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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 REPLY IN
SUPPORT OF THEIR MOTION IN
LIMINE TO EXCLUDE ANY
REFERENCE OR EVIDENCE ON
PERSONAL CONDUCT**

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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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

ChromaDex, Inc.’s (“ChromaDex”) Opposition to Elysium Health, Inc.’s (“Elysium”) and Mark Morris’s (“Morris”) Motion *in Limine* to Exclude Any Reference or Evidence on Personal Conduct Evidence (“ChromaDex’s Opposition”) discloses ChromaDex’s intended strategy of turning the trial of this case into a circus, with the irrelevant personal conduct of Elysium personnel in the center ring and the merits of the case relegated to a sideshow. The idea, of course, is to distract the jury from the business dispute that’s actually at issue by launching a sustained *ad hominem* attack on Elysium’s personnel, in particular Eric Marcotulli and Dan Alminana. The whole point is to enlist the jury’s passions against Elysium, encourage it to cast judgment on the case by introducing personal and private conduct on what is at most a collateral issue unrelated to the merits of any claim or defense, fatally prejudice Elysium, and inflict pain and punishment on Elysium and its personnel for their personal lives and even health issues. The Court should not allow itself to be used as a tool of personal destruction and should not allow its authority to be hijacked to preside over a mockery of justice. In short, ChromaDex’s Opposition only confirms that the Court’s intervention is required to prevent ChromaDex from turning this case into a referendum on the personal conduct of Elysium personnel that precludes unbiased consideration of the merits of the parties’ claims and defenses by the jury.

Elysium’s and Morris’s Motion *in Limine* to Exclude Personal Conduct Evidence (the “Motion”) should be granted.

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1 **II. ARGUMENT**

2 **A. The Personal Conduct Evidence Is Not Relevant to Any of the**
3 **Claims or Defenses in This Case**

4 The Personal Conduct Evidence¹ is inadmissible for any reason and should be
5 excluded pre-trial before ChromaDex can “waft an unwarranted innuendo into the
6 jury box.” *Michelson v. United States*, 335 U.S. 469, 481 (1948). That evidence has
7 nothing whatsoever to do with the merits of this case, which concerns a business
8 dispute between two companies. ChromaDex’s summary judgment briefing does
9 not once mention or seek to rely upon the Personal Conduct Evidence for any merits
10 issue. ChromaDex does not even attempt to argue that the evidence is relevant for
11 any purpose other than credibility, and even there ChromaDex has failed to meet its
12 burden.

13 **B. ChromaDex Has Failed to Meet Its Burden to Support Admission**
14 **Regarding Credibility**

15 Even on credibility, “a district court must apply ‘the general balancing test of
16 Rule 403 to protect all litigants against unfair impeachment of witnesses.’” *United*
17 *States v. Rowe*, 92 F.3d 928, 933 (9th Cir. 1996) (citation omitted). “[W]hen making
18 the decision whether to permit impeachment by contradiction, trial courts should
19 consider the Rule 403 factors, such as confusion of the jury or the cumulative nature
20 of the evidence.” *United States v. Kincaid-Chauncey*, 556 F.3d 923, 932 (9th Cir.
21 2009), *abrogated on other grounds by Skilling v. United States*, 561 U.S. 358 (2010);
22 *see also United States v. Castillo*, 181 F.3d 1129, 1133 (9th Cir. 1999) (holding that
23 courts should evaluate evidence of impeachment by contradiction under Rule 403).

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1. ChromaDex Has Failed to Meet Its Burden to Attack Any Witness’s Credibility Based on [REDACTED]

ChromaDex cannot attack credibility or capacity with [REDACTED]

[REDACTED]

Yet despite the bar on using evidence of [REDACTED] to attack credibility, ChromaDex asserts (Opp.² at 15) that “the jury should also be allowed to hear that in the *years since those negotiations* he [REDACTED]

[REDACTED]

(emphasis added). That reflects that ChromaDex has no direct and specific theory of relevancy. Instead, it cites pages and pages of text messages but does not attempt to demonstrate how the bulk of them (such as those it quotes at length on page 6 of its Opposition) have any conceivable relevance to this case. ChromaDex even admits that it intends to use this evidence specifically to attack the “impression” that Elysium was run by “trustworthy corporate executives.” (Opp. at 19). This brazen attempt to present unfair and highly prejudicial content to the jury, with full

² Citations to “Opp. at ___” refer to ChromaDex’s Memorandum in Opposition to Defendants’ Motion *in Limine* to Exclude Any Reference or Evidence on Personal Conduct, ECF No. 285-00.

1 knowledge that the evidence of [REDACTED] is not temporally connected to the events
2 in question, must be rejected because [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 Not only would such an attack be improper, but ChromaDex has also failed to
6 demonstrate any kind of relevance with respect to its central pretext for admission
7 that alleged [REDACTED]. Expert
8 testimony is required [REDACTED]
9 [REDACTED]. That is because, as courts have widely
10 recognized, [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] Scholars too have recognized that [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 That is why courts have recognized that expert testimony is required to
27 introduce evidence that [REDACTED] may have affected a witness's memory or
28 perceptions. For example, as the district court in a case cited favorably by

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1 ChromaDex (Opp. at 14) held, [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 [REDACTED] The time has passed for ChromaDex to attempt to procure an expert
9 witness to attempt to provide a basis for the introduction of this evidence, and as a
10 result, it has no ability to even attempt to demonstrate relevance.

11 In short, ChromaDex’s argument about impaired capacity is specious, yet the
12 prejudicial effect of evidence on [REDACTED] is well-recognized, which is why this
13 evidence should be excluded. [REDACTED]
14 [REDACTED]

15 **2. ChromaDex Fails To Link Any [REDACTED] to**
16 **Any Material Events of the Case**

17 As the party claiming the Personal Conduct Evidence is relevant, ChromaDex
18 has the burden to “articulate[] precisely the hypothesis by which one or more
19 consequential facts can be inferred from this evidence.” *United States v.*
20 *Mehrmanesh*, 689 F.2d 822, 831 (9th Cir. 1982). It is well-established that the party
21 offering evidence “must carry the burden of showing how the proffered evidence is
22 relevant to one or more issues in the case; specifically, it must articulate precisely
23 the evidential hypothesis by which a fact of consequence may be inferred from the
24 other acts evidence.” *Id.* at 830; *see also United States v. Brooke*, 4 F.3d 1480, 1483
25 (9th Cir. 1993) (same).

26 As an initial matter, ChromaDex largely focuses on Mr. Marcotulli’s
27 participation in conversations regarding the misappropriation of trade secrets claim,
28

1 see Opp. at 7, topics on which any testimony by Mr. Marcotulli would be, at best,
2 cumulative given the participation of others in those same conversations.

3 Moreover, ChromaDex’s circus strategy relies on several missing links—that
4 is, it fails to connect any [REDACTED] to any material, relevant, and disputed
5 fact. Most gratuitously, ChromaDex cites and quotes (Opp. at 6–7) numerous text
6 messages about [REDACTED] that it does not even contend
7 have any connection to this case. Why ChromaDex felt these text messages were
8 even relevant—other than to attack Mr. Marcotulli’s character impermissibly—is
9 not explained anywhere in ChromaDex’s opposition. ChromaDex also asserts (Opp.
10 at 7–8) that [REDACTED] delivered to his apartment, [REDACTED]
11 [REDACTED]. But ChromaDex does not show that [REDACTED]

12 [REDACTED]
13 Nor does ChromaDex show a close temporal connection between [REDACTED]
14 [REDACTED] and any event relevant to this business dispute. To the contrary, even under
15 ChromaDex’s theory, the [REDACTED]
16 [REDACTED] (See Opp. at 7–8). This type of character assassination,
17 divorced from any of the facts of this case, is exactly what Rule 403 prohibits.

18 Consistent with its *ad hominem* approach, ChromaDex does not articulate any
19 theory, much less a precise theory, for why [REDACTED]
20 would be consequential to any disputed fact central to a legal claim at issue—let
21 alone for why evidence of [REDACTED], given its irrelevance, should not be
22 excluded under Rule 403. For example, ChromaDex cites (Opp. at 8) a June 24,
23 2016 text message where [REDACTED] and then
24 texted Mr. Alminana about a new patent strategy. Whether [REDACTED]
25 [REDACTED] is not relevant even to credibility; the operative fact—a new patent
26 strategy—is recorded in a text message that speaks for itself. Similarly, ChromaDex
27 cites (Opp. at 8) a June 26, 2016 text message where [REDACTED]

28

1 [REDACTED] and, the next morning, he had “another CDXC idea.”³ But
2 ChromaDex never explains how the text message relates to the veracity of Mr.
3 Marcotulli’s testimony, and ChromaDex never even questioned Mr. Marcotulli
4 about the “CDXC idea” at his deposition. Likewise, ChromaDex cites (Opp. at 7)
5 text messages that occurred, respectively, hours before and hours after December 2
6 and December 8, 2015 discussions with ChromaDex executives regarding the
7 Exclusivity Provision, without even attempting to explain the connection between
8 those text messages and the discussions. Unsurprisingly, Mr. Marcotulli was not
9 questioned at his deposition about the December 2 and 8 discussions he had with
10 ChromaDex executives.

11 The same is true for the remaining text messages cited by ChromaDex on
12 pages 8–9 of its Opposition. ChromaDex cites June 30, July 8, and July 17, 2016
13 text messages regarding [REDACTED] around the time Mr. Marcotulli
14 had phone conferences with other witnesses; however, ChromaDex never explains
15 how the [REDACTED] relates to any material and disputed fact.
16 ChromaDex also cites text messages from on September 5, 6, 9 for [REDACTED]
17 [REDACTED] around supposedly relevant events. But ChromaDex fails to explain how
18 any *testimony* by Mr. Marcotulli related to the contemporaneous events is impacted
19 or even rendered incredible by the [REDACTED].⁴ Allowing ChromaDex
20 to use the text messages when they have limited or no connection to any testimony
21 will only serve as a prejudicial and confusing sideshow that is barred by Rule 403.⁵

22 _____
23 ³ Plaintiff speculates that Mr. Marcotulli’s idea was to place a large supply order, but
24 it is undisputed that Mr. Alminana placed the order. (*See* ECF No. 244–3).

25 ⁴ Plaintiff failed to question Mr. Marcotulli at his deposition about the September 5,
26 2016 discussion with the unknown Grace employee. The September 6 and 9
27 discussions regarding Dartmouth are a red herring—Dartmouth never terminated
28 ChromaDex’s patent license.

⁵ ChromaDex’s attempt to introduce the personal conduct evidence under Rule 613
are also unavailing. That rule merely provides when a witness is afforded a chance

1 In sum, ChromaDex has failed to carry its burden to show that any of these
2 text messages are relevant for any purpose other than character assassination. That,
3 of course, is not a legitimate basis for placing unfairly prejudicial Personal Conduct
4 Evidence or the personal conduct purportedly described therein before the jury. The
5 Court should grant Elysium’s motion to exclude this Personal Conduct Evidence.

6 **3. ChromaDex Identifies No Ground for Admission of the**
7 **Rest of the Personal Conduct Evidence**

8 Some of the text messages produced concerned private matters that cannot
9 conceivably be linked to capacity to remember or any claim on the merits. Without
10 even attempting to argue that any of these personal text messages could be relevant
11 to this business dispute, ChromaDex contends (Opp. at 23) that the Court should not
12 “exclude a broad and undefined category of documents until and unless Defendants
13 expressly identify whatever it is that concerns them.” To be clear, the concern is
14 that text messages of private conversations [REDACTED]
15 [REDACTED] have no relevance to a case about a
16 business dispute. And ChromaDex makes no claim to the contrary. These text
17 messages and any question or argument concerning these text messages should be
18 categorically excluded, especially given the unfairly prejudicial and private nature
19 of this content.⁶

20 _____
21 to see his own prior inconsistent statement but does not govern the introduction of
22 evidence, even for impeachment purposes. *See United States v. Higa*, 55 F.3d 448,
23 452 (9th Cir. 1995) (providing that prior inconsistent statements admissible under
24 Rule 613 are still subject to Rule 608(b)); *Smith for J.L. v. Los Angeles Unified Sch.*
25 *Dist.*, 2018 WL 6137133, at *3 (C.D. Cal. Feb. 13, 2018) (“Defendants may seek to
use such evidence for impeachment, to the extent the evidence satisfies the rules
governing impeachment evidence.”).

26 ⁶ Further evidencing its willingness to prey on unfair prejudice, Plaintiff asserts (Opp.
27 at 23) without any redaction and in violation of the protective order in this case that
28 some of these [REDACTED]
This gratuitous comment has nothing to do with any of the claims in this case yet

1 ChromaDex has also failed to argue why any private text messages on
2 personal conduct from any Elysium personnel other than Mr. Marcotulli is
3 conceivably relevant to this contract dispute. Thus, the Personal Conduct Evidence
4 of Elysium personnel aside from Mr. Marcotulli should be excluded simply because
5 ChromaDex has asserted no reason whatsoever for why these text messages are
6 relevant to anything in this case and has therefore failed to carry its burden.

7 **C. ChromaDex’s Impeachment Theory Does Not Support Use of the**
8 **Text Messages**

9 **1. Impeachment on Veracity as to [REDACTED] Is a Collateral**
10 **Issue**

11 ChromaDex’s attempt to malign an individual’s character with a mini-trial on
12 [REDACTED] in a case concerning a business dispute between two companies
13 ignores decades of precedent. It is black-letter law that “[e]vidence extrinsic to a
14 witness’s testimony is inadmissible to contradict that witness on a collateral matter.”
15 27 Fed. Prac. & Proc. Evid. § 6096 (2d ed.); *see also* Fed. R. Evid. 608. This Circuit
16 has repeatedly recognized this rule. *See, e.g., Ortiz v. Yates*, 704 F.3d 1026, 1038
17 (9th Cir. 2012) (“[A] witness may not be contradicted by extrinsic evidence on a
18 collateral matter.”); *Herzog v. United States*, 226 F.2d 561, 565 (9th Cir. 1955),
19 *adhered to on reh’g*, 235 F.2d 664 (9th Cir. 1956) (“A witness cannot be impeached
20 where the subject matter of his testimony is either immaterial or collateral to the
21 issues in the cause in which the testimony is given.”).

22 ChromaDex disregards Ninth Circuit authority that a witness’s testimony on
23 a collateral matter cannot be impeached through extrinsic evidence because,
24 “[o]therwise, the jury will be required to determine the preponderance of the
25 evidence in relation to collateral matters, instead of confining their consideration to
26 _____
27 places Elysium in a negative light. This is exactly why the Court should grant the
28 motion *in limine* to exclude these text messages and any reference to such Personal
Conduct Evidence. Plaintiff cannot prey on unfair prejudice.

1 the real question in controversy.” *Smith v. United States*, 10 F.2d 787, 788 (9th Cir.
2 1926). If extrinsic evidence were admitted on a collateral matter, it would interrupt
3 the trial on the merits with a trial-within-a-trial that may confuse the issues, mislead
4 the jury, unduly consume time, or infuse the trial with unfair prejudice. 4 Handbook
5 of Fed. Evid. § 607:2 (8th ed.); *EEOC v. High Speed Enter., Inc.*, 2012 WL
6 12964791, at *4 (D. Ariz. Jan. 17, 2012) (excluding evidence on a collateral issue
7 “under Rule 403 because it will confuse the jury, waste Court time, delay the trial
8 and cause a mini-trial on a collateral issue.”). That is exactly what ChromaDex seeks
9 to do here.

10 A witness’s testimony concerns a collateral matter when the testimony is “not
11 logically relevant to establish any fact in issue.” *Shanahan v. S. Pac. Co.*, 188 F.2d
12 564, 568 (9th Cir. 1951). “An inquiry into the credibility of a witness is collateral
13 to that witness’s direct testimony because it is not an inquiry into the details of the
14 witness’s direct testimony.” *People of Territory of Guam v. Talladoc*, 36 F.3d 1103
15 (9th Cir. 1994); *see also Mannhalt v. Reed*, 847 F.2d 576, 581 (9th Cir. 1988)
16 (recognizing that under state law counsel could “inquire into collateral matters to
17 test the witness’ credibility, but the cross-examiner may not introduce evidence to
18 show the answers are false.”). The Ninth Circuit has explained that “[a] collateral
19 contradiction is typically one on a point not related to the matters at issue, but
20 designed to show that the witness’ false statement about one thing implies a
21 probability of false statements about the matters at issue.” *United States v. Higa*, 55
22 F.3d 448, 452 (9th Cir. 1995).

23 The Personal Conduct Evidence ChromaDex’s seeks to use is extrinsic
24 evidence of (at most) a collateral matter. As evident from ChromaDex’s briefing on
25 summary judgment, which makes no mention of these personal text messages on any
26 merits issue, the text messages are completely disconnected from the merits of the
27 case, confirming that the personal matters they address are irrelevant and collateral.
28 (See ECF Nos. 241-27, 302-1).

1 When a witness is questioned on a collateral matter, such as credibility, the
2 witness’s answer stands because, “[w]here extrinsic evidence is barred, the cross
3 examiner must ‘take the answer,’ and cannot put on another witness to show that the
4 witness to be contradicted testified falsely.” *Higa*, 55 F.3d at 452; *see also* 4
5 Handbook of Fed. Evid. § 607:2 (8th ed.) (“If a matter is considered collateral, the
6 testimony of the witness on direct or cross-examination stands—the cross-examiner
7 must take the witness’ answer; extrinsic evidence, i.e., evidence offered other than
8 through the witness himself, in contradiction is not permitted.”).⁷ In such
9 circumstances, extrinsic evidence—such as the text messages in dispute—is “not
10 admissible by way of impeachment” because a witness may not be “impeached by
11 contradiction upon a collateral matter.” *Shanahan*, 188 F.2d at 568.

12 In deciding similar issues, other courts have held that [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] *see also Wilson v. Muckala*, 303
16 F.3d 1207, 1216 (10th Cir. 2002) (excluding extrinsic evidence of an [REDACTED]
17 [REDACTED]
18 [REDACTED] Ninth Circuit has held that it was prejudicial error to
19 admit extrinsic evidence to impeach a witness who denied [REDACTED]
20

21 _____
22 ⁷ “[W]hen contradiction relates to a so-called ‘collateral matter’ the contradiction
23 may be proved only through the *testimony* of the witness to be impeached.” 27 Fed.
24 Prac. & Proc. Evid. § 6096 (2d ed.) (emphasis added). The text messages are
25 certainly not testimony because “the word ‘testimony’ refers only to statements made
26 under oath or affirmation.” *United States v. Salerno*, 505 U.S. 317, 322 (1992);
27 *Kungys v. United States*, 485 U.S. 759, 780 (1988) (“[T]estimony’ is limited to oral
28 statements made under oath.”). The text messages were obviously not under oath, so
as non-testimonial writings they are inadmissible for impeachment by contradiction.
In particular, Plaintiff cites (Opp. at 6) an exchange with a friend purporting to
discuss [REDACTED], but none of these texts are testimonial and are thus inadmissible for
impeachment by contradiction.

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1 [REDACTED]

2 [REDACTED]

3 ChromaDex ignores all of this precedent in a brazen attempt to malign Mr.
4 Marcotulli’s character with extrinsic evidence of text messages purporting [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Finally, ChromaDex’s claim of “bias” (Opp. at 16–17) is a red herring. There
12 is no relevant link between the [REDACTED] and the claims at issue in
13 this case. ChromaDex does not assert that Mr. Marcotulli or Mr. Alminana gave
14 false testimony about any merits issue in this case. To show that bias influenced
15 their testimony, ChromaDex would need to draw a connection between false
16 testimony on a disputed fact consequential to a legal claim in this case. ChromaDex
17 fails to make that showing.⁸

18

19 _____

20 ⁸ Consistent with its “attack Elysium” strategy, ChromaDex’s irresponsible and
21 inflammatory accusations of perjury are a collateral sideshow on a collateral issue
22 that fails to address the merits of the admissibility of the Personal Conduct Evidence,
23 to say nothing of the merits of the underlying claims that will be heard at trial. Not
surprisingly, ChromaDex’s hyperbolic charges are factually, logically, and legally
baseless.

24 First, ChromaDex’s assertion (Opp. at 11) that “both Marcotulli and Alminana
25 declared that the text messages sent to and from [REDACTED]
26 [REDACTED]” misstates their declarations. Both declarations state, in
relevant part, [REDACTED]

27 [REDACTED] ECF No. 272, ¶ 2; ECF No. 271 ¶ 2.
28

1 In short, there is no basis to admit the personal text messages because they are
2 highly prejudicial extrinsic evidence on a collateral issue. That is inadmissible.

3 **2. ChromaDex Relies Entirely on Cases Where [REDACTED] Was**
4 **the Central Issue, Not a Collateral Issue**

5 ChromaDex argues that evidence of [REDACTED] is admissible based on cases
6 where [REDACTED] was the central issue, not a collateral issue. To begin with,
7 ChromaDex cites this Court’s decision in [REDACTED]

8 [REDACTED]
9 where this Court dismissed a product liability claim because the plaintiffs had lied
10 about their [REDACTED] and that [REDACTED]
11 [REDACTED] *Id.* at 911 (emphasis added). This Court held that the plaintiffs’

12 [REDACTED]
13 because the plaintiffs claimed the fire causing their burns started because of a
14 defectively manufactured product, while the defendant claimed the fire started
15 because the plaintiffs misused the product [REDACTED] at

16 _____
17 Second, ChromaDex ignores that the declarations were made months following the
18 depositions. There is no necessary inconsistency between Mr. Alminana’s deposition
19 testimony that he had no knowledge of [REDACTED] and his averment,
20 months later, that he had become aware of text messages [REDACTED]
[REDACTED]. Those statements are not contradictory.

21 Third, there was no perjury. Reflecting its cavalier attitude to leveling accusations
22 of personal and criminal misconduct, Plaintiff does not even cite the elements of a
23 perjury claim, which are “(1) that the defendant gave false testimony under oath
24 (2) concerning a material matter (3) with the willful intent to provide false testimony,
25 rather than as a result of confusion, mistake, or faulty memory.” *United States v.*
26 *Jimenez*, 300 F.3d 1166, 1170 (9th Cir. 2002). “A statement is material if ‘it has a
27 natural tendency to influence, or was capable of influencing, the decision of the
28 decision-making body to which it was addressed,’” and materiality is measured “at
the time the alleged false statement was made.” *United States v. McKenna*, 327 F.3d
830, 839 (9th Cir. 2003). The other elements aside, any statement about [REDACTED]
was not material when it was made, let alone now.

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1 the time of the fire causing their injuries. ChromaDex cites this case without
2 providing the context, which is entirely different from this business dispute where
3 [REDACTED] has nothing to do with whether a contract was breached or a trade
4 secret misappropriated.

5 The other cases ChromaDex cites on this issue are equally inapposite, as most
6 involved Section 1983 claims against police officers or municipalities for the use of
7 excessive force when arresting [REDACTED]⁹:

- 8 • [REDACTED] is a
9 Section 1983 case where the plaintiff sued several police officers for
10 using excessive force and the municipality for failure to train arising
11 from the plaintiff's arrest [REDACTED]. The plaintiff conceded the
12 relevance of his [REDACTED] on the night when he was arrested for
13 resisting or obstructing a police officer. Importantly, the court granted
14 the motion *in limine* [REDACTED]
15 [REDACTED]
16 [REDACTED] *Id.* at *7. The issue of [REDACTED]
17 [REDACTED] was a *central issue in the case* because it was directly relevant to a
18 defense.
- 19 • In [REDACTED]
20 (unpublished), a Section 1983 case, the plaintiff was arrested for [REDACTED]
21 [REDACTED] and then sued the city for
22 excessive force at the time of his arrest. The Ninth Circuit held that the
23 arrest report authored by the arresting officer was admissible as
24 substantive evidence and as impeachment evidence because it [REDACTED]

25 _____
26 ⁹ Plaintiff also cites *Old Chief v. United States*, 519 U.S. 172, 184 (1997); *United*
27 *States v. Abel*, 469 U.S. 45, 52 (1984) and *Classic Foods Int'l Corp. v. Kettle Foods,*
28 *Inc.*, 2006 WL 5187497, at *7 (C.D. Cal. Mar. 2, 2006); those cases concern the
general standard for excluding evidence under Rules 402 and 403 but do not involve
[REDACTED] or an analogous issue.

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[REDACTED]

[REDACTED] *Id.* (emphasis added).

• ChromaDex cites *United States v. Barnard*, 490 F.2d 907 (9th Cir. 1973), for the principle that “[c]redibility, however, is for the jury—the jury is the lie detector in the courtroom,” but ignores that it excluded extrinsic evidence on witness credibility because it “may cause juries to surrender their own common sense” and “may produce a trial within a trial” on a collateral matter. *Id.* at 912.

• [REDACTED] was a Section 1983 case where the plaintiff asserted that the police used excessive force in attempting to arrest an [REDACTED]. The [REDACTED] supported the disputed fact that the arrestee was [REDACTED] and thus was a *central issue*. *Id.* at *22. Even then, the court limited the admissible evidence to specific [REDACTED] [REDACTED]s and consume an amount of time disproportionate to its probative value.” *Id.* at *23.

• [REDACTED] is another Section 1983 case where police arrested an [REDACTED] [REDACTED] was a *central issue*. Importantly, the court recognized that [REDACTED] [REDACTED] *Id.* (emphasis added). Even then, the court held that “only a very limited exploration is appropriate” on the topic of [REDACTED]. *Id.* at *3.

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- [REDACTED]),
is another Section 1983 case where a police officer was sued for using
excessive force in arresting an [REDACTED]. The plaintiff's
[REDACTED]
[REDACTED] was a central issue of the case. *Id.* at 12–13.
- [REDACTED] does not
support Plaintiff's claim that evidence of [REDACTED] is routinely admitted
at trial for impeachment purposes. [REDACTED] was a habeas case where the
petitioner asserted that his counsel provided ineffective assistance for
failing to more fully impeach a third-party witness who testified against
him. The third-party witness's credibility was impeached through
evidence that the witness had been [REDACTED]
[REDACTED]
[REDACTED] And because the third-party witness was not connected to either
party, any impeachment evidence did not cast either party in a negative
light, such that there could be no unfair prejudice from introduction of
the impeachment evidence.
- [REDACTED]
[REDACTED] is also a Section 1983 case where a municipality was sued after
a police officer allegedly used excessive force in arresting an
[REDACTED]. [REDACTED] was relevant to the *central issue in the*
case for showing the plaintiff's "behavior and reactions to the officers"
who arrested him, and the [REDACTED] was in close temporal proximity to
the event at issue, such that the plaintiff did not object to its admission
to provide context for the encounter. Notably, the court held the
evidence of [REDACTED] use was not admissible as character evidence.
- ChromaDex cites dicta from *United* [REDACTED]
[REDACTED] for the proposition that [REDACTED]

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[REDACTED]
[REDACTED] but it ignores the Seventh Circuit’s *holding*
that the district court properly *excluded* evidence of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Id. at 405.

In sum, the authorities cited by ChromaDex are plainly inapposite to this case, where [REDACTED] is not directly relevant to any claim or dispute.

3. There Are Much Less Prejudicial Methods Available

Granting the Motion would not preclude ChromaDex from seeking reconsideration with respect to specific evidence in the context of a specific dispute over relevance and prejudice. Requiring ChromaDex to proceed in that manner, if it believes that it has a basis for introduction of particular evidence, would allow the Court to consider and decide the matter in an appropriately granular fashion, given the general irrelevance and highly prejudicial nature of the Personal Conduct Evidence. In that context, the Court could also consider whether and to what extent to permit examination on questions of memory and perception, as a potential alternative to introduction of Personal Conduct Evidence. [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] In this way, granting the Motion would avoid turning the trial into a circus, while still permitting ChromaDex to seek to present evidence on collateral issues in a way that avoids undue prejudice and keeps the jury focused on the material issues raised in this litigation.

1 **III. CONCLUSION**

2 The Court should grant Elysium’s and Morris’s Motion *in limine* to exclude
3 any evidence or argumentation on the Personal Conduct Evidence because that
4 evidence is irrelevant to the merits of the case, highly and unfairly prejudicial to
5 Defendants, and personally harmful to the individuals whose most intimate secrets
6 would be exposed to public inquisition.

7
8 Respectfully submitted,

9 Dated: September 4, 2019

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

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