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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **WESTERN DIVISION**

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

Case No.: 8:16-cv-02277-CJC-DFM
[Assigned to the Hon. Cormac J. Carney]

**ELYSIUM HEALTH, INC. AND
MARK MORRIS'S OPPOSITION TO
CHROMADEx, INC.'S *EX PARTE*
APPLICATION TO MODIFY THE
BRIEFING SCHEDULE FOR
RESPONDING TO THE COURT'S
ORDER (ECF NO. 369)**

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

Trial: TBD

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1 **I. INTRODUCTION**

2 Plaintiff ChromaDex, Inc. (“ChromaDex”) unnecessarily seeks to modify the
3 Court’s clear and equitable briefing schedule in order to obtain additional briefing
4 pages for itself—a request that this Court has already denied once (ECF No. 224)—
5 and deprive Defendants Elysium Health, Inc. and Mark Morris (together,
6 “Defendants”) of the ability to effectively argue their *own motion* for summary
7 judgment. Plaintiff’s *ex parte* application should be denied, and the Court’s October
8 9, 2019 Order (ECF No. 369) (“October 9 Order”) should remain unmodified.

9 **II. ARGUMENT**

10 There is no reason to deviate from the Court’s October 9 Order. As the Court
11 has noted, and despite ChromaDex’s efforts to characterize it otherwise, this case is
12 a “straightforward breach of contract action and not a complicated, multimillion-
13 dollar tort, unfair competition, and antitrust one.” (October 9 Order at 11.) The Court
14 has expressed “serious[] concern[s] that ChromaDex’s damages are overstated”—
15 justifiably so—and noted that its “main concern centers on causation.” (October 9
16 Order at 3.) The Court therefore ordered “the parties to submit supplemental briefs
17 on what specific evidence shows (*or disproves*) that Elysium’s and Mark Morris’
18 trade secret theft and use caused” five categories of damages alleged by ChromaDex.
19 (October 9 Order at 9 (emphasis added).) Because ChromaDex’s lack of proof of
20 causation and overreach on damages were brought to the Court by *Defendants*, on
21 *Defendants’* motion for partial summary judgment, the Court properly ordered that
22 the Defendants should submit the supplemental opening and reply briefs.¹

23 ChromaDex’s memorandum in support of its *ex parte* application is
24 approximately two-and-a-half pages long, the bulk of which reiterates the substance
25 of a press release ChromaDex issued this morning (*see* Press Release, ChromaDex,
26 ChromaDex Statement Regarding the October 9th Order in the Central District of
27

28 ¹ ChromaDex’s alleged purge of its patent misuse was not briefed by either party in their respective summary judgment motions. (October 9 Order at 8.)

1 California Litigation (Oct. 11, 2019), [https://investors.chromadex.com/news/news-](https://investors.chromadex.com/news/news-details/2019/ChromaDex-Statement-Regarding-the-October-9th-Order-in-the-Central-District-of-California-Litigation/default.aspx)
2 [details/2019/ChromaDex-Statement-Regarding-the-October-9th-Order-in-the-](https://investors.chromadex.com/news/news-details/2019/ChromaDex-Statement-Regarding-the-October-9th-Order-in-the-Central-District-of-California-Litigation/default.aspx)
3 [Central-District-of-California-Litigation/default.aspx](https://investors.chromadex.com/news/news-details/2019/ChromaDex-Statement-Regarding-the-October-9th-Order-in-the-Central-District-of-California-Litigation/default.aspx)), coupled with a disingenuous
4 complaint about delays in the pending New York and Delaware litigations between
5 the parties. A review of Exhibit B to ChromaDex’s *ex parte* application, however,
6 reveals that it was *ChromaDex* who requested the delay in the litigation in the
7 Southern District of New York, not Defendants. (Attanasio Decl. at Exhibit B.) If
8 that delay is harming ChromaDex (and it is not), that injury truly is a self-inflicted
9 wound.

10 ChromaDex seeks to reorder the Court’s briefing schedule to its own
11 advantage. Contrary to ChromaDex’s false assertion that the Court’s “questions
12 concerning causation have been put to ChromaDex, not Defendants” (ECF No. 370
13 at 3, 4), the Court plainly addresses its serious concerns with the overstatement of
14 ChromaDex’s alleged damages and lack of proof of causation to *both* parties, as
15 evidenced by the Court’s request for “specific testimony and exhibits proving *or*
16 *undermining* each link in the causal chain, with reference to the specific applicable
17 trade secrets,” “the theory on which ChromaDex’s financing expenses resulting from
18 Elysium’s failure to pay are *or are not* recoverable,” and “the case or legal authority
19 that supports *or negates* ChromaDex’s claim that it is entitled to recover any and all
20 of these categories of damages.” (October 9 Order at 9 (emphasis added).)

21 ChromaDex readily admits that this supplemental briefing is to be submitted
22 on *Defendants’* motion for summary judgment, and argues that it is *Defendants’*
23 burden to show the absence of a genuine dispute as to any material fact and that they
24 are entitled to judgment as a matter of law, but perversely and nonsensically asserts
25 that “fairness” requires the opening and reply briefs to be submitted by ChromaDex,
26 the non-movant. (ECF No. 370 at 4.) Moreover, ChromaDex seeks to limit
27 Defendants’ brief *on their own motion* to 15 pages (instead of the 40 pages
28 Defendants now have to allocate among the issues on which the Court has requested

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1 supplemental briefing), while simultaneously garnering for itself an overall
2 additional 15 pages of briefing not allotted to it by the Court. ChromaDex then
3 blithely asserts that “the only change [it requests] is the manner in which the Court’s
4 questions are addressed,” apparently hoping that both its demand for additional
5 briefing pages and its reallocation of Defendants’ briefing pages will go unnoticed
6 and unremarked upon. (ECF No. 370 at 4.) The Court should not countenance this
7 attempted circumvention of its Order. Defendants appreciate and respectfully defer
8 to the procedure the Court has set forth in its Order for resolving the various problems
9 presented by ChromaDex’s exaggerated claims, and ChromaDex has offered no valid
10 reason for deviating from that approach.

11 **III. CONCLUSION**

12 For the foregoing reasons, ChromaDex’s *ex parte* application should be
13 denied.

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15
16 Respectfully submitted,

17 Dated: October 11, 2019

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19 By: /s/ Joseph N. Sacca
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