

Exhibit 47

**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 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 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 value to them. It didn't allow them to continue on."
2 It may change it in some way.

3 Q In what way would it change it?

4 A I -- I don't know. I'd have to think about
5 it. It's a -- it's a very complicated thing you just
6 asked me because there's hundreds of different pieces
7 of information here, and you're saying, "Hey,
8 Mr. Gunderson, ignore all that other stuff and just say
9 there's one little thing that they had," and I'd have
10 to think about that. I don't know.

11 Q Okay. Looking at your report, is there any
12 way the jury could determine damages attributable
13 solely to the information related to Genomatica?

14 A I guess they potentially could. They'd have
15 to take the information I have, and they would have
16 to -- to look at what -- the damages number that I came
17 up with, and they would have to figure out what -- what
18 the value is based on what I give them.

19 Q And how would they do that?

20 A I -- I don't know. It would be up to them.

21 Q Okay. So you would give them -- you would say
22 Elysium's entire -- the entirety of Elysium's profits
23 are X, and then the jury would decide the Genomatica
24 damages are X minus whatever.

25 A The -- I guess they would -- I mean, this is a

1 cost was from Grace. They then went to their -- when
2 they were doing their \$20 million financing, they went
3 to them and said, "Hey, we can do it for, you know,
4 [REDACTED]."

5 They -- they were -- they had a number out
6 there that was even lower than the [REDACTED] that Grace did,
7 and I think that's part of what they were doing.
8 They -- they knew that there was this other method that
9 might be able to lower the cost. So that's why they
10 were using that number to talk to their refinance
11 people.

12 Q When you say "their refinance people," what
13 were they refinancing?

14 A Well, "refinance" is probably the wrong word.
15 They needed capital. They needed \$20 million capital.
16 So I don't know that they refinanced. I misspoke.
17 Their finance. Their financing.

18 Q You talk about the \$[REDACTED] number. If
19 ChromaDex's CEO and executive vice president of sales,
20 whatever his title is, told Elysium during their price
21 negotiations on the June 30th order what their margins
22 were, would that impact your opinion at all on how the
23 \$[REDACTED] number was used ultimately?

24 A No. That's -- I mean, that's just one
25 negotiation amongst many.

1 Q Can you --

2 A So --

3 Q -- figure out, if you know someone's margins
4 and you know the price at which they're selling, what
5 their cost is?

6 A You can.

7 Q So if Elysium figured out what ChromaDex's
8 costs were from information given them by ChromaDex's
9 CEO, would that impact, at all, your opinions on how
10 Elysium used the [REDACTED] number it received from
11 Mr. Morris?

12 A No. I still think -- they were -- they
13 disclosed that at a much earlier time frame as well.
14 They -- I think they disclosed it -- I want to say they
15 disclosed it in a text, but I don't think that was the
16 only time that that was disclosed.

17 Q How much earlier?

18 A I don't know.

19 Q Days?

20 A I don't know. I don't know. I don't know.

21 Q When did Elysium use the [REDACTED] number to its
22 benefit?

23 A I think that they used it in the --

24 I told you about the negotiation or when they
25 got their financing. I think that's one time that I

1 trying to lower that cost.

2 Q That there would be a new method of
3 manufacture by the end of 2016 or the first quarter of
4 2017?

5 A You'd have to ask him, ultimately. It could
6 be a hyperbole for all I know.

7 Q Well, I guess my question is: Why are you
8 expressing an opinion that this information, which
9 doesn't relate to the cost ChromaDex was paying, was
10 derived from ChromaDex confidential information rather
11 than any other?

12 MR. ANDERSON: Objection. Mischaracterizes
13 testimony.

14 THE WITNESS: I think it does. It does. I
15 think what I said was that they knew -- they had a
16 baseline. They knew it was [REDACTED] and they knew that
17 they might be able to lower the cost somehow, maybe
18 through the Genomatica research.

19 I think that's -- that's part of the reason
20 why he was able to -- or he said that. Whether that
21 actually, you know, came to pass, I guess that's a
22 different question at this point.

23 Q Well, I guess my question is --

24 A He used that to -- to get financing.

25 Q How do you know that this is derived from

1 disclosure, I think is the -- that's the way I read
2 that.

3 Q But how do you read B?

4 A Well, I was reading A first.

5 Q Right. So now read B.

6 A Yeah. I still -- the way I read this is
7 it's -- it's private until it's, you know, public.

8 Q How do you get that from reading Clause B?

9 A I just -- that's the way I understand --
10 that's the way I understand it to work. I don't know.
11 I mean, at the end of the day, this is a legal
12 question. So I don't know why it matters what I think
13 one way or the other about that. It's a legal issue.

14 Q Well, what, if anything, would it do to your
15 damages analysis if it turns out that the NR study data
16 was not, in fact, confidential?

17 A I think my overall analysis remains the same.

18 Q Because you don't parse out damages
19 attributable to any piece of information.

20 A That's right.

21 Q If you look in the next paragraph, "ChromaDex
22 claims that Elysium breached" --

23 A Oh. I'm sorry. Where are we at again?

24 Q Sorry. Page 53.

25 A Okay.

1 Q Now the bottom paragraph.

2 "ChromaDex claims that Elysium breached the
3 pTeroPure Supply Agreement by disclosing the pTeroPure
4 GRAS Report to Elysium's regulatory consultants in
5 order to prepare an NDI submission to the FDA and a
6 GRAS report involving a pterostilbene manufactured by a
7 non-ChromaDex supplier."

8 Did Elysium ever make an NDI submission to the
9 FDA?

10 A I don't know.

11 Q Is the fact whether Elysium did or didn't
12 relevant at all to your analysis?

13 A It may. I mean, they may have still prepared
14 one but never submitted it, I suppose.

15 Q And, in your view, would that be a benefit to
16 them?

17 A It -- it could be, I suppose. I don't know.
18 I haven't really thought that through.

19 Q Did Elysium ever secure GRAS status for
20 pterostilbene manufactured by a non-ChromaDex supplier?

21 A I -- I don't -- I don't have personal
22 knowledge of that. I would think that they did, but I
23 don't have personal knowledge of that.

24 Q Why would you think that they did?

25 A I think, if they're going to sell something, I

1 think it needs to, at some point, be generally
2 recognized as safe.

3 Q And what's the basis of that opinion?

4 A I don't know. I don't have a -- I don't have
5 or that.⁶

6 If Elysium didn't secure GRAS status
7 pterostilbene manufactured by a non-ChromaDex supplier,
8 would that impact your analysis at all?

9 A I don't think so. Again, there are just too
10 many elements here, and I haven't broken them out as we
11 talked about before.

12 Q Turn to page 59, please, of your report,
13 Exhibit 1.

14 You'll see the first full sentence on that
15 page reads "Examples from documents I have reviewed
16 reflecting Mark Morris's breach of fiduciary duty
17 include at least the following:"

18 A Is that from --

19 Are we talking 59?

20 Q 59, first sen- -- first full sentence.

21 A Okay. Yep.

22 Q Are you expressing an opinion that Mr. Morris
23 breached his fiduciary duty to ChromaDex?

24 A I think that's a legal question. I -- I'm
25 not -- I'm certainly not a legal expert on this issue,

1 it. That's my opinion.

2 Q And it's your opinion that ChromaDex would
3 have borrowed the same amount even had its other
4 customers paid.

5 A Well, let's be clear. I don't think they ever
6 borrowed that money. I don't -- this is really just
7 the cost to get -- get it up and going. I think that
8 they -- they just got the line available. I don't know
9 that they ever drew on the line.

10 Q Page 116 of your report starts a discussion of
11 Mr. Morris's compensation.

12 You say, on the bottom of page 117, the last
13 sentence, "I understand that ChromaDex may be entitled
14 to all, or a portion, of these compensation elements
15 due to ChromaDex's claims for misappropriation of
16 trade secrets, breach of contract and/or breach of
17 fiduciary duty against Mark Morris."

18 Is there anything in your report that speaks
19 to how these compensation elements, as you describe
20 them, should be apportioned?

21 A No.

22 Q You have a section called "Breach of Contract"
23 on page 118 of your report.

24 And on the top of page 119, you say "I
25 understand from Counsel that the damages remedies

1 discussed above under my analysis of trade secret
2 misappropriation damages are also acceptable damages
3 remedy" -- "damages remedies for Elysium's breaches of
4 the Supply Agreements between the parties."

5 That's --

6 What did counsel tell you about that?

7 A I think they told me what -- basically what I
8 just said there.

9 Q Okay. Just so I'm clear, when you talk about
10 your discussion or your analysis of trade secret
11 misappropriation damages, what -- what pages of your
12 report are you pointing to here?

13 A I'm really pointing to the -- the -- the
14 calculations, the damages calculations and the -- you
15 know, the -- the amounts.

16 Q So -- so maybe we can look at your table of
17 contents, and that might be the easiest way for you to
18 tell me, you know, where the analysis of trade secret
19 misappropriation damages is.

20 A Well, I have a summary of opinions, and
21 then --

22 Q Is it pages 84 to 118?

23 A That's where I talk about it. I mean, that's
24 damages on just enrichment calculations. So those are
25 the calculations right there. Yes.

1 Q Okay. So -- so let's just flip through so I
2 can make sure I'm understanding all of this.

3 That includes the -- the "Elysium's Profits"
4 analysis that begins on page 86?

5 A Yes.

6 Q And -- and that analysis is based on alleged
7 misappropriated trade secrets; correct?

8 A Yes.

9 Q Alleged misuse of confidential information;
10 correct?

11 A Yes.

12 Q Alleged misuse of proprietary information?

13 A Yeah. All -- yes.

14 Q And alleged aiding and abetting of
15 Mr. Morris's fiduciary duty, breach of fiduciary duty.

16 A Yes.

17 Q Okay. And you were told by counsel that all
18 of those same damages are applicable to the breach of
19 contract claim.

20 A Yes.

21 Q Okay. So flipping forward, we then have
22 "Elysium's Avoided Costs and Accelerated Entry." And
23 that's on page -- sorry -- 92 it starts.

24 And you were told by counsel that all of the
25 alleged damages included in here are properly sought

1 under the breach of contract claim?

2 A Yes.

3 Q And then 99 to 123, the unpaid sales
4 invoices -- I'm sorry -- 99 to 101, the unpaid sales
5 invoices, you were told by counsel that those damages
6 are properly recoverable under the breach of contract
7 claim?

8 A Yes.

9 Q Were you told by counsel that the amount of
10 the unpaid sales invoices are appropriate damages for
11 the trade secret misappropriation claim?

12 A I don't recall that. I think those are fairly
13 straightforward. I don't recall that being part of the
14 trade secret claim.

15 Q Why is it in your report under the
16 trade secret misappropriation damages?

17 A I don't know.

18 Q Should it be somewhere else?

19 A Not necessarily. I mean, it's -- it's just an
20 element of the damages.

21 Q Okay.

22 A Ideally, maybe it could be somewhere else, but
23 it's -- I don't know that it matters.

24 Q Okay. And then next is the price discount,
25 which is on 101 to 103. You were told by counsel that

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