

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

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

*Plaintiffs,*

v.

MERCK & CO., INC.,

*Defendant.*

Civil Action No. 10-4374 (CDJ)

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

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

**EXHIBIT 7**

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

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

11 \_\_\_\_\_ : Master File No.  
12 IN RE: MERCK MUMPS : 2:12-cv-03555(CDJ)  
13 VACCINE ANTITRUST :  
14 LITIGATION :

15 THIS DOCUMENT RELATES TO: :  
16 ALL ACTIONS :

17 - - -  
18 May 3, 2017

19 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
20 - - -

21 Continued videotaped deposition of  
22 STEPHEN KRAHLING, taken at the offices of  
23 Morgan Lewis & Bockius, 1701 Market Street,  
24 Suite 18-F, Philadelphia, Pennsylvania 19103,  
25 beginning at 10:09 a.m., before LINDA  
ROSSI-RIOS, a Federally Approved RPR, CCR and  
Notary Public.

26 - - -  
27 VERITEXT LEGAL SOLUTIONS  
28 MID-ATLANTIC REGION  
29 1801 Market Street - Suite 1800  
30 Philadelphia, PA 19103

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1     STEPHEN KRAHLING - HIGHLY CONFIDENTIAL

2     A.   I don't want to use the word

3     fraud. There's legal stuff there. Misconduct,

4     there were problems.

5     Q.   So Dr. Krah's lab, the HP --

6     lab working on the HPV vaccine you mentioned.

7     A.   I would just say that the HIV

8     adenoviral vaccine product would be responsive

9     to your question if you're talking about

10    potential scientific misconduct. I can't

11    make -- legal fraud, I don't know.

12    Q.   Did you ever work in Merck's

13    laboratory operations group in Merck's

14    manufacturing division?

15    A.   I don't know what the -- I

16    don't know what the laboratory operations

17    group is. If you're talking about the

18    physical, wherever it is -- I don't recognize

19    the name. I did work that supported

20    manufacturing.

21    Q.   You mean the work you did in

22    Dr. Krah's lab may have supported manufacturing?

23    A.   No, it did. He explained how.

24    Q.   But other than the work in

25    Dr. Krah's lab, you never worked in any of the

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1     STEPHEN KRAHLING - HIGHLY CONFIDENTIAL

2     manufacturing facilities?

3     A.   My labor was not physically

4     present -- I don't even know where that place

5     is. But I -- my labor was done in Krah's lab

6     other than that one time they stuck me in

7     another room.

8     Q.   Have you ever reviewed Merck's

9     quality manuals, SOPs, policies or procedures

10    that are used by Merck's manufacturing

11    division?

12    A.   If I was required to review

13    them for the job, then I reviewed them. I

14    don't recall.

15    Q.   In your work at Merck, did you

16    ever run a TCID50 assay?

17    A.   You're talking about a potency

18    assay?

19    Q.   A specific TCID50 assay.

20    A.   To determine the amount of

21    virus that's present. I don't think I did. I

22    don't recall. I don't think I did, though.

23           MS. DYKSTRA: Let take a break

24           and we'll switch topics.

25           VIDEOGRAPHER: The time is 11:00.

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2     We're going off the video record.

3     - - -

4     (A recess was taken.)

5     - - -

6           VIDEOGRAPHER: The time is 11:17.

7     We're back on the video record.

8     BY MS. DYKSTRA:

9     Q.   Mr. Krahling, tell me how and

10    where you met Mr. Moody.

11    A.   I met him in Pittsburgh. And I

12    met him through an intermediary.

13    Q.   Who is the intermediary?

14    A.   Liz Birt.

15    Q.   What does Liz Birt do? What is

16    her profession?

17    A.   I don't know.

18    Q.   How do you know Liz Birt?

19    A.   I don't know her anymore.

20    Q.   Well, how did you -- how did

21    she become an intermediary to introduce you to

22    Mr. Moody?

23    A.   How did I meet her?

24    Q.   Yes.

25    A.   I don't recall how I met her.

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2     Q.   Who is she, Liz Birt?

3     A.   In what sense, I don't know

4     what --

5     Q.   You said she introduced you to

6     Mr. Moody. Who is -- in what context did you

7     know her?

8     A.   I mean, I was communicating

9     with her, so I knew her in the sense that we

10    communicated.

11           MS. DYKSTRA: What Exhibit is

12           that? 21?

13    BY MS. DYKSTRA:

14    Q.   She's mentioned in your

15    interrogatory responses if that will refresh

16    your recollection. I just want to know who

17    she is, how you met her and how she came to

18    introduce you to Mr. Moody.

19    A.   I don't remember how I met her.

20    Q.   And you don't remember what she

21    did for a living?

22    A.   For a living? No.

23    Q.   Do you know what profession she

24    was in at all?

25    A.   I don't know what profession

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1     STEPHEN KRAHLING - HIGHLY CONFIDENTIAL

2     Q.    Would you recommend Mr. Moody

3    as counsel to somebody else if they had a

4    potential False Claims Act case?

5     A.    I would always recommend these

6    guys first.

7     Q.    You're not answering my

8    question. Would you or would you not

9    recommend Mr. Moody to somebody else if they

10   had a False Claims Act case?

11    A.    Not with a better option

12   available. I'd recommend these, Constantine

13   Cannon, Keller Grover.

14    Q.    Other than the 2003 and 2009

15   autism conferences, did you attend any other

16   autism conferences in the broad sense we're

17   speaking, meaning go to the area where the

18   conference is held?

19    A.    I'm not sure. I think I

20   went -- I may have gone to Chicago to meet Jim

21   Moody. I don't know the number of times.

22    Q.    Did your wife attend the trips

23   to Chicago with you?

24    A.    No.

25    Q.    Mr. Krahling, you left Merck in

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2   November/December 2001. Following your

3   departure from the company, did you ever see,

4   other than in connection with this case, any

5   of the submissions Merck made to the FDA

6   around Protocol 007?

7     MR. SCHNELL: Object to form.

8     THE WITNESS: What do you mean

9   in connection with the case?

10  BY MS. DYKSTRA:

11  Q.    I know you produced in this

12  case, the company has produced in this case a

13  lot of submissions and filings that the

14  company had with the FDA over a long period of

15  time. You weren't at the company for that

16  entire period of time. So what I'm asking you

17  is other than things that you may have seen

18  through the course of discovery in this case,

19  have you ever seen the actual submissions that

20  Merck made to the FDA in connection with

21  Protocol 007 that postdated your employment?

22  A.    Those overlap. If you can

23  rephrase it as prior to filing the lawsuit

24  what submissions would I have seen, then we

25  cut out anything I've seen first time since

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1     STEPHEN KRAHLING - HIGHLY CONFIDENTIAL

2   then.

3     Q.    Prior to filing the lawsuit.

4     A.    Now, what do you mean by

5   "submissions"?

6     Q.    Anything that Merck provided to

7   the FDA related to 007.

8     A.    Prior to filing the lawsuit, on

9   clinicaltrials.gov Protocol 007 was listed as

10  a completed trial. I had the ProQuad BLA, and

11  I -- there was the language around the label

12  change from 20,000 to 12,500 TCID50. There

13  was an EMA submission -- there was an EMA

14  document that cited an EMA submission that

15  listed Protocol 007 as a pivotal study and it

16  had the final seroconversion rates in it. It

17  was listed as a completed study. So I had at

18  least those things. I can't remember off the

19  top of my head more submissions.

20    Q.    Let me just make sure I have

21  those correctly. So prior to filing the

22  lawsuit, you went on clinicaltrials.gov and

23  based on information on clinicaltrials.gov,

24  you had the ProQuad BLA, an EMA submission and

25  I think you said the new label?

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2   A.    Are you saying I got them off

3   of clinicaltrials.gov?

4     Q.    That's what it sounded like

5   your answer was.

6     A.    No, it was a separate thing. I

7   got the ProQuad BLA from an Internet search.

8     Q.    Okay.

9     A.    Clinicaltrials.gov is a

10  website. The EMA document that cites the EMA

11  submission off the Internet.

12    Q.    So BLA you got off the Internet?

13    A.    The CDC contract.

14    Q.    The CDC contract, okay.

15    A.    I might be leaving something

16  out, but I think we have it detailed in the

17  complaint if you want to go through it.

18    Q.    If you think looking at the

19  complaint would be helpful, that's fine.

20    A.    No. That's what I got off the

21  top of my head here 17 years later.

22    Q.    So you said you got the ProQuad

23  BLA off an Internet search. Correct?

24    A.    Yes.

25    Q.    I just want to break it down.

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2 A. Sure.

3 Q. And you got the CDC contract

4 where?

5 A. Someone on our legal team found

6 that. I'm not sure I found it. I don't

7 recall how I had that in front of me.

8 Q. Which legal team are you

9 talking about?

10 A. Which legal team? Do I need to

11 make the distinction?

12 Q. Yes, you do.

13 A. These guys. Oh, wait. I got

14 more. The FDA 483 report.

15 Q. Where did you get that?

16 A. Counsel. The first one.

17 Q. Mr. Moody?

18 A. Yes.

19 Q. How did he get it?

20 A. I have no idea.

21 MR. SCHNELL: I just want to

22 instruct the witness going forward not

23 to identify documents that your counsel

24 may have provided you. So if we can

25 carve out of your answer going forward

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2 those documents, please do.

3 THE WITNESS: Are these the

4 ones I found on my own?

5 BY MS. DYKSTRA:

6 Q. My question was prior to filing

7 this lawsuit, what did you see?

8 A. Everything I saw prior to 2010.

9 Q. So the ProQuad BLA you

10 mentioned you found yourself from an Internet

11 search?

12 A. I don't know if counsel found

13 it independently, but I remember when I found

14 it, it lit a fire under me.

15 Q. Tell me about that, when did

16 you find it and what did you think?

17 A. I think that they were using --

18 it cited the PRN from Protocol 007 to justify

19 the cutoff for the ELISA. And they were

20 bringing ProQuad to market based on unreliable

21 data that was falsified. So I knew for

22 certain the fraud was ongoing.

23 Q. You don't know whether you

24 found the ProQuad BLA from your own Internet

25 search or Mr. Moody gave it to you?

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2 A. No, I know I found it.

3 Q. You found it yourself?

4 A. Absolutely.

5 Q. And so that was -- you found

6 that, I'm sorry, on the Internet somewhere?

7 A. Internet search engine somehow.

8 Q. The CDC contract, did you also

9 find that from Internet search or you think

10 you may have got that from counsel?

11 A. I don't recall --

12 Q. I'm trying not to -- I'm trying

13 to say did you find --

14 A. I don't recall how I got it in

15 front of me. The reason I remember the

16 ProQuad BLA so much is it was easily

17 identifiable that they were using Protocol 007

18 ELISA which was absolutely predicated and

19 inextricably linked to that PRN falsification.

20 I know I saw the seroconversion rates in that

21 EMA document that talked about the EMA

22 submission. It was a completed study. They

23 weren't looking at some small sample size.

24 Those stand out quite well. At some point I

25 was looking at a CDC contract. I don't know

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2 who found it or supplied it.

3 Q. And I think you mentioned the

4 483. Do you know whether you found that by

5 yourself on some FOIA request or an Internet

6 search?

7 A. Let's clarify. I don't recall,

8 I remember that I had it in front of me before

9 I met them. Whether counsel provided or me, I

10 don't think I provided it. I mean, I have to

11 identify who provided it? I shouldn't guess.

12 Q. I don't want you to guess. I'm

13 just asking if you recall how you got it?

14 A. I recall seeing it.

15 Q. What data did you get off of

16 clinicaltrials.gov related to the mumps

17 vaccine?

18 A. One of the most important

19 pieces was that Protocol 007 was a completed

20 study which means the seroconversion rates I

21 was seeing were final. They weren't based off

22 of some interim measure, or however Merck

23 described it.

24 Q. Did you see -- did you pull off

25 of clinicaltrials.gov the final seroconversion

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1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL  
 2 rates from 007 that were submitted to the FDA?  
 3 A. I don't know if they were on  
 4 there. I don't recall that. I recall seeing  
 5 the final seroconversion rates listed in the  
 6 EMA submission that the EMA discussed.  
 7 Q. Other than the documents you  
 8 just identified, did you see -- let me ask  
 9 specifically. Again, I'm excluding what  
 10 you've seen in connection with this  
 11 litigation.  
 12 A. Prior to 2010.  
 13 Q. Prior to discovery in this  
 14 litigation, had you ever seen the supplemental  
 15 biological license application that Merck  
 16 submitted to the FDA on January 29, 2004?  
 17 MR. SCHNELL: Do you have the  
 18 document?  
 19 THE WITNESS: I'd have to look  
 20 at it to know.  
 21 BY MS. DYKSTRA:  
 22 Q. Do you recall seeing it?  
 23 A. Well, you listed a title. If I  
 24 saw a document and didn't remember the title?  
 25 Q. I'm asking you if you recall

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1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL  
 2 seeing --  
 3 A. I can't say either way.  
 4 Q. You don't remember one way or  
 5 the other?  
 6 A. No, I didn't say that. I said  
 7 without seeing the document, I can't know  
 8 whether I saw it before or not.  
 9 - - -  
 10 (Exhibit Krahling-31, 1/29/04  
 11 Supplemental Biologics License Application,  
 12 MRK-KRA00000032 - 00000139, was marked  
 13 for identification.)  
 14 - - -  
 15 BY MS. DYKSTRA:  
 16 Q. I'm going to mark as Exhibit 31  
 17 a January 29, 2004, Supplemental Biologics  
 18 License Application. And you can -- all I  
 19 want to know is whether or not you saw this  
 20 document prior to discovery in this lawsuit?  
 21 I'm not asking if there's a label attached and  
 22 you may have seen the label. I'm talking  
 23 about the full submission to the FDA.  
 24 A. I have seen this document. I  
 25 don't recall when I first saw it because so

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1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL  
 2 many pieces of it are familiar.  
 3 Q. You just looked at the first  
 4 page.  
 5 A. I looked through it. There's  
 6 nothing that looks foreign here. I know that  
 7 I've seen all this. The question is, which  
 8 isn't helping you, is, I don't know when I  
 9 first saw this. I saw this years ago.  
 10 Q. But you don't know when you  
 11 first saw it?  
 12 A. I can't say for certain whether  
 13 I saw it prior or not. I don't know.  
 14 Q. Mr. Krahling, you had answered  
 15 a series of requests for admissions related to  
 16 the CDC already stating that you were never  
 17 asked to communicate with the CDC during your  
 18 employment at Merck and your job duties did  
 19 not include directly communicating with the  
 20 CDC. Do you recall that?  
 21 A. What exhibit is that?  
 22 Q. I have no idea. It's  
 23 Exhibit 6. The supplemental requests for  
 24 admissions number 50 and 51.  
 25 Do you see number 50 you state

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1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL  
 2 that your job duties did not include directly  
 3 communicating with the CDC. You were never  
 4 asked to communicate with the CDC during your  
 5 employment at Merck, and prior to the lawsuit  
 6 you had no personal knowledge of any nonpublic  
 7 communications between Merck and the CDC.  
 8 A. I see those.  
 9 Q. And the last one I'll point to  
 10 is number 57, you admitted that you had no  
 11 personal knowledge of any communications at  
 12 all regarding Protocol 007 between Merck and  
 13 the CDC?  
 14 A. Yeah.  
 15 Q. In addition, is it also correct  
 16 that you never negotiated any contract with  
 17 the CDC on behalf of Merck?  
 18 A. Hold on. Wait a minute.  
 19 You're talking about request number 57 now?  
 20 Q. No. I'm not asking you in  
 21 addition to those.  
 22 A. Okay.  
 23 Q. I have another question.  
 24 A. Okay.  
 25 Q. Is it also true that you never

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1     STEPHEN KRAHLING - HIGHLY CONFIDENTIAL

2     log10 TCID50. These lots will be released by

3     CBER with a dating period of 24 months based

4     upon the CBER potency testing criteria

5     described above. Furthermore, all

6     mumps-containing lots submitted for CBER

7     release, regardless of the manufacturing date,

8     will be subject to the described CBER release

9     requirements as of November 8, 1999.

10     You see that, correct?

11     A.    Sure.

12     Q.    Is this the overfill clinically

13     that we were talking about in your -- talking

14     about in your answers?

15     A.    I don't want to narrow the

16     overfill to just that, but this is an example

17     of an overfill. And this -- I mean, this is

18     an overfill of the vaccine in around 1999. I

19     think this is probably quite correct at this

20     point.

21     Q.    My question is, have you ever

22     done any potency testing at all on vaccine

23     that contained this overfill?

24     A.    Potency testing?

25     Q.    Yes.

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1     STEPHEN KRAHLING - HIGHLY CONFIDENTIAL

2     A.    Just to determine how much is

3     in the vaccine?

4     Q.    Yes.

5     A.    I didn't do potency tests to

6     see how much is in the vaccine. All I was

7     getting at with that high dose was that Krah

8     said they were very concerned about the fact

9     that they had no clinical safety data. I

10     don't know if they shared that. I mean, all

11     this confirmed is that Krah was right in the

12     first part of it, that they did overfill. I

13     wasn't making -- yeah. I mean, that's --

14     MS. DYKSTRA: I think we can

15     break for lunch.

16     VIDEOGRAPHER: The time is

17     1:29. We're going off the video

18     record.

19     - - -

20     (A recess was taken.)

21     - - -

22     VIDEOGRAPHER: The time is

23     2:22. We're back on the video record.

24     BY MS. DYKSTRA:

25     Q.    Mr. Krahling, I want to follow

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1     STEPHEN KRAHLING - HIGHLY CONFIDENTIAL

2     up on a couple of things we talked about prior

3     to lunch.

4     You mentioned -- I don't want

5     you to disclose any communications from

6     counsel or anything that's privileged. You

7     mentioned, though, that you met with Joan

8     Wlochowski and your counsel around 2009, 2010.

9     Is that accurate?

10     A.    Yeah, about that time frame.

11     Q.    Did you meet with any other

12     former lab members and your counsel, without

13     telling me what occurred during that time

14     frame?

15     MR. SCHNELL: I already

16     objected to that line of questioning.

17     MS. DYKSTRA: Who he met with?

18     MR. SCHNELL: Yeah, who counsel

19     decided was worth meeting or not worth

20     meeting is work product.

21     MS. DYKSTRA: I disagree. So

22     you're not going to disclose who you

23     met with, who you and Mr. Krahling

24     talked to about the allegations in his

25     complaint?

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2     MR. KELLER: Why don't you do

3     it this way.

4     MS. DYKSTRA: Sure.

5     MR. KELLER: Do it in the

6     negative. Did you meet with anybody

7     else with your counsel.

8     BY MS. DYKSTRA:

9     Q.    Okay. Did you meet with

10     anybody else that used to work in the lab with

11     your counsel around the allegations in the

12     complaint?

13     A.    No.

14     MR. KELLER: Just trying to

15     shortcut it.

16     MS. DYKSTRA: That's fine. I

17     appreciate that.

18     BY MS. DYKSTRA:

19     Q.    Did you meet with Joan

20     regarding the issues in your complaint without

21     your counsel present?

22     A.    I don't recall. I had the

23     meeting that I described. I met with her with

24     Jeffrey who is my counsel. Outside of that,

25     no. But at that first meeting, as I pointed

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1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL  
2 like that you produced in this litigation?  
3 A. I don't even remember them.  
4 Yeah, I -- if you're going to ask a question,  
5 yes, I understand.  
6 Q. Did you share those documents  
7 with anybody outside of the company? And if  
8 so, who?  
9 A. I did not share them or show  
10 them to anyone outside of counsel.  
11 Q. So outside of Mr. Moody and  
12 outside of your current counsel, you did not  
13 share that data with anybody?  
14 A. No.  
15 Q. Mr. Krahling, when you were  
16 considering leaving the lab in June of 2001,  
17 you informed David Krah that you were looking  
18 for a job at Penn State but then informed him  
19 that you did not get the job at Penn State.  
20 What job were you looking for and what job did  
21 you apply for?  
22 A. I'm not sure what you're  
23 talking about.  
24 Q. I'll try and find the document  
25 to produce it to you, but there's a June 19th

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1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL  
2 e-mail from you to Dave Krah.  
3 A. In 2001?  
4 Q. In 2001. That states -- I'll  
5 wait until we get it.  
6 - - -  
7 (Exhibit Krahling-36, E-mail  
8 chain, MRK-KRA00002281 & 00002282, was  
9 marked for identification.)  
10 - - -  
11 BY MS. DYKSTRA:  
12 Q. I'm going to mark this as  
13 Krahling-36. Your e-mail is the first in the  
14 chain.  
15 A. Which means where?  
16 Q. The bottom.  
17 A. And back?  
18 Q. Yes.  
19 A. What's your question?  
20 Q. In your e-mail you state that  
21 you did not get the job at PSU. I was  
22 wondering what job that was you were applying  
23 for?  
24 A. I have no idea what that refers  
25 to. This is -- I have no idea what that

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1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL  
2 refers to.  
3 Q. You don't recall applying to a  
4 job at Penn State during this time?  
5 A. No, I don't. I don't -- what I  
6 remember about June 19th is that I called the  
7 FDA.  
8 Q. What time of day did you call  
9 the FDA on June 19th?  
10 A. The morning.  
11 Q. The same day that you wrote  
12 this e-mail to David Krah?  
13 A. It was written on June 19th.  
14 Q. So you called the FDA the same  
15 day you said to him "I think lab lunches are a  
16 good idea..." and --  
17 A. You don't think I called the  
18 FDA? Suter told me that I had to play ball  
19 and archive things in e-mails that showed I  
20 was playing ball and being decent toward these  
21 people. I know that June 19th I was concerned  
22 with stopping fraud and I called the FDA to  
23 get that done. That's what I remember about  
24 June 19th.  
25 Q. Do you have any documentation

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1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL  
2 of your call on June 19th?  
3 A. No.  
4 Q. In this e-mail you state that  
5 you think lab lunches are a good idea but I  
6 have to agree with Joan's sentiments about  
7 what happened at Jenny's B-day lunch. It  
8 contributed to a hostile work environment.  
9 What happened at Jenny's B-day lunch?  
10 A. I have no idea.  
11 Q. Is it true that you thought you  
12 were living in a hostile work environment?  
13 A. I don't remember this e-mail.  
14 I told you what I remember about June 19th.  
15 June 19, 2001.  
16 Q. Do you remember in detail  
17 anything specifically that you told the FDA on  
18 that one call?  
19 MR. SCHNELL: Object to form.  
20 THE WITNESS: Can you restate  
21 it?  
22 BY MS. DYKSTRA:  
23 Q. Do you remember anything  
24 specific about what you told the FDA on  
25 June 19, 2001?

<p style="text-align: right;">Page 500</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 A. Specific? What I told the FDA</p> <p>3 was that KraH and Merck were committing fraud.</p> <p>4 That I worked in a lab where fraud was being</p> <p>5 committed.</p> <p>6 Q. Any more detail or is that the</p> <p>7 two sentences you --</p> <p>8 A. I think we went over this</p> <p>9 yesterday.</p> <p>10 Q. We did.</p> <p>11 A. It was a short call. That was</p> <p>12 the main point. We exchanged contact</p> <p>13 information so she could get back to me.</p> <p>14 Q. Were you disappointed that the</p> <p>15 FDA wasn't taking you seriously?</p> <p>16 A. Come on. Your characterization.</p> <p>17 When did I ever say they weren't taking me</p> <p>18 seriously?</p> <p>19 Q. That was a question. Were you</p> <p>20 disappointed that -- did you think the FDA was</p> <p>21 not taking you seriously?</p> <p>22 A. You said was I disappointed</p> <p>23 they weren't taking it seriously. At no time</p> <p>24 did ever I think they weren't taking it very</p> <p>25 seriously.</p>	<p style="text-align: right;">Page 502</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 e-mail.</p> <p>3 A. Okay.</p> <p>4 Q. You state that you wanted an HR</p> <p>5 representative to be present if you speak to</p> <p>6 David KraH. Is that accurate? Is that</p> <p>7 accurate what was happening at the time?</p> <p>8 A. I recall the purpose of this</p> <p>9 e-mail. The purpose of this e-mail was that</p> <p>10 Suter had informed me in person that no one</p> <p>11 knew I had called the FDA. And I pointed out</p> <p>12 to him that I told Emini I was going to call</p> <p>13 the FDA. I said, of course, they know.</p> <p>14 Colleen knows I called the FDA. And other</p> <p>15 people in the lab knew I had called the FDA.</p> <p>16 Dave had told me he knew I had called the FDA.</p> <p>17 And then sometime around now Dave switched</p> <p>18 gears and said nobody knows who called the</p> <p>19 FDA. Suter told me to avoid putting anything</p> <p>20 in an e-mail where I said that I called the</p> <p>21 FDA or that Dave knew I called the FDA. "He</p> <p>22 also denied knowing why the FDA was here even</p> <p>23 though yesterday he told me they were here</p> <p>24 because of me." The entire e-mail exists for</p> <p>25 that sentence. Suter told me I could not go</p>
<p style="text-align: right;">Page 501</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 Q. So you understood -- it was</p> <p>3 your belief that the FDA was taking your</p> <p>4 complaint seriously?</p> <p>5 A. Absolutely.</p> <p>6 Q. In this e-mail you also state</p> <p>7 to Dr. KraH that as far as weekend work goes,</p> <p>8 you are available for some weekend work but</p> <p>9 you won't work a sixth and seventh day during</p> <p>10 any week until all employees are expected to</p> <p>11 consistently work a fifth. Can you explain a</p> <p>12 little more about what that means?</p> <p>13 A. I can't speak to this e-mail.</p> <p>14 What I remember about June 19th is that I</p> <p>15 called the FDA and reported Merck for</p> <p>16 committing fraud.</p> <p>17 - - -</p> <p>18 (Exhibit KraHling-37, 9/7/01</p> <p>19 E-mail, RELATOR_00000746, was marked</p> <p>20 for identification.)</p> <p>21 - - -</p> <p>22 BY MS. DYKSTRA:</p> <p>23 Q. I'm going to mark as KraHling</p> <p>24 Exhibit 37 a September 7, 2001, e-mail to</p> <p>25 Mr. Suter. If you can take a look at this</p>	<p style="text-align: right;">Page 503</p> <p>1 STEPHEN KRAHLING - HIGHLY CONFIDENTIAL</p> <p>2 to him for any reason unless I had an HR</p> <p>3 complaint. That's why that e-mail exists.</p> <p>4 Q. You mean Suter told you you</p> <p>5 couldn't go to Suter with allegations of</p> <p>6 fraud, only allegations of HR issues?</p> <p>7 A. He said he wouldn't talk to me</p> <p>8 unless I had a human resource complaint which</p> <p>9 is why he always made me bring lists or do</p> <p>10 lists of something that I could say about</p> <p>11 personnel or administrative things in the lab.</p> <p>12 Q. Did Mr. Suter tell you he would</p> <p>13 not listen to your concerns around data</p> <p>14 manipulation or lab fraud?</p> <p>15 A. The very first time I met him,</p> <p>16 he said that was -- said something to that</p> <p>17 effect, that he wasn't going to be able to --</p> <p>18 he couldn't -- he could only listen to</p> <p>19 administrative complaints.</p> <p>20 Q. Did you speak to anybody else</p> <p>21 in HR when he told you that or any other time?</p> <p>22 A. I don't recall.</p> <p>23 Q. So you don't recall?</p> <p>24 A. If there was anyone else</p> <p>25 present or -- I don't recall, no.</p>