

1 COOLEY LLP  
MICHAEL ATTANASIO (151529)  
2 (mattanasio@cooley.com)  
BARRETT J. ANDERSON (318539)  
3 (banderson@cooley.com)  
CRAIG E. TENBROECK (287848)  
4 (ctenbroeck@cooley.com)  
SOPHIA M. RIOS (305801)  
5 (srios@cooley.com)  
JAYME B. STATEN (317034)  
6 (jstaten@cooley.com)  
4401 Eastgate Mall  
7 San Diego, CA 92121-1909  
Telephone: (858) 550-6000  
8 Facsimile: (858) 550-6420

9 *Attorneys for Plaintiff and Counter-Defendant*  
10 *ChromaDex, Inc.*

11 *Counsel continued on following page*

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

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

21  
22 Elysium Health, Inc.,  
23 Counterclaimant,  
24 v.  
25 ChromaDex, Inc.,  
26 Counter-Defendant.

Case No. 8:16-cv-2277-CJC (DFMx)

**DECLARATION OF FRANK L. JAKSCH JR. IN SUPPORT OF CHROMADEx, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST COUNTERCLAIMANT ELYSIUM HEALTH, INC.**

Judge: Hon. Cormac J. Carney  
Courtroom: 7C  
Date: September 16, 2019  
Time: 1:30 PM

Trial: October 15, 2019  
Pretrial Conference: Sept. 18, 2019

1 COVINGTON & BURLING LLP  
MITCHELL A. KAMIN (202788)  
2 (mkamin@cov.com)  
1999 Avenue of the Stars, Suite 3500  
3 Los Angeles, CA 90067-4643  
Telephone: (424) 332-4800  
4 Facsimile: (424) 332-4749

5 COVINGTON & BURLING LLP  
PHILIP A. IRWIN (*admitted Pro Hac Vice*)  
6 (pirwin@cov.com)  
620 Eighth Avenue  
7 New York, NY 10018-1405  
Telephone: (212) 841-1000

8  
9 *Attorney for Plaintiff and Counter-Defendant*  
*ChromaDex, Inc.*

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 I, Frank L. Jaksch, Jr., declare:

2 1. I am Co-Founder and Executive Chairman of the Board of Directors of  
3 Plaintiff and Counter-Defendant ChromaDex, Inc. (“ChromaDex”). I submit this  
4 Declaration in support of ChromaDex’s Motion for Partial Summary Judgment. I  
5 declare that the following statements are true and to the best of my knowledge,  
6 information, and belief, formed after a reasonable inquiry under the circumstances. If  
7 called upon to testify, I could and would competently testify hereto.

8 2. I was the Chief Executive Officer of ChromaDex from the time the  
9 company began selling the ingredient nicotinamide riboside (“NR”) until June 2018.

10 3. ChromaDex approached the negotiation of terms for NR supply  
11 relationships with each customer and potential customer based on the unique business  
12 relationship between the parties. Apart from protecting its NR patent rights and  
13 ensuring that it obtained the best overall value that it could from each deal, ChromaDex  
14 did not otherwise take rigid positions on individual contract terms. The company  
15 remained flexible and exercised its business judgment in order to sell the ingredient at  
16 terms acceptable to all parties.

17 4. ChromaDex invested millions in building the NIAGEN® brand by funding  
18 and sponsoring clinical and preclinical trials to support safety, toxicology, and efficacy,  
19 creating and submitting extensive safety dossiers to the U.S. Food and Drug  
20 Administration and numerous other agencies around the world for review under the  
21 brand name, and through marketing and public relations efforts. As a consequence of  
22 ChromaDex’s investment in the NIAGEN® trademark, most customers and potential  
23 NR customers sought to use the mark in connection with their NR products in order to  
24 reap the benefits of an association with the NIAGEN® trademark in the market. Some  
25 of these customers willingly entered supply agreements in which they agreed to use the  
26 NIAGEN® trademark on their product labels, while many others were granted  
27 permission, but did not have an obligation, to use the mark. No customer was ever  
28 required to use the NIAGEN® trademark in their primary brand name, although some

1 customers chose to do so. As shown by their voluntary use of the NIAGEN®  
2 trademark, almost all of ChromaDex's NR customers saw value in the brand and sought  
3 to benefit from ChromaDex's investments.

4 5. Only a small number of NR customers ever indicated to ChromaDex that  
5 they desired to purchase a supply of NR but did not also want to use the NIAGEN®  
6 brand anywhere on their product labels or marketing. In those rare cases, ChromaDex  
7 evaluated each negotiation on a case-by-case basis, taking into account the customer's  
8 professed needs, ChromaDex's interests, and other unique aspects of each supply  
9 relationship. While ChromaDex, like most companies, is generally in favor of its  
10 customers using its trademark (subject to certain terms and brand use guidelines to  
11 ensure that it is used properly), the company never refused to sell NR to a customer  
12 simply because that customer did not desire to use or license the trademark. Licensing  
13 or using the NIAGEN® trademark was not, and never has been, an absolute requirement  
14 for purchasing a supply of NR from ChromaDex.

15  
16 Executed on August 16, 2019.

17  
18 

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Frank L. Jaksch Jr.