

# **Exhibit 4**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF GEORGIA  
3 ATLANTA DIVISION

4 UNITED STATES OF )  
 AMERICA, ) Deposition of:  
 )  
 5 Plaintiff, ) AMY K. EICHNER, PH.D.  
 )  
 6 vs. )  
 ) Civil No.  
 7 UNDETERMINED ) 1:13-cv-13675-WBH-JCF  
 QUANTITIES OF )  
 8 1,3-DIMETHYLAMYLAMINE )  
 HCL (DMAA), )  
 9 )  
 Defendant, )  
 10 )  
 AND )  
 11 )  
 HI-TECH )  
 12 PHARMACEUTICALS, INC., )  
 and JARED WHEAT, )  
 13 )  
 Claimants. )

14  
15  
16 Job No. 116738

17  
18 December 14, 2016 \* 9:12 a.m.

19  
20 Location: Kirton & McConkie  
21 36 S. State Street, Suite 1900  
22 Salt Lake City, Utah 84111  
23

24 Reporter: Ann Fleming, RPR  
25 Notary Public in and for the State of Utah

Page 2

1                   A P P E A R A N C E S  
 2   FOR THE PLAINTIFF:  
 3       Claude Scott  
       UNITED STATES DEPARTMENT OF JUSTICE  
 4       450 5th Street, N.W.  
       Washington, DC 20530  
       (Appearing via telephone)  
 5  
 6  
 7  
 8   FOR THE DEFENDANT:  
       David Marck  
       EPSTEIN BECKER & GREEN  
       One Gateway Center  
 9       Newark, New Jersey 07102  
 10  
 11  
 12  
 13   FOR USADA AND THE DEPONENT:  
       Kevin Koons  
       KROGER, GARDIS & REGAS  
       111 Monument Circle  
 14       Indianapolis, Indiana 46204  
 15  
 16  
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 2   EXHIBIT 13 May-June 2011 Email Chain, Numbers for 123  
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 5   EXHIBIT 15 January 2012 Email Chain, From Jim at 127  
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 7   EXHIBIT 16 February 2012 Email Chain, Commercial 129  
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 8   EXHIBIT 17 April 2012 Email Chain, FDA Warning 137  
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 10   EXHIBIT 18 May 2012 Email Chain, Stimulant 141  
       Marketed as "Natural" in Sports  
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 12   EXHIBIT 19 May 2012 Email Chain, Embargoed Paper 145  
 13   EXHIBIT 20 Research Article 1,3 DMAA in 153  
       Supplements and Geranium Products:  
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 14   EXHIBIT 21 May 2012 Email Chain, Zhang, et al., 158  
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 11   EXHIBIT 2 November-October 2010 Email Chain, 73  
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 26   EXHIBIT 12 May-June 2011 Email Chain, Numbers for 113

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1                   AMY K. EICHNER, PH.D.  
 2                   P R O C E E D I N G S  
 3  
 4                   AMY K. EICHNER, PH.D.,  
 5                   called as a witness, being first sworn,  
 6                   was examined and testified as follows:  
 7  
 8                   EXAMINATION  
 9                   BY MR. MARCK:  
 10                  Q. Good morning, Dr. Eichner, my name is  
 11                  David Marck. I represent Hi-Tech Pharmaceuticals and  
 12                  Jared Wheat in the case that is captioned "United  
 13                  States of America versus Undetermined Quantities" of a  
 14                  chemical I'm going to refer to as DMAA. You may also  
 15                  know it as methylhexaneamine, but even if I'm going to  
 16                  be quoting from a document, I'm probably going to be  
 17                  using DMAA because it's easier for me, you, the  
 18                  reporter. The other defendants are Hi-Tech, like I  
 19                  said, and Jared Wheat. And have you ever been deposed  
 20                  before?  
 21                  A. No.  
 22                  Q. Okay. So you're not familiar with the  
 23                  procedure, so we'll go through it in detail. I will  
 24                  need oral answers, not gestures or nods of the head,  
 25                  otherwise the court reporter can't figure out what

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1 AMY K. EICHNER, PH.D.  
 2 you're actually trying to say and the record won't  
 3 reflect it. If you have not understood my question,  
 4 please ask me to repeat it; otherwise, I'm going to  
 5 assume you heard and understood it. And if you need me  
 6 to rephrase something because it's unclear, please do  
 7 so. I'll be happy to figure out a way that makes it  
 8 easier for you to understand.  
 9 Are you taking any medication or anything  
 10 else that would interfere with your ability to  
 11 understand my questions today?  
 12 A. No.  
 13 Q. Anything that would interfere with your  
 14 ability to remember past events?  
 15 A. No.  
 16 Q. Okay. Now, your counsel may interpose  
 17 objections, as will counsel for the government, but you  
 18 must answer unless you're instructed not to by your  
 19 counsel. Anytime you want to take a break, that's  
 20 fine. If there's a question pending, please just let  
 21 me know and I ask that you answer the question fully  
 22 and then we can take a break. I mean, if you need to  
 23 take a break every half an hour, that's fine, whatever,  
 24 it doesn't matter to me. Do you understand the  
 25 questions -- excuse me, do you understand the

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1 AMY K. EICHNER, PH.D.  
 2 A. Correct.  
 3 Q. Besides your attorneys, does anybody else  
 4 even know you're appearing, say, besides your family or  
 5 something like that?  
 6 A. Not that I'm aware.  
 7 Q. Anybody at USADA know you're here?  
 8 A. So I know Dr. Bowers is aware --  
 9 Q. Right.  
 10 A. -- of the subpoena, but I don't believe  
 11 he's aware that a deposition is taking place today.  
 12 Q. Okay. Did you review any documents to get  
 13 ready for today?  
 14 A. Yes.  
 15 Q. Such as?  
 16 A. The documents that we produced for you.  
 17 Q. Anything else in addition to that?  
 18 A. There were always documents that were not  
 19 related to this case that were reviewed.  
 20 Q. Okay.  
 21 A. We determined that they weren't related.  
 22 Q. You mean to do a responsive/non-responsive  
 23 check on them?  
 24 A. Correct.  
 25 Q. Gotcha. Did you consult any reference

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1 AMY K. EICHNER, PH.D.  
 2 instructions?  
 3 A. Yes.  
 4 Q. All right. Would you state your full  
 5 name, please?  
 6 A. Amy Kristine Eichner.  
 7 Q. What's your home address?  
 8 A. 3050 East Deer Hollow Drive in Sandy,  
 9 Utah.  
 10 Q. And your business address?  
 11 A. U.S. Anti-Doping Agency, and that is 5555  
 12 Tech Center Drive, Suite 200 in Colorado Springs,  
 13 Colorado.  
 14 Q. Right. Just for my own edification, do  
 15 you ever go to that office?  
 16 A. Yes.  
 17 Q. Wasn't sure how it worked. Did you meet  
 18 with anyone to prepare for this deposition.  
 19 A. Not in person, just -- well, yesterday we  
 20 met.  
 21 Q. And anything you said with counsel, I  
 22 don't need to -- sorry, didn't mean to talk over you,  
 23 but I don't need to hear any of your protected  
 24 conversations. But you've not met with anybody else  
 25 besides your attorneys?

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1 AMY K. EICHNER, PH.D.  
 2 sources or treatises or anything like that, any  
 3 scientific background kind of documents. I just tried  
 4 to refresh my memory on the paper that is the subject  
 5 of this, the 2012 ElSohly paper?  
 6 Q. Have you ever been a party to a litigation  
 7 or as a defendant or a plaintiff?  
 8 A. Only in college when I went to small  
 9 claims court.  
 10 Q. That's fine.  
 11 A. Does that count?  
 12 Q. It does count, but I'm not concerned with  
 13 that stuff.  
 14 A. Okay.  
 15 Q. Have you ever been convicted of a crime?  
 16 A. No.  
 17 Q. Speaking of college, where did you go to  
 18 college?  
 19 A. University of Minnesota.  
 20 Q. I was actually just in Saint Paul  
 21 yesterday transferring here. When was that?  
 22 A. From 1993 to '96.  
 23 Q. And what was your degree in?  
 24 A. Psychology.  
 25 Q. And did you have a minor?

1 AMY K. EICHNER, PH.D.  
2 A. Not technically. I was one credit short  
3 of a degree in physiology as well, but it doesn't  
4 count.  
5 Q. Double major?  
6 A. Yeah. It doesn't count as a minor.  
7 Q. Gotcha. And that was a BS, I assume,  
8 right, in psychology?  
9 A. Bachelor of Arts, actually. Psychology  
10 was considered a BA.  
11 Q. Okay. And I understand you have a Ph.D.  
12 in neuroscience from Australian National University; is  
13 that correct?  
14 A. Correct.  
15 Q. And how long did it take you to get that?  
16 What was the scope of the studies as far as the  
17 timeline was?  
18 A. About four years.  
19 Q. Was that all done in Australia?  
20 A. Uh-huh (affirmative). All of it was done  
21 in Australia.  
22 Q. Any other degrees?  
23 A. No.  
24 Q. Now, I note that you did some research at  
25 Harvard. Can you elaborate a little bit?

1 AMY K. EICHNER, PH.D.  
2 A. No.  
3 Q. Okay. That's what I thought, too. I  
4 wasn't sure maybe I missed a connection.  
5 A. No.  
6 Q. Okay. Do you have any background in  
7 botany?  
8 A. No.  
9 Q. Chemistry?  
10 A. A little bit in chemistry, but I am not a  
11 chemist.  
12 Q. Can you elaborate a little bit like where  
13 that came from? Is it part of your Ph.D. studies or  
14 something you've learned since then?  
15 A. It was part of my undergraduate courses  
16 and, you know, some chemical principles and principles  
17 of chemistry come into play in my field of  
18 neuroscience, but I am not a chemist in the traditional  
19 sense of synthesizing, analyzing chemical compounds.  
20 Q. Like not spending time in a lab and things  
21 like that?  
22 A. Correct.  
23 Q. What's your current position?  
24 A. I am the special advisor on drugs and  
25 supplements for the U.S. Anti-Doping Agency.

1 AMY K. EICHNER, PH.D.  
2 A. It was a post-doctoral fellowship, which  
3 is common after you do a Ph.D. It's kind of like the  
4 next career step.  
5 Q. How long did that take?  
6 A. I was only there for one year.  
7 Q. Did you get anything as far as a degree,  
8 certificate, any of that kind of stuff?  
9 A. It's just a job.  
10 Q. Just a job to put on further research,  
11 right?  
12 A. Uh-huh (affirmative).  
13 Q. What was the focus when you were there?  
14 A. At Harvard?  
15 Q. Yes.  
16 A. I continued my thesis studies basically on  
17 the retina.  
18 Q. Can you elaborate a little bit?  
19 A. Sure. So my degree was focused mainly on  
20 physical processing, so the retina is basically an  
21 analog to digital converter, so my thesis was  
22 evaluating the synaptic transmission between the layers  
23 of neurons in the retina.  
24 Q. And do you feel that your current work  
25 actually has anything to do with that now or no?

1 AMY K. EICHNER, PH.D.  
2 Q. And what does that actually consist of?  
3 A. I have varied roles in the organization.  
4 My primary role is to provide advice to athletes about  
5 whether a substance is prohibited or not. Basically I  
6 help them understand the prohibited list. The  
7 prohibited list that WADA publishes is filled with  
8 chemical compounds and names that might not be familiar  
9 to your average person, so I help athletes understand  
10 how and where they might encounter prohibited  
11 substances. So I do this by talking to them on the  
12 phone; I do this by responding to email inquiries; and  
13 I also assist in running Global Drug Reference Online,  
14 which is an online database that provides the  
15 anti-doping status for medications.  
16 Q. Do you speak directly with the athletes?  
17 They actually call you on the phone?  
18 A. Sometimes, yes.  
19 Q. Interesting. Now, how long have you had  
20 this role at USADA?  
21 A. You know, I'd have to check my CV, but a  
22 couple years. So my title has changed since 2009.  
23 That's when I joined USADA. But my overall position  
24 hasn't really changed. My responsibilities have always  
25 been assisting with therapeutic use exemptions,

1 AMY K. EICHNER, PH.D.  
2 assisting on Global Drug Reference Online, providing  
3 advice to athletes about how they should interpret the  
4 prohibited list, how the prohibited list applies to  
5 them.

6 Q. How did you come to join USADA?

7 A. We moved to Colorado Springs and I took up  
8 a position there.

9 Q. Who is "we"?

10 A. My husband and I, and our kids.

11 Q. Okay.

12 A. We brought them.

13 Q. I figured. Jobs before joining USADA?

14 A. A partial year at Therapeutic Goods

15 Administration.

16 Q. What's that?

17 A. It's the equivalent of the FDA in

18 Australia.

19 Q. And was that your job directly prior to  
20 USADA?

21 A. Yes.

22 Q. Do you have any -- besides when you were  
23 at Harvard, do you ever do any other fellowships?

24 A. Yes. So after Harvard, I -- my husband  
25 and I moved back to Australia and I took up a position

1 AMY K. EICHNER, PH.D.

2 in an auditory laboratory, which was a mouthful.

3 Again, you know, focusing on the neuroscience of the  
4 sensory system, and I believe I was there -- I would  
5 honestly have to check my CV, but probably about five  
6 years.

7 Q. Quick question, were you born in  
8 Australia?

9 A. No.

10 Q. Was your husband?

11 A. Yes.

12 Q. Okay. Just wasn't sure why the --

13 A. My husband is Australian, yes.

14 Q. All right. I won't go too far into

15 personal things. I was just a little confused. Who is  
16 Larry Bowers?

17 A. Dr. Bowers is the Chief Scientist for  
18 USADA.

19 Q. Do you know how long he's been in that  
20 role?

21 A. I don't know. Many years.

22 Q. What does that mean, by "chief scientist"?

23 A. He was the -- he was highest ranking  
24 member of the Science Department.

25 Q. Do you know his training or what the

1 AMY K. EICHNER, PH.D.

2 background is of his training at all?

3 A. He's a chemist and I know he ran a lab for  
4 many years. And I know he was involved in anti-doping  
5 before the existence of WADA.

6 Q. And how old is USADA itself, do you know?

7 A. I believe it was founded in 2000 or 2001,  
8 but please don't quote me.

9 Q. She is, but don't worry.

10 A. I understand.

11 Q. And do you consider him your superior?

12 A. Absolutely.

13 Q. Was he your superior in the 2010-to-2014  
14 timeframe?

15 A. By "superior" do you mean my direct boss?  
16 Because I was working in a different department.

17 Q. Different silo?

18 A. Correct.

19 Q. For lack of a better word?

20 A. Correct.

21 Q. Do you consider him a mentor, though?

22 A. Yes.

23 Q. Who is Travis Tygart?

24 A. CEO of USADA.

25 Q. How long has he been in that role?

1 AMY K. EICHNER, PH.D.

2 A. I don't know. He was my superior prior to  
3 my role.

4 Q. So he was obviously your superior as well?

5 A. (Witness nods head.)

6 Q. Do you consider yourself a scientist?

7 A. Yes.

8 Q. You're familiar with the scientific  
9 method, correct?

10 A. Yes.

11 Q. What's the function of peer review?

12 A. Yeah. So the scientific process where you  
13 do experiments, you write a paper manuscript, you  
14 submit that to peer review for analysis so that other  
15 scientists can review your data, your logic, rationale  
16 for proceeding in certain ways and they can assess  
17 independently whether your conclusions are valid,  
18 whether you have enough data to support your  
19 conclusions, whether there's anything that you could  
20 have done or that you should do to improve your paper,  
21 make your conclusions stronger. Sometimes when your  
22 article is peer reviewed, it gets rejected because  
23 flaws are found.

24 Q. Have you ever served as a peer reviewer?

25 A. Yes.

1 AMY K. EICHNER, PH.D.  
 2 Q. Commonly or just -- I mean, approximately  
 3 how many times?  
 4 A. Maybe five times in my neuroscience field.  
 5 Q. How long ago was the last time?  
 6 A. I don't recall.  
 7 Q. I mean, the last five, ten years?  
 8 A. It would have been when I was at the  
 9 Australian National University.  
 10 Q. All right. Thanks. Do scientists  
 11 typically have a hypothesis before conducting a study?  
 12 A. Usually. Usually good scientists will  
 13 normally have a hypothesis that they're trying to prove  
 14 or disprove.  
 15 Q. And that's --  
 16 A. But it depends on the type of research,  
 17 actually, because some scientific articles are  
 18 descriptive in nature and the purpose is to establish  
 19 basic information or facts about different things. So  
 20 for example, back in my research, retinal research  
 21 days, we came across many papers which were just  
 22 anatomical descriptions of the retina.  
 23 Q. Right. Do you feel like it's very  
 24 important to avoid bias when you're conducting  
 25 research?

1 AMY K. EICHNER, PH.D.  
 2 A. Yes, but I would like to know what you  
 3 mean by "bias."  
 4 Q. We'll move on to the next question. I  
 5 think we'll flush it out a little more as we go  
 6 forward. Is it common for scientists to receive  
 7 funding for research?  
 8 A. Yes.  
 9 Q. Is it common to receive funding from  
 10 manufacturers and other companies?  
 11 A. I don't know.  
 12 Q. Is it common to receive it from the  
 13 government?  
 14 A. That has been my experience in my academic  
 15 career.  
 16 Q. And is it common for scientists to receive  
 17 funding from nonprofits or other foundations something  
 18 like USADA?  
 19 A. I don't know.  
 20 Q. Do you believe it's inappropriate for a  
 21 source of funding of certain research to comment on  
 22 drafts of manuscripts for a peer reviewed article?  
 23 MR. SCOTT: Object as to form.  
 24 Q. (By Mr. Marck) You can still answer?  
 25 MR. KOONS: If you understand.

1 AMY K. EICHNER, PH.D.  
 2 THE WITNESS: I don't understand.  
 3 Q. (By Mr. Marck) Do you believe it's  
 4 inappropriate for the source of the funding, say, a  
 5 government or a company that is paying for the funding  
 6 to comment on the actual resulting paper or manuscript?  
 7 MR. SCOTT: Are you asking -- objection,  
 8 compound. Are you asking before publication?  
 9 MR. MARCK: Yes, before publication.  
 10 MR. SCOTT: All right. So object to the  
 11 form.  
 12 THE WITNESS: Not necessarily. I think it  
 13 would just depend on a number of circumstances.  
 14 Q. (By Mr. Marck) Such as?  
 15 A. I can't think of any examples right now,  
 16 but I don't necessarily think that that's automatically  
 17 wrong.  
 18 Q. Okay. Do you think it's inappropriate for  
 19 a source of funding to make suggestions as to the  
 20 methods of a certain research project?  
 21 MR. SCOTT: Object as to form.  
 22 THE WITNESS: Not necessarily, but again,  
 23 to really understand what you're getting at, I would  
 24 need context.  
 25 Q. (By Mr. Marck) Okay. All right. I

1 AMY K. EICHNER, PH.D.  
 2 understand. Do you believe it's inappropriate for a  
 3 source of funding to encourage researchers to reach a  
 4 particular result?  
 5 A. Yes.  
 6 MR. SCOTT: Object as to form.  
 7 MR. MARCK: Claude, I'm going to turn your  
 8 mic down a tiny little bit, loud in here, but just keep  
 9 on going forward as you need to.  
 10 MR. SCOTT: Is that better?  
 11 MR. MARCK: We're good now.  
 12 MR. SCOTT: I just -- she was a little  
 13 soft spoken and I'm okay with that.  
 14 MR. MARCK: Thanks.  
 15 Q. (By Mr. Marck) When conducting a study, do  
 16 you believe that a researcher should report all the  
 17 data they've obtained in any subsequent peer reviewed  
 18 article?  
 19 MR. SCOTT: Object as to form.  
 20 THE WITNESS: Valid data, yes.  
 21 Q. (By Mr. Marck) What do you mean by "valid  
 22 data"?  
 23 A. Well, when do you mean by "data"?  
 24 Q. What I mean is, I guess, results that are  
 25 generated during a study of some sort, do you feel that



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1 AMY K. EICHNER, PH.D.  
 2 all that should be included either in a peer reviewed  
 3 article or in the supporting information?  
 4 MR. KOONS: Vague and ambiguous, but you  
 5 can answer.  
 6 MR. SCOTT: Object to form. Sorry for  
 7 talking over.  
 8 THE WITNESS: Repeat that? I'm sorry.  
 9 Q. (By Mr. Marck) I'll repeat it. Should  
 10 researchers report all of the data they've obtained in  
 11 any subsequent peer reviewed article, and you said what  
 12 type of data, and I said the type of data that may be  
 13 generated during a study. Should that be included  
 14 either in the article or in supplemental material to  
 15 that?  
 16 MR. SCOTT: Object as to form.  
 17 THE WITNESS: Well, I would say not  
 18 always, because sometimes you generate data and you  
 19 don't know what it means, and you have to conduct  
 20 further research to understand what it means and it  
 21 might not mean anything. Also, many times you generate  
 22 data that is not relevant or that is just beyond the  
 23 scope of the article, so to put in every scrap of data  
 24 that is generated in a study oftentimes isn't  
 25 practical, first of all. And second of all, like I

Page 24

1 AMY K. EICHNER, PH.D.  
 2 A. No.  
 3 Q. Does the USADA do a cellular behest  
 4 request?  
 5 A. No, we don't usually -- well, see, I just  
 6 don't know. I just don't know because I'm just not  
 7 involved in that kind of work, so I know the U.S.  
 8 Anti-Doping Agency is a strong supporter of the paper  
 9 Partnership For Clean Competition, which is a granting  
 10 agency, and I know that many research grants are  
 11 granted through that agency, but that is the extent of  
 12 my knowledge.  
 13 Q. So the Partnership For Clean Competition,  
 14 is that a governmental agency, or is this nonprofit,  
 15 quasi?  
 16 A. I don't know.  
 17 Q. Okay. Do you know where they're based?  
 18 A. No.  
 19 Q. Okay. Are they actually a part of USADA  
 20 or just --  
 21 A. Not to my knowledge, but I'm not involved  
 22 in that part of the organization, so I can't say.  
 23 Q. And in the last year, you have awarded no  
 24 research grants in your role at USADA?  
 25 A. Not in my role.

Page 23

1 AMY K. EICHNER, PH.D.  
 2 said, sometimes you produce data that has no meaning.  
 3 Q. (By Mr. Marck) Would you consider it  
 4 breach of the scientific method for a researcher to  
 5 exclude from his or her article only those results  
 6 inconsistent with his or her hypothesis?  
 7 MR. SCOTT: Object to the form.  
 8 THE WITNESS: Repeat your question.  
 9 MR. MARCK: Can you read it back, please?  
 10 (The requested portion of the record was  
 11 read by the court reporter.)  
 12 THE WITNESS: Well, valid data, yes, so if  
 13 you have valid data that disproves your hypothesis,  
 14 then that should form part of your conclusions.  
 15 Q. (By Mr. Marck) Would you consider it an  
 16 act of scientific dishonesty to falsify test results in  
 17 a scientific paper?  
 18 A. To falsify test results?  
 19 Q. Yes.  
 20 A. Yes.  
 21 Q. Skip these, already asked these.  
 22 Approximately how much money do you award each year for  
 23 research, either in your role at USADA, do you  
 24 typically -- let me rephrase this. In your role of  
 25 USADA, do you award research grants?

Page 25

1 AMY K. EICHNER, PH.D.  
 2 Q. How about in the last five years?  
 3 A. I believe that ElSohly article was the  
 4 only one.  
 5 Q. The only one. Okay.  
 6 A. But I do want to qualify that. That is  
 7 just not my role at USADA, so I can't say for  
 8 certainty.  
 9 Q. Okay. When was the first time you heard  
 10 of DMAA?  
 11 A. In my role at USADA as a drug reference  
 12 person.  
 13 Q. How did it come up to you in your role at  
 14 USADA?  
 15 A. I don't recall the first instance, but  
 16 generally we were having a lot of positive tests,  
 17 positive anti-doping tests.  
 18 Q. And this was a concern to you why?  
 19 A. Because USADA takes very seriously our  
 20 role in protecting clean athletes and part of the  
 21 results management process, which is after an athlete  
 22 tests positive there's a results management process,  
 23 where it is determined how a substance got into the  
 24 athlete's body, into the athlete's sample. We  
 25 determined that many athletes were using dietary



1 AMY K. EICHNER, PH.D.

2 supplements. That was the link that linked many of the  
3 athletes that were testing positive. And that was a  
4 concern because it was very a sudden increase in the  
5 number of positive tests.

6 Q. Right. And so DMAA is on WADA's  
7 prohibited list?

8 A. Correct.

9 Q. Do you know when it went on that list?

10 A. I do not know when it was specifically  
11 added as an example on the WADA prohibited list, but  
12 the WADA prohibited list is a non-exhaustive list, so  
13 the WADA prohibited list prohibits categories of  
14 substances. Stimulants is one of those categories.  
15 DMAA is a stimulant, so regardless of whether or not it  
16 was specifically listed as an example, it was still  
17 prohibited.

18 I know at some point, I don't know when,  
19 but at some point, it was added as a specific example.

20 Q. Prior to it being added, were people even  
21 looking for it in athletes' test results?

22 A. I don't know, but the fact that athletes  
23 were testing positive, that tells me that the WADA labs  
24 were testing samples for this substance.

25 Q. And do you have any idea why WADA would

1 AMY K. EICHNER, PH.D.

2 begin testing for it or looking for it?

3 A. I don't know the history. My guess is  
4 that it's documented somewhere in published literature,  
5 but I don't know that.

6 Q. It's your belief that DMAA poses a serious  
7 safety or health risk of some sort, correct?

8 MR. SCOTT: Object as to form.

9 THE WITNESS: The case reports that we  
10 became aware of did suggest that.

11 Q. (By Mr. Marck) What type of case reports  
12 are you referring to?

13 A. We became aware of DMAA being used in New  
14 Zealand as party pills.

15 Q. When you said "we," are you --

16 A. Just generally at USADA when we started  
17 seeing positive tests for this DMAA, we tried to learn  
18 as much about this DMAA as we could.

19 Q. What do you mean by "party pills"?

20 A. Well, apparently in New Zealand, around  
21 that time, there were --

22 Q. Sorry, if I may interject, what time, what  
23 date range?

24 A. I don't recall but around the time when we  
25 had become aware of DMAA in athlete samples and we were

1 AMY K. EICHNER, PH.D.

2 trying to figure out what is this and where is it  
3 coming from.

4 Q. In the context of these in New Zealand,  
5 were you seeing these pop up in athletes from New  
6 Zealand or do you mean part of the general culture?

7 A. We never made any such link, so I can't  
8 comment on any such link. But as a part of our  
9 research in trying to understand how DMAA came on the  
10 scene, we came across case reports in New Zealand for  
11 emergency room visits of people who were using this  
12 ingredient, DMAA, as party pills.

13 Q. Were there other ingredients in these  
14 pills?

15 A. I don't know.

16 Q. Do you know what led people to conclude  
17 that DMAA was the causative factor in their admittance  
18 to the hospital?

19 A. It's all in the Paul Gee papers.

20 Q. Paul Gee papers. Okay. Is it your view  
21 that DMAA should be removed from the marketplace,  
22 correct?

23 MR. SCOTT: Object as to form.

24 THE WITNESS: That's not my view  
25 necessarily, de facto. If it is determined that DMAA

1 AMY K. EICHNER, PH.D.

2 is not a legitimate dietary ingredient, then I think  
3 dietary supplements should be compliant with the law  
4 and should not contain DMAA, but that's not my call and  
5 that's not USADA's call.

6 Q. (By Mr. Marck) It's your view that DMAA is  
7 not found in the geranium plant or its oils, correct?

8 A. We could not find evidence to support that  
9 DMAA is in geranium oil despite our efforts.

10 Q. When did you come to have that view?

11 A. Well, it was a long process that included  
12 the ElSohly paper; 2012 to be clear.

13 Q. So that's when you came to that conclusion  
14 yourself is in 2012?

15 MR. SCOTT: Object as to form.

16 THE WITNESS: What does "objection to  
17 form" mean? Can somebody please tell me?

18 MR. KOONS: It just means he's objecting  
19 to the form of his question. It can be a number of  
20 different things, but you really don't need to concern  
21 yourself with it. It's considered legalese.

22 THE WITNESS: Okay.

23 MR. MARCK: Problem with the phraseology.

24 MR. KOONS: The way he worded the  
25 question.

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1 AMY K. EICHNER, PH.D.  
 2 THE WITNESS: But you don't have to do  
 3 anything about it?  
 4 MR. MARCK: No.  
 5 MR. KOONS: He may if he wants to, but you  
 6 don't have to. You can go ahead and answer the  
 7 question.  
 8 THE WITNESS: Can you please read the  
 9 question back to me?  
 10 (The requested portion of the record was  
 11 read by the court reporter.)  
 12 THE WITNESS: I would say so, yes, but it  
 13 wasn't a single instance. It was the culmination of a  
 14 couple of years of researching and concluding in our  
 15 own study the ElSohly 2012 paper that we could not find  
 16 evidence that DMAA is in germanium oil.  
 17 Q. (By Mr. Marck) So far have you been  
 18 pleased with the FDA's approach to removing DMAA from  
 19 the marketplace?  
 20 MR. SCOTT: Object to form.  
 21 THE WITNESS: That's kind of a weird  
 22 question because it's not my role to cast a judgment on  
 23 what the FDA does.  
 24 Q. (By Mr. Marck) But I'm still asking what  
 25 your opinion is.

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1 AMY K. EICHNER, PH.D.  
 2 of dietary supplements, products marketed as dietary  
 3 supplements but are actually something else such as  
 4 illegal steroids, selected antigen receptor modulators,  
 5 also known as SARMS, and other investigational drugs  
 6 are included sometimes in products marketed as dietary  
 7 supplements, so that's a concern.  
 8 So we would obviously as an organization,  
 9 like for there to be an enforcement body that can  
 10 remove those from the marketplace, but we also  
 11 understand that it's not an easy task.  
 12 Q. Right. And obviously USADA we've talked  
 13 about funded the ElSohly study that we just discussed.  
 14 Has it funded any other studies regarding DMAA?  
 15 A. Not that I'm aware of.  
 16 Q. Do you know how much was spent on the  
 17 research with Dr. ElSohly?  
 18 A. I believe it was a contract for 25,000,  
 19 but you should have that in your documents to confirm  
 20 and I would trust the documents more than my memory.  
 21 Q. Okay. Fair enough. Who put together the  
 22 research proposal for the ElSohly study?  
 23 A. I believe it was Dr. ElSohly and Dr.  
 24 Bowers.  
 25 Q. And the research into whether or not

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1 AMY K. EICHNER, PH.D.  
 2 A. I don't have enough information. I  
 3 would -- about the FDA process, about how they make  
 4 decisions, I appreciate that there's a lot at stake.  
 5 For instance, for your clients and others and when I  
 6 was working at the TGA, I appreciated the fact that  
 7 regulators need to be careful and slow in making their  
 8 decisions. But on the other hand to get to your point,  
 9 in order to best serve athletes, clarity from the FDA  
 10 would be useful, would have been useful at the time and  
 11 continues to be useful.  
 12 Q. Do you feel that the FDA needs expanded  
 13 regulatory and/or legal tools to deal with dietary  
 14 supplements?  
 15 A. I don't have a strong opinion on that.  
 16 Q. Do you believe the U.S. Government has  
 17 effective regulations to protect consumers from unsafe  
 18 dietary supplements?  
 19 MR. SCOTT: Object as to form.  
 20 THE WITNESS: The fact that so many  
 21 dietary supplements are on the market that may not be  
 22 legal is a concern.  
 23 Q. (By Mr. Marck) What do you mean by "may  
 24 not be legal"?  
 25 A. Well, we're aware of the continued supply

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1 AMY K. EICHNER, PH.D.  
 2 DMAA's natural occurring in geraniums, that research  
 3 doesn't have anything to do with athletic performance,  
 4 does it?  
 5 A. Well, if it turns out that geranium oil --  
 6 let me rephrase. At that time, if it turned out in the  
 7 course of our research that methylhexaneamine was  
 8 present in geranium oil, then that is relevant because  
 9 any athlete taking geranium oil would be consuming a  
 10 prohibited substance.  
 11 Q. Who selected the researchers and labs? Or  
 12 who selected Dr. ElSohly I should say?  
 13 A. I don't recall. I believe we -- I  
 14 remember Dr. Bowers and I contemplating who has the  
 15 expertise in this country to conduct this type of  
 16 research, and I don't recall exactly how Dr. Khan was  
 17 selected, but I know that a number of people in our  
 18 organization had been to conferences where he was  
 19 speaking. So our initial, when we initially reached  
 20 out, it was to Dr. Khan and he pulled in Dr. ElSohly,  
 21 and after several discussions, we collectively agreed  
 22 as a group that this would be a good collaboration.  
 23 Q. Where did the funding come from? I  
 24 understand it came from USADA in a sense you had a  
 25 \$25,000 agreement with Dr. Khan. Does all of that

1 AMY K. EICHNER, PH.D.  
 2 money or does the research grant money that USADA uses,  
 3 is that federal money that comes from Congress, or is  
 4 it outside funding from other groups?  
 5 A. I don't know.  
 6 Q. Do you know if this research was subject  
 7 to any sort of Congressional oversight?  
 8 A. I don't know.  
 9 Q. Do you know if it was authorized under the  
 10 USADA budget?  
 11 A. I don't know but I have to assume that it  
 12 was because normal processes at USADA include  
 13 discussions with finance, that there's sufficient  
 14 funds, but I don't know.  
 15 Q. Did Travis Tygart make the decision to  
 16 research DMAA and allocate USADA resources for that?  
 17 A. I don't know.  
 18 Q. Have you ever had any conversations with  
 19 him regarding DMAA?  
 20 A. Yeah, sure. I don't recall any specific  
 21 conversations, but he was aware and concerned about  
 22 athletes testing positive from methylhexanamine.  
 23 Q. And that's pretty much the extent of your  
 24 recollection of your conversations with him?  
 25 A. Any conversations would have generally

1 AMY K. EICHNER, PH.D.  
 2 A. No.  
 3 Q. Aside from DMAA, what other compounds have  
 4 been subjected to USADA-sponsored research activity?  
 5 A. I don't know.  
 6 Q. Do you know if there's any criteria for  
 7 figuring out if something would be tested? Let me  
 8 rephrase.  
 9 A. That's not my role. I'm just not involved  
 10 in . . .  
 11 Q. Research allocation or anything like that?  
 12 A. Correct.  
 13 Q. Okay. Who made the decision to focus  
 14 USADA's attention to DMAA?  
 15 A. I don't know.  
 16 Q. Sorry, let me backtrack. Who made the  
 17 decision to focus on USADA's attention to  
 18 DMAA-containing supplements?  
 19 A. I don't know. And the reason I say that  
 20 is I don't recollect that it was ever a particular  
 21 individual that said or dictated that this is what we  
 22 should do. As an organization, like I said earlier,  
 23 it's we were concerned about athletes testing positive  
 24 for methylhexanamine, and we were trying to understand  
 25 -- we wanted to understand where it was coming from

1 AMY K. EICHNER, PH.D.  
 2 revolved around, you know, where is this coming from,  
 3 why are athletes testing positive, what can we do to  
 4 protect athletes from accidentally ingesting this  
 5 ingredient, or deliberately for that matter.  
 6 Q. Was he aware of your and Dr. Bowers'  
 7 efforts to figure out the derivation of DMAA?  
 8 A. He was aware that we were trying to  
 9 determine if we could detect DMAA in geranium oil.  
 10 Q. Was he at all involved in choosing the  
 11 researchers that you ended up working with?  
 12 A. Not that I'm aware.  
 13 Q. Do you know if USADA has statutory  
 14 authority to engage in scientific research involving  
 15 dietary supplement ingredients?  
 16 A. I don't know.  
 17 Q. To the best of your knowledge, has anyone  
 18 at the FDA ever requested USADA's involvement or  
 19 assistance in the area of dietary supplement  
 20 regulation?  
 21 A. No.  
 22 Q. To the best of your knowledge, has anyone  
 23 at the FDA ever requested USADA's involvement in the  
 24 testing of geranium or to determine whether it contains  
 25 DMAA?

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 2 because that has an impact on how we advise athletes  
 3 and how we educate them.  
 4 It was important for us to understand if  
 5 it, if DMAA is in geranium oil, then that expands our  
 6 education. We need to tell athletes you can't use  
 7 geranium oil either. And there are a lot of products  
 8 that do contain geranium oil. There's different oils  
 9 that you can put on your skin; there's things overseas  
 10 like cough medications that contain geranium oil. So  
 11 there was just a general feeling that we needed to  
 12 understand if it was in geranium oil because if it is,  
 13 then geranium oil possesses a risk to athletes.  
 14 Q. Was there like an either informal working  
 15 group or formal working group regarding DMAA?  
 16 A. Not really.  
 17 Q. Have you engaged in any -- let me rephrase  
 18 this. Have you ever spoken at a conference regarding  
 19 DMAA or presented at a conference regarding DMAA?  
 20 A. Probably, but I would have to consult my  
 21 CV to work out which presentations, but I have been to  
 22 conferences before and I also speak to athletes on any  
 23 prohibited substance, so . . .  
 24 Q. Would USADA fund your appearance at those  
 25 conferences or presentations?

1 AMY K. EICHNER, PH.D.  
2 A. Possibly. Or depending on the conference,  
3 sometimes they cover travel and hotel and . . .  
4 Q. Are you familiar with a company called  
5 Chromodex?  
6 A. I've heard the name, but I am not familiar  
7 with . . .  
8 Q. Have you ever personally had contact with  
9 anyone at Chromodex, its owners or employees?  
10 A. It's possible that I have, but honestly I  
11 just don't, I just don't know, I can't put a name to  
12 the company.  
13 Q. Have you ever communicated with any  
14 attorneys representing persons alleged to be injured by  
15 DMAA-containing products?  
16 A. I don't know.  
17 Q. You don't know or you don't remember?  
18 A. I don't remember. I mean, it's possible,  
19 but I don't recall.  
20 Q. Have you ever served as a paid consultant  
21 to any attorneys involved in a DMAA-related litigation?  
22 A. No.  
23 Q. Have you ever served as a paid consultant  
24 to any kind of litigation concerning dietary  
25 supplements regardless of whether or not they have

1 AMY K. EICHNER, PH.D.  
2 were -- I don't recall reviewing any of those documents  
3 to prepare for today, so, I'm sorry, my memory just  
4 doesn't serve me in this instance.  
5 Q. That's fine. Your memory is what your  
6 memory is. Do you have any recollection as to who  
7 reached out to who?  
8 A. I don't remember.  
9 Q. Have you communicated with her in the last  
10 two years?  
11 A. No, I don't believe so, no.  
12 Q. Was she considered a friend at any point,  
13 or was it --  
14 A. No. The one salient detail that I recall  
15 in discussions with her is that she was obviously very  
16 upset about her son.  
17 Q. Understandable.  
18 A. And at that time, it was very important  
19 for her to be active in preventing any such thing  
20 happening again. So for her, that's what I remember  
21 the most is that she really wanted to do something to  
22 help make the world safer basically.  
23 Q. Do you know if she reached out to you  
24 though?  
25 A. I just don't remember. I'm sorry.

1 AMY K. EICHNER, PH.D.  
2 DMAA?  
3 A. No.  
4 Q. Are you familiar with the lawsuit  
5 involving Army Private Michael Sparling?  
6 A. The name rings a bell, but I was -- I'm  
7 not aware of the litigation or what happened in the  
8 litigation.  
9 Q. What's your understanding of what actually  
10 happened to Private Sparling?  
11 A. From my recollection, he was a soldier who  
12 was -- he died, I believe, and it was attributed at the  
13 time by the military partially to consumption of  
14 methylhexanamine, if my memory serves me.  
15 Q. Have you ever had any conversations with  
16 the attorneys who represented his family?  
17 A. I don't recall, but it's possible because  
18 I remember, and I don't even know what year this was,  
19 but his mom contacted me at some point.  
20 Q. Right. And did you speak with her?  
21 A. I think so, yes.  
22 Q. What were the nature of those  
23 communications, do you remember, telephone, email?  
24 A. Probably both. I don't really remember  
25 clearly. I would have to go back and review. Those

1 AMY K. EICHNER, PH.D.  
2 Q. If --  
3 A. I would be surprised if it turned out that  
4 I reached out to her because I wasn't involved in the  
5 initial, you know.  
6 Q. Would she have been aware of you through  
7 the press or something like that?  
8 A. You know --  
9 MR. SCOTT: Objection.  
10 Q. (By Mr. Marck) You're good. You can  
11 answer.  
12 A. To form again?  
13 Q. Yes.  
14 A. It was probably through Dr. Deuster, who  
15 was and still is at the Uniformed Services University.  
16 Q. Right. And this is Patricia Deuster,  
17 right?  
18 A. That's correct.  
19 Q. Let's talk about your relationship with  
20 her a little bit. How do you know her?  
21 A. She's a work colleague.  
22 Q. Can you elaborate? Start with where does  
23 she work?  
24 A. Uniformed Services University.  
25 Q. Where is that?

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1 AMY K. EICHNER, PH.D.  
 2 A. Bethesda, America's medical school.  
 3 Q. Yes.  
 4 A. So --  
 5 Q. Stop you right there, America's medical  
 6 school, is that a public institution, private  
 7 institution?  
 8 A. I'm sorry, I have no idea.  
 9 Q. That's okay. And when was your last  
 10 communication with Miss Deuster?  
 11 A. Probably earlier this week.  
 12 Q. What have your conversations regarding  
 13 DMAA been with her? Have they been typically by  
 14 telephone, email?  
 15 A. A lot via telephone and some via email.  
 16 Q. And when did you meet her?  
 17 A. I believe we were put into contact with  
 18 each other or came into contact with each other could  
 19 have been as early as 2010, but I don't recall 100  
 20 percent. It could have also been in 2011. And I  
 21 recall discussing with her she had put together the  
 22 fact that we as an organization were seeing positive  
 23 tests for methylhexanamine.  
 24 Q. Do you know where she learned that  
 25 information?

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1 AMY K. EICHNER, PH.D.  
 2 Q. That's all you can remember. Okay. Are  
 3 you aware the Department of Defense commissioned a  
 4 study regarding DMAA?  
 5 A. No. Actually if you told me the name of  
 6 the study or an outcoming paper, then I probably would  
 7 recognize it, but using the terms that you've used, it  
 8 doesn't ring a bell for me.  
 9 Q. Are you aware of a report called Case  
 10 Reports: Death of Active Duty Soldiers Following  
 11 Injection of Dietary Supplements Containing DMAA?  
 12 A. Yes. That is language I can recognize.  
 13 Q. Can you tell me about that article?  
 14 A. It was one or two case reports, I believe  
 15 it was two, of people who were injured, had adverse  
 16 events of some description, and at the time, the  
 17 researchers and the medical professionals linked DMAA  
 18 to those adverse events.  
 19 Q. Were you involved in the actual study?  
 20 A. No.  
 21 Q. Did you edit the results in the paper?  
 22 A. My role was just to provide some  
 23 background information on like where was DMAA first  
 24 used like, you know, produced by Eli Lilly back in the  
 25 '40s, nasal decongestant, and just to contribute our

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1 AMY K. EICHNER, PH.D.  
 2 A. No.  
 3 Q. Okay.  
 4 A. It's possible that it was Dave Ellis, who  
 5 was a nutritionist, and I believe he might have been at  
 6 a conference that she was at, but I really don't  
 7 recall.  
 8 Q. Could you say his name again?  
 9 A. Dave Ellis.  
 10 Q. Dave Ellis. Could you tell me who he is?  
 11 A. He's a nutritionist, a sports  
 12 nutritionist.  
 13 Q. Did you ever discuss legal claims against  
 14 manufacturers of DMAA-containing supplements with her,  
 15 meaning Ms. Deuster? Did you ever discuss, did you --  
 16 strike that. Start from the beginning. Have you ever  
 17 discussed any legal claims against manufacturers of  
 18 DMAA-containing supplements?  
 19 A. Legal claims?  
 20 Q. Did you ever discuss pending litigation  
 21 like Mr. Sparling's litigation?  
 22 A. She might have made me aware of the  
 23 pending litigation.  
 24 Q. But that's it?  
 25 A. Yeah.

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1 AMY K. EICHNER, PH.D.  
 2 learnings up to that point on the laws around dietary  
 3 supplements like what is a dietary supplement.  
 4 At that time in 2010 and 2011, I  
 5 personally and as an organization, USADA, did not have  
 6 a lot of expertise in that area, so it was a big  
 7 learning curve for us. So that was my primary  
 8 contribution to those articles.  
 9 Q. Who is Lori Bestervelt?  
 10 A. She is at the NSF International.  
 11 Q. What is the NSF International?  
 12 A. It is a standard setting organization that  
 13 sets standards for a number of different products such  
 14 as water filters and other things. And they also had a  
 15 dietary supplement certification program.  
 16 Q. Do you know what that consists of?  
 17 A. Vaguely. A dietary supplement company can  
 18 go to the NSF and be evaluated for quality. They do an  
 19 analysis of GMP compliance, which is Good Manufacturing  
 20 Practice compliance, and they test dietary supplements  
 21 for substances prohibited in sport and they do a few  
 22 other things, but it all culminates in a certification.  
 23 Q. Are you in contact with her frequently?  
 24 A. Not currently, no.  
 25 Q. When did that stop?



1 AMY K. EICHNER, PH.D.

2 A. We were in regular communication around  
3 the time when we were trying to determine where  
4 methylhexaneamine was coming from and it's -- I just  
5 haven't been in contact with her that much since that  
6 time.

7 Q. Beyond the discussions regarding DMAA,  
8 what else would you discuss?

9 A. Oh, dietary supplements in general, safety  
10 issues, general topics.

11 Q. Hopping back to the Department of Defense  
12 study we were just discussing, do you agree with the  
13 report's conclusions?

14 A. Yes.

15 Q. Do you do any work in coordination with  
16 the Department of Justice?

17 A. What do you mean by "in coordination"? I  
18 guess it kind of depends on what you mean by that.

19 Q. Do you do any work with them at all?

20 A. Yes. We have provided test results to  
21 them in the past and I am sometimes in contact with  
22 Jill Furmann, who I believe is in the Consumer  
23 Protection Branch.

24 Q. Did you say Jill Furmann or Herman?

25 A. Furmann.

1 AMY K. EICHNER, PH.D.

2 Q. You said that's the Consumer Protection  
3 Branch, correct?

4 A. Uh-huh (affirmative).

5 Q. What do you believe providing these test  
6 results for what reason? As part of a prosecution?

7 A. No, just general information. So if we --  
8 in other studies not related to DMAA, but just if we  
9 become aware of dietary supplements that contain  
10 prohibited substances that are prohibited in sport and  
11 we have reason to believe or there's evidence that it's  
12 not a legitimate dietary ingredient, we have in the  
13 past shared those tests results with Jill Furmann.

14 Q. Do you know what she does with those  
15 results?

16 A. No, I don't. I don't.

17 Q. Have they ever followed up with you to  
18 have someone from either yourself or someone from USADA  
19 serve as an expert witness in a case?

20 A. No.

21 Q. Do you know what Operation Supplement  
22 Safety is?

23 A. Yes.

24 Q. Explain.

25 A. It is to my understanding, it is the

1 AMY K. EICHNER, PH.D.

2 Uniformed Services University equivalent of Supplement  
3 411. It is an educational website to help military  
4 personnel understand and navigate the risks around  
5 dietary supplements and make good safe decisions around  
6 the use of dietary supplements.

7 Q. So similar to the hotline that you manage  
8 for USADA for athletes?

9 A. Yes.

10 Q. Do you know how that's funded?

11 A. No.

12 Q. Do you have any involvement in it?

13 A. Not a direct involvement in Operation  
14 Supplement Safety, but I work on a regular basis with  
15 Dr. Deuster and Andrea Lindsey in sharing information  
16 that is useful for their stakeholders.

17 Q. Dr. Deuster, and I'm sorry, the person  
18 who's other name you just said was?

19 A. Andrea Lindsey.

20 Q. Did they run that program?

21 A. To my knowledge, they do.

22 Q. Are you in contact with other  
23 international regulatory bodies regarding dietary  
24 supplements?

25 A. No.

1 AMY K. EICHNER, PH.D.

2 Q. So you never reach out to, say, Health  
3 Canada or some other agency regarding --

4 A. Not on a regular basis. I recall early in  
5 the piece with the whole DMAA question, reaching out to  
6 other regulatory agencies to see what their position  
7 was on DMAA, but I don't recall the outcome, the  
8 outcomes of those inquiries.

9 Q. Do you remember which agencies you were in  
10 contact with?

11 A. Health Canada rings a bell. I have a  
12 feeling I would have reached out to the Therapeutic  
13 Goods Administration as well; although I don't recall  
14 receiving a clear answer from them.

15 Q. And the TPA you said is the Australian  
16 version of the FDA?

17 A. TGA, Therapeutic Goods Administration.

18 Q. Thank you. Do you remember the nature of  
19 their responses to you?

20 A. I just don't remember.

21 Q. Are you aware of any peer reviewed  
22 scientific literature which concludes that DMAA causes  
23 liver toxicity?

24 MR. SCOTT: Object as to form.

25 THE WITNESS: There's probably papers out

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1 AMY K. EICHNER, PH.D.  
 2 there that have established that. I just don't know.  
 3 Q. (By Mr. Marck) Can you identify any peer  
 4 reviewed scientific literature which concludes that  
 5 DMAA causes liver injury in humans?  
 6 MR. SCOTT: I'm sorry, could you repeat  
 7 the question? I lost the last part of it.  
 8 Q. (By Mr. Marck) Sure, no problem. Can you  
 9 identify any peer reviewed scientific literature which  
 10 concludes that DMAA causes liver injury in humans?  
 11 MR. SCOTT: Object as to form.  
 12 THE WITNESS: I don't recall, but if you  
 13 put me in front of a computer, I know how to do the  
 14 search to determine whether there is literature.  
 15 Q. (By Mr. Marck) Okay. I believe you. Can  
 16 you identify any peer reviewed scientific literature  
 17 which concludes that DMAA causes heat stroke in humans?  
 18 A. I recall that heat stroke was a part of  
 19 the case reports if that's correct, the Eliason paper.  
 20 I seem to recall that there, there may be literature  
 21 out there, but again, to really answer your question,  
 22 if your question is, not to put words in your mouth,  
 23 but if your question is, is there evidence, valid  
 24 evidence that it causes liver damage or heat stroke,  
 25 things like that, then the process that I would go

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1 AMY K. EICHNER, PH.D.  
 2 Q. If it's the same answer, you can say --  
 3 A. Same answer.  
 4 Q. Can you identify any peer reviewed  
 5 scientific literature which concludes that DMAA causes  
 6 rhabdomyolysis in humans?  
 7 A. Same answer.  
 8 Q. Can you identify any peer reviewed  
 9 scientific literature which concludes that DMAA causes  
 10 heart attacks in humans?  
 11 A. Again, same answer.  
 12 Q. Can you identify any peer reviewed  
 13 scientific literature which concludes that DMAA causes  
 14 cardiac dysrhythmia?  
 15 A. Same answer.  
 16 Q. Can you identify any peer reviewed  
 17 scientific literature which describes a confirmed  
 18 biological mechanism of action through which  
 19 DMAA-containing supplements cause harm in humans?  
 20 A. Repeat your question, please.  
 21 Q. Can you identify any peer reviewed  
 22 scientific literature which describes a confirmed  
 23 biological mechanism of action through which  
 24 DMAA-containing supplements cause harm in humans?  
 25 A. No, I'm not aware, but same answer.

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1 AMY K. EICHNER, PH.D.  
 2 through would be to do a literature search and evaluate  
 3 a number of abstracts to see whether . . .  
 4 Q. Right. But off the top of your head --  
 5 A. Off the top of my head, I mean I just  
 6 don't recall sufficiently to . . .  
 7 Q. That's a fine answer.  
 8 A. Okay.  
 9 Q. Don't mean to put words in your mouth. I  
 10 just wanted to know if you know right now whether or  
 11 not X, Y, Z exists.  
 12 A. Sure.  
 13 Q. Speaking of the Eliason article, the DOD  
 14 article you've been referring to, was that peer  
 15 reviewed?  
 16 A. I believe so. What journal is it in?  
 17 Military Medicine?  
 18 Q. No, this actually says no med.  
 19 A. Yeah, I believe that is a peer reviewed  
 20 journal, but the best way to verify that is to consult  
 21 the journal web page.  
 22 Q. Can you identify any peer reviewed  
 23 scientific literature which concludes that DMAA impairs  
 24 human thermoregulation in any way?  
 25 A. Again, my process --

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1 AMY K. EICHNER, PH.D.  
 2 Really I would have to go through a process.  
 3 Q. Have you ever been in contact with the FDA  
 4 or its employees?  
 5 A. Yes.  
 6 Q. When was your first contact?  
 7 A. I don't recall, but it would have been  
 8 sometime after 2009 when I took up my job at USADA.  
 9 Q. And when you are in contact with them,  
 10 what's the nature of those communications? Is it  
 11 typically telephone, email, write a letter?  
 12 A. Typically email.  
 13 Q. Do you know an individual named Daniel  
 14 Fabricant?  
 15 A. Yes, I do.  
 16 Q. When did you meet him?  
 17 A. When did I meet him? I met him originally  
 18 when he was a part of the Natural Products Association.  
 19 Q. What's the NPA?  
 20 A. It's a trade association for, I believe,  
 21 retailers of dietary supplements, but to find the  
 22 actual answer, I would need to consult the NPA website  
 23 to find out who exactly they represent.  
 24 Q. Do you know what his role was at NPA when  
 25 you met him?



1 AMY K. EICHNER, PH.D.  
 2 A. I don't know what his title was.  
 3 (Brief interruption for package)  
 4 (Break)  
 5 Q. (By Mr. Marck) Dr. Eichner, we were  
 6 speaking about your relationship with Daniel Fabricant  
 7 while he was at NPA. Did you also know him during his  
 8 tenure at the FDA?  
 9 A. Yes.  
 10 Q. Were you in regular contact with him when  
 11 he was with the FDA?  
 12 A. Yes.  
 13 Q. What was the mode of communication  
 14 typically with Dr. Fabricant?  
 15 A. Usually email.  
 16 Q. Did you ever meet him in person?  
 17 A. I would see him at conferences.  
 18 Q. Can you give me an example of some  
 19 conferences you may have met him at?  
 20 A. I don't remember which conferences, but it  
 21 could have been SupplySide, SupplySide Conference  
 22 Series.  
 23 Q. Did you ever attend a conference with him  
 24 and Dr. Khan and Dr. ElSohly?  
 25 A. Actually, I think I did.

1 AMY K. EICHNER, PH.D.  
 2 MR. MARCK: Sorry, Claude, go ahead.  
 3 MR. SCOTT: Object as to form.  
 4 THE WITNESS: I believe I can answer that  
 5 question. I recall a meeting at Ole Miss. They would  
 6 host a regular series of conferences and I seem to  
 7 remember that he was there one year when I went there.  
 8 Q. (By Mr. Marck) Do you remember the subject  
 9 matter of that conference?  
 10 A. Many different topics are discussed at  
 11 those conferences, but there's often a large botanical  
 12 component because Ole Miss is known for its botanical  
 13 expertise.  
 14 Q. Did you speak at that conference?  
 15 A. I don't remember. I have spoken at those  
 16 conferences before, but honestly, I would have to look  
 17 back at my presentation record to see if I spoke at any  
 18 particular conference.  
 19 Q. Have you ever co-presented with Dr.  
 20 Fabricant?  
 21 A. I don't recall, but it's possible that --  
 22 I've served on certain panels over the years and he may  
 23 have been on one, but I don't recall a particular one.  
 24 Q. Do you consider him a friend?  
 25 A. No. I don't consider him an enemy.

1 AMY K. EICHNER, PH.D.  
 2 Q. I know, the extent of your personal  
 3 relationship. Have you ever had any conversations with  
 4 him regarding DMAA?  
 5 A. Probably. And I know at the time, and I  
 6 don't remember if he was at the NPA at this time or the  
 7 FDA. I probably would have had conversations with him  
 8 in both of his roles regarding DMAA.  
 9 Q. Do you remember approximately what year  
 10 that would have been?  
 11 A. Anytime between 2011, 2012, 2013. You  
 12 know, the issue about whether DMAA is in geranium oil  
 13 has been around for a long time, so there would have  
 14 been many opportunities and reasons to discuss with him  
 15 or others.  
 16 Q. And do you remember the content of the  
 17 discussions regarding DMAA at all?  
 18 A. No particulars.  
 19 Q. And did you discuss other things with him  
 20 besides DMAA?  
 21 A. When he was at the FDA, we would provide  
 22 USADA as an organization, would provide test results  
 23 when we obtained them for any dietary supplement that  
 24 contained a prohibited substance that was prohibited in  
 25 sport, and we had evidence or reason to believe that it

1 AMY K. EICHNER, PH.D.  
 2 was also not a legitimate dietary ingredient.  
 3 Q. What do you mean by "not a legitimate  
 4 dietary ingredient"?  
 5 A. Well, so the way we would determine that  
 6 is if the FDA had issued previous warning letters  
 7 regarding a particular ingredient and then we became  
 8 aware of a dietary supplements that contained that  
 9 ingredient. Then we would always share that  
 10 information with the FDA.  
 11 Q. Were you USADA's primary point of contact  
 12 with FDA regarding dietary supplements?  
 13 A. Probably, but I don't know if other  
 14 members of USADA also had communications with the FDA.  
 15 Q. But did you have a formal role as a  
 16 liaison between the two?  
 17 A. It wasn't a formal role, but USADA  
 18 generally is supportive of regulatory agencies and  
 19 where we have information that could help the FDA or  
 20 any regulatory agency, then we share that.  
 21 Q. Do you know where Dr. Fabricant currently  
 22 works?  
 23 A. He's back at the Natural Products  
 24 Association.  
 25 Q. And do you know how long he's been back

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1 AMY K. EICHNER, PH.D.  
 2 there?  
 3 A. I don't remember his exact transition  
 4 date, but it's been a while.  
 5 Q. Have you been in contact with him since  
 6 he's been back at NPA?  
 7 A. I don't think so, but it's possible that I  
 8 emailed him, but I don't recall any particulars of why  
 9 I would.  
 10 Q. So in his role at NPA, you can't think of  
 11 why you would actually be in contact with him there?  
 12 A. Well, I can generally say that since we  
 13 published our paper, the 2012 article, and then shortly  
 14 thereafter, I think maybe 2012, 2013, we just haven't  
 15 had a lot of dealings with the trade associations, with  
 16 any trade association.  
 17 So you know, I do maybe once or twice a  
 18 year have an email to or from CRN or AHPA or it could  
 19 even be the MPA.  
 20 Q. Can you explain who CRN is?  
 21 A. Council For Responsible Nutrition and AHPA  
 22 is American Herbal Products Association, I think.  
 23 Q. AHPA?  
 24 A. AHPA.  
 25 Q. I thought you were saying OPPA, so glad we

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1 AMY K. EICHNER, PH.D.  
 2 MR. SCOTT: Object as to form.  
 3 THE WITNESS: Formal meetings.  
 4 Q. (By Mr. Marck) I'll describe that as like  
 5 a teleconference where the subject matter was  
 6 determined to be DMAA or an in-person meeting where  
 7 people from USADA, including yourself, and someone from  
 8 FDA met to discuss DMAA.  
 9 MR. SCOTT: Same objection.  
 10 THE WITNESS: I don't recall any such  
 11 meetings. Like I said, if I was at a conference with  
 12 Dan Fabricant or other members of the FDA, then I would  
 13 take that occasion to talk about USADA's concerns about  
 14 DMAA, but I don't recall any specific formal meetings  
 15 where we met to discuss whether or not it was a legal  
 16 ingredient or something like that.  
 17 Q. When you would run into Dan Fabricant at,  
 18 say, a conference, whether it be SupplySide or down at  
 19 Ole Miss, would you consider your activities like  
 20 lobbying?  
 21 MR. SCOTT: Object as to form.  
 22 THE WITNESS: No.  
 23 Q. (By Mr. Marck) Did FDA provide any  
 24 financial support for USADA activities?  
 25 A. No.

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1 AMY K. EICHNER, PH.D.  
 2 cleared it up.  
 3 A. But to confirm what those initials stand  
 4 for, we would need to consult the website.  
 5 Q. Gotcha. Do you know what the relationship  
 6 currently is between USADA and the FDA's Dietary  
 7 Supplements Office?  
 8 A. I'm not aware of any particular --  
 9 Q. Ongoing relationship?  
 10 A. Ongoing relationship, other than the fact  
 11 that as we come across dietary supplements that we  
 12 believe or have reason to believe that contain  
 13 ingredients that are not legitimate dietary ingredients  
 14 and where we have knowledge that could be useful, then  
 15 we share that with the FDA.  
 16 Q. And do you make recommendations as to  
 17 policy?  
 18 A. No.  
 19 Q. Do you recommend certain enforcement  
 20 actions?  
 21 A. No.  
 22 Q. And recommend any regulatory actions?  
 23 A. No.  
 24 Q. Were any formal meetings held with the FDA  
 25 regarding DMAA?

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1 AMY K. EICHNER, PH.D.  
 2 Q. Do you know that for sure?  
 3 A. I don't. I'm not aware of any such  
 4 funding.  
 5 Q. Did the FDA provide any financial support  
 6 for USADA activities regarding DMAA?  
 7 A. Not that I'm aware.  
 8 Q. Have you ever heard of the Natural  
 9 Products Research Center at the University of  
 10 Mississippi?  
 11 A. Possibly, but is that Phytochemical?  
 12 Q. It's not.  
 13 A. Okay. So that name doesn't ring a bell to  
 14 me as a specific entity that I had any dealings with,  
 15 but I could easily, if ElSohly is a part of that, then,  
 16 I'm having dealings with that.  
 17 Q. I gotcha. Do you know if USADA's ever  
 18 actually provided any funding to the Center?  
 19 A. I don't know. Aside from the \$25,000  
 20 contract, which I believe was \$25,000, the contract  
 21 with ElSohly's and Khan's group.  
 22 Q. And in order to expedite things, I'll say  
 23 "Ole Miss" because you know what I'm talking about and  
 24 we're referring to the University of Mississippi, but  
 25 we'll just make things a little bit quicker, especially

1 AMY K. EICHNER, PH.D.  
2 when we get to exhibits, we'll say "Ole Miss." Are you  
3 familiar with Dr. Ikhlas Khan?  
4 A. Yes.  
5 Q. When did you meet him?  
6 A. I don't recall the first time, but I would  
7 guess it was at a conference that I attended.  
8 Q. Did you meet him through Daniel Eichner?  
9 A. Possibly.  
10 Q. Is Daniel Eichner your husband?  
11 A. Yes.  
12 Q. And do you consider Dr. Khan a friend?  
13 A. No.  
14 Q. A colleague?  
15 A. A colleague.  
16 Q. How often are you in contact with him?  
17 A. Aside from this, our 2012 article, and  
18 occasional contact at conferences, rarely.  
19 Q. Just rarely like maybe once every couple  
20 months?  
21 A. Not even.  
22 Q. Have you had any conversations with Dr.  
23 Khan regarding this litigation?  
24 A. No.  
25 Q. Are you aware that Dr. Khan is serving as

1 AMY K. EICHNER, PH.D.  
2 an expert witness in this litigation?  
3 A. Yes.  
4 Q. Do you know where Dr. Khan gets funding  
5 for his various research projects?  
6 A. No.  
7 Q. Do you respect him as a scientist?  
8 A. Yes.  
9 Q. Do you trust his judgment?  
10 A. I don't have any reason not to.  
11 Q. Do you consider him a person with  
12 integrity?  
13 A. Yes. I don't have any reason not to.  
14 Q. Are you familiar with Mahmoud, Dr. Mahmoud  
15 ElSohly?  
16 A. Yes.  
17 Q. And when did you meet him?  
18 A. I would have met him through Dr. Khan and  
19 I don't recall the first time. It was probably at a  
20 conference.  
21 Q. Do you consider him a colleague?  
22 A. Yes.  
23 Q. Have you had any conversations with Dr.  
24 ElSohly regarding this litigation?  
25 A. He was required to disclose to USADA the

1 AMY K. EICHNER, PH.D.  
2 existence of a Subpoena many months ago. And following  
3 his disclosure that he had received a Subpoena, we've  
4 had no further contact.  
5 Q. When he disclosed that service of the  
6 Subpoena on him, what did USADA do?  
7 A. Nothing. We asked about the nature of the  
8 Subpoena. This is outside of my area because I don't  
9 know what happened behind the scenes, but I believe we  
10 received a copy of it so that we could understand what  
11 documents would involve USADA.  
12 Q. Do you know why he was compelled to share  
13 the Subpoena with USADA?  
14 A. I don't know for sure, but I think there  
15 was a clause in our contract that we asked for  
16 notification in the event of a Subpoena.  
17 Q. Do you respect Dr. ElSohly as a scientist?  
18 A. Yes. I don't have any reason not to.  
19 Q. Do you trust his judgment?  
20 A. Yes.  
21 Q. And you consider him a person of  
22 integrity?  
23 A. Yes.  
24 Q. Are you familiar with Phytochemical  
25 Services, Incorporated?

1 AMY K. EICHNER, PH.D.  
2 A. Yes, but again, I, when I refer to my  
3 colleagues, I don't really know what business entities  
4 they represent at any particular time. I just know  
5 them as Dr. ElSohly, Dr. Khan and et cetera.  
6 Q. I guess you probably -- strike that. Do  
7 you know if Dr. Khan has an ownership interest in PSI?  
8 A. I don't know.  
9 Q. And do you know if Dr. ElSohly does?  
10 A. I don't know.  
11 Q. Who is Johnnie Wingard?  
12 A. She is an employee of USADA.  
13 Q. Do you know what her role is?  
14 A. She helps the Legal Department.  
15 Q. Is she an attorney?  
16 A. I don't believe so.  
17 (Exhibit 1 was marked)  
18 MR. MARCK: Claude, this is ElSohly 3480.  
19 MR. SCOTT: Exhibit 1?  
20 MR. MARCK: Exhibit Eichner 1  
21 Q. (By Mr. Marck) Doctor, if you could just  
22 please review the entire document. I don't think you  
23 need to read every line in detail, but that's fine.  
24 MR. KOONS: Are you going to ask her  
25 questions about what's in the content?

1 AMY K. EICHNER, PH.D.  
 2 MR. MARCK: I am, yes.  
 3 THE WITNESS: Okay.  
 4 Q. (By Mr. Marck) Are you ready?  
 5 A. Uh-huh (affirmative).  
 6 Q. Can you please flip to page 3, which is  
 7 EISohly 3482. Do you recognize this agreement?  
 8 A. Uh-huh (affirmative).  
 9 Q. Can you read me the title of it?  
 10 A. "Consulting Agreement."  
 11 Q. Did you negotiate this agreement?  
 12 A. No.  
 13 Q. Do you know who did?  
 14 A. No, but I believe it was Dr. Bowers and  
 15 Dr. EISohly and Dr. Khan may have been involved, but I  
 16 don't know.  
 17 Q. How much did USADA agree to pay PSI?  
 18 A. "Consultant shall be paid a one-time  
 19 consultant fee of \$25,000."  
 20 Q. And what was USADA paying PSI to do?  
 21 A. "Services. Consultant shall assist USADA  
 22 by consulting research on the constituents of the  
 23 Pelargonium graveolens extract. PSI will identify and  
 24 obtain Pelargonium graveolens, extract it, and conduct  
 25 mass spectrometry on the extract."

1 AMY K. EICHNER, PH.D.  
 2 preface this by saying that I am not a chemist  
 3 reminding everyone that mass spectrometry is not my  
 4 area of expertise, but I can summarize the feelings and  
 5 thoughts of the larger group, which consisted of Khan,  
 6 EISohly and Dr. Bowers.  
 7 So first my understanding is that a  
 8 library match, which is what the Ping paper relied on,  
 9 is not the best way to determine whether something is  
 10 in, is present in an extract.  
 11 Q. Did USADA pay PSI the full contracted  
 12 amount?  
 13 MR. KOONS: She wasn't finished. "First."  
 14 I think there's more coming.  
 15 THE WITNESS: So that was one reason why  
 16 we didn't believe that the Ping study had valid  
 17 conclusions. The second reason was because the Ping  
 18 study also reported the presence of amphetamine in  
 19 geranium oil and our experience in athlete positive  
 20 tests, we did not detect the presence of amphetamine  
 21 along with the methylhexaneamine. And so if geranium  
 22 oil, what was purported to be geranium oil contained  
 23 only methylhexaneamine but not amphetamine, then that  
 24 also points to this Ping article being erroneous.  
 25 Another reason why things just didn't make

1 AMY K. EICHNER, PH.D.  
 2 Q. Beyond what's listed in the document, do  
 3 you have any other understanding of what the role was  
 4 going to be pursuant to the agreement?  
 5 A. We were trying to replicate the Ping  
 6 study.  
 7 Q. What do you mean by "Ping study"?  
 8 A. This was an article that established the  
 9 presence of DMAA in geranium oil. It was the only  
 10 known publication at that time. We wanted to validate  
 11 it by basically performing the study all over again as  
 12 is common in scientific research. So when one lab  
 13 reports something, when another lab can verify and get  
 14 the same result, then the conclusions are much  
 15 stronger.  
 16 Q. Going to this study that was being  
 17 negotiated with Dr. Khan, or excuse me, with PSI, did  
 18 you have an opinion regarding the validity of the Ping  
 19 study?  
 20 A. Yes.  
 21 Q. Which was?  
 22 A. We did not think that the Ping study's  
 23 conclusions were valid.  
 24 Q. Why?  
 25 A. There were a number of reasons. I want to

1 AMY K. EICHNER, PH.D.  
 2 sense at that time was the amount that Ping reported,  
 3 the amount of methylhexaneamine did not add up to the  
 4 amount of methylhexaneamine that was detected in  
 5 dietary supplements. The numbers just didn't add up.  
 6 So at that time, it didn't make any sense that  
 7 methylhexaneamine was being obtained from geranium oil  
 8 if this Ping paper was correct.  
 9 And lastly, according to my understandings  
 10 of other people's reports, amines stink and they are  
 11 acrid and they smell very bad and geranium oil on the  
 12 other hand, is used for fragrance, so it just didn't  
 13 make sense that methylhexaneamine could be a major  
 14 constituent of geranium oil.  
 15 Q. (By Mr. Marck) Okay. I didn't mean to cut  
 16 you off, but thank you. Did USADA pay PSI the full  
 17 contracted amount?  
 18 A. Yes.  
 19 Q. Do you believe PSI fulfilled its  
 20 obligations under the agreement?  
 21 A. As far as I'm aware.  
 22 Q. Can you flip to page 1 of this, which is  
 23 back to EISohly 3480, and can you please turn your  
 24 attention to the email at the bottom of page 1. Did  
 25 you send this email?

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1 AMY K. EICHNER, PH.D.  
 2 A. I must have.  
 3 Q. Do you have any reason to believe that you  
 4 didn't?  
 5 A. No.  
 6 Q. What's the date of this email?  
 7 A. April 20th, 2011.  
 8 Q. Can you read the second line of the email,  
 9 second sentence, excuse me?  
 10 A. "Here you will find an executed Consulting  
 11 Agreement."  
 12 Q. Sorry, the second sentence after?  
 13 A. Oh, "I had so much fun at your conference,  
 14 and Ikhlas your 'show me the money tag' really worked."  
 15 Q. What conference are you referring to?  
 16 A. I don't remember, but since I said "your  
 17 conference," I was probably referring to Ole Miss, the  
 18 botanical thing that they would have every year.  
 19 Q. Because of the dates, this likely happened  
 20 sometime in the spring of 2011?  
 21 A. Probably.  
 22 Q. "Show me the money." What were you  
 23 referring to, do you remember?  
 24 A. I don't remember, but he must have said  
 25 something funny.

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1 AMY K. EICHNER, PH.D.  
 2 A. No, I don't recall.  
 3 Q. Do you know who Robert Moore is?  
 4 A. Yes, he was also an employee of the FDA.  
 5 Q. Do you know his role?  
 6 A. No.  
 7 Q. Do you remember the nature of your  
 8 communications with him?  
 9 A. Uh-huh (affirmative). Very early on as I  
 10 had mentioned earlier.  
 11 Q. What do you mean by "very early on"?  
 12 A. Oh, in my world, very early on is around  
 13 2010, 2011, just that general time period when we were  
 14 trying to understand dietary supplements laws and the  
 15 different regulations that determine whether something  
 16 can be an ingredient. I recall writing him an email  
 17 inquiring from the FDA, can you help me understand what  
 18 is a dietary supplement.  
 19 Q. And do you know if Dr. Moore's currently  
 20 still at the FDA?  
 21 A. I just don't know.  
 22 Q. Do you know who Kathleen Lewis is?  
 23 A. Name doesn't ring a bell.  
 24 Q. And do you know someone named Daniel Levy?  
 25 A. That name rings a bell that I believe he

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1 AMY K. EICHNER, PH.D.  
 2 Q. Are you familiar with the group called  
 3 AOAC International?  
 4 A. Rings a bell, but . . .  
 5 Q. Are you a member?  
 6 A. No, I don't think so, not unless someone  
 7 signed me up.  
 8 Q. You can put that to the side. Do you know  
 9 who Gary Coody is?  
 10 A. Yes.  
 11 Q. Who is he?  
 12 A. He worked at the FDA. I believe -- he  
 13 worked at the FDA at the time. I seem to remember that  
 14 he has since retired, but I don't recall.  
 15 Q. I can't answer the question.  
 16 A. Okay. I have to do all the answering  
 17 then.  
 18 Q. That's right. But you have no more memory  
 19 about him other than being someone at FDA?  
 20 A. So I met him on a couple of occasions. I  
 21 know that we would occasionally email him with  
 22 questions about different aspects of the logged dietary  
 23 supplements or we might have sent him test reports at  
 24 some point.  
 25 Q. Do you know where at FDA he worked?

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1 AMY K. EICHNER, PH.D.  
 2 was also at the FDA. I never had very many dealings  
 3 with him.  
 4 Q. Is it fair to say so during late 2010,  
 5 early 2011, you were reaching out to Gary Coody, Robert  
 6 Moore, maybe Dan Levy about these issues?  
 7 A. Sure.  
 8 Q. I will mark as Eichner two a series of  
 9 emails that begin with the Bates stamp GOV 7409.  
 10 (Exhibit 2 was marked)  
 11 MR. MARCK: Claude, you heard the stamp  
 12 number, right?  
 13 MR. SCOTT: Yeah, got it.  
 14 Q. (By Mr. Marck) These are email chains so  
 15 you may want to start from the back and just let me  
 16 know when you've had a chance to peruse it front to  
 17 back, excuse me, back to front.  
 18 MR. MARCK: I understand this is a  
 19 cumbersome way to look at these emails, but I figure do  
 20 it this way rather than marking 40 of them.  
 21 MR. KOONS: Absolutely.  
 22 MR. MARCK: So we'll try to go through it  
 23 methodically so no one is confused, but let me know if  
 24 at any point you don't know what I'm referring to.  
 25 MR. KOONS: Okay.



1 AMY K. EICHNER, PH.D.  
2 THE WITNESS: Okay  
3 Q. (By Mr. Marck) Let's start with the email  
4 at the bottom of page 4, which is marked GOV 7413. Do  
5 you see the one I'm referring to?  
6 A. Uh-huh (affirmative).  
7 Q. Did you send this email?  
8 A. Yes.  
9 Q. To who?  
10 A. Gary Coody.  
11 Q. And the date?  
12 A. October 11, 2010.  
13 Q. And do you have any reason to believe this  
14 is not an email that you sent?  
15 A. No.  
16 Q. What prompted this email?  
17 A. Reading through this, must have been the  
18 time when we were very first trying to understand why  
19 methylhexaneamine was popping up in anti-doping tests.  
20 So as I had mentioned before, this was just very  
21 important for us to understand the source of the  
22 methylhexaneamine so that he knew how to advise  
23 athletes whether they just need to steer clear from  
24 methylhexaneamine or whether it was more broadly  
25 available in plants such as geranium oil.

1 AMY K. EICHNER, PH.D.  
2 the conclusions of that particular study based on the  
3 evidence, but it was still an open question.  
4 Q. When did you become aware of the Ping  
5 study if these dates here might give you some  
6 reference?  
7 A. Yeah, it all -- I'm afraid it all blends  
8 into one, but if I recall correctly, when we were  
9 looking at some of the dietary supplements that  
10 athletes were reporting using and subsequently testing  
11 positive, review of those websites at least one of them  
12 referred to the Ping study.  
13 For some reason the name Patrick Arnold is  
14 popping up in my head. I think we were evaluating a  
15 bunch of just different blogs of different companies  
16 about, you know, where they were -- why they were using  
17 methylhexaneamine, what it was, et cetera.  
18 Q. Who's --  
19 A. And I believe -- well, Patrick, were you  
20 --  
21 Q. Yeah, who is Patrick Arnold? I didn't  
22 mean to cut you off though.  
23 A. I know he had a supplement company and  
24 that's about all I know about him.  
25 Q. You have no other experience with him?

1 AMY K. EICHNER, PH.D.  
2 Q. Continuing on page 4, can you please focus  
3 on the email from Gary Coody to Robert Moore and  
4 Kathleen Lewis?  
5 A. Uh-huh (affirmative).  
6 Q. Have you ever seen this email?  
7 A. Uh-huh (affirmative).  
8 Q. Is that "yes"?  
9 MR. KOONS: "Yes" or "no."  
10 THE WITNESS: Sorry.  
11 Q. (By Mr. Marck) That's okay. What date was  
12 this email sent on?  
13 A. October 11th.  
14 A. 2010.  
15 Q. At the time this email was sent, did you  
16 agree with Mr. Coody's comment that DMAA is, quote,  
17 "naturally-occurring in geranium and other flower  
18 oils"?  
19 A. The question is did I, do I agree that it  
20 is naturally-occurring in geranium and other flower  
21 oils?  
22 Q. At the time it was written.  
23 A. So I didn't know and we didn't know at  
24 USADA. We were aware of the Ping study at that time  
25 and for the reasons that I stated earlier, we doubted

1 AMY K. EICHNER, PH.D.  
2 A. Me personally, no. I believe there could  
3 be some backstory that he had other involvements with  
4 anti-doping in the past, but that was before my time  
5 and I just don't know.  
6 Q. And do you currently agree with Mr.  
7 Coody's comment that we just spoke about, quote, "the  
8 naturally-occurring," that DMAA is, quote,  
9 "naturally-occurring in geranium and other flower  
10 oils"?  
11 A. Well, we could not find evidence that it  
12 was. So if it is naturally occurring in geranium and  
13 other flower oils, we haven't seen evidence that brings  
14 us to the same conclusion.  
15 Q. Can you please flip to page 2, and that is  
16 GOV 7410, and please focus on the email that Dr. Moore  
17 sent to you. Have you seen this email?  
18 A. Uh-huh (affirmative).  
19 MR. KOONS: "Yes"?  
20 THE WITNESS: Yes, I'm sorry.  
21 Q. (By Mr. Marck) Again just for the record,  
22 who sent it?  
23 A. Robert Moore.  
24 Q. To who?  
25 A. To me and Gary Coody is copied.

1 AMY K. EICHNER, PH.D.  
2 Q. And the date, please?  
3 A. October 13th, 2010.  
4 Q. And this email continues on to the  
5 following page. Can you flip to the top of page 3 and  
6 there's a comment by Dr. Moore that DMAA is, quote,  
7 "found in many plants." At the time that you heard  
8 this, did you agree with it?  
9 A. Well, this was intriguing. I wanted to  
10 know more about which plants methylhexaneamine was  
11 found in because this is very important for how we  
12 advise athletes. So up to this point, we hadn't found  
13 any evidence that it was in plants, so it was very  
14 important for us to follow up on this.  
15 Q. Speaking of following up, can we flip to  
16 page 1. There's an email at the bottom of the page.  
17 Who sent that email?  
18 A. I did.  
19 Q. And who did you send it to?  
20 A. Robert Moore.  
21 Q. And the date please?  
22 A. October 13th, 2010.  
23 Q. You state that Dr. Moore's descriptions  
24 below, referring to his previous email, "help me to  
25 understand dietary ingredients and NDIs." What was

1 AMY K. EICHNER, PH.D.  
2 position?  
3 A. No.  
4 MR. SCOTT: Object as to form.  
5 Q. (By Mr. Marck) Do you know the FDA's basis  
6 for that position at this point in time?  
7 A. At this point in time, no. In this email  
8 chain, no.  
9 Q. Closer to the top of the page there's an  
10 email on November 29th from you to Dr. Moore. Do you  
11 see that one?  
12 A. Uh-huh (affirmative).  
13 Q. And did you send this email?  
14 A. Yes.  
15 Q. And sent it to Dr. Moore, correct?  
16 A. Yes.  
17 Q. What was the purpose of your email?  
18 A. Well, I can say here, "I'd like to know  
19 more about this process," referring to NDIs, which is  
20 the process for establishing a new dietary ingredient.  
21 And at this time, I also revealed that, "We have reason  
22 to argue that methylhexaneamine in fact is not in  
23 geranium oil," and this is based on our evaluation of  
24 the Ping paper.  
25 Q. When you say "our," do you mean your and

1 AMY K. EICHNER, PH.D.  
2 your understanding of these concepts prior to Dr.  
3 Moore's email?  
4 A. That's a hard question to answer because I  
5 was in such a learning stage at that time. I had read  
6 the FDA web page about dietary ingredients and dietary  
7 supplements, but it's one thing to read regulation and  
8 it's another thing to understand how it's applied. So  
9 I just had no idea about how it's transferred to like  
10 application.  
11 Q. Dr. Moore's responses to you helped fill  
12 in some blanks?  
13 A. Well, it must have. And if you want me to  
14 read in great detail, then I maybe could point out some  
15 examples.  
16 Q. We don't need to go there.  
17 A. Okay.  
18 Q. Otherwise we'll be here 'til tomorrow.  
19 Now the way these emails are set up, Dr. Moore seemed  
20 to have put in some comments directly into your email  
21 and do you see his comment at the bottom of the page  
22 that DMAA is found in the oil of many geraniums?  
23 A. It is found in the oil of many geraniums,  
24 yes.  
25 Q. Do you know why Dr. Moore took that

1 AMY K. EICHNER, PH.D.  
2 Dr. Bowers?  
3 A. Yeah.  
4 Q. Solely the two of you?  
5 A. I think so. You know, there are other  
6 people at USADA that may have weighed in at some point,  
7 but the majority of my communications and discussing  
8 all this was with Dr. Bowers.  
9 Q. You make a statement that, "Who at the FDA  
10 is in charge of NDIs? I'd like to know more about this  
11 process, and be sure that an NDI for methylhexaneamine  
12 doesn't on go unscrutinized." What did you mean by  
13 "unscrutinized"?  
14 A. Well, presumably there's a process in  
15 place where any new dietary ingredient is evaluated  
16 carefully and if we had information about its safety,  
17 then we would like to provide that information.  
18 Q. Meaning if it was part of a notice or  
19 comment period, you wanted to be sure your voice was  
20 heard?  
21 A. Yes.  
22 Q. I don't want to put words in your mouth  
23 but make sure I understood. The top email refers to  
24 someone named Dr. Daniel Levy. Do you remember if you  
25 actually did end up speaking to him?



1 AMY K. EICHNER, PH.D.  
 2 A. I probably did, but I don't recall him, I  
 3 don't recall any particular conversations with him.  
 4 Q. You can put that one to the side now.  
 5 Thank you.  
 6 (Exhibit 3 was marked)  
 7 (Attorneys conferring)  
 8 Q. (By Mr. Marck) USADA 7072, it's pretty  
 9 much the continuation of the previous email string that  
 10 we had.  
 11 A. Okay.  
 12 Q. You may be ready, but let's give Claude a  
 13 minute. Thank you?  
 14 MR. MARCK: And, Claude, let us know when  
 15 you've had a chance to get it.  
 16 MR. SCOTT: Okay.  
 17 Q. (By Mr. Marck) Dr. Eichner, if you could  
 18 look at the email that starts right at the bottom of  
 19 the page. It says, "From Amy Eichner." Do you see  
 20 that, follow all the way down to the bottom, goes on to  
 21 the next page?  
 22 A. Yes.  
 23 Q. You sent this email?  
 24 A. Yes.  
 25 Q. To Dan Levy?

1 AMY K. EICHNER, PH.D.  
 2 the current definition of a dietary ingredient, so if  
 3 it's not a plant or a constituent or an amino acid or  
 4 if it doesn't already fall into that dietary ingredient  
 5 category as written, then there's still an opportunity  
 6 for a supplement company to have a new ingredient  
 7 considered.  
 8 Q. (By Mr. Marck) And at this point in time,  
 9 it's safe to say that you believed that someone thought  
 10 an NDI was going to be required because they thought it  
 11 did not fall into the other bucket you just --  
 12 A. Probably. I could have come across blogs  
 13 of supplement companies discussions. I just don't  
 14 recall.  
 15 Q. And in the second paragraph, you state,  
 16 "We are conducting a 'definitive' study by extracting  
 17 the plant ourselves with Ikhlas Khan at Ole Miss."  
 18 What was going to make your study definitive?  
 19 A. That was my naive understanding of botany  
 20 at the time.  
 21 Q. Okay. Do you believe there can be a  
 22 definitive answer to this question?  
 23 A. I think --  
 24 MR. SCOTT: Object to form.  
 25 THE WITNESS: I think that you can

1 AMY K. EICHNER, PH.D.  
 2 A. Yes.  
 3 Q. And you copied Robert Moore?  
 4 A. Yes.  
 5 Q. And the date is December 1st, 2010?  
 6 A. Yes.  
 7 Q. Any reason to believe this email is not  
 8 authentic?  
 9 A. No.  
 10 Q. In the second paragraph, you say, "We are  
 11 conducting," I'm sorry, strike that. First paragraph,  
 12 you state, "I have a feeling someone will be submitting  
 13 an NDI for methylhexaneamine." Why did you have that  
 14 feeling?  
 15 A. I don't know.  
 16 Q. No recollection at all?  
 17 A. No. Probably because if it's a lucrative  
 18 or valuable ingredient, then the dietary supplement  
 19 industry, it would behoove them to go along with  
 20 regulations that require the notification of new  
 21 dietary ingredients.  
 22 Q. In what instance is an NDI required?  
 23 MR. SCOTT: Object as to form.  
 24 THE WITNESS: My understanding is that if  
 25 it is a dietary -- if it's something that doesn't meet

1 AMY K. EICHNER, PH.D.  
 2 definitely draw conclusions based on the limits of your  
 3 data in your paper and your conditions absolutely, but  
 4 as with all science, there could be something else out  
 5 there. There could be some other species that we  
 6 didn't test or something like that. So yes, I would  
 7 revise this.  
 8 Q. (By Mr. Marck) The use of the word  
 9 "definitive"?  
 10 A. Yes.  
 11 Q. This email is sent on December 1st, 2010.  
 12 By that date, you had decided definitively to go with  
 13 the study with Dr. Khan and Dr. ElSohly?  
 14 A. We were in conversations at that time. I  
 15 would have to actually refer back. I'm not really good  
 16 with dates, so I would have to refer back to the  
 17 Consulting Agreement. My recollection is that there is  
 18 some bandwidth of time which is significant between.  
 19 Q. Just let the record reflect that the  
 20 witness is looking at Exhibit Eichner 1.  
 21 A. Uh-huh (affirmative). So the agreement  
 22 was executed in April of 2011 and, yes, you're right,  
 23 so if this email is in December 1 of 2010, then we were  
 24 in conversations at that time discussing this issue,  
 25 but it was quite sometime before we formalized a

1 AMY K. EICHNER, PH.D.  
 2 research program.  
 3 Q. Flipping back to page 1 of this exhibit,  
 4 which is USADA 7072, there's an email from Daniel Levy  
 5 dated December 1st, 2010, do you see that one?  
 6 A. Yes.  
 7 Q. It was sent to yourself, Dr. Eichner, and  
 8 copied Robert Moore, correct?  
 9 A. Yes.  
 10 Q. Please read that. Have you reviewed that  
 11 one in detail already?  
 12 A. Yes, I have.  
 13 Q. Do you agree with Dr. Levy's statement  
 14 that is, quote, "Proving a negative, i.e. that no  
 15 variety ever expressed methylhexaneamine might be a  
 16 challenge"?  
 17 A. Yes.  
 18 Q. There's another email directly above it  
 19 from yourself to what I think is Lori Bestervelt; is  
 20 that correct?  
 21 A. Yes.  
 22 Q. What did you mean when you -- sorry, the  
 23 date of that email is December 1st, 2010, correct?  
 24 A. Yes.  
 25 Q. What did you mean when you said, "Looks

1 AMY K. EICHNER, PH.D.  
 2 sentence starting with "On the other hand"?  
 3 A. "On the other hand, I think they might be  
 4 held accountable for not performing a competent review  
 5 of the literature."  
 6 Q. Do you know what Dr. Bowers was referring  
 7 to?  
 8 A. Based on the context of the email, I'm  
 9 assuming that he's referring to the email from Dan Levy  
 10 that we just discussed.  
 11 Q. And do you agree that the FDA did not  
 12 conduct a competent review of the literature including  
 13 the Ping paper?  
 14 MR. SCOTT: Objection to form.  
 15 THE WITNESS: I don't know if that's what  
 16 was stated here. At the time because of all of the  
 17 problems that I stated earlier about the Ping paper, we  
 18 felt that was important that the FDA also was aware of  
 19 those issues. We did not know what the FDA process was  
 20 for evaluating the literature.  
 21 Q. (By Mr. Marck) Skipping down a little bit  
 22 further in the email to the second to the last  
 23 sentence, could you read that aloud as well?  
 24 A. "I would be careful about alerting the FDA  
 25 people too much."

1 AMY K. EICHNER, PH.D.  
 2 like an uphill battle"?  
 3 A. I meant that getting the FDA to understand  
 4 the limitations of the Ping study may be harder than we  
 5 originally thought.  
 6 Q. You can put that one to the side.  
 7 MR. MARCK: Claude, can you find USADA  
 8 7070? I think it might be a little easier because it's  
 9 the page before it. This is going to get marked as  
 10 Eichner 4.  
 11 (Exhibit 4 was marked)  
 12 MR. SCOTT: Got it.  
 13 Q. (By Mr. Marck) Dr. Eichner, take as much  
 14 time as you need to review it.  
 15 A. Okay.  
 16 Q. Flip to page 2, please. There's a single  
 17 email on this page, correct?  
 18 A. Yes.  
 19 Q. Who sent that email?  
 20 A. Larry Bowers.  
 21 Q. To who?  
 22 A. Me.  
 23 Q. And the date please?  
 24 A. December 1st, 2010.  
 25 Q. Can you please read aloud the fourth

1 AMY K. EICHNER, PH.D.  
 2 Q. Do you know what Mr. Bowers meant by that,  
 3 or Dr. Bowers I should say?  
 4 A. I don't. My guess is that working with a  
 5 regulatory agency, you want to be certain that the  
 6 statements you make are correct.  
 7 Q. Can you flip back to page 1. There's an  
 8 email about midway down the page; it starts with "On  
 9 December 1, 2010." It seems to be lacking a typical  
 10 email header. Do you believe this email was sent by  
 11 you?  
 12 MR. KOONS: Is this one followed by "6:16  
 13 p.m."?  
 14 MR. MARCK: Yes, thank you.  
 15 THE WITNESS: Yes, I think this was sent  
 16 by me.  
 17 Q. (By Mr. Marck) I can't do the who-sent  
 18 routine because it's lacking here, but you really have  
 19 no reason to believe that's not an email that you sent,  
 20 correct?  
 21 A. That is correct.  
 22 Q. Did you feel that the FDA was not being  
 23 responsive to your concerns?  
 24 A. I think that is going too far. At this  
 25 time, I didn't understand the FDA process. I was still

1 AMY K. EICHNER, PH.D.  
2 learning how all of this works. I did appreciate the  
3 fact that any decision that the FDA makes on anything  
4 has an impact both on public health safety and  
5 business. So I respected that.

6 However, my role at USADA was and  
7 continues to be to protect athletes. And on a daily  
8 basis, I was continuing to field questions about  
9 methylhexaneamine and geranium oil. So this was an  
10 important puzzle to solve.

11 Q. Did you feel like this was an urgent  
12 situation?

13 A. On behalf of athletes, yes, because a  
14 positive doping test can ruin the career of an athlete.

15 Q. Flipping to the email right at the top,  
16 who sent that one?

17 A. I did.

18 Q. To who?

19 A. Larry.

20 Q. And the last name?

21 A. Bowers.

22 Q. The date, please?

23 A. December 2nd, 2010.

24 Q. And you state, "I guess I felt like we had  
25 to be quick and these things take time." I guess

1 AMY K. EICHNER, PH.D.  
2 that's consistent with what you just said that you felt  
3 like you needed to move quickly?

4 A. On behalf of athletes.

5 Q. Put that one to the side.

6 MR. MARCK: Claude, we won't be using any  
7 of the new exhibits for a while just so you know.

8 MR. SCOTT: I'll keep them up anyway, so  
9 it won't take me so long to get through if you use some  
10 more.

11 MR. KOONS: Another hour, saying should we  
12 take a quick break for lunch?

13 MR. MARCK: Perfect.

14 (Break)

15 Q. (By Mr. Marck) I'd like to mark another  
16 exhibit, which I think will be Eichner --  
17 (Exhibit 5 was marked)

18 MR. MARCK: Claude, this document is Ole  
19 Miss 9567.

20 Q. (By Mr. Marck) Amy, Dr. Eichner, could you  
21 please review? Sorry, I see your first name in so many  
22 things.

23 A. It's okay. Okay.

24 Q. Did you send this email?

25 A. Yes.

1 AMY K. EICHNER, PH.D.

2 Q. To who?

3 A. Dr. Khan.

4 Q. And the date it was sent on?

5 A. October 13, 2010.

6 Q. Do you remember this email?

7 A. No.

8 Q. Do you believe this is your first  
9 communication with Dr. Khan?

10 A. It appears so. The context of the email  
11 makes sense.

12 Q. That's all with this one. I am going to  
13 mark Eichner 6. Please review.

14 MR. MARCK: Claude, it's Ole Miss 9800.  
15 (Exhibit 6 was marked)

16 Q. (By Mr. Marck) If you could please review  
17 that and let me know when you've had a chance.

18 A. Okay.

19 Q. The email that begins with "Dear Dr.  
20 Khan," I think there's another one of these emails that  
21 seems to be missing a header. Was this email sent by  
22 you?

23 A. It appears so.

24 Q. And who do you believe you sent it to?

25 A. Dr. Khan.

1 AMY K. EICHNER, PH.D.

2 Q. Do you have any idea what date it was sent  
3 on?

4 A. I don't.

5 Q. Any idea why the email doesn't have a  
6 date?

7 A. No.

8 Q. Approximately when it was sent?

9 A. If I had to guess, and this is a guess, it  
10 would have been around, probably around the same time  
11 as initially reaching out to him, but the truth is I  
12 don't know.

13 Q. What is the interesting project you're  
14 referring to?

15 A. Here I reference it involves geranium oil  
16 and the claim that DMAA or methylhexaneamine is a  
17 natural constituent.

18 Q. Why would it be better discussed on the  
19 phone?

20 A. Because otherwise you get very long in the  
21 tooth.

22 Q. Simple enough. You can put that one to  
23 the side as well.

24 MR. MARCK: We will mark another exhibit,  
25 Eichner 7. Claude, this is Ole Miss 10794.

1 AMY K. EICHNER, PH.D.  
 2 (Exhibit 7 was marked)  
 3 THE WITNESS: Okay.  
 4 Q. (By Mr. Marck) All right. Was this email  
 5 sent by you?  
 6 A. Yes.  
 7 Q. To who?  
 8 A. Dr. Khan.  
 9 Q. And the date, please?  
 10 A. November 11, 2010.  
 11 Q. Do you remember this email?  
 12 A. No.  
 13 Q. You use the words "pretty keen" to  
 14 describe the mood. I think we've kind of discussed,  
 15 but what really prompted that urgency?  
 16 A. We were very concerned about all of the  
 17 athletes testing positive for methylhexaneamine at this  
 18 time.  
 19 Q. Was that the whole mess you were referring  
 20 to?  
 21 A. Yes, and the lack of any conclusive  
 22 evidence about where it was coming from.  
 23 Q. And do you remember the conference you  
 24 were referring to in the second paragraph? Do you  
 25 think it's the one we were discussing earlier?

1 AMY K. EICHNER, PH.D.  
 2 How many athletes were testing positive for DMAA in a  
 3 given year just to give an idea of the scope of the  
 4 issue?  
 5 A. That information is all available on  
 6 websites and also in WADA annual documents and/or  
 7 report documents. I don't know, but I can say that it  
 8 was enough that it was odd. It was very odd for so  
 9 many athletes to test positive for the same substance.  
 10 It was a spike in athletes testing positive that was  
 11 unusual.  
 12 Q. Is it fair to say that's what prompted  
 13 such urgency on your behalf and USADA's behalf?  
 14 A. Yes, that would be fair to say that.  
 15 Q. Why don't we put this one to the side as  
 16 well. I'm going to mark --  
 17 MR. SCOTT: Are you going to let her  
 18 finish her answer about what the serious issues that  
 19 she was seeing in the dietary supplements world? You  
 20 cut her off and you told her she could finish it.  
 21 MR. MARCK: Sorry, I thought I had come to  
 22 an agreement about what she meant by that.  
 23 Q. (By Mr. Marck) But if you'd like to  
 24 continue, Doctor, go ahead.  
 25 A. Yeah, that was one serious issue, but as

1 AMY K. EICHNER, PH.D.  
 2 A. I've been to -- yes, the Ole Miss  
 3 botanical conference, that's how I refer to it. I know  
 4 it has a technical name. I've been to it at least  
 5 twice.  
 6 Q. Do you remember the years you went?  
 7 A. I don't.  
 8 Q. Approximately?  
 9 A. Well, it appears I went this year  
 10 upcoming, so I don't know if that would have been in  
 11 2010 or 2011. And I know I went subsequently some  
 12 other year, but I just don't remember.  
 13 Q. Okay. I don't want to have you answer if  
 14 you don't know the answer. One of the sentences says,  
 15 refers to "serious issues happening in the dietary  
 16 supplement arena with regards to botanicals." Can you  
 17 elaborate on what you meant by "serious issues"?  
 18 A. Yes, one of the issues was that dietary  
 19 supplements companies were selling methylhexaneamine in  
 20 their products and it was labeled as geranium oil on  
 21 the label. So the serious issue for us, again, was, is  
 22 methylhexaneamine in geranium oil. Do we need to tell  
 23 athletes that they can't use geranium oil. That was  
 24 one issue.  
 25 Q. Stop you right there and we'll continue.

1 AMY K. EICHNER, PH.D.  
 2 always, we were aware for many years that dietary  
 3 supplements continue to be sold with illegal steroids  
 4 and other illegal ingredients, controlled substances.  
 5 Q. Thank you. I didn't mean to cut you off.  
 6 I thought I had gotten there a different route. I'm  
 7 going to mark now Eichner 8. This is Ole Miss 9792.  
 8 (Exhibit 8 was marked)  
 9 Q. (By Mr. Marck) Skipping to the second  
 10 page, which is marked 9793, there's an email that  
 11 begins that page. Who sent that email?  
 12 A. Down the middle of the page, I sent an  
 13 email to Dr. Khan and Dr. Bowers.  
 14 Q. And the date, please?  
 15 A. January 11, 2011.  
 16 Q. You refer to a formalized process for such  
 17 research. I know that we discussed previously the  
 18 process that USADA does. Does this email give you any  
 19 more background on what that formalized process is?  
 20 A. You know, it's the -- there's a formalized  
 21 process for setting up vendors for various things. I  
 22 said a formalized process for such research, but now  
 23 having been at USADA for many years and in hindsight,  
 24 I -- the appropriate thing to say would have been we  
 25 have a formalized process for establishing contracts

1 AMY K. EICHNER, PH.D.  
 2 with vendors.  
 3 Q. And why would USADA need Dr. Khan and PSI  
 4 to enter into a Non-Disclosure Agreement regarding the  
 5 proposed research?  
 6 A. As far as I'm aware, that's just standard  
 7 operating procedure for USADA.  
 8 Q. So these are typically obtained for any  
 9 research that they're going to be doing?  
 10 A. That I don't know.  
 11 Q. You can turn to page 1. That's marked Ole  
 12 Miss 9792. There's an email at the bottom of the page  
 13 sent from a Dr. ElSohly to you on January 2011. Do you  
 14 agree?  
 15 A. Yes.  
 16 Q. And in point number 2, Dr. ElSohly  
 17 proposed to conduct, quote, "an abbreviated validation  
 18 of the analytical method." Do you know what he means  
 19 by "abbreviated"?  
 20 A. No.  
 21 Q. Is researching commission normally subject  
 22 to an abbreviated validation?  
 23 A. I don't know.  
 24 Q. Please take a look at the email  
 25 immediately above that.

1 AMY K. EICHNER, PH.D.  
 2 A. Uh-huh (affirmative).  
 3 Q. Who sent that?  
 4 A. I did to Dr. ElSohly, Dr. Khan and Dr.  
 5 Bowers on January 14th, 2011.  
 6 Q. Thank you. What made you not want to test  
 7 commercially available geranium oils?  
 8 A. Our focus was really on authenticated  
 9 plant material. If we felt that it was very important  
 10 to authenticate the plant material because we wanted to  
 11 be sure that we were dealing with Pelargonium  
 12 graveolens and not some other species.  
 13 Q. Did you have reason to believe that the  
 14 oils were mixed?  
 15 A. Well, we wouldn't be in a position to  
 16 verify whether or not they were.  
 17 Q. Do you know anything about that industry  
 18 and how the products are typically created or mixed  
 19 together?  
 20 A. Some -- well, my understanding is that  
 21 they can be, but we felt it was important that we  
 22 really knew what our starting material was because the  
 23 Ping paper specified Pelargonium graveolens, so we  
 24 wanted to be sure that we were dealing with Pelargonium  
 25 graveolens.

1 AMY K. EICHNER, PH.D.  
 2 Q. Are all variations of that species the  
 3 same?  
 4 A. I don't know.  
 5 MR. SCOTT: Object to the form.  
 6 Q. (By Mr. Marck) We can move on from this  
 7 one.  
 8 MR. MARCK: Claude, this is marked ElSohly  
 9 4346.  
 10 (Exhibit 9 was marked)  
 11 MR. SCOTT: The numbers again?  
 12 MR. MARCK: ElSohly 4346.  
 13 MR. SCOTT: Thank you  
 14 MR. MARCK: And it runs through 4362.  
 15 MR. SCOTT: Got it. Thank you.  
 16 THE WITNESS: Okay.  
 17 Q. (By Mr. Marck) Referring to the email at  
 18 the top of the first page, was this email sent to you?  
 19 A. Yes, from Dr. ElSohly on April 6, 2011.  
 20 Q. Do you remember receiving this email?  
 21 A. No.  
 22 Q. Can you please read aloud the second line  
 23 of Dr. ElSohly's email?  
 24 A. "Attached please find the results we have  
 25 so far and let me know if you need any additional

1 AMY K. EICHNER, PH.D.  
 2 information."  
 3 Q. And can you please flip to page 6, which  
 4 is 4351, and the heading that says "Conclusion," can  
 5 you please read that first paragraph?  
 6 A. "A sensitive and reliable CG/MS procedure  
 7 was developed for the analysis of DMP in Pelargonium  
 8 oil and leaves. None of the oils or the plant material  
 9 analyzed showed any detectable level of DMP, less than  
 10 one part per million."  
 11 Q. Do you remember receiving this information  
 12 from Dr. ElSohly?  
 13 A. Not in particular, but absolutely there  
 14 were documents going back and forth, yes.  
 15 Q. What did you think of this conclusion?  
 16 A. I just accepted it.  
 17 Q. What was your reaction to it?  
 18 MR. SCOTT: Objection to form.  
 19 THE WITNESS: I didn't have a strong  
 20 reaction either than it confirmed that what we felt  
 21 that the Ping study also did not reliably detect  
 22 methylhexaneamine in geranium oil and this is  
 23 consistent with that.  
 24 Q. (By Mr. Marck) It says that Pelargonium  
 25 oil and leaves were tested, correct?



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1 AMY K. EICHNER, PH.D.  
 2 A. Uh-huh (affirmative).  
 3 Q. Is there a reason that oil was added?  
 4 A. I believe that was the oil that was  
 5 extracted from the plant.  
 6 Q. Can you please flip back to the first  
 7 page?  
 8 A. Yes.  
 9 Q. Again, what time was this email sent to  
 10 you?  
 11 A. 4:31 p.m.  
 12 Q. We can put this one to side. We might  
 13 flip back to this one, so just keep it somewhat handy,  
 14 I guess.  
 15 (Exhibit 10 was marked)  
 16 THE WITNESS: Before we move on, so do I  
 17 draw the conclusion then from your last statement that  
 18 this was attached to this particular email from 4:31  
 19 p.m..  
 20 Q. (By Mr. Marck) Let me ask you that  
 21 question. Do you have any reason to believe that it  
 22 wasn't?  
 23 A. I have no idea what it was attached to,  
 24 but I'm assuming since you provided this email chain  
 25 and you've made a note of the time that I should

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1 AMY K. EICHNER, PH.D.  
 2 discussed before who worked at the FDA?  
 3 A. Yes.  
 4 Q. And who you communicated with back in  
 5 October of 2010 timeframe?  
 6 A. Yes.  
 7 Q. Please read the second and third sentences  
 8 of the email aloud.  
 9 A. "We have scoured the literature, and we  
 10 have also conducted testing on the plants themselves  
 11 and on commercially available geranium oils. We have  
 12 failed to find a shred of approximate evidence to  
 13 support methylhexaneamine naturally occurs in geranium  
 14 oil."  
 15 Q. What date was this email sent on again?  
 16 A. April 6, 2011.  
 17 Q. Is it safe to say you were very eager to  
 18 share the preliminary results of the study with the  
 19 FDA?  
 20 A. We are always eager to share important  
 21 information about safety with the FDA.  
 22 Q. Prior to this April 6, 2011 email, do you  
 23 believe you had any communications with Dr. Moore or  
 24 anyone else at the FDA since you had previously been in  
 25 communication with them in October?

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1 AMY K. EICHNER, PH.D.  
 2 conclude that this was provided to us at that time.  
 3 Q. The email at the top of the chain says,  
 4 "Attachments: DMP Preliminary Report.docx."?  
 5 A. Yes.  
 6 Q. And "Chromatograms, pdf"?  
 7 A. Yes. Yes. Okay.  
 8 Q. So just to be clear for the record, you  
 9 have no reason to believe that's not the attachment?  
 10 A. No, I just wanted to understand.  
 11 Q. That's fine. I want everyone to be on the  
 12 same page. And then when you've had a chance to review  
 13 that one, just let me know.  
 14 MR. KOONS: What number did we mark this  
 15 as?  
 16 MR. MARCK: That's Eichner 10.  
 17 MR. SCOTT: Document number?  
 18 MR. MARCK: GOV 7430. Sorry, Claude, I  
 19 thought I said that.  
 20 THE WITNESS: Okay.  
 21 Q. (By Mr. Marck) And please review the email  
 22 at the bottom of the first page. And was this email  
 23 sent by you?  
 24 A. Yes, to Robert Moore on April 6, 2011.  
 25 Q. And this is the same Robert Moore that we

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1 AMY K. EICHNER, PH.D.  
 2 A. I don't know. Possibly.  
 3 Q. One last question. It says that, "We have  
 4 conducted testing on the plants themselves and on  
 5 commercially available geranium oils." We previously  
 6 discussed that. I guess the preliminary idea was not  
 7 to test geranium oils or commercially available ones?  
 8 A. That's correct.  
 9 Q. Did something change in the interim?  
 10 A. It could have. I would have to look back  
 11 at the ElSohly paper to make see if we ended testing  
 12 commercially available oils. I do know that NSF  
 13 International at that time was testing commercially  
 14 available geranium oils in parallel.  
 15 Q. What does the phrase "shred of evidence"  
 16 mean?  
 17 A. We just could not find valid solid  
 18 evidence that we felt we could rely on conclusively.  
 19 Q. I mean in the sense "valid" means what?  
 20 A. That we were certain that the conclusions  
 21 were accurate.  
 22 Q. Can you flip back to the previous exhibit,  
 23 which would be Eichner 9? Do you see the email that is  
 24 dated March 6, 2011 at 3:33 p.m.?  
 25 MR. KOONS: Which page are you on?

1 AMY K. EICHNER, PH.D.  
 2 MR. MARCK: Sorry, it's on page 2.  
 3 MR. KOONS: March what?  
 4 MR. MARCK: March 6th, 2011, says "at 3:33  
 5 p.m." I think this is another email that's missing a  
 6 header.  
 7 Q. (By Mr. Marck) Do you see that one, Dr.  
 8 Eichner?  
 9 A. Yes.  
 10 Q. Are you the sender and Dr. Khan the  
 11 recipient?  
 12 A. As far as I'm aware, yes.  
 13 Q. What important implications for the  
 14 supplement industry did you think that the USADA study  
 15 would have?  
 16 A. Well, if it turns out that  
 17 methylhexaneamine was not a constituent of geranium  
 18 oil, it was not in geranium oil, then the supplement  
 19 industry would have to label their dietary supplements  
 20 with methylhexaneamine. They wouldn't be able to label  
 21 it as geranium oil. They're only allowed to label it  
 22 geranium oil if there's actually geranium oil in the  
 23 product.  
 24 Q. After you received the preliminary results  
 25 that you shared with Dr. Bowers, what reaction were you

1 AMY K. EICHNER, PH.D.  
 2 expecting from the FDA?  
 3 A. Well, I guess we --  
 4 MR. SCOTT: Object as to form. She shared  
 5 the results with Dr. Bowers?  
 6 Q. (By Mr. Marck) Excuse me, not Dr. Bowers,  
 7 Dr. Moore. Excuse me.  
 8 MR. SCOTT: All right.  
 9 THE WITNESS: Repeat the question?  
 10 MR. MARCK: Can you read it back.  
 11 (Attorneys conferring)  
 12 MR. KOONS: I'm looking at Exhibit 9.  
 13 That was sent at 4:31 p.m.  
 14 MR. MARCK: Let's go off the record real  
 15 quick.  
 16 (Discussion off the record)  
 17 Q. (By Mr. Marck) Back on the record, when  
 18 you received the results from the preliminary results  
 19 from Dr. Khan and Dr. ElSohly, and you shared them with  
 20 the FDA, what reaction did you expect from the FDA?  
 21 MR. SCOTT: Object as to form, assumes  
 22 facts not in evidence. I don't think you got her at  
 23 the moment saying she shared the results other than  
 24 what it says in the email. Are you implying she gave  
 25 them something else? I'm not trying to be difficult.

1 AMY K. EICHNER, PH.D.  
 2 It's a little confused here.  
 3 MR. MARCK: I hear you, Claude. Let me  
 4 rephrase it again.  
 5 Q. (By Mr. Marck) After you sent that email  
 6 to the FDA to Dr. Bowers --  
 7 A. Mr. Moore?  
 8 Q. Thank you. Sorry. I'm having a --  
 9 A. So just to be clear, I sent an email to  
 10 Robert Moore on April 6th, 2011 at 3:52 and I said,  
 11 "We have failed to find a shred of evidence to support  
 12 methylhexaneamine naturally occurs in geranium oil."  
 13 And your question is, what do I expect that their  
 14 reaction would be?  
 15 Q. Correct. What did you expect the FDA's  
 16 reaction to be to that email?  
 17 A. We didn't know.  
 18 Q. Okay. Fair enough.  
 19 MR. MARCK: This is going to be marked  
 20 Eichner 11. I think you're familiar with this.  
 21 (Exhibit 11 was marked)  
 22 MR. MARCK: GOV 4346. Sorry, that was a  
 23 typo. It's Government 27840, Claude. It is the 2012  
 24 article with Dr. ElSohly, Khan and Eichner and Bowers.  
 25 A. And Gul, Murphy.

1 AMY K. EICHNER, PH.D.  
 2 Q. We're just trying to get him to where we  
 3 need to be.  
 4 A. Understood.  
 5 Q. And review that and let me know if you're  
 6 ready to go.  
 7 MR. SCOTT: Exhibit 11?  
 8 MR. KOONS: Yes.  
 9 MR. MARCK: Correct.  
 10 Q. (By Mr. Marck) Are you familiar with the  
 11 attached?  
 12 A. Yes.  
 13 Q. What's the title of this article?  
 14 A. "Pelargonium Oil and Methyl Hexaneamine:  
 15 Analytical Approaches Supporting the Absence of  
 16 Methylhexaneamine in Authenticated Pelargonium  
 17 Graveolens Plant Material and Oil."  
 18 Q. Do you know who wrote that title?  
 19 A. No.  
 20 Q. What journal was this article printed in?  
 21 A. Journal of Analytical Toxicology.  
 22 Q. Do you know if this is the journal your  
 23 co-authors attempted to get this published in?  
 24 A. I don't remember.  
 25 Q. Who is Waseem Gul?



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1 AMY K. EICHNER, PH.D.  
 2 A. A colleague of ElSohly.  
 3 Q. Have you ever met him in person?  
 4 A. I don't think so.  
 5 Q. Have you ever communicated with him  
 6 directly?  
 7 A. Probably during this time when we were  
 8 writing the manuscript.  
 9 Q. Do you know what his role was in the  
 10 study?  
 11 A. I don't know. I believe he was an  
 12 analyst.  
 13 Q. And do you know Kareem ElSohly?  
 14 A. No.  
 15 Q. Do you know Timothy Murphy?  
 16 A. I don't know any of the other authors  
 17 aside from I only know Dr. Khan, Mahmoud ElSohly and  
 18 Dr. Bowers.  
 19 Q. Can you please flip to the last page,  
 20 which is marked GOV 2784. I'm sorry, 27854. Can you  
 21 read the Acknowledgments out loud?  
 22 MR. SCOTT: 854, okay. I thought you said  
 23 "the last page." I'm sorry.  
 24 MR. KOONS: That is the last page.  
 25 MR. SCOTT: The one I've got is 27864.

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1 AMY K. EICHNER, PH.D.  
 2 read the second sentence beginning with "none of."  
 3 A. "None of the analyzed oils or the plant  
 4 material (young and mature, fresh and dried leaves and  
 5 stems) showed any detectable level of MHA," less than,  
 6 in parentheses, (less than 0.1 parts per million by  
 7 GC-MS, less than 2.5 parts per billion by LC-MS-MS and  
 8 10 parts per billion by the high resolution  
 9 LC-QTOF-MS)."  
 10 Q. Do you have any idea who wrote that  
 11 sentence?  
 12 A. No.  
 13 Q. Who did the preliminary drafting of this  
 14 paper? Sorry primary, not preliminary.  
 15 A. My understanding is ElSohly and Khan's  
 16 group drafted the results and methods. They may have  
 17 also drafted other areas, but I know that my role in  
 18 this article was drafting parts of the introduction and  
 19 providing context in the dietary supplements industry  
 20 like, you know, how something becomes a dietary  
 21 supplements.  
 22 So I don't recall who did the first draft  
 23 that we then called this is the first draft.  
 24 Q. Gotcha. Were you involved in the actual  
 25 testing at all?

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1 AMY K. EICHNER, PH.D.  
 2 MR. MARCK: I'm not going to use those  
 3 pages so . . .  
 4 MR. SCOTT: Okay, 854.  
 5 MR. MARCK: Correct.  
 6 MR. SCOTT: So the exhibit is not  
 7 complete?  
 8 MR. MARCK: Are you objecting to it being  
 9 not complete?  
 10 MR. SCOTT: I'm asking a question because  
 11 I'm not exactly sure what's been marked to go in right  
 12 now.  
 13 MR. MARCK: I marked 27840 through 27854.  
 14 MR. SCOTT: Okay.  
 15 Q. (By Mr. Marck) And you can go ahead and  
 16 please read the Acknowledgments out loud.  
 17 A. "This project was supported in part by the  
 18 U.S. Anti-Doping Agency, Colorado Springs, Colorado,  
 19 U.S.A."  
 20 Q. Do you know what portion of the funding  
 21 was not provided by USADA?  
 22 A. No.  
 23 Q. And could you please flip to the previous  
 24 page, which is page 14 of the article, Bates stamped  
 25 Government 27853. From the Conclusion section, please

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1 AMY K. EICHNER, PH.D.  
 2 A. No.  
 3 Q. Do you know where the testing was  
 4 performed?  
 5 A. As far as I am aware, it was all performed  
 6 at Ole Miss at the PSI, but I don't know.  
 7 Q. Did you ever visit PSI or Dr. Khan or  
 8 ElSohly's labs while the study was being conducted?  
 9 A. No.  
 10 Q. During the course of the time that the  
 11 study was being conducted, how often were you in  
 12 contact with Drs. Khan and Dr. ElSohly?  
 13 A. It's hard to say. I feel like for a large  
 14 part of the study we just let them get on with their  
 15 work and we didn't have a lot of communications. I  
 16 remember there were a couple of email correspondences  
 17 and phone conferences, but I don't know exactly how  
 18 often.  
 19 Q. Who is Edward -- I'm going to screw this  
 20 name up -- Wyszumiala? Does that ring a bell for you?  
 21 A. That was a pretty good pronunciation.  
 22 Q. Okay.  
 23 A. I know him. He was at the NSF  
 24 International at that time.  
 25 (Exhibit 12 was marked)

1 AMY K. EICHNER, PH.D.  
 2 MR. MARCK: Claude, these are marked  
 3 ElSohly 4318.  
 4 Q. (By Mr. Marck) Can you flip to page 3,  
 5 which is marked ElSohly 4320?  
 6 A. Yes.  
 7 Q. And there's an email at the bottom of the  
 8 page and was this email sent by you? Sorry, sent to  
 9 you?  
 10 A. Yes, from Ed Wyszumiala on May 27, 2011.  
 11 Q. And it continues onto the fourth page.  
 12 There's a sentence starting with "FYI." Can you please  
 13 read that into the record?  
 14 A. "AHPA mentioned to me that they talked  
 15 with a lab that tested geranium and found  
 16 methylhexaneamine in it."  
 17 Q. And what is AHPA again?  
 18 A. That must be the American Herbal Products  
 19 Association, one of the trade associations.  
 20 Q. Do you know the lab that Edward was  
 21 referring to?  
 22 A. No.  
 23 Q. Do you know it now?  
 24 A. No. Well, no. In follow-up emails if it  
 25 was disclosed to me, that's a possibility, but I just

1 AMY K. EICHNER, PH.D.  
 2 MR. SCOTT: Object as to form.  
 3 THE WITNESS: No. That was not my  
 4 reaction.  
 5 Q. (By Mr. Marck) So you weren't referring to  
 6 the study that was being discussed in the prior email  
 7 when you said that?  
 8 A. So my concern was if there is a report of  
 9 methylhexaneamine in geranium oil, that we need to  
 10 follow that up and we need to find out who it was, who  
 11 did the work, we need to see the data and we need to  
 12 see if we can replicate it.  
 13 Q. Can we flip to page 2, which is marked  
 14 ElSohly 4319, and the email in the middle of the page  
 15 from yourself to Dr. Khan on May 27, 2011; is that  
 16 correct?  
 17 A. Yes.  
 18 Q. Do you have any reason to believe this  
 19 email is not --  
 20 A. No.  
 21 Q. -- genuine. We've already discussed what  
 22 AHPA is. Please read the second paragraph beginning  
 23 with, "I think."  
 24 A. "I think we're going to have to really  
 25 lobby the FDA to rule on this once and for all, and

1 AMY K. EICHNER, PH.D.  
 2 don't . . .  
 3 Q. Remember it now?  
 4 A. I just don't know labs very well.  
 5 Q. Okay. Let's move up to your responsive  
 6 email, which I think begins on the middle of page 3,  
 7 ElSohly 4320. Was this email sent by you?  
 8 A. Yes, on Friday May 27th at 2011 to Ed  
 9 Wyszumiala and Lori Bestervelt.  
 10 Q. And you state a line, or you wrote, excuse  
 11 me, "If you say something enough, lies become the  
 12 truth." What lies are you referring to?  
 13 A. Well, at that time because we couldn't  
 14 find any evidence that methylhexaneamine was in  
 15 geranium oil and in our view the Ping paper was  
 16 invalidated and dietary supplements companies continued  
 17 to refer to the Ping paper, at least on websites and in  
 18 blogs as valid data for the presence of  
 19 methylhexaneamine in geranium oil, that was the  
 20 misinformation that I was referring to.  
 21 Q. Is it fair to say that your first reaction  
 22 to being informed of a lab finding results contrary to  
 23 the ones that you and Dr. ElSohly had reached, that you  
 24 would think that they were lies?  
 25 MR. KOONS: Objection, form.

1 AMY K. EICHNER, PH.D.  
 2 your reputation might be a critical factor here.  
 3 Q. What did you mean by "rule on this once  
 4 and for all, banning DMAA?"  
 5 A. No, providing clarity on, A, whether  
 6 methylhexaneamine is in geranium oil, and, B, whether  
 7 it is a legitimate dietary ingredient.  
 8 Q. You also said, "I don't want the trade  
 9 associations writing the rules here." Which trade  
 10 associations are you referring to?  
 11 A. Any trade association. And I have that  
 12 view because the trade associations don't necessarily  
 13 have consumers' best interest at heart because that's  
 14 not their job. That's the FDA's job.  
 15 Q. You also speak about the importance and  
 16 implications of our paper. Strike that. I think we've  
 17 already discussed it enough. This email was sent on  
 18 May 27th, 2011, correct?  
 19 A. Yes.  
 20 Q. Were the results of the study finalized by  
 21 that point in time?  
 22 A. I don't remember.  
 23 Q. Please flip to page 1. There's an email  
 24 at the bottom of the page from Dr. ElSohly sent to you,  
 25 correct?

1 AMY K. EICHNER, PH.D.  
2 A. Yes, on May 27th, 2011.  
3 Q. Thank you. Do you remember this email?  
4 A. Not in particular.  
5 Q. It continues over onto page 2, and please  
6 read the sentence beginning with, quote, "The LC/MS/MS  
7 method."  
8 A. "The LC/MS/MS method is 1000 times more  
9 sensitive than the GC/MS method."  
10 Q. Continue?  
11 A. "We analyzed the samples you just sent to  
12 me by the LC/MS/MS method and they do continue low  
13 levels of DMP in the nanogram per mL range."  
14 Q. Now, which samples had you sent?  
15 A. I don't remember, but perhaps those are  
16 commercially available samples. I just don't know.  
17 Q. Now, does this indicate that DMAA was  
18 detected during the study?  
19 A. I don't know. That would require the  
20 expertise of Dr. ElSohly or Dr. Khan.  
21 Q. But the statement they do contain low  
22 levels of DMP, do you understand Dr. ElSohly to be  
23 referring to DMAA?  
24 A. Yes.  
25 Q. When you're saying that?

1 AMY K. EICHNER, PH.D.  
2 this period of time?  
3 A. Possibly, but if he was my primary person  
4 that I was communicating with at the time, I probably  
5 would have communicated directly with him.  
6 Q. And let's flip up to your responsive  
7 email, which is -- did you send that on May 30th, 2011?  
8 A. Yes.  
9 Q. And the recipient's Mahmoud ElSohly?  
10 A. And Dr. Bowers, Dr. Khan, Dr. Gul.  
11 Q. What did you mean by "measurable level"?  
12 A. I would have meant that if it was detected  
13 at a level that you could be certain that your  
14 measurement was correct.  
15 Q. Do you know what the level that was chosen  
16 to be reported in the study ultimately?  
17 A. I'm sure it's reported in the study, but I  
18 don't recall offhand.  
19 Q. Do you know whose decision it was to  
20 determine what the appropriate level of detection was?  
21 A. No.  
22 Q. Do you remember having any discussions  
23 with anyone about that?  
24 A. I'm sure it was discussed and I may have  
25 been present, but as I'm not a chemist and much of the

1 AMY K. EICHNER, PH.D.  
2 A. Yes.  
3 Q. And he does say that these samples do  
4 contain low levels of DMAA, correct?  
5 A. Yes.  
6 Q. Were these findings reflected in the  
7 resulting paper?  
8 A. I don't remember.  
9 Q. Do you have any idea whether these  
10 findings were reflected in the supplemental materials  
11 for the paper?  
12 A. I don't know.  
13 MR. MARCK: Sorry, Claude, did you have an  
14 objection?  
15 MR. SCOTT: Yes, as to form.  
16 Q. (By Mr. Marck) This detection of DMAA  
17 arose after you had emailed Dr. Moore at the FDA on  
18 April 6th and told him that the study had failed to  
19 detect DMAA. How long did it take you to share these  
20 results with the FDA?  
21 A. I don't know.  
22 Q. Did you share these results with the FDA?  
23 A. I don't remember.  
24 Q. Besides Dr. Moore, is there anyone else at  
25 the FDA that you would have been in contact with during

1 AMY K. EICHNER, PH.D.  
2 mass spec data is Greek to me, I just formed no part of  
3 the analysis.  
4 Q. Can you move to the email at the top of  
5 the page. Who sent that?  
6 A. Dr. ElSohly to myself and Dr. Bowers and  
7 Dr. Khan, Waseem Gul were copied.  
8 Q. And June 1st, 2011?  
9 A. Correct.  
10 Q. Dr. ElSohly is stating that his lab is  
11 able to detect DMAA in some samples but it's in the  
12 parts per billion range. Again, were these results  
13 included in the final published paper?  
14 A. I don't know.  
15 MR. SCOTT: Objection to form.  
16 Q. (By Mr. Marck) Were they disclosed in  
17 supplemental data?  
18 A. I don't know.  
19 Q. Do you know the level of detection for the  
20 LC/MS/MS method that was in the paper?  
21 A. No.  
22 Q. Would it help if you looked back at the  
23 exhibit?  
24 A. Sure. And I'm not trying to be difficult,  
25 I just -- I don't -- I'm not an aspect person, and I'm

1 AMY K. EICHNER, PH.D.  
 2 not a good person to ask --  
 3 Q. That's fine.  
 4 A. -- about these types of questions, but  
 5 what would you like me to look at?  
 6 Q. Flip to the Conclusion on page 14 of what  
 7 is Eichner 11.  
 8 A. Okay.  
 9 Q. And the part that I had you read last  
 10 time, could you read that where it starts with, "showed  
 11 any detectable level of MHA"?  
 12 A. The whole sentence or would you just like  
 13 me to read the --  
 14 Q. Do the whole sentence for the record.  
 15 A. Okay. "None of the analyzed oils or the  
 16 plant material (young and mature, fresh and dried  
 17 leaves and stems) showed any detectable level MHA (less  
 18 than 0.1 part per million by GC-MS, less than 2.5 parts  
 19 per billion by LC-MS-MS and 10 parts per billion by the  
 20 high resolution LC-QTOF)."  
 21 Q. Thank you. You can put that back to the  
 22 side. But do you agree that for the LC-MS-MS method,  
 23 the limited section was 2.5 parts per billion?  
 24 A. 2.5 parts per billion by LC-MS-MS, yes.  
 25 Q. Do you have any idea if the test results

1 AMY K. EICHNER, PH.D.  
 2 2011.  
 3 Q. Do you remember this email?  
 4 A. I don't have any particular memories of  
 5 this particular one.  
 6 Q. And in this email, Dr. ElSohly is  
 7 discussing the limited detection regarding the LC-MS-MS  
 8 testing method, correct?  
 9 A. That is correct.  
 10 Q. Do you know if this was the point during  
 11 the study in the drafting of the paper generally where  
 12 you as a group came to the conclusion that you cannot  
 13 or you need to -- strike that. Sorry.  
 14 Was this the point during the study that  
 15 you decided that you needed to adopt the language or  
 16 the nomenclature that cannot detect within a specified  
 17 limit?  
 18 A. I don't know.  
 19 MR. SCOTT: Object to form.  
 20 Q. (By Mr. Marck) Did the fact that you  
 21 actually needed to use the "could not detect within a  
 22 certain limit" language or proviso disappoint you?  
 23 A. No.  
 24 Q. Would you like to have been able to make a  
 25 more declarative statement that DMAA was not present

1 AMY K. EICHNER, PH.D.  
 2 that Dr. ElSohly was referring to were above or below  
 3 that level?  
 4 A. I don't recall and I wasn't a part of the  
 5 analysis.  
 6 MR. MARCK: I think right now is a perfect  
 7 time to take a lunch break.  
 8 (Break)  
 9 Q. (By Mr. Marck) I'm going to mark exhibit  
 10 Eichner 13.  
 11 (Exhibit 13 was marked).  
 12 Q. (By Mr. Marck) Please review that.  
 13 MR. SCOTT: What is the document number?  
 14 MR. MARCK: ElSohly 4330.  
 15 MR. SCOTT: Okay. Thank you.  
 16 THE WITNESS: Okay.  
 17 Q. (By Mr. Marck) All right. Can you please  
 18 focus on the email that's at the beginning, middle of  
 19 the top of page 1? It's actually the second email  
 20 down. Do you know, can you tell me who sent that?  
 21 A. Dr. Bowers to Dr. ElSohly.  
 22 Q. Sorry, I mean the second one down from the  
 23 top, the one that starts --  
 24 A. Oh, yes, from Dr. ElSohly to Dr. Bowers  
 25 and myself and Ikhlas Khan and Waseem Gul on June 1st,

1 AMY K. EICHNER, PH.D.  
 2 geraniums or --  
 3 A. That's always cleaner, but science is not  
 4 always clean. Our primary concern was being accurate.  
 5 Q. And I think you testified before, but  
 6 correct me if I'm wrong, that when it came to the  
 7 limited detection, you defer to Drs. Bowers, ElSohly  
 8 and Khan regarding these issues?  
 9 A. That's correct. I was primarily an  
 10 observer of those conversations.  
 11 Q. Okay. We can put this one to the side.  
 12 Going to mark as Eichner 14 ElSohly 3768.  
 13 (Exhibit 14 was marked)  
 14 Q. Let me -- if you're ready.  
 15 A. Yes, I'm ready.  
 16 Q. Who sent this email?  
 17 A. I sent this email on January 4th, 2012 to  
 18 Dr. ElSohly and Dr. Bowers and I copied Waseem Gul.  
 19 Q. And can you read the last sentence aloud,  
 20 please?  
 21 A. "Establishing its history of use as a drug  
 22 further alienates DMAA from the supplement category."  
 23 Q. What did you mean when you used the word  
 24 "alienate"?  
 25 A. So according to my understanding of

1 AMY K. EICHNER, PH.D.  
 2 dietary supplementary law, if an ingredient was  
 3 approved as a drug, then it remains a drug throughout  
 4 its lifetime unless some other process takes place that  
 5 establishes it as something else.  
 6 Q. What type of process?  
 7 A. Such as a new dietary ingredient  
 8 notification. I'm assuming that -- but my  
 9 understanding is that there are some compounds that are  
 10 available in drugs and they're sold as drugs, but they  
 11 can also be sold as other categories. For example,  
 12 green tea. There is a product on the market, which  
 13 green tea is the primary ingredient and it is a drug,  
 14 but it is also a supplement and it is also a food.  
 15 Q. Okay. We can move off of this one. Do  
 16 you know who James Neal-Kababick is?  
 17 A. Yes, only from afar.  
 18 Q. Elaborate, please.  
 19 A. I'm aware of him and I've met him before  
 20 at conferences and he, I believe, has his own research  
 21 lab.  
 22 Q. Did he ever work for FDA, do you know?  
 23 A. I don't know.  
 24 Q. What is your relationship with him or  
 25 interactions with him? Have you ever emailed with him

1 AMY K. EICHNER, PH.D.  
 2 a discussion on Dateline while our manuscript's still  
 3 waiting to be submitted."  
 4 Q. How would your paper be impacted by the  
 5 fact that it would be published after NBC aired a  
 6 special about dietary supplements?  
 7 A. It wouldn't be impacted in my view.  
 8 Q. Do you know anyone who was involved in  
 9 this NBC special? Do you know anything about it?  
 10 A. Well, as I said before, I'm aware and I  
 11 sort of know Dr. Kababick. I know Dr. Pieter Cohen. I  
 12 haven't the pleasure of meeting Dr. Oz.  
 13 Q. Neither have I. Do you have any idea if  
 14 anyone at USADA was involved?  
 15 A. I don't think we were involved. I would  
 16 be surprised if we were involved because I would have  
 17 heard about it. Certainly this wouldn't have been a  
 18 surprise, the Dr. Oz Show.  
 19 Q. And the email at the top, you sent that,  
 20 correct?  
 21 A. Yes, to Dr. Khan and Dr. ElSohly and  
 22 Waseem Gul on January 10th, 2012.  
 23 Q. And obviously that was in response to Dr.  
 24 Khan sending you the email saying that the paper would  
 25 be published after the Dateline special. Your reaction

1 AMY K. EICHNER, PH.D.  
 2 or communicated with him?  
 3 A. I believe there are some emails back and  
 4 forth between the two of us and it could have related  
 5 to geranium oil, although I don't recall.  
 6 Q. Okay. I'm going to mark as 15 ElSohly  
 7 4163.  
 8 (Exhibit 15 was marked)  
 9 Q. (By Mr. Marck) Could you please focus on  
 10 the email at the bottom of page 1 that is sent by James  
 11 Neal-Kababick?  
 12 A. Yes.  
 13 Q. Who is that sent to?  
 14 A. It appears that it was sent to himself, so  
 15 he must have had some kind of a Listserv.  
 16 Q. And do you know if you were bcc'd or part  
 17 of that Listserv for that email?  
 18 A. I don't believe I was.  
 19 Q. And can you see the email directly above  
 20 that?  
 21 A. Yes, that was from Dr. Khan to Dr. ElSohly  
 22 and myself on January 10th. And so from this chain, I  
 23 would conclude that Ikhlas forwarded that to me.  
 24 Q. Can you read just the Dr. Khan statement?  
 25 A. "FYI, looks like geranium will be part of

1 AMY K. EICHNER, PH.D.  
 2 was, to quote, "DOH." I think that's the Homer Simpson  
 3 phraseology if I know pop culture.  
 4 A. Well done.  
 5 Q. Why that reaction?  
 6 A. I don't know. I just probably thought it  
 7 was a goofy thing to say.  
 8 Q. But you didn't really feel like the fact  
 9 that your paper was making it to publication after this  
 10 other --  
 11 A. No, my primary concern were the items that  
 12 I listed, 1 through 4, and it didn't really mean that  
 13 much to me.  
 14 Q. You can put this one to the side, too.  
 15 (Exhibit 16 was marked)  
 16 Q. (By Mr. Marck) Can you look at the email  
 17 all the way at the bottom of page 1 dated February 9th.  
 18 You wrote that  
 19 A. Yes, I did.  
 20 Q. And do you know -- see again another one  
 21 of these emails that is lacking a full header. Can you  
 22 tell who you drafted it to?  
 23 A. Well, Mahmoud was addressed, Dr. ElSohly.  
 24 Q. Gotcha. Can you read that entire email  
 25 aloud? It's only a line and a half.



1 AMY K. EICHNER, PH.D.  
2 A. "Hi Mahmoud, did we test Auricacia or  
3 Plant Life brands of geranium oil for the paper? These  
4 are the brands that Catlin tested and says he found  
5 MHA."  
6 Q. And it goes onto the next page, one line.  
7 A. Oh. "Also, do you object if we share the  
8 submitted draft with the FDA?"  
9 Q. Thank you. What prompted these questions  
10 from you to Dr. Khan, excuse me, Dr. ElSohly?  
11 A. So all of our Catlin has a supplement  
12 testing company.  
13 Q. His first name is Oliver?  
14 A. Uh-huh (affirmative). And it's called  
15 Banned Substance Control Group, BSCG, and I've had  
16 communications with him on and off over the years about  
17 various dietary supplements topics and he disclosed to  
18 me that he detected methylhexaneamine in some geranium  
19 oils.  
20 Q. Going back just to your relationship  
21 between the two of you and even before that, you said  
22 BSCG is the initials, right?  
23 A. Correct.  
24 Q. Is it a private lab?  
25 A. I think it's private. I think he owns it

1 AMY K. EICHNER, PH.D.  
2 and discuss those.  
3 Q. Did he ever become a USADA certified  
4 analytical lab?  
5 A. No. USADA doesn't endorse any third party  
6 certifying agency to like approve dietary supplements  
7 for Olympic athletes.  
8 Q. Gotcha. Now, do you normally share draft  
9 academic papers with the FDA?  
10 A. Well, this is the first paper that I've  
11 ever been in a position to share because it was the  
12 first paper I've ever been on that has any relevance  
13 whatsoever.  
14 Q. What prompted you to think to share it  
15 with them?  
16 A. Because this was an area -- so  
17 methylhexaneamine and geranium oil were under their  
18 regulatory purview.  
19 Q. Now, did you -- if this is a draft paper,  
20 correct, we're talking about?  
21 A. Uh-huh (affirmative).  
22 Q. What's the rush to share the draft paper  
23 rather than the finalized manuscript?  
24 MR. KOONS: Object to the  
25 characterization, but go ahead answer if you can.

1 AMY K. EICHNER, PH.D.  
2 with his dad, but don't quote me. I'm sure the  
3 business structure is documented somewhere.  
4 Q. That's fine. Do you know where it's  
5 located?  
6 A. I don't recall.  
7 Q. Maybe even the state. If you don't know,  
8 that's fine?  
9 A. I just don't.  
10 Q. Okay. And have you ever met with Oliver  
11 or was your correspondence with him by email,  
12 telephone?  
13 A. At this time it was only by email and/or  
14 telephone. I subsequently have met him.  
15 Q. What prompted his email to you to indicate  
16 that he had found DMAA in certain oils?  
17 A. We were communicating on a variety of  
18 other topics, so at the time, USADA was developing our  
19 position on third party supplement certifiers, how we  
20 were going to educate athletes. As he has one of those  
21 companies, we wanted to learn about what his company  
22 did, and he was interested in our process for  
23 evaluating those.  
24 He also had some questions about various  
25 prohibited substances and we would go back and forth

1 AMY K. EICHNER, PH.D.  
2 THE WITNESS: There was no rush. We just  
3 share information. So another example during the same  
4 time is if we detected -- or if we became aware of a  
5 dietary supplement that contained a prohibited  
6 substance, we would share all of those test results as  
7 well even though they were just screens. So for  
8 example, we would test other dietary supplements, not  
9 with ElSohly, this was separate, and we would just  
10 detect the presence of something, but we wouldn't  
11 confirm it. There's like, you know, detection and then  
12 confirmation, which are different, but we would share  
13 all of those with the FDA with the understanding that  
14 the FDA as we understood it, that they look at  
15 information and then they conduct their own studies  
16 anyway.  
17 Q. (By Mr. Marck) Who was doing the testing  
18 of the supplements you just referred to?  
19 A. We used a variety of labs.  
20 Q. Such as?  
21 A. The NSF International. We also would  
22 occasionally send products to one of the WADA labs, for  
23 example, SMRTL or UCLA.  
24 Q. Gotcha. Can you focus on the email on  
25 page 1 sent by Dr. ElSohly? And who did he send that



1 AMY K. EICHNER, PH.D.  
2 to?  
3 A. He sent it to me, Dr. Khan, Waseem Gul and  
4 Dr. Bowers on February 9th, 2012.  
5 Q. What is the SNIP conference he's referring  
6 to, S-N-I-P?  
7 A. I don't know.  
8 Q. I think we talked about this before, but  
9 how many conferences have you presented at with Dr.  
10 Khan?  
11 A. With Dr. Khan where he was on a panel with  
12 me? Or where he was present? Or where he was running  
13 the show?  
14 Q. Let's break it down. Any conferences that  
15 he was the organizer?  
16 A. I think I've presented at two Ole Miss  
17 conferences.  
18 Q. And you have appeared with him on panels,  
19 not that he had organized overall, but even aside from  
20 Ole Miss?  
21 A. Possibly, but I don't, I just don't  
22 remember. I would have to look back through all of my  
23 presentations. It's certainly possible that I was on a  
24 panel with him at some point.  
25 Q. Do you know how many panels you've been on

1 AMY K. EICHNER, PH.D.  
2 where DMAA was discussed regardless of the presence of  
3 other people?  
4 A. Probably only one or two.  
5 Q. Do you remember which conferences they  
6 were at or --  
7 A. So I remember going to Ole Miss, but I  
8 don't remember if I was on a panel or whether I  
9 presented like my own deal. I've been to, you know, a  
10 number of athletic educational things that were put on  
11 by various boards and I would have been on panels with  
12 coaches and medical professionals or, you know, other  
13 things to educate athletes.  
14 Q. Okay. And we'll move to the email that  
15 Dr. Bowers sent directly above that. It's another one  
16 of our very fun missing the header. It seems to be  
17 sent to you; is that correct?  
18 A. Well, it's certainly addressed to me, yes.  
19 Q. Do you happen to know what he's referring  
20 to when he says "corrected draft"?  
21 A. Well, in the process of creating  
22 manuscripts, you have notes and comments and errors  
23 that other people pick up. Are you sure this is right?  
24 This is a better word. So that whole process of  
25 revising the draft, you know, ultimately you make a

1 AMY K. EICHNER, PH.D.  
2 collective decision and then you come up with a  
3 corrected draft.  
4 Q. That means final draft in your mind?  
5 A. Probably. So if we have a corrected draft  
6 that we stand behind that this is our best effort at  
7 accurate information and it's ready to submit, then  
8 corrected draft might be pointing to that. I just  
9 don't know in this instance.  
10 Q. So but it's safe to say the draft article  
11 was still being edited in February 2012?  
12 A. Let me have a look here. Okay. So what  
13 Larry wanted to do, he says, "Once the final draft is  
14 submitted and accepted, I have no problem sharing it  
15 with anyone." Because once it's submitted and  
16 accepted, it's gone through peer review and it's gone  
17 through scrutiny sufficiently that any errors can be  
18 corrected, we know it's right. So we didn't want to --  
19 so Larry didn't want to at that time, send something  
20 that we weren't 100 percent certain that we could stand  
21 behind.  
22 Q. Okay. But so at least at this point in  
23 time where the article is still being edited in  
24 February 2012, which is --  
25 A. Appears so.

1 AMY K. EICHNER, PH.D.  
2 Q. -- nearly a year after the testing was  
3 done by Dr. Khan and Dr. ElSohly. Is that a normal  
4 amount of time in your experience?  
5 MR. SCOTT: Object as to form.  
6 THE WITNESS: Well, let's see, 2012 and  
7 then, you know, it's not unusual, if you look at my  
8 thesis papers.  
9 Q. (By Mr. Marck) I just want to get your  
10 input. I wasn't sure; that's why I asked. You can put  
11 that one to the side.  
12 Do you know what an FDA warning letter is?  
13 A. Yes.  
14 Q. Can you describe to me what your  
15 understanding of that is?  
16 A. My understanding is that an FDA warning  
17 letter is something that is sent to a dietary  
18 supplements company because they failed to comply with  
19 a variety of regulations. And if I'm not mistaken, not  
20 all warning letters are made public and not every  
21 enforcement action involves a warning letter.  
22 Q. I'm going to mark Eichner 17.  
23 (Exhibit 17 was marked).  
24 Q. (By Mr. Marck) It is Ole Miss document  
25 1000, sorry, 10886. Let me know when you've had a

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1 AMY K. EICHNER, PH.D.  
 2 chance.  
 3 A. I've had a chance.  
 4 Q. Can we focus on the email from Dr. Khan on  
 5 page 1? Who is that to?  
 6 A. To me.  
 7 Q. And the date?  
 8 A. April 27, 2012.  
 9 MR. SCOTT: What's the number for this one  
 10 again?  
 11 MR. MARCK: Ole Miss 10886.  
 12 MR. SCOTT: Okay. 886 or 866?  
 13 MR. MARCK: 10886. I may have sent you a  
 14 typo because the typo is in my outline.  
 15 MR. SCOTT: I don't have that one in front  
 16 of me.  
 17 MR. MARCK: That's okay. We'll give you a  
 18 minute to find it. Just give us a chat when you have  
 19 your copy. Let's go off the record.  
 20 (Discussion off the record).  
 21 MR. MARCK: We just marked Eichner Exhibit  
 22 Number 17, counsel for the government has indicated  
 23 they do not have a full copy of that exact same Bates  
 24 stamped version that we have. Counsel for Dr. Eichner  
 25 mailed him a similar version, which is marked AE

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1 AMY K. EICHNER, PH.D.  
 2 on April 27th, 2012.  
 3 Q. What was your comment back to him?  
 4 A. I said, "Happier. Not 100 percent though.  
 5 Still more to be done."  
 6 Q. In your view, what still needed to be done  
 7 at that point in time?  
 8 A. So these warning letters provided some  
 9 clarity that we needed, as an organization, to know how  
 10 to go forward with advising athletes. Up until that  
 11 point, we simply advised athletes that  
 12 methylhexaneamine was a prohibited stimulant and they  
 13 couldn't use it in competition.  
 14 Now, we had some dietary supplements  
 15 companies that we knew were marketing this product as  
 16 their products as having geranium extract, so it  
 17 provided some clarity that the FDA at that time did not  
 18 consider DMAA to be a dietary ingredient or -- I'll  
 19 stop there because I haven't really read through all of  
 20 ...  
 21 Q. I understand what you're saying. What is  
 22 the effect of a warning letter being issued regarding a  
 23 substance or dietary supplements upon the athletes that  
 24 your organization has jurisdiction over?  
 25 A. Well, this particular warning letter

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1 AMY K. EICHNER, PH.D.  
 2 0001191-1 and now turning to the document in front of  
 3 you, Miss Eichner, the email at the bottom of the page  
 4 from Ikhlas Khan, is that sent to you?  
 5 A. It is on April 27, 2012.  
 6 Q. What does this email describe?  
 7 A. What does it describe? Dr. Khan sent to  
 8 me the FDA news release of warning letters that were  
 9 sent to dietary supplements companies selling  
 10 methylhexaneamine for geranium extract.  
 11 Q. Were you involved in drafting any of these  
 12 DMAA warning letters?  
 13 A. No.  
 14 Q. Do you know who was?  
 15 A. No.  
 16 Q. Do you know if anybody at USADA was?  
 17 A. No.  
 18 Q. Do you know how those letters are  
 19 typically drafted, what the FDA process is for that?  
 20 A. No.  
 21 Q. Focus on the email back at the top. Who  
 22 sent it?  
 23 A. The very top?  
 24 Q. Yes, please.  
 25 A. Mine. I sent it in response to Dr. Khan's

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1 AMY K. EICHNER, PH.D.  
 2 doesn't have a huge impact, this series. It's just  
 3 clarity for us that at this time, the FDA didn't  
 4 consider DMAA to be a dietary ingredient, that they  
 5 needed additional information about it before they  
 6 could market it as safe. But it was the first step  
 7 because what we were really seeking in order to best  
 8 help athletes is an answer as to whether it's in  
 9 geranium oil because that does have an impact. We can  
 10 tell athletes for sure that methylhexaneamine is  
 11 prohibited, but we didn't know whether or not it was in  
 12 some other plant and that's what we needed to know.  
 13 (Exhibit 18 was marked)  
 14 MR. MARCK: Claude, this is 10807.  
 15 Q. (By Mr. Marck) Let's focus on the email  
 16 beginning in the middle of page 1. It says from  
 17 Physical Science News. Can you actually tell me who  
 18 sent this email? Do you know what Physical Science  
 19 News is?  
 20 A. It appears from the email address, that  
 21 it's from Wiley, which is a publishing company. That's  
 22 the extent of my knowledge.  
 23 Q. Do you know -- who is it addressed to?  
 24 A. Mark Blumenthal.  
 25 Q. Do you know who Mark Blumenthal is?

1 AMY K. EICHNER, PH.D.

2 A. Yes, I know who he is. He leads up -- he  
3 has a little magazine called Herbalgram and he's  
4 another botanical expert in the U.S.

5 Q. You described it as a magazine. Is it  
6 published every month?

7 A. You know what, I don't know very much  
8 about Herbalgram.

9 Q. Have you ever read an issue of it?

10 A. Not a whole issue, but I've seen articles  
11 from there, but they normally don't really pertain to  
12 my work, so I just --

13 Q. Okay. And what -- sorry, I didn't mean to  
14 cut you off. What's the extent of your relationship  
15 with Mr. Blumenthal? I mean, have you ever  
16 communicated with him?

17 A. Yes, I've emailed him before and I've seen  
18 him at conferences a handful of times.

19 Q. And ever communicated with him on the  
20 telephone?

21 A. Uh-huh (affirmative).

22 Q. And when we flip to page 2, can you read  
23 the sentence beginning with "trace levels"?

24 A. I will when I find it.

25 Q. Right up at the top and should be the

1 AMY K. EICHNER, PH.D.

2 second line down.

3 A. Thank you. "Trace levels of the stimulant  
4 were detected in only 2 geranium products, with the  
5 concentrations lower than 10 parts per million."

6 Q. Continue.

7 A. "The two geranium oils contained a very  
8 small amount of DMAA with 7 milligram per kilogram in  
9 one and 3 milligram per kilogram in the other."

10 Q. Do you know what study or results this  
11 email is referring to?

12 A. Well, if I scan down to the lower part of  
13 the exhibit, it appears that it is from a paper by --  
14 I'm looking for the name, Armstrong, et al.

15 Q. Were you aware of this finding, of Dr.  
16 Armstrong's finding?

17 A. Yes, at some point.

18 MR. SCOTT: Form.

19 THE WITNESS: At some point, I did become  
20 aware of his study.

21 Q. (By Mr. Marck) Okay. Do you know what  
22 point you became aware?

23 A. This might have been the earliest  
24 communication especially since it appears it was  
25 embargoed at this time, which normally happens, you

1 AMY K. EICHNER, PH.D.

2 know, when the paper hasn't been formally published  
3 yet.

4 Q. Turn to the email at the top of the page  
5 1. The sender is Mark Blumenthal, correct?

6 A. Yes.

7 Q. And it's directed to Elaine Watson with a  
8 cc to Tyler Smith, James Neal-Kababick, Anthony Almada,  
9 Dr. Khan and Steven Foster. Do you know who Tyler  
10 Smith is?

11 A. No.

12 Q. Do you know who Anthony Almada is?

13 A. Yes.

14 Q. Who is he?

15 A. All I know is that he has a supplement  
16 company.

17 Q. Do you know what company?

18 A. I think. No -- or maybe he brought an  
19 ingredient to the market like maybe some kind of  
20 creatine. I don't know. He's in the industry. That's  
21 all I know.

22 Q. And Steven Foster?

23 A. I don't recognize that name.

24 Q. Do you recognize Elaine Watson?

25 A. I don't recognize that name.

1 AMY K. EICHNER, PH.D.

2 Q. Okay. You can put this one to the side.

3 A. Actually, I'm just trying to work out,  
4 where is this produced? Was I a recipient of this  
5 through a Listserv of some type?

6 MR. KOONS: Production.

7 Q. This is Ole Miss production.

8 A. All right. So earlier when I said I  
9 became aware and this may have been the earliest time  
10 point, I was assuming that I was on this, but as I'm  
11 not, I can't give you a time estimate of when I became  
12 aware of study.

13 Q. That's fine. I'm going to mark 19.

(Exhibit 19 was marked)

15 THE WITNESS: Is it important that those  
16 are commercial oils?

17 MR. KOONS: Bring that up if you want.

18 MR. MARCK: We'll talk about things, but  
19 let's keep on going the way I want to go. Claude, this  
20 is EISohly 2181.

21 Q. (By Mr. Marck) Just let me know when  
22 you've had a chance to review it.

23 MR. SCOTT: Before we go on to the next  
24 exhibit, let me note an objection on the record.  
25 Exhibit 18 is designated as confidential by the

1 AMY K. EICHNER, PH.D.  
 2 University of Mississippi in this action. And my  
 3 understanding of the Protective Order, subject to  
 4 confirmation is, this document is not to be shared with  
 5 people who are not qualified under the Protective Order  
 6 and/or who weren't on a particular document and  
 7 therefore had access to it at the time. It does not  
 8 appear that she is on the document and I'm not, don't  
 9 believe she qualifies under the Protective Order, so I  
 10 object to the use of this document and testimony based  
 11 on that basis.

12 MR. MARCK: All right. Duly noted.

13 THE WITNESS: Okay.

14 Q. (By Mr. Marck) Can we please focus on the  
 15 email midway down on page 2. Who sent this email?

16 A. At the top or the down?

17 Q. Midway down, yeah.

18 A. From Elaine Watson.

19 Q. And who is that directed to?

20 A. Ed Wyszumiala from the NSF.

21 Q. What date was it sent on?

22 A. May 22nd, 2012.

23 Q. And have you ever seen this email?

24 A. Well, it looks like it was forwarded to  
 25 Lori Bestervelt and John Travis and then it looks like

1 AMY K. EICHNER, PH.D.

2 it was forwarded to me and Patti Deuster.

3 Q. I think we already discussed this, but you  
 4 aren't familiar with who Elaine Watson is?

5 A. No.

6 Q. Can we please flip to page 5 of the  
 7 exhibit, which is marked as 2185. Now, I guess before  
 8 we talk about it in detail, do you have any reason to  
 9 believe that this is not the attachment to these cover  
 10 emails that come before it?

11 MR. SCOTT: Object as to form.

12 THE WITNESS: No, I don't have any reason.

13 Q. (By Mr. Marck) Do you see on the cover  
 14 email on the first page of this exhibit, it lists as  
 15 one of the attachments DTA-Embargoed?

16 A. May 30, 2012, yes, I see that.

17 Q. Can you tell me the name of this article?

18 A. Hold on one second. I'm just reviewing  
 19 something else. Okay. The title is  
 20 "1,3-Dimethylamylamine DMAA in Supplements Geranium  
 21 Plants/Products: Natural Or Synthetic?"

22 Q. Who are the authors?

23 A. Zhang, Woods and Armstrong.

24 Q. Do you know any of them?

25 A. No.

1 AMY K. EICHNER, PH.D.

2 Q. Are you familiar with this article?

3 A. I am familiar with it.

4 Q. Can you read me -- look at the date  
 5 headers at the top underneath where it says "Research  
 6 article." Can you read those to me, please?

7 A. "Received March 20th, 2012; Revised April  
 8 6, 2012; Accepted April 9, 2012."

9 Q. And it says, "Published online in Wiley  
 10 Online Library," correct?

11 A. Correct.

12 Q. Can you tell what journal this is?

13 A. Drug Testing and Analysis.

14 Q. Have you ever had any communications with  
 15 anyone at the University of Texas regarding this  
 16 article?

17 A. That rings a bell. Is that where  
 18 Armstrong is from?

19 Q. Yes.

20 A. Okay. Possibly. Yeah, so I am familiar  
 21 with him and there's a possibility that we would have  
 22 corresponded with him to try and understand his paper.

23 Q. Would it have been -- did you have any  
 24 awareness of Dr. Armstrong prior to receiving this  
 25 embargoed copy of this article?

1 AMY K. EICHNER, PH.D.

2 A. I don't remember. Possibly. It's  
 3 possible that if someone else had an awareness of this,  
 4 that he was working on this and told me,  
 5 then . . .

6 Q. Possibly?

7 A. Yeah, it's a possibility.

8 Q. Do you know if anyone at FDA was ever in  
 9 contact with him?

10 A. I don't know.

11 Q. Do you know if anyone at USADA besides  
 12 yourself may have been in contact with him?

13 A. It's a possibility that Dr. Bowers was at  
 14 some point.

15 Q. Okay. Can you read the last sentence of  
 16 the abstract aloud?

17 A. "Trace amounts of DMAA were detected in  
 18 only two geranium products with concentrations lower  
 19 than 10 part per million, weight weight.

20 Q. What does the WW mean, weight weight?

21 A. I think that's how they calculated the  
 22 parts per million. They did it by weight rather than  
 23 volume or rather than molecules.

24 Q. Understood, okay. I thought if you had  
 25 maybe meant it wait as in stop or hold. I want to make

1 AMY K. EICHNER, PH.D.  
2 sure we were all on the same page about something.  
3 What was your reaction to seeing this embargoed paper,  
4 do you remember?

5 A. Well, I was probably very pleased that  
6 someone else thought this was important enough to  
7 research.

8 Q. Did you find it strange that they had  
9 detected trace amounts of DMAA in two of their  
10 products?

11 MR. KOONS: I'm going to object as vague  
12 and ambiguous as the term of art.

13 Q. (By Mr. Marck) I'm just using the word  
14 they used in be abstract, so if I knew more, I would --

15 A. I wouldn't characterize my reaction as  
16 surprised or really that strong of a reaction either  
17 way.

18 Q. Did you --

19 A. I --

20 Q. Go ahead.

21 A. Yeah, let me walk you through this. So  
22 for me, I am not a chemist or an aspect person, as I  
23 mentioned before, so analyzing the quality of the  
24 research or the results, that's not my forte, that's,  
25 you know, that's hard for me to do that in this case.

1 AMY K. EICHNER, PH.D.

2 The one thing I will say is if, you know,  
3 we continue to have concerns about working on  
4 commercially prepared oils and so I don't know from his  
5 study and I just haven't evaluated it enough to know  
6 very clearly whether he got his own or whether he did  
7 commercially available. It appears here in Table 1  
8 that he may have done his own extractions.

9 Q. Do you consider these results, especially  
10 that last line you just read, to be inconsistent with  
11 the results of your study along with Dr. ElSohly and  
12 Khan?

13 A. Well, it's hard to say because it really  
14 depends on the methodology that they used. We could  
15 only say and base any conclusions based on what we had  
16 and what we saw, our instrumentation, our limits,  
17 limits of detection, so it's always possible that other  
18 organizations can have different results.

19 Q. Who is Zachary Breitbart? Does that ring  
20 a bell?

21 A. Doesn't ring a bell. Where do you see  
22 that name?

23 Q. Not here, but we'll get to it. Did you  
24 share this version of like this article that was  
25 attached to these emails with anyone else at the FDA?

1 AMY K. EICHNER, PH.D.

2 A. I don't know. I don't remember.

3 Q. Did you ever communicate with anyone at  
4 the Journal of Drug Testing and Analysis regarding this  
5 article?

6 A. I don't remember.

7 Q. Did you typically ever contact them?

8 A. Drug Testing and Analysis?

9 Q. Yeah, did you have another relationship in  
10 some other --

11 A. I didn't personally at that time.

12 However, I believe that the editor of the Drug Testing  
13 and Analysis is Mario Thevis, who works in one of the  
14 WADA labs.

15 Q. And you have a connection to him?

16 A. Well, only because we're both in the field  
17 of anti-doping.

18 Q. But as far as you said, you have no  
19 recollections that you ever communicated with anyone at  
20 the journal regarding this article?

21 A. I just don't remember.

22 Q. Okay. Do you know if this is a peer  
23 reviewed article?

24 A. I believe Drug Testing and Analysis is a  
25 peer-reviewed journal, so my understanding is, yes, it

1 AMY K. EICHNER, PH.D.

2 would have been peer reviewed.

3 Q. And you did not serve as a peer reviewer  
4 for this article, right?

5 A. That is correct.

6 Q. Put this one to the side.

7 (Exhibit 20 was marked)

8 Q. (By Mr. Marck) Once you've had a chance to  
9 review it, just . . .

10 A. Okay.

11 Q. What's the title of this article?

12 A. "1,3-Dimethylamylamine DMAA In Supplements  
13 and Geranium Products: Natural and Synthetic."

14 Q. The same title as the article we just  
15 discussed, the embargoed version that we just shared  
16 with you?

17 A. Yes, looks like it. Slightly. Missing  
18 "plants/products."

19 Q. Who are the authors?

20 A. Zhang, Woods, Breitbart and Armstrong.

21 Q. And can you read the last sentence of the  
22 abstract out loud?

23 A. "No DMAA was detected in any of the 8  
24 geranium products with a limit of detection of 10 parts  
25 per billion weight weight."



1 AMY K. EICHNER, PH.D.  
2 Q. Can you read for me the dates at the  
3 header of this article?  
4 A. "Received March 20th, 2012; Revised April  
5 6, 2012; Accepted April 9th, 2012."  
6 Q. Are those the same dates as the version I  
7 showed you as a previous exhibit?  
8 A. Yes.  
9 Q. And underneath that, it says, "Drug  
10 testing www.DrugTestingAnaylsis.com and has a DOI  
11 number. Do you know what a DOI number is?  
12 A. Department of Information.  
13 MR. KOONS: Where are you? Oh, I see.  
14 Thank you.  
15 THE WITNESS: I don't know.  
16 Q. (By Mr. Marck) I'll tell you that DOI  
17 number is a number they use to classify research,  
18 almost think about it like a more complicated version  
19 of --  
20 MR. KOONS: Dewey Decimal?  
21 MR. MARCK: Thank you. Blanked out on  
22 that part, but you knew where I was going.  
23 Q. (By Mr. Marck) Do the numbers match up  
24 between this exhibit and that one?  
25 MR. SCOTT: Let me object to form because

1 AMY K. EICHNER, PH.D.  
2 Q. An author was added to this article,  
3 correct?  
4 A. Yes.  
5 Q. And again, you said before you do not know  
6 who Zachary Breitbach is?  
7 A. Well, I don't recognize the name. I don't  
8 remember.  
9 Q. In your experience, is it typical for an  
10 article to have a new author added and reach a  
11 completely different conclusion without the dates of  
12 the manuscript being edited?  
13 MR. SCOTT: Objection to form, objection,  
14 assumes facts not in evidence.  
15 Q. (By Mr. Marck) You can still answer.  
16 A. I don't have enough experience to say  
17 whether that's normal or not.  
18 Q. Did you have any role at all in editing  
19 this article?  
20 A. No.  
21 Q. Did you have any role in editing any  
22 version of this article?  
23 A. No.  
24 Q. But you would agree that the final  
25 sentence of the abstract is different than -- different

1 AMY K. EICHNER, PH.D.  
2 part of that seems to be your term regarding what the  
3 number represents and with a question following with  
4 that being assumed as part of the question, which is  
5 improper in many ways, so object to the form of the  
6 question.  
7 MR. MARCK: Understood, and I appreciate  
8 that, Claude.  
9 Q. (By Mr. Marck) After the letters D-O-I, do  
10 the numbers match up between this exhibit and the  
11 previous one?  
12 A. Yes.  
13 Q. Thank you. Is it safe to say that the  
14 finding that DMAA was detected in two samples is not  
15 present in this version of the article?  
16 MR. SCOTT: Object as to form. Are you  
17 asking her to read the entire article and tell you that  
18 or just out of the first portion there.  
19 Q. (By Mr. Marck) Out of the abstract.  
20 A. Well, I can tell you that in the second  
21 article that you presented, I can read that sentence to  
22 you, but I am not in a position to draw any conclusions  
23 for you on this article. But I'll read it anyway. "No  
24 DMAA was detected in any of the 8 geranium products  
25 with a limit of detection of 10 parts per billion."

1 AMY K. EICHNER, PH.D.  
2 in this version than in Exhibit 19, correct?  
3 A. That's plain.  
4 Q. Now, I think you mentioned you may have  
5 had some contact with Dr. Armstrong. Did you have any  
6 contact with him regarding what seems to be a different  
7 version of the article?  
8 A. No.  
9 Q. You have no recollection of the details of  
10 your communications with him?  
11 A. (Witness shakes head.)  
12 MR. SCOTT: Objection, compound.  
13 THE WITNESS: I just don't recall.  
14 Q. (By Mr. Marck) Did you share this version  
15 of the article with anyone at FDA?  
16 A. I don't remember.  
17 Q. Do you know who John Travis is?  
18 A. John Travis worked for the NSF  
19 International.  
20 Q. Do you know what his role is there?  
21 A. He's a technician. He's an analyst, a  
22 chemist.  
23 Q. How long have you known him?  
24 A. I probably met him in 2010.  
25 Q. I'm going to mark Eichner 21.

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1 AMY K. EICHNER, PH.D.  
 2 (Exhibit 21 was marked)  
 3 MR. MARCK: Claude, this is USADA 2303.  
 4 Do you need A minute to find that?  
 5 MR. SCOTT: Okay. Give me a minute.  
 6 MR. MARCK: Off the record.  
 7 (Discussion off the record)  
 8 Q. (By Mr. Marck) The email midway on the  
 9 first page sent by John Travis, do you know who that  
 10 was addressed to?  
 11 A. Don't recognize the email address, but  
 12 it's addressed to Dr. Armstrong.  
 13 Q. It seems that this email was then  
 14 forwarded to you by John Travis; is that correct?  
 15 A. Yes.  
 16 Q. Who else was copied on that?  
 17 A. Ed Wyszumiala and Lori Bestervelt.  
 18 Q. When did that occur?  
 19 A. May 24th, 2012.  
 20 Q. In addition to Mr. Travis's communications  
 21 with Dr. Armstrong, do you know if he had any further  
 22 communication with Dr. Armstrong?  
 23 A. I don't know.  
 24 Q. Do you know if Dr. Armstrong sent the oil  
 25 lot numbers that were requested?

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1 AMY K. EICHNER, PH.D.  
 2 Q. Do you know what he meant by "Please keep  
 3 it in house at USADA for the time being"?  
 4 A. I don't know. I can only speculate. But  
 5 if it was something that wasn't published yet and they  
 6 had reason to keep it, you know, continue working on it  
 7 until it's ready to be published, then that wouldn't be  
 8 unheard of.  
 9 Q. And in the email below, did you -- it says  
 10 May 31st, 2011. Did you send that email to Paul J.  
 11 Greene?  
 12 A. Yes, I did.  
 13 Q. And again, no recollection about what you  
 14 might have --  
 15 A. I'm sorry, no.  
 16 Q. And this is, what you forwarded to him,  
 17 seems to be a portion of your conversation with Dr.  
 18 Moore at the FDA regarding NDIs?  
 19 A. Correct.  
 20 Q. And no idea why you may have sent this to  
 21 Paul Greene?  
 22 A. I don't recall.  
 23 Q. You can put that one to the side and we'll  
 24 move on to Eichner 23.  
 25 MR. MARCK: Which is ElSohly 2144, Claude.

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1 AMY K. EICHNER, PH.D.  
 2 A. I don't know. I don't remember.  
 3 Q. Do you know if anyone at NSF did any  
 4 additional testing to verify Dr. Armstrong's findings?  
 5 A. I have a feeling that they were conducting  
 6 some research on their own on various oils and I don't  
 7 recall whether there were outcomes from those  
 8 particular tests or whether they were sent to us. I  
 9 don't remember.  
 10 Q. Okay.  
 11 A. But if they were, they should be in all  
 12 the records that were provided.  
 13 Q. You can put this one to the side.  
 14 Q. I'm going to mark Eichner 22.  
 15 (Exhibit 22 was marked)  
 16 Q. (By Mr. Marck) Who's Paul Greene?  
 17 A. Good question. I don't know. Clearly I  
 18 must have talked to this person and clearly this person  
 19 is familiar with Dr. Armstrong. That's all I recall.  
 20 Q. Do you remember the conversation alluded  
 21 to here?  
 22 A. No.  
 23 Q. Do you know what report he's referring to?  
 24 A. He only calls it "Dr. Armstrong Report  
 25 Complete With CV."

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1 AMY K. EICHNER, PH.D.  
 2 (Exhibit 23 was marked)  
 3 Q. (By Mr. Marck) Please focus on the email  
 4 on the middle of page 1 sent by Dr. Khan. I may have  
 5 grabbed the wrong one. I did. Sorry about that.  
 6 We'll just keep that marked as it is, just  
 7 put it to the side for one second. Sorry about that.  
 8 This we'll mark as 24.  
 9 (Exhibit 24 was marked)  
 10 MR. MARCK: Marking another Exhibit. I  
 11 had my things out of order, so I'm going to mark  
 12 Eichner 24. You can just put 23 on the side for a  
 13 second and this one is Ole Miss 8909.  
 14 MR. SCOTT: 8909 is 24?  
 15 MR. MARCK: Correct.  
 16 Q. (By Mr. Marck) Please focus on the email  
 17 on the middle of page 1 sent by Dr. Khan, which you  
 18 should be able to find this time.  
 19 A. Uh-huh (affirmative).  
 20 Q. And who did Dr. Khan send this email to?  
 21 A. To me -- oh, to Dr. ElSohly and me, and he  
 22 copied Waseem Gul and another individual from Ole Miss,  
 23 Amar.  
 24 Q. I'm going to put the last name into the  
 25 record so it's there, Gopal Chittiboyina. When was

1 AMY K. EICHNER, PH.D.  
2 this email sent?  
3 A. February 14th, 2014.  
4 Q. Now, do you know Mr. Chittiboyina?  
5 A. Doesn't ring a bell.  
6 Q. And do you know what Dr. Khan meant when  
7 he said, "You were busy with Armstrong"?  
8 A. I believe he was referencing Lance.  
9 Q. I figured. I had to ask. And your  
10 achievements that he was proud of would have been?  
11 A. The successful doping cases.  
12 Q. Now, what were the next steps for you to  
13 take DMAA off the shelves?  
14 A. Can you please point me to what you're  
15 talking about.  
16 Q. Sorry, question that should have been in  
17 there. Strike that question. Sorry.  
18 Let's now move back to Eichner 23.  
19 A. Ready.  
20 MR. MARCK: This is 2144. You're on the  
21 same page as us, Claude?  
22 MR. SCOTT: Yes.  
23 Q. (By Mr. Marck) At the top, who sent the  
24 email?  
25 A. At the very top?

1 AMY K. EICHNER, PH.D.  
2 A. Well, NutraIngredients is a trade  
3 association paper, so I guess we would hope that USADA  
4 would be considered an important enough voice in  
5 dietary supplements safety that we would be worthy of  
6 contacting.  
7 Q. Were you aware that Dr. ElSohly conducted  
8 a second study regarding DMAA?  
9 A. I became aware of it after it was  
10 published and nearly completed, yes.  
11 Q. Were you -- so you were not really  
12 involved in at all? You said you only just became  
13 aware of it just prior to publication?  
14 A. Yeah, I heard about that they might be  
15 doing something additional, but I didn't have any role  
16 in it.  
17 Q. And USADA had no role in it either?  
18 A. (Witness shakes head.)  
19 Q. You didn't design it or anything?  
20 A. No.  
21 Q. And USADA didn't fund it?  
22 A. No.  
23 Q. Did you review any drafts of the paper  
24 before it was published?  
25 A. No.

1 AMY K. EICHNER, PH.D.  
2 Q. Correct.  
3 A. From me, Amy Eichner, to Dr. ElSohly, Dr.  
4 Bowers and Annie Skinner.  
5 Q. Who is Annie Skinner?  
6 A. She is our -- was our communications  
7 director at that time.  
8 Q. And it's a short email. Could you read it  
9 all aloud, please?  
10 A. "We should probably be prepared to comment  
11 on this paper. I'm a little offended but not surprised  
12 that NutraIngredients has not requested our comment.  
13 I'm sure they're terrified at what Larry would say."  
14 Q. Do you know which paper they're referring  
15 to?  
16 A. The attachment is ACI Identification and  
17 Quantification of Dimethylamylamine in geranium. And I  
18 would have to refer to the actual paper, but I believe  
19 that was -- I believe it was a paper by Bloomer. I  
20 would need to -- I'd like to confirm what we're talking  
21 about here, though, if possible.  
22 Q. That's fine. Then I'm going to skip past  
23 that and we can move by it. Do you know what prompted  
24 you to say that you were a little offended by not being  
25 contacted by them?

1 AMY K. EICHNER, PH.D.  
2 Q. Do you know the final results of that  
3 study?  
4 A. My understanding is that they confirmed it  
5 was consistent with our 2012 study and that they didn't  
6 find any evidence for the presence of DMAA and geranium  
7 oil within the limits of detection.  
8 MR. MARCK: I'm done with this witness.  
9 Claude, I'm not sure if you want to take a break.  
10 MR. SCOTT: Let's take a break.  
11 (Break)  
12 EXAMINATION  
13 BY MR. SCOTT:  
14 Q. Dr. Eichner, my name is Claude Scott. I'm  
15 with the United States Department of Justice and I just  
16 have a few questions for you this afternoon.  
17 First of all, could you rummage around the  
18 pile there and pull out Exhibit 10?  
19 MR. KOONS: Can I show her my exhibits  
20 that were marked?  
21 MR. MARCK: Yeah.  
22 Q. (By Mr. Scott) Do you have that in front  
23 of you now?  
24 A. Yes.  
25 Q. All right. You have in front of you an

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1 AMY K. EICHNER, PH.D.  
 2 exhibit marked as Exhibit 10 by counsel for claimants.  
 3 It's a multi-paged exhibit with identification numbers  
 4 GOV 7430 through 7435, correct?  
 5 A. Correct.  
 6 Q. And you recall being shown this by counsel  
 7 for claimants?  
 8 A. Correct.  
 9 Q. Now, if you want to look at the first page  
 10 of the exhibit down at the bottom there is the email  
 11 that you sent to Robert Moore on April 6, 2011. Do you  
 12 see that?  
 13 A. Yes, I do.  
 14 Q. And you recall that counsel asked you what  
 15 if any type of response you had expected to that email.  
 16 Do you recall that?  
 17 A. Yes, I do.  
 18 Q. Now, in the email you said, "Dear Dr.  
 19 Moore, following up from this email, could you provide  
 20 any references that show methylhexaneamine is in a  
 21 geranium oil?" Do you see that question that you  
 22 posed?  
 23 A. Yes.  
 24 Q. Now, the email above that is Mr. Moore, or  
 25 Dr. Moore, I'm not sure which, responds to your email,

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1 AMY K. EICHNER, PH.D.  
 2 you recall those?  
 3 A. Yes.  
 4 Q. And further down in response to your email  
 5 of April 6, 2011, Dr. Moore goes on to state, "We have  
 6 not conducted any independent scientific studies to  
 7 confirm or refute the findings alleging its presence in  
 8 geranium oil." Do you see that?  
 9 A. Yes.  
 10 Q. And by refuting its presence in geranium  
 11 oil, confirming or refuting its presence in geranium  
 12 oil, did you understand he was talking about DMAA?  
 13 A. Yes.  
 14 Q. Then he goes on to say, "Moreover, no  
 15 party has submitted to FDA concerning its occurrence in  
 16 any natural product." Do you see that?  
 17 A. Yes.  
 18 Q. And again, was he referring to DMAA to  
 19 your understanding?  
 20 A. Yes.  
 21 Q. Then he goes on to say, "Accordingly, we  
 22 have not reviewed any scientific information that would  
 23 enable the agency to conclude that the substance is or  
 24 is not a legitimate dietary ingredient under section  
 25 201 (ff)(1) of the FD&C Act, at this time." Do you see

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1 AMY K. EICHNER, PH.D.  
 2 correct?  
 3 A. Yes.  
 4 Q. And in response to your email, Dr. Moore  
 5 says that, "The only reference that we have seen cited  
 6 as showing its presence in geranium oil is this one:  
 7 Ping, Z.; June, Q. & Qing, L., 1996, 'A Study on the  
 8 Chemical Constituents of Geranium Oil,' Journal of  
 9 Guizhou Institute of Technology 25 (1):82-85." Do you  
 10 see that?  
 11 A. Yes.  
 12 Q. And do you understand whether or not  
 13 that's the Ping article that you discussed earlier in  
 14 the deposition?  
 15 A. That is the same.  
 16 Q. And in your view as USADA regarding the  
 17 scientific significance of the Ping article was what?  
 18 A. When we evaluated the paper and the  
 19 methodology, we determined that the results were not  
 20 sufficiently conclusive. We felt that the paper did  
 21 not in fact establish methylhexaneamine as a part of  
 22 geranium oil.  
 23 Q. And in your earlier testimony you pointed  
 24 out several issues that you found with the article  
 25 itself that you thought undercut its importance. Do

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1 AMY K. EICHNER, PH.D.  
 2 that?  
 3 A. Yes.  
 4 Q. You understood this to be the state of  
 5 what he was describing of the scientific information  
 6 regarding DMAA and its presence in geraniums that was  
 7 available to FDA as of April 13th, 2011 when he wrote  
 8 the email?  
 9 A. Yes.  
 10 Q. Then it goes on to say below that, "Any  
 11 person/party can submit information to FDA that they  
 12 believe may be relevant to FDA's regulation of a  
 13 substance or that bears on the legal status of a  
 14 substance/product under the Act. As with any complaint  
 15 of submission made to FDA by an FDA-regulated product,  
 16 we will consider that information as well as the  
 17 totality of all the information available to the agency  
 18 and whether a violation of the Act has occurred and, if  
 19 so, whether regulatory action may be warranted, in  
 20 light of FDA's present enforcement priorities and  
 21 available resources." Do you see that?  
 22 A. Yes, I do.  
 23 Q. And that was part of Dr. Moore's response  
 24 to your inquiry regarding what information was  
 25 available to FDA and the process by which people could

1 AMY K. EICHNER, PH.D.  
 2 bring information regarding whether geranium plants  
 3 produced DMAA or not to their attention?  
 4 A. That is correct.  
 5 Q. Now, earlier in your testimony you said  
 6 that you had some discussions with, I don't know if  
 7 it's a Mr. or Dr. Catlin. Do you recall that?  
 8 A. I recall that, yes.  
 9 Q. Do you know if it's Mr. or Dr.?  
 10 A. I think it's Mr. but I don't know.  
 11 Q. In the testimony, correct me if I'm wrong  
 12 here, I'm not trying to put any words in your mouth, I  
 13 believe you indicated in some conversation or  
 14 communication with Mr. Catlin, he told you that he had  
 15 found low levels of DMAA in geranium oil that he  
 16 tested?  
 17 A. Yes.  
 18 Q. Now, did he indicate to you whether or not  
 19 that geranium oil was pure or was blended with some  
 20 other product?  
 21 A. No, he didn't. In fact, I had to press  
 22 him on several occasions to tell us what product, what  
 23 geranium oil he actually tested because obviously we  
 24 wanted to validate that, we wanted to test it ourselves  
 25 and see if we could come up with a same conclusion.

1 AMY K. EICHNER, PH.D.  
 2 Q. All right. And did Dr. -- I mean did  
 3 Mr. Kaplan ever provide you with any documentation  
 4 regarding these findings of geranium oil, DMAA in  
 5 geranium oil?  
 6 A. No, he did not. After I pressed him, he  
 7 did reveal the brands of geranium oil that he had  
 8 obtained, but despite my encouragements that he should  
 9 publish his findings, to my knowledge, he never did,  
 10 and to my knowledge, he never supplied USADA or anyone  
 11 else that I know of his results. And in a later email  
 12 he also said himself that he was not 100 percent sure  
 13 about his results.  
 14 Q. All right. And to your knowledge, did he  
 15 ever publish anything regarding the findings that he  
 16 reported to you that he found DMAA in small amounts in  
 17 some geranium oils?  
 18 A. To my knowledge, he has not published in  
 19 that area at all.  
 20 Q. I think that's all I have. Oh, wait a  
 21 minute. I forgot. Doctor, are you being compensated  
 22 by claimants for your time in preparing for this  
 23 deposition and in attending it to testify?  
 24 THE WITNESS: Are you claimants?  
 25 MR. MARCK: Yes.

1 AMY K. EICHNER, PH.D.  
 2 THE WITNESS: Yes, then I am.  
 3 Q. (By Mr. Scott) What are the financial  
 4 arrangements? How much are you being paid to for your  
 5 time?  
 6 A. I don't know.  
 7 MR. MARCK: Don't look at me. You're  
 8 under oath.  
 9 MR. KOONS: You don't know?  
 10 THE WITNESS: I don't know.  
 11 MR. MARCK: Do you need to go off the  
 12 record and talk to her?  
 13 MR. KOONS: If we can.  
 14 MR. SCOTT: If that's what we need to do,  
 15 that's fine.  
 16 (Discussion off the record)  
 17 Q. (By Mr. Scott) Doctor, while we were off  
 18 the record, there was a discussion that indicated that  
 19 you're being paid \$450 an hour for your time in  
 20 preparing and testifying at the deposition and that a  
 21 retainer of \$7500 had been put on the table by  
 22 claimants. Is that your understanding?  
 23 A. Yes, it is.  
 24 Q. Now, in appearing today, did you have to  
 25 take off from work or lose any salary or lose any

1 AMY K. EICHNER, PH.D.  
 2 vacation time?  
 3 A. No.  
 4 MR. SCOTT: That's all I have.  
 5 MR. MARCK: Nothing further from  
 6 claimants.  
 7 (Proceedings concluded 2:35 p.m.)  
 8  
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 22  
 23 SUBSCRIBED AND SWORN BEFORE ME  
 24 THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016.  
 25 \_\_\_\_\_  
 (Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_



REPORTER'S CERTIFICATE

STATE OF UTAH )  
 ) ss.  
 COUNTY OF SALT LAKE )

I, Ann Fleming, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That prior to being examined, the witness, Amy K. Eichner, Ph.D., was by me duly sworn to tell the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in stenotype on December 14, 2016, at the place therein named, and was thereafter transcribed and that a true and correct transcription of said testimony is set forth in the preceding pages;

I further certify that, in accordance with Rule 30(e), a request having been made to review the transcript, a reading copy was sent to the witness to read and sign, and the original transcript will be delivered to Mr. Marck for safekeeping.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND this 19th day of December, 2016.

\_\_\_\_\_  
 Ann Fleming, RPR  
 Notary Public

ERRATA SHEET

Case Name:

Deposition Date:

Deponent:

Pg.	No.	Now Reads	Should Read	Reason
6	_____	_____	_____	_____
7	_____	_____	_____	_____
8	_____	_____	_____	_____
9	_____	_____	_____	_____
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19	_____	_____	_____	_____
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\_\_\_\_\_  
 Signature of Deponent

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