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12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **(WESTERN DIVISION)**
16

17 ChromaDex, Inc.,
18 Plaintiff,
19 v.
20 Elysium Health, Inc., and Mark Morris
21 Defendants.
22 Elysium Health, Inc.,
23 Counterclaimant,
24 v.
25 ChromaDex, Inc.,
26 Counter-Defendant.

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

**[PROPOSED] VERDICT FORM OF
CHROMADEx, INC.**

DEMAND FOR JURY TRIAL

Judge: Hon. Cormac J. Carney
Courtroom: 7C

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

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1 Pursuant to paragraph C.5.d. of the Court’s Standing Order re Final Pretrial
2 Conference – Jury Trial, Plaintiff and Counter-Defendant ChromaDex, Inc.
3 (“ChromaDex”) submits the attached Proposed Verdict Form. Plaintiff reserves the
4 right to update or revise this Proposed Verdict Form prior to trial based on the rulings
5 of the Court or other changes to the scope of the claims and issues for trial.

6
7 **I. CHROMADDEX’S CLAIMS**

8 Breach of Contract – Ingredient Orders

- 9 1. Do you find that Elysium breached the contracts it had with ChromaDex
10 by failing to pay for the June 30 Orders?

11 Yes ___ No ___

12
13 If you answered “Yes” to Question 1, please answer Question 2.

14 If you answered “No” to Question 1, you may skip Question 2 and continue starting at
15 Question 3.

- 16
17 2. Damages: State the dollar amount to fairly compensate ChromaDex for its
18 damages from Elysium’s nonpayment for the June 30 Orders. (See Jury
19 Instruction Nos. XX and XX.)

20 DAMAGES: \$ _____

21 Breach of Contract – Confidentiality Obligations

- 22
23 3. Do you find that Elysium breached the confidentiality obligations in the
24 NIAGEN Supply Agreement?

25 Yes ___ No ___

1 4. Do you find by that Elysium breached the confidentiality obligations in the
2 pTeroPure Supply Agreement?

3 Yes ___ No ___

4
5 5. Do you find that Mark Morris breached the February Confidentiality
6 Agreement?

7 Yes ___ No ___

8
9 6. Do you find that Mark Morris breached the July Confidentiality
10 Agreement?

11 Yes ___ No ___

12
13 Trade Secret Misappropriation

14 7. Do you find that Elysium misappropriated ChromaDex's trade secrets?

15 Yes ___ No ___

16
17 8. Do you find that Mark Morris misappropriated ChromaDex's trade
18 secrets?

19 Yes ___ No ___

20
21 Breach of Fiduciary Duty & Aiding and Abetting

22 9. Do you find that Mark Morris breached his fiduciary duty to ChromaDex?

23 Yes ___ No ___

24
25
26 If you answered "Yes" to Question 9, please answer Question 10.

27 If you answered "No" to Question 9, you may skip Question 10.

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10. Do you find that Elysium substantially assisted or encouraged Mark Morris in his breach of fiduciary duty?

Yes ___ No ___

ChromaDex's Damages

If you answered "Yes" to any of Questions 3-10, please answer Questions 11-20.

If you answered "No" to each and every one of Questions 3-10, you may skip Questions 11-20 and continue starting at Question 21.

11. Actual Damages: State the dollar amount to fairly compensate ChromaDex for its damages from the conduct in Questions 3-10 for which you found Elysium guilty. (See Jury Instruction Nos. XX and XX.)

DAMAGES: \$ _____

12. Elysium's Unjust Enrichment: State the dollar amount of Elysium's unjust enrichment from the conduct in Questions 3-10 for which you found Elysium guilty. (See Jury Instruction Nos. XX and XX.)

UNJUST ENRICHMENT: \$ _____

13. Actual Damages: State the dollar amount to fairly compensate ChromaDex for its damages from the conduct in Questions 3-10 for which you found Mark Morris guilty. (See Jury Instruction Nos. XX and XX.)

DAMAGES: \$ _____

14. Morris's Unjust Enrichment: State the dollar amount of Mark Morris's unjust enrichment from the conduct in Questions 3-10 for which you found Mark Morris guilty. (See Jury Instruction Nos. XX and XX.)

UNJUST ENRICHMENT: \$ _____

1 If you answered “Yes” to Question 7, please answer Question 15.

2

3 15. Do you find by clear and convincing evidence that Elysium’s
4 misappropriation of trade secrets was willful and malicious?

4

5 Yes ___ No ___

6

7 If you answered “Yes” to Question 8, please answer Question 16.

8

9 16. Do you find by clear and convincing evidence that Mark Morris’s
10 misappropriation of trade secrets was willful and malicious?

10

11 Yes ___ No ___

12

13 If you answered “Yes” to Question 9, please answer Question 17.

14

15 17. Do you find by clear and convincing evidence that Mark Morris’s breach
16 of fiduciary duty was willful and malicious?

16

17 Yes ___ No ___

18

19 If you answered “Yes” to Question 17, please answer Question 18.

20

21 18. Punitive Damages: State the dollar amount of punitive damages from
22 Mark Morris that you award to ChromaDex. (*See* Jury Instruction Nos.
XX and XX.)

23

24 PUNITIVE DAMAGES: \$ _____

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26 If you answered “Yes” to Question 10, please answer Question 19.

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19. Do you find by clear and convincing evidence that Elysium’s aiding-and-abetting of Mark Morris’s breach of fiduciary duty was willful and malicious?

Yes ___ No ___

If you answered “Yes” to Question 19, please answer Question 20.

20. Punitive Damages: State the dollar amount of punitive damages from Elysium that you award to ChromaDex. (See Jury Instruction Nos. XX and XX.)

PUNITIVE DAMAGES: \$_____

1 **II. ELYSIUM'S COUNTERCLAIMS**

2 MFN Provision

3 21. Do you find that ChromaDex breached the MFN Provision of the NIAGEN
4 Supply Agreement?

5 Yes ___ No ___

6
7 If you answered "No" to Question 21, you may skip Question 22.

8
9 22. Please indicate which of the following sales that you find caused a breach
10 of the MFN Provision.

11 (a) Innovations 4 Health (6/27/2014): Yes ___ No ___

12 (b) Proctor & Gamble (2/2/2015): Yes ___ No ___

13 (c) Live Cell (2/10/2015): Yes ___ No ___

14 (d) Live Cell (8/24/2015): Yes ___ No ___

15 (e) Lief Organics (3/29/2016): Yes ___ No ___

16
17 Exclusivity Provision - Liability

18 23. Do you find that the ingredient resveratrol is "substantially similar" to the
19 ingredient pTeroPure® under the Exclusivity Provision of the NIAGEN
20 Supply Agreement?

21 Yes ___ No ___

22
23 If you answered "No" to Question 23, you may skip Questions 24-30.

24
25 24. Do you find that ChromaDex breached the Exclusivity Provision?

26 Yes ___ No ___
27
28

1 If you answered “No” to Question 24, you may skip Questions 25-30.

2
3 25. Please indicate which of the following third-party consumer products that
4 combine NR and resveratrol you find caused harm to Elysium.

5 (a) Mitoboost: Yes ___ No ___

6 (b) ResveraCel: Yes ___ No ___

7 (c) Optimized Resveratrol with NR: Yes ___ No ___

8
9
10 Implied Covenant of Good Faith & Fair Dealing - Liability

11 If you answered “No” to Questions 23-24, or to the items listed in Question 25, you
12 may skip Questions 26-30.

13
14 26. Do you find that ChromaDex recommended to a third party that it create
15 one of the following consumer products that combine NR and resveratrol?

16 (a) Mitoboost: Yes ___ No ___

17 (b) ResveraCel: Yes ___ No ___

18 (c) Optimized Resveratrol with NR: Yes ___ No ___

19
20 If you answered “No” to the items listed in Question 26, you may skip Question 27.

21
22 27. Do you find that a third party created one of the following consumer
23 products that combine NR and resveratrol because it was recommended by
24 ChromaDex?

25 (a) Mitoboost: Yes ___ No ___

26 (b) ResveraCel: Yes ___ No ___

27 (c) Optimized Resveratrol with NR: Yes ___ No ___

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Exclusivity Provision & Implied Covenant of Good Faith & Fair Dealing – Damages

If you answered “No” to Questions 23-24, or to the items listed in Questions 25-27, you may skip Questions 28-30.

28. Do you find that Elysium would have captured sales of the following third-party consumer product that combines NR and resveratrol?

(a) Mitoboost: Yes _____ No _____

(b) If you answered “Yes,” state the dollar amount of the sales that you find Elysium would have captured.

MITOBOOST SALES: \$_____

29. Do you find that Elysium would have captured sales of the following third-party consumer product that combines NR and resveratrol?

(a) ResveraCel: Yes _____ No _____

(b) If you answered “Yes,” state the dollar amount of the sales that you find Elysium would have captured.

RESVERACEL SALES: \$_____

30. Do you find that Elysium would have captured sales of the following third-party consumer product that combines NR and resveratrol?

(a) Optimized Resveratrol with NR: Yes _____ No _____

(b) If you answered “Yes,” state the dollar amount of the sales that you find Elysium would have captured.

OPTIMIZED RESVERATROL WITH NR SALES: \$_____

cGMP Provision

31. Do you find that Elysium waived its counterclaim under the cGMP Provision of the NIAGEN Supply Agreement?

Yes ____ No ____

1 If you answered “Yes” to Question 31, you may skip Questions 32-34.

2

3 32. Do you find that ChromaDex breached the cGMP Provision?

4

Yes ___ No ___

5

6

7 If you answered “No” to Question 32, you may skip Questions 33-34.

8

9 33. Do you find that ChromaDex’s breach of the cGMP Provision caused harm
10 to Elysium?

11

Yes ___ No ___

12

13 If you answered “No” to Question 33, you may skip Question 34.

14

15 34. cGMP Provision Damages: State the dollar amount that you find Elysium
16 is due under the cGMP Provision. (See Jury Instruction Nos. XX and XX.)

17

cGMP DAMAGES: \$_____

18

19 Product Purity Provision

20 35. Do you find that Elysium waived its counterclaim under the Product Purity
21 Provision of the NIAGEN Supply Agreement?

22

Yes ___ No ___

23

24 If you answered “Yes” to Question 35, you may skip Questions 36-39.

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36. Do you find that there were levels of acetamide in the NIAGEN sold to Elysium that would have caused Elysium’s consumer product to exceed the Proposition 65 safe harbor limit?

Yes ___ No ___

If you answered “No” to Question 36, you may skip Questions 37-39.

37. Do you find that ChromaDex was aware of a quality or purity issue with the NIAGEN it sold to Elysium under the Product Purity Provision?

Yes ___ No ___

If you answered “No” to Question 37, you may skip Questions 38-39.

38. Do you find that ChromaDex failed to inform Elysium of a quality or purity issue under the Product Purity Provision?

Yes ___ No ___

If you answered “No” to Question 38, you may skip Question 39.

39. Product Purity Provision Damages: State the dollar amount that you find Elysium is due under the Product Purity Provision. (See Jury Instruction Nos. XX and XX.)

PRODUCT PURITY DAMAGES: \$_____

1 Fraudulent Inducement

2 40. Do you find that Frank Jaksch represented to Eric Marcotulli and Dan
3 Alminana during a phone call on December 16, 2013, that all of
4 ChromaDex's NR customers who had signed supply agreements for NR
5 were also required to sign separate license and royalty agreements, whether
6 they intended to use ChromaDex trademarks or not?

7 Yes ___ No ___

8 If you answered "No" to Question 40, you may skip Questions 41-46.

9
10 41. Do you find that Mr. Jaksch's representation was not true as of December
11 16, 2013?

12 Yes ___ No ___

13 If you answered "No" to Question 41, you may skip Questions 42-46.

14
15 42. Do you find that Mr. Jaksch knew that his representation was not true or
16 that he made it recklessly and without regard for its truth as of
17 December 16, 2013?

18 Yes ___ No ___

19
20 If you answered "No" to Question 42, you may skip Questions 43-46.

21
22 43. Do you find that Mr. Jaksch intended Elysium to rely on that
23 representation?

24 Yes ___ No ___

25
26 If you answered "No" to Question 43, you may skip Questions 44-46.

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44. Do you find that Elysium justifiably relied on that representation to execute the Trademark License & Royalty Agreement with ChromaDex?

Yes ___ No ___

If you answered “No” to Question 44, you may skip Questions 45-46.

45. Do you find that Elysium’s reliance on that representation caused harm to Elysium?

Yes ___ No ___

If you answered “No” to Question 45, you may skip Question 46.

46. Fraudulent Inducement Damages: State the dollar amount to fairly compensate Elysium for its damages from executing the Trademark License & Royalty Agreement. (See Jury Instruction Nos. XX and XX.)

DAMAGES: \$_____

Dated: September 11, 2019

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1 **STATEMENT IN SUPPORT OF PROPOSED VERDICT FORM**

2 Plaintiff ChromaDex, Inc. (“ChromaDex”) submits this statement in support of
3 its proposed verdict form because the parties were unable to agree to a joint form.

4 The Court should adopt ChromaDex’s proposed verdict form because it is simple,
5 easy for a layperson to understand, and asks the jury to answer only necessary questions
6 to decide the relevant facts. Despite the case including thirteen causes of action
7 encompassing numerous claims between the parties, ChromaDex’s proposed verdict
8 form has only 46 questions. Additionally, those questions are posed in a forthright
9 manner using language that is tied closely to the applicable legal standards, and the
10 entire form is organized to be “as straight-forward and manageable for the jury as
11 possible.” *In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 580 (S.D.N.Y.
12 2011). ChromaDex’s proposed form therefore will give the jury “a simple, easily
13 understood outlet through which to express its conclusions.” *Santos v. Posadas De*
14 *Puerto Rico Assoc., Inc.*, 452 F.3d 59, 65 (1st Cir. 2006). ChromaDex’s verdict form
15 is also legally defensible, as it hews closely to the model of the verdict form adopted by
16 the court in a similar case involving misappropriation of trade secrets and breach of a
17 confidentiality agreement: *Bladeroom Group Limited, et al., v. Emerson Elec. Co. et*
18 *al.*, 5:15-cv-01370-EJD (N.D. Cal. 2015). Notably, the court in *Bladeroom* kept the
19 verdict form to only seven questions, which the jury answered. (See *id.*, Dkt. 867.)

20 The verdict form proposed by Defendants Elysium Health, Inc. (“Elysium”) and
21 Mark Morris (collectively, “Defendants”) should be rejected because it would
22 undoubtedly confuse and mislead the jury. It asks an astonishing **142 questions**, many
23 of which are duplicative or unnecessary.¹ For example, Defendants’ proposed verdict
24 form asks the jury at two different points, spaced many pages apart and using slightly
25 different wording, whether ChromaDex breached the MFN and cGMP Provisions of the

26 _____
27 ¹ ChromaDex’s citations to “Defendants’ Proposed Verdict Form” are to the version
28 provided by Defendants lawyers to ChromaDex’s counsel at 6:19 PM on September 11,
2019.

1 NIAGEN Supply Agreement. (*Compare* Defendants’ Proposed Verdict Form,
2 Question 5 at Page 5 (MFN Provision) *with id.* Question 4 at Page 28 (same); Question 7
3 at Page 6 (cGMP Provision) *with id.* Question 11 at Page 29 (same).) Such repetitive
4 questions would confuse the jury and could result in inconsistent answers, which would
5 undermine the resulting verdict. Defendants’ proposed verdict form also contains many
6 unnecessary questions; for example, it asks at least twice whether the parties entered
7 into a contract for the supply of NR, (*see, e.g., id.* Question 1 at Page 5; Question 1 at
8 Page 28), and whether Elysium’s PT purchase orders were “valid,” (*id.* Question 4 at
9 Page 2). Those are two facts that are undisputed in this case; asking jurors to make a
10 finding on them would undoubtedly cause the jury confusion. Further, Defendants’
11 proposed form is complicated and difficult to follow, with bewildering directives and
12 cross-references regarding how the jury should proceed, and what further questions it
13 should answer or skip, if it answered certain questions in certain ways. (*See, e.g., id.*
14 Question 4 at Page 2; *id.* Questions 4, 7, 14 at Pages 28–30; *id.* Question 3 at Page 32.)

15 Additionally, Defendants’ proposed verdict form contains legal errors, including
16 questions regarding equitable issues that the parties have agreed will be tried to the
17 Court and are therefore inappropriate for the jury. (*See, e.g., id.* Question 3 at Page 2.)
18 Defendants’ verdict form is also erroneous because many of its proposed questions rely
19 on incorrect legal principles, including many to which ChromaDex objects in response
20 to Defendants’ proposed jury instructions. (*See id.* Questions 1–64 Pages at 7–19; *see*
21 *also* ChromaDex’s Position on Disputed Case-Specific Jury Instruction No. 46.)² To
22 the extent the Court finds that Defendants’ legal positions are incorrect, their related
23 questions in their proposed verdict form must fail as well. Other proposed questions
24 from Defendants are simply rote recitations of elements from proposed jury instructions
25 without regard to whether they relate to contested issues in the case or are worthy of the
26 jury’s special attention. (*See, e.g., id.* Questions 1–4 at Page 24.) Such rudimentary

27 _____
28 ² The parties’ Proposed Jury Instructions and position statements are filed concurrently
with this Proposed Verdict Form.

1 and undisputed questions are unnecessary for the jury to decide, and thus Defendants’
2 proposed verdict form should be rejected because “[f]urther elaboration would
3 needlessly risk emphasizing parts of the jury instruction while omitting others.” *Ostling*
4 *v. City of Bainbridge Island*, 2012 WL 4480550, at *12 (W.D. Wash. Sept. 28, 2012);
5 *see also Lawrence v. Gulf Oil Corp.*, 375 F.2d 427, 429 (3rd Cir. 1967) (“When . . . the
6 general charge adequately directs the jury to its duties in answer the questions submitted
7 to it there is no need to accompany the submission with repetitive instruction.”).

8 For these reasons, ChromaDex respectfully requests that the Court adopt
9 ChromaDex’s proposed verdict form.

10
11 Dated: September 11, 2019

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16 /s/ Michael A. Attanasio
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