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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION)

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

Case No. 8:16-cv-2277-CJC (DFMx)
**CHROMADEX, INC.’S ANSWER TO
 ELYSIUM HEALTH, INC.’S RESTATED
 COUNTERCLAIMS**

Judge: Hon. Cormac J. Carney
 Courtroom: 7C

21 Elysium Health, Inc.
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 23 Counterclaimant,
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 25 v.
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 27 ChromaDex, Inc.,
 28
 Counter-Defendant.

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*Attorney for Plaintiff and Counter-Defendant
ChromaDex, Inc.*

1 Plaintiff ChromaDex, Inc. (“ChromaDex”), by and through its undersigned
2 counsel, upon personal knowledge with respect to itself and its own acts, and upon
3 information and belief with respect to all other matters, responds to the allegations made
4 by Defendant Elysium Health, Inc. (“Elysium”) in the Answer to the Fifth Amended
5 Complaint and Restated Counterclaims as follows:

6 **ANSWER**

7 ChromaDex incorporates its responses in paragraphs 1 to 188 in its Answer to
8 Elysium’s Third Amended Counterclaims (ECF 104) and paragraphs 190 to 196 in its
9 Answer to Elysium’s Fourth Amended and Restated Counterclaims (ECF 120) as if
10 fully set forth herein.

11 **SEPARATE AND ADDITIONAL DEFENSES**

12 For its separate and additional defenses, ChromaDex alleges as follows:

13 **FIRST AND SEPARATE ADDITIONAL DEFENSE**

14 Elysium lacks standing to assert the counterclaims.

15 **SECOND AND SEPARATE ADDITIONAL DEFENSE**

16 Elysium fails to state a claim upon which relief can be granted.

17 **THIRD AND SEPARATE ADDITIONAL DEFENSE**

18 Elysium consented to and/or ratified any actions that it now alleges to be
19 unlawful.

20 **FOURTH AND SEPARATE ADDITIONAL DEFENSE**

21 Elysium did not sustain any loss, damage, harm, or detriment in any amount as a
22 result of the allegations against ChromaDex.

23 **FIFTH AND SEPARATE ADDITIONAL DEFENSE**

24 Elysium acquiesced to any actions it now alleged to be unlawful or wrongful.

25 **SIXTH AND SEPARATE ADDITIONAL DEFENSE**

26 Elysium’s counterclaims are barred by the doctrine of unclean hands.

27 **SEVENTH AND SEPARATE ADDITIONAL DEFENSE**

28 Elysium is barred from recovery, in whole or in part, by the doctrine of laches,

1 estoppel, election of remedies, and other applicable equitable doctrines.

2 **EIGHTH AND SEPARATE ADDITIONAL DEFENSE**

3 Elysium has engaged in conduct and activities with respect to the subject matter
4 of this dispute by reason of which it has waived any claims or demands.

5 **NINTH AND SEPARATE ADDITIONAL DEFENSE**

6 Elysium waived any claims under Section 3.7 of the NR Supply Agreement.

7 **TENTH AND SEPARATE ADDITIONAL DEFENSE**

8 Elysium’s claim under Section 3.7 of the NR Supply Agreement is barred as a
9 result of a unilateral or mutual mistake of the parties regarding the applicable definition
10 of current Good Manufacturing Practices.

11 **ELEVENTH AND SEPARATE ADDITIONAL DEFENSE**

12 Elysium’s breach of contract counterclaims are barred because Elysium failed to
13 substantially perform its contractual obligations under the contracts and/or there was a
14 failure of consideration.

15 **TWELFTH AND SEPARATE ADDITIONAL DEFENSE**

16 The counterclaims are barred because Elysium would be unjustly enriched by any
17 recovery against ChromaDex.

18 **THIRTEENTH AND SEPARATE ADDITIONAL DEFENSE**

19 ChromaDex has acted reasonably, in good faith, and with innocent intent with
20 respect to the conduct alleged.

21 **FOURTEENTH AND SEPARATE ADDITIONAL DEFENSE**

22 Elysium’s cause of action for declaratory judgment of patent misuse is barred
23 because ChromaDex has purged any and all alleged patent misuse.

24 ChromaDex denies that it has ever engaged in any act of alleged patent misuse
25 and specifically denies that it has engaged in patent misuse by “tying [] access to its
26 patent rights to a royalty-bearing trademark license” and, “in some instances,” by
27 “requir[ing] purchasers not only to license, but also to use ChromaDex trademarks in
28 order to obtain a supply of nicotinamide riboside”. ChromaDex further denies that

1 Elysium’s allegations constitute patent misuse as a matter of law. However, to eliminate
2 an issue from this litigation, to conserve the parties’ and the Court’s resources and to
3 streamline this action, and without prejudice to ChromaDex’s arguments and
4 contentions, ChromaDex unequivocally renounced any rights to collect, charge, or
5 obtain royalties under the Trademark License and Royalty Agreement with Elysium in
6 its Second Amended Complaint (ECF 45 ¶ 91) and Answer to the First Amended
7 Counterclaim (ECF 46 at 10). Pursuant to Section 14.1 of the Trademark License and
8 Royalty Agreement and ChromaDex’s notice sent to Elysium on October 31, 2016, the
9 Trademark License and Royalty Agreement was permanently terminated along with the
10 NIAGEN Supply Agreement effective on February 2, 2017. Accordingly, the allegedly
11 offending terms of the Trademark License and Royalty Agreement as alleged by
12 Elysium are no longer of any operative effect. The terminations of both agreements
13 were made in the ordinary course of business and are noted here for the purpose of
14 confirming the purge of any alleged patent misuse.

15 ChromaDex likewise unequivocally renounced any rights to charge, obtain, or
16 collect royalties on sales of non-trademark bearing NIAGEN from customers other than
17 Elysium, or to require the use of its trademarks under any such agreement. (ECF 45 ¶
18 92.) ChromaDex represents that it immediately terminated all such trademark license
19 agreements. These terminations were made for the purpose of purging any alleged
20 patent misuse. ChromaDex further refunded and/or credited any and all past royalties
21 paid by all customers pursuant to all “royalty-bearing trademark licenses.” (ECF 45 ¶
22 93.) ChromaDex confirms its representation to the Court that it will provide a credit to
23 Elysium for all past royalties against the damages owed by Elysium in this case,
24 including for the failure to pay for product purchased. (ECF 45 ¶ 93.)

25 These voluntary and proactive actions by ChromaDex were not an admission of
26 any wrong doing or acts of patent misuse, but instead were intended to prophylactically
27 and completely eliminate issues in this and any other dispute related to ChromaDex’s
28 patents by purging any and all allegedly unlawful conduct with respect to all allegations

1 by Elysium of patent misuse. In particular, these voluntary acts dissipated any and all
2 alleged effects of any alleged patent misuse in the market.

3 These voluntary steps taken by ChromaDex were intended to moot Elysium's
4 allegation and counterclaim for a declaratory judgment that ChromaDex has misused
5 any of its patents. Such counterclaim should be promptly voluntarily dismissed by
6 Elysium, or dismissed *sua sponte* by the Court based on the unequivocal terminations
7 and renouncements made by ChromaDex.

8 **FIFTEENTH AND SEPARATE ADDITIONAL DEFENSE**

9 Elysium's cause of action for declaratory judgment of patent misuse is moot.

10 **SIXTEENTH AND SEPARATE ADDITIONAL DEFENSE**

11 ChromaDex seeks to offset any damages owed to Elysium, if any, by the amount
12 Elysium owes to ChromaDex.

13 **SEVENTEETH AND SEPARATE ADDITIONAL DEFENSE**

14 Elysium's counterclaims are barred by their respective statutes of limitations.

15 **RESERVATION OF DEFENSES**

16 ChromaDex reserves the right to add additional defenses as the factual bases for
17 each of Elysium's claims and allegations become known. Future discovery may reveal
18 additional facts that support additional affirmative defenses presently available to, but
19 unknown to, ChromaDex.

20 **PRAYER FOR RELIEF**

21 Wherefore, ChromaDex prays for relief and judgment as follows:

- 22 1. That the Court deny Elysium's prayer for relief in its entirety and that the
23 Court dismiss the counterclaims with prejudice and enter judgment in ChromaDex's
24 favor.
- 25 2. That the Court award ChromaDex costs, expenses, and attorney's fees as
26 permitted by law.
- 27 3. That the Court award ChromaDex such other and further relief that it
28 deems appropriate.

DEMAND FOR JURY TRIAL

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ChromaDex requests a jury trial to all issues to which it is entitled.

Dated: March 5, 2019

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