

Exhibit 71

**REDACTED VERSION OF DOCUMENT PROPOSED TO BE
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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
(SOUTHERN DIVISION)

ChromaDex, Inc.,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	SACV 16-02277-CJC(DFMx)
Elysium Health, Inc.,)	
)	
Defendant.)	
_____)	
)	
Elysium Health, Inc.,)	
)	
Counterclaimant,)	
)	
v.)	
)	
ChromaDex, Inc.,)	
)	
Counter-Defendant.)	
_____)	

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION
IAIN MICHAEL COCKBURN, PH.D.
500 BOYLSTON STREET
BOSTON, MASSACHUSETTS 02166
TUESDAY, AUGUST 6, 2019
9:17 A.M.

Reported by:
CINDY L. SEBO, RMR, CRR, RPR, CSR, CCR, CLR, RSA
LIVEDEPOSITION AUTHORIZED REPORTER
JOB No. 19-81280

09:46 1 you mean by "counterclaims"?

2 Q. Did you review the document where
3 Elysium asserts counterclaims against Elysium in
4 this action?

09:46 5 MR. QUINA: Objection to form.

6 THE WITNESS: Against ChromaDex?

7 MR. QUINA: That's my objection.

8 BY MR. ANDERSON:

9 Q. Oh. Excuse me.

09:46 10 Did I say "against Elysium"? I meant
11 against ChromaDex. Forgive me.

12 A. Let me just -- I'm sure. Yeah, you
13 can see under Litigation Documents on Page 35,
14 Appendix C -- are you referring to the second
15 amended counterclaims, third amended
16 counterclaims? Is that what you mean by --

17 Q. Yes, the third --

18 A. Yes.

19 Q. -- amended counterclaims.

09:46 20 A. Yes.

21 Q. Are you familiar with those
22 counterclaims?

23 A. Generally, yes.

09:46 24 Q. Are you aware that Elysium has alleged
25 a counterclaim under Section 3.9 of the NR supply

09:47 1 agreement?

2 A. That being the MFN provision.

3 Q. Not the MFN provision.

4 A. 3.9?

09:47 5 Q. Section 3.9 of the supply agreement.

6 Are you familiar with --

7 A. You'd have to show me the agreement.

8 I haven't memorized the section numbers and the

9 content of them.

09:47 10 Q. Have you offered any opinion about any

11 breach of -- alleged breach of contract other than

12 the three that you discuss in Paragraph 8?

13 A. CGMP, is that what Section 3.9 refers

14 to? I'd have to go and look in my report.

09:47 15 Q. Without -- without referring to

16 specific sections, just looking at Paragraph 8,

17 because I don't want to confuse you, Doctor, the

18 three sections that you list in Paragraph 8 --

19 A. Yes.

09:47 20 Q. -- those are the only breach --

21 alleged breach of contract counterclaims on which

22 you offer an opinion; is that fair to say?

23 A. Yes, the MFN provision, the

24 exclusivity provision and the cGMP provision.

09:47 25 Q. If Elysium had alleged another breach

09:47 1 of contract, you're not offering an opinion on
2 that; is that right?

3 A. Not in this report, no.

4 Q. Okay. Are you aware that Elysium
09:48 5 alleged a counterclaim for breach of an implied
6 caveat of good faith and fair dealing?

7 A. It's possible.

8 Q. Are you offering an opinion on any
9 damages arising from that claim?

09:48 10 MR. QUINA: Objection.

11 THE WITNESS: Not in this report.

12 BY MR. ANDERSON:

13 Q. Are you aware that Elysium alleged a
14 counterclaim for fraudulent inducement of a
09:48 15 contract called the Trademark License and Royalty
16 Agreement?

17 A. I don't specifically recall fraudulent
18 inducement, but I'd have to --

19 THE COURT REPORTER: I'm sorry?

09:48 20 THE WITNESS: I don't specifically
21 recall fraudulent inducement. I'd have to
22 go back and look at the counterclaim.

23 BY MR. ANDERSON:

24 Q. Are you offering an opinion at all
09:48 25 related to a counterclaim for fraudulent

09:48 1 inducement?

2 A. Not in this report.

3 Q. Are you aware that Elysium alleged a
4 counterclaim for restitution for unjust enrichment
09:48 5 for royalties under the Trademark License and
6 Royalty Agreement?

7 A. It sounds somewhat familiar. Again,
8 I'd have to look at the counterclaim to be -- to
9 be clear.

09:49 10 Q. Okay. And are you offering any
11 opinion on an unjust enrichment claim for the
12 Trademark License and Royalty Agreement?

13 MR. QUINA: Objection to form.

14 THE WITNESS: Not in this report.

09:49 15 BY MR. ANDERSON:

16 Q. Okay. So those counterclaims that we
17 just discussed that you're not offering an opinion
18 in this report, are you offering those opinions
19 anywhere else in this case?

09:49 20 A. Not thus far, no.

21 Q. Okay. Now, looking at this report, do
22 you have any changes or amendments to the opinions
23 that you offer in here since you submitted on
24 June 21?

09:49 25 A. Not in substance, no. There might --

03:22 1 resveratrol-only or pterostilbene-only, so
2 some consumers would certainly buy those.

3 I think it's an unanswerable
4 question, based upon the -- the data that's
03:22 5 in the record here, that's available to us,
6 as to the question I'm addressing, given
7 the lack of perfect substitutability as
8 between Basis, as a combination NR plus
9 sirtuin activator and some of these other
03:22 10 products.

11 I've -- I've been careful to
12 identify where I think there may be good
13 reason to believe that some customers in a
14 counterfactual world in which the
03:22 15 combination MitoBoost, for example, was not
16 available. Some fraction of those, I
17 think, would have switched -- would have
18 been willing to buy Basis, and in this
19 counterfactual world, we could consider
03:23 20 their demand to be allocated to Basis.

21 Others may not for the reasons that I lay
22 out here. They might have found pill
23 splitting inconvenient or difficult. They
24 might not have found Elysium's Web site
03:23 25 retail something they wanted to do as

03:23 1 opposed to wherever they were buying
2 MitoBoost.

3 Those, I think, are real
4 possibilities. I take a count of them in
03:23 5 arriving at my opinion. Unfortunately,
6 there's a relatively wide band of
7 uncertainty around how much of that demand
8 could be reasonably assumed to be taken up
9 by Basis in a counterfactual world and for
03:23 10 how much of it consumers would have gone
11 elsewhere.

12 BY MR. ANDERSON:

13 Q. So when you referenced the wide band
14 of uncertainty, it's this last line that begins,
03:23 15 Based on my knowledge and experience --

16 A. Yes.

17 Q. -- in analyzing demand for
18 pharmaceutical and OTC products?

19 A. Yes.

03:24 20 Q. And you conclude at the end that in
21 your opinion, As much as 90 percent, but no less
22 than 10 percent, of the volume of MitoBoost sales
23 could have been captured in the but-for world by
24 the equivalent amount of Basis sales.

03:24 25 A. Yes.

03:24 1 Q. Now, 90 percent to 10 percent is the
2 wide band that you were referencing?

3 A. Yes.

4 Q. And other than your experience and
03:24 5 knowledge in analyzing demand for pharmaceutical
6 and OTC products, did you rely on anything else
7 when coming to your conclusion that between 90 and
8 10 percent of MitoBoost sales would have been --
9 could have been captured?

03:24 10 A. Yes. It was my evaluation of this
11 marketplace, these products, their pricing,
12 volumes, you know, in light of my -- and I'll cast
13 modesty -- modesty to the winds -- considerable
14 expertise in studying demand for prescription and
03:24 15 OTC pharmaceuticals suggest to me that these are
16 reasonable bounds within which the trier of fact
17 could determine that a counterfactual volume of
18 sales would lie.

19 Q. Okay. Did you conduct any formal
03:25 20 economic analysis to establish the 90 and
21 10 percent numbers?

22 MR. QUINA: Objection to form.

23 THE WITNESS: What do you mean by
24 "formal economic analysis"?

25

03:44 1 the four ingredients here.

2 Where did those numbers come from?

3 A. Those are the ones which I think
4 counsel for Elysium obtained through third-party
03:44 5 discovery from Thorne, LEF and Vitaquest.

6 Q. So those are the actual sales made by
7 those companies as far as the --

8 A. During the relevant period, yes.

9 Q. And next, it shows Basis equivalent
03:44 10 bottles, and --

11 A. Yes.

12 Q. -- those calculations are based off of
13 the -- the -- the pill splitting that we discussed
14 earlier?

03:44 15 A. Yes.

16 Q. Okay. Did you ever calculate how much
17 in NR it would have required Elysium to have in
18 inventory in order to sell those bottles?

19 A. Not explicitly. I certainly
03:45 20 considered, in doing -- performing this
21 calculation -- we're talking about a -- a
22 but-for world here. So, you know, I don't assume
23 the order quantities by Elysium to ChromaDex would
24 have necessarily been the same as they would have
03:45 25 been in the actual world.

1 Q. I'm sorry. What do you mean by you
2 don't assume the order --

3 A. To the -- to the extent that Elysium
4 would have needed to acquire more NR and more
5 pterostilbene to meet this extra volume, I assume,
6 in the but-for world, that they would have ordered
7 that from -- from ChromaDex under the terms that
8 were -- that were available to them.

9 We're talking about a but-for world
10 here, and no reason to believe that they would not
11 have ordered if they needed extra as compared to
12 their inventory level and that ChromaDex would not
13 have supplied it.

14 Q. So you -- you assume that they would
15 have ordered more and that ChromaDex would have
16 provided it?

17 A. Yes. We know that ChromaDex had a lot
18 of excess inventory.

[REDACTED]

04:36 1 reviewing comparable NR customers, that they had
2 different purchase patterns, they purchased
3 different order sizes at different times?

4 MR. QUINA: Objection to form.

04:36 5 THE WITNESS: Each company doesn't
6 order the same amount in every month, no.

7 BY MR. ANDERSON:

8 Q. Okay. Now, in the year 2016, if you
9 go over to the Elysium volume per kilogram, it
04:36 10 says, 1,500 kilograms.

11 Why did you not include the July 1
12 invoice from Elysium for 3,000 kilograms of NR?

13 A. I don't think that was a fair
14 comparison. At that point -- at that point, I
04:37 15 think Elysium had grown skeptical about the nature
16 of their agreement with ChromaDex and at what
17 point they became aware that they were purchasing
18 non-cGMP-compliant material that last -- I
19 ordinarily recall was at a much lower price, I
04:37 20 think one of the reasons it was low is because at
21 that point, they had become aware that it was not
22 cGMP compliant.

23 Q. So from your memory, Elysium was aware
24 as of June 30th, 2016, that the product it was
04:37 25 purchasing was not cGMP compliant?

04:37 1 A. I don't recall exactly at what point
2 they became aware. I just think, to be
3 conservative, I'm not including that large order
4 since it's unclear to me at what point the
04:37 5 renegotiated price that Elysium obtained did or
6 did not include an understanding that there
7 were -- their belief that it was cGMP-compliant
8 material might have -- might have started to
9 erode.

04:38 10 Q. Okay. Was there any other reason that
11 you didn't include that \$3,000 volume?

12 A. No.

13 MR. QUINA: Objection to form.

14 You said "\$3,000."

04:38 15 BY MR. ANDERSON:

16 Q. Excuse me. 3,000-kilogram order.

17 You said that -- that the June 30th
18 order, the July 1 invoice was at a lower price for
19 Elysium; is that right?

04:38 20 A. That's right.

21 Q. If you included that in your
22 calculation for the Elysium price, do you know if
23 that would drop below the but-for price?

24 A. I don't know.

04:38 25 Q. If it did, would that entitle Elysium

1 REPORTER'S CERTIFICATE

2 I, Cindy L. Sebo, Federally Certified
3 Shorthand Reporter, do hereby certify that the
4 deponent was duly sworn and the foregoing testimony
5 was reported by me and was thereafter transcribed
6 with computer-aided transcription; that the
7 foregoing is a full, complete, and true record of
8 said proceedings.

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

14 The dismantling, unsealing, or unbinding of
15 the original transcript will render the reporter's
16 certificate null and void.

17 In witness whereof, I have hereunto set my
18 hand this day: August 8, 2019.

19 _____ Reading and Signing was requested.

20 _____ Reading and Signing was waived.

21 XXXXX Reading and Signing was not requested.

22
23 

24 _____
25 CINDY L. SEBO, RMR/CRR/RPR/CSR/CCR/CLR/RSA
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