

Exhibit 32

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

ChromaDex, Inc.,)

)

Plaintiff,)

)

VS.)

CASE NO. SACV

)

Elysium Health, Inc. and)

16-02277-CJC(DFMx)

Mark Morris,)

)

Defendants.)

)

Elysium Health, Inc.,)

)

Counterclaimant,)

V.)

)

ChromaDex, Inc.,)

)

Counter-Defendant.)

_____)

HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY
VIDEOTAPED DEPOSITION OF FRANK JAKSCH
Los Angeles, California
Friday, April 12, 2019

Job No. 159127

Reported by: NIKKI ROY

CSR No. 3052

1 Videotaped deposition of FRANK JAKSCH, taken on
2 behalf of the Defendant and Counterclaimant, at
3 11601 Wilshire Boulevard, Los Angeles, California,
4 on Friday, April 12, 2019 at 9:34 a.m., before NIKKI
5 ROY, CSR No. 3052.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 APPEARANCES OF COUNSEL:

2

3 FOR PLAINTIFF AND CROSS-DEFENDANT:

4 COOLEY

5 MICHAEL ATTANASIO, ESQ.

6 SOPHIA RIOS, ESQ.

7 4401 Eastgate Mall

8 San Diego, California 92121

9

10 FOR DEFENDANT AND COUNTERCLAIMANT:

11 BAKER & HOSTETLER

12 JOSEPH SACCA, ESQ.

13 MEGAN CORRIGAN, ESQ.

14 45 Rockefeller Plaza

15 New York, New York 10111

16

17 ALSO PRESENT:

18 THOMAS WILHELM, Ph.D., General Counsel

19 Elysium Health

20 MARK FRIEDMAN, In-house counsel ChromaDex

21

22 VIDEOGRAPHER:

23 BRENT JORDAN

24

25

1 FRANK JAKSCH

2 called as a deponent and sworn in by
3 the deposition officer, was examined
4 and testified as follows:

5
6 EXAMINATION

7 BY MR. SACCA:

8 Q. Good morning, Mr. Jaksch.
9 Who's Will McCamy?

10 A. Will McCamy?

11 Q. Yes.

12 A. He works for Thorne Research.

13 Q. And what's his position at Thorne?

14 A. I think he's the president.

15 Q. Did he work for Thorne in March of 2016?

16 A. I believe so.

17 Q. Do you know what his title was then?

18 A. Probably the same.

19 Q. And what is Thorne Research?

20 A. Thorne Research is a dietary supplement
21 company.

22 Q. In March 2016 was Thorne a ChromaDex
23 customer?

24 A. In which date?

25 Q. March of 2016.

1 A. Yes.

2 Q. And what did Thorne buy from ChromaDex?

3 A. They bought ingredients from ChromaDex.

4 Q. Which ingredients in particular?

5 A. Nicotinamide riboside, Niagen. And I'm not
6 sure what other ingredients they were buying at that
7 time, but I do know they were buying NR.

8 Q. What did Thorne do with the NR it bought
9 from ChromaDex?

10 A. It used them to produce -- it used it to
11 produce dietary supplement products.

12 Q. And what did it do with those dietary
13 supplement products?

14 A. They sold them -- primarily I think their
15 business model is to sell them through practitioners,
16 through physicians' offices.

17 Q. Did Thorne sell any nicotinamide riboside
18 containing products direct to consumers?

19 A. Probably.

20 Q. Was Thorne a competitor of Elysium?

21 A. What do you mean by "competitor"?

22 Q. Were they in the same business?

23 A. Well, they sold a supplement, so by the fact
24 that they sell a supplement product, I guess, sure.

25 Q. How often did you talk with Mr. McCamy in

1 "(Or a substantially similar
2 product to a third party.)"

3 You see that?

4 A. I see it.

5 Q. What is a substantially similar product to
6 Niagen?

7 A. Well, there really isn't anything. What my
8 definition -- there's nothing I would say that's
9 substantially similar to Niagen in the marketplace
10 unless somebody was supplying counterfeit Niagen.

11 Q. Okay. So that was a superfluous provision
12 as far as you were --

13 MR. ATTANASIO: Object to the form.

14 BY MR. SACCA:

15 Q. -- concerned?

16 A. Yeah. I'm not -- yeah. I don't know what
17 the substance of that is.

18 Q. Okay. And then you'll see this provision
19 contains the same language we saw in the draft about
20 "provided Elysium Health purchases equal volumes or
21 higher volumes than the third party"?

22 A. I see that.

23 Q. Okay. And did you understand what that
24 meant when you signed the contract?

25 A. Yeah. My belief is that it would have

1 been -- you know, over -- you'd look over a 12-month
2 period, 12-month period of time, annual period of
3 time basically to assess what that higher volume or
4 what equal volume would be. That would be the fair
5 way of assessing it.

6 Q. Where does the contract say that?

7 A. It's a 12-month agreement. Most of the
8 terms in here are under, what, 12-month periods,
9 12-month periods, so I think it's pretty rational to
10 assume that a 12-month period would be a good period
11 of time to assess volumes.

12 Q. Well, if the contract repeats 12-month
13 periods, why didn't it repeat it in 3.1?

14 A. I don't know. Maybe because it was obvious.

15 Q. Did you discuss with Elysium that what -- in
16 your view it was a 12-month period?

17 A. I don't remember specifically discussing
18 that, no.

19 Q. 12 months measured from when?

20 A. Well, it would be -- it would be 12
21 months -- you could look at it on an annual basis or
22 a 12-month rolling from the date that it was signed.

23 Q. Which one was it?

24 A. Probably -- considering the date that it was
25 signed, look at it on a 12-month rolling basis.

1 created by Tom Varvaro.

2 Q. How about periodic financial reporting,
3 10-Ks and 10-Qs?

4 A. Tom Varvaro.

5 Q. Okay. Did you look at 10-Ks and 10-Qs
6 before they were filed with the SEC?

7 A. Yeah.

8 Q. And you made sure that they were complete
9 and accurate?

10 A. I mean, I would have to sign my name on the
11 line.

12 Q. Okay.

13 (Exhibit 6 Form 10-Q, marked for
14 identification as of this date.)

15 BY MR. SACCA:

16 Q. You have before you a document that's been
17 marked Jaksch Exhibit 6. It's a ChromaDex form 10-Q
18 for the period ended April 2, 2016.

19 Do you recognize this document?

20 A. Yeah, to the extent that I remember it, but
21 it was a 10-Q -- it was the 10-Q for Q2 of 2016.

22 Q. And who are these documents available to?

23 A. Well, they're available online. Pretty much
24 find them ubiquitously in multiple locations.

25 Q. If you can turn into the document, there are

1 page numbers. You'll find a page number 19.

2 And is that the one that has Mr. Varvaro's
3 signature on it?

4 A. It does.

5 Q. Okay. If you flip the page, what's that
6 document?

7 A. It is a supply agreement.

8 Q. Between who and who?

9 A. Between ChromaDex and Elysium.

10 Q. Okay. This is a copy of the agreement we
11 just saw?

12 A. I'm assuming, if I check back and forth
13 between them, that they'd be the same.

14 Q. You'll see there's a heading on top of the
15 document that has an asterisk inside brackets. And
16 it says (reading):

17 "Indicates confidential portion
18 has been omitted pursuant to a
19 request for confidential treatment
20 and has been filed separately with
21 the commission."

22 A. I see that.

23 Q. Do you understand what that means?

24 A. It means that certain omissions -- certain
25 portions may be redacted, but that's -- we can redact

1 what we want and then it's subject to SEC review,
2 where they may agree or disagree with what may be
3 redacted.

4 Q. Okay. So if you look, for example, in
5 Section 3.1 of the agreement. It's a couple pages
6 in.

7 A. Sure.

8 Q. There's an asterisk where the maximum price
9 was.

10 A. Uh-huh.

11 Q. Right.

12 So that was confidential information that
13 ChromaDex didn't want disclosed?

14 A. It was redacted, correct.

15 Q. Flip now a few more pages in.

16 And you see the signature page that has your
17 signature and Mr. Marcotulli's signature?

18 A. Yeah.

19 Q. Okay. Turn to the next page.

20 What's that?

21 A. The attached exhibit that was part of the
22 agreement, I guess.

23 Q. Okay. So this is a document that ChromaDex
24 chose to make publicly available?

25 A. It appears to.

1 Q. Okay. The next document here is the
2 pTeroPure supply agreement between ChromaDex and
3 Elysium?

4 A. Yep.

5 Q. And if you flip through that agreement past
6 the signature page, can you tell me what the next
7 page is?

8 A. On signature page. Next page. It is the
9 pTeroPure -- product specification for pTeroPure.

10 Q. So that is another document ChromaDex chose
11 to make publicly available?

12 A. As a part of this SEC filing, correct.

13 Q. Okay. It was not something ChromaDex
14 omitted from the SEC filing as confidential
15 information, right?

16 A. It looks like that.

17 Q. Did you see this at the time the 10-Q was
18 filed?

19 A. I'm sure I probably did.

20 Q. So you were okay with this information being
21 made publicly available?

22 A. It just didn't occur to me at the time.

23 Q. What didn't occur to you?

24 A. That if it was confidential information,
25 that we were publicly disclosing and it got missed,

1 but it's neither here nor there at this point.

2 Q. So you think this was a mistake?

3 A. It probably shouldn't have been just
4 publicly disclosed in the document. It probably
5 should have been redacted, but it wasn't.

6 Q. You know you're suing Elysium for disclosing
7 that same information that ChromaDex made publicly
8 available, right?

9 MR. ATTANASIO: Object to the form.

10 THE WITNESS: Yes.

11 BY MR. SACCA:

12 Q. Okay. Now knowing that ChromaDex chose to
13 make the same information publicly available, do you
14 still think it's appropriate to be suing Elysium for
15 disclosing it?

16 MR. ATTANASIO: Object to the form, calls
17 for a legal conclusion.

18 THE WITNESS: Well, I mean, I think that it
19 was -- this is one piece of a much bigger puzzle, but
20 nonetheless, yeah, I still think it's -- I think it's
21 appropriate based in the context of the whole thing.

22 If you want to boil the case down to that
23 one piece, okay, you can make that argument. I don't
24 agree with it.

25 ///

1 Q. And where did that spreadsheet come from?

2 A. It was an additional tab in the same
3 spreadsheet.

4 Q. Okay. And what was this intended to
5 communicate to Elysium?

6 A. It wasn't. It wasn't supposed to be on
7 there.

8 Q. Okay. And why wasn't it supposed to be on
9 there?

10 A. It was an internal document that was being
11 used to generate the other document and should have
12 been removed, but it wasn't.

13 Q. And is part of the reason it should have
14 been removed because it contained information about
15 Live Cell pricing that could indicate a breach of the
16 MFN provision?

17 MR. ATTANASIO: Object to the form.

18 THE WITNESS: No.

19 BY MR. SACCA:

20 Q. There is a row on here for a company called
21 Living Cell, correct?

22 A. On which page?

23 Q. The one ending 600.

24 A. Can you make it any smaller? Can barely see
25 it. Yeah, I see it.

1 pieces of these responses from other people that I
2 ended up putting into this email.

3 Q. Okay.

4 A. That's the only other possibility.

5 Q. And so are you saying some of this is not
6 yours?

7 A. I don't know.

8 Q. Would you have sent something without
9 reading it?

10 A. I doubt it.

11 Q. Would you have sent something someone else
12 wrote for you if you didn't understand it?

13 A. Probably not.

14 Q. Do you have any recollection of doing that
15 with respect to this email?

16 A. Not that I can recall.

17 Q. Let's go back to the phone call you had with
18 Elysium after the exchange of emails we've just been
19 looking at.

20 Who from ChromaDex participated in that
21 call?

22 A. I believe it was myself and Will Black.

23 Q. Who from Elysium was on the phone?

24 A. As far as I know it was Dan Alminana and
25 Eric Marcotulli.

1 Q. And in this call did you tell Elysium that
2 ChromaDex had sold to Live Cell for \$800 a kilogram?

3 A. I believe we did.

4 Q. Did you tell them when those sales took
5 place?

6 A. I don't remember if we got that specific or
7 not, but...

8 Q. Did you tell them the quantity of any of
9 those sales?

10 A. I don't believe we got into quantities. I
11 don't remember getting into quantities.

12 Q. Did you tell them on how many occasions
13 ChromaDex had sold to Live Cell for \$800 a kilogram?

14 A. I don't remember that either.

15 Q. Did you make any mention on that call of
16 your sales to Healthspan?

17 A. I don't believe so.

18 Q. Did you make any mention on that call of
19 sales to any other customers?

20 A. No.

21 Q. Did you tell Elysium on that call what it
22 cost ChromaDex to buy NR from Grace?

23 A. I don't remember that.

24 Q. Did you tell them that ChromaDex's price was
25 450 to \$500 a kilogram?

1 A. I don't remember saying that. I mean, I
2 think we had some -- they were -- Dan in particular
3 was focused on -- he kept focusing on margin. He
4 kept on harping on a point around margin. And we got
5 in a bit of a -- you know, an argument over that
6 point because he made a statement that he believed
7 that we were making too much margin. I said it's
8 none of his business to assess our -- ChromaDex's
9 gross margins.

10 Q. Did you tell Elysium that you wanted to
11 maintain a margin of 50 percent?

12 A. No, I didn't say it exactly like that. I
13 think what I would have said is that we would want to
14 maintain a margin -- a minimum margin of 50 percent,
15 not a margin of 50 percent, a minimum margin of
16 50 percent.

17 Q. And that was ChromaDex's intent?

18 A. That was the comment I made. And that was
19 the one where he said you -- he responded flippantly
20 back to me saying that we shouldn't be making that
21 much margin. And I said it's none of your business
22 to assess ChromaDex's -- it's ChromaDex's business to
23 determine how much gross margin it needs, not yours.

24 Q. When you told Elysium that ChromaDex wanted
25 to maintain a minimum margin of 50 percent, was that

1 STATE OF CALIFORNIA)
) ss.
 2 COUNTY OF LOS ANGELES)
 3

4 I, NIKKI ROY, Certified Shorthand Reporter,
 5 certificate number 3052, for the State of California,
 6 hereby certify:

7 The foregoing proceedings were taken before me
 8 at the time and place therein set forth, at which time
 9 the deponent was placed under oath by me;

10 The testimony of the deponent and all
 11 objections at the time of the examination were recorded
 12 stenographically by me and were thereafter transcribed;

13 The foregoing transcript is a true and correct
 14 transcript of my shorthand notes so taken;

15 I further certify that I am neither counsel for
 16 nor related to any party to said action nor in any way
 17 interested in the outcome thereof.

18 In witness whereof I have hereunto subscribed
 19 my name this 24th day of April, 2019.

20 

21 _____
 22 NIKKI ROY
 23
 24
 25