

February 19, 2021

**VIA E-MAIL:**

Hon. Jed S. Rakoff  
United States District Judge  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

*Re: U.S. v. Parker H. Petit, et al. Case No. 1:19-cr-850-JSR*

Honorable Judge Rakoff:

We write in response to the claims made by Parker Petit about Marc Cohodes in his letter to the Court dated February 16, 2021.

For more than 30 years, Mr. Cohodes has regularly provided valuable and timely information to the United States Securities and Exchange Commission and the Department of Justice about companies engaged in fraudulent accounting and business practices, such as Lernout & Hauspie, Media Vision Technology, NovaStar Financial, AremiSoft, California Micro Devices, Network Associates, TakeTwo Interactive, Krispy Kreme Donuts, Boston Chicken, and others. Between 2003 and 2005, Mr. Cohodes disclosed the manipulations at aaiPharma Inc., which led to SEC and U.S. Department of Justice actions. The Harvard Business School published a case study in March 2013 about his successful efforts to expose the NovaStar fraud in *NovaStar Financial: A Short Seller's Battle*, <https://www.hbs.edu/faculty/Pages/item.aspx?num=44503>.

During the past few years, Mr. Cohodes correctly identified Concordia International Corp. and MiMedx Group Inc. (among others) as companies that had improperly inflated their financial results through accounting tricks and manipulations. He was an outspoken critic of both. In the case of Concordia, the company's CEO filed a meritless defamation case against Mr. Cohodes, which was later dismissed, and the company collapsed as a result of its poor management and improper conduct. MiMedx withdrew multiple years of its own financial statements, and CEO Petit and other executives were fired. Two MiMedx executives, including Petit, were convicted of fraud in this Court.

Petit claims that he was taught never to tell a lie, and he adhered to that principle throughout his life. Yet, in the very same letter to the Court, Petit lied about and defamed Mr. Cohodes with provably false and scurrilous allegations – all in an effort to convince the Court that the real villain in the case was Mr. Cohodes, not Petit. Like other corrupt CEOs before him, Petit takes no personal responsibility for the fraudulent sales and accounting tactics at MiMedx. Instead, he falsely claims he was the victim of “corrupt” whistleblowers and of a “short and distort” conspiracy.

The two whistleblowers, Jess Kruchoski and Luke Tornquist, disclosed Petit’s rip-off of the Veterans Administration. Contrary to Petit’s claim here, both men were vindicated by the government and MiMedx’s internal investigation, after Petit harassed them with meritless lawsuits and smeared their reputations. <https://www.justice.gov/opa/pr/mimedx-group-inc-agrees-pay-65-million-resolve-false-claims-act-allegations-false-commercial>; <https://www.startribune.com/1-6m-settlement-for-twin-cities-whistleblowers-who-alleged-va-was-cheated-out-of-millions/569437452/>.<sup>1</sup>

In September 2017, upon learning about Petit’s bullying tactics regarding the whistleblowers, as well as claims of personal and professional harassment by Petit and his cohorts at MiMedx, Mr. Cohodes took a close look at MiMedx’s financial statements and business practices. He learned of another whistleblower, Jennifer Scott (*Scott v. MiMedx Group, Inc.*, ND Tx. Doc. 18 Cv. 1815), who claimed that MiMedx mis-reported revenue, retaliated against her for raising concerns, and then fired her. Mr. Cohodes made no secret of who he was or why he was critical of MiMedx: the company bore all the hallmarks of a fraud – false revenue recording, round-trip sales deals to inflate sales, and exaggerated claims of products’ effectiveness.

Almost immediately after Mr. Cohodes went public with his concerns, Petit attacked him. That is another hallmark of the fraudster. If a short analyst is wrong or lying, then any impact on a company’s stock price is fleeting. But if the short analyst is right, and the company is led by cheaters, then the best, or only, management tactic is to attack the analysts personally and professionally. In October 2017, Petit posted a notice on MiMedx’s website claiming that Mr. Cohodes was a “notorious” short seller who used offshore holding companies to “avoid taxes and scrutiny.” After we advised MiMedx’s general counsel that the assertion was false and defamatory, she covered over Mr. Cohodes’s name but left the misleading document on the company website.

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<sup>1</sup> MiMedx’s May 31, 2019 Proxy Statement for the company’s 2018 meeting listed two qui tam actions by former employees and several lawsuits against employees. It listed a case against Sparrow Fund Management, LP, for defamation, which was a meritless lawsuit based on MiMedx’s false assertion that Sparrow had written a particular critical report about MiMedx.

Later in October 2017, Mr. Cohodes laid out his concerns about MiMedx's practice in a letter to Mr. Petit, including disclosures from an employee that managers deleted incriminating information from the company's computers, distorted the financial results by refusing to avoid credits, stuffed MiMedx products into distributors to inflate revenues, and shipped unordered products to the VA. He wrote: "I ask you publicly to stop attacking the critics and buckle down and respond to the criticisms."

Petit did not heed the advice. Instead, he doubled down on his aggressive attacks on critics. As a large (if not the largest) contributor to then Senator Johnny Isakson of Georgia, Petit had special access to the Senator and his staff. Using that influence, Petit asked Isakson who then asked the FBI to tell Mr. Cohodes to shut up. In December 2017, evidently in an effort to please the Senator and his friend Petit, the FBI sent two agents in person to Mr. Cohodes's home, where he lives with his wife and disabled son. The agents refused to leave the home, told Mr. Cohodes they would only leave when he promised to stop posting on Twitter about Petit, and told Mr. Cohodes "there would be consequences" if they returned. They only left when I got on the telephone with one of them and told them to leave.

That wasn't enough for Petit. Soon after, Petit's friends and allies began to threaten Mr. Cohodes. Henry Mellon, who has submitted a letter to the Court in support of Petit, wrote on Twitter that Mr. Cohodes's "days are numbered!" Other of Petit's allies wrote that Cohodes was an alcoholic "blinded by rage, alcohol and bipolar medicines."

We complained to the FBI several times, without any response. A response to a FOIA application was the only way we learned that Petit and Isakson were behind the FBI threats. Notably, Petit does *not* reveal to this Court his own behind-the-scenes influence-buying to try to silence Mr. Cohodes.

Petit relies on two opinion pieces written by Joe Nocera, a journalist who previously had to retract his own false reporting about Warren Buffett<sup>2</sup> among others, about Mr. Cohodes as though they support his claim that Mr. Cohodes was involved in illegal short selling. Nocera's facts and analysis were wrong, but in any event Nocera did not claim Mr. Cohodes was involved in any illegal trading. More importantly, every respected journalist who wrote about MiMedx

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<sup>2</sup> *NYT Public Editor gets Joe Nocera to apologize for Warren Buffett error*, <https://www.imediaethics.org/nyt-public-editor-gets-joe-nocera-to-apologize-for-warren-buffett-error> ("Last week, *New York Times* public editor Margaret Sullivan called for *Times* columnist Joe Nocera to make a public statement in his column about errors in writing about Warren Buffett.") We pointed out Mr. Nocera's many errors to his editors at [https://drive.google.com/file/d/1cw3ZeX\\_S46yZKK2FQTqBT8eacRLR64KO/view](https://drive.google.com/file/d/1cw3ZeX_S46yZKK2FQTqBT8eacRLR64KO/view) and at [https://drive.google.com/file/d/15H5cVHKGhvxCMjXAbJ3cXrkWYY8EPNw\\_/view](https://drive.google.com/file/d/15H5cVHKGhvxCMjXAbJ3cXrkWYY8EPNw_/view). They are too numerous to repeat here.

determined that the company, and Petit, were engaged in business and accounting misconduct. For example, on May 24, 2019, Gretchen Morgenson, then a reporter for the Wall Street Journal, wrote *MiMedx Injectables Don't Meet Regulatory Standards Despite Claim to FDA* – reporting that Petit and his company lied repeatedly about the safety of its products. <https://www.wsj.com/articles/mimedx-injectables-dont-meet-regulatory-standards-despite-claim-to-fda-11558654273>.

Petit admits that he complained to the SEC about Mr. Cohodes, but the significant of that fact is that the SEC sued MiMedx and Petit, not Mr. Cohodes. Indeed, the number of serious analysts who independently reported on the improprieties at MiMedx and the FDA's, SEC's and DoJ's actions speaks loudly about who is the criminal.

Petit takes no responsibility for his actions at MiMedx, his expensive legal actions to harass former employees and stock analysts who criticized his company, MiMedx's lies to the FDA about its products, or Petit's harassment of company employees. In the company's 2018 Annual Report on Form 10-K filed on March 17, 2020, MiMedx reported that Petit directed Project Snow White: an effort to smear the reputations of company employees rather than investigate the merits of their allegations.

“As part of Project Snow White, the secret video surveillance system referenced above was installed at Mr. Petit's direction to record interviews that he, Mr. Taylor and other former members of management conducted of certain employees and those employees' discussions among themselves without those employees' knowledge or consent. The evidence showed that Mr. Petit directed that certain employees, whom he and other former members of senior management perceived to hold loyalty to an employee who had raised concerns about the Company's practices, be terminated.”

That is hardly consistent with the boy scout image Petit has tried to present to this Court.

Finally, Petit submitted a letter from Henry Mellon – one of the people who stalked and threatened Mr. Cohodes on behalf of Petit (or perhaps to protect his own fraudulent investment). Mellon claims MiMedx's stock was “illegally shorted by Illegal Naked Short Sellers.” He claims a “campaign” recruited Mr. Cohodes and the initial two whistleblowers to “be their voice,” and that Mr. Cohodes wrote a letter to Ernst & Young raising allegations even though E&Y “had never found any suspicion of wrongdoing.”

Mellon's claims about Mr. Cohodes are lies.

First, Ernst & Young was not some fly by night outfit bending to the desires of Mr. Cohodes. It is one of the top auditing firms in the United States. It spent months reviewing MiMedx's financial accounting and reporting, which was so deficient that Ernst & Young

resigned. According to the company's 2018 10-K cited above, Ernst & Young resigned on December 4, 2018 because the company's "internal controls necessary for the Company to develop reliable financial statements did not exist and identified additional matters involving operations that Ernst & Young considered to be material weaknesses." Those deficiencies were created by Petit, not Mr. Cohodes.

Second, Mr. Cohodes has never engaged in naked short selling (that is, he trades through brokers who find shares for him to borrow and he pays high interest fees to maintain his short positions). He was never part of any concerted illegal campaign to target MiMedx; his actions were his own. Mr. Cohodes's willingness to identify himself publicly, write detailed letters and submit evidence to MiMedx's board of directors, auditors, the SEC, and the FDA, and publicize his thoughts gave investors the chance to review the evidence and know the source of the information. It also made him a safe audience for people intimidated and threatened by Petit and his cronies – like Mellon – to disclose misconduct that Mr. Cohodes then reported to the MiMedx board.

Mellon may be disappointed that his investment in MiMedx did not reap him the large financial reward he hoped, but the fault lies with Petit and people like Mellon who refused to do what Mr. Cohodes originally asked them to do: buckle down and address the complaints. Had they done so, investors who were not part of Petit's and Mellon's inner circle would not have been bamboozled into buying MiMedx's stock.

Petit's plea for mercy depends almost completely on his repeated claims of victimhood. We hope that Mr. Cohodes is not the only person who responds to Petit's letter. We expect that the initial whistleblowers and others are constrained by nondisclosure agreements. If Petit truly wants this Court to understand his impact on others, then he and MiMedx ought to release any litigant from any non-disparagement or nondisclosure agreement.

Very truly yours,



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