

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA *ex rel.*,
STEPHEN A. KRAHLING and JOAN A.
WLOCHOWSKI,

Plaintiffs,

v.

MERCK & CO., INC.,

Defendant.

Civil Action No. 10-4374 (CDJ)

**CONTAINS “CONFIDENTIAL” AND
“HIGHLY CONFIDENTIAL –
ATTORNEYS’ EYES ONLY” MATERIAL
PURSUANT TO PROTECTIVE ORDER**

**MERCK'S MASTER SET OF
EXHIBITS IN SUPPORT OF MOTIONS
FOR SUMMARY JUDGMENT**

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION
ex rel., STEPHEN A. : NO. 2:10-04374(CDJ)
KRAHLING and JOAN A. :
WLOCHOWSKI, :
Plaintiffs, :
vs. :
MERCK & CO., INC., :
Defendant. :

_____ : Master File No.
IN RE: MERCK MUMPS : 2:12-cv-03555(CDJ)
VACCINE ANTITRUST :
LITIGATION :

THIS DOCUMENT RELATES TO: :
ALL ACTIONS :

- - -
May 2, 2017

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

- - -
Videotaped deposition of STEPHEN
KRAHLING, taken at the offices of Morgan Lewis
& Bockius, 1701 Market Street, Suite 18-F,
Philadelphia, Pennsylvania 19103, beginning at
9:37 a.m., before LINDA ROSSI-RIOS, a
Federally Approved RPR, CCR and Notary Public.

- - -
VERITEXT LEGAL SOLUTIONS
MID-ATLANTIC REGION
1801 Market Street - Suite 1800
Philadelphia, PA 19103

Page 38

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 one week, I feel bad leaving after a week.
 3 And they said, you know what, we understand.
 4 This is more in line with your experience, you
 5 got to do it. I would do it too. So even
 6 though I left after only one week, it was on
 7 very good terms.
 8 Q. And then from Warner-Lambert
 9 you went to your first position at Merck?
 10 A. Yes.
 11 Q. What was the title of that
 12 position?
 13 A. I don't recall because it was
 14 through a contract agency. So that the people
 15 at Merck called them -- sometimes they
 16 officially called them contract employees,
 17 sometimes they called them temps. So I don't
 18 know if that -- they -- how that would be
 19 designated.
 20 Q. Who did you work for when you
 21 first went to Merck?
 22 A. I'm pretty sure it was Dave
 23 Krah.
 24 Q. Anyone else?
 25 A. Nope.

Page 39

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 Q. And tell me about your first
 3 experience at Merck working for Dave Krah.
 4 MR. SCHNELL: Object to form.
 5 THE WITNESS: That's really
 6 general. What do you mean "first
 7 experience"?
 8 BY MS. DYKSTRA:
 9 Q. When you first went to work for
 10 David Krah, what did you do?
 11 A. What did I do?
 12 Q. And this was -- what year are
 13 we in, beginning of 2000?
 14 A. 1999.
 15 Q. 1999. So what did you do
 16 working Dave Krah when you were at Merck in
 17 1999?
 18 A. Formed cell-based assays to
 19 characterize Merck's live virus vaccines.
 20 Q. What was your job? What
 21 specifically did you do?
 22 A. Ran the cell-based assays. We
 23 did VZV, varicella zoster virus potency
 24 assays. I helped out with the -- some early,
 25 I don't know whether he characterize them

Page 40

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 validation, but he was doing -- Dave Krah was
 3 doing experiments with neutralization assays.
 4 Cultured cells. My responsibilities from when
 5 I worked at Merck the first year and a half
 6 to -- are you ready?
 7 Q. Yes, I'm sorry.
 8 A. I wanted to make sure you heard
 9 it.
 10 My job responsibilities as a
 11 contract employee to the second part where
 12 they hired me full time didn't change. It was
 13 the same position, it's just Merck formally
 14 qualified it as staff virologist. I did all
 15 the same things, all the same things were
 16 expected of me. Krah told me that the reason
 17 Merck hired people as contract employees first
 18 was so that they could get an idea if they
 19 could work there, if they were good. And that
 20 if they weren't, it was easier to fire them if
 21 they were contract employees. That once
 22 someone is permanent, it's a little tougher to
 23 fire them.
 24 So Merck was using this idea of
 25 having temps as a way to filter out people

Page 41

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 that they didn't think would be good at the
 3 job.
 4 Q. So the entire time you were at
 5 Merck, either as a contract employee or as a
 6 full-time permanent employee, you always
 7 reported to David Krah?
 8 A. I reported to David Krah up --
 9 what do you mean by "reported"?
 10 Q. Was he your direct supervisor?
 11 A. There you go. Okay. So direct
 12 supervisor from the time I started until
 13 October 2001. There was a time I came back
 14 for a few weeks where it was somebody else.
 15 Q. What time frame are you talking
 16 about?
 17 A. The time that Merck's lawyers
 18 contacted me and told me I had to come back.
 19 Q. Toward the end, I guess, of
 20 October -- September, October, best time
 21 frame?
 22 A. It could have been November. I
 23 can only bookend it by between October and
 24 December.
 25 Q. Who did you report to at that

Page 42

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL

2 time?

3 A. I don't know his name.

4 Q. Let me ask you before we go

5 into your employment at Merck, you left Merck

6 in 2001. Correct?

7 A. Yes.

8 Q. Between 2001 and today, tell me

9 chronologically what other positions you held

10 for employment.

11 A. I went back to Penn State, the

12 lab I had worked at before, and helped develop

13 graduate students in Dr. Schlegel's lab.

14 Q. What time frame was that?

15 A. 2002 and then to 2004. I

16 believe we had a publication in 2004. And

17 then it faded as in I was -- I made myself

18 available if they had questions, but I didn't

19 draw a wage. There was no other place of

20 employment after that.

21 Q. So between 2004 and 2017 you've

22 been unemployed?

23 A. What do you mean by that

24 characterization? Doesn't that imply seeking

25 employment?

Page 43

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL

2 Q. I'm not implying that.

3 A. I didn't have a job that paid a

4 wage.

5 Q. What did you do between 2004

6 and 2017?

7 A. Got married, had kids. Can I

8 ask a quick question?

9 Q. Sure.

10 A. That sun is blasting off of

11 that, can we close that blind?

12 Q. Absolutely.

13 A. If I could just -- you can open

14 it later when the sun leaves, but it's

15 blasting into my eyes so I can't look over

16 this way. I didn't want to do it while a

17 question was pending. Thank you.

18 - - -

19 (A discussion off the record

20 occurred.)

21 - - -

22 BY MS. DYKSTRA:

23 Q. Is that better?

24 A. Yes. Still seeing something.

25 It will clear up in a bit. I just can't see

Page 44

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL

2 clearly out of my left eye.

3 Q. So between 2004 and 2017, were

4 you looking for employment outside the home?

5 A. No.

6 Q. When did you get married?

7 A. I should be able to answer this

8 faster.

9 Q. You should.

10 A. 2002. October 26, 2002.

11 Q. How many children do you have?

12 A. Two.

13 Q. When were they born?

14 A. November 19, 2003.

15 February 18, 2006.

16 Q. Are you the primary caretaker

17 of your children?

18 A. Yes.

19 Q. Are you still married?

20 A. Yes.

21 Q. What does your wife do?

22 A. She's a pharmacy owner and a

23 pharmacist.

24 Q. So between 2004 and 2017 you

25 weren't looking for employment outside the

Page 45

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL

2 home?

3 A. Not that I recall. I may have

4 thought about it from time to time, but I

5 didn't actively say I need to get a job.

6 Q. When did you first consider

7 bringing a case against Merck in connection

8 with your work in Dr. Krah's lab?

9 A. Can you define what you mean by

10 "case"?

11 Q. When did you consider filing a

12 complaint of any kind against Merck in

13 connection with your work in Dr. Krah's lab?

14 A. Can you be more specific?

15 There's two answers to that. When I worked at

16 Merck and Shaw informed me that Dave was going

17 to continue to make life hell for me and he

18 said I could maintain that status quo -- he

19 gave me two options, Shaw said you can

20 maintain the status quo, in which case I

21 wouldn't get paid bonuses that were owed, and

22 that Dave would most likely give me a poor

23 performance review and that things would be

24 very stressful for me. He advised me not to

25 do that. He said take option number two and

Page 54

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 an assay and the assay was the end result of
 3 the assay. Not that you were characterizing
 4 like that, but that's my -- that's how it
 5 sounded.
 6 Q. No, that's okay. I just want
 7 to make sure I understand your testimony and
 8 what you're saying.
 9 So you worked on the plaque --
 10 let's go through it one by one. You worked on
 11 the plaque neutralization assay with Dr. Krah
 12 or reporting to Dr. Krah. Correct?
 13 A. That was one of the things I
 14 worked on in his lab.
 15 Q. So you ran -- you worked on the
 16 plaque neutralization assay as part of
 17 Protocol 007 with Dr. Krah. Correct?
 18 A. I worked on -- it would be more
 19 accurate to say I worked on Protocol 007
 20 testing with Krah and the other members of his
 21 lab. Now, by Protocol 007 testing, that means
 22 the PRN assay which -- if I call it a PRN,
 23 that's plaque reduction neutralization assay,
 24 and I'm talking about the mumps neutralization
 25 assay.

Page 55

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 So we worked on the PRN assay.
 3 We also worked to validate the ELISA assay.
 4 It was the same thing. So when I say Protocol
 5 007 testing, I mean the PRN and the ELISA
 6 testing.
 7 Q. When you say you worked on the
 8 PRN assay, you actually worked in running the
 9 assay itself, conducting the assay. Correct?
 10 A. If you mean by running we
 11 handled the plates that had the cells, the
 12 supernatant in it, yes.
 13 Q. What do you mean when you say
 14 you worked to validate the ELISA assay?
 15 A. Krah let me know that the PRN
 16 assay is time consuming, bulky, requires lots
 17 of materials. The idea was that they would
 18 only have to do this PRN assay this one time
 19 and the ELISA would be pegged to it. So the
 20 PRN was used to validate the assay but he
 21 often used the word "calibrate," because the
 22 PRN assay was used to be able to read the
 23 ELISA. There's two results that come out of
 24 an ELISA when the test is done correctly,
 25 positive or negative. The PRN determined what

Page 56

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 was positive or negative in the ELISA. In his
 3 words, it was fundamental to the ELISA and it
 4 was important and our lab was entrusted with
 5 it. The PRN also -- how did he say it? The
 6 ELISA -- the indicator strain used in the
 7 ELISA had to match the PRN. So all of the
 8 validation testing done for the PRN to choose
 9 an indicator strain was also choosing the
 10 strain that would be used in the ELISA.
 11 So the two assays were so
 12 fundamentally connected that we didn't talk
 13 like you do and, oh, you did PRN, you didn't
 14 do ELISA. I was told that we were validating
 15 use of the ELISA so that in future studies
 16 protocols after 07, they wouldn't have to do
 17 the PRN again because the ELISA would have
 18 been linked to a functional, better assay such
 19 as the PRN.
 20 Q. When you say that the PRN was
 21 used to calibrate the ELISA, let's put that
 22 aside for a second, did you actually work in
 23 the ELISA lab running the ELISA assay?
 24 A. The ELISA plates and running
 25 them through a plate reader, that was not

Page 57

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 done, I did not partake in that.
 3 Q. That was in a separate lab.
 4 Correct?
 5 A. I don't recall.
 6 Q. But that was not run by Dr. Krah,
 7 the ELISA testing?
 8 A. I don't know if it was run by
 9 him or not.
 10 Q. But you didn't take part in
 11 that testing, the actual running of the assay
 12 itself?
 13 A. If running of the assay itself
 14 means running the plates through the reader, I
 15 took part in the sense that I validated and I
 16 helped do the assays for how you read those
 17 results. But I didn't shove them through the
 18 plate reader, no.
 19 Q. Just to be clear, the PRN assay
 20 was run in Dr. Krah's lab. Correct?
 21 A. Yes.
 22 Q. The ELISA assay was run in a
 23 different lab?
 24 MR. SCHNELL: Objection. Asked
 25 and answered.

<p style="text-align: right;">Page 58</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. DYKSTRA:</p> <p>3 Q. Are you aware --</p> <p>4 A. I don't know that.</p> <p>5 Q. You're not aware where the</p> <p>6 ELISA assay was run? That's fine. You're not</p> <p>7 aware of where the ELISA assay was run itself,</p> <p>8 the actual running of the plates and counting --</p> <p>9 A. When you say run, I don't know</p> <p>10 what you're talking about. I'm defining run</p> <p>11 as that last step where -- ah, you know what,</p> <p>12 the other way they were linked. They had to</p> <p>13 be run on the same serum. So we had to show</p> <p>14 in the PRN that using these same serum, using</p> <p>15 the same indicator strain, that PRN, a</p> <p>16 functional, more specific assay, the ELISA</p> <p>17 could correlate to it so that in the future</p> <p>18 they wouldn't have to keep doing the PRN. So</p> <p>19 all of the results from the ELISA were</p> <p>20 unreliable because they were based on the PRN.</p> <p>21 So when you say -- I'll tell</p> <p>22 you this: The plate reader was in a different</p> <p>23 lab probably that they used. I don't know. I</p> <p>24 cannot say for certain the plate reader they</p> <p>25 used. So I don't want to keep jumping back to</p>	<p style="text-align: right;">Page 60</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 Q. When you say Dr. Krah wrote</p> <p>3 that down, what do you mean, he wrote what</p> <p>4 down?</p> <p>5 A. He wrote it down. It's in a</p> <p>6 document. We -- it's got to be in a document</p> <p>7 somewhere. I'm sure we produced it. He -- to</p> <p>8 our lab, he would give us, it looked like</p> <p>9 outlines. They would say how our lab fits in</p> <p>10 it, why it's important, how we make money</p> <p>11 for -- you know, implied how we make money and</p> <p>12 how we incorporate to the rest of the company.</p> <p>13 And he stressed that we work closely with</p> <p>14 manufacturing release testing. He wanted to</p> <p>15 show us, in his words, why we mattered to the</p> <p>16 rest of the company. Which was a good thing</p> <p>17 in my eyes, that he would let us know how we</p> <p>18 functioned with the rest of the company.</p> <p>19 Q. But you said in your request in</p> <p>20 connection with discovery in this case that</p> <p>21 you never worked in the manufacturing division</p> <p>22 at Merck. Correct?</p> <p>23 MR. SCHNELL: Objection to</p> <p>24 form. If you're going to refer to</p> <p>25 something, you should really --</p>
<p style="text-align: right;">Page 59</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 some generalization. I don't know where the</p> <p>3 plate reader was that they used for the ELISA</p> <p>4 assays.</p> <p>5 Q. You also noted in your answer</p> <p>6 that you worked closely with release testing</p> <p>7 and manufacturing. Can you explain what you</p> <p>8 mean by that?</p> <p>9 A. That's hard to say.</p> <p>10 MR. SCHNELL: Objection. I'm</p> <p>11 sorry, in his answer?</p> <p>12 MS. DYKSTRA: Just now.</p> <p>13 THE WITNESS: I did --</p> <p>14 MS. DYKSTRA: Just in his</p> <p>15 answer here.</p> <p>16 THE WITNESS: Krah provided us</p> <p>17 with that information on what exactly</p> <p>18 our -- the importance of our lab was.</p> <p>19 So he would -- he wrote that down and</p> <p>20 gave it to us and said this is what we</p> <p>21 do, we work closely with that. So he</p> <p>22 would have to communicate with</p> <p>23 manufacturing because they relied on</p> <p>24 information he had.</p> <p>25 BY MS. DYKSTRA:</p>	<p style="text-align: right;">Page 61</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. DYKSTRA:</p> <p>3 Q. Did you ever work in the Merck</p> <p>4 manufacturing division?</p> <p>5 A. It depends on what you mean by</p> <p>6 "division." I just said that --</p> <p>7 Q. Did you ever work for anybody</p> <p>8 who reported up through Merck's manufacturing</p> <p>9 division?</p> <p>10 A. Reported up? I don't know the</p> <p>11 chain of command. Here's what I can tell you:</p> <p>12 According to Krah and according to what I</p> <p>13 understand, the work we were doing impacted</p> <p>14 manufacturing. How much goes into the</p> <p>15 vaccine. To that level. So what they would</p> <p>16 report to regulatory. But there's a building</p> <p>17 somewhere where they make it. My job was not</p> <p>18 to report to that building and make it.</p> <p>19 Q. That's fair. So you didn't</p> <p>20 have any responsibility in the actual</p> <p>21 manufacturing process of the vaccine?</p> <p>22 A. That's too broad. Any</p> <p>23 responsibility? The work we were doing</p> <p>24 impacted what happened in that building. I</p> <p>25 just didn't personally go to the building.</p>

Page 82

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 that I was familiar with in the lab.
3 Q. If we stick looking at your
4 complaint for a moment, in paragraph 19 on
5 page 6, you note that "In order to obtain its
6 original government approval to sell the mumps
7 vaccine, Merck conducted field studies of
8 vaccinated children and concluded that the
9 vaccine had an efficacy rate of 95 percent or
10 higher." [As read.]
11 Do you see that?
12 A. I do see it.
13 Q. What are you referring to here?
14 A. This line refers to the package
15 label. Well, it would be the package insert,
16 I guess you'd call it.
17 Q. Are the studies that you are
18 talking about here Dr. Hilleman's studies back
19 in the late '60s and '70s?
20 A. I believe that's what they're
21 referring to.
22 Q. Do you allege that there was
23 any fraud in connection with those studies?
24 A. I can't say, I wasn't there
25 back then.

Page 83

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 Q. So you don't have any reason to
3 believe that there was fraud in connection
4 with those studies in the late '60s, early
5 '70s that warranted the product's original
6 approval?
7 A. Are you talking about legal
8 fraud?
9 Q. Scientific misconduct.
10 A. I don't have reason to know or
11 not know. I couldn't make a claim one way or
12 the other.
13 Q. So you're not making a claim
14 today that Dr. Hilleman's studies in the late
15 '60s, early '70s, were conducted in any
16 improper way? That's not what you're alleging
17 here?
18 A. I'm not alleging that those
19 people who ran those tests did something
20 improper like mentally they were doing
21 something that we've been referring to or I've
22 been referring to as scientific misconduct.
23 What happened back then, what I would claim or
24 what I -- what is true is that the testing
25 methods available to them back then were less

Page 84

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 rigorous than what are available today. The
3 sample size run are smaller than the things
4 Merck did in Protocol 007. So less rigorous,
5 not as good a test or accurate a test isn't
6 scientific misconduct.
7 Q. You understand that Dr. Hilleman
8 ran a double-blinded clinical trial where one
9 arm received a vaccine and the other arm
10 received a placebo. Correct?
11 A. That's referenced in that
12 package insert?
13 Q. Yes. You understand that, right?
14 A. Yes.
15 Q. Do you understand that that
16 type of clinical trial where you give one arm
17 of children placebo and one arm vaccine for
18 mumps could not be run today in the United
19 States. Correct?
20 A. You can replicate the same
21 thing. You can get information about that
22 without having not to inject the child.
23 That's what a pre-vaccination sample is. It
24 represents a child that hasn't had the vaccine
25 yet. So in lieu of a placebo control, that

Page 85

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 gives you information that is relevant to what
3 Hilleman found back then. But Hilleman also
4 didn't have large sample sizes either. But I
5 understand that according to some guidelines,
6 I think research guidelines, that it's
7 unethical to withhold a vaccine today, it
8 would be unethical to withhold the vaccine and
9 do the placebo, clinically controlled placebo
10 trial that you're talking about.
11 Q. So to boil that down to my
12 question, you understand that it would be
13 unethical today to do a double-blinded
14 clinical trial where there were two arms, one
15 given a placebo and one given the mumps
16 vaccine?
17 A. If you knew that the vaccine
18 worked, yes.
19 Q. You're not aware of any other
20 double-blinded clinical trial of the mumps
21 vaccine other than the one Dr. Hilleman did in
22 the United States, are you?
23 MR. SCHNELL: Object to form.
24 BY MS. DYKSTRA:
25 Q. I'll restate.

Page 110

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 and tell me if you agree.
3 A. But I can tell you right here.
4 Q. Is there anything else in the
5 label that you want to point to that you think
6 is false and misleading? I want to make sure
7 we get it all.
8 A. I want to be clear on this.
9 Cases reported in a given year prior. 1968 is
10 not prior. That's all I'm getting at. We can
11 argue why it says that or how it's a mistake.
12 But we're done with that on the package insert
13 up to indications and usage.
14 Q. Nothing else you want to point
15 to that you think is false and misleading
16 other than the things you've just identified?
17 A. Not in those two first
18 sentences right now off the top of my head.
19 Q. First two sections, right?
20 A. Yeah, first two sections.
21 Q. We'll come back to that.
22 I want to switch over to the
23 development of the assay. So you joined Merck
24 you said in 2000?
25 A. 1999.

Page 111

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 Q. And what was the date of your
3 employment, when you first were hired?
4 A. I think it was March 1999.
5 Q. And you left in November of
6 2001?
7 A. I think at some point during
8 November 2001 may have been the last time I
9 was physically present at the place.
10 Q. To what extent, if at all, were
11 you involved in the design and development of
12 the actual PRN assay?
13 MR. SCHNELL: Object to form.
14 THE WITNESS: That's such a
15 broad question. I mean, the design and
16 development of the assay, I worked
17 there when it was designed and
18 developed by Krah in his lab.
19 BY MS. DYKSTRA:
20 Q. I'm going to show you a series
21 of documents that some predate your employment
22 but I want to just confirm that you were not
23 involved in these particular discussions with
24 the FDA around the development of 007. The
25 first one I'm going to show you we'll mark as

Page 112

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 Krah-5.
3 MR. SCHNELL: Krahling.
4 MS. DYKSTRA: Krahling-5.
5 Sorry.
6 - - -
7 (Exhibit Krahling-5, 6/23/98,
8 IND submission, MRK-KRA00624345 -
9 00624446, was marked for identification.)
10 - - -
11 BY MS. DYKSTRA:
12 Q. This is a June 23, 1998, IND
13 submission from Merck to the FDA. Can you
14 take a look at that, you don't have to read
15 the whole thing. I just want to know, this is
16 before you were employed by the company.
17 Correct?
18 A. June 23, 1998, is before I was
19 employed at the company.
20 Q. Do you know whether you've ever
21 seen this document before? Just by looking at
22 it right now, can you tell me one way or the
23 other?
24 A. Just looking at the front page?
25 I can't tell by looking at the front page

Page 113

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 alone.
3 Q. Can you tell me prior to Merck
4 producing this document as part of discovery
5 in this case you've ever seen this document?
6 A. We're talking about the front
7 page. I mean, how much do you -- are you
8 going to let me look through it --
9 Q. Yes.
10 A. -- to figure out what I've seen
11 of it?
12 Q. Yes. And I want to know what
13 you've seen of it other than what you've seen
14 as part of this litigation?
15 A. I have to look at every page
16 then.
17 Q. We'll go off the record and you
18 can look at every page.
19 A. For God's sake. If you want an
20 accurate answer, I've got to look at it.
21 MS. DYKSTRA: Could we go off
22 the record for a moment?
23 VIDEOGRAPHER: The time is
24 11:49. We're going off the video
25 record.

<p style="text-align: right;">Page 118</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 originally denied it and then you admitted it.</p> <p>3 Correct?</p> <p>4 A. I see that, yes.</p> <p>5 Q. Do you know why you originally</p> <p>6 denied it?</p> <p>7 A. You mean beyond what's written</p> <p>8 here?</p> <p>9 Q. Well, you changed your answer</p> <p>10 from deny to admitted, so I want to understand</p> <p>11 why.</p> <p>12 A. Well, the definition of Merck</p> <p>13 includes Relators and other former employees.</p> <p>14 I was asked to contact the FDA by my co-workers.</p> <p>15 Q. Who asked you to do that?</p> <p>16 A. Suzie Maahs, Joan and Jon was</p> <p>17 shaking his head yes and agreed with it. Jill</p> <p>18 DeHaven. Frank Kennedy.</p> <p>19 Q. So other contact -- other than</p> <p>20 contacting the FDA, which I'm assuming you're</p> <p>21 talking about 2001 in connection with the FDA</p> <p>22 inspection. Correct?</p> <p>23 A. Can you restate that a little</p> <p>24 slower?</p> <p>25 Q. Assuming -- other than the</p>	<p style="text-align: right;">Page 120</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 Q. Putting aside you might have</p> <p>3 met somebody on the street that happened to</p> <p>4 work for the CDC and you didn't realize it,</p> <p>5 have you ever talked to somebody in their</p> <p>6 capacity as an employee of the CDC about the</p> <p>7 allegations in this case?</p> <p>8 A. No.</p> <p>9 Q. If you also look at your</p> <p>10 request for admissions numbers 34. I'm sorry,</p> <p>11 in the first RFA, I think that's number 6,</p> <p>12 Krahlings-6. Number 34. We asked you to admit</p> <p>13 that you've never attended any meetings</p> <p>14 between Merck and the FDA and you denied that.</p> <p>15 Correct?</p> <p>16 A. Yes, denied the request.</p> <p>17 Q. And why did you deny it?</p> <p>18 A. Merck is a company, the FDA is</p> <p>19 a regulatory agency, so if you're -- if those</p> <p>20 two things subsume all the people that work</p> <p>21 there, that can be taken to mean did I attend</p> <p>22 any meeting by an employee at Merck and</p> <p>23 employee at the FDA. I did.</p> <p>24 Q. And which meetings did you</p> <p>25 attend?</p>
<p style="text-align: right;">Page 119</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 conversations you may have had with the FDA</p> <p>3 that led to the inspection that you're</p> <p>4 referring to here, other than those</p> <p>5 conversations, were you ever asked to, during</p> <p>6 your employment with Merck, to communicate</p> <p>7 with the FDA directly on behalf of the</p> <p>8 company?</p> <p>9 A. On behalf of the company, no.</p> <p>10 I believe that's why it switched over. The</p> <p>11 loss of ambiguity on that and we can admit</p> <p>12 that. As part of my job duties, it wasn't my</p> <p>13 job to communicate with the FDA on behalf of</p> <p>14 Merck.</p> <p>15 Q. What about with the CDC, were</p> <p>16 you ever -- was it ever part of your job</p> <p>17 duties to communicate with the CDC on behalf</p> <p>18 of Merck?</p> <p>19 A. No, it was not.</p> <p>20 Q. Have you ever communicated with</p> <p>21 the CDC in connection with this case or your</p> <p>22 allegations here?</p> <p>23 A. I can't know -- other than not</p> <p>24 knowing if I'm talking to someone who is at</p> <p>25 the CDC, but I don't believe that I have.</p>	<p style="text-align: right;">Page 121</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 A. I attended a meeting in person</p> <p>3 that occurred in Krah's lab.</p> <p>4 Q. Other than that meeting -- I'm</p> <p>5 assuming you're talking about August 2001?</p> <p>6 A. Yes.</p> <p>7 Q. Other than that August 2001</p> <p>8 meeting, have you ever attended a meeting</p> <p>9 between Merck and the FDA?</p> <p>10 A. I attended a telephone</p> <p>11 conference meeting.</p> <p>12 Q. When was that and with whom?</p> <p>13 A. It was four or five teleconference</p> <p>14 calls or telephone meetings from the middle of</p> <p>15 June to the end of July, 2001.</p> <p>16 Q. They were between you and the</p> <p>17 FDA. Is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. That was in connection with</p> <p>20 your complaints around 007?</p> <p>21 A. Yeah, it was in connection with</p> <p>22 the fraud that I reported, that Joan and I</p> <p>23 reported and the rest of the lab with the</p> <p>24 Protocol 007 testing in Krah's lab.</p> <p>25 Q. Other than those complaints</p>

Page 122

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 about what was happening in Krah's lab in
3 2001, have you ever attended a meeting between
4 Merck and the FDA?
5 A. In person or on the phone, I
6 don't believe I did.
7 Q. And I have the same question
8 for number 35. We ask, admit that you've
9 never attended any meeting between Merck and
10 the FDA concerning Merck's mumps vaccine.
11 Aside from the complaints you
12 made to the FDA and the FDA inspection in
13 2001, have you ever attended any meetings
14 between Merck and the FDA concerning its mumps
15 vaccine?
16 A. So this is the same as 34?
17 Q. Essentially.
18 A. Yes. So we denied it because
19 the meeting I attended in their lab, if you
20 exclude the same things that were excluded in
21 request 34, I don't believe that I did attend
22 any other meetings.
23 Q. You can put those admissions
24 aside for a moment.
25 I'm going to show you what I'm

Page 123

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 going to mark as Krahling-8.
3 - - -
4 (Exhibit Krahling-8, Letter,
5 MRK-KRA00001446 - 00001469, was marked
6 for identification.)
7 - - -
8 BY MS. DYKSTRA:
9 Q. This is a September 8, 1998,
10 letter from the FDA to Dr. Chirgwin at Merck.
11 Have you ever seen this document before?
12 A. It's only two pages, can I read
13 it?
14 Q. You may. My question is just
15 going to be have you seen this before or had
16 any involvement with discussions about it with
17 Dr. Chirgwin or anybody else at Merck?
18 A. I have not seen it before. But
19 the first page which I'm done with, yes, I've
20 had discussions with Krah about item point
21 number 1. I had discussions with him about
22 3(a) which were related to 3(b). We talked
23 about number 4.
24 Q. You and Dr. Krah?
25 A. Yeah. Well, I mean, not just

Page 124

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 me and Dr. Krah, but Dr. Krah, Dave and the
3 lab, Krah and the lab, he talked about it in
4 front of the lab members. So not exclusively
5 to me. Definitely number 5. He alluded to
6 number 8 but tangentially in a way. So I
7 mean, quite a bit was discussed about this,
8 but I haven't seen the document before you
9 giving it to me.
10 Q. Other than people in -- Dr. Krah
11 or in Dr. Krah's lab, did you ever have any
12 discussions about those -- the topics raised
13 in that letter with anybody else at Merck or
14 the FDA?
15 A. So broad. These cover everything.
16 Q. My question is, other than people
17 in the lab that you referred to including
18 Dr. Krah, did you ever talk to anybody else at
19 the company about those issues?
20 A. These issues are broad. They
21 cover the entire clinical study. Alan Shaw,
22 Emilio Emini certainly. These issues are so
23 broad. This is everything about how the --
24 not everything, but these are quite broad
25 issues.

Page 125

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 Q. So is there anybody else
3 besides Dr. Emini, Dr. Shaw, or Dr. Krah and
4 people in his lab that you talked about these
5 issues at the company?
6 A. A lot of -- this is Protocol
7 007. I talked to the FDA about Protocol 007.
8 Now we're talking outside of the company?
9 Q. No, I'm talking about the
10 company right now.
11 A. Okay. Not that I can think of.
12 Q. Outside the company who did you
13 talk to about 007 other than the FDA and
14 Merck?
15 A. And outside of my lawyers?
16 Q. Yes.
17 MR. SCHNELL: I want to
18 instruct you, though, to the extent
19 that counsel was present or that it
20 discloses attorney-client
21 communications, work product, you
22 should not answer.
23 THE WITNESS: No one at this
24 level.
25 BY MS. DYKSTRA:

<p style="text-align: right;">Page 166</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 MR. SCHNELL: Object to form.</p> <p>3 THE WITNESS: You keep going to</p> <p>4 the word use. They don't know how</p> <p>5 Merck was using it. Krah represented</p> <p>6 that if they knew how we were using it,</p> <p>7 they wouldn't let us do it.</p> <p>8 BY MS. DYKSTRA:</p> <p>9 Q. Did you ever have discussions</p> <p>10 with CBER about how Merck was using the</p> <p>11 anti-IgG in the PRN assay?</p> <p>12 A. Can you repeat that?</p> <p>13 Q. Did you ever have any</p> <p>14 discussions with CBER about how Merck was</p> <p>15 using the anti-IgG in the PRN assay?</p> <p>16 A. That's a little bit open ended.</p> <p>17 I remember that I called the FDA to report</p> <p>18 fraud in our lab, hoping they would come in</p> <p>19 and investigate it and find everything out.</p> <p>20 Q. Other than those phone calls to</p> <p>21 the FDA, did you ever have discussions with</p> <p>22 CBER about how Merck was using the anti-IgG in</p> <p>23 its PRN assay?</p> <p>24 MR. SCHNELL: Object to form.</p> <p>25 THE WITNESS: No.</p>	<p style="text-align: right;">Page 168</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 seroconversion rates that -- the ProQuad BLA.</p> <p>3 Q. Other than the development of</p> <p>4 the PRN assay in Protocol 007.</p> <p>5 A. You're going by development of</p> <p>6 PRN assay. The development and the running</p> <p>7 are run simultaneously. The knowledge I have</p> <p>8 of that is that the testing that came</p> <p>9 afterward was based on the development of the</p> <p>10 PRN. If you're looking for knowledge of the</p> <p>11 seroconversion rates reported to the FDA,</p> <p>12 yeah, I mean, I knew that the seroconversion</p> <p>13 rates based on the ProQuad BLA, for one, were</p> <p>14 at or above 90 percent.</p> <p>15 Q. Let's -- you can put those</p> <p>16 exhibits away for the moment. We'll come back</p> <p>17 to them.</p> <p>18 I want to talk about when you</p> <p>19 first joined Dr. Krah's lab.</p> <p>20 A. Can we just like take a short</p> <p>21 two-minute bathroom break?</p> <p>22 Q. Absolutely.</p> <p>23 MR. SCHNELL: It's 1:15, what</p> <p>24 do you want to do for --</p> <p>25 MR. KELLER: Let's break for</p>
<p style="text-align: right;">Page 167</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. DYKSTRA:</p> <p>3 Q. Can you look at your RFAs that</p> <p>4 we marked in front of you? It's 6 and 7.</p> <p>5 Exhibits 6 and 7.</p> <p>6 A. Exhibit 6 and 7.</p> <p>7 Q. Can you look at RFA number 6,</p> <p>8 request for admission number 6. Yeah, the</p> <p>9 number 6. They're both denied in both</p> <p>10 answers.</p> <p>11 A. I didn't know if you meant</p> <p>12 Exhibit 6.</p> <p>13 Q. I'm sorry, request number 6.</p> <p>14 You have to go past the objection. The actual</p> <p>15 question. It's denied in both, you just need</p> <p>16 it in one. You don't need to look at both.</p> <p>17 So the question is: Admit that</p> <p>18 prior to filing this lawsuit, you had no</p> <p>19 knowledge of the seroconversion rates Merck</p> <p>20 reported to the FDA for the mumps component of</p> <p>21 M-M-R@II in connection with Merck's</p> <p>22 development of the PRN assay.</p> <p>23 So tell me what knowledge you</p> <p>24 did have since you denied that request?</p> <p>25 A. I had some knowledge of the</p>	<p style="text-align: right;">Page 169</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 lunch.</p> <p>3 THE WITNESS: My stomach is</p> <p>4 growling, so I wouldn't mind that.</p> <p>5 MS. DYKSTRA: That's fine. We</p> <p>6 can do that.</p> <p>7 VIDEOGRAPHER: The time is</p> <p>8 1:17. We're going off the video</p> <p>9 record.</p> <p>10 - - -</p> <p>11 (A recess was taken.)</p> <p>12 - - -</p> <p>13 VIDEOGRAPHER: The time is</p> <p>14 2:09. This begins disc three in the</p> <p>15 videotape deposition of Stephen</p> <p>16 Krahling.</p> <p>17 BY MS. DYKSTRA:</p> <p>18 Q. Mr. Krahling, before you worked</p> <p>19 at Merck in March 1999 had you ever ran a PRN</p> <p>20 assay previously?</p> <p>21 A. A plaque reduction neutralization</p> <p>22 assay where you measure the ability of serum</p> <p>23 to neutralize virus in a cell-based assay, no.</p> <p>24 Q. And since your work at Merck,</p> <p>25 have you ever had an opportunity to run a</p>

Page 170

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 plaque reduction neutralization assay since
 3 November 2001?
 4 A. By the same definition, no.
 5 Q. And the same question for an
 6 ELISA assay, have you ever run -- prior to
 7 your work at Merck, did you ever run an ELISA
 8 assay?
 9 A. Yes.
 10 Q. And after your work at Merck,
 11 did you ever run an ELISA assay?
 12 A. Yes.
 13 Q. In what context after Merck did
 14 you run an ELISA assay?
 15 A. Penn State. At Penn State the
 16 department of molecular and cell biology that
 17 I worked at.
 18 Q. What time frame was that again?
 19 A. 2002 to 2004.
 20 Q. Since 2004, have you ever run
 21 an ELISA assay?
 22 A. No.
 23 Q. I'm going to show you what's
 24 marked as Exhibit 12.
 25 - - -

Page 171

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 (Exhibit Krahlung-12, 8/1/00
 3 Letter, MRK-KRA00048418, was marked for
 4 identification.)
 5 - - -
 6 BY MS. DYKSTRA:
 7 Q. This is August 1, 2000, letter
 8 from you to Dr. Krahl.
 9 A. Got it.
 10 Q. So you -- did you leave Merck
 11 in mid-August 2000 to head to Penn State?
 12 A. I did.
 13 Q. Did you participate in a
 14 graduate school program at Penn State?
 15 A. If I recall correctly, I was
 16 going to enroll in taking some classes and
 17 continue working in Dr. Schlegel's lab with
 18 the possibility that I might pursue a PhD.
 19 Q. And did you do that work in
 20 Dr. Schlegel's lab at Penn State and work
 21 towards a PhD?
 22 A. I did work in Dr. Schlegel's
 23 lab, but I ended up coming back to Merck just
 24 a few months later.
 25 Q. Why did you not stay at Penn

Page 172

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 State and participate in the graduate program?
 3 A. Met Dr. Krahl. Dave and I --
 4 Colleen got married, Colleen Milliken got
 5 married, became Colleen Barr with two Rs. And
 6 at her wedding, I think it was in October of
 7 2000, Dave and I spent a lot of time talking,
 8 we were seated at the same table and he said
 9 that he wanted me to come back, he said things
 10 weren't the same since I left. And he asked
 11 me -- you know, he asked why I left, we left
 12 on such good terms.
 13 I told him that, I said, Well,
 14 you never had offered me that permanent
 15 position. There wasn't much keeping me there.
 16 He said, What if I offered you
 17 that, would you come back and say yes and work
 18 there.
 19 I said, You got to offer it and
 20 see. You got to take a chance.
 21 But he and I got along well
 22 enough that, I believe it was the next week or
 23 two, the letter was sent, and I thought we
 24 were on good enough terms, you know, he
 25 basically made the offer sound really good to

Page 173

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 come back and work at Merck. He wanted me
 3 back, so I came back.
 4 Q. So you left Merck in -- I guess
 5 was, in fact, your last day at Merck
 6 August 17th as this letter indicates --
 7 A. I have no idea.
 8 Q. -- or sometime mid-August of
 9 2000?
 10 A. I really don't know.
 11 Q. So you left Merck sometime in
 12 the summer of 2000, let's say. Is that fair?
 13 A. I mean, this letter would say
 14 the second half of August.
 15 Q. And between that point and when
 16 you saw Dr. Krahl at Colleen Barr's wedding in
 17 October of 2000, had you already enrolled and
 18 started in the graduate program at Penn State?
 19 A. I'm not sure what the criteria
 20 are for what enrollment would be.
 21 Q. Had you taken any classes or
 22 participated in any studies at Penn State?
 23 A. Well, I was doing research and
 24 I believe I may have enrolled for some
 25 classes.

<p style="text-align: right;">Page 178</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 Q. If that's how you learned how</p> <p>3 to work on the assay, sure.</p> <p>4 A. I don't think that's how I</p> <p>5 learned, but that's how I would describe how</p> <p>6 you run the assay. I'm not quite sure what</p> <p>7 you're asking. There's a difference between</p> <p>8 like how I trained and the methodology and</p> <p>9 like -- I don't understand quite what you're</p> <p>10 asking.</p> <p>11 Q. You got to Dr. Krah's lab and</p> <p>12 you had never run a plaque neutralization</p> <p>13 assay. How did you learn how to work on the</p> <p>14 assay? Who taught you and what did you do?</p> <p>15 A. First of all, a plaque</p> <p>16 reduction neutralization is dependent on</p> <p>17 methods that you don't learn from scratch</p> <p>18 there. So understanding how to culture cells</p> <p>19 is a critical part of running the assay. I</p> <p>20 didn't learn that in Krah's lab. I had</p> <p>21 already known how to do that. So that element</p> <p>22 of it, they just -- they could give you a</p> <p>23 protocol, say here's how you culture these</p> <p>24 cells. I already knew how to do that, easy to</p> <p>25 adapt to it. So I'm not sure what you're</p>	<p style="text-align: right;">Page 180</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 A. Yeah.</p> <p>3 Q. Well, you were in -- well, you</p> <p>4 actually joined Dr. Krah's lab again, and what</p> <p>5 was your hire date, the second hire date?</p> <p>6 A. December 2000.</p> <p>7 Q. December. So from</p> <p>8 December 2000 until we'll just say</p> <p>9 November 2001, although I know you left</p> <p>10 physically being in the lab before then, what</p> <p>11 were your job responsibilities in the lab?</p> <p>12 What did you do day to day?</p> <p>13 A. Before we were talking about</p> <p>14 1999.</p> <p>15 Q. Okay. Well, what did you --</p> <p>16 well, I was talking about when you came back.</p> <p>17 Okay. But the first time you ever did a</p> <p>18 plaque neutralization assay in Dr. Krah's lab</p> <p>19 was when you were there as a contractor then.</p> <p>20 Correct?</p> <p>21 A. I believe so, yes.</p> <p>22 Q. What did you do day to day as a</p> <p>23 contractor in Dr. Krah's lab?</p> <p>24 A. It depends on the day.</p> <p>25 Sometimes we did VZV assays, potency assays.</p>
<p style="text-align: right;">Page 179</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 looking, like is there a certain element how I</p> <p>3 was trained? The thing as a whole, I'm not</p> <p>4 sure I can describe how I was trained.</p> <p>5 There's different -- you learn them as you do</p> <p>6 them. They show you how to do them. When</p> <p>7 they feel comfortable that you're doing them</p> <p>8 however the protocol is set up, you run the</p> <p>9 assays.</p> <p>10 Q. So what were your</p> <p>11 responsibilities in the lab?</p> <p>12 A. As given to me by Krah?</p> <p>13 Q. Well, did somebody else give</p> <p>14 you job responsibilities in the lab other than</p> <p>15 Dr. Krah?</p> <p>16 A. In the beginning you could get,</p> <p>17 I could get instructions through, say, Mary</p> <p>18 Yagodich who would be speaking for Krah. So I</p> <p>19 could get them indirectly.</p> <p>20 Q. So what did -- instruction did</p> <p>21 you get from Dr. Krah or Mary Yagodich about</p> <p>22 what you were to do?</p> <p>23 A. Generally or any one time?</p> <p>24 Q. You were in the lab for a year</p> <p>25 and a half?</p>	<p style="text-align: right;">Page 181</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 Sometimes you assisted with -- Krah and Mary</p> <p>3 were doing plaque reduction neutralization</p> <p>4 assays against wild type mumps. They were</p> <p>5 doing things that they considered validation</p> <p>6 of the mumps neuts that were possibly coming.</p> <p>7 Stuff like that. I mean, do you want every</p> <p>8 single thing I did in his lab?</p> <p>9 Q. What was the majority of your</p> <p>10 time spent on?</p> <p>11 A. Cell-based assays and support</p> <p>12 for cell-based assays that would characterize</p> <p>13 Merck's live virus vaccines.</p> <p>14 Q. What was your job in cell-based</p> <p>15 assay? What did --</p> <p>16 A. To do that.</p> <p>17 Q. -- you actually do?</p> <p>18 A. To do that.</p> <p>19 Q. Explain to me what that means,</p> <p>20 "to do that."</p> <p>21 A. That's a lot of work to explain</p> <p>22 that. Well, I mean for varicella, you had to</p> <p>23 know how to culture MRC-5 cells because the</p> <p>24 human diploid cells and varicella grows in</p> <p>25 that so those assays were based on doing that</p>

Page 242

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 a bluff. I didn't know for sure.
3 Q. When you said "bullshit," what
4 did he say in response?
5 A. I think he basically reiterated
6 it, but that was the end of the conversation.
7 I was walking away at that point, if I recall
8 correctly. Tell you what sticks out in my
9 mind is him saying you'll go to jail and me
10 saying bullshit. And then -- I don't know
11 that there was much conversation after that.
12 That was the first time that he said that. He
13 mentioned that I would go to jail when -- the
14 time that I was also -- when I went in to have
15 a meeting where he actually said I would get
16 to meet with Emini.
17 Q. So at some point you clearly
18 made the decision that you were going to
19 contact the FDA. Correct?
20 A. Yes. Because I did contact
21 them, I must have made a decision to do it,
22 sure.
23 Q. Tell me about your discussions
24 with the FDA. When was the first time you
25 contacted the FDA about the fraud in

Page 243

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 connection with 007?
3 A. The middle of June 2001 was the
4 first time I called.
5 Q. Middle of June?
6 A. Middle of June, right around
7 June 19.
8 Q. What did you tell -- who did
9 you talk to, do you know?
10 A. Whoever answered the phone.
11 Q. What did you tell them in that
12 conversation?
13 A. I said that I worked at a lab
14 at Merck and that the lab was committing
15 fraud.
16 Q. Did you give them detail around
17 the -- your allegation of fraud?
18 A. I remember she sounded stunned.
19 And she wanted information on who I was, how
20 she could contact me, you know, affirming
21 that, you know, this is a real thing. And I
22 told her where I worked. So basically where
23 is the company, things like that. It only
24 lasted -- I mean, it didn't -- it wasn't a
25 very long call. She basically ended up with

Page 244

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 setting up, okay, we're going to have to talk
3 again.
4 Q. So she could get more
5 information about your allegations?
6 A. I don't recall. She was just,
7 we're going to have to talk again.
8 Q. How long before your second
9 call with the FDA? When was your second call
10 with the FDA?
11 A. So four or five phone calls
12 that all occurred between -- around June 19,
13 2001 and August 1st, 2001. I can't give you
14 exact dates, but there's about four or five
15 calls in there during that time period.
16 Q. So the first call was about how
17 long?
18 A. I can't -- I mean, isn't
19 this -- isn't this in the interrogatories if
20 you want an exact time? It was short.
21 Q. Who did you talk to on the
22 second call?
23 A. I think it was the same woman.
24 Q. You think it was the same
25 woman?

Page 245

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 A. I think it was. I don't know.
3 Q. How did you -- did she arrange
4 the call or did she get ahold of you, what did
5 she do?
6 A. I don't remember. We
7 exchanged -- I'm sure we must have exchanged
8 contact information. It was a series of
9 calls, the second one I remember was
10 predicated on the first one. They weren't
11 independent things, now who am I going to talk
12 to this time. There were a series of phone
13 calls.
14 Q. How long was the second call?
15 A. Short.
16 Q. What did you say during the
17 second call to the FDA?
18 A. The totality of the phone calls
19 went -- I was getting to the person I believe
20 she needed to put -- the person who answered
21 the phone obviously isn't -- probably not that
22 high up. But she was trying to get me in
23 front of someone who could hear it. And so
24 the series of four phone calls I didn't get to
25 tell them too much. I told them that fraud

Page 246

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 was occurring, they should come in.
3 So I'm not sure of the content
4 so much as there was fraud happening. And the
5 last phone call I said they needed to come in,
6 that data was being destroyed.
7 Q. How much detail did you give
8 the FDA about what kind of fraud was
9 occurring? Or did you just say fraud and they
10 said, Well, okay, we'll come. Or did you say,
11 Let me explain to you plaque neutralization
12 assay, for example, and what was actually
13 occurring?
14 A. Isn't this in the interrogatories?
15 Q. I'm just asking what you
16 remember.
17 A. I wasn't able to tell them too
18 much. The point was to get them in there so
19 they could investigate it and see it. I told
20 them that there was fraud occurring. My last
21 call was they needed to come in, that KraH was
22 destroying plates. He was destroying
23 evidence.
24 Q. So you recall telling them that
25 he was destroying evidence and destroying

Page 247

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 plates. Do you recall telling them that data
3 was being falsified in connection with the PRN
4 assay?
5 A. I think that the -- well, come
6 on, now, you had to go and add that last part.
7 What are -- you know, the very first phone
8 call I reported that fraud was occurring. The
9 last phone call I said they needed to come in
10 quickly. The details that I remembered, I
11 believe we put in interrogatories, but sitting
12 here today to say -- I mean, I know that I --
13 there was so much going on, there's no
14 possible way I could have detailed everything
15 to them over a phone call. But I gave them
16 details and I believe that the details that I
17 could remember were in the interrogatories and
18 there wasn't much outside of that. There
19 wasn't a lot of time to talk.
20 Q. Were you honest with the FDA,
21 and truthful?
22 A. Of course I was.
23 Q. Did you leave anything out of
24 your allegations --
25 A. It's not --

Page 248

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 Q. -- in reporting to the FDA?
3 MR. SCHNELL: Object to form.
4 THE WITNESS: Yeah. Look, it's
5 not that I left it out. I didn't have
6 time to tell them everything. I
7 couldn't put together some big
8 presentation. We were over the phone
9 and they needed to come in and
10 investigate it. That's a big project,
11 Protocol 007 testing. They needed to
12 come in and investigate. I couldn't
13 lay out point for point everything of
14 misconduct I saw. I tried to get the
15 point across that fraud was happening
16 in this lab, the FDA did not know about
17 it, it was -- and they should come and
18 investigate it.
19 BY MS. DYKSTRA:
20 Q. So you understood that in order
21 for them -- strike that.
22 It was your belief that for
23 them to fully investigate the fraud, they
24 needed to come in and do an investigation of
25 Dr. KraH's lab?

Page 249

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 A. What I know is that I wanted
3 them to come in and investigate it because
4 fraud was happening and we were not able to
5 stop it in the lab.
6 MS. DYKSTRA: Why don't we take
7 a break.
8 VIDEOGRAPHER: The time is
9 3:40. We're going off the video
10 record.
11 - - -
12 (A recess was taken.)
13 - - -
14 VIDEOGRAPHER: The time is
15 4:05. This begins disc four in the
16 videotape deposition of Stephen
17 KraHling.
18 BY MS. DYKSTRA:
19 Q. Mr. KraHling, I just want to
20 make sure I understood one of the things you
21 said previously correctly. You stated that
22 you met with Mr. Suter and originally
23 complained of fraud in February of 2001.
24 Correct?
25 A. I said that I believe it was

<p style="text-align: right;">Page 290</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 (Exhibit Krahling-21, Relator</p> <p>4 Stephen A. Krahling's Responses and</p> <p>5 Objections to Merck's Revised First Set</p> <p>6 of Interrogatories, was marked for</p> <p>7 identification.)</p> <p>8 - - -</p> <p>9 BY MS. DYKSTRA:</p> <p>10 Q. So it looks like interrogatory</p> <p>11 14 which appears on page 44, begins on</p> <p>12 page 39. But I want to focus on your</p> <p>13 discussions with the FDA. I believe those</p> <p>14 begin at the bottom -- actually the top of 44.</p> <p>15 A. So what interrogatory number is</p> <p>16 it?</p> <p>17 Q. 14.</p> <p>18 A. So I'd like to read it.</p> <p>19 Q. Sure. Take your time. I'm</p> <p>20 going to ask you about your discussions with</p> <p>21 the FDA.</p> <p>22 A. You mean I can skip the I spoke</p> <p>23 with -- that stuff?</p> <p>24 Q. Yeah, you can skip it the other</p> <p>25 people. I just want to focus on your</p>	<p style="text-align: right;">Page 292</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 neutralization assay."</p> <p>3 Is that accurate?</p> <p>4 A. I think it's accurate.</p> <p>5 Q. And in your response to the</p> <p>6 revised interrogatories on page 44, in answer</p> <p>7 -- in describing your discussions with the</p> <p>8 FDA, you say you spoke to two unidentified</p> <p>9 employees at the Philadelphia branch of FDA</p> <p>10 about topics related to the allegations in the</p> <p>11 amended complaint regarding the mumps vaccine.</p> <p>12 A. Where are you at on this?</p> <p>13 Q. In the middle of the page on</p> <p>14 page 44.</p> <p>15 A. What does it start with?</p> <p>16 Q. "Relator spoke..."</p> <p>17 A. Okay. Can you go again?</p> <p>18 Q. I just read the first line, you</p> <p>19 spoke to two people at the FDA. You say the</p> <p>20 first contact was with the Philadelphia branch</p> <p>21 of the FDA on June 19, 2001?</p> <p>22 A. Yeah. Yes.</p> <p>23 Q. And remind me what you conveyed</p> <p>24 to the FDA during that first phone call. And</p> <p>25 I'm giving you this in case this refreshes</p>
<p style="text-align: right;">Page 291</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 conversations with the FDA at the moment.</p> <p>3 A. Okay.</p> <p>4 Q. I'm going to mark one</p> <p>5 additional document we're going to look at at</p> <p>6 the same time as that, which is Krahling-25,</p> <p>7 which also discusses your conversations with</p> <p>8 FDA.</p> <p>9 A. I read it.</p> <p>10 - - -</p> <p>11 (Exhibit Krahling-25,</p> <p>12 Handwritten notes, RELATOR_00001044 -</p> <p>13 00001047, was marked for identification.)</p> <p>14 - - -</p> <p>15 BY MS. DYKSTRA:</p> <p>16 Q. So in your -- in the document</p> <p>17 that we labeled 25, you note in the second</p> <p>18 paragraph that "In July 2001 I notified Bob</p> <p>19 Suter, Human Resources, and Emilio Emini,</p> <p>20 vice-president of Vaccine Research, that I</p> <p>21 intended to call the FDA to report Merck for</p> <p>22 falsifying data. At the time, I had already</p> <p>23 contacted the FDA twice and reported Merck for</p> <p>24 instituting a policy to fraudulently lower the</p> <p>25 pre-positive rate in the mumps anti-IgG</p>	<p style="text-align: right;">Page 293</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 your recollection.</p> <p>3 A. That Krah's lab was committing</p> <p>4 fraud, Merck was committing fraud.</p> <p>5 Q. Did you identify any other</p> <p>6 individuals other than Dr. Krah in that phone</p> <p>7 call?</p> <p>8 A. I don't remember. It was such</p> <p>9 a short call.</p> <p>10 Q. You say it was 15 to 20 minutes.</p> <p>11 A. Yeah, but a lot of that was who</p> <p>12 is calling, what's your contact information,</p> <p>13 where do you work, the address of the place.</p> <p>14 Things like that. A lot of it was setting up</p> <p>15 a way that we would be able to contact again</p> <p>16 when she had a more appropriate person for me</p> <p>17 to talk to.</p> <p>18 Q. So she, the FDA employee,</p> <p>19 contacted you or you contacted her a second</p> <p>20 time about a month later?</p> <p>21 A. Probably within the next month.</p> <p>22 I'm not sure. What I can say is there were at</p> <p>23 least another phone call to set up -- she was</p> <p>24 setting me -- trying to set up a conference</p> <p>25 call where I'd be talking to her and someone</p>

<p style="text-align: right;">Page 294</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 she said would be more appropriate to talk to</p> <p>3 than someone who answered the phones there.</p> <p>4 Q. Do you know who you talked to</p> <p>5 in that second call or who the person that</p> <p>6 was --</p> <p>7 A. I have no idea.</p> <p>8 Q. -- more experienced?</p> <p>9 A. I don't recall.</p> <p>10 Q. You didn't take any notes of</p> <p>11 those phone calls?</p> <p>12 A. I was holding the phone and</p> <p>13 talking.</p> <p>14 Q. Where did the phone call --</p> <p>15 where were you at the time you made these</p> <p>16 calls?</p> <p>17 A. In the parking lot, Merck's</p> <p>18 parking lot in my car.</p> <p>19 Q. You don't have any notes of the</p> <p>20 phone calls?</p> <p>21 A. Well, the first couple of phone</p> <p>22 calls there wouldn't have been any notes. But</p> <p>23 I was reporting to them what I knew to try and</p> <p>24 get them to come in and do an investigation.</p> <p>25 I wasn't detailing for them every step of</p>	<p style="text-align: right;">Page 296</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 bottom of page 44.</p> <p>3 A. Okay, I'm there.</p> <p>4 Q. You "...witnessed Krah</p> <p>5 destroying garbage bags full of experimental</p> <p>6 plates..."</p> <p>7 A. Uh-huh.</p> <p>8 Q. You again called the</p> <p>9 Philadelphia branch office of the FDA and</p> <p>10 spoke the woman who you spoke with on previous</p> <p>11 occasions and reported what was happening?</p> <p>12 A. Yes.</p> <p>13 Q. Is that accurate?</p> <p>14 A. Well, I reported that the --</p> <p>15 that evidence was being destroyed. So the FDA</p> <p>16 needs to come in and review it so that he</p> <p>17 couldn't destroy all the evidence. Krah was</p> <p>18 destroying the evidence the morning after I</p> <p>19 met with Emini. So things went fast there. I</p> <p>20 met with Emini, Krah shows up early, is</p> <p>21 destroying stuff. I called the FDA and said</p> <p>22 you need to come in, evidence is being</p> <p>23 destroyed. She said it took a few days and</p> <p>24 then they showed up August 6th.</p> <p>25 Q. So Krah didn't -- Krah didn't --</p>
<p style="text-align: right;">Page 295</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 scientific misconduct or fraud I saw. The</p> <p>3 point was to say fraud is occurring, this is</p> <p>4 where it's at, come in and investigate it.</p> <p>5 Q. And then at the top of page 45,</p> <p>6 your answer, you state that "Relator urged her</p> <p>7 to get the FDA to conduct an on-site</p> <p>8 inspection and interview him and his</p> <p>9 co-workers in Krah's lab. She told him....,"</p> <p>10 you, "...that putting together an FDA</p> <p>11 inspection...to visit Merck would take a few</p> <p>12 days." Is that accurate?</p> <p>13 A. Yes.</p> <p>14 Q. Any other conversations with</p> <p>15 the FDA prior to the inspection?</p> <p>16 A. No.</p> <p>17 Q. At the bottom of page 44 in one</p> <p>18 of your phone calls it says that you called</p> <p>19 the Philadelphia branch and reported that Krah</p> <p>20 was destroying garbage bags full of</p> <p>21 experimental plates from the mumps 007 testing</p> <p>22 project. Is that accurate?</p> <p>23 A. Where are you at on this?</p> <p>24 Q. It's the bottom. It says,</p> <p>25 "Several weeks later, after Relator....,"</p>	<p style="text-align: right;">Page 297</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 according to you, Krah did not start</p> <p>3 destroying evidence until after you meet with</p> <p>4 Emilio Emini?</p> <p>5 MR. SCHNELL: Object to form.</p> <p>6 THE WITNESS: The first time I</p> <p>7 ever saw him show up early to work that</p> <p>8 early, the first time I saw him</p> <p>9 autoclave, destroyed plates for a study</p> <p>10 that was ongoing, was the day after I</p> <p>11 met with Emini. And Krah had</p> <p>12 previously told me that there was a</p> <p>13 need or an obligation to preserve the</p> <p>14 Protocol 007 study results and</p> <p>15 materials that we were generating. So</p> <p>16 I knew that that was irregular for a</p> <p>17 few different reasons. At the very</p> <p>18 least I wanted to call the FDA because</p> <p>19 the very obvious thing was that the</p> <p>20 plates were destroyed after he ran the</p> <p>21 autoclave.</p> <p>22 BY MS. DYKSTRA:</p> <p>23 Q. If you go back to the</p> <p>24 complaint. If you can go back to the</p> <p>25 complaint, we can go -- we're done with that</p>

Page 298

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 document.
3 A. Isn't this the complaint?
4 Q. Those are your interrogatory
5 answers.
6 MR. SCHNELL: Lisa, we've been
7 going an hour, so whenever a good time
8 for a break.
9 BY MS. DYKSTRA:
10 Q. When you -- you document in
11 your complaint the FDA's inspection on
12 August 6th. Correct?
13 A. Where is that at?
14 Q. That's on page 20, paragraph 59.
15 A. 20, paragraph 59. Okay.
16 Q. Describe to me what happened
17 when the FDA came to Merck.
18 A. Do you want me to read
19 paragraph 60?
20 Q. If you think it would help you
21 refresh your recollection, you can.
22 Otherwise, you can just describe it as you
23 recall it.
24 A. 60 describes it.
25 Q. Okay.

Page 299

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 A. You want, like, where I was at?
3 Q. Yes, where were you standing,
4 where was Dr. Krah. Explain in your own words
5 what happened when the FDA arrived.
6 A. Suzie came back, I was in the
7 back lab and Suzie came back and said the FDA
8 was here, I had to come up to the front lab.
9 And I was kind of shocked, and she grabbed me
10 by the arm and drug me and said I had to go to
11 the front lab which is where my desk was. So
12 I went to my desk which was right where the
13 meeting was happening. It was right -- my
14 desk was, desk/office computer, was right
15 where Krah and Shaw were being questioned by a
16 woman from the FDA. So I sat down and just
17 started taking notes.
18 Q. Was it one woman or more than
19 one person?
20 A. I know one woman was talking.
21 I think a second woman was there. But I
22 didn't -- I hadn't recognized the woman, so I
23 don't know if she's from the CDC or Merck at
24 the time. CDC -- whether she was from FDA or
25 Merck at the time. There was one woman from

Page 300

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 the FDA that did the talking.
3 Q. How long was the conversation
4 between the FDA -- how long -- what happened,
5 you witnessed the FDA interviewing Dr. Shaw
6 and Dr. Krah?
7 A. They were questioning Krah, and
8 Shaw was standing there. And I was writing
9 notes as fast as I could on what the FDA
10 person was saying and what Krah was answering.
11 And then when Krah ran out of the room, Shaw
12 tried to cover an answer and I just kept
13 writing what I had. I mean, the fact that I
14 was taking contemporaneous notes of exactly
15 what I heard, we should go to those. I mean,
16 can't -- that would be a pretty good record of
17 what happened.
18 Q. How long was that conversation
19 about, approximately?
20 A. I couldn't guess. My
21 adrenaline was rushing. Is that written
22 somewhere?
23 Q. Well, in paragraph 62 of your
24 complaint you say that "The entire interview
25 with Krah and Shaw was short, probably less

Page 301

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
2 than half an hour."
3 A. I was going to say I thought it
4 was less than half an hour. It wasn't -- I
5 mean, I didn't sit there for an hour.
6 Q. So less than a half an hour?
7 A. Yeah.
8 Q. The FDA interviewed Dr. Krah
9 and Dr. Shaw for less than half an hour?
10 A. Yeah. 20 minutes, half an
11 hour. Maybe 20 minutes-ish. Less than half
12 an hour.
13 Q. And the FDA did not talk to you
14 or Joan Wlochowski or other members of the
15 staff at that time. Is that correct?
16 A. No, they didn't talk to us at
17 that time.
18 Q. Following the interview -- so
19 you were there for the entire interview.
20 Correct?
21 A. I don't know. But they were
22 already talking when I went there, so I would
23 say I wasn't there for the whole interview
24 since --
25 Q. So you missed the beginning of

Page 302

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 the interview?
 3 A. I don't know how much I missed,
 4 but I must have missed at least however it
 5 started. I don't know when I picked it up.
 6 Q. What happened after you
 7 witnessed that interview?
 8 A. What do you mean after?
 9 Q. You took notes of the FDA's
 10 interview, you said Dr. Krahl left the room?
 11 A. He left the room and at some
 12 point he came back. And toward the end of
 13 that interview, they were still walking
 14 around. They walked through the lab somewhere
 15 and left. They at least left where the lab
 16 was.
 17 Q. The FDA left the lab?
 18 A. Yeah. I don't know if they
 19 left the premises. They may have been
 20 inspecting some other area. They left where I
 21 was, and they weren't in the back lab either.
 22 So I don't know where they went. But they
 23 walked away. The FDA with Krahl and Shaw,
 24 those people moved out.
 25 Q. Are you aware of any other

Page 303

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 portion of the FDA inspection that they did on
 3 August 6th, or did you witness any other
 4 portion of an inspection on August 6th?
 5 A. I didn't witness any other part
 6 of the inspection.
 7 Q. Did you witness any other
 8 inspections on any other days by the FDA in
 9 connection with your allegations?
 10 A. I didn't witness any other
 11 inspections.
 12 MR. KELLER: Lisa, it's been
 13 over an hour, can we take a break?
 14 MS. DYKSTRA: Let me ask one
 15 more.
 16 THE WITNESS: She can get done
 17 with this.
 18 BY MS. DYKSTRA:
 19 Q. Did you compile any data -- did
 20 the FDA request any data from Merck in
 21 connection with your allegations?
 22 A. I wouldn't know that. Wait.
 23 No, I mean, Krahl indicated that they had to
 24 respond to it. So I mean, I would know that
 25 they had to do something in response to it.

Page 304

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 But, I mean, I was cut off from seeing data at
 3 that point.
 4 MS. DYKSTRA: Okay. We can
 5 take a break.
 6 VIDEOGRAPHER: The time is
 7 5:10. We're going off the video
 8 record.
 9 - - -
 10 (A recess was taken.)
 11 - - -
 12 VIDEOGRAPHER: The time is
 13 5:27. We're back on the video record.
 14 - - -
 15 (Exhibit Krahl-22,
 16 Handwritten notes, RELATOR_00001072 -
 17 00001080, was marked for identification.)
 18 - - -
 19 BY MS. DYKSTRA:
 20 Q. Mr. Krahl, I'm marking as
 21 Exhibit 22 what I believe might be your notes
 22 of the conversations you overheard with
 23 Dr. Krahl, Dr. Shaw and the FDA. Can you just
 24 take a look and confirm that that's what that
 25 is? Can I see that for one second? Is that

Page 305

1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL
 2 the highlighted version? Let me give you a
 3 cleaner version. Put a clean version there.
 4 There you go. Thanks.
 5 A. All right.
 6 Q. Are these your notes?
 7 A. They're all my notes, yes.
 8 Q. Are these the notes you took
 9 during the FDA inspection on August 6, 2001?
 10 A. The first five pages are.
 11 Q. What are the other pages, 1077,
 12 78, 79 and 80?
 13 A. I could guess. Do you want me
 14 to guess what they are?
 15 Q. Well, are these your notes?
 16 A. They're notes, but they're not
 17 from when the FDA people were standing right
 18 there.
 19 Q. Okay. Do you recall what these
 20 are from, these notes?
 21 A. No. The second ones?
 22 Q. Yes, the second 1077 to 1078.
 23 A. Yeah, the neater ones. No, I
 24 don't recall what those were.
 25 Q. It look like it says FDA and

<p style="text-align: right;">Page 314</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 August inspection by the FDA, I still had</p> <p>3 communications with Bob Suter and Alan Shaw</p> <p>4 about how I could get out of Dave's lab.</p> <p>5 Q. And did you look for other</p> <p>6 opportunities at Merck?</p> <p>7 A. What to you mean by "opportunities"?</p> <p>8 Q. Other places within the company</p> <p>9 to work other than Dave's lab.</p> <p>10 A. I did look to try to move to a</p> <p>11 lab outside of Dave's lab and outside -- I</p> <p>12 believe it was outside of Alan's jurisdiction.</p> <p>13 I'm not sure that's the right word, but to</p> <p>14 move out of there but still stay at Merck.</p> <p>15 There was a period of time were I sought that</p> <p>16 as a solution to be able to stay there.</p> <p>17 Q. Did you interview in other labs</p> <p>18 at Merck? Did you interview for other lab</p> <p>19 positions at Merck other than Dr. Krah's lab?</p> <p>20 A. Can you define interview? You</p> <p>21 mean like a formal where I applied for it or</p> <p>22 how do you mean that?</p> <p>23 Q. I think you said you were</p> <p>24 looking for work within Merck but outside of</p> <p>25 Dr. Krah's law. Is that correct?</p>	<p style="text-align: right;">Page 316</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 A. I would not characterize that</p> <p>3 as offered. He was forced to try and take me</p> <p>4 there. And Shaw was forcing me to go there.</p> <p>5 Q. What do you mean forcing you to</p> <p>6 go there?</p> <p>7 A. Shaw said I had to go and take</p> <p>8 that interview. And Conley said that he was</p> <p>9 forced to have me work there.</p> <p>10 Q. What did Dr. Conley's lab do?</p> <p>11 A. I don't remember.</p> <p>12 Q. Did you interview or talk to</p> <p>13 any other employees at Merck about working in</p> <p>14 another lab other than Dr. Conley?</p> <p>15 A. Wait, what was that again?</p> <p>16 Q. Did you interview with somebody</p> <p>17 called Dr. Sepp-Lorenzion or talk to</p> <p>18 Dr. Sepp-Lorenzion about working in his lab?</p> <p>19 A. That name sounds familiar.</p> <p>20 Yeah. I found my own interview or I found a</p> <p>21 place that I wanted to go. At one point Shaw</p> <p>22 was for it. At another point he informed me</p> <p>23 that that would never happen. So I don't know</p> <p>24 the chronology of that. But at some point he</p> <p>25 said I'm never going there.</p>
<p style="text-align: right;">Page 315</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. What did you do to that end?</p> <p>4 A. Well, let me give you an</p> <p>5 example. Shaw forced me to take an interview</p> <p>6 with some guy, I think his name is Conley.</p> <p>7 So -- I mean, I don't know if I count that as</p> <p>8 an interview because Conley in the interview</p> <p>9 said he had no option but to interview me and</p> <p>10 I was told that I had to go for the interview.</p> <p>11 It wasn't really an interview because he just</p> <p>12 said, If you want to work here, you're hired.</p> <p>13 And I asked him, I said, Why</p> <p>14 would you hire me? I don't have the kind of</p> <p>15 background that's real specific to what he's</p> <p>16 doing.</p> <p>17 He said, you know, when the</p> <p>18 executive director, vice president calls you</p> <p>19 up and tells you to hire somebody or they'll</p> <p>20 come to your lab, you do it. And I said -- I</p> <p>21 really appreciated his honesty. I said, I</p> <p>22 can't take a position in your lab.</p> <p>23 Q. So you were offered a position</p> <p>24 in Dr. Conley's lab but you decided not to</p> <p>25 take that position?</p>	<p style="text-align: right;">Page 317</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 Q. What lab was that? What</p> <p>3 position was that?</p> <p>4 A. It may have been -- it was a</p> <p>5 place that I had found the interview for. I</p> <p>6 can't really say. It may have been that or it</p> <p>7 may not have been that. I shouldn't guess at</p> <p>8 that point.</p> <p>9 Q. But you found another position</p> <p>10 at Merck that you wanted to take?</p> <p>11 A. I don't recall the exact</p> <p>12 details, but when Alan said that I can remain</p> <p>13 in the lab and have Dave continue to retaliate</p> <p>14 or I can quit and take the money, I said that</p> <p>15 there was -- you know, in addition to trying</p> <p>16 to defend myself by saying that he shouldn't</p> <p>17 support Krah's retaliating against me, I said</p> <p>18 that there should be an option for me to move</p> <p>19 outside of Krah's lab but stay at Merck. He</p> <p>20 said I had one of the two options he named,</p> <p>21 and I couldn't take the first one. And he</p> <p>22 wanted me to come back and at least</p> <p>23 acknowledge as an option that taking money and</p> <p>24 leaving was an option that I should pursue.</p> <p>25 But for a while in there, I thought naively</p>

<p style="text-align: right;">Page 334</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 notebook pages out of the lab and not return</p> <p>3 them?</p> <p>4 A. I didn't take original notebook</p> <p>5 pages out of the lab. I had photocopied</p> <p>6 documents that I had in my possession. But</p> <p>7 these are referring to primary notebook pages.</p> <p>8 And I returned, not returned, I never left</p> <p>9 Merck with them. Those were put in two safe</p> <p>10 spots in Merck. One was on Krah's desk and</p> <p>11 the other was the place where you get the</p> <p>12 notebooks. These are conversations --</p> <p>13 Q. You're sure you never took</p> <p>14 original documents outside of Merck? I want</p> <p>15 to make sure you stick to that answer.</p> <p>16 MR. SCHNELL: Do you want to</p> <p>17 finish your answer?</p> <p>18 THE WITNESS: Let me finish</p> <p>19 this. Is this the -- you're talking</p> <p>20 about correspondence back and forth</p> <p>21 between the lawyers and you're asking</p> <p>22 me every little detail. We can talk</p> <p>23 about the specifics of this, but I</p> <p>24 haven't seen these documents. I don't</p> <p>25 recall seeing them. What was your</p>	<p style="text-align: right;">Page 336</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 "...with regard to the notebook pages you</p> <p>3 referenced my client has assured me he does</p> <p>4 not have any company documents. He has</p> <p>5 indicated and assured me he has absolutely</p> <p>6 placed all documents in their appropriate</p> <p>7 places...."</p> <p>8 Do you recall having a</p> <p>9 discussion with your counsel about that?</p> <p>10 A. I don't recall a discussion,</p> <p>11 but this looks true. I did not have whatever</p> <p>12 we're defining there as company documents. I</p> <p>13 had photocopies of documents.</p> <p>14 Q. So you understood this to mean</p> <p>15 originals, not photocopies?</p> <p>16 A. I don't know what I thought</p> <p>17 about it back then. What I'm saying is I</p> <p>18 didn't take any original documents. I didn't</p> <p>19 deprive Merck of the data they had. I was</p> <p>20 trying to preserve the data so that they</p> <p>21 wouldn't continue destroying it.</p> <p>22 MS. DYKSTRA: Mark this one.</p> <p>23 - - -</p> <p>24 (Exhibit Krahling-28, 11/30/01</p> <p>25 Agreement, MRK-KRA00582394 - 00582397,</p>
<p style="text-align: right;">Page 335</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 question about this?</p> <p>3 BY MS. DYKSTRA:</p> <p>4 Q. Is it your position that you</p> <p>5 never took original documents outside of the</p> <p>6 company?</p> <p>7 A. What are you talking about</p> <p>8 taking? When I worked at Merck, I had</p> <p>9 photocopies of documents. And one of the</p> <p>10 reasons I had that is because -- well, the</p> <p>11 main reason I had those is because Suzie and</p> <p>12 others were asking me to preserve those</p> <p>13 documents, but I saw documents being destroyed</p> <p>14 and ripped up such as counting sheets. So I</p> <p>15 was preserving them while I worked there.</p> <p>16 These are photocopies of documents. After I</p> <p>17 left Merck, I continued to preserve those</p> <p>18 photocopies of those documents.</p> <p>19 Q. If you look at the document,</p> <p>20 the letter Bates-stamped 1088 to 1089.</p> <p>21 A. Sure.</p> <p>22 Q. Which is a letter from your</p> <p>23 counsel back to Axel. It states -- your</p> <p>24 counsel writes on your behalf,</p> <p>25 "Additionally..., " the second paragraph,</p>	<p style="text-align: right;">Page 337</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 was marked for identification.)</p> <p>3 - - -</p> <p>4 BY MS. DYKSTRA:</p> <p>5 Q. I'm going to show you what I'm</p> <p>6 marking as Exhibit 28. This is a November 30,</p> <p>7 2001, agreement. Is that your signature on</p> <p>8 the bottom of page 4?</p> <p>9 A. Do you want me to read it?</p> <p>10 Q. You may read it, yes, if you</p> <p>11 want.</p> <p>12 A. Okay.</p> <p>13 Q. Is that your signature on page</p> <p>14 4, dated December 6, 2001?</p> <p>15 A. That is my signature.</p> <p>16 MS. DYKSTRA: Can we take a</p> <p>17 quick two-minute break -- five-minute</p> <p>18 break?</p> <p>19 MR. SCHNELL: Take five minutes.</p> <p>20 VIDEOGRAPHER: The time is</p> <p>21 6:13. We're going off the video record.</p> <p>22 - - -</p> <p>23 (A recess was taken.)</p> <p>24 - - -</p> <p>25 VIDEOGRAPHER: The time is</p>