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Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

NOVEX BIOTECH, LLC, a Utah Limited
Liability Company.

Plaintiff and Counter-claim
Defendant,

v.

CHROMADEX, INC., a California
Corporation and **DOES 1-10**.

Defendants and Counter-claim
Plaintiff.

**ATTORNEY PLANNING MEETING
REPORT**

Case No. 2:19-cv-00271

Case No. 2:19-cv-00271-JNP-PMW

The Honorable Judge Jill N. Parrish

Magistrate Judge Paul M. Warner

1. PRELIMINARY MATTERS:

a. Describe the nature of the claims and affirmative defenses:

Plaintiff's Statement:

Plaintiff markets and sells Oxydrene® Elite which has been shown in a double-blind, clinical trial to increase endurance, improve aerobic power, increase VO2 max, and improve physical performance. The claims Plaintiff makes about Oxydrene are substantiated and true.

Defendant, is making false and unsubstantiated claims about its competitive anti aging Tru Niagen product, giving Defendant an illegal and unfair advantage. Defendant's wrongful conduct has harmed and continues to harm Plaintiff because consumers are confused by Defendant's false claims.

Defendant's Statement:

ChromaDex is a leading health and wellness company. NIAGEN, ChromaDex's flagship product, is revolutionizing the way people age by increasing nicotinamide adenine dinucleotide (NAD) in the body. NAD is a vital resource for cellular energy and repair. The scientific evidence of safety and efficacy for NIAGEN is extensive.

As to efficacy, ChromaDex has four robust and peer reviewed human clinical trials proving that NIAGEN works. That is the gold standard, far exceeding all legal and regulatory requirements for a dietary supplement. In total, ChromaDex also has over 140 research collaborations with leading universities and hospitals around the world in support of NIAGEN. The dietary ingredient in NIAGEN is nicotinamide riboside ("NR"). ChromaDex protects this novel ingredient with 20 patents worldwide.

Novex, on the other hand, makes false and misleading claims for its product, Oxydrene® Elite. Novex falsely claims that Oxyredene is "proprietary" and a "revolutionary new compound" that "maximizes" "blood oxygenation, muscle recovery and athletic performance" and even that it can make people "run faster," "cut" time off races, and enable "peak aerobic activity." But in reality, Oxydrene Elite contains nothing more than small amounts of commodity household ingredients that provide none of the health benefits claimed. It is not revolutionary, new, or proprietary. The valid scientific evidence shows that each of Novex's claims is false and misleading.

- b. This case is not referred to a magistrate judge.
- c. Pursuant to Fed. R. Civ. P. 26(f), a telephone conference was held on July 8, 2019. Steven Garff and Jason Kerr of Price Parkinson & Kerr, PLLC appeared on behalf of Novex BioTech, LLC and David Mortensen of Stoel Rives LLP appeared on behalf of Chromadex, Inc.
- d. The parties will exchange by 07/31/19 the initial disclosures required by Rule 26(a)(1).

e. Pursuant to Fed. R. Civ. P. 5(b)(2)(D), the parties agree to receive all items required to be served under Fed. R. Civ. P. 5(a) by either (i) notice of electronic filing, or (ii) email transmission. Such electronic service will constitute service and notice of entry as required by those rules. Any right to service by USPS mail is waived.

2. **DISCOVERY PLAN:** The parties jointly propose to the court the following discovery plan: *Use separate paragraphs or subparagraphs as necessary if the parties disagree.*

a. Discovery is necessary on the following subjects:

All matters in the Complaint and Counterclaim.

b. Discovery Phases

Specify whether discovery will (i) be conducted in phases, or (ii) be limited to or focused on particular issues. If (ii), specify those issues and whether discovery will be accelerated with regard to any of them and the date(s) on which such early discovery will be completed.

- (i) Discovery will be conducted in two phases, fact and expert.
- (ii) None
- (iii) N/A

c. Designate the discovery methods to be used and the limitations to be imposed.

(1) *For oral exam depositions, (i) specify the maximum number for the plaintiff(s) and the defendant(s), and (ii) indicate the maximum number of hours unless extended by agreement of the parties.*

Oral Exam Depositions, not including expert depositions

Plaintiff(s): 10

Defendant(s): 10

Maximum number of hours per deposition 7

(2) *For interrogatories, requests for admissions, and requests for production of documents, specify the maximum number that will be served on any party by any other party.*

Interrogatories: 25 (per side). The parties agree, however, that they can mutually agree at a later date to additional interrogatories if doing so would streamline or reduce the burden of discovery by other means.

Admissions: 30 (per side). The parties agree, however, that they can mutually agree at a later date to additional requests for admission if doing so would streamline or reduce the burden of discovery by other means

Requests for production of documents: 30 (per side). The parties agree, however, that they can mutually agree at a later date to additional requests for production of documents if doing so would streamline or reduce the burden of discovery by other means

- (3) Other discovery methods: *Specify any other methods that will be used and any limitations to which all parties agree.*

Third-Party Subpoenas pursuant to Rule 45 of the Federal Rules of Civil Procedure.

- d. Discovery of electronically stored information should be handled as follows: *Brief description of parties' agreement.*

The parties agree to prepare and file a proposed Stipulated E-Discovery Order that will streamline the production of electronically stored information.

- e. The parties have agreed to an order regarding claims of privilege or protection as trial preparation material asserted after production, as follows: *Brief description of provisions of proposed order.*

The parties agree that in response to discovery requests, it is not necessary to identify communications between counsel of record and their clients that occurred on or after the date the action was filed, and that the attorney-client privilege and the trial preparation materials privilege / doctrine are automatically claimed for any such communications. The preceding sentence applies only to communications in which no other person was involved. The parties will submit a proposed protective order for the Court's approval

- f. Last day to serve written discovery by hand-delivery: 12/31/19
g. Close of fact discovery: 01/30/20
h. (*optional*) Final date for supplementation of disclosures under Rule 26(a)(3) and of discovery under Rule 26(e): The Parties decline to set a date.

3. AMENDMENT OF PLEADINGS AND ADDITION OF PARTIES:

- a. The cutoff dates for filing a motion to amend pleadings are:
Plaintiff(s): 11/8/19 Defendant(s): 11/8/19
- b. The cutoff dates for filing a motion to join additional parties are:
Plaintiff(s): 11/8/19 Defendant(s): 11/8/19

(NOTE: Establishing cutoff dates for filing motions does not relieve counsel from the requirements of Fed. R. Civ. P. 15(a)).

4. EXPERT REPORTS:

- a. The parties will disclose the subject matter and identity of their experts on:
Party(ies) bearing burden of proof: 11/01/19

Counter Disclosures: 12/06/19

- b. Reports from experts under Rule 26(a)(2) will be submitted on:
Party(ies) bearing burden of proof: 03/13/20
Counter Reports: 05/15/20

5. OTHER DEADLINES:

- a. Expert Discovery cutoff: 06/26/20
- b. Deadline for filing dispositive¹ or potentially dispositive motions including motions to exclude experts where expert testimony is required to prove the case: 07/31/20
- c. Deadline for filing partial or complete motions to exclude expert testimony: Thirty days after final resolution of dispositive or potentially dispositive motions.

6. ADR/SETTLEMENT:

Use separate paragraphs/subparagraphs as necessary if the parties disagree.

- a. The potential for resolution before trial is: ___ good X fair ___ poor
- b. The parties do not intend to file a motion to participate in the Court's alternative dispute resolution program at this time.
- c. The parties intend to engage in private alternative dispute resolution for:
arbitration: _____ mediation: X
- d. The parties will re-evaluate the case for settlement/ADR resolution on: 1/30/20

7. TRIAL AND PREPARATION FOR TRIAL:

- a. The parties should have 14 days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3)
- b. This case should be ready for trial by: October 2020
Specify type of trial: Jury X Bench _____
- c. The estimated length of the trial is: 8-10 days

¹ Dispositive motions, if granted, resolve a claim or defense in the case; nondispositive motions, if granted, affect the case but do not resolve a claim or defense.

Dated: July 8, 2019

PRICE PARKINSON & KERR, PLLC

/s/ Jason M. Kerr

Jason M. Kerr
Christopher B. Sullivan
Alan Dunaway

Attorneys for Novex Biotech, LLC

Dated: July 8, 2019

STOEL RIVES LLP

/s/ David L. Mortensen with permission

David J. Jordan
David L. Mortensen

Rollin A. Ransom
Benjamin M. Mundel
Jacquelyn E. Fradette
SIDLEY AUSTIN LLP

Attorneys for ChromaDex, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2019 I caused the foregoing **ATTORNEY PLANNING MEETING REPORT** to be served by email on all counsel, which will send notice of filing to all counsel of record.

/s/ Steven W. Garff