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March 29, 2019

VIA ECF

Hon. Colleen McMahon
Chief U.S. District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: In re: Elysium Health-ChromaDex Litigation, Case No. 1:17-cv-07394 (CM)

Dear Judge McMahon:

In accordance with the Court's Order dated March 25, 2019 (ECF No. 79), directing the parties in the above-captioned action to provide the Court with a "summary of what has happened in the California case, including all discovery taken therein," Defendant and Counter-Claimant Elysium Health, Inc. ("Elysium") and Plaintiff and Counter-Defendant ChromaDex, Inc. ("ChromaDex") jointly submit this letter to provide the Court with the requested summary of *ChromaDex, Inc. v. Elysium Health, Inc. and Mark Morris*, No. 8:16-cv-02277-CJC (DFM), pending in the United States District Court for the Central District of California (the "California Action").

SUMMARY OF THE CLAIMS IN THE CALIFORNIA ACTION

Elysium and ChromaDex separately summarize their respective claims in the California Action as follows.

ChromaDex's Claims in the California Action

ChromaDex, Inc. ("ChromaDex") develops and sells ingredients to customers in the dietary supplement, food, beverage, skin care, and pharmaceutical markets. ChromaDex was the sole United States commercial source and supplier of nicotinamide riboside ("NR") and had made substantial investments in advancing NR in the market and clearing regulatory hurdles necessary to produce and market the ingredient. Elysium once purchased NR and another ingredient, pterostilbene ("PT") from ChromaDex, for use in its consumer health supplement, Basis.

The California Action began as a breach-of-contract case regarding Elysium's willful refusal to pay for product it ordered and received from ChromaDex in the summer of 2016. Through discovery, however, ChromaDex learned about additional bad conduct by Elysium. Elysium, realizing the immense value of what ChromaDex had created, recruited two ChromaDex employees, Mark Morris and Ryan Dellinger, to secretly steal ChromaDex's trade secrets and proprietary information in furtherance of a plot to create a competing product, financially weaken ChromaDex, and take complete control of the NR market.

Elysium began recruiting Morris, then-ChromaDex Vice President of Business Development, in April 2016. Soon thereafter, Morris began to secretly funnel confidential ChromaDex information to Elysium. Morris also assisted Elysium in obtaining a large supply of ingredients from ChromaDex, which Elysium never intended to pay for. Once secure in its possession of ingredient stockpiles, Elysium completed its recruitment of Morris and Dellinger, the ChromaDex Director of Scientific Affairs, and both joined Elysium.

Elysium strung ChromaDex along by engaging in bad-faith discussions while it used ChromaDex's documents to develop competing sources for its ingredients. Morris and Dellinger worked with a third-party manufacturer to develop a new commercial supply of NR, independent of ChromaDex. Morris utilized proprietary ChromaDex documents and information—some that he stole when he left the employ of ChromaDex and others that Elysium had received from ChromaDex in trust and under non-disclosure agreements obligating Elysium not to misuse them—to guide Elysium's new manufacturer in the development of the new NR supply. Elysium's unlawful conduct allowed it to do in nine months what it took ChromaDex several years to do, and for a fraction of the cost.

ChromaDex's operative complaint in the California Action asserts claims relating to Elysium's breach of certain supply agreements and misappropriation of trade secrets, Morris's breach of confidentiality agreements and fiduciary duties to ChromaDex, and Elysium's conduct to aid and abet Morris's breaches of fiduciary duties. Elysium has interposed counterclaims alleging, inter alia, ChromaDex's material breach of the supply agreements, fraudulent inducement of Elysium to enter into a trademark license, misuse by ChromaDex of its patent rights, and unjust enrichment.

The present litigation in the Southern District of New York describes how Elysium also stole ChromaDex's pedigree with respect to NR, in addition to its personnel, proprietary information, and products, through false and deceptive advertisements of its competing product, Basis. Elysium's deceptive advertisements, which started when Elysium still utilized

ChromaDex's NR in Basis, and continue today, includes statements that Basis is the first product of its kind, that Elysium was materially involved in the research and science behind NR, and that Elysium has a patent for NR—all of which is true of ChromaDex and its product but false when said about Elysium and Basis.

Elysium's Claims in the California Action

Elysium sells a dietary supplement, Basis, that combines nicotinamide riboside (sometimes called "NR") and pterostilbene. From 2014 until mid-2016, Elysium purchased NR and pterostilbene from ChromaDex pursuant to three contracts: (1) a supply agreement governing the supply of NR ("the NR Supply Agreement"), (2) a supply agreement governing the sale of pterostilbene, and (3) a trademark license and royalty agreement (the "Trademark License"). The California Action principally relates to the relationship between ChromaDex and Elysium as ingredient supplier and customer. Elysium's counterclaims in the California Action concern ChromaDex's material breaches of multiple provisions of the NR Supply Agreement, its fraudulent inducement of Elysium to enter into the Trademark License, and its misuse of certain NR-related patents it licenses.

The NR Supply Agreement contained a "most-favored-nations" provision guaranteeing Elysium the lowest price at which ChromaDex sold NR to any other customer buying equal or lower volumes. ChromaDex repeatedly violated that provision, and tried to conceal those breaches by making multiple false statements to Elysium about the terms of its relationships with its other customers. The NR Supply Agreement also contained a provision granting Elysium exclusivity over the sale of products combining NR and pterostilbene or any substantially similar ingredients, and ChromaDex serially violated that requirement. The NR Supply Agreement further contained an express promise by ChromaDex that the NR it sold Elysium would be manufactured in accordance with practices applicable to the manufacture of pharmaceuticals. That representation was false when ChromaDex made it, and continued to be false throughout the period in which ChromaDex sold NR to Elysium. The NR Supply Agreement additionally required ChromaDex to advise Elysium of information potentially affecting the quality or purity of the NR it sold Elysium. ChromaDex breached this obligation by concealing from Elysium the presence of acetamide in the NR it sold Elysium in amounts that exceeded the limits established by California's Proposition 65, which requires notice be given to consumers of products that contain more than threshold amounts of potentially hazardous chemicals.

ChromaDex also falsely represented to Elysium that all of its customers were required to enter into trademark license agreements, which induced Elysium to enter into the royalty-bearing Trademark License notwithstanding that it did not want to, and did not, use ChromaDex's trademarks. Moreover, ChromaDex wrongfully exploited the market power created by the NR-related patents it licenses to impermissibly broaden the scope of the rights those patents purportedly create by, among other acts, tying access to them to the Trademark License that Elysium neither wanted nor used. Furthermore, ChromaDex required other third party licensees

of NR to use its NIAGEN trademark. This misuse of the patents served to unjustly enrich ChromaDex through the trademark royalties paid by Elysium and impermissibly strengthened the NIAGEN brand, resulting in anticompetitive effects that have not been purged.

Over time, the reason for ChromaDex's poor treatment of Elysium became apparent. ChromaDex proved interested in supplying Elysium only long enough for Elysium to build a market for NR among consumers, something that ChromaDex, having failed in its only prior effort to build a direct-to-consumer brand, recognized its inability to do on its own. ChromaDex schemed to usurp the market created by Elysium by planning to cut off Elysium's supply of NR, which, it hoped, would permit its own nascent direct-to-consumer subsidiary – a business it acquired from one of its own directors – to step into the void it planned to create by eliminating Elysium.

ChromaDex did not, however, succeed in eliminating Elysium, and the parties' respective direct-to-consumer sales businesses are what has given rise to the litigation before this Court. Thus, unlike the California Action, which relates to the parties' relationship as ingredient customer and supplier, this action relates to the parties' direct-to-consumer sales. Elysium's current counterclaims before this Court seek remedy for ChromaDex's false and misleading advertising claims that (1) ChromaDex discovered NR, (2) ChromaDex is the only seller of NR, (3) the United States Food and Drug Administration has rigorously reviewed the efficacy and safety of ChromaDex's NR, (4) ChromaDex's NR produces certain results, without adequate disclosure that the promised results would require four times the recommended daily intake, and (5) ChromaDex's NR prevents and cures certain diseases.

DISCOVERY TAKEN TO DATE IN THE CALIFORNIA ACTION

Under the operative scheduling order, all discovery is scheduled to close on April 5, 2019. However, some fact discovery remains, and will likely not be completed until at least mid-May, and expert discovery has not yet commenced.

- Document discovery is largely complete. The parties are actively engaged in the meet-and-confer process, and will likely soon bring the remaining disagreements to the Court in California.

- As of this date, ChromaDex has taken seven depositions. Three depositions remain to be taken, two of which have been scheduled. ChromaDex's 30(b)(6) deposition of Elysium is yet to be scheduled.

- As of this date, Elysium has taken three depositions. Seven depositions remain to be taken, six of which have been scheduled. Elysium's 30(b)(6) deposition of ChromaDex is yet to be scheduled.

- The remaining depositions which have been scheduled will take place during April and May. The latest-scheduled deposition is set for May 13, 2019.

- The parties have not yet agreed on a schedule for expert reports and depositions.

The case is scheduled for a jury trial to commence on July 9, 2019.

Respectfully submitted,

/s/ Joseph N. Sacca
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/s/ Alan Levine
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