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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

QUANTLAB TECHNOLOGIES LTD. . C.A. NO. H-09-4039
(BVI), et al . HOUSTON, TEXAS
VS. .
OCTOBER 31, 2013
VITALIY GODLEVSKY, et al . 1:00 P.M. to 6:45 P.M.

AFTERNOON SESSION
TRANSCRIPT of EVIDENTIARY HEARING
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

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1 PROCEEDINGS

2 *THE COURT:* Okay. I think it's your turn at bat
3 again.

4 *MS. MEDERSON:* Thank you, Your Honor. Your Honor,
5 just -- I didn't get through all my points before, about both
6 the sanctions motion and so I want to make a couple more points
7 and respond to some of Mr. Kaplan's points. First, you know,
8 it's our position that there's no way we can be sanctioned in
9 this court. We're not a party to this lawsuit. We're not
10 subject to the personal jurisdiction. We haven't violated any
11 court orders against us, and we haven't operated in bad faith.

12 The only action we did take was seek to protect
13 our information, and we did all of that in good faith.
14 Mr. Kaplan claims we slept on our rights for four weeks, but
15 basically Singletick learned that its information was subject
16 to discovery without it being protected, and so it had to hire
17 counsel, analyze its legal rights and take action, which I
18 think four weeks is reasonable for all of that. And so that
19 leads me to the protective order. And we have tried to work
20 out compromises with Quantlab. They never offered any
21 counterproposals back to us. They never offered that won't
22 work, how about we try this instead. The only time --

23 *THE COURT:* Tell me in particular what -- I mean, the
24 defendants signed off on the previous protective order, right?

25 *MS. MEDERSON:* Correct.

1 *THE COURT:* Well, why is what was good enough for them
2 not good enough for Singletick?

3 *MS. MEDERSON:* Because, again, as I think I stated
4 this last time I was here, first of all, I, in all the IP cases
5 that I have done and trade secret kind of cases, I never agree
6 to protective orders with in-house attorneys under attorneys'
7 eyes only. And we've talked about this. It has nothing to do
8 with the individual attorneys.

9 *THE COURT:* I understand it's not personal to them.

10 *MS. MEDERSON:* Yes, but this is a competitor looking
11 at Singletick's information. And, again, it's this odd thing
12 where they have the computers. They have all Singletick's
13 information. And there's actually the code and the technical
14 stuff on there, which I wouldn't understand. And I understand
15 that in-house counsel wouldn't understand that either. I guess
16 then my perspective is, is, well, if you can't understand it,
17 why do you even want to have access to it. And then there's
18 the other information --

19 *THE COURT:* That kind of proves too much, doesn't it?
20 Then there would be no exchange of discovery in any trade
21 secret case.

22 *MS. MEDERSON:* Well, to outside counsel, but, I mean,
23 honestly, when you get to that sort of very technical data --

24 *THE COURT:* But if in-house counsel can't understand
25 it, how is outside counsel going to understand it?

1 *MS. MEDERSON:* Because the reality is, at least when
2 I've dealt with it, is either you have a particular IP attorney
3 who can understand it or you turn it over -- and/or you turn it
4 over to experts, who also then have the ability to understand
5 it. So there are usually attorneys that have specialties in
6 these areas that can evaluate that information. And so either
7 they're in-house and can understand it, which is of extra
8 concern, because this is a Singletick competitor, who then has
9 that information and this case goes -- this case ends,
10 practice -- you know, business goes on and they still do know
11 this information about a competitor. So that's one concern
12 about the protective order.

13 *THE COURT:* That must have weighed heavily when you
14 decided to have Godlevsky and Kuharsky transfer the computers
15 to you, right?

16 *MS. MEDERSON:* That was certainly part of it. The
17 other part, again, Your Honor --

18 *THE COURT:* Did you get from them anything like a hold
19 harmless, that they would be responsible for any attorney's
20 fees or costs you had to absorb relating to this ongoing
21 litigation? I think I would have done that.

22 *MS. MEDERSON:* Your Honor, I had never focused on
23 that. I know there are some indemnity provisions in the
24 shareholder's agreement, but that has never been part of my
25 task or what I've looked at. So I don't know. I can't speak

1 to that.

2 The other concern is, normally when you are a
3 party to litigation, you do have -- there's checks and
4 balances. You can work out agreements with the other side,
5 because in theory you're both exposing your most vulnerable
6 information to the other side. So there is -- you can check,
7 you know, and you have a counter to whatever they claim to have
8 found with your information. You can say, well, no, our
9 experts have found the opposite. You can also reach agreements
10 as to how the information should be stored, how many copies of
11 it can be made, what kind of transparency as to the analysis is
12 done, you know, who saw the information, when, where, what
13 information did they see. Those are normally the sort of
14 things that when I'm a party to litigation, I can work out with
15 the other side. In this case we're not a party. As far as I
16 can tell, the protective order doesn't address any of that.

17 *THE COURT:* That's easily fixed. That's easily fixed.
18 We could add one sentence.

19 *MS. MEDERSON:* Well, and that would be part of our
20 motion for protective order, Your Honor, is that obviously we
21 would want reports -- I appreciate Quantlab, I think, in their
22 response offered to share --

23 *THE COURT:* Slowly now, slowly.

24 *MS. MEDERSON:* -- offered to share with us any
25 ultimate reports of what they found, but we would actually

1 want, in addition, reports as to what they did with our
2 information, again, who saw it, what information they were
3 accessing, when, what copies are made of this information,
4 where it's stored. We would want that sort of transparency.

5 *THE COURT:* Okay.

6 *MS. MEDERSON:* And then let me see, the only other
7 thing, too, I think I wanted to comment on is that, again, this
8 is both the sanctions and the protective order. I feel like
9 the plaintiffs have done a very good job of conflating the
10 defendants and Singletick. Again, Singletick didn't have legal
11 representation until they retained us. Singletick is a
12 separate entity with separate rights, and those rights haven't
13 been represented before this Court at all. That's what we were
14 seeking all along, is to have some sort of representation. And
15 so I even think it was -- I object to the trial brief yesterday
16 that was filed -- or the memorandum, where it's against -- the
17 motion against the defendants and yet they lump us into that
18 and they also ask for recovery against us in that motion, which
19 I think is improper and I would object to that as well.

20 *THE COURT:* Thank you. Thank you.

21 Let's see, anybody -- any one of the attorneys
22 who has not yet spoken wish to have a turn? No? Okay. It's
23 your turn again, then, Mr. Kaplan. We need to get to witnesses
24 sometime soon.

25 *MR. KAPLAN:* Absolutely. Let me just say that what

1 we're here about right now is Singletick. We're here about
2 willful violations of a court order. And you just can't be
3 play hot potato with the computers and say, "We're giving these
4 computers to somebody outside the jurisdiction," and then
5 they'll get away with it. You can't do that. And so
6 Singletick basically said, I'm going to take the hot potato and
7 I'm going to wait until the last second to do anything about
8 it. All these ideas, all these compromises, all these issues,
9 never heard a thing about them. It was a motion to quash on
10 August 16th.

11 Now, what really has happened is, first of all,
12 we've always said to them, we've said here, we've said in
13 Wisconsin, that they can mark things just like any party would
14 under the protective order and it will be treated that way.
15 Furthermore, we are willing, and we've said this, but I don't
16 think they heard us, that if they have code that they mark as
17 attorneys' eyes only, that will be kept in the office of
18 outside counsel. Now, that's what we've always been willing to
19 do. But, you know, it's they can't take anything reasonable
20 for an answer. What they want is ways to keep our experts and
21 our in-house counsel from helping us handle the case, and
22 that's just not allowable.

23 *THE COURT:* Okay.

24 *MR. KAPLAN:* All right. Now, I do want to address
25 just for a second some of the accusations or allegations that

1 have been made in this fairly overheated exchange. And when I
2 say you don't get to violate a court order, I'm not saying the
3 order is wrong and this stuff is irrelevant. You've already
4 made that decision. You already said this stuff is relevant.
5 It must be produced. So that's a decision we're past, and
6 rearguing, well, it really isn't relevant doesn't get us
7 anywhere. If that's true, then no court order matters, because
8 somebody can always contest it again, which they didn't do.
9 They just violated it.

10 Now, there's a lot of arguments that we have
11 falsely characterized the shareholder agreement. One of the
12 things Ms. Mederson continues to do is mischaracterize
13 Article 8. Well, rather than you listening to lawyers argue
14 again about what it says, it's in the record. It's Exhibit K
15 this time to I think it's Docket 448 -- no, I'm sorry, to
16 Docket 449. And Section 8.6 talks about -- which we've had up
17 on the screen, talks about -- or 8.2 says the core intellectual
18 properties in their protective custody. 8.6 says nothing
19 restricts their ability to pursue business ventures, nothing
20 can restrict their ability to use the core intellectual
21 property or to assign it, as long as they don't compete with
22 Singletick.

23 Another mistaken accusation that was made just a
24 minute ago by Mr. Holmes is that we're just alleging, without
25 evidence, that Singletick has an interest in the litigation.

1 Also not true. The shareholder agreement, Exhibit C, 6.3, says
2 that if any of the managers, Godlevsky or Kuharsky, get a
3 qualified litigation award, the manager gets some of that
4 money. Contingency legal fees can be paid by the manager to a
5 respective counsel, after which up to 50 -- and use up to
6 50 percent --

7 *THE COURT:* Slowly, slowly. Use up to 50.

8 *MR. KAPLAN:* The manager, that is, Godlevsky or
9 Kuharsky, can use up to 50 percent of it. 6.3(b) -- and,
10 again, it's in your record. It's in the court's record --
11 says, "The remaining portion of the qualified litigation award
12 shall be applied towards repayment of the respective Hillgrove
13 loan and the balance of funds shall be provided to the company
14 under the manager loan essentially on the terms of the
15 Subjectiva loan." So they do have an interest in the lawsuit
16 and it's been undisclosed.

17 Now there's also been an argument that somehow no
18 one kept the secret from us that Singletick was in the lawsuit.
19 First of all --

20 *THE COURT:* That Singletick is paying --

21 *MR. KAPLAN:* That Singletick had an interest --

22 *THE COURT:* Yeah.

23 *MR. KAPLAN:* -- or that these individuals intended to
24 work there. We never heard the word "Singletick."

25 August 16th --

1 *THE COURT:* You heard about a company being formed,
2 though, did you not?

3 *MR. KAPLAN:* What's that?

4 *THE COURT:* You did hear about a company being formed?

5 *MR. KAPLAN:* No. We heard -- and, you know, 18
6 lawyers could come up and testify. We heard that they wanted
7 to go in this business. They wanted to go in this business. I
8 challenge them to show that they ever -- and we were told it
9 was not a competitor. But rather than take our word for it on
10 that, I challenge them to show us that at any time before
11 August 16th we got a document that had Singletick in it. For
12 example, all these shareholder agreements, which Ms. Mederson
13 concedes were heavily drafted and it was finally signed
14 July 1st, 2013, no document production in any of those
15 communications. We just didn't hear about Singletick.

16 On the 16th, on that day, Dr. Kuharsky's
17 supplemental answers to interrogatories identified Singletick
18 as an employer. As you recall from prior hearings, Mr. Holmes
19 always objected to telling us the names of Dr. Kuharsky's
20 employees because -- employers, because he said we would just
21 go get him fired.

22 *THE COURT:* Yeah, I do remember that.

23 *MR. KAPLAN:* We had done that at Jefferies. We did
24 not here. And an accusation that we knew, you know, they can
25 show that that's false if they can show you some documents they

1 produced before August 16th. These are just side-like
2 arguments. If we're talking about Singletick, the information
3 that we now have is pretty clear. They knew from July 18th
4 that that code was to be produced. They knew from July 26th
5 that their efforts to wrangle a different order out of you had
6 been unsuccessful and that there was an order.

7 And as Dr. Kuharsky said, and it's in my
8 PowerPoint, he said, "They'll never be able to get this done
9 and we'll be able to run out the clock."

10 Now, what we have essentially is Singletick
11 colluding with the two people who are really the managers of
12 the company -- the other people are just investors --
13 colluding, as I say, to play hot potato and get those computers
14 out of our reach. And the argument now that, gee, it's
15 irrelevant, is itself irrelevant. You made the decision. You
16 issued an order. And their position is, we don't have to obey
17 it.

18 In our brief we've discussed at some length why
19 the Court has the authority to enter sanctions. That's in
20 Docket 443. And it's on page 6 and 7, mainly on page 7 about
21 your authority, and also on page 8, your authority to take
22 action. And so, you know, what -- we just have a group of
23 people who aren't going to obey the Court's orders. And
24 Singletick has just voluntarily come in to be part of that.

25 *THE COURT:* Will you speak to Mr. Holmes's point that

1 the information post-2008 was not requested until relatively
2 recently?

3 *MR. KAPLAN:* Actually it was requested way back in
4 2010 at the very latest. And that's another incorrect
5 accusation he's made. He claims that nothing that happened
6 after 2008 was ever an issue. We've responded to his summary
7 judgment motion long ago and pointed out that from the very
8 beginning complaint, we have always argued that on information
9 and belief, this misconduct has continued, from the opening
10 complaint. So that's another accusation that the court's
11 record disproves. And we've got the cites in our response to
12 that summary judgment motion. I don't have the docket number
13 for that.

14 *THE COURT:* Okay.

15 *MR. KAPLAN:* But we've been asking for it. And, you
16 know, he has -- Dr. Kuharsky has competent counsel.
17 Apparently, he doesn't really need counsel. But they know that
18 they have an obligation to hold onto these things. And we'll
19 talk about Dr. Kuharsky later. But there's just no question
20 that this has always been an issue from the day the complaint
21 was filed.

22 *THE COURT:* Okay. Thank you.

23 Okay, Mr. Holmes, and then we're going to get on
24 to the presentation of evidence.

25 *MR. HOLMES:* Yeah. There's four points that I'll

1 address very quickly -- I'll try and be quick anyway. First of
2 all, this notion -- yes, the proceeds of Dr. Kuharsky's
3 counterclaim are required to be used to repay the Hillgrove
4 loan and the manager loan, but those are not loans made by
5 Singletick. Singletick does not have an interest in this
6 lawsuit.

7 *THE COURT:* Well, but the parent does.

8 *MR. HOLMES:* Well, actually I'm not sure it's even the
9 parent. Maybe the shareholder of the parent. But, again, the
10 point we're making here is that this is supposed to be an
11 evidentiary hearing and which proof is being given, and what
12 you're being given is a lot of things that aren't true.

13 *THE COURT:* Well, the purpose of having opening
14 statements is try to narrow the issues as to which we have to
15 adduce proof and maybe that's not been a successful effort, but
16 that's what we're trying to do.

17 *MR. HOLMES:* Okay. And, secondly, I would point out
18 that Mr. Kaplan just dodged your point. You asked -- well, you
19 said, "Well, didn't you know there was a company?" And he
20 keeps coming back to saying, "We never heard the name
21 Singletick." Well, sure, he's right, because we resisted, and
22 in fact you ruled in our favor, that Mr. Kuharsky shouldn't
23 have to turn over the names of all his employers. And they
24 agreed to not seek discovery from them. That was a hearing we
25 had a couple of years ago.

1 So, yeah, we didn't use the name Singletick, but
2 there was no mystery that there was a company that was being
3 formed with Dr. Kuharsky and Dr. Godlevsky.

4 *THE COURT:* Okay.

5 *MR. HOLMES:* Number three, he says, well, that I'm
6 lying, because in 2010 they requested this stuff. They did.
7 We objected to it, and they never moved to compel. And that's
8 the point I'm making there, that this didn't issue. It sat
9 dormant for three years.

10 And, finally, this "on information and belief,"
11 that this -- there was further copying, we've addressed that in
12 our motion. There are pleading requirements. If you want to
13 plead a claim, you don't just say on information and belief
14 there was further copying somewhere down the road and that
15 suddenly is a carte blanche that any transaction ever down the
16 road is within their complaint and that they don't have to
17 amend, that they don't have limitations issues. Whenever you
18 get ready to take up that motion, we'll talk about that one
19 some more, but to say the least, the notion that Mr. Kaplan
20 keeps throwing out, that from day one all this other stuff was
21 in the case is not true. It is not in their complaint.

22 *THE COURT:* Okay.

23 *MS. MEDERSON:* Your Honor, may I make just a few
24 points?

25 *THE COURT:* Okay. All right.

1 *MS. MEDERSON:* Thank you. First, Mr. Kaplan said he
2 made an offer to keep any information we designate as
3 attorneys' eyes only in outside counsel's office. I know there
4 was one offer to keep it that way until November 4th. If
5 they're willing to continue that for as long as they keep the
6 computers, we would be willing to accept that certainly as one
7 part of the protective order.

8 *THE COURT:* Okay.

9 *MS. MEDERSON:* So I should say to date, they also
10 offered at one --

11 *THE COURT:* Slowly now.

12 *MS. MEDERSON:* Sorry.

13 *THE COURT:* I'm not following everything --

14 *MS. MEDERSON:* I'm sorry. They had also offered
15 during the conference with Judge Adelman, the possibility that
16 a Singletick representative could observe the analysis. I
17 understand that they now say that's too expensive, but that
18 would be something that we would still request and we would be
19 willing to work with them so that we don't hold up their
20 schedule.

21 The only other thing I want to point out with
22 regard to sanctions is that we have obeyed all court orders
23 against us. As soon as we were ordered to turn over the
24 computers, we did. We've produced documents. We also -- you
25 know, I know there's the e-mail that obviously shows that the

1 doctors had their intentions after the July hearing, but that
2 is separate from Singletick. Singletick --

3 *THE COURT:* I understand.

4 *MS. MEDERSON:* -- was notified, and they have their
5 own obviously legal interests. That's it. Thank you, Your
6 Honor.

7 *THE COURT:* Okay. Mr. Kaplan, your first witness.

8 *MR. KAPLAN:* Yes, we were not going to do that by
9 witness but by PowerPoint, because the PowerPoint has the clips
10 of the evidence that's already in --

11 *THE COURT:* Okay. All right.

12 *MR. HOLMES:* Well, given what we've already gone
13 through, all this is going to lead to is the same thing. I
14 mean, Mr. Kaplan is referring to evidence, but the evidence is
15 not being presented, and we ought to present the evidence and
16 then do the argument. So I would disagree with doing it this
17 way, because all we're going to do is, I'm going to have to
18 come up and respond to his PowerPoint presentation and then --
19 and along with any other counsel, rather than actually getting
20 around to actually putting evidence in the record.

21 *THE COURT:* How many witnesses do you intend to call?

22 *MR. HOLMES:* I intend to call Dr. Kuharsky.

23 *MS. MEDERSON:* Your Honor, it is our position that
24 we're not part of this evidentiary hearing.

25 *THE COURT:* That's fine. That's fine.

1 *MS. MEDERSON:* Actually I was going to ask to be
2 excused once we move to that motion.

3 *MR. JOSEF:* Your Honor, I'm just going to call
4 Dr. Godlevsky.

5 *MR. CLEARY:* And, Your Honor, we were going to call
6 Mr. Mamalakis, who stepped out to the bathroom a minute.

7 *THE COURT:* Okay.

8 *MR. CLEARY:* And two short deposition clips.

9 *MR. KAPLAN:* Your Honor, our evidence we have already
10 placed in the record in documentary form. For example, the
11 depositions we filed. I'm simply going to refer to them
12 because that saves time rather than calling people, reading
13 hours of testimony.

14 *THE COURT:* Okay.

15 *MR. KAPLAN:* I mean, I'm just trying to do this
16 efficiently for the Court.

17 *THE COURT:* Okay. Let's proceed.

18 *MR. KAPLAN:* All right. If we can now turn -- we
19 talked about Singletick --

20 *THE COURT:* Yes, I'm sorry.

21 *MS. MEDERSON:* Just --

22 *THE COURT:* Do you want to be excused?

23 *MS. MEDERSON:* Do you mind if we are excused?

24 *THE COURT:* That's fine with me.

25 *MS. MEDERSON:* Thank you, Your Honor.

1 *MR. KAPLAN:* If we can go ahead, Your Honor, I thought
2 we would turn now if for no other reason than to break the
3 flow, to the Mamalakis SXP story.

4 *THE COURT:* Okay.

5 *MR. KAPLAN:* And what this revolves around is
6 information that we've actually received even before you set
7 this for evidentiary hearing and some that we've gotten in the
8 depositions. But the bottom line is, that Mr. Mamalakis and
9 SXP had wiped 23 SXP computers and servers in 2012, including
10 all of the developer workstations. And we have found that
11 another set, 15 to 35 computers, are unaccounted for. They
12 were apparently given away.

13 Let's talk about the evidence on these things.
14 First, and our hearing brief, Exhibit M, has the discovery that
15 shows we asked for this information in 2010. And all these
16 were requests for production are listed to Mamalakis 67, to SXP
17 95, 109, 123, and 134 --

18 *THE COURT:* You're going too fast.

19 *MR. KAPLAN:* -- 134. They're in our hearing brief,
20 Exhibit M. And is that at Docket 449?

21 *MR. DOYLE:* Yes.

22 *MR. KAPLAN:* Okay. So they can be seen. They're in
23 the court's record.

24 We know that Dr. Mamalakis -- Mr. Mamalakis
25 admitted that in the summer of 2012, he ordered at least 23 SXP

1 computers and servers erased. That, Docket 393 and Exhibit
2 A -- I believe Exhibit A is his on affidavit -- that's
3 something that we had filed before the last hearing.

4 Then we deposed him the other day and there is
5 explicit testimony -- and his deposition, again, has been filed
6 with the Court -- at page 63, lines 3 to 13 and 79, lines 7
7 through 9, that he ordered computers to be wiped.

8 We now -- we also deposed a gentleman named
9 Mr. Roskopf. We had never heard of Mr. Roskopf. But he had
10 been presented earlier, again, I believe an affidavit at the
11 last hearing, about what he did. And so we took his
12 deposition -- we took a short deposition, and Mr. Roskopf said
13 these developer workstations were either wiped or disappeared.
14 So if we play, for example, the clip that we've got -- I'm
15 sorry. Is there an objection?

16 *MR. CLEARY:* There will be if -- this is not evidence.
17 This is counsel argument. I believe if he has evidence, he
18 should play the evidence.

19 *MR. KAPLAN:* I'm about to play the clip.

20 *THE COURT:* All right. Let's go ahead.

21 *MR. KAPLAN:* Now, once again, the Roskopf deposition
22 has also been filed with the Court, so the Court can refer to
23 all of it. But why don't we play this quick short clip of
24 Mr. Roskopf. Do we have volume here?

25 *(The following deposition clip was played:)*

1 "The machines that you did the wiping on, could
2 you tell us what machines those were?"

3 "Basically every machine that I could get my
4 hands on."

5 *MR. KAPLAN:* That's what he did, everything he could
6 get his hands on. And it's undisputed that that was done at
7 Mr. Mamalakis's direction.

8 Further -- let me back up. Further, he
9 testified, and there's about almost two pages' worth of
10 testimony, that there are many other computers that just can't
11 be found. They disappeared. That's at page 50, line 25 to 52,
12 line 18.

13 He then testified earlier in the deposition how
14 the computers were wiped. Now, you may recall we had been told
15 this earlier about this Department of Defense protocol. He
16 admitted that -- and it's DOD 5220.22. He admitted that that
17 protocol makes the data virtually unrecoverable. That's at 14,
18 line 8 through 16.

19 And, of course, we also learned in these
20 depositions about these other computers that are lost, because
21 Mamalakis gave computers away. What happened was, the receiver
22 discovered -- you know, Mamalakis didn't tell us all this. The
23 receiver discovered these computers had been wiped. And then
24 as you know from what's in the court's record, we've got this
25 alibi about liquidating SXP. Now we get that as an alibi. But

1 lets take a look at what is actually on file with the Court.

2 This is the September 3, 2013, declaration of
3 Mr. Mamalakis that has been filed in the Court previous to the
4 last hearing. And my recollection is -- I can't read the
5 docket number here. I think it says 417 -- excuse me, 417.1.
6 Once again, the Court has that in its record already. It was
7 filed September 25th, 2013. This is part of what was said:
8 "As part of its preparations for liquidation, SXP followed
9 standard operating procedures in wiping its remote servers and
10 developer workstations so they could be liquidated and sold."

11 Well, that might have been a plausible alibi, but
12 it's not true, because it's contradicted by what Mamalakis said
13 about a year earlier in Wisconsin state court. He explicitly
14 said there was no ongoing or planned liquidation of SXP. This
15 is in the court's record already, Docket 402, Exhibit A at 10,
16 and our hearing brief at Exhibit C. And in that hearing brief
17 we attached the affidavit of Mr. Mamalakis that he had filed in
18 Wisconsin. And at that time -- I'm trying to find the exact
19 statement. But he was opposing any kind of liquidation. And
20 that is different from the excuse we're getting now. So --

21 **MR. CLEARY:** Your Honor, I object as hearsay. It's an
22 out-of-court statement offered for the truth of the matter
23 asserted.

24 **THE COURT:** But by Mr. Mamalakis.

25 **MR. KAPLAN:** It's an admission of a party opponent,

1 Your Honor.

2 *THE COURT:* By Mr. Mamalakis.

3 *MR. CLEARY:* Who is here and available to testify.

4 *THE COURT:* No, but it's not hearsay.

5 *MR. KAPLAN:* So, once again, we've got different
6 stories. And so that's not a very good excuse when it's
7 contradicted by what was said a year earlier at a time when no
8 liquidation allegedly was being planned.

9 Further, we never had a litigation hold put on
10 this case for SXP. Mr. Mamalakis himself is an attorney.
11 Mr. Stippich -- and, once again, his deposition is offered to
12 the Court. It's in the court's record -- testified that he was
13 surprised that no litigation hold was ever issued given the
14 history of this litigation. There's actually testimony in
15 there that's about three pages' worth, from the beginning of
16 page 77 through the beginning of page 80. Never was a
17 litigation hold, and that's something that I hope is
18 undisputed. No litigation hold was ever issued at SXP, despite
19 the fact that this lawsuit was ongoing.

20 So that meant that employees were free to delete
21 files, and obviously that makes it more expensive to recover
22 things. So that's really all there is to say about
23 Mr. Mamalakis in addition to what we said at the last hearing.
24 And if people want to offer some evidence to contradict that,
25 they're welcome to, but we have offered in the court's record

1 what we know happened, unexcused wiping of many computers, with
2 an alibi that is not credible.

3 *THE COURT:* Okay. Since we're going to proceed this
4 way, I'll allow Mr. Mamalakis's lawyer to present their client,
5 if you wish.

6 *MR. CARLYLE:* Yes, Your Honor.

7 *THE COURT:* Okay.

8 *MR. CARLYLE:* At this time we would like to call
9 Mr. Mamalakis to the stand.

10 *THE COURT:* Very well. Yes, sir. We're going to have
11 you up here. Before you take your seat, Ms. Lyons will
12 administer the oath. If you would raise your right hand,
13 please.

14 *(Emmanuel Mamalakis sworn.)*

15 *THE COURT:* Try to be as comfortable as you can in
16 that seat and adjust the mic so you can speak directly into it.

17 *THE WITNESS:* Okay. I don't know if I need to push a
18 button or something for it to go on.

19 *THE COURT:* That will work. You don't need to put him
20 on the screen. That's all right. He doesn't need to be on the
21 screen. That's okay.

22 *MR. CARLYLE:* Right. And I may use the document
23 camera for a few things.

24 *THE COURT:* Let's get that straightened out first.
25 Okay. Good deal.

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1 was started?

2 A. Yes, sir.

3 Q. Okay. And what did the FBI take?

4 A. Everything.

5 Q. But specifically --

6 A. I mean, they took --

7 Q. -- with regard to electronics and things like that.

8 A. The FBI went to -- went to the offices and to the houses of
9 Dr. Kuharsky and Dr. Godlevsky. They went into the offices.

10 They took any and all electronic devices. They even took some
11 nonelectronic devices, some notebooks, some papers. I mean, if
12 there was anything even remotely plausible as electronic or
13 electronic related, they took it all.

14 Q. Okay. And where did they take SXP's material, from what
15 location?

16 A. From the Houston office.

17 Q. Okay. Did they take any SXP-related material from anywhere
18 other than the Houston office?

19 A. Yeah, the different -- not SXP related. They took other
20 stuff, but that was the personal properties of Dr. Godlevsky
21 and Dr. Kuharsky.

22 Q. Okay. Did the FBI also go to your personal residence?

23 A. They just stopped by and said hello, but they didn't take
24 anything from there. We weren't really doing anything computer
25 related out there.

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1 Q. Okay. At the time the FBI made the raid in March of 2008,
2 was SXP operating as a business?

3 A. Yes.

4 Q. Okay.

5 *THE COURT:* Was is profitable?

6 *THE WITNESS:* We hadn't started trading. We were only
7 maybe, if you can ballpark it, like 3 percent of the way to
8 even anything that could have started.

9 BY MR. CARLYLE:

10 Q. Okay. So, did the FBI's taking of equipment put a --
11 explain to us how that hindered SXP's operation.

12 A. Well, we had to completely start over. Because everything
13 that the FBI took, they kept and then it's basic -- it was --
14 it's basically never been seen, touched, or existed again by
15 anybody in SXP ever again and so we just basically had to go
16 buy new computers and just start from scratch.

17 Q. Okay. Well, did you have any inkling that the FBI was
18 going to come before they came?

19 A. No.

20 Q. Okay. It was a total surprise to you?

21 A. Yes.

22 Q. Okay. When they did come, was it explained what the
23 situation was?

24 A. After they came, I was -- I was actually about to board a
25 flight from Phoenix to Milwaukee when they did the raid; and

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1 when I landed in Milwaukee, I found out that they had gone
2 through and done the raid. And so I just went myself down to
3 the FBI office in downtown Milwaukee by myself and walked in
4 and said, "What's going on? What are you guys doing?" And so
5 that's when I basically had it explained to me -- or they --
6 excuse me -- where they explained what they were doing and what
7 was going on, because they believed that -- they were looking
8 for Quantlab code.

9 Q. Okay. And that was fairly recent after the raid?

10 A. That was same day as the raid.

11 Q. Okay. So we're still in March of 2008?

12 A. Yeah.

13 Q. After that you said SXP began to basically the process of
14 starting over, buying equipment and --

15 A. Yeah, everything from scratch.

16 Q. Okay. And then did SXP eventually get to a state where it
17 could conduct operations again?

18 A. Yes, sir.

19 Q. And when was that?

20 A. The fall of 2008.

21 Q. Okay. And then I'm going to jump -- eventually SXP stopped
22 operating, right?

23 A. Yes, sir.

24 Q. And when was that?

25 A. June of 2012.

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1 Q. Okay. And then what happened between the fall of 2008 and
2 June of 2012? I mean, was it just -- was SXP's -- what was its
3 business during that time period?

4 A. They did high-frequency trading. They did well through --
5 we were trading from the fall of '08 and then in the fall of
6 2011, it just wasn't working as well anymore, until we started
7 winding it down and we tried claiming bankruptcy in the spring,
8 because we just weren't making enough money to support
9 everything that was going on. And then --

10 *THE COURT:* Who owned SXP?

11 *THE WITNESS:* Me.

12 *THE COURT:* A hundred percent of the stock?

13 *THE WITNESS:* No. At the beginning, in the first
14 year, just for a little bit of time, it was one-third me,
15 one-third Kuharsky, Godlevsky, and then Andriy Kuharsky left
16 very shortly after beginning and so it then went to two-thirds
17 me, one-third Dr. Godlevsky and then it's my contention that
18 then Dr. Godlevsky left in the spring of 2010 -- or '11. I'm
19 mixing my years up. But he then left, I believe, in the spring
20 of 2011, and then it was me only until we got into the next
21 year when we were in bankruptcy court, where the -- as part of
22 the resolution for stepping out of bankruptcy court was to
23 recognize him as a one-third owner but still work out all the
24 disputes at hand.

25 BY MR. CARLYLE:

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1 Q. Okay. So SXP is operating from fall of 2008 until, you
2 said, around -- well, all the way to June of 2012, but things
3 slow down in the middle of 2011?

4 A. In the fall of 2011.

5 Q. In the fall of 2011?

6 A. Yeah.

7 Q. Okay. When was a lawsuit filed by Quantlab against SXP?

8 A. December of '09, I believe. But I could be corrected on
9 that. I think that's correct.

10 Q. But it's fair to say that ever since March of 2008, you
11 knew that someone was looking over your shoulder, so to speak?

12 A. Yes.

13 Q. Okay. As a result of the FBI raid?

14 A. Yes, absolutely.

15 Q. Okay. And because of -- after the raid, naturally the FBI
16 did a raid of your office, the first thing you did was go and
17 put Quantlab code back on all your computers, right?

18 A. No.

19 Q. Why not?

20 A. Well, first of all, we didn't have any. You know, I
21 didn't -- I had no Quantlab code. I never worked at Quantlab.
22 I had nothing to do with Quantlab and there's nothing on there.

23 Secondly, after 72 FBI agents raid your offices,
24 all the other homes, and you find out in a meeting with the FBI
25 that they wanted to be able to go into your house and separate

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1 out your minor children and pregnant wife by gunpoint to be
2 able to search your house, I don't think you're about to turn
3 around the next day and say, oh, I think I'm going to do --
4 let's go do that again.

5 Q. Right. Okay. When the lawsuit was filed and as a result
6 of the raid, I want to take -- I want you to describe for us
7 what you understood -- well, first of all, you are an attorney,
8 right?

9 A. Yes, sir.

10 Q. When did you become licensed?

11 A. 2000.

12 Q. Okay.

13 *THE COURT:* Where did you go to law school?

14 *THE WITNESS:* Marquette Law School in Milwaukee.

15 BY MR. CARLYLE:

16 Q. And what was your practice after law school?

17 A. My practice was mainly arbitration, securities
18 arbitrations. So we did -- I didn't do much of any in-court
19 practice. It was mainly what was back then NASD, which is now
20 FINRA. And so my focus of my practice was arbitration,
21 arbitration items and brokerage -- brokers' mismanagement.

22 *THE COURT:* What were you doing before you went to law
23 school? Did you have a career first?

24 *THE WITNESS:* No. I was in law school at 21. I was
25 an undergrad and then right to law school and --

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1 *THE COURT:* Where did you go to undergrad?

2 *THE WITNESS:* University of Wisconsin, Milwaukee.

3 *THE COURT:* Okay. What was your undergraduate major?

4 *THE WITNESS:* Finance and urban development.

5 *THE COURT:* Okay. Thank you.

6 BY MR. CARLYLE:

7 Q. Okay. So did you practice as an attorney from 2000 until
8 2008?

9 A. Yeah.

10 Q. When you formed SXP?

11 A. Yes, sir.

12 Q. And during that time your practice was in securities
13 arbitration?

14 A. Yes, sir.

15 *THE COURT:* How does one get an arbitration practice
16 right out of law school? I'm not accustomed to that.

17 *THE WITNESS:* While I was in law school, I was a
18 compliance guy. Since my undergrad degree was in finance,
19 during law school I worked at a brokerage house as compliance
20 and so --

21 *THE COURT:* I see.

22 *THE WITNESS:* -- they had field offices of
23 accountants, and so I had gotten to know them and that --

24 *THE COURT:* I see.

25 *THE WITNESS:* -- and all of a sudden I was like the

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1 only -- I was the only kid on the block in Wisconsin doing this
2 right about at 2000 when the market was crashing.

3 *THE COURT:* I see.

4 *THE WITNESS:* Yeah.

5 BY MR. CARLYLE:

6 Q. Okay. So, I want to move to December 2009 when the lawsuit
7 was filed. What was your understanding as to the dispute?

8 A. My understanding of the dispute was that Quantlab believed
9 that Dr. Godlevsky and Dr. Kuharsky were -- either had their
10 code or were using what was their trade secrets, is the best
11 way I can synopsise it.

12 Q. What was your understanding as to what they thought SXP had
13 to do with it?

14 A. They believed that SXP was actually implementing and
15 putting into commercial use the items that Dr. Godlevsky and
16 Dr. Kuharsky were not allowed to be doing.

17 Q. Okay. And what was your understanding as to what their
18 contentions were regarding you personally?

19 A. Just that if it was some form of a conspiracy or if I was
20 personally benefiting from a violation of the employment
21 agreement by Dr. Kuharsky or Dr. Godlevsky, which at that point
22 in time in 2009 it was really only Dr. Godlevsky, because Dr.
23 Kuharsky had been gone for a year at that point.

24 Q. So when did Dr. Kuharsky leave SXP?

25 A. January of '09. He was only -- my time with Dr. Kuharsky

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1 was probably six, seven months tops.

2 Q. Okay. All right. Mr. Mamalakis, you were in court during
3 the presentation of the plaintiff of their PowerPoint, and I'm
4 going to put that on the board here.

5 *THE COURT:* Let me -- before we get there, how did you
6 and Kuharsky and Godlevsky find your way to one another?

7 *THE WITNESS:* In the spring of '07, I was down at a
8 monastery in Arizona. I frequently go through there, around
9 two or three times a month. And Dr. Godlevsky had wandered by
10 the exact same monastery at the time and had been talking to a
11 couple of people there, explaining what had been going on with
12 his relationship with Quantlab. And at first that they had
13 actually introduced him to me, they just said, Well, this guy
14 is -- you know, if something bad happened to you from your
15 prior employer, talk to this guy. He's a nice guy. Maybe he
16 can help you out.

17 So we had been introduced. And as we had been
18 talking, he explained the scenario. He explained the
19 situation. And the question had come up, why don't -- well,
20 why don't you do, then, your own thing and is it viable, is it
21 legal, and can it comport and comply with your agreements you
22 have. And he gave a very good explanation. He had basically
23 said, It's almost impossible to go take Quantlab stuff and go
24 start something up and do an identical to Quantlab operation,
25 because they have an enormous, multimillion-dollar machine that

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1 implements what they do. So if we went in and I tried buying
2 the same stock at the same time that Quantlab is buying their
3 same stock, I would lose every time, because their mechanism is
4 so expensive and so vast that they would beat us to the punch
5 every single time.

6 *THE COURT:* I see.

7 BY MR. CARLYLE:

8 Q. Okay. Well, just -- and before we get to that, I think a
9 little more background is useful. Explain to us your
10 understanding -- well, first of all, did you have a title with
11 SXP?

12 A. CEO.

13 Q. Okay. And who managed the day-to-day operations of SXP?

14 A. From -- when we had started out, everything, computer and
15 code and everything computer related was worked out of Houston
16 between Dr. Godlevsky and Dr. Kuharsky. And then when
17 Dr. Kuharsky left, it was Dr. Godlevsky doing all computer
18 things down in Houston.

19 My operational side was just human resources,
20 financial, keeping every other business operation other than
21 designing code or working computers. I'm not very renown for
22 my computer knowledge.

23 Q. Do you have any kind of computer background, education, or
24 workwise?

25 A. Embarrassingly, no. My assistant used to even download my

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1 songs to my iPod for me, because I couldn't even figure that
2 out.

3 Q. Okay. Well, what was your understanding as CEO of SXP as
4 to how it mechanically operated its business with computers and
5 buying and selling stocks at the exchanges?

6 A. It was explained that what they would do is they were
7 buying -- buying stocks on a high-frequency basis that was
8 based on relationships that would exist. And I knew that --
9 this I could understand from being a finance major, is
10 correlations of relationships that existed. If you -- I use an
11 example, if you see ExxonMobil moving and Shell hasn't moved
12 yet, there's probably going to be a correspondence -- this is
13 just layman's terms. And whether or not you're successful is
14 whether or not you have unique concepts to how to approach how
15 stocks move in the market.

16 And they basically explained and said what they
17 had to do is they had to build -- they had to -- you had to
18 have a brain that was the computer brain that understood how it
19 all worked and then you had to have all of these ancillary
20 devices, which were just a data feed arm that would bring in
21 data information, a -- something that would splice up the
22 information and put it in a form where the brain would be able
23 to process it, then after the brain had made the decision, some
24 kind of processing arm that could send out the signal to
25 actually execute it. And so you have the brain in there, but

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1 then there's still all these different elements of how to make
2 the whole mechanism work. You know, it's like a football team.
3 Yeah, the quarterback is critical, but if you take everything
4 else away, you still need wideouts and offensive linemen and
5 running backs.

6 Q. While the company was operating, did you have an
7 understanding of -- I mean, specifically mechanically, what
8 were the tentacles on the octopus, so to speak, what brought
9 things to the brain, took things away from the brain, that sort
10 of thing?

11 A. Yeah, I had an understanding of the concept of there is a
12 brain, but then there's all kind -- there's other accouterment
13 that have to be -- because I sometimes would manage personnel
14 issues, I would be able to see sometimes which individual would
15 be working on which parts of the ancillary features versus who
16 was working on the brain, because, you know, not a lot of
17 people were permitted to work on the brain. It was more
18 limited.

19 Q. Well, let me -- then let's just -- I want to drill down.
20 When you say "brain," what do you mean with regard to the
21 business? What sort of --

22 A. Well, the brain, there's a base code that exists, which
23 would be what would be the intellectual property, which would
24 be the items in dispute. You know, if there -- our form of how
25 you have a data feed come in, that's really not intellectual

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1 property. There's 10,000 ways you can have a data feed come in
2 and -- but the brain itself, the one in the -- the item in the
3 center, that's the mechanism by which you're deciding, do you
4 buy or sell a stock or which one do you or which one don't you.
5 That's your core. That's -- you know, that is what makes or
6 breaks are you going to make money.

7 Q. Okay. So the brain is -- is it a -- it's a piece of
8 written code that --

9 A. Yes, sir.

10 Q. -- the computer can read?

11 A. It's the code. It's -- you're going to refer to in this
12 case basically as the code --

13 Q. Okay.

14 A. -- frequently, but a little loosely.

15 Q. And what gets "fed" into the code is market
16 information --

17 A. Market data.

18 Q. -- such as Exxon has just done something but Shell hasn't?

19 A. Yes.

20 Q. Okay. And that gets fed to the brain?

21 A. Yes.

22 Q. Do you understand how that process works?

23 A. Yes. It comes in. It gets fed to the brain. The brain
24 makes a decision. The brain spits out a decision.

25 Q. Let me stop you. How does it get to the brain in the first

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1 place?

2 A. Well, the brain is actually located remotely out at the
3 exchange. It's colocated right next to the exchange. So the
4 information goes into the brain, it processes it, and then it
5 spits out an order decision.

6 Q. Okay. So the -- at the exchanges, there's a machine, a
7 computer that has the code on it?

8 A. Yes, sir.

9 Q. And it collects information from exchanges, decides what to
10 do very quickly --

11 A. And spits it --

12 Q. -- and then tells the markets what it wants to buy or sell?

13 A. Yes, sir.

14 Q. Okay. So did SXP's code writers -- well, first of all, did
15 the code change -- was it ever changed over time?

16 A. Constantly.

17 Q. What -- give me an example of what kind of changes might be
18 made to the code over time.

19 A. The main brain code had to be updated all the time, which
20 is -- you know, because what would happen is, you would design
21 a simulator on the side that would -- next to it, that in the
22 main server room, you would have a simulator, and what you
23 would do is you would simulate what the market conditions were
24 to be able to identify what's changed and how should the brain
25 think or what should the brain be doing now.

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1 And so you never would -- you don't want to leave
2 it out there for too long of a period of time without
3 hitting -- without refreshing it as to this is the process of
4 logic that you should take on this.

5 Q. So using your example, let's say, Shell issued a news
6 release that said, We think Exxon is off their rocker. We're
7 not going to do -- we're not going to drill in this area.

8 A. Well, there's actually a specific example of that. When
9 Google and the Chinese version of Google -- I remember this
10 instance when it was happening, watching it. There's Google
11 and there's the Chinese version of Google, and they used to
12 move with each other. But then at a point in time a couple
13 years ago, China started shutting down Google in China. They
14 weren't permitting Google to function in China. So now this
15 Chinese Google engine instead of moving with Google, every time
16 Google got hit, that Chinese one went up. And so for a couple
17 of days they're like, uh-oh, you know, what's going on here.

18 Well, they had to resimulate it through,
19 understanding that the world had changed. And so you had to
20 redesign it and reset it and that's where it's -- the evolution
21 of the code, I mean, you look at a code from one point over
22 time, I mean, it gets stale very quick.

23 Q. Okay. And then I just want the mechanics of how code is
24 changed like that with your company. I assume it's not --

25 A. In order to have --

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1 Q. -- written on a legal pad?

2 A. No. In order to have code changed, you have to bring up
3 the change in code. You have to basically submit it to the
4 main server room. It's put into the main server room where
5 it's -- where not only does it sit in there, but there's also a
6 backup tape, that in the event that there's a fire or water
7 damage, that stuff is not only there, but it's also backed up
8 and put in a safe-deposit box.

9 And in order for it to ever get implemented -- in
10 order for that code now to be used out at the markets, it has
11 to sit in the server room, it has to be put on the servers
12 there, it has to be backed up, and then has to be sent out to
13 the remote server at the market.

14 Q. Okay. What did you call your types of employees that could
15 make changes to code? Was there a name or anything like that
16 that was used to describe those kind of employees?

17 A. That could make changes to the code? That you would
18 have -- this would be -- I'm sorry, I'm blanking on. There
19 were only a very -- there were only a couple of people that
20 could actually approve that this code could now be issued as
21 the new one. And those would have been managers or the people
22 in charge. You can't just go in on your own and just change
23 it. Like, I would never be permitted to.

24 Q. Okay. Were the people that actually made the physical
25 change to the code, the ones that did that data entry, were

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1 they also the thinkers, the same person that came up with the
2 idea of what to change?

3 A. Sometimes, sometimes not.

4 Q. Okay.

5 A. But they would -- but they wouldn't be able to implement it
6 until other people had seen it. Nobody could sit there, change
7 the code and say, Ooh, I like this. Okay. Now it's
8 automatically going to get changed. It had to go into the
9 repository that was in the server room. It had to be
10 cross-checked with other folks. And then at that point, then
11 it would be decided as to whether or not it would go in.

12 Q. Okay. So there was some kind of committee on what changes
13 to make to code?

14 A. Well, absolutely. You could never have one person just
15 arbitrarily change what the code is. Because if you were to
16 have made a mistake, you know, you're going to rest on only one
17 set of eyes looking at that. That's just --

18 Q. Okay.

19 A. Yeah, it doesn't --

20 Q. I've heard the word "developer" used. What's a developer
21 with regard to SXP?

22 A. Well, the term "developer" was widely used at SXP as just
23 anyone who wrote any kind of code. Now, that might have been
24 items that were used in the main brain, but that was also
25 people who would have just wrote the data feed or wrote the

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1 order router or wrote the item that split up the data into its
2 components or filtered it.

3 Q. Let me make sure I understand. So a developer is someone
4 that could write code?

5 A. Uh-huh.

6 Q. The different kinds of codes that may be written, for
7 example, might be a code to receive a feed from a stock
8 exchange?

9 A. Yes, sir.

10 Q. I mean, you can't just -- I can't just plug in my iPhone
11 into the stock exchange? I need some kind of software that
12 knows how to interpret what's coming in and turn it into zeroes
13 and ones or something like that?

14 A. That's correct.

15 Q. Okay. So you have people that write that kind of code; and
16 then maybe you have people that write code going back, sending
17 information to the stock exchanges?

18 A. Yes, sir.

19 Q. What about code to send stuff to the brain and receive
20 stuff from the brain?

21 A. That's also different people, too. You had people who
22 wrote the code, where in the trading when you're watching
23 what's going on, they'd have to write the code that made it
24 viewable so that you could see. And that was all developers.
25 So a developer is just the category of anyone who did anything

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1 that assisted in the entire process.

2 Q. Okay. So the main brain, where was -- identify the places
3 where that information was kept at SXP?

4 A. In the server room.

5 Q. Okay. And where was the server room?

6 A. It was in the center of the office suite.

7 Q. But is this -- what, is this in Houston?

8 A. No. This is at -- well, they moved out of Houston. They
9 were only in Houston until, I believe, September of '08; and
10 then fall of '08, it all got merged into Milwaukee.

11 Q. Okay.

12 A. And so that sat in the server room in the offices in
13 Milwaukee. Prior to that, that sat in the server room in
14 Houston.

15 Q. Do you remember the address in Milwaukee?

16 A. Yeah. It was on Prospect, 2266 North Prospect, Suite 608.

17 *THE COURT:* Did Mr. Godlevsky -- Dr. Godlevsky did he
18 move to Wisconsin, too?

19 *THE WITNESS:* Yes, sir. Yes, he did.

20 *THE COURT:* And Dr. Kuharsky was already out of it by
21 then?

22 *THE WITNESS:* He was already out by then, yeah.

23 BY MR. CARLYLE:

24 Q. And while we're on the topic, how long did Mr. Godlevsky
25 stay with the company after it moved to Milwaukee?

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1 A. Two and a half years.

2 Q. So we have the shutdown in June of 2012. Can you put his
3 departure in relation to the shutdown?

4 A. 16 months prior. Because it was February. We ended in the
5 end of June. And the prior year, in mid-February is when he
6 had departed.

7 Q. Okay. So February of 2011?

8 A. Yeah. Yeah, that's when he quit.

9 Q. Okay.

10 *THE COURT:* What was the reason? Were there hurt
11 feelings or just he wanted to do something else?

12 *THE WITNESS:* It was approximately three weeks after
13 the FBI had given me an actual delineation of the code that
14 they believed had been found.

15 *THE COURT:* I see.

16 *THE WITNESS:* And I walked into his office and I was
17 like, "Hey, I'm going to give you this to look over and we need
18 to have a conversation." And all of a sudden the relationship
19 just went toxic. And three weeks later he started calling
20 people saying, "I don't care if they put me in jail. This is
21 ridiculous. I want more power. I want more authority." And
22 then he's like, I'm out of here and so --

23 *THE COURT:* Did he think you were threatening him with
24 this accusation or whatever it was in reference to the code?

25 *THE WITNESS:* I don't think he was thinking that I --

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1 well, no, because at no point in time had I actually threatened
2 him on it. I had just basically said, "Hi, this doesn't quite
3 jibe, you know. We're going to have to explain this." And
4 you'd get an understanding if you saw the prior years of
5 everything that was going on. Whenever stressful items like
6 this had come up, he would -- he started sending an e-mail
7 shortly after that saying, "I want to know how much money you
8 spend on for your kids." And he would just go off the wall.

9 And you -- so I would sit there. My main role
10 really, to be honest, through a lot of these years of SXP was
11 just moderating when Dr. Godlevsky had just gone off and just
12 kind of buffering, keeping everything productively going, you
13 know, trying to manage. And we would lose people left and
14 right, good folks, even very close friends of his. I mean,
15 that's --

16 *THE COURT:* Because he was difficult to work with?

17 *THE WITNESS:* Yeah. That's an understatement.

18 *THE COURT:* But he was -- but he must have been very
19 helpful to the business in some sense?

20 *THE WITNESS:* You know, at the beginning when he
21 basically described the concepts of this is how HFT works, this
22 is the way it was done, where it was very helpful to the
23 business, which absolutely, there's no way, we wouldn't have
24 been able to get started without him, without question. And
25 that was when he had just basically given an overview of this

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1 is high-frequency trading. This is how high-frequency trading
2 works. This is the different ways you want to go about it.

3 But one of the frustration points and you can see
4 it in the e-mails back and forth, by the time you got to the
5 time where he got upset and he left, SXP had grown so much
6 beyond his understanding, that one of the things he was upset
7 about is, he goes, "I look at the brain and I don't even
8 understand how the brain is designed." And it was just a lot
9 of this -- a lot of the Quantlab stuff and the FBI
10 investigation had just worn on him and it just -- it was toxic.

11 *THE COURT:* Okay.

12 BY MR. CARLYLE:

13 Q. So, when Dr. Godlevsky left in February 2011, did he take
14 any computer equipment with him?

15 A. Whatever -- he always considered any of his computer stuff
16 to be his personal property, and he took that all with him.

17 Q. Okay. Was he someone who was also a code -- a brain code
18 developer?

19 A. Yes, sir.

20 Q. Okay. So the materials he used to work on the brain, he
21 took with him?

22 A. Yes, sir.

23 Q. Okay. So you said the server room is where the brain is
24 kept?

25 A. The server room is where all things are kept. The brain

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1 and all of the other arms, anything that's going to be deployed
2 and utilized always go through the server room.

3 Q. Okay. How did you -- did you folks have e-mail to
4 communicate with each other?

5 A. Yes, sir.

6 Q. Okay. And where was the e-mail kept?

7 A. The server room.

8 Q. Okay. So there would be -- was there a server that
9 maintained all of the e-mails?

10 A. Yes, sir.

11 Q. Okay.

12 A. Everything electronic based out of this one room with just,
13 like, three, four big racks and all things -- it was like the
14 clearinghouse. All things sat in there.

15 Q. Okay. And you heard discussion about a litigation hold and
16 I think we could all agree in the normal situation, a company's
17 operating for a while and then somebody -- well, let's just say
18 it was this example: There's an allegation that an employee
19 came over and brought something. So the company may say, Okay.
20 Everyone keep -- don't delete anything regarding John Doe who
21 just joined our company. We've been sued and there's an
22 allegation that he took something from his former employer.
23 But in SXP's situation, is it -- for what amount of time that
24 it was operating had there been a cloud of litigation over it?

25 A. The beginning.

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1 Q. Okay. So ever since the company started, in essence, there
2 was a cloud?

3 A. Yes, sir.

4 Q. And what -- and your understanding of what the scope of
5 that cloud was, was what?

6 A. The issues of are we using Quantlab's code or are we using
7 their intellectual property.

8 Q. Like is your brain --

9 A. It's our brain -- and I didn't even believe it had to be
10 identical. Was our brain overlapping parts of their brain that
11 were not part of the public domain that were unique to Quantlab
12 alone. You know, that's its -- you know, you can't use their
13 intellectual property and you can't duplicate what they're
14 doing.

15 Q. Okay. So the FBI took the material in March 2008?

16 A. Yes.

17 Q. You start over. When do you first hear what the FBI found?

18 A. I first hear about what the FBI found -- the first instance
19 is we have about interaction with the FBI was in an evidentiary
20 hearing of fall of 2008 when the FBI -- when our attorneys went
21 back and said, "If you don't have anything on us, we'd kind of
22 like our property to be returned." And the FBI had explained
23 some of the issues that had occurred with Quantlab and Quantlab
24 turning over disks that it was impossible for it to be Quantlab
25 intellectual property. And so after that point, Dr. Godlevsky

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1 had explained to me, "Look, see, this was all a sham. None of
2 this was real. Look, they lied to the FBI in the disks they
3 gave them."

4 Q. Well, wait. Explain that to me. What do you mean, they
5 lied to the FBI in the disks they gave them?

6 A. In the evidentiary hearing in the fall of '08 after the
7 raid --

8 Q. In this case?

9 A. No. In the criminal case.

10 Q. Okay.

11 A. In the criminal case, in the evidentiary hearing in the
12 fall of '08, an FBI agent was called as a witness and he had to
13 testify that when they did the raid, they were given a disk
14 from Quantlab that --

15 *MR. MCDONALD:* Your Honor, can I assert an objection?
16 These hearings, we weren't a part of that. This does sound
17 like it might truly be hearsay offered for the truth of the
18 matter asserted.

19 *MR. CARLYLE:* And if I may respond? We're not
20 offering it for the truth asserted. We're offering it for the
21 impression it gave Mr. Mamalakis about what the cloud was --

22 *THE COURT:* Again, when I'm sitting without a jury, I
23 don't worry too much about it. I'll straighten out what I can
24 depend on or what I can't.

25 You can proceed.

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1 A. So the FBI agent -- and it was on the record -- had
2 explained that when Quantlab came to him and said, "We believe
3 codes have been stolen," Quantlab gave him a disk of around
4 79,000 lines of code. And they commenced the raid on us,
5 collected up our computers, and then they went in to go match
6 up our computers with the 79,000 lines of code. And the FBI
7 agent said on the stand, he said, "Well, and then we discovered
8 we had a problem, because it was Microsoft information on this
9 disk that can't be Quantlab code." And so they went back to
10 Quantlab and said, "Hey, this is impossible."

11 And so then Quantlab returned back to them and
12 said, "Actually this is what it is." And now instead of 79,000
13 lines of codes, it was like 18,000 lines of code.

14 BY MR. CARLYLE:

15 Q. Okay. So did you find out at least by then, fall of '08,
16 that there were 18,000 lines of code that were similar or
17 matched?

18 A. No, because that didn't -- they hadn't said it had matched,
19 but this was the preset where Dr. Godlevsky had said, "Don't
20 believe everything you hear out of the FBI."

21 Q. Okay. So when did you learn that, that there was some
22 matching?

23 A. I believe -- and I might get my dates backwards on this.
24 It's been a long process. But we received a -- I believe we --
25 my attorneys were told by the FBI, "We have matches, and we're

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1 going to explain it to you." And I always -- there was the set
2 of lines of code that were handed over three weeks before
3 Dr. Godlevsky quit, and then there was also a letter from
4 Assistant U.S. Attorney Johnson, where he explained their four
5 instances of interests of where they said, We would like an
6 explanation on these, these, these. And I can't remember --
7 one was in August and one was in January, but I'm screwing up
8 which one came before which.

9 But that's -- that was the first time where they
10 had said, Okay. There might be code that was on -- but only on
11 the FBI seized portion of everything, which from my
12 understanding was now gone, seized. When the FBI returned it,
13 we never -- it went straight from the FBI to our lawyers, to an
14 expert witness, and now the special master. So nobody at SXP
15 has ever touched, placed their hands on, or ever interacted
16 with the FBI-seized material since the day it was taken in
17 March of '08.

18 Q. Okay. And we're going to get to the details of the
19 allegations here, but I'm trying to set the stage of what the
20 equipment is that we're talking about. I want to talk about
21 developers. Do they all work in one location for SXP?

22 A. No.

23 Q. Okay. Where did they work?

24 A. We had offices in Milwaukee, offices in Madison, and then
25 you had some people that worked remotely from Boston and

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1 Florida, at a certain point in time D.C. also.

2 Q. From their homes?

3 A. From their homes, yeah.

4 Q. Okay. And how could they work remotely? What sort of
5 equipment did they use?

6 A. Just a computer and they had -- they had a line. It was --
7 I'm not -- I don't remember the exact -- the correct term of
8 it, but it was like a -- some kind of like a VPN line where
9 they could link up into the server room. So if they wanted to
10 do anything, if they were doing anything, all people fed,
11 again, back through the server room. Wherever you're working,
12 if you want to interact with anybody else, you're going through
13 the server room.

14 Q. Okay. And were all of the computers that developers used
15 when they worked remotely, were those computers owned all by
16 SXP?

17 A. No, some of those folks had personal computers.

18 Q. Okay.

19 A. They were permitted to use personal.

20 Q. Okay. So a developer could log into the brain remotely?

21 A. Not all of them. You had to have permission.

22 Q. Okay. And were there any developers -- well, right. Well,
23 let's just not talk about the brain. Any code-related stuff at
24 SXP, a developer could log into that remotely?

25 A. Yes.

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1 Q. Okay. And could they also do it from the Milwaukee office?

2 A. Yes, sir.

3 Q. Okay. And did you have some developers in the Milwaukee
4 office?

5 A. Yes, we did, most of them.

6 Q. Do you have any idea how many developers you had?

7 A. We had -- if you ballparked it, that if you had 12
8 developers, probably half were in Milwaukee.

9 Q. Okay.

10 A. Again, that's just a proportionate ratio. That number
11 changed over time.

12 Q. Was there a significant turnover with developers?

13 A. There was definitely more so in the beginning and then
14 later on, the turnover stopped. After Dr. Godlevsky had left,
15 you didn't have as much turnover anymore.

16 Q. Okay. When the -- eventually a receiver was appointed over
17 SXP?

18 A. Yes, sir.

19 Q. And I believe -- do you recall when that was, when you
20 first got an inkling that a receiver might be appointed?

21 A. It was, I think, late 2012 or -- when the motion was filed
22 for a receiver.

23 Q. And that receiver was appointed by whom?

24 A. The receiver -- Dr. Godlevsky asked that a receiver be
25 appointed, and he asked the state court in Wisconsin to appoint

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1 that receiver.

2 Q. Okay. So that's what you said. There was a dispute
3 between you and Dr. Godlevsky regarding ownership of the
4 company?

5 A. Regarding ownership of the company and the financials of
6 the company, yes.

7 Q. And that's in Wisconsin?

8 A. And that's in Wisconsin.

9 Q. And that judge appointed a receiver?

10 A. Yes, sir.

11 Q. Okay.

12 *THE COURT:* What was the value? I thought the company
13 was not making money then.

14 *THE WITNESS:* They wanted to go back into the history
15 to see the prior money, if it had been spent appropriately and
16 parceled out appropriately.

17 *THE COURT:* So it was an accounting basically, huh?

18 *THE WITNESS:* Well, it was an accounting and -- it was
19 an accounting and then in order to get that accounting, you had
20 to sort out who had a right to do what in order to be able to
21 get to an accounting.

22 *THE COURT:* Okay.

23 BY MR. CARLYLE:

24 Q. And when did the receiver -- when was the receiver
25 officially appointed?

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1 A. I believe January or February of 2013.

2 Q. Okay. So, now we're to this year. And one of the jobs of
3 the receiver was to take possession of SXP equipment?

4 A. Yes, sir.

5 Q. Okay. And right before -- right when the receiver was
6 appointed, did you go to the server room and set a fire to
7 everything?

8 A. Well, no. At the point in which the receiver was
9 appointed, all the -- everything from the server room had
10 already been unplugged, stacked, and stored.

11 Q. Where?

12 A. In the basement of my Brookfield home.

13 Q. When was that done?

14 A. Immediately after SXP closed at the end of June 2012, they
15 transferred it immediately and stored it in the basement of my
16 Brookfield home.

17 Q. Okay. So that it was leasing the space at Prospect before
18 that?

19 A. Yes.

20 Q. And then it moved out of that space?

21 A. Yes.

22 Q. At the time it shut down in June, July of 2012?

23 A. Yes.

24 Q. And then the computer equipment was taken to your personal
25 home?

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1 A. Yeah, to one of them, yeah.

2 Q. Okay. And when the receiver was appointed, did you set
3 fire to all of the SXP computer equipment?

4 A. No. When the receiver was appointed, he asked for all of
5 the SXP computer equipment. We had him over to the Brookfield
6 house. We gave him all of the servers. We pointed out the
7 workstations. We told them that -- I'm sorry.

8 Q. Let me interrupt you. What is a workstation?

9 A. It's just a -- the workstations are just the standard
10 towers. Like if you have a personal computer, the tower, the
11 tower-looking part of the computer, you know.

12 Q. So let's use this courtroom as an example. We have clerks
13 that are typing in the computers. It's likely that those --
14 what they're doing is being saved to a server somewhere and not
15 only saved on their personal computers. Are you saying that
16 the workstations are where the individual users make entries?

17 A. Yes. The workstation is just basically your individual
18 tower under your desk for just your station.

19 Q. Okay. And what got saved on individual workstations?

20 A. Just what you were immediately doing before it went into
21 the server room.

22 Q. Okay. And then whatever they worked on would be in the
23 server room?

24 A. Yes.

25 Q. So those would be duplicative of each other?

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1 A. Yes.

2 Q. Okay. So you didn't set fire to everything when the
3 receiver was appointed?

4 A. Not at all.

5 Q. Okay. We have -- what did the receiver -- did the receiver
6 specifically ask for certain stuff or what happened then?

7 A. The receiver told us, Please turn over -- we had an
8 agreement to turn over all SXP computers. And so the receiver
9 came over to the Brookfield house where they all were. And we
10 had all -- we started stacking up the computers. And we said,
11 "Here are your servers. Here's everything that it is." And we
12 pointed out and we said, "Those are the workstations, but
13 everything was already on the main servers. Those have been
14 wiped." And so the receiver first said, "Well, we'll just take
15 the servers. We're not concerned with the workstations right
16 now, but we'll get back to you on it."

17 Q. Okay. And I just want to stop you there for a second. I'm
18 going to put up on the board the prehearing brief that Quantlab
19 filed. This is Document 449 in the court's record.

20 And they said, "In the case of Mamalakis, he
21 admitted to wiping the drives over a year ago after the wiping
22 occurred and only when the forensic examiner hired by SXP's
23 receiver disclosed suspected spoliation." Is that true?

24 A. That's absolutely not true.

25 Q. When did you disclose to anyone the wiping of these

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1 workstations?

2 A. I know at minimum it was immediately when the receiver was
3 to have the -- all the computer equipment. So it would have
4 been seven, eight months after -- or at the latest it would
5 have been seven, eight months afterwards, when we went to the
6 receiver and we told them immediately.

7 *THE COURT:* Seven or eight months after that?

8 *THE WITNESS:* After SXP closed. It closed at the end
9 of June. So seven, eight months later was when the receiver
10 was appointed. And the minute the receiver was appointed, when
11 he asked for all the computer hardware, we told him what was
12 there, what was wiped, what wasn't wiped, asked them what they
13 wanted, and delivered it over to them.

14 *MR. CARLYLE:* May I approach the witness, Your Honor?

15 *THE COURT:* You may.

16 BY MR. CARLYLE:

17 Q. Mr. Mamalakis, I'm going to hand you a document. Without
18 disclosing the contents of that, can you tell us generally what
19 it is?

20 A. It's e-mail exchanges between my attorney up in Wisconsin
21 Hugo Rojas and the receiver.

22 Q. Okay.

23 *THE COURT:* Spell his last name, please.

24 *THE WITNESS:* Rojas, R-o-j-a-s.

25 BY MR. CARLYLE:

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1 Q. And the receiver's name is Seth Dizard, D-i-z-a-r-d?

2 A. Yes, sir. It's Seth and the Joe Newbold and Melissa Blair.

3 Q. Okay.

4 *MR. CARLYLE:* Do you have any objection to this?

5 *MR. MCINTURF:* I don't have any objection to it.

6 *MR. CARLYLE:* Okay. Well, at this time I would like
7 to offer it then as Defendant Mamalakis's Exhibit 1.

8 *THE COURT:* Any objection? No. Admitted without
9 objection.

10 BY MR. CARLYLE:

11 Q. Mr. Mamalakis, I'm going to put it up on the board so we
12 can read it. So Hugo Rojas is your attorney?

13 A. Yes, sir.

14 Q. In the action in Wisconsin, right?

15 A. Yes, sir.

16 Q. And Seth Dizard is the receiver. Who's Joe Newbold?

17 A. He's one of the lawyers that works with --

18 *THE COURT:* This is a potential waiver of the
19 attorney-client privilege. Is that okay with you?

20 *MR. CARLYLE:* No, the -- well, with Dizard on there --
21 with regard to this specific issue as to what we told SXP and
22 the receiver -- well, maybe I need to confirm. Let me --

23 *THE COURT:* I think you do, yeah.

24 *MR. CARLYLE:* Your Honor, it's our position that the
25 receiver is in control of SXP. It would be his privilege to

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1 assert if he wanted to.

2 *THE COURT:* Okay. But you're not going to assert one?
3 Okay.

4 *MR. CARLYLE:* Not with regard to this.

5 *UNIDENTIFIED SPEAKER ON THE PHONE:* Hold on, Your
6 Honor. We don't know what the e-mail is. We're on the phone
7 here. Without knowing what --

8 *THE COURT:* Well, it's an e-mail from Mr. Rojas to
9 Mr. Dizard and carbon copied on it are Mr. Newbold and
10 Ms. Blair.

11 *THE WITNESS:* Yeah.

12 *MR. CARLYLE:* March 15th, 2013, talking about bringing
13 over the workstation.

14 *THE COURT:* Yeah, I don't know who all these people
15 are. It may have been waived already. Who's Ms. Blair?

16 *MR. CARLYLE:* She works with Newbold, who they are
17 both attorneys for the receiver.

18 *THE COURT:* I see. Okay.

19 *MR. CARLYLE:* So I don't know that it's
20 attorney-client communication.

21 *THE COURT:* Okay. Well, I'm not interested in
22 asserting a privilege. I just want to make sure if we're
23 waiving one, I just want to make sure we're doing it knowingly.

24 *MR. CARLYLE:* I don't think it applies to this.

25 *THE COURT:* Okay. All right. That's fine.

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1 BY MR. CARLYLE:

2 Q. So, just, Mr. Mamalakis, explain to us generally what was
3 going on at this time period, March 15, 2013, with regard to
4 the stuff that the receiver wanted, the computer equipment that
5 the receiver wanted.

6 A. On March 15th, that's when we were turning over the
7 computer equipment to the receiver. And when they had come and
8 taken all the servers and everything that they had requested,
9 my attorney, Hugo Rojas, after we had consulted, had wanted to
10 make sure -- had wanted to ask them, "Well, what do you want to
11 have happen with these workstations? The workstations you saw,
12 the workstations you discussed, what do you want to have happen
13 with these?" And so he discusses it here in the e-mail and
14 then it goes on for around a week of him saying, "What do you
15 want done? What do you want done?"

16 Q. Okay. And I'm just going to go back to the brief. This is
17 Document 449. This is another part, on page 5, Quantlab
18 writes, "After the receiver was appointed to oversee SXP's
19 assets" -- so at the time of the e-mail that we're looking at,
20 a receiver has been appointed, right?

21 A. Yes, sir.

22 Q. They communicated it. It says, "Mamalakis never disclosed
23 to SXP his wiping of 23 computer servers." Do you see that?

24 A. I do.

25 Q. So at the time of this e-mail, the receiver had been

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1 appointed, right?

2 A. Yes, sir.

3 Q. Okay. And Mr. Rojas says to Mr. Dizard -- or actually --
4 yeah, Mr. Dizard, the receiver, "Also please note for the
5 record that it is my understanding that any towers that were
6 not turned over to you were wiped of all data when SXP ceased
7 operations" --

8 *THE COURT:* You're going too fast.

9 *MR. CARLYLE:* I'm sorry. You're right, Your Honor.

10 *THE COURT:* When SXP.

11 BY MR. CARLYLE:

12 Q. -- "ceased operations in July of 2012. We mentioned this
13 when you picked up SXP's servers. That's why we still have
14 them."

15 So, the receiver -- were you hiding anything with
16 regard to the wiping?

17 A. No, not at all.

18 Q. Did you not tell anyone about that until the receiver filed
19 a motion for protective order and Quantlab filed a motions for
20 sanctions?

21 A. No.

22 Q. All right. The same e-mail string, at the top, this is now
23 March 22nd, a week later from Mr. Rojas also to Mr. Dizard.
24 And here Mr. Rojas also explains the reason for the wiping,
25 right?

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1 A. Yes, sir.

2 Q. And he says, "I wanted to clarify the issue of SXP's
3 computer equipment that we still possess. First, the wiping
4 information" --

5 *THE COURT:* No, you're going too fast.

6 *MR. CARLYLE:* You're right. I know, Your Honor. I
7 get excited.

8 *THE COURT:* Why don't you just let us read it to
9 ourselves -- well, that won't work on the phone though. Go
10 ahead. Just read more slowly.

11 BY MR. CARLYLE:

12 Q. First, the -- I'm not going to read the whole thing.
13 "First, the wiping of information from SXP computers that you
14 do not possess at this time was done as to protocol."

15 *THE COURT:* Take a breath. Take a breath. Okay.

16 BY MR. CARLYLE:

17 Q. "SXP had stopped operating and the thought was that if the
18 company had to dissolve and liquidate its assets, it would have
19 to clean the computers that were to be liquidated of any code
20 or trading data." And then it goes on, and I'm not going to
21 read all that.

22 But, so, Mr. Mamalakis, you've been in the
23 courtroom and the representations from Quantlab were that --
24 the word I think they used was "alibi."

25 A. Yes.

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1 Q. Then it wasn't later that you gave this alibi about
2 liquidation. And that's just not true, is it?

3 A. Absolutely not.

4 Q. And is it an alibi, Mr. Mamalakis?

5 A. I don't understand how it can be -- no, it's not an alibi.

6 Q. Okay. Well, then tell us, please -- we're talking about
7 developer workstations. Okay? You're an attorney.

8 A. Uh-huh.

9 Q. Right?

10 A. Yes.

11 Q. Granted, you don't do a whole lot of litigation. You're an
12 attorney. You understand you're not supposed to destroy
13 evidence?

14 A. Yes, sir.

15 Q. Okay. You know that someone has sued your company, saying
16 that your brain looks a lot like their brain?

17 A. Yes, sir.

18 Q. Right?

19 A. Yes, sir.

20 Q. The server is where the brain is kept?

21 A. Yes, sir.

22 Q. Okay. And the remote computers are also in your
23 possession?

24 A. Yes, sir.

25 Q. Okay. Why were those wiped?

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1 A. At the end of June, when we were looking to close down the
2 company, the issues that preceded the company even closing, the
3 whole reason why we attempted filing bankruptcy, everything
4 that was going on was because we were running out of money.
5 The company just wasn't making enough money anymore.

6 And so as we came to the conclusion of the
7 company closing, I knew that I wouldn't have an IT staff
8 anymore after the company closed. We were out of money. IT
9 wouldn't exist there anymore. And so I had to try to figure
10 out the way in which I could make sure that I was complying
11 with what I needed to in the Houston litigation, but also
12 didn't put myself in a situation where later on in the lawsuit
13 with Dr. Godlevsky, if they wanted to liquidate it all, that I
14 wouldn't now be charged to bring in an IT individual to prep
15 the computers for liquidation.

16 At that time the prevailing items that had
17 occurred, our expert witnesses had explained to us that the code
18 that the FBI had found was the ancillary pieces, not main
19 brain, that it was ancillary pieces, that in all likelihood the
20 reason why Dr. Godlevsky or Dr. Kuharsky had those is because
21 as researchers on their own, they must have known what the
22 brain was, but they had taken pieces that were the ancillary
23 parts. And so at that point in time the focus was, okay, with
24 the limited resources I have, how do I prep for all this. And
25 I've now been assured through our -- not only through our

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1 expert witness and also because the FBI decided that they
2 didn't want to prosecute, that our issue was not as much
3 anymore about them taking a main brain. It was more, is our
4 brain identical or using the IP of Quantlab.

5 And at that point, discussions and conversations
6 had already been taken place between SXP and Quantlab. I had
7 come down to Houston. We had already turned over -- we had
8 already -- I turned over to Quantlab our code, a version of our
9 code for them to review, for them to look at, for them to
10 decide whether or not it matched, much along the same concept
11 of, "Okay. Here it is. Look at the code. You look at the
12 code. You've got our code. Match it up, and tell us is it the
13 same or is it not." And, in fact, they'll have had that code
14 for -- this spring it will be two years that they've had it.

15 And so when I met then with Quantlab afterwards
16 and when we had requested, so do we have your code, the best
17 answer that we got was, well, it might be a little derivative.
18 So at that point all conversations that were taking place in
19 that regard were -- had now been narrowed down to, okay, this
20 is about the brain. Is your brain the same or is it not?

21 And so when they came through and they said,
22 "Okay. These workstations, what do we want done with them," I
23 said, "Well, prep them as if we would -- if we end up getting
24 pushed into liquidation, prep them so that we don't get in
25 trouble if they're at liquidation." But also at that point in

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1 time, the item that they brought up there, prior to that, when
2 and Andriy Kuharsky had left SXP prior to the FBI raid, Andriy
3 Kuharsky had also -- he, out of the normal process, deleted his
4 computer before you leave a company. And I remember having the
5 conversation afterwards when the FBI was able to reverse the
6 deletion that Andriy Kuharsky did and it was -- you know, it
7 probably isn't an appropriate joke, but it was the running joke
8 I had with the IT folks. I always said, "Well, it looks like
9 wiping is not wiping." And I said, "How do you actually wipe a
10 computer?" They say, "You rip it apart and you take a
11 sledgehammer to it or melt it if you ever want it to be totally
12 gone."

13 And that where I had said -- I was, like, I'm
14 amazed how in the world Andriy -- Andriy Kuharsky is a full
15 professional just like my IT people in the computer world. He
16 followed the practice of wiping a computer, and the FBI
17 reversed it. And I remember having that conversation with
18 Brenton saying --

19 Q. Hold on. Slow down.

20 A. I'm sorry.

21 Q. No one knows who Brenton is yet.

22 A. Okay. I'm sorry.

23 Q. Okay.

24 A. So that was it.

25 Q. Let me ask a question, because that's a long answer. Tell

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1 us about your communications with folks at SXP regarding the
2 wiping of these developer workstations?

3 A. The issue of wiping was brought to me -- I wasn't -- when
4 we were shutting everything down, individuals from -- the IT
5 personnel at SXP are Brenton Roskopf and Chris Hemmerly. And I
6 was in my office and they had approached me and they were
7 trying to put together the mechanism, how do we close
8 everything down. And they asked me, they said, "Hey, what
9 about these workstations?"

10 And I said, "Do they have anything original?"

11 They said, "No. If it's relevant, it's in the
12 server room."

13 And I go, "And the server room is backed up?"

14 They say, "Yep, the server room is backed up."

15 I go, "All right." I said, "Well, let's prep
16 them as if we're forced to go into a liquidation." I want
17 these prepped with the -- since we have people now, let's just
18 prep them, if we're forced to go into liquidation, to put them
19 in the state so I don't have to -- I'm not going to have any
20 money. So I want to have them put in the state they're going
21 to need to be per liquidation. And I remember Brenton looking
22 at me and he says, Yeah -- he goes -- and he said, "Yeah, and
23 don't worry, I've already heard you. Wiping is not wiping."

24 I said, "I learned that lesson with the FBI quite
25 well."

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1 Q. Okay. So I've got a very crude drawing and I just want to
2 make sure we're on the same page. You've got a server room,
3 and in it are computers that have the code --

4 A. Yes, sir.

5 Q. -- the brain. And they also have all your e-mail
6 communication?

7 A. Yes, sir.

8 Q. Anything else in the server room that you can think of?

9 A. Everything. E-mail communications, anything that's any
10 part of anything that we were doing in the company, old files
11 old file folders, scanned-in documents, the accounting
12 paperwork, the financial paperwork, billing statements. Almost
13 everything that we did -- we were pushing to go paperless. So
14 if it existed at SXP, it was sitting in that server room.

15 Q. Did the code -- when new code was written, was the old code
16 destroyed?

17 A. No. It's kept on a -- it's on a system where you stack
18 them like pancakes or when a new one comes in, you put it on
19 top, so that if there was ever a bug that came up, you could go
20 down layers and go to an older version and try to start from
21 where the bug didn't exist, so that you could try to narrow
22 down where it was that you had to fix them.

23 Q. Okay.

24 *THE COURT:* If you'd look for a break, we want to take
25 time for a break.

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1 MR. CARLYLE: Sure. Yeah, let's take a break.

2 THE COURT: Right now? Okay. We'll take a 15-minute
3 break.

4 *(Recess from 2:43 p.m. to 2:58 p.m.)*

5 THE COURT: Okay. You may inquire. You may be
6 seated. Okay. Carry on.

7 **DIRECT EXAMINATION CONTINUED**

8 BY MR. CARLYLE:

9 Q. All right. Mr. Mamalakis, do you still understand you're
10 still under oath?

11 A. Yes, sir.

12 Q. Okay. So before we broke, you were telling us about the
13 system. And this is the server room, and these servers were
14 maintained?

15 A. Yes, sir.

16 Q. The data that's in these servers, what happened to those
17 servers? Where are they now?

18 A. With the receiver.

19 Q. Okay. And what we're talking about, with the machines that
20 were wiped, are these developer workstations, right?

21 A. Yes, sir.

22 Q. They were used to make changes to code, things like the
23 brain, things like other code you talked about that
24 communicates with the exchanges?

25 A. Yes, sir.

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1 Q. Okay. And I want to make sure I understand. Tell me again
2 exactly the communications you had with your IT department when
3 they told you about what these things do and what's on there.

4 A. I asked them, "Is there anything that is unique or relevant
5 on those workstations that is not sitting in the server room,"
6 and they said, "No." I gone through and I said, "Is there
7 anything that you can get from those towers that could not be
8 ascertained from everything that's sitting in that server
9 room?" And they said, "No."

10 Q. Okay. And if you wanted to frustrate Quantlab's ability to
11 prosecute this case, don't you think -- don't you think this
12 should have been deleted, the brain?

13 A. That's the only real way when you're looking at the dispute
14 of -- and everything that's at issue, everything that's at
15 issue here is resolvable, is viewable through what was kept in
16 that server room.

17 Q. Okay. Well, so you're saying -- did you think that
18 Quantlab at the time that you gave the A-OK to your IT people
19 to wipe these remote workstations -- and you're saying that was
20 in June, July of 2012?

21 A. Yes, sir.

22 Q. Okay. When you gave that okay, did you think that these
23 were relevant to the pending lawsuit?

24 A. Not at all.

25 Q. Okay. Why not?

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1 A. Because anything that had any relevance to this lawsuit is
2 sitting in the server room. And so you're balancing two
3 different lawsuits, two different situations and where you have
4 to set things up with the limited resources you have and
5 anything that you needed in this lawsuit is sitting in that
6 server room.

7 Q. Well, don't you think it would have been smarter to keep
8 those, then we wouldn't be here today?

9 A. Yeah, hindsight 20/20, I am wishing 3 million times over
10 that I would have just left it sitting there and not having
11 dealt with this. I mean, the -- I've had these conversations
12 now since, and it's one of those items where it's, okay,
13 hindsight 20/20, it's like proving a negative. It's like,
14 okay, could you have had it to certifiably -- but even at that
15 point in time, when you look at the server room and you look at
16 what the code is that's there and if it comes up that it's not
17 Quantlab code and it's not identical to Quantlab code, you
18 know, that resolves your issue. If it is Quantlab code, well,
19 then you're guilty whether or not someone was sitting doing
20 something on that workstation or not.

21 And so that's where I just couldn't -- at the
22 time when I checked with the IT department, they said,
23 "Anything that's relevant is in the server room." I had the
24 experience with the FBI where the stuff was completely
25 unwipeable. I checked with the IT department and said, "Is

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1 there anything on there that could even become -- that is even
2 remotely relevant?" And they're like, "No, if it's" -- you
3 know, I even asked them, I said -- and I remember Brenton even
4 having a conversation with me where he said, "You know, even if
5 you had them, there isn't anything really on there that you
6 could actually even see, you know, log-in dates or anything
7 like that. It's just not -- that's not how they're wired."

8 Q. Okay. Well, Quantlab has asserted that they sent specific
9 discovery requests to you asking for those machines. Were you
10 here in the courtroom when you heard that?

11 A. I heard that here and that was also brought up to me in
12 depositions last week.

13 Q. Okay. Because that would be a good way to let you know
14 what they think is relevant to the case. Do you agree with me?

15 A. Yes, sir.

16 Q. If they had asked you for them --

17 A. Yes, sir.

18 Q. -- would it be appropriate to then wipe them?

19 A. No.

20 Q. And back to their brief, Document 449, Quantlab says, "Even
21 assuming for the sake of argument that defendants were somehow
22 confused as to whether their development computers would be
23 subject to discovery, that implausible excuse was removed
24 through Quantlab's actual request for production." Do you see
25 that?

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1 A. I do.

2 Q. So I want to show you those requests for production, and I
3 want you to explain to the Court why, if that's the case, you
4 didn't think that meant the developer workstations, do you
5 understand?

6 A. Yes, sir.

7 Q. Okay. So we're going -- I'm back showing the PowerPoint
8 presentation, the first bullet on this page here. It
9 identifies the request for production. This is Exhibit M in
10 the hearing brief. We're going look at 67 to you and Nos. 95,
11 109, 123, and 134 to SXP. Are you with me?

12 A. Yes, sir.

13 Q. Because the representation is that, based on those
14 requests, you should have known not to wipe these developer
15 workstations.

16 A. I understand.

17 Q. Okay. So let's look at Exhibit M to the brief. This is
18 Document 449-13. And, first, I want to start with the one to
19 you. This is -- starts on page 40 of 151, and this is your
20 response to plaintiff's first set of requests for production.
21 And Quantlab said that the one we should look at is No. 67.
22 And this one says, "For imaging and inspection by Quantlab's
23 forensic experts, exact copies of all computer hard drives and
24 electronic storage devices used by you."

25 Well, didn't you think that meant these developer

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1 workstations?

2 A. No. I'm not a developer.

3 Q. Okay. Did the computer that you used while you were at
4 SXP, does the receiver have that?

5 A. Yeah.

6 Q. Okay. So when you read this, did you think you should have
7 kept all the developer workstations?

8 A. No.

9 Q. Do you think a good request for production might have been:
10 For imaging and inspection by Quantlab forensic experts, exact
11 copies of all computer hard drives and electronic storage
12 devices used by developers to write code?

13 A. That -- if that would have come up, then we would have
14 followed the same process we did with every other discovery
15 request. My attorneys would have informed me, and then we
16 would have had to start locking it down.

17 Q. Okay. Well, let's look at the request to SXP. And you
18 start on page 78. And the first one we're to look at is
19 No. 95. Let's see if that one asks for developer code -- or
20 developer computers. Now, this one asks for inspection by
21 Quantlab's experts, copies of computer hard drives seized on or
22 about March 5th, 2008, and returned to SXP by the FBI.

23 Okay. Does that lead you to believe that you
24 shouldn't delete these developer workstations?

25 A. No. That has nothing to do with workstations. That has to

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1 do with computer equipment that the minute when we knew that
2 occurred, that's why nobody ever touched those and those went
3 straight to our expert and then were turned over to the special
4 master, but that didn't involve workstations.

5 Q. Okay. So this request is for sort of SXP Version 1, the
6 preraid computers?

7 A. Yes. And those were turned over to the special master.

8 Q. Okay. The next one that allegedly should leave no cause
9 for confusion as to whether or not you should keep developer
10 workstations is No. 123 -- no, 109. It says, "For imaging and
11 inspection by Quantlab's forensic experts, exact copies of all
12 computer hard drives and electronic storage devices assigned to
13 Kuharsky."

14 Those developer workstations that you allowed to
15 be wiped, was Kuharsky's any of those?

16 A. Not at all. Those fell under the computer equipment that
17 was seized by the FBI. So that definitely didn't have anything
18 to do with any developer workstations.

19 Q. When did Kuharsky leave the company?

20 A. January of '08. And the FBI raided in March of '08.

21 Q. Okay. The next one is 123, on page 63. And this request
22 asks, "For Imaging and inspection by Quantlab's forensic
23 experts, exact copies of all computer hard drives and --"

24 *THE COURT:* Slowly.

25 Q. -- "and electronic storage devices assigned to Godlevsky."

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1 A. Uh-huh.

2 Q. These developer workstations that we looked at that talked
3 to the brain, was one of those Godlevsky's?

4 A. No. He had his own.

5 Q. But I thought he was a developer?

6 A. Yeah, but he kept his own privately. He didn't -- he had
7 gone out of his way to make sure that his stuff, his terms were
8 his personally, even to the point of he had -- didn't even sign
9 the confidentiality or noncompete, because he wanted to make
10 sure that he maintained his computers and his stuff as his own
11 property.

12 Q. Okay. And the last one is No. 134. And this one is the
13 same question, the computers assigned to this one says, "An."
14 Who is An?

15 A. Ping An, she's a -- she had -- she's a party to this case.
16 She only existed pre-FBI raid. So anything that was responsive
17 to this, again, would have been seized by the FBI, and it's the
18 same process. So, no, it did not involve developer
19 workstations.

20 Q. What do mean she only -- you mean she left the company's
21 employ?

22 A. Yeah, she left -- she left at or before Dr. Kuharsky had
23 left. So that's at least a functional bench date. She
24 definitely wasn't there after Dr. Kuharsky. And Dr. Kuharsky
25 was definitely, well, before the FBI did the raid.

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1 Q. Okay. So did you see any requests there that asked for
2 computers used by SXP's developers?

3 A. No.

4 Q. Okay. Instead we saw specific requests for computers
5 assigned to specific individuals, correct?

6 A. Yes, sir.

7 Q. And we saw one for a computer -- any computer you
8 personally used, right?

9 A. Yes, sir.

10 Q. And we saw one for all computers seized by the FBI, right?

11 A. Yes, sir.

12 Q. If you had received a request asking for developer
13 workstations, would that have changed things?

14 A. We had received a whole lot of requests. I'm sure if we
15 would have received one for a developer workstation, it would
16 have gone through the exact same process as the other ones did.

17 Q. Okay. These computers that were given away, Mr. Roskopf
18 testified that computers were given away as parting gifts.
19 First of all, were those SXP computers, other companies'
20 computers, both?

21 A. Of the computers that employees that were leaving were
22 permitted to keep, some of them were non-SXP computers. Some
23 of them were their personal computers that they worked on SXP
24 stuff with. And some of them might have been SXP computers.
25 But the one process that we made sure, is that any of those

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1 computers never left with any information that was SXP property
2 on them.

3 So they were -- they were -- the IT department
4 would make sure that everything was appropriately taken care
5 of. And at the time all these people were being basically laid
6 off and kicked off to the street and -- I went through that
7 same process of saying, "Is there anything on there that's
8 original or relevant?" No. It's in the server room. It's,
9 like, okay, you know, and then I'm not going to go back and
10 claim their computer from them. But, I mean, if we -- still to
11 this day I could probably try to go back and ask some of those
12 folks, "Hey, do you have your old laptop from when you were
13 there and I know we forced you to make sure it was clean, but,
14 you know, do you want to tender it back?" I mean, that's --

15 Q. Okay. If you were -- if you thought liquidation was a
16 possibility --

17 A. Uh-huh.

18 Q. -- and you are wiping computers so that they can be
19 liquidated --

20 A. Yes.

21 Q. -- for funds, why would you give away property, like
22 computers?

23 A. Well, the only reason why you end up doing that is that if
24 the individuals -- if this was part personal and part they
25 were, like, working on SXP stuff on their own and, again, if it

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1 was from non-SXP companies -- or there were many of these
2 individuals, when you look at the closing of SXP, that they had
3 actually received severance packages, that they had received
4 some kind of compensation. Since they're basically losing
5 their job at no fault of their own and much akin to them having
6 received a severance package, as long as they weren't doing
7 any damage or anything and if they had to go -- find where to
8 go work next, I wasn't about to pull out their only laptop from
9 their house and say, "Sorry, you're computerless."

10 Q. We heard argument that there was never a litigation hold at
11 SXP. During SXP's entire operation, the cloud of this
12 litigation was over it, correct?

13 A. Yes, sir.

14 Q. Okay. What was done to ensure that material relevant to
15 the lawsuit was not spoiled?

16 A. Two main things. The concept of the central hub where
17 everything was stored and then by the time we were able to get
18 a central hub that was functional, where everything was stored,
19 then the next step that was taken was to duplicate everything
20 on backup tapes and have those backup tapes routinely kept off
21 site in a safe-deposit box at a bank.

22 And both the backup tapes and the servers were
23 both in the hands of the receiver when we closed up. So they
24 have almost -- it should almost be like they got two sets of
25 everything. The servers that were all in the server room that

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1 stored everything, plus the set of backup tapes that back up
2 what was in there, because if you had a fire if you had
3 something that happened, if you had flood damage in the server
4 room, I mean, you can't have that be your only version of
5 what's going on. So we kept that -- we kept that also, so that
6 we would be able to maintain all relevant material on this.

7 Q. Mr. Mamalakis, do you understand that Quantlab is seeking
8 millions and millions of dollars in this litigation?

9 A. I do.

10 Q. And do you understand that this hearing is to decide
11 whether or not the Court should grant Quantlab's request for
12 dispositive sanctions? Do you understand what that means,
13 dispositive sanctions?

14 A. I do.

15 Q. Okay. Considering the fact that millions of dollars' worth
16 of judgment is being sought from you because these computers
17 were given away and computers were wiped, do you think -- do
18 you wish you could go back in time?

19 A. Oh, if I could go back in time right now and just say, "I
20 understand. I understand you're telling me that it's already
21 covered in the server room and I understand that you're telling
22 me that there's nothing on it that can be found that's even
23 relevant," I would have just basically said, "Fine. Forget --
24 we're keeping it all sitting right as is. Let them walk
25 through all of them and see that that's the case."

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1 But, even beyond that, too, at the end of the
2 day, in order for it to even be relevant, I had to have been
3 using Quantlab's IP or Quantlab's code. And that's why at the
4 end of the day, if it ends up that my company used Quantlab's
5 code, whether or not it was on that workstation or not, you're
6 guilty if you're using the code. And if we didn't, having --
7 what their theory is, I can't process, but still to this day
8 now, because of the magnitude of this -- these items, if I
9 could go back in time, I just would have said, "Just stack them
10 all up and leave them be. And if we get forced to pick up
11 costs of a liquidation later, then I'll just beg poverty."

12 Q. And do you understand that Quantlab is saying these
13 developer workstations now, that's what they needed to prove
14 their case?

15 A. That makes no sense to me.

16 Q. Why is that?

17 A. Because in order to prove a case of if we have your code,
18 it's sitting in the server room. It's -- if we have your code,
19 it's in the server room. And the other part, too, is, it
20 wasn't that big of a company and I knew all the people that
21 were working there quite well. And there were no way anyone
22 was sitting on a workstation with a Quantlab code on a
23 computer. And if you wanted proof -- the thing that befuddles
24 me on it, is if you want to prove the case, you've got the
25 code. You've had the code now for over a year and a half. And

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1 if you want to prove that case, you have it. It's also
2 available in the server room. It's also on backup tapes. And
3 I just --

4 *MR. MCINTURF:* I'm going to object to responsiveness,
5 Your Honor.

6 *THE COURT:* No, I think he's answering the question.
7 But I do understand your position, I really do.

8 *MR. CARLYLE:* Okay. I'm going to wrap it up, Your
9 Honor.

10 *THE COURT:* Okay.

11 BY MR. CARLYLE:

12 Q. Mr. Mamalakis, do you feel as though you have defenses
13 personally to Quantlab's codes -- I mean, to Quantlab's
14 allegations in this lawsuit?

15 A. Yes, sir.

16 Q. For example, one would be that you didn't know that
17 Quantlab's code was on -- that Mr. Godlevsky -- Dr. Godlevsky
18 had allegedly taken some of that?

19 A. Yes.

20 Q. Okay. Are there -- do you contend -- or do you dispute
21 that Quantlab's code, any parts that may have been used or
22 taken by Godlevsky are even confidential and proprietary in the
23 aspect of high-frequency trading and what all people use?

24 A. No. From interacting with the experts and what they
25 basically explained of the items that Dr. Godlevsky had pulled

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1 over -- and this is why the criminal case got resolved the way
2 it did, from my understanding, is that they explained that
3 although it was Quantlab files and he had them on his computer,
4 it did not -- it did not purport to look as if it was
5 intellectual property sitting there.

6 Q. Okay. And do you understand that if dispositive sanctions
7 are issued against you, then you lose all of those defenses?

8 A. I do.

9 Q. Finally, the PowerPoint that the plaintiff presented says
10 that every single developer workstation was either wiped or has
11 disappeared; is that true?

12 A. That's not true.

13 Q. Okay. Why is that not true?

14 A. You would have to go through -- they haven't disproved --
15 they haven't wiped -- the individuals were allowed to take
16 their laptops. If you wanted to go back to them and say, "Can
17 we get your wiped -- can we get your laptop back, have a look
18 at them" -- on top of that, I haven't even -- with discussions
19 with the receiver, there isn't even a completion yet of putting
20 everything back together. So I have absolutely no clue if
21 that's every single workstation. I don't know where that
22 purportedly came from and --

23 Q. What about the developers that worked remotely?

24 A. That -- yeah, those were -- I have no idea of -- from my
25 understanding, you know, those weren't wiped or destroyed.

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1 Q. Okay. And then, finally, the argument has been that your
2 statement that the computers were wiped to plan for
3 liquidation, Quantlab's argument there is that that is a
4 pretext, that that is an alibi, that that's not true. And one
5 of the things they say to support that is they say, "In
6 November 2012, months after the wiping, giveaway took place,
7 you asserted in Wisconsin state court that there was no ongoing
8 or planned liquidation of SXP." Do you see that?

9 A. Yes, I do.

10 Q. Okay. Is that true -- and then there's a cite specific to
11 Docket 402, Exhibit A at 10. Do you see that?

12 A. Yes. And I don't remember that being what was written in
13 that part.

14 Q. Okay. Those aren't quotes. Do you see quotes in that
15 paragraph?

16 A. No.

17 Q. Okay. Do you remember what was stated on Exhibit A at page
18 10?

19 A. I don't have it memorized.

20 Q. Okay. I've got it on my phone and I'm going to blow it up.
21 It may not come in very well. Here we go. It says, "SXP has
22 ceased operations as of June of the current year." Do you see
23 that?

24 A. Yes.

25 Q. And is that true?

Mamalakis - Direct by Mr. Carlyle

1 A. Yes.

2 Q. Was that true when that was written?

3 A. Yes.

4 Q. And then it says, "Godlevsky has presented no evidence that
5 SXP's assets have been liquidated." Do you see that?

6 A. Yes.

7 Q. Where does it say SXP does not plan to liquidate?

8 A. It doesn't.

9 *THE COURT:* I think you can wind it up here pretty
10 soon.

11 *MR. CARLYLE:* Your Honor, I'm going to pass.

12 *THE COURT:* Okay. Let me just ask just one question.
13 How are you now making your living? Are you practicing law?

14 *THE WITNESS:* No. The only law that I do is pro bono
15 work on that. I do consulting. I just trade items and --

16 *THE COURT:* I see.

17 *THE WITNESS:* Yeah.

18 *THE COURT:* And the time where you -- the monastery
19 that you were visiting, that was in your personal life? It
20 didn't relate to your business?

21 *THE WITNESS:* Yeah. No. Yeah.

22 *THE COURT:* Okay. All right. Any cross-examination
23 from Quantlab?

24 *MR. MCINTURF:* Yes Your Honor.

25 *THE COURT:* Okay. You may inquire.

Mamalakis - Cross by Mr. McInturf

1 *MR. MCINTURF*: Thank you, Your Honor. And for those
2 of you on the phone, this is Tim McInturf for Quantlab.

3 **CROSS-EXAMINATION**

4 BY MR. MCINTURF:

5 Q. Okay. Mr. Mamalakis, I would like to talk to you about a
6 few things you just testified to, and I'm going to run through
7 a few things as quickly as I can in reverse chronological
8 order. You testified earlier that you think to prove its case,
9 Quantlab should just look at its code and SXP's code; is that
10 correct?

11 A. In general.

12 Q. You think we don't need to see how SXP's code was
13 developed; is that right?

14 A. I don't -- I'm lost on that. You don't think I -- you need
15 to see how they -- no.

16 Q. You don't think we need to see how it was developed?

17 A. I don't understand. I don't think so.

18 *THE COURT*: He's saying even assuming the code was not
19 taken verbatim from Quantlab, isn't it possible that you
20 started with Quantlab and developed a derivative of Quantlab
21 code to use as SXP code?

22 *THE WITNESS*: Oh, yes, I get that.

23 A. Yes, yes, I'll agree with you on that. Yes.

24 BY MR. MCINTURF:

25 Q. Okay. So you agree that's possible?

Mamalakis - Cross by Mr. McInturf

1 A. Yes.

2 Q. Okay. And do you know whether it's possible to rewrite
3 software in a way that makes it difficult to detect that this
4 software is basically something rewritten or based on something
5 else?

6 A. It probably -- I don't know enough about software to be,
7 like, an expert on it, but I could see where -- I could see
8 where that would be an understanding.

9 Q. And that makes another point you talked about earlier. You
10 had no role in designing SXP's trading system; is that correct?

11 A. That's true.

12 Q. You had no role in developing SXP's trading strategy; is
13 that correct?

14 A. That's true.

15 Q. You had no role in developing SXP's trading infrastructure;
16 is that correct?

17 A. That's true. There was oversight stuff that I had done.
18 If there was a dispute between anyone or if anything had to be
19 sorted out, they would -- there were times that they would come
20 to me and say, "I want to do this and I want to do that," and I
21 would be an arbiter and they would have to explain it to me
22 like a kid.

23 Q. Because you don't have a technical background, right?

24 A. No, I do not.

25 Q. And you don't understand the technical details of the

Mamalakis - Cross by Mr. McInturf

1 trading system; is that right?

2 A. No, I do not yet.

3 Q. And you don't know how to write code to create a trading
4 system, do you?

5 A. That's true.

6 Q. And you don't know how to modify code to create a trading
7 system or maintain a trading system, do you?

8 A. That's accurate.

9 Q. So when you were testifying about what all has to be done
10 there, that wasn't based on your personal knowledge; is that
11 right?

12 A. That's based on my understanding from what people had told
13 me, yeah.

14 Q. But you're probably not the best guy to talk about that,
15 are you?

16 A. No, no, no, not at all.

17 Q. Your lawyer went through a bunch of RFP responses and
18 essentially said that Quantlab didn't ask specifically enough
19 for the developer workstations. Do you recall that testimony?

20 A. Yeah, I remember that, yes.

21 Q. Is it your contention that you individually and as CEO of
22 SXP didn't have a duty to preserve relevant evidence unless
23 Quantlab asked for it specifically?

24 A. That's not my position.

25 Q. Okay. Your counsel presented you with Defendant Mamalakis

Mamalakis - Cross by Mr. McInturf

1 Exhibit 1. Do you still have a copy of that?

2 A. I do.

3 Q. Okay. There's no e-mail similar to this telling Quantlab
4 that while this lawsuit was pending, you wiped computers, is
5 there?

6 A. Not to my knowledge. I'm not on this chain. So I don't
7 know of any others, yeah.

8 Q. Before you ordered the computers wiped, you never told your
9 lawyers to tell Quantlab you were going to do it, did you?

10 A. That's true.

11 Q. And you never told anybody not to wipe them because you
12 were in litigation; is that right?

13 A. Sorry. I'm working the double negatives. Sorry.

14 Q. You actually gave the instruction to wipe the computers?

15 A. Absolutely, yes.

16 Q. You gave some testimony earlier about what was allegedly
17 said at an FBI hearing or a criminal hearing that Quantlab
18 wasn't present at. Do you recall that?

19 A. Yes, I recall doing that.

20 Q. Were you present at that hearing?

21 A. No.

22 Q. So you don't have any personal knowledge of what was really
23 said at that hearing; is that right?

24 A. I had the transcript of the hearing. I was going off the
25 transcript of the hearing.

Mamalakis - Cross by Mr. McInturf

1 Q. So you read the transcript of that hearing?

2 A. Yes.

3 Q. Now, you don't have any knowledge whatsoever how Quantlab
4 selected the files it supplied to the FBI, do you?

5 A. I have no knowledge at all of that, yes.

6 Q. And you don't know whether Quantlab ever gave a single file
7 to the FBI that the FBI didn't first come and ask Quantlab for,
8 do you?

9 A. I have no knowledge of that.

10 Q. You testified earlier that the FBI took everything on
11 March 5th, 2008, right?

12 A. Yes, sir.

13 Q. But that's not completely true, is it?

14 A. From my understanding, they took every electronic device.

15 Q. Well, you had at least employees that were developing or
16 working with the software that were working remotely, correct?

17 A. Yes. No, they did not take those devices, yeah.

18 Q. And you can't say whether those employees shared files with
19 other employees at SXP after the raid, can you?

20 A. I do not think that they shared files. They're related to
21 me, and I know them. I personally I would -- there's no way
22 they would share files. But I cannot give you an ironclad, but
23 they wouldn't have done that.

24 Q. So if, for instance, an expert were to testify that files
25 were actually saved back to the SXP server room from those

Mamalakis - Cross by Mr. McInturf

1 remote computers, you wouldn't have any way to dispute that,
2 right?

3 A. They could have come back from those remote computers, but
4 it wouldn't have been stuff from any of Quantlab files, no.

5 Q. And how do you know that?

6 A. Because we didn't have any Quantlab files in our system at
7 SXP post-FBI raid.

8 Q. Did you ever look at Mr. Khovayko's computer or Mr. Lavdas
9 computer or either of the Lavdas brothers' computers?

10 A. I didn't personally go look at them.

11 Q. So you can't say for sure there was any Quantlab code on
12 those computers, right?

13 A. I cannot guarantee that.

14 Q. And those computers have not been produced in this case,
15 right?

16 A. I don't believe so.

17 Q. But just so we're clear, those are the three computers that
18 the FBI didn't get, right?

19 A. Yes, the ones mentioned, yeah.

20 Q. You talked about the U.S. attorney's decision not to
21 prosecute the case. You don't really know why they chose not
22 to prosecute the case, do you?

23 A. No, I wasn't making any statements on why. I was just
24 going to my mind-set at the time that I was making my decision
25 and the impact and the way it was packaged for me.

Mamalakis - Cross by Mr. McInturf

1 Q. Okay. You testified that you formed SXP initially in
2 July 2001, and at that time you were the sole owner, correct?

3 A. '07.

4 Q. I'm sorry. '07. Let me say that again. You testified
5 that you formed SXP officially on paper in July 2007, and at
6 that time you were the sole owner, correct?

7 A. Yes, sir. Yes, sir.

8 Q. You were waiting for certain things to happen before you
9 agreed to let Dr. Kuharsky and Dr. Godlevsky become owners; is
10 that correct?

11 A. That's accurate.

12 Q. What were you waiting for to happen?

13 A. We were waiting until the conclusion of the depositions so
14 that we would have representations that we could base findings
15 on that we would be sure no Quantlab code or any materials
16 would be on any SXP computers, and that was going to be covered
17 in their fall depositions of '07.

18 Q. So even before you let them into the company, you knew that
19 they were in litigation with Quantlab?

20 A. Yes, sir.

21 Q. Now, let's talk about the time you met Dr. Godlevsky in
22 April of 2007, up until September 2007, when the depositions
23 took place. Did you and Dr. Godlevsky have various
24 communications about starting a company?

25 A. Yes, sir.

Mamalakis - Cross by Mr. McInturf

1 Q. At the time did he tell you what type of work he did for
2 Quantlab?

3 A. He explained it as math and -- math and coding.

4 Q. He told you he was a research scientist for Quantlab,
5 didn't he?

6 A. I think it went beyond that, but, yeah, at minimum.

7 Q. He told you that he was involved in developing the trading
8 strategy; is that correct?

9 A. Yes, sir.

10 Q. He told you that Quantlab made a lot of money?

11 A. Yes, sir.

12 Q. He told you that Quantlab's trading strategy was very
13 successful?

14 A. Yes, sir.

15 Q. And Dr. Godlevsky presented you with a business outline; is
16 that right?

17 *MR. MCINTURF:* May I approach, Your Honor?

18 *THE COURT:* You may.

19 BY MR. MCINTURF:

20 Q. I've handed you what's been marked Quantlab Exhibit 18.
21 You recall in the depositions in this case so far, we've
22 been -- started with number one and have just been going
23 forward?

24 A. Yes. Yeah.

25 Q. Okay. Do you recognize Exhibit 18?

Mamalakis - Cross by Mr. McInturf

1 A. Yeah, I saw it for the first time in, like, five years when
2 you showed it to me at the depositions.

3 Q. But you recognized it as a communication that you had with
4 Dr. Godlevsky, correct?

5 A. I took your word for it on this. I hadn't seen it in
6 around five years.

7 Q. And you told me that you had multiple conversations with
8 him that were similar to this; is that right?

9 A. Yes, sir.

10 *MR. MCINTURF:* I've committed a cardinal sin. I
11 didn't offer these to the Court.

12 *THE COURT:* That's all right. Thank you very much.

13 *MR. MCINTURF:* Thank you.

14 BY MR. MCINTURF:

15 Q. So looking at Quantlab Exhibit 18, it says, "Emmanuel, here
16 is another outline of our business." Did I read that
17 correctly?

18 A. Yes, sir.

19 Q. You and he had had many discussions about what the business
20 should be; is that right?

21 A. Yes, sir.

22 Q. In the -- lower down he describes "our prediction model."
23 Do you see that?

24 A. Yes, sir.

25 Q. Do you know of any prediction models he worked on other

Mamalakis - Cross by Mr. McInturf

1 than Quantlab's?

2 A. I don't. But I also -- it's so long, I don't know if he's
3 referring to Quantlab's or -- well, I would go with Quantlab's.
4 I have no idea.

5 Q. So on the next page, if you turn to it, the first
6 highlighted portion, it says, "Our platform constantly tracks
7 the market in real time and enters in the position that
8 anticipates the price movement. We managed to achieve Sharpe
9 ratio" -- and he gives a Wiki cite for that -- "of 20 to 40,
10 which is extraordinarily high if one compares it with long-term
11 trading where a good Sharpe ratio can hardly reach 5 to 10.
12 Ten is considered super high."

13 Did I read that correctly?

14 A. Yes, sir.

15 Q. Were you aware of any platform that he would call his
16 platform other than Quantlab's?

17 A. Other than anything that he was claiming that was anything
18 new that he wanted to do.

19 Q. Before he even became a part owner in SXP, had he already
20 developed a trading platform?

21 A. No, not the platform. When he's discussing a platform
22 here, what he's doing is he's kind of having it as résumé
23 material. And at the time he was saying, Look, we're viable.
24 We know how to -- we knew how to do this stuff. We're good at
25 what we do. And then he basically moves on to the -- of saying

Mamalakis - Cross by Mr. McInturf

1 now in order of going forward, this is what the new would be.

2 Q. And so if we move to the next sentence that's highlighted,
3 it says, "The previous company where we implemented the
4 platform, trades 5 percent of NYSE and NASDAQ daily volume on a
5 relatively small investment capital, paren, \$100 million."

6 Do you see that?

7 A. Yeah. And that begins to distinguish the concept. If you
8 watch -- and even with -- Dr. Godlevsky, sometimes his English
9 is not the best. But in this, it's pretty of note where he
10 bounces between what he considers our platform, which might
11 have been his thoughts as to how he was viewing where to go
12 forward, versus the platform at the prior company, where he's
13 identifying the prior.

14 Because when I saw this for the first time in the
15 deposition last week, I was trying to go back to five years
16 ago, and I remember reading this and I was like, I remember
17 this conversation where he was detailing this is -- this is why
18 we're qualified, but then this is what we want to do going
19 forward. Again, that's just -- was within his pretense to me,
20 because it had been explained, you cannot be successful just
21 duplicating Quantlab's operation.

22 Q. So, do you know of any other company besides Quantlab he
23 would have been referring to when he says, "The previous
24 company where we implemented the platform"?

25 A. Oh, no, that certainly would have been Quantlab.

Mamalakis - Cross by Mr. McInturf

1 Q. And then look at the next sentence. You testified earlier
2 that -- you testified earlier that one of the reasons why you
3 weren't worried about misusing Quantlab information was that it
4 was your understanding that it would be impossible to compete
5 with Quantlab, because it was just so big and successful and
6 fast, correct?

7 A. No. It would be impossible to beat Quantlab using
8 Quantlab's brain. Because if I'm using Quantlab's brain and
9 they're using their brain, their hardware, their infrastructure
10 is so much faster, you're just going to bump heads and they're
11 going to beat you to the punch. If you wanted to be better
12 than Quantlab, you actually had to have something fundamentally
13 new, something fundamentally different, where you could be
14 beating them not on using their identical item. Because just
15 using their identical item, you're just butting heads against
16 each other, and they'll beat you every time on speed and power
17 of hardware.

18 Q. And is that something Dr. Godlevsky told you?

19 A. Yeah.

20 Q. Let's read what Dr. Godlevsky wrote to you in this e-mail
21 or document. "We believe that we can force our former company
22 from the market by using new additional indicators that carry
23 information about the price change."

24 Did I read that correctly?

25 A. Yes, sir.

Mamalakis - Cross by Mr. McInturf

1 Q. And you understood that to mean he was talking about
2 forcing Quantlab out of business, correct?

3 A. He was talking about I want to build a better mousetrap,
4 and if I can beat them --

5 Q. And so he was saying, I know Quantlab's indicator -- you
6 took it to mean, I know what Quantlab does, I can make it
7 better, and then we'll put them out of business; is that right?

8 A. Yeah, I took it -- and as it is explained here, which it
9 shows there, he's not saying we can do the same thing as
10 Quantlab and we'll beat Quantlab. He's explaining it as, we
11 are going to -- we have to build something different; and if we
12 do, we can box them out of the space.

13 Q. Do you think it would have been appropriate to -- for him
14 to start with what Quantlab did and just add a few indicators
15 to it?

16 A. No, not at all.

17 Q. At the time Godlevsky and Kuharsky were discharged -- I'm
18 sorry. In your discussions with Dr. Godlevsky and Kuharsky in
19 2007, one of the things they told you was, that they thought
20 Quantlab was on the verge of being sold, didn't they?

21 A. Yeah. Yes.

22 Q. And they told you that Quantlab had been offered
23 \$2 billion; is that right?

24 A. Yes, as one of the points of dispute.

25 Q. Now, you testified that you read the depositions before

Mamalakis - Cross by Mr. McInturf

1 officially forming SXP, right?

2 A. Yes, sir.

3 Q. And the defendants testified that they didn't have Quantlab
4 materials, correct?

5 A. Yes, sir.

6 Q. And they understood that they couldn't use or possess the
7 Quantlab trading strategy, correct?

8 A. Yes, sir.

9 Q. And before you let Dr. Kuharsky and Dr. Godlevsky into the
10 company, you also believe you read the complaint and the
11 lawsuits that were pending then, right?

12 A. I believe so, yes.

13 Q. So you believe you read both the depositions and the
14 lawsuit, correct?

15 A. Yes, sir.

16 Q. So you knew the fight was about whether or not they were
17 going to use Quantlab trade secrets, right?

18 A. Yes, sir.

19 Q. And so at the time you formed SXP with them, didn't you
20 think it would be important to preserve everything to defend
21 this Quantlab litigation?

22 A. Yes, sir.

23 Q. And if I understand your testimony here today, your lawyer,
24 I think, is trying to say that everything went through that
25 server room and was preserved. Is that what you believe to be

Mamalakis - Cross by Mr. McInturf

1 true?

2 A. Yes, sir.

3 Q. In fact, the backup system didn't capture materials on the
4 developer workstations unless they were checked into the
5 server, correct?

6 A. Yes, sir.

7 Q. So that's true?

8 A. Yeah.

9 Q. So, if the developers didn't check in to the server what it
10 was they were looking at, at the time they were writing
11 software, it wouldn't be in your server room, right?

12 A. That's true.

13 Q. And so if they were looking at the Quantlab files while
14 they were writing the SXP code, we're never going to find the
15 evidence now, because the developer workstations have all been
16 wiped; is that right?

17 A. See, I don't know that, because I still -- we still haven't
18 gotten a response from the receiver as to whether or not the
19 stuff is unwipeable. I still haven't seen what the conclusions
20 of the receiver are and what the -- what's going to happen with
21 the computers. I don't know. I don't have the knowledge to be
22 able to say, now, this is now irretrievably gone, first and
23 foremost.

24 And second of all, when I looked through -- when
25 Brenton did his deposition, he had actually even referenced the

Mamalakis - Cross by Mr. McInturf

1 fact that the stuff they would have been looking for at the
2 workstations, didn't even save that information.

3 Q. You don't know of any developer workstations that have
4 actually been produced in this case, do you?

5 A. I don't have a -- I didn't memorize the log of computers
6 produced.

7 Q. Now, at some point the FBI did tell you that Quantlab files
8 were found on the SXP computers, correct?

9 A. Yes, sir.

10 Q. And that was before you wiped the developer workstations,
11 right?

12 A. Yes, sir.

13 Q. Why didn't someone just make forensic images of these
14 developer workstations before you wiped them so that there
15 would be evidence to use in this case?

16 A. As I had mentioned before in the deposition, when you
17 proposed that prospect to me, I thought to myself that probably
18 would have been a great idea. And I actually had a
19 conversation afterwards with some of the IT folks and they had
20 said in theory that would have been a nicety. Again, we're
21 looking at hindsight 20/20 now. But they said a lot of this
22 metadata that's being asked for doesn't actually -- didn't
23 actually even exist on those computers anyway.

24 Q. You were the one that made the decision to put SXP in
25 bankruptcy in April of 2012, correct?

Mamalakis - Cross by Mr. McInturf

1 A. Yes, sir.

2 Q. And that bankruptcy filing happened on the very day this
3 court was hearing a motion to compel discovery from SXP,
4 correct?

5 A. I believe so.

6 Q. The bankruptcy was dismissed in June 2012, correct?

7 A. Yes, sir.

8 Q. That was the same month you made the decision to wipe the
9 developer workstations, correct?

10 A. Yes, sir.

11 Q. You understand that the optics look bad on that, right?

12 A. I do. We had discussed that at the deposition on the
13 optics. And the thing that I should have better explained at
14 the deposition is, if -- it actually does tie in, because of
15 the fact that everything that's going on in that time is
16 involving the expense of that litigation. It's the motivation
17 behind the bankruptcy, it's the motivation behind why SXP had
18 to close, and there's the motivation as to why we're trying to
19 find a way to make everyone happy and resolving the
20 workstation.

21 Q. In addition to the wiping developer workstations in
22 June 2012, you don't deny that you also gave away some unwiped
23 computers to employees and former employees, right?

24 A. No, just to employees, not -- well, they were about to
25 become former employees. I wasn't giving them away to people

Mamalakis - Cross by Mr. McInturf

1 that were not -- but we -- before they went, we had a procedure
2 in place. I asked the IT people what the proper procedure was
3 supposed to be. And they said, you know, you have to make sure
4 that they're not taking anything SXP with them and have them
5 sign off on that and then they can keep their computer.

6 Q. You now concede that it's your belief that Dr. Godlevsky
7 did, in fact, bring Quantlab materials to SXP; is that correct?

8 A. I believe due to an admission this summer, that he says
9 that he had Quantlab code on his computer prior to the FBI
10 raid.

11 Q. And after the March 5th, 2007, FBI search --

12 A. '8.

13 Q. Oh, 2008. You're right. Thank you.

14 A. That's okay.

15 Q. After March 5th, 2008, FBI search, you and Dr. Godlevsky
16 had a running disagreement about whether he would show you his
17 development workstations, correct?

18 A. There were dozens of run-in disagreements that were going
19 on. And his view on his own workstation was that that was his
20 private property. But as has been discussed earlier, as you
21 got into the years of SXP, less and less of what Dr. Godlevsky
22 was doing was actually making it to the final version. So it
23 really wasn't a big point of what was really in contention.

24 Q. But ultimately you never saw his developer workstation, so
25 you can't say what was on them?

Mamalakis - Cross by Mr. Holmes

1 A. No, I did not go over and look at Dr. Godlevsky's developer
2 workstation.

3 Q. And you don't know what happened to Dr. Godlevsky's
4 development workstations after SXP ceased operations, do you?

5 A. Everything that was his, he took with him.

6 *MR. MCINTURF:* Pass the witness.

7 *THE COURT:* Let's do all of cross and then come back
8 and do redirect.

9 **CROSS-EXAMINATION**

10 BY MR. HOLMES:

11 Q. Mr. Mamalakis, just to clear something up on the record,
12 because you gave more than one answer about when Mr. Kuharsky
13 left. One time you said January of '08. One time you said
14 January of '09. It was '08?

15 A. It was '08. My apologies. Yeah.

16 Q. Okay. But you said that SXP started trading in the fall of
17 2008; is that right?

18 A. I believe it was October of '08.

19 Q. Okay. At that point in time, to your knowledge, was there
20 anything that SXP was using to trade that was written by Andriy
21 Kuharsky?

22 A. Absolutely not.

23 Q. All right. Around the time of the summer of 2012, do you
24 remember that SXP provided its original code, the code that was
25 used when it first started trading to Quantlab?

Mamalakis - Cross by Mr. Holmes

1 A. I do.

2 Q. All right. As best you can, I understand that you're not a
3 quant or a tech, but as best you can describe it, what was
4 provided to Quantlab and approximately, as best you can recall,
5 when was it provided?

6 A. It was spring of 2012. And in an effort for resolution on
7 the case, we basically said, the closest code that would ever
8 exist to yours is the first version and the code that would
9 have been rolled out originally that would have been the
10 closest in time to when anyone would have been near Quantlab.
11 And we gave them that code in spring of 2012. So it will be --
12 this spring it will be two years ago.

13 Q. Right. So, you had some sort of -- something in your
14 server room presumably or that one of your IT people found that
15 was the version of the code that you were using to trade, and
16 that's what you produced to Quantlab?

17 A. Yes, sir.

18 Q. And Quantlab has now had that for what, about a year and a
19 half at that point?

20 A. A little longer than that.

21 Q. Okay. And if there had -- if an expert witness wanted to
22 go through and run a search on that, looking for something that
23 was -- that was Quantlab code, to your knowledge, is there any
24 reason they wouldn't have done that?

25 *MR. MCINTURF*: Objection, lack of foundation. In

Mamalakis - Cross by Mr. Holmes

1 fact, I think we've establish this witness isn't qualified to
2 answer that question.

3 BY MR. HOLMES:

4 Q. Okay. Well, let me ask the question a different way,
5 because that was a vague question.

6 *THE COURT:* All right.

7 A. I agree with you.

8 BY MR. HOLMES:

9 Q. But to your knowledge, was there anything about the format
10 that was given to Quantlab then that was anything other than
11 just the code? For example, we've had -- heard talk about
12 tapes in this case that are really hard to retrieve stuff from.
13 We've heard talk about different formats. To your knowledge,
14 was there anything unusual about the formatting or physical --

15 A. No, it was -- when the request was made, it was put on a
16 cloud -- I believe a cloud server and just pulled down off a
17 cloud or something. But it was just code went to them and they
18 looked at it.

19 Q. Okay. Now, finally, the -- I want to ask one more series
20 of questions. And these questions relate to the period of time
21 when Mr. Kuharsky was still working for your company. We saw a
22 document where -- well, strike that.

23 We had some discussion about Mr. Godlevsky
24 telling you he wanted to use Quantlab's trading strategy, or
25 words to that effect. What I want to focus on is "trading

Mamalakis - Cross by Mr. Holmes

1 strategy," which I believe is the term you used. What do you
2 understand that to mean?

3 A. "Trading strategy"?

4 Q. Yeah, in the --

5 A. Well, first of all, that conversation --

6 Q. In the context of what Mr. Godlevsky was saying to you.

7 A. First of all, I don't ever remember a conversation where
8 Dr. Godlevsky said, "Let's use Quantlab's trading strategy." I
9 mean, that conversation never took place. And, in fact, that
10 accusation didn't rear its head until very, very recent years,
11 when it was discovered that he had had Quantlab code and I was
12 suing him on it. So there had to be some new element brought
13 up to survive summary judgment. But there was never a
14 conversation that I had with Dr. Godlevsky or Dr. Kuharsky
15 where they said, "Hey, let's go use Quantlab's trading
16 strategy." They never came to me and said, "Hey, let's go do
17 this."

18 Q. Okay. So when Dr. Godlevsky came to you and said, "Here's
19 how we used to do things at Quantlab," did you understand that
20 to be a proposal that it was going to be literally duplicated?

21 A. I understood fully at the time that there was no way that
22 that could be literally duplicated, and they explained why.
23 They gave a very logical explanation as to why it could not be
24 literally duplicated. And they were basically -- all it was,
25 was in the context of here's a new guy. We want him to do a

Mamalakis - Cross by Mr. Holmes

1 business project with us. We just want to show him we actually
2 know what we're doing.

3 Q. Okay. Well, for example, this e-mail that -- or I think
4 it's an e-mail, the Exhibit 18, which you've got. It talks
5 about "in our prediction model." That was one of the things
6 that was highlighted by Mr. McInturf. Do you understand, in
7 layman's terms anyway, what a prediction model is?

8 A. I do.

9 Q. Okay. What is a prediction model?

10 A. It's some kind of mathematical model by which you can
11 predict an activity, be it stocks or anything like that. It's
12 a function of mathematics. It's a model. It's a design model.

13 Q. And prediction model is something then that is used to
14 determine what trades -- well, what you should buy, what you
15 should sell, and when?

16 A. Absolutely.

17 Q. Was it your understanding that -- at in any time, that
18 Dr. Godlevsky was proposing that SXP use Quantlab's prediction
19 model?

20 A. Absolutely not. He never proposed that.

21 Q. Finally, this last thing I want to ask you about -- last
22 topic, is this comment that Dr. Godlevsky made about -- which
23 is on the second page. "We believe that we can force out our
24 former company from the market by me using new additional
25 indicators that carry information about the price change."

Mamalakis - Cross by Mr. Holmes

1 What did you understand at the time that "new
2 additional indicators" meant?

3 A. At that time -- and, again, like I explained in the
4 deposition, this is five years old. So somehow me memorizing
5 this interaction on this is -- it's a long shot at best. All I
6 can do is remember what the context of all conversations were
7 at that point in time. And it was, you know, this was a part
8 of the evidence of, we can't do what Quantlab was doing. We
9 have to bring -- it has to be new. It has to be different or
10 else you're not going to make money.

11 Q. All right. Do you recall at any time that Dr. Godlevsky or
12 anybody else proposed that some of what you would use would be
13 Quantlab's indicators, but there would also be new additional
14 indicators?

15 A. No.

16 Q. All right. Just finally, last thing is, in layman's terms,
17 can you -- what is an indicator, as you understand it?

18 A. If I line up this coaster and this bottle and if I can see
19 that this coaster is about to start moving, that's an indicator
20 that this bottle is going to start moving afterwards.

21 Q. Okay.

22 A. That's the best layman's term I can give.

23 Q. To your knowledge, did SXP ever use any of Quantlab's
24 indicators?

25 A. To my knowledge, no.

Mamalakis - Cross by Mr. Josef

1 *MR. HOLMES:* That's all I have.

2 *THE COURT:* Yes, sir.

3 *MR. JOSEF:* This is Timothy Josef.

4 **CROSS-EXAMINATION**

5 BY MR. JOSEF:

6 Q. So, Mr. Mamalakis, you're engaged in a lawsuit with
7 Dr. Godlevsky in Wisconsin; is that correct?

8 A. Yes, sir.

9 Q. And is there a factual dispute in that lawsuit as to
10 whether or not he quit or whether he was forcibly locked out of
11 the company?

12 A. I believe so.

13 Q. Okay. And do you have anything to gain from a finding of
14 fact in that case, that Dr. Godlevsky quit on his own volition?

15 A. I don't think so.

16 Q. You don't think you have anything to gain? So it wouldn't
17 benefit your lawsuit at all if the Court in Wisconsin found
18 that Dr. Godlevsky quit and --

19 A. Yeah. No, it would. It would. That was just kind of an
20 obscure question. I didn't understand.

21 Q. Sure.

22 A. Yeah, if they found that he quit and he forfeited his
23 rights to his shares, yeah, that would definitely help me,
24 yeah.

25 Q. Okay. Did Dr. Godlevsky ever have any developer

Mamalakis - Cross by Mr. Josef

1 workstation that he kept at SXP?

2 A. I think so. I believe so. I don't remember whether or not
3 it was his laptop or a workstation. I tended to avoid his
4 office.

5 Q. Okay. And after Dr. Godlevsky separated from SXP, did your
6 attorneys ever send him a letter, stating that he wasn't
7 allowed to come back to SXP or to stay away from the premises?

8 A. Yeah, after he had quit, when he wanted to come back, it
9 was my right to say, "No, you've already quit. You can't come
10 back."

11 Q. Okay. And after that, did you ever receive a letter or
12 did your attorneys ever receive a letter that -- from
13 Dr. Godlevsky, on behalf of him, requesting back his computers
14 or any personal property?

15 A. I don't remember those. I would have to -- if it was
16 showed to me, I'm sure it was true, but from my knowledge,
17 anything that was his personal property was returned. And any
18 of his computer property he would have already had.

19 Q. Okay. So if someone else were to testify that you were
20 sent a letter or your attorneys were sent a letter, you would
21 not be in a position to dispute that right now?

22 A. I would not, no.

23 Q. Okay. You stated earlier that Dr. Godlevsky admitted that
24 he had Quantlab code on a computer last year?

25 A. This year.

Mamalakis - Cross by Mr. Josef

1 Q. This year. He made that admission this year?

2 A. It was -- there was in July -- I don't have a copy of it
3 here, but in July there was a -- some kind of -- there was a
4 responsive filing that was done in this case where --

5 Q. So that would have been something in a brief where that
6 admission was made?

7 A. Or an answer to a request for admission or discovery. I
8 don't remember what the filing was, but I do remember --

9 Q. But it was a document filed by an attorney and not some
10 separate admission or written confession?

11 A. Again, like I said, I didn't memorize what that was in.

12 Q. Okay. And, finally, in your opinion, why did SXP stop
13 making money and why did it become -- why did it suddenly run
14 out of money?

15 A. In the market of high-frequency trading, my theory is
16 someone out there just built a better mousetrap and, you know,
17 that's how it goes. If somebody else was building a better
18 system that was able to beat ours and ours just didn't make as
19 much money -- I do think there were also market forces
20 involved, where the liquidity and the volatility, which you
21 need in order to be successful in that, I mean, the volume was
22 down half on the New York exchanges. I mean, there's a number
23 of reasons that play into it. If I knew the exact reason, I
24 probably wouldn't have closed it, because I would have been
25 able to fix it.

Mamalakis - Recross by Mr. McInturf

1 Q. Fair enough.

2 MR. JOSEF: No further questions.

3 THE COURT: Anybody else? No?

4 MR. CARLYLE: No redirect, Your Honor.

5 THE COURT: Okay. You may step -- he says "no."

6 MR. CARLYLE: I just had a question about the
7 exhibits.

8 THE COURT: Okay. Go ahead. Go ahead.

9 MR. CARLYLE: No, no, no, I just -- we had an exhibit
10 admitted. I'm not sure mechanically, should I just e-file that
11 later to get it in the record or --

12 THE COURT: Yeah.

13 MR. CARLYLE: Okay.

14 MR. MCINTURF: Your Honor, I should have offered my
15 exhibit. It would be Quantlab 18.

16 THE COURT: Okay. Any objection?

17 MR. CLEARY: No.

18 THE COURT: Admitted without objection.

19 MR. MCINTURF: Then I have several more questions.

20 THE COURT: Okay.

21 **RECROSS-EXAMINATION**

22 BY MR. MCINTURF:

23 Q. Mr. Mamalakis, would you look at Exhibit 18, the last
24 sentence that's highlighted.

25 A. Yes.

Mamalakis - Recross by Mr. McInturf

1 Q. When Dr. Godlevsky talks about using new and additional
2 indicators, do you see that?

3 A. I do.

4 Q. What was your understanding that they would be additional
5 to?

6 A. Whatever he was doing.

7 Q. His work at Quantlab?

8 A. No. There's -- to be completely fair, when you are looking
9 at this and you're saying new and additional indicators, this
10 is all contexted with the discussion, that you can't duplicate
11 Quantlab and be successful.

12 *MR. MCINTURF:* I'll pass the witness.

13 *THE COURT:* Okay. You may step down. Thank you very
14 much.

15 *MR. CARLYLE:* May Mr. Mamalakis be excused to go to
16 Milwaukee?

17 *THE COURT:* Fine with me. Fine with me.

18 *MR. CARLYLE:* Thank you, Your Honor.

19 *THE COURT:* Okay. Who wishes to go next?

20 *MR. CARLYLE:* We have two video clips we would like to
21 play, Your Honor.

22 *THE COURT:* Okay. All right.

23 *MR. CARLYLE:* And just give me a minute just to get
24 that up.

25 *THE COURT:* Okay.

1 *MR. MAMALAKIS:* Thank you, Your Honor.

2 *MR. HOLMES:* While's he's setting up, let me ask a
3 procedural question. How late do you plan to go?

4 *THE COURT:* I'm okay going very late.

5 *MR. HOLMES:* All right. So it's a good chance we can
6 get done tonight.

7 *THE COURT:* Yeah.

8 *MR. KAPLAN:* Your Honor, just to signpost what I think
9 we have in mind for the rest of the Mamalakis/SXP issue, they
10 have some Stippich clips to play.

11 *MR. CARLYLE:* Yeah, we have from Stippich, yeah.

12 *MR. KAPLAN:* We haven't seen that. We'll have some
13 additional Stippich to offer. This is a gentleman from SXP.
14 They were going to play some more of Mr. Roskopf; is that
15 right?

16 *MR. CARLYLE:* Yeah, that's what we're doing right now.

17 *MR. KAPLAN:* And we'll play a little more of
18 Mr. Roskopf other than what -- the short part I had earlier.
19 And then to explain this Mamalakis/SXP stuff, Pathway will
20 testify. And what we kind of envision is that their testimony
21 was broken up, Mamalakis and then --

22 *THE COURT:* Okay. I mean, I don't mean to keep people
23 here as if we're in a marathon. Do the people have
24 availability tomorrow or not?

25 *MR. HOLMES:* I am good until 1:00 o'clock tomorrow, as

1 long as I -- if I could be back in my office -- in other words,
2 out of here by about noon tomorrow, I'm great. I could even
3 for that matter probably come back after that. It's just a
4 conference call with an EEOC investigator that I have to be
5 present for.

6 *THE COURT:* Can you take the call from here?

7 *MR. HOLMES:* No, I can't. It has to be a conference
8 call that I have to initiate.

9 *MR. JOSEF:* I am available tomorrow as well, but it's
10 strongly my preference to finish today even if it means going
11 to 10:00 o'clock.

12 *THE COURT:* Well, I don't know if we can finish today,
13 given all that we have left.

14 *MR. KAPLAN:* I would say that our experience thus far
15 makes it highly unlikely that we'll get finished, and we're
16 available until 1:00, if that's the Court's preference.

17 *MR. MCINTURF:* Yes, we're available.

18 *MR. KAPLAN:* We'll go a while tonight and see what we
19 think we can get done, but I don't think there's any way we'll
20 get finished today given what's happened so far.

21 *MR. CLEARY:* Your Honor, Jim Clearly on behalf of
22 Defendant Mamalakis. We can go a while longer today. I will
23 lose Mr. Carlyle. He has got important trick or treat
24 responsibilities tonight.

25 *MR. CARLYLE:* Oh, that's right.

1 *MR. CLEARY:* But I will be here. And tomorrow would
2 be good, although I do have several other conflicts in the
3 afternoon.

4 I did want to talk a little bit about the
5 presentation of the evidence. I was under the impression that
6 the plaintiff had put on their evidence through their opening
7 PowerPoint presentation. It appears that they want to put on
8 additional evidence. I would think that it would make sense
9 for them to finish putting on their evidence before we put on
10 any further evidence ourselves.

11 *MR. KAPLAN:* Well, what we're doing is rebutting what
12 we now understand they want to put on and that's why, you know,
13 Mamalakis in chief, we think we made the prima facie case for
14 spoliation. They're now arguing about it. And we're going to
15 finish after all of this with as little testimony from Pathway
16 as we can get away with. That's the most efficient, we think.

17 *THE COURT:* Well, in terms of dualing deposition
18 excerpts, what I normally do in a trial is make a judgment as
19 to whether the first party's excerpt played by itself is a
20 misrepresentation of the excerpts used. That is, does it cut
21 off explanatory language or additional testimony that is
22 necessary to understand what is being offered. When I have
23 that kind of careful excision, I do allow it to be played
24 altogether. Otherwise, I make each party present it as part of
25 their case in chief. This, I don't know. I just don't know

1 what this evidence will consist of, so.

2 *MR. MCDONALD:* One of our difficulties, Your Honor, is
3 we just got their designations two hours before we walked in,
4 so.

5 *THE COURT:* I understand. I understand. I'm going to
6 allow it.

7 *MR. CARLYLE:* I think what Mr. Cleary is talking about
8 is the live witness, Your Honor. They have a -- they still
9 have a live witness, Pathway, that we thought it's kind of hard
10 for us to present our defense until we hear their case.

11 *THE COURT:* Mr. Kaplan, your response?

12 *MR. KAPLAN:* And as I say, this is rebuttal to what
13 they're now saying. Mr. Mamalakis has made some fairly wild
14 claims about how innocent he is and --

15 *THE COURT:* But wouldn't it make more sense if we had
16 your case in chief, defendants' response, then your rebuttal
17 case?

18 *MR. KAPLAN:* Well, we think we've presented our case
19 in chief.

20 *THE COURT:* Yeah, I know. So why do you get to do
21 more now?

22 *MR. KAPLAN:* Well, because we'll be rebutting what
23 they say.

24 *THE COURT:* I know, but why don't you wait until the
25 end and rebut everything that's been said?

1 *MR. KAPLAN:* You mean, do Pathway at the very end of
2 everybody?

3 *THE COURT:* Yeah.

4 *MR. KAPLAN:* Well, we could do that if you want. I
5 thought we would break it up. Mamalakis/SXP. Because we
6 really regard that as one story. The Kuharsky, Godlevsky story
7 is just kind of a separate story. I mean, they can -- is your
8 request that Pathway wait until the very end of everything?

9 *THE COURT:* I'm asking for any suggestions.

10 *MR. KAPLAN:* My thinking was --

11 *THE COURT:* Mamalakis all at once?

12 *MR. KAPLAN:* Right. And then Kuharsky, Godlevsky are
13 pretty much, you know, they're sort of a tag team and Pathway
14 for them.

15 *THE COURT:* Your response, Mr. Cleary or Mr. Carlyle?

16 *MR. CLEARY:* I'll just make it very quickly. I think
17 they're sandbagging us. I doubt that this Pathway's person is
18 going to just provide rebuttal evidence. That being said,
19 let's just get it all in front of you and let you make your
20 decision.

21 *THE COURT:* Well, I think we all agree with that, just
22 what order we do it. Let me think about it a little bit more.
23 What comes next is your depo excerpts. Let's do that.

24 *MR. CARLYLE:* All right. We're just saying the
25 difficulty is our witnesses -- our clients left, and we would

1 like them to hear what they have to say and that kind of stuff.

2 *MR. CLEARY:* I mean, there may be an issue --

3 *THE COURT:* You could have that problem in any event.

4 *MR. CARLYLE:* You're right, I agree. I agree.

5 *MR. CLEARY:* Well, the point is literally just now
6 we're hearing that Pathway is just going to come last and kind
7 of be the cleanup, which is great if I'm the plaintiff with the
8 burden of proof.

9 *THE COURT:* I'm not agreeing that they're last.
10 They'll put Pathway on and then you'll have a chance to put on
11 whatever evidence you want.

12 *MR. CLEARY:* All right. May I be excused so I can get
13 Mr. Mamalakis?

14 *THE COURT:* Yes, you may.

15 *MR. CLEARY:* Thank you, Your Honor.

16 *MR. CARLYLE:* I'm going to do a sound check first. I
17 miked it.

18 *THE COURT:* Fine. Fine.

19 *MR. CARLYLE:* Your Honor, I'm going to play the video.
20 The full deposition is already in the court's record.

21 *THE COURT:* Yeah, I understand.

22 *MR. CARLYLE:* And then I'll e-mail the court reporter
23 what exactly we played. I guess she's not going to type it in
24 the record.

25 *THE COURT:* No. All right.

1 MR. CARLYLE: This is Brenton Roskopf.

2 *(Played video excerpts of Brenton Roskopf.)*

3 THE COURT: All right.

4 MR. CARLYLE: That's our presentation for Mr. Roskopf.

5 MR. MCDONALD: We have designations for Mr. Roskopf as
6 well, and I apologize, some of them are going to overlap
7 because we just --

8 THE COURT: Well, having thought about it, I think I
9 need to repoll the house. Do you want them to go ahead with
10 this while Mr. Mamalakis is here or is it your preference that
11 take it on their rebuttal case after all of the defendants have
12 rested?

13 MR. CARLYLE: Well, the rebuttal part, Your Honor, we
14 were talking about was the Pathway. The depositions --

15 THE COURT: You don't care about the depositions?

16 MR. CARLYLE: No.

17 THE COURT: Okay. Let's roll the depositions again.

18 MR. MCDONALD: We need to switch the screen.

19 *(Played video excerpts of Brenton Roskopf.)*

20 THE COURT: Let's take a ten-minute break.

21 *(Recess from 5:04 p.m. to 5:14 p.m.)*

22 THE COURT: All right. Now, where are we? Does
23 somebody want to call a witness?

24 MR. CLEARY: Judge, we would like to call another
25 witness, Mr. Stippich, by video. We have, between plaintiff's

1 and my cuts, about 35 to 40 minutes.

2 *THE COURT:* Oh, boy. You know when everybody is here,
3 with witnesses here, the court reporter at the ready, can't you
4 just leave us those clips and let us play them separately and
5 let's get on with live testimony? I mean, the people have come
6 a ways to testify today, I think.

7 *MR. CLEARY:* Your Honor, I'm not opposed to that. The
8 only thing I wanted, I guess, to mention is my understanding is
9 the only live witness remaining in the Mamalakis part of the
10 case is Pathway, who's being called as a rebuttal witness.

11 *THE COURT:* Yeah, I understand. I understand.

12 *MR. CLEARY:* And they haven't had the benefit of
13 hearing some of the testimony.

14 *MR. MCDONALD:* Yeah. If we do this and call them
15 first thing in the morning --

16 *THE COURT:* Well, I'm thinking your next witness ought
17 to go on after both -- we finish with Mamalakis and the other
18 two defendants.

19 *MR. KAPLAN:* Okay.

20 *THE COURT:* I think that's what I'm going to do.

21 *MR. KAPLAN:* You want to save Pathway for the end?

22 *THE COURT:* Yes, I do. Yes, I do.

23 So does anybody wish to call another witness
24 live?

25 *MR. KAPLAN:* Well, the next thing would be to get --

1 the only other person for the Mamalakis story is the Stippich
2 video.

3 *THE COURT:* Okay. I'll deal with that after -- I'll
4 take your cuts, and I promise I'll look at them.

5 *MR. KAPLAN:* After that, I guess, is the Kuharsky,
6 Godlevsky story.

7 *THE COURT:* Yes.

8 *MR. KAPLAN:* And it's up to them. If they want to
9 call Dr. Kuharsky live first and then I'll ask him questions or
10 if they want me to call him.

11 *THE COURT:* No, I think they get to call him first if
12 they want to.

13 *MR. KAPLAN:* I don't really care.

14 *MR. HOLMES:* I think Dr. Godlevsky is going to go
15 first. He's volunteered.

16 *THE COURT:* Okay. That's fine. Okay. Yes, sir. You
17 know the drill now. If you would raise your right hand,
18 please.

19 *(Vitaliy Godlevsky sworn.)*

20 *THE COURT:* Okay. That will be your seat. Try to
21 adjust the microphone, so you can speak directly into it.

22 Okay. You may inquire.

23 *MR. JOSEF:* Thank you, Your Honor.

24 For the people on the phone, this is Timothy
25 Josef.

Godlevsky - Direct by Mr. Josef

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DIRECT EXAMINATION

BY MR. JOSEF:

Q. Sir, can you please state your name for the record.

A. My name is Vitaliy Godlevsky.

Q. And where do you currently reside?

A. I live in West Bend, Wisconsin.

Q. And what do you do for a living?

A. I'm a financial engineer, and I've been in this area for --
I've tried to be in this area for 12, 13 years.

Q. And can you give me a brief summary of your work history?

A. Well, my background is computational physics. I got my
Ph.D. in computational physics there in the University of
Minnesota. Then I worked at University of -- at Yale
University, Rutgers University in computational physics, and
then I started to work with Quantlab in the year 2001.

THE COURT: At Yale and these other schools, were you
a postdoc or --

THE WITNESS: Postdoc, yeah. Correct, Your Honor.

A. So I started to work with Quantlab in the year 2001. I got
terminated in 2007, in March 2007.

In July 2007 I started with SXP. I worked at SXP
till February 2011. I was unemployed for a year, a little bit
more than a year. And currently I work with Singletick.

Q. All right. Thank you. Okay. On July 26th of this year,
Judge Ellison signed a discovery order that required you to

Godlevsky - Direct by Mr. Josef

1 produce documents and computers for forensic imaging; is that
2 correct?

3 A. Correct.

4 Q. And did you comply with that order?

5 A. Yeah, I complied as much as I could. I produced all that I
6 had at my residence. Notebook, CDs, DVDs, the electronic
7 media. And I wanted to turn in my Singletick computers --

8 Q. Before you go down that road, was there anything else that
9 you produced pursuant to that order?

10 A. There were a lot of -- were materials, like, I had to
11 produce all my banking statements. It was very extensive, from
12 back to 2008, like my tax statements. And before that,
13 Quantlab also received my e-mails for probably one -- one year.
14 I produced my receipts for electronic media that I bought, that
15 I was able to find. So it was very extensive, very extensive
16 discovery that was produced to me.

17 Q. Okay. And once you started out a moment ago, there were
18 some computers that you did not produce?

19 A. Right.

20 Q. And why didn't you produce those?

21 A. I got an order from -- from Singletick to return computers
22 to the company.

23 Q. Now, you're a part owner of Singletick, at least
24 indirectly. Don't you have the authority to control those
25 decisions or --

Godlevsky - Direct by Mr. Josef

1 A. That's right here. Not directly. I'm owner -- the
2 shareholder of the mother company of -- that solely owns
3 Singletick. So effectively I'm a part owner of Singletick.
4 But according to our shareholder agreement, the majority of the
5 company and majority of the golden share in making -- in
6 decision-making belongs to the investment group.

7 *THE COURT:* Belongs to who?

8 *THE WITNESS:* Investor, to the investor.

9 A. So when I was basically pressed between anvil and hammer
10 what to do, you know, I am already involved in two litigations,
11 Quantlab here and another litigation with Mr. Mamalakis that's
12 basically derived from Quantlab.

13 *THE COURT:* From Quantlab or from SXP?

14 *THE WITNESS:* From Quantlab.

15 A. I -- if I didn't comply with the orders of Singletick, I
16 could be basically thrown out of the company and I potentially
17 faced another lawsuit that I physically couldn't afford.

18 Q. So what you're saying --

19 *THE COURT:* Before we get too far down the narrative,
20 are you going ask him about the circumstances under which he
21 was terminated from Quantlab?

22 *MR. JOSEF:* I was not planning on --

23 *THE COURT:* I'll ask. Why were you terminated from
24 Quantlab?

25 *THE WITNESS:* Official story, Quantlab says that I was

Godlevsky - Direct by Mr. Josef

1 terminated because of misperformance.

2 *THE COURT:* Because of what?

3 *THE WITNESS:* Misperformance. I didn't perform.

4 *THE COURT:* I see. And what's your real story?

5 *THE WITNESS:* Real story, well, I got in Quantlab when
6 it was a start-up. There was like 10, 15 people -- or 12, 15
7 people. To my understanding, it was just on the edge of
8 bankruptcy. It was shrinking. It was a start -- a start-up,
9 so-called start-up company, and people were giving money. It
10 didn't have any execution engine. So Quantlab hired me to
11 create an execution engine to do electronic trading for them.
12 So I joined it in 2001. Since 2002 it started to trade and it
13 was -- it started to trade based on my algorithm --

14 *THE COURT REPORTER:* I'm sorry?

15 *THE WITNESS:* I'm sorry. I'm sorry for my Russian
16 accent.

17 So in 2002 Quantlab started to trade and they
18 still had issues that they traded were based on my mathematics
19 algorithms or my finding -- and Quantlab was very successful,
20 earning probably 150 percent a year since year 2002. And there
21 were so many open project -- projects. And basically I was
22 terminated on the peak of -- on the peak of Quantlab
23 performance during my presence there. I don't believe that it
24 was misperformance.

25 *THE COURT:* What was it?

Godlevsky - Direct by Mr. Josef

1 *THE WITNESS:* I don't know, maybe I asked
2 uncomfortable questions to Quantlab about trading practices,
3 deletion practices, offshore accounts. It's still a puzzle for
4 me, because I was closely related to other members of Quantlab,
5 for example, director of research and development, who was the
6 mastermind of Quantlab. He's my classmate from Westcol
7 College.

8 *THE COURT:* What's his name?

9 *THE WITNESS:* Andrey Omeltchenko.

10 *THE COURT:* You heard Mr. Mamalakis's testimony
11 earlier today, didn't you?

12 *THE WITNESS:* I did.

13 *THE COURT:* He says you were a very difficult person
14 to get along with and employees quit rather than have to work
15 for you. Is that a part of the story?

16 *THE WITNESS:* I don't know. It's probably -- I cannot
17 comment on that.

18 *THE COURT:* You don't have any feeling about whether
19 you are difficult or easy to work for?

20 *THE WITNESS:* Well, usually problems appear in a
21 company in two cases: When it underperforms or it starts to
22 make so much money that the conflicts arise. So I think that's
23 what happened both in Quantlab and SXP. I believe that, you
24 know, I worked hard in both companies. I contributed to make
25 Quantlab billionaires from nothing and my former partner,

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1 Mr. Mamalakis, multimillionaire, and personally I am bankrupt.

2 *THE COURT:* So you think that because you were making
3 the company a success, they got rid of you? That doesn't sound
4 right to me.

5 *THE WITNESS:* I don't know. Maybe I asked
6 uncomfortable questions. I don't know.

7 *THE COURT:* Okay. Both places you asked uncomfortable
8 questions?

9 *THE WITNESS:* In the case of SXP, I was -- I was
10 asking to open company -- company books, because I noticed that
11 the leakage of the funds from the trading account was much --
12 was comparable to what we were making, and what we were making
13 was a very substantial amount of money. And Mr. Mamalakis was
14 explaining that he is withdrawing the funds to pay legal bills
15 for the company. And it didn't match. It was too much. So I
16 started to ask questions. I also started to ask questions
17 about moving the funds from SXP to offshores and then --

18 *THE COURT:* Okay. So you thought Mr. Mamalakis was
19 somehow secreting funds?

20 *THE WITNESS:* Embezzling the funds.

21 *THE COURT:* Embezzling funds.

22 *THE WITNESS:* Yes.

23 *THE COURT:* Okay.

24 *THE WITNESS:* Yes. And currently there is -- receiver
25 is conducting the forensic -- accounting forensic

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1 investigation.

2 *THE COURT:* So they'll form its own judgment about
3 that.

4 *THE WITNESS:* Yes. Correct.

5 *THE COURT:* Okay.

6 BY MR. JOSEF:

7 Q. And what uncomfortable questions were you asking at
8 Quantlab?

9 *THE COURT:* He's answered that, I think. He was
10 asking about offshore accounts. He was asking --

11 A. SEC regulations --

12 *THE COURT:* What was the second thing you said?
13 Secret donations?

14 *THE WITNESS:* SEC regulations, violating SEC
15 regulations --

16 *THE COURT:* SEC regulations.

17 *THE WITNESS:* -- front -- front writing the customers.
18 Front writing the customers.

19 BY MR. JOSEF:

20 Q. Okay. And to circle back where we were, so it's correct,
21 that Singletick has the power to terminate you and they had
22 sent you a directive saying that you were to turn your
23 computers over?

24 A. Well, I'm not sure whether they have power of termination.

25 In fact, Mr. Mamalakis also didn't have power to terminate, but

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1 that happened. And I -- I didn't have -- I don't have any
2 funds to -- if it ever happens, if Singletick terminates me, I
3 cannot -- I don't have funds to go to them and dispute it in
4 the court. I --

5 Q. Okay. And when you gave your computers to Singletick, what
6 did you expect them to do with them?

7 A. Well, it was explained to me that, first, I'm -- on my
8 computers, the ones only of the so-called core IP that's
9 discussed in the shareholder agreement, core IP was
10 intermingled with other developer, developer --

11 *THE COURT REPORTER:* Excuse me?

12 A. Core IP was mixed with other developer codes. So the
13 code --

14 *THE COURT:* I also didn't hear that. You said
15 something was mixed with other developer codes. What was the
16 something?

17 *MR. JOSEF:* It's core IP.

18 *THE WITNESS:* Core IP.

19 *THE COURT:* Core IP. I see. I got it.

20 A. And so basically my computers had property of Singletick.
21 That's not core IP. My computers also had business
22 correspondence -- business correspondence and communication
23 with vendors and maybe some attorney-client privilege
24 information. So to my understanding, Singletick wanted to --
25 first, to analyze it, to -- first, to image it, to make sure

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1 that they would be in good position to defend themselves if
2 there is any argument between Singletick and Quantlab, also to
3 secure -- to protect themselves against my possible
4 introduction of, God forbid, pieces belonging to somebody else.

5 *THE COURT:* God forbid entry of what now?

6 *THE WITNESS:* Prohibit -- they would secure themselves
7 from me introducing anything else, anything from other entity,
8 for example, from SXP or from Quantlab. So they needed to
9 secure the computers to -- going to that I don't introduce
10 anything else.

11 *THE COURT:* Okay. All right.

12 A. And then it was explained that it's going to be given -- to
13 later it's going to be given to Quantlab for forensic -- or to
14 forensic expert for forensic.

15 BY MR. JOSEF:

16 Q. So you expected ultimately, though, that the Court would
17 have an opportunity to rule on whether or not Singletick could
18 withhold those computers and to what extent; is that correct?

19 A. I'm sorry. Could you repeat that again?

20 Q. Was it your understanding that Singletick was going to come
21 to the Court and be forthright and not just describe the
22 computers or destroy them or do something --

23 A. Right. Correct.

24 Q. -- inappropriate?

25 Okay. So, if I could summarize, was it your

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1 understanding that you were choosing between doing something
2 that could potentially cause you to lose your job or cause your
3 investor to withdraw or just delay the case a little bit?

4 A. Correct. Yeah. Yeah.

5 Q. And why would it matter so much if you lost your job at
6 Singletick or if your investor withdrew?

7 A. Well, when it was looked at from this experience, I had
8 only 12,000 on my family account and I had a mortgage to pay.
9 Now with all this litigations, I'm deep in debt. I was without
10 a job for more than a year, and I didn't have any medical
11 insurance. My wife doesn't work. My stepdaughter has diabetic
12 condition and she is totally without support.

13 So if you're terminated, I -- nobody would be
14 able to take me on a job with Quantlab if -- with Quantlab on
15 my shoulders six and a half years after being terminated from
16 Quantlab. And especially with the precedent, that Quantlab
17 able to reach out and grab whatever software I develop. Nobody
18 in the world would want me -- want to hire me, because they
19 would be concerned about software that they would disclose to
20 me or software that I'm going to produce to them. They would
21 know that it's going to be -- potentially it's going to be
22 claimed by Quantlab.

23 Q. Okay. And the computers that you turned over to
24 Singletick, have those been produced to Quantlab yet?

25 A. I believe so.

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1 Q. Okay. So Quantlab is also accusing you of destroying or
2 disposing evidence, specifically of computers that contain code
3 or other work product. What I would like to do now is walk
4 through various time periods between the time that you started
5 at SXP and the time you started Singletick and find out what
6 happened to all of the computers or electronic storage devices.
7 So you said you started working for SXP when?

8 A. I started to work in SXP in 2007.

9 Q. And what computers and electronic storage devices did you
10 have in your possession at that time?

11 A. I believe I had multiple notebooks. I don't remember
12 exactly, maybe two, three, or four desktops. I had a number of
13 hard drives, USB flash drives, DVDs, CDs.

14 Q. Okay. And did anything happen that caused you to lose
15 possession of those devices?

16 A. Yeah, in March 2008, my house and SXP office was raided by
17 FBI. Everything that was found in my house was seized,
18 including cell phones, printers, all kind of electronics. And
19 all my computers and electronic devices in the office,
20 including all SXP servers and electronics were also seized.

21 Q. Okay. And so after the FBI raid, did you have any devices
22 remaining in your possession, whether flash drives, hard
23 drives, computers, or anything that could store data?

24 A. I believe not.

25 Q. Okay. And after the FBI raid, did you replace all of your

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1 computers?

2 A. Yes -- not all the computers, but, yeah, I probably
3 bought -- bought something, a notebook, something was replaced
4 by SXP. I bought electronic parts, parts for the computers.

5 Q. Okay. And did anything cause -- happen that caused you to
6 lose possession of those devices that you bought after the FBI
7 raid?

8 A. Yeah, I didn't keep track of what I had. I was kind of
9 relaxed, thought that -- not relaxed. I was relaxed that,
10 okay, so FBI seized everything and now I can prove that
11 everything started from the scratch. It's just a new life, new
12 start. FBI will just figure out what was going on and
13 that's -- will do its analysis. And Quantlab closed, dismissed
14 its -- withdrew its state court case against me in -- shortly
15 after FBI raid. And there was nothing open, nothing pending
16 for -- almost for a couple of years.

17 I didn't keep track of what I had -- you know, in
18 the modern age when a flash drive was so disposable, your
19 neighbor comes and says, "Okay. Can you copy me this movie,"
20 or your colleague at work just comes into your office and you
21 share something through flash drives. So I didn't keep track
22 of what electronic I have. A lifetime of notebooks is two or
23 three years, depending on how heavily they're used. So they
24 just -- the lifespan determines that the computers go away.

25 Q. Okay. So you said that you weren't keeping track of the

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1 notebooks and storage devices. Were you aware that Quantlab
2 intended to refile its case?

3 A. No, I wasn't.

4 Q. And did you not have any communication with your own
5 attorney or did you not talk to Quantlab's attorneys?

6 A. Well, I didn't communicate with my attorney -- I believe I
7 didn't communicate with my attorneys for -- for almost two
8 years. So nobody had told me that I'm supposed to keep all
9 hard drives, all notebooks, or all USB drives.

10 Q. Okay. So at the time that you separated from SXP --
11 actually let me rephrase that question.

12 What are the circumstances that led to you
13 separating from SXP?

14 A. Well, I was actually locked out from SXP. At some point I
15 asked Mr. Mamalakis to disclose the financial books. And it
16 generated to the point that he refused me to make decisions,
17 management decisions in the company. And when I started to
18 argue, I was doing the same way with -- on February 24th, I
19 communicated with him on that morning -- or through his -- or
20 to his secretary. And on the same day I was informed that --
21 actually he told me that he had missed my resignation, but that
22 I had never informed him about my resignation in any form. I
23 was just disputing my managerial rights.

24 Q. Okay. And when you got locked out from SXP, did you lose
25 access to any computers or storage devices?

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1 A. Correct. Yeah. I -- we're talking about here SXP, and
2 during my deposition, I mentioned a few devices that I had with
3 SXP, including workstation, notebook. I lost access to
4 everything, to those devices. Plus all passwords were
5 immediately changed, so I wasn't capable to log into SXP, to
6 SXP private network. I wasn't able to log into a repository,
7 to the central repository, or to my workstations, to other
8 servers that I previously had access to. And I was informed
9 that I cannot enter the premises of SXP.

10 Q. Okay. And did you maintain possession of any storage
11 devices or computers after you got locked out of SXP?

12 A. Yes, I had a notebook and a desktop at home.

13 Q. And what was the notebook used for?

14 A. The notebook had Windows operational system and primarily
15 it was used for Internet browsing, for movies -- I don't have
16 TV at home -- and for checking -- for checking my e-mails and
17 communicating with my legal counsel.

18 Q. Did you ever do any programming work on it or any work
19 related to high-frequency trading on that computer?

20 A. No, no. It even had Windows operational system installed,
21 and what we used in SXP was UNIX-based operational system.

22 Q. Okay. And did you have any idea that you had an obligation
23 to preserve that or maintain it?

24 A. No, I didn't, no.

25 Q. Okay. And in your mind, what was important to preserve?

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1 A. Well, the most important material was the code itself; the
2 history, how it was developed; and corporate e-mail
3 communication.

4 *THE COURT:* Why do you think the FBI got involved?

5 *THE WITNESS:* Well, I saw -- you know, actually I was
6 very nervous to come here. It's my first appearance. And I
7 was so much -- you were nice in this court -- and painted as a
8 villain, that, including, for example -- including the
9 testimony to FBI by Quantlab, that at some point I was accused
10 as a foreign spy, conspiring with foreign governments, and that
11 I would overflow U.S. markets with fake --

12 *THE COURT:* I see. So the allegations were in the
13 nature of something that might be considered an act of treason?

14 *THE WITNESS:* I'm sorry?

15 *THE COURT:* So the allegations were in the nature of
16 something that could be considered an act of treason? Is that
17 why the FBI got involved?

18 *THE WITNESS:* Well, the way I also, as far as I
19 understand, there were -- one was letters saying that SXP is
20 using Quantlab proprietary code.

21 *THE COURT:* See, the reason I'm confused is to me it's
22 very unusual for a government law enforcement agency to get
23 involved in what's basically a civil dispute.

24 *THE WITNESS:* Yeah. And it was very, very big case,
25 probably one of the largest white-collar crime cases in Texas.

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1 72 agents, what I thought was almost -- agents, FBI agents
2 raided our houses, SXP premises.

3 *THE COURT:* Yeah, yeah, it was a big deal. Yeah, a
4 big deal. And you think it was because of suggestions that you
5 were not loyal to this country? Is that the reason?

6 *THE WITNESS:* I saw -- well, not saw, but I was told
7 about allegations in this case, including that I was going to
8 that -- that I was working for foreign governments and going to
9 overflowed -- overflow U.S. markets with fake orders and to
10 submerge the U.S. markets. But my explanation is primary,
11 Quantlab was concerned about -- was concerned about competition
12 and didn't want us to --

13 *THE COURT:* No, I understand that. But normally in
14 that kind of circumstance, it's very hard for a private party
15 to get the federal government involved on what is basically a
16 trade secret case. The federal -- in my experience, law
17 enforcement would say, "That's a private dispute. We have more
18 important matters to pursue. Go deal with that in civil
19 court."

20 *THE WITNESS:* Uh-huh, right, right.

21 *THE COURT:* And do you have any idea why the FBI took
22 a different stance on this case?

23 *THE WITNESS:* We -- well --

24 *THE COURT:* If you don't, that's fine.

25 *THE WITNESS:* Yeah, I don't know. I don't know.

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1 *THE COURT:* Okay. That's fine.

2 BY MR. JOSEF:

3 Q. Okay. You mentioned that you're aware that it's important
4 for the code to be preserved and for e-mail communications.
5 And to the best of your knowledge, was that information being
6 backed somewhere or being preserved for -- as evidence for
7 trial?

8 A. Correct. When we started SXP, all code development was --
9 had to go through a central repository, so-called SVN for
10 abbreviation. It's the abbreviation. And we backed up this
11 repository on the mail server or on tapes, I don't remember,
12 but it was backed up. And SVN would allow it to go -- to roll
13 back to previous versions and to see how the code was
14 developed. So all steps of how the code incrementally is
15 created can be reproduced. It shows who committed the code,
16 all comments of the developer -- of the developers, and
17 basically line-by-line growth of the code. Besides, mail
18 server that we used for the corporate communication was also
19 backed up, so -- and everything was in SXP server in the server
20 room.

21 Q. Did you have any reason to believe whatsoever that that
22 information could be compromised or be destroyed?

23 A. No, I don't have comments about that. To my understanding,
24 from what I've learned so far, Pathway or forensic experts of
25 Quantlab get ahold of -- received tapes or our servers and they

Godlevsky - Direct by Mr. Josef

1 can find -- they are able to recover -- eventually be able to
2 recover, I hope.

3 Q. Okay. And did you have any communication with
4 Mr. Mamalakis before he started wiping computers from SXP?

5 A. No, I didn't.

6 Q. Or before giving them away, before any form of disposal?

7 A. I didn't.

8 Q. All right. And when did you first learn that that had
9 occurred?

10 A. I learned about that probably a few months ago on when I
11 was reading from the transcripts of the hearings.

12 Q. Okay. And before I get too far away from the subject, so
13 Mr. Mamalakis testified earlier that you had quit from SXP and
14 not that you had been locked out. Do you know why he would
15 testify to that effect?

16 A. Well, there is a pending litigation case in the Milwaukee
17 state court and it would greatly benefit Mr. Mamalakis if he
18 can demonstrate that I quit the company, as he alleges, instead
19 of me being locked out.

20 Q. Okay. Because you said earlier when -- after you had been
21 locked out of SXP, you had a notebook and a desktop. We've
22 already talked about the notebook. But what happened -- let me
23 rephrase that. What was the desktop used for?

24 A. The desktop was used as a terminal to get to virtual
25 private network of SXP --

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1 *THE COURT REPORTER:* I'm sorry?

2 A. -- to get to virtual private network of SXP.

3 *THE COURT:* Virtual private network?

4 *THE WITNESS:* VPN, uh-huh. Right.

5 A. So I would be able to monitor real time trading performed
6 from SXP. So I would be able to monitor it from my house.

7 Also, I was able to write corporate e-mails through that
8 desktop and I was able to, like, enter SXP servers and do my
9 work there.

10 Q. Did you ever actually store any code on that computer?

11 A. I believe not.

12 Q. Okay. In your deposition on the 29th, Mr. Neighbors asked
13 you if this was the primary work computer that you used to do
14 your work for SXP, and you answered in the affirmative when he
15 asked that question. And this is cited by Quantlab in their
16 brief; is that an accurate statement?

17 A. Yes, I use it for some work for SXP.

18 Q. But was it the primary computer for you --

19 A. No, no, it wasn't primary. I emphasized that most of my
20 work was done from the office, from my office workstation.

21 Q. And did you make an effort to clarify that in your
22 deposition?

23 A. Yes, I remember I did.

24 Q. Okay. And if I can, I've just got a few lines that I'm
25 going to read from the deposition.

Godlevsky - Direct by Mr. Josef

1 *THE COURT:* All right. Please read slowly for the
2 court reporter and for me.

3 *MR. JOSEF:* And this is Exhibit F to Document No. 449.

4 BY MR. JOSEF:

5 Q. Question: "Well, I -- we've made clear that that was the
6 computer that you were primarily using on behalf of SXP after
7 the FBI raid, correct?"

8 Answer: "No. Actually I have -- most of the
9 work that I did was from my SXP office. I used my SXP
10 workstation or desktop, if you want, to do the -- most of the
11 work."

12 That's the end of the quote.

13 And what happened to this computer, this desktop?

14 A. I believe at some point the hard drive failed and I used it
15 for parts.

16 Q. Okay. And what happened with the hard drive specifically?

17 A. I don't know what happened with the hard drive. It may
18 just -- I actually tried to recover it first, to see if I was
19 able to resuscitate it. I read a few instructions on the
20 Internet what to do. I'm not a system administrator, so I
21 needed some guidance. Went on the Internet, what to do, how to
22 boot the computer in a different mode, in safe mode. Nothing
23 worked out, so I just left it alone. I don't remember what
24 happened with the hard drive. It could be -- it could have
25 ended up in the garbage can. But I -- when I got the request

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1 to produce what I have at home, I didn't have hard drive.

2 Q. And when you allowed that hard drive to be discarded, did
3 you have any idea that you were doing something wrong?

4 A. No, I didn't.

5 Q. Okay. So before starting Singletick and also after leaving
6 SXP, did you have any other computers or electronic storage
7 devices that we haven't talked about?

8 A. I'm sorry, before June --

9 Q. Before starting at Singletick.

10 A. Before starting at Singletick. I had -- I had a notebook.
11 And I believe I stopped using this notebook when I -- when we
12 started Singletick. As soon as we started Singletick, I used
13 Singletick hardware. And it's just been this way almost for
14 one and a half years.

15 Q. Okay. And what was on that notebook? Was there any coding
16 done or high-frequency trading related work done on that
17 computer?

18 A. No, not at all. In fact, I didn't -- when I was
19 unemployed, I didn't develop any code.

20 Q. Okay. What were you -- what was most of your time focused
21 in that gap of unemployment, between your leaving SXP and
22 starting Singletick?

23 A. Well, when I was locked out, I had -- it was very shocking
24 experience to me. I wasn't able to find a job. I made few
25 efforts. Nobody wanted to take me. And I literally had to

Godlevsky - Direct by Mr. Josef

1 survive. I placed my house on the market, trying to sell it.
2 And basically me and my wife were trying to survive. We were
3 living really from the land, from the orchard. We have kind of
4 a farm. We raise chickens. We have bees. Garden, orchard.
5 And I tried to search for a job frantically. We have an
6 outstanding mortgage to take pay. The amount probably, 40,000
7 plus taxes, plus maintenance. So, it was a very, very, very
8 shocking experience.

9 *THE COURT:* You couldn't teach? You couldn't teach?

10 *THE WITNESS:* I -- yeah, if I teach, I probably still
11 I'm not able to pay legal expenses and even mortgage wouldn't
12 be affordable. No, I think I'm really, like, 200,000 in debt.
13 And this legal expenses are just --

14 *THE COURT:* Keep adding, huh?

15 *THE WITNESS:* -- keep mounting, yeah.

16 *THE COURT:* Okay.

17 BY MR. JOSEF:

18 Q. And so the personal notebook that we just talked about, was
19 that the notebook that was produced to Quantlab?

20 A. No, the notebook that's produced to Quantlab is -- belongs
21 to SXP -- I'm sorry, belongs to Singletick. Should have two
22 notebooks that Singletick produced to Quantlab.

23 Q. Let me slow you down. There was one notebook that was
24 actually produced on August 16th, and then there's also the
25 four other notebooks that were -- or the two notebooks, two

Godlevsky - Direct by Mr. Josef

1 desktops that were produced later?

2 A. Right, right, yeah. So that notebook was produced to
3 Quantlab along with CDs and DVDs that I was able to find around
4 my house.

5 Q. Okay. And so other than that notebook that was actually
6 produced and then the four other computers that were given to
7 Singletick and then ultimately produced to Quantlab, were there
8 other computers and storage devices?

9 A. There was a notebook also that I used only for Internet
10 browsing and for e-mails, and that notebook had a failed hard
11 drive probably one and a half years ago.

12 Q. Okay. And do you have any idea where that notebook is now?

13 A. Probably I disposed it in the garbage. I tried to use a
14 few parts for a friend's notebook. He asked me to help him to
15 recover his notebook. I used -- tried to use a few parts, and
16 I wasn't able to recover both notebooks.

17 Q. Okay. And you said you used it for Internet browsing. Did
18 you ever do any coding or any work related to high-frequency
19 trading on it?

20 A. No, I had no reason for it.

21 Q. Did you have any idea that you were under an obligation to
22 preserve that or produce it?

23 A. No. No.

24 Q. Okay. And at the time of the order that you responded, did
25 you physically have in your possession, custody, or control any

Godlevsky - Direct by Mr. Josef

1 other storage devices or computers?

2 A. I believe I didn't have computers. I may have had storage
3 devices, like USB drives, CDs, DVDs. If I follow the path of
4 what, you know, was confiscated by FBI, I had flash drives,
5 two Kindles, maybe two smartphome.

6 Q. Okay. So, if I understood your answer correctly, you're
7 saying that there may have been other devices that contained
8 storage media on it, but whose primary purpose was not for
9 storing?

10 A. Correct. Correct. Not for code development, not for
11 code -- not for, you know, for storing.

12 Q. Okay. And just my last question for right now is, how much
13 money did you ultimately make off of the SXP project? How much
14 did you walk away from that project with?

15 A. Well, when I -- I started SXP, I had, I believe, 1 million
16 in my savings account. I invested in SXP approximately half a
17 million. And when I was locked out from SXP, I had only 12,000
18 in my account. So, basically, I didn't make any money.

19 I believe that I was a few years without -- I was
20 all the time without a salary. I didn't receive -- I wasn't on
21 the payroll. There was some cash distribution which I
22 received -- is figuring out whether it was redemption of what I
23 invested or it was a cash distribution kind of facility. But
24 when I was locked out from SXP, I had only 12,000.

25 Q. Okay.

Godlevsky - Cross by Mr. Neighbors

1 A. I believe I produced this to Quantlab in my banking
2 statements.

3 Q. Okay. And actually this will be my last question. At any
4 point since 2007 have you intentionally destroyed a computer or
5 a storage device with the intention of keeping it out of
6 evidence or keeping it away from Quantlab?

7 A. No, I haven't.

8 Q. Okay.

9 *MR. JOSEF:* I'll pass the witness.

10 *THE COURT:* Okay. Thank you. Yes, sir.

11 *MR. NEIGHBORS:* Yes, Your Honor. Thank you.

12 Allan Neighbors for those on the phone.

13 **CROSS-EXAMINATION**

14 BY MR. NEIGHBORS:

15 Q. Dr. Godlevsky, let's talk a little bit about Singletick
16 first. You're not just an employee of Singletick, correct?

17 A. Correct.

18 Q. You are a chief operations officer of the company?

19 A. That's what I saw I was promoted, in a recent
20 communication.

21 Q. So the answer is "yes"?

22 A. Again, we didn't have a discussion about that. I am a
23 manager in the shareholder contract. I'm a manager, but I saw
24 three times in communication, legal communication, that I'm
25 called COO.

Godlevsky - Cross by Mr. Neighbors

1 Q. The company has, in fact, sent you letters, including a
2 hold letter, identifying you as the chief operations officer,
3 correct?

4 A. Right. That's what I'm referring to.

5 Q. You also own 23.5 percent of the company, correct?

6 A. Correct.

7 Q. You're a manager of the company, correct?

8 A. Correct.

9 Q. What is Singletick's business?

10 A. Singletick was created to do all different trading on U.S.
11 markets.

12 Q. And Singletick or some investor in Singletick has fronted
13 you money to defend this litigation, correct?

14 A. Correct.

15 Q. And, in turn, you've given either Singletick or that
16 investor an interest in any award that you get out of this
17 litigation, correct?

18 A. I believe so.

19 Q. You know it is. The answer is "yes"?

20 A. Yes.

21 Q. Let's talk a little bit about your compliance with the
22 judge's July 26th discovery order. You turned over on
23 August 16th, through your counsel, Mr. Josef, a laptop, did you
24 not?

25 A. I did.

Godlevsky - Cross by Mr. Neighbors

1 Q. And when did you come into possession of that laptop?

2 A. It's hard to say, but I believe a few years ago.

3 Q. Okay. Can you be any more specific than that?

4 A. No, I cannot.

5 Q. Do you recall telling me in your deposition on Tuesday,
6 that you believed it was in 2012?

7 A. I don't remember.

8 Q. Would it surprise you if the service tag on that computer
9 and the operating system on that computer both show dates of
10 October 2010?

11 A. No, it wouldn't.

12 Q. And would it surprise you if the forensics on that computer
13 showed that at least seven external devices had been attached
14 to that computer?

15 A. It won't.

16 Q. And would it surprise you to know that none of them have
17 been produced in this litigation?

18 A. It won't.

19 Q. Would it surprise you if the forensics also shows that at
20 least two of those external devices were also attached to the
21 Singletick laptop that you talked about on direct examination?

22 A. It is possible.

23 Q. And that neither of those have been produced either?

24 A. Correct.

25 Q. So where are they?

Godlevsky - Cross by Mr. Neighbors

1 A. I don't know. USB devices are so disposable, you know, you
2 can have them in the form of a pen or in a pen cap. You know,
3 I know that in the course of my work in the office, people,
4 employees, and colleagues come into my -- may come into my room
5 and ask to transfer something through a USB drive. I remember
6 a few occasions when I copied a movie on somebody's drive from
7 my Singletick computer. So some of the USB drives are not
8 mine. And probably some of USB drives were mine, but I didn't
9 keep them.

10 Q. And why not?

11 A. Well, you can lose USB drive. You can give it to somebody,
12 because they're so cheap. They're -- sometimes they're a few
13 bucks only.

14 Q. So which one was it? Did you lose them or did you give
15 them away?

16 A. It's hard to tell. You mean the ones that I had?

17 Q. Yeah. You've just testified that it's possible that you
18 could lose them or it's possible that you could give them away.
19 You've also testified earlier that you threw at least two hard
20 drives in the trash of other computers that you've had. We're
21 here to tell the Court today what the story is. So tell us,
22 where are they?

23 A. I don't know. I never kept track of them. I didn't keep a
24 code on those flash drives or hard drives. So I never realized
25 that I was -- had an obligation to keep track of all hard

Godlevsky - Cross by Mr. Neighbors

1 drives or flash drives attached to notebooks.

2 Q. Dr. Godlevsky, you've only had this laptop that you've
3 turned over on 8-16 since well after December 9th --
4 December 2009 when this case was filed, correct?

5 A. Correct.

6 Q. And at least as of that date, you knew that you had an
7 obligation to preserve evidence, correct?

8 A. Correct.

9 Q. And now you're sitting here telling us today, that of the
10 seven devices that the forensics are going to show was attached
11 to this laptop that you turned over finally on 8-16, you don't
12 know where they are?

13 A. Well, the devices belonging to me. Some devices may belong
14 to our employees, some devices may belong to Singletick.

15 Q. Well, did you make any effort before today to go back and
16 get them?

17 A. There were -- there was also a device that I attached to it
18 when I gave -- in my Singletick -- computer to Singletick. I
19 had to transfer my legal files. So I copied legal files on
20 some media and transferred it into a new computer that was
21 given to me by Singletick.

22 Q. Sir, that wasn't my question. You need to listen to my
23 question. Did you make any effort to go round up or locate any
24 of the seven devices that the forensics show were attached to
25 the laptop that you turned over on 8-16?

Godlevsky - Cross by Mr. Neighbors

1 A. I checked at home. I did an effort and checked everything
2 at home.

3 Q. And when did you do that?

4 A. I believe by the time when I submitted Singletick --
5 computers to Singletick.

6 Q. And that was when? August 14th of this year?

7 A. I believe around that time.

8 Q. Have you in the intervening two months gone and done
9 another look for them?

10 A. I'm sorry?

11 Q. In the two months since then -- I'm assuming on 8-14, you
12 didn't find them, correct?

13 A. Correct.

14 Q. Have you looked for them in the intervening two months?

15 A. No, I haven't. I --

16 Q. As we sit here today, you can't tell us exactly where those
17 devices are or what was on them?

18 A. I believe some devices are in the Singletick offices.
19 There's probably devices that I used to transfer files related
20 to legal work, without -- if I -- if -- had I given all
21 documents related to -- like, attorney-client documents or
22 documents that I use for my defense, I wouldn't be able to, you
23 know, to communicate to my attorneys. So I had to have some
24 means to move it from my Singletick computers to the new
25 computer that I was given.

Godlevsky - Cross by Mr. Neighbors

1 Q. That doesn't make any sense to me. So explain it to me.
2 Why do you need to be moving the contents of the device to be
3 able to exchange communications with your lawyers? We saw
4 e-mails earlier today where you were exchanging communications
5 with your lawyers via a Singletick e-mail account. Are you
6 telling me that there's only one way that you can get access to
7 the Singletick e-mail account on one computer?

8 A. No, it's not only e-mail account. It's all legal files,
9 that I store it, that I generated for six and a half years.
10 And it's substantial, substantial amount of files.

11 Q. How do you know, as we stand here today, that there's
12 nothing else on those devices that we haven't seen?

13 A. Well, I'm willing to turn in my notebook for forensic.

14 Q. Well, you were also supposed to turn over any other
15 electronic storage devices that you had in your possession, you
16 were you not?

17 A. Yes, I'm willing to do that as well.

18 Q. Well, why haven't you already done it? When do you think
19 we're going to get to doing that?

20 A. Because it's going -- for me, it's -- you know, as soon as
21 I touch anything, it's already supposed to be turned -- you
22 know, I wouldn't be able to do any legal work, any further
23 work. I need to -- I still need to work for Singletick. So if
24 I -- it's like an avalanche. I'm producing, producing,
25 producing. At some point I -- whatever I touch, whatever gets

Godlevsky - Cross by Mr. Neighbors

1 in my possession, I'm supposed to give to Quantlab.

2 Q. You were here for Mr. Mamalakis's testimony earlier today,
3 correct?

4 A. Correct.

5 Q. And you heard him testify that you kept your SXP computers
6 after what you call "the lockout"? Did you hear him testify to
7 that?

8 A. I did.

9 Q. And do you disagree with that testimony?

10 A. I do.

11 Q. Sir?

12 A. I do.

13 Q. You do disagree?

14 A. Yes.

15 Q. So is it your testimony, then, at the time of your
16 separation, whether it was a walkout or a quit, whatever it was
17 from SXP, there were computers at SXP that you were using on
18 behalf of SXP?

19 A. Correct.

20 Q. How many?

21 A. At least one workstation that was under my desk and --
22 under my desk in the office, in SXP office, and I had one or
23 two notebooks.

24 Q. And it's your testimony that all three of those remained at
25 SXP and out of your possession as of -- was it February 24th,

Godlevsky - Cross by Mr. Neighbors

1 2011?

2 A. Correct.

3 Q. You don't know where those are today?

4 A. I don't.

5 Q. You also have a computer at your home as we sit here right
6 now, do you not?

7 A. I do.

8 Q. You haven't turned that over, have you?

9 A. I haven't. I --

10 Q. The answer is "no," right?

11 A. That computer came to our family after we turned in
12 everything. So there was a period of time that we didn't have
13 that computer.

14 Q. So you bought that computer and because of the timing of
15 when you bought it, you believed it was exempted from the
16 judge's order, is that what you're telling us?

17 A. Correct.

18 Q. And you also have an Acer laptop that Singletick gave you
19 on the very day that you turned over your other four devices,
20 correct?

21 A. I checked. It's not Acer. It's Asus. In the deposition I
22 said it's either Acer or Asus. It is Asus, yeah, correct.

23 Q. A-c-u-s (sic)?

24 A. Uh-huh.

25 Q. But otherwise the answer is "yes"?

Godlevsky - Cross by Mr. Neighbors

1 A. Yes.

2 Q. You haven't turned that computer over to us, have you?

3 A. I haven't.

4 Q. And you received that the very day that you turned over
5 your other four devices from Singletick, true?

6 A. I believe so. True.

7 Q. And you also testified in your deposition on Tuesday, that
8 you were aware of having a jump drive and a hard drive at your
9 home that you haven't produced in this litigation, correct?

10 A. It's at Singletick's office.

11 Q. But they haven't been produced in this case?

12 A. Correct. I used them to transfer, you know, all my legal
13 files and -- related to the legal case.

14 Q. But nonetheless, you haven't produced them?

15 A. Correct. Otherwise, I wouldn't be able to, you know, to
16 defend myself.

17 Q. Well, you could have made a copy of them, couldn't you?

18 A. But you would require the media that contains the copy to
19 be produced right away, so that's why I made the copy one.

20 Q. Other than what you already testified to today, have you
21 thrown away any external devices, such as USBs?

22 A. It's possible. I don't remember particularly yes, but it
23 may be a possibility. I didn't keep track of all my devices.

24 I never was aware that I would be required to keep track of all
25 of my hardware.

Godlevsky - Cross by Mr. Neighbors

1 Q. Are there any devices that you attached to any of your
2 computers that you have lost?

3 A. It could be.

4 Q. Possibly?

5 A. Yes.

6 Q. One of the other things that we heard Mr. Mamalakis testify
7 to earlier today was that nothing that was seized by the FBI
8 ever went back into use at SXP. Did you hear that?

9 A. Yes, sir.

10 Q. And you don't disagree -- you don't agree with that, do
11 you?

12 A. Partially. I need to explain.

13 Q. Well, after you received a computer back from the FBI that
14 had been seized from you, you put it back into use for your
15 work at SXP, did you not?

16 A. Correct.

17 Q. And where is that computer, as we stand here today?

18 A. I believe it's at SXP. But that computer was taken, the
19 hard drive out and the hard drive -- before giving it to me,
20 the hard drive was taken out. And I believe it's stored
21 with -- stored with the legal counsel of SXP.

22 Q. Well, have you seen any evidence that it has been turned
23 over in any shape or form to Quantlab in this case? Have you
24 seen it on any itinerary list or inventory list in this case?

25 A. No, I haven't. I have not.

Godlevsky - Cross by Mr. Neighbors

1 Q. Isn't it true, sir, that within two weeks of the FBI's raid
2 in March of 2008, SXP started reloading code into its SVN
3 server?

4 A. I don't know that.

5 Q. So if the forensics show that, you wouldn't have any reason
6 to dispute it?

7 A. I don't -- yeah, I'm not aware about it.

8 Q. So you can't testify one way or the other?

9 A. Correct.

10 Q. You also heard Mr. Mamalakis testify that he was under the
11 impression or understood that the contents of any of the
12 developer workstations would have been also on the -- what he
13 referred to as the brain server. Did you hear that, the SXP
14 server where the brain was also housed? Did you hear that?

15 A. I didn't hear the brain server. I think he referred to a
16 repository, a central repository, if it's true.

17 Q. Where what he called the brain was housed?

18 A. The brain, yeah. I think he referred to a so-called SVN or
19 repository, yeah, central repository, yeah.

20 Q. And that's not true, is it?

21 A. Can you repeat it again?

22 Q. Yeah. You don't agree with his testimony, where he said
23 that the contents of the developer workstations would have
24 necessarily also been on this central repository server? You
25 don't agree with that, do you?

Godlevsky - Cross by Mr. Neighbors

1 A. Well, I think he referred not to the contents of
2 workstations. He referred to the work product of developers.
3 So if a developer wrote a code for production, it -- the only
4 way to get it in production is only through the brain server.

5 Q. But in any event, you would agree that information that is
6 contained on an individual developer workstation would not
7 necessarily show up on the main server repository? You would
8 agree with that?

9 A. I didn't hear Mr. Mamalakis making such a statement.

10 Q. It's a different question. I'm asking you the question
11 now. You would agree with that?

12 A. I would agree with that, yeah.

13 Q. And you heard Mr. Roskopf testify that he understood that
14 there could be differences, too, and probably would be
15 differences, correct?

16 A. Correct.

17 Q. Did you hear that?

18 A. I didn't hear, but I will agree that that would be the
19 case.

20 Q. For example, if information was saved locally just to the
21 individual workstation, it wouldn't show up on the central
22 repository, would it?

23 A. Correct.

24 Q. And if a thumb drive was attached or inserted into an
25 individual workstation and then pulled up contents on the

Godlevsky - Cross by Mr. Neighbors

1 screen of that individual workstation, it wouldn't necessarily
2 show up on the central repository, would it?

3 A. It won't.

4 Q. And you would agree with me that that type of information
5 on the computers that were being used to develop SXP's code
6 would be important? You would agree with that?

7 A. The important thing was what was launched in production and
8 the production code, research code, that would be important.

9 Q. So if, for example, one of the developers was -- had two
10 screens side by side and on one of them had a set of Quantlab
11 code and on the other one was writing SXP code, you wouldn't
12 think that was information that we'd want to know in this
13 litigation?

14 A. That would be a very far-fetched scenario.

15 Q. So if the forensics showed that, in fact, happened, would
16 you be shocked?

17 A. I would be shocked.

18 Q. And you'd probably be even more shocked if it was either
19 you or Dr. Kuharsky, would you not?

20 A. Yes.

21 Q. You talked a little bit on direct examination about core IP
22 as it relates to Singletick. Do you remember that?

23 A. Yes.

24 Q. Can you explain that? What is the definition of core IP
25 within SX -- Singletick's -- within Singletick?

Godlevsky - Cross by Mr. Neighbors

1 A. Well, I believe it's given a broad definition -- a rather
2 broad definition, but in our understanding, core IP is
3 basically mathematics of the trade platform with Linux
4 indicators, that kind of software that's responsible to --
5 responsible for modeling it to combine the different indicators
6 in the model.

7 Q. Do you know who supplied that definition for the
8 shareholders' agreement?

9 A. I don't.

10 Q. Did you?

11 A. I believe not.

12 Q. Would you be shocked to --

13 A. What do you mean by "supplied"?

14 Q. Well, who came up with the definition of core IP that
15 ultimately went into the Singletick shareholders' agreement?

16 A. I believe it was between the -- one of our lawyers who
17 worked on the agreement and the lawyers of investor, who was on
18 the other side of the agreement.

19 Q. Would you then find it odd if that definition was
20 essentially the same definition of intellectual property from
21 the Quantlab confidentiality agreement?

22 A. Probably not. It's weird here, but there may be some
23 reason why it was put there.

24 Q. Well, can you think of any?

25 A. I can only guess.

Godlevsky - Cross by Mr. Neighbors

1 Q. What would that guess be?

2 A. Well, investors -- investor group was concerned about
3 possible litigation and they wanted to separate me and Kuharsky
4 from Singletick and in case of something comes up, so they
5 wanted to define core IP, you know, as close to what Quantlab
6 defines as its trade secrets, just to, you know, to make a
7 separation between Singletick software and core IP.

8 Q. So then is it your understanding that they intentionally
9 used the same definition from the Quantlab agreements to use in
10 the Singletick agreements?

11 A. It may be a possibility, but I don't know what was the
12 reason to include. It was a work product by both -- of two
13 counsels.

14 Q. In the year leading up to your discharge from Quantlab --
15 and you know Bruce Eames, correct?

16 A. I do.

17 Q. He's the chief operations officer, correct, of Quantlab?

18 A. Correct.

19 Q. Isn't it true that he repeatedly told you that you had to
20 change your behavior and get along with the director of
21 research?

22 A. I don't remember that. He asked me what's going on between
23 you and some other members of the team, but he never -- I don't
24 remember that he mentioned Andrey Omeltchenko.

25 Q. Well, it's true, isn't it, sir, that you had trouble

Godlevsky - Cross by Mr. Neighbors

1 getting along with the director of research, who just happened
2 to be your boss?

3 A. Later on I learned that it was also one of the reasons why
4 Quantlab alleged that I'm terminated from Quantlab, but at the
5 time when I worked at Quantlab, I wasn't aware about that. For
6 example, maybe one month before my termination, I was invited
7 to a birthday party at Andrey Omeltchenko house. So I wasn't
8 aware about that.

9 Q. So it's your testimony under oath here today, that prior to
10 being fired by Quantlab, you had nothing to suggest to you that
11 Quantlab believed you just simply could not get along with the
12 director of research?

13 A. Correct. We had --

14 Q. That's okay. You said "yes." That's fine. I don't --

15 *THE COURT:* No, no. He's taken an oath to tell the
16 whole truth. Go ahead and finish your answer.

17 A. Well, I knew Andrey from, you know, when he was 17 years
18 old, so more than -- I don't remember, 15 -- 15, 20 years. His
19 wife also was my classmate. So we started together in Moscow,
20 in the same college, in the same group. Their adopted daughter
21 was my goddaughter. And I was -- I was -- I believed that I
22 was free to know -- to be on shorthand with them.

23 *THE COURT:* Be on what?

24 *THE WITNESS:* On shorthand with them.

25 *THE COURT:* Shorthand, meaning you didn't have to say

Godlevsky - Cross by Mr. Neighbors

1 everything you were thinking? It would be obvious to him?

2 *THE WITNESS:* Well, I'm free to express what I'm
3 thinking directly.

4 *THE COURT:* Okay.

5 A. Where scientific disputes between us, for example, what
6 model to use, what indicators to use, it just basically came
7 probably from the competition back from the college years. And
8 besides, we also worked in academia. We worked in very similar
9 areas. He also came from computational physics and from
10 molecular dynamics. That's what I did as well. So I believed
11 that we were colleagues and in the scope of colleague
12 discussion, yeah, I was -- maybe we had scientific hard
13 discussions, but never about, you know, one that I remember
14 about business or --

15 *THE COURT:* When did you become godfather to his
16 daughter? How long ago was that?

17 *THE WITNESS:* I believe a year or two years prior to
18 my termination.

19 *MR. NEIGHBORS:* May I proceed, Your Honor?

20 *THE COURT:* Proceed.

21 BY MR. NEIGHBORS:

22 Q. It's also true, sir, that in the months prior to your
23 termination from Quantlab, the company even told you to take
24 some time off to think about whether you really wanted to
25 continue working there? That's true, isn't it?

Godlevsky - Cross by Mr. Neighbors

1 A. No, it's not true.

2 Q. It's not true that you took a sabbatical in November of the
3 year prior to your termination?

4 A. I did take sabbatical.

5 Q. And the reason for that was so you could go somewhere away
6 from Quantlab to think about whether you really wanted to
7 continue working there; isn't that right?

8 A. No.

9 Q. Well, why else did you take sabbatical, sir?

10 A. I was going to go to visit my family and was planning to go
11 for two or three months -- two or three weeks. And before my
12 trip, I was called to meet with Bruce Eames and Bosarge, who is
13 the other owner of Quantlab. Andrey Omeltchenko was also on
14 that meeting. And I was offered to start being in charge -- to
15 start a new project in the options and one other projects, to
16 be head of the options project. And I was also offered to have
17 my participation in the fund increased.

18 And I understood that there were some
19 misunderstanding in the group, some tension in the group. It
20 wasn't disclosed to me who was the reason -- who was the
21 subject of that tension. And I was offered also to go -- to
22 take those three -- three-week vacation that I was originally
23 planning to spend in Ukraine. And, in fact, Andrey
24 Omeltchenko -- I believe it was Andrey Omeltchenko, that I
25 would take code, to continue working on the code in Ukraine.

Godlevsky - Cross by Mr. Neighbors

1 *THE COURT:* How much did you make in your best year at
2 Quantlab?

3 *THE WITNESS:* Best year, I think slightly -- slightly
4 above a million. That was --

5 *THE COURT:* And how about your worst year?

6 *THE WITNESS:* Worst year? 65,000.

7 *THE COURT:* And how about your last year at Quantlab,
8 what did you make?

9 *THE WITNESS:* I was terminated in --

10 *THE COURT:* March.

11 *THE WITNESS:* -- in March.

12 *THE COURT:* Say the previous calendar year.

13 *THE WITNESS:* Probably 400 -- 400,000.

14 BY MR. NEIGHBORS:

15 Q. You received, sir, as compensation for your services to
16 Quantlab, a salary, correct?

17 A. Correct.

18 Q. And that salary increased every year over the six plus
19 years you were there?

20 A. I believe it didn't increase much. It was from 65,000, I
21 believe, to 75,000.

22 Q. Okay. But it increased?

23 A. Yeah. For six years, yeah.

24 Q. You were also allowed, as a select group of employees, to
25 participate in Quantlab's trading fund, correct?

Godlevsky - Cross by Mr. Neighbors

1 A. I wouldn't say that it's a privilege. It's a risk, because
2 I risk my capital in the fund as well.

3 Q. Well, was there ever a single day when you lost money in
4 that fund?

5 A. Yes.

6 Q. Was there ever a week when you lost money in the fund?

7 A. It could be.

8 Q. How much money over the course of your employment at
9 Quantlab, did you cash out of the fund?

10 A. I don't remember, but I believe it could be up to
11 50 percent of those big profitable years.

12 Q. It was several million dollars, sir, was it not?

13 *THE COURT:* How much do you suggest?

14 *MR. NEIGHBORS:* Several million dollars.

15 *THE COURT:* A million?

16 BY MR. NEIGHBORS:

17 Q. Was it not, sir?

18 A. Over all -- over six years of my employment at Quantlab?

19 Q. My question was: Through the course of your employment at
20 Quantlab, how much did you cash out of the fund over time?

21 A. I don't remember. It's -- it was less than 2 million.

22 Q. Less than 3 million?

23 A. Less than 2 million.

24 Q. Less than 2 million?

25 A. Yeah. Maybe 1.5, maybe 1 million.

Godlevsky - Cross by Mr. Neighbors

1 Q. And you got a cash payout in connection with your
2 separation, did you not?

3 A. Actually I, was refused to be paid for my last years in
4 Quantlab, for 2006, 2007. A portion of that payout, a small
5 fraction was paid.

6 Q. How much was that? How much did you get paid in connection
7 with your separation from Quantlab?

8 A. I don't remember. It was probably around 300,000.

9 Q. And after you left Quantlab, did you then invest that money
10 in SXP?

11 A. Correct, over a number of years.

12 Q. How much total?

13 A. It's difficult to separate my money from, you know, my
14 family money, because members of my family also contributed to
15 that investment. But overall, I invested approximately half a
16 million, maybe more than half a million. Plus I had to live on
17 other money for a course of almost four years when I worked for
18 SXP. I just kept billing my savings, because I wasn't on the
19 payroll and --

20 Q. And it's your position up in the litigation in Milwaukee,
21 that money that Mr. Mamalakis has taken out of SXP, a portion
22 of it is rightfully yours, correct?

23 A. Correct.

24 Q. You would agree with me, would you not, that the last year
25 of your employment with Quantlab was financially your best

Godlevsky - Cross by Mr. Neighbors

1 year?

2 A. Not exactly. I was terminated in 2007. So 2006 was the
3 best. But 2007, I wasn't compensated for 2007 at all.

4 *THE COURT:* Wait a minute. You told me 2006 you made
5 about 400,000.

6 *THE WITNESS:* I'm sorry. 2007 -- 2007, probably
7 1 million. And 2000 --

8 *THE COURT:* 2007 is the year you were terminated,
9 right?

10 *THE WITNESS:* Yeah, yeah. I was --

11 *THE COURT:* You made a million that year?

12 *THE WITNESS:* No, no. I was terminated two and a half
13 months after the new year.

14 *THE COURT:* Yeah.

15 *THE WITNESS:* So in 2006, I made a million. In 2005,
16 I made 400 something.

17 *THE COURT:* Okay. Well, that's not what you said
18 earlier, but okay.

19 *THE WITNESS:* I'm sorry. Probably I misstated the
20 years.

21 *THE COURT:* Okay.

22 *THE WITNESS:* Sorry about that.

23 BY MR. NEIGHBORS:

24 Q. And then the two and a half or so months of 2007 that you
25 worked for Quantlab, how much did you make?

Godlevsky - Cross by Mr. Holmes

1 A. It's hard to say. I don't remember.

2 Q. You don't have any recollection of it?

3 A. Maybe a few hundred thousand, maybe 150, 200. It has been
4 six -- six years ago. I don't remember.

5 Q. So for two months of work in 2007, you made possibly
6 \$200,000?

7 A. It's not me. It's the fund. Again, the risky enterprise
8 that made --

9 Q. Well, that money went into your bank account, did it not?

10 A. It did.

11 *MR. NEIGHBORS:* That's all I have, Your Honor.

12 *THE COURT:* Okay. Is there anything else, Mr. Holmes?

13 *MR. HOLMES:* Yeah.

14 *THE COURT:* How long are you going to be?

15 *MR. HOLMES:* I'm going to try to make it -- I'll try
16 to get down to another five or ten minutes. I understand the
17 time constraints.

18 **CROSS-EXAMINATION**

19 BY MR. HOLMES:

20 Q. Dr. Godlevsky, let me see if I can clear up one thing.

21 When you were asked some questions about the definition of core
22 IP in the shareholder agreement, do you know who wrote the
23 shareholder agreement?

24 A. I believe it's legal counsel of the investor.

25 Q. All right. Do you remember the name of the law firm?

Godlevsky - Cross by Mr. Holmes

1 A. I think it's Winston & Strawn.

2 Q. Winston & Strawn out of Chicago?

3 A. I'm not sure. They are present in Europe. Judging by the
4 language --

5 *THE COURT:* I think they started in Chicago. I
6 understand that.

7 *MR. HOLMES:* Okay.

8 BY MR. HOLMES:

9 Q. And did you ever get any indication that Winston & Strawn
10 went and got your contract from Quantlab and used that to put
11 a definition in a shareholder agreement they were writing?
12 Did you ever get that -- anything ever indicate to you that
13 Winston & Strawn went and got your employment -- your
14 confidentiality agreement with Quantlab and used that to come
15 up with the definition of core IP?

16 A. I don't know. Probably not.

17 Q. Yeah. While I have you here, I want to ask you a couple of
18 questions about something I'm going to cover more with
19 Dr. Kuharsky. Are you familiar with something called Numerical
20 Recipes?

21 A. I'm not familiar, but the words, judging by common sense,
22 I --

23 Q. Are you familiar with a company called Numerical Recipes?

24 A. Oh, numerical. I thought you said "miracle recipes."

25 Q. No, numerical, numerical.

Godlevsky - Cross by Mr. Holmes

1 A. Yes. Yes, I do.

2 Q. What is Numerical Recipes?

3 A. *Numerical Recipes* is basically a textbook of different
4 numerical methods applied in science and that book provides
5 C++ equal to Fortran code for different --

6 *THE COURT REPORTER:* Equal to what?

7 A. -- C++ comma C and Fortran code for different methods.

8 Q. Okay. When did you first come into contact with *Numerical*
9 *Recipes*?

10 A. I knew this book probably back from academia. It's very
11 popular, popular textbook.

12 Q. Okay. And did you continue to use *Numerical Recipes* after
13 you left academia and went to Quantlab?

14 A. Yes, I did.

15 Q. All right. Now, for -- well, before I ask that or do that,
16 well, are you familiar with a file called "Matrix Inverse"?

17 A. I believe so.

18 Q. And that's something that was used at SXP and at Quantlab,
19 right?

20 A. Matrix Inverse, I believe it was used in Quantlab.

21 Q. Okay. What -- just as simply as you can put it, what does
22 Matrix Inverse do?

23 A. As far as I remember, Matrix Inverse, inverts -- it's a
24 combination of -- I believe it was two methods that inverted
25 matrixes.

Godlevsky - Cross by Mr. Holmes

1 Q. Matrices?

2 A. Matrices, yeah. And --

3 Q. Go ahead.

4 A. Yeah, and I do recognize the name. That was -- that file
5 was taken from -- that duplication was by 95 percent was taken
6 from *Numerical Recipes* book.

7 Q. Okay. Well, before -- so, basically, Matrix Inverse -- a
8 matrix in math would be a set of numbers with columns and rows,
9 right?

10 A. Correct.

11 Q. And Matrix Inverse would invert those numbers?

12 A. Correct.

13 Q. And it was computer code to do that?

14 A. Correct.

15 Q. All right.

16 *MR. HOLMES:* If I may approach, Your Honor --

17 *THE COURT:* You may.

18 *MR. HOLMES:* -- give the witness what I've marked as
19 Kuharsky Exhibit 1.

20 BY MR. HOLMES:

21 Q. Is this a copy of the Matrix Inverse?

22 *THE COURT:* Do you have one for me?

23 *MR. HOLMES:* Yeah.

24 *THE COURT:* No, that's all right. I'll get it later.

25 That's all right.

Godlevsky - Cross by Mr. Holmes

1 MR. HOLMES: No, no. We'll find you a --

2 THE COURT: If you hand it to Mr. Heaps, please.

3 BY MR. HOLMES:

4 Q. Is this Matrix Inverse, Dr. Godlevsky?

5 A. Yes, I believe so.

6 Q. All right. If you will go down -- sorry, I need my
7 glasses. If you go down to the third line, you'll see there's
8 a double slash mark for which is a comment, right?

9 A. Correct.

10 Q. It says, "The following code solves a system of equations
11 AX equals B." Do you see that?

12 A. I do.

13 Q. All right. Then it says, "This code is copied from
14 *Numerical Recipes* book," correct?

15 A. Correct.

16 Q. All right. And this is something you worked on -- you've
17 worked with before, correct?

18 A. That's correct, yeah. Yes.

19 Q. And what was this -- in fact, was this one of the files
20 that was identified by Pathway Forensics as something that was
21 supposedly stolen by SXP from Quantlab?

22 MR. NEIGHBORS: Judge, I don't think he has any
23 foundation to talk about this.

24 A. I believe it was found --

25 THE COURT: I'm going to allow it.

Godlevsky - Cross by Mr. Holmes

1 A. I believe I saw -- I recognize the name, and I saw it on
2 the list of files that was discovered by FBI on my SXP desktop.

3 BY MR. HOLMES:

4 Q. All right. Well, in your own experience, both at Quantlab
5 and at SXP, was Matrix Inverse something that was created by
6 Quantlab?

7 A. No, not by any means. Actually your method was invented by
8 Carl Gauss 200 years ago.

9 *THE COURT:* By Carl?

10 *THE WITNESS:* Gauss. It's a famous mathematician.
11 200 years ago he --

12 *THE COURT:* G-a-u-s-t, right?

13 *THE WITNESS:* Huh?

14 *THE COURT:* G-a-u-s-t?

15 *THE WITNESS:* G-a-u-s-s.

16 *THE COURT:* Yea, I've heard of him.

17 *THE WITNESS:* He's German.

18 *THE COURT:* Okay.

19 *MR. HOLMES:* Okay. I'll come back to this with
20 Dr. Godlevsky's -- Dr. Kuharsky's testimony. And I'll pass the
21 witness for now.

22 *THE COURT:* Okay. I propose we recess -- do you have
23 a few questions? I was going to recess until tomorrow.

24 *MR. JOSEF:* Very briefly, Your Honor.

25 *THE COURT:* Okay.

Godlevsky - Redirect by Mr. Josef

1

REDIRECT EXAMINATION

2 BY MR. JOSEF:

3 Q. So very briefly, my redirect questions -- this is Timothy
4 Josef. So you are the COO of Singletick?

5 A. I'm getting used to this term now since it has been
6 mentioned.

7 Q. Did you have any idea that you were the COO before your
8 deposition this week?

9 A. I saw I was called this title -- I was promoted to this
10 position in a few e-mails.

11 Q. And do you know what it means?

12 A. Chief operation officer.

13 Q. But the practical implications as to what it means in terms
14 of your authority to govern the company?

15 A. Nothing.

16 Q. So as a practical matter, if you disobey the directives
17 given to you by the directors of Singletick, do you feel like
18 you would suffer negative consequences?

19 A. Yeah, I don't even -- I'm even afraid to speculate about
20 that, you know, to think of that, I'm -- filed third lawsuit
21 and then I'm totally --

22 *THE COURT:* Yeah. Okay. I understand.

23 A. That's a death sentence.

24 BY MR. JOSEF:

25 Q. The jump drive and hard drive in your possession that you

Godlevsky - Redirect by Mr. Josef

1 said that you copied legal files onto those, you did that
2 because you had to turn over your computer, correct?

3 A. Correct.

4 Q. And so you're just preserving information to keep fighting
5 the lawsuit?

6 A. Correct.

7 Q. Okay. You specified earlier -- you stated earlier that you
8 could not identify your computers on the inventory of SXP's
9 computers that their receivers turned over?

10 A. Correct.

11 Q. Can you identify any of the computers on that list?

12 A. I saw a few computers called -- with the cases of the brand
13 Supermicro -- the Supermicro brand. I believe those were
14 servers, rack servers.

15 Q. Okay. But from looking at that inventory list, when you
16 looked at the serial numbers and information provided, did you
17 have any idea whose computers they were or where they were
18 from?

19 A. No, by serial number, it's impossible. It's like
20 memorizing your vehicle identification number --

21 Q. Okay.

22 A. -- instead of the make and model.

23 Q. And did you have anything to do whatsoever with the
24 decision to wipe the developer workstations at SXP?

25 A. No, I don't. I don't.

