

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GNOSIS S.P.A., GNOSIS
BIORESEARCH S.A., AND
GNOSIS U.S.A., INC.,

Petitioners,

Case IPR2013-00117
US Patent 6,011,040

v.

MERCK & CIE,

Patent Owner.

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Deposition of AUDY KENT LADNER

Friday, November 22, 2013

Kenner, Louisiana

9:00 a.m.

Reported by:
MARYBETH MUIR
Job No. 32574

Gnosis Exhibit 1147
Gnosis v. Merck/SAMSF
IPR2013-00116,-117,-118,-119

<p style="text-align: right;">2</p> <p>1 A P P E A R A N C E S:</p> <p>2</p> <p>3 ATTORNEYS FOR THE PETITIONERS:</p> <p>4 HUSCH BLACKWELL, LLP</p> <p>5 120 South Riverside Plaza, Suite 2200</p> <p>6 Chicago, Illinois 60606</p> <p>7 BY: JOSEPH E. CWIK, ESQ.</p> <p>8 joseph.cwik@huschblackwell.com</p> <p>9</p> <p>10 AMIN TALATI</p> <p>11 55 West Monroe Street, Suite 3400</p> <p>12 Chicago, Illinois 60603</p> <p>13 BY: JONATHAN J. KRIT, ESQ.</p> <p>14 jonathan@amintalati.com</p> <p>15</p> <p>16</p> <p>17 ATTORNEYS FOR THE PATENT OWNERS:</p> <p>18 ALSTON & BIRD, LLP</p> <p>19 90 Park Avenue</p> <p>20 New York, New York, 10016-1387</p> <p>21 212.210.9400</p> <p>22 BY: THOMAS PARKER, ESQ.</p> <p>23 thomas.parker@alston.com</p> <p>24 DWAYNE C. NORTON, ESQ.</p> <p>25 dwayne.norton@alston.com</p>	<p style="text-align: right;">4</p> <p>1 AUDY KENT LADNER,</p> <p>2 having been first duly sworn, was examined and</p> <p>3 testified as follows:</p> <p>4</p> <p>5 EXAMINATION</p> <p>6 BY MR. CWIK:</p> <p>7 Q. Good morning, Mr. Ladner. Could you</p> <p>8 please state your full name for the record.</p> <p>9 A. Audy Kent Ladner.</p> <p>10 Q. Mr. Ladner, you've been deposed</p> <p>11 before, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Just a couple ground rules. Today</p> <p>14 I'll be asking you a series of verbal questions.</p> <p>15 It's important that you answer verbally rather than</p> <p>16 gestures such as shaking your head and nodding your</p> <p>17 shoulders because the reporter cannot really take</p> <p>18 those things down. I'll ask you a series of</p> <p>19 questions. And I'll assume that you understand the</p> <p>20 question unless you tell me otherwise.</p> <p>21 Is that okay?</p> <p>22 A. Yes.</p> <p>23 Q. Is there any reason medically that</p> <p>24 you can't give truthful testimony today?</p> <p>25 A. No.</p>
<p style="text-align: right;">3</p> <p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 AUDY KENT LADNER</p> <p>4 Examination by Mr. Cwik 4, 96</p> <p>5 by Mr. Norton 90</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 IDENT. DESCRIPTION PAGE</p> <p>9 Exhibit 1099 Parties' Joint Stipulation of</p> <p>10 Undisputed Facts 11</p> <p>11 Exhibit 1100 Jury Demanded 34</p> <p>12 Exhibit 1101 Metanx Tablets Product Insert 36</p> <p>13 Exhibit 1102 Jury Demand Complaint 45</p> <p>14 Exhibit 1103 Jury Demanded 51</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 Q. Mr. Ladner, I've handed you what</p> <p>2 we've previously marked as Exhibit 2022, title</p> <p>3 replacement declaration of Audy Kent Ladner. I'd</p> <p>4 like you to take a look at this document and tell me</p> <p>5 if you've seen it before.</p> <p>6 A. I have.</p> <p>7 Q. And is this your declaration that you</p> <p>8 submitted in connection with these matters before</p> <p>9 the Patent Board?</p> <p>10 A. It is.</p> <p>11 Q. Okay.</p> <p>12 Turning to page 28, which is your</p> <p>13 signature page. Is that your signature?</p> <p>14 A. It is.</p> <p>15 Q. The sentence before that says:</p> <p>16 "I declare under penalty of perjury</p> <p>17 that the foregoing is true and correct."</p> <p>18 Is that an accurate statement?</p> <p>19 A. Yes, it is.</p> <p>20 Q. Referring to Paragraph 14 of your</p> <p>21 declaration, the first sentence in Paragraph 14</p> <p>22 says:</p> <p>23 "One particular differentiate tour</p> <p>24 that makes our product unique is our use of</p> <p>25 Merck's Metafolin as our L-methylfolate</p>

<p style="text-align: right;">6</p> <p>1 ingredient."</p> <p>2 In that sentence you have a phrase,</p> <p>3 "our product", and I just want to understand which</p> <p>4 product or products you are referring to in that</p> <p>5 sentence.</p> <p>6 A. All of our product that contain the</p> <p>7 L5-methylfolate.</p> <p>8 Q. Did you say L-5-methylfolate?</p> <p>9 A. L5-methylfolin.</p> <p>10 Q. L5-methylfolin?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 Is that L5-methylfolin sometimes also</p> <p>14 called L-methylfolate?</p> <p>15 A. It is.</p> <p>16 Q. Is it also sometimes called</p> <p>17 5-methyl-6S-tetrahydrofolate?</p> <p>18 A. Sometimes.</p> <p>19 Q. Okay.</p> <p>20 So which ingredients that PamLab</p> <p>21 makes includes the methylfolin ingredient?</p> <p>22 MR. NORTON: Objection to form.</p> <p>23 A. Uhhh, Neevo DHA -- I just want to</p> <p>24 make sure we get it. Dep line, Neevo, Cerefolin,</p> <p>25 Cerefolin NAC, Metanx.</p>	<p style="text-align: right;">8</p> <p>1 include B vitamins in their product, correct?</p> <p>2 A. Yes.</p> <p>3 Q. So that doesn't by itself make your</p> <p>4 product unique, correct?</p> <p>5 A. I'm not sure -- you mean by having B</p> <p>6 vitamins?</p> <p>7 Q. Uh-huh.</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 Let's go to Paragraph 17 of your</p> <p>11 declaration. It says:</p> <p>12 "PamLab entered into a license with</p> <p>13 Merck in 2002 and the latest agreement between</p> <p>14 Merck and PamLab was signed in 2013."</p> <p>15 Now, under those agreements, you</p> <p>16 understand that PamLab is a licensee under the four</p> <p>17 patents that are listed on the front page of your</p> <p>18 declaration, correct?</p> <p>19 MR. NORTON: Objection to form.</p> <p>20 A. Correct.</p> <p>21 Q. Let's look at the front page so we</p> <p>22 can get some common language that we're using today.</p> <p>23 Not page one, but the actual cover page. There you</p> <p>24 go.</p> <p>25 Do you see towards the bottom there</p>
<p style="text-align: right;">7</p> <p>1 Q. Okay.</p> <p>2 Is that it that you can recall at</p> <p>3 this time?</p> <p>4 A. The ones that I'm pertaining to in</p> <p>5 that statement.</p> <p>6 Q. The first sentence says:</p> <p>7 "One particular differentiate tour</p> <p>8 that makes our product unique is our use of</p> <p>9 Merck's Metafolin."</p> <p>10 Are you aware of any other</p> <p>11 differentiate tours that make your product unique?</p> <p>12 A. B vitamins.</p> <p>13 Q. Okay.</p> <p>14 Which ones are those?</p> <p>15 A. B12, B6, all of the ones that we use</p> <p>16 that are covered under the Bailey patents.</p> <p>17 Q. Okay.</p> <p>18 And are you saying that you are not</p> <p>19 aware of any other products that use B vitamins or</p> <p>20 is it just the particular combination of these B</p> <p>21 vitamins and your L-methylfolate which makes your</p> <p>22 product unique?</p> <p>23 A. I'm not sure what you're asking.</p> <p>24 Q. Okay.</p> <p>25 You are aware of other products that</p>	<p style="text-align: right;">9</p> <p>1 is a reference to a U.S. Patent No. 5997915?</p> <p>2 A. I'm not sure. I'm not seeing it.</p> <p>3 Oh, okay, yes. I was looking down below.</p> <p>4 Q. And below that is there is a</p> <p>5 reference to U.S. Patent 673381?</p> <p>6 A. Yes.</p> <p>7 Q. And U.S. Patent 7172778, correct?</p> <p>8 A. Yes, correct.</p> <p>9 Q. And below that is a reference to a</p> <p>10 patent 6011040?</p> <p>11 A. Correct.</p> <p>12 Q. Okay.</p> <p>13 And do you understand that PamLab has</p> <p>14 a license to use those patents under the</p> <p>15 Merck-PamLab license agreements?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 And with respect to those first three</p> <p>19 patents, and, you know, we commonly call patents by</p> <p>20 their last three digits. So, for example, the first</p> <p>21 one would be the 915 patent. You're familiar with</p> <p>22 that, correct?</p> <p>23 A. Correct.</p> <p>24 Q. With respect to the 915 and 381 and</p> <p>25 778 patents, you've defined those patents in your</p>

<p style="text-align: right;">10</p> <p>1 declaration as the Bailey patents; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. Is that okay if we call those three</p> <p>4 patents the Bailey patents today?</p> <p>5 A. Yes.</p> <p>6 Q. And the last one is the 040 patent.</p> <p>7 Is that okay if we call that the 040 patent?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 Under the Merck-Pamlab agreements, do</p> <p>11 you understand whether Pamlab is a licensee under</p> <p>12 any additional patents?</p> <p>13 MR. NORTON: Objection to form.</p> <p>14 A. I'm not sure under those patents what</p> <p>15 you're referring to.</p> <p>16 Q. Okay.</p> <p>17 Under the Merck-Pamlab license</p> <p>18 agreement, is Pamlab licensed to use any patents</p> <p>19 other than the Bailey patents or the 040 patent?</p> <p>20 A. I'm not sure. I'm not familiar with</p> <p>21 under that patent, so...</p> <p>22 Q. Maybe it's just the language. Do you</p> <p>23 understand that Pamlab has the rights to any patents</p> <p>24 other than the Bailey patents and the 040 patent</p> <p>25 under the Merck agreements?</p>	<p style="text-align: right;">12</p> <p>1 and U.S. Patent 67490 and Canadian patent</p> <p>2 CA-2243981."</p> <p>3 Mr. Ladner, does that refresh your</p> <p>4 recollection as to whether or not Pamlab is a</p> <p>5 licensee under additional patents under the Pamlab</p> <p>6 license agreement?</p> <p>7 MR. NORTON: Objection, foundation.</p> <p>8 A. It's the first time I've seen this.</p> <p>9 I don't -- you know, in my capacity I'm aware that</p> <p>10 we have license agreements. Under what and what</p> <p>11 with what, that I can't give specifics.</p> <p>12 Q. Okay.</p> <p>13 A. I don't know what any of these mean.</p> <p>14 Q. Okay.</p> <p>15 Have you seen any of the Pamlab Merck</p> <p>16 license agreements?</p> <p>17 A. Not in-depth. I'm just simply aware</p> <p>18 that we have them because of, again, my capacity as</p> <p>19 an officer of the company and a significance that</p> <p>20 040 has to our business.</p> <p>21 Q. In your declaration you make</p> <p>22 reference to the "Pamlab Patented Products"; is that</p> <p>23 correct? Do you use that phrase?</p> <p>24 A. Where are we?</p> <p>25 Q. We can look at Paragraph 30. Do you</p>
<p style="text-align: right;">11</p> <p>1 A. That Pamlab has rights to other</p> <p>2 patents?</p> <p>3 Q. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. And do you know which patents those</p> <p>6 are?</p> <p>7 A. Not off memory.</p> <p>8 MR. CWIK: Mark this 1099.</p> <p>9 (Whereupon Exhibit 1099, Parties'</p> <p>10 Joint Stipulation of Undisputed Facts, was marked</p> <p>11 for Identification.)</p> <p>12 Q. Mr. Ladner, I've handed you what was</p> <p>13 marked as Exhibit 1099. And it's titled "Parties</p> <p>14 Joint Stipulation of Undisputed Facts". This is the</p> <p>15 public version of the document.</p> <p>16 MR. NORTON: Counsel, it's 1099,</p> <p>17 right?</p> <p>18 MR. CWIK: 1099, correct.</p> <p>19 Q. And, Mr. Ladner, I'd like you to look</p> <p>20 at Paragraph 11 of the stipulation on page five that</p> <p>21 says:</p> <p>22 "Under the Merck-Pamlab license</p> <p>23 agreement Pamlab is also licensee of U.S.</p> <p>24 Patent 6254904, U.S. Patent 6441168 and U.S.</p> <p>25 Patent No. 6451360, U.S. Patent No. 6808725</p>	<p style="text-align: right;">13</p> <p>1 see Paragraph 30 lists the products Cerefolin,</p> <p>2 Metanx, CerefolinNAC, Deplin, Neevo and NeevoDHA?</p> <p>3 A. Yes.</p> <p>4 Q. Do you see after that list you define</p> <p>5 them as collectively the "Pamlab "Patented</p> <p>6 Products"?"</p> <p>7 A. Yes.</p> <p>8 Q. And is it okay if we use that phrase</p> <p>9 today for today's deposition?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 Is it your opinion that the Pamlab</p> <p>13 Patented Products are covered by the 915778381 or</p> <p>14 the 040 patents?</p> <p>15 MR. NORTON: Objection, calls for</p> <p>16 legal conclusion. Expert testimony.</p> <p>17 Q. You can answer.</p> <p>18 A. If we're referring to the 040 patent</p> <p>19 and the Bailey patents, yes.</p> <p>20 Q. Okay.</p> <p>21 And is it your understanding that the</p> <p>22 Pamlab Patented Products are covered by any patents</p> <p>23 other than the Bailey patents and the 040 patent?</p> <p>24 MR. NORTON: Same objection.</p> <p>25 A. Not that I am aware of specifically</p>

<p style="text-align: right;">14</p> <p>1 what it would be covering for those products. The</p> <p>2 ones of significance are the 040 and the Bailey</p> <p>3 patents.</p> <p>4 Q. Okay.</p> <p>5 And why are they of significance?</p> <p>6 Why are only those of significance?</p> <p>7 A. Because we have built our entire</p> <p>8 business around that -- those inventions and those</p> <p>9 patents. And the outcomes that have been associated</p> <p>10 with those in the PamLab Patented Products.</p> <p>11 Q. Well, given that we've seen in the</p> <p>12 joint stipulation that PamLab took a license to</p> <p>13 patents other than the Bailey patents and the 040</p> <p>14 patent, could you tell me why PamLab obtained rights</p> <p>15 to those other patents?</p> <p>16 A. I didn't know what those patents were</p> <p>17 for or do I know what they're for. So I can't,</p> <p>18 therefore, say there is any significance.</p> <p>19 Q. Is there someone at PamLab who would</p> <p>20 know why PamLab took rights to those other patents?</p> <p>21 A. I don't -- I can't tell you.</p> <p>22 Q. Regarding the patents that PamLab</p> <p>23 took a license to that are other than the Bailey</p> <p>24 patents and 040 patent, do you know if those other</p> <p>25 patents were deemed necessary to sell the PamLab</p>	<p style="text-align: right;">16</p> <p>1 trademark?</p> <p>2 A. Yes.</p> <p>3 Q. And do you know why PamLab desired to</p> <p>4 have rights to Merck's Metafolin trademark?</p> <p>5 A. No.</p> <p>6 Q. Do you understand that PamLab has</p> <p>7 rights to Merck's analytical support?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 And do you know why PamLab desired</p> <p>11 rights to Merck's analytical support?</p> <p>12 A. No.</p> <p>13 Q. Do you understand that PamLab has</p> <p>14 rights to Merck's application know-how?</p> <p>15 MR. NORTON: Objection to foundation.</p> <p>16 A. No.</p> <p>17 Q. When PamLab first licensed the</p> <p>18 patents from Merck, did PamLab believe that Merck</p> <p>19 had a good business reputation?</p> <p>20 A. I wasn't with PamLab at the time.</p> <p>21 Q. Okay.</p> <p>22 When did you arrive at PamLab?</p> <p>23 A. 2006.</p> <p>24 Q. In 2006 did PamLab believe that</p> <p>25 Merck had a good business reputation in the</p>
<p style="text-align: right;">15</p> <p>1 Patented Products?</p> <p>2 MR. NORTON: Objection to form.</p> <p>3 Calls for expert testimony.</p> <p>4 A. No.</p> <p>5 Q. Did you say no?</p> <p>6 A. I said no.</p> <p>7 Q. Do you know if PamLab could make</p> <p>8 PamLab Patented Products without rights to the other</p> <p>9 patents other than the Bailey patents and the 040</p> <p>10 patent?</p> <p>11 MR. NORTON: Same objection.</p> <p>12 A. No.</p> <p>13 Q. Do you understand that PamLab is</p> <p>14 licensed to use Merck's Metafolin ingredient?</p> <p>15 A. Yes.</p> <p>16 Q. And do you know why PamLab had a</p> <p>17 desire to use Merck's Metafolin ingredient?</p> <p>18 A. Because of its uniqueness and its</p> <p>19 novel properties and it's truly a novel invention.</p> <p>20 Q. So, what is unique and novel about</p> <p>21 Merck's Metafolin ingredient?</p> <p>22 A. The outcomes that we see because of</p> <p>23 it.</p> <p>24 Q. Do you have an understanding that</p> <p>25 PamLab is licensed to use Merck's Metafolin</p>	<p style="text-align: right;">17</p> <p>1 industry?</p> <p>2 A. Yes.</p> <p>3 Q. Has PamLab's association with Merck</p> <p>4 and Merck's reputation been important to PamLab?</p> <p>5 MR. NORTON: Objection to form.</p> <p>6 A. Only regarding 040.</p> <p>7 Q. Only with respect to the 040 patent</p> <p>8 is that what you said?</p> <p>9 A. Uh-huh.</p> <p>10 Q. Has PamLab put the name of the</p> <p>11 Metafolin ingredient on its product insert for the</p> <p>12 PamLab patented ingredients?</p> <p>13 MR. NORTON: Objection to form.</p> <p>14 A. I'm not sure it's on each one of</p> <p>15 them.</p> <p>16 Q. Okay.</p> <p>17 We'll look at that later then.</p> <p>18 A. I mean we've got...</p> <p>19 Q. In your mind, is it beneficial for</p> <p>20 PamLab to be associated with Merck in connection</p> <p>21 with its license agreements and its use of the</p> <p>22 Metafolin product?</p> <p>23 MR. NORTON: Objection to form.</p> <p>24 A. Only with regard to the licensing of</p> <p>25 the Metafolin product. And I'll refer to that as</p>

<p style="text-align: right;">18</p> <p>1 040.</p> <p>2 Q. Is it beneficial to PamLab that</p> <p>3 PamLab has a license to the Metabolin trademark?</p> <p>4 A. No.</p> <p>5 Q. Is it beneficial to PamLab that</p> <p>6 PamLab has a license to Merck's analytical support?</p> <p>7 A. No.</p> <p>8 Q. Has PamLab used any analytical</p> <p>9 support from Merck in connection with the PamLab</p> <p>10 Patented Products?</p> <p>11 A. I don't know.</p> <p>12 Q. So it's possible that PamLab has</p> <p>13 obtained Merck's analytical support with respect to</p> <p>14 the PamLab Patented Products?</p> <p>15 A. What is -- I'm not sure what</p> <p>16 analytical support is.</p> <p>17 Q. Okay.</p> <p>18 Technical support on the use of the</p> <p>19 Metabolin ingredient.</p> <p>20 MR. NORTON: Objection to form.</p> <p>21 A. That's medical. I'm not aware of it.</p> <p>22 Q. I understood you previously testified</p> <p>23 that PamLab having Merck's analytical support would</p> <p>24 be valuable to PamLab. Why is the analytical</p> <p>25 support valuable if you don't know really what has</p>	<p style="text-align: right;">20</p> <p>1 THE WITNESS: Have I heard? -- can I</p> <p>2 repeat the question?</p> <p>3 Q. Sure tell me what you understand in</p> <p>4 the question?</p> <p>5 A. Have I heard or do I understand in</p> <p>6 hearing that we pay royalties to Merck for the</p> <p>7 Bailey patents? Is that what you're asking?</p> <p>8 Q. And a portion each of those to Bailey</p> <p>9 patents and the 040 patent.</p> <p>10 A. That's the part that I don't know.</p> <p>11 Q. Do you know if Pam last has done any</p> <p>12 internal analysis which royalties paid to Merck</p> <p>13 relate to the Bailey patents and 040 patent?</p> <p>14 A. No.</p> <p>15 Q. Do you understand that PamLab has</p> <p>16 exclusive rights to the license patents in a certain</p> <p>17 exclusive market?</p> <p>18 A. Yes.</p> <p>19 Q. And do you recall what that exclusive</p> <p>20 market is?</p> <p>21 A. I know it's United States, Canada and</p> <p>22 South America. That I am aware of.</p> <p>23 Q. Is it beneficial to PamLab to be the</p> <p>24 exclusive licensee in that market?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">19</p> <p>1 been done?</p> <p>2 MR. NORTON: Objection, form and</p> <p>3 foundation. Misstates the record.</p> <p>4 Q. You can answer.</p> <p>5 A. Any time anyone is offering any</p> <p>6 support -- any support -- I think that's valuable.</p> <p>7 Q. Okay.</p> <p>8 A. And it is valuable.</p> <p>9 Q. Now, under the Merck-PamLab license</p> <p>10 agreement, you understand that PamLab pays royalties</p> <p>11 to Merck, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And when PamLab pays royalties to</p> <p>14 Merck, does PamLab somehow apportion the royalties</p> <p>15 to each of the Bailey patents and the 040 patent?</p> <p>16 A. Ummm, the apportionment and all that,</p> <p>17 I don't know how that's done or if that's done. I'm</p> <p>18 aware of royalties and the amount of royalties only</p> <p>19 because in my capacity as an officer and the</p> <p>20 business piece of it, I'm aware of it.</p> <p>21 Q. Have you ever heard of other from</p> <p>22 PamLab that PamLab somehow does a portion the</p> <p>23 royalties it pays for each of the licenses under the</p> <p>24 Bailey patents and 040 patent?</p> <p>25 MR. NORTON: Objection, hearsay.</p>	<p style="text-align: right;">21</p> <p>1 Q. Okay.</p> <p>2 Why is that beneficial to PamLab?</p> <p>3 A. Because of its novelty. Because of</p> <p>4 its value.</p> <p>5 Q. Is it valuable to PamLab because in</p> <p>6 that market PamLab does not have to compete with</p> <p>7 other companies that also have rights under those</p> <p>8 patents?</p> <p>9 A. No.</p> <p>10 Q. No?</p> <p>11 A. No.</p> <p>12 Q. If PamLab had a choice of being an</p> <p>13 exclusive licensee in a market or had the choice of</p> <p>14 competing with others under the same patents, would</p> <p>15 PamLab prefer to be the exclusive licensee or</p> <p>16 competing with others?</p> <p>17 MR. NORTON: Objection. Calls for</p> <p>18 speculation.</p> <p>19 A. We'd always prefer to be exclusive.</p> <p>20 Q. And why is that?</p> <p>21 A. Well, first of all, because if you</p> <p>22 have a patent, and if you have true -- if you have</p> <p>23 novelty and you have something that you believe in</p> <p>24 and you built your whole business around the</p> <p>25 strength of that, and that's exclusive, then you</p>

<p style="text-align: right;">22</p> <p>1 don't have to deal with this.</p> <p>2 Q. Okay.</p> <p>3 Paragraph 23 of your declaration, you</p> <p>4 can take your time and read the whole paragraph if</p> <p>5 you want, but I'm going to focus on the last two</p> <p>6 lines of Paragraph 23. And starting off with "as</p> <p>7 well as" at the end of the second to last line.</p> <p>8 It says:</p> <p>9 "As well as our enforcing the patents</p> <p>10 against multiple third-party infringers."</p> <p>11 My question is: I understand that</p> <p>12 you've enforced the patents against Gnosis in</p> <p>13 litigation, correct?</p> <p>14 A. PamLab specifically?</p> <p>15 Q. Yes.</p> <p>16 A. That I'm not sure.</p> <p>17 Q. Do you know if PamLab has enforced</p> <p>18 the patents against Macoven?</p> <p>19 A. From a patent standpoint, PamLab?</p> <p>20 No. I'm not aware of it.</p> <p>21 Q. So, with respect to PamLab's</p> <p>22 enforcing the patents against multiple third-party</p> <p>23 infringers, who are those multiple third-party</p> <p>24 infringers?</p> <p>25 A. Those were -- what I was referring to</p>	<p style="text-align: right;">24</p> <p>1 Q. Is it your understanding that PamLab</p> <p>2 has enforced the patents against each of these</p> <p>3 companies that I just read?</p> <p>4 A. No. As I explained earlier, it's --</p> <p>5 I don't know if it's patent specifically was</p> <p>6 enforced in these, but we had -- we had litigation</p> <p>7 and we had specifics around the ability to be an</p> <p>8 imposter or the fact that they were copying our</p> <p>9 products.</p> <p>10 Q. Okay.</p> <p>11 So with respect to those companies,</p> <p>12 you're not sure whether there was actual patent</p> <p>13 lawsuit filed against those companies; is that</p> <p>14 correct?</p> <p>15 A. Not against all of them, no.</p> <p>16 Q. Okay.</p> <p>17 And do you understand the difference</p> <p>18 between a lawsuit that's for patent infringement as</p> <p>19 opposed to a lawsuit that's for false advertising?</p> <p>20 I know you're not a lawyer.</p> <p>21 A. I know the difference for that, yes.</p> <p>22 Q. Okay.</p> <p>23 A. But again, I'm not a lawyer and I'm</p> <p>24 not wrapped up in all of the legal wrangling that is</p> <p>25 going on regarding it. I know the reason why we do</p>
<p style="text-align: right;">23</p> <p>1 there was -- is what is referred to as imposters.</p> <p>2 And you'll see that in here. In the actual</p> <p>3 litigation against those third-party infringers, the</p> <p>4 specifics of was -- was patent involved or was it</p> <p>5 not. What I'm referring to there is the fact that</p> <p>6 the exclusiveness of the 040 patent. Now, whether</p> <p>7 it was mentioned in there -- but it was all around</p> <p>8 the primary -- the primary ingredient, if you will,</p> <p>9 in all of our products of being L5, which is covered</p> <p>10 in the patent of 040. So it's the L5 that I'm</p> <p>11 referring to.</p> <p>12 Q. You said that you were referring to</p> <p>13 the imposter products among other things and those</p> <p>14 are discussed in your declaration, right?</p> <p>15 A. Uh-huh.</p> <p>16 Q. If you could look at page 26 of your</p> <p>17 declaration. You have a table on page 26, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And it lists several companies that</p> <p>20 are labeled as imposters, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Those include Macoven, Acella</p> <p>23 Pharmaceutical, Trigen Labs, Seton Pharmaceutical</p> <p>24 and Virtus Pharmaceutical, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">25</p> <p>1 it. I know the outcome that I expect from it. And</p> <p>2 I know the impact that it has while we're waiting on</p> <p>3 the outcome. And that's why -- in my capacity, that</p> <p>4 is what I focus on. So the specifics of what's all</p> <p>5 being brought forward in any litigation, it's all</p> <p>6 the same to me.</p> <p>7 Q. Just to complete the loop here then,</p> <p>8 Paragraph 23 in the last line where you mention</p> <p>9 there is PamLab enforcing the patents against</p> <p>10 multiple third-party infringers, I understand your</p> <p>11 testimony to be that you don't recall exactly which</p> <p>12 third-party infringers those were; is that correct?</p> <p>13 MR. NORTON: Objection to the extent</p> <p>14 that it misquotes the witness.</p> <p>15 A. Jen specific to the patent tease</p> <p>16 piece and litigation associated with what's patent</p> <p>17 and what's false advertising? I don't recall the</p> <p>18 specifics of all those with all of the different</p> <p>19 imposters and infringers that we had.</p> <p>20 Q. Okay.</p> <p>21 And am I safe in assuming that you</p> <p>22 don't recall which specific patents were asserted in</p> <p>23 those actions against those infringers, correct?</p> <p>24 MR. NORTON: Objection to form.</p> <p>25 A. I don't know if patents were enforced</p>

<p style="text-align: right;">26</p> <p>1 to begin with. But if they were -- I don't know for 2 sure, but if they were, I can tell you that those 3 are the ones that would be primary because it would 4 be the same. It would be the one that would be 5 associated with 040 and the Bailey patents. Because 6 those are the ones that are significant.</p> <p>7 Q. Okay. 8 Do you recall if there are any other 9 patents that were asserted?</p> <p>10 A. No, because I can't recall any other 11 patents.</p> <p>12 Q. Paragraph 26 of your declaration, the 13 first sentence says: 14 "Over the years PamLab sought ways to 15 expand the scope of the agreements to capture 16 more of the value of the intellectual property 17 covered by those agreements. In particular 18 the scope of the agreements became broader to 19 allow PamLab to purchase more Metafolin from 20 Merck."</p> <p>21 And the sentence continues. And my 22 question is: Where you say the scope of the 23 agreements back broader to allow PamLab to purchase 24 more Metafolin, was it beneficial for PamLab to 25 purchase more Metafolin?</p>	<p style="text-align: right;">28</p> <p>1 Q. When you say "on this", do you mean 2 the Merck relationship?</p> <p>3 A. I'm talking about on the novelty of 4 the invention of the 040 and the Bailey patents.</p> <p>5 Q. Okay. 6 Paragraph 30 of your declaration, the 7 last sentence of paragraph 30 says: 8 "Without the license from Merck, 9 PamLab would not have moved forward with the 10 development of Metanx, CerofolinNAC, Deplin, 11 Cerofolin, Neevo or NeevoDHA". 12 And my question is: Did PamLab 13 believe it needed a license to certain patents to 14 make the PamLab Patented Products?</p> <p>15 MR. NORTON: Objection to form.</p> <p>16 A. We needed a license for 040 and the 17 Bailey patents.</p> <p>18 Q. Okay. 19 Do you know if PamLab believed that 20 it needed a license to any other patents to make the 21 PamLab Patented Products?</p> <p>22 MR. NORTON: Objection to form.</p> <p>23 A. I don't know.</p> <p>24 Q. Do you understand that the Merck 25 Metafolin ingredient is covered by its own patent?</p>
<p style="text-align: right;">27</p> <p>1 A. Yes.</p> <p>2 Q. Is it important that PamLab purchase 3 the specific Metafolin ingredient versus a different 4 version of L-methylfolate sold by a different 5 company?</p> <p>6 MR. NORTON: Objection to form.</p> <p>7 A. Yes.</p> <p>8 Q. Why is it important that you purchase 9 the specific Metafolin product?</p> <p>10 A. Because it's the one that we have 11 associated with our outcomes.</p> <p>12 Q. When you say "outcomes", are you 13 referring to clinical outcomes of patients that have 14 used your products?</p> <p>15 A. Yes.</p> <p>16 Q. If Metafolin was not for sale, would 17 PamLab still continue to manufacture it's PamLab 18 Patented Products with a different version of 19 L-methylfolate on the market?</p> <p>20 MR. NORTON: Objection, hypothetical, 21 calls for speculation.</p> <p>22 A. I mean I can't answer that. Our 23 entire -- I will add this: Our entire business 24 model and business and the whole reason that I'm at 25 PamLab is built on this.</p>	<p style="text-align: right;">29</p> <p>1 MR. NORTON: Objection. Calls for 2 expert testimony.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. 5 Do you understand that patent to be 6 U.S. Patent 6441168?</p> <p>7 A. No.</p> <p>8 Q. Do you know what the patent number 9 is?</p> <p>10 A. No.</p> <p>11 Q. Okay. 12 Do you understand that patent covers 13 a crystalline version of L-methylfolate?</p> <p>14 A. No.</p> <p>15 Q. Do you understand that all of PamLab 16 Patented Products include the Metafolin ingredient?</p> <p>17 MR. NORTON: Objection to form.</p> <p>18 A. The ones that we're discussing?</p> <p>19 Q. Yes, the PamLab Patented Products. 20 A. Yes, I'm sorry.</p> <p>21 Q. Well, given that all of the PamLab 22 Patented Products use Metafolin and Metafolin is 23 covered by a patent, do you agree that PamLab 24 understands it needs rights to that patent covering 25 the Metafolin ingredient as well?</p>

<p style="text-align: right;">30</p> <p>1 MR. NORTON: Objection to form.</p> <p>2 A. I would assume if it's part of the</p> <p>3 patent, we need the Metafolin.</p> <p>4 Q. The Metafolin patent?</p> <p>5 A. We need the 040. The Bailey patents</p> <p>6 are the ones that I -- that's the one that I know</p> <p>7 creates outcomes. And that's the one that I know</p> <p>8 are significant. And those are the ones that I know</p> <p>9 that is driving our whole bus.</p> <p>10 Q. Do you know if Merck has claimed that</p> <p>11 its Metafolin version of L-methylfolate is more</p> <p>12 effective in patients than other versions of</p> <p>13 L-methylfolate?</p> <p>14 MR. NORTON: Objection, hearsay.</p> <p>15 A. No.</p> <p>16 Q. Do you know if Merck has claimed that</p> <p>17 its crystalline version of L-methylfolate is more</p> <p>18 effective than other versions of L-methylfolate?</p> <p>19 MR. NORTON: Objection, hearsay,</p> <p>20 foundation.</p> <p>21 A. No.</p> <p>22 Q. Referring to Paragraph No. 32 of your</p> <p>23 declaration, the first sentence says:</p> <p>24 "In general, the PamLab Patented</p> <p>25 Products each have labels that provide</p>	<p style="text-align: right;">32</p> <p>1 Q. Okay.</p> <p>2 Are there supervisors or leaders of</p> <p>3 those two divisions?</p> <p>4 A. There are.</p> <p>5 Q. Who are they?</p> <p>6 [REDACTED]</p> <p>7 Q. And [REDACTED], he is a lawyer,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Do you know who reviews these product</p> <p>11 inserts before they're given to the public?</p> <p>12 A. Med/Reg.</p> <p>13 Q. And again that's the internal</p> <p>14 division within PamLab?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know if they're reviewed by</p> <p>17 Mr. Coch and Mr. Daigle?</p> <p>18 A. In regard to the process, there is a</p> <p>19 process. Everything is put through for Med/Reg. I'm</p> <p>20 not sure if [REDACTED] actually sign off on</p> <p>21 the approval. I believe that they do.</p> <p>22 Q. Now, the second page of this</p> <p>23 Exhibit 2078, there is a list of patents at the top,</p> <p>24 do you see that?</p> <p>25 A. I do.</p>
<p style="text-align: right;">31</p> <p>1 information about the products. But the most</p> <p>2 significant source of information for the</p> <p>3 product is the package insert for each</p> <p>4 product."</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Why is the package inserts the most</p> <p>8 significant source of information?</p> <p>9 A. It's where clinicians go to get their</p> <p>10 information.</p> <p>11 Q. Referring to Paragraph 37 of your</p> <p>12 declaration, you make reference and you cite to the</p> <p>13 Metanx product insert as Exhibit 2078; is that</p> <p>14 correct? I handed you what's been marked as</p> <p>15 Exhibit 2078, which is entitled "Metanx" at the top.</p> <p>16 Mr. Ladner, is this the Metanx product insert that</p> <p>17 you've identified as Exhibit 2078?</p> <p>18 A. It is.</p> <p>19 Q. Okay.</p> <p>20 Who at PamLab prepares this product</p> <p>21 insert?</p> <p>22 A. Medical/Regulatory.</p> <p>23 Q. Is that an internal division within</p> <p>24 PamLab?</p> <p>25 A. It is. It's two divisions.</p>	<p style="text-align: right;">33</p> <p>1 Q. And does the Med/Reg people prepare</p> <p>2 that list of patents?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have personal knowledge as to</p> <p>5 which of these patents do apply to the Metanx</p> <p>6 product?</p> <p>7 MR. NORTON: Objection to form.</p> <p>8 A. No, I don't. Other than 040 and the</p> <p>9 Bailey patents.</p> <p>10 Q. On this list other than Bailey</p> <p>11 patents and the 040 patent there is a U.S. Patent</p> <p>12 6254904, correct? The third one, do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. You would agree that is not a Bailey</p> <p>15 patent or 040 patent, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay.</p> <p>18 The one below that is U.S. Patent No.</p> <p>19 6441168 and you would agree that is not a Bailey</p> <p>20 patent or a 040 patent, correct?</p> <p>21 A. As I understand them, correct.</p> <p>22 Q. And the last one is U.S. Patent</p> <p>23 767490 and you understand that is not a Bailey</p> <p>24 patent or 040 patent, correct?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">34</p> <p>1 Q. For those patents that are not the</p> <p>2 Bailey patents or 040 patent, do you know whether</p> <p>3 the claimed features in those other patents</p> <p>4 contributed to PamLab's success?</p> <p>5 A. No.</p> <p>6 Q. Do you recall if PamLab has ever</p> <p>7 asserted that Metanx is covered by a patent other</p> <p>8 than a patent that is listed here?</p> <p>9 MR. NORTON: Objection to form.</p> <p>10 A. No.</p> <p>11 MR. CWIK: This is 1100.</p> <p>12 (Whereupon Exhibit 1100, Jury</p> <p>13 Demanded, was marked for Identification.)</p> <p>14 Q. Mr. Ladner, we've handed you a</p> <p>15 document that we marked as 1100 and it's a case</p> <p>16 titled PamLab L.L.C. vs. Brookstone Pharmaceuticals,</p> <p>17 L.L.C. a/k/a Acella Pharmaceuticals. I would like</p> <p>18 you to take a look at Paragraph 16 on page seven and</p> <p>19 the first sentence of Paragraph 16 says:</p> <p>20 "Metanx's formulation and use falls</p> <p>21 within the scope of the '496 patent."</p> <p>22 Does that refresh your recollection</p> <p>23 as to whether PamLab has asserted Metanx is covered</p> <p>24 by a patent other than the patents that are listed</p> <p>25 on the product insert?</p>	<p style="text-align: right;">36</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall if previous versions of</p> <p>3 the Metanx product insert listed this 496 patent?</p> <p>4 MR. NORTON: Objection, form,</p> <p>5 foundation.</p> <p>6 A. No.</p> <p>7 MR. CWIK: Mark this 1101.</p> <p>8 (Whereupon Exhibit 1101, Metanx</p> <p>9 Tablets product insert, was marked for</p> <p>10 Identification.)</p> <p>11 Q. I've handed you a document marked as</p> <p>12 1101 and the title at the top is "Metanx Tablets".</p> <p>13 Have you seen this document before, Mr. Ladner?</p> <p>14 A. It looks familiar, yes.</p> <p>15 Q. Do you recognize that's a product</p> <p>16 insert for Metanx tablets?</p> <p>17 A. An older version.</p> <p>18 Q. On the last page I see the last line</p> <p>19 it says revised 11/08. Do you know what that would</p> <p>20 indicate, that language right there?</p> <p>21 A. That there was a change made in</p> <p>22 November of '08.</p> <p>23 Q. Okay.</p> <p>24 And on the third page there is a</p> <p>25 listed Patent section. Do you see that?</p>
<p style="text-align: right;">35</p> <p>1 A. It says it here. But I'm still not</p> <p>2 aware of it. I don't know what that means or the</p> <p>3 significance that it has.</p> <p>4 Q. Referring to Paragraph No. 2, if you</p> <p>5 could turn to that on page 2, the last sentence, it</p> <p>6 says:</p> <p>7 "Metabolite is the owner of all</p> <p>8 right, title, and interest in U.S. Patent No.</p> <p>9 6,528,496, entitled 'Compositions treating,</p> <p>10 preventing, or reducing elevated metabolic</p> <p>11 levels' (the '496 Patent)."</p> <p>12 Does that sentence refresh your</p> <p>13 recollection that PamLab has asserted that is</p> <p>14 covered by the 40?</p> <p>15 MR. NORTON: Objection as to</p> <p>16 foundation and with respect to the document.</p> <p>17 A. It's here.</p> <p>18 Q. But it doesn't jog your memory?</p> <p>19 A. No.</p> <p>20 Q. Do you have a recollection of PamLab</p> <p>21 filing suit against Brookstone Pharmaceuticals and</p> <p>22 Acella Pharmaceuticals?</p> <p>23 A. Yes.</p> <p>24 Q. And do you recall that suit took</p> <p>25 place in Federal Court in New Orleans?</p>	<p style="text-align: right;">37</p> <p>1 A. I do.</p> <p>2 Q. On the right-hand column the last</p> <p>3 patent is U.S. Patent no. 6528496. And my question</p> <p>4 is: Does this refresh your recollection as to</p> <p>5 whether 496 patent was included in previous product</p> <p>6 inserts for Metanx?</p> <p>7 A. It's here.</p> <p>8 Q. Okay.</p> <p>9 So this does refresh your</p> <p>10 recollection that, in fact, it was listed?</p> <p>11 MR. NORTON: Objection, asked and</p> <p>12 answered.</p> <p>13 A. Yes.</p> <p>14 Q. Referring back to Metanx product</p> <p>15 insert Exhibit 2078, the one that's referred to in</p> <p>16 your declaration?</p> <p>17 A. Uh-huh.</p> <p>18 Q. I see that has a revise date of</p> <p>19 August 2012, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 Do you know why the 496 patent</p> <p>23 appears in Exhibit 1101 in 2008, but does not appear</p> <p>24 in Exhibit No. 2078 in 2012?</p> <p>25 MR. NORTON: Objection, foundation.</p>

<p style="text-align: right;">38</p> <p>1 A. No.</p> <p>2 Q. Referring to the Exhibit 2078, the</p> <p>3 product insert referred to in your declaration?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Do you see there is a section on the</p> <p>6 front page called "Precautions"?</p> <p>7 A. Yes.</p> <p>8 Q. About halfway down?</p> <p>9 A. Yes.</p> <p>10 Q. And the -- it looks like the second</p> <p>11 sentence begins "L-methylfolate calcium". Do you</p> <p>12 see that sentence?</p> <p>13 A. Yes.</p> <p>14 Q. It says:</p> <p>15 "L-methylfolate calcium may be less</p> <p>16 likely than folic acid to mask vitamin B12</p> <p>17 deficiency."</p> <p>18 You see the footnotes, the 13 and 14?</p> <p>19 A. Yes.</p> <p>20 Q. And is it your understanding that</p> <p>21 those footnotes, 13 and 14, would refer to the</p> <p>22 references on the second page of this exhibit?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 Do you see that reference 14 is</p>	<p style="text-align: right;">40</p> <p>1 that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 And with respect to this list, is it</p> <p>5 also your opinion that you don't know which patents</p> <p>6 cover these Cerofolin products other than the Bailey</p> <p>7 and 040 patents listed here?</p> <p>8 MR. NORTON: Objection to form.</p> <p>9 A. Correct.</p> <p>10 Q. And Metafolin ingredient is included</p> <p>11 in the Cerofolin product, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Do you know why the 168 patent by</p> <p>14 Merck is not included in this list of patents?</p> <p>15 A. No.</p> <p>16 Q. With respect to the Bailey patents I</p> <p>17 see that the 381 and the 778 Bailey patents are not</p> <p>18 listed in this list of patents. Is it your belief</p> <p>19 that Cerofolin is covered by the 381 and 778</p> <p>20 patents?</p> <p>21 MR. NORTON: Objection, speculation,</p> <p>22 calls for expert.</p> <p>23 A. It doesn't have it here.</p> <p>24 Q. Do you have a personal belief whether</p> <p>25 Cerofolin is covered by those patents or not?</p>
<p style="text-align: right;">39</p> <p>1 reference to Scott JM, et al, lancet 1981,</p> <p>2 2:337-340.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Does PamLab agree that it was known</p> <p>6 at the time of this Scott article in 1981 that</p> <p>7 L-methylfolate calcium may be less likely than folic</p> <p>8 acid to mask vitamin B12 deficiency?</p> <p>9 MR. NORTON: Objection form,</p> <p>10 foundation.</p> <p>11 A. Medical has it in here.</p> <p>12 Q. If Medical has it in there, Medical</p> <p>13 believed it was true?</p> <p>14 A. I can't answer for Medical.</p> <p>15 Q. Would you expect Medical to only</p> <p>16 provide information that it believed was true,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. Mr. Ladner, I'm handing you what we</p> <p>20 mark as Exhibit 2251. Mr. Ladner, do you recall</p> <p>21 this exhibit was cited in your declaration as a</p> <p>22 product insert for Cerofolin tablets?</p> <p>23 A. Yes.</p> <p>24 Q. On the second page of this exhibit</p> <p>25 there is a section entitled "Patents". Do you see</p>	<p style="text-align: right;">41</p> <p>1 A. This Cerofolin?</p> <p>2 Q. Yes.</p> <p>3 A. Uhhh, no. Because the only ones that</p> <p>4 I really again, care about, is 040 and the Bailey</p> <p>5 patents. But I don't know which patent is specific</p> <p>6 to Cerofolin individually. And why or why not it's</p> <p>7 not listed here.</p> <p>8 Q. On the front page of this exhibit,</p> <p>9 2251, there is a section entitled "Precautions". Do</p> <p>10 you see that?</p> <p>11 A. I do.</p> <p>12 Q. And the second sentence says:</p> <p>13 "The 1 mg of cyanocobalamin contained</p> <p>14 in Cerofolin has been shown to provide an</p> <p>15 adequate amount of cyanocobalamin to address</p> <p>16 this precaution."</p> <p>17 Do you see there is a citation to No.</p> <p>18 4 there?</p> <p>19 A. I do.</p> <p>20 Q. Do you understand that to be a</p> <p>21 citation to reference No. 4 on the second page of</p> <p>22 this exhibit?</p> <p>23 A. It's not a very good citation, but --</p> <p>24 uhmm, there is a citation 4, yes.</p> <p>25 Q. And citation 4 says:</p>

<p style="text-align: right;">42</p> <p>1 "Lederle FA, oral cobalamin for 2 pernicious anaemia: medicine's best kept 3 secret? JAMA 1991; 265:94-95." 4 Are these references, references that 5 you believe the Med division of PamLab created? 6 MR. NORTON: Objection to form. 7 A. Or Regulatory. 8 Q. Okay. 9 And do you assume that Medical or 10 Regulatory believed this information to be accurate? 11 MR. NORTON: Objection, calls for 12 speculation. 13 A. I don't know. It wouldn't be in here 14 I wouldn't think if they didn't think that it was 15 accurate. 16 Q. This product insert also would have 17 been created by the Med/Reg divisions of PamLab, 18 correct? 19 A. Correct. 20 Q. Is that true for all the product 21 inserts for all of the PamLab Patented Products? 22 MR. NORTON: Objection, form calls 23 for speculation. 24 A. That all of them are created? 25 Q. By the Med/Reg divisions at PamLab?</p>	<p style="text-align: right;">44</p> <p>1 Q. Okay. 2 And I see there is a 915 patent which 3 is part of the Bailey patents, correct? 4 A. Correct. 5 Q. Okay. 6 And there is the 040 patent 7 underneath that, correct? 8 A. Correct. 9 Q. With respect to the other patents 10 listed there, do you have knowledge as to whether 11 CerofolinNAC is covered under those other patents? 12 A. No. 13 Q. The Metafolin ingredient is included 14 in the CerofolinNAC product; is that correct? 15 A. Correct. 16 Q. Do you have any knowledge why the 168 17 patent is not listed in this list of patents? 18 MR. NORTON: Objection, foundation. 19 A. No. 20 Q. Do you have any explanation as to why 21 the 381 or the 778 patents are not listed in this 22 list of patents? 23 A. No. 24 Q. Do you have an understanding as to 25 whether CerofolinNAC is actually covered by the 381</p>
<p style="text-align: right;">43</p> <p>1 A. It's -- everyone has a -- creates 2 this -- they are responsible for them, Med/Reg. 3 They are the ones that are medical, does all the 4 clinical. And Regulatory makes sure that it meets 5 all the Regulatory requirements. 6 Q. Okay. 7 So, you're saying that the other 8 people from even outside of those divisions provide 9 input? 10 A. Yes. 11 Q. But Med/Reg has the supervision of 12 actually -- 13 A. Yes, yes, the final. 14 Q. Mr. Ladner, I handed you what we've 15 marked as Exhibit 20 '85, which has been described 16 in your declaration as a product insert for 17 Cerofolin in a credit. 18 Mr. Ladner, in fact, is this the 19 product insert for CerofolinNAC that you had cited 20 in your declaration? 21 A. It is. 22 Q. The middle column towards the bottom 23 I see there is a list of patents there. Do you see 24 that? 25 A. I do.</p>	<p style="text-align: right;">45</p> <p>1 or 778 patent? 2 A. No. 3 Q. Do you have an understanding as to 4 whether CerofolinNAC is covered by any other patents 5 that list June Ailing and Steve Bailey as the 6 inventors? 7 MR. NORTON: Objection to form, 8 foundation. 9 A. I don't know specifics around 915. I 10 don't know the specifics, no. 11 Q. Do you recall if PamLab has ever 12 asserted that CerofolinNAC is covered by patents 13 other than the Bailey patents or the 040 patent? 14 A. I don't know. 15 (Whereupon Exhibit 1102, Jury 16 Demand Complaint, was marked for Identification.) 17 Q. Mr. Ladner, we handed you what's been 18 marked as Exhibit 1102, which is a complaint filed 19 by PamLab among others against Macoven and the 20 Allied Fire & Safety Equipment Co. entities in the 21 earn district of Texas. 22 Are you aware of that lawsuit, Mr. 23 Ladner? 24 A. Yes. 25 Q. I'd like you to take a look at</p>

<p>46</p> <p>1 Paragraph 60 of this complaint, page seven. 2 Paragraph 60 says: 3 "NeevoDHA, Metanx, CerofolinNAC and 4 Deplin are covered by one or more claims of 5 the 915, 904381778, 490 and/or 040 patents." 6 Do you see that? 7 A. Yes. 8 Q. Does that refresh your recollection 9 that PamLab has asserted that CerofolinNAC is 10 covered by patents other than the 040 patent? 11 MR. NORTON: Objection form, 12 foundation. 13 A. Based on this, yes. 14 Q. You would agree that PamLab has 15 asserted that? 16 A. Someone at PamLab has, yes. 17 Q. Does that refresh your recollection 18 as to whether CerofolinNAC is, in fact, covered by 19 the 409 or 040 patents? 20 MR. NORTON: Calls for speculation, 21 foundation. 22 A. I still don't know, but somebody has 23 said it does. So they, obviously, know more about 24 it than I. 25 Q. Okay.</p>	<p>48</p> <p>1 regarding the references have come from the Med/Reg 2 divisions at PamLab? 3 A. Yes. 4 Q. And you assume that Med/Reg PamLab 5 divisions at PamLab would have believed that to be 6 true, correct? 7 MR. NORTON: Objection, calls for 8 speculation. 9 A. They would validate it. These could 10 come from other places, but they validate it. 11 Q. And "validate it" means that they 12 would go back and read the references and make sure 13 it says what it says or? 14 MR. NORTON: Objection, calls for 15 speculation. 16 A. I don't know their process. 17 MR. NORTON: We've been going for an 18 hour. Want to take a break? 19 MR. CWIK: Yes, just a couple of 20 minutes. Let's finish this exhibit. 21 MR. NORTON: All right. 22 Q. Okay. 23 There's several other references 24 cited in this product insert, correct? 25 A. Correct.</p>
<p>47</p> <p>1 Who at PamLab would know more about 2 that than you do? 3 A. Harold Coch. 4 Q. Referring back to the CerofolinNAC 5 product insert Exhibit 2085, do you see in the 6 left-hand column toward the top there is a section 7 called "Pharmacology"? 8 A. Yes. 9 Q. And the first sentence says: 10 "L-methylfolate or 6(S)5 11 methyltetrahydrofolate, 6(S)5 MTHF, is the 12 primary biologically active isomer of folate." 13 And there is a citation to a footnote 14 1. Do you see that? 15 A. Yes. 16 Q. Do you see that referring to footnote 17 1 under the references there is a description of: 18 "Donaldson, K and KJC, Naturally 19 occurring forms of folic acid to enzymatic 20 conversion of methyltetrahydrofolate acid to 21 prefolic A methyltetrahydrofolate, J Biol Chem 22 1962 237:P1298 to 304?" 23 Do you see that? 24 A. Yes. 25 Q. And, again, would this information</p>	<p>49</p> <p>1 Q. And for each of those it's your 2 understanding that the Med/Reg division would 3 validate the accuracy of those references with 4 respect to this product insert, correct? 5 MR. NORTON: Objection to form. 6 Speculation. 7 A. Correct. 8 MR. CWIK: Okay. We can take a break 9 now. 10 (Recess.) 11 MR. CWIK: On the record. 12 Q. Mr. Ladner, I've handed you a 13 document that's been marked as 2162 and this exhibit 14 is described in your declaration as a Deplin product 15 insert; is that correct? 16 A. Correct. 17 Q. And on the right-hand column towards 18 the bottom there is a list of patents and I see 19 there is the 040 patent, correct? 20 A. Correct. 21 Q. And under that is U.S. Patent No. 22 6441168. Do you see that? 23 A. B1, yes. 24 Q. Okay. 25 Do you know whether the Deplin</p>

<p style="text-align: right;">50</p> <p>1 product made by PamLab is covered by this 6441168 2 patent? 3 A. I don't know. That's not something 4 that I keep up with. 5 Q. Okay. 6 I'm asking you to see if things jog 7 your memory here today. Okay? 8 A. Yes. 9 Q. Okay. 10 Now, you understand that Metafolin is 11 included in the Deplin product, correct? 12 A. Correct. 13 Q. And you understand that Metafolin is 14 the only active ingredient in Deplin? 15 A. Correct. 16 Q. Do you recall if PamLab has ever 17 asserted that Merck's ability to synthesize a stable 18 L-methylfolate in crystalline form was a key 19 breakthrough? 20 MR. NORTON: Objection, form, 21 foundation. 22 A. No. 23 MR. NORTON: Can I have that question 24 read back please. 25 (Whereupon the last question was read</p>	<p style="text-align: right;">52</p> <p>1 as to whether PamLab ever asserted that Merck's 2 Metafolin product was a key breakthrough? 3 MR. NORTON: Objection, asked and 4 answered. 5 A. Based on this document, yes. 6 Q. That does refresh your recollection, 7 correct? 8 A. I still don't know. I'm assuming 9 that Merck asserted that. It's in here and 10 submitted as evidence in the case I guess. It's 11 just not something that's -- the type, the form, 12 it's not something that is part of what I do. Now, 13 I hear things because of the capacity and role I'm 14 in. But outside of that, this is not something that 15 I focus on. 16 MR. NORTON: Objection as to the 17 document. There's been no foundation as to whether 18 the witness has even seen the document before. 19 Q. Paragraph 29 of this same Exhibit 20 1103, the PamLab complaint says: 21 "Metafolin is protected by a 22 comprehensive set of patents and patent 23 applications on the substance, key 24 intermediates, production processes and its 25 use in specific fields."</p>
<p style="text-align: right;">51</p> <p>1 back.) 2 MR. NORTON: Thank you. 3 MR. CWIK: Mark this 1103 please. 4 (Whereupon Exhibit 1103, Jury 5 Demanded, was marked for Identification.) 6 Q. Mr. Ladner, I've handed you what we 7 mark as Exhibit 1103, which is titled "Original 8 Complaint" and listed parties as PamLab as the 9 Plaintiff and list of Defendants are Acella 10 Pharmaceuticals and others. 11 Mr. Ladner, are you aware of this 12 lawsuit that PamLab filed against Acella? 13 A. Yes. 14 Q. I'd like you to look at Paragraph 27 15 on page eight. The first sentence says: 16 "In the mid-1990's, Merck & Cie 17 (formerly known as Merck Eprova AG) 18 ("Merck") made a key breakthrough, and 19 invented a process to synthesize 20 L-methylfolate in a stable form. Offered 21 under the name Metafolin. L-methylfolate 22 calcium is the crystalline, stable and 23 diastereoisomerically pure form of folate 24 directly usable by cells in the body." 25 Does that refresh your recollection</p>	<p style="text-align: right;">53</p> <p>1 Do you see that sentence? 2 A. I do. 3 Q. Does that refresh your recollection 4 as to which patents cover the Metafolin product 5 ingredient? 6 MR. NORTON: Objection. No 7 foundation. 8 A. I don't know what specific patents 9 are tied to this comment. 10 Q. Referring back to Exhibit 2162, the 11 Deplin product insert, on the right-hand column 12 there is a series of references on the bottom. Do 13 you see that? 14 A. Yes. 15 Q. And would those references be 16 approved by the Med/Reg division at PamLab? 17 A. At the time it had to come through 18 somehow, yeah. 19 Q. Okay. 20 And these references would have been 21 validated by the -- 22 A. I can't say that. I know the 23 process. I'm not involved in the process. But I 24 can't say whether they validated. These package 25 inserts change all the time. As you get updated and</p>

<p style="text-align: right;">54</p> <p>1 sometimes things aren't taken out, things are left 2 in. And as you get more information and more 3 clinical information, they update it and they go 4 through the process and that's part of the process. 5 That's all that I'm saying. I'm not the one that 6 validates it. I'm not even involved in the process. 7 Q. I understand. 8 A. Because the most important things on 9 this package insert is what the clinician uses, in 10 here is indication, contraindication, adverse events 11 and dose. 12 Q. And how do you know that? How do you 13 know what is most important to the physicians? 14 A. Twenty-three years of experience in 15 dealing directly with physicians has shown me in my 16 experience that this is the most important thing. 17 Q. You would agree that it's important 18 to PamLab that the product insert be as accurate as 19 possible, correct? 20 A. Correct. 21 Q. Mr. Ladner, I'm handing you what we 22 marked as Exhibit 2079, which is a product insert 23 for Neevo caplets. And, Mr. Ladner, would you agree 24 that this is the product insert for the Neevo 25 product that's cited in your declaration?</p>	<p style="text-align: right;">56</p> <p>1 A. No. Not to me. 2 Q. Is it important to PamLab? 3 MR. NORTON: Objection, calls for 4 speculation. 5 A. Again, this is how you're defining 6 important from a business standpoint which is -- 7 from a commercial standpoint, no. 8 Q. Are you aware of a federal law that 9 says patented products must have patent numbers 10 marked on them? 11 MR. NORTON: Objection. 12 A. I'm not. But if that's the case, 13 that's why they're in here. 14 Q. And in Exhibit 2079 there is a list 15 of patents on the third page, Neevo product insert 16 2079. And the same questions as before. I assume 17 that you don't know whether Neevo is covered by the 18 patents listed here other than the Bailey patents 19 and 040 patent, correct? 20 A. Correct. 21 Q. And you would agree that the 168 22 patent is not listed in this list, correct? 23 MR. NORTON: Objection to foundation. 24 A. Correct. 25 Q. The Bailey patent, the 381 patent, is</p>
<p style="text-align: right;">55</p> <p>1 A. Again, it must be the specific one. 2 We have multiple ones, but yes. 3 Q. You can verify in Paragraph 60 of 4 your declaration if you want to. 5 A. Okay, got it. You do understand that 6 these change? 7 Q. I do understand. 8 That's the question. In your 9 declaration you have cited various product inserts 10 and the ones that you cited in your declaration, 11 were they the most current declarations at the time 12 that you submitted them? 13 A. Those are the ones that I quoted or 14 cited. They could have been -- they may or may not 15 have been the most current. 16 Q. Okay. 17 Was it important to you that the most 18 current product inserts be submitted in connection 19 with your declaration? 20 A. Yes. But understand the most 21 important to me, the most important in this package 22 insert is what we use. Which is indications, 23 contraindications, adverse events and dose. 24 Q. Is the marking of correct patent 25 numbers important to PamLab in its product inserts?</p>	<p style="text-align: right;">57</p> <p>1 not listed, correct? 2 A. Correct. 3 Q. The Bailey patent, the 781 patent, is 4 not listed, correct? 5 A. Correct. 6 Q. Mr. Ladner, I've handed you a 7 document that's been marked as Exhibit 2080 and it's 8 a product insert for NeevoDHA. Mr. Ladner, is this 9 the product insert for the NeevoDHA that's cited in 10 your declaration? 11 A. It is. 12 Q. Okay. 13 Do you know if this is the most 14 recent product insert? 15 A. No. 16 Q. Referring to the second page there, 17 towards the bottom, there is a list of patents and 18 the same question. I assume that you do not know 19 which patents cover the NeevoDHA product other than 20 the Bailey patents and the 040 patent, correct? 21 A. Correct. I know the 040 covers it. 22 Q. And would you agree with me that the 23 915 patent is not listed on this list of patents? 24 A. Correct. 25 Q. Referring to Paragraph 68 of your</p>

<p style="text-align: right;">58</p> <p>1 declaration it says:</p> <p>2 "Although PamLab historically has not</p> <p>3 tracked the profitability of its products on</p> <p>4 an individual product basis, the significant</p> <p>5 growth in sales and revenue year over year</p> <p>6 shows that the PamLab Patented Products are</p> <p>7 commercially successful."</p> <p>8 My question is regarding the first</p> <p>9 part of that sentence, that PamLab has historically</p> <p>10 not tracked profitability of its products on an</p> <p>11 individual product basis.</p> <p>12 Has PamLab ever tracked the</p> <p>13 profitability of its products on an individual</p> <p>14 basis?</p> <p>15 A. No.</p> <p>16 Q. And still does not today?</p> <p>17 A. We're trying to get there.</p> <p>18 Q. Has PamLab ever tracked its marketing</p> <p>19 and promotion expenses for its products on a</p> <p>20 product-by-product basis?</p> <p>21 A. No. We -- let me back up. Let me</p> <p>22 correct that. When we are talking about overall</p> <p>23 product expenses down to the fully absorbed costs --</p> <p>24 because you've got all expenses associated with a</p> <p>25 product. Which could be marketing, which could be</p>	<p style="text-align: right;">60</p> <p>1 advertising promotional expenses for PamLab have</p> <p>2 been in 2012?</p> <p>3 MR. NORTON: Objection to form.</p> <p>4 A. On an aggregate basis just looking at</p> <p>5 that small piece of it, roughly around [REDACTED]</p> <p>6 percent.</p> <p>7 Q. [REDACTED] percent of PamLab revenues?</p> <p>8 A. Of the promoted product sales --</p> <p>9 revenues.</p> <p>10 Q. Okay.</p> <p>11 In 2011 do you know?</p> <p>12 A. It's been about the same. It's never</p> <p>13 [REDACTED] percent.</p> <p>14 Q. Okay.</p> <p>15 A. Obviously, as your revenues get</p> <p>16 higher, if you're maintaining that same level, that</p> <p>17 percentage is going to go down. So if you went back</p> <p>18 to -- it's always going to be somewhere around [REDACTED]</p> <p>19 -- somewhere in [REDACTED] percent.</p> <p>20 Q. Paragraph 79 of your declaration, the</p> <p>21 first sentence:</p> <p>22 "The substantial sales of the PamLab</p> <p>23 Patented Products are particularly remarkable</p> <p>24 because PamLab had to cultivate a niche market</p> <p>25 for prescription-only medical foods, where</p>
<p style="text-align: right;">59</p> <p>1 sales force, everything. But then you have your</p> <p>2 marketing spend, which the brand spend is directly</p> <p>3 tied to the product. So, in that case it is, but</p> <p>4 the entire spend is not.</p> <p>5 Q. Okay.</p> <p>6 So you do keep track of a direct</p> <p>7 brand spend for each of the PamLab Patented</p> <p>8 Products?</p> <p>9 A. For what the brand spends, correct.</p> <p>10 Q. What is included in the brand spend?</p> <p>11 A. That would be any promotional</p> <p>12 activities, anything that they are investing in</p> <p>13 sharing outcome data in regards to speaker programs.</p> <p>14 It could just be disease state programs and it could</p> <p>15 be supporting grants and doing grand rounds. It</p> <p>16 could be actual educational pieces. It could be</p> <p>17 videos. CME, that's how physicians get their --</p> <p>18 keep their license up-to-date through Continuing</p> <p>19 Medical Education. They have to have so many CMEs</p> <p>20 each year.</p> <p>21 Q. Do you know what the brand spends</p> <p>22 have been for each of the PamLab Patented Products</p> <p>23 as you sit here today?</p> <p>24 A. As I sit here today, no.</p> <p>25 Q. Do you know what the overall</p>	<p style="text-align: right;">61</p> <p>1 traditional drug products approved by the FDA</p> <p>2 were the norm."</p> <p>3 I guess my question is: Why did you</p> <p>4 say that "PamLab had to cultivate a niche market"?</p> <p>5 A. Because to fully realize the</p> <p>6 potential of this novel -- of this novel -- I'll say</p> <p>7 invention and this novel ingredient that we have.</p> <p>8 To really fully reach the potential, you have to</p> <p>9 invest in clinical outcomes. And what physicians</p> <p>10 know today in clinical outcomes are drug-type</p> <p>11 studies. They are used to that kind of education.</p> <p>12 And they are used to that kind of methodology. And</p> <p>13 they are used to those kind of protocols. And so,</p> <p>14 you have to do that with a medical -- to do that</p> <p>15 with a medical food. It's -- to take that and to</p> <p>16 see -- first of all, realize the outcomes that this</p> <p>17 brings is truly novel. And utilize those outcomes</p> <p>18 because -- I mean we're saving lives here. I mean</p> <p>19 depression is a serious illness. And there is --</p> <p>20 there are studies that are protocol-like drug</p> <p>21 studies that show the outcome and show the benefit.</p> <p>22 And to be able to do that with a medical food,</p> <p>23 you've got to have that kind of outcome data, that</p> <p>24 kind of evidence. Otherwise, it's the credibility</p> <p>25 piece. The FDA automatically provides that</p>

<p style="text-align: right;">62</p> <p>1 credibility. We don't have that because we have 2 the -- you know, orphan amendment. And to be able 3 to say -- you mean to tell me that a food can have 4 this kind of outcome, that is novel.</p> <p>5 Q. Uh-huh.</p> <p>6 Now, is it your understanding that a 7 reason a prescription for the PamLab Patented 8 Products is required is because of the high dosage 9 amounts of the B vitamins and the L-methylfolate?</p> <p>10 A. It's because of the definition and 11 requirements of a "medical food". It has to be 12 under medical supervision and that's somewhat dose 13 related. Do I know the specifics around that? No.</p> <p>14 Q. Did PamLab ever consider selling 15 these PamLab Patented Products at a lower dosage 16 that would not have required a prescription or a 17 classification of a medical food?</p> <p>18 MR. NORTON: Objection, calls for 19 speculation.</p> <p>20 A. Not that I am aware of. Not that I 21 was involved in anyway.</p> <p>22 Q. With respect to your discussion of 23 advertising and your declaration, was there a reason 24 that you didn't provide the actual dollars spent?</p> <p>25 A. I don't recall directly saying</p>	<p style="text-align: right;">64</p> <p>1 more than what we could even come close to. Also, 2 that spend depends on the product life cycle and 3 where you are and the outcome that you have. And it 4 varies. But there was not any -- it's just so 5 nominal. In fact, it's almost embarrassing that we 6 have not been able to have more investment in what 7 we have.</p> <p>8 So did I answer your question?</p> <p>9 Q. Yes, thank you.</p> <p>10 Paragraph 88, the last sentence of 11 Paragraph 88, it's on actually Page 20. It says: 12 "Cerofolin and Neevo and NeevoDHA 13 are not detailed."</p> <p>14 Why are those products not detailed?</p> <p>15 A. I know I said that. I'm sorry. 16 Could you repeat that?</p> <p>17 Q. It's Paragraph No. 88, but it's the 18 last sentence which starts on Page 20.</p> <p>19 A. I got it, I'm sorry. So why --</p> <p>20 Q. Why are those not detailed and the 21 other ones are?</p> <p>22 A. Because you only have -- you only 23 have limited capacity in regards to detailing. And 24 notice that word is not selling, it's detailing. 25 That is an industry word. Our reps by title are not</p>
<p style="text-align: right;">63</p> <p>1 advertising.</p> <p>2 Q. Well, if you look on page 18, you had 3 a section called "Marketing of PamLab Patented 4 Products. Do you see that, section No. 7?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Then you have several paragraphs 7 discussing marketing. And my question is: Do you 8 recall why you did not decide to list what the 9 actual expenses for marketing of the PamLab Patented 10 Products were?</p> <p>11 A. First of all, I want to clarify the 12 use of advertising. That was your word.</p> <p>13 Q. Yes.</p> <p>14 A. We share outcome data. We educate. 15 Nothing in particular for not including that in 16 there. In fact, what you'll see compared to Pharma, 17 and what we do, and the expense that we have to go 18 to, to provide the outcomes and the evidence, that 19 truly show the novelty of what we have, PamLab 20 Patented Products, which is again going back to what 21 I referred to earlier, the 040 and the Bailey 22 patent, I primarily believe that. That is the 23 significance. If you look at the spend that would 24 be associated with reaching an opportunity and 25 launching that, uhmm, it would be -- it would be way</p>	<p style="text-align: right;">65</p> <p>1 sales representatives. They are medical 2 representatives. We take that to heart in that we 3 share outcomes. The reason why we do not promote 4 those or detail those, because the sales -- they 5 only have limited capacity. They have limited 6 capacity, so much capacity. And with the outcomes 7 that we have and data that we have, the studies, the 8 double-blind, randomized, placebo-controlled studies 9 that are similar -- well, they are the same as drug 10 studies for the most part. When you have that kind 11 of -- that kind of outcome data, you've got to put 12 everything on it to maximize that opportunity. So 13 this is just a business revenue decision. To -- is 14 the only reason, the only reason why.</p> <p>15 Q. Were those three products, Cerofolin, 16 Neevo and NeevoDHA ever detailed at PamLab?</p> <p>17 A. Yes.</p> <p>18 Q. And do you recall when that stopped?</p> <p>19 A. Cerofolin, you could say for the most 20 part, is. It's somewhat detailed in CerofolinNAC 21 because even though you're talking about 22 CerofolinNAC, a lot of times that leads to -- leads 23 to conversations with Cerofolin. But Cerofolin we 24 really don't have to talk about it because it just 25 stays in there. It's, basically, just -- it's</p>

<p style="text-align: right;">66</p> <p>1 maintaining the levels that it has. It's declining, 2 but we moved it from the outside sales force to 3 CerofolinNAC is promoted inside. Cerofolin, we 4 actually stopped promoting just Cerofolin, the 5 actual product. Because we believe CerofolinNAC -- 6 again, you can only do so much. It may have been 7 '07. And I'm guesstimating on that and I know I 8 shouldn't do that here. But '07.</p> <p>9 And Neevo, we stopped promoting it 10 period, this year. But some would argue that inside 11 promotion versus outside promotion are two different 12 things.</p> <p>13 Q. And NeevoDHA, do you recall when you 14 stopped detailing that?</p> <p>15 A. December 31st of 2011 -- I'm sorry 16 12. We're already -- '13 is done, isn't it?</p> <p>17 Q. Paragraph 91 on Page 20, the first 18 sentence says:</p> <p>19 "Based on my experience working in 20 the pharmaceutical industry, the size of 21 PamLab's sales force are in line with what you 22 would ordinarily see for a company of our 23 size."</p> <p>24 How did you determine that the size 25 of your sales force was in line with what you would</p>	<p style="text-align: right;">68</p> <p>1 pharmaceutical-related companies that you've worked 2 at in your career just Eli Lilly and PamLab, which 3 is now Nestle?</p> <p>4 A. Yes.</p> <p>5 Q. You've not worked at other companies 6 that are approximately the same size as PamLab, 7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. You mentioned benchmarks. Is there 10 published benchmarks that you're thinking of or is 11 that just --</p> <p>12 A. No, it's just looking at -- it's 13 looking at other -- just other medical food 14 companies and other companies that have the total 15 revenue-promoted products that we have and the 16 amount of sales reps, but that varies. In our 17 business there are a lot of dynamics. It all 18 depends on -- it all depends on the novelty of the 19 product that you have. It depends on your outcome 20 data and it depends on where you are in your life 21 cycle. For example, if you were launching a 22 product, and you had outcome data when you were 23 launching it, you may launch with 200. So, again, 24 it depends on the company and where they are. You 25 know, you hear of lately a lot of Pharma is going</p>
<p style="text-align: right;">67</p> <p>1 ordinarily see for a company of your size? Was 2 there a ratio that you looked at or how did you 3 determine that?</p> <p>4 A. Just using industry benchmarking. 5 When I'm talking about a company of our size, I'm 6 talking about a company of our revenue. If you look 7 at our total revenue that's based on the product 8 sales, it's very conservative. Now, what I really 9 mean by that is if we had outcome -- I'll put it to 10 you like this: I had 17 years with Eli Lilly and we 11 got 23 years in this business. If someone in Pharma 12 had the outcome data that we had currently, you 13 would look at -- your basis would be 500 promoting 14 it with that kind of outcome data. If it was again 15 -- now if you were Pharma and we are medical food, 16 we put our -- we put all of our -- we're all in 17 because of the Merck and Bailey patents. So we're 18 putting everything here. But if we were a Pharma 19 company and this was a drug, you're looking at a 20 sales force with our kind of outcome data, 500 to a 21 thousand. When you look at a company of our size 22 though, to answer your question, just benchmarking 23 revenues just in experience, we're conservative at 24 160.</p> <p>25 Q. And are the only two</p>	<p style="text-align: right;">69</p> <p>1 through down-sizing because their products are in 2 that life cycle where they're maturing. They're 3 even beyond being a cash cow any longer. So that 4 varies. And it's just, in general, based on our 5 outcome. I can tell you we're very small.</p> <p>6 Q. Regarding your opinion that the 7 PamLab Patented Products are commercially 8 successful, [REDACTED]</p> <p>12 MR. NORTON: Objection, foundation.</p> <p>13 A. First of all, it's not my opinion 14 that we've been commercially successful. There's 15 fact in that. You can look at the sales revenue 16 associated with it. You can look at the outcomes 17 that is associated with it which drive those 18 revenues. You can look at industry thought leaders 19 and look at the -- look at their opinions on it. 20 Their participation in the studies. You can look at 21 testimonials if you want. And you can look at the 22 studies and that's why it's commercially successful. 23 Not because of my opinion.</p> <p>[REDACTED]</p>

<p>70</p> <p>[REDACTED]</p> <p>18 MR. NORTON: Objection for 19 speculation. And for purposes of this testimony, I 20 would like the deposition designated as confidential 21 pursuant to the protective order. 22 [REDACTED] 23 [REDACTED] 24 Q. Paragraph 101 of your declaration, 25 you state that:</p>	<p>72</p> <p>1 I'm familiar with ones that's in my declaration 2 here. Outside of that, I'm not familiar with where 3 they are, who they are. You know, if you'd 4 mentioned them or brought it up, I might could -- I 5 might would say yeah, I've heard that just because 6 of being in the capacity of an officer of the 7 company, you're in meetings and you have privy to 8 that. I can't give you any specifics. I'm just not 9 the right guy. 10 Q. Regarding this declaration, I see 11 it's 20-some pages. How much of this declaration 12 did you personally type? 13 A. None. 14 Q. And how was this declaration prepared 15 then? 16 A. I'm sorry? 17 Q. How was the declaration prepared? 18 A. We discussed it with counsel. 19 Q. Okay. 20 So all of the drafts of the 21 declaration came from counsel and you understand 22 that they typed it? 23 A. Yes. 24 Q. How much time did you spend in 25 reviewing the declaration and ultimately signing it?</p>
<p>71</p> <p>1 "Pamlab has also sublicensed the 2 Bailey and 040 patents to three companies, 3 [REDACTED] and [REDACTED] 4 [REDACTED] and [REDACTED] 5 [REDACTED]" 6 The question is: Other than the 7 Bailey and 040 patents, are you aware of any other 8 patents that Pamlab licensed to [REDACTED] 9 [REDACTED]? 10 A. No. 11 Q. Have you ever seen the sublicense 12 agreements that Pamlab has with [REDACTED] 13 [REDACTED]? 14 A. I have seen -- I've just seen part of 15 the [REDACTED]. But I have not -- not to the 16 point where I could say what's in where and where it 17 is because I don't know all of the specifics of any 18 of those. I'm just aware that we have done that. 19 Q. Okay. 20 If I showed you those agreements, do 21 you think that you could identify the other patents 22 that are licensed? 23 A. When you do that I'm going to be 24 guessing. I don't know these patents. This whole 25 thing has been about asking me to identify patents.</p>	<p>73</p> <p>1 A. Uhhh, a lot of time. I can't -- it 2 was over -- it's mixed. I'd be guessing. In the 3 preparation it's been weeks ago. 4 Q. I mean ballpark. Over ten hours, 5 less than ten hours? 6 A. I'm guessing. 7 Q. Okay. 8 And do you recall in preparing your 9 declaration if you did any investigation as to which 10 other patents may apply to the Pamlab Patented 11 Products? 12 A. As to which patent may apply? 13 Q. Correct. 14 A. I didn't go into specifics. Again, 15 we're going back to the patent part. 16 Q. Okay. 17 Paragraph 107, the last sentence in 18 Paragraph 107 begins: 19 "Macoven promoted these imposter 20 products as wholesale copies of our products 21 in terms of having the same ingredients, in 22 the same strengths, in the same dosage form, 23 and for the same route of administration." 24 So I understand, it's your statement 25 that the Macoven VitaCircB is the copy of your</p>

<p style="text-align: right;">74</p> <p>1 Metanx product; is that right?</p> <p>2 A. Correct.</p> <p>3 Q. Are you aware of any differences</p> <p>4 between the VitaCircB product and the Metanx</p> <p>5 product?</p> <p>6 MR. NORTON: Objection to form.</p> <p>7 A. Ummm, they say they are exactly the</p> <p>8 same.</p> <p>9 Q. Do you know if the Macoven VitaCircB</p> <p>10 product has a version of 6(S)5 MTHF, otherwise known</p> <p>11 as L-methylfolate that exists in amorphous form</p> <p>12 instead of crystalline form?</p> <p>13 MR. NORTON: Objection to form.</p> <p>14 Relevance.</p> <p>15 A. I'm only aware of that of just again,</p> <p>16 just being associated, because of that morphous</p> <p>17 crystalline stuff, I let the scientists and medical</p> <p>18 and R&D deal with that, but I hear it. Two</p> <p>19 questions earlier than that -- I don't know the</p> <p>20 specifics enough to specifically talk about it. But</p> <p>21 I know through just the discussion of Macoven and</p> <p>22 legal action that that was -- that was associated</p> <p>23 with it. And I believe we talked about that</p> <p>24 earlier. Or you asked me a question about that</p> <p>25 earlier.</p>	<p style="text-align: right;">76</p> <p>1 presented yourself as a copy, an exact copy, an</p> <p>2 identical copy to our product. And that's public.</p> <p>3 Q. With respect to Macoven's</p> <p>4 L-methylfolate calcium product, are you aware of any</p> <p>5 differences between that product and your Deplin</p> <p>6 product?</p> <p>7 MR. NORTON: Objection to form.</p> <p>8 A. They're saying they're the same.</p> <p>9 Q. With respect to your Deplin product,</p> <p>10 did your Deplin product ever include an ingredient</p> <p>11 called LGS?</p> <p>12 A. Yes.</p> <p>13 Q. When did that occur?</p> <p>14 A. End of -- March of 2013.</p> <p>15 Q. And was that product ever sold?</p> <p>16 A. Yes.</p> <p>17 Q. With respect to the sales figures</p> <p>18 that you investigated for this matter, did your</p> <p>19 sales figures for Deplin include the version of</p> <p>20 Deplin that includes the LGS ingredient?</p> <p>21 A. I'm going to say no, I don't believe</p> <p>22 so, no. Because that was just as of March. So</p> <p>23 that's been recent.</p> <p>24 Q. Do you know why PamLab decided to add</p> <p>25 LGS to its Deplin product?</p>
<p style="text-align: right;">75</p> <p>1 Q. Okay.</p> <p>2 So, you do understand that to be one</p> <p>3 difference between the VitaCircB product and the</p> <p>4 Metanx product, the crystalline versus the</p> <p>5 amorphous?</p> <p>6 MR. NORTON: Objection to the extent</p> <p>7 that you are misstating the testimony.</p> <p>8 A. I didn't know the difference is what</p> <p>9 I'm saying. I'm not a scientist. I don't know the</p> <p>10 difference or if there is a difference. They say</p> <p>11 there is not a difference.</p> <p>12 Q. Okay.</p> <p>13 A. "They" being Macoven at the time.</p> <p>14 Q. Do you recall who at Macoven said</p> <p>15 that?</p> <p>16 A. I don't have to recall who said it.</p> <p>17 They posted it publicly for everyone to see.</p> <p>18 Q. And where was that?</p> <p>19 A. In the compendium.</p> <p>20 Q. Do you recall if the compendium had</p> <p>21 an indication of crystalline versus amorphous</p> <p>22 discussion in it?</p> <p>23 A. I'm not privy to their discussions.</p> <p>24 But by simply submitting it to the compendium and</p> <p>25 being linked to our product, says that you have</p>	<p style="text-align: right;">77</p> <p>1 MR. NORTON: Objection, relevance.</p> <p>2 A. That's confidential.</p> <p>3 MR. PARKER: It's privileged.</p> <p>4 MR. NORTON: I want to caution the</p> <p>5 witness to the extent that you are referring to</p> <p>6 communications that you are aware of or</p> <p>7 communications with lawyers, do not recite that</p> <p>8 testimony. I also object on attorney/client</p> <p>9 privilege grounds.</p> <p>10 Q. Are you not going to answer that</p> <p>11 question then?</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 With respect to Macoven's LAZ-NAC</p> <p>15 product, are you aware of any differences between</p> <p>16 that product and PamLab's CerafolinNAC product?</p> <p>17 A. They say they are the same.</p> <p>18 Q. I know what they say. But are you</p> <p>19 personally aware of any differences?</p> <p>20 A. When you look at them and you list</p> <p>21 them, they are saying they're the same. In regards</p> <p>22 to getting into the science and everything, I don't</p> <p>23 know the differences. Now, based on what some of</p> <p>24 the R&D people say, they could tell you something</p> <p>25 different.</p>

<p style="text-align: right;">78</p> <p>1 Q. Paragraph 108, the first sentence, 2 you state: 3 "Macoven's objective was to have 4 their product be prescribed for the same uses 5 as our products as specified in the PamLab 6 Patented Products package inserts." 7 What is your support for the 8 statement that it was Macoven's objective to do 9 that? 10 A. Because they linked directly to us in 11 the compendium. They had to provide information 12 that said that they were identical to our product, 13 to the compendium to be linked. And that's -- 14 that's an intentional scheme to ride the coattails 15 of our products. Because by being linked, it, 16 basically, dupes, if you will, the system in saying 17 here's the generic. And so there is a generic 18 alternative and automatic substitution for 19 something. 20 Q. Okay. 21 Are you giving your personal opinion 22 as to what Macoven Corporation's intent was with 23 respect to the product? 24 A. What I'm saying is based on my 25 experience and what I know. The only reason why you</p>	<p style="text-align: right;">80</p> <p>1 A. No. 2 Q. Okay. 3 In coming to that conclusion, have 4 you seen any statements by Macoven telling 5 physicians, pharmacists or patients for what medical 6 conditions their products should be used for? 7 MR. NORTON: Objection to form. 8 A. No. 9 Q. And with respect to your 10 understanding of the linking process, in order for 11 Macoven to link their products to the PamLab 12 products, did Macoven have to tell the compendium 13 what conditions the products will be used for? 14 A. Yes, I believe that they did. 15 Q. And do you know what they told the 16 compendium, what conditions? 17 A. The compendium doesn't share that. 18 Q. Now, starting in Paragraph 110 you 19 identify some products from Brookstone/Acella that 20 you believe were copies of the PamLab Patented 21 Products, correct? 22 A. Yes. 23 Q. Okay. 24 And the same question: Are you aware 25 of any differences between the PamLab Patented</p>
<p style="text-align: right;">79</p> <p>1 link is to do that. So I'm just telling you that is 2 -- otherwise, they would not have linked. There is 3 no reason to be linked. So I can tell you with a 4 high confidence level that's exactly why they would 5 do it. 6 Q. Okay. 7 And you would agree that you've never 8 worked for Macoven though, correct? 9 A. Correct. 10 Q. You've never been on the Board of 11 Directors of Macoven? 12 A. Correct. 13 Q. Did you review any Macoven deposition 14 testimony in coming to that conclusion? 15 A. Not that I recall, no. I saw it 16 linked in the compendium. I monitor it daily. 17 Q. And do you recall reviewing any 18 Macoven document in coming to that conclusion? 19 A. I don't recall. 20 Q. And in coming to that conclusion, 21 have you seen any promotional material where Macoven 22 told physicians, pharmacists or patients what 23 medical conditions the product should be used for? 24 A. Where Macoven told? 25 Q. Yes.</p>	<p style="text-align: right;">81</p> <p>1 Products and the Brookstone/Acella products that you 2 identify there? 3 A. On these? 4 Q. Uh-huh. 5 A. Other than -- just like the others, 6 other than questionable between what the patents 7 cover and what they don't, it's the same for all -- 8 I mean you've got -- again, I'm going back in 9 history. You've got multiple products and multiple 10 companies. It's the same scheme. It's the same 11 thing to say we are exactly the same. That's what 12 they say there. They are pretending to be copies 13 and they are saying they're copies and they are 14 getting linked. It's on and on and on and I don't 15 understand how they can do that. 16 Q. So, essentially, with respect to the 17 Brookstone/Acella, it's the same situation that 18 because of the linking and their communications with 19 the compendium and database company that that is the 20 basis of your conclusion that they are copies, 21 correct? 22 A. They are saying they're copies. 23 That's what I'm saying. Now, are the ingredients 24 identical? No. I'm saying that they're saying 25 they're copies simply by getting linked. That's the</p>

<p style="text-align: right;">82</p> <p>1 only way that you can get linked because you have to 2 say that you are identical. With regard to Acella, 3 the district court ruled that, basically, they lied 4 by saying they are the same. It's -- that's public 5 knowledge. It's the same thing with every single 6 one that comes. We have settled -- the district 7 court ruled that with Acella, but we settled with 8 all of them and there is a reason for that. Because 9 it's a scheme. It's absurd that they can even do 10 it.</p> <p>11 Q. Now, with respect to Trigen, Seton, 12 Midlothian and Virtus, is that the same situation 13 where your basis for calling their products copies 14 of your own products is the fact that they engaged 15 in this linking process?</p> <p>16 A. And they say they are copies.</p> <p>17 Q. And they say they are copies? You 18 don't have any personal knowledge as to whether 19 chemically they actually are identical copies?</p> <p>20 A. All of these we had court proceedings 21 with. And, in fact, I've been in some here. So 22 there is -- I'm sure there's evidence that theirs 23 has some differences. But what I'm quoting here is 24 that they're saying they're the same.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">84</p> <p>1 differences between these imposter products and your 2 products as you sit here today?</p> <p>3 A. Ummm, we can go through it. It 4 varied by product. If you're looking at specific 5 differences, it would vary by product by product. 6 Obviously, I would like to have that in front of me, 7 but it would vary by product by product. And I 8 can't recall exactly which was what for what 9 product. But they were copies and they were saying 10 that they were copies.</p> <p>11 Q. Okay, I understand.</p> <p>12 A. I mean I hate to be talking about two 13 different things. But the point that creates a -- 14 that creates a commercial -- frankly, outcome issue 15 for us is the fact that they are saying they are a 16 copy and they are publicly doing it.</p> <p>17 Q. Okay.</p> <p>18 In this linking process, is it your 19 understanding that the databases will actually 20 verify whether the ingredients of the Brookstone and 21 Acella and Trigen are actually identical to what 22 your ingredients are?</p> <p>23 A. I can't speak for what they do. I 24 mean based on my knowledge, clearly they don't. But 25 I can't speak for what they do.</p>
<p style="text-align: right;">83</p> <p>1 A. And that's what's -- because with a 2 difference -- with being a difference, they would 3 not be able to be linked. They are saying -- they 4 are making the claim which is -- that's my point. 5 Because we have put all of our -- we have -- in 6 fact, you know, that's the reason why I'm here -- 7 when I came to PamLab was to start the Metafolin 8 Business Unit. There is a reason it's called the 9 Metafolin Business Unit. That was our future. And 10 that's what we're building our future on. In fact, 11 it with outcome data and evidence and helping 12 patients in the things that we've done to the point 13 that Nestle came in and said you know what? Your 14 little bitty company in Covington, Louisiana, we see 15 something here. It's because of the novelty of what 16 we have. It's because -- and to have all these 17 others come in and say they are the same. You know? 18 Regardless of what they actually have in there, they 19 saying they're the same and that's the problem.</p> <p>20 Q. I understand.</p> <p>21 A. So, yeah, they could be different. 22 You know. There are differences. But they're 23 saying they're the same.</p> <p>24 Q. Okay.</p> <p>25 Do you recall any of the actual</p>	<p style="text-align: right;">85</p> <p>1 Q. Okay.</p> <p>2 Do you recall if Brookstone, Trigen, 3 Seton, Midlothian and Virtus were sued for patent 4 infringement by PamLab?</p> <p>5 A. You asked me that earlier. And it's 6 -- I know that in some -- those I believe were 7 Lanham Act, making false claims. Macoven was -- I 8 think Macoven was different. I mean I get it 9 confused. I don't know if patents were included in 10 those either.</p> <p>11 Q. You said that you had a Metafolin 12 Business Unit within your company. Who came up with 13 that name, was it you?</p> <p>14 A. I think it was the presidency at the 15 time.</p> <p>16 Q. Did they express to you why they 17 called it the Metafolin Business Unit?</p> <p>18 A. To differentiate from the Women's 19 Health Business Unit. Which was Neevo and NeevoDHA. 20 So there wasn't any specific reason for doing it.</p> <p>21 Q. You have the Women's Health Business 22 Unit and I can't remember the name -- the Metafolin 23 Business Unit. Are there any other units of PamLab?</p> <p>24 A. Inside Sales. We don't have the 25 Women's Health Business Unit now. We're going way</p>

<p style="text-align: right;">86</p> <p>1 back. You just went way back when we're talking 2 about Metafolin Business Unit. Because that's not 3 even -- that was just at the time. That was at the 4 time when we were launching Deplin and it was a 5 different theater that we used. But we were -- we 6 knew where we were headed.</p> <p>7 Q. Okay.</p> <p>8 I seem to recall that you testified 9 earlier, and correct me if I'm wrong, but you said 10 that the Bailey patents and the 040 patent are, 11 basically, the entire business of PamLab these days. 12 Is that correct?</p> <p>13 A. Yeah. I mean that's my opinion, 14 yeah.</p> <p>15 Q. Okay.</p> <p>16 But PamLab does have other products 17 that they sell that are beyond the Bailey patent and 18 the 040 patent, correct?</p> <p>19 A. Uhhh, I don't believe we have any 20 others.</p> <p>21 MR. NORTON: Objection, asked and 22 answered.</p> <p>23 Q. Does PamLab sell a product called 24 Foltx?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">88</p> <p>1 folic acid version?</p> <p>2 A. I believe they did.</p> <p>3 Q. Do you know when that changed?</p> <p>4 A. I can't give you the date.</p> <p>5 Q. Was there a period of time when 6 PamLab was selling Foltx and PamLab Patented 7 Products at the same time?</p> <p>8 A. Was there any overlap is, basically, 9 what I think you're asking?</p> <p>10 Q. Yeah.</p> <p>11 A. I can't give you the timelines on it. 12 I don't know. I can't recall the actual launch and 13 roll-out of that.</p> <p>14 MR. CWIK: Okay. Why don't you give 15 me five minutes to look at my notes and then we'll 16 try to wrap up, okay?</p> <p>17 MR. NORTON: Okay. 18 (Recess.)</p> <p>19 MR. CWIK: On the record.</p> <p>20 Q. Just a couple more questions, Mr. 21 Ladner.</p> <p>22 Are you aware of any patents owned by 23 a company called [REDACTED] that PamLab has taken a 24 license from?</p> <p>25 A. I've heard the name. I've seen when</p>
<p style="text-align: right;">87</p> <p>1 Q. Do you understand that Foltx is 2 covered by the Bailey patents and the 040 patent?</p> <p>3 A. Yes. Because it now has -- if we're 4 talking about now -- it now has -- we may still have 5 some of the old Foltx that could be out there, but 6 all of the new Foltx is covered by the 040 and 7 Bailey patents.</p> <p>8 Q. Does the current Foltx have folic 9 acid instead of L-methylfolate?</p> <p>10 A. No.</p> <p>11 Q. Foltx now has L-methylfolate?</p> <p>12 A. That's my understanding.</p> <p>13 Q. Did it previously have folic acid?</p> <p>14 A. It did.</p> <p>15 Q. And through Breckenridge -- well, 16 Breckenridge sells a generic version of Foltx called 17 Folbic; is that correct?</p> <p>18 A. Correct. They do all the Foltx. I'm 19 not really involved in it. That's the reason why I 20 haven't kept good, close tabs on it.</p> <p>21 Q. Do you know if the generic 22 Breckenridge Folbic product includes folic acid or 23 L-methylfolate now?</p> <p>24 A. L-methylfolate.</p> <p>25 Q. Do you know if they previously sold a</p>	<p style="text-align: right;">89</p> <p>1 I was saying earlier that I had seen some of the 2 agreements, but not any specifics, I've heard the 3 name and I've heard it in conversation, but I'm not 4 aware of what it pertains to.</p> <p>5 Q. Okay.</p> <p>6 You are not aware of whether those 7 patents cover the PamLab Patented Products, correct?</p> <p>8 A. I'm not aware of -- exactly, no, I'm 9 not aware of it. I've heard it, but I just don't 10 know what it pertains to.</p> <p>11 Q. Are you aware of a group of patents 12 invented by Stabler and Allen?</p> <p>13 A. I've heard of Allen. I've never 14 heard of Stabler.</p> <p>15 Q. Stabler?</p> <p>16 A. Stabler, no, but I've heard Allen. 17 I've heard that name. But, again, it's the same? I 18 don't know.</p> <p>19 Q. You don't know of any Allen patents 20 that cover the PamLab Patented Products; is that 21 correct?</p> <p>22 A. No. But I've heard of the Allen 23 patent, but I don't know what it's in reference to.</p> <p>24 MR. CWIK: I'm finished with my 25 cross-examine.</p>

<p style="text-align: right;">90</p> <p>1 MR. NORTON: I've got a couple of</p> <p>2 redirect.</p> <p>3 EXAMINATION</p> <p>4 BY MR. NORTON:</p> <p>5 Q. Mr. Ladner, do you recall you were</p> <p>6 asked questions why DHA was added to the PamLab</p> <p>7 Patented Products?</p> <p>8 A. Yes.</p> <p>9 Q. Did you gain any understanding that</p> <p>10 you have of why DHA was added to the PamLab Patented</p> <p>11 Products based on communications with attorneys?</p> <p>12 A. No.</p> <p>13 Q. Any understanding that you have of</p> <p>14 why the DHA was added to the PamLab Patented</p> <p>15 Products, is that related to any interactions that</p> <p>16 you've had with legal department at PamLab?</p> <p>17 A. Yes.</p> <p>18 Q. During your testimony today you were</p> <p>19 asked, and I don't recall the specific paragraph,</p> <p>20 but you were asked questions with regard to your</p> <p>21 understanding or your basis for understanding that</p> <p>22 Macoven products were used for the same prescription</p> <p>23 as the PamLab Patented Products. Do you recall that</p> <p>24 line of questioning?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">92</p> <p>1 product.</p> <p>2 Q. And why are you confident that the</p> <p>3 prescription would be written for a PamLab product</p> <p>4 as opposed to another one of the imposter products</p> <p>5 as you refer to them?</p> <p>6 MR. CWIK: Objection, foundation and</p> <p>7 form.</p> <p>8 A. Based on feedback from clinicians,</p> <p>9 based on the compendium, based on the outcomes and</p> <p>10 the evidence that's being provided and the</p> <p>11 discussions around those outcomes and the indication</p> <p>12 specifically for those, that's why.</p> <p>13 MR. CWIK: Add objection to hearsay</p> <p>14 to that.</p> <p>15 MR. NORTON: I'm going to object to</p> <p>16 that objection for the record.</p> <p>17 Q. Do you have an understanding of</p> <p>18 whether or not a company like Macoven details their</p> <p>19 products in the same way that PamLab does for</p> <p>20 example?</p> <p>21 MR. CWIK: Objection, foundation.</p> <p>22 A. No. They do not in my understanding.</p> <p>23 As PamLab does with the exception of negotiating</p> <p>24 contracts at the wholesaler and retailer level for</p> <p>25 preferred positions all based on discounts and cost</p>
<p style="text-align: right;">91</p> <p>1 Q. What is your basis for understanding</p> <p>2 that the Macoven products were being used for the</p> <p>3 same prescriptions as the PamLab Patented Products?</p> <p>4 MR. CWIK: Objection to form.</p> <p>5 A. The linking in the compendium, the</p> <p>6 contracting that they did directly with wholesalers</p> <p>7 and retail pharmacy chains to get Direct Access</p> <p>8 instead of PamLab product. And in replace of PamLab</p> <p>9 products.</p> <p>10 Q. With respect to the actual filling of</p> <p>11 a prescription with a Macoven product, do you have</p> <p>12 an understanding based on your experience of how</p> <p>13 that works?</p> <p>14 A. Yes.</p> <p>15 Q. And how does that work?</p> <p>16 MR. CWIK: Objection, foundation.</p> <p>17 A. A clinician writes a prescription</p> <p>18 based on the indication for PamLab, for example,</p> <p>19 Metanx. And when they fill out the prescription.</p> <p>20 It's Metanx. And then it's substituted when it goes</p> <p>21 to the pharmacy level for whatever is in the</p> <p>22 preferred position. And in this case Macoven,</p> <p>23 because that's what you are speaking of. But it</p> <p>24 could be any of the imposters, depending upon the</p> <p>25 one. And it is directly substituted for the PamLab</p>	<p style="text-align: right;">93</p> <p>1 and price.</p> <p>2 Q. Do you recall your testimony earlier</p> <p>3 today related to the forecasting with respect to the</p> <p>4 [REDACTED]?</p> <p>5 A. Yes.</p> <p>6 Q. Strike that and let me ask it again.</p> <p>7 You were asked questions by counsel</p> <p>8 related to whether or not there were missed</p> <p>9 projections with respect to forecasting of sales for</p> <p>10 PamLab Patented Products. Do you recall that</p> <p>11 generally?</p> <p>12 A. Generally, yes.</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 Q. Are you aware of the main "imposter"</p> <p>24 as you refer to them?</p> <p>25 A. Primarily Macoven, Virtus, those are</p>

<p style="text-align: right;">94</p> <p>1 the main two of late.</p> <p>2 Q. To your knowledge, does Virtus use</p> <p>3 L5-MTHF calcium salt in its products?</p> <p>4 A. Uhhh, as I put in my declaration,</p> <p>5 they say they're the same. Is it the same that</p> <p>6 Virtus uses or does Virtus use the same? I can't</p> <p>7 say it's the same.</p> <p>8 Q. With respect to your discussions or</p> <p>9 your prior testimony related to Brookstone, Trigen,</p> <p>10 Seton, Midlothian, are you aware that at least some</p> <p>11 of those companies use the racemic in their</p> <p>12 products?</p> <p>13 MR. CWIK: Objection, scope, form.</p> <p>14 A. They are saying -- and I'll go back</p> <p>15 to this. And my comment in here is that they were</p> <p>16 copying -- was that they were saying that they are</p> <p>17 the same. But from my understanding is that they</p> <p>18 were racemic. And I believe -- it forget which</p> <p>19 company is which, because there were multiple</p> <p>20 different things. And that's the reason why I don't</p> <p>21 like to go into specifics. But it was Brookstone,</p> <p>22 Acella, Seton, primarily that were using racemic.</p> <p>23 Macoven and Virtus were using another form. Again,</p> <p>24 I don't want to get into all the crystalline and</p> <p>25 calcium salts and all that. That is not my area of</p>	<p style="text-align: right;">96</p> <p>1 series of questions and examined on several package</p> <p>2 inserts today?</p> <p>3 A. Yes.</p> <p>4 Q. With respect to those package inserts</p> <p>5 that you were shown, are you in any way able to</p> <p>6 confirm the accuracy of the content of those package</p> <p>7 inserts?</p> <p>8 A. No.</p> <p>9 MR. NORTON: That's it.</p> <p>10 MR. CWIK: Just a couple of follow-up</p> <p>11 questions.</p> <p>12 CONTINUED EXAMINATION</p> <p>13 BY MR. CWIK:</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 Q. When did the Macoven products stop</p> <p>23 being sold?</p> <p>24 A. That's one of the things that's</p> <p>25 questionable, if you want to know the truth.</p>
<p style="text-align: right;">95</p> <p>1 expertise. But they were saying that they were</p> <p>2 identical and that they were a copy. So that's the</p> <p>3 way that I approach it. Because that's the way</p> <p>4 clinicians see it and that's the way that the</p> <p>5 database was seeing it.</p> <p>6 Actually, for clarification, it's the</p> <p>7 way pharmacists see it. Clinicians don't see it.</p> <p>8 Pharmacists see it.</p> <p>9 Q. With respect, and I know that you're</p> <p>10 not really mired in the specifics of it, but with</p> <p>11 respect to the companies that were using a racemic,</p> <p>12 what does that say in your mind as to their</p> <p>13 willingness to claim that their products were</p> <p>14 copies? What does that say about the PamLab</p> <p>15 Patented Products?</p> <p>16 MR. CWIK: Objection, foundation,</p> <p>17 form.</p> <p>18 A. It says that they're willing -- and</p> <p>19 I'll use the district court ruling -- that they,</p> <p>20 basically, lied. They are willing to lie to ride</p> <p>21 the coattails to get on the bus. To get a seat on</p> <p>22 the bus, the PamLab bus, to try to ride our</p> <p>23 invention and our commercial success of our PamLab</p> <p>24 Patented Products.</p> <p>25 Q. And you recall that you were asked a</p>	<p style="text-align: right;">97</p> <p>1 Because they have too much -- there is still too</p> <p>2 much in the distribution channels that, basically,</p> <p>3 I've been questioning with legal counsel to try to</p> <p>4 understand. So my understanding is that as of the</p> <p>5 settlement date, which I don't know exact date. We</p> <p>6 can probably look on one of the exhibits here. But</p> <p>7 that is when they were required to quit providing</p> <p>8 their product. However, it's still in the markets.</p> <p>9 Q. Okay.</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 Q. Have you sued Virtus for being in</p> <p>21 that same database and selling their products?</p> <p>22 MR. NORTON: Objection, form.</p> <p>23 I'm going to caution the witness to</p> <p>24 the extent this gets into privileged conversations</p> <p>25 he's had with counsel or the legal department at</p>

<p>98</p> <p>1 PamLab, not to disclose that information.</p> <p>2 Q. I'm just asking are you aware of a</p> <p>3 public filing that you sued Virtus for patent</p> <p>4 infringement based on those sales.</p> <p>5 A. I know there is a suit against</p> <p>6 Virtus. I don't know if PamLab is mentioned in that</p> <p>7 suit.</p> <p>8 Q. Do you know if that concerns patent</p> <p>9 infringement, that lawsuit?</p> <p>10 A. I don't know. Again, I don't get</p> <p>11 caught up in it because I'm not involved in it.</p> <p>[REDACTED]</p> <p>19 MR. CWIK: Okay. I have no further</p> <p>20 questions.</p> <p>21 MR. NORTON: None from my end.</p> <p>22 MR. CWIK: We're done.</p> <p>23 (Whereupon the deposition concluded</p> <p>24 at 12:02 p.m.)</p> <p>25</p>	<p>100</p> <p>1 CERTIFICATE</p> <p>2 This certification is valid only for a</p> <p>3 transcript accompanied by my original signature and</p> <p>4 original required seal on this page.</p> <p>5 I, MARYBETH E. MUIR, Certified Court Reporter</p> <p>6 in and for the State of Louisiana and Registered</p> <p>7 Professional Reporter, as the officer before whom</p> <p>8 this testimony was taken, do hereby certify that AUDY</p> <p>9 KENT LADNER, after having been duly sworn by me upon</p> <p>10 authority of R.S. 37:2554, did testify as</p> <p>11 hereinbefore set forth in the foregoing 111 pages;</p> <p>12 that this testimony was reported by me in the</p> <p>13 stenotype reporting method, was prepared and</p> <p>14 transcribed by me or under my personal direction and</p> <p>15 supervision, and is a true and correct transcript to</p> <p>16 the best of my ability and understanding; that the</p> <p>17 transcript has been prepared in compliance with</p> <p>18 transcript format guidelines required by statute or</p> <p>19 by rules of the board, that I have acted in</p> <p>20 compliance with the prohibition on contractual</p> <p>21 relationships, as defined by Louisiana Code of Civil</p> <p>22 Procedure Article 1434 and in rules and advisory</p> <p>23 opinions of the board; that I am not related to</p> <p>24 counsel or to the parties herein, nor am I otherwise</p> <p>25 interested in the outcome of this matter.</p> <p>This 25th day of November, 2013.</p> <p>_____ MARYBETH E. MUIR, CCR, RPR</p>
<p>99</p> <p>1</p> <p>2 STATE OF _____)</p> <p>3) :ss</p> <p>4 COUNTY OF _____)</p> <p>5</p> <p>6</p> <p>7 I, AUDY KENT LADNER, the witness</p> <p>8 herein, having read the foregoing</p> <p>9 testimony of the pages of this deposition,</p> <p>10 do hereby certify it to be a true and</p> <p>11 correct transcript, subject to the</p> <p>12 corrections, if any, shown on the attached</p> <p>13 page.</p> <p>14</p> <p>15 _____</p> <p>16 AUDY KENT LADNER</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Sworn and subscribed to before</p> <p>21 me, this _____ day of _____</p> <p>22 _____, 2013.</p> <p>23</p> <p>24 _____</p> <p>25 Notary Public</p>	<p>101</p> <p>1 INSTRUCTIONS TO WITNESS</p> <p>2</p> <p>3 Please read your deposition over carefully</p> <p>4 and make any necessary corrections. You should state</p> <p>5 the reason in the appropriate space on the errata</p> <p>6 sheet for any corrections that are made.</p> <p>7 After doing so, please sign the errata sheet</p> <p>8 and date it.</p> <p>9 You are signing same subject to the changes</p> <p>10 you have noted on the errata sheet, which will be</p> <p>11 attached to your deposition.</p> <p>12 It is imperative that you return the original</p> <p>13 errata sheet to the deposing attorney within thirty</p> <p>14 (30) days of receipt of the deposition transcript by</p> <p>15 you. If you fail to do so, the deposition transcript</p> <p>16 may be deemed to be accurate and may be used in court.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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25	WITNESS' SIGNATURE	DATE