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11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **(SOUTHERN DIVISION)**

15 ChromaDex, Inc.,  
16 Plaintiff,  
17 v.  
18 Elysium Health, Inc., and Mark Morris  
19 Defendants.

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

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

**CHROMADEx’S OPPOSITION TO  
DEFENDANTS’ APPLICATION FOR  
LEAVE TO FILE UNDER SEAL**

Judge: Hon. Cormac J. Carney  
Courtroom: 9B  
Date: May 3, 2021  
Time: 1:30 PM

Pretrial Conf.: Sept. 13, 2020  
Trial: Sept. 21, 2020

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1 ChromaDex moved to dismiss Elysium’s third, fourth, and fifth counterclaims on  
2 March 8, 2021. (Dkt. 474.) As set forth in ChromaDex’s related application to seal,  
3 also filed on March 8, ChromaDex opposes concealing from public view that motion or  
4 any information relating to the depositions and declarations of Elysium CEO Eric  
5 Marcotulli and COO Daniel Alminana. (Dkt. 472.) Elysium filed its opposition to  
6 ChromaDex’s motion to dismiss on March 22, 2021, (Dkt. 481-1), along with an  
7 application to seal it, (Dkt. 480). Elysium’s application incorporated by reference the  
8 arguments it advanced in the Declaration of Marc S. Williams in support of sealing  
9 ChromaDex’s motion to dismiss, (Dkt. 477), filed on March 12, 2021. ChromaDex  
10 disagrees with Elysium’s arguments in that declaration, most of which do not require  
11 further discussion because they were already addressed in ChromaDex’s March 8 filing  
12 that opposed sealing. (*See* Dkt. 472.) ChromaDex therefore takes this opportunity only  
13 to clarify three things.

14 *First*, Elysium tries to reverse the “strong presumption in favor of public access  
15 to court records,” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th  
16 Cir. 2016) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th  
17 Cir. 2003)), by suggesting repeatedly in its declaration that it is *ChromaDex* that must  
18 provide reasons why the motion and supporting information should be unsealed.  
19 Elysium has it exactly backward. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172,  
20 1178 (9th Cir. 2006) (“A party seeking to seal a judicial record [] bears the burden of  
21 overcoming this strong presumption by meeting the ‘compelling reasons’ standard.”).

22 *Second*, Elysium argues that the “good cause” standard should apply here, but the  
23 primary case cited by Elysium—*Center for Auto Safety v. Chrysler Group*—says no  
24 such thing. There, the Ninth Circuit held that the “compelling reasons” standard applies  
25 even to non-dispositive motions, so long as they “involve[] important issues and  
26 information to which our case law demands the public should have access.” 809 F.3d  
27 at 1098. The Ninth Circuit did not hold, as Elysium suggests, that a lesser standard  
28 applies to information supporting a dispositive motion like ChromaDex’s motion for

1 terminating sanctions.<sup>1</sup> That motion and the information supporting it are by definition  
2 directly related to the merits of Elysium’s third, fourth, and fifth counterclaims.

3 *Third*, Elysium adopts the old adage that “the best defense is a good offense” by  
4 accusing ChromaDex of having an improper motive for opposing sealing. This is not  
5 only unsupported by anything in the record—ChromaDex took depositions, endured  
6 extraordinary hubris and dishonesty, and now seeks basic relief—but more importantly  
7 it ignores the undisputed principle that the strong presumption in favor of open court  
8 records turns not on a party’s supposed motive, but rather on the *public’s* right of access.  
9 *Ctr. for Auto Safety*, 809 F.3d at 1096 (“The presumption of access is based on the need  
10 for federal courts, although independent—indeed, particularly because they are  
11 independent—to have a measure of accountability and for the public to have confidence  
12 in the administration of justice.” (quotation omitted)). In order to overcome that strong  
13 public right, Elysium was obligated to provide “specific factual findings that outweigh  
14 the general history of access and the public policies favoring disclosure, such as the  
15 public interest in understanding the judicial process.” *Kamakana*, 447 F.3d at 1178  
16 (cleaned up). Elysium provided no such findings and certainly has tendered no facts to  
17 suggest that the public cannot be trusted with the subject of ChromaDex’s motion.<sup>2</sup>

18 This is not a secret star chamber proceeding. It is a straightforward case of  
19 deposition perfidy, for which even Elysium concedes there must be some remedy. Why  
20 should that discussion, and this Court’s decision, be concealed from the public? For  
21

22 <sup>1</sup> Elysium’s other authority is not to the contrary. In *Hicks v. City of Vallejo*, the court  
23 found that the “items sought to be filed under seal concern the parties’ discovery  
24 dispute” and involved non-parties. 2016 WL 1728783, at \*1 (E.D. Cal. Apr. 29, 2016).  
25 And in *G&C Auto Body Inc. v. Geico General Insurance Co.*, the court found that the  
26 information at issue “[wa]s not directly relevant to the legal issues that were raised by  
27 GEICO’s summary judgment motions.” 2008 WL 687372, at \*2 (N.D. Cal. Mar. 11,  
28 2008). In contrast, the information at issue here is necessary to the Court’s  
consideration of ChromaDex’s motion, which seeks terminating sanctions or  
reconsideration of summary judgment (either of which trigger the “compelling reasons”  
standard) on the basis of sanctionable conduct by Elysium and its principal executives.

<sup>2</sup> Even if a party’s motive were relevant to whether the public may access court records  
(and it is not), ChromaDex’s motive here—to respect this Court’s repeated commands  
that applications to seal are strongly disfavored—is in no way improper.

1 these reasons, and those in ChromaDex’s prior submission, (Dkt. 472), the Court should  
2 decline to seal the motion and supporting information at issue here.

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Dated: March 23, 2021

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