

KYLEEN CANE - 12/18/06

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID KAGEL,
Plaintiff,
vs.
JAN WALLACE,
Defendant.

CASE NO.:
CV 06-3357 R (SSx)

AND RELATED COUNTER-CLAIM.

PARRISH MEDLEY,
Plaintiff,
vs.
JAN WALLACE,
Defendant.

TELEPHONIC DEPOSITION OF KYLEEN CANE
LAS VEGAS, NEVADA
MONDAY, DECEMBER 18, 2006

REPORTED BY: Elizabeth A. Shea, CCR No. 814

1 TELEPHONIC DEPOSITION OF KYLEEN CANE, taken
2 at 3273 East Warm Springs, Las Vegas, Nevada, 89120, on
3 Monday, December 18, 2006, at 4:00 p.m., before Elizabeth
A. Shea, Certified Court Reporter, in and for the State of
Nevada.

4 Appearances:

5 For the Plaintiff, David Kagel:

6 ALAN S. GUTMAN, ESQ.
7 Law Offices of Alan S. Gutman
9401 Wilshire Boulevard
8 Suite 575
Beverly Hills, California 90212

9 For the Defendant, Jan Wallace:

10 BRYAN R. CLARK, ESQ.
11 Cane Clark, LLP
3273 East Warm Springs
12 Las Vegas, Nevada 89120

13

14 I N D E X

15 WITNESS: KYLEEN E. CANE, ESQ.
16 EXAMINATION PAGE
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20 PLAINTIFF'S PAGE
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52965
4:00 P.M.

-000-

MR. GUTMAN: Could you mark pages 1 through 9 collectively as Exhibit No. 1.

(Whereupon Plaintiff's Exhibit No. 1 was marked for identification.)

whereupon,

KYLEEN CANE,

was called as a witness, and having been first duly sworn to testify to the truth, the whole truth, and nothing but the truth, was examined and testified as follows:exam

EXAMINATION

MR. GUTMAN: Good afternoon Ms. Cane and Mr. Clark.

MR. CLARK: Good afternoon.

THE WITNESS: Hello.

MR. GUTMAN: Let me just say for the record, we are here for the deposition subpoena that was issued to Kyleen Cane. We're starting a little bit later in the day, but it is December 18th, 2006. I would also like to note for the record that counsel for Jan Wallace, by way of letter dated December 16, 2006, has indicated that she would not be appearing either telephonically or in person

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1 in connection with this deposition subpoena and, in fact,
2 this examination pursuant to the federal rules of civil
3 procedure.

4 BY MR. GUTMAN:

5 Q. With that said, Ms. Cane, let me just start with
6 asking you if you are a licensed attorney in Nevada?

7 A. I am.

8 Q. Are you licensed in any other states?

9 A. I'm licensed in California, Hawaii, and
10 Washington State, in addition to Nevada.

11 Q. Fantastic. Since when were you licensed in
12 Nevada?

13 A. 1996.

14 Q. And how about those other states, California?

15 A. Gee, you're going to really get to my age,
16 aren't you. California was 1979.

17 Q. Right.

18 A. Hawaii was 1978.

19 Q. Okay.

20 A. And Washington State was 1996.

21 Q. Great. The current name of your law firm where
22 you practice is?

23 A. Cane Clark, LLP.

24 Q. Are you affiliated with any other law firms?

25 A. No, I'm not.

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1 Q. What year was the firm of Cane Clark, LLP
2 established?

3 A. Well, the actual firm, probably 2000 and --

4 Q. I'm sorry, did you complete your answer?

5 A. No, I didn't. I'm actually trying to remember

6 if it was 2003 or 2004.

7 It was September of 2003, I think, that it
8 originally happened.

9 Q. And what was the name of the firm in which you
10 were practicing prior to that date?

11 A. Cane O'Neil Taylor.

12 Q. And for how long were you practicing with that
13 firm?

14 A. Since 1997.

15 Q. That's fine.

16 A. In various forms.

17 Q. Where did you attend law school?

18 A. The University of Southern California.

19 Q. And that's in Los Angeles, correct?

20 A. That's correct.

21 Q. What year did you graduate?

22 A. 1978.

23 Q. Have you practiced law continuously since that
24 date?

25 A. It depends on what you mean by practice law.

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1 Q. Well, let me clarify. That's a good point.

2 Have you been employed for, let's say, more than
3 50 percent of your employment in any occupation, other
4 than as a lawyer, anytime since 1978?

5 A. Yes.

6 Q. And what capacity were you employed, other than
7 as a lawyer?

8 A. I was a law professor, and I had my own -- well,
9 I was part of a public company. I was the President/CEO
10 of a public company.

11 Q. Where were you a law professor?

12 A. University of Hawaii and at Western State
13 University College of Law and at Whittier College of Law
14 at various times during the past 30 years.

15 Q. Anytime during the past ten years, were you
16 working full time as a law professor?

17 A. Yes. On the last ten years?

18 Q. Right.

19 A. No.

20 Q. Okay. And anytime within the last ten years
21 were you working full-time as an officer of a public
22 corporation?

23 A. Yes.

24 Q. What company was that, what corporation was
25 that?

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1 A. Legal Access Technology.

2 Q. During what time period were you working at
3 Legal Access?

4 A. I believe it was the year 2000, 2001, something
5 like that, through 2003, 2004, for those three years.

6 Q. Do you specialize in any one particular area of
7 the law or any particular areas of the law?

8 A. I'm security's counsel. I practice securities
9 law, Federal Securities mostly.

10 Q. During the time that you worked as a law
11 professor, which subject matters did you teach?

12 A. I taught securities. I taught, for a period of
13 time, real property, and I taught -- most transactional
14 subjects, taxation for a period of time, corporations.
15 That's all.

16 Q. Okay. Have you ever been deposed before?

17 A. Yes, I have.

18 Q. On how many different occasions?

19 A. Two or three.

20 Q. When was the last time, if you recall?

21 A. It was during an SCC investigation of a
22 particular company.

23 Q. How many years ago was that?

24 A. About two, three.

25 Q. Do you remember the name of the company?

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1 A. I think it was Axion Foods.

2 Q. Can you spell that, please?

3 A. A-x-i-o-n Foods, F-o-o-d-s.

4 Q. Was the SCC the plaintiff in that particular
5 lawsuit?

6 A. I don't believe there was a lawsuit. I think it
7 was an informal investigation where they asked for my
8 testimony regarding a transaction.

9 Q. Were there any instances or situations that you
10 can recall where you gave deposition testimony such as the
11 procedure that we're employing today?

- 12 A. I gave deposition testimony in my divorce.
13 Q. Okay. Have you ever testified in a courtroom
14 before?
15 A. Yes.
16 Q. On how many different occasions?
17 A. One.
18 Q. When was that?
19 A. 1990.
20 Q. And what type of matter was that?
21 A. That was a divorce.
22 Q. I gotcha.
23 In the course of your experience as a lawyer,
24 have you ever taken a deposition previously?
25 A. Yes.

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- 1 Q. On how many different occasions?
2 A. Oh, I'd have to guess, but I think probably six
3 or seven, maybe more.
4 Q. Okay. So you are somewhat familiar with this
5 process of having an attorney ask questions, and you
6 responding as what we know commonly as a deposition, would
7 that be correct?
8 A. I wouldn't call myself anywhere near an expert,
9 but I have some experience. The last depositions I would
10 have taken would have been in 1980, and that would have
11 been as a junior associate. So it was 1979, 1980.
12 Q. All right. Well, let me just go over a few of
13 the ground rules, and I'll keep them very brief.

14 You are an attorney. You understand that you
15 have been placed under oath, and you understand further
16 that in connection with that oath that you have sworn to
17 tell the truth, and what that means, if you knowingly
18 misrepresent your testimony, you could be charged with
19 some crime like perjury.

20 Do you understand that oath?

21 A. Yes.

22 Q. You'll have an opportunity at the conclusion of
23 the deposition to review the transcript and make any
24 changes or corrections to the portion of your testimony
25 that you believe to have been recorded inaccurately or if

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1 you believe that your testimony was not the best testimony
2 that you could give. I should caution you, however, that
3 in the event that you make any changes or corrections to
4 any substantive portion of your testimony, that it could
5 be embarrassing or perhaps even damaging.

6 Do you understand that particular admonition?

7 A. Yes.

8 Q. You're doing an excellent job, and I appreciate
9 it. Only one person can speak at a time, and that is so
10 our court reporter, Ms. Shea, can taking down every word
11 that is being said. We only ask that you respond
12 intelligible, audible, and English responses, so that we
13 will have a clear understanding of what response you
14 intended by whatever response that you give to my
15 questions. So I think we're doing a great job there.

16 Also, I'd like to point out that if at anytime
17 you don't understand one of my questions, please ask me to
18 restate it, and I'd be happy to restate it. Because if
19 you do respond to one of my questions, we will come to the
20 conclusion that you understood it at the time that I asked
21 it.

22 will you agree to do that?

23 A. Yes.

24 Q. Is there any reason -- I know that you had a
25 dental appointment earlier today. Is there any reason

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1 that you feel that you cannot give your best testimony
2 here today?

3 A. No.

4 Q. Are you under the influence of any mind-altering
5 chemicals that would influence your ability to recall
6 certain events or your comprehension of the questions or
7 your responses?

8 A. No.

9 Q. Thank you. Did you review any documents in
10 preparation for today's deposition?

11 A. The documents you sent.

12 Q. And that would be what we've marked as
13 Exhibit 1, pages 1 through 9?

14 A. Yes.

15 Q. Okay. Other than those documents, those
16 9 pages, in the last 30 days, have you reviewed any
17 documents that pertain to either Davi Skin, MW Medical,

18 Inc., Mr. Medley or Ms. Wallace?

19 A. Just the documents, the letters going back and
20 forth between you and Mr. Rocktell(phonetic) that were
21 sent to me.

22 Q. Okay.

23 A. And then the list of questions that were in your
24 letter.

25 Q. Very good. Now, have you or your law firm, to

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1 your knowledge, ever represented Jan Wallace individually?

2 A. No.

3 Q. So I would be correct then, you never had any
4 written retainer agreement between any law firm that you'd
5 been associated with and Ms. Jan Wallace. Would that be
6 correct?

7 A. Yeah, not that I'm aware of.

8 Q. Okay. Have you individually or any law firm
9 that you've been associated with represented
10 Mr. Parrish Medley in his individual capacity?

11 A. No.

12 Q. So then similar to my question with
13 Ms. Wallace, it would be correct that you would not have a
14 written retainer agreement between you or your law firm
15 that you're affiliated with and Mr. Medley?

16 A. Not that I'm aware of.

17 Q. Okay. Have you or any law firm that you've been
18 affiliated with ever represented MW Medical, Inc.?

19 A. Yes.

20 Q. And was that pursuant to a written retainer
21 agreement?

22 A. I don't recall.

23 Q. How would you determine whether or not there was
24 a written retainer agreement for you or your law firm's
25 representation of MW Medical, Inc.?

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1 A. I'd have to look in our files.

2 Q. And those are maintained on the premises where
3 your office is currently located?

4 A. Some. Some of the older files are put in
5 storage.

6 Q. Do you recall approximately when the first time
7 you or your firm began to represent MW Medical, Inc.?

8 A. Oh, it would be somewhere in the late '90s, '97,
9 '98, in that time frame.

10 Q. And that would have been during the time period
11 that you were with the firm of Cane O'Neil & Taylor?

12 A. In some form, yeah. I'm not sure what it was
13 called at that time, but it was the same partners.

14 Q. Okay. Did you or your firm ever represent
15 Davi Skin, Inc., in some capacity?

16 A. That was the name of the -- of MW Medical when
17 it changed its name.

18 Q. All right. Do you recall whether or not you had
19 a written retainer agreement with Davi Skin, Inc., whether
20 it was before or after the name changed to Davi Skin,
21 Inc.?

22 A. It would be the same answer as to MW Medical.
23 It's the same corporation, it's just a name change.

24 Q. Do you presently represent Ms. Jan Wallace in
25 any capacity?

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1 A. No.

2 Q. Do you presently represent Mr. Parrish Medley in
3 any capacity?

4 A. No.

5 Q. So to the extent that you ever provided any
6 legal advice to either Jan Wallace or Parrish Medley, it
7 would have strictly been in their capacity as officers of
8 either MW Medical, Inc., or Davi Skin, Inc.?

9 A. Not necessarily, no.

10 Q. Well, did you ever provide any legal advice --
11 well, let me withdraw that.

12 Do you believe that an attorney/client
13 relationship was ever formed between you and Jan Wallace
14 in her individual capacity?

15 A. No.

16 Q. Do you believe an attorney/client relationship
17 was ever formed between you and Parrish Medley in his
18 individually capacity?

19 A. No.

20 Q. So then in response to my question about whether
21 or not you ever represented -- or actually, I misspoke. I
22 believe I asked you if you ever provided any legal advice
23 or services to either Jan Wallace or Parrish Medley in

24 their capacity, other than as officers of either
25 MW Medical, Inc., or Davi Skin, Inc., I think you said

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1 something, not necessarily; is that correct?

2 A. No. The answer is no to that.

3 Q. Okay. So did you ever provide any legal
4 services for Jan Wallace in any capacity, other than as an
5 officer of MW Medical, Inc., or Davi Skin, Inc.?

6 MR. CLARK: I think what we're getting hung up
7 on here, Alan, is you're asking her if she provided legal
8 services to Jan Wallace, and her testimony, as I
9 understand it, is she has not. So the capacity or not,
10 the legal services were provided to MW Medical, later
11 known as Davi Skin, Inc., and never to Ms. Wallace.

12 BY MR. GUTMAN:

13 Q. Ms. Cane, would you adopt that as a correct
14 interpretation of your position?

15 A. Yes.

16 Q. And would the same be true for
17 Mr. Parrish Medley, you never provided legal services
18 directly to Parrish Medley, as only in -- only to the
19 companies to which he had an affiliation with?

20 A. Yeah, only to his companies, but -- yeah, that's
21 correct. Only to Davi Skin, Inc. That's correct.

22 Q. Now, with respect to Jan Wallace, have you ever
23 represented any other companies in which she was an
24 officer?

25 A. Yes.

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1 Q. What are the other company -- or the name of the
2 other company or companies that you provided services to
3 in which Jan Wallace was an officer?

4 A. Dynamic Associates, Inc., Secured Diversified
5 Investments. I can't remember the exact name, but Secured
6 Diversified Investments, SDI.

7 Q. Any others?

8 A. I think one more, Western Investments,
9 something or other, Partners.

10 Q. Do you currently represent any of those entities
11 in which Jan Wallace was or is an officer?

12 A. Currently represent Secured Diversified
13 Investment.

14 Q. And do you know whether or not Ms. Wallace is
15 still an officer of that company?

16 A. I believe she still is.

17 Q. Have you represented any other companies in
18 which Parrish Medley is an officer?

19 A. He may have been an officer at one time of a
20 company we represented, and I'm not certain of this, it's
21 called MV Fund or related --

22 Q. MV Fund?

23 A. MV Funding Corp.

24 Q. Funding Corp?

25 A. Yeah. I don't know if he was ever an officer

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1 there. I can't recall at this time, but there may have
2 been a time when he was an officer.

3 Q. Okay. Directing your attention to what I
4 characterize as Parrish Medley's purchase of Jan Wallace's
5 debt and equity in MW Medical. Did you represent any of
6 the parties to the transactions involved in that series of
7 events?

8 A. Corporation. I'm not sure -- I'm not sure what
9 you're directing me to. That's why.

10 Q. Sure. I understand that from certain documents
11 that I've reviewed that Parrish Medley was a participant
12 in a series of events that led to the purchase of
13 Jan Wallace's debt and equity in MW Medical.

14 Does that sound familiar to you?

15 A. Yeah.

16 Q. Were you representing any individual or entity
17 in connection with that transactions?

18 A. Yeah, MW Medical.

19 Q. And none of the individuals, am I correct?

20 A. That's correct.

21 Q. Was there what I would refer to as a closing,
22 where the transaction was finalized are completed?

23 A. Yes, there was.

24 Q. And do you recall who was present at the
25 closing?

1 A. Jan Wallace; Parrish Medley; myself;
2 Sue Johnson, my paralegal -- or maybe she wasn't. I'm
3 sorry. I'm not really certain exactly.

4 Q. But you do recall Jan Wallace and Parrish Medley
5 being present, do you not?

6 A. Yes, I do.

7 Q. And where did the closing take place?

8 A. At my office.

9 Q. Do you recall when it occurred?

10 A. It occurred sometime in June of 2004, June of
11 2004.

12 Q. Do you recall how long it lasted, the closing --
13 or the meeting at which the closing took place?

14 A. No. Maybe 30 minutes, fairly quick.

15 Q. Do you recall any discussion that occurred
16 between Parrish Medley and Jan Wallace during the closing?

17 A. Nothing in particular. Possibly there was a
18 discussion about a purse that Jan was buying.

19 Q. Why do you recall that in particular?

20 A. The purse was of some ungodly figure, like,
21 \$20,000 or something, and Parrish was -- as I recall, was
22 actually knowledgeable in that particular brand or purse,
23 and the fact that he knew about it and she knew about it,
24 and it was too expensive, and she was trying to get it, and
25 he was going to assist her in obtaining it. That was what

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1 struck me as odd.

2 Q. Okay. Other than the discussion regarding this
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3 particular purse, do recall any other discussion taking
4 place between Jan Wallace and Parrish Medley at the
5 meeting at your office that we've identified in June,
6 2004?

7 A. Nothing in particular, no.

8 Q. Do you recall any discussion of a Promissory
9 Note taking place during that June, 2004 meeting at your
10 office?

11 A. No.

12 Q. Do you recall there ever being a discussion
13 regarding any Promissory Notes between Jan Wallace and
14 Parrish Medley?

15 A. A discussion between them on a Promissory Note,
16 is that what you're saying?

17 Q. Right. I'm sorry, did you answer?

18 A. No. I was trying to understand the question.

19 Q. And do you understand the question?

20 A. I don't think so.

21 Q. All right. Let me see if I can restate it so
22 the record is clear.

23 Did you ever witness, either in person or
24 telephonically, any conversation between Jan Wallace and
25 Parrish Medley concerning a Promissory Note?

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1 A. Not that I can recall.

2 Q. Did you ever learn of any agreement between
3 Jan Wallace and Parrish Medley concerning any Promissory
4 Notes?

5 MR. CLARK: Objection, as to lack of foundation
6 to the extent that you're knowledge is based on any
7 communication between MW Medical or any of its then
8 representatives.

9 Do not answer the question.

10 BY MR. GUTMAN:

11 Q. Are you able to respond to the question?

12 A. I don't think I am.

13 Q. And is the reason that you cannot respond to it,
14 based upon the assertion of the attorney/client privilege
15 that Mr. Clark just advised you of?

16 MR. CLARK: Hang on just a moment.

17 Let me clarify my objection for the record.

18 MR. GUTMAN: Please.

19 MR. CLARK: To the extent that you can answer
20 the question, without answering the question in drawing on
21 communications, confidential communications between an
22 officer or director of MW Medical, Inc., that were
23 communicated to you confidentially for the purpose of
24 seeking or obtaining legal assistance, you may answer the
25 question. Otherwise, we will object on the basis that it

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1 calls for a privileged communication, and we will not
2 answer it.

3 MR. GUTMAN: Understandable.

4 MR. CLARK: All right.

5 BY MR. GUTMAN:

6 Q. Now, based upon that objection, Ms. Cane, are
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7 you able to respond to the question?

8 A. Yes. I do believe I had some conversations, but
9 I can't recall exactly when and where.

10 Q. Do you recall who the conversation or
11 conversations were with?

12 A. Well, prior to the closing, I can only respond
13 with regard to conversations I had with, you know,
14 Parrish, who a non-officer at that time, and I believe
15 there were conversations regarding the Promissory Note
16 with him.

17 Q. Okay. And what do you recall having been
18 discussed about those Promissory Notes?

19 A. Nothing in particular. There was a Promissory
20 Note owed to Jan, and that was in the transaction, but
21 that's, you know, that's all I can -- I don't have any
22 specific recollection of any particular conversation.

23 Q. Well, do you recall there being any discussion
24 as to any assignment of any Promissory Note?

25 A. No.

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1 Q. Were you aware that any Promissory Note was
2 assigned at anytime?

3 A. No.

4 Q. So as you sit here today, are you aware of any
5 oral agreements that were entered into --

6 A. I should clarify that. I did receive
7 documentation in March, showing the assignment -- March of
8 this year, March or April of this year, showing the

9 assignment of the Promissory Note to a Mr. Kagel.

10 Q. Okay.

11 A. I did receive that.

12 Q. All right. We'll get to those documents that I
13 sent over later that have been marked as Exhibit 1.

14 Did anyone ever advise you that there was an
15 oral agreement between Parrish Medley and Jan Wallace
16 concerning any Promissory Notes?

17 MR. CLARK: Again, to the extent that you can
18 answer the question, without reference to a privileged
19 communication, you may do so.

20 THE WITNESS: I cannot answer that.

21 BY MR. GUTMAN:

22 Q. Based upon the privilege?

23 A. Yes.

24 Q. Were you present at any other meetings between
25 Jan Wallace and Parrish Medley, other than the one meeting

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1 that we referred to in June of 2004?

2 A. There might have been one or two meetings prior
3 to that meeting.

4 Q. Any meetings subsequent to that June, 2004
5 meeting where the closing took place?

6 A. No.

7 Q. Did you participate in any telephone calls in
8 which Jan Wallace and Parrish Medley were also on the same
9 telephone call?

10 A. Not that I recall.

11 Q. Did you happen to be with Jan Wallace sometime
12 subsequent to June of 2004 at which time she was about to
13 meet with Parrish Medley in Newport Beach, California?

14 A. No.

15 Q. Did you ever meet with Jan Wallace in Newport
16 Beach, California?

17 A. No -- oh, I take that back, I'm sorry. Yes, I
18 did.

19 Q. Do you know when that was?

20 A. That was -- I'm guessing, I can't recall --
21 about a year, year and a half ago.

22 Q. And was there any discussion at that time about
23 any Promissory Note that had been issued by the company to
24 Jan Wallace?

25 A. No. We were in a meeting for SDI. It was a

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1 corporate directors' meeting, board of directors.

2 Q. So then would it be correct that you never spoke
3 to Jan Wallace at anytime concerning any Promissory Notes
4 from Davi Skin, Inc.; is that correct?

5 MR. CLARK: To the extent that the question is
6 calling for -- or is deemed to include communications that
7 occurred at the time when Ms. Wallace was an officer and
8 director of MW Medical, do not answer.

9 MR. GUTMAN: All right. Let me break the
10 question down differently and back up a moment.

11 BY MR. GUTMAN:

12 Q. Do you know at what point in time in the history
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13 of Davi Skin or the history of MW Medical, Inc., that
14 Jan Wallace ceased to be an officer of either MW Medical,
15 Inc., or Davi Skin, Inc.?

16 A. That would have been in June of 2004.

17 Q. So effective with the closing and the
18 transaction in which MW Medical was -- I'm not sure of the
19 proper terminology, but --

20 A. There was a reverse acquisition.

21 Q. The reverse acquisition to Davi Skin, Inc.,
22 Jan Wallace had no longer been an officer of Davi Skin,
23 Inc., since that time; is that correct?

24 A. Well, there would have been a period of time
25 following that, and a filing of a 14-F that we did with

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1 the SCC, that she would remained as an officer, and then
2 she would have ceased. I don't know what that time period
3 is, but it would have been somewhere close to the end of
4 June or the beginning of July, 2004.

5 Q. Okay. Since -- let's just say, the beginning of
6 July, 2004, have you ever had a discussion with
7 Jan Wallace concerning any Promissory Notes issued by
8 MW Medical, Inc., or Davi Skin, Inc.?

9 A. Yes.

10 Q. On how many different occasions?

11 A. I don't recall, two or three.

12 Q. Do you recall the substance of what was stated
13 during any of those conversations?

14 A. Probably with regard to getting extensions on
Page 23

15 the note.

16 Q. You say "probably," are you guessing or you have
17 some recollection of that?

18 A. I have very little recollection of that. A lot
19 of that was handled outside of me.

20 Q. I'm sorry, I didn't hear the end of your answer.

21 A. I didn't handle most of that, so I might have
22 made a call to her and asked, regarding an extension.

23 Q. When you say you didn't handle it, do you know
24 who did?

25 A. Well, Parrish and/or maybe somebody from my

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1 office maybe made a follow-up call to her to see if she
2 could assign an extension on the note -- on the note, I
3 should say.

4 Q. Okay. Do you know why there was any discussion
5 as to Jan Wallace signing an extension?

6 A. Yeah, because she was the holder of the note,
7 and it retired her to get -- to sign an extension for the
8 company.

9 Q. Other than the subject of an extension on a
10 Promissory Note or on some Promissory Notes, do you recall
11 having any other discussion with Jan Wallace since July of
12 2004 in which the subject of a Promissory Note was
13 discussed?

14 A. No, I don't recall any others.

15 Q. During the time that Parrish Medley was an
16 officer of Davi Skin, Inc., do you know if he made any

17 attempts to attract investors for Davi Skin?

18 MR. CLARK: Let me ask you to lay a little
19 foundation there. If you are asking for the content of
20 any communications Parrish made to Ms. Cane during the
21 period of time in which he was an officer or director of
22 MW Medical/Davi Skin, Inc., we're going to have a problem.
23 would you mind breaking that out for us?

24 MR. GUTMAN: well, let me ask you this then:

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1 BY MR. GUTMAN:

2 Q. During the time period that Parrish Medley was
3 an officer of Davi Skin, Inc., to the extent that he
4 attempted to attract investors for Davi Skin, Inc., would
5 you have learned of his efforts solely by virtue of your
6 relationship as counsel to Davi Skin, Inc.?

7 A. During the time he was the president?

8 Q. Yes.

9 A. Yeah, that's the only -- how else would I have
10 learned of that?

11 Q. I'm not sure. I'm just trying to establish that
12 that would have been the way you would have learned of it.

13 A. Yeah, it's the only way I would have learned of
14 it.

15 Q. Did you ever tell Jan wallace to execute a blank
16 assignment of the Promissory Note?

17 MR. CLARK: Again, to the extent that we're
18 talking about a period of time in which Ms. wallace was an

19 officer/director of Davi Skin, and the information came to
20 you by way of a communication between you and
21 Ms. Wallace, intended to be confidential for the purpose
22 of retaining or seeking legal advice, do not answer the
23 question.

24 BY MR. GUTMAN:

25 Q. Are you able to respond to that?

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1 A. No.

2 Q. And is the reason that you can't respond to that
3 is that you would have learned that during the course of a
4 confidential communication?

5 A. Correct.

6 Q. All right. If you folks could take Exhibit 1,
7 the 9 pages that we've previously marked as Exhibit 1.

8 Do you have that handy?

9 A. Yes.

10 Q. All right. Referring to page 1 of Exhibit 1, a
11 Promissory Note that appears to be in the principle amount
12 of \$248,325.

13 A. Uh-huh.

14 Q. Do you recognize this particular document?

15 A. Not in particular, but, yeah.

16 Q. Do you know if you drafted this document?

17 A. I can't -- I can't say with any certainly,
18 but --

19 MR. CLARK: Don't speculate.

20 BY MR. GUTMAN:

21 Q. Does the form appear to be the form of
22 Promissory Note that you had -- the type that you had
23 prepared in the past?

24 A. Yes.

25 Q. All right. Going to the -- oh, one last

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29

KYLEEN CANE - 12/18/06

1 question on this. The signature on page 1 of Exhibit 1,
2 it appears to be Grace Sim, do you recognize that name?

3 A. Yes, I do.

4 Q. Do you know who Ms. Sim is?

5 A. She was the former treasurer and CFO of
6 MW Medical.

7 Q. Do you know if Ms. Sim is affiliated with any of
8 the other companies you identified as Ms. Wallace being
9 affiliated with?

10 A. She was affiliated with Dynamic Associates for a
11 time, but not with any of the others.

12 Q. Do you know where Ms. Sim resides?

13 A. I do not know where she resides at this time.

14 Q. Did you ever know where she resided?

15 A. Generally, Arizona.

16 Q. When was the last time you spoke to Ms. Sim?

17 A. Three years ago, four years ago, maybe. I don't
18 recall specifically.

19 Q. Okay. The second page of Exhibit 1 states,
20 "notice of partial cancellation of Promissory Note."

21 Do you recognize this document?

22 A. Not in particular, no.

23 Q. So then would it be accurate that you don't
24 recall whether or not you drafted this document?

25 A. No, I don't recall.

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1 Q. Do you have any reason to believe that you did
2 not -- well, I don't want to state it like that.

3 As you look at this document, do you believe
4 that you drafted it?

5 A. No. I couldn't say one way or another.

6 Q. Okay. So you wouldn't have any recollection of
7 having been involved in the transaction that this document
8 is designed to memorialized, would that be correct?

9 A. No. That's a different question.

10 Q. All right. Then what, if anything, was your
11 role in connection with the cancellation of the Promissory
12 Note that's identified in page 2 of Exhibit 1?

13 A. I was counsel for the corporation, and this
14 document represents a cancellation -- a partial
15 cancellation of debt, as I'm reading it, and that was all
16 disclosed in the public file. So this is consistent with
17 the public file, as far as I can recall at this time.

18 Q. Okay. Directing your attention to the 3rd page
19 of Exhibit 1, it's another Promissory Note in the
20 principle amount of \$200,000, issued by Davi Skin.

21 Do you recognize this Promissory Note?

22 A. Not in particular.

23 Q. Do you know if you drafted this particular
24 Promissory Note?

25 A. I can't recall.

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KYLEEN CANE - 12/18/06

1 Q. Do you know why this Promissory Note was issued?

2 A. Well, it doesn't match up. It's got a date of
3 June of 2003 on this Promissory Note.

4 Q. When you say "it doesn't match up," what do you
5 mean by that?

6 A. Well, to my recollection, Jan's debt at the time
7 of June of 2003, a year before the transaction, was
8 substantially more than this is showing, and plus
9 Parrish Medley was not the present. There is a Davi Skin
10 Promissory Note, and there was -- as far as I know,
11 Davi Skin, the name wasn't changed to Davi Skin until June
12 or July of 2004, but -- yeah.

13 Do you see what I mean?

14 Q. Okay. So do you have any understanding as to
15 why this Promissory Note came into existence?

16 A. Well, barring those differences. There was a
17 \$200,000 recorded note to Jan Wallace at the close of the
18 transaction. And other than the note and the beneficiary
19 securities --

20 Q. I'm sorry, your voice trailed off at the end
21 there.

22 A. Yeah, I'm just reading out loud, actually. I
23 mean, if this were -- it doesn't seem to be dated at all,
24 because there's no date in the thing. But if it was dated
25 after the transaction, it would be consistent with the

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1 note that was given -- that was granted to Jan Wallace at
2 the close of the transaction, which was a pared down
3 version of her prior notes and obligations that we're
4 referring to.

5 Q. So is it your understanding that as of the
6 close, that is, as of the transfer by Jan Wallace of her
7 interest in MW Medical, that there was only one note
8 issued to Jan Wallace by the corporation then known -- or
9 then to become Davi Skin?

10 A. Yes. After the close, when the name was changed
11 to Davi Skin, there was a note, a revised note issued to
12 Jan Wallace for \$200,000.

13 Q. Okay. If you could go to page 4 of Exhibit 1.
14 where we referred to earlier in your testimony, a loan
15 extension.

16 Do you recognize this particular document that
17 is described as a loan extension?

18 A. Yes.

19 Q. Did you prepare this document?

20 A. Not that I recall.

21 Q. Do you see the date in the upper left-hand
22 corner, what I refer to as a faxed legend?

23 A. Uh-huh.

24 Q. April 13, '04?

25 A. Yeah.

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1 Q. Do you know if that's the point in time in which
2 this loan extension document was created or signed?

3 A. It would make sense, but, no, I wouldn't know
4 one way or the other.

5 Q. Okay.

6 A. I wouldn't know. I don't -- it doesn't make any
7 sense.

8 Q. And do you know why there was an extension
9 granted to December 31, 2005, as reflected on the 4th page
10 of Exhibit 1?

11 A. I'm sorry, say that again.

12 Q. The page that we're looking at, this loan
13 extension that appears to extend the maturity date of a
14 \$200,000 loan to December 31, 2005.

15 A. Uh-huh.

16 Q. Do you have some understanding as to why this
17 loan extension was granted to December 31, 2005?

18 MR. CLARK: Objection, to the extent that you
19 are required to draw upon privileged communications
20 between yourself and Davi Skin, Inc., through its officers
21 and directors, intended to be confidential for the purpose
22 of seeking legal assistance.

23 Don't answer the question to the extent that it
24 implicates such privileged communications.

25 THE WITNESS: I can't answer.

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1 BY MR. GUTMAN:

2 Q. Based upon the privilege?

3 A. Yes.

4 Q. Did you have any conversations with Jan Wallace
5 anytime after July, 2004, regarding the granting of an
6 extension of a \$200,000 note?

7 MR. CLARK: Asked and answered.

8 You can answer again.

9 THE WITNESS: As I stated before, yes.

10 BY MR. GUTMAN:

11 Q. Do you recall the substance of any of those
12 communications with Jan Wallace regarding the extension?

13 A. No, nothing in particular, other than seeing if
14 she would sign the extension.

15 Q. Did Jan Wallace ever tell you why she was
16 signing the extension?

17 A. No.

18 Q. Did you ever have an understanding as to why
19 Jan Wallace was signing the extension?

20 MR. CLARK: Objection, to the extent that she
21 cannot answer the question without reference to privileged
22 communication between herself and one of the officers and
23 directors at Davi Skin, Inc., it's confidential for the
24 purposes of seeking legal -- or obtaining legal
25 assistance.

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KYLEEN CANE - 12/18/06

1 THE WITNESS: I can't answer that.

2 BY MR. GUTMAN:

3 Q. Based upon the privilege?

4 A. Yes.

5 Q. Did Jan Wallace ever tell you anything in
6 connection with any loan extension document that she
7 furnished, either the one on page 4 or page 5 of
8 Exhibit 1?

9 MR. CLARK: After she was an officer or
10 director?

11 MR. GUTMAN: Correct.

12 MR. CLARK: You may answer.

13 THE WITNESS: Regarding the loan extension, no.

14 BY MR. GUTMAN:

15 Q. Subsequent to July of 2004, did Jan Wallace ever
16 tell you anything about the Promissory Note that she had
17 from Davi Skin?

18 A. Not that I recall.

19 Q. All right. Directing your attention to page 6
20 of Exhibit 1. It's a document entitled Assignment of
21 Promissory Notes.

22 Do you see it?

23 A. Uh-huh.

24 Q. Is that a yes?

25 A. Yes.

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1 Q. Have you ever seen this document before?

2 A. Not that I can recall.

3 Q. Do you know who prepared this document?

4 A. Not that I can recall, no.

5 Q. In the second line of the text, it refers to a
6 attached Promissory Notes, notes being plural, issued by
7 MW Medical, Inc.

8 Do you see the line that I'm referring to?

9 A. Yes.

10 Q. Do you know which Promissory Notes are being
11 referenced? Are you aware of any Promissory Notes?

12 A. Are you talking plural?

13 Q. Correct.

14 A. I'm only aware at any point in time that Jan had
15 one Promissory Note, if that's what you're saying.

16 Q. Yeah. Okay. Did you ever learn from
17 Jan wallace at any point after July of 2004 that she had
18 signed an assignment of any Promissory Notes?

19 A. Say that again.

20 Q. Did you ever learn from Jan wallace at anytime
21 after July, 2004 that she had signed an assignment of any
22 Promissory Notes to Parrish Medley?

23 A. From Jan wallace?

24 Q. Right.

25 A. Did I ever learn from Jan wallace that there

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1 was --

2 Q. Right.

3 A. Not that I can recall, no.

4 Q. At anytime after July, 2004, up through today,
5 did the word assignment ever get mentioned in any
6 conversation that you had with Jan wallace in connection

7 with a Promissory Note?

8 A. Just the general term "assignment"?

9 Q. Yeah. Yes, I should say.

10 A. I can't recall.

11 Q. All right. So then it would be correct for me
12 to state that you have no recollection of ever discussing
13 an assignment of a Promissory Note with Jan Wallace at
14 anytime since July of 2004 through today. Would that be
15 correct?

16 A. Yes.

17 Q. Is that a yes?

18 A. Yes.

19 Q. Okay. Turning to page 7 of Exhibit 1.

20 A. Uh-huh.

21 Q. Again, it's another assignment of Promissory
22 Notes; however, in the second line it refers to "attached
23 Promissory Note," singular, you'll notice, "issued by
24 Davi Skin, Inc., fka, MW Medical, Inc.," and then this
25 assignment is to the individuals identified in Schedule A

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1 attached hereto in the amounts specified.

2 Do you see the portion that I just referred to
3 on page 7 of Exhibit 1?

4 A. Yes.

5 Q. Have you ever seen this document before, this
6 page before?

7 A. No, not that I can recall.

8 Q. So then it would be correct that, it's the best

9 you can recall, you did not draft this document?

10 A. I can't recall.

11 Q. Okay. Let's direct your attention to the next
12 page, it's page 8 of Exhibit 1.

13 A. Yes.

14 Q. Just from my perspective, it appears to be the
15 identical document as page 7 of Exhibit 1. It's another
16 assignment of Promissory Notes; however, the date --
17 there's a type written April 6, 2006 on the dated line,
18 which did not exist on page 7 of Exhibit 1.

19 A. Uh-huh.

20 Q. And I invite you to compare the two of them, to
21 see that I'm characterizing it accurately, but do see the
22 document that we've marked as page 8 of Exhibit 1?

23 Do you have that in front of you?

24 A. Yes.

25 Q. Have you ever seen this document at anytime

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1 prior to today?

2 A. Yeah. I saw this attached to some documents in
3 about April of 2006. I seen it attached to some documents
4 related to a demand that was made by Mr. Kagel to the
5 company for payment on the Promissory Note.

6 Q. Did you ever have a discussion with Jan Wallace
7 regarding this document?

8 A. No, not that I can recall.

9 MR. GUTMAN: Okay. I don't have any further
10 questions. At this time, we'll reserve the right with

11 respect to any questions in which the objection was
12 asserted, and we had a stipulation prior to today that we
13 would create the record. I should say the stipulation was
14 between myself and Mr. Clark, as counsel, that in the
15 event that the privilege was asserted to any question, and
16 in response not received, that we would evaluate whether
17 or not we thought it necessary to obtain an order to
18 require the witness to respond to any questions, and that
19 I would make such a motion, would not seek sanction.

20 I do appreciate, Mr. Clark, your cooperation in
21 getting this testimony, and certainly Ms. Cane, I
22 appreciate your time. I would propose the following
23 stipulation with respect to the maintenance of the
24 transcript itself, unless you have anything else to add,
25 Mr. Clark.

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KYLEEN CANE - 12/18/06

1 MR. CLARK: I don't. I don't have any questions
2 for the witness.

3 MR. GUTMAN: Then I propose this stipulation
4 with respect to the maintenance of the transcript, that
5 the court reporter can be relieved of her duties under the
6 federal rules of civil procedure regarding the maintenance
7 of the original transcript, that the original transcript
8 can be provided to the witness to read, review, and sign
9 under penalty of perjury.

10 That in the event if there are any changes or
11 corrections to any portions of the transcript, that
12 counsel for the deponent will notify me, let's say, within

13 20 days of their receipt of the transcript of any such
14 changes, and that assuming that there are no changes or
15 even with the changes, that the deponent will sign the
16 original transcript and will forward it to my attention
17 for custody, and that I shall make it available at the
18 time of trial or in any other matter in this litigation in
19 which the original transcript is required.

20 In the event that the original is not received
21 by me or is not signed or for any reason whatsoever is
22 lost or unavailable, a certified copy can be used in lieu
23 thereof. Is that okay with you?

24 MR. CLARK: We agree.

25 MR. GUTMAN: And I would ask the court if she

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1 could arrange to have a forwarding envelope provided to
2 Mr. Clark, so that it could be sent directly to me, once
3 Ms. Cane and Mr. Clark have completed their review.

4 Original, Mini, Ascii.

5 MR. CLARK: No copy at this time, and send it to
6 this office for reading and signing.

7 (whereupon the deposition was concluded at 4:50 p.m.)

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1 CERTIFICATE OF DEPONENT

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I, KYLEEN CLARK, ESQ., deponent herein, do hereby certify and declare under penalty of perjury the
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17 within and foregoing transcription to be my deposition in
18 said action; that I have read, corrected and do hereby
affix my signature to said deposition.

19 _____
20 KYLEEN CLARK, ESQ.
21 Deponent

22 Subscribed and sworn to before me this
23 _____ day of _____, _____.

24
25 _____
NOTARY PUBLIC

♀

KYLEEN CANE - 12/18/06

1 REPORTER'S CERTIFICATE

2
3 STATE OF NEVADA)
4 COUNTY OF CLARK) ss

5 I, Elizabeth A. Shea, a duly commissioned
6 Notary Public, Clark County, State of Nevada, do hereby
7 certify: That I reported the deposition of
8 KYLEEN E. CANE, ESQ., commencing on Monday, December 18,
9 2006, at 4:00 p.m.

10 That prior to being deposed, the witness was
11 duly sworn by me to testify to the truth. That I
12 thereafter transcribed my said shorthand notes into
13 typewriting and that the typewritten transcript is a
14 complete, true, and accurate transcription of my said
15 shorthand notes, and a request was made to review the
16 transcript.

17 I further certify that I am not a relative or
18 employee of counsel of any of the parties, nor a relative

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19 or employee of the parties involved in said action, nor a
20 person financially interested in the action.

21 IN WITNESS WHEREOF, I have set my hand in my
22 office in the County of Clark, State of Nevada, this
23 24th day of December, 2006.

24

25

ELIZABETH A. SHEA, CCR NO. 814

♀