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Transcript of John Gargiulo

Date: April 30, 2026

Case: Conjupro Biotherapeutics -v- Ascletis Pharma China Co., Ltd.

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4
5 CONJUPRO BIOTHERAPEUTICS, INC.

6 Petitioner,

7 V.

8 ASCLETIS PHARMA CHINA CO. LTD.,

9 Patent Owner.

10
11 Case No. PGR2025-00057

12 Patent No. 12,234,236

13
14 Title: GLP-1R Agonist and
15 Therapeutic Method Thereof

16 Videotaped Deposition of JOHN GARGIULO

17 Via Remote

18 Thursday, April 30, 2026

19 9:02 AM EST

20
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23 Pages: 1 - 220

24 Reported By: Kim A. McCann, RMR, CRR, CSR

25

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INDEX

PAGE

Appearances..... 2

JOHN GARGIULO

Examination by Mr. Toft..... 4

Telephone Hearing with Board.....190

Examination by Ms. Agarwal.....208

Further Examination by Mr. Toft.....214

Reporter's Certificate.....219

EXHIBITS

NO. DESCRIPTION PAGE

Exhibit 1 Declaration of John Gargiulo..... 13

Exhibit 2 Exhibit 2081 Lab Notebook..... 13

Exhibit 3 United States Patent 12,234,236.....210

1 P R O C E E D I N G S

2 MR. TOFT: And for -- in case we want
3 to do appearances for the record, my name is
4 Luke Toft. I'm representing petitioner, Conjupro
5 Biotherapeutics, Inc. I'm with the firm Fox
6 Rothschild. With me on the line are my
7 colleagues, Joe Chen and Jin Zhu.

8 Isha, would you like to --

9 MS. AGARWAL: Yeah. This is Isha
10 Agarwal from Cooley LLP on behalf of Ascletis
11 Pharma, patent owner. With me on the line is
12 also Geoff Biegler also from Cooley.

13 JOHN GARGIULO,
14 Having been first duly sworn, testified as
15 follows:

16 EXAMINATION

17 BY MR. TOFT:

18 Q. And hi, John.

19 A. Hi, Luke.

20 Q. Can you help me with your last name?

21 A. Yeah, it's Gargiulo.

22 Q. Gargiulo (pronouncing.)

23 A. Yeah, I know it's a mouthful.

24 Q. Okay. I will attempt to get that
25 correct. I apologize if I -- if I mess it up.

1 Mr. Gargiulo, have you been deposed
2 before?

3 A. Yes.

4 Q. How many times?

5 A. Once, I think.

6 Q. Okay. And what was the basis of that
7 deposition?

8 A. It was a civil suit.

9 Q. Okay. And was that civil suit
10 related to any business that you worked for, or
11 was it a personal issue?

12 A. It was a business that I worked for.

13 Q. Okay. And what was the underlying
14 dispute with that case?

15 A. That information is confidential so
16 we have not disclosed that information.

17 Q. The -- the dispute itself is
18 confidential?

19 A. The underlying -- what you said about
20 the underlying case is confidential.

21 Q. Who were the parties involved?

22 A. It was Ascletis and Viking
23 Therapeutics.

24 Q. And when was this?

25 A. Two to three years ago. I -- I can't

1 remember exactly.

2 Q. No worries. So you may remember this
3 and -- and -- and your counsel may have -- have
4 mentioned, but I'm going to go through a couple
5 of rules just so that we can, you know, be
6 effective with today. I am going to ask you a
7 question, and if it's a yes-or-no question, I'm
8 going to ask that you to respond with a yes or a
9 no, no uh-huhs or huh-uhs or nodding of the head
10 or anything like that so that the court reporter
11 can make sure we have a clear record.

12 Is that fair?

13 A. Sure.

14 Q. Okay. So that's an example of one
15 that we -- I would need a "yes" or a "no" instead
16 of a -- a nod where it looked like you're --
17 you're prepared to do that. I would say wait
18 until I've finished asking my question to give
19 your answer. I'll try and do the same for you.

20 A. I understand.

21 Q. If you need a clarify on a question,
22 please ask and I'll try to do my best to rephrase
23 the question for you. If you don't ask, is it
24 fair to assume that you understood the question?

25 A. What question?

1 Q. So while we're talking today if you
2 don't ask for a clarification, can I assume that
3 you understood the question?

4 A. That doesn't necessarily mean I --
5 just because I don't ask for clarification would
6 not mean I understand the question. I may ask
7 for clarification later.

8 Q. So if you don't understand the
9 question, will you please ask for clarification
10 throughout today's proceeding?

11 A. Yes, I will ask for clarification if
12 I need clarification in the question that you
13 asked, yes.

14 Q. Okay. And you're prepared to answer
15 today's questions -- question -- or sorry --
16 you're prepared to answer questions today?

17 A. Yes, I am prepared to answer
18 questions today.

19 Q. Is there any reason you would be
20 unable to provide truthful testimony under oath
21 today?

22 A. No, there is no reason why I cannot
23 answer questions truthfully.

24 Q. Okay. And -- and I apologize, this
25 isn't meant to like insinuate anything, but I

1 just have to ask you've not had any alcohol this
2 morning?

3 A. No, I have not had any alcohol.

4 Q. And you haven't taken any drugs that
5 would impair your ability to -- to answer
6 questions today?

7 A. No, I've not taken any drugs that
8 would impair my ability.

9 Q. I see that you have a laptop in front
10 of you.

11 A. Yes.

12 Q. What are you looking at on your
13 laptop?

14 A. What is what?

15 Q. What -- what applications are open on
16 that laptop?

17 A. Zoom.

18 Q. Okay. Is there anything else?

19 A. No.

20 Q. There's no documents?

21 A. No, there are no documents.

22 Q. There's no email?

23 A. There is no email.

24 Q. Okay. I also see that you have a
25 phone next to you. Can you just turn that over?

1 A. Yes.

2 Q. Okay. And I'd ask that throughout
3 today, you know, on breaks I understand you're a
4 busy person, so if you need to check email or
5 whatever on breaks that's fine, but throughout
6 today's proceedings, just to not to check emails
7 or if you get a text or a call or anything like
8 that, we can handle that on the break, but...

9 I might use some shorthand today --
10 oh, speaking of, if you ever need a break,
11 absolutely just ask and we can take a break. I
12 would just ask that you answer any question
13 that's currently pending and then we, you know,
14 can take a break. Is that fair?

15 A. Oh, yeah, sure.

16 Q. And I might use some shorthand today;
17 I just want to make sure that we're on the same
18 page. If I refer to Conjupro, you'll understand
19 that I'm referring to the petitioners in this
20 proceedings. Is that fair?

21 A. Yes, I understand. That's fair.

22 Q. And if I refer to patent owner or
23 Ascl- -- is it Ascletis?

24 A. Ascletis.

25 Q. Ascletis, you'll understand that I'm

1 referring to the patent owner, Ascletis Pharma
2 China Co., Ltd.?

3 A. If I need clarification on that, I'll
4 just ask.

5 Q. Perfect. Fair. And I understand
6 that there is an Ascletis Pharma, Inc., which is
7 the parent company. Is that correct?

8 A. Yes, Ascletis Pharma, Inc. is the
9 parent company.

10 Q. And you work for the parent company,
11 Ascletis Pharma, Inc.; right?

12 A. Yes, I work for Ascletis Pharma, Inc.

13 Q. Okay. So if I refer to like China
14 Co. Ltd, I'm referring to the pan -- patent
15 owner. If I refer -- if I refer to the Inc., I'm
16 referring to the parent company. Is that fair?

17 A. Yeah, that's fair. But if I need
18 clarification, I'll ask.

19 Q. Fair. Are there other Ascletis
20 Pharma Company's subsidiaries that -- that you
21 work for?

22 A. That I -- well, there are other
23 Ascletis Pharma subsidiaries, but my role is with
24 Ascletis Pharma, Inc. as to business officer.

25 Q. Perfect. And if I refer to the

1 '236 patent, you'll understand that I'm referring
2 to the U.S. Patent Number 12,234,236?

3 A. It would be helpful if you would put
4 that up when you refer to it just so I'm clear.

5 Q. I -- fair. But I understand when --
6 if you -- if I refer to the '236 patent, you'll
7 understand that I'm referring to the patent at
8 issue in this proceeding, the Patent
9 Number 12,234,236?

10 A. It's easier for you to refer to it as
11 like, you know, the Ascleptis patent or whatever.

12 Q. Ascleptis patents, I can do that.

13 A. Yeah. You know, Ascleptis '236 patent
14 just so it's clear.

15 Q. Okay. And just in case, have you
16 ever heard of the phrase "a person of ordinary
17 skill in the art"?

18 A. Yeah.

19 Q. Okay. Or have you ever heard of a
20 POSA?

21 A. I -- I don't -- I don't know what
22 that is.

23 Q. Okay. What, if anything, did you do
24 to prepare for today's deposition?

25 MS. AGARWAL: Objection. If -- it's

1 pretty broad question. I'm going to instruct you
2 not to answer on the basis of privilege. If
3 you've got anything specific you want to ask.

4 Q. So, Mr. Gargiulo, I'm not -- I'm not
5 asking you to divulge the substance of any
6 communication that you've had with any attorney,
7 but if you can tell me generally who did you meet
8 with, did you review documents, how long did you
9 spend, did you meet with anybody else, those
10 types of things, that's what I'm looking for.

11 So does that make sense?

12 A. Can you be more specific? Like,
13 you've had a number of things you mentioned.
14 Which specifically are you interested in?

15 Q. Okay. Did you review any documents
16 in preparation for today's deposition?

17 A. I reviewed my declaration and the
18 attachment.

19 Q. The attachment meaning Exhibit 20 --

20 A. It's to today, yeah.

21 Q. And is -- do you have your
22 declaration there?

23 A. Yes, I do.

24 Q. Okay. Can -- is there -- do you have
25 any other documents there?

1 A. No, I do not have any other
2 documents.

3 MR. TOFT: Isha, can I have you pull
4 that exhibit for now, and I would like a copy of
5 that scanned in for the next break just so that I
6 can make sure that there's no notes or anything
7 on there?

8 MS. AGARWAL: It's a clean copy of
9 his declaration.

10 MR. TOFT: That's fine. If you can
11 scan that for me and send it to me on the next
12 break, I'd appreciate it.

13 MS. AGARWAL: I can try.

14 (Exhibits 1 - 2 was marked.)

15 Q. (BY MR. TOFT) Other than your
16 declaration and Exhibit 2081, did you review any
17 other documents?

18 A. No, I didn't.

19 Q. Okay. Did you talk to any
20 attorneys -- again, not -- not asking for any
21 substance of those discussions -- did you talk to
22 any attorneys in preparation for today's
23 deposition?

24 A. Yes, I did speak to our attorneys.

25 Q. Okay. And who did you speak with?

1 A. Isha and Geoff Biegler.

2 Q. Anyone else?

3 A. No.

4 Q. Did you talk with any other
5 individuals who are not attorneys?

6 A. Yes, I did.

7 Q. And who was that?

8 A. Bin Liang.

9 Q. Okay. Anyone else?

10 A. No.

11 Q. And how long were you conversations
12 with Isha and Geoff?

13 A. Oh, I don't remember the specific
14 amount of time.

15 Q. A range.

16 A. I don't -- a couple of hours at the
17 most.

18 Q. Okay. And how long did you speak
19 with Bin Liang?

20 A. Oh, maybe 10, 15 minutes.

21 Q. Okay. And what did you and Bin and
22 -- Bin Liang talk about?

23 A. We discussed the information that's
24 in the declaration.

25 Q. And what do you mean by that?

1 A. We discussed the information that's
2 in the declaration.

3 Q. And what did you discuss?

4 A. We discussed the -- I'd have to look
5 at the declaration. Oh, we discussed the
6 information at paragraph 8 and the information in
7 paragraph 11 and Exhibit 2081.

8 Q. And what did you and Mr. Liang
9 discuss regarding the information in paragraph 8?

10 A. Can you be specific? What do you
11 mean, just discuss is general.

12 Q. Well, you said that you discussed the
13 information in paragraph 8. What -- what did you
14 discuss -- what was said?

15 MS. AGARWAL: Objection. Vague.

16 A. It's a very broad question. We
17 talked about the information in paragraph 8, so
18 we just -- paragraph 8 is the EC50 data, the
19 orforglipron and two additional compounds.
20 That's what we discussed.

21 Q. And what did Mr. Bin Liang confer to
22 you during this discussion?

23 A. So he -- he communicated when the
24 study was done and how the study was done.

25 Q. Okay. Did he communicate anything

1 else to you?

2 A. No, that was the majority of what he
3 said.

4 Q. Okay. In paragraph 11 what was the
5 information that Mr. Liang conferred to you?

6 A. It was the same type of information
7 as paragraph 8.

8 Q. When the study was done and how the
9 study was done?

10 A. Yes.

11 Q. Okay. And for Exhibit 2081 what did
12 Mr. Liang confer to you?

13 A. It was also confirming when the study
14 was done.

15 Q. And anything else?

16 A. When the study was done, when the
17 notebook information was entered into a notebook,
18 those two pieces of information mostly.

19 Q. And when did you have this
20 conversation with Mr. Liang?

21 A. Which -- so I had two conversations
22 with him. One conversation was awhile ago, which
23 was before the declaration was actually submitted
24 and that was for 8 and 11, and then the other
25 conversation for the notebook, which is the

1 exhibit, was last night.

2 Q. Okay. And so just so that I make
3 sure that I understand, when you said that you
4 talked with Mr. Liang in preparation for today's
5 deposition, you had a conversation with Mr. Liang
6 last night for about ten minutes?

7 A. Yes.

8 Q. And during last night's conversation,
9 you talked about Exhibit 2081?

10 A. Yes, that is correct, last
11 conversation we talked about Exhibit 2081.

12 Q. And -- but you did not last night
13 talk about the information in paragraphs 8 or 11?

14 A. No, we did not talk about the
15 information in paragraphs 8 or 11 last night.

16 Q. Okay. And then you said that there
17 was a -- another conversation that you had prior
18 to the submission of your declaration dated
19 March 5, 2026.

20 Do you remember what date that
21 conversation was had?

22 A. No, I do not remember the exact date
23 of that.

24 Q. Do you remember how long that
25 conversation lasted?

1 A. It was about 15 minutes.

2 Q. Okay. And during that prior
3 conversation, you discussed the information in
4 paragraphs 8 and 11 of your declaration?

5 A. Yes, I discussed the information in
6 paragraphs 8 and 11 of the declaration.

7 Q. But at that time you did not discuss
8 Exhibit 2081?

9 A. No, at that time I did not discuss
10 Exhibit 2081.

11 Q. Okay. And did you review any emails
12 in preparation for today's deposition?

13 A. No, I did not review any emails in
14 preparation for this.

15 Q. Did you review any other declarations
16 submitted in this proceeding?

17 A. No, I did not review any other
18 declarations submitted in this proceeding.

19 Q. Did you review any of the briefing
20 that has been submitted in this proceeding?

21 A. What is the briefing?

22 Q. So, for instance, patent owner has
23 submitted a patent owner response in this
24 proceeding. Have you -- did you review that
25 document?

1 MS. AGARWAL: I'll just caution the
2 witness not to divulge any privileged
3 information.

4 Q. So I'm just looking for a yes or no.

5 A. Yeah, I knew -- I reviewed drafts of
6 those proceedings with our attorneys prior to the
7 submission.

8 Q. Okay. But -- so you reviewed the
9 documents prior to the -- to the submission on
10 March 5th, but for today's purposes, you didn't
11 re-review that submission?

12 A. No, I did not re-review that
13 submission for today's purposes.

14 Q. Okay. At any point have you talked
15 with anyone other than Bin Liang about this
16 proceeding?

17 MS. AGARWAL: Objection. And
18 instruct the witness not to answer for any
19 attorney-client privilege.

20 Q. So let me rephrase then. Other than
21 attorneys, is there any other individual that you
22 have spoken to regarding this proceeding at any
23 time?

24 MS. AGARWAL: I instruct the witness
25 not to answer on account of attorney-client

1 privilege.

2 Q. Okay. This is a yes-or-no question,
3 so you would not be disclosing attorney-client
4 privileged information by answering this
5 question.

6 MS. AGARWAL: You can answer yes or
7 no.

8 A. Can you rephrase the question?

9 Q. (BY MR. TOFT) Yeah. Other than your
10 attorneys, is there any individual that you have
11 spoken to about this proceeding at any time?

12 A. When you mean the proceeding, do you
13 mean -- what do you mean by the proceeding
14 because is it this deposition? Is that the
15 proceeding you're referring to?

16 Q. That's -- that's fair. So this
17 proceeding is a post-grant review entitled
18 PGR2025-00057. It's a type of post-grant review
19 in front of the United States Patent and
20 Trademark Office between Conjupro and Ascletis.
21 So that proceeding then involves the validity of
22 the Ascletis '236 patent is what I'm referring
23 to.

24 So the question is for -- have you
25 discussed with any individual who is not your

1 attorney the -- the post-grant proceeding
2 involving the '236 patent?

3 A. I have not had any direct
4 conversations relating to this proceeding with
5 any other individual.

6 Q. What do you mean by "direct
7 conversations"?

8 A. I have not had any conversations with
9 any other person -- individual that did not
10 include attorneys present.

11 Q. Okay. Are you aware of any other
12 disputes between Conjupro and Ascletis?

13 MS. AGARWAL: Objection. Scope.

14 A. I am not aware of any other disputes.

15 Q. When were you first contacted about
16 the -- this post-grant review of the '236 patent?

17 A. I don't understand your question.
18 When was I personally contacted? I don't
19 understand.

20 Q. Yes.

21 A. I am -- I found out about it when it
22 was filed by Conjupro, I guess.

23 Q. Okay. And when were you first asked
24 to submit a declaration in this proceeding?

25 MS. AGARWAL: Objection. I instruct

1 the witness not to answer on attorney-client
2 privilege.

3 Q. Other than your role -- let me ask
4 when were you first aware of the
5 Ascletis '236 patent?

6 A. I don't actually remember the
7 specific date. It would have been whenever we
8 disclosed that we had this molecule, around that
9 same time. It was -- I mean, I don't remember
10 when then it was. It was either '23 -- I think
11 it was '23, but I can't remember the specific
12 way.

13 Q. Were you involved in the filing of
14 any patent application that led to the
15 Ascletis '236 patent?

16 A. No, I was not involved in any patent
17 filings.

18 Q. Okay. Have you read the 2 -- the
19 Ascletis '236 patent?

20 A. I've read parts of the '236 patent.

21 Q. Can I ask why?

22 MS. AGARWAL: Objection. Form.

23 A. It's part of my -- I mean, I guess,
24 it's -- it would be a normal thing to do to
25 understand the patents that -- of our compounds

1 from, I guess, chief business officer.

2 Q. When did you review parts of the
3 Ascletis '236 patent?

4 A. I can't remember specifically. I may
5 have looked at it -- you know, briefly looked at
6 it before this incident with Conjupro and then
7 I'd -- probably I looked at it after the filing.

8 Q. And do you review all of Ascletis'
9 patents?

10 A. The ones -- not -- not all the
11 patents because ones that are -- no, I don't
12 review all of the patents.

13 Q. But you just said that you reviewed
14 part of the Ascletis '236 patent at least?

15 A. I think the word "review" is -- it is
16 a cursory skim, let's put it that way.

17 Q. Okay. And we talked about your
18 declaration in this proceeding.

19 Who drafted your declaration?

20 A. So I drafted the declaration with my
21 attorneys.

22 Q. Okay. How many hours do -- did you
23 spend drafting your declaration?

24 A. I don't remember specifically but I
25 don't -- yeah, I can't remember specifically how

1 long I spent on this.

2 Q. Are there any other documents that
3 you reviewed that you did not cite to in your
4 declaration?

5 A. No, there were no documents that I
6 reviewed that I did not cite to.

7 Q. Let's back up a little bit. You went
8 to Boston College; correct?

9 A. Yes, I went to Boston College.

10 Q. And you got a Bachelor of Arts in
11 Economics?

12 A. Yes, I got a Bachelor of Arts in
13 Economics.

14 Q. And did you get any other degrees
15 while at Boston?

16 A. No, I did not get any other degrees
17 at Boston College.

18 Q. And when did you graduate from BC?

19 A. Oh, my gosh. I graduated in 1982
20 from Boston College. Ages ago. Don't make me
21 say that.

22 Q. No, I'm sorry. And then Isha's been
23 sitting there probably not born yet.

24 A. You brag, Luke.

25 Q. You're current employer is Ascletis,

1 Inc. who -- that we talked about?

2 A. Yes.

3 Q. And when did you start there?

4 A. May of 2022.

5 Q. Okay. Oh, sorry. And be -- your
6 other education, you went to Duke and got an MBA;
7 right?

8 A. Yes, I got a MBA from the Fuqua
9 School of Business at Duke.

10 Q. Okay. Are there any other degrees
11 that you own?

12 A. No, I don't have any other degrees.

13 Q. So sorry, and you started at
14 Ascletis, Inc. when?

15 A. In May of 2022.

16 Q. Okay. And you're their chief
17 business officer; right?

18 A. Yes, I am the chief business officer
19 for Ascletis.

20 Q. Have you held any other roles there?

21 A. I have not held any other roles at
22 Ascletis.

23 Q. What are your other responsibilities
24 as the chief business officer?

25 A. My primary responsibilities as chief

1 business officer would be to talk to potential
2 partners about compounds that we may be
3 interested in partnering, to have conversations
4 with potential investors and analysts, and that's
5 -- and -- and also if we're going to be raising
6 money, I would be involved in that as well. So
7 those are my primary responsibilities I would
8 say.

9 Q. Got it. And when you say "talk to
10 partners about compounds," what partners are you
11 talking about?

12 MS. AGARWAL: Objection. I instruct
13 the witness not to divulge any third-party
14 confidential information.

15 THE WITNESS: Yeah, okay.

16 A. Partners could be anything from like
17 a private equity firm. It could be -- it would
18 be a pharmaceutical company, could be a venture
19 funds, I mean, it could be very broad kind of --
20 corporate people potentially.

21 Q. Okay. Other than talking to
22 partners, investors, and analysts, any other
23 responsibilities as CBO?

24 A. No, I think those are my main
25 responsibilities.

1 Q. And we discussed this was part of
2 your role as CBO, you don't necessarily review
3 Ascletis' patents; correct?

4 MS. AGARWAL: Objection.
5 Mischaracterizes testimony.

6 Q. You can answer.

7 A. Yeah. Whether, you know, reviewing
8 patents for us is -- it's not necessarily
9 affiliated with my role at Ascletis, so that
10 connection that you're making is not accurate.

11 Q. And you don't review Ascletis' patent
12 applications; correct?

13 A. I do not -- I do not -- so please be
14 more specific in your question. What do you mean
15 by "review"?

16 Q. So as part of your job
17 responsibilities as CBO, is it your normal course
18 to review Ascletis' patent applications as part
19 of --

20 A. No, it is not normal course for me to
21 review Ascletis' patent applications in my
22 position as CBO.

23 Q. Okay. In your position as CBO, do
24 you perform laboratory tests?

25 A. No, I do not perform laboratory tests

1 in my position as CBO.

2 Q. In your position as CBO, do you
3 analyze laboratory test results?

4 A. In my position as CBO, I do not
5 analyze -- I don't -- test results.

6 Q. In your position as CBO, do you
7 review industry literature?

8 MS. AGARWAL: Objection. Vague.

9 Q. Let's -- let me rephrase. Do you
10 review -- in your position as CBO, do you review
11 any industry scholarship?

12 A. I do not know what you mean by
13 "scholarship." What do you mean? What does that
14 mean?

15 Q. Do you review scientific review
16 articles?

17 A. In -- in my position as CBO, I do not
18 as a normal course review scientific review
19 articles.

20 Q. And in your position as CBO, do you
21 review patents or pat- -- patent applications
22 filed by competitors?

23 A. My position as CBO, I do not review
24 patent applications filed by competitors.

25 Q. In your position as CBO, do you

1 prepare laboratory notebooks?

2 A. In my position as CBO, I do not
3 prepare laboratory notebooks.

4 Q. Are laboratory notebooks maintained
5 in digital or paper form?

6 A. I cannot -- I do not know all -- I do
7 not know how all laboratory notebooks are
8 maintained at Ascletis.

9 Q. In what ways do you know that
10 laboratory notebooks are maintained at Ascletis?

11 A. I know that laboratory notebook that
12 is in the exhibit is maintained as an E-notebook.

13 Q. Okay. Are you aware of any other
14 ways that Ascletis maintains laboratory
15 notebooks?

16 A. I am not aware of any other ways that
17 Ascletis maintains laboratory notebooks.

18 Q. Does -- do you know if E-notebooks is
19 the -- a common way that Ascletis maintains
20 laboratory notebooks?

21 A. I know that E-notebooks --
22 E-notebooks are a way that that maintains the
23 notebooks.

24 Q. What software is used to prepare
25 Ascletis' E-laboratory notebooks?

1 A. I do not know what software is used
2 to prepare their E-notebooks.

3 Q. Do you know where the laboratory
4 notebooks are stored at Ascletis?

5 A. No, I don't know the specific
6 location of where the laboratory notebooks are
7 stored.

8 Q. Do you know what database would store
9 the laboratory notebooks at Ascletis?

10 A. No, I do not know what database would
11 store the laboratory notebooks.

12 Q. Do -- do you have access to the
13 database that would store the laboratory
14 notebooks?

15 A. No, I do not have access to the
16 database that would store the laboratory
17 notebooks.

18 Q. Do you know who does have access to
19 that database?

20 A. No, I do not know all the people that
21 have access to that database.

22 Q. Do you have any ownership interest in
23 Ascletis?

24 A. I do not own any stock in Ascletis,
25 but I do have stock options and what they call

1 share awards, which is public information.

2 Q. And how much are your stock options
3 worth, approximately?

4 A. I don't know. I haven't done a
5 recent calculation because most of my options are
6 not vested.

7 Q. When do most of your options vest?

8 A. Not for another full three years --
9 three, four years.

10 Q. And is that on a -- oh, I forget what
11 they call it -- is it waterfall schedule?

12 A. I don't know what that is.

13 Q. Do you have a certain amount that
14 vests every year?

15 A. Yes, I have a certain amount that
16 vests every year.

17 Q. Do you know how many are vested as of
18 today?

19 A. Yes, I do know how many are vested as
20 of today -- well --

21 Q. Well, how many is that?

22 A. It's about 2 -- 2.4 million.

23 Q. 2.4 million options?

24 A. Yes, 2.4 million options.

25 Q. And do you have any understanding as

1 to how -- what the value of 2.4 million options
2 is?

3 A. As of today no, I do not know what
4 that value is.

5 Q. Is it more than \$2.4 million?

6 A. I don't know. I'd have to actually
7 do the math to calculate it.

8 Q. Okay. So you -- you don't know if
9 each option is worth a dollar?

10 A. I don't know what the current --

11 MS. AGARWAL: Let me object.

12 Objection. Asked and answered.

13 A. Okay. I haven't looked at the stock
14 price -- the closing stock price, so I do not
15 know what it's worth as of today when you're
16 asking, no.

17 Q. Do you know what the basis range is
18 for your 2.4 million options?

19 A. Yes, I do know the basis range, yes,
20 of my option.

21 Q. What is that?

22 A. What is what?

23 Q. What is the basis range for the
24 2.4 million vested options?

25 A. Some are at \$3 -- \$3.30; some are at

1 \$3.90, roughly.

2 Q. And you said in addition to options,
3 you had one other type of equity. What was that?

4 A. It's called a share award.

5 Q. What is a share award?

6 A. It's shares that you would get if you
7 achieve certain performance objectives.

8 Q. Got it. And do you have share awards
9 that have already vested?

10 A. No, I have no share awards that ever
11 vested.

12 Q. What share awards do you have right
13 now?

14 A. I don't have any share awards right
15 now.

16 Q. So you have a -- a -- and I apologize
17 if I'm framing this incorrectly -- but you have
18 a -- it sounds to me like a share award is a
19 promise to pay shares in the future if a certain
20 metric or -- or benchmark is met; is that
21 correct?

22 MS. AGARWAL: Objection. Form.

23 A. So a share award is a share that you
24 can vest in if you keep -- achieve a certain
25 performance metric. It -- that's the best way to

1 describe it.

2 Q. And what performance metrics must be
3 achieved for your share awards?

4 A. My performance metrics are based on
5 completing what is defined as a business
6 development -- I -- I can't remember specifically
7 -- it's a -- I don't know if it says business --
8 I -- I can't remember specifically the wording.
9 It is of public information so it's easily
10 obtainable.

11 Q. Other than Ascletis, do you have any
12 other income source?

13 A. No, I do not have any other -- other
14 income source other than Ascletis.

15 Q. And what is your --

16 A. Can you clarify what you mean by
17 "income source"?

18 Q. Do you have any other employer?

19 A. No, I do not have any other employer.

20 Q. Okay. Do you have a board seat on
21 any other company?

22 A. No, I do not have a board seat on any
23 other company.

24 Q. Do you act as a consultant for any
25 other company?

1 A. No, I do not act as a consultant for
2 any other company.

3 Q. So other than -- are you a W-2 for
4 Ascletis?

5 A. Yes, I am a W-2 for Ascletis.

6 Q. Other than your W-2 from Ascletis, do
7 you receive a W-2 from any other company?

8 A. No, I do not receive a W-2 from any
9 other company.

10 Q. And do you receive a 1099 from any
11 company?

12 A. No, I do not. I -- I didn't know if
13 you also meant like investment income, you know,
14 like in --

15 Q. Oh, yes.

16 A. Yeah, that's what I've described,
17 because it -- the answer then would be "yes."

18 Q. Let's hope so. And what is your
19 annual compensation from Ascletis?

20 A. I'm not comfortable answering that as
21 it's within personal, and I don't understand what
22 the relevance is relative to my declaration.

23 Q. We're I'm happy to mark this -- this
24 question confidential if you'd like, but I -- I
25 don't have to explain the relevance of every

1 question.

2 A. Okay.

3 Q. Do you want to mark this
4 confidential?

5 A. It's right around -- it's around 380.

6 Q. 380,000?

7 A. Yes.

8 Q. And that's base comp?

9 A. That is base comp.

10 Q. And do you have any bonuses that
11 you --

12 A. Yes, there is a bonus.

13 Q. And what is your bonus structure?

14 A. It's a target of 30 percent target.

15 Q. And does it ever pay out at more than
16 100 percent?

17 A. No, it never pays out more than
18 30 percent.

19 Q. So I understand it's 30 percent of
20 your -- of your base comp, but does -- do bonuses
21 ever pay out at more than 100 percent to --

22 A. To what?

23 Q. So I -- I know some companies say,
24 for bonuses this year we're paying out a
25 120 percent, so you get 120 percent of the 30

1 percent of your 380. Do -- does Ascletis pay out
2 bonuses at more than 100 percent?

3 A. I have never received a bonus more
4 than 100 percent of my 30 percent for --

5 Q. Got it. And other than base pay and
6 bonus, is there any other aspect of your annual
7 compensation?

8 A. I mean, just health care, I think.
9 401(k).

10 Q. You don't have a -- an equity
11 allotment as part of your annual compensation?

12 A. I don't know what -- no, I do not
13 have an equity allotment as part of my annual
14 compensation, no.

15 Q. Other than this case, have you
16 assisted in any legal proceeding for Ascletis
17 before?

18 A. What do you mean by "assisted"?

19 Q. Have you submitted a declaration in
20 any proceeding for Ascletis before?

21 A. I --

22 MS. AGARWAL: Objection. Scope.

23 A. No, I haven't submitted.

24 Q. Have you reviewed legal documents
25 prior to their submission in any legal proceeding

1 before?

2 MS. AGARWAL: Objection. I'll
3 instruct the witness not to answer as it's
4 attorney product -- excuse me -- attorney-client
5 privileged information.

6 Q. And not -- I'm not asking for your
7 communications with attorneys or what was on
8 those documents. I'm literally just asking if
9 you have reviewed any documents prior to
10 submission?

11 MS. AGARWAL: I'm going to instruct
12 the witness not to answer on account of
13 attorney-client privilege. Re -- reviewing the
14 -- the interactions with attorneys for any sort
15 of proceedings is -- is privileged and also posit
16 to work product.

17 MR. TOFT: No. It's whether he's
18 reviewed or not is a fact, that's like whether
19 he's had a conversation with you or not is a
20 fact. The underlying content of what that
21 communication was is privileged, but whether he
22 has done something or not is a fact that is not
23 covered by attorney-client privilege.

24 MS. AGARWAL: If he --

25 MR. TOFT: I'm going to ask again.

1 Q. Mr. Gargiulo, have you reviewed any
2 legal documents prior to the submission in any
3 case for Ascletis before?

4 MS. AGARWAL: That information is
5 privileged and is irrelevant to the scope of this
6 deposition and his declaration at this
7 proceeding. I suggest you move on.

8 MR. TOFT: Isha, it's not privileged.

9 MS. AGARWAL: We disagree.

10 Q. Mr. Gargiulo, are -- are you going to
11 listen to your attorney and -- or answer my
12 question?

13 A. I'm going to follow my attorney's
14 advice.

15 Q. Okay. Prior to Ascletis you worked
16 at GPG Enterprises, LLC; is that right?

17 A. Yes, I worked at GPG Enterprises.

18 Q. And that was from 2014 to 2022?

19 A. Yes, that's correct.

20 Q. And that's a health-care company?

21 A. That's my own personal consulting
22 firm.

23 Q. Okay. What does GPG Enterprises
24 do --

25 A. What --

1 Q. -- or what did it do?

2 A. -- did it do? I did consulting with
3 mostly private equity firms.

4 Q. And what type of health-care service
5 or product did you consult on?

6 MS. AGARWAL: Objection. Vague.

7 THE WITNESS: Huh?

8 MS. AGARWAL: You can answer.

9 A. They were mostly health-care services
10 companies.

11 Q. Any pharmaceutical?

12 A. There were a couple of -- couple of
13 pharmaceuticals, yes.

14 Q. And what were your responsibilities
15 in your role at GPG Enterprises?

16 A. So I identified -- I identified
17 companies that could potentially be good fits for
18 private equity firms and then I worked with
19 private equity firms that could potentially
20 acquire those companies.

21 Q. Okay. Did you ever -- you didn't
22 provide any scientific services to these
23 companies?

24 A. No, I did not provide any scientific
25 services.

1 Q. And you were president -- you were
2 also president for Clinical Education Solutions;
3 is that right?

4 A. That is correct, I worked for
5 Clinical Education Solutions for a little bit
6 over a year.

7 Q. Okay. And what does Clinical
8 Education Solutions do?

9 A. At the time Clinical Education
10 Solutions provided services to pharmaceutical
11 companies where nurse educators would go and
12 educate patients on a specific product.

13 Q. Okay. And what were your
14 responsibilities while at Clinical Education
15 Services -- or Solutions?

16 A. At the time I was president of the
17 division, and I oversaw the client -- client
18 relationship and also the operations.

19 Q. And so it sounds -- correct me if I'm
20 wrong -- it sounds like Clinical Education
21 Solutions from the operations standpoint was kind
22 of a education-based operation?

23 A. Clinical Education Solution was --
24 was a in-home education service for patients.

25 Q. And did you as part of your

1 responsibilities provide any scientific services?

2 MS. AGARWAL: Objection. Vague.

3 A. No, I did not provide any scientific
4 services course like that.

5 Q. And it looks like you also worked as
6 a chief operating officer at Clarus Therapeutics;
7 is that correct?

8 A. That is correct, I worked as chief
9 operating officer at Clarus Therapeutics.

10 Q. And how long were you there?

11 A. I think like -- I was only there
12 about three months.

13 Q. Why -- explain that stint.

14 MS. AGARWAL: Objection. Form.

15 A. Yeah, my father came down with colon
16 cancer and I left to take care of him.

17 Q. Oh. I'm sorry to hear that.

18 What did Clarus Therapeutics do?

19 A. Clarus Therapeutics had a product in
20 clinical development for -- it was an oral
21 testosterone replacement.

22 Q. And did you -- as part of your role
23 as COO, were you involved in any scientific
24 testing related to this testosterone development?

25 A. No, I was not involved in any

1 scientific testing related to that product.

2 Q. Were you involved at all in the
3 development of that product?

4 A. No, I was not involved in the
5 development of any product at Clarus
6 Therapeutics.

7 Q. Okay. And then prior to that, it
8 looks like you were at -- I might pronounce this
9 wrong --

10 A. It's Daiichi Sankyo. It's okay.

11 Q. There you go.

12 A. Yeah.

13 Q. Daiichi Sankyo.

14 A. Yeah.

15 Q. And did -- what does Daiichi Sankyo
16 do -- or did it do?

17 A. Daiichi Sankyo is a pharmaceutical
18 company.

19 Q. And what kind of pharmaceutical
20 products did Daiichi Sankyo specialize in?

21 A. They had a broad portfolio of
22 products, so hundreds of products.

23 Q. And it looks like you started there
24 as VP of marketing?

25 A. Yes, I started as a VP of marketing.

1 Q. And then VP of commercial operations?

2 A. That is correct, then VP of
3 commercial operations.

4 Q. And then SVP of commercial
5 operations?

6 A. And then senior vice president of
7 commercial operations, yes.

8 Q. And finally, president and CEO?

9 A. Yes, finally --

10 Q. Did you hold -- sorry. Did you hold
11 any other roles?

12 A. I did not hold any other roles at
13 Daiichi Sankyo.

14 Q. Okay. In any of those roles, did you
15 provide, as part of your role, any services
16 related to development of any product?

17 A. What do you mean by "services"?

18 Q. So as part of your general
19 responsibilities, did you develop products while
20 at Daiichi Sankyo?

21 MS. AGARWAL: Objection. Vague.

22 A. Yeah, you've got to be more specific
23 when you -- what you mean by product develop.
24 "Develop" is a very broad term.

25 Q. What kind of products did

1 Daiichi Sankyo provide?

2 A. I don't remember all of the compounds
3 that they sold. They had hundreds of them. They
4 were pharmaceutical products.

5 Q. Okay. Did you develop any compounds
6 while at Daiichi Sankyo?

7 MS. AGARWAL: Objection. Vague.

8 A. It's very difficult for me to try to
9 answer your question because using the word
10 "develop" is incredibly broad and vague and it
11 could mean multiple things. So I -- I just need
12 you to be more specific about what do you mean
13 "develop," like that's what I've got to -- I am
14 trying to understand. I don't want to be
15 difficult. That's just, you know --

16 Q. Absolutely. I understand. What are
17 the definitions of develop that -- that you have?
18 What different of -- definitions of develop a
19 compound?

20 A. So developing a compound could be
21 commercially developing it, getting it ready for
22 market. It could be clinically developing it.
23 It can be preclinically dev- -- there's a -- just
24 like a huge spectrum of how you would interpret
25 develop.

1 Q. Okay.

2 A. So which are you asking me?

3 Q. While at Daiichi Sankyo, were you
4 involved in any preclinical development of a
5 compound?

6 A. No, I was not involved in any
7 preclinical development.

8 Q. While at Daiichi Sankyo, were you
9 involved in any clinical development of a
10 compound?

11 A. Please -- I need you to be more
12 specific about what you mean by "involved."

13 Q. Okay. Well, let's just start with
14 were you -- do you believe that you had any
15 involvement in the clinical development of a
16 compound at Daiichi Sankyo?

17 MS. AGARWAL: Objection. Form.

18 A. Yes, I was involved in clinical
19 development of compounds at Daiichi Sankyo.

20 Q. Can you explain what your involvement
21 was?

22 MS. AGARWAL: Objection. Form.

23 A. So the best way to understand it is
24 there's -- there is always commercial input at
25 Daiichi Sankyo medically, but there was

1 commercial input into the clinical development
2 process in order to assess what the target
3 product profile was or, you know, what the
4 potential value would be or what -- how the
5 studies might need to be done to make them
6 feasible. And that was sort of the role that my
7 -- my -- or my group, I didn't do it directly --
8 but the people that worked for me, that was the
9 role that they played in that process.

10 Q. And did you personally provide any of
11 that input in the development of any clinical
12 compounds at Daiichi Sankyo?

13 MS. AGARWAL: Objection. Form.

14 A. At Daiichi Sankyo I was -- I sat on a
15 committee that reviewed the clinical programs
16 that were ongoing and they made -- the committee
17 made decisions on what we'd advance or not
18 advance.

19 Q. Okay. And that was, if I'm
20 understanding correctly, a kind of a market
21 analysis for the compounds?

22 A. Yes, it was the commercial input.

23 Q. Okay.

24 A. For --

25 Q. You didn't synthesize any compounds

1 while at Daiichi Sankyo?

2 A. No, I did not synthesize any
3 compounds while at Daiichi Sankyo.

4 Q. And you didn't perform tests or
5 analysis on any compounds while at Daiichi
6 Sankyo?

7 A. No, I did not perform tests or
8 analysis on compounds at Daiichi Sankyo.

9 Q. And you didn't analyze, for example,
10 the PK of any compound while at Daiichi Sankyo?

11 MS. AGARWAL: Objection. Form.

12 A. Yes, I reviewed -- I have reviewed PK
13 data for compounds at Daiichi Sankyo.

14 Q. But you didn't perform any PK test?

15 A. No, I did not perform any PK tests.

16 Q. And you do not have a degree in
17 chemistry; correct?

18 A. No, I do not have a degree in
19 chemistry.

20 Q. Or biology?

21 A. No, I do not have any degree in
22 biology.

23 Q. Or any other science?

24 A. I have a degree -- a master's in
25 business administration, and I have a Bachelor of

1 Arts in Economics. Some people would argue
2 that's a science.

3 Q. Okay. Do you personally have any
4 experience in creating or synthesizing chemical
5 compounds?

6 A. No, I do not have experience in
7 creating or synthesizing chemical compounds.

8 Q. Do you personally have any experience
9 in testing chemical compounds?

10 A. No, I do not have any experience in
11 testing chemical compounds.

12 Q. Do you personally have any experience
13 in ascertaining the biological activity in any
14 compounds?

15 MS. AGARWAL: Objection. Form.
16 Vague.

17 A. I'm -- can you rephrase, please?

18 Q. What experience do you have in
19 ascertaining the biological activity of any
20 compound?

21 MS. AGARWAL: Same objections.

22 A. I review EC50 data or other types of
23 data that would indicate potency of compounds.

24 Q. That would indicate what?

25 A. The potency of a compound.

1 Q. Other than the EC50 data, what other
2 data do you analyze that would indicate the
3 potency of a compound?

4 A. I mean, I can't remember other types
5 of information that sometimes it's called EC50.
6 Sometimes it's called EC90. But generally I
7 don't, you know, remember every -- every
8 different type of metric. Every drug is
9 different potentially.

10 Q. What would the -- sorry. Go ahead.

11 A. No. Go ahead.

12 Q. What is the difference between EC90
13 and EC50 data?

14 A. So it's mutually the same -- it's the
15 same analysis or study, it's just one -- it's
16 with 50 percent inhibition and the other is
17 90 percent inhibition. So that's why it says
18 EC50/EC90.

19 Q. And what is your understanding of how
20 EC50 data can indicate the potency of a compound?

21 A. So the lower the value generally,
22 depending on the compound, then it indicates the
23 higher potency of that molecule.

24 Q. And how does one get EC50 data?

25 A. I do not specifically know every

1 study that is conducted to generate EC50 data.

2 Q. Where did your understanding for --
3 where did your understanding that the lower the
4 EC50 data value, the higher the potency come
5 from?

6 A. I've been in pharmaceuticals for
7 30 years, so over the course of that time, you
8 know, you learn these things, so...

9 MS. AGARWAL: We've been going for
10 about an hour. Is now a good time to take a
11 break?

12 MR. TOFT: Yeah, we can take a break.

13 (Break from 9:00 am to 9:11 am)

14 Q. (BY MR. TOFT) Mr. Gargiulo, during
15 the break did you talk to your attorney of the
16 substance of any testimony?

17 A. No, I did not.

18 Q. And you've submitted a declaration in
19 this proceeding. Do you have an understanding of
20 the purpose of your declaration in this
21 proceeding?

22 MS. AGARWAL: Objection. Form.

23 A. Yeah, I don't know what you mean by
24 "purpose."

25 Q. Why is it that you think you

1 submitted a declaration in this proceeding?

2 A. I submitted additional information
3 that was not in the Ascletis patent, that's what
4 the declaration is for.

5 Q. And what information did you intend
6 to convey by submitting information that was not
7 in the Ascletis '236 patent?

8 MS. AGARWAL: Objection. Form.

9 Answer if you know.

10 A. The declaration includes additional
11 EC50 information in paragraph 8, PK data in
12 paragraph 11, and an E-notebook, Exhibit 2081.

13 Q. Is it -- it's your position that none
14 of that information is in the '236 patent?

15 A. My position is that the information
16 in the declaration that specifically says that is
17 not in the 2 -- 2 -- whatever the patent is
18 noted, yes.

19 Q. And that's the information in
20 paragraphs 8 and 11 and Exhibit 2081?

21 A. Yes, 8, 11, and, yes, 2081.

22 Q. Are any of the compounds discussed in
23 your declaration ASC30?

24 A. There is no -- none of the data in
25 paragraph 8, 11, or 12 is ASC30.

1 Q. And is any of the information about
2 the compounds tested in Exhibit 2081 ASC30 data?

3 A. No, the compounds tested in
4 Exhibit 2081 is not ASC30 data.

5 Q. Do you know what compound the ASC30
6 is?

7 A. Yes, I do know which compound is
8 ASC30.

9 Q. Which compound is it?

10 A. We have not disclosed that
11 information publicly. It is confidential.

12 Q. Sorry, you said it's confidential?

13 A. Yes, we've not disclosed that
14 information publicly. It's confidential.

15 Q. So it's not any of the -- it's not
16 Compound 1 of the Ascletis patent?

17 A. We've not disclosed which compound is
18 ASC30.

19 Q. But you just said that none of the
20 compounds that are referenced in your declaration
21 are ASC30?

22 A. That is correct.

23 Q. And Compound 1 is -- is discussed in
24 your declaration; correct?

25 A. Yes, that is correct.

1 Q. So ASC30 is not Compound 1?

2 MS. AGARWAL: Objection.

3 Mischaracterizes testimony.

4 A. As I said, none of the compounds that
5 are in my declaration, the additional data is
6 ASC30.

7 Q. Okay. This is just a yes-or-no
8 question. Compound 1 is not the ASC30 compound;
9 correct?

10 A. As I stated, none of the compounds
11 that are referred to in the declaration or the
12 additional data are for ASC30.

13 Q. Okay. And -- and there's a few
14 different compounds, so I just want to make the
15 record very clear. So I want to ask first about
16 Compound 1. Compound 1 -- and I just want a
17 "yes" or "no" to this -- is not ASC30; correct?

18 MS. AGARWAL: Objection. Asked and
19 answered.

20 A. I answered. I just said.

21 Q. Is it "yes" or "no"?

22 MS. AGARWAL: Same objection.

23 A. So, as I said, the information in
24 paragraph 11, those compounds are not ASC30.

25 Q. So -- and I'm just going to break it

1 down because there's two of them.

2 Compound 1 referenced in paragraph 11
3 is not ASC30; correct?

4 MS. AGARWAL: Objection. Asked and
5 answered.

6 A. No, Compound 1 is not ASC30.

7 Q. And Compound 19 also referenced in
8 paragraph 11 is not ASC30?

9 MS. AGARWAL: Objection. Asked and
10 answered.

11 Q. Correct?

12 A. I got the compound --

13 Q. And we can mark this portion of the
14 deposition transcript as confidential, again, if
15 -- if that's a concern to you, but I just need an
16 answer to my question here.

17 A. So the way I answered the question, I
18 got the compound numbers mixed up. I cannot
19 disclose which compound is ASC30, and so when I
20 re -- some of the compounds may have -- I cannot
21 disclose which compound is ASC30 unfortunately
22 because of confidentiality.

23 Q. Well, if it's -- if it's a
24 confidential issue, we can mark this deposition
25 transcript confidential.

1 A. Yeah. Yeah, I know. I can't
2 disclose -- I cannot disclose which compound is
3 ASC30, and answering your question could
4 potentially do that.

5 Q. Okay. So I'm trying to understand --
6 I'm trying to square the testimony that you've
7 given so far, and I'm struggling to do that.

8 But you said that none of the
9 compounds referenced in your declaration are
10 ASC30, and now you -- you say you can't answer
11 that Compound 19 referenced in your declaration
12 is ASC30 or not?

13 MS. AGARWAL: Objection.
14 Mischaracterizes the testimony.

15 A. How am I going to explain this?

16 MS. AGARWAL: Why don't -- why don't
17 we take a break to discuss some confidentiality
18 issues. Can we go off the record?

19 MR. TOFT: You can go off the record.
20 And if we need to, I'm happy to make this portion
21 of the confident -- this portion of the
22 transcript AEO if that's the concern. But if
23 it's just a confidentiality issue, I -- I do need
24 answers to my questions. So we can go on break.
25 How long would you like?

1 MS. AGARWAL: I think probably about
2 a ten minutes.

3 MR. TOFT: Ten minutes? Okay. We'll
4 be back at 9:30 or 10:30 depending.

5 MS. AGARWAL: Thank you.

6 (Break from 9:20 am to 9:33 am)

7 Q. (BY MR. TOFT) So prior to the break,
8 we were discussing Compound 19 and ASC30. And so
9 I am going to ask is Compound 19 ASC30?

10 A. So I'm need to -- I need to make a
11 correction in my testimony. So originally our --
12 you asked me if any of the compounds into the
13 declaration were ASC30, and I need to change my
14 answer to that question to I cannot confirm or
15 deny whether or not any of those compounds in my
16 declaration are ASC30 based on confidentiality.

17 Q. Okay. That is not going to work for
18 us. The -- whether it's confidential or not, we
19 can mark the deposition transcript confidential,
20 but this is highly relevant to these proceedings.
21 And -- and so I am going to need an answer as to
22 whether or not the compounds that you've
23 identified in your declaration are ASC30 or not.

24 So we can go through it one by one,
25 but I do need an answer.

1 MS. AGARWAL: I'm going to object as
2 it is outside the scope of his declaration, and
3 the witness has given you an answer.

4 MR. TOFT: He has not given me an
5 answer. The witness has testified that he does
6 know which compound is ASC30 and has provided
7 testimony regarding different properties of
8 different compounds and the veracity of tests
9 related to different compounds. And patent owner
10 has taken the position that ASC30 has superior
11 properties and is therefore relevant to the
12 unexpected results argument that they have raised
13 in this proceeding.

14 So whether one of the compounds that
15 Mr. Gargiulo is testifying about is ASC30 or not
16 is both relevant to these proceedings and within
17 the scope. And if it's a confidentiality
18 concern, that can be addressed by marking this
19 portion of the deposition transcript
20 confidential. You don't get to not testify about
21 information just because it's confidential.

22 MS. AGARWAL: So the -- the witness
23 has given you an answer, and his declaration does
24 not reference ASC30. It's outside the scope of
25 his declaration, so object to your questioning.

1 I object to this line of your questioning.

2 MR. TOFT: You can object, that's
3 fine, and we can fight over your testimony later.
4 But for now I'm going to need an answer to these
5 questions.

6 Q. So I'm going to ask is Compound 19
7 ASC30?

8 MS. AGARWAL: I'm going to object as
9 outside the scope of his declaration. You know,
10 Rule 42.53 is limited to his declaration and
11 what's in his declaration. So we maintain a
12 objection to this line -- line of questioning.

13 MR. TOFT: And objection is noted.

14 Q. Doctor -- or Mr. Gargiulo, please
15 answer my question.

16 A. I cannot confirm or deny which
17 compounds are ASC30 based on confidentiality. We
18 have not disclosed that information publicly.

19 Q. And I understand that, and I'm not
20 asking you to disclose it publicly. I'm asking
21 you to disclose it to me now so that I can
22 understand the implications of the testimony that
23 you are providing to this proceeding that
24 involves ASC30?

25 A. I cannot confirm or deny if any of

1 the compounds in my declaration are ASC30.

2 MR. TOFT: If you refuse to answer
3 these questions, I will end up having to go to
4 the board with this, and we will keep this
5 deposition open.

6 MS. AGARWAL: That is -- that's your
7 prerogative. We disagree. This is outside the
8 scope of his declaration. As I cited to the
9 Rule 42.53, your cross is limited to what is in
10 his declaration.

11 Q. (BY MR. TOFT) So your declaration
12 discusses test results; correct?

13 A. My declaration discusses EC50 data in
14 paragraph 8, PK data in paragraph 11, and a
15 laboratory notebook in Exhibit 2081.

16 Q. Did you perform any of the tests that
17 are discussed in your declaration?

18 A. I did not perform any of the tests
19 that are discussed in my declaration.

20 Q. Did you personally record any of the
21 data from any of the tests that are discussed in
22 your declaration?

23 A. I did not personally record any of
24 the data that is discussed in my declaration.

25 Q. And your declaration discusses

1 results from an hGLP assay. Just out of
2 curiosity, I -- it's different in your
3 declaration and different -- what is the correct
4 assay? How do you say it? I think I see one
5 place there's an "hGLP-1R," a different place was
6 an "hGL-IR." What is the correct assay test?

7 A. In paragraph 8 it says "an hGLP-1R
8 cAMP assay."

9 Q. Okay. In paragraph 6 the first thing
10 it says is, "potency in an hLGP-IR cAMP assay."

11 A. Oh, that is a typographical error.

12 Q. So I guess you already have it in
13 front of you, so I don't need to introduce an
14 exhibit. But we are discussing the Exhibit 280
15 of this proceeding, which is the declaration of
16 John Gargiulo that's a part of patent owner's
17 response.

18 You reviewed this declaration prior
19 to testifying today; correct?

20 A. Yes, I have reviewed this declaration
21 prior to testifying today.

22 Q. And other than the typo that you just
23 mentioned in paragraph 6, is there any other
24 information that you believe needs to be changed
25 in this declaration?

1 A. No, I do not believe there is any
2 other information that needs to be changed in
3 this declaration that I see.

4 Q. If we look at paragraph 3, the last
5 sentence says: In addition, I often present the
6 results of our preclinical and clinical studies
7 for our drug candidates, including ASC30 to
8 potential investors and strategic partners.

9 Do you see that?

10 A. Yes.

11 Q. Okay. So you do discuss ASC30 in
12 your declaration?

13 A. I mention ASC30 is a compound that I
14 would potentially talk to investors.

15 Q. Okay. And then your declaration
16 presents results from different testing on
17 compounds; correct?

18 A. My declaration presents in
19 paragraph 8 our EC50 data for some additional
20 compounds, in paragraph 11, PK data, and also in
21 12, a laboratory notebook.

22 Q. So that's a "yes"?

23 MS. AGARWAL: Objection.
24 Mischaracterizes testimony.

25 A. As I said, in paragraph 8 is EC50

1 data, paragraph 11 is PK data, in paragraph 12 is
2 a laboratory notebook.

3 Q. And those are the results of tests of
4 compounds; correct?

5 A. Those are -- yes, the EC50 data are
6 results of tests, so those compounds are of PK
7 data are results of tests, and laboratory
8 notebook is -- laboratory notebook, which is the
9 results of tests.

10 Q. And are you aware that ASC30 is a
11 compound that patent owner has taken the position
12 that it has superior properties in the --

13 MS. AGARWAL: Object -- sorry.

14 A. So we're going to finish?

15 Q. You can answer.

16 A. I don't know the question. Can you
17 repeat your question?

18 Q. Are you aware that patent owner has
19 taken the position that ASC30 has superior
20 properties in this proceeding?

21 MS. AGARWAL: Objection. Outside the
22 scope.

23 A. Superior properties to what?

24 Q. Good question. Are you aware that it
25 has a -- that patent owner has taken the position

1 that ASC30 has shown superior pharmacokinetic
2 profiles?

3 MS. AGARWAL: Objection. Outside the
4 scope.

5 A. Superior pharmacokinetic profiles to
6 what?

7 Q. To anything.

8 MS. AGARWAL: Objection. Form.
9 Outside the scope.

10 A. No, the compound does not have
11 superior pharmacokinetic profiles to anything.

12 Q. Are you aware that patent owner has
13 taken the position that ASC30 has shown, quote,
14 strong promise in early clinical studies?

15 MS. AGARWAL: Objection. Outside the
16 scope.

17 A. What specific data are you referring
18 to?

19 Q. I'm just asking your awareness for
20 that -- for that -- for that position taken by
21 patent owner in this proceeding?

22 A. It is a very broad question, and I
23 can't answer it unless you give me more
24 specifics.

25 Q. So you are aware or are not aware

1 that the patent owner has taken the position
2 that, quote, ASC30 has shown strong promise in
3 early clinical studies?

4 MS. AGARWAL: Objection. Form.
5 Outside the scope.

6 A. I don't know what you mean. I don't
7 know what you mean by the question, so I don't
8 know what you mean by -- I don't understand your
9 question. So I can't answer it if I don't
10 understand.

11 Q. Okay. Well, I'm -- I'm -- I'm
12 referencing arguments that are raised by patent
13 owner in their patent owner response, and I'm
14 wondering if you're aware of those positions
15 being taken by patent owner in this proceeding?

16 A. I do not know all the details on the
17 information that's in the patent owner's
18 response.

19 Q. I'll ask some others to see if you
20 have awareness of them, then.

21 Are you aware that patent owner has
22 taken the position that ASC30's early success in
23 clinical trials is consistent with the
24 above-superior properties?

25 MS. AGARWAL: Objection. Form.

1 Scope.

2 A. I don't understand what you mean.

3 Superior to what?

4 Q. That ASC30 has shown a, quote,
5 6.5 percent mean reduction in body weight after
6 just 28 days of treatment?

7 MS. AGARWAL: Objection. Scope.
8 Counsel, this is not part of his declaration.
9 He's not -- this is not referenced anywhere in
10 his declaration. It's not relevant to his
11 declaration.

12 MR. TOFT: Isha, you can feel free to
13 make an objection, but the speaking objections
14 are not warranted. You can -- put an objection
15 on the record, but I'm allowed to ask questions
16 about this proceeding.

17 MS. AGARWAL: You're -- you're not
18 allowed to ask questions that are outside the
19 scope of his declaration.

20 MR. TOFT: And I'm not.

21 MS. AGARWAL: Your cross-examine --
22 your cross-examination is supposed to be narrow
23 and focused to his direct testimony, which is
24 everything that is in his declaration. This is
25 clearly outside of the bounds.

1 MR. TOFT: No, I'm trying to
2 understand he has provided testimony relating to
3 the evaluation of different compounds. He has
4 testified that he is familiar with ASC30, and
5 patent owner has taken the position that ASC30
6 has superior properties, superior potency,
7 pharmacokinetics, et cetera, in this proceeding,
8 and I need to understand how the -- the test
9 results that are in this declaration relate at
10 all, if at all, to those arguments.

11 MS. AGARWAL: So I'm going to --

12 MR. TOFT: And the -- and I -- I am
13 allowed to understand the scope and the rationale
14 for the -- the testimony in this declaration and
15 how it relates to the arguments that the patent
16 owner has presented.

17 MS. AGARWAL: That is not the scope
18 of his declaration. His declaration is focused
19 on the particular results that are disclosed in
20 his declaration. He does not --

21 MR. TOFT: I need to know if -- if
22 one of them -- the results -- if one of them
23 disclosed in here is ASC30 so that I know how to
24 evaluate the arguments that patent owner has
25 presented.

1 MS. AGARWAL: That is not part of his
2 declaration, and that's not -- that's not
3 anything relevant that you need to know from his
4 declaration. He's not testifying as an expert.
5 He hasn't put in this declaration in as an
6 expert. He's given you in answers --

7 MR. TOFT: He has not given me my
8 answers. I don't know how to evaluate this
9 information fully in the context of the arguments
10 that patent owner has raised without this
11 information.

12 MS. AGARWAL: That is -- that's not
13 his job to give you those answers.

14 MR. TOFT: He has this information.

15 MS. AGARWAL: If -- he has provided
16 specific information that is in his declaration.
17 Your cross-examination is supposed to be
18 specifically focused on the direct testimony that
19 he has provided. If you're going to continue
20 down this line of questioning, we're going to
21 need to pause the deposition.

22 MR. TOFT: You are going to stop
23 today's deposition?

24 MS. AGARWAL: Yes, if you continue
25 down this line of questioning that's outside the

1 scope of his declaration.

2 MR. TOFT: It's not outside the scope
3 of his deposition.

4 MS. AGARWAL: He -- he doesn't talk
5 about ASC30's superior properties or anything in
6 his declaration.

7 MR. TOFT: He talks about the test
8 results of several different compounds.

9 MS. AGARWAL: Yeah, and he -- all he
10 does is provide those test results. That is the
11 entirety of his declaration. So you can ask him
12 questions about those test results and what he
13 says in his declaration but that's --

14 MR. TOFT: That's all -- that's all
15 that I'm doing, I'm trying to understand these
16 test results what are they of. Was ASC30 tested
17 or not.

18 MS. AGARWAL: That's not --

19 MR. TOFT: That is what I'm trying to
20 understand.

21 MS. AGARWAL: That's not part of his
22 declaration. The claims of the '236 patent do
23 not go to ASC30. That is not relevant in any way
24 to his declaration.

25 MR. TOFT: So your position is that

1 the ASC30 is not an embodiment of
2 the '236 patent.

3 MS. AGARWAL: The claims of
4 the '236 patent do not recite ASC30, the
5 declaration that Mr. Gargiulo put in. The test
6 results that he discloses are not -- do not
7 specifically say ASC30 anywhere. He has given
8 you an answer as to whether or not he knows what
9 ASC30 is and whether or not he can disclose.

10 MR. TOFT: I -- I'm going to object
11 to you characterizing his testimony. He is
12 saying that it is a confidentiality issue.
13 Confidentiality can be addressed here. All I
14 want to know is are the results that he is
15 providing related to ASC30 are all of ASC30 or
16 not. It is a simple yes-or-no question that he
17 knows and can answer and has testified that he
18 could answer but for confidentiality reasons.

19 MS. AGARWAL: That's not part of his
20 declaration. His declaration is -- does not go
21 towards whether the test results are related or
22 not related to ASC30.

23 MR. TOFT: Patent owner has taken the
24 position that ASC30 has superior results --

25 MS. AGARWAL: And that's --

1 MR. TOFT: -- and I need to
2 understand that what these test results are,
3 whether or not they relate to ASC30 or not.

4 MS. AGARWAL: That is not the purpose
5 of his declaration.

6 MR. TOFT: You don't get to hide
7 information behind a veil of confidentiality and
8 present results that can't be interpreted with
9 the arguments that are made in this proceeding.

10 MS. AGARWAL: You can ask him
11 questions that are within the scope of his
12 declaration. Your questions on ASC30 are not
13 limited in the scope of the declaration.

14 MR. TOFT: We can ask the questions
15 and we can fight about the scope later, and you
16 can raise the issue with the Board and say this
17 -- you know, I'm going to object, file the
18 objection with the Board. But we're not going to
19 sit here and close the deposition due to a
20 confidentiality concern.

21 MS. AGARWAL: This -- so it's not
22 just a confidentiality concern; it's going
23 outside the bounds of his declaration. And so if
24 you want to ask him questions about his
25 declaration, you can do that.

1 MR. TOFT: I am.

2 MS. AGARWAL: This is not -- your
3 questions on ASC30 are outside the bounds of his
4 declaration. We're not going to allow you to
5 continue to ask him questions on that.

6 Q. (BY MR. TOFT) Mr. Gargiulo, I'm going
7 to ask again, is Compound 19 -- the test results
8 in your declaration, is Compound 19 ASC30?

9 MS. AGARWAL: Objection. Scope.

10 A. I cannot confirm or deny which
11 compounds may or may not be ASC30.

12 Q. Is Compound 65 referenced in
13 paragraph 13 of your declaration ASC30?

14 MS. AGARWAL: Objection. Scope.

15 A. I cannot confirm or deny which
16 compounds may or may not be ASC30.

17 Q. I'd like you to turn to paragraph 8
18 of your declaration.

19 A. Yes.

20 Q. There are three structured compounds
21 open that page. Do you see that?

22 A. Yes, I see that.

23 Q. Are -- is the first compound,
24 orforglipron, is that ASC30?

25 MS. AGARWAL: Objection. Scope.

1 A. I cannot confirm or deny whether any
2 of the compounds in my declaration are ASC30.

3 Q. The second structure that is under
4 orforglipron, do you see that?

5 A. Yes, I see it.

6 Q. Is that ASC30?

7 A. I cannot confirm or deny any of the
8 compounds in my declaration are of ASC30.

9 Q. The compound underneath that, the
10 bottom one of this chart, do you see that?

11 A. Yes, I do.

12 Q. And is that compound ASC30?

13 MS. AGARWAL: Objection. Scope.

14 A. I cannot confirm or deny whether any
15 of the compounds in my declaration are ASC30.

16 Q. Okay. So your testimony here today
17 is that you are not presenting any test results
18 that relate to ASC30; is that correct?

19 A. I cannot --

20 MS. AGARWAL: Objection. Scope.

21 A. I cannot confirm or deny if any of
22 the compounds in my declaration are ASC30.

23 Q. Due to confidentiality; correct?

24 A. I -- as I stated, I can not confirm
25 or deny whether any of the compounds in my

1 declaration are ASC30.

2 Q. Other than confidentiality, is there
3 any other reason that you cannot confirm or deny
4 whether any of the compounds are ASC30?

5 MS. AGARWAL: Objection. Form.

6 A. As I said, I can't confirm or deny
7 whether any of the compounds are ASC30 are -- I
8 mean, whether any of the compounds in my
9 declaration are ASC30.

10 Q. Okay. And I understand that. Other
11 than confidentiality, is there any other reason
12 that you cannot confirm or deny that?

13 MS. AGARWAL: Objection. Form.

14 A. As I said, I can't confirm or deny
15 whether any of the compounds in my declaration
16 are ASC30.

17 Q. Mr. Gargiulo, I appreciate that you
18 have a -- a line that has probably been fed to
19 you that you are repeating, but I have a
20 different question and I need you to keep the
21 question that I am asking in mind when you're
22 answering. This is a yes-or-no question.

23 Other than confidentiality, is there
24 any reason that you could not confirm or deny
25 whether any compound in your declaration is

1 ASC30?

2 MS. AGARWAL: Just object for the
3 record to characterization of the witness's
4 testimony. Objection. Form.

5 A. As I stated, I can't confirm or deny
6 whether any of the compounds in my declaration
7 are ASC30 due to confidentiality.

8 Q. And is there any other reason that
9 you cannot confirm or deny that?

10 A. What do you mean by "any other
11 reason"?

12 Q. Is there any other reason that you
13 could not give me the -- the answers to the --
14 this question? I understand you have a
15 confidentiality concern.

16 Is there any other reason that you
17 could not provide the information that I am
18 seeking? I just want to make sure that I
19 understand.

20 A. Yeah. As I -- so -- so this is how
21 I'm going to answer that. Any way in which I may
22 answer that question could potentially disclose
23 either confirming or denying whether ASC30 is in
24 my declaration. So I can't answer that question
25 also because of the basis of confidentialities.

1 Q. Okay. But other than
2 confidentiality, there is no other reason that
3 you could not answer that question?

4 MS. AGARWAL: Objection.
5 Mischaracterizes testimony. Also outside the
6 scope.

7 A. I answered the question.

8 Q. Let's -- can you answer it again?

9 A. I mean, I answered your question. So
10 what I'm saying --

11 Q. So with a yes or no -- sorry. Go
12 ahead.

13 A. I think the way your question is
14 worded, I cannot answer because it -- it could
15 potentially confirm or deny whether or not ASC30
16 is in my declaration. And therefore it is based
17 on confidentiality, I choose not to answer that
18 question. That's what I've said.

19 Q. Okay. And I'm -- and I understand
20 that and I appreciate that, and I just want to
21 make sure that I understand the full scope.

22 And so my question is, other than the
23 confidentiality basis, is there any other reason
24 that you could not answer whether or not one of
25 these compounds is ASC30?

1 MS. AGARWAL: Objection. Form.

2 Outside the scope.

3 Q. It's yes-or-no question.

4 A. No, it's not a yes-or-no question.

5 So -- yeah. Rephrase your question one more time
6 and then I can -- maybe I'll be able to answer it
7 directly.

8 Q. Other than confidentiality, what
9 reason do you have for not being able to provide
10 an answer to whether one of the compounds in your
11 declaration is ASC30?

12 MS. AGARWAL: Objection. Form.

13 Outside the scope.

14 A. So the -- so as I said before, I
15 can't confirm or deny if the information in this
16 -- in my declaration due to confidentiality.
17 I've been very clear that it's due to
18 confidentiality. So I -- I don't know what you
19 -- I mean, I've answered it that's why.

20 Q. Okay. And is it due to any other
21 reason besides confidentiality, or is it just
22 confidentiality?

23 A. No, I mean, I have to say that we --
24 as I said, we've not disclosed this compound.
25 I've not talked about ASC30 in my declaration,

1 and I cannot say whether or not -- confirm or
2 deny whether or not ASC30 is in my declaration
3 due to confidentiality, so there you go.

4 MR. TOFT: Let the record reflect
5 that the witness has not identified any other
6 reason besides confidentiality.

7 Q. Turning to the last page of the
8 declaration, it says, Respectfully submitted, and
9 then there's your name in italicized -- italic
10 print.

11 Do you see that?

12 A. Yes.

13 Q. Okay. Did you authorize someone to
14 add your signature there?

15 MS. AGARWAL: Objection. And caution
16 you not to divulge any privileged conversations
17 or information.

18 A. It was a electronic signature that
19 was authorized.

20 Q. Okay. And did you provide that
21 electronic signature authorization on March 5th?

22 A. I don't remember if it was on the day
23 of the submission or -- or before. I don't
24 remember the exact date.

25 Q. Okay. Will you look at the paragraph

1 above that, your signature, it says: I declare
2 that all statements made herein are -- of my
3 knowledge are true and that all statements made
4 on information and believed -- or sorry -- and
5 all statements made on information and belief are
6 believed to be true.

7 Do you see that?

8 A. Yes, I do see that statement.

9 Q. Which statements in your declaration
10 are made of your knowledge, and which statements
11 in your declaration are made upon information and
12 belief?

13 MS. AGARWAL: Objection. Form.

14 A. I don't understand like -- I don't
15 understand. Can you be more specific? Like
16 maybe you can go through each of them
17 individually and can --

18 Q. Sure. Let's just start with the
19 statements made on information and belief.

20 Can you please identify all
21 statements in your declaration made on
22 information and belief?

23 A. I mean, I'm familiar with all the
24 information that I'm putting in the declaration,
25 so the -- the PK data, the EC50 data, and

1 Exhibit 2081.

2 Q. Okay. I just want to know -- to
3 stick with you make this delineation, Statements
4 made herein of my knowledge are true, and that
5 all statements made on information and belief are
6 believed to be true, and so I want to know which
7 statements are which.

8 So can you identify for me which
9 statements that you have made in your declaration
10 are made on information and belief?

11 MS. AGARWAL: Objection. Form.

12 A. Yeah. So, you know, I didn't perform
13 the tests, but I did talk to the individuals that
14 did perform the tests to validate that the
15 information was correct. So there may be some
16 things that, because I don't have direct
17 knowledge, would be a belief based upon what was
18 told to me from others.

19 Q. Okay. Maybe -- maybe let's look at
20 it in the opposite direction. Can you provide an
21 identification of the statements that are made in
22 your direct -- in your declaration made of your
23 knowledge which are true?

24 MS. AGARWAL: Objection. Form.

25 A. Yeah. I can't -- I mean, you want me

1 to go through every sentence in the thing? You
2 want me to start from the beginning and we'll go
3 through it line by line.

4 Q. I just -- I --

5 A. Is that what you're asking me?

6 Q. There's --

7 A. So I can do that. If we start in
8 paragraph 1, yes, that's true, I do have personal
9 knowledge of all the facts in the declaration, so
10 I am aware of those facts. I did join Ascletis
11 in May of '22. Ascletis is the -- is the parent
12 of Ascletis Pharma China Company, I know that
13 directly. I am the chief business officer of
14 Ascletis, so, yes, that is correct and I know
15 that directly.

16 Business development functions, you
17 know, the strategic goals internationally, those
18 are some of my functions. I have others but I do
19 know that directly. I do have the information
20 concerning the company's drug development
21 programs as part of this role, so that I know
22 directly.

23 And I do present results of some of
24 the preclinical and clinical data by drug
25 candidates, to potential investors and strategic

1 partners, so that is -- I have direct knowledge
2 of that, I know that directly.

3 My business degree was received from
4 Duke University, and I have a BA from
5 Boston College, yes, that is direct information
6 that I know directly. I'm submitting the
7 declaration which is the purpose of my
8 declaration is only to present the results
9 preclinical studies, evaluating characteristics
10 of certain compounds disclosed and/or claimed in
11 '236 patent, and the comparator used in some of
12 those studies, orforglipron. So I am aware that
13 I am actually making that submission and that is
14 true.

15 Q. But you don't have personal knowledge
16 of the results of the preclinical studies
17 evaluating the characteristics, just know that
18 you're submitting the declaration?

19 MS. AGARWAL: Objection. Form.

20 Q. Is that right?

21 MS. AGARWAL: Mischaracterizes
22 testimony.

23 A. Yeah, that's not what I said. I
24 never even addressed that yet.

25 Q. Okay. Do you have personal knowledge

1 of the results of preclinical studies evaluating
2 the characteristics of certain compounds
3 disclosed found in the '236 patent?

4 A. What do you mean by "personal
5 knowledge"? because obviously I have knowledge of
6 the information that was disclosed, yes.

7 Q. I'm just trying to understand. You
8 said the statements made of my knowledge are
9 true, and the statements made on infor- --
10 information and belief are believed to be true.
11 So I want to understand which statements are true
12 and which statements are believed to be true?

13 A. And I'm -- I'm doing that. I'm going
14 through it and I've already, you know, answered
15 that for the first five paragraphs. So if you'd
16 let me continue, I can go through the
17 declaration line by line --

18 Q. Paragraph 6.

19 A. -- to address that.

20 Q. Okay.

21 A. So paragraph 6, Ascletis directed the
22 testing compounds disclosed and/or claimed
23 in '236 patent to compare their potency -- that
24 was a typo, I mentioned that -- to orforglipron.
25 That I do know directly that that was done.

1 Q. So you were -- you were involved in
2 the directing of that testing?

3 A. I was not involved in the directing
4 of the testing, but I was informed of the
5 testing.

6 Q. Was that after the fact or at the
7 time of?

8 A. After the fact.

9 Q. Okay. So you believe it to be true,
10 but have you taken steps to confirm the veracity
11 of it other than talk about it?

12 A. Well --

13 MS. AGARWAL: Objection. Form.

14 A. So I had a conversation with the
15 individual that actually conducted the test.

16 Q. Okay. Anything else?

17 A. No.

18 Q. Okay.

19 A. As it stated, so I am aware that this
20 test was conducted. As I stated, I spoke to the
21 individual that conducted the tests, so I have
22 direct knowledge that the test was conducted.
23 Paragraph 7, you know, these are -- table 2 is in
24 the patent.

25 Q. You know that -- you looked at that

1 to confirm?

2 A. Yes, I did look at that to confirm,
3 so I know for a fact that test is -- this is in
4 the co-patent.

5 Q. And do you know that these EC50
6 values in table 2 are correct?

7 A. I believe those values are correct.
8 I've not verified those values in terms of, you
9 know, source documentation.

10 Q. Okay. Let's -- let's put a pin in
11 this exercise for now, and we'll maybe do this on
12 a paragraph-by-paragraph basis.

13 What steps, if any, did you take to
14 verify the accuracy of the data that you
15 submitted in your declaration?

16 MS. AGARWAL: Objection. Form.

17 A. So I spoke with the scientists that
18 conducted actually all of the studies for the
19 data that was submitted directly.

20 Q. Okay. Did you do anything else to
21 verify the accuracy of the data you submitted in
22 your declaration?

23 A. No, I did not. I spoke to the
24 scientist who conducted the studies.

25 Q. And you didn't review any raw data

1 files?

2 A. No, I did not.

3 MS. AGARWAL: Objection. Form.

4 A. Okay. No, I did not review any the
5 raw data files.

6 Q. You did not observe any --

7 A. Well, raw data files for what?

8 Q. Related to any of the testing.

9 A. No, I did not review raw data files
10 related to the information in my declaration.

11 Q. And you didn't observe any instrument
12 outputs?

13 MS. AGARWAL: Sorry, did you observe
14 any?

15 MR. TOFT: Instrument outputs.

16 MS. AGARWAL: Objection. Form.

17 A. What is -- what is an instrument
18 output?

19 Q. Did you observe the reading that was
20 on any instrument that was part of the test of
21 any of these compounds?

22 A. No, I did not observe the reading on
23 any instrument that was part of the testing of
24 these compounds.

25 Q. And did you review any calibration

1 records related to the testing of any of these
2 compounds?

3 MS. AGARWAL: Objection. Form.

4 A. No, I did not review any calibration
5 records regarding the testing of these compounds.

6 Q. Do you know what the GLP quality
7 system is?

8 MS. AGARWAL: Objection. Outside the
9 scope.

10 A. All I know is it stands for good
11 laboratory practices.

12 Q. And do you know what the good
13 laboratory practices standards are for any of
14 these tests?

15 MS. AGARWAL: Objection. Outside the
16 scope.

17 A. No, I do not know what good
18 laboratory practices are specifically, no.

19 Q. Do you have any opinions in your
20 declaration that are not -- or sorry. Do you
21 have any opinions related to this proceeding that
22 are not in your declaration?

23 MS. AGARWAL: Objection. Form.

24 A. No, I do not have anything other than
25 what is currently in my declaration.

1 Q. So you have no opinions on the
2 validity of the '236 patent?

3 MS. AGARWAL: Objection. Form.
4 Outside the scope.

5 A. No, I don't. That is a -- a legal
6 matter that I'm not -- I don't have any expertise
7 in patent law.

8 Q. That's fine. And you -- so you don't
9 have any opinion as to whether any claim of the
10 '236 patent is obvious or not; right?

11 MS. AGARWAL: Objection. Outside the
12 scope. Asked and answered.

13 A. I don't know what "obvious" means.

14 Q. And you don't have any opinion as to
15 whether any claim of the Ascletis '236 patent
16 exhibits unexpected results; correct?

17 MS. AGARWAL: Objection. Outside the
18 scope.

19 A. I don't know what "unexpected
20 results" means.

21 Q. And you don't have any opinion on
22 whether there's any evidence of failure of
23 others; correct?

24 MS. AGARWAL: Object -- objection.
25 Outside the scope.

1 A. I don't even know what that means.

2 Q. You have no opinions on any secondary
3 considerations of nonobviousness that you're
4 presenting; correct?

5 MS. AGARWAL: Objection. Outside the
6 scope.

7 A. I don't know what that means. I
8 don't know those terms. I'm not a patent lawyer.

9 Q. Yeah, and I understand that, and I'm
10 not trying to -- to, you know, make you feel bad
11 for not knowing those terms. I just need to make
12 sure that I understand what it is that you're
13 testifying about and that you're not planning to
14 testify about other things that I need to ask
15 questions about.

16 A. All right. That's fine.

17 Q. Does your declaration identify or
18 report any margin of error for the data that was
19 presented?

20 A. Now, let me just take a look at it.

21 (Witness reviewing document.)

22 A. Oh, do you have the exhibit? I have
23 -- I have to look to see if it's in the exhibit.

24 Q. Sorry. The Exhibit 281?

25 A. Yeah.

1 Q. Well, let's -- let's -- let's focus
2 just on your declaration for now.

3 Does your declaration identify or
4 report any margin of error for the data?

5 A. So no margin of error is reported in
6 paragraph 8 or paragraph 11 of my declaration.

7 Q. Okay. And I -- I understand.
8 Putting aside paragraph -- or sorry --
9 Exhibit 2 -- 2081, is there any identification or
10 report on a margin of error anywhere else in your
11 declaration?

12 A. Just give me a minute to go through
13 it and look but --

14 (Witness reviewing document.)

15 A. No, there's no margin of error other
16 than -- or not including Exhibit 2081, which I
17 haven't reviewed, taken another look at, but, no,
18 there's no margin of error reported.

19 Q. Okay. Go to paragraph 6, it says:
20 Ascletis collected the testing of compounds
21 disclosed or claimed in the '236 patent to
22 compare their potency and then hGLP --

23 A. cAMP --

24 Q. -- we'll call it -1R cAMP assay to
25 orforglipron.

1 Who at Ascletis conducted this
2 testing?

3 A. I don't know who specifically
4 directed the testing.

5 Q. Do you know when the directive was
6 given?

7 A. No, I don't know when the testing was
8 done.

9 Q. And do you know who performed the
10 test?

11 A. I don't know specifically who
12 performed this test, no.

13 Q. Do you know when the test was
14 performed?

15 MS. AGARWAL: Objection. Asked and
16 answered.

17 A. No, I don't know specifically when
18 the test was performed.

19 Q. And when you say Ascletis directed
20 the testing, do you know if that is Ascletis,
21 Inc. or Ascletis China Co. LTD?

22 A. Ascletis is just use that term
23 generally, so not -- not referring to either one.

24 Q. Do you know which one would have
25 directed the testing?

1 A. No, I do not know which one would
2 have directed the testing.

3 Q. What is an hGLP-1R cAMP Assay?

4 A. I do not know the specifics of what
5 an hGLP-1R cAMP Assay is other than it measures
6 the potency of a GLP-1.

7 Q. And how does it measure a GLP-1's
8 potency?

9 A. I do not know how it measures GLP-1
10 potency.

11 Q. Have you ever performed an hGLP-1R
12 cAMP Assay?

13 A. No, I've not performed a hGLP-1R cAMP
14 Assay.

15 Q. Do you know where any of the hGLP-1R
16 cAMP Assays disclosed in your Section A of your
17 declaration were performed?

18 A. No, I do not know where -- I do not
19 know where these assays in Table 2 were
20 performed.

21 Q. Do you know where the assays in the
22 chart on page 4 under paragraph 8 of your
23 declaration were performed?

24 A. Yes, I do know where those studies
25 were.

1 Q. Okay. Were the -- was the hGLP-1R
2 assay in paragraph 8 performed at a different
3 time than the assay in paragraph 7?

4 A. The -- the data in paragraph 8, that
5 assay was done at the same time as the assay that
6 was done in paragraph 7, Table 2.

7 Q. And when was that?

8 A. I don't remember the -- I don't know
9 the data point it was done. I just know it was
10 done at the same time.

11 Q. Okay. So your -- your testimony is
12 at the -- that at some point an hGL-1 -- sorry --
13 hGL-1R assay was performed on compounds, and that
14 information is partially in Table 2 and partially
15 in the table on page 4 of your declaration?

16 MS. AGARWAL: Objection. Form.

17 A. Yeah. So what I'm saying is that the
18 hGLP-1R cAMP assay that was performed which
19 resulted in the data that's in Table 2, that
20 assay which also resulted in the data that's in
21 paragraph 8, those were run at the same time.

22 Q. And -- but you don't know when?

23 A. No, I don't know the specific date of
24 when they were run.

25 Q. Okay. And -- but -- and where were

1 they performed?

2 A. I don't know specifically where the
3 data was -- where it was performed for Table 2,
4 but for the data in paragraph 8, this was done
5 through a CRO that performed these tests.

6 Q. Which CRO?

7 A. I do not know the name of the CRO
8 that performed them.

9 Q. Do you know which country the CRO was
10 located in?

11 A. I do not know specifically which
12 country the CRO was located in.

13 Q. How do you know that the assays were
14 performed at the same time?

15 A. I spoke to the scientist that
16 performed the assays, Bin Liang, and he told me
17 that they were performed at the same time.

18 Q. And he performed them -- he's --

19 A. He -- he oversaw -- in paragraph 8,
20 Bin Liang oversaw the studies that were done by
21 the CRO.

22 Q. Okay. And just for the record,
23 what's a CRO?

24 A. A clinical research organization.

25 Q. So a third party?

1 A. Yes, a third party.

2 Q. So -- and that individual who oversaw
3 the CRO was who?

4 A. Bin Liang.

5 Q. So Bin Liang told you that a
6 third-party CRO conducted tests that he oversaw,
7 and those results are in page 4 under paragraph 8
8 of your declaration?

9 MS. AGARWAL: Objection. Form.

10 A. So Bin Liang told me that he oversaw
11 the studies that were conducted at a CRO that
12 resulted in the information which is in
13 paragraph 8 of my declaration.

14 Q. Okay. And he also told you that he
15 oversaw the assays that resulted in the
16 information in Table 2, paragraph 7 of your
17 declaration?

18 A. No, he -- he did not tell me that he
19 oversaw those studies. He told me that it was
20 done -- this study in paragraph 8 was done at the
21 same time as the information to Table 2.

22 Q. And what is your understanding of
23 what the same time means? The same day?

24 A. It would -- my understanding was it
25 was in the same series of experiments.

1 Q. Okay. Do you -- do you know why the
2 information, the hGL-1R agonist cAMP simulation
3 assay, the EC50 data that is in the chart under
4 paragraph 8 of your declaration, why that is not
5 fully inclusive in Table 2?

6 MS. AGARWAL: Objection. Form. And
7 caution the witness to not disclose any --

8 A. Yeah, I do -- I do not know why. I
9 do not know.

10 Q. Do you know if the assays in Table 2
11 -- sorry. For shorthand if I say Table 2, we'll
12 agree that I'm talking about Table 2 of
13 the '236 patent which you've reproduced in
14 paragraph 7 of your declaration. Is that fair?

15 A. That's fair.

16 Q. And can I call the table on the next
17 page under paragraph 8 the paragraph 8 table?

18 A. Yes, that would be good.

19 Q. Okay. Do you -- do you know if the
20 assays in Table 2 were conducted under the same
21 exact conditions as the assays in table -- in the
22 paragraph 8 table?

23 A. I do know that their -- what I know
24 is that the data in the paragraph 8 table what
25 conducted under the same conditions of the data

1 in Table 2.

2 Q. And how do you know that?

3 A. Bin Liang told me.

4 Q. And what were those conditions?

5 A. I do not know the specific
6 conditions.

7 Q. Okay. Did you -- other than Bin
8 Liang's word, do you have anything else that you
9 have done to verify that they were conducted
10 under the same exact conditions?

11 MS. AGARWAL: Objection. Form.

12 A. Excuse me. No, I have not reviewed
13 any other data to confirm whether they were
14 conducted under the same conditions other than my
15 conversations with Bin Liang.

16 Q. And you don't know if the assays in
17 Table 2 were conducted by the same personnel as
18 the assays in the paragraph 8 table; correct?

19 MS. AGARWAL: Objection. Form.

20 A. I am not -- I am not sure if the
21 person that conducted this -- I think I'm getting
22 nomenclature mixed up but it's like getting
23 confusing. I'm not sure if the person who
24 conducted the studies in paragraph 8 are the
25 same -- is the person who's -- who did it in

1 paragraph -- in Table 2. I'm not sure.

2 Q. And you don't know if the assays
3 conducted in Table 2 used the same equipment and
4 re-agents as the assays in paragraph 8 table?

5 A. All I know is that the -- that the --
6 the -- the results in paragraph 8 -- the results
7 in paragraph 8, the -- the -- the conditions and
8 the way the test was conducted was the same as
9 what was in Table 2, but I do not know specifics.

10 Q. Do you know how Bin Liang assessed
11 whether or not they were the same conditions?

12 MS. AGARWAL: Objection. Form.
13 Speculation.

14 A. As I've said, Bin Liang told me that
15 they were the same conditions.

16 Q. Right. And I'm asking do you have
17 any understanding as to the analysis he conducted
18 to confirm that statement?

19 MS. AGARWAL: Objection. Form.
20 Speculation.

21 A. No, I did not. I did not have a
22 discussion with Bin Liang on those specifics.

23 Q. Do you know if the person who ordered
24 the assays in Table 2 was the same person as the
25 person who ordered the assays in paragraph 8

1 chart?

2 A. I actually don't know who
3 specifically ordered the -- the paragraph -- the
4 Table 2 -- the Table 2 whatever.

5 Q. The Table 2 assays?

6 A. The Table 2 assays, yes.

7 Q. Okay. Do you know who specifically
8 ordered the paragraph 8 table assays?

9 A. No, I do not know who specifically
10 ordered the paragraph 8 assays because they were
11 done at the same time so...

12 Q. If we look at the paragraph 8 table,
13 the first compound is orforglipron; right?

14 A. That's what it says, yes.

15 Q. Is this -- the second compound here
16 that has a EC50 of 1.995, is that compound
17 disclosed in the Ascletis '236 patent?

18 A. No. My -- my declaration says: In
19 addition to the compounds listed in Table 2 of
20 the '236 patent, Ascletis evaluated several other
21 compounds used in this assay.

22 Q. Yes, and I understand that. I'm
23 actually asking other than -- so actually let's
24 break --

25 A. Your -- your phone is locking out.

1 Not specifically identified in the '236 patent.

2 Q. Okay. So -- so this compound was not
3 identified at all in the '236 patent?

4 A. That's what my declaration says, Two
5 additional compounds not specifically identified
6 in the '236 patent.

7 Q. And you've confirmed that? You have
8 personal knowledge of that? Or were you told
9 that?

10 A. I -- I -- I was told that. I did not
11 go and, you know, check the molecular design
12 against what was in the '236 patent.

13 Q. And who told you that?

14 A. This would have been Bin --
15 Bin Liang.

16 Q. Why did you provide a declaration for
17 statements that Bin Liang made instead of
18 Bin Liang create -- providing a declaration?

19 MS. AGARWAL: Objection. I'm going
20 to instruct the witness not to answer on account
21 of attorney-client privilege.

22 Q. What's your understanding -- I'm not
23 asking for the communication -- I want to know
24 what your understanding is for why you submitted
25 the declaration for Bin Liang's statements?

1 MS. AGARWAL: Same objection. I'm
2 going to instruct the witness not to answer on
3 account of attorney-client privilege.

4 Q. Mr. Gargiulo, is it your testimony
5 that you cannot answer that question without
6 divulging attorney-client privilege?

7 A. Yes, that is correct.

8 Q. Is this some --

9 A. I cannot answer that question without
10 divulging attorney-client privilege.

11 Q. Have you been asked to provide
12 testimony for someone else's statements before?

13 MS. AGARWAL: Objection. Scope.

14 I'd instruct you not to answer based
15 on attorney-client privilege.

16 Q. So I'm not asking about this -- this
17 -- this declaration here. I'm just asking have
18 you ever been asked to provide sworn testimony
19 for someone else's statements before?

20 MS. AGARWAL: Same objections.

21 Instruct you not to answer if it will divulge
22 attorney-client privileged communications and
23 information.

24 Q. Again, this is a question of fact.
25 I'm not asking for -- well, let me rephrase it

1 then.

2 Have you ever testified for someone
3 else's statements before?

4 MS. AGARWAL: Objection. Form.

5 A. What do you mean?

6 Q. Have you ever provided sworn
7 testimony that was a reiteration of someone
8 else's statement to you before?

9 MS. AGARWAL: Same objection. Form.

10 A. In what context?

11 Q. In any context.

12 A. Well, as I stated in my deposition I
13 have only -- I mean, in a -- as I stated earlier,
14 I've only been involved in one other thing, which
15 was the one I mentioned that I was deposed on.
16 So I guess the answer would be no, I have never
17 done a declaration like this before.

18 Q. Did it strike you as odd that you
19 were being asked to provide testimony of what
20 someone else had told you?

21 MS. AGARWAL: Objection. I instruct
22 you not to answer that question on account of
23 work-product and attorney-client privilege.

24 MR. TOFT: Isha, I'm not asking for
25 the attorney-client communications. You have to

1 stop with this privilege when this is not a
2 privileged question.

3 Q. I'm asking did it strike you as odd
4 to submit a declaration that involved providing
5 the statements provided to you by others?

6 MS. AGARWAL: So the same objection.
7 I'm going to instruct him not to answer.

8 It is a privileged question if it's
9 -- it would divulge conversations and
10 communications with attorneys.

11 MR. TOFT: No, it -- only if he
12 chooses to divulge that.

13 Q. I'm not asking if you asked your
14 attorneys is this normal, is this odd, is this
15 right, whatever. I'm not asking that. I'm
16 asking did you -- was it -- did it strike you as
17 odd ever -- whether you talked to your attorney
18 or not, did it strike you as odd that you were
19 being -- that you were submitting a declaration
20 that provided statements that were told to you?

21 MS. AGARWAL: Objection. And I'm
22 going to instruct you not to answer on account of
23 attorney-client privilege.

24 Q. Mr. Gargiulo, will you be answering
25 that question?

1 A. I'm going to be following the advice
2 of Counsellor.

3 MR. TOFT: Okay. Let the record
4 reflect that I object to counsel's inappropriate
5 use of the attorney-client privilege, yet again,
6 as a shield -- as both a sword and a shield.

7 Q. I -- looking at the second compound,
8 just to make sure the question is clear, the last
9 compound, that also is not in the '236 patent;
10 correct?

11 A. Okay. Can you just tell me what
12 we're talking about now?

13 Q. So in paragraph 8 --

14 A. Are we back to paragraph 8?

15 Q. -- that last compound there,
16 that's -- that also is not in the '236 patent?

17 MS. AGARWAL: Objection. Form.

18 A. As I state in my declaration, the two
19 additional compounds -- right? --

20 Q. Yeah.

21 A. -- not specifically identified in the
22 '236 patent.

23 Q. What do you mean by "not specifically
24 identified"?

25 A. I mean they were not in the

1 '236 patent.

2 Q. Were they identified in any other way
3 that was not specific?

4 MS. AGARWAL: Objection. Form.
5 Scope.

6 A. The intent of what I'm saying is that
7 these two other compounds were not disclosed in
8 the '236 patent.

9 Q. Got it. So it's -- it's -- that's
10 not a caveat that you're providing there, it was
11 specifically identified?

12 A. No, it's not a caveat.

13 Q. Do you know when the two compounds
14 that are identified under the orforglipron on --
15 in this chart were synthesized?

16 A. No, I do not know when those
17 compounds were synthesized.

18 Q. Do you know why these compounds were
19 selected for testing?

20 A. No, I do not know why these compounds
21 were selected for testing.

22 Q. With -- looking at the first
23 compounds, the one in the middle of the chart,
24 was that compound tested in its freebase form or
25 as a salt in the assay?

1 MS. AGARWAL: Objection. Outside the
2 scope.

3 A. I do not know if it was tested in its
4 freebase form or in its -- what was the other
5 one?

6 Q. Or as a salt.

7 A. Or as a salt. However, I do know
8 that the testing procedure used was the same as
9 the testing procedure used in Table 2, so if --
10 if that's disclosed in the patent which salt it
11 is, then I'm assuming this would be same.

12 Q. Okay. And, again, you don't know
13 that, you were told that by Bin Liang?

14 A. Yes, I was told that the conditions
15 were the same for both the data in Table 2 and
16 the data in paragraph 8.

17 Q. And you don't know what the
18 conditions using either assay were?

19 A. Were what?

20 Q. And you don't know what the
21 conditions used in either assay were?

22 MS. AGARWAL: Objection. Form.
23 Asked and answered.

24 A. I have not reviewed the patent to see
25 if the conditions were disclosed within the

1 patent, so...

2 Q. But you don't know the conditions in
3 the assays performed in the paragraph 8 table
4 either; right?

5 MS. AGARWAL: Objection. Form.

6 A. All I know is that the conditions
7 that were used to perform the -- the conditions
8 that were used for the data in paragraph 8 are
9 the same as the conditions that were used in
10 Table 2.

11 Q. Again, you were told that, but
12 otherwise you don't know that; correct?

13 MS. AGARWAL: Objection. Form.

14 A. Well, I know it because I was told
15 that.

16 MS. AGARWAL: Is now a time for a
17 break?

18 MR. TOFT: If you need a break, we
19 can take one.

20 MS. AGARWAL: Would you like a break?
21 And go off the record for a second if you want to
22 discuss --

23 THE WITNESS: You know, why -- why
24 don't we just do another ten if you wanted to
25 take a break? Do you want a few more minutes?

1 MS. AGARWAL: We can -- up to you.

2 THE WITNESS: I would say let's go
3 until lunch, right, and at least -- so that's
4 only another 20 minutes; right? Keep going,
5 Luke.

6 (Discussion off the record.)

7 Q. (BY MR. TOFT) For, again, with
8 reference to the second compound here in the
9 paragraph 8 chart, do you know was the
10 polymorphic form of the compound used in the
11 assay?

12 A. I do not know which form, whether the
13 polymorphic form was used in the assay.

14 Q. Okay. Moving to the last compound
15 here, the third compound in paragraph 8 chart, do
16 you know if the compound tested was in its
17 freebase form or salt?

18 MS. AGARWAL: Objection. Compound.
19 Scope.

20 A. As I mentioned, I know that depend --
21 the conditions were similar for the two studies,
22 but I do not know whether it was a freebase or
23 salt.

24 Q. When you say similar, did Bin Liang
25 tell you that they were similar or the same?

1 A. No, he said they were the same.

2 Q. And do you know if the polymorphic
3 form of the compound the -- listed here, the
4 third one in this chart, was used as the assay?

5 MS. AGARWAL: Objection. Form.

6 A. I don't even know what polymorphic
7 form is, so, no, I do not know.

8 Q. Do you know how many times each
9 measurement was repeated?

10 MS. AGARWAL: Objection. Form.
11 Vague.

12 Q. So the second compound here in the
13 chart, the one that has this EC50 at 1.995 in the
14 chart that you've provided, do you know how many
15 times that measurement was taken or repeated?

16 A. So I would actually -- I mean, to
17 agree with the answer to your question, I would
18 need to go and look at the patent and look at the
19 data that was reported in Table 2 and review the
20 conditions under which those studies were done
21 before I could accurately answer your question.

22 Q. Right, I understand. So the -- it
23 sounds like --

24 A. And if you'd let me do that, then I
25 can -- you know, the way -- the questions you're

1 asking me, I really need to go through the
2 patents and see what the conditions were used
3 because, as I said, the conditions were the same
4 and I need to see whether I can answer your
5 question. That's what I would prefer to do if I
6 have time to do that.

7 Q. I -- I understand. And -- and let's
8 -- so the answer to my question, though, is that
9 you do not know, sitting here right now, how many
10 times the measurements of the EC50 for the second
11 compound was repeated; correct?

12 MS. AGARWAL: Objection. Form.
13 Vague.

14 A. Yeah. What I've said is that the
15 conditions of the test, the actual test, the way
16 the test was run for these compounds that are in
17 paragraph 8 were the same as the way the tests
18 were run for Table 2. So for me to answer that
19 question, I have to go pull the patent, I have to
20 go through it and see if in there they describe
21 exactly what you asked me or not. If -- if it's
22 not described, then my answer is no. If it is
23 described, then I can say yes. But I don't know,
24 I haven't reviewed it.

25 Q. So -- okay. So your answer is if --

1 if the measurements for the Table 2 are described
2 in patent 2, you're going to wholly adopt that as
3 how many measurements were taken for this
4 compound without knowing how many measurements
5 were taken for that compound?

6 MS. AGARWAL: Objection.
7 Mischaracterizes testimony.

8 A. No. What I'm saying is if the patent
9 specifically says that the procedure used to
10 generate the data in Table 2, okay, ten test
11 samples, whatever that was, because the
12 conditions in the test that was used for the data
13 in paragraph 8 is exactly the same, then that is
14 what we -- what was used for the second compound
15 that you are discussing. But I have not had the
16 opportunity to review the patent to ver- --
17 verify that to answer your question.

18 Q. The same -- same question for the
19 third compound here, the last compound, you don't
20 know how many times the measurement was repeated
21 for that compound; correct?

22 MS. AGARWAL: Objection. Form.
23 Mischaracterizes testimony.

24 A. So as I stated, the -- the conditions
25 and the way the test was actually run for the

1 second compound, or the third in table, the third
2 compound in the table were exactly the same as
3 the conditions and the way the test was done for
4 the data in Table 2. So I would need to review
5 the patent to see how that was done in order to
6 answer your question as to the number of times
7 the tests were conducted.

8 Q. And you don't have any information as
9 to the margin of error of this 1.995 EC50 for the
10 second compound?

11 MS. AGARWAL: Objection. Form.

12 A. No, as I stated before I did not
13 disclose any margin of error for the
14 compound with the EC50 of 1.9995.

15 Q. Okay. And the same for the third
16 compound there?

17 A. Yes, as I stated -- sorry. As I
18 stated before, I did not disclose margin of error
19 for the third compound in the table in
20 paragraph 8.

21 Q. And what does the EC50 value
22 represent?

23 MS. AGARWAL: Objection. Asked and
24 answered.

25 A. As I stated before, it's a measure of

1 potency.

2 Q. What is the significance of an EC50
3 value of 0.044 versus 1.995?

4 MS. AGARWAL: Objection. Scope. And
5 calls for expert testimony.

6 A. All I know is that the if full number
7 is lower, it's generally better.

8 Q. And what is the significance of an
9 EC50 over a 10?

10 MS. AGARWAL: Same objection. Scope.
11 Calls for expert testimony.

12 A. I don't have a -- I don't know. I
13 don't know. I'm not a scientist so I really
14 don't know.

15 Q. Okay. And these are -- these are all
16 single-point estimates; correct?

17 MS. AGARWAL: Same objection. Scope.
18 Calls for expert -- expert testimony.

19 A. As I said, this would have been done
20 the same way it was done in Table 2. So I'd have
21 to review the methodology disclosed in the patent
22 to answer that question, so...

23 Q. Got it. So you don't know if these
24 are single-point estimates or averages?

25 A. No, I didn't say I don't know. I

1 said if you gave me the opportunity to review the
2 information in the patent, then I could answer
3 your question so -- because they're the same, so
4 I need to review the patent to answer your
5 question. So if you'd let me review the patent,
6 then I can answer your question.

7 Q. Why did you choose these two
8 compounds in paragraph 8 to compare to
9 orforglipron?

10 MS. AGARWAL: Objection. Outside the
11 scope.

12 A. I did not select the compounds. As I
13 stated, these were done at the same time as the
14 data presented in Table 2, so they were done, you
15 know, way before the patent was even submitted.
16 So I did not select these.

17 Q. But you didn't provide any
18 information that shows that the assays in
19 paragraph 8 charts were done prior to the for the
20 patent being submitted; correct?

21 MS. AGARWAL: Objection. Form.

22 A. Yeah, I don't understand your
23 question. Just -- can you just rephrase it some?

24 Q. So you were told that the assays in
25 paragraph 8 were performed prior to the patent;

1 right?

2 A. I was told they were performed at the
3 same time that the -- as this -- the -- the tests
4 that resulted in the data in Table 2. So
5 obviously, you know, they were performed at the
6 same time. They had been performed before it was
7 put in the patent. That -- but I wasn't told
8 that; that's an assumption.

9 Q. Are you aware that each of the
10 structures that you've identified under
11 orforglipron have more than one structural
12 distinction to orforglipron?

13 MS. AGARWAL: Objection. Outside the
14 scope. Calls for expert testimony.

15 A. Yeah, I'm not a medicinal chemist. I
16 don't even really know like what the differences
17 are.

18 Q. So are you aware of -- do you know
19 what a -- the distinction between a methyl and a
20 cyclopropyl group are?

21 A. No, I don't.

22 MS. AGARWAL: Object. Let me put in
23 my objection.

24 Objection. Outside the scope. Calls
25 for expert testimony.

1 MR. TOFT: I'm asking for anything
2 outside the scope. I'm asking for his awareness
3 of the compounds that are in his declaration.

4 Q. And you don't know what a
5 cyclopropane group is; right?

6 MS. AGARWAL: Objection. Outside the
7 scope. Calls for expert testimony.

8 A. No, I don't know what a cyclopropyl
9 is.

10 Q. Okay. And you don't know how
11 additional methyl groups or the lack thereof
12 would affect EC50 measurements?

13 MS. AGARWAL: Same objection.
14 Outside the scope. Calls for expert testimony.

15 A. You're going to have to repeat that
16 again.

17 Q. You don't have any understanding as
18 to how -- so, for example, if you look at
19 orforglipron, in the upper left-hand corner, do
20 you see there's a hexagon with an O in the upper
21 left side?

22 A. Yes.

23 Q. And then just next to it, there's two
24 little like antennas?

25 A. Yeah, I see that.

1 Q. And if you look at the compound
2 directly below that.

3 A. Yes.

4 Q. That does not have those two
5 antennas; correct?

6 A. I -- yes, there's no two little
7 antennas in the compound below it.

8 Q. Okay. And you have no understanding
9 as to how that structural difference would change
10 the EC50 measurement; correct?

11 MS. AGARWAL: Objection. Outside the
12 scope. Calls for expert testimony.

13 A. No. All I know is that the EC50 is
14 different.

15 Q. Okay. If we look at the very bottom
16 right to the orforglipron, there's a little N
17 with the one line coming off of it on the
18 pentagon?

19 A. Yes, I see that.

20 Q. And both of the compounds below,
21 the -- that same N has a little line with a
22 triangle attached to it.

23 Do you see that?

24 A. Yes, I see that.

25 Q. And you have no understanding as to

1 how that structural change would affect the EC50
2 measurements; correct?

3 MS. AGARWAL: Objection. Outside the
4 scope. Calls for expert testimony.

5 A. All I know is the EC50 result of that
6 molecule based on the data that is in my des --
7 declaration.

8 Q. In addition to the compounds in
9 Table 2 and paragraph 8 chart, were any other
10 compounds tested for hGLP-1R cAMP assays?

11 A. I -- I do not know if any other
12 compounds were tested.

13 Q. And so you don't know if other
14 compounds were tested at the same time as the
15 compounds in paragraph 8 chart?

16 MS. AGARWAL: Objection.
17 Mischaracterizes testimony.

18 A. So -- so other than the compounds
19 that are disclosed in the '236 patent in Table 2
20 and the compounds disclosed in paragraph 8 of my
21 declaration, I do not know if there were any
22 other compounds tested.

23 Q. Okay. Did you inquire as to whether
24 or not there were any other compounds?

25 A. No, I did not inquire as to whether

1 or not there were any other compounds tested.

2 Q. Did you ask why you were only
3 including these two compounds in comparison to
4 orforglipron?

5 MS. AGARWAL: Objection. I'd
6 instruct the witness not to answer on account of
7 attorney-client privilege.

8 Q. Did you ask Bin Liang whether -- why
9 these two compounds were being used as opposed to
10 any other compounds?

11 A. No, I did not ask Bin Liang why these
12 two compounds were being used versus any other
13 compound.

14 Q. And did he explain to you why these
15 two compounds were being used for any reason?

16 A. No, we did not discuss why these
17 compounds were being used for any reason.

18 Q. And you didn't provide any laboratory
19 notebooks that relate to the assay evaluations in
20 Section A of your declaration -- right? --
21 paragraph 6 through 8?

22 A. No, I did not include any laboratory
23 notebooks in my declaration or the compounds in
24 paragraph 8.

25 Q. And are you aware of any documents

1 that relate to these evaluations other than your
2 declaration that have been submitted in this
3 proceeding?

4 MS. AGARWAL: Objection. Form.

5 A. No, I don't have any personal
6 knowledge of whether any other documents exist
7 other than what is in my declaration.

8 Q. And are you aware of whether or not
9 there are documents that relate to the
10 evaluations of the compounds in paragraph 8
11 chart?

12 A. Am I aware of what?

13 Q. Are you aware of whether or not
14 documents showing or relating to the assays that
15 were conducted and --

16 A. I --

17 Q. -- that resulted in paragraph 8?

18 A. Yeah, I'm not --

19 MS. AGARWAL: Hold on. Objection.
20 Form.

21 A. Okay. I haven't seen any documents
22 that -- I haven't seen any documents or these
23 compounds in paragraph 8 other than I do know
24 that, you know, the -- I know it's a general
25 course of business, Ascletis does keep laboratory

1 notes on studies they conduct. But I don't know
2 specifically whether or not that exists for this.
3 I have not seen those notes.

4 Q. The -- the second compound in your
5 paragraph 8 chart, where did you access -- you
6 didn't draw that, did you?

7 A. No.

8 Q. Okay. Where did you get that
9 compound from?

10 MS. AGARWAL: Hold on here. I'm just
11 going to caution you not to reveal any privileged
12 information.

13 A. Where did I get it from? I don't
14 remember specifically like where -- I mean, I
15 re -- probably rec- -- I can't remember
16 specifically like who sent that -- who sent it to
17 me. I'd have to go back and look at sort of like
18 history in my -- my email communications and
19 stuff.

20 Q. But it was provided to you?

21 A. Yeah, it was provided to me. Yeah, I
22 didn't take it.

23 Q. And was it provided to you as part of
24 a different document, or was it provided to you
25 as, like, this is just the compound?

1 A. So I -- I -- as I said, I don't -- I
2 have to go -- yeah.

3 MS. AGARWAL: I'm going to actually
4 instruct you not to answer on account of
5 attorney-client privilege.

6 THE WITNESS: Okay.

7 Q. The third compound here, how was that
8 -- was that also provided to you by someone else?

9 MS. AGARWAL: Same objection and
10 instruction to just be cautious not to reveal any
11 privileged information.

12 A. I did not draw that compound.

13 Q. It was provided to you?

14 A. I didn't draw it so -- so, yes.

15 Q. Okay. Did Bin Liang provide you
16 either of those compounds?

17 A. I can't -- I don't remember where the
18 email -- I don't remember where the or- -- the
19 email originated from when -- when I received
20 this paper.

21 Q. Okay.

22 MR. TOFT: Were you looking to take a
23 lunch break at noon your time?

24 THE WITNESS: It's up to you.
25 Whatever you want to do.

1 MS. AGARWAL: Our -- our lunch is
2 here.

3 THE WITNESS: Oh, it is here.

4 MS. AGARWAL: Yeah, so we can break
5 now, or if you want to keep going, we can keep
6 going. It's up to you.

7 THE WITNESS: Where would you feel
8 would be a natural stop, Luke?

9 MR. TOFT: I -- I would like to move
10 on with a different section of questioning, which
11 is why I asked. So I'm at a natural breaking
12 point and I could use the restroom so --

13 THE WITNESS: Okay. If you want
14 to -- okay. Let's take a break then. Let's do
15 it. Let's do lunch.

16 MS. AGARWAL: Do you want -- do you
17 want to do like 30 minutes?

18 THE WITNESS: Thirty minutes okay,
19 Luke.

20 MR. TOFT: Yeah, see you back in half
21 an hour.

22 THE WITNESS: Okay.

23 (Break from 10:59 am to 11:42 am)

24 Q. (BY MR. TOFT) Mr. Gargiulo, during
25 your lunch break, did you and your attorney

1 discuss your deposition testimony?

2 A. No, nothing of substance.

3 Q. During the break prior to that when
4 we were talking about the ASC30 confidentiality
5 issue, you took a break to address
6 confidentiality.

7 You and your attorney talked about
8 your testimony during that break; correct?

9 A. We talked about the confidentiality.

10 Q. Okay. And what was the substance of
11 that discussion?

12 MS. AGARWAL: I instruct the witness
13 not to answer on account of attorney-client
14 privilege. He can't discuss the substance of the
15 discussion he had with us.

16 MR. TOFT: I believe in -- in
17 post-grant proceedings in early IPR, discussions
18 during breaks are not privileged. It's from the
19 start to the end they're not privileged. You can
20 talk to him beforehand and you can talk to him
21 after hand, privileged, but breaks are not
22 privileged.

23 MS. AGARWAL: Well, we were
24 discussing the confidentiality.

25 MR. TOFT: I'm asking this of the

1 witness.

2 Q. So, Mr. Gargiulo, what -- what was
3 discussed during your break?

4 A. We talked about confident --
5 confidentiality of the ASC30.

6 Q. And what was -- what instructions
7 were you given regarding answering questions
8 based on confidentiality?

9 MS. AGARWAL: I'm going to instruct
10 the witness not to answer based on that
11 confidentiality as well as privilege.

12 MR. TOFT: Again, those conversations
13 are not privileged.

14 Q. Mr. Gargiulo, what's -- is it your
15 understanding that you are allowed not to answer
16 a question based on confidentiality?

17 A. I don't understand your question.

18 Q. Is it your understanding based on
19 communications with your counsel that you can not
20 answer one of my questions because of
21 confidentiality concerns?

22 MS. AGARWAL: Objection. Form.
23 Vague.

24 A. I -- I stated in my deposition when
25 you asked me that question that I was not able to

1 answer that question based on confidentiality,
2 and I made that statement before I talked to my
3 attorneys.

4 Q. And how did your --

5 A. So I haven't -- haven't changed my
6 position on that.

7 Q. What did you and your counsel discuss
8 regarding confidentiality then?

9 MS. AGARWAL: I'm going to instruct
10 you not to answer that question on the basis of
11 privilege.

12 MR. TOFT: You're going to assert
13 privilege during the communications during a
14 recess.

15 MS. AGARWAL: Yes, the -- the
16 conversation surrounding the confidentiality.

17 Q. If we can turn to paragraph 9 of your
18 declaration, you state that Ascletis directed the
19 testing of compounds disclosed found in
20 the '236 patent to compare their pharma --
21 pharmacokinetics after a single-dose subcutaneous
22 injection.

23 Do you see that?

24 A. Yes, I see that.

25 Q. Who at Ascletis directed that

1 testing?

2 A. I do not know who specifically
3 directed the testing in paragraph 9 of the
4 declaration.

5 Q. Do you know when that directive was
6 given?

7 A. I do not know specifically when the
8 directive was given --

9 Q. And do you know who --

10 A. -- in paragraph 9 of the declaration.

11 Q. I apologize, I didn't mean to talk
12 over you.

13 Do you know who at Ascletis performed
14 the testing to compare pharmacokinetics?

15 A. I do not know who performed the
16 testing on -- to compare the pharmacokinetics in
17 Table 3 of in my declaration.

18 Q. And do you know who recorded the
19 results?

20 A. I do not know who recorded the
21 results of the pharmacokinetic testing that is
22 shown in Table 3 in my declaration.

23 Q. And in paragraph 9, you say: The
24 study was conducted as described in the Example 3
25 of the '236 patent (the PK Study). And then

1 Table 3 -- and then in paragraph 10: Table 3 of
2 the '236 patent discloses the pharmacokinetics of
3 certain compounds in the PK study.

4 Do you see that?

5 A. Yes, I see paragraphs 9 and 10, yes,
6 in my declaration.

7 Q. So Table 3 discloses the results of
8 the testing that is described in paragraph 9; is
9 that right?

10 A. That's what I state in my declaration
11 that Table 3 discloses the results from
12 paragraph 9.

13 Q. And you say it discloses the
14 pharmacokinetics of certain compounds in the PK
15 study. What other compounds were in the PK study
16 are not disclosed in Table 3?

17 MS. AGARWAL: Objection. Scope.

18 A. I need to review the patent to answer
19 the question.

20 Q. This wouldn't be in the patent. So
21 I'm asking -- because Table 3 is from the --

22 A. Table 3 is from the patent, so you're
23 asking me everything in 9 and 10 refers to
24 information that's in the patent. So if you're
25 asking me questions about paragraphs 9 and 10, I

1 need to refer to the patent.

2 Q. I'm not asking about that. I'm
3 asking about the testing that you said that
4 Ascletis directed and then disclosed in -- some
5 of which was disclosed in Table 3.

6 I'm asking what testing was done on
7 compounds that were not disclosed in the patent?

8 MS. AGARWAL: Objection. Scope.
9 Form.

10 A. As I've said, I need to go and look
11 at the patent to see if any other compounds are
12 disclosed in the patent that are not in Table 3,
13 which may have been disclosed some other way. I
14 haven't done the review. So if you allow me to
15 review the patent, I could answer your question.

16 Q. But sitting here right now, you're
17 not aware of any other compounds that Ascletis
18 directed the pharmacokinetics testing of?

19 MS. AGARWAL: Objection.
20 Mischaracterizes testimony.

21 A. That's not what I said.

22 Q. So meaning --

23 A. No, I haven't answered your question
24 until I have the opportunity to review the
25 patent. So I want to review the patent. Are you

1 refusing to allow me to review the patent?

2 Q. Well, I'm not asking about what's in
3 the patent. I'm asking about this testing that's
4 performed that you -- that you're testifying to.
5 And so my -- my question then if you have
6 knowledge of this testing, I'm wondering do you
7 know -- without reviewing other documentation, do
8 you know if -- what other chemicals -- or what --
9 sorry -- what other compounds were tested in this
10 comparison to pharmacokinetics?

11 MS. AGARWAL: Objection. Scope.
12 Asked and answered.

13 A. It is inappropriate for -- to answer
14 that -- ask that question if you don't give me
15 the opportunity to review the patent, because I'm
16 referring to the patent when I'm -- in my
17 declaration here. So I don't remember every
18 detail in the patent, so I can't answer your
19 question.

20 Q. Okay. And that's fine.

21 A. So I can't answer your question. So
22 if you'd allow me to review the patent, then I
23 will tell you whether or not there were other
24 compounds not listed in Table 3. If you don't
25 let me review the patent, I can't answer your

1 question.

2 Q. Got it. So without the review of the
3 patent, you can't identify other compounds that
4 were tested for pharmacokinetics?

5 MS. AGARWAL: Objection. Scope.

6 A. That's not what I said. Without
7 reviewing the patent, I can't determine if there
8 are other compounds that were tested other than
9 those in Table 3.

10 Q. Right.

11 A. So will you allow me to review the
12 patent?

13 Q. We -- we can look at possibly
14 bringing up the patent in a bit. But right now
15 I'm just wondering if you know, sitting here
16 without looking at other documents, the answers
17 to what Ascletis did based on --

18 A. I can't answer that. I don't
19 remember every thing, every document, every word
20 of everything I've seen. We have documents
21 available that are allowed for me to review, and
22 you're refusing to allow me to review the
23 document so that I can answer your question.

24 Q. Are you aware --

25 A. If you're not going to allow me to

1 review the document, then move on and ask me
2 something else.

3 Q. Mr. Gargiulo, I understand that --
4 that you might not like the questions that I'm
5 asking, but I am entitled to ask them. And if
6 your counsel wants to redirect and allow you to
7 answer additional questions or present you with
8 the patent, she's more than willing to -- to be
9 able to do so, but right now I -- I do have some
10 questions that I want answers to.

11 A. Okay. I understand. I got it.

12 Q. The -- the compounds that are shown
13 in Table 3 -- actually, let me back up. You said
14 that there are documents other than the
15 '236 patent. Is there any document that you're
16 aware of that would tell you whether or not
17 Ascletis -- or I guess what compounds Ascletis
18 compared pharmacokinetics to in this testing that
19 is described in paragraphs 9 and 10 of your
20 declaration?

21 MS. AGARWAL: Objection. Form.
22 Vague. Scope.

23 A. I have absolutely no idea what you
24 just asked me.

25 Q. Okay. So there are -- paragraphs 9

1 and 10 of your declaration talk about testing
2 related to pharmacokinetics; correct?

3 A. My paragraph 9, yes, talks about
4 compounds that are disclosed and claimed in the
5 '236 patent where we compared pharmacokinetics
6 after a single-dose subcutaneous injection.

7 Q. Right. And -- and my question is
8 other than the '236 patent, is there another
9 document that you are aware of that would tell
10 you what other compounds, if any, Ascletis tested
11 in this comparison of pharmacokinetics?

12 MS. AGARWAL: Same objections. Form,
13 vague. Scope.

14 A. I am not aware of any other documents
15 other than the information in the '236 patent
16 that would include PK information.

17 Q. Got it. The compounds in Table 3, do
18 you know if they were formulated in a salt-free
19 form or freebase form?

20 MS. AGARWAL: Objection. Scope.

21 A. I do not know if these were
22 formulated in freebase form or a salt-base form.

23 Q. Do you know what the basis -- or
24 sorry -- the purpose of comparing
25 pharmacokinetics of compounds is?

1 MS. AGARWAL: Objection. Scope.

2 Calls for expert testimony.

3 A. I do not have a expert understanding
4 of PK data other than it is a measure of how much
5 drug is absorbed into an animal or a human being.
6 Basically that's about the extent of my
7 knowledge.

8 Q. In paragraph 11 you state that
9 Ascletis evaluated the clearance and observed
10 concentrations for compounds 1 and 19; right?

11 A. Yes, paragraph 11 talks about the
12 clearance and the Cmax for compounds 1 and 19 of
13 the '236 patent.

14 Q. Do you know who at Ascletis directed
15 that evaluation?

16 A. Yes, I do know who -- yes, I know who
17 at Ascletis directed that evaluation.

18 Q. And who directed that that evaluation
19 take place?

20 A. Bin Liang directed that evaluation.

21 Q. And do you know when he provided that
22 directive?

23 A. I think it was around the same time
24 -- it's around the same time that the other PK
25 data was conducted in Table 3.

1 Q. And what's the basis for that
2 understanding?

3 A. That was what he told me -- Bin Liang
4 said that to me.

5 Q. Do you know why he evaluated the
6 clearance and observed concentration for
7 compounds 1 and 19?

8 MS. AGARWAL: Objection. Scope.

9 A. No, I do not know why the clearance
10 and Cmax concentration was evaluated for 1 and
11 19.

12 Q. Do you know who evaluated the
13 clearance and or observed concentration for
14 either compound?

15 A. I am aware of who evaluated the
16 clearance and Cmax data for those compounds.

17 Q. Who was that?

18 A. It was Bin Liang.

19 Q. So -- okay. So he help -- he not
20 only directed it take place, but he also did the
21 evaluation himself?

22 A. It was done -- the evaluation for the
23 PK data was done through a CRO.

24 Q. Okay. An -- a third-party CRO. So
25 he -- he oversaw this third-party evaluation?

1 A. Bin Liang oversaw the CRO that
2 conducted the study which generated the data in
3 paragraph 11.

4 Q. Okay. And when -- when Bin Liang is
5 observing these CRO evaluations or testings, do
6 you know if he is on-site with the third-party
7 CRO?

8 MS. AGARWAL: Objection. Scope.
9 Speculation.

10 A. I do not know if he is on-site with
11 the CRO during the testing of the information in
12 paragraph 11.

13 Q. Got it. And safe to say you're not
14 sure who recorded the results of the evaluation,
15 somebody at the CRO probably?

16 MS. AGARWAL: Objection.
17 Speculation.

18 A. I do not know who specifically
19 recorded the results of the data that is in
20 paragraph 11 of my declaration.

21 Q. Did you get the data in paragraph 11
22 of your declaration from the CRO?

23 A. No, I did not receive the data
24 directly from the CRO that is in paragraph 11 of
25 my declaration.

1 Q. How did you receive that data?

2 A. If I remember correctly, it came
3 directly from Bin Liang.

4 Q. And was that via a conversation, or
5 did he provide that in a different way?

6 A. I would have received it in an email.

7 Q. Was there any other information that
8 Bin Liang conveyed in the email that he sent that
9 provided the --

10 A. No, not that I remember. As I've
11 mentioned, I had a conversation with him directly
12 to get the -- as much -- or to verify the
13 information and also understand a little bit more
14 about how the data was collected, as I mentioned.

15 Q. And what else did you learn about the
16 way that the data was collected?

17 A. It was done -- the study was done
18 about the same time -- was done in the same time
19 as what's in Table 3. I mentioned it was done by
20 a CRO. So that was done by CRO. Bin Liang
21 oversaw it. And that was probably the majority
22 of what he communicated that I can remember.

23 Q. Was the evaluation results in Table 3
24 done by the same CRO?

25 MS. AGARWAL: Objection. Scope.

1 A. I do not know. He did not mention
2 which CRO conducted the study that's -- the data
3 that's in Table 3 and the data that's in the full
4 review.

5 Q. I suppose I -- I should have asked,
6 was the study or the results that are in Table 3
7 conducted by a CRO, or was it conducted by some
8 -- by Ascletis or somebody else? Do you know?

9 A. Yeah, I don't know if the data in
10 Table 3 was conducted by a CRO or not.

11 Q. Okay. And in paragraph 11, you
12 provide the clearance and observed concentrations
13 for compounds 1 and 19, you do not provide the
14 same information for orforglipron; correct?

15 A. Orforglipron is not listed in my
16 declaration in paragraph 11.

17 Q. Okay. And there are multiple other
18 compounds in Table 3. Did Ascletis evaluate the
19 clearance or concentration for com -- for
20 orfor- -- for orforglipron?

21 MS. AGARWAL: Objection. Scope.

22 A. I do not know if Ascletis evaluated
23 the clearance for orforglipron or not.

24 Q. Okay. Do you know if Ascletis
25 evaluated the clearance or concentration for

1 Compounds 13 -- let's go through that list, I
2 guess -- for Compound 13?

3 MS. AGARWAL: Objection. Scope.

4 A. I do not know if Ascletis evaluated
5 that clearance for Compound 13.

6 Q. How about 18?

7 A. I --

8 MS. AGARWAL: Objection. Scope.

9 A. Yeah, I do not know that Ascletis
10 evaluated that clearance for Compound 13.

11 Q. Okay. And when you say clearance,
12 you mean clearance or concentration --
13 correct? -- you don't know either one?

14 A. I don't provide concentration data in
15 my declaration, so I don't know if concentration
16 data was somewhere in the patent or not. But
17 it's not in Table 3.

18 Q. Got it. And do you know if Ascletis
19 evaluated --

20 A. I don't know what you mean by
21 concentration. Like what's the definition of
22 concentration? What do you mean by that?

23 Q. Well, what do you mean by that?

24 A. Well, I have no idea.

25 Q. You put observed concentration in

1 here, you don't know what that means?

2 A. It's not that -- is that what you're
3 referring to?

4 Q. Yes.

5 A. Oh, Cmax. Thank you. A
6 concentration in general can mean something else
7 other than Cmax.

8 Q. Got it.

9 A. It could be Cmin. It could be a
10 whole lot of other things.

11 Q. So let's --

12 A. It alluded to Cmax in my declaration
13 when you say concentration.

14 Q. Let's -- yeah. Let's start that over
15 so that we're just -- the record's clear.

16 Talking about clearance first, the
17 Cl_F, do you know if Ascletis evaluated the
18 clearance of Compound 13?

19 MS. AGARWAL: Objection. Scope.

20 A. I do not know if Ascletis evaluated
21 the clearance of Compound 13.

22 Q. How about 18?

23 MS. AGARWAL: Same objection. Scope.

24 A. I do not know if Ascletis evaluated
25 the clearance of Compound 18.

1 Q. How about Compound 20?

2 MS. AGARWAL: Objection. Scope.

3 A. I do not know if Ascletis evaluated
4 the clearance of Compound 20.

5 Q. And Compound 21?

6 MS. AGARWAL: Objection. Scope.

7 A. I do not know if Ascletis evaluated
8 the clearance of Compound 21.

9 Q. And I guess, just so the record's
10 clear, and for orforglipron?

11 A. I do not know if Ascletis evaluated
12 the clearance of orforglipron.

13 Q. Okay. And then now with reference to
14 observed concentration Cmax, do you know if
15 Ascletis evaluated the Cmax for Compound 13?

16 MS. AGARWAL: Objection. Scope.

17 A. I would have to refer to the patent
18 to see if that was disclosed in the patent but --
19 so that's the only way I can answer that. I
20 don't know if it's -- I don't know if that
21 information has been disclosed in the patent or
22 not unless I look at it.

23 Q. Yeah, fair. So if it's in the
24 patents, then likely that it's been evaluated,
25 but if it's not in the patents, you don't know if

1 it's been evaluated or not?

2 A. If it's not in the patent, I don't
3 know if it's been evaluated.

4 Q. Okay. So for -- and for plan 18,
5 unless it's in the patent, you don't know if
6 Ascletis has evaluated the Cmax for Compound 18;
7 correct?

8 MS. AGARWAL: Objection. Scope.

9 A. Unless it's in the patent, I do not
10 know if Cmax has been evaluated for Compound 18.

11 Q. Yeah. And how about Compound 20?

12 MS. AGARWAL: Objection. Scope.

13 A. Unless it's in the patent, finally I
14 do not know if Cmax was evaluated for Compound
15 20.

16 Q. And for Compound 21?

17 MS. AGARWAL: Objection. Scope.

18 A. Unless it's in the '236 patent, I do
19 not know if the Cmax was evaluated for
20 Compound 21.

21 Q. And for orforglipron?

22 MS. AGARWAL: Objection. Scope.

23 A. So for orforglipron, unless the Cmax
24 was evaluated in the '236 patent, I do not know
25 if it was evaluated.

1 Q. Okay. Do -- are you aware of any
2 deliberate decision to exclude the clearance Cl_F
3 or observed concentration C_{max} of orforglipron
4 from your declaration in the patent?

5 MS. AGARWAL: Objection. Scope.

6 A. Can you repeat that?

7 Q. Are you aware of any deliberate
8 decision to exclude the concentration -- observed
9 concentration or clearance of orforglipron from
10 let's start with your declaration?

11 A. So --

12 MS. AGARWAL: Objection. Scope. And
13 you can answer that "yes" or "no," but don't
14 divulge any privileged information.

15 A. Okay. Ask it again, then.

16 Q. Are you aware of a deliberate
17 decision to exclude orforglipron clearance or
18 observed concentration from your declaration?

19 A. No.

20 Q. Are you aware of any deliberate
21 decision to exclude the clearance or
22 concentration -- observed concentration of
23 orforglipron in the Ascletis '236 patent?

24 MS. AGARWAL: I'm going to object
25 scope. And the same instruction, you can answer

1 that "yes" or "no" to that.

2 A. No.

3 Q. Do you believe that you can compare
4 pharmacokinetics of Compound 1 to orforglipron
5 without the clearance or observed concentration?

6 MS. AGARWAL: Objection. Scope.
7 Calls for expert testimony.

8 A. I am only attesting that this data
9 that I'm presenting is accurate. I do not know
10 how that data will be used.

11 Q. Got it. So you just -- and, again,
12 this is just to like make sure that I know where
13 you're not testifying.

14 You don't know if it would be
15 possible to state that Compound 1 or 19 is an
16 improvement over orforglipron if you don't have
17 the clearance or observed concentration of -- of
18 orforglipron; right?

19 MS. AGARWAL: Objection. Scope.
20 Form. Calls for expert testimony.

21 A. I need you to break that down.

22 Q. Yeah, let's break it down. If we're
23 comparing Compound 1 and orforglipron --

24 A. Okay.

25 Q. -- you don't know if you could say

1 Compound 1 is an improvement over orforglipron if
2 you don't have the clearance and observed
3 concentration for both?

4 A. Okay.

5 MS. AGARWAL: Objection. Form.
6 Calls for expert testimony. Outside the scope.

7 A. Okay. So, number one, I don't have
8 the scientific background to completely
9 understand your question, so I'm going to try and
10 answer it hopefully where it answers your
11 question in a way which I can.

12 Q. Okay.

13 A. So what I can say in my -- which is
14 in my declaration is that the information that's
15 provided in paragraph 11 is true and accurate.
16 But I do not know how this information relates
17 clinically or scientifically to a potential
18 outcome of any sort. I'm hoping I answered it
19 because I don't -- I don't necessarily know some
20 of the specifics that you're asking me in terms
21 of the way you're referencing information.

22 Q. I think that that's fair. Let me ask
23 it this way just to make sure.

24 Based on your background, the
25 clearance and observed concentration of any

1 compound you're not able to testify as to whether
2 or not that could be an improvement even if you
3 have the information; is that right?

4 MS. AGARWAL: Objection. Form.
5 Outside the scope. Calls for expert testimony.

6 A. Okay. So what I'm saying is I do not
7 have the expertise to be able to say whether the
8 clearance and Cmax data relative to another
9 compound means anything.

10 Q. Yeah. Let's take it as an analogy.
11 If I have three cars, let's just say two cars,
12 cars A and B, and I tell you car B can accelerate
13 from 0 to 60 in 3.2 seconds and has an average of
14 25 miles per gallon, can you tell me if car B is
15 an improvement over car A?

16 MS. AGARWAL: Objection. Incomplete
17 hypothetical.

18 A. I have no idea what car A is.

19 Q. Exactly. So if you don't have the
20 concentration and observed clearance of
21 orforglipron, you can't say if Compound 1 is
22 better or not than orforglipron; right?

23 MS. AGARWAL: Object -- Objection.
24 Form. Outside the scope. Calls for expert
25 testimony.

1 A. I'm not making any assertion in my
2 declaration whether one thing is better or not
3 better. All I'm saying is the data, that's all I
4 know, this is the data.

5 Q. My question is that this is all a
6 comparison -- comparison to orforglipron, but in
7 11 you don't include orforglipron. I guess the
8 basis of my question is would you agree that I
9 can't compare these compounds that you've
10 identified in paragraph 11 to orforglipron
11 because you haven't given data on orforglipron?

12 MS. AGARWAL: Objection. Form.
13 Outside the scope. Calls for expert testimony.
14 Also asked and answered.

15 A. It's a hypothetical. I can't give
16 you a hypothetical. I don't provide any data for
17 orforglipron. I'm only attesting that the data
18 for Compound 1 and 19 are accurate, and I'm not
19 making any assumption as to the relevance of this
20 to any other molecule.

21 Q. Got it. And so -- and there's
22 nothing in your declaration that would allow me
23 to compare Compound 1 clearance and observed
24 concentration to orforglipron; right?

25 A. I have absolutely no idea.

1 Q. And there is nothing in your
2 declaration that allow me to compare Compound 19
3 to orforglipron; correct?

4 MS. AGARWAL: Objection. Scope.
5 Mischaracterizes the declaration and calls for
6 expert testimony.

7 A. I have no idea whether you would be
8 able to do that or no. I can't speak for you.

9 Q. Okay.

10 A. I don't -- yeah, I -- I -- I have no
11 idea.

12 Q. Yeah. And -- okay. So it does not
13 speak for me. Is there anything in your
14 declaration that will allow you or anyone
15 else to -- to the best of your knowledge, that
16 would allow anyone to make a comparison between
17 Compound 1 and -- and orforglipron based on
18 clearance and observed concentration data?

19 MS. AGARWAL: Objection. Form.
20 Outside the scope. Calls for expert testimony.

21 A. I have absolutely no idea. I am not
22 a scientist so I do not know how a scientist
23 would take this information as it relates to
24 orforglipron. I have no idea.

25 Q. Okay. And that's what I suspected.

1 I just needed to make sure that -- that we
2 weren't missing something.

3 A. Okay.

4 Q. Other than the clearance Cl_F and
5 observed concentration C_{max}, are you aware of any
6 other testing or evaluation related to
7 pharmacokinetics for any of the compounds in
8 Table 3?

9 MS. AGARWAL: Objection. Form.
10 Scope.

11 A. Other than what is disclosed in the
12 '236 patent, I'm not aware of any other
13 information for the content -- not information or
14 whatever you said -- I don't remember what you
15 said. What were you specifically asking me?
16 What about Table 3? What -- I'm not aware of
17 other like AUC data.

18 Q. I'm just asking other than what we
19 see in Table 3 and the information that you
20 provided in paragraph 11, if you're aware of any
21 other data or results that compare the
22 pharmacokinetics of the compounds that are
23 identified in Table 3?

24 MS. AGARWAL: Objection. Form.
25 Scope.

1 A. Other than what's in the '236 patent,
2 no, I wouldn't be aware of anything else for
3 Table 3.

4 Q. With reference to paragraph 11, the
5 analysis done in paragraph 11 of Compounds 1 and
6 19, do you know how Compound 1 was formulated for
7 testing?

8 MS. AGARWAL: Objection. Scope.

9 A. I do not know how Compound 1 was
10 formulated for testing.

11 Q. Do you know how Compound 19 was
12 formulated for testing?

13 MS. AGARWAL: Objection. Scope.

14 A. I do not know how Compound 19 was
15 formulated for testing.

16 Q. Do you know when either compound was
17 made that was then evaluated?

18 MS. AGARWAL: Objection. Scope.

19 A. Was what?

20 Q. Do you -- do you have any
21 understanding of when either compound was made?
22 Or how -- let's start with that.

23 A. What do you mean "made"?

24 Q. Synthesized.

25 MS. AGARWAL: Objection. Form.

1 A. I do not know when Compound 1 or
2 Compound 19 were synthesized.

3 Q. Do you have any understanding as to
4 the time between when Compound 1 and 19 were
5 synthesized and when the evaluation was
6 performed?

7 MS. AGARWAL: Objection. Scope.

8 A. So, as I said, I do not know when
9 Compound 1 and Compound 19 were synthesized. I
10 do know that the clearance and Cmax data that is
11 in paragraph 11, that was done at the same time
12 as the AUC data in Table 3 from paragraph 9.

13 Q. Got it. But other than that, like
14 you don't know when that evaluation was done?

15 A. I do not know the specific date as to
16 when the study was conducted for Compounds 1 and
17 19 in paragraph 11.

18 Q. Do you know if the evaluation of the
19 compounds in paragraph 11 were formulated in a
20 salt-free form?

21 MS. AGARWAL: Objection. Scope.

22 A. I do not know if compounds in
23 paragraph 11 were formulated in a salt-free form.

24 Q. Do you know if the compounds in
25 paragraph 11 were further examined for metabolic

1 stability?

2 MS. AGARWAL: Objection. Scope.

3 A. I do not know if the compounds in
4 paragraph 11 were evaluated for metabolic
5 stability.

6 Q. Do you know if the compounds in
7 paragraph 11 were further examined for
8 selectivity?

9 MS. AGARWAL: Objection. Scope.

10 A. I do not know if the compounds in
11 paragraph 11 were further evaluated for
12 selectivity other than what potentially is in the
13 patent.

14 Q. Understood. To your knowledge, were
15 there compounds in paragraph 11 further examined
16 for any other reason?

17 MS. AGARWAL: Objection. Form.
18 Scope.

19 A. What do you mean? I don't know what
20 you mean "any other reason."

21 Q. Well, let's start with Compound 1.
22 Do you -- are you aware of any other testing or
23 evaluation of Compound 1 other than what's
24 disclosed in the '236 patent?

25 A. Yeah, all that --

1 MS. AGARWAL: Objection. Form.

2 Scope.

3 A. So I'm not aware of any other testing
4 other than the information that is disclosed in
5 the patent for those compounds.

6 Q. Are you aware of any clinical study
7 that involves Compound 1?

8 MS. AGARWAL: Objection. Scope.

9 A. I actually don't know if there was a
10 clinical study involving Compound 1.

11 Q. Are you aware of any evaluation of
12 Compound --

13 MS. AGARWAL: Sorry. Were you
14 finished with your answer?

15 A. No. Yeah, so I'm not aware of a
16 clinical study that was done on the unrelated
17 compound.

18 Q. Okay. Are you aware of any
19 examination of Compound 19 that was done other
20 than what you've disclosed in paragraph 11 and
21 what's disclosed in the '236 patent?

22 MS. AGARWAL: Objection. Form.
23 Scope.

24 A. What do you -- what do you mean
25 again?

1 Q. Is there any other analysis that
2 you're aware of that you can sit --

3 A. Yeah, I got it. I got it. So
4 there's no other preclinical analysis that I'm
5 aware of for Compound 19 that is either disclosed
6 in my declaration or is currently in the
7 '236 patent.

8 Q. Okay. Is there any clinical analysis
9 that you're aware of for Compound 19?

10 MS. AGARWAL: Objection. Scope.

11 A. So -- so after you asked me the
12 question relative to sort of clinical evaluation
13 relative to compounds in my declaration, I'm
14 going to have to take a position that I can't
15 really confirm or deny other than in the
16 Compound 1, which I mentioned, whether or not any
17 of the compounds in my declaration had other type
18 of clinical studies conducted for the possibility
19 that it could potentially breach confidentiality
20 of -- from the earlier sort of discussion that we
21 had.

22 Q. So I'm sorry, you're refusing to
23 answer the question based on confidentiality?

24 A. Yes, I'm refusing to answer the
25 question based on confidentiality.

1 MS. AGARWAL: And I'd just reiterate
2 my objection as to scope as being outside of the
3 allowed cross-examination of Mr. Gargiulo's
4 declaration.

5 MR. TOFT: I'm just trying to
6 understand, he's provided a bunch of information
7 regarding testing that Ascleitis has done. I just
8 want to understand the scope of the testing that
9 was done. So...

10 MS. AGARWAL: And our objections --
11 our objection as to the scope, that all of those
12 questions are outside the scope of his
13 declaration, reiterating it now -- reiterating it
14 now that this line of questioning is outside the
15 scope of his declaration.

16 MR. TOFT: That's fine. You can --
17 that objection can stand. But you're --

18 Q. Mr. Gargiulo, you're refusing to
19 answer that question based on -- on
20 confidentiality; correct?

21 A. Yeah, I'm refusing to answer
22 questions relating to whether there was any
23 clinical studies done on any of the compounds in
24 my declaration based on confidentiality.

25 Q. Without scientific training, how

1 would do you have a basis and personal knowledge
2 of the accuracy of any pharmacokinetic --
3 pharmacokinetic-related value?

4 MS. AGARWAL: Objection. Form.

5 A. I don't need scientific training to
6 know whether information's correct or not. So
7 don't have to have scientific training to know if
8 a number is correct or is incorrect from a point.

9 Q. How did you confirm the accuracy of
10 the information in paragraph 11?

11 A. I spoke to the individual that
12 conducted the study, and he informed me of the
13 accuracy of the information.

14 Q. And what did you do to confirm that
15 he -- that his numbers that he was giving you
16 were accurate?

17 A. I did not do anything other than had
18 a conversation with him to verify the numbers.

19 Q. So it's -- you have no personal
20 knowledge that any evaluation even occurred?

21 MS. AGARWAL: Objection. Outside the
22 scope. Mischaracterizes testimony.

23 A. Yeah, that's not what I said. I -- I
24 spoke to Bin Liang who conducted the study, and
25 he informed me that he conducted the study and

1 that this is the data and it was an accurate
2 reflection of the results of the study.

3 Q. I understand that. But if he lied to
4 you, you wouldn't have any idea if he lied or
5 not; correct?

6 MS. AGARWAL: Objection. Form.
7 Speculation. Mischaracterizes testimony.

8 A. I believe that he was telling me the
9 truth, and that's what I put in my declaration.

10 Q. And you didn't review any lab
11 notebooks related to testing or evaluation in
12 paragraph 11?

13 MS. AGARWAL: Object. Form.

14 A. No, I did not review any lab
15 notebooks in relation to the data listed in
16 paragraph 11.

17 Q. And no lab note -- lab notebooks
18 related to the testing or evaluation of par -- of
19 paragraph -- sorry. And no lab notebooks related
20 to the results of the testing and evaluation in
21 paragraph 11 were provided; correct?

22 A. No lab note -- I do not have lab
23 notebooks from the -- for the testing of the data
24 that's provided in paragraph 11.

25 Q. Okay. Are you aware of any documents

1 that relate to the testing or evaluation of the
2 results that you included in paragraph 11?

3 MS. AGARWAL: Objection. Form.
4 Outside the scope.

5 A. I am not specifically aware of
6 documents that are related to the testing of the
7 compounds in paragraph 11 other than as a normal
8 course of business, lab notebooks are kept for
9 studies that are conducted at Ascletis.

10 Q. But you -- again, you don't know
11 where those lab notebooks are kept?

12 A. No, as I stated before, I do not know
13 specifically where those lab notebooks are -- are
14 housed.

15 Q. And you don't know who had access to
16 it between when the evaluation took place and
17 when you were given the data?

18 A. I do not know who had access to the
19 lab notebooks during the period of time when the
20 study was done and when I received the data.

21 MR. TOFT: I need just a quick
22 five-minute break before I move on.

23 THE WITNESS: Yeah.

24 MR. TOFT: Is five minutes good for
25 you, or would you like more time.

1 MS. AGARWAL: Five minutes is good.

2 MR. TOFT: Okay. Be right back.

3 (Break from 12:28 pm to 12:37 pm)

4 Q. (BY MR. TOFT) Looking at your
5 declaration, in paragraph 12 you state that
6 Exhibit 2081 is a true and correct copy of
7 Ascletis laboratory notebook GLNB007230-3; right?

8 A. Yes, I state in my declaration that
9 Exhibit 2081 is a true and correct copy of
10 Ascletis laboratory notebook GLNB007230-3.

11 Q. Did you prepare -- can we call that
12 the '230 notebook?

13 A. Yes. Call it the 2Z -- like we can
14 call it 2081 notebook.

15 Q. The 2081 notebook. Okay. Did you
16 prepare the 2081 notebook?

17 A. I did not prepare the 2081 notebook.

18 Q. Do you know who did?

19 A. Bin Liang prepared the 2081 notebook.

20 Q. Anyone else?

21 A. To my knowledge, no one else prepared
22 the 2081 notebook.

23 Q. When was the first time you saw the
24 2081 notebook?

25 A. I don't remember the exact date. It

1 was before the submission.

2 Q. Who provided it to you?

3 A. It would have been an email I got
4 from Bin.

5 Q. And in the email you got from Bin,
6 did he provide any other information about the
7 notebook?

8 A. No, I don't remember anything else
9 being provided about the notebook other than any
10 information he provided me when I talked to him.

11 Q. The laboratory notebook name, do you
12 know what the GLNB stands for?

13 A. No, I do not know what the GLNB
14 stands for.

15 Q. And then the next -- there's a
16 numerical block, 007230, and I believe that
17 denotes the sequential notebook number. Is that
18 right or do you --

19 A. I do not know what the number refers
20 to.

21 Q. Okay. And then are you aware that
22 this -- well, let me ask, do you know what
23 software was used to make this lab notebook -- to
24 make the 2081 lab notebook entry?

25 A. I do not know what software was used

1 to make the 2081 lab notebook entry.

2 Q. If I told you that it was Chromium,
3 would have any reason to believe that that is
4 true or not?

5 MS. AGARWAL: Objection. Form.
6 Speculation.

7 A. As I stated, I have no idea what
8 software was used to create the Exhibit 2081
9 notebook.

10 Q. The dash-3 suffix on the lab notebook
11 in Chromium generally identifies a --

12 A. Can -- can you give me that exhibit,
13 please, so I can look at it?

14 Q. Yeah, like as soon as I'm done with
15 this next question or two, but I -- I just want
16 to see the dash-3 suffix in Chromium generally
17 refers to revisions or audit trails.

18 Are you familiar with revisions or
19 audit trails in lab notebooks?

20 MS. AGARWAL: Objection. Form.
21 Scope.

22 A. I am not familiar with revisions or
23 audit trails of notebooks.

24 Q. Do you have any reason to believe
25 that the dash-3 suffix does not refer to

1 revisions or audit trails?

2 MS. AGARWAL: Objection. Form.

3 Scope.

4 A. I do not know what the dash-3 suffix
5 refers to, no.

6 Q. Do you know if there are earlier
7 versions of this notebook that exist or existed?

8 MS. AGARWAL: Objection. Form.

9 Scope.

10 A. I do not know if there are any other
11 versions of this notebook.

12 Q. Do you have any reason to believe
13 that there are not earlier versions of this
14 notebook?

15 MS. AGARWAL: Objection. Form.

16 Scope.

17 A. I don't under -- it's like a double
18 negative. What are you asking?

19 Q. Do you have any reason to believe
20 that prior versions of this notebook do not
21 exist?

22 MS. AGARWAL: Objection. Form.

23 Scope.

24 A. As I stated, I do not know if there
25 are any other versions of this notebook.

1 Q. Okay. And if there are other
2 versions, you don't know what changes, if any,
3 were made; correct?

4 A. I don't know if there are any other
5 versions of this notebook.

6 Q. Correct. And you also don't know if
7 there are?

8 A. I don't --

9 MS. AGARWAL: Object to form. Scope.
10 Mischaracterizes testimony.

11 A. I said I don't know if there are any
12 other versions of this notebook at all.

13 Q. I understand. So I uploaded it to
14 the link, but I'll drop it into the chat here in
15 the --

16 A. Yeah.

17 THE WITNESS: Should I download it?

18 MS. AGARWAL: Yes.

19 THE WITNESS: Okay. Click it again,
20 it should download.

21 A. Okie-dokie I'm in.

22 Q. Awesome. Do you know when the
23 decision was made to conduct the solubility
24 testing that is described in the Exhibit 2081?

25 A. I do not know when the decision was

1 made to conduct the solubility testing for 2081
2 exhibit.

3 Q. Do you know who made the decision to
4 test?

5 A. I do not know who made the decision
6 to conduct the test that is in Exhibit 2081.

7 Q. Do you know who conducted the
8 testing?

9 A. Yes, I do know who conducted the
10 testing that is -- that is in Exhibit 2081.

11 Q. And who is that?

12 A. Bin Liang conducted the testing that
13 is in Exhibit 2081.

14 Q. And did anyone help Bin Liang do the
15 testing that is in Exhibit 2081?

16 A. I do not know if anyone else helped
17 Bin Liang do the testing that's in Exhibit 2081.

18 Q. Do you know if the solubility testing
19 conducted -- sorry.

20 Do you know when the solubility
21 testing in Exhibit 2081 was conducted?

22 A. The solubility testing for 2081 was
23 conducted in early March of 2026.

24 Q. So do you know if that solubility
25 testing was conducted for the purpose of this

1 proceeding?

2 A. I do not know if the solubility
3 testing was conducted for the purpose of this
4 proceeding.

5 Q. Would it -- so Exhibit 2081 was
6 created on March 4, 2026; correct?

7 MS. AGARWAL: Objection. Foundation.
8 Form.

9 A. The PDF files it appears were
10 generated on March 4, 2026, which is in page 2 at
11 the bottom.

12 Q. Yep. And can you read Chinese?

13 A. No, I cannot read Chinese.

14 Q. Okay. Would you be surprised to
15 learn that the Exhibit 2081 states that it was
16 created on March 4, 2026, at 16:16:04?

17 MS. AGARWAL: Objection. Form.
18 Speculation.

19 A. Can you show me where it says that in
20 the document because I don't see that?

21 Q. In the very, very bottom left in the
22 footer, that first line, do you see March 4,
23 2026, 16:16:04?

24 A. Yes.

25 Q. Okay. The Chinese character, the

1 translation provided states that the -- in that
2 first line it -- it means "created on."

3 MS. AGARWAL: Is there a question?

4 A. Yeah. I don't know, is there a
5 question?

6 Q. So are you surprised that this
7 document was created on March 4, 2026?

8 MS. AGARWAL: Objection. Form.
9 Speculation.

10 A. No, I stated that it was created on
11 March 4, 2026.

12 Q. Okay. You said early August -- or
13 early March before, I was just curious if you
14 were surprised it was -- it was created the day
15 before?

16 A. Oh, no, no, no, no, no. I'm sorry.
17 No, I'm not. It was created on March 4, 2026.

18 Q. Are you aware of any business reason
19 to conduct this test?

20 MS. AGARWAL: Objection. You can
21 answer that question "yes" or "no." Don't
22 divulge any privileged information.

23 A. All right. Ask it again.

24 Q. Yeah. So other than, you know, for
25 inclusion in -- in your declaration, are you

1 aware of any reason that Ascletis would have
2 conducted this testing on March 4, 2026?

3 A. No.

4 Q. In paragraph 13 of your declaration,
5 it states that GLC02-521 refers to Compound 1 in
6 the '236 patent.

7 Do you see that?

8 A. I do see that in paragraph 13.

9 Q. How do you know that?

10 A. I reviewed the notebook data with
11 Bian -- Bin, and he clarified for me that
12 GLC02-521 was Compound 1 in the '236 patent, and
13 GLC02-568 was Compound 65.

14 Q. And other than that conversation with
15 Bin Liang, is there any other reason that you
16 have to state this information?

17 A. What information?

18 Q. That GLC02-521 refers to Compound 1?

19 A. The -- the only way I know that
20 GLC02-521 refers to Compound 1 was based on my
21 conversation with Bin Liang.

22 Q. Got it. But you testified earlier
23 that your conversation with Bin Liang related to
24 the 2081 declaration occurred recently; correct?

25 A. Rephrase your question.

1 Q. That's okay.

2 A. Okay.

3 Q. Do you -- are you aware of a key that
4 Ascletis uses to track this -- this kind of
5 whether Compound 1 is GLC02-521 or Compound 65 is
6 GLC02-568?

7 A. Am I aware of this ski did you say?

8 Q. Like a key that Ascletis uses to
9 track kind of the --

10 A. No, I'm not aware of the key, I
11 guess, in which they assign numbers to compounds.
12 Is that what you're asking me? I'm not sure.

13 Q. Yeah, basically.

14 A. Yeah. No.

15 Q. And it states -- so 521 refers to
16 Compound 1 and 568 refers to Compound 65. Do you
17 have any understanding as to like, you know,
18 between 521 and 568 that it -- that is not 65, do
19 you have any understanding as to the kind of
20 formula that's used here, what these numbers
21 might mean?

22 A. No, I --

23 MS. AGARWAL: Objection. Form.
24 Speculation.

25 A. No, I don't know why numbers are

1 assigned to compounds.

2 Q. Okay.

3 A. I guess that's the best way for me to
4 answer.

5 Q. Fair. Do you know how long the
6 solubility testing that is outlined in
7 Exhibit 2081 lab notebook took?

8 MS. AGARWAL: Objection. Scope.

9 A. Other than what is actually in the
10 notebook, I do not know how long the tests
11 actually took, and I'd have to look and read them
12 they -- the key who put that in there.

13 Q. The chart at the very top of page 2
14 of 6, it says -- the first one says Appendix, do
15 you see where it says N/A?

16 A. At the top?

17 Q. The chart at top, the last line at
18 the chart at the top.

19 A. Are you talking about page 2?

20 Q. Yeah.

21 A. So it says, Solubility Test of
22 GLC02-521 and GLC02-568, and Phosphate Buffer
23 pH 11.

24 Q. Yep. And then right under that is a
25 chart.

1 A. N/A. Yes, I see N/A. Okay.

2 Q. So to the left, according to the
3 Chinese translation provided, that means
4 "participants."

5 Do you have any understanding why
6 participants would be left empty as to who --

7 MS. AGARWAL: Objection. Scope.
8 Speculation.

9 A. Yeah, I have absolutely no idea why
10 that would be left empty -- why participants
11 would be left empty.

12 Q. Are you aware of other tests that
13 were performed on GLC02-521 --

14 MS. AGARWAL: Objection.

15 Q. -- other than the solubility test?

16 MS. AGARWAL: Sorry. Objection.
17 Scope.

18 A. Okay. So I want to answer this just
19 so we're clear. So I stated in my declaration
20 that GLC02-521 refers to Compound 1 of the
21 '236 patent. So other than what's in the
22 '236 patent, I'm not aware of any other tests
23 that were done of GLC02-521 which is Compound 1.

24 Q. Okay. Other than the purported test
25 in 2081, are you aware of other tests on

1 GLC02-568?

2 MS. AGARWAL: Objection. Scope.

3 A. So as I state in my declaration,
4 GLC02-568 refers to Compound 65 in the
5 '236 patent, and I'm not aware of anything else
6 being done. I'm not aware of any other
7 preclinical data that's been generated other than
8 what is in the '236 patent.

9 Q. Got it. That's what I need. Are you
10 aware --

11 A. I want to answer you correctly.

12 Q. No worries. What was that last part?

13 A. I want to make sure I answer you
14 correctly.

15 Q. I appreciate that. Are you aware of
16 any -- you said preclinical data. Are you aware
17 of any clinical data on GLC02-568?

18 MS. AGARWAL: Objection.

19 A. Okay.

20 MS. AGARWAL: Objection. Outside the
21 scope.

22 A. So, as I stated before, I'm not
23 willing to answer questions relating to whether
24 there's preclinical da- -- clinical data on any
25 of the compounds in my declaration due to

1 confidentiality. So I'm not going to confirm or
2 deny whether there's any clinical data on any of
3 the compounds in my declaration other than what I
4 already stated for Compound 1 previously.

5 Q. Are you aware of any -- so we talked
6 about, you know, testing in Section A of your
7 declaration, testing in Section B of your
8 declaration, and now we're talking about the
9 Section C of your declaration relating to this
10 Exhibit 2081.

11 A. Yes.

12 Q. And you said that this solubility
13 test occurred in March of 2026.

14 A. Yes, I did.

15 Q. Sorry, go ahead.

16 A. Correct. Correct. Yes, I said it
17 occurred in March of 2026.

18 Q. And are you aware that the petition
19 in this case was filed in June of 2025?

20 MS. AGARWAL: Objection. Scope.

21 A. Honestly I'm not aware of the exact
22 date when the petition was filed, as I said.

23 Q. I wouldn't -- I wouldn't expect you
24 to be. Are you aware of any testing on any of
25 the compounds in your declaration that occurred

1 between June of 2025 and today other than this
2 Exhibit 2081?

3 MS. AGARWAL: Objection. Form.
4 Scope.

5 A. So, as I stated, I don't remember the
6 exact date when the -- when the information
7 that's in Section A and B was conducted other
8 than it was conducted at the same time as the
9 data that is in patent '236 in Exhibit 2 --
10 Table 2 and Table -- Table 3 because I don't have
11 dates. So I can't --

12 Q. Okay.

13 A. I don't know -- so I can't answer
14 that. That's the best way I can answer your
15 question.

16 Q. Fair. So other than the testing that
17 we have discussed today, are you aware of any
18 other tests related to the compounds that you
19 refer to in your declaration that have occurred
20 between June 2025 and today?

21 MS. AGARWAL: Objection. Scope.

22 A. Tests is very like, you know,
23 incredibly broad question. So what specific
24 tests do you want to know?

25 Q. I'm just wondering if there is any of

1 them that you're aware of?

2 MS. AGARWAL: Objection. Form.
3 Scope.

4 A. I -- I -- I need some -- I mean, I
5 can't really answer that unless you tell me what
6 you're looking -- what -- what tests you're
7 looking for. So I don't know -- like, from June
8 what?

9 Q. From June 2025.

10 A. Yeah, so --

11 Q. I'm asking what year or so?

12 A. Right. So I did disclose that in
13 paragraph --

14 MS. AGARWAL: I'm going to make the
15 same objection. Scope. Also form.

16 A. So I can't speak -- all I know is
17 that the data that I'd presented in my
18 declaration for paragraphs A and B were done at
19 the same time as Table 283. I do not know when
20 that was done.

21 Q. Okay.

22 A. I don't know when specifically that
23 was done. I don't know if it was before June or
24 not before June. It's -- the only thing that I
25 can say is that the information that is presented

1 in Section C, which would be the lab notebook of
2 2081, that was performed in March of 2026.

3 Q. Got it. And is there any test data
4 that you're aware of that was generated between
5 June 2025 and today that was not included in your
6 declaration?

7 MS. AGARWAL: Objection. That's
8 outside the scope of his declaration.

9 A. Right. So I'm not going to confirm
10 or deny that any other data was generated that is
11 not in my declaration on the basis of
12 confidentiality of -- that we discussed earlier.

13 Q. Are you aware of any data that is
14 inconsistent with any data that you have
15 submitted in your declaration?

16 MS. AGARWAL: Objection. Form.
17 Scope.

18 A. I have not seen any other da- -- so
19 let's go back. So Section A, the data in
20 paragraph 8, I don't believe -- I've not seen any
21 of the data that would be in conflict with the
22 data being presented in 8 -- paragraph 8.

23 Q. Okay.

24 A. In terms of the data in paragraph --
25 oh, I'm sorry. Okay. The data in paragraph 11,

1 I haven't seen any other data that would be
2 contradictory to that data.

3 Q. And then just to confirm, you've not
4 seen raw data that relates to hGL-1 assays or
5 clearance or observed concentrations for these
6 compounds; correct?

7 MS. AGARWAL: Objection. Form.
8 Scope.

9 A. I have not seen any of the raw data
10 that generated the information that is included
11 in paragraph 11 of my declaration. That's what
12 you asked me; right?

13 MR. TOFT: Sorry. Kim, could you
14 read back that answer?

15 THE REPORTER: Did you want me to
16 read the question to put in context?

17 (Requested portion was read.)

18 Q. (BY MR. TOFT) Not quite. But I
19 appreciate that answer.

20 Have you seen raw data of any other
21 hGLP-1R assay?

22 MS. AGARWAL: Objection. Scope.

23 A. I -- I have to look to see what
24 hGLP-1R assay is. Which assay are you referring
25 to?

1 Q. I'm just curious if you have seen raw
2 data of hGLP-1R --

3 A. When you refer to hGLC assay in my --
4 I'm trying to find where I refer to it at.

5 Q. Well, it's Section A of your dec- --
6 of your declaration.

7 A. That's hGLP data --

8 Q. Oh, I'm sorry.

9 A. -- not hGLC data.

10 Q. hGLP-1R cAMP assay's data.

11 A. Yeah, that's not what you asked me.

12 Q. I apologize.

13 A. Okay. So ask me what you want to
14 know.

15 Q. Have you reviewed Ascletis' raw data
16 related to hGLP-1R cAMP assays?

17 MS. AGARWAL: Objection. Outside the
18 scope.

19 A. I have not reviewed any raw data
20 related to hGLP-1R cAMP assays.

21 Q. Okay. And then you haven't reviewed
22 raw data created by Ascletis related to clearance
23 or observation concentration either; correct?

24 MS. AGARWAL: Objection. Outside the
25 scope.

1 A. Other than the information that's in
2 the notebook that we provide -- oh, I'm sorry,
3 that's different.

4 So the clearance and the Cmax, is
5 that what you're asking?

6 Q. Correct.

7 A. Yeah. Can you ask it again just so
8 I'm clearer, I can answer probably.

9 Q. You have not reviewed raw data
10 created by Ascleptis related to clearance and
11 Cmax; correct?

12 A. I --

13 THE WITNESS: Go ahead.

14 MS. AGARWAL: Objection. Outside the
15 scope.

16 A. I have not viewed raw data relating
17 to clearance and Cmax that is currently in my
18 declaration.

19 Q. You still have Exhibit 2081 in front
20 of you?

21 A. Yes, I do.

22 Q. Do you see where it says "Objective"
23 at the top under that chart we looked at?

24 A. Yes, I see that.

25 Q. And it says: To test the solubility

1 of these two compounds and phosphate buffer
2 pH 11.

3 Do you see that?

4 A. Yes, I do.

5 Q. Do you know why pH 11 was selected
6 for the solubility test here?

7 MS. AGARWAL: Objection. Scope.
8 Calls for expert testimony.

9 A. No, I do not know why pH 11 was
10 selected for the solubility test.

11 Q. The compounds that Ascletis has
12 disclosed in the Ascletis '236 patent are
13 administered in a human body; correct?

14 MS. AGARWAL: Objection. Outside the
15 scope. Calls for expert testimony.

16 A. So, you know, once again, you know,
17 I'm not going to confirm or deny whether any of
18 the compounds in the '236 patent have been tested
19 in humans or not.

20 Q. Well, it's -- it's a -- the compounds
21 in -- in the '236 patents are GLP-1; correct?

22 MS. AGARWAL: Objection. Scope.

23 A. I'd have to look at the patent to
24 confirm.

25 Q. Okay. And let's just short-circuit

1 that.

2 Do you know what the pH range of a
3 human body is?

4 MS. AGARWAL: Objection. Outside the
5 scope.

6 A. I do not know the pH range of a human
7 body.

8 Q. Okay. Do you know what the pH of the
9 -- a human stomach is?

10 MS. AGARWAL: Objection. Outside the
11 scope. Calls for expert testimony.

12 A. I do not know the pH of the stomach
13 in a human.

14 Q. Do you know if the solubility test
15 was conducted in any physiologically relevant pH
16 values?

17 MS. AGARWAL: Objection. Outside the
18 scope. Calls for expert testimony.

19 A. I do not know what would be
20 considered clinically relevant pH levels.

21 Q. Do you know if Ascletis tested
22 conducted a solubility test at any pH value less
23 than 11?

24 MS. AGARWAL: Objection. Outside the
25 scope. Speculation.

1 A. I do not know if solubility testing
2 was done for 02521 or 02568 in any pH other than
3 pH 11.

4 Q. And are you aware of any solubility
5 testing at all that Ascletis has conducted that
6 is of -- of compounds at pH values less than 11?

7 MS. AGARWAL: Objection. Outside the
8 scope. Speculation.

9 A. I'm not aware of any testing that has
10 been done at pH values on any compound other than
11 what's in my declaration.

12 Q. Okay. And do you know when Ascletis
13 performed solubility testing -- outside of this
14 test, when they normally perform solubility
15 testing, what pH value phosphate buffer is used?

16 MS. AGARWAL: Objection. Outside the
17 scope. Speculation.

18 A. I have absolutely no idea what pH
19 value buffer would be used to conduct solubility
20 testing at Ascletis other than what's in this lab
21 notebook 2081.

22 Q. Okay. And you have no opinion about
23 the results of this solubility testing and how
24 that they could show superiority of any compound
25 over another; correct?

1 MS. AGARWAL: Objection. Form.

2 Scope.

3 A. Just can you, you know, tighten it up
4 with that so I understand that.

5 Q. Yeah. I just want to make sure that
6 you -- you don't have certain opinions that are
7 being offered in this case. So I want to make
8 sure that you do not have an opinion that the
9 solubility testing disclosed in 2081 can evidence
10 any superiority of one compound over another?

11 MS. AGARWAL: Objection. Form.

12 Scope.

13 A. So all I'm attesting to in my
14 declaration is that this information is accurate.
15 I do not understand the implications of this --
16 this information and how it would relate to a
17 pharmaceutical product.

18 Q. Okay. And the --

19 A. That's the best way I can describe
20 it. I -- I don't know how else to describe it.

21 Q. Are you aware of any solubility data
22 of either Compound 1 or 65 in simulated gastric
23 fluid?

24 MS. AGARWAL: Objection. Scope.

25 Calls for expert testimony.

1 A. So I'm going to always preface this
2 by saying what -- other than what may be --
3 what's in the '236 patent because I haven't
4 reviewed it, so if it's not in that patent, then
5 no, no I don't know of other studies that
6 conducted the pH -- gastric pH levels, whatever
7 those would be.

8 Q. And do you know what the purity of
9 Compound 1 was during the testing in
10 Exhibit 2081?

11 MS. AGARWAL: Objection. Scope.
12 Speculation.

13 A. I don't know the purity of Compound 1
14 in the Exhibit 2081, which would be GLC02-521.

15 Q. And do you know the purity of
16 Compound 65 that was used in Exhibit 2081?

17 MS. AGARWAL: Objection. Scope.
18 Speculation.

19 A. I do not know the purity of the
20 compound GLC02-568, which refers to Compound 65
21 in Exhibit 2081.

22 Q. Do you know if either compound was
23 tested in their -- its freebase form or as a salt
24 in the solubility test?

25 MS. AGARWAL: Objection. Scope.

1 Calls for expert testimony.

2 A. I do not know if the compounds in
3 Exhibit 2081 were tested in their -- I don't
4 know -- what did you say? Freebase or salt?

5 Q. Yep.

6 A. Yeah. I don't know.

7 Q. And do you know what the polymorphic
8 form of the compound is used in the solubility
9 test was?

10 MS. AGARWAL: Objection. Scope.

11 Calls for expert testimony.

12 A. And I do not know if Exhibit 28 --
13 -081 whether or not polymorphic form was used.

14 Q. And you have no understanding as to
15 how purity salt form or polymorphic form would
16 affect solubility; correct?

17 MS. AGARWAL: Objection. Outside the
18 scope. Calls for expert testimony.

19 A. I have no idea how purity or the salt
20 form or freebase or -- would in any way affect
21 the clearance or Cmax -- I mean, the solubility
22 data that is in Exhibit 2081.

23 Q. Okay. Who is Liang Bin -- or
24 Bin Liang?

25 A. He is a scientist at Ascleptis.

1 Q. The Inc. or the China --

2 A. I'm actually not sure which one he's
3 technically employed with.

4 Q. How would you characterize your
5 relationship with Mr. Liang?

6 A. You know, I know him from reviewing
7 the information that's in this declaration pretty
8 much, and that's the extent of my interaction
9 with Bin Liang other than he is also listed on
10 the '236 patent.

11 Q. Got it. So in the normal course of
12 your responsibilities, you and Mr. Liang do not
13 interact?

14 MS. AGARWAL: Objection.
15 Mischaracterizes testimony.

16 A. Bin Liang and I do not interact on a
17 day-to-day basis.

18 Q. Okay. And would you say that you are
19 friendly with him outside of work?

20 A. Bin Liang is based in China, so I
21 don't see him outside of work.

22 Q. Okay. Have you ever met him in
23 person?

24 A. I have not met Bin Liang in person,
25 only through Zoom calls.

1 Q. Okay. Do you know what Bin Liang's
2 education is?

3 A. I do not know what Bin Liang's
4 education is.

5 Q. Do you know what his experience in
6 conducting pharmaceutical tests is?

7 MS. AGARWAL: Objection. Form.
8 Calls for speculation.

9 A. I have no idea of what experience
10 Bin Liang has or doesn't have.

11 Q. Do you -- do you know what his role
12 is at Ascletis?

13 A. I know that Bin Liang is one of our
14 scientists at Ascletis.

15 Q. Do you know what his title is?

16 A. No, actually I don't remember his
17 title, actually.

18 Q. And did Mr. Liang ever represent to
19 you that he did not want to attest to the lab
20 notebook that he created?

21 MS. AGARWAL: Objection.

22 You can answer that "yes" or "no."

23 A. Okay. Can you ask it again?

24 Q. Did Mr. Liang ever express to you
25 that he did not want to attest to the lab

1 notebook, Exhibit 2081?

2 A. No, he never said that.

3 MR. TOFT: I think I may be done or
4 just about done. Can we take a break and I'll go
5 through my notes and see what, if anything, I
6 have left and I'll come back.

7 THE WITNESS: How much time do you
8 need, Luke?

9 MR. TOFT: Give me ten minutes.

10 THE WITNESS: Okay, Luke. Thank you.

11 (Break from 1:15 pm to 1:29 pm)

12 Q. (BY MR. TOFT) So I just was also
13 curious, Mr. Gargiulo, have you had any
14 conversations with Dr. Wipf, if I'm pronouncing
15 that correctly?

16 MS. AGARWAL: Objection. Outside the
17 scope.

18 A. I've not had any conversations with
19 Dr. Wipf. Is that how you pronounce his name?

20 Q. I --

21 A. Yeah. Okay.

22 Q. Dr. Peter Wipf.

23 A. I have not had any conversations with
24 Dr. Peter Wipf.

25 Q. Okay. And are you aware of any

1 conversations between Ms. -- Dr. Wipf and
2 Mr. Liang?

3 MS. AGARWAL: Mr. -- sorry, Mr. --
4 who?

5 Q. Sorry. Liang -- Bin Liang.

6 A. I am not aware of any conversations
7 between Dr. Wipf and Bin Liang. Bin, B-i-n.

8 Q. And do you know Dr. Peter Wipf at all
9 personally?

10 A. I do not know Dr. Peter Wipf
11 personally.

12 Q. And then just to confirm, you do not
13 have -- I think we discussed this, but just make
14 sure the record is clear, you do not have any
15 opinions on the unexpected results associated
16 with the claims of the '236 patent; correct?

17 MS. AGARWAL: Objection. Scope.

18 A. I don't even know what you mean by --
19 like, I don't know what the technical definition
20 of "unexpected results" is.

21 Q. Fair. And you don't have any opinion
22 as to whether any one compound is better than any
23 other compound; correct?

24 MS. AGARWAL: Objection. Scope.

25 A. Yeah, based on the data that's in

1 this declaration or in the patent, I can't give
2 you just like any, you know, scientific reason
3 why anything is different from anything else.

4 Q. Okay. And you don't have any opinion
5 that any one compound is an improvement over the
6 prior art; correct?

7 MS. AGARWAL: Objection. Scope.

8 A. I don't even know what you mean by
9 like -- what prior -- I don't know what you mean
10 by "prior art."

11 Q. So if I -- by prior art -- let me say
12 it this way -- the -- the documents or compounds
13 that were known prior to the '236 patent being
14 filed is -- is prior art. So like orforglipron
15 is prior art because it was known already.

16 You don't have any opinion that any
17 compound disclosed in the Ascletis '236 patent is
18 an improvement over anything that was known
19 already; correct?

20 MS. AGARWAL: Objection. Scope. And
21 form.

22 A. I just -- I can't speak to that. I
23 have no idea what was known or what wasn't known
24 or -- so, no, I don't have an opinion.

25 Q. Okay. Perfect.

1 MR. TOFT: I think, based on that,
2 the rest of my questions likely stem from the
3 conversations that we'll have with the Board. So
4 let's take a roughly 75-minute break from this,
5 and, Kim, and I assume, Isha, and I'll see you in
6 about an hour.

7 MS. AGARWAL: All right.

8 THE WITNESS: Sounds good. Thank you
9 very much.

10 (Break from 1:33 pm to 2:31 pm)

11 (Telephone hearing begins at 2:31 pm)

12 MR. TOFT: My name is Luke Toft with
13 Fox Rothschild representing the petitioner in
14 this proceeding.

15 JUDGE CHANG: Is there anyone else
16 with you on the line?

17 MR. CHEN: Your Honor, my name is
18 Joe Chen also of Fox Rothschild on behalf of
19 petitioner. Thank you.

20 MR. ZHU: Judge Chen, this is Jin Zhu
21 representing the petitioner. Thank you.

22 JUDGE CHANG: Okay. Patent owner?

23 MS. AGARWAL: Thank you. Judge Chen,
24 this is Isha Agarwal from Cooley LLP on behalf of
25 the patent owner, Ascletis. Joining me on the

1 line is also Geoff Biegler also from Cooley.

2 JUDGE CHANG: Is there a court
3 reporter on the line?

4 THE REPORTER: There is. Kim McCann,
5 Texas CSR 5520.

6 JUDGE CHANG: All right. So we
7 understand that there's an issue regarding the
8 deposition of Mr. Gargiulo. I'm -- I'm not sure
9 I'm pronouncing that right.

10 Mr. Toft, since you requested a call,
11 why don't you start with explaining the position
12 on this issue?

13 MR. TOFT: Yes, your Honor. So I
14 think just a little bit of background on the
15 proceeding is helpful to kind of set the stage
16 for Mr. Gargiulo's deposition and the declaration
17 that he submitted. If I may just give you a
18 couple-of-minute background on that?

19 JUDGE CHANG: Sure.

20 MR. TOFT: So this petition it
21 challenges Claim 1 of what we call the
22 '236 patent. Claim 1 encompassed seven distinct
23 compounds, four of which are expressly challenged
24 -- Compounds 1, 19, 20 and 65 -- and three that
25 are not, Compounds 15, 18, and 21.

1 And this issue relates to a product
2 of patent owners called ASP30, which patent owner
3 has expressly put at issue in this proceeding.
4 First, patent owner argues unexpected results in
5 their patent owner response twice, in paper 26 at
6 pages 54 and 58, 65 and 68. In both arguments
7 patent owners identifies the ASC30 compounds to
8 argue that it has shown performance, superior --
9 superior properties, and appears to conflate
10 ASC30's abilities with, quote, superior potency
11 and pharmacokinetics seen in challenge to
12 Compound 19.

13 And patent owner in this patent owner
14 response admits the ASC30 compound corresponds to
15 one of the claimed compounds, but refuses to
16 identify which ones. And there are other experts
17 in the proceeding -- I'm sorry -- their expert in
18 this proceeding, Dr. Wipf, also opines on ASC30
19 when proffering opinions on expected results.

20 Okay. So that brings us to this
21 issue. And in support of this patent owner
22 response, patent owner submitted the declaration
23 of John Gargiulo. And this declaration provides
24 supported results of various testing on Compounds
25 1, 19, and 65, which are three of the challenged

1 compounds in Claim 1. And the declaration
2 provided support in its abilities two other
3 unidentified or unnamed compounds.

4 And as the basis for offering
5 testimony in a proceeding, Mr. Gargiulo states in
6 his declaration, he quotes: Often presents the
7 results of our preclinical and clinical studies
8 for our drug candidates, including ASC30, end
9 quote.

10 During the course of the deposition
11 Mr. Gargiulo testified that he knows which
12 compounds is ASC30, but that that information
13 hasn't been publicly disclosed. And so he
14 continues to say that he cannot answer questions
15 based on the basis of confidentiality. And --
16 and counsel for patent owner even took a break to
17 discuss the confidentiality question and came
18 back and stayed steadfast in that position.

19 And the reason that it's so relevant
20 here, it says, Mr. Gargiulo sends data on various
21 compounds. And without knowing whether any of
22 those compounds that he is presenting data on are
23 or are not ASC30, and if they are, which one.

24 Patent owner uses this information as
25 kind of a sword and a shield, and it also

1 prevents us from knowing even if it isn't ASC30,
2 how ASC30 is structurally similar or not to the
3 data that's being presented here. And so patent
4 owner is being allowed to use the status to say
5 hey, our claimed compounds to whatever ASC30 is,
6 is purportedly superior but you don't get any
7 information as to why.

8 And so we can't fully evaluate the
9 data the patent owner is presenting in this
10 proceeding. And, you know, for example, some of
11 the data relates to purported solubility and
12 pharmacokinetics and other data at this point,
13 and so we won't be able to inform ourselves
14 whether the data that they're presenting reports
15 or refutes arguments to counter the patent owner
16 as to the purported potency and counter the
17 efficacy and superior properties that they are
18 saying ASC30 presents in their arguments.

19 That's the basis of why we're seeking
20 this information, why we think it's within the
21 scope of the -- in both the proceeding and the
22 declaration propounded. But we have been so far
23 unable to get agreements to open up that line of
24 questioning.

25 JUDGE CHANG: Okay. This is

1 Judge Chang. So this -- so ASC30, if I
2 understand it, this is one of the claimed
3 compounds -- or their claimed compound that -- is
4 that correct?

5 MR. TOFT: I can answer for what I --
6 you know, patent owner's response, they state
7 that it is one of the seven claimed compounds,
8 but they do not identify which of the seven it
9 is.

10 JUDGE CHANG: Okay. So why don't we
11 go to patent owner.

12 What is your position on this issue?

13 MS. AGARWAL: Hi, Judge Chang. This
14 is Isha Agarwal. So our position is that
15 petitioner's line of questioning on ASC30 is
16 outside the scope of Mr. Gargiulo's declaration.
17 So this --

18 JUDGE CHANG: In what way?

19 MS. AGARWAL: Yeah. So -- so
20 Mr. Gargiulo is the chief business officer of
21 Ascletis who's the patent owner here. He
22 submitted a five-page declaration, which provides
23 preclinical data for some of the claimed
24 compounds as well as a couple of additional
25 related compounds from the '236 patent.

1 And, you know, his declaration
2 briefly mentions ASC30 in the background as part
3 of his role at Ascletis, but it does not make any
4 attempt to hide any of the preclinical data that
5 he discusses in his declaration to ASC30 in any
6 way.

7 He does not purport to provide any
8 data on ASC30 in his declaration, and so it is
9 our position that pursuant to 37 C.F.R
10 Section 42.53 that petitioner's cross-examination
11 should be limited only to the testimony that is
12 in Mr. Gargiulo's declaration, which is -- and
13 specifically regarding the data is just the
14 preclinical data for the identified compounds in
15 his declaration.

16 And instead it seems like, you know,
17 petitioner has asked Mr. Gargiulo multiple times
18 trying to get him to identify the structure of
19 ASC30, which is patent owner's clinical candidate
20 compound. Mr. Gargiulo has provided an answer
21 that he is comfortable with.

22 That information, the -- the
23 structure and identity of ASC30 has not been
24 publicly disclosed. We have publicly -- or
25 patent owner has publicly said that it is one of

1 the seven compounds disclosed in the
2 '236 patents, but otherwise has not disclosed
3 which one it is.

4 And that information is extremely
5 highly confidential. And in this case, you know,
6 petitioner is a competitor in this space and in
7 the field that previously, as we have put in our
8 previous briefings, has tried to license the
9 patent at issue from patent owner. And when
10 patent owner refused licensing, petitioner filed
11 this PGR. So now it seems like this is an
12 improper attempt to obtain some competitive or
13 sensitive information from an executive of patent
14 owner, from a chief business officer, who has
15 submitted a five-page declaration that has
16 nothing to do with ASC30 and does not, you know,
17 connect any of this data for the claimed
18 compounds to ASC30.

19 So we don't feel this question needs
20 to be -- or I apologize if I interrupted.

21 JUDGE CHANG: Oh, no. Please finish
22 your section of your argument.

23 MS. AGARWAL: That was -- that was
24 it.

25 JUDGE CHANG: Okay. I just wanted to

1 mention that Judge Murphy is now also on the
2 line. And just to summarize quickly for
3 Judge Murphy, I think the issue is that
4 Mr. Gargiulo has submitted a declaration
5 providing certain test results for compounds.

6 He mentions in paragraph, I think, 3
7 of his declaration that he presents the results
8 of studies for drug candidate including ASC30
9 which is none of the -- which patent owner has
10 said is one of the claimed compounds -- one of
11 the seven claimed compounds.

12 He has also said that he was aware of
13 what that compound is -- what ASC30 refers to,
14 but he does not -- he does not want -- or he does
15 not plan to disclose that. And petitioner has
16 asked for the structure of ASC30, and the patent
17 owner's position is that since the data provided
18 in his declaration does not relate to ASC30, that
19 that's improper in scope with respect to
20 cross-examination. So I just want to -- did I --
21 was that a correct summary of your positions?

22 MR. TOFT: Can I make one just point
23 on that?

24 JUDGE CHANG: Sure. Is this
25 petitioner? Or --

1 MR. TOFT: This is petitioner.

2 Sorry. Luke Toft for petitioner.

3 The ASC30 is raised both by a patent
4 owner and the patent owner expert in the
5 proceeding, Dr. Wipf, to argue to unexpected
6 results. And it isn't necessarily that ASC30 is
7 or is not disclosed in the Gargiulo declaration.

8 One of those compounds in essence may
9 be ASC30, but we are being stymied from
10 identifying whether or not that is if one of them
11 is, and if so, which one. And if it isn't, you
12 know, that's -- that's a different question.
13 But, you know, what the similarities in structure
14 are or differences would matter to these tests
15 and -- and to the unexpected results that are
16 being argued in these proceedings. That's our
17 position.

18 JUDGE CHANG: Well, is their answer
19 still -- have you asked the question of whether
20 ASC30 is one of the compounds tested that's
21 disclosed in the declaration?

22 MR. TOFT: Petitioner has asked that,
23 yes.

24 JUDGE CHANG: Okay.

25 MR. TOFT: And the answer was, "I

1 cannot confirm or deny due to confidentiality."

2 JUDGE CHANG: Okay. Is it patent
3 owner's position that whether or not one of the
4 compounds tested in the Gargiulo declaration,
5 whether one of those compounds is ASC30 is
6 confidential information and not the proper
7 subject of cross-examination? This is the
8 question for patent owner.

9 MS. AGARWAL: Yes. Yes, that is our
10 position. And just to respond quickly to
11 petitioner's additional point is, you know, this
12 is not an open exploratory fact deposition.
13 Petitioner's cross-examination under the Board's
14 rules are limited to -- it's limited to the
15 direct testimony that Mr. Gargiulo has given in
16 his fact declaration here.

17 And so that is -- that's what our
18 position is as well as our position is also, yes,
19 that this information is extremely confidential.

20 JUDGE CHANG: Okay.

21 MS. AGARWAL: Well, if I could just
22 add one more point. We don't think that these
23 questions should be allowed at all, but if the
24 Board does decide to consider it, we do ask that
25 the transcript of those questions and answers not

1 only be designated under the Board's default
2 protective order, but also be limited only to
3 outside attorneys' eyes only or only those who
4 have a reg number; so in-house employee or
5 individual at Conjupro see that. And with the
6 caveat that outside attorneys' eyes only would
7 also include anyone who has made an appearance in
8 this proceeding at this point.

9 JUDGE CHANG: Okay. And is that --
10 is there any concern that patent owner has that
11 would not be addressed by having a protective
12 order that has a outside-counsel-only
13 designation?

14 MS. AGARWAL: Our -- as I've
15 mentioned, our concern is that this line of
16 questioning does go extremely outside the scope
17 and the bounds of Mr. Gargiulo's declaration and
18 is very sensitive information to the patent
19 owner. So we would ask that the Board limit the
20 questioning to Mr. Gargiulo's declaration.

21 JUDGE CHANG: Is patent owner willing
22 to provide another witness that would testify to
23 the identity of ASC30, and if not, how do you
24 respond to the petitioner's position that it is
25 relevant to the unexpected results argument?

1 MS. AGARWAL: We do not at this time
2 plan to set up another witness regarding the
3 identity of ASC30. But petitioner's argument
4 goes to weight, and so if they can -- they can
5 make their arguments in response to what patent
6 owner has put in. But we maintain that the scope
7 of Mr. Gargiulo's declaration -- Mr. Gargiulo's
8 declaration does not refer to any -- is --
9 questioning on ASC30 is not within the scope of
10 Mr. Gargiulo's declaration.

11 JUDGE CHANG: A question for
12 petitioner. Other than the structure of ASC30,
13 is petitioner looking for any other information
14 about ASC30, or are we limiting it to the
15 structure? Or are you looking for other
16 information about ASC30?

17 MR. TOFT: No. I think the
18 structure, as long as we can interpret the
19 results that the patent owner has put forward and
20 whether or not any of these are -- the tests that
21 are being presented are related to the compound
22 they're saying has unexpected results. That's
23 the only thing. We're not looking for additional
24 testing or other at this time.

25 JUDGE CHANG: Okay. I think,

1 Judge Kaiser, Judge Murphy, do you have any
2 additional question before we put the parties on
3 hold for a minute?

4 JUDGE MURPHY: No. This is Judge
5 Murphy. No questions.

6 JUDGE CHANG: Okay. We'll ask the
7 parties to stay for a minute while -- while the
8 Board confers. Thank you.

9 (Break from 2:49 pm to 2:55 pm)

10 JUDGE CHANG: Okay. We're back. So
11 I think we would like to see further briefing on
12 this issue, and I do want the parties to try to
13 find a solution that, you know, both parties are
14 willing to agree to because if we do -- if we do
15 just to the patent owner, if we do rule if we do
16 find that Mr. Gargiulo should not respond to
17 these questions, you may have to put on the
18 witness again. Or he, you know, have to respond
19 in some other way if we do find that this
20 information is relevant.

21 So given that, I think we're going to
22 ask, I think, petitioner to file -- well,
23 actually, let's have patent owner file a motion
24 for protective order and just tell us what you're
25 willing to -- what you think the protective scope

1 is. And then let's say if we could have the
2 briefing by -- the motion by Monday. And we can
3 send out a briefing schedule, but I think we want
4 the briefing to be completed pretty quickly.

5 So if the motion could be completed
6 by Monday and then we'll go from there. But if
7 the parties are able to resolve the issue, you
8 know, to your satisfaction, I think that will be
9 certainly welcome.

10 Does that -- is there any questions?
11 Petitioner, you can go first.

12 MR. TOFT: I guess the only question
13 is, so if I'm understanding correctly, patent
14 owner can submit a motion for protective order,
15 and then we respond accordingly and then the
16 Board responds after that?

17 JUDGE CHANG: Yes.

18 MR. TOFT: It sounds like the Board
19 understands the urgency of it. There is a reply
20 deadline that we have coming up. And so if we're
21 going to have to wait and then reopen deposition
22 at a later date, I guess I'm just trying to be
23 mindful of those deadlines.

24 JUDGE CHANG: When is the reply due?

25 MR. TOFT: I can't remember off the

1 top of my head.

2 JUDGE CHANG: Okay.

3 MR. TOFT: So I apologize for that.
4 May 20th. So that gives us a little bit of time.
5 But I don't know Mr. Gargiulo's schedule either.

6 JUDGE CHANG: Right. Okay. I think
7 we will -- we'll definitely -- we'll send out the
8 briefing schedule and it should be completed
9 hopefully within the week. And I think as I
10 said, we want the patent owner to file a motion
11 by Monday. I guess, would -- if we do rule that
12 the information is relevant and should have been
13 provided by Mr. Gargiulo, would the petitioner be
14 satisfied with another witness or is it going to
15 be Mr. Gargiulo?

16 MR. TOFT: I'm just trying to think.

17 JUDGE CHANG: Just in terms of the
18 scheduling.

19 MR. TOFT: Yeah, I would say I'd
20 prefer it to be Mr. Gargiulo just because, you
21 know, it's his declaration, and we have some
22 concerns with some of the way the data is
23 collected. So as long as the testimony is
24 limited to, I guess, this question -- I'm just
25 trying to think of the line of questions that

1 we've had that relate to what Mr. Gargiulo has
2 kept confidential. I apologize right now without
3 being able to answer the full scope of that. My
4 initial reaction is that we prefer it to be
5 Mr. Gargiulo, but I could give that further
6 thought if that is a problem.

7 JUDGE CHANG: Okay. All right.
8 Patent owner, do you have any questions?

9 MS. AGARWAL: Just one question. How
10 many pages -- I apologize if I missed that -- but
11 how many pages for the briefing for the motion
12 for protective order would you like?

13 JUDGE CHANG: So just if you could
14 limit it to the issue, five. Does five sound --
15 seems like it should be sufficient, unless the
16 parties have any concerns about that.

17 MS. AGARWAL: That works for us. I
18 don't believe we have any other questions now.

19 JUDGE CHANG: Okay. And the Board
20 will send a schedule of the remaining. I know we
21 want the protective order by Monday, but we'll
22 send out another briefing schedule in the email.

23 MS. AGARWAL: All right. Thanks for
24 that.

25 JUDGE CHANG: Okay. If that's

1 everything, I think we can be adjourned. Thank
2 you.

3 (Hearing concluded - 3:00 pm.)

4 (Resume deposition - 3:11 pm)

5 MR. TOFT: Okay. So I'll just state
6 for the record that the parties just had a call
7 with the -- sorry. Thanks, Ty.

8 I will state for the record that the
9 parties just had a call with the Board, the PTAB
10 panel in this case, and have discussed the issue
11 of confidentiality. The Board has instructed us
12 to see if we can reach agreement, or in the
13 alternative, allow patent owner to file a motion
14 seeking the protective order in this case.

15 At this time petitioner will hold the
16 deposition open or its portion of the deposition
17 open so that it may further address the questions
18 that are at issue related to ASC30.

19 And with that caveat, I pass the
20 witness.

21 MS. AGARWAL: And if you could just
22 give us, you know, five, ten minutes to get our
23 thoughts together on redirect, we'll be back
24 shortly.

25 MR. TOFT: Oh, okay.

1 MS. AGARWAL: Thanks.

2 (Break from 3:12 pm to 3:21 pm)

3 EXAMINATION

4 BY MS. AGARWAL:

5 Q. We're back, Mr. Gargiulo. You were
6 asked earlier today about lab notebooks that
7 Ascletis keeps.

8 Do you remember that?

9 A. Yes, I do remember a series of
10 questions concerning lab notebooks, but not every
11 single one.

12 Q. And to the best of your
13 understanding, does Ascletis keep lab notebooks
14 in the ordinary course of business?

15 A. So Ascletis has a policy in which
16 they do keep lab notebooks in the ordinary course
17 of business.

18 Q. And you were also asked a number of
19 questions about the data disclosed in your
20 declaration today; correct?

21 A. Yes. I was asked a number of
22 questions about the data disclosed in my
23 declaration.

24 Q. And if we go to your declaration,
25 which is Exhibit 2080, in paragraph 8, you were

1 asked some questions about the conditions under
2 which the compounds disclosed in the chart in
3 paragraph 8 were tested under.

4 Do you remember that?

5 A. Yes, I was asked questions about the
6 conditions in which these compounds in
7 paragraph 8 were tested under.

8 Q. And you testified --

9 MR. TOFT: I see notes at the end of
10 the table. Would you just remove those. Thank
11 you.

12 THE WITNESS: Oh. Those are yours.

13 Q. (BY MS. AGARWAL) And you testified
14 that the compounds that are -- strike that.

15 You testified that the three
16 compounds that are disclosed in paragraph 8 of
17 your declaration were tested under the same
18 conditions as in Table 2 of the '236 patent; is
19 that right?

20 A. The compounds in paragraph 8 in the
21 table were tested under the same conditions as
22 the compounds in Table 2 in paragraph -- I think
23 it's, yeah, 7.

24 Q. And then counsel asked you a series
25 of questions about the specific conditions.

1 Do you remember that?

2 A. Yes, I remember some of the questions
3 that were specific condition related.

4 Q. And in response to those questions,
5 you asked to see the '236 patent; correct?

6 A. Yes, I asked a number of times to
7 review the '236 patent.

8 Q. And counsel did not show the
9 '236 patent to you today?

10 A. I did ask counsel to review the
11 '236 patent or opposing counsel, whatever.

12 Q. I'm going to share Exhibit 1001,
13 which is the '236 patent. I'm not sure if I can
14 just send it through the chat.

15 THE VIDEOGRAPHER: And are we marking
16 this as Exhibit 3?

17 MS. AGARWAL: Is that --

18 THE WITNESS: Well, you had -- there
19 was my thing and there was something for the one
20 -- the transcription was an email to her.

21 MS. AGARWAL: But that's -- yeah, we
22 can mark this as Exhibit 3, Ty.

23 (Exhibit 3 was marked.)

24 MS. AGARWAL: I'm also going to share
25 it on the screen.

1 Q. We are in column 199 to column 200 of
2 the '236 patent.

3 Do you see that?

4 A. What page was it?

5 Q. It is PDF page 103. Just let me know
6 when you get there.

7 MR. TOFT: Is this something that
8 Mr. Gargiulo could open up on his computer? I've
9 lost visual.

10 THE WITNESS: I am. I'm looking at
11 the document that was sent.

12 Q. You should be able to see a still on
13 the side of the Zoom, but I can -- if everybody
14 has the document, I'll go ahead and stop the
15 screen sharing.

16 MR. TOFT: Okay. Now, I can see.

17 THE WITNESS: Oh, you can see it now?

18 MR. TOFT: No, I can -- well, I can
19 see you.

20 THE WITNESS: Oh, okay. Okay. Okay.
21 Yeah, I haven't gotten to the page -- I'm still
22 trying to find --

23 A. What page number was it? 10 what?

24 Q. 103.

25 A. I'm almost there. I'm still trying

1 to find it. Okay. I'm on page 103.

2 Q. And do you see at the bottom there
3 where it says, The sample 2 in the trial activity
4 evaluation?

5 A. Yes, I see that.

6 Q. And then do you see right on that it
7 says, hGLP-1R cAMP assay?

8 A. Yes, I see hGLP-1R cAMP assay.

9 Q. And then it goes on to give a
10 description. Do you see that?

11 A. Yeah, it describes the conditions for
12 the test.

13 Q. And are these the conditions that you
14 refer to in paragraph 8 of your declaration?

15 A. Yeah, as I stated the conditions
16 that --

17 MR. TOFT: Objection. Leading.

18 THE WITNESS: I'm sorry, Luke. Go
19 ahead.

20 MR. TOFT: I was just preserving an
21 objection. You can answer.

22 THE WITNESS: No. Go ahead finish.

23 MS. AGARWAL: He's.

24 THE WITNESS: Oh, he already did.

25 MS. AGARWAL: He's only making an

1 objection.

2 A. Please ans- -- ask your question
3 again.

4 Q. Are these the conditions that you
5 refer to in your paragraph 8 of your declaration
6 and which you were referring to in your testimony
7 today?

8 A. Yeah, what I stated in my testimony
9 today was that the conditions that were used to
10 generate the data that is in paragraph 8 in the
11 -- in the table for these three compounds were
12 the same conditions that were used to generate
13 the data in Table 2. And the explanation here in
14 example 2 of this section gives the conditions
15 that were used for this study.

16 Q. And if you turn to paragraph 9 in
17 your declaration.

18 A. Yes.

19 Q. And regards to paragraphs 9 and 10 of
20 your declaration actually, you were asked a
21 series of questions about the testing conditions
22 in -- disclosed in the '236 patent for this
23 example as well; correct?

24 A. I'm assuming, yes. I don't remember
25 all the detail to the questions.

1 Q. If you look to paragraph 11, that's
2 where you disclosed additional PK data; right?

3 A. Yes.

4 Q. And you were asked a series of
5 questions today about the conditions around which
6 this PK data was generated; correct?

7 A. I'm sorry, but I don't remember. I'd
8 have to look at the transcript to remember
9 specifically if those questions were asked
10 relative to this data. I remember being asked
11 significantly about it to the other data, but I
12 don't remember if they asked that question for
13 this data, unfortunately.

14 Q. Okay.

15 MS. AGARWAL: No further questions.

16 FURTHER EXAMINATION

17 BY MR. TOFT:

18 Q. Mr. Gargiulo, I guess my first, your
19 basis for stating that the conditions aligned in
20 the patent on page 103 of the Ascleptis
21 '236 patent are the same conditions that were
22 used for the testing done that resulted in your
23 paragraph 8, the only basis you have for saying
24 that they're the same is a conversation that you
25 had with a Mr. Bin Liang; correct?

1 A. Bin Liang communicated to me that the
2 conditions that were used for the compounds in
3 paragraph 8 were the same as the conditions used
4 for the compounds in Table 2, paragraph 7.

5 Q. And he didn't provide details of what
6 any specific condition was; correct?

7 A. Bin Liang did not provide me with
8 specific details of what the conditions were,
9 only that the conditions were the same.

10 Q. So if we look at page 103 of the
11 '236 patent and the -- there is an error, you
12 wouldn't know if this is the conditions that were
13 used for the experiments run with regards to
14 paragraph 8 of your declaration?

15 MS. AGARWAL: Objection.
16 Speculation.

17 A. Yeah, I can't speak to whether the
18 information -- I'm not attesting to whether the
19 information to what the patent finding is. I
20 have no idea.

21 Q. Right. So you don't know if there's
22 an error here or not?

23 MS. AGARWAL: Objection.
24 Speculation. Scope.

25 A. I do not know. I cannot answer your

1 question. I do not know.

2 Q. Okay. And given the conditions, are
3 you aware of whether or not the structures that
4 are identified in paragraph 8 of your chart,
5 whether they were synthesized in salt or
6 freeform?

7 MS. AGARWAL: Objection. Scope.
8 Outside the scope of my direct. Also asked and
9 answered.

10 A. You asked salt and freeform, is that
11 what you asked?

12 Q. Uh-huh.

13 A. No, I don't know if those compounds
14 are salt or freeform.

15 Q. Okay. So even with reviewing the
16 '236 patent, you can't -- you are uncertain as to
17 whether or not the structures that were provided
18 in paragraph 8 or the form of those compounds
19 were for the evaluation; correct?

20 MS. AGARWAL: Objection. Scope.
21 Mischaracterizes the testimony.

22 A. Can you repeat your question?

23 Q. Yes. Your counsel directed you to
24 paragraph 103 of the '236 patent; correct?

25 A. That is correct.

1 MS. AGARWAL: Objection.

2 Mischaracterizes testimony.

3 Q. You testified you weren't able to
4 provide information under the conditions which
5 the evaluations took place unless you looked at
6 the '236 patent; correct?

7 A. I said that the conditions that were
8 used for the data -- the data in paragraph 8 were
9 the same as the conditions that were used in the
10 '236 patent. That's what I said.

11 Q. Okay. But now looking at the
12 '236 patent, you cannot tell me one way or the
13 other whether or not the second compound in
14 paragraph 8 was evaluated in its salt form or
15 freeform base; correct?

16 MS. AGARWAL: Objection. Scope.
17 Outside the scope of my direct. Form.

18 A. The conditions stated did not
19 identify -- I do not see anything that identifies
20 whether they -- anything salt or freeform.

21 Q. Okay. And same question for last
22 compound in the table here at paragraph 8, you're
23 not aware one way or the other of whether it is
24 -- was evaluated in its salt or freeform base?

25 MS. AGARWAL: Objection. Scope.

1 Outside the scope of my direct. And form.

2 A. No, I'm not aware of whether it was
3 salt or freeform.

4 MR. TOFT: Okay. No further
5 questions.

6 MS. AGARWAL: I don't have anything
7 further.

8 MR. TOFT: Mr. Gargiulo, you are free
9 to go. We will keep this deposition open pending
10 the Board's resolution of our dispute unless we
11 can reach agreement. But hopefully we can reach
12 agreement, and we do not have to call you back.

13 (Time noted - 3:37 pm.)

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1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3

4 I, Kim A. McCann, Certified Shorthand
5 Reporter in and for the State of Texas do
6 hereby certify:

7

8 That JOHN GARGIULO, the witness whose
9 deposition is hereinbefore set forth, was
10 duly sworn by me before the commencement of
11 such deposition and that such deposition was
12 taken before me and is a true record of the
13 testimony given by such witness.

14

15 I further certify that the adverse party,
16 ASCLETIS PHARMA CHINA CO., LTD., was
17 represented by counsel at the deposition.

18

19 I further certify that the deposition of
20 JOHN GARGIULO, occurred remotely on Thursday,
21 April 30, 2026, commencing at 9:02 a.m. to
22 3:37 p.m.

23

24 I further certify that I am not related
25 to any of the parties to this action by blood

1 or marriage, I am not employed by or an
2 attorney to any of the parties to this action,
3 and that I am in no way interested, financially
4 or otherwise, in the outcome of this matter.

5
6 IN WITNESS WHEREOF, I have hereunto set my
7 hand this 4th day of May, 2026.

8
9
10
11 
12

13 Kim A. McCann, CSR No. 5520

14 Expiration 10/31/2027

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Transcript of John Gargiulo
Conducted on April 30, 2026

222

A			
abilities	172:8, 181:22,	achieved	administration
192:10, 193:2	187:4, 190:6,	34:3	48:25
ability	202:14, 202:16,	acquire	admits
8:5, 8:8	206:16, 208:6,	40:20	192:14
able	208:19, 208:22,	act	adopt
77:6, 77:9,	209:1, 209:5,	34:24, 35:1	111:2
125:25, 132:9,	209:25, 213:21,	action	advance
146:1, 146:7,	214:5, 214:11	219:25, 220:2	47:17, 47:18
148:8, 194:13,	above	activity	adverse
204:7, 206:3,	79:1	49:13, 49:19,	219:15
211:12, 217:3	above-superior	212:3	advice
about	65:24	actual	39:14, 104:1
5:19, 14:22,	absolutely	110:15	aeo
15:17, 17:6,	9:11, 45:16,	actually	56:22
17:9, 17:11,	132:23, 147:25,	16:23, 22:6,	affect
17:13, 17:14,	148:21, 170:9,	32:6, 82:13,	116:12, 118:1,
18:1, 19:15,	181:18	84:15, 85:18,	184:16, 184:20
20:11, 21:15,	absorbed	99:2, 99:23,	affiliated
21:21, 23:17,	134:5	109:16, 111:25,	27:9
25:1, 26:2,	accelerate	122:3, 132:13,	after
26:10, 26:11,	146:12	153:9, 169:9,	23:7, 66:5,
31:22, 42:12,	access	169:11, 185:2,	84:6, 84:8,
45:12, 46:12,	30:12, 30:15,	186:16, 186:17,	124:21, 126:21,
51:10, 53:1,	30:18, 30:21,	203:23, 213:20	133:6, 154:11,
54:15, 57:1,	121:5, 158:15,	add	204:16
58:15, 58:20,	158:18	78:14, 200:22	again
66:16, 69:5,	according	addition	13:20, 38:25,
69:7, 69:12,	170:2	33:2, 62:5,	55:14, 72:7,
71:15, 71:24,	accordingly	99:19, 118:8	76:8, 101:24,
77:25, 84:11,	204:15	additional	104:5, 106:12,
89:13, 89:14,	account	15:19, 52:2,	107:11, 108:7,
89:15, 96:12,	19:25, 38:12,	52:10, 54:5,	116:16, 125:12,
101:16, 104:12,	100:20, 101:3,	54:12, 62:19,	143:15, 144:11,
124:4, 124:7,	102:22, 103:22,	100:5, 104:19,	153:25, 158:10,
124:9, 125:4,	119:6, 122:4,	116:11, 132:7,	163:19, 166:23,
128:25, 129:2,	124:13	195:24, 200:11,	178:7, 179:16,
129:3, 130:2,	accuracy	202:23, 203:2,	186:23, 203:18,
130:3, 133:1,	85:14, 85:21,	214:2	213:3
133:3, 134:6,	156:2, 156:9,	address	against
134:11, 137:14,	156:13	83:19, 124:5,	100:12
137:15, 137:18,	accurate	207:17	ages
139:6, 140:16,	27:10, 144:9,	addressed	24:20
140:22, 141:1,	145:15, 147:18,	58:18, 70:13,	ago
142:11, 149:16,	156:16, 157:1,	82:24, 201:11	5:25, 16:22,
160:6, 160:9,	182:14	adjourned	24:20
169:19, 172:6,	accurately	207:1	agonist
	109:21	administered	1:14, 96:2
	achieve	179:13	agree
	33:7, 33:24		96:12, 109:17,

Transcript of John Gargiulo
Conducted on April 30, 2026

223

147:8, 203:14 agreement 207:12, 218:11, 218:12 agreements 194:23 ahead 50:10, 50:11, 76:12, 172:15, 178:13, 211:14, 212:19, 212:22 alcohol 8:1, 8:3 aligned 214:19 all 23:8, 23:10, 23:12, 29:6, 29:7, 30:20, 43:2, 45:2, 65:16, 67:10, 69:9, 69:14, 70:13, 70:15, 79:2, 79:3, 79:5, 79:20, 79:23, 80:5, 81:9, 85:18, 87:10, 89:16, 98:5, 100:3, 107:6, 113:6, 113:15, 117:13, 118:5, 147:3, 147:5, 152:25, 155:11, 163:12, 166:23, 174:16, 181:5, 182:13, 188:8, 190:7, 191:6, 200:23, 206:7, 206:23, 213:25 allotment 37:11, 37:13 allow 72:4, 129:14, 130:1, 130:22, 131:11, 131:22, 131:25, 132:6, 147:22, 148:2,	148:14, 148:16, 207:13 allowed 66:15, 66:18, 67:13, 125:15, 131:21, 155:3, 194:4, 200:23 alluded 140:12 almost 211:25 already 33:9, 61:12, 83:14, 172:4, 189:15, 189:19, 212:24 also 4:12, 8:24, 16:13, 26:5, 35:13, 38:15, 41:2, 41:18, 42:5, 55:7, 62:20, 75:25, 76:5, 93:20, 95:14, 104:9, 104:16, 122:8, 135:20, 137:13, 147:14, 163:6, 174:15, 185:9, 187:12, 190:18, 191:1, 192:18, 193:25, 198:1, 198:12, 200:18, 201:2, 201:7, 208:18, 210:24, 216:8 alternative 207:13 always 46:24, 183:1 amount 14:14, 31:13, 31:15 analogy 146:10 analysis 47:21, 48:5, 48:8, 50:15,	98:17, 150:5, 154:1, 154:4, 154:8 analysts 26:4, 26:22 analyze 28:3, 28:5, 48:9, 50:2 animal 134:5 annual 35:19, 37:6, 37:11, 37:13 another 17:17, 31:8, 90:17, 107:24, 108:4, 133:8, 146:8, 181:25, 182:10, 201:22, 202:2, 205:14, 206:22 ans 213:2 answered 32:12, 54:19, 54:20, 55:5, 55:10, 55:17, 76:7, 76:9, 77:19, 83:14, 88:12, 91:16, 106:23, 112:24, 129:23, 130:12, 145:18, 147:14, 216:9 answering 20:4, 35:20, 56:3, 74:22, 103:24, 125:7 answers 56:24, 68:6, 68:8, 68:13, 75:13, 131:16, 132:10, 145:10, 200:25 antennas 116:24, 117:5, 117:7 anybody 12:9	anyone 14:2, 14:9, 19:15, 148:14, 148:16, 159:20, 164:14, 164:16, 190:15, 201:7 anything 6:10, 7:25, 8:18, 9:7, 11:23, 12:3, 13:6, 15:25, 16:15, 26:16, 64:7, 64:11, 68:3, 69:5, 84:16, 85:20, 87:24, 97:8, 116:1, 146:9, 148:13, 150:2, 156:17, 160:8, 171:5, 187:5, 189:3, 189:18, 217:19, 217:20, 218:6 anywhere 66:9, 70:7, 90:10 apologize 4:25, 7:24, 33:16, 127:11, 177:12, 197:20, 205:3, 206:2, 206:10 appeal 1:3 appearance 201:7 appearances 3:3, 4:3 appears 165:9, 192:9 appendix 169:14 application 22:14 applications 8:15, 27:12, 27:18, 27:21, 28:21, 28:24
--	---	---	--

appreciate 13:12, 74:17, 76:20, 171:15, 176:19 approximately 31:3 april 1:18, 219:21 argue 49:1, 192:8, 199:5 argued 199:16 argues 192:4 argument 58:12, 197:22, 201:25, 202:3 arguments 65:12, 67:10, 67:15, 67:24, 68:9, 71:9, 192:6, 194:15, 194:18, 202:5 around 22:8, 36:5, 134:23, 134:24, 214:5 art 11:17, 189:6, 189:10, 189:11, 189:14, 189:15 articles 28:16, 28:19 arts 24:10, 24:12, 49:1 asc's 65:22, 69:5, 192:10 ascertaining 49:13, 49:19 ascl 9:23 aside 90:8 asked 7:13, 21:23,	32:12, 54:18, 55:4, 55:9, 57:12, 88:12, 91:15, 101:11, 101:18, 102:19, 103:13, 106:23, 110:21, 112:23, 123:11, 125:25, 130:12, 132:24, 138:5, 147:14, 154:11, 176:12, 177:11, 196:17, 198:16, 199:19, 199:22, 208:6, 208:18, 208:21, 209:1, 209:5, 209:24, 210:5, 210:6, 213:20, 214:4, 214:9, 214:10, 214:12, 216:8, 216:10, 216:11 asking 6:18, 12:5, 13:20, 32:16, 38:6, 38:8, 46:2, 59:20, 64:19, 74:21, 81:5, 98:16, 99:23, 100:23, 101:16, 101:17, 101:25, 102:24, 103:3, 103:13, 103:15, 103:16, 110:1, 116:1, 116:2, 124:25, 128:21, 128:23, 128:25, 129:2, 129:3, 129:6, 130:2, 130:3, 132:5, 145:20, 149:15, 149:18, 162:18, 168:12, 174:11, 178:5 asp 192:2 aspect 37:6	assay 61:1, 61:4, 61:6, 61:8, 61:10, 90:24, 92:3, 92:5, 92:12, 92:14, 93:2, 93:3, 93:5, 93:13, 93:18, 93:20, 96:3, 99:21, 105:25, 106:18, 106:21, 108:11, 108:13, 109:4, 119:19, 176:21, 176:24, 177:3, 212:7, 212:8 assay's 177:10 assays 92:16, 92:19, 92:21, 94:13, 94:16, 95:15, 96:10, 96:20, 96:21, 97:16, 97:18, 98:2, 98:4, 98:24, 98:25, 99:5, 99:6, 99:8, 99:10, 107:3, 114:18, 114:24, 118:10, 120:14, 176:4, 177:16, 177:20 assert 126:12 assertion 147:1 assess 47:2 assessed 98:10 assign 168:11 assigned 169:1 assisted 37:16, 37:18 associated 188:15	assume 6:24, 7:2, 190:5 assuming 106:11, 213:24 assumption 115:8, 147:19 attached 117:22 attachment 12:18, 12:19 attempt 4:24, 196:4, 197:12 attest 186:19, 186:25 attesting 144:8, 147:17, 182:13, 215:18 attorney 12:6, 21:1, 38:4, 39:11, 51:15, 103:17, 123:25, 124:7, 220:2 attorney's 39:13 attorney-client 19:19, 19:25, 20:3, 22:1, 38:4, 38:13, 38:23, 100:21, 101:3, 101:6, 101:10, 101:15, 101:22, 102:23, 102:25, 103:23, 104:5, 119:7, 122:5, 124:13 attorneys 13:20, 13:22, 13:24, 14:5, 19:6, 19:21, 20:10, 21:10, 23:21, 38:7, 38:14, 103:10, 103:14, 126:3, 201:3, 201:6 auc 149:17, 151:12
---	--	---	--

Transcript of John Gargiulo
Conducted on April 30, 2026

225

audit 161:17, 161:19, 161:23, 162:1 august 166:12 authorization 78:21 authorize 78:13 authorized 78:19 available 131:21 avenue 2:34 average 146:13 averages 113:24 award 33:4, 33:5, 33:18, 33:23 awards 31:1, 33:8, 33:10, 33:12, 33:14, 34:3 aware 21:11, 21:14, 22:4, 29:13, 29:16, 63:10, 63:18, 63:24, 64:12, 64:25, 65:14, 65:21, 81:10, 82:12, 84:19, 115:9, 115:18, 119:25, 120:8, 120:12, 120:13, 129:17, 131:24, 132:16, 133:9, 133:14, 135:15, 143:1, 143:7, 143:16, 143:20, 149:5, 149:12, 149:16, 149:20, 150:2, 152:22, 153:3, 153:6, 153:11, 153:15, 153:18,	154:2, 154:5, 154:9, 157:25, 158:5, 160:21, 166:18, 167:1, 168:3, 168:7, 168:10, 170:12, 170:22, 170:25, 171:5, 171:6, 171:10, 171:15, 171:16, 172:5, 172:18, 172:21, 172:24, 173:17, 174:1, 175:4, 175:13, 181:4, 181:9, 182:21, 187:25, 188:6, 198:12, 216:3, 217:23, 218:2 awareness 64:19, 65:20, 116:2 awesome 163:22 awhile 16:22 B b-i-n 188:7 ba 82:4 bachelor 24:10, 24:12, 48:25 back 24:7, 57:4, 104:14, 121:17, 123:20, 132:13, 159:2, 175:19, 176:14, 187:6, 193:18, 203:10, 207:23, 208:5, 218:12 background 145:8, 145:24, 191:14, 191:18, 196:2 bad 89:10	base 36:8, 36:9, 36:20, 37:5, 217:15, 217:24 based 34:4, 57:16, 59:17, 76:16, 80:17, 101:14, 118:6, 125:8, 125:10, 125:16, 125:18, 126:1, 131:17, 145:24, 148:17, 154:23, 154:25, 155:19, 155:24, 167:20, 185:20, 188:25, 190:1, 193:15 basically 134:6, 168:13 basis 5:6, 12:2, 32:17, 32:19, 32:23, 75:25, 76:23, 85:12, 126:10, 133:23, 135:1, 147:8, 156:1, 175:11, 185:17, 193:4, 193:15, 194:19, 214:19, 214:23 bc 24:18 because 7:5, 20:14, 23:11, 31:5, 35:17, 45:9, 55:1, 55:22, 58:21, 75:25, 76:14, 80:16, 83:5, 99:10, 107:14, 110:3, 111:11, 114:3, 125:20, 128:21, 130:15, 145:19, 147:11, 165:20, 173:10, 183:3, 189:15, 203:14, 205:20	been 4:14, 5:1, 18:20, 22:7, 24:22, 51:6, 51:9, 74:18, 77:17, 100:14, 101:11, 101:18, 102:14, 113:19, 115:6, 120:2, 129:13, 141:21, 141:24, 142:1, 142:3, 142:10, 160:3, 171:7, 179:18, 181:10, 193:13, 194:22, 196:23, 205:12 before 1:3, 5:2, 16:23, 23:6, 37:17, 37:20, 38:1, 39:3, 77:14, 78:23, 101:12, 101:19, 102:3, 102:8, 102:17, 109:21, 112:12, 112:18, 112:25, 114:15, 115:6, 126:2, 158:12, 158:22, 160:1, 166:13, 166:15, 171:22, 174:23, 174:24, 203:2, 219:10, 219:12 beforehand 124:20 beginning 81:2 begins 190:11 behalf 2:2, 2:25, 4:10, 190:18, 190:24 behind 71:7 being 65:15, 77:9,
--	--	---	---

Transcript of John Gargiulo
Conducted on April 30, 2026

226

102:19, 103:19, 114:20, 119:9, 119:12, 119:15, 119:17, 134:5, 155:2, 160:9, 171:6, 175:22, 182:7, 189:13, 194:3, 194:4, 199:9, 199:16, 202:21, 206:3, 214:10 belief 79:5, 79:12, 79:19, 79:22, 80:5, 80:10, 80:17, 83:10 believe 46:14, 61:24, 62:1, 84:9, 85:7, 124:16, 144:3, 157:8, 160:16, 161:3, 161:24, 162:12, 162:19, 175:20, 206:18 believed 79:4, 79:6, 80:6, 83:10, 83:12 below 117:2, 117:7, 117:20 benchmark 33:20 besides 77:21, 78:6 best 6:22, 33:25, 46:23, 148:15, 169:3, 173:14, 182:19, 208:12 better 113:7, 146:22, 147:2, 147:3, 188:22 between 20:20, 21:12, 50:12, 115:19,	148:16, 151:4, 158:16, 168:18, 173:1, 173:20, 175:4, 188:1, 188:7 bian 167:11 biegler 2:26, 4:12, 14:1, 191:1 bin 14:8, 14:19, 14:21, 14:22, 15:21, 19:15, 94:16, 94:20, 95:4, 95:5, 95:10, 97:3, 97:7, 97:15, 98:10, 98:14, 98:22, 100:14, 100:15, 100:17, 100:18, 100:25, 106:13, 108:24, 119:8, 119:11, 122:15, 134:20, 135:3, 135:18, 136:1, 136:4, 137:3, 137:8, 137:20, 156:24, 159:19, 160:4, 160:5, 164:12, 164:14, 164:17, 167:11, 167:15, 167:21, 167:23, 184:23, 184:24, 185:9, 185:16, 185:20, 185:24, 186:1, 186:3, 186:10, 186:13, 188:5, 188:7, 214:25, 215:1, 215:7 biological 49:13, 49:19 biology 48:20, 48:22 biotherapeutics 1:5, 2:2, 4:5	bit 24:7, 41:5, 131:14, 137:13, 191:14, 205:4 block 160:16 blood 219:25 board 1:3, 2:39, 3:8, 34:20, 34:22, 60:4, 71:16, 71:18, 190:3, 200:24, 201:19, 203:8, 204:16, 204:18, 206:19, 207:9, 207:11 board's 200:13, 201:1, 218:10 body 66:5, 179:13, 180:3, 180:7 bonus 36:12, 36:13, 37:3, 37:6 bonuses 36:10, 36:20, 36:24, 37:2 born 24:23 boston 24:8, 24:9, 24:15, 24:17, 24:20, 82:5 both 58:16, 104:6, 106:15, 117:20, 145:3, 192:6, 194:21, 199:3, 203:13 bottom 73:10, 117:15, 165:11, 165:21, 212:2 bounds 66:25, 71:23, 72:3, 201:17	brag 24:24 breach 154:19 break 9:8, 9:10, 9:11, 9:14, 13:5, 13:12, 51:11, 51:12, 51:13, 51:15, 54:25, 56:17, 56:24, 57:6, 57:7, 99:24, 107:17, 107:18, 107:20, 107:25, 122:23, 123:4, 123:14, 123:23, 123:25, 124:3, 124:5, 124:8, 125:3, 144:21, 144:22, 158:22, 159:3, 187:4, 187:11, 190:4, 190:10, 193:16, 203:9, 208:2 breaking 123:11 breaks 9:3, 9:5, 124:18, 124:21 brian 2:42 briefing 18:19, 18:21, 203:11, 204:2, 204:3, 204:4, 205:8, 206:11, 206:22 briefings 197:8 briefly 23:5, 196:2 bringing 131:14 brings 192:20 broad 12:1, 15:16,
--	---	---	--

Transcript of John Gargiulo
Conducted on April 30, 2026

227

26:19, 43:21, 44:24, 45:10, 64:22, 173:23 buffer 169:22, 179:1, 181:15, 181:19 building 2:21 bunch 155:6 business 5:10, 5:12, 10:24, 23:1, 25:9, 25:17, 25:18, 25:24, 26:1, 34:5, 34:7, 48:25, 81:13, 81:16, 82:3, 120:25, 158:8, 166:18, 195:20, 197:14, 208:14, 208:17 busy 9:4	115:24, 116:7, 116:14, 117:12, 118:4, 134:2, 144:7, 144:20, 145:6, 146:5, 146:24, 147:13, 148:5, 148:20, 179:8, 179:15, 180:11, 180:18, 182:25, 184:1, 184:11, 184:18, 185:25, 186:8 came 42:15, 137:2, 193:17 camp 61:8, 61:10, 90:23, 90:24, 92:3, 92:5, 92:12, 92:13, 92:16, 93:18, 96:2, 118:10, 177:10, 177:16, 177:20, 212:7, 212:8 can't 5:25, 22:11, 23:4, 23:25, 34:6, 34:8, 50:4, 56:1, 56:10, 64:23, 65:9, 71:8, 74:6, 74:14, 75:5, 75:24, 77:15, 80:25, 121:15, 122:17, 124:14, 130:18, 130:21, 130:25, 131:3, 131:7, 131:18, 146:21, 147:9, 147:15, 148:8, 154:14, 173:11, 173:13, 174:5, 174:16, 189:1, 189:22, 194:8, 204:25, 215:17, 216:16 cancer 42:16	candidate 196:19, 198:8 candidates 62:7, 81:25, 193:8 cannot 7:22, 29:6, 55:18, 55:20, 56:2, 57:14, 59:16, 59:25, 72:10, 72:15, 73:1, 73:7, 73:14, 73:19, 73:21, 74:3, 74:12, 75:9, 76:14, 78:1, 101:5, 101:9, 165:13, 193:14, 200:1, 215:25, 217:12 car 146:12, 146:14, 146:15, 146:18 care 37:8, 42:16 carnegie 2:12 cars 146:11, 146:12 case 1:11, 4:2, 5:14, 5:20, 11:15, 37:15, 39:3, 172:19, 182:7, 197:5, 207:10, 207:14 caution 19:1, 78:15, 96:7, 121:11 cautious 122:10 caveat 105:10, 105:12, 201:6, 207:19 cbo 26:23, 27:2, 27:17, 27:22, 27:23, 28:1,	28:2, 28:4, 28:6, 28:10, 28:17, 28:20, 28:23, 28:25, 29:2 center 2:12, 2:19, 2:28 ceo 44:8 certain 31:13, 31:15, 33:7, 33:19, 33:24, 82:10, 83:2, 128:3, 128:14, 182:6, 198:5 certainly 204:9 certificate 3:11 certified 219:4 certify 219:6, 219:15, 219:19, 219:24 cetera 67:7 challenge 192:11 challenged 191:23, 192:25 challenges 191:21 chang 2:40, 190:15, 190:22, 191:2, 191:6, 191:19, 194:25, 195:1, 195:10, 195:13, 195:18, 197:21, 197:25, 198:24, 199:18, 199:24, 200:2, 200:20, 201:9, 201:21, 202:11, 202:25, 203:6, 203:10, 204:17, 204:24,
C			
calculate 32:7 calculation 31:5 calibration 86:25, 87:4 california 2:29 call 9:7, 30:25, 31:11, 90:24, 96:16, 159:11, 159:13, 159:14, 191:10, 191:21, 207:6, 207:9, 218:12 called 33:4, 50:5, 50:6, 192:2 calls 113:5, 113:11, 113:18, 115:14,			

Transcript of John Gargiulo
Conducted on April 30, 2026

228

205:2, 205:6, 205:17, 206:7, 206:13, 206:19, 206:25 change 57:13, 117:9, 118:1 changed 61:24, 62:2, 126:5 changes 163:2 character 165:25 characteristics 82:9, 82:17, 83:2 characterization 75:3 characterize 185:4 characterizing 70:11 chart 73:10, 92:22, 96:3, 99:1, 105:15, 105:23, 108:9, 108:15, 109:4, 109:13, 109:14, 118:9, 118:15, 120:11, 121:5, 169:13, 169:17, 169:18, 169:25, 178:23, 209:2, 216:4 charts 114:19 chat 163:14, 210:14 check 9:4, 9:6, 100:11 chemical 49:4, 49:7, 49:9, 49:11 chemicals 130:8 chemist 115:15	chemistry 48:17, 48:19 chen 2:17, 4:7, 190:17, 190:18, 190:20, 190:23 chief 23:1, 25:16, 25:18, 25:24, 25:25, 42:6, 42:8, 81:13, 195:20, 197:14 china 1:8, 2:25, 10:2, 10:13, 81:12, 91:21, 185:1, 185:20, 219:16 chinese 165:12, 165:13, 165:25, 170:3 choose 76:17, 114:7 chooses 103:12 christopher 2:41 chromium 161:2, 161:11, 161:16 cite 24:3, 24:6 cited 60:8 civil 5:8, 5:9 cl_f 140:17, 143:2, 149:4 claim 88:9, 88:15, 191:21, 191:22, 193:1 claimed 82:10, 83:22, 90:21, 133:4, 192:15, 194:5, 195:2, 195:3,	195:7, 195:23, 197:17, 198:10, 198:11 claims 69:22, 70:3, 188:16 clarification 7:2, 7:5, 7:7, 7:9, 7:11, 7:12, 10:3, 10:18 clarified 167:11 clarify 6:21, 34:16 clarus 42:6, 42:9, 42:18, 42:19, 43:5 clean 13:8 clear 6:11, 11:4, 11:14, 54:15, 77:17, 104:8, 140:15, 141:10, 170:19, 188:14 clearance 134:9, 134:12, 135:6, 135:9, 135:13, 135:16, 138:12, 138:19, 138:23, 138:25, 139:5, 139:10, 139:11, 139:12, 140:16, 140:18, 140:21, 140:25, 141:4, 141:8, 141:12, 143:2, 143:9, 143:17, 143:21, 144:5, 144:17, 145:2, 145:25, 146:8, 146:20, 147:23, 148:18, 149:4, 151:10, 176:5, 177:22, 178:4, 178:10, 178:17, 184:21	clearer 178:8 clearly 66:25 click 163:19 client 41:17 clinical 41:2, 41:5, 41:7, 41:9, 41:14, 41:20, 41:23, 42:20, 46:9, 46:15, 46:18, 47:1, 47:11, 47:15, 62:6, 64:14, 65:3, 65:23, 81:24, 94:24, 153:6, 153:10, 153:16, 154:8, 154:12, 154:18, 155:23, 171:17, 171:24, 172:2, 193:7, 196:19 clinically 45:22, 145:17, 180:20 close 71:19 closing 32:14 cmax 134:12, 135:10, 135:16, 140:5, 140:7, 140:12, 141:14, 141:15, 142:6, 142:10, 142:14, 142:19, 142:23, 143:3, 146:8, 149:5, 151:10, 178:4, 178:11, 178:17, 184:21 cmin 140:9 co-patent 85:4
---	--	---	---

Transcript of John Gargiulo
Conducted on April 30, 2026

229

colleagues 4:7 collected 90:20, 137:14, 137:16, 205:23 college 24:8, 24:9, 24:17, 24:20, 82:5 colon 42:15 column 211:1 com 138:19 come 51:4, 187:6 comfortable 35:20, 196:21 coming 117:17, 204:20 commencement 219:10 commencing 219:21 commercial 44:1, 44:3, 44:4, 44:7, 46:24, 47:1, 47:22 commercially 45:21 committee 47:15, 47:16 common 29:19 communicate 15:25 communicated 15:23, 137:22, 215:1 communication 12:6, 38:21, 100:23 communications 38:7, 101:22, 102:25, 103:10, 121:18, 125:19,	126:13 comp 36:8, 36:9, 36:20 companies 36:23, 40:10, 40:17, 40:20, 40:23, 41:11 company 10:7, 10:9, 10:10, 10:16, 26:18, 34:21, 34:23, 34:25, 35:2, 35:7, 35:9, 35:11, 39:20, 43:18, 81:12 company's 10:20, 81:20 comparator 82:11 compare 83:23, 90:22, 114:8, 126:20, 127:14, 127:16, 144:3, 147:9, 147:23, 148:2, 149:21 compared 132:18, 133:5 comparing 133:24, 144:23 comparison 119:3, 130:10, 133:11, 147:6, 148:16 compensation 35:19, 37:7, 37:11, 37:14 competitive 197:12 competitor 197:6 competitors 28:22, 28:24 completed 204:4, 204:5, 205:8	completely 145:8 completing 34:5 computer 211:8 concentration 135:6, 135:10, 135:13, 138:19, 138:25, 139:12, 139:14, 139:15, 139:21, 139:22, 139:25, 140:6, 140:13, 141:14, 143:3, 143:8, 143:9, 143:18, 143:22, 144:5, 144:17, 145:3, 145:25, 146:20, 147:24, 148:18, 149:5, 177:23 concentrations 134:10, 138:12, 176:5 concern 55:15, 56:22, 58:18, 71:20, 71:22, 75:15, 201:10, 201:15 concerning 81:20, 208:10 concerns 125:21, 205:22, 206:16 concluded 207:3 condition 210:3, 215:6 conditions 96:21, 96:25, 97:4, 97:6, 97:10, 97:14, 98:7, 98:11, 98:15, 106:14, 106:18, 106:21, 106:25, 107:2, 107:6, 107:7, 107:9, 108:21,	109:20, 110:2, 110:3, 110:15, 111:12, 111:24, 112:3, 209:1, 209:6, 209:18, 209:21, 209:25, 212:11, 212:13, 212:15, 213:4, 213:9, 213:12, 213:14, 213:21, 214:5, 214:19, 214:21, 215:2, 215:3, 215:8, 215:9, 215:12, 216:2, 217:4, 217:7, 217:9, 217:18 conduct 121:1, 163:23, 164:1, 164:6, 166:19, 181:19 conducted 51:1, 84:15, 84:20, 84:21, 84:22, 85:18, 85:24, 91:1, 95:6, 95:11, 96:20, 96:25, 97:9, 97:14, 97:17, 97:21, 97:24, 98:3, 98:8, 98:17, 112:7, 120:15, 127:24, 134:25, 136:2, 138:2, 138:7, 138:10, 151:16, 154:18, 156:12, 156:24, 156:25, 158:9, 164:7, 164:9, 164:12, 164:19, 164:21, 164:23, 164:25, 165:3, 167:2, 173:7, 173:8, 180:15, 180:22, 181:5, 183:6 conducting 186:6
--	---	---	--

Transcript of John Gargiulo
Conducted on April 30, 2026

230

confer 15:21, 16:12 conferred 16:5 confers 203:8 confident 56:21, 125:4 confidential 5:15, 5:18, 5:20, 26:14, 35:24, 36:4, 53:11, 53:12, 53:14, 55:14, 55:24, 55:25, 57:18, 57:19, 58:20, 58:21, 70:12, 197:5, 200:6, 200:19, 206:2 confidentialities 75:25 confidentiality 55:22, 56:17, 56:23, 57:16, 58:17, 59:17, 70:13, 70:18, 71:7, 71:20, 71:22, 73:23, 74:2, 74:11, 74:23, 75:7, 75:15, 76:2, 76:17, 76:23, 77:8, 77:16, 77:18, 77:21, 77:22, 78:3, 78:6, 124:4, 124:6, 124:9, 124:24, 125:5, 125:8, 125:11, 125:16, 125:21, 126:1, 126:8, 126:16, 154:19, 154:23, 154:25, 155:20, 155:24, 172:1, 175:12, 193:15, 193:17, 200:1, 207:11	confirm 57:14, 59:16, 59:25, 72:10, 72:15, 73:1, 73:7, 73:14, 73:21, 73:24, 74:3, 74:6, 74:12, 74:14, 74:24, 75:5, 75:9, 76:15, 77:15, 78:1, 84:10, 85:1, 85:2, 97:13, 98:18, 154:15, 156:9, 156:14, 172:1, 175:9, 176:3, 179:17, 179:24, 188:12, 200:1 confirmed 100:7 confirming 16:13, 75:23 conflate 192:9 conflict 175:21 confusing 97:23 conjupro 1:5, 2:2, 4:4, 9:18, 20:20, 21:12, 21:22, 23:6, 201:5 connect 197:17 connection 27:10 consider 200:24 considerations 89:3 considered 180:20 consistent 65:23 consult 40:5	consultant 34:24, 35:1 consulting 39:21, 40:2 contacted 21:15, 21:18 content 38:20, 149:13 context 68:9, 102:10, 102:11, 176:16 continue 68:19, 68:24, 72:5, 83:16 continues 193:14 contradictory 176:2 conversation 16:20, 16:22, 16:25, 17:5, 17:8, 17:11, 17:17, 17:21, 17:25, 18:3, 38:19, 84:14, 126:16, 137:4, 137:11, 156:18, 167:14, 167:21, 167:23, 214:24 conversations 14:11, 16:21, 21:4, 21:7, 21:8, 26:3, 78:16, 97:15, 103:9, 125:12, 187:14, 187:18, 187:23, 188:1, 188:6, 190:3 convey 52:6 conveyed 137:8 coo 42:23 cooley 2:27, 2:33, 4:10, 4:12, 190:24, 191:1	copy 13:4, 13:8, 159:6, 159:9 corner 116:19 corporate 2:19, 26:20 correct 4:25, 10:7, 17:10, 24:8, 27:3, 27:12, 33:21, 39:19, 41:4, 41:19, 42:7, 42:8, 44:2, 48:17, 53:22, 53:24, 53:25, 54:9, 54:17, 55:3, 55:11, 60:12, 61:3, 61:6, 61:19, 62:17, 63:4, 73:18, 73:23, 80:15, 81:14, 85:6, 85:7, 88:16, 88:23, 89:4, 97:18, 101:7, 104:10, 107:12, 110:11, 111:21, 113:16, 114:20, 117:5, 117:10, 118:2, 124:8, 133:2, 138:14, 139:13, 142:7, 148:3, 155:20, 156:6, 156:8, 157:5, 157:21, 159:6, 159:9, 163:3, 163:6, 165:6, 167:24, 172:16, 176:6, 177:23, 178:6, 178:11, 179:13, 179:21, 181:25, 184:16, 188:16, 188:23, 189:6, 189:19, 195:4, 198:21, 208:20,
---	---	--	---

210:5, 213:23, 214:6, 214:25, 215:6, 216:19, 216:24, 216:25, 217:6, 217:15 correction 57:11 correctly 47:20, 137:2, 171:11, 171:14, 187:15, 204:13 corresponds 192:14 could 26:16, 26:17, 26:18, 26:19, 40:17, 40:19, 45:11, 45:20, 45:22, 56:3, 70:18, 74:24, 75:13, 75:17, 75:22, 76:3, 76:14, 76:24, 109:21, 114:2, 123:12, 129:15, 140:9, 144:25, 146:2, 154:19, 176:13, 181:24, 200:21, 204:1, 204:5, 206:5, 206:13, 207:21, 211:8 counsel 6:3, 66:8, 125:19, 126:7, 132:6, 193:16, 209:24, 210:8, 210:10, 210:11, 216:23, 219:17 counsel's 104:4 counsellor 104:2 counter 194:15, 194:16 country 94:9, 94:12 county 219:2	couple 6:4, 14:16, 40:12, 195:24 couple-of-minute 191:18 course 27:17, 27:20, 28:18, 42:4, 51:7, 120:25, 158:8, 185:11, 193:10, 208:14, 208:16 court 6:10, 191:2 covered 38:23 create 100:18, 161:8 created 165:6, 165:16, 166:2, 166:7, 166:10, 166:14, 166:17, 177:22, 178:10, 186:20 creating 49:4, 49:7 cro 94:5, 94:6, 94:7, 94:9, 94:12, 94:21, 94:23, 95:3, 95:6, 95:11, 135:23, 135:24, 136:1, 136:5, 136:7, 136:11, 136:15, 136:22, 136:24, 137:20, 137:24, 138:2, 138:7, 138:10 cross 60:9 cross-examination 66:22, 68:17, 155:3, 196:10, 198:20, 200:7, 200:13 cross-examine 66:21	crr 1:24 csr 1:24, 191:5, 220:13 curiosity 61:2 curious 166:13, 177:1, 187:13 current 24:25, 32:10 currently 9:13, 87:25, 154:6, 178:17 cursor 23:16 cyclopropane 116:5 cyclopropyl 115:20, 116:8 D da 171:24, 175:18 daiichi 43:10, 43:13, 43:15, 43:17, 43:20, 44:13, 44:20, 45:1, 45:6, 46:3, 46:8, 46:16, 46:19, 46:25, 47:12, 47:14, 48:1, 48:3, 48:5, 48:8, 48:10, 48:13 dallas 219:2 dash-3 161:10, 161:16, 161:25, 162:4 database 30:8, 30:10, 30:13, 30:16, 30:19, 30:21 date 17:20, 17:22,	22:7, 78:24, 93:23, 151:15, 159:25, 172:22, 173:6, 204:22 dated 17:18 dates 173:11 day 78:22, 95:23, 166:14, 220:7 day-to-day 185:17 days 66:6 deadline 204:20 deadlines 204:23 dec 177:5 decide 200:24 decision 143:2, 143:8, 143:17, 143:21, 163:23, 163:25, 164:3, 164:5 decisions 47:17 declarations 18:15, 18:18 declare 79:1 default 201:1 defined 34:5 definitely 205:7 definition 139:21, 188:19 definitions 45:17, 45:18 degree 48:16, 48:18, 48:21, 48:24, 82:3
--	--	---	---

Transcript of John Gargiulo
Conducted on April 30, 2026

232

degrees 24:14, 24:16, 25:10, 25:12 deliberate 143:2, 143:7, 143:16, 143:20 delineation 80:3 denotes 160:17 deny 57:15, 59:16, 59:25, 72:10, 72:15, 73:1, 73:7, 73:14, 73:21, 73:25, 74:3, 74:6, 74:12, 74:14, 74:24, 75:5, 75:9, 76:15, 77:15, 78:2, 154:15, 172:2, 175:10, 179:17, 200:1 denying 75:23 depend 108:20 depending 50:22, 57:4 depos 220:15 deposed 5:1, 102:15 deposition 1:16, 5:7, 11:24, 12:16, 13:23, 17:5, 18:12, 20:14, 39:6, 55:14, 55:24, 57:19, 58:19, 60:5, 68:21, 68:23, 69:3, 71:19, 102:12, 124:1, 125:24, 191:8, 191:16, 193:10, 200:12, 204:21,	207:4, 207:16, 218:9, 219:9, 219:11, 219:17, 219:19 des 118:6 describe 34:1, 110:20, 182:19, 182:20 described 35:16, 110:22, 110:23, 111:1, 127:24, 128:8, 132:19, 163:24 describes 212:11 description 3:15, 212:10 design 100:11 designated 201:1 designation 201:13 detail 130:18, 213:25 details 65:16, 215:5, 215:8 determine 131:7 dev 45:23 develop 44:19, 44:23, 44:24, 45:5, 45:10, 45:13, 45:17, 45:18, 45:25 developing 45:20, 45:21, 45:22 development 34:6, 42:20, 42:24, 43:3, 43:5, 44:16, 46:4, 46:7, 46:9, 46:15,	46:19, 47:1, 47:11, 81:16, 81:20 diego 2:29 difference 50:12, 117:9 differences 115:16, 199:14 different 45:18, 50:8, 50:9, 54:14, 58:7, 58:8, 58:9, 61:2, 61:3, 61:5, 62:16, 67:3, 69:8, 74:20, 93:2, 117:14, 121:24, 123:10, 137:5, 178:3, 189:3, 199:12 difficult 45:8, 45:15 digital 29:5 direct 21:3, 21:6, 66:23, 68:18, 80:16, 80:22, 82:1, 82:5, 84:22, 200:15, 216:8, 217:17, 218:1 directed 83:21, 91:4, 91:19, 91:25, 92:2, 126:18, 126:25, 127:3, 129:4, 129:18, 134:14, 134:17, 134:18, 134:20, 135:20, 216:23 directing 84:2, 84:3 direction 80:20 directive 91:5, 127:5,	127:8, 134:22 directly 47:7, 77:7, 81:13, 81:15, 81:19, 81:22, 82:2, 82:6, 83:25, 85:19, 117:2, 136:24, 137:3, 137:11 disagree 39:9, 60:7 disclose 55:19, 55:21, 56:2, 59:20, 59:21, 70:9, 75:22, 96:7, 112:13, 112:18, 174:12, 198:15 disclosed 5:16, 22:8, 53:10, 53:13, 53:17, 59:18, 67:19, 67:23, 77:24, 82:10, 83:3, 83:6, 83:22, 90:21, 92:16, 99:17, 105:7, 106:10, 106:25, 113:21, 118:19, 118:20, 126:19, 128:16, 129:4, 129:5, 129:7, 129:12, 129:13, 133:4, 141:18, 141:21, 149:11, 152:24, 153:4, 153:20, 153:21, 154:5, 179:12, 182:9, 189:17, 193:13, 196:24, 197:1, 197:2, 199:7, 199:21, 208:19, 208:22, 209:2, 209:16, 213:22, 214:2 discloses 70:6, 128:2,
--	---	---	---

Transcript of John Gargiulo
Conducted on April 30, 2026

233

128:7, 128:11, 128:13 disclosing 20:3 discuss 15:3, 15:9, 15:11, 15:14, 18:7, 18:9, 56:17, 62:11, 107:22, 119:16, 124:1, 124:14, 126:7, 193:17 discussed 14:23, 15:1, 15:4, 15:5, 15:12, 15:20, 18:3, 18:5, 20:25, 27:1, 52:22, 53:23, 60:17, 60:19, 60:21, 60:24, 125:3, 173:17, 175:12, 188:13, 207:10 discusses 60:12, 60:13, 60:25, 196:5 discussing 57:8, 61:14, 111:15, 124:24 discussion 15:22, 98:22, 108:6, 124:11, 124:15, 154:20 discussions 13:21, 124:17 dispute 5:14, 5:17, 218:10 disputes 21:12, 21:14 distinct 191:22 distinction 115:12, 115:19 division 41:17 divulge 12:5, 19:2,	26:13, 78:16, 101:21, 103:9, 103:12, 143:14, 166:22 divulging 101:6, 101:10 doctor 59:14 document 18:25, 89:21, 90:14, 121:24, 131:19, 131:23, 132:1, 132:15, 133:9, 165:20, 166:7, 211:11, 211:14 documentation 85:9, 130:7 documents 8:20, 8:21, 12:8, 12:15, 12:25, 13:2, 13:17, 19:9, 24:2, 24:5, 37:24, 38:8, 38:9, 39:2, 119:25, 120:6, 120:9, 120:14, 120:21, 120:22, 131:16, 131:20, 132:14, 133:14, 157:25, 158:6, 189:12 doing 69:15, 83:13 dollar 32:9 done 15:24, 16:8, 16:9, 16:14, 16:16, 31:4, 38:22, 47:5, 83:25, 91:8, 93:5, 93:6, 93:9, 93:10, 94:4, 94:20, 95:20, 97:9, 99:11, 102:17,	109:20, 112:3, 112:5, 113:19, 113:20, 114:13, 114:14, 114:19, 129:6, 129:14, 135:22, 135:23, 137:17, 137:18, 137:19, 137:20, 137:24, 150:5, 151:11, 151:14, 153:16, 153:19, 155:7, 155:9, 155:23, 158:20, 161:14, 170:23, 171:6, 174:18, 174:20, 174:23, 181:2, 181:10, 187:3, 187:4, 214:22 double 162:17 down 42:15, 55:1, 68:20, 68:25, 144:21, 144:22 download 163:17, 163:20 dr 187:14, 187:19, 187:22, 187:24, 188:1, 188:7, 188:8, 188:10, 192:18, 199:5 drafted 23:19, 23:20 drafting 23:23 drafts 19:5 draw 121:6, 122:12, 122:14 drive 2:20, 2:28, 220:16 drop 163:14 drug 50:8, 62:7,	81:20, 81:24, 134:5, 193:8, 198:8 drugs 8:4, 8:7 due 71:19, 73:23, 75:7, 77:16, 77:17, 77:20, 78:3, 171:25, 200:1, 204:24 duke 25:6, 25:9, 82:4 duly 4:14, 219:10 during 15:22, 17:8, 18:2, 51:14, 123:24, 124:3, 124:8, 124:18, 125:3, 126:13, 136:11, 158:19, 183:9, 193:10 E e-laboratory 29:25 e-notebook 29:12, 52:12 e-notebooks 29:18, 29:21, 29:22, 30:2 each 32:9, 79:16, 109:8, 115:9 earlier 102:13, 154:20, 162:6, 162:13, 167:22, 175:12, 208:6 early 64:14, 65:3, 65:22, 124:17, 164:23, 166:12, 166:13 easier 11:10
--	--	--	--

easily 34:9 ec 15:18, 49:22, 50:1, 50:5, 50:6, 50:12, 50:13, 50:18, 50:20, 50:24, 51:1, 51:4, 52:11, 60:13, 62:19, 62:25, 63:5, 79:25, 85:5, 96:3, 99:16, 109:13, 110:10, 112:9, 112:14, 112:21, 113:2, 113:9, 116:12, 117:10, 117:13, 118:1, 118:5 economics 24:11, 24:13, 49:1 educate 41:12 education 25:6, 41:2, 41:5, 41:8, 41:9, 41:14, 41:20, 41:23, 41:24, 186:2, 186:4 education-based 41:22 educators 41:11 effective 6:6 efficacy 194:17 either 22:10, 75:23, 91:23, 106:18, 106:21, 107:4, 122:16, 135:14, 139:13, 150:16, 150:21, 154:5, 177:23, 182:22,	183:22, 205:5 electronic 78:18, 78:21 else 8:18, 12:9, 14:2, 14:9, 16:1, 16:15, 84:16, 85:20, 90:10, 97:8, 102:20, 122:8, 132:2, 137:15, 138:8, 140:6, 148:15, 150:2, 159:20, 159:21, 160:8, 164:16, 171:5, 182:20, 189:3, 190:15 else's 101:12, 101:19, 102:3, 102:8 email 8:22, 8:23, 9:4, 121:18, 122:18, 122:19, 137:6, 137:8, 160:3, 160:5, 206:22, 210:20 emails 9:6, 18:11, 18:13 embodiment 70:1 employed 185:3, 220:1 employee 201:4 employer 24:25, 34:18, 34:19 empty 170:6, 170:10, 170:11 encompassed 191:22 end 60:3, 124:19, 193:8, 209:9 entered 16:17	enterprises 39:16, 39:17, 39:23, 40:15 entirety 69:11 entitled 20:17, 132:5 entry 160:24, 161:1 equipment 98:3 equity 26:17, 33:3, 37:10, 37:13, 40:3, 40:18, 40:19 error 61:11, 89:18, 90:4, 90:5, 90:10, 90:15, 90:18, 112:9, 112:13, 112:18, 215:11, 215:22 esquire 2:3, 2:10, 2:17, 2:26, 2:32 essence 199:8 est 1:19 estimates 113:16, 113:24 et 67:7 evaluate 67:24, 68:8, 138:18, 194:8 evaluated 99:20, 134:9, 135:5, 135:10, 135:12, 135:15, 138:22, 138:25, 139:4, 139:10, 139:19, 140:17, 140:20, 140:24, 141:3, 141:7, 141:11, 141:15, 141:24, 142:1,	142:3, 142:6, 142:10, 142:14, 142:19, 142:24, 142:25, 150:17, 152:4, 152:11, 217:14, 217:24 evaluating 82:9, 82:17, 83:1 evaluation 67:3, 134:15, 134:17, 134:18, 134:20, 135:21, 135:22, 135:25, 136:14, 137:23, 149:6, 151:5, 151:14, 151:18, 152:23, 153:11, 154:12, 156:20, 157:11, 157:18, 157:20, 158:1, 158:16, 212:4, 216:19 evaluations 119:19, 120:1, 120:10, 136:5, 217:5 even 82:24, 89:1, 109:6, 114:15, 115:16, 146:2, 156:20, 188:18, 189:8, 193:16, 194:1, 216:15 ever 9:10, 11:16, 11:19, 33:10, 36:15, 36:21, 40:21, 92:11, 101:18, 102:2, 102:6, 103:17, 185:22, 186:18, 186:24 every 31:14, 31:16, 35:25, 50:7, 50:8, 50:25, 81:1, 130:17,
---	---	---	---

Transcript of John Gargiulo
Conducted on April 30, 2026

235

131:19, 208:10 everybody 211:13 everything 66:24, 128:23, 131:20, 207:1 evidence 88:22, 182:9 exact 17:22, 78:24, 96:21, 97:10, 159:25, 172:21, 173:6 exactly 6:1, 110:21, 111:13, 112:2, 146:19 examination 3:7, 3:9, 3:10, 4:16, 153:19, 208:3, 214:16 examined 151:25, 152:7, 152:15 example 6:14, 48:9, 116:18, 127:24, 194:10, 213:14, 213:23 exclude 143:2, 143:8, 143:17, 143:21 excuse 38:4, 97:12 executive 197:13 exercise 85:11 exhibit 3:16, 3:17, 3:18, 12:19, 13:4, 13:16, 15:7, 16:11, 17:1, 17:9, 17:11, 18:8, 18:10, 29:12, 52:12, 52:20, 53:2, 53:4,	60:15, 61:14, 80:1, 89:22, 89:23, 89:24, 90:9, 90:16, 159:6, 159:9, 161:8, 161:12, 163:24, 164:2, 164:6, 164:10, 164:13, 164:15, 164:17, 164:21, 165:5, 165:15, 169:7, 172:10, 173:2, 173:9, 178:19, 183:10, 183:14, 183:16, 183:21, 184:3, 184:12, 184:22, 187:1, 208:25, 210:12, 210:16, 210:22, 210:23 exhibits 3:14, 13:14, 88:16 exist 120:6, 162:7, 162:21 existed 162:7 exists 121:2 expect 172:23 expected 192:19 experience 49:4, 49:6, 49:8, 49:10, 49:12, 49:18, 186:5, 186:9 experiments 95:25, 215:13 expert 68:4, 68:6, 113:5, 113:11, 113:18, 115:14, 115:25, 116:7, 116:14, 117:12, 118:4, 134:2,	134:3, 144:7, 144:20, 145:6, 146:5, 146:24, 147:13, 148:6, 148:20, 179:8, 179:15, 180:11, 180:18, 182:25, 184:1, 184:11, 184:18, 192:17, 199:4 expertise 88:6, 146:7 experts 192:16 expiration 220:14 explain 35:25, 42:13, 46:20, 56:15, 119:14 explaining 191:11 explanation 213:13 exploratory 200:12 express 186:24 expressly 191:23, 192:3 extent 134:6, 185:8 extremely 197:4, 200:19, 201:16 eyes 201:3, 201:6 F fact 38:18, 38:20, 38:22, 84:6, 84:8, 85:3, 101:24, 200:12, 200:16 facts 81:9, 81:10 failure 88:22	fair 6:12, 6:24, 9:14, 9:20, 9:21, 10:5, 10:16, 10:17, 10:19, 11:5, 20:16, 96:14, 96:15, 141:23, 145:22, 169:5, 173:16, 188:21 familiar 67:4, 79:23, 161:18, 161:22 far 56:7, 194:22 father 42:15 feasible 47:6 fed 74:18 feel 66:12, 89:10, 123:7, 197:19 few 54:13, 107:25 field 197:7 fight 59:3, 71:15 file 71:17, 203:22, 203:23, 205:10, 207:13 filed 21:22, 28:22, 28:24, 172:19, 172:22, 189:14, 197:10 files 86:1, 86:5, 86:7, 86:9, 165:9 filing 22:13, 23:7 filings 22:17 finally 44:8, 44:9,
--	---	---	---

Transcript of John Gargiulo
Conducted on April 30, 2026

236

142:13 financially 220:3 find 177:4, 203:13, 203:16, 203:19, 211:22, 212:1 finding 215:19 fine 9:5, 13:10, 59:3, 88:8, 89:16, 130:20, 155:16 finish 63:14, 197:21, 212:22 finished 6:18, 153:14 firm 4:5, 26:17, 39:22 firms 40:3, 40:18, 40:19 first 4:14, 21:15, 21:23, 22:4, 54:15, 61:9, 72:23, 83:15, 99:13, 105:22, 140:16, 159:23, 165:22, 166:2, 169:14, 192:4, 204:11, 214:18 fits 40:17 five 83:15, 158:24, 159:1, 206:14, 207:22 five-minute 158:22 five-page 195:22, 197:15 fluid 182:23 focus 90:1	focused 66:23, 67:18, 68:18 follow 39:13 following 104:1 follows 4:15 footer 165:22 forget 31:10 formula 168:20 formulated 133:18, 133:22, 150:6, 150:10, 150:12, 150:15, 151:19, 151:23 forth 219:9 forward 202:19 found 21:21, 83:3, 126:19 foundation 165:7 four 31:9, 191:23 fox 2:4, 2:11, 2:18, 4:5, 190:13, 190:18 framing 33:17 free 66:12, 218:8 freebase 105:24, 106:4, 108:17, 108:22, 133:19, 133:22, 183:23, 184:4, 184:20 freeform 216:6, 216:10, 216:14, 217:15,	217:20, 217:24, 218:3 friendly 185:19 front 8:9, 20:19, 61:13, 178:19 full 31:8, 76:21, 113:6, 138:3, 206:3 fully 68:9, 96:5, 194:8 functions 81:16, 81:18 funds 26:19 fuqua 25:8 further 3:10, 151:25, 152:7, 152:11, 152:15, 203:11, 206:5, 207:17, 214:15, 214:16, 218:4, 218:7, 219:15, 219:19, 219:24 future 33:19	191:8, 192:23, 193:5, 193:11, 193:20, 195:20, 196:17, 196:20, 198:4, 199:7, 200:4, 200:15, 203:16, 205:13, 205:15, 205:20, 206:1, 206:5, 208:5, 211:8, 214:18, 218:8, 219:8, 219:20 gargiulo's 155:3, 191:16, 195:16, 196:12, 201:17, 201:20, 202:7, 202:10, 205:5 gastric 182:22, 183:6 gave 114:1 general 15:11, 44:18, 120:24, 140:6 generally 12:7, 50:6, 50:21, 91:23, 113:7, 161:11, 161:16 generate 51:1, 111:10, 213:10, 213:12 generated 136:2, 165:10, 171:7, 175:4, 175:10, 176:10, 214:6 geoff 4:12, 14:1, 14:12, 191:1 geoffrey 2:26 getting 45:21, 97:21, 97:22 give 6:18, 64:23,
		G	
		gallon 146:14 gargiulo 1:16, 3:6, 3:16, 4:13, 4:21, 4:22, 5:1, 12:4, 39:1, 39:10, 51:14, 58:15, 59:14, 61:16, 70:5, 72:6, 74:17, 101:4, 103:24, 123:24, 125:2, 125:14, 132:3, 155:18, 187:13,	

Transcript of John Gargiulo
Conducted on April 30, 2026

237

68:13, 75:13, 90:12, 130:14, 147:15, 161:12, 187:9, 189:1, 191:17, 206:5, 207:22, 212:9 given 56:7, 58:3, 58:4, 58:23, 68:6, 68:7, 70:7, 91:6, 125:7, 127:6, 127:8, 147:11, 158:17, 200:15, 203:21, 216:2, 219:13 gives 205:4, 213:14 giving 156:15 glc 167:5, 167:12, 167:13, 167:18, 167:20, 168:5, 168:6, 169:22, 170:13, 170:20, 170:23, 171:1, 171:4, 171:17, 183:14, 183:20 glnb 160:12, 160:13 glnb-3 159:7, 159:10 glp 87:6 glp-1 92:6, 92:9, 179:21 glp-1's 92:7 glp-1r 1:14 go 6:4, 41:11, 43:11, 50:10, 50:11, 56:18, 56:19, 56:24, 57:24, 60:3,	69:23, 70:20, 76:11, 78:3, 79:16, 81:1, 81:2, 83:16, 90:12, 90:19, 100:11, 107:21, 108:2, 109:18, 110:1, 110:19, 110:20, 121:17, 122:2, 129:10, 139:1, 172:15, 175:19, 178:13, 187:4, 195:11, 201:16, 204:6, 204:11, 208:24, 211:14, 212:18, 212:22, 218:9 goals 81:17 goes 202:4, 212:9 going 6:4, 6:6, 6:8, 12:1, 26:5, 38:11, 38:25, 39:10, 39:13, 51:9, 54:25, 56:15, 57:9, 57:17, 57:21, 58:1, 59:4, 59:6, 59:8, 63:14, 67:11, 68:19, 68:20, 68:22, 70:10, 71:17, 71:18, 71:22, 72:4, 72:6, 75:21, 83:13, 100:19, 101:2, 103:7, 103:22, 104:1, 108:4, 111:2, 116:15, 121:11, 122:3, 123:5, 123:6, 125:9, 126:9, 126:12, 131:25, 143:24, 145:9, 154:14, 172:1, 174:14,	175:9, 179:17, 183:1, 203:21, 204:21, 205:14, 210:12, 210:24 good 40:17, 51:10, 63:24, 87:10, 87:12, 87:17, 96:18, 158:24, 159:1, 190:8 gosh 24:19 gotten 211:21 gpg 39:16, 39:17, 39:23, 40:15 graduate 24:18 graduated 24:19 group 47:7, 115:20, 116:5 groups 116:11 guess 21:22, 22:23, 23:1, 61:12, 102:16, 132:17, 139:2, 141:9, 147:7, 168:11, 169:3, 204:12, 204:22, 205:11, 205:24, 214:18 H half 123:20 hand 124:21, 220:7 handle 9:8 happy 35:23, 56:20 head 6:9, 205:1 health 37:8	health-care 39:20, 40:4, 40:9 hear 42:17 heard 11:16, 11:19 hearing 2:39, 3:8, 190:11, 207:3 held 25:20, 25:21 help 4:20, 135:19, 164:14 helped 164:16 helpful 11:3, 191:15 here 55:16, 67:23, 70:13, 71:19, 73:16, 99:15, 101:17, 108:8, 108:15, 109:3, 109:12, 110:9, 111:19, 121:10, 122:7, 123:2, 123:3, 129:16, 130:17, 131:15, 140:1, 163:14, 168:20, 179:6, 193:20, 194:3, 195:21, 200:16, 213:13, 215:22, 217:22 hereby 219:6 herein 79:2, 80:4 hereinbefore 219:9 hereunto 220:6 hexagon 116:20 hey 194:5
---	--	---	---

Transcript of John Gargiulo
Conducted on April 30, 2026

238

hgl-1 93:12, 176:4 hgl-1r 93:13, 96:2 hgl-ir 61:6 hglc 177:3, 177:9 hglp 61:1, 90:22, 177:7 hglp-1r 61:5, 61:7, 92:3, 92:5, 92:11, 92:13, 92:15, 93:1, 93:18, 118:10, 176:21, 176:24, 177:2, 177:10, 177:16, 177:20, 212:7, 212:8 hi 4:18, 4:19, 195:13 hide 71:6, 196:4 higher 50:23, 51:4 highly 57:20, 197:5 himself 135:21 history 121:18 hlgp-ir 61:10 hold 44:10, 44:12, 120:19, 121:10, 203:3, 207:15 hon 2:40, 2:41, 2:42 honestly 172:21 honor 190:17, 191:13 hope 35:18	hopefully 145:10, 205:9, 218:11 hoping 145:18 hour 51:10, 123:21, 190:6 hours 14:16, 23:22 housed 158:14 however 106:7 huge 45:24 huh 40:7 huh-uhs 6:9 human 134:5, 179:13, 180:3, 180:6, 180:9, 180:13 humans 179:19 hundreds 43:22, 45:3 hungerford 220:16 hypothetical 146:17, 147:15, 147:16 I idea 132:23, 139:24, 146:18, 147:25, 148:7, 148:11, 148:21, 148:24, 157:4, 161:7, 170:9, 181:18, 184:19, 186:9, 189:23, 215:20 identification 80:21, 90:9 identified 40:16, 57:23,	78:5, 100:1, 100:3, 100:5, 104:21, 104:24, 105:2, 105:11, 105:14, 115:10, 147:10, 149:23, 196:14, 216:4 identifies 161:11, 192:7, 217:19 identify 79:20, 80:8, 89:17, 90:3, 131:3, 192:16, 195:8, 196:18, 217:19 identifying 199:10 identity 196:23, 201:23, 202:3 impair 8:5, 8:8 implications 59:22, 182:15 improper 197:12, 198:19 improvement 144:16, 145:1, 146:2, 146:15, 189:5, 189:18 in-home 41:24 in-house 201:4 inappropriate 104:4, 130:13 inc 1:5, 4:5, 10:6, 10:8, 10:11, 10:12, 10:15, 10:24, 25:1, 25:14, 91:21, 185:1 incident 23:6 include 21:10, 119:22,	133:16, 147:7, 201:7 included 158:2, 175:5, 176:10 includes 52:10 including 62:7, 90:16, 119:3, 193:8, 198:8 inclusion 166:25 inclusive 96:5 income 34:12, 34:14, 34:17, 35:13 incomplete 146:16 inconsistent 175:14 incorrect 156:8 incorrectly 33:17 incredibly 45:10, 173:23 index 3:1 indicate 49:23, 49:24, 50:2, 50:20 indicates 50:22 individual 19:21, 20:10, 20:25, 21:5, 21:9, 84:15, 84:21, 95:2, 156:11, 201:5 individually 79:17 individuals 14:5, 80:13 industry 28:7, 28:11 infor 83:9
--	--	--	---

inform 194:13 information's 156:6 informed 84:4, 156:12, 156:25 inhibition 50:16, 50:17 initial 206:4 injection 126:22, 133:6 input 46:24, 47:1, 47:11, 47:22 inquire 118:23, 118:25 insinuate 7:25 instance 18:22 instead 6:15, 100:17, 196:16 instruct 12:1, 19:18, 19:24, 21:25, 26:12, 38:3, 38:11, 100:20, 101:2, 101:14, 101:21, 102:21, 103:7, 103:22, 119:6, 122:4, 124:12, 125:9, 126:9 instructed 207:11 instruction 122:10, 143:25 instructions 125:6 instrument 86:11, 86:15, 86:17, 86:20, 86:23 intend 52:5	intent 105:6 interact 185:13, 185:16 interaction 185:8 interactions 38:14 interest 30:22 interested 12:14, 26:3, 220:3 internationally 81:17 interpret 45:24, 202:18 interpreted 71:8 interrupted 197:20 introduce 61:13 investment 35:13 investors 26:4, 26:22, 62:8, 62:14, 81:25 involved 5:21, 22:13, 22:16, 26:6, 42:23, 42:25, 43:2, 43:4, 46:4, 46:6, 46:9, 46:12, 46:18, 84:1, 84:3, 102:14, 103:4 involvement 46:15, 46:20 involves 20:21, 59:24, 153:7 involving 21:2, 153:10 ipr 124:17	irrelevant 39:5 isha 2:32, 4:8, 4:9, 13:3, 14:1, 14:12, 39:8, 66:12, 102:24, 190:5, 190:24, 195:14 isha's 24:22 issue 5:11, 11:8, 55:24, 56:23, 70:12, 71:16, 124:5, 191:7, 191:12, 192:1, 192:3, 192:21, 195:12, 197:9, 198:3, 203:12, 204:7, 206:14, 207:10, 207:18 issues 56:18 italic 78:9 italiced 78:9 itself 5:17	219:20 join 81:10 joining 190:25 judge 190:15, 190:20, 190:22, 190:23, 191:2, 191:6, 191:19, 194:25, 195:1, 195:10, 195:13, 195:18, 197:21, 197:25, 198:1, 198:3, 198:24, 199:18, 199:24, 200:2, 200:20, 201:9, 201:21, 202:11, 202:25, 203:1, 203:4, 203:6, 203:10, 204:17, 204:24, 205:2, 205:6, 205:17, 206:7, 206:13, 206:19, 206:25 june 172:19, 173:1, 173:20, 174:7, 174:9, 174:23, 174:24, 175:5
		J	K
		jersey 2:14, 2:22 jin 2:10, 4:7, 190:20 job 1:22, 27:16, 68:13 joe 2:17, 4:7, 190:18 john 1:16, 3:6, 3:16, 4:13, 4:18, 61:16, 192:23, 219:8,	k 37:9 kaiser 2:41, 203:1 keep 33:24, 60:4, 74:20, 108:4, 120:25, 123:5, 208:13, 208:16, 218:9 keeps 208:7 kept 158:8, 158:11, 206:2 key 168:3, 168:8,

Transcript of John Gargiulo
Conducted on April 30, 2026

240

168:10, 169:12 kim 1:24, 176:13, 190:5, 191:4, 219:4, 220:13 kind 26:19, 41:21, 43:19, 44:25, 47:20, 168:4, 168:9, 168:19, 191:15, 193:25 knew 19:5 knowing 89:11, 111:4, 193:21, 194:1 knowledge 79:3, 79:10, 80:4, 80:17, 80:23, 81:9, 82:1, 82:15, 82:25, 83:5, 83:8, 84:22, 100:8, 120:6, 130:6, 134:7, 148:15, 152:14, 156:1, 156:20, 159:21 known 189:13, 189:15, 189:18, 189:23 knows 70:8, 70:17, 193:11	208:13, 208:16 laboratory 27:24, 27:25, 28:3, 29:1, 29:3, 29:4, 29:7, 29:10, 29:11, 29:14, 29:17, 29:20, 30:3, 30:6, 30:9, 30:11, 30:13, 30:16, 60:15, 62:21, 63:2, 63:7, 63:8, 87:11, 87:13, 87:18, 119:18, 119:22, 120:25, 159:7, 159:10, 160:11 lack 116:11 laptop 8:9, 8:13, 8:16 last 4:20, 17:1, 17:6, 17:8, 17:10, 17:12, 17:15, 62:4, 78:7, 104:8, 104:15, 108:14, 111:19, 169:17, 171:12, 217:21 lasted 17:25 later 7:7, 59:3, 71:15, 204:22 law 88:7 lawrenceville 2:22 lawyer 89:8 leading 212:17 learn 51:8, 137:15, 165:15 least 23:14, 108:3	led 22:14 left 42:16, 116:21, 165:21, 170:2, 170:6, 170:10, 170:11, 187:6 left-hand 116:19 legal 37:16, 37:24, 37:25, 39:2, 88:5 lenox 2:20 less 180:22, 181:6 let's 23:16, 24:7, 28:9, 35:18, 46:13, 76:8, 79:18, 80:19, 85:10, 90:1, 99:23, 108:2, 110:7, 123:14, 123:15, 139:1, 140:11, 140:14, 143:10, 144:22, 146:10, 146:11, 150:22, 152:21, 175:19, 179:25, 190:4, 203:23, 204:1 levels 180:20, 183:6 liang 14:8, 14:19, 14:22, 15:8, 15:21, 16:5, 16:12, 16:20, 17:4, 17:5, 19:15, 94:16, 94:20, 95:4, 95:5, 95:10, 97:3, 97:15, 98:10, 98:14, 98:22, 100:15, 100:17, 100:18,	106:13, 108:24, 119:8, 119:11, 122:15, 134:20, 135:3, 135:18, 136:1, 136:4, 137:3, 137:8, 137:20, 156:24, 159:19, 164:12, 164:14, 164:17, 167:15, 167:21, 167:23, 184:23, 184:24, 185:5, 185:9, 185:12, 185:16, 185:20, 185:24, 186:10, 186:13, 186:18, 186:24, 188:2, 188:5, 188:7, 214:25, 215:1, 215:7 liang's 97:8, 100:25, 186:1, 186:3 license 197:8 licensing 197:10 lied 157:3, 157:4 likely 141:24, 190:2 limit 201:19, 206:14 limited 59:10, 60:9, 71:13, 196:11, 200:14, 201:2, 205:24 limiting 202:14 line 4:6, 4:11, 59:1, 59:12, 68:20, 68:25, 74:18, 81:3, 83:17, 117:17, 117:21, 155:14, 165:22, 166:2,
L			
lab 3:17, 157:10, 157:14, 157:17, 157:19, 157:22, 158:8, 158:11, 158:13, 158:19, 160:23, 160:24, 161:1, 161:10, 161:19, 169:7, 175:1, 181:20, 186:19, 186:25, 208:6, 208:10,			

Transcript of John Gargiulo
Conducted on April 30, 2026

241

169:17, 190:16, 191:1, 191:3, 194:23, 195:15, 198:2, 201:15, 205:25 link 163:14 list 139:1 listed 99:19, 109:3, 130:24, 138:15, 157:15, 185:9 listen 39:11 literally 38:8 literature 28:7 little 24:7, 41:5, 116:24, 117:6, 117:16, 117:21, 137:13, 191:14, 205:4 llc 39:16 llp 2:4, 2:11, 2:18, 2:27, 2:33, 4:10, 190:24 located 94:10, 94:12 location 30:6 locking 99:25 long 12:8, 14:11, 14:18, 17:24, 24:1, 42:10, 56:25, 169:5, 169:10, 202:18, 205:23 look 15:4, 62:4, 78:25, 80:19,	85:2, 89:20, 89:23, 90:13, 90:17, 99:12, 109:18, 116:18, 117:1, 117:15, 121:17, 129:10, 131:13, 141:22, 161:13, 169:11, 176:23, 179:23, 214:1, 214:8, 215:10 looked 6:16, 23:5, 23:7, 32:13, 84:25, 178:23, 217:5 looking 8:12, 12:10, 19:4, 104:7, 105:22, 122:22, 131:16, 159:4, 174:6, 174:7, 202:13, 202:15, 202:23, 211:10, 217:11 looks 42:5, 43:8, 43:23 lost 211:9 lot 140:10 lower 50:21, 51:3, 113:7 luke 2:3, 4:4, 4:19, 24:24, 108:5, 123:8, 123:19, 187:8, 187:10, 190:12, 199:2, 212:18 lunch 108:3, 122:23, 123:1, 123:15, 123:25 M made 47:16, 47:17,	71:9, 79:2, 79:3, 79:5, 79:10, 79:11, 79:19, 79:21, 80:4, 80:5, 80:9, 80:10, 80:21, 80:22, 83:8, 83:9, 100:17, 126:2, 150:17, 150:21, 150:23, 163:3, 163:23, 164:1, 164:3, 164:5, 201:7 main 26:24 maintain 59:11, 202:6 maintained 29:4, 29:8, 29:10, 29:12 maintains 29:14, 29:17, 29:19, 29:22 majority 16:2, 137:21 make 6:11, 9:17, 12:11, 13:6, 17:2, 24:20, 47:5, 54:14, 56:20, 57:10, 66:13, 75:18, 76:21, 80:3, 89:10, 89:11, 104:8, 144:12, 145:23, 148:16, 149:1, 160:23, 160:24, 161:1, 171:13, 174:14, 182:5, 182:7, 188:13, 196:3, 198:22, 202:5 making 27:10, 82:13, 147:1, 147:19, 212:25 many 5:4, 23:22,	31:17, 31:19, 31:21, 109:8, 109:14, 110:9, 111:3, 111:4, 111:20, 206:10, 206:11 march 17:19, 19:10, 78:21, 164:23, 165:6, 165:10, 165:16, 165:22, 166:7, 166:11, 166:13, 166:17, 167:2, 172:13, 172:17, 175:2 margin 89:18, 90:4, 90:5, 90:10, 90:15, 90:18, 112:9, 112:13, 112:18 mark 35:23, 36:3, 55:13, 55:24, 57:19, 210:22 marked 13:14, 210:23 market 45:22, 47:20 marketing 43:24, 43:25 marking 58:18, 210:15 marriage 220:1 master's 48:24 math 32:7 matter 88:6, 199:14, 220:4 maybe 14:20, 77:6, 79:16, 80:19, 85:11 mba 25:6, 25:8
--	--	--	---

mccann 1:24, 191:4, 219:4, 220:13 md 220:18 mean 7:4, 7:6, 14:25, 15:11, 20:12, 20:13, 21:6, 22:9, 22:23, 26:19, 27:14, 28:12, 28:13, 28:14, 34:16, 37:8, 37:18, 44:17, 44:23, 45:11, 45:12, 46:12, 50:4, 51:23, 65:6, 65:7, 65:8, 66:2, 66:5, 74:8, 75:10, 76:9, 77:19, 77:23, 79:23, 80:25, 83:4, 102:5, 102:13, 104:23, 104:25, 109:16, 121:14, 127:11, 139:12, 139:20, 139:22, 139:23, 140:6, 150:23, 152:19, 152:20, 153:24, 174:4, 184:21, 188:18, 189:8, 189:9 meaning 12:19, 129:22 means 88:13, 88:20, 89:1, 89:7, 95:23, 140:1, 146:9, 166:2, 170:3 meant 7:25, 35:13 measure 92:7, 112:25, 134:4	measurement 109:9, 109:15, 111:20, 117:10 measurements 110:10, 111:1, 111:3, 111:4, 116:12, 118:2 measures 92:5, 92:9 medically 46:25 medicinal 115:15 meet 12:7, 12:9 men 168:21 mention 62:13, 138:1, 198:1 mentioned 6:4, 12:13, 61:23, 83:24, 102:15, 108:20, 137:11, 137:14, 137:19, 154:16, 201:15 mentions 196:2, 198:6 mess 4:25 met 33:20, 185:22, 185:24 metabolic 151:25, 152:4 method 1:15 methodology 113:21 methy 115:19, 116:11 metric 33:20, 33:25, 50:8 metrics 34:2, 34:4 midday 2:39	middle 105:23 might 9:9, 9:16, 43:8, 47:5, 132:4, 168:21 miles 146:14 million 31:22, 31:23, 31:24, 32:1, 32:5, 32:18, 32:24 mind 74:21 mindful 204:23 minneapolis 2:7 minnesota 2:7 minute 90:12, 190:4, 203:3, 203:7 minutes 14:20, 17:6, 18:1, 57:2, 57:3, 107:25, 108:4, 123:17, 123:18, 158:24, 159:1, 187:9, 207:22 mischaracterizes 27:5, 54:3, 56:14, 62:24, 76:5, 82:21, 111:7, 111:23, 118:17, 129:20, 148:5, 156:22, 157:7, 163:10, 185:15, 216:21, 217:2 missed 206:10 missing 149:2 mixed 55:18, 97:22	molecular 100:11 molecule 22:8, 50:23, 118:6, 147:20 monday 204:2, 204:6, 205:11, 206:21 money 26:6 months 42:12 more 12:12, 27:14, 32:5, 36:15, 36:17, 36:21, 37:2, 37:3, 44:22, 45:12, 46:11, 64:23, 77:5, 79:15, 107:25, 115:11, 132:8, 137:13, 158:25, 200:22 morning 8:2 most 14:17, 31:5, 31:7 mostly 16:18, 40:3, 40:9 motion 203:23, 204:2, 204:5, 204:14, 205:10, 206:11, 207:13 mouthful 4:23 move 39:7, 123:9, 132:1, 158:22 moving 108:14 much 31:2, 134:4, 137:12, 185:8, 187:7, 190:9 multiple 45:11, 138:17,
---	---	--	---

Transcript of John Gargiulo
Conducted on April 30, 2026

243

196:17 murphy 2:42, 198:1, 198:3, 203:1, 203:4, 203:5 must 34:2 mutually 50:14	needs 61:24, 62:2, 197:19 negative 162:18 never 36:17, 37:3, 82:24, 102:16, 187:2 new 2:14, 2:22 next 8:25, 13:5, 13:11, 96:16, 116:23, 160:15, 161:15 night 17:1, 17:6, 17:12, 17:15 night's 17:8 nod 6:16 nodding 6:9 nomenclature 97:22 none 52:13, 52:24, 53:19, 54:4, 54:10, 56:8, 198:9 nonobviousness 89:3 noon 122:23 normal 22:24, 27:17, 27:20, 28:18, 103:14, 158:7, 185:11 normally 181:14 note 157:17, 157:22 notebook 3:17, 16:17, 16:25, 29:11,	60:15, 62:21, 63:2, 63:8, 159:7, 159:10, 159:12, 159:14, 159:15, 159:16, 159:17, 159:19, 159:22, 159:24, 160:7, 160:9, 160:11, 160:17, 160:23, 160:24, 161:1, 161:9, 161:10, 162:7, 162:11, 162:14, 162:20, 162:25, 163:5, 163:12, 167:10, 169:7, 169:10, 175:1, 178:2, 181:21, 186:20, 187:1 notebooks 29:1, 29:3, 29:4, 29:7, 29:10, 29:15, 29:17, 29:20, 29:23, 29:25, 30:4, 30:6, 30:9, 30:11, 30:14, 30:17, 119:19, 119:23, 157:11, 157:15, 157:17, 157:19, 157:23, 158:8, 158:11, 158:13, 158:19, 161:19, 161:23, 208:6, 208:10, 208:13, 208:16 noted 52:18, 59:13, 218:13 notes 13:6, 121:1, 121:3, 187:5, 209:9 nothing 124:2, 147:22, 148:1, 197:16 number 11:2, 11:9,	12:13, 112:6, 113:6, 145:7, 156:8, 160:17, 160:19, 201:4, 208:18, 208:21, 210:6, 211:23 numbers 55:18, 156:15, 156:18, 168:11, 168:20, 168:25 numerical 160:16 nurse 41:11 nw 2:34
N			O
name 4:3, 4:20, 78:9, 94:7, 160:11, 187:19, 190:12, 190:17 narrow 66:22 natural 123:8, 123:11 necessarily 7:4, 27:2, 27:8, 145:19, 199:6 need 6:15, 6:21, 7:12, 9:4, 9:10, 10:3, 10:17, 45:11, 46:11, 47:5, 55:15, 56:20, 56:23, 57:10, 57:13, 57:21, 57:25, 59:4, 61:13, 67:8, 67:21, 68:3, 68:21, 71:1, 74:20, 89:11, 89:14, 107:18, 109:18, 110:1, 110:4, 112:4, 114:4, 128:18, 129:1, 129:10, 144:21, 156:5, 158:21, 171:9, 174:4, 187:8 needed 149:1			oath 7:20 object 32:11, 58:1, 58:25, 59:1, 59:2, 59:8, 63:13, 70:10, 71:17, 75:2, 88:24, 104:4, 115:22, 143:24, 146:23, 157:13, 163:9 objection 11:25, 15:15, 19:17, 21:13, 21:25, 22:22, 26:12, 27:4, 28:8, 32:12, 33:22, 37:22, 38:2, 40:6, 42:2, 42:14, 44:21, 45:7, 46:17, 46:22, 47:13, 48:11, 49:15, 51:22, 52:8, 54:2, 54:18, 54:22, 55:4, 55:9, 56:13, 59:12, 59:13, 62:23,

Transcript of John Gargiulo
Conducted on April 30, 2026

244

63:21, 64:3, 64:8, 64:15, 65:4, 65:25, 66:7, 66:13, 66:14, 71:18, 72:9, 72:14, 72:25, 73:13, 73:20, 74:5, 74:13, 75:4, 76:4, 77:1, 77:12, 78:15, 79:13, 80:11, 80:24, 82:19, 84:13, 85:16, 86:3, 86:16, 87:3, 87:8, 87:15, 87:23, 88:3, 88:11, 88:17, 88:24, 89:5, 91:15, 93:16, 95:9, 96:6, 97:11, 97:19, 98:12, 98:19, 100:19, 101:1, 101:13, 102:4, 102:9, 102:21, 103:6, 103:21, 104:17, 105:4, 106:1, 106:22, 107:5, 107:13, 108:18, 109:5, 109:10, 110:12, 111:6, 111:22, 112:11, 112:23, 113:4, 113:10, 113:17, 114:10, 114:21, 115:13, 115:23, 115:24, 116:6, 116:13, 117:11, 118:3, 118:16, 119:5, 120:4, 120:19, 122:9, 125:22, 128:17, 129:8, 129:19, 130:11, 131:5, 132:21, 133:20, 134:1, 135:8,	136:8, 136:16, 137:25, 138:21, 139:3, 139:8, 140:19, 140:23, 141:2, 141:6, 141:16, 142:8, 142:12, 142:17, 142:22, 143:5, 143:12, 144:6, 144:19, 145:5, 146:4, 146:16, 146:23, 147:12, 148:4, 148:19, 149:9, 149:24, 150:8, 150:13, 150:18, 150:25, 151:7, 151:21, 152:2, 152:9, 152:17, 153:1, 153:8, 153:22, 154:10, 155:2, 155:11, 155:17, 156:4, 156:21, 157:6, 158:3, 161:5, 161:20, 162:2, 162:8, 162:15, 162:22, 165:7, 165:17, 166:8, 166:20, 168:23, 169:8, 170:7, 170:14, 170:16, 171:2, 171:18, 171:20, 172:20, 173:3, 173:21, 174:2, 174:15, 175:7, 175:16, 176:7, 176:22, 177:17, 177:24, 178:14, 179:7, 179:14, 179:22, 180:4, 180:10, 180:17, 180:24, 181:7, 181:16, 182:1, 182:11, 182:24, 183:11, 183:17, 183:25, 184:10, 184:17, 185:14,	186:7, 186:21, 187:16, 188:17, 188:24, 189:7, 189:20, 212:17, 212:21, 213:1, 215:15, 215:23, 216:7, 216:20, 217:1, 217:16, 217:25 objections 49:21, 66:13, 101:20, 133:12, 155:10 objective 178:22 objectives 33:7 observation 177:23 observe 86:6, 86:11, 86:13, 86:19, 86:22 observed 134:9, 135:6, 135:13, 138:12, 139:25, 141:14, 143:3, 143:8, 143:18, 143:22, 144:5, 144:17, 145:2, 145:25, 146:20, 147:23, 148:18, 149:5, 176:5 observing 136:5 obtain 197:12 obtainable 34:10 obvious 88:10, 88:13 obviously 83:5, 115:5 occurred 156:20, 167:24, 172:13, 172:17, 172:25, 173:19,	219:20 odd 102:18, 103:3, 103:14, 103:17, 103:18 offered 182:7 offering 193:4 office 1:1, 20:20 officer 10:24, 23:1, 25:17, 25:18, 25:24, 26:1, 42:6, 42:9, 81:13, 195:20, 197:14 often 62:5, 193:6 oh 9:10, 9:15, 14:13, 14:20, 15:5, 24:19, 25:5, 31:10, 35:15, 42:17, 61:11, 89:22, 123:3, 140:5, 166:16, 175:25, 177:8, 178:2, 197:21, 207:25, 209:12, 211:17, 211:20, 212:24 okie-dokie 163:21 on-site 136:6, 136:10 once 5:5, 179:16 one 6:14, 16:22, 33:3, 50:15, 50:24, 57:24, 58:14, 61:4, 67:22, 73:10, 76:24, 77:5, 77:10, 91:23, 91:24, 92:1,
--	--	--	---

Transcript of John Gargiulo
Conducted on April 30, 2026

245

102:14, 102:15, 105:23, 106:5, 107:19, 109:4, 109:13, 115:11, 117:17, 125:20, 139:13, 145:7, 147:2, 159:21, 169:14, 182:10, 185:2, 186:13, 188:22, 189:5, 192:15, 193:23, 195:2, 195:7, 196:25, 197:3, 198:10, 198:22, 199:8, 199:10, 199:11, 199:20, 200:3, 200:5, 200:22, 206:9, 208:11, 210:19, 217:12, 217:23 ones 23:10, 23:11, 192:16 ongoing 47:16 only 42:11, 82:8, 102:13, 102:14, 103:11, 108:4, 119:2, 135:20, 141:19, 144:8, 147:17, 167:19, 174:24, 185:25, 196:11, 201:1, 201:2, 201:3, 201:6, 202:23, 204:12, 212:25, 214:23, 215:9 open 8:15, 60:5, 72:21, 194:23, 200:12, 207:16, 207:17, 211:8, 218:9 operating 42:6, 42:9 operation 41:22	operations 41:18, 41:21, 44:1, 44:3, 44:5, 44:7 opines 192:18 opinion 88:9, 88:14, 88:21, 181:22, 182:8, 188:21, 189:4, 189:16, 189:24 opinions 87:19, 87:21, 88:1, 89:2, 182:6, 188:15, 192:19 opportunity 111:16, 114:1, 129:24, 130:15 opposed 119:9 opposing 210:11 opposite 80:20 option 32:9, 32:20 options 30:25, 31:2, 31:5, 31:7, 31:23, 31:24, 32:1, 32:18, 32:24, 33:2 oral 42:20 order 47:2, 112:5, 201:2, 201:12, 203:24, 204:14, 206:12, 206:21, 207:14 ordered 98:23, 98:25, 99:3, 99:8, 99:10 ordinary 11:16, 208:14,	208:16 orfor 138:20 orforglipron 15:19, 72:24, 73:4, 82:12, 83:24, 90:25, 99:13, 105:14, 114:9, 115:11, 115:12, 116:19, 117:16, 119:4, 138:14, 138:15, 138:20, 138:23, 141:10, 141:12, 142:21, 142:23, 143:3, 143:9, 143:17, 143:23, 144:4, 144:16, 144:18, 144:23, 145:1, 146:21, 146:22, 147:6, 147:7, 147:10, 147:11, 147:17, 147:24, 148:3, 148:17, 148:24, 189:14 organization 94:24 originally 57:11 originated 122:19 others 65:19, 80:18, 81:18, 88:23, 103:5 otherwise 107:12, 197:2, 220:4 ourselves 194:13 out 21:21, 36:15, 36:17, 36:21, 36:24, 37:1, 61:1, 99:25, 204:3, 205:7, 206:22	outcome 145:18, 220:4 outlined 169:6 output 86:18 outputs 86:12, 86:15 outside 58:2, 58:24, 59:9, 60:7, 63:21, 64:3, 64:9, 64:15, 65:5, 66:18, 66:25, 68:25, 69:2, 71:23, 72:3, 76:5, 77:2, 77:13, 87:8, 87:15, 88:4, 88:11, 88:17, 88:25, 89:5, 106:1, 114:10, 115:13, 115:24, 116:2, 116:6, 116:14, 117:11, 118:3, 145:6, 146:5, 146:24, 147:13, 148:20, 155:2, 155:12, 155:14, 156:21, 158:4, 171:20, 175:8, 177:17, 177:24, 178:14, 179:14, 180:4, 180:10, 180:17, 180:24, 181:7, 181:13, 181:16, 184:17, 185:19, 185:21, 187:16, 195:16, 201:3, 201:6, 201:16, 216:8, 217:17, 218:1 outside-counsel-- only 201:12 over 8:25, 41:6,
---	---	---	--

Transcript of John Gargiulo
Conducted on April 30, 2026

246

51:7, 59:3, 113:9, 127:12, 140:14, 144:16, 145:1, 146:15, 181:25, 182:10, 189:5, 189:18 oversaw 41:17, 94:19, 94:20, 95:2, 95:6, 95:10, 95:15, 95:19, 135:25, 136:1, 137:21 own 25:11, 30:24, 39:21 owner 1:9, 4:11, 9:22, 10:1, 10:15, 18:22, 18:23, 58:9, 63:11, 63:18, 63:25, 64:12, 64:21, 65:1, 65:13, 65:15, 65:21, 67:5, 67:16, 67:24, 68:10, 70:23, 190:22, 190:25, 192:2, 192:4, 192:5, 192:13, 192:21, 192:22, 193:16, 193:24, 194:4, 194:9, 194:15, 195:11, 195:21, 196:25, 197:9, 197:10, 197:14, 198:9, 199:4, 200:8, 201:10, 201:19, 201:21, 202:6, 202:19, 203:15, 203:23, 204:14, 205:10, 206:8, 207:13 owner's 61:16, 65:17, 195:6, 196:19,	198:17, 200:3 owners 192:2, 192:7 ownership 30:22 P page 3:2, 3:15, 9:18, 72:21, 78:7, 92:22, 93:15, 95:7, 96:17, 165:10, 169:13, 169:19, 211:4, 211:5, 211:21, 211:23, 212:1, 214:20, 215:10 pages 1:23, 192:6, 206:10, 206:11 pan 10:14 panel 207:10 paper 29:5, 122:20, 192:5 par 157:18 paragraph-by-par- agraph 85:12 paragraphs 17:13, 17:15, 18:4, 18:6, 52:20, 83:15, 128:5, 128:25, 132:19, 132:25, 174:18, 213:19 parent 10:7, 10:9, 10:10, 10:16, 81:11 part 22:23, 23:14, 27:1, 27:16, 27:18, 37:11,	37:13, 41:25, 42:22, 44:15, 44:18, 61:16, 66:8, 68:1, 69:21, 70:19, 81:21, 86:20, 86:23, 121:23, 171:12, 196:2 partially 93:14 participants 170:4, 170:6, 170:10 particular 67:19 parties 5:21, 203:2, 203:7, 203:12, 203:13, 204:7, 206:16, 207:6, 207:9, 219:25, 220:2 partnering 26:3 partners 26:2, 26:10, 26:16, 26:22, 62:8, 82:1 parts 22:20, 23:2 party 94:25, 95:1, 219:15 pass 207:19 pat 28:21 patents 11:12, 22:25, 23:9, 23:11, 23:12, 27:3, 27:8, 28:21, 110:2, 141:24, 141:25, 179:21, 197:2 patients 41:12, 41:24 pause 68:21	pay 33:19, 36:15, 36:21, 37:1, 37:5 paying 36:24 pays 36:17 pdf 165:9, 211:5 pending 9:13, 218:9 pennsylvania 2:34 pentagon 117:18 people 26:20, 30:20, 47:8, 49:1 percent 36:14, 36:16, 36:18, 36:19, 36:21, 36:25, 37:1, 37:2, 37:4, 50:16, 50:17, 66:5 perfect 10:5, 10:25, 189:25 perform 27:24, 27:25, 48:4, 48:7, 48:14, 48:15, 60:16, 60:18, 80:12, 80:14, 107:7, 181:14 performance 33:7, 33:25, 34:2, 34:4, 192:8 performed 91:9, 91:12, 91:14, 91:18, 92:11, 92:13, 92:17, 92:20, 92:23, 93:2, 93:13, 93:18, 94:1, 94:3,
---	--	--	--

Transcript of John Gargiulo
Conducted on April 30, 2026

247

94:5, 94:8, 94:14, 94:16, 94:17, 94:18, 107:3, 114:25, 115:2, 115:5, 115:6, 127:13, 127:15, 130:4, 151:6, 170:13, 175:2, 181:13 period 158:19 person 9:4, 11:16, 21:9, 97:21, 97:23, 97:25, 98:23, 98:24, 98:25, 185:23, 185:24 personal 5:11, 35:21, 39:21, 81:8, 82:15, 82:25, 83:4, 100:8, 120:5, 156:1, 156:19 personally 21:18, 47:10, 49:3, 49:8, 49:12, 60:20, 60:23, 188:9, 188:11 personnel 97:17 peter 187:22, 187:24, 188:8, 188:10 petition 172:18, 172:22, 191:20 petitioner 1:6, 4:4, 190:13, 190:19, 190:21, 196:17, 197:6, 197:10, 198:15, 198:25, 199:1, 199:2, 199:22, 202:12, 202:13, 203:22,	204:11, 205:13, 207:15 petitioner's 195:15, 196:10, 200:11, 200:13, 201:24, 202:3 petitioners 9:19 pgr 1:11, 20:18, 197:11 ph 2:10, 2:17, 169:23, 179:2, 179:5, 179:9, 180:2, 180:6, 180:8, 180:12, 180:15, 180:20, 180:22, 181:2, 181:3, 181:6, 181:10, 181:15, 181:18, 183:6 pharma 1:8, 2:25, 4:11, 10:1, 10:6, 10:8, 10:11, 10:12, 10:20, 10:23, 10:24, 81:12, 126:20, 219:16 pharmaceutical 26:18, 40:11, 41:10, 43:17, 43:19, 45:4, 182:17, 186:6 pharmaceuticals 40:13, 51:6 pharmacokinetic 64:1, 64:5, 64:11, 127:21 pharmacokinetic-- related 156:3 pharmacokinetics 67:7, 126:21, 127:14, 127:16, 128:2, 128:14, 129:18, 130:10,	131:4, 132:18, 133:2, 133:5, 133:11, 133:25, 144:4, 149:7, 149:22, 192:11, 194:12 pharmakinetic 156:2 phone 8:25, 99:25 phosphate 169:22, 179:1, 181:15 phrase 11:16 physiologically 180:15 pieces 16:18 pike 2:19 pin 85:10 pk 48:10, 48:12, 48:14, 48:15, 52:11, 60:14, 62:20, 63:1, 63:6, 79:25, 127:25, 128:3, 128:14, 128:15, 133:16, 134:4, 134:24, 135:23, 214:2, 214:6 place 61:5, 134:19, 135:20, 158:16, 217:5 plan 142:4, 198:15, 202:2 planet 220:15 planning 89:13 played 47:9 please 6:22, 7:9,	27:13, 46:11, 49:17, 59:14, 79:20, 161:13, 197:21, 213:2 point 19:14, 93:9, 93:12, 123:12, 156:8, 194:12, 198:22, 200:11, 200:22, 201:8 policy 208:15 polymorphic 108:10, 108:13, 109:2, 109:6, 184:7, 184:13, 184:15 portfolio 43:21 portion 55:13, 56:20, 56:21, 58:19, 176:17, 207:16 posa 11:20 posit 38:15 position 27:22, 27:23, 28:1, 28:2, 28:4, 28:6, 28:10, 28:17, 28:20, 28:23, 28:25, 29:2, 52:13, 52:15, 58:10, 63:11, 63:19, 63:25, 64:13, 64:20, 65:1, 65:22, 67:5, 69:25, 70:24, 126:6, 154:14, 191:11, 193:18, 195:12, 195:14, 196:9, 198:17, 199:17, 200:3, 200:10, 200:18, 201:24 positions 65:14, 198:21
---	--	---	--

possibility 154:18 possible 144:15 possibly 131:13 post-grant 20:17, 20:18, 21:1, 21:16, 124:17 potency 49:23, 49:25, 50:3, 50:20, 50:23, 51:4, 61:10, 67:6, 83:23, 90:22, 92:6, 92:8, 92:10, 113:1, 192:10, 194:16 potential 26:1, 26:4, 47:4, 62:8, 81:25, 145:17 potentially 26:20, 40:17, 40:19, 50:9, 56:4, 62:14, 75:22, 76:15, 152:12, 154:19 practices 87:11, 87:13, 87:18 preclinical 46:4, 46:7, 62:6, 81:24, 82:9, 82:16, 83:1, 154:4, 171:7, 171:16, 171:24, 193:7, 195:23, 196:4, 196:14 preclinically 45:23 preface 183:1 prefer 110:5, 205:20, 206:4	preparation 12:16, 13:22, 17:4, 18:12, 18:14 prepare 11:24, 29:1, 29:3, 29:24, 30:2, 159:11, 159:16, 159:17 prepared 6:17, 7:14, 7:16, 7:17, 159:19, 159:21 prerogative 60:7 present 21:10, 62:5, 71:8, 81:23, 82:8, 132:7 presented 67:16, 67:25, 89:19, 114:14, 174:17, 174:25, 175:22, 194:3, 202:21 presenting 73:17, 89:4, 144:9, 193:22, 194:9, 194:14 presents 62:16, 62:18, 193:6, 194:18, 198:7 preserving 212:20 president 41:1, 41:2, 41:16, 44:6, 44:8 pretty 12:1, 185:7, 204:4 prevents 194:1 previous 197:8 previously 172:4, 197:7	price 32:14 primary 25:25, 26:7 princeton 2:14, 2:19 print 78:10 prior 17:17, 18:2, 19:6, 19:9, 37:25, 38:9, 39:2, 39:15, 43:7, 57:7, 61:18, 61:21, 114:19, 114:25, 124:3, 162:20, 189:6, 189:9, 189:10, 189:11, 189:13, 189:14, 189:15 private 26:17, 40:3, 40:18, 40:19 privilege 12:2, 19:19, 20:1, 22:2, 38:13, 38:23, 100:21, 101:3, 101:6, 101:10, 101:15, 102:23, 103:1, 103:23, 104:5, 119:7, 122:5, 124:14, 125:11, 126:11, 126:13 privileged 19:2, 20:4, 38:5, 38:15, 38:21, 39:5, 39:8, 78:16, 101:22, 103:2, 103:8, 121:11, 122:11, 124:18, 124:19, 124:21, 124:22, 125:13, 143:14, 166:22 probably 23:7, 24:23,	57:1, 74:18, 121:15, 136:15, 137:21, 178:8 problem 206:6 procedure 106:8, 106:9, 111:9 proceeding 7:10, 11:8, 18:16, 18:18, 18:20, 18:24, 19:16, 19:22, 20:11, 20:12, 20:13, 20:15, 20:17, 20:21, 21:1, 21:4, 21:24, 23:18, 37:16, 37:20, 37:25, 39:7, 51:19, 51:21, 52:1, 58:13, 59:23, 61:15, 63:20, 64:21, 65:15, 66:16, 67:7, 71:9, 87:21, 120:3, 165:1, 165:4, 190:14, 191:15, 192:3, 192:17, 192:18, 193:5, 194:10, 194:21, 199:5, 201:8 proceedings 9:6, 9:20, 19:6, 38:15, 57:20, 58:16, 124:17, 199:16 process 47:2, 47:9 product 38:4, 38:16, 40:5, 41:12, 42:19, 43:1, 43:3, 43:5, 44:16, 44:23, 47:3, 182:17, 192:1
---	--	--	--

Transcript of John Gargiulo
Conducted on April 30, 2026

249

products 43:20, 43:22, 44:19, 44:25, 45:4 proffering 192:19 profile 47:3 profiles 64:2, 64:5, 64:11 programs 47:15, 81:21 promise 33:19, 64:14, 65:2 pronounce 43:8, 187:19 pronouncing 4:22, 187:14, 191:9 proper 200:6 properties 58:7, 58:11, 63:12, 63:20, 63:23, 65:24, 67:6, 69:5, 192:9, 194:17 propounded 194:22 protective 201:2, 201:11, 203:24, 203:25, 204:14, 206:12, 206:21, 207:14 provide 7:20, 40:22, 40:24, 42:1, 42:3, 44:15, 45:1, 47:10, 69:10, 75:17, 77:9, 78:20, 80:20, 100:16, 101:11, 101:18, 102:19, 114:17, 119:18, 122:15, 137:5, 138:12,	138:13, 139:14, 147:16, 160:6, 178:2, 196:7, 201:22, 215:5, 215:7, 217:4 provided 41:10, 58:6, 67:2, 68:15, 68:19, 102:6, 103:5, 103:20, 109:14, 121:20, 121:21, 121:23, 121:24, 122:8, 122:13, 134:21, 137:9, 145:15, 149:20, 155:6, 157:21, 157:24, 160:2, 160:9, 160:10, 166:1, 170:3, 193:2, 196:20, 198:17, 205:13, 216:17 provides 192:23, 195:22 providing 59:23, 70:15, 100:18, 103:4, 105:10, 198:5 ptab 2:39, 207:9 public 31:1, 34:9 publicly 53:11, 53:14, 59:18, 59:20, 193:13, 196:24, 196:25 pull 13:3, 110:19 purity 183:8, 183:13, 183:15, 183:19, 184:15, 184:19 purport 196:7 purported 170:24, 194:11, 194:16	purportedly 194:6 purpose 51:20, 51:24, 71:4, 82:7, 133:24, 164:25, 165:3 purposes 19:10, 19:13 pursuant 196:9 put 11:3, 23:16, 66:14, 68:5, 70:5, 85:10, 115:7, 115:22, 139:25, 157:9, 169:12, 176:16, 192:3, 197:7, 202:6, 202:19, 203:2, 203:17 putting 79:24, 90:8 Q quality 87:6 questioning 58:25, 59:1, 59:12, 68:20, 68:25, 123:10, 155:14, 194:24, 195:15, 201:16, 201:20, 202:9 questions 7:15, 7:16, 7:18, 7:23, 8:6, 56:24, 59:5, 60:3, 66:15, 66:18, 69:12, 71:11, 71:12, 71:14, 71:24, 72:3, 72:5, 89:15, 109:25, 125:7, 125:20, 128:25, 132:4, 132:7, 132:10, 155:12, 155:22,	171:23, 190:2, 193:14, 200:23, 200:25, 203:5, 203:17, 204:10, 205:25, 206:8, 206:18, 207:17, 208:10, 208:19, 208:22, 209:1, 209:5, 209:25, 210:2, 210:4, 213:21, 213:25, 214:5, 214:9, 214:15, 218:5 quick 158:21 quickly 198:2, 200:10, 204:4 quite 176:18 quote 64:13, 65:2, 66:4, 192:10, 193:9 quotes 193:6 R raise 71:16 raised 58:12, 65:12, 68:10, 199:3 raising 26:5 range 14:15, 32:17, 32:19, 32:23, 180:2, 180:6 rationale 67:13 raw 85:25, 86:5, 86:7, 86:9, 176:4, 176:9, 176:20, 177:1, 177:15, 177:19, 177:22, 178:9,
--	--	--	--

Transcript of John Gargiulo
Conducted on April 30, 2026

250

178:16 re-agents 98:4 re-review 19:11, 19:12 reach 207:12, 218:11 reaction 206:4 read 22:18, 22:20, 165:12, 165:13, 169:11, 176:14, 176:16, 176:17 reading 86:19, 86:22 ready 45:21 really 110:1, 113:13, 115:16, 154:15, 174:5 reason 7:19, 7:22, 74:3, 74:11, 74:24, 75:8, 75:11, 75:12, 75:16, 76:2, 76:23, 77:9, 77:21, 78:6, 119:15, 119:17, 152:16, 152:20, 161:3, 161:24, 162:12, 162:19, 166:18, 167:1, 167:15, 189:2, 193:19 reasons 70:18 rec 121:15 receive 35:7, 35:8, 35:10, 136:23, 137:1 received 37:3, 82:3, 122:19, 137:6,	158:20 recent 31:5 recently 167:24 recess 126:14 recite 70:4 record 4:3, 6:11, 54:15, 56:18, 56:19, 60:20, 60:23, 66:15, 75:3, 78:4, 94:22, 104:3, 107:21, 108:6, 188:14, 207:6, 207:8, 219:12 record's 140:15, 141:9 recorded 127:18, 127:20, 136:14, 136:19 records 87:1, 87:5 redirect 132:6, 207:23 reduction 66:5 refer 9:18, 9:22, 10:13, 10:15, 10:25, 11:4, 11:6, 11:10, 129:1, 141:17, 161:25, 173:19, 177:3, 177:4, 202:8, 212:14, 213:5 reference 58:24, 108:8, 141:13, 150:4 referenced 53:20, 55:2, 55:7, 56:9, 56:11, 66:9, 72:12	referencing 65:12, 145:21 referred 54:11 referring 9:19, 10:1, 10:14, 10:16, 11:1, 11:7, 20:15, 20:22, 64:17, 91:23, 130:16, 140:3, 176:24, 213:6 refers 128:23, 160:19, 161:17, 162:5, 167:5, 167:18, 167:20, 168:15, 168:16, 170:20, 171:4, 183:20, 198:13 reflect 78:4, 104:4 reflection 157:2 refuse 60:2 refused 197:10 refuses 192:15 refusing 130:1, 131:22, 154:22, 154:24, 155:18, 155:21 refutes 194:15 reg 201:4 regarding 15:9, 19:22, 58:7, 87:5, 125:7, 126:8, 155:7, 191:7, 196:13, 202:2 regards 213:19, 215:13 reiterate 155:1	reiterating 155:13 reiteration 102:7 relate 67:9, 71:3, 73:18, 119:19, 120:1, 120:9, 158:1, 182:16, 198:18, 206:1 related 5:10, 42:24, 43:1, 44:16, 58:9, 70:15, 70:21, 70:22, 86:8, 86:10, 87:1, 87:21, 133:2, 149:6, 157:11, 157:18, 157:19, 158:6, 167:23, 173:18, 177:16, 177:20, 177:22, 178:10, 195:25, 202:21, 207:18, 210:3, 219:24 relates 67:15, 145:16, 148:23, 176:4, 192:1, 194:11 relating 21:4, 67:2, 120:14, 155:22, 171:23, 172:9, 178:16 relation 157:15 relationship 41:18, 185:5 relative 35:22, 146:8, 154:12, 154:13, 214:10 relevance 35:22, 35:25, 147:19 relevant 57:20, 58:11,
---	---	---	--

Transcript of John Gargiulo
Conducted on April 30, 2026

251

58:16, 66:10, 68:3, 69:23, 180:15, 180:20, 193:19, 201:25, 203:20, 205:12 remaining 206:20 remember 6:1, 6:2, 14:13, 17:20, 17:22, 17:24, 22:6, 22:9, 22:11, 23:4, 23:24, 23:25, 34:6, 34:8, 45:2, 50:4, 50:7, 78:22, 78:24, 93:8, 121:14, 121:15, 122:17, 122:18, 130:17, 131:19, 137:2, 137:10, 137:22, 149:14, 159:25, 160:8, 173:5, 186:16, 204:25, 208:8, 208:9, 209:4, 210:1, 210:2, 213:24, 214:7, 214:8, 214:10, 214:12 remote 1:17 remotely 219:20 remove 209:10 reopen 204:21 repeat 63:17, 116:15, 143:6, 216:22 repeated 109:9, 109:15, 110:11, 111:20 repeating 74:19 rephrase 6:22, 19:20,	20:8, 28:9, 49:17, 77:5, 101:25, 114:23, 167:25 replacement 42:21 reply 204:19, 204:24 report 89:18, 90:4, 90:10 reported 1:24, 90:5, 90:18, 109:19 reporter 6:10, 176:15, 191:3, 191:4, 219:5 reporter's 3:11 reports 194:14 represent 112:22, 186:18 represented 219:17 representing 4:4, 190:13, 190:21 reproduced 96:13 requested 176:17, 191:10 research 94:24 resolution 218:10 resolve 204:7 respect 198:19 respectfully 78:8 respond 6:8, 200:10, 201:24, 203:16, 203:18, 204:15 responds 204:16	response 18:23, 61:17, 65:13, 65:18, 192:5, 192:14, 192:22, 195:6, 202:5, 210:4 responsibilities 25:23, 25:25, 26:7, 26:23, 26:25, 27:17, 40:14, 41:14, 42:1, 44:19, 185:12 rest 190:2 restroom 123:12 result 118:5 resulted 93:19, 93:20, 95:12, 95:15, 115:4, 120:17, 214:22 results 28:3, 28:5, 58:12, 60:12, 61:1, 62:6, 62:16, 63:3, 63:6, 63:7, 63:9, 67:9, 67:19, 67:22, 69:8, 69:10, 69:12, 69:16, 70:6, 70:14, 70:21, 70:24, 71:2, 71:8, 72:7, 73:17, 81:23, 82:8, 82:16, 83:1, 88:16, 88:20, 95:7, 98:6, 127:19, 127:21, 128:7, 128:11, 136:14, 136:19, 137:23, 138:6, 149:21, 157:2, 157:20, 158:2,	181:23, 188:15, 188:20, 192:4, 192:19, 192:24, 193:7, 198:5, 198:7, 199:6, 199:15, 201:25, 202:19, 202:22 resume 207:4 reveal 121:11, 122:10 review 12:8, 12:15, 13:16, 18:11, 18:13, 18:15, 18:17, 18:19, 18:24, 20:17, 20:18, 21:16, 23:2, 23:8, 23:12, 23:15, 27:2, 27:11, 27:15, 27:18, 27:21, 28:7, 28:10, 28:15, 28:18, 28:21, 28:23, 49:22, 85:25, 86:4, 86:9, 86:25, 87:4, 109:19, 111:16, 112:4, 113:21, 114:1, 114:4, 114:5, 128:18, 129:14, 129:15, 129:24, 129:25, 130:1, 130:15, 130:22, 130:25, 131:2, 131:11, 131:21, 131:22, 132:1, 138:4, 157:10, 157:14, 210:7, 210:10 reviewed 12:17, 19:5, 19:8, 23:13, 24:3, 24:6, 37:24, 38:9, 38:18, 39:1,
---	--	--	--

Transcript of John Gargiulo
Conducted on April 30, 2026

252

47:15, 48:12, 61:18, 61:20, 90:17, 97:12, 106:24, 110:24, 167:10, 177:15, 177:19, 177:21, 178:9, 183:4 reviewing 27:7, 38:13, 89:21, 90:14, 130:7, 131:7, 185:6, 216:15 revisions 161:17, 161:18, 161:22, 162:1 right 10:11, 25:7, 25:17, 33:12, 33:14, 36:5, 39:16, 41:3, 82:20, 88:10, 89:16, 98:16, 99:13, 103:15, 104:19, 107:4, 108:3, 108:4, 109:22, 110:9, 115:1, 116:5, 117:16, 119:20, 128:9, 129:16, 131:10, 131:14, 132:9, 133:7, 134:10, 144:18, 146:3, 146:22, 147:24, 159:2, 159:7, 160:18, 166:23, 169:24, 174:12, 175:9, 176:12, 190:7, 191:6, 191:9, 205:6, 206:2, 206:7, 206:23, 209:19, 212:6, 214:2, 215:21 rmr 1:24 rockville 220:18 role 10:23, 22:3,	27:2, 27:9, 40:15, 42:22, 44:15, 47:6, 47:9, 81:21, 186:11, 196:3 roles 25:20, 25:21, 44:11, 44:12, 44:14 rothschild 2:4, 2:11, 2:18, 4:6, 190:13, 190:18 roughly 33:1, 190:4 rule 59:10, 60:9, 203:15, 205:11 rules 6:5, 200:14 run 93:21, 93:24, 110:16, 110:18, 111:25, 215:13 S s 2:1 safe 136:13 said 5:19, 15:12, 15:14, 16:3, 17:3, 17:16, 23:13, 33:2, 53:12, 53:19, 54:4, 54:20, 54:23, 56:8, 62:25, 74:6, 74:14, 76:18, 77:14, 77:24, 82:23, 83:8, 98:14, 109:1, 110:3, 110:14, 113:19, 114:1, 122:1, 129:3, 129:10, 129:21, 131:6, 132:13,	135:4, 149:14, 149:15, 151:8, 156:23, 163:11, 166:12, 171:16, 172:12, 172:16, 172:22, 187:2, 196:25, 198:10, 198:12, 205:10, 217:7, 217:10 salt 105:25, 106:6, 106:7, 106:10, 108:17, 108:23, 183:23, 184:4, 184:15, 184:19, 216:5, 216:10, 216:14, 217:14, 217:20, 217:24, 218:3 salt-base 133:22 salt-free 133:18, 151:20, 151:23 same 6:19, 9:17, 16:6, 22:9, 49:21, 50:14, 50:15, 54:22, 93:5, 93:10, 93:21, 94:14, 94:17, 95:21, 95:23, 95:25, 96:20, 96:25, 97:10, 97:14, 97:17, 97:25, 98:3, 98:8, 98:11, 98:15, 98:24, 99:11, 101:1, 101:20, 102:9, 103:6, 106:8, 106:11, 106:15, 107:9, 108:25, 109:1, 110:3, 110:17, 111:13, 111:18, 112:2, 112:15, 113:10, 113:17,	113:20, 114:3, 114:13, 115:3, 115:6, 116:13, 117:21, 118:14, 122:9, 133:12, 134:23, 134:24, 137:18, 137:24, 138:14, 140:23, 143:25, 151:11, 173:8, 174:15, 174:19, 209:17, 209:21, 213:12, 214:21, 214:24, 215:3, 215:9, 217:9, 217:21 sample 212:3 samples 111:11 san 2:29 sankyo 43:10, 43:13, 43:15, 43:17, 43:20, 44:13, 44:20, 45:1, 45:6, 46:3, 46:8, 46:16, 46:19, 46:25, 47:12, 47:14, 48:1, 48:3, 48:6, 48:8, 48:10, 48:13 sat 47:14 satisfaction 204:8 satisfied 205:14 saw 159:23 say 6:17, 24:21, 26:8, 26:9, 36:23, 56:10, 61:4, 70:7, 71:16, 77:23, 78:1, 91:19,
---	---	--	--

Transcript of John Gargiulo
Conducted on April 30, 2026

253

96:11, 108:2, 108:24, 110:23, 113:25, 127:23, 128:13, 136:13, 139:11, 140:13, 144:25, 145:13, 146:7, 146:11, 146:21, 168:7, 174:25, 184:4, 185:18, 189:11, 193:14, 194:4, 204:1, 205:19 saying 70:12, 76:10, 93:17, 105:6, 111:8, 146:6, 147:3, 183:2, 194:18, 202:22, 214:23 says 34:7, 50:17, 52:16, 61:7, 61:10, 62:5, 69:13, 78:8, 79:1, 90:19, 99:14, 99:18, 100:4, 111:9, 165:19, 169:14, 169:15, 169:21, 178:22, 178:25, 193:20, 212:3, 212:7 scan 13:11 scanned 13:5 schedule 31:11, 204:3, 205:5, 205:8, 206:20, 206:22 scheduling 205:18 scholarship 28:11, 28:13 school 25:9 science 2:28, 48:23,	49:2 scientific 28:15, 28:18, 40:22, 40:24, 42:1, 42:3, 42:23, 43:1, 145:8, 155:25, 156:5, 156:7, 189:2 scientifically 145:17 scientist 85:24, 94:15, 113:13, 148:22, 184:25 scientists 85:17, 186:14 screen 210:25, 211:15 seat 34:20, 34:22 second 73:3, 99:15, 104:7, 107:21, 108:8, 109:12, 110:10, 111:14, 112:1, 112:10, 121:4, 217:13 secondary 89:2 seconds 146:13 section 92:16, 119:20, 123:10, 172:6, 172:7, 172:9, 173:7, 175:1, 175:19, 177:5, 196:10, 197:22, 213:14 see 8:9, 8:24, 61:4, 62:3, 62:9, 65:19, 72:21, 72:22, 73:4, 73:5, 73:10, 78:11, 79:7, 79:8,	89:23, 106:24, 110:2, 110:4, 110:20, 112:5, 116:20, 116:25, 117:19, 117:23, 117:24, 123:20, 126:23, 126:24, 128:4, 128:5, 129:11, 141:18, 149:19, 161:16, 165:20, 165:22, 167:7, 167:8, 169:15, 170:1, 176:23, 178:22, 178:24, 179:3, 185:21, 187:5, 190:5, 201:5, 203:11, 207:12, 209:9, 210:5, 211:3, 211:12, 211:16, 211:17, 211:19, 212:2, 212:5, 212:6, 212:8, 212:10, 217:19 seeking 75:18, 194:19, 207:14 seems 196:16, 197:11, 206:15 seen 120:21, 120:22, 121:3, 131:20, 175:18, 175:20, 176:1, 176:4, 176:9, 176:20, 177:1, 192:11 select 114:12, 114:16 selected 105:19, 105:21, 179:5, 179:10 selectivity 152:8, 152:12 send 13:11, 204:3, 205:7, 206:20,	206:22, 210:14 sends 193:20 senior 44:6 sense 12:11 sensitive 197:13, 201:18 sent 121:16, 137:8, 211:11 sentence 62:5, 81:1 sequential 160:17 series 95:25, 208:9, 209:24, 213:21, 214:4 service 40:4, 41:24 services 40:9, 40:22, 40:25, 41:10, 41:15, 42:1, 42:4, 44:15, 44:17 set 191:15, 202:2, 219:9, 220:6 seven 191:22, 195:7, 195:8, 197:1, 198:11 several 69:8, 99:20 share 31:1, 33:4, 33:5, 33:8, 33:10, 33:12, 33:14, 33:18, 33:23, 34:3, 210:12, 210:24 shares 33:6, 33:19 sharing 211:15
--	--	---	---

shield 104:6, 193:25 short-circuit 179:25 shorthand 9:9, 9:16, 96:11, 219:4 shortly 207:24 should 138:5, 163:17, 163:20, 196:11, 200:23, 203:16, 205:8, 205:12, 206:15, 211:12 show 165:19, 181:24, 210:8 showing 120:14 shown 64:1, 64:13, 65:2, 66:4, 127:22, 132:12, 192:8 shows 114:18 side 116:21, 211:13 signature 78:14, 78:18, 78:21, 79:1 signature-b7fzp 220:11 significance 113:2, 113:8 significantly 214:11 similar 108:21, 108:24, 108:25, 194:2 similarities 199:13 simple 70:16 simulated 182:22 simulation 96:2	since 191:10, 198:17 single 208:11 single-dose 126:21, 133:6 single-point 113:16, 113:24 sit 71:19, 154:2 sitting 24:23, 110:9, 129:16, 131:15 sixth 2:5 ski 168:7 skill 11:17 skim 23:16 software 29:24, 30:1, 160:23, 160:25, 161:8 sold 45:3 solubility 163:23, 164:1, 164:18, 164:20, 164:22, 164:24, 165:2, 169:6, 169:21, 170:15, 172:12, 178:25, 179:6, 179:10, 180:14, 180:22, 181:1, 181:4, 181:13, 181:14, 181:19, 181:23, 182:9, 182:21, 183:24, 184:8, 184:16, 184:21, 194:11 solution 41:23, 203:13 solutions 41:2, 41:5, 41:8, 41:10,	41:15, 41:21 some 9:9, 9:16, 32:25, 36:23, 49:1, 55:20, 56:17, 62:19, 65:19, 80:15, 81:18, 81:23, 82:11, 93:12, 101:8, 114:23, 129:4, 129:13, 132:9, 138:7, 145:19, 174:4, 194:10, 195:23, 197:12, 203:19, 205:21, 205:22, 209:1, 210:2 somebody 136:15, 138:8 someone 78:13, 101:12, 101:19, 102:2, 102:7, 102:20, 122:8 something 38:22, 132:2, 140:6, 149:2, 210:19, 211:7 sometimes 50:5, 50:6 somewhere 139:16 soon 161:14 sorry 7:15, 24:22, 25:5, 25:13, 42:17, 44:10, 50:10, 53:12, 63:13, 76:11, 79:4, 86:13, 87:20, 89:24, 90:8, 93:12, 96:11, 112:17, 130:9, 133:24, 153:13, 154:22, 157:19, 164:19, 166:16, 170:16,	172:15, 175:25, 176:13, 177:8, 178:2, 188:3, 188:5, 192:17, 199:2, 207:7, 212:18, 214:7 sort 38:14, 47:6, 121:17, 145:18, 154:12, 154:20 sound 206:14 sounds 33:18, 41:19, 41:20, 109:23, 190:8, 204:18 source 34:12, 34:14, 34:17, 85:9 space 197:6 speak 13:24, 13:25, 14:18, 148:8, 148:13, 174:16, 189:22, 215:17 speaking 9:10, 66:13 specialize 43:20 specific 12:3, 12:12, 14:13, 15:10, 22:7, 22:11, 27:14, 30:5, 41:12, 44:22, 45:12, 46:12, 64:17, 68:16, 79:15, 93:23, 97:5, 105:3, 151:15, 173:23, 209:25, 210:3, 215:6, 215:8 specifically 12:14, 23:4, 23:24, 23:25, 34:6, 34:8, 50:25, 52:16,
--	---	--	---

68:18, 70:7, 87:18, 91:3, 91:11, 91:17, 94:2, 94:11, 99:3, 99:7, 99:9, 100:1, 100:5, 104:21, 104:23, 105:11, 111:9, 121:2, 121:14, 121:16, 127:2, 127:7, 136:18, 149:15, 158:5, 158:13, 174:22, 196:13, 214:9 specifics 64:24, 92:4, 98:9, 98:22, 145:20 spectrum 45:24 speculation 98:13, 98:20, 136:9, 136:17, 157:7, 161:6, 165:18, 166:9, 168:24, 170:8, 180:25, 181:8, 181:17, 183:12, 183:18, 186:8, 215:16, 215:24 spend 12:9, 23:23 spent 24:1 spoke 84:20, 85:17, 85:23, 94:15, 156:11, 156:24 spoken 19:22, 20:11 square 56:6 stability 152:1, 152:5 stage 191:15 stand 155:17	standards 87:13 standpoint 41:21 stands 87:10, 160:12, 160:14 start 25:3, 46:13, 79:18, 81:2, 81:7, 124:19, 140:14, 143:10, 150:22, 152:21, 191:11 started 25:13, 43:23, 43:25 state 104:18, 126:18, 128:10, 134:8, 144:15, 159:5, 159:8, 167:16, 171:3, 195:6, 207:5, 207:8, 219:1, 219:5 stated 54:10, 73:24, 75:5, 84:19, 84:20, 102:12, 102:13, 111:24, 112:12, 112:17, 112:18, 112:25, 114:13, 125:24, 158:12, 161:7, 162:24, 166:10, 170:19, 171:22, 172:4, 173:5, 212:15, 213:8, 217:18 statement 79:8, 98:18, 102:8, 126:2 statements 79:2, 79:3, 79:5, 79:9, 79:10, 79:19, 79:21, 80:3, 80:5, 80:7,	80:9, 80:21, 83:8, 83:9, 83:11, 83:12, 100:17, 100:25, 101:12, 101:19, 102:3, 103:5, 103:20 states 1:1, 3:18, 20:19, 165:15, 166:1, 167:5, 168:15, 193:5 stating 214:19 status 194:4 stay 203:7 stayed 193:18 steadfast 193:18 stem 190:2 steps 84:10, 85:13 stick 80:3 still 178:19, 199:19, 211:12, 211:21, 211:25 stint 42:13 stock 30:24, 30:25, 31:2, 32:13, 32:14 stomach 180:9, 180:12 stop 68:22, 103:1, 123:8, 211:14 store 30:8, 30:11, 30:13, 30:16 stored 30:4, 30:7	strategic 62:8, 81:17, 81:25 street 2:5 strike 102:18, 103:3, 103:16, 103:18, 209:14 strong 64:14, 65:2 structural 115:11, 117:9, 118:1 structurally 194:2 structure 36:13, 73:3, 196:18, 196:23, 198:16, 199:13, 202:12, 202:15, 202:18 structured 72:20 structures 115:10, 216:3, 216:17 struggling 56:7 studies 47:5, 62:6, 64:14, 65:3, 82:9, 82:12, 82:16, 83:1, 85:18, 85:24, 92:24, 94:20, 95:11, 95:19, 97:24, 108:21, 109:20, 121:1, 154:18, 155:23, 158:9, 183:5, 193:7, 198:8 study 15:24, 16:8, 16:9, 16:13, 16:16, 50:15, 51:1, 95:20, 127:24, 127:25,
---	--	---	--

Transcript of John Gargiulo
Conducted on April 30, 2026

256

128:3, 128:15, 136:2, 137:17, 138:2, 138:6, 151:16, 153:6, 153:10, 153:16, 156:12, 156:24, 156:25, 157:2, 158:20, 213:15 stuff 121:19 stymied 199:9 subcutaneous 126:21, 133:6 subject 200:7 submission 17:18, 19:7, 19:9, 19:11, 19:13, 37:25, 38:10, 39:2, 78:23, 82:13, 160:1 submit 21:24, 103:4, 204:14 submitted 16:23, 18:16, 18:18, 18:20, 18:23, 37:19, 37:23, 51:18, 52:1, 52:2, 78:8, 85:15, 85:19, 85:21, 100:24, 114:15, 114:20, 120:2, 175:15, 191:17, 192:22, 195:22, 197:15, 198:4 submitting 52:6, 82:6, 82:18, 103:19 subsidiaries 10:20, 10:23 substance 12:5, 13:21, 51:16, 124:2, 124:10, 124:14	success 65:22 sufficient 206:15 suffix 161:10, 161:16, 161:25, 162:4 suggest 39:7 suit 5:8, 5:9 suite 2:6, 2:13, 2:35, 220:17 summarize 198:2 summary 198:21 superior 58:10, 63:12, 63:19, 63:23, 64:1, 64:5, 64:11, 66:3, 67:6, 69:5, 70:24, 192:8, 192:9, 192:10, 194:6, 194:17 superiority 181:24, 182:10 support 192:21, 193:2 supported 192:24 suppose 138:5 supposed 66:22, 68:17 sure 6:11, 6:13, 9:15, 9:17, 13:6, 17:3, 75:18, 76:21, 79:18, 89:12, 97:20, 97:23, 98:1, 104:8, 136:14, 144:12, 145:23, 149:1, 168:12, 171:13,	182:5, 182:8, 185:2, 188:14, 191:8, 191:19, 198:24, 210:13 surprised 165:14, 166:6, 166:14 surrounding 126:16 suspected 148:25 svp 44:4 sword 104:6, 193:25 sworn 4:14, 101:18, 102:6, 219:10 synthesize 47:25, 48:2 synthesized 105:15, 105:17, 150:24, 151:2, 151:5, 151:9, 216:5 synthesizing 49:4, 49:7 system 87:7 T table 84:23, 85:6, 92:19, 93:6, 93:14, 93:15, 93:19, 94:3, 95:16, 95:21, 96:5, 96:10, 96:11, 96:12, 96:16, 96:17, 96:20, 96:21, 96:22, 96:24, 97:1, 97:17, 97:18, 98:1, 98:3, 98:4, 98:9, 98:24, 99:4, 99:5, 99:6, 99:8,	99:12, 99:19, 106:9, 106:15, 107:3, 107:10, 109:19, 110:18, 111:1, 111:10, 112:1, 112:2, 112:4, 112:19, 113:20, 114:14, 115:4, 118:9, 118:19, 127:17, 127:22, 128:1, 128:7, 128:11, 128:16, 128:21, 128:22, 129:5, 129:12, 130:24, 131:9, 132:13, 133:17, 134:25, 137:19, 137:23, 138:3, 138:6, 138:10, 138:18, 139:17, 149:8, 149:16, 149:19, 149:23, 150:3, 151:12, 173:10, 174:19, 209:10, 209:18, 209:21, 209:22, 213:11, 213:13, 215:4, 217:22 take 9:11, 9:14, 42:16, 51:10, 51:12, 56:17, 85:13, 89:20, 107:19, 107:25, 121:22, 122:22, 123:14, 134:19, 135:20, 146:10, 148:23, 154:14, 187:4, 190:4 taken 8:4, 8:7, 58:10, 63:11, 63:19, 63:25, 64:13, 64:20, 65:1, 65:15, 65:22, 67:5, 70:23, 84:10,
--	--	---	--

Transcript of John Gargiulo
Conducted on April 30, 2026

257

90:17, 109:15, 111:3, 111:5, 219:12 talk 13:19, 13:21, 14:4, 14:22, 17:13, 17:14, 26:1, 26:9, 51:15, 62:14, 69:4, 80:13, 84:11, 124:20, 127:11, 133:1 talked 15:17, 17:4, 17:9, 17:11, 19:14, 23:17, 25:1, 77:25, 103:17, 124:7, 124:9, 125:4, 126:2, 160:10, 172:5 talking 7:1, 26:11, 26:21, 96:12, 104:12, 124:4, 140:16, 169:19, 172:8 talks 69:7, 133:3, 134:11 target 36:14, 47:2 tawan 2:40 technical 188:19 technically 185:3 telephone 3:8, 190:11 telephonic 2:39 tell 12:7, 95:18, 104:11, 108:25, 130:23, 132:16, 133:9, 146:12, 146:14, 174:5,	203:24, 217:12 telling 157:8 ten 17:6, 57:2, 57:3, 107:24, 111:10, 187:9, 207:22 term 44:24, 91:22 terms 85:8, 89:8, 89:11, 145:20, 175:24, 205:17 test 28:3, 28:5, 48:14, 60:12, 61:6, 67:8, 69:7, 69:10, 69:12, 69:16, 70:5, 70:21, 71:2, 72:7, 73:17, 84:15, 84:20, 84:22, 85:3, 86:20, 91:10, 91:12, 91:13, 91:18, 98:8, 110:15, 110:16, 111:10, 111:12, 111:25, 112:3, 164:4, 164:6, 166:19, 169:21, 170:15, 170:24, 172:13, 175:3, 178:25, 179:6, 179:10, 180:14, 180:22, 181:14, 183:24, 184:9, 198:5, 212:12 tested 53:2, 53:3, 69:16, 105:24, 106:3, 108:16, 118:10, 118:12, 118:14, 118:22, 119:1, 130:9, 131:4, 131:8,	133:10, 179:18, 180:21, 183:23, 184:3, 199:20, 200:4, 209:3, 209:7, 209:17, 209:21 testified 4:14, 58:5, 67:4, 70:17, 102:2, 167:22, 193:11, 209:8, 209:13, 209:15, 217:3 testify 58:20, 89:14, 146:1, 201:22 testifying 58:15, 61:19, 61:21, 68:4, 89:13, 130:4, 144:13 testimony 7:20, 27:5, 51:16, 54:3, 56:6, 56:14, 57:11, 58:7, 59:3, 59:22, 62:24, 66:23, 67:2, 67:14, 68:18, 70:11, 73:16, 75:4, 76:5, 82:22, 93:11, 101:4, 101:12, 101:18, 102:7, 102:19, 111:7, 111:23, 113:5, 113:11, 113:18, 115:14, 115:25, 116:7, 116:14, 117:12, 118:4, 118:17, 124:1, 124:8, 129:20, 134:2, 144:7, 144:20, 145:6, 146:5, 146:25, 147:13, 148:6, 148:20, 156:22, 157:7,	163:10, 179:8, 179:15, 180:11, 180:18, 182:25, 184:1, 184:11, 184:18, 185:15, 193:5, 196:11, 200:15, 205:23, 213:6, 213:8, 216:21, 217:2, 219:13 testing 42:24, 43:1, 49:9, 49:11, 62:16, 83:22, 84:2, 84:4, 84:5, 86:8, 86:23, 87:1, 87:5, 90:20, 91:2, 91:4, 91:7, 91:20, 91:25, 92:2, 105:19, 105:21, 106:8, 106:9, 126:19, 127:1, 127:3, 127:14, 127:16, 127:21, 128:8, 129:3, 129:6, 129:18, 130:3, 130:6, 132:18, 133:1, 136:11, 149:6, 150:7, 150:10, 150:12, 150:15, 152:22, 153:3, 155:7, 155:8, 157:11, 157:18, 157:20, 157:23, 158:1, 158:6, 163:24, 164:1, 164:8, 164:10, 164:12, 164:15, 164:17, 164:18, 164:21, 164:22, 164:25, 165:3, 167:2, 169:6, 172:6, 172:7, 172:24, 173:16, 181:1, 181:5,
---	--	---	--

Transcript of John Gargiulo
Conducted on April 30, 2026

258

181:9, 181:13, 181:15, 181:20, 181:23, 182:9, 183:9, 192:24, 202:24, 213:21, 214:22 testings 136:5 testosterone 42:21, 42:24 tests 27:24, 27:25, 48:4, 48:7, 48:15, 58:8, 60:16, 60:18, 60:21, 63:3, 63:6, 63:7, 63:9, 80:13, 80:14, 84:21, 87:14, 94:5, 95:6, 110:17, 112:7, 115:3, 169:10, 170:12, 170:22, 170:25, 173:18, 173:22, 173:24, 174:6, 186:6, 199:14, 202:20 texas 191:5, 219:1, 219:5 text 9:7 th 205:4 thank 57:5, 140:5, 187:10, 190:8, 190:19, 190:21, 190:23, 203:8, 207:1, 209:10 thanks 206:23, 207:7, 208:1 therapeutic 1:15 therapeutics 5:23, 42:6,	42:9, 42:18, 42:19, 43:6 therefore 58:11, 76:16 thereof 1:15, 116:11 thing 22:24, 61:9, 81:1, 102:14, 131:19, 147:2, 174:24, 202:23, 210:19 things 12:10, 12:13, 45:11, 51:8, 80:16, 89:14, 140:10 think 5:5, 22:10, 23:15, 26:24, 37:8, 42:11, 51:25, 57:1, 61:4, 76:13, 97:21, 134:23, 145:22, 187:3, 188:13, 190:1, 191:14, 194:20, 198:3, 198:6, 200:22, 202:17, 202:25, 203:11, 203:21, 203:22, 203:25, 204:3, 204:8, 205:6, 205:9, 205:16, 205:25, 207:1, 209:22 third 94:25, 95:1, 108:15, 109:4, 111:19, 112:1, 112:15, 112:19, 122:7 third-party 26:13, 95:6, 135:24, 135:25, 136:6 thirty 123:18	thought 206:6 thoughts 207:23 three 5:25, 31:8, 31:9, 42:12, 72:20, 146:11, 191:24, 192:25, 209:15, 213:11 through 6:4, 57:24, 79:16, 81:1, 81:3, 83:14, 83:16, 90:12, 94:5, 110:1, 110:20, 119:21, 135:23, 139:1, 185:25, 187:5, 210:14 throughout 7:10, 9:2, 9:5 thursday 1:18, 219:20 tighten 182:3 time 14:14, 18:7, 18:9, 19:23, 20:11, 22:9, 41:9, 41:16, 51:7, 51:10, 77:5, 84:7, 93:3, 93:5, 93:10, 93:21, 94:14, 94:17, 95:21, 95:23, 99:11, 107:16, 110:6, 114:13, 115:3, 115:6, 118:14, 122:23, 134:23, 134:24, 137:18, 151:4, 151:11, 158:19, 158:25, 159:23, 173:8, 174:19, 187:7, 202:1, 202:24, 205:4,	207:15, 218:13 times 5:4, 109:8, 109:15, 110:10, 111:20, 112:6, 196:17, 210:6 title 1:14, 186:15, 186:17 today 6:6, 7:1, 7:16, 7:18, 7:21, 8:6, 9:3, 9:9, 9:16, 12:20, 31:18, 31:20, 32:3, 32:15, 61:19, 61:21, 73:16, 173:1, 173:17, 173:20, 175:5, 208:6, 208:20, 210:9, 213:7, 213:9, 214:5 today's 7:10, 7:15, 9:6, 11:24, 12:16, 13:22, 17:4, 18:12, 19:10, 19:13, 68:23 toft 2:3, 3:7, 3:10, 4:2, 4:4, 4:17, 13:3, 13:10, 13:15, 20:9, 38:17, 38:25, 39:8, 51:12, 51:14, 56:19, 57:3, 57:7, 58:4, 59:2, 59:13, 60:2, 60:11, 66:12, 66:20, 67:1, 67:12, 67:21, 68:7, 68:14, 68:22, 69:2, 69:7, 69:14, 69:19, 69:25, 70:10, 70:23,
---	---	--	--

Transcript of John Gargiulo
Conducted on April 30, 2026

259

71:1, 71:6, 71:14, 72:1, 72:6, 78:4, 86:15, 102:24, 103:11, 104:3, 107:18, 108:7, 116:1, 122:22, 123:9, 123:20, 123:24, 124:16, 124:25, 125:12, 126:12, 155:5, 155:16, 158:21, 158:24, 159:2, 159:4, 176:13, 176:18, 187:3, 187:9, 187:12, 190:1, 190:12, 191:10, 191:13, 191:20, 195:5, 198:22, 199:1, 199:2, 199:22, 199:25, 202:17, 204:12, 204:18, 204:25, 205:3, 205:16, 205:19, 207:5, 207:25, 209:9, 211:7, 211:16, 211:18, 212:17, 212:20, 214:17, 218:4, 218:8 together 207:23 told 80:18, 94:16, 95:5, 95:10, 95:14, 95:19, 97:3, 98:14, 100:8, 100:10, 100:13, 102:20, 103:20, 106:13, 106:14, 107:11, 107:14, 114:24, 115:2, 115:7, 135:3, 161:2 took 124:5, 158:16, 169:7, 169:11,	193:16, 217:5 top 169:13, 169:16, 169:17, 169:18, 178:23, 205:1 towards 70:21 track 168:4, 168:9 trademark 1:1, 20:20 trails 161:17, 161:19, 161:23, 162:1 training 155:25, 156:5, 156:7 transcript 55:14, 55:25, 56:22, 57:19, 58:19, 200:25, 214:8 transcription 210:20 translation 166:1, 170:3 treatment 66:6 trial 1:3, 212:3 trials 65:23 triangle 117:22 tried 197:8 true 79:3, 79:6, 80:4, 80:6, 80:23, 81:8, 82:14, 83:9, 83:10, 83:11, 83:12, 84:9, 145:15, 159:6, 159:9, 161:4, 219:12 truth 157:9	truthful 7:20 truthfully 7:23 try 6:19, 6:22, 13:13, 45:8, 145:9, 203:12 trying 45:14, 56:5, 56:6, 67:1, 69:15, 69:19, 83:7, 89:10, 155:5, 177:4, 196:18, 204:22, 205:16, 205:25, 211:22, 211:25 turn 8:25, 72:17, 126:17, 213:16 turning 78:7 twice 192:5 two 5:25, 15:19, 16:18, 16:21, 55:1, 100:4, 104:18, 105:7, 105:13, 108:21, 114:7, 116:23, 117:4, 117:6, 119:3, 119:9, 119:12, 119:15, 146:11, 161:15, 179:1, 193:2 ty 207:7, 210:22 type 16:6, 20:18, 33:3, 40:4, 50:8, 154:17 types 12:10, 49:22, 50:4 typo 61:22, 83:24 typographical 61:11	U uh-huh 216:12 uh-huhs 6:9 unable 7:20, 194:23 uncertain 216:16 under 7:20, 73:3, 92:22, 95:7, 96:3, 96:17, 96:20, 96:25, 97:10, 97:14, 105:14, 109:20, 115:10, 162:17, 169:24, 178:23, 200:13, 201:1, 209:1, 209:3, 209:7, 209:17, 209:21, 217:4 underlying 5:13, 5:19, 5:20, 38:20 underneath 73:9 understand 6:20, 7:6, 7:8, 9:3, 9:18, 9:21, 9:25, 10:5, 11:1, 11:5, 11:7, 17:3, 21:17, 21:19, 22:25, 35:21, 36:19, 45:14, 45:16, 46:23, 56:5, 59:19, 59:22, 65:8, 65:10, 66:2, 67:2, 67:8, 67:13, 69:15, 69:20, 71:2, 74:10, 75:14, 75:19, 76:19, 76:21, 79:14, 79:15, 83:7,
---	--	---	---

Transcript of John Gargiulo
Conducted on April 30, 2026

260

83:11, 89:9, 89:12, 90:7, 99:22, 109:22, 110:7, 114:22, 125:17, 132:3, 132:11, 137:13, 145:9, 155:6, 155:8, 157:3, 163:13, 182:4, 182:15, 191:7, 195:2 understanding 31:25, 47:20, 50:19, 51:2, 51:3, 51:19, 95:22, 95:24, 98:17, 100:22, 100:24, 116:17, 117:8, 117:25, 125:15, 125:18, 134:3, 135:2, 150:21, 151:3, 168:17, 168:19, 170:5, 184:14, 204:13, 208:13 understands 204:19 understood 6:24, 7:3, 152:14 unexpected 58:12, 88:16, 88:19, 188:15, 188:20, 192:4, 199:5, 199:15, 201:25, 202:22 unfortunately 55:21, 214:13 unidentified 193:3 united 1:1, 3:18, 20:19 university 82:4 unless 64:23, 141:22, 142:5, 142:9,	142:13, 142:18, 142:23, 174:5, 206:15, 217:5, 218:10 unnamed 193:3 unrelated 153:16 until 6:18, 108:3, 129:24 uploaded 163:13 upper 116:19, 116:20 urgency 204:19 use 9:9, 9:16, 91:22, 104:5, 123:12, 194:4 uses 168:4, 168:8, 193:24 using 45:9, 106:18 V vague 15:15, 28:8, 40:6, 42:2, 44:21, 45:7, 45:10, 49:16, 109:11, 110:13, 125:23, 132:22, 133:13 validate 80:14 validity 20:21, 88:2 value 32:1, 32:4, 47:4, 50:21, 51:4, 112:21, 113:3, 156:3, 180:22, 181:15, 181:19 values 85:6, 85:7,	85:8, 180:16, 181:6, 181:10 various 192:24, 193:20 veil 71:7 venture 26:18 ver 111:16 veracity 58:8, 84:10 verified 85:8 verify 85:14, 85:21, 97:9, 111:17, 137:12, 156:18 versions 162:7, 162:11, 162:13, 162:20, 162:25, 163:2, 163:5, 163:12 versus 113:3, 119:12 vest 31:7, 33:24 vested 31:6, 31:17, 31:19, 32:24, 33:9, 33:11 vests 31:14, 31:16 via 1:17, 137:4 vice 44:6 videographer 210:15 videotaped 1:16 viewed 178:16 viking 5:22 visual 211:9 vp 43:24, 43:25,	44:1, 44:2 W w-2 35:3, 35:5, 35:6, 35:7, 35:8 wait 6:17, 204:21 want 4:2, 9:17, 12:3, 36:3, 45:14, 54:14, 54:15, 54:16, 70:14, 71:24, 75:18, 76:20, 80:2, 80:6, 80:25, 81:2, 83:11, 100:23, 107:21, 107:25, 122:25, 123:5, 123:13, 123:16, 123:17, 129:25, 132:10, 155:8, 161:15, 170:18, 171:11, 171:13, 173:24, 176:15, 177:13, 182:5, 182:7, 186:19, 186:25, 198:14, 198:20, 203:12, 204:3, 205:10, 206:21 wanted 107:24, 197:25 wants 132:6 warranted 66:14 washington 2:36 waterfall 31:11 way 22:12, 23:16, 29:19, 29:22, 33:25, 46:23, 55:17, 69:23, 75:21, 76:13,
---	--	--	--

Transcript of John Gargiulo
Conducted on April 30, 2026

261

98:8, 105:2, 109:25, 110:15, 110:17, 111:25, 112:3, 113:20, 114:15, 129:13, 137:5, 137:16, 141:19, 145:11, 145:21, 145:23, 167:19, 169:3, 173:14, 182:19, 184:20, 189:12, 195:18, 196:6, 203:19, 205:22, 217:12, 217:23, 220:3 ways 29:9, 29:14, 29:16 we'll 57:3, 81:2, 85:11, 90:24, 96:11, 190:3, 203:6, 204:6, 205:7, 206:21, 207:23 we're 7:1, 9:17, 26:5, 35:23, 36:24, 63:14, 68:20, 71:18, 72:4, 104:12, 140:15, 144:22, 170:19, 172:8, 194:19, 202:23, 203:10, 203:21, 204:20, 208:5 we've 51:9, 53:13, 53:17, 77:24, 206:1 week 205:9 weight 66:5, 202:4 welcome 204:9 went 24:7, 24:9,	25:6 weren't 149:2, 217:3 whatever 9:5, 11:11, 52:17, 99:4, 103:15, 111:11, 122:25, 149:14, 183:6, 194:5, 210:11 whenever 22:7 whereof 220:6 whether 27:7, 38:17, 38:18, 38:21, 57:15, 57:18, 57:22, 58:14, 70:8, 70:9, 70:21, 71:3, 73:1, 73:14, 73:25, 74:4, 74:7, 74:8, 74:15, 74:25, 75:6, 75:23, 76:15, 76:24, 77:10, 78:1, 78:2, 88:9, 88:15, 88:22, 97:13, 98:11, 103:17, 108:12, 108:22, 110:4, 118:23, 118:25, 119:8, 120:6, 120:8, 120:13, 121:2, 130:23, 132:16, 146:1, 146:7, 147:2, 148:7, 154:16, 155:22, 156:6, 168:5, 171:23, 172:2, 179:17, 184:13, 188:22, 193:21, 194:14, 199:10, 199:19, 200:3, 200:5, 202:20, 215:17,	215:18, 216:3, 216:5, 216:17, 217:13, 217:20, 217:23, 218:2 whole 140:10 wholly 111:2 willing 132:8, 171:23, 201:21, 203:14, 203:25 wipf 187:14, 187:19, 187:22, 187:24, 188:1, 188:7, 188:8, 188:10, 192:18, 199:5 within 35:21, 58:16, 71:11, 106:25, 194:20, 202:9, 205:9 without 68:10, 101:5, 101:9, 111:4, 130:7, 131:2, 131:6, 131:16, 144:5, 155:25, 193:21, 206:2 witness 19:2, 19:18, 19:24, 22:1, 26:13, 26:15, 38:3, 38:12, 40:7, 58:3, 58:5, 58:22, 78:5, 89:21, 90:14, 96:7, 100:20, 101:2, 107:23, 108:2, 119:6, 122:6, 122:24, 123:3, 123:7, 123:13, 123:18, 123:22, 124:12, 125:1, 125:10, 158:23, 163:17, 163:19,	178:13, 187:7, 187:10, 190:8, 201:22, 202:2, 203:18, 205:14, 207:20, 209:12, 210:18, 211:10, 211:17, 211:20, 212:18, 212:22, 212:24, 219:8, 219:13, 220:6 witness's 75:3 wondering 65:14, 130:6, 131:15, 173:25 word 23:15, 45:9, 97:8, 131:19 worded 76:14 wording 34:8 work 10:10, 10:12, 10:21, 38:16, 57:17, 185:19, 185:21 work-product 102:23 worked 5:10, 5:12, 39:15, 39:17, 40:18, 41:4, 42:5, 42:8, 47:8 works 206:17 worldwide 220:15 worries 6:2, 171:12 worth 31:3, 32:9, 32:15 wouldn't 128:20, 150:2, 157:4, 172:23, 215:12 wrong 41:20, 43:9
--	--	---	---

Transcript of John Gargiulo
Conducted on April 30, 2026

262

y	31:9, 51:7	02	10:59 am
yeah	yep	167:5, 167:12,	123:23
4:9, 4:21,	165:12, 169:24,	167:13, 167:18,	11
4:23, 9:15,	184:5	167:20, 168:5,	15:7, 16:4,
10:17, 11:13,	yes-or-no	168:6, 169:22,	16:24, 17:13,
11:18, 12:20,	6:7, 20:2,	170:13, 170:20,	17:15, 18:4,
19:5, 20:9,	54:7, 70:16,	170:23, 171:1,	18:6, 52:12,
23:25, 26:15,	74:22, 77:3,	171:4, 171:17,	52:20, 52:21,
27:7, 35:16,	77:4	183:14, 183:20,	52:25, 54:24,
42:15, 43:12,	z	219:21	55:2, 55:8,
43:14, 44:22,	zhu	02521	60:14, 62:20,
51:12, 51:23,	2:10, 4:7,	181:2	63:1, 90:6,
56:1, 69:9,	190:20	02568	134:8, 134:11,
75:20, 77:5,	zoom	181:2	136:3, 136:12,
80:12, 80:25,	8:17, 185:25,	04	136:20, 136:21,
82:23, 89:9,	211:13	165:16, 165:23	136:24, 138:11,
89:25, 93:17,	\$	081	138:16, 145:15,
96:8, 104:20,	\$2.4	184:13	147:7, 147:10,
110:14, 114:22,	32:5	08540	149:20, 150:4,
115:15, 116:25,	\$3	2:14	150:5, 151:11,
120:18, 121:21,	32:25	08648	151:17, 151:19,
122:2, 123:4,	\$3.30	2:22	151:23, 151:25,
123:20, 138:9,	32:25	1	152:4, 152:7,
139:9, 140:14,	\$3.90	1.995	152:11, 152:15,
141:23, 142:11,	33:1	99:16, 109:13,	153:20, 156:10,
144:22, 146:10,	.	112:9, 113:3	157:12, 157:16,
148:10, 148:12,	.190	1.9995	157:21, 157:24,
152:25, 153:15,	3:8	112:14	158:2, 158:7,
154:3, 155:21,	.208	10	169:23, 175:25,
156:23, 158:23,	3:9	14:20, 57:4,	176:11, 179:2,
161:14, 163:16,	.210	113:9, 128:1,	179:5, 179:9,
166:4, 166:24,	3:18	128:5, 128:23,	180:23, 181:3,
168:13, 168:14,	.214	128:25, 132:19,	181:6, 214:1
169:20, 170:9,	3:10	133:1, 211:23,	1117
174:10, 177:11,	.219	213:19, 220:14	2:29
178:7, 182:5,	3:11	100	11:42 am
184:6, 187:21,	0	36:16, 36:21,	123:23
188:25, 195:19,	0.044	37:2, 37:4	12
205:19, 209:23,	113:3	1001	52:25, 62:21,
210:21, 211:21,	00057	210:12	63:1, 159:5
212:11, 212:15,	1:11, 20:18	10265	12,234,236
213:8, 215:17	007230	2:28	1:12, 3:18,
year	159:7, 159:10,	103	11:2, 11:9
31:14, 31:16,	160:16	211:5, 211:24,	120
36:24, 41:6,		212:1, 214:20,	36:25
174:11		215:10, 216:24	1299
years		1099	2:34
5:25, 31:8,		35:10	12:28 pm
			159:3

Transcript of John Gargiulo
Conducted on April 30, 2026

263

12:37 pm 159:3 13 3:16, 3:17, 72:13, 139:1, 139:2, 139:5, 139:10, 140:18, 140:21, 141:15, 167:4, 167:8 15 14:20, 18:1, 191:25 16 165:16, 165:23 18 139:6, 140:22, 140:25, 142:4, 142:6, 142:10, 191:25 19 55:7, 56:11, 57:8, 57:9, 59:6, 72:7, 72:8, 134:10, 134:12, 135:7, 135:11, 138:13, 144:15, 147:18, 148:2, 150:6, 150:11, 150:14, 151:2, 151:4, 151:9, 151:17, 153:19, 154:5, 154:9, 191:24, 192:12, 192:25 1982 24:19 199 211:1 1:15 pm 187:11 1:29 pm 187:11 1:33 pm 190:10 1r 90:24 2 2.4 31:22, 31:23,	31:24, 32:1, 32:18, 32:24 20 12:19, 108:4, 141:1, 141:4, 142:11, 142:15, 191:24, 205:4 200 211:1 20004 2:36 2014 39:18 202 2:37 2022 25:4, 25:15, 39:18 2025 1:11, 20:18, 172:19, 173:1, 173:20, 174:9, 175:5 2026 1:18, 17:19, 164:23, 165:6, 165:10, 165:16, 165:23, 166:7, 166:11, 166:17, 167:2, 172:13, 172:17, 175:2, 219:21, 220:7 2027 220:14 2080 208:25 2081 3:17, 13:16, 15:7, 16:11, 17:9, 17:11, 18:8, 18:10, 52:12, 52:20, 52:21, 53:2, 53:4, 60:15, 80:1, 90:9, 90:16, 159:6, 159:9, 159:14, 159:15, 159:16,	159:17, 159:19, 159:22, 159:24, 160:24, 161:1, 161:8, 163:24, 164:1, 164:6, 164:10, 164:13, 164:15, 164:17, 164:21, 164:22, 165:5, 165:15, 167:24, 169:7, 170:25, 172:10, 173:2, 175:2, 178:19, 181:21, 182:9, 183:10, 183:14, 183:16, 183:21, 184:3, 184:22, 187:1 20850 220:18 21 141:5, 141:8, 142:16, 142:20, 191:25 212 2:12 22 81:11 220 1:23 23 22:10, 22:11 230 159:12 236 11:1, 11:6, 11:13, 20:22, 21:2, 21:16, 22:5, 22:15, 22:19, 22:20, 23:3, 23:14, 52:7, 52:14, 69:22, 70:2, 70:4, 82:11, 83:3, 83:23, 88:2, 88:10, 88:15, 90:21, 96:13, 99:17, 99:20, 100:1,	100:3, 100:6, 100:12, 104:9, 104:16, 104:22, 105:1, 105:8, 118:19, 126:20, 127:25, 128:2, 132:15, 133:5, 133:8, 133:15, 134:13, 142:18, 142:24, 143:23, 149:12, 150:1, 152:24, 153:21, 154:7, 167:6, 167:12, 170:21, 170:22, 171:5, 171:8, 173:9, 179:12, 179:18, 179:21, 183:3, 185:10, 188:16, 189:13, 189:17, 191:22, 195:25, 197:2, 209:18, 210:5, 210:7, 210:9, 210:11, 210:13, 211:2, 213:22, 214:21, 215:11, 216:16, 216:24, 217:6, 217:10, 217:12 25 146:14 26 192:5 28 66:6, 184:12 280 61:14 281 89:24 283 174:19 2:31 pm 190:10, 190:11 2:49 pm 203:9 2:55 pm 203:9 2z 159:13
---	---	---	---

Transcript of John Gargiulo
Conducted on April 30, 2026

264

3 3 219:22 3.2 146:13 31 220:14 33 2:5 3600 2:6, 2:15, 2:23 37 196:9, 219:22 380 36:5, 37:1 380,000 36:6 3:00 pm 207:3 3:11 pm 207:4 3:12 pm 208:2 3:21 pm 208:2 3:37 pm 218:13 4 400 2:13, 220:17 401 37:9 42.53 59:10, 60:9, 196:10 451 220:16 4th 220:7 5 50 15:18, 49:22, 50:1, 50:5, 50:13, 50:16, 50:18, 50:20,	50:24, 51:1, 51:4, 52:11, 60:13, 62:19, 62:25, 63:5, 79:25, 85:5, 96:3, 99:16, 109:13, 110:10, 112:9, 112:14, 112:21, 113:2, 113:9, 116:12, 117:10, 117:13, 118:1, 118:5 521 167:5, 167:12, 167:18, 167:20, 168:5, 168:15, 168:18, 169:22, 170:13, 170:20, 170:23, 183:14 54 192:6 550 2:30 5520 191:5, 220:13 55402 2:7 568 167:13, 168:6, 168:16, 168:18, 169:22, 171:1, 171:4, 171:17, 183:20 58 192:6 5th 19:10, 78:21 6 6.5 66:5 60 146:13 6000 2:30 607 2:8 609 2:15, 2:23	612 2:8 628437 1:22 65 72:12, 167:13, 168:5, 168:16, 168:18, 171:4, 182:22, 183:16, 183:20, 191:24, 192:6, 192:25 68 192:6 7 700 2:35 7000 2:8 75 190:4 7800 2:37 8 842 2:37 858 2:30 896 2:15, 2:23 9 9 57:4, 128:8, 219:21 90 50:6, 50:12, 50:17, 50:18 92121 2:29 997 2:20 9:00 am 51:13 9:02 am 1:19 9:11 am 51:13	9:20 am 57:6 9:33 am 57:6
--	--	---	---