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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.

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

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

**CHROMADEx, INC.'S EVIDENTIARY
OBJECTIONS TO EVIDENCE FILED BY
ELYSIUM HEALTH, INC. AND MARK
MORRIS IN SUPPORT OF THEIR
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

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

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

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Plaintiff and Counter-Defendant ChromaDex, Inc. (“ChromaDex”) hereby objects to the following declaration and exhibits submitted by Defendants Elysium Health, Inc. and Mark Morris (collectively, “Defendants”) in Support of Their Motion for Partial Summary Judgment (the “Motion”) (Dkt.230–1).

	Objectionable Material:	Grounds for Objection:	Ruling on Objection
1.	Declaration of Mark Morris in Support of Elysium Health, Inc.’s and Mark Morris’s Motion for Partial Summary Judgment (“Morris Declaration”) (Dkt. 234-1)	<p>A. PREJUDICE AND CONFUSION – Fed. R. Evid. 403</p> <p>ChromaDex seeks to exclude the Morris Declaration. Numerous statements in the Morris Declaration are verifiably false by documents produced in discovery in this action. Consideration of this material therefore risks confusion of the truth, and would likewise prejudice ChromaDex. <i>See generally</i> Dkt. 234-1.</p> <p>B. HEARSAY – Fed. R. Evid. 801</p> <p>The Morris Declaration contains out of court statements offered to prove the truth of the matter asserted. As such, they are inadmissible hearsay. The document also contains statements by other persons that are hearsay within hearsay and also inadmissible. <i>See generally</i> Dkt. 234-1.</p>	<p>Sustained: __</p> <p>Overruled: __</p>

	Objectionable Material:	Grounds for Objection:	Ruling on Objection
2.	Sacca Decl. Ex. 12	<p>A. RELEVANCE: Fed. R. Evid. 401 & 402</p> <p>Sacca Dec. Ex. 12 is the Supply Agreement between ChromaDex and Healthspan Research LLC. Defendants cites this Supply Agreement for the proposition that “ChromaDex had devised a plan to sell an NR-containing product directly to consumers, in competition with Elysium.” <i>See Mot.</i> at 6.</p> <p>This document has no tendency to make the asserted “fact” more or less probable, and is therefore irrelevant to this limited point.</p> <p>B. PREJUDICE AND CONFUSION: Fed. R. Evid. 403</p> <p>Defendants attempt to use a supply agreement that does not contain any language about a plan to sell an NR-containing product directly to consumers. Defendants attempt to use this as evidence of ChromaDex’s intent is therefore misleading and its introduction into this case would be highly prejudicial.</p>	<p>Sustained: ___</p> <p>Overruled: ___</p>

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	Objectionable Material:	Grounds for Objection:	Ruling on Objection
3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22.	Sacca Decl. Ex. 15 ¹	<p>A. PREJUDICE AND CONFUSION: Fed. R. Evid. 403</p> <p>Defendants seek to attribute specific statements to ChromaDex, but have offered no basis to show that ChromaDex adopted those statements as its own. The evidence thus has little to no probative value, and its introduction into this case would be highly prejudicial and risks misleading the fact finder about ChromaDex’s true understanding at the time. <i>See Mot.</i> at 6.</p> <p>B. HEARSAY: Fed. R. Evid. 801</p> <p>Defendants offer out of court statements in the form of text messages between two non-parties to prove the truth of the matter asserted that “ChromaDex likes the idea of Healthspan raising \$1 million, putting a great team together, raising a big round and then merging with ChromaDex.” <i>See Mot.</i> at 6.</p> <p>The statements from ChromaDex within the text messages are hearsay within hearsay because Defendants also offer them to prove the truth of the matter asserted. <i>See Mot.</i> at 6.</p>	<p>Sustained: __</p> <p>Overruled: __</p>

¹ All citations to “Sacca Decl. Ex.” refer to those Exhibits attached to the Declaration of Joseph N. Sacca in Support of Elysium Health, Inc.’s and Mark Morris’s Motion for Partial Summary Judgment (Dkt. 234-2).

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	Objectionable Material:	Grounds for Objection:	Ruling on Objection
4.	Sacca. Decl. Ex. 19	<p>A. RELEVANCE: Fed. R. Evid. 401 & 402</p> <p>Sacca Decl. Ex. 19 is an unrelated federal action that is irrelevant to the above-captioned matter because it makes no fact at issue in this case more or less probable. Defendants offer this evidence for an ancillary fact. Moreover, the cited evidence is incorrect. <i>See Mot.</i> at 6.</p> <p>B. PREJUDICE AND CONFUSION: Fed. R. Evid. 403</p> <p>Sacca Decl. Ex. 19 is ChromaDex’s Answer and Counterclaims in an unrelated lawsuit. The evidence has no probative value, as its only cited purpose is to establish a fact provable by myriad other less prejudicial evidence in this case; namely, the date at which ChromaDex entered the direct-to-consumer market. Its introduction into this case would be highly prejudicial because the case concerns claims against ChromaDex by another party and it thus risks misleading the fact finder on unrelated issues.</p>	<p>Sustained: __</p> <p>Overruled: __</p>

	Objectionable Material:	Grounds for Objection:	Ruling on Objection
5.	Sacca Decl. Ex. 51	<p>A. COMPROMISE OFFERS AND NEGOTIATIONS; SETTLEMENT PRIVILEGED COMMUNICATIONS: Fed. R. Evid. 408 and Cal. Evid. Code 1152</p> <p>Sacca Decl. Ex. 51 is a settlement communication between ChromaDex and Elysium. It is marked as such in the subject line, as well as in the penultimate sentence of the email. Defendants cite this information to prove that “ChromaDex’s own CEO did likewise, also telling Elysium that Live Cell paid \$800/kg and was a lower volume purchaser than Elysium”; and that “it would be impossible to conclude that Elysium derived some benefit from the information provided by Morris.” <i>See</i> Mot. at 13.</p> <p>This evidence is offered neither to (1) prove a witnesses bias or prejudice, (2) negate a contention of undue delay, or (3) prove an effort to obstruct a criminal investigation or prosecution. As such, its inclusion is improper.</p> <p>B. PREJUDICE AND CONFUSION: Fed. R. Evid. 403</p> <p>Any probative value of Sacca Decl. Ex. 51 is outweighed by the unfair prejudice and tendency to mislead the fact finder that presentation of settlement communications would cause.</p>	<p>Sustained: ___</p> <p>Overruled: ___</p>

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Dated: August 28, 2019

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