

Exhibit 74

**REDACTED VERSION OF DOCUMENT PROPOSED TO BE
FILED UNDER SEAL**

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

CHROMADEX, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	No. SACV 16-02277-CJC
ELYSIUM HEALTH, INC.,)	
)	
Defendant.)	
)	
<hr/> ELYSIUM HEALTH, INC.,)	
)	
Counterclaimant,)	
)	
vs.)	
)	
CHROMADEX, INC.,)	
)	
Counter-Defendant.)	
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HIGHLY CONFIDENTIAL
DEPOSITION OF
ERIC MARCOTULLI
NEW YORK, NEW YORK
MARCH 27, 2019

Reported by:
KATHLEEN T. KEILTY, CSR
LICENSE No. 000755
No. 19-76228

1 MR. SACCA: Joe Sacca for Elysium
2 Health and Mark Morris. With me is Tom Wilhelm
3 and Darley Maw.

4 WHEREUPON,

09:14:26 5 ERIC MARCOTULLI,
6 having been first duly sworn/affirmed
7 by a Notary Public within and for the
8 State of New York (Kathleen T. Keilty)
9 was examined and testifies as follows:

09:14:34 10 THE WITNESS: I swear.

11 EXAMINATION

12 BY MR. ATTANASIO:

13 Q. Good morning, sir.

14 A. Good morning.

09:14:38 15 Q. You are the chief executive officer of
16 Elysium Health?

17 A. I am.

18 Q. You were one of the co-founders of
19 Elysium Health?

09:14:45 20 A. That's true.

21 Q. What year was the company founded?

22 A. The very first paperwork was filed in
23 February of 2013.

09:14:59 24 Q. Was a man named -- is a man named
25 Leonard Guarente also one of the founders of

1 November 2017?

2 A. Yes.

[REDACTED]

24 MR. ATTANASIO: Let me show you what
25 we'll mark as Exhibit 133.

1 lab that studied sirtuins, as an example. So it was
2 students, post docs, other scientists, professors,
3 et cetera.

4 Sometimes they're more open. Sometimes
10:24:05 5 he presents to our company or our scientific board.

6 Q. Let me ask you some questions about the
7 ChromaDex and Elysium relationship.

8 When did you first hear about a company
9 named ChromaDex?

10:24:24 10 A. 2013.

11 Q. How did you hear about ChromaDex in
12 2013?

13 A. I don't recall.

14 Q. Who told you about ChromaDex in 2013?

10:24:41 15 A. I don't recall.

16 Q. Under what circumstances did an unknown
17 person mention the name ChromaDex to you in 2013?

18 A. We were interested in developing a
19 product that could boost NAD levels and activate
10:24:56 20 sirtuins. We identified nicotinamide riboside as a
21 candidate for the former.

22 It was through that process that we
23 arrived at our first conversations with ChromaDex.

24 Q. How did you identify NR as possibly
10:25:23 25 being something that would boost NAD levels?

1 which is you, Elysium, will have to take a license
2 to our patents and you will have to pay a royalty on
3 our patents. That's the first thing you told me.

4 The second thing you told me is, no, we
11:21:28 5 won't give you license to our patents. You'll have
6 to pay a royalty on a license to our trademarks.

7 Other than those two things, what else
8 did Mr. Jaksch say to you during these negotiations
9 about royalties?

11:21:42 10 MR. SACCA: Object to the
11 characterization of the testimony which is
12 inaccurate in numerous respects.

13 A. For the sake of clarity, I never said
14 that Frank denied us patents. I was clear about
11:21:52 15 that.

16 We subsequently learned that the
17 trademark and royalty agreement that was
18 subsequently presented to us, in our opinion, was
19 painted in such a way to look as though we were
11:22:03 20 licensing the patents when, in fact, we later
21 learned that we were licensing the trademarks.

22 Q. Wait. So at the time -- are you
23 telling me that at the time you signed the supply
24 agreement with ChromaDex, the final one, you thought
11:22:15 25 you were getting a license to ChromaDex's patents;

1 is that right?

2 A. That's exactly right.

3 Q. Did your counsel review the agreement?

4 A. They did.

11:22:26 5 Q. Okay. Without getting into those
6 communications, your understanding at the time you
7 signed the agreement, or Elysium signed the
8 agreement was that you had a license to ChromaDex's
9 patents.

11:22:37 10 A. Yes.

11 Q. How did you get that understanding?

12 A. Frank represented as such. Again, he
13 said we have these patents. You need to pay
14 royalties in order to access our product, and
11:22:49 15 everybody does these.

16 Q. Did you read the agreement?

17 A. I don't recall.

18 Q. Did you read the final agreement?

19 A. I don't recall.

11:22:58 20 Q. Did you sign the final agreement?

21 A. I don't recall.

22 MR. SACCA: What agreement are you
23 asking about?

24 MR. ATTANASIO: The supply agreement
11:23:04 25 between ChromaDex and Elysium that was the final

1 outcome of the negotiations reflected in

2 Exhibit 134.

3 A. I don't recall.

4 Q. Would it be your practice to read an

5 agreement between Elysium and a major supplier?

6 A. Yes. I also trust my counsel. I'm not

7 a lawyer. I don't structure these sorts of

8 agreements.

9 Q. Did you discuss with Mr. Jaksch that

10 you had been under the impression that Elysium had a

11 license to ChromaDex's patents?

12 A. Not that I recall. It was -- again, it

13 was represented to us in that fashion.

14 Q. What do you mean by that? What was

15 represented to you?

16 A. I don't know why we would have talked

17 to Frank about it because Frank was the one telling

18 us that this was how the agreements are structured.

19 Q. Right. But at some point, you've told

20 me you discovered that, no, in fact, Elysium did not

21 have a license to ChromaDex's patents; is that

22 correct?

23 A. That is correct.

24 Q. When did you learn that fact?

25 A. I don't recall.

1 Q. How did you learn it?

2 A. I don't recall.

3 Q. Where did you learn it?

4 A. I do not recall.

11:24:33 5 Q. Who told you?

6 A. I don't recall.

7 Q. What was your reaction?

8 A. I don't recall.

9 Q. Were you upset?

11:24:44 10 A. I don't recall.

11 Q. Did you go on a WhatsApp tirade?

12 A. I don't recall.

13 Q. Well, it's March 2019 right now. When
14 do you think you first learned this fact that the

11:25:03 15 agreement you thought you had for a license to
16 ChromaDex's patents you, in fact, did not have?

17 A. I don't know.

18 Q. Did you discuss that understanding with
19 Mr. Alminana? By understanding, I mean the fact

11:25:25 20 that Elysium did not have a license to patents from
21 ChromaDex.

22 A. I don't recall.

23 Q. Did you discuss it with Dr. Guarente?

24 A. I don't recall.

11:25:35 25 Q. Did you discuss it with counsel without

1 telling me what was said?

2 A. I don't recall.

3 Q. What impact, if any, did the change in
4 your understanding have on Elysium's business,
11:25:53 5 change in understanding from thinking you had a
6 license to intellectual property, specifically
7 patents from ChromaDex, to not having such a
8 license?

9 A. Well, I think the biggest issue for us
11:26:06 10 is that we were paying for trademarks, which we
11 didn't want nor did we use. And we could have been
12 using that money to further scale our business and
13 invest in other products or clinical trials, et
14 cetera.

11:26:21 15 Q. Did you tell that to Mr. Jaksch?

16 A. I don't recall.

17 Q. Did you tell Mr. Jaksch what you just
18 told me?

19 A. I don't recall.

11:26:30 20 Q. Did you tell Mr. Jaksch that we would
21 prefer to use this money for clinical trials?

22 A. I don't recall.

23 Q. Did you tell Mr. Jaksch that we're not
24 going to use your trademarks, we want to spend this
11:26:41 25 money elsewhere?

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CERTIFICATE

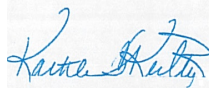
STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

I, KATHLEEN T. KEILTY, a Certified
Shorthand Reporter and Notary Public within and
for the State of New York, do hereby certify:

That ERIC MARCOTULLI, the witness whose
testimony is hereinbefore set forth, was duly
sworn/affirmed by me and that the foregoing
transcript is a true record of said testimony.

I further certify that I am not related
to any of the parties to this action by blood or
marriage, and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 18th day of April, 2019.



KATHLEEN T. KEILTY, CSR
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