

Exhibit 1

**Redacted Version of Document
Proposed to be Filed Under Seal**

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)
12 -----
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14

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 I wanted to discuss -- yeah. I think we
2 probably did at the time.

3 Q Did you have a list of questions?

4 A I'm -- I'm sure we did. Usually we do.

5 Q Did you provide it to them in advance?

6 A I don't know if we did or not.

7 Q And do you still have those lists?

8 A I don't know. Maybe.

9 Q Who prepared them?

10 A Mr. Chavez.

11 Q Do you recall what questions you asked of
12 ChromaDex's personnel?

13 A I think we just generally discussed the case
14 and the various issues in the case in terms of the --
15 you know, the trade secrets, what the trade secrets
16 were, the importance of the trade secrets to their
17 company, how important the -- the -- or how difficult
18 it would be to replicate those trade secrets. A
19 variety of different things, but that's what I recall.

20 Q When you asked during these conversations what
21 the trade secrets were, what did ChromaDex tell you?

22 A Well, I mean, we -- I think I have a list of
23 them in one of my schedules, if you look at
24 Schedule 15. And so we talked about those -- those
25 particular -- you know, those trade secrets.

1 Q And you're talking about Schedule 15 to your
2 report?

3 A Yes.

4 Q And does that include Schedule 15A?

5 A Yes.

6 Q Okay. So you understood from ChromaDex that
7 all of the information identified in Schedule 15 and
8 15A are ChromaDex trade secrets?

9 A That -- that's my understanding, yes.

10 Q Why do you have a Schedule 15 and a
11 Schedule 15A?

12 A I think Schedule 15 attempted to
13 circumscribe -- circumscribe the specific documents
14 into categories, into these four categories, but those
15 four categories have a variety of different documents
16 that are encompassed in those categories.

17 Q So is it your testimony that -- that
18 everything in 15A falls within one of the four
19 categories in Schedule 15?

20 A I believe so. Yes.

21 Q And -- and can you identify for me which
22 category each item on 15A falls into?

23 A No.

24 Q Why not?

25 A I mean, a lot of these are just simply Bates

1 numbers. We -- I -- I'd have to look at each one of
2 them. If you wanted to start pulling them out, I guess
3 I could try to -- try to do that for you. But I
4 can't -- just using this document, I can't.

5 Q Who identified -- so -- so during your
6 phone call or your phone calls, when you asked
7 ChromaDex what the trade secrets were, they identified
8 for you all of the information in Schedule 15A?

9 A Well, I would say them in combination with the
10 attorneys, as well.

11 Q Who titled Schedule 15A?

12 A It would have been Mr. Chavez.

13 Q Do you know why the title reads "ChromaDex's
14 Trade Secrets, Confidential, and/or Proprietary
15 Information at Issue"?

16 A I think that describes what -- what Mr. Chavez
17 and I believe is -- these -- these documents are.

18 Q Okay. Which of these are trade secrets, which
19 of them are confidential, and which of them are
20 proprietary?

21 A I don't know that they're necessarily mutually
22 exclusive, first of all. I think some of them might be
23 trade secrets and, you know, confidential and
24 proprietary all at the same time.

25 So I think most of them would be considered

1 confidential and proprietary. Some of them -- you
2 know, a good portion of them would be trade secrets, as
3 well, but I don't know which ones are -- you know,
4 would fall under each of those categories.

5 Q What's the difference between confidential and
6 proprietary?

7 A I think confidential means that it should not
8 be shared. And, to me, proprietary means that it's --
9 it's just -- it's ChromaDex's. To me, proprietary
10 implies some ownership.

11 But, again, I'm not a legal -- that's just
12 my -- my understanding, my layperson's understanding.

13 Q The title of 15A, is that intended to convey
14 any legal conclusions?

15 A No.

16 Q So, then, just in the context of your report,
17 the def- -- the distinction between confidential and
18 proprietary is that confidential should not be shared
19 and that proprietary implies ownership?

20 A I don't know. I don't know that I intended it
21 one way or the other. I never really thought about it
22 that -- that distinctly.

23 Q Okay. Some of the information in this list is
24 confidential but not proprietary?

25 A I don't know.

1 Q Some of it is proprietary but not
2 confidential?

3 A Again, I don't know.

4 Q Is some of it confidential but not a
5 trade secret?

6 A I think it's the same answer.

7 Q You don't know.

8 A Yeah. I'm not here to make a legal conclusion
9 about what each of these documents are.

10 Q Okay. The title of Schedule 15 is different.
11 It says "ChromaDex's Trade Secrets Information at
12 Issue."

13 A I see that.

14 Q Why doesn't 15 say "ChromaDex's Trade Secrets,
15 Confidential, and/or Proprietary Information at Issue"?

16 A I'm not sure.

17 Q This is your report; right?

18 A It is my report.

19 Q You chose these two different titles?

20 A I think in combination with my staff, yes.

21 Q Okay. Did you choose these titles, or did
22 your staff choose these titles?

23 A Well, my staff did, and then I reviewed it on
24 this particular one.

25 Q So when you reviewed it, what -- what

1 distinction did you understand these two different
2 titles to be drawing?

3 A I -- I didn't think about it that closely.

4 Q Okay. Do these two titles draw any
5 distinction?

6 A For me, I think it's the -- it's the
7 documentation of the bad acts that -- that occurred,
8 the trade secrets that were given, and the
9 confidential -- confidential information that was
10 shared.

11 Q Are you attempting, in these schedules, to
12 draw any distinction between trade secrets and
13 confidential information?

14 A I'm not.

15 Q Okay. You understand that ChromaDex has
16 claims regarding misappropriation of trade secrets;
17 correct?

18 A Yes.

19 Q What trade secrets do you understand ChromaDex
20 to allege Elysium misappropriated?

21 A Well, I think I've listed them here and
22 summarized them. So, certainly, the ingredient sales
23 spreadsheet, as I've indicated; the -- the pricing that
24 ChromaDex has there and are made -- made for. I think
25 they viewed that as a trade secret, proprietary, and

1 confidential.

2 The R&D work related to the different salts
3 used to manufacture the NR, and then ChromaDex's
4 research and development work with Genomatica,
5 G-e-n-o-m-a-t-i-c-a.

6 Q And do you understand ChromaDex to be alleging
7 that Elysium misappropriated any other trade secrets?

8 A I think those are the broad categories, but
9 there are a variety of different ways that they were
10 misappropriated, and I think I attempted to show those
11 different -- the different documents and whatnot
12 that -- that constituted those broad categories of
13 trade secrets.

14 Q You understand ChromaDex has allegations in
15 this case that Elysium used confidential information in
16 violation of the company's supply agreements; correct?

17 A Yes.

18 Q What do you understand that confidential
19 information to be?

20 A I think there's a variety of those -- those
21 types of things. I think they're encompassed in
22 this -- this schedule, but I think that would include
23 the -- the price of the NR. I think it includes these
24 same types of definitions we just went over.

25 Q So your understanding, for example, is that

1 ChromaDex is asserting that its \$[REDACTED]-per-kilogram price
2 paid to Grace is confidential information that Elysium
3 misused in violation of the parties' agreements?

4 A Certainly I think it's in violation. Now, the
5 legalities of which agreements, I know that there are
6 confidentiality agreements that Mr. Morris signed, and
7 I think that -- that's involved there. I also think
8 that they viewed that as a trade secret.

9 Q Right. But -- but I'm talking about the claim
10 that ChromaDex has against Elysium for violating, for
11 example, the NIAGEN supply agreement by misusing -- or
12 by using confidential information in violation of that
13 agreement.

14 Do you understand the \$[REDACTED]-per-kilogram price
15 paid to Grace to be part of that claim?

16 A I'm -- I'm not certain.

17 Q Okay. Do you understand that the confidential
18 information ChromaDex claims Elysium used is
19 coextensive with the trade secrets ChromaDex alleges
20 Elysium to have misappropriated?

21 A I don't know what you mean by "coextensive."

22 Q It's exactly the same information. The two
23 pots of information are the same.

24 A I don't know. I mean, that's a legal
25 question, I think, and I'm not certain.

1 Q But that's not part of your damages analysis,
2 trying to distinguish between what information might be
3 a trade secret, what information might be confidential,
4 and what information might be proprietary?

5 A I generally looked at the -- the trade secret
6 damages as a disgorgement. I looked at -- I looked at
7 the lost profits that ChromaDex had, and I think that
8 it can be -- fall into each of those categories.

9 Q So when you, for example, came to an opinion
10 on lost profits related to the trade secrets claim, you
11 considered all of the information in Schedule 15A to be
12 part of the alleged wrongdoing.

13 A Yes.

14 Q Okay. And when you considered, for example,
15 damages to ChromaDex on the trade secret
16 misappropriation claim, you considered all of the
17 information in Schedule 15A to be part of that claim.

18 A Well, I don't know that all of -- I don't know
19 that I looked at it that way. I mean, I looked at --
20 there was harm that was done from the taking, and --
21 and that harm caused -- caused damage to -- to
22 ChromaDex, and that's -- that's what I calculated.

23 Q Okay. Harm from the taking of what?

24 A Of the trade secrets and also the confidential
25 information.

1 Q Okay.

2 A I think they're -- I think they're commingled
3 here.

4 Q Okay. So you --

5 A So the -- the distinction, I didn't view -- I
6 mean, it ends up being a very legal question, in my
7 opinion, as to the distinction between, you know, the
8 confidential information that breached the contract
9 and -- and the trade secrets. I think they're --
10 they're clearly commingled here in this case.

11 Q Okay. So -- so, in conducting your damages
12 analysis, you commingled confi- -- the confidential and
13 trade secret information.

14 A I wouldn't say I commingled. I would say that
15 the -- the information is commingled just by the
16 very -- very nature of the information. It -- it's
17 often in several categories.

18 It's confidential, I think, as you pointed out
19 before. It also may be a trade secret. Some of it may
20 be trade secrets. And we're talking generalities here.
21 If you want to point me to specific things, I guess I
22 could give you my layperson's opinion about that. But,
23 ultimately, I think that's a legal question.

24 Q Do you, in your report, express any opinion on
25 damages caused to ChromaDex solely as a result of

1 Elysium's alleged misappropriation of trade secrets?

2 A I -- I don't look at it that way. I think
3 it -- it's damages caused by all of those elements,
4 in -- in concert. Those elements in concert is the
5 best way to put it.

6 Q And those elements in concert mean
7 trade secrets, confidential, and/or proprietary
8 information.

9 A Yes.

10 Q Do you, anywhere in your report, express an
11 opinion as to damages caused to ChromaDex solely by
12 virtue of Elysium's alleged misappropriation of the
13 ingredient sales spreadsheet and the information in
14 that spreadsheet?

15 A I didn't break it out that way. No.

16 Q Same question. Do you, anywhere in your
17 report, express an opinion as damages caused to
18 ChromaDex solely by virtue of Elysium's alleged
19 misappropriation of ChromaDex's \$[REDACTED]-per-kilogram price
20 paid to Grace?

21 A I don't. I think that's -- that's for the
22 Court to determine, ultimately.

23 Q Do you, anywhere in your report, express an
24 opinion as damages caused to ChromaDex solely by virtue
25 of Elysium's alleged misappropriation of ChromaDex's

1 research and development work regarding to different
2 salts for use in manufacturing NR?

3 A Same answer.

4 Q The answer is no.

5 A Same answer as before.

6 Q And do you, anywhere in your report, express
7 an opinion as to any damages caused to ChromaDex solely
8 by virtue of Elysium's alleged misappropriation of
9 ChromaDex's research and development work with
10 Genomatica?

11 A I didn't break it out that way.

12 Q Okay. Do you, anywhere in your report,
13 express an opinion as to any benefit to Elysium solely
14 attributable to its alleged misappropriation of
15 ChromaDex's sales information including the ingredient
16 sales spreadsheet?

17 A I didn't break it out that way.

18 Q Do you, in your -- anywhere in your report,
19 express an opinion as to any benefit to Elysium solely
20 attributable to ChromaDex's -- its mis- -- alleged
21 misappropriation of ChromaDex's \$█-kilogram --
22 per-kilogram price paid to Grace?

23 A Same answer.

24 Q And do you, anywhere in your report, express
25 any opinion as to any benefit to Elysium solely

1 attributable to its alleged misappropriation of
2 ChromaDex's research and development work regarding
3 different salts for use in manufacturing NR?

4 A The same answer.

5 Q And do you, anywhere in your report, express
6 any opinion as to any benefit to Elysium solely
7 attributable to its alleged misappropriation of
8 ChromaDex's research and development work with
9 Genomatica?

10 A Again, same answer.

11 Q Do you express any opinion in your report as
12 to what a reasonable royalty to ChromaDex might be from
13 Elysium's alleged misappropriation of any trade secret?

14 A No.

15 Q If you could turn to page 6 of your report,
16 Exhibit 1. You see you have a heading, "Summary of
17 Opinions"?

18 A Yes.

19 Q And the first sentence of the second paragraph
20 under there says you've "been asked to provide
21 financial analysis, opinions, and conclusions related
22 to," and No. 1 is "Elysium's profits associated with,
23 and resulting from, the alleged wrongful acts."

24 Do you see that?

25 A Yes.

1 Q What does "associated with" mean in that
2 context?

3 A Well, there's a lot of information here that
4 was taken, and it's -- so it's -- you know, it's the
5 profits that -- that resulted from the bad acts.

6 I think -- at its heart, I think what's being
7 alleged by ChromaDex is the taking of this variety of
8 different information allowed Elysium to basically
9 exist, in essence.

10 It gave them a head start that they needed
11 just to be able to exist because they were on a very,
12 very -- they -- they were on a difficult pathway at the
13 time. They didn't have a lot of cash flow, and they
14 needed the -- they needed this -- this boost in order
15 to even -- even be a company. I think that's the
16 essence of what these -- the -- the claim is.

17 Q That's the essence of what claim?

18 A Well, you asked about Elysium's profits.

19 Q Right.

20 A And this disgorgement of those profits, and
21 that's the essence of -- of the -- the claim.

22 Q I guess my question is: Which claim?

23 A Well, all of them.

24 Q Okay.

25 A All of them in concert. And -- and any one of

1 them potentially allowed that to happen.

2 Q Okay. So do you -- you -- and is --

3 Are the opinions you're expressing in your
4 report on damages applicable to every one of
5 ChromaDex's claims?

6 A To the extent -- and this is for the Court
7 ultimately to decide, but I believe each one of them
8 had a part in that, both together and in concert with
9 the other -- with the other claims.

10 Q So my question to you was: What does
11 "associated with" mean in the context of your report?

12 And your answer was "So it's -- you know, it's
13 the profits that resulted from the bad acts."

14 You see, in the clause I was asking you about
15 of your report, you wrote "Elysium's profits associated
16 with, and resulting from, the alleged wrong [sic]
17 acts."

18 My question was: What does "associated with"
19 mean? Does "associated with" mean solely -- being
20 resulting from?

21 A I think it does. I say "resulting from" in
22 the next -- the next word, it says "resulting from."
23 So --

24 Q Right. And that, I guess, is the heart of my
25 question. You say "associated with and resulting

1 from," suggesting those two things are distinct.

2 A I don't know. I think we're parsing words
3 here where we don't need to parse words.

4 What I'm saying is there were a bunch of
5 wrong -- wrongful acts that -- that are being alleged,
6 and those allowed Elysium to make those profits. And I
7 am cal- -- simply calculating the profits that are
8 associated with those wrongful acts.

9 Q Are you expressing any opinions in your report
10 on causation?

11 A I am not a causation expert. I think I have
12 plenty of -- of information in the report that
13 indicates causation, but I am not -- that's a legal
14 issue, as I understand it, and I'm not expressing a
15 causation opinion.

16 Q Are you expressing any opinions in your report
17 that Elysium used any information from ChromaDex?

18 A I believe I have a whole variety of
19 information that shows that they did; but, ultimately,
20 I think that's -- that ends up being a legal question.

21 Q So my question is: Are you expressing any
22 opinion whether Elysium used any information from
23 ChromaDex?

24 A And my answer is going to be the same. I
25 think my -- my report is replete with that different --

1 that information, the fact that they did use them; but,
2 ultimately, I think, this -- the causation issue is a
3 legal issue.

4 Q So is that answer a "yes" or a "no"?

5 A That answer is the same answer I'm going to
6 give you every time, and it's a fact that I have a
7 variety of information in my report that indicates that
8 there is causation; but, ultimately, that's a legal
9 question in my opinion.

10 Q Okay. Is it your opinion that Elysium used
11 any information from ChromaDex?

12 A I think I've seen a lot of information that
13 says that they have; but, ultimately, that's a legal
14 question.

15 Q And that information includes ChromaDex's
16 fifth amended complaint?

17 A Say that again. Ask the question again.

18 Q The information that you say you've seen
19 includes ChromaDex's fifth amended complaint?

20 A Well, those are the allegations, so that's
21 some things that I've seen. But I'm more specifically
22 referring to e-mails and text messages and other things
23 that indicate that they used -- used that information.

24 Q Let's take an example, then.

25 How did Elysium use the ingredient sales

1 spreadsheet?

2 A I believe it was used at a variety of
3 different times. It was not only taken in the July
4 time frame, the July 2016 time frame, but I think
5 Mr. Morris shared a variety of information through
6 texts that came from that ingredient -- ingredient
7 sales spreadsheet.

8 Q And how did Elysium -- when did Elysium use
9 the ingredient sales spreadsheet?

10 A I think it was as early as potentially 2015, I
11 want to say, at some point. I think I have that in my
12 report, if you want to --

13 I'm going to turn to my Schedule 16, which has
14 a whole variety of different text messages and other
15 things.

16 Q Sure.

17 A So I am on Schedule 16, and I'm just reading
18 through these text messages. And I think those are
19 indications of the use of those -- those trade secrets,
20 many of which came from that ingredient sales
21 spreadsheet that we just talked about.

22 Q Which ones came from the ingredient sales
23 spreadsheet?

24 A I think there were a variety of them that came
25 from them.

1 Q Can you identify them for me?

2 A So there's one in November where it talks
3 about ChromaDex will get a 450,000 milestone payment,
4 and I think that potentially came from it. It
5 certainly was confidential, and I think ChromaDex would
6 view that as proprietary.

7 It talks about the use of 4- -- 400,000
8 kilograms of niacinamide per year. I think that may
9 have come from the ingredient sales -- sales
10 spreadsheet.

11 Q And how did Elysium use that information?

12 A They used that to formulate their strategy and
13 how they were going to eventually bring over
14 Mr. Morris, and -- and they were going to eventually
15 kick ChromaDex to the curb and -- and get a new
16 supplier.

17 Q And what evidence do you see that Elysium used
18 this information to formulate its strategy?

19 A It's replete throughout all of the different
20 text messages that -- when Mr. Morris is talking with
21 Dan Alminana; talking with Eric, the -- the
22 president -- I mean Eric Marcotulli.

23 I think it's replete throughout all those
24 text messages that -- that they used this information
25 to formulate their strategy of how they were going to

1 move forward.

2 Q Okay. So the one you chose to offer as an
3 example talks about an agreement that is exclusive for
4 NR and topical use; right?

5 A So this is just one example. I mean --

6 Q Right. And -- but what I'd like you to do is
7 tell me what evidence you've seen based on this example
8 that Elysium used the information in this text to
9 formulate its strategy.

10 A Well, it -- it's all part -- part of their
11 strategy to eventually, you know, get a different
12 supplier, lower their costs. And I think this is one
13 of them, but it may -- that may not be the best one to
14 look at. There are a whole variety of them.

15 Q Okay. But let's stick to this one.

16 What information in here do you see Elysium
17 having used to formulate its strategy to find a new
18 supplier of NR?

19 A He's giving them information about what
20 fraction of the 400,000 would be NR, like 10 percent.
21 The last sentence, I think, is helpful in that regard.

22 "NR would be a fraction like 10 percent, but
23 that is still a big fraction that will drive the
24 manufacturing cost down, which is good for everyone."

25 So they're talking about manufacturing and

1 driving the manufacturing cost down, and that
2 ultimately is what they were trying to do, and that's
3 why they -- that's one of the reasons why they wanted
4 to go to a different supplier.

5 Q So how would driving the manufacturing cost
6 for ChromaDex to acquire NR down help Elysium formulate
7 a strategy to find a new source of NR?

8 A Well, first of all, it -- it might do that,
9 but it also helps them in negotiations with -- with
10 ChromaDex when they're negotiating pricing. It helps
11 them know where to put their pricing. I have seen a
12 variety of other e-mails where they're throwing out a
13 \$█ price. They offered ChromaDex, at one point, a
14 \$400 price to buy NR.

15 I think all of that goes into their strategy
16 as to how they're going to negotiate with ChromaDex
17 for -- for the time being -- this is in 2015 -- for the
18 time being, negotiate their pricing, which they, you
19 know, shouldn't have been able to see that -- that type
20 of proprietary information.

21 Q So what --

22 A And --

23 I'm not done.

24 Q Oh, sorry.

25 A And then, in addition, it helps them in their

1 more long-term objective of replacing ChromaDex and
2 trying to get a supplier that will be able to do it for
3 a lower cost.

4 Q What evidence have you seen, in -- in or
5 before November of 2015, that Elysium was looking for
6 another supplier of NR?

7 A I'm not sure that there was anything before
8 2015. There may have been. But the information starts
9 at the end of 2015, and it gets more and more clear
10 that they're looking for a different supplier as they
11 get into '16.

12 Q And what evidence have you seen that Elysium
13 used any of the information in this text to negotiate
14 price with ChromaDex?

15 A I think there are -- there's a variety of
16 e-mails that I've seen that indicate that they -- they
17 did. They were using information that Mr. Morris gave
18 them to then negotiate the pricing.

19 Q And -- and what in this text did they use to
20 negotiate pricing?

21 A I think -- again, I think I answered that, but
22 the fact that they're -- they're able to drive the cost
23 down would indicate it would give them some idea that
24 they might be able to try to negotiate a lower price,
25 generally.

1 I think there's some specific information
2 that -- that he then gives them in some of the later
3 texts that indicate that -- you know, that -- he talks
4 about what the cost is for ChromaDex to manufacture,
5 and that's part of their negotiating strategy as well.
6 It -- it's all part of the strategy that they have.

7 And, you know, there's many gleeful texts that
8 I've seen from the -- the leaders at Elysium that they
9 had this information and that -- that Mark Morris was
10 the man and that he was the guy that was helping them,
11 you know, with their strategy. I've seen a whole
12 variety of them.

13 Q Turn to page 25 of your report.

14 You see, in the first paragraph, you relate
15 what you say is the definition of "confidential
16 information" in the NIAGEN supply agreement?

17 A Yeah. Let me read this.

18 Yeah. Okay. I see it.

19 Q Do you understand that to be a comprehensive
20 definition of "confidential information" from the
21 agreement?

22 A I don't know. It might be. I think, again,
23 that's a legal issue. Whether it's -- it's
24 comprehensive or not, I don't know.

25 Q Well, let me ask a different question, then.

1 Why did you choose to quote this part of the
2 definition of "confidential information" in your
3 report?

4 A I don't know. I don't know why this part. I
5 mean, it -- it was a part that defined what -- what it
6 said, so that's why I put it in.

7 Q Did you intend it to be a complete definition
8 of "confidential information"?

9 A I don't know that I thought about that one way
10 or the other.

11 Q Did you intend to exclude any part of the
12 definition of "confidential information"?

13 A I didn't think about in that way.

14 Q Let me show you a document that's been
15 previously marked as Rhonemus Exhibit 71.

16 (Exhibit 71 was referenced.)

17 BY MR. SACCA:

18 Q Do you recognize this document?

19 A Yes. It's the -- the supply agreement between
20 ChromaDex and Elysium.

21 Q And do you see the definition of "confidential
22 information"?

23 A Yes.

24 Q In 1.4.

25 And you elected to quote a portion of the

1 first sentence of that definition in your report;
2 correct?

3 A Yes.

4 Q And then do you see there's a sentence -- the
5 second sentence of the definition of "confidential
6 information" begins "Notwithstanding the foregoing,
7 confidential information of a party shall not include
8 information which the other party can establish by
9 written documentation," and then there's an A through
10 D.

11 A Yes.

12 Q Is there a reason you chose to exclude from
13 your report the part of the definition of "confidential
14 information" that outlined what information is not
15 confidential -- confidential pursuant to the agreement?

16 A I don't know. I didn't really think about it
17 that way. I was looking at what was confidential. And
18 I think, you know, certainly ChromaDex views the
19 information that they're alleging is confidential as
20 confidential.

21 Q So are you, for purposes of your report,
22 accepting as true ChromaDex's assertion that all the
23 information they claim is confidential was
24 confidential?

25 A Yes.

1 Q Okay. You see, for example, Item B in the
2 definition of "confidential information." All right.
3 So "Notwithstanding the foregoing, confidential
4 information of a party shall not include information
5 which the other party can establish by written
6 documentation to have become publicly known without
7 fault on the part of the other party subsequent to
8 disclosure of such information by the disclosing party
9 to the other party."

10 Do you see that exclusion from what is
11 confidential?

12 A Yeah. And I also note that it says "without
13 fault on the part of the other party," and I
14 think there -- I mean, there's a reason why we're here
15 in this -- in this litigation.

16 Q No. No. I -- I understand that.

17 A I think there's allegations that -- that there
18 was -- there is some fault.

19 Q Right. But do you also understand that
20 material ChromaDex claims in this case is confidential
21 it made public?

22 A I know there are some allegations. I guess
23 that remains to be proven at trial.

24 Q Okay. Have you done anything to verify those
25 allegations?

1 A I have not.

2 Q Okay. For example, you cite a number of
3 ChromaDex's SEC filings in your report; correct?

4 A I do.

5 Q Did you look for any SEC filings ChromaDex
6 made where they disclosed information that they now
7 claim is confidential?

8 A I did not.

9 Q Okay. Is there a reason you didn't do that?

10 A I am taking at face value that the -- the
11 information is confidential. I'm certain that you
12 will, at some point, try to prove that there may have
13 been some of that information that's not confidential,
14 and -- and I guess that remains to be viewed by the
15 Court to see if that is true or not.

16 Q Let's say it is true, that many of the items
17 that ChromaDex claims are confidential are not
18 confidential under the terms of this agreement.

19 What does that do to your damage analysis?

20 MR. ANDERSON: Objection. Incomplete
21 hypothetical.

22 THE WITNESS: I don't think it changes it
23 because I think there are a variety of information
24 that -- that is confidential. I think there's a
25 variety of information that's trade -- that are

1 trade secrets. And if -- to the extent any one of them
2 allowed Elysium to -- to remain in business the way
3 that they have by using that information, then I think
4 that my analysis stands.

5 BY MR. SACCA:

6 Q So just so I'm clear, assume the only
7 trade secret ChromaDex proves in this case Elysium
8 misappropriated and used is information regarding work
9 ChromaDex had done with Genomatica and the jury rejects
10 all of ChromaDex's other trade secrets claims, all of
11 ChromaDex's other confidential information claims, and
12 all of ChromaDex's other breach of fiduciary duty
13 claims, is your testimony that your damage analysis
14 does not change?

15 A To the extent that the jury finds that that
16 allowed them to stay in business and allowed them to,
17 you know, eventually seek another supplier and stay in
18 business, then I believe that that is the case. Yes.

19 Q Do you express an opinion that the information
20 about ChromaDex's relationship with Genomatica alone
21 allowed Elysium to stay in business?

22 A I -- I think that's part of the basket of --
23 of information that -- or -- or of trade secrets that
24 are being alleged as part of the entire claim.

25 Q That wasn't the question I asked, though.

1 A No. I understand that you're trying to parse
2 it down to some -- you know, what you view as some very
3 small part of this.

4 And what I'm saying is that, to the extent
5 that that allowed Elysium to stay in business, then,
6 yes, my opinion is that that -- that damages remain the
7 same.

8 Q My opin- -- my question was: Do you express
9 any opinion that that piece of information alone,
10 ChromaDex's relationship with Genomatica, did allow
11 Elysium to stay in business?

12 A And -- and I'll -- I'll express it the same
13 way. To the extent that the Court finds that that
14 allowed them to -- to stay in business and to continue
15 to operate, then yes.

16 Q Right. But you're still not answering my
17 question.

18 A No. I am. I did. I just answered it.

19 Q No.

20 A I'm going to answer it exactly the same way if
21 you ask it again.

22 Q Okay. I'll keep asking it.

23 Do you express any opinion -- do you express
24 an opinion -- that the information relating to
25 ChromaDex's relationship with Genomatica, standing

1 alone, allowed Elysium to remain in business?

2 That's a yes-or-no question.

3 MR. ANDERSON: Objection. Asked and answered.
4 Argumentative.

5 THE WITNESS: I'm going to -- I'm going to
6 answer the same way.

7 To the extent that the Court finds that that
8 allowed them to stay in business, then, yes, the -- my
9 opinion is that the -- my damages would remain the
10 same.

11 BY MR. SACCA:

12 Q I didn't ask you anything about your damages.

13 A That's all right.

14 Q Okay. So let me ask it a different way.

15 If the Court finds that the information
16 relating to ChromaDex's relationship with Genomatica,
17 standing alone, did not allow Elysium to stay in
18 business, would your opinion be that that information
19 did not allow Elysium to stay in business?

20 A I think that's -- you're saying me -- you're
21 saying to me that it did not allow them to stay in
22 business. So I guess, if it did not allow them to stay
23 in business, then I guess my -- then there are no
24 damages if that's the only thing that's left and it
25 didn't allow them to stay in business. I think that's

1 my point.

2 Q My question has nothing to do with damages.

3 A I think it does.

4 Q No, it doesn't.

5 A Okay.

6 Q My question is related to the scope of your
7 opinions in this case.

8 And my question is: Are you expressing an
9 opinion as to whether the information related to
10 ChromaDex's relationship with Genomatica alone allowed
11 Elysium to stay in business, or are you saying that's
12 not within your purview?

13 MR. ANDERSON: Objection. Asked and answered.
14 Argumentative.

15 THE WITNESS: I think it's -- as I said
16 before, I think, to the extent that the jury finds that
17 that allows them to stay in business, then -- then my
18 opinion on damages stands.

19 BY MR. SACCA:

20 Q Right. I'm not asking about your opinion on
21 damages.

22 I'm asking whether you have an opinion,
23 whether you're stating an opinion, as to the impact of
24 the information solely relating to ChromaDex's
25 relationship with Genomatica.

1 A And that is an opinion -- asking an opinion on
2 damages, in my opinion. I mean, I guess we're at an
3 impasse because that -- that question goes to the heart
4 of the damages question, and I believe that that -- to
5 the extent that they find that there is a taking of
6 that -- that information and that allowed them to stay
7 in business, then my damages are the same.

8 Q Right. I understand that.

9 Do you have an opinion whether the information
10 related to Genomatica allowed Elysium to stay in
11 business?

12 A I -- I think it did. I mean, I think that
13 there's -- I looked at a variety of different
14 information, and I believe that did, as well. Yeah.

15 Q Okay. So do you have an opinion that the
16 information related to Genomatica alone allowed Elysium
17 to stay in business?

18 A At the end of the day, I think that's a
19 liability question, but -- but I believe that it -- the
20 damage would remain the same.

21 Q Right. But do you have an opinion that the
22 information related to Genomatica alone allowed Elysium
23 to stay in business?

24 A Yes.

25 MR. ANDERSON: Objection. Asked and

1 answered.

2 THE WITNESS: Yes.

3 BY MR. SACCA:

4 Q Okay.

5 A It did.

6 Q How?

7 A I don't know. You have to ask me a specific
8 question about which -- which information we're talking
9 about.

10 Q We're talking about the information about
11 ChromaDex's relationship with Genomatica, which is
12 discrete.

13 A Right.

14 Q How did that alone allow Elysium to stay in
15 business?

16 A I'm not sure. I don't know.

17 Q Okay. But your opinion is they did.

18 A That's for -- that's for the Court to decide.

19 Q Okay. So you don't have an opinion that that
20 alone allowed Elysium to stay in business.

21 A I'm not sure.

22 Q You're not sure if you have an opinion or not?

23 A I'm not sure whether it did or not. I'd --
24 I'd have to review the specific information you're
25 talking about.

1 Q Okay. You don't, in your report, express that
2 opinion anywhere.

3 A I don't.

4 Q Is there a reason you excluded from your
5 description of the definition of "confidential
6 information" in the pTeroPure supply agreement on
7 page 27 of your report the part that talks about what
8 information is not confidential?

9 A I don't have any reason for that one way or
10 the other.

11 Q Did you draft these sections of your report?

12 A I certainly reviewed them. I don't know that
13 I drafted this specific part. I reviewed it.

14 Q Do you know who made the decision to exclude
15 the parts of the definitions of "confidential
16 information" that define what is not confidential?

17 A I'm sure it was Mr. Chavez.

18 Q Okay. Did you talk to him about why he chose
19 to exclude that?

20 A No.

21 MR. ANDERSON: Joe, if you've reached a good
22 stopping point, we've been going about an hour and a
23 half.

24 MR. SACCA: Sure.

25 MR. ANDERSON: Okay.

1 THE VIDEOGRAPHER: This is the end of
2 Media No. 1.

3 The time is 9:51 a.m.

4 We are now off the record.

5 (Recess taken 9:51 a.m. - 10:07 a.m.)

6 THE VIDEOGRAPHER: This is the beginning of
7 Media No. 2 in the deposition of Lance Gunderson.

8 The time is 10:07 a.m.

9 We are back on the record.

10 BY MR. SACCA:

11 Q Mr. Gunderson, can you turn to page 43 of your
12 report.

13 You see you have a heading, "Misappropriation
14 of Trade Secrets"?

15 A Yes.

16 Q And under there, you say, "For example" -- and
17 this is the second sentence -- "among other wrongful
18 disclosures of ChromaDex's trade secrets information,"
19 and then you -- you talk about two e-mails regarding
20 Live Cell.

21 What are the other wrongful disclosures of
22 trade secrets information that you're referencing in
23 here?

24 A You want to talk about all the different
25 disclosures?

1 Q Yeah. I just want to know, can we find it
2 anywhere in your report? Is it Schedule 15A?

3 A Well, I mean, I think I talk about it
4 throughout the report, and I think it's replete with
5 different things that they've disclosed. But 15A, I
6 think, summarizes --

7 And that's not intended to be an all-inclusive
8 summary, by the way. It's just -- it summarizes some
9 of the things that I saw that -- that indicate to me
10 that there was a -- you know, a disclosure of the
11 trade secrets that I defined in 15.

12 Q Okay. So it's -- it's 15 that's the
13 trade secrets or 15A that's the trade secrets?

14 A I think it's -- 15 talks -- it's that summary.
15 We just talked about that; right?

16 Q Okay.

17 A So let's see.

18 So 15 talks, in general, about the general
19 trade secrets. I think we discussed that.

20 And then 15A is a more granular representation
21 of those trade secrets.

22 Q Okay. And 15A, as we discussed earlier, also
23 includes confidential information?

24 A Yes.

25 Q And also includes proprietary information.

1 A Yes.

2 Q So it's not exclusively a list of
3 trade secrets.

4 A No.

5 Q So turning back to page 43 of your report.

6 You say, in the sentence we were just looking
7 at, "ChromaDex claims that, between July 15, 2015, and
8 July 18, 2015, Mark Morris improperly sent to Elysium
9 via e-mail information regarding Elysium's largest NR
10 competitor, Live Cell Research, regarding Live Cell's
11 sales and goals of NR" -- "and sales goals of
12 NR-containing products and business strategies."

13 Why are Live Cell's sales and sales goals and
14 business strategies ChromaDex trade secrets?

15 A Well, I don't think -- I really think that
16 it -- it's really the information from the sales
17 database that -- that contained that information that
18 is the trade secret. That's an example of some of the
19 information they had that should not have been shared
20 with Elysium but was shared with Elysium.

21 Q Well, let -- let's look at the footnote, 232,
22 all right, which is the footnote attached to the
23 sentence we just read. And you quote from an e-mail
24 Mr. Morris sent on July 15, 2015.

25 You start it out "The Clemens brothers along

1 with Josh Golder decided to take their skills in
2 copywriting and internet marketing to the world of
3 health and wellness."

4 Is that a ChromaDex trade secret?

5 A I think that the next sentence where they talk
6 about how many bottles they're selling per month and
7 then those types of things, I think, may be information
8 that was in the -- the sales database that is a
9 trade secret.

10 Q Okay.

11 A The specifics of what they're doing should not
12 be something that -- that Elysium got from ChromaDex.

13 Q Okay. Well, let's stick to the first
14 sentence.

15 Is the first sentence a ChromaDex trade
16 secret?

17 A I -- first of all, it's a legal question. So
18 I'm not going to --

19 Q Well, is your understanding of that that
20 that's a ChromaDex trade secret?

21 A I don't see anything in there that -- but
22 there might be. I don't see anything in there
23 personally.

24 Q "They launched Whole Body Research and
25 Key-" --

1 I think that's supposed to be Keybiotics.

2 A Yeah. I think the "O" and the "I" were
3 probably transposed.

4 Q -- "was selling 450,000 bottles per month when
5 Google shut them down in the middle of 2014."

6 Is that a ChromaDex trade secret?

7 A I think to the extent that that's part of the
8 information that is being claimed, for example, the
9 sales database, then yes. I don't think that that's
10 something --

11 They shouldn't know what their competitor was
12 selling.

13 Q And do you know what Keybiotics is?

14 A No.

15 Q Is that a product that competes with Elysium?

16 A I -- I don't know.

17 Q Is that a product that was sourced from
18 ChromaDex?

19 A I'm not sure.

20 Q "They were also selling 160,000 bottles of
21 garcinia."

22 Is that a ChromaDex trade secret?

23 A I'm not sure.

24 Q "Recently, they have been focusing on skin
25 care with Beverly Hills MD."

1 Is that a ChromaDex trade secret?

2 A I don't know. I don't think so, but I don't
3 know.

4 Q "That product is up to 600,000 bottles per
5 month."

6 Is that a ChromaDex trade secret?

7 A It -- it may be. I don't know.

8 Q "They are at 50,000 bottles per month of
9 NIAGEN and looked to double that in August and be at
10 250,000 bottles per month in early 2016."

11 Is that a ChromaDex trade secret?

12 A I would think that it is, yes.

13 Q Okay. So -- so you think quantities of
14 purchases are ChromaDex trade secrets.

15 A Yes, I do.

16 Q So if -- if -- here, it's Mark Morris telling
17 Elysium quantities of purchases from Live Cell, and you
18 think that he's sharing ChromaDex trade secrets.

19 A Yes.

20 Q Okay. So --

21 A And certainly breaching his fiduciary duty.
22 He just shouldn't be doing that.

23 Q Okay. So that would be true if others within
24 ChromaDex told other ChromaDex customers other customer
25 purchase volumes as well.

1 A Potentially, I guess.

2 Q Okay. So, for example, someone from ChromaDex
3 telling a competitor of Elysium the volumes Elysium was
4 purchasing would be sharing ChromaDex trade secret
5 information.

6 A I think that's potentially so.

7 Q Okay. In violation of their fiduciary duties
8 to ChromaDex.

9 A Potentially, yes.

10 Q Okay.

11 "They are at 50,000 bottles per month of
12 NIAGEN and looked to double that" --

13 I'm sorry. We read that.

14 "They are taking NIAGEN to the retail space
15 this year and are currently producing radio
16 commercials."

17 Is that a ChromaDex trade secret?

18 A The fact that that's what they're doing, I
19 believe it is. That's -- that's private. I mean, the
20 fact that they know that, it would seem to me -- at a
21 minimum, it's proprietary. Whether it's -- that
22 particular element's trade secret, I guess is more of a
23 legal question.

24 Q "This relationship is so volatile and can
25 completely fall apart at any moment."

1 Is that a ChromaDex trade secret?

2 A I think it is. I mean, the -- he shouldn't be
3 sharing how the relationship -- what the relationship's
4 like with another -- another competitor of Elysium.

5 Q Okay. So -- so information about the
6 relationship between Live Cell and ChromaDex --

7 A Potentially.

8 Q -- is a ChromaDex trade secret.

9 A Potentially.

10 Q Okay.

11 "It is a terrible existence from my
12 perspective."

13 Is that a ChromaDex trade secret?

14 A I -- I don't know. I wouldn't think so.

15 Q What did Elysium do with this information?

16 A I think they used it as part of their
17 strategy, and -- and it's -- it's just market
18 awareness. I mean, Elysium uses that as market
19 awareness since it's their biggest competitor. Knowing
20 what's going on with their biggest competitor is very
21 important to them.

22 Q So what specifically did they do with this?
23 Did they change their strategy in response to it?

24 A It helped shape what their strategy was. I
25 think it helped shape how they compete.

1 Q And where is that reflected?

2 A In -- in all of their business dealings.

3 Q And -- and you see that reflected? So -- so
4 you see a change in their strategy after July 15, 2015,
5 that reflects this information?

6 A Well, I think that their strategy eventually
7 became "Hey, we got to replace ChromaDex, and we got to
8 get, you know, another supplier."

9 So, yes, I think it did.

10 Q And what is this information having to do with
11 Elysium deciding it needed to find another supplier?

12 A Well, it's information about their most -- one
13 of their biggest competitors, and it helps them
14 understand what's going on in the marketplace, and it
15 helps them form their strategy of whether or not they
16 need to lower costs or, you know, whether -- what --
17 what they do, you know, what their strategy is.

18 Q If -- if Elysium subsequently learned that
19 ChromaDex was planning to eliminate Live Cell as a
20 customer, how would this inform their strategy?

21 A Again, it's just helping them understand
22 what's going on in the marketplace. If it's one of
23 your biggest competitors, I think that's -- that --
24 that is key to any kind of strategic decisions you
25 make.

1 Q Right. But I guess my question is -- you're
2 saying that -- that this information led to Elysium's
3 decision to seek an alternate source of supply.

4 A What I'm saying is there's a whole variety of
5 information including this. This is -- you might have
6 noticed that I said this is one example up there.

7 Q Right.

8 A So I'm not trying to make it all-inclusive.
9 I'm not trying to make it the most important piece of
10 information.

11 They received a variety of different
12 information, all of which was confidential, many of
13 which was a trade secret, and that helped them
14 formulate their strategy and decide how they were going
15 to proceed, and ultimately it helped them remain viable
16 as a company.

17 Q I guess I'm just trying to ask about --
18 I mean, this is the example you chose for your
19 report --

20 A Yes.

21 Q -- which is all I'm asking about it.

22 I guess what I'm asking is -- is: What
23 evidence have you seen that Elysium changed its
24 strategy using this information?

25 A I'm not sure. I think this is part of a

1 variety of different information that helped them, you
2 know, with their strategy to replace ChromaDex.

3 Q Right. But what -- what evidence have you
4 seen? Have you seen internal discussions at Elysium of
5 this information?

6 A I may have. I can't put my finger on it. I
7 may have.

8 Q Okay. What was that discussion?

9 A I don't know. I can't put my finger on it. I
10 think I said that before.

11 Q Turn to page 45 of your report.

12 You see the last sentence of the first
13 paragraph says "ChromaDex claims the trade secrets
14 information at issue provided Elysium with a
15 competitive advantage against its competitors and that
16 a competitive advantage has been attained by Elysium
17 through the use of ChromaDex's trade secret
18 and confidential information at issue"?

19 A Yes.

20 Q And you cite for that the fifth amended
21 complaint.

22 A Yes.

23 Q And you cite discussions with ChromaDex
24 personnel.

25 Tell me who from ChromaDex told you that.

1 A I mean, I think it -- it's part of the general
2 discussions with each of the people that we spoke to.
3 I mean, that's the general feeling at ChromaDex.

4 Q What, specifically, did you learn from these
5 discussions about this topic?

6 A Specifically that ChromaDex is upset and feels
7 like they've been wronged by both Mark Morris and
8 Elysium and that that's provided them a competitive
9 advantage in the marketplace; it allowed them to attain
10 financing; it allowed them to continue on as -- as a
11 company and all through the use of ChromaDex
12 information. That's the general feel from the people I
13 spoke to at ChromaDex.

14 Q And what information in particular did they
15 identify to you?

16 The variety of different e-mails and other
17 things that have been, you know, provided in this case.
18 It's, you know -- the ingredient sales spreadsheet,
19 number one. It seems to me that that's a very
20 important part of their -- their proprietary
21 information that they use. And the fact that that was
22 disclosed, different pieces were disclosed over time
23 through text messages, that ultimately it was given to
24 them, it was taken by Mr. Morris and downloaded onto
25 the computer, I think they felt -- they feel very

1 wronged by that. They feel like it gave them
2 advantage, and -- and I have calculated what that --
3 the value of that is for my damage report.

4 Q And -- and what use did Elysium make of the
5 ingredient sales spreadsheet?

6 A They used a variety of different things.
7 Their -- their different -- different information about
8 competitors, about the sales volumes they had, about --
9 it allowed them to negotiate with ChromaDex and -- and
10 ask for lower rates once they had knowledge about what
11 their -- the price that they paid for Grace to actually
12 make the product.

13 There was a variety of information that helped
14 them to strategically dec- -- make decisions about
15 what's going on.

16 Q All right. I'm going to parse it out.

17 The information about what ChromaDex paid to
18 Grace is not in the ingredient sales spreadsheet;
19 right?

20 A Fair enough.

21 Q Okay. So what use did Elysium make of the
22 Ely- -- the ingredient sales spreadsheet, which
23 ChromaDex alleged it received in July of 2016?

24 A Well, I think it was actually before that.
25 Many of the text messages and e-mails that Mr. Morris

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

17 

18 _____
19 Tricia Rosate, RDR, RMR, CRR, CCRR
20 CSR No. 10891
21
22
23
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25