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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **(SOUTHERN DIVISION)**

15 ChromaDex, Inc.,
16 Plaintiff,
17 v.
18 Elysium Health, Inc.,
19 Defendant.

Case No. SACV 16-02277-CJC(DFMx)

**CHROMADEx, INC.'S SUPPLEMENTAL
BRIEF IN SUPPORT OF ITS MOTION TO
COMPEL FURTHER RESPONSES FROM
ELYSIUM HEALTH, INC.**

Date: November 13, 2018
Time: 10:00 a.m.
Courtroom: 6B
Judge: Hon. Douglas F. McCormick

22 Elysium Health, Inc.,
23 Counterclaimant,
24 v.
25 ChromaDex, Inc.,
26 Counter-Defendant.

Discovery Cut-Off: December 21, 2018
Pretrial Conference: March 25, 2019
Trial: April 2, 2018

1 Defendant Elysium Health, Inc. (“Elysium”), as the party resisting discovery, has
2 not met its “burden to show discovery should not be allowed.” *Keith H. v. Long Beach*
3 *Unified Sch. Dist.*, 228 F.R.D. 652, 655–56 (C.D. Cal. 2005). In the parties’ Joint
4 Stipulation (“J.S.”), Plaintiff ChromaDex, Inc. (“ChromaDex”) demonstrates several
5 reasons why the requested documents are relevant, none of which have anything to do
6 with the dismissed conversion claims. The Court should compel Elysium—self-
7 described as ChromaDex’s “best customer” (J.S. at 4–5)—to produce documents
8 showing how it secretly recruited ChromaDex employees and stole ChromaDex trade
9 secrets and other information on which it relied to further its plans to wrongfully (a)
10 obtain \$3 million in ChromaDex ingredients without paying, and (b) develop a new
11 source of nicotinamide riboside (“NR”) to compete with ChromaDex’s.

12 **I. DOCUMENTS REGARDING ELYSIUM’S MISAPPROPRIATION OF CHROMADDEX’S**
13 **INFORMATION ARE RELEVANT AND PROPORTIONAL.**

14 Elysium insists that because ChromaDex’s trade secret claim arises from one
15 document, “any discovery regarding trade secret misappropriation is limited to conduct
16 involving [that document].”¹ (J.S. at 82.) That is not the law. Documents concerning
17 Elysium’s other acts of misappropriation are relevant because those acts were part and
18 parcel of the same misconduct, committed by the same agents, by which Elysium
19 misappropriated ChromaDex’s trade secrets. As discussed in the Joint Stipulation, the
20 documents sought in Request Nos. 141, 143, 146, 148, 149, 151, 153, 154, and 155
21 easily clear the relevance standard. (J.S. at 60–76.)

22 Elysium incorrectly suggests that the documents ChromaDex seeks are not
23 admissible. (J.S. at 80–81.) First, Elysium’s position concedes that evidence of its
24 repeated misconduct exists and has not been produced, further demonstrating that
25 Elysium’s emphasis on the unrelated dismissal of the conversion claim is a ploy to hide
26 further damaging material. And Elysium overlooks the rule that “[i]nformation . . . need
27 not be admissible in evidence to be discoverable.” Fed. R. Civ. P. 26(b)(1).

28 ¹Elysium has failed to produce all documents related to the trade secret claim. (*See* Rios
Decl. Ex. A; J.S. at 72–73). (“Rios Decl.” refers to the declaration attached to this brief.)

1 But even applying the heightened standard Elysium imagines does not change the
2 result. The evidence will be admissible at trial because it shows Elysium’s repeated and
3 related misconduct, its coordinated plan to misappropriate ChromaDex’s property, and
4 its motives in doing so. The very authority Elysium cites makes clear that material
5 revealing repeated misconduct is relevant. (J.S. at 80–81 (citing elements applicable to
6 Fed. R. Evid. 406, including the “numerosity of the examples of the conduct”).)
7 Elysium’s repeated misconduct is also relevant to whether Elysium’s conduct was
8 “willful” and “reprehensible,” as considered for an award of exemplary damages.
9 *Mattel, Inc. v. MGA Entm’t, Inc.*, 801 F. Supp. 2d 950, 953-54 (C.D. Cal. 2011). And
10 Elysium’s attempt to distinguish *Mattel* fails because Elysium ignores that the *Mattel*
11 court relied on misconduct involving non-trade secret information in awarding
12 exemplary damages for trade secret misappropriation. (J.S. at 65.)

13 ChromaDex offers several other grounds for the relevance of the documents,
14 including its claims that Elysium breached certain confidentiality obligations. Elysium
15 has not produced all documents relevant to those claims. (J.S. 85, 91–92; Rios Decl. Ex.
16 A.) For example, Elysium’s refusal to produce its invoices with regulatory consultants
17 who relied on one of those documents—the pTeroPure GRAS Report (Request No.
18 160)—deprives ChromaDex of information necessary to prove Elysium was unjustly
19 enriched by its breach. Documents concerning the disclosure of information on the
20 ingredients NIAGEN and pTeroPure (Request No. 159) are relevant to whether Elysium
21 wrongfully disclosed further documents in breach of the same contract provisions. It is
22 hardly a “fishing expedition” to seek material directly related to existing claims.

23 ChromaDex also seeks documents that are relevant to the impeachment of
24 Elysium’s witnesses. Contrary to Elysium’s position, it is not “pure speculation” that
25 ChromaDex’s former employees lied. (J.S. at 90:15, 90:28.) They falsely represented
26 ChromaDex presentations—that they drafted while employed by ChromaDex—as
27 Elysium’s to industry watchdogs and potential Elysium investors. Documents about
28 those presentations and how Elysium willingly profited from them are relevant (Request

1 Nos. 149–52). One of those former employees also falsely represented that a document
 2 about ChromaDex’s NR manufacturing process was Elysium’s; material about that
 3 document is certainly relevant to impeaching his credibility (Request No. 153).
 4 ChromaDex also seeks documents showing Elysium has come to Court with unclean
 5 hands because it wrongfully obtained ChromaDex sales information that assisted it in
 6 bringing its claims for breach of the parties’ contracts (Request Nos. 141, 143.)²

7 Contrary to Elysium’s assertions, the Requests are not “exceedingly broad.” (J.S.
 8 at 5.) In fact, Request Nos. 141, 143, 146, 148, 149, 151, 153, 154, 155, and 159 merely
 9 seek to discover *ChromaDex’s information* in Elysium’s possession, and Elysium’s
 10 reliance on that information. Moreover, Request Nos. 150 and 152 are limited to
 11 documents showing how Elysium was unjustly enriched by the two plagiarized
 12 presentations. Lastly, Request Nos. 144, 145, and 160 seek specific information that is
 13 not burdensome to produce. Elysium has never substantiated its boilerplate burden
 14 objections and, if Elysium is correct that it has already produced much of the
 15 information sought, then any burden would be minimal.

16 **II. DOCUMENTS REGARDING THE PURITY AND QUALITY OF COMPONENTS IN THE**
 17 **BASIS SUPPLY CHAIN ARE RELEVANT AND PROPORTIONAL.**

18 ChromaDex’s Requests are not limited to “the question of whether ChromaDex
 19 complied with its contractual obligations to Elysium,” (J.S. at 104), because that is not
 20 the only relevant question to the parties’ claims and defenses. Other issues include
 21 whether Elysium waived its claims by failing to bring them within the time specified by
 22 the contract or through other conduct, and whether Elysium was damaged by the alleged
 23 breaches. ChromaDex’s Requests are both relevant and proportional to those issues.

24 ChromaDex carefully articulated how documents sought by Request Nos. 93, 94,
 25 95, 96, 97, and 98, related to the cGMP status of other suppliers in the Basis supply
 26 chain, are relevant to the two questions above. (J.S. at 96–98.) Elysium contends the
 27 Requests are “patently overbroad,” but Elysium has never substantiated its purported

28 ² Elysium has not agreed to produce “all” documents in response to Request Nos. 141
 and 143. (*Compare* J.S. at 86 *with* Treckler Decl. (ECF 133-13) Ex. 4 at 3–4.)

1 burden. Elysium’s argument that ChromaDex previously advanced a narrower
2 interpretation of relevance for documents in ChromaDex’s possession, (J.S. at 104,
3 106–07), is both irrelevant and reveals Elysium’s unfair double standard; for its own
4 Requests to ChromaDex, Elysium insisted on a much broader definition of relevance.
5 (See Treckler Decl. (ECF 133-13) Ex. 5 at 2.) Notably, ChromaDex initially objected
6 because Elysium’s proposed search terms hit on “more than **20,000 documents.**” (*Id.*
7 (emphasis added)). But Elysium nevertheless demanded ChromaDex review those
8 documents or stipulate to liability. (*Id.* Ex. 9 at 3.) Now, as to documents in its own
9 possession, Elysium seeks a narrower interpretation and claims “burden” for
10 “thousands” of documents. (J.S. at 59.) If it was proportional for ChromaDex to review
11 20,000 documents for Elysium’s claims, it is also proportional for Elysium to review a
12 similar number in support of ChromaDex’s defenses.

13 ChromaDex also seeks to establish Elysium’s knowledge of the NIAGEN GRAS
14 and NDIN documents to show that Elysium waived its claims for breach of the
15 NIAGEN Supply Agreement (Request Nos. 100, 101, 154, 155). (J.S. at 107.) Elysium
16 asserts that it has produced documents that “address Elysium’s consideration of
17 NIAGEN’s cGMP status.” (J.S. at 107.) But aside from the parties’ contract, Elysium
18 has produced no documents revealing its knowledge of NIAGEN’s cGMP status before
19 it began efforts to undermine ChromaDex. (Rios Decl. ¶ 5.) Elysium’s argument that the
20 NIAGEN GRAS “nowhere mentions use as an ingredient in dietary supplements,” (J.S.
21 at 108), is also unpersuasive. If true, it would mean Elysium did not believe the
22 NIAGEN GRAS even applied to the product it purchased. That would be relevant to
23 ChromaDex’s defense and underscores why Elysium’s communications about the
24 GRAS and NDIN (which could reveal that purported belief) are relevant.

25 With regard to its allegations about the Substance, Elysium advances another
26 double standard. First, Elysium states that its allegation that ChromaDex “fail[ed]] to
27 inform Elysium that the NR it sold to Elysium contained acetamide” is
28 “straightforward.” (J.S. at 6.) But in the next breath, Elysium argues that the issue is

1 really “whether the NR ChromaDex supplied to Elysium contained acetamide”—a
2 different question. (J.S. at 6; *see also id.* at 109, 111.) Elysium thus unfairly seeks to
3 cabin ChromaDex’s discovery to material on the “knowledge of . . . the presence or
4 absence of acetamide in the NR ChromaDex sold,” (J.S. at 6), while Elysium actually
5 litigates whether it was injured because NIAGEN allegedly contained acetamide.
6 ChromaDex must be allowed to discover the material relevant to defending itself
7 against these defamatory allegations, including the COAs showing whether Elysium
8 accepted ingredients from other sources that contained the Substance (Request No.
9 130). (*See* Rios Decl. Ex. A.) As to the samples of Elysium’s alternate source of NR
10 (Request No. 129), Elysium argues that there is “no reason” why Elysium’s current
11 supply of NR is relevant. (J.S. at 105.) But Elysium elides that, if it accepted, paid for,
12 and sold NR that contained higher amounts of acetamide than that allegedly found in
13 ChromaDex’s NR, then Elysium was not damaged by ChromaDex’s purported breach.

14 Production of the samples is also necessary because, while ChromaDex has
15 produced information concerning its testing of NIAGEN for the Substance, Elysium has
16 not likewise produced documents concerning *its* testing of NIAGEN. (*Cf.* J.S. at 110;
17 Rios Decl. Ex. A.) Because it refuses to produce either the samples or testing necessary
18 to directly compare the parties’ testing methods, ChromaDex cannot rebut Elysium’s
19 unsupported assertions that its test is superior. (J.S. at 109.) Elysium’s refusal to
20 produce the samples thus prejudices ChromaDex’s ability to defend itself.

21 **III. ATTORNEYS’ FEES**

22 Elysium’s discovery tactics violate Rule 26. They have drawn out this action and
23 needlessly increased the parties’ and this Court’s costs.³ Further, Elysium’s strategic
24 refusal to respond to relevant requests that are not burdensome while imposing a much
25 greater burden on ChromaDex is wholly unjustified. The Court should award
26 ChromaDex its reasonable costs and fees.

27 ³ Elysium’s violation of the Court’s December 20 Order is separate and apart from
28 documents it produced pursuant to the parties’ later agreements. (*Cf.* J.S. at 59 n.2.)
ChromaDex reserves all rights to seek sanctions for Elysium’s violation.

1 Dated: October 30, 2018

COOLEY LLP

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3 By: /s/ Barrett J. Anderson

4 Barrett J. Anderson

5 Attorneys for Plaintiff ChromaDex, Inc.

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