

Exhibit E

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION
4

5 ChromaDex, Inc.,)
6 Plaintiff,) Case No.
7 vs.) SACV16-02277-CJC(DFMx)
8 Elysium Health, Inc., and)
9 Mark Morris,)
10 Defendants.)
_____)

11 And all Related Cross Actions)
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15 DEPOSITION OF LANCE GUNDERSON
16 San Diego, California
17 Friday, August 9, 2019
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23 Reported by:
24 Tricia Rosate, RDR, RMR, CRR, CCRR
25 CSR No. 10891
Job No. 164590

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Friday, August 9, 2019

8:28 a.m.

DEPOSITION OF LANCE GUNDERSON,
taken at 12790 El Camino Real, San Diego, California,
commencing at 8:28 a.m. and concluding at 4:01 p.m.,
Friday, August 9, 2019, before Tricia Rosate, RDR, RMR,
CRR, CCRR, CSR 10891, a Certified Shorthand Reporter.

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

2 For the Plaintiff:

3 COOLEY
4 4401 Eastgate Mall
5 San Diego, California 92121
6 BY: BARRETT ANDERSON, ESQ.

7 For the Defendants:

8 BAKER & HOSTETLER
9 45 Rockefeller Plaza
10 New York, New York 10111
11 BY: JOSEPH SACCA, ESQ.

12 BAKER & HOSTETLER
13 11601 Wilshire Boulevard
14 Los Angeles, California 90025
15 BY: ELIZABETH TRECKLER, ESQ.

16
17 The Videographer:

18 MICHAEL DUARTE
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1 Q Are you expressing any opinion that Elysium
2 obtained gains beyond those you identify in your
3 report?

4 A No, I'm not -- I'm not saying that.

5 Q Page 101 of your report, you have a heading
6 titled "ChromaDex's Price Discount."

7 And you see in the second -- sorry -- the
8 first paragraph there, your last sentence says
9 "ChromaDex complains that Elysium wrongfully induced
10 ChromaDex to supply significantly larger amounts of
11 NIAGEN and pTeroPure to Elysium."

12 Significantly larger amounts than what?

13 A I guess than their -- their traditional buying
14 patterns, I guess.

15 Q But wasn't your testimony that ChromaDex
16 expected Elysium's typical buying patterns to change?

17 A I think that there -- they had heard some
18 rumblings from Elysium that -- that they were going to
19 become a large buyer.

20 Q And when were those rumblings?

21 A I'm not sure.

22 Q Paragraph -- or sorry. Page 104 of your
23 report bears the heading at the top "ChromaDex's Lost
24 Profits."

25 As I understand it, you -- you calculate

1 ChromaDex's lost profits, what you call their lost
2 profits, in two different scenarios; is that right?

3 A Yes.

4 Q Okay. One is based upon an e-mail that
5 Elysium sent to Grace; correct?

6 A Yes. I think I have it down here, down below.
7 Yes.

8 Q Okay. And -- and the second is based on the
9 minimum purchase commitments in the amendment to the
10 supply agreement between ChromaDex and Elysium?

11 A Yes.

12 Q Did you ever look at the actual amount of NR
13 purchases made by Elysium in -- in conducting this
14 analysis?

15 A During what time period?

16 Q During whatever time period your damage
17 analysis covers.

18 A I didn't.

19 Q Okay. So let's start with the e-mail to
20 Grace.

21 That was a forecast of potential NR purchases
22 in the future?

23 A Yes.

24 Q Was that ever provided to ChromaDex?

25 A I don't believe so.

1 Q Okay. And you have no idea how that forecast
2 matches up against Elysium's actual NR purchases?

3 A I don't know.

4 Q But you, nonetheless, expressed the opinion
5 that Elysium would have purchased all the NR in that
6 forecast if it kept doing business with ChromaDex?

7 A That's what they had forecast, so yes.

8 Q Okay. And what's the basis for that?

9 A Well, it was their -- their estimate at the
10 time of what their needs were going to be.

11 Q Okay. And were -- have you -- did you look to
12 see how Elysium's historical forecasts -- how accurate
13 those proved to be over time?

14 A I did not.

15 Q Is that relevant to your inquiry at all?

16 A I mean, they're in a dynamic business. I
17 think they expected their business to be substantial
18 and grow.

19 Q Did they always hit their forecasts?

20 A I don't know.

21 Q Let's say Elysium had a history of
22 consistently underperforming its forecasts. Would that
23 influence, at all, your decision to decide -- or your
24 decision to construe their e-mail to Grace as a binding
25 forecast?

1 A Well, I don't know that I construed it as a
2 binding forecast. I construed it as what they were
3 forecasting that they would sell.

4 I do know that if -- if they -- you know, once
5 they get into a contract with Grace, when you forecast
6 it -- at least this is ChromaDex's experience -- the
7 forecast is -- is a requirement of what you're going to
8 purchase.

9 Q Right. But Elysium didn't have a contract
10 with Grace; right?

11 A They didn't, but they were -- they were --

12 Q So they weren't bound to that.

13 A -- they were looking -- they were looking to
14 get one.

15 Q They weren't bound to that forecast.

16 A They weren't. They weren't.

17 Q Right. Do you know if they signed a contract
18 with Grace where they were required to bind themselves
19 to a forecast, they would have used those same numbers?

20 A I don't know.

21 Q What's a better indication of the amount of NR
22 Elysium would purchase in, let's say, 2017? Its actual
23 2017 purchases or a forecast it gave someone in
24 mid-2016?

25 A Well, I think their actual purchases are

1 I, Tricia A. Rosate, Certified Shorthand
2 Reporter licensed in the State of California,
3 License No. 10891, hereby certify that the deponent
4 was by me first duly sworn, and the foregoing testimony
5 was reported by me and was thereafter transcribed with
6 computer-aided transcription; that the foregoing is a
7 full, complete, and true record of said proceedings.

8 I further certify that I am not of counsel or
9 attorney for any of the parties in the foregoing
10 proceeding and caption named or in any way interested
11 in the outcome of the cause in said caption.

12 The dismantling, unsealing, or unbinding of
13 the original transcript will render the reporter's
14 certificates null and void.

15 In witness whereof, I have hereunto set my
16 hand this day: August 13, 2019

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19 Tricia Rosate, RDR, RMR, CRR, CCRR
20 CSR No. 10891
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