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CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER

Transcript of John Ferris

Date: November 2, 2022

Case: Slayback Pharma LLC -v- Eye Therapies LLC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

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1	UNITED STATES PATENT AND TRADEMARK OFFICE	1	A P P E A R A N C E S
2	-----	2	ON BEHALF OF THE PETITIONER, SLAYBACK PHARMA
3	BEFORE THE PATENT TRIAL AND APPEAL BOARD	3	LLC:
4	-----X	4	LINNEA P. CIPRIANO, ESQUIRE
5	SLAYBACK PHARMA LLC, :	5	Goodwin Procter LLP
6	Petitioner, :	6	620 Eighth Avenue
7	v. : Case No. :	7	New York, New York 10018
8	EYE THERAPIES LLC : IPR2022-00142	8	212-813-8800
9	Patent Owner : U.S. Patent No. :	9	lcipriano@goodwinlaw.com
10	-----X	10	
11		11	ON BEHALF OF THE PATENT OWNER, EYE THERAPIES
12	** CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER **	12	LLC:
13	Deposition of John Ferris	13	CAITLIN O'CONNELL, ESQUIRE
14	Newark, New Jersey	14	BRYAN DINER, ESQUIRE
15	Wednesday, November 2, 2022	15	Finnegan, Henderson, Farabow, Garrett &
16	9:40 a.m.	16	Dunner LLP
17		17	901 New York Avenue NW
18		18	Washington, District of Columbia 20001-4413
19		19	202-408-4004
20	Job No.: 468947	20	
21	Pages 1-90	21	ALSO PRESENT: Kristi McIntyre, In-House Counsel
22	Reported by: Angela (Angie) Shaw-Crockett, CRR, RMR	22	Bausch Enrique Casas, The Videographer
1	Deposition of John Ferris, held at:	1	I N D E X
2		2	Examination of: Page
3		3	John Ferris
4	Gibbons, P.C.	4	
5	One Gateway Center	5	C O N T E N T S
6	Newark, New Jersey 07102-5310	6	MS. CIPRIANO 6
7	973-596-4500	7	
8		8	E X H I B I T S
9		9	(Retained by the court reporter)
10		10	DEPOSITION EXHIBIT PAGE
11		11	Exhibit 1045 Earnings Call Transcript 54
12	Pursuant to Notice, before Angela (Angie)	12	
13	Shaw-Crockett, CRR, RMR, Notary Public in and for the	13	
14	states of New York, New Jersey and Connecticut.	14	
15		15	
16		16	
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5 1 THE VIDEOGRAPHER: Here begins media 2 number 1 in the videotaped deposition of John Ferris 3 in the matter of Slayback Pharma LLC v. Eye Therapies 4 LLC in the United States Patent and Trademark Office, 5 case number IPR-2022-00142. 6 Today's date is November 2, 2022, the time 7 on the video monitor is 9:40 a.m. The videographer 8 today is Enrique Casas, representing Planet Depos. 9 This video deposition is taking place at One Gateway 10 Center, Newark, New Jersey, 07102. 11 Would counsel please voice identify 12 themselves and state whom they represent? 13 MS. CIPRIANO: Linnea Cipriano, 14 representing petitioner. 15 MS. O'CONNELL: Good morning. This is 16 Caitlin O'Connell from Finnegan, representing the 17 patent owner and the witness, and with me is my 18 colleague, Bryan Diner, also from Finnegan, and Kristi 19 McIntyre from Bausch. 20 THE VIDEOGRAPHER: The court reporter today 21 is Angie Shaw-Crockett, representing Planet Depos. 22 Would the reporter please swear in the	7 1 company? 2 A Yes, I was. 3 Q So this will likely -- since it wasn't 4 virtual, obviously, in your last deposition, this will 5 likely go along the same lines as your last 6 deposition, but I'd like to go over some ground rules. 7 A Okay. 8 Q I'll be asking you questions today, and 9 your answers are going to be recorded by the court 10 reporter. I will try not to speak over you. I ask 11 that you try not to speak over me, so we make her life 12 a little bit easier. Your answers today will be under 13 oath as if you were testifying in court. 14 Do you understand that? 15 A Yes. 16 Q Is there any reason that you can't answer 17 my questions today truthfully and fully? 18 A No. 19 Q During the course of the deposition, your 20 counsel may make objections, but unless you've been 21 instructed not to answer, you'll need to answer my 22 questions.
6 1 witness. 2 John Ferris, having been duly REMOTELY sworn, 3 testified as follows: 4 EXAMINATION 5 BY MS. CIPRIANO: 6 Q Good morning. 7 A Good morning. 8 Q As I said, my name is Linnea. I'll be 9 asking you questions today. 10 Could you please state your name for the 11 record? 12 A Sure. My name is John Ferris. 13 Q Have you ever been deposed before? 14 A I have. 15 Q About how many times? 16 A One time. 17 Q And when was that? 18 A That was about eight years ago. 19 Q Was that in your position at Bausch? 20 A It was at Bausch but in a different 21 position. 22 Q Okay. Were you testifying on behalf of the	8 1 Do you understand that? 2 A Yes. 3 Q If you don't understand my questions, I ask 4 that you ask me to clarify. I'll do my best. I'm 5 sure I'll have some questions that are not the best, 6 but just ask me to clarify. 7 If you answer my question, I'm going to 8 assume that you understood it; is that fair? 9 A Yes. 10 Q We'll take breaks from time to time. 11 Please let me know if you need a break. But I do ask 12 that we finish a question and answer before we take a 13 break. 14 Does that make sense? 15 A Yes, that's fine. 16 Q And you understand that while I am asking 17 questions, you are not permitted to discuss the 18 substance of your testimony with your attorneys. 19 Do you understand that? 20 A Yes. 21 Q Did you prepare for today's deposition? 22 A Yes.

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1 Q And at a high level, what did you do to 2 prepare? 3 A I reviewed my declaration and had some 4 meetings yesterday with my lawyers. 5 Q Did you speak with anyone besides lawyers 6 about your deposition? 7 A No. 8 Q About how long did you prepare? 9 A About five hours. 10 Q Did you review documents other than your 11 declaration in preparation for this deposition? 12 A I reviewed the one market research study 13 that was submitted along with my declaration, the 14 Ipsos. 15 Q Okay. Do you recall any other documents? 16 A No. 17 Q Let's -- I'm going to hand you -- the court 18 reporter is going to hand you a copy your declaration, 19 which is Exhibit 2023 in the IPR. 20 A Okay. 21 Q Do you recognize this as the declaration 22 that you prepared in connection with IPR2022-00142?	9 11 1 responsibilities? 2 A So I'm primarily responsible for leading 3 the commercial organization for our consumer health 4 care products. 5 Q Other than Lumify, what products does that 6 cover? 7 A It includes many products around the globe, 8 but some of them are our eye vitamin business, 9 PreserVision and OcuVite eye vitamins. 10 (Reporter requests clarification.) 11 A PreserVision and OcuVite are two of the 12 brand names, our contact lens solution business, other 13 OTC eye drops. 14 BY MS. CIPRIANO: 15 Q So your declaration sets forth information 16 based on your personal knowledge about Bausch's 17 marketing and commercial efforts related to Lumify, 18 correct? 19 A Yes. 20 Q And you're not providing any testimony in 21 this case as an expert, right? 22 MS. O'CONNELL: Objection, vague.
10 1 A Yes, I do. 2 Q And at a high level, how did you prepare 3 your declaration? 4 A So it was a collaborative process within 5 Bausch, with our legal team and with some of the 6 content owners, market research, and other groups. 7 Q What do you mean by "content owners"? 8 A So, for example, a market research study, 9 I'm not considered the content owner of that at 10 Bausch~+~Lomb. So the market research department 11 would be. So if we asked for a market research study, 12 they are the ones who would provide that. 13 Q Did you draft the words in the document? 14 A I drafted many of the words in the 15 document. I did not type the entire document. 16 Q Are there any corrections that you'd like 17 to make in your declaration? 18 A At this time, no. 19 Q What is your current title? 20 A I am the senior vice president for the 21 global consumer health business at Bausch~+~Lomb. 22 Q And in your role, what are your	12 1 A Can you clarify what you mean by "expert"? 2 BY MS. CIPRIANO: 3 Q Sure. 4 Are you an expert economist? 5 A I'm not, but I have an M.B.A. 6 Q And you're not providing -- you're not 7 holding yourself out as an expert in this case as an 8 economist, right? 9 A As an economist, no. As a person very 10 familiar with and understanding of the marketing and 11 commercialization of OTC nonprescription products like 12 Lumify, yes. 13 Q You're not an ophthalmologist? 14 A I'm not an ophthalmologist. 15 Q You're not a chemist? 16 A I'm not a chemist. 17 Q You're not an expert in the formulation of 18 eye drops? 19 A I'm not an expert in the formulation of 20 eye drops. 21 Q Your role in this case is not as an expert 22 in marketing, overall, right?

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1 MS. O'CONNELL: Objection, vague. 2 A Can you clarify what you mean by "expert in 3 marketing," please? 4 BY MS. CIPRIANO: 5 Q All of the information that you are 6 providing is based on what you know in your job at 7 Bausch, correct? 8 A And through my career, which includes 9 20 years of marketing -- direct marketing experience. 10 So I do believe I have significant expertise in the 11 field of marketing, especially as related to OTC 12 health care products. 13 Q Is the information in your declaration 14 based on your opinions about the market -- the 15 marketing of OTC health care products? 16 MS. O'CONNELL: Objection, vague. 17 A No. I would not say it's based on my 18 opinion. It's based on my knowledge and expertise, 19 both directly with this product and then, again, over 20 20-plus years of experience directly marketing, 21 including official roles in marketing, vice president 22 of marketing, product manager, et cetera.	13 1 BY MS. CIPRIANO: 2 Q In publications in the scientific 3 literature. 4 Are you aware that low-dose brimonidine has 5 been discussed in the scientific literature? 6 MS. O'CONNELL: Same objections. 7 A So I'm not well-versed in all of the 8 scientific literature. And no, I'm not specifically 9 aware of that. 10 BY MS. CIPRIANO: 11 Q Okay. And you didn't search for that when 12 you were preparing your declaration, right? 13 A No, I did not. 14 Q So this comparison in paragraph 5 of your 15 declaration is not comparing Lumify with any known 16 redness reliever, just the commercially available 17 redness relievers, right? 18 MS. O'CONNELL: Objection, vague. 19 A Yes. And -- and as understood as eye 20 doctors and what they are currently recommending or 21 prescribing to their patients, yes. 22
14 1 BY MS. CIPRIANO: 2 Q Okay. Let's turn to paragraph 5 in your 3 declaration. 4 A (Witness complies.) 5 Q So at the end of paragraph 5, here you 6 state that -- the last paragraph, or the last sentence 7 in paragraph 5, "It is backed by multiple clinical 8 trials with hundreds of patients and works differently 9 than other redness relievers." 10 Do you see that? 11 A Yes, I do. 12 Q The "other redness relievers" that you were 13 referring to in this paragraph are other commercially 14 available redness relievers, right? 15 A That is correct. 16 Q Are you aware that formulations of low-dose 17 brimonidine other than Lumify have been described in 18 the literature? 19 MS. O'CONNELL: Objection. Outside the 20 scope, vague. 21 A Can you clarify what literature you're 22 referring to?	16 1 BY MS. CIPRIANO: 2 Q And those would be the commercially 3 available drops, right? 4 MS. O'CONNELL: Same objection. 5 A It would include commercially available 6 drops. I would -- you know, doctors always have the 7 right to prescribe any product they want for any 8 purpose, off-label. So, you know, when we use that 9 term with -- you know, within Bausch -- and you'll see 10 it in many of the marketing materials -- it's in the 11 context of, yes, approved products in the marketplace, 12 but, you know, doctors, I think, understand it to be 13 there are other options as well. 14 BY MS. CIPRIANO: 15 Q And the last phrase of that sentence we 16 were just talking about "works differently than other 17 redness relievers," what is your understanding about 18 why Lumify works differently than other redness 19 relievers? 20 MS. O'CONNELL: Objection to the extent it 21 calls for expert testimony or it's outside the scope 22 of his declaration.

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17 1 A So I'm not a medical expert. My 2 understanding is, when we -- when we say "works 3 differently," it refers to relieving redness without 4 the side effects that are commonly associated with 5 other redness relievers on the market. And it is 6 related, obviously, to the mechanism of action of 7 low-dose brimonidine itself. 8 BY MS. CIPRIANO: 9 Q So it works differently than other redness 10 relievers because it's a different drug, right? 11 A It works differently because it's a 12 different drug, but there are many different drugs 13 that work the same way, in the same class of 14 medication. So it works differently than other 15 approved products, yes. 16 Q Let's look at paragraph 7 of your 17 declaration. 18 A (Witness complies.) 19 Q In the second half of paragraph 7, you 20 discuss some statistics about the habits of eye care 21 professionals. 22 Do you see that?	19 1 number has grown to 50 percent of ECPs recommending 2 redness relievers, with 85 percent of those 3 recommendations being for Lumify." 4 I'm just wondering where those numbers came 5 from. 6 A Again, those -- it would come from the 7 IQVIA survey and data and from our market research 8 department. 9 Q Could you point me to a document that has 10 that information? 11 A Point you to a document today? 12 Q It's in your declaration. And I just want 13 to know where it came from. 14 A Again, it came from the data survey IQVIA, 15 which is live data. We collect this data 16 periodically. You know, it's a monthly or quarterly 17 basis. So it comes from our market research 18 department. 19 Q Do you know if that is contained in an 20 exhibit in this IPR that was submitted? 21 A Off the top of my head, I don't believe it 22 was included in an exhibit.
18 1 A Yes. 2 Q Specifically, you say "Less than 10 percent 3 of ECPs recommended any redness relievers to their 4 patients." 5 A Yes, that's correct. 6 Q Did you collect -- personally collect the 7 data that supports this statement? 8 A No, I did not personally collect the data. 9 The data is collected. It's standard -- or, a typical 10 process for companies such as Bausch+Lomb, through 11 third parties, who will conduct those surveys. 12 So in this instance, the company was called 13 "IQVIA," which is well-known in the industry as -- for 14 their expertise in collecting this type of 15 information. 16 Q Did you provide in your declaration the 17 data that supports these statements? 18 A I'm not sure I understand the question. 19 Could you clarify, please? 20 Q Sure. 21 So you make statements about "less than 22 10 percent of ECPs," and then the next sentence, "That	20 1 MS. O'CONNELL: If you'd like a copy of 2 that IQVIA data, we can provide that to you. We can 3 take that up off-line, but... 4 MS. CIPRIANO: Is it an exhibit in the IPR? 5 MS. O'CONNELL: Not currently. 6 MS. CIPRIANO: Okay. 7 BY MS. CIPRIANO: 8 Q If we could look at the next paragraph, the 9 next section of your declaration talks about some of 10 the marketing materials for Lumify. 11 Am I understanding that? It's the section 12 that starts with the letter "B" there. 13 Am I understanding that correctly? 14 A Yes, it describes their commercial 15 strategy, working on reducing redness using low-dose 16 brimonidine. Correct. 17 Q Are you aware of any marketing materials 18 that highlight the pH of Lumify? 19 MS. O'CONNELL: Objection, vague. 20 A So I'm not personally familiar or can't 21 recall if there are any marketing materials that 22 include the pH of Lumify. There may or may not be.

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21	23
1 BY MS. CIPRIANO:	1 [REDACTED]
2 Q But you're not aware of any?	2 [REDACTED]
3 A No.	3 [REDACTED]
4 Q Are you aware of any marketing materials	4 [REDACTED]
5 that discuss using Lumify to treat red eye resulting	5 [REDACTED]
6 from Lasik?	6 [REDACTED]
7 MS. O'CONNELL: Objection, vague,	7 [REDACTED]
8 foundation.	8 Q You've never worked at Ipsos, right?
9 A Again, I'm not familiar with every	9 A I have not.
10 marketing piece that's ever been developed for Lumify.	10 Q Do you have any personal knowledge of how
11 Some of them may have been developed prior to my time	11 Ipsos maintains its documents?
12 specifically leading this part of our organization.	12 A Can you clarify what you mean by
13 So I can't -- I don't think I could give you a good	13 "maintain"?
14 answer one way or the other whether those marketing	14 Q Sure.
15 materials would exist or not.	15 I mean, you have a section in your -- in
16 BY MS. CIPRIANO:	16 your declaration at the end that talks about how
17 Q But sitting here today, you're not aware of	17 Bausch maintains its documents and keeps its figures.
18 any?	18 Do you have that same information about how
19 A No. I'm not aware, personally.	19 Ipsos maintains and retains its documents?
20 Q And are you aware of any marketing -- any	20 MS. O'CONNELL: Objection, foundation, and
21 marketing materials that discuss using Lumify to treat	21 to the extent it calls for speculation.
22 red eye resulting from chronic red eye?	22 A No, I don't know how Ipsos maintains their
22	24
1 MS. O'CONNELL: Objection, vague,	1 documents, but the Ipsos is a company that they're
2 foundation.	2 well-known in our industry for completing surveys such
3 A Again, I'm not familiar with every piece of	3 as this and for high-quality research and data.
4 marketing material that's ever been developed for	4 BY MS. CIPRIANO:
5 Lumify, so I can't tell you whether those materials	5 Q So let's take a look at this study. And I
6 exist or don't.	6 believe it's Exhibit 2156 in the IPR.
7 BY MS. CIPRIANO:	7 Do you recognize this as Exhibit 2156 that
8 Q But sitting here today, you're not aware of	8 was submitted in the IPR?
9 any?	9 A Yes, I do.
10 A No, I'm not aware.	10 [REDACTED]
11 Q If we can turn to paragraph 14 of your	11 [REDACTED]
12 declaration.	12 [REDACTED]
13 A (Witness complies.)	13 [REDACTED]
14 Q You discuss what you call [REDACTED]	14 [REDACTED]
15 [REDACTED] right?	15 [REDACTED]
16 A Yes, that's correct.	16 [REDACTED]
17 Q In that first sentence, you state that	17 [REDACTED]
18 [REDACTED] right?	18 [REDACTED]
19 [REDACTED]	19 [REDACTED]
20 [REDACTED]	20 [REDACTED]
21 [REDACTED]	21 [REDACTED]
22 [REDACTED]	22 [REDACTED]

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25 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	27 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 MS. O'CONNELL: Objection, vague, 20 foundation. 21 [REDACTED] 22 [REDACTED]
26 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	28 1 BY MS. CIPRIANO: 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]

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29	31
1 [REDACTED]	1 [REDACTED]
2 [REDACTED]	2 [REDACTED]
3 A (Witness complies.)	3 MS. O'CONNELL: Same objections.
4 Q Are you there?	4 [REDACTED]
5 A This one (indicating)?	5 [REDACTED]
6 Q Yeah.	6 [REDACTED]
7 [REDACTED]	7 [REDACTED]
8 [REDACTED]	8 [REDACTED]
9 [REDACTED]	9 [REDACTED]
10 [REDACTED]	10 [REDACTED]
11 [REDACTED]	11 [REDACTED]
12 MS. O'CONNELL: Objection, foundation.	12 [REDACTED]
13 [REDACTED]	13 [REDACTED]
14 [REDACTED]	14 [REDACTED]
15 [REDACTED]	15 [REDACTED]
16 [REDACTED]	16 [REDACTED]
17 [REDACTED]	17 [REDACTED]
18 [REDACTED]	18 A (Witness complies.)
19 [REDACTED]	19 Yes.
20 [REDACTED]	20 [REDACTED]
21 presentation.	21 [REDACTED]
22 MS. O'CONNELL: Objection, vague,	22 [REDACTED]
30	32
1 foundation.	1 [REDACTED]
2 A Could you be more specific, please?	2 [REDACTED]
3 BY MS. CIPRIANO:	3 [REDACTED]
4 [REDACTED]	4 MS. O'CONNELL: Same objections.
5 [REDACTED]	5 [REDACTED]
6 [REDACTED]	6 [REDACTED]
7 [REDACTED]	7 [REDACTED]
8 [REDACTED]	8 [REDACTED]
9 MS. O'CONNELL: Objection, vague,	9 [REDACTED]
10 foundation.	10 [REDACTED]
11 [REDACTED]	11 [REDACTED]
12 [REDACTED]	12 [REDACTED]
13 [REDACTED]	13 [REDACTED]
14 [REDACTED]	14 [REDACTED]
15 [REDACTED]	15 [REDACTED]
16 [REDACTED]	16 [REDACTED]
17 [REDACTED]	17 MS. O'CONNELL: Objection, vague. Asked
18 [REDACTED]	18 and answered.
19 [REDACTED]	19 [REDACTED]
20 [REDACTED]	20 BY MS. CIPRIANO:
21 [REDACTED]	21 [REDACTED]
22 [REDACTED]	22 [REDACTED]

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33 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	35 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 Q Okay. We can put away Exhibit 2156. 18 A (Witness complies.) 19 Q For now, if we could look at your 20 declaration. And turn to paragraph 19, please. 21 A (Witness complies.) 22 Q It's on page 13.
34 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	36 1 A Okay. 2 Q And there you refer to an exhibit after 3 that first sentence, Exhibit 2068. 4 Do you see that? 5 A I see that. 6 Q I'd like to take a look at this document. 7 Do you recognize this as the document that 8 was marked 21 -- excuse me -- Exhibit 2068 and 9 referenced in paragraph 19 of your declaration? 10 A Yes, I do. 11 Q So the second sentence in paragraph 19 of 12 your declaration, I'll just read it so we're on the 13 same page. 14 "It was specifically highlighted in 15 Bausch's earnings as an integrated platform that 16 uniquely positions Bausch +~Lomb to establish it as a 17 plus-\$100-million brand and as a product that Bausch 18 expects to grow both internationally and through 19 additional products." 20 Do you see that? 21 A Yes, I do. 22 Q So you cite to page 15 of Exhibit 268, and

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1 I'd like to take a look at that page. 2 A (Witness complies.) 3 Q Are you there? 4 A Yes. 5 Q So this reference to the "\$100-million 6 brand," does that represent the entire international 7 market? 8 A At the time, it represented almost 9 exclusively U.S. sales. We were just starting to 10 launch the product internationally. 11 Q So at the time of this, Lumify was already 12 a \$100-million brand? 13 A That's correct. 14 Q Just so we're on the same page, you said 15 "at the time." 16 That was -- this presentation was in the 17 first quarter of 2022? 18 A So the -- it's our first quarter 2022 19 financial results. So I think -- I believe the date 20 of -- the actual date of the presentation would have 21 been April of 2022. 22 Q Okay. Got it.	37	1 brand name is most -- is associated with low-dose 2 brimonidine, 0.025 percent. Line extensions could 3 include other products marketed under the name Lumify 4 that may include low-dose brimonidine or -- and other 5 active ingredients or other formulations; so, for 6 example, preservative free or other products that 7 might fit under the Lumify brand name. 8 Q So line extensions would be versions, or 9 products, that are different from Lumify as it is 10 currently sold right now, right? 11 MS. O'CONNELL: Objection, vague. 12 A Would offer additional benefits than Lumify 13 today, I think, is a more accurate statement. 14 BY MS. CIPRIANO: 15 Q And in order to offer additional benefits, 16 it would have to have some difference to the Lumify 17 formulation as it currently stands? 18 MS. O'CONNELL: Objection, vague. Calls 19 for speculation. Outside the scope. 20 A It could. Or some line extensions are -- 21 for example, it might be a packaging variation -- 22 could also be a line extension. So it could or could	39
1 So it's page 16 of the exhibit, slide 15 of 2 the financial results document. 3 There's a reference at the bottom of the 4 left-hand side of the slide, "Expect to launch Lumify 5 in several international markets and grow franchise 6 through line extensions." 7 Do you see that? 8 A Yes. 9 Q Now, these line extensions would be 10 products that are different from Lumify, right? 11 MS. O'CONNELL: Objection, vague. Outside 12 the scope. 13 A Can you clarify what you mean by "different 14 than Lumify"? 15 BY MS. CIPRIANO: 16 Q So in order to be -- I guess, let me ask a 17 question. 18 Do you understand what "line extensions" 19 means in this slide? 20 A Yes. 21 Q What does it mean to you? 22 A So Lumify is a brand name. Currently, that	38	1 not. 2 BY MS. CIPRIANO: 3 Q You can put that document away for now. 4 A (Witness complies.) 5 Q I'd like to turn back to your declaration. 6 A (Witness complies.) 7 Q Just the next page that we were -- from 8 where we were just talking in paragraph 20 of your 9 declaration. 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 Do you see that? 15 A Yes. 16 [REDACTED] 17 [REDACTED] 18 MS. O'CONNELL: Objection, vague. 19 [REDACTED] 20 [REDACTED] 21 BY MS. CIPRIANO: 22 Q Now, you don't point to any documents in	40

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1 that sentence. 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 A Could you be more specific as to a time 7 frame? 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 Q Now, did you cite to any of those business 19 plans or strategic plans in your declaration in this 20 IPR? 21 A Well, I did specifically cite to the 22 exhibit that we had just reviewed, 2068, which --	41 1 declaration. 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 MS. O'CONNELL: Objection, vague. 6 [REDACTED] 7 [REDACTED] 8 BY MS. CIPRIANO: 9 [REDACTED] 10 [REDACTED] 11 MS. O'CONNELL: Objection, vague. 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 BY MS. CIPRIANO: 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]
42 1 where we -- we stated "exceeding our expectations." 2 And our expectations for it to grow to be a 3 \$100-million-plus brand. And I relied on my general 4 knowledge and understanding of the business and the 5 expectations and, you know, my expertise over years. 6 So Lumify has been on the market for less 7 than four years at this point -- or, just about four 8 years. So to achieve sales of \$108 million by the end 9 of fiscal year 2021 is a significant achievement. 10 The number of \$100-million brands within a 11 company like Bausch + Lomb -- it's in the exhibit -- 12 there aren't that many. This is already a top-ten 13 product, just within a couple of years of launch. 14 So -- with a very high market share, close to a 15 50 percent market share in a category. 16 And it has helped almost double the sales 17 of that category that -- you know, in its -- to 18 someone from my experience and my role within the 19 company and knowledge of OTC products and the OTC 20 redness-reliever category, it's pretty much common 21 knowledge that Lumify exceeded expectations. 22 Q Let's take a look at paragraph 21 of your	43 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 MS. O'CONNELL: Objection, vague, 21 foundation. 22 [REDACTED]
	44

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45	47
1 [REDACTED]	1 [REDACTED]
2 [REDACTED]	2 [REDACTED]
3 [REDACTED]	3 [REDACTED]
4 [REDACTED]	4 [REDACTED]
5 [REDACTED]	5 [REDACTED]
6 [REDACTED]	6 [REDACTED]
7 [REDACTED]	7 [REDACTED]
8 [REDACTED]	8 [REDACTED]
9 [REDACTED]	9 MS. O'CONNELL: Objection, foundation.
10 MS. O'CONNELL: Same objections. Also,	10 [REDACTED]
11 asked and answered.	11 [REDACTED]
12 [REDACTED]	12 [REDACTED]
13 [REDACTED]	13 [REDACTED]
14 [REDACTED]	14 [REDACTED]
15 [REDACTED]	15 [REDACTED]
16 [REDACTED]	16 [REDACTED]
17 [REDACTED]	17 MS. O'CONNELL: Objection, vague.
18 [REDACTED]	18 [REDACTED]
19 [REDACTED]	19 BY MS. CIPRIANO:
20 [REDACTED]	20 Q Did you look at any of those documents in
21 [REDACTED]	21 preparation for your declaration?
22 [REDACTED]	22 A Specifically in preparation for today, no.
46	48
1 MS. O'CONNELL: Objection, foundation.	1 But I'm -- through the course of business, I do review
2 [REDACTED]	2 those.
3 [REDACTED]	3 [REDACTED]
4 [REDACTED]	4 [REDACTED]
5 [REDACTED]	5 [REDACTED]
6 BY MS. CIPRIANO:	6 [REDACTED]
7 [REDACTED]	7 MS. O'CONNELL: Objection to the extent it
8 [REDACTED]	8 calls for speculation.
9 Do you see that?	9 [REDACTED]
10 A Yes.	10 [REDACTED]
11 [REDACTED]	11 [REDACTED]
12 [REDACTED]	12 [REDACTED]
13 [REDACTED]	13 BY MS. CIPRIANO:
14 [REDACTED]	14 [REDACTED]
15 [REDACTED]	15 [REDACTED]
16 [REDACTED]	16 MS. O'CONNELL: Objection. Calls for
17 [REDACTED]	17 speculation, foundation.
18 [REDACTED]	18 [REDACTED]
19 [REDACTED]	19 [REDACTED]
20 [REDACTED]	20 [REDACTED]
21 [REDACTED]	21 [REDACTED]
22 [REDACTED]	22 [REDACTED]

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49 1 BY MS. CIPRIANO: 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	51 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]
50 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 MS. O'CONNELL: Objection, vague. 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	52 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 MS. O'CONNELL: Objection to the extent it 6 mischaracterizes his testimony. 7 A Yes. Could you clarify the question for 8 me, please? 9 BY MS. CIPRIANO: 10 Q Sure. 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]

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53 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 MS. CIPRIANO: Does it make sense to take a 8 quick break now? We've been going for about an hour. 9 THE WITNESS: That's fine by me. 10 THE VIDEOGRAPHER: We are going off the 11 record. The time is 10:40 a.m. 12 (Recess.) 13 THE VIDEOGRAPHER: We are back on the 14 record. The time is 10:57 a.m. 15 BY MS. CIPRIANO: 16 Q Welcome back. 17 A Thank you. 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	55 1 Q Yes. 2 A (Witness reviews document.) 3 Okay. Thank you. 4 Q So you said you've never seen this document 5 as it's put together here. But you see the title of 6 the -- at least the bold print at the top of the 7 document -- is "Bausch Health Companies (BHC) 6 8 November '18/2018 Q3 Earnings Call Transcript." 9 Do you see that? 10 A Yes, I see that. 11 Q Are you aware that Bausch holds periodic 12 calls with investors about how the company is doing? 13 A Yes, I am. 14 Q And these are typically called "earnings 15 calls," correct? 16 A That's correct. 17 Q And do you have any role in preparing for 18 earnings calls at Bausch? 19 A As a -- so as a commercial leader in the 20 organization, and, for example, in my current role, 21 yes, we provide -- we provide summaries of our 22 quarterly business results to senior leadership, and
54 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 MS. CIPRIANO: Okay. I'd like to mark a 14 document. We're going to mark it as Exhibit 1045. 15 (Exhibit 1045 was received and marked for 16 identification, as of this date.) 17 BY MS. CIPRIANO: 18 Q So I'll give you a second to look at it. I 19 apologize that we need a microscope to see any of the 20 words on this page, the way that it was printed. 21 A Yeah. Please give me a few minutes. I 22 have not seen this before.	56 1 then senior leadership prepares these commentaries. 2 Q Okay. Now, were you -- you weren't in your 3 current role in 2018, correct? 4 A That's correct. 5 Q Okay. So you didn't personally have an 6 involvement -- or, let me step back. 7 Did you have a personal involvement in 8 preparation for the 2018 Q3 earnings call? 9 A Again, in my previous role, I would have 10 provided input and shared business results for the 11 U.S. vision care business but not for Lumify. 12 Q Okay. So if we take a look at the 13 document, at the beginning, there's a list of people. 14 It starts with Art Shannon, Senior Vice President, 15 Head Investor Relations and Communications. 16 That's someone at Bausch, correct? 17 A That's correct. 18 Q Then Joe Papa, Chairman and Chief Executive 19 Officer at Bausch, correct? 20 A That's correct. 21 Q Does this appear to you to be the 22 transcript from the earnings call that was held for --

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1 on November 6, 2018, for Q3 2018? 2 MS. O'CONNELL: Objection, foundation. 3 A So I am familiar with Bausch's earnings 4 calls and, again, from other companies. It's a very 5 common practice. It's actually a requirement for 6 publicly traded companies. 7 I can't state specifically whether every 8 word in this document accurately reflects the 9 transcript from the Q3 earnings call on November 6 of 10 2018, but it does appear to follow the format of our 11 earnings calls. 12 BY MS. CIPRIANO: 13 Q Okay. Great. Thank you. 14 So I'd like to draw your attention to just 15 a couple of statements in this, just to talk about 16 Lumify. 17 So on the -- on the second page of the 18 printout, in about the middle of the page, there's a 19 paragraph that's set off -- that starts "For example, 20 in Q3 2018." 21 Can you let me know when you find that? I 22 guess that it's about the middle of the page.	57 1 specifically state to the time period. 2 BY MS. CIPRIANO: 3 Q Okay. And when you say -- 4 A And how that ramps up. 5 [REDACTED] 6 [REDACTED] 7 MS. O'CONNELL: Objection. Asked and 8 answered, vague, foundation. 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]
58 1 A Yes, I have it. 2 Q Okay. So it says "For example, in Q3 2018 3 relative to '17, we reduced A&P spending for some 4 assets, and we allocated some of those savings to 5 roughly \$17 million of promotional support for Lumify 6 with excellent results." 7 Do you see that? 8 A Yes, I do. 9 Q Now, does that -- let me start over. 10 Am I understanding this correctly and does 11 it match with your understanding of the history of 12 Lumify, that roughly \$17 million was spent in 13 promotional support for Lumify in 2018? 14 MS. O'CONNELL: Objection, vague. 15 A So, again, I wasn't involved at the time in 16 preparing the support for these comments. Taking a 17 direct read of it, it speaks to allocating some of 18 those savings to roughly 17 million of promotional 19 support for Lumify. 20 It doesn't give a time period for that 21 specifically. So my judgment would tell me that the 22 17 million would be accurate. But, again, I can't	60 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 BY MS. CIPRIANO: 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]

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61 1 [REDACTED] 2 [REDACTED] 3 MS. O'CONNELL: Objection. Asked and 4 answered, foundation. 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 BY MS. CIPRIANO: 12 [REDACTED] 13 Do you have an expectation, or do you have 14 a memory -- strike that. 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	63 1 Q Okay. So the last part of this sentence 2 that we've been looking at, the person speaking is 3 Paul Herendeen? 4 A Herendeen. 5 Q That's a Bausch employee? 6 A Yes. At the time, yes. 7 Q Okay. He said "We allocated some of those 8 savings to roughly \$17 million of promotional support 9 for Lumify with excellent results." 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 MS. O'CONNELL: Objection, foundation. 14 Calls for speculation. 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 Q Would you agree that -- strike that. 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]
62 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	64 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 MS. O'CONNELL: Objection, foundation. 15 Calls for speculation. Assumes facts not in evidence. 16 Mischaracterizes the document and his testimony. 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]

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65	67
1 [REDACTED]	1 team that speak to doctors about Bausch's products
2 [REDACTED]	2 tasked with marketing Lumify?
3 [REDACTED]	3 MS. O'CONNELL: Objection, vague.
4 [REDACTED]	4 A I just want to clarify, please.
5 [REDACTED]	5 [REDACTED]
6 BY MS. CIPRIANO:	6 [REDACTED]
7 Q The purpose of investing in marketing is to	7 [REDACTED]
8 drive sales, correct?	8 [REDACTED]
9 MS. O'CONNELL: Objection. Assumes facts	9 BY MS. CIPRIANO:
10 not in evidence.	10 Q So my question -- so yeah. Let's simplify
11 A So for a product like Lumify, a health care	11 and make sure we're on the same page with my question.
12 product and especially a new product to market, the	12 So in the marketing team, does Bausch
13 goal of investment, any commercial investment behind	13 employ people who speak to doctors about Bausch's
14 advertising -- what we call "advertising and	14 products?
15 promotion" is to educate, first and foremost,	15 A Okay. So I want to make sure I answer the
16 physicians about a product and then, secondly,	16 question you're asking.
17 consumers so that they are more aware and informed	17 [REDACTED]
18 about the product and can make a decision if it's an	18 [REDACTED]
19 appropriate -- an appropriate option to recommend to	19 [REDACTED]
20 their patients or for them to purchase for themselves.	20 [REDACTED]
21 BY MS. CIPRIANO:	21 [REDACTED]
22 Q And the ultimate goal is to achieve	22 Q Now, are those -- the people that you talk
66	68
1 increased sales, correct?	1 about as developing educational content, are those the
2 MS. O'CONNELL: Same objection.	2 people that actually go to speak to doctors?
3 A As a commercial organization, as a	3 MS. O'CONNELL: Objection, vague. Assumes
4 for-profit company, you know, our goal is always to,	4 facts not in evidence.
5 you know, generate a -- generate sales and a	5 A Can you clarify in what context you mean
6 reasonable profit, you know. And that is based on	6 "speak to doctors"?
7 educating and providing products to doctors and	7 BY MS. CIPRIANO:
8 patients that they choose to treat their eye health.	8 Q Does Bausch employ people that talk to
9 BY MS. CIPRIANO:	9 ophthalmologists or eye doctors about Lumify?
10 Q Does Bausch currently employ sales	10 MS. O'CONNELL: Objection, vague.
11 representatives who are currently tasked with	11 [REDACTED]
12 marketing Lumify in the United States?	12 [REDACTED]
13 MS. O'CONNELL: Objection, vague.	13 [REDACTED]
14 A Can you be more specific what you mean by	14 [REDACTED]
15 "sales representatives"?	15 [REDACTED]
16 BY MS. CIPRIANO:	16 [REDACTED]
17 Q Sure.	17 [REDACTED]
18 Does Bausch employ a marketing team that	18 [REDACTED]
19 speaks to doctors about its products?	19 BY MS. CIPRIANO:
20 A So Bausch--Lomb overall as a company	20 [REDACTED]
21 across its business segments? Yes.	21 [REDACTED]
22 Q Are any of those members of the marketing	22 [REDACTED]

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69 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	71 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 Q Do you know how many samples are 21 currently -- let me strike that and ask a better 22 question.
70 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 Q So are there field sales team members that 6 currently are tasked with promoting Lumify? 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	72 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 MS. O'CONNELL: Objection. Calls for 12 speculation. 13 [REDACTED] 14 [REDACTED] 15 BY MS. CIPRIANO: 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 MS. O'CONNELL: Objection, vague. 21 [REDACTED] 22 [REDACTED]

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1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	73 1 structure of J&J, the owner of Visine. So I can't 2 specifically comment. I know there is another major 3 competitor, Clear Eyes. And it is my understanding 4 that Clear Eyes promotes their products to eye care 5 professionals. I can't tell you whether it's through 6 salespeople or other means, but I do believe they 7 provide samples. 8 Q Are you familiar with a marketing metric 9 called "Share of Voice"? 10 A Yes. 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 Q Do you know -- do you know what Lumify's 16 Share of Voice is currently? 17 A Share of Voice relative to what? In what 18 context? 19 Q To its redness-relief competitors. 20 A So, again, Share of Voice is a -- can be 21 applied in many ways. It can be Share of Voice of 22 advertising to consumers; it could be share of
74 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 BY MS. CIPRIANO: 9 Q So in the time period that we're talking 10 about of Lumify being on the market from mid-2018 to 11 present, are you -- do you have any knowledge about 12 the promotion of Lumify's competitors such as Visine 13 or Clear Eyes? 14 A Some knowledge, yes, over the course of 15 business, yes. 16 Q Do you know whether ophthalmologists or eye 17 doctors are provided samples of Visine? 18 A I can't specifically comment whether 19 they're provided samples of Visine or not. 20 Q Do you know if there are any field sales 21 teams promoting Visine? 22 A Again, I don't -- I don't know the	76 1 promotion. It can be used in many different contexts. 2 Do you have -- 3 Q Understood. 4 A Can you be more specific, please? 5 Q Yeah. Let me clarify. So let's break it 6 down into categories. 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]

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77 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	79 1 Do you see that? 2 A Yes. 3 Q What is a media impression? 4 A So a media impression is basically one 5 person viewing an ad or a mention of the product one 6 time. 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 MS. O'CONNELL: Objection, vague, and to 11 the extent it mischaracterizes his declaration. 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 BY MS. CIPRIANO: 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 MS. O'CONNELL: Objection. Asked and 22 answered.
78 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 Q Does Bausch offer discounts or coupons for 11 Lumify? 12 A To just clarify, discounts and coupons to 13 consumers? 14 Q Yes. 15 A Yes, we do, as does -- as do, you know, 16 almost all consumer products and as do Visine and 17 Clear Eyes and other competitors in this space. 18 Q Okay. Let's look at your declaration. I'd 19 like to look at paragraph 25. 20 A Okay. 21 Q You state in paragraph 25 that the brand 22 has garnered over 4 billion media impressions.	80 1 [REDACTED] 2 BY MS. CIPRIANO: 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 MS. O'CONNELL: Objection. Calls for 7 speculation. 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]

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81 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 BY MS. CIPRIANO: 19 Q So let me just clarify. 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	83 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 MS. O'CONNELL: Objection. 20 Mischaracterizes the document. 21 [REDACTED] 22 MS. CIPRIANO: I'm sorry. Let me rephrase,
82 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 Q Okay. 6 A Thank you. 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 Q Okay. 13 [REDACTED] 14 [REDACTED] 15 Q Understood. Okay. 16 And then in the next -- in the next 17 sentence, you mentioned TikTok. 18 A Yes. 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	84 1 just so we're clear. Thank you. 2 BY MS. CIPRIANO: 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 BY MS. CIPRIANO: 21 Q And part of their -- some of their -- 22 strike that.

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85 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 MS. O'CONNELL: Objection, vague. 6 [REDACTED] 7 [REDACTED] 8 BY MS. CIPRIANO: 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 Q Does Bausch have social media accounts? 22 A Bausch-+~Lomb? Yes.	87 1 [REDACTED] 2 [REDACTED] 3 BY MS. CIPRIANO: 4 Q This summer, are you aware that Bausch ran 5 a social media sweepstakes associated with Lumify? 6 A Yes. 7 Q And in that sweepstakes, users had to post 8 a video on TikTok, using a specified hashtag, and 9 there was a \$10,000 prize package for the winner, 10 right? 11 A Yes. [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 Q And there was no requirement that the 15 entrants had to use the product, correct? 16 A That's correct, which is common in 17 sweepstakes done by companies who market consumer 18 products, consumer health care products, consumer 19 products like Lumify. 20 MS. CIPRIANO: I have no further questions. 21 MS. O'CONNELL: Okay. May we take a quick 22 break, see if we have anything else?
86 1 Q Does the Bausch-+~Lomb -- step back. 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 MS. O'CONNELL: Objection, vague. 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]	88 1 MS. CIPRIANO: Sure. 2 THE VIDEOGRAPHER: We are going off the 3 record. The time is 11:44 p.m. -- a.m. 4 (Recess.) 5 THE VIDEOGRAPHER: We're back on the 6 record. The time is 11:49 a.m. 7 MS. O'CONNELL: We don't have any 8 questions, but I just want to mark the transcript 9 protective order material, confidential, pursuant to 10 the protective order entered in this proceeding. 11 THE VIDEOGRAPHER: This marks the end of 12 the deposition. We are going off the record at 13 11:49 a.m. 14 MS. CIPRIANO: Standing order. 15 MS. O'CONNELL: Standing order. 16 17 (Time noted: 11:49 a.m.) 18 19 20 21 22

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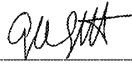
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89 1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC 2 3 I, Angela (Angie) Shaw-Crockett, Certified 4 Reporter and Notary Public within and for the States 5 of New York, New Jersey and Connecticut do hereby 6 certify: That John Ferris, the witness whose 7 deposition is hereinbefore set forth was duly sworn by 8 me before the commencement of such deposition and that 9 such deposition was taken before me and is a true 10 record of the testimony given by such witness. 11 I further certify that the adverse party, 12 Eye Therapies, was represented by counsel at the 13 deposition. 14 I further certify that the deposition of, 15 John Ferris, occurred at the offices of Gibbons, P.C., 16 One Gateway Center, Newark, New Jersey 07102-5310, on 17 Wednesday, November 2, 2022, commencing at 9:40 a.m. 18 to 11:49 a.m. 19 I further certify the inspection, reading 20 and signing of said deposition was not discussed on 21 the record. I further certify that I am not related 22 to any of the parties to this action by blood or	90 1 marriage, I am not employed by or an attorney to any 2 of the parties to this action, and that I am in no way 3 interested, financially or otherwise, in the outcome 4 of this matter. 5 6 IN WITNESS WHEREOF, I have hereunto set my 7 Hand this 14th day of November, 2022. 8 9  10 _____ 11 NOTARY PUBLIC IN AND FOR THE 12 NEW JERSEY 13 14 15 16 17 18 19 20 21 22
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CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

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Re: Deposition of **John Ferris**

Date: 11/2/2022

Case: Slayback Pharma LLC -v- Eye Therapies LLC (PTAB)

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Page	Line	Correction/Change and Reason
9	13-14	Change "the Ipsos." to "the Ipsos study."; clarification
24	19	Change "but experience" to "but I have experience"; transcription error
28	14-15	Change "complete data" to "complete raw data"; transcription error
30	16	Change "review this" to "view this"; transcription error
31	12	Change "representation" to "reputation"; transcription error
36	22	Change "Exhibit 268" to "Exhibit 2068"; transcription error
51	16	Change "promoter" to "over-the-counter"; transcription error

John Ferris

Digitally signed by John Ferris
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(Date)

(Signature)

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No. 468947

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Date: 11/2/2022

Case: Slayback Pharma LLC -v- Eye Therapies LLC (PTAB)

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ACKNOWLEDGMENT OF DEPONENT

I, John Ferris, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me and any corrections appear on the attached Errata sheet signed by me.

John Ferris

Digitally signed by John Ferris
Date: 2022.12.13 14:10:25
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(Date)

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