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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. .
FEBRUARY 28, 2014
VITALIY GODLEVSKY, et al . 2:30 P.M. to 3:14 P.M.

TRANSCRIPT of MOTION HEARING
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 P R O C E E D I N G S

2 *THE COURT:* All right. I know you've probably already
3 gone over this with Ms. Metzger, but let's do the appearances
4 of counsel one more time, beginning with the plaintiffs.

5 *MR. KAPLAN:* Lee Kaplan and Ty Doyle and Allan
6 Neighbors and Tim McInturf for the plaintiffs, Your Honor.

7 *THE COURT:* Thank you.

8 *MR. HOLMES:* David Holmes for Kuharsky and Maravina.

9 *MR. JOSEF:* Timothy Josef for Defendant Godlevsky.

10 *THE COURT:* Thank you very much.

11 Okay. Have you conferred further about the
12 password for Dr. Kuharsky? Where do we stand on that?

13 *MR. HOLMES:* No, we have not.

14 *THE COURT:* Sorry?

15 *MR. HOLMES:* No, we have not.

16 *THE COURT:* Okay. I don't know if this is susceptible
17 to a Court order. Let me hear from Dr. Kuharsky's counsel
18 first. I mean, is there something you need from me as to this
19 password?

20 *MR. HOLMES:* Well, I mean, I don't know, to tell you
21 the truth. This is -- it's been dragging on for three months,
22 and what we've said over and over again is that if Dr. Kuharsky
23 has enough time to play with it, there's a good chance he's
24 going to be able to come up with whatever combination he had.
25 I think what they arranged last time -- I guess Mr. Kaplan was

1 actually there. I wasn't -- was a short meeting, I believe at
2 Mr. Kaplan's office. But that's what we've been saying. If
3 you want us to get -- be able to get into that computer and so
4 he can figure out what his log-in was, whatever it may have
5 been, the only way we're going to get that taken care of is for
6 them to give him either the laptop or an image of the laptop
7 and let him basically play with it and eventually he's going to
8 figure it out.

9 *THE COURT:* Okay. Let me hear from the plaintiffs.

10 *MR. KAPLAN:* That's always an option. He came in, I
11 don't remember the day, and spent about 30 minutes with the
12 imaged computer and said, "Well, I can't figure it out." And,
13 you know, the way we left it -- Mr. Holmes wasn't there and,
14 you know, I don't want to communicate with somebody's client,
15 but obviously if they want to look at the imaged computer,
16 we've got one. They can come look at it as much as they want.
17 I don't know when and how they're willing to do that. They've
18 never offered and never given us any ideas, but if they want to
19 do it, we've got it.

20 *THE COURT:* Well, where is the disconnect here? I
21 mean, it seems like such an obvious step that needs to be
22 taken. I mean, what do I do, order him to go try to retrieve
23 the password?

24 *MR. KAPLAN:* Your Honor, it would seem to me that
25 Dr. Kuharsky would want to remember his password.

1 *THE COURT:* Yeah.

2 *MR. KAPLAN:* He doesn't need an invitation, but we're
3 extending the invitation. We extended it once. He came for
4 half an hour and said, "I don't get anything." If he wants to
5 come and spend a lot of time looking at the imaged computer,
6 fine. We're not standing in the way of that happening. And I
7 don't want to -- you know, we haven't sent a request every
8 week, "Have you got any more news for me? What are you willing
9 to do?" It's just they haven't done anything about it. But
10 the computer is available. When they'd like to look at it,
11 give me a phone call. They can do it at my office. They can
12 do it at Pathway. And they can spend -- we'll give them a
13 conference room and good coffee at our office. They can do it
14 as long as they think there's a chance of remembering
15 something.

16 *THE COURT:* Okay. Mr. Holmes?

17 *MR. HOLMES:* Why don't they just -- they say they have
18 an image of the computer. They also have the computer itself.
19 Why don't they just drop it off at my office. I'll get it to
20 Dr. Kuharsky. I mean, why do we have to do this at Pathway?
21 Why do we have to try to arrange for Dr. Kuharsky to be in
22 Houston, to go to Mr. Kaplan's office? If they really want to
23 know what's there, just give us the computer and I'll get it to
24 him and he'll figure it out.

25 *THE COURT:* Well, I mean, given all of the problems

1 we've had in discovery, I can see why they want to retain some
2 control over the computer.

3 *MR. HOLMES:* Well, but they have an image of it. They
4 just told you that. So if he goes through in that computer --
5 that is his Singletick computer and if it's something that he
6 goes through and monkeys with it, in figuring it out, what
7 difference does it make? They still have the image or the
8 original, whichever one they want. That's not really the
9 issue. Wherever this computer is, it is his computer. I
10 cannot imagine why they would not be willing to give it back to
11 him, given that they have a copy.

12 *THE COURT:* Mr. McInturf.

13 *MR. MCINTURF:* Lee won't let me talk, but he's talking
14 to Mr. Allan, so I'm going to talk.

15 *MR. KAPLAN:* This is Mr. McInturf from Quantlab, Your
16 Honor.

17 *MR. MCINTURF:* From my perspective, the way
18 Dr. Kuharsky left it, was he came in and he looked at the
19 computer, fooled around with it a little bit and said, "I can't
20 do it." And then, you know, we reached out and said, "Okay.
21 What are you going to do?" And it's just been radio silence.
22 And my perception is that Dr. Kuharsky has throughout this case
23 engaged in a strategy of denials that turned out to be false,
24 delays that are unnecessary, and then finally destruction of
25 evidence. I think this password -- the encryption itself and

1 then the password are just another delay and so --

2 *THE COURT:* Well, I mean, it will weigh in my decision
3 as to whether I do order further sanctions and it will
4 certainly weigh in my decision as to what instruction is
5 appropriate on spoliation. But I would much rather just have
6 the password produced than any of those things.

7 *MR. MCINTURF:* Your Honor, I'll speak right to that.
8 In this hearing today is the first time our side has ever heard
9 that if we would send him an image of it and he played with it,
10 it would get worked out. That had never been offered before.
11 We don't have a problem preparing an image, sending it to him,
12 and letting him play with it. So if that's all it takes, we
13 offer that.

14 *MR. HOLMES:* How many pleadings have I said that in,
15 Your Honor? The fact that you've read this and you know about
16 the issue, I've said it in pleading over and over and they have
17 never reached out to me and said, "How do you want to solve
18 this?" They file pleadings, and I come back and say that. But
19 if they're willing to do that today, we have a resolution, so
20 hooray.

21 *THE COURT:* Okay. All right. Let's do that. Let's
22 have it produced, and then ask Dr. Kuharsky to be back with a
23 response within 15 days.

24 Okay. Now, we need to the turn the issue of
25 scheduling. We need to set an entirely new schedule. We were

1 thinking that December of 2014 might be the best we could do in
2 terms of getting this case to trial.

3 *MR. KAPLAN:* Your Honor, I can respond to this --

4 *THE COURT:* Yes.

5 *MR. KAPLAN:* -- to some extent. From our standpoint,
6 the stumbling block is what do we do about Singletick. Now,
7 you may recall the e-mail in which Dr. Kuharsky said three
8 months is not enough and we can run out the clock. Once -- we
9 did not want to sue Singletick. And one way or another, we
10 hope the Kuharsky Singletick computer, the encrypted one, would
11 solve the question. Get it enough time to analyze it and we
12 can either say not a problem or we believe there is a problem.
13 And, you know, everything that's happened in the last six or
14 eight months has only increased our suspicions. The computer
15 was put out of our -- you know, put out of our ability to get
16 to it, and I won't go through all of that.

17 But one of the things we have gotten from
18 Singletick the first time around with our very modest amount of
19 discovery was the business plan that they submitted to
20 Singletick, in which they explicitly said -- this is page 4.
21 I've got multiple copies of this. This hasn't been filed with
22 the court yet, but I've got copies of it for everybody. And
23 I've tabbed the page. If I may --

24 *MR. HOLMES:* Are we really going to go through all of
25 this?

1 *MR. KAPLAN:* Well, I'm going to explain why we have a
2 scheduling problem, Your Honor. I'm going to be quick about
3 it. And may I hand this to --

4 *THE COURT:* You can give a copy to Ms. Lyons.

5 *MR. KAPLAN:* -- the Court and a copy for your law
6 clerk. And I've tabbed what is disturbing to us, most
7 disturbing. And we found this from the Singletick discovery.
8 It says -- this is their proposal to get funding for a start-up
9 for Singletick. It says in that first bullet point, "Knowledge
10 of what models have and have not worked historically so that
11 research can focus on correlations and indicators used to
12 fine-tune the robust models." And there's other stuff in
13 there, but that's pretty explicitly telling Singletick, we're
14 going to work off what we've done before.

15 And then the funder -- we've translated the
16 e-mails we got from Singletick, and I have copies of that as
17 well. And I believe -- I don't remember if the originals were
18 stamped AEO by --

19 *MR. DOYLE:* They were stamped confidential.

20 *MR. KAPLAN:* Confidential by Singletick. And I have,
21 once again, copies for the Court and your law clerk, if I may
22 hand them up. This is --

23 *THE COURT:* Thank you.

24 *MR. KAPLAN:* -- some e-mails, and I'll cut to the
25 chase. VBL is Boris, the funder. Of course, Godlevsky and

1 Kuharsky are involved in this discussion. And what Boris asks
2 on page 1 -- I'm sorry, on page 2, when they're having that
3 argument about sharing IP -- because you remember we talked
4 about the agreement and they were trying to get the right to
5 use it separately, that is, Kuharsky and Godlevsky, as well as
6 with the new venture. It's clear that Boris understood that
7 it's not only the ideas you have possessed the last ten --
8 that's ten years -- and have twice proved their worth, that of
9 course being at Quantlab and SXP, and then he's talking about
10 creating the third time.

11 So these are just things that have increased our
12 suspicions, and we have to make a decision about whether to sue
13 Singletick. The idea was the Kuharsky computer may put that to
14 rest, not just for what's on it, but, for example, whether
15 there have been thumb drives attached to it and those materials
16 got downloaded and they're somewhere else out there. Because
17 if we merely had an injunction -- if we, for example, got this
18 computer and cordoned it off and it wasn't used anymore but we
19 saw that it had been -- everything had been downloaded into a
20 thumb drive, we would have to go search for that and figure out
21 where it is.

22 So we were trying not to add a party, not to sue
23 Singletick. That's our issue. If we can get to the bottom of
24 the computer situation, we hope we'll exclude them, or as my
25 client certainly suspects, decide we have to include them.

1 *THE COURT:* Well, that would be a major change to this
2 litigation.

3 *MR. KAPLAN:* Well, not really, because these people
4 are the brains of the operation, Kuharsky and Godlevsky.

5 *THE COURT:* Well, I'm sure we would have to go back to
6 a new schedule though.

7 *MR. KAPLAN:* Well, if I can elaborate just a second.
8 Because we got stymied on the computer and we really thought
9 finally we were going to get an answer on all of this, we then
10 sent another subpoena to Singletick. We're trying every way we
11 can to run this to ground, and we had to go through the
12 Wisconsin Federal Court again. We've served the subpoena. We
13 got a call two or three days before their response date last
14 week from Ms. Mederson, asked us for another week. I want to
15 be in the best position possible with that court, so I agreed
16 to give her another week for the response, not for the
17 documents or whatever materials, because we've asked for
18 things. She pretty much gave me to understand, they will give
19 us a little bit of stuff, but we're going to get objections to
20 the heart of what we want. So we're going to have to go
21 through motion practice up there to try this secondary avenue,
22 which we're going though only because of Dr. Kuharsky's
23 convenient loss of memory. So it is an issue for us.

24 And I have a couple of alternate suggestions.
25 One is that we come back here in 60 days and you then set the

1 trial date, 60 to 90. We by then hopefully will know the
2 result of that and/or this password controversy. And the other
3 is you set it for March and we will simply work as hard as we
4 can. We need a new parties deadline. The Court then can --

5 *THE COURT:* Set what for March?

6 *MR. KAPLAN:* Set the trial for March.

7 *THE COURT:* As in next month?

8 *MR. KAPLAN:* 2015. No, 2015. And we will do the best
9 we can to make our decision about Singletick as soon as we
10 either get a password and get information or complete the
11 motion practice up there, because they successfully argued that
12 that had to happen up there, and then we'll make that decision.
13 I mean, I had talked to Ms. Loewe a little bit about your
14 availability. And if we had been able to resolve this, you
15 know, we would be looking at a trial in September, October.
16 This is a problem. We know we need the time to analyze
17 whatever we get, then we have the completion of the expert
18 reports, as well as the fact discovery, and we'll go forward.
19 So those were my two suggestions. Either have us come back in
20 early May and set a date then and we'll have an answer for you
21 about Singletick, or just set it in March of 2015.

22 *THE COURT:* Okay. Thank you.

23 Mr. Holmes?

24 *MR. HOLMES:* For about four years now, I've been
25 telling you that Quantlab's game is to drag this out and wear

1 our clients down, and they've pretty much done that at this
2 point. I don't know that any of the defendants are going to
3 make it to the finish line in this case just because they're
4 all running out of resources. As I understand it, Singletick
5 is pretty much defunct at this point, because the Russian
6 investors pulled out after Quantlab made them spend all this
7 money and put all this into place. I don't know that for a
8 fact, because I'm not Singletick's counsel, but that's what I'm
9 getting from my client, is that's pretty much gone. So
10 effectively, Dr. Kuharsky --

11 *THE COURT:* Is your client not working anymore?

12 *MR. HOLMES:* That's my understanding, he is not
13 working. And that's also true of Dr. Godlevsky. But the -- I
14 don't know the exact status up there, what's going on with
15 Singletick. But as far as I can tell, it's pretty much dead.
16 So here my client is seven years after he left Quantlab and
17 every employer he has been hit with this stuff. Any employer
18 he goes to is going to be hit with this stuff, and he's pretty
19 much a wreck and I suspect that's going to be true of the other
20 defendants. All I can say is I've been saying -- telling you
21 this story now for four years, and unfortunately -- I know
22 you've done what you thought was right, but unfortunately it
23 appears that a lot of the things I've been telling you are
24 going to turn out to be true. And I know that's not your
25 intent, but that is, nonetheless, the reality. So all I can

1 say make this as fast as possible.

2 And the one thing, as I've said over and over
3 again, that they keep making excuses to keep from giving us
4 these expert reports. You just, you know, said my motion for
5 summary judgment is premature. Well, we respect your ruling,
6 but they've never even shown any damages or what their damages
7 model would be. The only files they've ever shown us are
8 things like that file that was -- comes from the work of Gauss.
9 At some point we would just urge you to make them come forward
10 with something.

11 The story I've been getting from Mr. Kaplan
12 lately is the new theory is going to be that somehow my clients
13 admitted that we -- they stole their trade secrets and that
14 none of this is really an issue. But you know better than
15 that. But I don't know that my clients -- that any of these
16 parties are going to make it to the finish line. I don't know
17 that we have the resources left. But the longer you stretch it
18 out, the less the chances are that you'll even have any
19 defendants left to try at the end.

20 *THE COURT:* Well, one thing about this case is that
21 from the very first, you have maintained what you just said,
22 and Quantlab has maintained that there's been enormous theft of
23 its property. Your response has always been it was obsolete
24 and unhelpful to anyone even if their motives were sinister,
25 which you certainly deny. If that's true, then I think this

1 would be a very easy case to settle. I mean, I would have
2 thought that your client could have produced all of his files
3 forthwith and it could have been shown to anybody's
4 satisfaction that he hadn't taken any valuable information with
5 him. Instead we've had a terrible time in discovery, just
6 getting that what I would have thought was almost a Rule 26
7 disclosure, all that information. So I take the point that
8 I've whatever, I have --

9 *MR. HOLMES:* Yeah, I don't mean to blame you.

10 *THE COURT:* -- had the case last longer than it should
11 have, but a lot of things that should have been automatic that
12 are automatic in most big case litigation was not automatic
13 here, and I think that's been the problem.

14 *MR. HOLMES:* Well, there was only one factor, let's
15 not forget, and that's the FBI.

16 *THE COURT:* That's true.

17 *MR. HOLMES:* You know, the vast bulk of this stuff, my
18 client couldn't have produced from day one, because he didn't
19 have it. The FBI had it. And we were going to have to deal
20 with that issue no matter what. And that's not your fault, my
21 fault, Mr. Kaplan's fault, or anybody else's. That's just one
22 of the realities we had to deal with in this case, that the
23 great bulk of everything that was at issue was in the hands of
24 the FBI, and there's nothing we can do about that. But, again,
25 if you look at it from our point of view, which is that

1 Quantlab's motivation is to keep these guys out of the market
2 from competing with them, well, they've succeeded.

3 *THE COURT:* Well, if it really were the case that your
4 client and the other defendants hadn't taken anything and it
5 really were the case that your client and others in truth have
6 no assets, then I would think lawyers as good as you guys could
7 resolve that. I would have thought you could have explained to
8 the satisfaction of the plaintiffs that there is no sensitive
9 information that was purloined and that neither in this country
10 nor in another country does any of the defendants have any
11 money. I mean, that should have been simple to prove, if that
12 is, in fact, the case. But when the discovery was not
13 forthcoming and we're still dealing with this now, I do
14 understand why plaintiff is suspicious of the defendants'
15 motives, just as you're suspicious of Quantlab's motives.

16 *MR. HOLMES:* Right.

17 *THE COURT:* Well, I mean, if your client is not
18 working, is he getting unemployment? What's he doing?

19 *MR. HOLMES:* I really don't know. He comes in to
20 Houston from time to time because his daughter still lives here
21 with his ex-wife. So I don't even -- I really haven't seen him
22 that much since the -- I think I've seen him in the flesh maybe
23 twice since we had the hearing. So I don't really know
24 everything that's going on with him. I know that Ms. Maravina
25 is living in Canada now and does not come back down here very

1 often. But other than that, I really don't know what their
2 personal situation is. All I know is that my client has
3 indicated to me that the Russian investor has pulled out of
4 Singletick or at least has never funded it and whether that's
5 all -- again, my information is all secondhand.

6 *THE COURT:* Yeah.

7 *MR. HOLMES:* But my understanding is that company is
8 pretty much defunct and that Mr. Kuharsky has indicated to me
9 that he's out looking for a job, but, of course, any time he
10 applies for a job, you know, this is going to pop up. So he's
11 not in a good place, but I haven't actually talked about his
12 circumstances --

13 *THE COURT:* He should be highly incentivized to get
14 this case resolved, just as Quantlab should be. I mean,
15 Quantlab is spending a lot of money, too. If there really were
16 nothing else going on except run out the clock, I wouldn't have
17 thought it would have been worth that much, especially what,
18 six, seven years after these employees left. I think in this
19 highly specialized area and highly technical area, I would have
20 thought the technology would have changed beyond recognition in
21 that period.

22 *MR. HOLMES:* Yeah, sure. But that's -- like I say, I
23 wish I could tell you it's going to resolve that way, but I can
24 almost say certainly it will not. And we are -- at least for
25 now we're still walking down the litigation road. And all I

1 can say is that I feel fairly confident that once we get to the
2 point of finding out what they claim to have found, this case
3 is going to fall apart. But the longer that goes -- even for
4 all I know, there may be a point at which Dr. Kuharsky is
5 pro se in the case and that is what it will be.

6 *THE COURT:* Anybody want to respond, from the
7 plaintiffs?

8 *MR. KAPLAN:* Well, we are going to have expert reports
9 to the extent of what we've been able to do thus far sometime
10 before -- I think your current deadline is May 3rd or --

11 *THE COURT:* It is, yeah.

12 *MR. KAPLAN:* -- May 2nd. And we are working on that
13 as hard as we can. As far as stalling the case, you know,
14 obviously somebody keeps handing us excuses why the case isn't
15 moving and that's because they have this lapse of memory. Now,
16 we have not moved to reconsider your order. I think that would
17 be futile at this point. We probably will provide you some
18 more evidence from the experts that provide more information
19 about what's happened.

20 *THE COURT:* That's fine. I still haven't --

21 *MR. KAPLAN:* But, you know, I don't know what to say
22 about the others, except we'll image the computer again. That
23 takes -- apparently there's some effort involved in doing that,
24 a new image, not the old image, because he may have fiddled
25 with it. We'll give him a new image, and we will FedEx it to

1 wherever Mr. Holmes tells me to FedEx it.

2 *MR. HOLMES:* My office.

3 *MR. KAPLAN:* Okay. I mean, we'll FedEx it directly to
4 the client and wherever they are, but we will make that happen
5 as soon as we can. And I'm merely suggesting the date that I'm
6 suggesting, because in addition to myself having two
7 arbitrations scheduled in late 2014, the practicalities of what
8 we can get done here bother me. And a trial in December or
9 January runs up on the December holidays and with out-of-town
10 people, it's very --

11 *THE COURT:* But isn't it a fairly simple case? I
12 mean, Quantlab will put witnesses on the stand to say these
13 guys left under difficult circumstances and they had a lot of
14 files and everybody agrees they had a lot of files and the
15 Court is going to give you a spoliation instruction.

16 The other side is going to say, We took these --
17 we didn't take anything. We had forgotten we had some of these
18 on our home computers. In any event, it's all antiquated now
19 and Quantlab hadn't identified any loss.

20 That sounds like a fairly simple trial. It's
21 pure credibility, pure credibility.

22 *MR. KAPLAN:* Well, you heard in the two days all the
23 reasons why what Pathway had already identified is not credible
24 and there's a larger mountain than that that we'll have to go
25 through, and then there's a damage problem. SXP and Mamalakis

1 have succeeded in obscuring, apparently running through, I
2 don't know, 20 or \$30 million. And we are using forensic
3 people to try to help us get that; and we had to do that
4 through the receiver, who hired some former FBI agent.
5 Singletick, you know, we don't really know. We're getting some
6 secondhand information about --

7 *THE COURT:* What's the nature of your damages though?
8 That these guys siphoned some of your clients?

9 *MR. KAPLAN:* Well, you can't say that a given trade is
10 a trade you would have made and made the money on, instead they
11 did. So I think one of our theories is going to simply be a
12 royalty or an unjust enrichment theory, where we look at how
13 much money we spent to do all the research that they have
14 avoided doing. And it's tens of millions of dollars. It's a
15 significant amount of money. And I'll let Tim speak to this
16 for a moment.

17 *THE COURT:* So they've taken all your mature
18 technology that had been -- involved sweat equity of 10 or 20
19 million dollars and worked off that?

20 *MR. KAPLAN:* Or more. Now, remember, let me just say
21 one more thing, what I just talked about in that document,
22 fine-tuning the robust models, our robust models. They don't
23 have to do the fine-tuning. That's not just a one-stage
24 booster rocket. That's getting them very close and now they're
25 fine-tuning for more developments. Quantlab is a very

1 profitable company, but they're making profits they had no
2 right to make. At least that's what we say. I understand
3 that's not something that they're going to admit in the hearing
4 today.

5 *THE COURT:* But, again, I think that's a credibility
6 issue.

7 *MR. MCINTURF:* Your Honor, let me speak to the damages
8 issue. And Mr. Holmes says that there's, you know, no clear
9 damages here in this case. The Court is aware in these theft
10 of trade secret cases that the different types of damages are
11 frequently equitable in nature. So from the evidence you've
12 already heard from Pathway, plus all the more that you're going
13 to hear, clearly they had and have possession of Quantlab
14 property. Obviously we're going to want injunctive relief.

15 *THE COURT:* I don't think it's ever been denied as --

16 *MR. MCINTURF:* Yeah.

17 *THE COURT:* -- to whether that Quantlab information is
18 of any value.

19 *MR. MCINTURF:* Well, I think that's right. But the --
20 and, of course, you make a good point, that that's just going
21 to require a credibility determination. They're going to get
22 up there and say it's not and our people are going to get up
23 there and say it is. As far as the other measures of damages,
24 there's the unjust enrichment measure. We know that SXP
25 started operating and we now know from the receiver's forensic

1 accountant that in the two and a half years they operated, they
2 made \$44 million in trading profits on a trading capital of
3 about \$2 million and so --

4 *THE COURT:* Then why are they in bankruptcy?

5 *MR. MCINTURF:* Yeah, good question. And the receiver
6 recently filed a lawsuit against Mr. Mamalakis saying that the
7 reason that it's defunct is because Mr. Mamalakis siphoned all
8 the money out, and so that lawsuit is now pending up in
9 Wisconsin. The other measure of damages that I expect to be
10 included in our expert report --

11 *THE COURT:* Did he say it was siphoned off by anybody
12 else or just Mr. Mamalakis?

13 *MR. MCINTURF:* Just Mr. Mamalakis. The other measure
14 I expect to be included in our report is the one that you and
15 Mr. Kaplan were speaking about, and that is, the theft of the
16 mature technology and how much it costs Quantlab -- or their
17 avoided costs in developing -- starting from where Quantlab
18 was. And I think a conservative estimate, you know, I mean,
19 conservative estimate of that number is going to be in excess
20 of \$50 million. And, you know, they obviously can't pay that,
21 but nonetheless, we've got unjust enrichment of \$44 million and
22 we've got \$50 million worth of technology they took. There's
23 going to be serious damages.

24 *THE COURT:* And what is your basis for thinking that
25 they can pay that?

1 *MR. MCINTURF*: I'm saying I don't know that they can.
2 I don't know that, and it's not my fault, you know, that they
3 can't.

4 *MR. KAPLAN*: Well, remember that is another issue.
5 The bank records that, oh, I sent money to the Ukraine or to
6 Russia, to my relatives and trying to help them out and it was
7 the bank account that was set up in a secretive way. For us to
8 chase assets, we need a judgment, because we have not gotten
9 discovery from defendants and I'm --

10 *MR. HOLMES*: That is not true.

11 *THE COURT*: I'll give you your turn when Mr. Kaplan is
12 finished.

13 *MR. KAPLAN*: Let's put it this way: We don't regard
14 it as sufficient discovery. And I understand their position is
15 they've given us everything they have. Okay? But you can't go
16 into another country and say, I want to know everything there
17 is to know about somebody without at least a judgment. And
18 whether we'll be successful enforcing a judgment in one of
19 those other countries is another question. And we are,
20 contrary to the accusations here, interested in getting that
21 judgment so we can do that. We can't do it without a judgment.
22 So all I can say is the most impatient person in this room is
23 undoubtedly me. And everything about my approach to this case,
24 I have tried to move it along, and it's very frustrating. It's
25 frustrating just to my personality. So all I can say is we

1 would like to move it along and they, we believe, have created
2 the reasons why it isn't moving along.

3 So that's why I suggest what we suggest. We'll
4 make a decision about Singletick as soon as we can. We have
5 been working with the experts on what they have. And obviously
6 the Court will exercise its discretion about scheduling and
7 adding parties.

8 *THE COURT:* Mr. Holmes, I said you could respond. Do
9 you want to say anything?

10 *MR. HOLMES:* Yeah, we've produced everything that
11 Mr. Kuharsky has and the Ukrainian Bank records. He was lucky
12 to get his money out of the country when the Ukrainian banks
13 went into trouble in 2008 and 2009. But as far as I know,
14 there's been no money over there in years.

15 But as for the damages model, we'll argue this
16 another day, of course, but I'll leave you with the question:
17 All these things that Mr. McInturf was saying about the SXP are
18 interesting, about the unjust enrichment, but how do you get
19 damages against Dr. Kuharsky? Because he isn't SXP. He's not
20 liable as a conspirator with SXP. He was an employee of sorts
21 with SXP. He's not liable for profits that SXP may have made.
22 If they can even prove that they -- somehow SXP's technology
23 got jump started with Quantlab's stuff, which to date they've
24 never shown us any proof of that other than hot air, if they
25 prove that, how is Dr. Kuharsky liable for that? I'll leave

1 you with that rhetorical question, and we'll return to this
2 another day.

3 *THE COURT:* Well, Dr. Kuharsky might be liable for it
4 because he might have been the one who carried the secrets from
5 his home or his brain to SXP.

6 *MR. HOLMES:* Well, if they can actually prove
7 something like that, maybe, but so far as of today, we've never
8 seen that and I'm still waiting to see it.

9 *THE COURT:* It's a tail chaser. They say the reason
10 you've never seen it is the defendants have made documents
11 unavailable. So, as I say, this is no different from where we
12 were years ago. We're still arguing about the same thing.

13 *MR. MCINTURF:* And, Your Honor, I just want to say one
14 more thing, because I get, you know, personally hurt when
15 Mr. Holmes keeps saying, you know, Quantlab is vindictive and
16 all they want to do is keep my guys from ever working again and
17 whatnot, and nothing could be farther from the truth. What we
18 have in this case, and you've seen some of these documents, is
19 we have Dr. Kuharsky and Dr. Godlevsky basically threatening
20 Quantlab that if we didn't pay them \$50 million at the time
21 they left, they were going to take our stuff and see how much
22 it was really worth, is the quote. And then we have now all
23 the documents we've seen and all the computer files we've seen
24 of them actually taking it and building SXP and that being
25 talked about as being Quantlab's system but just with slight

1 modifications and now we're starting to see with Singletick
2 that, okay, so this is going to be the same system that you've
3 had here and here and here. And the courts are not a good
4 place. Because the reality is that even after this lawsuit is
5 over, we're never going to know that they don't have our stuff
6 and they're not doing it again. But I just want to leave the
7 Court with a point. Quantlab is not on some crazy witch hunt
8 here, you know.

9 *THE COURT:* Has it lost other technical employees?

10 *MR. MCINTURF:* Has it -- sir?

11 *THE COURT:* Has it lost other technical employees?

12 *MR. MCINTURF:* Yeah, we have absolutely lost other
13 technical employees and --

14 *THE COURT:* And lawsuits did not follow?

15 *MR. MCINTURF:* Sometimes they did and sometimes they
16 didn't. Now, he's going to say that we sue everybody. We have
17 had probably just as many that there weren't lawsuits with than
18 there were. And I would strongly take issue with Mr. Holmes
19 saying that Quantlab is just, you know, vindictive and sues
20 everybody, because he doesn't know what evidence was available
21 in those cases either.

22 *MR. HOLMES:* Well, I'll just mostly pass on that, but
23 I think I would just ask again, if Quantlab is not vindictive,
24 then why are they spending this much money to go after a bunch
25 of broke guys?

1 *THE COURT:* Well, I think here we come back to this --
2 the disagreement that has haunted the case from the beginning.
3 They think your clients -- or your client and other defendants
4 are well-moneyed.

5 *MR. HOLMES:* I wish.

6 *THE COURT:* I don't have an opinion on that. I don't
7 have an opinion on that. I mean, for somebody who's
8 unemployed, you know, flying to Houston and paying you are
9 things that cost money. I don't know what his source of income
10 is, I just don't know.

11 Mr. McInturf?

12 *MR. MCINTURF:* Well, I was just going to say, Your
13 Honor, it's a matter of public record from Dr. Kuharsky and
14 Ms. Maravina's recent divorce, that -- you know, we don't know
15 the value of all the assets they divided up, but she got two of
16 the residences, he got one, and he's paying her \$400,000 for
17 something. And, you know, I asked is that a complete list, and
18 the answer is "no." You know, not all of the records are even
19 public. But it's not like he's indigent.

20 *THE COURT:* Okay. Well, do you want to try to piece
21 together something in a way of a schedule or are you -- do you
22 think we need to await developments of Singletick?

23 *MR. KAPLAN:* If I had a preference, Your Honor, it's
24 for us to come back and see you around May 1st and by that time
25 we will propose a schedule to you. If that's not sufficient

1 for the Court, I will send a proposed schedule in next week.
2 But it will be for, like, a March trial.

3 *THE COURT:* And what is going to take so long?

4 *MR. KAPLAN:* Well --

5 *THE COURT:* Hearing from the experts or preparing a
6 dispositive motion?

7 *MR. KAPLAN:* Well, the work that Pathway does, it's
8 very difficult and when you're piecing stuff together, as they
9 are, it's hard. And the defendants have successfully made it
10 all much harder. If we could get this computer -- I mean, you
11 know, it's mind-boggling that somebody would be working with a
12 computer in July and have forgotten -- the most recent
13 computer, with the most important stuff for his next venture,
14 and he's forgotten the password. If we could get the password
15 and get into that, then, according to what they know, three
16 months should be enough for us to get an answer to the
17 question. It's just very hard work. When they take out this
18 piece, we're pushed back further. And we may -- you know, we
19 may be -- if we can't get the password from Dr. Kuharsky and we
20 can't get discovery from Singletick, which is possible, then
21 we'll be put to a hard decision. I don't know how long the
22 motion practice will take up there, but I anticipate -- because
23 I gave them an extension until today, and I had not received
24 it -- I haven't looked at my e-mail now. But I wouldn't be
25 surprised to get it after of hours.

1 *THE COURT:* What now, I'm sorry?

2 *MR. KAPLAN:* The Singletick response to our subpoena.

3 *THE COURT:* All right.

4 *MR. KAPLAN:* And then we have motion practice up
5 there, where we have to put together a motion to compel,
6 explain what's gone on, get a hearing up there, get an order,
7 then get this or not, I don't know which, and then analyze it.
8 So if in the best day in the world, tomorrow, Singletick gave
9 us everything, in three months from now we would have an
10 answer, according to what they know. They know how hard this
11 is from their own e-mail, about needing three months to do
12 things, where they said three months isn't enough time and
13 we'll run out the deadlines. So, you know, it's frustrating
14 for me.

15 So that's why we're where we are. I don't expect
16 them to agree that we're being fair with them, but that's an
17 explanation that's supported by the documents and just the
18 normal knowledge of court practices. That's where we are.

19 *MR. HOLMES:* As I've said in our papers, that laptop
20 is far more valuable to Mr. Kaplan and Quantlab as long as
21 it's -- as it is still unusable, because we're going to hear
22 about this over and over and over again.

23 *THE COURT:* Well, then I would think that he would
24 be -- your client would be motivated to spend more than a half
25 hour trying to work through it all.

1 *MR. HOLMES:* Well, that's all they -- that was right
2 before Thanksgiving. That's when they made it available. And
3 as you know, you've read my pleadings, I've been saying in
4 pleading after pleading since then, why, you know -- you know,
5 if they will send this to us, we will work on it some more.
6 And today we hear from Mr. McInturf, oh, we never reached out.
7 They never reached out to us. I mean, this has gone on for
8 three months. Any time during that period they could have
9 said, "Here you go." But, you know, we keep hearing the same
10 themes over and over again. The question was, what to do with
11 the scheduling order. Our position is set it as fast as
12 possible and let's get on with this, but --

13 *THE COURT:* Okay.

14 *MR. HOLMES:* -- if we come back in 60 days when
15 they're done with Singletick, then it's going to be something
16 else, and that's the way it's been going on for four years now.

17 *MR. KAPLAN:* I hate to respond. I was there.
18 Dr. Kuharsky -- I mean, I set aside the afternoon. I don't
19 remember if it was the Tuesday of that Thanksgiving week or the
20 Friday or the Saturday. But we scheduled it for whichever day.
21 We all came down, and I was going to sit there as long as
22 possible. I wanted to run him out of excuses. He played with
23 it for about half an hour. My suspicion is when he figured out
24 it was an imaged computer and he couldn't fiddle with it, then
25 there was no point. But he played with -- well, that's my

1 suspicion. I have no way of proving that.

2 *MR. HOLMES:* Come on.

3 *MR. KAPLAN:* But we sat there and at the end of 20 or
4 30 minutes, he said, "I can't do anything with this. I don't
5 have any ideas," and he walked out. And I couldn't, you know,
6 cross-examine him or, I mean, I wasn't going to. Mr. Holmes
7 didn't want to come, that's fine. But in the last three
8 months, the idea that somehow we're supposed to have a new
9 idea? Nobody has ever said, if you'll just send me an imaged
10 computer and give me months, so we will.

11 *THE COURT:* Well, you-all apparently can't even agree
12 on whether that's been offered or not. I mean, that's how wide
13 the gulf is now.

14 *MR. KAPLAN:* So we will do that. And then, you know,
15 if we're lucky, Dr. Kuharsky will stumble on the password or
16 find a scrap of paper or, you know, I don't know, but he
17 certainly has never told us there's a place he could look or
18 there's something else he could do. He just said, "I can't
19 figure out the password" and left. You know, I had sat aside
20 multiple hours. When he said he was done, he was done. We
21 didn't escort him out, I mean. But we'll try to, you know,
22 take care of this latest excuse as well.

23 *THE COURT:* May 7th, May 8th are available at 2:30.
24 Will that work?

25 *MR. KAPLAN:* I haven't figured out how to just punch

1 in the date. I have to scroll to it real quickly. Any time on
2 May 7th. The Fifth Circuit conference is May 8th and 9th, I
3 think, and I don't know, but May 7th is fine, Your Honor.

4 *THE COURT:* Okay. I'm not going to the conference.
5 May 7th, 2:30, will that work?

6 *MR. HOLMES:* As far as I know, yeah.

7 *THE COURT:* Okay. Is there anything else we can do
8 today?

9 *MR. KAPLAN:* Thank you, Your Honor.

10 *(Concluded at 3:14 p.m.)*

11 * * *

12 I certify that the foregoing is a correct transcript from the
13 record of proceedings in the above-entitled cause, to the best
14 of my ability.

15

16 */s/ Kathy L. Metzger*
Kathy L. Metzger
17 Official Court Reporter

3-20-2014
Date

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