

CONFIDENTIAL

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 THE BOARD OF TRUSTEES OF THE LELAND
4 STANFORD JUNIOR UNIVERSITY,
5 Plaintiff,
6 vs. Case No.: C 05 04158 MHP
7 ROCHE MOLECULAR SYSTEMS, ET AL.,
8 Defendants.
9 ROCHE MOLECULAR SYSTEMS, ET AL.,
10 Counterclaimants,
11 vs.
12 THE BOARD OF TRUSTEES OF THE LELAND
13 STANFORD JUNIOR UNIVERSITY; AND THOMAS
14 MERIGAN,
15 Counterclaim Defendants.
16
17 **CONFIDENTIAL**
18 (THIS MATERIAL IS CONFIDENTIAL PURSUANT
19 TO COURT ORDER)
20
21 DEPOSITION OF ERIC GROVES
22 San Diego, California
23 Friday, August 11, 2006
24
25 Reported by:
BROOKE SILVAS, RPR
CSR No. 10988
Job No. 51122

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14 MERIGAN,
15 Counterclaim Defendants.
16
17 Deposition of ERIC GROVES, taken on behalf
18 of Plaintiff and Counterclaim Defendant, at
19 4445 Eastgate Mall, Suite 200, San Diego,
20 California, beginning at 9:02 a.m., Friday,
21 August 11, 2006, before BROOKE SILVAS,
22 CSR No. 10988, RPR.
23
24
25

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11:13 1 BY MR. RODRIGUEZ:
 11:13 2 Q And do you recall actually reviewing
 3 publications for that purpose?
 11:13 4 A Yes.
 11:13 5 Q Do you recall actually asking the
 6 publications -- let me rephrase that.
 11:13 7 Do you ever recall suggesting that proposed
 8 publications not be published or delayed -- be
 9 delayed in publication in connection with
 10 confidentiality concerns?
 11:13 11 A Counsel made me aware yesterday of a
 12 document where we asked that a specific abstract be
 13 held confidential prior to its actual publication
 14 because of potential intellectual property issues.
 15 And that's the one thing that I now remember.
 11:14 16 Q Do you remember any -- anything else in
 17 that similar vein?
 11:14 18 A No, not explicitly.
 11:14 19 Q And setting aside intellectual property
 20 concerns, can you think of any other issues that
 21 might have posed a problem for you in terms of
 22 allowing proposed publications to go ahead and
 23 publish?
 11:14 24 MR. BOOZELL: Vague and ambiguous.
 11:14 25 THE WITNESS: So publications can bring

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1 entity. Cetus was a series of people. Those people
 2 worked in different disciplines. The issue about
 3 how to properly monitor patients is -- is something
 4 that is always present in any pharmaceutical
 5 corporation. So methods to do that are being
 6 discussed at any given time all the time everywhere.
 7 So exactly when it was that somebody first started
 8 to talk about how to quantitate HIV with PCR, I
 9 don't know. But I would imagine it would have been
 10 shortly after PCR was first used to identify the
 11 virus. But I -- that's just a speculation.
 11:16 12 Q Was there actually a particular project
 13 that was directly targeted towards quantifying HIV
 14 using PCR?
 11:16 15 MR. BOOZELL: Objection. Vague. Ambiguous.
 16 And calls for speculation. Lacks foundation.
 11:16 17 THE WITNESS: So the laboratory that I
 18 supervised endeavored to build a refined technology
 19 for doing that. But I do not remember that Cetus
 20 per se was attempting to develop a clinical
 21 commercial assay which would be appropriate for that
 22 task.
 11:17 23 BY MR. RODRIGUEZ:
 11:17 24 Q With respect to your lab, when do you
 25 recall that your lab began to undertake to develop a

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1 incorrect interpretations of data and immortalize
 2 them. So we would review them to see whether we
 3 thought there was correct interpretations of the
 4 data. If we disagreed, we would discuss the matter
 5 with the investigator.
 11:14 6 BY MR. RODRIGUEZ:
 11:14 7 Q Do you recall when Cetus became interested
 8 specifically in the quantitation of HIV RNA?
 11:15 9 MR. BOOZELL: Objection. Vague and ambiguous.
 10 Calls for speculation. Lacks foundation as to all
 11 of Cetus.
 11:15 12 THE WITNESS: Cetus is a big place. Lots of
 13 people were thinking all the time.
 11:15 14 BY MR. RODRIGUEZ:
 11:15 15 Q Can you give any additional information?
 11:15 16 A No.
 11:15 17 Q When -- when did you become aware that
 18 Cetus was looking to investigate the quantitation of
 19 HIV RNA?
 11:15 20 MR. BOOZELL: Same objections.
 11:15 21 BY MR. RODRIGUEZ:
 11:15 22 Q Actually, let me be a tad more general.
 23 When did -- when did you become aware that Cetus was
 24 interested in investigating the quantitation of HIV?
 11:15 25 A So Cetus is not -- was not an universal

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1 way to quantify HIV?
 11:17 2 A So when we first started doing the assays
 3 from the samples from the AZT/IL-2 Stanford trial,
 4 the goal was to try to qualitatively quantitate the
 5 virus. And then with time, the technology got more
 6 refined. So...
 11:17 7 Q And you used the term qualitatively
 8 quantitate just to identify the fact that early on
 9 it was more of a qualitative issue -- result than a
 10 quantitative result?
 11:18 11 A That is correct.
 11:18 12 Q Do you recall there ever being a project at
 13 Cetus that was directed at using the quantitation of
 14 HIV for purposes of detecting HIV?
 11:18 15 MR. BOOZELL: Vague and ambiguous.
 11:18 16 THE WITNESS: I'm sorry. Can you restate that?
 11:18 17 BY MR. RODRIGUEZ:
 11:18 18 Q Yeah.
 11:18 19 A I got confused where you were going.
 11:18 20 Q Just to give you the context in terms of
 21 what I'm getting at in terms of, say, blood banks,
 22 people that come in to determine if they have HIV,
 23 you know, that kind of detection.
 11:18 24 So with that background, did you ever
 25 become aware that Cetus became interested in using

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11:39 1 BY MR. RODRIGUEZ:
 11:39 2 Q And was there a particular way in which
 3 Cetus tracked which materials were being sent
 4 pursuant to which materials transfer agreements?
 11:39 5 MR. BOOZELL: Calls for speculation.
 11:39 6 THE WITNESS: There was a log maintained for the
 7 materials that were shipped, but I don't know where
 8 that log is or who maintained it.
 11:39 9 BY MR. RODRIGUEZ:
 11:39 10 Q Did that log include information that
 11 identified whether the material was being sent
 12 pursuant to an MTA?
 11:39 13 A It would not have been shipped without an
 14 MTA.
 11:39 15 Q But did -- but did the log actually state
 16 which MTA --
 11:40 17 A I didn't read the log, so I can't tell you
 18 that.
 11:40 19 Q But your recollection is that nothing was
 20 shipped out of the company unless it was affiliated
 21 with an MTA?
 11:40 22 A That's correct.
 11:40 23 Q Did you ever become aware during your time
 24 at Cetus of any material that was transferred out of
 25 Cetus that was not subject to an MTA?

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11:42 1 Q -- Exhibit 29 --
 11:42 2 A Let me -- let me -- that was the initiating
 3 factor, but that would not have been the sole --
 4 once information was transferred to Dr. Merigan,
 5 if -- if other things occurred in the future, that
 6 would certainly have been governed by such an
 7 agreement.
 11:42 8 Q Okay.
 11:42 9 A The relationship doesn't terminate with the
 10 termination of the trial.
 11:42 11 Q And that was my follow-up question. So was
 12 the MTA, Exhibit 29, intended to cover the transfer
 13 of materials other than materials related to the
 14 IL-2/AZT clinical trial?
 11:43 15 MR. BOOZELL: Calls for speculation. Lacks
 16 foundation.
 11:43 17 THE WITNESS: The reagents that were transferred
 18 could have been used for many purposes that were not
 19 explicitly related to that trial. The MTA wasn't
 20 designed to cover all uses of the reagents, not just
 21 some. The obligation between Dr. Merigan and the
 22 Stanford University and Cetus was for all possible
 23 things to do with this.
 11:43 24 BY MR. RODRIGUEZ:
 11:43 25 Q And I guess what I'm getting at is not so

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11:40 1 A No, I do not recall.
 11:40 2 Q Were there any procedures in place to
 3 insure that material was -- that was being sent was
 4 actually being sent pursuant to an MTA?
 11:40 5 A The process whereby material was shipped
 6 out of the company was at least centralized within
 7 various disciplines so that it was controlled. So
 8 that was the method used, the controls. There was a
 9 procedure to insure that things had happened before.
 10 That the appropriate steps had occurred prior to
 11 this material being shipped.
 11:41 12 Q And how does the MTA, Exhibit 29, relate to
 13 the IL-2/AZT clinical trials?
 11:41 14 A Dr. Merigan's group wanted to be able to do
 15 more of the work down at Stanford. So this was an
 16 effort to support that goal.
 11:41 17 Q Were there any other materials -- so -- let
 18 me see if I understand. The MTA, Exhibit 29, was
 19 entered into for the purpose of -- let me start
 20 again.
 11:42 21 The MTA, Exhibit 29, was entered into in
 22 connection with the IL-2/AZT clinical trials?
 11:42 23 A Yes.
 11:42 24 Q Did the MTA --
 11:42 25 A Excuse me.

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1 much what they're used for, but what -- how they get
 2 there in the first place. So as an example, if
 3 there was an unrelated -- a lab that was unrelated
 4 to IL-2 and the AZT was not dealing with that study,
 5 just wanted to have PCR agents for a wholly
 6 different purpose. So with that background, my
 7 question is Exhibit 29, the MTA, intended to cover
 8 the transfer of materials from Cetus to Stanford for
 9 the purpose of things other than things related to
 10 the IL-2/AZT clinical trial?
 11:44 11 MR. BOOZELL: Vague and ambiguous. Calls for
 12 speculation. Lacks foundation. It's an incomplete
 13 hypothetical. Calls for a legal conclusion.
 11:44 14 THE WITNESS: So let me see. The modis -- the
 15 reason for initiating the MTA was to support the
 16 AZT/IL-2 trial. But Cetus was well aware that the
 17 reagents and knowledge could be used in different
 18 settings. And the obligation extended to all of
 19 those.
 11:44 20 BY MR. RODRIGUEZ:
 11:44 21 Q And what I'm getting at is actually just
 22 the purpose. Let me just give you a hypothetical.
 11:44 23 A Yeah.
 11:44 24 Q Let's say there was a separate lab
 25 unrelated to HIV, unrelated to IL-2 or AZT, and that

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1 lab wanted to get some PCR reagents.
 11:45 2 A Uh-huh.
 11:45 3 Q Did the MTA, Exhibit 29, cover the transfer
 4 of materials in such a circumstance or would a new
 5 MTA be required?
 11:45 6 A A new --
 11:45 7 MR. BOOZELL: Calls for speculation. Lacks
 8 foundation. Calls for a legal conclusion. And it's
 9 vague and ambiguous as to -- are you talking about
 10 another lab at Stanford?
 11:45 11 MR. RODRIGUEZ: Yes.
 11:45 12 MR. BOOZELL: Okay.
 11:45 13 THE WITNESS: So --
 11:45 14 MR. BOOZELL: Same objections.
 11:45 15 THE WITNESS: So the agreement was between
 16 Dr. Merigan's group and Cetus. And it was not
 17 between anybody else and Cetus. So if Dr. Merigan
 18 chose to release the agents to somebody else, that
 19 would have been considered something outside of the
 20 range of the agreement and at some level a breach.
 11:45 21 BY MR. RODRIGUEZ:
 11:45 22 Q Okay. So let me see if I get the -- let me
 23 see if I can get the metes and bounds here. The MTA
 24 was intended to cover transfer of materials between
 25 Cetus and Dr. Merigan's lab.

11:46 1 A We had no controls to establish whether he
 2 was using it within the spirit of that agreement.
 11:47 3 Q And the spirit that you're referring to
 4 is --
 11:47 5 A We said, we're doing this to support this
 6 trial. Okay. That's fine. If he decides to do
 7 something else in his laboratory and not tell us
 8 about it, we had no controls to monitor that kind of
 9 activity.
 11:47 10 Q Would that have been considered a breach?
 11:47 11 MR. BOOZELL: Vague and ambiguous. Calls for a
 12 legal conclusion. Calls for speculation. Lacks
 13 foundation.
 11:47 14 THE WITNESS: It would have been perceived to be
 15 a problem.
 11:47 16 BY MR. RODRIGUEZ:
 11:47 17 Q And if there were different labs that
 18 wanted access to PCR reagents, they would have to
 19 sign up with a separate MTA?
 11:48 20 MR. BOOZELL: Calls for a legal conclusion.
 21 Lacks foundation. Calls for speculation.
 11:48 22 THE WITNESS: That would be my speculation.
 11:48 23 BY MR. RODRIGUEZ:
 11:48 24 Q Did you have an understanding at the time
 25 that Exhibit 29 was signed, this is the MTA, with

11:45 1 MR. BOOZELL: Calls for --
 11:45 2 BY MR. RODRIGUEZ:
 11:45 3 Q Is that right?
 11:46 4 MR. BOOZELL: Calls for speculation. Lacks
 5 foundation. Calls for a legal conclusion.
 11:46 6 BY MR. RODRIGUEZ:
 11:46 7 Q You can answer.
 11:46 8 A This agreement was created to cover a
 9 specific transfer. Okay. That was the transfer
 10 between Cetus and Dr. Merigan's laboratory. Okay.
 11 So as -- okay. So that's what I know about it. So
 12 let's -- I guess I should stop there.
 11:46 13 BY MR. RODRIGUEZ:
 11:46 14 Q And so once the -- once material
 15 transferred under the MTA, Exhibit 29, got to
 16 Dr. Merigan, Dr. Merigan's lab could use it for
 17 other purposes and still be within the MTA; is that
 18 right?
 11:46 19 MR. BOOZELL: Vague and ambiguous. Calls for
 20 speculation. Lacks foundation. Calls for a legal
 21 conclusion.
 11:46 22 THE WITNESS: It was not our expectation that he
 23 would do that.
 11:46 24 BY MR. RODRIGUEZ:
 11:46 25 Q But would it -- would it have been --

1 respect to how it addressed who had rights to
 2 intellectual property?
 11:48 3 MR. BOOZELL: Vague and ambiguous. Calls for
 4 speculation. Lacks foundation. Calls for a legal
 5 conclusion.
 11:48 6 THE WITNESS: My appreciation was that Cetus's
 7 intellectual property people would conduct
 8 themselves in a manner that would sustain the
 9 intellectual property position of the company and
 10 that I would abide by their requirements and
 11 restrictions to support that work. That's as much
 12 as I can say.
 11:49 13 BY MR. RODRIGUEZ:
 11:49 14 Q Did you have an understanding, specific to
 15 Exhibit 29, the MTA, as to how that agreement dealt
 16 with the allocation of intellectual property as
 17 between Cetus and Dr. Merigan's lab?
 11:49 18 MR. BOOZELL: Vague and ambiguous. Lacks
 19 foundation. Calls for speculation. And calls for a
 20 legal conclusion. It's an incomplete hypothetical.
 11:49 21 THE WITNESS: I'm not competent to make that
 22 judgment.
 11:49 23 BY MR. RODRIGUEZ:
 11:49 24 Q Right. But did you have an understanding
 25 at the time?

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11:49 1 MR. BOOZELL: Same objections.
 11:49 2 THE WITNESS: I'm still not competent to make
 3 that judgment. They were supposed to do it right.
 4 I don't know what they did.
 11:49 5 BY MR. RODRIGUEZ:
 11:49 6 Q And what would you consider doing it right?
 11:49 7 A This was Cetus proprietary technology. It
 8 should be properly protected.
 11:49 9 Q In -- in what way in terms of who gets
 10 rights as between a third party and Cetus?
 11:49 11 MR. BOOZELL: Same objections. Calls for a
 12 legal conclusion. Lacks foundation. Calls for
 13 speculation. Incomplete hypothetical.
 11:49 14 THE WITNESS: So that -- the question that you
 15 asked is generic and covers a great many different
 16 possible combinations. The particular work that
 17 we're describing here, it was our view that
 18 Dr. Holodny was learning everything he knew how to
 19 do with us, and that the -- the improvements that
 20 occurred to him under our explicit guidance were
 21 Cetus's.
 11:50 22 BY MR. RODRIGUEZ:
 11:50 23 Q And what about with respect to the MTA,
 24 Exhibit 29?
 11:50 25 A I -- I don't actually quite understand your
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1 The time is 12:03 p.m.
 12:02 2 BY MR. RODRIGUEZ:
 12:02 3 Q Dr. Groves, did your lab, while were you at
 4 Cetus, have any involvement in the non-isotopic
 5 detection of HIV?
 12:03 6 A Yes.
 12:03 7 Q Can you describe that?
 12:03 8 A Not well. There was a desire to make the
 9 process for detecting the positive samples and the
 10 quantitative samples in an efficient way that used
 11 technology that made it inexpensive to read, easy to
 12 use, and so on. And the technologies that are used
 13 for this kind of work are actually quite
 14 sophisticated technologies. And you have to spend a
 15 fair amount of time learning how to best use them
 16 and so on. And so there was -- I -- there was
 17 discussion within the company about what
 18 technologies were useful and what might be the best.
 19 And some of them -- there were visions that they
 20 might go on to develop -- be developed as commercial
 21 assays. So there was some -- some constraints on
 22 what technologies were appropriate for commercial
 23 assaying. So all those things factored into the
 24 work that was done. And Dr. Conrad was very
 25 interested in that kind of problem. Although he was
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1 question.
 11:50 2 Q Your comment just went -- was directed to
 3 Dr. Holodny and his work.
 11:50 4 A So that specific problem is addressed here
 5 somehow, but I'm not competent to judge how it's
 6 addressed.
 11:50 7 Q When you say "here," you're talking about
 8 the MTA, Exhibit 29?
 11:50 9 A Yeah.
 11:51 10 MR. RODRIGUEZ: Should we break for lunch?
 11:51 11 MR. BOOZELL: You have enough after lunch to
 12 justify a whole lunch break?
 11:51 13 MR. RODRIGUEZ: Probably. I probably have
 14 another hour or so, I'm guessing.
 11:51 15 MR. BOOZELL: It's up to you.
 11:51 16 MR. RODRIGUEZ: I can go straight through if you
 17 want.
 11:51 18 THE WITNESS: If you want to go straight
 19 through.
 11:51 20 MR. RODRIGUEZ: Let's just take a short break.
 11:51 21 MR. BOOZELL: Okay.
 11:51 22 THE VIDEOGRAPHER: Going off the record. The
 23 time is 11:51 a.m.
 12:02 24 (A recess was taken.)
 12:02 25 THE VIDEOGRAPHER: We're back on the record.
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1 not necessarily an inventor on a specific
 2 technology, he wanted to use such technologies to
 3 make the assays work better and faster. And --
 12:04 4 Q Which scientists or technicians at Cetus
 5 were actually involved in the technical aspects of
 6 non-isotopic detection of HIV?
 12:04 7 MR. BOOZELL: Calls for speculation. Lacks
 8 foundation.
 12:04 9 THE WITNESS: I can't recall specific people.
 10 But the laboratory was involved in that work. And
 11 so the technicians and the various people in the
 12 laboratory would have been working on that. And
 13 then there were people outside the laboratory that
 14 were interested in the general problem because the
 15 same technology could be used for assays which were
 16 not designed to quantitate, but were just simply
 17 designed to just be positive or negative.
 12:05 18 BY MR. RODRIGUEZ:
 12:05 19 Q Do you know whether anybody at Cetus
 20 performed non-isotopic detection protocol or methods
 21 for HIV/RNA from plasma?
 12:05 22 MR. BOOZELL: Calls for speculation. Lacks
 23 foundation.
 12:05 24 THE WITNESS: I no longer recall.
 25
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12:05 1 BY MR. RODRIGUEZ:
 12:05 2 Q Who would know that, assuming they recall?
 12:05 3 A Members of the PCR group and maybe the
 4 members of the laboratory.
 12:05 5 Q Are you familiar at all with avidinated
 6 beads?
 12:05 7 A That's a technology that's used for
 8 detecting labeled proteins or labeled entities,
 9 molecular entities.
 12:05 10 Q Do you have any understanding technically
 11 in terms of when those beads became available
 12 generally for purchase?
 12:05 13 MR. BOOZELL: Calls for speculation. Lacks
 14 foundation.
 12:06 15 THE WITNESS: I have no personal knowledge of
 16 that.
 12:06 17 BY MR. RODRIGUEZ:
 12:06 18 Q Do you have any -- any general knowledge at
 19 all?
 12:06 20 A (Witness shakes head.)
 12:06 21 Q Do you recall at all a problem that was
 22 caused by heparin in connection with the
 23 quantitation of HIV using PCR?
 12:06 24 A Yes.
 12:06 25 Q Can you describe what you recall about

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1 then eventually outside the company. But with
 2 regard to actually doing assays, I told you, I
 3 didn't do any assays.
 12:07 4 Q Did you actually work at the bench at all
 5 during your time at Cetus?
 12:08 6 A No, I did not.
 12:08 7 Q Your role was management and supervisory?
 12:08 8 A Yes.
 12:08 9 Q Do you recall providing any technical input
 10 or insight with respect to this heparin issue?
 12:08 11 A Other than to say I wanted the general
 12 problem examined, no.
 12:08 13 MR. BOOZELL: Before we go into details of 601
 14 here, I notice that Dr. Groves has made himself a
 15 note on the exhibit. I don't know if you want to
 16 switch it for one that is clean in the record.
 12:08 17 MR. RODRIGUEZ: Shame on you.
 12:08 18 THE WITNESS: I was trying to do some
 19 arithmetic.
 12:08 20 MR. BOOZELL: You should switch it for yours
 21 because I wrote on mine.
 12:08 22 MR. RODRIGUEZ: That's fine. I'll put the
 23 sticker as best I can over my writing without
 24 putting the RMS number in jeopardy.
 12:08 25 MR. BOOZELL: Please don't write on that.

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1 that?
 12:06 2 A As I told -- said earlier, we were
 3 interested in adequate sample collection to assure
 4 that the samples were collected in media or in a
 5 manner in which permitted the best assessment of the
 6 contents. And heparin is a component of some of
 7 those sample collection tubes. And as part of that,
 8 we explored whether or not -- we explored all the
 9 tubes that you could get. And it turned out that
 10 heparin was -- interfered with the process of PCR.
 11 And exactly how that happened, I don't know, but it
 12 did. And we went on to publish that because we were
 13 concerned that other people not be waylaid by us and
 14 the problem. It's not intrinsically a major
 15 scientific breakthrough, but it was a piece of
 16 information that we wanted to make sure was publicly
 17 available so that other users of PCR would be
 18 collecting their samples appropriately.
 12:07 19 Q What was your particular involvement in the
 20 analysis to determine the inhibitory effect of
 21 heparin with respect to PCR quantitation of HIV?
 12:07 22 A I was concerned that we establish property
 23 conditions. Then once some inappropriate conditions
 24 were established, I was concerned that that be --
 25 information be made available within the company and

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12:08 1 THE WITNESS: I didn't realize I wasn't supposed
 2 to do that. Excuse me.
 12:09 3 MR. RODRIGUEZ: I hope you brought your
 4 toothbrush because you're going to jail now.
 12:09 5 (Plaintiff's Exhibit 601 was marked for
 6 identification by the deposition
 7 officer. Said exhibit is attached
 8 hereto.)
 12:09 9 BY MR. RODRIGUEZ:
 12:09 10 Q So let's go ahead and get to these exhibits
 11 that I put in front of you. If I could direct your
 12 attention to what is marked as Exhibit 601. This is
 13 a document entitled "Consulting Agreement," having
 14 Bates number RMS 06272 through 288.
 12:09 15 Would you please take a look at Exhibit 601
 16 and tell me if you recognize it?
 12:09 17 A I do not recognize it.
 12:09 18 Q You don't think you've ever seen it before?
 12:09 19 A I have not seen it before.
 12:09 20 (Plaintiff's Exhibit 602 was marked for
 21 identification by the deposition
 22 officer. Said exhibit is attached
 23 hereto.)
 12:09 24 BY MR. RODRIGUEZ:
 12:09 25 Q If I could direct your attention to

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1 Exhibit 602. This is a document entitled
 2 "Nonexclusive Consulting Agreement," having Bates
 3 number RMS 00048 through 00050.
 12:09 4 Would you please take look at Exhibit 602
 5 and tell me if you recognize it?
 12:10 6 A I do not recognize it.
 12:10 7 Q You don't think you've ever seen it?
 12:10 8 A I don't think I've ever seen it.
 12:10 9 Q I want to turn now to the topic of one of
 10 these articles relating to the quantitation of HIV
 11 RNA, the publication of that and some disclosures
 12 related to it. So I'll walk you through some
 13 documents here.
 12:10 14 I have handed you what has been previously
 15 marked as Exhibit 563. This is a document having
 16 Bates number RMS 00096 through 98. Would you please
 17 take look at Exhibit 563 and tell me if you
 18 recognize it.
 12:11 19 A I recognize it. I was shown it yesterday
 20 by counsel.
 12:11 21 Q What do you remember about it?
 12:11 22 MR. BOOZELL: You can -- you can answer to the
 23 extent that you remember something independent of
 24 any discussions that we had yesterday.
 12:11 25 THE WITNESS: Nothing explicit about it. This
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1 written handwriting there throughout; is that right?
 12:12 2 A On page -- on 506719, that is my
 3 handwriting.
 12:12 4 Q You have to read the RMS numbers. I'm
 5 sorry.
 12:12 6 A Oh, I'm sorry. I was reading the wrong
 7 one. See the RMS 00096, that was my handwriting on
 8 that page. The next page, I don't recognize the
 9 handwriting. And then on RMS 00098, that is my
 10 handwriting.
 12:12 11 Q Do you actually -- do you have any
 12 recollection of why you were suggesting that Alice
 13 Wang and Michael Conrad be added as coauthors?
 12:13 14 A Because they had significant input into the
 15 work.
 12:13 16 Q Is that something that you -- that you are
 17 recalling now as to why you wanted them added or is
 18 that your conclusion based on looking at the
 19 document? I'm just trying to get at whether this is
 20 a specific recollection of yours or whether this is
 21 a conclusion that you're drawing now based on your
 22 review of it.
 12:13 23 A It would be a specific recollection.
 12:13 24 Q Do you recall how you determined that Alice
 25 Wang and Michael Conrad should also be added as
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1 is a -- something that was submitted as part of a
 2 publication effort.
 12:11 3 BY MR. RODRIGUEZ:
 12:11 4 Q Do you have any recollections at all about
 5 the particular publication that was being asked to
 6 be cleared?
 12:11 7 MR. BOOZELL: Go ahead and look at the whole
 8 document if you need to answer.
 12:11 9 THE WITNESS: Maybe you could -- can you
 10 rephrase -- can you restate the question?
 12:11 11 BY MR. RODRIGUEZ:
 12:11 12 Q Do you remember anything at all about this
 13 particular publication clearance request?
 12:11 14 A Not -- other than that that's my
 15 handwriting at the top of the page saying that other
 16 authors needed to be included in the work. And
 17 after that, I don't remember anything specific.
 12:12 18 Q You don't remember receiving it?
 12:12 19 A No, I don't remember.
 12:12 20 MR. BOOZELL: For the record, there --
 12:12 21 THE WITNESS: That is my handwriting on it. I
 22 received it. It is my handwriting on the front page
 23 of the document.
 12:12 24 BY MR. RODRIGUEZ:
 12:12 25 Q RMS 00096, you recognize your -- your
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1 coauthors?
 12:13 2 A They were both significant contributors to
 3 the work. They were in a senior position in the
 4 course of the work. And those are the appropriate
 5 people for inclusion as authors in such an abstract.
 12:14 6 Q What was your understanding of their
 7 contribution to the work?
 12:14 8 A That they had major roles. And I can't say
 9 they did this assay or that assay. But that they
 10 had major roles in the work.
 12:14 11 Q You are also listed as a coauthor for the
 12 abstract listed on RMS 0098. Is that right?
 12:14 13 A That's correct.
 12:14 14 Q And what is the purpose or reason for
 15 listing of you as a coauthor as well?
 12:14 16 MR. BOOZELL: Calls for speculation. Lacks
 17 foundation.
 12:14 18 THE WITNESS: I was a contributor to the
 19 initiation of this work and its conduct. And in
 20 that role, I have author rights or -- or excuse me.
 21 Not rights. I should say that's an appropriate role
 22 for an author.
 12:15 23 BY MR. RODRIGUEZ:
 12:15 24 Q And when you say that you were involved in
 25 the conduct of what's disclosed in the abstract on
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1 RMS 00098, what do you mean by that?
 12:15 2 A I supervised the laboratory that was doing
 3 the work and the relationship between -- from the
 4 Cetus side, between Dr. Merigan's group and the
 5 laboratory.
 12:15 6 Q Do you recall who you sent the publication
 7 clearance request, Exhibit 53, to?
 12:15 8 A No.
 12:15 9 Q Do you recall having any discussions with
 10 anybody about the publication clearance request,
 11 Exhibit 563?
 12:15 12 A No.
 12:15 13 Q Do you recall that somebody eventually told
 14 you that it was cleared?
 12:15 15 A No, I don't recall that.
 12:16 16 Q Here is another one for you.
 12:16 17 I've handed you what's been previously
 18 marked as Exhibit 33, having Bates number RMS 00070
 19 through 72. Would you please take a look at
 20 Exhibit 33 and tell me if you recognize it?
 12:16 21 A I recognize it after seeing it with counsel
 22 yesterday.
 12:16 23 Q What do you recall about it?
 12:16 24 A That it covered the submission of this
 25 abstract to this meeting and that there was concern

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1 patent application?
 12:18 2 A No, I do not.
 12:18 3 Q Nobody ever got back to you to let you know
 4 if it was actually filed as a patent application?
 12:18 5 A I don't recall.
 12:18 6 MR. BOOZELL: Misstates his testimony.
 12:18 7 THE WITNESS: I don't recall.
 12:18 8 BY MR. RODRIGUEZ:
 12:18 9 Q I've handed you a document that has been
 10 previously marked Exhibit 34, having Bates number
 11 RMS 000542 to 544.
 12:19 12 Would you please take a look at Exhibit 34
 13 and tell me if you recognize it?
 12:19 14 A I recognize it after reviewing it with
 15 counsel yesterday.
 12:19 16 Q Can you tell me what you recall about it?
 12:19 17 A The work had matured to the point where it
 18 was appropriate to consider an invention disclosure
 19 with potential to file a patent. And so the people
 20 who had done the work were asked to fill out -- the
 21 hands-on work were asked to fill out an invention
 22 disclosure. And this is that invention disclosure.
 12:19 23 Q Do you recognize the handwriting?
 12:19 24 A No, I do not explicitly recognize the
 25 handwriting.

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1 that the information not be released prematurely in
 2 the course of -- of -- by the people who received
 3 the abstract.
 12:16 4 Q Do you see that it refers to -- let me
 5 start the question again. If I could direct your
 6 attention again to RMS 00071.
 12:17 7 A Yes.
 12:17 8 Q Do you see that that letter refers to the
 9 information being the subject of a patent
 10 application?
 12:17 11 A I see that phrase.
 12:17 12 Q Do you recall that a patent application was
 13 filed in connection with the subject matter that's
 14 disclosed in the abstract on the page that follows,
 15 RMS 00072?
 12:17 16 A I do not recall.
 12:17 17 Q Do you have any general recollection at all
 18 with respect to a patent application being
 19 contemplated or filed with respect to the abstract
 20 that's on RMS 00072?
 12:17 21 A I recall there was an invention disclosure
 22 that covered material which is related to the
 23 content of the abstract.
 12:18 24 Q Did you -- did you recall ever actually
 25 learning that the content was the subject of a

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12:19 1 Q But to what extent were you involved in the
 2 preparation or submission of this invention
 3 disclosure, Exhibit 34?
 12:19 4 A I would have asked that it happen. But I
 5 would not have written it.
 12:20 6 Q And you don't recall hearing back one way
 7 or the other as to whether the invention disclosure
 8 was actually filed as a patent application?
 12:20 9 A I do not recall.
 12:20 10 Q Do you recall anything else with respect to
 11 Exhibit 34?
 12:20 12 A No.
 12:20 13 MR. BOOZELL: For the record, it also includes
 14 an abstract on the back. Go ahead and look at the
 15 whole document before you answer.
 12:20 16 THE WITNESS: Pardon me.
 12:20 17 MR. BOOZELL: Whether you remember anything
 18 about the document.
 12:20 19 THE WITNESS: So the abstract in the back is the
 20 abstract, I believe -- I have not checked it word
 21 for word -- that you showed me previously, minus --
 22 with Alice Wang and Conrad added to it. And I have
 23 a note which I believe is in Mark Holodniy's on the
 24 bottom of page 000544 saying we have done this. And
 25 this is included as part of the information for the

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12:38 1 Q If I could -- start that one again. I have
2 handed you what has previously been marked as
3 Exhibit 46.
12:38 4 Would you please take look at Exhibit 46
5 and tell me if you recognize it?
12:38 6 A I do. I reviewed it with counsel
7 yesterday. But --
12:38 8 Q Do you --
12:38 9 A -- only in that sense.
12:38 10 Q Do you recall seeing Exhibit 46 prior to
11 your review yesterday?
12:38 12 A No. Excuse me. I review not having seen
13 it before yesterday.
12:38 14 Q And so let me just see if I'm clear then.
15 It's not that you recall one way or the other. You
16 don't believe that you saw it before yesterday?
12:39 17 A That's correct.
12:39 18 Q Are there any other documents that you
19 reviewed in connection with counsel that refreshed
20 your recollection that you can remember?
12:39 21 A I think we basically covered them.
12:39 22 Q Are there any others that you can remember?
12:39 23 A No.
12:39 24 MR. RODRIGUEZ: Subject to continuing document
25 issues, I have no further questions. Thank you for

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9 I, ERIC GROVES, do hereby declare under
10 penalty of perjury that I have read the foregoing
11 transcript; that I have made any corrections as appear
12 noted, in ink, initialed by me, or attached hereto; that
13 my testimony as contained herein, as corrected, is true
14 and correct.
15 EXECUTED this _____ day of _____,
16 20____, at _____,
(City) (State)
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ERIC GROVES

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1 your time.
12:39 2 MR. BOOZELL: Okay. And given the documents
3 that have been entered into the record in the
4 deposition and Dr. Groves's testimony, Roche would
5 like to designate the transcript as attorney's eyes
6 only, restricted -- highly restricted. And
7 Dr. Groves requests the opportunity to review his
8 transcript and make any changes before it becomes
9 final.
12:39 10 MR. RODRIGUEZ: Thank you for your time.
12:39 11 MR. BOOZELL: Thank you.
12:39 12 THE VIDEOGRAPHER: This concludes today's
13 deposition of Eric Groves. The number of media used
14 was two. We're going off the record. The time is
15 12:40 p.m.
12:40 16 (Deposition session concluded at 12:40
17 p.m.)
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1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF RIVERSIDE)
3
4 I, Brooke Silvas, Certified Shorthand Reporter,
5 Certificate No. 10988, for the State of California, hereby
6 certify:
7 I am the deposition officer that stenographically
8 recorded the testimony in the foregoing deposition;
9 Prior to being examined the deponent was first
10 duly sworn by me;
11 The foregoing transcript is a true record of the
12 testimony given;
13 Before completion of the deposition, review of the
14 transcript {X} was { } was not requested. If requested, any
15 changes made by the deponent (and provided to the reporter)
16 during the period allowed are appended hereto.
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18 Dated _____
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