

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF THE TRUSTEES OF
THE LELAND STANFORD JUNIOR
UNIVERSITY,

Plaintiff,

vs.

No. C-05-04158 MHP

ROCHE MOLECULAR SYSTEMS, INC.;
ROCHE DIAGNOSTICS CORPORATION;
ROCHE DIAGNOSTICS OPERATIONS,
INC.; ROCHE DIAGNOSTIC SYSTEMS,
INC.,

Defendants.

CERTIFIED
COPY

AND RELATED COUNTERCLAIM.

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VIDEOTAPED DEPOSITION OF THOMAS C. MERIGAN, M.D.

Palo Alto, California

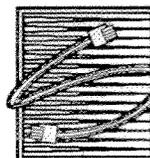
Monday, September 11, 2006

Volume 1

Reported by:
SUZANNE F. BOSCHETTI
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10:32:41 1 MR. RODRIGUEZ: Objection. The document
10:32:43 2 speaks for itself.

10:32:43 3 BY MR. STONE:

10:32:58 4 Q. And what was the subject matter generally of
10:33:00 5 the 1988 MTA you're referring to?

10:33:02 6 MR. RODRIGUEZ: Objection. The document
10:33:04 7 speaks for itself. Calls for a legal conclusion.

10:33:07 8 THE WITNESS: It -- it actually is pretty
10:33:09 9 vague because it doesn't have a specific set of
10:33:14 10 experiments that it refers to. But yet all the MTAs
10:33:20 11 I've done in the past usually are documented around a
10:33:26 12 specific set of experiments.

10:33:28 13 My memory and my sense of what was going on
10:33:32 14 from my papers and the information that I had was that
10:33:39 15 this MTA was directed toward allowing us to look at
10:33:49 16 virus in the blood of patients in an IL-2 study that
10:33:54 17 was partially supported by Cetus, but also the
10:33:57 18 National Institutes of Health.

10:34:07 19 BY MR. STONE:

10:34:08 20 Q. The semiquant work that you referred to, who
10:34:10 21 was doing that work at Cetus, to your knowledge?

10:34:13 22 A. I really can't remember. There were a number
10:34:15 23 of people that were in the HIV group at Cetus, but I
10:34:24 24 believe there was a woman who was most involved with
10:34:27 25 it, but I really dealt with her primarily through

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10:34:34 1 others, particularly, I think, Eric Groves.

10:34:38 2 Q. In connection with this work, did you have a
10:34:40 3 primary contact at Cetus?

10:34:44 4 A. I think I just said through Eric Groves.

10:34:46 5 Q. And I was wondering if he was your -- was --
10:34:49 6 was Dr. Groves your primary contact at Cetus?

10:34:52 7 A. It's really hard to be sure now these many
10:34:55 8 years later.

10:34:57 9 Q. The woman that you're referring to, was that
10:34:59 10 Sharon DeGroat?

10:35:00 11 A. No. Shirley Kwok, I believe.

10:35:22 12 Q. Let me show you what previously was marked as
10:35:48 13 Exhibit 29.

10:35:48 14 (Previously marked Exhibit 29 was
10:35:48 15 presented to the witness.)

10:35:48 16 BY MR. STONE:

10:36:08 17 Q. Dr. Merigan, do you recognize Exhibit 29?

10:36:12 18 A. Yes.

10:36:12 19 Q. Is this the MTA that you've been referring to?

10:36:15 20 A. I believe so.

10:36:23 21 Q. And is it your recollection that semiquant
10:36:31 22 work was done in connection with this MTA?

10:36:35 23 A. Yes.

10:36:37 24 Q. Who -- were you involved in discussions that
10:36:40 25 led to the drafting of this MTA?

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10:36:45 1

A. No.

10:36:47 2

Q. You had no discussions with anyone at Stanford or Cetus relating to the preparation of this MTA?

10:36:50 3

10:36:54 4

A. No. I think we had -- I had discussions with scientists and administrative people at Cetus to stimulate the work that was done under this MTA, and I believe the work had actually gone on even before this MTA. And it -- it was required by Cetus as kind of a last minute thing because we'd shipped the samples.

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10:37:43 12

The specimens maybe had been titrated or were in the midst of titration, and we couldn't get -- they didn't want to give the results unless we signed this MTA.

10:37:50 13

10:37:55 14

At -- at Stanford, you can see an administrative officer signed off on the MTA as well as myself, David Schwartz.

10:38:00 15

10:38:03 16

10:38:06 17

Q. Which scientists at Cetus did you have discussions with concerning Exhibit 29?

10:38:12 18

10:38:15 19

10:38:21 20

A. Well, I'm -- I'm sorry, but I can't tell all of them, but I know that Eric Groves and Shirley Kwok, I think, for two.

10:38:27 21

10:38:36 22

Q. Can you recall any others?

10:38:36 23

A. Not really.

10:38:37 24

10:38:39 25

Q. Not at all?

A. No. There may have been because it's a large group, and we were doing work for the National

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10:38:48 1 Institutes of Health in HIV in patients which actually
10:38:52 2 involved the FDA. And everyone was very interested in
10:38:59 3 whether, when we give patients IL-2, would we activate
10:39:07 4 the virus, not suppress the virus. And we were doing
10:39:11 5 the first experiments to give it in combination with
10:39:14 6 AZT.

10:39:15 7 So when no one really knew the outcome and
10:39:19 8 yet PCR had not been shown to be quantitative yet with
10:39:26 9 respect to measuring the virus, but it seemed logical
10:39:31 10 to send specimens to Cetus since they were involved in
10:39:35 11 this area. And we were -- felt it was in our
10:39:43 12 patients' best interests to find out whether the IL-2
10:39:47 13 was activating the virus or not.

10:39:51 14 Q. Is it your recollection that you didn't
10:39:53 15 receive any results from Cetus concerning that work
10:39:58 16 until after this was executed in February of 1989?

10:40:01 17 A. That's the way I remember it, yes.

10:40:07 18 Q. This MTA doesn't appear to reference IL-2.

10:40:12 19 Does that suggest to you that the MTA you're
10:40:16 20 recalling was a different MTA?

10:40:18 21 A. No. I think it was a generic MTA, not
10:40:27 22 really -- it was just to cover the work that they were
10:40:36 23 doing.

10:40:42 24 Q. And -- and when you say "generic," what do you
10:40:45 25 mean by that?

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10:40:48 1 A. Not one that specified exactly what samples
10:40:53 2 were being sent to Cetus.

10:41:01 3 Q. And the MTA covers materials being provided
10:41:06 4 from Cetus to Stanford, right?

10:41:10 5 MR. RODRIGUEZ: Objection. Calls for a legal
10:41:12 6 conclusion.

10:41:15 7 THE WITNESS: I don't know whether it did or
10:41:17 8 not.

10:41:18 9 BY MR. STONE:

10:41:18 10 Q. Prior to this MTA, had you ever entered into
10:41:23 11 another MTA with Cetus?

10:41:25 12 A. I don't believe so.

10:41:27 13 Q. Is it your recollection that there was only
10:41:30 14 one MTA between your group and Cetus?

10:41:35 15 A. That's the way I remember it. I actually
10:41:41 16 didn't remember this MTA, either.

10:41:45 17 Q. When did you first see this MTA, to your
10:41:48 18 recollection?

10:41:49 19 MR. RODRIGUEZ: You can just give a date, but
10:41:52 20 don't give additional details to the extent they
10:41:54 21 relate to attorney-client communications.

10:42:03 22 THE WITNESS: I believe in the last year.

10:42:03 23 BY MR. STONE:

10:42:06 24 Q. And you didn't see any other MTAs in
10:42:08 25 preparation for your testimony today?

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I, THOMAS C. MERIGAN, M.D., do hereby declare under penalty of perjury that I have read the foregoing transcript of my deposition; that I have made such corrections as noted herein, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this ____ day of _____, 20____, at _____, _____.

(City)

(State)


THOMAS C. MERIGAN, M.D.
Volume 1

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: SEP 14 2006



SUZANNE F. BOSCHETTI
CSR NO. 5111

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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VIDEOTAPED DEPOSITION OF THOMAS C. MERIGAN, M.D.

Palo Alto, California

Wednesday, September 13, 2006

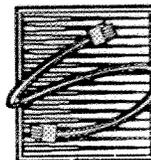
Volume 2

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11:07:30 1

A. No.

11:07:30 2

Q. And I take it this doesn't spark any

11:07:33 3

additional recollection concerning discussions that you

11:07:35 4

had with anyone at Stanford, including Drs. Holodniy or

11:07:38 5

Katzenstein or Kozal?

11:08:00 6

A. No.

11:09:31 7

Q. Let me show you what we're going to mark as

11:09:34 8

next in order. And I apologize, I only have one copy.

11:09:34 9

(Deposition Exhibit 357 marked by the

11:09:34 10

court reporter.)

11:09:34 11

BY MR. STONE:

11:10:15 12

Q. Dr. Merigan, do you recognize Exhibit 357?

11:10:18 13

A. Yes.

11:10:18 14

Q. What's Exhibit 357?

11:10:24 15

A. It's describing some material that we

11:10:28 16

received from Cetus. And Dr. Terry Basham and I did

11:10:41 17

some experiments with it, I believe.

11:10:43 18

Q. Do you actually remember this letter or do you

11:10:48 19

just recognize the form?

11:10:50 20

A. No, I see my signature on it, but I don't

11:10:53 21

remember it or else I would not have told you I

11:10:56 22

thought there were two -- two, now three.

11:10:59 23

Q. So this is a Material Transfer Agreement

11:11:01 24

between Cetus and Stanford?

11:11:05 25

MR. RODRIGUEZ: Objection. Lacks foundation.

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11:11:14 1 Calls for speculation.

11:11:16 2 THE WITNESS: Well, I have to read it. It's
11:11:17 3 a letter going along with material, and it is signed
11:11:27 4 by Stanford -- Stanford administrators as well as
11:11:34 5 myself. And I guess it is an MTA.

11:11:34 6 BY MR. STONE:

11:11:41 7 Q. The Stanford administrator who signed it,
11:11:44 8 who's that?

11:11:45 9 A. Elwood Pierce.

11:11:48 10 Q. And your signature -- and for the record,
11:11:52 11 Exhibit 357 is a two-page document bearing production
11:11:55 12 numbers RMS 64086 through 64087.

11:12:00 13 And your signature is on the second page at
11:12:04 14 the bottom there?

11:12:05 15 A. That's right.

11:12:05 16 Q. And this document is also signed by Jeffrey
11:12:08 17 Price at Cetus Corporation; is that right?

11:12:12 18 A. Yes.

11:12:12 19 Q. And did you have discussions with Jeffrey
11:12:14 20 Price concerning material transfer agreements?

11:12:21 21 A. I don't know that I did.

11:12:23 22 Q. Sitting -- sitting here today, can you recall
11:12:26 23 any discussions with Jeffrey Price?

11:12:27 24 A. Not at all. Not at all. No, I had several
11:12:29 25 discussions with Jeffrey Price, but it was about many

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11:12:32 1 things. And this was for immunologic work.
11:12:38 2 Dr. Basham is a cellular immunologist who worked in my
11:12:43 3 group, and she was interested in this recombinant
11:12:49 4 tumor necrosis factor. And I'm sure that I must have
11:12:55 5 called his office to ask if we could have it. And
11:12:59 6 when the material came, this letter came along with
11:13:02 7 it, and we appropriately filled it out and returned it
11:13:05 8 to Cetus.

11:13:08 9 Q. In your experience, Cetus wouldn't provide you
11:13:10 10 with materials without there being some agreement in
11:13:13 11 place; is that right?

11:13:13 12 MR. RODRIGUEZ: Objection. Mischaracterizes
11:13:15 13 testimony. Lacks foundation.

11:13:17 14 THE WITNESS: I can't remember, because
11:13:18 15 sometimes we had relationships with people where they
11:13:20 16 would give us things and didn't have a -- what do you
11:13:24 17 call it -- a Material Transfer Agreement in fact. So
11:13:28 18 it's a long time, and I -- I don't know.

11:13:28 19 BY MR. STONE:

11:13:32 20 Q. Sitting here today, are you aware of any
11:13:35 21 specific situation where you took proprietary materials
11:13:38 22 from Cetus without there being an agreement, without
11:13:41 23 there being some agreement relating to those materials?

11:13:43 24 A. I don't know --

11:13:44 25 MR. RODRIGUEZ: Objection. Vague.

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12:52:52 1

Exhibit 29.

12:53:29 2

A. Yeah.

12:53:31 3

12:53:38 4

Q. And that MTA was negotiated in connection with the collaboration that you engaged in with Cetus and Dr. Holodniy, correct?

12:53:42 5

12:53:43 6

12:53:50 7

12:53:54 8

12:53:57 9

A. Mm-hmm. No. No. I'm wrong. As I said, this -- I mean, you spoke to me -- I couldn't hear you because you were facing away. Can you repeat the question?

12:53:57 10

12:54:00 11

12:54:02 12

12:54:06 13

Q. Sure. This MTA, the one found in Exhibit 29, was negotiated with Cetus in connection with the collaboration that you engaged in with Cetus pursuant to which Dr. Holodniy went to Cetus, right?

12:54:09 14

12:54:13 15

A. No, I don't know that. I don't see Dr. Holodniy here listed.

12:54:14 16

12:54:18 17

12:54:24 18

Q. Well, pursuant to this MTA, wasn't Cetus going to provide your lab with materials, including primers and probes, for detecting HIV using PCR?

12:54:29 19

12:54:30 20

MR. RODRIGUEZ: Objection. Calls for a legal conclusion. The document speaks for itself.

12:54:34 21

12:54:36 22

12:54:39 23

12:54:43 24

12:54:49 25

THE WITNESS: I don't -- I really don't know what happened here, whether anything came from this or not. I don't know. But it appears to be that it was between myself and David Schwartz and not Mark Holodniy. That's really an important issue to me, is

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12:54:51 1 that I see no signature of Mark Holodniy here and I
12:54:56 2 don't see him listed in the agreement. So you're --
12:55:01 3 you're adding that out and I think you're wrong.

12:55:04 4 BY MR. STONE:

12:55:05 5 Q. Well, you don't really know one way or the
12:55:07 6 other?

12:55:08 7 A. No, I do know that it -- that this concerns
12:55:12 8 Schwartz and that the work that Cetus was interested
12:55:17 9 in most of all was the IL-2 work. And Schwartz was
12:55:23 10 involved in the IL-2 work, and we saw some reports
12:55:26 11 there. But this might have been an attempt to get
12:55:32 12 David Schwartz to start working on the work, and this
12:55:36 13 might be equipping him with material. But I don't
12:55:39 14 know whether any material ever came because I never
12:55:42 15 saw any results from it. And -- but that's -- that's
12:55:45 16 what this document's about. Not about Mark Holodniy,
12:55:49 17 even though you've tried to bring it in several times.

12:55:52 18 Q. Well, Dr. Merigan, in the -- in paragraph 2 on
12:55:58 19 the first page of Exhibit 29, it talks about certain
12:56:03 20 materials in section 2(a), including appropriate
12:56:07 21 primers and probes for the detection of HIV.

12:56:11 22 Do you see that?

12:56:11 23 A. Yeah.

12:56:12 24 Q. What PCR work did Dr. Schwartz do?

12:56:15 25 MR. RODRIGUEZ: Objection. Vague.

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12:56:17 1 THE WITNESS: I've got to say that I'm a
12:56:20 2 little suspicious that this -- this Material Transfer
12:56:25 3 Agreement was never fulfilled, that it -- it was
12:56:29 4 written to cover work that Schwartz would do, but
12:56:32 5 I'm -- since I've never seen -- I never saw a positive
12:56:38 6 work with Schwartz and it -- and there was nothing for
12:56:43 7 Mark to build on from Schwartz that it never took
12:56:43 8 place.

12:56:43 9

12:56:48 10 BY MR. STONE:

12:56:48 11 Q. What PCR work did Dr. Schwartz do in your lab?

12:56:53 12 A. As I say, I don't know that there was any.

12:56:56 13 But on the other hand, this document is cast to cover
12:57:02 14 work by Schwartz, not Holodniy.

12:57:04 15 Q. Isn't it cast to cover work by coworkers in
12:57:08 16 your lab?

12:57:08 17 A. No, it covers -- it covers me and Schwartz.
12:57:10 18 That's what it says and that's who signed it.

12:57:13 19 Q. If you look at paragraph 3, the second
12:57:15 20 sentence, it says:

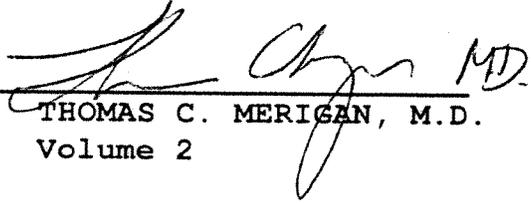
12:57:16 21 "During the course of this scientific
12:57:18 22 collaboration, Cetus contemplates providing
12:57:21 23 the scientist and his or her coworkers with
12:57:24 24 certain proprietary information relating to
12:57:27 25 PCR technology."

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I, THOMAS C. MERIGAN, M.D., do hereby declare under penalty of perjury that I have read the foregoing transcript of my deposition; that I have made such corrections as noted herein, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this ____ day of _____, 20____, at _____, _____.
(City) (State)


THOMAS C. MERIGAN, M.D.
Volume 2
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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: SEP 18 2006



SUZANNE F. BOSCHETTI
CSR NO. 5111