

1 MICHAEL R. MATTHIAS (SBN 057728)
mmatthias@bakerlaw.com
2 ELIZABETH M. TRECKLER (SBN 282432)
etreckler@bakerlaw.com
3 **BAKER & HOSTETLER LLP**
11601 Wilshire Boulevard, Suite 1400
4 Los Angeles, CA 90025-0509
Telephone: (310) 820-8800
5 Facsimile: (310) 820-8859

6 JOSEPH N. SACCA (admitted *pro hac vice*)
jsacca@bakerlaw.com
7 **BAKER & HOSTETLER LLP**
45 Rockefeller Plaza
8 New York, NY 10111-0100
9 Telephone: (310) 820-8800
Facsimile: (310) 820-8859

10 *Counsel continued on following page*

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **SOUTHERN DIVISION**

15
16 ChromaDex, Inc.,
17 Plaintiff,
18 v.
19 Elysium Health, Inc. and Mark
Morris,
20 Defendant.

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

Case No.: 8:16-cv-02277-CJC (DFM)

NOTICE OF SUBPOENA

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

1 DONALD R. WARE (admitted *pro hac vice*)
dware@foleyhoag.com
2 MARCO J. QUINA (admitted *pro hac vice*)
mquina@foleyhoag.com
3 JULIA HUSTON (admitted *pro hac vice*)
jhuston@foleyhoag.com
4 **FOLEY HOAG LLP**
155 Seaport Boulevard
5 Boston, Massachusetts 02210
Telephone: (617) 832-1000
6 Facsimile: (617) 832-7000

7
8 *Attorneys for Defendant and Counterclaimant*
ELYSIUM HEALTH, INC. *and Defendant*
9 MARK MORRIS

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Please TAKE NOTICE that pursuant to Federal Rules of Civil Procedure 26,
3 34(c) and 45, Defendant and Counterclaimant Elysium Health, Inc. (“Elysium”) will
4 serve the subpoena *duces tecum* on the following third party, compelling the
5 production of documents and electronically stored information as set forth in Exhibit
6 A hereto:

Producing Party	Date and Time	Location
Phillip Frost	March 7, 2019 10:00AM	U.S. Legal Support 1900 Northwest Corporate Boulevard, Suite 200 East Boca Raton, FL 33431

12
13 Production shall be made at the date and time and location specified above, or
14 such other location as is mutually acceptable to and agreed upon by the above-named
15 third party and Elysium’s counsel. No testimony shall be required by this subpoena.

21 Dated: February 8, 2019

BAKER & HOSTETLER LLP

22 By: /s/ Benjamin D. Pergament
23 Benjamin D. Pergament

24 *Attorneys for Defendant and Counterclaimant*
25 **ELYSIUM HEALTH, INC. and Defendant**
26 **MARK MORRIS**

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

EXHIBIT A

UNITED STATES DISTRICT COURT

for the

Central District of California

ChromaDex, Inc.

Plaintiff

v.

Elysium Health, Inc. and Mark Morris

Defendant

Civil Action No. 8:16-cv-16-02277-CJC-DFM

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Phillip Frost
21 Star Island Drive, Miami Beach, FL 33139-5147

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit 1

Place: U.S. Legal Support
1900 Northwest Corporate Boulevard, Suite 200 East
Boca Raton, FL 33431

Date and Time:
03/13/2019 10:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/08/2019

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Elysium Health Inc., who issues or requests this subpoena, are:

B. Pergament, Baker & Hostetler LLP, 45 Rockefeller Plaza, NY NY 10111, bpergament@bakerlaw.com, (212) 589-4200

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 8:16-cv-16-02277-CJC-DFM

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT 1

DEFINITIONS

1. “ChromaDex” means ChromaDex, Inc., or any owner, director, officer, employee, agent, parent, subsidiary, affiliate, predecessor, successor, representative, or other persons purporting to act on its behalf.

2. “Elysium” means Elysium Health, Inc., or any owner, director, officer, employee, agent, parent, subsidiary, affiliate, predecessor, successor, representative, or other persons purporting to act on its behalf.

3. “Healthspan” means Healthspan Research, LLC, or any owner, director, officer, employee, agent, members, partners, parent, subsidiary, affiliate, predecessor, successor, representative, or other persons purporting to act on its behalf.

4. “Frost Group” means Frost Group, LLC, or any owner, director, officer, employee, agent, members, partners, parent, subsidiary, affiliate, predecessor, successor, representative, or other persons purporting to act on its behalf.

5. “NR” means the chemical compound nicotinamide riboside, whether or not sold under the brand name Niagen.

6. “Document” or “Documents” means any tangible thing from or on which information can be stored, recorded, processed, transmitted, inscribed, or memorialized in any way by any means, regardless of technology or form and including, but not being limited to: papers, books, emails, Internet files, accounts, newspapers and magazine articles, letters, photographs, objects, tangible things, correspondence, telegrams, wires, checks, check stubs, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews or of conferences, or of other meetings, occurrences, or transactions, affidavits, transcripts of depositions or hearings, statements,

summaries, opinions, reports, tests, experiments, analyses, evaluations, contracts, agreements, ledgers, journals, logs, books or records of account, receipts, summaries of accounts, balance sheets, income statements, statistical records, desk calendars, appointment books, diaries, lists, tabulations, sound recordings, computer printouts, data processing input and output, microfilms, all other records kept by electronic, photographic or mechanical means, and things similar to any of the foregoing however, denominated. Each copy of a document which contains any separate notations or writings thereon shall be deemed to be a separate document for purposes of these discovery requests.

7. “Communications” means any oral or written statement, any in-person, electronic, telephonic or other communication between two or more Persons (including, but not limited to, e-mail or text/instant messages), and any analysis, summary, note, comment, or other description of a Communication, regardless of its form.

8. “You,” “Your,” or “Yours” means Phillip Frost, and his agents, employees, officers, directors, shareholders, representatives, predecessors, successors, subsidiaries, parents, and any other Person or entity acting or purporting to act on behalf of any one or more of the foregoing.

9. “Concern,” “concerns,” “concerning,” “relating to,” “relate to”, “regarding” and/or other derivatives shall be construed in their broadest sense and shall mean directly or indirectly describing, setting forth, relate or relating to, refer or referring to, pertain or pertaining to, reflect or reflecting, describe or describing, contradict or contradicting, support or supporting, evidence or evidencing, evaluate or evaluating, discuss or discussing, embody or embodying, mention or mentioning, record or recording, study or studying, analyze or analyzing and constituting or in any

way legally, logically or factually connected with the matter being discussed either in whole or in part and without limitation.

10. “All” and “any” mean any and all, and the word “including” means “including without limitation.”

11. “Or” includes “and” and both shall be used conjunctively and disjunctively as is necessary to bring within the scope of these Requests any information that might otherwise be outside their scope.

12. The use of the singular form of any word includes the plural and vice versa.

INSTRUCTIONS

1. A request for a document shall be deemed a request for any non-identical copies or drafts of such documents, as well as all transmittal sheets, cover letters, exhibits, enclosures, appendices or attachments to the document, in addition to the document itself.

2. Any electronically stored information that is responsive to any of the Requests contained herein shall be produced in native format.

3. The documents responsive to each Request shall be produced either (a) as they are kept in the usual course of business or (b) organized and labeled to correspond with each numbered paragraph of the request(s) to which they are responsive.

4. These Requests apply to any documents that are within your possession, custody or control, or the possession, custody or control of present and former officers, directors, agents, employees, parent corporations, corporate affiliates, divisions, subgroups, subsidiaries, predecessors-in-interest, successors-in-interest, assigns, attorneys, legal representatives, trustees, consultants, agents and all other persons acting on behalf of the aforementioned, and all other documents that are otherwise within your control.

5. If it is not possible to produce any document called for by a Request, or if you object to any individual Request, in whole or in part, specifically state the reasons for the failure to produce the document or the objection as to all grounds.

6. If a document responsive to any Request is not in your possession, custody or control, state what disposition was made of the document and the date of such disposition, and identify all persons having knowledge of the document's contents.

7. If a document responsive to any Request has been destroyed, set forth that document's author, addressor, addressee, recipients of indicated or "blind" copies, date, subject matter, number of pages, attachments, appendices, the date of such destruction and the name of the person(s) who destroyed the document and/or ordered or authorized such destruction.

8. If you object to any of the Requests herein, whether in whole or in part, on the grounds that information sought therein is subject to a claim of attorney-client privilege, work-product immunity or any other privilege or immunity, you shall produce as much of the document concerned as to which no claim of privilege or immunity is made. With respect to documents or portions of documents for which a claim of privilege or immunity is made, state all of the following: the type and nature of the document or communication; the date of the document; the person(s) in receipt of the document or the person(s) present during the communication; the person(s) who authored or created the document or the person(s) who made the communication; the person(s) to whom such document or communication was made; the general subject matter of the document or communication in a manner sufficient to support the privilege or immunity claimed; and the nature of the privilege or immunity asserted and/or the specific reason why the document is not being produced.

9. These Requests are continuing and require further and supplemental production by You as and whenever You acquire or create additional documents between the time of initial production hereunder and the time of final judgment in the above captioned action.

10. All documents produced in response to these Requests shall be produced *in toto* notwithstanding that portions thereof may contain information not requested.

DOCUMENTS REQUESTED

1. All documents relating to Robert Fried's membership in the Frost Group.
2. All documents and communications related to ChromaDex's relationship with Healthspan including, but not limited to, any agreements between ChromaDex and Healthspan, the sale of NR by ChromaDex to Healthspan (including the pricing at which any sales were made), ChromaDex's strategy with respect to Healthspan, and ChromaDex's acquisition of Healthspan.
3. All documents and communications related to any direct or indirect interest you or the Frost Group held or hold in Healthspan or any expectation You or the Frost Group had of participating in or benefiting from any transaction between ChromaDex and Healthspan.
4. All communications between You and ChromaDex concerning Elysium or Healthspan.
5. All documents and communications concerning any potential, purported or considered acquisition of Elysium by ChromaDex.
6. All documents and communications concerning the March 2015 meeting in Florida between You, Michael Brauser, and Barry Honig and representatives of Elysium, including but not limited to documents and communications concerning the participation of Frank Jaksch in a portion of that meeting by telephone and documents and communications concerning Your

proposal at that meeting that ChromaDex acquire Elysium and replace ChromaDex's management with Elysium's.

7. All documents and communications between You and Michael Brauser concerning ChromaDex, Elysium, or Healthspan.

8. All communications between You and Barry Honig concerning ChromaDex, Elysium, or Healthspan.

9. All communications between You and Robert Fried concerning ChromaDex, Elysium, or Healthspan.

10. Documents sufficient to show all of Your roles, jobs, positions, titles or responsibilities with regard to ChromaDex from 2013 through 2017.

11. All documents memorializing, reflecting, or concerning the communications requested in Request Nos. 1-10 above, including but not limited to any notes or summaries or oral communications between you and ChromaDex falling within the scope of Request Nos. 1-10 above.