

Exhibit 5

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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

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

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DEPOSITION OF

DAN ALMINANA

NEW YORK, NEW YORK

MARCH 29, 2019

Reported by:
VICTORIA RUSSO
NO. 19-76235

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09:13 1 DAN ALMINANA,
2 having been first duly sworn by a Notary Public of
3 the State of New York and New Jersey was examined
4 and testifies as follows:

09:13 5
6
7 -EXAMINATION-

8
9 BY MR. ATTANASIO:

09:13 10 Q. Good morning, Mr. Alminana.

11 A. Good morning, Mr. Attanasio.

12 Q. Have you ever had your deposition taken
13 before?

14 A. Yes.

09:14 15 Q. How many times?

16 A. Once.

17 Q. What type of case was that?

18 A. It was an arbitration with an investor
19 a while ago.

09:14 20 Q. The investor was an investor in
21 Elysium?

22 A. Correct.

23 Q. What was, generally, the nature of that
24 dispute?

09:14 25 A. He was an early investor who,

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09:41 1 same things that Lenny had told us and, you know, at
2 the end of the day we were just trying to find like
3 is anybody doing this, are there any products in the
4 market. So we learned -- what we found, at least
09:41 5 from what I remember, there weren't products on the
6 market.

7 Q. There were not?

8 A. There were not being sold.

9 Q. Did you find out where you can buy --

09:41 10 A. Yes.

11 Q. -- nicotinamide riboside?

12 A. That's where I was going with that. So
13 what we did find was that there was, I believe, a
14 press release about ChromaDex announcing -- I don't
09:41 15 recall exactly what the announcement was but it had
16 something to do with production of nicotinamide
17 riboside.

18 Q. We'll come back to some of those
19 topics.

09:41 20 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

09:42 25 A. No.

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01:05 1 Mr. Morris.

2 Q. Were you upset after you got this
3 information from Mr. Morris?

4 A. I wasn't happy.

01:05 5 Q. Did you speak about this information
6 with Mr. Marcotulli?

7 A. I don't recall the conversation but
8 likely.

9 Q. Well, tell me what you and
01:05 10 Mr. Marcotulli talked about, as best you recall,
11 regarding the Live Cell pricing information that
12 Mr. Morris shared with you by text?

13 A. I don't recall the discussion.

14 Q. Do you know why Mr. Morris texted you
01:05 15 this information instead of e-mailing it to you?

16 A. I've texted with Mark. I've texted
17 with Frank. I texted with Rob. I texted with
18 people. Clearly, this is a way for us also to
19 communicate via business topics as well.

01:05 20 Q. Did you discuss -- can you remember
21 anything at all about your discussions with
22 Mr. Marcotulli about the Live Cell pricing
23 information that Mr. Morris sent you?

24 A. Nothing more than just reiterating what
01:06 25 the message said.

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01:08 1 all, you don't mention anything at all about the
2 information you just received from Mr. Morris,
3 correct?

4 A. That's correct.

01:08 5 MR. SACCA: Object to the form of the
6 question.

7 Q. Why not?

8 A. First of all, I told Mark that I
9 wouldn't do anything. That's what I meant by that,
01:09 10 that this is between you and me. From my end that's
11 all I can control, number one. Number two, there had
12 been a series of clear dishonesty with Frank and,
13 obviously, as our -- as the CEO of our only supplier,
14 we're going to ask him this question without any
01:09 15 additional information because he should be able to
16 provide either the exact same information or more
17 accurate information if he had it.

18 Q. Do you know where Mr. Jaksch was when
19 you wrote this e-mail to him and he replied on
01:09 20 May 29th, May 30th?

21 A. No.

22 Q. Do you know which came first, the text
23 from Mr. Morris giving you the Live Cell information
24 or your information to Mr. Jaksch?

01:09 25 A. I don't know what "UTC minus four"

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01:09 1 means.

2 Q. Right.

3 Well, do you have a memory of getting
4 the Morris information, looking at it, having a
01:10 5 reaction to it and then writing to Jaksch?

6 A. Actually that's quite -- that's the
7 same day, right?

8 Q. Yes.

9 A. UTC minus four is four hours -- eastern
01:10 10 time, I think, is four hours previous. So actually
11 Mark's text came in two -- Mark's -- hold on. I
12 don't know. I need to know what UTC minus four is.

13 Q. You don't -- I'm asking your
14 independent memory.

01:10 15 A. Oh, I don't remember. I mean I just --
16 UTC minus four is there a conversion that we can do
17 for that because I never -- I don't even know what
18 UTC means.

19 Q. We don't need to work it out now. I'm
01:10 20 just --

21 A. Okay.

22 Q. I'm just interested in your memory.

23 A. I mean I don't -- in and around a
24 fundraising, this would have been a local question to
01:10 25 ask everybody over there because it's pretty much the

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01:14 1 A. -- that's the case, yes. I don't know.

2 Q. I am not asking you to verify. I'm not
3 asking you to swear to it. Let's walk through that.

4 A. Okay.

01:14 5 Q. This is an e-mail from Mr. Jaksch. He
6 is in California at least as an employee of
7 ChromaDex. You can see that on his address. So if
8 this is picking up Pacific time, it would be 9:03
9 your time, yes?

01:14 10 A. Yes.

11 Q. And what time on your -- the timestamp
12 of your text messages did Mr. Morris provide you the
13 Live Cell pricing information?

14 A. 8:41 UTC minus four.

01:14 15 Q. Then if I'm right, and we could -- and
16 if that's east coast time and we can verify that you
17 were writing to Mr. Jaksch and were looking at
18 Pacific time, 22 minutes would have elapsed from the
19 time you got the Morris Live Cell pricing information
01:15 20 to when you wrote to Mr. Jaksch seeking the same
21 information, correct?

22 A. Assuming all of those time conversions
23 are correct, yes, but I don't recall.

24 Q. Is it true that you were eager, after
01:15 25 you saw this Live Cell pricing information, to get to

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01:15 1 Mr. Jaksch and demand the same information from him?

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

4 A. I don't know if I got it before.

01:15 5 Q. You don't mention anything in Exhibit
6 140, your e-mail to Mr. Jaksch, about wanting to
7 assess compliance with Section 3.1 of the supply
8 agreement, correct?

9 A. Correct.

01:15 10 Q. Isn't that what you were doing; isn't
11 that what you wanted to do you told me?

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

14 A. There are many things you want to
01:16 15 accomplish, that being one of them but most
16 importantly, and they're related, more importantly,
17 is making sure that we get the lowest price for the
18 ingredient that we deserve which would then greatly
19 assist the business in many ways, including being
01:16 20 able to use the money that we're not paying for
21 ingredients to grow the business but also improve the
22 unit economic profile for any potential investors
23 that are looking at gross margins.

24 Q. Why didn't you just tell Mr. Jaksch
01:16 25 that you were concerned about ChromaDex's compliance

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01:29 1 specific pricing information about a competitor, then
2 why did you have to keep it from Mr. Jaksch?

3 A. I wanted Mr. Jaksch to send me accurate
4 information on his own without -- without me letting
01:29 5 him know that I had some information, accurate or
6 not, I wasn't even sure about the accuracy of the
7 information that Mark gave me, and Frank should be
8 able to produce that.

9 Q. Mr. Alminana, are you familiar with the
01:29 10 orders that Elysium placed with ChromaDex for Niagen
11 and ptero pure in late June 2016?

12 A. Yes.

13 Q. Did you have a role in placing those
14 orders?

01:29 15 A. Somewhat, yes.

16 Q. What was your role?

17 A. Mostly signing off on volumes, money
18 that has to go out the door.

19 Q. You mean how much it was going to cost?

01:29 20 A. Right.

21 Q. By the way, I apologize. Did you take
22 the Live Cell information that Mr. Morris provided to
23 you and create a spreadsheet of some kind, a table?

24 A. I don't recall.

01:30 25 Q. Did you take the information Mr. Morris

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01:30 1 provided to you and create a comparison table or
2 spreadsheet showing what Elysium was paying for NR
3 versus what he told you Live Cell was paying for NR?

4 A. I don't remember putting together a
01:30 5 spreadsheet like that.

6 Q. What did you do with the data that we
7 see in this text?

8 A. Tried to figure out what's going on.

9 Q. Did you write it down anywhere, did you
01:30 10 do anything with it?

11 A. I don't recall where I
12 compartmentalized it.

13 Q. In your head?

14 A. I don't know. Possibly.

01:30 15 Q. Did you memorize it?

16 A. Maybe.

17 Q. You memorized all those numbers?

18 A. There aren't that many.

19 Q. Okay. All right.

01:30 20 Is that what you think you did, just
21 put it up in the old brain?

22 MR. SACCA: Object to the form of the
23 question.

24 A. It is almost three years ago. I don't
01:31 25 know where I put it.

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01:31 1 Q. Did you write it down?

2 A. I don't recall.

3 Q. Would it be your habit as COO to create
4 Excel spreadsheets of important information?

01:31 5 A. I have created Excel spreadsheets in
6 the past but I don't recall what's on all of our
7 spreadsheets.

8 Q. Did you create one after Mr. Morris
9 texted you pricing information of a ChromaDex
01:31 10 customer?

11 A. I don't recall.

12 Q. Okay.

13 Other than -- back to the late June
14 orders, other than assessing volume and whether you
01:31 15 could pay for it, what other role, if any, did you
16 have in the late June orders placed with ChromaDex?

17 A. Oh, I mean there was a -- obviously, a
18 pricing discussion. Those are the big ones that come
19 to mind.

01:31 20 Q. Okay.

21 And did you have in your mind, since
22 you probably said you might have memorized it, did
23 you have in your mind the Live Cell pricing
24 information when you were working on the late June
01:32 25 orders?

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02:02 1 with him and Will Black.

2 Q. If that's true, then do you have an
3 understanding why Mr. Morris is making this offer to
4 you to sort of help you?

02:02 5 A. Mark is trying to be helpful to the
6 entire relationship. He's trying to make a sale as a
7 good -- as a good salesperson at ChromaDex would.

8 Q. Following the short attack that we see,
9 did you talk to Morris about buying ChromaDex's NR
02:02 10 patents?

11 A. I don't know.

12 Q. You don't remember?

13 A. No.

14 Q. On Page 32, row 4166, can you take a
02:02 15 look at that, please? You can read it all. There's
16 some more information about the short attack?

17 A. Okay.

18 Q. Then I will direct your attention to
19 4163.

02:03 20 A. Okay.

21 Q. Mr. Morris writes to you, "Dan, can I
22 e-mail you some thoughts on the patents?"

23 A. Okay.

24 Q. You reply "yes, would love that",
02:03 25 correct?

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02:03 1 A. Yes.
2 Q. What are you talking about there?
3 A. Mark's thoughts on the patent. Well,
4 here is his thoughts.

02:03 5 Q. Why?

6 A. Why not?

7 Q. Why would he send that to you?

8 A. I don't know. Mark is the one who
9 initiated that.

02:03 10 Q. Well, you said you would love it; so
11 why would you love it?

12 A. When someone says I'm going to give you
13 some thoughts on anything that's related to your
14 business, I'll take it. I would love it. I always
02:03 15 love it.

16 Q. Why the patents at this point; why were
17 you interested in the patents?

18 A. I don't know.

19 Q. You don't remember?

02:03 20 A. I don't.

21 Q. Is this around -- is this when Mr.
22 Morris began to e-mail you information about
23 alternative suppliers?

24 A. I don't know.

02:04 25 Q. You don't remember?

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02:04 1 A. No, I don't.

2 Q. Do you remember Mr. Morris e-mailing

3 you what's known as a GRAS, G-R-A-S, at this time?

4 MR. SACCA: Object to the form of the

02:04 5 question.

6 A. No, I don't remember.

7 Q. Then after the patent exchange -- well,

8 not after the patent exchange, the same day as the

9 patent exchange, after the discussion about Mr.

02:04 10 Morris giving you thoughts on the patent and you say

11 "yes, would love that", you write to him and you say

12 "maybe you should start sooner, if possible."

13 What was that a reference to?

14 A. I don't know.

02:04 15 Q. What does it mean?

16 A. I don't know. Maybe you should start

17 sooner, if possible.

18 Q. What sooner?

19 A. I don't know. I'm reading around here

02:05 20 and there is no -- by joining Elysium, that would be

21 the logical interpretation for that.

22 Q. Why did you say that?

23 A. That I don't know.

24 Q. Why -- why at 11:05 p.m. on June 21,

02:05 25 2016 did you suddenly tell Mr. Morris you should

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02:10 1 to a collaboration.

2 Q. What did you understand him to mean
3 when he said "we will make their worst nightmares
4 come true"?

02:10 5 A. I understood that to be Mark being
6 frustrated and blowing off steam.

7 Q. What did you understand "their worst
8 nightmares to be" at ChromaDex?

9 A. I don't know.

02:10 10 Q. If you were a public company, wouldn't
11 your worst nightmare be going out of business?

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

14 A. No, it wouldn't be.

02:10 15 Q. What did you understand -- when he
16 wrote to you, not to any of us here, to you "of
17 course, we will make their worst nightmares come
18 true", what did you understand him to mean?

19 A. It could have been just making them
02:10 20 adhere to contracts and being honest.

21 Q. That would be their worst nightmares?

22 A. It would be a big nightmare.

23 Q. You wrote back "awesome. You're the
24 best"; is that what you wrote back?

02:10 25 A. Yes.

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02:10 1 Q. And you say "let us call you tomorrow
2 and we can discuss exact timing and best way to deal
3 with Frank this week"; do you see that?

4 A. Yes.

02:10 5 Q. Were you going to advise Mr. Morris on
6 how to get out of ChromaDex?

7 A. I don't know.

8 Q. What are you talking about here?

9 A. I don't know. We discussed Frank in
02:11 10 the context also of the -- of the MFN and agreements
11 and pricing.

12 Q. Were you going to discuss with him the
13 best way to deal with Frank on the large
14 record-breaking order you were about to place?

02:11 15 A. I don't know.

16 Q. Was that what you were talking about
17 when you say "best way to deal with Frank", how you
18 were going to place that massive order?

19 A. I don't know. It didn't matter because
02:11 20 I would have to deal with Frank and Will.

21 Q. In what way?

22 A. I would have to talk with them and
23 negotiate directly with them.

24 Q. Wouldn't it be great to know how to
02:11 25 deal with that from Mr. Morris before you did so,

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02:11 1 right?

2 A. Not really.

3 Q. Why did you tell him "awesome, you're

4 the best"; is that like you're the f'ing man? Does

02:11 5 that mean kind of the same thing?

6 A. No. Well, maybe. I don't know.

7 Q. Or is it different; is that a different

8 level of awesomeness?

9 A. I don't really go in levels.

02:11 10 Q. What did you mean? Why was he the

11 best; why was that awesome?

12 A. Mark is great.

13 Q. So in response to Mark Morris telling

14 you that once he gets over to Elysium, he'll make his

02:12 15 current employer's worst nightmares come true, your

16 answer is "awesome, you're the best", right?

17 A. That's not necessarily responding to

18 any one comment in that box.

19 Q. What are you responding to?

02:12 20 A. I don't know.

21 Q. What did you mean in that 4168 row

22 "time to take control of everything"?

23 A. I don't know.

24 Q. Mr. Morris writes back and says

02:12 25 "absolutely. Time to change the world and get rid of

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02:12 1 the scumbags holding this magnificent technology"; do
2 you see that?

3 A. Yes.

4 Q. He worked where when he wrote that?

02:12 5 A. He worked at ChromaDex.

6 Q. Right. And then you write back
7 "absolutely! We need to get Grace deal inked ASAP";
8 do you see that?

9 A. Yes.

02:12 10 Q. So you were going to work with
11 Mr. Morris to ink a deal with a company that made
12 ChromaDex's Niagen under a patent license; is that
13 what you're talking about here?

14 A. They don't make it under a patent
02:13 15 license.

16 Q. Okay.
17 You were going to work with Mr. Morris,
18 who is at this time is employed by ChromaDex, to ink
19 a deal with a company that made Niagen for ChromaDex,
02:13 20 right?

21 A. That's not what it says here.

22 Q. What deal were you going to ink with
23 Grace?

24 A. We weren't going to include Mark Morris
02:13 25 in that. We were going to talk to Grace.

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02:13 1 Q. What deal were you going to ink with
2 Grace?

3 A. I don't know because there is no deal
4 inked with Grace.

02:13 5 Q. What deal did you plan to ink with
6 Grace on June 21, 2016 at 11:23 and do it ASAP, by
7 the way?

8 A. We didn't have a deal structured with
9 Grace.

02:13 10 Q. What are you talking about then?

11 A. I don't know.

12 Q. You say "Grace deal inked"?

13 A. We didn't have a deal to ink.

14 Q. Then what are you talking about?

02:13 15 A. I don't know. There was no deal to
16 ink.

17 Q. This exchange would be interesting if I
18 wrote these words --

19 A. I agree.

02:13 20 Q. -- but you wrote them so I'm asking
21 you.

22 A. I don't know. There was no deal to
23 ink. So I can't recall a deal that was going to get
24 inked. I see what it says here but there was no deal
02:14 25 to ink.

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02:14 1 Q. Were you lying to Mr. Morris?
2 A. I don't even recall why it was said.
3 So I don't know if I was lying or not.
4 Q. You could have been?
02:14 5 A. I don't think so.
6 Q. Were you trying to lure him over to
7 Elysium by making him believe that you had a deal on
8 the table with -- with Grace about to be inked --
9 A. Not that I --
02:14 10 Q. -- ASAP?
11 A. Not that I'm aware of.
12 Q. Were you trying to convince Mr. Morris
13 that you were about to ink a deal with Grace ASAP so
14 you could get him to give you things from ChromaDex
02:14 15 and come work for Elysium?
16 A. Not that I recall.
17 Q. Then what are you talking about?
18 A. I don't know. There was no deal to
19 ink.
02:14 20 Q. Who is the "we" in that sentence?
21 A. I don't know.
22 Q. Was it you and Mr. Morris?
23 A. I don't know.
24 Q. Was it you and Mr. Marcotulli?
02:14 25 A. I don't know.

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02:14 1 Q. Was it you and Donald Trump; who is it?

2 A. I doubt that but I don't know.

3 Q. Okay.

4 A. It's a lot of people.

02:15 5 Q. Last time. What was the general
6 subject of the deal to which you're referring in row
7 4170 as being inked ASAP?

8 A. There was no deal.

9 Q. Was that the deal you went to see Grace
02:15 10 about the following week or so?

11 A. We didn't go to Grace to talk about a
12 deal.

13 Q. Did you go for a tour; what did you go
14 for?

02:15 15 A. A tour would have been nice. We went
16 to meet with them as an introductory meeting.

17 Q. Did Mr. Morris help you develop that
18 plan?

19 A. No.

02:15 20 Q. In row 4172, you can read the whole
21 thing to yourself if you'd like, you tell him "thank
22 you for being the only guy in the company doing the
23 right thing." Then you say "you are helping make
24 this possible in a big way."

02:16 25 What was Mr. Morris helping make

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03:55 1 Q. But you can't be sure?

2 A. I can't be sure because I don't

3 understand what the connection would be.

4 Q. That's what I was going to ask you.

03:55 5 What is the connection?

6 A. I don't know.

7 Q. Why would you wait to discuss Green

8 Molecular until after you had the next order in,

9 whatever it is?

03:55 10 A. I don't know.

11 Q. Why would you wait to discuss Green

12 Molecular until after the ChromaDex order is in, if

13 that's what he is referring to?

14 A. I don't know.

03:55 15 Q. In the next line he says "just

16 disregard. I'm just ultra sensitive to this new

17 patent strategy"; do you see that?

18 A. Yes.

19 Q. What was the new patent strategy?

03:56 20 A. I have no idea.

21 Q. As of June 24, 2016, did Elysium have a

22 new patent strategy?

23 A. Not that I'm aware of. We certainly

24 haven't done much. I mean this is very confusing

03:56 25 because the e-mail before -- I'm sorry, the text

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03:56 1 message before Green Molecular potentially is
2 relevant and not -- I don't know what he's talking
3 about because the text message above that relates to
4 two other companies that we were in discussions with.

03:56 5 Q. Okay.

6 But let's just focus on the words that
7 are in front of us. If you find relation to
8 something else, by all means, let us know. There is
9 a reference to Skadden up above. Maybe it relates to
03:56 10 that.

11 A. The alma mater.

12 Q. It says -- he says "I am just ultra
13 sensitive to this new patent strategy" and in the
14 next one he says "so game changing" which suggests
03:57 15 some level of importance or excitement or something
16 so -- and he's writing to you; so what was it?

17 A. I don't know because, to the best of my
18 knowledge, we didn't concoct some game changing
19 patent strategy. I don't know what he's talking
03:57 20 about.

21 Q. No idea?

22 A. No idea.

23 Q. Shortly after this, and by that I mean
24 days, a couple of weeks, shortly after this, there is
03:57 25 a lot of movement about talking to Grace and going

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03:57 1 all the way up to Hanover, New Hampshire to see
2 Darmouth.

3 A. Okay.

4 Q. Does that refresh your memory about
03:57 5 what the new patent strategy might be?

6 A. I don't know what strategy we had. He
7 clearly thought he had a strategy. I'm not aware, I
8 don't recall what the strategy he thought he had.

9 Q. The day before this, do you recall
03:58 10 Mr. Morris sending over to you, much like he did with
11 the GRAS document, a bunch of information about
12 ChromaDex's patents?

13 A. Did you --

14 Q. No, I didn't look. I'm asking you if
03:58 15 you remember it.

16 A. No, I don't recall that.

17 Q. I don't feel like bringing it out.

18 A. It's fine.

19 Q. I'll just ask you if you remember it.

03:58 20 A. I don't remember it.

21 Q. So here's -- here's -- let me walk
22 just -- let me walk through this with you.

23 Around the time, actually the day
24 before of these texts that we're looking at,

03:58 25 Mr. Morris sends you guys information about

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03:58 1 ChromaDex's patents. I can show it to you if you
2 must see it. Then we have these texts about the new
3 ultra sensitive game change strategy. Then in short
4 order, you all get with Grace and you all get with
03:58 5 the Darmouth folks.

6 I am asking you what the relationship
7 is between those events?

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

03:58 10 A. I don't know what game changing patent
11 strategy Eric thought he had at the time. We didn't
12 have a game changing patent strategy. If we had it,
13 it would have been game changing and we didn't -- we
14 hadn't had one.

03:59 15 I don't know if it is related to that.
16 I don't know if it is related to Stan and Ginco which
17 is literally referenced above. We had so much going
18 on at the time it is hard to tell what he was even
19 talking about.

03:59 20 Q. Do you recall meetings up at Darmouth
21 where you and Mr. Marcotulli attempted to undermine
22 Darmouth's relationship with ChromaDex?

23 MR. SACCA: Object to the form of the
24 question.

03:59 25 A. I remember a meeting at Darmouth. It

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ACKNOWLEDGEMENT

I, DAN ALMINANA, having appeared for my deposition on March 29, 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 5th day of August, 2019.



DAN ALMINANA

HIGHLY CONFIDENTIAL

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C E R T I F I C A T E

I, VICTORIA RUSSO, a Certified Shorthand Reporter and Notary Public within and for the States of New York and New Jersey, do hereby certify:

I reported the proceedings in the within-entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, 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 10th day of April, 2019.



VICTORIA RUSSO
Registration No. 01RU4849015
Notary Public for the State of New York
My commission expires: October 31, 2021
Registration No. 2347397
Notary Public for the State of New Jersey
My commission expires: July 20, 2021