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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

**CHROMADEX, INC.,**

**Plaintiff,**

**v.**

**ELYSIUM HEALTH, INC.,**

**Defendant.**

**ELYSIUM HEALTH, INC.,**

**Counter Claimant,**

**v.**

**CHROMADEX, INC.,**

**Counter Defendant.**

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

**ORDER GRANTING DEFENDANT'S  
MOTION FOR LEAVE TO AMEND  
AND DENYING APPLICATIONS TO  
FILE UNDER SEAL**

1 **I. INTRODUCTION**

2  
3 Before the Court is Defendant and Counter Claimant Elysium Health Inc.’s  
4 (“Elysium”) motion for leave to file Third Amended Counterclaims and a First Amended  
5 Answer. (Dkts. 88 [Notice of Motion and Motion], 88-1[Memorandum of Points and  
6 Authorities, hereinafter “Mot.”].) In connection with its motion, Elysium has also filed  
7 applications to file portions of the following documents under seal: (1) its memorandum  
8 of points and authorities in support of its motion, (2) its proposed Third Amended  
9 Counterclaims, (3) a redlined version of the proposed Third Amended Counterclaims,  
10 and (4) its reply brief in support of its motion. (Dkt. 86, 94.) For the following reasons,  
11 Elysium’s motion for leave to file Third Amended Counterclaims and a First Amended  
12 Answer is **GRANTED** and its applications to file under seal are **DENIED**.<sup>1</sup>

13  
14 **II. MOTION FOR LEAVE TO AMEND**

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16 In its Second Amended Counterclaims, Elysium alleges that Plaintiff and Counter  
17 Defendant ChromaDex, Inc. (“ChromaDex”) breached a contract called the Niagen  
18 Supply Agreement (the “NR Supply Agreement”). (Dkt. 65 [Second Amended  
19 Counterclaims] ¶¶ 61–80.) Elysium sells a dietary supplement called Basis, which  
20 combines the ingredients nicotinamide riboside and pterostilbene. (*Id.* ¶ 2.) Pursuant to  
21 the NR Supply Agreement, ChromaDex supplied Elysium with nicotinamide riboside.

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28 <sup>1</sup> Having read and considered the papers presented by the parties, the Court finds this matter appropriate  
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set  
for April 2, 2018, at 1:30 p.m. is hereby vacated and off calendar.

1 Elysium alleges in its Second Amended Counterclaims that ChromaDex breached  
2 two specific contractual provisions of the NR Supply Agreement. The first provision,  
3 “the MFN Provision,” allegedly entitles Elysium to the most favorable prices on  
4 nicotinamide riboside relative to ChromaDex’s other customers. (*Id.* ¶ 61.) The second  
5 provision, “the Exclusivity Provision,” allegedly prohibits ChromaDex from selling or  
6 enabling others to sell a product substantially similar to Basis, *i.e.*, a product combining  
7 nicotinamide riboside and pterostilbene. (*Id.* ¶ 63.)

8  
9 Elysium seeks leave to file Third Amended Counterclaims and a First Amended  
10 Answer to add allegations, facts, and one affirmative defense related to ChromaDex’s  
11 breach of the NR Supply Agreement. (*See generally* Mot.) First, Elysium seeks to add  
12 facts alleging that ChromaDex offered nicotinamide riboside to other customers at less  
13 than half the price offered to Elysium. (*Id.* at 2.) Second, Elysium seeks to add  
14 allegations claiming that ChromaDex sold nicotinamide riboside that was not in  
15 compliance with good manufacturing practices, and therefore breached another provision  
16 in the NR Supply Agreement, “the cGMP Provision.” (*Id.*) Third, Elysium seeks to add  
17 allegations that ChromaDex failed to inform Elysium of critical information relating to its  
18 nicotinamide riboside, and therefore breached yet another provision, “the Product Purity  
19 Provision.” (*Id.* at 3.) Finally, in light of ChromaDex’s failure to inform, in violation of  
20 the Product Purity Provision, Elysium seeks to amend its Answer to add the affirmative  
21 defense of unclean hands. (*Id.*) Elysium indicates that these proposed amendments  
22 provide additional facts related to its breach of contract counterclaim and incorporates  
23 new information that Elysium learned through discovery. (*Id.* at 1.)

24  
25 Federal Rule of Civil Procedure 15 provides that, except where amendment is  
26 allowed as a matter of course, “a party may amend its pleading only with the opposing  
27 party’s written consent or the court’s leave. The court should freely give leave when  
28 justice so requires.” Fed. R. Civ. P. 15(a)(2). As a general matter, “leave to amend

1 should be granted with extreme liberality.” *Petersen v. Boeing Co.*, 715 F.3d 276, 282  
2 (9th Cir. 2013) (citation and quotations omitted). “Courts frequently use five factors to  
3 assess the propriety of a motion for leave to amend: (1) bad faith, (2) undue delay, (3)  
4 prejudice to the opposing party, (4) futility of amendment; and (5) whether plaintiff has  
5 previously amended his complaint.” *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Allen v.*  
6 *City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990). “[T]he consideration of  
7 prejudice to the opposing party [] carries the greatest weight.” *Eminence Capital, LLC v.*  
8 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

9  
10 ChromaDex objects to Elysium’s motion on several bases. (*See generally* Dkt. 93  
11 [Opposition].) First, ChromaDex claims that Elysium’s new allegations are factually  
12 untrue, (*id.* at 19), and that Elysium has contractually waived its right to bring these new  
13 allegations, (*id.* at 21). These arguments do not justify denying Elysium leave to amend,  
14 however, because they attack the merits of Elysium’s proposed allegations and are more  
15 appropriately raised in a dispositive motion.

16  
17 ChromaDex also includes a diatribe against Elysium’s purported history of  
18 gamesmanship and argues that Elysium’s motion is brought in bad faith. (*Id.* at 20.)  
19 ChromaDex claims that Elysium stole ChromaDex’s products and profits, waged a  
20 baseless challenge to ChromaDex’s patent rights, and stealthily recruited two of  
21 ChromaDex’s most knowledgeable employees. (*Id.*) ChromaDex fails to explain how  
22 this purported misbehavior is connected to Elysium’s motion to amend its pleadings,  
23 however. It is not apparent how Elysium’s purported gamesmanship in diverting  
24 ChromaDex’s business and employees evidences Elysium’s bad faith motive in amending  
25 its pleadings.

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1 Finally, ChromaDex argues it will be prejudiced because Elysium unduly delayed  
2 in bringing new allegations that will alter the course of the litigation and require  
3 additional discovery. (*Id.* at 11.) ChromaDex estimates that the new allegations will  
4 require an additional three months of discovery and requests an extension of the  
5 discovery deadlines and trial if Elysium is granted leave to amend. (*Id.* at 25.) Because  
6 leave to amend should be granted with extreme liberality, the Court will grant Elysium’s  
7 motion. To address ChromaDex’s concerns about prejudice, the Court will also grant  
8 ChromaDex’s requested three-month extension and will issue an amended scheduling  
9 order forthwith.

### 11 **III. APPLICATIONS TO FILE UNDER SEAL**

12  
13 The public has a common law right of access to public records and documents,  
14 including judicial records and documents. A party seeking to file documents under seal  
15 “bears the burden of overcoming [the] strong presumption” in favor of public access to  
16 court records. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir.),  
17 *cert. denied sub nom. FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016)  
18 (internal quotation marks omitted). “The presumption of access is ‘based on the need for  
19 federal courts, although independent—indeed, particularly because they are  
20 independent—to have a measure of accountability and for the public to have confidence  
21 in the administration of justice.’” *Id.* at 1096.

22  
23 Where, as here, the documents are filed in connection with a non-dispositive  
24 motion, the documents can be sealed only upon a “particularized showing” of good  
25 cause. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). The  
26 mere fact that the records have been designated “confidential” pursuant to a stipulated  
27 protective order does not provide the good cause required for sealing. *Joint Equity*  
28

1 *Comm. of Investors of Real Estate Partners, Inc. v. Coldwell Banker Real Estate Corp.*,  
2 No. SACV 10-401, 2012 WL 234396, at \*2–3 (C.D. Cal. Jan. 24, 2012).

3  
4 Elysium has failed to show good cause that would justify filing the requested  
5 documents under seal. Elysium’s applications merely state that the documents  
6 “summarize or reflect information” that ChromaDex produced in discovery and  
7 designated as “Confidential” or “Highly Confidential – Attorney’s Eyes Only” pursuant  
8 to a protective order. (Dkt. 86 at 1.) Elysium states that it “takes no position on the  
9 appropriateness of ChromaDex’s designations,” but indicates, in cursory fashion, that the  
10 documents should be filed under seal “to the extent they contain information that  
11 constitutes ChromaDex’s protected trade secret and/or confidential business  
12 information.” (*Id.* at 2.) Elysium does not identify the purported trade secrets or business  
13 information at issue, nor does Elysium indicate why disclosure of the information would  
14 prejudice ChromaDex. In short, Elysium does not even attempt to make a “particularized  
15 showing” of good cause. Elysium’s generalized references to the parties’ protective  
16 order is not a sufficient basis to deny public access to the documents.<sup>2</sup>

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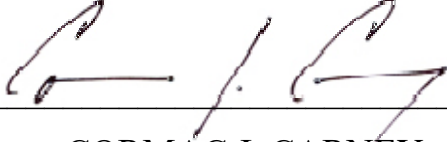
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27 <sup>2</sup> Elysium submitted the applications to file under seal, so it is Elysium’s burden to show good cause.  
28 The Court notes, however, that ChromaDex also has not provided any justification for sealing the  
documents. ChromaDex was given notice of Elysium’s applications, but ChromaDex has not joined in  
the applications nor provided any additional justification for sealing the documents. Simply put, neither  
party makes a showing of good cause.

1 **IV. CONCLUSION**

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3 For the foregoing reasons, Elysium’s motion for leave to file Third Amended  
4 Counterclaims and a First Amended Answer is **GRANTED**. The Court will also issue  
5 forthwith an amended scheduling order continuing the discovery and trial dates.  
6 Elysium’s applications to file under seal are **DENIED**. Elysium is **DIRECTED** to file  
7 unredacted versions of their documents, including the amended pleadings, on the docket  
8 by **MONDAY, APRIL 2, 2018**.

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12 DATED: March 30, 2018

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15 CORMAC J. CARNEY  
16 UNITED STATES DISTRICT JUDGE  
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