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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

RENEE BLASZKOWSKI, et al.,	)	
individually and on behalf of	)	
others similarly situated,	)	
	)	
Plaintiffs/Class Representatives,	)	
	)	
vs.	)	CASE NO.
	)	07-21221 CIV
MARS INC., et al.,	)	ALTONAGA/BROWN
	)	
Defendants.	)	
_____	)	

VIDEOTAPED DEPOSITION OF  
PETER LARRY ATKINS

DATE: November 5, 2008

TIME: 9:15 a.m.

LOCATION: PULONE & STROMBERG, INC.  
1550 The Alameda  
Suite 150  
San Jose, California 95126

REPORTED BY: Jean H. Vaughn  
Certified Shorthand Reporter  
License Number C-4139

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A P P E A R A N C E S:

For the Plaintiffs: LAW OFFICES OF EDGAR R. NIELD  
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Suite 350  
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Pg Ln

A. \*\*\* Who financed the ..... 268 22  
construction of the plant?

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P R O C E E D I N G S:

09:14:34 2 THE VIDEOGRAPHER: Good morning. We are  
09:14:53 3 going to begin Media Number 1 of the deposition of  
09:14:55 4 Peter Atkins in the matter of Renee Blaszkowski, et  
09:15:05 5 al., v. Mars, Incorporated, U.S. District Court,  
09:15:10 6 Southern District of Florida, Miami Division, Case  
09:15:14 7 Number 07-21221 CIV. Today's date is November 5th,  
09:15:23 8 2008. The time on the video monitor is 9:15 a.m.

09:15:26 9 This deposition is taking place at 1550 The  
09:15:30 10 Alameda, San Jose, California, and it's being taken  
09:15:33 11 on behalf of the plaintiffs.

09:15:35 12 The videographer is Jeff McKinney appearing  
09:15:39 13 on behalf of Sarnoff Court Reporter and Media  
09:15:43 14 Technologies located in Irvine, Los Angeles, San  
09:15:46 15 Francisco, California.

09:15:50 16 Will counsel please identify yourselves for  
09:15:52 17 the record and state whom you represent.

09:15:55 18 MR. NIELD: Yeah. My name is Ed Nield. I  
09:15:57 19 represent the plaintiffs in this case.

09:15:59 20 MR. BAKER: Jason Baker. I represent the  
09:16:01 21 plaintiffs.

09:16:02 22 MS. CAVERLY: Kristen Caverly representing  
09:16:05 23 Natura Pet Products.

09:16:07 24 THE VIDEOGRAPHER: Will the court reporter  
09:16:08 25 please swear in the witness.

1 PETER LARRY ATKINS,  
2 called as a witness, after having been first duly  
3 sworn by the Certified Shorthand Reporter to tell  
4 the truth, the whole truth, and nothing but the  
5 truth, testified as follows:

6 EXAMINATION

09:16:24 7 BY MR. NIELD:

09:16:24 8 Q. Good morning, sir. As I indicated, my name  
09:16:27 9 is Ed Nield. I just introduced myself on the record  
09:16:31 10 and I did introduce myself just prior to the  
09:16:33 11 deposition today.

09:16:34 12 How are you today?

09:16:35 13 A. I'm well. How are you?

09:16:37 14 Q. Good.

09:16:38 15 Could you please state your full name and  
09:16:40 16 spell it for the record, please?

09:16:42 17 A. Sure. It's Peter Larry Atkins, P-e-t-e-r,  
09:16:47 18 Larry, L-a-r-r-y, Atkins, A-t-k-i-n-s.

09:16:53 19 Q. And, Mr. Atkins, have you ever had your  
09:16:55 20 deposition taken before?

09:16:56 21 A. Yes.

09:16:57 22 Q. Approximately, or exactly if you know, how  
09:17:01 23 many occasions?

09:17:02 24 A. Just once before.

09:17:03 25 Q. One time. And how long ago was that?

09:17:07 1 A. I believe it would have been 2001. 2000 or  
09:17:14 2 2001.

09:17:14 3 Q. And what was that in connection with?

09:17:16 4 A. It was involved with a previous lawsuit.

09:17:20 5 Q. Previous lawsuit that involved Natura?

09:17:23 6 A. Correct.

09:17:25 7 MS. CAVERLY: Ed, before you get into your  
09:17:27 8 substantive questions, I do have some objections to  
09:17:30 9 your deposition notice I would like to put on the  
09:17:32 10 record if this is a good time.

09:17:34 11 MR. NIELD: Well, I was going to get into  
09:17:35 12 the notice in a little bit, but if you would like to  
09:17:38 13 get there, go ahead.

09:17:39 14 MS. CAVERLY: I would like to object that  
09:17:41 15 the service of the notice was untimely. I received  
09:17:44 16 it by e-mail -- or actually did not receive it. The  
09:17:47 17 e-mail was sent apparently on Friday late in the  
09:17:50 18 afternoon. I received it by fax Monday.

09:17:54 19 I also would like to object to the dates  
09:17:56 20 that are indicated in the deposition notice as  
09:18:00 21 beginning relevant date in January 1st of 2003.  
09:18:03 22 This action was not filed against Natura until  
09:18:07 23 November 2003 and -- I'm sorry, November 2007, so  
09:18:12 24 any class period or claims couldn't relate back  
09:18:15 25 prior to November 2003.

09:18:19 1                   The notice also indicates product  
09:18:23 2 categories that are not products of Natura or are  
09:18:27 3 not at issue in this case. Specifically Innova  
09:18:32 4 Chicken Dry, Innova Red Meat Dry Diet and Innova Red  
09:18:38 5 Meat Small Bites.

09:18:39 6                   And I will object at the appropriate time  
09:18:41 7 as well, but I object to the notice covering  
09:18:44 8 formulations of Natura's products to the extent that  
09:18:47 9 that is intended to indicate the recipe or the  
09:18:51 10 quantities of various ingredients.

09:18:54 11                   I don't object to you asking about what the  
09:18:57 12 ingredients are, but the particular formulations or  
09:19:00 13 recipes are trade secrets and not relevant to this  
09:19:04 14 case.

09:19:08 15                   MR. NIELD: As it relates to the last  
09:19:10 16 issue, formulations, recipes, I don't know that we  
09:19:13 17 are going to get there today, but if we get there  
09:19:16 18 today we can deal with that issue at that point in  
09:19:18 19 time.

09:19:19 20                   Certainly I don't agree that because they  
09:19:21 21 are trade secrets of your client that we can't ask  
09:19:24 22 questions about them in this lawsuit under  
09:19:27 23 appropriate protections of that information as we  
09:19:27 24 have done with the documentation. But I'm going to  
09:19:32 25 table that for now because I don't know that that's



09:19:33 1 going to be an issue or that I even need to know

09:19:35 2 about that, so --

09:19:38 3 As far as the class period, I have no

09:19:40 4 problem with November '03 to November '07. I don't

09:19:43 5 intend to go outside of that period.

09:19:45 6 As far as the products, if there's some

09:19:47 7 legitimate issue as to which products are at issue,

09:19:50 8 you know, we can work it out. I don't have a

09:19:51 9 problem. I did my best to pull out what I thought

09:19:54 10 was at issue from prior depositions and prior

09:19:57 11 interrogatories. And maybe we can go back and look

09:20:01 12 at some of that information and see if we can figure

09:20:03 13 that out. I'm not here to ask questions about

09:20:06 14 products that are not at issue.

09:20:08 15 I don't know that there's anything else I

09:20:10 16 can say about that so I won't say anything else

09:20:13 17 about that. And with that we will move forward.

18 BY MR. NIELD:

09:20:17 19 Q. We were talking about your deposition as it

09:20:20 20 related to a lawsuit that Natura was involved in in

09:20:23 21 2002. What kind of -- what were the issues in that

09:20:27 22 suit? What were the claims -- well, let me back up.

09:20:29 23 Was Natura a defendant in that case?

09:20:31 24 A. Correct.

09:20:32 25 Q. Okay. And what were the claims against

09:20:34 1 Natura in that case?

09:20:35 2 A. It was a breach of contract case.

09:20:40 3 Q. And who was the plaintiff in that case?

09:20:42 4 A. Western Pet Wholesalers.

09:20:52 5 Q. And what does -- what claim was Western Pet

09:20:53 6 Wholesalers making against Natura in that lawsuit?

09:20:57 7 A. It was a breach of contract, that we had

09:20:59 8 breached their distributor contract.

09:21:04 9 Q. They were a distributor of Natura products?

09:21:07 10 A. Correct.

09:21:15 11 Q. And that -- and that lawsuit has since been

09:21:17 12 resolved?

09:21:18 13 A. Correct.

09:21:24 14 Q. I don't want to get too far so I won't.

09:21:27 15 Let me -- it's been a while since you've

09:21:29 16 been deposed and I want to go over some of the

09:21:33 17 ground rules of the deposition process so that we

09:21:35 18 can make this go as smoothly and easily as possible.

09:21:40 19 First of all, as you see, we do have a

09:21:42 20 court reporter with us here today and she's taking

09:21:45 21 down everything that any one of us has to say,

09:21:47 22 primarily me and you and perhaps your attorney.

09:21:51 23 Perhaps Jason. But whatever is said in the room

09:21:54 24 today will be taken down by the court reporter and

09:21:57 25 it will be transcribed at the end of the deposition

09:21:59 1 into a booklet and you'll be given the opportunity  
09:22:01 2 to read that booklet. It will be in  
09:22:04 3 question-and-answer format. You'll be given the  
09:22:07 4 opportunity to read it, make any changes,  
09:22:09 5 corrections, additions, deletions, et cetera, that  
09:22:11 6 you may deem necessary to that transcript.

09:22:14 7           And once you've had that opportunity,  
09:22:14 8 there'll be a page at the back of the deposition  
09:22:17 9 transcript that you will sign indicating that you  
09:22:19 10 have read it, made any changes you deemed  
09:22:21 11 appropriate, and you'll be signing that under the  
09:22:24 12 penalty of perjury that that as corrected is your  
09:22:26 13 true and correct testimony. Okay?

09:22:28 14           A. Understood.

09:22:29 15           Q. All right. Also because we have a court  
09:22:31 16 reporter here with us today we have to make sure  
09:22:33 17 that we do a couple of things. One, we can't talk  
09:22:35 18 at the same time. So far you've been doing a great  
09:22:39 19 job. But we can't -- the court reporter can only  
09:22:43 20 take one of us down at a time. So I'll try to make  
09:22:45 21 sure that you've completed your answer before I ask  
09:22:48 22 you another question. And I would ask that you try  
09:22:52 23 to make sure I've completed my question before you  
09:22:54 24 begin to answer. Okay?

09:22:55 25           A. Certainly.

09:22:56 1 Q. Okay. It sounds like an easy thing to do,  
09:23:00 2 but in everyday conversation sometimes we step on  
09:23:02 3 each other because we don't have court reporters  
09:23:05 4 taking down everything. But if it becomes an issue  
09:23:08 5 I'll remind you or I'm sure your attorney will  
09:23:11 6 remind you. Okay?

09:23:12 7 A. Very good.

09:23:13 8 Q. Also because we have a court reporter we  
09:23:15 9 have to be sure that all of our responses are  
09:23:18 10 audible, either "yes" or "no" or whatever the  
09:23:20 11 appropriate narrative response is. Shakes of the  
09:23:23 12 head, movements of the hand, "uh-huh," "huh-uh,"  
09:23:26 13 slang terms like that don't come across in a  
09:23:29 14 transcript very well and so we have to make sure  
09:23:31 15 that we are a little bit more precise in our  
09:23:34 16 language. Okay?

09:23:35 17 A. Sure.

09:23:35 18 Q. We do have an videographer here with us  
09:23:38 19 today. But even though he -- that person is here  
09:23:42 20 and the camera will certainly show your expressions  
09:23:45 21 and movements of your hands and head, et cetera, we  
09:23:48 22 still need to make sure that the written transcript  
09:23:51 23 is clean. All right?

09:23:52 24 A. Certainly.

09:23:53 25 Q. Okay. From time to time I may ask you

09:23:55 1 about your best recollection about things, your best  
09:23:57 2 approximation or estimation about things, and I am  
09:24:01 3 entitled to your best estimate or recollection on  
09:24:03 4 various items. But I don't want you to guess or  
09:24:07 5 speculate about anything. So if your answer is  
09:24:11 6 going to require you to guess, that's not what we  
09:24:14 7 are looking for. So if you don't recall something,  
09:24:17 8 you can just simply tell me you don't recall. And  
09:24:19 9 if you don't know something, you can just tell me  
09:24:22 10 you don't know.

09:24:23 11           And you know the difference between giving  
09:24:24 12 me an estimate versus guessing about something?

09:24:29 13           A. Yes.

09:24:34 14           Q. Okay. I want to make sure that you  
09:24:36 15 understand my questions before you answer my  
09:24:38 16 questions. So, you know, if I'm speaking too  
09:24:41 17 quickly or you don't understand the way I've phrased  
09:24:45 18 the question or whatever it happens to be, please  
09:24:48 19 stop me and ask me to rephrase it or slow down or  
09:24:50 20 whatever you need to do to make sure that you  
09:24:52 21 understand the question because I want you to be  
09:24:55 22 sure you understand the question before you answer.  
09:24:57 23 Okay?

09:24:58 24           A. Yes.

09:24:58 25           Q. If you answer a question and don't stop me

09:25:01 1 and ask for any type of clarification I'm going to  
09:25:04 2 assume that you understood the question before you  
09:25:06 3 answered it. Okay?

09:25:07 4 A. Okay.

09:25:07 5 Q. Is that fair?

09:25:08 6 A. Yes.

09:25:15 7 Q. Okay. All right. From time to -- this

09:25:21 8 deposition will probably last most of the day.

09:25:25 9 There's a lot of stuff to cover here. But if you

09:25:28 10 need to take a break for any reason, this is not an

09:25:30 11 endurance contest, please let us know. We'll stop

09:25:33 12 the deposition so that you can take a break, use the

09:25:35 13 men's room, talk to your attorney, stretch your

09:25:39 14 legs, whatever it happens to be. All right?

09:25:40 15 A. Yes.

09:25:40 16 Q. We will be taking periodic breaks and we'll

09:25:44 17 have some period of time for lunch today. I'm sure

09:25:47 18 we'll determine what that is a little later on. All

09:25:49 19 right?

09:25:50 20 A. Sure.

09:25:51 21 Q. All right. Can you think of any reason why

09:25:53 22 you cannot provide us with your best testimony here

09:25:55 23 today?

09:25:55 24 A. No.

09:25:58 25 Q. You haven't taken any drugs or alcohol

09:26:01 1 today that would in any way impair your ability to  
09:26:04 2 provide us with your best testimony?  
09:26:05 3 A. No.  
09:26:06 4 Q. All right. Then let's begin. I just want  
09:26:10 5 to get a little feel for your educational  
09:26:11 6 background, so could you -- did you go to college?  
09:26:14 7 A. Yes.  
09:26:15 8 Q. Okay. Where did you go to college?  
09:26:17 9 A. Texas A & M University.  
09:26:21 10 Q. And you graduated?  
09:26:22 11 A. Correct.  
09:26:23 12 Q. And what was your degree in?  
09:26:24 13 A. I have a bachelor's degree in agricultural  
09:26:27 14 education and a master's in agricultural  
09:26:32 15 development.  
09:26:35 16 Q. And you did those consecutively? You got  
09:26:38 17 the B.A. --  
09:26:39 18 A. Correct.  
09:26:39 19 Q. -- and then you went right into the  
09:26:41 20 master's program?  
09:26:41 21 A. Correct.  
09:26:42 22 Q. In what year did you graduate from the  
09:26:46 23 master's program?  
09:26:47 24 A. 1980.  
09:26:50 25 Q. Okay. Have you had any formal education

09:26:52 1 after getting your master's in 1980 from Texas  
09:26:55 2 A & M?  
09:26:56 3 A. Not from a university, no.  
09:27:00 4 Q. Okay. Have you had any formal education  
09:27:02 5 from any other entity at all?  
09:27:05 6 A. Only through employers, American Management  
09:27:08 7 Association courses, self-teaching, those kind of  
09:27:12 8 things.  
09:27:13 9 Q. Seminar kind of things?  
09:27:14 10 A. Absolutely, right.  
09:27:21 11 Q. Can you give me -- I don't know if you  
09:27:24 12 recall them all but perhaps you do -- some sense of  
09:27:27 13 what types of seminars you've had over the years?  
09:27:30 14 A. Sure. I've been to actually none recently,  
09:27:33 15 but I've been to several American Management  
09:27:35 16 Association management-type courses in finance,  
09:27:38 17 general management, marketing, et cetera.  
09:27:42 18 And every year the pet industry has what's  
09:27:47 19 called the Pet Food Forum. It's basically an event  
09:27:51 20 where all the companies and universities come  
09:27:53 21 together to share the latest information about  
09:27:55 22 what's going on in nutrition or processing or things  
09:27:59 23 having to do with the pet food industry, and so I've  
09:28:01 24 done that for the last 14 years probably every year,  
09:28:04 25 so --



09:28:07 1 Q. Okay.

09:28:07 2 A. So those are the top -- top ones, I guess.

09:28:10 3 Q. And at the Pet Food Forum they have various

09:28:13 4 seminars and things that are put on?

09:28:15 5 A. Right, they have usually a couple of tracks

09:28:18 6 of education-type seminars that go on.

09:28:22 7 Q. All right. So any other formal type of

09:28:26 8 education that you've had over the years?

09:28:28 9 A. No, that would pretty much cover it.

09:28:29 10 Q. Okay. Where are you currently employed?

09:28:33 11 A. Natura Pet Products.

09:28:36 12 Q. And how long have you been employed with

09:28:38 13 Natura Pet Products?

09:28:39 14 A. Since its inception starting in March of

09:28:43 15 1992.

09:28:48 16 Q. What is your position with Natura Pet

09:28:50 17 Products at this time?

09:28:51 18 A. President.

09:28:54 19 Q. And how long have you been president?

09:28:56 20 A. Since March of '07.

09:29:02 21 Q. And prior to March of '07 what position did

09:29:04 22 you hold within Natura Pet Products?

09:29:08 23 A. Vice president.

09:29:10 24 Q. And was there any other -- vice president

09:29:12 25 of something or just vice president?

09:29:13 1 A. Just vice president.

09:29:14 2 Q. Okay. And how long did you hold the

09:29:17 3 position of vice president with Natura?

09:29:19 4 A. Since 1996.

09:29:24 5 Q. And then prior to 1996 what was your

09:29:26 6 position with Natura?

09:29:28 7 A. I don't -- we weren't big on titles then.

09:29:33 8 It was director of marketing and distribution I

09:29:35 9 think was the actual title.

09:29:43 10 Q. And did that go back to the time that the

09:29:45 11 company was started in '92?

09:29:47 12 A. Correct.

09:29:51 13 Q. How many employees does Natura have today?

09:29:54 14 A. Natura Pet Products --

09:29:56 15 Q. Correct.

09:29:56 16 A. -- the company?

09:30:02 17 Roughly -- sales and our San Jose office

09:30:08 18 roughly 20.

09:30:09 19 Q. And you noted -- and -- and just, you know,

09:30:12 20 I may not say the full name. I'll try to, Natura

09:30:14 21 Pet Products, but if I say Natura, that's what I

09:30:17 22 mean, Natura Pet Products.

09:30:19 23 So you said in your San Jose office you

09:30:22 24 have 20 employees?

09:30:23 25 A. No, that -- including the San Jose office.

09:30:25 1 Q. Oh, including.

09:30:26 2 A. We have four -- four full-time people in

09:30:30 3 the San Jose office, two -- one part time and one

09:30:33 4 temp. And then the rest of those employees would be

09:30:37 5 made up in the sales team. Those would all be

09:30:40 6 salespeople.

09:30:40 7 Q. Salespeople work outside of the office?

09:30:42 8 A. Correct.

09:30:43 9 Q. Out of their homes?

09:30:46 10 A. Correct.

09:30:46 11 Q. And so with your headquarter staff and your

09:30:49 12 salespeople, about 20 people?

09:30:50 13 A. Correct.

09:30:56 14 Q. How many people started -- were employed by

09:31:00 15 Natura when the company was incepted in 1992?

09:31:03 16 A. It was just the three of us, the owners of

09:31:06 17 the company, John and Ann Rademakers -- actually

09:31:10 18 four of us that would count -- and Patricia Gilpin,

09:31:15 19 who is our director of administration, now one of

09:31:19 20 the minority owners of the company, and myself.

09:31:24 21 Q. And so over the years you've just added

09:31:26 22 salespeople and just -- just grown?

09:31:28 23 A. Correct.

09:31:30 24 Q. At a fairly steady pace?

09:31:33 25 A. Correct.

1 (Pages 21 to 27 can be found under separate  
2 cover in the confidential portion of this  
3 deposition.)

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09:35:02 1 Q. And what position does Ronn hold?

09:35:04 2 A. Ronn is a regional sales manager.

09:35:11 3 Q. And Joyce?

09:35:11 4 A. Executive assistant.

09:35:23 5 Q. I think you told me that Patricia Gilpin

09:35:26 6 was not an officer of the corporation. Correct?

09:35:28 7 A. Yes.

09:35:29 8 Q. Is Sean Gilpin an officer of the

09:35:31 9 corporation?

09:35:32 10 A. No.

09:35:33 11 Q. Is John Rademakers an officer of the corp.?

09:35:36 12 A. Yes.

09:35:37 13 Q. And what position does he hold?

09:35:39 14 A. He is treasurer and -- I have to look at

09:35:43 15 the last minutes, but he's treasurer and vice

09:35:48 16 president -- no, I take that back. He's president,

09:35:51 17 so I would be vice president, and he's treasurer and

09:35:58 18 president. And Ann is secretary. Sorry.

09:35:59 19 Okay. So here is the way it goes. John

09:36:01 20 Rademakers is president. I'm vice president. John

09:36:07 21 is treasurer and Ann, his wife, is secretary.

09:36:15 22 Q. So John is president and treasurer?

09:36:17 23 A. Correct, as far as the officers go, right.

09:36:22 24 Q. All right. And that's all of the officers?

09:36:23 25 A. Yes, that's it.

09:36:39 1 Q. And earlier you indicated that Natura Pet  
09:36:41 2 Products was started in 1992, correct, March of '92?

09:36:45 3 A. Yes, sir.

09:36:46 4 Q. And that company was started by yourself  
09:36:48 5 and the Rademakers?

09:36:50 6 A. Right.

09:36:51 7 Q. The three of you?

09:36:52 8 A. Correct.

09:37:06 9 Q. Now, you understand that you are here today  
09:37:10 10 to provide deposition testimony as the designated  
09:37:15 11 most knowledgeable representative of Natura Pet  
09:37:18 12 Products, correct?

09:37:18 13 A. Yes.

09:37:19 14 MS. CAVERLY: Actually, I object. It is  
09:37:21 15 not the most knowledgeable representative. That's  
09:37:23 16 not what the rules provide. He is the corporate  
09:37:29 17 designee.

09:37:30 18 MR. NIELD: All right.

09:37:31 19 BY MR. NIELD:

09:37:31 20 Q. You are here as the corporate designee; is  
09:37:34 21 that correct?

09:37:34 22 A. Yes.

09:37:35 23 Q. Let me show you the notice of deposition,  
09:37:38 24 and I know we've already had objections, but they  
09:37:40 25 are on the record. But let me ask you if you've

09:37:43 1 ever seen this before, please.

09:37:48 2 A. I've got to get my cheaters.

09:37:50 3 Q. Yeah, take your time. I can't see anything  
09:37:52 4 without glasses anymore. It's terrible.

09:37:58 5 A. Yes, I've seen this.

09:38:05 6 MR. NIELD: I want to mark the notice of  
09:38:07 7 deposition as Exhibit A -- strike that.

09:38:12 8 Let's make that Exhibit 1 to your  
09:38:15 9 deposition.

10 (WHEREUPON, DEPOSITION EXHIBIT 1 WAS MARKED  
11 FOR IDENTIFICATION.)

09:38:35 12 BY MR. NIELD:

09:38:36 13 Q. Now, did you understand when you were  
09:38:38 14 designated as the corporate designee for Natura Pet  
09:38:41 15 Products that you were going to be asked to provide  
09:38:47 16 information that is included in Attachment A to the  
09:38:50 17 deposition notice?

09:38:50 18 A. Yes, sir.

09:38:51 19 Q. Okay. And are you prepared to do that  
09:38:53 20 today?

09:38:53 21 A. Yes.

09:38:53 22 Q. Okay. Perhaps it's easier if you look at  
09:38:58 23 that as we go through that.

09:39:08 24 And it's kind of broken down loosely into  
09:39:12 25 different categories. The first category is

09:39:14 1 "Marketing, Packaging, Labeling and Distribution."

09:39:16 2 Do you see that?

09:39:17 3 A. Yes.

09:39:18 4 Q. Okay. And there's several items underneath

09:39:21 5 that category. The first one asks for accounting

09:39:29 6 records -- well, and let's clear this up now since

09:39:31 7 we are here.

09:39:32 8 The way this has been structured is there's

09:39:35 9 various categories of documents that we are seeking

09:39:39 10 for what I believe to be the various Natura pet

09:39:42 11 products at issue in the case. And I know

09:39:47 12 Ms. Caverly indicated that she had some issues with

09:39:50 13 a couple of the products that are included in the

09:39:53 14 items in the notice.

09:39:55 15 Would you refresh my recollection as to

09:39:57 16 what those were?

09:39:59 17 MS. CAVERLY: The Innova Chicken Dry,

09:40:04 18 Innova Red Meat Diet and Innova Red Meat Small

09:40:09 19 Bites.

09:40:17 20 MR. NIELD: All right.

09:40:19 21 MS. CAVERLY: And I don't know if you

09:40:21 22 misspeak, but I did not read or understand your

09:40:23 23 deposition notice to be regarding documents that you

09:40:25 24 had requested. These are topics for the deposition.

09:40:29 25 MR. NIELD: Did I say documents?



09:40:30 1 MS. CAVERLY: Yes.

09:40:32 2 MR. NIELD: Then I did misspeak.

09:40:33 3 MS. CAVERLY: Okay.

09:40:33 4 MR. NIELD: I'm sorry. Topics.

09:40:38 5 THE WITNESS: Topics.

6 BY MR. NIELD:

09:40:40 7 Q. Innova Chicken Dry, that is not a product

09:40:45 8 that Natura Pet Products manufactures?

09:40:48 9 A. No.

09:40:50 10 Q. Has Natura Pet Products ever manufactured a

09:40:55 11 product known as Innova Chicken Dry?

09:40:59 12 A. No.

09:40:59 13 Q. So there would be no documentation or

09:41:03 14 anything on the company's Web site relating to that

09:41:06 15 particular product?

09:41:06 16 A. Correct.

09:41:17 17 Q. All right. Well, you know, based upon that

09:41:19 18 representation then to the extent these items listed

09:41:23 19 in the notice reference that particular product,

09:41:26 20 we'll just delete any references to that product and

09:41:28 21 we won't be asking questions about Innova Chicken

09:41:31 22 Dry, okay?

09:41:32 23 A. Very good.

09:41:33 24 Q. The next item, Innova Red Meat Diet, is

09:41:38 25 that not a product that is manufactured by Innova?

09:41:45 1 A. It is now, but it wasn't up until a month  
09:41:49 2 ago.

09:41:50 3 Q. So it was not a product manufactured by  
09:41:54 4 Natura Pet Food Products as of November of 2007?

09:41:57 5 A. No, it was not.

09:42:04 6 Q. All right. Well, the same thing will apply  
09:42:07 7 then. Based upon your representation in that  
09:42:10 8 regard, to the extent that the items listed in the  
09:42:12 9 deposition notice reference that particular item we  
09:42:15 10 will not include that in our questioning. Okay?

09:42:17 11 A. Very good.

09:42:18 12 Q. All right. And then finally the last one  
09:42:21 13 was Innova Red Meat Small Bites. Is that a product  
09:42:26 14 that's manufactured by Innova?

09:42:29 15 A. Again, same answer as the last one. It is  
09:42:30 16 now but was not during the time in question.

09:42:35 17 Q. When did that product come into production  
09:42:40 18 by?

09:42:41 19 A. It was launched last month again, October.

09:42:46 20 Q. So there wouldn't be nothing on, for  
09:42:49 21 instance, the company's Web site prior to October of  
09:42:52 22 2008 referencing that particular product?

09:42:54 23 A. Correct.

09:43:02 24 Q. And there would be no marketing materials  
09:43:04 25 or packaging or anything produced by Innova that

09:43:08 1 would relate to that product prior to October of  
09:43:11 2 2008?

09:43:12 3 A. Nothing that would have been on the market  
09:43:14 4 or available. We obviously produced packaging and  
09:43:16 5 literature and all that stuff in advance of the  
09:43:18 6 launch, but it would not have been made available to  
09:43:21 7 the public or on our Web site beyond anything  
09:43:25 8 internal, no.

09:43:30 9 Q. Well, for the purposes of this deposition  
09:43:33 10 today, I will -- you know, based upon that  
09:43:39 11 representation and without reserving my rights to  
09:43:41 12 look into this a little further in the future -- I  
09:43:44 13 mean without waiving my rights to look into this in  
09:43:47 14 the future, I'll agree not to question you as I did  
09:43:50 15 with the other items on the Innova Red Meat Small  
09:43:54 16 Bites product, okay?

09:43:58 17 A. Correct, good.

09:43:59 18 Q. So with those qualifications I want to look  
09:44:01 19 at this list of items again.

09:44:05 20 We have asked for the designee who can  
09:44:08 21 testify about accounting records of the sale of --  
09:44:11 22 and there's a list of products there. I don't want  
09:44:14 23 to keep reading them over and over again, but the  
09:44:16 24 products -- initially I'll say California Natural  
09:44:19 25 Chicken. That is a product manufactured by Natura

09:44:28 1 Pet Food Products, correct?

09:44:29 2 A. Correct.

09:44:29 3 Q. And that was in existence between the

09:44:31 4 period of November of 2003 and November of 2007; is

09:44:33 5 that correct?

09:44:35 6 A. Yes.

09:44:36 7 Q. The next item is -- and I didn't read the

09:44:37 8 full name, I'm sorry, California Natural Chicken and

09:44:39 9 Brown Rice Adult. And all of the same questions I

09:44:44 10 just asked you would apply to that product?

09:44:46 11 A. Yes.

09:44:46 12 Q. Okay. And then the next product is

09:44:47 13 California Natural Dry Dog Food. Was that a

09:44:50 14 product -- strike that.

09:44:51 15 Is that a product that Natura manufactures?

09:44:53 16 A. Yes.

09:44:54 17 Q. And was that product being manufactured

09:44:57 18 between November of 2003 and November of 2007?

09:45:01 19 A. Yes.

09:45:03 20 Q. And then the next item is California

09:45:05 21 Natural Lamb Meal Dry. Again, is that a Natura pet

09:45:10 22 food product?

09:45:11 23 A. That is the same product as the one before.

09:45:14 24 California Natural Dry Dog Food is California

09:45:17 25 Natural Lamb Meal Dry.

09:45:19 1 Q. Okay. So what does Natura call the

09:45:22 2 product?

09:45:23 3 A. The official name is California Natural

09:45:25 4 Lamb Meal and Rice Dry -- or Dog Food would be the

09:45:30 5 official brand.

09:45:31 6 Q. And that is the same as the item that we've

09:45:33 7 listed before that, California Natural Dry Dog Food?

09:45:36 8 A. Correct.

09:45:38 9 Q. All right. So California Natural Lamb Meal

09:45:40 10 and Rice Dry Dog Food is obviously a Natura pet food

09:45:46 11 product?

09:45:46 12 A. Yes, sir.

09:45:46 13 Q. And was being manufactured between November

09:45:48 14 of 2003 and November of 2007?

09:45:52 15 A. Correct.

09:45:53 16 Q. The next item is California Natural Salmon

09:45:58 17 and Sweet Potato Adult. Is that a Natura pet food

09:46:02 18 product?

09:46:03 19 A. Correct.

09:46:03 20 Q. And was that being manufactured between

09:46:05 21 November of 2003 and November of 2007?

09:46:08 22 A. It -- it was launched in '06. So it would

09:46:13 23 not have been there for those earlier dates, but it

09:46:18 24 would have been -- I don't know the exact date, but

09:46:21 25 early '06 and all of '07 definitely.

09:46:37 1 Q. All right. And then the next item is  
09:46:41 2 Innova Chicken Dry. Is that a product that's  
09:46:45 3 manufactured by Innova Pet Food Products?  
09:46:48 4 A. No, that's not our product.  
09:46:49 5 Q. That's not one of your products?  
09:46:51 6 A. Right. That was the ones -- one of the  
09:46:52 7 ones that Kristen objected to earlier.  
09:46:54 8 Q. Oh, I'm sorry, you are right. Then we'll  
09:46:56 9 pass that by.  
09:46:57 10 Innova Original Dry Dog Food, is that a  
09:47:01 11 Natura pet food product?  
09:47:03 12 A. Correct. It's actually not the brand.  
09:47:05 13 It's Innova Dry Dog Food Original. It's just --  
09:47:07 14 it's our very first Innova formula. So that's where  
09:47:10 15 the "Original" probably came from.  
09:47:12 16 Q. So the official name is Innova Dry Dog  
09:47:16 17 Food?  
09:47:16 18 A. Correct.  
09:47:17 19 Q. And that is a Natura pet food product,  
20 correct?  
09:47:22 21 A. Yes, correct.  
09:47:23 22 Q. And that was manufactured between November  
09:47:25 23 of 2003 and November of 2007, correct?  
09:47:27 24 A. That's correct.  
09:47:32 25 Q. And then the next item I think we also

09:47:35 1 talked about earlier, the Innova Red Meat Dry Diet.  
09:47:39 2 That is not a product that was in existence at the  
09:47:44 3 time between that time period of November 2003 and  
09:47:49 4 November of 2007, correct?  
09:47:50 5 A. That's correct.  
09:47:51 6 Q. Although it is in existence today?  
09:47:54 7 A. Correct.  
09:47:56 8 Q. The same would apply to the next item  
09:47:59 9 that's listed, Innova Red Meat Small Bites, correct?  
09:48:02 10 A. Yes.  
09:48:04 11 Q. All right. Then the next item is Innova  
09:48:08 12 Senior Dry Dog Food. Is that a product manufactured  
09:48:13 13 by Innova Pet Products today?  
09:48:15 14 A. By Natura Pet Products, yes.  
09:48:16 15 Q. Natura. Sorry. And was -- that was  
09:48:18 16 something that was being manufactured by Natura  
09:48:21 17 between November of '03 and November of '07?  
09:48:24 18 A. Yes, sir.  
09:48:28 19 Q. And then finally the last product listed is  
09:48:31 20 Mother Nature - Beef Stew Recipe Dog Biscuits. Is  
09:48:34 21 that a Natura pet food product?  
09:48:36 22 A. Yes.  
09:48:37 23 Q. And was that a product being manufactured  
09:48:39 24 between -- by Natura between November of '03 and  
09:48:44 25 November of '07?

09:48:45 1 A. Again, it was -- it was there for the later  
09:48:47 2 dates. I think it was introduced in 2005. So it  
09:48:51 3 would not have been available for those earlier  
09:48:53 4 dates to the best of my recollection.

09:48:56 5 Q. Okay. Again --

09:48:57 6 MS. CAVERLY: Can I clarify for the record?  
09:48:59 7 You are saying Natura manufactured. You realize  
09:49:02 8 that there are multiple companies. Natura Pet  
09:49:05 9 Products, Inc., is not doing the manufacturing or  
09:49:09 10 do -- I just want to be clear what we are talking  
09:49:11 11 about when we say Natura.

09:49:13 12 MR. NIELD: Well, yeah, I did understand  
09:49:14 13 that, but maybe we should clear that up right up  
09:49:17 14 front here.

09:49:26 15 BY MR. NIELD:

09:49:26 16 Q. Natura Pet Food Products doesn't actually  
09:49:30 17 manufacture these products; is that correct?

09:49:32 18 A. Correct. Natura Pet Products is the  
09:49:34 19 marketing, sales, distribution company, right.

09:49:37 20 Q. Natura Pet Food Products contracts with  
09:49:40 21 other companies to manufacture the products; is that  
09:49:42 22 correct?

09:49:43 23 A. Correct.

09:49:51 24 Q. And that applies to all of the products  
09:49:53 25 that Natura Pet Food produced between November of



09:49:58 1 '03 and November of '07; is that correct?

09:50:01 2 A. Yes, sir.

09:50:08 3 Q. And Natura Pet Food Products contracts with  
09:50:11 4 a number of different companies, not a single  
09:50:15 5 entity, to manufacture a number of its product; is  
09:50:19 6 that correct?

09:50:19 7 A. Yes, sir.

09:50:29 8 Q. And as the corporate designee, you are  
09:50:33 9 able -- you are in the best position of anyone in  
09:50:36 10 Natura to provide information concerning the  
09:50:39 11 entities that manufacture Natura pet food products,  
09:50:42 12 correct?

09:50:43 13 A. Yes, sir.

09:50:47 14 Q. Okay. Now, I did refer in going through  
09:50:49 15 this list of products and I said did Natura Pet Food  
09:50:54 16 Products manufacture and technically I stand  
09:50:57 17 corrected. I should have said Natura caused others  
09:51:00 18 to manufacture those products on behalf of Natura  
09:51:02 19 which Natura then marketed and distributed, correct?

09:51:05 20 A. Yes.

09:51:07 21 Q. So that's what I mean if I use the term  
09:51:10 22 "manufacture," and I'll try to make sure I'm not  
09:51:14 23 quite as loose with that term in the future.

09:51:16 24 A. Understood.

09:51:18 25 Q. Now that we've gone through the products

09:51:20 1 and the caveats as to those three items that we've  
09:51:23 2 already discussed, let me get back to Item Number 1  
09:51:26 3 here under "Marketing, Packaging, Labeling and  
09:51:29 4 Distribution." As the corporation designee for  
09:51:32 5 Natura you would be in the best position to provide  
09:51:35 6 information about accounting records and sales  
09:51:38 7 figures as it related to the products that were  
09:51:41 8 manufactured by Natura within the time frame of  
09:51:46 9 November of '03 to November of '07; is that correct?

09:51:49 10 MS. CAVERLY: I object on your  
09:51:50 11 characterization of "the best position." He's been  
09:51:53 12 designated as the corporate representative according  
09:51:56 13 to the federal rules. So he is here to answer your  
09:51:59 14 questions. Whether he is the best is pure opinion  
09:52:03 15 and speculation on his part as to what you think  
09:52:05 16 that means.

09:52:06 17 BY MR. NIELD:

09:52:06 18 Q. Would you be the most knowledgeable person  
09:52:10 19 within Natura to testify as to sales of Natura pet  
09:52:16 20 food products between November of '03 and November  
09:52:18 21 of '07?

09:52:22 22 A. Yes.

09:52:35 23 Q. Let's drop down to the second item. We've  
09:52:40 24 already gone through the list. I'm not going to go  
09:52:42 25 through the list --

09:52:43 1 A. Sure.

09:52:43 2 Q. -- on all of these because we've already

09:52:45 3 done that. But as I just asked you, would you be

09:52:48 4 the most knowledgeable person within Natura Pet Food

09:52:53 5 Products to discuss the marketing of those items

09:52:56 6 that were manufactured that are at issue between

09:53:00 7 November of '03 and November of '07?

09:53:02 8 A. Yes.

09:53:06 9 Q. Let's drop down to Item Number 3. Would

09:53:09 10 you also be as Natura's corporate designee the most

09:53:14 11 knowledgeable individual with Natura as it related

09:53:17 12 to the labeling of the products that we've already

09:53:20 13 identified as being at issue between November of '03

09:53:23 14 and November of '07?

09:53:24 15 A. Yes.

09:53:24 16 Q. Okay. Let's drop down to Number 4. Would

09:53:30 17 you also be the most knowledgeable as Natura's

09:53:34 18 corporate designee as it related to any Internet Web

09:53:38 19 page advertising undertaken by Natura for those

09:53:41 20 products that we've identified as being at issue?

09:53:44 21 A. Yes.

09:53:48 22 Q. Let's drop down to Number 5.

09:53:52 23 A. Actually, there's two Number 5s.

09:53:55 24 Q. Good help is hard to find. That is a good

09:53:59 25 point. So what I am going to do --

09:54:01 1 MS. CAVERLY: That means you did this  
09:54:03 2 notice, right?  
09:54:04 3 MR. NIELD: That's right. Absolutely.  
09:54:07 4 I'm going to just mark my copy and maybe we  
09:54:13 5 can --  
6 MR. BAKER: 5A and 5B.  
09:54:14 7 MS. CAVERLY: Well --  
09:54:14 8 MR. NIELD: I was just going to go 5 and  
09:54:17 9 5A, but I don't know that we need to do that. I  
09:54:19 10 don't want to mess with the original there.  
11 BY MR. NIELD:  
09:54:21 12 Q. So there is two Number 5s. The first  
09:54:24 13 Number in order asks about e-mail advertisements.  
09:54:27 14 And would you again as Natura's corporate designee  
09:54:31 15 be the most knowledgeable as it related to any  
09:54:33 16 e-mail advertisement, if any, undertaken by Natura  
09:54:38 17 Pet Food Products during the November '03 to '07  
09:54:41 18 November time frame?  
09:54:43 19 A. Yes.  
09:54:43 20 Q. And then the second Number 5 -- did I do  
09:54:46 21 this? No, I didn't do this.  
09:54:49 22 The second Number 5 asks about the display  
09:54:53 23 advertisements and, again, as Natura's corporate  
09:54:56 24 designee would you be the most knowledgeable  
09:54:58 25 individual to respond to questioning about display

09:55:02 1 advertisements of Natura pet food products between  
09:55:05 2 the November of '03 to November of '07 time period?

09:55:09 3 A. Yes.

09:55:12 4 Q. Dropping down to Number 6, which there's  
09:55:17 5 only one of, thank god, this one asks about direct  
09:55:21 6 mail advertisements. And again as Natura's  
09:55:25 7 corporate designee would you be the most  
09:55:27 8 knowledgeable individual at Natura as it related to  
09:55:29 9 questioning concerning direct mail advertisements,  
09:55:32 10 if any, during the time period at issue between  
09:55:36 11 November of '03 and November of '07?

09:55:38 12 A. Yes.

09:55:39 13 Q. It's a little repetitive, but I need to do  
09:55:42 14 this for the record.

09:55:44 15 Let's drop -- go over to the next page and  
09:55:47 16 Number 7. Number 7 is asking about radio  
09:56:00 17 advertisements. And it would also be true as it  
09:56:04 18 related to radio advertisements, if any, that you as  
09:56:08 19 Natura's corporate designee would be the person most  
09:56:12 20 knowledgeable about any radio advertisements of  
09:56:15 21 Natura pet food products between November of '03 and  
09:56:20 22 November of '07.

09:56:20 23 A. Yes.

09:56:21 24 Q. Okay. Drop down to Number 8. The same  
09:56:23 25 question as it related to television advertisements.

09:56:28 1 Would you be as Natura's corporate designee the  
09:56:32 2 person most knowledgeable about any television  
09:56:34 3 advertising Natura did, if any, within the time  
09:56:38 4 frame at issue?

09:56:39 5 A. Yes.

09:56:40 6 Q. And when I say "the time frame at issue,"  
09:56:44 7 just as a way to try to expedite things, that is  
09:56:49 8 November of 2003 to November of 2007.

9 A. Sure.

09:56:52 10 Q. Okay?

09:56:52 11 A. Understood.

09:56:53 12 Q. Save me some words.

09:56:56 13 Number 9. Again as Natura's corporate  
09:57:00 14 designee would you be the person most knowledgeable  
09:57:04 15 with Natura and able to answer questions relating to  
09:57:05 16 any newspaper or magazine advertisements undertaken  
09:57:08 17 by Natura during the time frame at issue?

09:57:10 18 A. Yes.

09:57:13 19 Q. Number 10, point-of-purchase  
09:57:16 20 advertisements. Again, as Natura's corporate  
09:57:19 21 designee would you be the individual most  
09:57:23 22 knowledgeable about any point-of-purchase  
09:57:26 23 advertising Natura undertook relating to the  
09:57:29 24 products at issue during the time frame at issue in  
09:57:32 25 the lawsuit?

09:57:33 1 A. Yes.

09:57:34 2 Q. Okay. Number 11 --

09:57:39 3 Let me just ask before I go any further.

09:57:43 4 Has there been any individuals that Natura has asked

09:57:48 5 or that have unsolicitedly provided endorsements of

09:57:54 6 Natura pet food products that Natura has used in an

09:57:57 7 advertising sense?

09:57:59 8 A. I don't understand. Could you rephrase the

09:58:01 9 question?

09:58:02 10 Q. Does Natura -- has Natura contracted with

09:58:05 11 any individuals to provide Natura, the company or

09:58:08 12 its pet food products, endorsements for marketing

09:58:11 13 purposes?

09:58:12 14 A. Yes.

09:58:15 15 Q. Okay. We'll get to that.

09:58:17 16 So let me ask you, as Natura's corporate

09:58:20 17 designee would you be in the -- would you be the

09:58:23 18 most knowledgeable person with Natura as it related

09:58:25 19 to any endorsements that Natura has obtained for

09:58:32 20 marketing purposes of its products during the time

09:58:35 21 period at issue?

09:58:36 22 A. Yes.

09:58:41 23 Q. Number 12. Let me ask a foundational

09:58:47 24 question. Does Natura -- and we've talked about

09:58:50 25 Natura contracting with other entities to

09:58:53 1 manufacture its products, correct?

09:58:54 2 A. Yes.

09:58:54 3 Q. Does Natura undertake any advertising of  
09:58:59 4 its product in conjunction with those entities that  
09:59:03 5 manufacture the products on behalf of Natura?

09:59:06 6 A. Again, I'm not sure I clearly understand  
09:59:09 7 the question. What -- could you --

09:59:11 8 Q. Sure, sure. Is there any joint advertising  
09:59:17 9 between Natura and any of the entities that  
09:59:20 10 manufacture Natura's pet products of those products?

09:59:24 11 A. Yes.

09:59:25 12 Q. Okay. Would you then as Natura's corporate  
09:59:31 13 designee be the individual most knowledgeable as it  
09:59:34 14 relates to any joint advertising between Natura and  
09:59:37 15 any of its -- the manufacturers of its products in  
09:59:40 16 the time period at issue?

09:59:41 17 A. Yes.

09:59:46 18 Q. The next item is 13. As Natura's corporate  
09:59:57 19 designee would you be the person most knowledgeable  
09:59:59 20 as it related to any advertisements placed by Natura  
10:00:02 21 in any newsletters or periodicals concerning the  
10:00:06 22 products that we've identified as being at issue  
10:00:10 23 during the time frame that is at issue?

10:00:11 24 A. Yes.

10:00:15 25 Q. And, again, in Number 14, as Natura's



10:00:19 1 corporate designee would you be the person most  
10:00:22 2 knowledgeable as it related to the packaging of the  
10:00:26 3 Natura pet food products we've identified as being  
10:00:29 4 at issue in the relevant time frame?

10:00:31 5 A. Yes.

10:00:35 6 Q. Going on to Page 3 we'll go to 15. The  
10:00:39 7 same questioning as to labeling. As Natura Pet Food  
10:00:42 8 Product's corporate designee would you be the person  
10:00:46 9 most knowledgeable as to the labeling on the  
10:00:48 10 packaging of the pet food products that we've  
10:00:51 11 identified as being at issue in the relevant time  
10:00:53 12 frame?

10:00:54 13 A. Yes.

10:01:00 14 Q. I think you get an idea of what I'm asking  
10:01:02 15 you here.

16 A. Uh-huh.

10:01:05 17 Q. There's several other items. Number 16  
10:01:07 18 asks about nutritional information that is contained  
10:01:10 19 on the packaging. I'll shorten this down. Would  
10:01:23 20 you be Natura's most knowledgeable representative as  
10:01:26 21 to the nutritional information placed on the  
10:01:29 22 packaging for the products at issue during the time  
10:01:31 23 frame at issue?

10:01:32 24 A. Yes.

10:01:33 25 Q. Would that same apply to ingredient

10:01:36 1 information on packaging of the products at issue  
10:01:40 2 during the time frame at issue?  
10:01:41 3 A. Correct.  
10:01:42 4 Q. And that same would apply for any -- well,  
10:01:46 5 let me back up here.  
10:01:55 6 Let's go off the record a moment.  
7 Did I just ask about ingredients?  
10:01:58 8 THE VIDEOGRAPHER: We are going off the  
10:01:59 9 record --  
10:02:01 10 MR. NIELD: No. Okay. Sorry about that.  
10:02:03 11 Go ahead.  
10:02:03 12 THE VIDEOGRAPHER: Off the record. The  
10:02:04 13 time is 10:02.  
10:02:57 14 (Brief recess taken.)  
10:05:16 15 THE VIDEOGRAPHER: We are back on the  
10:05:17 16 record. The time is 10:05.  
10:05:20 17 BY MR. NIELD:  
10:05:21 18 Q. Okay. We just took a quickie break there  
10:05:24 19 so I could get organized again. And so we'll start  
10:05:27 20 up where we left off and we are on Number 18. As  
10:05:30 21 Natura's corporate -- designated corporate -- strike  
10:05:34 22 that -- Natura's corporate designee, would you be  
10:05:38 23 the individual most knowledgeable about any warnings  
10:05:42 24 issued regarding any -- the consumption of any of  
10:05:45 25 the products we've identified at issue during the

10:05:48 1 time period at issue?

10:05:49 2 A. Yes.

10:05:52 3 Q. And would the same apply as to any

10:05:54 4 instructions that Natura issued as it related to the

10:05:57 5 consumption of their products during the relevant

10:06:00 6 time period?

10:06:00 7 A. Yes.

10:06:16 8 Q. And that would be instructions given to

10:06:23 9 consumers as far as consumption of any of the

10:06:25 10 products at issue during the relevant time period?

10:06:27 11 A. Yes.

10:06:29 12 Q. Dropping down to 21. As Natura's corporate

10:06:33 13 designee would you be the individual most

10:06:36 14 knowledgeable about any trademark and copyright

10:06:40 15 registrations as it relates to any of the pet food

10:06:43 16 products we've identified as being at issue during

10:06:46 17 the time period at issue?

10:06:48 18 A. Yes.

10:06:48 19 Q. 22. As Natura's corporate designee would

10:06:55 20 you be the person most knowledgeable as it related

10:06:58 21 to any of the distributors of the products at issue

10:07:02 22 during the time period at issue, distributors of

10:07:05 23 Natura pet food products during that time frame?

10:07:07 24 A. Yes.

10:07:12 25 Q. And would the same apply to the retailers

10:07:16 1 of those Natura pet food products at issue during  
10:07:19 2 the pertinent time frame?

10:07:21 3 A. Yes.

10:07:24 4 Q. And would the same apply to distribution  
10:07:27 5 agreements between Natura and its distributors of  
10:07:30 6 those items, pet food items, at issue during that  
10:07:34 7 pertinent time frame?

10:07:34 8 A. Yes.

10:07:37 9 Q. And would the same be true of -- for -- and  
10:07:41 10 I'm up to 25 now -- retail sales agreements between  
10:07:44 11 Natura and any retailers of the pet food products --  
10:07:48 12 its pet food products?

10:07:49 13 A. There are no such agreements.

10:07:50 14 Q. There are none. Okay.

10:07:59 15 All right. So we'll drop down to Number  
10:08:02 16 26. Are there any direct sales that take place  
10:08:05 17 between Natura Pet Food of the products at issue  
10:08:09 18 directly to consumers during that pertinent time  
10:08:12 19 period?

10:08:12 20 A. No, sir.

10:08:14 21 Q. No direct sales.

10:08:35 22 And 27 may be a little repetitive. We've  
10:08:38 23 already established that there are no agreement  
10:08:40 24 between Natura and retailers for the sales of its  
10:08:44 25 product during -- products at issue during the time

10:08:47 1 period at issue, correct?

10:08:48 2 A. Correct.

10:08:48 3 Q. I think we've already talked about

10:08:50 4 distributors there. Is there any difference in your

10:08:53 5 mind between a wholesaler and a distributor of

10:08:57 6 Natura's pet food products?

10:08:58 7 A. They'd be the same.

10:09:00 8 Q. The same.

10:09:00 9 So we've covered Number 27 already. And

10:09:03 10 Number 28, I think we've covered Number 28 as well

10:09:10 11 because it looks the same as Number 21 to me.

10:09:20 12 All right. Before we go on, let's go back

10:09:26 13 to Number 1. Are you aware that Natura Pet Food

10:09:48 14 Products just produced documentation to the

10:09:51 15 plaintiffs in this case pursuant to the request by

10:09:56 16 the plaintiffs for such documentation?

10:09:57 17 A. Yes, I was advised of that by Kristen.

10:10:00 18 Q. Okay. Were you involved in -- in that

10:10:06 19 production, selecting any of the documents,

10:10:08 20 producing any of the documents to the plaintiffs?

10:10:10 21 A. Yes.

10:10:13 22 Q. Was anyone else within Natura Pet Food

10:10:16 23 Products involved in that process?

10:10:17 24 A. Yes.

10:10:23 25 Q. Who else was involved in that process?

10:10:25 1 A. My assistant, Vicki Lane, L-a-n-e.

10:10:31 2 Q. Okay. Anyone else?

10:10:34 3 A. Patricia Gilpin, who we've referenced

10:10:38 4 earlier.

10:10:39 5 Q. Okay. Anyone else?

10:10:41 6 A. That would be it at Natura Pet Products.

10:10:46 7 Q. Okay.

10:10:46 8 MS. CAVERLY: Actually, Paul French helped

10:10:49 9 me also, but that was before he left the company.

10:10:51 10 THE WITNESS: Oh, that was the marketing

10:10:51 11 stuff. He's no longer with Natura, so --

10:10:54 12 BY MR. NIELD:

10:10:54 13 Q. Paul French?

10:10:55 14 A. Paul French was our director of marketing

10:11:00 15 services and he recently resigned to move to Mexico,

10:11:06 16 so --

10:11:10 17 Q. To move to Mexico?

10:11:11 18 A. Uh-huh.

10:11:16 19 Q. When did he resign?

10:11:19 20 A. His last day was October -- mid October

10:11:23 21 sometime. So it was just very recently.

10:11:25 22 Q. Recently. Okay. So he was also involved

10:11:28 23 in the process of gathering the documentation

10:11:31 24 requested and providing it --

10:11:32 25 A. Yes, sir.

10:11:32 1 Q. -- to the plaintiffs?

10:11:35 2 Would it be fair to say you supervised that

10:11:37 3 effort?

10:11:41 4 A. Yes.

10:11:42 5 Q. Or were you actually pulling documents

10:11:46 6 yourself?

10:11:47 7 A. Both.

10:11:48 8 Q. Both. Okay.

10:11:56 9 Are you -- or do you know whether -- let's

10:12:05 10 move on.

10:12:11 11 To the best of your knowledge, has Natura

10:12:14 12 produced all documentation relating to the marketing

10:12:18 13 of California Natural Chicken and Brown Rice

10:12:22 14 Adult -- of the Brown Rice Adult product?

10:12:25 15 A. To my knowledge, yes.

10:12:26 16 Q. Okay. Would there be anyone in Natura that

10:12:30 17 would have more knowledge than yourself as it

10:12:32 18 related to the production of all marketing materials

10:12:35 19 relating to that particular product, California

10:12:38 20 Natural Chicken and Brown Rice Adult?

10:12:41 21 A. No.

10:12:44 22 MS. CAVERLY: To clarify, Mr. Atkins knows

10:12:47 23 what was given to me. He doesn't know what I gave

10:12:50 24 to you.

10:12:54 25 MR. NIELD: Okay. I suppose I can't ask

10:13:04 1 you if you gave us everything.

10:13:06 2 MS. CAVERLY: Not today.

10:13:08 3 MR. NIELD: Not today.

10:13:10 4 BY MR. NIELD:

10:13:10 5 Q. All right. Well, we'll table that for the  
10:13:14 6 time being and let me ask you some additional  
10:13:17 7 questions.

10:13:19 8 And perhaps that may also relate to some of  
10:13:23 9 these other products at issue, but let's start with  
10:13:26 10 the California Natural Chicken and Brown Rice. How  
10:13:31 11 does Natura Pet Food Products or how did Natura Pet  
10:13:35 12 Food Products market that particular item during the  
10:13:39 13 time frame of November of 2003 and November of 2007?  
10:13:43 14 What is the whole array of marketing techniques  
10:13:46 15 utilized by Natura for that item?

10:13:51 16 A. From a centralized standpoint we do very  
10:13:55 17 little marketing ourselves. The Web site would be  
10:13:58 18 the predominant source of marketing and advertising  
10:14:02 19 activity from a Natura Pet Products corporate  
10:14:05 20 standpoint.

10:14:06 21 The rest of our advertising and marketing  
10:14:09 22 resources are focused on cooperative-type activities  
10:14:13 23 to where we support field-generated type work. We  
10:14:18 24 do a lot of coop for newspaper ads, for -- truck  
10:14:25 25 signage is a big one for us to where actually that



10:14:29 1 product would have been represented in a big truck  
10:14:33 2 decal that our distributors and some of actually our  
10:14:35 3 retail customers use in the market.

10:14:40 4 We beyond that would only have spent  
10:14:43 5 marketing dollars for point-of-purchase type  
10:14:46 6 materials, for signage, for display signage, those  
10:14:53 7 kind of things.

10:14:57 8 From a television, radio, we don't do any  
10:14:59 9 of those kind of activities.

10:15:04 10 Q. All right. Well, so there is no television  
10:15:05 11 advertising undertaken by Natura Pet Food Products,  
10:15:10 12 undertaken in that pertinent time period of November  
10:15:12 13 of '03 to November of '07 --

10:15:14 14 A. Yes.

10:15:15 15 Q. -- for any of the Natura pet food products  
10:15:19 16 that we've already identified as being at issue; is  
10:15:22 17 that correct?

10:15:22 18 A. That would -- that would cover the whole  
10:15:24 19 gamut, yes, sir.

10:15:25 20 Q. And that same answer would apply to any  
10:15:28 21 radio advertising; is that correct?

10:15:29 22 A. That's correct. Any -- with the exception  
10:15:31 23 of anything done on a cooperative basis. We do  
10:15:35 24 have -- I can count on one hand the number of times  
10:15:39 25 we've done some kind of cooperative cable TV

10:15:42 1 advertising to where there will be a donut or  
10:15:44 2 something where the local TV station will produce  
10:15:47 3 something that will include our products with the  
10:15:50 4 retailer's message in the middle. But again those  
10:15:54 5 are very few and far between.

10:15:55 6 Same thing for radio. We do cooperatively  
10:15:58 7 support radio advertising by the retailer through  
10:16:02 8 our distributors. But, again, we don't generate  
10:16:04 9 that kind of copy or that kind of activity. We just  
10:16:08 10 support what they do.

10:16:09 11 Q. And that would apply for all of the  
10:16:11 12 products we've identified as being at issue,  
10:16:13 13 correct?

10:16:13 14 A. Yes, sir.

10:16:13 15 Q. And I just want to be sure we are clear on  
10:16:16 16 that. California Natural Chicken and Brown Rice  
10:16:20 17 Adult. We've already established that --

18 A. Yes.

10:16:23 19 Q. -- California Natural Dry Dog Food is just  
10:16:25 20 a duplicate of the California Natural Lamb Meal Dry,  
10:16:30 21 correct?

10:16:31 22 A. Uh-huh.

10:16:31 23 Q. California Natural Salmon and Sweet Potato  
10:16:34 24 Adult?

10:16:35 25 A. Yes.

10:16:55 1 Q. The Innova Dry Dog Food?

10:17:00 2 A. Yes.

10:17:00 3 Q. And the Innova Senior Dry Dog Food?

10:17:03 4 A. Yes.

10:17:04 5 Q. Now, you are talking about cooperative

10:17:08 6 marketing. What do you mean in that sense?

10:17:10 7 Marketing with retailers, wholesalers, both?

10:17:13 8 A. All of the above. Our -- yes.

10:17:32 9 Q. Okay. All right. And is the cooperative

10:17:36 10 marketing that is undertaken with -- let's take --

10:17:41 11 let's separate them -- retailers for the time being,

10:17:45 12 is that product specific or is that generally just

10:17:49 13 as to Natura pet food products running the gambit?

10:17:55 14 A. I guess to clarify, we don't do anything

10:17:58 15 directly with retailers. Everything goes through

10:18:02 16 distributors. They have the budget. They manage

10:18:03 17 the budget and how it's spent with their customers,

10:18:04 18 the retailer.

10:18:05 19 The retailer advertisements that we --

10:18:07 20 because we see it come through -- back through for

10:18:09 21 cooperative advertising payment. And it's

10:18:12 22 usually -- we are usually representative in an ad

10:18:14 23 either by ourselves featured or with other products

10:18:17 24 that are being featured or on sale or whatever that

10:18:20 25 you might see in your local newspaper, et cetera.

10:18:25 1 Q. So you have a network of  
10:18:27 2 distributor/wholesalers across the nation; is that  
10:18:30 3 correct?  
10:18:30 4 A. Yes.  
10:18:31 5 Q. Do you sell your products in all 50 states?  
10:18:33 6 A. We don't -- we do not have distributors in  
10:18:37 7 all 50 states, but our product is sold in all 50  
10:18:40 8 states, yes.  
10:18:41 9 Q. Do you have agreements with distributors or  
10:18:43 10 wholesalers that cover sales of your products -- and  
10:18:47 11 this would apply from November of '03 to November of  
10:18:50 12 '07 -- in all 50 states? Is that correct?  
10:18:52 13 A. Yes.  
10:18:53 14 Q. All right. So you cover the nation?  
10:18:55 15 A. Yes.  
10:18:57 16 Q. That would include Florida?  
10:18:58 17 A. Yes.  
10:18:59 18 Q. Okay. It would include California?  
10:19:02 19 A. Yes.  
10:19:04 20 Q. And points in between?  
10:19:05 21 A. Yes.  
10:19:05 22 Q. Okay. And you have agreements with the  
10:19:11 23 wholesalers to sell your products; is that correct?  
10:19:13 24 A. Yes.  
10:19:13 25 Q. And these are written agreements?

10:19:15 1 A. Correct.

10:19:17 2 Q. In every case you have a written agreement  
10:19:19 3 with a wholesaler?

10:19:21 4 A. Yes.

10:19:22 5 Q. Okay. And as part of these agreements  
10:19:25 6 there's provisions for cooperative advertising that  
10:19:28 7 the wholesalers undertake with the retailers?

10:19:30 8 A. Yes.

10:19:32 9 Q. And you help fund that cooperative  
10:19:35 10 advertising?

10:19:35 11 A. Yes.

10:19:38 12 Q. Okay. Do you -- does Natura pay for the  
10:19:42 13 whole -- the entire cost of that cooperative  
10:19:43 14 advertising or is it a joint shared cost between the  
10:19:46 15 wholesaler and Natura?

10:19:47 16 A. It's a shared program.

10:20:02 17 Q. Now, the wholesalers -- I'm going to call  
10:20:05 18 them wholesalers but we understand that it's  
10:20:08 19 distributors and wholesalers. It's just something  
10:20:11 20 we are using interchangeably, correct?

10:20:14 21 A. Sure.

10:20:15 22 Q. The wholesalers have their own sales staff;  
10:20:18 23 is that correct?

10:20:18 24 A. Not as many as we would like, but, yes,  
10:20:21 25 most of them do.

10:20:22 1 Q. The wholesalers probably -- well, let me  
10:20:25 2 ask you this. The wholesalers that Natura typically  
10:20:28 3 contracts with are not only handling Natura pet food  
10:20:31 4 products but they have other products that they are  
10:20:33 5 selling for other manufacturers -- strike that --  
10:20:35 6 other companies, correct?

10:20:36 7 A. Correct.

10:20:38 8 Q. Okay. Do the wholesalers that Natura Pet  
10:20:41 9 Food Products contracts with, do they specialized in  
10:20:44 10 pet foods products or do they run the gamut on other  
10:20:48 11 types of products?

10:20:49 12 A. It -- there's not really a typical  
10:20:51 13 distributor. Some are very much just focused on pet  
10:20:57 14 food. Others have hard lines and accessories and  
10:21:00 15 run the gamut, so it's a broad swathe of different  
10:21:05 16 kinds of distributors that we utilize.

10:21:07 17 Q. Do the distributors utilize -- do they  
10:21:10 18 typically specialize in pet products generally or do  
10:21:13 19 they go into other types of consumer items?

10:21:17 20 A. Yeah, I mean, they do, but they are focused  
10:21:19 21 on pet. The majority of their business would be pet  
10:21:22 22 related, yes.

10:21:33 23 Q. Okay. And these activities -- and you  
10:21:35 24 listed five or six different types of things that  
10:21:38 25 you do on a cooperative basis with your

10:21:41 1 wholesalers -- these are ongoing activities?

10:21:45 2 A. Yes, sir.

10:21:47 3 Q. They -- they are not one-time events? They  
10:21:49 4 are continually -- you are continually having  
10:21:53 5 cooperative types of advertising activities with  
10:21:56 6 your wholesalers and they with you -- with the  
10:21:59 7 retailers, correct?

10:21:59 8 A. Correct.

10:22:02 9 Q. Let's focus on -- well, strike that.

10:22:07 10 Is one of the activities that is done in a  
10:22:10 11 cooperative way between your wholesalers and the  
10:22:12 12 retailers providing samples of products to retailers  
10:22:18 13 for -- to generate interest with consumers?

10:22:20 14 A. That's actually not a cooperative program.  
10:22:22 15 That's something we do. We give them to them on a  
10:22:27 16 pro rata basis based on their purchases. It's been  
10:22:31 17 a while since I've looked at it, but it's -- but for  
10:22:35 18 certain -- what they buy, they get a certain amount  
10:22:38 19 of samples free to help promote the products.

10:22:40 20 Q. "They" being the wholesalers?

10:22:42 21 A. The wholesaler.

10:22:44 22 Q. So based upon what they are purchasing from  
10:22:47 23 Natura they get some percentage back in samples that  
10:22:50 24 they then can utilize in servicing the retailers; is  
10:22:55 25 that correct?

10:22:55 1 A. Yes, sir.

10:22:56 2 Q. Okay. Are you aware during the period of  
10:23:02 3 November of 2003 to January of 2003 where -- whether  
10:23:09 4 samples were provided -- let me back up here. Let  
10:23:12 5 me back up foundationally.

10:23:15 6 Who is the distributor or distributors that  
10:23:21 7 handle Natura pet food products for the State of  
10:23:24 8 Florida?

10:23:25 9 A. From the period of 2003 --

10:23:27 10 Q. Correct.

10:23:27 11 A. -- or now or --

10:23:28 12 Q. All of my questions will be for that  
10:23:29 13 period.

10:23:30 14 A. Okay.

10:23:30 15 Q. For that pertinent period of November of  
10:23:33 16 2003 to January of 2003.

10:23:35 17 A. The main distributor that we've had --

10:23:37 18 MS. CAVERLY: Let me interrupt because you  
10:23:38 19 said November of 2003 to January of 2003.

10:23:41 20 MR. NIELD: You are right. I meant  
10:23:43 21 November of 2007. November 2003, November of 2007.

22 BY MR. NIELD:

10:23:47 23 Q. I'm sorry, go ahead.

10:23:48 24 A. The main distributor we've had there is a  
10:23:51 25 company called Pet Professionals Choice and they are



10:23:55 1 based outside of Orlando.

10:23:56 2           And then up until, gosh, I don't know the  
10:24:00 3 exact termination date, but would have been '05 or  
10:24:04 4 '6, we would have had another distributor there  
10:24:08 5 whose name escapes me at the moment. But they are  
10:24:13 6 no longer a distributor, but they would have been in  
10:24:17 7 play up until 2005 or '6.

10:24:18 8           Q. Okay. So Pet Professionals Choice came  
10:24:21 9 after this other company?

10:24:22 10          A. They came -- actually while they were --  
10:24:25 11 they both were in existence for a period of time and  
10:24:27 12 distributing together in the market.

10:24:29 13          Q. Distributing Natura pet food products in  
10:24:32 14 the market?

10:24:32 15          A. Yes.

10:24:34 16          Q. The other company's name you can't recall  
10:24:37 17 at this moment?

10:24:41 18          A. No. It will come to me, but I can't recall  
10:24:43 19 at the moment.

10:24:43 20          Q. Well, we'll be here for a while, so if it  
10:24:45 21 comes to you in the meantime I would appreciate if  
10:24:48 22 you let me know. I would like to include it on the  
10:24:53 23 record. And if we don't remember it today, perhaps  
10:24:54 24 we can make arrangements to get that name --

10:24:57 25          A. Sure.

10:24:57 1 Q. -- in another date.

10:24:59 2 But currently the distributor that handles

10:25:02 3 Natura pet food products, the pet food products

10:25:04 4 we've identified as being at issue for at least a

10:25:07 5 part -- well, strike that.

10:25:08 6 I guess they were one of the distributors

10:25:11 7 at one point and now the only distributor for that

10:25:14 8 November '03, November '07 time period was Pet

10:25:18 9 Professionals Choice, correct?

10:25:20 10 A. Correct.

10:25:21 11 Q. Of Orlando, Florida?

10:25:23 12 A. They are outside of Orlando. Longview, I

10:25:26 13 think, but apparently right outside of Orlando.

10:25:30 14 Q. And they would be the distributor for the

10:25:33 15 entire State of Florida?

10:25:33 16 A. Yes. Yes, there might be -- actually, I

10:25:37 17 would have to look at the contract. There might be

10:25:39 18 a question about the panhandle portion. May or may

10:25:42 19 not be included in there, but definitely for the

10:25:45 20 majority of Florida. And, again, we can look that

10:25:48 21 up and confirm it.

10:25:49 22 Q. Is there another wholesaler that you are

10:25:51 23 thinking about might be contracted as it relates to

10:25:55 24 the panhandle portion of Florida?

10:25:56 25 A. Our distributor out of Atlanta, Southeast

10:26:02 1 Pet is their name, and actually it's Austell,  
10:26:07 2 Georgia, I know covers that area. Whether or not  
10:26:10 3 they cover it for us, I would have to go back and  
10:26:12 4 look at the contracts. I honestly don't recall at  
10:26:16 5 this moment.

10:26:21 6 Q. All right. So either one or perhaps two  
10:26:23 7 companies?

10:26:25 8 A. Or potentially three if they were in there,  
10:26:28 9 too.

10:26:29 10 Q. Yeah. You are right. Let me -- I didn't  
10:26:32 11 phrase that very well.

10:26:32 12 You talked about an unknown of company and  
10:26:35 13 Pet Professionals Choice. And at least those two  
10:26:38 14 and perhaps three, the company just outside of  
10:26:42 15 Atlanta, Southeast Pet, were responsible for  
10:26:46 16 distributing Natura pet food products in the State  
10:26:49 17 of Florida in the pertinent time period, November of  
10:26:54 18 '03 to November of '07, correct?

10:26:56 19 A. Just to rephrase that, the two Florida  
10:26:59 20 distributors for sure. Again, Southeast Pet  
10:27:02 21 undetermined. They may or may not. But could be  
10:27:05 22 potentially one of those distributors.

10:27:07 23 Q. Okay. That's fine. And that would be for  
10:27:10 24 the pet food products that we just discussed, we've  
10:27:13 25 identified several times now, correct?

10:27:14 1 A. Yes.

10:27:15 2 Q. And that would include the Innova Senior

10:27:17 3 Dry Dog Food, correct?

10:27:19 4 A. Yes.

10:27:19 5 Q. Okay. As we sit here today, are you aware

10:27:25 6 of any samples being given to any of the three

10:27:27 7 entities that we've just discussed to be utilized

10:27:33 8 with retailers in the Florida market in the

10:27:36 9 pertinent time period?

10:27:38 10 A. To be specific I'm aware that they had the

10:27:41 11 opportunity to have those samples available. I'm

10:27:44 12 not aware of any actual samples given or sold or

10:27:48 13 provided.

10:27:50 14 Q. They may have, they may not have? The

10:27:53 15 opportunity was there, but you just don't

10:27:54 16 specifically know at this point in time?

10:27:56 17 A. As I sit here, I couldn't tell you one way

10:27:59 18 or the other, no.

10:27:59 19 Q. That would include samples of Innova Senior

10:28:02 20 Dry Dog Food?

10:28:04 21 A. Correct.

10:28:05 22 Q. Does Innova keep any kind of records as to

10:28:10 23 who -- strike that -- as to which retailers the

10:28:14 24 wholesalers that Innova Pet Food Products contracts

10:28:17 25 with are actually selling their products to the

10:28:19 1 consumer?

10:28:20 2 A. No, we do not get retailer data. We only  
10:28:23 3 have sales data to the distributor or wholesaler.

10:28:27 4 Q. So you know who the distributors are, but  
10:28:30 5 you don't know who the distributors are doing  
10:28:32 6 business with at a retail level?

10:28:33 7 A. We do -- we do and we don't. We get --  
10:28:37 8 distributors provide us retailer names for our Web  
10:28:40 9 site locator. So we know who they are through that.  
10:28:44 10 But we don't know -- not all of our distributors do  
10:28:47 11 a good job of that, so we wouldn't necessarily know  
10:28:51 12 every distributor's every customer and for certain  
10:28:53 13 we don't know their sales data. We don't know if  
10:28:56 14 they sold them one bag or a thousand bags.

10:29:01 15 Q. All right. Natura Pet Food Products, and  
10:29:04 16 again during the pertinent time period at issue,  
10:29:08 17 didn't undertake any direct marketing efforts with  
10:29:12 18 any retailers of its products, correct?

10:29:14 19 A. Correct.

10:29:20 20 Q. Earlier in the deposition you indicated  
10:29:23 21 that Natura does maintain its own sales force,  
10:29:27 22 correct?

10:29:27 23 A. Yes.

10:29:27 24 Q. It's approximately 20 individuals, I think  
10:29:29 25 you indicated?

10:29:30 1 A. Well, 20 includes staff. It would be -- I  
10:29:38 2 would have to count them up but that would be  
10:29:40 3 roughly, yes.

10:29:42 4 Q. All right. And these individuals, they are  
10:29:45 5 responsible for sales efforts with the distributors?

10:29:48 6 A. Correct.

10:29:50 7 Q. None of the sales staff that Natura  
10:29:51 8 maintains is involved with any retailers of Natura  
10:29:57 9 pet food products in the marketing or sales of those  
10:30:00 10 products?

10:30:01 11 A. No. They work with our distributors to  
10:30:03 12 help sell those products to their retail stores, so  
10:30:06 13 they do work at the retail level, yes.

10:30:13 14 Q. Okay. And these are employees? The sales  
10:30:15 15 staff are employees of Natura Pet Food Products?

10:30:18 16 A. We have our own internal sales team and  
10:30:22 17 then we also contract in our eastern region with an  
10:30:25 18 independent company to provide our sales  
10:30:27 19 representation for us.

10:30:29 20 Q. When we were talking about roughly 20,  
10:30:31 21 perhaps a few less because there's some  
10:30:35 22 administrative staff there, those individuals, those  
10:30:38 23 were actual employees of Natura or did that include  
10:30:41 24 the entity in the east?

10:30:43 25 A. It would have included the independent

10:30:45 1 folks, so they actually technically wouldn't be  
10:30:48 2 employees, they would be contractors.

10:30:50 3 Q. Right. Independent contractors. Okay. So  
10:30:53 4 your sales force, whether they are through an  
10:30:55 5 independent contract -- whether they are independent  
10:30:57 6 contractors or whether they are actual employees,  
10:31:00 7 does get involved with retail efforts in conjunction  
10:31:03 8 with your wholesalers' efforts to assist retailers  
10:31:08 9 in the marketing of the Natura pet food products,  
10:31:11 10 correct?

10:31:11 11 A. Yes.

10:31:13 12 Q. This would include the State of Florida?

10:31:15 13 A. Yes.

10:31:16 14 Q. This would include all 50 states, I'm  
10:31:19 15 assuming?

10:31:20 16 A. No, we -- it would not because we are  
10:31:23 17 not -- we don't have enough salespeople to cover all  
10:31:27 18 50 states. So it would include primarily the major  
10:31:30 19 metropolitan markets or potential markets for our  
10:31:33 20 products. So we would not have necessarily sales  
10:31:36 21 representation in every state in every market.

10:31:37 22 Q. Okay. Florida being a bigger state, you  
10:31:39 23 would have that kind of representation, sales  
24 representation?

10:31:41 25 A. By way of one of our independent

10:31:43 1 contractors has a rep there, right.

10:31:44 2 Q. Which independent contractor has a rep in  
10:31:48 3 the State of Florida?

10:31:49 4 A. Well, again, our eastern region  
10:31:51 5 representation is through a company called PetReps.  
10:31:55 6 P-e-t-R-e-p-s, Incorporated, and they are based out  
10:32:05 7 of Connecticut.

10:32:10 8 Q. And they have a sales rep. That entity  
10:32:13 9 PetReps, Inc., has a sales rep that is involved in  
10:32:18 10 the sales of Natura pet food products, those that  
10:32:22 11 we've identified, including Innova Senior Dry Dog  
10:32:23 12 Food in the State of Florida?

10:32:26 13 A. Yes.

10:32:26 14 Q. And that was -- that was the situation in  
10:32:29 15 the pertinent time period between November of '03  
10:32:32 16 and November of '07, correct?

10:32:34 17 A. Yeah, there -- during that entire time  
10:32:37 18 there was not a rep there the entire time. And I  
10:32:42 19 really couldn't tell you the dates when that rep was  
10:32:45 20 added on, but I would guess in '05 probably, '05 or  
10:32:49 21 '6, when he actually added the Florida rep.

10:32:53 22 Q. So before '05 or '06 you are not certain  
10:32:56 23 whether there was a sales rep?

10:32:57 24 A. That there was not a sales rep.

10:32:59 25 Q. There was not?



10:33:00 1 A. Yeah, absolutely.

10:33:01 2 Q. So it just started in '05 or '06?

10:33:04 3 A. Right, right.

10:33:07 4 Q. So this situation where sales reps, either

10:33:14 5 independent contractors or your own employees, cover

10:33:17 6 various regions of the country for Natura and work

10:33:20 7 cooperatively with wholesalers and retailers is --

10:33:25 8 generally occurs in the more metropolitan, the

10:33:30 9 denser population areas; is that correct?

10:33:31 10 A. That's where their focus would be because

10:33:34 11 that would be where the primary potential would be

10:33:36 12 for sales, yes.

10:33:37 13 Q. For instance, New York, Illinois,

10:33:40 14 California?

10:33:40 15 A. Yeah, exactly.

10:33:52 16 Q. Okay. And these sales activities that are

10:33:55 17 undertaken with either the independent contractors

10:33:58 18 working on behalf of Natura or Natura's own sales

10:34:02 19 reps working with Natura's contracted wholesalers,

10:34:06 20 these activities that they undertake with the

10:34:08 21 retailers are undertaken in those areas that we just

10:34:16 22 talked about where there's more population,

10:34:19 23 metropolitan areas across the nation, correct?

10:34:21 24 A. That would be fair, yes.

10:34:24 25 Q. And it's undertaken for all of the various

10:34:27 1 products that we've discussed here including Innova

10:34:30 2 Senior Dry Dog Food?

10:34:32 3 A. Yes.

10:34:49 4 Q. Let's -- let's just define some of these

10:34:53 5 activities a little more clearly. The cooperative

10:35:00 6 activities that are undertaken between the

10:35:02 7 wholesalers and the retailers, either with the

10:35:06 8 wholesaler representatives or your company's sales

10:35:09 9 force or independent contractors or both or

10:35:12 10 everyone, what kinds of activities do they undertake

10:35:16 11 together? What kinds of things are they doing to

10:35:21 12 market Natura pet food products to the retailers and

10:35:24 13 assist the retailers in selling those products?

10:35:27 14 A. Sure.

10:35:28 15 MS. CAVERLY: I'll object to the extent

10:35:29 16 that you are asking about wholesaler and retailer

10:35:29 17 activities where Natura is not involved. That would

10:35:31 18 call for speculation.

10:35:34 19 BY MR. NIELD:

10:35:34 20 Q. Well, I don't want you to speculate. Do

10:35:36 21 you have any knowledge of activities that occur

10:35:39 22 between whole -- wholesalers of Natura pet food

10:35:44 23 products and its retailers where you don't have a

10:35:47 24 sales rep or a contracted rep involved?

10:35:51 25 A. Not firsthand knowledge. Again, it would

10:35:53 1 be speculation based on my experience in the  
10:35:56 2 industry. But I wouldn't say I have been there to  
10:35:59 3 witness what these people do that don't work for us.

10:36:02 4 Q. Well, you are told about it?

10:36:03 5 A. Correct, sure.

10:36:04 6 Q. So you do have information about what's  
10:36:06 7 going on?

10:36:07 8 A. Correct.

10:36:08 9 Q. And that's all I'm asking you.

10:36:10 10 A. Okay. Good. I got that.

10:36:12 11 Q. All right. So let's go back to that  
10:36:13 12 question then. To the extent that you know about  
10:36:14 13 it, heard about it, seen it, what kind of  
10:36:17 14 cooperative efforts are undertaken between the  
10:36:20 15 wholesalers and the retailers whether or not one of  
10:36:22 16 your representatives is involved?

10:36:23 17 A. Sure. Wholesale reps, when there is one,  
10:36:30 18 their job is usually to be order takers. They go  
10:36:34 19 in, they go call on the accounts. They'll push  
10:36:37 20 deals, do promotions, try to get shelf space for  
10:36:41 21 their products, those kind of things. So my  
10:36:47 22 estimation, that would be a typical sales activity  
10:36:51 23 for a wholesale sales representative.

10:36:56 24 Q. Push deals, get shelf space with retailers,  
10:37:00 25 correct?

10:37:00 1 A. Yes, sir.

10:37:01 2 Q. Does Natura Pet Food Products provide its  
10:37:06 3 wholesalers any instructions or guidance as to the  
10:37:09 4 type of retailer it would like to sell its products  
10:37:14 5 or did it provide that kind of instruction or  
10:37:17 6 direction during the relevant time period?

10:37:19 7 A. Yes.

10:37:23 8 Q. What type of instructions or directions do  
10:37:26 9 you give your wholesalers as to the type of retailer  
10:37:30 10 you would like handling Natura pet food products?

10:37:34 11 A. Actually, by our contract with distributors  
10:37:37 12 they are required to sell only to independent feed  
10:37:41 13 stores, pet stores, veterinary offices and those  
10:37:47 14 kind of outlets. They are exclusive -- they are  
10:37:49 15 prohibited by contract to sell to major mass  
10:37:53 16 merchandise outlets, grocery stores, PetSmarts,  
10:37:56 17 PETCOs, those kind of outlets.

10:38:02 18 Q. And that was a marketing decision that  
10:38:04 19 individuals at Natura Pet Food Products made?

10:38:09 20 A. Yes. From our inception, yes.

10:38:24 21 Q. As far as who these independent stores are,  
10:38:30 22 pet foods -- independent pet food stores or feed  
10:38:32 23 stores or veterinarians, the wholesalers develop  
10:38:36 24 those group of -- that group of retailer; is that  
10:38:40 25 correct? They develop -- they go out and figure out

10:38:44 1 who these individuals -- who these entities are?

10:38:47 2 A. Sure, yes.

10:38:48 3 Q. Do these entities have to be approved in  
10:38:51 4 any way by Natura Pet Food Products once they are  
10:38:53 5 identified by the wholesaler?

10:38:55 6 A. No. As long as they are within the scope  
10:38:57 7 of that independent store definition, then there's  
10:38:59 8 no approval necessary.

10:39:11 9 Q. Getting back to Pet Professionals Choice,  
10:39:19 10 one of the distributors in the State of Florida, do  
10:39:24 11 you know the names of the individual sales  
10:39:27 12 representatives for that entity that cover the State  
10:39:30 13 of Florida?

10:39:30 14 A. I do not know.

10:39:34 15 Q. And would that also apply to PetReps, Inc.,  
10:39:38 16 if indeed they do have some coverage of the State of  
10:39:41 17 Florida?

10:39:42 18 A. No, I do know their sales representatives.

10:39:45 19 Q. And who is the PetReps, Inc. sales  
10:39:49 20 representatives that would be in the State of  
10:39:50 21 Florida?

10:39:51 22 A. In the time frame in question the only one  
10:39:57 23 that would have been a full-time dedicated sales rep  
10:39:59 24 in that territory would be a gentleman by the name  
10:40:01 25 of Jim Balsimo, B-a-l-s-i-m-o.

10:40:07 1 Q. B-a-l-i --

10:40:09 2 A. -- s-i-m-o.

10:40:13 3 Q. Okay. And you are not certain whether or  
10:40:23 4 not his territory covered the panhandle of Florida  
10:40:28 5 or not?

10:40:29 6 A. No, not as I sit here I would not be able  
10:40:31 7 to tell you exactly if it did or didn't, no.

10:40:34 8 Q. But as to the other two entities, Pet  
10:40:38 9 Professionals Choice and the one that -- whose name  
10:40:41 10 you can't recall right now, you don't have any  
10:40:44 11 recollection of which sales representatives that  
10:40:47 12 they were utilizing in the State of Florida; is that  
10:40:50 13 correct?

10:40:50 14 A. Correct, I don't know their sales reps'  
10:40:53 15 names, no.

10:41:00 16 Q. Are there any -- well, we were talking  
10:41:04 17 about cooperative efforts.

10:41:14 18 You are talking about shelf space, deals.  
10:41:19 19 When you are talking about deals, you are talking  
10:41:22 20 about discounts on the cost of your items or  
10:41:28 21 promotions -- give-away promotions or something.  
10:41:31 22 What kind of deals are we talking about?

10:41:32 23 A. I guess I have to clarify the context. In  
10:41:34 24 our previous discussion was about our wholesalers  
10:41:37 25 and their representatives and their activities,

1 so --

10:41:40 2 Q. Correct.

10:41:40 3 A. -- if you are asking me to speak to that,  
10:41:42 4 then what you've described are pretty typical. The  
10:41:45 5 promotions by the distributor, could be company  
10:41:47 6 promotions that Natura or other of their suppliers  
10:41:51 7 provide that they pass on to their stores. Those  
10:41:54 8 kind of activities, yes.

10:41:56 9 Q. So you're coordinating -- well, strike  
10:41:59 10 that.

10:41:59 11 Does Natura Pet Food Products coordinate  
10:42:04 12 its -- strike that.

10:42:06 13 Natura Pet Food Products is not involved in  
10:42:11 14 the retail marketing of the products that we've  
10:42:14 15 discussed as being at issue; is that correct?

10:42:18 16 A. Wait. I guess the question is "involved."  
10:42:21 17 We are involved as far as our direct reps, people  
10:42:25 18 that are employed by us or even our contract  
10:42:27 19 representatives primarily to do training. We spend  
10:42:32 20 quite a bit of time and money on education.

10:42:38 21 Our bags are sold one at a time. And it  
10:42:42 22 takes those representatives at the retail floor  
10:42:45 23 level to be knowledgeable, educated about our  
10:42:48 24 products and to believe in our products to be able  
10:42:50 25 to promote them and sell them to their customers.

10:42:55 1 Q. So your people or your contracted sales  
10:43:00 2 reps are involved in the training of the retailers,  
10:43:06 3 the individuals that work for the retailers as far  
10:43:09 4 as what your products are about, the benefits of  
10:43:12 5 your products, the kinds of things you would like  
10:43:17 6 them to communicate to the ultimate consumer,  
10:43:20 7 correct?

10:43:20 8 A. Correct.

10:43:22 9 Q. When it comes to your relationship with the  
10:43:25 10 wholesalers, do you coordinate with the wholesalers,  
10:43:30 11 Natura's wholesalers, various programs that they may  
10:43:33 12 be utilizing, deals that they may be utilizing in  
10:43:37 13 their contacts with the retailers?

10:43:40 14 A. Yes.

10:43:44 15 Q. For instance, you may be promoting one or  
10:43:47 16 more products from a price perspective and you'll  
10:43:50 17 pass that along to them and then they pass it along  
10:43:53 18 to the retailer. Is that how it works? Something  
10:43:56 19 like that?

10:43:56 20 A. That would be an example, yes.

10:44:26 21 Q. All of the products that we've gone through  
10:44:29 22 as far as being at issue for your deposition today  
10:44:33 23 and we've already established were sold during the  
10:44:38 24 pertinent time period, November of '03 to November  
10:44:41 25 of '07, all of those products are marketed by Natura



10:44:44 1 Pet Food Products through its wholesalers with the  
10:44:47 2 assistance of your sales force and your contracted  
10:44:50 3 sales force in all 50 states; is that correct?

10:44:56 4 A. No. It wouldn't be correct just again for  
10:44:59 5 the fact that we -- the manpower you described would  
10:45:02 6 not be able to cover all 50 states.

10:45:05 7 We are represented by retail customers that  
10:45:07 8 our wholesale customers sell to in all 50 states to  
10:45:11 9 some degree, some better than others.

10:45:13 10 But as far as our own representation or  
10:45:13 11 even wholesale representation, there probably are  
10:45:15 12 some like North Dakota and Montana that probably  
10:45:18 13 don't get to see a rep on a pretty regular basis,  
10:45:21 14 so --

10:45:22 15 Q. A rep meaning either a rep from a  
10:45:24 16 wholesaler or a rep from your company or a rep that  
10:45:27 17 you contract with; is that correct?

10:45:28 18 A. Or both. Or all three, right.

10:45:30 19 Q. But your products are available, to the  
10:45:33 20 best of your knowledge, these products that we are  
10:45:35 21 talking about today, in all 50 states; is that  
10:45:38 22 correct?

10:45:38 23 A. Yes.

10:45:43 24 Q. Is there any variation in the way Natura  
10:45:48 25 Pet Food Products packages those products that we've

10:45:51 1 talked about being at issue today in different parts  
10:45:56 2 of the country or is the packaging uniform for each  
10:45:59 3 of those products wherever it's sold in the country?

10:46:03 4 A. It's uniform.

10:46:04 5 Q. Uniform. There's no modifications done for  
10:46:11 6 whatever -- you know, differences in state statutes  
10:46:14 7 or regulations as to what's supposed to be on  
10:46:17 8 packaging or not supposed to be on packaging?

10:46:21 9 A. No. It's all -- everybody gets the same  
10:46:22 10 bag.

10:46:24 11 Q. In responding to the production request of  
10:46:26 12 plaintiffs were you involved in providing  
10:46:29 13 documentation relating to packaging of those  
10:46:31 14 products at issue?

10:46:34 15 A. From a supervisory level to have those  
10:46:38 16 produced, yes.

10:46:39 17 Q. To the best of your knowledge, has all of  
10:46:41 18 the packaging -- documentation relating to the  
10:46:45 19 packaging of those products at issue been produced  
10:46:49 20 to the plaintiffs as requested?

10:46:50 21 A. To my -- it was produced to Kristen, so to  
10:46:53 22 the extent of what she produced I don't know.

10:46:56 23 Q. Okay. And we've talked about this a little  
10:47:19 24 bit before, but your wholesalers are given the  
10:47:27 25 opportunity to provide samples to your retailers in

10:47:30 1 territories that they cover. And this would be of  
10:47:36 2 any of the products that we've discussed as being at  
10:47:39 3 issue today?

10:47:40 4 A. Yes.

10:47:41 5 Q. Okay. And this would include the State of  
10:47:43 6 Florida?

10:47:45 7 A. I take that back. It would not include the  
10:47:48 8 Mother Nature - Beef Stew Recipe Dog Biscuits. We  
10:47:52 9 do not do samples for those products.

10:47:53 10 Q. Okay. Well, excluding that particular  
10:47:54 11 product, the other products you do provide samples  
12 for?

10:47:54 13 A. Yes.

10:47:56 14 Q. And that would also include providing  
10:47:59 15 samples to your distributors for their retailers in  
10:48:02 16 the State of Florida in the November '03 to November  
10:48:07 17 '07 time period, correct?

10:48:09 18 A. Yes. Those samples would have been  
10:48:10 19 available to our distributor during that time  
10:48:13 20 period.

10:48:13 21 Q. And that would have included Innova Senior  
10:48:16 22 Dry Dog Food, correct?

10:48:19 23 A. Yes.

10:48:20 24 Q. Okay. So that opportunity for those  
10:48:21 25 distributors to provide free samples of that product

10:48:24 1 to retailers in the State of Florida during that  
10:48:27 2 time period existed but you don't have any specific  
10:48:30 3 information as to whether those samples were passed  
10:48:33 4 out and, if so, to who, correct?

10:48:35 5 A. Correct.

10:48:40 6 MR. NIELD: Why don't we go off the record  
10:48:41 7 and take a short break.

10:48:43 8 THE VIDEOGRAPHER: This concludes Video  
10:48:48 9 Number 1, Volume I, in the deposition of Peter  
10:48:51 10 Atkins.

10:48:52 11 Now going off the record. The time is  
10:48:55 12 10:48.

10:48:57 13 (Brief recess taken.)

11:08:14 14 THE VIDEOGRAPHER: This is the beginning of  
11:08:16 15 Video Number 2, Volume I, in the deposition of Peter  
11:08:19 16 Atkins.

11:08:20 17 We are on the record. The time is 11:08.

11:08:24 18 MS. CAVERLY: We had some discussion off  
11:08:26 19 the record about which portions of the transcript  
11:08:28 20 would be marked as confidential and how that will be  
11:08:31 21 handled. The portions of the transcript that should  
11:08:34 22 currently be marked as confidential begin with  
11:08:37 23 Mr. Atkins' response that he owns four percent of  
11:08:40 24 Natura Pet Products and ends with the responses that  
11:08:45 25 Ronn Walthers and --

11:08:51 1 THE WITNESS: Joyce.

11:08:51 2 MS. CAVERLY: -- Joyce Walthers -- her name

11:08:54 3 escaped me -- owned .1 percent of Natura Pet

11:08:57 4 Products, and the questions in between should also

11:09:00 5 be designated as confidential.

11:09:02 6 We've agreed that the confidential portions

11:09:04 7 of the transcript will be provided separate from the

11:09:07 8 remainder of the transcript and marked appropriately

11:09:12 9 on the cover.

11:09:16 10 MR. NIELD: And I guess -- I think we

11:09:18 11 discussed briefly as far as the computer disk, I

11:09:23 12 guess there will be a separate disk for that portion

11:09:26 13 as well?

11:09:26 14 MS. CAVERLY: Yes.

11:09:27 15 MR. NIELD: And that will also apply to the

11:09:30 16 video?

11:09:31 17 MS. CAVERLY: In my view it's not necessary

11:09:34 18 at this point to separately create a videotape

11:09:38 19 unless you plan to show the videotape outside the

11:09:41 20 parameters of the protective order.

11:09:43 21 I expect as we go on through the day that

11:09:47 22 we may have "Attorneys Eyes Only" portions of the

11:09:49 23 transcript, and so perhaps we should at the end of

11:09:53 24 the day deal with how we want all of the transcript

11:09:56 25 to be available if your intention is that you need

11:10:01 1 to show it in excess of the protective order

11:10:06 2 requirements.

11:10:06 3 MR. NIELD: Yeah, that's fine. Let's just

11:10:08 4 see how it comes up. I agree that we don't need to

11:10:11 5 do it separately. I at this point don't have any

11:10:14 6 intention to use it in, you know, any way outside of

11:10:17 7 the parameters of the protective order. But if

11:10:19 8 there's an issue that comes up we'll deal with it at

11:10:23 9 that point.

11:10:23 10 MS. CAVERLY: Often the videotape is not

11:10:25 11 used until the time of trial, so if we agree to keep

11:10:28 12 it pursuant to the "Attorneys Eyes Only," if there

11:10:31 13 are such designations, until it's necessary to use

11:10:34 14 it then we could go by the specific excerpts that

11:10:37 15 you would intend or I would intend to show at trial.

11:10:42 16 MR. NIELD: That's fine. That's fine.

11:10:49 17 BY MR. NIELD:

11:10:49 18 Q. Okay. Then let's continue.

11:11:02 19 I want to discuss a little bit more the

11:11:07 20 agreements that you talked about that Natura Pet

11:11:11 21 Food Products has with its wholesalers/distributors.

11:11:16 22 And I think you indicated earlier in your testimony

11:11:18 23 that each wholesaler that you contract with to sell

11:11:25 24 Natura Pet Food Products during the time period at

11:11:27 25 issue you did have a written agreement with those

11:11:31 1 entities; is that correct?

11:11:32 2 A. Yes, correct.

11:11:33 3 Q. There is no wholesaler/distributor of  
11:11:39 4 Natura Pet Food Products during the time period at  
11:11:41 5 issue that does not have a written agreement with  
11:11:44 6 your company; is that correct?

11:11:47 7 A. I'm sorry, could you restate that? I'm  
8 sorry.

11:11:49 9 Q. Yeah, that wasn't very good. I didn't say  
11:11:52 10 it very clearly.

11:11:53 11 There is no wholesaler or distributor of  
11:11:57 12 the Natura pet food products at issue during that  
11:12:00 13 time period, '03 to '07, we've talked about many  
11:12:04 14 times with which Natura Pet Food Products does not  
11:12:07 15 have a written agreement?

11:12:08 16 A. Did not have or did not -- correct.

11:12:12 17 Q. Every one of your distributors and  
11:12:14 18 wholesalers has a written agreement with you, with  
11:12:17 19 Natura?

11:12:17 20 A. Correct.

11:12:18 21 Q. Okay. And those agreements, are they  
11:12:21 22 fairly uniform or are they uniform?

11:12:23 23 A. There's just two versions. There's either  
11:12:26 24 a nonexclusive or an exclusive version. And the  
11:12:29 25 rest is pretty much the same.

11:12:33 1 Q. So the only difference in terms between the  
11:12:36 2 two different versions is one gives the particular  
11:12:40 3 distributor exclusive rights to market Natura pet  
11:12:44 4 food products within a specific region while the  
11:12:47 5 other version of the contract would be a  
11:12:50 6 nonexclusive, meaning others could also market  
11:12:53 7 within that area?

11:12:54 8 A. Correct.

11:12:56 9 Q. All the other terms remain the same?

11:12:58 10 A. Correct.

11:13:01 11 Q. Do those agreements include any provisions  
11:13:06 12 relating to how the distributor can go about  
11:13:13 13 marketing Natura pet food products to retailers?

11:13:19 14 A. How they can go about marketing --

11:13:21 15 Q. Correct. Is there anything in there that  
11:13:24 16 restricts them in any way about how they can deal  
11:13:27 17 with the retailers that they are hoping to sell  
11:13:31 18 Natura pet food products through? For instance, you  
11:13:32 19 mentioned earlier that they are prohibited from  
11:13:36 20 going to the major chain stores.

11:13:38 21 A. Correct.

11:13:38 22 Q. They can't use PETCO, PetSmart, et cetera,  
11:13:42 23 to sell your products. You want independent types  
11:13:45 24 of entities selling your product, correct?

11:13:48 25 A. Correct.



11:13:48 1 Q. Okay. Is there any other of those types of  
11:13:51 2 provisions that place any kind of limitation on how  
11:13:53 3 the wholesalers can go about selling Natura pet food  
11:13:58 4 products to the retailers who are ultimately going  
11:14:01 5 to sell it to the consumer?

11:14:03 6 A. No.

11:14:04 7 Q. Okay. Is there any process in place,  
11:14:10 8 perhaps outside of the actual written contract,  
11:14:14 9 where the wholesaler of your products -- and again  
11:14:16 10 all of these questions are within that '03 to '07  
11:14:21 11 time frame so I don't have to keep saying that all  
11:14:23 12 the time --

11:14:24 13 A. Sure.

11:14:25 14 Q. -- any process in place, procedures in  
11:14:29 15 place where Natura Pet Food Products needs to  
11:14:35 16 approve any marketing techniques or efforts that the  
11:14:38 17 wholesalers are undertaking as it relates to the  
11:14:42 18 ultimate retailers of Natura pet food products?

11:14:44 19 A. No.

11:14:45 20 Q. So the wholesaler/distributors are free  
11:14:51 21 beyond restrictions on who they can sell the product  
11:14:55 22 to to do any types of marketing, any techniques that  
11:15:02 23 they choose; is that correct?

11:15:03 24 A. Yes.

11:15:09 25 Q. Can you think of an instance where Natura

11:15:13 1 has ever objected to a wholesaler or distributor of  
11:15:17 2 its products, again during the appropriate time  
11:15:19 3 period, for some sort of marketing technique or deal  
11:15:27 4 or something that they were -- activity that the  
11:15:30 5 wholesaler was undertaking in an effort to sell  
11:15:33 6 Natura pet food products to a retailer which Natura  
11:15:38 7 Pet Food Products objected to?

11:15:39 8 A. No.

11:15:45 9 Q. Does Natura Pet Food Products, again during  
11:15:48 10 the time period at issue, provide the retailer --  
11:15:53 11 excuse me, the wholesaler with marketing assistance?  
11:15:58 12 For instance, do they provide them literature to  
11:16:00 13 give to the ultimate retailer of the product or  
11:16:04 14 videos or other -- or information of any kind to  
11:16:09 15 assist the wholesaler and then selling the product  
11:16:13 16 to the retailer?

11:16:14 17 A. Yes.

11:16:14 18 Q. What types of information does Natura  
11:16:19 19 provide the wholesaler to assist it in marketing,  
11:16:25 20 selling its products to the retailers?

11:16:27 21 A. As you suggest, we provide product  
11:16:30 22 brochures. That would probably be the greatest  
11:16:34 23 extent of the sales tools that we provide.

11:16:38 24 From time to time we do provide videos as  
11:16:44 25 appropriate. That's very -- actually, I can just

11:16:48 1 think of a couple occasions where we've done that.

11:16:54 2           And, again, training tools that -- again,

11:16:57 3 that's one of our major efforts with our

11:16:58 4 distributors and our retailers is to provide

11:17:01 5 training. So we'll provide product guides, again,

11:17:04 6 the literature that goes with that.

11:17:09 7           And, of course, the sales tools that we

11:17:11 8 talked about earlier, the point-of-purchase type of

11:17:14 9 materials, the signage, you know, the shelf-talkers

11:17:18 10 and those kind of things.

11:17:31 11           Q. Product guides, that's printed materials

11:17:33 12 talking about the products that Natura has to offer?

11:17:36 13           A. Product guides would generally be Web

11:17:38 14 based. It would be electronic, that kind of a

11:17:41 15 thing. But actually that wouldn't apply during the

11:17:44 16 time frame that we are talking about, so that would

11:17:47 17 just be limited to product brochures.

11:17:52 18           Q. You know, when I go on your Web site today,

11:17:55 19 and apparently that's all I have right now, I can

11:17:58 20 look up various categories of pet foods, specific

11:18:03 21 products, their ingredients and even what the

11:18:07 22 ingredients are comprised of. Did that situation

11:18:11 23 exist in the November of '03 to November '07 time

11:18:15 24 period on your Web site?

11:18:16 25           A. Yes.

11:18:18 1 Q. And so product guides would be basically  
11:18:24 2 informing -- or the wholesaler informing the  
11:18:27 3 retailer or perhaps one of your own sales reps or  
11:18:31 4 contracted reps informing the retailer they can go  
11:18:34 5 on the Web site and find out all of this information  
11:18:37 6 about the various products?

11:18:38 7 A. Correct.

11:18:38 8 Q. There's no separate brochure of any kind?

11:18:41 9 A. Each product line, Innova, California  
11:18:46 10 Natural, EVO, has its own separate product brochure,  
11:18:50 11 so the answer would be, no, there would be those  
11:18:53 12 brochures as well.

11:18:54 13 Q. So they can hand the literature out as  
11:18:57 14 well?

11:18:59 15 A. Correct.

11:19:04 16 Q. And was the literature, the brochures that  
11:19:06 17 are provided to the wholesalers to give to the  
11:19:09 18 retailers, was that documentation provided to you to  
11:19:18 19 your counsel pursuant to the plaintiffs' request for  
11:19:22 20 information?

11:19:23 21 A. To the extent of my knowledge, yes, it was  
11:19:25 22 instructed to be provided.

11:19:35 23 Q. Do your sales representatives or contracted  
11:19:38 24 representatives undertake any training or  
11:19:45 25 instruction with the wholesalers themselves so that

11:19:47 1 they in turn can go out and market your products to  
11:19:50 2 the retailers?

11:19:50 3 A. Yes.

11:19:54 4 Q. So the training, that's undertaken on two  
11:20:00 5 levels, actually, the wholesaler level and the  
11:20:02 6 retailer level in some instances?

11:20:05 7 A. And actually the consumer level from time  
11:20:07 8 to time, too, so three levels, yes.

11:20:09 9 Q. In what instance would your sales reps or  
11:20:12 10 contracted reps be involved in training consumers  
11:20:17 11 about Natura pet food products?

11:20:18 12 A. Oh, it could be at a retailer open house to  
11:20:21 13 where they might have a special promotion, customers  
11:20:25 14 come in. We would have one of our reps or a  
11:20:28 15 wholesaler might have one of their reps with a demo  
11:20:29 16 table, it's called. They would have product  
11:20:32 17 literature, signage, samples to where we actually  
11:20:35 18 might do some either one-on-one training at that  
11:20:38 19 time or it's not uncommon that a retailer will say,  
11:20:43 20 "Okay, I want to get all my good customers together,  
11:20:46 21 have a pizza dinner and, you know, let's talk about  
11:20:48 22 the new product that's coming out." Those kind of  
11:20:51 23 activities.

11:21:06 24 MS. CAVERLY: Would you like a mint?

11:21:09 25 THE WITNESS: I'm okay. Thank you.

11:21:10 1 MS. CAVERLY: Good. Since you are on  
11:21:12 2 camera.

11:21:13 3 BY MR. NIELD:

11:21:13 4 Q. Does Natura Pet Food Products participate  
11:21:15 5 in any types of trade shows as it relates to pet  
11:21:22 6 food products in general where the consumer can  
11:21:25 7 attend and, you know, circulate amongst various  
11:21:28 8 booths and get information about various products,  
11:21:30 9 that kind of thing?

11:21:31 10 A. Yes.

11:21:32 11 Q. Is that one of the marketing efforts that  
11:21:36 12 Natura undertakes on a regular basis?

11:21:37 13 A. Correct.

11:21:40 14 Q. And these trade shows are held throughout  
11:21:44 15 different parts of the country?

11:21:45 16 A. They are -- I guess to clarify, there's  
11:21:48 17 trade shows that we do which are not consumer  
11:21:52 18 related. They are to, again, retailers or whole  
11:21:54 19 wholesalers, et cetera, that we do on a regular  
11:21:57 20 basis. There's basically four major shows that we  
11:22:02 21 do, trade shows that we do every year.

11:22:05 22 Consumer shows are usually in conjunction  
11:22:07 23 with the wholesaler, and our sales representative  
11:22:10 24 will again, based on their time and priorities, will  
11:22:13 25 work with them to do those shows. I mean, there's

11:22:16 1 literally something that could be done every weekend  
11:22:19 2 from dog shows, cat shows, field trials, those kind  
11:22:23 3 of things. So we do those kind of activities, but  
11:22:26 4 they are usually in conjunction with our wholesaling  
11:22:28 5 accounts.

11:22:31 6 Q. And the efforts that are undertaken by your  
11:22:34 7 wholesalers in that regard are supported by Natura  
11:22:36 8 Pet Food Products through providing brochures, for  
11:22:38 9 instance?

11:22:38 10 A. Correct.

11:22:39 11 Q. Providing samples, for instance?

11:22:40 12 A. Correct.

11:22:43 13 Q. And possibly even providing either one of  
11:22:46 14 your own salespeople or contracted salespeople to  
11:22:49 15 assist them in attending and working these shows?

11:22:51 16 A. Correct.

11:22:54 17 Q. And I suppose there would be some training  
11:22:57 18 going on as well at these shows?

11:23:01 19 A. Always. Always, yes.

11:23:06 20 Q. Are you aware whether any of these  
11:23:09 21 consumer-oriented shows occurred -- strike that --  
11:23:14 22 any of these consumer-oriented shows where  
11:23:18 23 wholesalers of Natura pet food products attended  
11:23:22 24 occurred in Florida between the November '03 to  
11:23:25 25 November '07 time period?

11:23:28 1 A. You know, as I sit here, I do not know of  
11:23:31 2 any specific shows that our wholesaler or contract  
11:23:35 3 reps would have done in that market, no.

11:23:37 4 Q. So there may have been, there may not have  
11:23:39 5 been, but you just don't have any information as we  
11:23:41 6 sit here today?

11:23:42 7 A. That's correct.

11:23:46 8 Q. The types of support you would provide to  
11:23:49 9 the wholesalers that are participating in these  
11:23:53 10 consumer-oriented shows as far as printed  
11:23:57 11 information, as far as samples, as far as having  
11:24:01 12 personnel there or not through your own sales force  
11:24:04 13 or contracted sales reps would be the same no matter  
11:24:09 14 where those types of shows were undertaken; is that  
11:24:12 15 correct?

11:24:14 16 A. It would -- obviously not the same, but it  
11:24:17 17 would be similar. Obviously depending on the size  
11:24:19 18 of the show would have a reflection on the type of  
11:24:23 19 resources we might contribute towards that effort.  
11:24:26 20 So, you know, smaller shows don't need as many  
11:24:31 21 samples or brochures. Bigger shows, you might need  
11:24:34 22 an extra person or more brochures or more samples.  
11:24:37 23 But beyond that structure there wouldn't be anything  
11:24:39 24 different, no.

11:24:40 25 Q. So the geographic location of the show



11:24:42 1 wouldn't be determinative of how much support Natura  
11:24:45 2 would provide? It would be more of the size and  
11:24:47 3 nature of the consumer-oriented show at issue; is  
11:24:50 4 that correct?

11:24:50 5 A. Yes, absolutely.

11:25:07 6 Q. The independent contractor -- I think in  
11:25:12 7 the east you independently contract with individuals  
11:25:15 8 to act -- to augment your sales force; is that  
11:25:18 9 correct?

11:25:19 10 A. Correct.

11:25:19 11 Q. I think we established that, right?

11:25:20 12 A. Right.

11:25:21 13 Q. Do you have contracts with those  
11:25:23 14 individuals?

11:25:24 15 A. No, we do not.

11:25:25 16 Q. No written contracts?

11:25:26 17 A. No, we do not.

11:25:27 18 Q. Do you provide those individuals any  
11:25:29 19 instructions on how they are to go about marketing  
11:25:36 20 Natura pet food products and, again, during the time  
11:25:37 21 period at issue?

11:25:40 22 A. Only the principal of the independent firm  
11:25:45 23 that does -- that actually controls those sales  
11:25:48 24 reps. So we work with him, but he's part and parcel  
11:25:53 25 of the team, I guess, and carries that message on to

11:25:56 1 his salespeople to make sure that they do -- are  
11:26:00 2 doing the things that are important to be done in  
11:26:03 3 the market.

11:26:04 4 Q. So is the same types of training that you  
11:26:07 5 provide to those sales reps that are your employees,  
11:26:11 6 same types of supporting materials as far as  
11:26:13 7 brochures, videos, whatever, you know, samples,  
11:26:16 8 whatever it happens to be, is also provided to the  
11:26:20 9 principal of the entity that is providing others to  
11:26:25 10 augment to your -- other independent contractors to  
11:26:27 11 augment your sales force; is that correct?

11:26:28 12 A. That's correct.

11:26:33 13 Q. It's important to Natura Pet Food Products  
11:26:35 14 to keep it's advertising messages consistent?

11:26:39 15 A. Yes. Yes.

11:26:50 16 Q. Does Natura Pet Food Products have any  
11:26:52 17 subsidiaries?

11:26:53 18 A. Subsidiaries, no.

11:26:55 19 Q. Or any affiliates of any kind?

11:26:58 20 MS. CAVERLY: Objection. Vague as to what  
11:26:59 21 you mean by affiliate.

11:27:01 22 BY MR. NIELD:

11:27:01 23 Q. Well, I think we've already talked about,  
11:27:03 24 and we'll be getting into this later, but there are  
11:27:06 25 other entities that do manufacture the products that

11:27:10 1 Natura Pet Food Products -- Natura Pet Food  
11:27:11 2 Products, right?  
11:27:15 3 MS. CAVERLY: Natura Pet Products.  
11:27:19 4 MR. NIELD: Natura Pet Products.  
5 MS. CAVERLY: Natura Pet Products.  
11:27:19 6 MR. NIELD: I stand corrected. Natura Pet  
11:27:21 7 Products.  
8 BY MR. NIELD:  
11:27:22 9 Q. -- is marketing to the public, correct?  
11:27:25 10 A. Among others, yes.  
11:27:27 11 Q. Among others. Perhaps we are not talking  
11:27:33 12 about the same thing. We talked about earlier that  
11:27:35 13 the products that Natura is marketing to the -- to  
11:27:43 14 the wholesalers and ultimately to the consumer are  
11:27:46 15 manufactured by other entities, not Natura itself;  
11:27:50 16 is that correct?  
11:27:50 17 A. Yes.  
11:27:53 18 Q. Okay. Now, other than these manufacturing  
11:27:56 19 entities are there any other entities that are  
11:28:00 20 performing other services for Natura as it relates  
11:28:07 21 to -- we talked about the salespeople -- as it  
11:28:11 22 relates to the -- either the packaging or the  
11:28:19 23 marketing or administrative services which all go  
11:28:25 24 into ultimately preparing and marketing your  
11:28:29 25 products?

11:28:29 1 A. Yes.

11:28:30 2 Q. Okay. What types of entities -- again,  
11:28:34 3 beyond the salespeople we've talked about and the  
11:28:36 4 manufacturers we've talked about -- are these and  
11:28:38 5 what types of services are they providing?

11:28:42 6 A. As I recall the list as far as packaging  
11:28:45 7 and marketing, that would be done through a contract  
11:28:48 8 relationship with an advertising agency out of Saint  
11:28:53 9 Louis called Brighton Agency, B-r-i-g-h-t-o-n, and  
11:29:00 10 they would be involved in all those activities. And  
11:29:09 11 that would be it.

11:29:11 12 Q. Okay. So Brighton Agency is involved in  
11:29:15 13 the packaging and marketing of Natura pet food  
11:29:21 14 products, those products we've discussed as being at  
11:29:24 15 issue here during the November of 2003 to November  
11:29:28 16 of 2007 time frame; is that correct?

11:29:30 17 A. They would have come on board in '04. So  
11:29:33 18 from, I would say, March '04 -- I think it was  
11:29:37 19 March -- spring of '04 to the end of that time  
11:29:40 20 frame, yes.

11:29:41 21 Q. Okay. And prior to Brighton coming on  
11:29:45 22 board in March of '04, was there another entity that  
11:29:48 23 provided those same types of services that was  
11:29:50 24 contracted with Natura?

11:29:51 25 A. No. We did it all internally.

11:30:02 1 Q. Does Natura have a written contract with  
11:30:05 2 the Brighton Agency to provide services in the areas  
11:30:09 3 of packaging and marketing?

11:30:11 4 A. Yes.

11:30:18 5 Q. Is that one of the documents that you  
11:30:20 6 produced at the request of the plaintiffs for  
11:30:22 7 documented information?

11:30:23 8 MS. CAVERLY: No, we have not.

9 THE WITNESS: Okay.

11:30:25 10 MS. CAVERLY: Again, Mr. Atkins hasn't seen  
11:30:27 11 the actual production, so you could ask him what he  
11:30:32 12 gave to his counsel --

11:30:35 13 BY MR. NIELD:

11:30:35 14 Q. Did you --

11:30:36 15 MS. CAVERLY: -- but I can tell you that,  
11:30:37 16 no, it was not produced.

11:30:39 17 MR. NIELD: Okay.

18 BY MR. NIELD:

11:30:40 19 Q. Did you give that agreement to your  
11:30:41 20 counsel?

11:30:42 21 A. As I recall, yes.

11:30:47 22 Q. Is that an agreement that's renewed on a  
11:30:50 23 yearly basis?

11:30:50 24 A. No, it has a two-month out. So with  
11:30:55 25 two-month notification we can end the contract

11:30:57 1 either way.

11:31:00 2 Q. Is that agreement -- has this agreement  
11:31:04 3 been modified -- well, strike that.

11:31:06 4 I assume it was initially entered into in  
11:31:08 5 March of '04. Is that correct?

11:31:10 6 A. To the best of my recollection, yes.

11:31:12 7 Q. Between March of '04 and November of '07 do  
11:31:15 8 you recall whether there were any amendments or  
11:31:18 9 modifications to that agreement?

11:31:20 10 A. There has been none.

11:31:23 11 Q. Does that agreement contain any provisions  
11:31:32 12 which provide Brighton instruction to how Natura  
11:31:38 13 wants its products marketed?

11:31:41 14 A. No.

11:31:44 15 Q. Does it provide any guidelines or  
11:31:46 16 limitations in what Brighton can do in the marketing  
11:31:50 17 of its products?

11:31:55 18 A. No. I mean -- no. No.

11:31:57 19 Q. How about as it relates to packaging, is  
11:32:00 20 there information -- strike that.

11:32:01 21 Is there provisions in that agreement that  
11:32:05 22 provide direction or instruction to Brighton as to  
11:32:08 23 the form of the packaging should take or the design  
11:32:10 24 of the packaging or the labeling or information that  
11:32:13 25 should be included on labeling?

11:32:15 1 A. No, there isn't.

11:32:19 2 Q. Are there any side agreements -- strike  
11:32:21 3 that.

11:32:23 4 Are there written communications between  
11:32:26 5 Natura -- and again during the appropriate time  
11:32:29 6 period, between Natura and Brighton discussing  
11:32:32 7 issues of packaging or labeling or the types of  
11:32:37 8 information that should be on labels or the types of  
11:32:42 9 advertising that could be undertaken, that kind of  
11:32:44 10 thing?

11:32:44 11 A. Yes.

11:32:47 12 Q. Documents relating to those types of  
11:32:49 13 instructions, you provided those to your counsel?

11:32:53 14 A. Correct.

11:33:00 15 Q. Do you meet with representatives of  
11:33:04 16 Brighton on a periodic basis to discuss their  
11:33:09 17 relationship with Natura and the marketing and  
11:33:18 18 packaging of Natura pet food products?

11:33:19 19 A. Yes.

11:33:20 20 Q. Do you have a primary contact, "you"  
11:33:24 21 being -- does Natura have a primary contact at  
11:33:26 22 Brighton through which most of these communications  
11:33:27 23 or meetings are through?

11:33:30 24 A. Yes. You want to know the contact?

11:33:33 25 Q. Please.

11:33:33 1 A. It's the principal of the company, Roger

11:33:36 2 Yount. And I'll spell that. Y-o-u-n-t.

11:33:44 3 Q. Okay. Does Roger Yount have individuals

11:33:47 4 that work on your account, so to speak?

11:33:50 5 A. Yes.

11:33:51 6 Q. Are these generally the same individuals or

11:33:56 7 do they change over time?

11:33:58 8 A. Depends on the project. He's got, you

11:34:00 9 know, full service ad agency, so depending on what

11:34:03 10 the project is there could be multiple people

11:34:05 11 working on a Natura project, yes.

11:34:08 12 Q. Is there any particular individual that

11:34:12 13 devotes a large part of their time to Natura?

11:34:16 14 A. Yes.

11:34:17 15 Q. Who would that be?

11:34:18 16 A. Her name is Cathy with a C, C-a-t-h-y,

11:34:22 17 Heimberger. I'm going to have to think about

11:34:25 18 spelling her name. H-e-i-m-b-e-r-g-e-r.

11:34:39 19 Q. As it relates to packaging of a particular

11:34:48 20 Natura pet food product, just so I get a feel for

11:34:53 21 how things work, you go to Brighton with a

11:34:57 22 particular product and indicate you would like to

11:34:59 23 see this product packaged and appropriately labeled

11:35:02 24 for sale?

11:35:03 25 A. Fundamentally, yes.



11:35:05 1 Q. Okay. And then who decides what that  
11:35:07 2 packaging is going to look like and what's going to  
11:35:10 3 be included on that packaging, what the labeling  
11:35:12 4 should be?

11:35:13 5 A. Multipart answer on that. It's a  
11:35:16 6 collaborative effort in terms of design. Concepts  
11:35:20 7 are presented. I'll look at them. Some of the rest  
11:35:25 8 of our team will look at it. Give them guidance,  
11:35:29 9 "Yes," "No," "We like it," "We don't like it," those  
11:35:32 10 kind of things.

11:35:32 11 Once we've kind of agreed on a direction  
11:35:35 12 for graphics and design, then the rest of it is  
11:35:39 13 pretty well regulated in terms of what we can and  
11:35:42 14 can't say on a label and what we can do.

11:35:45 15 Obviously there's certain things that we  
11:35:47 16 are required by law to communicate, certain things  
11:35:49 17 that we are prohibited from putting on the label as  
11:35:52 18 well. So working within those parameters we create  
11:35:56 19 the package, try to communicate as best we can on  
11:35:58 20 that package. Again, it's a collaborative effort.

11:36:02 21 And then we run it by our regulatory  
11:36:06 22 advisor. And once we get his official approval,  
11:36:11 23 then it goes to the printer.

11:36:17 24 Q. As Natura's corporate designee in this  
11:36:21 25 deposition, would you be the individual at Natura

11:36:23 1 most knowledgeable about the interaction and the  
11:36:27 2 relationship between Natura and Brighton?  
11:36:29 3 A. Yes.  
11:36:30 4 Q. Would you be the primary contact --  
11:36:33 5 Natura's primary contact with Brighton?  
11:36:35 6 A. Yes.  
11:36:38 7 Q. Would you be the ultimate decision maker as  
11:36:42 8 to what types of packaging should be utilized for  
11:36:48 9 Natura's products and what types of information  
11:36:49 10 should be included in the labeling of those  
11:36:51 11 products?  
11:36:51 12 A. Yes.  
11:37:06 13 Q. Natura contracts with a regulatory advisor  
11:37:09 14 to assist it in ensuring that its labeling conforms  
11:37:13 15 with all legal requirements; is that correct?  
11:37:15 16 A. Yes.  
11:37:15 17 Q. Is that an attorney?  
11:37:16 18 A. No.  
11:37:18 19 Q. Who is that individual?  
11:37:19 20 A. His name is David, and I'll spell this,  
11:37:22 21 Dzanis, D-z-as in zebra-a-n-i-s.  
11:37:29 22 Q. That is interesting. D-z-a-n-i-s?  
11:37:31 23 A. Yep.  
11:37:33 24 Q. Where is he located?  
11:37:34 25 A. He's in Southern California, LA area. I

11:37:44 1 forget at the moment where he is.

11:37:45 2 Q. Does he have a company?

11:37:46 3 A. Yes. I think it's Dzanis Collaborations or

11:37:52 4 something like that. I would have to look it up, to

11:37:54 5 be honest.

11:37:55 6 Q. Do you happen to know his phone number?

11:37:57 7 A. I do.

11:37:58 8 Q. Can you provide that, please?

11:37:59 9 A. Sure. Get my glasses here.

11:38:05 10 MS. CAVERLY: I think it's on the Rule 26

11:38:07 11 disclosures as well.

11:38:08 12 MR. NIELD: That could be. Good point.

11:38:24 13 THE WITNESS: Let's see here. It is Area

11:38:27 14 Code (661) 251-3543. 251-3543. And he's in Santa

11:38:37 15 Clarita.

11:38:45 16 BY MR. NIELD:

11:38:46 17 Q. Oh, really. Well, he is on the Rule 26

11:38:49 18 disclosure, thank you very much, although they don't

11:38:54 19 have him in Santa Clarita, but maybe it's just a

11:38:58 20 different name for the same place. Canyon Country.

11:39:03 21 The phone number is the same, so that's enough.

11:39:10 22 Do you -- well, do you provide -- how do

11:39:17 23 you pronounce that, Dzanis?

11:39:19 24 A. Dzanis.

11:39:20 25 Q. Do you provide Mr. Dzanis information

11:39:24 1 developed in the collaborative effort between you  
11:39:28 2 and Brighton that you would like to include in your  
11:39:31 3 labeling and he comments on it? Is that correct?

11:39:33 4 A. Yes.

11:39:34 5 Q. Evaluates it, makes sure it's legally  
11:39:37 6 appropriate?

11:39:38 7 A. Not legally so much, but regulatory.

11:39:41 8 Q. Regulatory?

11:39:42 9 A. Right.

11:39:43 10 Q. What regulations apply to the labeling of  
11:39:46 11 pet food products?

11:39:47 12 A. We are obliged to follow the rules set by  
11:39:52 13 AAFCO. A-A-F-C-O is the acronym. And it stands for  
11:39:55 14 the American Association of Feed Control Officials.

11:39:59 15 Q. So he is well informed about those  
11:40:06 16 particular AAFCO rules and makes sure that you are  
11:40:09 17 in compliance with those rules?

11:40:10 18 A. Very much. Dave actually used to be the  
11:40:12 19 head of the CVM -- FDA's CVM, Center for Veterinary  
11:40:18 20 Medicine division of the FDA, so he used to run the  
11:40:21 21 thing.

11:40:36 22 Q. As far as labeling is concerned, your  
11:40:43 23 labels contain -- and correct me if I'm wrong. I'm  
11:40:47 24 not trying to put words in your mouth. But from my  
11:40:50 25 perspective as a layperson your labeling seems to

11:40:53 1 include information concerning the ingredients that

11:40:56 2 the product is made up of. Correct?

11:40:59 3 A. Yes, sir.

11:41:00 4 Q. And it also contains information

11:41:02 5 concerning -- nutritional information concerning

11:41:05 6 about, you know, what types of nutritional elements

11:41:08 7 are found in the product. Is that correct?

11:41:09 8 A. Yes, sir.

11:41:11 9 Q. And then, you know, standard colors and

11:41:16 10 pets and visual advertising types of information,

11:41:22 11 correct?

11:41:23 12 A. Yes.

11:41:27 13 Q. I guess labeling as far as ingredients go

11:41:31 14 that's fairly standard. I mean, whatever your

11:41:33 15 products are made up of you include on your labels,

11:41:36 16 correct?

11:41:36 17 A. Yes.

11:41:37 18 Q. And it's important to Natura to be accurate

11:41:43 19 when it sets out on a label the ingredients of

11:41:47 20 products, for instance, that we are talking about

11:41:49 21 here today?

11:41:49 22 A. Yes, sir.

11:41:52 23 Q. How does Natura -- well, strike that.

11:41:58 24 Does Natura develop its own recipes,

11:42:03 25 formulations for the pet food products we are

11:42:06 1 talking about here today?

11:42:06 2 A. Yes.

11:42:10 3 Q. Are you the person that develops those

11:42:13 4 recipes?

11:42:14 5 A. It's a collaborative effort, but I during

11:42:18 6 that time frame was the principal person responsible

11:42:21 7 for developing the products. But the recipes, the

11:42:25 8 actual formulations, were done out -- I didn't do

11:42:27 9 the actual formulations, no.

11:42:31 10 Q. Okay. And again we are talking November

11:42:33 11 '03, November '07?

11:42:34 12 A. (Nodding head up and down.)

11:42:35 13 Q. I think you were the vice president at that

11:42:37 14 time.

11:42:38 15 A. I was still -- yeah, I was for most of that

11:42:40 16 time, yeah.

11:42:45 17 Q. You indicated you were involved in

11:42:47 18 developing the recipes, formulations for these

11:42:51 19 products --

11:42:52 20 A. Right.

11:42:52 21 Q. -- that we are talking about, correct?

11:42:53 22 A. Yes.

11:42:55 23 Q. But that you didn't -- I didn't understand

11:42:58 24 what you said you didn't do in that regard.

11:43:00 25 A. In other words, the actual formulations

11:43:02 1 saying, okay, this ingredient is going to be in the  
11:43:05 2 formula at this proportion to meet the label  
11:43:09 3 guarantee, we have -- there's somebody else that  
11:43:11 4 does that actual formulation work.

11:43:18 5 Q. Let's just take one of these for an example  
11:43:21 6 so I can work my way through this a little bit.

11:43:25 7 Let's just take the Innova Senior Dry Food, Dry Dog  
11:43:29 8 Food. That is a product that you created?

11:43:33 9 A. Correct. Actually, in thinking of the  
11:43:35 10 context of the products that are on this list, I  
11:43:40 11 would have actually formulated that product, so,  
11:43:46 12 yeah, I would have done the original formulation on  
11:43:49 13 that product.

11:43:50 14 Q. You would have or you did?

11:43:52 15 A. I did.

11:43:58 16 Q. So in the development of a particular  
11:44:01 17 product, in the life of the development of a  
11:44:03 18 particular product as it relates to your role, you  
11:44:05 19 are the one that comes up with ideas for what type  
11:44:11 20 of product should -- Natura should look into  
11:44:15 21 producing?

11:44:15 22 A. Correct.

11:44:19 23 Q. And what types of ingredients that product  
11:44:23 24 might be made up of?

11:44:24 25 A. Correct.

11:44:25 1 Q. And what kind of nutrients you would like  
11:44:28 2 to see that product include?

11:44:30 3 A. Yes.

11:44:35 4 Q. It's almost like a chef creating a recipe,  
11:44:39 5 so to speak?

11:44:39 6 A. Very much so, yes.

11:44:41 7 Q. You have pets yourself, I'm sure?

11:44:43 8 A. Yes, sir.

11:44:44 9 Q. And do you actually go in and mix the  
11:44:49 10 ingredients, cook the food, put it together?

11:44:51 11 A. No.

11:44:54 12 Q. So most of your design work as products are  
11:44:58 13 concerned is written out as far as what types of  
11:45:01 14 things should go in it, perhaps what proportions  
11:45:04 15 should be in it?

11:45:05 16 A. Sure. It would be very much like that,  
11:45:07 17 yes.

11:45:13 18 Q. And then once you come up with an idea and  
11:45:16 19 you've laid out what ingredients you would like to  
11:45:19 20 see and perhaps what proportions those ingredients  
11:45:22 21 should be in there and what nutrients you believe  
11:45:26 22 the ingredients would provide, you have kind of like  
11:45:29 23 a target audience, so to speak, a segment of the pet  
11:45:33 24 food market that you are trying to design the market  
11:45:35 25 for?



11:45:36 1 A. Yes.

11:45:39 2 Q. For instance, the Senior Dry Dog Food, as  
11:45:44 3 the name would imply, I suppose you are looking at  
11:45:47 4 directing that product to the older dog?

11:45:49 5 A. Absolutely, yes.

11:45:51 6 Q. Okay. And so when you designed that  
11:45:53 7 product you included ingredients in a proportion  
11:45:57 8 that you think would be beneficial to the older dog?

11:46:02 9 A. Not so much the ingredient proportion but  
11:46:05 10 the design overall, the design of the product and  
11:46:08 11 the nutrients that it provides to the animal at the  
11:46:11 12 end of the day that would serve it best in its  
11:46:14 13 particular life stage, so --

11:46:16 14 Q. Okay. So then you design the product with  
11:46:22 15 a specific purpose in mind, correct?

11:46:24 16 A. Correct.

11:46:25 17 Q. And then after you do that you provide your  
11:46:30 18 idea, this product, here is what I think it should  
11:46:34 19 include, to someone else to design a label,  
11:46:40 20 packaging for that product?

11:46:42 21 Well, that's maybe two words. That's two  
11:46:45 22 questions.

11:46:45 23 A. Yes and yes. Ultimately, yes, once the --  
11:46:47 24 once we've developed the product to where we are  
11:46:50 25 happy with it, then it would go for label and

11:46:53 1 package design, yes.

11:46:54 2 Q. Okay. And that would go to Brighton?

11:46:57 3 A. Today it would, yes.

11:46:59 4 Q. Okay. Let's -- again, as always, I'm

11:47:01 5 confining my questions to the November '03 to the

11:47:04 6 November '07, and I know that Brighton didn't come

11:47:07 7 on until March of '04.

8 A. Uh-huh.

11:47:08 9 Q. But you did this yourself before March of

11:47:11 10 '04. Let's just focus on the March of '04, November

11:47:15 11 '07 time frame. It would go to Brighton during that

11:47:18 12 time frame?

11:47:19 13 A. Correct.

11:47:21 14 Q. They wouldn't actually make any adjustments

11:47:25 15 to the recipe that you came up with? They would

11:47:28 16 just take the information you provided them as to

11:47:31 17 what is in this particular product and in what

11:47:36 18 proportion, I'm assuming?

11:47:38 19 A. It would be listed -- no, the proportion is

11:47:43 20 set so they wouldn't have any control there, no.

11:47:45 21 Q. Okay. So you would go to Brighton and say,

11:47:48 22 "I have this new product, this is kind of the target

11:47:52 23 audience" -- I use that loosely, but "the target

11:47:53 24 audience, this is the purpose of the product." You

11:47:57 25 are -- are they involved in naming the product?

11:48:01 1 A. No, not really, no.

11:48:03 2 Q. That's up to you?

11:48:04 3 A. Yeah. Again, we have our core brands that

11:48:06 4 have been around for a while. And they are just

11:48:10 5 again subset products or line extensions under those

11:48:14 6 products, so I can't recall of them being involved

11:48:16 7 in any naming, no.

11:48:17 8 Q. That's you and your people?

11:48:18 9 A. Correct.

11:48:21 10 Q. But you basically provide them, "Here's the

11:48:24 11 ingredients that are in this particular product"?

11:48:26 12 A. Right.

11:48:27 13 Q. And "Here is" -- based upon those

11:48:29 14 ingredients, you give them a list of what you think

11:48:32 15 the nutritional elements are?

11:48:33 16 A. Or what we know they are, yes.

11:48:35 17 Q. What you know they are. How do you know

11:48:37 18 what the nutritional elements are?

11:48:39 19 A. Through analysis, laboratory analysis.

11:48:42 20 Q. Do you perform your own laboratory

11:48:44 21 analysis?

11:48:45 22 A. Natura Pet Products does not, no.

11:48:48 23 Q. Do you contract with somebody to do that

11:48:50 24 for you?

11:48:51 25 A. Yes.

11:48:51 1 Q. Who performs Natura's laboratory analysis  
11:48:54 2 of its product?

11:48:55 3 A. Our contract manufacturer has their own  
11:48:58 4 internal lab where they do some of it. And then  
11:49:04 5 they -- they actually contract with other outside  
11:49:07 6 labs to do further testing that they can't do  
11:49:09 7 internally.

11:49:12 8 Q. So the testing of Natura's products as it  
11:49:18 9 relates to the nutritional elements and perhaps  
11:49:20 10 other things, but right now I'm focusing on that, is  
11:49:24 11 undertaken by your contract manufacturers either  
11:49:28 12 through their own internal laboratories or  
11:49:31 13 laboratories with whom they contract?

11:49:32 14 A. Absolutely, yes.

11:49:36 15 Q. So when you create a product and decide  
11:49:41 16 what kind of ingredients should go into that product  
11:49:44 17 for the purposes you are trying to achieve, then you  
11:49:48 18 go to your contract manufacturer and say, "I'm  
11:49:51 19 looking at creating, producing this type of a  
11:49:55 20 product," and you work with them in, I guess,  
11:49:58 21 producing prototypes, so to speak?

11:50:02 22 A. Uh-huh.

11:50:03 23 Q. Correct?

11:50:03 24 A. Correct, yes. Test products, yeah.

11:50:05 25 Q. Test products. And once you come up with a

11:50:09 1 formulation test product that you are satisfied  
11:50:13 2 with, then it's submitted to the laboratory to break  
11:50:16 3 it down to determine what the nutritional analysis  
11:50:18 4 is?

11:50:18 5 A. Correct.

11:50:21 6 Q. Are they looking for things other than just  
11:50:24 7 the nutritional analysis when the lab -- well, maybe  
11:50:27 8 I'll back that up.

11:50:28 9 Are you asking, "you" being Natura,  
11:50:32 10 Natura's representative -- well, strike that.

11:50:38 11 Do you as Natura's representative have any  
11:50:41 12 direct contact with the laboratories, whether they  
11:50:43 13 be internal or external, of the manufacturers for  
11:50:46 14 evaluating these products?

11:50:47 15 A. Could you repeat the question? Me  
11:50:49 16 personally?

11:50:49 17 Q. Correct.

11:50:50 18 A. I would have contact with our  
11:50:53 19 manufacturer's lab, but not the external  
11:50:55 20 laboratories, no.

11:50:57 21 Q. Okay. Are you involved in what direction,  
11:51:03 22 instruction is given to the lab, whether it be in  
11:51:05 23 internal or external, as far as an evaluation of the  
11:51:09 24 prototype, the test product?

11:51:12 25 A. Yes.

11:51:13 1 Q. You wouldn't be externally, you would be  
11:51:16 2 internally?

11:51:16 3 A. Could be both. I mean, we would set --  
11:51:19 4 develop a set of parameters, "Here is the  
11:51:21 5 information we want to know." I mean, pretty much  
11:51:22 6 every product we develop we'll need to know a full  
11:51:27 7 nutritional profile which we will have to do either  
11:51:30 8 through calculation or through laboratory analysis.  
11:51:33 9 So one way or another we get the information,  
11:51:36 10 whether it's through the manufacturer's lab or  
11:51:38 11 outside of that lab.

11:51:41 12 Q. Is it fairly standard, the information that  
11:51:43 13 you want the lab to provide you in their analysis  
11:51:47 14 for a test product?

11:51:49 15 A. Yes.

11:51:51 16 Q. Whatever that product is you want to kind  
11:51:54 17 of know the same information?

11:51:55 18 A. Correct.

11:51:55 19 Q. Is this written down somewhere? Do you  
11:51:58 20 have guidelines for the information you want the  
11:52:01 21 laboratories to provide as it relates to test  
11:52:03 22 products?

11:52:04 23 A. We wouldn't have like a standard sheet, but  
11:52:07 24 for each product that we develop there would be  
11:52:09 25 communication to -- towards that end, yes.

11:52:13 1 Q. And it's fairly standard, the information  
11:52:16 2 you want?

11:52:16 3 A. Correct.

11:52:17 4 Q. So you just -- you just know this because  
11:52:20 5 you've done it so many times? You know this is what  
11:52:23 6 you want and you communicate that?

11:52:24 7 A. Right. Exactly, yes.

11:52:27 8 Q. You don't have to have it written down in a  
11:52:29 9 policy manual or a checklist somewhere? You just --  
11:52:32 10 just know it because you remember it?

11:52:34 11 A. Right.

11:52:36 12 Q. What types of things do you instruct your  
11:52:42 13 labs when they're evaluating a test product, what  
11:52:44 14 types of information do you ask them to provide you  
11:52:46 15 about that product?

11:52:47 16 A. It would include, again, nutritional  
11:52:53 17 analysis because we are obliged by the AAFCO  
11:52:56 18 regulations to provide certain nutrient --  
11:53:01 19 nutritional information on the package. We would  
11:53:02 20 have that analyzed to validate that that information  
11:53:05 21 that we are providing on the package is indeed  
11:53:09 22 valid.

11:53:09 23 So, for example, crude protein, crude fat,  
11:53:13 24 crude fiber, moisture, those are all required by law  
11:53:18 25 to provide either minimums or maximums for.

11:53:21 1 Q. All right. Anything else?

11:53:22 2 A. Again, for our own internal use we would  
11:53:27 3 want to know a full nutritional profile. Basically  
11:53:31 4 if you again go to the AAFCO book there's a full  
11:53:34 5 list of amino acids, vitamins and minerals,  
11:53:42 6 et cetera, that are known, that are identified that  
11:53:44 7 you can analyze for that we would either want to  
11:53:47 8 have analyzed by a lab or that we would calculate  
11:53:50 9 based on our formulation to provide that  
11:53:52 10 information.

11:53:55 11 Q. Okay. So the AAFCO requirements indicate  
11:54:01 12 what you as the producer of the food, although I  
11:54:07 13 know you contract for the actual production, what  
11:54:11 14 information you need to know about a product before  
11:54:14 15 you can market it? Is that correct?

11:54:19 16 A. Say it again. I'm sorry.

11:54:23 17 Q. Well, we are talking about the AAFCO  
11:54:24 18 guidelines -- are they guidelines or regulations?

11:54:27 19 A. They are regulations.

11:54:28 20 Q. So you are required by law to follow these  
11:54:30 21 regulations?

11:54:30 22 A. Correct.

11:54:31 23 Q. And those regulations include requirements  
11:54:31 24 as to what you as a company involved in the  
11:54:33 25 production of a particular pet food product need to



11:54:36 1 know about that product; is that correct?

11:54:38 2 A. Correct.

11:54:40 3 Q. And that includes the nutritional analysis

11:54:42 4 that you I think briefly described, fiber,

11:54:45 5 protein --

6 A. Uh-huh.

11:54:45 7 Q. -- fat, that kind of thing, correct?

11:54:47 8 A. Correct.

11:54:47 9 Q. But then you said there's some internal

11:54:49 10 things you need to know that are also, I think you

11:54:52 11 said, dictated by AAFCO. Is that correct?

11:54:54 12 A. No, just the -- just the -- again, you

11:54:56 13 asked for is there a list of things, and the list

11:54:58 14 would be the AAFCO list.

11:55:01 15 I mean, again, food, whether it's for

11:55:04 16 humans or pets, there's certain nutrients that

11:55:07 17 comprise food. And that again is protein, which is

11:55:09 18 comprised of amino acids, there's carbohydrates,

11:55:11 19 there's fiber, there's vitamins, minerals.

11:55:14 20 And then there's or nutraceutical types

11:55:14 21 things that are not necessarily nutritive but that

11:55:18 22 you still either include in your product or are

11:55:20 23 brought to the party by your ingredients that you

11:55:22 24 use.

11:55:23 25 So those are all things that are important

11:55:24 1 to us that we want to know. It's not something that  
11:55:27 2 we are required to do. As a matter of fact, we are  
11:55:28 3 very unique in our industry because we do it.

11:55:34 4 Q. Okay. So let me make sure I understand  
11:55:36 5 this. AAFCO does set out directions -- a list of  
11:55:40 6 things that you need to know about a product that  
11:55:43 7 you are marketing or producing --

8 A. Well --

11:55:46 9 Q. -- in conjunction with others, correct?

11:55:48 10 A. -- they -- AAFCO presents a requirement of  
11:55:51 11 certain basic information that you have to represent  
11:55:54 12 on your packaging. And it does not necessarily  
11:55:58 13 require that you do a lab analysis. You can  
11:56:01 14 actually do it just through formulation calculation.

11:56:04 15 Again, individual states may take that  
11:56:07 16 product and analyze it themselves and hold you to --  
11:56:10 17 that your calculations are correct.

11:56:12 18 But, again, AAFCO just requires that you  
11:56:14 19 make that representation and that they be accurate  
11:56:16 20 either through calculation or lab analysis.

11:56:22 21 Q. Okay. And Natura Pet Food Products always  
11:56:28 22 has a lab analysis for the products it's producing?

11:56:32 23 A. Correct.

11:56:33 24 Q. You never just rely on a formulation  
11:56:35 25 calculation to provide the information required by

11:56:38 1 AAFCO?

11:56:39 2 A. Absolutely not, no.

11:56:40 3 Q. That would apply to Senior Dry Dog Food?

11:56:44 4 A. Yes.

11:56:48 5 Q. And then you were saying you even go --

11:56:51 6 your company is unique in that it goes beyond what

11:56:54 7 AAFCO requires be disclosed; is that correct?

11:56:57 8 A. Correct.

11:56:57 9 Q. And I think you started to tell me some of

11:57:00 10 what that information was. Can we slow down a

11:57:04 11 little bit --

11:57:04 12 A. Sure.

11:57:04 13 Q. -- and what is it internally that you need

11:57:07 14 to know that you are not obligated by AAFCO to

11:57:09 15 disclose?

11:57:11 16 A. Again, we want to know the different

11:57:14 17 nutrient levels, especially the macro nutrients.

18 Q. I'm sorry?

11:57:21 19 A. Calcium, phosphorus, magnesium, for

11:57:24 20 example. Carbohydrate levels for some of our

11:57:30 21 products. Amino acid profile. And those are things

11:57:40 22 beyond the basic types of analysis that we -- that

11:57:46 23 we do ourselves.

11:57:48 24 Q. Well, but you have your labs look at it as

11:57:52 25 well as what AAFCO requires you know, correct?

11:57:56 1 A. Both, yes.

11:58:01 2 Q. You could go to the lab and say, "I just  
11:58:03 3 need to know" -- "I need to know about this  
11:58:07 4 particular product what AAFCO requires that I know  
11:58:09 5 for labeling purposes," correct?

11:58:11 6 A. I mean, you would -- it would be very  
11:58:13 7 specific what you would ask for from the lab. "I  
11:58:16 8 want to know protein, fat, fiber, carbohydrates,  
11:58:19 9 moisture," which are the basics.

11:58:20 10 Q. So to get this additional information that  
11:58:23 11 you use internally you would have to add to that  
11:58:25 12 list of things --

11:58:26 13 A. Yes.

11:58:27 14 Q. -- that you want the lab to look for; is  
11:58:28 15 that correct?

11:58:29 16 A. Yes.

11:58:29 17 Q. This information you are talking about, the  
11:58:31 18 nutrient levels, carb levels, amino acid profile, is  
11:58:35 19 this information you include in your labeling?

11:58:37 20 A. We do not include it in our labeling, no.

11:58:40 21 Q. What's the purpose of having this  
11:58:41 22 information?

11:58:41 23 A. We've always had a policy of being very  
11:58:45 24 open and transparent and providing as much  
11:58:47 25 information to our customers as possible. And all

11:58:49 1 that information we put on our Web site so customers  
11:58:52 2 can go look and see that extended list of  
11:58:55 3 information that is there about the products that  
11:58:58 4 they feed. Veterinarians can look take a look at  
11:59:02 5 that same information for their purposes. So it's  
11:59:04 6 really again to communicate and provide more  
11:59:06 7 information to our customers.

11:59:12 8 Q. Okay. Now, once you develop a product,  
11:59:16 9 analyze a product and start manufacturing through  
11:59:22 10 your outside entities a product, do you  
11:59:26 11 periodically, from time to time, do followup  
11:59:29 12 analysis of the product?

11:59:32 13 A. Yes.

11:59:34 14 Q. Or I suppose that would actually be  
11:59:36 15 undertaken by your manufacturer?

11:59:38 16 A. Correct.

11:59:39 17 Q. Do you require the manufacturers undertake  
11:59:42 18 followup analysis on any kind of a regular basis?

11:59:45 19 A. Yes.

11:59:45 20 Q. Is that a contractual requirement?

11:59:48 21 A. No. Just a verbal understanding, yes.

11:59:53 22 Q. Are you the primary contact between  
11:59:57 23 Natura's manufacturers and Natura?

11:59:58 24 A. Yes.

12:00:00 25 Q. I mean, you would be the person that would

12:00:02 1 communicate with them about, for instance, followup  
12:00:05 2 analysis of an ongoing product?

12:00:09 3 A. Correct.

12:00:13 4 Q. You just communicate these requests for  
12:00:15 5 followup analysis orally or do you communicate that  
12:00:18 6 in writing or both?

12:00:19 7 A. No, it's something that we established  
12:00:23 8 together from the get-go when we started working  
12:00:26 9 together, basically a protocol for testing, for  
12:00:29 10 ingredient handling, for -- again, for all those  
12:00:35 11 things that we expect for them to do. So it was set  
12:00:39 12 up initially and so it's not anything that we have  
12:00:43 13 to talk about anymore because it's already set in  
12:00:46 14 place.

12:00:47 15 Q. So some sort of a written protocol exists  
12:00:52 16 that's prepared by Natura in conjunction with its  
12:00:54 17 manufacturer on all of the things you just set out?

12:00:56 18 A. Yes.

12:00:58 19 Q. And Natura has a copy of that written  
12:01:01 20 protocol?

12:01:01 21 A. Again, it wouldn't be a consolidated  
12:01:05 22 document, but we would have all of that in writing  
12:01:08 23 at some level, yes.

12:01:12 24 Q. Certain aspects of the protocol may be in  
12:01:15 25 different writings than other aspects?

12:01:19 1 A. Correct.

12:01:21 2 Q. And would be like separate communications  
12:01:27 3 to the manufacturer or within manufacturing  
12:01:31 4 specifications of some sort? How would you go about  
12:01:36 5 finding out all aspects of a particular protocol as  
12:01:40 6 to a particular product if you wanted to pull all  
12:01:42 7 that information? Do you, for instance, know all of  
12:01:46 8 the places you would go to put that information  
12:01:48 9 together?

12:01:49 10 A. I'm sorry, could you repeat that question?

12:01:51 11 I --

12:01:52 12 Q. The protocol seems to have many provisions,  
12:01:55 13 many steps to it, correct, many items that are  
12:01:58 14 included in the protocol, as the manufacture  
12:02:01 15 testing, distribution, storage, et cetera?

12:02:04 16 A. Yes.

12:02:06 17 Q. Okay. If you wanted to know the entire  
12:02:09 18 protocol as it related to an entire Natura pet food  
12:02:14 19 product, what I'm hearing is you can't go to one  
12:02:17 20 document.

12:02:17 21 A. Correct.

12:02:18 22 Q. That protocol could be found in many  
12:02:21 23 documents?

12:02:22 24 A. Correct.

12:02:24 25 Q. If somebody wanted to know the entire

12:02:27 1 protocol as to a particular product, do you  
12:02:29 2 personally know how to go about putting that  
12:02:32 3 together?

12:02:33 4 A. Actually, I guess to correct the answer to  
12:02:35 5 the last question there, the manufacturer has a  
12:02:38 6 uniform set of policy documents that could be  
12:02:42 7 referred to at any moment. So I guess the answer to  
12:02:45 8 the question is that we don't internally, but it's  
12:02:48 9 at the manufacturer level that all of that is very  
12:02:51 10 well documented in a single place.

12:02:53 11 Q. In a single document?

12:02:55 12 A. Single set of documents, yeah.

12:03:00 13 Q. For instance, they may have protocols,  
12:03:05 14 manufacturing procedures, inspection procedures,  
12:03:07 15 testing procedures, storage procedures and they  
12:03:09 16 might have them categorized in that way that?

12:03:12 17 A. Yep, absolutely.

12:03:13 18 Q. That's a fair statement?

12:03:14 19 A. Yes.

12:03:16 20 Q. And that would apply to more than one  
12:03:19 21 product? That would probably apply to many?

12:03:21 22 A. All of them, yeah.

12:03:25 23 Q. Okay. So there is a -- getting back to the  
12:03:30 24 testing issue, there's a protocol that the  
12:03:32 25 manufacturers have that's been developed between



12:03:35 1 Natura and the manufacturer as to the frequency of  
12:03:38 2 testing of an ongoing product?  
12:03:40 3 A. Correct.  
12:03:42 4 Q. Which would be for all products that are  
12:03:44 5 ongoing?  
12:03:44 6 A. Correct.  
12:03:45 7 Q. What is that frequency?  
12:03:47 8 A. It varies on the type of testing. I mean,  
12:03:50 9 some are done on every batch of product run and some  
12:03:54 10 are done on a periodic basis as part of kind of a  
12:03:57 11 spot testing program. So it just all depends on the  
12:04:00 12 exact -- exact type of test we are talking about.  
12:04:03 13 Q. So there's more than one test that is  
12:04:05 14 undertaken on your products across the board by the  
12:04:10 15 manufacturers periodically?  
12:04:11 16 A. Absolutely, yes.  
12:04:13 17 Q. What are the types of tests -- there's two  
12:04:18 18 categories. There's testing that's undertaken on a  
12:04:21 19 routine basis, correct?  
12:04:22 20 A. Correct.  
12:04:24 21 Q. And then there's testing that's undertaken  
12:04:26 22 on a spot basis?  
12:04:27 23 A. Or on a periodic basis to -- as part of a  
12:04:31 24 larger protocol, yes.  
12:04:38 25 Q. Let's start with the routine testing. I

12:04:45 1 think you said the routine -- depending on what type  
12:04:47 2 of test you want to run on a product that the  
12:04:49 3 frequency may differ. Is that correct?

12:04:51 4 A. Correct.

12:04:55 5 Q. How many types of tests are there that  
12:04:57 6 you -- that Natura -- well, strike that.

12:05:01 7 Who determines what types of testing is  
12:05:03 8 going to be undertaken on a particular product? Is  
12:05:06 9 that Natura or is that the manufacturer or a  
12:05:10 10 combination of the two?

12:05:11 11 A. You know, it was all established early on  
12:05:13 12 as part of a larger quality protocol or procedure,  
12:05:17 13 so those things were established collectively  
12:05:20 14 between -- between us.

12:05:26 15 Q. Okay. So the protocol as related to the  
12:05:30 16 routine testing and what types of testing would be  
12:05:32 17 undertaken was established some time ago. How long  
12:05:39 18 ago?

12:05:39 19 A. 2003.

12:05:45 20 Q. In a cooperative effort between yourself  
12:05:51 21 and your manufacturers?

12:05:52 22 A. Correct.

12:05:53 23 Q. All of your manufacturers?

12:05:58 24 A. We have different manufacturers, so for our  
12:06:00 25 dry food that's what I've been referring to in the

12:06:03 1 context of these products. So I guess that's what  
12:06:08 2 we are talking about so it would be yes.

12:06:10 3 Q. Okay. You have different manufacturers for  
12:06:12 4 your wet food and your dry food?

12:06:14 5 A. Correct.

12:06:15 6 Q. These products that we've been talking  
12:06:18 7 about are dry?

12:06:18 8 A. Correct.

12:06:19 9 Q. Do you have more than one manufacturer for  
12:06:22 10 your dry food products?

12:06:23 11 A. Only the Mother Nature Biscuit. It's a  
12:06:26 12 separate manufacturer. The rest are with the dry  
12:06:29 13 food manufacturer.

12:06:30 14 Q. A single manufacturer?

12:06:31 15 A. Correct.

12:06:34 16 Q. So in 2003 in a conjunctive effort between  
12:06:41 17 yourself and the manufacturer, certain protocols  
12:06:45 18 were arrived at which included among other things  
12:06:49 19 routine testing, correct?

12:06:49 20 A. Correct.

12:06:49 21 Q. And what types of things should be  
12:06:53 22 routinely tested by the manufacturer; is that  
12:06:54 23 correct?

12:06:54 24 A. Correct.

12:06:56 25 Q. Okay. So what is that protocol that you

12:06:59 1 developed for your dry food -- with your dry food

12:07:02 2 manufacturer as to routine testing?

12:07:05 3 A. It would be difficult to recite it very

12:07:07 4 specifically, but if -- I can give you a very kind

12:07:12 5 of a broad brush of what it looks like if that's

12:07:14 6 okay with you.

12:07:15 7 Q. Sure. It's fine with me.

12:07:16 8 A. Okay. Okay.

12:07:18 9 Q. For the time being anyway.

12:07:19 10 A. It's very comprehensive. It starts with

12:07:22 11 suppliers, our ingredients. Basically it's an

12:07:25 12 approval process of suppliers. Basically a very

12:07:30 13 specific definition of the ingredients that we buy,

12:07:32 14 what it has to provide, what it can't include in

12:07:36 15 terms of contaminants or toxins, those kind of

12:07:38 16 things.

12:07:39 17 And then once those ingredients come to the

12:07:43 18 plant we don't unload that truck until we take a

12:07:45 19 sample of those ingredients and test it for many or

12:07:49 20 all of those things depending on the ingredient.

12:07:51 21 We do reject or the manufacturer rejects

12:07:54 22 loads on a pretty regular basis that don't meet up

12:07:57 23 to our specifications.

12:07:58 24 Then once the ingredients come in we do

12:08:03 25 basically a basic NIR near infrared analysis. It's

12:08:08 1 a very simple but accurate test to where we take a  
12:08:10 2 sample of the ingredient, grind it up, put it into  
12:08:14 3 the NIR machine and it gives us back protein, fat,  
12:08:18 4 fiber, some basic things about the ingredient to  
12:08:20 5 make sure it meets our, again, nutrient  
12:08:22 6 specifications for that ingredient. And that would  
12:08:25 7 pretty much run the gamut of all of the ingredients  
12:08:29 8 that we use.

12:08:30 9           Then those are put in storage. Once we run  
12:08:32 10 our formulas, we actually take product off the end  
12:08:35 11 of the line and do those same kind of testing as  
12:08:38 12 well. We'll do visual inspections. We'll do color  
12:08:42 13 inspections. We have charts in place to say, okay,  
12:08:44 14 it's got to be, you know, this color within this  
12:08:47 15 range, it's got to be this size.

12:08:49 16           We have micrometers at the end of the  
12:08:52 17 extruder to actually measure the product to make  
12:08:54 18 sure it's within specification.

12:08:56 19           Then, again, we do NIR testing to get that  
12:08:59 20 basic protein, fat, moisture type of analysis done  
12:09:02 21 to make sure we are within specs.

12:09:05 22           Then the product is finished. It's dried,  
12:09:08 23 packaged. We take -- retain -- we have retention  
12:09:13 24 samples of all those products that we keep for -- I  
12:09:17 25 would have to check -- 15 months I believe is the --

12:09:19 1 15 months to two years, something like that. I

12:09:23 2 would have to look that up.

12:09:25 3 But we would be able to go back if there

12:09:27 4 was a problem in the market and basically do a -- go

12:09:31 5 back to those trace samples, do an analysis, see if

12:09:35 6 there's any issues with that internally.

12:09:38 7 Our manufacturer is AIB certified, American

12:09:42 8 Institute of Baking, superior. Every year since

12:09:45 9 2003 since they've had the inspection they've been

12:09:48 10 rated superior.

12:09:51 11 They are APHIS certified. In other words,

12:09:55 12 they can make products to export to certain

12:09:58 13 countries.

12:09:58 14 And they are also, which is very unusual,

12:10:01 15 ISO 9001 -- 9000? I always get those numbers

12:10:04 16 confused -- but which is a certification that is

12:10:07 17 very unusual in our industry. And they comply with

12:10:10 18 those regulations for that ISO certification.

12:10:13 19 So, again, our manufacturer is topnotch,

12:10:17 20 best in the industry, and a lot of those protocols

12:10:21 21 that we've talked about are built into those

12:10:23 22 certifications anyway so it's a very comforting

12:10:27 23 thing.

12:10:28 24 Q. Who is your manufacturer for the dry food?

12:10:30 25 A. Natura Manufacturing, Incorporated.

12:10:41 1 Q. What a coincidence. They seem to have the  
12:10:43 2 same name as your company.

12:10:44 3 A. Uh-huh.

12:10:45 4 Q. They are not a subsidiary?

12:10:46 5 A. Not a subsidiary, no, sir.

12:10:48 6 Q. Do you have any ownership interest in that  
12:10:50 7 company?

12:10:50 8 A. Yes, I do.

12:10:57 9 MS. CAVERLY: If we are going to go through  
12:10:59 10 the owners of the company and their percentage  
12:11:02 11 interests -- yes or no?

12:11:03 12 MR. NIELD: Well, we might. Before we get  
12:11:05 13 there, a little guidance. It is about 12:10. I'm  
12:11:11 14 sure people would like to stop and take a lunch  
12:11:14 15 break at some point in time. We can do that now.  
12:11:18 16 We can -- you want to do it now?

17 THE WITNESS: Go ahead.

12:11:19 18 MS. CAVERLY: Anytime when you are ready.

12:11:22 19 THE WITNESS: Defer to the group.

12:11:23 20 MR. NIELD: Well, I can do it now if this  
12:11:24 21 is a good time. We are going to be going for, you  
12:11:27 22 know, I would think the rest of the day, but if now  
12:11:29 23 is what everybody wants, let's do it now.

24 MR. BAKER: Let's do it now.

25 MR. NIELD: Let's go off the record then.

12:11:32 1 THE VIDEOGRAPHER: Going off the record.

12:11:34 2 The time is 12:11 p.m.

3 (Luncheon recess taken.)

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1 A F T E R N O O N S E S S I O N

13:01:21 2 THE VIDEOGRAPHER: We are back on the

13:01:22 3 record. The time is 1:01 p.m.

13:01:32 4 BY MR. NIELD:

13:01:32 5 Q. Just before we took our lunch break I was

13:01:41 6 talking to you about the manufacturing company

13:01:45 7 Natura Manufacturing, Inc. You indicated you had an

13:01:48 8 ownership interest in that; is that correct?

13:01:49 9 A. Yes, sir.

13:01:51 10 Q. Do the Rademakers have an ownership

13:01:54 11 interest in that as well?

13:01:56 12 A. Yes.

13:01:56 13 Q. Do the Gilpins have an ownership interest

13:02:01 14 in that?

13:02:01 15 A. Yes.

13:02:02 16 Q. Does everybody that has an ownership

13:02:04 17 interest in Natura Pet Food Products have an

13:02:07 18 interest in Natura Manufacturing, Inc.?

13:02:09 19 A. Yes.

13:02:10 20 Q. Is there people beyond Natura

13:02:14 21 Manufacturing, Inc., interest holders that -- excuse

22 me, strike that.

13:02:15 23 Is there people beyond the Natura Pet Food

13:02:17 24 Products interest holders that have an interest in

13:02:21 25 Natura Manufacturing, Inc.?

13:02:23 1 MS. CAVERLY: Natura Pet Products.

13:02:25 2 MR. NIELD: I'm sorry.

13:02:27 3 THE WITNESS: The -- I guess to be clear

13:02:29 4 the ownership of Natura Manufacturing are the same

13:02:34 5 owners, not necessarily proportional number of

13:02:37 6 shares, but it is common ownership as far as the

13:02:41 7 actual stockholders.

8 BY MR. NIELD:

13:02:42 9 Q. And there's no other parties besides the

13:02:46 10 individuals that have an ownership interest in

13:02:49 11 Natura Pet Products that have an ownership interest

13:02:53 12 in Natura Manufacturing, Inc.?

13:02:54 13 A. That is correct.

13:03:00 14 Q. All right. I want to go back to where I

13:03:04 15 was earlier today and then I got off on a tangent.

16 A. Excuse me.

13:03:08 17 Q. I'll come back to that later.

13:03:21 18 And if I have asked you this already I

13:03:24 19 apologize, but I want to make sure I've closed --

13:03:27 20 closed these doors so I can move on. But the

13:03:30 21 brochures and the written educational materials, the

13:03:33 22 written materials you provide to your wholesalers

13:03:35 23 and distributors for use with the ultimate

13:03:39 24 retailers, that's standard material that is utilized

13:03:42 25 by your company across the country; is that correct?

13:03:46 1 A. Yes.

13:03:47 2 Q. Doesn't change by state by state or region  
13:03:50 3 by region?

13:03:51 4 A. No.

13:03:53 5 Q. The training that is provided and the  
13:03:57 6 training materials that are provided, that's the  
13:03:58 7 same thing, it's the same type of training you  
13:04:02 8 provide -- strike that.

13:04:03 9 You provide the same type of training  
13:04:05 10 relating to your products to retailers and  
13:04:07 11 wholesalers across the country, correct?

13:04:09 12 A. We provide the same core materials that the  
13:04:12 13 sales reps use in the field. Perhaps obviously they  
13:04:15 14 will put their own twist and slant on it as they do  
13:04:19 15 the presentations, but what Natura provides to them  
13:04:21 16 to use as tools for those presentations is uniform,  
13:04:24 17 yes.

13:04:31 18 Q. Okay. And we've been talking about  
13:04:32 19 marketing and we've been talking about advertising  
13:04:35 20 and kind of perhaps utilizing those terms a little  
13:04:38 21 loosely. You've been viewing those as the same  
13:04:41 22 thing?

13:04:41 23 A. In the context of our discussion so far,  
13:04:43 24 yes, sir.

13:04:52 25 Q. Okay. In going through the documentation

13:04:54 1 that has been provided, and not including your Web  
13:04:58 2 site, some of the printed materials, it appears that  
13:05:04 3 to a large degree or almost an exclusive degree that  
13:05:08 4 they focus more on Natura as a brand and that the  
13:05:15 5 categories California Natural, EVO and all that as  
13:05:21 6 brands as opposed to specifically advertising  
13:05:24 7 particular products. Is that a fair statement?

13:05:28 8 A. Not -- no, I would say not. Normally --  
13:05:32 9 actually Natura -- if you would ask people who makes  
13:05:36 10 California Natural or Innova, they would probably  
13:05:38 11 not know the name Natura. It's actually not as well  
13:05:41 12 advertised as the brands in my opinion.

13:05:44 13 Q. Okay. Well, the brands -- I guess that's  
13:05:48 14 what I'm getting to. The Natura -- excuse me.  
13:05:50 15 Innova, California Natural, et cetera, those brands,  
13:05:54 16 within those brands there's several products,  
13:05:56 17 correct?

13:05:57 18 A. Correct.

13:05:57 19 Q. Many products. And it appears that the  
13:05:59 20 advertising is directed at the brands themselves  
13:06:01 21 more than the specific products within the brands.

13:06:05 22 A. Correct.

13:06:06 23 Q. That's fair?

13:06:07 24 A. Absolutely, yes.

13:06:08 25 Q. For instance, EVO is a holistic brand. Am

13:06:14 1 I getting that right?

13:06:15 2 A. No. Again, we use the term holistic with  
13:06:19 3 several of our brands. So it's not just identified  
13:06:23 4 with EVO.

13:07:10 5 Q. "Innova" -- I'm looking at a page from your  
13:07:12 6 Web site. "Innova," in one of the descriptions,  
13:07:16 7 "The first 'true' holistic pet health food."

13:07:20 8 EVO is "Grain-free pet food for  
13:07:25 9 carnivore" -- "for the carnivore in your dog, cat or  
13:07:29 10 ferret."

13:07:30 11 Let me just show it to you to be fair.

13:07:32 12 A. Sure.

13:07:33 13 Q. Is that the -- I think that's the current  
13:07:35 14 Web site. I think that's --

13:07:35 15 A. Very -- very recent, yes.

13:07:37 16 Q. Very -- that's the primary front first page  
13:07:39 17 you get when you pull up the Web site; is that  
13:07:42 18 correct?

13:07:42 19 A. As of 10/20/08 probably was, yes.

13:07:46 20 Q. Okay.

13:07:46 21 MS. CAVERLY: Are we going to mark this as  
13:07:48 22 an exhibit?

13:07:48 23 MR. NIELD: I don't know if I need to right  
13:07:50 24 now.

13:07:50 25 MS. CAVERLY: I would prefer to have it

13:07:52 1 marked. Otherwise, you are going to have no idea  
13:07:57 2 what he's answered questions agreeing with you or  
13:07:59 3 not agreeing with you.

13:08:00 4 MR. NIELD: All right. I'll mark it, but  
13:08:02 5 let's talk about it before I do.

13:08:04 6 I'll mark it right now as Exhibit 2. It  
13:08:06 7 doesn't matter to me.

8 (WHEREUPON, DEPOSITION EXHIBIT 2 WAS MARKED  
9 FOR IDENTIFICATION.)

13:08:11 10 MR. NIELD: This is color, but it doesn't  
13:08:14 11 need to be color when you make an exhibit.

13:08:17 12 BY MR. NIELD:

13:08:17 13 Q. Each of the brand -- the Natura brand names  
13:08:21 14 is on the left-hand column; is that correct?

13:08:25 15 A. Correct.

13:08:26 16 Q. And each has a little blurb underneath it  
13:08:29 17 about that particular brand, correct?

13:08:31 18 A. Right.

13:08:32 19 Q. Those are distinguished -- to distinguish  
13:08:35 20 one brand from the other?

13:08:36 21 A. Correct.

13:08:36 22 Q. Okay. And as we just discussed, the  
13:08:41 23 advertising that I've seen, anyway, and correct me  
13:08:43 24 if I'm wrong, seems to be more focused on the brands  
13:08:47 25 that are listed down the left-hand side, Innova,

13:08:53 1 EVO, California Natural?

13:08:56 2 A. HealthWise, Mother Nature, Karma.

13:08:58 3 Q. Correct? Am I correct in that?

13:09:01 4 A. Yes, sir.

13:09:14 5 Q. Okay. So the focus of the marketing is

13:09:16 6 more brand specific than product specific?

13:09:20 7 A. Correct.

13:09:51 8 Q. Excuse me. Excuse me, I just misplaced

13:09:54 9 something here. Oh, here.

13:10:04 10 Does your company -- we've talked about the

13:10:06 11 brochures, written materials given to distributors

13:10:09 12 to assist them in marketing the retailers. Is there

13:10:16 13 any other type of print advertising that Natura

13:10:21 14 utilizes to sell its products, for instance, press

13:10:24 15 releases?

13:10:26 16 A. Yes.

13:10:29 17 Q. Would you as the corporate designee for

13:10:32 18 Natura be the most knowledgeable person as it

13:10:35 19 related to advertising through the press in that

13:10:38 20 regard?

13:10:38 21 A. Yes.

13:10:39 22 Q. Okay. How does Natura utilize press

13:10:45 23 releases in its advertising efforts?

13:10:48 24 A. Again, through our marketing, our Brighton

13:10:51 25 Agency. They have a PR department which

13:10:55 1 periodically will issue releases on new products or  
13:11:00 2 a new hire, for example, in the company, those kind  
13:11:04 3 of things.

13:11:04 4 Q. So you provide that kind of information to  
13:11:07 5 Brighton and then they coordinate releasing that  
13:11:09 6 information to the press?

13:11:10 7 A. Yes, sir.

13:11:16 8 Q. When Brighton moves forward and prepares  
13:11:26 9 press releases, do you have to approve them before  
13:11:29 10 they are actually released?

13:11:30 11 A. No, not -- no.

13:11:32 12 Q. No? You just provide the information and  
13:11:36 13 just assume that they'll do the appropriate thing  
13:11:38 14 with it?

13:11:38 15 A. Correct.

13:11:41 16 Q. Is that the same with respect to packaging,  
13:11:43 17 when they design packaging? Is this something you  
13:11:48 18 have to have the final approval on before it's  
13:11:51 19 utilized?

13:11:52 20 A. Yes. Yes, I always get a copy of the final  
13:11:58 21 package design and label design for review and  
13:12:01 22 signoff, correct.

13:12:03 23 Q. Packaging, label meaning the labeling --  
13:12:05 24 the label information, the ingredients, the  
13:12:09 25 nutrition section, all of that has to be signed off



13:12:12 1 on by yourself --

13:12:12 2 A. Correct.

13:12:14 3 Q. -- before it's used?

13:12:24 4 Does your company utilize an entity known

13:12:27 5 as Crier Communications?

13:12:29 6 A. We did. They were our PR company before

13:12:32 7 Brighton.

13:12:37 8 Q. And they were limited to simply public

13:12:41 9 relations; is that correct?

13:12:42 10 A. Yes, sir, that's correct.

13:12:43 11 Q. They weren't involved in packaging or

13:12:46 12 labeling or that kind of thing?

13:12:47 13 A. Correct.

13:12:53 14 Q. Now, I think you indicated Brighton has

13:12:55 15 been on board with your company since March of '04;

13:12:59 16 is that correct?

13:12:59 17 A. Yes, sir.

13:13:00 18 Q. Do you still utilize Crier Communications

13:13:02 19 for any reason?

13:13:03 20 A. No, we -- when we first signed on with

13:13:07 21 Brighton it was just for marketing, advertising and

13:13:09 22 we kept Crier on. And I think we just changed from

13:13:14 23 Crier -- Crier to Brighton I want to say probably

13:13:19 24 '06, '07. I don't know the exact date, but it

13:13:22 25 was -- it wasn't from the beginning of our

13:13:24 1 relationship with Brighton.

13:13:26 2 Q. When was the last time you can recall  
13:13:30 3 utilizing Crier for anything?

13:13:33 4 A. Like I said, I want to say it was probably  
13:13:36 5 '06 or '07. I can't remember the exact date.

13:13:53 6 Q. One of the things we talked about earlier  
13:13:55 7 was point-of-purchase materials, advertising that  
13:13:59 8 the company is involved with. And I've mentioned  
13:14:04 9 the term "display advertisements." Display  
13:14:07 10 advertisements are synonymous with  
13:14:10 11 point-of-purchase, I would imagine?

13:14:12 12 A. Sure.

13:14:14 13 Q. These are posters -- I think you said  
13:14:18 14 something about talking something?

13:14:22 15 A. Shelf-talkers.

13:14:23 16 Q. Shelf-talkers. Those are the little things  
13:14:26 17 that you attach to the shelf and a voice will come  
13:14:29 18 off and tell you something about the product?

13:14:31 19 A. No. We are not quite there. It's  
13:14:34 20 basically a paper, a printed paper, basically an  
13:14:40 21 eight-and-a-half-by-eleven folded in half and it  
13:14:41 22 will have like either the logo or a picture of the  
13:14:41 23 product and a blank space for the retailer to write  
13:14:43 24 in their price.

13:14:44 25 Q. I see. And the posters are just posters of

13:14:47 1 the product itself, the packaging kind of thing?

13:14:49 2 A. Correct. Or the brand, right.

13:14:52 3 Q. Again, those types of materials, the

13:14:55 4 shelf-talkers, the posters utilized at

13:14:58 5 point-of-purchase displays are uniform across the

13:15:01 6 country?

13:15:01 7 A. Yes, sir.

13:15:06 8 Q. Do you do any direct mail advertising?

13:15:09 9 A. No.

13:15:20 10 Q. Earlier we talked about endorsements,

13:15:27 11 people that are contracted with to provide

13:15:30 12 endorsements for Natura or its products. I think

13:15:33 13 you indicated that Natura is involved in those types

13:15:36 14 of relationships.

13:15:39 15 A. You know, I did, but within the context of

13:15:41 16 the time frame that we are talking about -- November

13:15:44 17 '07 is the latest date, right?

13:15:46 18 Q. Correct.

13:15:46 19 A. Then we would not. We just started a

13:15:49 20 program called Pro Dog which -- which involves that

13:15:52 21 kind of a marketing activity. But that didn't start

13:15:55 22 until this year, so it would not have been included

13:15:57 23 at that time.

13:16:06 24 Q. Was your company involved in advertising in

13:16:11 25 periodicals directed at pet owners?

13:16:15 1 A. In the context again of the time frame we  
13:16:18 2 are talking about, no, we did not do any of that  
13:16:23 3 kind of magazine or periodical advertising to  
13:16:25 4 consumers.

13:16:26 5 Q. So you've become involved in it, but  
13:16:30 6 between two thousand -- November 2003 and November  
13:16:35 7 2007 you were not involved?

13:16:38 8 A. Correct.

13:16:44 9 Q. I think you also indicated that one of the  
13:16:49 10 primary forms of advertising utilized by your  
13:16:53 11 company is the Web site?

13:16:54 12 A. Yes.

13:16:56 13 Q. The Natura Web site?

13:16:59 14 A. Yes.

13:16:59 15 Q. When did Natura first create its Web site?

13:17:03 16 A. Our first iteration of the Web site would  
13:17:09 17 have been -- gosh, I couldn't give you an exact  
13:17:10 18 date, but I would say mid to late '90s, in that ball  
13:17:15 19 park, '96, '97 probably.

13:17:22 20 Q. And it's been maintained in some form over  
13:17:24 21 the years?

13:17:25 22 A. Yes, sir.

13:17:25 23 Q. Up through November of 2007?

13:17:28 24 A. Yes.

13:17:31 25 Q. And I imagine it's evolved over that time

13:17:34 1 period?

13:17:34 2 A. Correct.

13:17:37 3 Q. Who -- would you as the designated

13:17:40 4 representative of Natura Pet Products be the most

13:17:43 5 knowledgeable person as relates to the Web site and

13:17:47 6 its contents?

13:17:48 7 A. Yes, sir.

13:17:51 8 Q. Now, who is in charge -- well, strike that.

13:17:55 9 Did you hire someone on the outside to

13:17:58 10 initially design the Web site?

13:17:59 11 A. Yes.

13:18:00 12 Q. Is the Web site currently maintained by an

13:18:03 13 outside entity?

13:18:04 14 A. Yes.

13:18:05 15 Q. What's the name of the company that -- or

13:18:07 16 individual that maintains Natura's Web site?

13:18:10 17 A. It's Brighton Agency.

13:18:23 18 Q. Now, Brighton came on board again in March

13:18:26 19 of '04?

13:18:26 20 A. '04.

13:18:27 21 Q. Was there an entity prior to Brighton that

13:18:30 22 was involved in the Web site?

13:18:30 23 A. We did it internally and contracted with a

13:18:33 24 young man that does our IT on a contract basis.

13:18:36 25 Q. And who is he?

13:18:38 1 A. His name is Daniel Lamb, L-a-m-b.

13:19:02 2 Q. Is he still involved in any way with the  
13:19:04 3 Web site?

13:19:04 4 A. No.

13:19:05 5 Q. Okay. Does he still work with Natura as it  
13:19:11 6 relates to its IT needs?

13:19:12 7 A. Yes.

13:19:23 8 Q. Brighton -- as far as the contents of the  
13:19:26 9 Web site, you, Natura, provide Brighton with the  
13:19:31 10 information you want on the Web site and they  
13:19:34 11 include it?

13:19:34 12 A. Yes.

13:19:38 13 Q. They do some design work as it relates to  
13:19:41 14 what it should look like?

13:19:42 15 A. Yes.

13:19:43 16 Q. With input from your company?

13:19:46 17 A. Yes.

13:19:48 18 Q. And then you approve whatever they do as  
13:19:52 19 far as the design work?

13:19:54 20 A. There's not really a formal approval  
13:19:56 21 process. They -- they pretty much do it. I think  
13:20:02 22 in the past it was collaborative with Paul French,  
13:20:05 23 the marketing guy that moved to Mexico, and  
13:20:07 24 basically between them the content was created. It  
13:20:12 25 didn't -- in other words, it didn't have my

13:20:14 1 approval, no.

13:20:17 2 Q. Was there any kind of an approval process  
13:20:19 3 in place, whether it was yourself or someone else?

13:20:22 4 A. It was more by exception. If one of our  
13:20:25 5 salespeople or customers or even myself ran into  
13:20:28 6 something that didn't make sense or didn't look  
13:20:31 7 right, then we would address it at that time. But  
13:20:34 8 those are few and far between.

13:20:36 9 Q. Your Web site has the ability to allow  
13:20:44 10 customers to contact you through that Web site. Is  
13:20:46 11 that correct?

13:20:46 12 A. Yes.

13:20:49 13 Q. And, you know, make any comments or  
13:20:51 14 complaints or praise or whatever they feel  
13:20:53 15 appropriate, correct?

13:20:54 16 A. Correct.

13:20:55 17 Q. Is there a specific individual within  
13:20:58 18 Natura that is in charge of that aspect of the Web  
13:21:01 19 site, the communication part of it?

13:21:02 20 A. It actually is originally filtered through  
13:21:06 21 Brighton Agency. Again, they are managing our Web  
13:21:08 22 site and they get first crack at it.

13:21:11 23 And then depending on what it is, it goes  
13:21:14 24 to the appropriate person at Natura. Most of it  
13:21:16 25 goes to our customer service person in San Jose,

13:21:23 1 Veronica Moreno, M-o-r-e-n-o.

13:21:28 2 Q. Was Veronica the individual handling this  
13:21:32 3 aspect of the Web site between two thousand --  
13:21:36 4 November 2003 through November and January -- excuse  
13:21:39 5 me, and November of 2007?

13:21:41 6 A. No. She's probably only been with us since  
13:21:44 7 '05 or so.

13:21:50 8 Q. Was there someone else that was handling  
13:21:52 9 that aspect of it prior to Veronica?

13:21:56 10 A. Before her there was a gentleman by the  
13:21:58 11 name of Rory Tharp.

13:21:59 12 Q. I'm sorry, what was the first name?

13:22:00 13 A. Rory, R-o-r -- I can't spell it. R-o-r-y  
13:22:02 14 and Tharp, T-h-a-r-p.

13:22:06 15 And Veronica took his place. She actually  
13:22:10 16 worked for him for a period of time.

13:22:11 17 Q. And how long was he with your company?

13:22:14 18 A. Gosh, I would have to look it up. Two --  
13:22:16 19 two years probably. Two to three years.

13:22:19 20 Q. So he would have been around in November of  
13:22:22 21 '03?

13:22:22 22 A. Correct.

13:22:30 23 Q. From time to time I think we discussed that  
13:22:32 24 the Web site does -- it is changed, modified, added  
13:22:37 25 to, that kind of thing, correct?



13:22:39 1 A. Yes, sir.

13:22:40 2 Q. Who determines when changes should be made  
13:22:42 3 to the Web site?

13:22:43 4 A. It's pretty much managed by Brighton now,  
13:22:48 5 Roger Yount specifically, under his direction.

13:22:57 6 Q. So Roger Yount decides when the Web site  
13:23:01 7 should be modified?

13:23:03 8 A. Correct.

13:23:06 9 Q. Is there any criteria that he utilizes in  
13:23:10 10 determining when changes should be made?

13:23:11 11 A. Sure. New products, for example. Those  
13:23:14 12 would be included, updated. We have several pieces  
13:23:19 13 of the site that are updated from -- on a regular  
13:23:25 14 basis.

13:23:26 15 Of course, our retailer database is updated  
13:23:29 16 as we have new stores come on line that we are  
13:23:32 17 informed about. Things like that.

13:23:34 18 Q. So it's updated primarily to include new  
13:23:37 19 information and delete old information?

13:23:39 20 A. Yes.

13:24:02 21 Q. The ingredient lists that are -- I noticed  
13:24:06 22 going through the Web site for each of your products  
13:24:09 23 you set out an ingredient list, correct?

13:24:12 24 A. Yes, sir.

13:24:13 25 Q. That information is provided to Brighton by

13:24:16 1 Natura?

13:24:16 2 A. Yes.

13:24:17 3 Q. And then you can actually click on the

13:24:19 4 ingredients and they'll tell you what they are

13:24:21 5 comprised of essentially; is that correct?

13:24:23 6 A. Yes.

13:24:23 7 Q. That information, again, is provided by

13:24:25 8 Natura?

13:24:25 9 A. Yes.

13:24:41 10 Q. I want to show you something from the

13:24:49 11 internet and see if you recognize this.

13:24:59 12 I may even have a copy for you.

13:25:01 13 MS. CAVERLY: Thank you.

13:25:17 14 THE WITNESS: Okay.

15 BY MR. NIELD:

13:25:19 16 Q. You had a chance to look at it all?

13:25:23 17 A. Yes.

13:25:23 18 Q. Okay. Do you recognize this?

13:25:25 19 A. Yes.

13:25:28 20 Q. This is something that you prepared?

13:25:32 21 A. Not -- not the final version, no. I've  
13:25:36 22 contributed to this, but not the final version, no.

13:25:42 23 Q. Do you -- do you know who did prepare this?

13:25:45 24 A. It would have been Brighton Agency.

13:25:48 25 Q. Do you know approximately when it was

13:25:49 1 prepared?

13:25:57 2 A. 2006 would be my best estimate.

13:26:03 3 Q. And how would you describe this, this page?

13:26:09 4 A. It's kind of about the company Natura Pet  
13:26:12 5 Products.

13:26:17 6 Q. Seems to be a page that was included in --  
13:26:21 7 well, is this from your Web site?

13:26:24 8 A. Yes.

13:26:28 9 Q. Okay. So I'm going to mark this as Exhibit  
13:26:31 10 3 to your deposition.

11 (WHEREUPON, DEPOSITION EXHIBIT 3 WAS MARKED  
12 FOR IDENTIFICATION.)

13:26:34 13 THE WITNESS: Actually, I take it back.  
13:26:35 14 Looking at the printout it looks like it's  
13:26:38 15 definitely not -- it looks like from a shopping  
13:26:40 16 site, somebody else's site. So it could have been  
13:26:45 17 extracted from our site and plugged into this one,  
13:26:47 18 but I -- I don't recognize the actual -- because if  
13:26:50 19 you look at the left it talks about best seller,  
13:26:53 20 shopping cart, things that we wouldn't have on  
13:26:56 21 our -- our Web site so, no, I'm not familiar with  
13:26:59 22 this page at all.

13:27:00 23 BY MR. NIELD:

13:27:00 24 Q. Does your company utilize on-site shopping  
13:27:06 25 sites, on-line shopping sites to merchandise its

13:27:09 1 products?

13:27:10 2 A. We do not directly, no. Our distributors

13:27:13 3 sell to those type of companies, though, yes.

13:27:17 4 Q. Okay. But the text of this particular

13:27:20 5 document is information that you recognize, correct?

13:27:23 6 A. It looks -- it looks familiar, yes, sir.

13:27:25 7 Q. Would it be information that your company

13:27:29 8 provided to Brighton, for instance?

13:27:32 9 A. Yes.

13:27:33 10 Q. Or provided to -- or perhaps Brighton and

13:27:37 11 your wholesalers?

13:27:38 12 A. Correct.

13:27:41 13 Q. And the information on this document is

13:27:45 14 accurate, true?

13:27:47 15 MS. CAVERLY: As of what time frame,

13:27:48 16 Counsel?

13:27:49 17 MR. NIELD: As of the time that it was

13:27:51 18 produced. I think the witness indicated sometime in

13:27:53 19 2006.

13:27:55 20 THE WITNESS: Yes.

13:28:02 21 BY MR. NIELD:

13:28:02 22 Q. I'm going to describe this as a document,

13:28:08 23 Exhibit 3. At the top it says "Natura Pet Products

13:28:11 24 - Dog Cat Pet Food, Page 1 of 4." And then the

13:28:15 25 title of this -- of the text is "Natura Pet

13:28:17 1 Products."

13:28:22 2           This is kind of a general description of  
13:28:29 3 Natura and how it goes about producing its products  
13:28:33 4 again through its manufacturing contractor, correct?

13:28:36 5           A. Correct.

13:29:02 6           Q. I notice in Paragraph 3, starting about  
13:29:10 7 two-thirds of the way down of the first line, the  
13:29:13 8 statement is made that, "We use only ingredients  
13:29:16 9 you'd eat yourself." Correct?

13:29:20 10          A. Yes, sir.

13:29:21 11          Q. And it goes on to say "quality meats, whole  
13:29:23 12 grains, fresh fruits and vegetables, and complete  
13:29:27 13 vitamin and mineral supplements."

13:29:30 14           And I think I've seen representations by  
13:29:35 15 Natura in other advertising that -- well, it's here  
13:29:38 16 too, excuse me. Under "Quality," "the highest  
13:29:42 17 quality human-grade pet food ingredients" are  
13:29:45 18 utilized in your products, correct?

13:29:47 19          A. That has been --

13:29:48 20           MS. CAVERLY: I'll object as compound. I'm  
13:29:50 21 not sure which phrase or discussion you are asking  
13:29:52 22 him about.

13:29:53 23           MR. NIELD: Well, we can take them -- we  
13:29:54 24 can take them individually then.

13:29:55 25 BY MR. NIELD:

13:29:55 1 Q. Let's start with the one where you indicate  
13:30:00 2 that "We only use ingredients you'd eat yourself."  
13:30:06 3 Meaning that the pet owner, I'm assuming, would eat  
13:30:09 4 those ingredients themselves, correct?

13:30:11 5 A. The ingredients that we use, yes.

13:30:14 6 Q. And then going down to that section where  
13:30:17 7 it -- titled "Quality," it says "because we only use  
13:30:21 8 the highest quality human-grade pet food ingredients  
13:30:26 9 in our dog and cat foods, we apply the highest  
13:30:30 10 quality manufacturing guidelines to our production  
13:30:31 11 process."

13:30:32 12 Do you see that?

13:30:32 13 A. Yes.

13:30:38 14 Q. Natura represents here and I think  
13:30:41 15 elsewhere that it uses human-grade ingredients in  
13:30:46 16 its pet food, correct?

13:30:47 17 A. Yes. Here it does, yeah.

13:30:49 18 Q. And it's true that Natura has made the  
13:30:53 19 representation on its Web site in the past that its  
13:30:59 20 pet food would -- is fit for human consumption; is  
13:31:07 21 that correct?

13:31:07 22 A. No, we've never made that representation.

13:31:13 23 Q. In making the representation that you use  
13:31:15 24 human-grade pet food ingredients, you are indicating  
13:31:20 25 that the pet food is human grade?

13:31:24 1 MS. CAVERLY: Objection. Argumentative and

13:31:26 2 vague as to what you mean by "human grade."

13:31:36 3 BY MR. NIELD:

13:31:37 4 Q. You can respond.

13:31:38 5 A. I'm sorry, could you repeat the question

13:31:40 6 then?

13:31:42 7 Q. In making the representation that you

13:31:44 8 utilize human-grade pet food ingredients in your

13:31:47 9 products, are you not representing that the products

13:31:52 10 are fit for human consumption?

13:31:54 11 A. No. A major distinction -- you can see --

13:31:59 12 see where you draw the parallel, but we've never

13:32:03 13 represented that it's for human consumption. It's

13:32:03 14 always been very clear that our products are for

13:32:06 15 dogs and cats. But we do make -- we did make the

13:32:08 16 representation that we used human-grade ingredients.

13:32:11 17 Q. All right. And I didn't mean to infer that

13:32:13 18 you said it was -- that the food was for human

13:32:17 19 consumption, just that it was fit for human

13:32:20 20 consumption, that it could be consumed by human

13:32:23 21 beings.

13:32:24 22 A. Correct. You could make that parallel,

13:32:26 23 correct.

13:32:26 24 Q. And that's a parallel that you are drawing

13:32:29 25 in this article, correct?

13:32:31 1 A. This article -- again, this article is part  
13:32:34 2 of somebody else's Web site that I'm not sure  
13:32:38 3 exactly where it came from, but it looks like it's  
13:32:41 4 from an earlier iteration of our Web site, so --

13:32:44 5 Q. The information contained in -- on this  
13:32:47 6 page, Exhibit 3, is information that came from your  
13:32:49 7 company, correct?

13:32:50 8 A. At some point, yes, I believe so.

13:33:05 9 Q. In making the representation that "we use  
13:33:09 10 only ingredients you'd eat yourself," you are again  
13:33:14 11 inferring that the ingredients utilized are  
13:33:18 12 ingredients that would be fit for human consumption,  
13:33:21 13 correct?

13:33:21 14 A. Yes.

13:33:22 15 Q. And is that Natura's position, that all of  
13:33:25 16 the ingredients it utilizes in its pet food products  
13:33:29 17 are fit for human consumption?

13:33:31 18 A. Yes.

13:33:44 19 Q. And all of the ingredients Natura utilizes  
13:33:48 20 in its various products are set out on the labels  
13:33:54 21 for each of those products; is that correct?

13:33:56 22 A. Yes.

13:34:36 23 Q. What are rendered ingredients?

13:34:44 24 A. It's my understanding the definition of  
13:34:46 25 rendering is basically taking any ingredient and



13:34:49 1 modifying its form into one of its parts or

13:34:53 2 something like that.

13:34:57 3 Q. Do you know what -- well, for instance,

13:35:05 4 does Natura utilize any rendered ingredients in any

13:35:09 5 of its pet food products?

13:35:11 6 A. Yes.

13:35:12 7 Q. What rendered ingredients does it utilize?

13:35:19 8 A. Let's see. What would be a good example.

13:35:21 9 Just about any -- any ingredient that we use at some

13:35:24 10 point. We use whole grains, fruits, vegetables.

13:35:28 11 For example, the fresh turkey meat that we use, you

13:35:31 12 know, didn't come to us as fresh turkey. It started

13:35:34 13 out on a turkey, so it had to be processed and the

13:35:39 14 meat taken off the bone and provided to us to use in

13:35:41 15 the pet food. So that turkey is a rendered

13:35:44 16 ingredient.

13:35:44 17 Q. Do you understand or do you have an

13:35:46 18 understanding how rendered ingredients are produced?

13:35:49 19 A. Yes.

13:35:50 20 Q. And how is that?

13:35:52 21 A. Again, it's some form of processing.

13:35:55 22 Q. Do you understand what processing takes

13:35:57 23 place?

13:35:59 24 A. It's dependent upon the ingredient, but

13:36:01 25 yes.

13:36:02 1 Q. Okay. How would -- chicken meal -- well,  
13:36:07 2 strike that.

13:36:08 3 Is chicken meal a rendered ingredient?

13:36:11 4 A. Yes.

13:36:12 5 Q. How is that processed?

13:36:13 6 A. Chicken meal is basically the meat and some  
13:36:19 7 bone and cartilage material taken from the chicken.  
13:36:23 8 It's generally off of backs and necks that come to  
13:36:26 9 the processing plant. The quality meat that's on  
13:36:30 10 those products are taken from the bone that didn't  
13:36:32 11 make it to the grocery store or to Colonel Sanders.

13:36:38 12 It's processed, consolidated and sold to us  
13:36:41 13 for our pet food. Or if it wasn't sold to us, it  
13:36:45 14 could be sold to somebody who makes hot dogs or  
13:36:51 15 sandwich meats, that kind of an outlet.

13:36:53 16 Q. Natura Pet Food Products doesn't produce  
13:36:57 17 its owned rendered products, does it?

13:36:59 18 A. No.

13:37:00 19 Q. It purchases those from other entities?

13:37:02 20 A. Correct.

13:37:06 21 Q. More than one entity?

13:37:07 22 A. Correct.

13:37:10 23 Q. As we sit here today, can you recall the  
13:37:13 24 names of any of the entities from which Natura  
13:37:16 25 purchases its rendered products?

13:37:19 1 MS. CAVERLY: Can I clarify which Natura  
13:37:21 2 you are talking about? Because Natura Pet Products  
13:37:21 3 does --

13:37:27 4 MR. NIELD: You know, you are absolutely  
13:37:27 5 right. That does need to be clarified.

13:37:30 6 BY MR. NIELD:

13:37:30 7 Q. Natura Pet Products itself does not  
13:37:33 8 manufacture its products. Correct?

13:37:35 9 A. Correct.

13:37:35 10 Q. Okay. So I'm assuming then that Natura Pet  
13:37:37 11 Products, the marketing and distribution entity, is  
13:37:41 12 not purchasing any ingredients --

13:37:43 13 A. Right.

13:37:43 14 Q. -- for its products. Correct?

13:37:45 15 A. Yes.

13:37:46 16 Q. Okay. Are you aware of what the  
13:37:49 17 manufacturing entity, Natura Manufacturing, Inc.,  
13:37:55 18 from which entities they purchase rendered products  
13:37:59 19 for the production of various Natura pet food  
13:38:01 20 products?

13:38:01 21 A. Yes.

13:38:02 22 Q. Okay. Can you please tell me which  
13:38:05 23 entities they purchase rendered products from?

13:38:08 24 A. As I sit here, I do not recall the names of  
13:38:10 25 the suppliers.

13:38:14 1 Q. Is it more than one supplier?

13:38:15 2 A. Yes.

13:38:17 3 Q. More than five?

13:38:18 4 A. Yes.

13:38:20 5 Q. More than ten?

13:38:24 6 A. I would say overall probably. But, again,

13:38:27 7 I don't recall the list and again I don't deal with

13:38:30 8 those suppliers as regular course of my activities,

13:38:33 9 so -- but I would say it's ten to fifteen, in that

13:38:36 10 ball park, for all of our raw materials.

13:38:40 11 Q. Does Natura Pet Products have any say as to

13:38:50 12 from which entities rendered products will be

13:38:53 13 purchased, any say with the manufacturing entity?

13:38:56 14 A. Not directly, no.

13:38:59 15 Q. Who is the individual at -- if you know, at

13:39:03 16 Natura Manufacturing, Inc., that is in charge of

13:39:08 17 purchasing rendered products used as an ingredient

13:39:11 18 in Natura pet food products?

13:39:14 19 A. A gentleman by the name of Kent Cooper,

13:39:17 20 C-o-o-p-e-r.

13:39:21 21 Q. Where is the Natura Manufacturing, Inc.

13:39:23 22 entity located?

13:39:25 23 A. Fremont, Nebraska.

13:39:35 24 Q. Is Mr. Cooper given autonomy when it comes

13:39:40 25 to selecting which entities' rendered food products

13:39:43 1 will be purchased?

13:39:44 2 A. Within -- within a framework of  
13:39:47 3 preapprovals. In other words, there's -- again,  
13:39:50 4 those suppliers that we utilize, they are  
13:39:53 5 preapproved. He can't just go out and, you know, go  
13:39:56 6 to -- to, you know, Tom, Dick or Harry and buy  
13:40:00 7 ingredients for us. It has to be on an approved  
13:40:03 8 supplier list that's already been -- been  
13:40:05 9 established.

13:40:06 10 Q. Who establishes the approved supplier list?

13:40:08 11 A. It's a collaborative effort between the  
13:40:12 12 management team at Natura Manufacturing and Natura  
13:40:14 13 Pet Products to some degree.

13:40:16 14 Q. Okay. Would you be the -- as the corporate  
13:40:19 15 designee for Natura Pet Products, would you be the  
13:40:23 16 most knowledgeable person as to that collaborative  
13:40:27 17 effort between Natura Pet Products and the  
13:40:30 18 manufacturing entity --

13:40:31 19 A. Yes.

13:40:31 20 Q. -- as it relates to compiling the approved  
13:40:35 21 supplier list?

13:40:36 22 A. Yes.

13:40:38 23 Q. Would you personally have input in  
13:40:41 24 compiling that list?

13:40:44 25 A. Very limited. I would say again just from

13:40:48 1 a global expectation standpoint but not actually  
13:40:50 2 getting down to the level saying this supplier is  
13:40:54 3 approved, this one is not one. Again, there's  
13:40:55 4 protocols and requirements set for each supplier  
13:40:59 5 that has to be met. So it's pretty much a  
13:41:02 6 self-fulfilling kind of a protocol.

13:41:05 7 Q. All right. Is there someone else within  
13:41:07 8 Natura Pet Products that would be -- that would  
13:41:13 9 participate in the compiling of this approved  
13:41:16 10 supplier list that the manufacturing entity  
13:41:18 11 utilizes?

13:41:19 12 A. No.

13:41:21 13 Q. Only yourself and your participation as --  
13:41:25 14 is as you just described it?

13:41:26 15 A. Yes, sir.

13:41:28 16 Q. The protocols and requirements that are  
13:41:31 17 utilized in selecting approved suppliers, first of  
13:41:38 18 all, are those all on one list, protocols and  
13:41:41 19 requirements, or are those two separate things?

13:41:43 20 A. There's certain requirements. Like we do  
13:41:45 21 expect all of our suppliers to be AIB certified, for  
13:41:48 22 example. We do personal physical inspections.

13:41:51 23 I mean, again, there's a whole set of  
13:41:53 24 protocols which is written down. It's part of our  
13:41:57 25 operating manuals or the operating manuals in

13:42:00 1 Nebraska at the manufacturing plant.

13:42:01 2           So, again, all of this was established very  
13:42:03 3 early on so it made -- you know, it makes our  
13:42:06 4 decision-making process in the future and now much  
13:42:09 5 easier.

13:42:13 6           Q. You said "AIB certified"?

13:42:15 7           A. Correct. American Institute of Baking.  
13:42:19 8 They are based in Manhattan, Kansas, and they are  
13:42:23 9 utilized in human food and pet food industry for  
13:42:30 10 basically manufacturing and distribution warehouse  
13:42:33 11 certifications.

13:42:35 12           So just real quickly, they come in and they  
13:42:38 13 inspect your facility. You get a grade. You get a  
13:42:40 14 review, identify things where you are weak, where  
13:42:43 15 you are strong, and then you can make improvements  
13:42:45 16 as you go on.

13:42:46 17           But they have several different  
13:42:48 18 certification levels, and, as I said, that our plant  
13:42:51 19 has always achieved superior, which is the highest  
13:42:54 20 certification.

13:42:55 21           Q. And this entity, AIB, American Institute of  
13:42:58 22 Baking, they certify rendering facilities?

13:43:03 23           A. They certify warehousing and distribution  
13:43:09 24 facilities. So, yes, they do -- do certify those  
13:43:13 25 kind of facilities. Manufacturing of all kinds.

13:43:16 1 Q. The certification they would provide to a  
13:43:19 2 rendering facility relates to the processes that  
13:43:22 3 that facility utilizes in preparing its rendered  
13:43:27 4 products?

13:43:27 5 A. Correct. Again, it's uniformly applied to  
13:43:30 6 all manufacturing or warehousing or whatever the  
13:43:33 7 particular certification is, yes.

13:43:35 8 Q. Does that entity have a set of requirements  
13:43:37 9 or guidelines or criteria that it utilizes in  
13:43:44 10 certifying rendering facilities?

13:43:48 11 A. Whatever the -- I don't know that it's  
13:43:51 12 specific to rendering, but it is to manufacturing.  
13:43:53 13 So -- again, this is a little beyond my area of  
13:43:57 14 expertise. I'm just familiar with that it does go  
13:43:59 15 on, so to the best of my knowledge they do, but --

13:44:01 16 Q. And you are not an expert?

13:44:02 17 A. I'm not an expert at this, no.

13:44:04 18 Q. I'm not asking you for expert opinions.

19 A. Uh-huh.

13:44:07 20 Q. Just for your knowledge.

13:44:08 21 A. Sure.

13:44:12 22 Q. So when you say the American Institute of  
13:44:16 23 Baking certifies manufacturing facilities, this  
13:44:19 24 isn't only pet food facilities but other types of  
13:44:23 25 facilities, correct?



13:44:24 1 A. Sure. Mostly -- mostly -- most of their  
13:44:26 2 business is in the human food side, bakeries --  
13:44:29 3 again, hence the name American Institute of  
13:44:32 4 Baking -- and other food processors.

13:44:34 5 Q. Okay. Do you have specific knowledge of  
13:44:37 6 what the American Institute of Baking's role is in  
13:44:42 7 providing certifications for rendering facilities?

13:44:44 8 A. I do not specifically know that. Again, I  
13:44:47 9 know based on what we utilize them for internally  
13:44:50 10 for our own manufacturing and distribution  
13:44:52 11 warehouses what those expectations are, but I  
13:44:55 12 couldn't specifically say what they are for  
13:44:58 13 rendering facilities, no.

13:44:59 14 Q. What are your internal expectations, what  
13:45:03 15 are they as it relates to IAB certifications?

13:45:08 16 A. Sure. It's -- again, I'm not an expert,  
13:45:10 17 but it involves basically every aspect of your  
13:45:13 18 operation, from record keeping to material handling,  
13:45:17 19 to cleanliness, sanitation.

13:45:19 20 They have certain regulations, guidelines  
13:45:21 21 and basically again an inspector comes into your  
13:45:24 22 facility, has a grading sheet, check, check, pass,  
13:45:27 23 pass, fail, fail, and then you end up with a score  
13:45:29 24 at the end of that process.

13:45:31 25 Q. Sounds like the health department.

13:45:33 1 A. Very much so. Very much so.

13:45:36 2 But again I need to emphasize this is a  
13:45:38 3 voluntary activity that we take. It's not required  
13:45:41 4 of us to do this. It's something that we do for our  
13:45:44 5 own -- own benefit.

13:45:46 6 Q. Your approved supplier lists are not only  
13:45:48 7 for rendering facilities but for all of the  
13:45:51 8 ingredients that are utilized by the manufacturing  
13:45:53 9 entity in the production of pet -- Natura pet food  
13:45:57 10 products, correct?

13:45:57 11 A. Correct.

13:45:59 12 Q. So you would be looking for I -- excuse  
13:46:02 13 me -- AIB certifications as it relates to the fruits  
13:46:05 14 and vegetables that you purchase?

13:46:07 15 A. Sure. Yes, sir.

13:46:07 16 Q. To the meats that you purchase, correct?

13:46:09 17 A. Correct.

13:46:09 18 Q. The grains?

13:46:11 19 A. To the extent that it's possible, yes.

13:46:14 20 Q. And to the rendering product, rendered  
13:46:17 21 products?

13:46:18 22 A. Correct.

13:46:21 23 Q. The protocols and requirements utilized by  
13:46:25 24 the manufacturing entity in selecting suppliers for  
13:46:31 25 the approved list, they would be located in Fremont,

13:46:34 1 Nebraska?

13:46:36 2 A. I'm sorry, ask the question again.

13:46:38 3 Q. You indicated that some time ago your

13:46:43 4 company -- strike that.

13:46:46 5 A. Actually, I need to correct myself, too. I

13:46:49 6 keep forgetting we are talking in the context of '03

13:46:52 7 to '07. And that AIB requirement was not -- would

13:46:55 8 not have applied during that time, so my apologies,

13:46:57 9 I misspoke. It's something that has happened

13:46:59 10 subsequent to that time period.

13:47:03 11 Q. Okay. So just so I'm clear on this, to

13:47:06 12 be -- to be on the approved supplier list that is

13:47:12 13 used by Natura Manufacturing, Inc., for suppliers

13:47:19 14 providing ingredients for Natura pet food products,

13:47:22 15 the requirement that those entities -- those

13:47:25 16 suppliers be AIB certified did not apply between

13:47:32 17 November of 2003 and November of 2007; is that

13:47:34 18 correct?

13:47:34 19 A. Correct.

13:47:35 20 Q. That is something that's come on since that

13:47:38 21 time?

13:47:38 22 A. Yes, sir.

13:47:39 23 Q. All right. But there were protocols and

13:47:41 24 requirements that existed for the selection of

13:47:44 25 suppliers for the approved list utilized by Natura

13:47:48 1 Manufacturing between November of 2003 and November  
13:47:52 2 of 2007; is that correct?

13:47:53 3 A. Yes.

13:47:55 4 Q. And those protocols and requirements, those  
13:47:58 5 are written down somewhere?

13:48:00 6 A. Correct. It's in the Natura Manufacturing  
13:48:03 7 procedure manual, yes.

13:48:13 8 Q. And just so that I'm clear, you indicated  
13:48:14 9 that you would be the most knowledgeable as the  
13:48:19 10 corporate designee of Natura Pet Products, the most  
13:48:22 11 knowledgeable person as it relates to Natura Pet  
13:48:26 12 Products' participation in the promulgation of those  
13:48:29 13 protocols and requirements in conjunction with  
13:48:34 14 Natura Manufacturing, Inc., correct?

13:48:35 15 A. Yes.

13:48:36 16 Q. And you've already described to us what  
13:48:37 17 your participation was in the promulgation of those  
13:48:41 18 protocols and requirements, correct?

13:48:42 19 A. Yes.

13:48:45 20 Q. And it would have been Mr. Kent Cooper with  
13:48:50 21 Natura Manufacturing, Inc., who would have been  
13:48:52 22 involved from their side in preparing these  
13:48:55 23 protocols and requirements?

13:48:56 24 A. Yes. Absolutely. Their management team,  
13:48:59 25 yes.

13:49:01 1 Q. Okay. Who in addition to Mr. Cooper would  
13:49:02 2 have been involved in putting together those  
13:49:07 3 protocols and requirements for individuals --  
13:49:13 4 suppliers providing ingredients for Natura pet food  
13:49:16 5 products?

13:49:16 6 MS. CAVERLY: Would have been or was?

13:49:18 7 MR. NIELD: You are right. Was.

13:49:21 8 THE WITNESS: It would have -- it was Don  
13:49:25 9 Scott.

10 BY MR. NIELD:

13:49:25 11 Q. See how easy that is. Go ahead.

13:49:28 12 A. S-c-o-t-t. President of Natura  
13:49:30 13 Manufacturing. He would have been vice president at  
13:49:32 14 the time. Kent Cooper we talked about. Brian  
13:49:35 15 Streit, S-t-r-e-i-t.

13:49:39 16 Q. I'm sorry, S-t-r-i-t?

13:49:42 17 A. E-i-t.

18 Q. E-i-t.

13:49:45 19 A. Right. Director of operations. And I  
13:49:52 20 think to the best of my knowledge that would have  
13:49:54 21 been the crew that would have -- would have been  
13:49:56 22 involved.

13:49:56 23 Q. Were these protocols and requirements in  
13:49:59 24 place before November of 2003?

13:50:02 25 A. No. The plant was built in November of

13:50:04 1 2003 so -- or, excuse me, commissioned in June of

13:50:08 2 '03, so would have happened in '03.

13:50:20 3 Q. Who was producing -- manufacturing Natura

13:50:27 4 pet food products prior to June of '03?

13:50:31 5 A. Chenango Valley Pet Foods. That's

13:50:32 6 C-h-e-n-a-n-g-o Valley Pet Foods in Sherburne, New

13:50:37 7 York. That's S-h-e-r-b-u-r-n-e.

13:50:50 8 Q. I asked you this. I think you said there

13:50:52 9 is a written version of the protocols and

13:50:55 10 requirements that were prepared between Natura Pet

13:50:59 11 Food Products and Natura Manufacturing, Inc., as it

13:51:02 12 relates to approved suppliers, correct?

13:51:05 13 A. I'm sorry, repeat the question. There --

13:51:07 14 Q. There is a written version of these

13:51:09 15 protocols and requirements in existence as it

13:51:11 16 relates to the selection of ingredient suppliers for

13:51:16 17 the approved list?

13:51:17 18 A. At Natura Manufacturing, correct.

13:51:18 19 Q. And is it one document?

13:51:20 20 A. Correct. Well, it's -- yeah, it's in a

13:51:23 21 binder that they have. Several different binders

13:51:27 22 involving different procedures, but, yes, it's all

13:51:31 23 in one spot, yes.

13:51:32 24 Q. And it's part of a procedure manual of some

13:51:34 25 sort?

13:51:35 1 A. Correct.

13:51:35 2 Q. What would be the specific name of that  
13:51:38 3 manual?

13:51:40 4 A. I -- I don't know.

13:51:42 5 Q. When was the last time that you reviewed  
13:51:46 6 the protocols and requirements for selection of  
13:51:52 7 suppliers for the approved list?

13:51:55 8 A. In its entirety, never. I've been involved  
13:52:00 9 with portions of it, but the actual complete,  
13:52:03 10 finished protocol I've actually never reviewed.

13:52:07 11 Q. Do you know whether that -- those protocols  
13:52:10 12 and requirements call for the inspection of the  
13:52:15 13 supplier's facilities by any representative of  
13:52:18 14 Natura Manufacturing, Inc.?

13:52:19 15 A. Yes.

13:52:19 16 Q. They do call for that inspection?

13:52:21 17 A. Correct.

13:52:25 18 Q. Do you know how often such inspections are  
13:52:28 19 required pursuant to those protocols and  
13:52:29 20 requirements?

13:52:31 21 A. It's on a regular basis, but I would just  
13:52:34 22 be guessing if I spewed out a number. But for any  
13:52:39 23 supplier to be on the list some -- we've had to be  
13:52:43 24 on their -- at their facility.

13:52:46 25 Q. At some point?

13:52:47 1 A. At some point.

13:52:48 2 Q. Do you know whether those protocols and  
13:52:51 3 requirements call for any testing of the supplier's  
13:52:58 4 plant facilities?

13:53:00 5 A. No. Again, not specifically any general  
13:53:05 6 testing that I'm aware of, no.

13:53:07 7 Q. Do you know what the -- well, do the  
13:53:09 8 protocols and requirements set out what types of  
13:53:12 9 inspections are to occur when that plant visit  
13:53:14 10 occurs?

13:53:15 11 A. It -- you know, again, I -- this is not my  
13:53:18 12 area of expertise and involvement. I know those  
13:53:21 13 kind of things are included in that, but I -- as I  
13:53:24 14 sit here cannot tell you what they are or how  
13:53:26 15 they've been applied, no.

13:53:28 16 Q. Does anyone at Natura Manufacturing, Inc.,  
13:53:32 17 report to you about the findings of their  
13:53:37 18 inspections of supplier facilities that are  
13:53:41 19 attempting to get on the approved supplier list for  
13:53:44 20 Natura Manufacturing, Inc.?

13:53:45 21 A. No. Only -- only -- not as a requirement.  
13:53:48 22 Only in just conversation and discussions about  
13:53:51 23 potential suppliers. But, no, I don't hear about  
13:53:55 24 every supplier that makes it or doesn't make it, no.

13:53:57 25 Q. Is it fair to say that the -- you mentioned



13:54:01 1 several individuals at Natura Manufacturing, Inc.  
13:54:04 2 Sounds to me like they are part of the management  
13:54:07 3 team there.

13:54:07 4 A. Correct.

13:54:08 5 Q. Is it fair to say that they have the  
13:54:10 6 autonomy to approve ingredient suppliers for the  
13:54:16 7 approved supplier list --

13:54:17 8 A. Yes.

13:54:18 9 Q. -- without having any kind of a signoff by  
13:54:21 10 yourself?

13:54:21 11 A. Yes.

13:54:26 12 MR. NIELD: All right. Our tape is running  
13:54:28 13 out so we are going to have to take a brief break.

13:54:31 14 THE VIDEOGRAPHER: This marks the end of  
13:54:33 15 Media Number 2 in the deposition of Peter Atkins.

13:54:37 16 We are now off the record. The time is  
13:54:40 17 1:54.

13:54:41 18 (Brief recess taken.)

14:06:12 19 THE VIDEOGRAPHER: We are back on the  
14:06:13 20 record at 2:06 p.m. This marks the beginning of  
14:06:17 21 Media Number 3 in the deposition of Peter Atkins.

14:06:43 22 BY MR. NIELD:

14:06:43 23 Q. Okay. We were talking about the protocol  
14:06:52 24 and requirements, that list utilized by Natura  
14:06:56 25 Manufacturing, Inc., as relates to approving

14:06:59 1 suppliers. We talked about one of the criteria  
14:07:04 2 being inspecting a supplier's facilities, correct?  
14:07:06 3 A. Yes, sir.  
14:07:07 4 Q. Can you recall any of the other criteria  
14:07:09 5 that's included in the protocol?  
14:07:15 6 A. Again, this is not something I get deeply  
14:07:18 7 involved in. Physical inspection most certainly.  
14:07:24 8 Obviously an evaluation of the product they provide.  
14:07:27 9 But, again, I -- it's not something that I can speak  
14:07:32 10 to line item by line item. I just know there's a  
14:07:37 11 set protocol that they use to qualify suppliers.  
14:07:40 12 Q. Is part of the protocol that the products  
14:07:44 13 being supplied be the types of products that humans  
14:07:53 14 would eat?  
14:07:55 15 A. It's not a requirement, no. It's just  
14:07:57 16 something that we enforce ourselves.  
14:08:02 17 Q. Or a requirement that the ingredients be  
14:08:07 18 human-grade ingredients?  
14:08:12 19 A. It's not a stated requirement in the book,  
14:08:15 20 no, sir.  
14:08:22 21 Q. In your view, what would a human-grade  
14:08:26 22 ingredient be?  
14:08:27 23 A. Well, and that's a good question because  
14:08:29 24 it -- it's not a defined term. Human grade is a  
14:08:33 25 matter of opinion. And the way we've applied it

14:08:36 1 limited in the past is based on our opinion of what  
14:08:39 2 human grade really means.

14:08:42 3           Again, it's something that would be clean,  
14:08:44 4 pure, free from contaminants. Something that --  
14:08:49 5 that would not be out of the realm of something that  
14:08:52 6 we would ordinarily eat.

14:08:54 7           Again, it's very common for me, for many of  
14:08:57 8 our employees to sample our foods themselves from  
14:09:00 9 time to time. It's not -- not a big stretch.

14:09:03 10 There's nothing evil or contaminated about dog or  
14:09:08 11 cat food, especially our cat -- our dog and cat  
14:09:12 12 food.

14:09:18 13           MR. NIELD: Could you read that response  
14:09:19 14 back for me, please.

15           (Record read by the court reporter as  
16 follows: "A. Well, and that's a good  
17 question because it -- it's not a  
18 defined term. Human grade is a matter  
19 of opinion. And the way we've applied  
20 it limited in the past is based on our  
21 opinion of what human grade really  
22 means.

23           "Again, it's something that would  
24 be clean, pure, free from  
25 contaminants. Something that would

1 not be out of the realm of something  
2 that we would ordinarily eat.")  
14:09:51 3 MR. NIELD: That's enough. That's enough.  
14:09:52 4 Thank you.  
5 BY MR. NIELD:  
14:09:57 6 Q. Would that same thing -- I don't want to be  
14:10:00 7 splitting hairs here, but when we are talking about  
14:10:03 8 something that's human grade and something that's  
14:10:05 9 fit for human consumption, are those things the  
14:10:08 10 equivalent, same -- same meaning to you or is there  
14:10:12 11 some difference in what that would mean?  
14:10:14 12 A. Yeah, again, they are two different things.  
14:10:17 13 Fit for human consumption means that the intended  
14:10:20 14 audience for that product is you or I or a human,  
14:10:24 15 which is not at all the case in our -- in our  
14:10:26 16 products and in our marketing.  
14:10:28 17 Again, it's our opinion that the  
14:10:30 18 ingredients that we use are of human quality,  
14:10:33 19 something that we would feel comfortable eating  
14:10:35 20 ourselves.  
14:10:50 21 Q. Are all of the ingredients utilized in the  
14:10:54 22 products at issue -- and we've read them before, I  
14:10:56 23 can read them again -- california Natural Chicken  
14:11:04 24 and Brown Rice Adult, California Natural Lamb Meal  
14:11:08 25 and Rice, California Natural Salmon and Sweet Potato

14:11:16 1 Adult, Ennovo --  
2 MS. CAVERLY: Innova.  
14:11:20 3 MR. BAKER: Innova.  
14:11:20 4 MS. CAVERLY: There's an EVO and an Innova.  
14:11:23 5 MR. NIELD: I know, I made a mistake, but I  
14:11:25 6 know that you are always going to be there.  
14:11:27 7 MS. CAVERLY: I try.  
14:11:28 8 MR. NIELD: I rely on it.  
14:11:28 9 MS. CAVERLY: I would like a clean record.  
14:11:31 10 MR. NIELD: Innova Chicken Dry, is that one  
14:11:33 11 of the ones we've eliminated?  
14:11:35 12 MS. CAVERLY: Innova Chicken Dry, yes.  
14:11:38 13 We've eliminated it, yes.  
14 MR. NIELD: All right.  
14:11:40 15 MS. CAVERLY: It does not exist.  
14:11:41 16 BY MR. NIELD:  
14:11:41 17 Q. Innova Dry Dog Food and Innova Senior Dry  
14:11:48 18 Food. Are all of the ingredients in those products  
14:11:52 19 in the opinion of Natura Pet Products human-grade  
14:11:57 20 ingredients?  
14:11:58 21 MS. CAVERLY: Objection. Vague as to time.  
14:12:00 22 MR. NIELD: During --  
14:12:01 23 MS. CAVERLY: And with regard to opinion, I  
14:12:03 24 think that has to be personal. I don't know that a  
14:12:05 25 corporation can have an opinion, but --

14:12:08 1 MR. NIELD: Well, I only say that because  
14:12:10 2 in his last answer we were talking about that very  
14:12:18 3 thing and he indicated it was a matter of -- it  
14:12:22 4 wasn't a defined term and it was a matter of  
14:12:25 5 opinion, and I'm assuming that's the opinion of  
14:12:29 6 Natura Pet Products.

7 BY MR. NIELD:

14:12:32 8 Q. Is that something is or is not of human  
14:12:34 9 grade, correct? You talked in terms of being "our  
14:12:41 10 opinion is."

11 But go ahead.

14:12:42 12 MS. CAVERLY: My objection is only that a  
14:12:44 13 corporation doesn't really have an opinion. It's  
14:12:46 14 the people who work there.

14:12:47 15 MR. NIELD: I would have to agree with  
14:12:48 16 that, but representations are being made on behalf  
14:12:51 17 of the corporation pursuant to somebody's judgment  
14:12:54 18 and opinion, so --

14:12:57 19 BY MR. NIELD:

14:12:57 20 Q. Do you understand the question, sir?

14:12:58 21 A. I guess just to respond, it is my opinion,  
14:13:02 22 and as I represent Natura Pet Products at a very  
14:13:06 23 high level, that we do use those kind of quality  
14:13:09 24 ingredients, yes.

14:13:10 25 Q. The question was a little different. And

14:13:13 1 perhaps I should break it down by product. But, for  
14:13:16 2 instance, is it your opinion and therefore the  
14:13:25 3 corporate entity's position that all of the  
14:13:29 4 ingredients in Innova Senior Dry Dog Food are  
14:13:34 5 human-grade ingredients?

14:13:35 6 A. Again, based on the -- my opinion of the  
14:13:39 7 definition of the term "human grade," the answer is  
14:13:42 8 yes.

14:13:46 9 Q. Would that same answer apply to all of the  
14:13:50 10 ingredients in California Natural Chicken and Brown  
14:13:55 11 Rice Adult --

14:13:56 12 A. Yes.

14:13:58 13 Q. -- product?

14:13:59 14 Okay. And in California Natural Dry Dog  
14:14:02 15 Food?

14:14:04 16 A. Yes.

14:14:05 17 Q. Actually, I misspoke because that's a  
14:14:09 18 duplication of California Natural Lamb Meal and  
14:14:12 19 Rice, right?

14:14:12 20 A. I would consider those in the same -- as  
14:14:14 21 the same, yes.

14:14:15 22 Q. Okay. And in California Natural Salmon and  
14:14:18 23 Sweet Potato Adult?

14:14:19 24 A. Yes.

14:14:23 25 Q. Innova Chicken Dry?

14:14:25 1 A. There's no such product.

14:14:26 2 Q. That's right. I'm going to have to --

14:14:35 3 Innova Dry Dog Food?

14:14:38 4 A. Yes.

14:14:46 5 Q. And Mother Nature - Beef Stew Recipe Dog

14:14:49 6 Biscuits?

14:14:50 7 A. Yes.

14:15:01 8 Q. All right. Well, we also had a discussion

14:15:03 9 about fit for human consumption. Would the same

14:15:08 10 answer apply to, for instance, Innova Senior Dog Dry

14:15:12 11 Food as it relates to the ingredients, would all the

14:15:14 12 ingredients in that product in the opinion of

14:15:18 13 yourself and the corporate entity, Natura Pet

14:15:23 14 Products, be fit for human consumption?

14:15:27 15 A. That's a defined term and is regulated and

14:15:31 16 the answer would be no, because any ingredient that

14:15:33 17 comes to a pet food plant automatically is

14:15:37 18 disqualified from being fit for human consumption.

14:15:45 19 Q. You said that fit for human consumption is

14:15:49 20 a defined term. Who is that defined by?

14:15:57 21 A. I always get confused between USDA and

14:16:02 22 FD -- I think it's USDA.

14:16:04 23 Q. And is it your understanding that the

14:16:05 24 USA -- USDA indicates that if a product comes from a

14:16:15 25 pet food manufacturing plant it is not fit for human



14:16:18 1 consumption?

14:16:20 2 A. Yeah. I mean, you could get a truckload of  
14:16:24 3 Harris Ranch filet mignons, send it to our plant,  
14:16:28 4 and once it hits the front door of the pet food  
14:16:31 5 plant it automatically is not allowed to be used for  
14:16:35 6 human consumption or fit for human consumption.

14:16:45 7 Q. Does the -- is it the A-F-F --

14:16:50 8 A. AAFCO.

14:16:51 9 Q. AAFCO. Does AAFCO have any provisions  
14:16:55 10 relating to what are or are not human-grade  
14:17:03 11 ingredients?

14:17:04 12 A. No, they don't -- they -- no, they don't  
14:17:06 13 get involved in actually what is and what isn't.  
14:17:08 14 They define the actual ingredient terms. And it's  
14:17:13 15 my understanding that actually during the time frame  
14:17:17 16 we are talking about that they actually established  
14:17:19 17 a model rule against the use of the term "human  
14:17:22 18 grade." I would have to go back and look it up, but  
14:17:24 19 I think that's the case.

14:17:25 20 Q. That AAFCO during the November '03 to  
14:17:30 21 November '07 period of time prepared a model rule  
14:17:38 22 prohibiting use of that term "human grade"?

14:17:40 23 A. Again, I -- it's my understanding that  
14:17:43 24 either late '06, early '07 that that's the case.

14:18:02 25 Q. Wait just a minute.

14:18:04 1 A. I'm sorry.

14:18:04 2 Q. No, if you have something to add, please.

14:18:06 3 A. I was going to say AAFCO works in

14:18:09 4 mysterious ways and it could be just an opinion

14:18:12 5 issued by the head of the organization, but, again,

14:18:15 6 I would have to look, so --

14:18:22 7 Q. I wanted to show you something here. And

14:18:26 8 my printer was poor. I'm sorry I don't have a

14:18:49 9 better copy, but this is what I believe to be --

14:18:54 10 unfortunately it's from your current Web site. At

14:18:57 11 the time I didn't know which Web site it was from,

14:18:59 12 but this appears to be from your current Web site.

14:19:02 13 It's about Senior Dry Dog Food. And this is how

14:19:05 14 it's described on your Web site. I believe I copied

14:19:08 15 it from the Web site. Take a look at that.

14:19:18 16 A. Okay.

14:19:19 17 Q. There's a couple pages there.

14:19:35 18 A. Okay.

14:19:37 19 Q. One of them is blank, but I included it

14:19:41 20 just so that I gave you everything I printed off.

14:19:43 21 One of the ingredients in the Senior Dry

14:19:46 22 Dog Food is chicken meal; is that correct?

14:19:50 23 A. Yes.

14:19:54 24 Q. And your Web site also goes on to describe

14:20:00 25 what that ingredient is comprised of, is that

14:20:02 1 correct, how it's processed?

14:20:10 2 A. Correct.

14:20:12 3 Q. And that's a rendered product, correct?

14:20:14 4 A. Correct.

14:20:17 5 Q. And it indicates that "Chicken meal is the

14:20:19 6 dry rendered (cooked down) product from a

14:20:25 7 combination of clean flesh and skin with or without

14:20:28 8 accompanying bone derived from the parts of whole

14:20:32 9 carcasses of chicken -- exclusive of feathers,

14:20:35 10 heads, feet, or entrails." Correct?

14:20:38 11 A. Yes, sir.

14:20:40 12 Q. It goes on to say "Chicken meal is

14:20:43 13 considered to be the single best source of protein

14:20:47 14 in commercial pet products. Natura uses

14:20:49 15 high-quality, low ash chicken meal extensively. The

14:20:52 16 ingredient is very digestible, very palatable and

14:20:57 17 very expensive."

14:20:59 18 Is it the position of Natura Pet Products

14:21:02 19 that chicken meal is a human-grade ingredient?

14:21:08 20 A. Again, it's my opinion, and as I represent

14:21:11 21 Natura Pet Products, that it is a human-quality,

14:21:14 22 human-grade ingredient, yes.

14:21:19 23 Q. It's your understanding that chicken meal,

14:21:25 24 the part of the chicken that's utilized or rendered,

14:21:28 25 is that part that's left over after all of the parts

14:21:32 1 of the chicken that humans utilize for consumption

14:21:36 2 have been taken from the chicken?

14:21:37 3 A. Not all the parts, no, sir.

14:21:40 4 Q. What parts are left that are utilized for

14:21:44 5 human consumption before they are rendered?

14:21:46 6 A. Again, when chickens are processed, to the

14:21:49 7 best of my knowledge, there's quite a bit of meat

14:21:52 8 left over when the breasts are removed or the

14:21:54 9 thighs, et cetera, are removed from the bone. It's

14:21:57 10 that meat that's left over, including some of the

14:22:00 11 bone, some of the cartilage material, that's

14:22:01 12 included in chicken meal. And, again, I think

14:22:04 13 that's a very high quality source of protein.

14:22:14 14 Q. Can rendered products include -- well, in

14:22:20 15 your experience, your knowledge, rendered products

14:22:23 16 include other animals that are processed as part of

14:22:28 17 the meal?

14:22:29 18 A. Are we talking about chicken meal

14:22:31 19 specifically still?

14:22:32 20 Q. No, just meal in general.

14:22:36 21 A. I mean, meal is a very generic term, can

14:22:39 22 refer to anything that's ground up, so I can't

14:22:42 23 answer your question.

14:22:44 24 Q. Are you aware of facilities that have used

14:22:49 25 dead dogs and cats, for instance, in preparing meal?

14:22:51 1 A. No.

14:22:53 2 Q. Have you ever heard of anything like that  
14:22:54 3 occurring?

14:22:55 4 A. Sure.

14:22:58 5 Q. Meal that is used in pet food products?

14:23:01 6 A. Again, you've asked me that. I've heard of  
14:23:03 7 that. Yes, I've heard of that.

14:23:06 8 Q. No personal experience with it?

14:23:08 9 A. No.

14:23:23 10 MS. CAVERLY: So just so I get to take it  
14:23:25 11 home.

14:23:26 12 MR. NIELD: Right.

13 BY MR. NIELD:

14:23:26 14 Q. And I'm not really sure what this is and so  
14:23:28 15 I'm going to ask you to tell me what this is. This  
14:23:30 16 was among the documentation that was produced to the  
14:23:33 17 plaintiffs in the case. And I'm not even -- it was  
14:23:35 18 in this order when we got it. I'm not sure that all  
14:23:39 19 of the pages are supposed to be included with this.  
14:23:43 20 If it's not, please let us know. This is the best  
14:23:46 21 we could do in trying to figure out what was part of  
14:23:49 22 this document. But could you -- have you seen this  
14:23:51 23 document before?

14:23:52 24 A. I've seen portions of the document before.

14:23:54 25 Q. And, by the way, it has been Bates-stamped

14:23:58 1 as Defendants' Document DEF 000059.

14:24:04 2 And, I'm sorry, go ahead. You were saying

14:24:06 3 you saw part of this document before?

14:24:08 4 A. Correct. I've seen the front portion of

14:24:12 5 it. But I haven't seen all of the -- the majority

14:24:16 6 of the document, no.

14:24:18 7 Q. All right. The front portion, how many

14:24:21 8 pages would that include?

14:24:23 9 A. It would include 1, 2, 3, 4, 5, 6, 7, 8,

14:24:39 10 9 -- 10 is blank -- 11, 12, 13, 14. Up to 14.

14:24:57 11 Q. So that would be up to DEF 000072?

14:25:01 12 A. Oh, yeah, correct. That's a lot easier.

14:25:04 13 Q. Yes?

14:25:05 14 A. Yes.

14:25:06 15 Q. Why don't we do this then. Let's just take

14:25:10 16 the rest of this off and give it back to Jason.

14:25:19 17 So now I have a document that's titled "Our

14:25:23 18 Nutritional Philosophy" and below that it says

14:25:28 19 "Natura Natural Is Better." It is Bates-stamped DEF

14:25:33 20 000059 and it goes through DEF 000072.

14:25:40 21 Is that correct, sir?

14:25:41 22 A. Correct.

14:25:43 23 MR. NIELD: I'm going to make this Exhibit

14:25:44 24 4 to your deposition.

25 (WHEREUPON, DEPOSITION EXHIBIT 4 WAS MARKED

1 FOR IDENTIFICATION.)

14:25:50 2 BY MR. NIELD:

14:25:51 3 Q. And this is the part of the document you

14:25:52 4 indicated you recognize, correct?

14:25:53 5 A. Yes.

14:25:57 6 Q. Let me just stick that on there.

14:26:01 7 All right. What is this document?

14:26:03 8 A. It's a brochure entitled "Our Nutritional

14:26:08 9 Philosophy."

14:26:10 10 Q. Is this a brochure that is published by

14:26:13 11 Natura Pet Products?

14:26:14 12 A. Yes.

14:26:16 13 Q. And the contents of this brochure were

14:26:24 14 prepared by Natura Pet Products?

14:26:26 15 A. Yes.

14:26:31 16 Q. Was Brighton involved in the publishing of

14:26:33 17 this?

14:26:34 18 A. In the publishing of this?

14:26:36 19 Q. Right.

14:26:36 20 A. Yes.

14:26:37 21 Q. Okay. But the contents were provided by

14:26:40 22 Natura, correct?

14:26:40 23 A. Yes.

14:26:55 24 Q. And what was -- this is a brochure that is

14:26:58 25 distributed to who?

14:27:01 1 A. To salespeople, to distributors, to  
14:27:04 2 retailers.

14:27:06 3 Q. So it's used in the marketing of Natura Pet  
14:27:09 4 Products?

14:27:10 5 A. Yes.

14:27:11 6 Q. And what is the purpose of this brochure?

14:27:15 7 A. To explain what Natura is about and what  
14:27:18 8 makes us different than the competition.

14:27:24 9 Q. And what is that?

14:27:26 10 A. I have to read you the whole brochure to do  
14:27:30 11 that.

14:27:32 12 Q. Well, I don't want you to read the whole  
14:27:34 13 brochure so I withdraw that question.

14:27:37 14 On Page 4, which is DEF 000061, Roman  
14:27:47 15 Numeral Number I, it makes the statement "Use only  
14:27:50 16 ingredients which I feel comfortable eating myself."  
14:27:57 17 Who is "myself"?

14:27:59 18 A. Well, it would have been me, I guess, at  
14:28:02 19 the time.

14:28:03 20 Q. Is this the way that a salesperson is  
14:28:05 21 supposed to utilize this information, approach it by  
14:28:08 22 telling somebody we use only the ingredients we  
14:28:12 23 would -- I would feel eating myself? Is that the  
14:28:15 24 way it's interpreted?

14:28:16 25 A. It's not -- it is not the focus of the



14:28:19 1 sales presentation. It's part of the whole

14:28:22 2 aggregate presentation of the company, the products

14:28:26 3 and the performance of our foods.

14:28:27 4 Q. Isn't this meant as a way to inform your

14:28:30 5 salespeople or the salespeople for the distributors

14:28:33 6 on how to present your products, Natura Pet

14:28:37 7 Products, to the public, to the consumer?

14:28:40 8 A. Again, it's part of the entire context of

14:28:43 9 that presentation, yes.

14:28:45 10 Q. Part of that presentation?

14:28:46 11 A. Uh-huh.

14:28:47 12 Q. There are other materials that are included

14:28:49 13 in training somebody to --

14:28:51 14 A. Sure.

14:28:51 15 Q. -- provide that presentation?

14:28:52 16 A. Right.

14:28:54 17 Q. What other materials would there be besides

14:28:57 18 this brochure?

14:28:59 19 A. Product brochures. Could be university

14:29:02 20 studies. Could be our own internal research

14:29:05 21 studies. Could be testimonials which we have file

14:29:12 22 cabinets full of. Those would be the key things.

14:29:19 23 Q. You said product brochures. I think you

14:29:22 24 said university studies, internal studies. Is this

14:29:26 25 part of the documentation that you provided your

14:29:28 1 counsel pursuant to the plaintiff's request for  
14:29:33 2 documentation?

14:29:34 3 A. Yes.

14:29:56 4 Q. And so this statement here on -- in Roman  
14:30:00 5 Numeral Number I is a way of informing salespeople  
14:30:05 6 representing Natura Pet Products of what part of  
14:30:10 7 their presentation of those products should be,  
14:30:13 8 correct?

14:30:13 9 MS. CAVERLY: Object as argumentative and  
14:30:15 10 the document speaks for itself.

14:30:17 11 BY MR. NIELD:

14:30:17 12 Q. You can -- you can respond.

14:30:18 13 A. Again, it -- it's part of a contextual  
14:30:23 14 presentation of the entire company and our products  
14:30:28 15 and, again, not the center of focus but again part  
14:30:31 16 of the message.

14:30:32 17 Q. Part of the message is that your  
14:30:34 18 salespeople, those representing your company, should  
14:30:36 19 indicate to consumers that, you know, these products  
14:30:41 20 are products I would feel comfortable eating myself,  
14:30:43 21 correct?

14:30:44 22 A. Again, as part of the context of the entire  
14:30:48 23 message, but, yes, included in that.

14:31:22 24 Q. Does Natura do internal studies of its  
14:31:28 25 products?

14:31:28 1 A. Natura Pet Products? No.

14:31:30 2 Q. Does Natura Manufacturing do internal  
14:31:33 3 studies of the products it manufactures for Natura  
14:31:36 4 Pet Products?

14:31:36 5 A. Yes.

14:31:50 6 Q. Going on to Page DEF 000062, in the  
14:31:59 7 left-hand column, the third paragraph, it says, "We  
14:32:04 8 at Natura Pet Products pride ourselves in refusing  
14:32:07 9 to use any of the following ingredients in our pet  
14:32:10 10 food," and it then it says "NO meat meal." What is  
14:32:14 11 meat meal?

14:32:15 12 A. Meat meal is -- in general would be a  
14:32:20 13 nondefined animal ground up. So instead of a  
14:32:25 14 specific ingredient like chicken meal or lamb meal  
14:32:28 15 where you know the origin of where that ingredient  
14:32:30 16 came from, meat meal could be pork, beef, chicken.  
14:32:36 17 It could be any number of different animals that you  
14:32:38 18 don't know the origin of.

14:33:00 19 Q. The next page, 000063, on the top, the  
14:33:08 20 first paragraph in the left-hand column, it says  
14:33:12 21 "Meat meal/meat and bone meal."

14:33:16 22 And I guess this is information concerning  
14:33:19 23 what that is, and it says "The rendered products  
14:33:21 24 from mammal tissues, exclusive of any added blood,  
14:33:25 25 hair, hoof, hide trimmings, manure, stomach and

14:33:29 1 rumen contents, except in such amounts as may be  
14:33:33 2 unavoidable in food processing practices.

14:33:38 3 "Most people associate this ingredient with  
14:33:41 4 beef. The truth is it can be any animal i.e. pigs,  
14:33:44 5 goats, horses, rabbits, road-kill, and in some cases  
14:33:47 6 recycled dogs and cats. It can also come from 4D  
14:33:52 7 animals: DEAD, DYING, DISEASED or DISABLED. These  
14:33:55 8 are condemned parts of animals that are rejected for  
14:33:58 9 human consumption. Would I eat it?"

14:34:00 10 What is the purpose of including this  
14:34:02 11 paragraph within this brochure?

14:34:09 12 A. It goes back awhile. One of our advisors  
14:34:13 13 when we originally started Natura Pet Products was a  
14:34:19 14 veterinarian in the San Jose area and basically he  
14:34:25 15 educated me and I educated us as to potentially what  
14:34:30 16 these nondescript ingredients, meat meal, for  
14:34:35 17 example, or meat and bone meal, might consist of.  
14:34:38 18 So it's a reflection of his input and concern about  
14:34:41 19 that particular ingredient.

14:34:46 20 MR. NIELD: All right. We need to go off  
14:34:47 21 the record for a moment so we'll do that.

14:34:50 22 THE VIDEOGRAPHER: Off the record at 2:34.

23 (Brief recess taken.)

14:35:47 24 THE VIDEOGRAPHER: We are back on the  
14:35:48 25 record. The time is 2:35.

14:35:54 1 BY MR. NIELD:

14:35:54 2 Q. Getting back to that paragraph we were  
14:35:58 3 looking at, did Natura Pet Products through its  
14:36:06 4 manufacturer, Natura Manufacturing, Inc., ever  
14:36:12 5 utilize meat meal in any of its pet food products?

14:36:15 6 A. No.

14:36:15 7 Q. From November of 2003 to November of 2007?

14:36:21 8 A. Correct.

14:36:25 9 Q. But apparently Natura Pet Food Products was  
14:36:29 10 aware that this type of ingredient existed and what  
14:36:32 11 it was comprised of?

14:36:34 12 A. Again, based on my explanation of our  
14:36:36 13 understanding of what it was, yes.

14:36:39 14 Q. This brochure in general, can you recall  
14:36:44 15 this -- well, let me ask you this. Is this still  
14:36:47 16 utilized today?

14:36:48 17 A. A version of it. This is a draft version.  
14:36:51 18 Obviously it's been changed. I think it's a little  
14:36:53 19 bit old. But, yes, we utilize a version of this  
14:36:57 20 today.

14:36:58 21 Q. And was a version of this utilized in the  
14:37:00 22 time period of November of 2003 to November of 2007?

14:37:04 23 A. Yes.

14:37:05 24 Q. And for that entire period of time?

14:37:07 25 A. Yes.

14:37:37 1 Q. Let's go on to Page 000065. And the  
14:37:48 2 right-hand column is titled "Why Do You Feed Less Of  
14:37:51 3 Natura Pet Foods Than Other Super Premium Brands?"

14:37:58 4 And Natura considers its pet food products  
14:38:02 5 super premium brands, correct?

14:38:03 6 A. Yes.

14:38:04 7 Q. Okay. The first couple of lines there say  
14:38:08 8 "First, the quality of ingredients that Natura Pet  
14:38:12 9 Food Products uses are rarely duplicated in pet  
14:38:15 10 foods. We use the same sources of our raw  
14:38:18 11 ingredients that are used by many grocery stores,  
14:38:21 12 and all ingredients selected could have been used  
14:38:24 13 for human consumption."

14:38:29 14 This is information being provided to  
14:38:32 15 salespeople presumably to provide it to either  
14:38:36 16 individuals working at retailers or consumers  
14:38:39 17 themselves, correct?

14:38:39 18 A. Correct.

14:38:47 19 Q. And was it the position of Natura Pet  
14:38:49 20 Products that for, for instance, Innova Senior Dry  
14:38:59 21 Dog Food during the period of 2003 -- November 2003  
14:39:04 22 to November of 2007, that the ingredients utilized  
14:39:08 23 in that product could have been used for human  
14:39:12 24 consumption?

14:39:13 25 A. Again, based on our understanding and my

14:39:15 1 opinion of the term "human grade" or "human

14:39:19 2 consumption," yes.

14:39:21 3 Q. And that would be same for the other

14:39:22 4 products we've been talking about, California

14:39:25 5 Natural Chicken and Brown Rice, California Natural

14:39:29 6 Lamb Meal and Rice, Innova Dry Dog Food, Salmon and

14:39:38 7 Sweet Potato Adult and Mother Nature - Beef Stew

14:39:42 8 Recipe Dog Biscuits; is that correct?

14:39:44 9 A. Yes.

14:39:48 10 Q. And that includes any rendered products,

14:39:50 11 correct?

14:39:51 12 A. I'm sorry, what includes any rendered

14:39:53 13 products?

14:39:54 14 Q. The ingredients utilized -- if any rendered

14:39:57 15 products are utilized in those products, the

14:40:01 16 statement that they could have been used for human

14:40:04 17 consumption applies to those rendered ingredients,

14:40:07 18 correct?

14:40:08 19 A. If they were in those products that you

14:40:10 20 just referenced, yes.

14:40:13 21 Q. Does Natura make any effort to -- well,

14:40:16 22 strike that.

14:40:43 23 I want to go on to Page 000066. And then

14:40:54 24 in the left-hand column there's a section entitled

14:40:57 25 "Myth Number 1: 'Human Grade Ingredients' implies

14:41:00 1 quality."

14:41:02 2 Do you see that?

14:41:02 3 A. Uh-huh.

14:41:05 4 Q. That section states that "This is a popular

14:41:07 5 marketing claim that you will see on pet food

14:41:09 6 labels. It is also most" -- "also the most

14:41:14 7 misleading one. Natura's products are the first pet

14:41:17 8 foods to ever use ingredients from human consumable

14:41:20 9 food sources and not from human waste" -- excuse

14:41:25 10 me -- "human food waste products. Since then, many

14:41:30 11 companies have jumped on the bandwagon, touting

14:41:33 12 their ingredients are of Human Grade quality.

14:41:36 13 Natura's packaging does not say this, and

14:41:39 14 subsequently, it has been used against us by our

14:41:42 15 competitors."

14:41:43 16 What does that mean?

14:41:45 17 A. The whole term "human grade" was something

14:41:49 18 that really wasn't made popular, something we really

14:41:53 19 didn't use until one of our competitors, Old Mother

14:41:58 20 Hubbard Wellness, started using it front and center

14:42:02 21 in their advertising, on their packaging, and it

14:42:03 22 forced us to basically make a competitive response

14:42:07 23 to address, you know, well, they're saying they're

14:42:09 24 using human-grade ingredients, I guess you must not

14:42:10 25 be because you don't say it on your packaging. So



14:42:15 1 that's what this was a response to.

14:42:17 2 Q. Has Natura ever made that statement on any  
14:42:19 3 of its packaging?

14:42:20 4 A. No, never.

14:42:31 5 Q. The next paragraph says, "The fact is, the  
14:42:34 6 term 'Human Grade ingredients' has not been defined  
14:42:38 7 by the Association of American Feed Control  
14:42:38 8 Officials (AAFCO), the regulatory agency that  
14:42:42 9 oversees the pet food industry. Therefore, the term  
14:42:46 10 cannot be used on any pet food product bearing the  
14:42:48 11 AAFCO statement of nutritional adequacy. If it is  
14:42:52 12 to be used, there must be a disclaiming statement  
14:42:55 13 denoting that it is not a recognized term by AAFCO.  
14:43:00 14 Because there is no standard, there is no guarantee  
14:43:03 15 of quality. Human grade does not equal quality (pig  
14:43:07 16 snout and tripe are human grade, but would never be  
14:43:11 17 found in a Natura pet food!)."

14:43:16 18 This is just something you are indicating  
14:43:18 19 to the people that this brochure was directed  
14:43:25 20 explaining what human grade ingredients are? What's  
14:43:31 21 the purpose of this paragraph?

14:43:32 22 A. Yeah, again, this is -- this brochure has  
14:43:34 23 gone through several iterations over time. And this  
14:43:37 24 one was done again in the context of a competitive  
14:43:41 25 response to Mother Hubbard Wellness and their human

14:43:45 1 grade assertions to address that issue. Pretty much

14:43:47 2 pure and simple that's what it was.

14:43:52 3 Q. The Natura Pet Products Web site I believe

14:43:56 4 you testified earlier is one of the mechanisms in

14:43:59 5 which Natura advertises its products, correct?

14:44:02 6 A. Correct.

14:44:03 7 Q. There is only one Natura Pet Products Web

14:44:08 8 site, correct?

14:44:09 9 A. Correct.

14:44:10 10 Q. You don't, even if you could -- I suppose

14:44:15 11 you could.

14:44:16 12 You don't have different web sites for

14:44:18 13 different portions of the country, correct?

14:44:19 14 A. No.

14:44:20 15 Q. It's the same Web site for everyone across

14:44:22 16 the country?

14:44:22 17 A. Yes.

14:44:25 18 Q. And that Web site was in existence, I think

14:44:29 19 we've established that, from February -- excuse me,

14:44:31 20 November of 2003 to November of 2007, correct?

14:44:33 21 A. Correct.

14:44:34 22 Q. Although it went through some revision over

14:44:36 23 that period of time --

14:44:39 24 A. Right.

14:44:40 25 Q. -- correct?

14:44:41 1            You would be as Natura's designated  
14:44:44 2 corporate representative the most knowledgeable  
14:44:46 3 person as to the contents of that Web site --  
14:44:47 4            A. Yes.  
14:44:48 5            Q. -- during that period of time?  
14:44:49 6            A. Yes.  
14:44:52 7            Q. Did Natura utilize the term "human-grade  
14:44:56 8 ingredients" in its Web site from -- in any way from  
14:45:02 9 November of 2003 to November of 2007?  
14:45:03 10           A. Yes.  
14:45:07 11           Q. Does it today utilize the term "human-grade  
14:45:12 12 ingredients" on its Web site?  
14:45:14 13           A. No.  
14:45:15 14           Q. When did it discontinue its utilization of  
14:45:19 15 that term?  
14:45:21 16           A. We as a management team made that  
14:45:30 17 decision -- I would have to go back and confirm, but  
14:45:32 18 I would -- would say late '06, early '07, in that --  
14:45:39 19 in that vicinity.  
14:45:41 20           Q. Why did Natura discontinue the use of the  
14:45:44 21 term "human-grade ingredients" on its Web site?  
14:45:48 22           A. Again, pretty much because of the confusion  
14:45:51 23 about the term, how it was being used by our  
14:45:54 24 competitors. We knew it was being slapped around.  
14:45:57 25 Everything under the sun was being called human

14:46:00 1 grade. So we just decided that, again, to be as  
14:46:05 2 honest and open as we could with our customers that  
14:46:08 3 it was a term that we didn't feel comfortable to use  
14:46:12 4 anymore so we made the decision let's take it out of  
14:46:15 5 our marketing and off of our Web site.

14:46:20 6 Q. So the management team at Natura Pet  
14:46:21 7 Products decided that utilizing the term  
14:46:26 8 "human-grade ingredients" may not have been as  
14:46:32 9 honest and upfront with its customers as you desired  
14:46:37 10 to be?

14:46:37 11 MS. CAVERLY: Objection. Misstates the  
14:46:39 12 testimony. Argumentative.

14:46:41 13 THE WITNESS: No, I disagree with that  
14:46:44 14 statement totally. Again, the only reason we  
14:46:46 15 started using it in the first place was again as a  
14:46:49 16 competitive response because our competitors were  
14:46:52 17 getting market share and taking business from us  
14:46:54 18 because they were boasting that their products were  
14:46:56 19 human grade, Natura obviously doesn't have it on  
14:46:59 20 their bag so they don't use human-grade ingredients.

14:47:03 21 Well, again, what is human grade? It  
14:47:03 22 confused the customer, kind of forced our hand to  
14:47:06 23 step up and address that.

14:47:08 24 Once regulatory agencies got involved,  
14:47:11 25 again AAFCO stepped in, basically shared their

14:47:13 1 displeasure with the use of that term, it took that  
2 competitive pressure off. And so it made sense for  
14:47:14 3 us, okay, now it really -- we don't have to do it,  
14:47:18 4 we are not comfortable to do it because it's not a  
14:47:21 5 defined term and better for us to just go about  
14:47:24 6 doing our business the way we are comfortable to do  
14:47:28 7 it.

8 BY MR. NIELD:

14:47:31 9 Q. So your use of the term "human-grade  
14:47:33 10 ingredients" on your Web site was motivated by the  
14:47:41 11 perceived need to react competitively to the claims  
14:47:46 12 competitors were making?

14:47:46 13 A. Yes.

14:47:50 14 Q. What competitors -- well, strike that.  
14:47:54 15 Your competitors you've referred to began  
14:47:57 16 utilizing that term before Natura did. Is that  
14:48:00 17 the -- is that your position?

14:48:02 18 A. Yes.

14:48:03 19 Q. Which competitors started to utilize that  
14:48:07 20 term before Natura started to use it?

14:48:10 21 A. Old Mother Hubbard Wellness, again one of  
14:48:14 22 our primary competitors. Gosh, there's a long  
14:48:18 23 laundry list. You can -- Natural Balance, Solid  
14:48:25 24 Gold at some level.

14:48:32 25 Boy, I would have to go back. But put it

14:48:34 1 this way, it's more uncommon for them not to use  
14:48:37 2 term than it was for them to use it. I would have  
14:48:39 3 to really go back and look. There's some that  
14:48:42 4 didn't, but very many did within our niche.

14:48:46 5 Q. Your niche being super premium?

14:48:49 6 A. Super premium --

14:48:51 7 Q. Pet food products?

14:48:53 8 A. -- pet food products, right.

14:48:56 9 Q. Was Natura Pet Food Products utilizing the  
14:49:00 10 term "human-grade ingredients" in November of 2003?

14:49:04 11 A. November of 2003. I don't think so. I --  
14:49:12 12 I don't know for sure.

14:49:13 13 Q. Do you have an approximation how long a  
14:49:15 14 period of time Natura Pet Food Products was using  
14:49:19 15 the term "human-grade ingredients" on its Web site?

14:49:23 16 A. It would -- it would truly be a guess.  
14:49:26 17 Again, it was the competitive response. I would  
14:49:28 18 guess that to be in that 2003, 2004 time frame, if I  
14:49:32 19 had to guess, and then up until 2007.

14:49:35 20 Q. Okay. And I don't want you to guess, but  
14:49:36 21 would it be your best estimate, your best  
14:49:38 22 approximation that you began -- Natura Pet Food  
14:49:42 23 Products began to utilize that term somewhere in the  
14:49:44 24 2003, 2004 time frame up to the 2006, 2007 time  
14:49:51 25 frame?

14:49:51 1 A. Yes.

14:49:58 2 Q. And, therefore, I guess it would -- it  
14:50:03 3 follows that your competitors were utilizing that  
14:50:05 4 term, "human-grade ingredients," prior to the 2003,  
14:50:11 5 2004 time frame?

14:50:14 6 A. Prior or at that time, yes. It preceded  
14:50:18 7 us, yes.

14:50:19 8 Q. Can you give me your best -- well, if you  
14:50:22 9 can do it specifically, fine, if not, your best  
14:50:25 10 estimate, how long before your -- Natura Pet Food  
14:50:31 11 Products began to utilize that term on its Web site,  
14:50:34 12 "human-grade ingredients," that your competitors  
14:50:37 13 were utilizing that term?

14:50:39 14 A. Again, within my best recollection it would  
14:50:42 15 have been in that 2003, 2004 time frame is when Old  
14:50:46 16 Mother Hubbard was really the first one to make that  
14:50:49 17 upfront and center marketing message, so, again, my  
14:50:52 18 best estimate is that time frame.

14:50:53 19 Q. Well, can you give me an estimate then how  
14:50:57 20 long time -- how long it took Natura Pet Food  
14:51:02 21 Products to respond to Old Mother Hubbards' use of  
14:51:06 22 the term "human-grade ingredients" by itself  
14:51:09 23 utilizing that for competitive purposes on its Web  
14:51:11 24 site? A matter of weeks, months?

14:51:14 25 A. Would have been months. Probably six

14:51:17 1 months or so would be my, again, best estimate of  
14:51:21 2 our response time.

14:51:55 3 Q. Let me direct your attention to 000069.

14:52:12 4 This portion of the brochure -- well, let me ask you  
14:52:16 5 first. Is this part of this brochure that we've  
14:52:19 6 been going through or is this a separate printed  
14:52:22 7 material?

14:52:23 8 A. You know, it says "Delete." This looks  
14:52:24 9 like a draft copy of the brochure and this  
14:52:28 10 particular page didn't end up in it. It looks like  
14:52:32 11 it says "Delete," "Delete" up at the top, so I  
14:52:35 12 couldn't swear to it. It's something that --

14:52:39 13 Q. Was it intended --

14:52:40 14 A. It might have been in a previous version.

14:52:43 15 Q. Was it intended to be part of the brochure  
14:52:45 16 or a stand-alone document?

14:52:46 17 A. It would have been part of the brochure.

14:52:50 18 Q. Would it be fair to say that if this  
14:52:53 19 particular page wasn't utilized concerning Innova  
14:52:57 20 that another revised version of this page was most  
14:53:01 21 likely utilized in the brochure?

14:53:03 22 A. Again, within the context of the philosophy  
14:53:06 23 brochure that we've been referencing, you know,  
14:53:09 24 these would have just been quick blurb pages about  
14:53:13 25 products. Each individual products, like Innova,



14:53:16 1 California Natural, et cetera, would have their own  
14:53:18 2 separate literature brochure that would be  
14:53:20 3 published.

14:53:21 4 Q. And in checking the subsequent pages, that  
14:53:24 5 does appear to be the case, correct, that each of  
14:53:27 6 your brands --

14:53:27 7 A. Yes.

14:53:28 8 Q. -- has its own page?

14:53:29 9 A. Right. Except -- well, each of our brands  
14:53:34 10 that are referenced except for Mother Nature in this  
14:53:37 11 discussion, yes.

14:53:44 12 Q. On this page discussing the Innova brand,  
14:53:50 13 in the right-hand column, the second paragraph, it  
14:53:52 14 indicates that "Innova undergoes 50 different  
14:53:56 15 quality control checks throughout the manufacturing  
14:53:58 16 process, from raw materials to finished product, so  
14:54:01 17 that you can be sure that the" -- "only the purest  
14:54:05 18 and freshest ingredients are used....free of  
14:54:07 19 pesticides, preservatives, hormones, and harmful  
14:54:08 20 chemicals of any kind."

14:54:11 21 You see that, right?

14:54:12 22 A. Yes, sir.

14:54:13 23 Q. Okay. What are the 50 quality control  
14:54:19 24 checks utilized throughout the manufacturing process  
14:54:21 25 that are being referred to?

14:54:25 1 A. I couldn't sit here and recite them to you  
14:54:28 2 one by one. There's actually more than 50 different  
14:54:31 3 checks that are used, again not on every batch but  
14:54:34 4 over time on all of our products. So, you know, I  
14:54:39 5 can try to come up with as many as I can think of,  
14:54:43 6 but --

14:54:44 7 Q. No, let's -- let me try to shortcut this a  
14:54:48 8 little bit.

14:54:48 9 A. Okay.

14:54:48 10 Q. It's not a memory test. 50 would be too  
14:54:53 11 many, and I have seen documents -- I can't put my  
14:54:56 12 hands on them right now, if we looked we could find  
14:54:57 13 them -- where your labeling now indicates that the  
14:54:59 14 quality control checks are 121.

14:55:01 15 A. Right.

14:55:02 16 Q. Is that correct?

14:55:02 17 A. Yes. I'm familiar with that, yes.

14:55:04 18 Q. All right. When did the 121 quality  
14:55:07 19 control checks come into existence? Was that within  
14:55:11 20 the November 2003 to November 2004 time period?

14:55:15 21 A. No.

14:55:16 22 Q. No?

14:55:17 23 A. Not -- in the November 2004?

14:55:19 24 Q. I'm sorry. I'm getting all  
14:55:22 25 discombobulated. November of 2003 to November of

14:55:25 1 2007.

14:55:26 2 A. Yes. Yes.

14:55:28 3 Q. It was within that time period that the 121

14:55:32 4 checks --

14:55:32 5 A. Correct.

14:55:33 6 Q. -- came about?

14:55:35 7 Do you know how long within that time

14:55:36 8 period the 121 quality control checks representation

14:55:39 9 was being utilized in Natura Pet Food Products'

14:55:44 10 advertising?

14:55:47 11 A. Probably three or four months. Four, five

14:55:50 12 months. In that ball park.

14:55:52 13 Q. Prior to that it was 50?

14:55:54 14 A. It would have been whatever this -- yeah,

14:55:57 15 this would have been the more -- the up until then

14:56:00 16 number, yes.

14:56:01 17 Q. Is there a document somewhere within the

14:56:08 18 documentation of Natura Pet Food Products that sets

14:56:11 19 out what those 50 different quality control checks

14:56:13 20 are?

14:56:14 21 A. Not within Natura Pet Products, no.

14:56:17 22 Q. Would such a document exist within the

14:56:20 23 Natura Manufacturing, Inc. entity?

14:56:22 24 A. Yes.

14:56:25 25 Q. Would all of them be contained on one

14:56:27 1 document?

14:56:31 2 A. Again, I think it would be part of the  
14:56:33 3 procedure manual and that would be inclusive of  
14:56:36 4 all -- all the different checks that they do  
14:56:38 5 collectively. So it wouldn't be on one document but  
14:56:42 6 it would be as part of the protocol manual, yes.

14:56:45 7 Q. So they have a procedure -- would it be  
14:56:49 8 called a procedure manual or protocol manual or --

14:56:51 9 A. Yeah, it would be -- it would be their  
14:56:52 10 procedure manual, I guess.

14:56:56 11 Q. Natura manufacturing and procedure manual  
14:56:57 12 or something --

14:56:58 13 A. Right.

14:56:58 14 Q. -- that talks about how they are going to  
14:57:00 15 run their business over there, correct?

14:57:02 16 A. Right.

14:57:05 17 Q. And some -- it's either on one page or a  
14:57:08 18 compilation of things that are mentioned throughout  
14:57:10 19 the manual; is that correct?

14:57:12 20 A. Correct.

14:57:15 21 Q. The same would apply to what is now the 121  
14:57:19 22 quality control checks, correct?

14:57:20 23 A. Yes.

14:57:23 24 Q. This philosophy brochure -- is that a fair  
14:57:31 25 statement?

14:57:31 1 A. Yes.

14:57:31 2 Q. -- corporate philos -- who prepared the  
14:57:35 3 text of this brochure?

14:57:37 4 A. I wrote the original version of this.

14:57:40 5 Q. Did you have any assistance?

14:57:41 6 A. No.

14:57:44 7 Q. Was it ultimately edited by anyone?

14:57:47 8 A. It's been edited multiple times since 1992,  
14:57:51 9 yes.

14:57:53 10 Q. All right. So your recollection is that  
14:57:54 11 you first authored this brochure in 1992?

14:57:57 12 A. Yes, sir.

14:58:01 13 Q. And since that time I'm assuming that you  
14:58:03 14 are one of those individuals that have edited this  
14:58:06 15 copy. Correct?

14:58:06 16 A. Yes.

14:58:10 17 Q. And would there be individuals at Brighton  
14:58:13 18 that have done some editing to this brochure?

14:58:15 19 A. Yes.

14:58:16 20 Q. Anybody else within Natura Pet Products?

14:58:19 21 A. Paul French would have done quite a bit of  
14:58:22 22 editing, also.

14:58:25 23 Q. Anyone else?

14:58:26 24 A. That would be it.

14:58:52 25 Q. Let's go on to the next page, 000070. This

14:58:59 1 is the page relating to California Natural -- the

14:59:05 2 California Natural brand, correct?

14:59:06 3 A. Yes.

14:59:08 4 Q. At the first sentence on the right-hand

14:59:10 5 column it says "Both California Natural canned and

14:59:14 6 dry foods are made in the US" -- excuse me, "with

14:59:17 7 the USDA" -- "with the USDA inspected meats." That

14:59:23 8 may not be grammatically correct, but --

14:59:26 9 A. Like I say, it has "Delete" on the top, so

14:59:28 10 this may have been a draft of something that was

14:59:31 11 actually never published, so --

14:59:32 12 Q. All right. Well --

14:59:33 13 A. Didn't make it through the proofreader.

14:59:37 14 Q. Excusing that, as it relates to, I guess,

14:59:42 15 California Natural, all of the meats that are

14:59:43 16 utilized in the products within that brand use USDA

14:59:49 17 inspected meats?

14:59:49 18 A. Yes.

14:59:52 19 Q. And you know that because those meat

14:59:55 20 products are purchased from suppliers that only

14:59:58 21 supply USDA inspected meats?

15:00:01 22 A. Yes.

15:00:04 23 Q. And when we are talking about meats, we are

15:00:07 24 including poultry in that?

15:00:08 25 A. In this -- yes, chicken meal and lamb meal,

15:00:12 1 yes.

15:00:12 2 Q. Would that include also the fish products?

15:00:16 3 A. Correct, yes.

15:00:20 4 Q. And beef?

15:00:21 5 A. We don't use beef in California Natural

15:00:25 6 products.

15:00:25 7 Q. Lamb?

15:00:25 8 A. Yes.

15:00:32 9 Q. The last page -- let's skip to 000072.

15:00:40 10 This is titled "Commitment"; is that correct?

15:00:43 11 A. Uh-huh.

15:00:44 12 Q. It's kind of a mission statement; is that

15:00:47 13 correct?

15:00:49 14 MS. CAVERLY: Objection. Vague as to what

15:00:50 15 you mean by "a mission statement."

15:00:52 16 MR. NIELD: And that's true, it is vague.

15:00:53 17 BY MR. NIELD:

15:00:54 18 Q. Maybe you can tell me what it is.

15:00:56 19 A. It -- yes, it's definitely not a mission.

15:01:07 20 It's a positioning statement, I guess, might be the

15:01:11 21 most fair way to describe it. Again, it's kind

15:01:16 22 of -- part of the philosophy brochure, so, yeah,

15:01:19 23 absolutely it would be kind of a philosophical

15:01:22 24 positioning statement.

15:01:22 25 Q. The right-hand column is a set of

15:01:24 1 guidelines that your company, at least in this  
15:01:31 2 brochure, was setting out as how do you make the  
15:01:41 3 healthiest pet food in the world; is that correct?

15:01:43 4 A. Yes, sir.

15:01:45 5 Q. And Number 1 is "Use only ingredients which  
15:01:48 6 I feel comfortable eating myself"; is that correct?

15:01:50 7 A. Yes.

15:01:57 8 Q. And that was correct between November of  
15:02:00 9 2003 and November of 2007?

15:02:02 10 A. Yes.

15:02:19 11 Q. And just to be clear, I think you indicated  
15:02:21 12 that -- well, strike that. Maybe you didn't. Maybe  
15:02:23 13 you didn't.

15:02:25 14 That was a statement that you did utilize  
15:02:28 15 on your Web site between November of 2003 and  
15:02:31 16 November of 2007, correct?

15:02:33 17 MS. CAVERLY: "That" meaning what?

15:02:35 18 BY MR. NIELD:

15:02:35 19 Q. That meaning the statement, the position  
15:02:46 20 that we feel -- that we "use only ingredients which  
15:02:50 21 I would feel comfortable eating myself."

15:02:53 22 A. I believe so, yes.

15:02:57 23 Q. Do you continue to use that phrase in your  
15:03:01 24 Web site advertising?

15:03:04 25 A. As I sit here today, no, we do not.



15:03:07 1 Q. Can you recall specifically, if not  
15:03:10 2 generally, when you discontinued using that phrase?  
15:03:14 3 "You" being Natura Pet Products.

15:03:22 4 A. Why, just as recent as two or three weeks  
15:03:24 5 ago.

15:03:25 6 Q. Can you recall when generally you -- Natura  
15:03:29 7 began using that phrase in its Web site advertising?

15:03:39 8 A. My best estimate is that we probably have  
15:03:44 9 always used it at some level on our Web site. It's  
15:03:49 10 probably an accurate statement.

15:03:50 11 Q. Why did you discontinuous using it two or  
15:03:53 12 three weeks ago?

15:03:53 13 A. Again, based on our experience,  
15:03:56 14 discussions, learning from this case and the pet  
15:04:01 15 food recall, again transparency, trying to be as  
15:04:05 16 open and honest as we can with our customers, we  
15:04:08 17 decided it would be in our best interest to change  
15:04:12 18 that statement.

15:04:15 19 Q. I'm done with that, but let's put it up  
15:04:18 20 here so we don't lose it for madam court reporter.

15:04:22 21 You might have a couple of things in front  
15:04:25 22 of you there.

15:04:36 23 And I -- did I not mark this -- let me mark  
15:04:39 24 this.

15:04:44 25 THE WITNESS: A broken stapler.

15:05:00 1 MR. NIELD: As bad a copy as this is, I did  
15:05:02 2 question the witness on this four-page doc --  
15:05:11 3 five-page document relating to -- from their current  
15:05:14 4 Web site, "their" being Natura Pet Products,  
15:05:17 5 concerning Senior Dry Dog Food. I'll mark that as  
15:05:21 6 Exhibit 5 to the deposition. Oh, here it is. 5.

7 (WHEREUPON, DEPOSITION EXHIBIT 5 WAS MARKED  
8 FOR IDENTIFICATION.)

15:05:28 9 MR. NIELD: It is a little bit after 3  
15:05:30 10 o'clock. We've been going for a couple of hours.  
15:05:35 11 Would anybody like a short break?

15:05:37 12 MS. CAVERLY: I'm fine.

15:05:38 13 THE WITNESS: I'm fine.

15:05:43 14 MR. NIELD: Our helpers? No? Okay. We'll  
15:05:46 15 continue.

15:05:54 16 MR. BAKER: Let's take five.

15:05:56 17 MR. NIELD: All right. We would like to  
15:05:57 18 take a short break.

15:05:58 19 THE WITNESS: Okay.

15:05:59 20 THE VIDEOGRAPHER: Going off the record.

15:06:01 21 The time is 3:05 p.m.

22 (Brief recess taken.)

15:21:15 23 THE VIDEOGRAPHER: We are back on the  
15:21:16 24 record. The time is 3:21.

15:21:22 25 BY MR. NIELD:

15:21:22 1 Q. I'm going to just refer quickly back to  
15:21:25 2 Exhibit 4. My esteemed colleague is curious about  
15:21:29 3 one other issue and it's in the top left-hand  
15:21:32 4 corner. It says "Natura Uses."

15:21:34 5 Do you see that? It's got a little  
15:21:37 6 bracket.

15:21:38 7 A. Uh-huh.

15:21:40 8 Q. And, again, it repeats the phrase  
15:21:42 9 "Ingredients we would eat ourselves," and then I  
15:21:45 10 guess there's four qualifiers to that: "NO Chemical  
15:21:51 11 Preservatives," "NO Artificial Flavors," "NO  
15:21:54 12 Artificial Colors," "NO Chemical Additives of any  
15:21:57 13 kind."

15:21:58 14 And, again, this is just part of the  
15:21:59 15 brochure that was utilized to educate your marketing  
15:22:09 16 representatives of how to present your products,  
15:22:11 17 correct?

15:22:11 18 A. Yes, sir.

15:22:28 19 Q. The products we've been talking about --  
15:22:33 20 shall I list them again --

15:22:34 21 A. No, sir.

15:22:35 22 Q. -- or you have a pretty clear idea of what  
15:22:38 23 we are talking about?

15:22:38 24 A. I've got them covered.

15:22:41 25 Q. All right. Does -- if you know, in the

15:22:44 1 manufacturing of those products, are any byproducts

15:22:47 2 utilized?

15:22:48 3 A. No.

15:22:50 4 Q. How do you define byproducts?

15:22:57 5 A. It would be anything but the primary meat

15:23:04 6 and flesh of the animal. So, now, again, in the

15:23:09 7 case of a chicken, for example, we would use only

15:23:14 8 the meat, bone, cartilage material, not the viscera,

15:23:17 9 the heet -- the feet, the head, the guts, the

15:23:19 10 feathers, those kind of things.

15:23:24 11 Q. The head, the feathers, the beak -- beak,

15:23:28 12 the viscera, those would be byproducts?

15:23:30 13 A. In our opinion, yes.

15:23:33 14 Q. And those are not things that are included

15:23:37 15 in, for instance, chicken meal?

15:23:39 16 A. Yes, sir, correct.

15:23:40 17 Q. That's your understanding, anyway?

15:23:42 18 A. Yes, sir.

15:23:51 19 Q. What would be a byproduct from a lamb?

15:23:55 20 A. Again, similar definition. Would be, you

15:23:58 21 know, hoofs, the hair, the internal organs, the

15:24:06 22 viscera, same as with the chicken.

15:24:10 23 Q. Internal organs. Would that include like

15:24:14 24 the stomach?

15:24:16 25 A. Correct.

15:24:16 1 Q. Would that include a liver?

15:24:17 2 A. Correct.

15:24:18 3 Q. Heart?

15:24:18 4 A. Correct.

15:24:19 5 Q. Those would all be byproducts?

15:24:21 6 A. Correct.

15:24:21 7 Q. And those are not included in lamb meal?

15:24:24 8 A. Correct.

15:24:31 9 Q. And how do -- what's the basis of your

15:24:36 10 opinion or your position that internal organs,

15:24:40 11 hoofs, fur, that kind of thing, is not included in

15:24:46 12 lamb meal?

15:24:48 13 A. The basis for my opinion, again, the

15:24:51 14 ingredient definition and our understanding what our

15:24:55 15 suppliers provide us.

15:24:59 16 Q. Based upon information your suppliers

15:25:03 17 provide you?

15:25:03 18 A. Correct.

15:25:04 19 Q. And then you said something else. Your

15:25:06 20 opinion?

15:25:08 21 MS. CAVERLY: He said ingredient

15:25:09 22 definition.

23 THE WITNESS: Ingredient definition.

15:25:10 24 MR. NIELD: Oh, ingredient definition.

15:25:25 25 MS. CAVERLY: It's a defined term by AAFCO.

1 BY MR. NIELD:

15:26:28 2 Q. AAFCO sets out specific definitions for  
15:26:33 3 those ingredients, lamb meal, for instance?

15:26:35 4 A. Yes, sir.

15:26:36 5 Q. Chicken meal?

15:26:37 6 A. Chicken meal, yes.

15:27:11 7 Q. All right. What is your definition of a  
15:27:18 8 filler?

15:27:20 9 A. Anything that's added to the product that  
15:27:22 10 doesn't have a nutritive value, that it's just there  
15:27:26 11 to add weight to the product.

15:27:30 12 Q. Can you give us some examples of a filler?

15:27:34 13 A. Yeah. In our opinion it would be anything  
15:27:36 14 that would be very high in fiber, like peanut hulls,  
15:27:40 15 rice hulls, wheat midds, those kind of very cheap,  
15:27:45 16 nonnutritive type of ingredients.

15:27:47 17 Q. Does Natura utilize any fillers in any of  
15:27:51 18 the products that we've been discussing today?

15:27:54 19 A. No, sir.

15:28:08 20 Q. What is your definition of an additive?

15:28:17 21 A. An additive. It would be any -- chemical  
15:28:24 22 additive, I think is the context we use it actually.  
15:28:28 23 It would be anything that would be not natural that  
15:28:32 24 would be added to the product for either flavor  
15:28:38 25 enhancement or even to perform a function if it's a

15:28:42 1 chemical additive like BHA or BHT, for example.

15:28:48 2 Q. And Natura Pet Products doesn't utilize any  
15:28:50 3 additives in the products that we've been discussing  
15:28:53 4 today?

15:28:53 5 A. Any chemical additives? No.

15:28:55 6 Q. Chemical additives?

15:28:57 7 A. No.

15:28:57 8 Q. And the only way that you would utilize the  
15:29:00 9 term "additive" is if it was a chemical additive?

15:29:03 10 A. Correct.

15:29:31 11 Q. Does Natura Pet Products maintain in some  
15:29:39 12 fashion prior versions of its Web sites when  
15:29:42 13 revisions occur?

15:29:46 14 A. Not to my knowledge. I think that's out  
15:29:48 15 there, but it's not in an easily accessible form.  
15:29:55 16 But I think it's out there somewhere, yes.

15:29:59 17 Q. Is obtaining versions of -- excuse me --  
15:30:05 18 strike that.

15:30:07 19 Obtaining some version of prior Web sites  
15:30:20 20 of Natura Pet Products, was that part of the  
15:30:23 21 documentation, so to speak, that you were asked to  
15:30:26 22 provide your attorney in response to the plaintiffs'  
15:30:28 23 request for documentation?

15:30:29 24 A. To the extent that we were able to provide  
15:30:32 25 it, it's my understanding that portions of it were

15:30:34 1 provided, yes.

15:30:52 2 Q. I want to show you a copy of a document  
15:31:04 3 that was provided in the documents that we have  
15:31:06 4 received. Perhaps you could just take a moment to  
15:31:17 5 look at this.

15:31:18 6 MS. CAVERLY: Are we going to mark this on  
15:31:20 7 the record?

15:31:20 8 MR. NIELD: Sure.

15:31:21 9 MS. CAVERLY: I will note for the court  
15:31:23 10 reporter that this is a confidential document  
15:31:26 11 designated under the protective order, so this  
15:31:28 12 exhibit as well as the discussion of it should be  
15:31:31 13 marked in a separate transcript.

15:31:35 14 MR. NIELD: All right. We'll mark it as  
15:31:37 15 Exhibit 7.

15:31:39 16 MS. CAVERLY: What was Exhibit 6?

15:31:44 17 MR. BAKER: Exhibit 6.

15:31:45 18 MR. NIELD: Oh, I'm sorry, this will be  
15:31:47 19 Exhibit 6.

15:31:58 20 BY MR. NIELD:

15:31:59 21 Q. Let me know when you are done looking at  
15:32:01 22 that.

15:32:02 23 A. I've had a chance to review it.

15:32:04 24 Q. All right. Have you seen this document  
15:32:06 25 before?



15:32:06 1 A. Actually, no, not in this form, no.

15:32:13 2 Q. When you say "not in this form," have you  
15:32:16 3 seen the information on this document in some other  
15:32:18 4 form?

15:32:18 5 A. Yes.

15:32:22 6 Q. What is this document as you understand it,  
15:32:24 7 if you have an understanding?

15:32:26 8 A. I mean, it appears to be an ingredient and  
15:32:28 9 supplier list from Natura Manufacturing.

15:32:35 10 Q. All right. Do you know why this would have  
15:32:36 11 been produced by Natura Pet Food Products?

15:32:44 12 MS. CAVERLY: We are generous.

15:32:47 13 MR. NIELD: I know you guys are generous.  
14 I knew that.

15 BY MR. NIELD:

15:32:50 16 Q. Was that the reason?

15:32:50 17 A. Again, it would have come from Natura  
15:32:52 18 Manufacturing direct to Kristen, so I do not know  
15:32:56 19 the answer to that question, no.

15:33:04 20 Q. Do you know what period of time this list  
15:33:09 21 would cover?

15:33:12 22 A. No, sir, I do not. It has a date on it of  
15:33:18 23 11/3/2008, but I don't know if that's when it was  
15:33:21 24 printed or last saved or -- so, no, I don't know the  
15:33:24 25 answer to your question.

15:33:26 1 Q. Yeah, I see on the third page in  
15:33:31 2 Bates-stamped DEF 001451 there's also some other  
15:33:34 3 dates in a box at the bottom of the page.  
15:33:38 4 A. Uh-huh. Looks like it's overwritten.  
15:33:39 5 Q. It says "Date Originated 8/13/2003" in the  
15:33:44 6 far left-hand column?  
15:33:45 7 A. I'm sorry, where are you looking at?  
15:33:47 8 Q. I'm on 1451.  
15:33:50 9 A. Oh, I see it. Okay. Yeah.  
15:33:52 10 Q. And then it has --  
15:33:53 11 A. That's small print.  
15:33:55 12 Q. It is. Not made for me.  
15:33:58 13 And then it has in the second column "Date  
15:34:01 14 Revised"?  
15:34:01 15 A. Yes, sir, I see that.  
15:34:03 16 Q. This is not a document that you  
15:34:06 17 participated in preparing; is that correct?  
15:34:08 18 A. No.  
15:34:08 19 MS. CAVERLY: I would also like to indicate  
15:34:10 20 for the record that this is not the document in its  
15:34:12 21 form as it was produced because it was produced in  
15:34:15 22 its native form and the footer is associated with  
15:34:19 23 your filing system apparently. So it pulls the  
15:34:22 24 footer when you saved it from the disk onto your  
15:34:27 25 server. The file path is no longer the original

15:34:31 1 file path.

15:34:34 2 MR. NIELD: Did you screw up again, Jason?

15:34:37 3 MR. BAKER: That is how it was produced.

15:34:38 4 MS. CAVERLY: The "Y Clients 7,000 Class

15:34:42 5 Actions"? That is your footer.

15:34:43 6 MR. BAKER: That's our footer.

15:34:46 7 BY MR. NIELD:

15:34:46 8 Q. All right. Well, regardless, I don't know

15:34:48 9 that we are going to go too far if you didn't have

15:34:52 10 anything to do with preparing this document. Is

15:34:55 11 that correct, sir?

15:34:55 12 A. Correct, I did not.

15:34:56 13 Q. And the information on this document, does

15:34:57 14 it look familiar to you?

15:34:58 15 A. Yes.

15:35:00 16 Q. The information concerning the suppliers,

15:35:03 17 they look familiar to you?

15:35:04 18 A. Yes, sir.

15:35:10 19 Q. All right. Well --

15:35:12 20 MS. CAVERLY: And, actually, I will note

15:35:14 21 for the record I'm not sure why when it printed out

15:35:17 22 the footer is not correct on the first page, but

15:35:19 23 this is an "Attorney Eyes Only" document.

15:35:21 24 MR. NIELD: You know, and since the witness

15:35:23 25 really doesn't have a lot of familiarity with it,

15:35:26 1 I'm just going to withdraw that as an exhibit and we  
15:35:29 2 won't make it that way and we won't have to worry  
15:35:32 3 about all the confidentiality issues.

15:35:34 4 MS. CAVERLY: Thank you.

15:35:34 5 MR. NIELD: You better give me your copy  
15:35:37 6 back because it's confidential.

15:35:39 7 MS. CAVERLY: You can have it because it's  
15:35:40 8 not the original document, so -- I am one of the  
15:35:43 9 attorneys, so I got to see it.

15:35:45 10 MR. NIELD: I'm just teasing you, as you  
15:35:46 11 know.

15:35:49 12 BY MR. NIELD:

15:35:49 13 Q. You talk about one of the ingredients. One  
15:35:53 14 of the ingredients in several of the products that  
15:35:56 15 we've been discussing today are potatoes, correct?

15:35:58 16 A. Yes, sir.

15:36:02 17 Q. Are you aware that there's been at least  
15:36:07 18 allegations of some issues relating to green  
15:36:12 19 potatoes being utilized in some of the products that  
15:36:15 20 we've discussed today?

15:36:17 21 A. I'm aware of allegations relative to  
15:36:20 22 potatoes, yes, sir.

15:36:21 23 Q. Okay. You are not involved in the  
15:36:30 24 procurement of the potatoes that are utilized in any  
15:36:33 25 of the products we've been discussing here today?

15:36:35 1 A. That's correct.

15:36:38 2 Q. This, again, would go back to the  
15:36:40 3 management team of Natura Manufacturing, Inc.; is  
15:36:45 4 that correct?

15:36:46 5 A. Yes, sir.

15:36:47 6 Q. Have you had any discussions with the  
15:36:49 7 management team of Natura Manufacturing, Inc.,  
15:36:52 8 concerning allegations relating to the use of green  
15:36:59 9 potatoes in some of the Natura pet food products --

15:37:04 10 A. Yes.

15:37:05 11 Q. -- we've been discussing today?

15:37:07 12 A. Yes.

15:37:07 13 Q. What were the nature of those  
15:37:10 14 conversations?

15:37:10 15 A. Just relative to the nature of the  
15:37:12 16 allegations, our concern over the potential validity  
15:37:16 17 of the allegations and discussion about our course  
15:37:23 18 of action in the future.

15:37:28 19 Q. What discussions did you have concerning  
15:37:30 20 the validity of the allegations?

15:37:33 21 A. Again, when the allegations were brought to  
15:37:36 22 our attention we took it upon ourselves to test our  
15:37:39 23 products and our materials for the green potato  
15:37:46 24 chemical and found that they were not included --  
15:37:55 25 they are not contained in the ingredients that we

15:37:57 1 were using at the time.

15:38:01 2 Q. You received information relating to the  
15:38:03 3 testing of your products that showed the use of --  
15:38:16 4 strike that -- the existence of a byproduct from  
15:38:19 5 potatoes, correct?

15:38:21 6 A. We were made aware of an alleged test that  
15:38:23 7 was made supposedly on our products that showed  
15:38:29 8 that. But, again, we were not able to validate that  
15:38:32 9 based on our own testing.

15:38:34 10 Q. And you say an alleged test. Do you have  
15:38:37 11 some reason to believe that that test wasn't -- was  
15:38:41 12 not undertaken?

15:38:43 13 A. Correct. Again, we have no idea who the  
15:38:46 14 person is, whether that person bought our products,  
15:38:49 15 whether the product was adulterated in any way  
15:38:52 16 before it was sent off for testing. We have no  
15:38:56 17 chain of custody. We, again, have no -- no real  
15:38:59 18 high comfort level that the test was valid or even  
15:39:02 19 done correctly.

15:39:03 20 Q. Did you personally see any results of  
15:39:09 21 testing undertaken by -- it's the New York  
15:39:12 22 Agricultural Department?

15:39:13 23 A. Yes.

15:39:16 24 Q. And you saw that the testing they undertook  
15:39:19 25 indicated that there was some toxins associated with

15:39:23 1 green potatoes in the sample that they tested?

15:39:27 2 A. Correct, yes.

15:39:32 3 Q. But because of the reasons you just stated,  
15:39:35 4 chain of custody, potential tampering, those kinds  
15:39:42 5 of things, you don't know whether that test is  
15:39:44 6 valid?

15:39:45 7 A. Yes.

15:40:42 8 (Discussion off the record.)

15:41:34 9 MR. NIELD: This information, these  
15:41:36 10 documents, came out of the production that we  
15:41:38 11 recently received from Natura. I'll mark them as an  
15:41:45 12 exhibit as a group, but they are Bates-stamped DEF  
15:41:50 13 001143, DEF 001144, DEF 001145, DEF 001146 and DEF  
15:42:02 14 001147. And I'll mark this as a group as Exhibit 6.

15 15 (WHEREUPON, DEPOSITION EXHIBIT 6 WAS MARKED  
16 16 FOR IDENTIFICATION.)

15:42:10 17 BY MR. NIELD:

15:42:11 18 Q. Can you take a look at this, please, and  
15:42:14 19 let me know if you've seen these before.

15:42:51 20 A. Yes.

15:42:52 21 Q. You have seen those before?

15:42:55 22 A. Yes. Yes, sir.

15:42:56 23 Q. Those are test results that I think were  
15:42:59 24 provided to you by a Ms. Thomas; is that correct?

15:43:01 25 A. Yes.

15:43:05 1 Q. All right. Have you discussed those  
15:43:07 2 results with anyone else within Natura Pet Products?  
15:43:12 3 A. Yes. Within Natura Pet Products? Yes.  
15:43:16 4 Q. Who have you discussed it with?  
15:43:18 5 A. With the owner, John Rademakers.  
15:43:20 6 Q. Anyone else?  
15:43:22 7 A. Not within Natura Pet Products, no.  
15:43:26 9 A. Oh, I take that back. With Dr. Sean  
15:43:27 10 Delaney.  
15:43:29 11 Q. Who is Dr. Sean Delaney?  
15:43:32 12 A. He is our vice president and chief medical  
15:43:35 13 officer and director of special projects. That's  
15:43:38 14 his title.  
15:43:44 15 Q. All right. And what were the nature of  
15:43:46 16 your discussions with Dr. Delaney?  
15:43:48 17 A. Again sharing the information, learning  
15:43:50 18 more about what these chemicals or results mean and  
15:43:58 19 to engage him in the work of doing the testing with  
15:44:03 20 our manufacturing partner to determine  
15:44:07 21 manufacturing.  
15:44:08 22 Q. Now, those tests results -- strike that.  
15:44:10 23 Did he explain -- well, strike that.  
15:44:14 24 In just looking at those results yourself,  
15:44:17 25 did you have an understanding of what they showed?



15:44:19 1 A. I was -- at the time I looked at them I was  
15:44:22 2 familiar with the components, but I'm far from being  
15:44:26 3 an expert so I needed some additional information to  
15:44:28 4 make it more understandable and clear.

15:44:30 5 Q. And did you discuss those results with  
15:44:33 6 Dr. Delaney?

15:44:34 7 A. Yes, sir.

15:44:35 8 Q. And did he help you understand them more  
15:44:38 9 clearly?

15:44:38 10 A. Yes.

15:44:39 11 Q. And what do you understand those results  
15:44:41 12 show?

15:44:43 13 A. Again, the discussion had to do with the  
15:44:46 14 chemicals that are identified in these -- these  
15:44:49 15 alleged results and what they are about, their  
15:44:56 16 toxicity levels, the kind of data that's out there  
15:44:59 17 in dogs and cats relative to these chemicals and,  
15:45:04 18 again, the possibility of them being in our products  
15:45:07 19 and the ingredients that we use.

15:45:10 20 Q. All right. And don't they show that there  
15:45:13 21 are some toxins in the products -- the product  
15:45:18 22 that's being tested?

15:45:19 23 MS. CAVERLY: Objection. The documents  
15:45:23 24 speak for themselves.

15:45:23 25 BY MR. NIELD:

15:45:23 1 Q. You can -- you can respond.

15:45:24 2 A. Again, part of the concern is that there's  
15:45:28 3 no way to -- to truly know that the products listed  
15:45:31 4 on this document were actually the products tested.  
15:45:35 5 They show up at the lab in a baggie with a little  
15:45:39 6 note written this is this product. Then that's what  
15:45:41 7 goes on this report. Again, there's no validation  
15:45:44 8 that it was our product ever in that baggie or was  
15:45:47 9 ever purchased by this person. So, again, I've got  
15:45:50 10 serious doubts about the validity of these reports.

15:45:54 11 Q. All right. Well, something was tested,  
15:45:56 12 correct?

15:45:56 13 A. Ostensibly, yes. There's a -- there's a  
15:45:59 14 report here that says it was, yes.

15:46:01 15 Q. Something was tested and whether or not it  
15:46:03 16 was your product the test was performed and results  
15:46:09 17 were achieved, correct?

15:46:10 18 A. Yes.

15:46:11 19 MS. CAVERLY: Objection. Assumes facts not  
15:46:12 20 in evidence. You have no idea if there was ever a  
15:46:15 21 test done or not.

15:46:16 22 MR. NIELD: Well, I --

15:46:17 23 MS. CAVERLY: The document is what the  
15:46:19 24 document is. We really don't know what that  
15:46:21 25 document is yet.

15:46:24 1 MR. NIELD: Well, I do, but we'll move on.

2 BY MR. NIELD:

15:46:29 3 Q. Assuming --

15:46:30 4 MS. CAVERLY: Perhaps when we can depose

15:46:33 5 Ms. Thomas we will, too.

15:46:35 6 MR. NIELD: We will.

15:46:35 7 BY MR. NIELD:

15:46:35 8 Q. Assuming for the purposes of that question

15:46:38 9 that the document is a test of some pet food,

15:46:41 10 whether or not that's a Natura product or not, a

15:46:44 11 test of some test -- pet food undertaken by that

15:46:48 12 entity, it does show the existence of potential

15:46:52 13 contaminants, does it not?

15:46:53 14 A. Yes.

15:46:54 15 Q. And contaminants that may have resulted

15:46:58 16 from the use of green potatoes; is that correct?

15:47:01 17 A. Not necessarily. If you go to DEF 001146,

15:47:09 18 California Natural, that product does not use

15:47:11 19 potatoes and yet it showed up a small trace of both

15:47:14 20 of those chemicals. So you tell me how a product

15:47:17 21 that didn't use potatoes had a positive reading.

15:47:21 22 Q. Unfortunately I'm not the one being

15:47:25 23 deposed, so --

15:47:26 24 A. Sure. Understood.

15:47:26 25 MS. CAVERLY: But that's his answer, is

15:47:28 1 that, no, he can't conclude that.

15:47:37 2 BY MR. NIELD:

15:47:37 3 Q. May I have those back, please?

15:47:39 4 A. Uh-huh.

15:48:12 5 Q. This document, and I know you dispute this

15:48:18 6 or at least question it, indicates that the product

15:48:21 7 being tested was "Innova" and then it says "EVO no

15:48:29 8 grain baked treats for dogs," correct?

15:48:31 9 A. Yes, I don't see it, but that's the one I

15:48:33 10 recall, yes.

15:48:34 11 Q. All right. One of the things it says was

15:48:37 12 in this sample, and I know you have some issues

15:48:42 13 about the genuineness of the sample, is that it

15:48:45 14 contained feather fragments. Correct?

15:48:48 15 MS. CAVERLY: If you are going to ask him

15:48:49 16 about the document, I realize you only have one

15:48:52 17 copy, but maybe you can come around this side of the

15:48:55 18 table so you can both look at it. If you are just

15:48:58 19 reading the document, then the document speaks for

15:49:01 20 itself.

15:49:02 21 MR. NIELD: I understand.

15:49:03 22 THE WITNESS: According to this report is

15:49:04 23 says "Under microscopic examination, feather

15:49:08 24 fragments were found in the product, as per

15:49:11 25 complaint."

15:49:11 1 BY MR. NIELD:

15:49:14 2 Q. Is that a product -- the EVO No Grain Baked  
15:49:18 3 Treats For Dogs, that's a Natura pet food product,  
15:49:24 4 correct?

15:49:24 5 A. It's one of our brands, yes.

15:49:27 6 Q. Does that contain any chicken meal?

15:49:28 7 A. Yes.

15:49:35 8 Q. Do you know where the chicken meal that --  
15:49:39 9 that ingredient, where that came from?

15:49:40 10 A. No.

15:49:41 11 Q. Strike that. Strike that. That's not a  
15:49:43 12 good question.

15:49:44 13 Does Natura Manufacturing, Inc., utilize --  
15:49:48 14 if you know, utilize different suppliers for chicken  
15:49:51 15 meal?

15:49:54 16 A. It's my understanding they do, yes.

15:49:58 17 Q. Do you have an understanding of whether  
15:49:59 18 that chicken meal is tested by Natura Manufacturing,  
15:50:02 19 Inc. -- by Natura Manufacturing, Inc., prior to it  
15:50:09 20 being utilized in Natura pet food products?

15:50:12 21 A. Yes, again, all ingredients are tested at  
15:50:15 22 some level, yes.

15:50:16 23 Q. And I'm saying before it is used in a  
15:50:18 24 Natura pet food product.

15:50:19 25 A. Yes.

15:50:20 1 Q. What is the process utilized to test  
15:50:22 2 chicken meal from whatever approved supplier is  
15:50:26 3 providing it? If you know and you may not.

15:50:28 4 A. Again, I have general knowledge of some of  
15:50:30 5 the tests, but I don't have a comprehensive  
15:50:33 6 knowledge of all the tests.

15:50:34 7 Q. How do you know that chicken meal is tested  
15:50:39 8 when it is received by Natura Manufacturing, Inc.,  
15:50:42 9 prior to the time it is utilized in a Natura pet  
15:50:47 10 food product?

15:50:48 11 A. As with all of our ingredients it has to  
15:50:51 12 meet certain nutrient specifications. It has to be  
15:50:55 13 free of certain contaminants and it has to be also  
15:50:59 14 not rancid. So it's tested for that as well. So,  
15:51:02 15 again, there's certain macro tests that are done on  
15:51:05 16 all ingredients before, again, it's even released  
15:51:09 17 out of the truck, much less brought into the plant.

15:51:15 18 Q. Is there a test that you are aware of  
15:51:18 19 that's undertaken by Natura Manufacturing, Inc.,  
15:51:21 20 that could discover the existence of feather  
15:51:24 21 fragments?

15:51:25 22 A. No, there's no microscopic tests that are  
15:51:36 23 performed on chicken meal received at Natura  
15:51:39 24 Manufacturing.

25 (WHEREUPON, DEPOSITION EXHIBIT 7 WAS MARKED

1 FOR IDENTIFICATION.)

2 BY MR. NIELD:

15:53:07 3 Q. Let me show you this letter. It's to  
15:53:10 4 Yvonne Thomas from the State of New York, Department  
15:53:14 5 of Agricultural and Markets, dated October 9, 2007.

15:53:18 6 Have you seen this before?

15:53:33 7 A. Yes.

15:53:44 8 Q. Can I see it back?

15:54:08 9 I guess it's fair to say that you would  
15:54:11 10 disagree with the findings set out in that letter  
15:54:14 11 given your concern and uncertainty about the sample  
15:54:18 12 actually submitted for evaluation?

15:54:20 13 MS. CAVERLY: Objection. Incomplete  
15:54:22 14 hypothetical and argumentative.

15:54:25 15 You can still answer if you know.

15:54:27 16 THE WITNESS: Again, this is a letter  
15:54:29 17 between the State of New York and this Yvonne Thomas  
15:54:32 18 who I've never had any direct relation with so I  
15:54:35 19 really have no opinion.

15:54:39 20 Again, I -- based on earlier testimony,  
15:54:42 21 it's again very, very dubious in my opinion that  
15:54:45 22 these tests were real.

23 BY MR. NIELD:

15:54:47 24 Q. Okay. And I guess that's what I'm trying  
15:54:50 25 to get to. Do you think the State of New York is

15:54:53 1 making up the fact that it tested something --

15:54:55 2 A. No.

15:54:56 3 Q. -- or does your uncertainty lie in what

15:55:00 4 actually was being tested?

15:55:01 5 A. Exactly.

15:55:02 6 Q. It's the latter?

15:55:03 7 A. The latter, yes, exactly what was being

15:55:05 8 tested.

15:55:06 9 Q. You don't question that they tested

15:55:08 10 something?

15:55:09 11 A. No, I have no reason to, no.

15:55:24 12 Q. You know, here is something else that

15:55:27 13 was -- I'm done with that.

15:55:35 14 And I'm going to ask you what these are. A

15:55:37 15 whole series of these were produced in the document

15:55:40 16 production from Natura. I'm not sure if they came

15:55:43 17 from the Web site. Perhaps they did.

15:55:45 18 Can you tell me what these are?

15:56:03 19 A. That one is a little out of context. I'm

15:56:06 20 not sure where that --

15:56:07 21 Q. Yeah, that one may not be -- that may not

15:56:11 22 have a -- perhaps shouldn't be included with the

15:56:13 23 rest.

15:56:13 24 A. There's another one there. There's a

15:56:16 25 couple of extra ones here that I'm not sure what or



15:56:20 1 where they are from.

15:56:21 2 But these other sheets are field-generated  
15:56:28 3 product comparison charts.

15:56:31 4 Q. And when you say "field-generated product  
15:56:33 5 comparison charts," what are you referring to?

15:56:35 6 A. They were created by one of our sales reps  
15:56:38 7 to aid in his efforts in the field.

15:56:40 8 Q. Did you have any involvement in the  
15:56:42 9 preparation of those documents?

15:56:44 10 A. We were just made aware of them, but, no,  
15:56:46 11 we didn't -- we weren't involved in the preparation  
15:56:49 12 of them.

15:56:49 13 Q. Did you provide any approvals to the sales  
15:56:52 14 rep for -- to prepare those documents?

15:56:54 15 A. Not formal approvals, no.

15:56:57 16 Q. Do you recall any discussions with the  
15:56:59 17 sales rep concerning those documents?

15:57:00 18 A. Only -- only received a copy of it when it  
15:57:02 19 was produced and shared.

15:57:06 20 Q. These -- this is a sales rep that is  
15:57:09 21 employed by Natura Pet Products?

15:57:11 22 A. Correct, yes.

15:57:13 23 Q. Do -- what's the name of that sales rep?

15:57:16 24 A. I believe it's our Southern California  
15:57:19 25 sales rep, Eric Akaba, A-k-a-b-a.

15:57:28 1 Q. Is it your understanding that he is  
15:57:30 2 utilizing that material in the marketing of Natura  
15:57:33 3 Pet Products products?

15:57:36 4 A. Yes.

15:57:39 5 Q. And that's with your approval?

15:57:42 6 A. Yes. Again, it wasn't a formal approval,  
15:57:47 7 but -- but yes.

15:57:48 8 Q. Do any other sales reps of Natura Pet  
15:57:52 9 Products utilize those -- that documentation?

15:57:54 10 A. I know it's been shared with the other  
15:57:56 11 reps. Whether -- whether they use it and to the  
15:58:00 12 extent that they do use it I'm not 100 percent sure  
15:58:03 13 of.

15:58:04 14 Q. Let me see.

15:58:09 15 MS. CAVERLY: Are you going to mark that as  
15:58:11 16 an exhibit?

15:58:13 17 MR. NIELD: I don't know. Is it  
15:58:15 18 confidential?

15:58:16 19 MS. CAVERLY: No.

15:58:17 20 MR. NIELD: I didn't think so. I did show  
15:58:20 21 it to him and I think it's fair to mark it, although  
15:58:25 22 I was more curious than anything else.

15:58:46 23 BY MR. NIELD:

15:58:46 24 Q. These apparently are comparisons of certain  
15:58:51 25 Natura Pet Products products with other

15:58:56 1 manufacturers' products, correct?

15:58:57 2 A. Yes, sir.

15:59:01 3 Q. And each sheet appears to apply to a

15:59:04 4 different Natura product --

15:59:05 5 A. Yes.

15:59:05 6 Q. -- versus a similar competitor's product,

15:59:08 7 correct?

15:59:09 8 A. That's correct, yes.

15:59:21 9 Q. Is it your understanding that this

15:59:22 10 documentation is shared with wholesalers of Natura

15:59:29 11 Products?

15:59:31 12 A. I don't know that to be 100 percent fact,

15:59:34 13 but it is definitely within the realm of

15:59:36 14 possibility, sure.

15:59:37 15 Q. And that would be acceptable to Natura?

15:59:39 16 A. Yes.

15:59:42 17 Q. And the same question as it relates to

15:59:44 18 retailers, is it your understanding that this

15:59:47 19 documentation is shared with retailers?

15:59:48 20 A. Again, I don't have direct knowledge that

15:59:51 21 it was, but I would expect that it has been, yes.

15:59:56 22 MR. NIELD: I think I found another

16:00:00 23 unrelated document.

16:00:02 24 I will mark these as 8, Exhibit 8 to your

16:00:07 25 deposition. There are seven pages of this document

16:00:23 1 and I'm going to just categorize them as Natura pet  
16:00:28 2 product comparisons with other products manufactured  
16:00:32 3 by competitors. They are Bates Stamp Numbers  
16:00:37 4 000132, 000128, 000129, 000131, 000133, 000134 and  
16:00:55 5 000135.

6 (WHEREUPON, DEPOSITION EXHIBIT 8 WAS MARKED  
7 FOR IDENTIFICATION.)

16:01:31 8 BY MR. NIELD:

16:01:31 9 Q. Switching gears a little bit, are you aware  
16:01:39 10 of any changes in the labeling of the products we've  
16:01:42 11 been discussing here today between November of 2003  
16:01:48 12 and November of 2007?

16:01:52 13 A. Aware of any changes in the labeling.

16:01:55 14 Q. I can go through the products if you'd  
16:01:57 15 rather me do that.

16:01:58 16 A. I'm just trying to think.

16:02:08 17 Q. Maybe we should do that because I don't  
16:02:10 18 want you --

19 A. Yeah.

16:02:11 20 Q. -- to mix them all together.

16:02:13 21 Let's start with the Innova Senior Dry Dog  
16:02:16 22 Food. Are you aware of any changes in the  
16:02:22 23 labeling -- well, let me back up.

16:02:25 24 Was Innova Senior Dry Food -- Dog Food, was  
16:02:28 25 that a product in existence in November of 2003?

16:02:31 1 A. Yes.

16:02:31 2 Q. And it still exists today?

16:02:34 3 A. Correct.

16:02:34 4 Q. Has there been any changes in the

16:02:37 5 formulation of that dog food over that time period,

16:02:41 6 two thousand -- November 2003 until now?

16:02:47 7 A. Innova Senior Adult -- Innova Senior Dog

16:02:50 8 Food. I believe there was a change that was

16:02:52 9 actually 2004 where we introduced the -- boy, I

16:02:57 10 would have to look. They all kind of run together.

16:02:58 11 But I think we changed it, just a slight formulation

16:03:02 12 change to include pea fiber, I believe was the

16:03:06 13 change.

16:03:08 14 Q. Do you recall whether the labeling was

16:03:10 15 changed to reflect that?

16:03:12 16 A. Again, if that was the timing in the case,

16:03:14 17 then it would have changed -- would have changed the

16:03:16 18 labeling, yes.

16:03:17 19 Q. But that would have been the only change?

16:03:19 20 A. Correct, to my recollection, yes.

16:03:22 21 Q. So with the exception of that change, all

16:03:24 22 of the other information on the labeling of Innova

16:03:28 23 Senior Dry Dog Food from the period of November of

16:03:32 24 2003 until today would have remained the same?

16:03:35 25 A. Correct, that's my -- to my recollection,

16:03:37 1 yes.

16:03:41 2 Q. And that labeling was used on that  
16:03:44 3 particular product no matter where in the United  
16:03:47 4 States it was sold, correct?

16:03:48 5 A. That is correct.

16:03:48 6 Q. The labeling didn't change by region or  
16:03:51 7 state?

16:03:52 8 A. Correct.

16:03:52 9 Q. Let's talk about California Natural Chicken  
16:03:56 10 and Brown Rice. That product was in existence in  
16:04:02 11 November of 2003?

16:04:02 12 A. Yes.

16:04:03 13 Q. Has there been any changes in the recipe or  
16:04:05 14 formulation of that product from November of 2003  
16:04:09 15 until today?

16:04:09 16 A. No.

16:04:14 17 Q. Would that mean then that the labeling of  
16:04:17 18 that product as far as ingredients and nutritional  
16:04:21 19 information remained the same from November of 2003  
16:04:26 20 until today?

16:04:28 21 A. The formula didn't change, but we did a  
16:04:30 22 package redesign, and that would have occurred in  
16:04:34 23 '06, summer of '06. So the actual label information  
16:04:41 24 would more or less be the same, but -- well, put it  
16:04:44 25 this way. The ingredient -- the formula didn't

16:04:46 1 change, the ingredient and guaranteed analysis deck  
16:04:51 2 didn't change. The packaging did change and -- but  
16:04:54 3 I couldn't as I sit here tell you exactly what  
16:04:56 4 changed on the packaging, but it's a new design, new  
16:04:59 5 graphics, et cetera.

16:05:00 6 Q. The packaging changed, the presentation  
16:05:03 7 changed, but the information remained the same?

16:05:05 8 A. Yes, sir. Very simple way --

9 Q. Nutritional and ingredient information  
10 remained the same?

16:05:07 11 A. The product in the bag is the same, yes.

16:05:10 12 Q. And that same information on that label,  
16:05:13 13 whether other aspects of the label changed, that  
16:05:15 14 same information was used on that label for that  
16:05:18 15 product no matter where it was sold in the United  
16:05:20 16 States?

16:05:20 17 A. Yes.

16:05:22 18 Q. And that information remained the same over  
16:05:24 19 that period of time no matter where it was sold --

16:05:26 20 A. Yes.

16:05:27 21 Q. -- in the United States?

16:05:28 22 As it relates to the California Natural  
16:05:30 23 Lamb Meal and Rice, was there any changes in the  
16:05:35 24 recipe or formulation of that product from November  
16:05:39 25 of 2003 until the present?

16:05:40 1 A. No.

16:05:44 2 Q. Now, that may have also undergone some  
16:05:46 3 packaging redesign over that period of time?

16:05:48 4 A. It did. It's part of the whole California  
16:05:52 5 Natural refresh, correct.

16:05:55 6 Q. But as was the case with the last product,  
16:05:58 7 the nutritional information and information  
16:06:00 8 concerning the ingredients did not change over that  
16:06:05 9 period of time?

16:06:05 10 A. That is correct.

16:06:06 11 Q. That information on the label would have  
16:06:07 12 remained the same from 2003 until today?

16:06:11 13 A. Yes.

16:06:11 14 Q. And that information would have -- no  
16:06:14 15 matter whether there was a change in packaging, that  
16:06:16 16 information would have been on whatever packaging  
16:06:18 17 was utilized no matter where that product was sold  
16:06:21 18 in the United States over that period of time,  
16:06:23 19 correct?

16:06:23 20 A. That's correct.

16:06:26 21 Q. The same question as it relates to the  
16:06:29 22 California Natural Salmon and Sweet Potato product.  
16:06:34 23 Was that in existence in November of 2003?

16:06:36 24 A. I think we addressed that earlier and I  
16:06:39 25 think it wasn't introduced until '05 or -- yeah,



16:06:43 1 '05. Again, I have to go back and look, but in that  
16:06:46 2 ball park. So would have been there for the last  
16:06:49 3 couple of years, but I think it was '05 -- '04, '05  
16:06:52 4 that it was introduced.

16:06:53 5 Q. Okay. Are you aware of any redesign of the  
16:06:56 6 packaging for that product from the time it was  
16:06:59 7 introduced until today?

16:07:00 8 A. No.

16:07:00 9 Q. Was there any changes in the recipe or  
16:07:02 10 formulation of that product from the time it was  
16:07:05 11 introduced until today?

16:07:06 12 A. No.

16:07:08 13 Q. So the information on the labeling  
16:07:10 14 concerning ingredients and nutritional analysis  
16:07:14 15 would have remained the same over that period of  
16:07:16 16 time?

16:07:16 17 A. Yes.

16:07:18 18 Q. And that information on that packaging was  
16:07:21 19 the same no matter where that product was sold in  
16:07:23 20 the United States over that period of time?

16:07:25 21 A. Yes.

16:07:30 22 Q. The Innova Dry -- did I talk about the  
16:07:32 23 Innova Senior Dry Dog Food? It's getting late. I  
16:07:37 24 did.

16:07:39 25 A. That was the first one, yeah.

16:07:40 1 Q. All right. Well, we'll skip that then.  
2 Mother Nature - Beef Stew Recipe Dog  
16:07:43 3 Biscuits, that is the product -- strike that.  
16:07:44 4 Was that product in existence in November  
16:07:45 5 of 2003?  
16:07:46 6 A. No. Again, I think that was introduced in  
16:07:50 7 '05. It was later than '03.  
16:07:54 8 Q. I think you indicated that this product was  
16:07:56 9 not manufactured by Natura Manufacturing, Inc. Is  
16:07:59 10 that correct?  
16:07:59 11 A. That is correct, yes.  
16:08:01 12 Q. Who manufactures the Mother Nature - Beef  
16:08:05 13 Stew Recipe Dog Biscuits?  
16:08:08 14 A. The actual official company name is Sturdy  
16:08:12 15 Acquisition Corp., S-t-u-r-d-y.  
16:08:21 16 Q. Interesting name for a pet food  
16:08:23 17 manufacturer.  
16:08:24 18 Where are they located?  
16:08:26 19 A. San Leandro, California.  
16:08:29 20 Q. And is that product manufactured pursuant  
16:08:32 21 to an agreement that Natura Pet Products has with  
16:08:37 22 them?  
16:08:37 23 A. Yes.  
16:08:39 24 Q. Is that agreement the same as the agreement  
16:08:42 25 that Natura has with Natura Manufacturing, Inc.?

16:08:46 1 A. No.

16:08:51 2 Q. In what ways does it differ?

16:08:54 3 A. There's actually not a written agreement in  
16:08:56 4 place between Sturdy and Natura Pet Products.

16:09:00 5 Q. It's just an oral agreement?

16:09:02 6 A. Yes.

16:09:10 7 Q. Does Natura Pet Products provide Sturdy --  
16:09:14 8 we'll call them Sturdy. Is that okay?

16:09:17 9 A. Sure.

16:09:17 10 Q. -- Sturdy with the recipe information,  
16:09:25 11 formulation information it needs to produce that  
16:09:28 12 product?

16:09:28 13 A. Yes.

16:09:28 14 Q. Does it provide it with the manufacture --  
16:09:32 15 information concerning the manufacturing processes  
16:09:35 16 required to make that product?

16:09:39 17 A. I guess I don't understand the question.  
16:09:40 18 They are a bakery, so there's not much more  
16:09:45 19 instruction we can give them as far as that.

16:09:46 20 Q. So you tell them what the ingredients are  
16:09:49 21 and what the portions are of the ingredients and  
16:09:53 22 they go ahead and produce the agreement based upon  
16:09:57 23 their own processes?

16:10:00 24 A. I guess to short-circuit the discussion the  
16:10:03 25 Sturdy Pet Products is also an affiliated company of

16:10:08 1 Natura Pet Products. And actually they work in very  
16:10:11 2 close conjunction with Natura Manufacturing in terms  
16:10:14 3 of ingredients, suppliers and manufacturing  
16:10:15 4 protocols and those kind of things, so they go hand  
16:10:18 5 in hand.

16:10:20 6 Q. So Sturdy -- strike that.

16:10:23 7 So Natura Manufacturing, Inc., has or  
16:10:29 8 participates with Sturdy in the manufacture of that  
16:10:32 9 particular product?

16:10:32 10 A. Correct, yes.

16:10:34 11 Q. You mean there's communications between the  
16:10:35 12 two of them on the how-tos and what goes into it and  
16:10:40 13 that kind of thing?

16:10:41 14 A. Yes.

16:10:43 15 Q. They utilize the same approved supplier  
16:10:45 16 list?

16:10:48 17 A. Yes.

16:10:50 18 Q. Is Sturdy allowed to approve its own  
16:10:54 19 suppliers for the list?

16:10:55 20 A. No.

16:10:58 21 Q. So all of the suppliers are approved by  
16:11:02 22 Natura Manufacturing, Inc.?

16:11:02 23 A. Yes.

16:11:12 24 Q. Is Natura Pet Food -- excuse me, Natura Pet  
16:11:21 25 Products involved in any oversight of the

16:11:25 1 manufacture of the Beef Stew Biscuit product by

16:11:28 2 Sturdy?

16:11:28 3 A. No.

16:11:32 4 Q. Does Natura Pet Products do any inspections

16:11:36 5 of the processes utilized by Sturdy in producing

16:11:41 6 that product?

16:11:42 7 A. Again, it's part and parcel of Natura

16:11:46 8 Manufacturing. From Natura Pet Products' eyes they

16:11:52 9 are kind of one and the same. Sturdy Pet Products

16:11:55 10 basically works under the management and direction

16:11:58 11 and under the same protocols and quality management

16:12:00 12 programs as Natura Manufacturing.

16:12:03 13 Q. Is this by the direction of Natura Pet

16:12:07 14 Products? You require them to work under the same

16:12:13 15 protocols?

16:12:13 16 A. Yes. Again, they are an affiliated company

16:12:16 17 so share again similar ownership and part of the

16:12:22 18 family, I guess, so yes.

16:12:27 19 Q. Sturdy Acquisition Corp. is affiliated with

16:12:30 20 Natura Manufacturing, Inc.?

16:12:31 21 A. With Natura -- with all three companies,

16:12:33 22 yes. They are all three separate companies but

16:12:36 23 under similar ownership.

16:12:40 24 Q. Do you have an ownership interest in Sturdy

16:12:43 25 Acquisition Corp.?

16:12:43 1 A. Yes, sir.

16:12:45 2 Q. Do the other shareholders of Natura Pet

16:12:47 3 Products have an ownership interest in Sturdy

16:12:53 4 Acquisition Corp.?

16:12:53 5 A. Yes.

16:12:55 6 Q. Besides the ownership interests held by

16:13:00 7 those individuals that also have ownership interests

16:13:03 8 in Natura Pet Products, is there anyone else that

16:13:06 9 has an ownership interest in Sturdy Acquisition

16:13:07 10 Corp.?

16:13:09 11 A. No.

16:13:35 12 Q. Of the products that we've been discussing

16:13:37 13 here today, which one is the biggest seller? And

16:13:42 14 let me qualify that, if you can, during the period

16:13:46 15 of November 2003 to November 2007?

16:13:49 16 A. The -- of the list that we've been

16:13:53 17 referring to today, the Innova Adult Dog Food is the

16:13:56 18 biggest seller.

16:13:58 19 Q. Would that be the Innova Senior Dry Dog

16:14:00 20 Food?

16:14:02 21 A. No. It's listed as Innova Original Adult

16:14:08 22 Dog Food, or whatever it is.

16:14:09 23 Q. Innova Dry Dog Food?

16:14:11 24 A. Correct.

16:14:59 25 Q. Is there anyone with Innova Pet Products --

16:15:07 1 MS. CAVERLY: Natura.

16:15:09 2 BY MR. NIELD:

16:15:09 3 Q. -- Natura Pet Products that is responsible

16:15:21 4 for providing any warnings that may be appropriate

16:15:25 5 as it relates to the consumption of Natura Pet

16:15:27 6 Products by the consumers, the pets of the

16:15:31 7 consumers?

16:15:33 8 A. No.

16:15:37 9 Q. Is there anyone at Natura Pet Products

16:15:39 10 that's responsible for taking complaints from

16:15:45 11 consumers about Natura Pet Products products?

16:15:49 12 A. Yes.

16:15:50 13 Q. Who is that?

16:15:52 14 A. It's a multitiered system. We have a

16:15:59 15 customer service department. And this again is

16:16:01 16 within the context of the time frame referenced.

16:16:04 17 Q. All my questions are. Go ahead.

16:16:06 18 A. In San Jose we have a customer service

16:16:09 19 department, takes all the front end calls, whether

16:16:12 20 it's a question about the product, where to buy the

16:16:14 21 product, anything.

16:16:17 22 Any complaints are then logged and then

16:16:20 23 forwarded to our technical customer support team in

16:16:24 24 Nebraska and then they are handled from there.

16:16:30 25 Q. So Natura Manufacturing, Inc., has a

16:16:34 1 customer support team?

16:16:35 2 A. Correct. And it would only apply to the --

16:16:38 3 gosh, probably the latter half -- we are talking

16:16:43 4 November '07? Actually it probably didn't apply

16:16:47 5 during that time at all then.

16:16:49 6 No, then it all would have been handled

16:16:51 7 from start to finish in San Jose during that time

16:16:54 8 frame. Would have had involvement from the team in

16:16:58 9 Nebraska, but it would -- it would not have been

16:17:01 10 handed off for total -- total addressing the issue.

16:17:09 11 Q. Was there a particular individual that was

16:17:13 12 responsible for handling customer complaints?

16:17:15 13 A. Again, during that time it would have been

16:17:17 14 Rory Tharp, Veronica Moreno and their supervisor,

16:17:23 15 Vicki Lane. L-a-n-e. Like Lois Lane but Vicki.

16:17:31 16 Q. Was there a particular procedure in place

16:17:34 17 for handling customer complaints during the '03 to

16:17:39 18 '07 time frame?

16:17:40 19 A. Yes.

16:17:41 20 Q. Is that a written procedure?

16:17:42 21 A. Yes. I believe it is. Yeah, there's a

16:17:45 22 customer service -- I haven't looked at it in a long

16:17:48 23 time, but, yes, there is. There are written

16:17:51 24 procedures for handling complaints.

16:17:52 25 Q. Are you familiar with the procedure?



16:17:53 1 A. Yes.

16:17:54 2 Q. What is the procedure -- was the procedure  
16:17:57 3 for handling complaints from customers in the  
16:18:04 4 November '03 to November '07 time frame?

16:18:09 5 A. Basically a gathering of information,  
16:18:12 6 getting customer name, contact information,  
16:18:16 7 information about the animal, the problem, getting  
16:18:19 8 the product code date, the product information,  
16:18:22 9 getting that logged.

16:18:24 10 Asking about any kind of veterinary --  
16:18:27 11 veterinarian contact. Trying to get information  
16:18:30 12 about the veterinarian and any kind of veterinary  
16:18:33 13 reports that might be involved.

16:18:34 14 Requesting a sample of the product involved  
16:18:37 15 for us to receive and to test for whatever we need  
16:18:41 16 to test it for.

16:18:45 17 And that's pretty much it in a nutshell.

16:18:51 18 Q. Do you recall receiving or do you have  
16:18:55 19 knowledge of receiving customer complaints about any  
16:18:57 20 of the products we've been discussing here today  
16:19:00 21 during the November '03 to November '07 time frame?

16:19:03 22 A. I don't have any specific individual  
16:19:06 23 knowledge of anything associated with these  
16:19:08 24 products. But, again, I couldn't dispute that  
16:19:11 25 there -- there weren't any complaints on those

16:19:13 1 products, either, so, again I have no direct

16:19:16 2 knowledge of any individual complaint, no.

16:19:18 3 Q. When the complaints are received, they are

16:19:20 4 documented?

16:19:20 5 A. Correct, yes.

16:19:22 6 Q. Do you recall documentation of any

16:19:25 7 complaints received from November '03 to November

16:19:28 8 '07 being part of the documentation you were asked

16:19:31 9 to put together in response to the plaintiffs'

16:19:33 10 requests for documents?

16:19:36 11 A. Again, as it relates to the products that

16:19:38 12 are in question here, again, I have trouble citing

16:19:45 13 specific documents. Are there any? Yes, I'm sure

16:19:48 14 there are, but I couldn't recite them to you at this

16:19:52 15 moment, no.

16:19:53 16 Q. When you say "are there any?" we are

16:19:56 17 talking about documentation relating to complaints

16:19:58 18 about these products in the time period at issue?

16:20:01 19 A. Correct. Again, I don't see -- I see

16:20:04 20 summary data. Unless something is really extreme,

16:20:09 21 which is very, very unusual, I only see summary data

16:20:14 22 about that kind of information.

16:20:19 23 MR. NIELD: All right. We are running out

16:20:20 24 of tape. So we are going to have to take a break

16:20:24 25 for a moment while the tape is changed.

16:20:26 1 THE VIDEOGRAPHER: This marks the end of  
16:20:28 2 Media Number 3 in the deposition of Peter Atkins.  
16:20:30 3 We are off the record at 4:20 p.m.  
16:20:34 4 (Brief recess taken.)  
16:30:52 5 THE VIDEOGRAPHER: This is the beginning of  
16:31:13 6 Media Number 4 in the deposition of Peter Atkins.  
16:31:17 7 We are on the record. The time is 4:31  
16:31:19 8 p.m.  
16:31:35 9 BY MR. NIELD:  
16:31:35 10 Q. We were talking about customer complaints,  
16:31:42 11 how Innova Pet Products handled customer complaints,  
16:31:47 12 documentation relating to customer complaints.  
16:31:48 13 MS. CAVERLY: Natura Pet Products.  
16:31:50 14 MR. NIELD: I'm sorry, I keep making that  
16:31:52 15 mistake. Natura Pet Products.  
16 16 BY MR. NIELD:  
16:31:59 17 Q. Can you remember an instance between  
16:32:03 18 November of 2003 and November of 2007 where you  
16:32:14 19 received -- that Natura received a valid complaint  
16:32:19 20 concerning the quality of one of Natura Pet Products  
16:32:21 21 products?  
16:32:25 22 A. Can I recall a specific complaint? You  
16:32:41 23 know, again, I get -- I get summaries of complaint  
16:32:45 24 data which is -- again is not -- there's not very  
16:32:48 25 many. And I -- I can't off the top of my head

16:32:55 1 pinpoint and give you details of one particular  
16:32:57 2 complaint about the products in question at this  
16:32:58 3 point. Were there? I'm sure. But can I name --  
16:33:01 4 give you information about it? No.

16:33:03 5 Q. Is there somebody at Natura Pet Products  
16:33:07 6 that would have more information concerning the  
16:33:11 7 number and nature of customer complaints received by  
16:33:16 8 Matura -- Natura relating to the products at issue  
16:33:18 9 during the pertinent time period?

16:33:19 10 A. Yes.

16:33:20 11 Q. And who would that be?

16:33:24 12 A. For that time period in total it would be  
16:33:28 13 Vicki Lane.

16:33:34 14 Q. Okay. Has Natura Pet Products to your  
16:33:43 15 knowledge ever received any warnings or  
16:33:50 16 notifications or citations or anything along that  
16:33:54 17 line from any governmental entity concerning the  
16:34:00 18 contents of any of its products?

16:34:02 19 A. No.

16:34:03 20 Q. Has it received any of the same types of  
16:34:08 21 notices, warnings, et cetera, relating to any of the  
16:34:12 22 packaging of any of its products?

16:34:15 23 A. We have received regulatory notices, yes.

16:34:23 24 Q. With respect to which products have you --  
16:34:27 25 has Natura received regulatory notices as it relates

16:34:31 1 to packaging?

16:34:38 2 A. I -- I would have to look up which ones.

16:34:46 3 Whether they actually are involved with the products

16:34:48 4 that we are talking about today I couldn't exactly

16:34:51 5 tell you. But we have received regulatory notices

16:34:54 6 on our products in that time frame.

16:34:59 7 Q. What was the nature of the regulatory

16:35:03 8 notices you received?

16:35:03 9 A. It usually has to do with some sort of

16:35:06 10 labeling violation or interpretation of a violation.

16:35:08 11 Sometimes we've gotten notices where we've been able

16:35:11 12 to successfully argue or explain what we are doing

16:35:15 13 to the satisfaction of the regulator. In other

16:35:17 14 cases we just make the change.

16:35:26 15 Again, I'm trying to remember the product,

16:35:28 16 but, again, there's one that was -- actually that

16:35:33 17 wouldn't be in the time frame we are talking about

16:35:35 18 so, no, doesn't apply.

16:35:37 19 So, again, we've gotten some notices.

16:35:38 20 Usually we either argue successfully to do what we

16:35:42 21 wanted to do or we make a change to satisfy the

16:35:44 22 regulator.

16:35:45 23 Q. Can you remember the nature of any of the

16:35:50 24 regulatory notices that you received concerning any

16:35:54 25 of the products?

16:35:55 1           A. Well, many of them are just, you know,  
16:36:00 2 again, very trite and because we didn't get the  
16:36:05 3 proportion of a type size correct the regulator will  
16:36:10 4 say, "No, you need to make the type size bigger for  
16:36:13 5 this particular line," or, "The approved language  
16:36:15 6 for this ingredient is different."

16:36:18 7           Again I have trouble recalling a specific  
16:36:20 8 example, but it's those kind of more bureaucratic  
16:36:25 9 kind of issues.

16:36:29 10          Q. What regulatory agency would send notices  
16:36:34 11 to -- agency or agencies, plural, would send notices  
16:36:38 12 to Natura concerning the labeling of any of its  
16:36:41 13 products?

16:36:42 14          A. It would be a state department of  
16:36:43 15 agriculture.

16:36:47 16          Q. California State -- well, strike that.  
16:36:50 17 Strike that.

16:36:51 18                 "A state" meaning whichever state the issue  
16:36:55 19 arose, correct?

16:36:56 20          A. Correct, yes.

16:36:57 21          Q. Can you recall any specific states where  
16:36:59 22 these issues arose?

16:37:01 23          A. Definitely I know Texas, New Mexico,  
16:37:08 24 Kentucky. Gosh, those are the ones I know for sure.  
16:37:18 25 And I know there's been a couple of others and I

16:37:21 1 couldn't as I sit here tell you which ones they are,  
16:37:24 2 but those three I know for sure.

16:37:27 3 Q. Is there an individual within Natura Pet  
16:37:30 4 Products that is responsible for receiving and  
16:37:34 5 responding to regulatory notices?

16:37:36 6 A. Yes.

16:37:37 7 Q. Who is that?

16:37:38 8 A. Sharon -- actually, for receive it's kind  
16:37:41 9 of a process so I'll walk you through that. The  
16:37:44 10 person who receives them initially is Sharon Holden,  
16:37:47 11 H-o-l-d-e-n.

16:37:49 12 And then they are given to me for  
16:37:51 13 disposition and I review them. And during the time  
16:37:54 14 frame in question that we are talking about I would  
16:37:56 15 deal directly with Dave Dzanis who we've referenced  
16:38:01 16 before in the case to work out a resolution. And he  
16:38:07 17 actually makes the response to the individual state  
16:38:10 18 regulator.

16:38:10 19 Q. So Ms. Holden receives the notice. It is  
16:38:14 20 run by you and then transmitted to Mr. Dzanis --

16:38:20 21 A. Correct.

16:38:21 22 Q. -- for resolution?

16:38:22 23 A. Yes.

16:38:25 24 Q. Would Ms. Holden have more specific  
16:38:30 25 information concerning the regulatory notices Natura

16:38:34 1 received concerning its labeling of its products

16:38:38 2 during the pertinent time period?

16:38:39 3 A. Yes.

16:38:45 4 Q. Mr. Dzanis -- and if I'm --

16:38:47 5 A. Dzanis, yeah. It's a hard one.

16:38:50 6 Q. He is not an employee, he's a consultant of

16:38:53 7 Natura Pet Products, correct?

16:38:55 8 A. That is correct.

16:38:57 9 Q. And he would also have additional

16:39:00 10 information concerning the regulatory notices

16:39:02 11 received by Natura?

16:39:03 12 A. Yes.

16:39:12 13 Q. Okay. Other than regulatory notices

16:39:14 14 concerning packaging, labeling, are you aware of any

16:39:20 15 regulatory notices Natura Pet Products has received

16:39:23 16 concerning other issues relating to its products?

16:39:26 17 A. The only other one that comes to mind is

16:39:28 18 the one we just talked about from the State of New

16:39:30 19 York, which came back to us as an advisory notice.

16:39:42 20 Q. And when you said "the one we just talked

16:39:44 21 about" is that the one that involved Ms. Thomas?

16:39:48 22 A. Yes, sir.

16:39:55 23 Q. And the advisory notice took the form of

16:39:57 24 some sort of a correspondence, report or --

16:40:00 25 A. It was, again, copies of the reports from



16:40:04 1 the State of New York with a cover letter.

16:40:58 2 Q. As it related to that issue in the State of  
16:41:01 3 New York, there was various e-mail communications  
16:41:05 4 between you and Mr. Dzanis concerning that issue; is  
16:41:10 5 that correct?

16:41:10 6 A. Correct, yes.

16:41:15 7 Q. And I will spare you the documentation.

16:41:27 8 Mr. Dzanis -- excuse my butchering of his  
16:41:35 9 name, but Mr. Dzanis, he did ultimately respond to  
16:41:39 10 the Department of Agriculture in New York; is that  
16:41:41 11 correct?

16:41:42 12 A. Correct. Dr. Dzanis sent them a letter,  
16:41:44 13 yes.

16:42:13 14 Q. You are familiar with his response, his  
16:42:15 15 correspondence to the department?

16:42:16 16 A. Yes.

16:42:19 17 Q. And you would agree that correspondence  
16:42:21 18 does not raise -- it doesn't take the position that  
16:42:26 19 the sample was not a sample of a Natura Pet Food  
16:42:31 20 product?

16:42:31 21 A. I have not reviewed that correspondence in  
16:42:34 22 a while, but to the best of my knowledge, no, it  
16:42:38 23 doesn't reference that at all, no.

16:42:48 24 Q. All right. Other than the issue raised by  
16:42:51 25 the State of New York, are there any other

16:42:53 1 regulatory notices that Natura Pet Products has  
16:42:58 2 received for reasons other than labeling in the  
16:43:02 3 pertinent time period involved concerning the  
16:43:05 4 products at issue here?

16:43:06 5 A. No, sir, not to my knowledge.

16:43:42 6 MR. NIELD: I can't read that. That's  
7 writing.

16:43:46 8 MS. CAVERLY: You can blow it up on the  
16:43:49 9 computer. Since I gave you the electronic copy, you  
16:43:50 10 can make it as big as you want.

16:44:08 11 BY MR. NIELD:

16:44:08 12 Q. As it relates to the written agreement  
16:44:14 13 Natura has -- Natura Pet Products has with Natura  
16:44:17 14 Manufacturing, Inc. -- that is a written agreement?  
16:44:20 15 We talked about that, correct?

16:44:22 16 A. Yes.

16:44:22 17 Q. Is there anyone other than yourself that  
16:44:25 18 would be in a better position to discuss the terms  
16:44:27 19 and provisions of that agreement and the reasons for  
16:44:30 20 their inclusion in the agreement and the substance  
16:44:34 21 of the agreement?

16:44:35 22 A. No.

16:44:36 23 Q. Was that agreement negotiated between  
16:44:39 24 Natura Pet Products and Natura Manufacturing, Inc.?

16:44:43 25 A. No, not really. It was constructed by an

16:44:45 1 attorney. It's a very simple document. It's not a  
16:44:48 2 detailed type of a document that I think you may be  
16:44:52 3 thinking about.

16:44:54 4 Q. Natura Pet Products reimburses Natura  
16:44:59 5 Manufacturing, Inc., for the manufacturing services  
16:45:03 6 it provides?

16:45:04 7 A. Correct. Again, we are separate companies.  
16:45:06 8 We are actually billed by them and pay them for the  
16:45:09 9 product.

16:45:13 10 Q. They incur all of the costs of  
16:45:17 11 manufacturing and the purchasing of the ingredients  
16:45:21 12 and testing and quality control and all that good  
16:45:23 13 stuff?

16:45:23 14 A. Correct, they have their own P and L, yes.

16:45:26 15 Q. Do they do any independent marketing,  
16:45:29 16 marketing independent of Natura Pet Products?

16:45:31 17 A. They do have -- not marketing, but they do  
16:45:36 18 co-pack. They make products for other customers on  
16:45:38 19 a limited basis. But they don't do any marketing to  
16:45:42 20 support that. It's all direct.

16:45:48 21 Q. Which other companies does Natura  
16:45:51 22 Manufacturing, Inc., produce products for?

16:45:55 23 A. Like I said, it's only a handful and I --  
16:46:00 24 one is named Agritrade, A-g-r-i-t-r-a-d-e. There's  
16:46:10 25 two others that I -- as I sit here I can't tell you

16:46:13 1 the names of. Again, it's a very small part of  
16:46:16 2 their business.

16:46:16 3 Q. Are the products they manufacture for these  
16:46:19 4 other entities pet food products?

16:46:21 5 A. Yes, sir.

16:46:22 6 Q. Are they premium pet food products?

16:46:25 7 A. Yes.

16:46:27 8 Q. Are they competitor -- the entities they do  
16:46:31 9 work for, competitors of Natura?

16:46:35 10 A. No. Not directly in the markets that we  
16:46:38 11 serve, no.

16:46:40 12 Q. Does Natura Pet Products have any interest  
16:46:44 13 in the other entities that Natura Manufacturing,  
16:46:46 14 Inc., produces products for?

16:46:49 15 A. No.

16:46:55 16 Q. Would there be somebody at Natura  
16:46:57 17 Manufacturing, Inc., in a better position to provide  
16:47:01 18 information concerning the work that it performs for  
16:47:04 19 other entities other than yourself?

16:47:05 20 A. Yes.

16:47:07 21 Q. Who would be that individual?

16:47:08 22 A. Don Scott.

16:47:12 23 Q. And what is his position?

16:47:14 24 A. At the time in question -- well, now he is  
16:47:22 25 president of Natura Manufacturing.

16:47:23 1 Q. And he was in the pertinent time period?

16:47:26 2 A. He was vice president of Natura

16:47:29 3 Manufacturing and then became president at the same

16:47:32 4 time I became president of Natura Pet Products.

16:47:34 5 Q. There must have been a big party that

16:47:39 6 night.

16:47:39 7 A. The titles don't mean a whole lot at

16:47:43 8 Natura, so it was, "Congratulations, let's get back

16:47:48 9 to work," kind of a thing.

16:47:51 10 Q. Is there anyone at Natura Pet Products that

16:47:53 11 could provide more information than yourself as it

16:47:56 12 relates to Natura's -- I guess we call it a

16:48:01 13 marketing agreement with its various distributors?

16:48:04 14 Is that a fair terminology for it?

16:48:06 15 A. The only agreement we have with our

16:48:08 16 distributors is our distributor contract, or

16:48:11 17 distributor agreement I guess is its official title.

16:48:15 18 Q. All right. Then would there be anybody at

16:48:17 19 Natura Pet Products in a better position to discuss

16:48:22 20 the distributor contracts other than yourself?

16:48:24 21 A. No.

16:48:29 22 Q. If I asked you this, I apologize, but

16:48:31 23 Natura Pet Products does not place any requirements

16:48:36 24 on Natura Manufacturing, Inc., as to who it must

16:48:41 25 purchase ingredients or supplies from --

16:48:43 1 A. No.

16:48:43 2 Q. -- is that correct?

16:48:43 3 A. Not formally, no.

16:48:46 4 Q. Do they put informal requirements on Natura  
16:48:50 5 Manufacturing, Inc., as it relates to who they need  
16:48:52 6 to purchase supplies or ingredients from?

16:48:54 7 A. Again, when -- when the plant was built and  
16:48:58 8 the protocols established the rules were set and  
16:49:01 9 they follow those rules in terms of qualifying  
16:49:05 10 suppliers. So again there's no direct involvement,  
16:49:07 11 but we again know what the rules are and what they  
16:49:12 12 have to follow to select suppliers.

16:49:13 13 Q. When was the plant built for Natura  
16:49:16 14 Manufacturing, Inc.?

16:49:16 15 A. It was built in -- from basically -- I  
16:49:21 16 don't -- might be a month off, but June of '02 we  
16:49:24 17 broke ground, commissioned it July 1st of '03. And  
16:49:28 18 again I could be a month off one way or the other,  
16:49:30 19 but that seems to be right. We built it -- built  
16:49:33 20 it -- started and had it finished and running in one  
16:49:37 21 year.

16:49:37 22 Q. \*\*\* Who financed the construction of the  
16:49:39 23 plant?

16:49:39 24 MS. CAVERLY: Objection. That's  
16:49:41 25 irrelevant.

16:49:42 1           And I will instruct you, Mr. Atkins, that  
16:49:44 2 you do have a privacy right in California and you  
16:49:47 3 can assert it if you choose.

16:49:49 4           I don't see how that could possibly be of  
16:49:52 5 any interest to you in this case, other than  
16:49:55 6 solatious inquiry.

16:49:57 7           MR. NIELD: Solatious inquiry?

16:49:59 8           MS. CAVERLY: Yes.

16:50:01 9           Are you familiar with that word?

16:50:03 10          MR. NIELD: I am familiar with it. I just  
16:50:05 11 don't think it's applicable in this situation.

16:50:07 12 BY MR. NIELD:

16:50:07 13          Q. Are you choosing not to answer that  
16:50:09 14 question?

16:50:10 15          A. Yes, sir.

16:50:11 16          MR. NIELD: Okay. Just mark that for me in  
16:50:13 17 the transcript.

16:50:17 18 BY MR. NIELD:

16:50:17 19          Q. Do you know why -- well, you are an  
16:50:26 20 interest holder in Natura Manufacturing, Inc.,  
16:50:28 21 correct?

16:50:28 22          A. Yes.

16:50:29 23          Q. Were you consulted in -- as to whether that  
16:50:33 24 entity should be brought into existence?

16:50:37 25          A. Was I consulted, yes.

16:50:40 1 Q. I mean, were you part of the  
16:50:42 2 decision-making process to bring that entity into  
16:50:45 3 existence?  
16:50:46 4 A. Yes.  
16:50:47 5 Q. And what was the purpose of bringing that  
16:50:49 6 entity into existence?  
16:50:51 7 A. To gain control over our manufacturing.  
16:50:55 8 Q. Natura Pet Products wanted to gain control  
16:50:58 9 of its manufacturing?  
16:50:59 10 A. Correct. Well -- yes.  
16:51:05 11 Q. Does Natura Pet Products control Natura  
16:51:10 12 Manufacturing, Inc.?  
16:51:14 13 A. Yes.  
16:51:21 14 Q. Are you on the board --  
16:51:22 15 A. Actually to step back, John Rademakers  
16:51:25 16 controls all three companies. So it's not Natura  
16:51:28 17 Pet Products that controls it. It's John Rademakers  
16:51:31 18 that controls all three companies.  
16:51:32 19 Q. You are on the board of directors of Natura  
16:51:35 20 Pet Products?  
16:51:36 21 A. Yes.  
16:51:37 22 Q. You are on the board of directors of Natura  
16:51:39 23 manufacturing, Inc.?  
16:51:40 24 A. Yes.  
16:51:40 25 Q. John Rademakers is on both boards as well?



16:51:44 1 A. Yes.

16:51:45 2 Q. His wife, Ann, is on both boards as well?

16:51:47 3 A. Yes.

16:51:48 4 Q. All of the other interest holders in both

16:51:51 5 companies are on both companies' board of directors?

16:51:53 6 A. No.

16:51:58 7 Q. Okay. The Rademakers and yourself are on

16:52:00 8 Natura Pet Products' board. Who else is on that

16:52:03 9 board?

16:52:04 10 A. Natura Pet Products' board consists of --

16:52:09 11 during the time in question -- I got to think back.

16:52:13 12 It would be '07. It would just be us three, John,

16:52:17 13 Ann, myself.

16:52:18 14 Q. And how about Natura Manufacturing, Inc.,

16:52:21 15 who is on that board in November '07?

16:52:23 16 A. In that time frame in the year '07 it would

16:52:31 17 have been -- board of directors. It would still

16:52:34 18 just be those three, John, Ann, myself.

16:52:46 19 Q. Does -- if you know, does Natura

16:52:52 20 Manufacturing, Inc., purchase ingredients from any

16:52:57 21 supplier outside of the United States?

16:53:00 22 A. Yes.

16:53:03 23 Q. What entities does it purchase ingredients

16:53:07 24 from outside of the U.S.?

16:53:09 25 A. Very few. And, again, do I know the names

16:53:12 1 of those suppliers? I don't. I know there's a few  
16:53:15 2 that we only can source from outside of the United  
16:53:18 3 States and so we must until domestic suppliers are  
16:53:22 4 available.

16:53:24 5 Q. Okay. Would somebody else at Natura Pet  
16:53:27 6 Products be in a better position to identify the  
16:53:30 7 suppliers utilized that are outside the United  
16:53:32 8 States?

16:53:32 9 A. At Natura Pet Products, no.

16:53:34 10 Q. How about at Natura Manufacturing, Inc.?

16:53:36 11 A. Yes.

16:53:37 12 Q. Who would that be?

16:53:38 13 A. Kent Cooper.

16:53:45 14 Q. Do you know from which countries these  
16:53:48 15 outside supplier -- strike that.

16:53:50 16 Do you know which countries these outside  
16:53:53 17 suppliers that are utilized by Natura Manufacturing,  
16:53:55 18 Inc., are located?

16:53:57 19 A. I know -- during the time in question I  
16:54:04 20 would have a tough time answering that. I know -- I  
16:54:08 21 know some are from Europe, some are from Australia  
16:54:13 22 and New Zealand. And that would be the extent of my  
16:54:22 23 knowledge based on that time frame.

16:54:25 24 Q. There may be others, but you just can't  
16:54:28 25 recall at this point?

16:54:28 1 A. Yes, correct.

16:54:30 2 Q. And I think you told me you don't know

16:54:32 3 which products are being purchased from these

16:54:36 4 foreign companies?

16:54:36 5 A. Yeah. For example, lamb meal is purchased

16:54:39 6 from Australia and New Zealand. That I do know.

16:54:44 7 But beyond that I would have a tough time

16:54:50 8 identifying country to ingredient.

16:54:52 9 Q. Kent Cooper would be in a better position

16:54:54 10 to do that?

16:54:54 11 A. Yes.

16:55:27 12 Q. Of the products we've been -- and maybe I

16:55:30 13 should do this.

16:55:31 14 Well, let me ask you. Of the products

16:55:34 15 we've been talking about here today, can you recall

16:55:37 16 any alterations in the recipe or formulations of

16:55:40 17 those products that were from two thousand --

16:55:43 18 November of 2003 to November of 2007? And I can

16:55:48 19 name them individually if it makes it easier for

16:55:51 20 you.

16:55:51 21 A. Sure. Based on our earlier discussion the

16:55:54 22 only one I can recall of any formula change was the

16:55:58 23 Innova Senior Dog Dry Food having to do with the pea

16:56:03 24 fiber.

16:56:18 25 Q. Is the Natura Manufacturing, Inc., facility

16:56:26 1 subject to any type of inspection by the FDA?

16:56:32 2 A. The FDA, no.

16:56:34 3 Q. Is it subject to inspection by any federal,  
16:56:38 4 state or local governmental entity?

16:56:42 5 A. Part of the -- there's no -- as a pet food  
16:56:46 6 plant there's no requirement. Again, we invite our  
16:56:49 7 own inspections from third parties as part of our  
16:56:52 8 quality management program.

16:56:54 9 The one that is required, as part of our  
16:56:57 10 manufacturing plant we also have a feeding facility  
16:57:00 11 where we have dogs and cat employees, we call them,  
16:57:04 12 residents, that eat our food to find out if it's  
16:57:09 13 palatable, what their stools look like and those  
16:57:12 14 kind of things.

16:57:12 15 As part of that facility it is a  
16:57:16 16 requirement for basically surprise inspections by  
16:57:20 17 the USDA to come in, take a look at the facility and  
16:57:24 18 give you a score. And in every case that we've had  
16:57:26 19 our inspection we've been rated a model facility.

16:57:29 20 Q. Is that facility located in the same  
16:57:32 21 location as the Natura Manufacturing, Inc. plant?

16:57:36 22 A. Yes.

16:57:43 23 Q. You indicated that the Natura  
16:57:46 24 Manufacturing, Inc. plant invites entities in to  
16:57:50 25 perform inspections. Is that correct?

16:57:52 1 A. Yes.

16:57:53 2 Q. Do you know who those entities are?

16:57:56 3 A. Again, American Institute of Baking, AIB.

16:58:01 4 I guess FDA does come into our plant for

16:58:05 5 the APHIS certification, animal Plant Health

16:58:09 6 Inspection Service, for export. So I misspoke

16:58:12 7 earlier. We do have FDA on site.

16:58:15 8 As well as the ISO certification. We

16:58:20 9 invite -- I'm not familiar with the organization who

16:58:22 10 does that, but it's an independent third party

16:58:24 11 organization that comes in and then certifies that

16:58:28 12 our procedures meet their regulations.

16:58:31 13 Q. Is there somebody within Natura

16:58:34 14 Manufacturing, Inc., who may be in a better position

16:58:37 15 to discuss issues relating to these inspections than

16:58:40 16 yourself?

16:58:41 17 A. Yes.

16:58:41 18 Q. And who would that be?

16:58:42 19 A. Don Scott.

16:59:15 20 Q. I don't know if you are aware of this, but

16:59:19 21 does Natura Manufacturing, Inc., have written

16:59:23 22 contracts with its various suppliers?

16:59:25 23 A. Yes.

16:59:40 24 Q. Those contracts I'm sure talk about price.

16:59:44 25 Would that be fair to say?

16:59:47 1 A. You know, some do, yes.

16:59:51 2 Q. Supply scheduling, transportation, those

16:59:54 3 types of issues?

16:59:55 4 A. Yes.

16:59:56 5 Q. Is there any quality control type of issues

16:59:59 6 discussed in those contracts?

17:00:01 7 A. Yes. In some there are, yes.

17:00:03 8 Q. Is there somebody in a better position to

17:00:06 9 discuss that issue than you as far as the contents

17:00:09 10 of those --

17:00:09 11 A. Yes.

17:00:10 12 Q. -- agreements with suppliers?

17:00:11 13 A. Yes.

17:00:11 14 Q. Who would that be?

17:00:12 15 A. Kent Cooper.

17:00:26 16 Q. What types of quality control issues that

17:00:29 17 you are aware of are contained in those agreements

17:00:31 18 with suppliers?

17:00:36 19 A. It would be difficult for me to cite a

17:00:38 20 specific example. I don't review or see those

17:00:41 21 documents, so it -- I have to answer I don't know.

17:00:45 22 Q. Ask Kent?

17:00:46 23 A. Ask Kent.

17:01:04 24 Q. And we've talked about this before, and

17:01:09 25 perhaps more of a direct question, as far as the

17:01:12 1 quality control mechanisms put in place in the  
17:01:17 2 manufacturing aspect of Natura pet food products by  
17:01:25 3 Natura Manufacturing, Inc., we talked about their  
17:01:28 4 policy manual, procedure manual, other documentation  
17:01:32 5 that may exist. Someone at Natura Manufacturing,  
17:01:35 6 Inc., would be in a better position to discuss those  
17:01:38 7 quality control issues other than yourself; is that  
17:01:41 8 true?

17:01:41 9 A. Yes.

17:01:41 10 Q. And who would that be?

17:01:45 11 A. Don Scott.

17:02:17 12 Q. And I just asked you about quality control.

17:02:19 13 Well, strike that.

17:02:20 14 I just asked you about agreements between  
17:02:23 15 Natura Manufacturing, Inc., and various suppliers  
17:02:27 16 and quality control terms and conditions which may  
17:02:29 17 be in those agreements. As far as what types of  
17:02:33 18 mechanisms exist and the execution of those  
17:02:36 19 mechanisms, Mr. Cooper would be in a better position  
17:02:41 20 to discuss how quality control is exercised over  
17:02:48 21 suppliers for Natura Manufacturing, Inc.?

17:02:51 22 A. Yes, sir.

17:03:24 23 Q. And as to the manufacturing procedures  
17:03:28 24 generally, how they go about making the Natura pet  
17:03:37 25 food products -- "they" being Natura Manufacturing,

17:03:38 1 Inc. -- somebody there at Natura Manufacturing,  
17:03:40 2 Inc., would be in a better position to discuss those  
17:03:45 3 mechanisms other than yourself?  
17:03:48 4 A. More than likely. I mean I'm pretty well  
17:03:51 5 up to speed on what goes on there, but is there  
17:03:54 6 somebody more qualified? Yes.  
17:03:56 7 Q. And who would that be?  
17:03:58 8 A. Don Scott.  
17:04:01 9 Q. How many employees does Natura  
17:04:03 10 Manufacturing, Inc., have?  
17:04:03 11 A. During the time reference of the --  
17:04:06 12 Q. Correct.  
17:04:07 13 A. -- discussion here?  
17:04:08 14 Probably on average during that time frame  
17:04:12 15 of 50 employees. Fifty, five oh.  
17:05:09 16 Q. You attended Texas A & M?  
17:05:11 17 A. Yes.  
17:05:12 18 Q. For your bachelor's and your master's,  
17:05:14 19 correct?  
17:05:15 20 A. Yes.  
17:05:18 21 Q. Did you take any courses in either program  
17:05:24 22 as it related to the formulation, development of pet  
17:05:29 23 food products?  
17:05:30 24 A. Pet food products specifically, no.  
17:05:35 25 Q. Is there anyone else at Natura Pet Products



17:05:38 1 that is involved in the development, formulation of  
17:05:42 2 pet food products?

17:05:43 3 A. At the time in question, no.

17:05:47 4 Q. Just yourself?

17:05:48 5 A. Just myself.

17:05:51 6 Q. Is there any way or anything was necessary  
17:05:54 7 for you to develop some expertise in the area of  
17:05:58 8 developing pet food products?

17:06:02 9 A. Sure. As part of the Natura manufacturing  
17:06:04 10 team we have a young lady that has a master's in  
17:06:09 11 nutrition who does a lot of our formulation work.  
17:06:13 12 And as well we've, up until we hired Dr. Delaney,  
17:06:18 13 worked with another outside consultant to provide  
17:06:21 14 that expertise.

17:06:25 15 Q. And who is the young lady at Natura  
17:06:26 16 Manufacturing, Inc., that provides assistance in the  
17:06:32 17 nutrition of various recipes?

17:06:33 18 A. Her name is Kari, K-a-r-i, and her last  
17:06:39 19 name is Liu, L-i-u.

17:06:46 20 Q. And what is her educational background?

17:06:48 21 A. She has a master's in nutrition from  
17:06:51 22 University of Illinois.

17:07:26 23 Q. Where is my -- here.

17:08:12 24 So during the time period at issue as it  
17:08:15 25 related to selecting ingredients to go into Natura

17:08:19 1 Pet Products products, you would work in conjunction

17:08:24 2 with Ms. Liu; is that correct?

17:08:27 3 A. Yes.

17:08:29 4 Q. And I think you indicated Dr. Delaney was

17:08:32 5 not in the picture at that point?

17:08:33 6 A. Correct.

17:08:35 7 Q. He came along after November of 2007?

17:08:39 8 A. Boy, I was just trying to think of that

17:08:41 9 exact date. You know, he could have come in right

17:08:45 10 before that. I want to say it was maybe August of

17:08:48 11 '07, but his engagement would have been limited to

17:08:52 12 that time, so --

17:08:53 13 Q. Okay.

17:08:56 14 A. Or September.

15 Q. Sorry. Go ahead.

17:08:58 16 A. So September of '07 I believe he joined us.

17:09:02 17 Q. As it relates to the inspection and testing

17:09:04 18 of the ingredients used in the manufacture of Natura

17:09:08 19 pet food products, would there be someone other than

17:09:14 20 yourself that would be in a better position to

17:09:16 21 answer questions relating to that?

17:09:18 22 A. At Natura Manufacturing, yes.

17:09:21 23 Q. And that would be -- don't tell me, I

17:09:25 24 know -- Mr. Kent Cooper?

17:09:27 25 A. Correct.

17:09:45 1 Q. As it relates to the storage of ingredients  
17:09:53 2 utilized in the manufacture of Natura pet food  
17:09:56 3 products, those products at issue during the time  
17:09:59 4 period in issue, at the Natura Manufacturing, Inc.,  
17:10:04 5 would there be someone other than yourself in a  
17:10:06 6 better position to respond to questions on that  
17:10:09 7 issue?

17:10:09 8 A. Yes.

17:10:09 9 Q. And who would that be?

17:10:11 10 A. Don Scott.

17:10:31 11 Q. And I know we discussed in general terms  
17:10:36 12 that there was various quality control procedures,  
17:10:41 13 testing, inspections that were done on the product  
17:10:45 14 production process from the time the ingredients are  
17:10:49 15 received at Natura Manufacturing, Inc., until the  
17:10:52 16 time the finished product comes off the line. Is  
17:10:54 17 that correct?

17:10:55 18 A. Correct.

17:10:56 19 Q. And maybe beyond that?

17:10:57 20 A. Correct. Actually, until the time it  
17:10:58 21 leaves the plant, yes.

17:10:59 22 Q. Okay. Is there someone in a better  
17:11:04 23 position than yourself to discuss the various  
17:11:08 24 quality control inspections, tests, other mechanisms  
17:11:12 25 utilized in that regard as it relates to that

17:11:15 1 process?

17:11:15 2 A. Yes.

17:11:16 3 Q. And who would that be?

17:11:17 4 A. Don Scott.

17:11:40 5 Q. As to the products at issue that we've been

17:11:43 6 discussing all day long, has Natura undertaken --

17:11:48 7 Natura Pet Products, we'll start there, undertaken

17:11:51 8 any type of consumer testing, clinical testing of

17:11:58 9 that product as to its impact on the pets that eat

17:12:04 10 that food?

17:12:07 11 A. Have we done any clinical or consumer

17:12:10 12 testing?

17:12:10 13 Q. Any type of testing that would be designed

17:12:13 14 to measure the impact, either the benefits or the

17:12:17 15 side effects or the ill effects, of that food on the

17:12:21 16 consumer, and the consumer being the pet of course.

17:12:24 17 A. Yes, yes. And the answer is, yes, of

17:12:27 18 course we do do that.

17:12:28 19 Q. And you did it in the time period at issue?

17:12:30 20 A. Yes.

17:12:31 21 Q. Now, is it Natura Pet Products that

17:12:35 22 undertakes that testing or is it Natura

17:12:37 23 Manufacturing, Inc., that undertakes that testing or

17:12:40 24 some combination of the two?

17:12:42 25 A. I would -- during that time frame it would

17:12:50 1 all have fallen under Natura Manufacturing with the  
17:12:52 2 involvement of Natura Pet Products of course.

17:12:57 3 Q. Is there a particular person at Natura  
17:13:00 4 Manufacturing, Inc., that is responsible for  
17:13:04 5 overseeing the consumer testing -- I'm going to call  
17:13:10 6 it that -- of that product?

17:13:12 7 A. Yeah, it's actually a misnomer. It  
17:13:14 8 wouldn't be consumer testing. We do actual feeding  
17:13:15 9 trials again at our own facility, at Natura  
17:13:18 10 Manufacturing, and for the products in question  
17:13:23 11 except for the Mother Nature treat product.

17:13:27 12 We also do AAFCO protocol feeding studies.  
17:13:34 13 In other words, we validate through animal feeding  
17:13:36 14 that the products meet the requirement for the  
17:13:40 15 particular life stage that we represent it for. And  
17:13:43 16 that testing is done outside of our facility.

17:13:49 17 Q. Okay. So that I understand it, you do  
17:13:50 18 have -- when we talked about the feeding facility,  
17:13:54 19 that is located where the plant is?

17:13:56 20 A. Yes.

17:13:58 21 Q. Operated by Natura Manufacturing, Inc.?

17:14:01 22 A. (Nodding head up and down.)

17:14:02 23 Q. And so you do feeding trials at that  
17:14:06 24 location internally?

17:14:07 25 A. Feeding trials is -- actually in the

17:14:09 1 industry would be considered more than what we do  
17:14:11 2 there. We do feed -- limited feeding testing there.  
17:14:16 3 Basically it's limited to palatability, does the  
17:14:20 4 animal like it compared to our other products and  
17:14:23 5 our competitive products. And then what comes out  
17:14:26 6 the other end, does it come out good or not.

17:14:28 7           And that's pretty much the extent of the  
17:14:30 8 testing we do there. We do a few other odds and  
17:14:33 9 ends, but that's the extent. And anything beyond  
17:14:35 10 that is outside -- done outside the company.

17:14:42 11           Q. Okay. And you used the term "feeding  
17:14:44 12 trials." Is that something that is done outside the  
17:14:47 13 company?

17:14:47 14           A. Yes.

17:14:48 15           Q. And is that designed to determine the  
17:14:52 16 benefits, side effects, negative impacts of the  
17:14:57 17 product on the pet that's consuming it?

17:15:00 18           A. It's not designed to do those things  
17:15:03 19 although through the test -- through those type of  
17:15:06 20 feeding trials we learn those things.

17:15:08 21           But the actual trials are -- again, they  
17:15:11 22 are AAFCO protocols. They are set up in the AAFCO  
17:15:15 23 manual for, again, does it meet the nutritional need  
17:15:18 24 of a growing puppy, does it meet the nutritional  
17:15:22 25 need of adult maintenance, does it meet the

17:15:24 1 nutritional need of a gestating or lactating female.  
17:15:27 2 So each specific life stage has a particular  
17:15:32 3 prescribed feeding test and protocol that is  
17:15:33 4 followed, and you have to pass those to be able to  
17:15:36 5 put that on your label to say it does meet that  
17:15:38 6 requirement.

17:15:43 7 Q. And that's a requirement? You have to  
17:15:46 8 undertake those trials? The AAFCO protocols, you  
17:15:49 9 have to undertake those to be able to represent in  
17:15:55 10 your labeling that the nutrients in the product at  
17:15:59 11 issue do meet the requirements of the pet -- of the  
17:16:04 12 life stage of the pet or the condition of the pet  
17:16:05 13 that's going to consume that food?

17:16:07 14 A. Actually, not necessarily. It's -- you  
17:16:09 15 have two options as a manufacturer from a labeling  
17:16:13 16 standpoint. You can represent that it's approved --  
17:16:17 17 that it meets the need requirements for -- let's  
17:16:19 18 just use puppies, for example. You can either do it  
17:16:22 19 by feeding studies, which obviously is the more  
17:16:25 20 expensive but the more accurate way to do it, which  
17:16:28 21 we do, or you can do it by calculation so you can  
17:16:32 22 say on the bag this product was formulated to meet  
17:16:37 23 the needs of a growing puppy. So there's two  
17:16:40 24 separate distinctions made on the package to make  
17:16:40 25 that representation.

17:16:41 1 Q. But if you don't actually do the testing,  
17:16:44 2 you have to use the word "formulated"?

17:16:46 3 A. Correct, correct. Actually, there's a rule  
17:16:49 4 called the Family Rule to where if a product is --  
17:16:52 5 and, gosh, I would be stepping out of school to give  
17:16:55 6 you that exact rule. But if a product is very  
17:16:59 7 form -- is formulated very similar to your lead  
17:17:02 8 product and it's for a lesser nutritional  
17:17:05 9 requirement -- so, for example, if you formulate a  
17:17:07 10 product that's for a puppy and your adult formula  
17:17:10 11 has a very similar composition for main ingredients  
17:17:14 12 and ingredient priority, then if it meets the need  
17:17:18 13 for puppy then the AAFCO says, okay, you can say it  
17:17:21 14 also meets the need for maintenance. So it's not  
17:17:24 15 exactly 100 percent that you have to do the trial,  
17:17:28 16 but for most cases that is the case, yes.

17:17:31 17 Q. But regardless, Natura Pet Products  
17:17:34 18 undertakes the actual feeding trials to assure that  
17:17:38 19 its products are meeting the nutritional needs of  
17:17:41 20 the life stage of the pet that it's designed for?

17:17:45 21 A. Yes. For the products in question today,  
17:17:48 22 yes.

17:17:52 23 Q. That's done by an outside entity that  
17:17:57 24 Natura Pet Products contracts with?

17:17:58 25 A. Correct, yes.



17:18:00 1 Q. And which -- who is that outside entity?

17:18:03 2 A. You know what? It varies. And, actually,  
17:18:15 3 you know, we use Summit Ridge Farms I know for most  
17:18:19 4 of them. And then we've also used UC Davis for one  
17:18:22 5 of our cat protocol studies. And there may be  
17:18:27 6 something beyond that, but I as I sit here couldn't  
17:18:31 7 tell you, but those are the ones I know about.

17:18:36 8 Q. Would there be somebody else within Natura  
17:18:39 9 Pet Products that would be in a better position than  
17:18:41 10 yourself to discuss these trials and the outside  
17:18:45 11 entities utilized for these trials?

17:18:47 12 A. Yes.

17:18:47 13 Q. And who would that be?

17:18:48 14 A. Kari Liu.

17:18:51 15 Q. Okay. Now, she's actually with Natura  
17:18:54 16 Manufacturing?

17:18:54 17 A. Manufacturing, correct. Sorry, yeah.

17:19:28 18 Q. And we were just talking about this  
17:19:31 19 testing, these trials. These feeding trials are  
17:19:34 20 really more designed to assure that your  
17:19:36 21 representations as to the stage of life or condition  
17:19:44 22 of the pet at issue as it relates to the product  
17:19:46 23 that you are making are true, correct?

17:19:50 24 A. Correct.

17:19:51 25 Q. They are not really designed to determine

17:19:55 1 the effects of the product on the consuming pet; is  
17:20:02 2 that correct?

17:20:03 3 A. That would be not true. No. I mean, it's  
17:20:06 4 part and parcel of the test to see -- again, for  
17:20:09 5 puppy study you feed the puppy, you take its weight,  
17:20:12 6 then you see the effect of feeding it to the puppy  
17:20:16 7 in terms of body weight at the end of the test.

17:20:18 8 There's a body condition score, does the puppy look  
17:20:21 9 healthy. So all those things are taken into account  
17:20:24 10 beyond just the actual protocol testing as well.

17:20:31 11 Q. And that's voluntary on your part or is  
17:20:34 12 that required by AAFCO?

17:20:36 13 A. No, just -- no, I mean, the requirement by  
17:20:39 14 AAFCO is just to get the data and have it available  
17:20:42 15 for them if they need to see it. But, again, as far  
17:20:45 16 as our interest goes we want to know how the puppy  
17:20:49 17 is doing or how the dog or the cat is doing after  
17:20:53 18 our products are fed.

17:20:53 19 Q. Right. And I guess that wasn't a very  
17:20:56 20 clear question. But maybe it's just a de facto  
17:21:02 21 result of the testing that you are going to find  
17:21:04 22 these other things out. But your testimony is that  
17:21:10 23 Natura wants to know these other things as a result  
17:21:14 24 of this testing. They want to go beyond what AAFCO  
17:21:17 25 requires and find out these other issues, the

17:21:20 1 benefits of the products, side effects of the  
17:21:23 2 product, the potential downside of the product, that  
17:21:26 3 kind of thing?

17:21:27 4 A. Absolutely, yes.

17:21:28 5 Q. Is there some sort of a protocol or  
17:21:30 6 procedure or checklist or some documentation that  
17:21:33 7 Natura Pet Products has produced that relates to the  
17:21:37 8 types of information that it is seeking through the  
17:21:41 9 feeding trials?

17:21:45 10 A. No. Again, it would be -- we get the base  
17:21:48 11 data. So that's what's documented and what we have.  
17:21:52 12 But obviously, you know, there's direct  
17:21:54 13 communication with the facility and whoever is  
17:21:56 14 conducting the test for us or with us as far as the  
17:21:59 15 condition of those animals and how they are doing.  
17:22:03 16 But, you know, there's no written, you know, does he  
17:22:06 17 have a shiny coat or, you know, shiny eyes. I --  
17:22:12 18 it's not anything that's just written down.

17:22:14 19 Q. No written criteria?

17:22:15 20 A. No.

17:22:16 21 Q. Would Kari Liu be in a better position to  
17:22:19 22 discuss the details of the feeding trials than  
17:22:22 23 yourself?

17:22:23 24 A. Yes.

17:22:27 25 Q. Would Kari Liu be in a better position to

17:22:35 1 discuss Natura Pet Products' conformance with the  
17:22:38 2 requirements of AAFCO as it relates to performance  
17:22:45 3 of these trials?

17:22:48 4 A. No, I think we'd would be equal. But,  
17:22:50 5 again, we have access to the same data, the same  
17:22:52 6 information, so I don't know that she would have any  
17:22:57 7 more information about that than I do, no.

17:22:58 8 Q. Would she be the individual who would act  
17:23:01 9 as the contact for the outside entities that are  
17:23:04 10 performing the trials?

17:23:05 11 A. Yes.

17:23:34 12 Q. Beyond the feeding trials that are required  
17:23:43 13 by AAFCO --

17:23:45 14 A. They are actually --

17:23:46 15 Q. AAFCO. I'm sorry, AAFCO.

17:23:48 16 A. They are actually not required by AAFCO  
17:23:50 17 unless you make that representation.

17:23:51 18 But I'm sorry to interrupt you.

17:23:54 19 Q. All right. If you just formulated to meet  
17:23:55 20 those requirements and you put on your labeling that  
17:23:58 21 it's formulated to meet those requirements, then you  
17:24:00 22 don't have to go through the feeding trials,  
17:24:02 23 correct?

17:24:02 24 A. Exactly.

17:24:04 25 Q. Okay. But Natura chooses to go through the

17:24:07 1 feeding trials?

17:24:08 2 A. Yes.

17:24:12 3 Q. Okay. Is there any other types of testing  
17:24:17 4 undertaken by Natura Pet Food -- Natura Pet Products  
17:24:22 5 on the products at issue here today for any other  
17:24:25 6 purpose other than the feeding trials?

17:24:30 7 A. Nothing more than what we've discussed  
17:24:32 8 today, no.

17:24:33 9 Q. Nothing more than the feeding trials and  
17:24:36 10 the quality control testing?

17:24:38 11 A. Yes.

17:24:54 12 Q. I know I've asked you about customer  
17:24:56 13 complaints and maybe this is encompassed within that  
17:25:03 14 category. If it is, please just tell me. But has  
17:25:06 15 Natura Pet Products received during the time period  
17:25:09 16 at issue for the products at issue reports by  
17:25:16 17 consumers of side effects or possible side effects  
17:25:20 18 of Natura pet food products on their pets as a  
17:25:24 19 result of utilizing those products?

17:25:26 20 A. Could you give me an example of what you  
17:25:28 21 mean by a side effect?

17:25:31 22 Q. Well, for instance, a consumer might report  
17:25:34 23 that, "I've been feeding my dog Product X for three  
17:25:40 24 months," or something and, you know, "they've  
17:25:44 25 developed itching," or something to that effect, or

17:25:46 1 "they developed" -- "they've been vomiting" or,  
17:25:51 2 "their hair is falling out." Any potential side  
17:25:53 3 effect that they think may be related to feeding of  
17:25:59 4 that particular product.

17:25:59 5 A. Sure. Again, I don't have any knowledge of  
17:26:03 6 any specific instances that I can recite as I sit  
17:26:05 7 here, but have there been reports of side effects as  
17:26:09 8 you've described it? Yes.

17:26:13 9 MS. CAVERLY: Yes, you do have a list of  
17:26:15 10 all the complaints that have been received.

17:26:18 11 MR. BAKER: Hundreds of them.

17:26:19 12 MS. CAVERLY: By customer and product.

17:26:23 13 MR. BAKER: And by year.

17:26:23 14 MS. CAVERLY: So if you would like to  
17:26:25 15 refresh Mr. Atkins' recollection of anything he'll  
17:26:28 16 be available until our seven hours are up which they  
17:26:32 17 almost are.

17:26:47 18 MR. BAKER: Let's establish if he's the  
17:26:49 19 right person.

17:26:52 20 BY MR. NIELD:

17:26:52 21 Q. Well, let me first establish you are aware  
17:26:54 22 that there is a list that's been produced pursuant  
17:26:57 23 to the plaintiffs' document request relating to  
17:27:00 24 various complaints received by customers during the  
17:27:02 25 time period at issue, correct?

17:27:03 1 A. Yes.

17:27:04 2 Q. Okay. That list was prepared not by

17:27:08 3 yourself, correct?

17:27:09 4 A. Absolutely, yes.

17:27:10 5 Q. And I think we already talked about the

17:27:15 6 individual, whose name escapes me right now, but --

17:27:19 7 oh, it might have been -- was it Vicki Lane that was

17:27:21 8 responsible for that?

17:27:21 9 A. I think she was the one who ultimately

17:27:24 10 produced it to Kristen, yes.

17:27:26 11 Q. To Kristen? Oh, to Kristen, yes, okay.

17:27:30 12 Sorry.

17:27:31 13 So she would be in a position to --

17:27:33 14 MS. CAVERLY: I know I'm forgetful.

17:27:36 15 Forgettable.

17:27:38 16 MR. NIELD: I just associate -- you are so

17:27:40 17 close.

17:27:41 18 BY MR. NIELD:

17:27:41 19 Q. So she would be in a better than yourself

17:27:42 20 to respond to questions about that list and the

17:27:43 21 complaints that are registered on that list; is that

17:27:46 22 true?

17:27:49 23 A. Yes.

17:28:13 24 Q. As part of the process of responding to

17:28:16 25 complaints that are received by consumers, again

17:28:20 1 during the pertinent time period relating to the  
17:28:22 2 pertinent products, does Natura Pet Products require  
17:28:27 3 that a report be generated as to -- you know, we do  
17:28:31 4 know there's a list, but a report be generated as to  
17:28:34 5 each complaint received?

17:28:35 6 A. Again, it's logged and documented as part  
17:28:38 7 of that -- that report that you are referring to,  
17:28:40 8 yes.

17:28:40 9 Q. But that would be the only documentation of  
17:28:43 10 that complaint unless there's some other response,  
17:28:46 11 correspondence or something to that effect?

17:28:48 12 A. Correct. Anything that might be behind  
17:28:51 13 there would be on file somewhere.

17:28:59 14 Q. Does AAFCO have any policies or procedures  
17:29:07 15 that it mandates be utilized in the handling of  
17:29:09 16 customers' complaints?

17:29:10 17 A. No.

17:29:12 18 Q. Is there any governmental -- federal,  
17:29:15 19 state, local governmental agency that has  
17:29:19 20 regulations concerning how customer complaints  
17:29:23 21 relating to your products need to be handled?

17:29:25 22 A. No.

17:29:32 23 Q. Is Natura Pet Products required for any  
17:29:41 24 reason -- strike that.

17:29:43 25 Is Natura Pet Products required by any



17:29:47 1 governmental agency, federal, state, local, or  
17:29:50 2 entity like AAFCO, to report when consumers report  
17:29:56 3 that their pets have been injured by the use of one  
17:30:01 4 of the products at issue?

17:30:02 5 A. No.

17:30:23 6 Q. If I've asked this I apologize, but has --  
17:30:27 7 does Natura Pet Products have a written policy or  
17:30:31 8 written procedures as it relates to the handling of  
17:30:34 9 customer reports of injuries or complaints or  
17:30:38 10 problems?

17:30:41 11 A. Again, we generate the report that you  
17:30:44 12 referred to earlier and then our customer service  
17:30:46 13 team does have a procedure manual that provides  
17:30:50 14 those instructions.

17:30:52 15 Q. Would somebody on that team be in a better  
17:30:54 16 position to discuss those -- that issue than  
17:30:56 17 yourself?

17:30:57 18 A. Yes.

17:30:57 19 Q. Who would that be?

17:30:58 20 A. Vicki Lane.

17:31:17 21 Q. Does -- during the time period at issue for  
17:31:21 22 the products at issue, did Natura Pet Products  
17:31:26 23 receive any consumer/customer complaints relating to  
17:31:29 24 any of the labeling or packaging of the products at  
17:31:32 25 issue?

17:31:32 1 A. Not that I'm aware of, no.

17:31:35 2 Q. Would there be someone in a better position  
17:31:37 3 than yourself to discuss whether such complaints  
17:31:39 4 were received?

17:31:41 5 A. Yes.

17:31:41 6 Q. And who would that be?

17:31:43 7 A. Vicki Lane.

17:31:49 8 MS. CAVERLY: You mean other than looking  
17:31:51 9 at the documents that we've provided to you?

17:31:54 10 MR. NIELD: Other than looking at the  
17:31:56 11 documents.

17:31:57 12 THE WITNESS: Those complaints would be  
17:31:58 13 logged in if they were there.

17:32:01 14 MR. NIELD: I understand.

17:32:01 15 MS. CAVERLY: You are choosing not to ask  
17:32:03 16 Mr. Atkins your questions. And I realize that you  
17:32:06 17 anticipate doing a motion for an extension of time  
17:32:09 18 on your class certification motion, but you could  
17:32:12 19 actually ask Mr. Atkins the questions that you would  
17:32:15 20 now propose that you should ask all of these other  
17:32:18 21 people.

17:32:20 22 MR. NIELD: Mr. Atkins has already  
17:32:22 23 testified that there are people in a better position  
17:32:24 24 than himself to provide that information.

17:32:27 25 MS. CAVERLY: Yes, because she can look at

17:32:30 1 the report which you are not showing to Mr. Atkins  
17:32:32 2 but which you have available to you. So you are  
17:32:34 3 choosing not to allow him to look at the report  
17:32:38 4 which Ms. Lane will certainly need to look at as  
17:32:41 5 well.

17:32:41 6 MR. NIELD: You know, that's just not true,  
17:32:43 7 Kristen. I'm not choosing to do that at all.

17:32:46 8 MS. CAVERLY: We'll see next week.

17:32:48 9 MR. NIELD: But thank you for your  
17:32:49 10 speculation in that regard.

17:32:51 11 MS. CAVERLY: We'll see next week.

17:32:53 12 MR. NIELD: Whatever. I don't even know if  
17:32:54 13 I have a written copy of that report.

17:32:56 14 Do you have one, Jason?

17:32:58 15 MR. BAKER: They are not reports. It's  
17:33:00 16 just a spreadsheet identifying report numbers.

17:33:03 17 MR. NIELD: All right. Well, whatever.

17:33:07 18 Everybody will do what they need to do.

19 BY MR. NIELD:

17:33:36 20 Q. Other than the provisions set out in AAFCO,  
17:33:42 21 are there any other rules and regulations that apply  
17:33:49 22 to the manufacture of Natura Pet Products by Natura  
17:33:55 23 Manufacturing, Inc.?

17:33:56 24 A. No.

17:34:03 25 Q. No other standards that you are obligated

17:34:05 1 to meet?

17:34:06 2 A. No, sir.

17:34:42 3 Q. Other than this litigation are you aware of  
17:34:44 4 any other litigation in which Natura Pet Products  
17:34:48 5 has been involved as it relates to any of the  
17:34:51 6 products at issue here?

17:34:53 7 A. No.

17:35:00 8 Q. Are you aware of the document retention  
17:35:03 9 policies of Natura?

17:35:05 10 A. Yes.

17:35:07 11 Q. What are the document retention policies of  
17:35:10 12 Natura?

17:35:15 13 A. Natura Pet Products, I know we keep our --  
17:35:20 14 I would have to double-check this. I know -- I  
17:35:23 15 believe that we keep all of our documents for two  
17:35:26 16 years. But I could be wrong. I'm aware of them,  
17:35:29 17 but as I sit here I couldn't tell you exactly what  
17:35:32 18 they are.

17:35:33 19 Q. Is there somebody in a better position than  
17:35:35 20 yourself that would have information concerning the  
17:35:38 21 document retention policies of Natura?

17:35:39 22 A. Yes.

17:35:40 23 Q. And who would that be?

17:35:41 24 A. Patricia Gilpin.

17:35:51 25 Q. Would that also apply to the storage of

17:35:55 1 electronic computer data?

17:35:57 2 MS. CAVERLY: Would what also apply?

3 BY MR. NIELD:

17:36:00 4 Q. Patricia Gilpin would be in a better

17:36:03 5 position than yourself to talk about the storage and

17:36:05 6 retention of e-mail, e-information, e-documentation,

17:36:11 7 electronic data?

17:36:12 8 A. No, she's not really involved in that.

17:36:14 9 That would -- I would actually be the most

17:36:16 10 knowledgeable in that case.

17:36:17 11 Q. That would be yourself?

17:36:18 12 A. Correct.

17:36:19 13 Q. What policies does Natura Pet Products have

17:36:22 14 for the retention of electronic data such as e-mail,

17:36:27 15 databases, whatever is stored electronically?

17:36:31 16 A. Yeah, actually, we don't have any written

17:36:33 17 policies for retention. It is whatever we have, and

17:36:35 18 we don't have any formal archival type of a process

17:36:40 19 or program for those type -- type of documents or

17:36:43 20 electronic documents.

17:36:49 21 Q. Is it left basically to the individual

17:36:53 22 storing that electronic documentation, e-mails, to

17:36:59 23 determine what they keep and what they don't?

17:37:01 24 A. Yes.

17:37:14 25 Q. If I've asked you this I apologize, but is

17:37:16 1 there an individual at Natura Pet Products that is  
17:37:21 2 responsible for responding to inquiries made over  
17:37:26 3 e-mail, electronic inquiries made through the Web  
17:37:29 4 site to Natura Pet Products?

17:37:30 5 A. Yes.

17:37:31 6 Q. And who is that?

17:37:36 7 A. The majority are handled by Veronica  
17:37:39 8 Moreno.

17:37:50 9 Q. Are you aware of any type of a log or a  
17:37:55 10 list that's maintained of e-mail inquiries made for  
17:37:59 11 any reason relating to Natura Pet Products to Natura  
17:38:02 12 Pet Products?

17:38:03 13 A. No.

17:38:06 14 Q. You would have to talk to Veronica Moreno?

17:38:09 15 A. Again, there's not a formal requirement  
17:38:12 16 that that correspondence is kept. If -- you know,  
17:38:15 17 as long as her computer didn't crash and hard drive  
17:38:18 18 erase last week it's probably still there since she  
17:38:21 19 started, but, again, there's no formal requirement  
17:38:23 20 nor do I know if her computer did crash last week.

17:38:27 21 Q. Is there a policy by Natura Pet Products to  
17:38:31 22 make hard copies of any e-mail inquiries made of  
17:38:35 23 Natura Pet Products over its Web site?

17:38:38 24 A. No.

17:38:48 25 Q. And there's no requirement by Natura Pet

17:38:50 1 Products that such contacts, web contacts made  
17:38:56 2 through Natura's Web site, be documented in any way?

17:39:01 3 A. Beyond the response to the correspondence,  
17:39:04 4 no.

17:39:32 5 Q. Your attorney has produced something known  
17:39:34 6 as a Rule 26 Disclosure concerning individuals with  
17:39:40 7 information concerning various aspects of this case.  
17:39:44 8 One of the individuals identified is Greg Aldrich at  
17:39:51 9 Pet Food & Ingredient Technology, Inc. What is --  
17:39:57 10 if you know, what is his relationship with Natura  
17:40:00 11 Pet Products?

17:40:01 12 A. Sure. During the time in question --  
17:40:03 13 actually we covered it earlier when you asked about  
17:40:06 14 outside expertise in terms of formulation.  
17:40:09 15 Dr. Aldrich and his company worked with Natura in  
17:40:13 16 that capacity to help with formulation and product  
17:40:16 17 development.

17:40:17 18 Q. He worked with you in that regard?

17:40:18 19 A. Yes.

17:40:22 20 Q. Does he still work with Natura Pet  
17:40:24 21 Products?

17:40:24 22 A. Yes, but on a very, very limited basis  
17:40:27 23 since Dr. Delaney has come on board.

17:40:35 24 Q. Another entity listed on this disclosure is  
17:40:40 25 Covance, Covance Laboratories, C-o-v-a-n-c-e.

17:40:46 1 A. That one -- I'm not familiar with them.

17:40:49 2 Q. How about Midwest Laboratories?

17:40:51 3 A. I'm familiar with them. They are a testing

17:40:54 4 lab used by Natura Manufacturing on a regular basis

17:40:59 5 for a variety of things that I actually don't know

17:41:01 6 specifically what they are.

17:41:04 7 Q. Would Ms. Liu be more -- would be in a

17:41:08 8 better position to discuss their connection with

17:41:12 9 Natura Manufacturing, Inc., or Natura Pet Products?

17:41:14 10 A. Probably Don Scott would be -- be the most

17:41:17 11 knowledgeable.

17:41:22 12 Q. Anthony Bennie of PetReps, is that the

17:41:25 13 principal of PetReps you were referring to earlier?

17:41:27 14 A. Yes.

17:41:32 15 Q. Ocala Breeders Feed & Supply in Ocala,

17:41:36 16 Florida, what is their connection with Natura?

17:41:40 17 A. It's my understanding they are a retailer

17:41:42 18 of our products.

17:41:47 19 Q. Serviced by one of your wholesalers?

17:41:50 20 A. Yes.

17:42:06 21 Q. What is the function of the Nutritional

17:42:09 22 Advisory Board?

17:42:12 23 A. The Nutritional Advisory Board -- actually

17:42:15 24 that's something that was formed actually not within

17:42:18 25 the context of our discussion today but was done



17:42:21 1 more recently to get a list of -- basically to get  
17:42:26 2 some influential veterinarians that are involved in  
17:42:30 3 more alternative therapy, like Chinese medicine,  
17:42:35 4 Eastern thought, or of an integrative type type of  
17:42:42 5 veterinarian, type of a board to help us take a look  
17:42:44 6 at our existing products, to help us develop new  
17:42:47 7 products, to give us ideas on again how to help make  
17:42:51 8 our products better and our future products better.

17:42:54 9 Q. Is this a board that meets on a regular  
17:42:56 10 basis?

17:42:56 11 A. It's only met once so far, so --

17:42:59 12 Q. When was it --

13 A. -- it's not regular.

17:42:59 14 Q. When did it come into existence?

17:43:01 15 A. It was just formed September formally. It  
17:43:07 16 had its first meeting mid October.

17:43:11 17 Q. There's a Dr. Randy Aronson, veterinarian  
17:43:17 18 acupuncture --

17:43:17 19 A. Uh-huh.

17:43:18 20 Q. -- Chinese herbology, Chinese medicine.

17:43:29 21 What is his role in the development of Natura pet  
17:43:33 22 food products?

17:43:33 23 A. Again, this is a new group, just met once  
17:43:37 24 for a very rudimentary discussion, so any -- any  
17:43:40 25 individual on that list has had literally no role to

17:43:44 1 this point in any of our product development.

17:43:54 2 Q. Were you involved in the decision to put

17:43:56 3 this advisory board together?

17:43:58 4 A. I approved the decision, yes.

17:43:59 5 Q. And who was -- who made the recommendation

17:44:03 6 that the board be put together that you approved?

17:44:07 7 A. Dr. Sean Delaney.

17:44:16 8 Q. I think you said, and correct me if I'm

17:44:18 9 wrong, you said Dr. Delaney is located in Southern

17:44:22 10 California?

17:44:22 11 A. He actually lives in Davis.

17:44:24 12 Q. Oh, he lives in Davis.

13 A. Uh-huh.

17:44:25 14 Q. Is Dr. Delaney associated with UC Davis?

17:44:29 15 A. He -- yes, he still is. As a matter of

17:44:30 16 fact I think he's still on staff at some level, but,

17:44:33 17 yes, he was a professor there at UC Davis.

17:44:36 18 Q. Veterinarian school?

17:44:37 19 A. Yes, vet school.

17:44:47 20 Q. And was Dr. Davis -- Delaney -- I'm sorry.

17:44:53 21 Dr. Delaney, was he the one responsible for

17:44:55 22 selecting the individuals that make up this board?

17:44:58 23 A. He and one of his staff, a young lady by

17:45:03 24 the name Antoinette -- oh, she would love I called

17:45:06 25 her young -- Antoinette Ginochio, G-i-n-o-c-h-i-o.

17:45:11 1 Q. Okay. He and a member of his staff who you  
17:45:14 2 just identified -- I won't even attempt to pronounce  
17:45:17 3 the name -- those two individuals were responsible  
17:45:20 4 for deciding who would be on the board?

17:45:22 5 A. Yes.

17:45:24 6 Q. With your approval?

17:45:25 7 A. Yes.

17:45:27 8 MS. CAVERLY: Can we get a time check,  
17:45:29 9 please?

17:45:31 10 MR. NIELD: It's --

17:45:35 11 THE VIDEOGRAPHER: Six hours 37 minutes.

17:45:43 12 MS. CAVERLY: Thank you.

17:45:45 13 MR. NIELD: You know what? Let's go off  
17:45:47 14 the record.

17:45:49 15 THE VIDEOGRAPHER: Going off the record.

17:45:50 16 The time is 5:45 p.m.

17:45:54 17 (Brief recess taken.)

17:54:35 18 THE VIDEOGRAPHER: We are back on the  
17:54:42 19 record.

17:54:43 20 The time is 5:54 p.m.

17:54:59 21 BY MR. NIELD:

17:54:59 22 Q. I wanted to ask -- this kind of goes to the  
17:55:05 23 beginning of the deposition, but as it relates to  
17:55:10 24 sales of the products that we've been discussing  
17:55:12 25 here today over the 2003 to 2007 time period at

17:55:18 1 issue --

17:55:18 2 A. Uh-huh.

17:55:18 3 Q. -- would you be as the Corporate designee

17:55:23 4 of Natura Pet Products the most knowledgeable person

17:55:28 5 in that regard?

17:55:28 6 A. Yes.

17:55:29 7 Q. Without going back and consulting sales

17:55:32 8 data, would you be able to answer questions as to

17:55:36 9 the volume of sales revenues produced on these

17:55:42 10 various products over the time period at issue?

17:55:46 11 A. I could make an estimation, but it -- it

17:55:52 12 would be an order of magnitude, but it really would

17:55:55 13 be a guess. I would have to really go back and

17:55:58 14 consult the actual data to give you accurate

17:56:01 15 numbers.

17:56:01 16 Q. You could ball-park it for me, so to speak?

17:56:04 17 A. I could ball-park it, sure.

17:56:07 18 Q. Well, then let's focus on the Senior --

17:56:13 19 Innova Senior Dry Dog Food for the November 2003 to

17:56:19 20 November of 2007 time period. Could you ball-park

17:56:23 21 the sales of that product for me over that time

17:56:26 22 period?

17:56:26 23 MS. CAVERLY: In what geographic area?

17:56:29 24 MR. NIELD: In the United States of

17:56:30 25 America.

17:56:37 1 MS. CAVERLY: Is your ball-park

17:56:39 2 confidential information, Mr. Atkins?

17:56:41 3 THE WITNESS: It's internal confidential

17:56:43 4 information, yes.

5 (Pages 309 to 315 can be found under  
6 separate cover in the confidential portion  
7 of this deposition.)

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18:00:04 1 MR. NIELD: Mighty interesting reading  
18:00:14 2 here.  
18:00:14 3 BY MR. NIELD:  
18:01:22 4 Q. So let me show you something that was  
18:01:25 5 produced as part of the document production, and I'm  
18:01:27 6 not really sure what this is. It may be more than  
18:01:31 7 one thing. So let's not do that.  
18:01:41 8 This first document is Bates-stamped DEF,  
18:01:47 9 Defendant, ADD 00029. Can you tell me what that is?  
18:02:02 10 A. That looks like a -- it's entitled "NMI  
18:02:09 11 Quality Control Summary." It looks like a list of  
18:02:11 12 different types of quality control activities that  
18:02:14 13 the plant engages in.  
18:02:16 14 Q. The plant that's operated by Natura --  
18:02:19 15 A. Manufacturing.  
18:02:20 16 Q. -- Manufacturing, Inc.?  
18:02:21 17 A. Yes.  
18:02:22 18 Q. I'm sorry, what type of activities again?  
18:02:25 19 A. Quality control activities.  
18:02:27 20 Q. Okay. This would probably be that  
18:02:30 21 document -- discussion of that document and the  
18:02:34 22 information contained therein would probably be  
18:02:37 23 better directed at somebody at Natura Manufacturing,  
18:02:41 24 Inc.?  
18:02:41 25 A. Depending on the scope of the question,

18:02:43 1 yes.

18:02:43 2 MS. CAVERLY: Why don't you try us while we  
18:02:45 3 are sitting here.

18:02:48 4 MR. NIELD: I may have some other things.

18:02:55 5 Thanks for the suggestion.

6 BY MR. NIELD:

18:03:01 7 Q. There's another document that was also  
18:03:04 8 produced as part of the production. I think I know  
18:03:11 9 what this is, but can you tell me what that is,  
18:03:13 10 please?

18:03:32 11 A. Yeah, it looks like a -- again, it's  
18:03:35 12 entitled "Natura Manufacturing, Inc., Quality  
18:03:37 13 Control Point Summary." "Natura Manufacturing,  
18:03:39 14 Inc., Quality Control Point Summary." And it's  
18:03:44 15 another list of quality activity -- quality control  
18:03:49 16 activities that are engaged by Natura Manufacturing.

18:03:53 17 Q. Did you have any participation in the  
18:03:58 18 preparation of that document?

18:03:59 19 A. No.

18:04:03 20 Q. Do your day-to-day activities involve  
18:04:06 21 execution of any of the items set out in that  
18:04:10 22 document?

18:04:11 23 A. No.

18:04:13 24 Q. That document refers to the processes  
18:04:16 25 undertaken by Natura Manufacturing, Inc.?

18:04:17 1 A. Yes.

18:04:22 2 Q. Do you know anybody at Natura

18:04:24 3 Manufacturing, Inc., which -- who was involved in

18:04:26 4 the preparation of that document?

18:04:28 5 A. Yes.

18:04:29 6 Q. Who would that be?

18:04:32 7 A. I'm sure -- the people I know specifically

18:04:35 8 would be Don Scott and Brian Streit, S-t-r-e-i-t.

18:04:42 9 Q. He's the operations manager?

18:04:44 10 A. Correct.

18:04:45 11 Q. Can I see that?

18:04:53 12 And those individuals would be in a better

18:04:55 13 position to answer specific questions as to each of

18:04:57 14 the items set out in this document than yourself?

18:04:59 15 A. Yes.

18:05:03 16 Q. Would the same individuals -- and we looked

18:05:05 17 at this document just a moment ago, but would the

18:05:08 18 same individuals be able to answer specific

18:05:11 19 questions as to the various items listed on that

18:05:14 20 document than yourself?

18:05:16 21 A. Yes, I mean, I could and they could as

18:05:19 22 well, yes.

18:05:20 23 Q. Are you as well versed as they are in the

18:05:23 24 items in that document?

18:05:24 25 A. No.



18:05:25 1 MS. CAVERLY: Objection. Calls for  
18:05:26 2 speculation.

18:05:30 3 THE WITNESS: My opinion is no.

18:05:31 4 MR. NIELD: Then I'm not going to waste  
18:05:33 5 your time with it.

18:07:49 6 Anything over there?

18:07:51 7 MR. BAKER: No. Sales figures. Press  
18:07:55 8 releases. We already talked about that.

18:07:59 9 MR. NIELD: Just give me a moment. I may  
18:08:01 10 be done here. There's one thing I wanted to look  
18:08:04 11 at. I just can't find it.

12 BY MR. NIELD:

18:09:31 13 Q. Does the AAFCO contain a definition of  
18:09:36 14 byproducts, if you know?

18:09:40 15 A. It has reference for, like, poultry  
18:09:44 16 byproduct meal for specific byproduct ingredients,  
18:09:47 17 but just the generic term "byproducts" I don't think  
18:09:50 18 they have a specific definition for, no.

18:09:53 19 Q. If poultry byproduct meal is included in a  
18:09:57 20 product, is the manufacturer required to include  
18:10:00 21 that on a label?

18:10:08 22 A. Yes.

18:10:16 23 Q. Well, you may be lucky. I can't -- all  
18:12:03 24 right. I guess it's not that important.

18:12:11 25 All right. Well, I can't -- I don't think

18:12:14 1 I have anything further at this point.

18:12:17 2 MS. CAVERLY: We would like to reserve our  
18:12:19 3 right to review the transcript. If I could propose  
18:12:22 4 that the court reporter be relieved of her duties  
18:12:24 5 and send the original transcript to me. I'll  
18:12:27 6 arrange for Mr. Atkins to review it and I'll either  
18:12:30 7 send it to you or maintain it until the time of  
18:12:33 8 trial, of course, advising you if there are any  
18:12:38 9 alterations.

18:12:38 10 MR. NIELD: Are we maintaining each other's  
18:12:40 11 originals?

18:12:41 12 MS. CAVERLY: I am maintaining the  
18:12:42 13 originals for my own witnesses, so you may do so for  
18:12:45 14 yours if you choose to or I will.

18:12:49 15 MR. NIELD: Well, I think it's easier, more  
18:12:54 16 convenient for each us to maintain the transcript of  
18:12:57 17 our own witnesses if we agree to that.

18:12:59 18 MS. CAVERLY: That's fine with me.

18:13:00 19 MR. NIELD: All right. As far as the  
18:13:01 20 transcript, I don't have any problem with that. The  
18:13:03 21 only problem I do have is that we need to get the  
18:13:06 22 transcript relatively quickly. We need at least a  
18:13:09 23 draft of the transcript.

18:13:11 24 MS. CAVERLY: Well, you can talk with the  
18:13:13 25 court reporter and expedite it. I'm sure if you pay

18:13:16 1 for it she won't mind getting it to you in the next  
18:13:21 2 48 hours. But Mr. Atkins certainly won't be able to  
18:13:25 3 review it in that time frame.

18:13:27 4 MR. NIELD: I understand. That's the  
18:13:29 5 aspect of it I'm thinking of.

18:13:31 6 MS. CAVERLY: Well, he has 30 days under  
18:13:33 7 the rules.

18:13:34 8 MR. NIELD: I understand.

18:13:38 9 What do you think?

18:13:40 10 You know what, I'll just -- we'll put a  
18:13:45 11 stipulation on the record that the original copy of  
18:13:48 12 the transcript will be sent to Mr. Caverly.

18:13:52 13 I'm assuming you want it to go to you?

18:13:53 14 MS. CAVERLY: Please.

18:13:54 15 MR. NIELD: And Ms. Caverly then will  
18:13:56 16 provide it to her client.

18:13:57 17 So that you, as we indicated, talked about  
18:14:00 18 in the beginning of the deposition, have the  
18:14:01 19 opportunity to review it, make any changes,  
18:14:03 20 corrections, additions you deem necessary and then  
18:14:03 21 sign it under the penalty of perjury and then inform  
18:14:07 22 Ms. Caverly of any changes you've made.

18:14:09 23 And you will inform my office of any  
18:14:11 24 changes made in the deposition transcript within how  
18:14:16 25 many days?

18:14:17 1 MS. CAVERLY: Thirty days.

18:14:18 2 MR. NIELD: Thirty days.

18:14:20 3 Ms. Caverly will then maintain the original  
18:14:22 4 copy of the transcript in her records and agree to  
18:14:25 5 produce it for all purposes in the future including  
18:14:27 6 trial.

18:14:28 7 If for any reason the original copy of the  
18:14:31 8 deposition transcript is unavailable in the future  
18:14:33 9 then a certified unsigned copy may be used for all  
18:14:37 10 purposes.

18:14:37 11 MS. CAVERLY: So stipulated.

18:14:38 12 MR. NIELD: We will discuss with the court  
18:14:40 13 reporter as far as whether we need it expedited or  
18:14:44 14 not off the record.

18:14:46 15 Anything else?

18:14:46 16 MS. CAVERLY: No.

17 MR. NIELD: Thank you.

18:14:48 18 THE VIDEOGRAPHER: This concludes today's  
18:14:51 19 deposition of Peter Atkins. Number of media used  
18:14:53 20 today is four.

18:14:54 21 We are off the record at 6:14 p.m.

18:14:59 22 THE COURT REPORTER: Are you ordering a  
18:15:01 23 copy of the deposition?

24 MS. CAVERLY: Yes, and I would like  
18:15:03 25 electronic and condensed.

1 (Whereupon, the deposition of  
2 PETER LARRY ATKINS was concluded  
3 at 6:15 p.m. this date.)

4 --- oOo ---

5 I certify under penalty of perjury under the laws of  
6 the State of California that the foregoing is true  
7 and correct.

8

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Date \_\_\_\_\_ PETER LARRY ATKINS

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