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September 19, 2011

VIA FEDERAL EXPRESS

The Honorable Anil C. Singh
Justice of the Supreme Court
111 Centre Street, Room 541
New York, New York 10013

Re: 3M Co. v. Boulter, No. 651708/2011 (N.Y. Sup. Ct., N.Y. Cty.)

Dear Judge Singh:

This firm represents defendants Lanny Davis, Lanny J. Davis & Associates, PLLC, and Davis-Block LLC (collectively, the “Davis Entities”) in the nearly identical lawsuit filed by 3M in the District of Columbia federal court. The Davis Entities support the request of defendants Harvey Boulter, Porton Capital Technology Funds, and Porton Capital, Inc. (collectively, “Porton”) for a conference with the Court concerning defendant 3M Company’s (“3M”) request to voluntarily dismiss this action.

The best evidence that 3M lacked any good faith basis for bringing suit against the Davis Entities in New York is that 3M’s original complaint did not name them as defendants. That complaint, filed June 19, 2011, relied on conversations and e-mails between defendant Boulter and 3M’s attorney on June 18 and 19, 2011—not any conduct by the Davis Entities—as the alleged “unlawful campaign to blackmail 3M.” *See* Complaint and Demand for Jury, NYSCEF Doc. No. 1, Preliminary Statement at 1. The original complaint’s failure to allege any wrongful conduct by the Davis Entities is nothing less than an admission of bad faith given 3M’s later contention that the Davis Entities, *prior to the filing of 3M’s original complaint*, had “launched with great fanfare” a “barrage of disparaging and defamatory statements” against 3M. *See* First Amended Complaint, filed July 21, 2011, NYSCEF Doc. No. 9, ¶ 1. Surely 3M did not overlook this “barrage” of “defamatory statements” when lining up defendants to sue. Rather, 3M plainly chose not to sue the Davis Entities in June 2011 because there was no legitimate basis for an assertion of personal jurisdiction over them and because the Davis Entities’ statements on matters of public interest—particularly on public health issues having life-and-death consequences—are constitutionally protected.

3M’s decision to sue the Davis Entities a month after filing its original complaint was not based on any change in the law or any new facts, but by 3M’s desire to use this Court and the federal court in the District of Columbia to publicly embarrass and silence the Davis Entities. This is made clear by 3M’s inclusion, in both its amended complaint in this Court and in the

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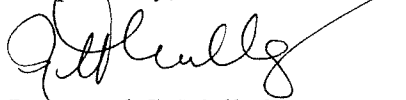
complaint in the D.C. federal court, of flagrantly false, immaterial and impertinent allegations about the Davis Entities' work for other clients—allegations having no bearing whatsoever on 3M or any aspect of the dispute between 3M and Porton. Both complaints contain the deprecating heading, “Lanny Davis: Champion of Anyone Willing to Pay Top Dollar,” under which 3M launches into a 10-paragraph *ad hominem* attack on Mr. Davis and certain of his current and former clients, citing such credible sources as an unnamed “Washington, D.C. lobbyist” who, in a textbook example of the rule of pots and kettles, allegedly “described Davis’ client list as ‘unseemly, ‘tawdry,’ and ‘an illustration of what most of the American people think of as wrong with Washington.’” See Complaint, *3M Company v. Harvey Boulter, et al.*, Case No. 1:11-cv-01527, U.S. District Court, District of Columbia at ¶ 29. Most of what is asserted in these 10 paragraphs is incorrect. 3M’s failure to check the facts—or perhaps even worse, check the facts and make these plainly irrelevant and inaccurate allegations anyway—is rendered all the more offensive by 3M’s decision to leak both these insults and the utterly false and inflammatory charge of “blackmail” to the *Guardian* newspaper in London, and to the nationally-distributed newspaper *Politico* in the U.S., before telling Mr. Davis about, much less serving, the new D.C. lawsuit. This, of course, was by design. By not giving Mr. Davis notice of the allegations against him, he would be more likely to be caught off guard when contacted by the media, and therefore more likely to be the subject of further embarrassment and humiliation.

Equally egregious, unprofessional and indicative of 3M’s bad faith was its decision to file suit in the District of Columbia federal court before seeking and obtaining permission from this Court to withdraw the New York action. As aptly noted by Porton, because 3M was aware that the New York action would likely be dismissed due to lack of personal jurisdiction, 3M filed the identical District of Columbia action without giving Porton or the Davis Entities any notice of their intention to do so, with the result that defendants’ attorneys remained working (and billing) on the second motion to dismiss the pleading that 3M knew it would soon seek to voluntarily discontinue.

Based on the above, the Davis Entities respectfully support Porton’s requesting a conference with the Court, either in person or by telephone, to discuss the most efficient way for the parties to present their respective arguments on the conditions that should be attached to the discontinuance of this action.

Thank you for your consideration in this matter.

Respectfully,



Raymond G. Mullady, Jr.

Enclosure

cc: Lee S. Wolosky, Esq.
Alexander Widell, Esq.
Lanny J. Davis, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

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3M COMPANY,
c/o 3M Office of General Counsel
3M Center
St. Paul, MN 55133-3428

Plaintiff,

Civil Action No. _____

- v -

HARVEY BOULTER,
7th Floor
23 Buckingham Gate
Westminster
London SW1E 6LB

PORTON CAPITAL TECHNOLOGY FUNDS,
Maples and Calder Limited
P.O. Box 309
Ugland House
South Church Street
Grand Cayman, Cayman Islands
KY1-1104

Case: 1:11-cv-01527
Assigned To : Kessler, Gladys
Assign. Date : 8/24/2011
Description: PI/Malpractice

PORTON CAPITAL, INC.,
Maples Corporate Services Limited
P.O. Box 309
Ugland House
South Church Street
Grand Cayman, Cayman Islands
KY1-1104

LANNY DAVIS
c/o Lanny J. Davis & Associates, PLLC
600 13th Street, N.W., Suite 600
Washington, D.C. 20005

LANNY J. DAVIS & ASSOCIATES, PLLC
600 13th Street, N.W., Suite 600
Washington, D.C. 20005

DAVIS-BLOCK LLC
600 13th Street, N.W., Suite 600
Washington, D.C. 20005

Defendants.
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3M COMPANY'S ORIGINAL COMPLAINT AND JURY DEMAND

Plaintiff 3M Company ("3M") files this Complaint against defendants Harvey Boulter, Porton Capital Technology Funds, Porton Capital, Inc. (collectively, the "Boulter Defendants"), Lanny Davis, Lanny J. Davis & Associates, PLLC, and Davis Block LLC (collectively, the "Davis Defendants," and together with the Boulter Defendants, the "Defendants"), upon personal knowledge as to its own actions, and on information and belief as to all other matters, as follows:

I.

PRELIMINARY STATEMENT

1. This lawsuit arises from a conspiracy – memorialized in written statements authored by Defendants – whose purpose was to unlawfully coerce one of the world's largest and most successful companies, 3M, into paying tens of millions of dollars needed by the Boulter Defendants to save them from the consequences of yet another unprofitable investment. Defendants' illicit campaign has included overt threats of reprisals by holders of large blocks of 3M stock; public demonstrations by paid individuals posing as victims of an altogether fabricated public health "issue" allegedly created by 3M's decision to discontinue selling a product no one wanted; multiple press conferences aimed at disseminating false and defamatory information; and a constant stream of media advisories that flooded the airwaves with defamatory statements about 3M and its CEO, George Buckley ("Buckley"). Specifically, the public relations aspect of the pressure campaign – launched with great fanfare on May 11, 2011, by Defendants' agent and self-proclaimed public relations expert, defendant Lanny Davis ("Davis") – has featured a barrage of disparaging and defamatory statements disseminated in domestic and international forums, and through every imaginable medium. It has included multiple media events, an interactive website, and various written commentaries asserting damaging and knowingly unfounded allegations that 3M put the health of victims of methicillin-

resistant *Staphylococcus aureus* ("MRSA") at risk when 3M chose to cease its multi-year attempts to market an MRSA screening test that was not commercially viable.

2. When these tactics failed to yield the financial windfall Defendants sought, they resorted to making extortionate demands upon 3M. On June 18, 2011, Defendants Harvey Boulter and Davis acted together to make these demands by sending to 3M's counsel an unsolicited e-mail in which Boulter claimed that the British Minister of Defence had instructed Boulter to inform 3M that if it did not pay over \$30 million, the Minister of Defence would interfere with 3M's ability to do business with the British government. He also threatened that the British government would reconsider the recently announced call to knighthood of Buckley. This crude extortion attempt threatened both to embarrass Buckley and to tarnish 3M's most valuable asset, its corporate brand.

3. 3M brings this lawsuit to: (i) vindicate its rights; (ii) uncover the true extent of the damage done to 3M by Defendants' defamatory campaign and efforts to interfere with 3M's business interests in the United Kingdom (the "U.K."); (iii) pursue those who aided, abetted, conspired, or participated with Defendants in any manner relative to their defamatory media campaign and the extortionate demands; and (iv) recover all damages caused by Defendants' wrongful acts.

II.

PARTIES

A. Plaintiff

4. Plaintiff 3M Company is a Delaware corporation with its principal place of business in Minnesota. Its principal mailing address is: 3M COMPANY, c/o 3M Office of General Counsel, 3M Center, St. Paul, MN 55133-3428.

5. Defendant Harvey Boulter is a director of defendant Porton Capital Technology Funds and the Chief Executive Officer of defendant Porton Capital, Inc. He maintains

residences in the U.K. and Dubai. His principal mailing address is: **Harvey Boulter**, 7th Floor, 23 Buckingham Gate, Westminster, London SW1E 6LB.

6. Defendant Porton Capital Technology Funds ("Porton Technology") is an entity organized under the laws of the Cayman Islands which does business in the U.K., Dubai, and other jurisdictions internationally. The company's principal mailing address is: **PORTON CAPITAL TECHNOLOGY FUNDS**, Maples and Calder Limited, P.O. Box 309, Umland House, South Church Street, Grand Cayman, Cayman Islands KY1-1104.

7. Defendant Porton Capital, Inc. ("Porton Capital") is an entity organized under the laws of the Cayman Islands which does business in the U.K., Dubai, and other jurisdictions internationally. The company's principal mailing address is: **PORTON CAPITAL, INC.**, Maples Corporate Services Limited, P.O. Box 309, Umland House, South Church Street, Grand Cayman, Cayman Islands KY1-1104.

8. Defendant Lanny J. Davis is an individual who works in Washington, D.C., and is the principal of at least two Washington, D.C. businesses having their principal places of business in Washington, D.C. Davis portrays himself as a "crisis manager and public legal advocate" who uses the media to attempt to obtain positive results for his clients when those results cannot be achieved in court. His principal mailing address is: **LANNY DAVIS**, c/o Lanny J. Davis & Associates, PLLC, 600 13th Street, N.W., Suite 600, Washington, D.C. 20005.

9. Defendant Lanny J. Davis & Associates, PLLC is a professional services firm organized under the laws of the District of Columbia and having its principal place of business in Washington, D.C. It was formed by Davis upon his departure last year from the law firm McDermott Will & Emery. At that time, Davis stated that "[s]ince legal issues frequently overlap with media and legislative issues, through my new law firm and in cooperation with other non-legal entities I hope to organize or affiliate with in the future, I will use all of these

three disciplines, as needed, to solve client problems.” Davis is a principal of Lanny J. Davis & Associates. Its principal mailing address is: **LANNY J. DAVIS & ASSOCIATES, PLLC**, 600 13th Street, N.W., Suite 600, Washington, D.C. 20005.

10. Defendant Davis-Block LLC is an entity organized under the laws of the District of Columbia and having its principal place of business in Washington, D.C. Lanny J. Davis is a principal of Davis-Block LLC. Its principal mailing address is: **DAVIS-BLOCK LLC**, 600 13th Street, N.W., Suite 600, Washington, D.C. 20005.

III.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1332 and 1367. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332, *i.e.*, the amount in controversy is greater than \$75,000.

12. This Court has personal jurisdiction over all defendants because they are entities organized under the laws of the District of Columbia (Lanny J. Davis & Associates, PLLC, and Davis Block LLC); because they transact substantial business in the District of Columbia (the Davis Defendants); or because they are foreign entities acting in the District of Columbia by and through, and in conspiracy with, the Davis Defendants as their agents and co-conspirators (the Boulter Defendants). In addition, this Court has personal jurisdiction over all Defendants because jurisdiction would exist pursuant to D.C. Code Sections 13-423(a)(3) and (a)(4) on the grounds that all Defendants have caused tortious injury by acts and omissions within and without the District of Columbia, including: extorting and blackmailing 3M and its chairman and CEO by threatening to deprive 3M of business opportunities and causing the loss of a knighthood that had been promised to Buckley by the Queen of England, wrongfully interfering with 3M’s prospective business opportunities and relationships; and defaming and disparaging 3M in its business in order to damage its reputation and goodwill, and ultimately to cause economic

damage to its good will. Jurisdiction is also proper in this Court because the Davis Defendants are persons domiciled in, and maintain a principal place of business in the District of Columbia.

13. As detailed below, Davis – acting on behalf of the Boulter Defendants and for the benefit of Defendants – orchestrated the conspiracy from Washington, D.C. Indeed, Davis’s offices in Washington, D.C. served as the “nerve center” of a campaign to coerce and intimidate 3M into paying Defendants tens of millions of dollars under the guise of “settling” a lawsuit that was then pending in the U.K. between the Boulter Defendants and 3M. Among other things, Davis made telephone calls from those Washington, D.C. offices to 3M’s counsel to facilitate the campaign of intimidation, set the stage for Boulter’s improper threats and assisted Boulter in doing so. Davis also used his Washington, D.C. offices as a base from which to issue multiple disparaging and false press releases about 3M and Buckley for the purpose of defaming them in the public eye and increasing pressure on 3M and its CEO to induce 3M to pay tens of millions of dollars by damaging 3M’s good will. To that end, Davis originated from his Washington, D.C. offices a so-called “citizen’s petition” to the FDA based on those same unsupportable allegations, and orchestrated public demonstrations by purported MRSA “victims” – all with the intent of cowing 3M into settling the U.K. litigation on unfair terms that had nothing to do with the merits of the case. In short, Davis was the “spider in the web” of the unlawful conspiracy that united Defendants’ wrongful acts.

14. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a), (c) and (d) because a substantial part of the events giving rise to the claims stated herein occurred in the District of Columbia; because at least one defendant is subject to personal jurisdiction in this district; and because the Boulter Defendants are aliens.

IV.

FACTUAL BACKGROUND

A. 3M And Its Business

15. 3M was founded in 1902 in Two Harbors, Minnesota, by five businessmen hoping to capitalize on a mining mineral used for grinding wheels. Their persistence paid off and they began manufacturing sandpaper in 1905. The company moved to the St. Paul area in 1910. In 1916, the company paid its first dividend of 6 cents a share.

16. Today, 3M is a company that applies technologies – often in combination – to satisfy a wide array of consumer needs. To that end, the company produces literally thousands of products and is a leader in numerous markets. In particular, 3M competes in such varied fields as health care, highway safety, office products, abrasives, and adhesives. Among 3M's more notable products are Scotch[®] Magic TM Tape, Post-it[®] Note Pads, and Nexcare TM Adhesive Bandages. 3M's goal is to make life better for its customers.

17. The engine that drives 3M's long-term success is its commitment to innovation. In the early 1920s, 3M introduced the world's first waterproof sandpaper. In 1925, 3M invented masking tape – an innovative step toward diversification and the first of many Scotch brand pressure-sensitive tapes. 3M then invented Scotch[®] Cellophane Tape for box sealing and soon hundreds of practical uses were discovered. In the early 1940s, 3M dove into the production of defense materials for World War II. Thereafter, new ventures such as Scotchlite[™] Reflective Sheeting for highway markings, magnetic sound recording tape, filament adhesive tape, and offset printing plates were started. In the 1950s, 3M introduced the Thermo-Fax[™] copying process and Scotch-Brite[®] Cleaning Pads. In the 1960s, 3M developed photographic products, carbonless papers, overhead projection systems, and a rapidly growing health care business of medical and dental products. In the 1970s and 1980s, 3M expanded into pharmaceuticals, radiology, and energy control. In 1980, 3M introduced Post-it[®] Notes, which changed people's

communication and organization behavior forever. In the 1990s, 3M continued to develop an array of innovative products, including immune response modifier pharmaceuticals; brightness enhancement films for electronic displays; and flexible circuits used in inkjet printers, cell phones, and other electronic devices.

18. Today, 3M has more than 35 business units, organized into six businesses divisions – namely: Healthcare; Consumer and Office; Display and Graphics; Electro and Communications; Industrial and Transportation; and Safety, Security and Protection Services. 3M employs more than 80,000 persons globally, with operations in more than 65 countries, and sells its products in nearly 200 countries. In particular, 3M presently employs 7,350 researchers worldwide. In 2010, 3M had global sales of \$27 billion.

19. Importantly, 3M traditionally enjoyed excellent relationships with governmental authorities in the U. K. Based on those relationships, 3M has done business with, and had expected to do more business with, many of those governmental authorities. Unfortunately, defendants interfered and threatened to further interfere with 3M's business relationships by depriving it of business opportunities and damaging the good will of both 3M and Buckley.

20. Throughout its history, 3M has maintained an unwavering commitment to act with honesty and integrity in everything it does. Indeed, 3M has an enviable record of achievement in corporate responsibility, and continually strives to improve its performance and address ongoing challenges and opportunities. In 2010, 3M and the 3M Foundation donated approximately \$59 million in cash and products to educational and charitable institutions.

B. George W. Buckley, 3M's Visionary Chairman/CEO

21. George Buckley is the Chairman of the Board, President, and CEO of 3M. Buckley was born and raised in Sheffield, England and is a dual citizen of both the U.S. and the U.K. He has a Ph.D. in electrical engineering. He is a scientist and the inventor of several patents. Having overcome extreme poverty as a child, Buckley has become a success in both

business and life. Under his leadership, 3M has thrived not only economically, but in fulfilling its mission of community involvement and civic leadership.

22. In recognition of his business accomplishments and his contributions to his alma mater, the University of Huddersfield, it was announced in June 2011 that Buckley would be invested by Queen Elizabeth II with the rank of Knight Bachelor. The British Consul General Robert Chatterton Dickson described Buckley and his accomplishments as follows: "As Chairman of the Board, President and CEO of 3M, Dr. Buckley, now Sir George, has been a leader in the American and Midwestern business community for decades. Throughout his career he has maintained close ties to the U.K. and a commitment to educating future generations as exemplified by his involvement with the University of Huddersfield. Sir George represents excellence in business and learning. . . ."

C. The Boulter Defendants And Their Business

23. Boulter is a Director of Porton Technology, an investment fund that, through five sub-funds, makes investments in a number of areas, including life science ventures. Boulter is also the Chief Executive Officer of Porton Capital, the investment manager for Boulter's funds.

24. It is reported that Boulter's funds were created around a strategy of partnering with the U.K. government, including the Ministry of Defence. One of Porton Technology's investments was an ownership interest in Acolyte Biomedica Limited ("Acolyte"), a British Company. Ploughshare Innovations Limited ("Ploughshare"), an entity controlled by the British Ministry of Defence, was a minority investor in Acolyte. Acolyte was in the business of developing and marketing various products whose aim was to detect certain dangerous microorganisms.

25. An important part of Boulter's strategy for his funds has been to invest with the Ministry of Defence in its attempts to commercialize certain intellectual property that it owns. Unfortunately for Boulter, he and his funds are under tremendous financial pressure from

investors to dramatically improve performance. As set forth herein, that pressure caused Boulter to commit desperate, unlawful acts, in an effort to salvage what had become a bad investment in Acolyte for all parties involved.

D. Lanny Davis: Champion of Anyone Willing To Pay Top Dollar

26. Davis is the principal of Lanny J. Davis & Associates, a self-styled public relations and law firm located in Washington, D.C. that Davis formed in 2010 after departing from his prior firm, McDermott Will & Emery LLP. According to the firm's website, Davis offers to provide to his clients a "unique combination" of legal and "crisis management" services.

27. Davis' approach to assisting clients in managing a crisis is to step outside of the facts and merits of any associated legal disputes, and to concoct a media strategy aimed at giving his client an advantage in the court of public opinion. In his own online marketing materials Davis declares that "there are often no purely legal solutions to legal problems," and that "the rules of media and crisis management have no borders."

28. Indeed, one of Davis' "no borders" marketing points is that, because he is an attorney, he can shield unsavory facts and conversations behind the attorney-client privilege. As Davis says on the Lanny J. Davis & Associates website, "Davis – along with other attorneys involved in sensitive litigation and regulatory matters – will also be able to ensure the ongoing confidentiality protection afforded through attorney-client privilege." He goes on to say, "I have learned over the years that having the protection of the attorney-client privilege . . . is essential to developing effective messages"

29. Davis has been described in *The New York Times* as "a kind of front man for the dark side, willing to take on some of the world's least noble companies and causes." One Washington, D.C. lobbyist described Davis' client list as "unseemly," "tawdry," and "an illustration of what most of the American people think of as wrong with Washington."

30. For example, beginning in December 2010, Davis accepted a \$100,000-per-month retainer to represent Laurent Gbagbo, the former president of the Ivory Coast who lost an election in late 2010 but refused to relinquish power. It was widely reported in the media that, after losing the election, Gbagbo and his supporters had begun violently suppressing opposition protests by killing or abducting scores of opposition marchers, and had instituted death squads to deal with dissent.

31. In response, Davis called a press conference in which he said, among other things, that “Mr. Gbagbo opposes violence.” This public relations event prompted observations that Davis’ spin “does not square with the known facts” and subjected Davis to broad criticism in the press. Ultimately, Davis was forced to abandon an earlier statement that “there is substantial documentary evidence that President Laurent Gbagbo is the duly elected president” of the Ivory Coast. Eventually, amid a firestorm of public criticism, Davis resigned from the representation – but not before pocketing a reported \$150,000.

32. Davis’ willingness to represent foreign dictators with dismal records of human rights abuses is well known. In 2010, he also accepted a \$1 million-per-year contract to represent Teodoro Obiang, the 30-year president of Equatorial Guinea. Obiang was well known in human rights circles, where Human Rights Watch had described his regime as “one of the most abusive and corrupt in the world.” According to news reports, in June 2010, Davis declared himself to be Obiang’s “reform counsel” and then shuttled to South Africa to conduct a press conference at which he promoted Obiang’s reformed policies because, according to Davis, “the president [Obiang] wants to turn the page” and would make his country “like the United States in its values, its democracy.”

33. Only a few months later, however, in October 2010, Davis’ supposedly-reformed client, Obiang, was cited by the human rights watchdog Amnesty International for causing his regime to abduct, torture, and execute his political opponents.

34. In 2009, Davis represented supporters of the illegal coup in Honduras that installed Roberto Micheletti as de facto leader of the country. There, Davis' version of "crisis management" was to publish a press release declaring that "democracy and civil liberties are flourishing in Honduras" under the Micheletti regime. Davis made this statement just days after Micheletti's troops opened fire on protesters and just one day before the regime arrested and deported foreign journalists.

35. Davis' track record, therefore, reveals his willingness to take on whatever client is willing to pay him top dollar, apparently with little concern for whether his public statements are, in fact, true. It now appears that Davis' approach was precisely what the Boulter Defendants sought in their campaign against 3M.

E. The Underlying Dispute—3M Acquires Acolyte And An MRSA Screening Test Product In Order To Expand Into A Potential New Market.

36. As part of its plan to expand into the global in vitro diagnostics market, 3M caused 3M U.K. Holdings Limited – a wholly-owned subsidiary of 3M – to acquire all of the outstanding shares of Acolyte. Acolyte's only commercially available product at the time was BacLite MRSA ("BacLite"), a device that allegedly allowed hospitals and clinics to screen patients for methicillin resistance *Staphylococcus aureus* bacteria MRSA. While staph bacteria are ubiquitous in daily life, MRSA and related organisms, commonly known as "superbugs," are of particular concern to medical professionals. Those superbugs are resistant to treatment from conventional antibiotics and can spread quickly when introduced into hospitals. The goal of screening tests such as BacLite is to identify carriers of MRSA and quarantine them before the bacteria can spread to the general patient population.

37. Acolyte sold 3M on the prospects of BacLite by touting its ability to fill a market niche existing in early 2007. Competing screening products then on the market were either much cheaper but slower (*i.e.* chromogenic agar tests cost \$2-3 per test, but took 48-72 hours), or much faster but far more expensive (*i.e.* genetic-based PCR tests cost approximately \$25 or more per

test, but provided results within 1-2 hours). Acolyte represented to 3M that BacLite was an easy-to-use test that could obtain results in 5 hours at a cost of only \$12-15 per test, and that in clinical trials it had achieved diagnostic sensitivity and specificity in acceptable ranges of 95.2% and 93.2%, respectively.¹

38. In acquiring Acolyte, 3M intended to utilize its strong global presence and leadership in the medical products field to exploit that niche – specifically an MRSA screening test that was faster than traditional culture-based chromogenic agars but less expensive than genetic PCR screening methods.

F. Unfortunately, BacLite Is A Commercial Failure In The Global Market.

39. Immediately after the acquisition, and in fulfillment of its obligations under provisions of the Sales and Purchase Agreement (“SPA”) (which granted Acolyte’s selling shareholders (the “Vendors”) an opportunity to receive conditional earn-out payments on net sales of BacLite through December 2009²), 3M not only continued to actively market BacLite in the U.K., but also began marketing in the rest of the European Union (“E.U.”), Canada, Australia, and the United States (“U.S.”). In addition, 3M obtained an import license for BacLite’s distribution in Australia, and began diligent efforts to gain similar approval from U.S. and Canadian authorities.

40. As is the case with most medical and pharmaceutical products, BacLite could not be sold in the U.S. without approval from the Food and Drug Administration (“FDA”). The key

¹ The sensitivity of a screening test measures how accurate it is at identifying that a sample actually contains MRSA, while its specificity indicates how accurate it is at identifying that a sample is negative for MRSA. Thus, a sensitivity rating of 95.2% would mean a test gave “false negative” readings only 4.8% of the time, while a specificity rating of 93.2% would mean it only gave a “false positive” reading 6.8% of the time.

² Specifically, the SPA provided that Vendors would receive an amount equal to all of the Net Sales that 3M made of BacLite from February 2007 through December 31, 2009, less certain adjustments. These payments were, of course, not guaranteed and expressly contingent upon 3M’s success in generating sales.

to obtaining FDA approval for BacLite was the successful completion of clinical trials demonstrating support for the product's claims relating to clinical sensitivity, specificity, and positive and negative predictive values, as well as data demonstrating the product's performance against an acceptable comparator/reference method.

41. Results from these trials, conducted at prestigious hospitals around the U.S., showed sensitivity and specificity percentages alarmingly below those claimed by Acolyte before 3M's acquisition. Sensitivity percentages at times were as low as 50%, meaning that BacLite would be about as accurate as a coin flip at determining whether a patient carried MRSA.

42. Customer trials of BacLite in other parts of the world, such as Hong Kong and France, also reported lower than expected performance.

43. 3M spent months trying to root out the cause of these surprising results, but with little success. Instead, 3M came to the disappointing conclusion that BacLite, in its current form, did not meet the performance expectations that Acolyte had claimed for it prior to the acquisition.

44. In the meantime, despite 3M's extensive marketing efforts in the U.K. and the E.U., it became apparent that the product was becoming rapidly obsolete in the face of newer, more robust competitors.

45. Ultimately, 3M determined that BacLite was not commercially viable because: (i) it was not "robust," meaning that it was not capable of meeting its claimed performance parameters in a real world environment; (ii) it was overly complicated, involving over a dozen manual steps, thus increasing the chances of error in busy clinical environments and requiring highly-skilled personnel to operate it; (iii) it was too slow to meet current market demands, even if it could be run in 5 hours, as Acolyte claimed; (iv) the test could not actually be run in 5 hours; (v) it was doubtful the test could routinely achieve the sensitivity and specificity ratings stated by

Acolyte prior to the acquisition; and (vi) by early 2008, the market niche 3M expected to exploit with BacLite had unexpectedly narrowed because the cheaper chromogenic agar tests had gotten faster and the faster PCR tests had gotten cheaper.

46. In sum, 3M came to the reasonable conclusion that BacLite: did not perform as Acolyte had claimed; was obsolete; would never be commercially viable in the U.S., Canada, or Australia in the form in which it was sold to 3M; and that its prospects in the E.U. and the U.K. were rapidly eroding.

G. 3M Seeks Vendor's Consent To Cease The BacLite Business.

47. In light of the above facts, and pursuant to its rights under the SPA, in July 2008, 3M sought the Vendors' consent to allow 3M to stop marketing BacLite before December 2009. In return, 3M offered to pay the Vendors the amount of net sales that 3M expected to actually achieve from that point through December 31, 2009. In effect, 3M at that time offered to pay the earn-out payments that would have been otherwise due to the parties who are now claimants in the London litigation which 3M believed to be less than \$2 million. Under the SPA, the Vendors' consent to that request was not to be unreasonably withheld.

48. Unfortunately, the Vendors refused to consider 3M's request. Instead, they demanded £41 million (at current exchange rates, about \$66.8 million), an amount bearing no rational relationship to what could have been achieved pursuant to the earn-out under any circumstances. The Vendors' disproportionate and unreasonable demand destroyed any chance for an amicable resolution.

H. Defendants' Campaign Of Harassment And Intimidation Begins: Boulter Threatens Retaliation If 3M Does Not Agree To Resolve The Dispute On His Terms.

49. Fully aware that the terms of the SPA prevented them from realizing an additional return on their investment in Acolyte anywhere near the amounts they were demanding from 3M, the Boulter Defendants looked for other ways to force 3M to pay them and the other U.K. Claimants tens of millions of dollars – an unjustifiable windfall. Unfortunately, the tactics

chosen by the Boulter Defendants included overt threats of economic harm, a defamatory media campaign and blackmail.

50. In what we now know was the beginning of Defendants' extortion campaign, Boulter contacted his friend Robert L. Hamburger ("Hamburger"), who allegedly has influence over several groups of investors that purportedly hold large blocks of 3M stock. On August 30, 2008, Hamburger sent an e-mail to Buckley, which contained in its text a copy of an e-mail from Boulter to Hamburger. In the e-mail, Hamburger and Boulter told Buckley that they "have one investor group in [Porton Capital, Inc.] who . . . control[s] a very material position of 3M stock." According to Hamburger and Boulter, they "informed" the investors of 3M's position regarding Acolyte, and those investors "have taken a view that 3M is a dishonest party and have threatened to sell their entire position."

51. Hamburger and Boulter stated that the investors controlled so much 3M stock that it constituted an amount greater than "high multiples" of \$100 million. Boulter and Hamburger threatened that these foreign-based investor groups were "propping up various U.S. sectors right now," implying that 3M's stock price was dependent on those groups. Boulter and Hamburger pressed the urgency of their threat by stating that their unnamed investor groups could not be relied on to "do it in a western rational way," and that the situation was "a recipe to get a lot worse rapidly." According to Hamburger and Boulter, "3M's actions [in discontinuing BacLite] have created one hell of a storm."

52. Later that same day, Boulter sent a second e-mail in which he sharpened his earlier threats by declaring that it was "essential that 3M do nothing to further escalate this situation" because it had already "triggered a rather unexpected chain of events." Boulter warned that the investor groups, who he claimed were threatening to sell off massive quantities of 3M stock, were a volatile group that was "understandably not very happy" and were "simple

