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1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF CALIFORNIA
 3 THE BOARD OF THE TRUSTEES OF
 4 THE LELAND STANFORD JUNIOR
 5 UNIVERSITY,
 6 Plaintiff,
 7 vs. No. C-05-04158 MHP
 8 ROCHE MOLECULAR SYSTEMS, INC.;
 9 ROCHE DIAGNOSTICS CORPORATION;
 10 ROCHE DIAGNOSTICS OPERATIONS,
 11 INC.; ROCHE DIAGNOSTIC SYSTEMS,
 12 INC.,
 13 Defendants.
 14
 15 AND RELATED COUNTERCLAIM.
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CONFIDENTIAL
 VIDEOTAPED DEPOSITION OF THOMAS C. MERIGAN, M.D.
 Palo Alto, California
 Monday, September 11, 2006
 Volume 1

Reported by:
 SUZANNE F. BOSCHETTI
 CSR No. 5111
 Job No. 3-52871

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 2
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 18
 19 Videotaped deposition of THOMAS C. MERIGAN,
 20 M.D., Volume 1, taken on behalf of Defendants and
 21 Counterclaimants Roche Molecular Systems, Inc., et
 22 al., at 5 Palo Alto Square, Palo Alto, California,
 23 beginning at 9:08 a.m. and ending at 1:01 p.m. on
 24 Monday, September 11, 2006, before SUZANNE F.
 25 BOSCHETTI, Certified Shorthand Reporter No. 5111.

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09:28:33 1 Q. The San Mateo group wasn't at Stanford.
 09:28:36 2 A. No, nobody else at Stanford.
 09:28:37 3 Q. Okay.
 09:28:38 4 A. Well, there's a little bit of a misnomer
 09:28:41 5 here. San Mateo had an affiliation with Stanford. So
 09:28:44 6 in the greater sense, San Mateo was a part of
 09:28:48 7 Stanford.
 09:28:50 8 Q. But -- okay. What was the nature of your
 09:28:59 9 contribution to the work that's reflected in the
 09:29:00 10 abstract?
 09:29:01 11 MR. RODRIGUEZ: Objection. Vague.
 09:29:06 12 THE WITNESS: I was the intellectual leader,
 09:29:10 13 the person that had the original idea, and supported
 09:29:14 14 the work on my grants and directed the work on an
 09:29:22 15 overall basis.
 09:29:27 16 BY MR. STONE:
 09:29:27 17 Q. What was the original idea that you're
 09:29:30 18 referring to?
 09:29:31 19 MR. RODRIGUEZ: Objection. Vague.
 09:29:37 20 THE WITNESS: That we could precisely
 09:29:38 21 quantitate HIV in the blood of patients.
 09:29:38 22 BY MR. STONE:
 09:29:54 23 Q. When did you come up with that idea?
 09:29:57 24 MR. RODRIGUEZ: Same objection. Objection.
 09:30:00 25 Vague.

09:31:47 1 THE WITNESS: Yes, I think it did.
 09:31:47 2 BY MR. STONE:
 09:31:49 3 Q. How did it evolve over time?
 09:31:51 4 MR. RODRIGUEZ: Same objection.
 09:31:58 5 THE WITNESS: HIV was still quite difficult
 09:32:00 6 to grow, even today, and therefore, precisely
 09:32:05 7 quantitating the virus takes new chemical methods.
 09:32:09 8 And they had to be more and more demanding in the
 09:32:15 9 sense of sensitivity and specificity.
 09:32:15 10 BY MR. STONE:
 09:32:21 11 Q. And did you communicate -- strike that.
 09:32:24 12 And did it further evolve over time, your
 09:32:27 13 idea?
 09:32:27 14 MR. RODRIGUEZ: Objection. Vague.
 09:32:30 15 THE WITNESS: Well, by 1989 and '90 we were
 09:32:35 16 working with chemical methods including PCR.
 09:32:53 17 BY MR. STONE:
 09:32:54 18 Q. And when you say "we were working with
 09:32:55 19 chemical methods including PCR," you're referring to
 09:32:59 20 people in your group at Stanford?
 09:33:01 21 A. That's correct.
 09:33:01 22 Q. And your group at Stanford, what was your
 09:33:04 23 group at Stanford in 1989, 1990?
 09:33:06 24 MR. RODRIGUEZ: Objection. Vague.
 09:33:10 25 THE WITNESS: Do you mean technicians?

09:30:02 1 THE WITNESS: Perhaps as early as 1984.
 09:30:02 2 BY MR. STONE:
 09:30:17 3 Q. How did you come up with that idea?
 09:30:19 4 A. Because I was working with other chronically
 09:30:22 5 infecting viruses where we needed chemical methods for
 09:30:26 6 detecting the virus.
 09:30:36 7 Q. Sitting here today, can you peg for me with
 09:30:38 8 any specificity exactly when you came up with this
 09:30:41 9 idea?
 09:30:45 10 A. I already said 1984. Is that precise enough?
 09:30:49 11 Q. Can you provide me any more specificity?
 09:30:52 12 A. I wrote an article that was in the Journal
 09:30:56 13 of -- New England Journal of Medicine. It was an
 09:31:00 14 editorial commenting on Robert Gallo's work at that
 09:31:04 15 time. And I suggested that there would be new
 09:31:07 16 diagnostic tests that would be important in treatment
 09:31:10 17 and management of HIV patients.
 09:31:14 18 Q. Did you identify any such new diagnostic tests
 09:31:18 19 in connection with that paper?
 09:31:19 20 A. No.
 09:31:23 21 Q. You just suggested that in the future there
 09:31:26 22 may be such tests?
 09:31:28 23 A. Had to be.
 09:31:39 24 Q. Did your idea evolve over time?
 09:31:42 25 MR. RODRIGUEZ: Objection. Vague.

09:33:12 1 Fellows? Faculty?
 09:33:14 2 BY MR. STONE:
 09:33:14 3 Q. Actually, just kind of backing up. What group
 09:33:17 4 were you in in 1989, 1990 at Stanford?
 09:33:20 5 A. I had been awarded two large grants from the
 09:33:24 6 National Institutes of Health by that time. One was
 09:33:26 7 to create the AIDS Clinical Trials Group at Stanford,
 09:33:30 8 which used new therapy on patients to try and control
 09:33:36 9 the infection. And I also had a center -- I directed
 09:33:42 10 a Center for AIDS research which involved other
 09:33:46 11 faculty at Stanford and myself in a number of
 09:33:52 12 immunologic and virologic and epidemiologic and
 09:33:57 13 clinical studies of HIV.
 09:34:01 14 Q. And you were also a professor at Stanford at
 09:34:04 15 this time?
 09:34:04 16 A. I have been a professor at Stanford for 44
 09:34:08 17 years.
 09:34:08 18 Q. So in 1989 to 1990, you were a professor at
 09:34:11 19 Stanford?
 09:34:11 20 A. Yes.
 09:34:11 21 Q. What were you a professor of at that time?
 09:34:17 22 A. Medicine and infectious disease.
 09:34:26 23 Q. Have you always been a professor of medicine
 09:34:29 24 and infectious disease at Stanford?
 09:34:31 25 A. That's --

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<p>09:34:31 1 MR. RODRIGUEZ: Objection. 09:34:32 2 THE WITNESS: -- correct. 09:34:32 3 MR. RODRIGUEZ: Vague. 09:34:32 4 BY MR. STONE: 09:34:33 5 Q. Were you also the director of the infectious 09:34:36 6 disease department at Stanford? 09:34:38 7 A. That's correct. 09:34:38 8 Q. When were you first the director of the 09:34:40 9 infectious disease department at Stanford? 09:34:42 10 A. I guess about 1966. 09:34:47 11 Q. When did you cease being the director of the 09:34:50 12 infectious disease department? 09:34:52 13 A. During the 1990s. 09:34:57 14 Q. Mid 1990s? 09:34:59 15 A. Yeah, I think so. 09:35:00 16 Q. Was there any reason why you stepped down from 09:35:03 17 that position? 09:35:05 18 A. Well, I was getting older, and I felt that 09:35:11 19 the division would profit from new leadership. 09:35:22 20 Q. When was the Center for AIDS Research started 09:35:28 21 at Stanford? 09:35:32 22 A. The work began about 1984, and the award 09:35:43 23 for -- from the NIH was, I think, in later 1980s. 09:35:54 24 Q. As a result of the award from the NIH, 09:35:58 25 Stanford was able to institute the Center for AIDS</p> <p style="text-align: right;">Page 25</p>	<p>09:37:37 1 therefore we just needed the physical facility in 09:37:41 2 which many more people could work in safety. And we 09:37:47 3 got it through two grants. 09:37:49 4 One grant was for an infrastructure grant 09:37:53 5 from the National Institutes of General Medical 09:37:56 6 Sciences, and the other was to the Allergy and 09:37:59 7 Infectious Disease Institute, which funded formally 09:38:02 8 about half the structure, including the area we had 09:38:05 9 for nurses and doctors as well as the laboratory 09:38:14 10 itself. 09:38:15 11 Q. So when -- when did the Center for AIDS 09:38:19 12 Research formally open its doors? 09:38:22 13 MR. RODRIGUEZ: Objection. Vague. 09:38:26 14 THE WITNESS: It never -- it -- it had to 09:38:27 15 begin only partially completed facilities. 09:38:34 16 Fortunately, the dermatology department had additional 09:38:38 17 space for us, and David Schwartz was working there. 09:38:40 18 And we used some of the clinical facilities of the 09:38:43 19 hospital. 09:38:44 20 And then we began to move them over into the 09:38:49 21 S10 -- 1 -- 156 general area, the first floor of the 09:38:58 22 Grant Building. And that's where both -- we were 09:39:00 23 adjacent to the Clinical Research Center and could use 09:39:03 24 their facilities for management of the patients, but 09:39:07 25 we also had places for our nurses and doctors who were</p> <p style="text-align: right;">Page 27</p>
<p>09:35:58 1 Research? 09:36:02 2 A. No -- 09:36:02 3 MR. RODRIGUEZ: Objection. Mischaracterizes 09:36:04 4 the testimony. 09:36:05 5 THE WITNESS: No. I said that we started in 09:36:08 6 1984 with several different investigators working 09:36:14 7 together to functionally be a center, but the funding 09:36:21 8 didn't -- the funding came because we had a 09:36:24 9 preexisting relationship that would be promising for 09:36:31 10 working on HIV. 09:36:31 11 BY MR. STONE: 09:36:34 12 Q. Was the Center for AIDS Research formally 09:36:38 13 created in 1984? 09:36:39 14 A. No. It had a physical structure that took 09:36:43 15 place about 1987, '88, I believe. 09:36:48 16 Q. When you say "physical structure," what do you 09:36:50 17 mean? 09:36:51 18 A. Well, we got grants from the National 09:36:58 19 Institutes of Health to both renovate the structure we 09:37:02 20 had to make it safer for managing viruses. At that 09:37:07 21 time, most every pharmaceutical country -- company in 09:37:11 22 the country wasn't really able to work with HIV. They 09:37:15 23 had fears, and it took a biohazard facility to do it. 09:37:27 24 And we had experience with working with hazardous 09:37:32 25 viruses demand from our clinical laboratory, and</p> <p style="text-align: right;">Page 26</p>	<p>09:39:10 1 doing these controlled trials. And in very close 09:39:15 2 apposition was the research labs where there was 09:39:19 3 sufficient biohazard arrangement to allow personnel to 09:39:24 4 work. 09:39:25 5 BY MR. STONE: 09:39:25 6 Q. You mentioned that it opened when all of the 09:39:29 7 infrastructure wasn't entirely complete. 09:39:32 8 What time frame are you speaking about there? 09:39:34 9 A. That's when David Schwartz came. It was 09:39:41 10 1985, '86. 09:39:48 11 Q. And the infrastructure grant that was received 09:39:51 12 from NIH, when was that work done? 09:39:53 13 A. It wasn't work. You mean physical work? 09:39:56 14 Q. Yes. 09:39:57 15 A. I can't place it precisely. As I say, it was 09:40:02 16 in the late 1980s. 09:40:04 17 Q. Did it carry over into the 1990s? 09:40:07 18 A. I don't know. Some things -- as you know, 09:40:11 19 any physical development can take time and might have 09:40:16 20 served our purposes partially but then was improved 09:40:19 21 even with time. So I think the grant might have been 09:40:22 22 extended an extra six months or a year to help us 09:40:27 23 because, of course, there were also state and local 09:40:33 24 laws to be dealt with about being sure we had the 09:40:37 25 right protective environment.</p> <p style="text-align: right;">Page 28</p>

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09:46:39 1 THE WITNESS: Maybe a little earlier. Maybe
 09:46:40 2 around 1986.
 09:46:40 3 BY MR. STONE:
 09:46:50 4 Q. What was the nature of the work that the AIDS
 09:46:53 5 Clinical Trials Group did at Stanford?
 09:46:54 6 A. It was a nationally organized group where we
 09:47:00 7 took part in trials that were either senior center or
 09:47:05 8 multicenter. And the members of the group defined the
 09:47:17 9 specific protocols.
 09:47:22 10 Q. How long did the AIDS Clinical Trials Group
 09:47:26 11 work continue at Stanford?
 09:47:28 12 A. It is still active now.
 09:47:31 13 Q. Was there someone at Stanford who was
 09:47:36 14 primarily responsible for the work of the AIDS Clinical
 09:47:40 15 Trials Group at Stanford?
 09:47:41 16 A. I was.
 09:47:42 17 Q. Did you have a title in connection with that?
 09:47:49 18 A. I was the principal investigator.
 09:47:52 19 Q. Did you have a title in connection with the
 09:47:54 20 work that you did for the Center for AIDS Research?
 09:47:56 21 A. I was the director of the Center for AIDS
 09:48:19 22 Research.
 09:48:19 23 Q. The idea that you had about quantitating HIV,
 09:48:30 24 did you ever document the evolution of your idea?
 09:48:34 25 MR. RODRIGUEZ: Objection. Vague.

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09:49:51 1 Q. You mentioned that you reviewed lab notebooks
 09:49:54 2 in preparation for your testimony today that refreshed
 09:49:57 3 your recollection; is that correct?
 09:49:59 4 A. Yes.
 09:49:59 5 Q. Which lab notebooks did you review?
 09:50:02 6 A. Mark Holodniy's lab notebook, but it was not
 09:50:08 7 a thorough going. It was really a pre -- a more
 09:50:13 8 focused one.
 09:50:15 9 Q. What -- what do you mean by that?
 09:50:17 10 MR. RODRIGUEZ: And I just want to caution
 09:50:19 11 you not reveal any attorney-client communications.
 09:50:22 12 You can talk about how you personally looked at the --
 09:50:25 13 the lab notebooks but not reveal any attorney-client
 09:50:29 14 communications.
 09:50:32 15 THE WITNESS: Since it actually was done in
 09:50:34 16 the presence of attorneys, I'm not sure that it isn't
 09:50:39 17 completely covered by the attorney-client privilege.
 09:50:43 18 MR. RODRIGUEZ: Well, I'm going to object
 09:50:44 19 then on the basis of calling for attorney-client
 09:50:47 20 privilege and instruct you not to answer. We can
 09:50:49 21 discuss that off-line to determine if there's an
 09:50:51 22 answer that you can provide.
 09:50:55 23 BY MR. STONE:
 09:50:55 24 Q. Well, which portions of Dr. Holodniy's lab
 09:50:58 25 notebooks refreshed your recollection?

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09:48:35 1 Mischaracterizes testimony.
 09:48:42 2 THE WITNESS: I -- that's a -- a rather, for
 09:48:45 3 me, diffuse question. I think you need to be more
 09:48:48 4 specific.
 09:48:49 5 BY MR. STONE:
 09:48:49 6 Q. Well, you mentioned this idea that you had and
 09:48:52 7 that your idea had evolved over time. And I'm
 09:48:55 8 wondering if you did anything over the time that your
 09:48:58 9 idea was evolving to document that?
 09:49:01 10 MR. RODRIGUEZ: Objection. Vague.
 09:49:03 11 THE WITNESS: We wrote papers. We wrote
 09:49:07 12 abstracts. We had conversations with the national
 09:49:16 13 group.
 09:49:16 14 BY MR. STONE:
 09:49:23 15 Q. Did you maintain any internal Stanford
 09:49:28 16 writings relating to that?
 09:49:32 17 A. I don't believe so.
 09:49:33 18 Q. Did you ever maintain a lab notebook?
 09:49:38 19 A. People who worked for me did.
 09:49:40 20 Q. Right. And my question is, did you ever
 09:49:42 21 maintain a lab notebook?
 09:49:44 22 A. No.
 09:49:44 23 Q. So there wouldn't be a lab notebook that would
 09:49:48 24 reflect the evolution of this idea?
 09:49:51 25 A. No.

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09:51:00 1 A. You're just repeating the same question that
 09:51:02 2 we can't -- chose not to answer.
 09:51:04 3 Q. Well, you actually can answer that because if
 09:51:07 4 it refreshed your recollection, I'm entitled to
 09:51:10 5 understand that.
 09:51:10 6 MR. RODRIGUEZ: You -- you can state -- if
 09:51:11 7 there was a particular portion that you have a
 09:51:13 8 specific recollection of, then you can state that.
 09:51:18 9 THE WITNESS: Well, I was specifically
 09:51:22 10 looking at the timing of the work at Stanford compared
 09:51:25 11 to the timing of the work at --
 09:51:26 12 MR. RODRIGUEZ: Actually, let me -- let me
 09:51:27 13 stop you right there. So the question is, is there --
 09:51:30 14 MR. STONE: No, no, no, no. And -- and
 09:51:32 15 Counsel, I mean, he's providing an answer --
 09:51:33 16 MR. RODRIGUEZ: Then I'm going to object --
 09:51:34 17 MR. STONE: On what grounds?
 09:51:35 18 MR. RODRIGUEZ: -- on the basis of
 09:51:36 19 attorney-client privilege, and I'm going to instruct
 09:51:38 20 you not to answer.
 09:51:38 21 THE WITNESS: Thank you.
 09:51:40 22 MR. RODRIGUEZ: Now -- why don't you just ask
 09:51:41 23 your next question.
 09:51:42 24 MR. STONE: No.
 09:51:43 25 Could you restate the question, please.

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<p>10:27:16 1 MR. RODRIGUEZ: Objection. Vague. 10:27:20 2 THE WITNESS: I had a chance to review the 10:27:22 3 material transfer agreement. 10:27:26 4 BY MR. STONE: 10:27:26 5 Q. Did you do anything else? 10:27:29 6 MR. RODRIGUEZ: And I'll just caution you not 10:27:31 7 to reveal any attorney-client communications. 10:27:34 8 THE WITNESS: Well, I certainly thought about 10:27:36 9 all the events of those times. 10:27:36 10 BY MR. STONE: 10:27:38 11 Q. But having not seen this document prior to 10:27:44 12 today, I take it you didn't do anything else 10:27:46 13 specifically to prepare for this topic? 10:27:48 14 MR. RODRIGUEZ: Objection. Mischaracterizes 10:27:51 15 the testimony. 10:27:52 16 THE WITNESS: Well, it seems to me that this 10:27:54 17 is a pivotal document that I had to think about. 10:27:54 18 BY MR. STONE: 10:28:03 19 Q. Did you speak to anyone prior to today other 10:28:05 20 than your counsel to prepare for testifying concerning 10:28:09 21 area of inquiry No. 7? 10:28:11 22 A. No. 10:28:14 23 Q. Other than looking at the MTA, did you look at 10:28:17 24 any other documents to prepare? 10:28:21 25 A. Oh, I had to think about all the things we</p> <p style="text-align: right;">Page 57</p>	<p>10:29:33 1 THE WITNESS: Certainly aspects of it. I saw 10:29:37 2 tables and figures and discussed next strategies. 10:29:37 3 BY MR. STONE: 10:29:43 4 Q. You did that back in the 1989, 1990 time 10:29:49 5 frame? 10:29:50 6 A. Yes. 10:29:50 7 Q. Did you know Sohini Sengupta? 10:29:57 8 A. Sure. I do know her. 10:29:59 9 Q. And did you have a practice of reviewing her 10:30:02 10 lab notebook at the time that she was working with 10:30:06 11 Dr. Holodniy? 10:30:07 12 A. No, I didn't. 10:30:11 13 Q. Did you have a practice of reviewing 10:30:13 14 Dr. Katzenstein's lab notebook while he was working 10:30:17 15 with you back in the late '80s, early '90s? 10:30:24 16 A. I don't think he had lab notebooks. But on 10:30:27 17 the other hand, I discussed with him and Sohini the 10:30:33 18 data as it was occurring. It's that I haven't 10:30:39 19 precisely been over the day-to-day lab notes. 10:30:45 20 Q. You didn't review Dr. Sengupta's lab notebooks 10:30:50 21 in preparation for your testimony concerning topic 10:30:53 22 No. 7, did you? 10:30:54 23 A. No. 10:30:54 24 Q. And you didn't review all the volumes of 10:30:57 25 Dr. Holodniy's lab notebooks in preparing for your</p> <p style="text-align: right;">Page 59</p>
<p>10:28:26 1 talked about several minutes ago in order to think 10:28:32 2 about the events of that time. 10:28:34 3 Q. So -- so what did you think about? 10:28:37 4 MR. RODRIGUEZ: And I'll just caution you 10:28:39 5 again not to reveal any attorney-client 10:28:41 6 communications. 10:28:41 7 THE WITNESS: As I said, papers, letters, and 10:28:50 8 so forth. 10:28:50 9 BY MR. STONE: 10:28:51 10 Q. And maybe you misunderstood my question. You 10:28:53 11 said you had to think about it, and I was wondering 10:28:55 12 what you thought about. 10:28:56 13 MR. RODRIGUEZ: Objection. Vague. Asked and 10:28:57 14 answered. 10:29:01 15 THE WITNESS: I had to -- 10:29:03 16 BY MR. STONE: 10:29:04 17 Q. Please. Go ahead. 10:29:05 18 A. I had to think about the events of that time. 10:29:08 19 Place myself back in those days and read the letters 10:29:12 20 and look at the documents and consider what exactly 10:29:18 21 happened. 10:29:19 22 Q. In connection with the work that you did with 10:29:23 23 Dr. Holodniy, was it your practice, while he was 10:29:26 24 working for you, to review his lab notebook? 10:29:31 25 MR. RODRIGUEZ: Objection. Vague.</p> <p style="text-align: right;">Page 58</p>	<p>10:30:59 1 testimony concerning topic No. 7, did you? 10:31:02 2 A. No. 10:31:13 3 Q. So what work was performed in connection with 10:31:16 4 the 1988 materials transfer agreement? 10:31:19 5 MR. RODRIGUEZ: Objection. Vague. 10:31:21 6 THE WITNESS: Well, only -- only work at 10:31:31 7 Stanford where we drew blood from patients undergoing 10:31:37 8 trials in preparation for studying them at Cetus and 10:31:44 9 perhaps at Stanford as well. 10:31:44 10 BY MR. STONE: 10:31:53 11 Q. Is that the entirety of work was that 10:31:55 12 performed in connection with the 1988 MTA, to your 10:31:58 13 knowledge? 10:31:58 14 A. Yes. 10:31:58 15 Q. Was any PCR work performed in connection with 10:32:01 16 that MTA? 10:32:02 17 A. Yes. There was some work done at Cetus. 10:32:04 18 Q. What was the nature of that work? 10:32:07 19 A. It was a semiquantitative analysis of blood 10:32:12 20 virus. 10:32:16 21 Q. This 1988 MTA that is referred to here was an 10:32:23 22 '88 MTA that was signed on -- it was signed in February 10:32:37 23 of 1989. 10:32:39 24 Is that the MTA that you're referring to? 10:32:41 25 A. Yes.</p> <p style="text-align: right;">Page 60</p>

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<p>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</p> <p style="text-align: right;">Page 61</p>	<p>10:36:45 1 A. No. 10:36:47 2 Q. You had no discussions with anyone at Stanford 10:36:50 3 or Cetus relating to the preparation of this MTA? 10:36:54 4 A. No. I think we had -- I had discussions with 10:36:57 5 scientists and administrative people at Cetus to 10:37:09 6 stimulate the work that was done under this MTA, and I 10:37:19 7 believe the work had actually gone on even before this 10:37:21 8 MTA. And it -- it was required by Cetus as kind of a 10:37:30 9 last minute thing because we'd shipped the samples. 10:37:35 10 The specimens maybe had been titrated or were in the 10:37:39 11 midst of titration, and we couldn't get -- they didn't 10:37:43 12 want to give the results unless we signed this MTA. 10:37:50 13 At -- at Stanford, you can see an 10:37:55 14 administrative officer signed off on the MTA as well 10:38:00 15 as myself, David Schwartz. 10:38:03 16 Q. Which scientists at Cetus did you have 10:38:06 17 discussions with concerning Exhibit 29? 10:38:12 18 A. Well, I'm -- I'm sorry, but I can't tell all 10:38:15 19 of them, but I know that Eric Groves and Shirley Kwok, 10:38:21 20 I think, for two. 10:38:27 21 Q. Can you recall any others? 10:38:36 22 A. Not really. 10:38:36 23 Q. Not at all? 10:38:37 24 A. No. There may have been because it's a large 10:38:39 25 group, and we were doing work for the National</p> <p style="text-align: right;">Page 63</p>
<p>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?</p> <p style="text-align: right;">Page 62</p>	<p>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?</p> <p style="text-align: right;">Page 64</p>

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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?

10:43:20 1 specifically one way or the other what materials were
 10:43:22 2 provided to people at Stanford in connection with this
 10:43:26 3 MTA?
 10:43:28 4 MR. RODRIGUEZ: Objection. Mischaracterizes
 10:43:30 5 the testimony.
 10:43:31 6 THE WITNESS: I didn't say there were any
 10:43:32 7 specimens -- anything provided to the people at
 10:43:37 8 Stanford.
 10:43:37 9 BY MR. STONE:
 10:43:39 10 Q. Right. And -- and my question is, you don't
 10:43:42 11 really recall one way or the other whether or not
 10:43:44 12 materials were provided to Stanford under this MTA,
 10:43:47 13 right?
 10:43:47 14 MR. RODRIGUEZ: Same -- same objection and
 10:43:49 15 asked and answered.
 10:43:50 16 THE WITNESS: I -- I -- yes. I have already
 10:43:52 17 answered that question.
 10:43:52 18 BY MR. STONE:
 10:43:54 19 Q. Right. And my question is, sitting here
 10:43:57 20 today, though, you don't recall one way or the other
 10:44:00 21 whether or not materials were provided to Stanford in
 10:44:03 22 connection with this MTA?
 10:44:04 23 MR. RODRIGUEZ: Objection. Asked and
 10:44:05 24 answered. Mischaracterizes the testimony.
 10:44:08 25 THE WITNESS: I have not -- I do not believe

10:42:10 1 A. No.
 10:42:10 2 Q. That is your signature on the last page of
 10:42:14 3 Exhibit 29?
 10:42:19 4 A. Yes.
 10:42:19 5 Q. Do you know if any materials were provided to
 10:42:22 6 Stanford pursuant to this MTA?
 10:42:26 7 A. I don't believe so.
 10:42:27 8 Q. But you don't really have a recollection one
 10:42:29 9 way or the other, do you?
 10:42:30 10 MR. RODRIGUEZ: Objection. Mischaracterizes
 10:42:32 11 the testimony.
 10:42:33 12 THE WITNESS: No, since all I knew there was
 10:42:35 13 work at Cetus, not work at Stanford at this point.
 10:42:35 14 BY MR. STONE:
 10:42:41 15 Q. And until this -- and until the last year when
 10:42:44 16 you saw this again, you didn't even remember that there
 10:42:46 17 had been an MTA between Stanford and Cetus, right?
 10:42:49 18 MR. RODRIGUEZ: Objection. Mischaracterizes
 10:42:52 19 the testimony.
 10:42:53 20 THE WITNESS: I -- I -- I don't remember all
 10:42:59 21 the things that happened then, but I do remember that,
 10:43:07 22 after seeing this, it was relevant to the specimens
 10:43:15 23 taken at Stanford.
 10:43:15 24 BY MR. STONE:
 10:43:18 25 Q. But sitting here today, you can't recall

10:44:12 1 this was relevant to any materials provided at
 10:44:17 2 Stanford.
 10:44:17 3 BY MR. STONE:
 10:44:19 4 Q. Do you know whether or not materials were
 10:44:21 5 provided to Stanford under this MTA, Exhibit 29?
 10:44:25 6 A. I said I do not believe there were any --
 10:44:28 7 anything provided to Stanford from this.
 10:44:31 8 Q. Right. Do you know?
 10:44:32 9 A. Yes.
 10:44:32 10 MR. RODRIGUEZ: Same objection. Asked and
 10:44:34 11 answered.
 10:44:34 12 BY MR. STONE:
 10:44:35 13 Q. And so your testimony is there weren't
 10:44:37 14 materials provided under this MTA?
 10:44:39 15 A. I believe there was not, yes.
 10:44:40 16 Q. Do you have any records that would reflect
 10:44:42 17 that?
 10:44:43 18 MR. RODRIGUEZ: Objection. Vague.
 10:44:48 19 THE WITNESS: What sort of records?
 10:44:50 20 BY MR. STONE:
 10:44:50 21 Q. Any records.
 10:44:51 22 MR. RODRIGUEZ: Same objection.
 10:44:53 23 THE WITNESS: Only the knowledge of what I
 10:44:55 24 said we had relevant to preparing for the deposition.
 10:44:55 25 BY MR. STONE:

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<p>10:45:02 1 Q. And did those records reflect that no 10:45:04 2 materials were transferred? 10:45:06 3 A. Yes -- 10:45:07 4 MR. RODRIGUEZ: Objection. Vague. 10:45:08 5 THE WITNESS: Yes, because there was no work 10:45:10 6 at Stanford from materials provided at that time. 10:45:10 7 BY MR. STONE: 10:45:17 8 Q. Dr. Holodniy didn't bring materials from Cetus 10:45:19 9 to Stanford? 10:45:20 10 MR. RODRIGUEZ: Objection. Calls for 10:45:21 11 speculation. Lacks foundation. 10:45:23 12 THE WITNESS: Dr. Holodniy is not involved in 10:45:25 13 this MTA. 10:45:25 14 BY MR. STONE: 10:45:27 15 Q. That's your testimony? 10:45:28 16 A. Yes. 10:45:28 17 Q. How do you know that? 10:45:30 18 A. Because his name -- he's not the signatory to 10:45:33 19 it. 10:45:34 20 Q. Dr. Holodniy wasn't working for you in late 10:45:36 21 1988? 10:45:38 22 A. I said he was not a signatory to it. He did 10:45:41 23 not -- it did not cover his work. 10:45:46 24 Q. Did you ever discuss your belief that this MTA 10:45:50 25 did not cover Dr. Holodniy with anyone at Cetus?</p> <p style="text-align: right;">Page 69</p>	<p>10:47:03 1 for you. 10:47:07 2 THE WITNESS: He was a clinical and research 10:47:09 3 trainee under me. I brought him to Stanford. I 10:47:12 4 provided him the grant support that supported him at 10:47:17 5 Stanford. And he was working both in my laboratory -- 10:47:25 6 he came to be working at Cetus, and I can't give you 10:47:29 7 the exact day he worked there, but Cetus had him as a 10:47:35 8 guest in their laboratory for a period of time. 10:47:38 9 And then he stopped working at Cetus when it 10:47:42 10 became -- when, in fact, he didn't need their help. 10:47:47 11 And he was taking specimens from Stanford again to 10:47:51 12 look at the virus levels. 10:47:55 13 But again, I think it was during 1988, '89, 10:47:59 14 '90 that he was a postdoctoral fellow, but, again, 10:48:04 15 without his -- without his laboratory notebook or 10:48:07 16 specifics, I can't go further. 10:48:07 17 BY MR. STONE: 10:48:10 18 Q. You directed Dr. Holodniy to go to Cetus? 10:48:13 19 MR. RODRIGUEZ: Objection. Vague as to 10:48:16 20 "directed." 10:48:17 21 THE WITNESS: Well, he went there because I 10:48:21 22 arranged it. 10:48:23 23 BY MR. STONE: 10:48:23 24 Q. And you arranged it so that he could learn 10:48:25 25 techniques related to PCR, right?</p> <p style="text-align: right;">Page 71</p>
<p>10:45:55 1 A. Not that I remember. 10:45:56 2 Q. Did you ever discuss that with anyone at 10:45:59 3 Stanford? 10:46:00 4 A. Not that I remember. 10:46:02 5 Q. Was Dr. Holodniy working for you in December 10:46:15 6 of 1988? 10:46:16 7 MR. RODRIGUEZ: Objection. Vague as to 10:46:17 8 "working for you." 10:46:21 9 THE WITNESS: I think so. But that would be 10:46:25 10 reflected in his lab notebooks. 10:46:25 11 BY MR. STONE: 10:46:27 12 Q. What kind of work was he doing then? 10:46:30 13 MR. RODRIGUEZ: Same objection. 10:46:36 14 THE WITNESS: Again, I don't have his lab 10:46:38 15 notebooks, so I can't answer that question. 10:46:38 16 BY MR. STONE: 10:46:41 17 Q. You don't know what kind of work Dr. Holodniy 10:46:44 18 was doing then? 10:46:44 19 A. It's just you want a precise answer, and I 10:46:47 20 want to give -- give you a precise answer, but I can't 10:46:50 21 do it without looking at the specific notes to cover 10:46:53 22 the specific window of time you're interested in. 10:46:57 23 Q. What kind of work was he doing in 1988 for 10:47:00 24 you? 10:47:01 25 MR. RODRIGUEZ: Objection. As to work doing</p> <p style="text-align: right;">Page 70</p>	<p>10:48:27 1 MR. RODRIGUEZ: Objection. Vague. 10:48:29 2 THE WITNESS: I think he'd already started 10:48:31 3 some PCR work himself. And I thought it was maybe '89 10:48:37 4 when he started it, but I could be precise about the 10:48:41 5 date when I looked at his laboratory notebook. And 10:48:53 6 he -- we thought that it would be good for him to work 10:48:58 7 with somebody else who'd done it because it might be a 10:49:03 8 faster road to getting the work going in our group. 10:49:11 9 There were people around the country in other 10:49:13 10 regions working on it, but I thought he -- I thought 10:49:18 11 it would be, in fact, to Cetus's advantage as well as 10:49:23 12 ours to have him trained. I'd seen their work, and it 10:49:29 13 was only semiquantitative response they were 10:49:34 14 documenting. And we knew we needed a very precise 10:49:39 15 quantitative assay and that we had to do that because 10:49:46 16 there wasn't really much interest at Cetus at that 10:49:52 17 time on a precise quantitative assay. 10:49:55 18 BY MR. STONE: 10:49:55 19 Q. And you couldn't do that on your own, and 10:49:57 20 that's why you sent Dr. Holodniy to Cetus? 10:49:59 21 A. No. 10:49:59 22 MR. RODRIGUEZ: Objection. Mischaracterizes 10:50:01 23 the testimony. 10:50:01 24 THE WITNESS: I think it was really a 10:50:02 25 question of -- in a situation where there was a</p> <p style="text-align: right;">Page 72</p>

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<p>10:50:05 1 worldwide epidemic occurring. We had the specimens, 10:50:12 2 and we could get to a working methods fastest if we 10:50:18 3 got some help from people who'd already worked in that 10:50:22 4 area from the standpoint of basic science and not 10:50:26 5 clinical science. They had that capability developed. 10:50:39 6 And because they were close, we thought it might be -- 10:50:47 7 and he could still work at home, live at home, it was 10:50:52 8 simplest to start out with him. 10:50:53 9 BY MR. STONE: 10:50:54 10 Q. Well, you also had a lengthy history with 10:50:56 11 Cetus, didn't you? 10:50:57 12 MR. RODRIGUEZ: Objection. Vague. 10:50:58 13 THE WITNESS: Oh, yes. I had -- I was on the 10:51:01 14 original Cetus board of directors, scientific board. 10:51:01 15 BY MR. STONE: 10:51:06 16 Q. And at the time you sent Dr. Holodniy to 10:51:09 17 Cetus, you were a consultant at Cetus, were you not? 10:51:12 18 MR. RODRIGUEZ: Objection. Mischaracterizes 10:51:13 19 the testimony as to "sent." 10:51:16 20 THE WITNESS: Yes, I was, but I was working 10:51:18 21 on another area, HIV and cancer. I'm sorry. IL-2 and 10:51:26 22 cancer. 10:51:27 23 BY MR. STONE: 10:51:27 24 Q. You did also work, though, with IL-2 and HIV 10:51:31 25 in connection with your efforts at Cetus, did you not?</p>	<p>10:52:34 1 that correct? 10:52:34 2 A. Thank you. Yes. 10:52:36 3 Q. How did Dr. Holodniy first become exposed to 10:52:41 4 PCR? 10:52:41 5 MR. RODRIGUEZ: Objection. Calls for 10:52:42 6 speculation. 10:52:46 7 THE WITNESS: There were people at Stanford 10:52:48 8 doing PCR. It was a widespread technique. We'd, in 10:52:55 9 fact, ordered our first PCR machine, I think, before 10:52:58 10 he came. 10:52:58 11 BY MR. STONE: 10:53:02 12 Q. Do you know if it was before he came? 10:53:04 13 MR. RODRIGUEZ: Objection. Vague. 10:53:06 14 THE WITNESS: I think so. Yeah. I think I 10:53:08 15 did -- I think it was before he came. 10:53:10 16 BY MR. STONE: 10:53:10 17 Q. When was it ordered? 10:53:14 18 A. '87 or '88, right in there. 10:53:18 19 Q. Who ordered it? 10:53:20 20 A. I did. 10:53:23 21 Q. How did you do that? 10:53:26 22 A. Had my secretary prepare a purchase order. 10:53:30 23 Q. And you signed it on behalf -- 10:53:32 24 A. Yeah. 10:53:32 25 Q. -- of Stanford?</p>
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<p>10:51:34 1 A. No, I don't believe so. I think the -- I 10:51:37 2 mentioned IL-2 in clinical studies, and we were 10:51:43 3 interested in Cetus helping us determine whether there 10:51:47 4 was a chance we were activating the virus. 10:51:50 5 Q. Did Cetus provide you with IL-2 in connection 10:51:53 6 with HIV clinical studies? 10:51:57 7 A. No. I believe they -- it went through the 10:51:59 8 National Institutes of Health. 10:52:03 9 Q. At the time Dr. Holodniy joined your group and 10:52:07 10 began working for you, what experience did he have with 10:52:10 11 PCR? 10:52:11 12 MR. RODRIGUEZ: Objection. Calls for 10:52:12 13 speculation. 10:52:15 14 THE WITNESS: He had no ex- -- no direct 10:52:17 15 experience, but he had worked in relevant molecular 10:52:21 16 biology. 10:52:21 17 BY MR. STONE: 10:52:21 18 Q. What relevant molecular biology? 10:52:24 19 MR. RODRIGUEZ: Objection. Calls for 10:52:25 20 speculation. 10:52:25 21 THE WITNESS: At this time I can't remember. 10:52:29 22 BY MR. STONE: 10:52:29 23 Q. Sitting here today, you don't know? 10:52:30 24 A. I can't remember. 10:52:31 25 Q. Sitting here today, you can't remember; is</p>	<p>10:53:33 1 MR. RODRIGUEZ: Objection. Calls for a legal 10:53:34 2 conclusion. 10:53:37 3 THE WITNESS: I don't sign purchase orders. 10:53:39 4 The university signs purchase orders on my behalf. 10:53:39 5 BY MR. STONE: 10:53:45 6 Q. So you would have signed it, Thomas Merigan, 10:53:48 7 right? 10:53:49 8 A. I don't think I signed even -- at any time, I 10:53:53 9 didn't have to sign for everything. I could prepare 10:53:56 10 the material, and then -- prepare the specifications 10:54:00 11 and what we were wanting when, and then the university 10:54:04 12 processed my order if I had the funds to support it. 10:54:09 13 Q. So can you provide me with the month and year 10:54:13 14 when you ordered the PCR equipment? 10:54:18 15 MR. RODRIGUEZ: Objection. Vague. 10:54:24 16 THE WITNESS: It's my understanding you 10:54:26 17 already have been provided with it from my attorneys. 10:54:26 18 BY MR. STONE: 10:54:30 19 Q. I'm asking you, sir. 10:54:32 20 MR. RODRIGUEZ: Objection. Argumentative. 10:54:34 21 THE WITNESS: Yes, I don't understand what 10:54:37 22 you mean. 10:54:37 23 BY MR. STONE: 10:54:38 24 Q. Please provide me with the month and year when 10:54:40 25 you submitted the purchase order for the PCR equipment.</p>
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11:10:51 1 Q. Did anyone at Stanford teach Dr. Holodniy how
 11:10:55 2 to run the PCR equipment that was in the lab?
 11:10:57 3 MR. RODRIGUEZ: Objection. Calls for
 11:10:58 4 speculation.
 11:11:04 5 THE WITNESS: I -- I can't remember that.
 11:11:08 6 I -- I don't think so, no. I think it was up to him
 11:11:14 7 and his understanding of the methodology. He was
 11:11:18 8 really pioneering that work for us.
 11:11:30 9 MR. STONE: Let's go off the record so we can
 11:11:32 10 change the tape.
 11:11:32 11 MR. RODRIGUEZ: Okay.
 11:11:33 12 MR. STONE: We may as well take a short
 11:11:35 13 break, too.
 11:11:36 14 VIDEO OPERATOR: The time is 11:11. We are
 11:11:38 15 going off the record. And this is the completion of
 11:11:41 16 media No. 1.
 11:19:37 17 (Recess.)
 11:19:48 18 VIDEO OPERATOR: The time is 11:20. We are
 11:20:02 19 back on the record. And this will be the beginning of
 11:20:05 20 media No. 2 in the deposition of Dr. Thomas Merigan.
 11:20:05 21 BY MR. STONE:
 11:20:10 22 Q. Dr. Merigan, have you ever published any
 11:20:13 23 papers relating to PCR?
 11:20:18 24 A. Quite a few.
 11:20:19 25 Q. What was the first paper you published related

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11:21:42 1 THE WITNESS: No.
 11:21:42 2 BY MR. STONE:
 11:21:47 3 Q. You were a consultant for Cetus in the past,
 11:21:50 4 correct?
 11:21:51 5 A. Yes.
 11:21:51 6 Q. When did you first become involved with Cetus?
 11:21:57 7 A. Maybe 1979.
 11:21:59 8 Q. What was the nature of your involvement?
 11:22:06 9 A. I had developed the first lymphokine or
 11:22:15 10 cytokine for clinical application, and Cetus had an
 11:22:28 11 interest in developing other cytokines and using other
 11:22:33 12 techniques in infectious disease.
 11:22:42 13 Q. Did you first contact Cetus or did they
 11:22:44 14 contact you?
 11:22:47 15 A. They contacted me.
 11:22:49 16 Q. Who contacted you?
 11:22:51 17 A. Might have been Ron Cape.
 11:22:54 18 Q. Who was Ron Cape at that time in terms of his
 11:22:58 19 position?
 11:22:58 20 A. The co-president of Cetus.
 11:23:01 21 Q. Do you recall anything about his first contact
 11:23:06 22 with you?
 11:23:17 23 A. No, other than he was enthusiastic that I
 11:23:22 24 join their scientific board.
 11:23:24 25 Q. Cetus's Scientific Advisory Board, is that

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11:20:22 1 to PCR?
 11:20:29 2 A. It might have been the paper in the Journal
 11:20:34 3 of Infectious Disease.
 11:20:34 4 Q. That's the JID paper that was coauthored with
 11:20:38 5 certain Cetus personnel?
 11:20:40 6 A. Yeah.
 11:20:43 7 Q. Sitting here today, you don't recall having
 11:20:45 8 published a paper related to PCR prior to that date; is
 11:20:48 9 that correct?
 11:20:49 10 A. Well, I had a paper involving PCR that was
 11:20:51 11 presented at a symposium, and I don't remember whether
 11:20:57 12 it was -- I think it was definitely after that paper,
 11:21:02 13 but I'm not sure as to whether it was six months later
 11:21:07 14 or at the time.
 11:21:10 15 Q. Did that paper relate to the same work as the
 11:21:13 16 JID paper?
 11:21:14 17 A. It covered that among other things, yes.
 11:21:18 18 Q. Was that paper a coauthored with certain Cetus
 11:21:22 19 personnel?
 11:21:22 20 A. No. It was just a review. So it must have
 11:21:25 21 been later. I think it was of our general work
 11:21:31 22 because the work with Cetus was really just an
 11:21:36 23 introductory --
 11:21:38 24 Q. Have you had any formal PCR training yourself?
 11:21:40 25 MR. RODRIGUEZ: Objection. Vague.

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11:23:27 1 were you're referring to?
 11:23:28 2 A. Yes.
 11:23:28 3 Q. Did you join Cetus's Scientific Advisory
 11:23:31 4 Board?
 11:23:31 5 A. Yes.
 11:23:32 6 Q. Did you join the board in 1979?
 11:23:33 7 A. I believe so.
 11:23:34 8 Q. In connection with your position on Cetus's
 11:23:40 9 Scientific Advisory Board, what type of role did you
 11:23:42 10 play at Cetus?
 11:23:44 11 A. Well, we set up a program in immunology and
 11:23:52 12 immunologic aspects of treatment of infectious disease
 11:23:56 13 and cancer eventually at Stanford -- in the area
 11:24:01 14 immediately adjacent to Stanford called Cetus Immune
 11:24:04 15 or Cetus Palo Alto, and that functioned for a few
 11:24:10 16 years. And we had projects there that involved
 11:24:20 17 immunology and virology that I was a contributor to.
 11:24:26 18 Q. And what was the nature of your contribution,
 11:24:30 19 generally?
 11:24:32 20 A. I was an advisor. Did not do laboratory work
 11:24:36 21 but interacted with Cetus scientists who were doing
 11:24:41 22 laboratory work and with Cetus administrative people
 11:24:48 23 to determine the next directions for Cetus.
 11:24:55 24 And I was personally close to Steven
 11:25:02 25 Rosenberg, who had done trials of natural IL-2 in

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<p>11:25:14 1 cancer patients which were very similar to mine of 11:25:19 2 those years and proceeding with interferon, another 11:25:28 3 lymphokine. 11:25:29 4 And our trials were very attractive to the 11:25:33 5 biotech community because we had determined where 11:25:38 6 interferon might play a role in human medicine. And 11:25:45 7 IL-2 didn't have that understanding yet of where it 11:25:49 8 might fit into human medicine, and yet it was a 11:25:56 9 characterized material that might be produced by 11:25:59 10 recombinant DNA, which was a unique technique in 11:26:04 11 biotechnology programs like Cetus's. 11:26:08 12 Q. Was Cetus a producer of IL-2? 11:26:11 13 A. Not at the -- not when we started, but under 11:26:15 14 our help, Cetus Immune -- we arranged for 11:26:20 15 Dr. Rosenberg to work with Cetus in transferring 11:26:24 16 technology to Berkeley and to Palo -- and to Palo Alto 11:26:28 17 to do that, to -- to prepare IL-2 and to eventually 11:26:34 18 make it by recombinant DNA techniques. 11:26:38 19 Q. When -- when you say transferring it to 11:26:39 20 Berkeley and Palo Alto, you're referring Cetus 11:26:42 21 facilities in those locations? 11:26:43 22 A. Yes. 11:26:47 23 Q. The manufacturing or production of IL-2 using 11:26:51 24 recombinant DNA technology, is that something that you 11:26:55 25 had experience with or expertise with?</p> <p style="text-align: right;">Page 93</p>	<p>11:28:50 1 quantitation, and, in fact, its being able to 11:28:57 2 quantitate it and how it would be a method to 11:29:01 3 evaluating antivirals. 11:29:11 4 Q. Were you compensated in connection with the 11:29:13 5 work that you were doing as a member of the Cetus 11:29:16 6 Scientific Advisory Board? 11:29:17 7 A. Yes, I was. 11:29:18 8 Q. How were you compensated? 11:29:20 9 A. By monthly payments and by stock options. 11:29:27 10 Q. How much were you paid? 11:29:30 11 A. I'm really sorry. I can't tell you that 11:29:33 12 number. It was a good payment of both. I don't have 11:29:40 13 a specific record, but I think you've subpoenaed -- 11:29:48 14 no. You have documents that show from the original 11:29:55 15 agreement what that was to be. 11:29:58 16 Q. But sitting here today, you don't have a 11:30:00 17 recollection of the specifics? 11:30:01 18 A. Not a precise recollection. 11:30:16 19 Q. How long did you serve on Cetus's Scientific 11:30:23 20 Advisory Board? 11:30:23 21 A. Through to about 1990 -- I mean, what am I -- 11:30:30 22 yeah, 1990, maybe 1989, right in that period. 11:30:34 23 Q. What was the reason for you ceasing your 11:30:40 24 position on Cetus's Scientific Advisory Board? 11:30:43 25 A. Well, I had been the advisor to Cetus perhaps</p> <p style="text-align: right;">Page 95</p>
<p>11:26:56 1 A. No expertise, but I was a clinical person who 11:27:01 2 understood the issues in developing a recombinant DNA 11:27:06 3 product for use in clinical medicine because I was 11:27:09 4 also working with Roche at that time beginning 11:27:16 5 clinical trials of recombinant DNA, now produced 11:27:22 6 interferon. But we were -- it was a parallel path 11:27:26 7 kind of issue, and we were further along in the path 11:27:29 8 in terms of we had had natural interferon for many 11:27:34 9 years and had proven its activity in animal models and 11:27:39 10 in human medicine. 11:27:40 11 And then it became important to make this 11:27:43 12 very expensive material more cheaply using recombinant 11:27:48 13 DNA and see if you could get the same clinical 11:27:51 14 responses that you got with the more crude, natural 11:27:58 15 interferon. And Rosenberg was at a much earlier stage 11:28:05 16 wanting to again use recombinant DNA to use 11:28:11 17 large-scale studies in cancer because he'd seen some 11:28:14 18 encouragement in small-scale natural recombinant IL-2 11:28:20 19 studies. 11:28:21 20 Now, in addition, there was work at Cetus 11:28:26 21 Palo Alto on DNA virus, cytomegalo virus, and we were 11:28:33 22 working on developing monoclonal antibodies as 11:28:38 23 potential treatment for cytomegalo virus infection 11:28:42 24 where I -- because I was an expert in cytomegalo virus 11:28:47 25 infection and -- and the growth of that virus and its</p> <p style="text-align: right;">Page 94</p>	<p>11:30:50 1 after about -- after Cetus Immune closed and the 11:30:55 2 technology we started was -- some transferred to -- to 11:31:00 3 Berkeley, Emeryville and some stopped, project 11:31:05 4 stopped, I became advisor to the president of Cetus 11:31:08 5 about IL-2 studies in patients in cancer. And the 11:31:16 6 work with Cetus stopped after he was deposed as 11:31:24 7 chairman. And it was right in this period and was 11:31:32 8 associated with the fact that Cetus needed to be 11:31:35 9 reorganized because the FDA had turned down the first 11:31:41 10 request for IL-2 licensing. 11:31:45 11 Q. Who was it that you were the advisor to? 11:31:47 12 A. Fildes, Robert Fildes. 11:31:52 13 Q. And what was the nature of the advice that you 11:31:56 14 provided to him in connection with your tenure as his 11:31:59 15 advisor? 11:31:59 16 MR. RODRIGUEZ: Objection. Vague. 11:32:04 17 THE WITNESS: I advised him on what sorts of 11:32:11 18 trials might be necessary in kidney cancer and to help 11:32:16 19 interpret the data coming from his group's work, and 11:32:23 20 how to interact with the FDA advisory committee 11:32:29 21 because I had been on that committee myself for four 11:32:33 22 years and understood what the goals of the committee 11:32:40 23 were in terms of expectations of a potential drug for 11:32:47 24 human medicine coming from recombinant DNA technology. 11:32:51 25 BY MR. STONE:</p> <p style="text-align: right;">Page 96</p>

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11:32:51 1 Q. Do you recall when you became the advisor to
 11:32:55 2 Robert Fildes?
 11:32:57 3 A. I think --
 11:32:58 4 MR. RODRIGUEZ: Objection. Mischaracterizes
 11:33:00 5 the testimony.
 11:33:02 6 THE WITNESS: I think it was in 1984, '5 when
 11:33:17 7 the -- because when Cetus Palo Alto was closed at that
 11:33:26 8 time, the contracts on the Scientific Advisory Board
 11:33:33 9 of my colleagues were stopped, and my contract was
 11:33:38 10 continued under the original terms because I was doing
 11:33:42 11 that specific advisory work for him in terms of IL-2
 11:33:48 12 studies.
 11:33:48 13 BY MR. STONE:
 11:33:53 14 Q. And so you did remain a member of the Cetus
 11:33:56 15 Scientific Advisory Board while you were in this
 11:33:58 16 advisory role to Fildes; is that correct?
 11:34:04 17 A. I -- you know, I can't remember. I don't
 11:34:06 18 remember going to general meetings or -- and the --
 11:34:15 19 even the general meetings yearly might not be even
 11:34:19 20 taking place then. And Cetus was converting from an
 11:34:26 21 early staged biotech company to one that was more lean
 11:34:31 22 and mean and hoping to compete with the big pharma
 11:34:39 23 programs with specific projects in mind -- specific
 11:34:43 24 products in mind rather than just gathering scientists
 11:34:49 25 who were expert in the recombinant DNA or monoclonal

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11:36:35 1 the company the expertise to get the job done.
 11:37:13 2 Q. Let me show you what we'll mark as
 11:37:40 3 Exhibit 351.
 11:37:40 4 (Deposition Exhibit 351 marked by the
 11:37:41 5 court reporter.)
 11:37:41 6 MR. STONE: And for the record, Exhibit 351
 11:37:43 7 is a multipage document bearing production numbers
 11:37:47 8 RMS 63947 through 63952.
 11:39:52 9 Q. Dr. Merigan, do you recognize Exhibit 351?
 11:39:55 10 A. Yes.
 11:39:55 11 Q. And is this a consulting agreement that you
 11:39:58 12 entered into with Cetus in May of 1980?
 11:40:01 13 A. Yes.
 11:40:04 14 Q. It's your signature on the last page of
 11:40:07 15 Exhibit 351 --
 11:40:08 16 A. Yes.
 11:40:08 17 Q. -- the page bearing production number
 11:40:11 18 RMS 63952?
 11:40:12 19 A. Yes.
 11:40:12 20 Q. And I take it you intended to be bound by this
 11:40:17 21 agreement when you executed it?
 11:40:18 22 MR. RODRIGUEZ: Objection. Vague. Calls for
 11:40:20 23 a legal conclusion.
 11:40:26 24 THE WITNESS: Well, I signed it. Yes.
 11:40:26 25 BY MR. STONE:

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11:34:55 1 antibody area.
 11:34:57 2 Q. Did you attend Scientific Advisory Board
 11:35:00 3 meetings during your tenure on the board?
 11:35:06 4 A. I would think only one or two that I can
 11:35:09 5 remember.
 11:35:09 6 Q. How many other people were there on the
 11:35:12 7 Scientific Advisory Board?
 11:35:14 8 A. It fluctuated, but I remember numbers like
 11:35:21 9 25, 30, 40 down to lesser numbers.
 11:35:33 10 Q. At the time that you were on -- strike that.
 11:35:36 11 At the time that you were in your advisory
 11:35:38 12 role to Robert Fildes, were you also a consultant for
 11:35:41 13 Cetus?
 11:35:44 14 A. Well, I think the word "Scientific Advisory
 11:35:48 15 Board member" and "consultancy" are somewhat
 11:35:55 16 equivalent. So you could say I was a consultant
 11:36:00 17 because I was helping the organization because of my
 11:36:05 18 prior experience.
 11:36:08 19 Q. So is it your testimony that you didn't have
 11:36:11 20 two roles, one as consultant and one as a member of the
 11:36:16 21 Scientific Advisory Board?
 11:36:17 22 A. No. It was really one as consultant. By
 11:36:20 23 that time, Fildes was representing big pharma's
 11:36:27 24 approach, which doesn't really rely on scientific
 11:36:32 25 advisory boards but tries to build internally within

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11:40:29 1 Q. And you intended to be bound by it, correct?
 11:40:31 2 MR. RODRIGUEZ: Same objections.
 11:40:33 3 THE WITNESS: Yes.
 11:40:33 4 BY MR. STONE:
 11:40:35 5 Q. Did you have any discussions with anyone at
 11:40:37 6 Cetus relating to this agreement?
 11:40:41 7 A. No.
 11:40:45 8 Q. That's no, you had no discussions, or no --
 11:40:45 9 A. No, I had --
 11:40:48 10 Q. -- you recall no discussions?
 11:40:51 11 A. No, I had no discussions.
 11:40:52 12 Q. They provided this to you?
 11:40:56 13 A. Yes.
 11:40:56 14 Q. Who provided it to you?
 11:41:01 15 A. I -- someone probably who worked with the
 11:41:03 16 chairman of the board.
 11:41:10 17 Q. Do you recall specifically who provided it to
 11:41:12 18 you?
 11:41:13 19 A. No.
 11:41:13 20 Q. And without having any discussions, you signed
 11:41:15 21 it?
 11:41:16 22 MR. RODRIGUEZ: Objection. Mischaracterizes
 11:41:18 23 the testimony and vague.
 11:41:24 24 THE WITNESS: What do you mean by
 11:41:25 25 "discussions"?

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12:12:51 1 A. No.
 12:12:51 2 Q. Can you recall anything specific that
 12:12:56 3 Dr. Sninsky said?
 12:12:58 4 A. Well, he reaffirmed something that came out
 12:13:04 5 from the other Cetus scientists when we decided to go
 12:13:10 6 our separate directions after publishing -- or
 12:13:14 7 submitting the JID article and before the JC article
 12:13:22 8 work was started and came out.
 12:13:25 9 Cetus was primarily in the mode of thinking
 12:13:32 10 of Ph.D.s who thought the most important work that
 12:13:39 11 could come from diagnostics would be a monitoring of
 12:13:44 12 blood banking for presence of HIV in transfused blood,
 12:13:52 13 potentially for transfusion. And he thought very
 12:14:01 14 strongly that our work with monitoring HIV levels in
 12:14:12 15 therapy would not become clinically significant.
 12:14:18 16 And that was after we published our JCI paper
 12:14:22 17 and had had increasing experience with it. I can't
 12:14:28 18 tell you, though, exact day of that because I haven't
 12:14:31 19 any direct document on it. It just was when he'd been
 12:14:35 20 a longer-term Cetus employee and after the time we had
 12:14:42 21 our discussions both at Stanford and at Cetus about
 12:14:47 22 the fact that they contributed to our starting the
 12:14:53 23 effort, and we were going to continue to work on it
 12:15:02 24 but separately from them.
 12:15:05 25 Q. So you mentioned that there was a discussion

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12:16:25 1 A. It --
 12:16:26 2 Q. So it kind of blurs in your mind? You can't
 12:16:29 3 distinguish between what was said at one of the
 12:16:34 4 meetings and what was said at the other?
 12:16:36 5 A. No.
 12:16:36 6 Q. Can you distinguish in your mind who was
 12:16:39 7 present at the meeting at Cetus as compared to who was
 12:16:43 8 present at your office at Stanford?
 12:16:45 9 A. Well, I remember definitely Groves being
 12:16:47 10 present at my office because we were going over the
 12:16:50 11 final way we were going to cast the paper in -- for
 12:16:52 12 the JID. And I can't remember for the -- when this
 12:17:01 13 happened at Cetus very precisely. It's just that I
 12:17:05 14 have a feeling it was discussed at both places.
 12:17:13 15 Q. And do you have any recollection as to anyone
 12:17:16 16 else who was present at the meeting in your office
 12:17:24 17 besides yourself and Michael Groves?
 12:17:27 18 A. Well, I mentioned Michael Konrad. I don't
 12:17:31 19 believe there were any others there.
 12:17:32 20 Q. No one else from Stanford was present there?
 12:17:34 21 A. Oh, very likely Mark Holodniy was present and
 12:17:38 22 perhaps David Katzenstein.
 12:17:39 23 Q. And you said very likely, but is it your
 12:17:42 24 recollection that they were present or just based on
 12:17:45 25 circumstances, you think they could have been present?

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12:15:07 1 about going in separate directions. Who did that
 12:15:11 2 discussion take place with?
 12:15:18 3 A. One or two or three of the people who were on
 12:15:21 4 the paper. Perhaps Michael Konrad and the fellow
 12:15:24 5 who's been my primary contact. He was -- they were
 12:15:27 6 both there. And I remember us saying that we had had
 12:15:35 7 a good collaboration when we -- when they started us
 12:15:41 8 out by helping us get started and that we recognized
 12:15:46 9 that by including him -- including them in the two
 12:15:50 10 papers -- two early papers, but that they were going
 12:15:55 11 other directions with their HIV work, and we were
 12:16:00 12 continuing to work with it for our goals.
 12:16:03 13 Q. What -- where did that meeting take place?
 12:16:05 14 A. Well, I think both at Cetus on one occasion
 12:16:08 15 and definitely in my office at Stanford.
 12:16:12 16 Q. So there was more than one discussion about
 12:16:14 17 going --
 12:16:14 18 A. I --
 12:16:15 19 Q. -- in separate directions?
 12:16:16 20 A. I think so, yes.
 12:16:17 21 Q. And so let's just break it down into what your
 12:16:21 22 recollection is of each of the two discussions, if you
 12:16:24 23 can.
 12:16:25 24 A. No, I don't think I can.
 12:16:25 25 Q. Okay.

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12:17:46 1 A. No. I think that in the case of Mark
 12:17:50 2 Holodniy, he really had to be present because another
 12:17:54 3 issue was the specific data we were discussing of his
 12:17:58 4 work.
 12:18:03 5 Q. Right. But you say he had to be present.
 12:18:05 6 I'm -- I'm asking if, sitting here today, in your mind
 12:18:08 7 you have a specific recollection that, in fact, he was
 12:18:10 8 present?
 12:18:10 9 A. Yes, I do.
 12:18:11 10 Q. Okay. So sitting here today, do you have a
 12:18:14 11 specific recollection in your mind of anyone else who
 12:18:17 12 was present?
 12:18:17 13 A. Well, I mentioned two people from --
 12:18:19 14 Q. Besides -- besides the people you've already
 12:18:21 15 testified to, Dr. Groves, yourself, Mark Holodniy, and
 12:18:25 16 perhaps Michael Konrad.
 12:18:30 17 A. And perhaps David Katzenstein.
 12:18:35 18 Q. And so when you say perhaps, is there a
 12:18:37 19 specific recollection, or is that just conjecture on
 12:18:40 20 your part sitting here today?
 12:18:41 21 A. No. It was that he deserved to be there
 12:18:46 22 because he was a collaborator from Stanford in the
 12:18:49 23 work, and he was not vital, so I can't say I'm sure he
 12:18:54 24 was there, but he -- if -- if he hadn't have been
 12:19:01 25 traveling or consumed by some other responsibility, he

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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: _____

SUZANNE F. BOSCHETTI
CSR No. 5111

CONFIDENTIAL ATTORNEYS' EYES ONLY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
THE BOARD OF THE TRUSTEES OF
THE LELAND STANFORD JUNIOR
UNIVERSITY,
Plaintiff,
vs.
ROCHE MOLECULAR SYSTEMS, INC.;
ROCHE DIAGNOSTICS CORPORATION;
ROCHE DIAGNOSTICS OPERATIONS,
INC.; ROCHE DIAGNOSTIC SYSTEMS,
INC.,
Defendants.

AND RELATED COUNTERCLAIM.

CONFIDENTIAL - ATTORNEYS' EYES ONLY
VIDEOTAPED DEPOSITION OF THOMAS C. MERIGAN, M.D.
Palo Alto, California
Wednesday, September 13, 2006
Volume 2

Reported by:
SUZANNE F. BOSCHETTI
CSR No. 5111
Job No. 3-52873

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 THE BOARD OF THE TRUSTEES OF
THE LELAND STANFORD JUNIOR
4 UNIVERSITY,
5 Plaintiff,
6 vs. No. C-05-04158 MHP
7 ROCHE MOLECULAR SYSTEMS, INC.;
ROCHE DIAGNOSTICS CORPORATION;
8 ROCHE DIAGNOSTICS OPERATIONS,
INC.; ROCHE DIAGNOSTIC SYSTEMS,
9 INC.,
10 Defendants.

AND RELATED COUNTERCLAIM.

Confidential videotaped deposition of THOMAS
C. MERIGAN, M.D., Volume 2, taken on behalf of
17 Defendants and Counterclaimants Roche Molecular
Systems, Inc., et al., at 3175 Hanover Street, Palo
18 Alto, California, beginning at 9:21 a.m. and ending at
19 1:31 p.m. on Wednesday, September 13, 2006, before
20 SUZANNE F. BOSCHETTI, Certified Shorthand Reporter No.
21 5111.

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09:28:55 1 of how we prepared for our work. And the work
 09:28:59 2 relevant to the patent and the work prior to the
 09:29:02 3 patent with Cetus, I think I know quite a lot about
 09:29:06 4 because it has been the subject of so much discussion
 09:29:09 5 and thought.
 09:29:10 6 Q. How many other material transfer agreements
 09:29:13 7 were there?
 09:29:13 8 A. I don't think there --
 09:29:15 9 MR. RODRIGUEZ: Objection. Vague.
 09:29:16 10 THE WITNESS: I don't think there was another
 09:29:17 11 one.
 09:29:17 12 BY MR. STONE:
 09:29:17 13 Q. What was transferred pursuant to material
 09:29:20 14 transfer agreements that existed between the 1983
 09:29:23 15 agreement that I showed you and the 1988 agreement that
 09:29:26 16 I showed you on Monday; do you know?
 09:29:28 17 MR. RODRIGUEZ: Objection. Calls for a legal
 09:29:31 18 conclusion. Lacks foundation.
 09:29:34 19 THE WITNESS: I don't think any else -- any
 09:29:36 20 -- there was any material transferred or material
 09:29:39 21 transfer agreement.
 09:29:39 22 BY MR. STONE:
 09:29:39 23 Q. Sitting here today, you're not aware of any
 09:29:43 24 other material transfer agreements that existed between
 09:29:45 25 1983 and December of 1988; is that correct?

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09:30:43 1 BY MR. STONE:
 09:30:44 2 Q. Dr. Merigan, do you recognize Exhibit 15?
 09:30:51 3 MR. RODRIGUEZ: Do you have extra copies of
 09:30:53 4 those?
 09:30:55 5 MR. STONE: I do.
 09:31:09 6 THE WITNESS: Yeah.
 09:31:09 7 BY MR. STONE:
 09:31:11 8 Q. You do recognize Exhibit 15?
 09:31:13 9 A. Yeah.
 09:31:14 10 Q. Do you recognize that as the '730 patent?
 09:31:24 11 A. Yes, that's what it says on the top of it.
 09:31:26 12 Q. Are you a named inventor on the '730 patent?
 09:31:29 13 A. Yes.
 09:31:29 14 Q. Did you contribute to the subject matter of
 09:31:31 15 the '730 patent?
 09:31:32 16 A. Yes.
 09:31:32 17 Q. What was your contribution to the subject
 09:31:34 18 matter of the '730 patent?
 09:31:36 19 MR. RODRIGUEZ: Objection. Calls for a legal
 09:31:37 20 conclusion.
 09:31:40 21 THE WITNESS: I was the principal
 09:31:43 22 investigator of the group that did the work resulting
 09:31:47 23 in the patent. And I fulfilled all the functions of
 09:31:53 24 principal investigator. I had the idea. I supported
 09:31:58 25 other people for doing it. I put materials of mine

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09:29:49 1 A. Yes.
 09:29:50 2 Q. And sitting here today, you're not aware of
 09:29:52 3 any materials that were transferred from Cetus to
 09:29:55 4 Stanford pursuant to material transfer agreements that
 09:29:59 5 existed to the extent that any did, between 1983 and
 09:30:02 6 December 1988; is that correct?
 09:30:04 7 A. Yes.
 09:30:04 8 Q. And you're not prepared to testify concerning
 09:30:06 9 that? You didn't prepare to testify concerning such
 09:30:09 10 agreements prior to your deposition today; is that
 09:30:12 11 correct?
 09:30:12 12 A. Yes.
 09:30:15 13 Q. Dr. Merigan, I've put in front of you what
 09:30:18 14 previously was marked as, I believe, Exhibit 16; is
 09:30:23 15 that correct? I actually handed you the copy. Now I'm
 09:30:26 16 not sure which one I handed you. It's the patent right
 09:30:28 17 there on your left hand.
 09:30:30 18 A. Yeah.
 09:30:30 19 Q. The exhibit number on the bottom is what, sir?
 09:30:32 20 A. 16.
 09:30:33 21 Q. 16. And I'm also going to show you what
 09:30:35 22 previously has been marked as Exhibit 15.
 09:30:35 23 (Previously marked Exhibit 15 was
 09:30:39 24 presented to the witness.)
 09:30:43 25 THE WITNESS: Yeah.

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09:32:02 1 and my thinking into it, and I worked with the patent
 09:32:07 2 attorneys in drawing it up.
 09:32:07 3 BY MR. STONE:
 09:32:15 4 Q. Other than performing your role as the
 09:32:17 5 principal investigator, did you have any other
 09:32:21 6 contributions to the subject matter of the '730 patent?
 09:32:23 7 MR. RODRIGUEZ: Objection. Mischaracterizes
 09:32:25 8 his testimony.
 09:32:31 9 THE WITNESS: I don't know what -- what
 09:32:34 10 you're getting at about other functions. Principal
 09:32:39 11 investigator, I've gone over some of the functions. I
 09:32:42 12 can go over others. Do you want a more complete
 09:32:45 13 picture of that? Because that may mean a different
 09:32:48 14 thing to you than to me.
 09:32:49 15 BY MR. STONE:
 09:32:49 16 Q. Sure. And I would like a complete picture of
 09:32:51 17 what your contributions were to the subject matter of
 09:32:53 18 the '730 patent.
 09:32:55 19 MR. RODRIGUEZ: Objection. Calls for a legal
 09:32:56 20 conclusion.
 09:32:59 21 THE WITNESS: Well as I say, I had worked in
 09:33:04 22 viral diagnostics for many years. We treated
 09:33:11 23 hepatitis B and CMV and used for the first time
 09:33:18 24 chemical methods for characterizing the impact on
 09:33:21 25 viral load. And I, as I mentioned, had the idea that

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09:33:32 1 the moment we had a virus that didn't grow as well as
 09:33:38 2 HIV did, it would need -- we would need that kind of
 09:33:41 3 technology, that is, the ability to quantitate the
 09:33:43 4 virus in the blood of patients during therapy to make
 09:33:48 5 good decisions on continuing therapy or choice of
 09:33:52 6 drugs.
 09:33:53 7 So the patent is not about just the assay, it
 09:33:57 8 is about using the assay to determine whether or not
 09:34:01 9 to continue with the given drug or start a new drug.
 09:34:08 10 And that concept is what I had in my mind, and that --
 09:34:17 11 that PCR might give us a tool for. And the people
 09:34:24 12 that worked with me knew that, and we worked together
 09:34:30 13 to see if it was true. We were in a unique position
 09:34:34 14 because on one hand we had assay working but we also
 09:34:41 15 had -- were treating some of the first patients in the
 09:34:46 16 country with monotherapy and combination therapy, and
 09:34:50 17 particularly with combination therapy with a rather
 09:34:54 18 small number of patients you could see whether it was
 09:34:58 19 viral load and resistance mutations related well to
 09:35:03 20 either the failure or the action of a drug
 09:35:06 21 respectively.
 09:35:07 22 So I on a frequent basis would meet with my
 09:35:18 23 colleagues and define where we were going and -- and
 09:35:23 24 they took different aspects of the project and helped
 09:35:28 25 make it happen.

09:37:45 1 because he made a good case for the fact that the idea
 09:37:51 2 would be more likely to rapidly gain support in
 09:37:56 3 medicine if the company had a position with --
 09:38:03 4 supported by a patent rather than just the papers we
 09:38:06 5 were publishing.
 09:38:08 6 BY MR. STONE:
 09:38:08 7 Q. The prosecution was done for free by Pennie &
 09:38:12 8 Edmonds?
 09:38:12 9 A. There was like a delayed payment. Only --
 09:38:15 10 only if and when we develop royalties would they take
 09:38:19 11 some funding for it. But it was minimal, and it was
 09:38:23 12 several years later because it took time to go through
 09:38:27 13 the patent granting situation, and for the field to
 09:38:31 14 catch up with the idea. And many things happened to
 09:38:40 15 make it an important part of human medicine.
 09:38:43 16 Q. Was the lawyer at Pennie & Edmonds who gave
 09:38:46 17 you the suggestion Leslie Misrock?
 09:38:49 18 A. That's right.
 09:38:49 19 Q. The assay that you referred to, that's the
 09:38:51 20 assay for quantitating HIV RNA using PCR?
 09:38:55 21 MR. RODRIGUEZ: Objection. Vague.
 09:38:56 22 Mischaracterizes testimony.
 09:38:58 23 THE WITNESS: It's two different assays. One
 09:39:02 24 is for PCR, and the other is for -- for quantitating
 09:39:06 25 virus in blood, but the other is for looking at the

09:35:30 1 Mark Holodniy was pivotal, as you know, and
 09:35:34 2 David Katzenstein had worked with HIV before at
 09:35:41 3 National -- at the Center For Aids Disease Control,
 09:35:47 4 and so when he came to the lab, he had also worked on
 09:35:51 5 noncultured methods for quantitating virus. And our
 09:35:55 6 group and he had discussed those techniques, and so he
 09:36:00 7 was really aware why I thought this could result in
 09:36:06 8 something useful for medicine.
 09:36:14 9 And I initially worked with Cetus on it, and
 09:36:19 10 we also -- but on the other hand, there we were just
 09:36:23 11 working to study the stage of disease with respect to
 09:36:27 12 whether we could demonstrate virus consistently in the
 09:36:33 13 blood. And we took that technique and modified it
 09:36:40 14 over time and applied it to these treated patients and
 09:36:46 15 came up with the basis for the claims of the patent.
 09:36:59 16 And the reason I patented it was on the
 09:37:02 17 suggestion of a patent lawyer who offered to do it for
 09:37:06 18 me because his son had HIV, and he thought that it was
 09:37:12 19 very important that any advance in this field would
 09:37:17 20 have the benefit of protection for some developer who
 09:37:22 21 was going to develop the patent. And my university,
 09:37:26 22 therefore, didn't actually have to support the funding
 09:37:30 23 of that to start with.
 09:37:33 24 So the patent was developed in conjunction
 09:37:39 25 with Pennie & Edmonds. And it was my -- mine to do it

09:39:09 1 nature of virus in the blood, particularly changes in
 09:39:12 2 the drug target genes, mutations that might cause
 09:39:16 3 resistance.
 09:39:17 4 BY MR. STONE:
 09:39:17 5 Q. The assay for quantitating HIV RNA using PCR,
 09:39:22 6 that was the assay that Dr. Holodniy was working on
 09:39:27 7 while he was at Cetus?
 09:39:28 8 MR. RODRIGUEZ: Objection. Lacks foundation.
 09:39:30 9 Calls for speculation.
 09:39:31 10 THE WITNESS: Actually, he started to work
 09:39:33 11 there, but as I said before, Cetus's work was only
 09:39:37 12 semiquantitative, and he had to do much work to make
 09:39:41 13 it a quantitative assay that would reflect accurately
 09:39:48 14 the blood levels, especially in early patients. So
 09:39:53 15 there were tricks he had to do that were developed
 09:39:55 16 only at the bench at Stanford afterwards.
 09:39:57 17 BY MR. STONE:
 09:39:58 18 Q. Sitting here today, are you able to
 09:39:59 19 distinguish the work that Dr. Holodniy did at Stanford
 09:40:03 20 with respect to the assay versus the work that he did
 09:40:06 21 with input from Cetus?
 09:40:10 22 A. Oh, yes.
 09:40:11 23 MR. RODRIGUEZ: Objection. Vague.
 09:40:11 24 THE WITNESS: Oh, yes.
 09:40:11 25 BY MR. STONE:

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12:19:19 1 Q. You don't recognize the form of document?
 12:19:21 2 A. No, not even the form of the document. It
 12:19:27 3 must be an internal document produced in the -- in the
 12:19:42 4 administration of Stanford based on what we purchased.
 12:19:50 5 Q. Let me show you what we'll mark as next in
 12:19:53 6 order.
 12:19:58 7 A. Ah, related to grants. HLA has to do with
 12:20:01 8 grants.
 12:20:01 9 (Deposition Exhibit 363 marked by the
 12:20:17 10 court reporter.)
 12:20:17 11 BY MR. STONE:
 12:20:17 12 Q. Was the PCR machine in your lab purchased with
 12:20:19 13 grant money?
 12:20:21 14 A. Yes.
 12:20:21 15 Q. So a -- an inventory of equipment purchased
 12:20:26 16 with grant money should reflect when that was
 12:20:30 17 purchased, correct?
 12:20:31 18 A. Except it is not -- the only problem is I
 12:20:38 19 don't know what inventory this was and what grants it
 12:20:41 20 covers since I'm not familiar with that output of the
 12:20:51 21 university's stuff.
 12:20:56 22 MR. STONE: For the record, Exhibit 363 is a
 12:20:58 23 multipage document bearing production numbers RMS
 12:21:02 24 64056 through RMS 64059.
 12:21:12 25 Q. Dr. Merigan, do you recognize Exhibit 363?

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12:22:37 1 THE WITNESS: No, it doesn't have -- well,
 12:22:39 2 yes, that's right, that's right. And the material, as
 12:22:46 3 it says here, is not just biological materials or
 12:22:55 4 recombinant DNA -- recombinant IL-2, it's know-how and
 12:23:00 5 data. So this was something that was covered fairly
 12:23:08 6 precisely. And as I say, I saw this in conjunction
 12:23:14 7 with some letters from Cetus that showed the results
 12:23:18 8 of specific titrations and convinced me that the Cetus
 12:23:24 9 work was only semiquantitative and that it would take
 12:23:29 10 considerable effort to improve it to be -- meet the
 12:23:33 11 needs of my plans for the future.
 12:23:36 12 BY MR. STONE:
 12:23:37 13 Q. So did you have discussions with anyone at
 12:23:39 14 Cetus at this time about your plans for the future?
 12:23:52 15 A. I don't remember.
 12:23:52 16 Q. But after you entered into the Material
 12:23:56 17 Transfer Agreement in Exhibit 363, it was then that you
 12:23:59 18 started receiving the data from Cetus relating to the
 12:24:04 19 semiquant work?
 12:24:04 20 A. It's not began receiving, it's one document
 12:24:09 21 describing titrations in two patients or three
 12:24:14 22 patients and lays out about ten observations or
 12:24:19 23 something in each.
 12:24:22 24 Q. And so your recollection is there was one
 12:24:24 25 piece of correspondence that you received?

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12:21:45 1 A. Yes.
 12:21:45 2 Q. And is it because you recognize your
 12:21:49 3 signature?
 12:21:49 4 A. No, not just that.
 12:21:53 5 Q. So you actually recall this Material Transfer
 12:21:56 6 Agreement --
 12:21:56 7 A. Yes.
 12:21:56 8 Q. -- now having seen it?
 12:21:58 9 A. No, having seen it earlier.
 12:21:59 10 Q. Oh, you saw this previously?
 12:22:01 11 A. Yes.
 12:22:02 12 Q. When did you see this?
 12:22:04 13 A. I would think a few weeks ago with my
 12:22:08 14 counsel.
 12:22:09 15 Q. So in preparing for your deposition, you
 12:22:11 16 reviewed more than one MTA?
 12:22:14 17 A. No, I think this might be the one. That's
 12:22:16 18 what I was trying to get at and -- and in the past,
 12:22:23 19 earlier in the deposition, I referred to one, and I
 12:22:26 20 think this was that one.
 12:22:28 21 Q. And this is the one that you were referring to
 12:22:30 22 pursuant to which the semiquant work was done?
 12:22:35 23 A. No.
 12:22:36 24 MR. RODRIGUEZ: Objection. Mischaracterizes
 12:22:37 25 testimony.

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12:24:26 1 A. That's right.
 12:24:29 2 Q. How was it arranged -- so -- strike that.
 12:24:33 3 This semiquant work that was being done at
 12:24:36 4 Cetus related to an ongoing study at Stanford?
 12:24:39 5 A. No. We were working with material that was
 12:24:43 6 supplied by National Institutes of Health and had come
 12:24:47 7 from Cetus and giving it to patients. So we had a
 12:24:52 8 formal protocol, and it was registered with the FDA by
 12:24:58 9 the National Institutes of Allergy and Infectious
 12:25:04 10 Disease. And Cetus was agreeable to my idea of
 12:25:09 11 looking at the virus because we thought the virus
 12:25:16 12 might be -- being activated by IL-2, and it was
 12:25:20 13 important for the safety of the patients to know about
 12:25:22 14 the quantitation of the virus.
 12:25:23 15 And you keep speaking about viral RNA. But
 12:25:28 16 that's really our discovery. People didn't know
 12:25:31 17 whether it was going to be RNA or DNA or XYZ or what
 12:25:35 18 fraction of RNA or DNA it would be. And at this time
 12:25:41 19 we thought that it -- Cetus might be interested in
 12:25:48 20 doing the techniques they had available, and that's
 12:25:51 21 what they did. But it was uninterpretable data, and
 12:25:54 22 therefore we knew we had much more work ahead not only
 12:25:57 23 to find the kind of RNA as well as the method --
 12:26:03 24 details of the method itself. The kind of -- the kind
 12:26:08 25 of nucleic acid that was going to be studied and the

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12:26:12 1 methods itself to get --
 12:26:14 2 Q. Does -- the semiquant work that Cetus was
 12:26:17 3 doing on samples that were provided to it by Stanford,
 12:26:21 4 those samples were generated as part of the study you
 12:26:26 5 described?
 12:26:26 6 A. That's right.
 12:26:26 7 Q. And then those samples were given to Cetus and
 12:26:32 8 a team of people there engaged in semiquant work using
 12:26:35 9 PCR, to your recollection?
 12:26:37 10 A. Yeah, using PCR, but I actually don't know
 12:26:40 11 whether they were using RNA or DNA PCR.
 12:26:44 12 Q. And in connection with any of that work, did
 12:26:48 13 you ever send Dr. Schwartz to Cetus?
 12:26:52 14 A. Oh, I could have, but I don't remember it.
 12:26:55 15 And his going there would be fundamentally different
 12:27:04 16 in the way Mark went there, in the sense that Schwartz
 12:27:09 17 might have gone there to talk about some samples he
 12:27:12 18 brought. But on the other hand, in the case of Mark,
 12:27:17 19 it was with the prior agreement with Cetus that Mark
 12:27:22 20 was going to be able to work there for a short period
 12:27:28 21 of time to get started in the PCR technique as he was
 12:27:33 22 doing it.
 12:27:34 23 Q. Who authorized that prior agreement?
 12:27:36 24 MR. RODRIGUEZ: Objection. Calls for a legal
 12:27:37 25 conclusion.

12:29:07 1 single page document bearing production number RMS
 12:29:11 2 5915.
 12:29:13 3 Q. Dr. Merigan, do you recognize RMS 5915?
 12:29:19 4 A. No, I don't, but I see David Schwartz's name
 12:29:23 5 on it. And I wouldn't think that it was not a
 12:29:25 6 document he signed, but I believe it is a document
 12:29:28 7 that he must have signed.
 12:29:29 8 Q. And you wouldn't have been surprised that he'd
 12:29:32 9 have to sign this kind of a visitor agreement when he
 12:29:34 10 went to Cetus?
 12:29:34 11 A. Well, I want to read this. I have to --
 12:29:37 12 since I haven't seen it. Granting the access to
 12:29:40 13 facilities and information. And I don't know whether
 12:29:42 14 physically he went there that -- it's a blanket thing
 12:29:49 15 that was signed, but I don't know that physically he
 12:29:52 16 went there. I'm sure that there must have been
 12:29:55 17 discussions, but I don't know about him going there
 12:29:58 18 physically. But maybe he did.
 12:30:01 19 Q. And that would have been something that you
 12:30:02 20 would have arranged, right?
 12:30:03 21 MR. RODRIGUEZ: Objection. Vague.
 12:30:11 22 THE WITNESS: Yes, I would have.
 12:30:11 23 BY MR. STONE:
 12:30:12 24 Q. Dr. Schwartz didn't have an independent
 12:30:15 25 relationship with Cetus that you're aware of, correct?

12:27:38 1 THE WITNESS: Which one are you talking
 12:27:40 2 about?
 12:27:40 3 BY MR. STONE:
 12:27:40 4 Q. The one that permitted Mark to go to Cetus.
 12:27:43 5 MR. RODRIGUEZ: Same objection. Calls for
 12:27:44 6 speculation.
 12:27:46 7 THE WITNESS: Probably myself and Jeffrey
 12:27:50 8 Price, and -- who was it -- some of the people who
 12:28:00 9 were on the paper, because they thought it would -- it
 12:28:09 10 would be reasonable.
 12:28:09 11 BY MR. STONE:
 12:28:11 12 Q. Michael Konrad, was he one?
 12:28:13 13 A. Yes, he might have been one.
 12:28:15 14 Q. And that stemmed from the initial semiquant
 12:28:19 15 work; is that right?
 12:28:21 16 MR. RODRIGUEZ: Objection. Vague.
 12:28:22 17 THE WITNESS: I don't know. For me it was
 12:28:27 18 driven by the fact that I thought it was an important
 12:28:30 19 thing, and I don't know what was in their mind.
 12:28:30 20 BY MR. STONE:
 12:28:33 21 Q. Let me show you what we'll have marked as next
 12:28:35 22 in order.
 12:29:00 23 (Deposition Exhibit 364 marked by the
 12:29:04 24 court reporter.)
 12:29:04 25 MR. STONE: For the record, Exhibit 364 is a

12:30:17 1 A. Well, I don't know that. He could have
 12:30:21 2 developed the relationship with Cetus and -- and I
 12:30:25 3 don't know that he did -- he was not also a prime
 12:30:29 4 mover in having this happen. But it was certainly a
 12:30:34 5 goal for me when we got the machine to want to follow
 12:30:40 6 through on an idea that I said was long preexisting in
 12:30:44 7 my mind.
 12:30:45 8 Q. But Dr. Schwartz wasn't the person who ended
 12:30:49 9 up ultimately doing that; that was Dr. Holodny?
 12:30:51 10 MR. RODRIGUEZ: Objection. Vague.
 12:30:53 11 THE WITNESS: Yes.
 12:30:53 12 (Deposition Exhibit 365 marked by the
 12:31:13 13 court reporter.)
 12:31:13 14 THE WITNESS: Two pages.
 12:31:19 15 MR. STONE: For the record, Exhibit 365 is a
 12:31:22 16 two-page document bearing production numbers CH 996
 12:31:26 17 and CH 997.
 12:31:28 18 Q. Dr. Merigan, do you recognize Exhibit 365?
 12:31:33 19 A. Yes.
 12:31:33 20 Q. Is this some of the semiquant work that you
 12:31:36 21 were referring to previously?
 12:31:37 22 A. Yes.
 12:31:37 23 Q. And this appears to reflect two batches of
 12:31:41 24 samples that were provided to Cetus by Dr. Schwartz?
 12:31:45 25 A. No. Oh, provided to Cetus from Dr. Schwartz,

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12:31:52 1 yes.
 12:31:52 2 Q. And there's a number of different patients
 12:31:56 3 listed in each batch; is that correct?
 12:31:58 4 A. Two -- yeah.
 12:32:00 5 Q. So, for instance, where it says patient 1,
 12:32:03 6 that's one patient, patient 8 is a different patient,
 12:32:06 7 patient 9 -- in the left-hand column on the first page?
 12:32:09 8 A. Yeah.
 12:32:12 9 Q. Do you recall any discussions with anyone at
 12:32:15 10 Cetus relating to Exhibit 365?
 12:32:24 11 A. No. I must have had them, though.
 12:32:26 12 Q. Do you recall any discussions with anyone at
 12:32:28 13 Stanford relating to Exhibit 365?
 12:32:31 14 A. Well, surely Dr. Schwartz and I discussed
 12:32:35 15 them.
 12:32:35 16 Q. But sitting here today, you don't have a
 12:32:38 17 present recollection of that?
 12:32:38 18 A. No.
 12:32:39 19 Q. Let me show you what we'll mark as next in
 12:32:41 20 order.
 12:32:41 21 (Deposition Exhibit 366 marked by the
 12:33:01 22 court reporter.)
 12:33:01 23 MR. STONE: For the record, Exhibit 366 is a
 12:33:03 24 two-page document bearing production numbers CH 740
 12:33:07 25 and 741.

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12:34:51 1 you can recall about how you expressed what your goal
 12:34:55 2 was to Cetus from Mr. -- for Dr. Holodniy?
 12:35:04 3 A. Well, clearly with these two documents, Cetus
 12:35:12 4 knew it was good to look at the blood of patients for
 12:35:18 5 virus with PCR, and they could see the same
 12:35:24 6 limitations as I could in the way the data looked.
 12:35:29 7 And I think that's why they went ahead and had Mark as
 12:35:35 8 a guest for a few months in their lab, and it did give
 12:35:40 9 us a good start on it, as you and I have discussed.
 12:35:56 10 (Discussion off the record.)
 12:35:56 11 BY MR. STONE:
 12:35:56 12 Q. Let me show you two documents that --
 12:35:56 13 (Deposition Exhibits 367 and 368 marked
 12:36:36 14 by the court reporter.)
 12:36:36 15 MR. STONE: For the record, Exhibit 367 is a
 12:36:39 16 multipage document bearing production number CH 1064
 12:36:43 17 through CH 1067, and Exhibit 368 is a multipage
 12:36:49 18 document bearing production numbers CH 1079 through
 12:36:54 19 1082.
 12:36:55 20 Q. Dr. Merigan, do you recognize Exhibits 367 and
 12:37:00 21 368?
 12:37:00 22 A. No.
 12:37:03 23 Q. Any reason to believe you didn't receive them
 12:37:06 24 in October of 1988?
 12:37:12 25 A. I just don't remember them.

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12:33:12 1 Q. Dr. Merigan, do you recognize this exhibit?
 12:33:14 2 A. I haven't seen -- I haven't seen it since it
 12:33:18 3 was originally sent to David, and I'm sure I saw it
 12:33:22 4 then.
 12:33:23 5 Q. Because you were involved in this work with
 12:33:27 6 your coworker Dr. Schwartz, right?
 12:33:30 7 A. Mm-hmm.
 12:33:30 8 Q. And do you have any specific recollection of
 12:33:35 9 discussions with anyone at Cetus or at Stanford
 12:33:38 10 relating to this?
 12:33:40 11 A. No, but I am sure that I did with most likely
 12:33:48 12 Groves and -- and maybe Kwok or Sninsky, yeah.
 12:33:55 13 Q. Does this document refresh your recollection
 12:33:58 14 any further about discussions with Cetus about this
 12:34:02 15 quantitation work?
 12:34:11 16 A. Yes.
 12:34:12 17 Q. How so?
 12:34:15 18 A. I'd concluded from both these documents at
 12:34:19 19 that time when I was -- when they were fresh in my
 12:34:23 20 hands back in July of 1988 that there would be need
 12:34:33 21 for a better technique.
 12:34:38 22 Q. Did you express that to Cetus at the time?
 12:34:40 23 A. Yes, yes. And that I was going to work on
 12:34:43 24 that. And that was a goal for Mark Holodniy.
 12:34:47 25 Q. Can you -- can you tell me anything else that

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12:37:15 1 Q. Do you -- I know this is a tough question, but
 12:37:20 2 do you have any recollection what your fax number was
 12:37:22 3 back then? Maybe it's something that hasn't changed
 12:37:25 4 over time.
 12:37:25 5 A. No, I'm sorry, I don't.
 12:37:32 6 Well, that might have been. Yeah, I think
 12:37:34 7 that was -- looking at the outside of this, I think
 12:37:37 8 those -- might have been the fax machine that's still
 12:37:40 9 there today -- not machine, number.
 12:37:44 10 Q. Okay. The number (415) 725-2395?
 12:37:49 11 A. Yeah, I think that still may be that lab's
 12:37:52 12 fax number.
 12:37:54 13 Q. Did there come a time, Dr. Merigan, when you
 12:37:57 14 requested protocols from Cetus in writing relating to
 12:38:01 15 quantitation of HIV?
 12:38:03 16 A. Yes.
 12:38:03 17 Q. From whom did you seek such protocols?
 12:38:07 18 A. One of the staff, it could have been Eric
 12:38:10 19 Groves, it could have been Sninsky, it could have been
 12:38:13 20 Kwok. I asked that that might make Mark's starting
 12:38:19 21 the work more easy.
 12:38:21 22 Q. And do you recall what the response was of
 12:38:24 23 Dr. Groves?
 12:38:24 24 A. No, I don't know that. I don't know that. I
 12:38:27 25 don't have those -- I don't have a memory or papers

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12:38:32 1 that tell me what the response was.
 12:38:34 2 Q. But presumably the response was favorable
 12:38:37 3 because Dr. Holodniy did go to Cetus?
 12:38:39 4 A. No, I don't think that's necessarily true.
 12:38:42 5 The scientists may not have their methods written up
 12:38:47 6 in a way that they can share with another individual,
 12:38:51 7 and that was a request of some specific work that
 12:38:56 8 might have not been to -- in people's agenda. And I
 12:39:05 9 can't -- all I've seen is my letter requesting it.
 12:39:08 10 Q. You saw that letter in preparation for your
 12:39:10 11 deposition?
 12:39:10 12 A. That's right.
 12:39:11 13 Q. Let me show you what previously was marked as
 12:39:13 14 Exhibit 28.
 12:39:13 15 (Previously marked Exhibit 28 was
 12:39:21 16 presented to the witness.)
 12:39:21 17 BY MR. STONE:
 12:39:22 18 Q. Dr. Merigan, is this the letter that you were
 12:39:24 19 referring to?
 12:39:25 20 A. Yes.
 12:39:25 21 Q. And this is a letter that you and Dr. Schwartz
 12:39:29 22 sent to Dr. Groves on or about November 7, 1988?
 12:39:34 23 A. Yes.
 12:39:34 24 Q. And in this letter you were seeking Cetus
 12:39:38 25 protocols for extraction, amplification and

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12:40:54 1 is reflected in these documents you sent me.
 12:40:57 2 BY MR. STONE:
 12:40:57 3 Q. In fact, Dr. Merigan, didn't Dr. Holodniy
 12:41:00 4 paste into his lab notebook a protocol for extraction
 12:41:03 5 of RNA that he received from Cetus?
 12:41:05 6 A. Well, you're asking the question as though it
 12:41:08 7 must be there, so -- but again, I don't remember
 12:41:13 8 everything in the lab notebook.
 12:41:15 9 Q. Didn't Dr. Holodniy receive protocols for
 12:41:18 10 amplification of HIV RNA?
 12:41:20 11 A. Yes.
 12:41:21 12 MR. RODRIGUEZ: Objection. Calls for
 12:41:22 13 speculation.
 12:41:22 14 THE WITNESS: I would think that he did, but
 12:41:24 15 I don't -- I haven't -- right now I guess I'm getting
 12:41:28 16 tired, too. I don't have it all right in my
 12:41:33 17 fingertips.
 12:41:34 18 BY MR. STONE:
 12:41:35 19 Q. Didn't Dr. Holodniy receive protocols from
 12:41:38 20 Cetus for reverse transcription of HIV RNA?
 12:41:42 21 A. Oh, I --
 12:41:42 22 MR. RODRIGUEZ: Objection. Calls for
 12:41:44 23 speculation.
 12:41:45 24 THE WITNESS: Yes, I think he did, and that's
 12:41:46 25 the kind of thing that, without a doubt, Mark was

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12:39:40 1 quantitation of HIV?
 12:39:42 2 A. DNA. That's very, very important.
 12:39:45 3 Q. Why is that important, sir?
 12:39:47 4 A. Because it tells me that the original work,
 12:39:53 5 which is not reported in any detail, is with DNA, and
 12:39:59 6 DNA doesn't work to follow day-to-day changes in the
 12:40:03 7 virus. It's only RNA which Mark discovered that
 12:40:06 8 allows you to follow day-to-day changes in the virus.
 12:40:11 9 Q. Did Cetus provide Dr. Holodniy with protocols
 12:40:14 10 for extraction of HIV RNA?
 12:40:17 11 MR. RODRIGUEZ: Objection. Calls for
 12:40:19 12 speculation.
 12:40:19 13 THE WITNESS: I can't answer that question.
 12:40:19 14 BY MR. STONE:
 12:40:21 15 Q. Well, you reviewed his lab notebooks, didn't
 12:40:23 16 you?
 12:40:24 17 A. Yes.
 12:40:24 18 MR. RODRIGUEZ: Objection. Mischaracterizes
 12:40:26 19 the testimony.
 12:40:27 20 THE WITNESS: But the notebook doesn't say
 12:40:29 21 that -- doesn't -- didn't necessarily have all the
 12:40:34 22 materials Cetus gave or didn't give. That there was
 12:40:39 23 methods developed during that time to look at RNA, but
 12:40:43 24 I don't know what Cetus's role was in that versus the
 12:40:49 25 DNA and the quantitation -- the semiquantitation that

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12:41:50 1 helped by Cetus. And I imagine there was help with
 12:41:55 2 RNA as well, but exactly what form it came in, I don't
 12:42:00 3 know.
 12:42:00 4 BY MR. STONE:
 12:42:01 5 Q. Didn't Dr. Holodniy receive protocols for
 12:42:04 6 nonisotopic detection methods of HIV PCR product from
 12:42:10 7 Cetus?
 12:42:10 8 MR. RODRIGUEZ: Objection. Calls for
 12:42:11 9 speculation.
 12:42:16 10 THE WITNESS: Perhaps, yes.
 12:42:16 11 BY MR. STONE:
 12:42:21 12 Q. Didn't Dr. Holodniy receive a standard for use
 12:42:25 13 in quantitating HIV RNA using PCR from Cetus?
 12:42:30 14 MR. RODRIGUEZ: Objection. Calls for
 12:42:31 15 speculation.
 12:42:33 16 THE WITNESS: I think he did, yeah.
 12:42:33 17 BY MR. STONE:
 12:42:35 18 Q. Did you ever have any interaction with a
 12:42:39 19 Dr. Alice Wang at Cetus?
 12:42:42 20 A. No. I don't think so. Was she -- I'm sorry.
 12:42:47 21 Yeah. No, I don't think so.
 12:42:48 22 Q. She was on the serum paper?
 12:42:50 23 A. Yeah, I thought so.
 12:42:51 24 Q. But you don't recall any interaction with her?
 12:42:53 25 A. I just didn't -- yeah, right.

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12:42:55 1 Q. Did you have any interaction with Clayton
 12:42:58 2 Casipit of Cetus?
 12:42:59 3 A. No, although I know he contributed.
 12:43:01 4 Q. He contributed to the JID paper?
 12:43:03 5 A. That's right.
 12:43:03 6 Q. Do you know what the subject matter of his
 12:43:06 7 contribution was?
 12:43:06 8 MR. RODRIGUEZ: Objection. Calls for
 12:43:08 9 speculation.
 12:43:09 10 THE WITNESS: He might have run some samples.
 12:43:09 11
 12:43:11 12 BY MR. STONE:
 12:43:11 13 Q. Wasn't he the one who prepared the standards
 12:43:13 14 that Dr. Holodniy used?
 12:43:14 15 MR. RODRIGUEZ: Same objection and lacks
 12:43:15 16 foundation.
 12:43:19 17 THE WITNESS: I can believe that possibility,
 12:43:23 18 I just don't know.
 12:43:23 19 BY MR. STONE:
 12:43:26 20 Q. After your November 7, 1988 letter to
 12:43:31 21 Dr. Groves reflected in Exhibit 28, was it then when
 12:43:33 22 you arranged for Dr. Holodniy to go to Cetus?
 12:43:36 23 A. It was after it, but now I'm -- yes, it was
 12:43:40 24 after it.
 12:43:41 25 Q. And can you recall anything more specific

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12:45:02 1 VIDEO OPERATOR: The time is 12:45. We're
 12:45:06 2 going off the record.
 12:51:42 3 (Recess.)
 12:51:42 4 VIDEO OPERATOR: The time is 12:51. We're
 12:51:46 5 back on the record.
 12:51:46 6 BY MR. STONE:
 12:51:47 7 Q. Dr. Merigan, so after -- after you sent your
 12:51:53 8 request for a written protocol concerning quantitation
 12:51:57 9 from Cetus, at some point thereafter you arranged with
 12:52:01 10 Cetus for Dr. Holodniy to go to Cetus, correct?
 12:52:04 11 A. Yes.
 12:52:05 12 Q. And you also entered into a Material Transfer
 12:52:12 13 Agreement with Cetus in or around that same time frame,
 12:52:18 14 correct?
 12:52:18 15 A. Well, you have to tell me because I don't
 12:52:23 16 know the timeline.
 12:52:24 17 Q. Sure. Well, so you requested the written
 12:52:27 18 protocol from Cetus in November of 1988, correct? That
 12:52:37 19 request was contained in Exhibit 28?
 12:52:39 20 A. Yes, okay. That's November.
 12:52:41 21 Q. And then --
 12:52:41 22 A. And this is December.
 12:52:43 23 Q. And then thereafter there was an MTA dated
 12:52:46 24 December 19, 1988 that wasn't signed, it appears, until
 12:52:50 25 February of 1989, if you look at the last page of

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12:43:48 1 about the discussions you had with Cetus personnel
 12:43:50 2 concerning arranging for Dr. Holodniy to go there?
 12:43:52 3 MR. RODRIGUEZ: Objection. Vague.
 12:43:56 4 THE WITNESS: Yeah, I don't know what you
 12:43:57 5 mean by that.
 12:43:57 6 BY MR. STONE:
 12:43:59 7 Q. I'm just wondering, sir, sitting here today,
 12:44:03 8 do you have a present recollection of any specific
 12:44:04 9 discussions that you had with Cetus personnel
 12:44:07 10 concerning arranging for Dr. Holodniy to go to Cetus?
 12:44:10 11 A. I think that I remember at least reassuring
 12:44:12 12 him that he was an honest and able person who would
 12:44:17 13 follow through on -- and do good work. And that was
 12:44:23 14 important in Cetus's accepting him, my verification
 12:44:27 15 that I had worked with him clinically, and I had
 12:44:30 16 looked at his qualifications and had talked to his
 12:44:33 17 mentors at other institutions. And putting all that
 12:44:36 18 together, I felt he was a person who could move this
 12:44:41 19 project good -- in a good way for both us and Cetus.
 12:44:48 20 Q. And on that basis Cetus agreed to have --
 12:44:50 21 A. That's right.
 12:44:50 22 Q. -- to have Dr. Holodniy in their lab?
 12:44:52 23 A. That's right.
 12:44:59 24 MR. STONE: Why don't we go off the record
 12:45:01 25 and take a short break.

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12:52:52 1 Exhibit 29.
 12:53:29 2 A. Yeah.
 12:53:31 3 Q. And that MTA was negotiated in connection with
 12:53:38 4 the collaboration that you engaged in with Cetus and
 12:53:42 5 Dr. Holodniy, correct?
 12:53:43 6 A. Mm-hmm. No. No. I'm wrong. As I said,
 12:53:50 7 this -- I mean, you spoke to me -- I couldn't hear you
 12:53:54 8 because you were facing away. Can you repeat the
 12:53:57 9 question?
 12:53:57 10 Q. Sure. This MTA, the one found in Exhibit 29,
 12:54:00 11 was negotiated with Cetus in connection with the
 12:54:02 12 collaboration that you engaged in with Cetus pursuant
 12:54:06 13 to which Dr. Holodniy went to Cetus, right?
 12:54:09 14 A. No, I don't know that. I don't see Dr.
 12:54:13 15 Holodniy here listed.
 12:54:14 16 Q. Well, pursuant to this MTA, wasn't Cetus going
 12:54:18 17 to provide your lab with materials, including primers
 12:54:24 18 and probes, for detecting HIV using PCR?
 12:54:29 19 MR. RODRIGUEZ: Objection. Calls for a legal
 12:54:30 20 conclusion. The document speaks for itself.
 12:54:34 21 THE WITNESS: I don't -- I really don't know
 12:54:36 22 what happened here, whether anything came from this or
 12:54:39 23 not. I don't know. But it appears to be that it was
 12:54:43 24 between myself and David Schwartz and not Mark
 12:54:49 25 Holodniy. That's really an important issue to me, is

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<p>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.</p> <p style="text-align: right;">Page 290</p>	<p>12:57:27 1 Do you see that? 12:57:31 2 A. Yes. 12:57:31 3 Q. Does that change your testimony? 12:57:37 4 THE WITNESS: Well, I really don't know how 12:57:40 5 it can apply to Mark Holodniy if he isn't involved in 12:57:43 6 it. 12:57:43 7 BY MR. STONE: 12:57:43 8 Q. Well, he was your coworker, right? 12:57:45 9 MR. RODRIGUEZ: Objection. Calls for legal 12:57:47 10 conclusion. 12:57:48 11 THE WITNESS: There was lots of people who 12:57:49 12 were my coworkers, but I just -- that is not a good, 12:57:53 13 clear term to me. 12:57:53 14 BY MR. STONE: 12:57:53 15 Q. Well, Holodniy was one of your coworkers, 12:57:56 17 right? 12:57:56 18 MR. RODRIGUEZ: Same objection. Calls for a 12:57:59 19 legal conclusion. 12:58:03 20 THE WITNESS: I don't know. I mean, he 12:58:08 21 worked in my laboratory, yes, if that's what you mean 12:58:13 22 by a coworker. 12:58:14 23 BY MR. STONE: 12:58:15 24 Q. Did Holodniy bring primers and probes from 12:58:18 25 Cetus to Stanford's lab?</p> <p style="text-align: right;">Page 292</p>
<p>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."</p> <p style="text-align: right;">Page 291</p>	<p>12:58:19 1 MR. RODRIGUEZ: Objection. Lacks foundation. 12:58:21 2 Calls for speculation. 12:58:23 3 THE WITNESS: I don't think so. 12:58:25 4 BY MR. STONE: 12:58:25 5 Q. Did Holodniy bring protocols from Cetus to 12:58:29 6 Stanford's lab? 12:58:30 7 MR. RODRIGUEZ: Objection. Calls for 12:58:31 8 speculation. 12:58:32 9 THE WITNESS: I think that since -- 12:58:36 10 MR. RODRIGUEZ: Vague. 12:58:37 11 THE WITNESS: Since the -- since some of the 12:58:40 12 original work was up at Cetus, that if we continued 12:58:45 13 along that vein, you can say he brought protocols. 12:58:48 14 But -- and you've already suggested that there's a 12:58:51 15 protocol in his notebook, so I guess he did bring 12:58:55 16 protocols to Stanford. 12:58:56 17 BY MR. STONE: 12:58:56 18 Q. Did Holodniy bring information that he learned 12:58:59 19 from Cetus relating to HIV RNA quantitation to 12:59:03 20 Stanford? 12:59:04 21 MR. RODRIGUEZ: Objection. Calls for 12:59:05 22 speculation. 12:59:11 23 THE WITNESS: I don't know. I think so. I'm 12:59:12 24 sure there was some help without a doubt from Cetus. 12:59:16 25 BY MR. STONE:</p> <p style="text-align: right;">Page 293</p>

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01:30:37 1 BY MR. STONE:
 01:30:39 2 Q. So, when you're saying that you had completed
 01:30:43 3 the work, are you referring to box C in -- box 6C in
 01:30:51 4 Exhibit 81 that we were discussing earlier?
 01:30:54 5 MR. RODRIGUEZ: Objection. Calls for a legal
 01:30:56 6 conclusion.
 01:30:58 7 THE WITNESS: Yes, that's what I meant.
 01:30:58 8 BY MR. STONE:
 01:31:00 9 Q. And so your testimony is that you had
 01:31:01 10 satisfied that in your mind before April of 1991?
 01:31:05 11 A. That's right.
 01:31:05 12 MR. RODRIGUEZ: Objection. Calls for a legal
 01:31:07 13 conclusion.
 01:31:12 14 MR. STONE: Okay. I reserve my right to
 01:31:16 15 continue this deposition, and I guess we can go off
 01:31:19 16 the record.
 01:31:19 17 MR. RODRIGUEZ: We believe the deposition is
 01:31:21 18 concluded, so there's just a disagreement on that.
 01:31:24 19 MR. STONE: Very well.
 01:31:26 20 VIDEO OPERATOR: This concludes today's
 01:31:28 21 deposition of Dr. Thomas Merigan. The number of media
 01:31:32 22 used was two, volume 2. We're off the record at 1:31
 01:31:37 23 p.m.
 01:31:40 24 (Discussion off the record.)
 01:31:40 25 MR. RODRIGUEZ: Yes, we'll designate it

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 8 I, THOMAS C. MERIGAN, M.D., do hereby
 9 declare under penalty of perjury that I have read the
 10 foregoing transcript of my deposition; that I have
 11 made such corrections as noted herein, in ink,
 12 initialed by me, or attached hereto; that my testimony
 13 as contained herein, as corrected, is true and
 14 correct.
 15 EXECUTED this ____ day of
 16 _____, 20____, at
 17 _____,
 18 (City) (State)
 19
 20
 21 THOMAS C. MERIGAN, M.D.
 22 Volume 2
 23
 24
 25

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01:31:42 1 attorneys' eyes only, and we would like the witness to
 01:31:49 2 have an opportunity to review the transcript.
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1
 2 I, the undersigned, a Certified Shorthand
 3 Reporter of the State of California, do hereby
 4 certify:
 5 That the foregoing proceedings were taken
 6 before me at the time and place herein set forth; that
 7 any witnesses in the foregoing proceedings, prior to
 8 testifying, were placed under oath; that a verbatim
 9 record of the proceedings was made by me using machine
 10 shorthand which was thereafter transcribed under my
 11 direction; further, that the foregoing is an accurate
 12 transcription thereof.
 13 I further certify that I am neither
 14 financially interested in the action nor a relative or
 15 employee of any attorney of any of the parties.
 16 IN WITNESS WHEREOF, I have this date
 17 subscribed my name.
 18
 19 Dated: _____
 20
 21
 22
 23
 24 SUZANNE F. BOSCHETTI
 25 CSR No. 5111

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