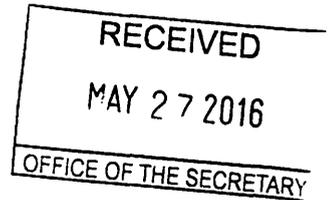


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



In the Matter of:

BioElectronics Corp.,
IBEX, LLC,
St. John's, LLC
Andrew J. Whelan
Kelly A. Whelan, CPA, and
Robert P. Bedwell, CPA

**ROBERT P. BEDWELL'S MOTION FOR
SUMMARY DISPOSITION**

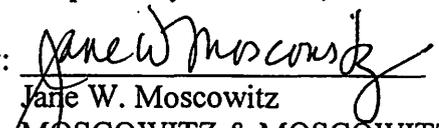
Administrative Proceeding
File No. 3-17104

Respondents.

Robert P. Bedwell hereby moves for summary disposition pursuant to Rule 250 of the Securities and Exchange Commission's Rules of Practice [17 C.F.R. §201.250]. Mr. Bedwell respectfully submits that summary disposition is appropriate and that the Court should resolve this proceeding in his favor and dismiss this proceeding.

In support of this Motion, Mr. Bedwell relies upon the accompanying memorandum of laws and the Declaration of Robert P. Bedwell. Robert P. Bedwell respectfully requests that the Court grant his motion.

Dated: Miami, FL
May 27, 2016

Respectfully submitted,
By: 
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**RESPONDENT ROBERT P. BEDWELL'S
MEMORANDUM OF LAW IN SUPPORT
OF HIS MOTION FOR SUMMARY
DISPOSITION**

Administrative Proceeding
File No. 3-17104

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EXECUTIVE SUMMARY

The case against Robert Bedwell must be dismissed because it is brought in violation of the five year statute of limitations applicable to this proceeding, 28 U.S.C. § 2462. The last possible date for the accrual of the action is the publication of the 2009 BioElectronics Corp. 10-K, which was on March 31, 2010. This action was brought on February 5, 2016, well beyond the five year deadline. The SEC seeks a professional bar for Mr. Bedwell, which is punitive not remedial, as the relief sought “goes beyond remedying the damage caused to the harmed parties by the defendant’s action,” *Johnson v. SEC*, 87 F.3d 484, 488 (D.C. Cir. 1996). The action is particularly punitive to Mr. Bedwell, who has not been an engagement partner on audits for several years. His work is subject to several levels of review. Moreover, currently, due to this action, the firm has taken him off all public company and broker dealer audits. Thus, the public does not need protection from Mr. Bedwell.

Additionally, Mr. Bedwell has been prejudiced by the delay in bringing this action. The person who would have been his major supporting witness, a CPA who worked on the audit, was not deposed until December 16, 2015 and had no memory of the audit, or even of documents authored by him that support Mr. Bedwell’s defense. Finally, as in *Johnson*, the SEC must not have thought Mr. Bedwell was a serious danger to the community or they would have brought the charges sooner. Thus, this action is barred by the statute of limitations.

This administrative proceeding violates the Appointments clause of the Constitution because the ALJ is an inferior officer who was not appointed by the President the Judiciary or the Commissioners of the SEC. Similarly, because the ALJ is protected from removal for cause at two different level, the removal process is unconstitutional.

I. THE PROSECUTION OF THIS OIP AGAINST MR. BEDWELL IS BARRED BY THE STATUTE OF LIMITATIONS

A. The SEC brought this action almost six years after it first accrued.

The Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b), 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice ("OIP") in this case, charging Robert P. Bedwell and others with various violations, was filed February 5, 2016. The 2009 10-K for BioElectronics Corp. ("BIEL"), which contained the results of the audit at issue here, was released on March 31, 2010, see ¶¶ 19-20 of the OIP. These dates appear on the face of the Complaint and in the public record.

Thus, it is undisputed that more than five years have elapsed since the SEC's claims first accrued in this matter. As there is no other specific statute of limitations that applies to this matter, Section 2462 applies, and as the relief sought here by the SEC is punitive to Mr. Bedwell, the statute of limitations requires that the case against Mr. Bedwell be terminated.

The statute provides:

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, **penalty, or forfeiture, pecuniary or otherwise**, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

28 U.S.C. § 2462 (emphasis added).¹

In 2013, the Supreme Court unanimously held that Section 2462 requires the SEC to bring enforcement actions within five years of a violation when the SEC seeks to impose civil money penalties. *Gabelli v. SEC*, 133 S.Ct. 1216, 1220 (2013). The SEC continues to argue that

¹ In *3M Co. v. Browner*, 17 F.3d 1453, 1457 (D.C.Cir.1994), the court held that Section 2462 applies to any administrative proceeding for the enforcement of a civil penalty.

it can wait as long as it wants, so long as it imposes “equitable” or “remedial” sanctions—here, an associational bar. Those are just labels, and labels do not control the analysis. See, *e.g.* *Bell Atlantic v. Twombly*, 550 U.S. 554, 555 (2007).

In this OIP, the SEC has sought to insulate itself from this challenge by appearing to fail to ask for specific relief and by characterizing the relief sought as “remedial.” The OIP states, at ¶ 50, regarding what is to be determined regarding Mr. Bedwell: “What, if any, remedial action is appropriate in the public interest against Bedwell under Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.”

However, the heading of the section in which Rule 102(e)(1)(ii) of the Commission’s Rules of Practice is found is “Suspension and Disbarment” and begins by stating that:

The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter . . . to have engaged . . . in . . . improper professional conduct.

The SEC alleges that Mr Bedwell engaged in improper professional conduct. (*see* ¶¶ 1, 44 of the OIP). The SEC here seeks to bar Mr. Bedwell from practicing his profession and therefore from supporting his family. If found liable, he will be stigmatized in his profession and will find it difficult, if not impossible, to continue a career in accounting. This is doubly hard for a fifty seven year old man, whose entire career has been in accounting. Such action is without doubt a penalty to him. See Declaration of Robert P. Bedwell, attached as Exhibit A. As such, the SEC’s failure to bring this action within the statute of limitations requires that it be dismissed with prejudice.

B. A professional bar is punitive within the meaning of Section 2462.

As the Court analyzed the question in *Johnson v. SEC*, 87 F.3d 484 (D.C. Cir. 1996), the terms “penalty” and “forfeiture,” as found in Section 2462, “refer to something imposed in a punitive way for an infraction of a public law,” as opposed to “a liability imposed solely for the purpose of redressing a private injury,” citing, *Meeker v. Lehigh Valley, R.R.*, 236 U.S. 412, 423 (1915) (interpreting the predecessor statute to Section 2462). Thus, where a particular sanction “goes beyond remedying the damage caused to the parties harmed by the defendant’s action,” Section 2462’s time limit applies. *Johnson v. SEC*, 87 F.3d 484, 488 (D.C. Cir. 1996). Neither censure nor a bar does anything to remedy past wrongs in this case, if there were any. See also *Proffitt v. F.D.I.C.*, 200 F.3d 855, 860 (D.C. Cir. 2000) (FDIC order removing bank director from his position and prohibiting him from further participation in banking industry constituted punishment for purposes of Section 2462); *Collins Sec. Corp. v. SEC*, 562 F.2d 820, 825 (D.C. Cir. 1977) (“One would hardly say that removal of a robber from society should be classified as only ‘remedial,’ because it protects ordinary citizens from his probable repetition of the crime”), *abrogated on other grounds by Steadman v. SEC*, 450 U.S. 91).

In *Johnson v. SEC*, 87 F.3d 484 (D.C. Cir. 1996), the court found that a Commission suspension was a “penalty” for purposes of the statute of limitations under 28 U.S.C. § 2462. The court in *Johnson* reviewed a decision of an SEC ALJ that had imposed a six-month disciplinary suspension on a branch manager of a securities firm. To avoid the strictures of Section 2462, the SEC asserted that the suspension did not constitute a civil penalty, framing it as a “remedial action” intended “to protect the public from future harm.” *Id.*, at 486. However, the Court stated,

In interpreting § 2462, however, the court's concern is not whether Congress legislated the sanction as part of a regulatory scheme to protect the public, but rather whether the sanction is itself a form of punishment of the individual for unlawful or proscribed conduct, going beyond compensation of the wronged party.

Id. at 491. The Court also stated,

In sum, we conclude that a “penalty,” as the term is used in § 2462, is a form of punishment imposed by the government for unlawful or proscribed conduct, which goes beyond remedying the damage caused to the parties harmed by the defendant's action.

Id., at 488.

Thus, the court held that where an SEC sanction compensated victims for their losses or deprived defendants of ill-gotten gains, such a sanction would not be considered a penalty, but when the relief sought had nothing to do with the victim, the action would be subject to the five-year limitations period of Section 2462. In Mr. Bedwell’s matter, the SEC in citing Rule 102(e)(1)(ii) and 4C, seeks no remedy to any victim, making the relief sought purely punitive.

The *Johnson* court stated, “the degree and extent of the consequences to the subject of the sanction must be considered as a relevant factor in determining whether the sanction is a penalty,” *Id.* at 488, and concluded that the six-month suspension “clearly” constituted a punishment that would be barred by the limitations defense. *Id.* The court noted that a suspension could cripple the career of professionals in the securities industry, and, that, even though the suspension would only apply for a limited period of time, the “collateral consequences” of such a suspension could last for the petitioner’s entire career. *Id.* at 489. As such, the court found that the collateral consequences accompanying the SEC’s decision were punitive. The court also commented in a footnote that the SEC waited over five years to bring suit, further indicating that the agency was not concerned about the threat that the respondent posed to public order. *See fn.* 9. In sum, the court found that the suspension constituted a penalty, and was therefore barred by the applicable statute of limitations. All the *Johnson* factors apply to Mr. Bedwell.

The SEC has acknowledged that *Johnson* is controlling for cases reviewed in the D.C. Circuit, as this one will be, and that Section 2462 applies to punitive sanctions. Thus, in *In the Matter of Timbervest, LLC, Joel Barth Shapiro, Walter William Anthony Boden, III, Donald David Zell, Jr., & Gordon Jones II*, Release No. 4197 (Sept. 17, 2015) at fn. 71, even while it noted that it does not acquiesce in *Johnson's* determination that a bar is punitive, the Commission stated:

[I]n our prior decisions we have at times *not* expressed the view that Section 2462 is categorically inapplicable to bars. This is explained by the fact that our administrative orders may under Exchange Act Section 25(a)(1) always be appealed to the D.C. Circuit, in which ***Johnson v. SEC*, 87 F.3d 484 (D.C. Cir. 1996), states the controlling rule, i.e., that a bar based “solely in view of ... past misconduct” could constitute a penalty for purposes of Section 2462. *Id.* at 490 n.20.”²**

² On August 20, 2014, this court issued its Initial Decision in that case, finding that Timbervest and its executives had violated federal securities laws, and ordering disgorgement. The judge declined, however, to revoke Timbervest's registration or to issue a bar. The judge relied on federal case law holding that, under § 2462, suspensions and censures are “punitive.” Therefore, notwithstanding the violations of federal securities law, the SEC could not obtain revocation against Timbervest or impose bars against its principals for misconduct that occurred more than five years before the SEC began its administrative proceedings.

On review of the ALJ's initial decision, the Commission rejected the finding that the associational bar and the cease-and-desist order were barred by § 2462. *See* Opinion of the Commission, *In the Matter of Timbervest, LLC*, Release 4197, Sept. 17, 2015 (“Opinion”) at 24-26, now on appeal. It conceded that “this proceeding was not brought within five years of the violations.” *Id.* at 24. But it concluded that § 2462 applies only to “punitive” measures, and that the sanctions imposed on Petitioners were “equitable, not punitive.” *Id.* at 25.

In this case and later ones, the SEC notes that it does not acquiesce in *Johnson's* interpretation of what is punitive. However, on review in the Court of Appeals, the court will not be required to defer to the SEC's interpretation. “Because § 2462 is a statute of general applicability rather than one whose primary administration has been delegated to the SEC, we interpret it *de novo*.” *Johnson*, 87 F.3d at 486 (citation omitted). *See also Proffitt v. F.D.I.C.*, 200 F.3d 855, 860 (D.C. Cir. 2000).

(emphasis supplied).

To the degree that the SEC contends that it is not required to “acquiesce in the decisions of a single circuit,” citing *Indep. Petroleum Ass'n of Am. v. Babbitt*, 92 F.3d 1248, 1260 (D.C. Cir. 1996), *Id.*, it must be noted that the Fifth Circuit in *SEC v. Bartek*, 484 Fed. App'x. 949, 957 (5th Cir. 2012) followed *Johnson*, affirming the dismissal of an enforcement action seeking a permanent injunction and officer and director bars on grounds that the action sought punitive sanctions and was brought too late, in violation of Section 2462.

The *Bartek* court stated:

The SEC's sought-after remedies [a permanent injunction and O/D bars,] would have a stigmatizing effect and long-lasting repercussions. Neither remedy addresses past harm allegedly caused by the Defendants. Nor does either remedy address the prevention of future harm in light of the minimal likelihood of similar conduct in the future.

SEC v. Bartek, 484 F. App'x 949, 957 (5th Cir. 2012) (footnotes omitted). Thus, the SEC may not rely on the notion that it can ignore “the decisions of a single circuit in this matter.”

The Commission itself has dismissed administrative proceedings as time-barred by Section 2462 where the Division of Enforcement sought civil penalties and various industry bars precluding securities industry professionals from associating with securities firms, or attorneys and accountants from practicing before the Commission. (See, e.g., *In re Feeley & Wilcox Asset Mgmt. Corp.*, Securities Act Release No. 8249, Exchange Act Release No. 48162, Advisers Act Release No. 2143, 80 S.E.C. Docket 1730 (July 10, 2003) (noting that the SEC's Division of Enforcement did not appeal the Administrative Law Judge's finding that the five-year statute of limitations set forth in 28 U.S.C. § 2462 applied to preclude consideration of certain alleged misconduct in considering the SEC's request for an industry bar and monetary penalties); *In re Blizzard*, Initial Decision Release No. 229, 80 S.E.C. Docket 1464 (June 13, 2003) (holding that

the requested three to five year industry bar and civil penalty were time-barred by 28 U.S.C. § 2462). ALJs also have noted that industry bars are punitive. *In the Matter of Michael A. Horowitz & Moshe Marc Cohen*, Release No. 733 (Jan. 7, 2015), review granted March 20, 2015 (“Section 2462 also prohibits the imposition of an associational bar on Cohen.”); *In the Matter of Donald J. Anthony, Jr., Frank H. Chiappone, Richard D. Feldmann, William P. Gamello, Andrew G. Guzzetti, William F. Lex, Thomas E. Livingston, Brian T. Mayer, Philip S. Rabinovich, & Ryan C. Rogers*, Release No. 745 (Feb. 25, 2015) (“I reject Respondents' claim that all sanctions sought are subject to Section 2462. Civil monetary penalties are clearly subject to the five-year statute of limitations. So too are associational bars, when, as here, the bars would be imposed punitively rather than remedially.”).

C. Mr. Bedwell has been prejudiced by the passage of time.

Just as in *Johnson*, it is clear that the SEC did not find Mr. Bedwell so dangerous that it hurried to bring the OIP within five years. Moreover, Mr. Bedwell has been prejudiced by the SEC's delay in bringing this case. By the time Mr. Bedwell was deposed, he was at a different firm than the one who conducted the audit and did not have access to the file to review and refresh his memory. More significant, the other auditors who worked for him on the audit, Brian Leitstein and Angela Slaney were not asked for investigative testimony until six years after their BIEL audit work. Not surprisingly, their memories had faded. Indeed, Mr. Leitstein had no memory at all. Mr. Leitstein, whose testimony would be critical to show that heightened scrutiny and extra measures were undertaken to verify BIEL's bill and hold transactions (for example, physical review of segregated inventory and special confirmations), was deposed on December 16, 2015, almost 6 years after he worked on the BIEL audit and several years after he left a public auditing career. See Transcript of Brian Leitstein, attached as Exhibit B. Mr. Leitstein

testified to failure of memory at least 60 times on issues related to the BIEL audit. Immediately before his testimony, he was sent a disk containing 150,000 pages. His counsel was able to search and print the approximately 15 documents containing his name for preparation, but that was all they had time to review. Leitstein Transcript page 11. He did not even remember what a bill and hold transaction was, which is the heart of the OIP charges against Mr. Bedwell, when he was deposed even though he himself wrote and sent documents discussing the requirements. Leitstein Transcript at 35. Mr. Leitstein did not remember that BIEL had an outside accountant. Leitstein Transcript at 81-82. He did not recognize or remember any critical details or recognize any documents, including ones he had authored. That included critical defense documents, See Exhibits 21, 90, 91 and 93 attached as composite Exhibit C. Angela Slaney, who also worked on the audit of BIEL was deposed on December 9, 2015, and not remember anything either.³ Thus, Mr. Bedwell is deprived of critical witnesses who would have been able to testify what they did and discussed related to the bill and hold transactions that form the basis of the charges against Mr. Bedwell.

D. A professional bar will be punitive to Mr. Bedwell.

Mr Bedwell has practiced public accounting for 35 years without any blemish on his record; he has never been disciplined nor reported for discipline. He has never been fired nor demoted. However, a finding of “improper professional conduct” will change all of that. His firm likely will let him go, and the stigma will prevent him from obtaining meaningful work, at a time when there are many people, [REDACTED]

³ Respondent has not attached the Slaney transcript to cut down on the volume of this filing, but it is available if the Court wishes to read it.

████████████████████. This is especially true given his age. See attached Declaration of Robert P. Bedwell, Exhibit A.

E. Sanctioning Mr. Bedwell will not serve a remedial purpose

Imposing a professional bar on Mr. Bedwell will not be remedial in any way. It will not serve to compensate victims for their losses or reinstate the status quo. It will not serve to protect the public from Mr. Bedwell (if that were necessary). As shown in his attached Declaration, Exhibit A, since joining his current firm, Mr. Bedwell has not been an engagement partner on audits. His title is Director, and there are at least three levels of review of his audit work. Moreover, the risk management department of the firm recently took him off all audits of public companies and broker dealers, as a result of this action. It remains to be seen how long his firm will continue to find his services of value, and the chances of finding new professional work at the age of 57 and with the stigma of a professional bar on his record would certainly be greatly diminished. Thus, a professional bar would not affect the public or any victims. It is, therefore, punitive, and, the OIP, having been brought more than 5 years after the accrual of the matter, must be dismissed.

II. THE SEC ALJ APPOINTMENT AND REMOVAL PROCESS IS UNCONSTITUTIONAL RENDERING THESE PROCEEDINGS UNCONSTITUTIONAL

A. The use of an SEC ALJ to conduct these proceedings violates the Appointments Clause of the Constitution.⁴

The Appointments Clause in Article II provides: “[T]he Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.” Constitution, Art. II, § 2, cl. 2. It is well-settled that the Appointments Clause provides the exclusive means by which inferior officers may be appointed. *See Buckley v. Valeo*, 424 U.S. 1, 138–9 (1976) (“Congress may undoubtedly ... provide such method of appointment to those ‘offices’ as it chooses. But Congress’ power under that Clause is inevitably bounded by the express language of Art. II, s 2, cl. 2, and unless the method it provides comports with the latter, the holders of those offices will not be ‘Officers of the United States.’ They may, therefore, properly perform duties only ... in an area sufficiently removed from the administration and enforcement of the public law as to permit their being performed by persons not ‘Officers of the United States.’ ”). For purposes of the Appointments Clause, the SEC is a “Department” of the Executive Branch, and the Commissioners function as the “Head” of that Department. *See Free Enterprise Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 512–513 (2010).

⁴ These arguments are appropriately brought here. “Jarquesy must continue to press his various challenges to the Commission’s enforcement proceeding before the Commission itself. “ *Jarquesy v. S.E.C.*, 803 F.3d 9, 30 (D.C. Cir. 2015). That case does not address the merits of the Appointments clause or removal procedure arguments, merely stating that they should not be brought in the district court.

SEC ALJs are “inferior officers,” because they exercise “significant authority pursuant to the laws of the United States.” *Freytag v. C.I.R.*, 501 U.S. 868, 881 (1991). The SEC ALJs' positions are “established by [l]aw,” including 5 U.S.C. §§ 556, 557 and 15 U.S.C. § 78d-1(a), and “the duties, salary, and means of appointment for that office are specified by statute.” *Id.*; *see also* 5 U.S.C. § 5372. ALJs “take testimony, conduct trials, rule on the admissibility of evidence, and have the power to enforce compliance with discovery orders.” *Freytag*, 501 U.S. at 881. “In the course of carrying out these important functions, the [ALJs] exercise significant discretion.” *Id.*; *see also Hill v. S.E.C.*, 114 F. Supp. 3d 1297, 1317 (N.D. Ga. 2015) (“like the STJs in *Freytag*, SEC ALJs exercise ‘significant authority.’ ”).⁵ The court in *Hill* concluded that “*Freytag* mandates a finding that the SEC ALJs exercise ‘significant authority’ and are thus inferior officers.” *Hill*, 114 F. Supp. 3d at 1319. That court granted the plaintiff's motion to enjoin the SEC administrative proceeding. (*Id.* at 1320). *See also Duka v. S.E.C.*, 124 F. Supp. 3d 27 (S.D.N.Y. 2015) (same).

There appears to be no dispute that the ALJ in this case was not appointed by the SEC Commissioners. In an affidavit, dated June 4, 2015 that was taken in *In the Matter of Timbervest, LLC et al*, Jayne L. Seidman, Deputy Chief Operating Officer of the SEC, stated that, “[b]ased on [her] knowledge of the Commission's ALJ hiring process, [SEC] ALJ [Cameron] Elliot was not hired through a process involving the approval of the individual members of the

⁵ The finding in *Landry v. F.D.I.C.*, 204 F.3d 1125 (D.C.Cir.2000), which the SEC has cited in other cases raising this issue, is inapposite. Decisions by FDIC ALJs are only recommendations, while decisions by SEC ALJs are expressly considered to be Commission actions if they are not reviewed by the Commissioners. 15 U.S.C. § 78d-1(c) (“If the right to exercise such review is declined, or if no such review is sought within the time stated in the rules promulgated by the Commission, the action of any . . . administrative law judge . . . shall, for all purposes, including appeal or review thereof, be deemed the action of the Commission.

Commission.” *In the Matter of Timbervest, LLC et al.*, Admin. Proc. File No. 3–15519. The ALJ was “not appointed by the President, a department head, or the Judiciary.” Therefore, the administrative proceeding is unconstitutional and must be dismissed.⁶

B. The Removal Process for an SEC ALJ Involves two Layers of Protection, Resulting in an Unconstitutional Structure.

SEC ALJs are protected from removal by the president by at least two layers of for-cause removal protection. Permitting an executive officer to enjoy such insulation from removal unconstitutionally prevents the president from exercising the necessary control to be accountable for the actions of the officer. *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010).

The first layer of protection exists at the SEC level. The SEC can only remove an ALJ “for cause.” 5 U.S.C. § 7521(a). Second, that determination of cause must be confirmed by the Merit Systems Protection Board (“MSPB”), whose members can only be removed “for cause.” *Id.*; 5 U.S.C. § 1202. Therefore, the judgment that an SEC ALJ should be removed for cause is “committed to another officer, who may or may not agree with the president’s determination, and whom the President cannot remove simply because that officer disagrees with him.” *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. at 484. Given the SEC’s assertion in *Free Enterprise Fund* that commissioners themselves are removable only for cause, *Id.* at 487, there

⁶Not surprisingly, the Commission has recently affirmed the constitutionality of its administrative proceedings. See *Raymond J. Lucia Cos.*, Exchange Act Release No. 75837, 2015 SEC LEXIS 3628, at *76-90 (Sept. 3, 2015), *appeal pending*, No. 15-1345 (D.C. Cir., filed Oct. 5, 2015); *accord Timbervest, LLC*, Advisers Act Release No. 4197, 2015 SEC LEXIS 3854, at *89-104 (Sept. 17, 2015), *appeal pending*, No. 15-1416 (D.C. Cir., filed Nov. 13, 2015); *David F. Bandimere*, Securities Act of 1933 Release No. 9972, 2015 SEC LEXIS 4472, at * 7486 (Oct. 29, 2015). These decisions are all on appeal, and Mr. Bedwell must preserve his record.

exist in fact three layers of protection between SEC ALJs and the president, as the commissioners themselves must initiate the removal proceedings against SEC ALJs. 5 U.S.C. § 7521 (a).

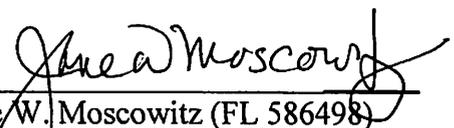
The power to remove officers has been seen since the time of the Founders as “incident to the power of appointment.” *Myers v. United States*, 272 U.S. 52, 110 (1926). When Congress did limit the removal of a postmaster conditioned on congressional approval, the Supreme Court held that to be an unconstitutional limitation on the power of the president. *Myers*, 272 U.S. at 176. This constitutional procedural defect renders this proceeding unconstitutional and it must be dismissed.

CONCLUSION

WHEREFORE, for all the above reasons Mr. Bedwell respectfully requests the dismissal of this action.

Respectfully Submitted, May 27, 2016

MOSCOWITZ & MOSCOWITZ, P.A.

By: 

Jane W. Moscovitz (FL 586498)

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Attorneys for Respondent

Robert P. Bedwell

SERVICE LIST

I hereby certify that a true and correct copy of the foregoing was served on the following on the 27th day of May, 2016, in the manner indicated below.

Securities and Exchange Commission
Office of the Secretary
Attn: Secretary of the Commission Brent J. Fields
100 F Street, N.E.
Mail Stop 1090
Washington, D.C. 20549
Fax: (202) 772-9324
alj@sec.gov
(via overnight mail and email: alj@sec.gov)

The Honorable Cameron Elliot
Office of the Administrative Law Judges
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549
(via overnight mail and email: alj@sec.gov)

Charles Stodghill, Esq.
Paul Kisslinger, Esq.
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Attorneys for SEC Division of Enforcement

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Attorneys for Respondent BioElectronics Corp.



Jane W. Moscovitz

EXHIBIT A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

**BioElectronics Corp.,
IBEX, LLC,
St. John's, LLC
Andrew J. Whelan
Kelly A. Whelan, CPA, and
Robert P. Bedwell, CPA**

**DECLARATION OF
ROBERT P. BEDWELL**

**Administrative Proceeding
File No. 3-17104**

Respondents.

I, Robert P. Bedwell do depose and say:

1. I am [REDACTED]. I reside in Coral Springs, FL [REDACTED]. I have

2. [REDACTED] and I also [REDACTED]

3. I have been a CPA for 33 years, and have worked in public accounting for over 35 years. It is the only profession that I am trained to perform.

4. I have never been disciplined nor reported for discipline by any state board of accountancy or other regulatory entity. I have never been demoted or fired by any employer. I have received positive evaluations throughout the years I have worked as an accountant.

5. I have lectured on various accounting and auditing topics for the Florida Institute of Certified Public Accountants and for Surgent McCoy, and have received outstanding evaluations from the participants.

6. I have trained, mentored and counseled hundreds of audit staff over the 35 years that I have worked in public accounting. I have received excellent upward reviews from the young professionals that I have trained and mentored over the years.
7. I am no longer a partner with Cherry Bekaert. I resigned from my position as partner with Cherry Bekaert in 2012 and joined another local public accounting firm as a director. The change in firms and positions was a great opportunity for me to continue doing work with the types of clients that I enjoy working with. That firm then merged with a national accounting firm. The change from partner to director was not a demotion and was not as a result of poor performance.
8. As a director in my current firm, I can no longer serve as an engagement partner on any engagements. This means that I cannot sign audit reports, I cannot sign off on issuance of any attest /assurance engagement reports, my work is subject to review by the engagement partner, a technical reviewer, and an engagement quality review partner. This means that my work and the work of the staff under my supervision is reviewed three times before the auditor/accountants' report is issued. Many of the engagement quality review and technical review partners are former Big Four or national firm partners.
9. As of May 19, 2016, as a result of discussing this case with risk managers for the firm, I have been removed from all public company audits and audits of broker dealers. Given that my functions are now limited, I am not sure how long the firm will maintain my employment. My firm has told me that any further adverse publicity about me by name will make it difficult if not impossible for them to assign me to any cases.
10. Should I be dismissed by my current employer, I perceive that I will have difficulty in obtaining comparable employment and compensation because of the unfavorable stigma associated with an SEC bar [REDACTED]. This would be extremely punitive for work that was performed over 6 years ago. [REDACTED]

I make this affidavit under penalty of perjury.

Executed on May 23, 2016

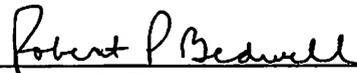

Robert P. Bedwell

EXHIBIT B

0001

1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. HO-11713-A

5 BIOELECTRONICS CORP.)

6

7 WITNESS: Brian S. Leitstein

8 PAGES: 1 through 96

9 PLACE: Securities and Exchange Commission

10 100 F Street, N.E., Room 8

11 Washington, D.C. 20549

12 DATE: Wednesday, December 16, 2015

13

14 The above entitled matter came on for hearing,

15 pursuant to notice, at 1:03 p.m.

16

17

18

19

20

21

22

23

24 Diversified Reporting Services, Inc.

25 (202) 467-9200

0002

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 THOMAS ROGERS, ESQ., Senior Counsel

5 BRAD MROSKI, CPA, CFE, Assistant Chief Accountant

6 JEFFREY R. ANDERSON, Accountant

7 CHARLES STODGHILL, Assistant Chief Lt. Counsel

8 PAUL W. KISSLINGER,

9 Assistant Chief Litigation Counsel

10 Securities and Exchange Commission

11 Division of Enforcement

12 100 F Street, N.E.

13 Washington, D.C. 20549

14 (202) 551-7144 - Mroski

15 (202) 551-6920 - Anderson

16 (202) 551-4427 - Kisslinger

17

18 On behalf of the Witness:

19 THERESA VAN VLIET, ESQ.

20 Genovese, Joblove & Battista, P.C.

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22 Suite 1110

23 Fort Lauderdale, Florida 33316

24 (954) 453-8000

25 (954) 453-8010 - fax

0003

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0004

1 PROCEEDINGS

2 MR. ROGERS: We are on the record at 1:03 p.m.
3 on Wednesday, December the 16, 2015 at the Securities and
4 Exchange Commission in Washington, D.C. The witness and
5 his counsel are located in the counsel's office in Miami,
6 Florida. We will ask the counsel to state the address
7 from which the testimony is being provided in just a few
8 minutes.

9 Mr. Leitstein, the Commission has issued a
10 formal order of investigation in this matter, which you
11 were shown prior to the opening of the record. The
12 formal order empowers me to administer the following
13 oath.

14 Would you please raise your right hand?

15 MS. VAN VLIET: It is raised.

16 Whereupon,

17 BRIAN S. LEITSTEIN

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

20 MR. ROGERS: Thank you. Mr. Leitstein, please
21 state and spell your full name, birth date, and Social
22 Security number for the record.

23 THE WITNESS: Brian Steven Leitstein, B r i a
24 n; middle name Steven, S-t-e-v-e-n. Last name is
25 Leitstein, L-e-i-t-s-t-e-i-n. [REDACTED]

0005

1 [REDACTED]

2 MR. ROGERS: Thank you.

3 My name is Tom Rogers. I am an attorney in the
4 Enforcement Division of the U.S. Securities and Exchange
5 Commission. With me are Brad Mroski, an accountant here
6 at the SEC; and Jeffrey Anderson, also an accountant here
7 at the SEC; Charles Stodghill and Paul Kisslinger, who
8 are trial attorneys here at the SEC.

9 Mr. Leitstein, are you represented by counsel
10 here today?

11 THE WITNESS: Yes, I am.

12 MR. ROGERS: Would counsel please introduce
13 herself for the record?

14 MS. VAN VLIET: Good afternoon. I am Theresa
15 Van Vliet with the law firm of Genovese, Joblove and
16 Battista. We are located actually in Fort Lauderdale,
17 not Miami.

18 MR. ROGERS: Thank you.

19 MS. VAN VLIET: Our office address is 200 East
20 Broward Boulevard, Suite 1110. The zip code is 33316.

21 MR. ROGERS: And you are representing Mr.
22 Leitstein here today, correct?

23 MS. VAN VLIET: I am.

24 MR. ROGERS: Are you representing anyone else?

25 MS. VAN VLIET: Not in this matter, no.

0006

1 MR. ROGERS: Okay. Thank you. That was a good
2 correction. Thank you.

3 MS. VAN VLIET: But yes, I do represent other
4 people.

5 MR. ROGERS: We are glad to hear that.

6 MS. VAN VLIET: Me, too.

7 MR. ROGERS: All right. Mr. Leitstein, do you
8 have any objections to your being sworn in by a court
9 reporter this morning who is not present in the room with
10 you?

11 THE WITNESS: No, I do not.

12 MR. ROGERS: Okay. And, Ms. Van Vliet, do you
13 have any? Are you

14 MS. VAN VLIET: We waive any objection that we
15 might be able to interpose on that score.

16 MR. ROGERS: Thank you.

17 MS. VAN VLIET: Welcome.

18 MR. ROGERS: All right. This is an
19 investigation of the United States Securities and
20 Exchange Commission entitled "In the Matter of
21 BioElectronics Corp., file number HO-11713. We are
22 investigating whether there have been violations of
23 certain provisions of the federal securities laws.
24 However, the facts developed in this investigation may
25 constitute violations of other federal or state civil or

0007

1 criminal laws.

2 EXAMINATION

3 BY MR. ROGERS:

4 Q Prior to opening of the record, Mr. Leitstein,

5 you and your attorney were provided a copy of the formal
6 order of investigation. The formal order is available
7 for your examination during the proceedings. Have you
8 and your attorney had an opportunity to review the formal
9 order?

10 A Yes, we have.

11 Q Do you have any questions about the formal
12 order?

13 A No, I do not.

14 Q Okay. Thank you.

15 Mr. Leitstein, have you taken any medication
16 that might affect your ability to answer or respond to my
17 questions today?

18 A No, I didn't.

19 Q Is there any reason that you cannot give full
20 and complete testimony today?

21 A No.

22 MR. ROGERS: Okay. I would like to mark an
23 exhibit at this point. And I am going to have the court
24 reporter mark it as exhibit 95. What I am having marked
25 is a copy of the subpoena package that was sent to Mr.
0008

1 Leitstein. It is dated November 30, 2015.

2 (SEC Exhibit No. 95 was marked
3 for identification.)

4 BY MR. ROGERS:

5 Q Mr. Leitstein, do you have that package in
6 front of you?

7 A Yes, I do.

8 Q Okay. And, for the record, I am going to
9 describe it. I have it as a five-page letter at the
10 beginning, addressed to you, followed by a one-page
11 subpoena and then a short, I will say, three-page,
12 attachment and then two documents after that, a date of
13 delivery standards and the SEC's form 1662, which is
14 formally titled "Supplemental Information for Persons
15 Requested to Supply Information Voluntarily or Directed
16 to Supply Information Pursuant to a Commission Subpoena."

17 Is that what you have in front of you, Mr.
18 Leitstein?

19 A Yes, I do.

20 Q Okay. Do you have any questions about the
21 letter or the subpoena or the attachment, the one that
22 describes the documents that we requested?

23 A No, I do not.

24 Q Okay. Did you have any documents that were
25 responsive to this subpoena?

0009

1 A No, I don't.

2 Q Okay. All right. Just real quick, and then we
3 will move on. I wanted to touch base with you about the
4 1662, the supplemental form that I just mentioned. Have
5 you had a chance to look at that?

6 A (Examining.) Yes. Yes, I have.

7 Q Do you have any questions about that?
8 A No, I don't.
9 Q And, as I am paging through the documents here,
10 I just realized that there is also one more addendum to
11 the package. It is the background questionnaire. Did
12 you receive the background questionnaire?
13 A Yes, I did.
14 Q Okay. And that is part of the exhibit 95 that
15 I was just referencing?
16 A Yes.
17 Q Did you fill out the background questionnaire?
18 A Yes, I did.
19 Q Okay. Did you send it to me? I don't have it
20 at this point. So I am wondering where it is.
21 MS. VAN VLIET: Actually, I have it. He just
22 gave it to me. So we didn't have enough time to get it
23 to you before this.
24 MR. ROGERS: Okay.
25 MS. VAN VLIET: So I will be perfectly honest
0010
1 with you. Some of it is -- my client's handwriting is
2 not as neat as I would have hoped.
3 MR. ROGERS: Okay.
4 MS. VAN VLIET: So we were going to type it
5 out, but you can certainly ask him any of the questions
6 on here now.
7 MR. ROGERS: Okay.
8 MS. VAN VLIET: But I will have it made a
9 little bit more legible and scan it to you.
10 MR. ROGERS: That would be wonderful, and I
11 appreciate that. I think what we will do is before we
12 dive too deep into the substantive questions, we will do
13 some basic background questions. And then we will rely
14 on the background questionnaire for the more detailed
15 things.
16 MS. VAN VLIET: Okay.
17 MR. ROGERS: All right?
18 BY MR. ROGERS:
19 Q Also, prior to the meeting today, I provided a
20 disk, an electronic disk, that contained the audit
21 documents supplied by an accounting firm by the name of
22 Cherry, Bekaert and Holland. Did you receive that disk,
23 Mr. Leitstein?
24 A Yes, I did.
25 Q Okay. Have you had a chance to review that
0011
1 disk?
2 A Yes. There's a lot of documents. I
3 Q Okay. So generally you have had a chance to
4 look at them, but you
5 A Yes. Yeah, generally.
6 Q Okay. Did you make any copies from the disk?
7 Hello?
8 A I did not, no.

9 Q Okay.

10 A But to

11 MS. VAN VLIET: To clarify, I printed out
12 copies of certain documents that were on the disk that I
13 found by doing just a search of his name so I could
14 narrow down out of the 15 or 150,000 documents or pages
15 that were on there. And they are here. And when we are
16 concluded with the testimony, we will put them in our
17 shred machine.

18 MR. ROGERS: Okay. And what about the disk
19 itself? What will become of that? Will you return it to
20 me?

21 MS. VAN VLIET: It will go in the same shred
22 machine unless you want it back personally. But I would
23 personally just as soon save the FedEx charge and shred
24 it myself.

25 MR. ROGERS: You know what?

0012

1 MS. VAN VLIET: And we haven't made any copies
2 or preserved any of the information on our electronic
3 document system.

4 MR. ROGERS: All right. Why don't we agree to
5 this? Why don't at the close of testimony, you will
6 destroy the disk and any copies made from it? And if you
7 could, send me an email or a letter if you want to go to
8 that extent just verifying that that is what you have
9 done.

10 MS. VAN VLIET: Sure, be happy to.

11 MR. ROGERS: Okay.

12 BY MR. ROGERS:

13 Q Mr. Leitstein, have you discussed with anyone
14 other than your attorney what your testimony would be
15 today?

16 A No.

17 Q Does anyone know that you are going to be here
18 other than your attorney?

19 A My employer knows that I needed to leave the
20 office.

21 Q Okay. Does he know that you are providing
22 testimony to the SEC?

23 A No.

24 Q Anyone else? How about your spouse? Do you
25 have a spouse?

0013

1 A I -- no, I don't have a spouse. The other --
2 the only other person was Jane Moskowitz.

3 Q Who is she?

4 A She is an attorney.

5 Q Okay. Is she your attorney?

6 A No, she is not my attorney.

7 MS. VAN VLIET: No.

8 MR. ROGERS: Okay.

9 BY MR. ROGERS:

10 Q What is it that you discussed with Ms.

11 Moskowitz?

12 A Just when I received the subpoena, I contacted
13 her.

14 Q Why did you contact her?

15 A Because she was the attorney for Berenfeld
16 years ago when Berenfeld existed.

17 Q Just to be clear, she was not acting as your
18 attorney when you received this subpoena, correct?

19 A No, she was not.

20 Q What did you discuss with her?

21 A I just told her I received a subpoena. And she
22 said she couldn't discuss it with me. And then she
23 referred Theresa as, you know, someone to contact in
24 regards to this.

25 Q Did you discuss your employment at Berenfeld or
0014

1 any other firm with Ms. Moskowitz?

2 MS. VAN VLIET: I am going to interpose an
3 objection and instruct my client to answer that question
4 only insofar as it relates to the conversation he had
5 with Ms. Moskowitz as relates to the subpoena in this
6 case because, as he has already noted, Ms. Moskowitz used
7 to represent Berenfeld in various matters. And,
8 therefore, I already know that he has discussed his
9 employment generally with Berenfeld with her but not the
10 -- if you understand what I am saying.

11 MR. ROGERS: I do. And if he could answer the
12 question and under the parameters you just set out? And
13 then maybe he could make that testimony on the record as
14 well.

15 THE WITNESS: Yeah. During that phone call,
16 nothing was discussed about my prior work experience or
17 anything of that nature.

18 MR. ROGERS: Okay.

19 BY MR. ROGERS:

20 Q Have you spoken to her since that initial call?

21 A No.

22 Q Anyone else?

23 A No.

24 Q How about a gentleman named Robert, or Bob,
25 Bedwell? Have you spoken to him about your testimony
0015

1 today?

2 A No. No, I haven't.

3 Q Do you know who I was referring to when I said
4 the name Robert Bedwell?

5 A Yes, I do.

6 Q Who did you take that to mean?

7 A He was an audit partner at Berenfeld, Spritzer.

8 Q Did you any -- I think I asked this question,
9 but I am not sure that I did. So I will ask it again.

10 Did you talk to Mr. Bedwell about your testimony here
11 today?

12 A No, I did not.

13 Q I apologize if I was repetitive.
14 All right. Before we begin the substantive
15 questions, I just want to go over some basic procedures.
16 The proceeding is being conducted on the record. If you
17 want to go off the record, we would ask that you would
18 let us know. And then we will decide whether it is an
19 appropriate point to take a break.

20 You are under oath. So you must answer
21 truthfully and accurately. Do you understand that
22 providing false testimony can subject you to criminal
23 sanctions?

24 A Yes, I do.

25 Q Okay. The court reporter is taking down

0016

1 everything we say today. So it is important that we
2 speak clearly and we not speak over each other.
3 Particularly since we are doing this over the phone, we
4 are going to have to make an effort to let the other
5 finish before we start speaking.

6 Do you understand that any question that I ask
7 you -- or if you don't understand any question that I ask
8 you, please ask me to clarify or rephrase in some fashion
9 until you do understand it. Is that clear?

10 A Yep. Yes, it is.

11 Q Okay. Do you have any questions about the
12 procedures or how we are going to do this today?

13 A No, I do not.

14 Q Okay. All right. Since the background
15 questionnaire is something that we are still working on,
16 let me ask you some basic questions. Have you ever been
17 known by any other name?

18 A No, I haven't.

19 Q What is your place of birth?

20 A Fort Lauderdale, Florida. I am not sure of the
21 actual city.

22 Q Okay. What was the date? Oh, you gave me your
23 birth date. All right. Sorry about that. I should have
24 known that.

25 What is your citizenship?

0017

1 A A U.S. citizen, United States.

2 Q How long have you resided at your current
3 address?

4 A Is that one of the questions? I'm just --
5 okay. May of 2013.

6 Q And what is your current address?

7 A [REDACTED]
8 [REDACTED], Boca Raton, Florida [REDACTED]. I'm sorry.
9 [REDACTED] as in dog.

10 Q Thank you.

11 For the purpose of the testimony here, would
12 you take me back just as far as three years back since I
13 think you said you have lived at your current address
14 since 2013?

15 A Right.
16 Q Where did you live prior?
17 A Do you want the address?
18 Q Yes.
19 A Okay. It's [REDACTED],
20 Plantation, Florida [REDACTED]
21 Q And what were the dates that you resided there?
22 A March of 2012 through May of 2013.
23 Q That is three years. So we will move on.
24 Have you ever been an officer or a director of
25 a publicly held company?

0018

1 A No, I haven't.
2 Q Have you ever testified before the Securities
3 and Exchange Commission before?
4 A Yes, I have.
5 Q When was that?
6 A I don't really remember. I can't remember the
7 exact date.
8 Q What was the testimony concerning?
9 A Scott Braustein.
10 Q Who is he?
11 A He was an attorney in Fort Lauderdale.
12 Q What were the particulars of your relationship
13 with him?
14 A I had no relationship with him. Our --
15 Berenfled, Spritzer conducted an audit of a company that
16 he was associated with.
17 Q Okay. Did you provide that testimony in the
18 SEC's Miami office?
19 A Yes, I did.
20 Q Who was your attorney for you at the -- did you
21 have an attorney when you provided that testimony?
22 A Yes, I did.
23 Q Who was that attorney?
24 A That was Jane Moskowitz.
25 Q Have you ever provided testimony before the

0019

1 Public Company Accounting Oversight Board, also known as
2 Peekaboo?
3 A No, I haven't.
4 Q Have you ever provided testimony in any legal
5 matter other than what you have just mentioned?
6 A Not that I recall, no.
7 Q How about let's do an educational history here.
8 Where did you go to high school?
9 A [REDACTED].
10 Q Is that in [REDACTED]?
11 A Yeah, I'm sorry. Yeah, [REDACTED].
12 Q When did you graduate?
13 A Nineteen ninety-four.
14 Q Did you continue your studies after high
15 school?
16 A Yes, I did.

17 Q Where did you do so?
18 A University of Florida. It's in Gainesville,
19 Florida.
20 Q Did you graduate from University of Florida in
21 Gainesville?
22 A Yes, I did.
23 Q When did you do so?
24 A May of 1998.
25 Q Anything beyond that, post-graduate studies?

0020

1 A Yes. I went to Nova Southeastern University in
2 Davie, Florida.

3 Q What did you study there?

4 A Accounting, tax.

5 Q Did you receive a certificate or diploma?

6 A No, I did not.

7 Q So you didn't finish or none was offered?

8 A I didn't finish.

9 Q How far did you get?

10 A Thirty -- it was around 30 credit hours.

11 Q Forgive me, but could you put that in some sort
12 of relation? How many hours were required?

13 A Oh, I don't know if -- it wasn't really a
14 requirement. It was in order to obtain my CPA.

15 Q Okay. And how many hours would have been
16 required for that?

17 A Well, at that time, I think it was like 150
18 hours in total from -- they say your -- my four years in
19 college in my -- my time at Nova Southeastern.

20 Q Okay. So at the completion of those 30 hours
21 at Nova Southeastern

22 A Right.

23 Q did you have enough hours to get your CPA?

24 A Well, I had to sit for the exam.

25 Q Okay. And did you sit for the exam?

0021

1 A Yes, I did.

2 Q Okay. So you did have enough hours at that
3 point to sit for the exam? I am sorry. I am just tying
4 up that loop. If that is incorrect, tell me.

5 A No. You are correct. That is correct.

6 Q Okay. So you sat for the CPA exam. When did
7 you sit for the CPA exam?

8 A I mean, there's numerous times, but it's --
9 from what I remember, 2006 and 2007.

10 Q Did you get your CPA license?

11 A Yes, I did.

12 Q When did you do so?

13 A In 2007.

14 Q Okay. Do you have any other professional
15 licenses?

16 A No, I do not.

17 Q Is your CPA license current?

18 A Yes, it is.

19 Q Has it lapsed at any time?
20 A Did you say "lapsed"?
21 Q Yes.
22 A No. No, it hasn't.
23 Q So since 2007, you have been a CPA
24 uninterrupted?
25 A That is correct.

0022

1 Q Okay. Are you currently working?
2 A Yes, I am.
3 Q Where?
4 A ChildNet -- it's C-h-i-l-d-N-e-t -- Inc., I n
5 c.
6 Q What do you do at ChildNet?
7 A I am the regional controller.
8 Q Could you give me just a brief description of
9 what a regional controller does, specifically what you do
10 as a regional controller?
11 A Oversee the Finance Department, prepare
12 financial statements, approve disbursements. I mean,
13 there's a lot involved, but that's the gist of it.
14 Q Does that require having a CPA license?
15 A I'm sorry? Say that one more time.
16 Q Does your current job require that you be a
17 CPA?
18 A No, it doesn't.
19 Q What did you do before ChildNet?
20 A I worked at -- I'm going to my sheet if I
21 recall. Before ChildNet
22 Q I am going to ask some resume-type questions.
23 So if you have something in front of you with that, that
24
25 A Yeah.

0023

1 Q might be a good idea.
2 A Okay. Yeah. I was just looking at the
3 questionnaire.
4 Before that, I did some audit consulting.
5 Q Let me ask you to put some dates here.
6 A Sure.
7 Q And I will do that as we go backwards. When
8 did you start with ChildNet?
9 A October of 2013.
10 Q Okay. And then you said you did some
11 consulting prior to ChildNet? Can you describe the type
12 of consulting that you did?
13 A I would assist CPA firms in conducting their
14 audits.
15 Q Did you do that as a freelance job or did you
16 work through an audit firm or how was that structured?
17 A It was a freelance. I wasn't an employee or
18 their firms.
19 Q And you weren't an employer or an employee of
20 any other firm? You were self-employed, correct?

21 A That's correct.
22 Q Okay. From when to when did you do this?
23 A That was from January 2013 through October
24 2013.
25 Q What did you do prior to being a freelancer?
0024
1 A Prior to that, I worked at Schumann, S c h u m
2 a n n, Steier, S-t-e-i-e-r, Incorporated.
3 Q What did you do there?
4 A I was the director of finance.
5 Q What were the dates for that?
6 A August 2012 through January 2013.
7 Q Can you describe that company?
8 A They were a reseller of a polyethylene wax.
9 Q Are they a public company?
10 A No.
11 Q Were they a public company when you worked for
12 them?
13 A No.
14 Q Prior to that, where did you work?
15 A Prior to that, I also was -- prior to that, I
16 did some -- I was self-employed, again, as an audit
17 consultant.
18 Q What were the dates?
19 A June 2011 through August 2012.
20 Q Okay. And prior to that stint as a freelancer,
21 were you employed? And if so, where?
22 A I was employed at Cherry, Bekaert and Holland.
23 Q Okay. What were the dates there?
24 A December of -- well, this is -- they acquired
25 my previous firm. So I'm just going to give you the
0025
1 dates that I was part of Cherry, Bekaert. December 2010
2 through June 2011.
3 Q What did you do for -- I am going to refer to
4 them as CBH. What did you do for CBH?
5 A I did audits.
6 Q What was your title there? And if it changed,
7 give me all the titles you held.
8 A Just audit manager.
9 Q So it was the same the entire time?
10 A Yes.
11 Q I think you referenced that CBH bought out your
12 previous employer. Who was your previous employer?
13 A Berenfeld, Spritzer, Shechter and Sheer.
14 Q What were the dates there?
15 A August of 2005 through December 2010.
16 Q What did you do for -- I am going to refer to
17 them as Berenfeld.
18 A What did I do for them?
19 Q Yes.
20 A Conducted audits.
21 Q What was your title there? And if it changed,
22 what were all of the titles, the names of all of the

23 titles?

24 A I started as a senior auditor and was promoted
25 to an audit manager.

0026

1 Q When were you promoted?

2 A I don't remember or recall when.

3 Q Okay. And earlier, we discussed a gentleman by
4 the name of Robert Bedwell. Did you have any contact
5 with Mr. Bedwell while you were working for either
6 Berenfeld or CBH?

7 A Yes, I did.

8 Q How so?

9 A He oversaw the Audit Department.

10 Q So he was a partner in charge? Is that a fair
11 summation?

12 A When he started there or while

13 Q I guess while you worked with him. I wouldn't
14 ask you what he did outside of what you know.

15 A No. I understand. No. I mean, because he's -
16 - his titles have changed.

17 Q Okay. So I understand that it is not your
18 title and that it is kind of the limits of your memory,
19 but what titles did he hold when you worked with him that
20 you can recall?

21 A Audit principal and audit partner.

22 Q Okay. In your mind, what is the difference
23 between those two titles?

24 A I don't even know. I don't even know what
25 their thought process was.

0027

1 Q Okay. Did you report to Mr. Bedwell?

2 A Yes.

3 Q Directly?

4 A Yes.

5 Q During the entire time or part of the time?

6 Maybe you could describe to me how you interacted with
7 Mr. Bedwell.

8 A I mean, I would only directly have contact if
9 he was running or an audit partner on one of the jobs,
10 the audits I was working on.

11 Q Did you work with Mr. Bedwell on every audit
12 that you performed or some of the audits or one? Can you
13 give me a sense of what that looked like?

14 A Some of the audits, not all.

15 Q Okay. Did he have other audit teams that
16 worked for him or did you -- did he have other audit
17 teams that worked for him that you are aware of?

18 A Yes.

19 Q How many?

20 A I don't know if I could call them teams. I
21 don't -- I couldn't even give you a number.

22 Q More than five?

23 A I don't -- I mean, there was more than five
24 employees, but I couldn't even tell you.

25 Q Okay. When you worked for Mr. Bedwell, is it
0028

1 fair to say that he was your direct report, that you
2 reported to him directly with whatever it was that you
3 were working on?

4 A Yes if it was a job he was overseeing.

5 Q Yes. Okay. Have you ever heard of a company
6 by the name of BioElectronics Corp.?

7 A Yes, I have.

8 Q In what context have you heard of them?

9 A I performed an audit on them.

10 Q Do you remember what the dates were that you
11 performed that audit?

12 A Years ago. Not particularly, no.

13 Q After having reviewed the documents that we
14 provided to you, does that help you remember what the
15 timeframe was that you provided that audit?

16 A Yeah. I mean, a general timeframe.

17 Q What is that?

18 A From like 2006 to 2010.

19 Q When you were working on the BioElectronics
20 audit, was that something that you worked on with Mr.
21 Bedwell?

22 A Yes, it is.

23 Q What was his role in that audit?

24 A He oversaw the audit.

25 Q Do you remember what his title was at that
0029

1 point?

2 A It was possibly either principal or partner.

3 Q Was there anyone else working on that audit
4 besides yourself and Mr. Bedwell?

5 A Yes.

6 Q Who was that?

7 A Angela Slaney.

8 Q Anyone else?

9 A I don't think so, no.

10 Q What was Ms. Slaney's role?

11 A She was an audit associate.

12 Q How does that differ from what you did?

13 A At that firm, not too much.

14 Q Do you remember during that audit, were you on
15 site or is this something you did remotely?

16 A We would go on site and then also perform work
17 at our office.

18 Q Okay. And your office being in Florida?

19 A Yes, in Fort Lauderdale, Florida.

20 Q Fort Lauderdale. I won't say "Miami" again, I
21 promise.

22 Do you remember where the company,
23 BioElectronics, was located?

24 A Maryland.

25 Q So I think you testified that you were on site
0030

1 for part of that audit. Is that correct?

2 A That is correct.

3 Q Was there anyone else with you when you were on
4 site as far as the audit team is concerned?

5 A Angela Slaney and Bob Bedwell.

6 Q Okay. Were they with you the entire time that
7 you were on site or for part of the time? Can you give
8 me an idea of what that looked like?

9 A I remember being there most of the time with
10 Angela Slaney. And Bob Bedwell, if he was not there the
11 entire time, he was there part of the time.

12 Q Okay.

13 A Other than that, I don't remember the exact

14 Q So while you were on site, what particular
15 tasks, if you remember, did you perform?

16 A Just general audit procedures. I don't know
17 the particular sections of an audit that I -- you know,
18 that I worked on.

19 Q Can you give me an example? Fully
20 understanding that you are not remembering specifically,
21 but can you give me an example of the type of work you
22 would have done?

23 A I mean, we would audit the various sections of
24 cash receivables, inventories, expenditures, accounts
25 payable. We would interview their staff, you know.

0031

1 Q Do you remember speaking to anyone at
2 BioElectronics while you were performing this audit?

3 A I remember speaking with people.

4 Q Do you remember who you spoke with?

5 A Andy Whelan.

6 Q Anyone else?

7 A I know I did. I just -- I can't remember
8 names.

9 Q What was Andy Whelan's role at BioElectronics
10 if you recall?

11 A I don't know. CEO. I don't know the exact
12 title that he was.

13 Q Okay. Is it fair to say that he was in charge
14 of the company?

15 A Yes, he was.

16 Q You understood that he was in charge of the
17 company. That is fair?

18 A Yes. Yes, I did.

19 Q Was he actively involved in the audit that you
20 recall?

21 A From what I recall, yes.

22 Q How so?

23 A You know, questions that we would ask, he would
24 -- you know, he would assist us.

25 Q Do you remember any specific instances that he

0032

1 would assist you?

2 A No. Not off the top of my head, no.

3 Q Okay. Were there other accountants or were
4 there -- I am going to put it this way. Strike what I
5 just asked. Were there accountants on staff at
6 BioElectronics?

7 A God, I don't even remember. I can't even
8 remember who did the books.

9 Q Was this a big company, small company? Can you
10 give me a sense of how big the company was?

11 A Like dollars or

12 Q Let me ask you how many people were at the
13 company while you were there that you saw. I am not
14 asking for outside the office you were in.

15 A I would say less than 10

16 Q Okay.

17 A that I recall seeing maybe. I don't -- I
18 can't give you an exact number.

19 Q Do you remember what the company did? What was
20 their business?

21 A They sold a patch for injuries. I guess that
22 helped speed up the injury process.

23 Q Do you remember

24 A For the healing -- I'm sorry -- healing
25 process, not injury process.

0033

1 Q Okay. Do you remember, was there a
2 manufacturing facility on hand? Was this simply an
3 office space? Can you give me a sense of what the
4 company looked like?

5 A I remember office space. I don't recall a
6 manufacturing facility.

7 Q Do you remember, did Mr. Bedwell, to your
8 knowledge, interact with anyone at BioElectronics while
9 you were on site?

10 A I'm sure he did. I -- you know, I don't know
11 specifically, but I'm sure he interacted with people
12 there.

13 Q You don't have any specific recollection?

14 A No, I don't. No. Not really, no.

15 Q How about Ms. Slaney? Same question. Did she
16

17 A The same thing. I'm sure that she interacted
18 but not specific.

19 Q Do you remember where in the audit cycle you
20 were when you visited? And if that is not clear, I am
21 thinking along the terms of did you visit on site to
22 begin the audit? Is that something you do at the end of
23 the audit? How does that work?

24 A I recall there being -- the process was
25 generally a planning back at our home office in Fort

0034

1 Lauderdale. And then we would go do the audit, which --
2 I don't know how -- you know, the timeframe. It may be a
3 month later. But no. The fieldwork was generally not at
4 the end that I remember.

5 Q Okay. So just so I am clear on how you are
6 answering, is that just as a general answer or are you
7 answering specifically to the BioElectronics audit?

8 A That is more of a general answer. I don't -- I
9 can't remember when we actually went up there.

10 Q Okay. Do you remember going more than once?

11 A Yes. Well, in regards -- I mean, there were
12 various audits. So yes, more than once.

13 Q Okay. Do you remember going more than once in
14 the course of a single audit?

15 A No, I don't.

16 Q Would that be unusual?

17 A For BioElectronics or just in general?

18 Q In general.

19 A Not particularly, no.

20 Q No? So generally there were instances where
21 you went back more than once to do an audit?

22 A Yes, that's correct.

23 Q But it is your testimony that you don't recall
24 going back a second time or more on any individual
25 BioElectronics audit?

0035

1 A No, I don't. I don't recall going back

2 Q Okay.

3 A for a particular audit.

4 Q Do you have any impression of Andy Whelan?

5 A Impression?

6 Q All right. I will ask a better question. Do
7 you remember interactions with Mr. Whelan being easy or
8 hard? Was he generally cooperative, I guess, is my
9 question?

10 A As cooperative as audit clients can be.

11 Q Maybe you could explain that for us, at least
12 the ones here who are not accountants.

13 A Oh, I am sorry. Yeah. I guess, you know, for
14 him particularly, I don't -- you know, I don't recall him
15 being difficult or not difficult to deal with

16 Q Okay.

17 A in performing the audit.

18 Q If I were to say the term "bill and hold,"
19 would you understand what I mean by that?

20 A Now I do.

21 Q What is your understanding of the term "bill
22 and hold"?

23 A Your -- a sale was made at a certain point, but
24 the goods aren't shipped until a later point in time.

25 Q Do you remember there being any bill and hold

0036

1 transactions related to BioElectronics?

2 A No, not at -- no, I didn't recall that.

3 Q I think you said there were multiple audits.

4 So you don't remember that term coming up in any of the
5 BioElectronics audit?

6 A No, I didn't. No.

7 Q How did you gain your understanding of bill and
8 hold?

9 A How did I gain my understanding?

10 Q Yes. I think you testified that you didn't
11 understand it, but you have come to understand it.

12 A Oh, based on the work papers that you had
13 forwarded to us.

14 Q So prior to see the disk that the SEC provided
15 to you as part of the November 30th subpoena, you were
16 not familiar with the term "bill and hold"?

17 A Familiar with the term but not technically.
18 It's just something I don't recall coming across.

19 Q Okay.

20 BY MR. KISSLINGER:

21 Q Have you ever had any training in bill and hold
22 transactions?

23 A No, I haven't.

24 BY MR. ROGERS:

25 Q Is that something you recall being part of your
0037

1 coursework when you were doing your either undergrad or
2 graduate degree?

3 A No. That I -- no. No, I don't. I don't
4 recall it being part of the coursework.

5 Q All right. Let's look at some specific
6 documents. The first one I want to look at has been
7 premarked exhibit 88. Let me know when you have that in
8 front of you, and we will talk about it just to make sure
9 we are both looking at the same document.

10 A Okay. I have it in front of me.

11 Q Okay. I have in front of me a document marked
12 exhibit 88 in the lower right-hand corner. It also has a
13 Bates stamp of CBH0011862 through 866. Do you understand
14 what I mean by a Bates stamp?

15 A Yes. It's on the bottom right-hand corner.

16 Q Right. And the numbers I just gave you
17 coincide to what you're looking at?

18 A Yes, they do.

19 Q Okay. Have you seen this document before?

20 A This particular one, or just in general?

21 Q This Exhibit 88.

22 A Yes. I'm looking at it right now, but --

23 Q Well, okay, why don't we do this then. Why
24 don't you take a minute and look through it and when you
25 have looked at it sufficiently that you think you can
0038

1 answer some questions, then let me know and we'll start
2 asking the questions. I just don't want to ask you
3 questions if you're not ready.

4 A Okay. All right. I'm ready.

5 Q So let me ask the question I asked before,
6 which I shouldn't have -- I think I jumped the gun. Have
7 you seen this document before?

8 A Yes, last night.

9 Q Okay. Prior to last night, have you seen this
10 document before?

11 A No. I don't recall seeing it.

12 Q Can you give me an idea of what you think this
13 document is?

14 A It's an audit program for an inventory
15 observation.

16 Q And what is that?

17 A It goes through the audit procedures of doing
18 an observation over inventory.

19 Q Is this something you would've been involved in
20 as part of an audit when you work for CBH or Berenfeld?

21 A Yes, it would have.

22 Q In this particular document, starting on page 2
23 and running after page 2, there is some notations in a
24 column headed, "N/A, performed by, and date." Do you see
25 the column?

0039

1 A Yes, I do.

2 Q And below that, there's a series of notations
3 of AS1/25/10. Do you know what that means?

4 A Yes. Those are initials and the date it was
5 completed.

6 Q Okay. Do you know whose initials those are?

7 A Yes, I do.

8 Q And who are they?

9 A Angela Slaney.

10 Q Do you believe that this indicates that Ms.
11 Slaney performed the task outlined in the document?

12 A Yes.

13 Q Have you used a similar document to this while
14 you were working for Berenfeld or CBH?

15 A Yes, I have.

16 Q Okay. What I'm really -- go ahead. I'm sorry,
17 did you want to say something?

18 A Oh, no. I thought you meant, okay, I thought
19 you were looking for something.

20 Q No. What I wanted to ask you if you are aware
21 of how the date is generated there in the notation that
22 has the initials and then the date, as you testified. Is
23 that the date that it was performed? Is that the date
24 the initials were entered? Something else? Do you know
25 how that date was generated?

0040

1 A I think it's the date that you're actually
2 working on the form and entering your initials.

3 Q Okay. So would you read that to be the last
4 date that these activities were performed?

5 A Based on this, yes.

6 Q Based on your experience, would you have the
7 same answer?

8 A I mean on some occasions, it may not be.

9 Q How so?

10 A I mean, if it's looked at again, you know, a

11 particular procedure.

12 Q If someone goes in after Ms. Slaney on the date
13 that was last stamped on there, would the system erase
14 the notation and/or the date?

15 A I don't remember if it does that. But I'm sure
16 if someone's entering their initials again, a new date
17 will appear.

18 Q Okay. What would that be based on, you're sure
19 is the way you put it?

20 A Oh, just as someone putting the date in there?

21 Q Yes. What is it that you're basing that answer
22 on?

23 A Of when it was completed, when someone is
24 signing off on those.

25 Q Let me ask you this. Have you had an

0041

1 experience where you went into a document such as this
2 one and it automatically generated a later date?

3 A No. I don't even know how you could do that.

4 Q I want to look at the third page specifically.
5 If you'll turn to the third page and then down at the
6 bottom, there's an item seven. Would you just read
7 through item seven for me and then I want to ask you a
8 question.

9 A Okay.

10 Q All right. Just see at the very end of item
11 seven, there's a reference to bill and hold transactions.

12 A Yes, I do.

13 Q Okay. Is that something that you look for when
14 you're doing an audit? And I'm asking about you
15 specifically.

16 A That's the procedure, I would say yes.

17 Q Is it your understanding that by looking at
18 this document, that Ms. Slaney performed that task, that
19 specifically she inquired with management, et cetera, on
20 the day?

21 A It appears so.

22 Q Is this -- let me ask you this. As a general
23 matter, are you familiar with how this sort of document
24 came to be?

25 A Came to be.

0042

1 Q All right. Maybe that's unclear. I think
2 earlier you testified that there was some preparation
3 worked on back at your office before you went out and
4 went to the client site; is that correct?

5 A Yes.

6 Q Okay. Would this document have been part of
7 the planning process before you went on the client, went
8 to the client site?

9 A You're saying completed before?

10 Q No. Would the doc order itself have been
11 drafted up prior to that?

12 A Just the normal, you know, the normal program

13 that we include as part of the inventory of our audit.

14 Q Okay. Well, let me ask you this. Does this
15 particular document customize for each audit client that
16 you know, if you know?

17 A No. I don't recall, customize.

18 Q Okay. So this is pretty much a standard
19 document, and every time you went out on an audit, the
20 same set of basic procedures would've been performed?

21 A Yes.

22 BY MR. STODGHIK:

23 Q Do you recall anything about these procedures
24 as related to the specific BioElectronics audit?

25 A No. No, I don't.

0043

1 Q Okay.

2 MR. MROSKI: I want to make sure I've got an
3 understanding of this one, Mr. Leitstein. For example,
4 if you look up at number six on page three there --

5 THE WITNESS: Yes.

6 BY MR. MROSKI:

7 Q So it says, "Determine the accuracy of the
8 shipping/receiving cut off procedures." And the next
9 column over has the initials AS, the date 1/25/10, and
10 then the last column has "See cut off procedures at work
11 paper 4253." You see that?

12 A Okay, yes I do.

13 Q So just so I understand how you were answering
14 this specific date of January 25th, 2010, is it your
15 understanding that that actual step outlined in number
16 six there was performed on January 25th, 2010?

17 A Oh, that. No, that I don't know.

18 Q Okay. Is it possible that the step was
19 performed prior to January 25th, 2010, and then this form
20 was filled out on January 25th, 2010?

21 A I mean that's a possibility. I'm not 100
22 percent sure now.

23 Q Well, I'm just asking for your understanding.
24 Because presumably, you've filled similar types of
25 documents out, correct?

0044

1 A Correct.

2 Q Okay. Is it your understanding that that
3 procedure could have been performed as, or prior to
4 January 25th, 2010?

5 A I mean, it's a possibility.

6 Q Okay. Is it standard practice that it would be
7 performed as of the date signed off on or prior?

8 A Standard practice?

9 Q From your experience?

10 A I would say so, yes.

11 Q Okay. Is there a scenario where the procedure
12 enumerated in item six could've been performed after
13 January 25th, 2010?

14 A I -- you know, it's a possibility. I'm not

15 sure.

16 Q So you're saying that there -- it's possible
17 that this step could've been signed off on as completed
18 as of January 25th, 2010, but it's possible that it
19 wasn't completed as of January 25th, 2010?

20 A I mean, it's a possibility, I'm not sure.

21 Q Are you familiar with any cases where that's
22 happened?

23 A No, not particularly.

24 Q Okay. Then moving down to item number seven,
25 as of January 25th, 2010, it notes that no such
0045

1 transactions identified or disclosed?

2 A Correct.

3 Q Is your understanding based on the way this
4 form works, that that represents as of January 25th,
5 2010, no bill and hold transactions have been identified
6 or disclosed?

7 A That's what it appears to be.

8 Q Okay. You want to take a break?

9 MR. ROGERS: Yes. Mr. Leitstein, we'd like to
10 take a break now. Before we go off the record, let's
11 just determine how we're going to do this, since we're on
12 the phone. What I would like to is put you on mute.
13 Maybe you'd do the same. And that way, we keep the line
14 open. Does that work for you?

15 MS. VAN VLIET: That's fine. How long of a
16 break do you want to take?

17 MR. ROGERS: Five minutes. Does that work for
18 you?

19 MS. VAN VLIET: Sure.

20 MR. ROGERS: Okay. So it is now, I have 2:02.
21 Let's attempt to come back on the record at about 2:07,
22 2:08; is that good?

23 MS. VAN VLIET: Okay. I'm fine.

24 MR. ROGERS: All right. We're off the record.
25 (Whereupon, at 2:02 p.m., a brief recess was
0046

1 taken.)

2 MR. ROGERS: All right. We're going to go back
3 on the record if you're ready.

4 THE WITNESS: Yes, I'm ready.

5 MR. ROGERS: Okay. We are back on the record.
6 It is now 2:10. Mr. Leitstein, are you aware that you
7 are still under oath?

8 THE WITNESS: Yes, I am.

9 MR. ROGERS: Okay. And did we have any
10 substantive discussions while we were off the record?

11 THE WITNESS: No, I didn't.

12 MR. ROGERS: All right, um --

13 BY MR. MROSKI:

14 Q Mr. Leitstein, just really quick to finish off
15 Exhibit 88, I want to go back to that item number seven
16 on the first page.

17 A Okay.

18 Q And understanding that this is Ms. Slaney's
19 sign-off on this work paper and not yours, generally
20 speaking, would it be unusual to sign off as of a
21 particular date; in this case, January 25th, 2010, and
22 note that there were not bill and hold transactions
23 identified or disclosed? Would it be unusual to make
24 that assertion if you were aware of billable transactions
25 prior to January 25th, 2010?

0047

1 A Would it be unusual to do that if we, if we did
2 not know if they were on hold?

3 Q Let me ask it in a different way.

4 A Sorry.

5 Q No, that's okay. Would it be unusual to say
6 that as of January 25th, 2010, you were not aware of bill
7 and hold transactions if in fact you were prior to that
8 date?

9 A Prior to that date, I would say we weren't
10 notified of any such transactions.

11 Q Okay.

12 MR. ROGERS: All right. Let's move on to
13 another document here. If you would be so kind, I would
14 like to look now at what has been pre-marked as Exhibit
15 89. Let me know when you have something in front of you
16 that you believe is Exhibit 89?

17 THE WITNESS: Yes, it's in front. Yes, I have
18 one in front of me.

19 BY MR. ROGERS:

20 Q Okay. And then the lower right-hand corner of
21 what you have in front of you, there is a box marked
22 Exhibit 89, with a Bates stamp of CBH0011838. Is that
23 correct?

24 A Yes, that's correct.

25 Q Okay. Are you familiar with the document?

0048

1 A After seeing it last night, yes.

2 Q So prior to seeing it last night, you were not
3 familiar with it.

4 A Yes, I mean, I don't recall.

5 Q Do you want to take a minute and read through
6 and then I'd like to ask some questions?

7 A No, I'm okay. I mean, I could -- you can go
8 ahead.

9 Q Could you describe this document to me? What's
10 your understanding of it?

11 A It's a memo regarding the review of the sales
12 journal of BioElectronics.

13 Q It says it's from Brian Leitstein, is that you?

14 A Yes, that's me.

15 Q But you don't remember this document
16 specifically; is that correct?

17 A Yes. I don't remember.

18 Q Is this the type of document you would've done

19 in the ordinary course of an audit?

20 A No. It's -- we may do that or there may be
21 something else, but in regards to this audit, prepared a
22 memo.

23 Q What would trigger a review of sales journal
24 memo?

25 A It's procedure to scan the sales journal.

0049

1 Q Go on.

2 A And prepare a memo in regards to that.

3 Q And I think if I'm understanding your
4 testimony, you said that this is something you would do
5 sometimes, but not other times? So what would -- in what
6 situation would you write a review of sales journal memo?

7 A It's just the procedure that we perform during
8 this time. I, you know, I don't know why I, you know,
9 did a memo, but that's what I did.

10 Q Well, what would you have done, what tasks or
11 procedures would you have completed to obtain the
12 information to write this memo?

13 A obtain the general ledger of BioElectronics for
14 December 2009 and January 2010. Scan, you know, the
15 general ledger of detail for sales, noted any significant
16 items.

17 Q And what would make those items significant?

18 A It's based on the materiality that's calculated
19 for BioElectronics.

20 Q And how would you calculate the materiality for
21 a particular company?

22 A There's an audit program which does the
23 calculation based on total assets or total sales, and it
24 goes through a calculation in order to determine it.

25 Q Do you remember the specific item one, the
0050

1 sales to eMarkets group?

2 A No, no I don't.

3 Q How about item three, sales to YesDTC Inc.?

4 A No, I don't.

5 Q At the top of the document, it says to work
6 paper file. Who would have access to the work paper
7 file?

8 A Berenfeld's. Well, I don't know if this was
9 electronic or paper file.

10 Q Can you explain that to me?

11 A If it's an electronic, it's in a software, so
12 only people that have password ability into the program
13 can do the documents.

14 Q Okay.

15 A If it's paper, it's in a binder.

16 Q And who would have access to the binder as a
17 general rule? I'm not asking you to vouch for that
18 particular binder, but --

19 A It should only be audit staff would have a
20 reason to view it.

21 Q Okay. And on this particular audit, the audit
22 staff was who?

23 A Myself, Angela Slaney and Bob Bedwell.

24 Q Okay. And anyone else?

25 A Not that I remember, no.

0051

1 Q Is there any way to know if either of those
2 other two individuals read the memo?

3 A I mean, the only way if there's a signature if
4 it's a paper file. If it's electronic, it would show a
5 sign off in the electronic software that it was reviewed.

6 Q Does that lead you to believe that this
7 document was an electronically prepared document or a
8 paper document?

9 A No signatures would lead me to believe that it
10 was electronic.

11 Q But it's possible that somebody read it, but
12 just didn't sign it, correct?

13 A Yes. It's a possibility.

14 Q Would that be unusual?

15 A Yes.

16 Q In your experience with Mr. Bedwell, did you
17 have an experience with Mr. Bedwell where he read a
18 document and didn't sign it that you're aware of?

19 A No, not that I'm aware of, no.

20 MR. ROGERS: Anybody has any other questions on
21 this?

22 MR. KISSLINGER: You don't recall, you don't
23 recall these transactions at all that are reflected on
24 this memo?

25 THE WITNESS: No, no, I don't recall them?

0052

1 BY MR. KISSLINGER:

2 Q Do you remember any discussion on a bill and
3 hold transaction while you performed the audit work for
4 BioElectronics?

5 A No, I don't recall that.

6 MR. ROGERS: All right. If you'd be so kind,
7 I'd like to move on to Exhibit 90. Let me know when you
8 have a document in front of you that you believe is
9 Exhibit 90, and then we'll verify that we're looking at
10 the same thing.

11 THE WITNESS: Yes. I have it in front of me.

12 BY MR. ROGERS:

13 Q Okay. What I'm referring to as Exhibit 90 is a
14 four-page document that has a Bates stamp in the lower
15 right-hand corner of CBH0011842, sequentially through 45.
16 And then there's an additional fourth page that is not
17 Bates stamped. Is that what you're looking at?

18 A I don't have 844. It's not sequential.

19 Q Okay. For the record then, let me describe
20 what I have as -- oh, you don't have --

21 A It's 11844, I don't have.

22 Q You're correct. You know what? I'm glad we

23 had this discussion, because it's not sequential. He
24 documents something, read them in individually. It's
25 CBH0011842 on the first page, 843 on the second page, 845
0053

1 on the third page, and then the fourth page does not have
2 a Bates stamp and appears to be a spreadsheet. Is that
3 what you have?

4 A Yes, I do.

5 Q Okay. And on the first page, there's a title
6 of "BioElectronics Bill and Hold Memo, Audit of 2009."
7 Is that what you're looking at?

8 A Yes.

9 Q All right. Have you seen this document before?

10 A Yes, yes, yes, last night.

11 Q Okay. Prior to last night, had you seen this
12 document before?

13 A Not that I recall, no.

14 Q Could you tell me what your understanding of
15 this document is?

16 A The memo from Andy Whelan regarding a bill and
17 hold revenue for the 2009 year, year end.

18 Q Up in the right hand corner of the document,
19 there are three letters in a circle fashion --

20 A Right.

21 Q PBC --

22 A Right.

23 Q You see what I'm looking at?

24 A Yes, I do.

25 Q What's your understanding of those three
0054

1 letters?

2 A Prepared by client.

3 Q Is that a standard notation?

4 A In the audit practice, yes.

5 Q Is it your testimony that you don't believe you
6 saw this document as part of the audit that you performed
7 or an audit that you performed for BioElectronics or that
8 you simply don't remember it?

9 A Yes, I'm sorry, yes, I don't remember seeing
10 it.

11 Q Have you seen this type of document before?

12 A In paper, I mean it's a memo. I mean, or bill
13 and hold memo.

14 MR. KISSLINGER: On the first page it says, I'm
15 looking at CBH0011845.

16 THE WITNESS: Right.

17 BY MR. KISSLINGER:

18 Q It says under name, "Bill and hold criteria."

19 A Yes.

20 Q Are you familiar with what criteria were
21 required to record a bill and hold transaction?

22 A Not off the top of my head, no.

23 Q Back then, were you?

24 A No. Not that I recall.

25 Q In your discussions with Mr. Bedwell about
0055

1 criteria for billing a bill and hold transactions, do you
2 recall any such discussions?

3 A No, I don't recall discussions with him.

4 MR. ROGERS: I think earlier you testified to
5 whom Mr. Whelan, Andy Whelan is. Does this clarify your
6 understanding of who Mr. Whelan was?

7 THE WITNESS: That he's the president.

8 BY MR. ROGERS:

9 Q Yes. That it doesn't contradict it. I guess a
10 better way of saying it is that this affirms your memory?

11 A Yes, it does.

12 Q If you don't remember this document
13 specifically, I'm curious as to why a document produced
14 by the client would be made part of the audit record?

15 A An issue came up that needed further guidance
16 on support from the client.

17 Q So would this be something in general that the
18 auditors would request of the client, or is this
19 something the client would volunteer? How does that
20 work?

21 A It could be either. We could request it, or
22 they would volunteer. You know, they report paper is in
23 memos.

24 Q Do you remember if Mr. Whelan was a CPA?

25 A Oh, jeez, I have no idea. I don't know. No.

0056

1 Q Do you remember there being a CPA on staff at
2 BioElectronics?

3 A No, I don't think so. But I don't remember.

4 Q The reason I'm asking is this document has
5 criteria, auditing criteria, it quotes the gap, and so
6 I'm curious as to how Mr. Whelan would produce this. But
7 I take it you didn't discuss that with him?

8 A No. No, I didn't. Not that remembered it.

9 MR. ANDERSON: Was it your understanding that
10 Mr. Whelan had an accounting background?

11 THE WITNESS: It's a possibility. I don't
12 remember.

13 MR. ANDERSON: Did he seem to have technical
14 knowledge of accounting standards?

15 THE WITNESS: I mean, he seemed intelligent. I
16 don't know about particular accounting standards, no.

17 MR. ROGERS: Let me ask you this. What's your
18 understanding of the criteria for recognizing revenue in
19 an ordinary situation? What's the general rule for
20 revenue recognition?

21 THE WITNESS: Well, just looking at this memo,
22 I mean, it indicates -- what is my general rule?

23 BY MR. ROGERS:

24 Q Yes. I'm asking for your understanding?

25 A Here if I get in a contract situation, if a

0057

1 contract is signed for goods, that there's collectability
2 assured from the customer and then shipment has occurred,
3 based on the shipping terms.

4 Q Is it your experience that revenue is
5 recognized under those terms unless one of those terms is
6 not met, one of those criteria are not met?

7 A Yes. I mean, based on the standards.

8 Q I guess what I'm trying to get at is why would
9 somebody recognize revenue some way other than the basic
10 revenue recognition criteria in your understanding?

11 A For their benefit. I don't know, I don't know
12 why they would personally do that.

13 Q Do you remember there being any unusual revenue
14 during the BioElectronics audit?

15 A No, no, not off the top of my head, no.

16 BY MR. STODGHK:

17 Q Could you look back at 89? Do you have that in
18 front of you?

19 A Yeah, hold on for one second. Yeah.

20 Q The two --

21 A Yes, I do.

22 Q The two transactions that are described there
23 under the paragraph that says December of 2009; do you
24 see that?

25 A There's four transactions.

0058

1 Q I'm sorry. Well, I'm looking at one and three.

2 A Oh, okay. Yes.

3 Q Do you recall whether you viewed those as being
4 unusual in the context of this audit?

5 A Based on the memo -- being unusual?

6 Q Yeah.

7 A Uh-huh.

8 Q Warranting special attention as part of your
9 audit work.

10 A I don't recall, but based on the memo, they
11 were determined to be significant.

12 Q Okay, and why was that?

13 A They exceeded the threshold for materiality.

14 Q And do you recall when you became aware --
15 well, let me ask you this question: on 89, it says, "The
16 purpose is to test the completeness valuation and
17 presentation/disclosure of sales by scanning the sales
18 journal for any large or unusual transactions," do you
19 read -- you see that?

20 A Yes, I do.

21 Q Typically, when would that process occur in the
22 course of your audit work?

23 A During field work or back at the office, it's
24 just -- it's during the normal audit process. There's no
25 specific time that it has to occur.

0059

1 Q Well, presumably in this case, if you look at
2 the procedures in the next paragraph, it occurred

3 subsequent to January of 2010; would that be fair? Since
4 you were looking at the sales account for the months of
5 December and January?

6 A Yes, based on the memo, yes.

7 Q Is that typical of your experience, when this
8 process is done?

9 A Oh, I -- no, I don't recall if that's typical
10 or not.

11 Q All right.

12 BY MR. MROSKI:

13 Q One other question on Exhibit 89 before we move
14 off of it. So, following on from the purpose of this
15 memo, and then the procedures where you allude to the
16 items enumerated in one through four being material
17 because you talk about exceeding one-third of tolerable
18 misstatement; is that right?

19 A Correct.

20 Q Okay. For items one and three, if -- would it
21 be typical to discuss that these transactions were bill
22 and hold while you were describing these transactions in
23 this memo? If you were aware of them at the time you
24 were preparing this memo?

25 A If I were aware that they were bill and hold,
0060

1 or -- I mean, I don't know what they are just scanning a
2 general ledger.

3 Q Okay. I guess more specifically, for items one
4 and three, nothing in those items mentions that those
5 transactions were completed on a bill and hold basis.
6 Rather, they're more focused on the fact in item one that
7 no payment has been received as of March 11th?

8 A Correct.

9 Q And the same on item three, it's really focused
10 around partial payment being made, and the receipt of
11 funds pursuant to these sales. My question to you is if
12 these sales were done on a bill and hold basis -- which
13 is an unusual revenue transaction. I think we can all
14 agree -- would it -- would it have been noted in this
15 memo if you were aware of it, as of the time this memo
16 was written?

17 A I would assume so, if, you know, we knew about
18 it at that time.

19 Q Okay, and this memo is dated March 13 2010;
20 that's correct?

21 A Yes, that's correct.

22 Q Okay.

23 MR. ROGERS: Does anybody have anything else on
24 Exhibit 90? We can always get that -- okay, let's -- Mr.
25 Leitstein, let's look at Exhibit 91, if you would.

0061

1 MS. VAN VLIET: Just so you know, whoever's
2 whispering, I -- we can hear you.

3 MR. MROSKI: Okay.

4 MR. ROGERS: Thank you.

5 MR. MROSKI: That's --
6 MR. ROGERS: Appreciate it.
7 MR. MROSKI: Appreciate that.
8 MR. STODGHIK: Thank you for that, yeah.
9 THE WITNESS: Okay, I have it.
10 MR. ROGERS: We have good microphones at the
11 SEC.
12 MR. STODGHIK: We didn't know they were that
13 good, though.
14 MS. VAN VLIET: Mm-hmm.
15 BY MR. ROGERS:
16 Q Let's make sure we're looking at the same thing
17 here. The document that was previously marked Exhibit 91
18 is a three page document Bates stamped CBH 001182627 and
19 -28. Is that the document you're looking at?
20 A Yes, it is.
21 Q Okay. Have you seen this document before?
22 A Yeah, I -- I mean, I saw it last night.
23 Q Okay, and prior to last night -- do you
24 remember this document prior to reviewing it last night?
25 A No, I don't remember it.

0062

1 Q Okay. Are you ready for me to ask questions
2 about it?
3 A Yes, I am.
4 Q Okay. If you need to take a minute, please
5 tell me. That said, what is this document to you?
6 What's your impression of this document?
7 A It is a confirmation prepared by BioElectronics
8 to confirm a customer's balance at December 31 2009.
9 Q And is this something that's part of the normal
10 audit process?
11 A Yes, it's a general audit procedure.
12 Q Okay, and can you tell me what your
13 understanding is of why this is a procedure? What's
14 trying to be done here?
15 A Well, there's a balance on the books of
16 BioElectronics due at December 31st, and you want an
17 independent sort of acknowledgement from the customer to
18 ensure that the balance is correct at that particular
19 date.
20 Q Okay. So am I correct in understanding that
21 this document was sent out by the company, but it -- that
22 it's returned to the auditors by the --
23 A No.
24 Q -- third part?
25 A I'm sorry, repeat that one more time. I talked

0063

1 over you.
2 Q Yeah. Am I correct in understanding that the
3 document is generated -- sent out by BioElectronics --
4 the company, but it's provided to the auditor after the
5 third party has provided the answers?
6 A No, it's sent out by the auditors --

7 Q Okay.
8 A -- to the -- to the customer.
9 Q Okay, so the auditors send it out, even though
10 the letterhead in this case is the company,
11 BioElectronics?
12 A Correct.
13 Q Okay, and how is it determined what questions
14 are asked?
15 A It's -- from what I recall, it's just a
16 standard audit confirmation.
17 Q Okay. Well, who fills in the specifics?
18 A The customer, or you know, whoever is filling
19 it out.
20 Q Okay, well maybe I wasn't clear, maybe I'm just
21 --
22 A Okay.
23 Q -- not understanding your answer, so let's try
24 it again, and I apologize. Could the particular document
25 we're looking at, Exhibit 91 --
0064
1 A Correct.
2 Q -- is a letter to YesDTC Inc., correct?
3 A Yes.
4 Q Okay, and it says that the letter is to confirm
5 the balance due as of December 31 2009, and an amount of
6 \$50,000 dollars. Do you see where I'm reading?
7 A Yes, that's true.
8 Q Okay. So who fills in the date -- the December
9 31 2009, and the amount, and who would send it to them?
10 A BioElectronics.
11 Q So the -- BioElectronics does? Okay.
12 A Yeah.
13 Q So does BioElectronics do this for every
14 account receivable that they have on the books, or is
15 there some other cut off?
16 A No, it's what the auditors request to be
17 confirmed.
18 Q Okay, so the auditors would request that this
19 particular letter be sent out by BioElectronics, correct?
20 A To be sent -- to be prepared by BioElectronics
21 to be sent out by the auditors.
22 Q Were you part of the process during the
23 BioElectronics audit that we're looking at -- I guess
24 it's the 2009 audit. Were you a part of the process that
25 decided who to request these letters be sent to?
0065
1 A I don't -- I don't remember if I was or wasn't.
2 Q Would that generally be part of your role as an
3 -- in an audit?
4 A In my particular role?
5 Q Yeah.
6 A No, it could be someone else who's on the audit
7 team. They could do this as well -- perform the task.
8 Q And were the questions the same to each and

9 every -- on each and every letter that was sent out?

10 A I assume. I don't -- I don't -- you know, I
11 don't really remember.

12 Q You don't remember if the letters were tailored
13 to each client?

14 A No, I don't know if they were tailored or not.

15 Q Okay. Let me direct your attention to the
16 third page of Exhibit 91.

17 A Yes.

18 Q Do you see down at the bottom -- I'm going to
19 say two-thirds, although it may be three-quarters -- of
20 that page, there appears to be an email.

21 A Yes.

22 Q Okay, and the email in question is -- it's from
23 Brian Leitstein, and it has an email address there. Was
24 that your email address while you worked for Berenfeld?

25 A Yes, it was.

0066

1 Q Okay. Was there -- were there any other Brian
2 Leitsteins working for Berenfeld while you were there
3 that you're aware of?

4 A No, there weren't.

5 Q Okay. Do you see the "to," field there, it
6 says Joe Noel?

7 A Yes.

8 Q Do you know who Mr. Noel is?

9 A No, I don't.

10 Q Okay.

11 A Well, I mean based on this document, he's the
12 CEO of Yes.

13 Q Okay, do you remember the email that is on this
14 page?

15 A No, not until last night.

16 Q Okay. Can you tell -- what's your
17 understanding of this email?

18 A We are -- we are asking him if he's entered
19 into a bill and hold agreement --

20 Q Okay.

21 A -- with BioElectronics.

22 Q So it appears that at least as of March 25
23 2010, you were aware of a bill and hold transaction
24 between YesDTC and BioElectronics, correct?

25 A Yeah, possibly at that point in time, yes.

0067

1 Q Okay. Does this email help you to remember
2 specifically this transaction?

3 A No, I don't. I don't -- not specifically, no.

4 Q Okay, there are -- in the email, there's a
5 series of questions numbered one to three; do you see
6 those questions?

7 A Yes, I do.

8 Q Okay. I'm curious as to how those questions
9 were arrived at. How did you decide to ask those
10 specific questions; do you know?

11 A No, that I -- I don't even remember, no.
12 Q Well, if you didn't have an understanding of
13 bill and hold transactions, how would you come up with
14 questions to ask about them?
15 A I would probably seek guidance from others
16 within the firm?
17 Q And who would that be?
18 A Probably the first person would be Bob Bedwell.
19 Q Okay. Do you have any recollection of talking
20 to Mr. Bedwell about a bill and hold transaction?
21 A No, I don't.
22 Q There are what appears to me to be some
23 handwriting after -- or, to the left of each answer to
24 the particular questions, the one through three that we -
25 - I was just referencing. Do you see what I'm referring
0068

1 to?
2 A Yes, I do.
3 Q Can you read that handwriting? Can you make
4 sense of it?
5 A No, I don't know what that is. No. I'm sorry,
6 I don't know what that is.
7 Q Okay. Let me ask you this: are those your --
8 is that your handwriting?
9 A No, definitely not my handwriting.
10 Q Okay. Have you seen anything similar to that
11 handwriting in the past?
12 A No. No I haven't.
13 Q Could that be Mr. Bedwell's handwriting?
14 A That, I don't know.
15 Q Have you seen Mr. Bedwell's initials before?
16 A Yes.
17 Q Okay, does this appear to be Mr. Bedwell's
18 initials?
19 A No, they aren't.
20 Q No they're not? Okay.
21 A I'm sorry, no they're not --
22 Q I'm sorry, what --
23 A No, I just was repeating, no, they're not.
24 Q Okay.
25 A Sorry.

0069
1 Q All right. Do you see at the bottom of the
2 email, it says, "In addition, as part of our audit
3 evidence, would it be possible to obtain a signed
4 confirmation from you rather than an email,"? Do you
5 recall if you received a signed confirmation?
6 A No, I don't.
7 Q As a general rule, would you -- is that
8 something you would need to be able to sign off on a
9 transaction?
10 A It gives me a little bit more comfortability
11 that it was prepared by the individual.
12 Q Okay. Let me ask you this: did you have

13 responsibility for signing off on this transaction?

14 A No.

15 Q Who would?

16 A The audit partners, Bob Bedwell.

17 Q Okay.

18 BY MR. MROSKI:

19 Q Did you say partner or partners?

20 A I mean, I don't know. I mean, for this
21 particular client, I don't know if there was a partner or
22 partners on it.

23 Q You don't know if there were multiple partners
24 on the BioElectronics audit?

25 A No, I don't.

0070

1 Q Okay. To your understanding, which partners
2 participated in the audit?

3 A Bob Bedwell.

4 Q Okay, and then with respect to the three
5 specific questions asked in this email, where would you
6 have gotten those questions from?

7 A Like I said before, I probably would have asked
8 someone --

9 Q Okay.

10 A -- within the firm.

11 Q Okay. Do you have a -- do you have a
12 recollection as to whether or not somebody told you to
13 ask these specific questions, or do you believe you came
14 up with them on your own?

15 A I don't recall. I mean, I don't think I came
16 up with them on my own.

17 Q Okay, and then specific to question number two,
18 do you have any recollection as to why you asked if
19 YesDTC planned to take possession by December 31 2010 --
20 the significance of that date?

21 A No. No, I don't.

22 Q Okay. Generally speaking -- or specifically,
23 if you can recall, how many audits did you work on per
24 year when you were at Berenfeld?

25 A Oh, wow. Jesus, could be less than ten or more

0071

1 than ten, depending on the type of audit.

2 Q Okay. Can --

3 A I'm sorry, I know that's a horrible answer.

4 Q It's all right. Again, general is fine. Are
5 you including like, employee benefit plan audits and
6 things of that nature?

7 A Yeah, like those -- you know, those are not
8 significant, or significantly large audits. So --

9 Q Right. Let's just do maybe financial statement
10 audits.

11 A I would definitely say less than ten.

12 Q Less than ten? Okay.

13 A Yeah.

14 Q And then when you throw employee benefit plan

15 audits in, would you say it's less than 20 per year in
16 total?

17 A Yes, definitely.

18 Q Okay, and what was -- again, generalize if you
19 don't remember specifically -- the average duration of an
20 audit engagement while you were at Berenfeld?

21 A It could go from three months to six months.

22 Q Okay. Was it typical that you were working on
23 multiple audits at the same time?

24 A Yes.

25 Q Okay. Generally, how many audits would you be
0072

1 working on at any given time?

2 A I would say four or less?

3 Q Okay.

4 A I hope? I mean, I can't -- I don't really
5 remember.

6 Q That's okay. Again, I -- generalize is fine.

7 It's -- we're going back five or six years.

8 BY MR. ROGERS:

9 Q Mr. Leitstein, let me ask you this: how would a
10 document such as the Exhibit 91 get to be part of the
11 audit file?

12 A It's part of the confirmation.

13 Q I guess I'm asking, specifically what is done
14 to make it part of the audit file?

15 A What is done?

16 Q Is it scanned, and made --

17 A Oh, I'm sorry --

18 Q -- into an electronic file, or is it just put
19 in binder? What happens?

20 A Well, like I said before, I don't know. I
21 mean, this may have been an electronic or paper file, and
22 it's scanned into our electronic work paper file.

23 Q And who would have access to the file once it's
24 made part of the file -- part of the -- let's just say
25 part of the file?

0073

1 A Whoever has access to the audit software
2 program.

3 Q And once it's made part of the file, does it
4 then become part of the completed audit?

5 A Once it's signed off on by --

6 Q And who does the signing off?

7 A -- either myself, another audit team, and the
8 reviewer.

9 Q Okay, could you explain that process to me?
10 Are you referring to a specific document that's signed
11 off, or the audit itself?

12 A Just documents in general that go into the work
13 paper file. They're signed off on by whoever prepared
14 them, and then there's a review process, and there's --
15 they sign off as well.

16 Q Can something be made part of the record after

17 the audit is complete?

18 A No, not that I know of. No.

19 Q And let me go back specifically go back to the
20 third page of Exhibit 91. Do you see up above the email,
21 there's a signature and note, "Brian, this is a copy of
22 the email I sent to you,"?

23 A Yes.

24 Q Okay, and then it appears to be signed by
25 Joseph Noel?

0074

1 A Yes.

2 Q Do you know whose phone number that is hand
3 written off to the right?

4 A No, I don't.

5 Q Okay.

6 A That's -- the area code is Florida, but other
7 than that, I don't know.

8 BY MR. MROSKI:

9 Q Is that Berenfeld's -- is that Berenfeld's fax
10 number?

11 A I -- no, I don't remember their fax number.

12 Q If you look at the second to the last paragraph
13 in your email to Mr. Noel --

14 A Oh, okay.

15 Q -- it's the same -- it's the same number you
16 give to him as your fax number.

17 A Yes, so --

18 Q Okay.

19 A -- there it is. Yeah, that's it. Sorry.

20 BY MR. ROGERS:

21 Q All right, maybe I should have asked Mr. Mroski
22 that question. Thank you. Unless somebody has any other
23 questions about this document, I'm going to move on. I'd
24 like to ask you about what's been pre-marked as Exhibit
25 67.

0075

1 A Okay. I have it in front of me.

2 Q Okay. All right, so we are clear that we are
3 looking at the same thing. Let me describe it again. At
4 the bottom right side, it is marked Exhibit 67, and then
5 it has a Bates stamp of SEC-BIOE-000631011, -12, -13, -
6 14, -15, -16, -17, -18, -19, and -20. Is that they --
7 does that match up to the document you're looking at?

8 A Yes, it does.

9 Q Okay, and at the top of the first page, it has
10 a heading. Why don't you read to me what it -- the
11 heading is.

12 A "Distributorship Agreement."

13 Q Okay. Have you seen this document before?

14 A Just -- yeah, last night.

15 Q Okay, and before last night, do you have any
16 recollection of having seen this document?

17 A No. No, I don't recall seeing it.

18 Q What's your understanding of this document?

19 A It's the distributors -- distributor agreement
20 between BioElectronics and YesDTC --
21 Q Okay.
22 A -- corp. products.
23 Q As part of any audit, generally, would you have
24 asked for Distributorship agreements between the company
25 and its customers?

0076

1 A It's a possibility, depending on either the
2 size of the customer -- I mean, I don't -- I don't
3 remember. You know, it's possible.
4 Q Okay. I want to call your attention to a
5 specific clause on the first page. Under "One:
6 Appointment and Acceptance," there are four paragraphs --
7 A Yes.
8 Q -- and the fourth -- the fourth paragraph
9 begins, "The right." Would you go ahead and read that
10 paragraph to yourself, and let me know when you're ready.
11 I want to ask you about it.

12 A Yes, I've read it.

13 Q Okay. What's your understanding of what that
14 clause says?

15 A That the distributor will be selling the
16 products in Japan, and if they are unable to obtain
17 regulatory clearance, the distributor may void the
18 contract.

19 Q Okay. Do you have an understanding how that
20 would affect revenue recognition, if indeed it would?

21 A No, I don't.

22 BY MR. KISSLINGER:

23 Q From what -- you gave us a general description
24 of your understanding of revenue recognition a little
25 earlier. Do you remember doing that?

0077

1 A Yes, I do.

2 Q Would a clause like this give you any
3 particular concerns with -- based on your understanding,
4 if revenue was indeed recorded under such an agreement?

5 A I mean, it's a possibility, but I'm not -- you
6 know, I'm not 100% percent sure.

7 Q If there's a contingency in a sales agreement
8 that allows somebody to void a contract, wouldn't that
9 give you some concerns as an auditor about recording
10 revenue under that contract?

11 A Yeah. I mean, it's a possibility, yes.

12 BY MR. STODGHK:

13 Q Can you think of circumstances in which it
14 wouldn't give you concern?

15 A No. I mean, I don't -- not particularly, no.
16 I don't know.

17 BY MR. ROGERS:

18 Q Do you remember this agreement as part of the
19 BioElectronics audit?

20 A No, I don't recall it.

21 Q Do you remember discussing revenue recognition
22 with Mr. Bedwell as part of the BioElectronics audit?

23 A No, no particular discussions that I remember
24 with him.

25 Q If you had questions about revenue recognition,
0078

1 would you have asked Mr. Bedwell?

2 A Yes, I would.

3 Q Is there -- well, no. Strike that. Let's move
4 on to Exhibit 93. Let me know when you've got the
5 document in front of you that you think is Exhibit 93.

6 A Yes, it's -- I have it in front of me.

7 Q Okay, so we -- again -- we know we're on the
8 same page, Exhibit 93 was pre-marked Exhibit 93, and it
9 carries a Bates stamp of CBH0011813, and -14. Is that
10 what you're looking at?

11 A Yes, it is.

12 Q Okay. Have you seen this document before?

13 A Yes, I -- last night.

14 Q Okay, and prior to last night, had you seen
15 this document before?

16 A No, I don't -- I mean, I don't remember if I'd
17 seen it.

18 Q Okay. Can you give me your understanding of
19 what this document is?

20 A It's another audit confirmation prepared by
21 BioElectronics to confirm a balance outstanding at
22 December 31 -- excuse me -- 2009 from eMarkets Group.

23 Q Do you know who Ms. Mary K Whelan is?

24 A No, other than having the same name as Andy,
25 no. I'm sorry -- I'm sorry. The same last name.

0079

1 Q Yeah.

2 BY MR. MROSKI:

3 Q Mr. Leitstein, I want to take Exhibit 93, and I
4 want to also put Exhibit 91 back in front of you, which
5 was the accounts receivable confirmation from YesDTC.

6 A Okay.

7 Q And again, flipping back to that email that you
8 had sent to Joe Noel on March 25th?

9 A Correct.

10 Q Correct me if I'm wrong; I don't want to put
11 words in your mouth, but is it fair to say that these
12 specific questions that you posed to Mr. Noel were as a
13 result of the uniqueness, or non-standard receivable
14 transaction that YesDTC had with BioElectronics? The
15 bill and hold transaction is what I'm getting at.

16 A Yes, I'm -- I suppose that's why those
17 questions were asked.

18 Q Okay, and those questions were asked on March
19 25th. Looking now at Exhibit 93, the date of the accounts
20 receivable confirmation sent to eMarkets group is March 3
21 2010; is that correct?

22 A Correct.

23 Q Since that time and as you sit here today, have
24 you done any research into bill and hold transactions or
25 otherwise independently investigated bill and hold
0080

1 transactions?

2 MS. VAN VLIET: Well, I -- whoa, whoa, whoa.
3 I'm going to instruct him not to answer that to the
4 extent that any part of his answer would require him to
5 divulge conversations and discussions that he had with
6 me.

7 MR. MROSKI: Right.

8 BY MR. MROSKI:

9 Q Okay. Independently, excluding conversations
10 with your counsel, have you looked into what constitutes
11 a bill and hold transaction since receiving the documents
12 we sent your way?

13 A No, I haven't.

14 Q Okay. As you sit here today, do you understand
15 or have an understanding of any specific criteria that
16 need to be met in order to have a valid bill and hold
17 transaction?

18 A The only knowledge I have is looking at -- it
19 was from Exhibit 90 where it indicated criteria.

20 Q Okay.

21 BY MR. THOMAS:

22 Q Let's loop in one more exhibit here, put it in
23 front of you, which is Exhibit 21. Let me know when you
24 have it in front of you, and I'll describe it.

25 A Yes, I have it in front of me.

0081

1 Q Okay. Exhibit 21 was pre-marked Exhibit 21 and
2 carries a Bates stamp of -- get ready -- SEC-BIO-MKW-E-
3 0013702 and 03.

4 Is that what you're looking at?

5 A Yes, that's correct.

6 Q Okay. Are you familiar with this document?

7 A Not since last night, no.

8 Q All right. So, the first time you became aware
9 of it was last night?

10 A Yes. I recall seeing it, yes.

11 Q Okay. And you don't remember it -- this being
12 part of the audit for -- that you performed for Bio
13 Electronics?

14 A No, I don't -- I don't remember or recall that.

15 Q Okay. Do you know who -- You see at the top of
16 the first page there it's from an Esther Ko? Do you know
17 who Ms. Ko is?

18 A No, I don't remember. I don't remember her. I
19 guess that's a her.

20 Q Yeah.

21 A I don't remember her at all.

22 Q Okay. And at -- and then the "To" field is
23 Mary Whelan.

24 A Correct.

25 Q Okay. Do you believe that that's the same Mary
0082

1 Whelan as we were looking at with Exhibit 93?

2 A Yeah, I assume so.

3 Q And -- but that's an assumption?

4 A I -- yeah. I mean, that's the same spelling
5 and everything. I assume that that's the same person.

6 Q Okay. Let me ask you about a couple emails
7 that are below Mary Whelan; an AWhelan@bioecorp.com. Do
8 you recognize that email address?

9 A It's a Bio Electronics email. I guess Andy
10 Whelan.

11 Q Are you guessing, or do you know?

12 A I don't know what the A is, but it's Whelan.

13 Q Okay. How -- after that there's a
14 SheriSMercer@bioecorp.com. Do you know who Sheri is?

15 A No. The name doesn't ring a bell. But I mean,
16 it's a Bio Electronics email address.

17 Q Yeah.

18 If you look at the second email on this page,
19 the one that's from Mary Whelan to Esther Ko. I guess it
20 begins just above the halfway mark. Do you see that?

21 A Yeah, I do. Yes.

22 Q Okay. Take a look at the email itself. Just
23 read through it to yourself, and then I want to ask you a
24 question or two.

25 (The witness examined the document.)

0083

1 THE WITNESS: Okay.

2 BY MR. THOMAS:

3 Q All right. And I should have said this to
4 begin with, but on the next page there is the preceding
5 email that begins, "Hi, Mary."

6 A Okay.

7 Q And it has a series of questions, one, two and
8 three. Why don't you read through those, and then I want
9 to ask you, I guess, questions about both of the emails.

10 (The witness examined the document.)

11 THE WITNESS: Okay. Okay.

12 BY MR. THOMAS:

13 Q The questions are similar here as to the
14 questions you asked in your email to Mr. Noel. That's my
15 impression.

16 For example, you see number two on Exhibit 21
17 is an eMarkets request to have Bio Electronics store the
18 good. And back on Exhibit 91, question number one was
19 has the SDTC requested that the transaction be on a bill
20 and hold basis.

21 Do you have an understanding as to why Ms. Ko
22 would be asking Ms. Whelan the three questions that are
23 part of Exhibit 21?

24 A No, I don't.

25 Q Do you believe that the -- is there any reason

0084

1 for you to believe that the emails that are part of
2 Exhibit 21 were referencing the same transactions that
3 are -- that was being asked about in Exhibit 93?

4 A Repeat that again? Do I have any --

5 Q Yeah. Do you think the transaction being asked
6 about in Exhibit 21 is the same transaction that's being
7 referenced in Exhibit 93?

8 A Probably for additional clarification of the
9 transaction.

10 Q Okay. Let's go back to Exhibit 21 on the first
11 page there, the one that's Bates-stamped 702 at the
12 bottom.

13 A Yeah.

14 Q All right. There in the second email, the one
15 from Mary Whelan to Esther Ko, dated Tuesday, March 23,
16 10:41, the third paragraph is substantial. There's
17 multiple sentences there. And the last sentence reads,
18 "I anticipate that the goods will have been sold and
19 shipped to customers by December 31, 2010."

20 A Okay. Yes.

21 Q Okay. Is it your understanding that goods that
22 have -- that will be shipped sometime in the next -- or
23 within nine months or so -- from an accounting
24 standpoint, would those be looked on as shipped or sold?

25 A Well, definitely not shipped.

0085

1 Q Definitely not shipped. Would you question
2 revenue that's recognized pursuant to such an agreement?

3 A I mean, there's a possibility.

4 Q Does that meet what you -- your understanding
5 is of basic revenue recognition?

6 A Yes.

7 Q How so?

8 A Based on when the items are shipped.

9 BY MR. KISSLINGER:

10 Q If you could, just clarify that answer for me.
11 I don't think I understood it.

12 A Oh, it's just what I was saying before, based
13 on the revenue recognition, that determined when the
14 items were shipped.

15 Q So, if they're shipped by December 31st, can
16 you -- could you recognize the revenue in March or the
17 prior year?

18 A I guess it's based on their agreement. I'm not
19 sure.

20 MR. STODGHK:

21 Q Are you implying --

22 A Based on the --

23 Q I'm sorry. Go ahead.

24 A No. I guess, based on the revenue recognition.

25 Q Are you implying bill and hold concepts to

0086

1 this, or is this the general FAS 104?

2 A Just the general. I don't -- you know, the

3 bill and hold I don't know. But based on just normal
4 revenue recognition, you know, there should be enough
5 revenue.

6 MS. VAN VLIET: I'm sorry. Are we -- can I
7 just interpose a question?

8 I was under the understanding that my client
9 was being called as a fact witness, not -- you're really
10 kind of getting into expert areas on auditing and
11 certified public accounting issues that I haven't
12 prepared him for because of my perhaps misunderstanding
13 of what the nature of the testimony was going to be.

14 So, if you're calling him to opine on revenue
15 recognition and the propriety of it, happy to prepare him
16 for it, but that's not what my understanding was.

17 MR. MROSKI: We promise we won't call him as an
18 expert. We are just trying to establish a baseline of
19 his understanding of certain revenue recognition
20 concepts.

21 MR. THOMAS: Why don't we do this? Why don't
22 we -- it's 3:10. Why don't we take a break, five
23 minutes, and when we come back we'll see where there is
24 to go.

25 MS. VAN VLIET: Okay.

0087

1 MR. THOMAS: All right. Again, we'll go
2 through the same procedure, but let's go off the record
3 now.

4 (A brief recess was taken.)

5 MR. THOMAS: All right. So, let's go back on
6 the record. It is 3:17.

7 Mr. Leitstein, do you understand that you are
8 still under the record -- under oath?

9 THE WITNESS: Yes, I do.

10 MR. THOMAS: Okay. Did we have any substantive
11 questions -- discussions while we were off the record,
12 you and I or anybody at the SEC and you?

13 THE WITNESS: No, we didn't.

14 MR. THOMAS: Okay.

15 All right. We have a couple more questions.

16 BY MR. KISSLINGER:

17 Q Just could you turn back to Exhibit 21 please?

18 A Okay.

19 Q And you were asked some questions about that
20 long paragraph in the middle at the -- towards the bottom
21 of the page.

22 A Correct.

23 Q Specifically, the last sentence of that
24 paragraph says, "I anticipate that the goods will have
25 been sold and shipped to customers by December 31, 2010."

0088

1 I -- just to clarify for the record, do you
2 have an understanding one way or the other whether that
3 is -- well, would that sentence have given you any
4 concern back then about its revenue recognition and

5 proprietary -- whether it was proper to record it?

6 A I mean, it's a possibility at that point in
7 time. It may --

8 Q And why is that?

9 A Based on the revenue recognition and when items
10 are shipped.

11 Q Just clarify, the fact that it was being
12 shipped to customers at the end of the next year, would
13 that have given you some concerns?

14 A I mean, yeah. I mean, it's a possibility. It
15 might have.

16 BY MR. THOMAS:

17 Q And if you had concerns, what would you have
18 done with that concern or concerns?

19 A Either talk to the audit partner or inquire of
20 the client.

21 BY MR. MROSKI:

22 Q With respect to Exhibit 21, do you recall this
23 email chain being part of the audit work paper file for
24 the 2009 audit of Bio Electronics?

25 A No. I mean, there's no -- there's no one from
0089

1 Berenfeld on here.

2 Q Okay. And you don't have any recollection as
3 to whether this was ultimately put into the audit file?

4 A No, I don't. I don't remember.

5 Q Do you have any recollection as to whether a
6 document similar to this or presenting similar type
7 information related to this transaction was part of the
8 audit file?

9 A No, not other than what you gave me, no.

10 Q Okay. And you said what we gave you you don't
11 recall being in the audit file?

12 A No, I don't.

13 Q Okay.

14 MR. THOMAS: Mr. Leitstein, we do not have any
15 -- oh, we do have another question.

16 MR. STODGHIK: Can we go off the record for one
17 second? I just want to discuss with you guys my --

18 MR. THOMAS: Yeah, all right.

19 Let's go off the record for a just a couple of
20 minutes, and we'll be right back. We're off the record
21 at 3:20.

22 (A brief recess was taken.)

23 MR. THOMAS: It is 3:21. We're back on the
24 record.

25 I'm sorry. Did you have something to say?
0090

1 MS. VAN VLIET: Yeah. Before you go off, I
2 think he just wants to clarify his last answer a little
3 bit in terms of what you gave him --

4 THE WITNESS: Yeah. When I said, "What you
5 guys gave me," it's the exhibits that you had sent to us,
6 nothing on the CD but just the exhibits.

7 MR. THOMAS: Okay.
8 Okay. We are -- just so the record is clear,
9 I'm not sure if I said everything I need to say.
10 We are back on the record. Mr. Leitstein, are
11 you aware that you're still under oath?
12 THE WITNESS: Yes. Yes, I do.
13 MR. THOMAS: And did we have any substantive
14 conversations while we were off the record?
15 THE WITNESS: No, we didn't.
16 MR. THOMAS: Okay.
17 BY MR. THOMAS:

18 Q Let me as a discrete question here. Your
19 current employer ChildNet, is that a public company or a
20 private one?

21 A It's a -- a non-profit corporation.

22 Q Okay.

23 BY MR. MROSKI:

24 Q They don't issue any public debt or anything of
25 that nature?

0091

1 A I don't -- no, no, no.

2 Q Okay.

3 With respect to the 2009 audit of Bio
4 Electronics, do you recall if you were present for a
5 physical inventory observation?

6 A I recall doing something with inventory. I
7 can't recall if it was the physical inventory.

8 Q Okay. So, you don't recall if you were present
9 for the physical inventory observation?

10 A I may have been. I don't -- I'm not a hundred
11 percent sure that I remember that I was.

12 Q Okay. Do you have reason to believe you were?

13 A I just remembered being in -- they had a back
14 warehouse with inventory. Maybe that -- maybe that's why
15 it's jogging my memory.

16 Q Okay. Would you typically be involved in
17 physical inventory observations as a manager, as an audit
18 manager at Berenfeld?

19 A Yes, on various clients I would, you know,
20 perform inventory counts.

21 Q Okay. Do you remember for any of your audit
22 clients, during the entire time you were at Berenfeld,
23 during the performance of a physical inventory
24 observation, reviewing specific inventory that was
25 segregated and held apart from the other inventory for

0092

1 any reason?

2 A I recall, like, if it's -- sometimes it would
3 be on a pallet to be put onto a truck to be shipped.

4 Q Okay. And do you recall if you specifically
5 excluded that inventory from the inventory count or if
6 you included it --

7 A I think it was --

8 Q -- if it was prior to shipment?

9 A I think it was excluded. I am not sure. I
10 mean for those, I would -- you know, I would have to look
11 at those transactions. I don't remember off the top of
12 my head.

13 Q Okay. Do you recall if those things that you
14 -- you may recollect as being on pallets, if that was in
15 any way associated with Bio Electronics?

16 A No. I just -- I have another client in my mind
17 where I know when I was doing the counts; I can kind of
18 picture it. But no, I don't remember Bio Electronics.

19 Q Okay. Do you recall having ever represented to
20 Mr. Bedwell or anybody else that you had viewed inventory
21 at Bio Electronics in a segregated state?

22 A Geez, I -- no, I don't recall saying that. No.

23 Q Okay.

24 MR. THOMAS: All right.

25 MR. MROSKI: One last question.

0093

1 BY MR. STODGHIK:

2 Q Do you recall him ever asking you that question
3 -- Mr. Bedwell?

4 A No. I'm sorry. No. No, I don't.

5 MR. THOMAS: All right. I think it's safe to
6 wrap up now.

7 Mr. Leitstein, we don't have any further
8 questions for you at this point. If we have further
9 questions, we'll, of course, go through your attorney.

10 Ms. Van Vliet, do you have any clarifying
11 questions or anything you would like to put on the
12 record?

13 MS. VAN VLIET: Yeah, just a couple of
14 clarifying questions.

15 Mr. Leitstein, do you have any independent
16 recollection, other than the very few things that you've
17 discussed in your testimony, about your work in 2009
18 about -- on the Bio Electronics case?

19 THE WITNESS: No, not particularly, no.

20 MS. VAN VLIET: Did you have an opportunity in
21 the few days to review the 150,000 pages of work papers
22 and things like that that the SEC sent down on a DVD -- a
23 CD, I guess?

24 THE WITNESS: Very few, not every single
25 document.

0094

1 MS. VAN VLIET: You did, however, of course,
2 review the specifically numbered exhibits, as you've
3 testified; is that right?

4 THE WITNESS: Yes, I did.

5 MS. VAN VLIET: Okay. So, there may or may not
6 be other relevant pieces of paper on that disk or scanned
7 to the -- that are relevant to your testimony but you
8 haven't had an opportunity to review them, right?

9 THE WITNESS: Yes, that's correct.

10 MS. VAN VLIET: Okay. That's all I have.

11 MR. THOMAS: All right.
12 It's now 3:26. And before I say good bye, I'll
13 say thank you very much. We do appreciate your time. It
14 was very helpful to us. Thank you.
15 We're off the record at 3:26.
16 (Whereupon, at 3:26 p.m., the examination was
17 concluded.)

18 * * * * *

19
20
21
22
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0095

1 PROOFREADER'S CERTIFICATE

2
3 In The Matter of: BIOELECTRONICS CORP.
4 Witness: Brian Leitstein
5 File Number: HO-11713-A
6 Date: December 16, 2015
7 Location: Washington, D.C.

8
9 This is to certify that I, Nicholas Wagner,
10 (the undersigned), do hereby swear and affirm that the
11 attached proceedings before the U.S. Securities and
12 Exchange Commission were held according to the record and
13 that this is the original, complete, true and accurate
14 transcript that has been compared to the reporting or
15 recording accomplished at the hearing.

16
17 _____
18 (Proofreader's Name) (Date)

19
20
21
22
23
24
25

EXHIBIT C

From: esther ko [REDACTED] >
Sent: Tuesday, March 23, 2010 4:00 PM
To: Mary Whelan <[REDACTED]>
Cc: awhelan@bielcorp.com; Sherri <smercer@bielcorp.com>
Subject: Re: eMarkets' transaction with BioElectronics

Thanks very much Mary.

so it means that you held titles of the goods as at 12.31.09 even though they are still housed in BioElectronics' warehouse? Just want to confirm on this piece of info.

Esther

-- On Tue, 3/23/10, Mary Whelan <[REDACTED]> wrote:

From: Mary Whelan [REDACTED]
Subject: Re: eMarkets' transaction with BioElectronics
To: "esther ko" [REDACTED]
Cc: awhelan@bielcorp.com, "Sherri" <smercer@bielcorp.com>
Date: Tuesday, March 23, 2010, 10:51 AM

Dear Esther,

I am sorry for the delay in responding to your request for clarification. I have been out of town and busy with customer requests.

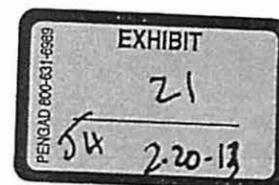
Here is the clarification you requested:

As part of my agreement to develop the veterinary market for BioElectronics products, BioElectronics agreed to drop ship orders to customers on demand. I do not have an FDA/ISO certified warehouse or fulfillment capability. When quantities of the models that are of most interest to the Equine market became available (BioElectronics has discontinued manufacturing these models), I decided to make advance purchases of inventory of those models (the Square patch and the Crescent patch) in order to insure that I had adequate supplies on hand for my customers. I anticipate that the goods will have been sold and shipped to customers by December 31, 2010.

I expect there may be other special orders that I will purchase from BioElectronics, take title to the goods, but keep in their certified warehouse in the future.

Let me know if you need any further clarification.

Mary K. Whelan
President
eMarkets Group
551-200-5586
[REDACTED]



On Mar 18, 2010, at 2:15 PM, esther ko wrote:

> Hi Mary,

>

> I'm the accounting consultant (Esther Ko) who is working with BioElectronics and Andy re: SEC reporting and audit coordination.

>

> As of December 31, 2009, we understand that there was \$215,853 of BioElectronics' products which have already been sold to eMarkets but not yet delivered to eMarkets. Could you please confirm / explain the following for the audit purpose related to the above transaction?

>

> 1) The titles of the above goods have been transferred to eMarkets, even though BioElectronics still physically keep the goods.

>

> 2) It is eMarkets' request to have BioElectronics store the goods. Please kindly provide the business purpose for ordering the goods but not yet have them delivered.

>

> 3) When will eMarkets expect the shipment of the goods? Is there a fixed delivery schedule?

>

> We would appreciate it if you can respond to us at your earliest convenience, because the above information is critical for our audit process.

>

> Best regards,

> Esther

>

>

>

>

>

>

BioElectronics
Bill and Hold Memo
Audit of 2009

From: Andy Whelan, President
To: Work paper

PURPOSE

To identify the amount of bill and hold revenue for the year ended of December 31, 2009 and analyze if such amount is qualified to recognize as revenue according to GAAP.

BACKGROUND

During 2009, the Company recognized bill and hold revenue related to two customers, eMarkets Group, LLC¹ ("eMarkets") and YesDTC, Inc.² ("YES"). The following summarizes the related financial information:

Bill and Hold revenue for the year ended December 31, 2009:				
		eMarkets	YES	TOTAL
Sales	a	215,853	150,000	365,853
COGS		58,679	27,900	86,579
Gross Margin		<u>157,174</u>	<u>122,100</u>	<u>279,274</u>
Collection as at 12.31.09	b	<u>105,018</u>	<u>100,000</u>	<u>205,018</u>
Collection yet to receive	a-b	<u>110,835</u>	<u>50,000</u>	<u>160,835</u>

Berenfeld Note: See customer's accounts receivable confirmation at w/p's 4204.01 and 4204.08 for further documentation of their agreement with the Bill and Hold process.

ACCOUNTING PRONOUNCEMENT

According to ASC 605-10-S99 SEC Materials, SEC summarizes the revenue recognition criteria (as previously discussed in SAB 101), and sets forth criteria under FN17 to be met in order to recognize revenue when delivery has not occurred.

A) General revenue recognition criteria:

¹ eMarkets Group, LLC (eMarkets) is a company owned and controlled by a member of the board of directors and sister of the company's president. The agreement provides for eMarkets to be the exclusive distributor of the Company's line of products to customers in certain countries outside of the United States for a period of 3 years. The distribution agreement lists the prices to be paid for the company's products by eMarkets and provides for the Company to provide training and customer support at its own cost to support the distributor's sales function. The terms and conditions of the agreement are comparable to any independent distributors of the Company.

² YesDTC, Inc. (YES) is BioElectronics' distributor in Japan.



CBH0011842

1. Persuasive evidence of an arrangement exists, FN3
2. Delivery has occurred or services have been rendered, FN4.
3. The seller's price to the buyer is fixed or determinable, FN5 and
4. Collectibility is reasonably assured. FN6

B) Bill and Hold Revenue Criteria:

1. The risks of ownership must have passed to the buyer;
2. The customer must have made a fixed commitment to purchase the goods, preferably in written documentation;
3. The buyer, not the seller, must request that the transaction be on a bill and hold basis. FN18 The buyer must have a substantial business purpose for ordering the goods on a bill and hold basis;

FN18 Such requests typically should be set forth in writing by the buyer.

4. There must be a fixed schedule for delivery of the goods. The date for delivery must be reasonable and must be consistent with the buyer's business purpose (e. g., storage periods are customary in the industry);
5. The seller must not have retained any specific performance obligations such that the earning process is not complete;
6. The ordered goods must have been segregated from the seller's inventory and not be subject to being used to fill other orders; and
7. The product must be complete and ready for shipment.

RATIONALE

See attached table at w/p 4256.02.

CONCLUSION

Based upon the discussion above, the Company determines that it is appropriate to record the bill and hold revenue of \$365,853 and the related COGS of \$86,579 for the year ended December 31, 2009.

DOCUMENT INFO

Name: 4256.02 Bill and Hold Criteria.xls

Comments: Excel files excluded from processing

DOCUMENT INFO

CBH0011845

BIOELECTRONICS CORPORATION
 BILL AND HOLD CRITERIA
 12/31/2009

PURPOSE: In order to determine if the bill and hold arrangements entered into with two customers is appropriate, as noted at w/p 4258.01, management prepared the following criteria based on Topic ASC 650-10-S99.

P
BC

Revenue Recognition Criteria:	eMarkets	YES
1 Persuasive Evidence of an Arrangement Exists	Yes - Final agreement is executed by the properly authorized personnel of the buyer and seller	Yes - Final agreement is executed by the properly authorized personnel of the buyer and seller
2 Delivery Has Occurred or Services Have Been Rendered	No - See Bill and Hold criteria below	No - See Bill and Hold criteria below
3 The Seller's Price to the Buyer is Fixed or Determinable	Yes - The pricing is according to the agreement	Yes - The pricing is according to the agreement
4 Collectibility is Reasonably Assured	Yes - \$105K of \$216K (49%) has been collected as at 12.31.09. Since eMarkets has the exclusive right to sell BioElectronics' products in the Veterinary Market, it is unlikely that eMarkets will default payment which triggers the cancellation of the agreement.	Yes - \$100K of \$150K (67%) has been collected as at 12.31.09. Since YES has the exclusive right to sell BioElectronics' products in Japan, it is unlikely that YES will default payment which triggers the cancellation of the agreement.
Bill and Hold Criteria:		
1 Risks - The risks of ownership must have passed to the buyer	Yes - Confirmed by Mary Whelan, President of eMarkets	Yes - Confirmed by Joe Noel, President of YES.
2 Fixed Commitment - The customer must have made a fixed commitment to purchase the goods, preferably in written documentation	Yes - There is an executed contract and an invoice.	Yes - There is an executed contract and an invoice.
3 Buyer Requested - The buyer, not the seller, must request that the transaction be on a bill and hold basis. The buyer must have a substantial business purpose for ordering the goods on a bill and hold basis	Yes - Confirmed by Mary Whelan, President of eMarkets. She does not have an FDA/ISO certified warehouse or fulfillment capability. BioElectronics has such property and therefore, the transactions were requested to be done on a bill and hold basis.	Yes - Confirmed by Joe Noel, President of YES. As explained in his correspondence, YES' primary market is Japan and the products have to be shipped from an ISO certified warehouse. BioElectronics has such a site but YES does not.
4 Fixed Schedule - There must be a fixed schedule for delivery of the goods. The date for delivery must be reasonable and must be consistent with the buyer's business purpose (e.g., storage periods are customary in the industry)	Yes - Confirmed by Mary Whelan, President of eMarkets. The goods will be shipped by December 31, 2010.	Yes - Confirmed by Joe Noel, President of YES. YES is planned to take all of the 15,000 units by December 31, 2010.
5 Performance Obligations - The seller must not have retained any specific performance obligations such that the earning process is not complete	Yes - There is no additional performance obligation	Yes - There is no additional performance obligation*
6 Goods are Segregated - The ordered goods must have been segregated from the seller's inventory and not be subject to being used to fill other orders	Yes - The goods are packaged and segregated from the remaining of the inventory.	Yes - The goods are packaged and segregated from the remaining of the inventory.
7 Ready for Shipment - The product must be complete and ready for shipment	Yes - All goods are packaged and ready for shipment	Yes - All goods are packaged and ready for shipment

Berenfeld Comments:

Customers confirmed outstanding balance as noted at w/p's 4204.01 and 4204.08, respectively.

(NOTE 1)

See confirmations at w/p 4204.01 and 4204.08.

(NOTE 2)

* There is no additional performance obligations for the seller but there is a contingency listed in the Distributorship Agreement, which said "the rights granted by Company to Distributor are made under the assumption that regulatory clearance to sell the Company's products in Japan can be relatively easily obtained. Should Distributor be unable to gain regulatory clearance within six months of contract execution, this agreement is voidable at the option of Distributor." Per the Company's understanding, our products are classified as level one (with the least amount of scrutiny) in the Japanese regulatory clearance process. Therefore, it is not likely that the Distributor cannot obtain such clearance. In any event that the clearance cannot be obtained, the Company's position is that this clause only applies to future sales and will not impact sales that have already made.

1 Since the risks of loss have passed to the buyers, the inventory is removed from the inventory balance at year-end and recorded as cost of good sold. This will ensure that gross profit is not overstated. The related COGS recorded was \$86,579.

2 The holding period is through December 31, 2010 and will be delivered on or before December 31, 2010. The holding period (or dates of delivery) is reasonable and it is consistent with the buyer's business purpose.

Conclusion: Based on the criteria noted above and the confirmations received from these two customers, the bill and hold arrangements at 12/31/09 appear reasonable.



March 3, 2010

YES DTC, Inc.
Attn: Joe Noel
300 Beale Street
Ste # 613
San Francisco, CA 94105

Our auditors, Berenfeld, Spritzer, Shechter and Sheer LLP, are conducting an audit of our financial statements. Please confirm the balance due our company as of December 31, 2009, which is shown on our records as \$50,000.00.

Please indicate in the space provided below if the amount is in agreement with your records. If there are differences, please provide any information that will assist our auditors in reconciling the differences.

The balance due BioElectronics Corporation of \$50,000.00 as of December 31, 2009 is correct with the following exceptions (if any):

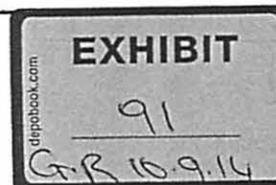
Note: See customer's signature following the confirmation.

Are there any contingencies, amendments, or modifications to the original agreement, side agreements (verbal or written) or expected future concessions under this agreement?

Yes _____ No _____

If "Yes," please explain below in the space provided or attach a separate memo.

4539 Metropolitan Court
Frederick, Maryland 21704
Phone: 866-757-2284 · Fax: 301-874-6935



CBH0011826

Are there any undelivered products or any undelivered services that are to be provided at no charge under this agreement?

Yes _____ No _____

If "Yes," please explain below in the space provided or attach a separate memo.

Are there any termination, cancellation privileges, refund, return rights, rebates, warranty privileges or other provisions under this agreement with us?

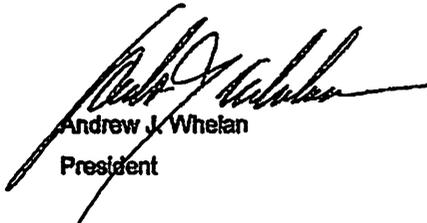
Yes _____ No _____

If "Yes," please explain below in the space provided or attach a separate memo.

Please mail your reply directly to Berenfeld, Spritzer, Shechter and Sheer LLP, 401 East Las Blvd, Suite 1090, Fort Lauderdale, Florida 33301 in the enclosed return envelope. PLEASE DO NOT MAIL PAYMENTS ON THIS BALANCE TO OUR AUDITORS.

Very truly,

BioElectronics Corporation


Andrew J. Wheelan
President

To: Berenfeld, Spritzer, Shechter and Sheer LLP

Signature: _____

Title: _____

Date: _____

4539 Metropolitan Court
Frederick, Maryland 21704
Phone: 886-757-2284 Fax 301-874-6935

CBH0011827

Brian – This is a copy of the email I have sent to you. I am faxing you a confirmation as you have requested.



Joseph Noel
CEO
YesDTC Holdings, Inc.

954-728-3798

From: Brian Leitstein (x1713) <Bleitstein@berenfildllp.com>
To: JOE NOEL [REDACTED]
Sent: Thu, March 25, 2010 1:01:05 PM
Subject: RE: YES DTC, Inc - A/R Confirmation

Mr. Noel,

Thank you for your response. During our audit procedures, we noted that BioElectronics had invoiced YES DTC, Inc. for approximately \$150K during December 2009, but had not shipped the entire order to your Company. It appears that YES DTC, Inc. and BioElectronics have entered into a Bill and Hold agreement and we wanted to verify the following:

1. Has YES DTC, Inc. requested that the transaction be on a bill and hold basis?



Yes - That is correct. The products are bound for Japan. We feel it is better for the products to be held in an ISO certified location as it adds to the perception of quality. We have therefore asked that the units be held at BIEL and then shipped on an as needed basis.

2. Does YES DTC, Inc. plan to take possession of the remaining 15,000 units by December 31, 2010?



Yes - We are actually hoping to place several other additional orders for product. We will require these to also be held at the Maryland location until needed.

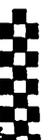
3. Is the storage period at the seller a customary business practice within your industry?



Yes - It occurs often. Unit are often stored at the manufacturer until needed for shipment to the end customer or distribution point. In this case it is even more important due to BIEL's ISO clearance.

In addition, as part of our audit evidence, would it be possible to obtain a signed confirmation from you rather than an email? You can email the signed confirmation to us or fax it to 954-728-3798.

If you have any questions concerning the above, please do not hesitate in contacting me.





March 3, 2010

eMarkets Group
ATTN: Mary K. Whelan

[Redacted]
Caldwell, NJ

Our auditors, Berenfeld, Spritzer, Shechter and Sheer LLP, are conducting an audit of our financial statements. Please confirm the balance due our company as of December 31, 2009, which is shown on our records as \$165,297.42.

Please indicate in the space provided below if the amount is in agreement with your records. If there are differences, please provide any information that will assist our auditors in reconciling the differences.

The balance due BioElectronics Corporation of \$165,297.42 as of December 31, 2009 is correct with the following exceptions (if any):

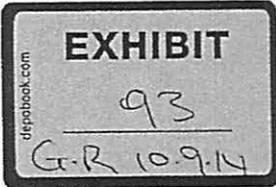
Balance does not reflect credit due to eMarkets Group for PR Services via Marketplace of \$17,188.00 during 2009.

Note: Berenfeld traced a portion of the credit noted above to the accounts payable aging at 12/31/09 at w/p 5102. The difference is deemed

Are there any contingencies, amendments, or modifications to the original agreement, side agreements (verbal or written) or expected future concessions under this agreement? immaterial

Yes No

If "Yes," please explain below in the space provided or attach a separate memo.



4539 Metropolitan Court
Frederick, Maryland 21704
Phone: 866-757-2284 Fax: 301-874-6935

Are there any undelivered products or any undelivered services that are to be provided at no charge under this agreement?

Yes No

If "Yes," please explain below in the space provided or attach a separate memo.

Inventory for eMarkets is stored in Maryland but considered delivered and title is eMarkets.

Are there any termination, cancellation privileges, refund, return rights, rebates, warranty privileges or other provisions under this agreement with us?

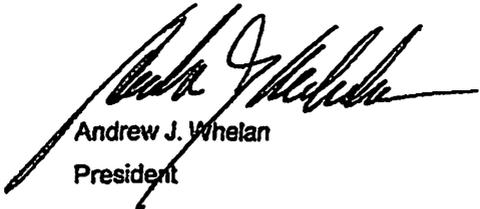
Yes No

If "Yes," please explain below in the space provided or attach a separate memo.

Please mail your reply directly to Berenfeld, Spritzer, Shechter and Sheer LLP, 401 East Las Blvd, Suite 1090, Fort Lauderdale, Florida 33301 in the enclosed return envelope. PLEASE DO NOT MAIL PAYMENTS ON THIS BALANCE TO OUR AUDITORS.

Very truly,

BioElectronics Corporation


Andrew J. Whelan
President

To: Berenfeld, Spritzer, Shechter and Sheer LLP

Signature: Andrew J. Whelan
Title: President, eMarkets Group
Date: 3/25/2010

4539 Metropolitan Court
Frederick, Maryland 21704
Phone: 866-757-2284 Fax: 301-874-6935

CBH0011814