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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
16 **(SOUTHERN DIVISION)**

17 CHROMADEX, INC.,) Case No. 8:16-02277-CJC (DFM)
18 Plaintiff,) **FIRST AMENDED ANSWER TO**
19 v.) **THIRD AMENDED COMPLAINT**
20 ELYSIUM HEALTH, INC.,) **AND RESTATED**
21 Defendant.) **COUNTERCLAIMS**
22) **DEMAND FOR JURY TRIAL**
23 ELYSIUM HEALTH, INC.,)
24 Counterclaimant,)
25 v.)
26 CHROMADEX, INC.,)
27 Counterdefendant.)

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1 Defendant Elysium Health, Inc. ("Elysium"), by and through its undersigned
2 counsel, upon personal knowledge with respect to itself and its own acts, and upon
3 information and belief with respect to all other matters, responds to the allegations
4 made by Plaintiff ChromaDex, Inc. ("ChromaDex") in the Third Amended
5 Complaint and counterclaims as follows:

6 **ANSWER**

7 1. To the extent the allegations in Paragraph 1 of the Third Amended
8 Complaint state legal conclusions, no response is required. To the extent a response
9 is deemed necessary, Elysium denies the allegations set forth in Paragraph 1 of the
10 Third Amended Complaint.

11 2. Elysium denies knowledge or information sufficient to form a belief as
12 to the truth of the allegations in Paragraph 2 of the Third Amended Complaint,
13 except admits that Elysium sells a dietary supplement named "Basis" and that
14 Elysium has previously purchased Niagen and pTeroPure from ChromaDex, and
15 denies the allegation in the last sentence of Paragraph 2 of the Third Amended
16 Complaint.

17 3. Elysium denies the allegations in Paragraph 3 of the Third Amended
18 Complaint.

19 4. Elysium denies the allegations in Paragraph 4 of the Third Amended
20 Complaint

21 5. Elysium denies the allegations in Paragraph 5 of the Third Amended
22 Complaint, except admits that two former ChromaDex employees are employed by
23 Elysium.

24 6. To the extent the allegations in Paragraph 6 of the Third Amended
25 Complaint state legal conclusions, no response is required. To the extent a response
26 is deemed necessary, Elysium denies the allegations in Paragraph 6 of the Third
27 Amended Complaint.

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1 7. Paragraph 7 of the Third Amended Complaint contains legal
2 conclusions as to which no response is required.

3 8. Paragraph 8 of the Third Amended Complaint contains legal
4 conclusions as to which no response is required.

5 9. Elysium denies knowledge or information sufficient to form a belief as
6 to the truth of the allegations in Paragraph 9 of the Third Amended Complaint.

7 10. Elysium admits the allegations in Paragraph 10 of the Third Amended
8 Complaint.

9 11. Elysium denies knowledge or information sufficient to form a belief as
10 to the truth of the allegations in Paragraph 11 of the Third Amended Complaint,
11 except admits that Elysium has previously purchased Niagen from ChromaDex.

12 12. Elysium admits the allegations in Paragraph 12 of the Third Amended
13 Complaint.

14 13. Elysium denies knowledge or information sufficient to form a belief as
15 to the truth of the allegations in Paragraph 13 of the Third Amended Complaint.

16 14. Elysium admits the allegations in Paragraph 14 of the Third Amended
17 Complaint.

18 15. Elysium denies knowledge or information sufficient to form a belief as
19 to the truth of the allegations in Paragraph 15 of the Third Amended Complaint.

20 16. As to Paragraph 16 of the Third Amended Complaint, Elysium refers to
21 the Niagen Supply Agreement, the pTeroPure Supply Agreement, and the Trademark
22 License and Royalty Agreement (together, the "Agreements") themselves for the
23 terms, conditions, and provisions of each Agreement. Elysium denies any
24 paraphrasing, summarizing, or characterization of the Agreements and any factual
25 inferences or legal conclusions made by ChromaDex based on the Agreements. To
26 the extent a response is deemed necessary, Elysium denies the allegations in
27 Paragraph 16 of the Third Amended Complaint, except admits that the Niagen
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1 Supply Agreement and the Trademark License and Royalty Agreement are now
2 terminated.

3 17. Elysium denies the allegations in Paragraph 17 of the Third Amended
4 Complaint, except admits that Elysium sells a health supplement named Basis that
5 combines nicotinamide riboside ("NR") and pterostilbene, along with other non-
6 active ingredients.

7 18. Elysium denies knowledge or information sufficient to form a belief as
8 to the truth of the allegations in Paragraph 18 of the Third Amended Complaint,
9 except admits that Elysium previously purchased NR and pterostilbene from
10 ChromaDex and admits that ChromaDex is currently the sole commercial supplier of
11 nicotinamide riboside.

12 19. Elysium denies the allegations in Paragraph 19 of the Third Amended
13 Complaint, except admits that Elysium ordered Niagen from ChromaDex in 2015
14 and in the first quarter of 2016.

15 20. Elysium denies the allegations in Paragraph 20 of the Third Amended
16 Complaint.

17 21. Elysium denies the allegations in Paragraph 21 of the Third Amended
18 Complaint, except admits that Elysium submitted purchase orders for Niagen and
19 pTeroPure on June 28, 2016, and refers to the purchase orders themselves for the
20 terms, conditions, and provisions of each order. Elysium denies any paraphrasing,
21 summarizing, or characterization of the purchase orders and any factual inferences or
22 legal conclusions made by ChromaDex based on the purchase orders.

23 22. To the extent the allegations in Paragraph 22 of the Third Amended
24 Complaint state legal conclusions, no response is required. To the extent a response
25 is deemed necessary, Elysium denies the allegations in Paragraph 22 of the Third
26 Amended Complaint.

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1 23. Elysium denies the allegations in Paragraph 23 of the Third Amended
2 Complaint, except admits that ChromaDex discussed the June 28 purchase orders
3 with Elysium and ultimately did not fill the June 28 purchase orders.

4 24. Elysium denies the allegations in Paragraph 24 of the Third Amended
5 Complaint, except admits that Mr. Morris scheduled a call between ChromaDex and
6 Elysium to discuss the June 28 purchase orders.

7 25. Elysium admits the allegations in Paragraph 25 of the Third Amended
8 Complaint.

9 26. Elysium denies the allegations in Paragraph 26 of the Third Amended
10 Complaint, except admits that Elysium and ChromaDex spoke by phone on June 30,
11 2016, and that Elysium objected to the price ChromaDex asked for Niagen as being
12 in breach of the parties' Agreements.

13 27. Elysium denies the allegations in Paragraph 27 of the Third Amended
14 Complaint.

15 28. As to Paragraph 28 of the Third Amended Complaint, Elysium refers to
16 the June 30, 2016 purchase orders themselves for the terms, conditions, and
17 provisions of each order. Elysium denies any paraphrasing, summarizing, or
18 characterization of the purchase orders and any factual inferences or legal
19 conclusions made by ChromaDex based on the purchase orders, and expressly denies
20 that the June 28, 2016 purchase orders were "disingenuous."

21 29. Elysium admits the allegations in Paragraph 29 of the Third Amended
22 Complaint.

23 30. Elysium admits the allegations in Paragraph 30 of the Third Amended
24 Complaint.

25 31. Elysium admits the allegations in Paragraph 31 of the Third Amended
26 Complaint.

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1 32. Elysium denies the allegations in Paragraph 32 of the Third Amended
2 Complaint, except admits that Mr. Alminana wrote an email to ChromaDex on
3 August 10, 2016, and refers to the email for its complete contents.

4 33. As to Paragraph 33 of the Third Amended Complaint, Elysium refers to
5 the referenced email for its complete contents. Elysium denies any paraphrasing,
6 summarizing, or characterization of the email and any factual inferences or legal
7 conclusions made by ChromaDex based on the email.

8 34. Elysium denies the allegations in Paragraph 34 of the Third Amended
9 Complaint.

10 35. Elysium denies the allegations in Paragraph 35 of the Third Amended
11 Complaint, except admits that ChromaDex periodically sought payment from
12 Elysium.

13 36. Elysium denies the allegations in Paragraph 36 of the Third Amended
14 Complaint, except admits that Elysium has not paid what ChromaDex has demanded
15 and further states that Michael Brauser, acting with ChromaDex's express, implied,
16 or apparent authority, has continually harassed both Elysium and one of its investors
17 by phone in an effort to frustrate rather than promote the amicable resolution of this
18 matter.

19 37. Elysium denies knowledge or information sufficient to form a belief as
20 to the truth of the allegations in Paragraph 37 of the Third Amended Complaint,
21 except admits that Messrs. Morris and Dellinger are former ChromaDex employees
22 who are employed by Elysium.

23 38. As to Paragraph 38 of the Third Amended Complaint, Elysium refers to
24 the June 30, 2016 purchase orders themselves for the terms, conditions, and
25 provisions of each order, except admits that Elysium has not paid what ChromaDex
26 has demanded.

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1 39. Elysium denies the allegations in Paragraph 39 of the Third Amended
2 Complaint.

3 40. Elysium denies the allegations in Paragraph 40 of the Third Amended
4 Complaint.

5 41. Elysium denies the allegations in Paragraph 41 of the Third Amended
6 Complaint.

7 42. Elysium denies the allegations in Paragraph 42 of the Third Amended
8 Complaint.

9 43. Elysium denies the allegations in Paragraph 43 of the Third Amended
10 Complaint.

11 44. As to Paragraph 44 of the Third Amended Complaint, Elysium refers to
12 the pTeroPure Supply Agreement itself for its terms, conditions, and provisions.
13 Elysium denies any paraphrasing, summarizing, or characterization of the pTeroPure
14 Supply Agreement and any factual inferences or legal conclusions made by
15 ChromaDex based on the pTeroPure Supply Agreement.

16 45. As to Paragraph 45 of the Third Amended Complaint, Elysium refers to
17 the pTeroPure Supply Agreement itself for its terms, conditions, and provisions.
18 Elysium denies any paraphrasing, summarizing, or characterization of the pTeroPure
19 Supply Agreement and any factual inferences or legal conclusions made by
20 ChromaDex based on the pTeroPure Supply Agreement.

21 46. As to Paragraph 46 of the Third Amended Complaint, Elysium refers to
22 the pTeroPure Supply Agreement itself for its terms, conditions, and provisions.
23 Elysium denies any paraphrasing, summarizing, or characterization of the pTeroPure
24 Supply Agreement and any factual inferences or legal conclusions made by
25 ChromaDex based on the pTeroPure Supply Agreement.

26 47. As to Paragraph 47 of the Third Amended Complaint, Elysium refers to
27 the referenced invoices themselves for their complete terms. Elysium denies any
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1 paraphrasing, summarizing, or characterization of the invoices and any factual
2 inferences or legal conclusions made by ChromaDex based on the invoices.

3 48. To the extent the allegations in Paragraph 48 of the Third Amended
4 Complaint state legal conclusions, no response is required. To the extent a response
5 is deemed necessary, Elysium denies the allegations in Paragraph 48 of the Third
6 Amended Complaint.

7 49. To the extent the allegations in Paragraph 49 of the Third Amended
8 Complaint state legal conclusions, no response is required. To the extent a response
9 is deemed necessary, Elysium denies the allegations in Paragraph 49 of the Third
10 Amended Complaint.

11 50. As to Paragraph 50 of the Third Amended Complaint, Elysium refers to
12 the Niagen Supply Agreement itself for its terms, conditions, and provisions.
13 Elysium denies any paraphrasing, summarizing, or characterization of the Niagen
14 Supply Agreement and any factual inferences or legal conclusions made by
15 ChromaDex based on the Niagen Supply Agreement.

16 51. As to Paragraph 51 of the Third Amended Complaint, Elysium refers to
17 the Niagen Supply Agreement itself for its terms, conditions, and provisions.
18 Elysium denies any paraphrasing, summarizing, or characterization of the Niagen
19 Supply Agreement and any factual inferences or legal conclusions made by
20 ChromaDex based on the Niagen Supply Agreement.

21 52. As to Paragraph 52 of the Third Amended Complaint, Elysium refers to
22 the Niagen Supply Agreement itself for its terms, conditions, and provisions.
23 Elysium denies any paraphrasing, summarizing, or characterization of the Niagen
24 Supply Agreement and any factual inferences or legal conclusions made by
25 ChromaDex based on the Niagen Supply Agreement.

26 53. As to Paragraph 53 of the Third Amended Complaint, Elysium refers to
27 the Niagen Supply Agreement itself for its terms, conditions, and provisions.

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1 Elysium denies any paraphrasing, summarizing, or characterization of the Niagen
2 Supply Agreement and any factual inferences or legal conclusions made by
3 ChromaDex based on the Niagen Supply Agreement.

4 54. To the extent the allegations in Paragraph 54 of the Third Amended
5 Complaint state legal conclusions, no response is required. To the extent a response
6 is deemed necessary, Elysium denies the allegations in Paragraph 54 of the Third
7 Amended Complaint.

8 55. To the extent the allegations in Paragraph 55 of the Third Amended
9 Complaint state legal conclusions, no response is required. To the extent a response
10 is deemed necessary, Elysium denies the allegations in Paragraph 55 of the Third
11 Amended Complaint, except admits that on October 31, 2016, ChromaDex sent to
12 Elysium a notice letter and refers to the letter for its complete contents.

13 56. Elysium denies knowledge or information sufficient to form a belief as
14 to the truth of the allegations in Paragraph 56 of the Third Amended Complaint,
15 except admits that Mr. Morris is currently employed by Elysium and holds the title
16 Head of Scientific Technology.

17 57. Elysium denies knowledge or information sufficient to form a belief as
18 to the truth of the allegations in Paragraph 57 of the Third Amended Complaint,
19 except admits that Mr. Dellinger is currently employed by Elysium and holds the
20 title Director of Scientific Affairs.

21 58. Elysium admits the allegations in Paragraph 58 of the Third Amended
22 Complaint, and refers to the referenced First Amended Counterclaims for their
23 complete contents.

24 59. Elysium admits the allegations in Paragraph 59 of the Third Amended
25 Complaint, and refers to the referenced First Amended Counterclaims for their
26 complete contents.

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1 60. Elysium admits the allegations in Paragraph 60 of the Third Amended
2 Complaint, and refers to the referenced motion and order for their complete contents.

3 61. Elysium denies knowledge or information sufficient to form a belief as
4 to the truth of the allegations in Paragraph 61 of the Third Amended Complaint.

5 62. Paragraph 62 of the Third Amended Complaint states legal conclusions
6 to which no response is required. To the extent a response is deemed necessary,
7 Elysium denies the allegations in Paragraph 62 of the Third Amended Complaint.

8 63. Paragraph 63 of the Third Amended Complaint states legal conclusions
9 to which no response is required. To the extent a response is deemed necessary,
10 Elysium denies the allegations in Paragraph 63 of the Third Amended Complaint.

11 64. Elysium denies knowledge or information sufficient to form a belief as
12 to the truth of the allegations in Paragraph 64 of the Third Amended Complaint.

13 65. To the extent the allegations in Paragraph 65 of the Third Amended
14 Complaint state legal conclusions, no response is required. To the extent a response
15 is deemed necessary, Elysium denies that ChromaDex has purged its patent misuse
16 and denies knowledge or information sufficient to form a belief as to the truth of the
17 remaining allegations in Paragraph 65 of the Third Amended Complaint.

18 66. Elysium incorporates by reference its responses to Paragraphs 1-65 of
19 the Third Amended Complaint as if set forth herein.

20 67. Paragraph 67 of the Third Amended Complaint states legal conclusions
21 to which no response is required.

22 68. To the extent the allegations in Paragraph 68 of the Third Amended
23 Complaint state legal conclusions, no response is required. To the extent a response
24 is deemed necessary, Elysium denies the allegations in Paragraph 68 of the Third
25 Amended Complaint.

26 69. To the extent the allegations in Paragraph 69 of the Third Amended
27 Complaint state legal conclusions, no response is required. To the extent a response
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1 is deemed necessary, Elysium denies the allegations in Paragraph 69 of the Third
2 Amended Complaint.

3 70. To the extent the allegations in Paragraph 70 of the Third Amended
4 Complaint state legal conclusions, no response is required. To the extent a response
5 is deemed necessary, Elysium denies the allegations in Paragraph 70 of the Third
6 Amended Complaint.

7 71. Elysium incorporates by reference its responses to Paragraphs 1-70 of
8 the Third Amended Complaint as if set forth herein.

9 72. Paragraph 72 of the Third Amended Complaint states legal conclusions
10 to which no response is required.

11 73. To the extent the allegations in Paragraph 73 of the Third Amended
12 Complaint state legal conclusions, no response is required. To the extent a response
13 is deemed necessary, Elysium denies the allegations in Paragraph 73 of the Third
14 Amended Complaint.

15 74. To the extent the allegations in Paragraph 74 of the Third Amended
16 Complaint state legal conclusions, no response is required. To the extent a response
17 is deemed necessary, Elysium denies the allegations in Paragraph 74 of the Third
18 Amended Complaint.

19 75. To the extent the allegations in Paragraph 75 of the Third Amended
20 Complaint state legal conclusions, no response is required. To the extent a response
21 is deemed necessary, Elysium denies the allegations in Paragraph 75 of the Third
22 Amended Complaint.

23 **GENERAL DENIAL**

24 Elysium denies each and every allegation, statement, and matter not expressly
25 admitted or qualified here. The WHEREFORE clause is denied in its entirety.
26 Elysium denies that ChromaDex is entitled to any of the relief requested or to any
27 other relief based on the allegations in the Third Amended Complaint.

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AFFIRMATIVE DEFENSES

Without undertaking any burden of proof not otherwise assigned to it by law, Elysium asserts the following affirmative and other defenses with respect to the allegations in the Third Amended Complaint:

FIRST AFFIRMATIVE DEFENSE

The Third Amended Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The amount sought to be recovered in this action is barred, in whole or in part, by the amount owing from ChromaDex to Elysium.

THIRD AFFIRMATIVE DEFENSE

ChromaDex's claims are barred, in whole or in part, because, and to the extent that, any relief or recovery would unjustly enrich it.

FOURTH AFFIRMATIVE DEFENSE

ChromaDex's claims are barred, in whole or in part, because ChromaDex materially breached one or more of the Agreements. Accordingly, Elysium's obligations under the Agreements were excused in whole or in part and the damages to which ChromaDex would otherwise be entitled, if any, are offset in whole or in part.

FIFTH AFFIRMATIVE DEFENSE

ChromaDex's claims are barred, in whole or in part, because all or part of Elysium's undertaking of obligations under the Agreements resulted from fraud, deceit, and/or misrepresentation (whether knowingly, recklessly, negligently, or otherwise) by ChromaDex.

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SIXTH AFFIRMATIVE DEFENSE

ChromaDex's claims are barred in whole or in part because ChromaDex failed to perform its obligations under the Agreements and/or failed to satisfy a condition precedent.

SEVENTH AFFIRMATIVE DEFENSE

ChromaDex's claims are barred in whole or in part by the doctrines of waiver, estoppel, ratification, and/or consent.

EIGHTH AFFIRMATIVE DEFENSE

Any and all actions taken by Elysium in relation to ChromaDex and the Agreements were taken in good faith and in accordance with Elysium's duties, obligations, and rights pursuant to the Agreements.

NINTH AFFIRMATIVE DEFENSE

ChromaDex's claims are barred in whole or in part by the doctrine of unclean hands.

DEFENSES RESERVED

Elysium reserves the right to assert any other affirmative defenses that are supported by information or facts obtained through discovery or other means during this case and expressly reserves the right to amend its Answer to assert such other affirmative defenses in the future.

WHEREFORE, Elysium respectfully requests that the Court enter judgment:

1. Dismissing all claims asserted herein with prejudice; and
2. Granting Elysium all other and further relief that the Court deems just and proper.

COUNTERCLAIMS

Defendant Elysium Health, Inc. ("Elysium"), by and through its undersigned counsel, hereby incorporates by reference its Third Amended Counterclaims, dated February 22, 2018.

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DATED: February 22, 2018

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