

# **EXHIBIT 3**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION  
HONORABLE CORMAC J. CARNEY, U.S. DISTRICT JUDGE

CHROMADEx, INC.,	)	
	)	
Plaintiff,	)	<b>Certified Transcript</b>
	)	
vs.	)	Case No.
	)	8:16-cv-02277-CJC-DFM
ELYSIUM HEALTH, INC. AND MARK	)	
MORRIS,	)	<b>Public Proceedings</b>
	)	
Defendants.	)	
	)	

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REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS  
MOTION HEARING  
**(Excluding in-camera proceedings)**  
TUESDAY, JANUARY 21, 2020  
1:30 P.M.  
LOS ANGELES, CALIFORNIA

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**DEBBIE HINO-SPAAN, CSR 7953, CRR**  
FEDERAL OFFICIAL COURT REPORTER  
350 WEST 1ST STREET, SUITE 4455  
LOS ANGELES, CA 90012-4565  
dhinospaan@yahoo.com

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**APPEARANCES OF COUNSEL:**

**FOR THE PLAINTIFF:**

COOLEY LLP  
BY: BARRETT J. ANDERSON, ESQ.  
4401 Eastgate Mall  
San Diego, California 92121  
858-550-6000  
banderson@cooley.com

**FOR THE DEFENDANTS:**

KAPSLAN HECKER & FINK LLP  
BY: ROBERTA ANN KAPLAN, ATTORNEY AT LAW  
350 Fifth Avenue  
Suite 7110  
New York, New York 10118  
212-763-0883  
rkaplan@kaplanhecker.com

COHEN WILLIAMS LLP  
BY: REUVEN L. COHEN, ESQ.  
724 South Spring Street  
9th Floor  
Los Angeles, California 90014  
213-232-5160  
rcohen@cohen-williams.com

COHEN WILLIAMS LLP  
BY: MARC S. WILLIAMS, ESQ.  
724 South Spring Street  
9th Floor  
Los Angeles, California 90014  
213-232-5160  
mwilliams@cohen-williams.com

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**APPEARANCES OF COUNSEL (CONTINUED) :**

**FOR THE DEFENDANTS :**

BY: JOSEPH N. SACCA, ESQ.  
45 Rockefeller Plaza  
New York, New York 10111  
212-589-4200  
jsacca@bakerlaw.com

**ALSO PRESENT :**

MARK FRIEDMAN, ChromaDex, Inc., general counsel

1                   **LOS ANGELES, CALIFORNIA; TUESDAY, JANUARY 21, 2020**

2                                   **1:30 P.M.**

3                                   - - -

4                   THE COURTROOM DEPUTY:   Calling case

01:30PM 5                   SACV 16-2277-CJC, *ChromaDex, Inc., versus Elysium.*

6                   MR. ANDERSON:   Barrett Anderson from Cooley LLP on  
7                   behalf of ChromaDex.   Excuse me, Your Honor.

8                   THE COURT:   Go ahead.

9                   MR. ANDERSON:   With me today in the courtroom is  
01:30PM 10                  Mark Friedman, general counsel for ChromaDex.

11                  THE COURT:   Good afternoon, gentlemen.

12                  MR. WILLIAMS:   Good afternoon, Your Honor.   Marc  
13                  Williams and Reuven Cohen.   We're the proposed local counsel  
14                  for Elysium Health, Inc., and Mark Morris.

01:30PM 15                  MR. COHEN:   Good afternoon, Your Honor.

16                  THE COURT:   Nice to see you gentlemen again.

17                  Okay.   Well, thanks for --

18                  MR. WILLIAMS:   And we also have Roberta Kaplan here,  
19                  who's the proposed lead counsel for Elysium and Mr. Morris.

01:30PM 20                  THE COURT:   Hello, Ms. Kaplan.   Nice to see you  
21                  again.

22                  MS. KAPLAN:   Good afternoon, Your Honor.   Nice to  
23                  meet you.

24                  THE COURT:   Okay.   Let me tell you why I called you  
01:30PM 25                  in here.   I had juggled my calendar and I was ready to give a

1 trial date of March 10th and then have a pretrial conference on  
2 March 2nd. And then I saw the request for substitution of  
3 counsel and I was -- I wasn't anticipating this. So I wanted  
4 to hear everybody's thoughts.

01:31PM 5 And I guess the first obvious question is,  
6 Mr. Williams, can you be ready to go to trial in March?

7 MR. WILLIAMS: Yeah, that's -- our understanding was  
8 that's -- there was discussion about the case being set for  
9 trial in the summer.

01:31PM 10 THE COURT: There was.

11 MR. WILLIAMS: And that was our understanding and  
12 the basis upon which we filed the substitution.

13 THE COURT: And agreed to come in. Yeah, that was  
14 my concern. I went through my calendar and I am really booked  
01:31PM 15 up during the summer. But I was able to juggle a few things  
16 and I thought I could get everybody in in March. I'm probably  
17 hitting -- surprising you a little bit, so why don't you noodle  
18 it for a moment.

19 And why don't I ask Mr. Anderson, is ChromaDex ready  
01:32PM 20 to go in March?

21 MR. ANDERSON: Yes, Your Honor.

22 THE COURT: Okay.

23 MS. KAPLAN: Your Honor, can we have -- I have to  
24 admit, I almost -- my heart skipped a beat when you said that,  
01:32PM 25 to be quite frank. Can we have a couple minutes to confer? We

1 may need to call the client as well.

2 THE COURT: Absolutely.

3 MS. KAPLAN: Okay.

4 MR. COHEN: Your Honor, while we're at it, is it --

01:32PM 5 and frankly, I probably have the least amount of information  
6 about the history of the case in the room. I know that  
7 proposed lead counsel's ready, certainly, for summertime trial.

8 Is the Court not flexible with respect to the March date? In

9 other words, are there other options or is that pretty much

01:33PM 10 what the Court is thinking?

11 THE COURT: It's pretty much what I'm thinking. But

12 I want to be fair. And I know I had indicated that there -- I  
13 was hoping I could get you in in the summer. That wasn't going  
14 to work out. But given this case, I think it's the oldest case  
01:33PM 15 on my docket.

16 MR. COHEN: I would imagine so, Your Honor. The  
17 only thing is it's my understanding that there are some nuances  
18 with respect to the relationship that sort of induced

19 Ms. Kaplan and our firm getting involved. So it might make

01:33PM 20 sense if we take a few minutes, not just to confer with the  
21 client, but also amongst ourselves.

22 THE COURT: Absolutely. Take as much time as you  
23 want.

24 MR. COHEN: Thank you, Your Honor.

01:33PM 25 MS. KAPLAN: Thank you, Your Honor.

1                   **(Pause in proceedings.)**

2                   THE COURT: You know, before I give you -- another  
3 thing to talk about, given what I perceive to be pretty  
4 litigious conduct on both parts, both sides, I didn't think  
01:34PM 5 this case wasn't going to settle. I thought the chances of  
6 settlement seemed nil. So I said I got to get this out to  
7 trial. And that was also, quite frankly, part of my analysis.

8                   If you feel that there is a reasonable possibility  
9 of settlement, I would obviously want to know that. But given  
01:34PM 10 the law and motion that's occurred on this case, given how old  
11 this case is -- I know previous settlement negotiations went  
12 nowhere -- my thinking is this is only going to get resolved  
13 now by trial.

14                  MS. KAPLAN: So, Your Honor, we're obviously  
01:34PM 15 relatively new. And I understand exactly what Your Honor said.  
16 On the other hand, having litigated cases like this for 20-some  
17 years now, given where the bid-ask is, it's not a case that  
18 should go to trial. Frankly, it's a case that should settle.  
19 But I appreciate what you said about the litigiousness and  
01:35PM 20 consummately end it between the parties.

21                  THE COURT: Okay. So take as much time as you need  
22 and let me know when you're ready to talk.

23                   **(Recess from 1:35 p.m. to 1:57 p.m.)**

24                  THE COURT: All right, counsel, what's the word?

01:57PM 25                  MR. COHEN: Your Honor, it looks like I've somehow



1 been conscripted, the guy who knows the least about any of  
2 this. But with the Court's indulgence, this is what we would  
3 ask. We would -- I'll start with where we'd like to go with  
4 Your Honor and then work backwards from there.

01:57PM 5 Without anyone's objection, we would ask for an  
6 in-camera hearing to make a short proffer to the Court about  
7 some privileged information about this sort of posture of the  
8 relationship. But there are two things before we ask for that,  
9 I think, that the, you know, the Court should know for its own  
01:58PM 10 edification.

11 Number one is had we not moved -- or really  
12 Ms. Kaplan's firm not eventually moved to come in, current  
13 counsel would have sought to withdraw. That's one thing. The  
14 other thing is apparently it's -- Mr. Attanasio has a conflict  
01:58PM 15 with the proposed -- the Court's proposed trial date. So that  
16 is all sort of in the mix in addition to what we would ask for  
17 the Court's indulgence to propose in camera.

18 THE COURT: All right. Why don't I deal with this  
19 in camera.

01:58PM 20 MR. ANDERSON: Your Honor, just to make sure it's  
21 clear, Mike Attanasio, the lead trial counsel who couldn't be  
22 here today, unfortunately, has another trial here in the  
23 Central District starting March 9th before Judge Huff sitting  
24 by designation. So with that in mind, obviously, plaintiff  
01:58PM 25 would like to have this resolved as soon as possible. So we're

1 looking for the earliest date that Your Honor can manage. But  
2 beyond that, that's what we have, Your Honor.

3 THE COURT: All right. Okay. Why don't you give us  
4 a little time in camera and we'll call you when --

01:59PM 5 Yeah, you could stay here.

6 If you would just wait outside.

7 MR. COHEN: And, Your Honor, we have conferred with  
8 current counsel, Mr. Sacca, and he is okay if we do it without  
9 his presence, if that's acceptable to the Court.

01:59PM 10 THE COURT: That would be fine.

11 MR. COHEN: Thank you.

12 **(In-camera proceedings outside the presence**  
13 **of plaintiff and Mr. Sacca.)**

14 THE COURT: All right. I think everybody's in here.

02:05PM 15 Mr. Sacca, now I had the in-camera hearing where I  
16 got a very general sense of some of the problems and issues in  
17 the relationship. But after hearing that, I am going to  
18 approve the substitution of counsel and allow you to withdraw.

19 MR. SACCA: Thank you, Your Honor.

02:05PM 20 THE COURT: So you're excused.

21 MR. SACCA: Thank you.

22 **(Mr. Sacca left the courtroom.)**

23 THE COURT: So let me sign this order approving  
24 that.

02:06PM 25 All right. What are we going to do with this case?

1 This case is a problem for me. It's so old. I don't know how  
2 and when, as I'm sitting here, it got off the tracks, but it  
3 got off the tracks.

4 I know, Mr. Anderson, you and your colleagues have  
02:06PM 5 disagreed with my characterization of the case is that at its  
6 heart and soul, I really think this is a breach of contract  
7 case. There were some troubling e-mails or texts that I saw  
8 from Mr. Morris in connection with the summary judgment motion.  
9 And I could understand ChromaDex's anger and frustration, quite  
02:06PM 10 frankly. But I didn't -- I never saw this as a \$60 million  
11 case. And you respectfully disagree with that. And it's no  
12 longer a \$60 million case, but I guess it's a \$10 million case  
13 thereabouts. Still a lot of money litigating in Federal Court.

14 And I'm probably singing to the choir when I say  
02:07PM 15 this, it's not an efficient way to do business. And there are  
16 some cases where you just can't settle because the amount is so  
17 big it might be the crown jewel of technology. But this is a  
18 case, it just seems to me, that should resolve itself. But I  
19 was under the strong impression from the briefing and summary  
02:07PM 20 judgment that that wasn't going to happen.

21 So first question, I guess, for both sides now is:  
22 Is there any reasonable possibility that this case might  
23 settle? And please don't hand me a line. If it's not, I need  
24 to know that.

02:07PM 25 MR. ANDERSON: Your Honor, I think from our

1 perspective, we're always amenable to settlement discussions.  
2 I would say the one big issue out here that's not monetary  
3 related is the patent misuse counterclaim, which is obviously  
4 halting a patent infringement case in Delaware.

02:08PM 5 Now, resolving that might be a little more  
6 difficult, but we are amenable to settlement discussions. And  
7 we view, as Your Honor stated, putting a trial date on a  
8 calendar is one of the most effective ways to bring a party  
9 together.

02:08PM 10 THE COURT: Right. The problem is with the Central  
11 District being down nine judges, scheduling trials is very  
12 precious. Giving you trial time is very precious. And am I  
13 going to be upset if I juggle my calendar and then you settle  
14 the case? Maybe. Couple years ago, no, I wouldn't have been.  
02:08PM 15 But I've had to do certain things in advance, criminal trials.

16 And you can imagine in a criminal case, they don't  
17 like having their trials advanced. But I have to do that  
18 because I can't be at three places at once. And I don't know  
19 whether the government is not making reasonable plea offers or  
02:09PM 20 defendants realize that we're being jammed and they're maybe  
21 trying to hold out for a better deal, I don't know. But I'm  
22 finding myself jammed, so to speak.

23 So if it's going to go to trial, I want to prepare  
24 it to go to trial. And I don't want to give you a trial date  
02:09PM 25 that I'm just going to continue again because that's very

1 unfair to your clients, especially after this case has been  
2 pending for over three years. I don't want to do that to you  
3 and start and stop.

4           Too early, Ms. Kaplan, to get any kind of read,  
02:10PM 5 whether there's any kind of reasonable possibility of  
6 settlement? Before you answer, my response to the patent  
7 misuse is maybe there were some things that shouldn't have been  
8 done. I know ChromaDex disagrees that anything was improper.  
9 But they sure seem like they tried to purge. And as I  
02:10PM 10 understand the patent misuse, you're trying to get them for  
11 conduct that they did a while ago.

12           And again, I'm having -- I'm having a little bit of  
13 a problem being convinced that there really is an impact on  
14 competition by something that happened, which I'm going to  
02:10PM 15 assume shouldn't have happened. But they've refunded all the  
16 money except to Elysium, as I understand it. And now they're  
17 willing to pay that, but I guess as an offset. It just didn't  
18 seem to me that that should be an impediment to settlement  
19 either.

02:11PM 20           MS. KAPLAN: So, Your Honor, I'm short so I'm going  
21 to stand here at the table. I essentially agree with you.  
22 We're new to this, of course. But having done the work that  
23 we've done so far, I agree with you, that it's essentially a  
24 contracts case. The advantage -- or one huge advantage of your  
02:11PM 25 summary judgment ruling is it has narrowed the issues and

1 certainly narrowed, as Your Honor pointed out, the scope of the  
2 damages. So we're looking at 2- to \$10 million range. In a  
3 reasonable world, commercial cases in that range settle. The  
4 vast majority of the ones I've ever litigated has settled.

02:11PM 5 I know there was a magistrate that was involved in  
6 the settlement, and that was, as I understand, not very  
7 successful. One thing that I had been thinking about just -- I  
8 always think about when I do a case is retaining a private  
9 mediator. I personally have mediated cases with

02:12PM 10 Judge Weinstein, Danny Weinstein, who's out here in L.A. where  
11 the parties were, frankly, far more antagonistic than they are  
12 here that Judge Weinstein was able to settle. So we would be  
13 amenable to doing something like that. It's always worth it.  
14 You're absolutely right. All the money and expense and sheer  
02:12PM 15 aggravation of a jury trial in federal court, that these kinds  
16 of numbers, it certainly makes sense to try.

17 THE COURT: All right. So that's going to be a high  
18 priority is trying to get the case to try. So this is a  
19 question. I can try to go through my calendar now again to see  
02:12PM 20 if I can find a date that I can place you. But in connection  
21 with that, there's going to be a lot of work to get ready for  
22 trial because I'm not going to impanel a jury on this case  
23 unless everybody's really prepared and the rhetoric is put  
24 aside and this is what the case is all about.

02:13PM 25 So the order that I send out -- and this is not on

1 your watch, but the order that I send out on the supplemental  
2 briefing, I hate saying it, I must have been right because how  
3 did this case in such a short period of time go from  
4 60-something million dollars to \$10 million? And the majority  
02:13PM 5 of that money differential was taken off the table by  
6 ChromaDex.

7           Granted, my order for briefing was pretty  
8 suggestive, and I realize that. So maybe the writing was on  
9 the wall. But I want you to be ready for trial. I'm going to  
02:13PM 10 probably have one, if not two, pretrial conferences. We'll  
11 deal with any remaining motions in limine. I won't bore you  
12 today with my philosophy about motions in limine, but I don't  
13 like them. They're disfavored, especially after such an  
14 extensive summary judgment. Everybody should know what the  
02:14PM 15 issues are.

16           I'm also going to put time limitations on both  
17 sides. I don't like doing that, but again, time is precious  
18 with juries right now. And we're going to ask people to give  
19 up their valuable time with their family, friends, work, and  
02:14PM 20 other commitments they have. They don't want to be cooling  
21 their jets, and they don't want to be bored. We got to present  
22 the case in an efficient but persuasive, understandable manner.

23           So I was hoping that we could get this trial done in  
24 four to six days, trial days, is what my reasonable estimate  
02:14PM 25 is. And I would divide that time up equally among both sides.

1           Again, there's going to be a lot of work that I'm  
2 going to require of you specifically in connection with the  
3 pretrial motions, the conclusions of fact and law, the joint  
4 statement of the case, the joint witness list, the exhibit  
02:15PM 5 list, the jury instructions, and then, obviously, the verdict  
6 form. And I'm one of those that has to be pretty much  
7 finalized before we impanel a jury.

8           One of my pet peeves is that it always astonishes me  
9 how lawyers don't finalize the jury instructions until trial,  
02:15PM 10 in the midst of trial, and they send their junior partners or  
11 lower-level associates to kind of take the first draft. I'm of  
12 the belief that the jury instructions is what really drives  
13 everything, that once the Complaint has been prepared, you  
14 should be working on your jury instructions so you have an idea  
02:16PM 15 of what your claims require. And then it's what I use to guide  
16 my analysis on the pretrial motions and all of the evidentiary  
17 issues on what's relevant, what's character evidence, what's  
18 not.

19           So I'm going to work you pretty hard. And maybe  
02:16PM 20 we'll only have two pretrial conferences. But before those,  
21 I'm going to be having deadlines to submit all this stuff.  
22 That's a long-winded way of asking you, do you want to try to  
23 settle before we undertake this? Or do you want me to set the  
24 trial date and then start doing all this work?

02:17PM 25           MS. KAPLAN: So, Your Honor, it takes two sides. We



1 would be amenable to that, but there's no point in doing it  
2 unless -- it takes two sides to settle the case.

3 MR. ANDERSON: Your Honor, as I said, we're  
4 certainly amenable to that as well. I think, you know, in the  
02:17PM 5 interim, I'd like to ask my client whether or not a trial date  
6 is something that we absolutely would like today. If I could  
7 just have one moment on that.

8 THE COURT: Okay.

9 **(Pause in proceedings.)**

02:17PM 10 MR. ANDERSON: Your Honor, just to give you a quick  
11 outline of where we've been before, the parties have attempted  
12 to mediate this on numerous occasions. In fact, the New York  
13 litigation involved a mediation. We had the mediation here  
14 before Magistrate Judge McCormick. All of the efforts have  
02:18PM 15 failed. And while we welcome working with the new counsel for  
16 Elysium, we also do think that the shadow of trial may be the  
17 only thing that brings the parties together. But, of course,  
18 we'll respect whatever decision you make.

19 THE COURT: And I appreciate that. That's why I'm  
02:18PM 20 asking you. I don't want to waste anybody's time. If we're  
21 going to have a trial, let's go.

22 Given my March date isn't go to work, I'm going to  
23 need to get with Gabby and think about when I can get you out.  
24 And then you're now on notice. We're going to have a few  
02:18PM 25 pretrial conferences before then. I'm going to want all

1 that -- those pretrial filings done again; contentions of fact  
2 and law, joint statement of the case, joint witness list,  
3 memorandum of contentions of fact and law, both sides, the  
4 exhibit list, jury instructions and verdict form.

02:19PM 5 As far as settlement, I can order you to a  
6 magistrate judge, but it doesn't sound to me that that would be  
7 beneficial or productive. So I won't do that. And I'm going  
8 to assume you're not going to settle. And if you settle, that  
9 would be great. So the ball's in your court, so to speak.

02:19PM 10 So, Ms. Kaplan, if after thinking about it you want  
11 to go to a private mediator, I encourage and support that. But  
12 it takes two to go to the dance, so to speak, especially if  
13 it's private mediation. And if ChromaDex is more comfortable  
14 proceeding in a trial, we'll proceed to trial.

02:20PM 15 MS. KAPLAN: Understand, Your Honor. And we're  
16 certainly ready to proceed to trial if necessary.

17 THE COURT: Okay. So I got to get an order out.

18 The one little last pitch is please don't be  
19 thinking about filing a lot of motions in limine. One thing  
02:20PM 20 that's going to upset me is if I see eight or nine motions in  
21 limine. I'm actually thinking before I took the bench today,  
22 thinking we were going to have a March trial, there weren't  
23 going to be any motions in limine.

24 So at this point, given all the law and motion work  
02:20PM 25 that's done, given that there's going to be time limitations,

1 given most of the damages, I'm sure there's going to be an  
2 expert. But it's just going to be repeating numbers; right?  
3 It's not going to -- it's not very complex, economic principles  
4 or formulas. I'm hoping we don't have to have a *Daubert*  
02:21PM 5 hearing before the trial because that's going to take another  
6 day. And the motions in limine on discrete pieces of evidence,  
7 I just don't see that. I don't see any evidence that's not  
8 going to come in that I considered in connection with the  
9 summary judgment motions.

02:21PM 10 MS. KAPLAN: Understood, Your Honor. We'll  
11 absolutely keep that in mind. I'm not going to do the  
12 Paul, Weiss version of pretrial filings.

13 THE COURT: Good. Good. Because it will put me in  
14 a bad mood.

02:21PM 15 So you need an order from me, and I'll try to get  
16 that out this week.

17 Okay. Any questions before I let you go?

18 MR. WILLIAMS: Just a heads-up, we'll get the  
19 pro hoc vice applications in by tomorrow.

02:21PM 20 THE COURT: And I'll sign off on those, and then  
21 we'll be ready to go.

22 Okay. Anything further?

23 MR. ANDERSON: No, Your Honor.

24 THE COURTROOM DEPUTY: All rise.

02:22PM 25 **(Proceedings concluded at 2:22 p.m.)**

