

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CHROMADEx, INC. and TRUSTEES
OF DARTMOUTH COLLEGE,

Plaintiffs,

v.

ELYSIUM HEALTH, INC.,

Defendant.

Civil Action No. 18-1434-CFC

**CHROMADEx, INC. AND TRUSTEES OF DARTMOUTH COLLEGE’S
MOTION FOR LEAVE TO FILE A FIVE-PAGE REPLY BRIEF IN
SUPPORT OF THEIR MOTION FOR REARGUMENT OR
RECONSIDERATION OF THE REVISED MEMORANDUM OPINION
AND ORDERS ISSUED DECEMBER 17, 2020**

Before filing this motion for leave, Plaintiffs ChromaDex, Inc. and Trustees of Dartmouth College (together “ChromaDex”) requested that Defendant Elysium Health, Inc. (“Elysium”) correct factual and legal mischaracterizations in its Opposition to ChromaDex’s Motion for Reargument or Reconsideration. (D.I. 160.) Elysium refused. ChromaDex now requests leave to fix them itself through a five-page reply brief in support of its Motion. A copy of the proposed reply brief is attached as Exhibit A. The parties met and conferred regarding this motion pursuant to L.R. 7.1.1 and were unable to reach agreement.

The Court may, in its discretion, allow a reply brief where “new evidence, facts, or arguments [are] presented” in the response to a motion for reargument. *Am.*

Axle & Mfg., Inc. v. Neapco Holdings LLC, C.A. No. 15–1168–LPS, 2017 WL 3888228, at *1 (D. Del. Sept. 6, 2017); *cf. St. Clair Intellectual Prop. Consultants, Inc. v. Samsung Elecs. Co.*, 291 F.R.D. 75, 80 (D. Del. 2013) (granting motion for leave to file a sur-reply brief where the sur-reply brief responded to new evidence, facts, or arguments). Here, Elysium makes inherently new arguments in that they are grounded upon mischaracterizations of relevant facts or law that could not have been anticipated by ChromaDex. For example, Elysium mischaracterizes the Amended Agreement by disregarding that it clarifies the parties’ *original* understanding and intentions about licensing rights. Elysium also raises for the first time and mischaracterizes the effect of the implied covenant of good faith and fair dealing on the parties’ contractual obligations. And Elysium appears to base certain of its arguments on the continued existence of Healthspan LLC when it has known for weeks that Healthspan LLC was formally dissolved.

ChromaDex therefore respectfully requests that the Court grant it leave to file the reply brief attached hereto as Exhibit A. An appropriate form of order is attached as Exhibit B.

Dated: February 8, 2021

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CERTIFICATE OF SERVICE

I, Adam W. Poff, hereby certify that on February 8, 2021, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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I further certify that on February 8, 2021, I caused the foregoing document to be served via electronic mail upon the above-listed counsel.

Dated: February 8, 2021

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