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VIA ECF

Hon. Lewis J. Liman
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

RE: *In re: Elysium Health-ChromaDex Litigation (Case 1:17-cv-07394-LJL)*

Dear Judge Liman:

We represent Defendant/Counter-Claimant Elysium Health, Inc. (“Elysium”) in the above-referenced matter, along with Kaplan Hecker & Fink LLP, and write to request a conference to address a proposal for a four-month extension of the current scheduling order. (Dkt. 77 and 92.) Attached to this letter as Exhibit A is a chart of the current and Elysium’s proposed deadlines. We conferred with counsel for Plaintiff/Counter-Defendant ChromaDex, Inc. (“ChromaDex”) on the extension request by telephone on February 12, 2020. ChromaDex consented only to a 30-day extension request, which Elysium believes is insufficient given the circumstances described below.

The dispute between the parties has a long history. Elysium sells a dietary supplement called Basis. Basis contains two ingredients, nicotinamide riboside (NR) and pterostilbene (PT). ChromaDex is a manufacturer of NR. ChromaDex used to supply Elysium with NR before entering the market for itself with a product called Tru Niagen. Now, Elysium and ChromaDex are direct competitors.

On December 29, 2016, ChromaDex sued Elysium in the U.S. District Court for the Central District of California for breach of contract and business torts (Case No. 8:16-cv-02277) (the “California Action”). Elysium counterclaimed for breach of contract and business torts on January 25, 2017.

On September 27, 2017, Elysium sued ChromaDex in the U.S. District Court for the Southern District of New York for false advertising, trade libel, deceptive business practices, and tortious interference arising out of ChromaDex’s abuse of the citizen petition process of the FDA. (Dkt. 1.) On October 25, 2017, ChromaDex commenced a separate action against Elysium in New York for false advertising, federal unfair competition, deceptive business

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practices, and tortious interference. (Dkt. 1 in 1:17-cv-08239.) Elysium filed counterclaims for false advertising, federal unfair competition, and deceptive business practices. (Dkt. 45.) The two cases were consolidated on November 3, 2017 (the “New York Action”). (Dkt. 27.)

Also on November 3, 2017, the Court stayed discovery pending resolution of any motions to dismiss. (Dkt. 27.) Due to extensive motion practice, discovery was stayed through February 8, 2019. (Dkt. 72.) The parties’ proposed scheduling order (Dkt. 76) was adopted by the Court on March 21, 2019. (Dkt. 77.) On August 21, 2019, following mutual amendments of the parties’ respective pleadings, the parties requested an adjournment of all deadlines until after the trial in the California Action, which at the time was expected to commence on October 15, 2019. (Dkt. 91.) Instead, the Court granted a six-month extension of all deadlines. (Dkt. 92.) On October 11, 2019, the parties notified the Court that the trial in the California Action had been vacated until after that Court ruled on the summary judgment motions. (Dkt. 94.) Although the parties did not request an extension, the Court stated in response that it would not grant further extensions. (Dkt. 95.)

Since that time, however, the California court issued a summary judgment order and set a trial date in the California Action and there has been a complete turnover of counsel in the New York Action. On January 10, 2020, ChromaDex’s current counsel, LTL Attorneys LLP, first appeared. (Dkt. 97.) Frankfurt Kurnit Klein & Selz PC, as well as Kaplan Hecker & Fink LLP, first appeared on Elysium’s behalf on January 29, 2020. (Dkt. 99.) Shortly thereafter, on February 4, 2020, former counsel for both parties in the New York Action moved to withdraw. (Dkt. 103-113.) The same day, the New York Action was reassigned to Your Honor. And, on January 22, 2020, the California Action was set for trial beginning May 12, 2020.

Upon appearing in this matter, Elysium’s new counsel became aware that both parties’ prior counsel had engaged in minimal discovery to date. The current scheduling order, however, affords the parties little remaining time to complete discovery. The current deadline for completion of document discovery is February 23, 2020, less than ten days away. Yet, prior counsel for both parties, perhaps focusing on the California Action, did not produce a single document. Nor have the parties even submitted a proposed Electronically-Stored Information Order or a Protective Order, which new counsel only agreed upon yesterday. Moreover, the current deadline for completion of depositions is April 11, 2020, but, again, both parties’ prior counsel did not notice a single deposition, despite the parties’ initial disclosures identifying over fifty potential witnesses.

Further compounding the challenges with the current discovery deadlines, both parties filed motions for leave to amend their respective pleadings on February 10, 2020. (Dkt. 117-123.) These new allegations may require the parties to seek additional document discovery.

Elysium and ChromaDex both agree that an extension of the current scheduling deadlines is warranted. Elysium believes a four-month extension is necessary under the circumstances. This would give sufficient time to complete discovery in an organized and meaningful manner

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without interfering with the current trial schedule in the California Action. ChromaDex is suggesting a one-month extension, which would be insufficient. Elysium can only speculate why ChromaDex will not stipulate to a more reasonable extension, but Elysium would be severely prejudiced by having to review ChromaDex's entire document production—not due to Elysium's new counsel, but rather because ChromaDex has not produced *any* documents to date—and prepare for potentially dozens of depositions with only thirty additional days, not to mention engaging in expert discovery. Moreover, a one-month extension would not provide sufficient time for additional discovery related to the amended pleadings and would create a conflict between depositions in this matter and witness preparation for the trial in the California Action.

Therefore, Elysium respectfully requests a conference to address Elysium's proposal that this Court extend each of the deadlines in the current scheduling order by four months. A chart showing the current and proposed deadlines is attached as Exhibit A to this letter.

Respectfully submitted,

/s/ Craig B. Whitney

Craig B. Whitney

cc: Roberta A. Kaplan, Esq.
Sean Hecker, Esq.
Gabrielle E. Tenzer, Esq.
David Shieh, Esq.
Kaplan Hecker & Fink LLP
Counsel for Elysium

ECF Counsel of Record

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EXHIBIT A

	Current Deadline	Proposed Deadline
Completion of Document Discovery	February 23, 2020	June 23, 2020
Completion of Depositions	April 11, 2020	August 11, 2020
Initial Expert Disclosures	April 25, 2020	August 25, 2020
Rebuttal Expert Disclosures	May 25, 2020	September 25, 2020
Completion of Expert Depositions	June 20, 2020	October 20, 2020
Completion of All Discovery	June 20, 2020	October 20, 2020
Submission of Joint Pretrial Order	August 28, 2020	December 28, 2020