

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

*In re Elysium Health-ChromaDex Litigation*

Case No. 1:17-cv-07394 (CM)

**NOTICE OF MOTION TO  
WITHDRAW**

PLEASE TAKE NOTICE that, upon the accompanying *ex parte* Affidavits of Joseph N. Sacca, Benjamin D. Pergament, Tracy L. Cole, Esterina Giuliani, and Kristin L. Keranen, dated February 4, 2020 (the “Affidavits”) to be filed under seal, and pursuant to Local Civil Rule 1.4, the law firm of Baker & Hostetler LLP moves this Court to withdraw as counsel for Defendant Elysium Health, Inc. (“Elysium”) in this matter.

Counsel from Frankfurt Kurnit Klein & Selz PC (“Frankfurt Kurnit”) and Kaplan Hecker & Fink LLP (“Kaplan Hecker”) entered notices of appearance on behalf of Elysium in the above-captioned action on January 29, 2020. *See* ECF Nos. 99-101. Kaplan Hecker also appeared *pro hac vice* on behalf of Elysium last month in the action pending in the United States District Court for the Central District of California captioned *ChromaDex, Inc. v. Elysium Health, Inc. and Mark Morris*, Case No. 8:16-cv-02277-CJC-DFM (the “California Action”). *See* ECF No. 101. Baker no longer represents Elysium in the California Action.

Baker has worked with Kaplan Hecker to ensure a smooth transition and minimize delay. All discovery in the above-captioned action is to be completed by June 20, 2020, with document discovery to be completed by February 23, 2020 and fact depositions completed by April 11, 2020. *See* ECF Nos. 77, 92. No trial date has been set. Baker has transferred or made available to Elysium’s new counsel the relevant data for the above-captioned action, including materials from

the California Action that are relevant to this Action, and Baker agrees to provide reasonable cooperation to Frankfurt Kurnit and Kaplan Hecker if needed going forward. *See* Affidavits at ¶ 6. “Where discovery in a case has not yet closed and the case is not on the verge of trial readiness, prejudice is unlikely to be found.” *Karimian v. Time Equities, Inc.*, 2011 WL 1900092, at \*3 (S.D.N.Y. May 11, 2011) (internal quotations omitted) (collecting cases).

The reason for Baker’s withdrawal is set out in the Affidavits, which are requested to be filed *ex parte* and under seal, as the attorney-client relationship is implicated. *See, e.g., C.D.S. Inc. v. Zetler*, 16 Civ. 3199, 2017 WL 1103004, at \*4 n.2 (S.D.N.Y. Mar. 23, 2017) (“As is typical in these circumstances, the Court directed NMM to submit its memorandum and any supporting materials *ex parte* given that the attorney-client relationship is implicated in the nature of its application. The Court will file these papers under seal. It is well-settled that this is the appropriate method to proceed in these circumstances.”).

Baker respectfully requests that, pursuant to Local Rule 1.4, the Court order the withdrawal of Joseph N. Sacca, Benjamin D. Pergament, Tracy L. Cole, Esterina Giuliani, and Kristin L. Keranen from the above-captioned action.

Dated: February 4, 2020

Respectfully submitted,

**BAKER & HOSTETLER LLP**

By: /s/ Joseph N. Sacca\_\_\_\_\_

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