

Exhibit 10

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION)

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ChromaDex, Inc.,)
)
Plaintiff,)
)
vs.) Case No. SACV
) 16-02277-CJC(DFMx)
)
Elysium Health, Inc., and)
9 Mark Morris,)
)
10 Defendants.)
-----X

Elysium Health, Inc.,)
)
12 Counterclaimant,)
)
13 vs.)
)
14 ChromaDex, Inc.,)
)
15 Counterclaimant.)
-----X

VIDEOTAPED DEPOSITION OF THOMAS C. VARVARO
Los Angeles, California
Tuesday, April 2, 2019
CONFIDENTIAL - ATTORNEYS' EYES ONLY

Reported By:
SUSAN A. SULLIVAN, CSR #3522, RPR, CRR
Job No. 157999

1 April 2, 2019

2 9:31 a.m.

3
4 VIDEOTAPED DEPOSITION OF THOMAS C.
5 VARVARO, taken by Defendant and
6 Counterclaimant, at the offices of
7 Baker & Hostetler, 11601 Wilshire
8 Boulevard, Los Angeles, California,
9 before Susan A. Sullivan, CSR, RPR, CRR,
10 State of California.

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1 A P P E A R A N C E S :

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3 COOLEY

4 Attorneys for the Plaintiff and

5 Cross-Defendant

6 4401 Eastgate Mall

7 San Diego, California 92121

8 BY: BARRETT ANDERSON, ESQ.

9

10 BAKER & HOSTETLER

11 Attorneys for the Defendant and

12 Counterclaimant

13 45 Rockefeller Plaza

14 New York, New York 10111

15 BY: KRISTIN KERANEN, ESQ.

16 ESTERINA GIULIANI, ESQ.

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18 VIDEOGRAPHER :

19 BRENT JORDAN

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1 had a most favored nations clause?

2 A I know there was some. I don't recall
3 which ones.

4 Q Do you know how many?

5 A No.

6 Q Would it have been more than five?

7 A I don't know.

8 Q How many customers did ChromaDex have for
9 NR while you were at ChromaDex?

10 A I don't know.

11 Q Would it have been more than ten?

12 A Yes.

13 Q More than 20?

14 A At times possibly, yes.

15 Q Would it have been more than 30?

16 A I don't know.

17 Q Would it have been more than 25?

18 A I don't know.

19 Q Was Elysium ever allowed to ask the
20 pricing of other customers in order to ensure that
21 the most favored nations clause was being adhered
22 to?

23 A I don't know.

24 Q And who would know?

25 A Mark Morris.

1 Q Anyone else?

2 A I don't know.

3 Q Why do you say Mr. Morris would know?

4 A Because Mark Morris was in charge of the
5 relationship with Elysium.

6 Q So it was his responsibility to monitor
7 the other customer orders to make sure Elysium was
8 getting the best pricing?

9 MR. ANDERSON: Objection; compound
10 question.

11 THE WITNESS: Mark was the sales manager.
12 He was responsible for all of the ingredient
13 customers.

14 Q BY MS. KERANEN: When you say he is
15 responsible for all the ingredient customers, what
16 do you mean by that?

17 A Mark oversaw their accounts, he worked
18 with them on their issues, he's the one that had
19 the communications with them, he's the one that I
20 believe typically they would send, especially
21 ingredients, they would send the orders through
22 him, he was the one that was in day-to-day
23 communications with them or him through his team.

24 Q So if Elysium was entitled to a lower
25 price for NR would it have been Mr. Morris'

1 responsibility to inform them as such?

2 A I believe so.

3 Q Do you know if Mr. Morris ever did so
4 inform them?

5 A I don't know.

6 Q Did you ever hear anyone at ChromaDex
7 discuss whether or not he informed Elysium that
8 they should be paying a lower price?

9 A I don't know.

10 Q Mr. Varvaro, I'm handing you what's been
11 previously marked as Exhibit 73. This is the
12 amendment from February 19th, 2016, to the Niagen
13 and TeroPure supply agreements between ChromaDex
14 and Elysium, so if you just want to take a moment
15 to take a look at the document, please.

16 A Okay.

17 Q So you previously mentioned that you were
18 involved in a couple of phone conversations with
19 Mr. Rhonemus and either with Dan or Eric --

20 A Uh-huh.

21 Q -- in connection with this amendment.

22 What if any terms did you comment on in
23 this document?

24 A In this document?

25 Q In this document.

1 3,000 kilograms and my largest customer doesn't
2 place an order in that quarter are you my largest
3 customer all of a sudden? You are in Quarter 2.
4 That doesn't make you the largest contract.

5 Q And where in the supply contract does it
6 specify that's how the price is calculated?

7 A Which supply contract?

8 Q The 2014 one with the MFN provision.

9 A I don't think it specifically states that,
10 does it?

11 Q So on what basis was ChromaDex saying that
12 it had to be an annual -- sorry.

13 On what basis was ChromaDex saying that in
14 order to be the largest customer you had to be the
15 largest customer for the whole year?

16 MR. ANDERSON: Objection. That
17 mischaracterizes testimony, assumes facts not in
18 evidence.

19 THE WITNESS: Yeah. I never said that it
20 was for an entire year.

21 Q BY MS. KERANEN: You -- all right. Then
22 please explain to me what you meant by if in
23 Quarter 2 you place an order for 3,000 kilograms
24 and the largest customer doesn't place an order you
25 are suddenly the largest customer all of a sudden,

1 so when would your calculation be occurring?

2 A The calculation would typically occur on a
3 quarter on a rolling basis.

4 Q For if you placed the largest order in
5 that quarter would you not be entitled to the
6 lowest pricing?

7 A No.

8 Q Why not?

9 A Because you are not the largest quarter
10 over a rolling time period.

11 Q Over what time period then?

12 A 12-month rolling time period.

13 Q And where in the contract does it specify
14 it is calculated over a 12-month rolling time
15 period?

16 MR. ANDERSON: Objection; calls for a
17 legal conclusion.

18 THE WITNESS: It doesn't that I'm aware of
19 but all the other terms of the contract are all
20 pricing. Everything else is adjusted on a yearly
21 basis.

22 Q BY MS. KERANEN: What other terms are
23 adjusted on a yearly basis? Please feel free to
24 pull that contract back out.

25 A Sure.

1 REPORTER'S CERTIFICATE

2
3 I, SUSAN A. SULLIVAN, CALIFORNIA CSR No.
4 3522, RPR, CRR, do hereby certify:

5 That prior to being examined THOMAS C.
6 VARVARO, the witness named in the foregoing
7 deposition, was, before the commencement of the
8 deposition, duly administered an oath in accordance
9 with C.C.P. Section 2094;

10 That the said deposition was taken before
11 me at the time and place therein set forth, and was
12 taken down by me in shorthand and thereafter
13 transcribed into typewriting under my direction and
14 supervision; that the said deposition is a true and
15 correct record of the testimony given by the
16 witness;

17 I further certify that I am neither
18 counsel for, nor in any way related to any party to
19 said action, nor in any way interested in the
20 outcome thereof.

21 IN WITNESS WHEREOF, I have subscribed my
22 name on this 12th day of April, 2019.

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SUSAN A. SULLIVAN CSR