

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
3 Opposition No. 91161603

4 DEPOSITION OF: REBECCA SPAAR
5 EXAMINATION DATE: January 20, 2006

6 ALLERGAN, INC.,
7 Opposer,
8 v.
9 BIOCENTRIC LABORATORIES, INC.,
10 Applicant.

11 PURSUANT TO NOTICE, the deposition of
12 REBECCA SPAAR was taken at 10:00 a.m. on January
13 20, 2006, at Sheridan Ross, P.C., 1560 Broadway,
14 Suite 1200, Denver, Colorado, before Lisa
15 Persichitte Reed, Registered Professional
16 Reporter and Notary Public in and for the State
17 of Colorado.

18 Lisa Persichitte Reed
19 Registered Professional Reporter
20
21
22
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25

ATTORNEYS SERVICE CENTER, INC.

"Service is our middle name"

Thursday, March 02, 2006

Kenneth L. Wilton, Esq.
Seyfarth Shaw LLP
2029 Century Park East, Suite 3300
Los Angeles, CA 9006-3063

Re: *Allergan, INC. v. Biocentric Laboratories, INC.*
Deposition of: Rebecca Spaar

Dear Mr. Wilton:

The above-mentioned original deposition is being forwarded to you, as indicated below.

- Unsigned; signed signature page and amendments, if any, to be submitted at trial.
- Unsigned; pursuant to the Rules of Civil Procedure. Said deponent and/or counsel were to arrange for review and signature; there has been no response from either party and said deposition remains unsigned.
- Signed by the deponent with no amendments.
- Signed by the deponent with amendments, copies of which are enclosed.

Please call if we can be of any further assistance. Thank you.

Sincerely,


Diane Buswell

Enclosures: One Sealed Original Transcript (w\exhibit loose)

ATTORNEYS SERVICE CENTER, INC.

"Service is our middle name"

Thursday, January 26, 2006

Kenneth L. Wilton, Esq.
Seyfarth Shaw LLP
2029 Century Park East, Suite 3300
Los Angeles, CA 9006-3063

Re: *Allergan, INC. v. Biocentric Laboratories, INC.*
Deposition of: Rebecca Spaar

Dear Mr. Wilton:

Enclosed are your copy, MiniTranscript and ASCII disk of the deposition of Rebecca Spaar per your request. An invoice for the services of the court reporter will be forwarded under separate cover.

A copy of the transcript and some amendment sheets are being forwarded to the witness for review and signature.

The original deposition is being held in this office until thirty days have expired, or the witness has reviewed and signed it. It will be forwarded to you at that time along with any amendments. If you would like to have the original forwarded sooner, please contact this office.

Please call if we can be of any further assistance.

Sincerely,



Chantell Rodriguez

ATTORNEYS SERVICE CENTER, INC.

"Service is our middle name"

Thursday, January 26, 2006

Rebecca Spaar
32260 E. 167th Drive
Hudson, CO 80642

Re: *Allergan, INC. v. Biocentric Laboratories*

Dear Ms. Spaar:

A copy of your deposition taken in the above-captioned case is enclosed for your review and signature.

If you wish to make any changes, please make them in ink on the amendment sheets provided. You will then need to take the enclosed affidavit and your amendments, if any, to a notary public, sign the affidavit and each amendment sheet in the presence of the notary, and have each signature notarized.

Please return the signed and notarized affidavit and amendment sheets to this office no later than thirty days from the date of this letter. (Please do not return the copy of the transcript; it is yours to keep). The affidavit and amendment sheets will then be forwarded along with the original transcript to the noticing attorney.

If we do not hear from you by that date, we will forward your deposition unsigned to the noticing attorney. If you have any questions regarding this matter, please contact your attorney.

Sincerely,


Chantell Rodriguez

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A P P E A R A N C E S

FOR THE OPPOSER:

KENNETH L. WILTON, ESQ.
Seyfarth Shaw LLP
2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
(310) 201-5271

Also Present: Michael Lehman

I N D E X

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I N D E X O F E X H I B I T S

DEPOSITION EXHIBIT NO.	DESCRIPTION	PAGE FIRST APPEARS
16	"First Amended Notice of Testimony ... Deposition of BioCentric Laboratories, Inc."	6
17	Application for registration of trademark or service mark	17
18	Interrogatory responses of Rebecca Spaar	18
19	Requests for admissions	19
20	Requests for production	19
21	Page from BioEntopic Web site	23
22	Page from BioEntopic Web site	25
23	Page from BioEntopic Web site	28
24	Page from BioEntopic Web site	28
25	Page from BioEntopic Web site	28

1	26	Page from BioEntopic Web site	28
2	27	Page from BioEntopic Web site	28
3	28	Copy of photograph of product	33
4	29	Becarre SeaTox White Tea Evening	45
		Cremem Triple Complex flier	
5	30	Becarre SeaTox Evening Creme	53
6		Triple Complex flier	
7	31	Copy of label for SeaTox Evening	60
		Creme Triple Complex	
8	32	Copy of label for SeaTox White	60
9		Tea Evening Creme	
10	33	Fives pages from	69
		plasticsurgery.org Web site	
11	34	Advertisement from	77
12		gmcbetterhealth.com Web site	
13	35	Advertisement from	77
		health.megamart.us Web site	
14	36	Advertisement from	77
15		store.agoodvitamin.com Web site	
16	37	Advertisement from	80
		911healthshop.com	

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P R O C E E D I N G S

REBECCA SPAAR

The deponent herein, being first duly sworn to testify to the truth in the above cause, was examined and testified on her oath as follows:

E X A M I N A T I O N

BY MR. WILTON:

Q Could you, please, state and spell your name for the record.

A Rebecca Spaar, R-e-b-e-c-c-a, S-p-a-a-r.

MR. WILTON: And, sir, if you could do the same.

MR. LEHMAN: Michael Lehman, M-i-c-h-a-e-l, L-e-h-m-a-n.

MR. WILTON: I'm glad you did that.

THE DEPONENT: You think they are easy names.

MR. WILTON: Not really.

Q (BY MR. WILTON) As you know, I represent Allergan in this proceeding, in the opposition proceeding, where we're opposing the registration of the SeaTox mark.

1 Have you ever been deposed before?

2 A No.

3 Q Let me go through a couple of the
4 ground rules so that you have them in front of
5 you and you are aware of them. Even though we're
6 sitting here in a conference room and it's a
7 rather informal setting, the oath that you took
8 is the same oath that you would take in a court
9 of law and has the same effect. Do you
10 understand that?

11 A Yeah.

12 Q The court reporter sitting to my
13 right and your left is going to be reporting and
14 recording everything that we say in writing. And
15 it will appear in a transcript that says,
16 "question," "answer," "question," "answer," down
17 the page. In order to make her job easy and make
18 it clear at the end of the day, I will wait until
19 you finish your answers before starting the next
20 question. And if you could do the same, let me
21 finish my question before answering, okay?

22 A Mm-hmm.

23 Q This is not intended to be any
24 kind of marathon or anything. So if there is any
25 reason you need to take a break, just tell me.

1 A That being said, how long do you
2 anticipate this taking?

3 Q About three hours or so, maybe
4 shorter, depending on where it goes.

5 A I have recently had some very
6 invasive surgeries. And I have a lot of pain. I
7 have problems getting up and down. I have been
8 on bed rest until very recently, so I will do my
9 best to, you know, get through everything because
10 I, of course, want this taken care of also. But
11 please understand my situation.

12 Q I do, and I will move as quickly
13 as I can so that you can go back and be more
14 comfortable than you are right now. Why don't we
15 start --

16 MR. WILTON: We'll mark
17 Exhibit 16.

18 (Deposition Exhibit 16 was marked.)

19 Q (BY MR. WILTON) It is the first
20 amended notice of deposition of BioCentric
21 Laboratories.

22 A This is hers or mine?

23 Q That is yours to look at. And
24 let me explain the exhibit process. What happens
25 is I, obviously, have some papers here, which I

1 will be marking as exhibits with a number: 16,
2 17, 18, et cetera. They will be attached to the
3 transcript. So when you get a chance to review
4 the transcript, you'll be able to see the exhibit
5 attached when it is referenced in the text.

6 So what I'll do is give a copy to the
7 court reporter. She'll give that copy to you to
8 look at, sort of go in this round-robin, kind of,
9 circle.

10 And one thing I didn't mention is at
11 the end of this, she will transcribe this into a
12 booklet. And you will have a chance to read what
13 she transcribes and sign it under penalty of
14 perjury as your testimony. You also have the
15 chance to correct anything that may be wrong,
16 something that you misstate, or something that
17 the court reporter inadvertently transcribes
18 incorrectly.

19 A Okay. When does that happen?

20 Q Probably -- you should get that
21 in about two weeks, three weeks.

22 A Okay.

23 Q You'll have some time to review
24 it. The point that I want to make, though, is
25 that if you can give your best answer to my

1 questions during the course of the day, that
2 would be better than if we have a bunch of
3 handwritten answers.

4 A Will I also get a copy of the
5 deposition from Tom Albright?

6 Q Yes, you will. The rules require
7 that I serve a copy on you within 30 days after
8 the deposition.

9 A Just making sure.

10 Q You will get a copy of that.

11 Now, turning back to Exhibit 16, did
12 you receive a copy of this notice?

13 A Mm-hmm. Yes.

14 Q And you're appearing today in
15 response to that notice, correct?

16 A Yes.

17 Q And you're testifying on behalf
18 of the applicant in this proceeding, which is
19 BioCentric Laboratories, correct?

20 A Yes.

21 Q What is your position at
22 BioCentric?

23 A I am the CEO.

24 Q How many other employees are
25 there at BioCentric?

1 A How is that relevant to what
2 we're doing?

3 Q I'm just asking questions to get
4 some background on the company.

5 A We're a small company.

6 Q How many?

7 A Less than ten employees.

8 Q I ran a Dun & Bradstreet report
9 on the company and it said that the company had
10 two employees; is that correct?

11 A At a recent time, it did. We
12 have changes in the company, like everybody else.

13 Q Have you ever had more than ten
14 employees?

15 A No.

16 Q When did you found the company?

17 A Oh, good heavens. 2000, I think.

18 Q And have you been the CEO during
19 the entire time the company has been in
20 existence?

21 A Yes.

22 Q Prior to founding BioCentric,
23 what kind of job did you have?

24 A Strange questions. I was in the
25 real estate industry.

1 Q How many offices does BioCentric
2 have?

3 A One.

4 Q Does BioCentric have any
5 manufacturing facilities?

6 A Yes.

7 Q Where are those located?

8 A At the one location.

9 Q So all of your products are
10 manufactured at that location?

11 A Yes.

12 Q Is that location certified under
13 any FDA guidelines or something like that?

14 A None of our products fall under
15 the FDA umbrella of what they would control. So
16 no.

17 Q Are there any regulations that
18 govern the manufacture of cosmetics?

19 A It's the FD&C Act, Section
20 201(i).

21 Q You are reading from your
22 discovery responses, your interrogatory
23 responses?

24 A Yeah.

25 Q What does that regulation say?

1 A It defines the term "cosmetic" as
2 things applied to the skin topically.

3 Q And you're referring to the
4 regulation put out by the Food and Drug
5 Administration?

6 A Yeah.

7 Q And how does that regulate the
8 manufacturing of cosmetics?

9 A I can't explain it since I'm not
10 part of the Food and Drug Administration. I
11 don't know how they would say it regulates it.

12 Q When you started manufacturing
13 cosmetics, did you do any research to find out
14 what would regulate the manufacture of cosmetics
15 or whether they are regulated?

16 A Yes.

17 Q What did you find out?

18 A To the best of my knowledge, I
19 made sure that I stayed within the legal
20 guidelines of what I understood.

21 Q And what legal guidelines were
22 those?

23 A That creams be applied topically
24 as opposed to injected or taken orally or
25 something that would have to be prescribed by a

1 physician.

2 Q So in terms of the products that
3 you have -- that you sell, you've attempted to
4 make sure that all of them are just applied
5 topically; is that right?

6 A Yes.

7 Q Did you do any research into what
8 standards might apply in terms of the actual
9 manufacture of those products?

10 A I don't quite understand your
11 question.

12 Q Let's back up --

13 A It's such a broad question.

14 Q It's a broad question. Let's
15 back up a second. You said you have
16 manufacturing facilities at your offices,
17 correct?

18 A Yes.

19 Q At those facilities, you actually
20 mix together the ingredients for your cosmetic
21 products, right?

22 A Correct.

23 Q And you package them, correct?

24 A Correct.

25 Q Are there any guidelines that

1 govern the cleanliness of your facility?

2 A I do not recall anything
3 specific.

4 Q Does anybody inspect your
5 facility on a regular basis?

6 A No.

7 Q Has anybody ever inspected your
8 facility?

9 A Yes.

10 Q Who?

11 A The FDA.

12 Q When was that?

13 A I don't recall.

14 Q Was it in the last year?

15 A No.

16 Q Was it in the year 2000 when you
17 founded the company?

18 A No. It was between that time and
19 now.

20 Q And the FDA sent out an inspector
21 to look at your facility?

22 A Yes.

23 Q Did you ask the FDA to do that?

24 A No.

25 Q Why did the FDA do that?

1 A I'm trying to remember the
2 specific incident. I take that back. We did
3 initiate the contact with the FDA at the request
4 of a client.

5 Q So one of your clients asked you
6 to have your facility inspected?

7 A It was part of my initial
8 dealings with who I knew at the time would be a
9 significant client and subsequently is.

10 Q Did the FDA issue a report
11 following its inspection?

12 A No.

13 Q Did the FDA tell you anything
14 following the inspection?

15 A It was deemed that nothing we did
16 fell under their scope.

17 Q Are there any standards that
18 you're aware of regarding the purity of the
19 products that you sell?

20 A I'm not aware of any. Now, that
21 does not indicate that I don't follow any.

22 Q What do you follow?

23 A My own personal morality.
24 I would not put out a product that would be
25 inferior in any way, to the best of my knowledge.

1 Q What was the first product that
2 you sold?

3 A It was a massage cream.

4 Q Do you still sell that product?

5 A Yes.

6 Q And under what mark do you sell
7 that product, or do you sell it under any kind of
8 mark?

9 A What mark?

10 Q What do you call that product?

11 A BioEntopic massage cream.

12 Q What is BioEntopic?

13 A Just another product line, I
14 guess you could call it.

15 Q Did you come up with the name
16 "BioEntopic"?

17 A Yes, I did.

18 Q Have you ever heard of a
19 gentleman named John McVay?

20 A Yes.

21 Q Who is John McVay?

22 A John McVay is a gentleman that I
23 worked for at one time.

24 Q In the real estate business?

25 A No, just before I got into this

1 industry.

2 Q And what business is Mr. McVay
3 in?

4 A Mr. McVay is in cosmetics.

5 Q Is he at all involved in your
6 company?

7 A No.

8 Q Does he also manufacture
9 cosmetics?

10 A He used to. I don't know what he
11 does anymore. I think I know what you're
12 referring to.

13 Q I'm referring to his registration
14 of the BioEntopic mark.

15 A Yes.

16 Q You're aware of that?

17 A Yes.

18 Q Do you know why Mr. McVay
19 registered the BioEntopic mark?

20 A He was angry that I no longer
21 worked for him.

22 Q Have you had that registration
23 assigned to you?

24 A Prior to Mr. McVay's registration
25 of that name. He changed --

1 Q I'm sorry.

2 A He changed the capitalization of
3 a letter, I believe, and registered it under a
4 different, quote/unquote, spelling, I think is
5 what happened.

6 MR. WILTON: Let's mark this as
7 17.

8 (Deposition Exhibit 17 was marked.)

9 Q (BY MR. WILTON) I'm showing you
10 a two-page document that is an application for
11 registration of trademark or service mark from
12 the Colorado Secretary of State. And on the
13 second page is a copy of the mark. Do you see
14 that?

15 A Mm-hmm.

16 Q Is that a yes?

17 A Yes. I'm sorry.

18 Q The other thing is she needs
19 "yeses" and "noes."

20 A I'm sorry about that.

21 Q Isn't that the mark that you
22 currently use?

23 A Yes, that is.

24 Q So Mr. McVay owns a registration
25 of a mark that BioCentric uses?

1 A Yes.

2 Q Have you taken any steps to
3 either cancel that registration or have it
4 assigned to BioCentric?

5 A I was not aware of this as it's
6 actually taken off of one of my products,
7 apparently.

8 Q But he does not sell products
9 under the BioEntopic mark as far as you know?

10 A No. It really was not worth
11 pursuing with Mr. McVay.

12 Q Why not?

13 A Mr. McVay has some personal and
14 private issues. His motivations were and still
15 are unclear, let's say.

16 Q Okay. Why don't we mark -- we'll
17 go through this fairly quickly -- Exhibit 18.

18 (Deposition Exhibit 18 was marked.)

19 Q (BY MR. WILTON) I would like you
20 to take a look through Exhibit 18, and with the
21 question in mind that I'm just asking you whether
22 these are your interrogatory responses.

23 A Everything appears to be correct,
24 yes.

25 Q And these responses are true and

1 correct to the best of your knowledge?

2 A Yes.

3 Q Did you draft these responses?

4 A Yes.

5 Q Did anybody assist you in
6 drafting these responses?

7 A No.

8 Q We'll get back to them in a
9 little bit of detail later, but I want to move on
10 to the next one, which is Exhibit 19.

11 (Deposition Exhibit 19 was marked.)

12 Q (BY MR. WILTON) I'll ask you to
13 do the same exercise. These are copies of your
14 responses to requests for admissions. I just
15 want to confirm that these are, in fact, your
16 responses?

17 A Again, everything appears to be
18 correct, yes.

19 Q And they are true and correct to
20 the best of your knowledge?

21 A Yes.

22 (Deposition Exhibit 20 was marked.)

23 Q (BY MR. WILTON) I'm showing you
24 Exhibit 20, which are requests -- responses to
25 requests for production that were sent to my

1 office on November 2, 2005. I have the same
2 question for you, if you can just look through
3 them and confirm that they are, in fact, your
4 responses to our discovery?

5 A Yes.

6 Q And they are true and correct to
7 the best of your knowledge?

8 A Yes.

9 Q That is your signature that
10 appears on the last page?

11 A Yes.

12 Q Other than the product that is at
13 issue, you sell a number of other products, don't
14 you?

15 A Yes.

16 Q Who formulates those products, or
17 does it change from product to product?

18 A I hesitate to answer because I
19 feel that's a trade secret.

20 Q Why is that a trade secret?

21 A Because how and with whom I
22 formulate is part of my competitive edge, shall
23 we say.

24 Q Your competitive edge over whom?

25 A Other companies in the area that

1 I sell product in.

2 Q Do you consider Allergan to be
3 one of those other companies?

4 A No.

5 Q So providing that information to
6 Allergan would not harm your company?

7 A I wonder. Are these proceedings
8 public record? Is this something that --

9 Q These proceedings are public
10 record, that is correct. And let me stop for a
11 second. During the course of the deposition so
12 far, your brother, I believe --

13 A Friend.

14 Q Your friend has been pointing to
15 a document and you've been reading portions of
16 that document. What is that document you are
17 looking at?

18 A Just a set of personal notes.

19 Q Notes about the case, notes about
20 what?

21 A Yeah. Notes about all the
22 documents and everything that we've been going
23 through.

24 Q May I see that?

25 A Sure.

1 Q Who prepared these notes?

2 A I did.

3 Q How did you go about preparing
4 them?

5 A Reviewed some information on the
6 trial board's Web site and personal discussions
7 with friends and family.

8 Q Let's move back to the products
9 for a second. And let me ask you -- see if I can
10 ask a question that you don't think invades what
11 you believe is a trade secret. Do you work with
12 other people in formulating your products?

13 A Yeah.

14 Q Are those people employees of
15 BioCentric?

16 A No.

17 Q Do you know if those people work
18 with anybody else in formulating cosmetic
19 products?

20 A I am not aware of that. I don't
21 know.

22 Q You don't know one way or
23 another?

24 A I don't know one way or the
25 other.

1 Q Do you have any written
2 agreements with these people that you work with?

3 A No.

4 Q Are they under any obligation to
5 keep the formulas for your products secret?

6 A No.

7 Q So they could sell the formula to
8 a third party who could market it under a
9 different name; is that right?

10 A Technically, yes.

11 Q Do you know whether or not they
12 do that?

13 A I'm not aware of that ever being
14 done, no.

15 MR. WILTON: Let me mark this as
16 Exhibit 21.

17 (Deposition Exhibit 21 was marked.)

18 Q (BY MR. WILTON) Exhibit 21 is, I
19 believe, a page from your Web site.

20 A It is.

21 Q And when I say that, I'm
22 referring to the Web site at www.BioEntopic.com.
23 That is your site, correct?

24 A Yes.

25 Q Do you maintain that site?

1 A I don't know how to do Internet
2 stuff personally, but --

3 Q That is probably a bad question.
4 None of us here do.

5 A That's a whole different world.

6 Q Do you hire a company that
7 maintains it for your company?

8 A I have a friend who does, who is
9 a professional.

10 Q And the content of that site, you
11 have control over, correct?

12 A Yes.

13 Q And on the page we were looking
14 at, Exhibit 21, it lists two of the products that
15 you sell, correct?

16 A Correct.

17 Q And those products, at least
18 looking at the photo here, in large letters, you
19 have "BioEntopic"; is that correct?

20 A Correct.

21 Q And that is an actual photo of
22 the packaging for those products?

23 A It is.

24 Q And those products were packaged
25 at your facility at BioCentric?

1 A Yes.

2 Q And the labels are put on it by
3 BioCentric?

4 A Yes.

5 Q And all the products that you
6 sell are shipped from that facility at
7 BioCentric?

8 A Yes.

9 MR. WILTON: Let me mark this as
10 Exhibit 22.

11 (Deposition Exhibit 22 was marked.)

12 Q (BY MR. WILTON) This is another
13 page, I believe this is from your Web site as
14 well, correct?

15 A Correct.

16 Q This is a description of one of
17 the products that was listed on the prior page we
18 were looking at, correct?

19 A Correct.

20 Q Did you write the copy -- or let
21 me rephrase that.

22 Why do you have a description of your
23 products on your Web site?

24 A For two reasons. One is for
25 general consumer information. And the other is

1 to support the health food stores that sell my
2 product retail.

3 Q Okay. Let's focus on the first
4 one. It is general consumer information.

5 A Hold on just a moment, please.
6 I have to cough and hold my stomach at the same
7 time.

8 MR. WILTON: Off the record.

9 (Discussion held off the record.)

10 Q (BY MR. WILTON) Like you said,
11 if you ever need to take a break, just --

12 A One is coming soon, please.

13 Q Not a problem. You said that
14 your ad copy is there for two reasons. One is
15 for general consumer information, and also to
16 support the health food -- or the health food
17 stores --

18 A Health food stores.

19 Q -- that sell your product?

20 A Yes.

21 Q With regard to the general
22 consumer information, is the intent of the copy
23 to inform the consumer so that they will purchase
24 your product?

25 A You always want the consumer to

1 buy your product. It would be impossible to
2 answer "no" to that question. Am I a marketing
3 genius? No. It's an explanation of what I have
4 formulated this product to accomplish.

5 Q Do you write the -- back up a
6 second.

7 With regard to each of the products on
8 your Web site, you have a similar type of
9 description, correct?

10 A Correct.

11 Q Obviously, it's tailored to the
12 product, but you have a description that
13 describes the product, right?

14 A Correct.

15 Q Do you write all those?

16 A By and large, yes.

17 Q What do you mean by "by and
18 large"?

19 A Of course, the gentleman who
20 writes the copy can make the spelling
21 corrections, grammar corrections, if there are
22 any, and maybe a marketing hint here or there.

23 Q So somebody else edits what you
24 write; is that fair?

25 A By virtue of the fact that

1 somebody has to input it. Since I can't directly
2 transcribe -- I don't know how to write an
3 Internet program, basically.

4 Q So what you're saying is the
5 friend who maintains your Web site, who puts this
6 copy on the Web site, also makes minor changes to
7 what you give him, correct?

8 A With my approval.

9 Q But in terms of the technical
10 information that appears here, that's all
11 stuff -- that's all information that you've
12 written, correct?

13 A Yes.

14 Q Let me go quickly through a
15 couple other pages. I just want to confirm -- in
16 fact, why don't we go off the record for a
17 second.

18 (Discussion held off the record.)

19 (Deposition Exhibits 23 through 27 were
20 marked.)

21 MR. WILTON: Back on the record.

22 Q (BY MR. WILTON) While we were
23 off the record, the court reporter marked
24 Exhibits 23, 24, 25, 26, and 27. Are these all
25 copies of pages from your Web site that would

1 include products that you sell?

2 A Yes.

3 MR. WILTON: Why don't we take a
4 break since I know you need one.

5 (A recess was taken from 10:43 a.m. to
6 10:46 a.m.)

7 Q (BY MR. WILTON) You mentioned
8 that your ad copy also was intended to support
9 health food stores that sell your product?

10 A Yes.

11 Q May I assume from that, then,
12 that you have a network of health food stores
13 that are distributors of BioCentric products?

14 A Network and distributors have a
15 different meaning in my industry. I am a
16 manufacturer in my industry jargon and I sell
17 wholesale to retail locations. So I have a
18 number of clients who are health food stores.

19 Q Are all of those on the Web, or
20 are some of them on the Web and some of them --
21 strike that.

22 With regard to those health food
23 stores, are some of them just Internet-based
24 companies?

25 A I believe some are. I don't know

1 for sure, though.

2 Q Does BioCentric sell directly to
3 consumers?

4 A Yes, on a very limited basis.

5 Q Does BioCentric have a storefront
6 that it sells products at?

7 A No.

8 Q And you don't know whether the
9 health food stores you mentioned have storefronts
10 or don't have storefronts?

11 A I assume that places representing
12 themselves as a health food store, quote/unquote,
13 have a physical retail location.

14 Q Going back to the products that
15 we were looking at, and actually -- which were
16 Exhibit 23, I believe -- actually, started at 21,
17 but all of these products. How did you come up
18 with the names that appear on the Web site for
19 the products? Feel free to look at all of them.

20 A The majority of the products are
21 a basic descriptive indicator of the main
22 ingredient or intended purpose of that product.

23 Q And there are exceptions to that
24 rule?

25 A Yes.

1 Q And why have you decided in some
2 cases to use something other than the basic
3 description of the product as its name?

4 A You can only call so many
5 ingredients or so many products a moisturizing
6 cream. And then you just end up numbering them
7 and that's quite boring and not very marketable.

8 Q Looking at this list -- or
9 looking at the exhibits that we were looking at
10 from 21 through 27, in my looking at it, there
11 only appears to be one that does not have a basic
12 descriptive name. Am I missing others?

13 A I see two.

14 Q What is the second one?

15 A The first being Skin Nectar
16 Emulsion; the second being Super Pain Relief.

17 Q And you have the third one, which
18 is the SeaTox Evening Creme CoQ10 Evening Creme
19 Triple Complex. Is that descriptive, or is that
20 a mark?

21 A It's both.

22 Q How is it both?

23 A The "Sea" in "SeaTox" describes
24 MSM and Red Seaweed Extract. So I'm not calling
25 it MSM and Red Seaweed Extract Creme. The "Tox"

1 is for its detoxifying effects of those
2 ingredients. So it's descriptive. The
3 ingredients come from the sea and it detoxifies,
4 but it's not, you know, a specific ingredient as
5 the name of the cream.

6 Q And the Skin Nectar Emulsion?

7 A Yes.

8 Q It's used on the skin, correct?

9 A Correct.

10 Q Does it have any nectar in it?

11 A Nectar is not specifically an
12 ingredient. Nectar is a descriptive noun, if I
13 remember my English. I'm reaching for that.

14 Q Does it describe an ingredient in
15 the product? Does nectar describe an ingredient
16 of the product?

17 A Not really.

18 Q What was the third exception that
19 you mentioned?

20 A Super Pain Relief.

21 Q Is that a new product?

22 A No. That is a problem with the
23 photographer, which is what I'm mumbling to
24 myself about.

25 Q But that describes an effect of

1 the product, correct?

2 A Correct.

3 Q Let me show you --

4 MR. WILTON: Let's mark this as
5 28.

6 (Deposition Exhibit 28 was marked.)

7 Q (BY MR. WILTON) One of the
8 products that was listed, which is Cucumber
9 Moisturizing Emulsion. Do you see that?

10 A Yes.

11 Q First of all, is this a copy of a
12 paragraph that appears on your Web site?

13 A It is.

14 Q It is a photograph of one of your
15 products?

16 A It is.

17 Q And it's difficult to read, but
18 it looks like underneath moisturizing emulsion,
19 it says, "Aloe Vera, MSM, and Vitamin C Ester"?

20 A Yes.

21 Q What is MSM?

22 A If you want the technical name, I
23 can neither pronounce it nor spell it. It's some
24 30 letters long.

25 Q That would be

1 Methylsulfonylmethane?

2 A That's the one. Thank you.

3 Q That's what MSM is, correct?

4 A Yes.

5 Q What effect does MSM have?

6 A MSM has a broad spectrum of
7 effects and uses. It's beneficiality to the skin
8 is probably used -- I don't want to say as often,
9 but it's also used in conjunction with its
10 pain-relieving abilities.

11 Q So first of all, how do you know
12 that?

13 A Research that I've done and being
14 a girl and going through cosmetic areas of
15 stores.

16 Q Is that part of your research?

17 A No, just a hobby.

18 Q You can even make it research.

19 It becomes tax deductible --

20 A I don't want to mess with the
21 IRS.

22 Q Don't take advice from me.

23 A I stay clean with them fellows.

24 Q So to your knowledge, MSM is
25 beneficial to skin and is used in conjunction

1 with pain relief?

2 A I have seen it used in both.

3 Q With regard to your products,
4 where do you get the ingredients?

5 A I have a number of vendors that
6 I --

7 Q So you get the raw ingredients
8 from your vendors and then you mix them together
9 at your manufacturing facility?

10 A Correct.

11 Q Turning to the product that is
12 really at issue here, your SeaTox Evening Creme.
13 When did you come up with the idea of bringing
14 out that product?

15 A I don't even remember
16 specifically.

17 Q What's the purpose of the
18 product.

19 (Mr. Lehman pointing at document.)

20 A It's intended to be a face cream.

21 Q (BY MR. WILTON) But you've
22 already told me that all your products are face
23 creams, so --

24 A No.

25 Q Well, a good number of them, you

1 said, were moisturizing creams?

2 A I have a number of moisturizers.

3 Q Okay. And you've told me that
4 you try to distinguish one from the other by
5 using different descriptions, correct?

6 A Correct.

7 Q So it strikes me that saying that
8 this was intended to be a face cream, sort of
9 lumps it together with five or ten of your other
10 products, right?

11 A It does.

12 Q What was intended to distinguish
13 this face cream from other face creams?

14 A Putting thoughts in order. The
15 health food market, which is what I refer to my
16 client base as, is a very narrow and specifically
17 educated group of consumers. Many people in
18 natural health prefer the use of vitamins. Some
19 prefer the use of natural minerals from various
20 sources. And not so much vitamins, some like
21 specific plant sources. So different
22 moisturizers and face creams were thought to
23 appeal to a specific market sector, as I see
24 them.

25 Q That also seems to me to

1 describe -- let's back up a second.

2 Are all of your products -- would you
3 describe them as natural health products?

4 A Off the cuff, I would say that
5 that's how I market to. So I try to keep things
6 natural.

7 Q So in selling to the market that
8 you perceive, the health food market, as you've
9 described it, you try to use natural ingredients
10 and inform consumers that you are using natural
11 ingredients, correct?

12 A Yes.

13 Q And that goes for all the
14 products that you sell, correct?

15 A To the best of my knowledge,
16 right now, yes.

17 Q So why don't we do this. I put
18 in front of you Exhibit 26. Exhibit 26, my
19 understanding, that is a list of the products
20 that you market under the label "skin care"; is
21 that correct?

22 A Yes.

23 Q And so all of these products
24 listed on Exhibit 26 are intended to be used on
25 the skin, correct?

1 A Yes.

2 Q And do those -- each of those
3 products have a distinct purpose -- strike that.

4 Do each of those products have a
5 purpose that is distinct from the other products
6 that you cite?

7 A No.

8 Q They all do the same thing?

9 A No. They don't all do the same
10 thing.

11 Q So how -- I mean, your
12 expectation is that consumers in the best of all
13 worlds would buy all of these products, right?

14 A I do not expect every consumer to
15 buy every product.

16 Q Do you expect consumers to buy
17 more than one product?

18 A You would like that. That's why
19 I do this.

20 Q Which makes sense. I mean, you
21 want them to be happy with one of your products
22 and buy another one of your products, correct?

23 A Correct.

24 Q I'm not saying buy multiple
25 bottles of the same product. I'm talking about

1 two separate products, right?

2 A Any owner of a business would
3 want more sales.

4 Q So looking at Exhibit 26, you
5 would like your consumers to be happy with your
6 Cucumber Moisturizing Emulsion and then come back
7 and buy the Vitamin C Ester Daily Renew Creme as
8 well, right?

9 A Correct.

10 Q Which strikes me that in some
11 way, you want to distinguish your Cucumber
12 Moisturizing Emulsion from your Vitamin C Ester
13 Daily Renew Creme, right?

14 A Yes.

15 Q And you distinguish it by name,
16 right?

17 A Yes.

18 Q And you also distinguish it by
19 the purpose of the product?

20 A What is your definition of
21 "purpose of the product"?

22 Q The effect of the product.

23 A You could answer that a number of
24 ways. Basically, yeah.

25 Q What does the Cucumber -- if you

1 could, in a nutshell, tell me, what does the
2 Cucumber Moisturizing Emulsion do?

3 A To compare apples to apples, the
4 moisturizing lotion, Cucumber Moisturizing Lotion
5 and Skin Nectar are body moisturizers. The
6 moisturizing lotion has basic moisturizers. The
7 Cucumber Moisturizing Emulsion adds another layer
8 of moisturizers. The Skin Nectar adds another
9 layer.

10 Q So if you --

11 (Mr. Lehman confers with Ms. Spaar.)

12 Q (BY MR. WILTON) If you use the
13 Skin Nectar Emulsion, would you expect a consumer
14 to also use the moisturizing lotion?

15 A No.

16 Q If you used the -- would you
17 expect consumers to use both the Skin Nectar
18 Emulsion and the Vitamin C Daily Ester Renew
19 Creme?

20 A That makes sense because one is a
21 body moisturizer; one is intended as a face
22 moisturizer.

23 Q And the Vitamin C Ester Daily
24 Renew Creme and the Vitamin C Evening Renew
25 Creme, are those different products?

1 A They are different products.

2 Q One is intended to be used during
3 the day and one is intended to be used at night?

4 A Hence, the specification in the
5 name, yeah.

6 Q So you would hope that consumers
7 would buy both of those products?

8 A That is a specific case where
9 yes, those are meant to be used in conjunction
10 with each other.

11 Q So turning back to the SeaTox
12 Evening Creme, how does that differentiate it
13 from the other products that you sell?

14 A The level of ingredients that I
15 use in it.

16 Q What do you mean by that?

17 A It's a two-part answer. Part of
18 it goes back to the markets, which are looking
19 for a specific -- where something comes from.
20 Why can't I think of it?

21 Q Source.

22 A Thank you. A specific source,
23 plant, mineral, et cetera. Part of it also goes
24 back to the cost of ingredients to me, period.

25 Q I'm not sure I understand how

1 that distinguishes that -- the SeaTox Evening
2 Creme product from your other products.

3 A Vitamin C is a vitamin source
4 product. SeaTox is a mineral source product.

5 Q Are they intended to do the
6 same -- have the same effect?

7 A Yes and no.

8 Q How about the "yes" part of that?

9 A They both moisturize.

10 Q Okay.

11 A How they specifically do it and
12 the desired results are different for the two.

13 Q What are the desired results for
14 the Vitamin C Ester Creme?

15 A Vitamin C Ester is intended to
16 replenish the vitamins within the skin to
17 brighten the skin and moisturize.

18 Q And what are the ingredients in
19 the SeaTox Evening Creme intended to do?

20 A They also replenish minerals that
21 may be lost due to all the environmental things
22 as well as detoxify some of the pollutants that
23 get into your skin.

24 Q What steps did you take to create
25 that product? And actually, I'm going to take a

1 quick break because I got your cough.

2 A Thank you. Lucky man.

3 (A recess was taken from 11:10 a.m. to
4 11:14 a.m.)

5 Q (BY MR. WILTON) How did you
6 develop the SeaTox product?

7 A Explain how did I go about it?

8 Q Well, you came up with the idea
9 of coming out with a new product, right?

10 A Yes.

11 Q And did you in your mind have any
12 idea of what effect you wanted that product to
13 have?

14 A I knew of the ingredients and
15 knew that I wanted to use them in a topical face
16 cream for their benefits.

17 Q And once you made that
18 determination, what steps did you take to
19 formulate the product?

20 A I drew upon my knowledge that I
21 gained through experience in doing this and
22 talked to other people who I trust and know have
23 experience with this, formulating.

24 Q Formulating this type of product,
25 or just formulating products?

1 A Just products.

2 Q Did you experiment with any
3 formulas and reject them?

4 A Yeah.

5 Q Why were they rejected?

6 A I didn't like the feel of them.

7 Q Did you in any way test the
8 product to see if it had the effect you wanted?

9 A Not on a professional level.

10 Q Did you test it on a personal
11 level?

12 A Small business owner. One and
13 only guinea pig.

14 Q Did it have the effect that you
15 wanted it to?

16 A I saw the effects I wanted.

17 Q And what were those?

18 A Just the difference in my skin
19 that I wanted to see from them, the ingredients.

20 Q What kind of differences did you
21 see?

22 A I'll get personal. My skin
23 seemed brighter to me and my pores seemed smaller
24 and less clogged. How gross is that? Sorry.

25 MR. WILTON: Let me mark this as

1 29.

2 (Deposition Exhibit 29 was marked.)

3 Q (BY MR. WILTON) This is a
4 document that you produced in this proceeding.
5 Have you seen this before?

6 A Yeah.

7 Q Did you write the text of this
8 document?

9 A Yes.

10 Q All of it?

11 A I would have to read the entire
12 thing over again to see if I had drawn from any
13 cases or other information.

14 Q At the second page of this
15 document, towards the bottom, it says, "Copyright
16 2003-2005, BioCentric Laboratories." Do you see
17 that?

18 A Yeah.

19 Q Have you revised this document
20 since you first wrote it?

21 A Yes. Is this one that I had to
22 go over?

23 (Mr. Lehman confers with Ms. Spaar.)

24 A I'm trying to think. I have so
25 many different documents, I don't recall what

1 specifically I changed on this one. At the time,
2 everything gets updated as I feel the need to.

3 Q (BY MR. WILTON) What is the
4 purpose of this document? Why did you write it?

5 A Individuals who fall under the,
6 quote/unquote, health food market are very
7 specific in what they want, what every single
8 ingredient does. And this is my company and I
9 want to, you know, satisfy my customers' needs.

10 A lot of people are referred to as
11 ingredient junkies. They have to know
12 everything. And in this day and age, it's not a
13 bad thing.

14 Q So part of the purpose of this
15 document is to satisfy your customer base,
16 correct?

17 A Correct.

18 Q And it is to provide them
19 information on all of the ingredients in the
20 product?

21 A The major active ingredients.

22 Q So there are ingredients like
23 water or something that --

24 A Exactly.

25 Q So this is a list of the active

1 ingredients in the SeaTox product, correct?

2 A To the best of my knowledge, yes.

3 Q You formulated the product,

4 correct?

5 A Yeah.

6 Q And you're the one who put
7 together the ingredients for the product, right?

8 A Right.

9 Q So you would know whether or not
10 this lists all of the active ingredients, right?

11 A Yes.

12 Q It does?

13 A Yes. That is yes.

14 Q And let's look at the first one
15 of these, which says, "10 percent Argireline"?

16 A Yes.

17 Q Do you see that?

18 A Yes.

19 Q It then goes on to talk about,
20 "Argireline reduces catecholamine release.

21 Catecholamine is responsible for muscle

22 contraction when we change our facial

23 expressions." Do you see that?

24 A Mm-hmm.

25 Q Yes?

1 A Yes.

2 Q What is a catecholamine?

3 A I'm not a chemist or biologist.
4 I don't know everything.

5 Q Where did you get the information
6 that Argireline reduces catecholamine release?

7 A I do not specifically remember.

8 Q Did you find -- did you do
9 research before you wrote this?

10 A I did research. I don't recall
11 the source.

12 Q Was that research on the
13 Internet?

14 A Maybe partially. I do some
15 research on the Internet.

16 Q Where else do you do research?

17 A There is a lot of written
18 literature that I also access, reference.

19 Q Written literature regarding the
20 cosmetics industry?

21 A Cosmetics industry, ingredients.
22 Some of it is trends in ingredients.

23 Q What do you mean by "trends in
24 ingredients"?

25 A For awhile, having oatmeal in a

1 product was real popular. So being in the
2 industry, you'll receive information from vendors
3 about what is, quote/unquote, the new discovery.

4 Q So is it fair to say that you
5 reached the -- strike that.

6 That in terms of the description of
7 Argireline that you took that from a third-party
8 source as opposed to determining that on your
9 own? Let me turn that into a better question.

10 Is it fair to say that the description
11 of Argireline and its effects is something that
12 you obtained from a third-party source as opposed
13 to something that you determined on your own?

14 A Yeah.

15 Q And further down in that
16 description, there is a sentence that reads, "By
17 reducing catecholamine release, gradually a
18 significant reduction in the depth and size of
19 wrinkles are noticed and without the paralysis as
20 with Botox injections." Do you see that?

21 A I do.

22 Q Did you read that somewhere?

23 A I don't recall specifically.

24 Q What did you -- what is that
25 intended to convey to consumers?

1 (Mr. Lehman tenders document to
2 Ms. Spaar.)

3 A The intention was to convey to
4 consumers that this did not require a
5 pharmaceutical or physician's application -- or I
6 don't know the word. And that by being a natural
7 product -- I'm trying to think how to phrase it.
8 I don't talk legal for a living.

9 Q (BY MR. WILTON) Let me just ask
10 the question again. Why did you include
11 Argireline in your product?

12 A The research that I saw sounded
13 like a benefit that I wanted to provide to my
14 customers.

15 Q And what was that benefit?

16 A That it had apparent
17 skin-tightening effects.

18 Q It reduced wrinkles, correct?

19 A Correct. In some, yeah.

20 Q And it reduced them without the
21 use of Botox, correct?

22 A Correct.

23 Q And that's why it's the first
24 ingredient that you list on this list, correct?

25 A No.

1 Q Why is it the first ingredient?

2 A Because of the level -- the
3 percentage of that ingredient in that product.

4 Q So the greatest percentage of
5 active ingredients -- let me rephrase that.

6 The active ingredient with the greatest
7 percentage in your product is Argireline,
8 correct?

9 A Correct.

10 MR. WILTON: Off the record.

11 (Discussion held off the record.)

12 (The last question was read back.)

13 A Correct.

14 Q (BY MR. WILTON) And it's your
15 understanding that Argireline minimizes fine
16 lines and wrinkles without the expense of Botox
17 injections, correct?

18 A Correct.

19 Q The next ingredient that's listed
20 here says 3 percent Matrixyl, M-a-t-r-i-x-l. Do
21 you see that?

22 A Yes.

23 Q And the language describing
24 Matrixyl, is that language that you obtained from
25 your research?

1 A Yeah.

2 Q And the effect of Matrixyl in
3 your description says that it will significantly
4 reduce the appearance of wrinkles. Do you see
5 that?

6 A I do.

7 Q And that was the intended effect
8 in including Matrixyl in your product, correct?

9 A Yeah, correct.

10 Q So the first two ingredients in
11 your product are intended to reduce the
12 appearance of wrinkles, correct?

13 A Actually, there is another
14 ingredient: 5 percent White Tea Extract that
15 comes between Argireline and Matrixyl.

16 Q That was in your original
17 formulation of your product, correct?

18 A It's in a secondary formulation.

19 Q We're looking at two different
20 documents.

21 A That's what I wondered.

22 Q Did you produce two different
23 copies of your -- actually. What would you call
24 this? What is Exhibit 29?

25 A A flier.

1 Q Okay. Did you produce to us two
2 different copies of your flier?

3 A Yes.

4 Q And Exhibit 29 describes your
5 first version of this product or the second?

6 A What do you have as the second
7 flier? May I see? The SeaTox Evening --

8 Q SeaTox -- I'll get a copy and
9 we'll mark this as Exhibit 30. It is SeaTox
10 Evening Creme Triple Complex.

11 (Deposition Exhibit 30 was marked.)

12 A The evening cream triple complex
13 was technically formulated first. I then did the
14 white tea formula. And then I subsequently
15 changed my formulation of the evening cream
16 again. So it's the first and third.

17 Q (BY MR. WILTON) So there are
18 three formulations of this?

19 A There are now only two. I don't
20 know which one you would call first, though.

21 Q Okay.

22 A They weren't far apart.

23 Q The two fliers we have,
24 Exhibit 29 and Exhibit 30, do those describe the
25 two current versions of your product?

1 A Yes.

2 Q Okay. Let's go back to 29, now
3 that I have the right one in front of me.
4 Looking at 29, the second ingredient is the white
5 tea extract, correct?

6 A Correct.

7 Q And I assume that the information
8 that is set forth describing the effect of the
9 white tea extract is information that you
10 obtained from your research?

11 A It is.

12 Q It is not information that you
13 independently developed?

14 A No.

15 Q Otherwise, you could tell me what
16 a Langerhans cell is?

17 A Or explain the subject's
18 buttocks.

19 Q It says here that white tea
20 extract boosts the immune function of skin cells.
21 Do you see that?

22 A Mm-hmm. Yes.

23 Q So one of the effects of the
24 product that you were formulating was to boost
25 the immune function of skin cells, correct?

1 A Correct.

2 Q And the ingredient underneath
3 white tea extract is the Matrixyl that we were
4 talking about, correct?

5 A Correct.

6 Q And the effect of that ingredient
7 is to reduce the appearance of wrinkles?

8 A Correct.

9 Q And I believe -- the next
10 ingredient down is "3 percent Vitamin C Ester."
11 Do you see that?

12 A Yes.

13 Q I believe you earlier told me
14 that Vitamin C Ester will brighten the skin; is
15 that right?

16 A That's just my personal
17 definition. There is a lot of descriptive words
18 that have no carved-in-stone meaning. I don't
19 know what else to say.

20 Q And the first sentence here says,
21 "Vitamin C, L-ascorbic acid, stimulates collagen
22 production helping to minimize wrinkles." Do you
23 see that?

24 A Yes.

25 Q So the purpose of including the

1 Vitamin C Ester in this product was to help to
2 minimize wrinkles, correct?

3 A Partially.

4 Q And the other effect was to do
5 what? Brighten the skin?

6 A It stimulates collagen
7 production, cuts down the acidity of skin, fights
8 free radicals. It -- Vitamin C does a number of
9 things.

10 Q The next ingredient that you list
11 is this Olive Leaf Extract. Do you see that?

12 A I do.

13 Q And that, according to this
14 description, olive leaf extract is an antioxidant
15 with anti-inflammatory and antimicrobial
16 properties that supports the texture and
17 integrity of the skin. First of all, is that
18 correct?

19 A To the best of my knowledge, yes.

20 Q And that's based on the research
21 that you've done, correct?

22 A Correct.

23 Q And that was the purpose for your
24 including this ingredient in your product,
25 correct, as described here, right?

1 A Yes.

2 Q The next ingredient on the next
3 page, and it's at the very top, hard to read, I
4 can't read the percentage, but red algae extract?

5 A Two percent.

6 Q Two percent red algae extract.
7 And that is described here as an exfoliant. Is
8 that what red algae extract does?

9 A Yes.

10 Q So it exfoliates the skin?

11 A Yes.

12 Q Helps remove dead skin cells,
13 right?

14 A Correct.

15 Q That is why you included it in
16 your product?

17 A Correct.

18 Q Next, we have 1 percent Sepilift,
19 S-e-p-i-l-e-f-t. And I will not read the
20 chemical name for Sepilift.

21 A Welcome to my world.

22 Q But according to this
23 description, it stimulates the contraction of
24 collagen fibers, protects elastin, and protects
25 fibroblasts against free radicals. Do you see

1 that?

2 A Yes.

3 Q It also resculpts the skin and
4 corrects imperfections for a natural facelift.
5 Do you know if that's true or false?

6 A That is what was presented to me
7 as an effect.

8 Q And so that's why you included
9 this ingredient in your product?

10 A Yes.

11 Q Next ingredient down is 1 percent
12 retinol?

13 A Yes.

14 Q And that says that retinol
15 reduces wrinkles, pigment spots, and helps to
16 reverse the damage from UV rays; is that correct?

17 A Yes.

18 Q To the best of your knowledge?

19 A Of course. Everything is.

20 Q So you included this ingredient
21 because, to your knowledge, it had the effects
22 that are listed here, correct?

23 A Suffice it to say that I've
24 included every ingredient because I feel that it
25 works to the best of my knowledge. I wouldn't

1 put something in my cream that I didn't think
2 worked or I thought was garbage.

3 Q Fair enough. Makes sense. And
4 the purpose of this document is to tell your
5 consumers in the health food stores that sell
6 your products that this is what the ingredients
7 do?

8 A These are what these ingredients
9 are for, yes.

10 Q And without going through the
11 rest of these ingredients, I believe you said
12 these are the active ingredients in your product?

13 A Correct.

14 Q Moving on to 30, and I'm not
15 going to walk through all of them, just one that
16 I found that is different. If you look on
17 Exhibit 30, which describes another -- first of
18 all, this describes another formulation of your
19 SeaTox Evening Creme, correct?

20 A It does.

21 Q And it does not include the White
22 Tea Extract?

23 A Correct.

24 Q But it does include 1 percent
25 CoQ10?

1 A Pronounced CoQ10.

2 Q Or "Idebenone" according to this;
3 is that right?

4 A Yes.

5 Q And it says, "Idebenone is a
6 mineral that assists in the manufacturing of
7 energy in every cell and is an antioxidant." And
8 that's information that you obtained from your
9 research, correct?

10 A Correct.

11 Q Why did you include CoQ10 in this
12 formulation and not White Tea Extract?

13 A CoQ10 is an ingredient that is
14 getting a lot of exposure as researchers find out
15 what benefits it has.

16 Q And what is your understanding of
17 the benefits that it has?

18 A That it assists in manufacturing
19 energy in every cell and it is an antioxidant and
20 it's good for antiaging.

21 (Mr. Lehman confers with Ms. Spaar.)

22 MR. WILTON: Let me mark this as
23 Exhibit 31.

24 (Deposition Exhibits 31 and 32 were
25 marked.)

1 Q (BY MR. WILTON) I've marked
2 Exhibits 31 and 32. The first one is one that
3 you produced to us during the course of the
4 proceeding. And the second one is a copy of a
5 label that I obtained. My first question is:
6 Are these copies of the labels for the two
7 formulations of your product?

8 A They do appear to be, yes.

9 Q And if we read through -- let me
10 strike that.

11 On both of those labels is a section
12 entitled "Ingredients." Do you see that?

13 A Yeah.

14 Q Yes?

15 A Yes.

16 Q And that lists all of the
17 ingredients in the product, correct?

18 A Yes.

19 Q Not just the active ones that
20 were on the previous exhibits we were looking at?

21 A Correct.

22 Q And underneath the name in the
23 middle there, where it says, "SeaTox Evening
24 Creme," you have three listed ingredients. Do
25 you see that?

1 A Yes.

2 Q Are those listed there because
3 you consider those to be the most important
4 ingredients in your product?

5 A Not necessarily.

6 Q Why are they listed there?

7 A I try not to change too much of
8 my labels too often. Product identification. I
9 mean, they are important ingredients, but every
10 ingredient that I list on my flier is an
11 important ingredient. I can't say that they are
12 necessarily the most important. It also depends
13 on what you are looking for in a face cream.

14 Q So in part, the idea of the label
15 is to convey to the consumer information so the
16 consumer can determine whether the face cream
17 does what they want it to do?

18 A Yeah.

19 Q Which is how you entice people to
20 buy the face cream, right?

21 A Exactly. That is my
22 understanding of marketing.

23 Q You tell the consumer, "This is
24 what my product does."

25 A "This is what my product has. I

1 hope it helps you."

2 Q So if we look at the first
3 sentence on the right side of these two exhibits,
4 they both say the same thing. And they say,
5 "SeaTox Triple Complex functions by relaxing the
6 muscles, as opposed to paralyzing them with
7 chemical injections." Is that what it says?

8 A It does.

9 Q And that is intended to tell the
10 consumer what this product does, correct?

11 A Correct.

12 Q And you have a sentence that
13 says -- or a portion of that that says, "As
14 opposed to paralyzing them with chemical
15 injections." What are you referring to?

16 A It refers to any pharmaceutical
17 or, quote/unquote, controlled substance.

18 Q That does what?

19 A That's intended to relax or
20 minimize facial appearance.

21 Q You mean any --

22 A Or minimize -- enhance facial
23 appearance, is what I meant to say.

24 Q So you are telling me it refers
25 to any controlled substance that is intended to

1 reduce the appearance of wrinkles; is that fair?

2 A Generally enhance your
3 appearance. I mean, enhancing your appearance
4 could be a lot of things.

5 Q Okay.

6 A It is not meant to have one
7 specific effect.

8 MR. LEHMAN: Are you okay?

9 THE DEPONENT: No, I'm not.

10 MR. WILTON: Let's take a break.

11 (A recess was taken from 11:48 a.m. to
12 11:50 a.m.)

13 Q (BY MR. WILTON) So we're talking
14 about the portion of the label that distinguishes
15 your product from products that relax the muscles
16 by paralyzing them with chemical injections.
17 That's what the first sentence of your label
18 says, right?

19 A Yes.

20 Q And you referred in your
21 interrogatory responses and today in reading
22 those, to some extent, that you're referring to
23 any pharmaceutically controlled substance sold
24 through a doctor's office and administered
25 through an invasive medical procedure, correct?

1 A Correct.

2 Q Are you aware of any such
3 products?

4 A Yes.

5 Q What products are you aware of?

6 A There is collagen injections.
7 There's fat injections. There's, of course, your
8 product, which everybody in America knows about.
9 I haven't lived under a rock.

10 Q Is it your understanding that a
11 collagen injection paralyzes muscles?

12 A Perhaps not the ingredient, but
13 the procedure.

14 Q Let's look back for a moment at
15 Exhibit 19, which I think is actually your
16 request for admissions that you have in front of
17 you. And we'll look at request No. 24. You
18 provided us with a supplemental response to that
19 request. And let me ask a foundation question.
20 Was the supplemental response intended to set
21 forth what you were referring to with -- when you
22 used the language, "as opposed to paralyzing them
23 with chemical injections"?

24 A Yes.

25 Q And so you are referring to

1 collagen injections and fat injections, correct?

2 A In part.

3 Q And also injections of my
4 client's product, Botox?

5 A As well as something like
6 Novocain when you go to the dentist.

7 Q Have you ever heard of anybody
8 using Novocain to --

9 A No, of course not.

10 Q -- enhance their appearance?

11 A Of course not.

12 Q Your description of collagen
13 injections says that it's used primarily to fill
14 wrinkles, lines on the face, and sometimes the
15 neck, back, and chest. That is what your
16 response says, right?

17 A Yes.

18 Q Are you aware of any information
19 that says that collagen injections paralyze
20 muscles?

21 A Not specifically.

22 Q Are you generally aware of that?

23 A No.

24 Q And then below that, you have fat
25 injections, which -- the first sentence says,

1 "Fat-injections are known as autologous fat
2 transplantation or microlipoinjection." Do you
3 see that?

4 A Yes.

5 Q Are you aware of any information
6 that says fat injections paralyze muscles?

7 (Mr. Lehman confers with Ms. Spaar.)

8 A Two-part answer. They have --
9 the injection itself has side effects. Personal
10 experience, transplanted fat has a numbing or
11 paralyzing effect.

12 Q (BY MR. WILTON) And you have
13 undergone that procedure?

14 A Not as a facial cosmetic. As a
15 medically necessary --

16 Q You've undergone a
17 transplantation of fat?

18 A I have had to have fat moved from
19 one portion of my body to another.

20 Q Would that occur before or after
21 you developed the SeaTox product?

22 A After.

23 Q So that was after you put on the
24 label for your --

25 (Mr. Lehman confers with Ms. Spaar.)

1 Q (BY MR. WILTON) Am I
2 interrupting something?

3 A No.

4 MR. LEHMAN: I'm just bringing up
5 a point.

6 A He is helping me.

7 (Mr. Lehman confers with Ms. Spaar.)

8 A He was reminding me of an
9 occasion when I had lip enhancement, which made
10 my lips numb. I felt like Donald Duck.

11 Q (BY MR. WILTON) And you were
12 referring to that when you wrote your label for
13 the SeaTox product?

14 A No. I kept my personal
15 experience out of it, out of writing my label.

16 Q So at the time you wrote your
17 label, the only product that you knew had, at
18 least in your view, a paralyzing effect was the
19 Botox product; isn't that correct?

20 A No.

21 Q So at the time you wrote your
22 label, you knew that collagen injections had a
23 paralyzing effect?

24 A I knew that invasive procedures
25 had the side effects of making a person feel a

1 paralysis.

2 Q Your response includes the
3 sentence I -- response No. 24 includes a sentence
4 I read about, autologous fat transplantation. Do
5 you remember that?

6 A Mm-hmm.

7 Q Yes?

8 A Yes.

9 Q Is that information that you had
10 at the time that you wrote your label?

11 A Yes.

12 Q Where did you get that
13 information?

14 A I do not recall the specific
15 source.

16 Q Have you ever been to a Web site
17 called "plasticsurgery.org"?

18 A Not to my recollection.

19 MR. WILTON: I would like to mark
20 this as an exhibit.

21 (Deposition Exhibit 33 was marked.)

22 Q (BY MR. WILTON) Have you ever
23 seen this before, this page?

24 A Not to my recollection.

25 Q I would like you to look on

1 page 4. There is a page number at the very top,
2 right-hand corner.

3 A Okay.

4 Q At the bottom is a heading that
5 says, "Fat." Do you see that?

6 A Yes.

7 Q And that first sentence says, "In
8 the medical world, the fat-injection procedure is
9 known as autologous fat transplantation or
10 microlipoinjection." Do you see that?

11 A Okay.

12 Q Do you recall reading that from
13 that sentence?

14 A I do.

15 Q You do?

16 A I do. I don't specifically
17 remember this page. I've seen tens of thousands.

18 Q But the information that you put
19 in your response came from someplace on the Web;
20 is that right?

21 A By and part, yes.

22 Q In the description of your
23 product that we looked at, the flier, it talks
24 about Argireline and mentions that it has an
25 effect that operates without the paralysis as

1 with Botox injections. Do you remember that?

2 It's Exhibit 29 or 30.

3 A Yes. I'm sorry.

4 Q Do we need to take a longer
5 break?

6 MR. LEHMAN: No. She is doing
7 this as fast for you. I'd push it along as quick
8 as you can.

9 A With all due respect, I'm asking
10 out of courtesy, because of my situation, I know
11 you have a job to do, but because of everything
12 I've been through, I get weak very, very fast. I
13 really don't have much left.

14 Q (BY MR. WILTON) I will finish as
15 quickly as I can.

16 A I'm doing my best to give you
17 what you want. I really am.

18 Q I appreciate that. I'm curious
19 why you won't make the statement that your
20 product compares itself to the Botox product?

21 A Because I didn't set out to have
22 any malice or, you know, be a bad guy to the
23 Botox people. I don't operate on that level.
24 And I mean, we're drawing away from the specifics
25 of how you as an attorney operate.

1 I'm just a small business owner. I
2 don't want to hurt anybody. I don't want to make
3 anybody look bad. I don't disagree with
4 anybody's products that I haven't personally
5 experienced.

6 I've never had a Botox injection, so I
7 can't say whether your product is good, bad,
8 works, or doesn't. I make a topical cream. I
9 want it to have an effect. I did some simple
10 marketing. I'm not a chemist. I'm not a
11 professional formulator. I don't have a business
12 degree. I didn't set out to hurt anybody. I
13 didn't set out to slander anybody. I didn't set
14 out to copy you all's name, basically. Pardon my
15 frustration.

16 Maybe it's just everything I'm going
17 through. We've been going through this for such
18 a long time. I really want it to be taken care
19 of, but I just didn't do what you all think I
20 did, and that's use "TOX" to copy you all's name.
21 That wasn't my intention.

22 Q I appreciate that. And from our
23 point of view, though, the product is marketed as
24 an alternative to Botox using "TOX." And --

25 A "TOX" was only a syllable to

1 indicate that it has a detoxifying effect. I
2 couldn't call it "sea detox" because as you are
3 putting on your cream, you get the impression of
4 a wharf bar where sailors are looking for ladies
5 of the evening.

6 The best alternative in my head, just
7 naming a product, it was just "SeaTox."
8 Everybody knows "TOX." Toxic things. It's
9 taking away toxic stuff. That's all it meant.
10 It is just a syllable to me.

11 Q What other products are you aware
12 of that use "TOX"?

13 A Pardon me. I know that there are
14 a couple of them. The names of them, I don't
15 know.

16 Q Were you aware of any of them
17 when you named this product three, four years
18 ago -- about three years ago?

19 A When I named this product, I came
20 up with the name, like I said, that I thought
21 sounded good. I went to my marketing people,
22 which is my friends and family, "How does this
23 product name sound to you?" I applied for a
24 trademark and I got it. I thought I was doing
25 right.

1 Q You applied for the trademark in
2 Colorado, right?

3 A And federally. I thought that
4 when I set up my business, you had to do things
5 in a certain order for state level then
6 federally. And that is the way I did this with
7 all of my products. I did things through the
8 state and then continued on to the federal level
9 because I want things to be right.

10 Q Are you aware that your product
11 is being marketed as an alternative to Botox?

12 A It's not my intention to say
13 alternative to Botox. I don't want to use
14 another product name to, you know -- it's like
15 saying, "McDonald's is better than Burger King's
16 Whopper." You know, it's different. I wouldn't
17 want that -- it's not my intention to do that.

18 Q Are you aware that your retailers
19 are selling the product as an alternative to
20 Botox?

21 A I have a number -- I have a lot
22 of them. I don't monitor all of them. And no, I
23 was not aware somebody was going, "Use this
24 instead of Botox."

25 Q Isn't what the description of

1 Argireline says, that it works as an alternative
2 to Botox?

3 A To me, it is using the word
4 "alternative" in two different ways. You know,
5 you can use different products for a number of
6 different reasons. So I mean, if you want to go
7 to the Webster's dictionary literal alternative,
8 it could be construed that way. That was not my
9 intention. I didn't mean to put it out there
10 like that.

11 I'm sorry. I'm just not feeling well.

12 Q Let me wrap this up very quickly,
13 but I need --

14 A I appreciate that.

15 Q Why do you use the R and the
16 circle next to SeaTox?

17 A As a registered trademark. It is
18 my understanding that as long as you are applying
19 for that, you can use that.

20 Q Where did you obtain that
21 understanding?

22 A I don't recall specifically.
23 Probably on one of the government Web sites, I
24 would think. I'm not sure.

25 Q What is your understanding of the

1 distinction between the R and the circle and the
2 TM?

3 A One means registered and one
4 means trademark. And the specific definition of
5 which, I can't recall right at the moment. I
6 can't quote the fed regs.

7 Q Your product, the SeaTox product,
8 instead of selling it under BioEntopic, you sell
9 it under Becarre. Why do you do that?

10 A Because I hope to someday have a
11 line of skin care products that is different from
12 the health food store products. I have
13 aspirations, too. I mean, I would love to walk
14 into Nordstrom and see my products on the shelf.
15 Becarre is a prettier word.

16 Q Than BioEntopic?

17 A Than BioEntopic. BioEntopic is
18 my clinical side of things and Becarre just had a
19 more appealing, feminine sound to it.

20 Q Have you applied to register that
21 mark?

22 A Yes.

23 Q Where?

24 A I believe both state and
25 federally.

1 Q I'll take your word. If you
2 have, why don't you use the R and a circle next
3 to Becarre?

4 A I do not know. I don't know why
5 that was never changed. I'm sorry.

6 Q Let me, since I was asking you
7 about them, just mark these as 34 and 35, I
8 believe.

9 (Deposition Exhibits 34 and 35 were
10 marked.)

11 Q (BY MR. WILTON) Have you ever
12 seen these advertisements?

13 A No. Oh.

14 Q So you've never seen
15 advertisements that advertise your product as a
16 Botox alternative?

17 A Honest to God, I have never seen
18 that.

19 Q You're referring to Exhibit 35?

20 A Exhibits 34 and 35. They both
21 say the same thing.

22 Can I go off the record for a second?

23 (Discussion held off the record.)

24 (Deposition Exhibit 36 was marked.)

25 Q (BY MR. WILTON) Have you seen

1 what we've marked as Exhibit 36?

2 A Mm-hmm.

3 Q Yes?

4 A Yeah.

5 Q What is Exhibit 36?

6 A 36 is --

7 Q Is that different? That was my
8 intent at least?

9 A If it is, I don't see how.

10 Q Oh, sorry. I don't have the
11 right one in front of you. What did I hand you?
12 You have this one --

13 A "Megamart.us," who are they?
14 Remind me of that name, will you.

15 Q Okay. This is the one. Make
16 this 36.

17 A Them I know.

18 (Deposition Exhibit 36 was remarked.)

19 Q (BY MR. WILTON) That is the
20 third one. These are all -- I will represent
21 these are printouts from Web sites we found on
22 the Internet. And these are all selling your
23 product, correct?

24 A Apparently, yes.

25 Q And they all sell it or advertise

1 it as an alternative for Botox, correct?

2 A That is their representation.

3 Q And you do not police what the
4 health food stores say about your product?

5 A I would love to say that I have
6 control over what other people do; I don't. I
7 will state for the record that none of these
8 exhibits I was aware of. I did not indicate to
9 these people how to market. I don't tell people
10 how to sell their things. I am -- you know, it
11 may sound like bunk to you, but I personally am
12 offended by this.

13 Q Why are you offended?

14 A Because that's not my intention.
15 That's not how I -- that is not what is meant. I
16 don't like that. And I don't like knowing that
17 people are -- I can't be surprised that people
18 are sneaky.

19 Q The text that appears on -- well,
20 one of those doesn't have any text really, but
21 the other two have what looks like something
22 similar to your flier printed below?

23 A It is an exact copy of my flier.

24 Q So you give a copy of the flier
25 to your health food stores and allow them to copy

1 it?

2 A I give the copy to the health
3 food stores. So when they have a client come in
4 with a question, they can hopefully answer the
5 question. So I'm not getting every single
6 consumer calling me. I don't have enough hours
7 in the day as it is. Apparently, I need to spend
8 more time policing my --

9 Q Policing your --

10 A How my product is represented on
11 the Web.

12 (Deposition Exhibit 37 was marked.)

13 Q (BY MR. WILTON) I take it you
14 have not seen Exhibit 37 either?

15 A No.

16 Q Have you ever heard of 911 Health
17 Shop?

18 A Yes, I have.

19 Q They are one of your customers?

20 A Yes, they are.

21 Q So they purchase product from
22 you?

23 A Mm-hmm.

24 Q Yes?

25 A Yes. I have some mental notes

1 going on in my head.

2 Q Why did you apply to register
3 your mark at the federal level?

4 A A, because it is my understanding
5 that's what you're supposed to do. I was under
6 the impression that when you did that, the
7 federal government kind of gave you the official
8 okay that that name was all right. And
9 apparently, I was wrong.

10 Q Why have you not applied to
11 register BioEntopic at the federal level?

12 A BioEntopic is registered at the
13 federal level.

14 Q No, it's not.

15 A It's not.

16 MR. LEHMAN: (Shaking head.)

17 A It's supposed to be.

18 MR. LEHMAN: You only have so
19 many hours in the day.

20 A I only have so many hours in the
21 day. That's something that should have been
22 taken care of six years ago. I mean, that's
23 something that I thought I would have done when
24 I was starting my product lineup. So mea culpa.
25 I don't know why it is not. I will research it

1 now. Thanks.

2 Q (BY MR. WILTON) You're welcome.
3 Have you ever applied to register the mark
4 BioCentric?

5 A I don't remember. Again, it's
6 six years ago.

7 MR. WILTON: Give me a minute or
8 two and I may get you out of here.

9 (A recess was taken from 12:17 p.m. to
10 12:23 p.m.)

11 Q (BY MR. WILTON) In your
12 interrogatory responses, and I can find them much
13 quicker, or do you have a copy right there?

14 A I have them.

15 Q Interrogatory No. 6, do you have
16 that in front of you?

17 A Yes, I do.

18 Q It is actually marked as
19 Exhibit 18, for the record. You say that your
20 product is directed to any consumer interested in
21 a quality facial cream, correct?

22 A Correct.

23 Q That would include women,
24 correct?

25 A Of course.

1 Q And that would include women
2 between the ages of 30 and 55, correct?

3 A It includes everybody.

4 Q And you also state in
5 interrogatory No. 7 that you did not make any
6 effort to determine if there are any other marks
7 that included a "TOX" suffix; is that correct?
8 At the time that you selected the mark?

9 A Yes.

10 Q And now, you may be aware of
11 some; but at the time, you were not; is that
12 right?

13 A Yes.

14 Q And you were aware of the Botox
15 product and mark at the time you selected your
16 mark, correct?

17 A I haven't lived under a rock.
18 Everybody has heard of Botox. Everybody knows
19 who you are.

20 Q And with that, I will conclude
21 the deposition so you can move on.

22 A I appreciate that.

23 MR. WILTON: Off the record.

24 (Discussion held off the record.)

25 MR. WILTON: Back on the record.

1 THE DEPONENT: I just want to
2 state for the record that I've undergone a
3 serious medical procedure. And due to recent
4 procedures, my health is not optimum. Fatigue,
5 weakness. I just wanted to state that I've had
6 something going on officially so I don't look
7 like a dingbat.

8 Q (BY MR. WILTON) Did that
9 preclude you from giving your best testimony
10 today?

11 A No. I've answered everything to
12 the best of my ability. I am just very tired
13 after it.

14 Q I appreciate that. We are done.

15 A Thank you.

16 (The deposition concluded at
17 12:27 p.m.)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 78/320,975
Published in the Official Gazette of August 3, 2004

ALLERGAN, INC.,

Opposer,

v.

BIOCENTRIC LABORATORIES, INC.,

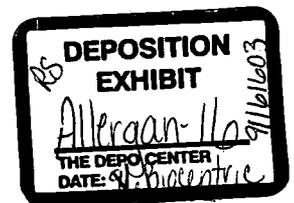
Applicant.

Opposition No. 91161603

**FIRST AMENDED NOTICE OF TESTIMONY DEPOSITION OF BIOCENTRIC
LABORATORIES, INC.**

TO APPLICANT:

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure and 37 C.F.R. 2.123, Opposer Allergan, Inc. ("Opposer") will take the testimony deposition of Rebecca Spaar, CEO of Applicant BioCentric Laboratories, Inc., whose address is 854 Baseline Place, Suite B, Brighton, CO 80603, upon oral examination before a notary public or other officer authorized to administer oaths, at the offices of Sheridan Ross, P.C., 1560



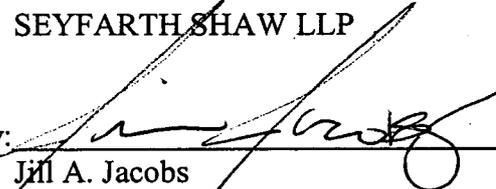
Broadway, Suite 1200, Denver, Colorado 80202, commencing at 10:00 a.m. on January 20, 2006, and continuing from day to day thereafter until the examination is completed.

You are invited to attend and cross-examine.

Respectfully submitted,

Dated: January 10, 2006

SEYFARTH SHAW LLP

By: 

Jill A. Jacobs
Attorneys for Opposer
ALLERGAN, INC.

2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2006, I served the foregoing First Amended Notice of Testimony Deposition of BioCentric Laboratories, Inc. on the applicant by e-mailing a copy to applicant and by depositing a true copy thereof in a sealed envelope with the United States Postal Service "Priority Mail Service" addressed to applicant as follows:

Ms. Rebecca Spaar
Chief Executive Officer
BioCentric Laboratories, Inc.
854 Baseline Place
Suite B
Brighton, CO 80603

AND

Ms. Rebecca Spaar
Chief Executive Officer
BioCentric Laboratories, Inc.
P.O. Box 1018
Brighton, CO 80601



 BioEntopic

INTERROGATORIES

INTERROGATORY NO. 1:

State the name, title, and address of each person involved in the selection, adoption, and/or clearance of Applicant's Mark.

Rebecca Spaar CEO 32260 East 167th Drive Hudson, CO 80642

INTERROGATORY NO. 2:

State the name, title, and address of each person involved in the decision to file the Opposed Application.

Rebecca Spaar CEO 32260 East 167th Drive Hudson, CO 80642

INTERROGATORY NO. 3:

State in detail the reasons for selecting Applicant's Mark.

The "Sea" is for the MSM and the Red Seaweed Extract from the sea. The "Tox" is for detoxifying.

INTERROGATORY NO. 4:

Identify any other marks that were considered as an alternative to Applicant's Mark in the process of selecting, adopting, and clearing Applicant's Mark.

None.

INTERROGATORY NO. 5:

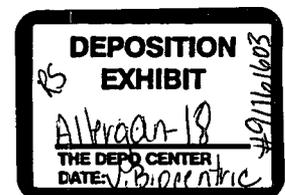
State when and under what circumstances Applicant first became aware of Opposer and/or Opposer's Mark.

While watching television.

INTERROGATORY NO. 6:

Identify the class or classes of consumers to whom Applicant intends to market or promote the products intended to be sold under Applicant's Mark.

Any consumer interested in a quality facial cream.



INTERROGATORY NO. 7:

Describe all efforts undertaken by or on behalf of Applicant to determine the nature, extent, and duration of any actual use in commerce or existence of marks, other than Opposer's Mark, containing a "TOX" suffix.

None.

Supplemental Response:

There were no efforts undertaken by or on behalf of Applicant to determine the nature, extent, and duration of any actual use in commerce or existence of marks, including the Opposer's Mark, containing a "TOX" suffix.

INTERROGATORY NO. 8:

State the name and address of any person who has expressed the belief, orally, in writing, or by conduct, that Applicant's Mark is similar to Opposer's Mark, and/or reminded the person of Opposer and/or Opposer's Mark, and as to each person so identified, state the date and substance of his or her statement or act.

There has never been any person who has expressed the belief, orally, in writing, or by conduct, that Applicant's Mark is similar to Opposer's Mark, and/or reminded the person of Opposer and/or Opposer's Mark.

INTERROGATORY NO. 9:

State the name and address of any person who has expressed the belief, orally, in writing, or by conduct, that Applicant's goods sold or to be sold under Applicant's Mark originate or are associated with, or are sponsored, authorized or licensed by, Opposer.

There has never been any person, who has expressed the belief, orally, in writing, or by conduct, that Applicant's goods sold or to be sold under Applicant's Mark originate or are associated with, or are sponsored, authorized or licensed by, Opposer.

INTERROGATORY NO. 10:

Identify by name, date, and title any consumer research, market research, focus groups, studies, or other forms of research regarding Applicant's Mark.

There has never been a consumer research, market research, focus groups, studies, or other forms of research regarding Applicant's Mark.

INTERROGATORY NO. 11:

For each of Applicant's responses to each request for admission contained in Opposer's First Set of Requests for Admission served concurrently herewith that is not an unqualified admission, state all facts that support Applicant's response.

All answers are fact.

Supplemental Response:

All responses are fact to the best of our knowledge, information, and belief. All facts to support Applicant's responses have been stated.

INTERROGATORY NO. 12:

State in detail to what the statement on the label for the SEATOX Product which reads "as opposed to paralyzing them with chemical injections" is intended to refer.

Intended to refer to any pharmaceutical controlled substance sold through a doctor's office and administered through an invasive medically procedure.

Supplemental Response:

The statement on the label for the SEATOX product which reads "as opposed to paralyzing them with chemical injections" is intended to refer to any pharmaceutical controlled substance sold through a doctor's office and administered through an invasive medically procedure, **that may have paralyzing side effects.**

Webster's dictionary definition of paralyze:

- 1: to affect with paralysis.
- 2: to make powerless or ineffective.
- 3: unnerve
- 4: stun, stupefy.

Collagen injections are used primarily to fill wrinkles, lines on the face and sometimes the neck, back and chest.

Injectable collagen, patented by the Collagen Corporation under the trade names Zyderm and Zyplast, is derived from purified bovine collagen. It is produced in various thicknesses to meet individual patient needs.

Fat-injections are known as autologous fat transplantation or microlipoinjection. It involves extracting fat cells from the patient's abdomen, thighs, buttocks or elsewhere and reinjecting them beneath the facial skin. Fat is most often used to fill in "sunken" cheeks or laugh lines between the nose and mouth, to correct skin depressions or indentations, to minimize forehead wrinkles and to enhance the lips.

As with collagen, "overfilling" is necessary to allow for fat absorption in the weeks following treatment. When fat is used to fill sunken cheeks or to correct areas on the face other than lines, this overcorrection of newly injected fat may temporarily make the face appear abnormally puffed out or swollen.

If a larger area was treated, you may be advised to curtail your activity for a brief time.

Side effects for both these invasive medical procedures may include the paralyzing effects of numbness, facial dissymmetry, discoloration, hardening, connective skin disorder, scarring, and swelling.

To further define paralyze, after receiving Novocain injections at a dentist office, the numbness paralysis's the face creating side effects such as drooling, loss of speech, and the inability to eat or drink.

BioCentric has never fully researched just how many pharmaceutically controlled substances administered through an invasive medical procedure have paralyzing side effects.

INTERROGATORY NO. 13:

State in detail all intended uses for products intended to be sold under Applicant's Mark, including whether said products are intended or marketed to consumers for use to improve or lessen the appearance of wrinkles.

In detail all intended uses for products intended to be sold under Applicant's Mark is as a cosmetic facial cream. If the Applicant did make a claim such as "use to improve or lessen the appearance of wrinkles," the FDA would require that the Applicant's product be listed as a drug. The Applicant's product is not a drug because the Applicant makes no such claim and is not involved in the pharmaceutical market place whereas the Opposer is.

Supplemental Response:

The two products sold under the Applicant's Mark, Bécarre White Tea Evening Crème, and Bécarre Evening Crème are under the FDA law defining cosmetics.

How does the FDA law define a cosmetic?

The Food, Drug and Cosmetic Act (FD&C Act) defines cosmetics by their intended use, as "articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body...for cleansing, beautifying, promoting attractiveness, or altering the appearance" [FD&C Act, sec. 201(i)]. Among the products included in this

definition are skin moisturizers, perfumes, lipsticks, fingernail polishes, eye and facial makeup preparations, shampoos, permanent waves, hair colors, toothpastes, and deodorants, as well as any material intended for use as a component of a cosmetic product.

INTERROGATORY NO. 14:

Does Applicant include the registration symbol --®-- at the end of Applicant's Mark with the intent of conveying to its consumer that the Applicant's Mark is registered?

Just as the Applicant uses the symbol --©-- or the symbol --™-- prior to officially receiving documentation, the Applicant uses the symbol --®-- in the same manner.

Supplemental Response:

Rule 33. Interrogatories to Parties does not stipulate a yes or no answer.

Because the Applicant intends to receive registered documentation for the Mark, the symbol --®-- has always been included at the end of the Applicant's Mark. This is common practice used for symbols like --®--, --©--, and --™-- during the process of registering, copy righting, and trade marking. In anyone of these examples, it may convey to a consumer that the process has been completed. This is not intent to deceive a consumer.

INTERROGATORY NO. 15:

If Applicant's response to the foregoing Interrogatory is anything other than an unqualified yes, please explain Applicant's response.

Just as the Applicant uses the symbol --©-- or the symbol --™-- prior to officially receiving documentation, the Applicant uses the symbol --®-- in the same manner.

Supplemental Response:

Rule 33. Interrogatories to Parties does not stipulate a yes or no answer.

Because the Applicant intends to receive registered documentation for the Mark, the symbol --®-- has always been included at the end of the Applicant's Mark. This is common practice used for symbols like --®--, --©--, and --™-- during the process of registering, copy righting, and trade marking. In anyone of these examples, it may convey to a consumer that the process has been completed. This is not intent to deceive a consumer.

INTERROGATORY NO. 16:

Does the Applicant include the registration symbol --®-- at the end of the Applicant's Mark with the intent of conveying to its consumer that it has obtained a U.S. trademark registration for Applicant's Mark?

Just as the Applicant uses the symbol --©-- or the symbol --™-- prior to officially receiving documentation, the Applicant uses the symbol --®-- in the same manner.

Supplemental Response:

Rule 33. Interrogatories to Parties does not stipulate a yes or no answer.

Because the Applicant intends to receive registered documentation for the Mark, the symbol --®-- has always been included at the end of the Applicant's Mark. This is common practice used for symbols like --®--, --©--, and --™-- during the process of registering, copy righting, and trade marking. In anyone of these examples, it may convey to a consumer that the process has been completed. This is not intent to deceive a consumer.

INTERROGATORY NO. 17:

If Applicant's response to the foregoing Interrogatory is anything other than an unqualified yes, please explain Applicant's response.

Just as the Applicant uses the symbol --©-- or the symbol --™-- prior to officially receiving documentation, the Applicant uses the symbol --®-- in the same manner.

Supplemental Response:

Rule 33. Interrogatories to Parties does not stipulate a yes or no answer.

Because the Applicant intends to receive registered documentation for the Mark, the symbol --®-- has always been included at the end of the Applicant's Mark. This is common practice used for symbols like --®--, --©--, and --™-- during the process of registering, copy righting, and trade marking. In anyone of these examples, it may convey to a consumer that the process has been completed. This is not intent to deceive a consumer.

INTERROGATORY NO. 18:

To the extent not already done so in response to the Opposer's First Set of Interrogatories or foregoing Interrogatories, describe all uses that the Applicant has made of the Applicant's Mark.

- 1.) Bécarre White Tea Evening Crème
- 2.) Bécarre Evening Crème

INTERROGATORY NO. 19:

If Applicant has commenced use of Applicant's Mark in commerce, state in detail the nature, extent, and duration of any use in commerce of Applicant's Mark.

- 1.) First used May 1st, 2003.
- 2.) Still being used.
- 3.) Used on the label of cosmetic crèmes, sold through health food retail markets to be applied by the consumer in their home.

INTERROGATORY NO. 20:

If Applicant has commenced use of Applicant's Mark in commerce, state the average price of the goods identified in the Opposed Application that the Applicant has provided under Applicant's mark.

Retail: \$39.99

INTERROGATORY NO. 21:

For each of Applicant's responses to each request for admission contained in Opposer's Second Set of Requests for Admission served concurrently herewith that is not an unqualified admission, state all facts that support Applicant's response.

All answers are fact.

Supplemental Response:

All responses are fact to the best of our knowledge, information, and belief. All facts to support Applicant's responses have been stated. See each response.

I, Rebecca Spaar, CEO BioCentric Laboratories, Inc., declare under penalty of perjury under the laws of the United States of America, that I have given responses to this set of "Interrogatories", which are true to the best of my knowledge, information, and belief.

Executed January 3, 2006

Rebecca Spaar

CEO

BioCentric Laboratories, Inc.

REQUESTS FOR ADMISSION

REQUEST NO. 1:

When Applicant selected Applicant's Mark, it was aware of Opposer.

Applicant had seen advertisements for BOTOX.

Supplemental Response:

Admit

REQUEST NO. 2:

When Applicant selected Applicant's Mark, it was aware of Opposer's Mark.

Applicant had seen advertisements for BOTOX.

Supplemental Response:

Admit

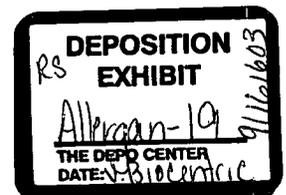
REQUEST NO. 3:

When Applicant selected Applicant's Mark, it was aware of Opposer's Registration No. 1,692,384 with the United States Patent and Trademark Office for Opposer's Mark.

Applicant first became aware of Opposer's Registration No. 1,692,384 with the United States Patent and Trademark Office for Opposer's Mark, at the receiving of a letter from Susan J. Hinchey, Corporate Trademark Manager, dated March 26, 2004.

Supplemental Response:

Deny



REQUEST NO. 4:

When Applicant selected Applicant's Mark, it was aware of Opposer's Registration No. 1,709,160 with the United States Patent and Trademark Office for Opposer's Mark.

Applicant first became aware of Opposer's Registration No. 1,709,160 with the United States Patent and Trademark Office for Opposer's Mark, at the receiving of a letter from Susan J. Hinchey, Corporate Trademark Manager, dated March 26, 2004.

Supplemental Response:

Deny

REQUEST NO. 5:

When Applicant selected Applicant's Mark, it was aware of Opposer's Registration No. 2,510,675 with the United States Patent and Trademark Office for Opposer's Mark.

Applicant first became aware of Opposer's Registration No. 2,510,675 with the United States Patent and Trademark Office for Opposer's Mark, at the receiving of a letter from Susan J. Hinchey, Corporate Trademark Manager, dated March 26, 2004.

Supplemental Response:

Deny

REQUEST NO. 6:

Opposer's Registration No. 1,692,384 with the United States Patent and Trademark Office has become incontestable.

The United States Patent and Trademark Office have issued the Opposer Registration No. 1,692,384 and BioCentric has no knowledge of any contest.

Supplemental Response:

The Applicant has made reasonable inquiry and that the information known or readily obtainable is insufficient to enable the Applicant to admit or deny.

REQUEST NO. 7:

Opposer's Registration No. 1,709,160 with the United States Patent and Trademark Office has become incontestable.

The United States Patent and Trademark Office have issued the Opposer Registration No. 1,709,160 and BioCentric has no knowledge of any contest.

Supplemental Response:

The Applicant has made reasonable inquiry and that the information known or readily obtainable is insufficient to enable the Applicant to admit or deny.

REQUEST NO. 8:

Applicant selected the "TOX" part of Applicant's Mark based on Opposer's Mark. Applicant did not select the "TOX" part of Applicant's Mark based on Opposer's Mark. The "Sea" is for the MSM and the Red Seaweed Extract from the sea. The "Tox" is for detoxifying.

Supplemental Response:

Deny

REQUEST NO. 9:

Opposer's Mark is famous in the United States. BioCentric is not professionally qualified to determine what is famous or not.

Supplemental Response:

The Applicant has made reasonable inquiry and that the information known or readily obtainable is insufficient to enable the Applicant to admit or deny.

REQUEST NO. 10:

Opposer's Mark is well-known in the United States.

BioCentric is not professionally qualified to determine what is well known or not.

Supplemental Response:

The Applicant has made reasonable inquiry and that the information known or readily obtainable is insufficient to enable the Applicant to admit or deny.

REQUEST NO. 11:

Applicant's Mark is similar to Opposer's Mark.

When reading the Applicant's mark there is no similarity to the Opposer's Mark. When speaking the Applicant's mark there is no similarity to the Opposer's Mark. When one dissects the two marks there is no similarity between "Sea" and "BO." The only similarity is in the "Tox."

Supplemental Response:

Deny

REQUEST NO. 12:

Applicant intends to use Applicant's Mark on goods which are similar to those goods on which Opposer uses Opposer's Mark.

Applicant does not intend and has never intended to use Applicant's Mark on goods which are similar to those goods on which Opposer uses Opposer's Mark. Opposer's goods are a pharmaceutical controlled substance sold through a doctor's office and administered through an invasive medically procedure, which is injection by a doctor into the face of a patient who is willing to risk the known possible side effects of the drug. Applicant's goods are a topical crème, not a drug, sold through health food retail markets to consumers desiring a natural product without side effects and applied by the consumer in the safety of their home.

Supplemental Response:

Deny

REQUEST NO. 13:

Applicant intends to use Applicant's Mark on goods which are related to those goods on which Opposer uses Opposer's Mark.

Applicant does not intend and has never intended to use Applicant's Mark on goods which are related to those goods on which Opposer uses Opposer's Mark. Opposer's goods are a pharmaceutical controlled substance sold through a doctor's office and administered through an invasive medically procedure, which is injection by a doctor into the face of a patient who is willing to risk the known possible side effects of the drug. Applicant's goods are a topical crème, not a drug, sold through health food retail markets to consumers desiring a natural product without side effects and applied by the consumer in the safety of their home.

Supplemental Response:

Deny

REQUEST NO. 14:

Applicant intends to use Applicant's Mark in the same channels of trade which are related to those in which Opposer uses Opposer's Mark.

Applicant does not intend and never has intended to use Applicant's Mark in the same channels of trade which are related to those in which Opposer uses Opposer's Mark. Opposer's goods are a pharmaceutical controlled substance sold through a doctor's office and administered through an invasive medically procedure, which is injection by a doctor into the face of a patient who is willing to risk the known possible side effects of the drug. Applicant's goods are a topical crème, not a drug, sold through health food retail markets to consumers desiring a natural product without side effects and applied by the consumer in the safety of their home.

Supplemental Response:

Deny

REQUEST NO. 15:

Applicant intends to market the goods to be sold under Applicant's Mark to consumers who are interested in improving the appearance of their skin.

Applicant's goods are sold through health food retail markets to consumers desiring a natural topical product without side effects for the purpose of improving the appearance of their skin.

Supplemental Response:

Admit

REQUEST NO. 16:

Third Parties have commented to Applicant, either orally or in writing, that Applicant's Mark is similar to, or reminds them of, Opposer's Mark.

No Third Parties have ever commented to Applicant, either orally or in writing that Applicant's Mark is similar to, or reminds them of, Opposer's Mark.

Supplemental Response:

Deny

REQUEST NO.17:

Consumers are likely to be confused between Applicant's Mark and Opposer's Mark. Consumers are never likely to be confused between Applicant's Mark and Opposer's Mark, because the marks look different, sound different and the Opposer's Mark represents a controlled drug sold through a medical office and administered through an invasive medically procedure by a doctor. The Applicant's Mark represents a natural topical crème sold through health food retail markets and applied by the consumer in the safety of their home.

Supplemental Response:

Deny

REQUEST NO. 18:

Attached hereto as Exhibit A is a true and correct picture of the SeaTox Evening Crème product offered for sale by Applicant.

Applicant did not provide this picture and can not say this is a true and correct picture, but based on what is being provided in Exhibit A, it appears to be a picture of the Applicants product.

Supplemental Response:

Deny

REQUEST NO. 19:

Applicant's SeaTox mark appears in the picture attached hereto as Exhibit A.

Applicant's SeaTox mark appears in the picture attached hereto as Exhibit A.

Supplemental Response:

Admit

REQUEST NO. 20:

Applicant includes the registration symbol ® at the end of the SeaTox mark when the SeaTox mark appears on Applicant's product.

Applicant includes the registration symbol ® at the end of the SeaTox mark when the SeaTox mark appears on Applicant's product because Applicant is in the process of registering the mark.

Supplemental Response:

Admit

REQUEST NO. 21:

Applicant includes the registration symbol ® at the end of the SeaTox mark when the SeaTox mark appears in writing.

Applicant includes the registration symbol ® at the end of the SeaTox mark when the SeaTox mark appears in writing because Applicant is in the process of registering the mark.

Supplemental Response:

Admit

REQUEST NO. 22:

Applicant includes the registration symbol --®-- at the end of the Applicant's Mark with the intent of conveying to its consumers that Applicant's Mark is registered.

Just as the Applicant uses the symbol --©-- or the symbol --™-- prior to officially receiving documentation, the Applicant uses the symbol --®-- in the same manner.

Supplemental Response:

Admit

REQUEST NO. 23:

Applicant includes the registration symbol --®-- next to Applicant's mark with the intent of conveying to its consumers that it has obtained a U.S. trademark registration for the Applicant's Mark.

Just as the Applicant uses the symbol --©-- or the symbol --™-- prior to officially receiving documentation, the Applicant uses the symbol --®-- in the same manner.

Supplemental Response:

Admit

REQUEST NO. 24:

The statement on the label for the SEATOX Product which reads "as opposed to paralyzing them with chemical injections" is intended to refer to the BOTOX Product.

The statement on the label for the SeaTox Product which reads "as opposed to paralyzing them with chemical injections" is intended to refer to any pharmaceutical controlled substance sold through a doctor's office and administered through an invasive medically procedure.

Supplemental Response:

Deny

The statement on the label for the SEATOX Product which reads "as opposed to paralyzing them with chemical injections" is intended to refer to any pharmaceutical controlled substance sold through a doctor's office and administered through an invasive medically procedure, **that may have paralyzing side effects.**

Webster's dictionary definition of paralyze:

- 1: to affect with paralysis.
- 2: to make powerless or ineffective.
- 3: unnerve
- 4: stun, stupefy.

Collagen injections are used primarily to fill wrinkles, lines on the face and sometimes the neck, back and chest.

Injectable collagen, patented by the Collagen Corporation under the trade names Zyderm and Zyplast, is derived from purified bovine collagen. It is produced in various thicknesses to meet individual patient needs.

Fat-injections are known as autologous fat transplantation or microlipoinjection. It involves extracting fat cells from the patient's abdomen, thighs, buttocks or elsewhere and reinjecting them beneath the facial skin. Fat is most often used to fill in "sunken" cheeks or laugh lines between the nose and mouth, to correct skin depressions or indentations, to minimize forehead wrinkles and to enhance the lips.

As with collagen, "overfilling" is necessary to allow for fat absorption in the weeks following treatment. When fat is used to fill sunken cheeks or to correct areas on the face other than lines, this overcorrection of newly injected fat may temporarily make the face appear abnormally puffed out or swollen.

If a larger area was treated, you may be advised to curtail your activity for a brief time.

Side effects for both these invasive medical procedures may include the paralyzing effects of numbness, facial dissymmetry, discoloration, hardening, connective skin disorder, scarring, and swelling.

To further define paralyze, after receiving Novocain injections at a dentist office, the numbness paralysis's the face creating side effects such as drooling, loss of speech, and the inability to eat or drink.

BioCentric has never fully researched just how many pharmaceutically controlled substances administered through an invasive medical procedure have paralyzing side effects.

REQUEST NO. 25:

The statement on the label for the SEATOX Product which reads "as opposed to paralyzing them with chemical injections" is intended to refer to injections of the BOTOX Product.

The statement on the label for the SeaTox Product which reads "as opposed to paralyzing them with chemical injections" is intended to refer to any pharmaceutical controlled substance sold through a doctor's office and administered through an invasive medically procedure.

Supplemental Response:

Deny

The statement on the label for the SEATOX Product which reads "as opposed to paralyzing them with chemical injections" is intended to refer to any pharmaceutical controlled substance sold through a doctor's office and administered through an invasive medically procedure, **that may have paralyzing side effects.**

Webster's dictionary definition of paralyze:

- 1: to affect with paralysis.
- 2: to make powerless or ineffective.
- 3: unnerve
- 4: stun, stupefy.

Collagen injections are used primarily to fill wrinkles, lines on the face and sometimes the neck, back and chest.

Injectable collagen, patented by the Collagen Corporation under the trade names Zyderm and Zylplast, is derived from purified bovine collagen. It is produced in various thicknesses to meet individual patient needs.

Fat-injections are known as autologous fat transplantation or microlipoinjection. It involves extracting fat cells from the patient's abdomen, thighs, buttocks or elsewhere and reinjecting them beneath the facial skin. Fat is most often used to fill in "sunken" cheeks or laugh lines between the nose and mouth, to correct skin depressions or indentations, to minimize forehead wrinkles and to enhance the lips.

As with collagen, "overfilling" is necessary to allow for fat absorption in the weeks following treatment. When fat is used to fill sunken cheeks or to correct areas on the face other than lines, this overcorrection of newly injected fat may temporarily make the face appear abnormally puffed out or swollen.

If a larger area was treated, you may be advised to curtail your activity for a brief time.

Side effects for both these invasive medical procedures may include the paralyzing effects of numbness, facial dissymmetry, discoloration, hardening, connective skin disorder, scarring, and swelling.

To further define paralyze, after receiving Novocain injections at a dentist office, the numbness paralyzes the face creating side effects such as drooling, loss of speech, and the inability to eat or drink.

BioCentric has never fully researched just how many pharmaceutically controlled substances administered through an invasive medical procedure have paralyzing side effects.

REQUEST NO. 26:

The document attached as Exhibit A, which was produced by the Applicant in response to Opposer's First Set of Request for Production of Documents and Things, is a true and correct copy of the Applicant's Application for Registration of Trademark that it submitted to the Colorado Secretary of State.

The document attached as Exhibit A, which was produced by the Applicant in response to Opposer's First Set of Request for Production of Documents and Things, is a true and correct copy of the Applicant's Application for Registration of Trademark that it submitted to the Colorado Secretary of State.

Supplemental Response:

Admit

REQUEST NO. 27:

The document attached as Exhibit A is admissible into evidence in this matter.

BioCentric Laboratories differs to the Trail Board's authority as to what is admissible evidence.

Supplemental Response:

Admit

REQUEST NO. 28:

The document attached as Exhibit B, which was produced by the Applicant in response to Opposer's First Set of Request for Production of Documents and Things, is a true and correct copy of literature Applicant provides consumers or potential consumers for its SEATOX Evening Crème Triple Complex.

The document attached as Exhibit B, which was produced by the Applicant in response to Opposer's First Set of Request for Production of Documents and Things, is a true and correct copy of literature Applicant provides consumers or potential consumers for its SeaTox Evening Crème Triple Complex.

Supplemental Response:

Admit

REQUEST NO. 29:

The document attached as Exhibit B is admissible into evidence in this matter. BioCentric Laboratories differs to the Trail Board's authority as to what is admissible evidence.

Supplemental Response:

Admit

REQUEST NO. 30:

The document attached as Exhibit C, which was produced by the Applicant in response to Opposer's First Set of Request for Production of Documents and Things, is a true and correct copy of literature Applicant provides consumers or potential consumers for its SEATOX White Tea Evening Crème Triple Complex.

The document attached as Exhibit C, which was produced by the Applicant in response to Opposer's First Set of Request for Production of Documents and Things, is a true and correct copy of literature Applicant provides consumers or potential consumers for its SeaTox White Tea Evening Crème Triple Complex.

Supplemental Response:

Admit

REQUEST NO. 31:

The document attached as Exhibit C is admissible into evidence in this matter.

BioCentric Laboratories differs to the Trail Board's authority as to what is admissible evidence.

Supplemental Response:

Admit

REQUEST NO. 32:

The document attached as Exhibit D, which was produced by the Applicant in response to Opposer's First Set of Request for Production of Documents and Things, is a true and correct copy of the label Applicant uses on the packaging for the SEATOX Evening Crème Triple Complex product.

The document attached as Exhibit D, which was produced by the Applicant in response to Opposer's First Set of Request for Production of Documents and Things, is a true and correct copy of the label Applicant uses on the packaging for the SEATOX Evening Crème Triple Complex product.

Supplemental Response:

Admit

REQUEST NO. 33:

The document attached as Exhibit D is admissible into evidence in this matter.

BioCentric Laboratories differs to the Trail Board's authority as to what is admissible evidence.

Supplemental Response:

Admit

I, Rebecca Spaar, CEO of BioCentric Laboratories, Inc., declare under penalty of perjury under the laws of the United States of America, that I have given responses to this set of Request for Admission 1 through 33 , which are true to the best of my knowledge, information, and belief. Executed January 3, 2006

Rebecca Spaar

CEO

BioCentric Laboratories, Inc.

REQUEST NO. 4:

All documents and things relating or referring to, or evidencing, reflecting, or constituting, any correspondence or communication between Applicant and any third party (other than Applicant's counsel) regarding Opposer.

There was never any correspondence or communication between Applicant and any third party including Applicant's counsel regarding Opposer.

REQUEST NO. 5:

All documents and things relating or referring to, or evidencing, reflecting, or constituting, any correspondence or communication between Applicant and any third party (other than Applicant's counsel) regarding Opposer's Mark.

There was never any correspondence or communication between Applicant and any third party including Applicant's counsel regarding Opposer's Mark.

REQUEST NO. 6:

All documents and things relating or referring to, or evidencing, reflecting, or constituting, the nature, duration, and/or extent of any actual use in commerce or existence of marks, other than Opposer's Mark, containing a "TOX" suffix.

There has never been any documents or things relating or referring to, or evidencing, reflecting, or constituting, the nature, duration, and/or extent of any actual use in commerce or existence of marks, including the Opposer's Mark, containing a "TOX" suffix. (Note: It is assumed that this is before the submission to the Trial Board "Late Answer", dated 12/01/04).

REQUEST NO. 7

All documents and things relating or referring to, or evidencing, reflecting, or constituting, any consumer research, market research, focus groups, studies, or other forms of research regarding Applicant's Mark.

There was never any consumer research, market research, focus groups, studies, or other forms of research regarding Applicant's Mark.

REQUEST NO. 8:

All documents relating or referring to, or evidencing, reflecting, or constituting, any instance in which any person has expressed the belief, orally, in writing, or by conduct, that Applicant's goods sold or to be sold under Applicant's Mark originate or are associated with, or are licensed, sponsored, or authorized by, Opposer.

There has never been any documents relating or referring to, or evidencing, reflecting, or constituting, any instance in which any person has expressed the belief, orally, in writing, or by conduct, that Applicant's goods sold or to be sold under Applicant's Mark originate or are associated with, or are licensed, sponsored, or authorized by, Opposer.

REQUEST NO. 9:

All documents relating or referring to, or evidencing, reflecting, or constituting, any instance in which any person has expressed the belief, orally, in writing, or by conduct, that Applicant's Mark is similar to Opposer's Mark, or brings to mind Opposer's Mark.

There has never been any documents relating or referring to, or evidencing, reflecting, or constituting, any instance in which any person has expressed the belief, orally, in writing, or by conduct, that Applicant's Mark is similar to Opposer's Mark, or brings to mind Opposer's Mark.

REQUEST NO. 10:

All documents and things relating or referring to, or evidencing, reflecting, or constituting, any samples, prototypes, mock-ups, models, artist's renderings, or actual production pieces of the goods identified in the Opposed Application sold or to be sold under Applicant's Mark.

See attached items.

REQUEST NO. 11:

All documents and things relating or referring to, or evidencing, reflecting, or constituting, any sales or promotional materials for any of the goods identified in the Opposed Application sold or to be sold under Applicant's Mark, including, without limitation, any catalogs, mailers, promotional literature, brochures, scripts, online advertisements, and other materials.

See attached items.

REQUEST NO. 12:

Representative samples of each form of packaging and labeling for any of the goods identified in the Opposed Application sold or to be sold under Applicant's Mark.

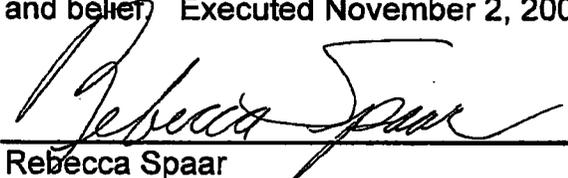
See attached items.

REQUEST NO. 13:

Representative samples of products sold or to be sold containing Applicant's Mark.

See attached items.

I, Rebecca Spaar, CEO BioCentric Laboratories, Inc., declare under penalty of perjury under the laws of the United States of America, that I have given responses to this set of "Request For Production", which are true to the best of my knowledge, information, and belief. Executed November 2, 2005



Rebecca Spaar

CEO

BioCentric Laboratories, Inc.

*Note: Per the Trial Boards directions in the "Trial Dates Reset" dated September 9, 2005,

"To the extent opposer's motion to compel pertains to opposer's August 23, 2005 discovery request, the motion to compel is denied as premature. Moreover, opposer's requests for admission do not stand admitted by operation of law. ²

Applicant's written response to opposer's discovery request are due on September 27, 2005, i.e., thirty-five days after August 23, 2005, the later of the two possible dates of service of opposer's discovery request on applicant."

BioCentric Laboratories delivered these "Request For Production", to the opposer's representative on September 27, 2005. Rebecca Spaar's signature was over looked; and at the request of the opposer, the signature is being provided by fax today and a hard copy will follow.

Natural skin creams



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Thursday 19 January, 2006

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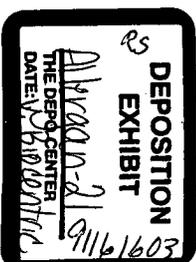
Product Name+	Price
 2% Micronized Natural Progesterone Creme 2oz	\$12.99
 2% Micronized Natural Progesterone Creme 4oz	\$19.99

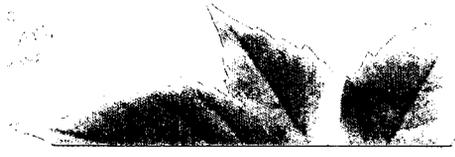
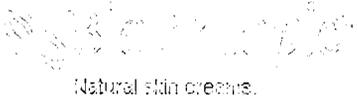
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2% Micronized Natural Progesterone Creme 2oz **\$12.99**

[progesterone] See ingredients list >

All-Natural Balance For All Women

In industrialized nations, an over abundance of estrogens, stress, environmental pollution, faulty eating habits and decreased nutrients in food are creating imbalances referred to as estrogen dominance. Estrogen is routinely fed to and/or injected in live stock to fatten them up for market. Petrochemical companies produce types of environmental pollution that act as estrogen in the human body. These imbalances create an array of symptoms, many associated with PMS, menopause, bone loss and adrenal exhaustion. These imbalances are being put in check by the use of natural progesterone. Progesterone is produced by the ovaries and adrenal glands. Natural progesterone USP from wild yams is bio-identical to the progesterone that the human body produces. Today, women are realizing the immediate and long-term benefits of using natural progesterone and herbs. Dr. John R. Lee M.D., a physician and author, writes that natural progesterone crème in applications of 20-30 mg, is giving relief to women expressing symptoms of estrogen dominance.



Click to enlarge

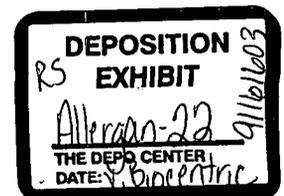
WHY DOESN'T MY DOCTOR PRESCRIBE NATURAL PROGESTERONE?

Organized medicine and pharmaceutical manufacturers have an age-old relationship. This is not to imply any evil or corruption. Pharmaceutical companies are interested only in medicines that they may patent for a profit. Just like anything natural, natural progesterone can not be patented. Doctors are required to prescribe products only from the pharmaceutical manufacturers.

WHY A CREME?

Natural progesterone taken orally is mostly destroyed in the digestion process. Adequate absorption is only accomplished through topical application in the form of a Liposome Carrier System.

BioEntopic is a liposome crème with micronized natural progesterone USP and a bio-available herb complex for adrenal exhaustion. It is free of TEA (triethanolamine), DEA, octyl palmitate, isopropyl palmitate, dowicil, stearic acid, dimethicone, cyclomethicone, glyceryl stearate, PEG, emulsifying waxes,



petroleum derivatives, dyes, colors, fragrance and alcohols. There is lanol (vegetable ester) blended with a Liposome Carrier System. Lanol is one of the finest cosmetic moisturizers and is reputed to maintain a youthful appearance. Liposomes are hollow tubes of phospholipids that are over 250 times smaller than human skin cells. Desired ingredients such as progesterone and herbs are encapsulated in the liposomes creating a superior delivery with a consistent absorption rate.

Note: Women who have not been using a natural progesterone crème are likely to have low progesterone levels in the body fat. Natural progesterone is fat-soluble and may mostly be absorbed by the body fat for the first couple of months. To compensate for this, in the first two months of using a natural progesterone crème, double the daily applications. See Dr. John Lee's material for specific conditions and or consult a health professional.

This product was added to our catalog on Wednesday 30 November, 2005.



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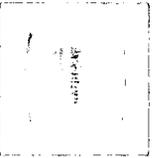
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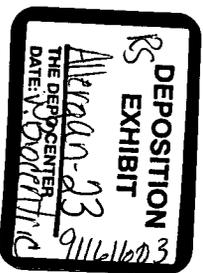
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Product Name+	Price
 Natural Estrogen Creme	\$29.99

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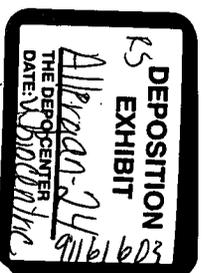
Product Name+	Price
 Testosterone Creme for Men - 5%	\$39.99
 Testosterone Creme for Women - 5%	\$39.99

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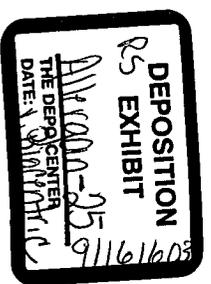
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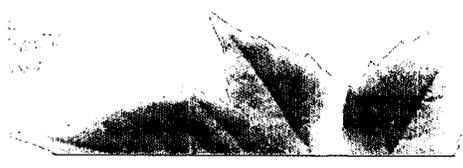
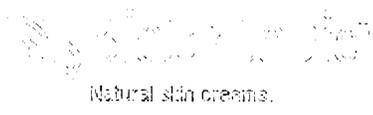
Product Name+	Price
HGH Creme	\$39.99

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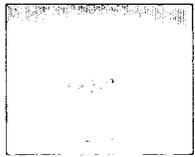
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Product Name+	Price
 Cucumber Moisturizing Emulsion	\$19.99
 Moisturizing Lotion	\$12.99
 Natural Retinol-A Crème	\$19.99
 SeaTox Evening Creme CoQ10 Evening Crème Triple Complex	\$49.99
 Skin Nectar Emulsion	\$39.99
 Vitamin C Ester Daily Renew Creme	\$39.99
 Vitamin C Ester Evening Renew Creme	\$39.99
 Vitamin K Creme - 5%	\$29.99

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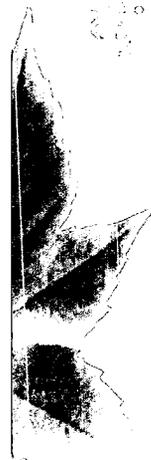
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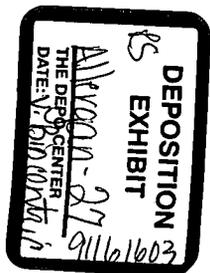
Product Name+	Price
Herbal Lidocaine Creme - 5%	\$29.99
Ibuprofen Creme - 15%	\$24.99
Super Pain Relief Emulsion	\$19.99

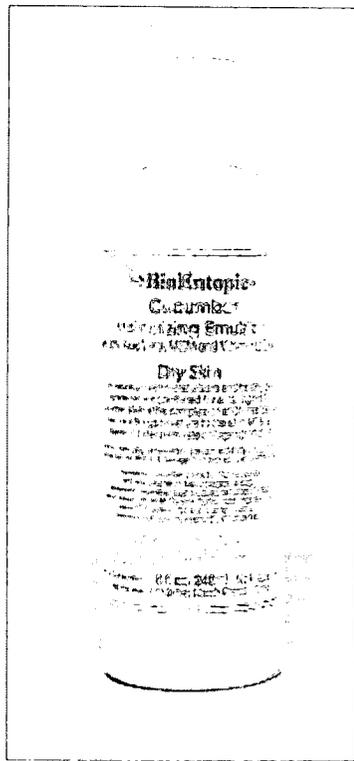
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Bécarre™

SeaTox® White Tea Evening Crème Triple Complex

SeaTox® triple complex functions by relaxing the muscles, as opposed to paralyzing them with chemical injections. SeaTox® stimulates the skin fibroblast to rebuild the dermal matrix and resculpt the face skin. SeaTox® stimulates the contraction of collagen fibres for a natural face lift.

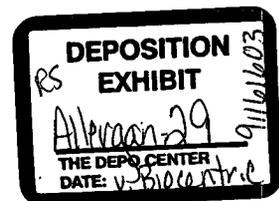
10% Argireline®: Argireline® (acetyl hexapeptide-3) is a non-toxic, anti-aging peptide, made from naturally derived amino acids. Argireline® reduces catecholamine release. Catecholamine is responsible for muscle contraction when we change our facial expressions. Through the years, the skin becomes tired from the repeated muscle contractions, giving way to wrinkles. By reducing catecholamine release, gradually a significant reduction in the depth and size of wrinkles are noticed and without the paralysis as with Botox® injections. Minimize fine lines and wrinkles without the expense (\$400 per injection), the pain or side effects. Studies of the effectiveness are based on a 10% level of Argireline®.

5% White Tea Extract (Polyphenols 98%): Scientist at the University of Cleveland and Case Western Reserve University have proven that ingredients in white tea extract boost the immune function of skin cells, helping protect the skin from the damaging effects of the sun that cause aging and cancer. Researchers applied white tea extract cream to a patch of skin on the subject's buttocks, an area not ordinarily exposed to much sunlight and left another area unprotected. Both skin areas were exposed to artificial sunlight. The white tea extract cream was then reapplied to the same area previously coated with the cream. Three days later, the researchers did cellular level comparisons of the coated and uncoated areas of skin. The researchers examined Langerhans cells located in the outer layer of the skin. These Langerhans cells are immune system sentinel cells that detect germs and mutated proteins caused by cancerous cells. Langerhans are sensitive to damage by sunlight. The researchers found the white tea cream extract protected the Langerhans cells. They also found the cream limited sunlight-caused DNA damage in skin cells.

3% Matrixyl®: Matrixyl® (palmitoyl pentapeptide-3) is a messenger peptide that stimulates the production of skin fibroblast to rebuild the dermal matrix molecules and significantly reduce the appearance of wrinkles. Studies of the effectiveness are based on a 3% level of Matrixyl®.

3% Vitamin C Ester : Vitamin C, L-ascorbic acid, stimulates collagen production helping to minimize wrinkles. It is water-soluble, very acidic, irritating to the skin and breaks down rapidly because it is not stabilized. Vitamin C Esters are made of L-ascorbic acid joined with a fatty acid creating an ester bond. Vitamin C Esters stimulate collagen production plus it is fat-soluble, making it stable, non-acidic, completely nonirritating to the skin and offers maximum protection against free radicals at the precise spot that they do the most damage; the outside of the cell. Vitamin C Esters, ascorbyl tetraispalmitate and dl-a-tocopheryl 2 L ascorbyl phosphate also achieve levels 10 times higher in the skin than just L-ascorbic acid. The dl-a-tocopheryl 2 L ascorbyl phosphate is a uniquely joined vitamin C with vitamin E and penetrates cell membrane so efficiently that it also gives anti-inflammatory benefits.

2% Olive Leaf Extract (Two extracts from the leaves of the olive tree.): 1.5% Arjunolic Acid, standardized to 80%, is an antioxidant with anti-inflammatory and antimicrobial properties. 0.5% Oleanolic Acid, standardized to 80%, is a skin conditioning agent that supports texture and integrity of the skin.



2% Red Algae Extract: Red Algae is a mild non-irritating acid free exfoliant that creates improvement in microcirculation and has a nutritive action with the oxygen supply to the skin.

1% Sepilift®: Sepilift® (dipalmitoylhydroxyproline) is a plant derived hydroxyproline that provides triple skin firming action. It stimulates the contraction of collagen fibres, protects elastin and protects fibroblast against free radicals. This triple firming action resculpts the face skin and corrects imperfections for a natural face lift. Studies of the effectiveness are based on a 1% level of Sepilift®.

1% Retinol (Vitamin A): It was discovered that vitamin A crème reduced wrinkles, pigment spots and helped to reverse the damage from UV rays. First there was tretinon (Retin-A brand) Then there was retinoic acid (Renova brand). Both by prescription only. Both having side effects of irritating the skin. Now there is retinol vitamin A that gives the results without the side effects and non-prescription.

0.50% Tocotrienol (Vitamin E): Traditionally when vitamin E is added to a cosmetic, tocopherol is used. Vitamin E in the form "tocotrienol" is 40 times stronger and more effective at repairing skin damage. Tocotrienol may also be listed as High Potency E or "HPE".

0.20% Sepivital®: Sepivital® (dl-a-tocopheryl 2 L ascorbyl phosphate) is a Vitamin C Ester. It is a uniquely joined vitamin C with vitamin E and penetrates cell membrane so efficiently that it also gives anti-inflammatory benefits. Studies of the effectiveness are based on a 0.20% level of Sepivital®.

Directions: Before bedtime, cleanse the face and the neck including the sides of the neck and behind the ears. Thoroughly apply crème to those areas. Avoid contact with eyes. Contains no sunscreen. *This is a concentrated topical treatment.* Use sparingly at first to determine correct amount of crème for the face type. **May be used during the day.**

External use only. As with any product, in case of rash, discontinue use.

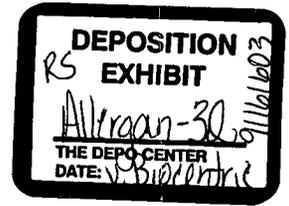
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Bécarre™

SeaTox® Evening Crème Triple Complex



SeaTox® triple complex functions by relaxing the muscles, as opposed to paralyzing them with chemical injections. SeaTox® stimulates the skin fibroblast to rebuild the dermal matrix and resculpt the face skin. SeaTox® stimulates the contraction of collagen fibres for a natural face lift.

10% Argireline®: Argireline® (acetyl hexapeptide-3) is a non-toxic, anti-aging peptide, chemically combined from naturally derived amino acids. Argireline® reduces catecholamine release. Catecholamine is responsible for muscle contraction when we change our facial expressions. Through the years, the skin becomes tired from the repeated muscle contractions, giving way to wrinkles. By reducing catecholamine release, gradually a significant reduction in the depth and size of wrinkles are noticed and without the paralysis as with Botox® injections. Minimize fine lines and wrinkles without the expense (\$400 per injection), the pain or side effects. Studies of the effectiveness are based on a 10% level of Argireline®.

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3% Vitamin C Ester : Vitamin C, L-ascorbic acid, stimulates collagen production helping to minimize wrinkles. It is water-soluble, very acidic, irritating to the skin and breaks down rapidly because it is not stabilized. Vitamin C Esters are made of L-ascorbic acid joined with a fatty acid creating an ester bond. Vitamin C Esters stimulate collagen production plus it is fat-soluble, making it stable, non-acidic, completely nonirritating to the skin and offers maximum protection against free radicals at the precise spot that they do the most damage; the outside of the cell. The Vitamin C Ester tetrahexyldecyl ascorbate, achieves levels 10 times higher in the skin than L-ascorbic acid.

2% Red Algae Extract: Red Algae is a mild non-irritating acid free exfoliant that creates improvement in microcirculation and has a nutritive action with the oxygen supply to the skin.

1% Sepilift®: Sepilift® (dipalmitoylhydroxyproline) is a plant derived hydroxyproline that provides triple skin firming action. It stimulates the contraction of collagen fibres, protects elastin and protects fibroblast against free radicals. This triple firming action resculpts the face skin and corrects imperfections for a natural face lift. Studies of the effectiveness are based on a 1% level of Sepilift®.

1% CoQ10 (Idebenone): CoQ10 is a mineral that assists in the manufacturing of energy in every cell. Research shows it is a powerful antioxidant and gives vital anti-aging results by stimulating the immune system, increasing tissue oxygenation and effectively counteracts free radical damage. It works synergistic with vitamin C and E. CoQ10 has a bright yellow-orange color, giving the crème its natural deep yellow hue.

1% Retinol (Vitamin A): It was discovered that vitamin A crème reduced wrinkles, pigment spots and helped to reverse the damage from UV rays. First there was tretinon (Retin-A brand) Then there was retinoic acid (Renova brand). Both by prescription only. Both having side effects of irritating the skin. Now there is retinol vitamin A that gives the results without the side effects and non-prescription.

0.50% Tocotrienol (Vitamin E): Traditionally when vitamin E is added to a cosmetic, tocopherol is used. Vitamin E in the form "tocotrienol" is 40 times stronger and more effective at repairing skin damage. Tocotrienol may also be listed as High Potency E or "HPE".

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Directions: Before bedtime, cleanse the face and the neck including the sides of the neck and behind the ears. Thoroughly apply crème to those areas. Avoid contact with eyes. Contains no sunscreen. *This is a concentrated topical treatment.* Use sparingly at first to determine correct amount of crème for the face type. **May be used during the day.**

External use only. As with any product, if irritation were to occur, discontinue use. This product contains large amounts of high quality extracts that may alter the product color and vary the color from batch to batch. This in no way affects the potency or quality of the product.

Free of Fragrance

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Ingredients: Chamomile Extract in Deionized Water, 10% Argireline®, Liposome Carrier System, Sodium Hyaluronate, Laminol (vegetable origin), 3% Matrixyl®, 3% Vitamin C Ester, 2% Red Algae Extract, Glycerin, Glycerol Stearate, Squalene, Dex Panthenol, Shea Butter, Borage Oil, Dimethicone, Butylene Glycol, 1% Sepilife®, 1% CoQ10, 1% Retinol, Sodium PCA, Cetyl Alcohol, PEG-100 Stearate, Carbomer, Cholesterol, Germall, 0.50%, Tocotrienol (High Potency Vitamin E), Stearic Acid, 0.20%, Sepvital®

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Bécarre™
SeaTox® Evening Crème
Triple Complex
10% Argireline®, 3% Matrixyl®, 1% Sepilife®
2 oz/ 60 ml

SeaTox® triple complex functions by relaxing the muscles, as opposed to paralyzing them with chemical injections. SeaTox® stimulates the skin fibroblast to rebuild the dermal matrix and rescript the face skin. SeaTox® stimulates the contraction of the muscles, which in turn relaxes the skin. SeaTox® stimulates the contraction of the muscles. Before bedtime, cleanse the face, the neck, including the sides of the neck and behind the ears. Thoroughly apply the crème to those areas. Avoid contact with eyes. Contains no sunscreen. This is a concentrated topical treatment. Use sparingly at first to determine correct amount of crème for the face type. May be used during the day or at night. The product contains a large amount of high quality extracts that may alter the product color from batch to batch. This in no way affects the potency or quality of the product.

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IMPROVING SKIN TEXTURE

If you're considering injectables...

As we age, our faces begin to show the effects of gravity, sun exposure and years of facial muscle movement, such as smiling, chewing and squinting. The underlying tissues that keep our skin looking youthful and plumped up begin to break down, often leaving laugh lines, smile lines, crow's feet or facial creases over the areas where this muscle movement occurs.

Soft-tissue fillers, most commonly injectable collagen or fat, can help fill in these lines and creases, temporarily restoring a smoother, more youthful-looking appearance. When injected beneath the skin, these fillers plump up creased and sunken areas of the face. They can also add fullness to the lips and cheeks. Injectable fillers may be used alone or in conjunction with a resurfacing procedure, such as a laser treatment, or a recontouring procedure, such as a facelift.

If you're considering a facial-rejuvenation treatment with collagen or fat, this brochure will give you a basic understanding of the procedure - when injectables can help, how the procedure is performed, and what results you can expect. It may not answer all of your questions, since a lot depends on your individual circumstances. Please ask your doctor if there is anything about the procedure you don't understand.

KNOWING YOUR OPTIONS

Injected collagen and fat are primarily used to improve the appearance of the skin's texture. They can help fill out deep facial wrinkles, creases and furrows, "sunken" cheeks, skin depressions and some types of scars. They can also be used to add a fuller, more sensual look to the lips.

Injectables are usually not sufficient for severe surface wrinkles on the face, such as multiple vertical "lipstick lines" that sometimes form around the mouth. Instead, your plastic surgeon may suggest a resurfacing technique, such as chemical peel,

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- « A word about other types of fillers
- « What to expect from treatment
- « Risks related to injectables
- « Planning for treatment
- « Where your treatment will be performed
- « Types of anesthesia
- « The Treatments
- « Your new look



dermabrasion or laser treatments. Rather than filling in facial lines, resurfacing methods strip away the outer layers of the skin to produce a smoother appearance.

Deep folds in the face or brow caused by overactive muscles or by loose skin may be more effectively treated with cosmetic surgery, such as a facelift or browlift. Injectables are sometimes used in conjunction with facial surgery procedures; however, injectables alone cannot change facial contour the way surgery can.

Keep in mind that a plastic surgeon is a specialist that can offer you the full gamut of the most advanced treatments ranging from cosmetic surgery, refinishing techniques, laser therapy, injectables and the use of other fillers. You and your surgeon may determine that a single procedure or a combination of procedures is the best choice for you.

ASPS brochures are available on chemical peel, dermabrasion, laser treatments, facelift and browlift. If you and your doctor think that one of these other procedures might be more appropriate for you, ask your plastic surgeon to provide you with a copy.

A WORD ABOUT OTHER TYPES OF FILLERS

This brochure deals with the two most commonly used types of injectable fillers, collagen and fat. However, to a lesser extent, a number of other filler materials are also being used for facial-rejuvenation purposes. They include: Fibril, a gelatin powder compound that's mixed with a patient's own blood and is injected to plump up the skin (similar to injectable collagen); and Gortex, a thread-like material that is implanted beneath the skin to add soft-tissue support.

Each of these options has its own set of risks and benefits. If you're considering any of these alternative filler treatments, tell your doctor.

WHAT TO EXPECT FROM TREATMENT

The most important fact to remember about injectable fillers is that the results are not permanent. Injected material is eventually metabolized by the body. You should not expect the same long-lasting results that may be gained from cosmetic surgery.

In some individuals, the results may last only a few weeks; in others, the results may be maintained indefinitely. Researchers believe that age, genetic background, skin quality and lifestyle as well as the injected body site may all play a role in the injected material's "staying power." However, the precise reason for the variation of results among patients has yet to be identified.

If you've had short-lived results from fat injections, you shouldn't necessarily assume that collagen injections will work better for you. And, conversely, if you've had disappointing results from collagen, don't assume that injected fat is the answer. Although it's true that some individuals' bodies are more receptive to one substance than the other, others may find that neither substance produces long-lasting results. Sometimes one substance may work better than the other for a specific problem.

RISKS RELATED TO INJECTABLES

When injectables are administered by a qualified plastic surgeon, complications are infrequent and usually minor in nature. Still, individuals vary greatly in their



Injectable collagen or fat can help improve the skin's texture by filling in the laugh lines and facial creases that often occur with aging.



Years of squinting and other facial muscle movements can take their toll on the eye area, leaving crow's feet and other noticeable lines

anatomy, their physical reactions and their healing abilities. The outcome of treatment with injectables is never completely predictable.

Collagen: Allergic reaction is the primary risk of collagen. To help determine if you are allergic to the substance, your surgeon will perform an allergy skin test about a month before the procedure. After the test is performed, the test site should be watched carefully for three or four weeks, or as long as your surgeon advises. Any sign of redness, itching, swelling or other occurrences at the test site should be reported to your surgeon.

Risks not necessarily related to allergies include infection, abscesses, open sores, skin peeling, scarring and lumpiness, which may persist over the treated area. Reports of these problems are very rare.

Fat: Allergic reaction is not a factor for fat because it's harvested from a patient's own body. However, there is still a small risk of infection and other infrequent complications.

PLANNING FOR TREATMENT

Facial rejuvenation is very individualized. That's why it's important to discuss your hopes and expectations with a board-certified plastic surgeon who has experience with many different types of surgical and non-surgical facial procedures.

In your initial consultation, your plastic surgeon will evaluate your face - the skin, the muscles and the underlying bone - and discuss your goals for the surgery. Your doctor will help you select a treatment option based on your goals and concerns, your anatomy and your lifestyle.

Your surgeon will ask you about your medical history, drug allergies, and check for conditions that could cause problems, such as active skin infections or non-healed sores from injuries. Collagen injections are generally off limits for pregnant women, individuals who are allergic to beef or bovine products, patients who suffer from autoimmune diseases, and those who are allergic to lidocaine (the anesthetic agent contained in the syringe with the collagen material). For more specific information about the contraindications and risks of collagen use, ask your doctor for the manufacturer's brochure for patients.

Insurance usually doesn't cover cosmetic procedures. However, if your injectable treatment is being performed to treat a scar or indentation from an accident or injury, you may be reimbursed for a portion of the cost. Check with your insurance carrier to be sure.

WHERE YOUR TREATMENT WILL BE PERFORMED

Injectables are usually administered in a surgeon's office-based facility. If, however, you are being hospitalized for a facelift, necklift, browlift, or any other procedure, your injections may be administered in the hospital as well.

TYPES OF ANESTHESIA

Collagen: Because the anesthetic agent lidocaine is mixed in with collagen, additional anesthetic is usually not used. However, if you are especially sensitive to pain, your doctor may use a topical cream anesthetic or a freon spray to numb the injected



After treatment, the skin around the eye area appears smoother and more taut.



Lines and creases that form around the mouth are usually caused by gravity and a breakdown of tissues beneath the skin.

area. Or, you may elect to have an injected local anesthetic or sedative drugs.

Fat: Both the donor and recipient sites are numbed with local anesthesia. Sedation can be used as well. If you elect to use sedation, be sure to arrange for a ride home after your treatment.

THE TREATMENTS

Collagen

Collagen is a naturally occurring protein that provides support to various parts of the human body: the skin, the joints, the bones and the ligaments. Injectable collagen, patented by the Collagen Corporation under the trade names Zyderm and Zyplast, is derived from purified bovine collagen. The purification process creates a product similar to human collagen. Injectable collagen received approval from the Food and Drug Administration in 1981. It is produced in various thicknesses to meet individual patient needs.

Collagen is used primarily to fill wrinkles, lines and scars on the face and sometimes the neck, back and chest.

The procedure: Treatment with collagen can begin after a skin test determines that you're not allergic to the substance. The collagen is injected using a fine needle inserted at several points along the edge of the treatment site. If a local anesthesia has not been used, you may feel some minor stinging or burning as the injections are administered.

Since part of the substance is salt water that will be absorbed by the body within a few days, your doctor will slightly overfill the area. You may be asked to hold a hand mirror during the procedure to help your doctor decide when you've had enough.

After treatment: Immediately following treatment, you may notice some minor discomfort, stinging or throbbing in the injected area. Occasionally some bruising or swelling will occur, but it is usually minor. Any redness that appears in the injected site usually disappears within 24 hours. However, in some individuals, particularly fair-skinned patients, this redness may persist for a week or more. Tiny scabs may also form over the needle-stick areas; these generally heal quickly.

No bandaging is needed and you are free to eat, drink, and wear makeup with sunblock protection shortly thereafter. There may be some temporary swelling and redness in the treated area which should dissipate within a few days. If these symptoms persist, contact your surgeon.

Results: As stated earlier, the duration of results from collagen injections is variable. Collagen's longevity depends on the patient's lifestyle and physical characteristics as well as the part of the body treated. In general, the injected material is likely to disappear faster in areas that are more affected by muscle movement.

Your doctor can help you determine how long you can go between treatments to best maintain your results.

Fat

In the medical world, the fat-injection procedure is known as autologous fat transplantation or microlipoinjection. It involves extracting fat cells from the patient's abdomen, thighs, buttocks or elsewhere and reinjecting them beneath the facial skin.



The lower face appears firmer and smoother after treatment with injectables. Lines around the mouth are filled in and nearly imperceptible.



With regular follow-up treatments, your refreshed look can be easily maintained.

Fat is most often used to fill in "sunken" cheeks or laugh lines between the nose and mouth, to correct skin depressions or indentations, to minimize forehead wrinkles and to enhance the lips.

The procedure: After both the donor and recipient sites are cleansed and treated with a local anesthesia, the fat is withdrawn using a syringe with a large-bore needle or a cannula (the same instrument used in liposuction) attached to a suction device. The fat is then prepared and injected into the recipient site with a needle. Sometimes an adhesive bandage is applied over the injection site.

As with collagen, "overfilling" is necessary to allow for fat absorption in the weeks following treatment. When fat is used to fill sunken cheeks or to correct areas on the face other than lines, this overcorrection of newly injected fat may temporarily make the face appear abnormally puffed out or swollen.

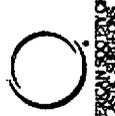
After treatment: If a larger area was treated, you may be advised to curtail your activity for a brief time. However, many patients are able to resume normal activity immediately. You can expect some swelling, bruising or redness in both the donor and recipient sites. The severity of these symptoms depends upon the size and location of the treated area. You should stay out of the sun until the redness and bruising subsides - usually about 48 hours. In the meantime, you may use makeup with sunblock protection to help conceal your condition.

The swelling and puffiness in the recipient site may last several weeks, especially if a large area was filled.

Results: The duration of the fat injections varies significantly from patient to patient. Though some patients have reported results lasting a year or more, the majority of patients find that at least half of the injected fullness disappears within 3-6 months. Therefore, repeated injections may be necessary. Your doctor will advise you on how to maintain your results with repeat treatments.

YOUR NEW LOOK

If you're like most patients, you'll be very satisfied with the results of your injectable treatments. You may be surprised at the pleasing results that can be gained from this procedure.



To find a plastic surgeon who performs this procedure, visit the online referral service of the American Society of Plastic Surgeons (ASPS). ASPS, founded in 1931, is the largest plastic surgery organization in the world and the foremost authority on cosmetic and reconstructive plastic surgery. All ASPS physician members are certified by the American Board of Plastic Surgery (ABPS) or the Royal College of Physicians and Surgeons of Canada.

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SeaTox® Evening Crème Triple Complex

The Natural Alternative to Botox® Injections

SeaTox® triple complex functions by relaxing the muscles, as opposed to paralyzing them with chemical injections. SeaTox® stimulates the skin fibroblast to rebuild the dermal matrix and resculpt the face skin. SeaTox® stimulates the contraction of collagen fibres for a natural face lift.

10% Argireline®: Argireline® (acetyl hexapeptide-3) is a non-toxic, anti-aging peptide, chemically combined from naturally derived amino acids. Argireline® reduces catecholamine release. Catecholamine is responsible for muscle contraction when we change our facial expressions. Through the years, the skin becomes tired from the repeated muscle contractions, giving way to wrinkles. By reducing catecholamine release, gradually a significant reduction in the depth and size of wrinkles is noticed and without the paralysis as with Botox® injections. Minimize fine lines and wrinkles without the expense (\$400 per injection), the pain or side effects. Studies of the effectiveness are based on a 10% level of Argireline®.

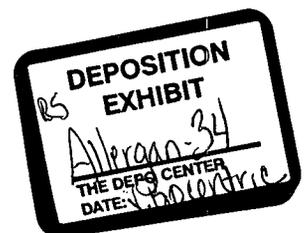
3% Matrixyl®: Matrixyl® (palmitoyl pentapeptide-3) is a messenger peptide that stimulates the production of skin fibroblast to rebuild the dermal matrix molecules and significantly reduce the appearance of wrinkles. Studies of the effectiveness are based on a 3% level of Matrixyl®.

3% Vitamin C Ester : Vitamin C, L-ascorbic acid, stimulates collagen production helping to minimize wrinkles. It is water-soluble, very acidic, irritating to the skin and breaks down rapidly because it is not stabilized. Vitamin C Esters are made of L-ascorbic acid joined with a fatty acid creating an ester bond. Vitamin C Esters stimulate collagen production plus it is fat-soluble, making it stable, non-acidic, completely nonirritating to the skin and offers maximum protection against free radicals at the precise spot that they do the most damage; the outside of the cell. The Vitamin C Ester tetrahexyldecyl ascorbate, achieves levels 10 times higher in the skin than L-ascorbic acid.

2% Red Algae Extract: Red Algae is a mild non-irritating acid free exfoliant that creates improvement in microcirculation and has a nutritive action with the oxygen supply to the skin.

1% Sepilift®: Sepilift® (dipalmitoylhydroxyproline) is a plant derived hydroxyproline that provides triple skin firming action. It stimulates the contraction of collagen fibres, protects elastin and protects fibroblast against free radicals. This triple firming action resculpts the face skin and corrects imperfections for a natural face lift. Studies of the effectiveness are based on a 1% level of Sepilift®.

1% CoQ10: CoQ10 (ubiquinone) is a mineral that assists in the manufacturing of energy in every cell. Research shows it is a powerful



antioxidant and gives vital anti-aging results by stimulating the immune system, increasing tissue oxygenation and effectively counteracts free radical damage. It works synergistic with vitamin C and E. CoQ10 has a bright yellow-orange color, giving the crème its natural deep yellow hue.

1% Retinol (Vitamin A): It was discovered that vitamin A crème reduced wrinkles, pigment spots and helped to reverse the damage from UV rays. First there was tretinon (Retin-A brand). Then there was retinoic acid (Renova brand). Both by prescription only. Both having side effects of irritating the skin. Now there is retinol vitamin A that gives the results without the side effects and is non-prescription.

0.50% Tocotrienol (Vitamin E): Traditionally when vitamin E is added to a cosmetic, tocopherol is used. Vitamin E in the form "tocotrienol" is 40 times stronger and more effective at repairing skin damage. Tocotrienol may also be listed as High Potency E or "HPE".

0.20% Sepivital®: Sepivital® (dl-a-tocopheryl 2 L ascorbyl phosphate) is a Vitamin C Ester. It is a uniquely joined vitamin C with vitamin E and penetrates cell membrane so efficiently that it also gives anti-inflammatory benefits. Studies of the effectiveness are based on a 0.20% level of Sepivital®.

Directions: Before bedtime, cleanse the face and the neck including the sides of the neck and behind the ears. Thoroughly apply crème to those areas. Avoid contact with eyes. Contains no sunscreen. *This is a concentrated topical treatment.* Use sparingly at first to determine correct amount of crème for the face type. **May be used during the day.**

External use only. As with any product, in case of rash, discontinue use. This product contains large amounts of high quality extracts that may alter the product color and vary the color from batch to batch. This in no way effects the potency or quality of the product.

Bécarre™ SeaTox® Evening Crème Triple Complex
with 10% Argireline®, 3% Matrixyl®, 1% Sepilift®
Unscented 2 fl oz/ 60 ml

The FDA has not evaluated these statements. Products are not intended to diagnose, treat, cure or prevent disease. Consult with a health professional. No animal or human products or by-products are used in manufacturing. No animal testing.

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Becarre SeaTox Evening Creme (Botox Alternative) b

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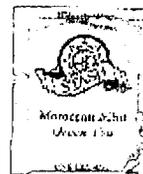
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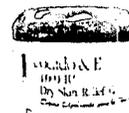


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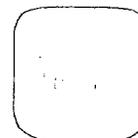
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Becarre SeaTox Evening Creme 2oz.

(Botox Alternative) by Bioentopic

SeaTox Triple Complex Evening Creme functions by relaxing the muscles, as opposed to paralyzing them with chemical injections. SeaTox stimulates the skin fibroblast to rebuild the dermal matrix and resculpt the face skin. SeaTox stimulates the contraction of collagen fibres for a natural facelift.

10% Argireline: argireline (acetyl hexapeptide-3) is a non-toxic, anti-aging peptide, chemically combined from naturally derived amino acids. Argireline reduces catecholamine release. Catecholamine is responsible for muscle contraction when we change our facial expressions. Through the years, the skin becomes tired from the repeated muscle contractions, giving way to wrinkles. By reducing Catecholamine release, gradually a significant reduction in the depth and size of wrinkles are noticed and without the paralysis as with Botox injections. Minimize fine lines and wrinkles without the expense (\$400 per injection), the pain or side effects. Studies of the effectiveness are based on a 10% level of Argireline.

3% Matrixyl: Matrixyl (palmitoyl pentapeptide-3) is a messenger peptide that stimulates the production of skin fibroblast to rebuild the dermal matrix molecules and significantly reduce the appearance of wrinkles. Studies of the effectiveness are based on 3% level of Matrixyl.

3% Vitamin C Ester: Vitamin C, L-ascorbic acid, stimulates collagen production helping to minimize wrinkles. It is water-soluble, very acidic, irritating to the skin and breaks down rapidly because it is not stabilized. Vitamin C Esters are made of L-ascorbic acid joined with a fatty acid creating an ester bond. Vitamin C Esters stimulate collagen production plus it is fat-soluble, making it stable, non-acidic, completely non-irritating to the skin and offers maximum protection against free radicals at the precise spot that they do the most damage; the outside of the cell. The Vitamin C Ester tetrahexyldecyl ascorbate, achieves levels 10 times higher in the skin than L-ascorbic acid.

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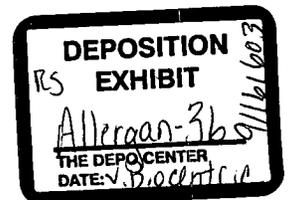
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Suggested Use:



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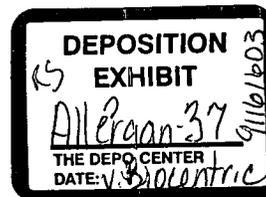
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10% Argireline: argireline (acetyl hexapeptide-3) is a non-toxic, anti-aging peptide, chemically combined from naturally derived amino acids. Argireline reduces catecholamine release. Catecholamine is responsible for muscle contraction when we change our facial expressions. Through the years, the skin becomes tired from the repeated muscle contractions, giving way to wrinkles. By reducing Catecholamine release, gradually a significant reduction in the depth and size of wrinkles are noticed and without the paralysis as with Botox injections. Minimize fine lines and wrinkles without the expense (\$400 per injection), the pain or side effects. Studies of the effectiveness are based on a 10% level of Argireline.

3% Matrixyl: Matrixyl (palmitoyl pentapeptide-3) is a messenger peptide that stimulates the production of skin fibroblast to rebuild the dermal matrix molecules and significantly reduce the appearance of wrinkles. Studies of the effectiveness are based on 3% level of Matrixyl.

3% Vitamin C Ester: Vitamin C, L-ascorbic acid, stimulates collagen production helping to minimize wrinkles. It is water-soluble, very acidic, irritating to the skin and breaks down rapidly because it is not stabilized. Vitamin C Esters are made of L-ascorbic acid joined with a fatty acid creating an ester bond. Vitamin C Esters stimulate collagen production plus it is fat-soluble, making it stable, non-acidic, completely non-irritating to the skin and offers maximum protection against free radicals at the precise spot that they do the most damage; the outside of the cell. The Vitamin C Ester tetrahexyldecyl ascorbate, achieves levels 10 times higher in the skin than L-ascorbic acid.

2% Red Algae Extract: Red Algae is a mild, non-irritating, acid free exfoliant that creates improvement in microcirculation and has a nutritive action with the oxygen supply to the skin.

1% Sepilift: Sepilift (hydroxyproline) is a plant derived hydroxyproline that provides triple skin firming action. It stimulates the contraction of collagen fibres, protects elastin and protects fibroblast against free radicals. This triple firming action resculpts the face skin and corrects imperfections for a natural face lift. Studies of the effectiveness are based on 1% level of Sepilift.

1% CoQ-10: CoQ-10 (ubiquinone) is a mineral that assists in the manufacturing of energy in every cell. Research shows is a powerful antioxidant and gives vital anti-aging results by stimulating the immune system, increasing tissue oxygenation and effectively counteracts free radical damage. It works synergistic with vitamin C and E. CoQ-10 has a bright yellow-orange color, giving the cream its natural deep yellow hue.

1% Retinol (Vitamin A): It was discovered that vitamin A creme reduced wrinkles, pigment spots and helped to reverse the damage from UV rays. First there was tretinon (Retin-A brand). Then there was retinoic acid (Renova brand). Both by prescription only. both having side effects of irritating skin. Now there is retinol vitamin A that gives the results without the side effects and non-prescription.

0.50% Tocotrienol (Vitamin E): Traditionally when vitamin E is added to a cosmetic, tocopherol is used. Vitamin E in the form of (tocotrienol) is 40 times stronger and more effective at repairing skin damage. Tocotrienol may also be listed as High Potency E or "HPE".

0.20% Sepivital: Sepivital (di-a-tocopheryl 2 ascorbyl phosphate) is a uniquely joined vitamin C with vitamin E and penetrates cell membrane so efficiently that it also gives

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anti-inflammatory benefits. Studies of the effectiveness are based on a 0.20% level of Sepivital.

Suggested Use:

Before bedtime, cleanse the face, the neck including the sides of the neck and behind the ears. Thoroughly apply the creme to those areas. Avoid contact with eyes. Contains no sunscreen. This is a concentrated topical treatment. Use sparingly at first to determine correct amount of creme for the face type. May be used during the day. External use only. As with any product, in case of a rash, discontinue use.

Becarre SeaTox Evening Creme (Botox Alternative) by Bioentopic - 2oz.

seatox **Suggested Retail Price: \$59.95 Today's Sale Price: \$39.95**

***These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.**

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