UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18292

In the Matter of
Anton & Chia, LLP, **Gregory A. Wahl, CPA,** **Michael Deutchman, CPA,** **Georgia Chung, CPA, and** **Tommy Shek, CPA,**
Respondents.

THE DIVISION OF ENFORCEMENT'S PROPOSED FINDINGS OF FACT

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The Audit Firm and the Respondents

1. **Anton & Chia, LLP** was a PCAOB-registered auditing firm since 2009, and a California limited liability partnership headquartered in Newport Beach, California, with additional offices in San Diego and Westlake Village, California. It was founded in 2009 by Georgia Chung, and thereafter was co-owned by Chung and Greg Wahl.[1]

2. **Gregory Anton Wahl** was Anton & Chia's managing partner and 90% owner.[2] He is a licensed CPA in California and New York, and a chartered accountant in British Columbia, Canada. Wahl obtained his CPA license in September 2009.[3] He has no post-college education or any valuation credentials.[4]

3. Wahl worked as an auditor for approximately 18.5 years. He started his auditing career at KPMG in Canada, which had a "very good" training program. He spent 2.5 years as a staff accountant, 2.5 years as a senior accountant, 2 years as a manager, and approximately 11 years as a partner. During his time as an auditor, Wahl had a "good understanding" of PCAOB standards.[5]

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[1] Ex. 840 (Stipulated Facts) ¶ 21.

[2] Ex. 839.6 (Prior Testimony Designations) 156 (July 26, 2016 Wahl Inv. Test at 23:1-7) ("Q Okay. And when did you begin to work at Anton & Chia? A Effectively – no. January 1, 2010. Q And what was your position or role when you began to work at Anton & Chia? A I took over as 90 percent owner and the managing partner of the firm.").

[3] Tr. (Vol. XVI Wahl) 3845:2-4 ("September 2009 is when I got my California license. I was licensed as a CPA.").

[4] Tr. (Vol. XX Wahl) 4911:5-16 ("Q Okay. But nothing beyond that, right? You don't have an MBA, right? A I do not have an MBA. Q You are not a chartered financial analyst, right? A I am not. Q You are not a certified valuation analyst, correct? A I am not. Q And you have no special valuation or appraisal credentials, correct? A I don't.").

[5] Tr. (Vol. XVI Wahl) 3844:11-17 ("Q And how many years of accounting experience do you have? A Public accounting, in terms of doing audits, reviews, it's roughly 18, 18 and a half years. And then in the last year and a half I've done predominantly consulting advisory for companies."); *Id.* at 842:2-3843:1 ("I was hired by KPMG when I was 25, January 1999. … It was in their new Westminster officer and moved to Burnaby, Canada. … But I chose KPMG because they – the office that I went to was their top office in the country. And KPMG in Vancouver at this time has, like, 67 – 60 to 70 percent of the known marketplace in terms of clientele. So they had a very big presence. And then they had very good training and took it really seriously to develop their staff."); *id.* at 3844:18-24 ("Q How many of those years would you say you worked as a partner versus a staff accountant versus a senior accountant? A Two and a half years roughly as a staff accountant, two and a half years as a senior accountant roughly, two years as a manager and about 11 years as a partner."); Ex. 839.6 (Prior Testimony Designations) 46 (July 2, 2019 Wahl AP Dep. Tr. 43:16-22) ("Q. Did you understand the PCAOB standards during your 19-year

4. As relevant here, Wahl served as the engagement partner for Accelera's 2013 and 2014 audits and interim reviews in 2014 and 2015, Premier's 2013 audit, and CannaVEST's 2013 interim reviews.[6] Wahl is currently working as a consultant with NorAsia, a firm owned by Chung.[7]

5. **Michael Deutchman** was an Anton & Chia audit partner from August 2014 until August 2016, when he resigned from the firm. He has been a CPA for 48 years and has served as an engagement partner on at least 40 public companies.[8] He was the engagement quality review partner ("EQR") for Accelera's 2014 year-end audit and the interim reviews for the first and second quarters of 2015.[9] He was the engagement partner for the third quarter 2014 quarterly review.[10]

6. **Georgia Chung** was Anton & Chia's co-owner with Wahl. Chung is a licensed CPA in California and Colorado. Chung obtained her Colorado CPA license in January 2005, and her California CPA license in July 2006.[11] Chung served as the EQR for CannaVEST's first quarter of 2013 interim review.

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career as an auditor? A. Of course. Q. Did you feel like you had a good understanding of PCAOB standards when you served as an auditor? A. I think I was very diligent.").

[6] Jan. 5, 2018 Answer of Respondents Anton & Chia, LLP, Gregory A. Wahl, CPA, and Georgia Chung, CPA ("Wahl Answer") ¶ 10.

[7] Tr. (Vol. XX Wahl) 4926:17-4927:3 (Q You're currently working at NorAsia Consulting and Advisory, correct? A When I'm not in trial, yes. Q Okay. And NorAsia is owned by your wife Georgia Chung? A Yes. … Q Okay. But are you an employee of NorAsia? A I'm a consultant that works with NorAsia.").

[8] Tr. (Vol. IV Deutchman) 1096:4-10 ("A. So I've been an engagement partner on at least 40 public companies over the last ten years … Q. What about your whole career? How long have you been in the space? A. I've been a CPA 48 years.").

[9] Jan. 5, 2018 Answer of Respondent Michael Detuchman ("Deutchman Answer") ¶ 12 (admitting that he "was an A&C audit partner from August 2014 until August 2016, which he resigned from the firm. He was the AQR for Accelera's 2014 year end audit and the interim reviews for the third quarter of 2014 and the first and second quarter of 2015.").

[10] Tr. (Vol. III Deutchman) 638:25-2 ("That is correct," to inquiry, "You were the engagement partner on the third quarter 2014 interim review for Accelera."); Ex. 1.4 (Q3 2014 Planning Memo workpaper) 3.

[11] Ex. 875(Chung background questionnaire) at 9.

Anton & Chia Internal Controls

7. Anton & Chia "grew very quick."[12] It started in 2010 with just Wahl and Chung, plus two consultants.[13] By 2013, Anton & Chia had three partners, ten professional staff, and 88 issuer audit clients.[14] By 2015, it had eight partners, 33 professional staff, and approximately 117 issuer clients.[15] By 2016, Anton & Chia had approximately 75 employees throughout eight offices,[16] 4 partners, and approximately 80-90 issuer clients.[17] As of early 2016, Anton & Chia provided services for over 100 public companies and brokerage firms.[18]

8. These audit clients were only part of Anton & Chia's business. At times which were the subject of the OIP, Anton & Chia, together with its Canadian affiliate, serviced over 2,000 clients in small and middle markets worldwide.[19]

9. Wahl planned to grow Anton & Chia to the point where each partner had a $2.5 million to $3.5 million book of business.[20] Wahl wanted to grow the firm to $20 million in the short term.[21]

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[12] Ex. 839.6 (Prior Testimony Designations) 32 (July 2, 2019 Wahl Dep. at 29:8-10).
[13] Ex. 839.6 (Prior Testimony Designations) 156 (July 26, 2016 Wahl Inv. Test at 23:8-10) ("At that time [2010], was it just the two of you or were there other employees as well? A. We had two consultants, plus my wife.").
[14] Ex. 83 at 2 (2013 PCAOB Inspection Report of Anton & Chia).
[15] Ex. 81 at 2 (2015 PCAOB Inspection Report of Anton & Chia); Tr. (Vol. XXI Wahl) 5006:16-18 ("Q So what did you think the right number was for the issuer audit opinions? A I remember 117 for some reason.").
[16] Ex. 839.6 (Prior Testimony Designations) 156 (July 26, 2016 Inv. Test at 23:25-24:4).
[17] Ex. 82 at 2 (2016 PCAOB Inspection Report of Anton & Chia); Tr. (Vol. XXI Wahl) 5007:9-13 ("Q And the number of issuer audit clients is 105 there. I think you previously testified that was high? A Yeah. I believe for the same reason. I believe it was in the 80 to 90 range.").
[18] Feb. 23, 2018 Motion to Dismiss at 3 ("As of early 2016, the Firm provided services for over 100 public companies and brokerage firms.").
[19] Feb. 23, 2018 Motion to Dismiss at 3 ("At times which are the subject of the OIP, together with its Canadian affiliate …, the Firm serviced over 2000 clients in small and middle markets worldwide.").
[20] Tr. (Vol. XXI Wahl) 5008:9-21 ("Q … you wanted the average partner book modeled on the high side of 3 million; is that right? A …when I looked at the larger firms, a lot of the partners would have a book of 2.5 to 3.5 million. And so that was kind of the benchmark.").
[21] Tr. (Vol. XXI Wahl) 5009:5-11 ("Q And did you want to grow it into a $20 million firm? A I think 20 million was the short-term time – was the short-term goal.").

10. Wahl also spent a significant amount of time managing Anton & Chia itself.[22] He managed all eight offices and personnel.[23] Starting in 2014, Wahl begin to transition into more of an administrative and business development role, stepping away from auditing.[24] By 2016, Wahl had stepped away from client engagements altogether and focused exclusively on running the firm.[25]

11. Anton & Chia operated in the small cap space, and most of its clients were "fairly risky."[26] For example, in 2013, only 12 to 13 of Anton & Chia's 88 issuer audit clients were operating companies.[27]

12. Anton & Chia had "a lot of [staff] turnover," due to "long hours," "stress," and a client base with poor controls.[28]

13. Anton & Chia's compliance consultant Shane Garbutt testified that Anton & Chia had fairly significant turnover at both the staff and partner levels.[29]

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[22] Ex. 839.6 (Prior Testimony Designations) 33 (July 2, 2019 Wahl Dep. at 30:6-8) ("Q. Did you also spend significant time managing … Anton & Chia itself? A. Yes.").
[23] Ex. 839.6 (Prior Testimony Designations) 156 (July 26, 2016 Wahl Inv. Test at 24:3-14) ("A We have eight offices … Q And you manage all those offices and all those personnel? A Yes.").
[24] Tr. (Vol. VIII Shek) 2466:2-10 (in response to question whether Wahl "took [his] job seriously," Shek responded, "I would say for the first two years, yes. And after that, I think you were just more busy in acquiring new business working with other partners in, like, trying to get more clients, too.").
[25] Tr. (Vol. XXI Wahl) 5010:23-5011:5 ("Q I'm sorry. So the work would have occurred in 2016, right? I think you had stepped away from being engagement partner on Accelera at that point, and Gandhi was the engagement partner on the '15 audit? A Well, I had stepped away from pretty much all of the clients, and I focused more on running the firm.").
[26] Tr. (Vol. XXI Wahl) 5096:10-14 ("Q Okay. Do you deny that Accelera was one of your riskier clients? A I mean, when you operate in a small cap space, I mean, most of the clients are fairly risky.").
[27]Tr. (Vol. XXI Wahl) 5002:21-5003:4 (Q I'm sorry. The number of issuer audit clients here [in Ex. 83] is estimated at 88. What's your view of that number? A I think it's a little bit misleading. I think there's maybe only 12 to 13 operating companies, and the rest were, I think, like small reporting companies with really nominal assets. There weren't a lot of larger clients in there if I remember correctly.").
[28] Tr. (Vol. VIII Shek) 2216:25-2217:9; *see also* Ex. 839.6 (Prior Testimony Designations) 157 (July 26, 2016 Wahl Inv. Test at 25:18-24) ("A. You know, the staff – you know, deal with the millennials and it's a bit of a challenge. You know, we've had probably – I would say our average [rate of staff turnover] is in the 14 to 16-month range with the younger staff….").
[29] Tr. (Vol. XI Garbutt) 3030:25-3033:10, 3037:12-25.

14. Garbutt also testified that Wahl had about a $3 million revenue target for each Anton & Chia partner, which is an unusually high revenue target for partners working in the micro-cap space. Garbutt further testified that it would be challenging for a partner managing a $3 million revenue target to maintain quality audits and interim reviews in the microcap space. Such a partner would have to rely a fair bit on his or her audit managers and senior accountants. But Anton & Chia had difficulties keeping its audit managers and senior accountants, as turnover was high.[30]

Applicable GAAP Standards

A. The GAAP Standard for Business Combinations – ASC 805

15. Generally accepted accounting principles ("GAAP") ASC 805 defines a business combination as a "transaction or other event in which an acquirer obtains control of one or more businesses."[31]

16. Before consolidating the results of the purported acquiree in its financial statements, the purported acquirer first must assess whether it has obtained control of the other company.[32] Under ASC 805, control is identified as "[t]he direct or indirect ability to determine the direction of management and policies through ownership, contract, or otherwise."[33] It further states that the "usual condition for a controlling financial interest is ownership of a majority voting interest, and, therefore, as a general rule ownership by one reporting entity, directly or indirectly, of more than 50 percent of the outstanding voting shares of another entity is a condition pointing toward consolidation."[34]

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[30] *Id.* at 3038-3040:7.
[31] Ex. 88.1 (Devor Report) ¶ 161 (citing ASC 805-10-20).
[32] *Id.* ¶ 162.
[33] *Id.* ¶ 163 (citing ASC 805-10-20).
[34] *Id.* ¶ 163 (citing ASC 805-20-20).

17. The date when an acquirer obtains control of the acquiree (the acquisition date) is "the date on which the acquirer legally transfers the consideration, acquires the assets, and assumes the liabilities of the acquiree."[35]

18. After identifying the acquirer and acquisition date, the acquisition method requires the acquirer to: (1) determine the fair value of the consideration (*i.e.*, the purchase price) as of the acquisition date; (2) recognize and measure the fair value of the net tangible and identifiable intangible assets acquired, the liabilities assumed, and any non-controlling interest in the acquiree as of the acquisition date; and (3) recognize and measure goodwill or a gain from a bargain purchase."[36]

19. Goodwill represents "the value of an enterprise after taking into account the value of identifiable assets, such as contracts."[37] ASC 805 defines goodwill as an "asset representing the future economic benefits arising from other assets acquired in a business combination … that are not individually identified and separately recognized."[38]

20. An identifiable asset can be tangible or intangible. For an intangible asset to be identifiable, it must meet "either the separability criterion or the contractual-legal criterion described in the definition of identifiable."[39] Such criteria are defined as follows:

> a. It is separable, that is, capable of being separated or divided from the entity and sold, transferred, licensed, rented, or exchanged, either individually or together with a related contract, identifiable asset, or liability, regardless of whether the entity intends to do so; or

[35] *Id.* ¶ 164 (citing ASC 805-20-25-7).
[36] *Id.* ¶ 427 (citing ASC 805-10-05-4); *id.* ¶ 642 (citing ASC 805-30-30-7, 805-30-30-1, 805-20-25-10, 805-20-30-1).
[37] *Id.* ¶ 428. *See also* 805-30-30-1.
[38] *Id.* ¶ 428 (citing ASC 805-30-20).
[39] *Id.* ¶ 429 (citing ASC 805-20-55-2).

> b. It arises from contractual or other legal rights, regardless of whether those rights are transferable or separable from the entity or from other rights and obligations.[40]

21. If a business combination involves "the acquisition of identifiable assets (or an assumption of a liability, or a non-controlling interest of the acquiree), with certain exceptions not applicable here, the acquirer must measure the assets at their 'acquisition-date fair values.'"[41] ASC 805 explicitly states that customer contracts are one type of intangible asset that are identifiable and, therefore, should be recognized and measured if acquired in a business combination.[42]

22. Fair value is "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date."[43]

23. Market participants are "buyers and sellers in the principal (or most advantageous) market for the asset or liability that have all of the following characteristics," including, "(b) [t]hey are knowledgeable, having a reasonable understanding about the asset or liability and the transaction using all available information, including information that might be obtained through due diligence efforts that are usual and customary."[44]

24. Orderly transaction is "a transaction that assumes exposure to the market for a period before the measurement date to allow for marketing activities that are usual and customary for transactions involving such assets or liabilities."[45]

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[40] *Id.* ¶ 429 (quoting ASC 805-20-20).
[41] *Id.* ¶ 430 (quoting ASC 805-20-30-1).
[42] *Id.* ¶ 430 (citing ASC 805-20-55-3).
[43] ASC 805-10-20.
[44] *Id.*
[45] *Id.*

B. The GAAP Standard for Receivables – ASC 310

25. ASC 310 governs the accounting for notes receivable. ASC 310 states that receivables "may arise from credit sales, loans, or other transactions," and "may be in the form of loans, notes, and other types of financial instruments and may be originated by an entity or purchased from another entity."[46] When the face value of a note is materially different from its fair value, ASC 310 requires the company to record the receivable at fair value.[47]

26. After the initial transaction and measurement, ASC 310 requires a company to periodically measure receivables for impairment to ensure that the recorded amounts still reflect the likelihood of collection. ASC 310 further provides that a receivable is impaired when available information indicates that it is probable that an asset has been impaired at the date of the financial statements and the amount of loss can be reasonably estimated.[48]

C. The GAAP Standard for Fair Value – ASC 820

27. ASC 820 defines "acquisition-date fair value" fair value as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date."[49]

28. An "orderly transaction" is a "transaction that assumes exposure to the market for a period before the measurement date to allow for marketing activities that are usual and customary for transactions involving such assets."[50] Circumstances that may indicate that a transaction is not orderly include, but are not limited to: "(a) there was not adequate exposure to the market for a period before the measurement date to allow for marketing activities that are

[46] *Id.* ¶ 418 (citing ASC 310-05-4).
[47] *Id.* ¶ 418 (citing ASC 310-10-30-5).
[48] *Id.* ¶ 421 (citing ASC 310-10-35-8).
[49] *Id.* ¶ 643 (quoting ASC 820-10-20); *see also id.* (citing ASC 805-20-30-1); *id.* ¶ 420 (citing ASC 820-10-20); *see also* ASC 820-10-05-1B and ASC 820-10-35-9A.
[50] *Id.* ¶ 644 (quoting ASC 820-10-20); *id.* (citing ASC 805-10-20).

usual and customary for transactions involving such assets or liabilities under current market conditions; or (b) there was a usual and customary marketing period, but the seller marketed the asset or liability to a single market participant."[51]

29. "If the evidence indicates that a transaction is not orderly, a reporting entity shall place little, if any, weight (compared with other indications of fair value) on that transaction price."[52]

30. Level 1 inputs are "quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity can access at the measurement date."[53]

31. An active market is "a market in which transactions for the asset or liability take place with sufficient frequency and volume to provide pricing information on an ongoing basis."[54]

32. Level 2 inputs are "inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly."[55]

33. Level 3 inputs are "unobservable inputs for the asset or liability."[56] An example of a Level 3 input "would be a financial forecast (for example, of cash flows or earnings)."[57]

D. The GAAP Standard for Goodwill – ASC 350

34. An acquiring company must "measure and recognize any goodwill from a business combination only *after* it determines and recognizes (1) the fair value of any identifiable

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[51] *Id.* ¶ 644 (citing ASC 820-10-35-54I).
[52] ASC 805-10-35-54J.
[53] ASC 820-10-20; ASC 820-10-35-40.
[54] ASC 820-10-20.
[55] ASC 820-10-20; ASC 820-10-35-47.
[56] ASC 820-10-20; ASC 820-10-35-52; ASC 820-10-35-53.
[57] ASC-10-55-22(e).

assets it acquired, including intangible assets, (2) liabilities assumed, and (3) any non-controlling interest in the acquiree."[58]

35. After its initial recognition, goodwill must be presented in accordance with ASC 350, which requires that the "[g]oodwill of a reporting unit shall be tested for impairment on an annual basis."[59] Additionally, goodwill "shall be tested for impairment if an event occurs or circumstances change that indicate that the fair value of the entity (or the reporting unit) may be below its carrying amount (a triggering event)."[60]

36. GAAP permits companies to assess goodwill using either a qualitative or quantitative test.[61]

37. Under a qualitative test, companies must determine "whether it is more likely than not (*i.e.*, greater than 50%) that the fair value of an entity or reporting unit is less than its carrying amount."[62] In making this evaluation, "'an entity shall assess relevant events and circumstances.'"[63] Under ASC 350, examples of qualitative events and/or circumstances that could result in the impairment of goodwill include, but are not limited to: (1) macroeconomic conditions; (2) industry and market considerations; (3) cost factors; and (4) overall financial performance.[64]

38. If a company does not use this qualitative option, or if it determines that the fair value of the entity or its reporting unit is less than its carrying amount, the company is required to perform a two-step quantitative goodwill impairment test.[65]

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[58] *Id.* ¶ 431.
[59] *Id.* ¶ 432 (citing ASC 350-20-35-28).
[60] *Id.* ¶ 432 (citing ASC 350-20-35-66).
[61] *Id.* ¶ 433.
[62] *Id.* ¶ 434 (citing ASC 350-20-35-3 & 3A).
[63] *Id.* ¶ 435 (quoting ASC 350-20-35-3A).
[64] *Id.* ¶ 435 (citing ASC 350-20-35-3C).
[65] *Id.* ¶ 436 (citing ASC 350-20-35-3).

39. The purpose of the two-step quantitative goodwill impairment test is "to determine whether the carrying value of the entity or reporting unit is consistent with its fair value as of the measurement date."[66] If the carrying value of an entity or reporting unit exceeds the fair value of its goodwill as of the measurement date, GAAP requires that "an impairment loss shall be recognized in an amount equal to that excess."[67]

40. If a goodwill impairment loss is recognized, the reporting entity must disclose in the notes to the financial statements, "a description of the facts and circumstances leading to the impairment," and "the amount of the impairment loss and the method of determining the fair value of the associated reporting unit."[68]

E. The GAAP Standard for Errors in Prior Reporting Periods – ASC 250

41. ASC 250 states that "any error in the financial statements of a prior period discovered after the financial statements are issued or are available to be issued should be reported as an error correction, by restating the prior-period financial statements."[69]

Applicable GAAS Standards

42. An external auditor has two responsibilities. First, an auditor must plan and perform an audit to obtain reasonable assurance that the financial statements are free of material misstatement. Second, an auditor must express an opinion on whether the financial statements are presented fairly, in all material respects, in conformity with GAAP.[70]

43. The Public Company Accounting Oversight Board ("PCAOB") has promulgated standards by which an auditor must plan, conduct, and report on an audit. These standards are "a

[66] *Id.* ¶ 437.
[67] *Id.* ¶ 437 (quoting ASC 350-20-35-11).
[68] ASC 350-20-50-2.
[69] *Id.* ¶ 651 (quoting ASC 250-10-45-23).
[70] Ex. 88.1 (Devor Report) ¶ 37 (citing AU 110.01, -.02).

measure of audit quality and the objectives to be achieved in an audit." Auditors have a "responsibility to their profession to comply with these standards."[71]

44. The PCAOB and the American Institute of Certified Public Accountants ("AICPA") have approved and adopted ten high-level generally accepted auditing standards to which auditors must adhere throughout the conduct of all audits. The ten standards fall into three categories: (1) general standards; (2) standards of fieldwork; and (3) standards of reporting. Specifically:

General Standards

- The audit is to be performed by a person or persons having adequate technical training and proficiency as an auditor.

- In all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor or auditors.

- Due professional care is to be exercised in the performance of the audit and the preparation of the report.

Standards of Field Work

- The work is to be adequately planned and assistants, if any, are to be properly supervised.

- A sufficient understanding of internal control is to be obtained to plan the audit and to determine the nature, timing, and extent of tests to be performed.

- Sufficient appropriate evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit.

[71] *Id.* ¶ 38 (citing AU 150.01).

Standards of Reporting

- The report shall state whether the financial statements are presented in accordance with generally accepted accounting principles.

- The report shall identify those circumstances in which such principles have not been consistently observed in the current period in relation to the preceding period.

- Informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report.

- The report shall contain either an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor should be stated. In all cases where an auditor's name is associated with financial statements, the report should contain a clear-cut indication of the character of the auditor's work, if any, and the degree of responsibility the auditor is taking.[72]

45. In the auditor's report, the auditor expresses an opinion on both the scope of his or her work and the fairness of the presentation of the financial statements (and often, the effectiveness of the entity's system of internal control over financial reporting). The audit report also identifies any circumstances in which the financial statements are not presented in accordance with GAAP.[73]

46. In this case, the following PCAOB standards (among others) applied to Anton & Chia's work:

A. AU 230 – Due Professional Care in the Performance of Work

47. The exercise of due professional care and professional skepticism are the "overarching obligations to which an auditor must adhere when performing procedures

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[72] *Id.* ¶ 39 (quoting AU 150.02).
[73] *Id.* ¶ 41 (citing AU 110.01, 150.02).

underlying the expression of an audit opinion."[74] The concept of due professional care, which is defined in AU 230, is in essence "'what the independent auditor does and how well he or she does it.'"[75]

48. "Due professional care is 'the degree of skill commonly possessed' by other auditors."[76] "Due professional care generally requires an auditor to exercise 'reasonable care and diligence' and 'professional skepticism' when performing audit procedures throughout the audit process and when rendering opinions."[77]

49. Professional skepticism as an attitude that includes a "questioning mind" and "critical assessment of audit evidence." "The auditor uses the knowledge, skill, and ability called for by the profession of public accounting to diligently perform, in good faith and with integrity, the gathering and objective evaluation of evidence."[78] "Gathering and objectively evaluating audit evidence requires the auditor to consider the competency and sufficiency of the evidence."[79]

50. Auditors "'should be assigned to tasks and supervised commensurate with their level of knowledge, skill, and ability so that they can evaluate the audit evidence they are examining.'"[80] Furthermore, the engagement partner is "'responsible for the assignment of tasks to, and supervision of, the members of the engagement team.'"[81]

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[74] *Id.* ¶ 44; *see also id.* ¶ 44 n.11 (citing AU 722.01, 150.02) ("Professional care and professional skepticism also applies to reviews of interim financial statements performed in accordance with AU 722.").
[75] *Id.* ¶ 44 (citing AU 230).
[76] *Id.* ¶ 45 (quoting AU 230.03).
[77] *Id.* ¶ 45 (quoting AU 230.05, -.07, -.08).
[78] *Id.* ¶ 46 (citing AU 230.07).
[79] *Id.* ¶ 46 (citing AU 230.08).
[80] *Id.* ¶ 47 (quoting AU 230.06).
[81] *Id.* ¶ 47 (quoting AU 230.06; footnote omitted).

51. Under AU 230, "'[t]he auditor neither assumes that management is dishonest nor assumes unquestioned honesty.'"[82]

B. AU 210 – Training and Proficiency of the Independent Auditor

52. An audit must be performed by those who have "adequate technical training and proficiency as an auditor."[83]

53. "The junior assistant must obtain his professional experience with the proper supervision and review of his work by a more experienced superior. An engagement partner must exercise 'seasoned judgment' in the supervision and review of the work done and judgments exercised by subordinates."[84]

54. An independent auditor must be "proficient in accounting and auditing" and "must have the ability to exercise independent judgment with respect to the information obtained during the course of an audit."[85]

C. AU 311 – Planning and Supervision and AU 314 – Understanding the Entity and Its Environment and Assessing the Risk of Material Misstatement

55. AU 311 provides guidance for auditors "to ensure audits are adequately planned and appropriately supervised."[86] "Planning an audit involves obtaining an understanding of the entity and its environment, including its internal control."[87] From this understanding, the auditor "assess[es] the risks of material misstatement of the financial statements" and "design[s] the nature, timing, and extent of further audit procedures."[88]

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[82] *Id.* ¶ 48 (quoting AU 230.09).
[83] *Id.* ¶ 49 (citing AU 210.01, 210.02).
[84] *Id.* ¶ 50 (quoting AU 230.03).
[85] *Id.* ¶ 51 (citing AU 210.05).
[86] *Id.* ¶ 52 (citing AU 311.01).
[87] *Id.* ¶ 52 (citing AU 311.03, .09); *see also id.* ¶ 52 n.12 (citing (AU 314.41) ("Internal controls is the process, effected by an entity's Board, management, and/or other personnel, designed to provide reasonable assurance regarding the achievement of the entity's objectives in the following categories: (1) reliability of financial reporting, (2) effectiveness and efficiency of operations, and (3) compliance with applicable laws and regulations.").
[88] *Id.* ¶ 52 (citing AU 311.09, 314.01).

56. In establishing the overall audit strategy, "the auditor is required to consider important factors or areas where special audit consideration may be necessary and that will determine the focus of the audit team's efforts, such as recent significant entity-specific developments or complex or unusual transactions."[89]

57. The auditor must develop an audit plan "which should include a description of the nature, timing, and extent of planned risk assessment procedures sufficient to assess the risk of material misstatement as determined under AU 314."[90]

58. If the auditor determines that there are weaknesses in an entity's control environment, the auditor should "consider an appropriate response and modify the audit procedures performed."[91]

D. AU 315 – Communications between Predecessor and Successor Auditors

59. AU 315 requires the successor auditor to make "specific and reasonable inquiries of the predecessor auditor regarding matters that will assist the successor auditor in determining whether to accept an engagement." Such matters include, among other things, "(a) information that might bear on the integrity of management, (b) disagreements with management as to accounting principles, auditing procedures, or other similar significant matters, (c) communications regarding fraud, illegal acts by clients, and internal control-related matters and (d) the predecessor auditor's understanding as to the reasons for the change of auditors."[92]

60. AU 315 also requires the successor auditor "to obtain sufficient appropriate evidential matter, as in any audit or review work." Such evidential matter may include, among other things, "the results of inquiry of the predecessor auditor and the results of the successor

[89] *Id.* ¶ 53 (citing AU 311.14, 314.03).
[90] *Id.* ¶ 54 (citing AU 311.21).
[91] *Id.* ¶ 55 (citing AU 314.75).
[92] *Id.* ¶ 56 (citing AU 315.09); *see also* AU 722.04.

auditor's review of the predecessor auditor's working papers relating to the most recently completed audit."[93]

E. AU 316 – Consideration of Fraud in a Financial Statement Audit

61. PCAOB standards consider fraud as "'an intentional act that results in a material misstatement in financial statements that are the subject of an audit.'"[94] Under PCAOB standards, "fraud can result if a company makes material misstatements due to aggressive applications of accounting rules that are rationalized by management."[95]

62. While it is management's responsibility to detect and prevent fraud, AU 316 "requires auditors to use professional judgment to determine whether fraud risk factors are present." When fraud risk factors exist, "auditors must respond by using their professional judgment and modifying their audit procedures."[96] A belief that "management is honest" does not suffice.[97] PCAOB standards provide that "'[i]n exercising professional skepticism, the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest.'"[98]

63. In the audit of a financial statement, "fraud risk factors trigger heightened scrutiny on the part of the auditor, and the auditor should consider them in identifying and assessing the risks of material misstatement due to fraud." Under AU 316, "an auditor should respond to identified risks by, among other things, altering the nature, timing, and extent of the auditing procedures to be performed."[99]

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[93] *Id.* ¶ 57 (citing AU 315.12).
[94] *Id.* ¶ 58 (quoting AU 316.05).
[95] *Id.* ¶ 58 (citing AU 316.06).
[96] *Id.* ¶ 59 (citing AU 316.85).
[97] *Id.* ¶ 59.
[98] *Id.* ¶ 59 (quoting AU 316.13).
[99] *Id.* ¶ 60 (citing AU 316.02).

64. Auditors also have a responsibility to give "special attention to significant unusual transactions that are outside the normal course of business for the entity, or that otherwise appear to be unusual given the auditor's understanding of the entity and its environment." This responsibility includes: "(1) gaining an understanding of the business rationale for the transaction and (2) considering whether the transaction may have been entered into to engage in fraudulent financial reporting."[100]

65. Auditors must evaluate the following considerations when understanding the business rationale for significant unusual transactions:

- "Whether the form of such transactions is overly complex (for example, involves multiple entities within a consolidated group or unrelated third parties)."[101]

- "Whether management has discussed the nature of and accounting for such transactions with the audit committee or board of directors."[102]

- "Whether management is placing more emphasis on the need for a particular accounting treatment than on the underlying economics of the transaction."[103]

- "Whether transactions that involve unconsolidated related parties, including special purpose entities, have been properly reviewed and approved by the audit committee or board of directors."[104]

- "Whether the transactions involve previously unidentified related parties or parties that do not have the substance or the financial strength to support the transaction without assistance from the entity under audit."[105]

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[100] *Id.* ¶ 61 (citing AU 316.66).
[101] *Id.* ¶ 62(1) (citing AU 316.67).
[102] *Id.* ¶ 62(2) (citing AU 316.67).
[103] *Id.* ¶ 62(3) (citing AU 316.67).
[104] *Id.* ¶ 62(4) (citing AU 316.67).
[105] *Id.* ¶ 62(5) (citing AU 316.67).

F. AU 330 – The Confirmation Process

66. It is generally presumed that "evidence obtained from third-parties provides auditors with more reliable audit evidence than is typically available from within an entity." For that reason, AU 330 presumes that "the auditor will request such third-party evidence (e.g., send a confirmation) when auditing receivables."[106]

67. If a positive confirmation is not returned by the third-party, "the auditor is required to perform additional procedures in order to 'obtain the evidence necessary to reduce audit risk to an acceptably low level.'"[107] At all events, "an auditor is required to either perform alternative procedures, or document why the alternative procedures are not necessary."[108] After performing the alternative procedures, auditors must "'evaluate the combined evidence provided by the confirmations and the alternative procedures to determine whether sufficient evidence has been obtained about all the applicable financial statement assertions.'"[109]

G. AU 333 – Management Representations

68. During the course of an audit, the independent auditor must obtain "written representations from management." Written representations are "'part of the evidential matter the independent auditor obtains.'" However, "'they are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit.'"[110]

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[106] *Id.* ¶ 63 (citing AU 330.34).
[107] *Id.* ¶ 64 (quoting AU 330.31); *see also id.* ¶ 64 n.13 (citing AU 336.17) ("AU 336 describes a positive confirmation as one in which the confirmation form either (1) requests the respondent to indicate whether he or she agrees with the information stated on the confirmation form, or (2) without stating the amount on the confirmation form, requests the recipient to fill in the balance or furnish other information.").
[108] *Id.* ¶ 64.
[109] *Id.* ¶ 64 (citing AU 330.33).
[110] *Id.* ¶ 65 (quoting AU 333.02).

69. When assessing audit evidence, "'[i]f a representation made by management is contradicted by other audit evidence, the auditor should investigate the circumstances and consider the reliability of the representation made.'"[111]

H. AU 336 – Using the Work of a Specialist

70. An entity may engage a valuation specialist to measure fair value in accordance with GAAP. AU 336 "provides the requirements for auditors when management utilizes the work of a specialist."[112]

71. When "the specialist's findings are part of the audit evidence relied upon by the auditor," PCAOB standards requires the auditor to perform the following:

- "obtain an understanding of the methods and assumptions used by the specialist,"
- "make appropriate tests of data provided to the specialist, taking into account the auditor's assessment of control risk," and
- "evaluate whether the specialist's findings support the related assertions in the financial statements."[113]

72. Thus, "auditors cannot blindly accept the results of a specialist, even if the specialist is judged to be objective and appropriately qualified." Auditors must review the specialist's work product "to understand and assess the specialist's methodology, significant assumptions used, and data inputs that were provided by management." Auditors also must "assess the overall findings, including any qualifications the specialist raised in such findings, and whether such findings are final."[114]

[111] *Id.* ¶ 66 (quoting AU 333.04).
[112] *Id.* ¶ 67.
[113] *Id.* ¶ 68 (quoting AU 336.12).
[114] *Id.* ¶ 69.

73. The PCAOB has stated that "auditors who do not properly evaluate a specialist's work may increase the risk that they will not detect a material misstatement, whether caused by error or fraud."[115]

I. AU 722 – Interim Financial Information

74. Auditors also must perform procedures for interim reviews they conduct. The objective of a review of interim financial information "is to provide the accountant with a basis for communicating whether he or she is aware of any material modifications that should be made to the interim financial information for it to conform with GAAP."[116] A review consists primarily of "performing analytical procedures and making inquiries of persons responsible for financial and accounting matters."[117]

75. In planning a review of interim financial information, the accountant should "perform procedures to update his or her knowledge of the entity's business and its internal control in order to (a) aid in the determination of the inquiries to be made and the analytical procedures to be performed and (b) identify particular events, transactions, or assertions to which the inquiries may be directed or analytical procedures applied."[118] The accountant should specifically consider "the nature of any significant financial accounting and reporting matters that may be of continuing significance."[119]

76. AU 722 also states that "during an initial review of interim financial information, the accountant must obtain sufficient knowledge of the entity's business and its internal

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[115] *Id.* ¶ 70 (citing PCAOB Staff Consultation Paper No. 2015-01, The Auditor's Use of the Work of Specialists, at 19-20).
[116] *Id.* ¶ 71 (citing AU 722.07).
[117] *Id.* ¶ 71 (citing AU 722.07).
[118] *Id.* ¶ 72 (citing AU 722.11).
[119] *Id.*

control."[120] To obtain that knowledge, the accountant performing an initial review of interim financial information:

> [M]akes inquiries of the predecessor accountant and reviews the predecessor accountant's documentation for the preceding annual audit and for any prior interim periods in the current year that have been reviewed by the predecessor accountant if the predecessor accountant permits access to such documentation. In doing so, the accountant should specifically consider the nature of any (*a*) corrected material misstatements; (*b*) matters identified in any summary of uncorrected misstatements; (*c*) identified risks of material misstatement due to fraud, including the risk of management override of controls; and (*d*) significant financial accounting and reporting matters that may be of continuing significance, such as weaknesses in internal control.[121]

77. If the accountant has not audited the most recent financial statements, AU 722 requires the accountant to perform procedures to obtain knowledge about, but not limited to, "(a) the entity's internal control, as it relates to the preparation of both annual and interim financial information, (b) relevant aspects of the control environment, and (c) the entity risk assessment process, control activities, information and communication, and monitoring."[122]

78. During an interim review, "the accountants should tailor their specific inquiries and analytical and other procedures performed based on the accountants' knowledge of the entity's business and its internal control."[123]

79. The accountant should "perform inquiries with members of management who have responsibility for financial and accounting matters concerning unusual or complex situations that may have an effect on the interim financial information."[124] Unusual or complex situations would include, for example, "business combinations, the impairment of assets, the

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[120] *Id.* ¶ 73 (citing AU 722.12).
[121] *Id.* ¶ 73 (quoting AU 722.12).
[122] *Id.* ¶ 74 (citing AU 722.13).
[123] *Id.* ¶ 75 (citing AU 722.15).
[124] *Id.* ¶ 76 (citing AU 722.18).

occurrence of infrequent or significant unusual transactions, and changes in related parties or significant new related-party transactions."[125]

80. Under AU 722, misstatements identified by the accountant, or brought to the accountant's attention, should be evaluated to determine whether material modification should be made to the interim financial information for it to conform to GAAP, and the accountant should consider the nature, cause (if known), and amount of the misstatements, and whether the misstatements originated in the preceding year or interim periods of the current year.[126]

81. An accountant's interim review documentation should include any findings or issues that in the accountant's judgment are significant, for example, the results of review procedures that indicate that the interim financial information could be materially misstated, including actions taken to address such findings, and the basis for the final conclusions reached. In addition, the documentation should: (a) enable members of the engagement team with supervision and review responsibilities to understand the nature, timing, extent, and results of the review procedures performed; (b) identify the engagement team member(s) who performed and reviewed the work; and (c) identify the evidence the accountant obtained in support of the conclusion that the interim financial information being reviewed agreed or reconciled with the accounting records.[127]

J. AS 3 – Audit Documentation

82. Auditors must follow documentation requirements set by the PCAOB. The requirements apply to "'an audit of financial statements, an audit of internal control over financial reporting, and a review of interim financial information.'"[128] Audit documentation –

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[125] *Id.* ¶ 76 (citing AU 722.55).
[126] AU 722.26.
[127] AU 722.51-722.52.
[128] *Id.* ¶ 77 (quoting AS 3.1).

also "'referred to as *workpapers* or *working papers*'" – is defined as "'the written record of the basis for the auditor's conclusions that provides the support for the auditor's representations, whether those representations are contained in the auditor's report or otherwise.'"[129] Audit documentation "'is the basis for the review of the quality of work because it provides the reviewer with written documentation of the evidence supporting the auditor's significant conclusions.'"[130]

83. "'[A]udit documentation is one of the fundamental building blocks'" for the integrity of audits.[131] "'[T]he quality and integrity of an audit depends, in large part, on the existence of a complete and understandable record of the work the auditor performed, the conclusions the auditor reached, and the evidence the auditor obtained that supports those conclusions.'"[132]

84. Audit documentation in connection with an audit "'should be prepared in sufficient detail to provide a clear understanding of its purpose, source, and the conclusions reached.'"[133] Audit documentation must "clearly demonstrate that the work was in fact performed." "The documentation must be sufficiently detailed, so that another auditor can understand the nature, timing, extent and results of the procedures performed and evidence obtained." Documentation must also be "sufficiently detailed to determine who performed and reviewed the work."[134]

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[129] *Id.* ¶ 77 (quoting AS 3.2).
[130] *Id.* ¶ 77 (quoting AS 3.2).
[131] *Id.* ¶ 78 (quoting AS 3, Appendix A.A4).
[132] *Id.* ¶ 78 (quoting AS 3, Appendix A.A4).
[133] *Id.* ¶ 70 (quoting AS 3.4).
[134] *Id.* ¶ 79 (citing AS 3.6 ("Audit documentation must contain sufficient information to enable an experienced auditor, having no previous connection with the engagement: (a) To understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached . . . .")).

85. Wahl agrees that audit documentation must contain information sufficient to allow an experienced auditor with no prior connection to the work to understand the procedures performed in the audit.[135]

86. PCAOB standards provide that auditors should consider "two factors when determining the nature and extent of audit documentation that is required to support an assertion in a financial statement:" (1) "the risk of material misstatement associated with the assertion"; and (2) the extent of judgment that auditors utilize to perform the work and evaluate the results."[136] With respect to the latter factor, "because accounting estimates require greater judgement, auditors must obtain 'more extensive documentation' in order to meet their objectives under PCAOB standards."[137]

87. Audit documentation "also must include facts or issues that are inconsistent with or contradict the auditor's final conclusions." This documentation includes "procedures performed in response to the contradictory information, and records documenting differences in professional judgment among members of the engagement team or between the engagement team and others consulted."[138]

88. The PCAOB requires auditors to "'consider all relevant evidential matter even though it might contradict or be inconsistent with other conclusions.'"[139] Further, "'[a]udit documentation must contain information or data relating to significant findings or issues that are inconsistent with the auditor's final conclusions on the relevant matter.'"[140]

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[135] Tr. (Vol. XX Wahl) 4924:23-4925:3 ("Q Audit documentation must contain information sufficient to allow an experienced auditor with no prior connection to the work to understand the procedures performed in the audit, right? A Right.").
[136] *Id.* ¶ 80 (citing AS 3.7).
[137] *Id.* ¶ 80 (citing AS 3.7).
[138] *Id.* ¶ 81 (citing AS 3.8).
[139] *Id.* ¶ 82 (quoting AS 3, Appendix A.A37).
[140] *Id.* ¶ 82 (quoting AS 3, Appendix A.A37).

89. If the auditor finds that "such inconsistent or contradictory information was 'incorrect or based on incomplete information,' it does 'not need to be included in the final audit documentation, provided that the apparent inconsistencies or contradictions were satisfactorily resolved by obtaining complete and correct information.'"[141]

90. If an auditor relies on the work of a specialist, including one retained by the company, "'the auditor must ensure that the specialist's work, as it relates to the audit objectives, also is adequately documented.'"[142]

91. Without documentation, there is doubt about whether an auditor performed the work at all. "If audit documentation does not exist for a particular procedure or conclusion related to a significant matter, there is doubt as to whether the necessary work was performed."[143] Additionally, "'[i]f the work was not documented, then it becomes difficult for the engagement team, and others, to know what was done, what conclusions were reached, and how those conclusions were reached.'"[144] The PCAOB explicitly states that "'a deficiency in documentation is a departure from the Board's standards.'"[145]

92. The PCAOB also provides that if an audit is being inspected or investigated and a lack of audit documentation is deemed to exist, "'the auditor is required to demonstrate with persuasive other evidence that the procedures were performed, the evidence was obtained, and appropriate conclusions were reached.'"[146] In these circumstances, an "'oral explanation alone does not constitute persuasive other evidence' but 'may be used to clarify other written evidence.'"[147]

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[141] *Id.* ¶ 83 (quoting AS 3, Appendix A.A38).
[142] *Id.* ¶ 84 (quoting AS 3, Appendix A.A33).
[143] *Id.* ¶ 85 (citing AS 3, Appendix A.A10).
[144] *Id.* ¶ 85 (quoting AS 3, Appendix A.A10).
[145] *Id.* ¶ 85 (quoting AS 3, Appendix A.A25).
[146] *Id.* ¶ 86 (quoting AS 3, Appendix A.A28).
[147] *Id.* ¶ 86 (quoting AS 3, Appendix A.A28).

K. AS 7 – Engagement Quality Review

93. Auditors also must follow requirements of the PCAOB regarding engagement quality review. Auditors must perform an "engagement quality review and obtain concurring approval before issuing audit reports for audits and completing reviews." The EQR must "evaluate the significant judgments made by the audit team and the related conclusions reached in forming the overall conclusion on the engagement in order to determine whether to provide concurring approval of issuance."[148]

94. The key qualities required of an EQR are "competence, independence, integrity, and the maintenance of objectivity when performing a review."[149] Specifically, pertaining to objectivity, the EQR "'should not make decisions on behalf of the engagement team or assume any of the responsibilities of the engagement team.'"[150] Pertaining to competency, the EQR must possess the level of knowledge and competence related to accounting, auditing, and financial reporting required to serve as the engagement partner on the engagement under review.[151]

95. The EQR "'should evaluate the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement and in preparing the engagement report.'"[152] Along with reviewing significant judgments made by the engagement team, the EQR should "'evaluate whether appropriate consultations have taken place on difficult or contentious matters.'"[153]

96. In an audit, the EQR should evaluate whether the audit documentation "'(a) [i]ndicates that the engagement team responded appropriately to significant risks, and (b)

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[148] *Id.* ¶ 87 (citing AS 7.2).
[149] *Id.* ¶ 88 (citing AS 7.4).
[150] *Id.* ¶ 88 (quoting AS 7.7).
[151] ASC 7.5.
[152] *Id.* ¶ 89 (quoting AS 7.9, 7.14).
[153] *Id.* ¶ 89 (quoting AS 7.10, AS 7.15).

[s]upports the conclusions reached by the engagement team with respect to the matters reviewed.'"[154]

97. Once the EQR performs his/her review of the interim review or audit, he or she "'may provide concurring approval of issuance only if, after performing with due professional care the review required by [AS 7], he or she is not aware of a significant engagement deficiency.'"[155] The audit firm "may grant permission to the client to use an audit report 'only after the engagement quality reviewer provides concurring approval of issuance.'"[156] This standard suggests that "if the EQR believes that a significant engagement deficiency exists in the audit, the EQR could prohibit the audit firm from providing an audit report to its client for use in its filing with the SEC."[157]

L. AS 10 – Supervision of the Audit Engagement

98. The engagement partner is responsible for "the audit engagement and its performance" and "to properly supervise the work of engagement team members and ensure compliance with PCAOB standards."[158] The supervision requirements "'also apply to any engagement team members who assist the engagement partner with the supervision of the work of other engagement team members.'"[159]

99. The engagement partner and other engagement team members performing supervisory activities should:

a. Inform engagement team members of their responsibilities, including:

(1) The objectives of the procedures that they are to perform;

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[154] *Id.* ¶ 90 (quoting AS 7.11).
[155] *Id.* ¶ 91 (AS 7.12, 7.17).
[156] *Id.* ¶ 91 (quoting AS 7.13).
[157] *Id.* ¶ 91.
[158] *Id.* ¶ 92 (citing AS 10.3).
[159] *Id.* ¶ 92 (citing AS 10.4).

(2) The nature, timing, and extent of procedures they are to perform; and

(3) Matters that could affect the procedures to be performed or the evaluation of the results of those procedures, including relevant aspects of the company, its environment, and its internal control over financial reporting, and possible accounting and auditing issues;

b. Direct engagement team members to bring significant accounting and auditing issues arising during the audit to the attention of the engagement partner or other engagement team members performing supervisory activities so they can evaluate those issues and determine that appropriate actions are taken in accordance with PCAOB standards.

c. Review the work of engagement team members to evaluate whether:

(1) The work was performed and documented;

(2) The objectives of the procedures were achieved; and

(3) The results of the work support the conclusions reached.[160]

100. To determine the extent of supervision necessary for engagement team members to perform their work, the engagement partner and other engagement team members performing supervisory activities should take into account:

a. The nature of the company, including its size and complexity;

b. The nature of the assigned work for each engagement team member, including:

(1) The procedures to be performed, and

[160] *Id.* ¶ 93 (quoting AS 10.05).

(2) The controls or accounts and disclosures to be tested;

c. The risks of material misstatement; and

d. The knowledge, skill, and ability of each engagement team member."[161]

M. AS 12 – Identifying and Assessing Risks of Material Misstatement

101. An auditor must obtain "an understanding of the company and its environment in order to understand the events, conditions, and company activities that might reasonably be expected to have a significant effect on the risks of material misstatement in an entity's financial statements."[162] Obtaining an understanding of the company includes, among other things, "understanding the nature of the company, the relevant industry, and regulatory and other external factors that impact the entity whose financial statements are under audit or review."[163]

102. To assess the risk of material misstatement related to industry developments, "the accountant should assess whether the company has the proper personnel or expertise to deal with any changes in the industry that might bear on financial reporting."[164]

N. AS 14 – Evaluating Audit Results

103. "'The objective of the auditor is to evaluate the results of the audit to determine whether the audit evidence obtained is sufficient and appropriate to support the opinion to be expressed in the auditor's report.'"[165] Factors that are relevant to the conclusion on whether sufficient appropriate audit evidence has been obtained include, in part, "(1) the results of audit procedures performed, including whether the evidence obtained supports or contradicts

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[161] *Id.* ¶ 94 (quoting AS 10.6).
[162] *Id.* ¶ 95 (citing AS 12.7).
[163] *Id.* ¶ 95 (citing AS 12.7).
[164] *Id.* ¶ 96 (citing AS 12.15).
[165] *Id.* ¶ 97 (quoting AS 14.2).

management's assertions and whether such audit procedures identified specific instances of fraud and (2) the appropriateness (*i.e.*, the relevance and reliability) of the audit evidence obtained."[166]

104. When an auditor "has not obtained sufficient appropriate audit evidence about a relevant assertion or has substantial doubt about a relevant assertion, the auditor must perform additional procedures."[167] If the auditor "is unable to obtain sufficient appropriate audit evidence to have a reasonable basis to conclude about whether the financial statements as a whole are free of material misstatement, AU sec. 508 indicates that the auditor should express a qualified opinion or a disclaimer of opinion."[168]

O. AS 15 – Audit Evidence

105. "'Audit evidence is all the information that is used by the auditor in arriving at the conclusions on which the auditor's opinion is based.'"[169] Auditors must plan and perform audit procedures "to obtain sufficient appropriate audit evidence to provide a reasonable basis for the audit opinion."[170] "'Sufficiency' is the measure of the quantity of audit evidence." "'Appropriateness' is the measure of the quality of audit evidence (*i.e.*, relevance and reliability)."[171]

106. The quantity of audit evidence required "depends in part on risk of misstatement as well as the quality of the audit evidence obtained." "The greater the risk of misstatement or the lessor the quality of audit evidence obtained, the more audit evidence an auditor requires."[172]

107. Audit evidence must be "both relevant and reliable to be appropriate to support the conclusions on which the auditor opinion is based." The relevance of audit evidence "refers

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[166] *Id.* ¶ 97 (citing AS 14.34).
[167] *Id.* ¶ 98.
[168] *Id.* ¶ 98 (citing AS 14.35).
[169] *Id.* ¶ 99 (quoting AS 15.2).
[170] *Id.* ¶ 99 (citing AS 15.4).
[171] *Id.* ¶ 99 (quoting AS 15.5, -.6).
[172] *Id.* ¶ 100 (citing AS 15.5).

to its relationship to the assertion or the objective of the control being tested."[173] The reliability of audit evidence "depends on the nature and source of the evidence and the circumstances under which it is obtained."[174]

108. In representing that financial statements are presented fairly in conformity with GAAP (for instance), "management implicitly or explicitly makes assertions regarding the recognition, measurement, presentation, and disclosure of the various elements of financial statements and related disclosures."[175] Auditors are required "to obtain audit evidence to address the implicit or explicit assertions that management made in financial statements and related disclosures."[176]

109. Inquiries is one type of audit procedure performed to obtain audit evidence. "Inquiries consists of obtaining information from knowledgeable persons in financial or nonfinancial roles within the company or outside the company. Inquiries of company personnel, by itself, does not provide sufficient audit evidence to reduce audit risk to an appropriately low level for a relevant assertion."[177]

110. Further, "'[if] audit evidence obtained from one source is inconsistent with that obtained from another … the auditor should perform the audit procedures necessary to resolve the matter and should determine the effect, if any, on other aspects of the audit.'"[178]

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[173] *Id.* ¶ 101 (citing AS 15.7).
[174] *Id.* ¶ 101 (citing AS 15.8).
[175] *Id.* ¶ 102 (citing AS 15.11).
[176] *Id.* ¶ 102 (citing AS 15.11).
[177] *Id.* ¶ 103 (citing AS 15.17).
[178] *Id.* ¶ 104 (quoting AS 15.29).

ACCELERA

A. Accelera-Related Entities and Individuals

111. **Accelera Innovations, Inc.** ("Accelera") was a Delaware corporation with its principal place of business in Frankfort, Illinois. It was incorporated in April 2008 as a shell company. Later, the company claimed to be "a healthcare service company … focused on acquiring companies primarily in the post-acute care patient services and information technology services industries." Its common stock was quoted on OTC Link, operated by OTC Markets Group, Inc. and f/k/a the Pink Sheets ("OTC Link") under ticker ACNV, beginning in January 2014.[179]

112. **Behavioral Health Care Associates, Ltd.** ("BHCA") is a health care provider based in Schaumberg, Illinois specializing in psychiatry and substance abuse treatment.[180]

113. **Geoffrey Thompson** was the Chairman of the Board of Accelera.[181]

114. **John Wallin** was the nominal CEO of Accelera.[182] However, Wallin "wasn't very involved at all" in Accelera.[183]

115. **Timothy Neher** founded and owned the shell company that eventually became Accelera.[184] After he sold the shell, he served as a consultant to Accelera and "interim CFO … on a contract basis" until Daniel Freeman was hired.[185] However, Neher did not have strong accounting or financial skills.[186]

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[179] Ex. 840 (Stipulated Facts) ¶ 24.
[180] Ex. 840 (Stipulated Facts) ¶ 25.
[181] Tr. (Vol. I Freeman) 55:13-14 ("I reported to the Chairman of the Board, Geoff Thompson."); Tr. (Vol. II Boerum) 378:23-24 ("Geoff Thompson was the Chairman of the Board.").
[182] Tr. (Vol. I Freeman) 55:25 ("The CEO was John Wallin.").
[183] Tr. (Vol. I Freeman) 56:8-14.
[184] Tr. (Vol. I Freeman) 56:19-22 ("He was the originally person who formed Accelera and sold the shares to Synergistic."); Ex. 105 (Accelera 2013 Form 10-K) 5.
[185] *Id.*
[186] Tr. (Vol. I Freeman) 80:14-24 ("I didn't think he had strong accounting or financial skills.").

116. **Daniel Freeman** served as the CFO of Accelera from approximately "September of 2014 through March 20 of 2015."[187] He has an MBA, and he is a Certified Public Accountant and a Certified Information Technology Professional.[188] He has thirty years of public accounting experience, including at KPMG.[189]

B. Facts about Accelera's Improper Consolidation of BHCA

1. BHCA Agreements

a. Stock Purchase Agreement

117. Dr. Blaise Wolfrum and Accelera entered into a stock purchase agreement (the "Stock Purchase Agreement" or "SPA") on November 11, 2013.[190]

118. The fourth whereas clause of the Stock Purchase Agreement stated that "Purchaser [Accelera], Seller [Wolfrum], and the Company [BHCA] mutually agree and intend that the Company shall become a wholly owned subsidiary of Purchaser upon receipt of purchase price set forth in Section 1.1.1.1, subject to the terms and conditions of this Agreement."[191]

119. Section 1.1.1.1 of the SPA referred to the first payment due from Accelera to Wolfrum: "Ninety days from the date of closing, as defined in Section 2.1 below, Purchaser shall pay to Seller One Million 00/100 Dollars in lump sum by wire transfer of immediately available funds."[192]

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[187] Tr. (Vol. I Freeman) 54:22-55:4.
[188] Tr. (Vol. I Freeman) 51:25-52:8 ("I have a Master's in Business Administration from the University of Saint Thomas in St. Paul, Minnesota. Q And what other credentials, if any, do you have? A I'm a Certified Public Accountant, I'm a chartered managerial accountant, and I have a CITP, which is a Certified Information Technology Professional.").
[189] Tr. (Vol. I Freeman) 52:12-18 ("My professional background is, I've been in public accounting roughly 30 years. Initially I got my start at KPMG in Des Moines, Iowa. After that I joined a small CPA firm in Rochester, Minnesota. I spent three and a half years in private accounting before returning to public accounting. I was a partner in CPA firms from 1995 until joining Accelera.").
[190] Ex. 184 (Stock Purchase Agreement).
[191] *Id.* at 1.
[192] *Id.* § 1.1.1.1.

120. Section 1.1 of the SPA stated that the stock of BHCA would transfer to Accelera "[u]pon receipt of the payment of the purchase price set forth in Section 1.1.1.1, and subject to the terms and conditions of this Agreement."[193] It further stated that "The Parties agree that [BHCA's] Accounts Receivable and Accounts Payable shall be conveyed, transferred and assigned to Purchaser [Accelera] upon receipt of the payment of the purchase price set forth in Section 1.1.1.1, subject to the terms and conditions of this Agreement."[194]

121. Section 1.2 of the SPA stated that "[p]rior to seller's receipt of the payment set forth in section 1.1.1.1, each party shall have the right to immediately, upon written notice to the other party, cancel and terminate this agreement in its entirety and be released from any and all obligations set forth herein."[195]

122. Section 7.18 of the SPA indicated that Accelera would form an LLC "prior to Closing," and that Wolfrum would be appointed as sole manager of that LLC.[196]

123. Both parties to the SPA understood that Wolfrum would not convey ownership to Accelera until Accelera paid him. Wolfrum understood that Accelera would take ownership of the company once it paid him the money in section 1.1.1.1 of the SPA.[197] Similarly, Accelera's Chief Strategic Officer, Cindy Boerum, understood that, under the Stock Purchase Agreement, Accelera would only obtain the stock of BHCA "[o]nce the payment of $1 million was made."[198]

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[193] *Id.* § 1.1.
[194] *Id.*
[195] *Id.* § 1.2.
[196] *Id.* § 7.18.
[197] Tr. (Vol. I Wolfrum) 199:4-17 ("It meant that once they would pay me the money that was described in section 1.1.1.1, that they would then take ownership of the company."); *see also id.* at 199:18-200:11 (Wolfrum understood Section 1.1. to mean that "once the monetary payment would be received by me, that I would then transfer stock to the purchaser.").
[198] Tr. (Vol II Boerum) 382:20-24.

124. Accelera never made any payments to Wolfrum under the Stock Purchase Agreement.[199] Wolfrum never received any payments at all from Accelera.[200] Accordingly, Accelera never obtained the stock of BHCA.[201]

125. Wolfrum's intent in entering into the Stock Purchase Agreement was to sell his company for $4.550 million.[202] Wolfrum did not intend to convey the stock of his company before he was paid.[203]

b. Bill of Sale

126. Wolfrum signed a bill of sale ("Bill of Sale"), which indicated that he would sell and convey the stock of BHCA to Accelera "effective upon the payment of the purchase price set forth in Section 1.1.1.1 of the Purchase Agreement.[204]

127. Wolfrum understood the Bill of Sale to mean that "until I would receive the money, there would be no sale of the company."[205]

c. Promissory Note

128. Accelera signed a $3.55 million promissory note to Wolfrum (the "Promissory Note") on November 11, 2013, which was expressly "effective upon the payment of the purchase

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[199] Tr. (Vol I Wolfrum) 203:2-203:5 ("Q Did you ever receive any money from a seller at any point in time pursuant to the Stock Purchase Agreement? A No."); *see also id.*at 202:19-203:1; Tr. (Vol I Freeman) 62:20-22 ("Q. And again, did Accelera make this payment set forth in section 1.1.1.1? A. No."); Tr. (Vol II Boerum) 382:25-383:2 ("Q And what amount of money, if any, did Accelera pay under the Stock Purchase Agreement? A To my knowledge, nothing.").
[200] Tr. (Vol I Wolfrum) 205:19-25 ("JUDGE PATIL … Wolfrum, did you ever receive any payments at all from Accelera? A. No.").
[201] Tr. (Vol I Wolfrum) 212:18-21 ("Q. And at any time from November 11, 2013, to the present, has Accelera ever taken possession of Behavioral stock? A. No."); *see also* Tr. (Vol I. Freeman) 63:13-16 (answering "[n]o," to question, "[d]id there ever come a time, to your knowledge, Freeman, when Accelera actually acquired the stock of Behavioral?"); Tr. (Vol. II Boerum) 383:3-5 ("Q So did Accelera ever obtain the stock of Behavioral Health Care Associates? A They should not – no.").
[202] Tr. (Vol. I Wolfrum) 203:6-9 ("Q. What was your intent in entering into the stock purchase agreement? A. It was to sell the company for the $4.550 million to Accelera.").
[203] Tr. (Vol. I Wolfrum) 203:10-13 ("Q. Did you ever intend to convey all of the stock in your company, Behavioral Health Care Associates, before you were ever paid for it? A. No.").
[204] Ex. 194 (Bill of Sale).
[205] Tr. (Vol. I Wolfrum) 204:3-12.

price set forth in Section 1.1.1.1 of the Purchase Agreement."[206] In other words, the Promissory Note would only take effect after the initial payment of $1 million, and it would cover the remaining $3.55 million of the agreed-upon purchase price.[207]

129. Under Section 3 of the Promissory Note, the failure of Accelera to make any payment required under the Note would cause Accelera to owe interest of 7% per year.[208] Wolfrum never received any payments of interest under Section 3 of the Promissory Note.[209] Accelera also did not accrue interest under the Promissory Note.[210]

130. Wolfrum's understanding was that the Promissory Note would only "take effect then once the first payment was made."[211]

d. Stock Powers Certificate

131. Wolfrum signed a Stock Powers Certificate, under which he agreed to sell the stock of BHCA "effective upon the payment of the purchase price set forth in Section 1.1.1.1 of the Purchase Agreement."[212]

132. Wolfrum's understood the Stock Power Certificate to mean that he would transfer the BHCA stock upon the payment of the purchase price set forth in the SPA.[213]

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[206] Ex. 186 (Promissory Note).
[207] *Id.*; *see also* Tr. (Vol I Freeman) 64:16-65:1 ("[The Promissory Note] was not in effect at that time."); Tr. (Vol. II Boerum 460:14-23 ("Q You also discussed Exhibit 186, the promissory note with Wahl. We hadn't discussed that during your direct examination, so I just wanted to call your attention to the first paragraph of Exhibit 186. Is it your understanding that Exhibit 186 was effective upon the payment of the purchase price set forth in section 1.1.1.1 of the Stock Purchase Agreement? A Yes.").
[208] Ex. 186 (Promissory Note) § 3.
[209] Tr. (Vol. I Wolfrum) 206:3-21 ("Q. Can you take a look at section 3 on the default right here? … Did you ever get any interest? A. No.").
[210] Tr. (Vol. I Freeman) 65:11-16 (responding, "[n]o," to question, "[w]hen you were the CFO of Accelera, did Accelera accrue interest under this promissory note?" because "the transaction had not been completed.").
[211] Tr. (Vol I Wolfrum) 204:13-205:3.
[212] Ex. 189 (Stock Powers Certificate).
[213] Tr. (Vol. I Wolfrum) 206:22-207:9 (A [The Stock Powers Certificate] says that I would be transferring the stock in Behavioral Health Care Associates effective upon the payment of the purchase price set forth in section 1.1.1.1. Q Is this term consistent with your intent not to sell Behavioral until you've been paid under the Stock Purchase Agreement? A Yes.").

e. Written Action of the BHCA Shareholders

133. Wolfrum signed a Written Action of the Shareholders of BHCA on November 11, 2013 which held that "upon Accelera's payment of the purchase price set forth in Section 1.1.1.1 of the Purchase Agreement, Blaise J. Wolfrum, M.D. shall be named President of Behavioral Health Care Associates, a wholly owned subsidiary of Accelera Innovations Inc. and Manager of Accelera Healthcare Management Service Organization."[214]

134. The Written Action of the Shareholders of BHCA further stated that Wolfrum "shall continue to hold the positions of CEO" of BHCA "until Accelera's payment of the purchase price set forth in Section 1.1.1.1 of the Purchase Agreement."[215]

135. Wolfrum understood the Written Action of the Shareholders of BHCA to mean that he would be named president of Accelera's subsidiary and manager of its management service organization only after Accelera made the first payment under the SPA.[216]

f. Stock Pledge and Escrow Agreement

136. Accelera and Wolfrum entered into a Stock Pledge and Escrow Agreement (the "Escrow Agreement") on November 11, 2013, which was to be "effective upon the payment of purchase price set forth in Section 1.1.1.1 of the Purchase Agreement."[217]

137. Under the Escrow Agreement, once Accelera made the initial payment of $1 million, the shares of BHCA would be placed into an escrow account and held as security until Accelera paid the full $4.55 million.[218]

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[214] Ex. 191 (Unanimous Written Action of the Shareholders of BHCA) 1.
[215] *Id.*
[216] Tr. (Vol. I Wolfrum) 208:2-10 ("It says that after payment of the purchase price set forth in Section 1.1.1.1, that I would be named the president of Behavioral Health Care Associates as a wholly owned subsidiary with Accelera, and then manager of their management service organization."); *see also id.* at 08:17-24.
[217] Ex. 188 (Escrow Agreement) 1.
[218] *Id.* § 2; *see also* Tr. (Vol I Wolfrum) 210:3-19 (Wolfrum understood the Stock Pledge and Escrow Agreement to mean that "after [he] received the first million dollars, the stock would go into an escrow account called BW

138. Wolfrum himself controlled the putative escrow agent, BW Holdings, LLC[219] Accelera never placed any BHCA stock into escrow.[220] But even if the stock had gone into escrow, under the Escrow Agreement, Wolfrum – as the escrow agent – would have controlled it until after the entire $4.55 million purchase price was paid.[221]

g. Operating Agreement

139. Wolfrum entered into an operating agreement on November 11, 2013 for an entity called Accelera Healthcare Management Service Organization LLC (the "Operating Agreement").[222]

140. At no time was the Accelera Healthcare Management Service Organization contemplated by the Operating Agreement ever operational.[223] Accelera Healthcare Management Service Organization never owned or controlled BHCA.[224]

Holdings … and the stock would remain in BW Holdings until such time as the full $4.550 million was received."); *see also id.* at12:5-17.

[219] Tr. (Vol. I Wolfrum) 211:5-6 ("Q. And who controls BW Holdings, LLC? A. Well, I did until I let it be dissolved."); *id.* at35:19-20 ("Q Who's the escrow agent under this agreement? A I am."); *see also* Ex. 277 (Illinois Secretary of State listing for BW Holdings, LLC).

[220] Tr. (Vol. I Wolfrum) 212:5-8 ("Q. So pursuant to the stock pledge and escrow agreement did Accelera ever escrow the Behavioral stock before Accelera paid you the million dollars? A. No."); *see also id.* at43:14-22 ("Q. And you never transferred the shares to Accelera? A. Correct. Q. Did you ever transfer the shares to the escrow? A. No. Q. And Accelera never took possession of the shares from November 2013 until today? A. That's correct.").

[221] Ex. 188 (Escrow Agreement); *see also* Tr. (Vol. I. Wolfrum) 235:19-236:7 ("Q Who's the escrow agent under this agreement? A I am. Q So you control the stock under the agreement; is that right? A If the stock went into the escrow, which it didn't, but if it did, I would have controlled the stock. Q And you would have controlled that stock until it came out of escrow, right? A Correct. Q And at what point would it have come out of escrow? A When the $4.550 million was received. Plus any other obligations that might be due, yeah.").

[222] Ex. 185 (Operating Agreement.).

[223] Tr. (Vol. I Wolfrum) 214:22-25 ("Q. At any time from November 11, 2013 until today, has the Accelera Healthcare Management Service Organization ever been operational? A. No."); *see also* Tr. (Vol. I Freeman) 70:11-13 ("Basically, [the Accelera Healthcare Management Service Organization] was a shell company at that point in time, because nothing had been moved into that subsidiary."); Tr. (Vol. II Boerum) 384:3-11 ("It was filed, but never implemented.").

[224] Tr. (Vol. I Freeman) 70:22-25 (responding, "[n]o," to question "at any time, did Accelera Healthcare Management Service Organization LLC own or control Behavioral?").

141. No assets were ever contributed to the Accelera Healthcare Management Service Organization.[225] In particular, the stock of BHCA was never contributed.[226]

142. On Exhibit A of the Operating Agreement, the ownership percentage attributed to Accelera was left blank.[227]

143. Wolfrum never worked for the Accelera Healthcare Management Service Organization.[228]

h. Employment Letter

144. On November 11, 2013, Accelera extended an offer of employment to Wolfrum to serve as president of an Accelera business unit called "Behavioral Health Care Associates" (the "Employment Letter").[229]

145. Wolfrum never became the President for the Accelera business unit, Behavioral Health Care Associates, or any other Accelera subsidiary.[230]

146. The employment offer was expressly contingent upon the "valuation and audited financials of 'Behavioral Health Care Associates."[231] No valuation or audited financials of BHCA were ever completed.[232]

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[225] Tr. (Vol. I Freeman) 71:7-10 ("No assets were contributed.").
[226] Tr. (Vol. I Wolfrum) 215:14-21 ("Q. And are you aware, as manager of the MSO, was the stock of BHCA ever contributed to Accelera Healthcare Management Service Organization? A. No. Q. Was it ever contributed to any subsidiary of Accelera called Behavioral Health? A. No. The stock was never transferred to anyone.").
[227] Ex. 185 (Operating Agreement) Ex. A; *see also* Tr. (Vol. I Freeman) 71:1-6.
[228] Tr. (Vol. I Wolfrum) 215:2-3 ("I never worked for them, never did anything for them, never signed anything for them.").
[229] Ex. 190 (Employment Letter).
[230] Tr. (Vol. I Wolfrum) 209:14-25 (responding "Well, no" to question, "Have you ever become the president of a wholly owned subsidiary of Accelera called Behavioral Health Care Associates."); *id.* at16:18-21; Tr. (Vol. II Boerum) 388:9-16 ("[The employment agreement] was not entered into. It was never engaged. He was never engaged. Q. So did Wolfrum ever work for Accelera or any Accelera subsidiary? A. No."); Tr. (Vol. I Freeman) 182:20-22 ("Q. Was Exhibit 190 operative during the time period that you were the CFO of Accelera? A. No.").
[231] Ex. 190 (Employment Letter) 3 ("This employment offer is contingent upon the following: Due Diligence, Valuation, and Audited Financials of 'Behavioral Health Care Associates.'").
[232] Tr. (Vol. IV Devor) 1172:12-1175:25 ("Q. And why – I'll just read this for the record, but it says, 'This employment offer is contingent upon the following: Due diligence, valuation, and audited financials of Behavioral Health Care Associates.' Do you see that? A. I do. Q. And you said this somehow informed your opinion that the employment letter was not evidence of control? A. Correct. These things were never done."); Tr. (Vol. IV Devor)

147. Under the terms of the Employment Letter, Wolfrum would report to John Wallin and would receive a base salary of $300,000.[233] However, Wolfrum never reported to John Wallin.[234] Nor did he report to Accelera's Board of Directors.[235] And, Wolfrum never received a salary of $300K from Accelera. In fact, he never received any salary at all from Accelera, or any Accelera-related entity.[236]

148. Wolfrum understood that his employment under the Employment Agreement would not take effect until the initial payment of $1 million.[237]

2. Amendments

149. Wolfrum and Accelera entered into four amendments to the SPA, each of which pushed back the payment deadlines set out in the SPA.[238] None of the four amendments to the SPA altered the terms in that agreement which held that the BHCA stock would only transfer upon payment.[239]

1879:15-21 ("Q. And you testified about this yesterday. Wahl was asking you questions, and I believe you testified at length about the fact that there were no audited financials of Behavioral that were ever completed; is that correct? A. There were not. I think we established that."); *id.* at880:2-6 ("Q. … Did you ever see a valuation done of Behavioral? A. I don't think so. And I think, in essence, that's why it all ends up in goodwill; because there's no valuation of anything else."); Tr. (Vol. VI Devor) 1649:8-10 ("There's no audited financials of Behavioral Health Care Associates, and if there are, show them to me. I've never seen them.").

[233] Ex. 190 (Employment Letter) 1.

[234]Tr. (Vol. I Wolfrum) 216:22-23 ("Q Did you ever report to John Wallin? A No.").

[235] Tr. (Vol. I Wolfrum) 217:17-19 ("Q. Did you ever report to Accelera's board of directors? A. No."); *see also* Tr. (Vol. I Freeman) 74:12-22 ("He did not report … to the board."); *see also* Tr. (Vol. II Boerum) 388:17-19.

[236] Tr. (Vol. I Wolfrum) 217:4-12 ("Q Did you ever receive $300,000 from Accelera? A No. Q Did you receive any salary? A No. Not from Accelera, no. Q Sorry. Never got a paycheck from Accelera, right? A That is a correct statement. Q Or from any Accelera-related entity? A No."); *see also* Tr. (Vol. II Boerum) 388:20-24, 459:11-13.

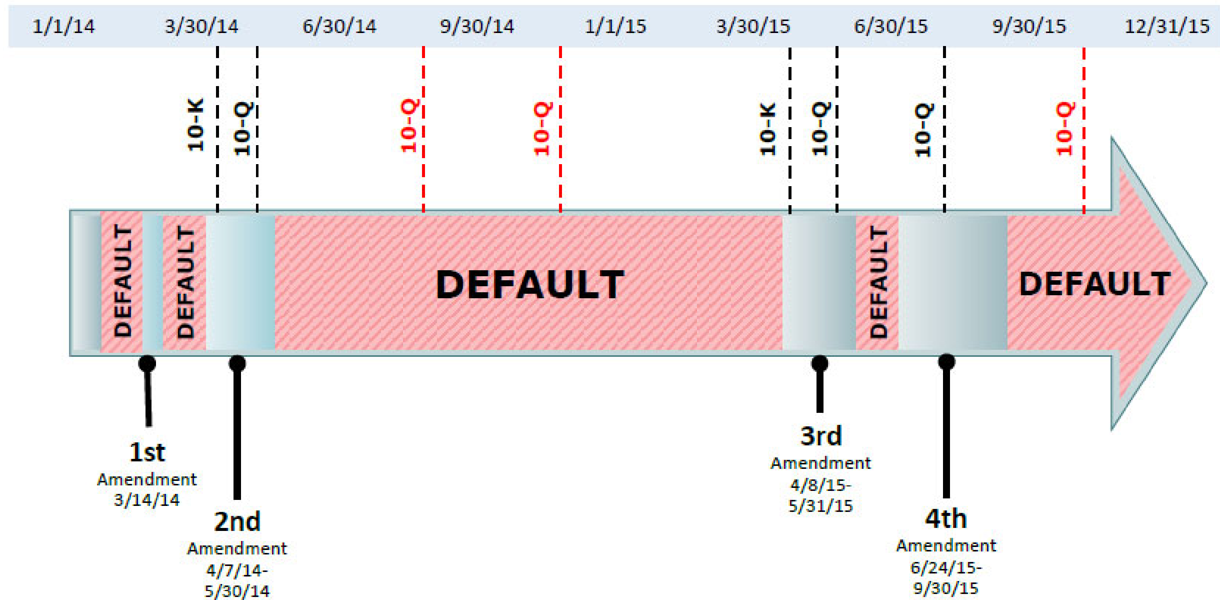
[237] Tr. (Vol. I Wolfrum) 218:3-9 ("Q What was your understanding as to when this employment would take effect? A Once I would be paid the first million dollars. That would set everything in motion. Q. So until that money was paid, you weren't an employee of any Accelera-related entity at all? A. Correct.").

[238] Ex. 197 (1st Amendment to SPA); Ex. 201 (2d Amendment to SPA); Ex. 205 (3d Amendment to SPA); Ex. 257 (4th Amendment to SPA).

[239] *Id.*; Ex. 88.1 (Devor Report) ¶ 123 ("None of the amendments altered the terms of the Stock Purchase Agreement that held that Accelera would only receive Wolfrum's ownership shares in BHCA if Accelera paid Wolfrum for them.").

150. In each of the amendments, the parties acknowledged that Accelera "did not make the payment to Seller as required by Article 1.1.1.1 of the Stock Purchase Agreement."[240]

151. All four of the amendments to the SPA were backdated.[241] There were gaps between the amendments such that there were several periods of time where no operative amendment was in place at all:[242]



152. The first amendment to the SPA extended the due date for the initial payment to March 14, 2014.[243] Although the first amendment was dated February 24, 2014, it was not actually signed until later in time – on or around March 14, 2014.[244]

[240] Ex. 197 (1st Amendment to SPA) 1; Ex. 201 (2d Amendment to SPA) 1; Ex. 205 (3d Amendment to SPA) 1; Ex. 257 (4th Amendment to SPA) 1.
[241] Tr. (Vol. I Wolfrum) 242:4-6 ("These amendments, I don't believe any of them were signed on the effective date. They were all signed afterwards.").
[242] Ex. 88.1 (Devor Report) 33, figure 1.
[243] Ex. 197 (1st Amendment to SPA) § 1(A).
[244] Tr. (Vol. I Wolfrum) 223:6-21 ("Q….to the best of your recollection, did you sign the – this amendment to – the first amendment to the Stock Purchase Agreement on the day that the original Stock Purchase Agreement – the deadline ended in February of 2014? A No. It was signed later."); Ex. 199 (Mar. 14, 2014 email from Hauert, attaching draft first amendment to SPA); Ex. 200 (Mar. 17, 2014 email from Boerum, attaching signed first amendment to SPA).

153. Under the first amendment to the SPA, Accelera was to give Wolfrum 20,000 shares of Accelera stock within two days, in exchange for the extension of time.[245] But Wolfrum didn't receive the shares he was owed under the first amendment to the SPA until "about a year later."[246]

154. The second amendment to the SPA extended the due date for the initial payment from March 14, 2014 to May 30, 2014.[247] Although the second amendment was dated March 18, 2014, it was not actually signed until later in time – on or around April 7, 2014.[248]

155. The second amendment also revised Article 1.2 of the SPA to read that "[p]rior to [Wolfrum's] receipt of the payment set forth in Section 1.1.1.1, [Wolfrum] shall have the right to immediately upon written notice to the other party cancel and terminate this Agreement in its entirety."[249]

156. Under the second amendment to the SPA, Accelera was to give Wolfrum 20,000 shares of Accelera stock within two days, in exchange for the extension of time.[250] But Wolfrum did not receive the shares for the second amendment for over a year.[251]

157. The second amendment expired on May 30, 2014, and the third amendment was not entered into until on or around April 8, 2015; so, from May 30, 2014 through April 8, 2015, there was no operative amendment to the SPA.[252]

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[245] Ex. 197 (1st Amendment to SPA) § 2; *see also* Tr. (Vol. I Wolfrum) 221:13-21.
[246] Tr. (Vol. I Wolfrum) 221:16-222:1 ("Q. Did you ever receive the 20,000 shares? A. Yes. Q. And when did you receive them? A. About a year later."); *see also* Ex. 251 (Apr. 27, 2015 Stock Transmittal Letter).
[247] Ex. 201 (2d Amendment to SPA) § 1(A).
[248] Ex. 203 (Apr. 7, 2014 email from Boerum attaching draft amendment); Tr. (Vol. I Wolfrum) 232:24-234:2 ("Q. So now was the second amendment signed on the same day as the effective date of the amendment? A. I don't believe it was.").
[249] Ex. 201 (2d Amendment to SPA) § 1(B).
[250] Ex. 201 (2d Amendment to SPA) § 2; *see also* Tr. (Vol. I Wolfrum) 231:9-16.
[251] Ex. 252 (Apr. 27, 2015 Stock Transmittal Letter); Tr. (Vol I Wolfrum) 231:5-232:23 ("Q. Did you ever get that stock within two business days? A No.").
[252] Ex. 203 (Apr. 7, 2014 email from Boerum attaching draft amendment); Ex. 253 (Apr. 27, 2015 Stock Transmittal Letter); Tr. (Vol. I Freeman) 73:11-14 ("Q. So, to your knowledge, was there an operative amendment to the Stock Purchase Agreement when you became the CFO of Accelera? A. No.").

158. The third amendment to the SPA extended the due date for the initial payment from May 30, 2014 to May 31, 2015.[253] Although the third amendment to the stock Purchase Agreement was dated May 30, 2014, it was not actually singed until later in time – on or around April 8, 2015.[254]

159. Under the third amendment to the SPA, Accelera was to give Wolfrum 10,000 shares of Accelera stock within five days, in exchange for the extension of time.[255] But Wolfrum did not receive the shares due under the Third Amendment until April 27, 2015.[256]

160. The fourth amendment to the SPA extended the due date for the initial payment from May 31, 2015 to September 30, 2015.[257] Although the fourth amendment to was dated May 31, 2015, it was not actually singed until later in time – on or around June 24, 2015.[258]

161. The fourth amendment expired on September 30, 2015.[259] As of October 1, 2015, Accelera was in default on the SPA, and there was no operative amendment.[260]

3. Other Indicia of Control

162. Accelera never made any management decisions about BHCA; instead, Wolfrum did.[261]

163. Accelera never paid for BHCA's expenses; instead, Wolfrum did.[262]

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[253] Ex. 205 (3d Amendment to SPA) § 1(A); Tr. (Vol. I Wolfrum) 237:1-12.
[254] Ex. 243 (Apr. 8, 2015 email from Boerum transmitting third amendment to the stock purchase agreement for signature); Tr. (Vol. I Wolfrum) 239:1-5 ("Q. Okay. So now, just like with the other two amendments, were they signed at a different time – was this one signed at a different time than when the effective date was? A Yes.").
[255] Ex. 205 (3d Amendment to SPA) § 2; *see also* Tr. (Vol. I Wolfrum) 237:13-16.
[256] Ex. 253 (Apr. 27, 2015 Stock Transmittal Letter); Tr. (Vol. I Wolfrum) 237:17-238:9.
[257] Ex. 257 (4th Amendment to SPA) 1.
[258] Ex. 259 (June 24, 2015 email from Boerum attaching 4th amendment to SPA); Tr. (Vol. I Wolfrum) 242:1-243:6.
[259] Ex. 257 (4th Amendment to SPA) §1(A).
[260] Ex. 840 (Stipulated Facts) ¶ 39.
[261] Tr. (Vol. I Wolfrum) 244:20-23 ("Q. From November 11, 2013 until today, who made all the management decisions about Behavioral Health Care Associates? A. I did."); *id.* at45:2-4 ("Q. From November 11, 2013 until today, did Accelera ever make management decisions at Behavioral? A. No.").
[262] Tr. (Vol. I Wolfrum) 245:9-14 ("Q. From November 11, 2013 to today, did Accelera ever pay for Behavioral expenses? A. No. Q. Who did? A. I did. Or Behavioral Health Care Associates did as directed by me.").

164. Accelera never had the ability to enter into contracts for BHCA; instead, Wolfrum did.[263]

165. Accelera never had control over Wolfrum's salary; instead, Wolfrum himself did.[264]

166. Accelera never had control over the hiring and firing of BHCA employees; instead, Wolfrum did.[265]

167. No one at Accelera had the ability to direct the personnel of BHCA; instead, Wolfrum directed the BHCA personnel.[266]

168. Accelera never had control over BHCA bank accounts; instead, Wolfrum did.[267]

169. Accelera never paid taxes on BHCA's revenues; instead, Wolfrum did.[268]

170. Accelera never directed the day-to-day operations at BHCA.[269]

171. No one at Accelera supervised Wolfrum.[270]

172. Accelera never received any of BHCA's revenues.[271]

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[263] Tr. (Vol. I Wolfrum) 245:20-25 ("Q. From November 11, 2013 until today, did Accelera ever have the ability to enter into contracts on behalf of Behavioral? A. No. Q. Who did? A. I did."); *see also* Tr. (Vol. I Freeman) 78:3-8).
[264] Tr. (Vol. I Wolfrum) 245:15-19 ("Q. From November 11, 2913 until today, did Accelera ever have control over your salary? A. No. Q. Who did? A. I did."); *see also* Tr. (Vol. I Freeman) 73:25-74:5 ("Q. So Freeman, what salary, if any, did Accelera pay Wolfrum? A. Nothing. Q. Who controlled the salary that Wolfrum received? A. Wolfrum.").
[265] Tr. (Vol. I Wolfrum) 246:1-6 ("Q. From November 11, 2013 until today, did Accelera ever have control over the hiring and firing of Behavioral employees? A. No. Q. Who did? A. I did."); Tr. (Vol. I Freeman) 77:22-78:2).
[266] Tr. (Vol. I Freeman) 77:16-21 ("Q. And who directed the personnel of Behavioral? A. Wolfrum. Q. Who, if anyone, at Accelera had the ability to direct the personnel of Behavioral? A. No one had that authority."); Tr. (Vol. II Boerum) 387:21-25.
[267] Tr. (Vol. I Wolfrum) 246:7-12 ("Q. From November 11, 2013 until today, did Accelera ever have control over Behavioral bank accounts? A. No. Q. Who did? A. I did."); *see also* Tr. (Vol. I Freeman) 77:5-13; Tr. (Vol. II Boerum) 387:19-20.
[268] Tr. (Vol. I Wolfrum) 246:18-22 ("Q. From November 11, 2013 until today, did Accelera ever pay taxes on Behavioral's revenue? A. No. Q. Who did? A. I did.").
[269] Tr. (Vol. I Wolfrum) 245:5-8 (responding "No," to question, "Did Accelera ever direct day-to-day operations at Behavioral?").
[270] Tr. (Vol. I Freeman) 74:6-10 ("No one supervised Wolfrum.").
[271] Tr. (Vol. I Wolfrum) 246:13-15 (responding "No" to question, "From November 11, 2013 until today, did Accelera ever receive any of Behavioral's revenues."); *see also* Tr. (Vol. I Freeman) 77:14-15; Tr. (Vol. II Boerum) 387:16-18.

173. Wolfrum placed a lien on BHCA in March of 2014.[272]

4. Accelera's Decision to Consolidate BHCA into its Financial Statements

174. Notwithstanding the facts described above, Accelera decided to consolidate its financial results with those of BHCA, beginning in its year-end financials for 2013, filed on Form 10-K.[273] Accelera continued to consolidate BHCA's financial results in its publicly-filed financial statements through the 2015 Form 10-K.[274]

175. "Tim Neher, working with the auditors of Anton & Chia" decided to consolidate BHCA into Accelera's publicly filed financial statements.[275]

176. Accelera sought acquisitions "because it would obviously give value to the shares and put revenue on the books."[276] It decided to consolidate BHCA's financial results with its own in its publicly filed financial statements "because without Behavioral they did not have any operations and would be considered a shell company."[277]

5. Accelera's Other Acquisitions and Putative Acquisitions

a. At Home Health

177. Accelera also claimed to have purchased At Home Health Management, LLC and All Staffing Services, LLC ("At Home Health") in December of 2013.[278] Accelera entered into a

[272] Tr. (Vol. I Wolfrum) 275:16-21 ("First of all, there was a lien that my attorney placed on Behavioral on or about March of 2014, which gave me a first position lien on my company in case somebody was trying to use my company as collateral.").
[273] Tr. (Vol. I Freeman) 79:15-18 ("Q. Now, prior to your becoming the CFO of Accelera, Freeman, how was Behavioral accounted for in Accelera's publicly filed financials? A. It was consolidated into Accelera."); Tr. (Vol. VIII Shek) 2320:3-8.
[274] Ex. 135 (Accelera 2016 Form 10-K) F-21; Ex. 105 (2013 Form 10-K) F-4; Ex. 175 (consolidated trial balance worksheet for 2014).
[275] Tr. (Vol. I Freeman) 80:2-12.
[276] Tr. (Vol. II Boerum) 385:12-18.
[277] Tr. (Vol. I Freeman) 80:25-81:8.
[278] Ex. 104 (Dec. 13, 2014 Form 8-K).

purchase agreement to purchase At Home Health on December 13, 2013, whereby it agreed to pay an aggregate of $1,420,000.[279]

178. However, as with BHCA, the At Home Health transaction remained "incomplete."[280] As with BHCA, Accelera "didn't have any control" over At Home Health's bank accounts, didn't direct its personnel, or receive its revenues.[281]

179. Nevertheless, Accelera consolidated At Home Health's financials into Accelera's in the 2013 Form 10-K.[282]

180. On October 16, 2014, At Home Health issued Accelera a notice of default, alleging, among other things, that Accelera had failed to issue consideration under the parties' purchase agreement.[283] Accelera terminated the At Home Health purchase agreement on December 31, 2014.[284] To account for this termination, Accelera reported the performance of At Home Health Services and All Staffing Services as discontinued operations in its 2014 financial statements.[285]

b. Advanced LifeCare

181. On August 25, 2014, Accelera entered into a stock purchase agreement with SCI Home Health, Inc. ("Advance LifeCare"), whereby it agreed to purchase all the shares of

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[279] *Id.*
[280] Tr. (Vol. I Freeman) 91:18-22 ("It was an incomplete transaction, so it should not have been consolidated.").
[281] Tr. (Vol. I Freeman) 90:21-91:10 ("Q. And what was the status of that transaction in September of 2014? A. It was an uncompleted transaction. Q. Who controlled the bank accounts of At Home Health?A The owners, the Gallaghers. Q. What control, if any, did Accelera have over the bank accounts of At Home Health? A. It didn't have any control. Q. And who directed the personnel of At Home Health? A. The owners, the Gallaghers. Q. And who received the revenues and profits of At Home Health? A. The Gallaghers.").
[282] Tr. (Vol. I Freeman) 91:11-16 ("Q. So what was Accelera's accounting treatment of At Home Health in its publicly filed financials? …THE WITNESS: It also was consolidated.").
[283] Ex. 111 (Oct. 22, 2014 Form 8-K).
[284] Ex. 114 (Accelera 2014 Form 10-K) 22.
[285] Ex. 114 (Accelera 2014 Form 10-K) F-4.

Advance LifeCare in exchange for $450,000.[286, 287] Accelera paid the purchase price for Advance LifeCare.[288]

182. Regarding Advanced LifeCare, Accelera actually controlled that entity's bank accounts, benefitted from its profits, issued payroll checks, had access to the bank accounts, signed the vendor payments, and worked with the manager on a fairly regular basis.[289] Accelera consolidated Advance LifeCare's financial results into its own.[290]

c. Grace, Watson, and Traditions

183. In the fourth quarter of 2014, Accelera entered into two more purchase agreements. On November 25, 2014, Accelera entered into a stock purchase agreement with Grace Home Health Care, Inc. ("Grace"), whereby Accelera agreed to purchase the stock of Grace in exchange for an aggregate purchase price or $5,250,000.[291] Also on November 25, 2014, Accelera entered into an asset purchase agreement with Watson Health Care, Inc. and Affordable Nursing, Inc. ("Watson"), whereby Accelera agreed to purchase the companies for an aggregate purchase price of $3,000,000.[292]

184. On January 5, 2015, Accelera entered into a stock purchase agreement with Traditions Home Care, Inc. ("Traditions"), whereby Accelera agreed to purchase the stock of Traditions in exchange for an aggregate purchase price of $6,000,000.[293]

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[286] Ex. 108 (Aug. 25, 2014 Form 8-K); *see also* Tr. (Vol. I Freeman) 78:12-21.
[287] The amount was adjusted to $431,000. *See* Ex. 114 (Accelera 2014 Form 10-K) 85.
[288] Ex. 175 (consolidated trial balance worksheet for 2014) row 304, column P.
[289] Tr. (Vol. I Freeman) 79:6-13 ("In the situation of Advanced, we controlled the bank accounts, we benefit – Accelera benefitted from any profits, we issued payroll checks, I had access to the bank account, I signed the paychecks, I signed the vendor payments, I worked with the manager – on-site manager at Advanced on a fairly regular basis, and we had none of that – none of that existed with Behavioral.").
[290] Ex. 175 (consolidated trial balance worksheet for 2014).
[291] Ex. 112 (Nov. 25, 2014 Form 8-K).
[292] *Id.*
[293] Ex. 115 (Jan. 5, 2015 Form 8-K).

185. As with BHCA, Accelera never made any payments toward the acquisitions of Grace, Watson, or Traditions.[294] As with BHCA, Accelera entered into amendments pushing back the payment deadlines for Grace, Watson, and Traditions.[295] Unlike BHCA, Accelera did not consolidate the financials of Grace, Watson, or Traditions into Accelera's financial statements.[296]

6. Termination of the Stock Purchase Agreement

186. On October 16, 2015, Wolfrum became aware that Accelera's principals had filed offering documents with the SEC indicating that an affiliate (Accelera Innovations Fund I LLC) was offering securities, purportedly in an attempt to purchase BHCA. In response, Wolfrum sent Accelera's principals an e-mail advising them that "Accelera Innovations Fund LLC does not have, and will never have, a first lien position on BHCA. Not even Accelera Innovations Inc. has a first lien position … Notice of such lien was posted over a year ago."[297] In this e-mail, Wolfrum also wrote, "[o]nly AFTER I am fully paid out would there be any ownership interest in BHCA by an entity other than Blaise Wolfrum. There is no secure interest in BHCA."[298] He also wrote, "Accelera is not entitled to report the income of any acquisition until such a sale is closed. That would not be proper accounting."[299]

187. After this October e-mail, Wolfrum started working on a termination agreement to "get away from" Accelera.[300] Wolfrum wanted to enter into a formal termination agreement,

[294] Tr. (Vol. II Boerum) 415:19-22 ("Q did Accelera ever pay any money towards the acquisitions of Grace, Watson, or Traditions? A No.").
[295] *See, e.g.*, Ex. 122 (May 4, 2015 Watson extension agreement); Ex. 123 (May 7, 2015 workpaper re: Grace extension agreement); Ex. 125 (May 10, 2015 Watson extension agreement).
[296] Tr. (Vol. II Boerum) 416:2-8 ("Q. So how did Accelera account in its publicly filed financial statements for Grace, Watson, and Traditions? … THE WITNESS: They didn't have it in the financials.").
[297] Ex. 307 (Oct. 16, 2015 email from Wolfrum) 2; *see also* Tr. (Vol. I Wolfrum) 271:6-275:21.
[298] Ex. 307 (Oct. 16, 2015 email from Wolfrum) 2; *see also* Tr. (Vol. I Wolfrum) 277:4-21.
[299] Ex. 307 (Oct. 16, 2015 email from Wolfrum) 3.
[300] Tr. (Vol. I Wolfrum) 283:10-19 ("Q. So what did that cause you to do in regard to the Stock Purchase Agreement? A. Well, it was up for re-amendment. The time was up. Instead, we started working on the termination

despite the fact that the last amendment to the SPA had already expired, "[b]ecause even though it expired, I wanted to make this an official notification that I was terminating the agreement, because I wanted to have a very clear break from the company."[301]

188. On March 31, 2016 Accelera and Wolfrum entered into a termination agreement, effective as of January 1, 2016, officially terminating the SPA and other accompanying agreements (the "Termination Agreement").[302]

189. Under the Termination Agreement, Accelera was to convey 600,000 shares of Accelera stock to Wolfrum.[303] The parties agreed that the stock "shall not be deemed to be consideration under or pursuant to any of the Stock Sale Agreements" ("Stock Sale Agreements" was defined to include the Employment Agreement).[304] Instead, the 600,000 shares conveyed under the Termination Agreement were compensation for Wolfrum's inconvenience and to compensate him for allowing the Anton & Chia auditors to perform field work at BHCA.[305]

190. An earlier draft of the Termination Agreement, written by Wolfrum's counsel, had included a paragraph requiring Accelera to file a "Form 8-K disclosing the terms and termination of the stock sale agreements, and further disclosing that purchaser did not own an interest in the company and should not have recognized on its books and records the revenue and

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agreement to get away from them, because I could give notice to Accelera at any time that I wanted to terminate the deal.").

[301] Tr. (Vol. I Wolfrum) 284:11-20.

[302] Ex. 133 (Mar. 31, 2016 Form 8-K) 8, 13; Ex. 840 (Stipulated Facts) ¶ 37.

[303] Ex. 133 (Mar. 31, 2016 Form 8-K) 9.

[304] Ex. 133 (Mar. 31, 2016 Form 8-K) 8, 9.

[305] Tr. (Vol. I Wolfrum) 285:10-24 ("Q. Were these 600,000 shares compensation for your employment? A. No. Q. Okay, what were they for? A. It was basically for putting up with their hassles all this time and for allowing the auditors to come, again, which they said they had to come in and audit because we still had a contract in 2015. And I know it's a lot of hassle, it's a lot of time on our part to do that."); *see also* Tr. (Vol. II Boerum) 405:12-406:3 (Q. And how did Accelera, if you know, how did Accelera convince him to let the auditors complete the audit? A. In the agreement … there was an additional 600 – 600 shares something like that, 600,000 shares. Sorry. Q. So let's look at that. So Section C is where it references the 600,000 shares? A. Yes. Q. Are you saying that was in exchange for – A. Yes. Q. – or in consideration for him cooperating with the audits in that provision that we just read? A. Yes. Yes.").

expenses of the company for the years 2012 [sic], 2013, 2014, and 2015."[306] Cindy Boerum transmitted that draft termination agreement to Wahl and Deutchman on March 30, 2016.[307] In her cover e-mail, she wrote, "So now I need to know how we can remove the revenue and restate all those years."[308]

191. In the March 30, 2016 e-mail, Boerum wrote, "this continues to be an issue."[309] She was referencing a prior discussion with Anton & Chia auditor Rahul Gandhi, where she said "[w]e shouldn't be recognizing this revenue." In response, Gandhi had said that he conferred with Wahl and "said that Greg [Wahl] told him that they had followed the GAAP rules."[310]

7. New Auditors and Restatement

192. In November of 2016, Accelera fired Anton & Chia and hired new auditors, AJ Robbins CPA, LLC ("AJ Robbins").[311] Accelera changed auditors "because we noted that …we would file the 8-K and restate," and Boerum "asked Geoff Thompson if [she] could find an auditor that would restate this."[312]

193. Boerum sent the new auditor, AJ Robbins, "a copy of … Behavioral's agreement and asked him to review it." A few days later, Boerum asked Robbins, "do you believe that we should be recognizing revenue based on this agreement," and Robbins responded, "No."[313] Upon review of the SPA, both Robbins and Accelera's CPA consultant, Kevin Pickard, concluded, "[t]hat [Accelera] never owned Behavioral."[314]

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[306] Ex. 264 (draft Termination Agreement) 2.
[307] Ex. 263 (Mar. 30, 2016 email from Boerum).
[308] *Id.*; *see also* Tr. (Vol. II Boerum) 402:5-15.
[309] Ex. 263 (Mar. 30, 2016 email from Boerum).
[310] Tr. (Vol. II Boerum) 400:5-401:10.
[311] Ex. 134 (Nov. 15, 2016 Form 8-K); *see also* Tr. (Vol. II Boerum) 406:18-407:12.
[312] Tr. (Vol. II Boerum) 409:13-20.
[313] Tr. (Vol. II Boerum) 409:21-410:1.
[314] *Id.* at 10:11-411:19.

194. In its 2016 Form 10-K, Accelera disclosed that "[w]e have determined that the financial statements of BHCA should have never been consolidated with our financial statements since we was never able to take control of BHCA due to nonpayment of the purchase price."[315]

8. Accelera's Accounting for BHCA Violated GAAP

195. Accelera's financial statements were not prepared in accordance with GAAP.[316]

196. Accelera consolidated BHCA's financial results (including its revenues, assets and liabilities) with its own in Accelera's 2013, 2014, and 2015 Forms 10-K and its Forms 10-Q filed in 2014 and 2015. This consolidation violated GAAP, because Accelera did not own or control BHCA.[317]

197. Under the circumstances present here, GAAP required that control of BHCA pass to Accelera before Accelera could consolidate BHCA into its financial statements.[318]

198. Accelera did not own or control BHCA, because it never paid any portion of the purchase price in accordance with the SPA and never acquired or received any of the shares of BHCA.[319] Accelera also did not have the "ability to determine the direction of management and

[315] Ex. 135 (Accelera 2016 Form 10-K) 7.
[316] Ex. 88.1 (Devor Report) ¶ 166 ("Accelera consolidated BHCA's financial results (including its revenues, assets and liabilities) with its own in Accelera's 2013, 2014, and 2015 Forms 10-K and its Forms 10-Q filed in 2014 and 2015. This consolidation violated GAAP, because Accelera did not own or control BHCA."); Tr. (Vol. IV Devor) 1151:15-1152:21.
[317] Ex. 88.1 (Devor Report) ¶ 166 ("Accelera consolidated BHCA's financial results (including its revenues, assets and liabilities) with its own in Accelera's 2013, 2014, and 2015 Forms 10-K and its Forms 10-Q filed in 2014 and 2015. This consolidation violated GAAP, because Accelera did not own or control BHCA."); Tr. (Vol. IV Devor) 1154:5-14 ("Q. Can you please explain, sir, why that is the case? Why is it in your opinion the – Accelera's financial statements failed to comply with GAAP because they consolidated Behavioral? A. Because it is incorrect to consolidate under GAAP. Q. And why? What does GAAP say about that? A. Basically, without getting into a whole lot, the stock – the control of the stock and control of the company never transferred.").
[318] Ex. 88.1 (Devor Report) ¶ 165 ("Under GAAP, Accelera was required to evaluate whether it obtained control of BHCA before consolidating the financial results of BHCA into its own financial statements."); Tr. (Vol. IV Devor) 1155:24 - 1156:5.
[319] Ex. 88.1 (Devor Report) ¶ 167.

policies."[320] There has been no evidence presented demonstrating that control of BHCA ever passed to Accelera, or that Accelera exercised any control over BHCA.[321]

199. Moreover, even if Accelera had made the initial payment to BHCA under the SPA, it still would not have acquired control, because – under the Escrow Agreement – Wolfrum would have maintained control of the stock of BHCA in escrow until Accelera paid the full $4.55 million purchase price.[322]

200. As a result of Accelera's wrongful consolidation of BHCA's financial results, Accelera's financial statements in its 2013 and 2014 Forms 10-K and its Forms 10-Q filed in 2014 and 2015 were materially misstated. By consolidating BHCA, Accelera overstated its revenues, current assets, and total assets.[323] The vast majority (90%) of Accelera's revenues in 2013 and 2014 came from BHCA.[324]

201. Before the SPA, Accelera was a shell company with little or no assets and revenues. In its Form 10-Q for the quarter before the SPA, Accelera reported revenues of $0 and just $50 in assets.[325]

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[320] Ex. 88.1 (Devor Report) ¶¶ 167, 169.
[321] Tr. (Vol. IV Devor) 1156:6-15 ("A. I have not. And to the contrary, I've heard testimony so many times that, in fact, it never passed. And so the answer is I've never seen anything that indicates control, and I've – I've heard many times very relevant facts that show that it never passed."); Tr. (Vol. IV Devor) 1171:25-1172:7 ("Q. In the course of your work on this case and listening to the testimony and evidence so far in the trial, have you seen one shred of evidence that Accelera exercised any control over Behavioral? [Objection Overruled.] THE WITNESS: I don't think so.").
[322] Ex. 88.1 (Devor Report) ¶ 168.
[323] Ex. 88.1 (Devor Report) ¶¶ 170-173.
[324] Ex. 105 (2013 Form 10-K) F-4; Ex. 175 (consolidated trial balance worksheet for 2014); *see also* Tr. (Vol. I Freeman) 81:14-19 ("Virtually a hundred percent" of Accelera's recorded revenues actually came from BHCA.); Tr. (Vol. II Chen) 485:4-17; Tr. (Vol. VIII Shek) 2320:9-2323:15.
[325] Ex. 840 (Stipulated Facts) ¶ 35.

C. Facts about Accelera

1. Accelera's Payment History with Anton & Chia

202. Accelera had "issues" with making timely payments to Anton & Chia, "multiple times" throughout the engagements.[326]

203. In January, Anton & Chia staff accountant, Yu-Ta Chen, e-mailed Deutchman to inquire if Anton & Chia was engaged for Accelera's 2014 audit. Deutchman responded, "[w]e are going to do it," but "we are pushing it to the back because they are paying so slow."[327]

204. Similarly, Wahl testified that by May of 2015, "the relationship between [Anton & Chia] and Accelera [was] already kind of breaking down."[328] At that "point in time, [Anton & Chia] was just working on getting [its] fees paid."[329] Further, "a lot of [the work for Accelera] was done later in the busy season, because it wasn't really a priority client for us."[330]

2. Accelera's Internal Controls

205. Accelera was a "pretty messy," client, "they didn't have … competent people [or] good controls."[331] Wahl was aware that Accelera had "shitty controls, risk, etc."[332]

206. Timothy Neher was the main "audit correspondent" with Anton & Chia for the 2013 audit.[333] Neher's financial and accounting abilities were "not good."[334]

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[326] Tr. (Vol. VIII Shek) 2294:22-2295:7; *see also* Ex. 255 (May 18, 2015 email chain with Wahl).
[327] Ex. 221 (Jan. 30, 2015 email from Deutchman).
[328] Tr. (Vol. XXIII Wahl) 5620:2-8.
[329] *Id.* at 5623:2-3.
[330] *Id.* at 5623:3-6.
[331] Tr. (Vol. VIII Shek) 2290:11-20.
[332] Ex. 261 (Dec. 3, 2015 email from Wahl to Gandhi) 1; *see also* Tr. (Vol. XXI Wahl) 5101:14-18 ("Q Okay. Are you denying that you're aware of Accelera's shitty controls? A Well, we booked for a proposed 18 million in audit adjustments in 2014, so I guess that could imply their controls weren't very good.").
[333] Tr. (Vol. II Chen) 474:4-14; *see also* Ex. 839.6 (Prior Testimony Designations) 158, 159 (July 26, 2016 Wahl Inv. Test at 56:9-15, 59:18-60:1).
[334] Tr. (Vol. II Chen) 559:23-560:7; Ex. 208 (Aug. 8, 2014 email from Wahl); Tr. (Vol. III Deutchman) 70:23 ("Timothy knew nothing about accounting.").

207. Accelera, via its consultant, Tim Neher, did not provide Anton & Chia with its draft Form 10-K or draft financials for its 2013 audit until the morning of March 24, 2014 – just six days prior to the filing deadline.[335] Anton & Chia staff asked Wahl permission to tell Accelera to seek an extension due to the delay. Wahl responded, "[i]f we don't get this done he will just use Malone Bailey. Guy raises lots of money."[336]

208. In the 2013 audit, Anton & Chia "identified a lack of sufficient personnel in [Accelera's] accounting and consolidated financial reporting function, due to the company's limited resources with appropriate skills, training, and experience to perform the review processes to ensure the complete and proper application of [GAAP]." Accordingly, Anton & Chia recommended that Accelera "hire a full time CFO with relevant experience to improve financial reporting and internal controls."[337]

209. In the quarterly reviews for 2014, Accelera continued to evince poor internal controls and accounting skills.[338] In connection with the second quarter review, an Anton & Chia staff member complained to Wahl that Neher "provided Yoda with crappy work," and "refuses to hire a consultant." He asked Wahl if they should "try to force [T]im [Neher] to get a consultant." Wahl responded, "Push it through so we can get paid. [C]an't win them all."[339]

210. In the course of the 2014 audit, Shek learned that Accelera's Board of Directors had not met for the past 15 months. He passed this information along to Wahl and Deutchman,

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[335] Ex. 202 (Mar. 25, 2014 email from Neher) 5.
[336] *Id.*; *see also* Tr. (Vol. II Chen) 477:2-23.
[337] Ex. 143 (Apr. 10, 2014 Letter to Accelera BoD) 10; *see also* Tr. (Vol. XXI Wahl) 5104:8-13 ("Q Do you recall determining that Accelera had a material weakness in financial reporting in connection with the 2013 audit? A Well, based on the $18 million in audit adjustments we identified, I think that would be implied."); *id.* at109:21-25 ("Q Okay. You agree with me that you did find a material weakness in financial reporting in connection with the '13 audit of Accelera? A I think it's very clearly stated in the communication with those charged with governance.").
[338] *See, e.g.*, Ex. 209 (Aug. 15, 2014 email chain) ("No please [to joining staff of Q2 review]. This is completely shit show."); Ex. 208 (Aug. 8, 2014 email chain).
[339] Ex. 208 (Aug. 8, 2014 email chain).

writing, “[t]hat explains why the Company is so f[]ed up.”[340] Wahl concurred that this “provides evidence that the company had really poor internal controls.”[341]

211. Accelera continued to have issues with its internal controls during the 2015 quarterly reviews. Wahl found Accelera’s internal controls to be “shitty”[342] In May of 2015, Wahl told other staff at Anton & Chia that if Accelera “walks,” or replaces Anton & Chia as its auditor, after filings its 10q, then, “we need to pull the opinions.”[343]

D. Facts about Anton & Chia’s Improper Audits and Reviews of Accelera

212. The audit and review work performed by Wahl and Deutchman for the Accelera engagements did not comply with applicable professional standards, including GAAS and PCAOB standards.[344]

213. Specifically, “Anton & Chia failed to:

- exercise an appropriate level of due professional care and professional skepticism;
- appropriately consider and/or address known red flags;
- [] properly plan its audits, including its failure to assess and consider deficiencies in Accelera’s control environment;
- staff the audit with persons having adequate training and proficiency as an auditor;
- adequately supervise the audit staff;

[340] Ex. 246 (Apr. 10, 2015 email from Shek).
[341] Tr. (Vol. XXIII Wahl) 5630:24-25.
[342] Ex. 258 (June 15, 2015 email from Wahl); Ex. 261 (Dec. 3, 2015 email from Wahl); *see also* Ex. 254 (May 13, 2015 email from Shek) (“welcome back to the shit show and nightmare!”).
[343] Ex. 255 (May 18, 2015 email chain with Wahl); *see also* Tr. (Vol. VIII Shek) 2295:9-2296:20.
[344] Tr. (Vol. IV Devor) 1153:7-12 (“Q. And did you form an opinion on that topic? A. I did. Q. And what is your opinion? A. That they were not performed in accordance with Generally Accepted Auditing Standards, incorporated and including the PCAOB standards.”).

- obtain sufficient appropriate audit evidence;
- adequately consider audit evidence obtained and audit results;
- sufficiently document relevant information obtained; and
- adequately perform engagement review procedures."[345]

214. "Wahl, in his role as Engagement Partner, failed to:

- exercise an appropriate level of due professional care and professional skepticism;
- appropriately consider and/or address known red flags;
- [] to ensure that Anton & Chia properly planned the audits, including the engagement team's failure to assess and consider deficiencies in Accelera's control environment;
- staff the audit with auditors having adequate training and proficiency;
- adequately supervise the audit staff;
- adequately consider audit evidence obtained and audit results; and
- document relevant information obtained during the audits."[346]

215. "Deutchman failed to:

- exercise an appropriate level of due professional care and professional skepticism;
- appropriately consider and/or address known red flags;
- adequately consider audit evidence obtained and audit results; and
- [] document relevant information obtained during audits."[347]

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[345] Ex. 88.1 (Devor Report) ¶ 181.
[346] Ex. 88.1 (Devor Report) ¶ 182.
[347] *Id.* ¶ 183.

1. 2013 Audit

216. As detailed below, Anton & Chia failed to conduct its 2013 audit of Accelera in accordance with PCAOB standards, which led to its failure to identify the consolidation of BHCA into Accelera's financials as improper.[348]

a. Staffing

217. Wahl failed to exercise appropriate due professional care in connection with the 2013 audit and, more specifically, did not ensure that the audit was sufficiently planned and performed by qualified individuals, as required by PCAOB standards.[349]

218. The Anton & Chia personnel working on the Accelera 2013 audit were:

- Yu-Ta "Yoda" Chen, staff
- Nguyen Le, staff
- Greg Wahl, engagement partner
- Rich Koch, engagement quality review partner[350]

219. Yu-Ta Chen did not have any auditing experience at the time he performed the 2013 audit of Accelera.[351] At that time, he did not have his CPA license.[352] He was hired in mid-March for a two-week trial period.[353] The Accelera 2013 audit was "one of [his] first audit[s]."[354]

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[348] *Id.* ¶ 185.
[349] *Id.* ¶ 207 (citing AU 210 and AS No. 10).
[350] Ex. 136 (2013 audit Planning Memo); *see also* Tr. (Vol II Chen) 479:19-481:16; Ex. 839.6 (Prior Testimony Designations) 43 (July 2, 2019 Wahl Dep. at 40:2-4).
[351] Tr. (Vol. II Chen) 468:19-21 (responding "[n]o," to question whether he had "any prior auditing experience"); *see also* Ex. 280 (Chen resume).
[352] Tr. (Vol. II Chen) 467:4-5 ("I have Texas license, which I got that in 2015).
[353] *Id.* at 67:22-468:7 ("My official starting date is April 1, but I do have like somewhere around like a two-week trial starting from mid of March.").
[354] Tr. (Vol. II Chen) 471:8-10; *see also* Tr. (Vol. II Chen) 471:11-17 (He was staffed on that audit "close to the end of March," just after he started at Anton & Chia); *see also* Ex. 202 (Mar. 25, 2014 email from Y. Chen).

220. Accordingly, Chen did not have the competencies required to reach conclusions on whether it was appropriate to consolidate BHCA.[355]

221. Wahl knew that Yu-Ta Chen had no prior auditing experience; Chen had provided Wahl with his resume during his interview with Wahl.[356]

222. Chen's inexperience should have increased the level of scrutiny and supervision applied by the engagement partner, Wahl.[357] To the contrary, Wahl failed to identify any of the obvious errors and inconsistencies noted above throughout the memorandum.[358]

223. At the same time he was working on the Accelera 2013 audit, Chen was working on "around 5 to 6 audit client[s] and "probably 10 to 12" quarterly reviews.[359]

224. Nguyen Le was only in her second year of employment with Anton & Chia.[360]

225. There was no manager staffed on the 2013 audit.[361]

226. The staff on the 2013 audit did not have sufficient professional auditing experience, which was a violation of AU 210 and AS 10.[362]

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[355] Ex. 88.1 (Devor Report) ¶ 207; Tr. (Vol. IV Devor) 1180:24-1182:11 ("A. … So the biggest issue is making sure that the acquisition is recorded correctly, right? That should be done by someone who's got the experience of looking at it. I'm not suggesting, by the way, it's complicated, but someone who has never seen [ASC] 805 [Business Combinations], someone who's never – you know, seen a transaction, a purchase transaction – I think that was Chen's testimony – is not putting the appropriate person with technical proficiency – technical training and proficiency to take care of that issue. To be, you're in charge of that issue. Chen, in essence, said I had no idea what I was doing. I mean, he didn't say – those are my words by the way, not his. … By the way, if you read the memo, you can see he – he missed the whole point. So that's training and proficiency.").
[356] Tr. (Vol. II Chen) 468:12-469:3 ("Q who hired you at Anton & Chia? A Greg. Q Greg who? A Greg Wahl. Q Okay. Did you interview with Wahl? A Yes. Q When you started at Anton & Chia, did you have any prior auditing experience? A No. Q Did you explain that to Wahl during the interview? A I can't remember, but it's all on my resume. Q And did you provide your resume to Wahl in connection with your job application? A Yes."); *see also* Ex. 280 (Chen resume).
[357] Ex. 88.1 (Devor Report) ¶ 206.
[358] *Id.*
[359] Tr. (Vol. II Chen) 470:6-15.
[360] Ex. 839.6 (Prior Testimony Designations) 160 (July 26, 2016 Wahl Inv. Test at 61:12-62:4).
[361] Ex. 136 (2013 Audit Planning Memo).
[362] Ex. 88.1 (Devor Report) ¶ 202.

227. Wahl was the engagement partner on the 2013 audit of Accelera.[363] As the engagement partner, Wahl was responsible for the audit.[364]

228. At the time of the 2013 Accelera audit, there were only two partners at Anton & Chia performing audits – Wahl and Koch. Between them, they handled all of the engagement partner and EQR roles.[365] At that time, Wahl was working 80 to 100 hours a week.[366]

b. Planning

229. Anton & Chia and Wahl's failure to identify Accelera's improper accounting treatment of BHCA can be attributed in part to its deficiencies in audit planning procedures.[367]

230. During its planning of the 2013 audit, Anton & Chia decided that it would examine the purchase agreements and operating agreements related to BHCA, and that it would request information regarding how Accelera had allocated the purchase price of the purported acquisition to the assets and liabilities.[368]

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[363] Tr. (Vol. XXI Wahl) 5084:22-5085:1 ("Q So you were the engagement partner on the 2013 audit of Accelera, correct? A I believe that is correct.").

[364] Tr. (Vol. XXI Wahl) 5085:22-5086:3 ("Q Okay. And you've testified when you're the engagement partner, the buck stops with you; is that right? A Yeah. I take responsibility for my work, yes. Q Right. You own it, right? A Yes, I do."); *see also id.* at086:14-5087:5 ("… when the engagement partner reviews the work paper, he's taking responsibility for it. And same as the concurrent partner.").

[365] Ex. 839.6 (Prior Testimony Designations) 160 (July 26, 2016 Wahl Inv. Test at 63:19-24) ("A I think at that time it was he and I that were the – the two assigned partners. MR. GLASER: And can you explain what that means? THE WITNESS: Well, I – I think at that time we only had two partners."); *id.* at61 (July 26, 2016 Wahl Inv. Test at 65:15-18-14) ("And you were the engagement partner for half of your clients during that period of time; is that right? THE WITNESS: More than likely, yes.").

[366] Ex. 839.6 (Prior Testimony Designations) 161 (July 26, 2016 Wahl Inv. Test at 65:8-14) ("Do you happen to recall, approximately, how many hours a week you – you personally were working during that time period? THE WITNESS: Well, the first six years, I mean, it was easy 80 to 100 hours a week. MR. GLASER: That's a lot of hours. THE WITNESS: Yeah, hard work.").

[367] Ex. 88.1 (Devor Report) ¶ 208.

[368] Ex. 136 (2013 planning memo workpaper) 3.

231. In its risk assessment summary workpaper, Anton & Chia identified the BHCA acquisition, revenue recognition, and purchase accounting as risk areas in the 2013 audit.[369] Yu-Ta Chen prepared, and Greg Wahl signed off on, the risk assessment summary workpaper.[370]

232. Anton & Chia documented in its workpapers that due to the fact that Accelera had has no significant operations and had a small Board of Directors, Anton & Chia would not rely upon the internal control over the financial statement reporting process."[371] Such observations should have elevated the level of professional skepticism and due professional care on the part of the engagement team.[372]

233. Based on the workpapers, the engagement team apparently made no effort to understand the experience and capabilities of those actually charged with preparing Accelera's 2013 financial statements.[373]

234. Anton & Chia also utilized a *Risk Inquiries Form* while planning its 2013 Accelera audit. This form was to be used by Anton & Chia to document its inquiries and responses of management and others about risks of material misstatements, including – but not limited to – fraud risks. For purposes of this form, Anton & Chia identified as management, and interviewed, Timothy Neher, Rose and Daniel Gallagher, and Ann Wolfrum. None of those individuals were actually Accelera management.

235. Based on the above, Anton & Chia and Wahl failed to exercise an appropriate level of due professional care and professional skepticism (AU 230) and violated PCAOB standards while planning its 2013 audit.[374]

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[369] Ex. 137 (2013 Accelera Risk Assessment Summary workpaper); se*e also* Tr. (Vol II Chen) 484:6-20.
[370] Ex. 137 (2013 Accelera Risk Assessment Summary workpaper); Ex. 138 (2013 Accelera audit workpaper sign-offs); se*e also* Tr. (Vol II Chen) 486:4-17.
[371] Ex. 88.1 (Devor Report) ¶ 217; Ex. 1 (Accelera workpapers) 2013 audit, WP 1105.
[372] *Id.* ¶ 219.
[373] *Id.* ¶ 213.
[374] Ex. 88.1 (Devor Report) ¶ 220.

c. Red Flags Regarding the BHCA Acquisition

236. Anton & Chia, including Wahl, received all of the BHCA agreements (including the SPA, Operating Agreement, Promissory Note, Stock Powers Certificate, Written Consent of BHCA Board, Bill of Sale, and Employment Letter) on March 27, 2014.[375]

237. Wahl signed off as having reviewed the Written Consent of BHCA Board, SPA, Employment Letter, Operating Agreement, and Promissory Note.[376]

238. Wahl was aware that Wolfrum was never paid $1 million under the terms of the SPA.[377]

239. In addition, on March 12, 2014, Accelera sent Anton & Chia a form entitled "understanding the company," regarding BHCA.[378] The form disclosed that Wolfrum "has owned" BHCA for 20 years.[379] It also said that Wolfrum "will be employed by Accelera."[380] No one from Anton & Chia asked any follow up questions of the form's reported author about these responses in the questionnaire.[381]

240. Similarly, Anton & Chia's own *Risk Inquiries Form* identified Ann Wolfrum (not Accelera) as the "owner" of BHCA.[382]

241. Nothing in Anton & Chia's workpapers for the Accelera engagements adequately documents how they reached the conclusion that it was appropriate for Accelera to consolidate BHCA in its financial statements.[383]

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[375] Exs. 302-304 (Mar. 27, 2014 emails and attachments from Neher); *see also* Tr. (Vol. II Chen) 499:9-504:23.
[376] Ex. 138 (2013 Accelera audit workpaper sign-offs); *see also* Tr. (Vol. II Chen) 505:1-507:8.
[377] Tr. (Vol. XXI Wahl) 5216:9-15 ("Q Was he ever paid a million dollars? A He was not. But, again, you're only looking at one factor of control.").
[378] Ex. 179 (email and attachment from Neher).
[379] *Id.* ¶ 4.
[380] *Id.* ¶ 37(f).
[381] Tr. (Vol. II Boerum) 392:19-22 ("there was no discussion") & 393:6-11 ("I never had a discussion with them regarding this.").
[382] Ex. 1 at 2013 audit, WP 1104 (Risks Inquiries Form).
[383] Tr. (Vol. IV Devor) 1196:6-1197:13 (1196:14 "A. … GAAS requires the most significant issue in the audit to be documented. I mean which, by the way, isn't crazy to think about, right? So – so clearly if the – so that's an example

d. Acquisition Memo

242. Only one workpaper in the entire 2013 audit dealt with the accounting for the purported BHCA acquisition: an April 10, 2014 memo (the "Acquisition Memo").[384]

243. Yu-Ta Chen drafted the Acquisition Memo. Chen had never prepared a memo like the Acquisition Memo before. In fact, he had never worked on a business combination issue before, or performed any accounting research on business combinations.[385] Chen did "not necessarily have that kind of knowledge" to determine the appropriate accounting model for a transaction.[386] "Most" of the memo was "based on a template."[387]

244. The Acquisition Memo stated that the appropriate accounting rule governing this transaction was ASC 805.[388] The Acquisition Memo further noted that a key issue to resolve under ASC 805 is whether the acquirer "gain control" over the acquiree.[389] It also stated that the usual manner in which control is obtained is through "ownership of [a] majority voting interest in the [acquire]."[390] The Acquisition Memo, however, contains no analysis as to how Accelera supposedly acquired control over BHCA.[391]

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of if, in fact, that exercise and analysis took place as it's being contended that it did, you would expect it to be all over the work papers. So anyway. And to the contrary, there's nothing in the work papers that documents how in the world the conclusion to consolidate this thing occurred. There's nothing in the work papers about it.").

[384] Ex. 88.1 (Devor Report) ¶ 194; Tr. (Vol. IV Devor) 1160:7-23, 1162:4-16 ("Q. And have you reviewed the work papers for all the engagements related to Accelera that are at issue in this case? A. Yes. Q. Other than this memo, is there anything in the work papers that analyzes whether Behavioral should be consolidated into Accelera? A. Not that I've seen."); Ex. 142 (Apr. 10, 2014 Acquisition Memo).

[385] Tr. (Vol. II Chen) 514:14-515:24 ("Q Well, had you ever prepared a memo like this before? A No. Q Had you ever worked on a business combination issue before? A No. …. Q you had never researched a business combination issue before; is that right? … THE WITNESS: No.").

[386] Tr. (Vol. II Chen) 523:1-5; *see also id.* at24:1-2 ("During that time. I don't think I would have the knowledge of the actual ASC 805.").

[387] Tr. (Vol. II Chen) 510:6-7, 513:1-6.

[388] Ex. 142 (Acquisition Memo) 3 ("**the appropriate accounting model for this transaction is the purchase accounting model governed by ASC 805**") (emphasis in original).

[389] Ex. 142 (Acquisition Memo) 2 ("The definition of business combination per ASC 805 is: "A transaction or other event in which an acquirer obtains control of one or more businesses.").

[390] Ex. 142 (Acquisition Memo) 4 ("the usual condition for controlling interest is the ownership of the majority voting interest in the entity").

[391] Tr. (Vol. IV Devor) 1161:6-25 ("Q. Does this memo contain any analysis as to how Accelera supposedly acquired control over Behavioral? A. Not at all. …").

245. The Acquisition Memo contains several other errors and inconsistencies. For example, the Acquisition Memo refers to a Letter of Intent (or "LOI"), but there was no Letter of Intent in this transaction.[392]

246. In addition, the Acquisition Memo uses several different tenses when describing the BHCA transaction, leaving it ambiguous as to whether the author believes the transaction has already occurred, or not. For example,

- "[Accelera] will pay BHCA $4,550,000. As a result, BHCA would become a wholly owned subsidiary of [Accelera]."[393]
- "Under the terms of the Agreement …, [Accelera] will obtained 100% of the ownership of [BHCA]."[394]
- "Revenue will begin to accrue to the Issuer from Target operations prospectively from the date [Accelera] obtains control."[395]

247. In a section entitled, "Determining the Acquisition Date," the Acquisition Memo states that "it is the date that the acquirer obtains control that is the acquisition date, not necessarily the date of an agreement or reaching binding terms," but the Acquisition Memo does not include any conclusion as to what the acquisition date of BHCA was.[396]

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[392] Ex. 142 (Acquisition Memo) 3 ("**Based off the facts related to the Issuer and Target and the terms outlined in the LOI**….") (Emphasis in orig.); Tr. (Vol. IV Devor) 1165:23-25 ("Q. Is there a letter of intent involved in this case? A. Not that I've seen.").
[393] Ex. 142 (Apr. 10, 2014 Acquisition Memo) 1-2.
[394] *Id.* at 2.
[395] *Id.* at 9.
[396] *Id.* at 4-5.

248. Wahl signed off as having reviewed the Acquisition Memo.[397] He was the only member of the 2013 audit engagement team who signed off as having reviewed the Acquisition Memo.[398]

249. This Acquisition Memo demonstrates Anton & Chia's failure to properly analyze whether Accelera had acquired control of BHCA. This memo also demonstrates Anton & Chia's and Wahl's lack of due professional care (AU 230) in their assessment of Accelera's decision to consolidate BHCA. Further, this memorandum depicts Wahl's lack of "seasoned judgment" in the supervision and the review of the work performed by Chen, under AU 210.[399]

e. Work Not Conducted

250. The amendments to the SPA, the Bill of Sale, the Stock Powers Certificate, the Written Action of the BHCA Board, and the Escrow Agreement were not among the workpapers for the 2013 audit.[400]

251. Under the SPA, the first payment toward BHCA was due 90 days from November 11th, or February 9, 2014.[401] Accordingly, by the time Anton & Chia was working on the 2013 audit, the payment was past-due. But, there is no evidence in Anton & Chia's 2013 audit workpapers that they considered the impact of default.[402]

252. Anton & Chia did not perform any field work during the 2013 audit.[403]

253. There is no evidence in the Anton & Chia's 2013 audit workpapers that the engagement team performed inquiries of Wolfrum including inquiring whether Accelera

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[397] Ex. 138 (2013 Accelera audit workpaper sign-offs) WP 2503; Ex. 139 (2013 Accelera audit workpaper sign-offs, native) WP 2503; Tr. (Vol. II Chen) 508:3-509:20; Ex. 839.6 (Prior Testimony Designations) 162 (July 26, Wahl 2016 Inv. Test at 88:10-20).
[398] *Id.*
[399] Ex. 88.1 (Devor Report) ¶ 196.
[400] Ex. 138 (2013 audit workpaper signoff index); Ex. 1 (Accelera workpapers).
[401] Ex. 184 (Stock Purchase Agreement) § 1.1.1.1.
[402] Ex. 88.1 (Devor Report) ¶ 191.
[403] Tr. (Vol. II Chen) 497:23-498:6.

controlled BHCA, had access to BHCA's bank accounts, had a controlling financial interest of BHCA, or whether Wolfrum received shares of Accelera, as required by the amendments to the Stock Purchase Agreement.[404] Neither Wahl nor Deutchman ever spoke to Wolfrum.[405] In particular, Chen never asked Wolfrum whether Accelera controlled BHCA's operations, whether Accelera had access to BHCA's bank accounts, or whether Accelera had the ability to hire or fire BHCA's employees.[406] These omissions constitute a failure to "obtain sufficient appropriate audit evidence to provide a reasonable basis for [their] opinion," as required by AS 15.[407]

254. Wahl did not ask anyone from Accelera whether it had ever received the shares of BHCA, because he "[didn't] think that's our problem."[408]

255. Despite the fact that Wahl found the SPA "contradictory,"[409] he never considered obtaining a legal opinion on the propriety of BHCA's consolidation.[410]

256. Even though two of the four amendments to the SPA had been signed by the time Anton & Chia was performing the 2013 audit,[411] neither amendment appears in the audit workpapers.[412] If Anton & Chia was not aware of the amendments, then the engagement team

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[404] Ex. 88.1 (Devor Report) ¶ 197.
[405] Tr. (Vol. I Wolfrum) 248:25-249:5 ("Q. Did you ever have occasion to speak to Greg Wahl at Anton & Chia?? A. Not that I can recall specifically. Q. Did you ever have an occasion to speak to Michael Deutchman at Anton & Chia? A. Not that I can recall.").
[406] Tr. (Vol. II Chen) 536:16-537:13 ("Do you remember at all asking Wolfrum whether Accelera controlled Behavioral's operations? A No. I don't think I have that conversation. Q Okay. Did you have any conversation with him or anybody at Behavioral about whether or not Accelera had access to Behavioral's bank accounts? A I did not have that conversation. Q Okay. Did you have any discussions with anybody at Behavioral, while you were working on the2013 audit, about whether Accelera had the ability to hire and fire Behavioral's employees? … For the 2013 audit, I don't remember have that conversation.").
[407] Ex. 88.1 (Devor Report) ¶ 198.
[408] Ex. 839.6 (Prior Testimony Designations) 19-20 (July 12, 2019 Wahl Dep. at 172:21-174:4).
[409] Ex. 839.6 (Prior Testimony Designations) 100 (July 2, 2019 Wahl Dep. at 247:16-17) ("Well, again, the – the agreement is contradictory…").
[410] Ex. 839.6 (Prior Testimony Designations) 105-06 (July 2, 2019 Wahl Dep. at 263:18-264:1) ("Did you ever do anything to ensure that Accelera was in compliance with the terms of the Stock Purchase Agreement while you were conducting the 2013 audit? A. I don't remember. Q. Did you ever consider obtaining a legal opinion to confirm the propriety of the consolidation of Behavioral? A. No.").
[411] Ex. 197 (1st Amendment to SPA); Ex. 201 (2d Amendment to SPA).
[412] Ex. 138 (workpaper sign-offs for 2013 audit).

failed to identify that Accelera was in breach of the terms of the SPA, as the first payment was overdue as of February 9, 2014. If they were aware of the amendments, then the engagement team failed to confirm that Accelera had met the terms of those amendments (*i.e.*, transferred the required stock to Wolfrum). Either way, Anton & Chia and Wahl failed to demonstrate due professional care in its assessment of the BHCA transaction.[413]

f. Anton & Chia Audit Report

257. Accelera's 2013 Form 10-K included an unqualified opinion from Anton & Chia. Anton & Chia opined that Accelera's financial statements, "present fairly, in all material respects, the consolidated financial position of Accelera Innovations, Inc. as of December 31, 2013 and 2012, and the consolidated results of their operations and their cash flows for each of the years then ended, in conformity with accounting principles generally accepted in the United States of America."[414]

258. Anton & Chia also represented that it had "conducted [its] audits in accordance with the standards of the Public Company Accounting Oversight Board (United States)."[415]

259. The report also included what is referred to as a going concern disclosure, disclosing "substantial doubt about the Company's ability to continue as a going concern."[416] A going concern disclosure in an audit opinion does not minimize the auditor's responsibility for conducting an audit that complies with the applicable auditing standards.[417]

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[413] Ex. 88.1 (Devor Report) ¶ 193 (citing AU 230).
[414] Ex. 105 (Accelera 2013 Form 10-K) F-2; *see also* Ex. 840 (Stipulated Facts) ¶¶ 32-34.
[415] *Id.*
[416] Ex. 105 (Accelera 2013 Form 10-K) F-2.
[417] Tr. (Vol. IV Devor) 1210:17-1211:17 ("Q. Devor, in your expert opinion, does it – does a going concern disclosure or warning in an audit opinion minimize or absolve an auditor's responsibility for conducting an appropriate audit? A. Of course not. Q Does it have any bearing on the quality of an audit that an auditor is required to perform? A. No. Q. Why not? A. There's an opinion that was shown on that screen, I believe when Deutchman was up here, Anton & Chia's opinion. It was a statement that says we conducted the audit in accordance with PCAOB standards. So you're not absolved of performing an audit in accordance with Generally Accepted Auditing Standards, PCAOB standards, just because the company is struggling to make money. … By the way, if you were,

260. Anton & Chia – through Wahl – signed this audit report.[418] Wahl anticipated that Accelera's Form 10-K would include Anton & Chia's opinion.[419]

g. Anton & Chia's Audit Fees

261. For the 2013 audit,[420] Anton & Chia charged Accelera $31,559.[421]

2. 2014 Quarterly Reviews

262. As detailed below, Anton & Chia failed to conduct the 2014 quarterly reviews in accordance with PCAOB standards, which led to the failure to identify the consolidation of BHCA into Accelera's financials as improper.[422]

a. Staffing

263. The first quarter 2014 quarterly review was staffed by:

- Yu-Ta Chen and Nguyen Le as staff
- Greg Wahl as engagement partner
- Richard Koch as EQR.[423]

264. The second quarter 2014 quarterly review was staffed by:

- Yu-Ta Chen and Rena Yu as staff
- Greg Wahl as engagement partner
- Richard Koch as EQR.[424]

265. The third quarter 2014 quarterly review was staffed by:

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why would you do the audit? Think about that. Common sense. Why – if it didn't matter what you did or the audit didn't matter, why would you go to the expense of hiring an auditor to do the audit if you
Didn't have to because there's a going concern statement?").

[418] Wahl Answer ¶ 66.

[419] Wahl Answer ¶ 111.

[420] Note, this amount comprises both the 2013 audit and the Q1 review. The Q1 review is therefore omitted from the fees in the section below.

[421] Ex. 308 (All Transactions for Acclera Innovations).

[422] Ex. 88.1 (Devor Report) ¶ 293.

[423] Ex. 1.1 (Q1 2014 Planning Memo workpaper) 3.

[424] Ex. 166 (Q2 2014 Planning Memo workpaper) 3.

- Yu-Ta Chen and Rena Yu as staff
- Brian Lam as audit manager
- Michael Deutchman as engagement partner
- Richard Koch as EQR[425]

266. Freeman found the Anton & Chia staff assigned to the 2014 Q3 audit engagement (Chen) "did not possess an appropriate level of experience to handle an engagement with these types of complexities."[426]

267. Deutchman was the engagement partner for the third quarter review for Accelera.[427] By the time he was staffed on the 2014 audit, Deutchman had already been censured by the SEC for appearing as a public accountant while not associated with a PCAOB-registered firm.[428] Deutchman did not inform Wahl of the 2008 censure when he was hired by Anton & Chia, but the Order was public information at that time.[429]

b. Planning

268. In the 2014 quarterly reviews, Anton & Chia noted "none," when asked in its *Interim Review Program* workpaper to identify "[s]ignificant financial accounting and reporting matters that may be of continuing significance," denoting that the BHCA transaction was not of

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[425] Ex. 1.4 (Q3 2014 Planning Memo workpaper) 3.
[426] Tr. (Vol. I Freeman) 116:25-117:11, 117:21-118:1.
[427] Tr. (Vol. III Deutchman) 638:25-639:2 ("That is correct," to inquiry, "You were the engagement partner on the third quarter 2014 interim review for Accelera."); Ex. 839.6 (Prior Testimony Designations) 470 (June 25, 2019 Deutchman Dep. at 18:8-14).
[428] Ex. 183 (July 29, 2008 Commission Order, Exchange Act Rel. No. 58240).
[429] Tr. (Vol. XXI Wahl) 5113:12-5114:9 ("Q Okay. Would you have wanted to know that Deutchman had been censured by the SEC before you hired him? A I mean, I think it would have been – in most cases it would have been appropriate to do that. I think it's mischaracterizing, you know, previous testimony. I knew Mike from before. I worked with him at Grobstein Horwath. So I was already reasonably comfortable with him. Q Okay. Did – Deutchman was also barred by the PCAOB, right? A I really don't know the specifics of that – of that situation. Q Okay. But he never told you when you hired him that he'd been barred by the PCAOB, right? A Well, my understanding was it was a private matter, and I think it was bound by certain confidentiality arrangements. And since he was an employee of Kabani, his counsel represented that he couldn't disclose that to us."); Tr. (Vol. III Deutchman) 646:19-25.

"continuing significance" during those reviews.[430] However, Anton & Chia and Wahl should have identified the purported acquisition of BHCA by Accelera and the associated consolidation of the assets, liabilities, and results of BHCA's operations as "significant financial accounting and reporting matters that may be of continuing significance."[431]

269. By failing to identify the BHCA transaction as a significant financial accounting and reporting matter in any of the interim quarterly reviews, Wahl failed to properly plan its interim quarterly reviews of the financial statements of Accelera in accordance with PCAOB standards.[432]

c. Red Flags Regarding BHCA Consolidation

i. Freeman's Questions regarding Consolidation

270. Freeman joined Accelera as its CFO on October 6, 2014.[433] When Freeman became the CFO, he "had serious questions about the appropriateness of consolidation," because "it didn't appear that there was sufficient control of BHCA which would justify that consolidation."[434]

271. Starting in September of 2014, and "[s]ometimes multiple times a week," Freeman raised with Accelera his questions about why BHCA had been consolidated into Accelera."[435] Accelera, however, did not want to remove BHCA from Accelera's financial statements, because that "would require amending the Qs and Ks that had already been

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[430] Ex. 164 (Interim Review Program workpaper for Q1 2014) 4(a)(iv); Ex. 1.2 (Interim Review Program workpaper for Q2 2014) 4(a)(iv); Ex. 1.3 (interim review program workpaper for Q3 2014) 4(a)(iv); *see also* Tr. (Vol. II Chen) 552:20-553:19.
[431] Ex. 88.1 (Devor Report) ¶ 297.
[432] *Id.* ¶ 298 (citing AU 722).
[433] Ex. 110 (Oct. 8, 2014 Form 8-K).
[434] Tr. (Vol. I Freeman) 79:19-80:1.
[435] *Id.* at 2:11-25; *see also* Tr. (Vol. II Boerum) 393:20-394:4.

consolidated, and it would render Accelera a shell, which would severely inhibit the trading ability of Accelera."[436]

272. Freeman raised the issue of consolidation with Deutchman beginning "as early as September 2014," and then repeatedly, "in virtually every phone conversation."[437] Freeman told Deutchman that he thought "[t]hat Behavioral was inappropriately consolidated into the financial statements," and he explained why he believed that to be the case.[438] In response, Deutchman "was dismissive and said that SEC rules apply to this particular situation," but would not cite any specific rule.[439]

273. Freeman also sent Deutchman e-mails raising the issue of BHCA's consolidation and/or suggesting that the BHCA transaction was not complete. For example:

- On September 10, 2014, Freeman sent an email to Deutchman telling him, "we have not closed on any entity yet."[440]
- On September 18, 2014, Freeman sent an email to Deutchman disclosing that Accelera was "trying to put some debt on [BHCA], which [would] allow us to access their cash flow."[441]
- On December 9, 2014, Freeman sent an e-mail to Deutchman requesting that he "forward me your basis for consolidating the three entities when you audited the December 31, 2013 financial statements." He wrote, "[a]s I mentioned in a telephone call with you back in October, I thought these

[436] Tr. (Vol. I Freeman) 83:19-84:1.
[437] *Id.* at 4:16-85:2.
[438] Tr. (Vol. I Freeman) 84:21-86:1.
[439] *Id.* at 6:23-87:13; *see also id.* at02:12-17; *id.*at 102:4-6 (responding, "[n]o" to question, "Did Deutchman provide you with the requested research?").
[440] Ex. 210 (Sept. 10, 2014 email from Freeman).
[441] Ex. 211 (Sept. 18, 2014 email from Freeman).

entities were inappropriately consolidated. However, I am open to having this discussion to gain a better understanding of the position taken by AVP and audited by Anton & Chia. I would think that Anton & Chia would have done some research and analysis to see if these entities should have been consolidated for the audited financial statements and quarterly reviews. To the extent you can share this research, please send it to me so we can have a meaningful dialog."[442]

- On January 7, 2015, Freeman sent an e-mail to Deutchman, again asking, "[i]n regards to the consolidation of Behavioral, would you send me a copy of your research supporting the consolidation of Behavioral at December 31, 2013 and 2014?"[443]
- On January 30, 215, Freeman sent an e-mail to Deutchman, stating, "we still want to move forward with Behavior's audit because we will need it when we do fully execute on the deal."[444]

274. In response, Deutchman did not examine the issue of BHCA's consolidation. Instead, he just "assume[d] that it was done correctly."[445] Deutchman found that the issue of whether Accelera controlled BHCA "was inconclusive either way," "[s]o [he] defaulted to the firm's position."[446]

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[442] Ex. 214 (Dec. 9, 2014 email from Freeman).
[443] Ex. 217 (Jan 7, 2015 email from Freeman).
[444] Ex. 220 (Jan. 30, 2015 email from Freeman).
[445] Tr. (Vol. III Deutchman) 762:6-13 (quoting Ex. 8 (Deutchman July 26, 2016 Inv. Test.) 82:18).
[446] Ex. 839.6 (Prior Testimony Designations) 471-72 (June 25, 2019 Dep. at 88:23-89:7).

ii. Field Work at BHCA

275. Anton & Chia auditors visited BHCA to perform fieldwork on three occasions.[447] The first was in late April- early May of 2014.[448]

276. On April 16, 2014, Wolfrum e-mailed Anton & Chia staff, instructing them to "remain as confidential and low profile as possible," and, specifically that, "[a]t no time should anyone mention the words 'Accelera,' 'sale,' 'purchase,' 'IPO,' 'transfer of ownership,' or any other such thing to anyone at BHCA other than myself."[449] Wolfrum sent this e-mail because he "didn't want people in the office to think that we had sold the business, because we hadn't."[450] No one from Anton & Chia ever questioned Wolfrum as to why he told them not to talk to his employees.[451]

277. During Anton & Chia's field work in 2014, Wolfrum told the staff on site that he still "owned Behavioral, and that no one's made any payments yet."[452] Wolfrum also told the Anton & Chia staff that "the money, it's earned here it all goes into our bank accounts, and I pay the taxes, I write the checks, and it's totally separate from Accelera. They haven't purchased us yet."[453]

278. During the field work in 2014, Anton & Chia had access to BHCA's bank records, which showed that BHCA never paid any of its revenues to Accelera.[454]

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[447] Tr. (Vol. I Wolfrum) 248:6-12 ("Q. Did accountants from Anton & Chia ever come to your offices to look at your records? A. Yes. Q. And you mentioned, I think previously, that they came on three occasions; is that right? A. Yes.").
[448] Ex. 204 (Apr. 16, 2014 email from Wolfrum).
[449] Ex. 204 (Apr. 16, 2014 email from Wolfrum).
[450] Tr. (Vol. I Wolfrum) 253:18-23.
[451] Tr. (Vol. I Wolfrum) 254:13-16 (responding "no," to question, "[d]id anyone from Anton & Chia ever question you as to why you told them not to talk to your employees").
[452] Tr. (Vol. I Wolfrum) 255:9-13.
[453] Tr. (Vol. I Wolfrum) 256:12-19.
[454] Tr. (Vol. I Wolfrum) 258:10-18 ("Q Did Anton & Chia have access to Behavioral's bank statements during the 2014 audit? A Yes. Q Did the bank records show that the – Behavioral never paid any of its revenues to Accelera? A That's correct. Q The bank records showed that? A Bank records showed that no money was ever paid to Accelera.); *see also* Tr. (Vol. II Boerum) 459:20-460:13.

iii. Acquisition Audits

279. Acquisition audits are audits of the historical financial information of an acquired entity or acquisition target, which are required to be filed under SEC Rules.[455]

280. Anton & Chia was retained to perform the acquisition audit for BHCA.[456] However, the acquisition audit was not ever completed.[457]

281. Deutchman was aware that, as of September 2014, Accelera had not filed the required Form 8-K with the BHCA audited financial statements.[458] That fact did not cause him to question whether the acquisition of BHCA had really transpired.[459]

d. Work Not Performed

282. The workpapers for the 2014 quarterly reviews did not contain any workpapers that analyze whether BHCA should be consolidated into Accelera.[460]

283. In fact, the workpapers for the 2014 quarterly reviews did not contain any of the agreements related to the BHCA transaction, including the amendments to the SPA.[461]

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[455] Tr. (Freeman) 89:14-18 ("An acquisition audit is an audit of the years leading up to actual acquisition so that there is historical information that's available on the acquired entities that have been audited for several years."); *see also* Tr. (Vol. II Chen) 537:19-538:15.

[456] Ex. 839.6 (Prior Testimony Designations) 110 (July 2, 2019 Dep. at 274:13-24).

[457] Tr. (Vol. II Chen) 539:10-16 ("Q. Did you ever complete the acquisition audit of BHCA? A No."); *see also* Tr. (Vol. I Freeman) 89:19-90:6 (acquisition audit was incomplete in fall of 2014, "[b]ecause the transactions had not been completed.").

[458] Ex. 839.6 (Prior Testimony Designations) 494 (June 20, 2018 Deutchman Dep. at 105:11-20) ("11 I believe you alluded to this this morning in your testimony, but you understood that Accelera had an obligation to file audited financials with the SEC within a certain period of time after completing an acquisition, correct? A That's correct. Q And as of September of 2014, you understood that Accelera had not filed such audited financial statements, correct? A That's correct.").

[459] Ex. 839.6 (Prior Testimony Designations) 496 (June 20, 2018 Deutchman Dep. at 115:4-15) ("4 Q Okay. So to recap, you knew there was this obligation to file audited financial statements after an acquisition was completed, correct? A That's correct. Q And you knew that for Accelera, that those financial statements had not been filed subsequent to the acquisition of Behavioral? A Correct. Q And did that fact cause you to question whether the acquisition of Behavioral had really transpired or not? A No.").

[460] Tr. (Vol. IV Devor) 1160:7-23, 1162:4-16 ("Q. And have you reviewed the work papers for all the engagements related to Accelera that are at issue in this case? A. Yes. Q. Other than this memo, is there anything in the work papers that analyzes whether Behavioral should be consolidated into Accelera? A. Not that I've seen.").

[461] Ex. 141 (Q1 2014 workpaper signoff index); Ex. 144 (Q2 2014 workpaper signoff index); Ex. 145 (Q3 2014 workpaper signoff index); Ex. 1 (workpapers).

284. Anton & Chia did not review any of the amendments to the SPA during the 2014 quarterly reviews.[462]

285. "[T]he issue of Accelera's consolidation of Behavioral" did not come up among the engagement team during any of the 2014 quarterly reviews.[463]

286. PCAOB standards prescribe that inquiries should be designed to address identified significant events and transactions. Specific inquiries "should be tailored to the engagement based on the accountant's knowledge of the entity's business."[464] Wahl failed to comply with these PCAOB standards with respect to performing inquiries during the quarterly reviews in 2014, because he failed to tailor inquiries of Accelera management in light of information that was known by the engagement team, including red flags about Accelera's accounting treatment of BHCA.[465]

287. There is no evidence in Anton & Chia's interim quarterly review workpapers indicating the engagement team sufficiently reviewed Accelera's continued consolidation of BHCA.[466]

288. Deutchman "did not ask any questions" of Freeman about the relationship between Accelera and Behavioral.[467]

289. Deutchman and Wahl should have inquired about (1) the multiple amendments to the Stock Purchase Agreement, (2) Accelera's plan, if any, to pay in order to comply with the amendments to Stock Purchase Agreement, (3) Accelera's defaults on the Stock Purchase

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[462] Ex. 141 (Q1 2014 workpaper signoff index); Ex. 144 (Q2 2014 workpaper signoff index); Ex. 145 (Q3 2014 workpaper signoff index); *see also* Tr. (Vol. II Chen) 584:23-585:21.
[463] Tr. (Vol. II Chen) 548:7-12; *see also id.* at71:11-16.
[464] Ex. 88.1 (Devor Report) ¶ 299 (citing AU 722.15).
[465] *Id.* ¶¶ 299-300.
[466] *Id.* ¶ 301 ("In reviewing Anton & Chia's interim quarterly review workpapers, I have seen no indication that the engagement team sufficiently reviewed Accelera's continued consolidation of BHCA.").
[467] Tr. (Vol. I Freeman) 119:11-14.

Agreement as of May 31, 2014 and again as of October 1, 2015, and (4) the basis for Accelera consolidating BHCA's financial results."[468]

290. Anton & Chia's interim quarterly review workpapers included an *Interim Review Inquiries Checklist.* This checklist consists of a standardized template of questions, with "Yes / No" checkmark responses. These checklists also did not include any questions relating to the purported acquisition of BHCA.[469]

291. In the respective *Interim Review Inquiries Checklist* for each of the quarters in 2014, Anton & Chia also failed to identify the specific person at Accelera who received and purportedly responded to Anton & Chia's purported inquiries.[470] Without identifying to whom these inquiries were made, there is no written record to confirm whether inquiries were made of the appropriate person or whether inquiries took place at all.[471]

292. Additionally, each of the *Interim Review Inquiries Checklists* included the following question:

> Have there been any unusual or complex situations or significant unusual transactions that may have an effect on the financial statements (for example, business combinations, disposal of a segment, restructuring plans or charges, litigation, or other significant unusual transactions occurring in the last several days of the interim period)?

In each checklist, Anton & Chia erroneously responded "No." [472]

293. The purported acquisition of BHCA was not only "significant" to Accelera's financial statements, but was a business combination, one of the scenarios outlined in the

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[468] Ex. 88.1 (Devor Report) ¶ 302.
[469]*See* Ex. 1.8 (interim review inquiries checklist for Q2 2014); Ex. 1 (Accelera workpapers) Q1 2014 WP 3003, Q3 2014 WP 3003.
[470] *Id.*
[471] Ex. 88.1 (Devor Report) ¶ 305.
[472] *Id.*

checklist.[473] The engagement team should have identified the purported acquisition of BHCA and adjusted its inquiries and review procedures accordingly, but there is no evidence in the workpapers that they did not do so.[474]

294. In addition, during the field work conducted in April and May of 2014, no one from Anton & Chia asked Wolfrum whether: (a) Accelera controlled BHCA, (b) Accelera had access to BHCA's bank accounts, (c) Accelera had a controlling financial interest in BHCA, (d) Wolfrum had received the shares owed under the first amendment to the Stock Purchase Agreement, (e) Wolfrum was employed by Accelera, or (f) Wolfrum was paid a salary by Accelera.[475]

295. During the first field work in 2014, no one from Anton & Chia ever requested proof of payment under section 1.1.1.1 of the Stock Purchase Agreement, or the stock certificates that were issued pursuant to the amendments.[476]

e. Anton & Chia's Fees

296. For its quarterly reviews of Accelera in 2014,[477] Anton & Chia charged Accelera $12,800.[478]

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[473] *Id.*; *id.* ¶ 307.
[474] Ex. 88.1 (Devor Report) ¶ 307.
[475] Tr. (Vol. I Wolfrum) 257:4-258:1 ("Q During that first audit did anyone ask you whether – from Accelera – I'm sorry. Did anyone from Anton & Chia ever ask you whether Accelera had access to Behavioral's bank accounts? A No. Q During that audit did anyone from Anton & Chia ask you whether Accelera had a controlling financial interest in Behavioral? A No. Q During the audit in 2014, did Anton & Chia ever ask you whether you received the shares as required under the first amendment to the Stock Purchase Agreement? A No. Q During that audit did anyone from Anton & Chia ever ask you whether you were employed by Accelera? A No. Q During that first audit did anyone from Anton & Chia ever ask you whether you were paid a salary by Accelera? A No."); *see also* Tr. (Vol. II Chen) 543:5-544:5.
[476] Tr. (Vol. I Wolfrum) 258:2-9 ("Q. During that first audit did Anton & Chia ever request proof of payment under section 1.1.1.1 of the Stock Purchase Agreement? A. No. Q. During that first audit did Anton & Chia ever request the stock certificates that were issued pursuant to the first amendment? A. No.").
[477] Excluding the Q1 review. *See supra* n.418.
[478] Ex. 308 (All Transactions for Accelera Innovations, Inc.).

3. 2014 Audit

297. As detailed below, Anton & Chia Anton & Chia violated PCAOB standards in multiple ways during its 2014 audit, including AU 230, AU 210, AU 333, AS 3, AS 7, AS 10, and AS 15.[479]

a. Staffing

298. The 2014 audit for Accelera was staffed by:

- Jason Jiang, Jackie Bai, and Barbara Lai as staff;
- Tommy Shek as manager;
- Michael Deutchman and Greg Wahl as partners.[480]

299. Before beginning to work for Anton & Chia in 2011, Shek had had no public company auditing experience[481] or experience accounting for business combinations.[482] He graduated from college in 2009.[483] At the time, Shek was working on the 2014 audit of Accelera, he had only had "one or two" prior experiences with auditing business combinations. One of those one or two previous experiences was with CannaVest.[484]

300. Two of the staff accountants on the 2014 audit – Jason Jiang and Jackie Bai – were not employees of Anton & Chia. Rather, they were from a different accounting firm.[485]

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[479] Ex. 88.1 (Devor Report) ¶ 222.
[480] Ex. 176 (2014 audit planning memo); *see also* Ex. 839.6 (Prior Testimony Designations) 43 (July 2, 2019 Wahl Dep. at 40:5-7).
[481] Tr. (Vol. VIII Shek) 2212:17-23 ("W. When you started at Anton & Chia, roughly July of 2011, did you have any public company auditing experience? A. No.").
[482] Tr. (Vol. VIII Shek) 2289:13-17 ("Q. Prior to your coming to Anton & Chia, had you had any prior experience accounting for business combinations? A. No.").
[483] Tr. (Vol. VIII Shek) 2211:10-14 ("Q And where did you go to college? A Cal State Fullerton. Q And when did you graduate? A Like, May 2009.").
[484] Tr. (Vol. VIII Shek) 2288:25-2289:9 ("Q As of spring of 2015 when you're the manager on Accelera's 2014 audit, had you had prior experience auditing business combinations? A Yes. Q How many times at that point in time had you audited a business combination? A Like, one or two. Q And was one of those one or two previous experiences related to CannaVEST? A Yes.").
[485] Ex. 311 (Mar. 16, 2015 email chain with Deutchman and Wahl); *see also* Tr. (Vol. VIII Shek) 2302:20-2303:17("Q Jason Jiang, who is he? A He's a staff. Q And did he work for Anton & Chia? A No. Q Who did he work for? A He worked for another CPA firm … Q Where was that firm located? A East Coast. Q Did you ever

Deutchman was originally "not real comfortable" having the third party firm perform the field work for the audit, but he agreed after Wahl said they "need competent staff on this," and "that [sic] why you mix it up."[486]

301. When Wahl was staffed as the engagement partner on the 2014 Accelera audit, he was also working on approximately 71 to 76 other engagements.[487]

b. Michael Deutchman's Role

302. During Anton & Chia's audit of Accelera's financial statements as of and for the year ended December 31, 2014, Deutchman was not competent or objective and failed to fulfill his duties as the EQR.[488]

303. By the time he was staffed on the 2014 audit, Deutchman had twice been disciplined by Anton & Chia. In February 24, 2015, a written warning was placed in Deutchman's personnel file at Anton & Chia for "substandard job performance." The warning included a note about a previous "performance issue," and noted that "[n]o other Firm employees want to work with Michael."[489]

304. In addition, Wahl informed Deutchman that he was "too old to be an engagement partner" at Anton & Chia.[490]

305. Wahl's decision to use Deutchman as nominal EQR in light of his disciplinary record and substandard job performance, and allowing him to perform key audit functions even

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mean Jason Jiang in person? A No. Q How about Jackie Bai? Who was that? A Staff. Q And did Jackie Bai work for Anton & Chia? A No. Q Did she work for the same firm that Jason Jiang worked for? A Yes. Q Did you ever meet Bai? A No.").

[486] Ex. 311 (Mar. 16, 2015 email chain with Deutchman and Wahl); *see also* Tr. (Vol. III Deutchman) 785:1-786:15.

[487] Ex. 839.6 (Prior Testimony Designations) 163 (July 26, 2016 Wahl Inv. Test at 130:21-131:24).

[488] Ex. 88.1 (Devor Report) ¶ 256.

[489] Ex. 226 (Corrective Action Form from M. Deutchman personnel file).

[490] Tr. (Vol. III Deutchman) 661:23-662:17; Ex. 839.6 (Prior Testimony Designations) 484, 492-93 (June 20, 2018 Deutchman Dep. at 35:6-36:7, 68:21-69:8).

through Wahl deemed him "too old" to serve as an engagement partner, demonstrates a failure by Wahl to comply with AS 7, AS 10, and AU 210.[491]

306. In addition, Deutchman's role on the 2014 audit was at best ambiguous. The Accelera personnel involved in the 2014 audit understood Deutchman, not Wahl, to be the engagement partner on the 2014 audit.[492] They did not have any communications with Wahl.[493]

307. Anton & Chia staff on the 2014 audit engagement also understood that Deutchman was the engagement partner and Wahl was the EQR.[494] Anton & Chia staff referred to Deutchman as the "EP," "partner in charge," "partner on the job" for the 2014 audit.[495]

308. Deutchman communicated with the client and staff, proposing calls, organizing field work, planning the planning meeting.[496] All of these were tasks appropriate for an engagement partner, not an EQR.[497] Wahl was often excluded altogether from these emails.[498]

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[491] Ex. 88.1 (Devor Report) ¶ 266 ("Utilizing Deutchman as EQR in light of his disciplinary record and substandard job performance, and allowing him to perform key audit functions even through Wahl deemed him "too old" to serve as an engagement partner, demonstrates a failure by Anton & Chia and Wahl to comply with AS 7, AS 10, and AU 210.").

[492] Tr. (Vol. I Freeman) 132:9-133:4 ("So in your experience, what role did Deutchman play on the 2014 10-K? A My understanding he was the engagement partner. Q And what makes you say that? A Because he was the person I was working with in the process of getting ready for the audit; *see also* Tr. (Vol. II Boerum) 396:16-397:1.

[493] Tr. (Vol. II Boerum) 397:10-17 ("I don't remember [Wahl] on any of the calls," … and she would receive communications from "Either Michael or Tommy"); *see also* Tr. (Vol. I Freeman) 133:16-21.

[494] Tr. (Vol. VIII Shek) 2304:22-24 ("Q. And, indeed, what role did Deutchman play on the 2014 audit of Accelera? A. Engagement partner."); *see also id.* at310:15-17 ("Well, my opinion, Michael Deutchman more like engagement partner, and Wahl more like the engagement quality reviewer.").

[495] Ex. 228 (Mar. 20, 2015 email from Shek); 229 (Mar. 24, 2015 email from Shek); Ex. 233 (Mar. 27, 2015 email from Rusywick); Ex. 230 (Mar. 26, 2015 email chain with Shek); Ex. 301 (Mar. 27, 2015 email from Rusywick).

[496] Ex. 235 (Mar. 29, 2015 email from Deutchman); Ex. 232 (Mar. 27, 2015 email chain); Ex. 234 (Mar. 27, 2015 email from Deutchman); Ex. 236 (Mar. 29, 2015 email from Deutchman); Ex. 231 (Mar. 26, 2015 email chain with Deutchman); Ex. 230 (Mar. 26, 2015 email chain with Shek); *see also* Tr. (Vol. II Boerum) 398:8-19.

[497] Tr. (Vol. VIII Shek) 19-24 ("I know it's more like Michael Deutchman was the one talking to the client, you know, talking to the former CFO. So he's more involved in engagement, which typically the engagement partner would act like that."); Ex. 88.1 (Devor Report) ¶ 257.

[498]*See* Ex. 230 (Mar. 26, 2015 email chain with Shek); Ex. 231 (Mar. 26, 2015 email chain with Deutchman); Ex. 232 (Mar. 27, 2015 email chain); Ex. 235 (Mar. 29, 2015 email from Deutchman).

309. The first draft of Anton & Chia's planning memo for 2014 and the final draft of the Engagement Summary Memo both indicated that Deutchman was the engagement partner and Wahl the EQR.[499]

310. Because Deutchman performed many of the duties typically performed by the Engagement Partner, including communicating with Accelera's officers regarding the engagement, he violated AS 7.7 by also signing off on the audit as the EQR.[500] "This inappropriate blending of roles meant that Accelera's 2014 financials were not subject to the necessary objectivity (*i.e.*, checks and balances) prescribed by the auditing standards."[501]

c. Planning

311. During planning for the Accelera 2014 audit, the engagement team, led by Wahl, had discussions regarding "the susceptibility of the entity's financial statements to material misstatements due to error or fraud and the company's selection and application of accounting principles, including related disclosure requirements."[502] The engagement team specifically discussed the "risk in legal structure" due to Accelera purportedly acquiring BHCA, At Home Health Services and All Staffing Services, with only BHCA remaining as a consolidated entity as of December 31, 2014.[503] This information was a red flag, and should have elevated Anton & Chia's level of due professional care.[504]

312. In light of this identified risk and the red flags discussed below, Anton & Chia and Wahl should have reevaluated whether Accelera's decision to consolidate BHCA in 2013,

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[499] Ex. 237 (Mar. 30, 2015 email and attachment from Shek); Ex. 176 (2014 audit Engagement Summary Memo).
[500] Ex. 88.1 (Devor Report) ¶¶ 257-58 ("Deutchman was initially staffed on the 2014 year-end audit as the Engagement Partner. He appears to have performed many of the duties typically performed by the Engagement Partner, including communicating with Accelera's officers regarding the engagement. Notwithstanding, Deutchman signed off on the audit as the EQR, in violation of PCAOB standards (i.e., AS 7.7).").
[501] *Id.* ¶ 258.
[502] Ex. 172 (engagement team discussion workpaper).
[503] *Id.*
[504] Ex. 88.1 (Devor Report) ¶ 253 (citing AU 230).

and continue to consolidate BHCA in 2014, was in accordance with GAAP. Anton & Chia's workpapers do not reflect any such reevaluation.[505] If Anton & Chia and Wahl had performed a proper reevaluation, they would have concluded that BHCA was improperly consolidated."[506]

313. In planning the 2014 audit, Accelera also recognized that there were significant risks in the 2014 audit, including risks with Accelera's control environment and its revenue recognition.[507] This meant that Anton & Chia needed to perform "a lot of substantive testing."[508]

314. In the Planning Memo for the 2014 audit, Anton & Chia determined the materiality threshold to be $41,000.[509]

d. Red Flags Regarding BHCA Acquisition

315. As detailed below, Wahl, Deutchman and Anton & Chia failed to appropriately address numerous red flags relating to the consolidation of BHCA during its 2014 audit. Furthermore, Deutchman failed to document the conflicting information available to the engagement team and the impact such information could have had on Accelera's financial statements.[510] Accordingly, they violated AU 230 (*Due Professional Care*), AS No. 15 (*Audit Evidence*), AU 333 (*Management Representations*), and AS No. 3 (*Audit Documentation*).[511]

i. Freeman's Continued Questions Regarding Consolidation

316. On February 2, 2015, Freeman sent an e-mail to Deutchman and others, containing a draft agenda with the following items: "To consolidate or not to consolidate

[505] Ex. 88.1 (Devor Report) ¶ 254.
[506] *Id.* ¶ 254.
[507] Ex. 174 (2014 Risk Assessment Summary Form); Tr. (Vol. VIII Shek) 2225:8-19.
[508] Tr. (Vol. VIII Shek) 2325:20-2326:14.
[509] Ex. 171 (2014 audit Planning Memo) 2.
[510] Ex. 88.1 (Devor Report) ¶ 255.
[511] *Id.* ¶¶ 224, 249.

Behavior Health," and "The SEC implications to the company and officers on the above positions."[512]

317. Also on February 2, Freeman e-mailed Deutchman directly, informing him that he "expect[ed] the issue of why Behavior was consolidated at December 31, 2013 will come up" on the upcoming call. Freeman further wrote that "[t]he word back from Timothy [Neher] was that since the entities were purchased by a wholly owned subsidiary that we owned we could consolidate because we controlled the subsidiary. However, the subsidiary never controlled the entity so it doesn't sound to me there should have been a consolidation."[513]

318. The conference call to discuss the consolidation of BHCA was held on February 9, 2015.[514] During that call, Freeman "outlined the issues that [he] saw with the consolidations, the problems that we had, not having control of BHCA, the 2013 10-K and the 2014 10-Qs were misleading because they included BHCA in the financial statements."[515] Accelera's attorneys did not express an opinion during the call regarding the consolidation.[516] Deutchman said that "the financial statements were fine, that they did not need to be restated," but he did not offer any reasons for his opinion.[517]

319. On the February 9th call, "[t]he resolution was that [Accelera's attorney] Bob Acri would meet with Wolfrum with a supplemental agreement which essentially would say that

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[512] Ex. 223 (Feb. 2, 2015 email from Freeman).
[513] Ex. 222 (Feb. 2, 2015 email from Freeman); *see also* Tr. (Vol. I Freeman) 109:4-110:17.
[514] Ex. 225 (Feb. 3, 2015 email re: telephone conference); *see also* Tr. (Vol. I Freeman) 121:2-20.
[515] Tr. (Vol. I Freeman) 123:1-5.
[516] Tr. (Vol. I Freeman) 122:19-23 ("Q And did either Laz or Laura express an opinion about the propriety of consolidating Behavioral? A No, they did not. They reminded me they were attorneys not accountants."); *id.* at23:6-10 ("Q Did either Laz or Laura speak on this call? A Yes, they did. Q What did they say? A They requested information from Michael Deutchman as far as his opinion.").
[517] Tr. (Vol. I Freeman) 123:11-17.

Behavioral would be under the control of Accelera to get around the issue of consolidation."[518] Such a supplemental agreement, however, was never actually entered into.[519]

320. Prior to the conference call, Freeman had obtained a second opinion from the AICPA hotline, confirming that BHCA had been inappropriately consolidated, which opinion he passed along to Deutchman.[520]

321. Freeman resigned from Accelera on March 20, 2015.[521] He resigned in part because of "the inappropriate consolidation of Behavioral with Accelera."[522]

322. Deutchman never informed the other members of the engagement team about Freeman's objections to consolidation.[523] Shek would have wanted to know about the objections, as they would have led him to perform additional audit procedures regarding the consolidation.[524] The failure to discuss Freeman's concerns with the engagement team was inconsistent with standards of due professional care.[525]

323. Deutchman did not perform any additional audit tasks in response to Freeman's questioning the BHCA consolidation. He opined that, "before I would change the firm's work or

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[518] Tr. (Vol. I Freeman) 123:18-23.
[519] *Id.* at 23:24-124:1 ("Q. And to your knowledge was such a supplemental agreement ever actually entered into? A. Not to my knowledge.").
[520] Tr. (Vol. I Freeman) 120:19-121:1 ("Q Referring back to your testimony about the opinion rendered to you by the AICPA, did you tell anybody at Anton & Chia about the AICPA's opinion that you were right and Behavioral had been inappropriately consolidated? A Yes, I did. Q And who did you convey that to? A Michael Deutchman.").
[521] Ex. 117 (Mar. 20, 2015 Form 8-K).
[522] Tr. (Vol. I Freeman) 125:22-126:7; *see also* Ex. 227 (Mar. 20, 2015 resignation email from Freeman).
[523] Ex. 88.1 (Devor Report) ¶ 230 ("There is no evidence in Anton & Chia's workpapers or in the testimony that he did so.").
[524] Tr. (Vol. VIII Shek) 2336:7-14 ("Q. Mr. Shek, were you aware during the 2014 audit engagement for Accelera, that Accelera's CFO Daniel Freeman had voiced his opinion that Behavioral had been improperly consolidated into Accelera's public financial statements? A. No, I'm not aware of it. Q. Nobody told you that? A. No. Q. And would you have wanted to know that information as manager of that audit engagement? A… A. Yes, I need to know, because then I don't need to audit the company. Q. If you had known, do you think that you would have performed additional audit procedures in response to that information? … A. Yes.").
[525] Ex. 88.1 (Devor Report) ¶ 260 ("Mr. Deutchman, in his role as EQR, and in compliance with AS 7, should have discussed Mr. Freeman's significant reservations surrounding the consolidation of BHCA with the engagement team (or at least the Engagement Partner) before he approved the audit and permitted the issuance of the audit report.").

be in the process of changing the firm's work, I would need to see a properly prepared document from the CFO of this public company that the treatment should be different."[526]

324. Deutchman felt that "[i]f [Anton & Chia] analyzed this back then and they were comfortable with it, it wasn't my … place to question them."[527] To the contrary, it was Deutchman's place, as EQR, to evaluate the judgments made by the engagement team and the conclusions they reached on difficult or contentious matters.[528]

325. Because Deutchman was aware that Freeman did not agree with the consolidation of BHCA into Accelera's financial statements and that he resigned on March 20, 2015, he "should have exercised due professional care and critically assessed the conclusion [the engagement team] had reached with respect to Accelera's consolidation of BHCA.[529] Specifically, Anton & Chia should have performed additional procedures, such as inquiries of Wolfrum with respect to who controlled BHCA and Wolfrum's purported employment agreement, consultation with an attorney or others internally at Anton & Chia, and review to ensure terms of the amendments to the Stock Purchase Agreement were complied with, in order to assess whether the consolidation of BHCA was appropriate.[530]

326. Deutchman also should have ensured that Freeman's reservations and Anton & Chia's response were documented within its 2014 audit workpapers. He failed to do so.[531] Anton & Chia never documented Freeman's concerns and the engagement team's response in its 2014 audit workpapers.[532]

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[526] Tr. (Vol. III Deutchman) 707:22-708:2.
[527] Ex. 839.6 (Prior Testimony Designations) 480 (Deutchman June 25, 2019 Dep. at 156:23-25); *see also id.* at 491 (Deutchman June 25, 2019 Dep. at 63:24-64:2) ("[I]t wasn't my place to go back to the beginning and challenge my own firm's accounting position that they had taken on this company's accounting treatment of its acquisition.").
[528] Ex. 88.1 (Devor Report) ¶ 227 (citing AS 7.10 and AS 7.15).
[529] *Id.* ¶ 232.
[530] *Id.* ¶ 232.
[531] *Id.* ¶ 261.
[532] *Id.* ¶ 261.

327. According to PCAOB standard AS 7, the role of the EQR during an audit is to provide an objective evaluation of the significant judgments made and conclusions reached by the engagement team. If the EQR becomes aware of a significant engagement deficiency, the EQR should prohibit the audit firm from providing an audit report to be used in a company's financial statements.[533]

328. Deutchman violated his duties under AS 7 by approving the issuance of the audit report as EQR even though Anton & Chia did not adequately address Freeman's concerns regarding the continuing consolidation of BHCA, and Anton & Chia failed to document Freeman's concerns in its 2014 audit workpapers.[534]

ii. Wolfrum's Evidence that Accelera Did Not Own BHCA

329. For the 2014 year-end audit, Anton & Chia requested that Wolfrum execute a confirmation of liability that made clear that the entire purchase price – of the $4.55 million under the SPA – was unpaid.[535] Wolfrum signed the confirmation, agreeing that Accelera had not paid any of the purchase price for the BHCA shares. Wolfrum added language clarifying that "To the extent the terms of this letter conflict with the terms of the parties' Stock Purchase Agreement, the terms of the Stock Purchase Agreement shall control."[536]

330. Wahl and Deutchman knew about the confirmation of liability.[537] Both Wahl and Deutchman signed off in the workpapers as having reviewed this confirmation letter.[538]

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[533] Ex. 88.1 (Devor Report) ¶ 259.
[534] *Id.* ¶ 262.
[535] Wahl Answer ¶ 57; Ex. 239 (Apr. 13, 2015 letter signed by Wolfrum).
[536] Wahl Answer ¶ 57; Ex. 239 (Apr. 13, 2015 letter signed by Wolfrum); Tr. (Vol. I Wolfrum) 269:6-270:20; *see also* Tr. (Vol. I Wolfrum) 354:2-14.
[537] Ex. 840 (Stipulated Facts) ¶ 38; Wahl Answer ¶ 58; Deutchman Answer ¶ 58.
[538] Ex. 147 (2014 audit workpaper sign-off index); *see also* Tr. (Vol. VIII Shek) 2338:13-23.

331. No one from Anton & Chia contacted Wolfrum regarding the language he wrote into the confirmation letter.[539] Neither Wahl nor Deutchman instructed Shek to perform any additional audit procedures based on the language that Wolfrum added to the confirmation.[540]

332. Prior to the field work in 2015, Wolfrum sent an e-mail to individuals from Anton & Chia, including Deutchman, instructing them that "[t]he purpose of the audit should not be disclosed to anyone at BHCA, … other than for 'internal review,'" because, "[o]nly Ann or Blaise Wolfrum and, possibly, my banker are aware of the Accelera deal."[541]

333. When Anton & Chia staff came to perform field work at BHCA in 2015, Wolfrum told them that "Accelera hasn't paid yet, and I still own a hundred percent of the company."[542]

334. During the BHCA field work in 2015 (for the 2014 audit), Anton & Chia had access to BHCA's bank records, which showed that BHCA never paid any of its revenues to Accelera.[543]

335. The facts that Wolfrum informed Anton & Chia staff that Accelera did not own BHCA and BHCA's cash and income did not belong to Accelera, no cash was going from BHCA to Accelera were red flags that BHCA was improperly consolidated.[544]

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539 Tr. (Vol. I Wolfrum) 270:21-271:2 ("Q. Did anyone from Anton & Chia ever get in touch with you to talk to you about what you wrote here on the second page? A. No. Q. Did anyone from Accelera ever talk to you about what you wrote on the bank? A. I don't believe so.").

540 Tr. (Vol. VIII Shek) 2339:2-21 ("Q. Did Deutchman ask you to perform any additional audit procedures based on the language that Wolfrum has included here?… THE WITNESS: No. Q Did Wahl ask you to perform any additional audit procedures or follow-up questions based on the language that Wolfrum added here? … THE WITNESS: No. Q And did you, in fact, perform any additional audit procedures based on this language that Wolfrum added to the confirmation? A No.").

541 Ex. 238 (email from Wolfrum) 1; *see also* Tr. (Vol. I Wolfrum) 261:4-25.

542 Tr. (Vol. I Wolfrum) 264:11-18.

543 Tr. (Vol. I Wolfrum) 266:12-17 ("Q Did Anton & Chia have access to Behavioral's bank statements during the 2015 audit? A Yes. Q And did those bank records show that Behavioral never paid any of its revenues to Accelera? A That is correct.").

544 Ex. 88.1 (Devor Report) ¶ 237 ("BHCA's owner, Wolfrum also supplied Anton & Chia with information that was a red flag indicating that Accelera did not acquire BHCA. For instance, Wolfrum informed Anton & Chia staff, who were present at BHCA to conduct audit procedures, that Accelera did not own BHCA. Wolfrum also informed

336. However, there is no indication in the work papers or testimony that Anton & Chia performed any additional procedures or analyses in response to these communications from Wolfrum.[545]

iii. Shek's Questions Regarding Which Entities to Audit

337. At the beginning of the audit, Shek questioned Deutchman and Wahl as to "which entity are we auditing and consolidating" for the 2014 financials.[546] Deutchman told Shek "he would find out."[547] But Deutchman never got back to Shek one way or another about which entities should be included in the 2014 financial statements.[548]

338. On March 31, 2015 and again on April 6, 2015, Shek asked Deutchman via e-mail to "[p]lease make sure you speak with the attorneys on Accelera to make sure you determine what entities need to be audited."[549] Although Deutchman responded, "[f]or sure," and "[t]op of the list,"[550] Deutchman was only "placating him, because [he] couldn't understand why he would be asking attorneys an accountant question."[551]

339. On April 11, 2015, Shek represented to Accelera (in an email where both Deutchman and Wahl were CCed) that Deutchman would call Accelera's attorney regarding a "legal representation for business they acquired in 2013 and 2014."[552]

Anton & Chia that BHCA's cash and income did not belong to Accelera."); *id.* ¶ 237 n.52 ("Anton & Chia also knew, or should have known, based on procedures it performed at BHCA, that BHCA was still owned by Wolfrum. For example, Anton & Chia would have seen no cash going to Accelera and that cash from BHCA was going to Wolfrum and that Wolfrum was taking a salary (from BHCA) that was different from that listed in the operating agreement between Wolfrum and Accelera.").

[545] Ex. 88.1 (Devor Report) ¶ 240.

[546] Tr. (Vol. VIII Shek) 2327:4-2329:21.

[547] Tr. (Vol. VIII Shek) 2329:25-2330:5.

[548] *Id.* at 333:4-8 ("Did you ever hear back from Deutchman one way or another about which entities should be included in the 2014 financial statements? A. No.").

[549] Ex. 240 (Apr. 1, 2015 email chain); Ex. 241 (Apr. 6, 2015 email chain).

[550] Ex. 240 (Apr. 1, 2015 email chain); Ex. 241 (Apr. 6, 2015 email chain).

[551] Tr. (Vol. III Deutchman) 798:15-799:6.

[552] Ex. 249 (Apr. 11, 2015 email chain); *see also* Tr. (Vol. III Deutchman) 806:9-18; Tr. (Vol. VIII Shek) 2334:22- (Q. And what are you asking for there? And I'll specifically refer to the first part of that request, 'legal

340. Deutchman acknowledged that "the only way I would be able to make a determination as an accountant as to the accounting treatment [of a potential default on the SPA] would be to get a legal opinion as to whether or not they had control."[553]

341. But Deutchman never obtained the requested legal opinion.[554]

iv. Amendments to the SPA

342. On April 10, 2015, Boerum transmitted the first, second, and third amendments to the SPA to Anton & Chia.[555] The 2014 audit was the first time that any of the amendments appeared in Anton & Chia's working papers.[556] In her cover e-mail, Boerum disclosed that none of the shares required under the three amendments had ever been issued to Wolfrum.[557]

343. After the e-mail from Boerum, Anton & Chia, Wahl, and Deutchman knew about the amendments to the SPA. After the 2014 audit, the amendments were included in the workpapers for the Accelera engagements. Both Wahl and Deutchman reviewed and signed off on those workpapers.[558]

v. Other Acquisitions Accounted for Inconsistently

344. As the purchase agreements for Grace and Watson were included in the workpapers for the 2014 audit, the engagement team – including Wahl and Deutchman – were aware of the agreements and their terms.[559]

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representation for business that they acquired in 2013 and 2014.' A. Just like, from the attorney perspective, is this stuff still complete or not.").

[553] Ex. 839.6 (Prior Testimony Designations) 499 (June 20, 2018 Deutchman Dep. at 160:11-14).

[554] Ex. 839.6 (Prior Testimony Designations) 477 (June 25, 2019 Deutchman Dep. at 103:3-6) ("Q. My question to you is: Do you remember getting an opinion whether it was inane or not? A. I don't remember getting an opinion from an attorney about anything."); Tr. (Vol. VIII Shek) 2333:9-16 ("Did you ever see a legal representation about which companies ought to be included in the 2014 financial statements of Accelera? …. A. No."); Tr. (Vol. III Deutchman) 807:3-808:7, 809:17-810:17.

[555] Ex. 247 (Apr. 10, 2015 email from Boerum).

[556] Ex. 138 (2013 audit workpaper sign-off index); Ex. 139 (same); Ex. 141 (Q1 2014 workpaper sign-off index); Ex. 144 (Q2 2014 workpaper sign-off index); Ex. 145 (Q3 2014 workpaper sign-off index).

[557] Ex. 247 (Apr. 10, 2015 email from Boerum).

[558] Ex. 840 (Stipulated Facts) ¶ 36; *see also* Deutchman Answer ¶ 45.

[559] Ex. 147 (2014 audit workpaper signoff index) 0418.01, 0419.01.

345. Grace and Watson were not consolidated into Accelera's 2014 financial statements. Shek "look[ed] at the agreement[s], and [] ask[ed] the company ... the status," and concluded they "didn't have control."[560] Shek did not perform those same procedures for BHCA, because he "expect[ed] that the [2013 audit] team [had] look[ed] at Behavioral acquisition."[561]

346. Deutchman was not "comfortable" with and "had never seen anything quite like it" the way Accelera was "conducting themselves" vis-à-vis these unfinished acquisitions.[562]

347. Nevertheless, there is no evidence in the workpapers of any attempt by Anton & Chia to reconcile Accelera's decision to consolidate the financial results of BHCA with its decision not to consolidate the financial results of Grace and Watson.[563]

vi. Incomplete Acquisition Audit

348. Members of the engagement team, including Wahl and Deutchman, understood that the SEC requires a company to file a Form 8-K containing the financial statements of any acquired entities.[564] Anton & Chia was retained to audit the financial statements for that filing with respect to BHCA.[565]

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[560] Tr. (Vol. VIII Shek) 2340:14-22.
[561] *Id.* at 340:23-2341:18.
[562] Ex. 839.6 (Prior Testimony Designations) 491 (June 20, 2018 Deutchman Dep. at 61:24-63:8).
[563] Ex. 88.1 (Devor Report) ¶ 244.
[564] Ex. 839.6 (Prior Testimony Designations) 110 (July 2, 2019 Wahl Dep. at 274:13-24) ("Did you – you understood that there was an SEC requirement for Accelera to file audited financials for acquired entities with the SEC within 75 days of acquisition. Is that correct? A. I believe there was an effort to get the AK [sic] completed by the company."); Ex. 214 (Dec. 9, 2014 email from Freeman to Deutchman) ("I know the audits are required if we actually acquired the entities…").
[565] Ex. 839.6 (Prior Testimony Designations) 110 (July 2, 2019 Wahl Dep. at 274:13-24) ("Did you – you understood that there was an SEC requirement for Accelera to file audited financials for acquired entities with the SEC within 75 days of acquisition. Is that correct? A. I believe there was an effort to get the AK [sic] completed by the company. Q. Did – was that ever completed? A. I don't know if it was completed or not. Q. Anton & Chia was engaged to perform that audit for Behavioral. Right? A. I believe we were.").

349. The acquisition audits had not been completed by the time of the 2014 audit of Accelera.[566]

350. Accelera's failure to complete the required post-acquisition filings should have provided further evidence to Anton & Chia that the purported BHCA acquisition was never completed. Yet Anton & Chia did not document this failure in its workpapers and did not perform any additional procedures.[567]

vii. Goodwill Impairment

351. By the time of the 2014 audit, Accelera had not performed its own goodwill impairment analysis or a purchase price allocation, despite the fact that it was required to have done both.[568]

352. As part of the Accelera 2014 audit, Anton & Chia prepared a workpaper documenting its own goodwill impairment analysis. This workpaper addressed whether goodwill pertaining to the BHCA and At Home acquisitions should be impaired.[569] The memo was drafted by Shek, and reviewed by both Wahl and Deutchman.[570]

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[566] Tr. (Vol. VIII Shek) 2345:20-23 ("Q. Had Accelera completed an acquisition audit by the time that you were working on the 2014 10-K audit? A. No."); Ex. 839.6 (Prior Testimony Designations) 494 (Deutchman June 20, 2018 Dep. at 105:11-20).

[567] Ex. 88.1 (Devor Report) ¶ 247.

[568] Tr. (Vol. VIII Shek) 2342:20-2343:19 ("Q So at the time of the 2014 audit engagement, had Accelera performed its own goodwill impairment analysis? A No. Q And based on your understanding, should they have? A Yes. Q Why is that? A. Because it's required by GAAP. And a lot of factors indicate the goodwill may be impaired. Q Now, at this time during the 2014 audit engagement, had Accelera ever performed a purchase price allocation for the Behavioral transaction? A No. Q And, again, based on your understanding, should they have? A Yes. Q And why is that? A So normal practice, you need to allocate the purchase price. Q And by this time in April 2015, this transaction had been booked for over a year, right? A Correct.").

[569] Ex. 146 (goodwill impairment memo workpaper).

[570] Ex. 147 (2014 audit workpaper signoff index) 4501.

353. In the memo, Shek determined that the entire amount of goodwill, $4,217,062, was impaired.[571] He proposed writing down Accelera's goodwill, due to, among other things, the fact that "the Company [did] not have sufficient support to validate the goodwill for BHCA."[572]

354. In other words, Anton & Chia deemed the entire putative investment in BHCA to be worthless, as – after removing the goodwill – virtually no BHCA assets remained on Accelera's balance sheet.[573] Considering that Accelera still had not paid any of the $4,550,000 purchase price, and Anton & Chia deemed the majority of the BHCA business worthless, this should have been a red flag and caused Anton & Chia to re-examine Accelera's purported acquisition of BHCA and whether consolidation was appropriate.[574]

e. Work Not Performed

355. The workpapers for the 2014 audit do not contain any workpapers analyzing the issue of whether BHCA should be consolidated into Accelera.[575]

356. The Acquisition Memo is not among the workpapers for the 2014 audit of Accelera. Nor are the SPA, the Bill of Sale, the Stock Powers Certificate, the Written Action of the BHCA Board, or the Escrow Agreement.[576]

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[571] Ex. 146 (goodwill impairment memo workpaper).
[572] Ex. 146 (goodwill impairment memo workpaper); *see also* Tr. (Vol. VIII Shek) 2343:20-2344:9.
[573] Ex. 146 (goodwill impairment memo workpaper).
[574] Ex. 88.1 (Devor Report) ¶ 235; Tr. (Vol. IV Devor) 1200:2-22 ("[A] … Here's another example. In 2014 we've heard testimony that they wrote off the goodwill. It was impaired and they wrote it off. Now, you're the second partner on this. You're the gatekeeper. And you're looking at these financial statements – and the write-off means basically that the assets they bought – or allegedly bought are worthless. Yet none of the payments have been made for the stock. And there's all these agreements well, we'll pay you later and we'll extend the date out, whatever. … They haven't paid yet. … And now they're admitting that everything they bought was worthless. They're never going to pay. And there's not a word about that in the papers. So, you know, it's – again, it's an example of due professional care, but also – it's a red flag. They just wrote off the impairment.").
[575] Tr. (Vol. IV Devor) 1160:7-23, 1162:4-16 ("Q. And have you reviewed the work papers for all the engagements related to Accelera that are at issue in this case? A. Yes. Q. Other than this memo, is there anything in the work papers that analyzes whether Behavioral should be consolidated into Accelera? A. Not that I've seen.").
[576] Ex. 147 (2014 audit workpaper signoff index).

357. As Deutchman acknowledged, if a document was not included in the workpapers, then it is "likely to be the case" that he did not review it.[577]

358. Despite all the red flags discussed above, Deutchman never brought up the issue of whether Accelera controlled BHCA with the engagement team. Instead, he just "assumed that it was handled correctly initially."[578]

359. Similarly, Deutchman never asked anyone from Accelera whether or not it had acquired the stock of BHCA, "because it was a complicated issue, and [he] assumed that [the] firm's position was correct."[579]

360. Deutchman also never asked Wolfrum if Accelera acquired BHCA.[580] He never asked Wolfrum about the nature or status of the SPA.[581]

361. This was wrong. An auditor cannot simply assume the prior year's audit was done correctly. An auditor cannot disregard a potential improperly handled accounting matter simply because the financial statements were already filed with the SEC. Instead, an auditor is required to explore the matter to assess the impact, if any, on the previously filed, as well as current, financial statements.[582]

362. During the 2014 audit, Deutchman "never assumed an opinion one way or the other" when it came to the propriety of consolidating BHCA. Instead, he "just deferred to the

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[577] Ex. 839.6 (Prior Testimony Designations) 486 (Deutchman June 20, 2018 Dep. at 41:11-21).
[578] Ex. 839.6 (Prior Testimony Designations) 508 (Deutchman June 26, 2016 Inv. Test. at 141:2-142:4).
[579] Tr. (Vol. III Deutchman) 711:3-18 (quoting Ex. 9 at 154:24); *see also* Tr. (Vol. IV Deutchman) 1056:22-23 ("So basically I assumed the firm's position was correct."); *id.* at057:20-21 ("So I just assumed that the company's position was correct."); Ex. 839.6 (Prior Testimony Designations) 478-479 (June 25, 2019 Dep. at 154:24-155:8).
[580] Tr. (Vol. IV Deutchman) 1066:23-25 ("Q. You also never asked Wolfrum if Accelera acquired Behavioral, right? A. I never discussed those matters with him.").
[581] Tr. (Vol. IV Deutchman) 1066:16-22 ("Q. But you agree then that you never asked Wolfrum about the nature or status of the Stock Purchase Agreement? A. I never got into the – it wasn't my role and I never got into the details of …. those aspects with Wolfrum.").
[582] Ex. 88.1 (Devor Report) ¶ 228 (internal quotes omitted).

firm's initial assessment.[583] This is contrary to his mandated role, as EQR, to "evaluate" the judgments made by the engagement team and the conclusions they reached on "difficult or contentious matters."[584]

363. Deutchman failed to question the engagement team as to how they reached the conclusion that it was appropriate for Accelera to consolidate BHCA.[585]

364. No one from Accelera ever told Deutchman whether or not Accelera had the ability to hire or fire employees of BHCA. Deutchman felt it "wasn't [his] position to ask those questions."[586]

365. Deutchman "never asked Dr. Wolfrum about the nature or status of the Stock Purchase Agreement," or whether Accelera had acquired BHCA.[587] In fact, no one from the engagement team never asked Wolfrum whether or not Accelera owned BHCA.[588]

366. During the field work in 2015, no one from Anton & Chia ever asked Wolfrum whether (a) Accelera controlled BHCA, (b) Accelera had access to BHCA's bank accounts, (c) Accelera had a controlling financial interest in BHCA, (d) Wolfrum had received the shares

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583 Tr. (Vol. IV Deutchman) 1060:9-15.
584 Ex. 88.1 (Devor Report) ¶ 227 (citing AS 7.10 and AS 7.15).
585 Tr. (Vol. IV Devor) 1198:1-1199:8 (1198:5 "What are the bases for that opinion? A. Well, first of all keep in mind what Mr. Deutchman's job is. He was the EQR, the engagement quality reviewer. In essence that's the last person to look at this, independent of the audit team, before the report hits the street. So he's the – if there ever was something that really should be called the gatekeeper, he's the gatekeeper. … The whole discussion – I mean there's nothing in the work papers about this issue that – as we've discussed, about the reasons for consolidating this thing in the – in the face of an agreement saying there's no control. So, you know, Mr. Deutchman would have been required to – any second partner looking at this would have been required to say hey, how'd you reach this conclusion? But even more so, in the third quarter of '14, he's directly confronted by someone saying look at this, it's wrong. Look at it again. Tell me how in the world you guys reached this conclusion. And apparently based on the record, ignores it. So you know that's not exercising due professional care or professional skepticism.").
586 Ex. 839.6 (Prior Testimony Designations) 479-80 (June 25, 2019 Deutchman Dep. at 155:23-156:10).
587 Tr. (Vol. IV Deutchman) 1065:24-1066:5, 1066:23-25.
588 Tr. (Vol. VIII Shek) 2349:14-25 ("Q During the 2014 audit, did you ever ask Wolfrum whether or not Accelera owned Behavioral? A No. Q To your knowledge, did anyone on the engagement team for the 2014 audit ask Wolfrum whether or not Accelera owned Behavioral? A No. Q Did either Mr. Deutchman or Mr. Wahl ever instruct you to ask Wolfrum whether or not Accelera owned Behavioral? A No.").

under the amendments to the Stock Purchase Agreement, (e) Wolfrum was employed by Accelera, or (f) Wolfrum was paid a salary by Accelera.[589]

367. During the field work in 2015, no one from Anton & Chia ever requested a proof of payment under section 1.1.1.1 of the Stock Purchase Agreement or the stock certificates that were issued under the amendments to the Stock Purchase Agreement.[590]

368. Neither Deutchman nor Wahl ever instructed Shek to ask Accelera whether it controlled BHCA, to inquire about who controlled the revenues earned by BHCA, or to inquire about whether Accelera had the power to hire or fire BHCA employees; and Mr. Shek never asked those questions.[591]

369. During the 2014 audit, the engagement team never had any discussions about whether or not Accelera controlled BHCA.[592]

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[589] Tr. (Vol. I Wolfrum) 265:5-266:3 ("During the 2015 audit, did Anton & Chia ever ask you whether Accelera controlled Behavioral? A You're saying 2016? Q I'm sorry. No, 2015. A No. Q During the 2015 audit did Anton & Chia ever ask you whether Accelera had access to Behavioral's bank accounts? A No. Q During the 2015 audit did Anton & Chia ever ask you whether Accelera had a controlling financial interest in Behavioral? A No. Q During the 2015 audit did Accelera – did Anton & Chia ever ask you whether you received the shares as required under the amendments to the Stock Purchase Agreement? A No. Q During the 2015 audit did Anton & Chia ever ask you whether you were employed by Accelera? A No. Q During the 2015 audit did Anton & Chia ever ask you whether you were paid a salary by Accelera? A No.").

[590] Tr. (Vol. I Wolfrum) 266:4-11 ("Q During the 2015 audit did Anton & Chia ever request proof of payment under section 1.1.1.1? A No. Q During the 2015 audit did Anton & Chia request the stock certificates that were issued to you pursuant to the amendments to the Stock Purchase Agreement? A No.").

[591] Tr. (Vol. VIII Shek) 2346:22-2349:13. (Q During the 2014 audit, did Mr. Deutchman ever instruct you to ask Accelera whether it controlled Behavioral? … THE WITNESS: No. Q During the 2014 audit engagement, did Mr. Wahl ever instruct you to ask Accelera whether it controlled Behavioral? MR. WAHL: Objection. Foundation. …11 THE WITNESS: No. Q And during the 2014 audit engagement, did you ask Accelera any questions about whether they controlled Behavioral? A No. Q During the 2014 audit of Accelera, did Mr. Deutchman ever instruct you to inquire about who controlled the revenues earned by Behavioral? A No. Q And during the 2014 audit, did Mr. Wahl ever instruct you to inquire about who controlled the revenues earned by Behavioral? A No…. Q During the 2014 audit of Accelera, did you inquire about who controlled the revenues earned by Behavioral? ... THE WITNESS: No. Q During the 2014 audit of Accelera, did Mr. Deutchman ever instruct you to inquire about whether Accelera had the power to hire or fire Behavioral employees? A No. Q During the 2014 audit of Accelera, did Mr. Wahl ever instruct you to inquire about whether Accelera had the power to hire or fire Behavioral's employees? … THE WITNESS: No. Q And during the 2014 audit of Accelera, did you, in fact, inquire about whether Accelera had the power to hire or fire Behavioral's employees? A No.").

[592] Tr. (Vol. VIII Shek) 2346:17-21 ("Q. So during the 2014 audit engagement for Accelera, did you have any discussions with others at Anton & Chia about whether or not Accelera controlled Behavioral? A. No.").

370. Deutchman understood that the SEC can give an opinion regarding the propriety of consolidation. In fact, Deutchman himself had contacted the SEC for technical questions "on numerous occasions." Nevertheless, neither Deutchman nor anyone else from Anton & Chia contacted the SEC to ask for an opinion regarding the accounting treatment of BHCA.[593] He never contacted any third-party or specialist regarding the issue of BHCA's consolidation into Accelera.[594]

f. Anton & Chia's Audit Report

371. Anton & Chia opined that Accelera's financial statements, "present fairly, in all material respects, the consolidated financial position of Accelera Innovations, Inc. as of December 31, 2014 and 2013, and the consolidated results of their operations and their cash flows for each of the years then ended, in conformity with accounting principles generally accepted in the United States of America."[595]

372. Anton & Chia also represented that it had "conducted [its] audits in accordance with the standards of the Public Company Accounting Oversight Board (United States)." [596]

373. The report also included what a going concern disclosure, disclosing "substantial doubt about the Compay's ability to continue as a going concern."[597] A going concern disclosure or warning in an audit opinion does not minimize the auditor's responsibility for conducting an audit that complies with the applicable auditing standards.[598]

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[593] Ex. 839.6 (Prior Testimony Designations) 488-89 (June 20, 2018 Deutchman Dep. at 52:7-54:2).
[594] Ex. 839.6 (Prior Testimony Designations) 490 (June 20, 2018 Deutchman Dep. at 60:10-14) ("More broadly than that, while you were at Anton & Chia, did you contact any third-party or specialist regarding the issue of the consolidation of Behavioral into Accelera's financial statements? A No.").
[595] Ex. 114 (Accelera 2014 Form 10-K) F-2; *see also* Ex. 840 (Stipulated Facts) ¶¶ 32-34.
[596] *Id.*
[597] Ex. 114 (Accelera 2014 Form 10-K) F-2.
[598] Tr. (Vol. IV Devor) 1210:17-1211:17 ("Q. Mr. Devor, in your expert opinion, does it – does a going concern disclosure or warning in an audit opinion minimize or absolve an auditor's responsibility for conducting an appropriate audit? A. Of course not. Q Does it have any bearing on the quality of an audit that an auditor is required to perform? A. No. Q. Why not? A. There's an opinion that was shown on that screen, I believe when Mr. Deutchman was up here, Anton & Chia's opinion. It was a statement that says we conducted the audit in accordance

374. Anton & Chia – through Wahl – signed this audit report.[599] Wahl and Deutchman anticipated that Accelera's Form 10-K would include Anton & Chia's opinion.[600]

g. Anton & Chia's Audit Fees

375. For the 2014 audit of Accelera, Anton & Chia charged Accelera $95,148.[601]

4. 2015 Quarterly Reviews

376. As detailed below, Anton & Chia failed to conduct the 2015 quarterly reviews in accordance with PCAOB standards.[602]

a. Staffing

377. On all three quarterly reviews in 2015, Yu-Ta Chen was staff, Tommy Shek was manager, Deutchman was EQR, and Wahl was the engagement partner.[603]

378. In 2015, when he worked on Accelera's 2015 reviews, Chen was working on "between 30 to 40" other audits and reviews.[604]

b. Planning

379. In the 2015 quarterly reviews, Anton & Chia left blanks when asked in the *Interim Review Program* workpaper to identify "[s]ignificant financial accounting and reporting

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with PCAOB standards. So you're not absolved of performing an audit in accordance with Generally Accepted Auditing Standards, PCAOB standards, just because the company is struggling to make money. … By the way, if you were, why would you do the audit? Think about that. Common sense. Why – if it didn't matter what you did or the audit didn't matter, why would you go to the expense of hiring an auditor to do the audit if you didn't have to because there's a going concern statement?").

[599] Wahl Answer ¶ 66.

[600] Wahl Answer ¶ 111; Deutchman Answer ¶ 111.

[601] Ex. 284 (Apr. 15, 2015 Invoice for $60,000); Ex. 308 (All Transactions for Accelera Innovations, Inc.).

[602] Ex. 88.1 (Devor Report) ¶ 293.

[603] Ex. 839.6 (Prior Testimony Designations) 115 (July 2, 2019 Dep. at 288:23-289:10); Ex. 1.6 (Q1 2015 Planning Memo) 3; Ex. 1.11 (Q2 2015 Planning Memo) 3; Ex. 1.14 (Q3 2015 Planning Memo); Ex. 308 (All Transactions for Accelera Innovations, Inc.).

[604] Tr. (Vol. II Chen) 470:20-24.

matters that may be of continuing significance," denoting that the BHCA transaction was not of "continuing significance" during those reviews.[605]

380. Anton & Chia and Wahl should have identified the purported acquisition of BHCA by Accelera and the associated consolidation of the assets, liabilities, and results of BHCA's operations as "significant financial accounting and reporting matters that may be of continuing significance." The fact that Accelera never paid for any shares of BHCA, and thus never acquired any shares of BHCA, certainly had "continuing significance" to Accelera's financial statements.[606]

381. By failing to identify the BHCA transaction as a significant financial accounting and reporting matter in any of the interim quarterly reviews, Anton & Chia and Wahl failed to properly plan its interim quarterly reviews of the financial statements of Accelera in accordance with PCAOB standards.[607]

c. Red Flags Regarding BHCA Acquisition

382. In the second quarter of 2015, Anton & Chia noted that Accelera had not made any payments to BHCA. The fact that Accelera had not made any payments did not cause the engagement team to re-assess whether BHCA's financials should be consolidated.[608]

383. Anton & Chia was aware of the fact that Accelera entered into a purchase agreement with Traditions on January 5, 2015, and that it did not consolidate that transaction.[609]

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[605] Ex. 1.9 (Interim Review Program workpaper for Q1 2015 review) 4(a)(iv); Ex. 1.12 (Interim Review Program workpaper for Q2 2015 review) 4(a)(iv); Ex. 1.15 (Interim Review Program workpaper for Q3 2015 review) 4(a)(iv).
[606] Ex. 88.1 (Devor Report) ¶ 297.
[607] Ex. 88.1 (Devor Report) ¶ 298 (citing AU 722).
[608] Tr. (Vol. II Chen) 582:17-584:4 (Q Did this issue – seeing this, in effect, that the seller had not made any payments to Behavioral cause the engagement team to re-assess whether Behavioral's financials should be consolidated with Accelera? …. THE WITNESS: I don't think that happens.BY HAYES: Q Okay. You don't think you re-assessed? A Yeah. Q You don't think it's part of the Q3 – Q2 review the engagement team went back and looked to determine whether it was appropriate to consolidate Behavioral's financials into Accelera? …. THE WITNESS: I don't think so."); Ex. 88.1 (Devor Report) ¶ 308.
[609] *See* Ex. 839.6 (Prior Testimony Designations) 491 (Deutchman June 20, 2018 Dep. at 62:3-9).

In addition, Anton & Chia was aware of the fact that Accelera entered into amendments extending the deadline for payment on those agreements (as it had with BHCA), because those extensions were in Anton & Chia's workpapers.[610]

384. By July 2015, Anton & Chia – including Wahl and Deutchman – was aware that Accelera was under an SEC investigation relating to its financial reporting, and specifically relating to the consolidation of BHCA.[611] However, Wahl specifically instructed Deutchman not to tell Anton & Chia's compliance consultant, Shane Garbutt.[612]

d. Work Not Performed

385. "[T]he issue of Accelera's consolidation of Behavioral" did not come up with the engagement team during any of the 2015 quarterly reviews.[613]

386. The workpapers for the 2015 quarterly reviews did not contain any workpapers analyzing the issue of whether BHCA should be consolidated into Accelera's financial statements.[614]

387. The workpapers for the 2015 quarterly reviews did not include key documents related to the BHCA transaction. The Bill of Sale, Escrow Agreement, Operating Agreement, and Acquisition Memo were not among the workpapers for any of the three quarterly reviews.[615]

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[610] *See, e.g.*, Ex. 123 (May 7, 2015 Amendment to Purchase Agreement with Grace); Ex. 148 (June 30, 2015 amendment to Traditions purchase agreement workpaper).
[611] Ex. 840 (Stipulated Facts) ¶ 40.
[612] Ex. 260 (July 11, 2015 email from Wahl) ("You cant mention to anyone regarding SEC investigation. This includes Shane. He is not part of the engagement team. Don't mention it to employees either. You opened your mouth last time and created problems with bioadaptives, etc. You need to shut the fuck up when it comes to these matters. I don't want any email correspondence between us and the Company until I get next steps approved from our counsel.").
[613] Tr. (Vol. II Chen) 548:7-12; Tr. (Vol. VIII Shek) 2352:12-16, 2353:4-8, 2353:22-2354:1.
[614] Tr. (Vol. IV Devor) 1160:7-23, 1162:4-16 ("Q. And have you reviewed the work papers for all the engagements related to Accelera that are at issue in this case? A. Yes. Q. Other than this memo, is there anything in the work papers that analyzes whether Behavioral should be consolidated into Accelera? A. Not that I've seen.").
[615] Ex. 150 (Q1 2015 workpaper signoff index); Ex. 153 (Q2 2015 workpaper signoff index).

Although the first quarter workpapers included the SPA and the Employment Letter, Wahl did not sign off as having reviewed those documents.[616]

388. PCAOB standards prescribe that inquiries should be designed to address identified significant events and transactions. Specific inquiries "should be tailored to the engagement based on the accountant's knowledge of the entity's business"[617] Wahl failed to comply with PCAOB standards with respect to performing inquiries during the quarterly reviews in 2015.[618] He failed to tailor inquiries of Accelera management in light of information that was known by the engagement team, including red flags about Accelera's accounting treatment of BHCA.[619]

389. There is no evidence in Anton & Chia's interim quarterly review workpapers indicating the engagement team properly reviewed Accelera's continued consolidation of BHCA.[620]

390. "Deutchman, and/or Wahl should have inquired about (1) the multiple amendments to the Stock Purchase Agreement, (2) Accelera's plan, if any, to pay in order to comply with the amendments to Stock Purchase Agreement, (3) Accelera's defaults on the Stock Purchase Agreement as of May 31, 2014 and again as of October 1, 2015, and (4) the basis for Accelera consolidating BHCA's financial results."[621]

391. Neither Wahl nor Deutchman ever instructed the Shek, during the 2015 quarterly reviews, to inquire into whether Accelera controlled BHCA, who controlled the revenues earned

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[616] Ex. 150 (Q1 2015 workpaper signoff index) 0415.201, 0440.301.
[617] Ex. 88.1 (Devor Report) ¶ 299 (citing AU 722.15).
[618] *Id.* ¶ 299.
[619] *Id.* ¶¶ 299-300.
[620] *Id.* ¶ 301 ("In reviewing Anton & Chia's interim quarterly review workpapers, I have seen no indication that the engagement team sufficiently reviewed Accelera's continued consolidation of BHCA.").
[621] *Id.* ¶ 302.

by BCHA, who had the power to hire or fire BHCA employees, or whether or not Accelera owned BHCA; and Shek never in fact performed those inquiries.[622]

392. As with the quarterly reviews in 2014, Anton & Chia's interim quarterly review workpapers included an *Interim Review Inquiries Checklist.* This checklist consisted of a standardized template of questions, with "Yes / No" checkmark responses. These checklists did not include any questions relating to the purported acquisition of BHCA.[623]

393. In the respective Interim Review Inquiries Checklist for each of the quarters in 2015, Anton & Chia failed to identify the specific person at Accelera who received and purportedly responded to Anton & Chia's purported inquiries.[624] Without identifying to whom these inquiries were made, there is no written record to confirm whether inquiries were made of the appropriate person or whether inquiries took place at all.[625]

394. Each of the *Interim Review Inquiries Checklists* included the following question:

> Have there been any unusual or complex situations or significant unusual transactions that may have an effect on the financial statements (for example, business combinations, disposal of a segment, restructuring plans or charges, litigation, or other significant unusual transactions occurring in the last several days of the interim period)?

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[622] Tr. (Vol. VIII Shek) 2354:2-2355:19 ("Q Now I'm going to ask you some of the same questions that I asked you before, but earlier I was referring to the 2015 audit engagement. So now I'm going to ask similar questions with respect to the 2015 quarterly reviews. So during the 2015 quarterly reviews, did either Deutchman or Wahl ever instruct you to ask Accelera whether or not it controlled Behavioral? A No. Q And during the 2015 quarterly reviews, did you, in fact, ask Accelera whether or not it controlled Behavioral? A No. Q During the 2015 quarterly reviews of Accelera, did either Deutchman or Wahl instruct you to inquire about who controlled the revenues earned by Behavioral? A No. Q And during the 2015 quarterly reviews, did you, in fact, inquire about who controlled the revenues of Behavioral? A No. Q During the 2015 quarterly reviews of Accelera, did either Deutchman or Wahl instruct you to inquire about whether Accelera had the power to hire or fire Behavioral's employees? A No. Q And did you, in fact, during any of the 2015 quarterly reviews inquire about whether or not Accelera had the power to hire or fire Behavioral's employees? A No. Q During the 2015 quarterly reviews did either Deutchman or Wahl ever ask you to ask Wolfrum whether or not Accelera owned Behavioral? A No. Q And did you, in fact, during any of the 2015 quarterly reviews ask Wolfrum whether or not Accelera owned Behavioral? A No.").

[623] Ex. 1.10 (Interim Review Inquiries Checklist workpaper for Q1 2015); Ex. 1.13 (Interim Review Inquiries Checklist workpaper for Q2 2015); Ex. 1 (Accelera workpapers) Q1, Q2, Q3 2015 review – WP REF 3001.

[624] *Id.*

[625] Ex. 88.1 (Devor Report) ¶ 305.

In each checklist, Anton & Chia erroneously responded "No."[626]

395. The purported acquisition of BHCA was not only "significant" to Accelera's financial statements, but was a business combination, one of the scenarios outlined in the checklist.[627] The engagement team should have identified the purported acquisition of BHCA and adjusted its inquiries and review procedures accordingly, but there is no evidence in the workpapers that they did not do so.[628]

e. Anton & Chia's Fees

396. For the 2015 quarterly reviews, Anton & Chia charged Accelera at least $22,500.[629]

5. Summary

397. Anton & Chia violated PCAOB standards during its 2013 and 2014 audits as well as its quarterly reviews performed for the quarters from March 31, 2013 through September 30, 2015."[630]

398. Wahl and Deutchman repeatedly failed to follow PCAOB standards during this period.[631] Specifically, they failed to:

- exercise an appropriate level of due professional care and professional skepticism;
- appropriately consider and/or address known red flags;

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[626] Ex. 1.10 (Interim Review Inquiries Checklist workpaper for Q1 2015) #2; Ex. 1.13 (Interim Review Inquiries Checklist workpaper for Q2 2015) #2; Ex. 1.16 (Interim Review Inquiries Checklist workpaper for Q3 2015) #2.
[627] *Id.*; Ex. 88.1 (Devor Report) ¶ 307.
[628] Ex. 88.1 (Devor Report) ¶ 307.
[629] Ex. 288 (May 19, 2015 invoice for $7,500); Ex. 290 (July 7, 2015 invoice for $7,500); Ex. 293 (Sept. 15, 2015 invoice for $7,500).
[630] Ex. 88.1 (Devor Report) ¶ 312.
[631] *Id.* ¶ 314.

- failed to properly plan their audits, including their failure to assess and consider deficiencies in Accelera's control environment;
- staff the audit with persons having adequate training and proficiency as an auditor;
- adequately supervise the audit staff;
- adequately consider audit evidence obtained and audit results;
- sufficiently document relevant information obtained; and
- adequately perform engagement review procedures.[632]

PREMIER

A. Premier-Related Entities

399. **Premier Holding Corporation** is a Nevada corporation with its principal place of business in Tustin, California. At all relevant times, Premier was a provider of a large array of energy services through its subsidiary companies. Premier's common stock is and was at all relevant times registered with the Commission pursuant to Section 12(g) of the Exchange Act and quoted on the OTC Link, under ticker PRHL. Premier files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder. Premier's fiscal year ends on December 31st. Throughout the relevant period, Premier raised funds through private sales of stock.[633] (Premier is sometimes referred to hereafter in this Section as the "Company.")

[632] Ex. 88.1 (Devor Report) ¶ 314.
[633] Ex. 840 (Parties' Second Agreed Stipulations of Fact) ¶ 26.

400. Anton & Chia audited Premier's 2012, 2013, and 2014 financial statements, among others.[634] Wahl was the engagement partner on Anton & Chia's audit of Premier's FY 2013 financial statements.[635]

401. Anton & Chia received a total of $31,246 for its audit of Premier's FY 2013 financial statements.[636]

402. **WePower Ecolutions, Inc.** was a wholly-owned subsidiary of Premier formed in November 2011 for the purpose of "offer[ing] renewable energy production and energy efficiency products and services." In January 2013, Premier effectively sold the business, including the name. On February 26, 2013, WePower Ecolutions' name was changed to Energy Efficiency Experts,[637] which was sometimes referred to as E^3.[638]

403. **WePower Eco Corp. ("New Eco")**, a Delaware corporation located in Aliso Viejo, California, effectively acquired WePower Ecolutions in January 2013.[639]

404. **The Power Company USA, LLC ("TPC")** was a privately-owned deregulated power broker that brokered power to both residential and commercial users in the twelve states that allowed the distribution of deregulated power. At all relevant times, since February 28, 2013, TPC has been 80% owned by Premier.[640]

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634 Exs. 401, 402, 1119, 1120 (Premier 2012, 2013, 2014 and 2015 Forms 10-K) F-1 (Anton & Chia Reports of Independent Registered Public Accounting Firm).

635 Ex. 840 ¶ 42

636 Ex. 482 (Jan. 8, 2014 invoice to Premier showing total fees of $31,200 for audit of 12/31/2013 financial statements); Ex. 826 (Apr. 1, 2014 invoice to Premier showing $46.00 due for domestic confirmations).

637 *Id.* ¶ 27; Ex 401 (Premier 2012 Form 10-K) 46 ("On February 26, 2013, WePower Ecolutions, Inc. changed its name to Energy Efficiency Experts Inc.").

638 Ex. 411 (Premier Form 8-K filed on Dec. 27, 2012 attaching open letter to shareholders) 3 of the shareholder letter ("As the new CEO, we will change WEPOWER to Energy Efficiency Experts (E^3).').

639 Ex. 840 ¶ 28.

640 Ex. 840 ¶ 29. After the relevant period, Premier acquired the remaining 20% interest in TPC and subsequently agreed to sell TPC in exchange for shares of AOTS 42, Inc., a private company. *See* Ex. 1125 (Mar. 23, 2018 Membership Interest Exchange and Contribution Agreement in whicb Premier, then the sole member of TPC, agreed to sell TPC and another subsidiary to AOTS). Premier announced the consummation of the share exchange agreement in a press release issued on April 1, 2019.

B. The Note Transaction

1. Premier's Acquisition of Green Energy Assets

405. In 2011, Premier's primary line of business was selling discount caskets to Native Americans and low income groups.[641] Premier recorded revenues of only $10,000 in 2011 and no revenues in 2010.[642]

406. At the end of 2011 and beginning of 2012, Premier embarked upon a new line of business, exiting the casket business and entering the green energy business.[643] As the Company disclosed in a Form 8-K filed on January 5, 2012:

> On December 31, 2011, Premier Holding Corp. ("Premier" or the "Company") completed the Asset Purchase Agreements with WePower, LLC, a Delaware limited liability company, and Green Central Holdings, Inc., a Nevada corporation. . . .
>
> . . . The Company entered agreements to acquire assets from WePower, LLC and Green Central Holdings, Inc. in order to start a second line of business. The business will offer products and services to commercial buildings to help the buildings reduce their energy consumption. Premier has formed PRHL Subsidiary A, Inc. to focus in this area.[644]

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[641] Ex. 400 (Premier 2011 Form 10-K) 3 ("Since [September 2008], the company developed a plan of operations to exploit an opportunity it had with Ace Casket Company to order caskets for below the normal wholesale cost of $685 per unit. The caskets were marketed to Indian reservations and to low income groups at a discounted retail price of $750 per unit."); Premier 2010 Form 10-K/A 6 ("We have not yet begun to purchase or market or sell caskets. The Company intends to begin the purchase of caskets and initiate marketing efforts once the company is able to seek a quotation of its securities on a quotation medium such as the over-the-counter bulletin board."). The Court may take judicial notice of this document, which is publicly available at https://www.sec.gov/Archives/edgar/data/1030916/000108671511000069/f10k4.htm.

[642] *Id.* at 8 ("Revenue for the year ended December 31, 2011 included the sale of $10,000 worth of caskets, . . . No revenue was recorded for the year ended December 31, 2010.") and 18.

[643] Ex. 401 (Premier 2012 Form 10-K) 5 ("In 2012, Premier discontinued the casket line of business, and began offering clean energy products and services.").

[644] Ex. 407 (Premier Form 8-K filed on Jan. 5, 2012) Item 2.01. *See also* Ex. 400 (Premier 2011 Form 10-K) 9 ("At year end, the Company formed a wholly-owned subsidiary, WePower Ecolutions Inc., and acquired assets from WePower, LLC and Green Central Holdings, Inc. WePower, LLC will offer clean energy products and services to commercial markets and developers and management companies of large scale residential developments.").

407. Premier acquired the green energy in exchange for Premier stock.[645] Specifically, Premier acquired assets such as sales leads, marketing materials, intellectual property, and distribution and joint venture agreements.[646] In exchange, WePower, LLC and Green Central collectively received approximately 30.5 million shares of Premier common stock.[647]

408. As of December 31, 2011, as a result of the exchange of assets for stock, WePower LLC and Green Central owned almost 70% of Premier's outstanding common stock.[648]

409. At the time of the acquisitions, WePower LLC was controlled by Marvin Winkler and Green Central was controlled by Randall Letcavage.[649]

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[645] Ex. 401 (Premier 2012 Form 10-K) 12 ("On December 29, 2011, Premier issued 16,497,695 shares of common stock to WEPOWER, LLC, a related party, valued at $1,649,770 based on the market price of Premier's stock, to acquire the assets, of We Power, LLC. On December 29, 2011, Premier issued 14,053,595 shares of common stock to Green Central Holdings, Inc., a related party, valued at $1,405,359 based on the market price of Premier's stock, to acquire the assets of We Power LLC.").

[646] Ex. 407 Item 2.01 ("The assets acquired in these transactions consists of phone list, marketing database, marketing materials, various trademarks and patent applications, sales leads, distribution agreements, and joint venture agreements relating to green energy products and services."); Tr. (Vol. 5 Winkler) 1294:18-24 ("Q . . . . And so what was – what were you selling to Premier Holding, to your recollection? A Different assets of WePower. Q And what kind of assets? A IP inventory, customer lists, you know, patents.").

[647] Ex. 401 (Premier 2012 Form 10-K) 12 ("On December 29, 2011, Premier issued 16,497,695 shares of common stock to WEPOWER, LLC, a related party, valued at $1,649,770 based on the market price of Premier's stock, to acquire the assets, of We Power, LLC. On December 29, 2011, Premier issued 14,053,595 shares of common stock to Green Central Holdings, Inc., a related party, valued at $1,405,359 based on the market price of Premier's stock, to acquire the assets of We Power LLC."); Tr. (Vol. V. Winkler) 1298:19-1299:2 ("Do you recall there being a stock split where you – your 3 million shares, 3 million-some-odd shares became 16 million? A I believe so. Q Okay. So if we see in exhibits – or witness testimony referring to WePower getting 16-million-and-some-odd shares as part of its sale of assets to Premier, you think that's right? A I do.").

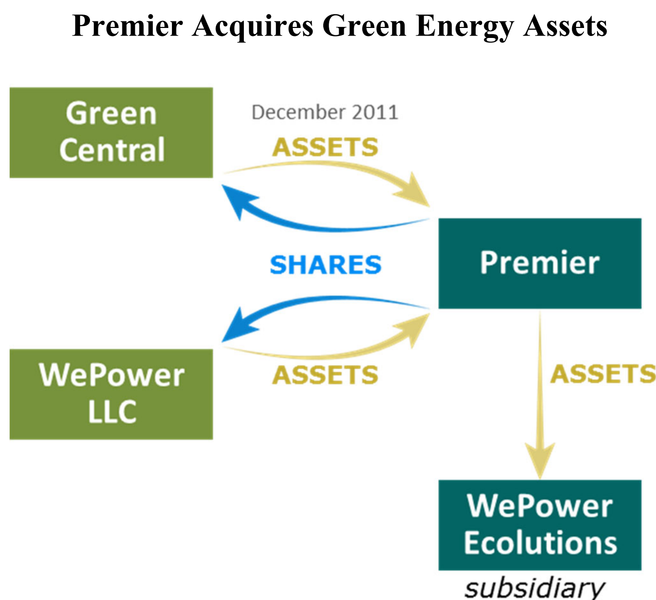
[648] Ex. 400 (Premier 2011 Form 10-K) 14 (table of shareholdings by beneficial owners of more than 5% of outstanding common shares).

[649] Tr. (Vol. XXIII Letcavage) 5764:4-5764:10 ("Q And Green Central had been your company – A Yes." "Q And WePower had been Marv Winkler's company? A Yes.") Tr. (Vol. V Winkler) 1290:25-1291:2 ("Q And you mentioned you started [WePower LLC]. What was your title? A I was chairman and CEO." *See also* Ex. 433 (Asset Purchase Agreement between Premier and WePower LLC signed by Winkler as Managing Member of WePower LLC.).

410. Premier contributed the newly-acquired assets to a newly-formed subsidiary, which was later named WePower Ecolutions Inc., through which it planned to operate the green energy business.[650]

411. The following diagram illustrates the basics of the transaction:[651]

Premier Acquires Green Energy Assets



412. Premier also changed its management shortly after purchasing the green energy assets. On February 22, 2012, the Company appointed Kevin Donovan as a director of Premier, and as CEO of WePower Ecolutions.[652] (Winkler, who had worked with Donovan before,[653] recommended that Premier hire Donovan.[654]) Two days later, two other directors of Premier

[650] Ex. 407 (Premier Form 8-K filed on Jan. 4, 2012) Item 1.01 ("These assets [acquired from WePower LLC], along with assets acquired form [sic] Green Central . . . will be contributed to PRHL Subsidiary A, Inc."); Ex. 400 (Premier 2011 Form 10-K) 3 ("At year end, the Company formed a wholly-owned subsidiary, WePower Ecolutions Inc., and acquired assets from WePower, LLC and Green Central."); *id.* at 9 (same).
[651] Ex. 88.1 (Devor Report) ¶ 331, Figure 5.
[652] Ex. 401 (Premier 2011 Form 10-K) 5 ("Premier appointed Kevin Donovan to lead the effort to establish the energy services business as Chief Executive Officer of Ecolutions on February 22, 2012."); Ex. 839.5 (Donovan Inv. Test. Designations) at 33:8-18.); Tr. (Vol. V Winkler) 1301:6-19.
[653] Tr. (Vol. V Winkler) 1301:9-11 ("Q How do you know Donovan? A I worked with Kevin years before that in other companies.").
[654] Tr. (Vol. V Winkler) 1301:17-19 ("Q Okay. And how did he get that job at Premier, if you know? A I recommended Kevin to the company.").

resigned, making Donovan the sole director.[655] On April 12, 2012, the day Premier filed its 2011 Form 10-K, [656] Donovan became the CEO of Premier.[657]

2. Doty Scott's Valuation of the Green Energy Assets

413. "GAAP requires that identifiable assets acquired in a business combination be recognized at their fair value."[658] "Because small companies such as Premier usually do not have the expertise to perform the valuation of hard-to-value and/or illiquid assets, they typically hire independent experts . . . to determine the fair value of such assets."[659] "One additional benefit that a company receives from using independent, qualified firms to determine the values of hard-to-value assets is that auditors typically regard such valuations as more reliable forms of audit evidence than a valuation determined by the company itself."[660]

414. Sometime in early 2012, Premier engaged a valuation firm, Doty Scott Enterprises, Inc., to perform a purchase price allocation for the transactions with WePower LLC and Green Central.[661] (Doty Scott is sometimes referred to hereafter as the "firm.") As part of that engagement, Doty Scott valued the assets Premier acquired as of December 29, 2911.[662]

415. Doty Scott provides independent professional valuation services, including valuations of public and private businesses and related securities, derivative financial

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[655] Ex. 400 (Premier 2011 Form 10-K) 27 ("On February 24, 2012, two of the Company's directors, Jack Gregory and Jasmine Gregory, submitted their resignations as directors of the Company. As such, Donovan is the sole director of the Company.").
[656] Ex, 400 (2011 Form 10-K) Attestation ("Attached is a copy of Premier Form 10-K, annual report, for the fiscal year ended December 31, 2011, received in this Commission on April 11, 2012, . . .").
[657] Ex. 401 (Premier 2012 Form 10-K) 5 ("Donovan was also appointed as director and CEO of Premier on April 11, 2012."); Ex. 408 (Premier Form 8-K filed on April 12, 2012) Item 5.0 announcing the departures of Jack Gregory as Premier's CEO and Jasmine Gregory as CFO and the appointment of Kevin Donovan as Premier's CEO.").
[658] S*ee generally* Paragraph 18 above.
[659] Ex. 88.1 (Devor Report) ¶ 350.
[660] *Id*. (citing AS 15).
[661] Tr. (Vol. V Scott) 1362:25-1363:2 ("We did purchase price allocations for two transactions they [Premier] completed in the fourth quarter of 2011."). *See also* Ex. 440 (Doty Scott Assets Valuation and Purchase Price Allocation Report).
[662] Ex. 440, first page defining valuation date.

instruments, and tangible and intangible assets at the request of auditors, attorneys, executive management, business development companies, investment bankers and hedge funds. The valuations are required in many contexts including financial reporting, merger and acquisition transactions, and investment analysis.[663] On several occasions, Doty Scott has been hired by an audit firm that lacks the necessary expertise to review the work of another independent valuation expert.[664] The firm is headed by Phil Scott, president[665] and Al Haddad, managing director.[666]

416. Scott is a chartered financial analyst with more than twenty-five years of valuation, corporate advisory, merger and acquisition and restructuring experience.[667] He has a B.S. from California Institute of Technology and an MBA from the University of San Diego.[668] He is a member of CFA Institute and the National Association of Certified Valuation Analysts. Scott performs and supervises Doty Scott's valuation and other analytical work and he reviews and signs all of Doty Scott's reports.[669]

417. Haddad has more than seventeen years of experience with financial technology services[670] and joined in Doty Scott in 2006.[671] Haddad has degrees in electrical engineering

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[663] Ex. 472 at Bates numbered page 76.
[664] Tr. (Vol. V Scott) 1357:2-5 ("Q Okay. And have you ever, Doty Scott, been hired as an expert to – on behalf of an auditing firm to review another valuation firm's work? A Yes. We've done that several times.").
[665] Tr. (Vol. V Scott) 1345:17-18 ("What is your title at Doty Scott? A I'm technically the president.").
[666] Tr. (Vol. VII Haddad) 1991:1-2("Q And what's your title at Doty Scott? A Managing director.").
[667] Ex. 472 at 77 (Bates); Tr. (Vol. V Scott) 1342:25-1343:3, 1344:2-6.
[668] Ex. 472 at 77 (Bates).
[669] Tr. (Vol. V Scott) 1345:19-24 ("Q And what is your role? A I operate the valuation work. I sign all of the reports. I review all of the reports. Q Do you also prepare reports? A Yes. Reports. And I do the analysis, financial analysis.").
[670] Tr. (Vol. VII Haddad) 1990:4-9 ("Q And what did you do after '99? A I went – I came to California to run a small technology company and spent three years there running that company, eventually sold it. And then I went on to a couple financial services technology companies until 2006.").
[671] Tr. (Vol. VII Haddad) 1990:10-14 ("Q What happened in 2006? A I – – I joined Phil's company").

systems, systems engineering, and computer science from the University of Massachusetts.[672] Haddad does most of Doty Scott's financial modeling and analytics.[673]

418. As part of this engagement, Doty Scott sent Premier a series of draft reports, each approximately forty pages long.[674] Like the final report Doty Scott issued on April 24, 2012, the draft reports contained detailed explanations of the assumptions and methodology Doty Scott used to determine the fair value of the acquired assets.[675]

419. Doty Scott valued the assets WePower Ecolutions acquired from WePower LLC and Green Central at $48,874.[676] According to Doty Scott's report, the technology and trade name and trademarks were worth $31,000; the inventory acquired was valued at cost, of roughly $17,000.[677]

3. Premier's Accounting for the Green Energy Assets

420. In its 2011 Form 10-K, Premier attributed no value to the green energy assets it had just acquired. The Company stated that the acquisitions from WePower LLC and Green Central were related-party transactions and explained that because they were related-party transactions and because the inventory acquired had been found to be impaired, at December 31, 2011, the Company valued the assets acquired at zero.[678]

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[672] Tr. (Vol. VII Haddad) 1989:13-16 ("I went to school at the University of Massachusetts, graduated in 1979. I have a degree in electrical engineering, systems engineering and computer science.").
[673] Tr. (Vol. VII Haddad) 1991:5-8 ("I do most of the valuation modeling and analytics relative to derivatives to valuing securities, valuing enterprises, purchase price allocations.").
[674] Exs. 437, 439.
[675] Exs. 437, 439, 440 (draft and final reports).
[676] Ex. 440 at 2.
[677] *Id.*
[678] Ex. 400 (Premier 2011 Form 10-K) 27: "No pro forma reporting was prepared for this acquisition as the underlying assets acquired to not have any past revenues associated with their operations. As the assets acquired were from a related party, and no value was assigned to the identified assets noted above, the assets were brought into the Company at their cost of $0, with the total value of stock issued recorded in expense." *See also* Note 9 description of acquisition of WePower LLC (same except also discussing impairment of inventory).

4. The Swap of the Green Energy Assets for the Note

421. WePower Ecolutions was unsuccessful in operating the green energy assets in 2012,[679] generating a loss of $756,912.[680]

422. In October of 2012, Premier announced that it intended to spin off WePower Ecolutions.[681] The Company also announced another change of management, disclosing that Kevin Donovan was ending his role as an officer and director of Premier and Randall Letcavage had been appointed Premier's CEO, President, Treasurer, Principal Executive Officer, and Principal Accounting Officer.[682] Letcavage, Winkler, and one other individual also became directors.[683]

423. One month later, Premier announced an agreement in principle to transfer certain green energy assets from WePower Ecolutions to a newly-formed entity controlled by Donovan, WePower Eco Corp (hereafter referred to as "New Eco") in exchange for a promissory note with a face amount of $5,000,000.[684]

424. There are three unaffiliated "WePower" entities: (1) WePower LLC, the company owned by Winkler that sold green energy assets to Premier, (2) WePower Ecolutions, the Premier subsidiary that operated those green energy assets and the green energy assets obtained

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[679] Tr. (Vol. V Winkler) 1313:22-23 ("Q Was Donovan ultimately successful? A No."); *see also* Tr. (Vol. V Winkler) 1308:13-23.
[680] Ex. 401 (Premier 2012 Form 10-K) 14, 46 (disclosing loss from discontinued operations of $756,912).
[681] Ex. 409 (Premier Form 8-K filed on Oct. 5, 2012) Item 5.07 ("As a result, the Company intends to spin-off WePOWER Ecolutions, Inc., a wholly owned subsidiary incorporated in Delaware, to the Company's stockholders.").
[682] Ex. 409 (Premier Form 8-K filed on Oct. 5, 2012) Item 5.02; Ex. 411 (Premier Form 8-K filed on Dec. 27, 2012 with attached open letter to shareholders) 2 of the shareholder letter.
[683] Ex. 409 (Premier Form 8-K filed on Oct. 5, 2012) Item 5.02.
[684] Ex. 410 (Premier Form 8-K filed on Nov. 29, 2012), Item 8.01 ("PRHL has reached an agreement in principle to sell certain assets to WePOWER Eco Corp., a newly formed entity, controlled by Kevin B. Donovan, PRHL's former CEO for a $5,000,000 promissory note."); Ex. 411 (Premier Form 8-K filed on Dec. 27, 2012 attaching open letter to shareholders) 3 of the shareholder letter ("These opportunities [to be transferred from WePower Ecolutions to New Eco] are expected to be exchanged for a note in the amount of $5,000,000, which will become an asset of Premier.').

from Green Central, and later sold green energy assets to the third WePower entity, and (3) New Eco (WePower Eco Corp.), the entity controlled by Donovan, which issued the Note in exchange for the assets obtained from WePower Ecolutions.[685] New Eco is also sometimes referred to in these findings as the borrower or the buyer.

425. As a result of this agreement in principle, Premier classified its WePower Ecolutions subsidiary as "discontinued operations"[686] and in its 2012 financial statements recognized a "loss from discontinued operations" of $756,912, the amount of WePower Ecolutions' net operating loss for 2012.[687]

426. Effective January 7, 2013, Premier (through WePower Ecolutions) entered into an asset purchase agreement with New Eco.[688] Under that agreement, WePower Ecolutions sold New Eco "certain assets related [to] solar energy, wind power projects, energy efficiency projects in real estate, and fuel efficiency for diesel and gasoline engines."[689] Among those assets were three patents, six trademarks, and twenty-eight contracts.[690] WePower Ecolutions also granted New Eco "certain exclusive business opportunities, fifteen exclusive opportunities and nineteen exclusive for six months."[691] In addition, WePower Ecolutions agreed to immediately cease using the WePower name or any derivation thereof and to change its name within ten days.[692]

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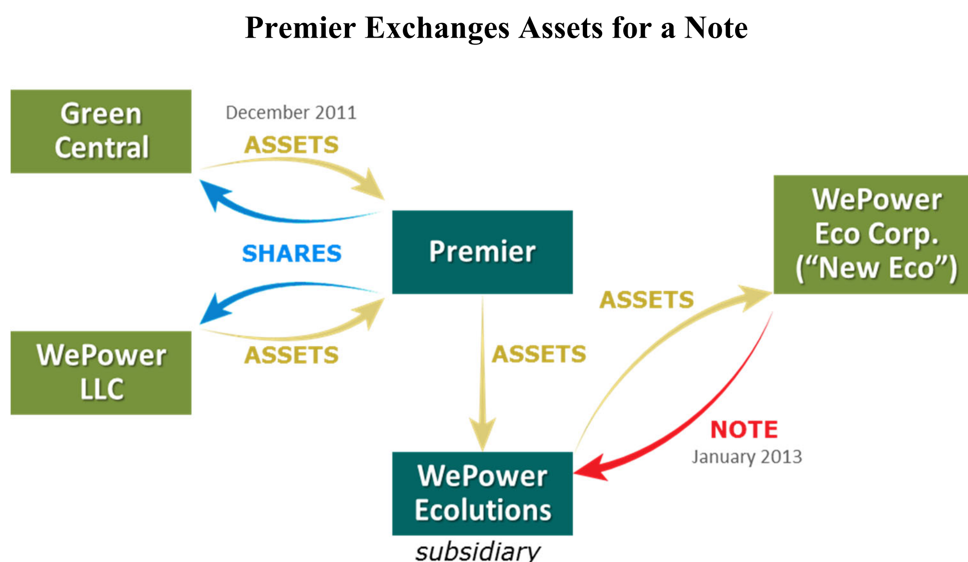
[685] *See* Paragraphs 410-11, 423.
[686] Ex. 401 (Premier 2012 Form 10-K) 46 "(In year 2012, WEPOWER Ecolutions Inc. is classified as held for sale . . . and therefore, the result of its operations is reported in discontinued operations . . . .The Transactions contemplated by the Purchase Agreement were deemed to be effective as of January 7, 2013 (see Note 10).").
[687] *Id.*; *see also id.* at 28 (reporting loss from discontinued operations of $756,912).
[688] Ex. 442 (Asset Purchase Agreement effective Jan. 7, 2013 between WePower Ecolutions and New Eco).
[689] Ex. 401 (Premier 2012 Form 10-K) 46; Ex. 402 (Premier 2013 Form 10-K) F-14.
[690] *Id.*
[691] *Id.*
[692] Ex. 442 (Asset Purchase Agreement effective Jan. 7, 2013 between WePower Ecolutions and New Eco) Paragraph 6(h). *See also* Ex. 412 (same filed on Form 8-K).

427. A number of the assets transferred from WePower Ecolutions to New Eco were originally purchased from WePower LLC) in December of 2011 (*e.g.*, trademarks, patents, and certain contracts).[693] The assets transferred to New Eco also contributed to the $756,912 loss from discontinued operations that Premier recognized for 2012.[694]

428. In exchange for the assets, WePower Ecolutions received from New Eco a promissory note in the principle amount of $5,000,000 and assumed roughly $100,000 in liabilities.[695]

429. The following diagram illustrates the transactions and relationships between the three unaffiliated "WePower" entities:[696]

Premier Exchanges Assets for a Note



[693] Ex. 402 (Premier 2013 Form 10-K) F-14, Note on Discontinued Operations ("The Company acquired assets from WEPOWEWR LLC during 2011. . . In 2012, WEPOWER Ecolutions was classified as held for sale . . . On January 7, 2013, Premier Holding Corporation . . . completed the sale of assets under an Asset Purchase Agreement with WEPOWR Eco Corp. . . ") 46; *compare* Schedule 1 to Ex. 433 (Asset Purchase Agreement made on Dec. 29, 2011 between Premier and WePower, LLC) *with* Schedule 2(a) to Ex. 442 (Asset Purchase Agreement effective January 7, 2013 between WePower Ecolutions and New Eco).

[694] 694 Ex. 401 (Premier 2012 Form 10-K) 46, Note on Discontinued Operations ("Premier acquired assets from WEPOWER, LLC at year [end] 201. . . . Loss from discontinued operations (756,912)."

[695] Ex. 401 (Premier 2012 Form 10-K) 46; Ex. 402 (Premier 2013 Form 10-K) F-14; Ex. 442 (Asset Purchase Agreement effective Jan. 7, 2013 between WePower Ecolutions and New Eco) ¶ 2(b)).

[696] Ex. 88.1 (Devor Report) ¶ 345, Figure 6.

430. The Note was unsecured,[697] and its terms were very generous to New Eco.[698] Under the terms of the Note, the interest rate was 2.00% per annum.[699] Interest on the principal balance was to be paid semi-annually but New Eco was not required to pay any interest for eleven months.[700] Thus, New Eco's first required payment was its initial semi-annual interest payment, of $50,000, which was due on December 7, 2013.[701] New Eco would be in default fifteen days after failing to make a required payment.[702] New Eco was not required to pay any principal for five years,[703] and had fifteen additional years to pay the principal an all accrued and unpaid interest.[704] Thus, the unpaid portion of the principal, as well as all accrued and unpaid interest, was due on January 7, 2033 – that is, twenty years after the Note was executed.[705]

431. There was little or no reason to think that New Eco would be able to pay the Note. New Eco was a newly formed company,[706] so it had no financial track record. Moreover, the assets acquired by New Eco generated losses of $756,912 for Premier totaling in 2012.[707]

432. Also, Donovan, who had led WePower Ecolutions to those losses in 2012, was slated to lead New Eco.[708] According to Letcavage, Donovan was so unsuccessful in running WePower Ecolutions, that he (Letcavage) had to get rid of him:

> A So the two entities that moved their assets into Premier were generating revenue previously. When Donovan took over, he had generated nothing for about eight or nine

[697] Ex. 412 (Premier Form 8-K announcing entry into Asset Purchase Agreement effective Jan. 7, 2013 between WePower Ecolutions and New Eco) Ex. 10.3 thereto (promissory note) ¶ 2; also promissory note, part of Ex. 442 (Asset Purchase Agreement) ¶ 2.
[698] Tr. (Vol. V Scott) 1448:23-1449:2 ("Q Okay. Going back to that second bullet, you mentioned that the terms were very generous. A Generous to New Eco. Q Okay. The borrower? A Correct.").
[699] *Id.* ¶ 1(a).
[700] *Id.* ¶ 1(a).
[701] *Id.* ¶ 1(a).
[702] *Id.* ¶ 4(a).
[703] *Id.* ¶ 1(b).
[704] *Id.* ¶ 1(c)
[705] *Id.* ¶ 1(c).
[706] Ex. 401 (Premier 2012 Form 10-K) at 46; Ex. 402 (Premier 2013 Form 10-K) at F-14.
[707] *Id.*
[708] *Id.*

> month, maybe longer. And my investors that were now shareholders in Premier, previously in Green Central, they were upset about it, because he wasn't performing. And I think he only had one sale during that time, which was a sale that we referred to him. It was a small sale for wind turbines, 50,000, somewhere along those lines.[709]
>
> . . . .
>
> Q So basically in order for you to create value for shareholders at that point in time, you had no choice but to dispose of the – of the –
>
> A I had to get Donovan out by almost any means necessary, and I had to get a company in there that was operating and had some potential.[710]

433. Donovan himself thought there was a "big chance" that New Eco would default on the Note at some point.[711]

434. By February 23, 2013, Letcavage was hoping to sell the Note to Winkler in exchange for 5,000,000 shares of Premier stock.[712] As discussed below, that sale did not occur until more than a year later and it was for only 2,500,000 shares.

5. Doty Scott's Engagement to Value the Note

435. In order to prepare its financial statements, Premier needed to assign a value to the Note. As it had for the green energy assets, Premier engaged Doty Scott to determine the fair value of the Note as of the acquisition date (January 7, 2013).[713] Scott and Haddad worked on the valuation of the Note.[714]

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[709] Tr. (Vol. XXIII Letcavage) 5664:7-5664:18.
[710] Tr. (Vol. XXIII Letcavage) 5687:21-5688:1.
[711] Ex. 839.5 (Donovan Dep. Designation) 76:25-77:5.
[712] Ex. 1100 (minutes of Feb. 23, 2013 meeting of Premier's board of directors) first page ("RESOLVED, the Company approves the agreement between WePower LLC/WePower Energy Corp. (WE) and WePower Eco Corp. (ECO), whereby, WE will purchase the 5,000,000 Promissory Note and transfer 5,000,000 shares of PHRL to TPC for consideration. Alternatively, the Company has the option to return these shares to treasury, without further action by the Board of Directors").
[713] Ex. 443 (Mar. 18, 2013 email from Rosenberg to Scott re valuations); *see also* Tr. (Vol. VII Haddad) 1994:11-1995:5 ("Q This [Ex. 444] was from March 18, 2013, … So is this around the time that you were engaged by Premier to value the WePower note transaction? A Right. Yes.").
[714] Ex. 447 (Mar. 29, 2013 email from Scott to Young, attaching PRHL WEPOWERECO - Assets Valuation 12-31-12 v1 - Draft - Report.XLSX and attachment summary page) (Email: "We used two primary methods to value the

436. Doty Scott was going to determine the fair value of the Note by discounting the expected cash flows on the Note at New Eco's estimated weighted average cost of capital,[715] or "WACC." The value of the Note depended on New Eco's ability to pay it, however. As a result, Doty Scott also needed to value New Eco.[716]

437. Accordingly, to perform the valuation, Doty Scott needed information about New Eco and the performance of its assets. By email dated March 19, 2013, Scott asked Eric Rosenberg for the following information:

- Regarding the Buyer (WEPOWER Eco Corp):
  - Is this a new entity?
  - Do they have a balance sheet/historical financials/projected financials?
- Regarding the Seller
  - Can you provide historical financials for the segment of the business that are related to the assets sold?[717]

438. Together with Joseph Greenblatt, Rosenberg was "responsible for the accounting function" at Premier at the time.[718]

439. Instead of providing the requested information, Premier told Scott to speak to Kevin Donovan.[719] Accordingly, Scott requested the information from Donovan, as well as Marvin Winkler, but "they didn't have financial projections, and they were unwilling to provide

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promissory note: … Discounted cash flows of the promissory note per contract discounted at the estimated buyer's WACC") (Attachment Summary Page: "Fair Value - Promissory Note Valuation (using WACC 27.91 %)"). *See generally* Tr. (Vol. V Scott) 1379:17-23; Tr. (Vol. VII Haddad) 1994:11-2030:22; Tr. (Vol. XXV Scott) 6002:3-6048:13.

[715] Tr. (Vol. XXV Scott) 6006:9-16 ("Q So let's look at the bottom value [on the summary page of Ex. 452.2], which is $698,377. . . . What does that value represent? A That would be the fair value of the promissory note using a discounted cash flow methodology, discounting the cash flows at a weighted average cost of capital of 27.9 percent.").

[716] Ex. 447 ("We . . . valued the buyer with the expectation that the note is not worth more than the buyer's total equity.").

[717] Ex. 444.

[718] Tr. (Vol. VII Rosenberg) 2186:2-5.

[719] Tr. (Vol. V Scott) 1389:18-22 ("So in response to my request for data, they said, 'Well, you should speak to Kevin Donovan.' So Kevin Donovan is with the buyer of the assets, and, 'he should be able to provide you with that information.'").

any even if they did have them."[720] In fact, New Eco never provided any information to Doty Scott.[721]

440. Scott therefor reached back out to Greenblatt, telling him that, given Donovan's and Winkler's lack of cooperation, Doty Scott would "need [Premier] to provide your best estimates of future projections based on the sales leads you were able to generate during your year of ownership."[722] Premier never sent Doty Scott any up-to-date projections or other data.[723]

6. Doty Scott's Initial Valuation Tables

441. In the meantime, Haddad prepared a template of the valuation model that Doty Scott would use to value New Eco and the Note, once it received the necessary information.[724]

442. Those initial valuation tables did not use financial projections for New Eco because Doty Scott had not received any. (*See* ¶¶ 437-440, *supra*.) Instead, Haddad used financial projections for WePower Ecolutions that Doty Scott had received when it valued the assets Premier had acquired from WePower LLC and Green Central at the end of 2011.[725] Thus those projections were a year old by the time that Haddad prepared the spreadsheets.

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[720] *Id.* at 389:23-1390:7; *see also* Ex. 445 (Mar. 21, 2013 email Email from Donovan to Haddad); Ex. 446 (Mar. 22, 2013 email from Scott to Greenblatt) ("We spoke with Kevin Donovan and Marvin Winkler. Neither of them can or will provide any financial projections for the Wepower assets sold."); Ex. 839.5 (Donovan Inv. Test) 96:6-17.

[721] Tr. (Vol. V Scott) 1391:5-10 ("Q And did you at any point in time ever get any data from New Eco, the – … the borrower? A – no. They refused to provide any information.").

[722] Ex. 446 (Mar. 22, 2013 email from Scott to Greenblatt).

[723] Tr. (Vol. V Scott) 1392:2-15 ("Q Did you ever get data in response to this request? A Not specifically, no. Q Okay. So let's look – and when you say, "not specifically," what do you mean by that? A I mean, I've had data from the client relative to this business segment in the past. I did not get any updated information based on these0 specific requests. Q Okay. So they never provided you any future projections of the – these assets other than what you already had? A From the work that we had done based on the December 2011 transaction.").

[724] Tr. (Vol. VII Haddad) 2005:11-16 ("But in this case, we had nothing, so I went through and built the models and built some valuations based on some of my own assumptions unsupported, of course. And we used those tables as a starting point to discuss the valuation"); Tr. (Vol. XXV Scott) 6027:11-13 ("And basically this was prepared as a template for the methodology so the auditors could sign off on the methodology.").

[725] Tr. (Vol. VII Haddad) 2011:1-12 ("Q Okay. And do you see at the top where it says, "Asset valuation WePower LLC to WePower Ecolutions Inc. as of 12/31/12"? A Right. Q Is that – are those the two entities that were involved in the 2011 transaction that you were undertaking to value in early 2012? A Yes, I believe it was – Q Right. So – A – because those are – from the old – yeah, because I used – I started with the old model and built on top of that.").

443. On March 29, 2013, in order to elicit information about New Eco's performance and prospects, so that Doty Scott could complete a valuation,[726] Scott sent Premier "initial valuation tables."[727] The tables were contained in an Excel file named "PRHL WEPOWERECO - Assets Valuation 12-31-12 vi - Draft – Report" and showed the outputs of the models Doty Scott planned to use to value the Note and New Eco. Scott emailed the tables to Larry Young, [728] Letcavage's right-hand man[729] who had been designated Doty Scott's contact at Premier.[730]

444. The tables were "hard-coded," meaning that they did not contain active formulas, which would have revealed Doty Scott's methodologies, which were proprietary.[731]

445. In his transmittal email, Scott described the methodologies reflected in the initial valuation tables. He explained that Doty Scott sought to value New Eco, in addition to the Note itself, because the firm expected that the Note could not be worth more than the buyer (New Eco, the borrower, which issued the Note). And he cautioned that the values for New Eco were based on old assumptions that had not been verified and for which Doty Scott had no support:

- The buyer refused to provide us with any information, therefore we made the following assumptions, which need to be verified by management and hopefully management can provide some supporting documentation
  - We used the previous projections, pushed out 1 year
  - The original valuation assumed 1%, 2%, and 4% realization of the projections (averaged)

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[726] ¶¶ 439-439 above; Tr. (Vol. V Scott) 1396:14-18 ("Q Okay. So these are just tables; is that rIght? A Right. The purpose of this was just to elicit additional information so that we could complete a valuation."); Tr. (Vol. VII) 2008:2-5 ("I had no evidence of anything. This was just me sitting in front of the computer making up numbers until we got some data. And then I could plug those real numbers in.").
[727] Ex. 447 (Mar. 29, 2013 email from Scott to Young).
[728] *Id.*
[729] Tr. (Vol. XXIII Letcavage) 5753:4-10 ("And Larry Young worked for you at Premier, correct? A Yes. Q We've heard – we've seen him referred to as your right-hand man. Would that be accurate? A Sure.").
[730] Tr. (Vol. V Scott) 1393:2-4 ("A L.R. Young was working on behalf of Premier. We were instructed to communicate with him regarding this project.").
[731] Tr. (Vol. V Scott) 1393:12-19 ("Q And the attachment listed is the PRHL WePower Eco asset valuation 12-31-12 version 1 draft report.XLSX; is that right? A Right. So it's an Excel tables file. Q All right. And that's not an operating table like you described. It's a hard-coded table? A It's not a valuation model. It's an output of some of the results.").

- Based on the $1M invested in sales leads and opportunities,[732] we increased these realization numbers to 5%, 25%, 50%,75% (averaged)

> This last item is the primary driver of value and will need to be reviewed by management. We should have a discussion regarding the projections and what support exists relative to the revenues.[733]

446. Finally, Scott warned, "[t]his preliminary valuation is not to be quoted at this time." [734]

447. Scott's transmission of the initial tables was consistent with Doty Scott's usual practice. The firm typically sends its clients draft tables, "primarily to make sure that [the firm] got all the data appropriately."[735]

448. The initial valuation tables Scott sent to Young contained three potential valuation figures: one figure for the fair value of the Note, and two figures for the fair value of New Eco:

(a) Fair value of the Note: $698,377
(b) Fair value of the enterprise (New Eco): $869,000 and
(c) Fair market value of the intellectual property, patents, and trade secrets acquired by New Eco: $861,000.[736]

7. The $869,000 Note Valuation in Premier's 2012 Form 10-K

449. Even though Doty Scott had clearly advised Premier that the figures in its initial valuation tables were "not to be quoted,"[737] a few weeks after Premier received the tables, the Company used the $869,000 as the value of the Note in its 2012 Form 10-K, which it filed on

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[732] Haddad testified that he didn't know what the "$1M invested in sales leads and opportunities" meant and whether it was true. Tr. (Vol. VII Haddad) 2008:6-19 ("Q Okay. But you had learned from Premier, it says in that last bullet, that they had invested a million dollars in sales leads and opportunities? A I don't know. You know, I don't know what that really meant, because the companies will tell us they invest in something like that, and, you know, until you see the financials, you don't really know what the investments mean. And did they really put in a million dollars? And what did they spend it on? And did they increase the value of the assets? There were a lot of open-ended questions in that. Because just throwing out a number like a million doesn't mean anything.").
[733] Ex. 447 (Mar. 29, 2013 email from Scott to Young).
[734] *Id.*
[735] Tr. (Vol. V Scott) 1352:6-16.
[736] Ex. 447 (Mar. 29, 2013 email from Scott to Young) 2.
[737] Ex. 447 (Mar. 29, 2013 email from Scott to Young).

April 22, 2013.[738] In the Subsequent Events Note to its 2012 financial statements, Premier represented that the "preliminary valuation on the note is $869,000." [739] The Company also stated that New Eco's "product line and prospects have been conservatively valued at approximately $869,000."[740]

8. Radio Silence on the Note Valuation

450. On April 24, 2013, Scott reached out to Premier again. Referring to, and forwarding, his March 29th email, Scott told Young, Greenblatt, and Rosenberg that there were still "several issues related to the WePower Eco Note valuation." "Before we issue a report," he added, "we would like some input on the assumptions detailed below." [741] Premier never provided the requested information.[742]

451. As discussed below, about a month later, in May 2013, Doty Scott communicated with Anton & Chia. After those communications, the Note valuation project "went radio silent," and Doty Scott ceased working on it for about a year.[743]

9. Anton & Chia's Q1 2013 Review of the Note Valuation

452. The Note first impacted Premier's balance sheet and income statement in the first quarter of 2013. As part of Anton & Chia's review of Premier's Q1 2013 financial statements, "one of [Chris Wen's] first assignments … [was] to evaluate whether Premier's note receivable balance as of March 31, 2013 was appropriately recorded."[744]

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[738] Ex. 401 (2012 Form 10-K) attestation.
[739] Ex. 401 (2012 Form 10-K) 46.
[740] Ex. 401 (2012 Form 10-K) 5.
[741] Ex. 450.
[742] Tr. (Vol. V Scott) 1413:9-11 ("Q Did Premier ever provide the information that you were requesting? A No.").
[743] Tr. (Vol. V Scott) 1426: 5-14 ("Q All right. So after you sent the model, the three files to Wen, did you have any further work on this project in 2013 to your recollection? A No. I believe it went radio silent. Q Okay. You didn't communicate with anyone from Premier? A No. Right. Nobody contacted us. Q Did you continue to do any work? A No."). See below regarding resumption of work on the Note valuation in April 2014.
[744] Tr. (Vol. VII Wen) 2118:23-2119:10.

453. Wen graduated from college in 2010 or 2011.[745] He started working at Anton & Chia in June of 2012. Before that, he worked as a salesperson in an AT&T retail store.[746] Wen was not a CPA.[747]

454. Wen started at Anton & Chia as an intern and became an employee in December 2012 or January 2013.[748] He was promoted to senior sometime in 2014.[749]

455. Before he went to work at Anton & Chia, Wen had never done any type of accounting or auditing work.[750] Wahl knew that Wen had no accounting or auditing experience because he hired Wen, who told him during the interviewing process that he (Wen) had no auditing or accounting experience.[751]

456. Wen asked Premier's accounting consultants, Greenblatt and Rosenberg, for support for the $869,000 value for the Note. The consultants told him that the $869,000 "was validated by a third-party firm" and sent him a copy of the hard-coded initial valuation tables.[752]

457. Wen wanted to see a "live" version of the tables, *i.e*. a version that was not hard-coded and included the formulas, and asked Greenblatt and Rosenberg for help getting them.[753]

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[745] Tr. (Vol. VII Wen) 2108:18-22 ("Q And then how many did you spend at the University of California Riverside? A Two years. Q So what year did you graduate? A 2010 or '11.").
[746] Tr. (Vol. VII Wen) 2109:14-2110:3 ("A I was working at an AT&T retail store in Rowland Heights. Q And what was your position at the AT&T retail store? A Sales rep. … A I keep working at that store ... – for a while, and then got hired by Anton & Chia").
[747] *Id.* at 109:2-6 ("Q Are you a licensed CPA? A No.").
[748] Tr, (Vol. VII Wen) 2114:21-24 ("Q All right. And when did you get that promotion or become a full-time employee? A So I went in there June, after six month – around December '12 or January '13.").
[749] Tr, (Vol. VII Wen) 2115:22-:24 ("A Yeah. I got another promotion to senior – I don't remember – I think it was – I think 2014, around there.").
[750] *Id.* at 112:19-2113:4 ("Q. So you mentioned that you started at Anton & Chia in June of 20 – of 2012; is that right? A Yes. Q And prior to beginning at Anton & Chia, had you ever done any type of accounting work before? A No. Q And when you started at Anton & Chia, had you ever done any type of audit work before? A No.").
[751] Tr. (Vol. VII Wen) 2114:5-13 ("Q And before he hired you, did Wahl interview you? A Yes, he did. Q And did you tell Wahl that you had no accounting experience? A Yes. Q Did you tell Wahl that you had no auditing experience? A Yes.").
[752] Tr. (Vol. VII Wen) 2119:11-2121:10.
[753] *Id.* at 123:21-2124:2 ("So you wanted one with the formulas, right? A Yes. Q Okay. Did you ask Premier, the folks at Premier, Eric and Joe, did you ask them to help get you a copy of the spreadsheet with the formulas? A Yes, I did.").

Accordingly, on May 22, 2013, Rosenberg asked Haddad to send copies of the Excel spreadsheets that were not hard-coded to Anton & Chia.[754]

458. Shortly after Rosenberg sent his request, Haddad sent Wen three Excel files that contained the formulas[755]: (a) PRHL WEPOWERECO -Assets Valuation 12-31-12 vi - Draft – Auditor, (b) WePower Ecolutions Financial Projections 12-31-12 vi –Auditor, and (c) an Excel report file.[756] In his transmittal email, Haddad told Wen, "Our models are proprietary, please do not share with the client or outside of your firm – Thanks."[757]

459. Haddad also provided a brief explanation of the models:

> The model reflects one scenario/valuation at a time - to sequence to the various scenarios and valuations change the cell Cover B 1 in the Asset Valuation model and cell Scenarios B 1 in the Financial Projections model. The models have multiple scenarios/valuations (4 weighted scenarios and financial projections), so if you enter the number of the scenario/valuation into either cell B 1 and hit return the model will recalculate that that value or financial projections. The model does require circular references to be enabled (under Excel options - Formulas) in both models.
>
> Please email any questions.[758]

460. Typically, Doty Scott (or its clients) provides its clients' auditors with drafts of its reports and, if asked, with its models.[759] The purpose of sending the firm's models to the auditors is so that the auditors can confirm that they are comfortable with Doty Scott's methodology.[760]

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[754] Ex. 451 (May 22, 2013 email from Rosenberg to Haddad) ("Our auditors Anton Chia [sic] are requesting the formulas for the WePower valuation.").
[755] Tr. (Vol. VII Wen) 2125:21-25 ("Do you recall getting this email [Ex. 452]? A Yeah. Yes. Q And are these the files that you got that had the formulas? A Yes.").
[756] Ex. 452.
[757] Ex. 452.
[758] Ex. 452.
[759] Tr. (Vol. V Scott) 1353:6-16 ("Q Okay. And what do you typically send the auditor? A Well, we – actually, we instruct the client to send the report to the auditor, and many times the auditor will come back to us and say, 'Hey, we need to review this in more detail.' All right. So they would ask for our actual valuation models. Q Okay. And do you provide that to the auditors? A Yes. If they request it."); *Id* at. 1423:24-1424:1 ("Well, the auditors have the right to check our work, and so we have to provide that, these files for them.").
[760] Tr. (Vol. VII Haddad) 2030:11-2030:22 ("But the purpose of me sending models to auditors typically is so they can go through and confirm that the methods we use and the implementation of those methods is correct.").

After the auditors receive the draft report and/or models, they will either "do their own valuation and then compare their results to [Doty Scott's] results," or "determine whether [Doty Scott] did the calculations properly and [had] the right assumptions and the right inputs," and then "send [Doty Scott] a list of questions."[761]

461. The audit firms Doty Scott deals with typically will either "have a whole segment of people that do valuation work for external clients," or "retain outside consultants" to evaluate the valuation.[762] Haddad therefore assumed that Wen was a valuation expert.[763]

462. At that time, however, Wen had no prior experience working with a valuation.[764] He did not know what a valuation report was, and had never seen one.[765] He was not even familiar with complex Excel tables, in general.[766] He did not understand what an enterprise value was,[767] did not know what a discount rate was,[768] did not know was a WACC (weighted average

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[761] Tr. (Vol. V Scott) 1353:21-1354:13. *See also id.* at423:24-1424:8.
[762] Tr. (Vol. V Scott) 1354:14-1355:23. *See also* Tr. (Vol. VII Haddad) 2032:7-2032:15 ("Q And do all those firms have a valuation group like your firm? A The audit teams? Q Yeah. A I would say – I would say a good 30 percent do. And another 30 percent have auditors who have valuation expertise. And then probably the last third will outsource consultants to assess the valuations for them, so").
[763] Tr. (Vol. VII Haddad) (2028:10-2028:240 ("I kind of thought when I was – they had given me Chris's name, that he was one of the kind of people I typically deal with, which are the more analytic part of an audit firm where they're more familiar with Excel and models and math and the mechanics of how you can develop these values. I really didn't think he was an auditor themselves. I thought I was dealing with somebody more geeky. . . . He was more of a tech – techy kind of guy. Like kind of people that I typically will interact with when I send the model."); *Id.* at 030:15-2030:18 ("And that's why I put this little explanation in there afterwards of how to run the model, how to ensure that the circular references were working.").
[764] Tr. (Vol. VII Wen) 2122:1-4 ('Q Now, let's see. So was this your first experience working with a aluation during an engagement at – of any kind? A Yes.").
[765] Tr. (Vol. VII Wen) 2122:11-2123:5 ("Q Now, was Wahl aware that you had never dealt with a valuation before when – in connection with the first quarter interim review in 2013? . . . . THE WITNESS: I should say yes, because I got no accounting experience before, no auditing experience before. BY QUALLS: Q Okay. Did you tell him specifically about that you had never done – worked on a valuation before? A I did not tell him that. I don't think I did. Q Okay. But he knew that you had no accounting experience of any kind? A Right.").
[766] Tr. (Vol. VII Wen) 2126:24-2127:2 ("Q Had you had any familiarity working with complex Excel tables like the one attached to Exhibit 452? A No.").
[767] Tr. (Vol. VII Wen) 2128:13-16 ("Q Okay. At the time you reviewed this in the first quarter of 2013, did you know what an enterprise value was? A Not exactly.").
[768] Tr. (Vol. VII Wen) 2131:8-11 ("Q When you reviewed this [the Doty Scott spreadsheets he received], did you know what a discount rate was? A No. I do not know what was the discount rate that they use.").

cost of capital) was,[769] and did not understand the relationship between the three valuation figures that appeared on the Doty Scott spreadsheets.[770]

463. After reviewing both the hard-coded and live initial valuation tables, Wen did not understand the models, the assumptions used,[771]or the relationships between the three fair value figures produced by the models.[772]

464. Wen and Scott had a "short conversation" in which Scott provided "some basic information about how to look at [Doty Scott's] files," "so that [Wen] could at least navigate the files and use them on his computer so that he could do some review."[773]

465. Scott did not tell Wen, or anyone else from Anton & Chia, that Doty Scott had concluded that the fair value of the promissory note was $869,000. As Scott explained, no one from Doty Scott would have told Wen, or anyone, to use the $869,000 figure, both because it was not supported and because it was not even a figure for the value of the Note:

> Q And in this conversation that you had with Wen, did you ever inform him that the fair value of the promissory note was $869,000?
> A No. I wouldn't have done that.
> Q Why not?

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[769] Tr. (Vol. VII Wen) 2131:18 -21("Q Okay. And I should have said, at the time when you reviewed this in 2013, did you know what the WACC or "WACC" was? A No").

[770] Tr. (Vol. VII Wen) 2129:5-14 ("Q And do you see that the three boxes, the three gray boxes we've got, the first one and – 869,000, the second one at 861,000, and the third one at $698,377 – well, dollars. Do you see those? A Yes. Q At the time when you reviewed this file in 2013, did you understand the relationship between those three figures? A No.").

[771] Tr. (Vol. VII Wen) 2127:23-2128:8 ("Q And did you – when you reviewed this file in connection with the Q1 interim review, did you know what the model, the valuation model was that the Doty Scott firm was using? A No. Q And did you understand the model that was contained in Exhibit – it's 452.1? A No. Q Did you understand the assumptions used in 452.1? A No.").

[772] Tr. (Vol. VII Wen) 2129:5-14 ("Q And do you see that the three boxes, the three gray boxes we've got, the first one and – 869,000, the second one at 861,000, and the third one at $698,377 – well, dollars. Do you see those? A Yes. Q At the time when you reviewed this file in 2013, did you understand the relationship between those three figures? A No.").

[773] Tr. (Vol. V Scott) 1424:21-1425:12 ("A I believe we did. I mean, I did not have a scheduled conference call scheduled with Chris to go over this, but I believe we had a short conversation in which he wanted some basic information about how to look at our files. Q Okay. And do you have a particular recollection of the conversation? A Well, the only recollection is that it was a short conversation. And I believe we basically explained the same information that's in the second paragraph so that he could at least navigate the files and use them on his computer so that he could do some review.").

A Because we hadn't come to a conclusion of the fair value.
Q Okay. And was 869,000 even the preliminary number for the promissory note?
A No. ... That was a preliminary number for the entity that acquired the assets.
Q Did you ever communicate with anyone else from Anton & Chia that the fair value of the promissory note was $869,000?
A I did not.[774]

466. For the same reasons, Scott did not tell anyone at Premier to use the $869,000 figure for the value of the Note:

Q And did you ever tell anyone at Premier or any Premier consultant to use the $869,000 value for the promissory note?
A No.
Q And how can you be so sure that you never [told anyone at Anton & Chia or Premier to use the $869,000 value for the Note]?
A Because it wasn't even a number that we would have concluded, right? We wouldn't have even concluded the 698 number, because we're still waiting for information to support it. So we had no support on any of the financial projections. And basically this was prepared as a template for the methodology so the auditors could sign off on the methodology.[775]

467. After his conversation with Scott, and after doing some research, Wen still did not understand the Doty Scott spreadsheets; he still "did not get it."[776]

[774] Tr. (Vol. V Scott) 1425:13-1426:4; *see also id.* at479:7-16 ("Q So who told – who from your firm told Anton & Chia to use the 869,000? A Nobody. Ever. Q You're saying that nobody told Chris Wen to use 869,000? A That's correct. Q Then who did? A No one ever told him to use that. We would never have told him that. It's not even the right number."); *id.* at487:9-10 ("We did not tell him [to use $869,000]. I know for a fact we did not tell him that."); Tr. (Vol. VIII Shek) 2473:19-24 ("Q. And in any communications with the company or Doty Scott, Chris Wen, was there any communication from those parties that the 869 was incorrect? A. Well, I don't have any answer. No one says yes this correct or not.").
[775] Tr. (Vol. XXV Scott) 6027:4-6027:13. *See also* Tr. (Vol VII Haddad) 2023:5-13 ("Q Was the $869,000 number any more meaningful for the note? . . . . . A It was not – it was unsupported, and I think the company and the auditors would not want to. I wouldn't think they would want to report those numbers.").
[776] Tr. (Vol. VII Wen) 2140:17-22.

468. Wen told Wahl that he did not understand the Doty Scott spreadsheet.[777] In response, Wahl told Wen to just "make sure that the formula … can be properly calculated to the ending results;" essentially, to make sure that the math worked.[778]

469. At the time of the Q1 2013, Wahl was aware the Premier had already disclosed to investors that the $5 million promissory not have a preliminary value of $869,000.[779]

470. Wen "never pa[id] attention to … line 27 [which contained the $698,377 Note value]," but rather "just focused on line 17 which is the $869,000 line."[780]

471. In connection with the first quarter 2013 review, Wen prepared a workpaper for the Note valuation.[781] The workpaper consisted of Doty Scott's initial draft spreadsheet with six lines of text that Wen inserted at the top of the summary sheet.[782] Wen's insert purported to describe the purpose of Anton & Chia's review of the Note valuation, the procedures it followed, and the conclusions it reached:

> ***Purpose:*** To evaluate the value of the Note receivable balance as of March 31, 2013 appropreately recorded.
>
> ***Procedures:*** AnC has directly contact the thrid party Appraiser to obtain the valuation report.
>
> AnC team has review the reasonableness of the assumptions, estimates of the fair value.
>
> ***Conclusion:*** Based on the review of the reasonableness of the valuation, AnC agreed that the estimated fair value appropreately presented.[783]

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[777] Tr. (Vol. VII Wen) 2141:1-4 ("Q And did you tell him that you didn't understand the spreadsheet that you got from Doty Scott? A Yes.").
[778] Tr. (Vol. VII Wen) 2140:23-2141:18.
[779] Tr. (Vol. XXII Wahl) 5306:20-25 ("Q So going into the Q1 2013 interim review, you were aware that Premier had already disclosed to investors the $869,000 value for the promissory note, right? A Well, yeah, it's disclosed in the notes, so yes.").
[780] Tr. (Vol. VII Wen) 2130:6-22.
[781] Ex. 860 (Q1 2013 valuation workpaper); *see also* Tr. (Vol. VII Wen) 2134:13-20 ("A Oh, that's [Ex. 860] probably the work paper for our quarterly review of first quarter. Q Okay. Did you prepare the work paper for the first quarter? A Yes.").
[782] Ex. 860.
[783] Ex. 860.

472. But Wen had not carried out the procedures set forth in the workpaper at the time that he inserted the description in the workpaper.[784] He had not "reviewed the reasonableness of the assumption estimates of the fair value" when he prepared the workpaper.[785]

473. Moreoever, because Wen did not understand those assumptions, he could not have reviewed their reasonableness at any time during the quarterly review or the audit.[786]

10. Premier's Q1 2013 Form 10-Q Note Valuation

474. Premier included the Note as an asset worth $869,000 in its financial statements for the first quarter of 2013.[787] The Company also represented that the Note had "been independently valued at approximately $869,000.[788]

475. Premier also reported a gain from the sale of discontinued operations of $985,138 comprised of the purported $869,000 value of the Note and New Eco's assumption of $116,138 in liabilities.[789]

11. New Eco's Default

476. As Donovan had anticipated (*see* ¶ 433, *supra*), New Eco defaulted on the Note. New Eco failed to make the first required payment – an interest payment of $50,000 – to Premier on December 7, 2013. Therefore, by December 22, 2013, the Note was in default.[790]

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[784] Ex. 860; *see also* Tr. (Vol. VII Wen) 2137:5-13 ("Q – this is the report, right? The next sentence says, 'A&C team has reviewed the reasonableness of the assumption estimates of the fair value.' Do you see that? A Yes. Q Had you done that at the time you wrote this in the top? A No.").
[785] Ex. 860; *see also* Tr. (Vol. VII Wen) 2137:14-16 ("Q So how did it work? You wrote down the procedures before you actually did them? A Yes.").
[786] *See* ¶ 462-63, 467, *supra*.
[787] Ex. 404 (Form 10-Q dated Mar. 31, 2013) 3 ("Notes Receivable" of "$869,000"); *id.* at 19 ("preliminary valuation on the note is $869,000").
[788] *Id.* at 20, *see also id.* at 9 ("The preliminary appraised value of the note is $869,000.").
[789] *Id.* at 9.
[790] Ex. 441 (Promissory Note) ¶ 4(a)(listing as an event of default, a failure by New Eco to make "any payment of principal or interest within fifteen (15) days after the same shall become due and payable.").

477. New Eco never paid any interest on the Note.[791] No one from Premier ever made any attempt to collect on Note.[792]

12. The Note-for-Stock Swap

478. On March 4, 2014, Premier entered into an agreement to, among other things, transfer the Note to WePower LLC (the company owned by Marvin Winkler that was the source of many of the green energy assets Premier obtained in December of 2011[793]) in exchange for the return of 2.5 million shares of Premier common stock.[794]

479. The agreement (the Compromise Agreement and Mutual Release, effective March 4, 2014) resolved multiple disputes, among multiple parties.[795] One of those disputes related to Premier's purchase of The Power Company ('TPC'). Winkler had previously promised to return 5,000,000 shares of Premier stock to facilitate the TPC acquisition but had not yet done so:

> Q … Back sometime after the original transaction where you sold your assets to Premier in December 2011, Letcavage mentions that he wants Premier to purchase The Power Company?
> A Correct.
> Q And to help facilitate that purchase, he asks you to return 5 million shares of Premier stock in order to increase the overall percentage ownership that TPC would have if it – if the deal went through?
> A Correct.
> Q But you never actually returned those 5 million shares?
> A Not until later.[796]

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[791] Ex. 839.5 (Donovan Inv. Test. Designations) 82:3-8; Ex. 839.5 (Donovan Dep. Designations) 84:6-12.
[792] Tr. (Vol. V Winkler) 13218:18-21 ("Q Okay. And was Donovan ever successful running his new company such that you were paid anything on that note? A No, he was not. Q Did you ever get – did you ever receive any payments under the note? A No."); Ex. 839.5 (Donovan Inv. Test. Designations) 85:14-21, 88:5-18, 90:23-91:10; Ex. 839.5 (Donovan Dep. Designations) 84:13-15.
[793] *See* ¶¶ 406-409, *supra*.
[794] Ex. 402 (2013 Form 10-K) F-14, Notes 8 and 9 ("The Company acquired assets from WePOWER, LLC during 2011. . . . Subsequent to the period ended December 31, 2013 . . . . Additionally, WePower LLC returned 5,000,000 common shares of the Company previously issued related to the sale of TPC, and in exchange for the promissory note in the face amount of $5,000,00 (and valued at 869,000 on the Company's financial statements as of December 31, 2013), the Company had returned an additional 2,500,000 common shares.").
[795] Ex. 454 (Compromise Agreement and Mutual Release); Tr. (Vol. V Winkler) 1318:18-21 ("Q Okay. And so was this Compromise Agreement and Mutual Release a kind of effort to resolve all those differences? A Correct.")
[796] Tr. (Vol. V Winkler) 1322:12-1323:1.

480. According to Ex. B to the Compromise Agreement, to resolve the dispute related to the TPC Acquisition, "WEPOWER LLC [was to] return 5,000,000 shares of PRHL common stock to PRHL." In addition, "WEPOWER LLC [was to] deliver[ ] 2,500,000 shares of PRHL common stock to [Premier] in exchange for the $5,000,000 Promissory Note executed by Kevin Donovan as President of [New Eco]."[797]

481. Winkler's agreement to return the 5 million shares he had previously promised to return and his agreement to exchange 2.5 million shares for the Note were entirely separate·.[798]

13. Doty Scott's Zero Valuation Report

482. At Premier's request, Doty Scott resumed working on the Note valuation in early April 2014, roughly a year after the firm had last heard from Premier. Premier's request appears to have been prompted in turn by the request of Tommy Shek, the manager on Anton & Chia's audit of Premier's FY 2013 financial statements,[799] for a valuation report.

483. On March 7, 2014, Wen emailed Phil Scott about the upcoming audit of Premier's 2013 financial statements. In his email, Wen told Scott: "the consultant of [Premier] requested to review the "assets [sic] valuation report provide[d] by your Company."[800]

[797] Ex. 454 (Compromise Agreement and Mutual Release) Ex. B.
[798] Tr. (Vol. V Winkler) 1325:8-17("Q So your understanding is that in order to just get all of these disputes resolved in one document, they put it in here? A Correct. Q Okay. But as I understand your testimony, the return of the 5 million shares to facilitate the purchase of TPC and your purchase of the note for 2.5 million shares, [were] entirely separate transactions? A Totally.").
[799] The Premier 2013 audit was staffed by: (a) Monique Lai, Chris Wen, and Ivan Shing as staff; (b) Tommy Shek as the manager; (c) Richard Koch as EQR; and (d) Greg Wahl as engagement partner. Ex. 419 (Planning Memo for Premier 2013 audit); *see also* Tr. (Vol. VIII Shek) 2218:14-2219:2, 2222:1-3.); Ex. 840 (Parties' Second Agreed Stipulation of Facts) ¶ 42 ("Wahl was the engagement partner on Anton & Chia's audit of Premier's FY 2013 financial statements.").
[800] Ex. 455 (Mar. 7, 2014 email from Scott to Wen) SEC-DS-E-3.

484. After reviewing Doty Scott's file, Scott responded that the firm had not prepared a report on the Note valuation: "I went back and reviewed this project. We only issued the excel tables. We have not drafted a report for this project. Upon payment, we will prepare a report."[801]

485. On April 1, 2014, Tommy Shek, the manager on the 2013 audit,[802] reached out to Premier, explaining to Connie Absher, Letcavage's secretary,[803] "[t]he valuation report is how the third party consultant calculate the $5million into $869,000. I only have a file with all number but I assume he will provide an official report."[804]

486. The next day, Absher responded, telling Shek: "I spoke to Randy regarding this email. He feels that you should have everything since it was something that handled in 2012 and should already show up in the 2012 l0K."[805]

487. Shek then checked with Wen about what Anton & Chia had previously received from Doty Scott.[806] He then confirmed to Absher, "What I have so far is only numbers from your third party consultant and I need to spend a lot of time to understand his calculations without anything in writing."[807]

488. Intentionally omitted.

489. On April 3, 2014, Shek reached out to Scott directly to see if Doty Scott would prepare a report: "My understanding is you sent us an excel regarding the asset valuation of a $5

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[801] *Id*. at SEC-DS-E-1.
[802] Tr. (Vol. VIII Shek) 2218:14-2219:2 ("Q Do you recall working on the Premier Holding audit for 2013? A Yes. . . . Q Okay. And what was your role at that time? A I'm the manager there, so – Q You're the audit manager? A Yes.").
[803] Tr. (Vol. XXIII Letcavage) 69:8-20 ("So on April 9, 2014, Doty Scott transmits a valuation arriving at a value of $0. And on the next day, Absher is setting up a call between you and Scott to talk about the valuation, right? A Okay. Q But it's your testimony that you didn't see this $0 valuation? A Yeah. I might not have read my email the day before – . … A – told my secretary in the morning to get ahold of this guy.").
[804] Ex. 461 (email chain) SEC-AC-E-13227 (Apr. 1, 2014 email from Scott).
[805] *Id.* at SEC-AC-E-13226 (Apr. 2, 2014 2:14 PM email from Absher).
[806] Ex. 460 (Apr. 2, 2014 2:59:22 email from Scott to Wen) ("Did you talk to the guy who prepared this schedule? I thought he will issue something in writing so we can understand his calculations.").
[807] Ex. 461 (Apr. 2, 2014 9:39 pm email from Scott to Absher).

million note receivable. Please let us know whether you will officially have a report on your calculation or not."[808]

490. In an April 7, 2014 email, Scott explained to Shek that the Excel spreadsheets Doty Scott had prepared in 2013 were merely a "draft analysis" and that the firm would need additional information in order to complete its analysis and prepare a report:

> Tommy,
>
> I was following up on your inquiry about the valuation of the [Note]. I reviewed this project this morning. We had issued a DRAFT ANALYSIS of the promissory note/enterprise valuation/intangible valuation in March, 2013. In order for us to complete the valuation, we will need the following information:
>
> - Actual date of issuance (it was previously indicated to be a 12/31/12 transaction)
> - Financial statements of the Borrower at issuance of the note
> - Budget/Financial projections of the borrower
> - Status of payment due in November/December 2013
>
> If you have any of this information, please forward.[809]

491. A few hours later, Anton & Chia staff accountant Monique Lai[810] forwarded Scott's email to Shek to Absher, copying Letcavage and another individual.[811]

492. Also on April 7, 2014, Absher told Scott that New Eco had paid "nothing" on the Note and Premier had no financial information from New Eco. She added, "I don't believe we have any bank statements from them. I'm not sure they will be willing to give them to us."[812] Absher closed her email by emphasizing the urgency of the situation: "Please advise us on how we should handle this. We do need to get this completed ASAP."[813]

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[808] Ex. 465 (Apr. 3, 2014 email from Shek).
[809] Ex. 466 at 131 (Apr. 7, 2014 12:02 pm email from Scott) (all caps in original).
[810] Ex. 419 (Planning Memo for Premier 2013 audit) SEC-AC-E-000'1857 (identifying engagement team).
[811] Ex. 466 (Apr. 7, 2014 18:14 pm email from Lai).
[812] *Id.* SEC-NYRO-J-7544 (Apr. 7, 2014 4:20 pm email from Absher).
[813] Ex. 469 (email chain) SEC-NYRO-J-7544 (Apr. 7, 2014 4:20 pm email from Absher).

493. Scott responded the next day, reiterating Doty Scott's need for financial information to prepare the valuation: "Can you forward me the 2012 financial statements for WePower?"[814] He later added: "I need the data to complete the analysis since we have no information from the buyer on the balance sheet or the projections of the buyer."[815]

494. In response to his request for financial statements, Scott received an email from Larry Young. Instead of providing the requested financial statements, Young emailed Scott a copy of the Asset Purchase Agreement and some unspecific, unconfirmed information about financing New Eco might receive, "hoping this is sufficient as we are in a hurry."[816]

495. Although neither New Eco or Premier had provided Doty Scott with the financial information the firm had requested, Doty Scott completed its analysis using the information it had, including WePower Ecolutions's 2012 performance as reported by Premier in its FY 2012 Form 10-K.[817]

496. On April 9, 2014, a week before Premier filed its 2013 Form 10-K, Doty Scott sent Premier a report that valued the Note at $0 (*i.e.*, it was worthless).[818] Consistent with Doty Scott's usual practice, this first report was labeled "DRAFT."[819]

497. In the report, Doty Scott gave the following reasons for valuing the Note at $0:

- The Note was unsecured and secondary to all secured debt obtained by the Borrower.

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[814] *Id*. at SEC-NYRO-J-7543 (Apr. 8, 2014 email from Scott).
[815] *Id*. at SEC-NYRO-J-7542 (Apr. 8, 2014 email from Scott).
[816] *Id*. at SEC-NYRO-J.7542 (Apr. 8, 2014 email from Young).
[817] Tr. (Vol. VII Haddad) 2051:6-20 ("A We did look at the filings, and we did notice that there was some information in the filings on Premier); Tr. (Vol. V Scott) 1453:20-1454:3 ("Q You testified earlier about the lack of revenue and about the losses that Premier had incurred? A Yeah. Q How – how did you know that? A Well, I either was provided that information or I found it in their 10-K. Q Okay. This would be the 2012 10-K? A Yeah.").
[818] Ex. 472 (Apr. 9, 2014 email from Scott transmitting draft report "WePower Eco Corp Promissory Note Valuation as of January 7, 2013" and cover letter).
[819] Tr. (Vol. V Scott) 1350:22-1351:11 (Q Okay. Let's talk about your draft reports for a minute. What are the features of the report that indicates that it's a draft? A We put a watermark on the first page and sometimes multiple pages that say "draft," and then many times at the bottom in the footer, there would be a notation draft. Q Okay. And what about the file name? A The what? Q The file name of the document. A Oh, yeah, the file name. Right. Internally, if the – if we send the document to people, the file name says "draft" in the report name.").

- The Note was for 20 years with no principal payments for 5 years. The interest rate was significantly below market at 2% with interest payments deferred until 11 months after issuance.

- New Eco (the payor under the Note) was a start-up company (incorporated in late 2012) with no known assets other than those obtained in the Asset Sale.

- New Eco had no known revenues.

- New Eco had an undisclosed and unknown quantity of secured and unsecured liabilities.

- The assets transferred by Premier to New Eco generated no revenue for Premier in 2012.

- The assets generated a net loss in excess of $750,000 for Premier in 2011.[820]

- New Eco refused to provide any information regarding its financial status or financial projections.[821]

498. When he testified at the hearing, Scott explained the significance of the factors listed above. For example, he explained the significance of the Note being unsecured:

> A So I said, "The note is unsecured and secondary to all secured debt obtained by the borrower."
> Q Okay. Why is that important?
> A So the ability to receive any proceeds on liquidation or sale of the business is – is diminished, because it has no security. So there's no assets that are secured by it, and it doesn't have a primary debt position. So any primary debt, senior debt would get paid out first.
> Q So if borrower went into bankruptcy, the recovery for the noteholder might be minimal?

[820] The year that the assets transferred to New Eco had generated a loss in excess of $750,000 was 2012, not 2011. Scott acknowledged the typographical mistake. Tr. (Vol. V Scott) 1450:4-10, ("Q Okay. Let's go to bullet 7. A "The assets transferred or operated by the borrower in 2011 generated a net loss in excess of 750,000." One, I'm sure I was referring to 2012. It's probably a typo. But the same year that they operated it, they lost $750,000 in that subsidiary.").
[821] Ex. 472 (Apr. 9, 2014 email from Scott transmitting draft report "WePower Eco Corp Promissory Note Valuation as of January 7, 2013" and cover letter) 53.

A Right. It could be seriously diminished because of the fact that they're unsecured and secondary.[822]

. . . .

Q Okay. Bullet five.

A "The note was issued by a company with undisclosed and unknown quantity of secured and unsecured liabilities." So, again, this ties back to the fact that we're unsecured and secondary. We do not know what senior debt they have and what other unsecured debt they might have. So it's hard to tell where you are in line in the ability to get repaid.[823]

499. And Scott made clear that the other terms of the Note were very unusual and generous to New Eco:

Q Okay. Let's move on to the next bullet. What did you say here?

A So here, "The note is for 20 years with no principal payments for five years. The interest rate is significantly below market at 2 percent with interest payments deferred until 11 months after issuance." So this is indicating that: One, that the terms in the note, in general, are very unusual, right? Typically you wouldn't issue a promissory note for 20 years for this type of a transaction and not have any principal payments for five years. And you wouldn't typically charge an interest rate that's that low and defer any interest payments for almost a year. So on the surface, the terms appear extremely generous under the circumstances.[824]

500. In the report, Doty Scott gave the value of the Note on a discounted cash flow basis, this time with a WAAC of 52.1%, which Scott concluded was more reasonable under the circumstances than the 27.91% used in the initial valuation tables[825] The firm of also estimated the value of New Eco, which served as a cap on the value of the Note. Doty Scott found that the

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[822] Tr. (Vol. V Scott) 1447:2-17.

[823] Tr. (Vol. V Scott) 1449:11-19.

[824] Tr. (Vol. V Scott) 1447:18-1448:10.

[825] Ex. 472 at 48; *see also* Tr. (Vol. V Scott) 1452:11-15 ("And we also did a discounted cash flow analysis. And under the circumstances, we adjusted the WACC to what we thought was a more reasonable WACC under the circumstances, and that netted a value of $272,488.").

net enterprise value of New Eco was less than $10,000 and the net value of New Eco's intangible assets was negative.[826] Accordingly, although the discounted cash flow analysis produced a value of $272,488, Doty Scott concluded that the Note was worthless.[827]

501. Despite its receipt of the Doty Scott zero valuation report on April 9, 2014,[828] in its quarterly and annual financial statements for 2013, Premier continued to represent to the public that the Note had a value of $869,000.[829]

14. Premier's FY 2013 Form 10-K Note Valuation

502. On April 15, 2014, Premier filed its 2013 audited financial statements on Form 10-K and reported the Note as a note receivable valued at $869,000 on its balance sheet.[830] Based on the $869,000 "preliminary valuation" of the Note and New Eco's agreement to assume $116,138 of WePower Ecolutions' liabilities, Premier also reported $985,138 in income from discontinued operations.[831] (Premier treated the entire purported value of the Note as a gain because it had valued the assets obtained from WePower LLC and Green Central at zero, as discussed in Paragraph 420 above.)

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[826] Ex. 472 at 48; Tr. (Vol. V Scott) 1451:11-1452:6 ("So if we took the – we knew what assets and liabilities were transferred into New Eco, and we could come up with knowing what those liabilities were and estimating an enterprise value of 113,000. But we basically said New Eco was essentially worthless, right? Q It was less than 10,000? A It was less than $10,000. So their ability with their current assets to repay a $5 million note was unreasonable. Q So that's the cap, is the way that you referred it to before? A Before. Is, like – if the asset's only worth $10,000, it's hard to argue that the fair value of the promissory note is worth more than the total assets. And then we also valued the intangible assets as much as we had done before, and we came up with $98,000. And netting out their liabilities, that actually comes up with a negative number. So that puts a cap of zero on the note.").

[827] Ex. 472 at 48; Tr. (Vol. V Scott) 1452:16-20 ("So even though the DCF provided a positive value, we felt because of all these other reasons and the fact that the company and the assets that that company owned had little to no value, that the promissory note was worthless.").

[828] Ex. 472 (Apr. 9, 2014 email from Scott transmitting draft report to Young).

[829] Ex. 404 (Q1 2013 Form 10-Q 20 ("The [promissory note has been independently valued at approximately $869,000."); Ex. 40 5(Q1 2013 Form 10-Q) 19 ("preliminary valuation on the note is $869,000."); 406 9 (Q3 2013 Form 10-Q (same);(Premier 2013 Form 10-K) F-4 ("The product line and prospects have been valued at $869,000."), F-9 ("The preliminary appraised value of the note is $869,000.") F-14 ("preliminary valuation on the note is $869,000."); *see also id*. F-2 F-4.

[830]Ex. 402 (2013 Form 10-K) F-2; *see also Id.* at F-4, F-9, F-14.

[831] Ex. 402 (2013 Form 10-K) F-3, F-14.

C. The TPC Acquisition

503. Separate and apart from the Note, Premier entered into another transaction in 2013 that had a significant impact on its reported assets.

504. On February 28, 2013, Premier acquired an 80% interest in The Power Company ("TPC), a deregulated power broker in Illinois,[832] in exchange for 30,000,000 shares of Premier stock (the "TPC acquisition").[833]

505. Premier touted the acquisition in several public statements, and consistently emphasized the number and the value of TPC's customer contracts, which were the source of TPC revenue and receivables.[834] For example:

(a) In a December 27, 2012, open letter to shareholders, Letcavage extolled the acquisition, stating that TPC had "significant assets," including "receivables of over $1,000,000," and "power contracts with 8,600 customers that we believe represent in excess of $8,000,000 of assets that will become part of Premier Holding[.]"[835]

(b) In a February 27, 2013 press release announcing the TPC acquisition, Premier claimed that TPC had "contracts with over 14,000 customers representing assets estimated to be valued from $6,000,000 to $10,000,000."[836]

(c) In a May 30, 2013 press release, Letcavage was quoted as saying Premier believed that TPC's "contracts in hand today are worth approximately $20,000,000 if the company chose to sell them off in the deregulated energy markets" and that "The market value of [TPC's]contracts at year end, December 31, 2013, should exceed $35,000,000 . . . ."[837]

[832]Ex. 840 (Stipulation) ¶ 29 (stipulating that TPC was a deregulated power broker); Ex. 402 (Premier 2013 Form 10-K) 4 ("On February 28, 2013 Premier acquired an 80% ownership interest in [TPC], a deregulated power broker in Illinois.").

[833] Ex. 402 (Premier 2013 Form 10-K) F-11("On February 28, 2013,[Premier acquired 80% of the outstanding membership units of [TPC] . . . for 30,000,0000 shares of Premier's common stock valued at $4,500,000.").

[834] Tr. (Vol. VIII Shek) 2478:12-19 (" Q All right. And do you recall they receive commissions for these contracts; they didn't actually -- A Correct. Q They didn't fulfill energy, right? A Correct. Q They got commissions, right? A Right."

[835] Ex. 411 (Premier Form 8-K dated Dec. 27, 2012).

[836] Ex. 413 (Premier Form 8-K dated Feb. 27, 2013) Ex. 99.1.

[837] Ex. 414 (press release issued May 30, 2013) fourth paragraph.

(d) In its 2013 Q1 Form 10-Q, Premier reported that "[a]s of March 31, 2013, TPC had over 12,000 commercial contracts, and now has almost 18,000." And the Company reported "The Power Company has over 12,000 residential and commercial customers, and has been adding between 1,000 and 1,500 clients per month, and it expects to add over 2,000 residential and commercial customers per month beginning as early as May 2013."[838]

(e) In its 2013 Q2 Form 10-Q, Premier reported that TPC"clos[ed] second quarter 2013 with 18,000 contracts" and had "over 18,500 residential and commercial customers."[839]

(f) In its 2013 Q3 Form 10-Q, Premier reported that TPC "clos[ed] third quarter 2013 with 40,000 contracts" and had "over 18,500 residential and commercial customers."[840]

506. Premier engaged Doty Scott to do a purchase price allocation for the TPC acquisition and Doty Scott requested information it needed to value TPC's assets. [841] The firm never received the requested information, however, and never completed the TPC purchase price allocation.[842]

1. Allocation of the Entire $4.5 Million Purchase Price to Goodwill

507. As discussed above, in its public statements Premier touted TPC's $6 million to $10 million in assets, including receivables and contracts. As discussed in Paragraphs 522, 644X-Y below, these assets were identifiable and should have been assigned a value before the remaining purchase price was recorded as goodwill.

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[838] Ex. 404 (Premier Form 10-Q for the quarter ended Mar. 30, 2013)20, 21.
[839] Ex. 405 (Premier Form 10-Q for the quarter ended June 30, 2013) 12, 21.
[840] Ex. 406 (Premier Form 10-Q for the quarter ended Sept. 30, 2013) 12, 16.
[841] Ex. 451 (Apr. 28, 2013 and May 17, 2013 emails from Haddad requesting information needed to perform the TPC acquisition purchase price allocation); Tr. (Vol. VII Haddad) 2027:4-25 ("Do you recall being engaged to value the – an acquisition of The Power Company? A Yes. It was – yes. Q All right. Did you ever prepare a valuation for that acquisition? A We put together information data requests, and we, again, asked for very similar items as we did before. . . . And then I did work on it, I believe, but I – I never generated any report or anything. I just worked on the models. . . . In anticipation they were going to send this data and retain us and all that kind of stuff. Q Okay. And nothing was ever sent to Anton & Chia – A No.")..
[842] See Tr. (Vol. VII Haddad) 2027:4-25, *supra*.

508. However, in its quarterly and fiscal year 2013 financial statements, Premier attributed no value to any such identifiable assets. Instead, the Company stated that an independent valuation of TPC's identifiable assets and liabilities had not yet been completed.[843] As a result, the Company explained, it was reporting the entire $4.5 million purchase price – the purported value of the 30 million shares Premier issued to the sellers as consideration for the acquisition – as goodwill.[844]

509. The acquisition of TPC, and Premier's decision to recognize the full purchase price from that acquisition as goodwill, was the primary reason that Premier's reported goodwill increased from $138,000 as of December 31, 2012 to $4,555,750 as of December 31, 2013.[845] Goodwill thus became the largest piece of Premier's total reported assets of $6,879,145.[846]

2. Premier's Representations about Goodwill Impairment

510. In its 2013 Form 10-K, Premier stated that it "periodically reviews the carrying value of intangible assets not subject to amortization, including goodwill, to determine whether impairment may exist."[847] Additionally, Premier represented that "[g]oodwill and certain intangible assets are assessed annually, or when certain triggering events occur, for impairment using fair value measurement techniques."[848] Premier further reported that it determined whether goodwill was impaired using a two-step quantitative process and went on to briefly describe the two steps in its financial statements.[849]

511. Premier did not report any impairment of goodwill in its 2013 financial statements. As a result of its representations about its goodwill accounting, readers of Premier's

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[843] Ex. 402 (Premier 2013 10-K) F-11.
[844] *Id.*
[845] Ex. 894 (Amended Premier 2013 Form 10-K) F-11.
[846] Ex. 402 (Premier 2013 10-K) F-2.
[847] Ex. 402 (Premier 2013 10-K) F-8.
[848] *Id.*
[849] *Id.*

2013 financial statements could reasonably have believed that the Company had assessed its goodwill for impairment at least annually and concluded that its goodwill of $4,555,750 was not impaired as of December 31, 2013.

D. Premier's 2013 Financial Statements

512. "Premier's consolidated financial statements as of and for the year ended December 31, 2013, including the footnotes therein, were materially misstated and, therefore, were not presented in conformity with GAAP, due principally to overstating the value of a note, and overstating the value of goodwill."[850]

1. The $869,000 Note Value

513. Premier assigned a value of $869,000 to the Note in its 2013 financial statements. "This amount, recorded and disclosed, did not comply with GAAP because there was no evidence or other documentation to support that value; there was no evidence to conclude that the Note represented a future economic benefit to the Company.[851] Thus, Premier materially misstated its assets and income from discontinued operations in 2013 by overstating the value of the Note.[852] Consistent with this conclusion, the United States District Court for the Central District of California has held that Premier made material misstatements about the value of the Note in its 2013 Form 10-K.[853]

514. The face value of the Note was materially different from its fair value, as Premier itself implicitly acknowledged when it valued the Note at $869,000 in its financial statements. As

[850] Ex. 88.1 (Devor Report) ¶ 9(2).
[851] *Id.* ¶ 417.
[852] *Id.* ¶ 417. *See* Paragraph 529, *infra*, regarding materiality.
[853] Ex. 886 (order granting summary judgment in *SEC v. Premier Holding Corp.*) 11.

a result, ASC 310 required Premier to record the Note at fair value upon acquisition and thereafter to measure it for impairment, *i.e.* the likelihood of collection.[854]

515. By the time that Premier issued its 2013 financial statements, Doty Scott had determined that the fair value of the Note upon acquisition was $0. Accordingly, Premier was required by GAAP to record the Note at its fair value, which Doty Scott had determined was $0.[855] Instead, the Company improperly reported a value for the Note in its 2013 financial statements that was not based on any current financial measures" [856] and which the Company's valuation expert had said was not to be used in its public filings.[857] The Company also falsely suggested that a valuation was ongoing.[858]

516. By reporting the Note at a value of $869,000, Premier materially misstated its reportable assets. The reported value of the Note (*i.e.*, $869,000) was the second largest asset, after goodwill, on Premier's December 31, 2013 balance sheet.[859] "Premier also improperly recognized a gain of $985,138 from discontinued operations in 2013 largely based on the inflated value of the Note."[860] Therefore, Premier's 2013 financial statements contained material misstatements and were not prepared in accordance with GAAP.[861]

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[854] Paragraphs 25, 26 above*;* Ex. 88.1 (Devor Report) ¶ 419.
[855] Ex. 88.1 (Devor Report) ¶ 422.
[856] Ex. 88.1 (Devor Report) ¶ 422.
[857] Ex. 447 (Mar. 29, 2013 email from Scott).
[858] Ex. 402 F-9 ("The gain is based upon the estimated value of the $5,000,000 note received in the transaction. The provisional amounts are subject to revision are completed. . . .The preliminary appraised value of the note is $869,000." F-14, Note 8 ("preliminary valuation on the Note is $869,000").
[859] Ex. 402 (Premier 2013 Form 10-K) F-2 balance sheet (reporting goodwill of $4,555,750 out of total asset value of $6,879,145).
[860]Ex. 88.1 (Devor Report) ¶ 423.
[861] Ex. 88.1 (Devor Report) ¶ 423.

2. The $4.5 Million TPC Goodwill

a. Valuation of the Acquisition

517. Premier assigned a value of $4.5 million to the goodwill acquired in the acquisition of TPC ("TPC goodwill"). "This amount, recorded and disclosed in the Company's 2013 financial statements, did not comply with GAAP. Premier should have assigned a value to the thousands of ostensibly valuable customer contracts it obtained as part of its acquisition of TPC."[862]

518. Premier's acquisition of its 80% interest in TPC should have been recorded using the acquisition method in accordance with ASC 805, *Business Combinations*.[863]

519. Goodwill represents the value of an enterprise *after* taking into account the value of identifiable assets, such as contracts.[864]

520. In its FY 2013 financial statements, Premier represented that "an independent valuation of TPC's identifiable assets and liabilities had not yet been completed."[865] Such a valuation was never completed.[866]

521. As discussed at Paragraph 506 above, although the Company had retained Doty Scott to perform the valuation, the firm did not receive the information it needed to do the valuation. Doty Scott therefor never performed the work and never provided Premier with a draft of a valuation report/purchase price allocation, or even preliminary calculations.

522. Premier allocated the entire purchase price of the TPC acquisition to goodwill. As shown at Paragraphs 505-507 above, however, the Company repeatedly touted the number and the value of TPC's contracts. In addition, in a September 19, 2013 email Joseph Greenblatt, one

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[862] Ex. 88.1 (Devor Report) ¶ 424.
[863] Ex. 88.1 (Devor Report) ¶ 426.
[864] Paragraphs 18, 19 above.
[865] Ex. 402 (Premier 2013 10-K) F-11.
[866] Paragraph 508.

of the Company's accounting consultants, told Larry Young that Premier had valued the TPC stake based on its customers:

> When we acquired The Power Company USA, LLC. (TPC) they had approximately 12000 customers.
>
> Our valuation of the TPC was solely based upon the value of those customers.[867]

523. According to Rosenberg, Premier's accounting consultant, Anton & Chai knew that Premier had valued TPC based on its customer contracts[868] and Rosenberg would have provided Anton & Chia with worksheets he had received from TPC showing that TPC was adding 1500 to 2000 contracts each month.[869] Similarly, Letcavage would have provided Anton & Chai with information about the number and value of the TPC contracts if the auditor had asked for it.[870]

524. Thus Premier's allocation of the full TPC purchase price, $4.5 million, to goodwill violated GAAP.[871]

b. Failure to Assess the TPC Goodwill for Impairment

525. Intentionally omitted.

526. In discussing its goodwill in its 2013 financial statements, Premier reported that it performed the two-step quantitative assessment when periodically reviewing goodwill for

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[867] Ex. 478 (email Sept. 19, 2013 from Greenblatt).
[868] Tr. (Vol. VII Rosenberg) 2191:13-18 ("Q So fundamentally was it the case that the value for TPC was based on its customer contracts? A Yes. Q And to your understanding, did Anton & Chia know that fact? A Yes.")
[869] Tr. (Vol. VII Rosenberg) 2192:21-2193:5. ("Now, focusing on that last sentence, where did that information come from that The Power Company was adding 1500 to 2,000 new contracts each month? A From the The Power Company provided to us and their worksheets that they had. Q In turn, was this information about the contracts at The Power Company had conveyed by Premier to the auditors, Anton & Chai? A Yes."); 2194:7-19.
[870] Tr. (Vol. XXIII Letcavage) 5788:3-7 ("Q Now, if Anton & Chia had asked you for any information regarding the number or value of TPC's customer contracts, you'd have provided it to them, right? A Yes.").
[871] Ex. 88.1 (Devor Report) ¶¶ 424, 439.

impairment.[872] In this discussion, Premier did not mention the optional qualitative assessment, suggesting that it did not perform such an assessment in 2013.[873]

527. Anton & Chia did not receive a goodwill impairment analysis from Premier [874] So, instead, Anton & Chia "look[ed] at goodwill impairment" itself.[875]

528. "Considering the magnitude of its reported goodwill, Premier's 2013 financial statements included a material misstatement, and thereby violated GAAP, when Premier disclosed in such statements that it performed a quantitative assessment to evaluate its goodwill for impairment at least annually" but did not do so.[876]

E. Materiality of the Note Valuation and TPC Goodwill

529. In its FY 2013 financial statements, Premier reported total assets of $6,879,145 as of December 31, 2013, an increase of over $6,000,000 from December 31, 2012.[877] Together, the Note and the TPC goodwill represented 78% of Premier's reported assets as of December 31, 2013.[878] The Note was also Premier's largest asset other than goodwill.[879]

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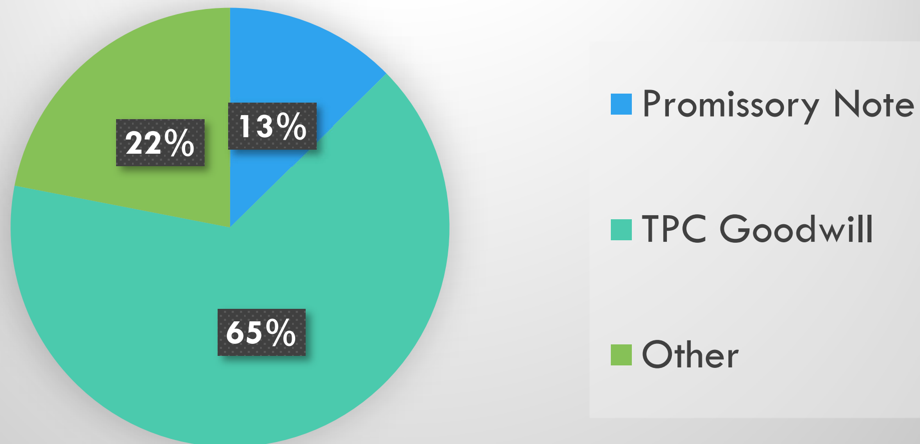
[872] Ex. 402 (Premier 2013 Form 10-K) F-8.
[873] *Id*. F-8.
[874] Tr. (Vol. VIII Shek) 2268:12-14 ("Q. Did you ever get an impairment analysis from the company? A. No.").
[875] Tr. (Vol. VIII Shek) 2269:1-8 ("Q In any event, do you recall, was it something that the engagement team did on its own, look at goodwill impairment? . . . . THE WITNESS: Yes."). *See also* Ex. 428 (goodwill impairment memo).
[876] Ex. 88.1 (Devor Report) ¶ 447.
[877] Ex. 402 (Premier 2013 Form 10-K) F-2.
[878] *Id.*
[879] *Id*.



530. In its FY 2013 financial statements, Premier reported a loss of $5,190, 013. The income attributable to the $869,000 Note valuation reduced the Company's losses by roughly 16.74%.[880]

F. The Premier 2013 Audit

1. The 2013 Audit Report

531. Premier's FY 2013 Form 10-K included a report from Anton & Chia representing that the auditor had audited Premier's FY 2013 financial statements in accordance with applicable professional standards and expressing its opinion on Premier those 2013 financial statements.[881]

532. In its report, Anton & Chia represented that it had "conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board."[882] Those standards, Anton & Chia stated, "require that we plan and perform the audits to obtain

[880] *Id.* at F-3.
[881] *Id.* at F-1.
[882] *Id.*

reasonable assurance about whether the consolidated financial statements are free of material misstatement."[883]

533. In the report, Anton & Chia also opined that Premier's financial statements were materially accurate: "In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of the Company as of December 31, 2013 and 2012 and the results of their consolidated operations and their cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States."[884]

534. This effectively unqualified (or "clean") audit opinion offered an assurance to investors that Premier's financial statements "present[ed] fairly, in all material respects, the consolidated financial position" of the Company "in conformity with accounting principles generally accepted in the United States." Anton & Chia thus represented that it had performed sufficient procedures to arrive at its opinion.

535. In fact, as shown above, Premier did not account for the Note or the TPC acquisition in conformity with GAAP. And as shown below, Anton & Chia and Wahl failed to conduct Anton & Chia's audit of Premier's 2013 financial statements in accordance with PCAOB standards. Specifically, as shown below and in the report and testimony of the Division's expert witness, they failed to:

(1) Exercise the required due professional care and professional skepticism as required by AU 230 (Due Professional Care in the Performance of Work);

(2) Properly document purported procedures performed by the engagement team in accordance with AS 3 (*Audit Documentation*);

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[883] *Id.*
[884] *Id.*

(3) Obtain appropriate sufficient audit evidence in accordance with AS 14 and AS 15 (*Evaluating Audit Results*, and *Audit Evidence*);

(4) Adhere to the requirements of an auditor when assessing the work of a specialist in accordance with AU 336 (*Using the Work of a Specialist*);

(5) Consider fraud in accordance with AU 316 (*Consideration of Fraud in a Financial Statement*) by failing to properly evaluate and consider the circular and unusual nature of the transactions that Premier entered into surrounding the Note; and

(6) Appropriately consider and/or address known red flags.[885]

536. Anton & Chia's audit report contained two qualifications – a going concern qualification[886] and a related-party qualification.[887] Those qualifications were unrelated to the reported value of the Note or the TPC goodwill or the quality of Anton & Chia's audit. As the Division's expert made clear, a going concern qualification does not relieve the auditor of its responsibility to comply with PCAOB standards.[888]

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[885] Ex. 88 (Devor Report) ¶¶ 556, 596, 600.

[886] Ex. 402 (Premier 2013 Form 10-K) F-1 ("The consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As shown in Note 3 to the consolidated financial statements, the Company has incurred an accumulated deficit of $13,146,885 from inception to December 31, 2013. This raises substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to this matter are described in Note 3. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.").

[887] *Id*. ("As discussed in Note 6 to the consolidated financial statements, during the year ended December 31, 2013, the Company made payments to Nexalin Technology. Nexalin Technology is in an unrelated business to the Company, and Letcavage is its president and a shareholder. In addition, the Company has also made payments to iCapital Advisory, which Letcavage serve as President.").

[888] Tr. (Vol. IV Devor) 1210:17-1211:17 ("Q. Devor, in your expert opinion, does it – does a going concern disclosure or warning in an audit opinion minimize or absolve an auditor's responsibility for conducting an appropriate audit? A. Of course not. Q Does it have any bearing on the quality of an audit that an auditor is required to perform? A. No. Q. Why not? A. There's an opinion that was shown on that screen, I believe when Deutchman was up here, Anton & Chia's opinion. It was a statement that says we conducted the audit in accordance with PCAOB standards. So you're not absolved of performing an audit in accordance with Generally Accepted Auditing Standards, PCAOB standards, just because the company is struggling to make money. … By the way, if you were, why would you do the audit? Think about that. Common sense. Why – if it didn't matter what you did or the audit didn't matter, why would you go to the expense of hiring an auditor to do the audit if you
Didn't have to because there's a going concern statement?").

2. The Audit Team

537. The audit team for the 2013 Premier audit included Wahl as the engagement partner,[889] Richard Koch as the EQR, Tommy Shek as audit manager, and Monique Lai, Ivan Shing, and Chris Wen as staff.[890]

538. "As the Engagement Partner, Wahl was responsible for ensuring that Anton & Chia conducted its audit in accordance with PCAOB standards."[891]

539. Exhibit 417 is Anton & Chia's Workpaper Sign Off History Report for the 2013 Premier audit. Among other things, the report identifies the workpapers Wahl reviewed and the dates on which he reviewed them.

540. Wahl signed off on 150 workpapers on the Premier audit in a one-week timespan between April 10 and April 15, 2014, the day that Anton & Chia issued its unqualified audit opinion.[892] Specifically, Wahl signed off on:

- 36 workpapers on April 10;
- 60 workpapers on April 14; and
- 54 workpapers on April 15, 2014.[893]

541. Ex. 417 shows that Wahl signed off on an important workpaper about the valuation of the Note (Ex. 423.xlsx (WP REF 4451 - Note Receivable Valuation) on April 15,

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[889] Ex. 840 (Parties' Second Agreed Stipulation) ¶ 42 (stipulating that Wahl as the engagement partner, on Anton & Chia's audit of Premier's FY 2013 financial statements).
[890] Ex. 419 (Engagement Planning Memorandum) SEC-AC-E-1857 (listing Wahl, Koch, Shek, Shing, and Lai); *see also* Tr. (Vol. VII Wen) 2143:8-10 ("Okay. So were you staffed on the 2013 audit for Premier? A Yes."); Tr. (Vol. VIII Shek) 2218:14-2219:2 ("Q Do you recall working on the Premier Holding audit for 2013? A Yes. . . . Q Okay. And what was your role at that time? A I'm the manager there, so – Q You're the audit manager? A Yes."); *Id.* at 222:1-3 ("Q Did Chris Wen work on the audit for Premier 2013? A Yes.").
[891] Ex. 88.1 (Devor Report) ¶ 453.
[892] Ex. 402 (Premier 2013 Form 10-K) attestation showing filing date; Ex. 403 (Anton & Chia report signed Apr. 15, 2014).
[893] Ex. 417 (Workpaper Sign Off History Report) Bates number 144; Ex. 88, Ex 4 (Summary of the Documents Signed Off by Wahl for the 2013 Audit of Premier, Based On Anton & Chia's Sign Off History Report).

2014, the day that Anton & Chia issued its audit opinion.[894] (The Workpaper Sign Off History Report for the 2013 Premier audit (Ex. 417) indicates that Wahl Wahl did not review the note receivable valuation memo (Ex. 424 (WP REF 4452 - Note receivable valuation memo), the other workpaper about the value of the Note.)

542. Anton & Chia generated records of the time spent by individuals working on the 2013 audit of Premier.[895] Based on the timesheets, Wahl spent a total of 8.5 hours on the audit.[896] He spent only three hours on the audit the week before issuing the unqualified audit opinion on April 15, 2014. Specifically, he spent:

- 1 hour on April 10;
- 0.5 hours on April 11;
- 1 hour on April 13; and
- 0.5 hours on April 15.[897]

543. On April 15, 2014, the day that he signed off on 54 workpapers (including one of the two Note Valuation workpapers),[898] Wahl spent only 0.5 hours on the audit.[899] Thus, he signed off on 54 workpapers in 30 minutes.

3. Deficiencies Involving the Note

a. Plans for Auditing the Note

544. Anton & Chia and Wahl recognized the significance of the Note in planning the audit. In a planning document titled *Audit Planning Memorandum as of December 31, 2013*,[900] the engagement team determined that they would address two financial assertions at the account

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[894] Ex. 417 Bates number 144.
[895] Ex. 418 (Anton & Chia Employee Daily Activity with Reference WIP Date From 7/1/2013 to 7/1/2014).
[896] Ex. 418 2.
[897] *Id.*
[898] Ex. 88 (Devor Report) Ex. 4.
[899] Ex. 418 at 875.
[900] Ex. 419 (WP REF 1001 - Audit Planning Memorandum as of Dec. 31, 2013).

level: (1) the notes receivable balance, *i.e.,* the value of the Note, which was Premier's only note receivable; and (2) the value of goodwill.[901]

545. With respect to Premier's "Notes receivable" asset (*i.e.,* the Note), Anton & Chia planned the following audit procedures:

> Valuation – [Anton & Chia] will test the assumptions for the discounted cash flow for the $5 million note receivable [*i.e.,* the Note] from disposal of Wepower Co in Q1 2013.
>
> Existence – [Anton & Chia] will send direct confirmation to verify the balance as of 12/31/2013 and also reconcile with the disposal agreement between [Premier] and the buyer.[902]

Thus, Anton & Chia & Wahl knew that Anton & Chia had to address the risks associated with Premier's assertions about the value and the existence of the Note.

b. Deficiencies in Testing Management's Assertion of Value

546. "Anton & Chia and Wahl failed to follow professional standards in the testing of the Note's reported value of $869,000. Based on the workpapers" and testimony, Anton & Chia and Wahl "failed to engage in any meaningful analysis at all."[903]

547. "Anton & Chia's purported 'analysis' was inadequate, and so were its workpapers. Anton & Chia and Wahl failed to exercise due professional care and professional skepticism, and failed to document purported procedures performed by the engagement team surrounding Doty Scott's Excel files. As a result, they failed to obtain sufficient appropriate audit evidence that supported the Note's reported value of $869,000 in Premier's 2013 financial statements."[904]

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[901] Ex. 419 at SEG-AG-E-1854.
[902] *Id.*
[903] Ex. 88.1 (Devor Report) ¶ 461; Tr. (Vol. XXV Devor) 5864:23-5865:3 ("Q Has any of the testimony that you've heard or read caused you to change any of the opinions that are reflected either in your expert report or the opinions you earlier offered at this hearing? A No.").
[904] Ex. 88.1 (Devor Report) ¶ 467.

548. Anton & Chia and Wahl knew that the engagement team needed to test the significant assumptions underlying the valuation of the Note. In fact, the Audit Planning Memorandum stated: "Valuation – ANC will test the assumptions for the discounted cash flow for the $5 million note receivable from disposal of Wepower Co in Q1 2013."[905]

549. Anton & Chia's workpapers treated Doty Scott's Excel spreadsheets (*i.e.,* the initial valuation tables) as the work of a specialist.[906]

550. The workpapers and the testimony of Wen, Shek, and Wahl himself show however, that neither Wahl nor anyone else on the audit team "obtain[e] an understanding of the methods and assumptions used by the specialist" or "ma[d]e appropriate tests of data provided to the specialist," as required by AU 336.[907]

551. Moreover, Anton & Chia and Wahl "failed to evaluate the 'specialist's findings,' because they reviewed Doty Scott's draft Excel spreadsheets and not its report valuing the Note at $0,"[908] which set forth and explained the firm's findings.[909]

552. Wen, who was charged with doing the audit work on the Note valuation, did not understand the methods or assumptions used by Doty Scott in creating the spreadsheets. As discussed at Paragraphs 462, 463, 467 above, he had no experience with valuations and was unable to understand the spreadsheets even after he spoke with Phil Scott during the 2013 Q1 quarterly review.

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[905] Ex. 419 (WP REF 1001 - Audit Planning Memorandum as of Dec. 31, 2013) 3.
[906] *Compare* Anton & Chia procedures described on Exs. 423, 424, and 860, *with* Paragraph 71 above (setting forth requirements of AU 316).
[907] *See* Paragraphs 462-473, above.
[908] Ex. 88.1 (Devor Report) ¶ 465; *see also* ¶ 474 ("AU 336 contemplates reliance on a specialist's 'findings.' But here, Anton & Chia and Wahl relied on drafts.").
[909] Ex. 472 (Apr. 9, 2014 draft Doty Scott Note valuation report).

553. According to the workpapers, for the audit Wen "checked the qualification of the appraiser company and confirmed that they are SEC compliance corporate valuation."[910] Other than checking Doty Scott's credentials, Wen performed no additional work on the Note valuation for the audit.[911]

554. Shek also did not understand the Doty Scott spreadsheets:

> Q Okay. If you did, was – do you recall, was that – were you able to, after looking at the Excel file and getting behind the formulas, able to understand what the appraiser did?
> A No.
> Q So you, at no point on this audit, did you ever understand what the appraiser did?
> A Yes.
> Q And you couldn't understand whatever the methodologists that he used –
> A No.
> Q – or the assumptions that he made?
> A No.
> Q Or where the facts came from, the information came from for this spreadsheet?
> A No.[912]

555. Shek knew, and Wahl knew or recklessly disregarded that Doty Scott had not yet "complete[d] the valuation." Shek wanted to get a report from Doty Scott so that he could understand the spreadsheets. As discussed in Paragraphs 482-490 X-Y above, in March and April of 2014, when Wen and Shek tried to get a copy of a Doty Scott report, Phil Scott repeatedly told they that the firm had not completed its analysis, and had not issued a report.[913]

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[910] Ex. 423.
[911] Tr. (Vol. VII Wen) 2157:20-2158:7 ("Q ... in the 2013 audit, did you perform any additional work testing the $869,000 value of the promissory note? A No. Q Okay. So there were no additional calculations that you made? A No. Q Did you check any assumptions? A The procedure has to be performed during a Q1. No, I did not perform – Q So no further procedures? A No.").
[912] Tr. (Volume VIII Shek) 2237:9-24.
[913] Ex. 455 at SEC-DS-E-1 (email Mar. 7, 2013 from Scott to Wen)("We have not drafted a report for this project."); Ex. 466 at 131 (Apr. 7, 2013 email from Scott to Shek ("We had issued a DRAFT ANALYSIS . . . ." All caps in original); ((Vol. VIII Shek) 2238:25-2239:5 ("Q Did you ever get a written report from Doty Scott that explained how they arrived at the valuation for the note? A No. Q Did you try to get such information? A Yes.").

556. Shek discussed with Wahl the issues he was having getting sufficient information to audit the note valuation.[914] Shek told Wahl that "we just have an Excel file from Doty Scott … [n]othing else."[915]

557. Because he was unable to understand the spreadsheets, Shek refused to sign off on the Note valuation workpapers:

> Q So you didn't sign off on the part of the audit related to the note valuation?
> A Yes.
> Q And why is that?
> A I just don't understand this.
> Q And you felt that you needed to understand it in order to sign off?
> A Yes.[916]

558. Shek also knew and Wahl knew or recklessly disregarded that Doty Scott required more information in order to complete its analysis, including financial statements and financial projections for New Eco. In an April 7, 2014, Scott reiterated to Shek that the firm had prepared only a "DRAFT ANALYSIS." [917] In his email, Scott also listed the information Doty Scott needed to complete the valuation, including New Eco financial statements and a budget or financial projections and information about the status of the payment on the Note that had been due before the end of 2013.[918]

559. Anton & Chia and Wahl "should have followed up with Doty Scott about the status of its valuation report." [919] Doty Scott ultimately issued its report on April 9, 2014 (Ex.

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[914] Tr. (Vol. VIII Shek) 2255:19-23 ("Q. Did you ever talk to Greg Wahl about the issues you were having getting information in order to conduct the audit of the note valuation? A. Yes."); *see also* Ex. 461 (Apr. 1, 2014 email chain with Shek) ("Let me discuss with Greg.").
[915] Tr. (Vol. VIII Shek) 2255:24-2256:3 ("Q Okay. And tell me, what was discussed? What did you tell him? A I just told him, like, we just have an Excel file from Doty Scott for the promissory notes. Nothing else.").
[916] Tr. (Vol. VIII) 2257:9-16.; Ex. 417 at Anton & Chia- Premier 143-44 (showing that Wen and Wahl signed off on WP 4451 but Shek did not and that Wen signed off on WP 4452 but Shek did not).
[917] Ex. 466 at Bates No. 131 (Apr. 7, 2014 email from Scott to Shek).
[918] Ex. 466.
[919] Ex. 88.1 (Devor Report) ¶ 471.

473), **before** Anton & Chia issued its audit opinion on April 15, 2014 (Ex. 403]). If they had followed up with Doty Scott, Anton & Chia and Wahl would have known that Doty Scott valued the Note at **$0**.

560. "Anton & Chia and Wahl violated professional standards by relying on Excel spreadsheets that were unfinished. AU 336 contemplates reliance on a specialist's 'findings.' But here, [Anton & Chia] and Wahl relied on drafts."[920]

561. Anton & Chia's and Wahl's "failure . . . to follow up with Doty Scott and inquire about the status of the valuation was a glaring violation of auditing standards."[921]

562. This is all the more true if, as he claims, Wahl analyzed Doty Scott's work and disagreed with the firm's supposed "double discounting" of the Note.[922] Had Wahl talked to Scott or Haddad he would have learned, among other things, that the fair values of the Note and the enterprise were calculated independently;[923] there was no double counting.[924]

563. But, with the exception of Wen's conversation with Scott during the Q1 review, no one from Anton & Chia asked how the $698,000 promissory note valuation was calculated.[925]

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[920] Ex. 88.1 (Devor Report) ¶ 474.
[921] Ex. 88.1 (Devor Report) ¶ 472.
[922] Tr. (Vol. XXII Wahl) 5359:7-18 ("Q Did – that's what Doty Scott believed that the fair value of the promissory note was, right? 698,377? A I don't know if he did or not. Q Okay. But you disagreed with that figure, right? A Based on my professional judgment and my experience and my finance background in looking at various valuations, I believe that double discounting the cash flows was inappropriate from a methodology standpoint and from a theoretical standpoint."); *id.* at364:25-5365:8 ("Q Okay. And did you have any discussions with Doty Scott's firm or Phil Scott or anyone at Doty Scott's firm about this double discount issue? A No. I didn't, because I didn't really want to get into a – you know, what I call a pissing match with the valuation firm that was on a booking of an asset at its historical cost for the reporting period – reporting requirements.").
[923] Tr. (Vol. XXV Scott) 6015:8-19 ("Q So the fair value of the enterprise, the methodology used for that has nothing to do with the methodology that you used to determine the fair value of the promissory note? A No. These two first sets of calculations were done to put a cap on the value of the promissory note. Q Okay. And just, for the record, the same is true of the fair value of the IP, right? That has nothing to do with the fair value of the promissory note, the methodology? A No. Right. They're not dependent").
[924] Tr. (Vol. XXV Scott) 6009:22-25 ("Q Did you apply that discount rate twice in determining the $698,000 value? A No. It's applied one time to these contractual cash flows.").
[925] Tr. (Vol. XXV Scott) 6009:10-13 ("Q Did anyone from Anton & Chia ever ask you how the $698,000 promissory note value was calculated? A Not that I recall.").

564. Instead of acknowledging the lack of a final report from Doty Scott, Anton & Chia and Wahl relied on the draft Excel spreadsheets that Doty Scott prepared as a template in 2013. They treated Doty Scott's draft spreadsheets as if they were a final report that definitively opined on the value of the Note.[926]

565. Wahl appears to have addressed the absence of a Doty Scott report by telling Wen to "roll forward" the workpaper from the Q1 quarterly review, saying that because there had been no changes, Anton & Chia could use that workpaper to support the year-end Note valuation.[927]

c. WP REF 4451 (Ex. 423)

566. "Anton & Chia's documentation of its purported review was cursory and conclusory."[928] The test for audit documentation "is for someone who has never had anything to do with a job and is not familiar with the job, to be able to go back to the work papers and recreate the work that was done and presumably reach the same conclusions." [929]

567. Based on the workpapers, it is not possible to ascertain what, if anything, Anton & Chia] did to assess the value of the Note."[930] Moreover, the workpapers fail to address numerous issues that, at a minimum, called into question their value as audit evidence.

568. Wen prepared two workpapers concerning the Note valuation for the audit. First, he created the rolled-forward workpaper, WP REF 4451 (Ex. 423). Second, at the request of

[926] Ex. 423; Ex. 88.1 (Devor Report) ¶ 473.
[927] Tr. (Vol. VII Wen) 2153:22-2154:7 ("Q But did you talk to Wahl about what to put in the work paper for the 2013 audit? . . . . Q And what did he tell you to do with respect to the work paper on the note valuation for the 2013 audit? A I don't remember 100 percent the conversation, but I do remember he request me to roll forward the work paper from Q1. And since there were no changes, then we can use that to support a yearend number.").
[928] Ex. 88.1 (Devor Report) ¶ 501.
[929] Tr. (Vol. XXV Devor) 5870:18-22; 5872:3-16 (quoting AS 3); see also Paragraph 84 above.
[930] Ex. 88.1 (Devor Report) ¶ 501.

Wahl or Shek, he prepared a second workpaper for the Note valuation: a one page memorandum, WP REF 4452 - *Note receivable valuation memo* (Ex. 424).[931]

569. WP REF 4451 (Ex. 423) is almost identical to the Note valuation workpaper for the Q1 review. It is a copy of the same Doty Scott "initial valuation" Excel workbook that had served as the Note valuation workpaper for the Q1 review (see Paragraphs __ above) with the addition of an additional procedure in the legend that Wen inserted at the top of the first page:

Purpose: To evaluate the value of the Note receivable balance as of March 31, 2013 appropreately recorded.

Procedures: AnC has directly contact the thrid party Appraiser to obtain the valuation report.

AnC team has review the reasonableness of the assumptions, estimates of the fair value.

Note: AnC has checked the qualification of the appraiser company and confirmed that they are SEC compliance corporate valuation. In addition, AnC has walkthrough with Phil Scott for all the key assumptions of the valuation schedule.

Wen added "AnC has checked the qualifications of the appraiser company and confirmed that they are SEC compliance corporate valuation." Wen neglected, however, to change the "as of" date of the workpaper from March 31, 2013 to December 31, 2013.[932]

570. WP REF 4451 (Ex. 423) contained very little original work product. Wen copied the Excel spreadsheets that Doty Scott had provided in 2013 (Ex. 452), and added a few sentences of [his] own (and a few tickmarks). Those few sentences added by Wen supposedly documented the purpose, nature, and results of the testing that supposed Anton & Chia performed.

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[931] Tr. (Vol. VII Wen) 2158:8-23 ("Q Now, did you have occasion to perform an additional work paper during the 2013 audit about the promissory note valuation? There was a one-page memorandum called "work paper 4452"? A Yeah, I think that's – that's one of them I did. Q Okay. So you remember that? A Yeah, yeah. Q All right. So in – did – who asked you to provide – to prepare the additional work paper 4452? A I forgot. Either Tommy or Greg Wahl, or both of them said we need to prepare a memo. Q Okay. So either one of them asked you to do the memo? A Yeah.").

[932] *Compare* Ex. 860 *with* Ex. 423; Tr. (Vol. VII Wen) 2156:20-2157:1 ("Q Right. Do you think that it's possible that you forgot to change the date when you made the audit work paper? A There's a possibility. But I can't say. I'm pretty sure I messed up the date, but – Q No, no. But it's possible – A Yeah."); Ex. 840 (Parties' Second Agreed Stipulations of Fact) ¶ 14 ("[T]he working papers produced and identified are believed to be true and correct copies of working papers prepared in support of the audits and reviews at issue.").

571. WP REF 4451 (Ex. 423) states that "[Anton & Chia] has directly contact[ed] the [third] party Appraiser to obtain the valuation report." But Anton & Chia did not even obtain a valuation report, much less rely on it. Instead, Anton & Chia obtained draft spreadsheets: Doty Scott's "initial valuation" tables. The workpaper also does not say who from Anton & Chai "directly contacted the Appraiser" or carried out the other procedures supposedly performed to obtain the audit evidence needed to approve Premier's valuation of the Note.

572. WP REF 4451 (Ex. 423) also states that Anton & Chia reviewed the "reasonableness of the assumptions." Yet the workpaper does not reveal what assumptions Anton & Chia evaluated, or how it determined if they were reasonable, or why it reached its conclusion.[933]

573. "Tickmarks are symbols or notations used on workpapers to denote auditing procedures performed or to provide explanations."[934] As shown at Paragraphs 468 above, the tickmarks Wen inserted in WP REF 4451 (Ex. 423) indicated simply that he had made sure the number was the correct result of the formulas contained in the workbook. The workpaper, however, provides no explanation of what the tickmarks represent, or why they are there.

574. WP REF 4451 (Ex. 423) also omits significant information.[935]

575. For example, WP REF 4451 (Ex. 423) does not acknowledge that the financial projections were not financial projections of New Eco*,* the payor under the Note. Instead, the projections were for WePower Ecolutions, the subsidiary of Premier, once it purchased the assets from WePower LLC.[936]

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[933] Ex. 88.1 (Devor Report) ¶ 504.
[934] *Id.* ¶ 505.
[935] *Id.* ¶¶ 468, 473, 489-490.
[936] Ex. 423 Financial Projections tab.

576. The workpaper also does not acknowledge that the financial projections underlying Doty Scott's spreadsheets were out of date.[937]

577. As shown at Paragraph 4 above, Haddad had used financial projections for WePower Ecolutions that it had received in early 2012 to build the models reflected in the initial valuation tables, and thus WP REF 4451 (Ex. 423).

578. Accordingly, the projections were prepared at least eleven months before Premier acquired the Note in January 2013. And by the time that Anton & Chia conducted the 2013 audit in April, 2014, the financial projections were more than two years old.

579. "Old financial projections for WePower Ecolutions were not a reliable basis for assessing New Eco's future ability to pay the Note."[938]

580. WP REF 4451 (Ex. 423) does not reflect the fact that Anton & Chia knew that it had received only Excel spreadsheets, and not a valuation report. The workpaper also "does not reflect that Doty Scott's work was tentative, and unfinished because Doty Scott lacked necessary information when it provided the draft spreadsheets to Premier and to Anton & Chia.

581. Wahl knew or recklessly disregarded that the Doty Scott spreadsheets were unfinished. As discussed below, the Doty Scott spreadsheets contained numerous indicia that they were not a final work product for the valuation of the Note.

582. It should have been obvious to Anton & Chia and Wahl that Doty Scott's Excel spreadsheets used out-of-date projections for the wrong company.[939] Even a cursory read of the "Financial Projections" tab reveals that it involves the wrong transaction between the wrong companies in the wrong year. The top of that page reads, in bold type: "**Asset Sale Valuation**

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[937] Ex. 88.1 (Devor Report) ¶ 479.
[938] Ex. 88.1 (Devor Report) ¶ 484.
[939] Ex. 88.1 (Devor Report) ¶ 485.

(WePower, LLC to WEPOWER Ecolutions, Inc.) as of 12/31/12." But the valuation was supposed to be about the Note, which New Eco (a/k/a WePower Eco Corp.) – **not** WePower, LLC – transferred to WePower Ecolutions in 2013.

583. Similarly, the other tabs in WP REF 4451 (Ex. 423) should have made it obvious to Anton & Chia and Wahl that Doty Scott used information about a different transaction. Many of the tabs contain the following header, in bold print: "**Asset Sale Valuation (WePower, LLC to WEPOWER Ecolutions) as of 12/31/12**." That header repeatedly confirmed that the spreadsheets addressed the sale of assets from WePower, LLC to WePower Ecolutions, **not** the later transfer of the Note by New Eco.

584. Other tabs in WP REF 4451 should have been a red flag that Doty Scott's spreadsheets did not address the value of the Note at all. For example:

- The *Project Overview* tab does not mention the Note. Instead, it discusses the Premier's purchase of assets from WePower LLC and Green Central in December, 2011.
- The *Valuation Assumptions* tab does not address the Note.
- The *PRHL Financials* tab appears to reflect the financial performance of WePower LLC in 2011, not New Eco.[940]

585. Indeed, none of the tabs in WP REF 4451 addressed the Note, except the first page of the first tab. None of the tabs in WP REF 4451 address New Eco, either.[941]

586. "In short, Anton & Chia and Wahl purported to rely on Excel spreadsheets that, on their face, did not address the value of the Note at all. All of the supporting tabs confirmed

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[940] Ex. 423; *see also* Ex. 88.1 (Devor Report) ¶ 488.
[941] Ex. 423; *see also* Ex. 88.1 (Devor Report) ¶ 489.

that Doty Scott relied on financial information from another transaction."[942] "Anton & Chia and Wahl signed off on the value of the Note without ever assessing New Eco's ability to pay it."[943]

587. Even if the Doty Scott initial valuation tables had been based on current projections for New Eco, Anton & Chia's review of them would have been deficient. Again, "AU 336 required Anton & Chia to 'obtain an understanding of the methods and assumptions used by the specialist.'"[944]

588. As the Division's expert opined and as made clear by the testimony of Wen, Shek, and Wahl, Anton & Chia and Wahl did not understand the assumptions underlying the initial valuation tables and could not have understood them under the circumstances.[945]

589. As discussed at Paragraphs 462, 463, 467 above, Wen did not understand the assumptions underlying WP REF 4451 (Ex. 423).[946] Shek also clearly did not understand the assumptions and therefore refused to sign off on the workpaper.[947]

590. And from Wahl's testimony about his purported analysis of the Doty Scott spreadsheets discussed below, it is apparent that he still does not understand the underlying assumptions.

591. Workpaper REF 4451 (Ex. 423) contained over forty tabs/spreadsheets and included complicated formulas, critical assumptions, and multi-year financial projections. Nowhere does the workpaper discuss whether any of those formulas, assumptions, or projections were reasonable.

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[942] Ex. 423; *see also* Ex. 88.1 (Devor Report) ¶ 491.
[943] Ex. 88.1 (Devor Report) ¶ 490.
[944] Ex. 88.1 (Devor Report) ¶ 492.
[945] Ex. 88.1 (Devor Report) ¶ 492.
[946] *See* Paragraphs 462, 463, 467 above.
[947] *See* Paragraphs 554, 557 above.

592. Wahl has no memory of reviewing any tabs of Workpaper REF 4451 (Ex. 423) other than the summary page.[948]

593. The workpaper also does not contain Doty Scott's calculation of the Note's discounted cash flows, the basis for the only relevant, albeit, unsupported, fair value figure in the workpaper. Unlike one of the other Excel workbooks Haddad sent to Wen,[949] the workbook that became Workpaper REF 4451 (Ex. 423) does not contain a tab for the Note. Indeed, it does not even refer to the Note except on the summary page

594. Workpaper REF 4451 (Ex. 423) also states that Anton & Chia reviewed the "reasonableness of the assumptions, estimates of fair value." Yet the workpaper does not reveal what assumptions Anton & Chia evaluated, or how it determined if they were reasonable, or why it reached its conclusion.

595. Similarly, the workpaper states that Anton & Chia had a "walkthrough [sic] with Phil Scott for all the key assumptions of the valuation schedule." The workpaper does not identify which "assumptions" Anton & Chia viewed as "key," or what took place during the "walkthrough."

596. Moreover, no such walkthrough ever occurred.

597. Wen's conversation with Scott took place during Anton & Chia's review of Premier's Q1 2013 quarterly financial statements. But the walkthrough summarized in WP REF 4451 did not occur during the quarterly review. That procedure was documented before anyone

[948] Tr. (Vol. XXII Wahl) 5345:5-9 ("Q All right. Let's – okay, so back to that work paper, 423. So did you look at any of the tabs at the bottom of the work paper in analyzing it? A I may have, but I can't remember.").
[949] Ex. 452 (May 22, 2013 email from Haddad transmitting files, including Ex. 452.2); Ex. 454 (Recommind printout showing attachments to Ex. 452); Ex. 452.2.xlsx (workbook containing promissory note tab); Tr. (Vol. VII Haddad) 2021:1-8 ("Q And then fees files listed below are – it says, "WePower sales zip," and it gives three names, and they're all Excel files. One is the auditor one. One is the draft-report one, and then the last one is those projections from Ecolutions? A Uh-huh. Q Are these the files that you sent? A Yes.").

on the engagement team had spoken with Scott.[950] And even after his conversation with Scott, Wen still did not understand Doty Scott's assumptions, key or otherwise.[951]

598. Accordingly, WP REF 4451 (Ex. 423) contains "no audit evidence, in accordance with PCAOB standards, that enabled Wahl to understand the assumptions and data inputs in the Excel file to calculate a purported value for the Note. "[952] The workpaper "did not contain enough audit evidence to conclude that the Note had a fair value of $869,000."[953]

599. Despite its insufficiency, Wahl signed off as having reviewed WP REF 4452 (Ex. 424).[954] As discussed below, the one other workpaper for the Note was also inadequate.

d. WP REF 4452 (Ex. 424)

600. At the request of Wahl or Shek,[955] Wen prepared an additional workpaper on the Note valuation: WorkPaper 4452, the "Note receivable valuation memo" (Ex. 424).[956] Wen drafted the memo to according to instructions from Wahl and/or Shek.[957]

601. The memo contained a paragraph described the circumstances surrounding the Note valuation, under the heading "Nature."[958] That paragraph closed by stating:

> On January 7, 2013, Premier Holding, acting through its wholly owned subsidiary, completed the sale of assets under an asset purchase agreement with WEPOWER Eco Corp, a newly formed

[950] Tr. (Vol. VII Wen) 2137:5-13 ("Q – this is the report, right? The next sentence says, 'A&C team has reviewed the reasonableness of the assumption estimates of the fair value.' Do you see that? A Yes. Q Had you done that at the time you wrote this in the top? A No.").
[951] Tr. (Vol. VII Wen) 2140:17-22 ("Q Okay. So after the call with Mr. Scott, did you have any better understanding of how this spreadsheet worked? A I tried to, you know, get understanding based on what he told me and do some research, but, no, I did not get it.").
[952] Ex. 88.1 (Devor Report) ¶ 509.
[953] Ex. 88.1 (Devor Report) ¶ 509.
[954] Ex. 417 Bates 144.
[955] Tr. (Vol. VII Wen) 2158:16-20, ("Q All right. So in – did – who asked you to provide – to prepare the additional work paper 4452? A I forgot. Either Tommy or Greg Wahl, or both of them said we need to prepare a memo.").
[956] Tr. (Vol. VII Wen) 2158:8-13 ("Now, did you have occasion to perform an additional work paper during the 2013 audit about the promissory note valuation? There was a one-page memorandum called "work paper 4452"? A Yeah, I think that's – that's one of them I did.").
[957] Tr. (Vol. VII Wen) 2158:24-2159:5 ("Did you – did you meet with Wahl to discuss the memo before you drafted it? A I did discuss with them what they're exactly looking for in the memo. Q Okay. And was that with Greg Wahl, Tommy Shek or both of them? A I don't remember. Maybe both of them.").
[958] Ex. 424 (WP REF 4452 note valuation memo).

> entity, controlled by PRHL's former CEO, PRHL sold certain assets related to solar energy, wind power projects, energy efficiency projects in real estate, and fuel efficiency for diesel and gasoline engines for a note payable for $5,000,000. In addition, the process has engaged with a third party appraiser company to evaluate the sale as $869,000 instead of 5,000,000. As of December 31, 2013, the payment has not been received yet.[959]

602. According to Wen, the third party appraiser referred to in the penultimate quoted sentence was Doty Scott[960] and the un-received payment referred to in the last sentence was the payment due on the Note.[961]

603. Although WP REF 4452 (Ex. 424) stated that New Eco had failed to make the first payment required under the Note, neither this workpaper nor any other documentation in the workpapers addresses the facts that New Eco had failed to make a required payment and was in default and that Premier was making no effort to collect.[962]

604. WP REF 4452 also sets forth the procedures Anton & Chia supposedly followed to audit the Note value:

> 1. In order to test the receivable, AnC has directly contact the third party appraiser to obtain the valuation assumption report.
>
> 2. AnC also obtained the valuation calculation schedule from the third party appraiser
>
> 3. Review, and recalculated the schedule to ensure the reasonableness of the ending value of the assets and subsequent financial statements to ensure no material changes to the underlying valuation and assumptions.

[959] Ex. 424 (WP REF 4452 note valuation memo).
[960] Tr. (Vol. VII Wen) 2163:12-14 ("Q Okay. Did – and then – is that third-party appraiser Doty Scott? A Right."
[961] Tr. (Vol. VII Wen) 2163:15-24 (Q Okay. And then it says, "As of December 31, 2013, the payment has not been received yet." What did you mean by that? A Notes receivable. Q You mean there had been no payment on the note? A Right. Q Okay. So the borrower had not paid – A Right. Q – what was due?").
[962] Ex. 423 (WP REF 4451), Ex. 424 (WP REF 4452 note valuation memo).

Finally, the memo states Anton & Chia's conclusion: "Based on our testing, the ending balance of the note receivable is reasonably recorded."[963]

605. One of the procedures listed in the Note valuation memo was:

> Review, and recalculated the schedule to ensure the reasonableness of the ending value of the assets and subsequent financial statements to ensure no material changes to the underlying valuation and assumptions.[964]

606. As far as Wen was concerned, those procedures were purely aspirational; he lacked the knowledge to understand the approach reflected in Doty Scott's schedules and thus could not determine whether $869,000 was a reasonable value for the Note:

> Q Now, I guess I'm trying to understand how did recalculating the numbers help you assess the reasonableness of the valuation of the assumptions?
> A Give me one minute.
> (Pause in testimony.)
> A Well, like I said earlier, I didn't – I did not have the knowledge or ability to perform any testing over that drawing –
> Q Okay.
> A – workbook, so those are the procedures that should be performed, but I just don't have the knowledge –
> Q Okay. So you didn't know whether it was –
> A – to understand – . . . I just didn't understand the approach they were using.
> Q Okay. So you didn't know one way or the other – one way or the other whether the $869,000 value was a reasonable value?
> A Right.[965]

607. Wen told Wahl during the first quarter review that he did not understand the Doty Scott spreadsheets.[966]

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[963] *Id.*
[964] *Id.*
[965] Tr. (Vol. VII Wen) 2165:14-2166:10.
[966] Tr. (Vol. VII Wen) 2166:11-14 ("Q Okay. Now, And Wahl knew that you didn't understand how the spreadsheet worked; is that right? A He knew at Q1.").

608. Like WP REF 4451, the Note valuation memo (WP REF 4452) was cryptic and conclusory, and failed to document any details associated with the procedures Anton & Chai supposedly performed to test Premier's assertion of the Note's value. The memo states that Anton & Chia reviewed and recalculated the schedule to ensure its "reasonableness," and refers generally to "underlying valuation and assumptions." The memo also claims that Anton & Chia performed "testing," without describing any detail of such testing. The memo "did not identify what the 'assumptions' were, let alone how [Anton & Chia] allegedly 'test[ed]' them for reasonableness. The memo concludes that the note receivable was 'reasonably recorded,' but completely fails to explain how [Anton & Chia] arrived at that conclusion."[967] The memo does not reveal who at Anton & Chai supposedly carried out the listed procedures.

609. Like WP REF 4451, the Note valuation memo inaccurately describes the Doty Scott initial valuation tables. The memo refers to a "valuation assumption report" and a "valuation calculation schedule" with an "ending value." But again, Anton & Chia did not receive a report – not even a draft – with an "ending value." Doty Scott merely provided Excel spreadsheets that demonstrated the methodology that it would use, once it received the requisite financial information.[968]

610. Neither of the workpapers discussed the terms of the Note, [969] which were highly favorable to New Eco.[970]

611. Neither of the audit workpapers for the Note valuation referred to a sale or settlement of the Note in 2014. Neither Wahl nor Shek ever told Wen to document an analysis of

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[967] Ex. 88.1 (Devor Report) ¶ 515 (quoting Ex. 424).
[968] *See* Paragraphs 436-445 above; *see also* Ex. 88.1 (Devor Report) ¶ 512.
[969] *See* Paragraph 569, 600-604.
[970] Ex. 441 (the Note); Ex. 88.1 (Devor Report) ¶ 520; Tr. (Vol. V Scott) 1448:23-1449:2 ("Q Okay. Going back to that second bullet, you mentioned that the terms were very generous. A Generous to New Eco. Q Okay. The borrower? A Correct.").

the value of 7,500,000 shares of Premier stock.[971] If he'd been asked to do so, Wen would have documented the analysis in the audit file.[972]

612. Although he may well have told Wen to prepare it, according to the Workpaper Sign Off History report, Wahl did not review WP REF 4452 (Ex. 424).[973]

613. "Wahl should have reviewed the note receivable value memo, given that (1) the Note reflected a significant portion – $869,000 of $6,879,145 – of Premier's purported assets as of December 31, 2013; (2) only two workpapers addressed this issue; and (3) there was no documentation in Anton & Chia workpapers supporting the data and assumptions used in the Excel file.[974] Wahl should have reviewed this memorandum to assess Anton & Chia's conclusion about the value of the Note.[975] By failing to do so, Wahl "failed to exercise professional due care."[976]

e. Wahl's Failure to Consider New Eco's Ability to Pay

614. The value of the Note depended on New Eco's ability to pay it. But Anton & Chia did not address the fact that New Eco was a start-up company with little or no ability to pay.[977]

615. "[Anton & Chia]'s analysis of the Note was cursory and incomplete."[978] "There were substantial reasons to doubt that New Eco would pay any portion of the Note, but Anton & Chia failed to address any such concerns."[979] Among the significant aspects of the Note that Anton & Chia failed to address are the following:

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[971] Tr. (Vol. VII Wen) 2159:6-13("Q Okay. And in that conversation, did Wahl or Shek ever tell you to include an analysis of the value of 7,500,000 shares of Premier stock? A No. Q Okay. And if he had asked you to include that in the memo, would you have done it? A I would have documented it in the file.").
[972] *Id.*
[973] Ex. 417 (Workpaper Sign Off History report) 144.
[974] Ex. 88.1 (Devor Report) ¶ 511.
[975] *Id.* ¶ 511
[976] *Id.* ¶ 511.
[977] *Id.* ¶ 516.
[978] *Id.* ¶ 517.
[979] *Id.* ¶ 517.

- New Eco was a new company;
- New Eco had no historical revenue stream, and no apparent ability to repay the Note; and
- New Eco had no discernible assets or revenue, and could not or would not provide any financial projections.[980]

616. "Based on the track record that did exist (for WePower Ecolutions), [Anton & Chia] should have exercised heightened skepticism."[981] The assets that New Eco bought from WePower Ecolutions did not generate a gain for WePower Ecolutions. In fact, WePower Ecolutions reported no revenues as well as a loss from discontinued operations of $756,912 in 2012.[982]

617. There is no evidence that Anton & Chia or Wahl analyzed how the assets could generate profits for New Eco when the same assets generated losses for WePower Ecolutions in 2012.[983]

618. "New Eco's failure to make the first payment – for a relatively small percentage of the Note ($50,000 was only 1% of a $5 million Note, excluding interest) – should have been a red flag about New Eco's ability to pay the Note." [984] But Anton & Chia did not address the fact that New Eco was in default as of the time of the audit" and failed to inquire or assess whether Premier was attempting to collect on its payment from New Eco.

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[980] Ex. 88.1 (Devor Report) ¶ 517.
[981] *Id.* ¶ 518.
[982] Ex. 401 (Premier 2012 Form 10-K) 28.
[983] Ex. 88.1 (Devor Report) ¶ 519.
[984] *Id.* ¶ 522.

f. Wahl's Failure to Consider Fraud

619. "Anton & Chia and Wahl, in his role as Engagement Partner, also violated AU 316 (Consideration of Fraud in a Financial Statement) by failing to properly evaluate and consider the circular and unusual nature of the transactions that Premier entered into surrounding the Note."[985]

620. Premier engaged in three transactions that, taken together, formed a round-trip. First, Premier obtained assets from WePower LLC in exchange for shares of Premier. Second, Premier exchanged the assets for a Note. And third, Premier exchanged the Note with WePower LLC for the return of Premier.

621. Viewed as a whole, Premier obtained assets, and then sold the assets. Premier obtained the Note, and then sold the Note. Premier paid shares of its stock, and then received shares of its stock. No cash was exchanged for any leg of the round-trip. All the transactions occurred between Premier and related parties.[986]

622. "These three transactions were significant and unusual as defined by AU 316.66. [Anton & Chia], and specifically Wahl as the Engagement Partner, should have exhibited appropriate professional skepticism when evaluating the business rationale for these transactions. [Anton & Chia] and Wahl failed to exhibit the required professional skepticism in accordance with AU 230 and AU 316 during its audit of Premier's 2013 financial statements and thereby did not assess these transactions as an indication of fraud."[987]

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[985] *Id.* ¶ 536.
[986] *See* Paragraphs 536, 539, 544 above. *See also* Tr. (Vol. XXII Wahl) 5374:8-5375:6 ("I think how we viewed that transaction at the time was that it was a related party transaction, and that in order to get the 869 off the books, we'd have to return those shares into treasury, and then reissue them. … But what I – and the fact that it was a related party transaction. I think we agree on that. I felt like booking the transaction through equity made more sense and was more prudent.").
[987] Ex. 88.1 (Devor Report) ¶ 545.

623. Wahl recognized that both the Note and TPC transactions were unusual.[988]

624. Although Premier had valued the assets obtained from WePower LLC at zero when it obtained them, and although those assets had contributed to a $756,912 loss for the year that Donovan, who was running New Eco, had operated them, and despite the absence of any analytic support, Premier valued the Note issued by New Eco at $869,000.

625. Intentionally omitted.

626. Instead of viewing the round trips of assets and stock with skepticism, Wahl claims that he took comfort in it,[989] or rather in his incorrect understanding of the exchange of the Note for the return of Premier stock. Assuming that he did in fact rely in part on that exchange, he failed to obtain a copy of the operative agreement (the Compromise Agreement) and failed to read, or misinterpreted Premier's description of the exchange in the audited financial statements, which reads:

> Additionally, WePower LLC returned 5,000,000 common shares of the Company previously issued related to the sale of TPC, and **in exchange for the promissory note in the face amount of $5,000,00** (and valued at 869,000 on the Company's financial statements as of December 31, 2013), **the Company had returned an additional 2,500,000 common shares**."[990]

[988] Tr.(Vol. XXIII Wahl 5710:9-20 ("Q And would you pull out the nonroutine transactions in those analyses? A Yes.Q So the going forward value here for you would be The Power Company, not the WePower transaction; is that a fair statement as an investor? A Yes. I would also pull out the note, an unsecured note that was also listed on all of our 18 filings. Q Right. Correct. Because it's a nonroutine transaction.")

[989] *See, e.g.*, Tr.(Vol. XXIII Wahl) 5348:20-5349:2 ("And, again, there was an 83 percent discount on the $5 million note, and then we had information that would -- where we were led to believe that there was going to be a settlement of -- between -- somewhere between -- I've seen documentation of 5 million shares, 2.5 million shares, and I've even had discussions on 7.5 million shares.").

[990] Ex. 402 (2013 Form 10-K) F-14, Notes 8 and 9.

g. Deficient Confirmation Process

627. Anton & Chia and Wahl "failed to confirm the existence of the Note in accordance with PCAOB standards, and failed to document the lack of confirmation as required by the PCAOB audit documentation standard (AS 3)."[991]

628. The engagement team planned to obtain third-party confirmation of the Note's existence and balance. According to the audit planning memorandum, the audit team was going to "send direct confirmation to verify the balance as of 12/31/2013 and also reconcile with the disposal agreement between the company and the buyer.")[992]

629. The team's modest attempts to obtain a confirmation from New Eco were unsuccessful, however.[993]

630. The audit workpapers (Ex. 2) contain no confirmation of the Note's existence or the balance and, according to Shek, Anton & Chia never received a confirmation.[994]

631. "According to PCAOB standards (*i.e.*, AU 330), if an auditor does not receive a response to a positive confirmation request, the auditor must perform alternative procedures in order to reduce audit risk to an acceptable level. There is no evidence that Anton & Chia performed alternative procedures."[995]

632. Anton & Chia's unsuccessful attempts to obtain a third-party confirmation of the Note's existence "should have been a red flag to Anton & Chia and Wahl that warranted a heightened level of professional skepticism and due professional care surrounding the existence and valuation of the Note."[996]

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[991] Ex. 88.1 (Devor Report) ¶ 554.
[992] Ex. 419 at SEG-AG-E-1854.
[993] Ex, 88.1 ¶¶ 546-551.
[994] Tr. (Vol. VIII Shek) 2249:8-10 ("Q Do you recall ever getting confirmation about what was due on the note? A No.").
[995] Ex. 88.1 (Devor Report) ¶ 552 n.89.
[996] Ex. 88.1 (Devor Report) ¶ 552.

633. The workpapers fail to mention that Anton & Chia did not receive a confirmation reply supporting the existence of the Note or the balance due on the Note. Thus, "Anton & Chia and Mr. Wahl . . . failed to document the lack of confirmation as required the PCAOB audit documentation standard (AS 3)."[997]

634. Wahl, who reviewed the *Engagement Summary Memo*[998] in his capacity as Engagement Partner, should have questioned why the workpapers did not include any confirmation or other appropriate steps relating to the existence of the Note as Anton & Chia had planned.

4. Deficiencies Involving the TPC Goodwill

635. "Anton & Chia and Wahl demonstrated a lack of due professional care and violated PCAOB standards with respect to goodwill from the acquisition of The Power Company."[999]

a. Allocation of the Entire Purchase Price to Goodwill

636. "Anton & Chia was required to obtain sufficient audit evidence to conclude that Premier's accounting [for its stake in TPC] complied with GAAP."[1000] But "Anton & Chia and Mr. Wahl failed to obtain audit evidence supporting the allocation of 100% of the [TPC] purchase price to goodwill. Anton & Chia did not receive any such evidence during its 2013 interim review procedures, or during its year-end audit procedures."[1001]

637. Anton & Chia and Wahl knew that $4,500,000 of Premier's reported goodwill of $4,555,750 was attributable to the TPC acquisition and knew that the $4,500,000 represented the

[997] Ex. 88.1 (Devor Report) ¶ 554.
[998] Ex. 2 (3005 *Engagement Summary Memo* FY 2013); Ex. 417 (Workpaper Sign Off History report) A&C-Premier000140.)
[999] Ex. 88.1 (Devor Report) ¶ 557.
[1000] *Id.* ¶ 560.
[1001] *Id.* ¶ 561.

the full purchase price.[1002] Yet they failed to obtain audit evidence supporting the allocation of 100% of the TPC purchase price to goodwill.

638. In its planning memo for the 2013 audit, Anton & Chia stated that Premier "has to complete a purchase price allocation [for the TPC acquisition] within a year per SEC requirement." The memo also said that Anton & Chia would "look… [at] the reasonableness of the purchase price allocation."

639. Anton & Chia failed to execute the procedures it planned to perform and which were required with respect to the purchase price allocation.

640. The audit team knew that Doty Scott had been engaged by Premier to complete a purchase price allocation for The Power Company, and that, as of April 3, 2014, Doty Scott was "awaiting data from the client to complete the engagement."[1003]

641. The audit team never received a purchase price allocation by Doty Scott.[1004] "Therefore, Anton & Chia and Wahl failed to exercise due professional care, and failed to exhibit professional skepticism, when they did not inquire about the status of the purchase price allocation."[1005]

642. At least for Shek it was a concern that over a year had passed since the TPC acquisition and a purchase price allocation had still not been completed at the time of the audit."[1006]

[1002] Tr. (Vol. VIII Shek) 2267:8-9 ("THE WITNESS: The whole engagement team. They put the 4, 5 million in goodwill."); Ex. 402 (Premier 2013 Form 10-K) F-2 (reporting total goodwill of $4,555,750).
[1003] Ex. 480 (Apr. 3, 2014 email from Scott).
[1004] Tr. (Vol. VIII Shek) 2264:8-20 ("Q Okay. And, to your knowledge, did Doty Scott ever complete a purchase price allocation for The Power Company? A No. Q Did you ever get a purchase price allocation from Doty Scott? A No. Q Did you ever talk to anybody at ANC who said, 'We got one. Don't worry. You don't need to see it'? … THE WITNESS: No.").
[1005] Ex. 88.1 (Devor Report) ¶ 566.
[1006] Tr. (Vol. VIII Shek) 2267:11-14 ("Q Okay. Was it a concern that over a year had passed and a purchase price allocation had not been completed for the acquisition of TPC? A Yes.").

643. The audit team was also aware that the value of TPC to Premier was based on the number of customer contracts it had and that it was adding 1,500 to 2,000 contracts a month.[1007]

644. In addition, as discussed in Paragraph 505 above, Premier had touted the number of TPC customer contracts – not supplier contracts – in multiple public filings, including its Forms Q for the first three quarters of 2013, at least one of which Anton & Chia reviewed.[1008]

645. By the time of the audit, Premier had made numerous public statements about the value of TPC's customers and contracts, and yet Premier allocated no value to such assets in its 2013 financial statements. The disconnect between Premier's representations about the benefits of the TPC acquisition in public statements and its financial statements should have been a red flag to Anton & Chia and Wahl.[1009]

646. Premier's 2013 financial statements stated that "[t]he initial accounting for the business combination [with TPC] is not complete because the evaluations necessary to assess the fair values of certain net assets acquired and the amount of goodwill to be recognized are still in process." [1010] By providing an unqualified opinion, Anton & Chia indicated that it accepted these assertions made by management, even though the transaction with TPC had closed more than a year before Premier issued its 2013 financial statements. (The acquisition closed on February 28, 2013; Premier issued its 2013 financial statements on April 15, 2014.)

647. "Anton & Chia and Wahl, in his role as Engagement Partner, failed to exercise due professional care and professional skepticism as required by AU 230 (*Due Professional*

[1007] Ex. 477 (Aug. 9, 2013 email from Greenblatt to Wen) ("The payment on those contracts comes 30 to 60 days behind the billings. We are adding approximately 2500 new contracts a month currently. I will forward you the calculation of the receivables.").
[1008] *See* Paragraphs 452-473 and 505, above.
[1009] Ex. 88.1 (Devor Report) ¶ 566.
[1010] Ex. 402 (Premier 2013 Form 10-K) F-11.

Care in the Performance of Work) and violated AS 15 with respect to Premier's decision to recognize the entire purported acquisition price to goodwill."[1011]

b. Goodwill Impairment

648. The audit planning memo also indicated that the audit team would "look at any impairment issues in the goodwill and intangibles."[1012]

649. Anton & Chia never received a goodwill impairment analysis from Premier.[1013] So, instead, the auditor itself looked at goodwill impairment.[1014]

650. Shek prepared a workpaper – WP REF 4500.04 (Ex. 428), a memo headed "Goodwill Impairment Analysis (Ex. 428) – documenting three steps he supposedly took in a qualitative analysis of Premier's goodwill.[1015]

651. The first step documented in the memo was to take two months' worth of cash inflows to TPC, calculate an average of those two months, and then project that income out for five years, assuming that average income number.[1016]

652. This methodology was Wahl's idea.[1017] In particular, it was Wahl's idea to look only at cash inflows, rather than net cash flows.[1018]

[1011] Ex. 88.1 (Devor Report) ¶ 570.
[1012] Ex. 419 (Planning Memo for Premier 2013 audit).
[1013] Tr. (Vol. VIII Shek) 2268:12-14 ("Q. Did you ever get an impairment analysis from the company? A. No.").
[1014] Tr. (Vol. VIII Shek) 2269:1-8("Q In any event, do you recall, was it something that the engagement team did on its own, look at goodwill impairment? … THE WITNESS: Yes."); *see also* Ex. 428 (goodwill impairment memo).
[1015] Tr. (Vol. VIII Shek) 2269:16-2269:23 ("Q Mr. Shek, do you remember – or do you recognize this document [Ex. 428]? A Yes. Q Okay. This is the goodwill impairment analysis memo prepared by ANC? A Yes. Q And prepared by T.S., that's you, right? A Correct.")
[1016] Ex. 428 (goodwill impairment memo) 2.
[1017] Tr. (Vol. VIII Shek) 2274:5-20 ("Q. And who's idea was it? Whose idea was it to say, 'Look, we're going to look at cash inflows and use that to make a projection?' … A. Wahl. Q. Okay. And why only cash – so why only cash inflows? Why not cash – why not net cash? Why not take into consideration the cash outflows as well? A. I just did what was asked to be done. Q. So Wahl just told you to do – look at cash inflows, and you did that? A. Yes."); *see also id.* at276:6-9 ("Q. And whose idea was it to only look at two months? … A. Wahl.").
[1018] *Id.*

653. Looking only at incoming cash, as opposed to net cash flows, does not provide an accurate picture of the financial health of a company.[1019]

654. In fact, TPC's **net** cash flow in January to February, 2014 was negative, not positive. TPC experienced a net cash flow of $13,205 in January, 2014, but experienced a net cash flow of negative $17,322 in February, 2014. Taken together, TPC had a net cash flow of negative $4,117 in that two-month period, which equates to a negative $2,058 per month.[1020]

655. Anton & Chia's goodwill impairment analysis was deficient in other respects as well. First, Anton & Chia did not follow its own plan. The workpaper contemplated that Anton & Chia would project cash inflows over the next "60 months."[1021] But the workpaper shows that Anton & Chia calculated the cash inflow projections for only 36 months, not 60 months, [1022] and never explained why Anton & Chai projected the cash inflows over a period of three years, not five years as planned.

656. Second, Anton & Chia's calculations of the cash inflows were incorrect. Anton & Chia based its analysis on the cash inflows of only two months: January and February, 2014. The workpaper reflects cash inflows of $174,000 in January, 2014, and $133,000 in February, 2014.[1023] TPC's bank statements show however that it had cash inflows of $472,903 in January, 2014, and $372,251 in February, 2014.[1024]

657. The second step described in the goodwill impairment memo involved "inquiry with the management," where Premier purportedly told Anton & Chia that they expected TPC to

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[1019] Ex. 88.1 (Devor Report) ¶¶ 579-582; *see also* Tr. (Vol. VIII Shek) 2274:21-2275: ("Q. Wouldn't it make more sense if you're going to do projections to look at the net cash flows? … A. Well, in my subsequent experience, a lot of, like, impairment look at net cash flow, yeah. Q. You would look at net cash flow? A. Correct. Q. To get a more accurate number, correct? A. Correct.").
[1020] Ex. 88.1 (Devor Report) ¶ 581 & Figure 8 (Cash Inflows and Outflows for January and February, 2014).
[1021] Ex. 428 (goodwill impairment memo) 2.
[1022] Ex. 428 (goodwill impairment memo) 2.
[1023] Ex. 428 (goodwill impairment memo) 2.
[1024] Ex. 88.1 (Devor Report) ¶ 578 and Figure 8 (Cash Inflows and Outflows for January and February, 2014).

keep growing "and did not see any factors that would significantly impaired [sic] the goodwill."[1025]

658. "Hearing Premier's view that goodwill was not impaired was not sufficient. An auditor cannot satisfy professional standards by simply accepting management representations, without more."[1026]

659. Moreover, Anton & Chia's documentation of the second step was also inadequate because it "failed to document who Anton & Chia contacted at Premier, what questions were asked, and what evidence (if any) was obtained by the engagement team to corroborate Premier's purported view that its recorded goodwill was not impaired as of December 31, 2013."[1027]

660. The third step described in the goodwill impairment workpaper was to analyze how many new customers TPC signed up in the first quarter of 2014 compared to the first quarter of 2013.[1028] This analysis was inadequate for two reasons. First, Anton & Chia simply accepted the contract numbers provided by management without performing any tests to evaluate whether such numbers were reliable.[1029] Second, Anton & Chia did not analyze whether those contracts were making, or losing, money for the Company.[1030] This methodology, too, was Wahl's idea.[1031]

[1025] Ex. 428 (goodwill impairment memo) 2.
[1026] Ex. 88.1 (Devor Report) ¶ 654.
[1027] Ex. 88.1 (Devor Report) ¶ 585.
[1028] Ex. 428 at 2-3.
[1029] Ex. 88.1 (Devor Report) ¶ 589.
[1030] Ex. 88.1 (Devor Report) ¶ 590; Tr. (Vol. VIII Shek) 2283:19-22 ("Q. And did you look at the – as part of the impairment analysis, did you look at the profitability of these contracts? A. No.").
[1031] Tr. (Vol. VIII Shek) 2282:12-15 ("Q All right. So whose idea was it to do the analysis this way? To basically look at these quarters and compare signups? A Wahl.").

<u>**CANNAVEST**</u>

A. Background: CannaVEST's 2012 Form 10-K

661. CannaVEST Corp. ("CannaVEST") was incorporated in the State of Texas on December 9, 2010 under the name Foreclosure Solutions. Foreclosure Solutions was incorporated with the intention to commence operations in the business of selling realtor services to prospective buyers interested in foreclosed residential properties. It was unable to secure financing for that business plan and experienced a change in control on November 16, 2012, when a group of buyers acquired a total of 6,979,900 shares of the company's common stock, representing 99.7% of the total issued and outstanding shares of the company's common stock, for an aggregate purchase price of $375,000, *i.e.,* at $0.054 cents per share (the "Mai Dun transaction").[1032]

662. As of December 31, 2012, Foreclosure Solutions had total assets of $431, no revenues since its inception, and annual losses.[1033]

663. In its 2012 Form 10-K, filed on April 16, 2013, Foreclosure Solutions discussed that its common stock traded on the OTC Bulletin Board, where the trading of securities is "often sporadic and investors may have difficulty buying and selling or obtaining market quotations." The company further noted that, as a penny stock, for sales of its securities, "broker-dealers must make a special suitability determination and receive a written agreement from the stockholder prior to making a sale on any such stockholder's behalf."[1034]

664. Foreclosure Solutions' 2012 Form 10-K also disclosed that management had identified a material weakness in the effectiveness of internal control over financial reporting

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[1032] Ex.702 (Foreclosure Solutions 2012 Form 10-K) 4, 17; Tr. (Vol. VI Devor) 1543:12-1546:9.
[1033] Tr. (Vol VII Turner) 2061:16-18, 2062:14-23; Ex. 702 (Foreclosure Solutions 2012 Form 10-K) 4, F-3, F-4, F-6.
[1034] Ex.702 (Foreclosure Solutions 2012 Form 10-K) 8.

related to a shortage of resources in the accounting department required to assure appropriate segregation of duties with employees having appropriate accounting qualifications related to the company's unique industry accounting and disclosure rules.[1035]

665. As of December 31, 2012, the management of Foreclosure Solutions consisted of one person, Michael Mona, who held the position of president, treasurer, secretary, director, principal executive officer and principal financial officer.[1036]

666. The report of the Turner, Stone and Company, LLP, the independent registered public accounting firm that had audited Foreclosure Solutions' balance sheets as of December 31, 2011 and 2012, that was attached to the company's 2012 Form 10-K, contained the following disclosure: "the Company has not generated any revenues from operations, which raises substantial doubt about its ability to continue as a going concern."[1037]

B. CannaVEST's Acquisition of PhytoSphere Systems, LLC

667. PhytoSphere Systems, LLC ("PhytoSphere") was a limited liability company owned by Medical Marijuana, Inc. (ticker symbol: MJNA.PK).[1038]

668. MJNA had purchased an 80% stake in PhytoSphere from CannaBank in April 2012 for $2.5 million.[1039]

669. On December 15, 2012, Foreclosure Solutions entered into an agreement with PhytoSphere to acquire certain assets in exchange for an aggregate payment of $35,000,000. The agreement was intended to close on December 31, 2012, but did not in fact close until January 29, 2013, when Foreclosure Solutions issued to PhytoSphere 900,000 shares of restricted

[1035] *Id.* at 11.
[1036] *Id.* at Ex. 31.1 (SOX certification).
[1037] *Id.* at F-2.
[1038] Ex. 700 (Feb. 12, 2012 Foreclosure Solutions Form 8-K) 3.
[1039] Ex. 836 (Apr. 12 2012 MJNA press release); Ex. 837 (Apr. 13, 2012 WSJ article); Tr. (Vol. VI Devor) 1530:6-1531:24.

common stock in satisfaction of its first payment obligation due under the purchase agreement.[1040] The acquisition of PhytoSphere Systems, LLC was reflected as a subsequent event in CannaVEST's financial statements as of December 31, 2012.[1041]

670. Section 3.01 of the agreement provided that the purchase price would be paid over the course of five installments, in either cash and/or stock, in the buyer's sole discretion. Section 3.02 of the agreement established that the price per share, if the consideration were to be provided in the form of stock, would be no greater than $6.00 and no less than $4.50 (the "collar").[1042]

671. Wahl testified that it was his expectation that CannaVEST would mainly pay the purchase price for PhytoSphere with CannaVEST stock.[1043]

672. Ultimately, CannaVEST provided a total of 5,825,000 shares (either all or mainly restricted shares) and paid $950,000 in cash to MJNA during 2013 for PhytoSphere.[1044]

673. The purchase agreement included an Exhibit A, which listed the assets that were being acquired, including: inventory, tangible personal property, Internet domain names, landline telephone numbers, vendor and supplier contracts, licenses, and cash. Other than the cash on hand, in the amount of $50,774.55, Exhibit A contained no value for the other assets being acquired, nor were the vendor and supplier contracts identified or attached to the agreement.[1045]

[1040] Ex. 700 (Feb. 12, 2013 Foreclosure Solutions Form 8-K) 3; Ex. 702 (Foreclosure Solutions 2012 Form 10-K) at 8 (noting restricted shares issued pursuant to registration exemption under Section 4(2) of the Securities Act of 1933, and/or Regulation D); Ex. 751 (PhytoSphere agreement at § 4.01).
[1041] Ex.702 (Foreclosure Solutions 2012 Form 10-K) 5.
[1042] *Id.* at 5 (describing transaction); Ex. 700 (Feb. 12, 2012 Foreclosure Solutions Form 8-K) Ex. 10.3 (PhytoSphere agreement); Ex. 751 (signed PhytoSphere agreement).
[1043] Tr. (Vol. XVII Wahl) 4111:17-20).
[1044] Ex. 706 (CannaVEST Q1 2013 Form 10-Q/A) 17; Ex. 708 (CannaVEST Q2 2013 Form 10-Q) 16; Ex. 710 (CannaVEST Q3 2013 Form 10-Q) 18; Ex. 715 (CannaVEST 2013 Form 10-K) F-12.
[1045] Ex. 751 (PhytoSphere agreement) Ex. A; Tr. (Vol. VI Devor) 1524:17-1526:7.

674. Contemporaneous with the closing of the PhytoSphere transaction, Foreclosure Solutions amended its certificate of formation to change its name to CannaVEST Corp., and changed its business to developing, producing, marketing and selling end consumer products to the nutraceutical industry containing hemp plant extract, cannabidoil (CBD).[1046]

C. CannaVEST's Form Q1, Q2 and Q3 Forms 10-Q

675. CannaVEST filed its first quarter 2013 Form 10-Q on May 20, 2013. The acquisition of PhytoSphere had a material impact on CannaVEST's financial statements. The total value of approximately $35 million assigned to the identifiable assets acquired, as well as the applied goodwill, represented almost the entire balance of CannaVEST's total assets as of March 31, 2013 (*i.e.*, at the end of the first quarter of 2013).[1047]

676. On May 30, 2013, CannaVEST filed an amended Form 10-Q for the first quarter of 2013. In an explanatory note, CannaVEST stated that the amended Form 10-Q had been filed for purposes of "correcting the form of presentation of [CannaVEST's] financial statements." More specifically, the amendment served mainly to (a) correct errors in the financial statements, and (b) furnish an additional exhibit, Exhibit 101 (referred to as *Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*) in accordance with Rule 405 of SEC Regulation S-T.[1048]

677. CannaVEST filed its second quarter of 2013 Form 10-Q on August 13, 2013. On its balance sheet, CannaVEST continued to report approximately $35 million for the purported assets associated with the PhytoSphere acquisition.[1049]

678. In the third quarter of 2013, Vantage Point Advisors, Inc. ("Vantage Point") performed what was referred to as *IRC 409A & ASC718 – Valuation of Common Stock* of

[1046] Ex. 700 (Feb. 12, 2012 Foreclosure Solutions Form 8-K) 2-3.
[1047] Ex. 705 (CannaVEST Q1 2013 Form 10-Q).
[1048] Ex. 706 (CannaVEST Q1 2013 Form 10-Q/A).
[1049] Ex. 708 (CannaVEST Q2 2013 Form 10-Q).

CannaVEST as of August 21, 2013 – dated September 3, 2013 (the "CannaVEST Stock Valuation"). The CannaVEST Stock Valuation determined that, as of August 21, 2013, CannaVEST's common stock was valued at $1.13 per share. Vantage Point also determined that CannaVEST's restricted shares was valued at $0.68 per share, and that the estimated business enterprise value ("BEV") of CannaVEST was between $14,070,000 and $16,840,000.[1050]

679. Seeing the entire BEV of CannaVEST was between $14 and $16 million, and the purported value of the PhytoSphere transaction was $35 million, gave rise to a concern that the PhytoSphere transaction had been overvalued. As a result, CannaVEST's management decided to have Vantage Point prepare a valuation report to determine the fair value of the PhytoSphere transaction as of the January 29, 2013 acquisition date.[1051]

680. On October 29, 2013, Vantage Point issued a draft report regarding the fair market value of PhytoSphere as of January 29, 2013 (*i.e.*, the date of the acquisition) (the "PhytoSphere valuation"). According to the PhytoSphere valuation, the estimated fair market value of PhytoSphere, as of January 29, 2013, was $8,150,000.[1052] This amount was $26,850,000 (or 77%) less than the purported acquisition price of $35,000,000.[1053]

681. CannaVEST filed its third quarter of 2013 Form 10-Q on November 14, 2013. This filing included the recognition of a goodwill impairment charge in the amount of $26,998,125 to entirely eliminate the carrying amount of goodwill that CannaVEST had been

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[1050] Ex. 797 (Sept. 2013 CannaVEST stock valuation report); Ex.830 (Vantage Point engagement letter for CannaVEST stock valuation); Tr. (Vol. IX Poling) 2695:10-2697:8, 2700:3-2701:92701:23-2702:13, 2707:11-17, 2714:4-7.

[1051] Tr. (Vol. IX Canote) 2626:19-2627:5, 2627:14-2628:20; Tr. (Vol. IX Poling) 2713:22-2714:1; Ex. 832 (Vantage Point engagement letter for PhytoSphere valuation).

[1052] Vantage Point provided a final valuation report to CannaVEST on November 19, 2013, concluding PhytoSphere, as of the January 29, 2013 acquisition date, had an estimated fair market value of $8,020,000, which was close in amount to the October 2013 draft report. Tr. (Vol. IX Poling) 2720:11-2721:4; Ex.859 (Nov. 2013 PhytoSphere valuation report).

[1053] Ex. 798 (Oct. 2013 PhytoSphere valuation report); Tr. (Vol. IX Canote) 2634:8-2635:20, 2638:14-17.

reporting as an asset on its balance sheet at that time, all of which emanated from the PhytoSphere acquisition.[1054]

682. All of Anton & Chia's work papers, and contemporaneous email communications with CannaVEST's management, demonstrate that the basis for the recommended goodwill impairment charge was Vantage Point's October 2013 PhytoSphere valuation report.[1055]

683. Wahl never told Richard Canote (CannaVEST's interim CFO consultant advisor) that Anton & Chia was recommending an impairment of goodwill in the third quarter because CannaVEST was not meeting its revenue projections.[1056]

684. In his investigative testimony, Wahl admitted that the Vantage Point valuation of PhytoSphere indicated there was an impairment of goodwill.[1057]

685. In his investigative testimony, Wahl stated that the PhytoSphere transaction fell under "level 3" of the ASC 820.[1058]

[1054] Ex. 709 (CannaVEST Q3 2013 Form 10-Q).
[1055] *See* Ex. 763 (Q3 goodwill impairment memo); Ex. 852 (Q3 balance sheet analytics with adjusting journal entry for the goodwill impairment) at lines 71-74; Ex. 787 (Q3 planning memo); Ex. 810 (Q3 engagement summary memo); Ex. 758 (Q3 management representation letter) at item 26); Ex. 752 (Nov. 8, 2013 email chain); Ex. 753 (Nov. 12, 2013 chain); Exs. 871, 871.2, 871.3 (Nov. 12, 2013 email from La with draft Q3 management representation letter attached, and spreadsheet with goodwill impairment tab attached); Tr. (Vol. IX Canote) 2638:18-2639:16, 2646-25.
[1056] Tr. (Vol. IX Canote) 2590:20-2593:5, 2682:11-13, 2691:2-16.
[1057] Ex. 839.6 (Prior Testimony Designations) 245 (Oct. 27, 2015 Wahl Inv. Test. at 86:15-87:2) (Q Okay. So let's move, then, to Q3 of 2013. So Q3 of 2013 is when assets were written off? A Yes. Q And what was written off? A I believe the goodwill was written off for about 26 – almost $27 million. Q And why was that written off? A There was further evidence provided by management that they indicated there was an impairment. Q And what was that evidence? A There was a valuation completed that assigned the values to – to CannaVEST. Or pardon me. To the PhytoSPHERE assets. Pardon me."); *id.* at74 (Oct. 27, 2015 Wahl Inv. Test. at 154:14-17) ("The results of obtaining the third party purchase price allocation and valuation indicated that there was an impairment."); *id.* at79 (Oct. 27, 2015 Wahl Inv. Test. at 170:2-15) ("Q And that valuation was used for you – for Anton & Chia to propose an impairment charge related to the PhytoSPHERE acquisition; is that correct? A When we were provided with a report, it indicated that there was an impairment. Q Is that – this valuation report, the first indication to you and your firm that there was a – there was an impairment that needed to be booked? A Yes. BY MS. PURPERO: Q Okay. So this valuation report indicated there was an impairment. MS. LEVIN: And just to confirm, that's the PhytoSPHERE Systems report in Exhibit 15, 1644.").
[1058] *Id.* at 261-62 (Oct. 27, 2015 Wahl Inv. Test. at 119:11-120:5 ("Q Okay. Let's take a step back. So under business combinations – A Yes. Q – the assets are recorded at fair value; is that correct? A Hmm-hmm. Correct. Q And fair value is measured under ASC 820; is that correct? That's the accounting standard – A Yes. Q – that discusses fair value; is that correct? A Sure. Q Okay. So I go back to go my question. How – so you've got these assets, the PhytoSPHERE assets. They're supposed to be measured at fair value? A Hmm-hmm. Q In accordance

686. In his investigative testimony, Wahl acknowledged that the Vantage Point valuation report of PhytoSphere provided the value of PhytoSphere as of January 29, 2013.[1059]

687. Canote never told Wahl that Anton & Chia should not rely on the October 29, 2013 draft PhytoSphere valuation report or the stock valuation report.[1060]

688. Wahl never told Shek that the draft PhytoSphere valuation report was unreliable and should not be relied upon.[1061]

689. Wahl never told his engagement team that the basis for the goodwill write off was the company's failure to meet its projections.[1062]

690. There was never a discussion with Anton & Chia prior to the filing of the Q3 Form 10-Q about holding off filing in order to restate, or the need for an allocation report concerning the fair value of each of the assets acquired from PhytoSphere.[1063]

691. Had Anton & Chia insisted that CannaVEST's needed to restate its financial results for the first and second quarters it would have done so.[1064]

D. CannaVEST's Financial Statements Did Not Comply with GAAP.

692. CannaVEST treated the PhytoSphere acquisition as a business combination under ASC 805, *Business Combinations*. Under ASC 805, the following steps should be taken to record a business combination on a company's balance sheet: (a) determine the fair value of the

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with two standards; right? Business combination standard ASC 805? A Right. Q And the fair value standard, which is ASC 820? A Okay."); *id.* at 265-66 (Oct. 27, 2015 Wahl Inv. Test. at 123:20-124:3) ("MR. GARTENBERG: – was it your understanding at the time that the valuation that appeared on the balance sheet in Q1 with respect to the PhytoSPHERE transaction fit under level one, level two, or level three? THE WITNESS: Well, based on the fact that it was an arms-length transaction and it was documented between arms-length parties, we felt it would fall underneath the level three.").

[1059] *Id.* at 280 (Oct. 27, 2015 Wahl Inv. Test. at 171:15-18) ("Q The question was: Does this report, does it show the fair market value of PhytoSPHERE as of January 29th, 2013? A Based on the report, it appears it does.").

[1060] Tr. (Vol. IX Canote) 2645:17-2646:2.

[1061] Tr. (Vol. XIII Shek) 2453:22-2454:3.

[1062] *Id.* at 454:5-10.

[1063] Tr. (Vol. IX Canote) 2649:14-22.

[1064] *Id.* at 650:1-6.

consideration (*i.e.*, the purchase price) as of the acquisition date (*see* ASC 805-30-30-7, consideration includes common stock), and (b) determine the fair value of the net tangible assets and identifiable intangible assets acquired as of the acquisition date (*see* ASC 805-30-30-1). Goodwill recorded is the difference between (a) and (b).[1065]

693. GAAP required CannaVEST to measure the consideration it was paying for PhytoSphere at "acquisition-date fair value" (*i.e.*, January 29, 2013), which is defined by ASC 820, *Fair Value Measurement* ("ASC 820") as "the price that would be received to sell an asset or paid to transfer a liability in an **orderly transaction** between **market participants** at the measurement date."[1066]

694. In its Q1 2013 Form 10-Q, CannaVEST represented that it had adopted ASC Topic 820, which defines fair value and established a framework for measuring fair value.[1067]

695. CannaVEST reflected $35 million in total assets acquired from PhytoSphere without having support for its fair value, such as in the form of a valuation of PhytoSphere or a valuation of the consideration paid for PhytoSphere (*i.e.*, for the value of CannaVEST's common stock).[1068]

696. When Richard Canote started working for CannaVEST on a full-time basis in June 2013, he noticed that there was no support for the $35 million value of the PhytoSphere transaction.[1069]

[1065] *See* ASC 805-30-30-1, ASC 805-20-25-10, and ASC 805-20-30-1; Ex. 88.1 (Devor Report) ¶ 642; Tr. (Vol. VI Devor) 1517:1-1518:11.
[1066] ASC 820-10-20; also ASC 805-20-30-1 (emphasis added); Ex. 88.1 (Devor Report) ¶ 643; Tr. (Vol. VI Devor) 1518:12-1520:6, 1554:9-20 (necessary to determine fair value of CannaVEST stock as of the acquisition date; trades subsequent to the acquisition date are irrelevant); Tr. (Vol XV Devor) 5915:22-5916:12.
[1067] Ex. 705 (CannaVEST Q1 2013 Form 10-Q) 9.
[1068] Ex. 779 (Nov. 4, 2014 CannaVEST letter to Corp. Fin.).
[1069] Tr. (Vol. IX Canote) 2608:18-25.

697. Because CannaVEST did not know the fair value of PhytoSphere or the fair value of the consideration paid for PhytoSphere, CannaVEST's total assets were materially overstated in the first and second quarter of 2013, and were subsequently restated in May 2014, under the guidance of new auditors.[1070]

1. CannaVEST's Stock Did Not Trade in an Active Market.

698. During the period October 1, 2012 through February 1, 2013, Foreclosure Solutions' shares traded on a total of six days, with a total volume of 1400 shares (out of 7,000,000 shares outstanding), with prices ranging from $2.00 to $5.02.[1071]

699. In hiring Vantage Point to analyze the value of CannaVEST's stock, CannaVEST did not rely on the OTC price as the fair market value of its stock "because there was no trading volume, per se, and the price was very volatile…the volume was small to nonexistent and inconsistent."[1072]

700. In a series of letters to the SEC's Division of Corporation Finance, CannaVEST acknowledged that its stock did not trade in an active market.[1073]

701. The purpose of the stock collar in the PhytoSphere agreement was to prevent shareholder dilution by limiting the number of shares that would be issued; it did not and was not intended to represent the fair market value of CannaVEST's stock at the time of the acquisition date.[1074]

[1070] Ex. 88.1 (Devor Report) ¶ 623; Ex. 718 (CannaVEST Q1 2013 Form 10-Q/A) (restating first quarter 2013 financial statements).

[1071] Ex. 729 (Bloomberg screen shot); Ex. 702 (Foreclosure Solutions 2012 Form 10-K) F-4; Tr. (Vol. VI Devor) 1551:7-1553:20; Tr. (Vol. IX Canote) 2602:7-16 (when CannaVEST acquired PhytoSphere in January 2013, the trading volume of CannaVEST's stock was "miniscule" and did not trade in an active market).

[1072] Tr. (Vol. IX Canote) 2618:16-2619:8, 2688:11-19; Ex.830 (Vantage Point engagement letter for the CannaVEST stock valuation).

[1073] Ex. 776 (Apr. 16, 2014 CannaVEST letter to Corp. Fin.); Ex. 779 (Nov. 4, 2014 CannaVEST letter to Corp. Fin.).

[1074] Tr. (Vol. VI Devor) 1527:22-1528:22, 1531:25-1541:13, 1541:15-1542:6, 1548:1-11; Tr. (Vol. IX Canote) 2598:14-2601:24; Ex. 776 (Apr. 16, 2014 CannaVEST letter to Corp. Fin.); Ex. 777 (May 13, 2014 CannaVEST

702. Wahl testified that he recognized that the collar was anti-dilutive for shareholders.[1075]

2. The Acquisition of PhytoSphere Was Not an Orderly Transaction between Market Participants.

703. An "orderly transaction" is a "transaction that assumes exposure to the market for a period before the measurement date to allow for marketing activities that are usual and customary for transactions involving such assets."[1076]

704. Circumstances that may indicate that a transaction is not orderly include, but are not limited to: (a) there was not adequate exposure to the market for a period before the measurement date to allow for marketing activities that are usual and customary for transactions involving such assets or liabilities under current market conditions; or (b) there was a usual and customary marketing period, but the seller marketed the asset or liability to a single market participant.[1077]

705. The PhytoSphere transaction was not an orderly transaction between market participants because CannaVEST did not obtain any financial information on PhytoSphere, did not perform any valuation on PhytoSphere, and did not perform any due diligence on the acquisition. MJNA did not market PhytoSphere to any other buyers and CannaVEST did not compete with any other buyers to buy PhytoSphere.[1078]

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letter to Corp. Fin.); Ex. 778 (June 12, 2014 CannaVEST letter to Corp. Fin.); Ex. 779 (Nov. 4, 2014 CannaVEST letter to Corp. Fin.).

[1075] Tr. (Wahl Vol. XVIII) 4320:12-19.

[1076] ASC 820-10-20; *see also* ASC 805-10-20.

[1077] *See* ASC 820-10-35-54I; Ex. 88.1 (Devor Report) ¶ 644; Tr. (Vol. VI Devor) 1518:12-1520:6, 1520:191521:8.

[1078] Ex. 779 (Nov. 4, 2014 CannaVEST letter to Corp. Fin.); Tr. (Vol. X Stewart) 2897:24-2898:4 (in working on the engagement, CannaVEST management advised PFK that it did not have financial statements of PhytoSphere; Tr. (Vol. IX Canote) 2603:8-59-2605:10 (no worksheets or other documentation supporting value of assets acquired from PhytoSphere); *Id.* at 605:21-2605:1 (Canote asked the chief operating officer of MJNA for PhytoSphere's historical financial statements and was told that separate financial statements for PhytoSphere did not exist); *id.* at606:2-9 (in the first and second quarter of 2013, projected or forecasted financial information for PhytoSphere or CannaVEST did not exist).

706. CannaVEST's financial statements violated GAAP in the first and second quarters of 2013 by materially overstating the value of the total assets related to the PhytoSphere acquisition.[1079]

707. ASC 250 states that "any error in the financial statements of a prior period discovered after the financial statements are issued or are available to be issued should be reported as an error correction, by restating the prior-period financial statements."[1080]

708. After CannaVEST received the PhytoSphere valuation in October 2013, which confirmed that PhytoSphere should have been valued at only approximately $8 million as of January 29, 2013, Anton & Chia proposed that CannaVEST record a goodwill impairment charge in the third quarter of 2013 to correct for the overstatement of the PhytoSphere assets. CannaVEST did not restate its financial statements for the first and second quarters of 2013 to properly reflect the $8 million carrying (and fair) value of the PhytoSphere acquisition – in violation of GAAP, including ASC 250.[1081]

709. For the third quarter of 2013, CannaVEST's decision to record a goodwill impairment charge, instead of restating its financial statements for the first and second quarters of 2013, meant that its third quarter 2013 financial statements were not in accordance with GAAP and, also misleading, as they did not disclose that the consideration to be paid for PhytoSphere was not $35 million, PhytoSphere was never valued at $35 million, and CannaVEST's total assets included in the first and second quarter 2013 balance sheets were materially overstated – in violation of GAAP. CannaVEST was required to restate its prior period filings (i.e., the first and second quarters Forms 10-Q) to correct the errors that resided

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[1079] Ex. 88.1 (Devor Report) ¶ 626, 652; 718, 719, 779; Tr. (Vol. VI Devor) 1559:11-18; Ex. 719 (CannaVEST Q2 2013 Form 10-Q/A) (restating first quarter 2013 financial statements).
[1080] ASC 250-10-45-23.
[1081] Ex. 88.1 (Devor Report) ¶ 651.

therein (as opposed to recording the goodwill impairment charge in the third quarter), but did not do so until after Anton & Chia had resigned and a new auditing firm had been engaged to render an opinion on the year-end 2013 financial statements.[1082]

710. No one from Anton & Chia advised Canote that CannaVEST needed to disclose in its Form 10-Q the facts and circumstances surrounding the impairment, the method CannaVEST used to determine the fair value of goodwill, or that it has obtained an $8 million valuation of PhytoSphere as of the January 29, 2013 acquisition date.[1083] Instead, Anton & Chia revised CannaVEST's third quarter Form 10-Q by writing-off the $27 million in goodwill, merely stating that an impairment had been taken and then sending these revisions to the Form 10-Q to Canote.[1084]

E. CannaVEST's Form 10-Q Amendments and Restatements of Prior Period Financial Statements

711. Because CannaVEST's first and second quarter Forms 10-Q were materially misstated and its third quarter Form 10-Q was materially misleading, CannaVEST was required to restate all three quarters.[1085]

712. In January 2014, CannaVEST engaged PKF LLP as its independent registered accounting firm.[1086]

[1082] *Id.* ¶¶ 653, 718, 719, 779.
[1083] Tr. (Vol. IX Canote) 2643:12-2644:15.
[1084] Exs. 848 & 848.1 (Nov. 12, 2013 email from Windy Wu with redline revised CannaVEST Q3 Form 10-Q attached).
[1085] Ex. 718 (CannaVEST Q1 2013 Form 10-Q/A) (restating first quarter financial statements); Ex. 719 (CannaVEST Q2 2013 Form 10-Q/A) (restating second quarter financial statements); Ex. 720 (CannaVEST Q3 2013 Form 10-Q/A) (restating third quarter financial statements); Ex. 88.1 (Devor Report) ¶ 630.
[1086] Tr. (Vol. X Stewart) 2869:14-2870:15; Ex. 713 (Jan. 16, 2014 CannaVEST Form 8-K).

713. Prior to accepting the engagement, Stewart, a PKF partner, reviewed CannaVEST's most recent filings with the Commission and was concerned about CannaVEST's impairment of approximately $27 million in goodwill related to the PhytoSphere transaction.[1087]

714. CannaVEST's third quarter Form 10-Q simply stated that it had recorded an impairment of goodwill, without disclosing – as required by ASC 350 – the facts and circumstances as to why there was an impairment and how the fair value was arrived at for the new carrying value of that asset.[1088]

715. In or about March 2014, PKF asked CannaVEST for an allocation of the about $8 million fair value among the individual PhytoSphere assets.[1089] In March 2014, Vantage Point updated its report with a purchase price allocation, under ASC 805, allocating a fair value to the assets acquired from PhytoSphere.[1090]

716. PKF prepared a memo analyzing the PhytoSphere acquisition.[1091] PFK determined that CannaVEST's stock price on the OTC at the time of the PhytoSphere acquisition was not an indicator of the fair value of the transaction, as Foreclosure Solutions had no operational history and "was a public shell company which was thinly traded."[1092]

717. CannaVEST, in its 2013 Form 10-K, reported that the PhytoSphere purchase price was determined to be $8,020,000 million based on management's estimate of the fair market value of the business acquired. The company explained, "The fair market value was determined to be the more appropriate basis of valuation as the Company's common stock was not trading,

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[1087] Tr. (Vol. X Stewart) 2872:1-2873:6.
[1088] *Id.* at 874:17-2875:24.
[1089] Ex. 801 (Mar. 3, 2014 email chain).
[1090] Tr. (Vol. X Stewart) 2878:22-2879:7; Tr. (Vol. IX Poling) 2721:6-28, 2722:7-23; Ex.771 (Mar. 2014 PhytoSphere valuation report from PKF workpapers).
[1091] Tr. (Vol. X Stewart) 2880:19-2881:18; Ex.772 (PKF acquisition memo).
[1092] *Id.* at 887:23-2888:9; Ex.772 (PKF acquisition memo).

and the Company had no operations at the time of the acquisition in order to estimate the fair market value of the Company's common stock."[1093]

718. In a Form 8-K filed on April 3, 2014, CannaVEST advised investors that they should not rely on the Forms 10-Q for the first through third quarters of 2013 because of errors related to the purchase price and the purchase price allocation of the assets related to the PhytoSphere acquisition.[1094]

719. On April 14, 2014, in a Form 8-K/A, CannaVEST announced that it would restate the financial statements contained in its Forms 10-Q filed for the first through third quarters of 2013.[1095]

720. On April 24, 2014, CannaVEST filed amendments/corrections to its previously issued Forms 10-Q for the first, second, and third quarters of 2013 on Forms 10-Q/A. In its Forms 10-Q/A for these quarters, covering periods which had originally been reviewed by Anton & Chia, CannaVEST stated that the purchase price for the PhytoSphere assets and the allocation thereof, as originally reported, "were not in accordance with GAAP."[1096]

721. In Stewart's opinion, an independent valuation of the PhytoSphere transaction was "required" because CannaVEST could not rely on CannaVEST's OTC stock price for fair value.[1097]

722. Had PKF been CannaVEST's auditor for the first quarter of 2013, Stewart would have recommended that CannaVEST obtain an independent valuation of PhytoSphere.[1098]

[1093] *Id.* at 891:16-2892:14; Ex.715 (CannaVEST 2013 Form 10-K) F-12.
[1094] Ex. 716 (Apr. 3, 2014 CannaVEST Form 8-K).
[1095] Ex. 717 (Apr. 14, 2014 CannaVEST Form 8-K/A).
[1096] Ex. 718 (CannaVEST Q1 2013 Form 10-Q/A); Ex. 719 (CannaVEST Q2 2013 Form 10-Q/A); Ex. 720 (CannaVEST Q3 2013 Form 10-Q/A).
[1097] Tr. (Vol. X Stewart) 2894:1-2896:16, 2946:21-2947:20.
[1098] *Id.* at 876:18-2877:23, 2898:21-2899:13, 2900:25-2901:10.

723. Stewart also testified that if the auditor is aware that the company has a deficiency or material weakness in its internal control over financial reporting, the auditor should bring a greater level of scrutiny and a greater level of care to the engagement.[1099]

724. PKF was involved in preparing and reviewing correspondence with the Division of Corporate Finance where the Division asked CannaVEST about its restatements and its decision to restate its financial results to reflect a fair value of the PhytoSphere transaction, as opposed to recording the $35 million purchase price and taking an immediate impairment of goodwill.[1100]

725. In those letters, CannaVEST explained that that the share price "collar" between $4.50 and $6.00 per share allowed the company to cap dilution from stock issuances to fund the acquisition, as opposed to establishing a fair value for the common stock or the transaction. As the Company stated, "With this provision and the ability to pay the entire purchase price in stock, we were willing to accept the $35 million stated purchase price demanded by PhytoSphere, because the acquisition would be funded with stock, which was not trading at the time and had little value. At the measurement date, (i) we had minimal operations; (ii) our common stock was not trading, (iii) the number of shares issuable in the transaction was of little relevance to the Company, and (iv) the $35 million purchase price was of little relevance to management and was not thought to represent the fair value of the business acquired when the transaction occurred."[1101]

[1099] *Id.* at 947:21-2948:11; Tr. (Vol. VI Devor) 1568:24-1570:16, 1581:15-1583:8.
[1100] Tr. (Vol. X Stewart) 2901:1-2902:17; Ex.776 (Apr. 4, 2014 letter from CannaVEST to Corp. Fin.); Ex.777 (May 14, 2014 letter from CannaVEST to Corp. Fin.); Ex. 778 (June 12, 2014 letter from CannaVEST to Corp. Fin.); Ex.779 (Nov. 4, 2014 letter from CannaVEST to Corp. Fin.).
[1101] *Id.*

726. In its November 4, 2014 email, the Company also carefully set forth its analysis under ASC 820-10-20, which defines fair value as: "The price that would be received to sell an asset or paid to transfer a liability in an **orderly transaction** between **market participants**."[1102] The Company concluded that the PhytoSphere transaction met neither criteria, as the seller did not market the assets or business of PhytoSphere to anyone prior to selling it to Company, and the Company had no relevant financial information on PhytoSphere and no due diligence procedures performed on the transaction.[1103]

727. In its November 4, 2013 letter, CannaVEST also stated it had evaluated several other factors, namely, that it total assets of $431 as of December 31, 2012, had zero revenues for 2011 and 2012, and that its stock had negligible trading volume. The Company noted that during 2012 there were 250 trading days. "During this timeframe the Company's stock was traded on only 6 days, representing 1,400 shares traded of common stock. The Company had 7,000,000 shares of issued and outstanding common stock at December 31, 2012. The trading volume for 2012 represents 0.02% of the Company's total outstanding common stock."[1104] As such, the Company concluded "the only method to credibly determine the fair market value of this acquisition was to perform a third party valuation of the underlying assets acquired which is supported by the fair value guidance of ASC 820."[1105]

728. In preparing and reviewing CannaVEST's letters to the Division of Corporate Finance, Stewart had discussions with CannaVEST's management in which management explained the facts and circumstances surrounding the transaction.[1106]

[1102] *Id.* at 2-3 (emphasis in original).
[1103] *Id.* at 4-5.
[1104] *Id.* at 5.
[1105] *Id.* at 6.
[1106] Tr. (Vol. X Stewart) 2906:20-2907:13, 2908:11-14, 2948:15-2949:17.

729. The Division of Corporate Finance did not require CannaVEST to restate its restated financial results for the first three quarters of 2013.[1107]

F. Anton & Chia's Reviews of CannaVEST's 2013 Interim Financial Statements

1. First Quarter 2013

730. Anton & Chia failed to perform its review of CannaVEST's first quarter of 2013 financial statements in accordance with PCAOB standards. As a result of the deficiencies in its review procedures, Wahl and Chung failed to determine and conclude that CannaVEST's financial statements were materially misstated and, therefore, required material modifications in order to be compliant with GAAP. Wahl's deficiencies with respect to the interim review procedures included the failure to:

- properly plan the interim review;
- perform sufficient inquiries of the predecessor auditor;
- exercise an appropriate level of due professional care and professional skepticism;
- appropriately consider and/or address known red flags;
- obtain a sufficient understanding of CannaVEST and its business;
- sufficiently assess evidence obtained; and
- sufficiently document information relevant to the quarterly review.[1108]

[1107] *Id.* at 892:22-25.
[1108] Ex. 88.1 (Devor Report) ¶ 658.

a. Deficiencies in Planning the Interim Review

731. The appointment of Anton & Chia as auditors occurred on May 3, 2013. At the time Anton & Chia was hired (to replace Turner Stone), it was contemplated that CannaVEST would file its first quarter Form 10-Q on May 15, 2013.[1109]

732. As the engagement partner, Wahl was responsible for the engagement and its performance. Accordingly, Wahl was responsible for properly supervising the work of the engagement team members and for compliance with PCAOB standards.[1110]

733. Under PCAOB standard AU 722, an interim review mainly consists of making inquiries of management and performing analytical procedures.[1111] The first quarter of 2013 was the first time that Anton & Chia had performed any procedures on CannaVEST's financial information.[1112]

734. Anton & Chia's engagement team for the first quarter of 2013 interim review of CannaVEST included Wahl as the engagement partner, Chung as the EQR, and Shek as the audit manager.[1113]

735. Shek was a named respondent in this action, and settled with the Commission, with an order being entered against him on July 12, 2018.[1114]

736. Shek submitted a declaration to the Commission, under the penalty of perjury, as a supplemental Wells submission, before he was named as a respondent in this action.[1115]

[1109] Ex. 703 (May 14, 2013 CannaVEST Form 8-K).
[1110] Ex. 88.1 (Devor Report) ¶ 660, Tr. (Vol. VI Devor) 15585:8-1586:21, 1591:4-6 (as the engagement partner, Wahl was obligated to review the work papers); Tr. (Vol. VIII Shek) 2363:6-12; Tr. (Vol. XVII Wahl) 4009:23-25 ("But at the end of the day, if the staff did the work, my job is to review it and make sure it's done right. So I'm the captain of the ship.")
[1111] AU 722.07.
[1112] Ex. 703 (May 14, 2013 CannaVEST Form 8-K) (disclosing change in auditors).
[1113] Ex. 740 (Q1 2013 planning memo); Tr. (Vol. VIII Shek) 2360:6-9.
[1114] Tr. (Vol. VIII Shek) 2358:17-25.
[1115] *Id.* at 371:4-2372:6; Ex.726 (Shek supplemental Wells submission).

737. When Shek worked on CannaVEST's first quarter interim review, he did not have any previous training or experience in reviewing or auditing business combinations under

738. ASC 805, or in analyzing or measuring the fair value of business transaction under ASC 820.[1116]

739. Wahl was familiar with Shek's lack of experience.[1117]

740. Shek was notified only a few days before CannaVEST's deadline to file its first quarter Form 10-Q that he would work on the interim review.[1118]

741. Because CannaVEST was a new client, Wahl pressured the engagement team to complete its review of the Form 10-Q so that it could be filed on time.[1119]

742. From his experience at Anton & Chia, Shek observed a high turnover of personnel at the staff level, and thought that there was undue emphasis on the collection of fees, with Wahl walking around the office, saying "Get it done, get it done" and "Bill and collect, bill and collect."[1120]

743. Shek believed, given the timing of the engagement, that there was "no way that we could have completed the filing on time with a significant business transaction entered in Q1." Shek also told Wahl that he was surprised to learn the company was something more than a shell, and he told Wahl "the company has a significant agreement this quarter, and it's no longer a shell."[1121]

744. Wahl told Shek that CannaVEST could amend the Form 10-Q if there was anything wrong with it.[1122]

[1116] *Id.* at 372:9-13, 2378:2-14, 2403:17-19; Ex.726 (Shek supplemental Wells submission).
[1117] *Id.* at 376:11-19, 2378:15-17; Ex.726 (Shek supplemental Wells submission).
[1118] *Id.* at 375:14-2376:10, 2377:3-2378:1; Ex.726 (Shek supplemental Wells submission).
[1119] *Id.* at 375:14-2376:10; Ex.726 (Shek supplemental Wells submission).
[1120] *Id.* at 457:3-22.
[1121] *Id.* at 374:19-2375:13, 2413:4-16; Ex.726 (Shek supplemental Wells submission).
[1122] *Id.* at 374:19-2375:13, 2401:3-21; Ex.726 (Shek supplemental Wells submission).

745. At the time of the first quarter interim review Wahl was on a vacation with his wife.[1123]

746. No one from Anton & Chia visited CannaVEST's offices during the first quarter interim review.[1124]

747. Shek did not make, and Wahl did not direct him to make, any inquiries as to Wilson's competency to draft CannaVEST's financial statements in accordance with GAAP.[1125]

748. Wilson is a Nevada certified CPA specializing in tax services to small business clients.[1126] Wilson does not hold himself out as knowing how to account for business combinations under GAAP, does not know to apply ASC 805 or 820, and does not practice any SEC financial reporting and, other than CannaVEST, does no work for public companies.[1127]

749. Shek managed the work of La, who was assigned by Wahl to do "all the heavy lifting" on the CannaVEST first quarter interim review.[1128]

750. La worked for Anton & Chia for nine months, from March 2013 to November 2013.[1129]

751. La was not and never has been a CPA.[1130]

752. La was hired as a staff accountant, an entry level position.[1131]

753. La had no auditing experience prior to joining Anton & Chia.[1132]

[1123] *Id.* at 378:18-2379:8.
[1124] *Id.* at 379:9-25.
[1125] *Id.* at 382:9-20; Ex.727 (May 15, 2013 email chain).
[1126] Tr. (Vol. IX Wilson) 2532:13-2533:19.
[1127] *Id.* at 533:12-22, 2534:25-2535:6, 2559:12-17, 2585:8-21.
[1128] Tr. (Vol. VIII Shek) 2380:2-5, 2381:15-2382:2; Ex.727 (May 15, 2013 email chain).
[1129] Tr. (Vol. X La) 2803:23-2804:2.
[1130] *Id.* at 804:7-11.
[1131] *Id.* at 804:12-20.
[1132] *Id.* at 805:11-13.

754. La was interviewed by Wahl, who knew La did not have any prior auditing experience.[1133]

755. La characterized the work environment at Anton & Chia as “uncomfortable,” “long hours,” “very fast paced,” with a “constant urgency … of just trying to get things done” and with “minimal training” that “wasn’t really organized.”[1134] The training was more “hands on” in terms of having to “figure it out by yourself” and “learning on the fly.”[1135]

756. La testified that Wahl would walk around the office, telling the staff “Get ‘er done.”[1136]

757. According to La, the group meetings that Wahl had with his staff were unpleasant, as he was just trying to get everyone to do things quickly, and telling the staff they could do a better job.[1137]

758. In terms of supervision, Wahl would walk around the office and just make sure everyone was getting things done.[1138]

759. La was assigned to the CannaVEST interim review on May 13, 2013, just two days before CannaVEST’s first quarter Form 10-Q was due to be filed.[1139]

760. Prior to coming to Anton & Chia, La was no prior experience in applying ASC 805 (business combinations) or 820 (fair value measurements).[1140]

761. Anton & Chia initially drafted the company’s management representation letter and then forwarded it to the company for it to be signed.[1141]

[1133] *Id.* at 805:14-21.
[1134] *Id.* at 805:22-2806:19, 2811:12-17.
[1135] *Id.* at 812:5-15.
[1136] *Id.* at 810:3-6.
[1137] *Id.* at 810:7-21.
[1138] *Id.* at 812:23-2813:6.
[1139] Ex.727 (May 15, 2013 email chain).
[1140] Tr. (Vol. X La) 2820:6-19, 2822:13-21.
[1141] Tr. (Vol. VIII Shek) 2390:14-2391:22; Ex.736 (Q1 2013 management representation letter).

762. The Q1 2013 management representation letter stated that the company was "aware of no significant deficiencies, including material weaknesses, in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information."[1142]

763. That representation was in direct conflict with CannaVEST's Form 10-Q filed on May 20, 2013 and its Form 10-Q/A filed on May 30, 2013, both of which disclosed that "The Company's management has identified a material weakness in the effectiveness of internal control over financial reporting related to a shortage of resources in the accounting department required to assure appropriate segregation of duties with employees having appropriate accounting qualifications related to the Company's unique industry accounting and disclosure rules."[1143]

764. La prepared the *Review Planning Memorandum* for the first quarter interim review of CannaVEST.[1144] Despite the first quarter of 2013 representing the first ever procedures performed by Anton & Chia on CannaVEST, the planning memo did not memorialize a discussion regarding how CannaVEST operated, or reflect any assessment (other than a mere mention) of the industry in which CannaVEST had, for the first time in this same quarter, begun to operate (*i.e.*, the hemp and CBD oil industry). Furthermore, the planning memo did not mention CannaVEST's material weakness in internal controls related to its lack of qualified accounting personnel, how that risk could increase the likelihood of misstatement, and plans by Anton & Chia to address that risk, such as performing additional review procedures.[1145]

[1142] Ex.736 (Q1 2013 management representation letter) 6.
[1143] *See* Ex. 705 (CannaVEST Q1 2013 Form 10-Q) 15; Ex. 706 (CannaVEST Q1 2013 Form 10-Q/A) 16.
[1144] Tr. (Vol. X La) 2834:5-2835:1; Ex.740 (Q1 planning memo).
[1145] Ex. 740 (Q1 planning memo).

765. The planning memo also did not mention making any inquiries into the fair value of CannaVEST stock, the fair value of PhytoSphere, or applying ASC 805 or ASC 820.[1146]

766. This constituted, among other things, violations of PCAOB standards with respect to the planning of the first quarter 2013 review.[1147]

767. Neither Wahl nor anyone else at Anton & Chia told La that ASC 805 and ASC 820 applied to the PhytoSphere transaction.[1148]

768. La did not know ASC 805 and ASC 820 applied to the PhytoSphere transaction.[1149]

769. Shek could not recall participating in a planning meeting prior to the first quarter review, as Wahl was on vacation.[1150]

770. Anton & Chia's first quarter work papers do not reflect any discussion with management about obtaining a valuation of PhytoSphere or CannaVEST's stock for purposes of proper financial reporting. To the contrary, the first quarter of 2013 workpapers reflect only that Anton & Chia would inquire of management to ensure CannaVEST's financial statements (inclusive of the PhytoSphere assets) were "properly presented" and that the "repayment procedure [for PhytoSphere] was valid."[1151]

771. The workpapers also do not reflect any inquiries made, or discussions about, the fair value of CannaVEST stock as of January 29, 2013, or the fair value of PhytoSphere's assets.[1152]

[1146] *Id.*
[1147] Ex. 88.1 (Devor Report) ¶ 667.
[1148] Tr. (Vol. X La) 2836:7-13.
[1149] *Id.* at 836:3-6; 2838:5-17.
[1150] Tr. (Vol. VIII Shek) 2411:10-15.
[1151] Ex. 3 (Anton & Chia workpapers); Ex. 740 (Q1 planning memo).
[1152] *Id.*; Tr. (Vol. VI Devor) 1586:22-1589:24 ("there is no direction at least from the planning memo as to what inquiry and analytical procedure one should do and focus on to ascertain that ASC 805 is perform – is – complied with.").

772. Wahl should have made such inquiries of CannaVEST management regarding the fair value of the consideration to be paid for PhytoSphere, (*i.e*., the fair value of CannaVEST's stock) to be in compliance with applicable PCAOB standards.[1153]

773. Shek failed to make, and Wahl did not direct him to make, any inquiries of CannaVEST's CEO regarding the fair value of the consideration (*i.e*., the fair value of CannaVEST's shares as of January 29, 2013) that CannaVEST would pay to MJNA.[1154]

774. Shek also failed to make, and Wahl did not direct him to make, any inquiries of CannaVEST's CEO regarding how the stock collar of $4.50 to $6.00 in the PhytoSphere agreement was determined.[1155]

775. On May 9, 2013, Anton & Chia sent a request to CannaVEST for various financial information, with a requested delivery date of May 11, 2013. Wahl's list of requested financial information did not include any information specific to the PhytoSphere transaction, even though it was the most significant transaction that quarter.[1156]

776. This would have allowed Anton & Chia just four days (including Saturday and Sunday) to conduct its interim review on the financial statements of a company for which it had never previously performed any assurance services.[1157]

777. CannaVEST did not provide a draft of its first quarter 2013 financial statements to Anton & Chia until May 14, 2013 at 5:00pm, one day before CannaVEST was supposed to file its Form 10-Q.[1158]

[1153] Ex. 88.1 (Devor Report) ¶ 664).
[1154] Tr. (Vol. VIII Shek) 2360:14-:25, 2361:18-25.
[1155] *Id.* at 362:9-2363:9.
[1156] Ex. 750 (May 9, 2013 Anton & Chia request letter to CannaVEST).
[1157] Ex. 703 (May 14, 2013 Form 8-K); Tr. (Vol. VI Devor) 1565:7-1567:10 (four days is insufficient time to conduct an interim review of a new client with a business combination).
[1158] Ex. 761 (May 16, 2013 email chain); Ex. 793 (May 14, 2013 email chain).

778. As a result, CannaVEST filed a Form NT 10-Q on May 15, 2013, announcing its inability to file its Form 10-Q by May 15, 2015. In doing so, CannaVEST assured the SEC that it would file its Form 10-Q no later than May 20, 2013.[1159]

779. Wahl knew that the Company was requesting only a five-day extension.[1160]

780. Even that extension provided Anton & Chia with an unreasonably short amount of time to conduct an adequate interim review, particularly in light of this being a first time engagement for Anton & Chia with CannaVEST, and the significant PhytoSphere acquisition that had occurred in the first quarter of 2013.[1161]

781. In both Shek's and La's opinions, the additional five days to complete Anton & Chia's interim review, as a result of filing the Form NT10-Q (Ex.704), was not a sufficient amount of time to be able to analyze the PhytoSphere transaction.[1162]

782. These time constraints not only contributed to the failures of the engagement team to conduct a proper interim review of CannaVEST under AU 722, but also highlight Wahl's lack of due professional care when applying PCAOB standards.[1163]

783. In the morning of May 20, 2013, John Cleary (CannaVEST's outside counsel) forwarded to Wahl and Wilson the Form 10-Q the company had sent to its filing agent, containing yellow highlighted areas for inserting numbers. Cleary stated "we need to file by 2pm today." Wahl then forwarded the yellow-highlighted Form 10-Q to Shek at 10:42 am, who then forwarded it to La.[1164] Ultimately, the Form 10-Q was filed with the yellow highlights removed, but with blanks for the missing financial information.[1165] The Form 10-Q, under the section

[1159] Ex. 704 (CannaVEST Form NT 10-Q).
[1160] Ex. 727 (May 15, 2013 email chain).
[1161] Ex. 88.1 (Devor Report) ¶ 669; Tr. (Vol. VI Devor) 1572:25-1575:7.
[1162] Tr. (Vol. VIII Shek) 2399:9-2400:20, 2497:20-2498:11; Tr. (Vol. X La) 2821:7-2822:12.
[1163] Ex. 88.1 (Devor Report) ¶ 671.
[1164] Exs. 728 and 728.1 (May 20, 2013 email chain with CannaVEST Q1 2013 Form 10-Q attached).
[1165] Ex. 705 (CannaVEST Q1 2013 Form 10-Q); *see also* Tr. (Vol. VIII Shek) 2515:24-2418:25.

entitled "Acquisition of Assets of PhytoSphere, LLC" also contained a discussion of a transaction that had nothing to do with PhytoSphere or CannaVEST.[1166]

784. Anton & Chia's review was not complete as of May 20, 2013, when CannaVEST filed its Form 10-Q.[1167] Nor was there an EQR in connection with the May 20 filing.[1168]

785. Wahl never expressed any surprise or concern that CannaVEST had filed its Form 10-Q before Anton & Chia's review was complete.[1169]

786. Canote spoke to both Wahl and Shek about the fact that CannaVEST's Form 10-Q that had been filed on May 20, 2013. Neither of them expressed any concern about CannaVEST having filed the Form 10-Q on that date.[1170]

b. Deficiencies Relating to Lack of Communications with Predecessor Auditors

787. CannaVEST's predecessor public accounting firm was Turner Stone & Company.[1171]

788. Turner Stone audited CannaVEST's 2012 Form 10-K.[1172]

789. The PhytoSphere transaction was not recorded in the financials of CannaVEST as of December 31, 2012, because the assets had not been transferred by that date, nor was any consideration paid by that date.[1173]

[1166] Tr. (Vol. VIII Shek) 2419:1-15; Ex.705 (CannaVEST Q1 2013 Form 10-Q) at 11; Tr. (Vol. IX Canote) 2596:11-2598:9.
[1167] Tr. (Vol. VIII Shek) 2419:14-24, 2420:21-2421:19; Ex.731 (Q1 signoff summary report showing various signoffs well after May 20).
[1168] *Id.* at 419:4-7.
[1169] *Id.* at 419:25-2420:3.
[1170] Tr. (Vol. IX Canote) 2594:3-2595:2.
[1171] Tr. (Vol. VII Turner) 2059:15-2060:15.
[1172] *Id.* at 060:16-18.
[1173] *Id.* at 072:16-2073:8.

790. AS 315 required Anton & Chia to communicate with CannaVEST's predecessor auditor (Turner Stone) as an initial procedure on a first time engagement.[1174] Among other things, AS 315 requires the successor auditor to communicate with the predecessor auditor and ask the predecessor auditor's understanding of the reason for the change in auditors, and whether there has been any disagreements with management as to accounting principles.[1175]

791. Neither Wahl, nor anyone else from Anton & Chia communicated with Turner Stone; nor is any such communication reflected in Anton & Chia's workpapers.[1176]

792. Turner Stone was terminated by CannaVEST over the amount of money Turner Stone would charge for audit work in 2013 in light of the PhytoSphere transaction.[1177]

793. Turner of Turner Stone testified that the applicable accounting standards for the PhytoSphere transaction were ASC 805 (business combinations) and 820 (fair value measurements). These standards require a determination of the fair value of the consideration paid to acquire the assets and a determination of the fair value of the assets being acquired.[1178]

794. Turner did not consider the trading prices of CannaVEST stock in the OTC market a level 1 input under ASC 820, given the stock's sporadic trading volume.[1179]

795. Turner was of the opinion that the value of Foreclosure Solution's stock was "essentially zero" as the company had only about $400 of assets, no revenue and no operating history.[1180]

[1174] *See also* AU 722.12.
[1175] Ex. 88.1 (Devor Report) ¶ 672; Tr. (Vol. VI Devor) 1562:11-1565:6; Tr. (Vol. VII Turner) 2090:11-2092:9.
[1176] Tr. (Vol. VII Turner) 2092:10-12; Tr. (Vol. X Stewart) 2870:16-21.
[1177] Tr. (Vol. VII Turner) 2087:16-2089:17.
[1178] *Id.* at 076:11-22.
[1179] *Id.* at 077:11-2079:3.
[1180] *Id.* at 067:2-9; 2071:24-2072:3 (CannaVEST's shares not worth between $4.50 and $6.00).

796. Turner recommended to the CEO of CannaVEST that the company hire an independent valuation firm to determine the fair value of the assets being acquired from PhytoSphere.[1181]

797. In the absence of CannaVEST hiring an independent valuation firm, Turner Stone would not have permitted the company to record the $35 million in assets on CannaVEST's balance sheet related to the PhytoSphere transaction.[1182]

798. On April 12, 2013, Turner Stone delivered a letter to CannaVEST, advising the company that with respect to the acquisition of PhytoSphere, the company's 2013 financial statements will require an appraisal of the fair value of those assets.[1183]

799. Turner opined that $2500 for a quarterly review (the amount charged by Anton & Chia) was unreasonably low.[1184]

c. Deficiencies in Inquiries and Analytical Procedures

800. As set forth in PCAOB standards, the fieldwork for interim reviews performed by auditors is comprised primarily of inquiries and analytical procedures.[1185] The acquisition of PhytoSphere constituted almost all of CannaVEST's total assets as of March 31, 2013, and was the most significant transaction recorded during the first quarter of 2013. In light of that, the inquiries and analytical procedures performed by Anton & Chia for its first quarter of 2013

[1181] *Id.* at 079:10-24; Ex.781 (March 27, 2013 email from Turner to Mona).
[1182] *Id.* at 080:25-2081:15, 2081:15-2082:19, 2105:4-21 ("as an auditor [you're left] with only one choice: have someone that's qualified determine that fair value.").
[1183] *Id.* at 082:20-2085:13; Ex.782 (Apr. 16, 2013 email, with Apr. 12, 2013 letter from Turner Stone to CannaVEST attached).
[1184] *Id.* at 088:22-2089:10 ("There's no way you can do the work and document that as required by professional standards for that amount of money"); *see also* Tr. (Vol. IX Canote) 2652:16-24 (Anton & Chia's $2500 fee for each interim review "seemed really low. It did not really make sense.").
[1185] AU 722.07.

interim review for CannaVEST were deficient in that they did not sufficiently address the PhytoSphere acquisition, in violation of PCAOB standards.[1186]

801. Wilson prepared CannaVEST's financial information for the first quarter of 2013, but was not qualified to assist with CannaVEST's GAAP reporting. After preparing the first quarter of 2013 financial information, Wilson sent Mona an "accountant's compilation report" that stated, among other things:

- he had merely compiled the financial statements for Q1 2013;
- he had "not reviewed or audited the accompanying financial statements;"
- he did not "provide any assurance about whether the financial statements are in accordance" with GAAP.[1187]

802. Neither Wahl nor any other member of Anton & Chia's engagement team ensured that inquiries were made of someone knowledgeable about the PhytoSphere transaction who was qualified to handle GAAP reporting. Rather, the only record evidence is an email from Wahl to Wilson and Cleary (CannaVEST's outside counsel) in which Wahl stated "No comments at this time. I assume Ed [Wilson] is drafting the financial statements in accordance with U.S. GAAP."[1188]

803. In response to one inquiry made by Anton & Chia to Wilson (*i.e.*, "[p]lease provide the allocation of intangibles and goodwill and your support on the allocation[]"), Wilson stated that CannaVEST did "not have a schedule for a detail of the intangibles," and that the PhytoSphere agreement was "not very specific."[1189]

[1186] Ex. 88.1 (Devor Report) ¶ 674).
[1187] Ex. 794 (Wilson's compilation report).
[1188] Ex. 727 (May 15, 2013 email chain).
[1189] Ex. 761 (May 16, 2013 email chain).

804. That should have been a red flag to Anton & Chia that the parties were not clear on the value of the subject assets and should have caused Anton & Chia to perform additional inquiries regarding how the value of the acquisition – and the journal entries purportedly reflecting such value – had been determined.[1190]

805. In its workpaper entitled *Balance Sheet Analytics*, Anton & Chia stated that CannaVEST had allocated values to the assets acquired from PhytoSphere according to "a breakdown" from the PhytoSphere agreement itself.[1191] However, there were no values assigned to the assets in the PhytoSphere agreement.[1192] Instead, Wilson provided Anton & Chia with an allocation of the $35 million among the assets related to the PhytoSphere acquisition. Wilson had received this allocation from Mona. Wahl, however, failed to make, or direct the engagement team to make, inquiries of Mona or Wilson, regarding why he believed this asset allocation was appropriate.[1193]

806. La prepared the first quarter balance sheet analytics. La simply copied into the workpaper the breakdown for the PhytoSphere transaction that Wilson had provided.[1194]

807. La prepared also Anton & Chia's first quarter interim review checklist. This checklist failed to include any specific or tailored questions related to the PhytoSphere transaction, such as the fair value of the consideration, i.e., CannaVEST's stock, or the fair value of PhytoSphere's assets. In fact, as to Item 7, which asked the question, "If relevant to the entity, has the fair value of financial assets and liabilities… been measured and recorded in accordance with GAAP?" the box was marked "No."[1195]

[1190] Ex. 784 (Q1 inquiries checklist); Ex. 88.1 (Devor Report) ¶ 679; Tr. (Vol. VI Devor) 1570:18-1571:19).
[1191] Ex. 850 (Q1 balance sheet analytics).
[1192] Ex. 751 (PhytoSphere agreement).
[1193] Tr. (Vol. X La) 2823:12-25); Tr. (Vol. IX Wilson) 2549:3-19, 2550:21-2551:2.
[1194] Tr. (Vol. X La) 2838:18-23; Ex.850 (Q1 balance sheet analytics).
[1195] Ex.784 (Q1 inquiries checklist); Ex. 88.1 (Devor report) ¶ 675; Tr. (Vol. X La) 2839:2840:17; Tr. (Vol. VIII Shek) 2427:25-2428:16.

808. Anton & Chia's workpapers did not include copies of any of the supposed agreements purportedly acquired by CannaVEST (*i.e.*, the Right to Purchase CBD, a Non-Compete Agreement, and what was vaguely referred to as "Other Agreements") – which represented 32%, 14%, and 50%, respectively, of the total $35 million in assets recorded as of March 31, 2013 on CannaVEST's balance sheet in connection with the PhytoSphere acquisition.[1196]

809. In a May 15, 2013 email from Wilson to Shek, Wilson broke down the value of the assets acquired from PhytoSphere, including "Other agreements of $17,535,000 (to balance). Tommy Shek was never provided with those "other agreements" and, in hindsight, Shek testified that he should have seen this as a red flag.[1197]

810. Wilson's breakdown of the assets acquired from PhytoSphere included "Other agreements of $17,545,000 (to balance)" which was a "fudge factor" Wilson had come up with for the difference between the value of the other identifiable assets and the total purchase price of $35 million. Wilson never saw those other agreements and did nothing to verify the other numbers that Mike Mona had given him for items 5 (right to purchase CBD oil) and 6 (non-compete agreement).[1198]

811. When Wilson included the $35 million in PhytoSphere assets in CannaVEST's balance sheets, he was not thinking of how to account for the transaction under ASC 805 or ASC 820; rather he was just taking the $35 million purchase price and breaking it down into a list of assets.[1199]

[1196] Ex. 3 (Anton & Chia's workpapers).
[1197] Tr. (Vol. VIII Shek) 2401:22-2402:21; Ex.793 (May 14, 2013 email chain).
[1198] Tr. (Vol. IX Wilson) 2558:2-10, 2558:11-21, 2559:3-5; Ex.793 (May 14, 3013 email chain).
[1199] *Id.* at 559:18-2560:7.

812. Wilson did not provide any assurance to CannaVEST that the first quarter financial information he had compiled was in compliance with GAAP.[1200]

813. Since Wahl was on vacation and not in the office, Shek called him by phone and described the terms of the PhytoSphere agreement. Wahl did not seem familiar with the stock collar provision in the agreement, and asked Shek "to look at the stock price, you know, in the OTC market." Shek told Wahl that the stock was trading in May 2013 at "more than $6." Wahl responded, "that's the only thing we can rely on, so we just take it."[1201]

814. During the course of the first quarter interim review, Wahl never suggested that the company should obtain an independent valuation of its stock as of the acquisition date of January 29, 2013.[1202]

815. Shek did not make, and Wahl did not direct him to make, any inquiries of CannaVEST management as to whether the transaction was orderly or between market participants, how the stock collar was determined or what it's purpose was, or how Wilson had determined the values of the assets acquired from PhytoSphere.[1203]

816. Neither Wahl nor anyone else at Anton & Chia directed La to make inquiries of CannaVEST concerning: (1) the purpose of the stock collar in the PhytoSphere agreement; (2) the fair value of CannaVEST's stock as of the acquisition closing date of January 29, 2013; (3) whether CannaVEST's stock traded in an active market; (4) the fair value of PhytoSphere assets as of the acquisition date of January 29, 2013; (5) whether the PhytoSphere transaction was an orderly transaction under ASC 805, that is, whether CannaVEST competed with other buyers for PhytoSphere or whether PhytoSphere marketed itself to other buyers; (6) whether the transaction

[1200] *Id.* at 560:12-2561:21; Ex.794 (Wilson's compilation report).
[1201] Tr. (Vol. VIII Shek) 2405:6-2406:2, 2407:24-2408:12.
[1202] *Id.* at 407:10-22).
[1203] *Id.* at 412:9-24, 2429:20-2430:24, 2422:22-2423:5, 2425:4-16).

was between market participants under ASC 805; (7) whether CannaVEST had conducted any due diligence on PhytoSphere or whether financial projections for PhytoSphere existed.[1204]

817. Neither Wahl nor anyone else at Anton & Chia instructed La to ask CannaVEST management whether it had obtained a valuation of its stock, or a valuation of the PhytoSphere assets.[1205]

818. The foregoing demonstrates that Wahl failed to perform, or failed to direct the engagement team to perform, sufficient inquiries related to:

- who at CannaVEST had the appropriate accounting qualifications to perform GAAP reporting;
- whether any due diligence had been performed by CannaVEST on the purchase of PhytoSphere;
- whether MJNA had marketed PhytoSphere to other buyers;
- the fair value of the consideration to be paid by CannaVEST for PhytoSphere (*i.e.*, the fair value of CannaVEST's stock as of January 29, 2013); and
- the fair value of the PhytoSphere assets.[1206]

d. First Quarter 2013 Engagement Summary Memo

819. Anton & Chia also prepared an engagement summary memo for the first quarter of 2013. The engagement summary memo merely mimicked the language from the planning memo regarding the PhytoSphere transaction, except it provided in past tense that Anton & Chia

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[1204] Tr. (Vol. X La) 2825:23-2828:6.
[1205] *Id.* at 829:9-2830:8; *see also* Tr. (Vol. VIII Shek) 2407:10-22 (during the course of the first quarter interim review, Wahl never suggested that the company should obtain an independent valuation of its stock as of the acquisition date of January 29, 2013).
[1206] Ex. 784 (Q1 inquiries checklist); Ex. 88.1 (Devor Report) ¶ 685; Tr. (Vol. VI Devor) 1596:17-1598:22.

had "made" inquiries "to ensure that provided financials are properly presented and repayment procedure is valid…" Again, the engagement summary memo mentioned nothing about Anton & Chia inquiring about the fair value of the consideration to be paid, i.e., the fair value of CannaVEST's stock as of January 29, 2013, or the fair value of PhytoSphere's assets. Moreover, there was no mention of the applicable accounting standards ASC 805 and 820.[1207]

e. Chung's Failure to Discharge her Role as the EQR during the First Quarter of 2013 Interim Review

820. An engagement quality review and concurring approval of issuance are required for an interim review of financial information conducted pursuant to the PCAOB standards.[1208]

821. The objective of the EQR is to perform an evaluation of the significant judgements made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement and in preparing the engagement report, if a report is to be issued, in order to determine whether to provide concurring approval of issuance.[1209]

822. In particular, the EQR should hold discussions with the engagement partner and other members of the engagement team and review documentation, in order to evaluate the significant judgments that relate to engagement planning, including the firm's recent engagement experience with the company, the company's business, recent significant activities, related financial reporting issues and risks, and the nature of identified risk of material misstatement due to fraud.[1210]

823. Among other things, the EQR should also evaluate whether appropriate consultations with management have taken place and review the documentation, including

[1207] Ex. 747 (Q1 engagement summary memo).
[1208] AS 7.1; *see also* Ex. 88.1 (Devor Report) ¶ 686.
[1209] AS 7.2; *see also* Ex. 88.1 (Devor Report) ¶ 687.
[1210] AS 7.14-16; *see also* Ex. 88.1 (Devor Report) ¶ 691.

conclusions of such consultations, and whether appropriate matters have been communicated to management.[1211]

824. The EQR should also review the interim financial information for all periods presented and for the immediately preceding interim period, and management's disclosures about any changes in internal control over financial reporting.[1212]

825. In addition, in a review of interim financial information, the EQR should evaluate whether the engagement documentation supports the conclusions reached by the engagement team with respect to the matters reviewed.[1213]

826. In a review of interim financial information, the EQR may provide concurring approval of issuance only if, after performing with due professional care the review required by AS 7, the EQR is not aware of any significant engagement deficiency. A deficiency exists, for purposes of the EQR review, when the engagement team fails to perform interim procedures necessary in the circumstances of the engagement or where the engagement team reaches an inappropriate overall conclusion on the subject matter of the engagement (including whether material modifications to the interim financial statements under review would be necessary for such to comply with GAAP).[1214]

827. Finally, the documentation of an EQR should contain sufficient information to enable an experienced auditor, having no previous connection with the engagement, to understand the procedures performed by the EQR.[1215]

[1211] AS 7.15; *see also* Ex. 88.1 (Devor Report) ¶ 691.
[1212] AS 7.14; *see also* Ex. 88.1 (Devor Report) ¶ 692.
[1213] AS 7.16; *see also* Ex. 88.1 (Devor Report) ¶ 692.
[1214] AS 7.17; *see also* Ex. 88.1 (Devor Report) ¶ 693.
[1215] AS 7.19; *see also* Ex. 88.1 (Devor Report) ¶ 693.

828. Chung was the EQR for Anton & Chia's first quarter of 2013 review of CannaVEST.[1216]

829. In his investigative testimony, Wahl acknowledged that his wife, Chung, had not been involved in the auditing business for three to four years as of 2013, and was the EQR on CannaVEST's first quarter interim review only because Anton & Chia's other partner, David Ruan, had left.[1217]

830. In connection with her role as the EQR for the first quarter of 2013 interim review for CannaVEST, Chung failed to conduct an adequate engagement quality review in that she failed to properly evaluate, among other things, the planning of the engagement, the sufficiency of the inquiries made and analytical procedures performed, the sufficiency of any evidence obtained, or evidence of which the engagement team should have been aware, and the engagement team's significant judgments. As a result, Chung failed to identify significant engagement deficiencies in the interim review. Specifically, Chung failed to identify that the engagement team did not properly plan the engagement, did not make adequate inquiries of management, did not prepare adequate documentation for the engagement, and inappropriately concluded that CannaVEST's first quarter financial statements did not require any material modifications to conform with GAAP.[1218]

831. Anton & Chia, during the planning of the first quarter of 2013 review, and throughout its procedures, failed to address that a material weakness existed within CannaVEST's system of internal control over financial reporting, specifically with respect to

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[1216] Ex. 839.6 (Prior Testimony Designations) 360 (July 1, 2019 Chung AP Dep. Tr. at 57:11-16).

[1217] Ex. 839.6 (Prior Testimony Designations) 195, 200 (Jan. 21, 2016 Wahl Inv. Test. at 355:8-17, 364:4-13).

[1218] Ex. 88.1 (Devor Report) ¶ 700); Ex. 759 (Q1 planning memo); Ex. 784 (Q1 inquiries checklist); Ex. 850 (Q1 balance sheet analytics); Ex. 747 (Q1 engagement summary memo); Ex. 745 (Q1 supervision, review, and approval form).

CannaVEST's lack of qualified accounting personnel. This included Anton & Chia's failure to assess whether the material weakness would increase the risk of material misstatements in CannaVEST's first quarter financial statements, and its failure to plan interim review procedures accordingly to address that risk, such as performing additional inquiries or other procedures. Chung failed to identify these planning failures.[1219]

832. Chung also failed to identify that the engagement team did not make appropriate inquiries of CannaVEST's management regarding the $35 million value recorded on CannaVEST's balance sheet related to the PhytoSphere acquisition. For example, Chung failed to identify that the engagement team did not make inquiries of management for the fair value of the consideration, *i.e.*, the fair value of CannaVEST's shares as of January 29, 2013, or the fair value of the PhytoSphere assets. As the EQR, Chung should have identified that the engagement team failed to make these critical inquiries regarding the value related to fair value.[1220]

833. In fact, in her investigative testimony, Chung acknowledged that she would, in general, for a transaction similar in size to the PhytoSphere acquisition, request a valuation of the subject assets, as well as inquire about whether the company had performed due diligence in connection with the acquisition.[1221]

834. Anton & Chia, however, failed to make such inquiries and Chung did not ask the engagement team to make inquiries of CannaVEST management to obtain such a valuation.[1222]

835. In addition, Chung failed to identify that the engagement team was not thinking about the fair value of PhytoSphere acquisition, as evidenced by the engagement team

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[1219] Ex. 88.1 (Devor Report) ¶ 701; Ex. 759 (Q1 planning memo).
[1220] Ex. 88.1 (Devor Report) ¶ 701; Ex. 784 (Q1 inquiries checklist).
[1221] Ex. 839.6 (Prior Testimony Designations) 318-319 (Feb. 8, 2016 Chung Inv. Test. at 63-64.
[1222] Ex. 745 (Q1 supervision, review, and approval form).

inappropriately check marking "no" to the inquiry "…has the fair value of financial assets and liabilities… been measured and disclosed in accordance with GAAP?"[1223]

836. Chung also failed to identify that the work papers did not even mention the applicable accounting standards to the PhytoSphere acquisition, ASC 805 (*Business Combinations*) and ASC 820 (*Fair Value Measurement*).[1224]

837. Furthermore, Chung failed to identify that the engagement team did not prepare adequate documentation for the Q1 interim review. For example, Chung should have identified that the work papers were devoid of any inquiries regarding the fair value of PhytoSphere acquisition. In addition, Chung should have identified that the planning memo did not document CannaVEST's material weakness related to its lack of qualified accounting personnel, the associated risk of material misstatement, and plans to address that risk.[1225]

838. Lastly, Chung failed to identify that the engagement team reached an inappropriate overall conclusion on the CannaVEST first quarter interim review in that the engagement team did not identify that CannaVEST's first quarter financial statements required material modifications to conform with GAAP.[1226]

839. To complete her engagement quality review, Chung had to review and sign off on the supervision, review, and approval form. The staff in charge of fieldwork, the engagement partner, and the EQR were supposed to sign-off on this checklist prior to CannaVEST filing its Form 10-Q.[1227]

[1223] Ex. 784 (Q1 inquiries checklist).
[1224] Ex. 759 (Q1 planning memo); Ex. 747 (Q1 engagement summary memo).
[1225] Ex. 759 (Q1 planning memo); Ex. 784 (Q1 inquiries checklist); Ex. 850 (Q1 balance sheet analytics); Ex. 747 (Q1 engagement summary memo).
[1226] Ex. 747 (Q1 engagement summary memo).
[1227] Ex. 745 (Q1 supervision, review, and approval form).

840. In reviewing the approval form, Chung marked "not applicable" to the question of "whether appropriate consultations have taken place on difficult or contentious matters, or significant unusual transactions." Chung, in fact, specifically documented in the comments section that "none is necessary."[1228]

841. The engagement team elsewhere in its work papers had identified the PhytoSphere acquisition as "significant," and documented in its first quarter inquiries checklist that CannaVEST had an "unusual or complex situation or significant unusual transactions" during the quarter that could impact the financial statements.[1229]

842. Chung marking "not applicable" to the question of whether appropriate consultations had taken place on significant unusual transactions further demonstrates her failure to conduct an appropriate engagement quality review and exercise due professional care in the performance of her work.[1230]

f. Chung's Failure to Exercise Due Professional Care during the First Quarter of 2013 Interim Review

843. PCAOB Standard AS No. 7, *Engagement Quality Review*, requires that an EQR perform her review with due professional care.[1231] Under PCAOB Standard AU § 230, *Due Professional Care in the Performance of Work*, due professional care requires that an accountant exercise professional skepticism, which is an attitude that includes a questioning mind and a critical assessment of the evidence.[1232]

844. Chung failed to exercise due professional care and failed to exercise a sufficient level of professional skepticism when providing an engagement quality review for CannaVEST's

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[1228] *Id.*
[1229] Ex. 839.6 (Prior Testimony Designations) 231 (Oct. 27, 2015 Wahl Inv. Test. at 68); Ex. 784 (Q1 inquiries checklist).
[1230] Ex. 88.1 (Devor Report) ¶ 705.
[1231] AS No. 7.17.
[1232] AU § 230.07.

first quarter interim review. As a result, Chung failed to identify that the interim review had significant engagement deficiencies, which included planning failures, not performing adequate inquiries, not preparing adequate documentation, and not identifying that CannaVEST's first quarter financial statements required material modifications to conform to GAAP.[1233]

g. Chung's Lack of Competency to Act as an EQR

845. The EQR must be competent to perform the review. Specifically, the EQR must possess the level of knowledge and competence related to accounting, auditing, and financial reporting required to serve as the engagement partner on the engagement under review.[1234]

846. Chung was not qualified to act as the EQR because she lacked the requisite level of knowledge and competence required under PCAOB standard AS 7.[1235]

847. Prior to 2009, Chung had limited accounting experience in entry-level positions. From April 2005 to November 2006, she was employed as a staff accountant at audit firm, Grobstein, Horwath & Company.[1236] Thereafter, from November 2006 to December 2008, she worked as an internal auditor at the Automobile Club of Southern California.[1237] In those capacities, she never acted as an engagement partner or a manager.[1238]

848. Chung also did not obtain any relevant experience at Anton & Chia. During the five-year period she was involved with Anton & Chia, Chung was the engagement quality reviewer for only approximately three engagements, one of which was CannaVEST. Chung did

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[1233] Ex. 88.1 (Devor Report) ¶ 707; Ex. 759 (Q1 planning memo); Ex. 784 (Q1 inquiries checklist); Ex. 850 (Q1 balance sheet analytics); Ex. 747 (Q1 engagement summary memo); Ex. 745 (Q1 supervision, review, and approval form).
[1234] AS 7.5; *see also* Ex. 88.1 (Devor Report) ¶ 690.
[1235] Tr. (Vol. VI Devor) 1601:16-1603:21.
[1236] Ex. 875 (Chung background questionnaire); Ex. 839.6 (Prior Testimony Designations) 349-352, (July 1, 2019 Chung AP Dep. Tr. at 46:1-48:12, 49:20-25).
[1237] Ex. 875 (Chung background questionnaire); Ex. 839.6 (Prior Testimony Designations) 349, 353-355, 361 (July 1, 2019 Chung AP Dep. Tr. at 46, 50-52, 59:22-25).
[1238] *Id.* at 61 (AP Dep. Tr. 59:22-25).

not work on any other engagements while at Anton & Chia, and never acted as a manager or an engagement partner. Chung could not even recall whether she was partner at Anton & Chia.[1239]

849. At the time she served as the engagement quality reviewer in connection with Anton & Chia's review of CannaVEST's first quarter of 2013 financial statements, Chung was nearly five years removed from doing any accounting and auditing work.[1240]

850. Chung claimed that she had a copy of AS 7 whenever she did an interim review, and thus knew or at a minimum should have known that she did not satisfy the AS 7.5 competency standard.[1241] At her July 2019 deposition, Chung could not say whether she would have been comfortable serving as the engagement partner on the CannaVEST first quarter of 2013 engagement.[1242]

851. Furthermore, Chung could not recall having any experience in applying ASC 805 or ASC 820.[1243]

852. Because Chung lacked the level of knowledge and competence required to serve as the engagement partner, she was not competent to act as the EQR on the CannaVEST first quarter interim review.[1244]

853. David Ruan resigned in April 2013, leaving Anton & Chia with just two partners: Wahl and Chung. Shek did not think Chung was competent to serve as the EQR on CannaVEST's first quarter interim review.[1245]

[1239] *Id.* at 346, 349, 360-361-362 (AP Dep. Tr. 25:1-20, 46:13-15, 57:11-16, 59:15-17, 60:1-20).
[1240] *Id.* at 349, 353-355, 361 (AP Dep. Tr. 46, 50-52, 59); Ex. 875 (Chung background questionnaire).
[1241] Ex. 839.8 (Addendum to the Prior Testimony Designations) 11 (February 8, 2016 Chung Inv. Test. at 110:3-13).
[1242] *Id.* at 452 (AP Dep. Tr. 184) (Q. And you never worked as an engagement partner at Anton & Chia. Correct? A. No. Q. And you never worked as an engagement partner in any capacity for any company prior to working for Anton & Chia. Correct? A. I don't recall. Q. Would you have felt comfortable being the engagement partner conducting, managing this review on CannaVEST? A. I can't answer that question.).
[1243] *Id.* at 355-358 (AP Dep. Tr. 52-55).
[1244] AS 7.5; *see also* Ex. 88.1 (Devor Report) ¶ 697.
[1245] Tr. (Vol. VIII Shek) 2431:15-2432:13.

854. Shek did not observe Chung doing any work on the CannaVEST engagement. Nor did she ask Shek any questions with respect to the judgments and decisions that the engagement team had made.[1246]

855. Shek did not believe that Chung possessed the necessary skills to review the PhytoSphere transaction, or the independence to question or challenge Wahl, in her capacity as EQR, since she was his wife.[1247]

856. Shek had no interaction with Chung during the first quarter interim review of CannaVEST; for that matter, he had no interaction with her during the four years of his employment at Anton & Chia.[1248]

857. Shek did not observe Chung doing any work on the CannaVEST engagement. Nor did she ask Shek any questions with respect to the judgments and decisions that the engagement team had made.[1249]

858. La did not have confidence in Chung that Anton & Chia's interim review and audit work was being done properly.[1250]

859. La had no interaction with Chung during the first quarter interim review of CannaVEST.[1251]

2. Second Quarter 2013.

860. Wahl also failed to perform the review of CannaVEST's interim financial statements for the second quarter of 2013 in accordance with PCAOB standards. As a result of such deficiencies, Wahl failed to determine and conclude that CannaVEST's interim financial

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[1246] *Id.* at 433:1-17, 2434:4-21.
[1247] *Id.* at 374:19-2375:13; Ex.726 (Shek supplemental Wells submission).
[1248] *Id.* at 431:5-14.
[1249] *Id.* at 433:1-17, 2434:4-21.
[1250] Tr. (Vol. X La) 2860:25-2861:25-2861:9.
[1251] *Id.* at 845:12-2846:3.

statements for the second quarter required material modification to be in conformity with GAAP. Wahl's deficiencies included the failure to:

- properly plan the review;
- exercise an appropriate level of due professional care and professional skepticism;
- appropriately consider and/or address known red flags;
- obtain an understanding of CannaVEST's business and the PhytoSphere acquisition;
- sufficiently assess evidence obtained; and
- sufficiently document information relevant to the interim review.[1252]

a. Deficiencies in Planning the Interim Review

861. According to Anton & Chia's *Review Planning Memorandum* dated July 30, 2013, the same engagement team was to perform the interim review for the second quarter of 2013 that had performed the first quarter of 2013, but for a change in the EQR. The EQR for the second quarter interim review was Richard Koch.[1253]

862. The second quarter 2013 planning memo again did not making any inquiries into the fair value of the CannaVEST stock as of January 29, 2013, the fair value of PhytoSphere, or applying ASC 805 or ASC 820. Instead, the planning memo vaguely stated, as it had for the first quarter of 2013, that Anton & Chia "will make inquiries of management to ensure that provided financials are properly presented and repayment procedure is valid…" *Id.*

863. Furthermore, the planning memo again did not mention CannaVEST's material weakness in internal controls related to its lack of qualified accounting personnel, how that risk

[1252] Ex. 88.1 (Devor Report) ¶ 708.
[1253] Ex. 808 (Q2 planning memo).

could increase the likelihood of misstatements, and plans by Anton & Chia to address that risk, such as performing additional review procedures. *Id.* The material weakness in internal control over financial reporting had previously been identified by management both as of December 31, 2012 and as of March 31, 2013. The failure to consider the existence of such material weakness for purposes of the second quarter 2013 interim review increased the risk that necessary material modifications to CannaVEST's financial statements might not be detected as a result of Anton & Chia's review procedures.[1254]

b. Deficiencies in Inquiries and Analytical Procedures

864. For the second quarter of 2013, CannaVEST's made significant changes to the manner in which it had allocated the $35,000,000 purchase price to the PhytoSphere assets purportedly acquired.[1255]

865. Anton & Chia's work paper entitled *Balance Sheet Analytics* for the second quarter of 2013 also reflected these changes to the allocation of the purchase price, but the work papers did not provide reasons or explanations for the changes in the allocation, nor was there apparent further analysis regarding such changes.[1256]

866. For example, from the first quarter to the second quarter of 2013, CannaVEST decreased the value of its right to purchase CBD oil from $11.5 million to $947,388, and increased the value of its goodwill from $17,535,000 to $26,998,125. These significant changes in individual asset balances should have been a red flag to Anton & Chia regarding the accuracy of the $35 million total asset value recorded on the balance sheet. None of these significant

[1254] Tr. (Vol. X Stewart) 2947:21-2948:11; Tr. (Vol. VI Devor) 1568:24-1570:16, 1581:15-1583:8 ("the entire first quarter review as well as subsequent ones needs to be done with awareness and understanding that there is a material internal control relating to – directly to the preparation of financial statements.").
[1255] Exs. 843 & 843.1 (Aug. 1, 2013 email from Canote spreadsheet with intangibles tab attached).
[1256] Ex. 851 (Q2 balance sheet analytics).

changes were addressed by Anton & Chia in its second quarter 2013 analytical procedures. This is despite the fact that the PhytoSphere assets comprised nearly all of CannaVEST's total assets as of March 31, 2013 and June 30, 2013.[1257]

867. Moreover, the balance sheet analytics failed to compare the first and second quarter balance sheets in accordance with PCAOB standards. *See* AU § 722.16, *Analytical Procedures and Related Inquiries*, analytical procedures should include comparing the quarterly interim financial information with comparable information from the immediately preceding interim period. Anton & Chia second quarter balance sheet analytics only compared the FYE 2012 balance sheet (when CannaVEST had only $431 in assets) to the second quarter of 2013 balance sheet. An appropriate balance sheet analytics would have shown the substantial changes in allocation between the first and second quarters of 2013. Again, if these significant changes between the first and second quarters had been documented in the analytics, the changes should have raised a red flag with Wahl regarding the accuracy of the $35 million total asset value for PhytoSphere. For example, the reallocation of a significant portion of the purchase price to "goodwill," should have been a red flag to Wahl – as the goodwill balance increased significantly to bridge the gap between the $35 million purchase price and the updated value of the identifiable assets acquired. This should have prompted Wahl to make inquiries of management related to the fair value of the consideration paid by CannaVEST and the fair value of PhytoSphere. If Wahl had made such inquiries related to fair value, he would have become aware that material modifications to the total asset value on CannaVEST's balance sheet should have been made.[1258]

[1257] Ex. 88.1 (Devor Report) ¶ 715; Tr. (Vol. VI Devor) 1606:21-1612:1.
[1258] *Id.* ¶¶ 716-717.

868. Wahl did not make, and did not direct the engagement team to make, any inquiries as to why there were there such dramatic and unexpected changes between the two quarters.[1259]

869. La prepared the second quarter interim review checklist. That checklist, under the section entitled "general-required," in response to the question #5, "Inquiries relating to significant unexpected differences noted during the performance of analytical procedures and other questions arising during the review" stated that "no unexpected differences were noted."[1260] The same question was asked in the section entitled "intangibles and other assets" (question #7), and no response at all was provided by Anton & Chia.[1261]

870. The second quarter interim review checklist also erroneously answered "no" to the question whether there were any significant deficiencies or material weaknesses in the design or operation of internal control over financial reporting.[1262] In its Form 10-Q for the second quarter of 2013, however, CannaVEST disclosed that it had determined – as it had for the prior two period ends – that there was a material weakness in its internal control over financial reporting.[1263]

871. The second quarter interim review checklist also answered "no" to the question, "If relevant to the entity, has the fair value of financial assets and liabilities… been measured and disclosed in accordance with GAAP?[1264]

[1259] Tr. (Vol. VIII Shek) 2436:7-2437:20, 2440:5-18, 2441:20-2442:4, 2442:6-18); Tr. (Vol. X La) 2847:1-2849:18.
[1260] Tr. (Vol. X La) 2851:19-2852:10; Ex.785 (Q2 inquiries checklist).
[1261] *Id.* at 853:22-2854:6.
[1262] *Id.* at 852:24-2853:10; *compare* Ex.785 (Q2 inquiries checklist) (general-required/question #11) *with* Ex.708 (CannaVEST Q2 2013 Form 10-Q) at 16.
[1263] Ex. 708 (CannaVEST Q2 2013 Form 10-Q).
[1264] Tr. (Vol. X La) 2853:1421; Ex.785 (Q2 inquiries checklist) (general-other/question #7).

c. Second Quarter 2013 Engagement Summary Memo

872. Anton & Chia's *Engagement Summary Memorandum* for the second quarter interim review was almost identical to what was prepared for the first quarter, but for changes in dates and measures of materiality for its test work.[1265]

873. Just as in the first quarter review, Wahl failed to make adequate inquiries of management regarding the fair value of PhytoSphere' s assets and the fair value of the consideration to be paid for PhytoSphere and the fair value of PhytoSphere's assets. Wahl also failed to perform appropriate balance sheet analytics.[1266]

3. Third Quarter 2013.

874. In CannaVEST's third quarter of 2013 interim review, Wahl failed to identify that CannaVEST's previously-issued financial statements for the first and second quarters of 2013 required restatement under GAAP.[1267]

875. For the third quarter of 2013, Anton & Chia's engagement partner was again Wahl. The EQR was Koch, and the audit manager was Shek.[1268]

876. The form and substance of Anton & Chia's work papers for the third quarter of 2013, in the areas of planning and inquiries, were very similar to the work papers for the prior two quarters. Anton & Chia once again responded "no" regarding whether there were significant deficiencies or material weaknesses in the company's system of internal control over financial reporting despite CannaVEST's public disclosures to the contrary in its third quarter 2013 Form 10-Q.[1269]

[1265] Ex. 809 (Q2 engagement summary memo).
[1266] Ex. 88.1 (Devor Report) ¶ 722.
[1267] *Id.* ¶ 723.
[1268] Ex. 787 (Q3 planning memo).
[1269] Ex. 789 (Q3 inquiries checklist); Ex. 710 (CannaVEST Q3 2013 Form 10-Q).

877. During its third quarter of 2013 review, Anton & Chia did, however, obtain reports relating to the fair values of both (a) CannaVEST's stock, and (b) PhytoSphere. These valuation reports indicated that the $35 million value assigned to PhytoSphere and the $4.50 to $6.00 per share collar price assigned to CannaVEST's stock under the PhytoSphere agreement were materially incorrect.[1270]

a. Valuation of PhytoSphere and the Goodwill Impairment

878. Vantage Point performed a fair market valuation of PhytoSphere as of January 29, 2013. A draft version of the PhytoSphere valuation was dated October 29, 2013.[1271] The report was finalized in November of 2013.[1272] Anton & Chia included the draft version of the valuation in its workpapers.[1273] Vantage Point determined, in the PhytoSphere valuation, that the fair market value of PhytoSphere was, as of January 29, 2013, $8,150,000.[1274] This was approximately 23% of the $35 million purported purchase price stated in the PhytoSphere agreement and recorded by CannaVEST in its financial statements for the first and second quarters of 2013.

879. Using this valuation, Anton & Chia proposed that CannaVEST effectively eliminate the then-existing goodwill balance of $26,998,125 by recording an impairment charge for that amount ($35,000,000 less $8,150,000 million approximately equals the $26,998,125

[1270] Ex. 88.1 (Devor Report) ¶ 726.
[1271] Ex. 856 (Q3 2013 review WP REF 0408 – *CannaVEST - PhytoSphere - BEV - 1.29.2013_29Oct2013*).
[1272] Ex.859 (Nov. 2013 Vantage Point PhytoSphere valuation report).
[1273] Ex. 856 (Q3 2013 review WP REF 0408 – *CannaVEST - PhytoSphere - BEV - 1.29.2013_29Oct2013*).
[1274] Vantage Point's final valuation report of PhytoSphere, dated November 2013, valued PhytoSphere at $8,020,000. Ex. 859.

goodwill impairment charge).[1275] This impairment charge was recorded in the third quarter of 2013 despite the fact that the valuation of PhytoSphere was as of January 29, 2013.[1276]

880. In connection with the PhytoSphere valuation and the related impairment charge, Anton & Chia wrote a memo, during its third quarter review, titled *Stock Installment Payment and Goodwill Impairment Memo*.[1277] Under the section titled, "goodwill impairment," the memo simply stated:

> Independent advisors [ ] provided fair valuation of PhytoSphere Systems, LLC's total equity at date of the sale [sic] which concludes the estimated fair valuation [sic] is $8,150,000. However, the transaction was originally booked with [a] purchase price of $35 million which leads to impairment of good will previously recorded.[1278]

881. The memo failed to discuss whether under GAAP the company should restate its first and second quarter financial statements given that PhytoSphere was worth $8 million as of January 29, 2013.

882. Moreover, the memo failed to assess whether it was appropriate for CannaVEST to have valued its stock using the per share collar price stated in the PhytoSphere agreement. Anton & Chia even specifically found that (a) CannaVEST's stock had "a finite trading volume" and (b) the stock did not qualify for level 1 (*i.e.*, from published indices) fair value measurement. *Id.*

[1275] *See* Ex. 763 (Q3 goodwill impairment memo); Ex. 852 (Q3 balance sheet analytics with adjusting journal entry for the goodwill impairment) at lines 71-74; Ex. 787 (Q3 planning memo); Ex. 810 (Q3 engagement summary memo); Ex. 758 (Q3 management representation letter, item 26); Ex. 752 (Nov. 8, 2013 email chain); Ex. 753 (Nov. 12, 2013 email chain); Exs. 871, 871.2, 871.3 (Nov. 12, 2013 email, with draft Q3 management rep letter attached, and spreadsheet with goodwill impairment tab attached); Tr. (Vol. IX Canote) 2638:18-2639:16, 2646-25.
[1276] Ex. 763 (Q3 goodwill impairment memo).
[1277] *Id.*
[1278] *Id.*

883. In his investigative testimony, Wahl admitted that the Vantage Point valuation of PhytoSphere indicated there was an impairment of goodwill.[1279]

884. In a November 12, 2013 email, Wahl communicated to CannaVEST that "the third party valuation came in at approximately $8.0 [million]," and that it "looks like [the acquisition] should have been booked originally at $8.0 [million] not the approximately $35 [million]."[1280] In that email, Wahl effectively acknowledged that the total $35 million value of the PhytoSphere assets reflected on CannaVEST's balance sheet had been wrong all along. *Id.*

885. Despite this conclusion, Wahl inexplicably testified that he was comfortable with the fact that CannaVEST had recorded the goodwill impairment in the third quarter of 2013.[1281]

886. Recording the impairment charge in the third quarter of 2013 was not proper with respect to GAAP. GAAP states that if material errors are identified in previously filed financial statements, such financial statements should be amended and corrected.[1282] While Anton & Chia was its auditor, CannaVEST never addressed the fact that its balance sheet for the first and second quarter of 2013 was materially overstated with respect to the PhytoSphere acquisition. Anton & Chia's workpapers also do not reflect any analysis or related conclusions pertaining to

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[1279] Ex. 839.6 (Prior Testimony Designations) 245 (Oct. 27, 2015 Wahl Inv. Test. at 86:15-87:2) (Q Okay. So let's move, then, to Q3 of 2013. So Q3 of 2013 is when assets were written off? A Yes. Q And what was written off? A I believe the goodwill was written off for about 26 – almost $27 million. Q And why was that written off? A There was further evidence provided by management that they indicated there was an impairment. Q And what was that evidence? A There was a valuation completed that assigned the values to – to CannaVEST. Or pardon me. To the PhytoSPHERE assets. Pardon me."); *id.* at74 (Oct. 27, 2015 Wahl Inv. Test. at 154:14-17) ("The results of obtaining the third party purchase price allocation and valuation indicated that there was an impairment."); *id.* at79 (Oct. 27, 2015 Wahl Inv. Test. at 170:2-15) ("Q And that valuation was used for you – for Anton & Chia to propose an impairment charge related to the PhytoSPHERE acquisition; is that correct? A When we were provided with a report, it indicated that there was an impairment. Q Is that – this valuation report, the first indication to you and your firm that there was a – there was an impairment that needed to be booked? A Yes. BY MS. PURPERO: Q Okay. So this valuation report indicated there was an impairment. MS. LEVIN: And just to confirm, that's the PhytoSPHERE Systems report in Exhibit 15, 1644.").

[1280] Ex. 753 (Nov. 12, 2013 email chain).

[1281] Ex. 839.6 (Prior Testimony Designations) 289-290 (Oct. 27, 2015 Wahl Inv. Test. at 192-193).

[1282] ASC 250.

whether a restatement of CannaVEST's first and second quarter financial statements was necessary.[1283]

b. CannaVEST Stock Valuation

887. Vantage Point issued the CannaVEST Stock Valuation on September 3, 2013. The report found that CannaVEST's restricted stock was valued at only $0.68 per share as of August 21, 2013.

888. The same report reflected a value of $1.13 per share for CannaVEST's non-restricted stock.[1284]

889. Similarly, the third quarter 2013 *Management Representation Letter* asserted, in the context of the goodwill impairment charge, that the "estimated fair value of PhytoSphere Systems, LLC amounted to $8,150,000 and estimated fair value of the Company's restricted common stock amounted to $0.68 per share."[1285] The management representation letter was drafted by Anton & Chia.[1286] The per share value of $0.68 was well below the range established as the "collar" in the PhytoSphere agreement (*i.e.*, between $4.50 and $6.00 per share).

890. Wahl failed, even during the third quarter interim review, after valuations had been performed both on the PhytoSphere business and the CannaVEST stock, to make inquiries related to the consideration to be paid by CannaVEST to acquire PhytoSphere, i.e., the fair value of CannaVEST stock as of January 29, 2013.[1287]

891. Indeed, CannaVEST ultimately concluded, in its 2013 Form 10-K (which was audited by successor auditor, PKF), that the stock price used for purposes of the PhytoSphere

[1283] Ex. 88.1 (Devor Report) ¶ 735.
[1284] Ex. 857 (Q3 2013 review WP REF 0409 – *CannaVEST 8.21.2013 - ASC 718 IRC 409A Report*).
[1285] Ex. 800 (Q3 management representation letter).
[1286] Exs. 871 and 871.3 (Nov. 12, 2013 email with management representation letter attached).
[1287] Ex. 789 (Q3 inquiries checklist).

agreement was significantly overstated, and was not reflective of the actual fair market value of the stock. The 2013 Form 10-K states the following, in relevant part:

> The purchase price of the acquisition was determined to be $8,020,000 based on management's estimate of the fair market value of the business acquired. The fair market value was determined to be the more appropriate basis of valuation as the Company's common stock was not trading and the Company had no operations at the time of acquisition in order to estimate a fair market value of Company common stock. The Company's common stock issued was contemporaneously valued with the purchase price of PhytoSphere.[1288]

892. CannaVEST ultimately concluded, in connection with the restatement that occurred in 2014 (after a new auditor PKF had been engaged), that the per-share value of its stock as of January 29, 2013, for purposes of the PhytoSphere acquisition, was $1.21. This was effectively determined by using the $8,020,000 fair value of PhytoSphere as of January 29, 2013, subtracting the amount of cash paid by CannaVEST ($950,000) and then dividing the difference by the number of shares CannaVEST issued to MJNA during 2013 (5,825,000 shares).[1289]

893. The foregoing demonstrates that: (a) the assets acquired from PhytoSphere were materially overstated as of the end of the first and second quarters of 2013, (b) the $4.50 to $6.00 collar price for CannaVEST's stock in the PhytoSphere agreement was for anti-dilutive purposes and was not the fair value of CannaVEST stock as of January 29, 2013, and (c) Wahl violated PCAOB standards by, among other things, not making adequate inquiries or performing appropriate balance sheet analytics related to the PhytoSphere acquisition.[1290]

[1288] Ex. 715 (CannaVEST 2013 Form 10-K) F-12.
[1289] Ex. 721 (Apr. 30, 2014 Form 8-K/A).
[1290] Ex. 88.1 (Devor Report) ¶ 742.

G. Summary

894. CannaVEST's Forms 10-Q for the first two quarters of 2013 materially overstated CannaVEST's total assets on the balance sheet. The overstatements related to CannaVEST improperly accounting for its acquisition of PhytoSphere.[1291]

895. CannaVEST's Form 10-Q for the third quarter of 2013 was materially misleading because CannaVEST wrote down the value of the assets related to the PhytoSphere acquisition in that period, failed to disclose that the consideration to be paid for PhytoSphere was not $35 million, PhytoSphere was never worth $35 million, and that the assets included in the balance sheets for the first and second quarters of 2013 were materially overstated – in violation of GAAP.[1292]

896. Anton & Chia's engagement team, Wahl, and Chung failed to perform sufficient PCAOB procedures, and as a result, nothing came to their attention that indicated CannaVEST's 2013 interim financial statements required material modifications to be presented in accordance with GAAP.[1293]

897. Specifically, Wahl failed to:

- obtain an understanding of the Company's business, the PhytoSphere acquisition, and/or CannaVEST's material weakness in internal control over financial reporting (*i.e.*, relating to the lack of personnel with appropriate accounting qualifications) when planning its 2013 interim reviews;
- make adequate inquiries and perform appropriate analytical procedures;

[1291] *Id.* ¶ 743.
[1292] *Id.*
[1293] *Id.* ¶ 897.

- consider, during the third quarter 2013 interim review, whether a restatement of CannaVEST's first and second quarter 2013 financial statements was necessary;
- ensure that the engagement team prepared adequate documentation; and
- exercise due professional care.[1294]

898. Chung, EQR for Anton & Chia's first quarter of 2013 interim review of CannaVEST, specifically failed to:

- identify significant engagement deficiencies;
- exercise due professional care; and
- have the requisite competency to act as an EQR.[1295]

REMEDIES

A. Recurrent Nature of Violations

1. Deutchman

899. On July 29, 2008, Deutchman was censured for "willfully violat[ing] Section 102(a) of the Sarbanes-Oxley Act of 2002" by practicing public accounting while he "did not possess the requisite qualifications to represent others."[1296]

900. Deutchman claimed that this censure "isn't any big deal," and was "really a nothing case, literally a nothing case."[1297]

901. In 2014, the PCAOB barred Deutchman from association with a registered public accounting firm and ordered him to pay a civil penalty of $35,000, in connection with a scheme

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[1294] *Id.* ¶ 745.
[1295] *Id.* ¶ 746.
[1296] Ex. 183 (July 29, 2008 Commission Order, Exchange Act Rel. No. 58240).
[1297] Tr. (Vol. XIII Deutchman) 3362:24-3363:10.

he participated in while employed at his prior employer, Kabani ("Kabani"),[1298] where Deutchman was a partner and was responsible for the quality control function of the firm.[1299] Specifically, Detuchman was found to have participated in a "widespread and resource-intensive effort … to alter documents in the audit files of three issuers in an attempt to deceive PCAOB inspections in an upcoming inspection about the deficiencies in the firm's audit workpapers."[1300] In addition, Deutchman's CPA license was revoked by the California Board of Accountancy at least in part as a result of the Kabani matter.[1301]

902. Deutchman referred to the PCAOB matter as a "travesty."[1302]

2. Wahl

903. In December 2016, Wahl instructed an Anton & Chia partner, Rahul Gandhi, to create the misimpression that he had performed work that he had not performed, for a PCAOB inspection. He wrote, "if you didn't [do the work], try and say you did so it goes away."[1303]

B. Sincerity of Assurances against Future Violations

904. Wahl did not follow the order of this Court to return or destroy all copies of the voicemail recording and not to disclose the voicemail or its contents to any person.[1304] Wahl

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[1298] PCAOB File No. 105-2012-002, Order Summarily Affirming Findings (Jan. 22, 2015); *see also* Ex. 219 (same); Exchange Act Rel. No. 80101 (Mar. 10, 2017); Deutchman Answer ¶ 12.
[1299] Tr. (Vol. XIII Deutchman) 3342:13-3342:15 ("Q So you and he were responsible for the quality control function at the firm, correct? A That's correct.").
[1300] PCAOB File No. 105-2012-002, Order Summarily Affirming Findings (Jan. 22, 2015); *see also* Ex. 219 (same); Exchange Act Rel. No. 80101 (Mar. 10, 2017); Deutchman Answer ¶ 12.
[1301] Tr. (Vol. XIII Deutchman) 3322:16-3322:20 ("My license was revoked as a result of the Kabani matter and also as a result of the press release in this case, which was published and presented as evidence in the case against me by the California Board of Accountancy.").
[1302] Tr. (Vol. XIII Deutchman) 3357:19-21 ("So this thing over here, this case was a travesty in my opinion. It was an overstatement of facts.").
[1303] Ex. 309 (Dec. 27, 2016 email from Wahl) ("The question is if we tested all the items in the reconciliation then there is no issue. If you did then you need to add this to your answer if you didn't then try and say you did so it goes away.").
[1304] 11.28.2018 Protective Order at 4 (ordering that "Wahl . . . return or destroy all copies of the above-referenced voicemail and transcript; not disclose the voicemail, transcript, or their contents to any person"); Tr. (Vol. XXI Wahl Under Seal) 5065:20-5066:19 ("Q Okay. So first you say in number 1, "Georgia and I, we have destroyed all copies of the above-referenced voicemail and transcript." Do you see that? A Yes. Q That's what you told us on December 18, 2018? A Yes. Q But that wasn't true, right? You had another copy that you sent to the Court on the 1st day of

represented that he no long had access to his Anton & Chia email account, yet he used that same account nine months later to correspond with his expert witness.[1305] Wahl admitted that he sent, via an email account registered to a pseudonym, harassing messages to the Division staff alluding to the voicemail communication.[1306]

905. Wahl never looked at the 2015 PCAOB inspection report of Anton & Chia, which found four deficiencies out of the nine engagements it reviewed.[1307] Wahl never looked at the 2016 PCAOB inspection report of Anton & Chia, which found nine deficiencies out of the ten engagements it reviewed.[1308]

906. Wahl believes that an auditor's role is sometimes "important" and sometimes "unimportant," and that it "depends on the type of company, whether it's a real business."[1309]

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this trial, right? A Well, as I said, I went through on a best basis to destroy all the copies. And then after they – the beginning of trial, I went through and destroyed every copy that I had in email. Because I did a number of searches under my email to destroy it, so."); *id.* at067:25-5-68:5 ("Q I'm sorry. I'm just referring to your email on the first day of trial to the Court, which also copied various Division personnel as well as some Court personnel. You disclosed it at that time, right? In October of 2019? A Yes.").

[1305] Ex. 874 (Dec. 18, 2018 email from Wahl) ("I no longer have access to my emails at anton@ancsecservices.com since the conversion of the Chapter 11 into a Chapter 7 for Anton & Chia, LLP. I cannot verify the completeness of the list."); Tr. (Vol. XXI Wahl) 5069:6-9 ("Q So when did you lose access to anton@ancservices – anton@ancsecservices.com? A I believe when the – when they did the 9 conversion from Chapter 11 to Chapter 7"); Tr. (Vol. XX Wahl) 4912:18-24 ("Q Anton & Chia file for bankruptcy in July 2018, correct? A We filed for Chapter 11 protection in July 2018. Q The case was converted into a Chapter 7 liquidation, right? A Sometime in early August [2018], yep."); Ex. 823 (July 15, 2019 email from Wahl to Misuraca) (Wahl uses anton@ancsecservices.com email address in July 2019).

[1306] Exs. 1264 & 1265 (Sept. 2019 emails from john_sec) (filed under seal); Tr. (Vol. XXII Wahl Under Seal) 5410:24-5411:5 ("Q But on the September 13 email that I'm asking Chris to put up, did you write this email? A I think the same thing; it was, you know, one of those things that was dictated. Q So you dictated it to her. Did you review – A I gave her, you know, some input.").

[1307] Tr. (Vol. XXI Wahl) 4977:4-4977:6 ("Well, at this time, I was not in charge of the audit group, so I did not look at this report [Ex. 83]."); Ex. 83 at 3-6 (2015 PCAOB Inspection Report of Anton & Chia).

[1308] Tr. (Vol. XXI Wahl) 4991:3-5 ("Q Is it your testimony that you haven't seen this report [Ex. 82]? A I don't think so."); Ex. 82 at 3-6 (2016 PCAOB Inspection Report of Anton & Chia).

[1309] Ex. 839.6 at 48, 51 (Prior Testimony Designations, Wahl 7/2/2019 AP Dep. Tr. 45:1-8 & 48:14-25) ("Q. Do auditors play an important role? A. Again, depends on the type of company, whether it's a real business, has real investors, and real operations. Q. Do you think that auditors play an important role when auditing the financial statements of real businesses? A. It depends on who the users are. . . . Q. How important is the role played by auditors when auditing financial statements of public companies? A. Again, it depends on who the investors are and who the users are, and the type of business that's in there. There's a lot of factors. Q. Do you think that the role played by auditors is ever unimportant when they audit the financial statements of public companies? A. Yeah, because there's many sophisticated investors that don't even look at the financial statements.").

907. In 2017, Anton & Chia failed to pay about $900,000 in FICA (social security, Medicare) and unemployment taxes for its employees.[1310] The IRS filed a proof of claim in the Anton & Chia bankruptcy for over $1 million, which includes these taxes, interest, and penalties.[1311] Wahl also failed to pay approximately [REDACTED].[1312]

C. Recognition of Wrongful Nature of Conduct

908. Wahl believes that no mistakes were made on the audits or interim reviews Anton & Chia performed for Accelera, Premier, or CannaVEST.[1313] Chung could not recall what work she had done on the CannaVEST engagement, but she knew she had done "everything right, nothing wrong" and that she did her job "according to the U.S. GAAP and GAAS standard."[1314]

909. Deutchman called this litigation "government at its absolute worst" and that the SEC attorneys "should be ashamed of yourself."[1315]

[1310] Ex. 893 (IRS Proof of Claim) 4.

[1311] *Id.*

[1312] *See In re Gregory Anton Wahl,* Case No. 8:18-bk-12449-TA (C.D. Cal. Bankr.), ECF No. 300, Debtor's Chapter 11 Plan of Reorganization dated July 1, 2019 at 4-5.

[1313] (Vol. XXI Wahl) 5086:4-13 ("Q Okay. And you're responsible for all the mistakes in the audit or the interim review, right? A Well, you're mischaracterizing the work. But I don't believe there was any mistakes. Q Right. But if there were mistakes and you were the engagement partner, you would be responsible? A Well, again, I think you're mischaracterizing my testimony. There was no mistakes made."); Tr. (Vol. XXII Wahl) 5300:8-12 ("Q Okay. Now, you said that – a couple different times, I believe, that you believe that everything that you did on the Accelera engagements was correct; is that right? A I believe we did, yes."); Tr. (XXII Wahl) 5385:24-5386:7 ("Q Knowing everything that you know today having sat through this hearing and the facts surrounding the valuation of the promissory note for Premier, would you still have approved the value of the note at 869,000? A Based on the information in evidence that we had from January 7, 2013, through to March 4, 2014, I believe the transaction was appropriately accounted for and disclosed."); Tr. (XXII Wahl) 5386:8-5386:19 ("Q Okay. And just what about sitting here today based on everything you know today, not based on what you knew at the time? Do you still believe that [the Premier promissory note] was appropriately accounted for and disclosed? A Yeah, I do. Q Okay. And nothing's changed your view? Nothing in all the testimony that you've heard in this trial or anything else? A No. Actually, the testimony actually further confirms to me that we did the right thing."); Tr. (Vol. XVIII Wahl) 4270:17 ("And I still stand by what we did.") (CannaVEST).

[1314] Tr. (Vol. XXI Chung) at 5182:20-22, 5161:22-24, *see also* 5146:4-6, 5147:8-11.

[1315] Tr. (Vol. III Deutchman) 790:22-791:7.

910. Wahl repeatedly referred to this litigation as "bullshit."[1316] He believes the PCAOB is a joke.[1317]

D. Opportunities for Future Violations

1. Current Business

911. In July 2018, Chung setup MattCarl LLC, and she is the manager and 100% owner of MattCarl.[1318] In August 2018, she registered MattCarl LLC doing business as NorAsia Consulting & Advisory.[1319] Chung performs no professional services for NorAsia clients.[1320] Wahl is operating and running NorAsia, providing "consulting" work to clients.[1321]

912. Wahl does not have a title at NorAsia, and he is a "consultant that works with NorAsia." His clients hire him to act as a CEO, COO, or CFO, and he is in the business of providing accounting, tax, M&A, and financial services to public and private companies.[1322]

913. NorAsia has a website and a Linked-in profile.[1323]

2. Audit Engagements

914. Greg Halpern, a character witness called by Wahl, is the Chairman and CFO of Max Sound Corporation, a publicly traded company whose stock is traded on the OTC Bulletin Board under the symbol "MAXD."[1324] In 2018, Max Sound had no revenues and $449 in total assets.[1325]

[1316] Ex. 76 (Dec. 4, 2017 Accounting Today article); Ex. 839.6 (Prior Testimony Designations) 5 (July 12, 2019 Wahl Dep. at 14:14-15 ("this is a bullshit case…"); *id.* at 6 (July 12, 2019 Wahl Dep. at 16:7-12 ("Q. And what did you discuss with Deutchman? A. Basically that it's a bullshit case.").
[1317] Tr. (Vol. XX Wahl) 4916:5-6 ("Q You think the PCAOB is a joke, correct? A I do.").
[1318] Ex. 883 (Articles of organization for MattCarl LLC); Ex. 884 (MattCarl LLC operating agreement) at 33-35.
[1319] Ex. 885 (Fictitious business statement for MattCarl LLC).
[1320] Tr. (Vol. XXI Chung) at 5188:13-18.
[1321] *Id.* at 5191:17-18; 5195:7-17; 5198:15-20.
[1322] Tr. (Vol. XX Wahl) at 4927:1-4927:11.
[1323] Exs. 892 and 892.1 (Website capture declaration, and NorAsia website and Linked-in profile website captures).
[1324] Tr. (Vol. XV Halpern) 3711:17-21; Ex. 862 (Max Sound 2018 Form 10-K).
[1325] Ex. 862 (Max Sound 2018 Form 10-K).

915. In 2016 Max Sound engaged Anton & Chia as its independent auditor, in part, to lower costs to the company.[1326]

916. Halpern testified that Anton & Chia was Max Sound's registered public accounting firm for Max Sound's 2018 Form 10-K, and for its first, second and third quarter interim reviews in 2019, and that Wahl personally worked on each of those engagements.[1327]

917. Page 24 of 59 of Max Sound's Form 10-K filed on March 29, 2019, contained an independent report of the registered auditor, bearing the letterhead "G.A. Wahl," dated March 28, 2019.[1328]

918. In creating that letterhead, Greg Halpern took a letter provided by Wahl, that Wahl had authorized for inclusion in Max Sound's 2018 Form 10-K, and changed the letterhead to "G.A. Wahl," based on the belief that Wahl was changing the name of his firm from Anton & Chia to "G.A. Wahl."[1329]

919. Wahl reviewed Max Sound's 2018 Form 10-K before it was filed with the Commission and made no comment to Halpern about the audit opinion letter that was affixed to the Form 10-K under the "G.A. Wahl" letterhead.[1330] Wahl had previously falsely represented to Judge Carol Foelak, on March 15, 2019, that both he and Chung "have no interest in being involved with attestation engagements (audit and reviews) for public companies."[1331]

920. On August 5, 2019, the Division of Corporate Finance advised Max Sound that "G.A. Wahl" was not registered with the PCAOB. In response, Max Sound filed an amended

[1326] Tr. (Vol. XV Halpern) 3707:16-3708:6.
[1327] *Id.* at 710:15-3711:3, 3730:4-7, 3754:18-22, 3757:7-11, 3758:8-20, 3776:11-22.
[1328] Ex. 862 (Max Sound 2018 Form 10-K) at 24 of 59.
[1329] Tr. (Vol. XV Halpern) 3735:13-3739:1, 3741:25-3742:23, 3744:8-15, 3750:9-21.
[1330] *Id.* at 748:8-14.
[1331] Motion to dismiss filed by Wahl and Chung (March 15, 2019) at 1.

Form 10-K/A, with an audit opinion letter under the Anton & Chia letterhead. Halpern explained the situation to Wahl and obtained that letter from Wahl.[1332]

921. In subsequent correspondence with Max Sound, the Division of Corporate Finance advised the company that Anton & Chia was not licensed in the State of California as of March 28, 2013, the date of Anton & Chia's audit opinion letter. In response, Halpern submitted a revised audit opinion letter from Anton & Chia dated February 22, 2019.[1333] Halpern testified that he explained Corp. Fin's concerns and asked Wahl to check his records as to when Anton & Chia had completed its audit. Wahl reported back to Halpern that he had completed the work on February 22, 2019, and authorized Halpern to re-date Anton & Chia's audit letter.[1334]

922. In his July 2, 2019 deposition, Wahl testified that the last time he performed any work for Max Sound was in the first or second quarter of 2018, and that he performed no work for Max Sound in 2019, and did not issue any audit opinion for Max Sound for fiscal year-end 2018. As Wahl explained, any work in Q3 2018 or after "would be impossible since the firm was in bankruptcy." In his deposition, Wahl also disavowed any knowledge of the "G.A. Wahl" audit opinion letter attached to Max Sound's 2018 Form 10-K and denied being paid any compensation by Max Sound for work performed in 2019.[1335]

923. At the hearing in this matter, Wahl finally admitted doing work for Max Sound in 2019, reviewing Max Sounds' financial statements for "material differences," and being personally paid for it, but claimed that he was merely a "consultant" assisting with the 2018 year-end audit that was performed by some other, unidentified, accounting firm.[1336]

[1332] *Id.* at 760:13-3761:2, 3761:24-3762:16, 3763:18-3764:5; Ex. 864 (Nov. 1, 2019 letter from Max Sound to Corp. Fin.); Ex. 865 (Max Sound 2018 Form 10-K/A filed on Nov. 1, 2019).
[1333] Tr. (Vol. XV Halpern) 3766:1-14; Ex. 866 (Max Sound 2018 Form 10-K/A filed on Nov. 19, 2019).
[1334] Tr. (Vol. XV Halpern) 3766:25-3768:8.
[1335] Ex. 839.8 (Addendum to the Prior Testimony Designations) 4-9 (July 2, 2019 Wahl AP Dep. Tr. at 311:6-316:19); *see also* Tr. (Vol. XV Halpern) 3774:9-3776:21.
[1336] Tr. (Vol. XX Wahl) 4947:2-4953:7.

E. Wahl Deceived His Expert John Misuraca

924. In July 2019, Wahl retained John Misuraca, a purported specialist in business valuations, to prepare two reports: one relating to Premier, the other to CannaVEST.[1337]

925. In his CannaVEST report (which Wahl has not sought to introduce into evidence), Misuraca states that he took a management forecast provided by Wahl from an email Wahl had sent to Shek and Koch on November 8, 2013 and used it to create a spreadsheet in a discounted future cash flow format.[1338] He then applied an estimated provision for taxes of 20% to the net income reflected in the forecast, an estimated cash flow growth rate of 4%, and then "input[ted] various discount rates into [his] spreadsheet until [he] ended up with an equity value [of CannaVEST] just above the purchase price of $35,000,000.[1339]

926. Based on his work, he calculated an internal rate of return for CannaVEST enterprise of 20.48%, which he considered "reasonable."[1340] He also stated that "[i]f the subject entity is achieving or exceeding the cash flows shown in the forecast after the internal rate of return has been considered reasonable, it is also reasonable that there is no likely impairment to the goodwill of the company.[1341]

927. At the hearing in this matter, Misuraca testified that he was offering only ***one*** opinion concerning CannaVEST: that the discount rate that he derived from using a $35 million purchase price for the PhytoSphere transaction, that forecast that Wahl had provided to him was "in the realm of reason."[1342] Misuraca candidly admitted that he would not consider the work that

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[1337] Tr. (Vol. XIV Misuraca) 3468:17-19; Ex. 1122 (Misuraca Premier report); Ex. 1036 (Misuraca CannaVEST report).
[1338] Ex. 1036 (Misuraca CannaVEST report) ¶¶ 19, 26-26, Ex. II.
[1339] *Id*. ¶¶ 28-29.
[1340] *Id*. ¶¶ 40-41.
[1341] *Id*. ¶ 43.
[1342] Tr. (Vol XIV Misuraca) 3477:17-24, 3507:3-7, 3529:6-15.

he had done on the CannaVEST matter to be a valuation.[1343] Rather, his work was simply a results-oriented and highly unorthodox analysis to determine what discount rate would result in a business enterprise value for CannaVEST in excess of $35 million based on the forecast that Wahl had provided to him.[1344] He also conceded that he had not made any conclusions or formulated any opinions as to whether the $35 million was reasonable, what the fair value of the PhytoSphere assets were, or whether CannaVEST should have recorded an impairment to goodwill in either the first or second quarters of 2013, as he did not have enough information to make that decision.[1345]

928. Misuraca explained that the ***only*** document he relied on to conduct his analysis was a five-year financial forecast that Wahl had provided to him, which Wahl represented was effective as of the date of the [PhytoSphere] transaction in January 2013."[1346] In conducting his work, Wahl had provided Misuraca with electronic access, via DropBox, to Anton & Chia's work papers and various other documents.[1347] Misuraca testified that he found nothing helpful in those documents to be able to conduct any analysis.[1348] He told Wahl that he would have expected CannaVEST to have had a financial forecast at the time it acquired PhytoSphere to ensure the price it was paying was reasonable.[1349] Wahl told Misuraca he would look for the forecast and would get back to him.[1350]

929. Wahl later provided Misuraca a copy of an email, dated November 8, 2013, that Wahl had purportedly sent to two of his subordinates at Anton & Chia, which included a

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[1343] *Id.* at 478:24-3479:6, 3482:1-3, 3503:21-3504:3.
[1344] *Id.* at 502:10-13, 20-22.
[1345] *Id.* at 527:16-3528:12, 3529:16-23, 3520:22-25.
[1346] *Id.* at 471:20-3472:6, 3483:15-19, 3524:20-25.
[1347] *Id.* at 470:8-13.
[1348] *Id.* at 33:1-134:11; 183:6-17.
[1349] *Id.* at 474:5-3475:15.
[1350] *Id.*

financial forecast.[1351] Based on his conversations with Wahl, as well as the substance of the email and the nature of the financial forecast (which provided actual results for the first quarter of 2013, and forecasted results for subsequent periods), Misuraca believed that the forecast had been made available by CannaVEST's management to Wahl during Anton & Chia's interim first quarter review.[1352]

930. Unbeknownst to Misuraca, his analysis was based on a materially altered document that Wahl had recently created.[1353] Wahl doctored a November 8, 2013 email, which Anton & Chia had previously produced to the Division (*see* Ex. 824 (original email)), by adding certain language and inserting a fictitious financial forecast, to suggest to his expert that the forecast had been available to Wahl during Wahl's first quarter interim review (*see* Ex. 823 (doctored email).

931. In the image below, the text that Wahl added to the original email is highlighted in yellow.

[1351] *Id.* at 483:1-14; Ex. 823 (July 15, 2019 email from Wahl).
[1352] *Id.* at 485:11-14, 3486:8-14, 3490:9-1, 3518:21-25.
[1353] *Id.* at 491:7-15.

Original Email (Ex. 824)

To: Tommy Shek[tshek@ancsecservices.com]; Richard Koch[rkoch@ancsecservices.com]
Cc: windy@ancsecservices.com[294095.windy@d59461-0701201115044559.exhost1.secureserver.net]
From: Greg Wahl
Sent: Fri 11/8/2013 8:32:20 AM
Importance: Normal
Subject: FW: CannaVEST - Documentation Requests

Tommy and Richard,

I think as stated the valuation of $0.68 makes sense for the stock transactions. I know this firm they are pretty good.

Plus, Phytosphere valuation implies an impairment so we need to take the hit.

Gregory Anton Wahl, C.P.A

Managing Partner

ANTON & CHIA, LLP

Office: 949.769.8905

Direct: 949.612.6329

Mobile: 949-300-6928

Fax: 949.623.9885

Email: anton@ancsecservices.com

Website: www.ancsecservices.com

Skype: antonchiallp

Twitter: @IAMTHEWAHL

Doctored Email (Highlighted) (Ex. 823)

From: Greg Wahl <anton@ancsec.com>
Sent: Monday, July 15, 2019 2:49 PM
To: John Misuraca
Cc: Barry Cohen
Subject: FW: CannaVEST - Documentation Requests
Attachments: CannaVEST - PhytoSPHERE - BEV - 1.29.2013_29Oct2013.pdf; ATT00001.htm; CannaVEST 8.21.2013 - ASC 718 IRC 409A Report.pdf; ATT00002.htm

Importance: High

John, I think below is an email with a the projections that I originally received. I will keep looking. I think we used this but I forget the discount factor to assess the fair value.

From: Greg Wahl <anton@ancsecservices.com>
Sent: Friday, November 8, 2013 5:32 AM
To: Tommy Shek <tshek@ancsecservices.com>; Richard Koch <rkoch@ancsecservices.com>
Cc: windy@ancsecservices.com <294095.windy@d59461-0701201115044559.exhost1.secureserver.net>
Subject: FW: CannaVEST - Documentation Requests

Tommy and Richard,

I think as stated the valuation of $0.68 makes sense for the stock transactions. I know this firm they are pretty good.

Plus, Phytosphere valuation implies an impairment so we need to take the hit. Below is what we had for original projections, etc.

	2013					2014	2015
	Actual		Projected				Proj
	Q1	Q2	Q3	Q4	Total		
Revenues	$ 1,275,000	$ 525,000	$ 1,100,000	$ 675,000	$ 3,575,000	$10,029,798	$19,725,617
Cost of Goods	$ 501,500	$ 315,000	$ 660,000	$ 405,000	$ 1,881,500	$ 2,156,407	$ 4,241,008
Gross Profit	$ 773,500	$ 210,000	$ 440,000	$ 270,000	$ 1,693,500	$ 7,873,391	$15,484,609
G&A	$ 435,559	$ 105,000	$ 225,000	$ 250,000	$ 1,015,559	$ 5,794,345	$10,638,455
Net Income	$ 337,941	$ 105,000	$ 215,000	$ 20,000	$ 677,941	$ 2,079,046	$ 4,846,154

932. In the email Wahl sent to his expert on July 15, 2019, which Wahl forwarded the doctored November 8, 2013 email, he begins with the salutation: "John, I think below is an email with the projections I originally received. I will keep looking. I think we used this but I forget the discount factor to assess the fair value."[1354]

933. Then, in the purported November 8, 2013 email from Wahl to Shek and Koch, Wahl added additional language that was not present in the original. The second sentence of the original email stated: "Plus PhytoSphere valuation implies an impairment so we need to take the hit." In the doctored email, Wahl added the language immediately following that sentence: "Below is what we had for original projections, etc."[1355] Based on that language, Misuraca

[1354] Ex. 823 (July 15, 2019 email from Wahl).
[1355] *Id.*

believed that the forecast included beneath that language was information that Wahl had available to him during Anton & Chia's first quarter interim review in 2013.[1356]

934. Beneath that new language Wahl then inserted a financial forecast, purportedly reflecting actual results for the first quarter of 2013, and projected results for the subsequent three quarters in 2013, and annual results for 2014, 2015, 2016, 2017 and thereafter.[1357]

935. No such forecast was included in the original version of the November 8th email, and it appears to have been entirely fabricated by Wahl for purposes of enabling Misuraca's analysis.[1358]

936. The Division moved, *in limine*, to exclude Misuraca's CannaVEST report based, in part, of Wahl's alternation of the November 8, 2013 email.

937. In his opposition to the Division's motion *in limine* to exclude Misuraca's CannaVEST report, Wahl submitted a declaration to the administrative law judge, signed under the penalty of perjury, dated September 27, 2019, in which he declared: "The projection 'pasted' into the November 8, 2013 email in one of the attachment from the actual email. It is page 36 of the projections that were prepared by Vantage Point, which I reviewed prior to completing the review in question. Copies of the pertinent projection were pasted in to the email sent to Misuraca…"

938. At the hearing in this matter, Wahl elected not to address his fabricated email in his direct examination by his counsel, electing instead to delay addressing the issue until his cross-examination by Division counsel.[1359]

[1356] Tr. (Vol. XIV Misuraca) 3504:4-16.
[1357] Ex. 823 (July 15, 2019 email from Wahl). The forecast in Wahl's email to Misuraca is cut off, ending in 2015; the full table is reflected in Ex. II to Misuraca's CannaVEST report.
[1358] Tr. (Vol. XIV Misuraca) 3504:22-3505:9; *compare* Ex. 823 (doctored email) *with* Ex. 824 (original email).
[1359] Tr. (Vol. XVIII Wahl) 4286:20-4288:1.

939. On cross-examination, it became apparent that Wahl's September 27, 2019 declaration was perjurious. The projections included in Misuraca's report were not copied from page 36 of either Vantage Point valuation report, or from any other portion of those reports.[1360] When Wahl was confronted with those facts, he changed his story, and testified that he took the numbers from page 36 of the CannaVEST stock valuation report and cut them by 50%, wanting to be "conservative." When confronted with the fact that the numbers were not 50% of page 36 of the CannaVEST stock valuation report, Wahl could not explain what he had done.[1361]

F. Wahl's Draws from Anton & Chia

940. In 2014, Wahl drew $858,734 in income from Anton & Chia. In 2015, Wahl drew $349,238 in income from Anton & Chia.[1362]

[1360] *See* Ex. 824 (Nov. 8, 2013 email to which both Vantage Point reports were attached).
[1361] Tr. (Vol. XXI Wahl) 5494:18-5516:9.
[1362] Ex. 78 (Anton & Chia 2014 and 2015 tax returns) 7 (2014 Schedule K-1), 17 (2015 Schedule K-1).

Dated: March 2, 2020

Respectfully submitted,

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18292

In the Matter of Anton & Chia, LLP, Gregory A. Wahl, CPA, Michael Deutchman, CPA, Georgia Chung, CPA, and Tommy Shek, CPA, Respondents.	**CERTIFICATE OF SERVICE**

In accordance with Rule 150 of the Commission's Rules of Practice, Alyssa A. Qualls, an attorney, hereby certifies that on March 2, 2020, she caused true and correct copies of the Division of Enforcement's Proposed Findings of Fact to be served on the following via email:

Honorable Jason S. Patil
Administrative Law Judge
United States Securities and Exchange Commission
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Respondent Georgia Chung
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Respondent Gregory Wahl
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Respondent Michael Deutchman
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Dated: March 2, 2020

/s/ Alyssa A. Qualls
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