

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20394**

In the Matter of

*Paul L. Chancey, Jr., CPA,*

Respondent.

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**ANSWER AND AFFIRMATIVE DEFENSES OF**  
**RESPONDENT PAUL L. CHANCEY, JR.**

Pursuant to Rule 220 of the Securities and Exchange Commission’s (“SEC” or the “Commission”) Rules of Practice, Respondent Paul L. Chancey, Jr., through his undersigned counsel, respectfully submits this Answer to the Order Instituting Administrative Proceedings and Cease-and-Desist Proceedings (“OIP”) dated July 13, 2021.

**INTRODUCTORY STATEMENT**

Mr. Chancey incorporates by reference the requests and supporting arguments made in his contemporaneously filed Motion for a More Definite Statement. A number of the allegations made by the Division of Enforcement (the “Division”) in its OIP lack sufficient detail to allow Mr. Chancey to provide substantive answers and to formulate all applicable affirmative defenses. By answering the allegations below, Mr. Chancey does not intend to forfeit or waive his argument that the Division should provide a more definite statement regarding the allegations identified in Mr. Chancey’s Motion for a More Definite Statement, or to waive his right to amend this Answer to provide such substantive answers and affirmative defenses, if necessary.

Mr. Chancey further reserves the right to amend all responses and affirmative defenses in this Answer, including, without limitation, in the event the Commission assigns an Administrative Law Judge to this proceeding.

The OIP contains several headings. To the extent the headings contain allegations against Mr. Chancey, any such allegations are denied.

The Division recently produced approximately 350,000 documents that Mr. Chancey feasibly could not review before the deadline for this Answer. Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny many of the allegations herein. Any allegation of fact not expressly admitted in this OIP is denied.

### ANSWER

Part I of the OIP contains legal conclusions to which no response is required. To the extent a response is required, Mr. Chancey denies that it is appropriate that public administrative and cease-and-desist proceedings be instituted against him. Mr. Chancey further denies that the Commission is entitled to institute proceedings pursuant to Sections 4C and 21C of the Securities and Exchange Act of 1934 and reserves the right to file a federal court action to enjoin and declare unconstitutional these proceedings. By filing this Answer, Mr. Chancey does not intend to waive, and does not waive, his rights to pursue a federal court action, and raises all constitutional objections here to preserve them. This Answer is filed without prejudice to and expressly preserves all claims and contentions that may be asserted in any federal court action.

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1. *Paul L. Chancey, Jr., a certified public accountant (“CPA”), engaged in improper professional conduct, within the meaning of Section 4C of the Exchange Act and Rule 102(e) of the Commission’s Rules of Practice, during the audits of the 2015 and 2016 financial statements of MiMedx Group, Inc. (“MiMedx”). MiMedx later restated these financial statements.*

**Answer to Paragraph 1:** Mr. Chancey admits that he is a certified public accountant. MiMedx’s restated financial statements for the years ended December 31, 2015 and December 31, 2016 speak for themselves. Mr. Chancey asserts that, as the Commission has alleged, he was the victim of a collusive fraud by MiMedx and others that was designed to frustrate and interfere with the 2015 and 2016 Audits and to deceive Mr. Chancey and other Cherry Bekaert, LLP (“CB”) personnel. Mr. Chancey also asserts that his conduct as to the 2015 and 2016 Audits was in accordance with all applicable professional standards. Mr. Chancey denies the remainder of the allegations in paragraph 1.

2. *For both years, Chancey served as the lead audit engagement partner for Cherry Bekaert, LLP (“CB”), the accounting firm performing these audits, but he ignored evidence indicating that sales between MiMedx and one of its largest distributors (“Distributor”) were made on a consignment basis, and that MiMedx had therefore prematurely recognized revenue for these transactions at the time of shipment. For the 2015 audit, this evidence included written allegations from MiMedx’s controller that highlighted the consignment nature of these transactions and challenged MiMedx’s revenue recognition. For the 2016 audit, the Distributor itself explained the contingent payment terms for these transactions, demonstrating their consignment nature, in a confirmation response.*

**Answer to Paragraph 2:** Mr. Chancey admits he served as the lead audit engagement partner for CB’s audits of MiMedx’s 2015 and 2016 financial statements (hereafter “2015 Audit” and “2016 Audit” or, collectively, “2015 and 2016 Audits”). Mr. Chancey admits that he became aware during the 2015 Audit that Controller authored an email raising concerns about the revenue recognition for certain sales by MiMedx to Distributor.<sup>1</sup> Mr. Chancey admits that CB’s revenue testing in connection with the 2016 Audit indicated that Distributor was MiMedx’s largest distributor. Mr. Chancey denies the remainder of the allegations in paragraph 2.

3. *However, rather than considering the consignment nature of these transactions or performing additional audit procedures to determine if revenue on Distributor transactions was reported in conformity with generally accepted accounting principles (“GAAP”), and without*

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<sup>1</sup> For the purposes of this Answer, Mr. Chancey uses the term “Controller” when referring to former MiMedx Controller Mark Andersen and “Distributor” when referring to MiMedx distributor AvKare.

*documenting any analysis of the consignment issue in CB's workpapers, Chancey improperly relied on MiMedx executives' false representations that revenue recognition was appropriate. Chancey's conduct violated several Public Company Accounting Oversight Board ("PCAOB") standards, including standards requiring Chancey to act with due professional care and obtain sufficient, appropriate audit evidence.*

**Answer to Paragraph 3:** Mr. Chancey admits that MiMedx executives made representations to CB that revenue recognition was appropriate, but denies the remaining allegations in paragraph 3.

4. *Chancey also caused CB to violate Rule 2-02(b) of Regulation S-X. In connection with the 2015 and 2016 audits, CB issued audit reports in which it represented that CB had conducted the audits in accordance with the standards of the PCAOB, and further represented that, based on its opinion, MiMedx's financial statements presented fairly, in all material respects, the company's financial condition and results of its operations in conformity with GAAP. Chancey approved the issuance of CB's audit reports that contained these unqualified opinions when he knew or should have known that CB's representations were false because CB's audits were not performed in accordance with PCAOB standards.*

**Answer to Paragraph 4:** Mr. Chancey admits that CB issued audit reports on MiMedx's 2015 and 2016 financial statements and that he approved those audit reports. CB's audit opinions speak for themselves. Mr. Chancey denies the remainder of the allegations in paragraph 4.

5. ***Paul L. Chancey, Jr.**, age 57, resides in Fayetteville, Georgia, and is a CPA licensed in Georgia and Mississippi. Chancey has been a partner at Cherry Bekaert, LLP, since 2006 and has less than a 5% ownership interest in the firm. Chancey was the lead engagement partner on each audit and interim review of MiMedx's financial statements from at least the first quarter of 2013 through the second quarter of 2017.*

**Answer to Paragraph 5:** Mr. Chancey admits that he has an ownership interest in CB but lacks information sufficient to admit or deny that his ownership interest is less than 5%. Mr. Chancey admits that he is a CPA licensed in Georgia and Mississippi, and states that in May of 2020 he became licensed in Missouri. Mr. Chancey admits the remaining allegations in paragraph 5.

6. ***Cherry Bekaert, LLP** is a limited liability company based in Richmond, Virginia, and a public accounting firm registered with the PCAOB. CB has 13 offices in the United States and more than 1,250 professional employees providing accounting, advisory, and consulting services. CB acted as MiMedx's independent auditor from June 9, 2008, to August 4, 2017. CB issued audit reports on the financial statements of MiMedx for each fiscal year from 2008-2016.*

**Answer to Paragraph 6:** Mr. Chancey admits the allegations contained in paragraph 6.

7. ***MiMedx Group, Inc.** is a Florida corporation with its primary operations in Marietta, Georgia. MiMedx's stock is currently registered with the Commission under Section 12(g) of the Exchange Act and trades on the NASDAQ exchange under the symbol MDXG. The Commission previously charged MiMedx for, among other things, fraudulently misstating its 2015 and 2016 financial statements in violation of GAAP. The Commission accepted MiMedx's offer of settlement, whereby MiMedx consented to an order permanently enjoining future violations of certain securities laws and imposing a civil penalty of \$1.5 million. The district court entered final judgment against MiMedx on December 4, 2019. See SEC v. MiMedx Group, Inc., et. al., No. 1:19-cv-10927-NRB (S.D.N.Y.).*

**Answer to Paragraph 7:** Mr. Chancey admits the allegations in paragraph 7 and further avers that the SEC also alleged in parallel litigation that MiMedx and its management misled CB in the course of the 2015 and 2016 Audits.

8. *MiMedx is a public company that sells medical products made from human placental tissue. MiMedx's 2015 and 2016 audited financial statements were included in filings MiMedx made with the Commission on Form 10-K. MiMedx's sales to customers in 2015 and 2016 included direct sales to distributors. MiMedx generally recognized revenue on those sales at the time of shipment.*

**Answer to Paragraph 8:** Mr. Chancey admits the allegations contained in the first three sentences of paragraph 8. As to the final sentence, Mr. Chancey admits that MiMedx generally recognized revenue at the time of shipment on direct sales to distributors in 2015 and 2016. Mr. Chancey otherwise denies the allegations of paragraph 8.

9. *CB was engaged by MiMedx as its independent auditor to conduct the annual audits of the 2015 and 2016 financial statements. CB's 2015 and 2016 audit reports contained unqualified opinions in which CB represented that it had conducted the audits in accordance with PCAOB audit standards, that MiMedx's financial statements fairly presented the financial condition and results of operations in all material respects, and that the financial statements had been prepared in conformity with GAAP.*

**Answer to Paragraph 9:** Mr. Chancey admits that CB was engaged by MiMedx as its independent auditor to conduct the annual audits of its 2015 and 2016 financial statements. Mr. Chancey further states that the CB audit reports speak for themselves. Mr. Chancey denies the remaining allegations in paragraph 9 as fundamentally incomplete.

10. *As the lead audit engagement partner, Chancey had responsibility for the conduct of the audits, including planning, supervising team members, and ensuring compliance with PCAOB standards.*

**Answer to Paragraph 10:** Mr. Chancey admits that he served as the engagement partner for the 2015 and 2016 Audits. Mr. Chancey states that his responsibilities as the engagement partner are set forth in applicable PCAOB standards, and those standards speak for themselves. Mr. Chancey otherwise denies the remaining allegations of paragraph 10.

11. *Distributor arranged sales of MiMedx product to the U.S. Department of Veterans Affairs and U.S. Department of Defense medical facilities (collectively, the “VA”). MiMedx and Distributor had a written distribution agreement that provided that risk of loss passed to Distributor upon shipment of product, that Distributor had a specific number of days to pay invoices, and that Distributor could return product only if it was defective.*

**Answer to Paragraph 11:** Mr. Chancey admits that the Distributor arranged sales of MiMedx product to the U.S. Department of Veteran Affairs and other federal entities and that MiMedx and Distributor entered into a written distribution agreement. The written distribution agreement speaks for itself. Mr. Chancey denies that under the agreement “Distributor could return product only if it was defective”. Mr. Chancey denies the remaining allegations in paragraph 11 as they are fundamentally incomplete.

12. *When Distributor and MiMedx first entered into this distribution agreement, Distributor purchased very limited quantities of MiMedx product and followed the terms of the written distribution agreement. MiMedx issued an invoice to Distributor upon shipment of product and recognized revenue at that time.*

**Answer to Paragraph 12:** Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny the allegations contained in paragraph 12.

13. *However, in late 2012, MiMedx asked Distributor to make bulk orders of product to stock at the VA. Distributor was willing to make bulk orders based on an arrangement that ensured Distributor would not be liable for payment to MiMedx until the VA used the products and committed to pay Distributor. As a result, MiMedx excused Distributor from payment until the VA issued a purchase order (“PO”) to Distributor for the product, which occurred after the VA used the product. This side arrangement was contrary to and replaced the terms of the written distribution agreement.*

**Answer to Paragraph 13:** Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny the allegations contained in paragraph 13. Mr. Chancey further states that, during the relevant time-period, to the extent a “side arrangement” between MiMedx and Distributor existed, MiMedx, Distributor, and others withheld from CB the existence of that “side arrangement”. Mr. Chancey further states that the allegations in paragraph 13 are vague as to the particular terms of the written distribution agreement that were replaced by the alleged side agreement between MiMedx and Distributor.

14. *MiMedx also did not transfer risk of loss to Distributor until Distributor received a PO from the VA. Instead, MiMedx managed the inventory held at VA facilities and credited Distributor for any lost, dropped, or missing products stocked at the VA.*

**Answer to Paragraph 14:** Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny the allegations contained in paragraph 14.

15. *The side agreement between MiMedx and Distributor effectively transformed MiMedx’s arrangement with Distributor into one where the product was shipped on a consignment basis. As a result, under GAAP, MiMedx should have delayed recognizing revenue until it was realized or realizable and earned, which occurs only when each of the following conditions is met: (i) persuasive evidence of an arrangement exists; (ii) delivery has occurred or services have been rendered; (iii) the seller’s price to the buyer is fixed or determinable; and (iv) collectibility is reasonably assured. However, MiMedx improperly continued recognizing revenue upon shipment of the product, rather than delaying revenue recognition until Distributor was obligated to purchase the product.*

**Answer to Paragraph 15:** Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny the allegations contained in paragraph 15. Mr. Chancey states that, to the extent the Division is referencing Generally Accepted Accounting Principles (“GAAP”), those principles speak for themselves. Mr. Chancey further states that the allegations in paragraph 15 are vague as to the GAAP conditions that were allegedly not met due to the alleged side agreement.

16. *The side arrangement, which lasted from at least late 2012 through 2017, was well known at MiMedx. MiMedx had a “Reconciliation Group” that closely tracked Distributor’s receipt of POs from the VA, which obligated the VA to pay Distributor for products*

*used. Under the side arrangement, Distributor's obligation to pay arose later than the MiMedx invoice date, which was contrary to the terms of the written distribution agreement.*

**Answer to Paragraph 16:** Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny the allegations contained in paragraph 16.

*17. Every weekday from late 2012 to the end of the relationship between MiMedx and Distributor in 2017, Distributor sent the Reconciliation Group a daily report listing each tissue for which the VA submitted a PO to Distributor. The Reconciliation Group then sent a daily email to MiMedx management providing the dollar value of the POs the VA had submitted to the Distributor. The Reconciliation Group then compiled the daily figures into a "Weekly Revenue" table circulated each Monday to MiMedx management and the accounting department.*

**Answer to Paragraph 17:** Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny the allegations contained in paragraph 17.

*18. Approximately 10 days after the close of each week, Distributor paid MiMedx the exact total cash amount identified in the Weekly Revenue table. The Reconciliation Group confirmed that Distributor's payment matched the anticipated amount. Distributor paid MiMedx only the value of Distributor's sales to the VA, its end customer.*

**Answer to Paragraph 18:** Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny the allegations contained in paragraph 18.

*19. MiMedx and Distributor agreed that Distributor's payments would be applied to the oldest outstanding invoice, regardless of which specific products Distributor had sold through.*

**Answer to Paragraph 19:** Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny the allegations contained in paragraph 19. Mr. Chancey further states that the allegations in paragraph 19 are vague as to the timing of the alleged agreement between Distributor and MiMedx regarding the alleged application of payments to the oldest outstanding invoice.

*20. As a result of the side arrangement, MiMedx prematurely recognized revenue on transactions with Distributor for several years, including 2015 and 2016. Distributor was one of MiMedx's largest customers, and sales to Distributor represented roughly 24% and 9% of MiMedx's total revenue in 2015 and 2016, respectively.*



**Answer to Paragraph 20:** Mr. Chancey admits the allegations contained in the second sentence of paragraph 20. Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny the allegations contained in the first sentence of paragraph 20.

21. *In 2020, MiMedx restated its financial statements for several reporting periods due to its nonconformance with GAAP. MiMedx's restatements included material changes for revenue prematurely recognized on sales to Distributor in 2015 and 2016.*

**Answer to Paragraph 21:** Mr. Chancey states that MiMedx's restated financial statements speak for themselves. Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny the remaining allegations contained in paragraph 21. Mr. Chancey further states that the allegations in paragraph 21 are vague as to the "material changes" the Division alleges were included in the MiMedx restatement for "revenue prematurely recognized on sales to Distributor in 2015 and 2016."

22. *During the audits of MiMedx's 2015 and 2016 financial statements, CB and Chancey identified revenue as one of MiMedx's most significant financial statement accounts and an area with heightened risk of material misstatement due to both error and fraud. PCAOB standards required CB to presume that improper revenue recognition was a fraud risk. Since revenue recognition was an area that required heightened scrutiny, CB had enhanced obligations under PCAOB standards to perform additional audit procedures.*

**Answer to Paragraph 22:** Mr. Chancey admits that the 2015 and 2016 workpapers identified improper revenue recognition as a significant risk and a fraud risk. Mr. Chancey further states that PCAOB standards speak for themselves. Mr. Chancey otherwise denies the allegations in paragraph 22.

23. *MiMedx management made false representations to CB during each audit, in management representation letters and other documents, denying that MiMedx had a side arrangement with Distributor. During both the 2015 and 2016 audits, Chancey improperly relied on these management representations without appropriate corroboration, even though these representations directly contradicted information Chancey had received from reliable sources, including MiMedx's controller and Distributor itself.*

**Answer to Paragraph 23:** Mr. Chancey admits that MiMedx did not inform CB about a "side arrangement" with Distributor. For the first sentence of paragraph 23, Mr. Chancey does not

have, and is unable to obtain, sufficient information to admit or deny the allegations regarding management's representations in its representation letters and other documents. Mr. Chancey denies the remaining allegations in paragraph 23.

24. *Chancey did not perform additional substantive audit procedures or obtain sufficient, appropriate audit evidence to reduce the risk of material misstatement to an appropriately low level as required by PCAOB standards. Chancey's conduct demonstrated the following audit failures in violation of PCAOB standards: (1) failure to exercise due professional care; (2) failure to obtain an understanding of MiMedx's business; (3) failure to plan the audits based on assessment of risk; (4) failure to obtain sufficient appropriate audit evidence; (5) failure to evaluate audit results; and (6) failure to document audit work.*

**Answer to Paragraph 24:** Mr. Chancey denies the allegations in paragraph 24. Mr. Chancey further states that PCAOB standards speak for themselves.

25. *As a result of these violations, Chancey engaged in (1) a single instance of highly unreasonable conduct in circumstances for which heightened scrutiny is warranted; and (2) repeated instances of unreasonable conduct that indicate his lack of competence.*

**Answer to Paragraph 25:** Mr. Chancey denies the allegations in paragraph 25. Mr. Chancey further states the SEC allegations are vague as to which instances of conduct the Division alleges were "unreasonable", which were "highly unreasonable", and the particular state of mind Mr. Chancey allegedly had for purposes of the alleged violations.

26. *Early in the 2015 audit, MiMedx's chief financial officer showed Chancey and MiMedx's Audit Committee an email from MiMedx's controller alleging improper revenue recognition relating to transactions with Distributor and others.*

**Answer to Paragraph 26:** Mr. Chancey admits that, in 2015, MiMedx's then-Chief Financial Officer shared with Mr. Chancey an email from Controller, in which Controller raised concerns about revenue recognition associated with certain MiMedx sales to Distributor and others (hereafter, "the Controller's Email"). Otherwise, Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny the allegations in paragraph 26.

27. *The controller alleged that Distributor "implicitly doesn't pay MiMedx until the tissue has been implanted, so revenue should be recognized on a consignment model." The*

*controller referenced in his email “information[,]” “sales and collections data[,]” and “accounting research” that he had collected to support his conclusions.*

**Answer to Paragraph 27:** Mr. Chancey admits that this allegation quotes portions of the Controller’s Email, which Mr. Chancey references in his response to paragraph 26. Mr. Chancey otherwise does not have, and is unable to obtain, sufficient information to admit or deny the allegations in paragraph 27. Mr. Chancey further states that the allegation is fundamentally incomplete.

28. *Chancey read the email and knew about the controller’s specific allegations, but Chancey made the decision not to obtain a copy of the controller’s email for inclusion in the CB workpapers. Chancey also did not document, or ensure documentation of, the controller’s allegations, or any related evaluation or resolution of the allegations, in the CB workpapers.*

**Answer to Paragraph 28:** Mr. Chancey admits that he read the Controller’s Email and knew about the Email’s “allegations”. Mr. Chancey admits that the CB workpapers do not include a copy of the Controller’s Email. Mr. Chancey denies the characterization of the Controller’s Email as “specific.” Mr. Chancey denies the remaining allegations in paragraph 28.

29. *Chancey also knew that the controller declined to sign the management representation letter that CB had requested as part of its 2015 audit procedures. However, Chancey also did not document, or ensure documentation of, this significant fact in the CB workpapers.*

**Answer to Paragraph 29:** Mr. Chancey denies that Controller told CB that he would not sign the management representation letter for the 2015 Audit. Mr. Chancey admits that the Audit Committee reported to Mr. Chancey that Controller once stated to them that he had not wanted to sign the management representation letter for the 2015 Audit. Mr. Chancey avers that the Audit Committee later told Mr. Chancey that Controller had generally recanted the concerns in the Controller’s Email. Consequently, the workpapers for the 2015 Audit do not explicitly reference Controller’s initial statement. Mr. Chancey otherwise denies the allegations in paragraph 29.

30. *Chancey never attempted to contact the controller to gain a better understanding of the controller’s allegations, nor did Chancey request the supporting information the controller*

*referenced in his email, even though CB was in regular contact with the controller in the course of performing 2015 audit procedures.*

**Answer to Paragraph 30:** Mr. Chancey denies the allegations in paragraph 30. Mr. Chancey further states that the allegations are vague and fundamentally incomplete.

31. *Chancey also did not attempt to obtain information about the possible consignment arrangement from Distributor, the VA, or even MiMedx personnel involved in collecting payments from Distributor.*

**Answer to Paragraph 31:** Mr. Chancey denies the allegations in paragraph 31.

32. *While CB performed some testing during its audits, this testing was insufficient to allow CB to conclude whether MiMedx was appropriately recognizing revenue for its sales to Distributor. In particular, CB's procedures to test sales transactions, accounts receivable, the Days Sales Outstanding ("DSO") metric, the sales returns allowance, and sales commissions either failed to provide sufficient appropriate evidence that was relevant to the consignment issue or, instead, raised additional red flags or contradictory evidence suggesting that the arrangement with Distributor could be a consignment.*

**Answer to Paragraph 32:** Mr. Chancey admits that CB conducted audit testing during the 2015 and 2016 Audits. Mr. Chancey denies the remaining allegations in paragraph 32.

33. *The DSO analysis, for example, reflected that Distributor was paying much later than, and in a manner that was not consistent with, the terms of the written distribution agreement. Additionally, the sales return allowance procedures reflected that the risk of loss had not transferred to Distributor upon shipment because MiMedx incurred losses for tissue that was subsequently lost, dropped, or missing. Further, the sales commissions procedures showed that MiMedx paid commissions to sales personnel only after the VA had implanted tissue, suggesting that the transaction was incomplete until that time.*

**Answer to Paragraph 33:** Mr. Chancey denies the allegations in paragraph 33. Mr. Chancey further states that the allegations are vague and fundamentally incomplete.

34. *MiMedx's Audit Committee conducted a limited review of the controller's allegations and concluded that MiMedx's accounting was appropriate based largely on the written distribution agreement, which MiMedx's management misrepresented as controlling the terms of the transactions with Distributor. Chancey attended an Audit Committee meeting where the Audit Committee reported the conclusions of its review, but he did not know what investigative steps the Audit Committee took in its review. Chancey did not implement any additional audit procedures to verify or corroborate the Audit Committee's work. Chancey also did not document, or ensure documentation of, the Audit Committee's review of the controller's allegations.*

**Answer to Paragraph 34:** Mr. Chancey admits that the Audit Committee conducted a review of Controller's concerns and concluded that MiMedx's accounting was appropriate. Mr. Chancey also admits that he attended an Audit Committee meeting where it reported the conclusions of its review. Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny whether "MiMedx's management misrepresented as controlling the terms of the transactions with Distributor". Otherwise, Mr. Chancey denies the remaining allegations in paragraph 34.

35. *Despite the evidence he had, Chancey did not plan, perform, or document any additional substantive procedures for the 2015 audit to test whether a side arrangement with Distributor existed.*

**Answer to Paragraph 35:** Mr. Chancey denies the allegations of paragraph 35.

36. *CB's 2015 workpapers did include a memo CB created as part of its audit procedures to summarize sales to Distributor. However, rather than documenting evidence obtained from substantive procedures performed to test the existence of a consignment arrangement, the memo referenced amendments to the written agreement that were not relevant and sales commission expense procedures that indicated a consignment arrangement might exist. The memo concluded, without sufficient basis, that "[c]onsistent with prior years, CB considers all four revenue recognition criteria to have been met on [Distributor's] sales."*

**Answer to Paragraph 36:** Mr. Chancey admits that the 2015 workpapers included a memo created by CB regarding sales to Distributor. Mr. Chancey admits that paragraph 36 quotes a portion of the memo. Mr. Chancey further states that the allegation is fundamentally incomplete. Mr. Chancey denies the remainder of the allegations in paragraph 36.

37. *At the conclusion of the 2015 audit, Chancey caused CB to issue an audit report that inaccurately stated that the audit was performed in accordance with PCAOB standards. MiMedx filed CB's inaccurate audit report with MiMedx's 2015 Form 10-K on February 29, 2016.*

**Answer to Paragraph 37:** MiMedx's 2015 Form 10-K, filed February 29, 2016, and CB's audit report speak for themselves. Mr. Chancey admits that he approved the issuance of CB's audit

report, and that the CB audit report was filed with the MiMedx 2015 Form 10-K. Mr. Chancey denies the remaining allegations in paragraph 37.

38. *During the 2016 audit, Chancey obtained new evidence, this time directly from Distributor, that further demonstrated MiMedx's consignment arrangement with Distributor.*

**Answer to Paragraph 38:** Mr. Chancey admits that the Distributor provided content in its confirmation response in 2016, which it had not previously provided to CB. Mr. Chancey denies the remaining allegations in paragraph 38.

39. *In its 2016 accounts receivable audit confirmation response to CB, Distributor specifically stated that Distributor "does not pay MiMedx for tissues until such a time as the [VA] issues a purchase order to [Distributor]."*

**Answer to Paragraph 39:** Mr. Chancey admits that the quoted language appears in the 2016 accounts receivable audit confirmation response from the Distributor. Mr. Chancey otherwise denies the allegation as it is fundamentally incomplete.

40. *Also during the 2016 audit, Chancey learned that Distributor made the same representation (of payment due to MiMedx only upon the issuance of a PO from the VA) during a MiMedx Audit Committee internal investigation into allegations of fictitious sales. As a result of that investigation, Chancey also learned that Distributor further represented that: (1) MiMedx had historically given Distributor credit for lost, dropped, and missing inventory; and (2) MiMedx applied Distributor's payments to the oldest invoices first, regardless of whether the VA made payments to Distributor for the products reflected in those invoices.*

**Answer to Paragraph 40:** Mr. Chancey admits that the Audit Committee issued a report of its internal investigation, which reflected that the Distributor had made certain representations to the Audit Committee. The Audit Committee's report speaks for itself. Mr. Chancey admits MiMedx management reported to him that in the course of the audit committee's investigation, Distributor represented that MiMedx historically had given Distributor credit for lost tissue, and that Distributor applied its payments to the oldest outstanding invoice. Mr. Chancey denies that he learned as a result of the Audit Committee investigation that Distributor represented that it was

given credit for “dropped” or “missing” inventory. Mr. Chancey denies the remaining allegations in paragraph 40 as they are fundamentally incomplete.

41. *In addition, consistent with the evidence obtained in the 2015 audit, CB’s procedures to test sales transactions, accounts receivable, the DSO metric, the sales returns allowance, and sales commissions either failed to provide sufficient appropriate evidence that was relevant to the consignment issue or, instead, raised additional red flags or contradictory evidence suggesting that the arrangement with Distributor was a consignment.*

**Answer to Paragraph 41:** Mr. Chancey admits that CB’s procedures tested sales transactions, accounts receivable, DSOs, the sales returns allowance, and sales commission as to the Distributor. Mr. Chancey denies the remaining allegations in paragraph 41.

42. *Despite this evidence, and the evidence from the 2015 audit, Chancey did not plan, perform, or document any additional substantive procedures for the 2016 audit to test whether a side arrangement existed. For example, he did not ask Distributor about the existence of a side arrangement or for any evidence Distributor might have to support its position that its obligation to pay MiMedx was contingent on a PO from the VA. Chancey also did not speak with anyone else at MiMedx or the VA who was involved in the sales and collection processes.*

**Answer to Paragraph 42:** Mr. Chancey admits that he did not ask the Distributor “for any evidence Distributor might have to support its position that its obligation to pay MiMedx was contingent on a PO from the VA.” Mr. Chancey further admits that he did not speak with VA personnel who were “involved in the sales and collection process” for Distributor sales. Mr. Chancey otherwise denies the remaining allegations of paragraph 42.

43. *As part of its 2016 audit procedures, CB requested and obtained a revenue recognition memo from MiMedx management that supported MiMedx’s revenue recognition for transactions with Distributor at the time of shipment. However, that memo did not provide sufficient appropriate evidence about revenue recognition considering the side agreement. Chancey improperly relied on management’s representations that the written distribution agreement established the terms of the transactions, rather than performing incremental audit procedures specifically directed at testing the alleged side agreement.*

**Answer to Paragraph 43:** Mr. Chancey admits that as part of its 2016 Audit, CB requested and obtained a memo from MiMedx that supported MiMedx’s revenue recognition practice for

transactions with Distributor at the time of shipment. Mr. Chancey denies the remaining allegations in paragraph 43.

44. *At the conclusion of the 2016 audit, Chancey again caused CB to issue an audit report that inaccurately stated that the audit was performed in accordance with PCAOB standards. MiMedx filed CB's inaccurate audit report with MiMedx's 2016 Form 10-K on March 1, 2017.*

**Answer to Paragraph 44:** MiMedx's 2016 Form 10-K, filed March 1, 2017, and CB's audit report speak for themselves. Mr. Chancey admits that he approved the issuance of CB's audit report, and that the CB audit report was filed with the MiMedx 2016 Form 10-K. Mr. Chancey denies the remaining allegations in paragraph 44.

45. *PCAOB AS 1015 (AU 230) Due Professional Care in the Performance of Work states, "the exercise of due professional care allows the auditor to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud" and "[a]lthough not absolute assurance, reasonable assurance is a high level of assurance." The standard requires the auditor to: a. exercise professional skepticism, "an attitude that includes a questioning mind and a critical assessment of audit evidence"; b. "consider the competency and sufficiency of the [audit] evidence"; c. neither assume that management is dishonest nor assume "unquestioned honesty" and "the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest"; and d. adhere to the standard during the planning and throughout the audit process.*

**Answer to Paragraph 45:** PCAOB AS 1015 (AU 230) speaks for itself. Mr. Chancey denies the allegations in paragraph 45 as fundamentally incomplete and to the extent they are inconsistent with PCAOB standards.

46. *PCAOB AS 2401 (AU 316) Consideration of Fraud in a Financial Statement Audit requires that the auditor exercise professional skepticism when considering fraud risks and "conduct the engagement with a mindset that recognizes the possibility that a material misstatement due to fraud could be present, regardless of any past experience with the entity and regardless of the auditor's belief about management's honesty and integrity. Furthermore, professional skepticism requires an ongoing questioning of whether the information and evidence obtained suggests that a material misstatement due to fraud has occurred."*

**Answer to Paragraph 46:** PCAOB AS 2401 (AU 316) speaks for itself. Mr. Chancey denies the allegations in paragraph 46 as fundamentally incomplete and to the extent they are inconsistent with PCAOB standards.



47. *During both the 2015 and 2016 audits, Chancey had evidence that contradicted management representations about MiMedx's transactions with Distributor. Yet, he improperly relied on management representations when concluding that MiMedx's financial statements were free of material misstatement. Furthermore, Chancey failed to corroborate management representations or perform any additional substantive procedures to reconcile the contradictory evidence he had received from reliable sources and CB's other audit procedures, and thus failed to reduce the risk of material misstatement to an appropriately low level.*

**Answer to Paragraph 47:** Mr. Chancey states that the allegations in paragraph 47 are vague as to the management representations the Division alleges were contradicted by evidence Mr. Chancey allegedly possessed. Mr. Chancey does not have, and is unable to obtain, sufficient information to admit or deny the remaining allegations contained in paragraph 47.

48. *As a result, Chancey failed to exercise due professional care, which was required by PCAOB standards, during the audits of MiMedx's 2015 and 2016 financial statements.*

**Answer to Paragraph 48:** Mr. Chancey denies the allegations in paragraph 48. Mr. Chancey further states that PCAOB standards speak for themselves.

49. *PCAOB AS 1015 (AU 230) Due Professional Care in the Performance of Work requires that the engagement partner "be knowledgeable about the client."*

**Answer to Paragraph 49:** PCAOB AS 1015 (AU 230) speaks for itself. Mr. Chancey denies the allegations in paragraph 49 as fundamentally incomplete and to the extent they are inconsistent with PCAOB standards.

50. *PCAOB AS 2110 (AS 12) Identifying and Assessing Risks of Material Misstatement requires the auditor to "obtain an understanding of the company and its environment ('understanding of the company') to understand the events, conditions, and company activities that might reasonably be expected to have a significant effect on the risks of misstatement."*

**Answer to Paragraph 50:** PCAOB AS 2110 (AS 12) speaks for itself. Mr. Chancey denies the allegations in paragraph 50 as fundamentally incomplete and to the extent they are inconsistent with PCAOB standards.

51. *Chancey failed to become knowledgeable about MiMedx's relationship with Distributor, which was one of MiMedx's most significant customers. Among other things, Chancey failed to obtain an understanding of the following significant events, conditions, and*

*activities impacting MiMedx's transactions with Distributor: a. During the 2015 audit, the controller's allegations about MiMedx's consignment arrangement; b. During both the 2015 and the 2016 audits, Distributor's practice of paying much later than the contract terms allowed; c. During both the 2015 and the 2016 audits, MiMedx's practice of incurring losses for sales of tissue to Distributor, contrary to terms of the distribution agreement, when tissues were lost, dropped, or missing after shipment; and d. During the 2016 audit, Distributor's representations that payment terms with MiMedx were contingent on sales to the VA.*

**Answer to Paragraph 51:** Mr. Chancey states that this allegation is vague as to what is meant by "most significant". Mr. Chancey further states that the allegations in paragraph 51 are vague as to Distributor's alleged representations that payment terms between MiMedx and Distributor were "contingent". Mr. Chancey denies the remaining allegations of paragraph 51.

52. *As a result, Chancey failed to obtain an understanding of MiMedx's business, which was required by PCAOB standards, during the audits of MiMedx's 2015 and 2016 financial statements.*

**Answer to Paragraph 52:** Mr. Chancey denies the allegations of paragraph 52. Mr. Chancey further states that PCAOB standards speak for themselves.

53. *PCAOB AS 2101 (AS 9) Audit Planning states that "[p]lanning the audit includes establishing the overall audit strategy for the engagement and developing an audit plan, which includes, in particular, planned risk assessment procedures and planned responses to the risks of material misstatement. Planning is not a discrete phase of an audit but, rather, a continual and iterative process that might begin shortly after (or in connection with) the completion of the previous audit and continues until the completion of the current audit." Moreover, "[t]he auditor should modify the overall strategy and the audit plan as necessary if circumstances change significantly during the course of the audit, including changes due to a revised assessment of the risks of material misstatement or the discovery of a previously unidentified risk of material misstatement."*

**Answer to Paragraph 53:** PCAOB AS 2101 (AS 9) speaks for itself. Mr. Chancey denies the allegations in paragraph 53 as fundamentally incomplete, and to the extent they are inconsistent with PCAOB standards.

54. *PCAOB AS 2110 (AS 12) Identifying and Assessing Risks of Material Misstatement requires the auditor to "presume that there is fraud risk involving improper revenue recognition and evaluate which types of revenue, revenue transactions, or assertions may give rise to such risks."*

**Answer to Paragraph 54:** PCAOB AS 2110 (AS 12) speaks for itself. Mr. Chancey denies the allegations in paragraph 54 as fundamentally incomplete and to the extent they are inconsistent with PCAOB standards.

55. *PCAOB AS 1101 (AS 8) Audit Risk provides that “reasonable assurance is obtained by reducing audit risk to an appropriately low level through applying due professional care, including obtaining sufficient appropriate audit evidence.”*

**Answer to Paragraph 55:** PCAOB AS 1101 (AS 8) speaks for itself. Mr. Chancey denies the allegations in paragraph 55 as fundamentally incomplete and to the extent they are inconsistent with PCAOB standards.

56. *During both the 2015 and 2016 audits, Chancey learned of red flags and contradictory evidence indicating that a side arrangement with Distributor existed, but CB did not perform additional procedures to determine if revenue was misstated. Even after Chancey learned during the 2015 audit that the controller had challenged MiMedx’s revenue recognition for transactions with Distributor and that the controller would not sign the management representation letter, and, during the 2016 audit, that Distributor had described its contingent payment terms with MiMedx in its audit confirmation response, Chancey did not modify CB’s audit plan to respond to the increased risk of material misstatement. This was true even though CB had previously identified revenue as an area with heightened risk of material misstatement due to error or fraud.*

**Answer to Paragraph 56:** Mr. Chancey admits that during the 2015 Audit he learned that Controller had expressed concerns about MiMedx’s revenue recognition for certain sales to the Distributor. Mr. Chancey admits that CB identified revenue as an area with risk of material misstatement due to error or fraud. Mr. Chancey denies the remaining allegations of paragraph 56.

57. *As a result, Chancey failed to plan the audits and revise risk assessments appropriately, as required by PCAOB standards, during the audits of MiMedx’s 2015 and 2016 financial statements.*

**Answer to Paragraph 57:** PCAOB standards speak for themselves. Mr. Chancey otherwise denies the allegations in paragraph 57.

58. *PCAOB AS 1105 (AS 15) Audit Evidence states that, “[t]o be appropriate, audit evidence must be both relevant and reliable in providing support for the conclusions on which*

*the auditor's opinion is based." Relevance depends on "whether [the audit procedure] is designed to (1) test the assertion or control directly and (2) test for understatement or overstatement and the timing of the audit procedure used to test the assertion or control." Additionally, "the reliability of evidence depends on the nature and source of the evidence and the circumstances under which it is obtained....Evidence obtained from a knowledgeable source that is independent of the company is more reliable than evidence obtained only from internal company sources." Furthermore, the standard requires the auditor to: a. "plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for his or her opinion"; b. "test the accuracy and completeness of the information" produced by the company; and c. "perform audit procedures necessary to resolve the matter" when "audit evidence obtained from one source is inconsistent with that obtained from another, or if the auditor has doubts about the reliability of information to be used as audit evidence"(emphasis added).*

**Answer to Paragraph 58:** PCAOB AS 1105 (AS 15) speaks for itself. Mr. Chancey denies the allegations in paragraph 58 as fundamentally incomplete, and to the extent they are inconsistent with PCAOB standards.

59. *PCAOB AS 2805 (AU 333) Management Representations states that management representations "are not a substitute for the application of auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit" and, "[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" (emphasis added).*

**Answer to Paragraph 59:** PCAOB AS 2805 (AU 333) speaks for itself. Mr. Chancey denies the allegations in paragraph 59 as fundamentally incomplete, and to the extent they are inconsistent with PCAOB standards.

60. *PCAOB AS 2310 (AU 330) The Confirmation Process explains that the purpose of confirmation is to obtain evidence from "third parties about financial statement assertions made by management." The auditor should evaluate the evidence provided in the confirmation to obtain an understanding about the existence and details of significant oral modifications to written agreements and perform alternative procedures and additional testwork to obtain sufficient evidence. Further, nonresponses "do not provide audit evidence about the financial statement assertions being addressed."*

**Answer to Paragraph 60:** PCAOB AS 2301 (AU 330) speaks for itself. Mr. Chancey denies the allegations in paragraph 60 as fundamentally incomplete, and to the extent they are inconsistent with PCAOB standards.

61. PCAOB AS 2301 (AS 13) The Auditor's Responses to the Risks of Material Misstatement states that “assessed risks of material misstatement, particularly fraud risks, should involve the application of professional skepticism in gathering and evaluating audit evidence[,]” which includes “obtaining sufficient appropriate evidence to corroborate management’s explanations or representations concerning important matters.” The standard also requires the auditor to: a. design the audit procedures performed to “[o]btain more persuasive evidence the higher the auditor’s assessment of risk [and] [t]ake into account the types of potential misstatements that could result from the identified risks and the likelihood and magnitude of potential misstatement”; b. “perform substantive procedures for each relevant assertion of each significant account”; c. obtain more evidence from substantive procedures “as the assessed risk of material misstatement increases”; and d. modify the planned audit procedures, in response to fraud risk, “to obtain more reliable evidence regarding relevant assertions.”

**Answer to Paragraph 61:** PCAOB AS 2301 (AS 13) speaks for itself. Mr. Chancey denies the allegations in paragraph 61 as fundamentally incomplete and to the extent they are inconsistent with PCAOB standards.

62. PCAOB AS 2401 (AU 316) Consideration of Fraud in a Financial Statement Audit indicates that, if there is a risk of improper revenue recognition, the auditor consider “[c]onfirming with customers certain relevant contract terms and the absence of side agreements, because the appropriate accounting often is influenced by such terms or agreements. For example, acceptance criteria, delivery and payment terms, the absence of future or continuing vendor obligations, the right to return product, guaranteed resale amounts, and cancellation or refund provisions often are relevant in such circumstances.”

**Answer to Paragraph 62:** PCAOB AS 2401 (AU 316) speaks for itself. Mr. Chancey denies the allegations in paragraph 62 as fundamentally incomplete and to the extent they are inconsistent with PCAOB standards.

63. *Chancey obtained reliable evidence from MiMedx’s controller during the 2015 audit, and from Distributor’s confirmation response during the 2016 audit, indicating that MiMedx and Distributor had a side arrangement. Additionally, during both audits, CB’s procedures concerning the DSO metric, the sales returns allowance, and sales commissions provided evidence suggesting that the arrangement MiMedx had with Distributor could be a consignment. This evidence contradicted MiMedx management’s representations claiming that the written distribution agreement controlled the terms of the transactions with Distributor.*

**Answer to Paragraph 63:** Mr. Chancey states the allegations in Paragraph 63 are vague as to “reliable evidence” Mr. Chancey allegedly obtained from Controller during the 2015 Audit. Mr. Chancey denies the remaining allegations in paragraph 63.

64. *Chancey failed to perform any incremental procedures to investigate the circumstances of this contradictory evidence or appropriately test the reliability of the representations made by MiMedx management. Chancey further failed to evaluate the contradictory audit evidence to obtain sufficient appropriate evidence for CB's audit conclusions.*

**Answer to Paragraph 64:** Mr. Chancey denies the allegations in paragraph 64.

65. *As a result, Chancey failed to obtain sufficient appropriate audit evidence, as required by PCAOB standards, during the audits of MiMedx's 2015 and 2016 financial statements.*

**Answer to Paragraph 65:** PCAOB standards speak for themselves. Mr. Chancey otherwise denies the allegations in paragraph 65.

66. *PCAOB AS 2810 (AS 14) Evaluating Audit Results requires the auditor to "obtain corroboration for management's explanations regarding significant, unusual, or unexpected transactions, events, amounts, or relationships. If management's responses to the auditor's inquiries appear to be implausible, inconsistent with other audit evidence, imprecise, or not a sufficient level of detail to be useful, the auditor should perform procedures to address the matter" (emphasis added).*

**Answer to Paragraph 66:** PCAOB AS 2810 (AS 14) speaks for itself. Mr. Chancey denies the allegations in paragraph 66 as fundamentally incomplete, and to the extent they are inconsistent with PCAOB standards.

67. *Because Distributor was one of MiMedx's largest distributors at the time, MiMedx's transactions with Distributor were significant. Despite the significance of the transactions, Chancey relied on management representations that were inconsistent with other audit evidence, without obtaining appropriate corroboration from other sources, during the audits of MiMedx's 2015 and 2016 financial statements. Although Chancey obtained contradictory evidence in two consecutive audits, he still failed to take action to reduce audit risk to an appropriately low level.*

**Answer to Paragraph 67:** Mr. Chancey admits that, based on CB's revenue testing in connection with the 2016 Audit, Distributor was MiMedx's largest distributor. Mr. Chancey otherwise denies the remaining allegations in paragraph 67.

68. *As a result, Chancey failed to evaluate audit results properly, as required by PCAOB standards, during the audits of MiMedx's 2015 and 2016 financial statements.*

**Answer to Paragraph 68:** PCAOB standards speak for themselves. Mr. Chancey otherwise denies the allegations in paragraph 68.

69. *PCAOB AS 1215 (AS 3) Audit Documentation* requires the auditor to document: a. “significant findings or issues, actions taken to address them (including additional evidence obtained), and the basis for the conclusions reached in connection with each engagement”; b. “information the auditor has identified relating to significant findings or issues that is inconsistent with or contradicts the auditor’s final conclusions” (emphasis added); and c. “risks of material misstatement that are determined to be significant risks and the results of the auditing procedures performed in response to those risks.”

**Answer to Paragraph 69:** PCAOB AS 1215 (AS 3) speaks for itself. Mr. Chancey otherwise denies the allegations in paragraph 69 as fundamentally incomplete and to the extent they are inconsistent with PCAOB standards.

70. *During both the 2015 and 2016 audits, CB had reliable information that was inconsistent with CB’s audit conclusions and raised significant risks about material misstatements in MiMedx’s financial statements. However, Chancey failed to document, or ensure the documentation of, any analysis of the consignment issues raised and the basis for CB’s audit conclusions in light of those issues. Notably, Chancey failed completely to document the controller’s allegations and refusal to sign the management representation letter, much less any audit response to these issues, in CB’s 2015 audit workpapers. He also failed to document in the 2016 audit workpapers any analysis or response to Distributor’s representations about contingent sales terms. Furthermore, for both audits, he failed to document any analysis of the consignment issues raised by additional red flags and contradictory evidence obtained from the DSO analysis, the sales return allowance testwork, and the sales commission testwork.*

**Answer to Paragraph 70:** Mr. Chancey denies the allegations contained in paragraph 70, except Mr. Chancey admits that the audit workpapers do not reference explicitly Controller’s email.

71. *As a result, Chancey failed to document audit work, as required by PCAOB standards, during the audits of MiMedx’s 2015 and 2016 financial statements.*

**Answer to Paragraph 71:** PCAOB standards speak for themselves. Mr. Chancey otherwise denies the allegations in paragraph 71.

72. *Despite Chancey’s multiple departures from PCAOB audit standards, as described above, CB, through Chancey, issued audit reports that contained unqualified opinions on MiMedx’s 2015 and 2016 financial statements. Those reports contained CB’s opinion that MiMedx’s financial statements presented fairly, in all material respects, the company’s financial position and results of operations in conformity with GAAP, and CB’s representation that its audits were conducted in accordance with PCAOB audit standards.*

**Answer to Paragraph 72:** Mr. Chancey admits that he approved the issuance of the CB audit reports. The CB audit reports speak for themselves. Mr. Chancey denies the remaining allegations in paragraph 72.

73. *As the lead engagement partner on the audits, Chancey approved the issuance of these audit reports. Chancey knew that MiMedx would file CB's audit reports with the Commission with MiMedx's Forms 10-K.*

**Answer to Paragraph 73:** Mr. Chancey admits the allegations contained in paragraph 73.

74. *Chancey caused CB's audit reports to inaccurately state that the audits were conducted in accordance with PCAOB audit standards.*

**Answer to Paragraph 74:** Mr. Chancey denies the allegations in paragraph 74.

75. *As a result of the conduct described above, Chancey engaged in improper professional conduct within the meaning of Exchange Act Section 4C(a)(2) and Rule 102(e)(1)(ii) of the Commission's Rules of Practice. Section 4C(a)(2) and Rule 102(e)(1)(ii) provide, in pertinent part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. Exchange Act Section 4C(b) and Rule 102(e)(1)(iv) define improper professional conduct with respect to persons associated with public accounting firms and persons licensed to practice as accountants, respectively, as (1) a single instance of highly unreasonable conduct in circumstances for which heightened scrutiny is warranted; or (2) repeated instances of unreasonable conduct that indicate a lack of competence.*

**Answer to Paragraph 75:** Mr. Chancey denies the allegations in paragraph 75.

76. *As a result of the conduct described above, Chancey caused the violation of Rule 2-02(b)(1) of Regulation S-X, which requires an audit report to accurately state whether the audit was made in accordance with generally accepted auditing standards. The phrase "generally accepted auditing standards" refers to the standards issued by the PCAOB. See Act Rel. No. 33- 8422. Under Exchange Act Section 21C, a person is a "cause" of another's primary violation if the person knew or should have known that his act or omission would contribute to the primary violation.*

**Answer to Paragraph 76:** Mr. Chancey denies the allegations of paragraph 76.

\* \* \*

Sections III and IV of the OIP describe orders of the Commission, to which no response is required.



## AFFIRMATIVE DEFENSES

Mr. Chancey asserts the following affirmative defenses to the OIP. Mr. Chancey does not assume the burden of proof where that burden properly is imposed on the Commission.

- 1. Laches:** Each cause of action and claim of violation in this OIP fails under the doctrine of laches. The Division unreasonably delayed in asserting their claims for relief and that delay has prejudiced Mr. Chancey. The Division waited *more than five years* following CB's 2015 Audit to file the OIP. At present, a key witness faces life-threatening medical problems, another witness (highly relevant to the alleged side arrangement) has passed away, and countless more have diminished memories of the relevant years-old events. During that same time, the Department of Justice, in coordination with the Division, has completed a related investigation and criminal trial. And the Division has conducted years of one-sided discovery. Yet prior to the issuance of the OIP, neither governmental body even shared the vast majority of its investigative file with Mr. Chancey, much less allowed him to take his own discovery. Therefore, the Division delayed unreasonably in commencing this action and Mr. Chancey suffered prejudice as a result.
- 2. Statute of Limitations:** Each cause of action/claim related to CB's audit of MiMedx's 2015 financial statements fails because the Division did not comply with the applicable statute of limitations set forth in 28 U.S.C. § 2462. The tolling agreements entered into between the parties do not rescue the Division's claims. The time limit created by section 2462 is jurisdictional; it cannot be extended by a tolling agreement.
- 3. Failure to State a Cause of Action:** The allegations of the OIP fail to state a cause of action under the cited provisions of Rule 102(e)(1)(ii).
- 4. Failure to Provide Fair Notice:** The OIP fails to "set forth the factual and legal basis alleged therefor in such detail as will permit a specific response thereto". 17 C.F.R.

§ 201.200(b)(3). As detailed in the accompanying *Motion for a More Definite Statement*, the Commission through the OIP has failed adequately to provide Mr. Chancey with fair notice of the charges against him, which has deprived Mr. Chancey of an adequate opportunity to prepare his defense and Answer.

5. **Due Process – Retroactivity:** The Commission’s OIP fails to provide Mr. Chancey with fair notice or due process, under the Fifth Amendment to the United States Constitution and the Administrative Procedure Act, because the OIP attempts to apply retroactively new interpretations of the plain language of applicable rules and professional standards.
6. **Due Process – Vagueness:** The Commission’s OIP denies Mr. Chancey of his right to due process under the Fifth Amendment to the United States Constitution because the Commission seeks to enforce vague and overbroad laws based on rules and professional standards, and interpretations of the relevant rules and standards, that are unduly vague and subjective.
7. **Due Process – Procedure and Sixth Amendment:** The Commission’s OIP denies Mr. Chancey of his right to due process and his right to assistance of counsel under the Sixth Amendment to the United States Constitution because during interviews with the Division, the Division failed to provide Mr. Chancey with the required Privacy Act notices and related warnings regarding his right to obtain individual counsel and how the SEC may use the information obtained from him, contained within Form 1662.
8. **Due Process – Procedure:** The Commission’s OIP denies Mr. Chancey of his right to due process under the Fifth Amendment to the United States Constitution because the instituted administrative proceeding does not provide Mr. Chancey with an adequate

opportunity to defend the allegations or access relevant evidence and information for use in Mr. Chancey's defense.

**9. Due Process – Property:** The administrative proceeding, if successful, will deprive Mr. Chancey of property without due process of law, in violation of Mr. Chancey's Fifth Amendment and Fourteenth Amendment rights under the United States Constitution. The Commission seeks monetary penalties as well as further actions that could impede his ability to practice as an accountant and threaten his livelihood. Such penalties and actions will deprive Mr. Chancey of property without the due process of law that is afforded to respondents facing proceedings in federal court, and withheld from respondents in administrative proceedings.

**10. Equal Protection:** The administrative proceeding violates Mr. Chancey's right to equal protection under the United States Constitution. The administrative proceeding, devoid of the protections of the Federal Rules of Civil Procedure and Evidence, the right to a trial by jury, or adequate time to prepare a defense, deprives Mr. Chancey of the rights enjoyed by similarly situated individuals who are respondents in federal district court proceedings. As such, the Commission's arbitrary choice to commence the instant proceeding as an administrative proceeding, rather than file an action in federal district court, has denied Mr. Chancey of his right to equal protection.

**11. Arbitrary and Capricious:** The Commission's initiation of these proceedings was arbitrary and capricious as the allegations in the OIP are not supported in the record or relevant rules and standards and contradict allegations made by the Division in related proceedings.

- 12. Eighth Amendment – Penalties:** The Commission’s OIP seeks penalties which, if imposed, would violate Mr. Chancey’s rights under the Eighth Amendment and Fifth Amendment of the United States Constitution because the relevant standards regarding “improper professional conduct” and the related standards used to determine penalties for such conduct are unduly vague and subjective, and permit arbitrary, capricious, excessive, and disproportionate punishment that serves no legitimate governmental interest.
- 13. Audit Interference:** MiMedx management and employees, as well as employees of Distributor, interfered with the relevant audits of MiMedx’s financial statements by misleading CB and impeding its auditors. MiMedx management and employees, as well as employees of Distributor, provided evidence to CB that ultimately, due to the subsequently uncovered fraud, was neither persuasive nor truthful. As such, no finding of improper professional conduct by Mr. Chancey is appropriate given this interference.
- 14. Estoppel – Fraud:** The Commission is estopped from finding that Mr. Chancey engaged in improper professional conduct because the Commission has simultaneously sued former MiMedx executives for deceit of auditors and has adopted positions contrary to those asserted in this proceeding.
- 15. State of Mind:** At all times relevant hereto, Mr. Chancey acted in good faith and at no time acted either willfully, intentionally, knowingly, negligently, or recklessly with respect to any matter alleged in the OIP.
- 16. Delegation of Legislative Authority:** The Commission’s claims in the OIP are barred, in whole or in part, because this administrative proceeding is the product of an

impermissible delegation of legislative authority in contravention of Article I of the United States Constitution.

**17. Separation of Powers:** The Commission's claims alleged in the OIP are barred, in whole or in part, because this administrative proceeding violates the doctrine of separation of powers.

**18. Additional Defenses:** Mr. Chancey expressly reserves the right to amend this Answer to modify, remove, or add any defenses based upon any facts, legal theories, information, and circumstances divulged through ongoing or any future discovery and/or further legal analysis of the Division's position and Commission's OIP in this proceeding.

Respectfully submitted,

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Dated: August 10, 2021

*Counsel for Respondent Paul L. Chancey, Jr.*

**Certificate of Service**

In accordance with 17 C.F.R. §§ 201.150, .151, I certify that a copy of Respondent's Answer to the Order Instituting Public Administrative and Cease-And-Desist Proceedings was served on the following on August 10, 2021, via the methods indicated below.

Securities and Exchange Commission  
Brent Fields, Secretary  
(Via eFAP system)

Stephen C. McKenna, Esq.  
Securities and Exchange Commission  
(Via Email: McKennas@sec.gov)

Mark L. Williams, Esq.  
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/s/ Claudius B. Modesti      Dated: August 10, 2021  
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