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11
 12 **UNITED STATES DISTRICT COURT**
 13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 14 **(SOUTHERN DIVISION)**

15 ChromaDex, Inc.,
 16 Plaintiff,
 17 v.
 18 Elysium Health, Inc.,
 19 Defendant.

Case No. SACV 16-02277-CJC(DFMx)

**JOINT STIPULATION MEMORIALIZING
 PARTIAL AGREEMENTS REGARDING
 CHROMADEx, INC.'S MOTION TO COMPEL
 PRODUCTION OF DOCUMENTS FROM
 ELYSIUM HEALTH, INC.**

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

Date: December 13, 2017
 Time: 8:30 a.m.
 Judge: Hon. Douglas F. McCormick
 Courtroom: 6B

Discovery Cut-Off: June 14, 2018
 Pretrial Conference: September 10, 2018
 Trial: September 18, 2018

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1 **I. INTRODUCTION**

2 Pursuant to the Court's November 9, 2017 order and its direction at the
3 hearing on ChromaDex's motion to compel on November 28, 2017, Plaintiff and
4 Counter-Defendant ChromaDex, Inc. ("ChromaDex"), and Defendant and
5 Counterclaimant Elysium Health Inc. ("Elysium") (collectively referred to herein as
6 the "Parties"), submit this stipulation regarding the resolution of certain issues on
7 ChromaDex's motion to compel further responses from Elysium, and a single
8 remaining disputed issue, referred to herein as the Alternative Source issue.

9 The Parties have resolved certain of the disputed issues on ChromaDex's
10 motion to compel as memorialized below.¹

11 **II. REQUESTS ON WHICH THE PARTIES HAVE REACHED AGREEMENT**

12 The Parties have resolved their disputes as to Request Nos. 44, 45, and 54 as
13 follows:

14 In response to Request Nos. 44 and 45, the parties agree that Elysium shall
15 produce:

16 *Documents (1) sufficient to show all final versions of PR*
17 *documents; and (2) Concerning Your public relations*
18 *activities related to pterostilbene, resveratrol, and/or any*
19 *other ingredient which You contend is substantially similar*
to pTeroPure, and/or the biological effects of Your product
Basis.

20 In response to Request No. 54, the parties agree that Elysium shall produce:

21 *Documents (1) sufficient to show any draft and final sales*
22 *projections for Your product Basis; (2) sufficient to show*
23 *the calculation of and factors affecting any sales*
24 *projections for Your product Basis; and (3) Concerning*
25 *any actual or potential changes or updates to sales*
26 *projections for Your product Basis.*

27 ¹ ChromaDex has reserved its right to amend its positions and seek additional
28 documents in response to further developments in the case.

1 **III. REQUESTS ON WHICH THE PARTIES HAVE REACHED PARTIAL AGREEMENT**
2 **AND THE REMAINING “ALTERNATIVE SOURCE” ISSUE**

3 The Parties have substantially narrowed several additional disputes related to
4 certain Requests at issue on ChromaDex’s motion to compel. The remaining
5 disputed areas turn on a single issue: Elysium’s objection to producing Documents
6 and Communications relating to the alternative (or secondary) sourcing of
7 nicotinamide riboside (“NR”) from parties other than ChromaDex (the “Alternative
8 Source” issue). Elysium proposed on November 29, 2017 that it produce documents
9 relating to the alternative or secondary sourcing of NR from parties other than
10 ChromaDex only through the parties’ entry into the NR Supply Agreement and the
11 Trademark License and Royalty Agreement on February 3, 2014, which ChromaDex
12 rejects due the proposal’s unacceptable time period limitation. It is ChromaDex’s
13 position that all such Alternative Source documents must be produced through the
14 date of Elysium’s production and supplemented later in the case because they relate
15 to Elysium’s counterclaims and ChromaDex’s defenses in this case. It is Elysium’s
16 position that since August 15, 2017, ChromaDex has taken the position that February
17 2, 2017—the termination of the NR Supply Agreement between the parties and the
18 Exclusivity Period—is an appropriate cut-off date for production. Elysium further
19 says the parties’ meet-and-confer discussions and motion to compel briefing have
20 proceeded on that assumption. Elysium wholly objects to ChromaDex’s eleventh-
21 hour change in position and in any event disagrees that alternative source documents
22 dating from after the parties’ entry into the relevant agreements have any relevance
23 whatsoever to the parties’ claims and defenses. ChromaDex respectfully disagrees
24 with Elysium’s contentions and objections, particularly in light of the Court’s order
25 dated November 28, 2017 (ECF 73) and, therefore, notes the parties’ disagreement
26 over the period through which the Alternative Source documents should be produced
27 in this case and further notes Elysium’s demands for current documents from
28 ChromaDex. Elysium in turn notes that ChromaDex in its Responses and Objections

1 to Elysium's First Set of Requests for Production took the position, in response to
2 each of Elysium's seven Requests demanding production of documents relating to
3 events postdating February 2, 2017, that "information concerning events after
4 February 2, 2017, is not relevant to either party's claims or defenses in this
5 litigation." ChromaDex states that the parties' positions and contentions have been
6 clarified as the result of the meet and confer process and the Court's order with
7 regard to Elysium's patent misuse counterclaim, at a minimum. The Alternative
8 Source issue permeates all other requests outlined herein and remains in dispute
9 despite the parties' other agreements to narrow the issues, including ChromaDex's
10 Request Nos. 42, 43, 47, 48, 49, 50, 59, 60, 61, 76, and 77. Elysium, however,
11 stands on its objection to producing the Alternative Source documents and
12 ChromaDex continues to demand their production. The parties will brief their
13 positions on the Alternative Source issue in connection with the Court's hearing on
14 December 13, 2017.

15 In response to Request Nos. 42, 43, and 61, excepting the Alternative Source
16 documents, the parties agree that Elysium shall produce:

17 *(1) Documents sufficient to show Your costs of goods sold*
18 *on a lot basis for Your product Basis; (2) all contracts and*
19 *invoices with vendors Concerning the supply chain for*
20 *your Product Basis; and (3) all documents Concerning any*
21 *delays, expansion, contraction, price or cost adjustments,*
22 *or other modifications Concerning the supply chain for*
23 *Your product Basis.*

24 ChromaDex maintains that the Alternative Source documents should be
25 produced.

26 In response to Request Nos. 47 and 48, the parties agree that Elysium shall
27 produce at a minimum:

28 *Documents sufficient to show Your inventory of NR.*

1 ChromaDex, however, asks for “*All Documents and Communications Concerning*
2 *Your inventory of NR*”, which includes more than just Elysium’s inventory data, and
3 thus the Alternative Source documents remain in dispute.

4 In response to Request Nos. 49 and 50, Elysium has objected in whole to
5 producing documents and the Alternative Source documents remain in dispute.

6 These Requests seek:

7 *All Documents and Communications Concerning any*
8 *efforts by You to obtain a supply of NR from any Person(s)*
other than ChromaDex.

9 ChromaDex contends that the Alternative Source documents are responsive and must
10 be produced. Elysium disagrees.

11 In response to Request Nos. 59 and 60, the parties agree that Elysium shall
12 produce:

13 *All Documents Concerning Your consideration of*
14 *pterostilbene not sourced from ChromaDex for inclusion*
in Your product Basis

15 However, ChromaDex also seeks: “*All Documents Concerning Your consideration of*
16 *NR not sourced from ChromaDex for inclusion in Your product Basis.*”

17 Accordingly, the Alternative Source issue remains in dispute.

18 In response to Request Nos. 76 and 77, the parties agree that Elysium shall
19 produce:

20 *All Documents Concerning Your strategic plans and*
21 *strategic planning documents Concerning sales and*
22 *marketing Concerning Basis and/or ingestible dietary*
23 *supplements that promote longevity, anti-aging, healthy*
24 *aging, cellular health, DNA repair, energy support, and/or*
metabolic support, including, but not limited to, products
containing NR, any NIAGEN Analog (as defined by
Elysium in its RFPs), pterostilbene, and/or any pTeroPure
Analog (as defined by Elysium in its RFPs).

25 However, ChromaDex also seeks “*All Documents Concerning Your strategic plans*
26 *and strategic planning documents Concerning procurement of ingredients*
27 *Concerning Basis and/or ingestible dietary supplements that promote longevity, anti-*
28 *aging, healthy aging, cellular health, DNA repair, energy support, and/or metabolic*

1 support, including, but not limited to, products containing NR, any NIAGEN Analog
2 (as defined by Elysium in its RFPs), pterostilbene, and/or any pTeroPure Analog (as
3 defined by Elysium in its RFPs).” Accordingly, the Alternative Source documents
4 remain at issue with respect to these requests.

5 The Parties will file supplemental briefing on the Alternative Source document
6 issue as directed by the Court, but otherwise agree to the resolution of the disputed
7 requests as memorialized herein.

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9 Dated: December 1, 2017

COOLEY LLP

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11 By: /s/ Anthony M. Stiegler
12 Anthony M. Stiegler
Attorneys for Plaintiff ChromaDex, Inc.

13 *The filer, Anthony M. Stiegler, attests that the other*
14 *signatory listed, on whose behalf the filing is*
15 *submitted, concurs in the filing's content and has*
16 *authorized the filing.*

17 Dated: December 1, 2017

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