

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SA CV 16-02277-CJC (DFMx)	Date	December 20, 2017
Title	ChromaDex, Inc. v. Elysium Health, Inc.		

Present: The Honorable Douglas F. McCormick

Nancy Boehme

n/a

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

n/a

n/a

Proceedings: (In Chambers) Order re: ChromaDex, Inc.'s Motion to Compel Production of Documents from Elysium Health, Inc.

Plaintiff and Counter-Defendant ChromaDex, Inc. ("ChromaDex") moved to compel further responses from Defendant and Counter-Claimant Elysium Health, Inc. ("Elysium") to 14 different requests for production ("RFPs") in ChromaDex's First Set of Requests for Production. See Dkt. 66. Several days before the hearing on ChromaDex's motion, the Court told the parties that the hearing would begin with a discovery conference at which the parties would meet and confer about the disputed RFPs under the Court's auspices. See Dkt. 69. The Court invited the parties to postpone the hearing to conduct such discussions themselves; the parties indeed did so and the hearing was continued for two weeks. See Dkt. 70.

On November 28, 2017, the Court held the continued hearing at which the parties told the Court that they had resolved a substantial portion of their disputes and would submit a stipulation reflecting that resolution, which the Court received a few days later. See Dkt. 76. The parties also told the Court that they continued to have one dispute that would require the Court's intervention. After further discussion with the parties, the Court ordered the parties to submit supplemental briefs on this issue of continued dispute. See Dkt. 78. The parties did so, see Dkt. 77 & 79, and the Court held a second hearing at which the parties argued this dispute on December 13, 2018.

The remaining issue in dispute involves Elysium's production of documents about its alternative sources of nicotinamide riboside ("NR").¹ ChromaDex argues that documents about Elysium's alternative sources of NR are crucial to, among other things, its defense to Elysium's

¹ According to ChromaDex's Third Amended Complaint, NR "is found naturally in trace amounts in milk and other foods and is a B3 vitamin metabolite. The body converts NR into Nicotinamide Adenine Dinucleotide ("NAD+"), which is an essential molecule found in every living cell. NR increases NAD+ levels in the body, which promote cellular metabolism, mitochondrial function, and energy production." Dkt. 48 at 4.

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claim that ChromaDex engaged in patent misuse by unlawfully tying the right to purchase NR with an obligation to sign a trademark license and royalty agreement. See Dkt. 77 at 3-5. The availability of other sources of NR would demonstrate, ChromaDex argues, that it does not have “market power,” or, alternatively, that any alleged conduct did not have an “anticompetitive” effect. See id. But wait, Elysium argues, that argument would at best only justify production of documents through the middle of 2016, because that’s when ChromaDex apparently stopped conditioning its supply of NR on buyers’ agreement to take a trademark license. See Dkt. 79 at 6-8.

And thus the parties ask the Court to wade into the murky depths of patent misuse doctrine. Having reviewed the cases supplied by the parties in their briefs and during the hearing, the Court finds no clear guidance about which party has the better of the argument about the proper temporal scope of the market power-anticompetitive effect inquiry required by Elysium’s patent misuse claim. Perhaps that will be an issue with which Judge Carney will be asked to grapple. But in the meantime, it is quite telling that Elysium’s second amended counterclaim filed just several weeks ago plainly alleges that ChromaDex *currently* possesses such market power and that the anticompetitive effect of its practices are *ongoing*. See Dkt. 65 ¶ 28 (“ChromaDex had, and still has, market power in the market for supply of [NR] in the United States and worldwide.” (emphasis added)), ¶ 134 (“ChromaDex has market power in the supply of [NR], and its tying of access to its patent rights to a royalty-bearing trademark license impermissibly broadens the scope of those patent rights, with anticompetitive effect.” (emphasis added)). These allegations alone are sufficient to make the information ChromaDex seeks about Elysium’s other sources of NR relevant to Elysium’s patent misuse claim. And because the patent misuse claim makes these documents relevant, the Court need not grapple with the parties’ other arguments.

Accordingly, ChromaDex’s motion to compel further responses to RFP Nos. 42, 43, 47, 48, 49, 50, 59, 60, 61, 76, and 77 is GRANTED. Elysium is ORDERED to provide a supplemental response and produce documents responsive to those requests within twenty-one (21) days of the date of this order.

Initials of Preparer

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