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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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

Case No.: 8:16-cv-02277-CJC-DFM
 [Assigned to the Hon. Cormac J. Carney]

**ELYSIUM HEALTH, INC.'S AND
 MARK MORRIS'S OPPOSITIONS
 TO CHROMADEx, INC.'S MOTION
 IN LIMINE NOS.1-3**

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

Pre-Trial Conference
 Date: September 18, 2019
 Time: 9:00 a.m.
 Ctrm: 7C

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant and Counterclaimant Elysium Health, Inc. (“Elysium”) and Defendant Mark Morris (“Morris,” together, “Defendants”) respectfully submit this Memorandum of Points and Authorities in opposition to ChromaDex, Inc. (“ChromaDex”)’s Motions *in Limine* (1) to exclude evidence and argument relating to litigation or investigations involving Barry Honig (“Honig”), Michael Brauser (“Brauser”), and Phillip Frost (“Frost”); (2) to bar characterization of or reference to an allegedly “fraudulent” spreadsheet”; and (3) to preclude evidence or argument to the jury relating to ChromaDex’s termination of certain contract terms with, and its refund of royalty payments to, some of its customers.

II. DEFENDANTS’ OPPOSITION TO CHROMADDEX’S MOTION IN LIMINE NO. 1 TO EXCLUDE EVIDENCE AND ARGUMENT RELATING TO LITIGATION OR INVESTIGATIONS INVOLVING BARRY HONIG, MICHAEL BRAUSER AND PHILLIP FROST

As described below, Honig, Brauser, and Frost are more than mere “passive investors” in ChromaDex. Each had significant influence over ChromaDex during the time period relevant to this case, and each had direct involvement in events of importance to this dispute. They cannot, as ChromaDex seeks, properly be erased from the record in this case. *See* ChromaDex’s Memorandum in Support of its Motion *in Limine* No. 1 (ECF No. 263-1 at p. 3 (seeking to exclude references that “these individuals are investors or former board members of ChromaDex”).) That said, Elysium does not intend to introduce evidence at trial concerning Honig’s, Brauser’s or Frost’s history of being investigated and sued by the Securities and Exchange Commission or any other regulator or shareholder unless and until ChromaDex opens the door to it doing so.

1 **A. Relevant Background**

2 **Philip Frost**

3 Dr. Philip Frost is the Chairman and CEO of OPKO Health, Inc. (“OPKO”),
4 and has been a significant investor in ChromaDex since mid-2010, when he became
5 the company’s largest shareholder at the time. (Declaration of Joseph N. Sacca
6 [“Sacca Decl.”] Ex. 1 at 30:13-30:18.) Brauser and Honig invested in that 2010
7 Frost-led financing. (Sacca Decl. Ex. 1 at 30:13-30:25.) Frost currently owns more
8 than five percent of ChromaDex’s outstanding shares, and current ChromaDex
9 director Steven Rubin is both a senior officer of OPKO and a member of the Frost
10 Group, LLC, Dr. Frost’s private investment group. (Sacca Decl. Ex. 2.) In
11 connection with the Frost/Brauser/Honig investment in ChromaDex, their group was
12 allocated three seats on ChromaDex’s board of directors, and Brauser and Honig
13 assumed the role of co-chairmen of the board. (Sacca Decl. Ex. 1 at 35:23-36:6.)

14 ChromaDex’s current CEO, Rob Fried, is, as ChromaDex acknowledges, a
15 relative of Dr. Frost. In July 2015, Fried became a director of ChromaDex, replacing
16 another Frost designee. (Sacca Decl. Ex. 1 at 37:9-11; Ex. 3 at 64:1-6.) Prior to that
17 time, and before he had any official position at ChromaDex, Fried sought “to form
18 a connection” with Elysium’s Chief Scientist, Leonard Guarente, by reaching out
19 and introducing himself as a “member of The Frost Group, an investment group in
20 Miami led by Dr. Phil Frost, the Chairman of Teva and CEO of Opko.” (Sacca Decl.
21 Ex. 4 at 118884.) Shortly thereafter, in early 2015, Fried brokered a meeting
22 between Frost and Elysium’s founders in Miami, Florida. (Sacca Decl. Ex. 3 at
23 15:25-17:23.) Also present at this meeting was Rubin, and Brauser and Honig
24 participated via telephone. (Sacca Decl. Ex. 3 at 16:15-16:22, 17:2-10.) At this
25 meeting, Frost proposed an acquisition of Elysium for \$15 million. (Sacca Decl. Ex.
26 3 at 18:16-19:2). Elysium declined Frost’s proposal. (Sacca Decl. Ex. 3 at 22:5-
27 22:6.)

28 In late 2016, when ChromaDex was negotiating to acquire from Fried a

1 company he had founded called Healthspan Research LLC (“Healthspan”) – which
2 sold NR direct to consumers in competition with ChromaDex customers like
3 Elysium – a ChromaDex board member warned ChromaDex’s then-CEO Frank
4 Jaksch that “we cannot go into this deal without him speaking to Frost personally
5 and making sure it will not cause a blow-up by him, Brauser and Honig. We do not
6 want to have another issue like the many we’ve had before. And, of course, Rob
7 [Fried] will have to offer all of them the opportunity to invest in the Healthspan sub.”
8 (Sacca Decl. Ex. 5.) This is all clear evidence not only that Brauser, Honig, and
9 Frost were deeply involved in ChromaDex, but that Brauser and Honig continued to
10 exert influence over both ChromaDex and the market for NR even after stepping
11 down from the ChromaDex board.

12 **Barry Honig and Michael Brauser**

13 From October 2011 to February 2015, Barry Honig and Michael Brauser
14 served as co-chairmen of ChromaDex’s board of directors. (Sacca Decl. Exs. 6, 7.)
15 As described above, shortly after they resigned from the board, they participated in
16 the meeting between Frost and Elysium’s founders that had been brokered by Fried
17 and at which Frost proposed an acquisition of Elysium.

18 In late 2016, as the relationship between ChromaDex and Elysium started to
19 deteriorate, Brauser, despite apparently having no official position within
20 ChromaDex, injected himself into the dispute with the full knowledge and
21 acquiescence of Jaksch, who was then still ChromaDex’s CEO. In a December 6,
22 2016 email to Jaksch, copied to Honig, Brauser stated “The attorney for Elysium
23 called me and we spoke. I need to be on the same page as you.” (Sacca Decl. Ex.
24 8.) Jaksch never discussed that phone call with Brauser, nor did he do anything to
25 prevent Brauser from continuing to reach out to Elysium’s lawyers. (Sacca Decl. Ex.
26 1 at 285:8-286:6.) Brauser then emailed an investor in Elysium, stating that he
27 “represent[ed] the sole supplier to Elysium, Chromadex,” which he called “my
28 company,” and claiming that if he did not hear back, “we will be forced to take all

1 available remedies under the law.” (Sacca Decl. Ex. 9.) Brauser copied Jaksch on
2 that message. Brauser also emailed Elysium’s COO, Dan Alminana, writing, “I
3 believe it is in your best interest to speak with me. I take our issue exceptionally
4 serious And will be relentless until resolved.” (Sacca Decl. Ex. 10.) Jaksch was also
5 copied on this message. Jaksch took no steps to stop Brauser from communicating
6 in ChromaDex’s name with Elysium or its investors. (Sacca Decl. Ex. 1 at 285:8-
7 286:6, 286:18-22.)

8 **The SEC’s lawsuit against Honig, Brauser and Frost**

9 In 2018, the United States Securities and Exchange Commission (“SEC”)
10 named Honig, Brauser, and Frost, among other defendants, in a complaint in the
11 United States District Court for the Southern District of New York alleging their
12 participation in a wide-ranging “pump-and-dump” scheme lasting from 2010
13 through 2018. (Sacca Decl. Ex. 11.) Frost has paid \$5.2 million to settle that case,
14 and accepted a bar on investing in penny stocks. (Sacca Decl. Exs. 12-14.) Honig
15 also accepted a penny stock bar in a settlement of the litigation that reserved for
16 further determination by the Court additional remedies, including disgorgement and
17 civil penalties. (Sacca Decl. Ex. 12.) The action is still pending against Brauser.

18 **B. Evidence of Honig, Brauser or Frost’s Involvement in Events**
19 **Relevant to This Dispute or of their Ownership of ChromaDex**
20 **Shares or Membership on Its Board of Directors is Properly**
21 **Admissible**

22 Although ChromaDex styles its motion as one to exclude evidence regarding
23 litigation or investigations involving Honig, Brauser and Frost, its argument seeks
24 to sweep more broadly, with an apparent aim to erase any mention of Honig, Brauser
25 and Frost from the trial entirely. ChromaDex’s Memorandum in Support of its
26 Motion *in Limine* No. 1 (ECF No. 263-1 at 3 (arguing “there is no fact ‘of
27 consequence’ that Defendants could show to be ‘more or less probable’ by
28 referencing that these individuals are investors or former board members of
ChromaDex”).) In making this argument, ChromaDex ignores entirely that Frost,

1 Brauser and Honig were participants at a meeting in which they proposed an
2 acquisition of Elysium, a proposal Elysium rejected. That failed acquisition is of
3 significant import in this case because it reflects ChromaDex’s plan to force Elysium
4 out of the market by any means, part of which was for ChromaDex to ultimately
5 “[b]e our own Elysium” by entering into the direct-to-consumer market itself
6 through its acquisition of Healthspan from Fried, and part of which was its scheme
7 to eliminate its customers like Elysium who operated in that market by cutting off
8 their supplies of NR. (ECF Nos. 235-09; 237-10.) ChromaDex also simply
9 disregards that one of its own directors warned its CEO that Frost, Brauser, and
10 Honig would need not only to be consulted on ChromaDex’s acquisition of
11 Healthspan, but also offered the opportunity to participate in it. (Sacca Decl. Ex. 5.)

12 ChromaDex also seeks to disingenuously distance itself from Brauser’s efforts
13 to inject himself into the discussions between Elysium and ChromaDex in late 2016
14 concerning their disputes by contending his approaches to Elysium and its investor
15 “are not relevant to this case for many reasons, including because Brauser was not
16 acting, or authorized to act, for ChromaDex and because the alleged factual bases
17 for the claims and defenses in the case occurred months before.” ChromaDex’s
18 Memorandum in Support of its Motion *in Limine* No. 1 (ECF No. 263-1 at 3.)
19 ChromaDex certainly has not established that Brauser was not acting for it. As
20 described above, he copied ChromaDex’s then-CEO, Jaksch, on his communications
21 with both Elysium and its investor, and Jaksch took no steps to dispute Brauser’s
22 authority to send those messages or to stop him from continuing to act in
23 ChromaDex’s name. Moreover, Brauser was acting for ChromaDex purportedly to
24 resolve disputes under its contract with Elysium at a time when that contract was
25 still in. *See* ChromaDex’s Notice of Non-Renewal of Supply Agreement to Elysium,
26 sent November 1, 2016 (ECF No. 235-06.)

27 Accordingly, to the extent ChromaDex seeks to preclude evidence of any
28 involvement of Honig, Brauser or Frost in any of the events relevant to this litigation,

1 or to exclude evidence that they are or were investors in ChromaDex or members of
2 its board, this motion should be denied. Elysium does not, however, intend to
3 introduce affirmatively evidence of litigation or investigations involving Frost,
4 Brauser or Honig, unless ChromaDex opens the door to that evidence coming in.¹

5 **III. DEFENDANTS’ OPPOSITION TO CHROMADEx’S MOTION IN**
6 **LIMINE NO. 2 TO BAR CHARACTERIZATION OF OR**
7 **REFERENCE TO AN ALLEGEDLY “FRAUDULENT”**
8 **SPREADSHEET**

8 This Court should deny ChromaDex’s Motion *in Limine* No. 2 for two reasons.

9 *First*, the motion is improper because despite ChromaDex’s belief that Elysium
10 will be “unable to establish a factual basis at trial for [the] accusations of fraud,” there
11 is sufficient evidence to show that the Spreadsheet was intended to mislead Elysium,
12 and ChromaDex’s motion thus seeks to improperly sterilize Defendants’ presentation
13 of their case.

14 *Second*, ChromaDex’s motion is overly broad, vague, and ambiguous as to the
15 relief requested. ChromaDex does not provide the Court or Defendants with any
16 guidance as to what is meant by “any similar label,” which therefore makes it
17 untenable to compel compliance with any order granting ChromaDex the relief it
18 requests.

19 **A. Relevant Factual Background**

20 Elysium and ChromaDex contracted in February 2014 for ChromaDex to
21 supply nicotinamide riboside (“NR”) to Elysium, and included in that contract a
22 “most favored nations” pricing provision (“MFN Provision”) that entitled Elysium to
23 any lower price at which ChromaDex sold NR to a third party buying the same or a
24 lower quantity of NR. It reads:

25 _____
26 ¹ For example, ChromaDex cites in its Memorandum communications from
27 Elysium’s CEO that characterize ChromaDex’s management and directors. (ECF
28 No. 263-1 at 1-2.) Although Elysium does not intend to offer those
characterizations affirmatively, Elysium’s CEO should be entitled to explain them
should ChromaDex seek to introduce those communications and question the basis
for the characterizations.

1 If, at any time during the Term, ChromaDex supplies Niagen (or a
2 substantially similar product) to a Third Party at a price that is lower
3 than that at which Niagen is supplied to Elysium Health under this
4 Agreement, then the price of Niagen supplied under this Agreement
5 shall be revised to such Third Party price with effect from the date of the
6 applicable sale to such Third Party and ChromaDex shall promptly
7 provide Elysium Health with any refund or credits thereby created;
8 provided Elysium Health purchases equal volumes or higher volumes
9 than the Third Party.

(ECF 153-03.)

10 On June 13, 2016, Jaksch sent Elysium the Spreadsheet in response to
11 Elysium's request for the "sales and price data for NR that ChromaDex has sold to
12 other customers." (ECF No. 243-08.) Jaksch understood that Elysium sought to
13 assess ChromaDex's compliance with the MFN Provision. (Sacca Decl. Ex. 1 at
14 203:22-204:6.)

15 The Spreadsheet contained two tabs. (ECF No. 244-0 at 326-41.) The first
16 purported to be a "blinded summary" of the terms of NR supply agreements between
17 ChromaDex and twelve NR purchasers who were not specifically named, including
18 the per kilogram price. (ECF No. 244-0 at 326.) The second tab contained
19 substantially more information, including customer names. (ECF No. 244-0 at 328-
20 41.) In addition, the second tab identified ChromaDex NR customers who were *not*
21 party to supply agreements with ChromaDex, including a customer named Live Cell.
22 (*Id.*) According to Jaksch, this second tab was not supposed to be sent to Elysium
23 because "[i]t was an internal document that was being used to generate the other
24 document and should have been removed, but it wasn't." (ECF No. 244-1 at 206:6-
25 206:12.)

26 The Spreadsheet appears to have been a calculated attempt to convince
27 Elysium that ChromaDex was compliant with the MFN Provision by hiding and
28 omitting some of the relevant information. For example, although Elysium had
sought "sales and price data for NR that ChromaDex has sold to other customers,"

1 Jaksch sought only to advise Elysium about the terms of its relationships with
2 customers that were party to supply agreements, even though the MFN Provision
3 does not, by its plain terms, apply only to sales made pursuant to supply agreements
4 Thus, Jaksch intended to exclude any information concerning ChromaDex’s sales to
5 Live Cell, including the information in the second tab he unintentionally sent that
6 suggested Live Cell received lower pricing for NR than did Elysium.

7 The Spreadsheet also omitted entirely other information vitally relevant to the
8 question of ChromaDex’s compliance (or, more properly, non-compliance) with the
9 MFN Provision. For example, although both the blinded and second tabs of the
10 Spreadsheet indicated that the terms of ChromaDex’s agreement with a customer
11 called Healthspan – which was owned by a ChromaDex board member – provided a
12 [REDACTED] per kilogram price for NR, neither disclosed that ChromaDex had in March
13 2016 sold [REDACTED] kilograms of NR to Healthspan for just [REDACTED] per kilogram. (ECF No.
14 244-00; Sacca Decl. Ex. 15). That transaction, at a quantity far below what Elysium
15 was purchasing at the time and at a price half of which ChromaDex was charging
16 Elysium, plainly implicated the MFN Provision. The Spreadsheet omitted mention
17 entirely of other ChromaDex customers like Innovations 4 Health and Proctor &
18 Gamble to which ChromaDex had sold quantities of NR far below the quantities
19 purchased by Elysium at prices far below those at which ChromaDex sold to Elysium,
20 also implicating the MFN Provision. (ECF No. 244-00) (reflecting a sale of one
21 kilogram of NR to Innovations 4 Health for [REDACTED] when Elysium’s price was [REDACTED]
22 per kilogram and a sale of one kilogram of NR to Proctor & Gamble for [REDACTED] when
23 Elysium’s prices were between \$1,300 and \$800).] These omissions from a
24 document Jaksch claimed was responsive to Elysium’s request for “sales and price
25 data for NR that ChromaDex has sold to other customers” that he understood Elysium
26 made to assess its position under the MFN Provision (Sacca Decl. Ex. 1 at 189-90),
27 are glaring, and highly suggestive of an attempt to mislead.
28

1 **B. ChromaDex’s Attempt to Sterilize Defendants’ Presentation of**
2 **Their Case is Not a Proper Purpose for a Motion in Limine**

3 A motion *in limine* is a procedural tool to expedite trial and prevent anticipated
4 prejudicial evidence before it is offered. *See Johnson v. Gen. Mills Inc.*, 2012 WL
5 13015023, at *1 (C.D. Cal. May 7, 2012) (Carney, J.) (*citing Luce v. United States*,
6 469 U.S. 38, 40 n.2 (1984)). “A party cannot use a motion *in limine* to sterilize the
7 other party’s presentation of the case.” *Johnson*, 2012 WL 13015023, at *1.

8 Here, ChromaDex seeks improperly to sterilize Elysium’s presentation of the
9 case by attempting to broadly limit how Elysium can describe the Spreadsheet. And
10 it does so even without offering any support for its contention that it will be
11 prejudiced, other than a conclusory statement to that effect.

12 Instead, ChromaDex argues that there is no evidence to support a description
13 of the Spreadsheet as “fraudulent.” As discussed above, however, the record shows
14 that Jaksch understood Elysium was requesting information on “sales and price data
15 for NR that ChromaDex has sold to other customers” so that it could assess
16 ChromaDex’s compliance with the MFN Provision. It shows further that Jaksch
17 intended to provide Elysium only a sub-category of the information it sought, which
18 would, for example, omit information regarding Live Cell that indicated its pricing
19 was more favorable than that extended to Elysium. It also demonstrates that the terms
20 of the supply agreements Jaksch purported to summarize in the Spreadsheet did not,
21 in fact, accurately characterize the terms of ChromaDex’s relationships with its
22 customers; for example, the Spreadsheet indicated that ChromaDex transacted with
23 Healthspan at [REDACTED] per kilogram, when in fact ChromaDex had sold NR to
24 Healthspan for half that price, and it omitted entirely sales to other customers at prices
25 that also implicated the MFN Provision. All of these facts support an inference that
26 the Spreadsheet was an intentionally dishonest effort to lull Elysium to believe that
27 ChromaDex was compliant with the MFN Provision.
28

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1 The law cited by ChromaDex fails to establish a legal basis for the relief it
2 requests. ChromaDex cites *Sec. & Exch. Comm’n v. Goldstone*, 2016 WL 4507454,
3 *1 (D.N.M. July 20, 2016), for the proposition that the Court can, in its discretion,
4 preclude “commentary” that is not an objective summary of what a party expects it
5 will present to the jury at the outset of trial. (ECF No. 263-1, p. 5.) *Goldstone* was
6 a fraud case brought by the Securities and Exchange Commission (“SEC”) alleging,
7 among other claims, that the defendant officers of a mortgage lender had deceived
8 the company’s auditors. At issue on the motion *in limine* were two differing versions
9 of a liquidity report prepared by an employee of the company, one of which took
10 account of negative financial information and the other of which did not. The one
11 not containing the negative information was shared with the company’s auditors, but
12 the evidence did not demonstrate that any of the defendants had directed the
13 preparation of the two reports or had provided the allegedly misleading report to the
14 auditors. The court noted that the differing reports could potentially provide
15 persuasive evidence of the alleged fraud, and declined to exclude them from trial. It
16 did, however, preclude the SEC from “making speculative arguments or
17 characterizing the liquidity reports in any way during its opening statement,” ruling
18 that “the SEC cannot say the reports were doctored or that the Defendants
19 intentionally withheld the margin call information from the liquidity reports unless
20 more evidence comes to light before trial.” *Goldstone*, 2016 WL 4507454 at *13.

21 The lack of evidence of the defendants’ involvement with the allegedly
22 misleading reports was thus central to the court’s ruling in *Goldstone*. Unlike in
23 *Goldstone* where the court sought “more evidence” before permitting
24 characterization of the reports, *id.* at *13, discovery here has already yielded
25 substantial evidence of the misleading nature of the Spreadsheet. *Goldstone* is thus
26 inapposite.

1 **C. ChromaDex’s Motion Should be Denied as Overly Broad, Vague**
2 **and Ambiguous as to the Relief Requested Therein**

3 Requests for overbroad or vague relief are not suitable for resolution on
4 motions *in limine*. *Allen v. Hylands Inc.*, 2015 WL 12720304, at *9 (C.D. Cal. Aug.
5 20, 2015) (denying portion of motion *in limine* to exclude “similar derogatory terms”
6 because what either side would consider derogatory depends on upon the context).
7 Here, ChromaDex’s motion and accompanying Proposed Order (*see* ECF No. 263-
8 4) suffer from the same flaw as the motion at issue in *Allen*, in that ChromaDex seeks
9 to ban “any similarly loaded term” to “fraudulent” without providing any guidance
10 or explanation how any order of that nature would be interpreted. (ECF No. 263-1
11 at 11). There is no way for the Court or Defendants to know what ChromaDex
12 considers to be a “similarly loaded term” to “fraudulent,” and Defendants certainly
13 should not be required to speculate as to what terms can be used during trial without
14 peril of violating an Order of the Court, as that would unduly chill their ability to
15 describe the evidence to the jury. For the foregoing reasons, Defendants respectfully
16 request that the Court deny ChromaDex’s Motion *in Limine* to bar characterizations
17 of or reference to the Spreadsheet as “‘fraudulent’ (or any similarly loaded term)”.

18 For the foregoing reasons, Defendants respectfully request that the Court
19 deny ChromaDex’s Motion *in Limine* to bar characterizations of or reference to the
20 Spreadsheet as “‘fraudulent’ (or any similarly loaded term).”

21 **IV. DEFENDANTS’ RESPONSE TO MOTION IN LIMINE NO. 3 TO**
22 **PRECLUDE EVIDENCE OR ARGUMENT TO THE JURY**
23 **RELATING TO CHROMADDEX’S TERMINATION OF CERTAIN**
24 **CONTRACT TERMS WITH, AND ITS REFUND OF ROYALTY**
25 **PAYMENTS TO, SOME OF ITS CUSTOMERS**

26 Elysium agrees with ChromaDex that patent misuse is properly tried to the
27 Court in view of the equitable nature of the claim, its strong public policy
28 grounding, the Defendants’ request for declaratory relief, and the potential for jury
confusion.

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1 Assuming the patent misuse counterclaim is tried to the Court, and provided
2 that ChromaDex makes the same undertaking, Elysium will agree not to proffer
3 evidence to the jury describing ChromaDex’s alleged termination of provisions in its
4 NR supply agreement regarding use of the trademark NIAGEN®, or ChromaDex’s
5 purported refund of, or promise to refund, royalty payments, as alleged in its Fifth
6 Amended Complaint. Elysium reserves the right to present this evidence if, contrary
7 to its anticipated undertaking, ChromaDex itself proffers such evidence to the jury.

8 **V. CONCLUSION**

9 For the foregoing reasons, Defendants respectfully request that the Court deny
10 ChromaDex’s Motion *in Limine* No. 1 to the extent it seeks to preclude Defendants
11 from introducing evidence and argument relating to Barry Honig, Michael Brauser
12 and Philip Frost as it relates to ChromaDex’s dealings with Elysium during the
13 relevant period.

14 Defendants further respectfully request that the Court deny ChromaDex’s
15 Motion *in Limine* No. 2 in its entirety.

16 Finally, Defendants do not oppose ChromaDex’s Motion *in Limine* No. 3,
17 assuming the patent misuse counterclaim is tried to the Court, and provided that
18 ChromaDex makes the same undertaking, and with a reservation of rights to present
19 such evidence if, contrary to the anticipated undertaking, ChromaDex’s itself
20 proffers such evidence to the jury.

21 Respectfully submitted,

22 Dated: August 28, 2019

BAKER & HOSTETLER LLP

24 By: /s/ Joseph N. Sacca
JOSEPH N. SACCA

25 *Attorneys for Defendant and Counterclaimant*
26 ELYSIUM HEALTH, INC. and Defendant
27 MARK MORRIS
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