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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ChromaDex, Inc.,

Plaintiff,

v.

Elysium Health, Inc. and Mark Morris,

Defendants.

Elysium Health, Inc.,

Counterclaimant,

v.

ChromaDex, Inc.,

Counter-Defendant.

Case No.: 8:16-cv-02277-CJC (DFM)

[Assigned to the Hon. Cormac J. Carney]

STATEMENT OF GENUINE DISPUTES OF MATERIAL FACT IN SUPPORT OF ELYSIUM HEALTH, INC.'S AND MARK MORRIS'S OPPOSITION TO CHROMADEX'S MOTION FOR PARTIAL SUMMARY JUDGMENT [C.D. Local Rule 56-2]

Hearing
Date: September 16, 2019
Time: 1:30 PM
Crtm: 7C

[*Opposition to Motion for Summary Judgement; Declarations; Exhibits*]

Pretrial Conference: September 18, 2019
Trial: October 15, 2019

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Pursuant to Local Rule 56-2, Defendant and counterclaimant Elysium Health, Inc. ("Elysium") and Defendant Mark Morris ("Morris") submit this Statement of Genuine Disputes of Material Fact in Support of Defendants' Opposition to ChromaDex Inc.'s ("ChromaDex") Motion for Partial Summary Judgment. All references to "Sacca Decl. Ex._" refer to exhibits attached to the Declaration of Joseph Sacca in Support of Elysium's and Morris's Opposition to Plaintiff's Motion for Partial Summary Judgment dated August 28, 2019. All references to "Aminana Decl. Ex. _" refer to the Declaration of Dan Alminana in Support of Elysium's and Morris's Opposition to ChromaDex's Motion for Partial Summary Judgment dated August 28, 2019. All references to "Cockburn Decl. Ex. _" refer to the Declaration of Iain M. Cockburn in Support of Elysium's and Morris's Opposition to ChromaDex's Motion for Partial Summary Judgment dated August 28, 2019. All references to "SAMF" refers to paragraphs in Elysium's Statement of Additional Material Facts.

Facts 1 through 79 below correspond to the facts and supporting evidence presented in the Statement of Uncontroverted Facts filed by ChromaDex. These facts are followed by additional material facts and supporting evidence showing a genuine issue of material fact exists.

DEFENDANTS' RESPONSES TO CHROMADEX'S ALLEGEDLY UNDISPUTED MATERIAL FACTS

ChromaDex's Alleged Uncontroverted Facts and Evidence	**Defendants' Reply**
1. Founded in 1999, ChromaDex has evolved from a testing and standards company into a science-based nutraceutical company	1. Undisputed but immaterial.

devoted to improving the way people age. **Evidence:** ChromaDex Ex. 1 at 14-16; ChromaDex Ex. 2 at 46-48.	
2. ChromaDex's nicotinamide riboside ("NR")—under the trade name "NIAGEN"—has received from the U.S. Food and Drug Administration two New Dietary Ingredient Notifications and the determination that NIAGEN is Generally Recognized As Safe. **Evidence:** ChromaDex Exs. 4-6.	2. Disputed. ChromaDex mischaracterizes the nature of the U.S. Food and Drug Administration's ("FDA") responses to submissions by ChromaDex. First, ChromaDex has *not* "received from the U.S. Food and Drug Administration two New Dietary Ingredient Notifications ("NDIN") for NR or NIAGEN. ChromaDex's Ex. 5 is a letter from the FDA that states: "Please note that acceptance of this notification [from ChromaDex] is notification for filing is a procedural matter, and thus, does not constitute a finding by FDA that the new dietary ingredient or supplement that contains the new dietary ingredient

	is safe or is not adulterated under 21 U.S.C. 342." Similarly, ChromaDex's Ex. 6 is a letter from the FDA that states: "Please note that acceptance of this notification for filing is a procedural matter, and thus, does not constitute a finding by FDA that the new dietary ingredient or supplement that contains the new dietary ingredient is safe or is not adulterated under 21 U.S.C. § 342." Second, the FDA also has *not* "made a determination that Niagen is Generally Recognized as Safe" ("GRAS"). ChromaDex's Ex. 4 is a letter from the FDA that states that "the agency ha[d] no questions at [that] time regarding ChromaDex's conclusion that NR is GRAS under the intended conditions of use." It also states that "this response should not be construed to be a statement that foods that contain NR, if introduced or delivered for introduction into

	interstate commerce, would not violate section 301(II) [of the FD&C Act]." It further states that "[t]he agency has not, however, made its own determination regarding the GRAS status of the subject use of NR."
3. In March 2017, ChromaDex acquired an established direct-to-consumer company and now sells an NR- containing dietary supplement called TRU NIAGEN®. **Evidence:** ChromaDex Ex. 2 at 14-16.	3. Disputed. In March 2017, ChromaDex acquired the equity interests it did not already own in Healthspan Research, LLC ("Healthspan") a direct-to-consumer company founded by ChromaDex board member Robert Fried ("Fried"), who decided to start the company sometime "in the middle of 2015" based on his research of the science of antiaging. Healthspan was not "established" as ChromaDex characterizes. Fried testified that when he "formed Healthspan, it was always a test" and he testified that he did not

	"have experience selling dietary supplements." **Evidence**: Sacca Decl. Ex. 1 at 44:23-45:3; 47:14-18; 50:24-51:1.
4. In 2013, Eric Marcotulli, Elysium's CEO, reached out to ChromaDex because he wanted to start a company selling a consumer product with ChromaDex's NR ingredient. **Evidence:** ChromaDex Ex. 74 at 71:16-21; ChromaDex Ex. 72 at 101:23-102:11.	4. Disputed in part. ChromaDex mischaracterizes Mr. Marcotulli's testimony. He testified that Elysium "identified nicotinamide riboside as a candidate" for a "product that could boost NAD levels." **Evidence:** ChromaDex Ex.[1] 74 at 917 (ECF No. 240-02).
5. NR was still a very new ingredient in 2013 and was only commercially available because of ChromaDex's efforts. **Evidence:** ChromaDex Ex. 2 at 48.	5. Disputed. ChromaDex mischaracterizes the evidence. NR is manufactured by W.R. Grace-Conn. ("Grace") for ChromaDex. ChromaDex itself has never manufactured NIAGEN for commercial sale.

[1] All references to ChromaDex Ex. herein refer to the exhibits attached to the August 16, 2019 Declaration of Barrett J. Anderson in Support of Chromadex, Inc.'s Motion for Partial Summary Judgment Against Counterclaimant Elysium Health, Inc. (ECF No. 232-24).

	Evidence: Sacca Decl. Ex. 2 at 14:18-14:25; Sacca Decl. Ex. 3 at 18:11- 19:3; Sacca Decl. Ex. 4 at 66:11- 66:24; Sacca Decl. Ex. 5 at 37:15-38:19; Sacca Decl. Ex. 6; Sacca Decl. Ex 7.
6. In 2013, ChromaDex only had one supply agreement for NR, which was with Thorne Research, Inc. ("Thorne"). In 2013, Thorne also signed a trademark license agreement. **Evidence:** ChromaDex Exs. 8, 67.	6. Disputed. ChromaDex cites evidence that does not support its factual assertion. The evidence does not show that in 2013 it only had one supply agreement for NR. ChromaDex had at least three agreements for the supply of NR in 2013, including (1) Thorne, (2) HPN, and (3) Doctor's Best. Neither HPN nor Doctor's Best had a trademark license agreement with ChromaDex in 2013. Although ChromaDex did not have a formal supply agreement with Doctor's Best, in response to Elysium's Interrogatory No. 10 which asked ChromaDex to

	"identify any license or supply agreement for nicotinamide riboside," ChromaDex identified an email from 2013 between it and Doctor's Best as a "Supply Agreement" and did not cite any document as a "Trademark License." ChromaDex and HPN executed a supply agreement on May 30, 2013 and did not execute a Trademark License Agreement until February 12, 2014. **Evidence:** Sacca Decl. Exs. 8, 9, 10; ChromaDex Ex. 22 at 323-326 (ECF No. 239-11).
7. ChromaDex and Elysium heavily negotiated the terms of their NR supply agreement, with the parties exchanging many rounds of revisions over a few months. **Evidence:** ChromaDex Exs. 9, 10.	7. Disputed. ChromaDex mischaracterizes the evidence. Although ChromaDex's and Elysium's negotiation of the terms of the NR supply agreement spanned a few months, they were also characterized by weeks of inactivity.

	Evidence: ChromaDex Ex. 11 (ECF No. 238-05)
8. Elysium sent the first draft of the supply agreement on November 9, 2013. The draft contained provisions for a sublicense to ChromaDex's patent rights, exclusivity in the direct-to-consumer sale of dietary supplements, the same price in Thorne's agreement ($1,200 per kilogram), most favored nation ("MFN") pricing, a cGMP warranty, and terms regarding product safety and latent defects. The draft also contained mandatory minimum purchase commitments for Elysium, royalties paid by Elysium based on its product sales, and a grant of Elysium equity to ChromaDex. **Evidence:** ChromaDex Ex. 9 at 157-171.	8. Undisputed.
9. The parties agreed that Elysium would pay royalties in order to	9. Disputed.

compensate for Elysium's "startup risk." **Evidence:** ChromaDex Ex. 10 at 187; ChromaDex Ex. 69 at 231:22-232:8.	ChromaDex mischaracterizes the evidence. As part of the negotiations, Elysium proposed to provide equity where "ChromaDex will be granted up to 5% of Elysium in a non-dilutive fashion" and pay royalties to ChromaDex starting at "5% and increases at predetermined increments, up to 10%, based on continued decreases in manufacturing costs passed along to Elysium" to address Elysium's "perceived startup risk" as it related to, and in exchange for, having exclusive rights related to NR in the internet channel. The executed NR Supply Agreement did not grant Elysium exclusive rights in the internet channel, nor did it provide any grant of equity to ChromaDex. **Evidence**: ChromaDex Ex. 10 at 185 (EFC No. 238-04); Sacca Decl. Ex. 11 at 339:13-344:5; Fifth Am. Compl., Ex. C (ECF No. 153-03).
10. On December 13, ChromaDex returned a draft of the agreement	10. Disputed in part.

that entirely removed the provisions for a patent sublicense, product safety, a cGMP warranty, and latent defects. ChromaDex further edited the draft to make MFN pricing contingent on the "volumes" Elysium ordered, as compared to third parties, and added a limited warranty provision. **Evidence:** ChromaDex Ex. 11 at 198-200.	On December 13, ChromaDex returned a draft of the NR Supply Agreement that added to the MFN pricing provision -- which before ChromaDex's addition read "If, at any time during the Term, ChromaDex supplies Niagen (or as substantially similar product) to a Third Party at a price that is lower than that at which Niagen is supplied to Elysium Health under this Agreement, then the price of Niagen supplied under this Agreement shall be revised to such Third Party price with effect from the applicable date of sale to such Third Party and ChromaDex shall promptly provide Elysium Health with any refund or credits thereby created" -- ChromaDex added only a clause reading "provided Elysium Health purchases equal volumes or higher volumes than the Third Party." Accordingly, the relative volume of Elysium's purchases were to be compared to that of the

	Third Party receiving a lower price, not third parties generally. Also, on December 13, ChromaDex notified Elysium that the parties "will need to split [the supply agreement] into two separate agreements": (1) the Supply Agreement; and (2) Brand License Agreement." **Evidence**: Chromadex Ex. 11 at 796, 802 (ECF No. 238-05).
11. Elysium negotiated not to use the NIAGEN trademark on its product label. ChromaDex did not ask for anything in exchange. However, ChromaDex indicated that Elysium would still need to sign a permissive trademark license agreement that would govern in the event Elysium later decided to use ChromaDex's trademarks. **Evidence:** ChromaDex Ex. 10 at 176; ChromaDex Ex. 69 at 239:19-240:20;	11. Disputed. ChromaDex cites to evidence that does not support its factual assertions. The evidence does not show that ChromaDex did not ask for anything in exchange. ChromaDex Ex. 18 shows that Elysium was required to pay royalties in exchange for the "permissive trademark license," even if the trademark was not used.

ChromaDex Ex. 11 at 190; ChromaDex Ex. 18 at 291, § 3.	Additionally, ChromaDex omits relevant details about the negotiation of the trademark license agreement. As part of their negotiations, ChromaDex falsely represented to Elysium that all customers were required to sign a trademark and royalty agreement. Jaksch later confirmed to Elysium that Live Cell, a customer that purchased NR prior to and during the course of Elysium and ChromaDex's negotiations, never signed a trademark and license agreement or paid royalties. Elysium was required to sign the trademark license and to pay trademark royalties in order to have access to NR form ChromaDex. **Evidence**: Sacca Decl. Ex. 12 at 90:19-91:16, 92:3-92:23, 103:2-103:22, 104:16-105:15; Sacca Decl. Ex. 13 at 166:21-166:24, 167:20-168:3; Sacca Decl. Ex. 14 at CDXCA_00007265;

	Sacca Decl. Ex 15; Elysium Ex.[2] 43 (ECF No 245-02); SAMF ¶¶ 15-18; ChromaDex Ex. 69 (ECF No. 240-02); Alminana Decl. ¶¶5-9.
12. In a December 13 email attaching a new draft of the supply agreement, Frank Jaksch—ChromaDex's then-CEO—noted that the parties would "need to split [the deal] into two separate agreements" and that the "royalty and equity section will transfer over to the brand license agreement." That transfer was to simplify the supply agreement, although Elysium understood that it would still be paying the royalty for "the supply of NR." **Evidence:** ChromaDex Ex. 11 at 190; ChromaDex Ex. 69 at 278:11-278:17, ChromaDex Ex. 284:17-285:10.	12. Disputed. ChromaDex cites to evidence that does not support its factual assertions. The royalty required under the trademark license was in exchange for the rights granted under the license, not to "simplify" the supply agreement. Mr. Jaksch repeatedly told Elysium that all of ChromaDex's NR customers were required to sign a separate trademark license and royalty agreement with ChromaDex.

[2] All references to Elysium Ex. herein refer to the exhibits attached to the August 16, 2019 Declaration of Joseph N. Sacca in Support of Elysium's and Mark Morris's Motion for Partial Summary Judgment (ECF No. 234-2).

	Evidence: SAMF ¶ ¶ 15-18; ChromaDex Ex. 18 (ECF No. 239-08); Alminana Decl. ¶¶ 7-9, Ex. E.
13. The parties had a phone call on December 16, 2013. The next draft following that phone call, sent on December 20, 2013, no longer granted ChromaDex equity in Elysium or granted Elysium exclusivity. **Evidence:** ChromaDex Exs. 12-13.	13. Undisputed but incomplete. The December 20, 2013 draft no longer granted Elysium exclusivity with regards to specific channels. **Evidence:** ChromaDex Ex. 13 at 221 (ECF No. 239-02); ChromaDex Ex. 11 at 194 (ECF No. 238-05); Alminana Decl. ¶ 8.
14. On December 27, 2013, ChromaDex sent a draft of the supply agreement, which removed the royalty provisions from the supply agreement and copied the same provisions into the trademark license and royalty agreement ("TLRA"). **Evidence:** ChromaDex Ex. 14; ChromaDex Ex. 15 at 242-243, 256-257.	14. Disputed. ChromaDex cites to evidence that does not support its factual assertions. ChromaDex has not produced the December 27, 2013 draft of the supply agreement in this litigation. ChromaDex also mischaracterizes the evidence. The provisions in the TLRA were not identical to the

	royalty provisions contained in the next draft of the agreement provided by Elysium. For example, the TLRA defined the term "net sales", which was not previously included in the supply agreement. Additionally, the royalty section of the supply agreement contained references to "NIAGEN." However, the TLRA changed all references to NIAGEN to "Qualifying Product." Moreover, the provision in the TLRA is an entirely different agreement and the royalty is in consideration for different rights and obligations. **Evidence**: ChromaDex Ex. 15 (ECF No. 239-04); SAMF ¶¶ 15-18; Alminana Decl. ¶ 9, Ex. F.
15. Elysium returned drafts of both contracts on January 10, 2014. In the supply agreement, Elysium reinserted provisions concerning latent defects and product safety,	15. Disputed. Elysium did not "expressly integrate the supply agreement and TLRA." They remained two

edited the limited warranty term to include a cGMP warranty and language limiting Elysium's liability, and deleted the royalty provision. Elysium also expressly integrated the supply agreement and the TLRA. **Evidence:** ChromaDex Ex. 15; *id.* at 240-244.	separate agreements with separate rights and obligations. **Evidence:** ChromaDex Ex. 18 at 291, 294 (ECF No. 239-07); Alminana Decl. ¶ 10.
16. The parties executed the supply agreement and TLRA on February 3, 2014. **Evidence:** ChromaDex Ex. 17 at 279; ChromaDex Ex. 18 at 291.	16. Undisputed.
17. On June 26, 2014, the parties executed the pTeroPure Supply Agreement, whereby ChromaDex agreed to supply Elysium with pterostilbene ("PT"). **Evidence:** ChromaDex Ex. 19.	17. Undisputed.
18. Elysium launched its Basis product in February 2015.	18. Undisputed.

Evidence: ChromaDex Ex. 70 at 35:8-10.	
19. On February 19, 2016, after negotiations, ChromaDex and Elysium signed an amendment to the NR supply agreement that, among other things, required Elysium to purchase minimum amounts of NR and PT and granted it the exclusive right to sell products combining "NIAGEN and pTeroPure (or ingredients substantially similar thereto)" (the "Exclusivity Provision"). **Evidence:** ChromaDex Ex. 21 at 313.	19. Disputed. ChromaDex mischaracterizes the evidence concerning the exclusivity provision. The NR Supply Agreement states: "ChromaDex shall not, directly or indirectly, sell, transfer or otherwise provide to any Third Party, or license or otherwise enable any Third Party to make any products containing both Niagen and pTeroPure® (or any ingredients that are substantially similar thereto) in combination, whether in the same delivery mechanism (including tablet, capsule, melt or liquid form) or packaging or in separate form or packaging but marketed together." **Evidence**: ChromaDex Ex. 21 at 313 (ECF No. 239-10).
20. ChromaDex supplied NIAGEN to almost 100 customers.	20. Undisputed but incomplete.

Evidence: ChromaDex Ex. 22 at 323-326.	During the timeframe of June 1, 2013 to February 28, 2018, ChromaDex supplied NIAGEN to almost 100 customers. **Evidence**: ChromaDex Ex. 22 at 323-326 (ECF No. 239-11).
21. Each of ChromaDex's supply relationships was a "unique discussion," negotiated on a case-by-case basis, considering factors such as "what the customer's plans were, where they intended to go, what their product was going to look like, how they were going to approach the customer base, [and] what volumes they might give." **Evidence:** ChromaDex Ex. 68 at 69:8-15.	21. Disputed. Frank Jaksch stated that in order for ChromaDex to supply Elysium with NR, Elysium would need to sign not only the Supply Agreement, but also a trademark license and royalty agreement and Mr. Jaksch repeatedly stated that all of ChromaDex's NR customers were required to sign a trademark license and royalty agreement with ChromaDex. ChromaDex's expert agrees that almost a quarter of the NR sold in 5 year-period was TM required. **Evidence:** SAMF ¶¶ 10-13, 15-18; Alminana Decl. ¶ 8.

22. Most of ChromaDex's customers affirmatively sought to use ChromaDex's NIAGEN trademark in connection with their NR products. Many of ChromaDex's customers never had an obligation to use the NIAGEN trademark. **Evidence:** Jaksch Decl. ¶ 4.	22. Disputed. The Jaksch declaration is unsworn. Many customers had a contractual obligation to use the mark. **Evidence:** SAMF ¶¶ 12-13; Sacca Decl. Ex. 16 at CDXCA_00005455; Sacca Decl. Ex. 17 at CDXCA_00027395; Sacca Decl. Ex. 18 at CDXCA_00008608; Sacca Decl. Ex. 19 at CDXCA_00008949; Sacca Decl. Ex. 20 at CDXCA_00031419; Sacca Decl. Ex. 21 at CDXCA_00008512; Sacca Decl. Ex. 22 at CDXCA_00008654; Sacca Decl. Ex. 23 at CDXCA_00008800; Sacca Decl. Ex. 24 at CDXCA_0002722; Sacca Decl. Ex. 25 at CDXCA_00027516; Sacca Decl. Ex. 26 at CDXCA_00027741; Sacca Decl. Ex. 27 at CDXCA_00062197; Sacca Decl. Ex. 28 at CDXCA_00207937; Sacca Decl. Ex. 29 at CDXCA_00210962; Sacca Decl. Ex. 30 at CDXCA_00243111; Sacca Decl. Ex. 31 at CDXCA_00254408.

23. Some of the NR supply agreements contained an obligation, while others gave permission, to use the NIAGEN trademark as part of the product label. **Evidence:** ChromaDex Ex. 78 ¶ 76.	23. Disputed to the extent suggesting that equal numbers of supply agreements gave permission rather than containing an obligation to use the trademark. **Evidence:** SAMF ¶¶ 10, 12-13.
24. ChromaDex sold NR to some customers on a product order basis, without a supply agreement. **Evidence:** ChromaDex Ex. 72 at 139:2-4.	24. Disputed. ChromaDex does not define "product order basis," but mischaracterizes the evidence on which it relies. The evidence cited by ChromaDex shows only that it sold NR to Live Cell without a supply agreement.
25. ChromaDex maintained control over the use of its NIAGEN brand by requiring any customer using its trademarks to sign a trademark license agreement. **Evidence:** ChromaDex Ex. 68 at 114:25-115:6, 117:25-118:7.	25. Disputed. ChromaDex required customers not using the NIAGEN brand, such as Elysium, to pay royalties under a trademark license agreement. **Evidence:** SAMF ¶18.

26. Under the Brand Usage Guidelines incorporated into its trademark license agreements, ChromaDex suggested that the NIAGEN mark appear on the back of the product label under the facts panel. **Evidence:** ChromaDex Ex. 23 at 341; ChromaDex Ex. 18.	26. Disputed In addition to the suggestions how the NIAGEN mark could look on a back label, ChromaDex required many licensees to use the mark as a "Product trademark" or "Product tradename" in their supply agreements. ChromaDex was aware that many licensees were using NIAGEN as their primary brand. Furthermore, it is disputed whether the Brand Guidelines were the same for every agreement. **Evidence:** SAMF ¶¶ 10, 12-14, 29-30.
27. In March 2016, Elysium began considering Mark Morris, ChromaDex's Vice President of Business Development, for a position at Elysium. **Evidence:** ChromaDex Ex. 24 at 360-362; ChromaDex Ex. 25.	27. Disputed. Elysium began considering Mark Morris for a position at Elysium sometime in the second quarter of 2016, after Morris had informed Elysium of his plans to leave ChromaDex.

	Evidence: Sacca Decl. Ex. 12 at 188:24; Sacca Decl. Ex. 13 at 106:17-107:25.
28. On May 29, 2016, Morris gave Alminana ChromaDex information concerning the prices and volumes of another customer's NR purchases. Over the next month and half, Elysium and Morris exchanged non-public ChromaDex information. **Evidence:** ChromaDex Ex. 24 at 367-368; *id.* at 368-388.	28. Disputed. ChromaDex mischaracterizes the evidence, which does not demonstrate that Morris provided Elysium with non-public ChromaDex information for a month and a half following May 29, 2016. The pricing and volume information shared by Morris was information to which Elysium was entitled, and it was Morris's responsibility to inform Elysium if it was entitled to a lower price under the NR Supply Agreement. **Evidence:** Sacca Decl. Ex. 2 at 208:3-208:9; Sacca Decl. Ex. 32 at 91:19-93:2.
29. Morris stated to Elysium that he wanted to "make [ChromaDex's]	29. Undisputed but incomplete.

worst nightmares come true!" and "get rid of the scumbags holding this magnificent technology" and "destroy [ChromaDex]!" **Evidence:** ChromaDex Ex. 24 at 376, 393.	ChromaDex omits the full context surrounding Morris's statements.
30. Morris provided Elysium with information about purchasing NR directly from W.R. Grace & Co. ("Grace"), which manufactured NR for ChromaDex in an exclusive arrangement. **Evidence:** ChromaDex Ex. 24 at 376, 389-390.	30. Disputed. ChromaDex cites to evidence that does not support its factual assertions. The evidence does not show Morris providing any "information about purchasing NR directly from" Grace.
31. While still a ChromaDex employee, Morris provided Elysium with a list of potential manufacturers, one of which was [redacted] **Evidence:** ChromaDex Ex. 26.	31. Disputed. Morris provided Elysium a list of "fine chemical" manufacturers, information that is publicly available, two days after giving ChromaDex notice of his resignation. **Evidence**: Decl. of Mark Morris ISO Elysium's and Morris's Motion for

	Partial Summary Judgment (ECF No. 234-01).
32. On June 28, 2016, Elysium submitted to ChromaDex orders larger in volume and lower in price than it had ever placed previously. **Evidence:** ChromaDex Ex. 28 at 429, 431.	32. Disputed. ChromaDex cites to evidence that does not support its factual assertions. The evidence does not indicate that Elysium submitted orders larger in volume and lower in price than it had ever placed previously. The evidence cited shows only the volume and price for the June 28, 2016 order.
33. On a June 30 phone call, Elysium requested from ChromaDex the same sales information it had already obtained from Morris. Elysium promised to place further large orders before the end of 2016. **Evidence:** ChromaDex Ex. 68 at 328:1-10.	33. Disputed. ChromaDex cites to evidence that does not support its factual assertion. The evidence does not show that Elysium requested sales information on the June 30 phone call that it had already obtained from Morris. Elysium had sought and received from Jaksch information concerning ChromaDex's sales to other customers prior to the June 30

	phone call in an effort to assess ChromaDex's compliance with the MFN provision. Jaksch gave Elysium information about the relative volume of Elysium's and Live Cell's purchases in 2015 and year-to-date 2016, told Elysium that Live Cell had made its last significant purchase in the third quarter of 2015, and that Live Cell received lower pricing than did Elysium. During the June 30 call Jaksch and Black told Elysium that Live Cell's Price was [redacted]. **Evidence:** Elysium Ex. 49 (ECF No. 245-08); Elysium Ex. 50 (ECF No. 245-09); Elysium Ex. 35 (ECF No. 244-04); Elysium Ex. 36 (ECF No. 244-05); Elysium Ex. 32 at 249:17-250:3 (ECF No. 244-01): Elysium Ex. 37 at 255:17-258:5 (ECF No. 244-06); Elysium Ex. 38 (ECF No. 244-07).
34. Elysium intended the June 28, 2016 purchase orders (and the subsequently placed orders on June 30, 2016) to last well into 2017.	34. Disputed. Because Elysium was a startup it was difficult for it to forecast and

Evidence: ChromaDex Ex. 73 at 95:7-12.	predict how long the supply from the June 30, 2016 order would last. **Evidence:** Sacca Decl. Ex. 13 at 194:21-195:23.
35. On June 30, 2016, Elysium submitted orders on credit for 3,000 kilograms of NR (at $800 per kilogram) and 580 kilograms of PT (at $1,000 per kilogram) (the "June 30 Orders"). ChromaDex accepted the June 30 Orders. The June 30 Orders represented $2,983,350 worth of ingredients. **Evidence:** ChromaDex Ex. 7 at 139-142.	35. Disputed in part. The June 30, 2016 purchase orders cited by ChromaDex include a payment terms of "30% Net30 70% Net60." The purchase orders for Niagen and pTeroPure totaled $2,983,350. **Evidence:** ChromaDex Ex. 7 at 134-143.
36. On July 1, Alminana informed Morris that he planned to "drop" an email accusing ChromaDex of violating the Exclusivity Provision "the second our ingredients" from the June 30 Orders were in Elysium's possession. In response, Morris provided Alminana with information about other ChromaDex customers.	36. Disputed. Morris provided Alminana with the names of three customers who were selling products containing NR and resveratrol. **Evidence:** ChromaDex Ex. 24 at 390-392.

Evidence: ChromaDex Ex. 24 at 390-391; *id.* 391-392.	
37. On August 10, 2016, Elysium received confirmation that the last of the June 30 Orders had shipped. That same day, Alminana sent ChromaDex an email asserting breach of the NR Supply Agreement. **Evidence:** ChromaDex Ex. 29 at 434; ChromaDex Ex. 30 at 449.	37. Undisputed but incomplete. In response to ChromaDex's August 9, 2016 email asking Elysium for a royalty report, Alminana reiterated Elysium's prior notification dated June 29, 2016 of ChromaDex's breach of the most favored nations ("MFN") provision of the NR Supply Agreement. Alminana also notified ChromaDex of Elysium's discovery of ChromaDex's breach of the exclusivity provision of the Amendment of the NR Supply Agreement. **Evidence**: ChromaDex Ex. 30 at 449-450 (ECF No. 240-1).
38. With no resolution between the parties, ChromaDex terminated the supply agreement, effective February 3, 2017.	38. Disputed. In November 2016, when ChromaDex terminated its agreement with Elysium, it was

Evidence: ChromaDex Ex. 32 at 457.	actively considering its plan to "[b]e its own Elysium" by selling NR direct to consumers and to eliminate its current NR customers who were in the direct-to-consumer ("DTC") market, including Elysium. **Evidence**: Elysium Ex. 16 (ECF No. 237-06); Elysium Ex. 9 (ECF No. 235-09).
39. Elysium replaced ChromaDex as its supplier with [redacted] Synthesis ([redacted]"). In late 2016, Elysium realized that [redacted] would not be able to deliver a commercial batch of NR before 2017. **Evidence:** ChromaDex Exs. 33-35.	39. Undisputed.
40. [redacted]. **Evidence:** ChromaDex Ex. 69 at 125:21-126:4; ChromaDex Ex. 36 at 484; ChromaDex Ex. 37; ChromaDex Ex. 38 at 517.	40. Undisputed but incomplete. From March 2017 to July 2017, [redacted].

	Evidence: ChromaDex Ex. 69 at 125:5-126:4 (ECF No. 240-02).
41. Elysium told [redacted] to change its NR safety specifications so that [redacted] could accept the NR. Specifically, Elysium had set the specification for acetamide, a NR manufacturing byproduct, at 40 parts per million ("ppm"). When [redacted] informed Elysium that the NR it was manufacturing would have more than 40 ppm of acetamide, Elysium raised the safety specification to 200 ppm, and told [redacted] to pull the batch from the reactor. **Evidence:** ChromaDex Ex. 39 at 519; ChromaDex Ex. 40; ChromaDex Ex. 76 at 198:12-199:25.	41. Disputed. ChromaDex cites to evidence that does not support its factual assertion. The evidence does not show that [redacted] informed Elysium that the NR it was manufacturing would have more than 40 ppm of acetamide.
42. After testing showed that a batch of NR contained over 200 ppm of the suspected carcinogen, Elysium again raised the safety specification, this time all the way to 275 ppm. Elysium paid [redacted] per kilogram for that batch of NR, more than it had ever paid ChromaDex for NR.	42. Disputed. ChromaDex cites to evidence that does not support its factual assertion. The evidence does not indicate that Elysium raised the safety specification. Elysium disputes the characterization of

Evidence: ChromaDex Ex. 41 at 528; ChromaDex Ex. 42 at 527.	"suspected carcinogen" in ChromaDex's factual assertion.
43. Elysium finally obtained finished product made with the batch of NR set to a specification of 275 ppm the week of [redacted]. **Evidence:** ChromaDex Ex. 43 at 625.	43. Disputed. ChromaDex cites to evidence that does not support its factual assertions. The evidence does not show any specification for the [redacted] finished product.
44. Elysium deliberately sold Basis with NIAGEN into California to satisfy Proposition 65 ("Prop. 65") and sold Basis with the contaminated NR into the rest of the country. **Evidence:** ChromaDex Ex. 73 at 268:3-4; ChromaDex Ex. 262:2-16.	44. Disputed. ChromaDex mischaracterizes the testimony of Daniel Magida ("Magida"). Magida testified that Elysium "separated acetamide possible product with acetamide versus non-acetamide product and kept into count that California has a Prop 65 warning and made sure that material that could contain acetamide was not shipped to the state of California." **Evidence:** ChromaDex Ex. 73 at 262:11-262:16 (ECF No. 240-02).

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45. In September 2018, Elysium switched NR manufacturers to [redacted], leaving [redacted] with [redacted] for which Elysium had not paid. **Evidence:** ChromaDex Ex. 76 at 37:6-38:20; 52:16-53:6.	45. Disputed. ChromaDex mischaracterizes the evidence, which does not indicate that Elysium had not paid for [redacted]. [redacted]. Elysium does not owe any money to [redacted]. **Evidence:** Sacca Decl. Ex. 11 at 99:2-99:8; Sacca Decl. Ex. 33.
46. [redacted] began delivering commercial quantities of NR to Elysium in September 2018. [redacted] still supplies Elysium with its NR today. **Evidence:** ChromaDex Ex. 78 ¶ 69; ChromaDex Ex. 69 at 98:15-16.	46. Disputed. ChromaDex cites to evidence that does not support its factual assertions. ChromaDex cites to the report of its rebuttal expert, Dr. Randal Heeb, for the proposition that [redacted] began delivering commercial quantities of NR to Elysium in September 2018. In support, Dr. Heeb cites to a document which does not show that

	[redacted] was capable of producing NR at a commercial scale or that [redacted] began to deliver NR to Elysium in September 2018.
47. Many customers—including Elysium—were under no obligation to use the NIAGEN mark. **Evidence:** ChromaDex Ex. 78 ¶ 69; Jaksch Decl. ¶ 4.	47. Disputed in part. Many customers were required to use the mark. The Jaksch Declaration is unsworn. **Evidence:** SAMF ¶¶ 10, 12-13, 24-25.
48. Many of ChromaDex's NR customers willingly used the NIAGEN mark, even without a mandatory use provision. **Evidence:** ChromaDex Ex. 78 ¶¶ 75, 76, 134; Jaksch Decl. ¶ 4.	48. Disputed. The Jaksch Declaration is unsworn. Further, Mr. Jaksch's statement that customers "willingly" used the mark is inadmissible hearsay and speculation. **Evidence:** SAMF ¶¶ 1-10, 12-13, 24-25.
49. Several NR customers went even further, and chose to use the mark "as their brand out of convenience, cost, [and] perceived familiarity." By their own choice, those customers displayed the NIAGEN	49. Disputed. ChromaDex cites to evidence that does not support its factual assertions. Furthermore, this statement is hearsay and not

mark far more prominently than suggested by ChromaDex in its Brand Usage Guidelines. **Evidence:** ChromaDex Ex. 46; ChromaDex Ex. 78 ¶¶ 78 & n.104, 134.	supported by competent, admissible evidence. ChromaDex has no personal knowledge of why customers chose to use the mark. ChromaDex's sole evidence for this statement is an internal ChromaDex document created in 2017. **Evidence:** SAMF ¶¶ 10; 12-13, 24-25.
50. Some NR customers, such as MAAC10, used the NIAGEN mark without ever executing a trademark license agreement at all. **Evidence:** ChromaDex Ex. 78 ¶¶ 75, 134.	50. Disputed. **Evidence:** SAMF ¶ 22.
51. ChromaDex never refused to sell NR to a customer simply because that customer did not desire to use or license the trademark. **Evidence:** Jaksch Decl. ¶ 5.	51. Disputed. **Evidence:** SAMF ¶¶ 15- 18.
52. A "branded ingredient" strategy, like the one at issue here, is a long-recognized and widely- practiced marketing strategy deployed by patent holders.	52. Disputed and immaterial. ChromaDex did not employ a "branded ingredient" strategy until 2017, when they "transitioned to a

Evidence: ChromaDex Ex. 78 ¶¶ 94-114.	branded ingredient strategy" after terminating the relationship with Elysium and after this litigation began. ChromaDex puts forth no evidence to support its factual assertion. The examples cited in the Heeb report to support whether the strategy was willingly accepted by the licensees, as neither ChromaDex nor Dr. Heeb has knowledge of the terms of relevant agreements between the brand and the licensee. Moreover, ChromaDex's expert relied on examples of so-called "branded ingredients" without knowing if they were in fact covered by patents. Furthermore, ChromaDex's NIAGEN strategy is highly unusual and not "widely-practiced." ChromaDex leveraged its patent to establish and develop the brand by requiring the use of the trademark or the payment of royalties.

	ChromaDex then seized control of the direct to consumer space and profited from the increased investment in the NIAGEN brand. Further, ChromaDex did not employ a "branded ingredient" strategy until 2017, when it "transitioned to a branded ingredient strategy" after this litigation began. **Evidence:** Sacca Decl. Ex. 34 at 175:7-175:13, 180:14 -180:19, 183:24 – 185:25; Sacca Decl. Ex. 45 at ¶¶ 139 – 162; ChromaDex Ex. 46 at 4096 (ECF No. 240-01); Cockburn Decl. Ex. A.
53. ChromaDex has objected to Elysium's addition of the counterclaim for breach of Section 3.9. **Evidence:** ChromaDex Ex. 47.	53. Undisputed but incomplete. ChromaDex opposed Elysium's motion for leave to file amended counterclaims, but the Court granted leave. **Evidence:** ChromaDex's Opp'n. To Elysium's Motion for Leave to File

	Third Am. Countercls. (ECF No. 93); Order Granting Elysium's Motion for Leave to File Third Am. Countercls. (ECF No. 98).
54. Elysium declined to offer a rebuttal opinion to Dr. Kagel or even to depose her. **Evidence:** Anderson Decl. ¶ 2; ChromaDex Ex. 48.	54. Disputed. Dr. Kagel submitted an opening report on June 21, 2019 and what ChromaDex has characterized as a supplemental report on July 26, 2019. Elysium was denied the opportunity to rebut the supplemental report as July 26 was the agreed-upon deadline for rebuttal expert reports.
55. Even after Elysium became aware that the laboratory it selected for its acetamide testing had never tested acetamide before, Elysium chose to use that laboratory's services. **Evidence:** ChromaDex Ex. 79 at 1005; ChromaDex Ex. 49 at 675.	55. Undisputed.
56. The laboratory told Elysium that its testing method would generate "false positives." Elysium directed the lab to use that method.	56. Disputed. ChromaDex cites to evidence that does not support its factual

Evidence: ChromaDex Ex. 79 at 1008; ChromaDex Ex. 50 at 679.	assertions. First, [redacted], not a laboratory, discussed applying a testing method for residual acetamide. Second, neither [redacted], nor the laboratory, told Elysium that its testing method would generate "false positives." Rather, [redacted] described its typical residual acetamide analysis which would "improve specificity of the method (avoid interference and false positives)." Third, the factual assertion that Elysium directed the lab to use a method is unsupported by the evidence cited by ChromaDex. **Evidence:** ChromaDex Ex. 50 at 679 (ECF No. 240-01).
57. Elysium has put forward to no evidence to bolster the testing method it used or to support the results alleged in its Third Amended Counterclaims. **Evidence:** Anderson Decl. ¶ 3.	57. Disputed. Elysium has put forward evidence to support the results alleged in its Third Amended Counterclaims. **Evidence**: Sacca Decl. Ex. 35 (Gibraltar testing docs); Decl. of Joseph N. Sacca ISO Elysium's and Morris's

	Motion *in limine* to Exclude the Supplemental Expert Report of Carla Kagel, Ex. A (ECF No. 266-2).
58. In January 2017, ChromaDex had "already determined [acetamide] will not be in the finished product" and was "confident that there is not detectable amount of acetamide." **Evidence:** ChromaDex Ex. 54 at 54.	58. Disputed. The document cited by ChromaDex admits that ChromaDex "does not test for acetamide" and it therefore could not have determined whether acetamide was present in its product.
59. As of February 3, 2017, ChromaDex had tested eight lots of NIAGEN "and acetamide was not detected." **Evidence:** ChromaDex Ex. 55 at 706.	59. Undisputed.
60. ChromaDex manufactured the NIAGEN it shipped to Elysium under the cGMP standards for food and dietary ingredients, as required by the "applicable laws and regulations" promulgated by FDA.	60. Disputed. Instead of relying on factual evidence, ChromaDex cites to a federal statute to support its assertion.

Evidence: 21 C.F.R. pt. 110, *superseded by* 21 C.F.R. pt. 117.	ChromaDex did not, and has not, manufactured NIAGEN. NIAGEN is manufactured by Grace. Grace was not fully compliant with 21 C.F.R. pt. 110, the cGMP standard for food and dietary ingredients. Moreover, under the terms of the NR Supply Agreement, ChromaDex was required to ship NIAGEN manufactured under the higher cGMP standard for pharmaceuticals to Elysium, which it failed to do. ChromaDex claims the inclusion in the parties' agreement of the cGMP provision defining cGMP as 21 C.F.R pts. 210 and 211 was an "error." **Evidence**: Sacca Decl. Ex. 2 at 14:18-14:25, 217:14-217:21, 218:16-218:17; Sacca Decl. Ex. 3 at 18:11- 19:3; Sacca Decl. Ex. 4. at 66:11-66:24; Sacca

	Decl. Ex. 5 at 37:15-38:19; 40:10-40:15 Fifth Am. Compl., Ex. C (ECF No. 153-03); Sacca Decl. Ex. 36 at CDXCA_00367355; Sacca Decl. Ex 37 at 111:2-111:16; Sacca Decl. Ex. 38.
61. Since ending its relationship with ChromaDex, Elysium has accepted NR from two manufacturers made in accordance with dietary supplement standards. **Evidence**: ChromaDex Ex. 75 at 111; ChromaDex Ex. 56 at 711.	61. Disputed in part. ChromaDex terminated the parties' relationship when it sent Elysium its notice of non-renewal. **Evidence**: Elysium Ex. 6 (ECF No. 235-06).
62. Elysium accepted all of the NIAGEN sold to it by ChromaDex. It earned all the profits it expected. **Evidence:** ChromaDex Ex. 69 at 269:1-6, ChromaDex Ex. 271:4-272:2.	62. Disputed. ChromaDex cites to evidence that does not support its factual assertions. The evidence does not establish that Elysium accepted all of the NIAGEN sold to it by ChromaDex. There is no testimony to support the statement that Elysium "earned all the profits it expected."
63. On September 7, 2016, Elysium's Alminana emailed its CEO	63. Undisputed.

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Marcotulli with the claim that "ChromaDex has breached [the cGMP Provision], as all of the Niagen sold to date has not been manufactured in a GMP facility." **Evidence:** ChromaDex Ex. 57.	
64. Elysium drafted, but never sent, a letter notifying ChromaDex of the purported cGMP Provision breach that same month. **Evidence:** ChromaDex Ex. 58.	64. Undisputed.
65. On January 9, 2018, counsel for Elysium informed ChromaDex's lawyers that it intended to amend its counterclaims to include the two new counterclaims. **Evidence:** ChromaDex Ex. 60.	65. Undisputed but incomplete. On January 4, 2018, counsel for Elysium informed counsel for ChromaDex that it planned to seek leave to amend its counterclaims and answers and affirmative defenses. On January 9, 2018, counsel for Elysium informed counsel for ChromaDex that Elysium planned on amending its counterclaims to assert additional claims for breach of contract relating to ChromaDex's breach of the cGMP provision and the

	product purity provision of the NR Supply Agreement. **Evidence**: Sacca Decl. Ex. 39.
66. After learning of ChromaDex's purported cGMP breach, Elysium continued to sell, and sold, of the NIAGEN in its inventory. **Evidence:** ChromaDex Ex. 69 at 271:1, 273:16-19; ChromaDex Ex. 73 at 3:21-23; 268:3-4; 262:2-16.	66. Undisputed.
67. ChromaDex shipped nine orders of NIAGEN to Elysium between June 27, 2014 and July 1, 2016. **Evidence:** ChromaDex Ex. 7.	67. Undisputed.
68. Elysium never made a claim about any of the NIAGEN orders it received within 30 days of accepting the NIAGEN. **Evidence:** ChromaDex Ex. 69 at 304:9-306:5; 267:24-269:9; 272:2-8.	68. Undisputed but incomplete. Elysium was unable to make a claim about ChromaDex's breach of the cGMP provision or the product purity provision within 30 days of accepting Niagen. The last shipment of Niagen Elysium received was on or around July 12, 2016, but Elysium did not learn of

	the cGMP breach until on or around September 2016 and the product purity breach until Spring 2017. **Evidence:** Sacca Decl. Ex. 40; ChromaDex Ex. 57 (ECF No. 240-02);
69. Neither Elysium's initial nor supplemental initial disclosures state that it seeks damages for its counterclaim for breach of the implied covenant of good faith and fair dealing. **Evidence**: ChromaDex Exs. 62-63.	69. Disputed. Elysium's initial and supplemental disclosures stated that it seeks damages related to ChromaDex's contractual breaches and unlawful and unfair business practices, which covers ChromaDex's breach of the implied covenant of good faith and fair dealing. **Evidence**: ChromaDex Ex. 62 at 782 (ECF No. 240-02); ChromaDex Ex. 63 at 790 (ECF No. 240-02).
70. In response to a ChromaDex interrogatory requesting Elysium to identify its damages, Elysium did not state that it seeks damages in connection with its counterclaim for	70. Disputed. Elysium's interrogatory response stated that it seeks damages related to ChromaDex's contractual breaches, which covers

breach of the implied covenant of good faith and fair dealing. **Evidence**: ChromaDex Ex. 64.	ChromaDex's breach of the implied covenant of good faith and fair dealing. **Evidence**: ChromaDex Ex. 64 at 801-804 (ECF No. 240-02).
71. In response to a ChromaDex interrogatory requesting Elysium to identify its damages in connection with its Section 3.9 and Confidentiality Provisions, Elysium objected to the Interrogatory as calling for expert testimony. **Evidence**: ChromaDex Ex. 64.	71. Undisputed but incomplete. In response to ChromaDex's Interrogatory No. 10, which asked Elysium to "identify, state the amount of, and explain how [Elysium] calculated any damages or other relief [it sought] through its counterclaims," Elysium objected to the extent it called for "expert testimony in advance of the deadline for such disclosure as required by the applicable rules or agreed to by the parties" and identified categories of damages it was seeking. **Evidence**: ChromaDex Ex. 64 at 801-804 (ECF No. 240-02).

72. Elysium's damages expert did not provide any opinions on damages arising from its counterclaims for Product Safety, Confidentiality Provisions, or the implied covenant of good faith and fair dealing. **Evidence**: ChromaDex Ex. 71 at 31:24-34:20.	72. Disputed. Elysium's damages expert opined on damages arising from ChromaDex's breach of the exclusivity provision of the Amendment to the NR Supply Agreement. Elysium's counterclaim asserting ChromaDex's violation of the implied covenant of good faith and fair dealing arises from ChromaDex's breach of the exclusivity provision. **Evidence**: ChromaDex Ex. 71 at 31:24-34:20 (ECF No. 240-02); Elysium's Third Am. Countercls. at ¶¶ 158-160 (ECF No. 103).
73. After Elysium ended its relationship with ChromaDex, it did not have access to new NR until [redacted]. **Evidence**: ChromaDex Ex. 42 at 537.	73. Disputed in part. ChromaDex terminated the parties' relationship when it sent Elysium its notice of non-renewal. **Evidence**: Elysium Ex. 6 (ECF No. 235-6).

74. [redacted] **Evidence**: ChromaDex Ex. 65 at 813.	74. Undisputed.
75. Elysium's expert stated that he could not narrow his "wide bands of uncertainty." **Evidence**: ChromaDex Ex. 71 at 228:13-229:3.	75. Disputed. ChromaDex mischaracterizes the testimony of Elysium's expert. Dr. Cockburn testified that, "there's a relatively wide band of uncertainty about how much of [Mitoboost's] demand could be reasonably assumed to be taken up by Basis in a counterfactual world and for how much of its consumers would have gone elsewhere." In reaching his conclusion that between 10 and 90% of MitoBoost sales could have been captured, Dr. Cockburn testified that he evaluated "this marketplace, these products, their pricing, volumes, you know, in light of my - - and I'll cast modesty - - modesty to the winds - - considerable expertise in studying

	demand for prescription and OTC pharmaceuticals suggest to me that these are reasonable bounds within which the trier of fact could determine that a counterfactual volume of sales would lie." **Evidence**: ChromaDex Ex. 71 at 227:11-229:18 (ECF No. 240-02).
76. Marcotulli testified that, when he signed the TLRA, he believed it gave Elysium a license to ChromaDex's patents, and that Elysium only "later learned that we were licensing the trademarks." **Evidence**: ChromaDex Ex. 74 at 104:16-104:21, 104-08.	76. Disputed and immaterial. The terms of the agreements speak for themselves. ChromaDex supplied NR to Elysium, which as a matter of law, granted them an implied license to practice the patent. **Evidence**: SAMF ¶¶ 15-18; Alminana Decl. ¶¶ 1-6.
77. ChromaDex's Amended Notice of 30(b)(6) put Elysium on notice that ChromaDex intended to depose its 30(b)(6) witness about Elysium's allegations related to the December 16, 2013 phone call.	77. Disputed. ChromaDex's Amended Notice of 30(b)(6) did not specifically reference a December 16, 2013 phone call as a deposition topic

Evidence: ChromaDex Ex. 66, Topics 2, 8-9, 25-27.	despite including an explicit reference to another phone call, namely the June 30 Phone Call. **Evidence**: ChromaDex Ex. 66, Topic 5 (ECF No. 240-02).
78. Elysium's Rule 30(b)(6) witness testified that he "[did]n't remember anything about a call" on December 16, 2013. **Evidence**: ChromaDex Ex. 69 at 277:23-278:10.	78. Disputed. ChromaDex asked Elysium's Rule 30(b)(6) witness whether he was familiar with a call that took place on "December 16, **2014**" (emphasis added). Moreover, Dr. Wilhelm testified that Elysium was required to pay royalties identified as trademark royalties even though Elysium was using and had no desire to use the NIAGEN trademark. **Evidence**: ChromaDex Ex. 69 at 277:23-277:24 (ECF No. 240-02); Sacca Decl. Ex. 11 at 238:22-239:2; SAMF ¶¶ 15-18; Alminana Decl. ¶ 8.
79. Elysium reviewed the Thorne supply agreement prior to the call	79. Undisputed but incomplete.

on December 16, and discussed it with ChromaDex a part of the negotiations. **Evidence**: ChromaDex Ex. 10, Ex. 14 at 233.	Elysium reviewed the Thorne supply agreement in September 2013 before proposing to provide equity and pay royalties to ChromaDex to address Elysium's "perceived startup risk" as it related to, and in exchange for, having exclusive rights related to NR in the internet channel. **Evidence**: ChromaDex Ex. 10 (ECF No. 238-04).

STATEMENT OF ADDITIONAL MATERIAL FACTS

Elysium also contends that the following additional material facts create genuine issues of material fact precluding summary judgment.

Material Facts	Supporting Evidence
1. ChromaDex is the exclusive license of certain nicotinamide riboside ("NR")-related patents, which have helped it establish and secure control of the commercial supply of NR.	1. ChromaDex Ex. 1 at ELY_0122945; Sacca Decl. Ex. 41 at CDXCA_00142505 – CDXCA_00142516; Sacca Decl. Ex. 42 at CDXCA_00009968 - CDXCA_00009997; Sacca Decl. Ex. 43 at CDXCA_00160556 - CDXCA_00160581; Sacca Decl. Ex. 44 at CDXCA_00071302 -

	CDXCA_00071311; Sacca Decl. Ex. 45 at ¶¶ 82- 114; Cockburn Decl. Ex. A; Sacca Decl. Ex. 46 at ELY_0125946 – ELY_0125950.
2. ChromaDex described its control of the market for NR, and its position as "gatekeeper" to the NAD+ precursor category in a July 8, 2013 press release filed with the SEC as part of a 2013 8-K ChromaDex further stated in this release "Niagen™ is the first and only commercially available brand of NR… ChromaDex believes its patent rights create a significant and meaningful barrier to entry for would-be competitors in the NR market."	2. Sacca Decl. Ex. 47 at CDXCA_00000104; Sacca Decl. Ex. 45 at ¶¶ 88, 91; Cockburn Decl., Ex. A.
3. ChromaDex has described itself as the only source of NR, including in investor presentations from 2014, 2015, and 2016.	3. Sacca Decl. Ex. 48 at CDXCA_00073434; Sacca Declaration Ex. 49 at CDXCA_00076408; Sacca Decl. Ex. 50 at CDXCA_00000210; Sacca Decl. Ex. 51 at CDXCA_00067549; Sacca Decl. Ex. 45 at ¶¶ 87-88; Cockburn Decl. Ex. A

4. Financial services firm Jeffries prepared a presentation for ChromaDex with significant input from ChromaDex in May of 2014 stating that ChromaDex is "**the only producer of Niagen** and its patent rights create a significant barrier to entry for would-be competitors in the market."	4. Sacca Decl. Ex. 52 at CDXCA_00105764 (emphasis in original); Sacca Decl. Ex. 45 at ¶ 95; Cockburn Decl. Ex. A; Sacca Decl. Ex. 53 at CDXCA_00107355 - CDXCA_00107356; Sacca Decl. Ex. 54 at CDXCA_00107442; Sacca Decl. Ex. 55 at CDXCA_00107524 – CDXCA_00107525; Sacca Decl. Ex. 56 at CDXCA_00126637 – CDXCA_001226638.
5. In a letter from Frank Jaksch to ChromaDex shareholders sent on January 6, 2016, Frank Jaksch described ChromaDex as being "in the enviable position of gatekeeper to the entire NAD+ precursor community."	5. Sacca Decl. Ex. 57 at CDXCA_00087744; Sacca Decl. Ex. 45 at ¶ 92; Cockburn Decl. Ex. A.
6. Referencing its NR patent rights, ChromaDex has told investors in a May 2016 presentation, that it is "in the enviable position of 'gatekeeper' to the entire NAD+ precursor category."	6. Sacca Decl. Ex. 51 at CDXCA_00067478; Sacca Decl. Ex. 45 at ¶ 88; Cockburn Decl. Ex. A.

7. A 2016 article written collaboratively with ChromaDex, and reviewed by Frank Jaksch, stated that "because of its patents, ChromaDex is currently, and will be for quite some time, the gatekeeper of NR."	7. Sacca Decl. Ex. 58 at CDXCA_00299912; Sacca Decl. Ex. 45 at ¶¶ 89-90; Cockburn Decl. Ex. A
8. In a December 27, 2016 email to a PR employee regarding responses to an inquiry from a reporter, ChromaDex CEO Frank Jaksch explained that "ChromaDex does control the NR market and will for quite some time," having "created multilayered fort around NR, protecting [their] controlling position in the market."	8. Sacca Decl. Ex. 59 at CDXCA_00154104; Sacca Decl. Ex. 45 at ¶ 192; Cockburn Decl. Ex. A.
9. In July 2014, a company called ProThera inquired whether ChromaDex would supply NR for use in the practitioner channel. After ChromaDex declined and said it was only the only commercial supplier, ProThera threatened to look for other suppliers. In response, Frank Jaksch, said that no alternate NR suppliers existed and	9. Sacca Decl. Ex. 59 at CDXCA_00169741-CDXCA_00169744; Sacca Decl. Ex. 45 at ¶ 96; Cockburn Decl. Ex. A

that if they did, ChromaDex would "go after the company here in the US." Frank Jaksch further stated that "[a]nyone else that tries to sell NR will receive a lawsuit."	
10. ChromaDex's supply arrangements with its customers included contractual provisions that required many of them to license the NIAGEN trademark and use it according to the terms of a separate trademark license agreement "(TLA"). ChromaDex admits its practice was to require customers to sign two separate agreements: a supply agreement and a trademark license.	10. Sacca Decl. Ex. 20 at CDXCA_00031419; Sacca Decl. Ex. 61 at CDXCA_00008497; Sacca Decl. Ex. 21 at CDXCA_00008512; Sacca Decl. Ex. 24 at CDXCA_00027272; Sacca Decl. Ex. 17 at CDXCA_00027393; Sacca Decl. Ex. 30 at CDXCA_00243111; Sacca Decl. Ex. 62 at CDXCA_00027516; Sacca Decl. Ex. 22 at CDXCA_00008657; Sacca Decl. Ex. 26 at CDXCA_00027741; Sacca Decl. Ex. 29 at CDXCA_00 210962; Sacca Decl. Ex. 23 at CDXCA_00008800; Sacca Decl. Ex. 16 at CDXCA_00005455; Sacca Decl. Ex. 19 at CDXCA_00008949; Sacca Decl. Ex. 27 at CDXCA_00062197; Sacca Decl. Ex. 31 at CDXCA_00245408; Sacca Decl. Ex. 63 at

	CDXCA_00207937; Sacca Decl. Ex. 45 at ¶119; Cockburn Decl. Ex. A; Sacca Decl. Ex. 2 at 118:4-118:11.
11. ChromaDex's expert admits that almost a quarter of all NR sold between 2013-2018 were purchases where the trademark was required and used.	11. Sacca Decl. Ex. 64 at ¶ 172, Figure 28.
12. For example, ChromaDex's very first NR supply agreement provided that "Buyer agrees to use the Product trademark NIAGEN."	12. Sacca Decl. Ex 16 at CDXCA_00005455; ChromaDex Ex. 8 at 148 (ECF No. 238-02); Sacca Decl. Ex. 45 at ¶ 119; Cockburn Decl., Ex. A.
13. Numerous other NR supply agreements conditioned supply of NR on the purchaser's use of ChromaDex's "Product trademark" when it sold the purchaser's NR. For example, Evolved Organics LLC's supply agreement with ChromaDex included language stating that "Buyer shall use the Product trademark NIAGEN and agrees to do so in accordance with the Trademark License Agreement…." In addition,	13. Sacca Decl. Ex 17 at CDXCA_00027395; Sacca Decl. Ex. 19 at CDXCA_00008949; Sacca Decl. Ex. 61 at CDXCA_00008497; Sacca Decl. Ex. 21 at CDXCA_00008512; Sacca Decl. Ex. 24 at CDXCA_00027272; Sacca Decl. Ex. 17 at CDXCA_00027393; Sacca Decl. Ex. 30 at CDXCA_00243111; Sacca Decl. Ex. 25 at CDXCA_00027516;

ThriveNow's supply agreement stated that "Buyer shall use the tradename NIAGEN on all finished product and agrees to use the Product trademark NIAGEN in accordance with the License agreement…" ChromaDex's supply agreement with HPN states: "Buyer shall use the tradename NIAGEN® on its Finished Product." The supply agreement with Nectar7 states, "Buyer shall use the Product trademark NIAGEN®, and agrees to do so in accordance with that certain Trademark License Agreement to be executed by the parties prior to the sale or marketing of the Finished Product.	Sacca Decl. Ex. 22 at CDXCA_00008657; Sacca Decl. Ex 20 at CDXCA_00031419; Sacca Decl. Ex. 31 at CDXCA_00245408; Sacca Decl. Ex. 26 at CDXCA_00027741; Sacca Decl. Ex. 29 at CDXCA_00210962; Sacca Decl. Ex. 23 at CDXCA_00008800; Sacca Decl. Ex. 16 at CDXCA_00005455; Sacca Decl. Ex. 27 at CDXCA_00062197; Sacca Decl. Ex. 28 at CDXCA_00207937; Sacca Decl. Ex. 45 at ¶¶ 34, 119; Cockburn Decl. Ex. A.
14. ChromaDex's TLAs generally attached Brand Usage Guidelines. These Guidelines gave examples as to how the logo, ingredient description, and registered patent and trademark statements could appear together under the facts panel. They also gave general	14. Sacca Decl. Ex. 65; Sacca Decl. Ex. 66; Sacca Decl. Ex. 34 at 37:8-37:10.

guidance for how the logo should appear when used.	
15. Elysium was required to sign a TLA agreeing to pay trademark royalties in exchange for the rights granted thereunder in order to have access to NR from ChromaDex.	15. Alminana Decl. ¶¶ 2-10, Ex. A-F; ChromaDex Ex. 69 (ECF No. 240-02); Cockburn Report at ¶¶ 123, 124; Cockburn Decl. Ex. A.
16. The Trademark License and Royalty Agreement ("TLRA") was signed by both Elysium and ChromaDex. The TLRA was granted "subject to the requirements specified in this Agreement," one of which was that Elysium "shall pay to ChromaDex" royalties on Elysium's net sales. It places obligations on Elysium, including the payment of royalties. The royalty obligation continues indefinitely as long as the supply agreement remains in effect.	16. ChromaDex Ex. 18 at 291, 294, 296 (ECF No. 239-07); Cockburn Report, ¶¶ 37, 124; Cockburn Decl. Ex. A.
17. In emails and phone conversations related to the contract negotiations, which took place between in October and December 2013, Eric Marcotulli and Dan Alminana of Elysium repeatedly told	17. Alminana Decl. at. ¶¶ 5, 7-10.

ChromaDex's then-CEO Frank Jaksch that Elysium was not interested in using the NIAGEN trademark and that Elysium wanted to retain the right to brand its product freely.	
18. Frank Jaksch responded by telling Eric Marcotulli and Dan Alminana in a series of emails and phone conversations between October and December 2013 that Elysium was required to sign the TLRA even if they did not want to use the NIAGEN trademark. During these contract negotiations, ChromaDex CEO Frank Jaksch demanded that Elysium sign a trademark license and pay royalties on product sales containing NR as a condition of Elysium's access to NR.	18. Alminana Decl. ¶¶ 4-10, Exs. A-F; Sacca Decl. Ex. 45 at ¶ 123; Cockburn Decl., Ex. A.
19. Elysium was required to pay a minimum royalty of 5% on net sales of its BASIS product as part of the TLRA.	19. ChromaDex Ex. 18 (ECF No. 239-07); Sacca Decl. Ex. 45 at ¶ 124; Cockburn Decl. Ex. A.

20. Elysium's royalty-bearing trademark license agreement was tied to ChromaDex's patent rights.	20. Sacca Decl. Ex. 67 at 301:19-301: 21; Sacca Decl. Ex. 45 at ¶ 124; Cockburn Decl. Ex. A; Sacca Decl. Ex. 68.
21. Elysium was required to pay approximately $496,000 in trademark royalties by the second quarter of 2016.	21. Sacca Decl. Ex. 45 at ¶¶ 37, 125; Cockburn Decl. Ex. A; Sacca Decl. Ex. 69 at CDXCA_00006939; Sacca Decl. Ex. 70 at CDXCA_00006948; Sacca Decl. Ex. 71 at CDXCA_00059349; Sacca Decl. Ex. 72 at CDXCA_00100914; Sacca Decl. Ex. 73 at CDXCA_00101783; Sacca Decl. Ex. 74 at CDXCA_00007068; Sacca Decl. Ex. 75 at ELY_0046779.
22. While MAAC10 did not formally execute a TLA with ChromaDex, ChromaDex sent MAAC10 a supply agreement which states "Buyer agrees to use the product trademark NIAGEN in accordance with the Trademark License Agreement…", and then MAAC10 placed an order, thereby accepting ChromaDex's offer.	22. Sacca Decl. Ex. 31 at CDXCA_00245405 – CDXCA_00245420; Sacca Decl. Ex. 76 at CDXCA_00152820 - CDXCA_00152821; Sacca Decl. Ex. 77 at CDXCA_00027653 - CDXCA_00027660; Sacca Decl. Ex. 78 at CDXCA_00146312; Sacca Decl. Ex 79 at CDXCA_0012174;

	ChromaDex Ex. 22, Rog No. 10 (239-11).
23. ChromaDex encouraged direct-to-consumer ("DTC") licensees to use NIAGEN as the name of their product.	23. Sacca Decl. Ex. 2 at 114:25-115:6; Sacca Decl. Ex. 45 at ¶ 122; Cockburn Decl. Ex. A.
24. ChromaDex strategically developed the brand name of NIAGEN so that consumers would think of NR as NIAGEN.	24. Sacca Decl. Ex. 1 at 152:4- 152:11; Sacca Decl. Ex. 80 at CDXCA_00276582 - CDXCA_00276583; Sacca Decl. Ex. 45 at ¶¶ 115- 137; Cockburn Decl. Ex. A.
25. ChromaDex's 30(b)(6) designee testified that ChromaDex recognized the company benefitted if customers used the NIAGEN brand name, stating that "[I]t's to the company's benefit if the customers use the mark […] Again, the company wants to build its brand, Niagen, and it's to our benefit for our customers to use that mark." He further testified that "obviously selling direct to consumers with a Niagen-branded product would help the brand."	25. Sacca Decl. 2 at 57:21-57:23, 120:8-120:19; Sacca Decl. Ex. 45 at ¶¶ 115-37; Cockburn Decl. Ex. A.

26. ChromaDex created investor presentations explaining a strategy to acquire "technologies and associated IP through licensing" and to then use their control over these technologies and IP to develop a "differentiated offering" through marketing and branding, among other factors. ChromaDex specifically tied this strategy to developing the NIAGEN brand.	26. Sacca Decl. Ex. 81 at CDXCA_00072189; Sacca Decl. Ex. 82 at CDXCA_00075455. Sacca Decl. Ex. 45 at ¶¶ 116-117; Cockburn Decl. Ex. A.
27. As a result of ChromaDex's trademark policy, many third party licensees used brand names that included the NIAGEN mark. Some used NIAGEN as the primary identifier for their product.	27. Sacca Decl. Ex. 1 at 261:17-261:23; Sacca Decl. Ex. 83 at 182:20-183:4; Cockburn Decl. Ex. A; Sacca Decl. Ex. 45 at pp. 10-12, Cockburn Report Figure A.
28. As ChromaDex recognized, its "NIAGEN ingredient TM strategy strengthens the overall NR business…." because it "[p]rovides differentiation for CDX [ChromaDex] if/when NR competition arrives."	28. ChromaDex Ex. 46 at CDXCA_00464097 (ECF No. 240-01); Sacca Decl. Ex. 45 ¶ 136, Figure C; Cockburn Decl. Ex. A.
29. In 2016, ChromaDex underwent strategic plans to develop a DTC NR brand with Healthspan, a	29. Elysium Ex. 18 at CDXCA_00172619, CDXCA_00172623 (ECF No. 237-

former licensee. ChromaDex had decided to terminate its DTC licensees' supply of NR, and to replace those sales with sales of its own DTC product. In an internal document circulated in November 2016 describing the cornerstone for a potential agreement, ChromaDex explained that it had caused its customers to make a "substantial investment… with respect to the use of the brand name NIAGEN."	08); Sacca Decl. Ex. 45 at ¶¶ 140, 142; Cockburn Decl. Ex. A.
30. In 2016, five out of ChromaDex's six NR licensees in the DTC market used NIAGEN as their primary brand name.	30. Elysium Ex. 18 at CDXCA_00172619_ CDXCA_00172623 (ECF No. 237-08); Sacca Decl. Ex. 45 at ¶¶ 38, 42; Cockburn Decl. Ex. A.
31. In 2017, ChromaDex acquired Healthspan as part of a strategy to enter and take over the DTC market.	31. Sacca Decl. Ex. 32 at 215:5-215:6; Sacca Decl. Ex. 45 at ¶ 40; Cockburn Decl. Ex. A.
32. ChromaDex's new DTC product is called TRU NIAGEN.	32. Sacca Decl. Ex. 45 at ¶ 41; Cockburn Decl. Ex. A.
33. In 2017, ChromaDex terminated supply agreements with 13 NIAGEN customers, including four of its six DTC customers. HPN's	33. Sacca Decl. Ex. 45 at ¶ 45; Cockburn Decl. Ex. A; Sacca Decl. Exs. 83-94; Elysium Ex. 6 (ECF No. 235-06).

supply agreement was subsequently terminated on December 14, 2017.	
34. After termination of their licenses, ChromaDex's DTC licensees were no longer allowed to use the NIAGEN mark as a primary product identifier or brand name.	34. Elysium Ex. 18 at CDXCA_00172623 (ECF No. 237-08); Sacca Decl. Ex. 95 at CDXCA_00030354.
35. ChromaDex's website as of June 2019 contained materials directing customers to "Look for 'Niagen®' on the label" to determine if an NR product is "authentic, safe, & effective."	35. Sacca Decl. Ex. 96 at ELY_0123390; Sacca Decl. Ex. 45 at ¶¶ 154-156; Cockburn Decl. Ex. A.
36. Elysium's expert economist provides detailed opinions supporting the conclusion that a market for the supply of NR exists.	36. Sacca Decl. Ex. 45 at ¶¶ 48-81; Cockburn Decl. Ex. A.
37. ChromaDex and others have recognized the unique characteristics of NR that make other products, including even other NAD+ precursors, inadequate substitutes	37. Sacca Decl. Ex. 45 at ¶¶ 53-66; Cockburn Decl. Ex. A.
38. The evidence, including expert testimony, also supports a conclusion that ChromaDex had	38. Sacca Decl. Ex. 45 at ¶¶ 82-114; Cockburn Decl. Ex. A.

market power in the NR supply market.	
39. ChromaDex used its market and patent power to condition the supply of NR on use of, or purchase of a license to use, ChromaDex's NIAGEN® trademark.	39. Sacca Decl. Ex. 45 at ¶¶ 134-37; Cockburn Decl. Ex. A.
40. As early as June 29, 2016, Elysium provided notice that ChromaDex was in breach of the most favored nation pricing provision ("MFN Provision") of the Niagen Supply Agreement between Elysium and ChromaDex ("NR Supply Agreement").	40. Elysium Ex. 35 at 371 (ECF No. 244-04).
41. On April 14, 2016, two months after the Amendment to the NR Supply Agreement was executed, ChromaDex first notified Nordic Clinical that it could no longer sell Mitoboost, a product containing both NR and PT.	41. Sacca Decl. Ex. 97.
42. In the email to Nordic Clinical providing that notice, ChromaDex suggested Nordic Clinical substitute resveratrol for PT.	42. Sacca Decl. Ex. 97.

43. Nordic Clinical did not launch its reformulated product until October 2016 and continued to sell its remaining inventory of Mitoboost with NR and PT past October 2016.	43. Sacca Decl. Ex. 98.
44. On August 10, 2016 Elysium provided notice to ChromaDex that ChromaDex was in breach of the Exclusivity Provision contained in the Amendment to the NR Supply Agreement.	44. Sacca Decl. Ex. 99.
45. On August 16, 2016, Elysium provided notice that ChromaDex that Mitoboost was being sold in violation of the Exclusivity Provision.	45. Sacca Decl. Ex. 99.
46. In response to Elysium's August 16, 2016 email, Will Black ("Black") replied that Mitoboost is a "post-Amendment product/brand" and "unbeknownst to [ChromaDex] they formulated a competitive ptero into their product…"	46. Sacca Decl. Ex. 99.
47. On January 26, 2016, Collene Villalobos notified Frank Jaksch ("Jaksch") that Nordic Clinical would launch Mitoboost in	47. Sacca Decl. Ex. 100.

February or March of 2016. The Mitoboost label was attached to the email notification and listed the ingredients as Niagen, Resveratrol, and Pterostilbene.	
48. Chromadex did not "require customers to tell it when they were launching new products containing NR."	48. Sacca Decl. Ex. 2 at 237:12-237:15.
49. ChromaDex claimed "it spent a lot of time looking at the market and looking at new customers. That's how [ChromaDex] became aware when that other customer launched a product where they did not purchase pterostilbene from us."	49. Sacca Decl. Ex. 2 at 236:20-237:11.
50. ChromaDex did not know if it notified all of its NR customers that they could not sell combinations of NR and PT or any substantially similar ingredients.	50. Sacca Decl. Ex. 2 at 232:23-233:11.
51. The only steps ChromaDex could definitely say it took to ensure it complied with the Exclusivity Provision was monitoring customer labels and products online and	51. Sacca Decl. Ex. 67 at 74:19-74:23, 77:14-77:22.

sending notice if it found noncompliance.	
52. On August 10, 2016, Elysium notified ChromaDex that Life Extension was selling a product called Optimized Resveratrol with Nicotinamide-Riboside, which included NR, PT, and Resveratrol.	52. Sacca Decl. Ex. 99.
53. On August 16, 2016, Elysium notified ChromaDex that a product called Niadex was being sold in violation of Elysium's exclusivity.	53. Sacca Decl. Ex. 99.
54. On August 20, 2016, Elysium notified ChromaDex that Thorne was selling a product called Resveracel, which contained NR and resveratrol.	54. Sacca Decl. Ex. 99.
55. ChromaDex disclosed the Exhibit A Niagen Specifications to numerous other customers.	55. Sacca Decl. Exs. 18, 21, 27.
56. ChromaDex only tested NR for acetamide once in 2015 in connection with seeking GRAS	56. Sacca Decl. Ex. 3 at 35:23 – 37:4.

status and did not start testing for acetamide again until 2017.	
57. ChromaDex did not make the determination to test every lot of NR for acetamide until 2017.	57. Sacca Decl. Ex. 2 at 35:15 – 37:18.
58. In January 2017, ChromaDex's Scientific Director of Regulatory Affairs was advised that ChromaDex could not identify a batch of NR to meet the specification for acceptable levels of acetamide that had been sent to the United States Food and Drug Administration ("FDA") because ChromaDex did not test its NR for acetamide.	58. ChromaDex Ex. 54 at 702-3 (ECF No. 240-02).
59. It was not until after ChromaDex started testing NR received from Grace in 2017 that it discovered acetamide at out of spec levels.	59. Sacca Decl. Ex. 2 at 35:15 – 37:18.
60. Elysium did not discover that the NR lots ChromaDex sold to it contained elevated levels of acetamide in it until April of 2017,	60. Decl. of Joseph N. Sacca ISO Elysium's and Morris's Motion *in limine* to Exclude the Supplemental Expert Report of Carla Kagel, Ex.

two months after ChromaDex had terminated the agreement.	A (ECF No. 266-02); Elysium Ex. 6 (ECF No. 235-06).
61. The June 21, 2019 Expert Report of Carla Kagel commented on acetamide testing ChromaDex performed in-house in September 2018 on lots of Niagen that were sold to other customers, not Elysium.	61. ChromaDex Ex. 79 at 1014-17 (ECF No. 240-03); Sacca Dec. Exs. 101, 102.
62. Carla Kagel's June 21, 2019 Report and July 26, 2019 Supplemental Report both failed to address the acetamide testing conducted by a third party in April/May 2017 on lots of Niagen sold to Elysium.	62. ChromaDex Ex. 79 at 1020-22 (ECF No. 240-03); ChromaDex Ex. 80 (ECF No. 240-04).

Dated: August 28, 2019

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