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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 ELYSIUM HEALTH, INC.,

4 Plaintiff,

5 v.

17 CV 7394 (LJL)

6 CHROMADEx, INC.,

7 Defendant.

8 -----x
9 New York, N.Y.
October 21, 2020
10:00 a.m.

10 Before:

11 HON. LEWIS J. LIMAN,

12 District Judge

13 APPEARANCES (Telephonic)

14 FRANKFURT KURNIT KLEIN & SELZ

15 Attorneys for Elysium

16 BY: TIFFANY CATERINA

17 KAPLAN HECKER & FINK

18 Attorneys for Elysium

19 BY: JOHN QUINN

20 CRAIG WHITNEY

21 LTL ATTORNEYS

22 Attorneys for Chromadex

23 BY: JOEDAT TUFFAHA

24 OMAR TUFFAHA

25 PRASHANTH CHENNAKESAVAN

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1 (Via telephone)

2 THE COURT: Good morning. This is Judge Liman. Do we
3 have the parties on the phone?

4 DEPUTY CLERK: Yes, Judge, all parties are on the
5 phone.

6 THE COURT: Who will be speaking for plaintiff?

7 MR. JOEDAT TUFFAHA: I'll be speaking on behalf of
8 ChromaDex.

9 THE COURT: Good morning. And who will be speaking
10 for defendants?

11 MS. CATERINA: Good morning, your Honor, this is
12 Tiffany Caterina, and I'll be speaking on behalf of Elysium
13 Health.

14 THE COURT: Good morning, Ms. Caterina.

15 So this morning I received a telephone call from one
16 of you, and I don't remember right now who it was, but asking
17 the very good question whether the conference was still on in
18 light of my order extending your discovery deadlines. And what
19 I said in that call -- and I'm mentioning this because it was
20 an ex parte call and I just happened to be the only one in
21 chambers who picked up the phone -- was since there had been no
22 request for an extension or an adjournment of the conference,
23 we would go forward, and that if the parties wanted the
24 conference to be adjourned they could email me, and I didn't
25 receive any email. The main reason why I kept this on is

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1 because nobody had asked me to adjourn it.

2 What I would like to do on this call is just make sure
3 from both sides' perspective that we're on track for the
4 completion of all discovery in February of 2021 and see if
5 there are any other issues that we should address.

6 So Mr. Tuffaha, the floor is yours.

7 MR. JOEDAT TUFFAHA: Yes, your Honor. I could give
8 you our perspective and Elysium could chime in and give you an
9 update in terms of tasks that have been completed and ongoing
10 discussions.

11 So at our discovery hearing, one of the issues we
12 raised was the online social media advertisements. We have
13 been able to meet and confer on those and exchange on the
14 advertisements, so that issue is no longer pending for now. I
15 know both sides are going to be reviewing the advertising, so
16 we were able to move successfully forward on that front.

17 If your Honor will recall, one of the issues at the
18 last hearing was VendEx. We still haven't received the VendEx
19 documents. The last update we received from Elysium is that
20 they're working on getting us that information, but I'm sure
21 with the current status they had a workaround because they
22 could not go to the office due to Covid. So that's a pending
23 issue.

24 Another issue we raised at the last hearing is our
25 issues with asserting lack of the documents. So we have

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1 exchanged notices and hit counts, we have exchanged proposed
2 search terms that we're working through. And it remains to be
3 seen if we'll be able to get agreement on those, but we are
4 moving forward on the meet and confer.

5 There are several other issues that were not raised at
6 the hearing that we're dealing with. One is we received
7 complete financial information from Elysium for some periods of
8 time but incomplete financial information as to other periods.
9 And we're working through that with Elysium right now.

10 Obviously, our expert will be need complete financial
11 information in order to conduct its damages analysis, and we
12 provided that info to Elysium. So that's a pending issue.

13 There's also interrogatory responses that we served,
14 including identification of Elysium's current manufacturers. I
15 believe Elysium has agreed to provide that information, but
16 we're still working through that. We need, obviously, to be
17 able to conduct third-party discovery once we receive those
18 entities, so that is an issue we're working through

19 There was an issue we had with Slack, it's a test
20 medium that Elysium relies on heavily, and we're working on
21 proposing search terms on that front

22 THE COURT: What's the name of the text medium?

23 MR. JOEDAT TUFFAHA: It's Slack, S-L-A-C-K. And we
24 have exchanged hit counts. I believe they collected about
25 350,000 Slack records but only produced 20. So we proposed

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1 search terms and so we're trying to work that through. So it
2 still remains to be seen whether or not we'll be able to reach
3 agreement on that front.

4 And then 30(b)(6), several months ago Elysium objected
5 to several of our topics and we delivered meet and confer
6 correspondence on that. We're awaiting Elysium's response, and
7 we would like to get that. Obviously we would like some
8 clarity on that front so we can successfully schedule 30(b)(6)
9 depositions. And so we are moving forward, your Honor,
10 methodically with the meet and confer process. Our goal is to
11 eliminate as many issues as possible, maybe all the issues.

12 We are a little concerned -- as your Honor noticed in
13 the last hearing, we should be entitled to sufficient time to
14 review documents once we receive them. The last thing we want
15 to do is have to redo depositions. So there are still some big
16 pending items. And I will note for the record that the
17 December 11 deadline is I guess approaching. We're almost in
18 November and there are still categories of documents that we
19 haven't received. So we're hopeful we could resolve the issue
20 shortly, but that is a concern that ChromaDex has in terms of
21 deposition scheduling.

22 THE COURT: Okay. That's very helpful.

23 Let me hear from counsel for Elysium.

24 MS. CATERINA: Thank you, your Honor, good morning.

25 I agree with Mr. Tuffaha that the parties have been

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1 working diligently and methodically to resolve the outstanding
2 issues on both sides. The list of items that Mr. Tuffaha just
3 went over we only received last night in a letter. So while I
4 do think those issues are not exactly ripe for the Court, I
5 have no reason to expect that the parties won't be able to
6 continue to work through those just as we have been doing.

7 THE COURT: It sounds like it was worthwhile for me to
8 have this conference scheduled so the issues could be raised.

9 Go ahead.

10 MS. CATERINA: We sent proposed search terms to
11 ChromaDex on October 9 and they told us last night they're only
12 still considering them. So there are certainly things on both
13 sides that we need to continue to work through, but I don't
14 think that there's any need to adjust the schedule or concern
15 that we won't keep the schedule.

16 With respect to the VendEx, precisely because Covid
17 was becoming an issue for direct access, we had our discovery
18 vendor bring in a forensic analyst and he was able to come up
19 with a workaround, which is in progress, and we expect that
20 we'll be able to get a count of how many documents are going to
21 be collected from VendEx later this week, and then we'll be
22 able to provide a date by which we will review and produce
23 those items.

24 THE COURT: Good.

25 MR. JOEDAT TUFFAHA: Your Honor, if I could just

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1 respectfully disagree with Ms. Caterina. These issues we have
2 been discussing now for over a month and we actually had a
3 telephonic meet and confer. So there's been several letters
4 back and forth. The latest letter we sent was last night, but
5 these issues have been highly visible to the other side now for
6 a while.

7 THE COURT: All right. Well, I don't need to get into
8 who is right with respect to that. The important thing is that
9 you're discussing and it sounds like there's nothing that's
10 ripe for me to resolve right now and hopefully will not be
11 anything. If there are issues where you've reached a point
12 where you just need a judge to make a decision, then follow my
13 individual practices and approach me. I would like to keep the
14 timetables as we currently have with respect to issues such as
15 hit numbers and different custodians, et cetera. My experience
16 from practice is those frequently are better addressed by the
17 parties themselves, so I hopefully you'll be able to work them
18 out.

19 Sounds like there's nothing else, Mr. Tuffaha, for me
20 to address.

21 MR. JOEDAT TUFFAHA: That's all from our end, your
22 Honor.

23 THE COURT: Ms. Caterina?

24 MS. CATERINA: That's all from us at this time, your
25 Honor.

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1 THE COURT: Okay, thank you all. Good luck with the
2 case and stay safe and stay healthy.

3 MS. CATERINA: Thank you.

4 MR. JOEDAT TUFFAHA: Thank you, your Honor.

5 (Adjourned)

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