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CLERK, U.S. DISTRICT COURT
SEP 9, 2021
CENTRAL DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

CHROMADEX, INC.,)
) **Case No.: SACV 16-02277-CJC (DFMx)**
)
) **Plaintiff,**)
)
) **v.**)
) **[DRAFT] JURY INSTRUCTIONS**
)
) **ELYSIUM HEALTH, INC., and MARK**)
) **MORRIS,**)
)
) **Defendants.**)
)
)
)
) **ELYSIUM HEALTH, INC.,**)
)
) **Counterclaimant,**)
)
) **v.**)
)
) **CHROMADEX, INC.,**)
)
) **Counter-Defendant.**)
)
)
)

COURT’S INSTRUCTION NO. 1

Members of the Jury: Now that you have heard all of the evidence on the issue of liability, it is my duty to instruct you on the law that applies to this case.

Each of you has received a copy of these instructions that you may take with you to the jury room to consult during your deliberations.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

Please do not read into these instructions or anything that I may say or do or have said or done that I have an opinion regarding the evidence or what your verdict should be.

COURT’S INSTRUCTION NO. 2

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3 You should decide the case as to each party separately. Unless otherwise stated,
4 the instructions apply to all parties.
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COURT’S INSTRUCTION NO. 3

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3 When a party has the burden of proving any claim by a preponderance of the
4 evidence, it means you must be persuaded by the evidence that the claim or affirmative
5 defense is more probably true than not true.
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7 You should base your decision on all of the evidence, regardless of which party
8 presented it.
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COURT’S INSTRUCTION NO. 4

When a party has the burden of proving any claim by clear and convincing evidence, it means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.

COURT’S INSTRUCTION NO. 5

The evidence you are to consider in deciding what the facts are consists of:

1. The sworn testimony of any witness;
2. The exhibits that are admitted into evidence;
3. Any facts to which the lawyers have agreed; and
4. Any facts that I may instruct you to accept as proved.

COURT’S INSTRUCTION NO. 6

In reaching your verdict, you may consider only the testimony and exhibits received into evidence, any agreed facts, and any facts that I may instruct you to accept as proved. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.
2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court’s ruling on it.
3. Testimony that is excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered.
4. Anything you have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

COURT’S INSTRUCTION NO. 7

Some evidence may be admitted only for a limited purpose.

When I instruct you that an item of evidence has been admitted only for a limited purpose, you must consider it only for that limited purpose and not for any other purpose.

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COURT’S INSTRUCTION NO. 8

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Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

COURT’S INSTRUCTION NO. 9

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. The opportunity and ability of the witness to see or hear or know the things testified to;
2. The witness’s memory;
3. The witness’s manner while testifying;
4. The witness’s interest in the outcome of the case, if any;
5. The witness’s bias or prejudice, if any;
6. Whether other evidence contradicted the witness’s testimony;
7. The reasonableness of the witness’s testimony in light of all the evidence; and
8. Any other factors that bear on believability.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the

1 other hand, if you think the witness testified untruthfully about some things but told the
2 truth about others, you may accept the part you think is true and ignore the rest.

3
4 The weight of the evidence as to a fact does not necessarily depend on the number
5 of witnesses who testify. What is important is how believable the witnesses were, and
6 how much weight you think their testimony deserves.

COURT’S INSTRUCTION NO. 10

The evidence that a witness lied under oath or gave inconsistent testimony on a prior occasion may be considered, along with all other evidence, in deciding whether or not to believe the witness and how much weight to give the testimony of the witness and for no other purpose.

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COURT’S INSTRUCTION NO. 11

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The parties have agreed to certain facts to be placed in evidence as Exhibit .
You must therefore treat these facts as having been proved.

COURT’S INSTRUCTION NO. 12

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3 A deposition is the sworn testimony of a witness taken before trial. The witness is
4 placed under oath to tell the truth and lawyers for each party may ask questions. The
5 questions and answers are recorded, and the deposition of that person may be used at the
6 trial. Insofar as possible, you should consider deposition testimony in the same way as if
7 the witness had been present to testify.
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COURT’S INSTRUCTION NO. 13

Evidence was presented to you in the form of answers of one of the parties to written interrogatories submitted by the other side. These answers were given in writing and under oath before the trial in response to questions that were submitted under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

COURT’S INSTRUCTION NO. 14

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3 You have heard testimony from _____, _____, and _____, who testified to opinions
4 and the reasons for their opinions. This opinion testimony is allowed, because of the
5 education or experience of these witnesses.

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7 Such opinion testimony should be judged like any other testimony. You may
8 accept it or reject it, and give it as much weight as you think it deserves, considering the
9 witness’s education and experience, the reasons given for the opinion, and all the other
10 evidence in the case.

COURT’S INSTRUCTION NO. 15

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The law allows expert witnesses to be asked questions that are based on assumed facts. These are sometimes called “hypothetical questions.”

In determining the weight to give to the expert’s opinion that is based on the assumed facts, you should consider whether the assumed facts are true.

COURT’S INSTRUCTION NO. 16

Certain charts and summaries not admitted into evidence have been shown to you in order to help explain the contents of books, records, documents, or other evidence in the case. Charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

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COURT’S INSTRUCTION NO. 17

Certain charts and summaries have been admitted into evidence to illustrate information brought out in the trial. Charts and summaries are only as good as the testimony or other admitted evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

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COURT’S INSTRUCTION NO. 18

Under the law, a corporation is considered to be a person. It can only act through its employees, agents, directors, or officers. Therefore, a corporation is responsible for the acts of its employees, agents, directors, and officers performed within the scope of authority.

COURT’S INSTRUCTION NO. 19

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3 ChromaDex claims that it and Elysium entered into a contract for the supply of an
4 ingredient called NIAGEN®, which is ChromaDex’s version of NR. This contract is
5 referred to as the NIAGEN Supply Agreement. ChromaDex also claims that it and
6 Elysium entered into a contract for the supply of an ingredient called pTeroPure®, which
7 is ChromaDex’s version of PT. This contract is referred to as the pTeroPure Supply
8 Agreement.

9
10 ChromaDex claims that Elysium breached these two contracts by failing to pay for
11 NIAGEN and pTeroPure that ChromaDex delivered to Elysium in fulfillment of a
12 purchase order.

13
14 ChromaDex also claims that Elysium’s breach of these contracts caused harm to
15 ChromaDex for which Elysium should pay.

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17 Elysium denies that it breached its contracts with ChromaDex.
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COURT’S INSTRUCTION NO. 20

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3 ChromaDex also claims that it and Morris entered into two contracts: one in
4 February 2016 titled “Receipt & Acknowledgment of Employee Handbook,” and another
5 in July 2016, titled “ChromaDex Inc. Confidentiality and Non-Solicitation Agreement.”
6 Both contracts required Morris to protect ChromaDex’s trade secrets and confidential
7 information.

8
9 ChromaDex claims that Morris breached these two contracts by not protecting
10 ChromaDex’s proprietary and/or confidential information.

11
12 ChromaDex also claims that Morris was unjustly enriched by his breaches of these
13 contracts.

14
15 Morris denies that he breached either contract. Morris also denies that the
16 document titled “ChromaDex Inc. Confidentiality and Non-Solicitation Agreement” was
17 a valid contract.

COURT’S INSTRUCTION NO. 21

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3 Elysium claims that ChromaDex, not Elysium, was the party who breached the
4 NIAGEN Supply Agreement. Elysium contends that ChromaDex breached the NIAGEN
5 Supply Agreement by selling NIAGEN® to other customers at a lower price than the
6 price at which ChromaDex sold it to Elysium, and did not give Elysium a refund or
7 credit, even though Elysium purchased equal volumes or higher volumes of NIAGEN®
8 than those other customers. Elysium contends that this conduct was prohibited by the
9 contract’s “Most Favored Nation” or “MFN” provision.

10
11 Elysium also claims that ChromaDex’s breach of the NIAGEN Supply Agreement
12 caused harm to Elysium for which ChromaDex should pay.

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14 ChromaDex denies that it breached the NIAGEN Supply Agreement.
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COURT’S INSTRUCTION NO. 22

To recover damages from another party for breach of contract, the party must prove by a preponderance of the evidence all of the following:

1. That the parties entered into a contract;
2. That the non-breaching party did all, or substantially all, of the significant things that the contract required it to do;
3. That the breaching party failed to do something that the contract required it to do, or did something that the contract prohibited it from doing;
4. That the non-breaching party was harmed, and
5. That the breaching party’s breach of contract was a substantial factor in causing the non-breaching party’s harm.

COURT’S INSTRUCTION NO. 23

ChromaDex claims that it entered into the July Confidentiality Agreement with Morris. Elysium denies that a contract was created. To prove that a contract was created, ChromaDex must prove by a preponderance of the evidence all the following:

1. That the contract terms were clear enough that the parties could understand what each was required to do;
2. That the parties agreed to give each other something of value; and
3. That the parties agreed to the terms of the contract.

If ChromaDex did not prove all of the above, then a contract was not created.

COURT’S INSTRUCTION NO. 24

To form a contract, the parties must agree to give each other something of value. This value is referred to as “consideration.”

A party provides consideration for a contract if it:

1. Gives or promises to give the other party any benefit to which the receiving party is not lawfully entitled; or
2. Suffers or agrees to suffer any prejudice that it is not lawfully bound to suffer.

COURT’S INSTRUCTION NO. 25

Elysium and ChromaDex dispute the meaning of the following provision in the NIAGEN Supply Agreement:

3.1 Price. With respect to all Niagen provided by ChromaDex to Elysium Health under this Agreement Elysium Health shall pay to ChromaDex a maximum price of one thousand three hundred US dollars per kilogram (\$1,300 per kg) (“Maximum Price”); If, at any time during the Term, ChromaDex supplies Niagen . . . to a Third Party at a price that is lower than that at which Niagen is supplied to Elysium Health under this Agreement, then the price of Niagen supplied under this Agreement shall be revised to such Third Party price with effect from the date of the applicable sale to such Third Party and ChromaDex shall promptly provide Elysium Health with any refund or credits thereby created; provided Elysium Health purchases equal volumes or higher volumes than the Third Party.

This is referred to by the parties as the Most-Favored-Nation or “MFN” provision.

Elysium claims that the words mean the following: If, at any time, ChromaDex sold Niagen to a customer for a lower price than the price to Elysium, then Elysium was entitled to that lower price, with effect from the date of the sale to the other customer, provided the sale to Elysium was for equal or more Niagen than the sale to the other customer. ChromaDex shall promptly provide Elysium with any refund or credits as a result of the lower price.

ChromaDex claims that the words mean the following: Elysium was entitled to purchase Niagen from ChromaDex at the lowest price charged to another Niagen customer, but only if the amounts of Elysium’s purchases of Niagen in total were equal or greater than the amounts of other customer’s purchases in total over a year. Elysium would promptly receive a refund or credits totaling the difference between the price it had paid on purchases of Niagen within that year and the new price.

1 Elysium must prove by a preponderance of the evidence that its interpretation is
2 correct.

3
4 In deciding what the words of a contract mean, you must decide what the parties
5 intended at the time the contract was created. You may consider the usual and ordinary
6 meaning of the language used in the contract as well as the circumstances surrounding the
7 making of the contract.

COURT’S INSTRUCTION NO. 26

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You should assume that the parties intended the words in their contract to have their usual and ordinary meaning unless you decide that the parties intended the words to have a special meaning.

COURT’S INSTRUCTION NO. 27

In deciding what the words of a contract meant to the parties, you should consider the whole contract, not just isolated parts. You should use each part to help you interpret the others, so that all the parts make sense when taken together.

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COURT’S INSTRUCTION NO. 28

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In deciding what the words in a contract meant to the parties, you may consider how the parties acted after the contract was created but before any disagreement between the parties arose.

COURT’S INSTRUCTION NO. 29

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3 In determining the meaning of the words of the contract, you must first consider all
4 of the other instructions that I have given you. If, after considering these instructions,
5 you still cannot agree on the meaning of the words, then you should interpret the contract
6 against the party that drafted the disputed words.
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COURT’S INSTRUCTION NO. 30

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3 If you decide that ChromaDex has proved any of its claims against Elysium and/or
4 Morris for breach of contract, you also must decide how much money will reasonably
5 compensate ChromaDex for the harm caused by any such breach. This compensation is
6 called “damages.” The purpose of such damages is to put ChromaDex in as good a
7 position as it would have been if Elysium and/or Morris had performed as promised.

8
9 To recover damages for any harm, ChromaDex must prove by a preponderance of
10 the evidence that when the contract was made, both parties knew or could reasonably
11 have foreseen that the harm was likely to occur in the ordinary course of events as a
12 result of the breach of the contract.

13
14 ChromaDex also must prove by a preponderance of the evidence the amount of its
15 damages. ChromaDex does not have to prove the exact amount of damages. However,
16 your award must be based upon evidence and not upon speculation, guesswork, or
17 conjecture.

COURT’S INSTRUCTION NO. 31

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3 If you decide that Elysium has proved its claim against ChromaDex for breach of
4 the NIAGEN Supply Agreement, you also must decide how much money will reasonably
5 compensate Elysium for the harm caused by the breach. This compensation is called
6 “damages.” The purpose of such damages is to put Elysium in as good a position as it
7 would have been if ChromaDex had performed as promised.

8
9 To recover damages for any harm, Elysium must prove by a preponderance of the
10 evidence that when the contract was made, both parties knew or could reasonably have
11 foreseen that the harm was likely to occur in the ordinary course of events as result of the
12 breach of the contract.

13
14 Elysium also must prove by a preponderance of the evidence the amount of its
15 damages. Elysium does not have to prove the exact amount of damages. However, your
16 award must be based upon evidence and not upon speculation, guesswork, or conjecture.

COURT’S INSTRUCTION NO. 32

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3 You must not include in any award for breach of contract any damages to punish or
4 make an example of any party. Such damages would be punitive damages, and they
5 cannot be a part of your verdict. You must award only the damages, if any, that fairly
6 compensate a party for its loss.
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2 **COURT’S INSTRUCTION NO. 33**
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4 ChromaDex claims that it is the owner of two categories of information: (1) the
5 price that ChromaDex’s customers paid for NR in specific volumes on specific dates; and
6 (2) the price ChromaDex paid to obtain NR from its manufacturer, W.R. Grace.
7

8 ChromaDex claims that this information is a trade secret and that Elysium and/or
9 Morris misappropriated it. “Misappropriation” means the improper use, acquisition, or
10 disclosure of the trade secret.
11

12 ChromaDex also claims that Elysium and/or Morris’ misappropriation caused
13 Elysium to be unjustly enriched.
14

15 Elysium and Morris deny that the information is a trade secret, that they
16 misappropriated any information, and that any alleged misappropriation caused Elysium
17 to be unjustly enriched.
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COURT’S INSTRUCTION NO. 34

ChromaDex claims that Elysium and/or Morris has misappropriated a trade secret under state law. To succeed on this claim, ChromaDex must prove by a preponderance of the evidence all of the following:

1. That ChromaDex owned the following: (i) the price that ChromaDex’s customers paid for NR in specific volumes on specific dates; and/or (ii) the price that ChromaDex paid its manufacturer, W.R. Grace, for NR;
2. That this information were trade secrets at the time of the misappropriation;
3. That Elysium and/or Morris improperly acquired, used, or disclosed one or both of the trade secrets;
4. That ChromaDex was harmed; and
5. That Elysium’s and/or Morris’s acquisition, use or disclosure was a substantial factor in causing ChromaDex’s harm.

COURT’S INSTRUCTION NO. 35

ChromaDex claims that Elysium and/or Morris also has misappropriated a trade secret under federal law. To succeed on this federal claim, ChromaDex must prove by a preponderance of the evidence all of the following:

1. That ChromaDex owned the following: (i) the price that ChromaDex’s customers paid for NR in specific volumes on specific dates; and/or (ii) the price that ChromaDex paid its manufacturer, W.R. Grace, for NR;
2. That this information were trade secrets at the time of the misappropriation;
3. That Elysium and/or Morris improperly acquired, used, or disclosed one or both of the trade secrets;
4. That ChromaDex was harmed;
5. That Elysium’s and/or Morris’s acquisition, use or disclosure was a substantial factor in causing ChromaDex’s harm; and
6. That the trade secrets are related to a product or service used in, or intended for use in, interstate or foreign commerce.

COURT’S INSTRUCTION NO. 36

ChromaDex claims that the information it alleges to be trade secrets relates to a product or service used in, or intended for use in, interstate or foreign commerce. Use or intended use of the product or service in interstate commerce means that the product or service involves travel, trade, transportation, or communication between a place in one state and a place in another state. Use of the product or service in foreign commerce means that the product or service involves travel, trade, transportation, or communication between a place in the United States and a place outside of the United States.

COURT’S INSTRUCTION NO. 37

To prove that the information was a trade secret, ChromaDex must prove by a preponderance of the evidence all of the following:

1. That the information was secret;
2. That the information had actual or potential independent economic value because it was secret; and
3. That ChromaDex made reasonable efforts to keep the information secret.

COURT’S INSTRUCTION NO. 38

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3 The secrecy required to prove that something is a trade secret does not have to be
4 absolute in the sense that no one else in the world possesses the information. It may be
5 disclosed to employees involved in ChromaDex’s use of the trade secret as long as they
6 are instructed to keep the information secret. It may also be disclosed to nonemployees if
7 they are obligated to keep the information secret. However, it must not have been
8 generally known to the public or to people who could obtain value from knowing it.
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COURT’S INSTRUCTION NO. 39

To establish that the information is a trade secret, ChromaDex must prove by a preponderance of the evidence that it made reasonable efforts under the circumstances to keep it secret. “Reasonable efforts” are the efforts that would be made by a reasonable business in the same situation and having the same knowledge and resources as ChromaDex, exercising due care to protect important information of the same kind. This requirement applies separately to each item that ChromaDex claims to be a trade secret.

In determining whether or not ChromaDex made reasonable efforts to keep the information secret, you should consider all of the facts and circumstances. Among the factors you may consider are the following:

1. Whether documents or computer files containing the information were marked with confidentiality warnings;
2. Whether ChromaDex instructed its employees to treat the information as confidential;
3. Whether ChromaDex restricted access to the information to persons who had a business reason to know the information;
4. Whether ChromaDex kept the information in a restricted or secured area;
5. Whether ChromaDex required employees or others with access to the information to sign confidentiality or nondisclosure agreements;

- 1 6. Whether ChromaDex took any action to protect the specific information, or
- 2 whether it relied on general measures taken to protect its business
- 3 information or assets;
- 4
- 5 7. The extent to which any general measures taken by ChromaDex would
- 6 prevent the unauthorized disclosure of the information;
- 7
- 8 8. Whether there were other reasonable measures available to ChromaDex that
- 9 it did not take;
- 10
- 11 9. Whether ChromaDex disclosed the information to others, including other
- 12 customers;
- 13
- 14 10. Whether the parties' agreements contemplated or required that this
- 15 information be disclosed to Elysium; and
- 16
- 17 11. Whether ChromaDex consented, explicitly or implicitly, to the disclosure.
- 18

19 The presence or absence of any one or more of these factors is not necessarily
20 determinative.

COURT’S INSTRUCTION NO. 40

Elysium misappropriated ChromaDex’s trade secrets by acquisition if Elysium acquired the trade secrets and knew or had reason to know that it used improper means to acquire the trade secrets.

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COURT’S INSTRUCTION NO. 41

Elysium misappropriated ChromaDex’s trade secrets by disclosure if Elysium:

1. disclosed the information without ChromaDex’s consent; and
2. did any of the following:
 - a. acquired knowledge of the trade secret by improper means; or
 - b. at the time of disclosure, knew or had reason to know that its knowledge of ChromaDex’s trade secret came from or through Morris, and that Morris had a duty to ChromaDex to keep the information secret.

COURT’S INSTRUCTION NO. 42

Morris misappropriated ChromaDex’s trade secrets by disclosure if Morris:

1. disclosed the information without ChromaDex’s consent; and
2. at the time of disclosure, knew or had reason to know that his knowledge of ChromaDex’s trade secrets were acquired under circumstances giving rise to a duty to keep the information secret.

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COURT’S INSTRUCTION NO. 43

Elysium misappropriated ChromaDex’s trade secrets by use if Elysium:

1. used the trade secrets without ChromaDex’s consent; and
2. did any one of the following:
 - a. acquired knowledge of the trade secrets by improper means; or
 - b. at the time of use, knew or had reason to know that the knowledge of the trade secrets were acquired under circumstances creating a legal obligation to limit use of the information; or
 - c. knew or had reason to know, at the time of use, that its knowledge of ChromaDex’s trade secrets came from or through Morris, and that Morris had a duty to ChromaDex to limit use of the information.

COURT’S INSTRUCTION NO. 44

Morris misappropriated ChromaDex’s trade secret(s) by use if Morris:

1. used the trade secrets without ChromaDex’s consent; and
2. at the time of use, knew or had reason to know that the knowledge of the trade secrets was acquired under circumstances creating a legal obligation to limit use of the information.

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COURT’S INSTRUCTION NO. 45

Improper means of acquiring a trade secret or knowledge of a trade secret include, but are not limited to, breach or inducing a breach of a duty to maintain secrecy. However, it is not improper to acquire a trade secret or knowledge of the trade secret by any of the following:

1. Independent efforts to invent or discover the information;
2. Reverse engineering; that is examining or testing a product to determine how it works, by a person who has a right to possess the product;
3. Obtaining the information as a result of a license agreement or other agreement with the owner of the information;
4. Observing the information in public use or on public display; or
5. Obtaining the information from published literature, such as trade journals, reference books, the Internet, or other publicly available sources.

Mere possession of information is not enough to establish improper acquisition of a trade secret.

COURT’S INSTRUCTION NO. 46

Elysium or Morris did not misappropriate ChromaDex’s trade secret if Elysium or Morris proves that the trade secret was readily ascertainable by proper means at the time of the alleged acquisition, use, or disclosure.

There is no fixed standard for determining what is “readily ascertainable by proper means.” In general, information is readily ascertainable if it can be obtained, discovered, developed, or compiled without significant difficulty, effort, or expense. For example, information is readily ascertainable if it is available in trade journals, reference books, or published materials. On the other hand, the more difficult information is to obtain, and the more time and resources that must be expended in gathering it, the less likely it is that the information is readily ascertainable by proper means.

COURT’S INSTRUCTION NO. 47

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3 If ChromaDex proves that Elysium and/or Morris misappropriated one or both of
4 its trade secrets, then ChromaDex is entitled to recover damages if the misappropriation
5 caused Elysium and/or Morris to be unjustly enriched.
6

7 Elysium and/or Morris was unjustly enriched if the misappropriation of one or both
8 of ChromaDex’s trade secrets caused Elysium to receive a benefit that it otherwise would
9 not have achieved. Here, ChromaDex claims that the profits Elysium made on sales
10 using the ingredients from the June 30, 2016 order constitute unjust enrichment.
11 ChromaDex also claims that the compensation Morris received constitutes unjust
12 enrichment.
13

14 To decide the amount of Elysium’s unjust enrichment, first determine the value of
15 Elysium’s benefit that would not have been achieved except for the misappropriation.
16 Then subtract from that amount Elysium’s reasonable expenses. To decide the amount of
17 Morris’s unjust enrichment, first determine the value of Morris’s benefit that would not
18 have been achieved except for the misappropriation. Then subtract from that amount
19 Morris’s reasonable expenses.
20

21 ChromaDex has the burden of proving Elysium’s and/or Morris’s unjust
22 enrichment by a preponderance of the evidence. Your award must be based upon
23 evidence and not upon speculation, guesswork, or conjecture.
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COURT’S INSTRUCTION NO. 48

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3 A corporate officer owes what is known as a fiduciary duty to his corporation. A
4 fiduciary duty imposes on a corporate officer a duty to act with the utmost good faith in
5 the best interests of his corporation.
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COURT’S INSTRUCTION NO. 49

ChromaDex claims that Morris breached the fiduciary duty of loyalty. A corporate officer owes his corporation undivided loyalty. To establish this claim, ChromaDex must prove by a preponderance of the evidence all of the following:

1. That Morris was ChromaDex’s corporate officer;
2. That Morris knowingly acted against ChromaDex’s interests, or acted on behalf of a party whose interests were adverse to ChromaDex, in connection with ChromaDex’s ingredients business;
3. That ChromaDex did not give informed consent to Morris’s conduct;
4. That ChromaDex was harmed; and
5. That Morris’s breach of fiduciary duty was a substantial factor in causing ChromaDex’s harm.

COURT’S INSTRUCTION NO. 50

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3 If you decide that ChromaDex has proved its claim against Morris for breach of
4 fiduciary duty, you must also decide how much money will reasonably compensate
5 ChromaDex for the harm. This compensation is called “damages.”
6

7 ChromaDex seeks to recover damages for Morris’s unjust enrichment. Morris
8 was unjustly enriched if his breach of fiduciary duty caused Morris to receive a benefit
9 that he otherwise would not have achieved. ChromaDex claims that the compensation
10 Morris received constitutes unjust enrichment.
11

12 To decide the amount of any unjust enrichment, first determine the value of
13 Morris’s benefit that would not have been achieved except for his breach of fiduciary
14 duty. Then subtract from that amount Morris’s reasonable expenses.
15

16 ChromaDex has the burden of proving Elysium’s unjust enrichment by a
17 preponderance of the evidence. Your award must be based upon evidence and not upon
18 speculation, guesswork, or conjecture.
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COURT’S INSTRUCTION NO. 51

ChromaDex claims that it was harmed by Morris’s breach of fiduciary duty, and that Elysium is responsible for the harm because it aided and abetted Morris in committing the breach of fiduciary duty.

If you find that Morris committed a breach of fiduciary duty that harmed ChromaDex, then you must determine whether Elysium is also responsible for the harm. Elysium is responsible as an aider and abettor if ChromaDex proves by a preponderance of the evidence all of the following:

1. That Elysium knew that a breach of fiduciary duty was being committed or going to be committed by Morris against ChromaDex;
2. That Elysium gave substantial assistance or encouragement to Morris; and
3. That Elysium’s conduct was a substantial factor in causing harm to ChromaDex.

Mere knowledge that a breach of fiduciary duty was being committed or was going to be committed and the failure to prevent it do not constitute aiding and abetting.

COURT’S INSTRUCTION NO. 52

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3 If you decide that ChromaDex has proved its claim against Elysium for aiding
4 and abetting Morris with a breach of fiduciary duty, you must also decide the
5 appropriate remedy.

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7 ChromaDex seeks to recover damages for Elysium’s unjust enrichment. Elysium
8 was unjustly enriched if its aiding and abetting Morris’s breach of fiduciary duty caused
9 Elysium to receive a benefit that it otherwise would not have achieved. ChromaDex
10 claims that profits Elysium made on sales using the ingredients from the June 30, 2016
11 order constitute unjust enrichment. ChromaDex also claims that Elysium was able to
12 secure a price discount as a result of its aiding and abetting.

13
14 To decide the amount of any unjust enrichment, first determine the value of
15 Elysium’s benefit that would not have been achieved except for its aiding and abetting of
16 a breach of fiduciary duty. Then subtract from that amount Elysium’s reasonable
17 expenses.

18
19 ChromaDex has the burden of proving Elysium’s unjust enrichment by a
20 preponderance of the evidence. Your award must be based upon evidence and not upon
21 speculation, guesswork, or conjecture.

COURT’S INSTRUCTION NO. 53

Elysium claims that ChromaDex induced it to enter into the Trademark License and Royalty Agreement by making a false representation that harmed it. To establish this claim, Elysium must prove by a preponderance of the evidence all of the following:

1. That ChromaDex, through its then-CEO, represented to Elysium that a fact was true;
2. That ChromaDex’s representation was false;
3. That ChromaDex knew that the representation was false when it made it, or that it made the representation recklessly and without regard for its truth;
4. That ChromaDex intended that Elysium rely on the representation;
5. That Elysium reasonably relied on ChromaDex’s representation;
6. That Elysium was harmed; and
7. That Elysium’s reliance on ChromaDex’s representation was a substantial factor in causing its harm.

COURT’S INSTRUCTION NO. 54

Elysium relied on ChromaDex’s misrepresentation if:

1. The misrepresentation substantially influenced it to sign a contract called the Trademark License and Royalty Agreement, and
2. It would probably not have signed the Trademark License and Royalty Agreement without the misrepresentation.

It is not necessary for a misrepresentation to be the only reason for Elysium’s conduct.

COURT’S INSTRUCTION NO. 55

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3 A substantial factor in causing harm is a factor that a reasonable person would
4 consider to have contributed to the harm. It must be more than a remote or trivial factor.
5 It does not have to be the only cause of the harm.

6
7 Conduct is not a substantial factor in causing harm if the same harm would have
8 occurred without that conduct.

COURT’S INSTRUCTION NO. 56

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3 If you decide that Elysium has proved its claim against ChromaDex for fraudulent
4 inducement, you must also decide how much money will reasonably compensate
5 Elysium for the harm. This compensation is called “damages.”

6
7 The amount of damages must include an award for each item of harm that was
8 caused by ChromaDex’s wrongful conduct, even if the particular harm could not have
9 been anticipated.

10
11 Elysium has the burden of proving damages by a preponderance of the evidence.
12 Elysium does not have to prove the exact amount of damages that will provide
13 reasonable compensation for the harm. However, your award must be based upon
14 evidence and not upon speculation, guesswork or conjecture.

15
16 The following are the specific items of damages claimed by Elysium: royalties
17 that Elysium paid under the Trademark License and Royalty Agreement.

COURT’S INSTRUCTION NO. 57

ChromaDex seeks damages from Elysium and Morris under more than one legal theory. However, each item of damages may be awarded only once, regardless of the number of legal theories alleged.

You will be asked to decide whether Elysium and Morris are liable to ChromaDex under the following legal theories:

1. Breach of contract as to Elysium;
2. Breach of contract as to Morris;
3. Misappropriation of trade secrets (state and federal) as to Elysium;
4. Misappropriation of trade secrets (state and federal) as to Morris;
5. Breach of fiduciary duty as to Morris; and
6. Aiding and abetting breach of fiduciary duty as to Elysium.

The following items of damages are recoverable only once:

1. The amount due under the NIAGEN Supply Agreement;
2. The amount due under the pTeroPure Supply Agreement;
3. Elysium’s profits from the resale of ChromaDex’s ingredients;
4. Elysium’s price discount for the purchase of NR; and
5. Morris’s compensation from ChromaDex and Elysium.

COURT’S INSTRUCTION NO. 58

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3 ChromaDex seeks an award of punitive damages from Elysium and Morris.
4 Elysium also seeks an award of punitive damages from ChromaDex. If you find for
5 ChromaDex on its claim for trade secret misappropriation under state or federal law, or
6 on its claim for breach of fiduciary duty or its claim for aiding and abetting breach of
7 fiduciary duty, you may, but are not required to, award punitive damages. Similarly, if
8 you find for Elysium on its claim for fraudulent inducement, you may, but are not
9 required to, award punitive damages.

10
11 The purposes of punitive damages are to punish a wrongdoer for the conduct that
12 harmed the plaintiff and to discourage similar conduct in the future.

13
14 You may award punitive damages only if the party seeking punitive damages
15 proves by clear and convincing evidence that the other party engaged in that conduct with
16 malice, oppression, or fraud.

17
18 “Malice” means that the party acted with intent to cause injury or that the party’s
19 conduct was despicable and was done with a willful and knowing disregard of the rights
20 or safety of another. “Despicable conduct” is conduct that is so vile, base, or
21 contemptible that it would be looked down on and despised by reasonable people. A
22 person acts with knowing disregard when the person is aware of the probable dangerous
23 consequences of the person’s conduct and deliberately fails to avoid those consequences.

24
25 “Oppression” means that the party’s conduct was despicable and subjected the
26 party seeking punitive damages to cruel and unjust hardship in knowing disregard of its
27 rights.

1 “Fraud” means that the party intentionally misrepresented or concealed a material
2 fact and did so intending to harm the party seeking punitive damages.

3
4 There is no fixed formula for determining the amount of punitive damages, and
5 you are not required to award any punitive damages. If you decide to award punitive
6 damages, you should consider all of the following factors in determining the amount:

7
8 (a) How reprehensible was the party’s conduct? In deciding how reprehensible the
9 party’s conduct was, you may consider, among other factors:

- 10
- 11 1. Whether the conduct caused physical harm;
- 12 2. Whether the party disregarded the health or safety of others;
- 13 3. Whether the party seeking punitive damages was financially weak or
14 vulnerable and the other party knew the party seeking punitive damages was
15 financially weak or vulnerable and took advantage of it;
- 16 4. Whether the party’s conduct involved a pattern or practice; and
- 17 5. Whether the party acted with trickery or deceit.
- 18

19 (b) Is there a reasonable relationship between the amount of punitive damages and
20 the party seeking punitive damage’s harm?

21
22 (c) In view of the wrongdoing party’s financial condition, what amount is
23 necessary to punish it and discourage future wrongful conduct? You may not increase the
24 punitive award above an amount that is otherwise appropriate merely because the
25 wrongdoing party has substantial financial resources.

COURT’S INSTRUCTION NO. 59

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3 Before you begin your deliberations, elect one member of the jury as your
4 presiding juror. The presiding juror will preside over the deliberations and serve as the
5 spokesperson for the jury in court.

6
7 You shall diligently strive to reach agreement with all of the other jurors if you can
8 do so. Your verdict must be unanimous.

9
10 Each of you must decide the case for yourself, but you should do so only after you
11 have considered all of the evidence, discussed it fully with the other jurors, and listened
12 to their views.

13
14 It is important that you attempt to reach a unanimous verdict but, of course, only if
15 each of you can do so after having made your own conscientious decision. Do not be
16 unwilling to change your opinion if the discussion persuades you that you should. But do
17 not come to a decision simply because other jurors think it is right, or change an honest
18 belief about the weight and effect of the evidence simply to reach a verdict.

COURT’S INSTRUCTION NO. 60

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3 Because you must base your verdict only on the evidence received in the case and
4 on these instructions, I remind you that you must not be exposed to any other information
5 about the case or to the issues it involves. Except for discussing the case with your
6 fellow jurors during your deliberations:

7
8 Do not communicate with anyone in any way and do not let anyone else
9 communicate with you in any way about the merits of the case or anything to do with it.
10 This includes discussing the case in person, in writing, by phone or electronic means, via
11 email, via text messaging, or any internet chat room, blog, website, or application,
12 including but not limited to Facebook, YouTube, Twitter, Instagram, LinkedIn, Snapchat,
13 or any other forms of social media. This applies to communicating with your family
14 members, your employer, the media or press, and the people involved in the trial. If you
15 are asked or approached in any way about your jury service or anything about this case,
16 you must respond that you have been ordered not to discuss the matter and report the
17 contact to the court.

18
19 Do not read, watch, or listen to any news or media accounts or commentary about
20 the case or anything to do with it; do not do any research, such as consulting dictionaries,
21 searching the Internet, or using other reference materials; and do not make any
22 investigation or in any other way try to learn about the case on your own. Do not visit or
23 view any place discussed in this case, and do not use Internet programs or other devices
24 to search for or view any place discussed during the trial. Also, do not do any research
25 about this case, the law, or the people involved—including the parties, the witnesses, or
26 the lawyers—until you have been excused as jurors. If you happen to read or hear
27 anything touching on this case in the media, turn away and report it to me as soon as
28 possible.

1 These rules protect each party’s right to have this case decided only on evidence
2 that has been presented here in court. Witnesses here in court take an oath to tell the
3 truth, and the accuracy of their testimony is tested through the trial process. If you do
4 any research or investigation outside the courtroom, or gain any information through
5 improper communications, then your verdict may be influenced by inaccurate,
6 incomplete, or misleading information that has not been tested by the trial process. Each
7 of the parties is entitled to a fair trial by an impartial jury, and if you decide the case
8 based on information not presented in court, you will have denied the parties a fair trial.
9 Remember, you have taken an oath to follow the rules, and it is very important that you
10 follow these rules.

11
12 A juror who violates these restrictions jeopardizes the fairness of these
13 proceedings, and a mistrial could result that would require the entire trial process to start
14 over. If any juror is exposed to any outside information, please notify the court
15 immediately.

COURT’S INSTRUCTION NO. 61

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3 If it becomes necessary during your deliberations to communicate with me, you
4 may send a note through the bailiff, signed by any one or more of you. No member of
5 the jury should ever attempt to communicate with me except by a signed writing. I will
6 not communicate with any member of the jury on anything concerning the case except in
7 writing or here in open court. If you send out a question, I will consult with the lawyers
8 before answering it, which may take some time. You may continue your deliberations
9 while waiting for the answer to any question. Remember that you are not to tell
10 anyone—including the court—how the jury stands, whether in terms of vote count or
11 otherwise, until after you have reached a unanimous verdict or have been discharged.

COURT’S INSTRUCTION NO. 62

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror should complete the verdict form according to your deliberations, sign and date it, and advise the bailiff that you are ready to return to the courtroom.

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