

1 COOLEY LLP
MICHAEL ATTANASIO (151529)
2 (mattanasio@cooley.com)
BARRETT J. ANDERSON (318539)
3 (banderson@cooley.com)
CRAIG E. TENBROECK (287848)
4 (ctenbroeck@cooley.com)
SOPHIA M. RIOS (305801)
5 (srios@cooley.com)
JAYME B. STATEN (317034)
6 (jstaten@cooley.com)
4401 Eastgate Mall
7 San Diego, CA 92121-1909
Telephone: (858) 550-6000
8 Facsimile: (858) 550-6420

9 *Attorneys for Plaintiff and Counter-Defendant*
ChromaDex, Inc.

10 *Counsel continued on following page*

11
12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **(WESTERN DIVISION)**

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

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

**DECLARATION OF BARRETT J.
ANDERSON IN SUPPORT OF
CHROMADEx, INC.'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
AGAINST COUNTERCLAIMANT
ELYSIUM HEALTH, INC.**

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

Judge: Hon. Cormac J. Carney
Courtroom: 7C
Date: September 16, 2019
Time: 1:30 PM

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

27 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**

1 COVINGTON & BURLING LLP
MITCHELL A. KAMIN (202788)
2 (mkamin@cov.com)
1999 Avenue of the Stars, Suite 3500
3 Los Angeles, CA 90067-4643
Telephone: (424) 332-4800
4 Facsimile: (424) 332-4749

5 COVINGTON & BURLING LLP
PHILIP A. IRWIN (*admitted Pro Hac Vice*)
6 (pirwin@cov.com)
620 Eighth Avenue
7 New York, NY 10018-1405
Telephone: (212) 841-1000

8
9 *Attorney for Plaintiff and Counter-Defendant*
ChromaDex, Inc.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 I, Barrett J. Anderson, declare:

2 1. I am a lawyer at Cooley LLP, attorneys of record for Plaintiff and Counter-
3 Defendant ChromaDex, Inc. (“ChromaDex”). I declare that the following statements
4 are true and to the best of my knowledge, information, and belief, formed after a
5 reasonable inquiry under the circumstances. If called upon to testify, I could and would
6 competently testify hereto.

7 2. Elysium Health, Inc. (“Elysium”) did not offer any expert opinions related
8 to any part of its counterclaim that ChromaDex breached Section 3.9 of the NIAGEN
9 Supply Agreement. On July 11, 2019, counsel for ChromaDex offered a deposition date
10 and location for its expert on acetamide testing related to that counterclaim, Dr. Carla
11 Kagel. That same day, counsel for Elysium accepted that date and location. On July 24,
12 2019, counsel for Elysium informed me that it would not be deposing Dr. Kagel.
13 Elysium did not offer a rebuttal witness to Dr. Kagel.

14 3. Since receiving Dr. Kagel’s expert reports detailing the numerous and
15 well-documented deficiencies in the acetamide testing method that Elysium used to
16 generate the results alleged in Paragraph 101 of its Third Amended Counterclaims and
17 the problems with those results, Elysium has not provided any evidence to rebut her
18 conclusions or otherwise bolster the defective testing method or results.

19 4. On August 9, 2019, pursuant to Local Rule 7-3, the parties met and
20 conferred by phone regarding their respective motions for summary judgment in an
21 attempt to narrow the claims at issue.

22 **EXHIBITS**

23 5. Attached hereto as Exhibit 1 is a true and correct copy of the document
24 produced by Elysium, bearing Bates range ELY_0122932–ELY_0122963.

25 6. Attached hereto as Exhibit 2 is a true and correct copy of the document
26 produced by ChromaDex, bearing Bates range CDXCA_00257401–
27 CDXCA_00257427.

28

1 7. Attached hereto as Exhibit 3 is a true and correct copy of the document
2 produced by ChromaDex, bearing Bates range CDXCA_00275718–
3 CDXCA_00275721.

4 8. Attached hereto as Exhibit 4 is a true and correct copy of the document
5 produced by ChromaDex, bearing Bates range CDXCA_00270477–
6 CDXCA_00270479.

7 9. Attached hereto as Exhibit 5 is a true and correct copy of the document
8 produced by ChromaDex, bearing Bates range CDXCA_00373747–
9 CDXCA_00373748.

10 10. Attached hereto as Exhibit 6 is a true and correct copy of the document
11 publicly available on the Food and Drug Administration’s website at
12 <https://www.regulations.gov/document?D=FDA-2018-S-0023-0032>.

13 11. Attached hereto as Exhibit 7 is a true and correct copy of the document
14 produced by ChromaDex, bearing Bates range CDXCA_00143401–
15 CDXCA_00143458.

16 12. Attached hereto as Exhibit 8 is a true and correct copy of the document
17 produced by ChromaDex, bearing Bates range CDXCA_00008919–
18 CDXCA_00008927.

19 13. Attached hereto as Exhibit 9 is a true and correct copy of the family of
20 documents produced by ChromaDex, bearing Bates range CDXCA_00007240–
21 CDXCA_00007257.

22 14. Attached hereto as Exhibit 10 is a true and correct copy of the document
23 produced by ChromaDex, bearing Bates range CDXCA_00077165–
24 CDXCA_00077178.

25 15. Attached hereto as Exhibit 11 is a true and correct copy of the family of
26 documents produced by third party Robert Prag bearing Bates range PRAG_000796–
27 PRAG_000816, and marked as “Jaksch Exhibit 5” at the April 12, 2019 deposition of
28 Frank Jaksch.

1 16. Attached hereto as Exhibit 12 is a true and correct copy of the document
2 produced by third party Robert Prag, bearing Bates range PRAG_000828–
3 PRAG_000830.

4 17. Attached hereto as Exhibit 13 is a true and correct copy of the family of
5 documents produced by third party Robert Prag, bearing Bates range PRAG_000850–
6 PRAG_000864.

7 18. Attached hereto as Exhibit 14 is a true and correct copy of the document
8 produced by ChromaDex, bearing Bates range CDXCA_00007260–
9 CDXCA_00007261.

10 19. Attached hereto as Exhibit 15 is a true and correct copy of an excerpt of a
11 family of documents produced by ChromaDex, bearing Bates range
12 CDXCA_00071523–CDXCA_00071551.

13 20. Attached hereto as Exhibit 16 is a true and correct copy of an excerpt of
14 family of documents produced by ChromaDex, bearing Bates range
15 CDXCA_00071552–CDXCA_00071598.

16 21. Attached hereto as Exhibit 17 is a true and correct copy of the document
17 produced by Elysium bearing Bates range ELY_0063502–ELY_0063512, and marked
18 as “Alminana Exhibit 200” at the March 29, 2019 deposition of Daniel Alminana.

19 22. Attached hereto as Exhibit 18 is a true and correct copy of the document
20 produced by Elysium bearing Bates range ELY_0036850–ELY_0036856, and marked
21 as “Wilhelm Exhibit 242” at the June 6, 2019 at the deposition of the Rule 30(b)(6)
22 witness for Elysium, Dr. Thomas Wilhelm.

23 23. Attached hereto as Exhibit 19 is a true and correct copy of the document
24 previously filed as Exhibit E in support of Dkt. 153, and marked as “Rhonemus Exhibit
25 72” at the March 28, 2019 deposition of Troy Rhonemus.

26 24. Attached hereto as Exhibit 20 is a true and correct copy of the document
27 produced by Elysium, bearing Bates range ELY_0024382.

28

1 25. Attached hereto as Exhibit 21 is a true and correct copy of the document
2 produced by Elysium bearing Bates range ELY_0036835–ELY_0036838, and marked
3 as “Alminana Exhibit 202” at the March 29, 2019 deposition of Daniel Alminana.

4 26. Attached hereto as Exhibit 22 is a true and correct copy of ChromaDex’s
5 Amended and Supplemental Responses to Elysium’s Second Set of Interrogatories,
6 served on Elysium on February 19, 2019.

7 27. Attached hereto as Exhibit 23 is a true and correct copy of the document
8 produced by ChromaDex, bearing Bates range CDXCA_00028253–
9 CDXCA_00028254.

10 28. Attached hereto as Exhibit 24 is a true and correct copy of a compilation
11 of text messages excerpted from the document produced by Elysium bearing Bates
12 range ELY_0085617, and marked as “Alminana Exhibit 204” at the March 29, 2019
13 deposition of Daniel Alminana.

14 29. Attached hereto as Exhibit 25 is a true and correct copy of an excerpt of
15 the family of documents produced by Elysium bearing Bates range ELY_0094667–
16 ELY_0094739, and marked as “Morris Exhibit 5” at the April 24, 3029 deposition of
17 Mark Morris.

18 30. Attached hereto as Exhibit 26 is a true and correct copy of an excerpt of
19 the family of documents produced by Elysium bearing Bates range ELY_0058829–
20 ELY_0058929, and marked as “Marcotulli Exhibit 146” at the March 27, 2019
21 deposition of Eric Marcotulli.

22 31. Attached hereto as Exhibit 27 is a true and correct copy of the family of
23 documents produced by Elysium bearing Bates range ELY_0014601–
24 ELY_0014602_009, and marked as [REDACTED] Exhibit 2” at the November 28, 2018
25 deposition of the Rule 30(b)(6) witness for [REDACTED].

26 32. Attached hereto as Exhibit 28 is a true and correct copy of the family of
27 documents produced by ChromaDex bearing Bates range CDXCA_00007069–
28 CDXCA_00007073.

1 33. Attached hereto as Exhibit 29 is a true and correct copy of the family of
2 documents produced by Elysium, bearing Bates range ELY_0037066–ELY_0037079.

3 34. Attached hereto as Exhibit 30 is a true and correct copy of the document
4 produced by ChromaDex, bearing Bates range CDXCA_00007084–
5 CDXCA_00007085.

6 35. Attached hereto as Exhibit 31 is a true and correct copy of the document
7 produced by ChromaDex, bearing Bates range CDXCA_00086045–
8 CDXCA_00086047.

9 36. Attached hereto as Exhibit 32 is a true and correct copy of the family of
10 documents produced by ChromaDex, bearing Bates range CDXCA_00007489–
11 CDXCA_00007490.

12 37. Attached hereto as Exhibit 33 is a true and correct copy of the document
13 produced by Elysium, bearing Bates range ELY_0013105.

14 38. Attached hereto as Exhibit 34 is a true and correct copy of the document
15 produced by Elysium, bearing Bates range ELY_0015314.

16 39. Attached hereto as Exhibit 35 is a true and correct copy of the document
17 produced by Elysium, bearing Bates range ELY_0020811.

18 40. Attached hereto as Exhibit 36 is a true and correct copy of the document
19 produced by Elysium bearing Bates range ELY_0070419–ELY_0070465, and marked
20 as “Wilhelm Exhibit 235” at the June 6, 2019 at the deposition of the Rule 30(b)(6)
21 witness for Elysium, Dr. Thomas Wilhelm.

22 41. Attached hereto as Exhibit 37 is a true and correct copy of the document
23 produced by Elysium bearing Bates range ELY_0015459–ELY_0015460, and marked
24 as [REDACTED] Exhibit 8” at the November 28, 2018 deposition of the Rule 30(b)(6) witness
25 for [REDACTED].

26 42. Attached hereto as Exhibit 38 is a true and correct copy of the document
27 produced by Elysium bearing Bates range ELY_0015767–ELY_0015768, and marked
28

1 as [REDACTED] Exhibit 9” at the November 28, 2018 deposition of the Rule 30(b)(6) witness
2 for [REDACTED].

3 43. Attached hereto as Exhibit 39 is a true and correct copy of the document
4 produced by Elysium, bearing Bates range ELY_0068183–ELY_0068185.

5 44. Attached hereto as Exhibit 40 is a true and correct copy of the document
6 produced by Elysium, bearing Bates range ELY_0016222.

7 45. Attached hereto as Exhibit 41 is a true and correct copy of the family of
8 documents produced by Elysium, bearing Bates range ELY_0068292–ELY_0068298.

9 46. Attached hereto as Exhibit 42 is a true and correct copy of an excerpt from
10 the document produced by Elysium, bearing Bates range ELY_00125945.

11 47. Attached hereto as Exhibit 43 is a true and correct copy of an excerpt from
12 the document produced by Elysium bearing Bates range ELY_0021635, and marked as
13 “Magida Exhibit 64” during the December 13, 2018 deposition of Daniel Magida.

14 48. Attached hereto as Exhibit 44 is a true and correct copy of Elysium’s First
15 Amended Answer to Plaintiff ChromaDex’s Complaint for Patent Infringement in the
16 case captioned *ChromaDex, Inc. & Trs. of Dartmouth Coll. v. Elysium Health, Inc.*,
17 C.A. No. 18-1434-CFC (Dkt. 12).

18 49. Attached hereto as Exhibit 45 is a true and correct copy of the Court’s
19 Order Granting in Part and Denying in Party Elysium’s Motion to Stay in *ChromaDex,*
20 *Inc. & Trs. of Dartmouth Coll. v. Elysium Health, Inc.*, C.A. No. 18-1434-CFC
21 (Dkt. 27).

22 50. Attached hereto as Exhibit 46 is a true and correct copy of an excerpt of
23 the document produced by ChromaDex, bearing Bates range CDXCA_00464084–
24 CDXCA_00464127.

25 51. Attached hereto as Exhibit 47 is a true and correct copy of the letter sent
26 via email from Eamonn Gardner (former counsel for ChromaDex) to Joseph Sacca
27 (counsel for Elysium) on February 22, 2018.

28

1 52. Attached hereto as Exhibit 48 is a true and correct copy of the email
2 correspondence between Barrett J. Anderson (counsel for ChromaDex) and Kristin
3 Keranen (counsel for Elysium) dated July 24, 2019.

4 53. Attached hereto as Exhibit 49 is a true and correct copy of an excerpt of
5 the family of documents produced by Elysium, bearing Bates range ELY_0120275–
6 ELY_0120285.

7 54. Attached hereto as Exhibit 50 is a true and correct copy of the document
8 produced by Elysium, bearing Bates range ELY_ 0068285–ELY_ 0068286.

9 55. Attached hereto as Exhibit 51 is a true and correct copy of the document
10 produced by Elysium, bearing Bates range ELY_0120407–ELY_0120409.

11 56. Attached hereto as Exhibit 52 is a true and correct copy of the document
12 produced by Elysium, bearing Bates range ELY_0120614–ELY_0120615.

13 57. Attached hereto as Exhibit 53 is a true and correct copy of an excerpt of
14 the document produced by ChromaDex, bearing Bates range CDXCA_00464674–
15 CDXCA_00464687.

16 58. Attached hereto as Exhibit 54 is a true and correct copy of an excerpt of
17 the document produced by ChromaDex, bearing Bates range CDXCA_00281587–
18 CDXCA_00281593, and marked as “Moreno Exhibit 3” at the May 13, 2019 deposition
19 of Matthew Moreno.

20 59. Attached hereto as Exhibit 55 is a true and correct copy of the document
21 produced by ChromaDex, bearing Bates range CDXCA_00427229–
22 CDXCA_00427231.

23 60. Attached hereto as Exhibit 56 is a true and correct copy of the document
24 produced by third party [REDACTED], bearing Bates range [REDACTED] 101–[REDACTED] 131.

25 61. Attached hereto as Exhibit 57 is a true and correct copy of an excerpt of
26 the family of documents produced by Elysium bearing Bates range ELY_0047185–
27 ELY_0047189, and marked as “Alminana Ex. 201” at the March 29, 2019 deposition
28 of Daniel Alminana.

1 62. Attached hereto as Exhibit 58 is a true and correct copy of the document
2 produced by Elysium, bearing Bates range ELY_0048667.

3 63. Attached hereto as Exhibit 59 is a true and correct copy of an excerpt of
4 the family of documents produced by Elysium bearing Bates range ELY_0063253–
5 ELY_0063289.

6 64. Attached hereto as Exhibit 60 is a true and correct copy of the email
7 correspondence and attachments between Eamonn Gardner (former counsel for
8 ChromaDex) and Michael Powell (former counsel for Elysium) dated January 10, 2018.

9 65. Attached hereto as Exhibit 61 is a true and correct copy of the family of
10 documents produced by ChromaDex bearing Bates range CDXCA_00140978–
11 CDXCA_00140996, and marked as “Jaksch Exhibit 4” at the April 12, 2019 deposition
12 of Frank Jaksch.

13 66. Attached hereto as Exhibit 62 is a true and correct copy of Elysium’s
14 Rule 26(a) Initial Disclosures, served on ChromaDex on March 28, 2017.

15 67. Attached hereto as Exhibit 63 is a true and correct copy of Elysium’s
16 Amended and Mark Morris’s Rule 26(a) Initial Disclosures, served on ChromaDex on
17 January 7, 2019.

18 68. Attached hereto as Exhibit 64 is a true and correct copy of Elysium’s
19 Supplemental Responses and Objections to ChromaDex’s First and Second Set of
20 Interrogatories to Elysium, served on ChromaDex on January 10, 2019.

21 69. Attached hereto as Exhibit 65 is a true and correct copy of the document
22 produced by Elysium, bearing Bates range ELY_0069525–ELY_0069526.

23 70. Attached hereto as Exhibit 66 is a true and correct copy of ChromaDex’s
24 Amended Notice of Deposition Pursuant to Fed. R. Civ. P. 30(b)(6), served on Elysium
25 on November 30, 2018.

26 71. Attached hereto as Exhibit 67 is a true and correct copy of the document
27 produced by ChromaDex, bearing Bates range CDXCA_00024333–
28 CDXCA_00024342.

1 72. Attached hereto as Exhibit 68 is a true and correct copy of excerpts of the
2 Deposition Transcript of ChromaDex's Rule 30(b)(6) witness Thomas Varvaro, taken
3 on May 8, 2019.

4 73. Attached hereto as Exhibit 69 is a true and correct copy of excerpts of the
5 Deposition Transcript of Elysium's Rule 30(b)(6) witness Dr. Thomas Wilhelm, taken
6 on June 6, 2019.

7 74. Attached hereto as Exhibit 70 is a true and correct copy of excerpts of the
8 Deposition Transcript of Daniel Alminana, taken on March 29, 2019.

9 75. Attached hereto as Exhibit 71 is a true and correct copy of excerpts of the
10 Deposition Transcript of Dr. Iain Cockburn, taken on August 6, 2019.

11 76. Attached hereto as Exhibit 72 is a true and correct copy of the Deposition
12 Transcript of Frank Jaksch, taken on April 12, 2019.

13 77. Attached hereto as Exhibit 73 is a true and correct copy of excerpts of the
14 Deposition Transcript of Daniel Magida, taken on December 13, 2018.

15 78. Attached hereto as Exhibit 74 is a true and correct copy of excerpts of the
16 Deposition Transcript of Eric Marcotulli, taken on March 27, 2019.

17 79. Attached hereto as Exhibit 75 is a true and correct copy of excerpts of the
18 Deposition Transcript Ramon Padilla, taken on March 21, 2019.

19 80. Attached hereto as Exhibit 76 is a true and correct copy of excerpts of the
20 Deposition Transcript of [REDACTED] Rule 30(b)(6) witness [REDACTED], taken on
21 November 28, 2018.

22 81. Attached hereto as Exhibit 77 is a true and correct copy of excerpts of the
23 Expert Report of Dr. Iain Cockburn, served on ChromaDex on June 21, 2019.

24 82. Attached hereto as Exhibit 78 is a true and correct copy of excerpts of the
25 Expert Report of Dr. Randal Heeb, served on Elysium on July 26, 2019.

26 83. Attached hereto as Exhibit 79 is a true and correct copy of the Expert
27 Report of Dr. Carla Kagel, served on Elysium on June 21, 2019.

28

1 84. Attached hereto as Exhibit 80 is a true and correct copy of the
2 Supplemental Expert Report of Dr. Carla Kagel, served on Elysium on July 26, 2019.

3
4 Executed on August 16, 2019.

5
6 

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Barrett J. Anderson