

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

FOUR TIMES SQUARE
NEW YORK 10036-6522

TEL: (212) 735-3000

FAX: (212) 735-2000

www.skadden.com

DIRECT DIAL
(212) 735-2358
DIRECT FAX
(917) 777-2358
EMAIL ADDRESS
JOSEPH.SACCA@SKADDEN.COM

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January 24, 2018

BY ECF

The Honorable Valerie E. Caproni
United States District Court for the
Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

RE: *In re Elysium Health-ChromaDex Litigation,*
Case No. 17-CV-7394 (VEC)

Dear Judge Caproni:

Plaintiff Elysium Health, Inc. submits this letter in response to Defendant ChromaDex, Inc.'s January 19, 2018 letter (ECF No. 37).

With its letter, ChromaDex provided the Court a copy of a citizen petition it submitted to the U.S. Food & Drug Administration on January 16, 2018, purportedly supplementing its August 18, 2017 citizen petition that is the subject of Elysium's claims in this action. Insofar as ChromaDex intends to suggest that the supplemental petition, which makes new claims and requests different relief than that sought in the original sham petition, has relevance to its pending motion to dismiss Elysium's complaint on the basis of *Noerr-Pennington* immunity, this position is incorrect.

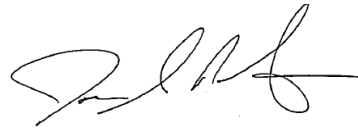
For purposes of the sham exception to *Noerr-Pennington* immunity, the analysis of whether a petition is "objectively baseless" looks to the challenged petition itself; it does not depend on an evaluation of the challenged conduct in conjunction with other developments. See *Theofel v. Farey-Jones*, 359 F.3d 1066, 1078-79 (9th Cir. 2003) (sham exception could apply to service of baseless subpoenas even where lawsuit in which subpoenas were served had arguable merit

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because *Noerr-Pennington* "is no bar where the challenged [] conduct itself is objectively baseless" (emphasis added)). Were this not the case, parties could escape liability for their sham petitioning efforts merely by strategic withdrawals or replacements of baseless petitions after achieving their improper goals—here, the injury to Elysium's business arising from ChromaDex's publication and dissemination of its original petition.

Elysium thus submits that the supplemental petition has no relevance to the Court's analysis of objective baselessness and the application of the sham exception to *Noerr-Pennington* immunity to ChromaDex's conduct here.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Sacca', with a long horizontal flourish extending to the right.

Joseph N. Sacca

Copy: All counsel of record