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14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**
 16 **WESTERN DIVISION**

17 ChromaDex, Inc.,
 18 Plaintiff,
 19 v.
 20 Elysium Health, Inc. and Mark
 Morris,
 21 Defendants.

Case No.: 8:16-cv-02277-CJC-DFM
 [Assigned to the Hon. Cormac J. Carney]

**ELYSIUM HEALTH, INC.'S AND
 MARK MORRIS'S RESPONSES TO
 CHROMADEx, INC.'S
 EVIDENTIARY OBJECTIONS TO
 EVIDENCE FILED IN SUPPORT OF
 DEFENDANTS' MOTION FOR
 PARTIAL SUMMARY JUDGMENT**

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

Pre-Trial Conference: September 18, 2019
 Trial: October 15, 2019

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1 Defendant and Counterclaimant Elysium Health, Inc. (“Elysium”) and
 2 Defendant Mark Morris (“Morris”) hereby respond to Plaintiff and Counter-
 3 Defendant ChromaDex, Inc.’s (“ChromaDex”) Evidentiary Objections to Evidence
 4 Filed in Support of Defendants’ Motion for Partial Summary Judgment (the
 5 “Motion”).

	Objectionable Material:	ChromaDex’s Grounds for Objection:	Defendants’ Responses to ChromaDex’s Objections:
1. 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Declaration of Mark Morris in Support of Elysium Health, Inc.’s and Mark Morris’s Motion for Partial Summary Judgment (“Morris Declaration”) (ECF No. 234-1)	<p>A. PREJUDICE AND CONFUSION - Fed. R. Evid. 403 ChromaDex seeks to exclude the Morris Declaration. Numerous statements in the Morris Declaration are verifiably false by documents produced in discovery in this action. Consideration of this material therefore risks confusion of the truth, and would likewise prejudice ChromaDex. <i>See generally</i> ECF No. 234-1.</p> <p>B. HEARSAY - Fed. R. Evid. 801 The Morris Declaration contains out of court statements offered to prove the truth of the matter asserted. As such, they are inadmissible hearsay. The document also contains statements by other persons that are hearsay within hearsay and also inadmissible. <i>See generally</i> ECF No. 234-1.</p>	<p>ChromaDex’s Objection to the Declaration of Mark Morris is improper and should be overruled.</p> <p>First, ChromaDex fails to identify the specific portions of Morris’s Declaration that are allegedly objectionable, and Defendants therefore cannot reasonably respond to ChromaDex’s overbroad and unspecific objections based upon Fed. R. Evid. 403 and 801 where ChromaDex does not direct Defendants or the Court to the “numerous statements” that it claims are at issue.</p> <p>Second, on the whole, ChromaDex’s objection should be overruled because the contents of Morris’s Declaration will be admissible at trial. <i>See Fraser v. Goodale,</i></p>

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	Objectionable Material:	ChromaDex’s Grounds for Objection:	Defendants’ Responses to ChromaDex’s Objections:
			342 F.3d 1032, 1036(9th Cir. 2003) (“At the summary judgment stage, we do not focus on the admissibility of the evidence's form. We instead focus on the admissibility of its contents”); <i>McMillian v. Johnson</i> , 88 F3d 1573, 1584 (11th Cir. 1996).
2.	Sacca Decl. Ex. 12	<p>A. RELEVANCE: Fed. R. Evid. 401 & 402 Sacca Dec. Ex. 12 is the Supply Agreement between ChromaDex and Healthspan Research LLC. Defendants cites this Supply Agreement for the proposition that “ChromaDex had devised a plan to sell an NR- containing product directly to consumers, in competition with Elysium.” <i>See Mot.</i> at 6.</p> <p>This document has no tendency to make the asserted “fact” more or less probable, and is therefore irrelevant to this limited point.</p> <p>B. PREJUDICE AND CONFUSION: Fed. R. Evid. 403 Defendants attempt to use a supply agreement that does not contain any language about a</p>	<p>ChromaDex’s objection to Ex. 12 should be overruled.</p> <p>First, Ex. 12 is relevant to Defendants’ arguments in the Motion, in particular to show that, as early as August 2015, ChromaDex intended to take an equity stake in a company for its foray into the direct-to-consumer market, and those arguments concerning ChromaDex’s breach of the MFN provision, and Healthspan’s involvement therein. (Motion, pp. 6, 8-10.)</p> <p>Second, the admission of Ex. 12 will not cause prejudice or confusion.</p>

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	Objectionable Material:	ChromaDex’s Grounds for Objection:	Defendants’ Responses to ChromaDex’s Objections:
		<p>plan to sell an NR-containing product directly to consumers. Defendants attempt to use this as evidence of ChromaDex’s intent is therefore misleading and its introduction into this case would be highly prejudicial.</p>	<p>Defendants have presented the Court with evidence demonstrating that the purpose of ChromaDex’s relationship with Healthspan was related to the development of a direct-to-consumer brand, and the Supply Agreement with Healthspan provides additional evidence to expound upon Healthspan’s relationship with ChromaDex and its impact on the claims against Elysium. (<i>See</i>, ECF No. 231, ¶¶ 24-31.) This will not cause prejudice or confusion.</p>
3.	<p>Sacca Decl. Ex. 15</p>	<p>A. PREJUDICE AND CONFUSION: Fed. R. Evid. 403 Defendants seek to attribute specific statements to ChromaDex, but have offered no basis to show that ChromaDex adopted those statements as its own. The evidence thus has little to no probative value, and its introduction into this case would be highly prejudicial and risks misleading the fact finder about ChromaDex’s true</p>	<p>ChromaDex’s objection to Ex. 15 should be overruled. First, Ex. 15 will not cause prejudice or confusion because Defendants can and have shown that one of the individuals on the text message chain, Rob Fried, the founder of Healthspan and ChromaDex’s current CEO, was speaking with</p>

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	Objectionable Material:	ChromaDex’s Grounds for Objection:	Defendants’ Responses to ChromaDex’s Objections:
		<p>understanding at the time. <i>See</i> Mot. at 6.</p> <p>B. HEARSAY: Fed. R. Evid. 801</p> <p>Defendants offer out of court statements in the form of text messages between two non-parties to prove the truth of the matter asserted that “ChromaDex likes the idea of Healthspan raising \$1 million, putting a great team together, raising a big round and then merging with ChromaDex.” <i>See</i> Mot. at 6.</p> <p>The statements from ChromaDex within the text messages are hearsay within hearsay because Defendants also offer them to prove the truth of the matter asserted. <i>See</i> Mot. at 6.</p>	<p>direct knowledge as to the current status of discussions between Healthspan and ChromaDex at this time, given that he was a Director of ChromaDex. (ECF No. 231, ¶¶ 21-22.)</p> <p>For that reason, Ex. 15 is also not inadmissible hearsay because it is an opposing party admission. Fed. R. Evid. 801(d).</p>
4.	Sacca. Decl. Ex. 19	<p>A. RELEVANCE: Fed. R. Evid. 401 & 402</p> <p>Sacca Decl. Ex. 19 is an unrelated federal action that is irrelevant to the above-captioned matter because it makes no fact at issue in this case more or less probable. Defendants offer this evidence for an ancillary fact. Moreover, the cited evidence is incorrect. <i>See</i> Mot. at 6.</p>	<p>ChromaDex’s objection to Ex. 19 should be overruled.</p> <p>First, Ex. 19 is relevant because it is a judicial admission by ChromaDex regarding the date that it launched its direct-to-consumer product, TruNiagen is directly relevant to the arguments raised in</p>

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	Objectionable Material:	ChromaDex’s Grounds for Objection:	Defendants’ Responses to ChromaDex’s Objections:
		<p>B. PREJUDICE AND CONFUSION: Fed. R. Evid. 403 Sacca Decl. Ex. 19 is ChromaDex’s Answer and Counterclaims in an unrelated lawsuit. The evidence has no probative value, as its only cited purpose is to establish a fact provable by myriad other less prejudicial evidence in this case; namely, the date at which ChromaDex entered the direct-to- consumer market. Its introduction into this case would be highly prejudicial because the case concerns claims against ChromaDex by another party and it thus risks misleading the fact finder on unrelated issues.</p>	<p>Defendants’ Motion. This demonstrates that ChromaDex was entering into the direct-to-consumer market at the same time that it was breaching the MFN provision. (Motion, pp. 8-10.)</p> <p>Second, Ex. 19 will not cause prejudice or confusion, and is highly probative given that it is a pleading filed by ChromaDex in which it sets forth information pertinent to the arguments raised in Defendants’ Motion.</p>
5.	Sacca Decl. Ex. 51	<p>A. COMPROMISE OFFERS AND NEGOTIATIONS; SETTLEMENT PRIVILEGED COMMUNICATIONS: Fed. R. Evid. 408 and Cal. Evid. Code 1152</p> <p>Sacca Decl. Ex. 51 is a settlement communication between ChromaDex and Elysium. It is marked as such in the subject line, as well as in the penultimate sentence of the email. Defendants cite this</p>	<p>ChromaDex’s objection to Ex. 51 should be overruled.</p> <p>Fed. R. Evid. 408 and Cal. Evid. Code 1152 provide that evidence of furnishing, promising, or offering to compromise, or conduct or a statement made during compromise negotiations about the claim are inadmissible to prove or disprove liability and/or the validity or amount of a</p>

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	Objectionable Material:	ChromaDex’s Grounds for Objection:	Defendants’ Responses to ChromaDex’s Objections:
		<p>information to prove that “ChromaDex’s own CEO did likewise, also telling Elysium that Live Cell paid \$800/kg and was a lower volume purchaser than Elysium”; and that “it would be impossible to conclude that Elysium derived some benefit from the information provided by Morris.” <i>See</i> Mot. at 13.</p> <p>This evidence is offered neither to (1) prove a witnesses bias or prejudice, (2) negate a contention of undue delay, or (3) prove an effort to obstruct a criminal investigation or prosecution. As such, its inclusion is improper.</p> <p>B. PREJUDICE AND CONFUSION: Fed. R. Evid. 403</p> <p>Any probative value of Sacca Decl. Ex. 51 is outweighed by the unfair prejudice and tendency to mislead the fact finder that presentation of settlement communications would cause.</p>	<p>disputed claim – in this case, issues pertaining to any breach of contract by ChromaDex.</p> <p>That is not the manner in which Defendants present Ex. 51 for the Court’s consideration. Rather, Defendants present Ex. 51 to demonstrate that ChromaDex did not treat its customer order information as a trade secret, which is a purpose separate and apart from any exclusion of evidence set forth in the Federal or California Rules of Evidence.</p> <p>Further, Ex. 51 is extremely probative, and will not lead to any prejudice or confusion. ChromaDex has not provided any way in which it would be prejudiced by the admission of Ex. 51 in this instance.</p>

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Respectfully submitted,

Dated: September 4, 2019

BAKER & HOSTETLER LLP

By: /s/ Joseph N. Sacca
JOSEPH N. SACCA

Attorneys for Defendant and Counterclaimant
ELYSIUM HEALTH, INC. *and Defendant*
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