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6 Attorneys for Plaintiff and Counterclaim Defendant,
THE BOARD OF TRUSTEES OF THE LELAND STANFORD
7 JUNIOR UNIVERSITY and Counterclaim Defendant THOMAS
MERIGAN
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12
13 THE BOARD OF TRUSTEES OF THE
14 LELAND STANFORD JUNIOR
UNIVERSITY,
15
Plaintiff,
16
v.
17
18 ROCHE MOLECULAR SYSTEMS, ET AL.,
19
Defendants.

Case No. C 05 04158 MHP

**SUPPLEMENTAL DECLARATION OF
MICHELLE S. RHYU IN SUPPORT OF
COUNTERCLAIM DEFENDANTS
STANFORD UNIVERSITY, DR. MERIGAN
AND DR. HOLODNIY'S OPPOSITION TO
COUNTERCLAIMANT RMS'S MOTION
FOR SUMMARY JUDGMENT**

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21 ROCHE MOLECULAR SYSTEMS, ET AL.,
22
Counterclaimants,
23
v.
24
25 THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR
UNIVERSITY; THOMAS MERIGAN AND
MARK HOLODNIY
26
Counterclaim Defendants.
27

1 I, Michelle S. Rhyu, declare as follows:

2 1. I am an attorney with the law firm of Cooley Godward Kronish LLP, counsel of
3 record for The Board of Trustees of the Leland Stanford Junior University and Thomas
4 Merigan in the above-captioned matter. I have knowledge of the following, and if called as a
5 witness, I could and would testify competently to this declaration's contents.

6 2. Attached hereto as Exhibit O are true and correct copies of excerpts from the
7 deposition of Thomas C. Merigan, M.D., conducted on September 13, 2006.

8 3. Attached hereto as Exhibit P is a true and correct copy of excerpts from the
9 deposition of Mary Albertson, conducted on August 25, 2006.

10 4. Attached hereto as Exhibit Q is a true and correct copy of excerpts from the
11 deposition of Michael S. Ostrach, conducted on August 21, 2006.

12 5. Attached hereto as Exhibit R is a true and correct copy of excerpts from the
13 deposition of Clayton Casipit, conducted on July 21, 2006.

14 6. Attached hereto as Exhibit S is a true and correct copy of excerpts from the
15 deposition of Susanne DeWitt, conducted on July 13, 2006.

16 7. Attached hereto as Exhibit T is a true and correct copy of excerpts from the
17 deposition of Ernest S. Kawasaki, conducted on August 24, 2006.

18 8. Attached hereto as Exhibit U is a true and correct copy of excerpts from the
19 deposition of Stacey R. Sias, conducted on October 4, 2006.

20 9. Attached hereto as Exhibit V is a true and correct copy of excerpts from the
21 deposition of Alice Wang, conducted on August 8, 2006.

22 10. Attached hereto as Exhibit W is a true and correct copy of excerpts from the
23 deposition of Michael W. Konrad, conducted on July 28, 2006.

24 11. Attached hereto as Exhibit X is a true and correct copy of excerpts from the
25 deposition of Eric Groves, conducted on August 11, 2006.

26 12. Attached hereto as Exhibit Y is a true and correct copy of excerpts from the
27 deposition of David H. Schwartz, conducted on October 16, 2006.

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1 13. Attached hereto as Exhibit 8 is a true and correct copy of excerpts from Mark
2 Holodniy's Lab Notebook, vol. 4. Page 1 of the notebook shows the first entry in the notebook
3 to be dated January 2 and 3, 1991. THIS DOCUMENT IS FILED UNDER SEAL pursuant to
4 Civil Local Rule 79-5(d) and the accompanying Administrative Request Re Filing Under Seal
5 Motion for Summary Judgment and Confidential Exhibits in Declaration of Michelle S. Rhyu.

6 14. Attached hereto as Exhibit 568 is a true and correct copy of Email Correspondence
7 between Cetus employees dated November 9, 1988.

8 15. Attached hereto as Exhibit 593 is a true and correct copy of excerpts from Shirley
9 Kwok's Lab Notebook No. 4489, issued on February 21, 1991.

10 16. Attached hereto as Exhibit 632 is a true and correct copy of Handwritten notes
11 produced by RMS bearing the Bates numbers RMS 78280 – RMS 78298.

12 17. Attached hereto as Exhibit 633 is a true and correct copy of Handwritten notes
13 produced by RMS bearing the Bates numbers RMS 78299 – RMS 78301.

14 18. Attached hereto as Exhibit 703 are true and correct copies of (1) a letter dated
15 August 12, 1986 from Thomas Merigan to Mark Holodniy; (2) a copy of the Dept. of Health
16 and Human Services, Public Health Services, Statement of Appointment of Trainee, for Mark
17 Holodniy (STAN 014158), showing the amount of the Training Grant, and (3) the National
18 Research Service Award Payback Agreement for Dr. Holodniy's Public Health Service
19 Research Award.

20 19. Attached hereto as Exhibit 704 is a true and correct copy of the publication, Kozal
21 *HIV-1 Syncytium-Inducing Phenotype, Virus Burden, Codon 215 Reverse Transcriptase*
22 *Mutation and CD4 Cell Decline in Zidovudine-Treated Patients*, J. AIDS, 7:832-38 (1994).

23 20. Attached hereto as Exhibit 705 is a true and correct copy of a letter dated June 12,
24 1995 from Debra J. Glaister to Luis R. Mejia attaching a copy of the Assignment for U.S.
25 Patent Application 07/883,327.

26 21. Attached hereto as Exhibit 706 is a true and correct copy of a United States Patent
27 Office Notice of Recordation of Assignment Document and attached Notarized Assignment of
28

1 Patent Application 07/883,327 by Michael J. Kozal, Thomas C. Merigan, Mark Holodniy, and
2 David A. Katzenstein.

3 22. Attached hereto as Exhibit 707 is a true and correct copy of an excerpt of Webster's
4 Ninth New Collegiate Dictionary (Merriam-Webster 1987) containing its definition of
5 "consequence."

6 23. Attached hereto as Exhibit 708 is a true and correct copy of Russell Higuchi, *Simple*
7 *and Rapid Preparation of Samples for PCR*, in PCR TECHNOLOGY: PRINCIPLES AND
8 APPLICATIONS FOR DNA AMPLIFICATION 31 (Henry A. Erlich, ed., Stockton Press 1989).

9 24. Attached hereto as Exhibit 710 are true and correct copies of Sponsor Notifications
10 from the Stanford University Office of Technology Licensing to the National Institutes of
11 Health dated (1) June 23, 1999, (2) November 18, 1998, (3) October 26, 1998, (4) April 28,
12 1998, and (5) April 5, 1995.

13 25. Attached hereto as Exhibit 711 is a true and correct copy of a License to the United
14 States Government to U.S. Patent Application 07/883,327, dated November 24, 1994.

15 26. Attached hereto as Exhibit 712 are true and correct copies of (1) a Form PTO-
16 1619A - Recordation Form for Conveyance of a License, dated March 22, 1996, and (2) a Copy
17 of a Conveyance of a License to the United States Government to U.S. Patent Application
18 07/883,327, dated November 24, 1994, marked "Recorded 3/29/1996."

19 27. Attached hereto as Exhibit 713 is a true and correct copy of a citation search on
20 publications authored by Mark Holodniy, with a count of the number of times each article has
21 been cited in other articles during the period from 1990 to November 2006.

22 28. Attached hereto as Exhibit 714 is a true and correct copy of the web page found at
23 <http://www.roche.com/home/divisions.htm>, dated November 14, 2006.

24 I declare under penalty of perjury under the laws of the United States of America that the
25 foregoing is true and correct, and that this declaration was executed at Palo Alto, California on
26 November 15, 2006.

27 /s/

28 _____
Michelle S. Rhyu