

EXHIBIT C

From: Omar Tuffaha <omar.tuffaha@lrlattorneys.com>
Sent: Thursday, April 08, 2021 1:42 PM
To: Caterina, Tiffany <TCaterina@fkks.com>
Cc: Prashanth Chennakesavan <Prashanth.Chennakesavan@lrlattorneys.com>
Subject: RE: In re: Elysium Health-ChromaDex Litigation (17cv07394)

Dear Tiffany:

As discussed at the April 5, 2021 status conference, we write in response to your email of April 4, 2021 regarding Elysium's Second Set of Interrogatories and First Set of Requests for Admission.

Interrogatories

As set forth in our email on April 2, 2021, ChromaDex objects to Elysium's belated Second Set of Interrogatories, served on March 15, 2021. From the time this case was reassigned to Judge Liman, the Court has consistently made clear that the February 9, 2021 deadline was the deadline for completion of fact discovery. Elysium served its Second Set of Interrogatories 34 days after that date, and over a month after Elysium's last deposition of a ChromaDex fact witness.

In addition, ChromaDex objects to the Second Set of Interrogatories on the ground that Elysium exceeds the number of interrogatories permitted without stipulation or court order. *See* FRCP 33(a)(1) ("Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts."). Although the Second Set of Interrogatories purports to contain 14 interrogatories, the actual number including all discrete subparts numbers in the hundreds. As just one example, Interrogatory No. 11 alone asks for three distinct pieces of information for 20 different alleged statements, constituting 60 subparts. Similarly, Interrogatory No. 12 seeks four different pieces of information for each of the 20 statements identified in Interrogatory No. 11, constituting 80 subparts. Almost all of the interrogatories are similarly broad:

- Nos. 2-10 seek at least 10 separate pieces of information for each at-issue marketing communication;
- No. 14 seeks three separate pieces of information;
- No. 15 seeks information about 9 different products.

Elysium describes its Second Set of Interrogatories as consisting of either (1) contention interrogatories served pursuant to Local Rule 33.3(c), or (2) interrogatories served pursuant to Local Rule 33.3(b) that seek information about which ChromaDex's designated Rule 30(b)(6) witnesses were insufficiently prepared to provide testimony. Elysium has not specified which interrogatories fall into which category. Nonetheless, ChromaDex addresses each category in turn.

Contention Interrogatories

Local Rule 33.3(c) provides for “interrogatories seeking the claims and contentions of the opposing party.” Local Rule 33.3(c); *see also* Fed. R. Civ. P. 33(a)(2) (providing for interrogatories that “ask[] for an opinion or contention that relates to fact or the application of law to fact.”). An interrogatory seeking identification of facts or documents rather than the opposing party’s contentions or opinions is not transformed into a contention interrogatory merely because it contains the word “contend.” *See, e.g., Dot Com Ent. Grp., Inc. v. Cyberbingo Corp.*, 237 F.R.D. 43, 44 (W.D.N.Y. 2006) (finding that interrogatories were not contention interrogatories where they “simply require Defendants disclose the evidentiary basis upon which . . . a [legal] determination may be made at trial, presumably, with the assistance of expert opinion and legal argument based on such facts.”). Moreover, courts in the Southern District of New York have held that interrogatories seeking identification of all facts supporting a particular allegation are inherently improper. *See e.g., Pasternak v. Dow Kim*, No. 10 Civ. 5045 (LTS) (JLC), 2011 WL 4552389, at *2 (S.D.N.Y. Sept. 28, 2011) (collecting cases); *see also Clean Earth Remediation and Const. Servs., Inc. v. Am. Intern. Grp., Inc.*, 245 F.R.D. 137, 141 (S.D.N.Y. 2007) (collecting cases).

Here, none of the interrogatories in Elysium’s Second Set of Interrogatories are proper contention interrogatories. Elysium’s Interrogatories 2 and 3 ask ChromaDex to identify documents (namely, advertisements), and Interrogatories 11-15 ask ChromaDex to identify certain facts regarding various issues. These interrogatories are plainly not contention interrogatories. As to interrogatories 4-10, each follows the same format of asking ChromaDex to “state all facts supporting Your contention that” As set forth above, such interrogatories are inherently improper.

Interrogatories purportedly justified by ChromaDex’s 30(b)(6) witness testimony

Elysium states that the Second Set of Interrogatories includes “a handful of specific factual interrogatories seeking information that ChromaDex’s Rule 30(b)(6) witnesses could not provide at deposition.” As an initial matter, Elysium has failed to cite to any transcript where a witness was asked—and could not provide responses to—the facts sought in the interrogatories. Nor has Elysium identified 30(b)(6) topics that would cover its current overbroad requests.

Further, and importantly, during depositions of witnesses designated to testify regarding Elysium’s 30(b)(6) topics, where Elysium raised generalized concern during the deposition about the witness’s knowledge, we invited Elysium to identify specific concerns so as to attempt to remedy any issue during the deposition. Indeed, during multiple depositions, ChromaDex voluntarily provided information following breaks to the extent a designated witness did not have relevant information when asked. In one instance, where a witness did not have details about a particular topic, we designated another witness to respond to Elysium’s questions. Rough transcripts of witnesses were also made available to counsel on the same day that each deposition was taken.

At no point within the fact discovery period—or in the weeks following the 30(b)(6) depositions—did Elysium claim that the 30(b)(6) witnesses were unable to provide the information it now seeks. Elysium’s attempt to use interrogatories at this belated stage to seek such information is disingenuous and improper, particularly in light of the demonstrated willingness of ChromaDex and its witnesses to remedy Elysium’s concerns at the time.

Requests for Admission

As set forth in our email on April 2, 2021, ChromaDex also objects to Elysium’s belated First Set of Requests for Admission (“RFAs”), served on March 23, 2021. At the conference on April 5, 2021, Elysium represented that these RFAs only sought authentication of certain documents. As so limited, ChromaDex agrees to respond to the requests for authentication alone.

Thank you,
Omar

Omar H. Tuffaha

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From: Caterina, Tiffany <TCaterina@fkks.com>
Sent: Sunday, April 4, 2021 2:18 PM
To: Omar Tuffaha <omar.tuffaha@ltlattorneys.com>
Cc: Prashanth Chennakesavan <Prashanth.Chennakesavan@ltlattorneys.com>
Subject: RE: In re: Elysium Health-ChromaDex Litigation (17cv07394)

Dear Omar:

Elysium’s Second Set of Interrogatories (Nos. 2-15) consist of either contention interrogatories or interrogatories seeking information about which ChromaDex’s designated Rule 30(b)(6) witnesses were insufficiently prepared to provide testimony. Elysium’s RFAs seek the authentication of 16 documents produced by ChromaDex in this case.

The parties inherited Judge McMahon’s scheduling order from their predecessor counsel. It states “All discovery, including expert discovery, must be completed on or before December 20, 2019.” (Dkt. 77), para. 6). The parties have repeatedly extended the deadlines set forth in Judge McMahon’s scheduling order without distinguishing between some earlier deadline for the completion of contention interrogatories or the authentication of documents and the completion of all discovery. Under the current scheduling order the deadline for “Completion of All Discovery” is April 23, 2021. (Dkt. 165, pg. 2).

In accordance with Local Rule 33.3(c), Elysium served contention interrogatories “[a]t the conclusion of *other* discovery, and at least 30 days prior to the discovery cut-off date[]” of April 23, 2021. (Emphasis added). Indeed, in *Erchonnia Corp. v. Bissoon*, No. 07 CIV. 8696 DLC, 2011 WL 3904600, at *3 (S.D.N.Y. Aug. 26, 2011) upon which you rely in your email below, “the Court ordered that such contention interrogatories could be served by Erchonnia **only once it had finished taking discovery** from Meridian, and stated generally that contention interrogatories could be served **only after fact discovery had been completed**.” (Emphasis added).

Local Rule 33.3(b) permits interrogatories “if they are a more practical method of obtaining the information sought than a request for production or a deposition.” Elysium served a handful of specific factual interrogatories seeking

information that ChromaDex's Rule 30(b)(6) witnesses could not provide at deposition. Courts routinely order interrogatories as a remedy for incomplete 30(b)(6) testimony, rather than a new oral deposition. *See FBI v. Alexander*, C.A. 186 F.R.D. 137 (D.D.C. Dec. 23, 1998); *United States v. Massachusetts Indus. Finance Agency*, 162 F.R.D. 410 (D.Mass.1995).

Elysium's RFAs seek authentication of 16 documents produced by ChromaDex. Your email seems to suggest that there is some other "appropriate" time for the authentication of documents. The parties' deadline for a joint pretrial order is June 22, 2021. The parties just submitted a proposed order to file motions for summary judgment by May 7, 2021. Elysium is hoping to streamline issues for motion practice and trial. Now is the "appropriate" time for the authentication of documents.

Please confirm that ChromaDex will substantively respond to Elysium's interrogatories and RFAs; otherwise, we will raise this discovery issue with Judge Liman at Monday's conference.

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From: Omar Tuffaha <omar.tuffaha@l1attorneys.com>
Sent: Friday, April 02, 2021 2:09 PM
To: Caterina, Tiffany <TCaterina@fkks.com>
Cc: Prashanth Chennakesavan <Prashanth.Chennakesavan@l1attorneys.com>
Subject: In re: Elysium Health-ChromaDex Litigation (17cv07394)

Dear Tiffany,

We are in receipt of Elysium's Second Set of Interrogatories, served on March 15, 2021, and Elysium's First Set of Requests for Admission, served on March 23, 2021. As Elysium is aware, the Court set a deadline of February 9, 2021 for the completion of fact discovery. ECF No. 165 at 2; *see also* ECF No. 170 at 3 (noting the Court "extend[ed] the deadline for fact discovery and fact depositions to February 9, 2021"); *id.* at 11 ("[T]he Court set a *firm deadline* of February 9, 2021 for the conclusion of all fact discovery and, if necessary, trial in August 2021." (emphasis added)). Elysium's Second Set of Interrogatories and First Set of Requests for Admission were served, respectively, 34 and 42 days after the deadline for *completion* of fact discovery (and over a month after Elysium took its last deposition).

The parties agreed to only two exceptions to the fact discovery deadline: (1) the deposition of Ms. Gerber on Rule 30(b)(6) topics that were identified well in advance of the fact discovery cutoff and (2) the conclusion of Dr. Dellinger's deposition, which was suspended by mutual agreement. Elysium did not seek leave to serve interrogatories or requests for admission after the fact discovery deadline, nor did it seek ChromaDex's consent. ChromaDex objects, and will not respond, to the belated interrogatories and requests for admission.

ChromaDex expressly reserves all other objections to the interrogatories, including, without limitation, on the bases that they violate Federal Rule 33(a)(1)'s numerical limit and, to the extent they purport to be contention interrogatories, they are not proper contention interrogatories as contemplated by Local Rule 33.3(c). We note that Federal Rule of Civil

Procedure 33(b)(2) and Local Rule 33.3(c) “anticipate[] that in the normal course, responses to contention interrogatories will be due *at the very end of the fact discovery period.*” *Erchonia Corp. v. Bissoon, M.D.*, Case No. 07 Civ. 8696 (DLC), 2011 WL 3904600, at *8 (S.D.N.Y. Aug. 26, 2011) (emphasis added). Further, “the Local Rules do not anticipate that parties will use contention interrogatories [served pursuant to Local Rule 33.3(c)] to develop new information” *Id.*

Likewise, ChromaDex expressly reserves all other objections to the requests for admission, including, without limitation, that authentication of documents can be addressed pursuant to FRE 901 at the appropriate time, and that the requests go beyond mere authenticity requests.

Thank you,
Omar

Omar H. Tuffaha



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