

## **EXHIBIT 2**

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

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

CHROMADEX, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.
	)	No. SACV 16-02277-CJC
ELYSIUM HEALTH, INC.,	)	
	)	
Defendant.	)	
	)	
ELYSIUM HEALTH, INC.,	)	
	)	
Counterclaimant,	)	
	)	
vs.	)	
	)	
CHROMADEX, INC.,	)	
	)	
Counter-Defendant.	)	
	)	

HIGHLY CONFIDENTIAL

DEPOSITION OF

ERIC MARCOTULLI

NEW YORK, NEW YORK

MARCH 27, 2019

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

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

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9 Defendant. )  
10 ELYSIUM HEALTH, INC., )  
11 Counterclaimant, )  
12 vs. )  
13 CHROMADEX, INC., )  
14 Counter-Defendant. )

15  
16  
17 VIDEOTAPED DEPOSITION of DEFENDANT AND  
18 COUNTERCLAIMANT ELYSIUM HEALTH, INC., by ERIC  
19 MARCOTULLI, taken pursuant to Notice, on behalf of  
20 the Plaintiff and Counter-Defendant, held at Cooley,  
21 LLP, 1114 Avenue of the Americas, New York, New  
22 York, commencing at 9:14 a.m., on Wednesday, March  
23 27, 2019, before Kathleen T. Keilty, a Certified  
24 Shorthand Reporter and Notary Public within and for  
25 the State of New York.



1 A P P E A R A N C E S:

2

3 For Plaintiff & Counterclaimant:

4 COOLEY, LLP  
5 BY: MICHAEL A. ATTANASIO, ESQ.  
6 401 Eastgate Mall  
7 San Diego, California 92121-1909  
8 858.550.6020  
9 mattanasio@cooley.com

8

9 For Defendant & Counter-Defendant:

10 BAKER & HOSTETLER, LLP  
11 BY: JOSEPH N. SACCA, ESQ.  
12 -and-  
13 DARLEY MAW, ESQ.  
14 45 Rockefeller Plaza  
15 New York, New York 10111-0100  
16 212.847.2869  
17 jsacca@bakerlaw.com  
18 dmaw@bakerlaw.com

14

15

16 ALSO PRESENT:

16

17 Mark Friedman, General Counsel for ChromaDex

18 Thomas E. Wilhelm, Ph.D., General Counsel Elysium

19 Chris Johnson, Videographer

20

21

22

23

24

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1 NEW YORK, NEW YORK

2 MARCH 27, 2019

3

09:13:04 4 THE VIDEOGRAPHER: We are now on the  
5 record. My name is Chris Johnson of the  
6 Sullivan Group. The date today is Wednesday,  
7 March 27, 2019. The time on the video monitor  
8 is approximately 9:14 a.m.

09:13:19 9 This deposition is being held in the  
10 office of Cooley, LLP, located at 1114 Avenue of  
11 the Americas, New York, New York. The caption  
12 of this case is ChromaDex, Incorporated, versus  
13 Elysium Health, Incorporated, in the United  
14 States District Court, the Central District of  
09:13:38 15 California, Southern Division. Case No. SACV  
16 16-02277-CJC. The name of the witness is Eric  
17 Marcotulli.

09:14:00 18 At this time, the attorneys present  
19 will identify themselves and the parties they  
20 represent, after which our court reporter, Kathy  
21 Keilty, will swear in the witness and we can  
22 proceed.

09:14:09 23 MR. ATTANASIO: Mike Attanasio, on  
24 behalf of Plaintiff ChromaDex. With me is Mark  
25 Friedman of ChromaDex.

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

4 WHEREUPON,

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

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

11 EXAMINATION

12 BY MR. ATTANASIO:

13 Q. Good morning, sir.

14 A. Good morning.

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

17 A. I am.

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

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

21 Q. What year was the company founded?

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

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

1 Elysium?

2 A. Yes, he is.

3 Q. Was he there in the beginning on the  
4 date you just mentioned?

09:15:08 5 A. I don't recall if he was on the very  
6 first filing of the paperwork.

7 MR. ATTANASIO: Let me show you what  
8 we'll mark as our next exhibit in order,  
9 No. 132.

09:15:28 10 (Whereupon, Exhibit 132, article from  
11 IdeaMensch, is marked for identification, as of this  
12 date.)

13 Q. Do you recognize that, sir, as an  
14 article that appeared in on online publication  
09:15:37 15 called IdeaMensch?

16 A. I mean, I'm not familiar with the  
17 article, but I can see it.

18 Q. Is that a picture of you on the first  
19 page?

09:15:48 20 A. It looks like it.

21 Q. Is the rest of the article a Q and A,  
22 questions and answers, that you provided to the  
23 publication?

24 A. I don't recall.

09:16:11 25 Q. If you look at the front



1 page underneath the big picture of you in the lower  
2 left corner of the large picture, there's a date, it  
3 says posted on November 24th, 2017.

4 Do you see that?

09:16:24 5 A. I do.

6 Q. Do you have any memory of giving an  
7 interview to this publication --

8 A. I do not.

9 Q. -- on November 24th, 2017?

09:16:33 10 A. I do not.

11 Q. Or around that time?

12 A. I do not.

13 Q. If you look at the second page where  
14 there's text, do you see the first question, "Where  
09:16:41 15 did the idea for Elysium Health come from?"

16 Do you see that?

17 A. Yes.

18 Q. In the third paragraph of the answer  
19 that's posted there, the first sentence reads,  
09:16:52 20 "Working with Lenny was significant because he's  
21 such a well-respected scientist."

22 Do you see that?

23 A. I do.

24 Q. Do you consider that to be a true  
09:17:02 25 statement?

1 A. Absolutely.

2 Q. Why is that?

3 A. Lenny has made multiple contributions  
4 to the field of aging. He's a pioneer in that  
09:17:12 5 field. He took on that research when aging was  
6 considered a bad word in the scientific community.  
7 He demonstrated --

8 THE COURT REPORTER: He demonstrated?

9 A. -- that there were fundamental  
09:17:24 10 processes associated with aging across different  
11 organism types.

12 And I think the stature of our  
13 scientific board speaks to Lenny's accomplishments.  
14 They would not have joined us in an advisory  
09:17:39 15 capacity had they not had respect for Lenny. So I  
16 think the validation is very much in the  
17 association.

18 Q. Could you turn to the next page,  
19 please? Do you see that there's a question at the  
09:17:54 20 top, "How do you bring ideas to life?"

21 Do you see that?

22 A. Mm-hmm. Yes.

23 Q. You have to say yes.

24 And then in the first paragraph of that  
09:18:02 25 answer, in the third sentence it reads, "We knew we

1 had a great idea for Elysium, but having Lenny,  
2 (Dr. Guarente), as a co-founder makes all the  
3 difference because he's one of the smartest people  
4 when it comes to the molecular and genetic  
09:18:20 5 mechanisms of aging."

6 Is that a true statement?

7 A. It's a true statement in the context of  
8 my opinion, yes.

9 Q. Was that your opinion at the time,  
09:18:32 10 November 2017?

11 A. It was, and it remains as such.

12 Q. Looking at the -- well, let's hold  
13 there for a moment.

14 Actually, let's go to the next  
09:18:44 15 paragraph. You say, "Our scientific advisory board  
16 is another great example. We are fortunate to be  
17 advised by a network of more than 20 world-renowned  
18 researchers and clinicians, including seven Nobel  
19 Prize-winning scientists, who help guide the  
09:19:01 20 direction of our company. Their expertise in areas  
21 like clinical trial design and new product discovery  
22 is invaluable."

23 Do you see that sentence?

24 A. I do.

09:19:13 25 Q. Was that a true statement in

1 November 2017?

2 A. Yes.

3 [REDACTED]

[REDACTED]

09:19:27 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

09:19:34 [REDACTED]

[REDACTED]

[REDACTED]

13 Q. Other than Basis, have any of those  
14 products gone to market?

09:19:45 15 A. They have not.

16 Q. What's the next one that's closest to  
17 going to market?

18 A. We don't disclose that.

19 Q. You don't want to disclose that now?

09:19:53 20 A. No.

21 Q. Okay. When do you expect a product  
22 might go to market other than Basis?

23 A. Again, we don't disclose that.

24 MR. ATTANASIO: Let me show you what

09:20:05 25 we'll mark as Exhibit 133.

1 (Whereupon, Exhibit 133, text messages  
2 between Eric Marcotulli and Daniel Alminina in  
3 and around January 2017, is marked for  
4 identification, as of this date.)

09:20:29 5 Q. Is your cell phone number

6 [REDACTED]

7 A. Yes.

8 Q. Was that your cell number in 2017?

9 A. Yes.

09:20:42 10 Q. Did you communicate from time to time  
11 with Mr. Alminana and others via WhatsApp texting?

12 A. Yes.

13 Q. Do you recognize what I've shown you as  
14 Exhibit 133 as text messages you exchanged with  
09:20:59 15 Mr. Alminana in and around January 2017 that were  
16 produced in this litigation?

17 A. I see them in front of me.

18 Q. Okay. Let's look at the first one, row  
19 479. And what I'll be doing with text messages  
09:21:19 20 throughout the day, Mr. Marcotulli, is directing you  
21 to a page and a row number.

22 You see how that's structured there?

23 A. I do.

24 Q. All right. You write to Mr. Alminana,  
09:21:29 25 "Know I'm putting you in a bad spot with my email,

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1 but I'm fucking done. Lenny can do what he wants.  
2 Everyone is a huge piece of shit. I can't keep  
3 doing this, and I'm taking the day off."

4 Have I read that correctly?

09:21:46 5 A. I believe you have.

6 Q. Did you write that to Mr. Alminana on  
7 January 6th, 2017?

8 A. I don't recall.

9 Q. Why would you have been writing to  
09:21:55 10 Mr. Alminana in January 6th, 2017 in such  
11 disparaging terms about Dr. Guarente?

12 A. There have been occasions in the  
13 history of the company where Lenny has gone beyond  
14 his purview as chief scientist and frustrated us  
09:22:16 15 with communications, for instance, with media. We  
16 have very strict policies around how we communicate  
17 with the press, how we communicate with customers.  
18 And there have been multiple instances that have  
19 frustrated us with respect to Lenny where we would  
09:22:30 20 have preferred that he had not engaged either  
21 reporters or customers that have reached out to him  
22 or others without following the appropriate company  
23 procedures.

24 In no way, shape or form does this  
09:22:42 25 inform or change my opinion of him as a scientist or

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1 his ability to conduct himself as our chief  
2 scientist.

3 Q. Who is Mr. Alminana, by the way?

4 A. Who he is.

09:22:53 5 Q. Yes?

6 A. He's our third co-founder --

7 THE COURT REPORTER: I'm sorry, he's  
8 what?

9 A. He's our third co-founder and our chief  
09:22:59 10 operating officer.

11 Q. In the message that I read, is it  
12 accurate that Lenny is a reference to Dr. Guarente?

13 A. I would say that is fair, yes.

14 Q. What did you mean when you told  
09:23:10 15 Mr. Alminana, your other co-founder, "I know I'm  
16 putting you in a bad spot with my email, but I'm  
17 f'ing done"?

18 What did you mean by that?

19 A. I don't know.

09:23:20 20 Q. No memory at all?

21 A. No memory at all.

22 Q. Is this consistent with how you  
23 communicate, the words you use with your co-founder,  
24 Mr. Alminana?

09:23:31 25 A. On occasion, if we're frustrated.

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1 Q. Were you frustrated, fair to say, on  
2 this day, January 6th, 2017?

3 A. It's possible.

4 Q. Do you remember why?

09:23:40 5 A. I do not.

6 Q. In reading this, do you think it's only  
7 possible you were frustrated or are you fairly  
8 certain you were frustrated?

9 A. I can't say.

09:23:52 10 Q. Can't infer that one way or the other  
11 from this email?

12 A. I'd rather not speculate.

13 Q. You don't have to speculate.

14 A. Then I won't.

09:24:01 15 Q. What did you mean when you said, "I  
16 can't keep doing this, and I'm taking the day off"?

17 A. I don't know what the first part of the  
18 sentence refers to, but it seems that I wanted to  
19 take the day off.

09:24:12 20 Q. Why?

21 A. I can't recall.

22 Q. What did you mean when you said,  
23 "Everyone is a huge piece of shit"?

24 A. I don't know.

09:24:22 25 Q. Who's everyone?



1 A. I do not know.

2 Q. Okay. Let's turn to page 3, row 497,  
3 middle of the page.

4 Do you see a message from Mr. Alminana  
09:24:40 5 to you, row 497? Do you see that, sir?

6 A. Yes, I do.

7 Q. What did Mr. Alminana write to you?  
8 You can read it.

9 A. I see it.

09:24:52 10 Q. You can read it.

11 A. I mean, I prefer not to.

12 Q. Please do.

13 A. "What the fuck is wrong with Lenny?"

14 Q. Row 498, he writes to you again,  
09:25:05 15 15 minutes later.

16 What does he say to you then,  
17 Mr. Marcotulli?

18 A. This is row 498?

19 Q. Yes, sir.

09:25:14 20 A. "What are we going to do with Lenny?  
21 Did you see his last email?"

22 Q. What is that about? What is he  
23 referring to, Mr. Alminana?

24 A. I don't know.

09:25:24 25 Q. No memory at all?

1 A. No.

2 Q. Let's turn to page 6, row 521.

3 Do you see row 521?

4 A. Yes, I do.

09:25:48 5 Q. What did Mr. Alminana write to you on  
6 that same day, January 6th, 2017, at 2:56?

7 A. You said row 521?

8 Q. Yes.

9 A. "Lenny has to step up today or we need  
09:26:08 10 to talk to Fialkow and Manzi about replacing him."

11 Q. Who is Fialkow?

12 A. Fialkow refers to David Fialkow of  
13 General Catalyst Partners, a venture fund who led  
14 our Series B financing. David is one of our board  
09:26:28 15 of directors members.

16 Q. Who is Mr. Manzi?

17 A. This refers to Jim Manzi, also a board  
18 member, also an investor. Jim was a large portion  
19 of our Series A financing.

09:26:39 20 Q. How did you respond to Mr. Alminana's  
21 statement that "Lenny has to step up today or we  
22 need to talk to Fialkow and Manzi about replacing  
23 him?" And you'll find that in row 522.

24 A. "Yup."

09:26:53 25 Q. How did you respond?

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1 A. "Yup."

2 Q. And did you believe on January 6th,  
3 2017 that Mr. Guarente could possibly be replaced if  
4 he didn't "step up"?

09:27:09 5 A. I don't recall.

6 Q. What did Mr. Alminana -- what did you  
7 understand Mr. Alminana to mean when he said, "Lenny  
8 has to step up today"?

09:27:22 9 A. I really don't know. I would need much  
10 more context around the discussion.

11 Q. What did you need Mr. -- Dr. Guarente  
12 to step up and do?

13 A. I do not know.

09:27:40 14 Q. Do you remember trying to take away  
15 Dr. Guarente's stock potentially if he didn't step  
16 up?

17 A. I don't recall.

18 Q. Does he own shares in Elysium,  
19 Dr. Guarente?

09:27:51 20 A. Yes, he does.

21 Q. How many?

22 A. I don't know the share quantity.

23 Q. What percentage of the company?

09:28:00 24 A. Lenny owned a rather significant  
25 portion of the founders' initial equity. I don't

1 recall the specific percentage.

2 Q. Can you give me an approximation of how  
3 much, by percentage, Dr. Guarente owned as of  
4 January 2017?

09:28:14 5 A. This is confidential information that  
6 we don't share.

7 Q. You can share it in this case.

8 A. Lenny [REDACTED]

[REDACTED]

09:28:26 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

09:28:39 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

09:28:49 [REDACTED]

[REDACTED]

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09:29:08 [REDACTED]

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Q. If you could turn to page 8, please,  
row 533. Do you see a text from you that says  
"Could we buy back a founders' stock," and then in  
row 534, "e.g., Kelley or Lenny."

Do you see that?

A. Yes.

Q. Who is Kelley?

A. Kelley refers to Kelley Mandor, my  
ex-wife.

Q. So here you are talking about -- we'll  
leave her aside -- here you're talking about an idea  
to buy back a founders' stock referring to  
Dr. Guarente, correct?

A. I can't say for certain, but it appears  
that way.

Q. Why were you considering buying back  
Dr. Guarente's stock?

A. I don't recall. This is almost -- more  
than two years ago.

Q. Well, is it an insignificant event for  
you to be considering taking back the stock of a

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1 co-founder, or is that something that happens all  
2 the time?

3 A. It happens with frequency.

4 Q. How many times have you considered  
09:30:43 5 taking Dr. Guarente's stock back?

6 A. I couldn't say.

7 Q. More than one?

8 A. I don't know.

9 Q. More than five?

09:30:51 10 A. I don't know.

11 Q. No idea?

12 A. No clue.

13 Q. Could be a hundred?

14 A. I don't know.

09:31:00 15 Q. Well, on January 6th, 2017, do you  
16 remember being so frustrated with Dr. Guarente that  
17 you called him all sorts of foul names and asked to  
18 take his stock back -- considered taking his stock  
19 back?

09:31:15 20 A. Are we looking at something?

21 Q. No, I'm asking a question?

22 A. Could you repeat it, please?

23 Q. Sure.

24 Do you remember, on January 6th, 2017,  
09:31:22 25 being so frustrated with Dr. Guarente that you

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1 called him all kinds of foul names and considered  
2 taking his stock back?

3 A. I do not recall.

4 Q. Has that happened more than once?

09:31:34 5 A. I don't know.

6 Q. Let's turn to page 9, row 541 in the  
7 middle of the page.

8 Do you see that?

9 A. Yes.

09:31:48 10 Q. That's a text from you, yes?

11 A. Yes.

12 Q. Would you read it, please?

13 A. "Lenny is such a fucking piece of  
14 shit."

09:31:58 15 Q. Why did you write that?

16 A. I don't recall.

17 Q. Is that the type of language you use  
18 about one of your co-workers all the time?

19 A. When I'm frustrated.

09:32:09 20 Q. When you're frustrated; is that what  
21 you said?

22 A. Yes. On occasion.

23 Q. Have you ever said that about  
24 Mr. Alminana?

09:32:18 25 A. I don't know.

1 Q. Have you ever said that about anybody  
2 else in the company?

3 A. I don't know.

4 Q. Is that a pejorative that you use from  
09:32:35 5 time to time to describe co-founders, "such an f'ing  
6 piece of S"?

7 A. I don't know.

8 Q. Don't know, you don't know?

9 A. I don't know.

09:32:49 10 Q. And you don't recall being interviewed  
11 for a three-page interview in IdeaMensch, either,  
12 that has ten questions that you answered at length?

13 A. I don't even know this publication.

14 Q. Do you think it's bogus? Do you think  
09:33:06 15 someone made it up?

16 A. No. It doesn't appear that way.

17 Q. No memory of the interview, though?

18 A. No.

19 Q. Okay. Now, if you look back at your  
09:33:14 20 text messages, Exhibit 133, still on page 9 at row  
21 542, you say, "This is all his fault," and then  
22 right on top of that, row 543, "100 percent."

23 Do you see that?

24 A. I do.

09:33:31 25 Q. What were you referring to that was all



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1 Dr. Guarente's fault?

2 A. I don't know.

3 Q. Do you recall what happened when you  
4 talked to Dr. Guarente about this big -- what  
09:34:00 5 appears to be this big mess he had created that had  
6 so provoked you? Do you remember what happened?

7 A. I do not.

8 Q. Do you remember asking him to step up  
9 and do something to fix it?

09:34:09 10 A. I do not.

11 Q. Turn the page, please, to page 10. I'm  
12 going to start at row 545 at the top.

13 Do you see a text that you wrote at  
14 approximately 10:48 p.m.?

09:34:32 15 A. 545?

16 Q. Yes, sir.

17 A. Yes.

18 Q. Read what you wrote, please?

19 A. "And instead of stepping up and  
09:34:39 20 admitting wrongdoing, he talks about resigning."

21 Q. It seems pretty dramatic, Dr. Guarente  
22 was accused of wrongdoing, refused to step up, and  
23 then said he was going to possibly resign.

24 Is that a fair reading of your text?

09:34:56 25 MR. SACCA: Object to the form of the

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1 question.

2 A. Sorry. Could you repeat that?

3 Q. Sure. This seems like a fairly  
4 dramatic situation within the company; would you  
09:35:06 5 agree with that?

6 A. I mean, I spent half a decade in  
7 venture capital. There are a lot of tense moments  
8 between co-founders. So I would say this is not in  
9 any way, shape or form out of the norm.

09:35:22 10 Q. Happens all the time?

11 A. All the time.

12 Q. At Elysium, too?

13 A. No.

14 Q. Well, was it unusual at Elysium for one  
09:35:30 15 of the co-founders to talk about resigning?

16 A. I would say so, yes.

17 Q. Was it unusual at Elysium for one of  
18 the co-founders to be accused of "wrongdoing," to  
19 use your word?

09:35:42 20 A. Yes, I would say that's highly unusual.

21 Q. Highly unusual.

22 So what are you talking about here when  
23 you talk about Dr. Guarente's wrongdoing?

24 A. I mean, I really don't know.

09:35:53 25 Q. No idea?

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1 A. No idea.

2 Q. Then in the next row, 546, you write,  
3 "Then he accuses me of breaching confidentiality  
4 because I included you on his tirade about his  
09:36:07 5 stock."

6 Have I read that correctly?

7 A. Yes.

8 Q. Is that what you wrote?

9 A. It appears that way, yes.

09:36:17 10 Q. What is this about? Did Dr. Guarente  
11 go on a tirade?

12 A. That's what the message says. I don't  
13 recall.

14 Q. Well, how many tirades has Dr. Guarente  
09:36:29 15 gone on in the time you've known him?

16 A. I couldn't say.

17 Q. More than one?

18 A. I don't know.

19 Q. Any?

09:36:35 20 A. I don't know. I don't recall.

21 Q. Do you recall Dr. Guarente accusing you  
22 of breaching confidentiality?

23 A. I do not.

24 Q. Do you recall Dr. Guarente being  
09:36:45 25 accused of wrongdoing?

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1 A. I do not.

2 Q. Do you recall Dr. Guarente talking  
3 about resigning?

4 A. I do not.

09:36:52 5 Q. Do you recall asking Dr. Guarente to  
6 step up and do something?

7 A. I do not.

8 Q. And do you recall talking to Dr.  
9 Guarente about his stock at this time?

09:37:02 10 A. I do not.

11 Q. Let's look, Mr. Marcotulli, at row 549.  
12 What did you write there, sir?

13 A. "Yes, but I'm done with his BS."

14 Q. What BS of Dr. Guarente are you  
09:37:25 15 referring to here?

16 A. I don't know.

17 Q. Well, this is something you talked  
18 about all the time, isn't it?

19 A. I'm sorry?

09:37:34 20 Q. Your relationship with Dr. Guarente,  
21 your frustration with Dr. Guarente, it's something  
22 you talked about all the time; isn't that right?

23 A. No.

24 Q. Did you ever talk about frustrations  
09:37:47 25 with Dr. Guarente?

1 A. What I'm looking at here is a series of  
2 text messages from a 24-ish-hour period. So it was  
3 pretty short.

4 Q. That's not my question.

09:37:59 5 A. Can you repeat the question?

6 Q. My question is, did you frequently talk  
7 to other people about your frustrations with  
8 Dr. Guarente?

9 A. Not to my recollection.

09:38:15 10 Q. Did you frequently talk with other  
11 people about what you called Dr. Guarente's BS?

12 A. Not that I recall.

13 Q. Well, if you look at the next row, sir,  
14 row 550, why don't you read to us what you wrote  
09:38:30 15 about Dr. Guarente's "BS"?

16 A. "We talk about it all the time.  
17 Everyone does."

18 Q. So I just asked you if you talked about  
19 it all the time and you said, no, of course not.

09:38:44 20 This is one series of texts -- you volunteered, this  
21 is one 24-hour period.

22 So here we have you saying, "We talk  
23 about it all the time," yes?

24 MR. SACCA: Object to the form of the  
09:38:55 25 question.

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1 A. Yes.

2 Q. Did you talk about Dr. Guarente's BS  
3 all the time?

4 A. Not to my recollection.

09:39:00 5 Q. Did you write something false to  
6 Mr. Alminana?

7 A. I'd need more context.

8 Q. You'd need more context to know if you  
9 wrote something false to your co-founder?

09:39:14 10 A. I couldn't say with certainty either  
11 way without more context.

12 Q. So this could be false.

13 A. I am saying I can't answer the question  
14 yes or no.

09:39:21 15 Q. What was Dr. Guarente's BS that had you  
16 so upset?

17 A. I really don't recall.

18 Q. Then you write in that same, row 550 --

19 THE COURT REPORTER: I'm sorry, then  
09:39:31 20 you write in that same row?

21 Q. -- row 550, "Everyone does," referring  
22 again to Dr. Guarente's BS.

23 Do you see that?

24 A. I do.

09:39:38 25 Q. Who's the everyone in that sentence who

1 talks about Dr. Guarente's BS?

2 A. I really don't know.

3 Q. Did you hate Dr. Guarente at this time?

4 A. No.

09:39:49 5 Q. Did others at the company hate  
6 Dr. Guarente?

7 A. No.

8 Q. Let's look at row 551.

9 Why don't you read to us what you wrote  
09:40:01 10 there to Mr. Alminana, your co-founder?

11 A. "Literally everyone hates Lenny."

12 Q. You even used the word "literally."

13 Did everyone hate Lenny at this time at  
14 the company?

09:40:15 15 A. Not to my recollection.

16 Q. Why did you write that?

17 A. It seems I was frustrated.

18 Q. Is it a true statement that literally  
19 everyone at Elysium hated Dr. Guarente as of  
09:40:27 20 January 2017?

21 A. Not to my recollection.

22 Q. Is that a false statement?

23 A. Again, I would need more context to say  
24 definitively.

09:40:36 25 Q. You can't tell me if that's a true or

1 false statement as you sit here now?

2 A. I cannot.

3 Q. So you could have just lied to  
4 Mr. Alminana in this text message.

09:40:45 5 A. I'm saying I couldn't give you a  
6 definitive answer either way.

7 Q. I'm asking a slightly different  
8 question.

9 Can you tell me whether or not what you  
09:40:55 10 wrote to Mr. Alminana in row 551 was a true  
11 statement or a false statement?

12 A. I cannot tell you that.

13 Q. Could be false?

14 A. Could be false. Could be true.

09:41:06 15 Q. Well, did you have a habit of writing  
16 false things to co-founders?

17 A. I'd like to think not.

18 Q. Is it important to you to be truthful?

19 A. Of course.

09:41:17 20 Q. Is it important to you to be truthful  
21 with your co-founders?

22 A. Of course.

23 Q. Then wouldn't this necessarily be a  
24 true statement, "Literally everyone hates Lenny,"  
09:41:27 25 row 551?



1 A. It could just as easily be a  
2 exaggeration.

3 Q. Are you prone to exaggeration, sir?

4 A. On occasion.

09:41:35 5 Q. Were you exaggerating here in your  
6 frustration about Dr. Guarente?

7 A. Again, I don't recall the context.

8 Q. Then you say, "And we never do anything  
9 about it." Now I'm looking at row 552.

09:41:49 10 Do you see that?

11 A. I do.

12 Q. What did you want to do about the fact  
13 that everyone hates Lenny, that you were tired of  
14 his BS? What did you want to do about it?

09:42:01 15 A. I don't know.

16 Q. Is it true that you wanted to remove  
17 him from the company?

18 A. I don't recall.

19 Q. Is it true that you wanted to take his  
09:42:11 20 stock back?

21 A. I do not recall.

22 Q. Is it true that you were frustrated  
23 with Dr. Guarente in January of 2017?

24 A. I do not recall.

09:42:29 25 Q. How did Dr. Guarente go from being an

1 expletive piece of expletive whose stock you were  
2 considering taking away, whose BS you were tired of  
3 in January of 2017 to being somebody who "makes all  
4 the difference" to the success of the company in  
09:42:56 5 November 2017 in the article we looked at,  
6 Exhibit 132?

7 A. Lenny's a fantastic scientist. That's  
8 the end of it. I would continue to say the same  
9 thing that I said -- that appears in this article.  
09:43:12 10 His scientific pedigree is beyond reproach, in my  
11 opinion.

12 Q. That's not what you say in the text  
13 messages, though. I don't see anything about his  
14 scientific pedigree.

09:43:24 15 A. I don't see anything denigrating his  
16 scientific pedigree.

17 Q. Do you remember talking to Dr. Guarente  
18 at this time, January 2017, about this mistake he'd  
19 made?

09:43:35 20 A. I do not.

21 Q. Do you remember talking, other than  
22 these text messages, to Mr. Alminana about the  
23 mistake Dr. Guarente had made?

24 A. I do not.

09:43:48 25 Q. Do you remember that there was an

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1 article published on January 6th, 2017, the very  
2 morning of the text messages we're talking about?

3 A. I do not recall that.

4 Q. Have you ever heard of a publication  
5 called MIT Technology Review?

6 A. Yes.

7 Q. Do you remember an article published in  
8 MIT Technology Review in January 2017 about your  
9 company?

10 A. I do not.

11 Q. Do you remember a reporter named Karen  
12 Weintraub who wrote that article?

13 A. The name is familiar.

14 Q. Did you give an interview to her?

15 A. I don't know.

16 Q. Don't remember?

17 A. I do not remember.

18 Q. And you don't remember the article at  
19 all?

20 A. There have been a number of articles  
21 written about the company. I don't know which  
22 specifically we're talking about.

23 Q. Well, do you remember one entitled,  
24 "Critics Blast Star-Studded Advisory Board of  
25 Anti-Aging Company"? That one might stick out in

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1 your mind.

2 Do you remember it?

3 A. Yes, I do.

4 Q. Do you remember that it was published

09:44:57 5 on January 6th, 2017, the same day you rain down all  
6 this foul language Dr. Guarente?

7 Do you remember that?

8 A. I -- I did not know the timing.

9 Q. Let me show you what's already been

09:45:14 10 marked in a prior deposition as Exhibit 70.

11 Do you recognize Exhibit 70 as an  
12 article that appeared in MIT Technology Review about  
13 your company?

14 A. Yes.

09:45:40 15 Q. Do you see the date in the middle of  
16 the first page, January 6th, 2017?

17 A. Yes.

18 Q. And I said the title earlier, but I'll  
19 read it again just to make sure we're clear,

09:45:57 20 "Critics Blast Star-Studded Advisory Board of  
21 Anti-Aging Company."

22 Did you consider this to be a negative  
23 article, generally?

24 A. I haven't read the article in a very  
09:46:14 25 long time, but, as I recall, it was not the most

1 positive of articles.

2 Q. Did it send you into something of a  
3 fury?

4 A. I don't recall.

09:46:22 5 Q. Do you recall that the text messages  
6 that we were looking at in Exhibit 133 were dated  
7 January 6th, 2017?

8 A. I'm sorry. Can you repeat that?

09:46:33 9 Q. Yes. Do you recall that the text  
10 messages we were looking at a moment ago in  
11 Exhibit 133 were all dated January 6th, 2017 into  
12 the night -- into the nighttime?

13 A. Yes.

09:46:50 14 Q. Does seeing the article and the date of  
15 the article refresh your memory that it was this  
16 article that sent you into such a fury as reflected  
17 in the text messages?

18 A. I don't recall.

09:47:05 19 Q. Do you believe that the article that  
20 we're looking at, Exhibit 70, dated January 6th,  
21 2017 may be unrelated to the communications you sent  
22 Mr. Alminana on the same date?

23 A. I don't know.

09:47:30 24 Q. Do you know of any connection between  
25 the article we're looking at, Exhibit 70, and your

1 text messages to Mr. Alminana and his text messages  
2 to you on January 6th, 2017?

3 A. I do not.

4 Q. Could be completely unrelated?

09:47:46 5 A. It's possible.

6 Q. What else could have happened that  
7 date, if you know, that would have sent you into  
8 such a rage about Dr. Guarente?

9 A. I don't know. Again, it's more than  
09:47:56 10 two years ago.

11 Q. Well, let's look at the article and see  
12 if there's any clues that might help.

13 A. Okay.

14 Q. Turn to the third page, please. If you  
09:48:19 15 look at the second full paragraph, it states, "The  
16 company's idea is that it can then use profits to  
17 follow up with scientific studies of the pills  
18 effects on humans."

19 Then there's a quotation, "'We wanted  
09:48:37 20 to take the fastest route to test the compounds and  
21 determine whether they would improve human health,'  
22 Guarente says, 'we intend to really make this  
23 company be based on rigorous science,'" is the rest  
24 of his quote.

09:48:55 25 Do you see that, Mr. Marcotulli?

1 A. Yes.

2 Q. Did you agree with his statement here,  
3 Dr. Guarente's?

4 A. I don't know.

09:49:10 5 Q. No idea?

6 A. I don't recall.

7 Q. Is it accurate that Elysium "wanted to  
8 take the fastest route to test the compounds and  
9 determine whether they would improve human health"?

09:49:32 10 A. I think it's a decent characterization.

11 Q. Is it accurate, 100 percent accurate?

12 A. I don't know.

13 Q. Do you disagree with that statement as  
14 of January 2017?

09:49:46 15 A. I really don't know what I would have  
16 thought on that date.

17 Q. Do you disagree with it today, right  
18 now, as a statement about your company and its  
19 history?

09:50:02 20 A. No.

21 Q. So you agree with it today, we want --  
22 I'll read the statement again, let me ask the  
23 question.

09:50:12 24 The statement by Dr. Guarente is, "We  
25 wanted to take the fastest route to test the

1 compounds and determine whether they would improve  
2 human health."

3 As you sit here today, Mr. Marcotulli,  
4 do you agree with that statement?

09:50:23 5 A. Yes.

6 Q. His next quote, "We intend to really  
7 make this company be based on rigorous science."

8 Do you agree with that statement?

9 A. Yes.

09:50:34 10 Q. Was that a true statement as of January  
11 2017?

12 A. I would assume so, yes.

13 Q. Is there anything in those quotes we've  
14 read that frustrated you and sent you into such a  
09:51:04 15 rage about Dr. Guarente on January 6th, 2017?

16 A. I don't recall.

17 Q. Well, you agreed with both statements  
18 just now, his quotes.

19 So the question is, why would the  
09:51:24 20 statements by Dr. Guarente in this article cause you  
21 so much frustration?

22 A. I do not know.

23 Q. Do you recall anything else in this  
24 article that caused you to be very frustrated with  
09:51:40 25 Dr. Guarente?



1 A. I do not.

2 Q. If you go down to the second to the  
3 last paragraph on this same page, it says, "Elysium  
4 declined to say how much it is paying its advisory  
09:51:58 5 board members, but noted that not all are  
6 compensated."

7 Do you see that, second to the last  
8 paragraph?

9 A. Oh, third to last paragraph -- or  
09:52:20 10 second to last paragraph, "Elysium declined to say  
11 how much..."?

12 Q. Yes.

13 A. Yes, I see it.

14 Q. Does Elysium pay its advisory board  
09:52:28 15 members?

16 A. Some advisors are compensated, yes.

17 Q. How much are they compensated?

18 A. I don't know.

19 Q. No idea?

09:52:36 20 A. I don't remember.

21 Q. Can you give me a ballpark?

22 A. I -- I would be speaking out of turn.

23 Q. Because you don't know or because you  
24 don't want to say?

09:52:44 25 A. Because I don't know off the top of my

1 head.

2

[REDACTED]

[REDACTED]

09:52:52 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 A. Again, I don't have the list in front

09:53:03 10 of me. We have a rather large advisory board.

11 Q. Can you tell me one?

12 A. [REDACTED]

13 Q. Any others?

14 A. Not off the top of my head.

09:53:13 15 Q. In fact, the next sentence of the  
16 article says, "Church says in exchange for joining  
17 the advisory board, he received 0.5 percent of the  
18 company's shares."

19 Have I read that correctly, sir?

09:53:27 20 A. Yes.

21 Q. Is that an accurate statement?

22 A. I do not know.

23 Q. Who else other than Mr. Church was paid  
24 to be on Elysium's advisory board with shares in the  
09:53:41 25 company?

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1 A. I -- I don't know. I don't recall.

2 Q. Can you tell me one person?

3 A. I really couldn't without a list in  
4 front of me.

09:53:52 5 Q. Who on the advisory board is paid in  
6 cash?

7 A. Again, I don't know. I don't handle  
8 compensation.

9 Q. So the CEO of the company has no idea  
09:54:04 10 which members of the advisory board are paid; is  
11 that correct?

12 A. Off the top of my head, no.

13 Q. Not even one other than Church whose  
14 name you see in the article, right?

09:54:14 15 A. I unfortunately don't know, as I sit  
16 here today.

17 Q. The CEO of the company can't tell me  
18 which advisory board members are paid in equity of  
19 the company --

09:54:24 20 A. I don't know.

21 Q. -- is that correct?

22 A. That is correct.

23 Q. The CEO of the company cannot tell me  
24 which of the advisory board members are paid a  
09:54:33 25 stipend or paid money for their service on the

1 advisory board; is that correct?

2 A. Yes.

3 Q. Who would know that?

4 A. It depends on who has access to the  
09:54:45 5 information. Our general counsel handles a lot of  
6 payment disbursements, especially with our  
7 scientific advisory board.

8 Q. You have no idea, though.

9 A. Not as I sit here today.

09:55:06 10 Q. Was it this passage here, this  
11 discussion about the advisory board members being  
12 compensated and Mr. Church saying he got equity, is  
13 this what sent you into such a fury on January 6th,  
14 2017?

09:55:23 15 A. I do not know.

16 Q. Well, I do not see any other quotes  
17 from Dr. Guarente in the article on January 6th,  
18 2017, Mr. Marcotulli. So I'll ask you again if you  
19 can share with me, now that we've looked at all  
09:55:57 20 this, why you would be raining down insults on  
21 Dr. Guarente on January 6th, into the night, 2017?

22 A. I don't know.

23 Q. No idea?

24 A. No idea.

09:56:09 25 Q. When's the last time you got that mad

1 at one of your co-founders?

2 A. I couldn't say.

3 Q. Have you ever had your deposition taken  
4 before?

09:56:17 5 A. I have, yes.

6 Q. How many times?

7 A. Once.

8 Q. In what kind of case?

9 A. [REDACTED]

09:56:28 [REDACTED]

[REDACTED]

12 Q. Who was the investor in that case?

13 A. His name is [REDACTED]

14 Q. Can you spell that last name?

09:56:37 15 A. Yes, [REDACTED]

16 Q. [REDACTED]

17 A. That is correct.

18 Q. [REDACTED]

19 A. [REDACTED]

09:56:52 [REDACTED]

[REDACTED]

22 Q. In summary, what was the essence of the  
23 dispute that [REDACTED] had with the company?

24 A. [REDACTED]

09:57:11 [REDACTED]

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1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

09:57:33

[REDACTED]

[REDACTED]

[REDACTED]

8

Q. You testified in a deposition before

9

the arbitration?

09:57:47

10

A. Yes.

11

Q. Did you testify in the arbitration

12

itself?

13

A. Yes.

14

Q. So you testified twice --

09:57:53

15

A. Yes.

16

Q. -- in that case?

17

Was it resolved via a ruling or via

18

settlement?

19

A. It was a ruling.

09:58:01

20

Q. And without getting into all the

21

details because, frankly, I'm not that interested,

22

who won?

23

A. We won, hands down across the board.

24

Q. Okay. When was that, the arbitration?

09:58:28

25

A. 2016 or 2017. I really don't -- I

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1 really can't place it.

2 Q. Two, three years ago?

3 A. I'd say that's accurate.

4 Q. Do you remember the name of the  
09:58:42 5 arbitrator?

6 A. [REDACTED]

7 Q. Pretty good memory for that case,  
8 Mr. Marcotulli.

9 A. It was a traumatic experience.

09:58:54 10 Q. Traumatic experience?

11 A. Depositions aren't fun.

12 Q. Well, you have been through it before,  
13 but I'll going go over some basic admonitions now.

14 The oath you took is the same as you  
09:59:03 15 would take in a courtroom or a formal setting.

16 Do you understand that?

17 A. I do.

18 Q. It's important we not interrupt each  
19 other, make sure you let me finish my question and  
09:59:10 20 I'll make sure to let you finish your answer for the  
21 benefit of the court reporter; is that agreeable?

22 A. Agreeable.

23 Q. Important you give verbal answers  
24 rather than nonverbal answers like huh-uh or hmm,  
09:59:22 25 which you've only done once so far, so you're doing

1 fine, but that's, again, so the court reporter can  
2 get an accurate record.

3 Do you understand?

4 A. I understand.

09:59:33 5 Q. You should make sure you understand my  
6 question. If, for any reason, it's vague or  
7 unintelligible to you, it won't hurt my feelings,  
8 just tell me and I'll reask it. Okay?

9 A. Okay.

09:59:44 10 Q. You will have the opportunity to review  
11 your transcript, sir, and you'll have the  
12 opportunity to make what you view to be corrections  
13 or changes. But if you do, I would be able to  
14 comment at our trial on the fact that you made  
09:59:58 15 changes.

16 Do you understand that?

17 A. I do.

18 Q. This is not an endurance contest,  
19 Mr. Marcotulli. We can take a break whenever you  
10:00:04 20 want, just say so. We'll try to take a break every  
21 hour, hour and 15 minutes, okay?

22 A. Yes.

23 Q. Are you under the influence of any  
24 prescription medications that would impact your  
10:00:14 25 ability to testify accurately and thoroughly today?



1 A. I am not.

2 Q. Are you under the influence of any  
3 illegal narcotics --

4 A. I am not.

10:00:21 5 Q. -- that would impact your ability to  
6 testify thoroughly and accurately today?

7 A. I am not.

8 Q. How long have you been the CEO of  
9 Elysium? Since the founding in 2013; is that  
10:00:32 10 correct?

11 A. That's correct, I have been the CEO  
12 since that time.

13 Q. What are your responsibilities as chief  
14 executive officer, sir?

10:00:40 15 A. I'd say very standard CEO  
16 responsibilities. I am responsible, in my opinion,  
17 for the direction of the company, how we think about  
18 things like product development, how we think about  
19 the vision for the company, the structure of the  
10:00:56 20 company, the growth of the company, things like  
21 marketing and communications.

22 Where I do not spend my time is on the  
23 day-to-day management and execution. Dan --

24 THE COURT REPORTER: I'm sorry, who?

10:01:14 25 A. Dan Alminana, our COO, really focuses

1 on things like supply chain, legal, finance,  
2 operations, et cetera.

3 So I consider myself the one who looks  
4 to tomorrow. I consider Dan to be the person who  
10:01:24 5 focuses on today. And Lenny, as our chief  
6 scientist, helps us think through how all those  
7 pieces integrate.

8 Q. Over the time that you've been the CEO  
9 of Elysium, have you had any other titles or  
10:01:39 10 positions at the company?

11 A. No.

12 Q. Who are your direct reports?

13 A. So, at the moment, our chief design  
14 officer, our VPs of research and development,  
10:02:04 15 engineering, communications, I believe, are my  
16 direct reports at the time being, as well as our  
17 acting chief revenue officer.

18 Q. Anybody else?

19 A. Not to my knowledge.

10:02:22 20 Q. How frequently do you meet with your  
21 direct reports?

22 A. It varies. Some I meet with weekly in  
23 an official capacity, you know, we constantly have  
24 meetings with one another and whatnot on a  
10:02:38 25 one-on-one basis.

1 Sometimes weekly, sometimes not at all.  
2 It really depends on the team and the employee.

3 Q. How do you communicate with your direct  
4 reports when you're not face to face with them in a  
10:02:52 5 conference room like this?

6 A. Any number of mediums, phone calls,  
7 messaging, emails.

8 Q. What messaging device -- what messaging  
9 platforms do you use to communicate with Elysium  
10:03:08 10 employees?

11 A. I use SMS, Apple Messages, also  
12 iMessages, text messages, WhatsApp, Facebook  
13 Messenger.

14 I have a couple of different email  
10:03:22 15 accounts.

16 I use Snapchat, Instagram, not  
17 frequently, but if we're sharing social media  
18 applications or ads or observations, things like  
19 that.

10:03:40 20 Q. So on official business, you'll use all  
21 of those mediums to communicate with your employees?

22 A. Yes.

23 Q. What about Slack?

24 A. We use Slack as well.

10:03:49 25 Q. Is there any -- well, let me ask it

1 this way. What types of communications, if you can  
2 categorize them, would you use Slack for as opposed  
3 to one of the other mediums?

10:04:06 4 A. It depends. So Slack lends itself to  
5 larger discussions, more chat-like. If something is  
6 more official, I would send an email.

10:04:24 7 Slack is also, at least for our  
8 purposes, categorized by channel. It's a feature  
9 that Slack has which allows you to ascribe a  
10 specific theme to a channel.

11 So, for instance, one of our  
12 channels --

13 THE COURT REPORTER: For instance, one  
14 of our channels?

10:04:29 15 A. Is called Articles. And in that  
16 particular channel we share with the team scientific  
17 articles. So, you know, if I was going to share a  
18 scientific paper with the team, I would use Slack,  
19 in that case via the Article channel to post that.

10:04:44 20 Q. You said for official business you  
21 would typically use email; did I hear that  
22 correctly?

23 A. Yes.

24 Q. What did you mean by official business?

10:04:51 25 A. I wouldn't send someone necessarily

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1 just an article. I wouldn't send the whole team an  
2 article via email. I'd use Slack for that.

3 If I wanted to address our team as a  
4 whole and give them an update on something I thought  
10:05:03 5 was important, I would use email.

6 Q. Under what circumstances would you use  
7 WhatsApp, such as in the text messages we saw  
8 between you and Mr. Alminana?

9 A. It depends. I mean, some of it's just  
10:05:18 10 the fact that, you know, we have ongoing  
11 conversations. We use WhatsApp, for instance, when  
12 we travel abroad.

13 You know, WhatsApp is encrypted end to  
14 end, and we do have sensitive data that we talk  
10:05:33 15 about. So, on occasion, we'll use WhatsApp if we  
16 feel like we want to talk about a clinical trial or  
17 a product that we're developing or an investor that  
18 we're talking to, where, you know, we'd just rather  
19 ensure that the security is there.

10:05:45 20 Q. Under those circumstances, you would  
21 use WhatsApp?

22 A. Not limited to that, but that's an  
23 example, yes.

24 Q. What other circumstances would cause  
10:05:53 25 you to use WhatsApp to communicate with people?

1 A. International travel, as I mentioned.  
2 WhatsApp does really well with international travel.

3 Group messaging. Sometimes people  
4 prefer WhatsApp on the other side of a conversation  
10:06:13 5 and you just get dragged into it.

6 We're talking right now to a supplier  
7 in the UK who uses WhatsApp, and that's how we're  
8 communicating with him because that was his  
9 preference.

10:06:25 10 Q. Is it accurate to say that you would  
11 use WhatsApp when you wanted to keep the  
12 communication confidential yourself and didn't want  
13 anyone else to see it?

14 A. No, I don't think that's accurate. I  
10:06:38 15 mean, again, I was at Sequoia Capital prior to  
16 Elysium. We were investors in WhatsApp. So I was  
17 very familiar with the security infrastructure, and  
18 I know that it's encrypted end to end. I know that  
19 they have not bent to --

10:06:57 20 THE COURT REPORTER: They have not bent  
21 to?

22 A. Bent to the wills or requests of  
23 various nations that have tried to backdoor into the  
24 messaging platform.

10:07:04 25 So when we just want to make sure that

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1 our data wouldn't be stolen, if it's something that  
2 we feel very proprietary about, we would use  
3 WhatsApp in that case.

4 Q. In that last explanation, I believe you  
10:07:18 5 used the word "bent," right, b-e-n-t? Okay. I just  
6 wanted to make sure it was clear; is that right?  
7 You have to say yes.

8 A. Yes.

9 Q. Thank you.

10:07:27 10 Let's talk a little bit about your  
11 background.

12 You graduated from Princeton?

13 A. I did.

14 Q. What --

10:07:31 15 A. 2007.

16 Q. Hmm.

17 What degree did you obtain from  
18 Princeton?

19 A. I received a Bachelor's in economics  
10:07:42 20 with a certificate, which is Princeton's version of  
21 a minor or focus, in finance.

22 Q. You wrestled there?

23 A. I did.

24 Q. 149 pounds, I believe?

10:08:00 25 A. Senior year, I was 149. My first three

1 years I wrestled 141.

2 Q. Did you obtain any degrees or  
3 certificates from Princeton in any scientific  
4 fields?

10:08:13 5 A. I did not.

6 Q. Do you consider yourself a scientist?

7 A. I do not. I consider myself a citizen  
8 scientist, but not a scientist.

9 Q. What does that mean, citizen scientist?

10:08:27 10 A. I have a passion for science, I always  
11 have. I read scientific papers. I'm involved in  
12 clinical trials and product development, but, you  
13 know, formally, by training, I'm not an MD or a PhD.

14 Q. So unlike, say, Dr. Guarente, you don't  
10:08:42 15 consider yourself to be a scientist?

16 A. That is correct.

17 Q. Did you complete any postgraduate  
18 degrees?

19 A. Yes, I did.

10:08:49 20 Q. Where?

21 A. I received my MBA from Harvard Business  
22 School.

23 Q. What year?

24 A. I was there from 2010 to 2012.

10:08:59 25 Q. At Harvard Business School, did you



1 obtain any graduate degrees or certificates in any  
2 scientific field?

3 A. No.

4 Q. Do you have any scientific training of  
5 any kind?

6 A. Nothing formal.

7 Q. What was your first employment after  
8 graduating from Harvard Business School?

9 A. After Harvard?

10 Q. Yes, sir.

11 A. I was at Sequoia Capital.

12 Q. For how long?

13 A. About two years.

14 Q. What were your duties, generally, at  
15 Sequoia Capital?

16 A. I was part of the growth fund. Sequoia  
17 has two funds. One is an early stage fund; the  
18 other is the growth fund. They different -- excuse  
19 me -- they differ in their focus.

20 So the early stage fund invests in  
21 earlier stage companies, Series A and B,  
22 predominantly. The growth fund focuses on larger  
23 investments and companies that are later stage in  
24 nature.

25 At the time that I joined, this is

1 2012, the hypothesis of the partnership level there  
2 was that mobile and Internet were becoming distinct  
3 entities, that the primary focus previously on them  
4 together under the Internet team now needed to be  
10:10:14 5 developed differently. And so, I was recruited to  
6 lead efforts specifically in and around all mobile  
7 technologies for the growth fund.

8 Q. By the way, what did you do between  
9 2007, when you graduated from Princeton, and 2010  
10:10:33 10 when you went off to Harvard?

11 A. I was at another venture fund based in  
12 Boston, the venture arm of Bain Capital.

13 THE COURT REPORTER: I'm sorry?

14 A. It was the venture arm of Bain Capital  
10:10:47 15 Ventures.

16 Q. You were there for three years?

17 A. Yes.

18 Q. Did you leave Bain to go to business  
19 school?

10:10:51 20 A. Yes.

21 Q. No other reason?

22 A. No other reason.

23 Q. Why did you leave Sequoia?

24 A. To start Elysium.

10:11:00 25 Q. Did you have any other jobs from the

1 time you left Harvard to the time you started  
2 Elysium other than the job at Sequoia?

3 A. No.

4 Q. What was your title when you left  
5 Sequoia? What was your rank?

6 A. Partner.

7 Q. How did you first meet Mr. Alminana?

8 A. Dan was working with venture capital  
9 funds while he was employed by JPMorgan. He and I  
10 moved to Palo Alto, both from Boston, although we  
11 did not know each other in Boston, the same month,  
12 in June of 2012.

13 Palo Alto is a very, very small town.  
14 We would see each other in multiple places, at both  
15 work events and social events. I couldn't say the  
16 exact first time we met, but we became friends over  
17 the latter portion, latter six months, if you will,  
18 of 2012.

19 Q. How did it come to be that you and  
20 Mr. Alminana thought about founding the company  
21 Elysium?

22 A. So the original idea, which is outlined  
23 in one of these articles, came from a case study  
24 that I did while I was in business school. It was a  
25 study of a company called Sirtris Pharmaceuticals,

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1 S-i-r-t-r-i-s, Pharmaceuticals.

2 And what they were trying to do was  
3 capitalize on discoveries that Lenny made around  
4 longevity genes --

10:12:45 5 THE COURT REPORTER: Around longevity  
6 genes?

7 A. -- called sirtuins, s-i-r-t-u-i-n-s.

8 What Lenny had discovered is that if  
9 you activate these genes, organisms live longer and  
10:12:55 10 they're healthier for longer. He and one of his  
11 students, David Sinclair -- I think, really, David  
12 discovered that there was a compound that could  
13 activate these genes. They started a company around  
14 it.

10:13:04 15 And the attention in the case was it  
16 was a natural compound, so it could be a  
17 direct-to-consumer offering, but it also had very  
18 good preclinical data around it, things like cancer,  
19 so it also could be developed as a therapeutic. And  
10:13:21 20 you had to debate the merits in this particular case  
21 study of both of those business models because they  
22 may be at odds from a resource allocation  
23 standpoint.

24 I believed fundamentally that the  
10:13:29 25 consumer opportunity was going to be neglected and

1 that it was very, very large in terms of potential  
2 impact and scope. So after graduating and joining  
3 Sequoia, I called Lenny, I called David, the  
4 scientists who made these discoveries and started  
10:13:45 5 this company. I began a dialogue with them around  
6 where the research had gone over the ensuing years.

7 It was through this that I was talking  
8 to Dan. Interestingly, Dan told me that he was  
9 considering leaving JPMorgan to work for an  
10:14:03 10 entrepreneur named Trip Hawkins. Trip was the  
11 founder of a video game company called Electronic  
12 Arts. Sequoia was the first backer or investor in  
13 Electronic Arts.

14 So Dan approached me and said I'm  
10:14:21 15 considering leaving. I'm considering working with  
16 this individual who Sequoia backed. Could you  
17 potentially ask other partners there what Trip is  
18 like to work with?

19 I said to Dan, you know, if you're  
10:14:34 20 thinking of leaving JPMorgan, I'm potentially  
21 working on something I find very interesting and I'd  
22 love to have you join.

23 And that is how Dan became involved in  
24 the project, which at the time was a project.

10:14:47 25 Q. At the time of these discussions with

1 Dr. Guarente first, had you ever heard of  
2 nicotinamide riboside?

3 A. I don't recall.

4 Q. Were you aware at that time that

10:15:04 5 Dr. Guarente's work did not involve NR?

6 A. I don't recall.

7 Q. As you pondered starting this company,  
8 Elysium, and addressing the consumer market that you  
9 had identified in your case study, did it ever cross  
10:15:26 10 your mind that there was a compound out there called  
11 NR that could be relevant to your project?

12 A. I don't know exactly when nicotinamide  
13 riboside entered into our viewfinder. I couldn't  
14 place it with specificity.

10:15:52 15 Q. It wasn't there at the beginning, was  
16 it?

17 A. I don't recall.

18 Q. Do you remember Dr. Guarente saying  
19 anything to you about nicotinamide riboside when you  
10:16:02 20 talked to him in the beginning?

21 A. I don't recall.

22 Q. To your knowledge, did any of  
23 Dr. Guarente's work at that time around sirtuins  
24 have anything to do with NR?

10:16:15 25 A. I don't -- I don't know. I don't

1 recall.

2 Q. When did you first hear the words  
3 "nicotinamide riboside" as something relevant to  
4 your company, Elysium?

10:16:27 5 A. Again, I couldn't place it with  
6 specificity.

7 Q. Give me a year. Give me anything you  
8 can remember.

9 A. Well, it would have been either 2012 or  
10:16:35 10 2013.

11 Q. You would have heard about nicotinamide  
12 riboside in 2012 or 2013?

13 A. Assuming that I heard about it from  
14 Lenny, which, again, I can't say with certainty,  
10:16:46 15 that would be the timeframe.

16 Q. Who first uttered the words, you know,  
17 there's something out there called nicotinamide  
18 riboside you should consider, to you?

19 A. I don't recall.

10:16:57 20 Q. How did it come to be a cornerstone of  
21 your product, Basis?

22 A. What I do recall is that part of the  
23 discussion I was having with Lenny and with David  
24 about Sirtris, which ultimately was viewed as a  
10:17:14 25 failure, was that sirtuins are dependent upon a

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1 coenzyme called NAD.

2 And that in order to activate these  
3 longevity genes, the research now showed, after  
4 Sirtris had been acquired, that you need to restore  
10:17:38 5 levels of NAD in the human body as they decline with  
6 age in order to be able to activate sirtuins.

7 I do know that was Lenny's hypothesis.  
8 It was the basis, no pun intended, for our first  
9 product, but I do not -- you know, I cannot say with  
10:17:57 10 specificity when NR entered the field.

11 Q. You gave a longish explanation, which  
12 is fine, of how Dr. Guarente's research evolved from  
13 the failure of Sirtris to the present day.

14 And my question is, who first  
10:18:23 15 introduced nicotinamide riboside into that evolution  
16 of Dr. Guarente's research?

17 A. I couldn't say. I don't know.

18 Q. When was the idea of NR as a component  
19 introduced into this evolution of Dr. Guarente's  
10:18:39 20 research after the failure of Sirtris?

21 A. I couldn't say. I don't recall.

22 Q. Why did Sirtris fail?

23 A. Resveratrol -- well, I would say two  
24 things. Again, somewhat personal in terms of my  
10:18:56 25 opinion, but, one, resveratrol, as a molecule, has



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1 challenges around what is called bioavailability.  
2 So the ability actually for the body to utilize it  
3 before it's broken down.

4 The second thing is, GlaxoSmithKline,  
10:19:14 5 it is my understanding, they sought to modify the  
6 molecule in terms of its structure so that they  
7 could pursue a composition of matter patent. And  
8 that modifications to the molecule were  
9 unsuccessful.

10:19:31 10 Q. You mentioned resveratrol, correct?

11 A. Yes.

12 Q. Is it true that all of Dr. Guarente's  
13 research leading up to the company, Sirtris, and his  
14 research at MIT at the time you met him had relied  
10:19:45 15 on resveratrol, not NR?

16 A. I don't know to what extent resveratrol  
17 comprised Lenny's body of work to that point.

18 Q. In terms of his anti-aging work and his  
19 research around NAD, is it accurate that  
10:20:04 20 Dr. Guarente, at the time you met him, had been  
21 focused on resveratrol?

22 A. I don't know.

23 Q. Did you discuss that with him in 2012  
24 or 2013?

10:20:17 25 A. I don't recall.

1 Q. Did you discuss with him why Sirtris  
2 had failed?

3 A. I don't recall.

4 Q. Did you discuss with Dr. Guarente how  
5 to create a product that would be more popular with  
6 consumers?

7 A. I don't recall.

8 Q. Did you discuss with Dr. Guarente how  
9 to create a product that would have better results  
10 on people?

11 A. I don't recall.

12 Q. Did you discuss with Dr. Guarente  
13 anything about nicotinamide riboside?

14 A. I don't recall.

15 Q. Did you discuss with Dr. Guarente what  
16 his role would be at the company when you first  
17 began these discussions about Elysium?

18 A. Yes.

19 Q. What did you tell Dr. Guarente his role  
20 at the company would be?

21 A. The vision for Lenny's role was and  
22 remains the director of the scientific vision of the  
23 company that predominantly focuses on everything up  
24 to and can, to some degree, include the actual  
25 clinical trials. So identifying products,

1 evaluating product from a scientific standpoint  
2 around things liked safety and efficacy, how those  
3 products potentially would be developed and/or  
4 formulated, and then what potential benefits we  
10:21:42 5 might be able to see from a health standpoint and  
6 how that would impact a clinical trial.

7 Q. Has Dr. Guarente performed the duties  
8 you've just described since the company was founded  
9 with him in 2013?

10:21:56 10 A. I believe so, yes.

11 Q. How many hours per week would you  
12 estimate that Dr. Guarente does work for Elysium at  
13 the present time per week?

14 A. MIT's policy is 20 percent of a faculty  
10:22:15 15 member's time can be spent outside of their  
16 full-time professorship.

17 I would say that's commensurate with  
18 Lenny's -- probably does more than that, but at a  
19 minimum is spending about 20 percent of his week on  
10:22:31 20 Elysium.

21 Q. Just spitballing it, about one out of  
22 every five days, if you looked at it globally?

23 A. On an average basis, yes.

24 Q. Has that been true since 2013,  
10:22:43 25 generally speaking?

1 A. Yes, and that's at a minimum.

2 Q. There are times he does more?

3 A. Mm-hmm, yes.

4 Q. What would be those types of

10:22:52 5 occurrences that would cause him to spend more than

6 20 percent of his time on an outside endeavor

7 contrary to MIT policy?

8 A. We've taken trips together that, you

9 know, end up being multi-day trips where, just by

10:23:08 10 virtue of the length of the trip, you know, he

11 spends several days focused on Elysium work.

12 And, you know, that doesn't necessarily

13 mean that the next week he takes off any subsequent

14 days, so...

10:23:20 15 Q. Have you ever attended any of his

16 classes at MIT? Have you ever gone up there and sat

17 in on one of his courses?

18 A. I've never sat in on Lenny's courses.

19 I have sat in on a number of his research talks.

10:23:34 20 Q. Are those given to students or faculty

21 or what, or all?

22 A. It depends on the specifics. Sometimes

23 he's invited to give a talk. He and I went to

24 Taiwan together, for instance, to National Yang-Ming

10:23:46 25 University. He was invited there to present for a

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

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

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

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

10:24:24 10 A. 2013.

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

13 A. I don't recall.

14 Q. Who told you about ChromaDex in 2013?

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

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

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

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

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

1 A. This was Lenny's suggestion.

2 Q. So Dr. Guarente told you that although  
3 resveratrol had failed as a useful booster of NAD  
4 levels for humans, that something called  
10:25:49 5 nicotinamide riboside might do the job; is that  
6 fair?

7 MR. SACCA: Object to the form of the  
8 question.

9 A. So resveratrol is a sirtuin-activated  
10:26:00 10 compound, not an NAD booster. So they are different  
11 in terms of the mechanism of action, the targeted  
12 pathways.

13 I don't recall when and how but Lenny  
14 identified NR, or nicotinamide riboside, as a  
10:26:16 15 potential candidate for the product that we were  
16 envisioning.

17 Q. Had Dr. Guarente attempted to use other  
18 compounds in the past to boost NAD levels other than  
19 NR?

10:26:31 20 A. I do not know.

21 Q. Wasn't Dr. Guarente's work, at the time  
22 you first talked to him, focused on boosting NAD  
23 levels?

24 A. Lenny's work up until the conversations  
10:26:46 25 that we had were focused on sirtuins, at least what

1 was publicly available.

2 Q. Do you know how Dr. Guarente learned  
3 that nicotinamide riboside might be useful in  
4 boosting NAD levels?

10:27:04 5 A. I do not.

6 Q. Do you remember what he told you about  
7 nicotinamide riboside when he first brought it up?

8 A. I do not.

9 Q. Who else was present when Dr. Guarente  
10 told you that nicotinamide riboside would be a  
11 candidate to boost NAD levels?

12 A. I do not know.

13 Q. At the time Dr. Guarente told you that  
14 nicotinamide riboside might be a candidate to boost  
10:27:28 15 NAD levels, did you have a plan for a product that  
16 would be sold to consumers?

17 A. Can you repeat the question?

18 Q. Sure. Let me back up and ask it  
19 slightly differently.

10:27:42 20 As of the time of your conversation  
21 with Dr. Guarente about nicotinamide riboside, what  
22 was the status of Elysium's efforts to bring a  
23 product to market?

24 A. To that point, what I feel confident  
10:28:00 25 saying is we had a vision for a product, again,

1 based on Lenny's guidance and the subsequent  
2 research and since the Sirtris acquisition, that we  
3 would create a product that is synergistic in  
4 function, that both restored production of NAD and  
10:28:19 5 activated sirtuins.

6 Q. Before Dr. Guarente came to you and  
7 mentioned NR, had he shared with you any other  
8 candidates for the part of your vision that would  
9 restore production of NAD?

10:28:43 10 A. I don't recall.

11 Q. Was there ever any other compound, any  
12 other ingredient other than nicotinamide riboside,  
13 that would perform that function for your product,  
14 boosting NAD levels?

10:29:00 15 A. Yes.

16 Q. What was that?

17 A. Well, the NAD biosynthesis pathway has  
18 a number of compounds in it. It begins with niacin,  
19 which is not nearly as effective but, in theory,  
10:29:16 20 does elevate levels of NAD.

21 Everything up until a certain point  
22 goes through a rate-limiting step that severely  
23 inhibits their ability to increase NAD levels. Two  
24 compounds that exist after this rate-limiting step  
10:29:36 25 are NR and nicotinamide mononucleotide or NMN.



1                   Some of Lenny's research network,  
2     former students and post docs, Shinmei, David  
3     Sinclair, et cetera, were using different types of  
4     NAD precursors, these two different compounds to  
10:30:02 5     study NAD repletion. So those would be other  
6     candidates.

7                   Q. Did you ever seriously consider any of  
8     those other candidates for the product that  
9     ultimately became Basis?

10:30:16 10                  A. The only other one that we would have  
11     considered given the dynamics of the biosynthesis  
12     pathway would be NMN. However, NMN is not a  
13     consideration in our minds, especially at that time,  
14     given there was no commercial source, there was no  
10:30:37 15     human data around safety or efficacy. So it was not  
16     a viable candidate molecule in our opinion.

17                  Q. Which left you with no candidate for  
18     the NAD boosting function of your product other than  
19     nicotinamide riboside; is that right?

10:31:03 20                  A. Yes.

21                  Q. Did you ever -- given the limitations  
22     around NMN that you just described, did you ever  
23     seriously consider using NMN to restore production  
24     of NAD in your product?

10:31:23 25                  A. I don't recall.

1 Q. At any time during the life of Elysium,  
2 have you considered using NMN as an ingredient in  
3 the product that became ultimately known as Basis?

4 A. Yes.

10:31:45 5 Q. When was that?

6 A. We have evaluated NMN on multiple  
7 occasions, from time to time. The research that  
8 we're seeing, while it's still very early for NMN,  
9 again still no human data, not something we consider  
10:32:04 10 to be a viable or competitive candidate to NR yet.

11 We keep an eye on the research. It's  
12 our view that, in the context of the NAD story, NMN  
13 may play a different role than NR. And given our  
14 belief in the potential health impacts of NAD  
10:32:26 15 repletion, it is something that we evaluate on a  
16 regular basis.

17 Q. Do you have a commercial source for it,  
18 if you chose to use it?

19 A. To our knowledge, no viable commercial  
10:32:37 20 source exists.

21 Q. It sounds like it's something you're  
22 keeping an eye on in terms of research, NMN,  
23 correct?

24 A. That's correct.

10:32:47 25 Q. Have you ever seriously considered NMN

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1 as a candidate for an ingredient that you could  
2 source, that you could be assured of its safety and  
3 that you could put in a product that Elysium would  
4 sell to the public?

10:33:01 5 A. Yes.

6 Q. When did you consider doing that?

7 A. Again, multiple times in the course of  
8 the company's history. I mean, I think it's --

9 serious consideration is what precedes a market

10:33:17 10 evaluation, when we would go and we would look for

11 commercial sources and evaluate and review the full

12 landscape of the literature, et cetera.

13 Q. So from time to time you've considered,

14 as a key ingredient in Basis, a product that you

10:33:36 15 cannot source and for which you have no assurances

16 or studies is safe for human consumption; is that

17 fair?

18 A. Yes.

19 MR. ATTANASIO: Probably at a good

10:33:47 20 point for a break now, if that's agreeable.

21 MR. SACCA: Sure. Just before we go

22 off the record, I will just, as I did with

23 Dr. Guarente, note that a significant portion of

24 your questioning so far is related to issues in

10:34:01 25 the New York case, not the California case. So

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1 we reserve all rights in both actions to seek  
2 appropriate protective orders.

3 MR. ATTANASIO: I understand, and I  
4 disagree. Thanks. We can go off the record.

10:34:15 5 THE VIDEOGRAPHER: It is 10:35 a.m.  
6 We're going off the record.

7 (Whereupon, there is a recess taken.)

8 THE VIDEOGRAPHER: It is 10:51 a.m. We  
9 are back on the record.

10:50:13 10 BY MR. ATTANASIO:

11 Q. Mr. Marcotulli, I'll remind you you're  
12 still under oath. You understand that?

13 A. Yes.

14 Q. We were chatting about NMN.

10:50:26 15 Do you know if that compound is able to  
16 enter the cell wall?

17 A. I do not.

18 Q. Do you know whether that compound is  
19 able to enter the cell wall without converting into  
10:50:40 20 something else?

21 A. I do not.

22 Q. Have you ever authored any scientific  
23 papers?

24 A. Yes.

10:50:46 25 Q. How many?

1 A. One.

2 Q. What was the name of it?

3 A. Repeat Dose Administration of NRPT -- I  
4 can't recall the remainder.

10:51:00 5 Q. What publication did your article  
6 appear in?

7 A. Nature Partner Journals, Aging and  
8 Mechanisms of Disease.

9 Q. Did you write it?

10:51:12 10 A. I was part of the team that drafted it,  
11 yes.

12 Q. In fact, you were listed as the lead  
13 scientist on that article; is that true?

14 A. The lead author, yes.

10:51:21 15 Q. Well, the person listed first is  
16 commonly known in scientific fields as the lead  
17 scientist on the project, yes?

18 A. My understanding is it is the lead  
19 author.

10:51:31 20 Q. Were you the lead author of that  
21 article?

22 A. Yes, I was.

23 Q. How did it come to be that you were the  
24 lead author of a scientific article in a scientific  
10:51:41 25 journal on a scientific subject when you're not a

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1 scientist?

2 A. It was Lenny's suggestion.

3 Q. Why?

4 A. Lenny said usually the first listed  
10:51:51 5 author is the one whose lab did the research that  
6 underscores the paper. I mean, it's from -- I was  
7 the quarterback, so to speak. And in this case, he  
8 said that was me.

9 Q. Did he tell you why he thought that was  
10:52:10 10 you?

11 A. He did not.

12 Q. Do you have a lab?

13 A. I do not.

14 Q. Then what he said wouldn't make sense,  
10:52:16 15 would it?

16 A. I think in the context of that comment,  
17 he was referring to Elysium in the context of a lab.  
18 I don't think he necessarily meant lab explicitly.

19 Q. Well, had Elysium done "lab work" that  
10:52:31 20 you oversaw such that you would be the lead author  
21 on a scientific article in a scientific journal?

22 A. Yes, we conducted a double-blind,  
23 placebo-controlled randomized trial.

24 Q. You were the quarterback of that; is  
10:52:50 25 that right?

1 A. Yes. I was intimately involved in the  
2 study.

3 Q. Were you the lead scientist on that  
4 study?

10:52:58 5 A. The lead scientist? I'm not a  
6 scientist.

7 Q. Well, what role did you play in that  
8 scientific study?

9 A. I helped with the design of the trial.  
10:53:09 10 I helped with the budgeting, the funding of the  
11 trial, the analysis of the data from a statistical  
12 standpoint when the results came in.

13 Q. How many double-blind,  
14 placebo-controlled randomized trials have you  
10:53:33 15 quarterbacked other than that one?

16 A. So we've done a number of additional  
17 studies since then that have either been completed  
18 or are in process now. So the number would be  
19 single digits, mid-single digits.

10:53:59 20 Q. Were you the leader of each of those  
21 studies?

22 A. Again, I'm intimately involved. Now  
23 that we have a much larger scientific team than we  
24 did at the time of our first clinical trial, I don't  
10:54:14 25 necessarily oversee the execution of the trials as

1 closely as I did for that particular trial.

2 Q. That particular trial, referring to the  
3 trial that was the subject of the article, yes?

4 A. Yes.

10:54:25 5 Q. So you were the leader of Elysium's  
6 first clinical trial?

7 A. According to Lenny.

8 Q. I'm asking you.

9 A. I defer to Lenny when it comes to  
10:54:35 10 matters of this nature.

11 Q. So Lenny told you that a nonscientist,  
12 you, with no scientific degree and no formal  
13 scientific training was the leader of the company's  
14 first clinical trial; is that accurate?

10:54:49 15 A. Yes.

16 Q. Did that make sense to you?

17 A. Yes.

18 Q. Would it have made more sense to you to  
19 have the leader of Elysium's first clinical trial be  
10:55:08 20 something like a scientist?

21 A. Not necessarily, no.

22 Q. By the way, the article that we were  
23 discussing, you had to publish a correction to that  
24 article; is that right?

10:55:20 25 A. That is correct.



1 Q. Do you remember what the correction was  
2 about?

3 A. I do not.

4 Q. Do you remember anything about it?

10:55:28 5 A. I do not.

6 Q. Well, you were the lead author, yes?

7 A. Yes.

8 Q. You've published how many articles in  
9 scientific journals?

10:55:38 10 A. One.

11 Q. The one that you've published had to  
12 take a correction that had to be published later  
13 because of an inaccuracy.

14 And so my question is, what was the  
10:55:51 15 inaccuracy?

16 A. I don't recall.

17 Q. Was it important to you?

18 A. My understanding, from our scientific  
19 team, was that the correction was minor, easily  
10:56:02 20 remedied, and there was no cause for concern. So I  
21 didn't involve myself in it beyond those  
22 discussions.

23 Q. But you've told me you were the lead  
24 author, so why would you not involve yourself in it?

10:56:18 25 A. It's a technical matter, a correction.

1 So given that I'm not a scientist, I relied on our  
2 scientists to handle that.

3 Q. Do you recall that, in fact, it had to  
4 do with sourcing for the support of one of the key  
10:56:30 5 propositions in the paper? Do you remember that?

6 A. I -- again, I don't recall what the  
7 corrections or correction was.

8 Q. Do you remember that the article made a  
9 claim about scientific support for a key pillar of  
10:56:43 10 the article and that that source was wrong?

11 A. You'd have to be more specific, but,  
12 again, I don't recall the nature of the correction.

13 Q. Nothing at all?

14 A. I do not, no.

10:56:59 15 Q. Let me talk to you about the Niagen  
16 supply agreement between Elysium and ChromaDex.

17 Are you familiar with that?

18 A. I am, yes.

19 Q. Who drafted the first version of the  
10:57:11 20 Niagen supply agreement between Elysium and  
21 ChromaDex?

22 A. As I recall, the very first volley was  
23 drafted by our attorneys at the time at Fenwick &  
24 West. Although I believe that that was not accepted  
10:57:31 25 at all and that we deferred to ChromaDex documents

1 from that point forward. That's the best I can  
2 recollect.

3 Q. Let me show you a document. Let's see  
4 if it assists us.

10:57:45 5 MR. ATTANASIO: We'll mark this as  
6 Exhibit 134.

7 (Whereupon, Exhibit 134, 11/9/13  
8 email, from Eric Marcotulli, to Frank Jaksch,  
9 CDXCA\_0007240, is marked for identification, as  
10:57:49 10 of this date.)

11 Q. Mr. Marcotulli, do you recognize  
12 Exhibit 134 as an email that you sent to ChromaDex,  
13 specifically Mr. Frank Jaksch, J-a-k-s-c-h, on  
14 November 9th, 2013?

10:58:43 15 A. Yes.

16 Q. Do you see the subject line is  
17 "Partnership Agreement Draft"?

18 A. Yes.

19 Q. And this is a document that begins with  
10:58:52 20 Bates Nos. ending 7240 in the lower right corner,  
21 for the record.

22 Is this the first, I think you called  
23 it, the first volley? In your email you call it the  
24 first pass.

10:59:06 25 Is this what you were referring to in

1 your prior answer when you said that attorneys at  
2 Fenwick & West had prepared the initial draft of an  
3 agreement between ChromaDex and Elysium?

4 A. Yes.

10:59:18 5 Q. And who did you understand Mr. Jaksch  
6 to be at this time?

7 A. My recollection is that Frank, at this  
8 point in time, was the CEO.

9 Q. So he was your counterpart,  
10:59:28 10 essentially?

11 A. Correct.

12 Q. Had you had negotiations, had you had  
13 discussions with Mr. Jaksch prior to sending this  
14 email over?

10:59:37 15 A. Yes.

16 Q. What had you discussed with Mr. Jaksch  
17 about a potential partnership between -- or  
18 agreement between ChromaDex and Elysium?

19 A. As I recall, we had at least one  
10:59:53 20 in-person meeting in the -- rough timeframe would be  
21 the summer of 2013, subsequent email exchanges and  
22 phone calls. And, you know, they all focused around  
23 a partnership between Elysium and ChromaDex,  
24 specifically related to the supply of the ingredient  
11:00:19 25 or ingredients in Basis.

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1 Q. Why did you refer to it in your answer  
2 and in this email at Exhibit 134 as a partnership  
3 agreement as opposed to, for instance, a supply  
4 agreement?

11:00:31 5 A. I think it was our view from the very  
6 beginning and, you know, we believed it was  
7 reciprocated that, you know, there was a  
8 relationship to be pursued that was deeper than a  
9 transactional supply agreement.

11:00:46 10 The idea that there could be further  
11 integration on a number of different -- along a  
12 number of different dimensions that, again, would  
13 fall more in line with what we would consider to be  
14 a partnership as opposed to just some form of  
11:01:02 15 contractual relationship.

16 Q. What do you mean when you say there  
17 could be further integration on a number of  
18 different -- on a number of different parts of the  
19 relationship?

11:01:15 20 A. Well, what was shared with us during  
21 this stage of discussions was that ChromaDex has a  
22 reference standards business that focuses on rare,  
23 emerging molecules like NR, that they had the  
24 ability to identify uniquely which of these  
11:01:38 25 potential reference standards could become large

1 market opportunities, like potentially NR. And then  
2 that they were experts on the supply chain side,  
3 figuring out how to scale these commercially.

4 They had shared with us that they had  
11:01:53 5 previously ventured into the direct-to-consumer  
6 market but had failed.

7 So the idea was, in the early days,  
8 some form of deeper integration would look like  
9 ChromaDex as a back-end partner of Elysium's where  
11:02:09 10 we would be working together on an exclusive or  
11 semiexclusive basis to both identify, commercialize  
12 and sell products together.

13 Q. Did you negotiate with anybody else at  
14 ChromaDex other than Mr. Jaksch?

11:02:29 15 A. For the purposes of the supply  
16 agreement, at least at this time frame, the other  
17 individual copied on this email was present and  
18 active in the dialogs, Robert Prag.

19 Q. Prag, P-r-a-g?

11:02:44 20 A. Yes.

21 Q. Who was Mr. Prag as it related to your  
22 dealings with ChromaDex?

23 A. It was never really clear to us. I  
24 think at one point he or Frank mentioned that Bob is  
11:02:55 25 somehow related to Frank, maybe through his wife.

1 Bob represented himself as a consultant  
2 who was assisting, you know, his email here is at a  
3 Del Mar Consulting handle. You know, Frank  
4 interacted with him in such a way that we felt --  
11:03:16 5 that that was a decision on their end. So we  
6 interacted with him as if he was part of their team.

7 Q. So you interacted both with Mr. Jaksch  
8 and Mr. Prag during this period; is that right?

9 A. Yes.

11:03:30 10 Q. If you turn in to the next page, you  
11 will see that attached to your email is a draft  
12 license and supply agreement.

13 Do you see that?

14 A. Yes.

11:03:40 15 Q. This draft was prepared, you said, by  
16 Fenwick & West?

17 A. That is correct.

18 Q. Did you have any input into the draft?

19 A. I don't recall.

11:03:56 20 Q. What did you understand the reference  
21 to license to mean in the title of the agreement?

22 MR. SACCA: I'm just going to caution  
23 you not to repeat anything you learned from  
24 conversations with your lawyers at Fenwick &  
11:04:09 25 West.

1 THE WITNESS: I can't answer that? I  
2 don't remember.

3 A. I don't think I can answer that, then.

4 Q. Let's walk through it. I don't want to  
11:04:26 5 invade any communications you had with Fenwick,  
6 okay?

7 A. Yep.

8 Q. Did you have an independent  
9 understanding, at the time you were negotiating with  
11:04:33 10 Mr. Jaksch, as to what type of license Elysium would  
11 have from ChromaDex other than your -- excluding  
12 communications you had with your counsel?

13 A. What I recall was represented to us was  
14 that ChromaDex had patents related to NR that were  
11:05:08 15 issued and that all customers had to license as part  
16 of any supply agreements.

17 So my understanding of a license was  
18 very much tied to the patents.

19 Q. Patents held by ChromaDex?

11:05:25 20 A. That is correct.

21 Q. Did you know what patents ChromaDex had  
22 on its property?

23 A. I don't recall at this time beyond what  
24 I shared.

11:05:41 25 Q. All right. If you turn to the draft



11:06:08 1 agreement, sir, page 2 of it, the Bates No. ending  
2 in 7242. And I'll direct your attention to Section  
3 1.12, which reads, "Licensed IP shall mean,  
4 collectively, the licensed patents and the licensed  
5 know-how."

6 Do you see that section?

7 A. Yes.

11:06:20 8 Q. Is that what you were just referring  
9 to, that is to say, the ChromaDex patents to which  
10 Elysium would take a license under the agreement?

11 A. Yes.

12 Q. As a strategic matter, did Elysium want  
13 to obtain licenses to those patents from ChromaDex?

11:06:38 14 A. Again, it was represented to us that we  
15 had no choice. So I think, you know, we trusted  
16 Frank on that point, and we proceeded as such.

17 Q. Do you know if ChromaDex ever agreed to  
18 license its patents to Elysium?

19 A. I'm not sure I understand the question.

11:06:53 20 Q. Did ChromaDex ever agree to license its  
21 patents to Elysium?

22 A. What Frank represented to us is that we  
23 were licensing the patents.

11:07:12 24 Q. Do you know if ChromaDex ever actually  
25 licensed patents to your company?

1 A. I don't believe they did.

2 Q. Why not? What were you told?

3 A. Subsequently it turns out that in the  
4 other volleys that came back after this, the  
5 agreements were split. And the license was tied to  
6 not intellectual property but trademarks, which we  
7 did not want.

8 Q. Why did you want licenses to  
9 ChromaDex's patents?

10 A. We were told we were licensing them,  
11 and that's what we had to pay a license fee for.

12 Q. Well, first you said that Mr. Jaksch  
13 told you that you had to license the patents.

14 A. That's correct.

15 Q. It was mandatory; is that what he told  
16 you?

17 A. That's right.

18 Q. And then you said that you were told  
19 ChromaDex declined to license the patents; is that  
20 what you were told?

21 A. No. I'm saying we subsequently learned  
22 that the patents weren't part of the license  
23 agreement, that it was the trademarks.

24 Q. My question to you is, were you told  
25 why the patents were not part of a license

1 agreement?

2 A. No.

3 Q. Well, did you ask Mr. Jaksch, gee,  
4 Frank, you told us that we were not only going to  
11:08:34 5 get the licenses to the patents but that we had to  
6 take them?

7 A. I don't recall.

8 Q. You don't recall asking him?

9 A. I do not.

11:08:42 10 Q. Did you ask him anything like that?

11 A. I don't recall.

12 Q. Did you talk to Mr. Jaksch at all about  
13 why a license to the patents owned by ChromaDex was  
14 not included in this agreement?

11:08:54 15 A. I don't recall.

16 Q. Did you discuss with Mr. Jaksch the  
17 fact that, according to you, today, you received  
18 mixed messages about whether Elysium would get a  
19 license to ChromaDex's patents?

11:09:07 20 A. I don't recall.

21 Q. Did you discuss with Mr. Jaksch why it  
22 was that Elysium preferred to have a license to the  
23 patents and not a license to any trademarks?

24 A. We were very clear that we didn't want  
11:09:28 25 the trademarks, but the rest of your question, I

1 don't recall.

2 Q. So you recall the one part of it, that  
3 you did not want the trademarks, but you don't  
4 recall anything else.

11:09:38 5 A. That is correct.

6 Q. Is there a writing, to your knowledge,  
7 where you tell Mr. Jaksch, look, we don't want a  
8 license to your trademarks? Did you write that to  
9 him in a draft or in a comment or in an email?

11:09:59 10 A. I don't recall.

11 Q. WhatsApp, anything?

12 A. Not to my recollection.

13 Q. Why not?

14 A. I don't recall.

11:10:07 15 Q. Well, was it a deal term that you  
16 negotiated?

17 A. I mean, this is the very first pass at  
18 this agreement, which subsequently changed multiple  
19 times, so I can't say based on what I'm looking at  
11:10:25 20 here.

21 Q. Tell me the last conversation you can  
22 recall about Elysium wanting a license on  
23 ChromaDex's patents.

24 MR. SACCA: Object to the form of the  
11:10:51 25 question.

1 A. I don't recall.

2 Q. Tell me the last conversation you can  
3 remember about Elysium not wanting a license on  
4 ChromaDex's trademarks.

11:11:04 5 A. I don't recall.

6 Q. Tell me any conversation you can  
7 remember about Elysium not wanting a license on  
8 ChromaDex's trademarks.

9 A. I don't recall.

11:11:17 10 Q. Tell me any conversation you can recall  
11 about Elysium wanting a license on ChromaDex's  
12 patents.

13 MR. SACCA: Object to the form of the  
14 question.

11:11:26 15 A. I don't recall.

16 Q. Do you recall that Elysium wanted  
17 exclusivity over certain channels in which Niagen  
18 and products containing Niagen would be sold?

19 A. Yes.

11:11:45 20 Q. Was that important to you, at Elysium?

21 A. Yes.

22 Q. Why?

23 A. Well, I think in any industry if you  
24 have an opportunity to have some form of exclusive  
11:11:57 25 relationship on a product, you pursue that

1 opportunity.

2 Q. Beyond that general proposition, was  
3 there anything specific about Niagen that caused you  
4 to want to have an exclusive for purposes of  
11:12:15 5 creating your own product?

6 A. Again, we believed in the early science  
7 behind NR. ChromaDex was the only supplier. They  
8 represented they had a very strong intellectual  
9 property portfolio.

11:12:31 10 So to be able to work with them  
11 exclusively was interesting to us, really related to  
12 my first point, which is, it seemed, at the time,  
13 they had a defensible portfolio of these attributes,  
14 and we would mutually benefit from an exclusive  
11:12:48 15 relationship.

16 Q. If you look at the draft agreement,  
17 Exhibit 134, and specifically Section 1.7, it is  
18 entitled, "Exclusive Field."

19 Do you see that on page 2?

11:13:12 20 A. I see the section.

21 Q. We don't need to read the whole thing  
22 into the record, but if you take a quick look at it,  
23 Mr. Marcotulli, is that the exclusive field that  
24 Elysium wanted to have in this agreement with  
11:13:29 25 ChromaDex regarding the sale of Niagen or products

1 containing Niagen?

2 A. Yes.

3 Q. Did ChromaDex agree to exclusivity?

4 A. No.

11:13:44 5 Q. Do you know why not?

6 A. My recollection is we -- we couldn't  
7 come to economic terms that both sides agreed on.

8 Q. Did you negotiate the exclusivity  
9 clause and the economic terms that were discussed?

11:14:02 10 A. I don't recall.

11 Q. Do you recall discussing with  
12 Mr. Jaksch the exclusivity provision that we're  
13 looking at in Exhibit 134?

14 A. I do not recall.

11:14:12 15 Q. Do you recall discussing with a man  
16 from Del Mar Consulting, Mr. Prag, the exclusivity  
17 agreement that Elysium was seeking from ChromaDex?

18 A. I do not recall.

19 Q. Do you recall what Mr. Jaksch told you  
11:14:32 20 about why ChromaDex would not enter an exclusivity  
21 arrangement with Elysium?

22 A. I do not recall.

23 Q. Are you confident that the only reason  
24 ChromaDex would not enter an exclusivity arrangement  
11:14:46 25 with Elysium was because the parties could not agree

1 on economic terms?

2 A. That's my recollection, yes.

3 Q. Were there any other reasons ChromaDex  
4 would not agree to exclusivity?

11:14:59 5 A. Not that I recall.

6 Q. Were you ever told that ChromaDex  
7 didn't want to ship only to Elysium, that it wanted  
8 to sell to other customers as well?

9 A. I don't recall.

11:15:12 10 Q. Do you remember ChromaDex asking for  
11 equity in Elysium as part of a possible agreement?

12 A. Yes.

13 Q. And were you told why ChromaDex wanted  
14 equity in Elysium as part of a possible agreement?

11:15:24 15 A. I don't recall.

16 Q. Well, who told you that ChromaDex  
17 wanted equity as a term of any agreement with  
18 Elysium?

19 A. I believe it was Frank, but I can't say  
11:15:36 20 with certainty.

21 Q. What did Frank tell you about ChromaDex  
22 wanting equity?

23 A. I don't recall.

24 Q. Were you aware that ChromaDex regularly  
11:15:43 25 received equity from the companies that bought



1 ingredients from ChromaDex?

2 MR. SACCA: Object to the form of the  
3 question.

4 A. I don't know.

11:15:54 5 Q. Did anyone at ChromaDex ever tell you  
6 that ChromaDex wanted to share in the success of  
7 Elysium by receiving equity in your company?

8 A. I don't recall.

9 Q. Did you agree to give ChromaDex equity  
11:16:06 10 in Elysium?

11 A. No.

12 Q. Why not?

13 A. I don't recall.

14 Q. Did you discuss it with Mr. Alminana?

11:16:14 15 A. I don't recall.

16 Q. Did you discuss with Mr. Alminana that  
17 the company that would be your main -- your only  
18 supplier of this key ingredient wanted a stake in  
19 the company, did you discuss that with Mr. Alminana?

11:16:26 20 A. I don't recall.

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

22 A. I don't recall.

23 Q. Is there any reason you wouldn't  
24 discuss with your co-founders and founding

11:16:34 25 shareholders that the supplier, ChromaDex, wanted

1 equity in your company?

2 A. There's no reason I wouldn't have had  
3 the discussion. I just don't recall having it.

4 Q. Do you recall negotiating royalty  
5 payments from Elysium to ChromaDex?

6 A. Somewhat.

7 Q. Look at page 8 of the agreement,  
8 please, in Exhibit 134, the draft agreement.

9 Do you see that Section 5 is entitled,  
10 "Royalties"?

11 A. Yes.

12 Q. Do you see that beneath that it says  
13 "Royalty Rate," and then there's a form of a  
14 schedule?

15 A. Yes.

16 Q. Is this the royalty provision that you  
17 proposed to ChromaDex?

18 A. It appears that way, yes.

19 Q. And do you remember why royalties were  
20 part of your first draft of the agreement?

21 A. Again, you know, royalties are  
22 typically paid when one company is accessing the  
23 intellectual property of another.

24 So our sense was a royalty structure  
25 was appropriate -- as I recall, appropriate. And as

1 you see here, on a sliding scale basis.

2 Q. But that would be royalties for a  
3 license to ChromaDex's patents, correct?

4 A. That is correct.

11:17:54 5 Q. Which ChromaDex did not agree to, yes?

6 A. Again, we were represented that we were  
7 licensing the patents, and that's why you see this  
8 here.

9 Q. To your memory, was Elysium financially  
11:18:06 10 capable of paying for the cost of purchasing Niagen  
11 from ChromaDex without agreeing to pay royalties as  
12 part of this deal?

13 A. Can you repeat the question?

14 Q. Yes. As of 2013, could Elysium, on a  
11:18:24 15 cash basis, have paid for the Niagen it wanted to  
16 buy from ChromaDex?

17 A. Absolutely.

18 Q. Why do you say that so confidently,  
19 Mr. Marcotulli?

11:18:38 20 A. Because we simply placed an order that  
21 is commensurate with the cash that we have. We  
22 don't need the royalty to help defer costs. If we  
23 want to spend less, we spend less.

24 Q. How much, as of 2013, were you  
11:18:53 25 preparing to purchase from ChromaDex if this deal

1 could be finalized?

2 A. I don't recall.

3 Q. Well, give me a range. How much were  
4 you going to buy and what was it going to cost?

11:19:03 5 A. I don't recall. I also don't know the  
6 cost structure.

7 Q. What do you mean by that?

8 A. I don't have the per kilo price in  
9 front of me. I don't know the context around  
11:19:15 10 scaling up.

11 There's clearly lead times on our end  
12 associated with things like production of jars,  
13 encapsulation, et cetera.

14 Q. When did you expect that to happen as  
11:19:31 15 of 2013 such that you would be ready to put  
16 encapsulated pills in jars and sell them to people?

17 A. I don't recall.

18 Q. Well, as of 2013, during the time of  
19 this negotiation, when did you expect that Elysium  
11:19:46 20 would bring its product known as Basis to market?

21 A. I don't recall.

22 Q. As of 2013, when you were negotiating  
23 this agreement with ChromaDex, what did you  
24 anticipate would be the volume of your first  
11:20:03 25 production run?

1 A. I don't recall.

2 Q. Did you agree to pay ChromaDex  
3 royalties in the final agreement?

4 A. Yes.

5 Q. Why?

6 A. Again, we were told that all customers  
7 pay a royalty and that was their way of doing  
8 business, given their ownership of the NR supply  
9 chain.

10 Q. Who told you that?

11 A. Frank.

12 Q. You are certain of that particular fact  
13 but none of the others?

14 A. Yes.

15 Q. Okay. Is there a reason why you, as  
16 you sit here today, remember that but you don't  
17 remember anything else Frank said to you?

18 A. No.

19 Q. What were the royalties for in the  
20 final agreement, Mr. Marcotulli?

21 A. It's my understanding that they were  
22 tied to the use of trademarks.

23 Q. Tell me what exactly Mr. Jaksch said to  
24 you about royalties other than the two things you've  
25 told me so far, contradictory as they are, one of

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

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

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

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

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

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

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

1 is that right?

2 A. That's exactly right.

3 Q. Did your counsel review the agreement?

4 A. They did.

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

11:22:37 10 A. Yes.

11 Q. How did you get that understanding?

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

16 Q. Did you read the agreement?

17 A. I don't recall.

18 Q. Did you read the final agreement?

19 A. I don't recall.

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

21 A. I don't recall.

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

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

1 outcome of the negotiations reflected in  
2 Exhibit 134.

3 A. I don't recall.

4 Q. Would it be your practice to read an  
5 agreement between Elysium and a major supplier?

6 A. Yes. I also trust my counsel. I'm not  
7 a lawyer. I don't structure these sorts of  
8 agreements.

9 Q. Did you discuss with Mr. Jaksch that  
10 you had been under the impression that Elysium had a  
11 license to ChromaDex's patents?

12 A. Not that I recall. It was -- again, it  
13 was represented to us in that fashion.

14 Q. What do you mean by that? What was  
15 represented to you?

16 A. I don't know why we would have talked  
17 to Frank about it because Frank was the one telling  
18 us that this was how the agreements are structured.

19 Q. Right. But at some point, you've told  
20 me you discovered that, no, in fact, Elysium did not  
21 have a license to ChromaDex's patents; is that  
22 correct?

23 A. That is correct.

24 Q. When did you learn that fact?

25 A. I don't recall.



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1 Q. How did you learn it?

2 A. I don't recall.

3 Q. Where did you learn it?

4 A. I do not recall.

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

6 A. I don't recall.

7 Q. What was your reaction?

8 A. I don't recall.

9 Q. Were you upset?

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

11 Q. Did you go on a WhatsApp tirade?

12 A. I don't recall.

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

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

17 A. I don't know.

18 Q. Did you discuss that understanding with  
19 Mr. Alminana? By understanding, I mean the fact  
11:25:25 20 that Elysium did not have a license to patents from  
21 ChromaDex.

22 A. I don't recall.

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

24 A. I don't recall.

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

1 telling me what was said?

2 A. I don't recall.

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

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

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

16 A. I don't recall.

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

19 A. I don't recall.

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

22 A. I don't recall.

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

1           A.    The only conversations I recall with  
2 Frank around the trademarks is that we wanted to  
3 list -- and this goes back to the patent piece --  
4 the patent numbers on the jar as opposed to  
11:26:53 5 ChromaDex's website and that we did not want to  
6 refer to our NR as Niagen as they were asking others  
7 to do.

8           Q.    Did he agree to that?

9           A.    Yes.

11:27:06 10           Q.    Is that in the agreement, the final  
11 agreement between ChromaDex and Elysium for supply,  
12 to your knowledge?

13           A.    I don't recall.

14                   MR. SACCA: Object to the form of the  
11:27:15 15 question.

16           Q.    Before sending this draft agreement  
17 over, did you ever tell anyone at ChromaDex that you  
18 wanted Niagen to be sold to Elysium to be  
19 manufactured under pharmaceutical cGMPs?

11:27:36 20           A.    It was represented to us that the  
21 product could be manufactured in accordance with  
22 210/211 compliance CGMPs, which is the, in our  
23 opinion, highest quality CGMP profile. So we were  
24 ecstatic to accept that particular term of the  
11:27:57 25 agreement.

1 Q. You said that "it was represented to  
2 us," and then you went on with your answer.

3 A. Mm-hmm.

4 Q. Who represented that to you?

5 A. Frank.

6 Q. Anybody else?

7 A. Not that I recall.

8 Q. Did Mr. Jaksch make that representation  
9 to you personally?

10 A. Yes.

11 Q. Do you remember it?

12 A. I don't remember the specific  
13 conversation, but I do remember he was the one who  
14 volunteered it.

15 Q. Tell me what you remember.

16 A. Again, we've had extensive  
17 conversations by this point around the vision for  
18 the company. A big part of Elysium was that the  
19 direct-to-consumer market has a lot of issues  
20 associated with it when you're talking about health  
21 products. So, you know, beyond just doing clinical  
22 trials, we wanted to pursue a model of quality in  
23 terms of the ingredients.

24 Frank's response was, we agree with  
25 that. You know, when we manufacture our products,

1 we do so in accordance with CGMPs. In fact, we can  
2 make this product at 210 and 211 compliant CGMPs.  
3 I'm paraphrasing. I don't -- I can't say it was the  
4 exact comment.

11:29:16 5 Q. I understand you're paraphrasing, but  
6 you have a specific memory of that conversation, of  
7 Mr. Jaksch saying in sum and substance, what you  
8 just told me.

9 A. Yeah. It -- yes, it stuck out mainly  
11:29:28 10 because most supplement facing companies will pursue  
11 110 and 111 compliance. And it was rare to meet any  
12 group that was operating in the realm of 210 and 211  
13 compliance.

14 Q. When did Mr. Jaksch tell you that?

11:29:49 15 A. I don't recall, again, specifically.  
16 It would have been before this document was sent,  
17 certainly.

18 Q. Where did you and Mr. Jaksch have the  
19 conversation about 210 and 211 compliant products?

11:30:03 20 A. I do not recall.

21 Q. Was it face to face, was it on the  
22 phone?

23 A. I don't recall.

24 Q. Anything else stand out in your mind  
11:30:11 25 about the negotiations with Mr. Jaksch?

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1 A. Not to my recollection, no.

2 Q. If you look at the agreement, page 1,  
3 Section 1.4 -- excuse me. Let me rephrase that.

4 If you would look at the draft  
11:30:38 5 agreement contained in Exhibit 134, and specifically  
6 page 1, Section 1.4.

7 Do you see the section there at 1.4  
8 with the underscored first word "cGMPs"?

9 A. Yes.

11:31:05 10 Q. And then it goes on and says, "cGMPs  
11 mean current good manufacturing practices, (i) as  
12 described in Parts 210 and 211 of Title 21 of the  
13 United States Code of Federal Regulations and the  
14 latest FDA guidance documents pertaining to  
11:31:27 15 manufacturing and quality control practice." Have I  
16 read that correctly?

17 A. Yes.

18 Q. Is this what you were referring to that  
19 you and Mr. Jaksch had discussed, that is, that  
11:31:36 20 ChromaDex would make Niagen for Elysium that was  
21 compliant with Part 210 and 211 of Title 21 of the  
22 CFR?

23 A. Yes.

24 Q. Was anybody else present for that  
11:31:48 25 conversation you described with Mr. Jaksch?

1 A. I believe Dan Alminana was present for  
2 that conversation as well.

3 Q. Was Mr. Alminana present for all of  
4 your negotiating sessions with Mr. Jaksch?

11:32:01 5 A. I'd say almost the entirety, yes.

6 Q. Were there any exchanges of email on  
7 these deal points between you and Mr. Jaksch or did  
8 these conversations occur orally?

9 And I recognize we're looking at an  
11:32:23 10 email you sent over in Exhibit 134, but from that  
11 point forward, was there a number of email exchanges  
12 or other communications in writing regarding the  
13 terms of the draft agreement we see here?

14 A. We emailed with Frank a lot. I don't  
11:32:41 15 recall specifically whether or not deal terms were  
16 discussed in email exchanges, but I wouldn't be  
17 surprised if that was the case. We emailed with  
18 Frank quite a bit.

19 Q. Do you know, from your memory, if this  
11:32:57 20 point about the product being compliant with parts  
21 210 and 211 ever came up again in your  
22 communications with Mr. Jaksch after you sent  
23 Exhibit 134?

24 A. I don't recall.

11:33:11 25 Q. Did you ever discuss that subject with

1 him again?

2 A. I -- I don't recall.

3 Q. When did you find out that the Niagen  
4 being produced by ChromaDex for Elysium was not  
11:33:24 5 compliant with parts 210 and 211 but instead was  
6 made as what's commonly called the food standard?

7 A. My recollection is that it was in late  
8 2016 that we learned the manufacturing process was  
9 not 210/211 or 110/111.

11:33:49 10 Q. How did you learn that?

11 A. We were speaking with the team at W.R.  
12 Grace about the relationship and it was disclosed to  
13 us.

14 Q. By whom?

11:34:09 15 A. I don't remember the individual's name,  
16 Brett something or other.

17 Q. Why were you speaking at that time to  
18 W.R. Grace about your relationship with ChromaDex?

19 A. In late 2016, we had -- you know, we  
11:34:22 20 were in the middle of attempting to resolve a  
21 dispute with ChromaDex. And we approached W.R.  
22 Grace in the vein -- as ChromaDex's partner for two  
23 reasons.

24 One was, you know, given their  
11:34:41 25 closeness with ChromaDex, our hope was they could



1 potentially be helpful in coming to a resolution.

2 The second was to just better  
3 understand the relationship. We were interested in  
4 understanding contingency plans for our own company  
11:34:57 5 to the extent we couldn't resolve issues associated  
6 with ChromaDex.

7 Q. Meaning you were interested in finding  
8 out if you could purchase NR directly from Grace,  
9 correct?

10 A. I don't know that that's an accurate  
11 characterization. I think this was very exploratory  
12 at the time, just better understanding who these  
13 people are and what they're capable of from a  
14 manufacturing standpoint.

11:35:18 15 Q. You went to Grace to have conversations  
16 that you hoped would lead to being able to purchase  
17 NR directly from Grace, correct?

18 A. No.

19 Q. That was not in your mind at all?

11:35:30 20 A. Again, this was really about resolving  
21 matters with ChromaDex.

22 Q. You had no thought in you mind about  
23 what you just called a contingency plan, just called  
24 it that 30 second ago, to buy product from Grace  
11:35:43 25 directly?

1 A. I don't think that was the explicit  
2 purpose, so I would say no.

3 Q. What was the contingency plan that you  
4 just talked about?

11:35:49 5 A. The idea would be, you know, if  
6 ChromaDex couldn't continue to supply us, couldn't  
7 continue as a viable business, what would our  
8 options be in the future?

9 Q. Was Grace one of those options in the  
11:36:01 10 future, in your mind?

11 A. We didn't know. That was why we  
12 approached them.

13 Q. Right. Right. You approached Grace to  
14 see if they could be the supplier of NR to Elysium  
11:36:14 15 if things didn't work out with ChromaDex, true?

16 A. No.

17 Q. We'll come back to Grace.

18 Now, let's stay for a moment on the 210  
19 and 211 issue.

11:36:34 20 What were you told when you met with  
21 Grace regarding a contingency plan about the 210/211  
22 compliance of Niagen?

23 A. They didn't specifically reference  
24 Niagen. They just simply said their facility is not  
11:36:51 25 110 or 111 compliant. They were hoping to get there

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1 in the early portion of 2017, as I recall. So they  
2 certainly weren't 201/211 compliant.

3 Q. So you were told by Grace that their  
4 facility was not even 110 or 111 compliant?

5 A. That is correct.

6 Q. Who did you meet with from Elysium when  
7 you went to see Grace, who was with you?

8 A. I know Dan was there. I can't recall  
9 who else was there.

10 Q. Is it your memory that at no earlier  
11 time did you learn that Niagen was being produced at  
12 something other than a 210/211 compliant status.

13 A. Could you repeat that?

14 Q. Yes.

15 Prior to your meeting with Grace, did  
16 you ever learn from any other source that the Niagen  
17 you were receiving from ChromaDex was not 210/211  
18 compliant?

19 A. I don't recall.

20 Q. Do you recall ever reading that in a  
21 document?

22 A. I do not recall.

23 Q. Do you recall ever hearing that from  
24 anybody?

25 A. I do not recall.

1 Q. Did you take any steps to confirm that  
2 the Niagen being sold to Elysium by ChromaDex was,  
3 in fact, 210/211 compliant?

4 A. It's very difficult to confirm 210/211  
11:38:25 5 compliance without talking to the supply chain  
6 partner. 210/211 compliance isn't something that  
7 you can evaluate with, for instance, a test on  
8 materials. It's procedure based, it's equipment  
9 based, it's facilities based.

10 So short of an audit of the facility,  
11:38:40 11 there would be no way for us to validate it. We  
12 trusted Frank.

13 Q. What did Frank tell you?

14 A. Again, Frank represented in these  
11:38:52 15 negotiations that they could make Niagen in  
16 accordance with 210/211, which is why we included  
17 it.

18 Q. Well, let me focus on the time after  
19 you signed the supply agreement.

11:39:02 20 Did you take any steps to confirm with  
21 anyone at ChromaDex that they continued to be  
22 comfortable, confident that Niagen was being  
23 manufactured at a 210/211 compliant level?

24 A. I don't recall.

11:39:12 25 Q. Did you ever discuss that with anybody

1 at ChromaDex after the negotiations?

2 A. I don't recall.

3 Q. Did you ever take any steps to try to  
4 get an introduction from ChromaDex to Grace that  
11:39:24 5 could allow your team to confirm that Niagen was  
6 being produced at a 210/211 level?

7 A. I don't recall.

8 Q. Okay. Do you recall that in  
9 October 2015, you had negotiations with Elysium  
11:39:39 10 about amending the Niagen supply agreement?

11 MR. SACCA: Object to the form of the  
12 question.

13 A. I know there was subsequent amendments.  
14 I couldn't place the exact dates.

11:39:51 15 Q. Do you remember having discussions with  
16 ChromaDex about exclusivity again?

17 A. Yes.

18 Q. Do you remember that being  
19 approximately in the fall of 2015?

11:40:01 20 A. I know it took place over many months.  
21 That sounds right.

22 Q. And I don't mean to quibble, but when  
23 you say many months, I think what you're suggesting  
24 to me is late 2015, fall of 2015, all the way into  
11:40:15 25 2016.

1 A. That is correct, yes.

2 Q. Okay. What were you after? What kind  
3 of exclusivity did Elysium want at that time, late  
4 2015, early 2016?

11:40:28 5 A. Again, we were always interested in a  
6 more exclusive arrangement around nicotinamide  
7 riboside specifically. We continued to have those  
8 discussions with ChromaDex. They continued to  
9 express interest, but, again, we went around in  
11:40:46 10 circles in terms of our ability to really craft  
11 something that really worked on both sides.

12 One of the things that we had  
13 suggested, or they had suggested, I don't remember  
14 initially raised the idea, would be to have an  
11:41:01 15 exclusive on the combination of the ingredients in  
16 Basis given, one, we believed in the synergy between  
17 the two ingredients and wanted to invest behind it;  
18 but, two, pterostilbene, which is the second  
19 ingredient in Basis, really didn't have much a  
11:41:21 20 market beyond the Elysium products.

21 And so, it seemed like a natural fit  
22 for us to say, hey, we might not be able, today, to  
23 carve out something exclusive to NR. If we can feel  
24 good about something that's defensible, specifically  
11:41:36 25 the combination of these ingredients, then we can

1 start from there and we can begin to build trust and  
2 a clinical profile around the combination.

3 Q. What do you mean by defensible in that  
4 sentence?

11:41:47 5 A. Well, the idea here is, you know, if we  
6 were just a nonexclusive NR, for instance, seller,  
7 we don't have an incentive to conduct clinical  
8 trials because other people selling the exact same  
9 ingredient in a dosage format, et cetera, would just  
11:42:05 10 piggy-back on our clinical data.

11 So for us having an exclusive offered  
12 some level of defensibility. If we were to say you  
13 control, ChromaDex, the supply of NR, therefore, you  
14 would know if somebody's trying to pair these two  
11:42:21 15 ingredients and can prevent that, well, we're  
16 comfortable with that, that gives us the comfort  
17 required to go invest in clinical trials to build a  
18 marketplace around a customer base, et cetera.

19 Q. Who led the negotiations in late 2015,  
11:42:31 20 early 2016 for Elysium?

21 A. Again, I believe it was myself and Dan,  
22 although I don't recall the specifics.

23 Q. Who led the negotiations in late 2015,  
24 early 2016 over exclusivity for Elysium?

11:42:47 25 A. Again, I think it was myself and Dan.

1 Q. Excuse me. Sorry.

2 Who led -- I asked the same question  
3 twice in a row, I apologize.

4 Who lead the negotiations in late 2015,  
11:42:58 5 early 2016 over exclusivity for ChromaDex?

6 A. I know that Frank was involved. I  
7 believe at this point, Bob Prag is no longer in the  
8 picture.

9 I know that -- I believe it was Troy  
11:43:17 10 Rhonemus on the ChromaDex side, but I can't say with  
11 a hundred percent certainty.

12 Q. In these --

13 A. I interfaced personally, when I did  
14 interface, with Frank. I've had almost no  
11:43:30 15 interaction with others on the team.

16 Q. Did you and Frank have several  
17 one-on-one conversations during that late 2015,  
18 early 2016 period?

19 A. I don't recall.

11:43:40 20 Q. How did you communicate, by phone, in  
21 person, by other electronic means?

22 A. All of the above. Lots of emails, lots  
23 of phone calls. We would meet on occasion when we  
24 were in similar geographies.

11:43:55 25 Q. I will represent to you that the



1 amendment was signed on February 19th, 2016.

2 Does that sound reasonable?

3 A. Yes.

4 Q. How would you characterize those  
5 negotiations, Mr. Marcotulli? Were they easy or  
6 difficult?

7 A. I think we were frustrated a lot. You  
8 know, we would have conversations where we felt we  
9 made a lot of ground, and then it would come to the  
10 paperwork or just pushing things forward and we  
11 would be stifled. I think overall we were pleased  
12 that we were able to get somewhere in the way of  
13 defensibility, as I mentioned.

14 With the amendment, as you saw, you  
15 know, we had -- for the previous agreement, we  
16 started negotiations in, you know, mid-2013 and  
17 didn't get to something until early 2014. And it  
18 ended up being just a pretty standard supply  
19 agreement as opposed to an exclusive or defensible  
20 arrangement as we had all originally set out to  
21 craft.

22 So I think, you know, a little of  
23 Column A and a little of Column B in terms of step  
24 forward and some frustration on our end.

25 Q. What was your understanding of what you

1 ended up getting in that agreement? What type of  
2 exclusivity did you get?

3 A. We were very explicit about this, I  
4 think. The way that we thought about it is we want  
11:45:11 5 to own this combination, and that means the explicit  
6 combination but also anything in the perceived mind  
7 of the consumer that could be similar.

8 So that would cover not just the  
9 combination of pterostilbene and nicotinamide  
11:45:27 10 riboside in a single pill format, but also just  
11 individual bottles that could be sold together,  
12 which just as easily would be the Basis.

13 And then further, products that could  
14 be marketed very similarly. You know, one of the  
11:45:47 15 easiest ones there would be resveratrol, which is an  
16 analogue of pterostilbene.

17 Q. Okay. I think you're telling me what  
18 you wanted, what you set out to get.

19 Is that your understanding of what,  
11:46:03 20 ultimately, the agreement was?

21 A. Yes.

22 Q. Okay. Did you have an opinion by this  
23 time, Mr. Marcotulli, of Frank Jaksch? This time  
24 meaning the time of these negotiations we've been  
11:46:20 25 discussing?

1 A. I don't recall.

2 Q. You don't recall one way or the other?

3 A. I do not.

4 Q. Did you believe that ChromaDex was wise  
11:46:28 5 to reject full exclusivity for Elysium?

6 A. I understood why. I didn't necessarily  
7 agree with it.

8 Q. Why did you not agree with it?

9 A. Well, I felt that together we could do  
11:46:41 10 a lot. Again, I understand why at the time a larger  
11 company would potentially not want to take the risk,  
12 so to speak, of working with a smaller company in a  
13 full exclusive arrangement. That's my point, I  
14 understood their position. I didn't agree with it.

11:46:58 15 I thought we had a great platform and, you know,  
16 that we could have done great things.

17 Q. During this time period, late 2015,  
18 early 2016, had you also come to know a man named  
19 Tom Varvaro?

11:47:11 20 A. Yes.

21 Q. Was he part of these negotiations?

22 A. I don't recall.

23 Q. Did you have an opinion of Mr. Varvaro  
24 one way or the other?

11:47:18 25 A. No, I spent very little time with

1 Mr. Varvaro over the course of our relationship.

2 Q. You mentioned Mr. Rhonemus; what was  
3 your understanding of his position at ChromaDex at  
4 the time?

11:47:28 5 A. I don't know well. In my  
6 understanding, he's -- he was either the operating  
7 officer or related to supply chain, either build-out  
8 or negotiations.

9 Q. Did you have an opinion of Mr. Rhonemus  
11:47:46 10 one way or the other in late 2015, early 2016?

11 A. Not that I recall. Similarly, I did  
12 not interact with him very often.

13 Q. Had you met a man named Mark Morris by  
14 that time period, late 2015, early 2016?

11:48:05 15 A. I don't recall when we first met Mark.  
16 So it is possible, but I can't place the first  
17 meeting.

18 [REDACTED]

11:48:24 [REDACTED]

[REDACTED]

11:48:37 [REDACTED]

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1 Q. Let's mark our next exhibit -- you  
2 understand your under oath, right?

3 A. Yes.

4 MR. ATTANASIO: Our next Exhibit is

5 135.

6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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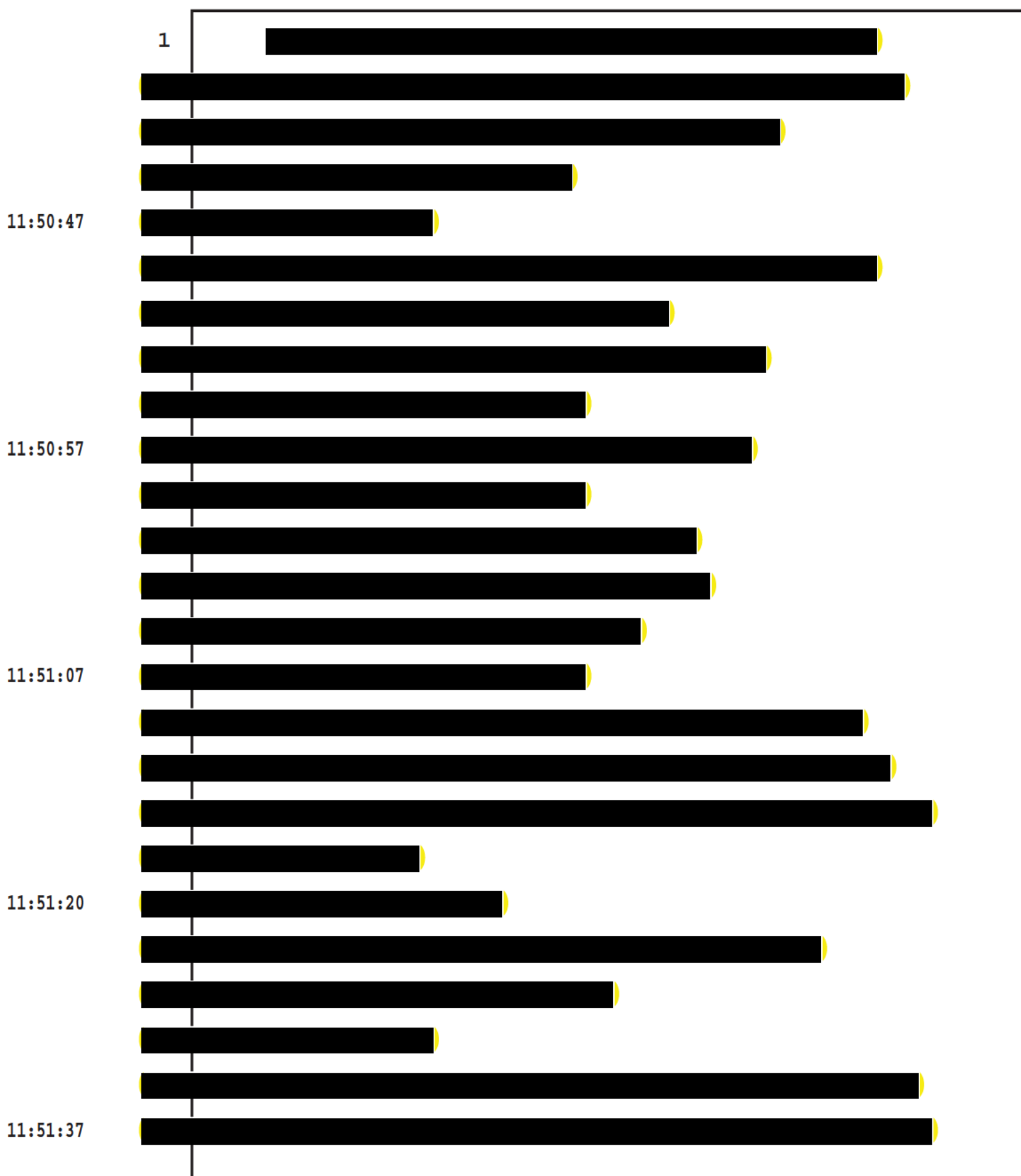
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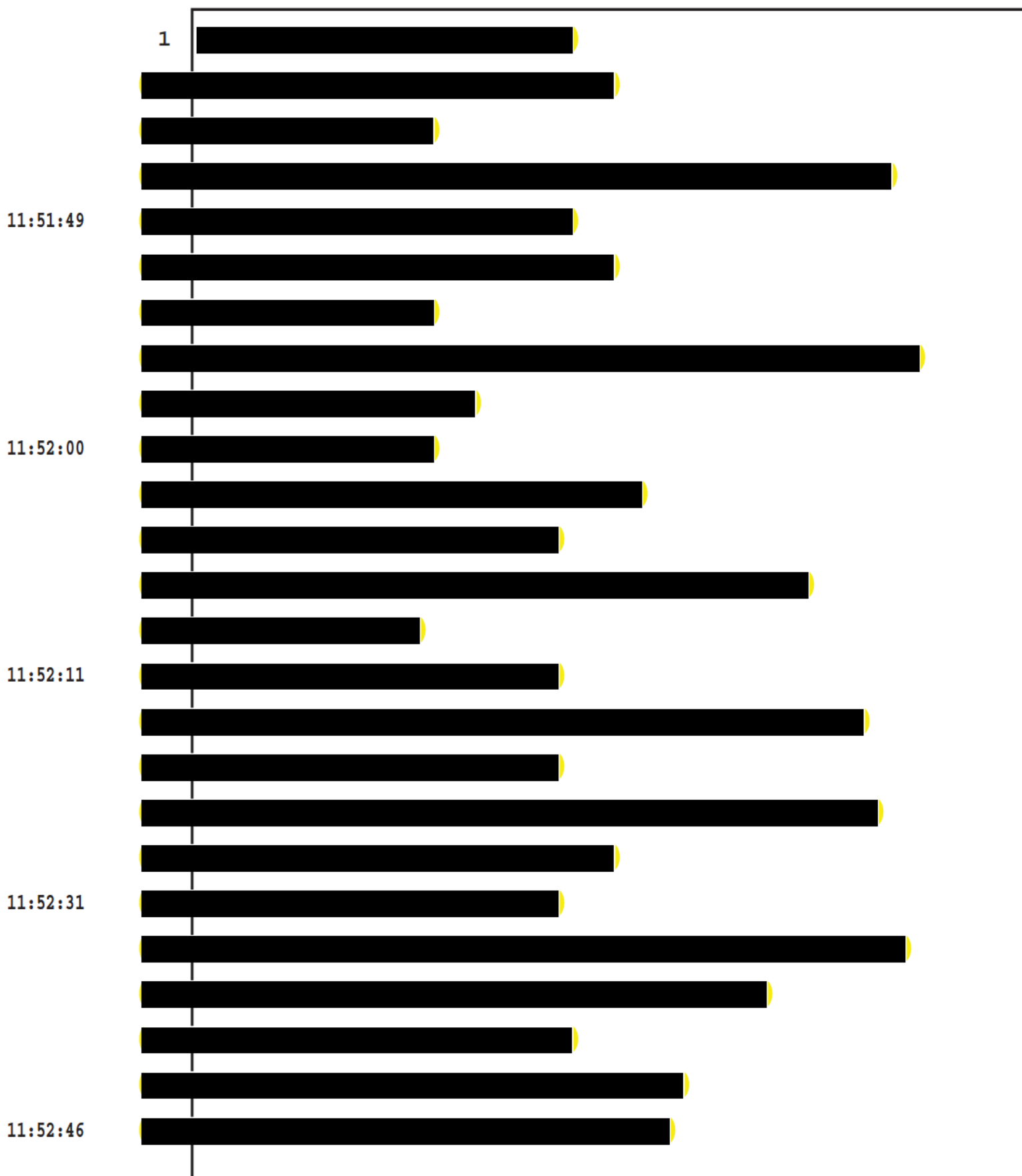
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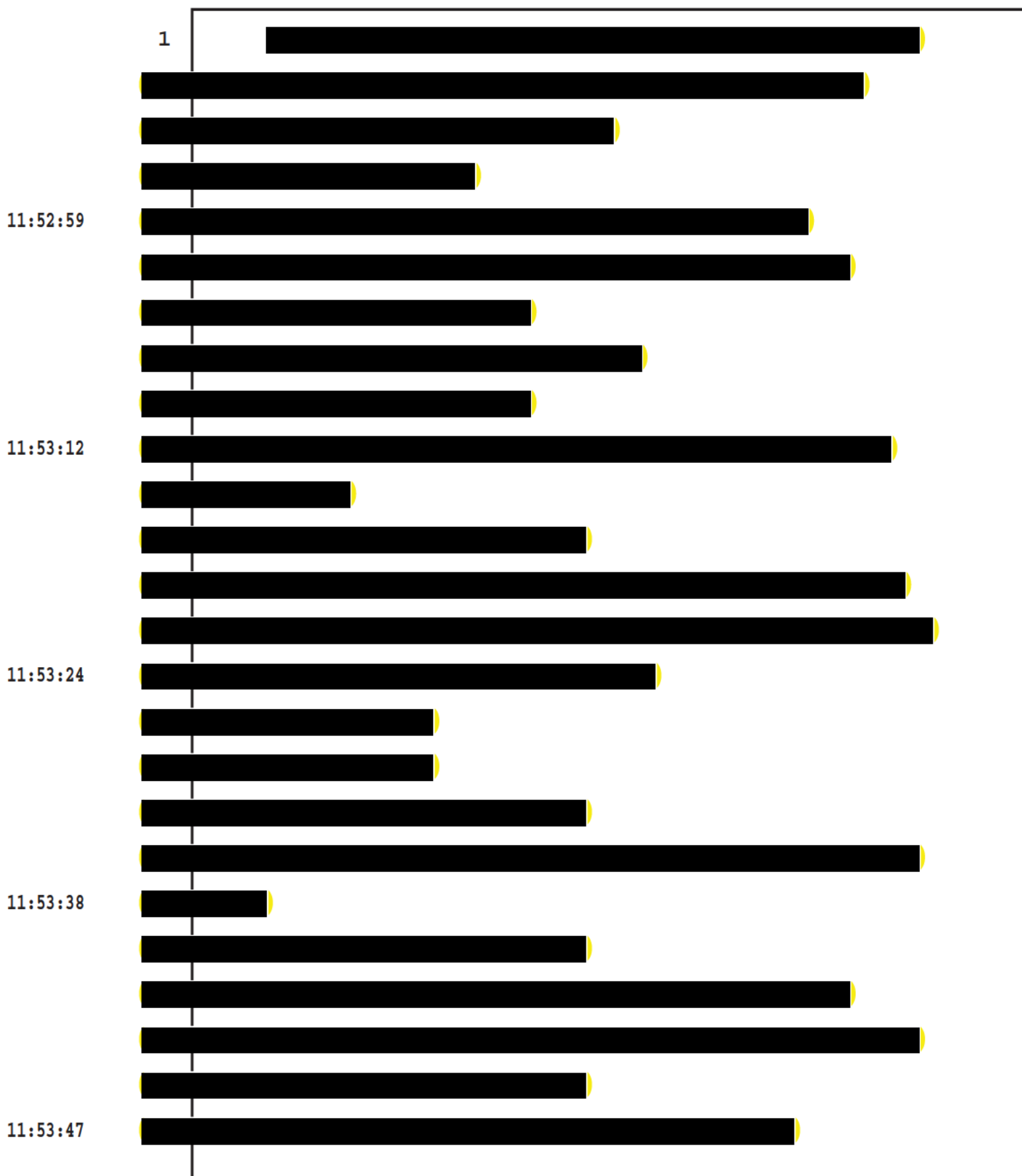
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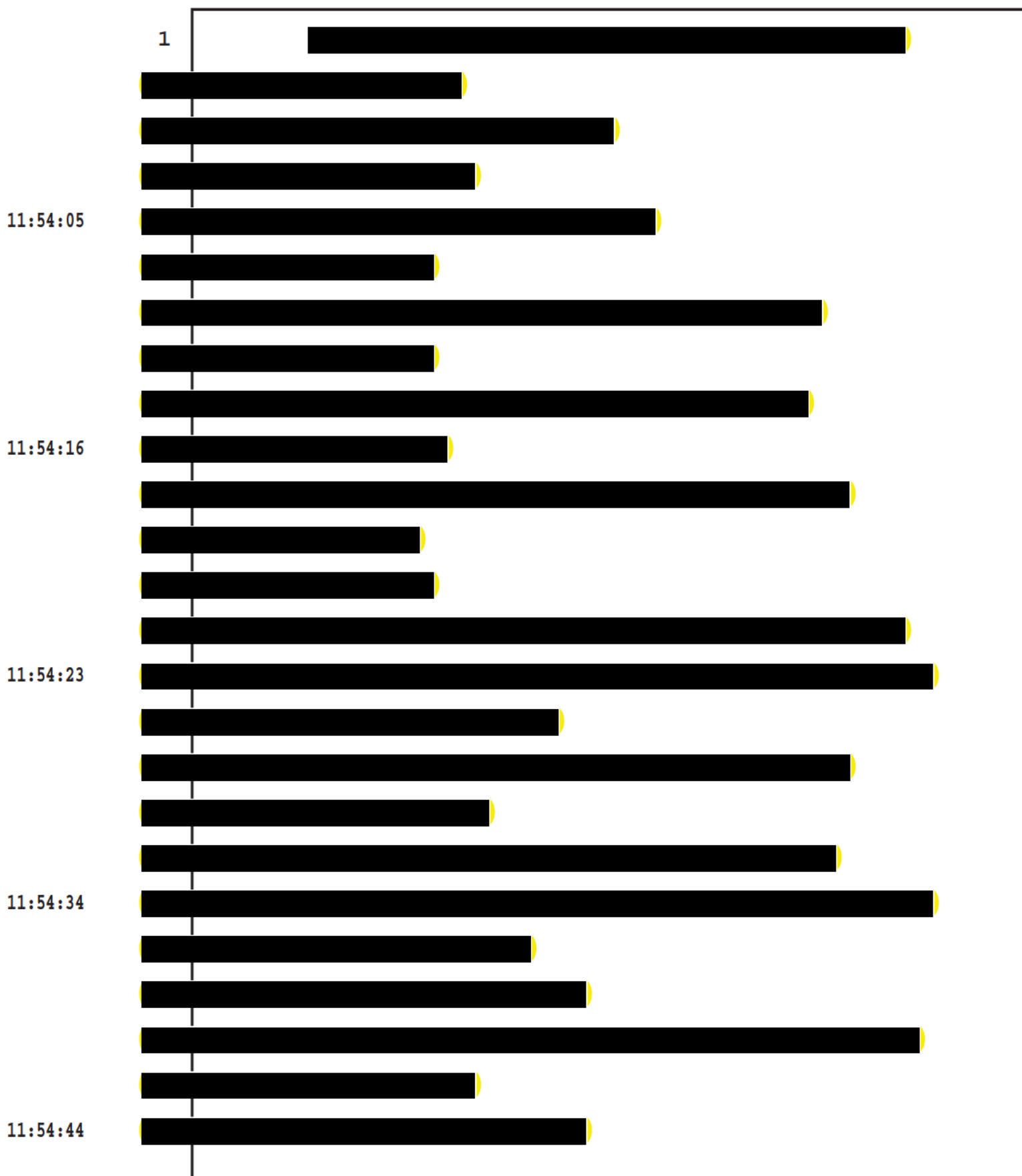


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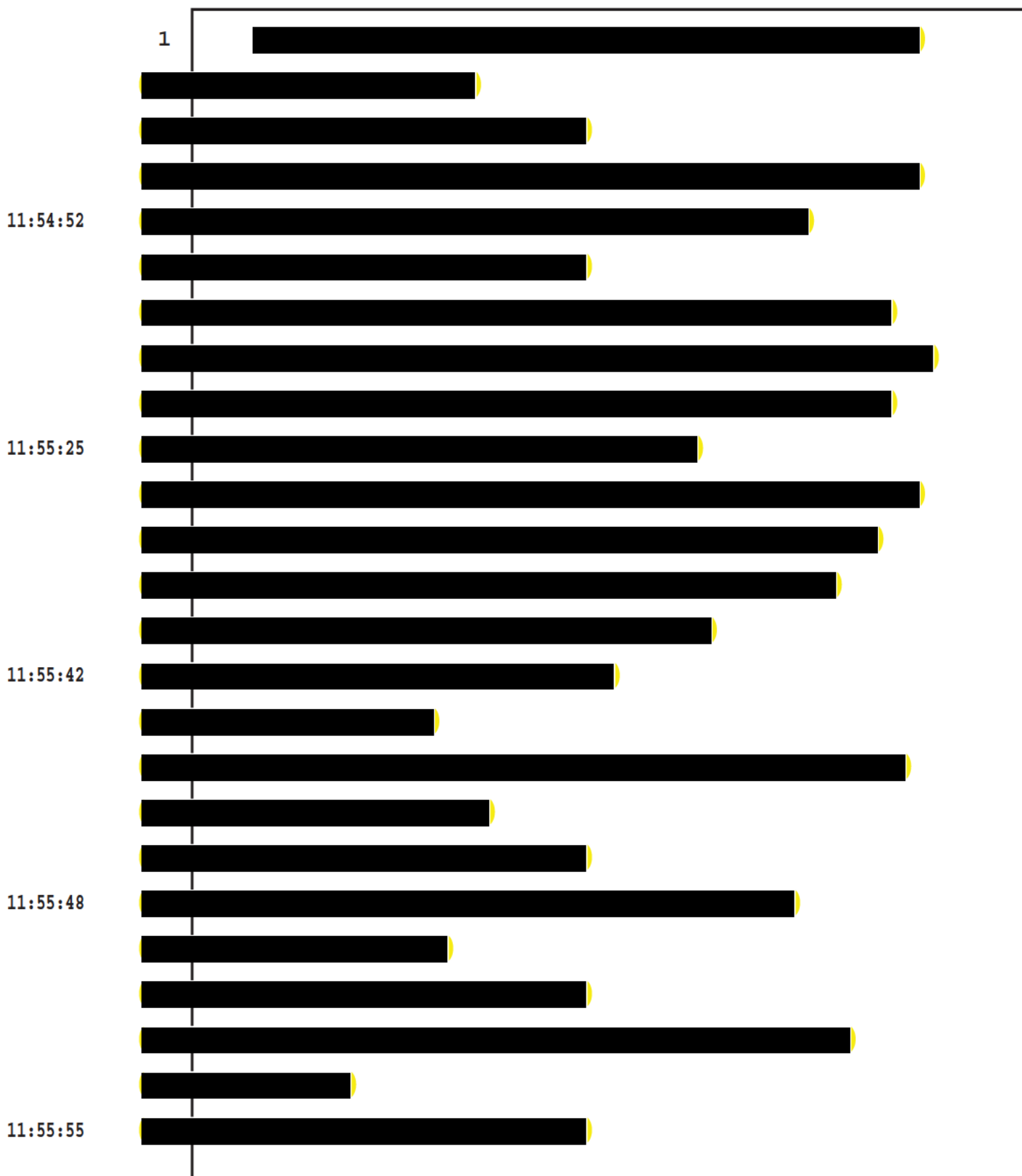
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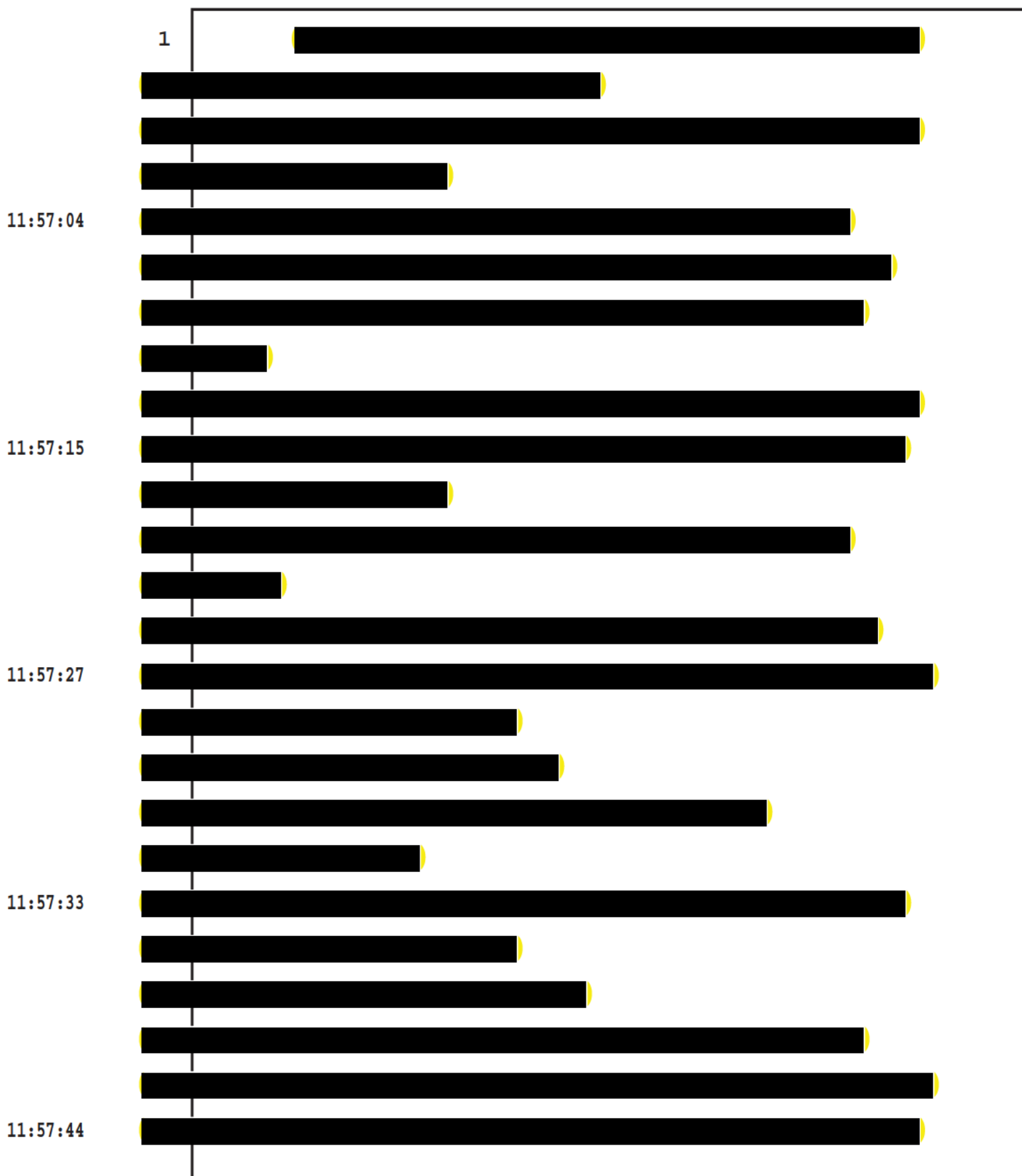
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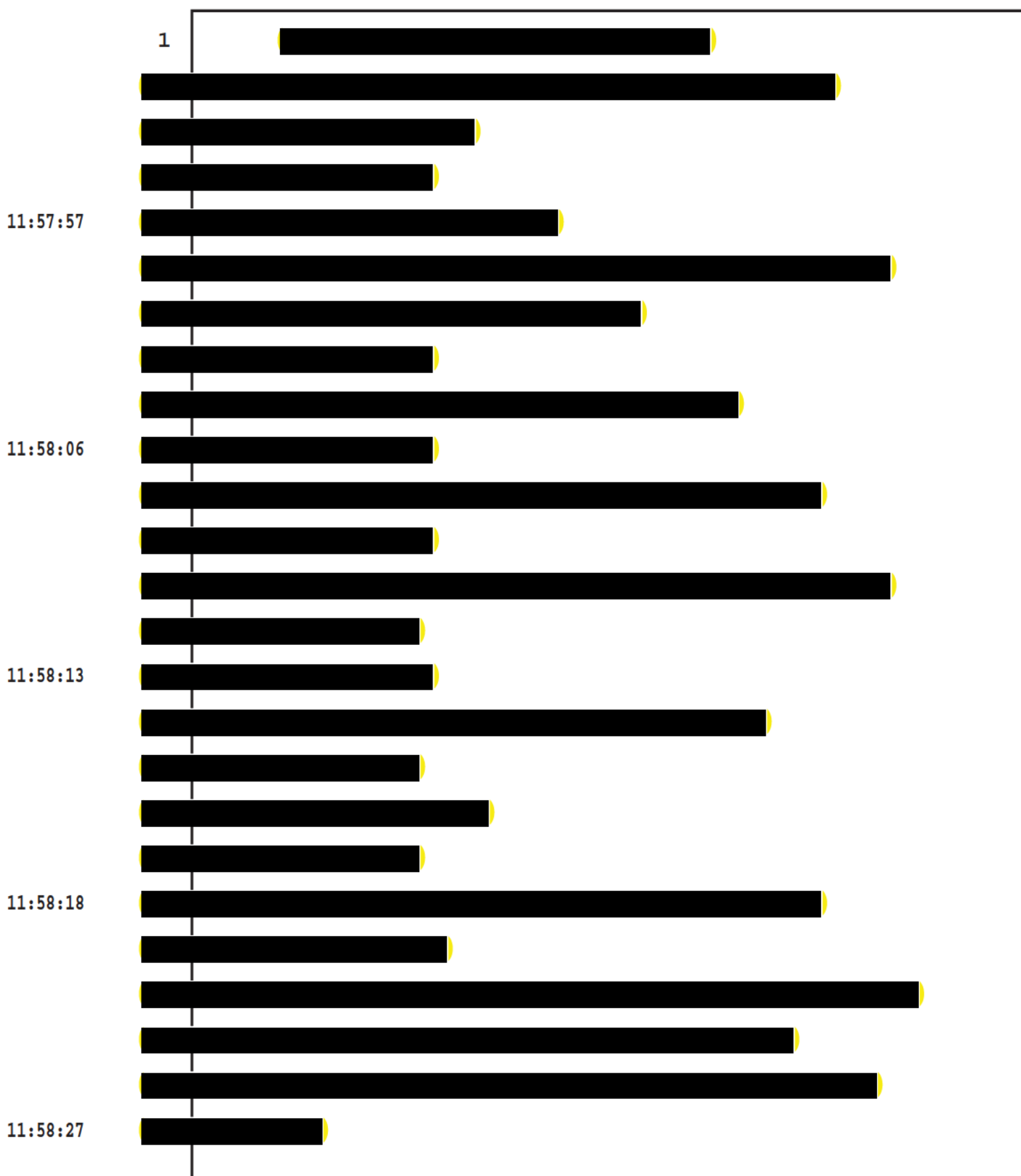
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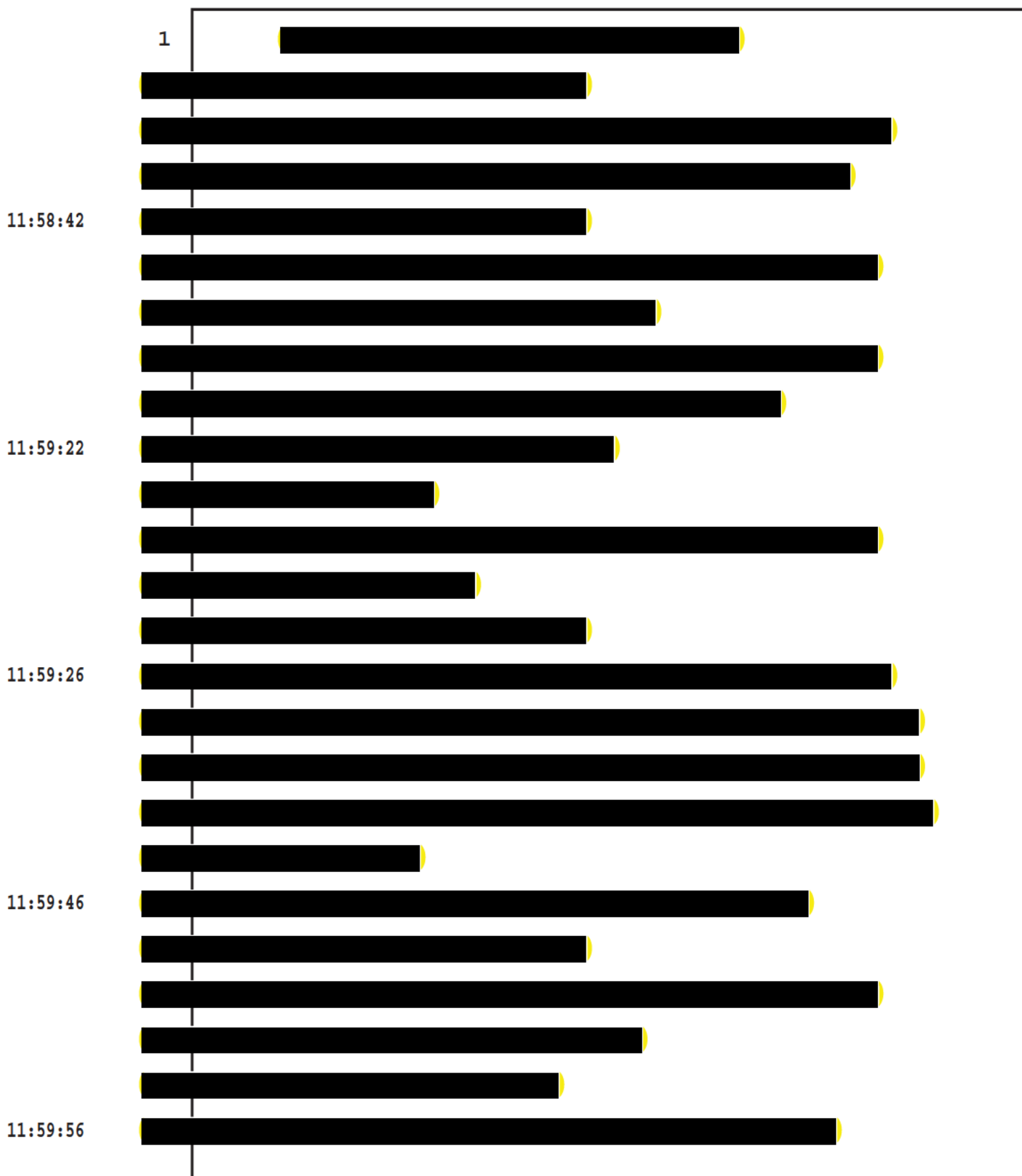
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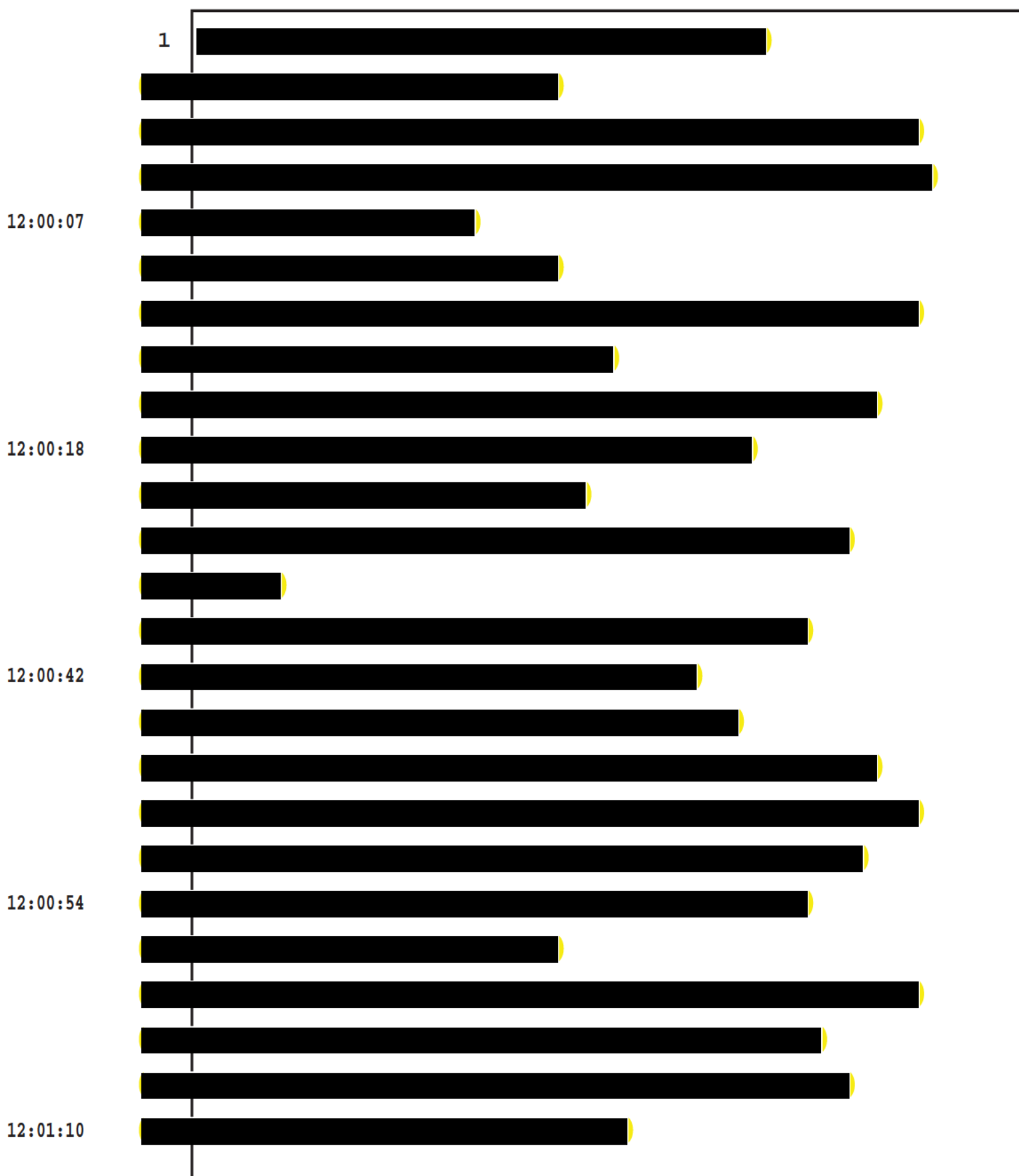
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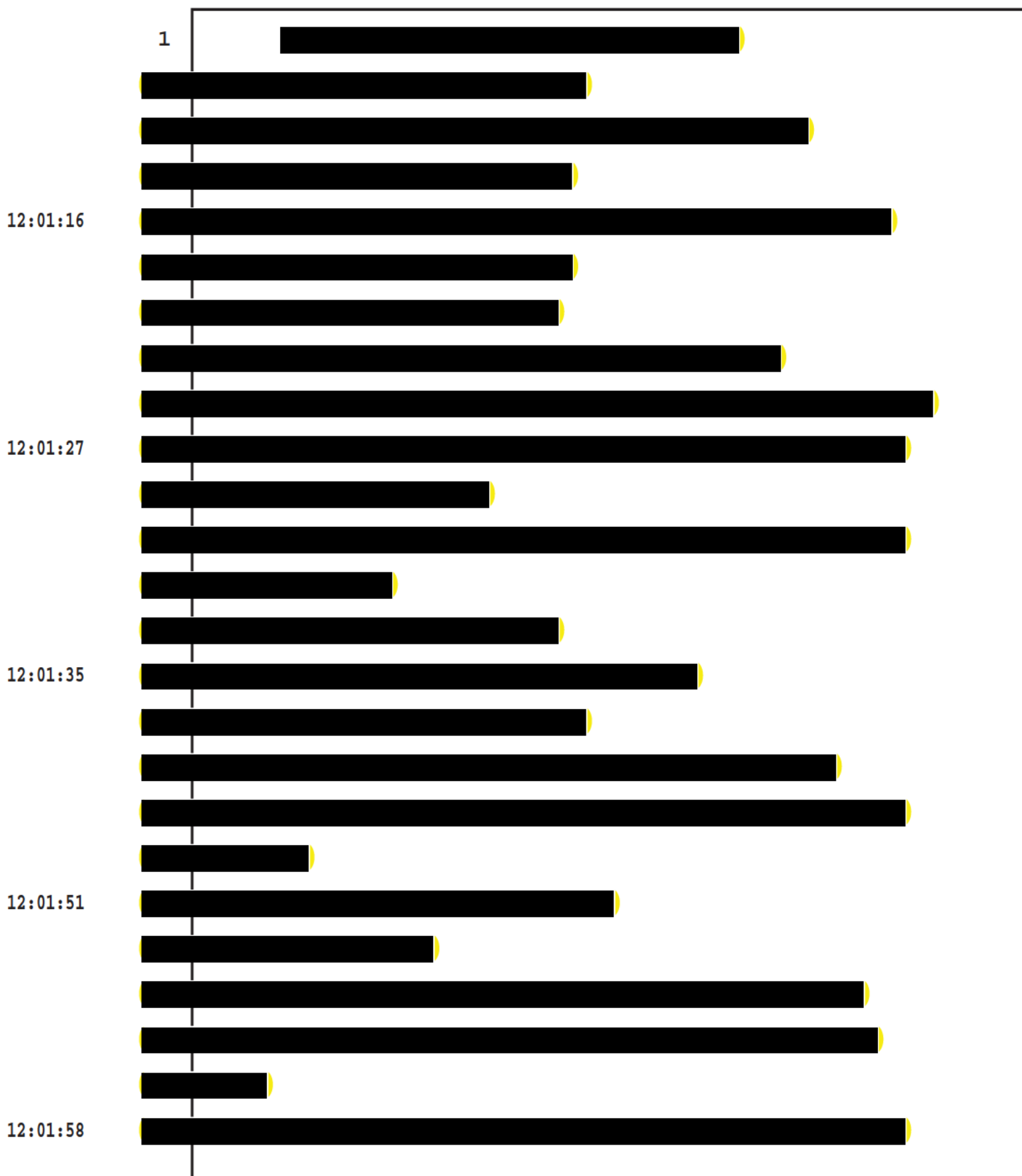
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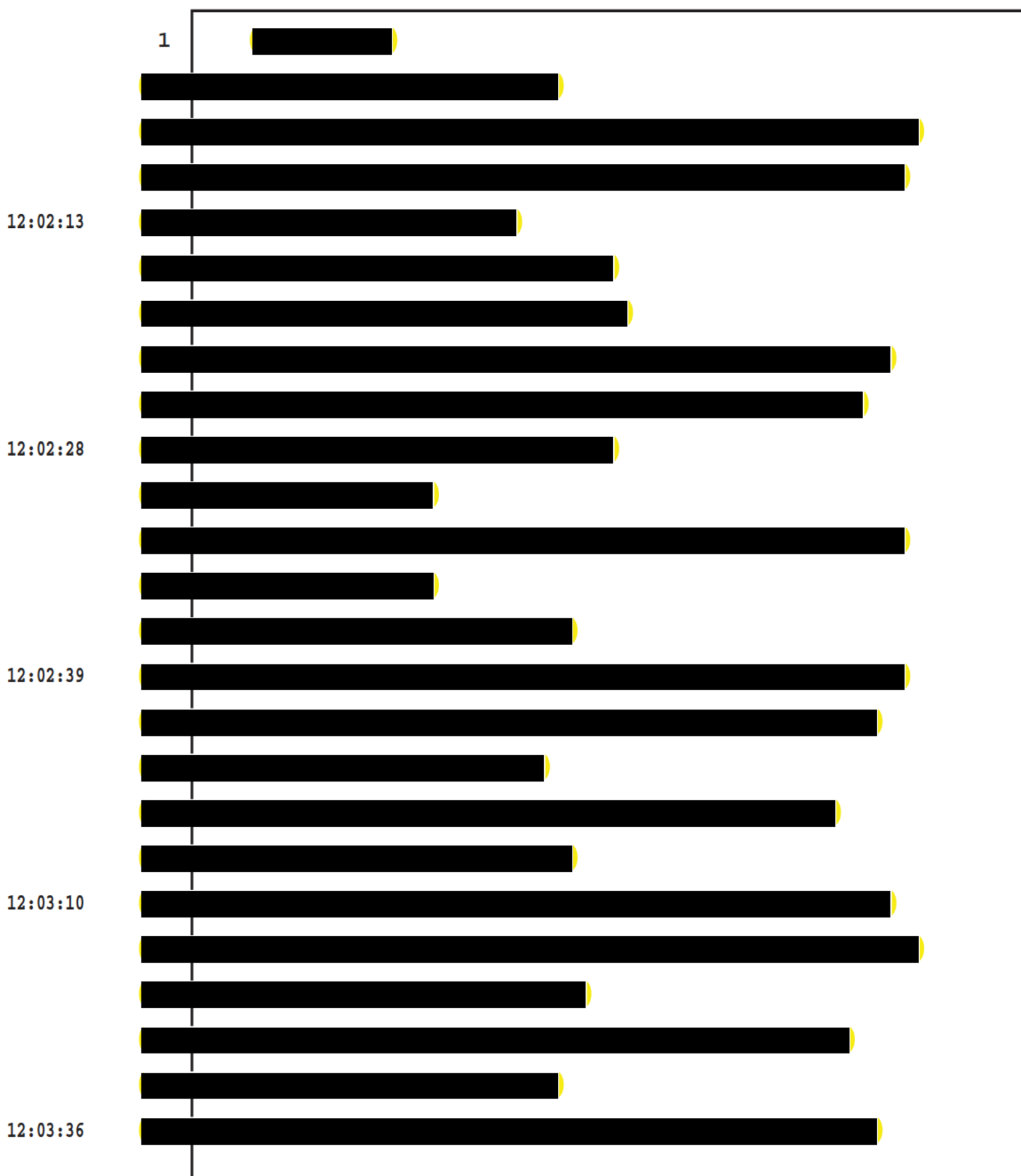


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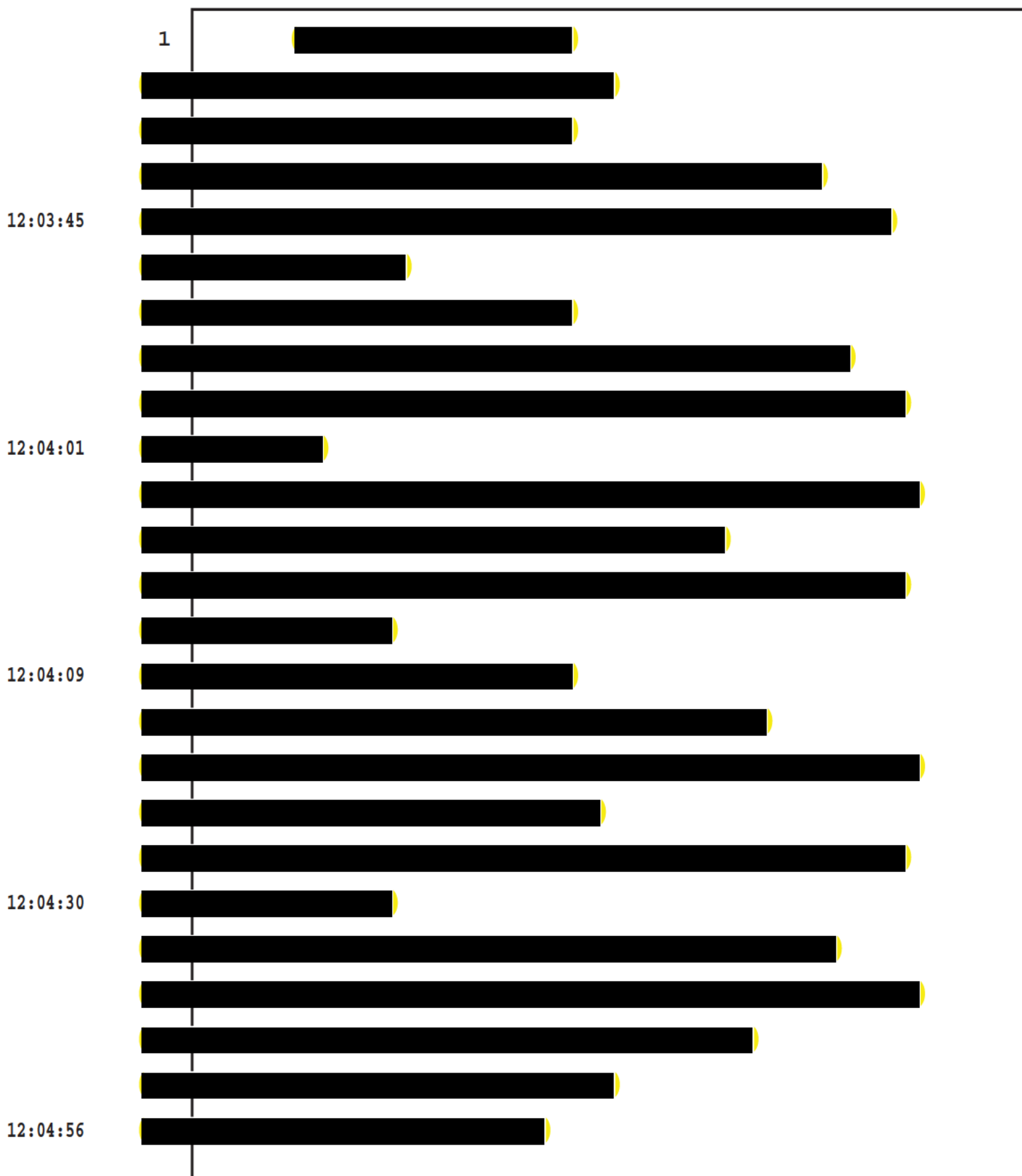




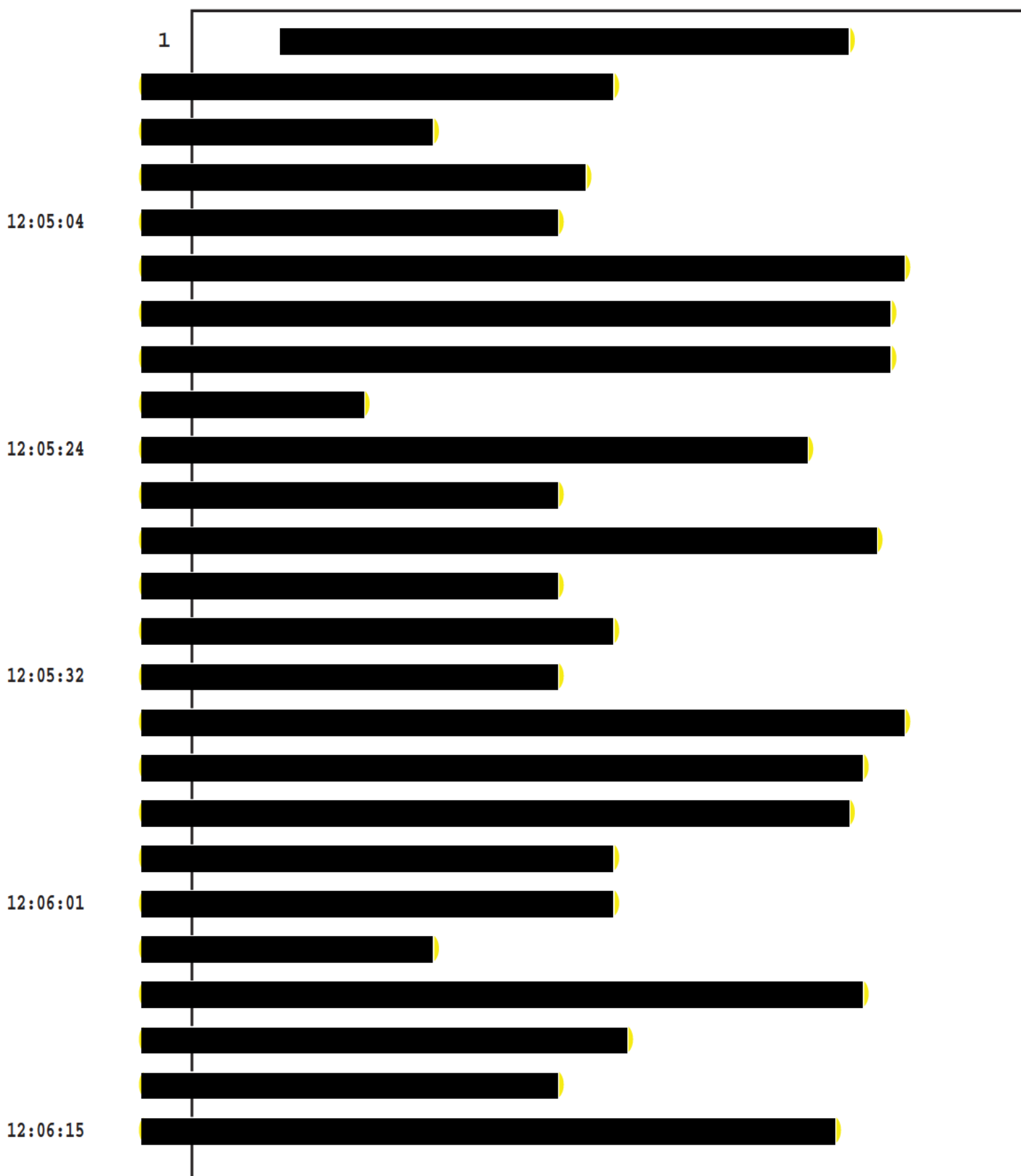
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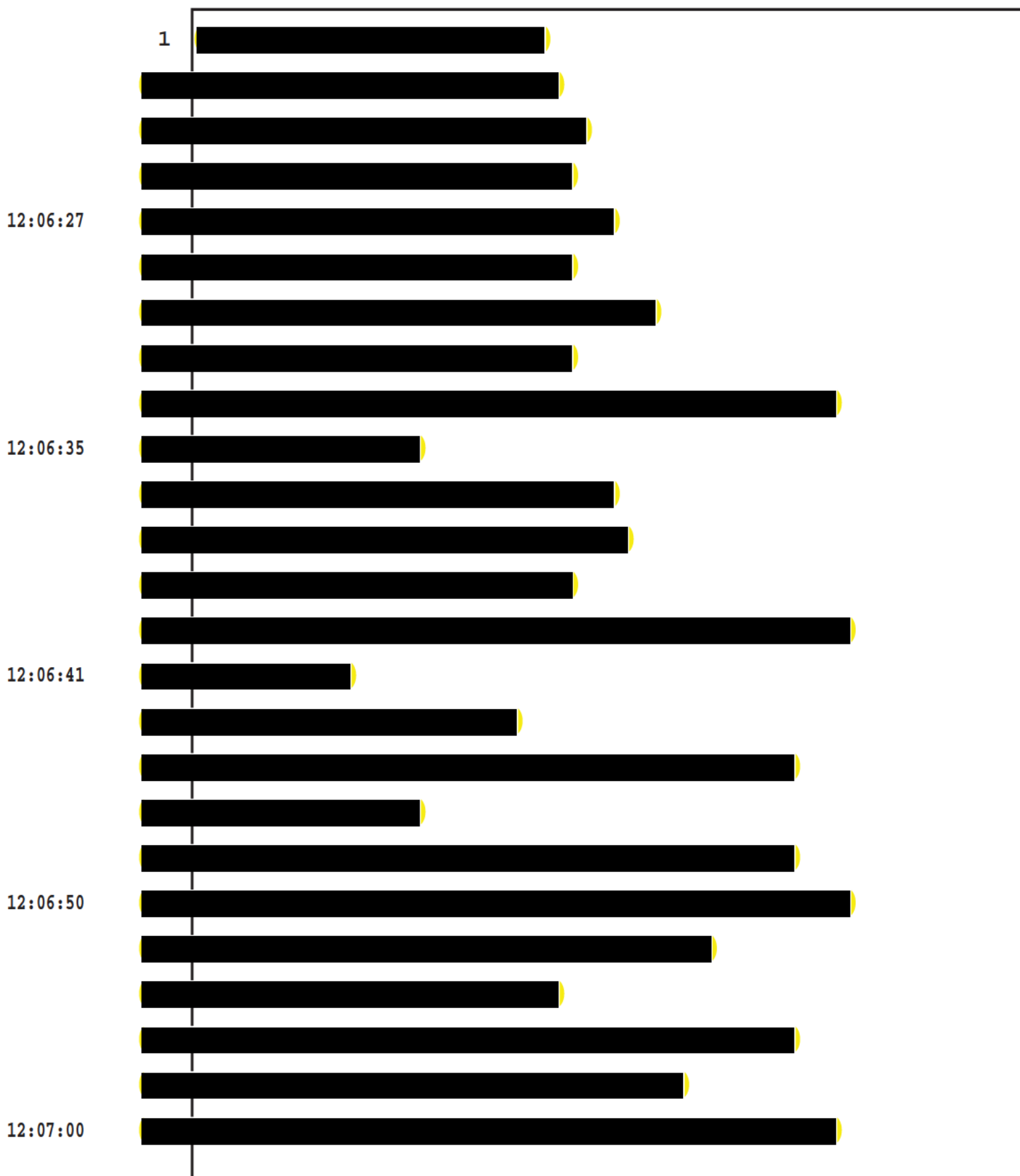
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1 MR. SACCA: We've been going about an  
2 hour and 20 minutes.

3 MR. ATTANASIO: Okay. We can take a  
4 break. That would be fine. Why don't we break  
5 for lunch? We can go off the record.

6 THE VIDEOGRAPHER: It's 12:08 p.m. We  
7 are going off the record.

8 (Whereupon, at 12:08 a lunch recess is  
9 taken.)

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## AFTERNOON SESSION

(Time noted: 1:05 p.m.)

ERIC MARCOTULLI, having been previously  
duly sworn/affirmed by a Notary Public, is  
examined and testifies as follows:

THE VIDEOGRAPHER: It is 1:07 p.m. We  
are back on the record.

BY MR. ATTANASIO:

Q. Good afternoon, Mr. Marcotulli.

A. Good afternoon.

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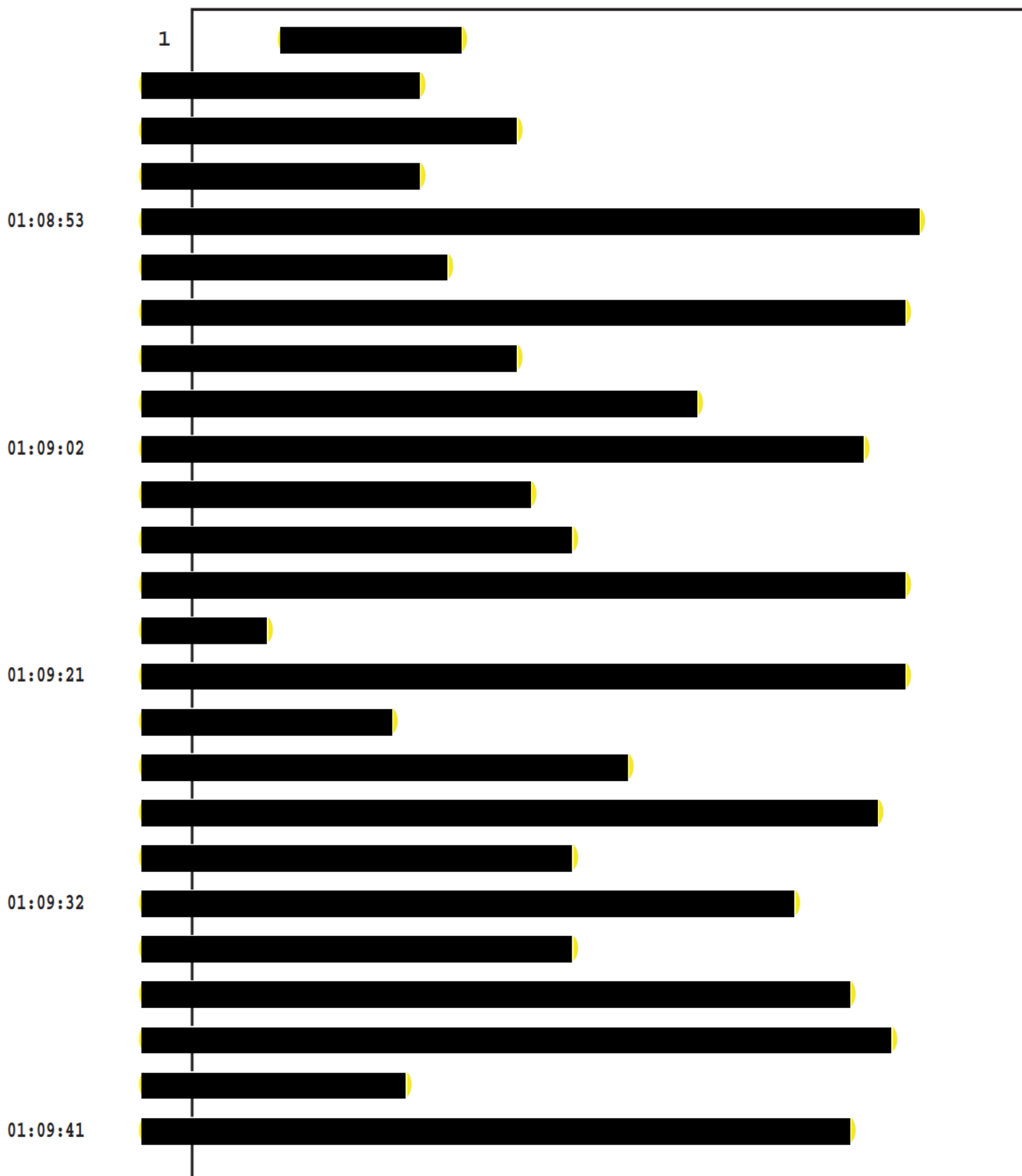
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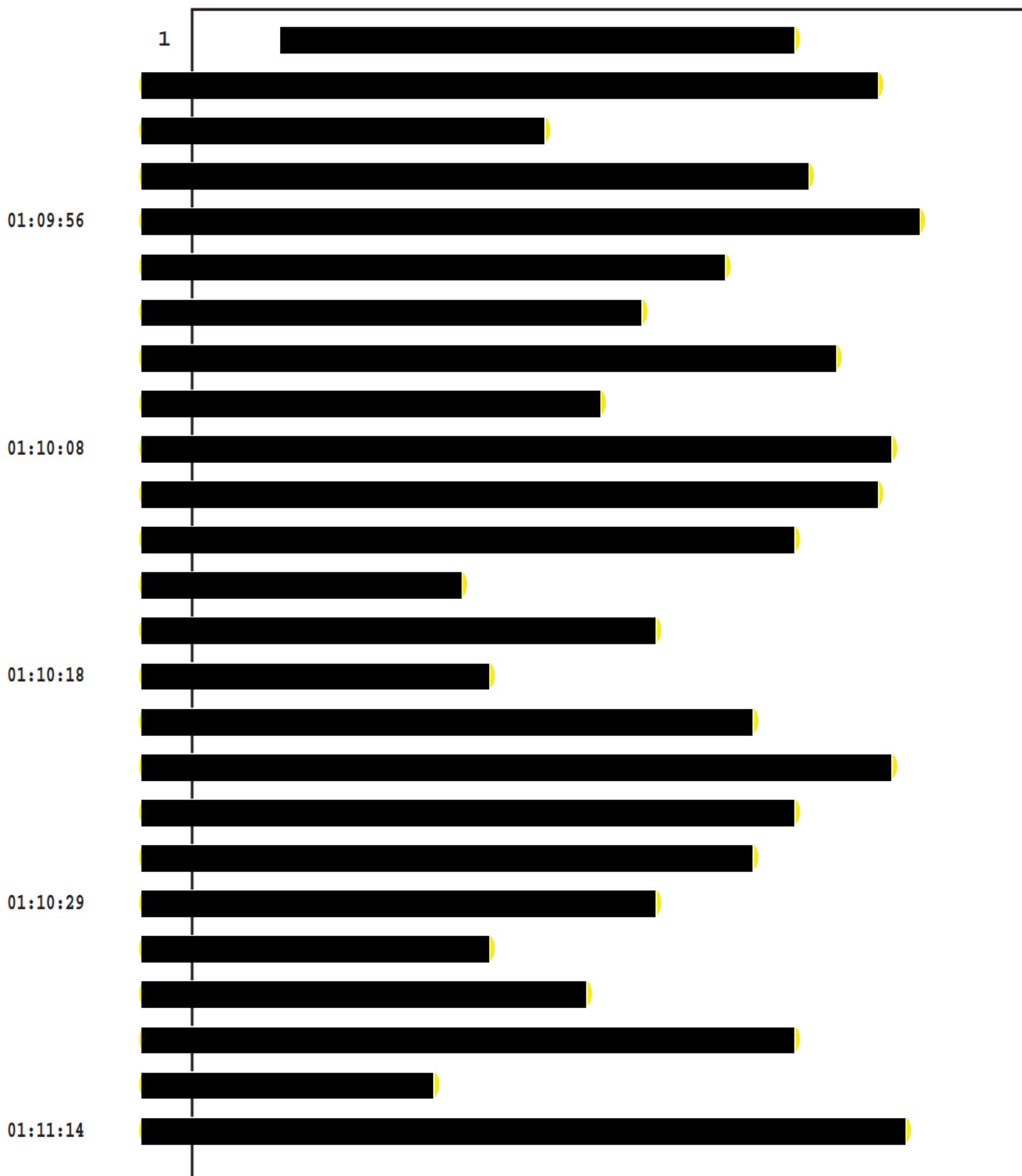
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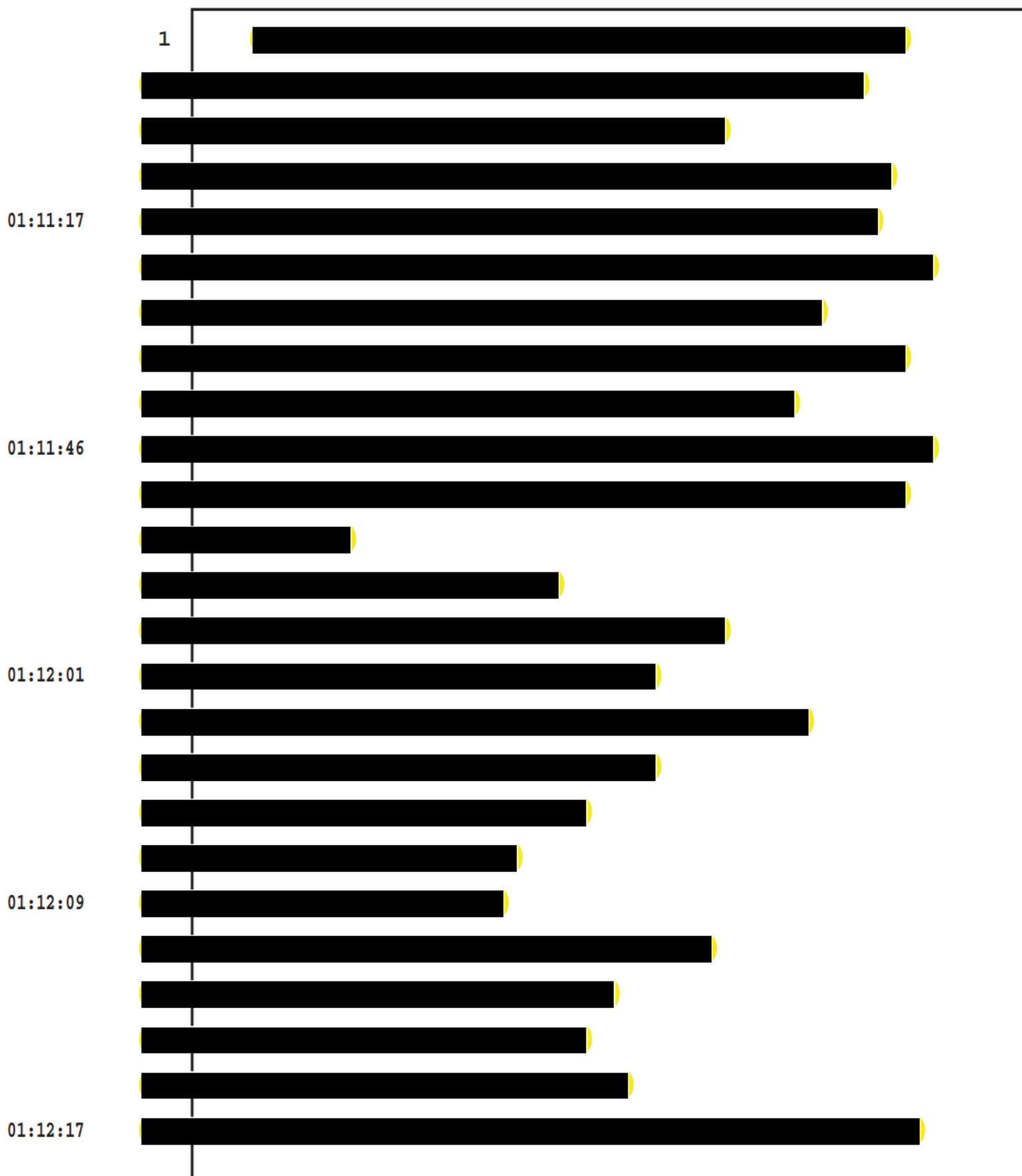
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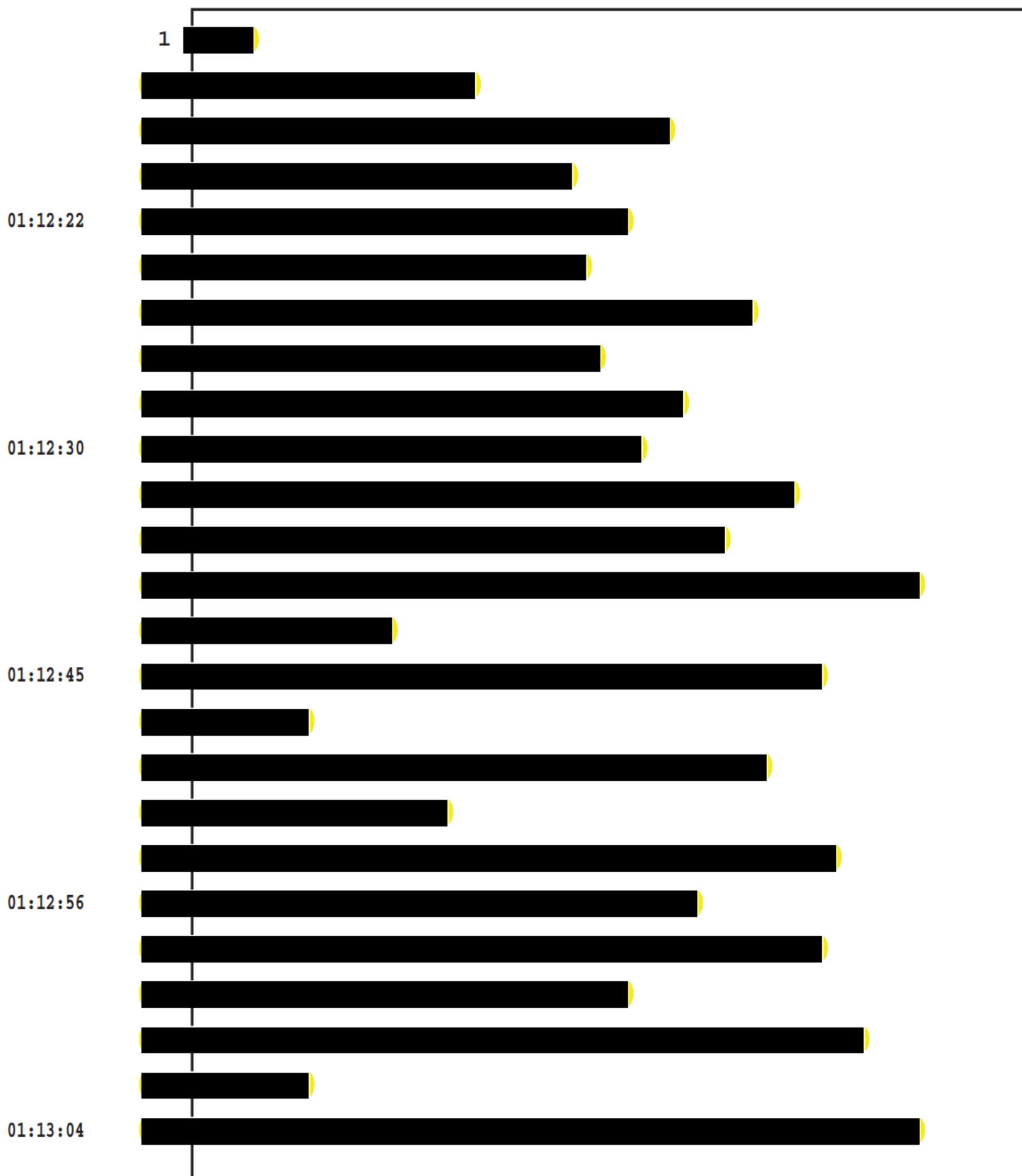
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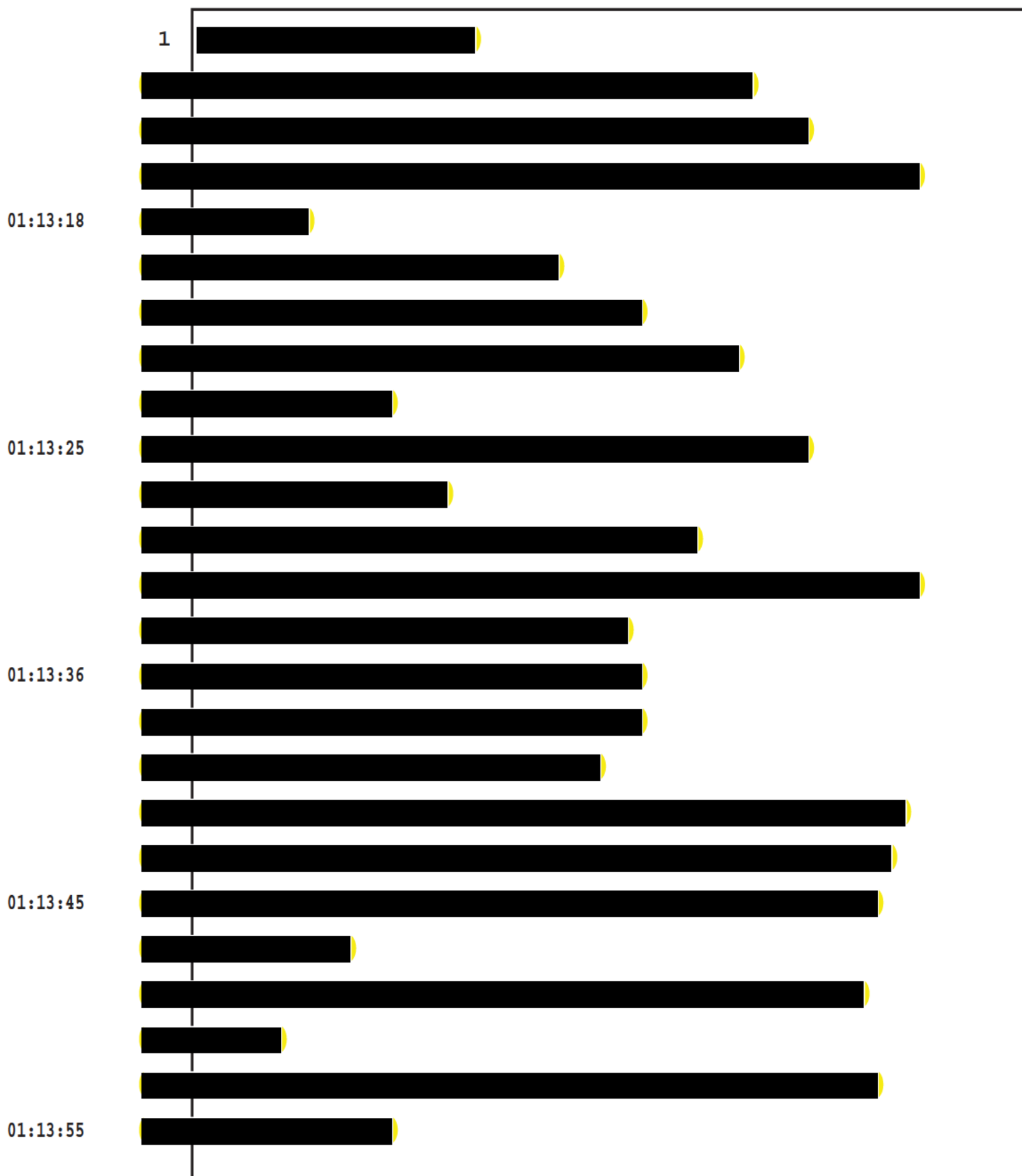
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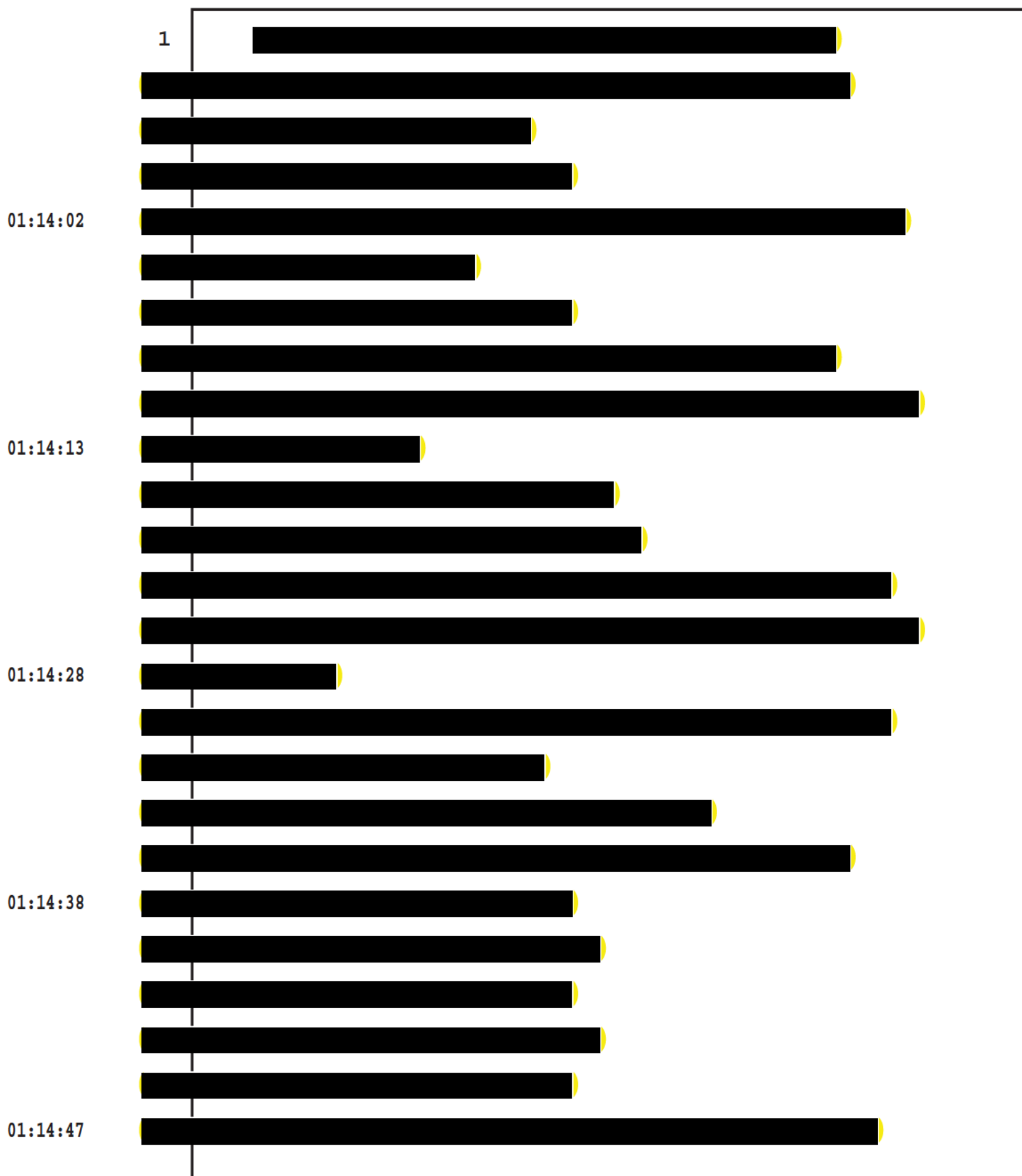
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A horizontal bar chart with 20 categories, each represented by a black bar. The bars are ordered from top to bottom. The first bar is labeled '1' on the left. The bars vary in length, representing different percentages. The bars are set against a white background with a vertical axis on the left.

Category	Percentage
1	100%
2	10%
3	50%
4	30%
5	90%
6	85%
7	10%
8	75%
9	20%
10	70%
11	50%
12	90%
13	90%
14	60%
15	85%
16	100%
17	10%
18	80%
19	40%
20	85%
21	100%
22	70%
23	40%

01:17:08

01:17:22

01:17:33

01:17:44



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1

[REDACTED]

[REDACTED]

[REDACTED]

18 Q. So when did Elysium begin planning to  
19 do a human clinical trial on Basis?

20 A. It was always our intention to do a  
21 clinical trial on Basis in humans. I don't know  
22 when the exact planning would have started.

23 Q. When did the study itself begin?

24 A. To the best of my recollection, in  
25 late -- perhaps early 2016, late or early -- late

1 2015. I can't recall the exact timing of the study.

2 Q. Who ran the study for Elysium?

3 A. We worked with a partner firm called  
4 KGK.

01:22:59 5 Q. What role, if any, did ChromaDex play  
6 in this study?

7 A. ChromaDex introduced us to KGK. And  
8 there was some assistance that they provided from an  
9 informational standpoint, but I can't recall the  
01:23:18 10 specifics.

11 Q. Who did you task to get information  
12 from ChromaDex to assist Elysium with its clinical  
13 trial? Do you remember?

14 A. We had a few. The team was small then,  
01:23:31 15 but we had -- obviously Lenny. We had an  
16 advisor/consultant at the time named Jean Wang, who  
17 is an expert in clinical trials who was assisting us  
18 as well.

19 Q. Do you remember asking Mr. Guarente to  
01:24:04 20 approach a man named Dellinger at ChromaDex to get  
21 information?

22 A. I do not recall that.

23 Q. Do you remember giving him specific  
24 instructions on what to ask for?

01:24:15 25 A. I do not recall.

1 Q. Let me show you what's been previously  
2 marked in a prior deposition as Exhibit 78.

3 Do you recognize Exhibit 78,  
4 Mr. Marcotulli, as an email you wrote on April 22nd,  
01:25:04 5 2015 to Mr. Guarente at MIT?

6 A. Yes.

7 Q. And if we look at the first sentence,  
8 you write, "For CDXC call with Ryan, make sure to  
9 get whatever information he's willing to offer. You  
01:25:36 10 can reiterate to him that we are all under NDA."

11 Do you see that?

12 A. Yes.

13 Q. Had you given these instructions to  
14 Dr. Guarente to get information from Ryan Dellinger?

01:25:48 15 A. I see no reason to doubt this  
16 particular email.

17 Q. You then write, "This can include some  
18 of the things to which Charlie had alluded but did  
19 not share in detail."

01:26:00 20 What were referring to there,  
21 Mr. Marcotulli?

22 A. We had had a series of conversations  
23 with another scientist by the name of Charles  
24 Brenner. And, again, I don't remember the  
01:26:13 25 specifics, but to my recollection, Charlie had

1 mentioned that there had been some key learnings  
2 that he was unable to share given his role in the  
3 company, but that were interesting and that could  
4 potentially inform some aspects of our clinical  
5 trial.

6 Q. So Dr. Brenner held back some  
7 information from you because of confidentiality  
8 concerns, correct?

9 A. I'm not sure that was the case.

10 Q. Well, you said that he held back  
11 information because of his position with the  
12 company.

13 What did you mean by that?

14 A. I think he would just have preferred if  
15 it were ChromaDex-related information, that someone  
16 from ChromaDex provide us with the information.

17 Q. Did he direct you to Dellinger?

18 A. I do not recall.

19 Q. You, then, say to Dr. Guarente,  
20 "Anything useful for the clinical, potential places  
21 that can test NAD positive levels in human blood  
22 that will we might use, et cetera."

23 Is that -- were those instructions you  
24 gave to Dr. Guarente.

25 A. It appears that way, yes.

1 Q. What did you mean by the clinical in  
2 April 2015?

3 A. This likely refers to our clinical  
4 trial.

01:27:28 5 Q. Had you conducted any human clinical  
6 trials as of this point, April 2015?

7 A. No.

8 Q. Do you know if ChromaDex had conducted  
9 any human clinical trials when you wrote this email?

01:27:41 10 A. I believe they had, yes.

11 Q. Was that information public?

12 A. I do not recall.

13 Q. Was that information confidential as to  
14 ChromaDex based on your understanding?

01:27:50 15 A. I do not recall.

16 Q. Had you seen it as of the time you  
17 asked Guarente to get more information about it from  
18 Dellinger?

19 A. I do not recall.

01:28:07 20 Q. Did you personally ask anyone at  
21 ChromaDex to share their clinical trial data?

22 A. We had a number of conversations with  
23 Frank about clinical data, all kinds of data,  
24 really, throughout our relationship.

01:28:21 25 Q. Did you ask Mr. Jaksch for ChromaDex's



1 clinical trial data?

2 A. I believe so, yes.

3 Q. What was the answer?

4 A. Well, the answers differed over time.

01:28:37 5 I think Frank was always willing to share it. He  
6 said there were some delays. He said they were  
7 working on intellectual property.

8 Eventually, the data was shared. And  
9 it depends on what specific data you're talking  
01:28:54 10 about, but Frank did share data with us on at least  
11 one or two occasions.

12 Q. What data did Mr. Jaksch share with you  
13 on one or two occasions?

14 A. At least, again, on one occasion, to my  
01:29:07 15 knowledge, the safety data that they had. I'm not  
16 sure if it was a separate grouping, but I also  
17 believe what was shared with us was PK data  
18 associated with a 24-hour administrative period of  
19 NR.

01:29:26 20 Q. What do you mean by PK data?

21 A. Pharmacokinetic, just the ability for  
22 NR to impact NAD levels in the blood.

23 Q. Did Elysium ever receive data from  
24 ChromaDex's first human study on NR?

01:29:45 25 A. I don't recall.

1 Q. You don't recall one way or the other?

2 A. I do not.

3 Q. Let's turn back to the exhibit that  
4 we're looking at, which is Exhibit 78, your email to  
01:30:05 5 Dr. Guarente. There's a reference in here that you  
6 make in the first sentence to an NDA.

7 Do you see that?

8 A. Mm-hmm, yes.

9 Q. Was that a nondisclosure agreement  
01:30:14 10 between ChromaDex and Elysium?

11 A. I believe so, yes.

12 Q. Were there any other parties?

13 A. I do not know.

14 Q. You don't know if there were any other  
01:30:25 15 parties?

16 A. I do not know.

17 Q. What was your understanding, generally,  
18 of the requirements of that NDA, as you operated?

19 A. My sense was that it was a mutual NDA  
01:30:38 20 that would cover the sharing of information from  
21 both sides.

22 Q. Did you have an understanding of  
23 whether under that NDA, Elysium could share  
24 information it received from ChromaDex with third  
01:30:49 25 parties?

1 A. I do not recall.

2 Q. Did you have an understanding of  
3 whether Elysium could share information received  
4 from ChromaDex under the NDA with third parties  
01:30:58 5 without ChromaDex's permission?

6 A. I do not recall.

7 Q. Why did you reference this NDA to  
8 Dr. Guarente?

9 A. Well, in some cases, scientists are  
01:31:11 10 unaware of what they can and can't share, and we  
11 often find it's helpful to put an NDA in place or  
12 when we were having subsequent discussions with the  
13 group, remind them that there is an NDA.

14 Q. So the goal of your effort here was to  
01:31:27 15 get ChromaDex's confidential information covered by  
16 the NDA, that much we can agree on, right?

17 MR. SACCA: Object to the form of the  
18 question.

19 A. No. The purpose here is to -- whatever  
01:31:39 20 Ryan is willing to offer, and if an NDA makes him  
21 more comfortable with offering that information,  
22 it's there, but just to see what we can learn.

23 Q. Do you know if Dr. Guarente had the  
24 call with Mr. Dellinger on April 23rd or  
01:31:55 25 thereabouts?

1 A. I do not know.

2 Q. Do you remember if Dr. Guarente learned  
3 any information from Mr. Dellinger that could be  
4 helpful to Elysium's clinical trial?

01:32:05 5 A. I do not know.

6 Q. You don't have any memory of any  
7 information coming from Mr. Dellinger in April 2015  
8 based on your specific instructions to your chief  
9 scientist?

01:32:18 10 A. I -- not as I'm sitting staring just at  
11 a piece of paper, I do not recall specifics.

12 Q. Well, let's not stare at the paper.  
13 Let's look up.

14 A. Uh-huh.

01:32:29 15 Q. I want you to think about it.

16 Do you remember any information that  
17 Dr. Guarente was able to get from Dellinger in or  
18 around April 2015?

19 A. I do not.

01:32:42 20 Q. Did you ever ask anyone at ChromaDex if  
21 Elysium could share information it obtained from  
22 ChromaDex with third parties?

23 A. We did have discussions with Frank  
24 quite a bit who expressed comfort in sharing data  
01:32:56 25 with two parties specifically, potential investors

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1 for Elysium and potential scientific collaborators.

2 Q. You seem to really take to that  
3 question.

4 MR. SACCA: Object to the form.

01:33:10 5 MR. ATTANASIO: Fair enough. I  
6 withdraw that.

7 Q. What did Mr. Jaksch say that you  
8 remember specifically now about sharing information  
9 with potential investors? Tell me about that one.

01:33:22 10 A. It wasn't, I would say, specifically,  
11 but, you know, we would constantly ask him if during  
12 an investor conversation we could provide  
13 information, if when talking to our advisors or  
14 other scientific collaborators if we could, and he  
01:33:39 15 was always very supportive.

16 Q. And that would be you and Mr. Jaksch  
17 talking?

18 A. Either myself and Frank, myself and Dan  
19 and Frank, Lenny and Frank, or any combination of  
01:33:52 20 the three of us.

21 Q. Tell me the first-hand conversations  
22 you attended, tell me when they happened first,  
23 where Mr. Jaksch gave you this permission to share  
24 ChromaDex confidential information with investors  
01:34:04 25 and scientific collaborators?

1 A. I don't recall.

2 Q. Where did it occur?

3 A. These were likely conversations over  
4 the phone, to the best of my recollection. And,  
01:34:15 5 again, they took place over multiple conversations  
6 in our relationship.

7 Q. I think you said it happened  
8 constantly; is that right?

9 A. It happened on a number of occasions.

01:34:27 10 Q. You said constantly.

11 A. Okay.

12 Q. What does that mean? How many times?

13 A. I couldn't put a number on it. We  
14 talked to a lot of investors and potential  
01:34:40 15 collaborators.

16 Q. I know you did that. I know you did  
17 that.

18 My question is your conversations with  
19 Mr. Jaksch, how many times did you discuss with  
01:34:47 20 Mr. Jaksch the fact that he authorized you to share  
21 ChromaDex information first with investors?

22 A. I don't recall.

23 Q. How many times did you discuss with  
24 Mr. Jaksch that Elysium could share ChromaDex's  
01:35:04 25 confidential information with scientific

1 collaborators?

2 A. I don't recall.

3 Q. What did you mean by constantly? Does  
4 that mean more than five, more than ten, more than a  
01:35:11 5 hundred?

6 A. It was enough to say multiple.  
7 Constantly refers, in my opinion, more to a steady  
8 cadence or repeated cadence of it. It's not that it  
9 happened in one isolated incident.

01:35:25 10 Q. Is there any emails about this? Did  
11 you discuss it with Mr. Jaksch by email?

12 A. I don't recall.

13 Q. Was it typically you who would ask for  
14 that permission from Mr. Jaksch or Dr. Guarente?

01:35:42 15 A. I don't recall. It could have been any  
16 combination.

17 Q. Were you ever present when Dr. Guarente  
18 asked permission of ChromaDex to share its  
19 confidential information with investors?

01:35:53 20 A. I don't recall.

21 Q. Were you ever present when Dr. Guarente  
22 asked Mr. Jaksch for permission to share ChromaDex's  
23 confidential information with scientific  
24 collaborators?

01:36:11 25 A. I don't recall.

1 Q. Did you ask Mr. Jaksch for that  
2 permission or did it come up in some other way?

3 A. I don't recall.

4 Q. Is there some reason it's not in  
5 writing anywhere?

6 A. I don't know.

7 Q. When were these conversations?

8 A. I think they started at the beginning  
9 of our discussions and lasted throughout the  
10 entirety of our relationship.

11 Q. When you had these discussions, what  
12 did you disclose to Mr. Jaksch about the identity of  
13 the investors to whom you would be disclosing  
14 ChromaDex's confidential information?

15 A. I don't recall.

16 Q. Did you tell him who you were going to  
17 share it with?

18 A. I would assume so, but I couldn't say  
19 with specificity.

20 Q. Did you just tell him generally, we're  
21 going to share this with some random folks who might  
22 want to invest in our company; or did you tell them,  
23 for instance, this venture fund or this private  
24 equity fund or something like that?

25 A. I don't recall.



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1 Q. Did you tell him the scientific  
2 collaborators you were going to share ChromaDex's  
3 confidential information with?

4 A. I don't recall.

01:37:24 5 Q. Wouldn't that be of interest, in your  
6 understanding, to ChromaDex since they might be  
7 collaborating with the same scientific parties?

8 A. It's possible, yes.

9 Q. Did you discuss that?

01:37:35 10 A. I don't recall.

11 Q. It would be odd, right, for Elysium to  
12 be disclosing ChromaDex's confidential information  
13 to a scientific partner who ChromaDex is already  
14 working with; would you agree?

01:37:44 15 MR. SACCA: I object to the form of the  
16 question.

17 A. Could you repeat the question?

18 Q. Sure.

19 Would it be your understanding that it  
01:37:52 20 would be odd and unusual for Elysium to disclose  
21 ChromaDex's own confidential information to a  
22 scientific collaborator with whom ChromaDex is  
23 already doing business?

24 MR. SACCA: Object to the form of the  
01:38:07 25 question.

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1 A. I don't know.

2 Q. Do you know what an investigator's  
3 brochure is?

4 A. I do not.

01:38:20 5 Q. Never heard that phrase?

6 A. I've heard the phrase, but I couldn't  
7 speak with any knowledge on the topic.

8 Q. You told me this morning that you were  
9 the lead on, I think you said, multiple, multiple  
01:38:33 10 clinical trials that Elysium ran.

11 Do I remember that correctly?

12 A. Yes.

13 Q. So what is an investigator's brochure?

14 A. These are technical elements that are  
01:38:42 15 not my competency.

16 Q. Even though you led Elysium's clinical  
17 trials and published a scientific paper in a  
18 scientific journal about scientific subjects?

19 A. Yes.

01:39:04 20 Q. Did Mr. Dellinger ever share with  
21 Elysium ChromaDex's protocol for its human clinical  
22 trial?

23 A. I do not recall.

24 Q. Did Mr. Dellinger share ChromaDex's  
01:39:21 25 investigator's brochure with Elysium for its own,

1 that is ChromaDex's, human clinical trial?

2 A. I don't recall.

3 Q. Did you ever discuss with Dr. Guarente  
4 getting a hold of ChromaDex's protocol for its  
01:39:39 5 human clinical trial?

6 A. I don't recall.

7 Q. Did you ever discuss with Dr. Guarente  
8 getting a hold ChromaDex's investigator's brochure  
9 to help Elysium with its own human clinical trial?

01:39:52 10 A. I do not recall.

11 Q. Are you aware, sir, that there's a  
12 testing method that measures NAD levels in human  
13 blood?

14 A. Yes.

01:39:59 15 Q. What's that called, are you aware?

16 A. I'm not privy on the technical details  
17 of the test.

18 Q. Are you aware that in April 2015,  
19 ChromaDex already had such a method that it was  
01:40:11 20 using for its own human clinical trial?

21 A. I don't recall.

22 Q. Did Mr. Dellinger share that method of  
23 measuring NAD levels in human blood with Elysium?

24 A. I do not recall.

01:40:26 25 Q. Don't remember one way or the other?

1 A. I do not.

2 Q. So this email that we looked at,  
3 Exhibit 78, where you gave Lenny Guarente very  
4 specific instructions about what he should try to  
5 procure from Ryan Dellinger, you don't remember a  
6 single thing that he got out of that conversation?

7 A. I do not.

8 Q. Were you mad at Dr. Guarente for this?  
9 Was this another episode where you got real -- real  
10 fussy with him?

11 A. I don't recall this conversation or the  
12 follow up.

13 Q. Would it be your practice, as chief  
14 executive officer, to make sure that people  
15 underneath you were getting the job done and doing  
16 what you asked them to do?

17 A. Yes.

18 Q. Did you follow up with Dr. Guarente to  
19 see whether he followed your very specific  
20 instructions in Exhibit 78?

21 A. I do not recall.

22 Q. For its first human clinical trial,  
23 what method of measuring NAD in human blood did  
24 Elysium use?

25 A. I do not, again, know the technical

1 specifications of the test.

2 Q. I'm not asking for the technical  
3 specifications. I'm asking for the method.

4 What method did Elysium use in its  
5 first human clinical trial to measure NAD in human  
6 blood?

7 A. I do not know.

8 Q. Did Elysium conduct a second human  
9 clinical trial after the first one?

10 A. We have conducted subsequent trials,  
11 yes.

12 Q. In either the first human clinical  
13 trial or the second human clinical trial, did  
14 Elysium use the ChromaDex method for testing --  
15 excuse me -- for measuring NAD in human blood?

16 MR. SACCA: Object to the form of the  
17 question.

18 A. I do not know. The one thing I'll say  
19 is what I do know about ChromaDex's test is they  
20 look at white blood cells. We look at the whole  
21 blood, red blood cells -- or they look at plasma.

22 There's a difference between the tests,  
23 to my understanding. I do not know the answer to  
24 your question.

25 Q. Well, between somewhat of a choppy

1 question, an objection and that answer, let's do the  
2 whole thing again.

3 For its first human clinical trial, did  
4 Elysium use ChromaDex's method for measuring NAD in  
5 human blood?

6 A. I do not --

7 MR. SACCA: Object to the form of the  
8 question.

9 A. I do not know.

10 Q. For it's second human clinical trial,  
11 did Elysium use the ChromaDex method for measuring  
12 NAD in human blood?

13 MR. SACCA: Object to the form of the  
14 question.

15 A. I do not know.

16 Q. Has Elysium conducted a third human  
17 clinical trial?

18 A. Yes.

19 Q. Did Elysium use the ChromaDex method in  
20 that clinical trial?

21 MR. SACCA: Object to the form of the  
22 question.

23 A. I do not know.

24 Q. When was the third clinical trial, sir?

25 A. That would have taken place in 2018.

1 Q. So very recently.

2 A. Yes.

3 Q. What method for measuring NAD in human  
4 blood did Elysium use in its third clinical trial in  
5 2018?

6 A. I do not know.

7 Q. For all the human clinical trials that  
8 Elysium has ever conducted at any time, can you tell  
9 me anything about the method used to measure NAD in  
10 human blood?

11 A. No.

12 Q. Have Elysium's clinical trials all been  
13 conducted on Basis?

14 A. Yes and no. And the reason I say that  
15 is because one of our clinical trials was done in a  
16 disease population for a potential therapeutic  
17 application for ALS in which the active ingredients  
18 are the same, however we labeled the product  
19 differently as it is a therapeutic, again,  
20 application.

21 So it is the same active ingredients at  
22 a higher dose and under a different moniker.

23 Q. Where did that study occur?

24 A. That study occurred in Spain.

25 Q. The active ingredients that you just

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1 referenced, that is NR and pterostilbene; is that  
2 correct?

3 A. That's correct.

4 Q. Any others -- active ingredients?

01:45:12 5 A. No.

6 Q. Where did the active ingredients in  
7 Basis come from for your first human clinical trial?

8 A. At that time, I believe that they came  
9 from ChromaDex.

01:45:41 10 Q. Where did the ingredients come from for  
11 the Basis that was used in Elysium's second clinical  
12 trial?

13 A. That, I do not recall.

14 Q. You don't know one way or the other?

01:45:52 15 A. I do not.

16 Q. Where did the ingredients come from  
17 that were used to make the Basis in Elysium's third  
18 human clinical trial?

19 A. Those came from our own supply chain.

01:46:08 20 Q. Who was that at that time?

21 A. I do not recall. We've had multiple  
22 supply chain partners.

23 Q. Was it [REDACTED]

24 A. I do not recall.

01:46:18 25 Q. Was it someone else?



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1 A. It's possible.

2 Q. Was it ChromaDex?

3 A. It was not ChromaDex.

4 Q. So who was your supplier after

01:46:28 5 ChromaDex?

6 A. There were two, one which you  
7 highlighted, the other is [REDACTED].

8 Q. Okay. So for your third human clinical  
9 trial, were the ingredients in the Basis used

01:46:42 10 sourced from [REDACTED] or from [REDACTED]?

11 A. That, I do not recall.

12 Q. Look back at your email, you still have  
13 it in front of you, Exhibit 78. Near the end of the  
14 first paragraph, there's a long sentence four lines  
01:47:02 15 up that begins, "He's unbelievably excited to work  
16 with you and other Elysium SAB members. So touching  
17 on his ability to integrate further with you and our  
18 scientific team 'working alongside' such prominent  
19 scientists should enable him to go back with  
01:47:27 20 enthusiasm to the team at ChromaDex for our  
21 agreement."

22 Do you see that sentence?

23 A. Yes.

24 Q. What was the basis for that statement?

01:47:37 25 A. I mean, in the sentence prior, you can

1 see that we're enthusiastic at this point about a  
2 closer and more exclusive relationship with  
3 ChromaDex. You know, it's our view that we would  
4 like to get lots of people and employees at  
01:47:51 5 potential partners excited about working with us.

6 So, again, the hope here was to let's  
7 fire Ryan, to share with the team his excitement  
8 about potentially working with us. And, you know,  
9 our hope was that it would continue to foster  
01:48:05 10 greater integration.

11 Q. All right. Fair enough.

12 But my question was slightly different,  
13 which is, you're describing very specifically  
14 Mr. Dellinger's state of mind.

01:48:16 15 What was the basis for that?

16 A. Oh, that, I do not know.

17 Q. You say, "He's unbelievably excited to  
18 work with you and other Elysium SAB members."

19 What was your basis for writing that?

01:48:30 20 A. I do not recall.

21 Q. Had you exchanged notes with  
22 Mr. Dellinger, emails?

23 A. I do not recall.

24 Q. Had you spoken with Mr. Dellinger?

01:48:37 25 A. I do not recall.

1 Q. Had Mr. Dellinger told you that he was,  
2 gosh, unbelievably excited to work with Lenny  
3 Guarente?

4 A. I do not recall.

01:48:47 5 Q. Did you know Mr. Dellinger by this  
6 time?

7 A. I do not recall.

8 Q. It is possible you made up that line in  
9 order to motivate Dr. Guarente to get out there and  
01:49:02 10 have a good conversation with Mr. Dellinger?

11 A. I don't recall.

12 Q. It's possible?

13 A. I highly doubt it.

14 Q. Why?

01:49:15 15 A. I would assume there's a basis for  
16 that. I just can't recall when we met Ryan, what  
17 our conversations were at that point.

18 Q. At the end of that sentence that we  
19 just read together, the very last words you  
01:49:28 20 reference, "should enable him to go back with  
21 enthusiasm to the team at ChromaDex for our  
22 agreement."

23 What did you mean by "our agreement"?

01:49:39 24 A. I think at this point, again, as I  
25 mentioned earlier, we were exploring, as we did with

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1 some frequency, the possibility of some form of  
2 agreement related to a partnership.

3 Q. Well, by this time you already had your  
4 supply agreement with ChromaDex, yes?

01:49:57 5 A. That is correct.

6 Q. So what agreement are you referring to  
7 here?

8 A. This would be one around some form of  
9 exclusivity.

01:50:03 10 Q. The thing --

11 A. Likely.

12 Q. Do you remember?

13 A. Not with specificity, no.

14 Q. When did you first meet Mr. Mark  
01:50:13 15 Morris?

16 A. To my recollection, the first time I  
17 met both Mark and Ryan was at a dinner in New York  
18 City at their request. I do not recall when it was.

19 Q. Would it have been before or after the  
01:50:29 20 amendment to the supply agreement was signed, which  
21 we identified together as February of 2016?

22 A. I would confidently say it was before  
23 that.

24 Q. Why did they ask you to meet for  
01:50:41 25 dinner?

1 A. I do not know. I don't recall.

2 Q. What was your understanding of why they  
3 wanted to meet you for dinner?

4 A. Well, Mark was a business development  
5 person. I think Ryan was traveling with him. And I  
6 think, you know, part of their roles at the time  
7 were to meet with potential partners. You know, we  
8 were willing to fund studies, which I think was rare  
9 for the types of clients that ChromaDex normally  
10 served at that point.

11 So I think they wanted to have dinner  
12 and learn more about what our vision for Elysium  
13 was, how we could work with ChromaDex more closely,  
14 what our plans on the clinical front were, et  
15 cetera.

16 Q. What were your impressions of  
17 Mr. Morris?

18 A. I liked Mark. He was in a senior  
19 position around business development, and I think he  
20 was well-suited for that role.

21 Q. Did you base that on the dinner meeting  
22 or something in addition to the dinner meeting?

23 A. The dinner meeting was part of it, but  
24 we had subsequent interactions with Mark about our  
25 relationship with ChromaDex that supported that line

1 of thinking.

2 Q. Would you, as CEO of Elysium, deal  
3 directly with, as you said, a sales executive at  
4 ChromaDex?

01:51:52 5 MR. SACCA: Object to the form of the  
6 question.

7 A. I'd say it's not uncommon for me to  
8 deal with people who own our accounts. You know, we  
9 work with management. We also work with people  
01:52:03 10 under management when there are no specific teams  
11 that cater to our needs in these different types of  
12 partnership agreements.

13 Q. What was your understanding, as  
14 precisely as you can, of Mr. Morris's position at  
01:52:16 15 ChromaDex at the time that you met him?

16 A. He was, again, a senior team member, so  
17 VP level, executive VP, senior VP, something of that  
18 nature in and around business development. It was  
19 his role to interface with different clients of  
01:52:34 20 ChromaDex from a business relationship standpoint.

21 Q. From the time you met him at that  
22 dinner until he came over and began working for you,  
23 how frequently, on average, would you communicate  
24 with Mr. Morris during the week?

01:52:51 25 A. I don't know.

1 Q. Would you communicate with Mr. Morris  
2 during that time period at least weekly?

3 A. No. I -- I think there were plenty of  
4 times when we would have regular communications and  
01:53:08 5 there would probably be lengths of time where we  
6 didn't have any communication whatsoever for weeks,  
7 potentially months. Again, I don't recall.

8 Q. Did you ever have communications with  
9 Mr. Morris during that period -- again, that's from  
01:53:22 10 your dinner to the time he began working for  
11 Elysium -- where you had an understanding between  
12 you that the substance of the communication would be  
13 kept secret from ChromaDex?

14 A. I don't recall that.

01:53:34 15 Q. Did you ever ask Mr. Morris to keep  
16 what you were talking about between him and you or  
17 between him and Mr. Alminana and not share it with  
18 ChromaDex?

19 A. I do not recall.

01:53:54 20 Q. How did you communicate with Mr. Morris  
21 during that period, Mr. Marcotulli?

22 A. We spoke mainly on the phone and via  
23 email.

24 Q. Those emails were between your Elysium  
01:54:12 25 account, yes?

1 A. Yes.

2 Q. And I assume they were with Mr. Morris  
3 at his ChromaDex account, yes?

4 A. I think so, yes.

01:54:20 5 Q. How often did you email Mr. Morris at  
6 his personal account, off the ChromaDex server?

7 A. That, I don't know. You know, from my  
8 standpoint, I don't think I ever went out of my way  
9 to email Mark at his personal address.

01:54:38 10 It was possible that Mark initiated a  
11 conversation from his personal address that I  
12 responded to, so I couldn't tell you specifically  
13 how often we would communicate.

14 Q. What's your understanding of why  
01:54:49 15 Mr. Morris was communicating with you off his  
16 ChromaDex account and instead on a private account?

17 A. I do not recall.

18 Q. Did you ever discuss that with him?

19 A. Not to my recollection, no.

01:55:02 20 Q. Did it ever strike you as odd that you  
21 were writing to somebody on a personal account?

22 A. No, it happens to me sometimes. It's  
23 not out of the norm entirely.

24 Q. Would it surprise you to know that  
01:55:17 25 we've got dozens of these folders with personal



1 emails -- excuse me, got dozens of these folders  
2 with emails between you and Mr. Morris on his  
3 private account?

4 A. Again, I, you know, wouldn't be  
01:55:31 5 surprised to hear that. I don't specifically go out  
6 of my way to email him on that account.

7 Q. Have you ever?

8 A. That, I can't say.

9 Q. Have you ever initiated emails to  
01:55:40 10 Mr. Morris where you started it on his personal  
11 account?

12 A. That, I don't know.

13 Q. If you did, why would you do it?

14 A. Autofill, type in Mark Morris, let the  
01:55:50 15 email filter it.

16 Q. Did you ever text with Mr. Morris on  
17 WhatsApp or any other platform?

18 A. I believe so.

19 Q. Why would you do that?

01:56:07 20 A. Again, when we work with partners, a  
21 lot of times they give us their personal numbers.  
22 Sometimes we text one another.

23 Q. Did you text anybody else at ChromaDex  
24 on WhatsApp other than Mr. Morris?

01:56:24 25 A. I don't recall.

1 Q. Did you ever text on WhatsApp or any  
2 other platform with any other employee of ChromaDex  
3 other than Mr. Morris?

4 A. I don't recall.

01:56:36 5 Q. Did you ever text on WhatsApp with  
6 Mr. Jaksch?

7 A. Not to my knowledge, no. I know that  
8 Dan and Frank would text one another.

9 Q. Okay. How do you know that?

01:56:51 10 A. Because Dan has told me.

11 Q. When?

12 A. On occasions when Frank or Rob Fried  
13 had texted him.

14 Q. Did anyone else at Elysium text with  
01:57:04 15 Mr. Morris other than you?

16 A. I do not know.

17 Q. Did Mr. Alminana, for instance?

18 A. It's possible, yes.

19 Q. Do you know that?

01:57:14 20 A. I don't know with certainty.

21 Q. Mr. Morris works today for Elysium; is  
22 that true?

23 A. Yes, that's correct.

24 Q. When did you first consider hiring  
01:57:24 25 Mr. Morris as your employee?

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1           A.     Mark let us know on a phone call, and  
2     I'm trying to place the date, that he would be  
3     resigning from ChromaDex. It wasn't until then that  
4     we had considered a role for him.

01:57:48     5           But just given that we had gotten to  
6     know him and what we knew about him, you know, Dan  
7     and I pretty quickly -- and Lenny believed that he  
8     would be an asset to the team. And if he was  
9     leaving ChromaDex already that -- actually it could  
01:58:03    10     potentially be beneficial for our relationship with  
11     ChromaDex, so we moved pretty quickly from there.

12           Q.     When was the conversation with  
13     Mr. Morris in which he told you that he was  
14     resigning from ChromaDex?

01:58:17    15           A.     My best guess is Q2 of 2016.

16           Q.     You're on a calendar year in that  
17     answer?

18           A.     Yes.

19           Q.     Okay. I just wanted to make sure your  
01:58:33    20     fiscal year was not something different.

21           A.     No.

22           Q.     So sometime between April 1st and  
23     June 30th of 2016; is that fair?

24           A.     Yes.

01:58:49    25           Q.     Was that a phone call?

1 A. Yes.

2 Q. Where were you when you had that phone  
3 call?

4 A. We were in the office.

01:58:56 5 Q. You remember that?

6 A. I remember it.

7 Q. Who was with you?

8 A. I was with Dan.

9 Q. Who was on the phone with Mr. Morris,  
01:59:03 10 if anybody?

11 A. I believe it was just Mark.

12 Q. He called you to tell you he was going  
13 to resign or was it more of an aside?

14 A. I don't remember. The only reason that  
01:59:11 15 I remember the call at all is because I put it on  
16 mute when he said he was leaving. I asked Dan,  
17 should we make Mark an offer? And Dan didn't even  
18 bat an eyelash and said, yes, we should.

19 And we unmuted the phone and started  
01:59:30 20 talking to Mark about potentially joining the  
21 company. So it was unusual enough that that portion  
22 of it remains in my memory.

23 Q. What was unusual about it, just how  
24 fast it happened?

01:59:43 25 A. How fast, you know, that Mark would let

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1 us know and that Dan and I would both agree --

2 THE COURT REPORTER: I'm sorry. What  
3 was unusual about it, how fast it happened?

4 A. How fast it happened, the fact that Dan  
5 and I both agreed so strongly and that we could  
6 begin discussing it right there on the call.

7 Q. Focusing on your second quarter answer  
8 and the time span we've identified, April 1st to  
9 June 30th, 2016, can you share with me approximately  
10 when during that period this call occurred?

11 A. That, I don't recall.

12 Q. Was it closer to June 30th or closer to  
13 April 1st?

14 A. I don't know.

15 Q. Do you have notes of that call?

16 A. Not to my knowledge.

17 Q. Do you have emails or texts about your  
18 unusually quick decision to make this offer to  
19 Mr. Morris?

20 A. It's possible. I don't recall off the  
21 top of my head.

22 Q. What did you discuss with Mr. Morris  
23 after you unmuted the phone?

24 A. Well, we said, Mark, first what are  
25 your plans? What are you thinking about? And he

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02:00:54 1 said -- and I can't remember the company name -- but  
2 he said, I'm going to be going -- it's my plan, I  
3 don't know if it was final for him or not, but his  
4 plan was to go to another ChromaDex customer  
5 company.

02:01:05 6 And when he said that, we said, well,  
7 would you potentially be interested in working here?  
8 And he expressed interest in doing so. And, again,  
9 that's why we thought, perhaps, if he was already  
10 going to another customer of ChromaDex's, this could  
11 be beneficial for us in furthering our relationship  
12 with ChromaDex.

02:01:18 13 Q. So to be clear, Mr. Morris talked about  
14 resigning from ChromaDex, but you and Mr. Alminana,  
15 yourselves, first raised the idea of him coming to  
16 work for Elysium; is that fair?

17 A. Yes.

18 Q. Did he ever raise with you prior to  
19 that interest in working with Elysium?

02:01:34 20 A. Not to my recollection, no.

21 Q. What did Mr. Morris say when you asked  
22 him, and I'm paraphrasing, would you be interested  
23 in possibly working with Elysium?

02:01:53 24 A. I don't, again, remember specifics. I  
25 do remember that the call was very positive, that

1 there was interest on Mark's side. And, you know,  
2 it warranted a longer conversation around specifics,  
3 what the role would look like, timing, et cetera.

02:02:11 4 Q. Do you remember anything else about the  
5 call you're describing here that you said, Mr.  
6 Alminana said or Mr. Morris said?

7 A. I do not.

8 Q. What was the next step supposed to be?

9 A. I -- I don't know.

02:02:23 10 Q. You don't know what was supposed to  
11 happen next?

12 A. I do not recall.

13 Q. Did Mr. Morris come for an interview at  
14 your building in New York where [REDACTED],  
02:02:39 15 did Mr. Morris come there?

16 MR. SACCA: Object to the form.

17 A. I do not recall.

18 Q. Did Mr. Morris come to Elysium, your  
19 offices in New York, for a job interview?

02:02:49 20 A. I don't recall.

21 Q. Did Mr. Morris come to Elysium, your  
22 offices in New York, for a meeting to discuss  
23 potential employment with Elysium?

24 A. I do not recall.

02:03:01 25 Q. Do you recall Mr. Morris coming to

1 Elysium in New York to discuss employment, not in Q2  
2 but in March 2016, sir?

3 A. I do not recall.

4 Q. Did you interview, personally,

02:03:19 5 Mr. Morris in March 2016?

6 A. I don't recall.

7 Q. Do you recall interviewing Mr. Morris

8 either right -- either with or in succession

9 Mr. Alminana?

02:03:34 10 A. I do not recall.

11 Q. Do you remember anything about

12 Mr. Morris coming to Elysium's offices in March 2016

13 at all?

14 A. I do not.

02:03:44 15 Q. Are you recalling that he came but you

16 don't think it was for employment discussions, it

17 was for business discussions?

18 A. I do not recall a trip in that period

19 of time for Mark to Elysium.

02:03:54 20 Q. Did Mr. Morris ever tell you that he

21 wanted to work for Elysium?

22 A. I don't recall.

23 Q. Did Mr. Morris ever tell you why he was

24 interested in working for Elysium?

02:04:06 25 A. I know that Mark was always very



1 interested in the vision that we described for him  
2 about Elysium, but beyond that, I couldn't say.

3 Q. Did Mr. Morris share with you, at any  
4 time, why he wanted to resign from ChromaDex?

02:04:25 5 A. Not to my recollection.

6 Q. Did Mr. Morris ever express an opinion  
7 to you about working for ChromaDex?

8 A. I don't recall.

9 Q. Did Elysium hire Mr. Morris or --  
02:04:43 10 strike that.

11 Did Elysium agree to hire Mr. Morris  
12 shortly after his interview in New York?

13 A. We agreed to hire him. I don't recall  
14 the timing.

02:04:55 15 Q. Well, give me your best estimate, sir.

16 When, as best you recall, did Elysium  
17 make an offer to Mr. Morris, orally?

18 A. I would say again, the Q2 time frame.  
19 I know that he started in Q3, so it would have been  
02:05:15 20 immediately prior to that.

21 Q. When was the first time you had a  
22 conversation with -- other than the one you've  
23 described earlier on the telephone where you  
24 affirmatively said to Mr. Morris, we want you to  
02:05:29 25 work for us, not would you consider working for us,

1 we want you, Mark, to work for us?

2 A. I could not say.

3 Q. No memory at all.

4 A. No specifics.

02:05:40 5 Q. During your recruitment of Mr. Morris,  
6 before he began working for you, did you ever ask  
7 him to execute a nondisclosure agreement?

8 A. I don't recall.

9 MR. ATTANASIO: Let's have our next  
02:06:06 10 exhibit in order, which I believe is 137.

11 (Whereupon, Exhibit 137, confidential  
12 disclosure agreement between Elysium and Mark  
13 Morris, ELY\_0107507-8, is marked for  
14 identification, as of this date.)

02:06:57 15 Q. Do you recognize this as a mutual  
16 confidential disclosure agreement between Elysium on  
17 the one hand and Mark Morris on the other hand?

18 A. Yes.

19 Q. Do you recognize Mr. Alminana's  
02:07:14 20 signature on the agreement?

21 A. Yes.

22 Q. Do you recognize Mr. Morris's signature  
23 on the agreement?

24 A. Yes.

02:07:22 25 Q. It's dated June 14th, 2016, correct?

1 A. Yes.

2 Q. Why did Elysium desire to have a  
3 nondisclosure agreement with Mr. Morris before he  
4 began working for you while he was still working at  
02:07:39 5 ChromaDex?

6 A. I don't recall.

7 Q. Did you expect Mr. Morris to share  
8 information with you?

9 A. I do not recall.

02:07:47 10 Q. Did you expect to share confidential  
11 information with Mr. Morris?

12 A. I do not recall.

13 Q. What's the purpose of this agreement,  
14 sir, as the CEO of the company?

02:07:57 15 A. I don't typically handle CDAs or NDAs,  
16 so I couldn't comment on this.

17 Q. You were personally involved in the  
18 recruitment of Mr. Morris, yes?

19 A. Yes.

02:08:08 20 Q. Did you ever discuss with Mr. Alminana,  
21 it would be a good idea to get him on an NDA,  
22 Mr. Morris?

23 A. I don't recall.

24 Q. Are you aware that Mr. Morris provided  
02:08:25 25 information to Elysium from ChromaDex's files --

1 A. I don't recall.

2 Q. -- during this time?

3 A. I do not recall.

4 Q. Have you ever entered an NDA with other  
02:08:39 5 recruits who still worked at another company at the  
6 time you were recruiting them at Elysium?

7 A. I don't know. Again, I don't oversee  
8 nondisclosure agreements.

9 Q. Do you recall when Elysium formally  
02:08:56 10 extended an offer of employment to Mr. Morris, that  
11 is to say, with terms?

12 A. I do not recall.

13 MR. ATTANASIO: Let's mark our next  
14 exhibit 138.

02:09:44 15 (Whereupon, Exhibit 138, email  
16 exchange, ELY\_0067819-20, is marked for  
17 identification, as of this date.)

18 Q. Just for the record, while you review  
19 it, Exhibit 138, email exchange, the last email  
02:09:58 20 being on June 27th, 2016 between Mr. Alminana and  
21 another person, copying Mr. Marcotulli, Bates Nos.  
22 ending in 7819.

23 Mr. Marcotulli, do you see that you  
24 were copied on this email that we have marked as  
02:10:17 25 Exhibit 138?

1 A. Yes.

2 Q. Do you recognize Mr. Alminana's email  
3 address at the top?

4 A. Yes.

02:10:23 5 Q. Do you see that Mr. Alminana is writing  
6 an email here and receiving an email from a third  
7 party?

8 A. Yes.

9 Q. That third party has the email address

02:10:36 10

11 Can you identify whose email that is,  
12 please?

13 A. Yes, that's Mark Morris.

14 Q. So this is another example of Mr.  
02:10:52 15 Morris on his personal account, not his ChromaDex  
16 account, yes?

17 A. Yes.

18 Q. This email string was initiated by  
19 Mr. Alminana, if you look at the bottom, on  
02:11:03 20 June 26th, 2016.

21 Do you see that?

22 A. Yes.

23 Q. He says, "We are very excited to be  
24 sending you a formal offer letter!" and then it  
02:11:13 25 looks like he has two attachments around that idea,

1 correct?

2 A. It appears that way, yes.

3 Q. Then Mr. Morris replies, and he says --  
4 let me back up for a second.

02:11:31 5 Before this email, Exhibit 138, and the  
6 June 26th email specifically from Mr. Alminana, had  
7 Elysium made any kind of formal or informal offer of  
8 employment to Mr. Morris, even if the particular  
9 terms weren't specific?

02:11:49 10 A. I'm sorry, could you repeat the  
11 question?

12 Q. Yes. Prior to Mr. Alminana sending the  
13 email that's at the bottom of Exhibit 138, had  
14 Elysium made any employment offer to Mr. Morris,  
02:12:03 15 even if it wasn't as detailed as this?

16 A. I don't recall.

17 Q. Mr. Morris replies, "Dan, I cannot  
18 thank you and Eric enough for this amazing  
19 opportunity. The offer is beyond generous, and it  
02:12:23 20 is with tremendous enthusiasm that I accept. As you  
21 mentioned, we should have a clear exit strategy this  
22 week."

23 Have I read that correctly?

24 A. Yes.

02:12:32 25 Q. Do you remember what the financial

1 terms of the offer were that he described as "beyond  
2 generous"?

3 A. I do not recall.

4 Q. Do you remember what his compensation  
5 was annually?

6 A. I do not recall.

7 Q. Do you remember what stock position was  
8 offered to Mr. Morris in this offer?

9 A. The only information I have on that is  
10 on this page.

11 Q. What Mr. Alminana says?

12 A. Yes.

13 Q. We'll come up to that in a second.

14 In the next sentence of his email,  
15 Mr. Morris writes, "As you mentioned, we should have  
16 a clear exit strategy this week."

17 What did you understand him to mean by  
18 "exit strategy," sir?

19 A. I do not know.

20 Q. Do you have any idea what he was  
21 talking about?

22 A. I do not.

23 Q. Did you ask?

24 A. I do not recall.

25 Q. Did you consider Mr. Morris to be a key

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1 executive that you were recruiting at the time?

2 A. In what context?

3 Q. The context of his importance to your  
4 company.

02:13:29 5 A. Yes.

6 Q. Weren't you interested to know what his  
7 exit strategy was, or what that meant?

8 A. It's possible that we discussed it. I  
9 just do not recall the specifics.

02:13:44 10 Q. Do you know if ChromaDex was aware by  
11 this point that Mr. Morris was in discussions with  
12 Elysium about employment?

13 A. I do not know.

14 Q. Did you, in fact, know that that was  
02:13:53 15 being kept from ChromaDex?

16 A. I don't know.

17 Q. Did you, yourself, take active steps to  
18 make sure that it was not known to ChromaDex that  
19 you were recruiting Mr. Morris at this time?

02:14:07 20 A. Not to my recollection, no.

21 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

02:14:31 [REDACTED]



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1

3

Is that what Mr. Alminana told

4

Mr. Morris?

5

A. It appears that way, yes.

6

Q.

11

Q. Is it true?

12

A. Again, I don't handle the compensation

13

of the SAB or the employees, so I can't say with a

14

hundred percent certainty.

15

Q. You would agree that is a -- strike

16

that.

17

You would agree that is a very generous

18

offer to Mr. Morris, yes?

19

MR. SACCA: Object to the form of the

20

question.

21

A. Yes.

22

Q. Those Nobel Laureates that are

23

mentioned here, they were given a slice of the

24

company and they went on your scientific advisory

25

board, yes?

1 A. That is correct.

2 Q. Are you familiar with a company called  
3 Live Cell?

4 A. Yes.

02:15:40 5 Q. Mark Morris gave you information about  
6 Live Cell from ChromaDex's files prior to this offer  
7 letter being sent to him, true?

8 A. I do not know.

02:15:53 9 Q. Do you remember Mr. Morris giving  
10 Elysium information about Live Cell from ChromaDex's  
11 files?

12 A. I do not, no.

13 Q. Do you recall learning information  
14 about ChromaDex's sales to a company called Live  
02:16:12 15 Cell or Living Cell?

16 A. I'm sorry, could you repeat that?

17 Q. Yes.

18 Do you recall receiving information  
19 about ChromaDex's sales to a company called Live  
02:16:23 20 Cell or Living Cell?

21 A. The only knowledge I have about that is  
22 data that Frank shared in the form of a spreadsheet  
23 and then, I believe, in subsequent conversations.  
24 But I can't, again, recall with specificity the  
02:16:40 25 dates.

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1 Q. You are referring to a spreadsheet that  
2 Mr. Jaksch sent you at one point?

3 A. Yes.

4 Q. Perfect.

02:16:46 5 Before Mr. Jaksch sent you that  
6 spreadsheet, did you receive from any source  
7 information about ChromaDex's sales to Live Cell?

8 A. I don't recall.

02:16:59 9 Q. Prior to Mr. Jaksch sending you that  
10 spreadsheet, did you talk to Mr. Morris about  
11 ChromaDex's sales to Live Cell?

12 A. I do not recall.

13 MR. ATTANASIO: Let me show you what  
14 we'll mark as Exhibit 138 -- 139, pardon me.

02:17:21 15 (Whereupon, Exhibit 139, document  
16 titled "NR Favored Pricing.xlsx," ELY\_0003825, is  
17 marked for identification, as of this date.)

18 Q. While you look it over, Mr. Marcotulli,  
19 for the record, Exhibit 139 is entitled, "NR Favored  
02:18:02 20 Pricing.xlsx," bearing Bates Nos. ending in 3825.

21 Mr. Marcotulli, do you recognize this  
22 document?

23 A. I do not.

02:18:20 24 Q. It was produced to ChromaDex in this  
25 litigation with you as the document custodian.

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1 A. Okay.

2 Q. Tell me about it. What is it?

3 A. I don't know. I've never seen this  
4 document.

02:18:34 5 Q. Do you know why you were identified as  
6 the custodian of this document?

7 A. Well, depending on where it originated,  
8 I set up the initial storage system for Elysium. So  
9 it's quite possible I'm the custodian of all  
02:18:51 10 documents.

11 Q. On the left-hand side, there's a set of  
12 columns entitled, "NR Purchase History, Date, Order,  
13 Price."

14 Do you see that?

02:19:06 15 A. Yes.

16 Q. Does that look consistent to you with  
17 Elysium's purchases of Niagen from ChromaDex during  
18 those time periods?

19 A. I do not know.

02:19:21 20 Q. You have no idea?

21 A. I really don't. Supply chain was not  
22 under me.

23 Q. How many people worked at the company  
24 in 2014 and '15, '16?

02:19:34 25 A. In 2014, it would have just been myself

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1 and Dan full-time and Lenny in his role.

2 In 2015, we likely grew to about, I'd  
3 say, between six and ten. So eight plus or minus  
4 two.

02:19:56 5 2016, we probably had about, by the  
6 last date on this, maybe between 15 and 20.

7 Q. You had one product on the market,  
8 Basis, yes?

9 A. That is correct.

02:20:10 10 Q. The key ingredient for Basis is Niagen,  
11 at that time anyway, yes?

12 A. One of the two ingredients, yes, was  
13 NR.

14 Q. You sourced it during this time from  
02:20:22 15 ChromaDex, correct?

16 A. Yes.

17 Q. And in a company that size, you cannot  
18 tell me if this appears to roughly reflect the  
19 orders that you made from ChromaDex on the dates  
02:20:31 20 indicated; is that right?

21 A. I do not know when we placed orders.

22 Q. On the right side, there's new numbers  
23 that say, "Live Cell Price (at this order  
24 quantity.)"

02:20:46 25 Do you see that?

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1 A. Yes.

2 Q. This information in this document,  
3 Exhibit 139, were in Elysium's files with you  
4 identified as the custodian.

02:20:58 5 So my question is to you, sir, where  
6 did that information come from in the column marked  
7 "Live Cell price"?

8 A. I do not know.

9 Q. Did Mr. Morris give it to you.

02:21:08 10 A. I don't recall.

11 Q. Did Mr. Morris give it to Mr. Alminana?

12 A. I do not know.

13 Q. Do you know if it was given to your  
14 company by phone, by text or by email?

02:21:19 15 A. I do not know.

16 Q. Do you see the right-hand column where  
17 it says, "Refund Due"?

18 A. Yes.

19 Q. What does that mean? What's your  
02:21:28 20 understanding?

21 A. I do not know.

22 Q. Do you have any understanding of what  
23 that means?

24 A. I couldn't say with certainty.

02:21:39 25 Q. Is it your understanding that that's

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1 supposed to reflect what Elysium would be entitled  
2 to by way of refund from ChromaDex because of the  
3 different prices shown here for Live Cell on the one  
4 hand and Elysium on the other hand?

02:21:57 5 A. I think that's a fair interpretation,  
6 but, again, I couldn't say with a hundred percent  
7 certainty.

8 Q. If this document was in the file --  
9 well, this document was in the files of Elysium, you  
02:22:11 10 are noted as the custodian.

11 Who do you believe would have the  
12 answers to where the Live Cell information came  
13 from?

14 A. I do not know.

02:22:20 15 Q. Would it be Mr. Alminana?

16 A. I do not know.

17 Q. Would it be Mr. Morris?

18 A. I do not know.

19 Q. But it's not you.

02:22:28 20 A. No.

21 Q. Do you know if this was created before  
22 or after -- "this" meaning this Exhibit 139, do you  
23 know if it was created before or after Mr. Morris  
24 went to work for you?

02:22:41 25 A. I do not know.

1 Q. Did you ever tell anybody at ChromaDex,  
2 you owe us a refund of --

3 THE COURT REPORTER: You owe us a  
4 refund of?

02:22:55 5 Q. Did you ever tell anyone at ChromaDex  
6 that ChromaDex owed Elysium a refund of \$520,000  
7 based on the prices Niagen was being sold to Live  
8 Cell?

02:23:03 9 A. We did talk about refund amounts. I do  
10 not recall if this particular number shown here was  
11 part of the discussion.

12 Q. Have you ever told Mr. Morris to keep  
13 information that he's giving you and the fact that  
14 he's giving it to you confidential?

02:23:19 15 A. I don't recall.

16 Q. Did Mr. Alminana share with you the  
17 text he received from Mr. Morris on May 29th, 2016  
18 with Live Cell pricing?

19 A. I don't recall.

02:23:47 20 Q. Would it surprise you to know that I  
21 have a text from Mr. Morris at ChromaDex to  
22 Mr. Alminana with the Live Cell pricing information  
23 that appears here?

24 A. I'm unaware of that.

02:24:03 25 Q. You know nothing about it?



1 A. Nope.

2 Q. Was \$520,000 a lot of money to the  
3 company in May of 2016?

4 A. I think \$520,000 is a lot of money to  
5 most companies, so, yes.

6 Q. Okay. By the way, on the spreadsheet  
7 we're looking at, Exhibit 139, do you have an  
8 understanding of what it means in the far right  
9 column where it says, "Due to Lower Volume Than Live  
10 Cell"?

11 A. My best guess on that would be there  
12 was a pricing provision in our supply contract that  
13 guaranteed us the lowest price, but it was volume  
14 based. So we had to meet specific volumes of other  
15 companies getting those prices in order to receive  
16 that price ourselves.

17 So in cases where we would not be  
18 meeting volume requirements, the pricing provision  
19 would not be applicable. So my sense is a reference  
20 to volume, in this case, is a reference to the  
21 pricing provision.

22 Q. Does that help you remember why this  
23 was being prepared at the time?

24 A. I -- I don't recall.

25 Q. Did you feel like you had a pricing

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1 dispute with ChromaDex in May 2016?

2 A. I don't know, again, with great  
3 specificity when we were made aware of the pricing  
4 issues.

02:25:49 5 Q. Can you ballpark it for me maybe by  
6 quarter or by season? I like seasons, personally,  
7 but you can do it by quarter, if you'd like.

8 A. It was Q2, early summer.

02:26:07 9 Q. Okay. Did you ever discuss that  
10 subject with Mr. Morris before his first day working  
11 for Elysium, in any context?

12 A. I don't recall.

13 Q. After May 30th, 2016, when is the first  
14 time you recall having any conversation with someone  
02:26:26 15 at ChromaDex about wanting a refund based on the  
16 pricing mechanism in the contract?

17 A. Again, my best recollection would place  
18 that discussion after Frank sent us the pricing  
19 spreadsheet, which, again, I can't place the exact  
02:26:50 20 date of.

21 Q. Well, let's see if we can.

22 MR. ATTANASIO: We'll mark this as our  
23 next in order, 140, I believe.

24 (Whereupon, Exhibit 140, email  
02:27:20 25 exchange between Frank Jaksch and Daniel Alminana,

1 CDXCA\_007166-7, is marked for identification, as of  
2 this date.)

3 MR. ATTANASIO: For the record,  
4 Exhibit 140 is an email exchange between Mr. Jaksch,  
02:28:06 5 Mr. Alminana, with the witness copied, last email  
6 being dated May 30th, 2016, Bates No. ending in  
7 7166.

8 Q. Do you recognize this email as an  
9 exchange between your COO, Mr. Alminana, and  
02:28:24 10 Mr. Jaksch?

11 A. Yes.

12 Q. I'd like to direct your attention down  
13 to the bottom of the first page where Mr. Alminana  
14 writes to Mr. Jaksch, and there's a bullet point  
02:28:37 15 that says, "Supply Agreement."

16 Do you see that?

17 A. Yes.

18 Q. And Mr. Alminana writes, "We are in the  
19 middle of a fast-paced due diligence process with a  
02:28:46 20 massive Silicon Valley VC who is looking to put a  
21 significant amount of money into Elysium. As a part  
22 of their discovery process, they have asked detailed  
23 questions about the raw materials costs and the  
24 agreements that we have in place with ChromaDex for  
02:29:03 25 financial analysis and projections."

1 Let me stop there.

2 Was that a true statement at the time,  
3 were you in such discussions?

4 A. To the best of my recollection, yes.

02:29:12 5 Q. Who was the VC?

6 A. I couldn't say with certainty. It  
7 could possibly have been General Catalyst, but I  
8 don't know. We talked to a number of VCs in this  
9 specific time period.

02:29:23 10 Q. Then Mr. Alminana goes on, "Couple of  
11 things that we need from your side to satisfy this  
12 diligence," there is another bullet point, "Favored  
13 Nation Pricing.

14 "Given the significant cost of NR as a  
02:29:36 15 percentage of our overall COGS, we would like to see  
16 sales and price data of NR that ChromaDex has sold  
17 to other customers to demonstrate that we have been  
18 receiving the lowest price of NR since we began  
19 purchasing the ingredient."

02:29:56 20 Have I read that correctly?

21 A. Yes.

22 Q. Is that something that you knew Mr.  
23 Alminana was going to ask Mr. Jaksch for?

24 A. I don't recall.

02:30:03 25 Q. Do you know of any relationship between

1 that request of Mr. Jaksch and the earlier  
2 spreadsheet we looked at about Live Cell?

3 A. I do not.

4 Q. Which was Exhibit 139.

02:30:16 5 A. I do not.

6 Q. Was Mr. Alminana's request for pricing  
7 information to satisfy due diligence by a Silicon  
8 Valley venture capital firm a rouse to get that  
9 information from Mr. Jaksch?

02:30:43 10 A. I do not know. I have no reason to  
11 believe that's the case.

12 Q. Well, at this time, you thought there  
13 was a pricing problem with ChromaDex, yes?

14 A. I do not recall.

02:30:58 15 Q. Well, you just told me when you looked  
16 at the last exhibit, the Live Cell spreadsheet,  
17 Exhibit 139, that you thought the reference to lower  
18 volume referred precisely to that paragraph of the  
19 contract, the pricing paragraph, right?

02:31:16 20 A. I mentioned that the first time I was  
21 made aware of any pricing provision issue was when  
22 Frank responded to these emails with the other Excel  
23 document.

02:31:30 24 Q. No concern about price until Mr. Jaksch  
25 wrote back to you? I want to make sure we're very

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1 clear about that.

2 A. To the best of my recollection, yes.

3 Q. Okay. Did you need favored nation  
4 pricing information from ChromaDex in order to  
5 satisfy the diligence of a VC at this time?

6 A. I don't recall, but, again, it seems  
7 like a very reasonable request from a diligence  
8 standpoint.

9 Q. Mr. Jaksch writes back and says, in the  
10 third paragraph, "I am not sure how much I'm going  
11 to be able to share about other NR customer  
12 relationships, but I am sure we can do something to  
13 help your situation with the VC as we, of course,  
14 want to help you get your funding."

15 Is that what he wrote?

16 A. Yet.

17 Q. Was it your perception that Mr. Jaksch  
18 was trying to be cooperative with you?

19 A. Yes.

20 Q. Was that always your perception of  
21 Mr. Jaksch?

22 A. No, I think I mentioned earlier we  
23 would often be frustrated by a lack of progress  
24 despite what we felt were steps forward. I think,  
25 in general, the messaging to us always was that they

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1 wanted to be helpful.

2 Q. Was the request for most favored nation  
3 pricing information that Mr. Alminana made to  
4 Mr. Jaksch in any way related to your conversations  
02:32:43 5 with Mr. Morris at the time?

6 A. I don't recall.

7 Q. So this is dated May 29th, 2016, this  
8 email from Mr. Alminana in Exhibit 140.

9 By then you were very deep into your  
02:32:55 10 recruiting conversations with Mr. Morris, true?

11 A. I do not know.

12 Q. Well, we looked earlier at the offer  
13 that was made to him. It comes shortly after this.

14 A. It looks about a month later.

02:33:15 15 Q. Did you ever discuss with Mr. Morris,  
16 before he came to work for Elysium, the most favored  
17 nation pricing clause in the contract or any  
18 information about it?

19 A. Not to my recollection.

02:33:35 20 Q. Had ChromaDex ever given you customer  
21 sales information prior to this time, the time of  
22 Exhibit 140?

23 A. I don't recall.

24 Q. Did Mr. Jaksch ever give you  
02:33:50 25 information about actual sales and price data of NR?

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1 A. I don't recall.

2 MR. ATTANASIO: Let's mark Exhibit 141,  
3 please.

4 (Whereupon, Exhibit 141, email  
02:34:17 5 exchange between Frank Jaksch and Daniel Alminana,  
6 ELY\_0049084, is marked for identification, as of  
7 this date.)

8 MR. ATTANASIO: For everybody's piece  
9 of mind, we'll work through this document  
02:35:01 10 efficiently and then take our break.

11 Q. Exhibit 141 is an email exchange, again  
12 between Mr. Jaksch and Mr. Alminana, on which you  
13 are copied.

14 Do you see that?

02:35:17 15 A. Yes, I do.

16 Q. And the Bates number on this one ends  
17 9084.

18 If you kind of quickly look at the body  
19 of the email down below, Mr. Marcotulli, and even on  
02:35:28 20 page 2, you'll see that this is a continuation of  
21 the discussion that we just looked at in  
22 Exhibit 141, fair enough?

23 A. Yes.

24 Q. In the middle of page 1, Mr. Alminana  
02:35:38 25 nudges Mr. Jaksch a little bit, that's my



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1 characterization. He says, "Hi, Frank, checking in  
2 again on this. Can you please let us know when you  
3 will be able to get us this information?"

4 Do you see that?

02:35:50 5 A. Yes.

6 Q. And then he says, "We are planning a  
7 sizable order and need this analysis completed prior  
8 to placing the PO"; is that right? Is that what he  
9 said?

02:36:03 10 A. Yes.

11 Q. Was that true?

12 A. I don't recall.

13 Q. Were you planning a sizable -- you or  
14 Elysium planning a sizable order as of June 11th,  
02:36:10 15 2016?

16 A. It is possible.

17 Q. Do you know?

18 A. I do not know.

19 Q. Mr. Jaksch replies on June 13th, 2016,  
02:36:19 20 and he says, "Dan and Eric, Attached is a blinded  
21 summary of supply agreements for NR."

22 Do you see that?

23 A. Yes.

24 Q. Then he says, "Please bear in mind that  
02:36:30 25 it is difficult to do and apples to apples

1 comparison as the deal terms vary substantially  
2 depending on the market segment, royalties, take or  
3 pay requirements, annual minimums to maintain,  
4 inventory requirements, advertising spend, et  
5 cetera."

6 Have I read that correctly?

7 A. Yes.

8 Q. What did you understand Mr. Jaksch to  
9 be communicating in that paragraph?

10 A. I don't recall.

11 Q. What did you understand him to be  
12 telling you?

13 A. My best understanding of this is he is  
14 sending through a document to answer Dan's earlier  
15 request.

16 Q. With respect to this specific paragraph  
17 that I just read, what was your understanding of the  
18 caveats he was putting on the information?

19 A. I -- I couldn't say.

20 Q. There are attachments to this email,  
21 correct?

22 A. Yes.

23 Q. Are these the spreadsheets that you  
24 have been referring to in your testimony when you  
25 say, it was only then that I knew we had a pricing

1 issue with ChromaDex?

2 A. Yes.

3 Q. Okay. If you turn to the first  
4 spreadsheet, Bates Nos. ending 9088, what did you  
02:37:48 5 understand this document to be, sir?

6 A. This is the blinded summary that Frank  
7 references in his message.

8 Q. Okay. Did this cause you any concern  
9 when you saw it, this spreadsheet specifically?

02:38:08 10 A. I don't recall.

11 Q. Was there anything on the spreadsheet  
12 that gave you heartburn about ChromaDex complying  
13 with its obligations under your supply agreement or  
14 the amendment?

02:38:19 15 A. I don't recall.

16 Q. Does anything at all stand out about  
17 this spreadsheet when you read it, that is, the  
18 blinded spreadsheet?

19 A. Not particularly.

02:38:28 20 Q. The second column is Pricing, yes?

21 A. Yes. That is correct.

22 Q. Elysium is the first company in the  
23 first row, yes?

24 A. Yes.

02:38:36 25 Q. Did anything in this column give you

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1 concern, the prices that are shown here?

2 A. No.

3 Q. And if we turn to the next page where  
4 the small print is; do you see that?

02:39:02 5 A. Yes.

6 Q. There are additional spreadsheets  
7 there, correct?

8 A. Yes.

9 Q. And this spreadsheet is entitled,  
02:39:09 10 "Supply/Trademark Agreements-Niagen."

11 Do you see that at top?

12 A. Yes.

13 Q. What did you understand this  
14 spreadsheet to be?

02:39:22 15 A. This looks like a more detailed  
16 breakdown by customer of the different buckets.

17 Q. And the first customer is, again,  
18 Elysium Health on the left, yes?

19 A. Yes, that's true.

02:39:35 20 Q. Did this spreadsheet cause you any  
21 concern?

22 A. Yes, I believe so.

23 Q. Why? What specifically?

24 A. I believe it was through an analysis of  
02:39:45 25 this or the subsequent worksheet that it became

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02:40:09 1 apparent there were others, including Live Cell as a  
2 specific example, that seemed to have a -- excuse  
3 me, lower price per kilogram than either was  
4 depicted on the top sheet or in our supply  
5 agreements itself.

6 Q. Did you have an understanding of why  
7 Mr. Jaksch sent you both a blinded spreadsheet and  
8 then a sheet that had customer names on it?

9 A. I do not.

02:40:18 10 Q. Did you ever speak to him about it?

11 A. Yes, we did.

12 Q. When did you speak to Mr. Jaksch about  
13 that?

14 A. I don't recall. I do know that there  
02:40:26 15 was an email exchange after this and that there was  
16 a phone call after this as well. Again, I can't  
17 place the exact timing.

18 Q. What was Mr. Jaksch's explanation for  
19 why he sent you a blinded spreadsheet and then a  
02:40:40 20 more detailed spreadsheet?

21 A. I don't recall.

22 Q. Do you recall anything he said about it  
23 at all?

24 A. No.

02:40:45 25 Q. Did you confront him about your concern

1 with the pricing that you saw in the unblinded  
2 spreadsheet?

3 A. Yes.

4 Q. What did you say to him?

02:40:54 5 A. We said that it was clear that there  
6 were customers who were receiving less than \$1,000  
7 per kilo, which was the price that we were paying.

8 Q. Which customers did you believe that to  
9 be true about from the unblinded spreadsheets?

02:41:10 10 A. Again, I know that Live Cell was one  
11 customer. I haven't looked at this spreadsheet in  
12 years, so I couldn't say specifically.

13 Q. Did you review this spreadsheet to  
14 prepare for your deposition?

02:41:22 15 A. No, not in any detail.

16 Q. What did you understand the date column  
17 to mean in this spreadsheet, sir?

18 A. I don't know.

19 Q. You have no idea what that means?

02:41:50 20 A. No.

21 Q. All right. If I could direct your  
22 attention to the second page of the unblinded  
23 spreadsheet. And at the top left, you'll see in  
24 small print, I apologize, Living Cell.

02:42:13 25 A. Yes.

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1 Q. Okay. Is this one of the entries that  
2 gave you concern?

3 A. Yes.

4 Q. Do you see that in the date column,  
02:42:19 5 although it's not -- the title's not on this page,  
6 but you can look back, if you wish, the date column  
7 says "pending" for Living Cell.

8 Do you see that?

9 A. Yes.

02:42:32 10 Q. Did you understand, by the way, Living  
11 Cell here to mean Live Cell?

12 A. Yes.

13 Q. We'll call it Live Cell, if that's all  
14 right, if that's agreeable to you.

02:42:43 15 A. Yes.

16 Q. What did you understand the word  
17 "pending" to mean in the date column for Live Cell?

18 A. I'm not sure it was a topic we ever  
19 discussed.

02:42:57 20 Q. Did you have any understanding of what  
21 pending meant in the date column next to the Live  
22 Cell entry?

23 A. No.

02:43:07 24 Q. Did you believe that ChromaDex had an  
25 agreement with Live Cell at the time this

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1 spreadsheet was created?

2 A. I don't know.

3 Q. Did you ever ask ChromaDex if it had a  
4 contract with Live Cell at the time?

02:43:17 5 A. I don't recall.

6 Q. Are you aware one way or the other  
7 whether ChromaDex had a contract with these terms  
8 with Live Cell at the time this spreadsheet was  
9 created?

02:43:27 10 A. I do not know.

11 Q. Are you aware of whether ChromaDex ever  
12 had a supply agreement with Live Cell?

13 A. I do not know.

14 Q. After you saw this spreadsheet, you  
02:43:40 15 told me you had a conversation with Mr. Jaksch; is  
16 that right?

17 A. Yes.

18 Q. But you can't tell me anything you said  
19 to him about the pricing concern you had, right?

02:43:50 20 A. Not -- again, not with specificity,  
21 other than, you know, we obviously don't believe  
22 that the numbers on the top sheet match the  
23 subsequent data provided.

24 Q. Were you mad?

02:44:02 25 A. I don't recall.



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1 Q. Were you outraged?

2 A. I don't recall.

3 Q. Were you as mad as you were at Lenny  
4 Guarente on January 6th, 2017?

02:44:13 5 MR. SACCA: Object to the form of the  
6 question.

7 A. I don't recall.

8 Q. What was your answer, sir?

9 A. I said I don't recall.

02:44:19 10 Q. What did Mr. Jaksch say to you when you  
11 said to him words to the effect, Frank, the data on  
12 the blinded spreadsheet is different than the data  
13 on the unblinded spreadsheet?

14 A. I do not recall.

02:44:37 15 Q. Do you recall anything else about that  
16 conversation after you received this unblinded  
17 spreadsheet and the blinded spreadsheet and the  
18 email?

02:44:47 19 A. Yes. The only additional information  
20 that I remember from our conversation with Frank  
21 was, specifically talking about Live Cell, we  
22 pointed towards these two numbers, 900 a kilo and  
23 700 a kilo as both lower than the \$1,000 a kilogram  
24 we were paying.

02:45:05 25 What I do remember is Frank saying they

02:45:21 1 never sold product to Live Cell at 700 kilo -- or  
2 \$700 per kilogram, but they had offered that, it  
3 never transacted at that price. And then we  
4 ultimately settled on a price slightly higher than  
5 that for the order that we were placing.

6 Q. Mr. Jaksch said all of those words to  
7 you?

8 A. I'm paraphrasing.

9 Q. Understood.

02:45:29 10 Mr. Jaksch communicated to you those  
11 paraphrased statements that you just summarized?

12 A. Yes.

13 Q. Did he say anything else to you that  
14 you remember?

02:45:42 15 A. Not that I recall.

16 Q. What customers and prices other than  
17 the Live Cell entry within Exhibit 142, any of the  
18 spreadsheets -- excuse me. Let me ask a new  
19 question.

02:46:01 20 Other than your concern about the Live  
21 Cell pricing you saw on the spreadsheet contained  
22 within Exhibit 141, were there any other customers  
23 of ChromaDex and prices for those customers listed  
24 in the spreadsheet that caused you concern?

02:46:21 25 A. There was at least one other --

1 Q. Who was that?

2 A. -- if I recall.

3 That is the entry just prior to Live  
4 Cell, which is Healthspan Research.

02:46:31 5 Q. On the prior page?

6 A. Yes.

7 Q. What was your concern about the pricing  
8 for Healthspan Research?

9 A. Just in that context, they had a  
02:46:39 10 similar per kilo price to Elysium. However, they  
11 were also receiving product in exchange for equity.

12 It's just very difficult to, then, make  
13 comparisons about what the average per kilogram  
14 price is.

02:46:55 15 Q. Does that help your memory of your  
16 understanding at the time of what Mr. Jaksch had  
17 told you about the difficulty of making an apples to  
18 apples comparison?

19 A. No.

02:47:09 20 Q. Did you understand Mr. Jaksch to be  
21 talking about precisely this situation, where there  
22 are other deal terms in play such that you can't  
23 just look at the price standing alone?

02:47:24 24 A. We didn't talk about that at all, to my  
25 recollection. We -- in the context of the

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02:47:40 1 subsequent orders and the pricing, spent our time  
2 mainly with respect to Live Cell just being the fact  
3 that it was a very straightforward relationship  
4 associated with a per kilogram price and no  
5 complicating factors.

02:47:53 6 Q. Other than your concerns about the  
7 pricing and deal terms with Live Cell and with  
8 Healthspan, did you have any other concerns with the  
9 prices shown and the customers shown on the  
10 spreadsheets in Exhibit 141?

11 A. Not that I recall.

12 Q. Did you discuss with Mr. Jaksch your  
13 concern about Healthspan?

14 A. I don't recall.

02:48:03 15 Q. Other than what you've told me you  
16 discussed with Mr. Jaksch about Live Cell, do you  
17 recall any other conversations about these  
18 spreadsheets with Mr. Jaksch?

19 A. I do not recall.

02:48:20 20 Q. So you've told me everything you  
21 remember about your talks with Frank, yes?

22 A. Specifically related to these  
23 spreadsheets, yes.

02:48:32 24 Q. Did you discuss these spreadsheets with  
25 Mr. Alminana?

1 A. Yes.

2 Q. What did you say to Mr. Alminana about  
3 these spreadsheets and what did he say to you?

4 A. Again, I don't recall specifics. I  
02:48:41 5 think it was pretty clear to both of us that we were  
6 not receiving the lowest price and that we were due  
7 a price adjustment on our orders and that we would  
8 likely also be eligible for a refund for prior  
9 orders, but we would have to be able to speak with  
02:48:58 10 Frank for that.

11 Q. You have Exhibit 139 right in front of  
12 you. It's the NR pricing one that you have your  
13 fingers on.

14 Do you see that?

02:49:18 15 A. Yes.

16 Q. What relationship, if any, is there  
17 between Exhibit 139, with the Live Cell pricing, and  
18 Exhibit 141, the information sent to you by  
19 Mr. Jaksch, which also contains Live Cell pricing?

02:49:36 20 A. I don't know.

21 Q. Do you believe that Exhibit 139, NR  
22 favored pricing, was created based on the data  
23 contained in Mr. Jaksch's spreadsheets or did it  
24 come from somewhere else?

02:49:49 25 A. I do not know.

1 Q. Does the data for Live Cell in  
2 Exhibit 139 even look consistent with the data that  
3 Mr. Jaksch sent you for Live Cell in Exhibit 141?

4 A. I don't know.

02:50:05 5 Q. Well, the numbers are different, aren't  
6 they?

7 A. They are.

8 Q. So this information in 139 must have  
9 come from somewhere else, fair?

02:50:12 10 A. I don't know.

11 Q. Okay.

12 MR. ATTANASIO: We can take a break.

13 Off the record.

14 THE VIDEOGRAPHER: It is 2:51 p.m. We  
02:50:22 15 are going off the record.

16 (Whereupon, there is a  
17 recess taken.)

18 THE VIDEOGRAPHER: It is 3:06 p.m. We  
19 are back on the record.

03:05:03 20 BY MR. ATTANASIO:

21 Q. Mr. Marcotulli, do you recall that in  
22 the communication string we were looking at between  
23 Mr. Alminana and Mr. Jaksch a few minutes ago before  
24 the break, Mr. Alminana had said, we're planning on  
03:05:21 25 placing a large order.

1 Do you remember that general topic?

2 A. Yes.

3 Q. Okay. Do you recall, by any chance,  
4 the size of the average order that Elysium typically  
03:05:34 5 had been ordering from ChromaDex up to this point in  
6 time, May and June 2016?

7 A. I do not.

8 Q. Do you recall any internal discussions  
9 at Elysium about placing a sizable or a large order  
03:05:48 10 around this time?

11 A. I do, to some degree. What I recall is  
12 we were all -- in 2015 when we launched, we had a  
13 supply chain hiccup that caused us to go out of  
14 stock for, I'd say, about ten weeks. And it was a  
03:06:06 15 very difficult time for the company. We did not  
16 want to have to deal with that again. Subsequently,  
17 we were living -- excuse me, PO to PO in order to  
18 fulfill our subscription agreements.

19 We did not want to have to do that  
03:06:24 20 again. We anticipated -- or excuse me, we were  
21 hopeful that we could place a larger order that  
22 would allow us to serve our customers for a longer  
23 period of time such that we could better plan the  
24 supply chain rather than risk going out of stock  
03:06:40 25 again.

1 Q. Do you recall what size of order you  
2 had in mind to fulfill those objectives in May and  
3 June of 2016?

4 A. I do not.

03:06:50 5 Q. Do you remember submitting purchase  
6 orders to ChromaDex on or around June 28th, 2016?

7 A. Yes, at a very high level I recall  
8 that.

03:07:02 9 Q. Okay. Do you recall what prices you  
10 offered to purchase those large quantities of NR and  
11 pterostilbene in that purchase order -- in those  
12 purchase orders?

03:07:22 13 A. I do not recall any negotiations other  
14 than those that resulted in the ultimate price,  
15 which, I believe, was \$800 a kilogram for that  
16 particular order.

03:07:37 17 Q. Do you remember that the initial  
18 purchase order that led to that order that you're  
19 describing, the price you used was \$400 per kilogram  
20 for Niagen and \$400 per kilogram for pterostilbene?

21 A. I do not recall.

22 Q. Who would have chosen the price to put  
23 on the purchase order for the large orders in  
24 June 2016?

03:08:02 25 A. Again, I can't say with certainty. The



1 supply chain team, at that time, was relatively  
2 small. It would have been, again, Dan Alminana,  
3 also Dan Nagita.

03:08:21 4 Q. Earlier we saw that Mr. Morris accepted  
5 his offer to work at Elysium on June 26.

6 Did you talk to Mr. Morris before you  
7 placed the June 28 orders?

8 A. I do not recall.

03:08:33 9 Q. Do you know if anybody at Elysium spoke  
10 to Mr. Morris before placing the June 28th orders?

11 A. I do not know.

12 Q. Was the price that Elysium initially  
13 requested based on any information that the company  
14 learned from Mr. Morris?

03:08:47 15 A. Not to my knowledge.

16 Q. Do you recall learning from Mr. Morris  
17 what ChromaDex's cost per kilogram to manufacture  
18 Niagen was?

19 A. I do not recall.

03:09:02 20 Q. Do you recall ever learning that?

21 A. I believe Frank did discuss that in the  
22 call, the same call that I alluded to a moment ago  
23 that resulted in the \$800 final price.

03:09:19 24 Q. By call you alluded to earlier, you're  
25 referring to the call you had with Mr. Jaksch

1 regarding the spreadsheets he had sent you; is that  
2 right?

3 A. You know, I'm not certain if that was  
4 one discussion or multiple discussions. They all  
03:09:31 5 did take place, if they were multiple discussions,  
6 after the spreadsheet was sent.

7 Q. So you had a call with Mr. Jaksch about  
8 the spreadsheet issues that you had, which we've  
9 already been over in painstaking detail, right?

03:09:45 10 A. Yes.

11 Q. You had, maybe on the same call but  
12 maybe on a different call around that time, a  
13 conversation with Mr. Jaksch about pricing for this  
14 order that you were going to make in June, correct?

03:09:58 15 A. Yes. And, again, I'm not sure that it  
16 was -- all of that was Frank because I believe Will  
17 Black was on the call, too. So I'm not sure  
18 exactly, you know, who said what on their end.

19 Q. Is it your memory that Mr. Jaksch, on  
03:10:16 20 one of those calls, told you what it cost ChromaDex  
21 to make Niagen?

22 A. Yes.

23 Q. Which one, if you remember?

24 A. Which of the calls?

03:10:26 25 Q. Yes.

1 A. Again, I don't know that it was two  
2 separate calls.

3 Q. Okay. Was anybody else on that call?

4 A. On the Elysium end?

03:10:33 5 Q. Yes.

6 A. As I remember, I believe Dan was on  
7 that call as well. I don't believe anybody else was  
8 on there.

9 Q. So now, does that refresh your memory  
03:10:44 10 that you used the information you recall Mr. Jaksch  
11 giving you about ChromaDex's cost to price your PO  
12 at that time?

13 A. I don't recall how the PO was priced.

14 Q. You had nothing to do with it, as far  
03:10:58 15 as you recall?

16 A. Not that I recall.

17 Q. Did you expect -- did you have any  
18 expectation about whether ChromaDex would accept or  
19 reject the initial orders?

03:11:08 20 A. I don't recall.

21 Q. Did you ever have any discussion with  
22 anybody at Elysium that ChromaDex really needed the  
23 sales and just might take the orders at that volume?

24 A. I don't recall.

03:11:18 25 Q. Did you ever discuss the order that was

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1 placed on June 28th, 2016 or any of the negotiations  
2 that led up to it with Mr. Morris?

3 A. I don't recall.

4 Q. Did you have any information about  
03:11:31 5 whether ChromaDex would make its own quarterly sales  
6 goals without the orders?

7 A. I don't recall.

8 Q. Ever discuss that with Mr. Morris?

9 A. I don't recall.

03:11:44 10 Q. Do you recall that on June 28th,  
11 Elysium ordered 6600 kilos of Niagen and 1,260 kilos  
12 of pTeroPure? Do those numbers sound correct?

13 A. Yes. I don't know the specifics, but I  
14 have no reason to believe that's not accurate.

03:12:03 15 Q. Sound like it is the ballpark?

16 A. Yes.

17 Q. Were those large orders?

18 A. It was certainly larger in my, again,  
19 recollection than orders that we had placed in the  
03:12:12 20 past.

21 Q. It was the largest order you had ever  
22 placed with ChromaDex, true?

23 A. I believe so, yes.

24 Q. By a factor of what, five, six?

03:12:21 25 A. I don't know, again, the previous

1 orders. I'd say ballpark two to three, but it could  
2 be a different number.

3 Q. Did Elysium forecast how long a supply  
4 of that size would support your sales?

03:12:39 5 A. We did a lot and still do a lot of  
6 modeling based on a lot of different things. So it  
7 is entirely plausible that we would have looked at  
8 the duration based on certain assumptions for that  
9 supply to last us.

03:12:54 10 Q. Did you?

11 A. I don't recall.

12 Q. Would that have been important to you  
13 as CEO of the company? You have placed this massive  
14 order, it's going to clearly last you for some long  
03:13:09 15 period of time; you would want to know how long it  
16 should last you based on a model, correct?

17 A. In theory, yes. We were growing very  
18 fast at the time, so -- and even still, models are  
19 very difficult in young companies to accurately  
03:13:25 20 project any sort of forecast.

21 We also can't account for external  
22 factors that benefit us such as public relations,  
23 articles that are written on us, et cetera, mentions  
24 in the press. All these factors affect growth.

03:13:37 25 So we do our best to model, but, you

1 know, the models are actually very difficult to  
2 place any real faith in.

3 Q. Conversely, media coverage could drive  
4 sales down, right?

03:13:53 5 A. Yes, that is entirely plausible.

6 Q. In fact, just six months later, you  
7 have the article in which Guarente's quoted that  
8 seems to drive you off into orbit, right?

9 MR. SACCA: Object to the form the  
03:14:06 10 question.

11 MR. ATTANASIO: I'll strike it.

12 Q. In fact, six months later, you had a  
13 negative article --

14 A. Yes.

03:14:11 15 Q. -- about the company, yes?

16 A. Yes, that's true.

17 Q. Did that diminish sales?

18 A. I don't recall the effect of that  
19 particular article.

03:14:19 20 Q. All right. Can you give me any  
21 estimate from your personal knowledge, personal  
22 memory, even an estimate, of how long the June 28th  
23 order was supposed to last for Elysium's business?

24 A. I, unfortunately, cannot say.

03:14:35 25 Q. Did you ever understand from your team

1 that the orders would allow Elysium to sell product  
2 until 2017?

3 A. I don't recall.

4 Q. Did you have any strategic reason to  
5 want the orders to last into 2017?

6 A. Not to my knowledge, no.

7 Q. Has Elysium ever purchased enough  
8 ingredients for Basis to supply it for as long as  
9 the June 28th order would last?

10 A. I don't know.

11 Q. Did Elysium have any stability data for  
12 nicotinamide riboside?

13 A. That's a question that's beyond my  
14 competency. I believe the answer is yes, but I  
15 wouldn't have any specific knowledge of the  
16 stability date itself.

17 Q. Why do you believe that Elysium had  
18 stability data on nicotinamide riboside?

19 A. Well, I do know that our manufacturing  
20 partners are either required to or just as part of  
21 our agreements keep batches on hand and they go  
22 through stability testing on a batch-by-batch basis.

23 Q. Do you believe you had stability data  
24 on Niagen as of the time of the June 28th, 2016  
25 orders?

1 A. I don't know. I would assume yes.

2 Q. Based on what you said a moment ago?

3 A. Yes.

4 Q. Did you have any conversations with  
03:16:00 5 anybody about whether the stability of Niagen would  
6 have an impact on how long the June 28th orders  
7 would last Elysium?

8 A. I don't recall.

9 Q. Did you have an opinion one way or the  
03:16:17 10 other whether the quantity of Niagen you purchased  
11 would be stable for as long as it would take you to  
12 use it?

13 A. My sense is we would, from a modeling  
14 standpoint, try to be as conservative as possible.  
03:16:33 15 We wouldn't want to waste material. I'm sure there  
16 was an estimate. Again, I don't recall what it  
17 would be.

18 Q. How did ChromaDex react to the orders  
19 on June 28th, the large orders?

03:16:44 20 A. They were unhappy with the price. I  
21 think from a size perspective, they were happy.  
22 Beyond that, I can't recall.

23 Q. Do you remember Mr. Jaksch emailing you  
24 and asking for a call?

03:16:58 25 A. I do not.



1 Q. Did you ever speak to Mr. Jaksch about  
2 the June 28th orders?

3 A. Yes. I mean, we placed the order with  
4 them. I mean, we came to terms verbally over the  
03:17:10 5 phone. Beyond that, I couldn't say.

6 Q. What's the basis for your statement  
7 that they, "they" meaning ChromaDex, was unhappy  
8 with the price?

9 A. I just recall Frank saying we're not  
03:17:21 10 going to sell this for less than 1,000 a kilo on  
11 that call with Frank and Will.

12 And so the 800 was pitched to us as a  
13 one-time only because they weren't going to settle  
14 for less than \$1,000 a kilo. So clearly that, in my  
03:17:38 15 opinion, they were unhappy.

16 Q. Is it accurate to say that ChromaDex  
17 made a significant accommodation to Elysium with  
18 that order by taking the lower price for such a  
19 large quantity?

03:17:50 20 A. I -- based on the conversation, we were  
21 entitled to that price, so I would not say it was a  
22 concession whatsoever.

23 Q. What do you mean, "based on the  
24 conversation, we were entitled to that price"?

03:18:01 25 A. Frank talked to us about Live Cell

1 getting product for 800 a kilo, said he was going to  
2 offer us the same price, the pricing provision in  
3 the contract stipulates it, so I think it's just  
4 part of the contractual agreement.

03:18:20 5 Q. So let me make sure I understand. The  
6 price to Elysium for the June 28th orders, \$800 a  
7 kilo, was the result of Mr. Jaksch agreeing to sell  
8 you the product at the same price it had been sold  
9 to Live Cell; is that correct?

03:18:41 10 A. That is my recollection.

11 Q. Do you remember anything else about  
12 that agreement that you've just described?

13 A. No.

14 Q. Did you consider that, as the CEO of  
03:18:56 15 Elysium, to resolve the matter of the pricing?

16 A. I did not, no.

17 Q. Why not?

18 A. Well, clearly, in our opinion, we had  
19 been not receiving the best price up until that  
03:19:10 20 point, which meant that potentially some adjustments  
21 needed to be made from previous orders as well,  
22 which would result in either refunds or credits as  
23 outlined by the contract.

24 Q. When did you settle on the amount of  
03:19:23 25 the refund or the credit to which you were entitled?

1 A. We never did.

2 Q. Well, we have a document that we've  
3 already looked at in detail which shows a refund due  
4 of \$520,000.

03:19:36 5 Was that the number?

6 MR. SACCA: Object to the form of the  
7 question.

8 A. We spoke with Frank about this. We  
9 spoke to Rob Fried about this. We ultimately spoke  
03:19:44 10 with, I believe, Steve Block about this over the  
11 course of many months.

12 The difficulty for us was we didn't  
13 know how much we were owed. We didn't know for how  
14 long we weren't receiving the best price, for which  
03:19:56 15 orders, what the adjustments should be based on  
16 those other sales. So our request was more  
17 information to be shared with us.

18 We did not receive that information.  
19 Therefore, we could not make a determination as to  
03:20:07 20 the refund. Conversations, on the ChromaDex side,  
21 we didn't feel captured what we figured would be the  
22 order of magnitude of the potential refund.

23 Q. What was the order of magnitude of the  
24 potential refund that you had calculated?

03:20:23 25 A. I don't recall what we calculated or

1 what we had proposed to them.

2 Q. Well, you received the data from  
3 Mr. Jaksch in the spreadsheets, yes?

4 A. Yes.

03:20:36 5 Q. You placed a massive order sometime  
6 thereafter using a revised price based on the Live  
7 Cell price you saw, correct?

8 A. No. It was due to what Frank  
9 communicated to us from Live Cell. The pricing  
03:20:52 10 spreadsheet actually doesn't have 800 a kilo in it.

11 Q. Okay.

12 A. But it was from Live Cell that we  
13 received the pricing adjustment.

14 Q. For the June 28th order, right?

03:21:02 15 A. That's correct.

16 Q. Then what prevented you from running a  
17 calculation of what the refund was that you were due  
18 from ChromaDex based on the spreadsheets you had and  
19 what Mr. Jaksch had told you?

03:21:17 20 A. We didn't know how far back those  
21 pricing agreements went. It's possible that they  
22 were adjusted at some point.

23 We also didn't know the volume  
24 threshold, which is the other variable in that  
03:21:30 25 equation, from the spreadsheet that Frank sent. All

1 that talks about is, for the most part, price.  
2 There might be some singular order data, but it's  
3 not a history of orders. So we would need to see a  
4 more comprehensive look at both volumes and prices  
03:21:47 5 associated with those volumes on an order-by-order  
6 basis in order for us to make a determination that  
7 we felt accurately reflected it.

8 On the other side, the only point I'll  
9 add is, I believe, again, I can't recall with great  
03:21:58 10 specificity, but the offer that we received was  
11 about \$100,000 from the ChromaDex side of things to  
12 settle the matter. And that just, again, from a --  
13 not being able to do the analysis standpoint, felt  
14 too little to us.

03:22:15 15 And, again, we couldn't confirm it. If  
16 that had been the number and we hadn't seen it borne  
17 out in the data, then that would have been the  
18 number, but we never got to a point where we felt we  
19 had an accurate understanding of the prior order  
03:22:26 20 dynamics.

21 Q. Who made the offer to you to settle the  
22 matter for \$100,000?

23 A. I don't recall. It would have been  
24 likely Frank.

03:22:33 25 Q. Was that in a phone call between you

1 and Frank?

2 A. I don't recall.

3 At one point we sat down in person with  
4 both Frank and Rob Fried. It could have been during  
03:22:42 5 that conversation. It could have been through any  
6 number of emails.

7 You know, the dispute over the pricing  
8 lasted from, call it, July to December when the  
9 lawsuit was filed. So we spent, you know, six  
03:22:55 10 months trying to resolve it.

11 Q. In the meantime, you placed the massive  
12 orders on June 28th, right?

13 A. Yes.

14 Q. At a discounted price?

03:23:05 15 A. Yes.

16 Q. And you've never paid for those,  
17 correct?

18 A. We have not paid as we still don't know  
19 the refund that we're due associated with prior  
03:23:14 20 orders.

21 Q. Do you have any reason to believe that  
22 refund could be as high as \$2.9 million,  
23 Mr. Marcotulli?

24 A. I really just don't know.

03:23:22 25 Q. What did you do, what steps did you

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1 take to figure out the amount of the refund you  
2 believed you were due in 2016?

3 A. We requested the data on multiple  
4 occasions. At one point, we were told that if we  
03:23:37 5 really wanted it, we needed to conduct a formal  
6 audit.

7 We sent -- we went so far as to send a  
8 letter of formal audit. The lawsuit was initiated  
9 shortly thereafter, so there was never an audit.

03:23:50 10 Q. And you're saying there were multiple  
11 emails requesting the information before the audit  
12 was requested and before the lawsuit was filed?

13 A. To the best of my recollection, yes.

14 Q. Do you recall Mr. Morris calling  
03:24:03 15 Mr. Alminana after the June 28th orders were placed?

16 A. I don't know anything about that.

17 Q. Do you recall getting on a call with  
18 Mr. Morris after the June 28th orders were placed?

19 A. I do not.

03:24:28 20 MR. ATTANASIO: Let's look at our next  
21 exhibit, which I believe is going to be marked  
22 142.

23 (Whereupon, Exhibit 142, packet of  
24 text messages between Eric Marcotulli, Dan  
03:24:34 25 Alminana and Brian Marcotulli, ELY\_0085619, is

1 marked for identification, as of this date.)

2 Q. This is a packet of text messages  
3 between you and Mr. Alminana, and also Brian  
4 Marcotulli, single Bates number for this packet is  
03:25:23 5 ELY\_0085619.

6 MR. SACCA: Object to the form of the  
7 question.

8 Q. Do you recognize, Mr. Marcotulli, your  
9 phone number in the from line of several of these  
03:25:38 10 text messages?

11 A. Yes.

12 Q. Who is Brian Marcotulli?

13 A. Brian's my brother. But I'm, just for  
14 the record, 99 percent certain given that this is  
03:25:48 15 coming from my AOL email address, which is  
16 associated with an old phone I gave to him, that  
17 he's not on these messages. That this is actually  
18 just myself and Dan.

19 Q. Thank you for clearing that up. I  
03:26:00 20 wondered about that.

21 If you could turn to page 3, please,  
22 row 10515.

23 Do you see that?

24 A. Yes.

03:26:21 25 Q. Mr. Alminana writes to you, now this is



1 on June 29th, the day after the orders were placed,  
2 "Talking to Mark then going to pack. Will call you  
3 in a couple of minutes."

4 Do you recall that Mr. Alminana spoke  
5 to Mr. Morris the day after the orders were placed?

6 A. I do not recall.

7 MR. SACCA: I object to the form of the  
8 question.

9 Q. Do you recall that there was a call  
10 planned with ChromaDex for June 30th?

11 A. I don't recall.

12 Q. Who did Mr. Morris work for as of  
13 June 29th, 2016?

14 A. I do not believe he was yet at Elysium.

15 Q. Did he work for ChromaDex?

16 A. My guess would be yes, but I couldn't  
17 say for certain.

18 Q. You knew he still worked for ChromaDex  
19 as of this time, correct?

20 A. I do not have the exact date of his  
21 resignation in my head.

22 Q. Do you have any reason to believe that  
23 the Mark referenced in this text message is anybody  
24 other than Mark Morris?

25 A. I don't know.

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1 Q. You don't know who that is?

2 A. It could very well be Mark, Mark  
3 Morris.

4 Q. Do you see two rows down where  
5 Mr. Alminana writes to you, "Dude, Morris just told  
6 me that Westphall is looking to invest in ChromaDex  
7 Pharm venture to take control of NR."

8 Do you see that?

9 A. I do see that.

10 Q. So do you believe that Mr. Alminana, in  
11 these rows we're looking at on June 29th and then  
12 forward to July 6th, is talking about Mark Morris?

13 MR. SACCA: Object to the form of the  
14 question.

15 A. I don't know. It's much more likely in  
16 the second message you point out from the 6th.

17 Q. You think it's unlikely that the Mark  
18 on June 29th is Mark Morris?

19 A. I couldn't say.

20 Q. No idea?

21 A. I do not know.

22 Q. Do you remember a call with ChromaDex  
23 on June 30th in which you talked about the Niagen  
24 supply agreement terms, pricing, most favored nation  
25 clause?

1 A. I do not recall the conversation  
2 specifically, no.

3 Q. Do you remember any significant call  
4 with ChromaDex after you placed the June 28th  
03:28:47 5 orders?

6 A. The only specific call I remember after  
7 the conversations we discussed earlier was one with  
8 Frank and Steve Block, I believe, later in the year.

9 Other than that, I know conversations  
03:29:10 10 took place, but I don't -- I don't recall them,  
11 specifically.

12 Q. Okay. So just to frame my question,  
13 let's just focus on the dates. There's the orders  
14 on June 28th.

03:29:25 15 Do you recall a telephone call two days  
16 later, on June 30th, in which the principals of both  
17 companies were on the phone?

18 A. I do not recall.

19 Q. Do you recall discussing with ChromaDex  
03:29:41 20 principals the Niagen supply agreement on or around  
21 June 30th?

22 A. I do not recall.

23 Q. Do you recall discussing with  
24 ChromaDex's principals the most favored nation  
03:29:53 25 pricing provisions on or around June 30th, 2016?

1 A. I do not recall.

2 Q. Do you recall during a call on or  
3 around June 30th, 2016, discussing your belief that  
4 Elysium was entitled to a refund?

03:30:10 5 A. Again, we -- you know, that topic was  
6 certainly relevant at that time period, but I do not  
7 recall a specific conversation.

8 Q. Okay. As of June 30th, 2016, did you  
9 believe that Elysium was ChromaDex's largest Niagen  
03:30:26 10 customer?

11 A. Yes, I believe that's a fair statement.

12 Q. Why did you believe that?

13 A. I'm fairly certain it was communicated  
14 to us during our conversations with Frank. I also  
03:30:44 15 believe that it was referenced in public documents  
16 related to their quarterly earnings releases.

17 Q. Do you recall telling Mr. Jaksch and  
18 perhaps other principals of ChromaDex that Elysium  
19 intended to make additional large purchases by the  
03:31:01 20 end of 2016?

21 A. At a high level, yes, I remember that.

22 Q. When did that happen?

23 A. I -- I don't recall.

24 Q. How soon in time after the first large  
03:31:12 25 order was placed in June 2016 did you tell ChromaDex

1 there would be more large orders?

2 A. I don't recall.

3 Q. Was it your habit sometimes to take  
4 notes of phone calls on your computer?

03:31:45 5 A. Occasionally, yes. I don't take notes  
6 very often.

7 Q. It would have to be an important call?

8 A. Not necessarily important, just the  
9 nature of the call, if something specific needs to  
03:31:57 10 be remembered. But likely important calls that have  
11 specifics to remember, it wouldn't be out of the  
12 ordinary for me to take notes.

13 Q. Would you do that on your computer?

14 A. Or my phone. I sometimes use the  
03:32:17 15 format of email just to send myself a note, as an  
16 example.

17 Q. Okay. Do you remember you had a call  
18 on June 30th, 2016 to discuss all the things I've  
19 been asking you about with Mr. Jaksch and Will Black  
03:32:34 20 and that you took notes of the call?

21 A. I don't recall.

22 MR. ATTANASIO: Please mark our next  
23 exhibit as 143, please.

24 (Whereupon, Exhibit 143, notes sent  
03:32:54 25 from Eric Marcotulli to Daniel Alminana re call on

1 or about 6/30/16, ELY\_0046720, is marked for  
2 identification, as of this date.)

3 Q. Do you recognize Exhibit 143,  
4 Mr. Marcotulli, as notes that you typed and sent to  
03:33:34 5 Mr. Alminana after a call on or about June 30th,  
6 2016 with Frank Jaksch and Will Black?

7 A. I don't recall taking these notes, but  
8 I have no reason to doubt that I sent them.

9 Q. Okay. Did you document what was said  
03:33:50 10 to you about Live Cell during that call?

11 A. That appears to be the case.

12 Q. Is what you wrote down here, I won't  
13 read the whole thing, but is what is down here about  
14 Live Cell consistent with your memory of what you  
03:34:08 15 were told by Mr. Jaksch and Mr. Black regarding  
16 ChromaDex's pricing to Live Cell?

17 A. Yes.

18 Q. Is this where the \$800 number came  
19 from?

03:34:17 20 A. It is possible. I don't recall.

21 Q. In the next paragraph you write, "Today  
22 ChromaDex is in the [REDACTED] range in NR cost  
23 per kilogram."

24 Do you see that?

03:34:35 25 A. Yes.

1 Q. Is that information that was provided  
2 to you during the call?

3 A. I don't recall.

4 Q. The next paragraph, it says, "Will  
5 honor 800 per kilogram today for Elysium order and  
6 will re-evaluate the entire agreement in Q3 with  
7 Elysium getting more defensibility but with Elysium  
8 agreeing to potentially higher prices."

9 Have I read that correctly?

10 A. You have, yes.

11 Q. Is that consistent with your memory of  
12 the going forward plan after your call on June 30th?

13 A. I don't recall.

14 Q. Do you recall one way or the other  
15 whether you and Mr. Jaksch and Mr. Black agreed that  
16 ChromaDex would honor the \$800 per kilogram order  
17 that you had just placed, that you all would  
18 reevaluate the entire agreement in Q3, and that  
19 Elysium would get more defensibility, which you  
20 mentioned earlier, Mr. Marcotulli, but with Elysium  
21 agreeing to potentially higher prices?

22 A. I don't recall.

23 Q. Was this important to you, this issue  
24 at the time, pricing with ChromaDex?

25 A. I think pricing is always a

03:36:04 1 consideration. I mean, the difference between 1,000  
2 a kilo and 800 a kilo is 20 percent. And at this  
3 point the NR in Basis was the highest single input  
4 to cost of goods sold. So it was something we were  
5 very focused on.

6 Q. You note that the cost range -- that  
7 the cost number that ChromaDex gave you was in a  
8 range.

9 Do you see that?

03:36:11 10 A. Yes.

11 Q. Did they tell you why they could only  
12 give you a range for their cost figure?

13 A. I don't recall this portion of the  
14 discussion.

03:36:18 15 Q. Do you recall that either Mr. Jaksch or  
16 Mr. Black told you that they were reluctant to give  
17 you the exact number because it was confidential?

18 A. I do not recall.

19 Q. Did you have any reason to believe the  
03:36:33 20 range they did give you was incorrect?

21 A. I don't recall the range being given.

22 Q. Do you recall that Elysium made  
23 additional orders at the \$800 price?

24 MR. SACCA: Object to the form of the  
03:36:49 25 question.



1 A. I'm unaware of subsequent orders.

2 Q. Are you aware of an order on June 30th  
3 for 3,000 kilos of Niagen and 580 kilos of  
4 pTeroPure?

03:37:06 5 A. I don't recall the specifics of the  
6 order.

7 Q. Do you recall there were two large  
8 orders in close proximity?

9 A. I do not recall.

03:37:14 10 Q. Had you told -- strike that.

11 Do you recall telling ChromaDex on the  
12 June 30th phone call how large your next order would  
13 be?

14 A. I do not recall.

03:37:27 15 Q. Do you know if ChromaDex fulfilled both  
16 orders that we've been discussing, June 28th and  
17 June 30th?

18 A. I do not know. I mean, I know we  
19 received product, but I couldn't say whether the  
03:37:41 20 orders were all entirely delivered.

21 Q. You don't know one way or the other?

22 A. I do not know.

23 Q. Do you know by what time frame  
24 ChromaDex had fulfilled the orders?

03:37:52 25 A. I believed we received material, again,

1 I -- I don't recall with specificity, in the July or  
2 August time frame. I could be wrong about that.

3 Q. If the records show that the last  
4 shipment was on August 9th, 2016, does that sound  
5 consistent with your memory?

6 A. Yes.

7 Q. And do you recall that the very next  
8 day, August 10th, after you had received all the  
9 product, that's when Elysium went back to ChromaDex  
10 and demanded a refund?

11 A. I do not recall.

12 Q. Was there any reason that you can think  
13 of that you waited until you got all the product and  
14 only then went back to ChromaDex and said, hey, we  
15 need a refund?

16 A. I don't recall.

17 Q. Do you recall why you waited until  
18 April 10th to ask Elysium -- to ask ChromaDex for a  
19 refund?

20 A. I wasn't aware that we asked for a  
21 refund on April 10th.

22 Q. I misspoke.

23 When did Elysium finally ask ChromaDex  
24 for a refund, specifically?

25 A. I do not recall.

1 Q. Was it after or before ChromaDex had  
2 provided all of the product placed in the orders in  
3 June?

4 A. I don't recall.

03:39:14 5 Q. Can you tell me any reason why Elysium  
6 would have waited until after it had received all  
7 the product from those orders in August to, then,  
8 demand a refund afterwards?

9 A. I don't know.

03:39:32 10 Q. How much money did Elysium owe at the  
11 time, based on the purchase orders, for the  
12 June 30th orders?

13 MR. SACCA: Object to the form of the  
14 question.

03:39:43 15 A. I don't know the exact number. I know  
16 it's in the -- the total of the invoice was for  
17 2.9 million. What we actually owe when refunds are  
18 accounted for remains unclear to us.

19 Q. Is it something greater than zero?

03:39:58 20 A. I do not know, actually.

21 Q. Applying -- do you have an estimate in  
22 your mind now, after all this time, of how much  
23 you're owed in refunds?

03:40:13 24 A. I don't think we've received any new  
25 data since the beginning of the litigation that

1 would allow us to even create that answer.

2 Q. So you don't know.

3 A. I do not know.

4 Q. By the way, do you recall -- so the  
5 record is clear, do you recall whether there were  
6 two separate orders or just one order that amounted  
7 to the amount owing that you just mentioned?

8 A. I do not recall. It would not be  
9 unorthodox for our supply chain, and sometimes it's  
10 on our side and sometimes it's on the partner's  
11 side, to do multiple orders in a row, for example.  
12 So I do not know.

13 Q. Okay. So in your best memory, there  
14 was either one or two large orders. And for the  
15 product ordered at that time, in June of 2016,  
16 Elysium owed ChromaDex, without getting into refunds  
17 yet, approximately \$3 million for those orders?

18 MR. SACCA: Object to the form of the  
19 question.

20 A. That's the best of my recollection.

21 Q. Did you believe that refusing to pay  
22 ChromaDex for the June 30th orders would have a  
23 negative impact on ChromaDex's finances?

24 A. I don't know that we considered that.

25 Q. Never thought about it?

1 A. I can't recall.

2 Q. Did you ever think, even for a second,  
3 that it would be a competitive advantage to Elysium  
4 against ChromaDex to not pay that money?

03:41:45 5 MR. SACCA: Object to the form of the  
6 question.

7 A. Not that I recall.

8 Q. Did you ever consider that ChromaDex  
9 might go into bankruptcy if you didn't pay any  
03:41:55 10 dollar, not one dollar on the \$3 million that you  
11 owed?

12 A. I don't recall.

13 Q. Did you ever tell anybody around this  
14 time that you thought ChromaDex might very well be  
03:42:08 15 going into bankruptcy?

16 A. I don't recall.

17 Q. I want you to think about that.

18 Did you ever tell anybody in the  
19 market, customer, partner, potential partner, third  
03:42:23 20 party of any kind, vendor that ChromaDex might be  
21 going bankrupt?

22 A. I really don't recall.

23 Q. You may have?

24 A. I don't recall.

03:42:40 25 Q. So it may have happened, you just can't

1 recall it.

2 A. I don't know.

3 Q. Did Morris actually request to resign  
4 from ChromaDex and begin officially working for  
03:42:55 5 Elysium before the June 30th orders were placed?

6 A. I don't recall.

7 Q. Do you recall a conversation with  
8 Mr. Alminana regarding what Mr. Morris's start date  
9 would be with Elysium?

03:43:10 10 A. I do not recall.

11 Q. Do you recall ever discussing with  
12 Mr. Alminana that Mr. Morris should wait and not  
13 start with Elysium until a few days or weeks after  
14 the orders were placed?

03:43:24 15 A. I do not recall.

16 Q. Do you recall ever discussing with  
17 Mr. Morris what his start date should be?

18 A. I do not recall.

19 Q. Do you ever recall discussing with  
03:43:37 20 Mr. Morris the orders on June 30th, 2016?

21 A. I do not recall.

22 Q. Do you recall telling Mr. Morris  
23 specifically that he should wait to resign from  
24 ChromaDex until sometime in July?

03:43:54 25 A. I don't recall.

1 Q. When did Mr. Morris actually resign  
2 from ChromaDex?

3 A. Um, I do not know the specific date.

4 Q. Does July 15th, 2016 seem consistent  
5 with your memory?

6 MR. SACCA: Object to the form of that  
7 question.

8 A. I don't recall.

9 Q. No idea?

03:44:14 10 A. The best I could say is sometime in  
11 July.

12 Q. You do recall that?

13 A. I believe, again, to the best of my  
14 recollection, Mark was with us in August. I think  
03:44:25 15 communications here have shown he was not in June.

16 Q. Prior to Mr. Morris resigning from  
17 ChromaDex in July 2016, tell me everything you can  
18 remember that he shared with you of ChromaDex  
19 information.

03:44:41 20 A. I don't know that he shared anything.  
21 I can't recall.

22 Q. So your best testimony here today is  
23 that Mr. Morris may not have shared anything at all  
24 with Elysium prior to resigning from ChromaDex.

03:44:53 25 A. I don't recall anything specific.

1 Q. Do you recall whether he shared  
2 information from ChromaDex with Elysium before he  
3 resigned from ChromaDex?

4 A. Not to my recollection.

03:45:06 5 Q. Your best testimony is he provided  
6 zero, nothing to Elysium of ChromaDex information  
7 before he resigned from ChromaDex; is that your  
8 testimony?

9 A. Yeah, I do not recall.

03:45:21 10 Q. Do you have a belief one way or the  
11 other, did he or didn't he? Did Mr. Morris --

12 A. I don't have a belief one way or the  
13 other.

14 Q. Okay. That's not something you would  
03:45:31 15 have been paying attention to as CEO of the company?

16 A. I just don't recall.

17 Q. [REDACTED]

03:45:46 20 MR. SACCA: Object to the form of the  
21 question.

22 [REDACTED]

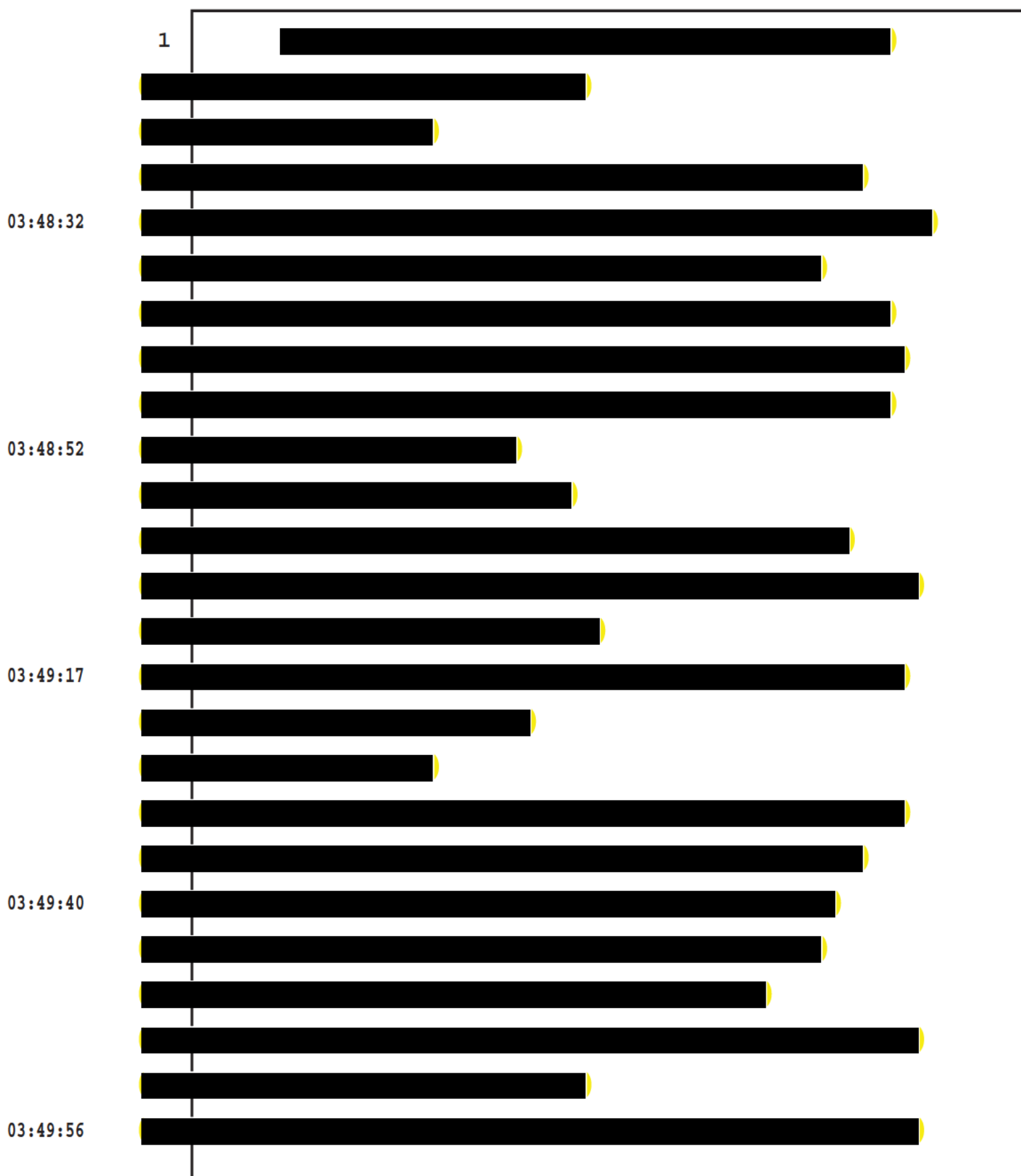
03:45:51 [REDACTED]



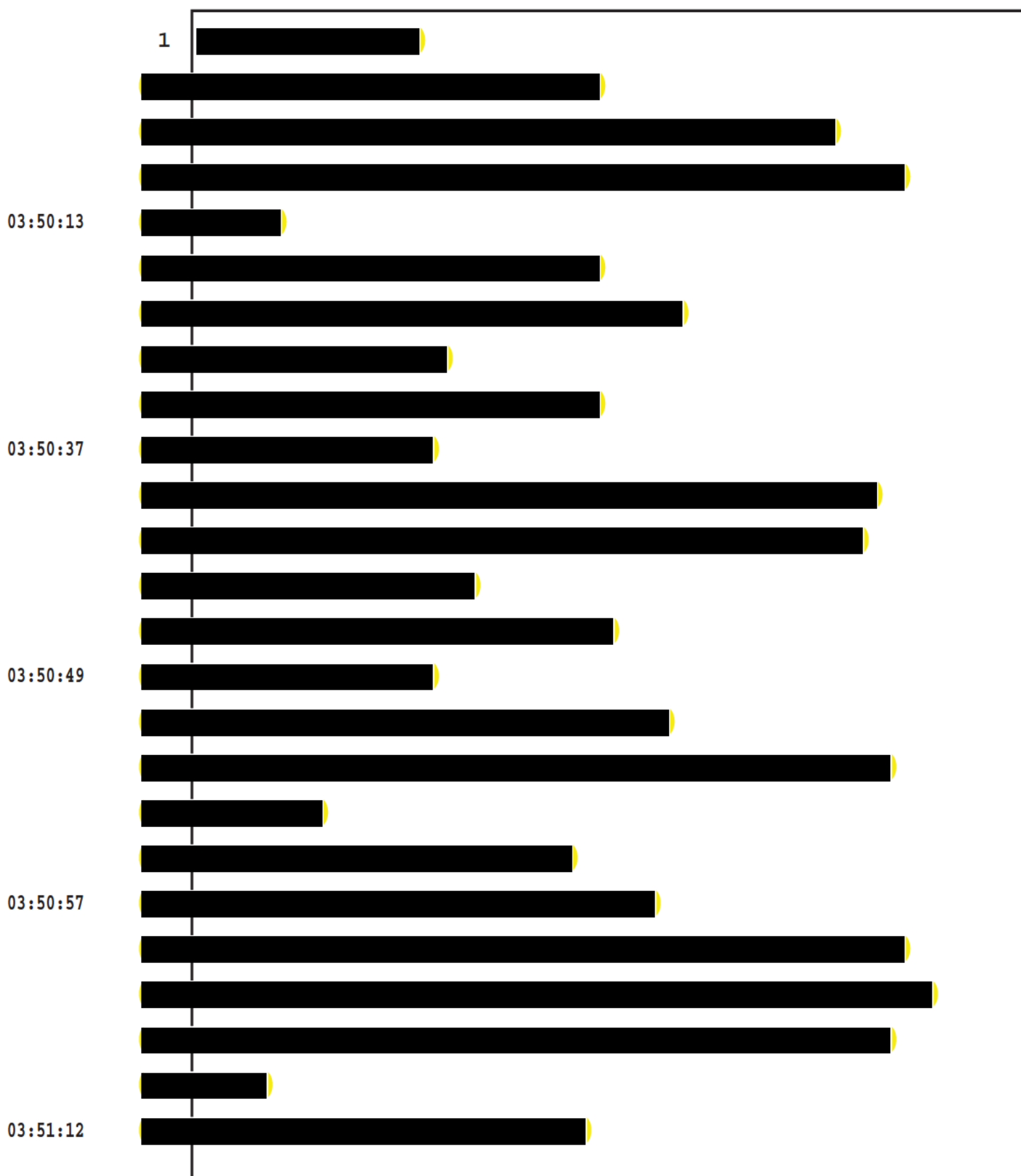
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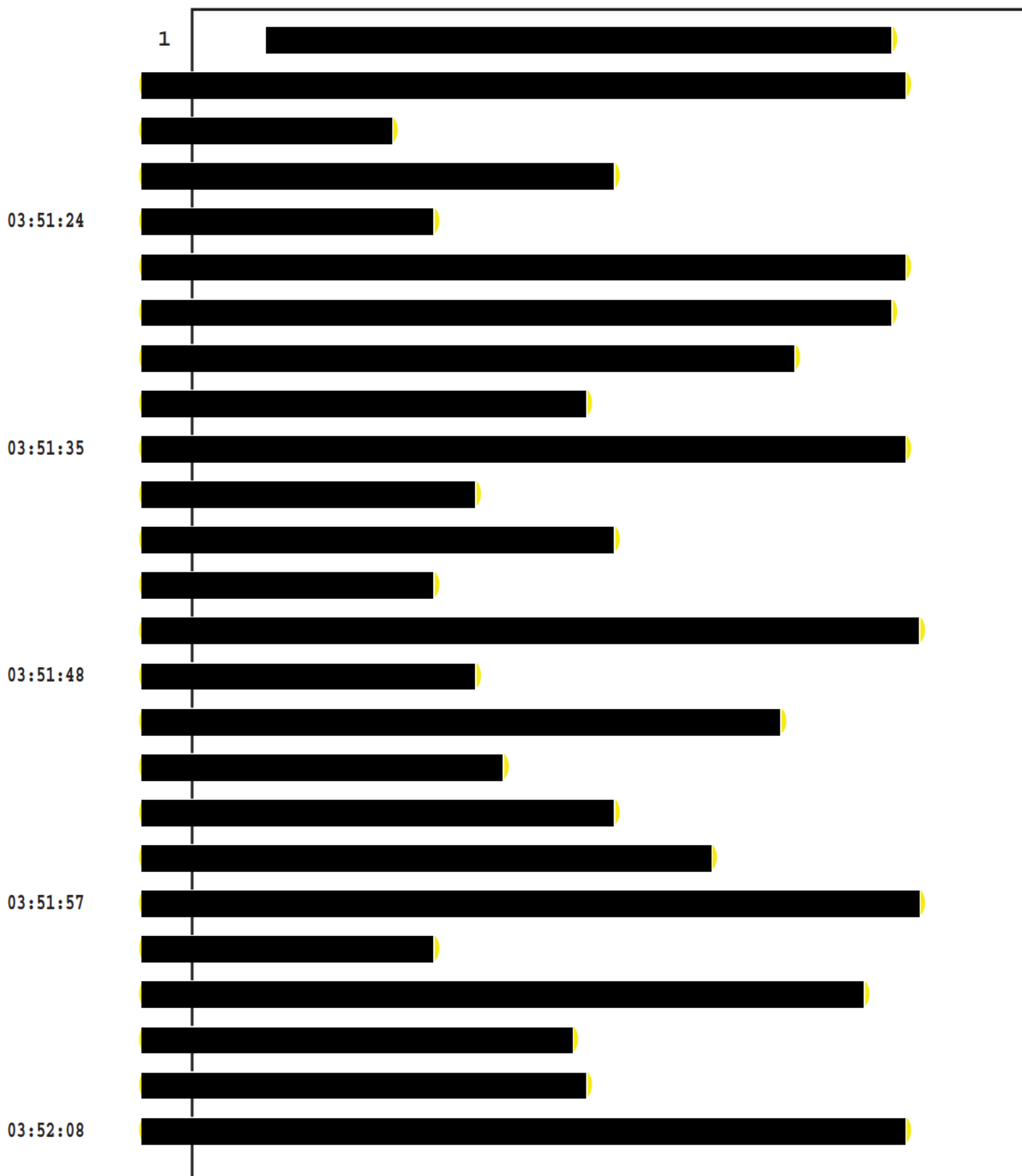
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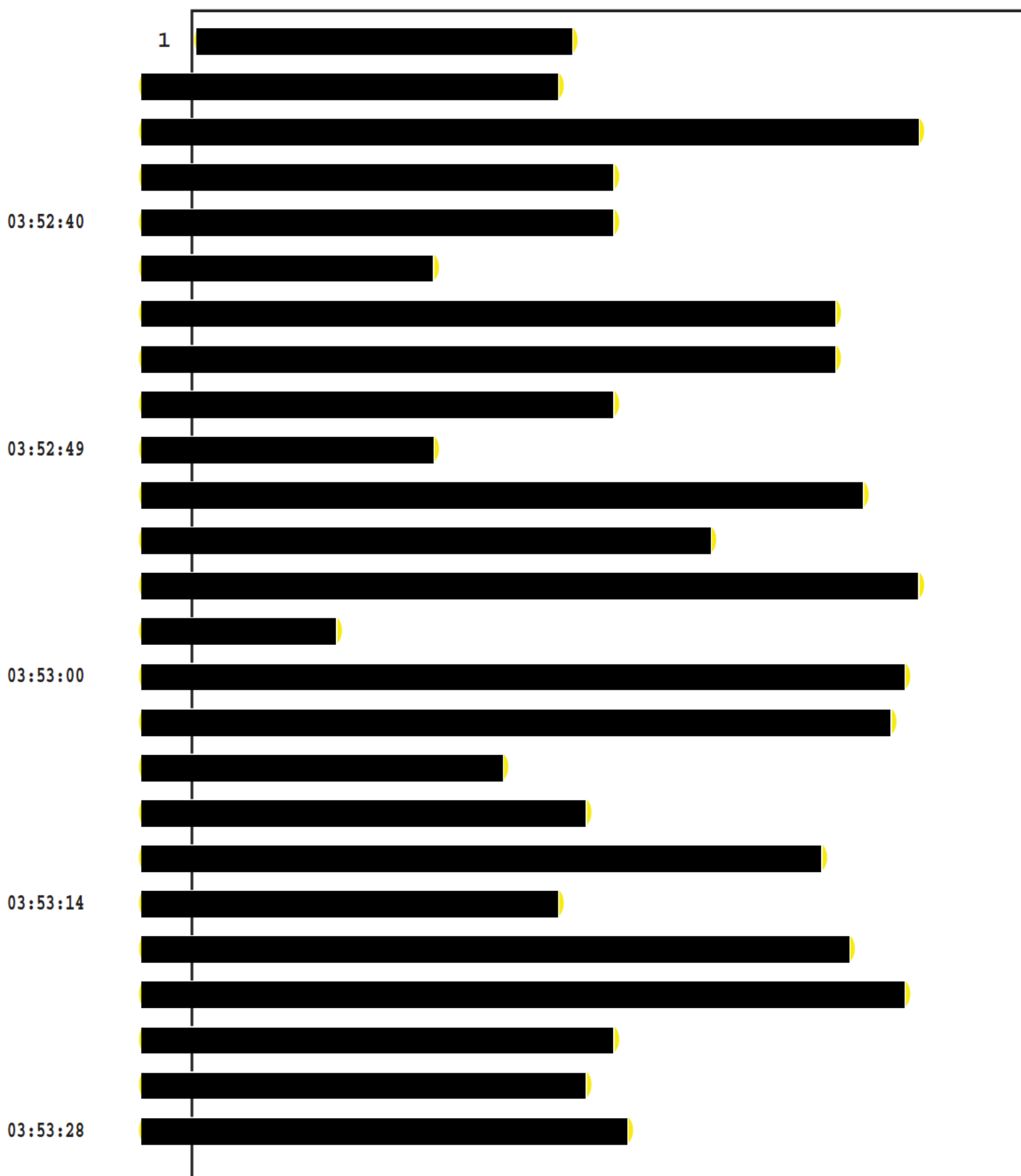
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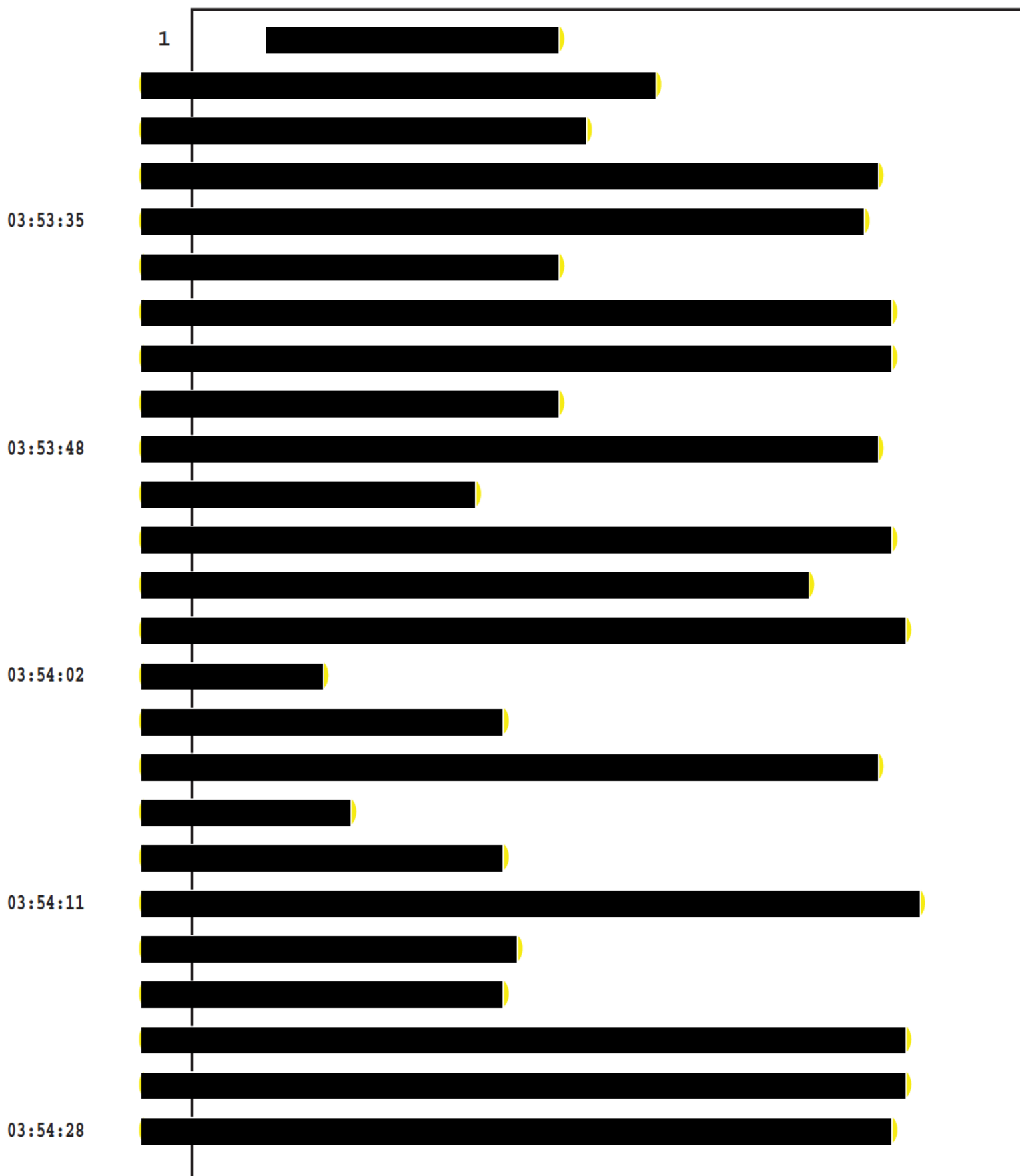
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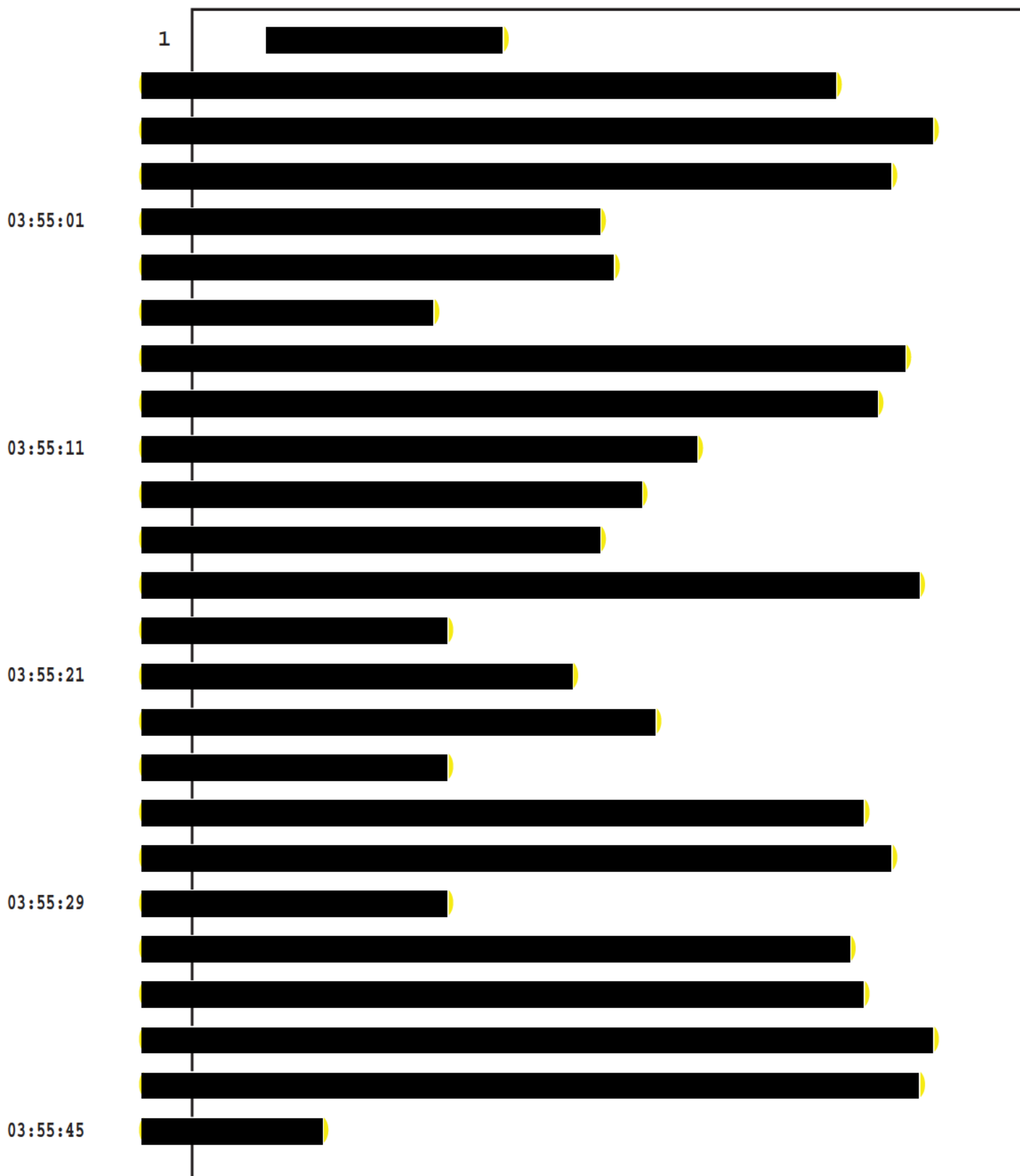
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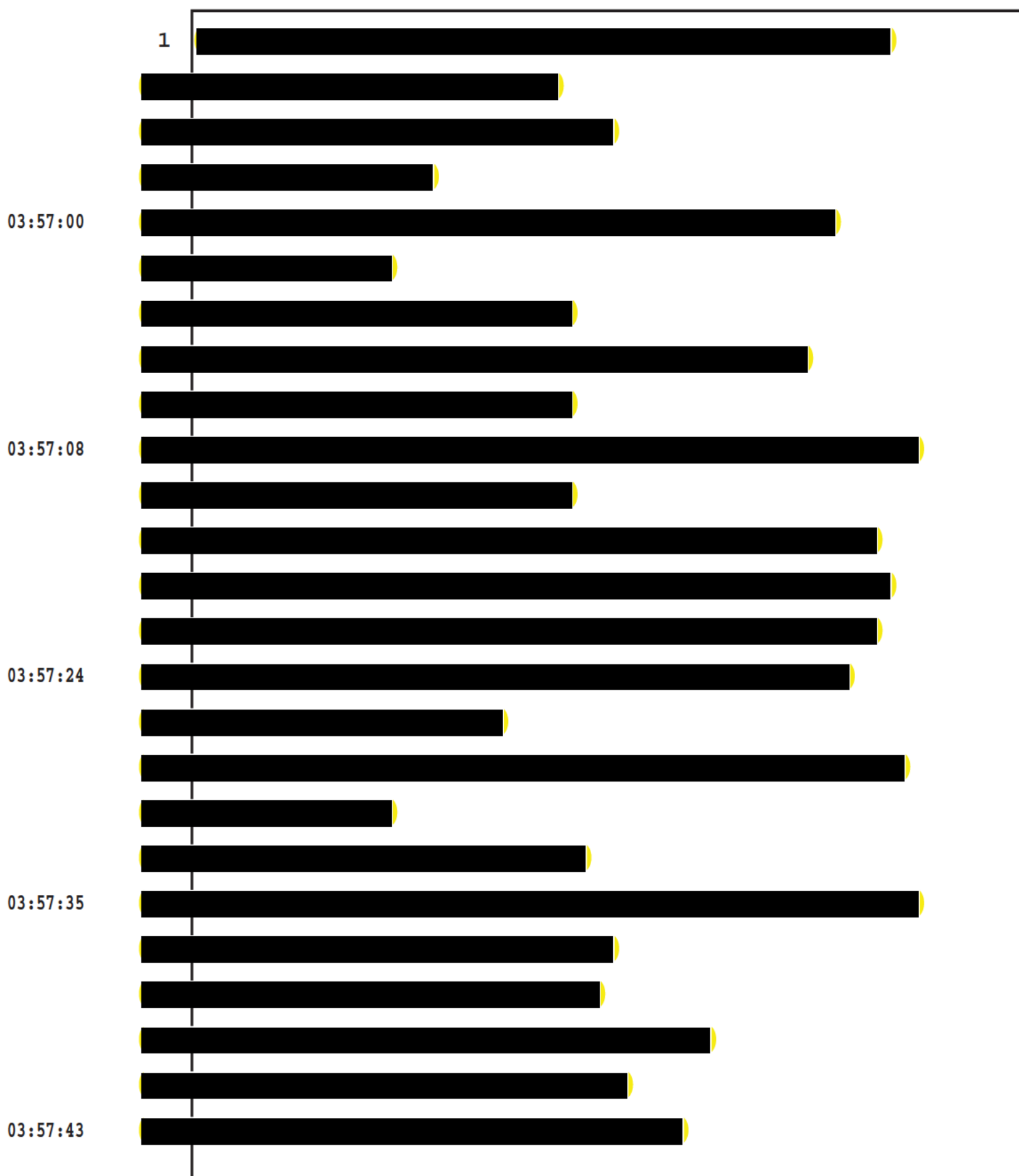


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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

03:57:52

[REDACTED]

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[REDACTED]

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03:58:05

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[REDACTED]

03:58:17

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

03:58:24

[REDACTED]

[REDACTED]

[REDACTED]

23

Q. Do you recall when Mr. Morris started

24

actually working at Elysium?

03:58:40

25

We saw that he resigned on July 15th.

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1 Do you remember when he started?

2 MR. SACCA: Object to the form of the  
3 question.

4 A. I do not recall when Mark officially  
5 started.

6 MR. SACCA: Mike, I think you --

7 THE COURT REPORTER: I'm sorry?

8 MR. SACCA: -- you made a  
9 representation there that I don't think we've  
10 seen.

11 MR. ATTANASIO: Okay. I'll ask a new  
12 question.

13 Q. Do you recall, leave aside when  
14 Mr. Morris resigned from ChromaDex, I want to ask  
15 about your company.

16 What was Mr. Morris's first day with  
17 Elysium?

18 A. I do not recall the exact day that he  
19 started.

20 Q. Was it in July?

21 A. It's possible. Again, I do not recall.

22 Q. Does July 18th ring a bell?

23 A. It does not.

24

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1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

04:01:14

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

04:01:29

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

04:01:43

[REDACTED]

[REDACTED]

[REDACTED]

Q. Let's return to the subject of the

19 orders on June 30th, 2016, if we could,

04:02:18

20 Mr. Marcotulli.

21 Do you know what Elysium did with the

22 ingredients it ordered on June 30th?

23 A. We created product out of it.

24 Q. Product meaning Basis?

04:02:29

25 A. Yes.

279

1 Q. Did you use all of the ingredients you  
2 ordered from ChromaDex on June 30th?

3 A. I don't know.

4 Q. You don't know one way or the other?

04:02:41 5 A. I do not know.

6 Q. Is it possible that some of those  
7 ingredients are still on-site at Elysium and have  
8 not been used yet to make Basis?

9 A. It is possible. I do not know.

04:02:53 10 Q. If there are portions of the June 30th  
11 order that have not been used yet, where would they  
12 be?

13 A. I do not know. Again, I do not run  
14 supply chain.

04:03:07 15 Q. Do you know whether Elysium has sold  
16 all of the Basis that it made with the ingredients  
17 from the June 30th order?

18 A. I also do not know that.

19 Q. Is it possible there's some Basis still  
04:03:21 20 out there in the market that was made from  
21 ingredients obtained by Elysium through the  
22 June 30th orders that has not been sold yet?

23 A. I do not know.

04:03:36 24 Q. Has Elysium sold all of the Basis it  
25 made with ChromaDex ingredients it ordered before

1 June 30th?

2 A. I do not know.

3 Q. Are you confident that Elysium sold, at  
4 least, some Basis to consumers that was made with  
04:03:58 5 the ingredients from the June 30th orders?

6 A. Yes.

7 Q. Did Elysium sell that Basis for full  
8 price?

9 A. I'm sorry, I don't understand the  
04:04:13 10 question, for full price.

11 Q. Did Elysium sell the Basis it made with  
12 ChromaDex's ingredients at your normal retail price?

13 A. Yes, I would assume so. We  
14 subsequently had sales, promotions, those sorts of  
04:04:30 15 things.

16 Q. Was there ever any specific discussion  
17 at Elysium to specifically discounting the price of  
18 Basis made with ChromaDex ingredients as opposed to  
19 ingredients from some other supplier?

04:04:48 20 A. I don't recall.

21 Q. Never heard any conversation like that?

22 A. Not to my recollection.

23 Q. At the time you placed the June 30th  
24 orders, did Elysium have forecasts for how much its  
04:04:59 25 sales of Basis would grow in the future?

1 A. I'm sorry. Can you repeat that?

2 Q. Sure.

3 At the time you placed the June 30th  
4 orders, did Elysium have forecasts for future sales  
04:05:12 5 growth of Basis?

6 A. Yes.

7 Q. What do you remember about those?

8 A. Again, we prepared a lot of these  
9 materials for our Series B due diligence, which was  
04:05:24 10 ongoing at this time. We created models based on  
11 historical growth rates, more conservative growth  
12 rates, more aggressive growth rates.

13 Again, with the idea being that,  
14 especially for an early-stage company, you don't  
04:05:41 15 really know where it's going to end up.

16 Q. What's your best memory, as of  
17 mid-2016, of the growth rate you anticipated for  
18 Elysium, your best estimate, in 2017?

19 A. I don't recall.

04:05:56 20 Q. What's your best estimate of your  
21 forecast at Elysium in mid-2016, late 2016 for how  
22 much the sale of Basis would increase in 2017 on a  
23 percentage basis?

24 A. I don't recall.

04:06:19 25 Q. Is it fair to say that you did expect



1 growth in the coming year?

2 A. Yes.

3 Q. You expected sales of Basis overall to  
4 increase; is that correct?

04:06:30 5 A. Yes.

6 Q. Did the growth in sales that you  
7 anticipated depend on having a steady supply of NR?

8 A. Yes.

9 Q. At the time of the June 30th orders,  
04:06:51 10 did Elysium have any other source of NR other than  
11 ChromaDex?

12 A. Not to my knowledge, no.

13 Q. At that time, was Elysium considering  
14 other sources of NR?

04:07:02 15 A. Not to my knowledge, no.

16 Q. Following the June 30th orders, did any  
17 member of your board of directors express concern  
18 about Elysium's growth potential?

19 A. I don't recall.

04:07:17 20 Q. Do you remember the board expressing  
21 concerns that the company was not growing fast  
22 enough or large enough?

23 A. I don't recall.

24 Q. Do you remember any member of the board  
04:07:26 25 expressing concerns that your forecasts for growth

1 were not realistic?

2 A. I don't recall.

3 Q. Do you recall any of Elysium's  
4 investors expressing concern about those matters?

04:07:40 5 A. I do not recall.

6 Q. Would that be important to you as the  
7 CEO?

8 A. To some degree.

9 Q. Well, what degree would they be  
04:07:52 10 important to you?

11 A. You know, investors believe in you,  
12 they put a certain amount of capital behind you and  
13 expect you to perform for them.

14 At the same time, your interests must  
04:08:06 15 be with the performance of the company and ensuring  
16 the viability of the operation as opposed to growth  
17 at all costs. You need to balance those two things.

18 Q. Is that your job as the CEO?

19 A. I'd say at least in part, yes.

04:08:27 20 MR. ATTANASIO: All right. Let's mark  
21 as Exhibit 145 our next exhibit.

22 (Whereupon, Exhibit 145, 1/17/18 email  
23 from Eric Marcotulli, to Dan Alminana, David Fialkow  
24 and Jim Manzi, ELY\_0069525-6, is marked for  
04:09:08 25 identification, as of this date.)

1 MR. ATTANASIO: Exhibit 145 is an email  
2 from Mr. Marcotulli dated January 17th, 2018,  
3 Bates ending in 9525.

4 Q. Mr. Marcotulli, do you recognize  
04:09:24 5 Exhibit 145 as an email that you sent to  
6 Dan Alminana, David Fialkow and Jim Manzi on  
7 January 17th, 2018?

8 A. Yes.

9 Q. And you see you sent it at 9:40 p.m.,  
04:09:41 10 correct?

11 A. Yes.

12 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 Q. Now, you write at the top, "David and  
18 Jim, Ahead of tomorrow's discussion, we wanted to  
19 put together a brief list of answers to concerns  
04:09:58 20 that have been raised and reasons we are excited."

21 Do you see that?

22 A. Yes.

23 Q. [REDACTED]

[REDACTED]

[REDACTED]

04:10:08 [REDACTED]

1 Do you see that?

2 A. Yes.

3 Q. [REDACTED]

[REDACTED]

04:10:16

[REDACTED]

6 Q. Well, you're writing to one of your  
7 largest investors, if not your largest, General  
8 Catalyst, correct?

9 A. That is correct.

04:10:26

10 Q. And a board member, Mr. Manzi, yes?

11 A. Yes.

12 Q. [REDACTED]

[REDACTED]

[REDACTED]

04:10:42

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

04:11:04

[REDACTED]

[REDACTED]

[REDACTED]

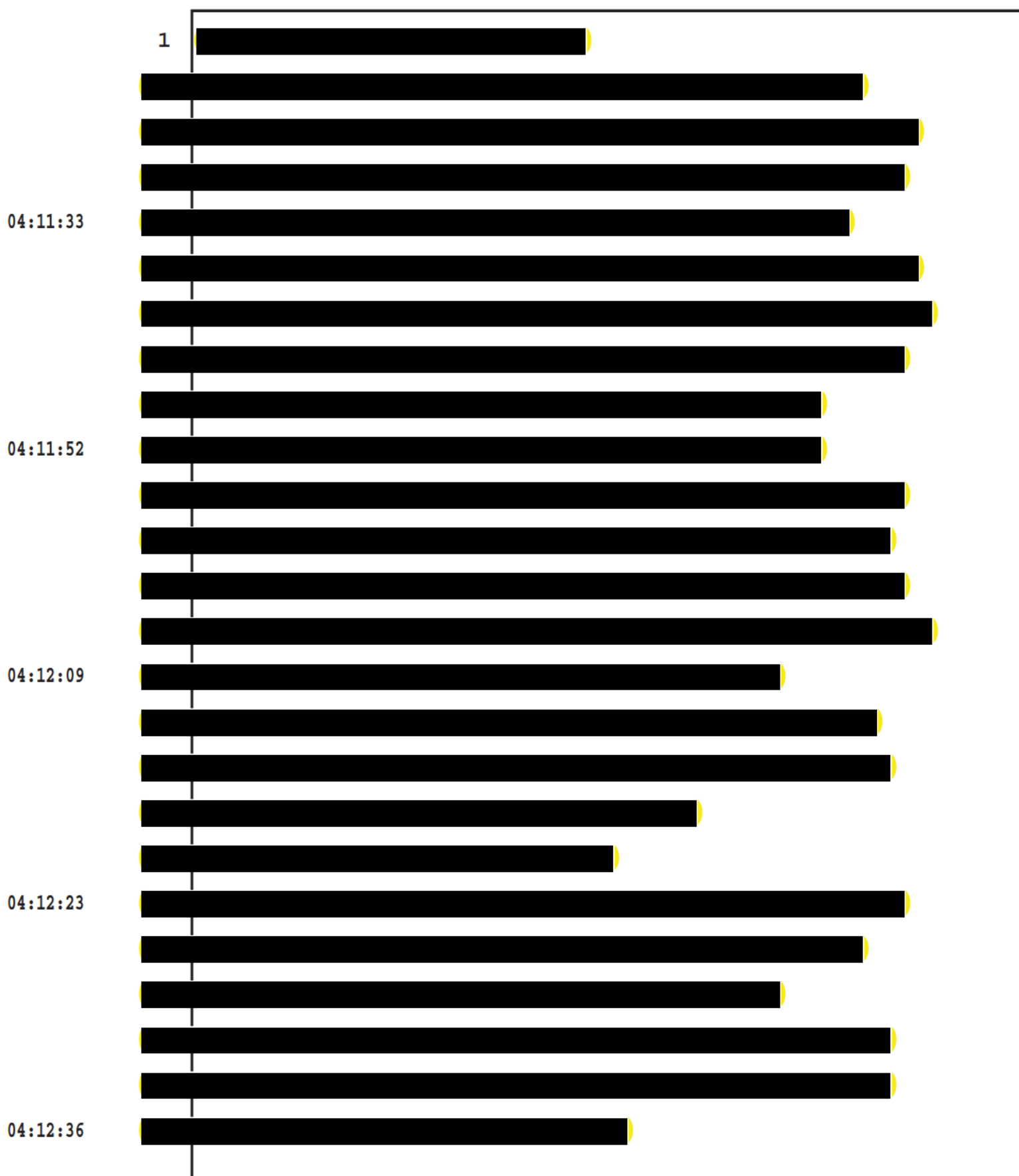
[REDACTED]

[REDACTED]

04:11:14

[REDACTED]

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1



1

3 Q. As of the time that you just mentioned,  
4 December 2016, how much Niagen and how much  
04:14:15 5 pterostilbene did you have left from the June 30th  
6 orders?

7 A. I do not know.

8 Q. Half of it, three-quarters,  
9 one-quarter?

04:14:25 10 A. I couldn't say.

11 Q. How long of a time span was available  
12 to you, as of December 2016, to continue producing  
13 Basis using the ingredients you had ordered on  
14 June 30th, 2016? How long could you survive doing  
04:14:44 15 it that way?

16 A. It really depends on the timing of a  
17 separate partner or supply chain implementation.

18 Q. Well, let's assume you never found one.  
19 Let's just assume you never found one.

04:15:01 20 The big order from ChromaDex was placed  
21 on June 30th, 2016; how long was that going to last?

22 A. Sometime into 2017. Again, depending  
23 on new customer acquisition, existing customer  
24 retention, et cetera.

04:15:26 25 Q. Can you give me any sharper estimate of

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1 how long you could continue to make Basis with the  
2 ingredients you ordered on June 30th than just  
3 sometime in 2017?

4 A. It would have been on the order of  
5 months. Beyond that, I couldn't say.

6 Q. Well, months could be two, it could be  
7 a hundred.

8 A. Months within the span of a year.

9 Q. Okay. Thank you.

10 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 Q. Did Elysium begin to grow more strongly  
21 beginning in August of 2017?

22 A. Yes, I think that's fair.

23 Q. Okay. As of -- by the way, as of  
24 December 2016, at the time you made the decision to  
25 move away from ChromaDex as a supplier, did you have



1 a new supplier yet?

2 A. I don't recall.

3 Q. As of December 2016, did you have a new  
4 supplier at least identified?

5 A. I don't recall.

6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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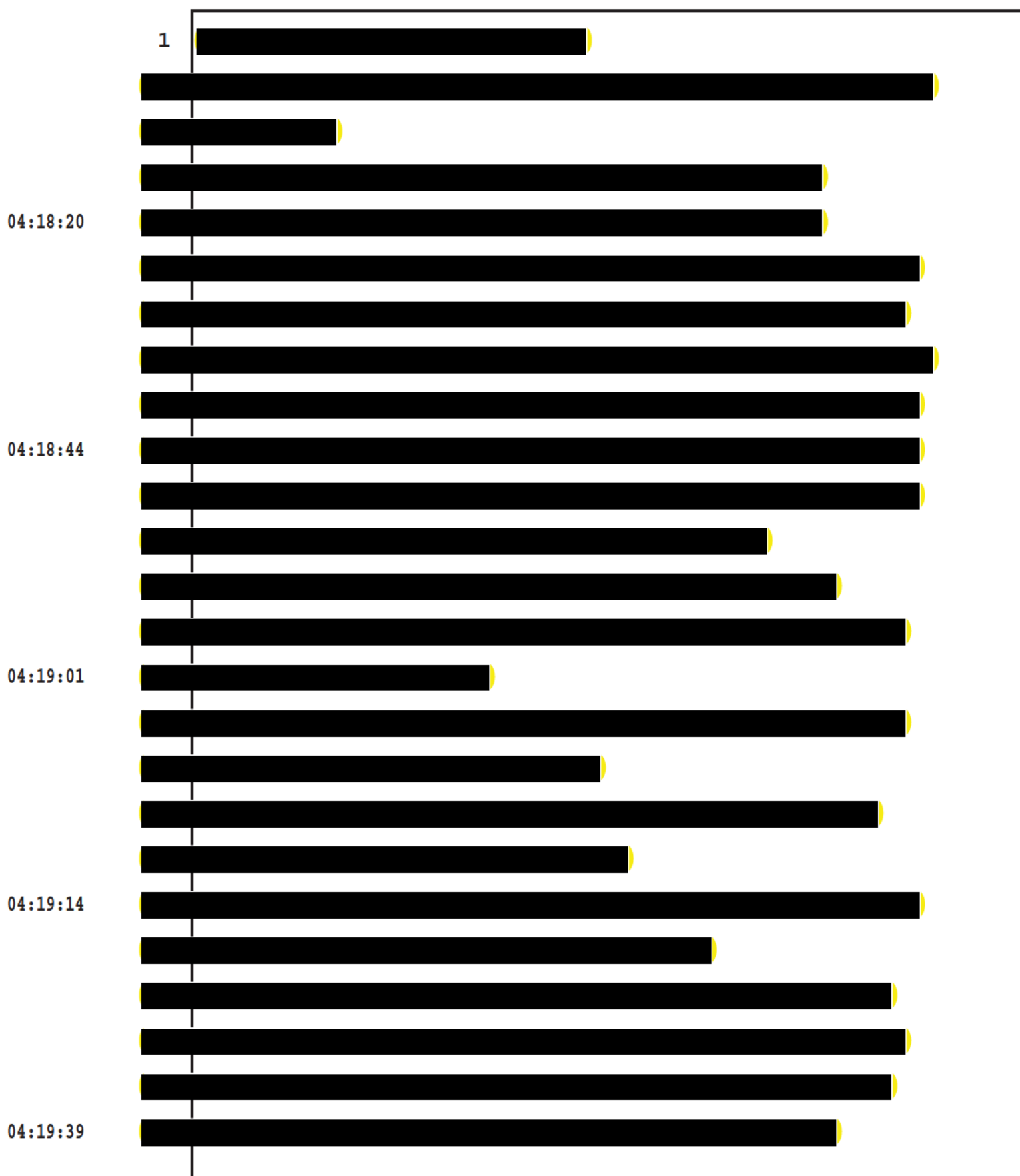
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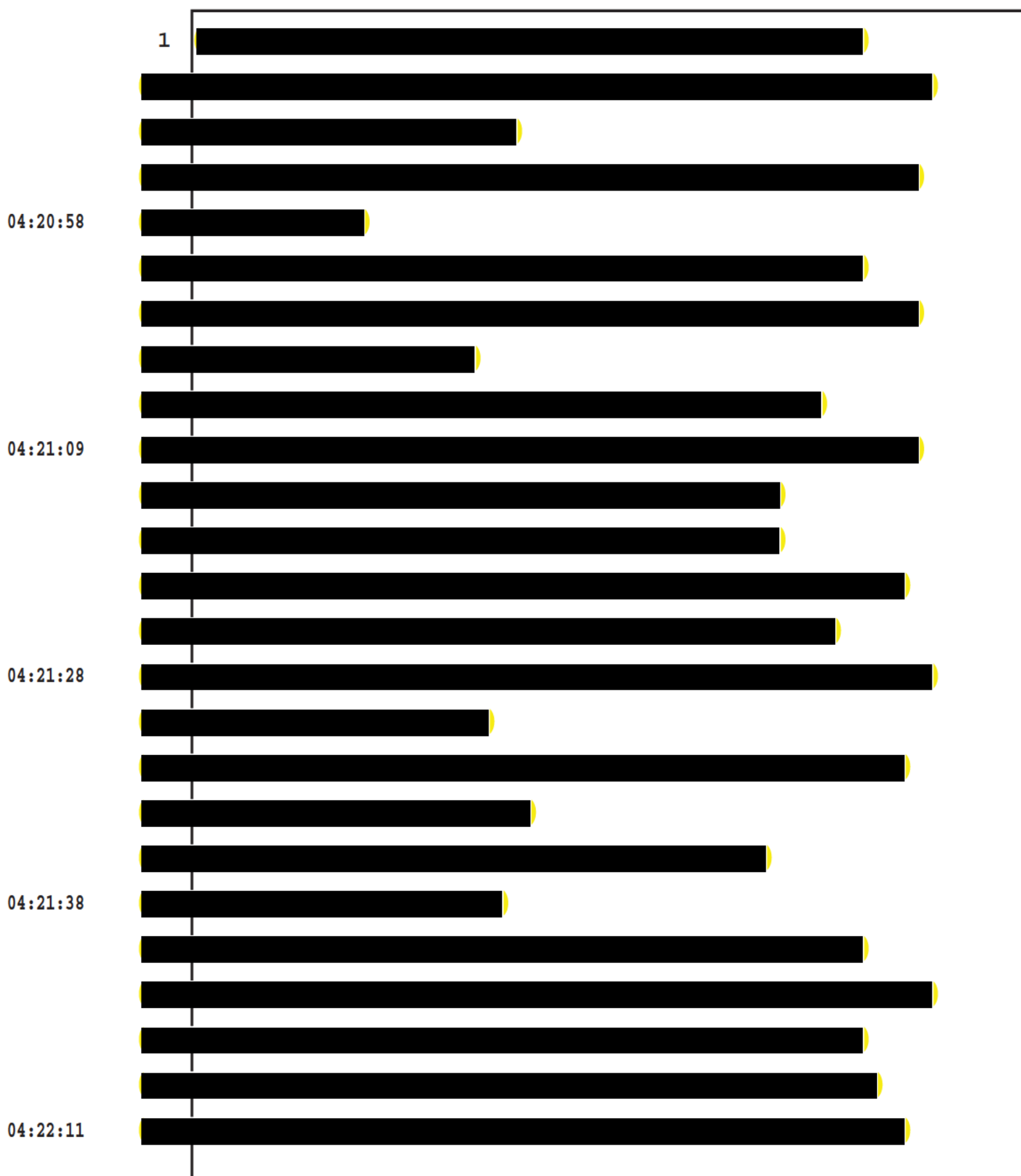
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1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7

Q. Did Elysium ever run a human trial on  
its new NR before selling it to consumers?

9

A. Not to my knowledge. The active  
ingredients are identical and the product was higher  
purity. I don't think we felt we needed to.

12

Q. Did Elysium ever run a human trial on  
Basis before you began selling to consumers in the  
beginning?

15

A. I'm sorry, by the beginning?

16

Q. That's -- that was poorly worded.

17

Did Elysium ever run any trials on  
Basis before your very first sale to consumers?

19

A. In 2015?

20

Q. Yes.

21

A. No.

22

Q. Are you aware of any time at which  
Elysium ran a trial basically based on you and  
Dr. Guarente and other Elysium principals just  
taking the product yourself?

25

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1 A. I'm sorry. I don't know that I  
2 understand the question.

3 Q. Are you aware -- let me ask it this  
4 way.

04:25:19 5 Are you aware that Dr. Guarente has  
6 claimed, under oath, that the first clinical trial  
7 you ran on Basis was just you all taking it?

8 MR. SACCA: Object to the form of the  
9 question.

04:25:30 10 A. I was not aware of that.

11 Q. Does that sound consistent with your  
12 memory, that that's what you did?

13 A. We have been taking the ingredients for  
14 years now, yes.

04:25:40 15 Q. But did you ever do it in a way that  
16 was designed to be able to report to each other and  
17 have data about whether it worked or not?

18 A. Anecdotal data, yes.

19 Q. Would you call that a study?

04:25:54 20 A. I wouldn't call it a rigorous study,  
21 but it can still be a study.

22 Q. Based on what definition?

23 A. Based on the fact that you are  
24 collecting data, making observations, coming to  
04:26:07 25 conclusions.

1 Q. And do you remember that happening,  
2 what you just described?

3 A. At a high level, it seems plausible. I  
4 don't recall specifically.

04:26:17 5 Q. Do you recall it happening, yes or no?

6 A. I don't recall.

7 Q. Did Mr. Morris assist Elysium in  
8 investigating alternative sources of NR while he  
9 still worked at ChromaDex?

04:26:41 10 A. I do not recall.

11 Q. Do you remember Mr. Morris giving you a  
12 list of potential suppliers that you could use  
13 different than ChromaDex while he worked at  
14 ChromaDex?

04:26:52 15 A. I do not recall.

16 Q. Do you remember my series of questions  
17 earlier this afternoon about whether Mr. Morris ever  
18 gave you any information of any kind at all from  
19 ChromaDex while he worked there?

04:27:03 20 A. Yes.

21 Q. Do you recall anything like that now?

22 A. I do not recall.

23 MR. ATTANASIO: Let's mark our next  
24 exhibit as 146, please.

04:28:56 25 (Whereupon, Exhibit 146, 7/14/16 email



1 from [REDACTED] to Eric Marcotulli and  
2 Daniel Alminana, dated July 14th, 2016, is marked  
3 for identification, as of this date.)

4 Q. Mr. Marcotulli, why don't you set that  
5 aside just for a second. I want to ask you a  
6 different question. We'll come back to that in a  
7 second.

8 A. Okay.

9 Q. After Mr. Morris joined Elysium, did he  
10 get an Elysium email address?

11 A. Yes.

12 Q. After Mr. Morris joined Elysium, would  
13 you communicate with him on his Elysium email  
14 address.

15 A. Yes.

16 Q. Now, let's look at 146. This is an  
17 email from [REDACTED] to you and  
18 Mr. Marcotulli dated July 14th, 2016.

19 A. You mean Mr. Alminana.

20 Q. Excuse me. To you and Mr. Alminana  
21 dated July 14th, 2016, correct?

22 A. Yes.

23 Q. Do you know -- let me back up.

24 You've previously identified the email  
25 address that's listed in the from line.

1 Do you see that?

2 A. Yes.

3 Q. Whose email address is that?

4 A. That's Mark Morris.

04:29:37 5 Q. That's his personal email address?

6 A. Yes.

7 Q. So on July 14th, 2016, he writes to you

8 and Mr. Alminana. And in his first sentence he

9 says, "Dan, the NR chloride GRAS," G-R-A-S,

04:29:57 10 "document is attached. The manufacturing process is

11 detailed starting on page 7. This is a public

12 document, so just hand it over to the manufacturing

13 companies. This is just the beginning, and I will

14 continue to work on it."

04:30:12 15 Have I read that correctly?

16 A. Yes.

17 Q. Do you remember Mr. Morris sending over

18 this information from his private email account?

19 A. I do not.

04:30:20 20 Q. Were you aware, until I showed you just

21 now, that Mr. Morris had sent to Elysium ChromaDex's

22 GRAS document?

23 A. I was unaware.

24 Q. Did you take any note of this email

04:30:35 25 when you received it?

1 A. I do not know. I do not recall.

2 Q. Do you recall this email at all?

3 A. I do not.

4 Q. Is it your practice to read emails that  
04:30:43 5 are sent to you, particularly when you're in the To  
6 line?

7 A. There are occasions when I do not.

8 Q. Wasn't it mission critical to you at  
9 the time to find an alternative source of NR? And  
04:30:58 10 at the time, I mean, the date of this email?

11 A. First, you know, again, this falls  
12 under supply chain, which are projects that I do not  
13 run personally.

14 Second of all, I think at this period  
04:31:12 15 of time, we were still very hopeful that we could  
16 resolve issues with ChromaDex. So I wouldn't say it  
17 was mission critical that we find another supplier  
18 at this point.

19 Q. Then why, to your understanding, is  
04:31:22 20 Mr. Morris, from his private email account, sending  
21 you ChromaDex's GRAS document telling you to hand it  
22 over to manufacturers and then listing one, two,  
23 three, four separate possible manufacturers to  
24 replace ChromaDex?

04:31:37 25 A. I do not know.

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1 Q. Did you ask for this information?

2 A. I do not recall.

3 Q. Did Mr. Alminana ask for this  
4 information?

04:31:44 5 A. I do not know.

6 Q. Did Mr. Alminana ask for the ChromaDex  
7 GRAS document?

8 A. I do not know.

9 Q. Did you ask for the ChromaDex GRAS  
04:31:51 10 document from Mr. Morris?

11 A. Not to my recollection.

12 Q. On Thursday, July 14th, 2016, who did  
13 Mr. Morris work for?

14 A. Again, I do not know when he resigned.

04:32:11 15 Q. Did you ever communicate with  
16 Mr. Morris at his private Yahoo account after he  
17 began working for Elysium?

18 A. I don't know.

19 Q. Would it surprise you to learn that  
04:32:24 20 there are emails like that? In other words, once he  
21 started working for Elysium, you're no longer  
22 writing to [REDACTED]?

23 MR. SACCA: Objection to the form of  
24 the question.

04:32:35 25 A. I do not know.

1 Q. In fact, one of the manufacturers that  
2 Mr. Morris provided to you is your manufacturer  
3 today, right?

4 A. That is correct.

04:32:49 5 Q. [REDACTED]

6 A. That is correct.

7 Q. So what's going on here? Why did Mr.  
8 Morris send this to you from his private email  
9 account?

04:32:58 10 A. I do not know.

11 Q. Do you know anything about it at all,  
12 Mr. Marcotulli?

13 A. I do not.

14 Q. Did you discuss it with Mr. Alminana,  
04:33:04 15 that now you had ChromaDex's GRAS and now you had  
16 four possible replacements for ChromaDex?

17 A. I do not recall.

18 Q. Did you ever thank Mr. Morris, pat him  
19 on the back?

04:33:14 20 A. I don't recall.

21 Q. Did you think it was within your  
22 rights, under the agreement you had with ChromaDex,  
23 to use this GRAS in your own application?

24 A. It says here it's a public document.

04:33:30 25 Q. That's not my question.

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1 Did you think it was within your  
2 rights, under your agreement with ChromaDex, to use  
3 ChromaDex's GRAS for your own purposes, to get your  
4 own approval?

04:33:41 5 A. I would say it is appropriate to use  
6 public documentation, yes.

7 Q. Is it appropriate to claim it as your  
8 own? Those are two separate things.

9 A. I don't know that we claimed it as our  
04:33:52 10 own.

11 Q. Are you aware that Elysium took this  
12 GRAS, changed it to make it appear that it was  
13 produced by Elysium, and then submitted it?

14 MR. SACCA: Object to the form of the  
04:34:02 15 question.

16 A. I do not know that.

17 MR. SACCA: Submitted it to who?

18 MR. ATTANASIO: That's all right.

19 Q. Do you know whether or not Elysium  
04:34:11 20 relied on Exhibit 146 to obtain its own GRAS?

21 A. I do not know.

22 MR. ATTANASIO: Why don't we take a  
23 break for our court reporter, if nothing else.  
24 We'll have a nice break, and then we'll come  
04:34:29 25 back.

1 THE VIDEOGRAPHER: It is 4:35 p.m. We  
2 are going off the record.

3 (Whereupon, there is a recess taken.)

4 THE VIDEOGRAPHER: It is 4:52 p.m. We  
5 are back on the record.

6 BY MR. ATTANASIO:

7 Q. Mr. Marcotulli, let me talk to you a  
8 little bit more about the circumstances of  
9 Mr. Morris's departure from ChromaDex in July 2016.

10 Are you with me?

11 A. Yes.

12 MR. ATTANASIO: Let's mark as our next  
13 exhibit, 147, I believe.

14 (Whereupon, Exhibit 147, 7/7 and  
15 7/9/16 email exchange between Eric Marcotulli,  
16 Mark Morris and Daniel Alminana, ELY\_0107573, is  
17 marked for identification, as of this date.)

18 Q. Mr. Marcotulli, do you recognize  
19 Exhibit 147 as an email exchange between you and  
20 Mr. Morris and Mr. Alminana on July 7th, 2016 and  
21 July 9th, 2016?

22 A. Yes.

23 Q. Do you recognize, again, Mr. Morris's  
24 private email address with a Yahoo handle here?

25 A. Yes.

1 Q. And if you look at the bottom half of  
2 the page, you will see that there is an email from  
3 Mr. Morris's private account to you and to  
4 Mr. Alminana.

04:53:36 5 Do you see that?

6 A. The bottommost message?

7 Q. Yes.

8 A. Yes.

04:53:44 9 Q. He writes to you in the first sentence,  
10 "Eric and Dan, the opportunity that you are offering  
11 me is one that has been in my dreams."

12 Is that what he told you?

13 A. It appears that way.

04:53:55 14 Q. Then in the second paragraph he says  
15 the following: "My preference is to begin this new  
16 capture with clear mind and clear soul. I would  
17 like to be truthful in my resignation and describe  
18 my endless enthusiasm for what lies ahead with  
19 Elysium."

04:54:12 20 Do you see that?

21 A. Yes.

22 Q. Do you recall Mr. Morris writing that  
23 to you?

24 A. I do not.

04:54:17 25 Q. Do you recall Mr. Morris telling you



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1 that he wants to be truthful to ChromaDex?

2 A. I do not recall.

3 Q. Did you think that was a good idea, for  
4 Mr. Morris to be truthful in his dealings with his  
04:54:34 5 employer?

6 A. I don't recall.

7 Q. You don't have an opinion one way or  
8 the other about whether he should be truthful?

9 A. I just don't recall this particular  
04:54:44 10 interaction.

11 Q. That's not my question.

12 My question is, do you have an opinion  
13 as to whether it would be a good thing or a bad  
14 thing for Mr. Morris to be truthful with his  
04:54:54 15 employer, ChromaDex?

16 A. Generally speaking, I always support  
17 employees in being truthful in their path out of  
18 organizations.

19 Q. In the last paragraph, Mr. Morris  
04:55:09 20 writes to you, "I am concerned that not being  
21 forthcoming and reappearing at Elysium will cause  
22 additional strain on the relationship."

23 Do you see that?

24 A. Yes.

04:55:18 25 Q. Do you recall Mr. Morris telling you

1 that he wanted to be forthcoming?

2 A. I do not.

3 Q. In the second to last sentence before

4 he signs off, Mr. Morris writes to you and

04:55:29 5 Mr. Alminana, "I also have unconditional loyalty to

6 you two, so please let me know how you feel"

7 Have I read that correctly?

8 A. Yes.

9 Q. Was it your understanding that as of

04:55:39 10 July 7th, 2016, Mr. Morris had unconditional loyalty

11 to you and Mr. Alminana?

12 A. I don't recall.

13 Q. Do you recall reading these words?

14 A. I do not.

04:55:50 15 Q. Is it common or uncommon for future

16 employees to write to you that they feel

17 "unconditional loyalty" to you?

18 A. I don't know.

19 Q. Has it ever happened before?

04:56:05 20 A. I don't know.

21 Q. Who was Mr. Morris employed by as of

22 July 7th, 2016.

23 A. My best guess would be ChromaDex.

24 Q. Your best guess is right.

04:56:17 25 How long did Mr. Morris have

1 unconditional loyalty to you and Mr. Alminana,  
2 at least as in your understanding?

3 A. I do not know.

4 Q. Well, we know he had it as July 7, 2016  
04:56:31 5 because he says so.

6 My question to you is, what's your  
7 understanding of how long that had been the state of  
8 affairs?

9 A. I don't know.

04:56:38 10 Q. What does unconditional loyalty mean to  
11 you?

12 A. I don't know.

13 Q. What did it mean to you when you read  
14 the words from Mr. Morris?

04:56:46 15 A. I don't recall.

16 Q. Were you happy that your future  
17 employee, before he even joined the company, had  
18 unconditional loyalty to you and Mr. Alminana?

19 A. I don't recall.

04:56:55 20 Q. Did you have any concern at the time,  
21 July 7th, that maybe that wasn't right, that  
22 somebody who didn't work for you yet but worked for  
23 another company had unconditional loyalty to you?

24 A. I don't recall.

04:57:16 25 Q. You had a call with Mr. Morris the very

1 next day, correct?

2 A. I do not recall.

3 Q. Mr. Morris writes to you on July 9th,  
4 two days later, and he says "Eric and Dan, thank you  
04:57:35 5 so much for the call yesterday and for sharing some  
6 of your personal experiences."

7 Have I read that correctly?

8 A. Yes.

9 Q. Does that refresh your memory that you  
04:57:45 10 had a call with Mr. Morris on July 8th, 2016?

11 A. No.

12 Q. Do you recall discussing with  
13 Mr. Morris on July 8th, 2016 his desire to be  
14 truthful and forthcoming, his words, with ChromaDex?

04:57:56 15 A. I do not recall.

16 Q. Do you recall ever discussing with  
17 Mr. Morris his desire to be truthful and forthcoming  
18 with ChromaDex?

19 A. I do not.

04:58:07 20 Q. Did you think it was a good idea as of  
21 July 8th, 2016 for Mr. Morris to be truthful and  
22 forthcoming with ChromaDex?

23 A. I do not recall.

04:58:22 24 Q. I'd like to just ask you if you can  
25 tell me anything at all, anything, one shred of

1 information about the call you had with Mr. Morris,  
2 apparently, on July 8th, 2016.

3 A. I do not recall the call.

4 Q. You and Mr. Alminana changed his mind.

04:58:41 5 You got him not to be truthful and  
6 forthcoming with ChromaDex, yes?

7 MR. SACCA: Object to the form of the  
8 question.

9 A. That's not my interpretation.

04:58:48 10 Q. I'm not asking your interpretation.  
11 I'm asking your memory.

12 A. Oh, I don't recall.

13 Q. What did you say to Mr. Morris on  
14 July 8th about whether he should be truthful and  
04:59:00 15 forthcoming with ChromaDex?

16 A. I do not recall.

17 Q. What did Mr. Alminana say on July 8th  
18 about whether Mr. Morris should be truthful and  
19 forthcoming with ChromaDex?

04:59:09 20 A. I do not know.

21 Q. Were you on the call, Mr. Marcotulli?

22 A. I don't recall.

23 Q. Well, Mr. Morris writes to you, "Thank  
24 you so much for the call yesterday," and he address  
04:59:23 25 that sentence to Eric and Dan.

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1 Are you the Eric in that sentence?

2 A. It appears that way.

3 Q. Do you have any reason to believe you  
4 weren't on that call?

04:59:33 5 A. I don't recall the call.

6 Q. Do you think maybe an impersonator of  
7 you joined Mr. Alminana for that call?

8 A. I do not.

9 Q. Has that ever happened before?

04:59:43 10 A. Not to my knowledge.

11 Q. All right. In the second paragraph of  
12 his final email, Mr. Morris says, "After speaking  
13 with you two, I definitely have a different  
14 viewpoint on how to leave."

04:59:55 15 Do you see that?

16 A. Yes.

17 Q. So before he wanted to be truthful and  
18 forthcoming, but now he has a different viewpoint,  
19 yes?

05:00:02 20 MR. SACCA: Object to the form of the  
21 question.

22 A. Again, that's not my interpretation.

23 Q. What is your interpretation?

05:00:09 24 A. It says, "I do not owe ChromaDex an  
25 explanation, and it is not their concern what I do

1 with my life."

2 It seems that that specific series of  
3 topics is what was discussed. That isn't to say  
4 that it was recommended one way or the other to him.

05:00:22 5 Q. So you did tell him what to say or not  
6 say.

7 MR. SACCA: Object to the form of the  
8 question.

9 A. Just I'm interpreting this as those are  
05:00:30 10 two topics discussed on this call.

11 Q. Do you recall telling him what you just  
12 told me based on your interpretation?

13 A. I do not.

14 Q. Do you remember anything that was said  
05:00:40 15 on the call at all?

16 A. I do not recall that call.

17 Q. So you are interpreting this document  
18 and you remember nothing about your conversation  
19 with Mr. Morris?

05:00:48 20 A. That is correct.

21 Q. Do you know what he finally told  
22 ChromaDex about his departure?

23 A. I do not.

24 Q. Now, this takes us to July 9th, 2016.

05:00:56 25 Does this help you any more pinpoint

1 the date of when you believe Mr. Morris officially  
2 resigned from ChromaDex?

3 A. It is helpful, yes.

4 Q. Now, at least, we know it's sometime  
05:01:08 5 after July 9th; is that fair?

6 A. Yes.

7 Q. Does it tell -- do you have any other  
8 memory besides it must have been after July 9th?

9 A. I do not.

05:01:27 10 Q. If you look, Mr. Marcotulli, at the  
11 very middle of the page in that last email we were  
12 reading. He does say, "I will resign next week."

13 Do you see that?

14 A. Yes.

05:01:40 15 Q. Does that make you comfortable that  
16 Mr. Morris resigned from ChromaDex approximately a  
17 week after this series of phone calls, give or take?

18 A. That seems reasonable.

19 Q. Is there anyone you have unconditional  
05:02:04 20 loyalty to like Mr. Morris had to you?

21 A. I don't know what Mark means by that.

22 Q. It's whatever definition you want to  
23 use for your own personal satisfaction.

24 A. I don't know.

05:02:18 25 Q. Do you have unconditional loyalty to



1 Mr. Alminana?

2 A. I'd have to think about this.

3 Q. You actually responded to this email  
4 from Mr. Morris. You say, "Great. Let us know how  
05:02:36 5 we can be helpful," correct?

6 A. Yes.

7 Q. So you agreed with Mr. Morris's  
8 decision about how to handle his transition from  
9 ChromaDex; is that true?

05:02:48 10 A. I don't recall.

11 Q. When you first interviewed Mr. Morris  
12 in March of 2016, did you ask him whether he would  
13 bring ChromaDex documents with him if he was hired  
14 by Elysium?

05:02:59 15 MR. SACCA: Object to the form of the  
16 question.

17 Q. Let me ask a different question.

18 When you first interviewed Morris for a  
19 job, did you ask him whether he would bring  
05:03:09 20 ChromaDex documents with him if was hired by  
21 Elysium?

22 A. I do not recall any of the interviews  
23 with Mark.

24 Q. Not a thing?

05:03:17 25 A. No.

1 Q. Not one interview, not one meeting?

2 A. No.

3 Q. Did you ask Mr. Morris for ChromaDex  
4 information at any time between the time you had the  
05:03:25 5 first conversation about possibly working for  
6 Elysium to his first day on the job?

7 A. I do not recall.

8 MR. ATTANASIO: Let me show you what  
9 we'll mark as our next exhibit, 148.

05:04:32 10 (Whereupon, Exhibit 148, document  
11 titled "NR Ingredient Sales Data for All  
12 Customers.xlsx, 1Q '12," ELY\_0040625, is marked for  
13 identification, as of this date.)

14 MR. ATTANASIO: While you look that  
05:04:26 15 over, Mr. Marcotulli, Exhibit 148 is entitled,  
16 "NR Ingredient Sales Data for All  
17 Customers.xlsx, 1Q '12," Bates No. ending 6025.

18 Q. Do you see that information?

19 A. Yes.

05:04:51 20 Q. Do you recognize this document?

21 A. No, I do not.

22 Q. Have you ever seen it before?

23 A. Not to my knowledge, no.

24 Q. Do you know whose ingredient sales data  
05:05:03 25 for all customers this is?

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1 A. I do not.

2 Q. Do you recognize both the customers and  
3 the ingredients to be ChromaDex related?

4 A. I do not know.

05:05:18 5 Q. Do you know why this was in the files  
6 of Elysium?

7 A. I do not know.

8 Q. Do you know why Elysium would have  
9 ingredient sales data for ChromaDex customers?

05:05:31 10 A. I do not know.

11 Q. Would you consider sales data for  
12 Elysium -- strike that.

13 Would you consider sales data for  
14 ChromaDex's customers to be confidential information  
05:05:42 15 of ChromaDex?

16 A. I do not know.

17 Q. Have you ever opened this file on your  
18 Elysium work computer, to your knowledge?

19 A. To my knowledge, no.

05:05:50 20 Q. Do you know how you got it?

21 A. I do not know.

22 Q. Have you ever saved this file, this  
23 Excel file to your Elysium work computer?

24 A. Not to my knowledge.

05:05:59 25 Q. Are you aware that Mr. Morris gave this

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1 document to Mr. Alminana?

2 A. I was not aware of that.

3 MR. SACCA: Object to the form of the  
4 question.

05:06:07 5 Q. Are you aware that Mr. Morris took this  
6 document from ChromaDex?

7 A. I did not know that.

8 Q. Have you ever discussed this document  
9 with Mr. Alminana?

05:06:19 10 A. I have not.

11 Q. Have you ever discussed this  
12 spreadsheet with anyone at Elysium?

13 A. I have not.

14 Q. To your knowledge, have you ever shared  
05:06:32 15 this document with anybody else?

16 A. No.

17 Q. Would it be useful for Elysium to know  
18 the exact size of its competitors' ingredient  
19 purchases?

05:06:44 20 A. In the context of computing the refund  
21 associated with the pricing discrepancies, I suppose  
22 so.

23 Q. What about for competitive reasons?

24 A. I can't think of any competitive  
05:06:58 25 reasons this would be useful.

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1 Q. Not a one, to know your competitors'  
2 purchases, what they're buying, how much, the price  
3 they're paying, when they're buying it, none of that  
4 would be of interest to you?

05:07:12 5 A. I don't think it provides any sort of  
6 advantage.

7 Q. Well, was it useful for Elysium to know  
8 the exact dates of its competitors' ingredients  
9 purchases?

05:07:25 10 A. Again, I'm not sure that it gives any  
11 sort of advantage.

12 Q. Is it your testimony, sir, that the  
13 first time you've ever laid eyes on this document,  
14 Exhibit 148, was here this afternoon?

05:07:42 15 A. Yes.

16 Q. Did you see it when you prepared for  
17 your deposition?

18 A. I did not.

19 Q. What are you thinking about? As you  
05:07:50 20 look at it, you seem to be deep in thought,  
21 scrutinizing it; is there something on your mind?

22 A. Well, this would have made calculating  
23 the refund easier.

24 Q. Well, it was in your files.

05:08:10 25 Did you ever discuss with anybody using

1 this to calculate the refund?

2 A. No.

3 Q. Do you believe this has everything you  
4 would need to know to calculate the refund?

05:08:21 5 A. This is -- this is the type of data  
6 that would be useful in calculating the refund, yes.  
7 I don't know that this is, again, comprehensive and  
8 accurate.

9 Q. Would it surprise you to know that the  
05:08:41 10 data associated with this document indicates its  
11 date of creation was July 18th, 2016, right after  
12 Mr. Morris resigned from ChromaDex?

13 A. I'm sorry. Could you, please, repeat  
14 that?

05:08:53 15 Q. Yes. Would it surprise you to know  
16 that the data associated with this exhibit suggests  
17 it was made on July 18th, 2016, just a few days  
18 after Mr. Morris resigned from ChromaDex and joined  
19 Elysium?

05:09:10 20 MR. SACCA: Object to the form of the  
21 question and the representation.

22 A. I don't know when this document was  
23 created.

24 Q. Would it surprise you to know that it  
05:09:23 25 was created on July 18th, 2016?

1 MR. SACCA: Object to the form of the  
2 question and the representation.

3 A. I'm not entirely sure if I would be  
4 surprised or not.

05:09:32 5 MR. SACCA: Are you making the  
6 representation, Michael, this was created on  
7 July 18th of 2018?

8 MR. ATTANASIO: No. I'm just asking  
9 the question. I'm not making -- I'm not here to  
05:09:41 10 make representations.

11 MR. SACCA: What's the basis for the  
12 question?

13 MR. ATTANASIO: I'll talk to you about  
14 it later on. I won't talk to you about it now.  
05:09:50 15 I'll move on to the next question.

16 Q. Mr. Marcotulli, let's move on.

17 Did Elysium try to keep from ChromaDex,  
18 for some period of time, the fact that Morris was  
19 working for Elysium?

05:10:04 20 A. I don't recall.

21 Q. Did you ever mislead ChromaDex about  
22 Morris's employment at Elysium?

23 A. Not to my recollection, no.

24 Q. While Mr. Morris worked at Elysium, in  
05:10:16 25 fact, right after he started, did you ever feign

1 ignorance about where Mr. Morris was and what he was  
2 doing to ChromaDex?

3 A. I don't recall.

4 Q. Did you ever pretend not to know what  
05:10:30 5 Mr. Morris was doing to ChromaDex?

6 A. I do not recall.

7 MR. ATTANASIO: Let's mark our next  
8 exhibit as 149, please.

9 (Whereupon, Exhibit 149, email string  
05:10:52 10 involving Eric Marcotulli, CDXCA\_00214363-5, is  
11 marked for identification, as of this date.)

12 Q. Mr. Marcotulli, do you recognize  
13 Exhibit 149 as a string of emails in which you were  
14 involved, the last one being dated July 27th, 2016?

05:11:59 15 A. Yes.

16 MR. ATTANASIO: And for the record, the  
17 last four Bates Nos. are 4363.

18 Q. Now let's walk through this, beginning  
19 on page 2, Mr. Marcotulli.

05:12:11 20 At the very bottom of page 2, there's  
21 an email from you dated July 25th, 2016.

22 Do you see that?

23 A. Yes, I do.

24 Q. You sent the email to Dr. Guarente,  
05:12:25 25 yes?



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1 A. Yes.

2 Q. You sent the email to Mark Morris,  
3 correct?

4 A. Yes.

05:12:31 5 Q. But you made a mistake, right? You  
6 sent this email to the ChromaDex address for  
7 Mr. Morris, right?

8 A. I don't recall sending this email.

9 Q. Well, do you see Mark Morris here as a  
05:12:48 10 recipient at his chromadex.com email address?

11 A. Yes, I do.

12 Q. And you sent over some sensitive  
13 information; you sent to Dr. Guarente and Mark  
14 Morris a patent application that Elysium intended to  
05:13:06 15 make, correct?

16 A. It appears that way, yes.

17 Q. You sent that to Mr. Morris in his  
18 capacity as an Elysium employee.

19 You were seeking his help at Elysium on  
05:13:20 20 this patent application, along with Dr. Guarente's  
21 help, correct?

22 A. I'm sorry. Could you, please, repeat  
23 that?

24 Q. Yes.

05:13:27 25 You intended to send this patent

1 application to Dr. Guarente and to Mark Morris at  
2 Mr. Morris's Elysium address, correct?

3 A. I do not recall.

4 Q. You inadvertently sent it to  
05:13:42 5 Mr. Morris's ChromaDex address, correct?

6 A. I do not know.

7 Q. Let's look what you write in the next  
8 email above it. On July 27th, 2016, you write an  
9 email to Mark from ChromaDex.

05:13:56 10 Do you see that?

11 A. Yes.

12 Q. And you copy Troy Rhonemus.

13 Do you see that?

14 A. Yes.

05:14:05 15 Q. You write to "Mark" from ChromaDex,  
16 "Please disregard and destroy the previous note. I  
17 sent it mistakenly. It contains privileged and  
18 confidential information."

19 Correct?

05:14:20 20 A. That's what the email says, yes.

21 Q. Who is Mark from ChromaDex?

22 A. I do not know.

23 Q. Is it Mark Morris or somebody else?

24 A. My assumption would be Mark Morris,  
05:14:34 25 yes.

1 Q. Well, you knew on July 27th, 2016,  
2 there was no Mark from ChromaDex named Mark Morris,  
3 he worked for you.

4 A. I'm sorry. Was that a question?

05:14:56 5 Q. Did you know by July 27th, 2016 that  
6 Mark Morris no longer worked at ChromaDex?

7 A. Likely, yes.

8 Q. Then why are you writing to Mark from  
9 ChromaDex?

05:15:10 10 A. I do not know. I do not recall this  
11 particular exchange.

12 Q. Were you shielding from ChromaDex the  
13 fact that Mr. Morris worked for you at this point?

14 A. I think what I was likely doing is  
05:15:23 15 trying to ensure that sensitive data was not  
16 misused.

17 Q. Well, then, why not write to Troy? Why  
18 address this email, the text of it, to Mark from  
19 ChromaDex?

05:15:36 20 A. I don't believe that I emailed Troy. I  
21 believe that Troy responded on behalf of Mark and  
22 thus the thread shows Troy.

23 Q. Well, no, not exactly. Your email,  
24 your first email is at the bottom, where you write  
05:15:51 25 to Mark Morris at chromadex.com.

1                   The next email is from you, just above  
2                   it, on July 27th. And you address that email to,  
3                   among others, Troy Rhonemus.

4                   Do you see that?

05:16:02       5                   A.     Yes.

6                   Q.     That's Troy Rhonemus's entry onto this  
7                   stage is your email, correct?

8                   A.     Again, I don't recall adding Troy or  
9                   sending this email.

05:16:11       10                  Q.     Well, who added Troy if you didn't?

11                  A.     It's possible that Troy's email took  
12                  over for Mark's, is what I'm trying to say.

13                  Q.     You mean, while you were typing,  
14                  somehow magically Troy's email jumped onto your To  
05:16:28       15                  line instead of Mark Morris's email onto your To  
16                  line?

17                  MR. SACCA: Object to the form of the  
18                  question.

19                  A.     I don't know.

05:16:35       20                  Q.     Mr. Rhonemus writes back to you  
21                  quick- -- relatively quickly, within a few hours,  
22                  and he says simply, "Done," correct?

23                  A.     Yes.

24                  Q.     Then you write back to him and you say,  
05:16:53       25                  "Thank you, Troy. Autofill is giving me a hard time

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1 lately, particularly as our team expands."

2 Is that what happened, autofill had  
3 filled in Mr. Morris's ChromaDex address, rather  
4 than his new Elysium address; is that what happened  
05:17:11 5 to you?

6 A. I don't know.

7 Q. Well, was that a true statement when  
8 you told Mr. Rhonemus that the cause of the misfire  
9 was autofill?

05:17:19 10 A. I don't recall.

11 Q. In the third paragraph you say, "Sorry  
12 to hear about Mark. I hope there wasn't a  
13 precipitating issue and that all are okay. We  
14 always enjoyed working with him. Send him our  
05:17:33 15 best."

16 Do you see that?

17 A. Yes.

18 Q. Mr. Morris, by this time, was an  
19 employee of yours, correct?

05:17:40 20 A. Yes.

21 Q. Did you really need to tell  
22 Mr. Rhonemus to send your employee his best?

23 A. I don't know what preceded this  
24 particular exchange.

05:17:52 25 Q. Well, you say, "We always enjoyed

1 working with him. Send him our best," referring to  
2 Mr. Morris.

3 Do you see that?

4 A. Yes.

05:18:02 5 Q. Why did you do that when he was working  
6 for you?

7 A. I don't recall.

8 Q. Why did you conceal from Mr. Rhonemus  
9 at this time, July 27th, that Mr. Morris had joined  
05:18:15 10 Elysium?

11 A. I don't know.

12 Q. Is that one of the things you and  
13 Mr. Alminana coached Mr. Morris on when you had that  
14 call on July 8th, don't tell ChromaDex where you're  
05:18:27 15 going?

16 MR. SACCA: Object to the form of the  
17 question.

18 A. I don't recall.

19 Q. Did you really intend for Mr. Rhonemus  
05:18:33 20 to send your own employee your best?

21 A. I don't know.

22 Q. Did you conceal from Mr. Rhonemus, in  
23 late July 2016, that Mr. Morris had gone to work for  
24 you?

05:18:49 25 A. I don't recall.

1 Q. When did you share with anybody at  
2 ChromaDex that Mr. Morris had gone to work for you?

3 A. I don't recall.

4 Q. Why did you conceal from Mr. Rhonemus  
5 that Mr. Morris had gone to work for you by late  
6 July 2016?

7 A. I don't recall.

8 Q. Okay. Mr. Marcotulli, when you first  
9 learned about NR, did you also learn about the  
10 intellectual property related to NR that ChromaDex  
11 had, at least at a high level?

12 A. At some point, yes.

13 Q. Did you learn that ChromaDex licenses  
14 patents related to NR?

15 A. Yes.

16 Q. What patents are those, sir?

17 A. I believe there are a handful. There  
18 are pair from Dartmouth. There is one from Cornell,  
19 I believe. There may be one from Wash U in  
20 St. Louis. And then beyond that, my knowledge tops  
21 out.

22 Q. Do you remember any patents from Grace?

23 A. I do believe, at some point, we were  
24 made aware that there is a -- and I don't know the  
25 specifics -- some form of either manufacturing

1 process patent or possibly a crystalline structure  
2 patent, I'm not sure which.

3 But I'm aware there was an application  
4 at one point that was brought to our attention with  
05:20:37 5 respect to Grace.

6 Q. As of late June 2016, right around the  
7 time you were negotiating with ChromaDex for the big  
8 order that you placed on June 30th, do you recall  
9 adopting a new patent strategy for Elysium?

05:20:55 10 A. I do not recall.

11 Q. Okay. I've placed -- you can move the  
12 last exhibit you were looking at aside, it probably  
13 would be easiest. The last two, move them out of  
14 the way, please. And then that next one, move that  
05:21:12 15 out of the way, too, please.

16 I've put in front of you, so it's  
17 handy, Exhibit 142 previously marked. If you could  
18 look at the very first page, rows 1, 2, and 3 --  
19 excuse me, the first three rows, which are actually  
05:21:27 20 numbered 10351 through 10353.

21 Do you see those emails,  
22 Mr. Marcotulli?

23 A. Yes.

24 Q. And here you are writing to  
05:21:42 25 Mr. Alminana, yes?



1 A. I believe these are text messages.

2 Q. Fair enough.

3 You're writing text messages to

4 Mr. Alminana, correct?

05:21:49 5 A. It appears that way.

6 Q. You write in these three, "Just sent  
7 you an email on Green Molecular, forgetting we are  
8 waiting until after next order," and you wrote that  
9 on June 24th, 2016.

05:22:05 10 Do you see that?

11 A. Yes.

12 Q. You were referring to the next order  
13 with ChromaDex, correct?

14 A. I do not know.

05:22:10 15 Q. You don't know what you were referring  
16 to?

17 A. I do not.

18 Q. Do you know a person named Jose  
19 Estrella?

05:22:16 20 A. I do.

21 Q. Is he connected to Green Molecular?

22 A. I believe so, yes.

23 Q. Has Elysium licensed any patents from  
24 Green Molecular?

05:22:25 25 A. Not to my knowledge, no.

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1 Q. You learned about Green Molecular as an  
2 opportunity for intellectual property collaboration  
3 from none other than Mark Morris, correct?

4 A. That is not my recollection.

05:22:40 5 Q. In the next row you say to  
6 Mr. Alminana, "Disregard. I am just ultrasensitive  
7 to this new patent strategy."

8 What did you mean by that?

9 A. I do not know.

05:22:53 10 Q. Well, you were ultrasensitive to  
11 something, so it must have been important; what was  
12 it?

13 A. I don't recall.

14 Q. What was the new patent strategy?

05:23:00 15 A. I do not know.

16 Q. In the next row you add, "Not only was  
17 it ultrasensitive, but it's also so game changing."

18 Do you see that?

19 A. I do see that, yes.

05:23:11 20 Q. This ultrasensitive, game-changing  
21 patent strategy, what was it, sir?

22 A. I do not recall.

23 Q. Was it to try to undermine ChromaDex's  
24 patents?

05:23:22 25 A. I do not recall.

1 Q. Did the new patent strategy lead you  
2 and Mr. Alminana to have meetings with both  
3 Dartmouth and Grace in the weeks and months after  
4 the texts we're looking at here?

05:23:36 5 A. I do not know.

6 Q. You and Mr. Alminana, after the texts  
7 we're looking at here, went out and met a woman at  
8 Dartmouth, didn't you?

9 A. We did meet with Dartmouth, yes.

05:23:47 10 Q. And when you met with Dartmouth, you  
11 tried to undermine ChromaDex's rights to the  
12 licenses it had with Dartmouth, correct?

13 MR. SACCA: Object to the form of the  
14 question.

05:23:57 15 A. I do not recall that.

16 MR. ATTANASIO: Let's mark our next  
17 exhibit as 150.

18 (Whereupon, Exhibit 150, 6/22/16  
19 email, from Mark Morris to Eric Marcotulli and  
05:24:29 20 Daniel Alminana, with attachment,  
21 ELY\_0107359-90, is marked for identification, as  
22 of this date.)

23 Q. Mr. Marcotulli, do you see your name as  
24 a recipient of the email that is Exhibit 150?

05:25:17 25 A. Yes.

1 Q. Do you see that Mr. Alminana is also a  
2 recipient?

3 A. Yes.

4 Q. The date is June 22nd, 2016, yes?

05:25:27 5 A. Yes.

6 Q. Who sent this email to you and  
7 Mr. Alminana?

8 A. It appears that Mark Morris did.

9 Q. From his ChromaDex account?

05:25:34 10 A. From his Yahoo account.

11 Q. His private account?

12 A. Yes.

13 Q. Mr. Morris writes to you, "Dan and  
14 Eric, the attached Word document has some thoughts  
05:25:51 15 on the key NAD positive patent."

16 Have I read that correctly? Is that  
17 what he wrote to you?

18 A. Yes.

19 Q. So Mr. Morris is providing you his own  
05:26:06 20 thoughts about the NAD positive patent owned by  
21 ChromaDex; is that correct? Strike that.

22 Mr. Morris is writing to you on  
23 June 22nd, 2016 with his own thoughts about the NAD  
24 positive patent; is that correct?

05:26:29 25 A. That's what the message says, yes.

1 Q. And is that one of the patents that  
2 ChromaDex licensed?

3 A. I believe so, yes.

4 Q. What was your understanding of why  
5 Mr. Morris was sending this information to you on  
6 June 22nd, 2016?

7 A. I do not know.

8 Q. Bear in mind, sir, in Exhibit 142, the  
9 ultrasensitive, game-changing patent strategy that  
10 you wrote about, those were dated June 24th, 2016,  
11 so just two days later.

12 What's the relationship between the  
13 ultrasensitive, game-changing patent strategy shown  
14 in Exhibit 142 and Mr. Morris's work here in  
15 Exhibit 150 two days before?

16 A. I do not know.

17 Q. Is there any relationship?

18 A. Not to my knowledge.

19 Q. Do you think they're unrelated?

20 A. I do not know.

21 Q. Do you think it's a coincidence that on  
22 June 22nd, Mr. Morris, from his private email  
23 account, sends you information about the NAD  
24 positive patent, and on June 24th, in your own  
25 private messaging with Mr. Alminana, you're talking

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1 about a new patent strategy; is that a coincidence?

2 A. I do not know.

3 Q. Who did Mr. Morris work for on  
4 June 22nd, 2016?

05:27:51 5 A. ChromaDex.

6 Q. Do you believe this was a period of  
7 time, bearing in mind some of the earlier messages  
8 we've seen, during which Mr. Morris had his  
9 unconditional loyalty to you and Mr. Alminana?

05:28:04 10 A. I do not know.

11 Q. As of June 22nd, 2016, was it your  
12 understanding that Mr. Morris was unconditionally  
13 loyal to you and Mr. Alminana?

14 A. I do not know.

05:28:21 15 Q. Had you asked Mr. Morris for his  
16 thoughts on the NAD positive patent?

17 A. Not to my recollection.

18 Q. Were you aware, on June 22nd, 2016,  
19 that the NAD positive patent is one of the Dartmouth  
05:28:36 20 patents?

21 A. I would likely know that, yes.

22 Q. Is it?

23 A. Yes, I did look at that.

24 Q. Did you agree it was a key patent, as  
05:28:53 25 Mr. Morris called it?

1 A. I don't recall.

2 Q. What did you do with this information?

3 A. I do not know.

4 Q. Did you get a legal opinion about

05:29:02 5 whether it was a valid patent?

6 MR. SACCA: Object to the form of the  
7 question.

8 A. I do not recall.

9 Q. Did you get any legal advice about

05:29:09 10 whether -- strike that.

11 Did you get any legal advice of any  
12 kind, without telling me what it was, about what to  
13 do with this information Mr. Morris had sent you in  
14 Exhibit 150?

05:29:20 15 A. Not to my recollection.

16 MR. ATTANASIO: Let's mark as  
17 Exhibit 151 our next exhibit.

18 (Whereupon, Exhibit 151, 6/23/16  
19 email, from Mark Morris, to Eric Marcotulli,  
05:30:42 20 with attachment, ELY\_010791-488, is marked for  
21 identification, as of this date.)

22 Q. Mr. Marcotulli, do you recognize  
23 Exhibit 151 as another email sent to you from  
24 Mr. Morris at his private Yahoo account, the very  
05:30:55 25 next day, June 23rd, 2016?

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1 A. Excuse me. Yes.

2 Q. You do now agree with me that  
3 Mr. Morris provided information to you and  
4 Mr. Alminana, to Elysium, about ChromaDex's business  
05:31:09 5 before he left ChromaDex?

6 A. I do not recall.

7 Q. You don't know if he did or not?

8 A. I don't recall this happening.

9 Q. Do you see that Mr. Alminana is also on  
05:31:24 10 this email?

11 A. Yes.

12 Q. Do you see the subject line is  
13 "Patents"?

14 A. Yes.

05:31:33 15 Q. Do you see that Mr. Morris, from his  
16 private Yahoo account, writes to you, "Dan and Eric,  
17 here are the Dartmouth patents"?

18 A. Yes.

19 Q. And then let's look at the very next  
05:31:45 20 paragraph, referring to a particular patent,  
21 8,114,626, Mr. Morris tells you, "Yeast strain for  
22 manufacturer. ChromaDex has given Genomatica 400K  
23 for a feasibility study which will be completed in  
24 4Q/16."

05:32:06 25 Have I read that correctly?



1 A. Yes.

2 Q. Do you remember receiving that  
3 information from Mr. Morris?

4 A. I do not.

05:32:12 5 Q. Was that confidential information or  
6 public information, to your knowledge?

7 A. I do not know.

8 Q. Who did Mr. Morris work for on  
9 June 23rd, 2016?

05:32:22 10 A. ChromaDex.

11 Q. Do you really believe that it was  
12 public information how much ChromaDex had paid  
13 Genomatica, what they were going to do and when the  
14 study would be completed at this point?

05:32:33 15 A. I do not know.

16 Q. Did it give you any concern that you  
17 were receiving sensitive information from Mr. Morris  
18 while he worked at ChromaDex?

19 MR. SACCA: Object to the form of the  
05:32:42 20 question.

21 A. I do not recall receiving this.

22 Q. Well, that's not my question.

23 My question is, did you ever have any  
24 concern about the sensitivity, one way or the other,  
05:32:55 25 of the information that Mr. Morris was giving to

1 you?

2 A. I don't recall.

3 Q. Then he says, Mr. Morris, "They are  
4 looking at yeast and E. coli. It will take at least  
05:33:09 5 another \$2 million for commercialization and the  
6 hope is to have production at \$150/KG."

7 Do you see that?

8 A. Yes.

9 Q. Was that public information on  
05:33:20 10 June 23rd, 2016, to your knowledge?

11 A. I do not know.

12 Q. Was that confidential information to  
13 ChromaDex as of June 23rd, 2016?

14 A. I do not know.

05:33:31 15 Q. You just have no idea at this point?

16 A. I do not know.

17 Q. Did you know then?

18 A. I don't recall.

19 Q. Did you thank Mr. Morris for secretly  
05:33:39 20 giving you this information?

21 MR. SACCA: Object to the form of the  
22 question.

23 A. I don't recall.

24 Q. Do you know whether Mr. Morris shared  
05:33:46 25 with ChromaDex that he was giving you this

1 information?

2 A. I do not know.

3 Q. Do you know why Mr. Morris used his  
4 private, personal Yahoo account for this  
05:33:54 5 communication and the last one?

6 A. I do not know.

7 Q. Do you know why Mr. Morris did not copy  
8 anybody from ChromaDex on this communication on  
9 Exhibit 151 nor on the communication in Exhibit 150?

05:34:05 10 A. I do not know.

11 Q. Did you go see Dartmouth about the  
12 patents that they licensed to ChromaDex?

13 A. We met with Dartmouth, yes.

14 Q. You met with Dartmouth regarding their  
05:34:27 15 relationship -- their licensing relationship with  
16 ChromaDex, yes?

17 A. That was part of the discussion, yes.

18 Q. That was the main reason for the  
19 meeting, correct?

05:34:39 20 A. The reason for the meeting was, again,  
21 to approach somebody involved in the broader  
22 situation that might be helpful in getting us to a  
23 resolution.

24 Q. Oh, so you went to see the Dartmouth  
05:34:51 25 folks in order to find a solution to your issues

1 with ChromaDex?

2 A. That was our hope, yes.

3 Q. Did you ever say that in an email?

4 A. I don't --

05:35:04 5 Q. Any written communication?

6 A. I don't have any recollection.

7 Q. Did you ever tell anybody at Dartmouth,

8 we really want to meet with you so that we can fix

9 some issues in our relationship with ChromaDex?

05:35:17 10 A. I do not recall.

11 Q. Do you recall writing emails to the

12 person at Dartmouth after your meeting?

13 A. I know that there were subsequent

14 exchanges, yes.

05:35:25 15 Q. Why don't we look at those?

16 MR. ATTANASIO: Let's mark as our next

17 exhibit, 152.

18 (Whereupon, Exhibit 152, emails

19 between Eric Marcotulli and Nila Bhakuni,

05:36:31 20 ELY\_0045013-5, is marked for identification, as

21 of this date.)

22 Q. Do you recognize Exhibit 152, sir, as

23 some emails between you and a woman named Nila,

24 N-i-l-a, Bhakuni, B-h-a-k-u-n-i?

05:36:52 25 A. Yes.

1 Q. The last one in this set being dated  
2 August 26th, 2016, correct?

3 A. Yes.

4 Q. And the Bates No., by the way, ends in  
5 5013 on the first page.

6 Do you recall having a discussion with  
7 Ms. Bhakuni on or about August 25th, 2016?

8 A. Yes.

9 Q. And if you look at the third page of  
10 Exhibit 152, you wrote a recap to Ms. Bhakuni about  
11 your meeting, correct?

12 A. It appears that way.

13 Q. What you wrote here to Ms. Bhakuni is  
14 all uniformly negative about ChromaDex, correct? Is  
15 that right?

16 A. I'm still reading.

17 Can you repeat the question?

18 Q. Yes.

19 In this email to Ms. Bhakuni that you  
20 wrote on August 25th, 2016, the substance and tone  
21 is uniformly negative about ChromaDex, correct?

22 A. It appears that way, yes.

23 Q. There's nothing in here about trying to  
24 fix the ChromaDex-Elysium relationship, is there?

25 A. It became apparent in the meeting that

1 we had with Ms. Bhakuni that they were unaware that  
2 there were products in the marketplace that  
3 potentially utilized their intellectual property.

4 That changed the tone of the  
05:38:58 5 discussions from working through something to better  
6 understanding the situation at hand.

7 Q. You went there to try to persuade  
8 Dartmouth and try to persuade Ms. Bhakuni that  
9 ChromaDex was violating its license agreement with  
05:39:15 10 Dartmouth, yes?

11 A. No.

12 Q. That was the new patent strategy that  
13 we saw in your text messages to Mr. Alminana,  
14 correct?

05:39:25 15 A. I don't recall.

16 Q. The new patent strategy was to go to  
17 Dartmouth and convince Dartmouth that ChromaDex was  
18 in breach of its license agreement so Dartmouth  
19 would dump ChromaDex, right?

05:39:39 20 A. I don't recall.

21 Q. That was the ultrasensitive patent  
22 strategy, correct?

23 A. I do not recall.

24 Q. So when did it crystallize in your mind  
05:39:52 25 that the objective of your dealings with Dartmouth

1 during this period was to convince Dartmouth that  
2 ChromaDex was violating its license agreement with  
3 Dartmouth?

05:40:05 4 A. I'm not sure that that ever  
5 crystallized.

6 Q. Was it your goal at any time to  
7 convince Dartmouth that ChromaDex was in breach of  
8 its license agreement with Dartmouth?

9 A. Not to my recollection, no.

05:40:19 10 Q. Well, in the third sentence of the  
11 third paragraph you say to Ms. Bhakuni, "We ask not  
12 because we have any ulterior motives but because  
13 comments made in our meeting today led us to believe  
14 that the third party in question here is striking  
05:40:38 15 agreements that utilized Dartmouth IP to further  
16 their financial gain while hiding those flows from  
17 the university."

18 Did you write that to Ms. Bhakuni?

19 A. I don't recall.

05:40:49 20 Q. You don't recall whether you wrote  
21 that?

22 A. I do not.

23 Q. Is the third party in question in that  
24 sentence that I just read ChromaDex?

05:40:56 25 A. I would think that's a reasonable

1 assumption.

2 Q. Did you tell ChromaDex's partner at  
3 Dartmouth that ChromaDex was trying to utilize  
4 Dartmouth IP to further its financial gain but  
05:41:09 5 hiding those flows from the university? Did you  
6 tell Ms. Bhakuni that?

7 A. I don't recall sending this note.

8 Q. Did you tell Ms. Bhakuni that?

9 A. I don't recall telling Ms. Bhakuni  
05:41:20 10 that.

11 Q. By the way, what was Ms. Bhakuni's  
12 position at Dartmouth, sir?

13 A. I believe she was a senior team member  
14 of the Office of Technology Transfer.

05:41:32 15 Q. She was the person in charge of the  
16 Dartmouth patents, correct?

17 A. Right. She was at tech transfer.

18 Q. She was the person in charge of  
19 policing compliance with Dartmouth's license  
05:41:49 20 agreements, correct?

21 A. I would believe that fell under her  
22 responsibilities, yes.

23 Q. You told her that you were confident  
24 that she would find that ChromaDex's treatment of a  
05:42:03 25 key input partner is about as valuable to them as



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1 their most lucrative customer, close to nothing.

2 Did you tell that to Ms. Bhakuni on  
3 August 25th, 2016?

4 A. I do not recall.

05:42:16 5 Q. Did you consider that to be a true  
6 statement on August 25th, 2016?

7 A. I don't recall.

8 Q. Is that the kind of statement you would  
9 use with Ms. Bhakuni to help, to use your phrase,  
05:42:27 10 fix the issues between ChromaDex and Elysium?

11 A. I don't know.

12 Q. Is that the kind of language you would  
13 write to a third party who you hope will help heal  
14 the issues between two parties, ChromaDex and  
05:42:42 15 Elysium?

16 A. I don't know.

17 Q. You, then, told her, for the sake of  
18 clarity, and then you lay out the orders you've made  
19 from ChromaDex in the recent past, and you tell her  
05:42:57 20 how much you owe, and then you say, "though we  
21 identified the fraud and decided we are withholding  
22 payment until this is resolved."

23 Do you see that?

24 A. Yes.

05:43:08 25 Q. Did you tell Ms. Bhakuni that ChromaDex

1 was engaged in fraud?

2 A. I don't recall.

3 Q. Did you write those words that I just  
4 read?

05:43:20 5 A. I don't recall.

6 Q. Did somebody take your computer and  
7 write them instead of you?

8 A. I don't know.

9 Q. Have you been hacked around this time?

05:43:28 10 A. I do not know.

11 Q. What fraud were you referring to?

12 A. I do not know.

13 Q. So you had decided -- I asked you  
14 earlier about when you decided that you just weren't  
05:43:42 15 going to pay ChromaDex on that order at all. You  
16 told me you didn't know. You're telling Ms. Bhakuni  
17 you're withholding payment.

18 When did you decide to withhold  
19 payment, not pay one penny on the \$3 million you  
05:43:56 20 owed ChromaDex?

21 A. I don't recall.

22 Q. Well when? We know by August 25th you  
23 did. When?

24 A. I don't know.

05:44:02 25 Q. Who made the decision?

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1 A. I don't know.

2 Q. As of August 25th, 2016, you were  
3 trying to get Dartmouth to break -- excuse me.

4 As of August 25th, 2016, you were  
05:44:25 5 trying to convince Dartmouth to declare that its  
6 license agreement with ChromaDex was in breach  
7 because ChromaDex had breached it, correct?

8 A. I'm sorry. Could you repeat that?

9 Q. Yes.

05:44:37 10 By August 25th, 2016, you were  
11 attempting to convince Dartmouth that ChromaDex had  
12 breached its license agreement with Dartmouth,  
13 correct?

14 A. I don't recall.

05:44:51 15 Q. On the bottom of page 1 of this  
16 exhibit, Mr. Marcotulli, there's a new person in  
17 play here. Her name is Adi, A-d-i, Ilani,  
18 I-l-a-n-i.

19 Do you see that?

05:45:08 20 A. Yes.

21 Q. Who is she?

22 A. He.

23 Q. Excuse me. Who is he?

24 A. He is another team member, as I  
05:45:15 25 understood it, within the technology transfer

1 office.

2 Q. Did you ever come to believe that  
3 Dartmouth had responded favorably to your strategy  
4 to interfere in the Dartmouth-ChromaDex  
05:46:00 5 relationship?

6 MR. SACCA: Object to the form of the  
7 question.

8 A. I don't recall.

9 Q. Do you remember writing that Dartmouth  
05:46:08 10 was revoking the patent, being really excited about  
11 that?

12 A. I do not recall.

13 Q. Do you have Exhibit 142 in front of  
14 you, the text messages that you and Mr. Alminana  
05:46:20 15 were sending to each other?

16 If you could turn to page 25, please.  
17 Please recall, sir, that your meetings in New  
18 Hampshire -- well, let me ask that.

19 Did you go to Dartmouth to meet them  
05:46:55 20 there?

21 A. Yes.

22 Q. Okay. So please recall that your  
23 meetings in New Hampshire were in late August 2016.

24 On page 25 of Exhibit 142, I'll direct  
05:47:08 25 your attention to row 1538.

1 Do you see a text that you wrote to  
2 Mr. Alminana just a few days later, September 6th,  
3 2016, in which you wrote, "Dartmouth is revoking the  
4 patent!!"?

05:47:27 5 MR. SACCA: Object to the form of the  
6 question.

7 A. I don't recall sending that note.

8 Q. Do you recall, on September 6th, 2016,  
9 sending a WhatsApp message to Mark Morris in which  
05:47:41 10 you wrote, "Dartmouth is revoking the patent"?

11 A. I do not recall.

12 Q. Do you recall coming to learn that in  
13 your understanding of things, Dartmouth was revoking  
14 the patent that it had licensed to ChromaDex?

05:48:03 15 A. I'm sorry. Could you repeat that?

16 Q. Yes. Let's ask this.

17 What are you talking about here? You  
18 tell me in your own words. You say, "Dartmouth is  
19 revoking the patent" and you manage to use two  
05:48:17 20 exclamation points.

21 What are talking about?

22 A. I do not know.

23 Q. Were you talking about Dartmouth's  
24 license with ChromaDex?

05:48:24 25 A. I could not say.

1 Q. You're communicating to Mr. Morris that  
2 Dartmouth is revoking ChromaDex's rights to the  
3 Dartmouth patents, correct?

4 A. I do not know.

05:48:35 5 Q. Well, what are you talking about, sir?

6 A. I don't recall.

7 Q. Why would you send that message to  
8 Mr. Morris on September 6th, approximately ten days  
9 after you were in Hanover, New Hampshire meeting  
05:48:49 10 with the Dartmouth folks?

11 A. I do not know.

12 Q. By the way, Hanover is not an easy  
13 place to get to, is it?

14 A. I don't know.

05:48:57 15 Q. You don't know? You didn't take the  
16 bus up there from Princeton to Dartmouth to wrestle?

17 A. They don't have a wrestling program.

18 Q. Okay. So I guess the answer is no.

19 A. Nope.

05:49:12 20 Q. All right. You don't remember this  
21 one, then, right?

22 A. I do not.

23 Q. No memory at all?

24 A. Not as I sit here today.

05:49:21 25 Q. All right. Page 27, please, row 1553.

1 Do you recall Mr. Morris writing to you  
2 the next day, September 7th, and stating, "How does  
3 the Dartmouth news impact this financing round? Did  
4 Spectrum deliver a term sheet?"

05:49:48 5 Do you see that?

6 A. Yes, I do.

7 Q. What was your understanding of what  
8 Mr. Morris was communicating to you with that  
9 message?

05:49:54 10 A. I don't know.

11 Q. Well, did you ever tell investors that  
12 Dartmouth was revoking ChromaDex's license to the  
13 patents with Dartmouth?

14 A. I don't recall.

05:50:10 15 Q. Look at row 1555, please.

16 A. Yes.

17 Q. You write back to Mr. Morris, you say,  
18 "Dartmouth won't play in until we have an actual  
19 agreement with them."

05:50:25 20 What does that mean?

21 A. I do not know.

22 Q. Well, what agreement are you referring  
23 to?

24 A. I don't know.

05:50:31 25 Q. You're referring to an agreement in

1 which Elysium would get an exclusive license to the  
2 Dartmouth patents, correct?

3 A. I do not know.

4 Q. That was the new patent strategy, cause  
05:50:44 5 a breach between ChromaDex and Dartmouth and then  
6 did replace ChromaDex as the exclusive licensee with  
7 Dartmouth, correct?

8 MR. SACCA: Object to the form of the  
9 question?

05:50:55 10 A. I do not recall.

11 Q. Do you know a person named Justin  
12 Roberts?

13 A. Yes.

14 Q. He's at General Catalyst, correct?

05:51:06 15 A. No, he is not.

16 Q. Was he on General Catalyst on  
17 August 24th, 2016?

18 A. It's possible, yes.

19 Q. Has he ever worked at a General  
05:51:17 20 Catalyst?

21 A. Yes.

22 Q. Do you remember telling Mr. Roberts,  
23 when he was at General Catalyst at this time, that  
24 you had had awesome meetings with Dartmouth?

05:51:28 25 A. I do not recall.



1 Q. Did you ever give to Mr. Roberts  
2 details on your belief that Dartmouth had revoked  
3 the patents?

4 A. I do not recall.

05:51:41 5 Q. You did you ever tell Mr. Roberts at  
6 General Catalyst that Dartmouth had revoked the  
7 ChromaDex patents?

8 A. I do not recall.

9 MR. ATTANASIO: Let's mark as our next  
05:52:11 10 exhibit, which is No. 153.

11 (Whereupon, Exhibit 153, emails  
12 between Eric Marcotulli and Adi Ilani,  
13 ELY\_0050041-5, is marked for identification, as  
14 of this date.)

05:53:03 15 Q. Do you recognize Exhibit 153 as emails  
16 between you and Ms. Ilani, who we previously  
17 identified as a Dartmouth employee?

18 A. It's a he.

19 Q. Excuse me. I did it again.

05:53:18 20 Do you recognize Exhibit 153 as emails  
21 between you and Mr. Ilani, who we previously  
22 identified as a Dartmouth employee?

23 A. Yes.

05:53:26 24 Q. And I want to direct your attention,  
25 sir, only to the first page, and we can do this

1 relatively quickly.

2 Do you see that Mr. Ilani wrote to you  
3 on September 29th, 2016?

4 A. Yes.

05:53:37 5 Q. And in sum and substance, he writes to  
6 you with an update, a report about whether he's been  
7 able to get enough information to prove that  
8 ChromaDex is guilty of sublicensing and, therefore,  
9 in breach of its license agreement with Dartmouth.

05:53:54 10 Is that the sum and substance of the  
11 information in the first paragraph?

12 A. I'm sorry. Could you please repeat  
13 that?

14 Q. Sure.

05:54:01 15 Do you recognize Exhibit 153, page 1,  
16 as a report to you from Mr. Ilani about his efforts  
17 to establish that ChromaDex has been engaged in  
18 sublicensing?

19 A. That's what he says here.

05:54:19 20 Q. Did you give him that direction, that  
21 he should look into that?

22 A. Not that I recall.

23 Q. Did you tell Mr. Ilani or the other  
24 Dartmouth employee that you believed ChromaDex was  
05:54:33 25 engaged in sublicensing and, therefore, in breach of

1 its license agreement?

2 A. Not to my recollection.

3 Q. At the end of the first paragraph,

4 Mr. Ilani writes to you, "I remember that you

05:54:46 5 mentioned you saw or heard about an internal memo

6 regarding denying sublicensing but we can't use that

7 one."

8 Did Mr. Ilani write that to you on

9 September 29th?

05:54:58 10 A. It appears that way.

11 Q. Did you tell Mr. Ilani that you had saw

12 or heard an internal ChromaDex memo on this topic?

13 A. I do not recall.

14 Q. Have you ever seen or heard about an

05:55:10 15 internal ChromaDex memo on the topic of

16 sublicensing?

17 A. I do not recall.

18 Q. Where did you learn that information?

19 A. I do not recall.

05:55:18 20 Q. Did Mr. Morris give it to you?

21 A. I do not recall.

22 Q. Why did Mr. Ilani tell you, we cannot

23 use that one, your understanding?

24 A. I do not know.

05:55:27 25 Q. Why can't he use that one,

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1 Mr. Marcotulli?

2 A. He does not give a reason here.

3 Q. What was your understanding?

4 A. I do not know.

05:55:40 5 Q. Then down below, Mr. Ilani ticks off  
6 some issues. And he says, "The issues" -- it says  
7 "issued," but I believe he intends to say  
8 "issues" -- "the issues that I raised."

9 Do you see that?

05:55:56 10 A. Yes.

11 Q. Mr. Ilani writes, number 1, "ChromaDex  
12 has SEC and solvency issues."

13 Do you see that?

14 A. Yes.

05:56:07 15 Q. Where did Dartmouth get that  
16 information?

17 A. I do not know.

18 Q. Did they get it from you?

19 A. I do not know.

05:56:14 20 Q. You told Dartmouth that ChromaDex was  
21 in danger of going bankrupt, didn't you?

22 A. I do not recall.

23 Q. You told Dartmouth that ChromaDex had  
24 solvency problems, didn't you?

05:56:26 25 A. I do not recall.

1 Q. You told Dartmouth, looking at letter  
2 Item A, that ChromaDex had cash flow and burn rate  
3 issues and was under great pressure, correct?

4 A. I do not recall.

05:56:44 5 Q. You told Dartmouth that ChromaDex had  
6 insider trading issues, true?

7 A. I do not recall.

8 Q. Basically, everything on Exhibit 153  
9 that's listed here Dartmouth got from you, correct?

05:56:58 10 A. I do not know.

11 Q. And they got it from you during the  
12 meeting in late August 2016, yes?

13 A. I do not know.

14 Q. Do you have any idea, then, where  
05:57:08 15 Dartmouth came to the conclusions -- came to the  
16 understandings that Mr. Ilani ticks off here on  
17 page 1 of Exhibit 153?

18 A. It says that he conducted some form of  
19 search for proof in the beginning of this note.

05:57:26 20 Q. Do you remember sending him over a pile  
21 of PDFs and a pile of articles and a pile of public  
22 reports about ChromaDex?

23 A. I do not recall.

24 Q. Do you remember sending that over to  
05:57:37 25 his colleague, the woman we talked about before,

1 Ms. Bhakuni?

2 A. I do not recall.

3 Q. Well, what did you send to Dartmouth,  
4 sir?

05:57:46 5 A. I do not recall.

6 Q. Did you send anything to Dartmouth?

7 A. Again, I do not recall.

8 Q. How did the new patent strategy work  
9 out that you texted Mr. Alminana about in

05:58:07 10 Exhibit 142, the one that was ultrasensitive?

11 MR. SACCA: Object to the form of the  
12 question.

13 Q. How did that turn out?

14 A. I do not know.

05:58:16 15 Q. You said it was game-changing and  
16 ultrasensitive.

17 What was the outcome?

18 A. I do not know.

19 Q. Did you also approach Grace?

05:58:25 20 A. We did speak with Grace, yes.

21 Q. Did you trash ChromaDex to Grace like  
22 you did to Dartmouth?

23 A. I don't recall the specifics of our  
24 meetings with Grace.

05:58:36 25 Q. [REDACTED]

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Q. Go to Exhibit 142, please, sir, that's the set of text messages with Mr. Alminana. Please turn to page 4. I'd like to direct your attention to row 10601 on page 4.

Do you see that?

A. Yes.

Q. Do you remember writing to Mr. Alminana that "Grace is the big key here"?

Do you see that?

A. I see that. I do not recall.

Q. Why did you write that?

A. I do not know.

Q. What does "big key" mean?

A. I do not know.

Q. Why is Grace the big key?

A. I don't know.

Q. The next line you write to -- you follow up and you write again to Mr. Alminana, "The Dartmouth was is icing."

What did you mean by that?

A. I do not know.

Q. Did you mean like icing on the cake?

A. I do not know.

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1 Q. Or did you mean, like, icing in hockey?

2 A. I do not know.

3 Q. What did you mean?

4 A. Again, I do not know.

05:59:48 5 Q. Is it your understanding, just reading  
6 this, that what you meant is Dartmouth is icing on  
7 the cake, as that phrase is sometimes used?

8 A. I do not know what this message  
9 intended.

06:00:01 10 Q. That's like ATM; you don't know what it  
11 means?

12 A. That's correct.

13 Q. Then in the next line you write, "She  
14 sucks."

06:00:12 15 Do you see that?

16 A. I do.

17 Q. Who are you writing about there? What  
18 did you meant?

19 A. I do not know.

06:00:17 20 MR. SACCA: Mike, just to let you know,  
21 you've got about a minute left in your seven  
22 hours.

23 MR. ATTANASIO: No. We'll get official  
24 time. It's like ten minutes.

06:00:24 25 MR. SACCA: I don't think so.



1 MR. ATTANASIO: Time?

2 THE VIDEOGRAPHER: You have about a  
3 minute left.

4 MR. ATTANASIO: Okay. Oh, 6:00.

06:00:30 5 That's true.

6 BY MR. ATTANASIO:

7 Q. Okay. Do you recall participating in a  
8 phone call with Grace on July 1st, 2016?

9 A. I do not.

06:00:38 10 Q. Do you recall any of the discussions  
11 that you had with Grace?

12 A. I do remember a meeting with a handful  
13 of Grace team members in the fall of 2016.

14 Q. Is that the meeting at which you  
06:00:58 15 learned that the NR sold by ChromaDex was not up to  
16 the 210 and 211 part standards that you talked about  
17 earlier?

18 A. I believe those meetings were one and  
19 the same.

06:01:14 20 Q. Okay. Did you communicate with  
21 anyone -- what do you recall other than that about  
22 your meetings with Grace?

23 A. Very little about the specifics.

24 Q. Do you remember sending to Grace a  
06:01:28 25 chart with Elysium's projected NR purchases over the

1 next five calendar years and sending that in  
2 August 2016?

3 A. I do not recall.

4 Q. Did you ever tell Grace that ChromaDex  
06:01:41 5 was not going to survive?

6 A. I do not recall.

7 MR. ATTANASIO: Okay. That's all I  
8 have, Mr. Marcotulli. Thank you for the time.

9 THE VIDEOGRAPHER: It is 6:03 p.m. We  
06:01:54 10 are going off the record.

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ACKNOWLEDGEMENT

I, ERIC MARCOTULLI, having appeared for my deposition on March 27, 2019, do this date declare under penalty of perjury that I have read the foregoing deposition, I have made any corrections, additions or deletions that I was desirous of making in order to render the within transcript true and correct.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 30<sup>th</sup> day of May, 2019.

  
ERIC MARCOTULLI

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ChromaDex, Inc.,

Plaintiff,

v.

Elysium Health, Inc. and Mark  
Morris,

Defendants.

Case No.: 8:16-cv-02277-CJC (DFM)

Elysium Health, Inc.,

Counterclaimant,

v.

ChromaDex, Inc.,

Counter-Defendant.

**Errata for March 27, 2019 Deposition of Eric Marcotulli**

Location	Current Language	Corrected Language	Reason
47:13	"His name is [REDACTED]"	"His name is [REDACTED]"	Typographical error
72:9	"...is a sirtuin-activated..."	"...is a sirtuin-activating..."	
109:22-23	"...210/211 compliance CGMPs, which is the, in our opinion, highest quality CGMP profile..."	"...210/211 compliance cGMPs, which is the, in our opinion, highest quality cGMP profile..."	Typographical error

111:1-2	"...we do so in accordance with CGMPs. In fact, we can make this product at 210 and 211 compliance CGMPs."	"...we do so in accordance with cGMPs. In fact, we can make this product at 210 and 211 compliance cGMPs."	Typographical error
119:9	"...October 2015, you had negotiations with Elysium..."	"...October 2015, you had negotiations with ChromaDex..."	Clarification
159:16	"...advisor/consultant at the time named Jean Wang, who..."	"...advisor/consultant at the time named Gene Wang, who..."	Typographical error
181:6	"...the hope here was to let's fire Ryan..."	"...the hope here was to inspire Ryan..."	Transcription error
216:16	"Yet."	"Yes."	Typographical error
294:9	[REDACTED]		Typographical error
302:22	"... writing to [REDACTED]"	"... writing to [REDACTED]"	Typographical error

Deponent's Signature



Date

May 30, 2019

CERTIFICATE

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

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

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

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

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



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KATHLEEN T. KEILTY, CSR  
License No. 000755