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

9  
 10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION

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

15 Plaintiff,

16 v.

17 ROCHE MOLECULAR SYSTEMS, ET AL.,

18 Defendants.

19  
 20 ROCHE MOLECULAR SYSTEMS, ET AL.,

21 Counterclaimants,

22 v.

23 THE BOARD OF TRUSTEES OF THE  
 24 LELAND STANFORD JUNIOR  
 UNIVERSITY; THOMAS MERIGAN AND  
 25 MARK HOLODNIY

26 Counterclaim Defendants.  
 27

Case No. C 05 04158 MHP

**DECLARATION OF BENJAMIN G.  
 DAMSTEDT IN SUPPORT OF DEFENDANTS'  
 ADMINISTRATIVE REQUEST TO FILE  
 UNDER SEAL COUNTERCLAIM  
 DEFENDANTS' CONFIDENTIAL  
 INFORMATION**

1 I, Benjamin G. Damstedt, declare as follows:

2 1. I am an attorney with the law firm of Cooley Godward Kronish LLP, counsel of  
3 record for The Board of Trustees of the Leland Stanford Junior University, Thomas Merigan, and  
4 Mark Holodniy (“Counterclaim Defendants”) in the above-captioned matter. I submit this  
5 declaration pursuant to Local Civil Rule 79-5(d). I have knowledge of the following, and if  
6 called as a witness, I could and would testify competently to this declaration’s contents.

7 2. Defendants Roche Molecular Systems et al. submitted an Administrative Request  
8 To File Documents Under Seal (Docket No. 86) covering (1) certain information in the  
9 confidential version of Defendants’ Motion for Summary Judgment and Memorandum of Points  
10 and Authorities in Support Thereof (Docket No. 90) and (2) certain exhibits attached to the  
11 Declaration of T.J. Chiang in Support of Defendants’ Motion for Summary Judgment (Docket  
12 No. 84). The information and exhibits had previously been designated as “Confidential,” “Highly  
13 Confidential,” and/or “Attorneys’ Eyes Only” by the Counterclaim Defendants pursuant to the  
14 Stipulated Protective Order entered in this action on May 19, 2006 (Docket No. 31).

15 3. The confidential version of Defendants’ Motion for Summary Judgment and  
16 Memorandum of Points and Authorities in Support Thereof (Docket No. 90) contains three  
17 excerpts that are sealable. Two excerpts refer to laboratory notebooks from Stanford University  
18 scientists and disclose non-public technical information regarding research, development,  
19 conception, and reduction to practice of inventions proprietary to Stanford University. (*Id.* at  
20 8:20-27, 9:14-17.) The third excerpt refers to a document containing non-public communications  
21 between Stanford University and its former counsel. (*Id.* at 17:10-20.) Although Stanford  
22 produced the document pursuant to the court’s order regarding waiver of privilege, the document  
23 continues to be sealable because it contains confidential correspondence between an attorney and  
24 client.

25 4. Defendants’ Administrative Request To File Documents Under Seal (Docket No.  
26 86) covers eighteen of the exhibits attached to the Declaration of T.J. Chiang. Stanford agrees to  
27 make public all exhibits except the following:

28 (a) Exhibit 14, which is a copy of a lab notebook of Sohini Sengupta

1 designated “Confidential Attorneys’ Eyes Only” and contains highly confidential, non-public  
2 technical information regarding research, development, conception, and reduction to practice of  
3 inventions proprietary to Stanford University;

4 (b) Exhibit 26, which is a copy of a letter from Dr. Thomas Merigan to Laura  
5 A. Coruzzi, with attachments designated by Stanford University as “Confidential – Attorneys’  
6 Eyes Only” and contains confidential information communicated to Stanford University’s former  
7 counsel that remains confidential even after the Court’s ruling that it is no longer privileged;

8 (c) Exhibit 40, which is a copy of a laboratory notebook of Mark Holodniy  
9 designated “Confidential Attorneys’ Eyes Only” and contains highly confidential, non-public  
10 technical information regarding research, development, and the conception and reduction to  
11 practice of inventions proprietary to Stanford University;

12 (d) Exhibit 41, which is a copy of a laboratory notebook of Mark Holodniy  
13 designated “Confidential Attorneys’ Eyes Only” and contains (1) highly confidential, non-public  
14 technical information regarding research, development, conception, and reduction to practice of  
15 inventions proprietary to Stanford University and (2) private medical information of patients  
16 involved in clinical tests that must be kept confidential under The Health Insurance and  
17 Portability Accountability Act (HIPAA, 42 U.S.C. § 1301 et seq);

18 (e) Exhibit 42, which is a copy of a laboratory notebook of Mark Holodniy  
19 designated “Confidential Attorneys’ Eyes Only” and contains (1) highly confidential, non-public  
20 technical information regarding research, development, conception, and reduction to practice of  
21 inventions proprietary to Stanford University and (2) private medical information of patients  
22 involved in clinical tests that must be kept confidential under The Health Insurance and  
23 Portability Accountability Act (HIPAA, 42 U.S.C. § 1301 et seq);

24 (f) Exhibit 43, which is a copy of a laboratory notebook of Mark Holodniy  
25 designated “Confidential Attorneys’ Eyes Only” and contains highly confidential, non-public  
26 technical information regarding research, development, conception, and reduction to practice of  
27 inventions proprietary to Stanford University;

28 (g) Exhibit 58, which contains excerpts from a laboratory notebook of Sohini

1 Sengupta designated “Confidential Attorneys’ Eyes Only” and highly confidential, non-public  
2 technical information regarding research, development, conception, and reduction to practice of  
3 inventions proprietary to Stanford University; and

4 (h) Exhibit 59, which contains excerpts from a laboratory notebook of Sohini  
5 Sengupta designated “Confidential Attorneys’ Eyes Only” and highly confidential, non-public  
6 technical information regarding research, development, conception, and reduction to practice of  
7 inventions proprietary to Stanford University.

8 I declare under penalty of perjury under the laws of the United States that the foregoing is  
9 true and correct, and that this declaration was executed in Palo Alto, California on November 3,  
10 2006.

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/s/  
Benjamin G. Damstedt