

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
 :
 : CASE NO. 1:17-CV-07394-CM
In re Elysium Health-ChromaDex Litigation :
 :
 :
 : **ANSWER TO COMPLAINT AND**
 : **COUNTERCLAIMS**
 :
 : **DEMAND FOR JURY TRIAL**
 :
 :
 -----X

Defendant Elysium Health, Inc. (“Elysium”), by and through the undersigned counsel, upon personal knowledge with respect to itself and its own acts, and up on information and belief with respect to all other matters, responds to the allegations made by Plaintiff ChromaDex, Inc. (“ChromaDex”) in its Complaint (S.D.N.Y. Case No. 1:17-cv-08239, ECF No. 7)¹ and counterclaims as follows:

ANSWER²

The prefatory paragraph of the Complaint states legal conclusions as to which no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in that paragraph.

1. Elysium denies the allegations in Paragraph 1 of the Complaint.
2. Elysium denies the allegations in Paragraph 2 of the Complaint.
3. Elysium denies the allegations in Paragraph 3 of the Complaint.

¹ By Order dated November 3, 2017, case no. 17-cv-8239 was consolidated for all purposes with case no. 17-cv-7394.

² To the extent that the headings in the Complaint require a response, Elysium denies the allegations in each and every one.

4. Elysium denies the allegations in Paragraph 4 of the Complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations that ChromaDex has supplied ingredients to dozens of customers without, prior to this dispute, ever having engaged in litigation against any of them.

5. Elysium denies the allegations in Paragraph 5 of the Complaint.

6. Elysium denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint.

7. Elysium denies the allegations of Paragraph 7 of the Complaint, except admits that it is a Delaware corporation.

8. To the extent that the allegations in Paragraph 8 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies that ChromaDex has any cause of action against Elysium.

9. To the extent that the allegations in Paragraph 9 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies that ChromaDex has any cause of action against Elysium.

10. To the extent that the allegations in Paragraph 10 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies that ChromaDex has any cause of action against Elysium.

11. To the extent that the allegations in Paragraph 11 of the Complaint state legal conclusions, no response is required. To the extent that a response is deemed necessary, Elysium admits that it is a Delaware Corporation with its principal place of business in New York and denies that ChromaDex has any cause of action against Elysium.

12. To the extent that the allegations in Paragraph 12 of the Complaint state legal conclusions, no response is required. To the extent that a response is deemed necessary, Elysium denies the allegations in Paragraph 12 of the Complaint.

13. Elysium denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint.

14. Elysium denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint.

15. Elysium denies the allegations in Paragraph 15 of the Complaint.

16. Elysium denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint.

17. Elysium denies the allegations in Paragraph 17 of the Complaint.

18. Elysium denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint.

19. Elysium denies the allegations in Paragraph 19 of the Complaint, except admits that Tru Niagen competes with Basis, and denies knowledge and information sufficient to form a belief as to the truth of the allegations in the second sentence and the last clause of the final sentence of Paragraph 19 of the Complaint.

20. Elysium denies the allegations in Paragraph 20 of the Complaint.

21. Elysium denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint.

22. To the extent that the allegations in Paragraph 22 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 22 of the Complaint.

23. Elysium denies the allegations in Paragraph 23 of the Complaint.

24. To the extent that the allegations in Paragraph 24 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 24 of the Complaint, and refers to Exhibit B of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit B of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

25. Elysium denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25 of the Complaint.

26. Elysium denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 of the Complaint, and states that ChromaDex's March 8, 2016 Generally Recognized As Safe ("GRAS") Submission to FDA was materially misleading because it falsely stated that acetamide was not detectable in its product.

27. Elysium denies the allegations in Paragraph 27 of the Complaint.

28. Elysium denies the allegations in Paragraph 28 of the Complaint, except admits that Elysium was founded in 2014 and began selling Basis in 2015.

29. Elysium admits the allegations in Paragraph 29 of the Complaint.

30. Elysium denies the allegations in Paragraph 30 of the Complaint, except admits that ChromaDex supplied Elysium with its Niagen and its pterostilbene ingredients.

31. Elysium denies knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 31 of the Complaint. Elysium denies the remaining allegations in Paragraph 31 of the Complaint.

32. Elysium denies the allegations in Paragraph 32 of the Complaint.

33. Elysium denies the allegations in Paragraph 33 of the Complaint.

34. Elysium denies the allegations in Paragraph 34 of the Complaint.

35. Elysium denies the allegations in Paragraph 35 of the Complaint, except admits that Mr. Dellinger resigned from ChromaDex on August 10, 2016.

36. Elysium denies the allegations of Paragraph 36 of the Complaint.

37. Elysium denies the allegations in Paragraph 37 of the Complaint.

38. Elysium denies the allegations in Paragraph 38 of the Complaint.

39. Elysium denies the allegations in Paragraph 39 of the Complaint.

40. Elysium denies the allegations in Paragraph 40 of the Complaint.

41. To the extent that the allegations in Paragraph 41 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 41 of the Complaint.

42. Elysium denies the allegations in Paragraph 42 of the Complaint.

43. Elysium denies the allegations in Paragraph 43 of the Complaint.

44. Elysium denies the allegations in Paragraph 44 of the Complaint.

45. Elysium denies the allegations in Paragraph 45 of the Complaint.

46. Elysium refers to Exhibit H of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit H and any factual inferences or legal conclusions made by ChromaDex.

47. Elysium denies the allegations in Paragraph 47 of the Complaint, and refers to Exhibit H of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit H of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

48. Elysium denies the allegations in Paragraph 48 of the Complaint.

49. Elysium denies the allegations in Paragraph 49 of the Complaint, and refers to Exhibit I of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit I of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

50. Elysium denies the allegations in Paragraph 50 of the Complaint, and refers to Exhibit J of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit J of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

51. Elysium denies the allegations in Paragraph 51 of the Complaint, and refers to Exhibit K of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit K of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

52. Elysium denies the allegations in Paragraph 52 of the Complaint.

53. Elysium denies the allegations in Paragraph 53 of the Complaint, and refers to Exhibit K of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit K of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

54. Elysium denies the allegations in Paragraph 54 of the Complaint, and refers to Exhibit K of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit K of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

55. Elysium denies the allegations in Paragraph 55 of the Complaint, and refers to Exhibit L of the Complaint for its contents and denies any paraphrasing, summarizing, or

characterization of Exhibit L of the Complaint and any factual inferences or legal conclusions made by ChromaDex, except admits that on December 6, 2016, Elysium issued a press release.

56. Elysium denies the allegations in Paragraph 56 of the Complaint, and refers to Exhibit M of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit M of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

57. Elysium denies the allegations in Paragraph 57 of the Complaint, and refers to Exhibit N of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit N of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

58. Elysium denies the allegations in Paragraph 58 of the Complaint, and states that testing of ChromaDex's Niagen and Elysium's NR reveals that Elysium's NR contains a higher concentration of NR and is therefore more pure than Niagen.

59. Elysium denies the allegations in Paragraph 59 of the Complaint, and refers to Exhibit O of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit O of the Complaint and any factual inferences or legal conclusions made by ChromaDex, except admits that Dr. Guarente is Elysium's Chief Scientist.

60. Elysium denies the allegations in Paragraph 60 of the Complaint.

61. Elysium denies the allegations in Paragraph 61 of the Complaint, and refers to Exhibit P of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit P of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

62. Elysium denies the allegations in Paragraph 62 of the Complaint.

63. Elysium denies the allegations in Paragraph 63 of the Complaint.

64. Elysium denies the allegations in Paragraph 64 of the Complaint, and refers to Exhibit Q of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit Q of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

65. Elysium denies the allegations in Paragraph 65 of the Complaint, and refers to Exhibit R of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit R of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

66. Elysium denies the allegations in Paragraph 66 of the Complaint, and refers to Exhibit S of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit S of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

67. Elysium denies the allegations in Paragraph 67 of the Complaint.

68. Elysium denies the allegations in Paragraph 68 of the Complaint, and refers to Exhibit P of the Complaint for its contents and denies any paraphrasing, summarizing, or characterization of Exhibit P of the Complaint and any factual inferences or legal conclusions made by ChromaDex.

69. Elysium denies the last sentence of Paragraph 69 of the Complaint, and Elysium denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 69 of the Complaint.

70. Elysium denies the allegations in Paragraph 70 of the Complaint, except admits that Elysium recommends that its customers take two capsules daily.

71. Elysium denies the allegations in Paragraph 71 of the Complaint.

72. Elysium incorporates by reference its responses to Paragraphs 1-71 of the Complaint as if set forth herein.

73. To the extent that the allegations in Paragraph 73 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 73 of the Complaint.

74. To the extent that the allegations in Paragraph 74 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 74 of the Complaint.

75. To the extent that the allegations in Paragraph 75 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 75 of the Complaint.

76. Elysium incorporates by reference its responses to Paragraphs 1-75 of the Complaint as if set forth herein.

77. To the extent that the allegations in Paragraph 77 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 77 of the Complaint.

78. To the extent that the allegations in Paragraph 78 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 78 of the Complaint.

79. To the extent that the allegations in Paragraph 79 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 79 of the Complaint.

80. Elysium incorporates by reference its responses to Paragraphs 1-79 of the Complaint as if set forth herein.

81. To the extent that the allegations in Paragraph 81 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 81 of the Complaint.

82. To the extent that the allegations in Paragraph 82 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 82 of the Complaint.

83. To the extent that the allegations in Paragraph 83 of the Complaint state legal conclusions, no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 83 of the Complaint.

84. Elysium incorporates by reference its responses to Paragraphs 1-83 of the Complaint as if set forth herein.

85. Paragraph 85 of the Complaint contains allegations rendered impertinent and immaterial by the Court's Order Granting in part and Denying in Part Elysium's Motion to Dismiss (ECF No. 44) and no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 85 of the Complaint.

86. Paragraph 86 of the Complaint contains allegations rendered impertinent and immaterial by the Court's Order Granting in part and Denying in Part Elysium's Motion to Dismiss (ECF No. 44) and no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 86 of the Complaint.

87. Paragraph 87 of the Complaint contains allegations rendered impertinent and immaterial by the Court's Order Granting in part and Denying in Part Elysium's Motion to

Dismiss (ECF No. 44) and no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 87 of the Complaint.

88. Elysium incorporates by reference its responses to Paragraphs 1-87 of the Complaint as if set forth herein.

89. Paragraph 89 of the Complaint contains allegations rendered impertinent and immaterial by the Court's Order Granting in part and Denying in Part Elysium's Motion to Dismiss (ECF No. 44) and no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 89 of the Complaint.

90. Paragraph 90 of the Complaint contains allegations rendered impertinent and immaterial by the Court's Order Granting in part and Denying in Part Elysium's Motion to Dismiss (ECF No. 44) and no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 90 of the Complaint.

91. Paragraph 91 of the Complaint contains allegations rendered impertinent and immaterial by the Court's Order Granting in part and Denying in Part Elysium's Motion to Dismiss (ECF No. 44) and no response is required. To the extent a response is deemed necessary, Elysium denies the allegations in Paragraph 91 of the Complaint.

Elysium denies each and every allegation, statement, and matter not expressly admitted or qualified here. The PRAYER FOR RELIEF section is denied in its entirety. Elysium denies that ChromaDex is entitled to any of the relief requested or to any other relief based on the allegations in the Complaint.

AFFIRMATIVE AND OTHER DEFENSES

Without undertaking any burden of proof not otherwise assigned to it by law, Elysium asserts the following affirmative and other defenses with respect to the allegations in the Complaint:

FIRST DEFENSE

The Complaint should be dismissed because it fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The Complaint should be dismissed because ChromaDex lacks standing to assert its claims.

THIRD DEFENSE

None of Elysium's activities, statements or conduct as alleged by ChromaDex misrepresent the nature, characteristics or qualities of its goods, services and/or commercial activities.

FOURTH DEFENSE

None of Elysium's activities, statements or conduct as alleged by ChromaDex have resulted in any injury to consumers, or have deceived any material segment of the public.

FIFTH DEFENSE

ChromaDex's claims are barred from recovery, in whole or in part, as ChromaDex has suffered no injury or damages.

SIXTH DEFENSE

ChromaDex's claims are barred in whole or in part by the doctrine of unclean hands.

SEVENTH DEFENSE

ChromaDex's claims are barred in whole or in part by the First Amendment to the Constitution of the United States.

EIGHTH DEFENSE

ChromaDex's claims are barred in whole or in part by the doctrine of laches.

NINTH DEFENSE

ChromaDex's claims are barred because none of Elysium's statements as alleged by ChromaDex are false.

TENTH DEFENSE

ChromaDex's claims are barred in whole or in part by the doctrine of estoppel.

ELEVENTH DEFENSE

ChromaDex's claims are barred in whole or in party by the doctrine of acquiescence.

TWELFTH DEFENSE

ChromaDex's claims are barred in whole or in part because the statements upon which it bases its claims are puffery that cannot serve as a basis to establish liability against Elysium.

DEFENSES RESERVED

Elysium reserves the right to assert any other affirmative defenses that are supported by information or facts obtained through discovery or other means during this case and expressly reserves the right to amend its Answer to assert such other affirmative defenses in the future.

WHEREFORE, Elysium respectfully requests that the Court enter judgement:

1. Dismissing all claims asserted herein with prejudice; and

2. Granting Elysium all other and further relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Elysium requests a trial by jury for all issues so triable.

COUNTERCLAIMS

Elysium brings these counterclaims for false advertising and unfair and deceptive business practices against ChromaDex. Elysium makes the following allegations upon personal knowledge as to its own acts, and on information and belief as to all other matters, and alleges as follows:

NATURE OF THE CASE

1. Elysium brings these counterclaims for false advertising and unfair and deceptive business practices arising out of ChromaDex's misleading national advertising campaign to sell its dietary supplement, Tru Niagen, the sole active ingredient in which is ChromaDex's Niagen, its trade name for nicotinamide riboside ("NR"). ChromaDex's false and misleading representations are willful and intentional because ChromaDex knows they are not true. ChromaDex is engaged in a pattern of behavior aimed at deceiving customers and harming its competitor and former largest customer, Elysium.

2. In large part through the website it uses to advertise its product to the public, ChromaDex tries to create among consumers the false impression that it is responsible for the discovery of NR. In truth, NR was actually discovered decades before ChromaDex even existed.

3. ChromaDex also promotes the false impression among consumers and the public at large that it is the only seller of NR, utilizing a marketing campaign designed to mislead consumers into equating ChromaDex's trade name, Niagen, with NR in an effort to, among other things, discredit other competing products containing NR that do not use the trade name Niagen,

such as Elysium's Basis. ChromaDex knows this advertising is false because it knows that Elysium sells NR in its product Basis.

4. Building on this scheme of dishonestly claiming credit for NR's discovery and falsely claiming to be the exclusive seller of NR, ChromaDex further attempts to deceive consumers and the public at large by falsely claiming its product has been "rigorously tested" and "rigorously reviewed" by the United States Food & Drug Administration ("FDA") for both safety and efficacy, when in fact FDA has done neither. Again, ChromaDex knows this is false.

5. On its Tru Niagen website, ChromaDex claims "3 FDA Safety Reviews." Those purported "Safety Reviews" are submissions to FDA in which *ChromaDex has itself claimed* the NR it sells is safe, and FDA has merely accepted those submissions *without conducting any independent review*.

6. Moreover, any response by FDA was irrevocably tainted by ChromaDex's falsehoods in its submissions. In its initial submission to FDA, ChromaDex falsely represented that its product did not contain detectable levels of acetamide, an industrial solvent and plasticizer.

7. In fact, ChromaDex's NR contained acetamide in such substantial quantities that it caused virtually all of ChromaDex's customers who re-sold its NR into California to violate a California voter initiative entitled the Safe Drinking Water and Toxic Enforcement Act of 1986, also known as Proposition 65, which requires warning labels on products containing substances hazardous to human health. ChromaDex also sold its own Tru Niagen into California in violation of Proposition 65.

8. ChromaDex's initial FDA submissions also claimed its NR was safe at a daily intake of up to 180 mg a day, yet it never sold its product at a recommended daily intake below 250 mg a day, a fact it did not disclose to the FDA in those submissions.

9. Moreover, although the advertising that ChromaDex publicizes and disseminates on its website is designed to, and does, create the further false impression that FDA has assessed the efficacy of ChromaDex's NR, neither of the submissions ChromaDex made to FDA even addressed the issue.

10. FDA has thus never even considered the question of whether ChromaDex's NR is effective, much less concluded after rigorous testing and review that it is, as ChromaDex so misleadingly advertises. ChromaDex's false, misleading and deceptive statements are aimed at increasing its own sales, misleading consumers, and harming its competitor, Elysium.

11. ChromaDex also falsely advertises the efficacy of its Tru Niagen product. On the website ChromaDex uses to market Tru Niagen, ChromaDex includes a chart labeled, in large, bold font, "NIAGEN® increases NAD by 60%." Buried in small, faint lettering under that chart is language that those results were seen in 21 people taking 1,000 mg of Niagen per day. Nowhere in connection with that chart does ChromaDex reveal that 1,000 mg per day is *four times* the amount it recommends its customers take.

12. ChromaDex's misleading advertisement that its product raises NAD levels by 60% without disclosing that customers would need to take four times the recommended daily intake (at, of course, four times the advertised monthly cost) is intended to lure customers away from Elysium, which truthfully discloses that, at its recommended daily intake (250 mg), its product Basis has been shown to increase NAD levels by 40%.

13. ChromaDex also uses its advertising to falsely disparage its more successful competitor, Elysium.

14. ChromaDex first claims that it is the only seller of NR, and goes so far as to accuse Elysium's NR of being "counterfeit." This is manifestly untrue, as ChromaDex knows full well that Elysium sells its own NR-containing product, Basis, in competition with ChromaDex both in New York and across the country.

15. Indeed, ChromaDex claims to have performed compositional testing of Elysium's product that reveals it to contain NR.

16. Next, ChromaDex falsely claims that its NR is the only NR that has been tested for safety.

17. In reality, the NR in Elysium's Basis has undergone extensive safety testing, and enjoys Generally Recognized As Safe ("GRAS") status, just as ChromaDex claims to be the case for its own NR.

18. ChromaDex does not limit its false advertising to its lies about discovering NR, being the only seller of NR, FDA's supposed "rigorous review" of the safety of ChromaDex's NR, or even its untruths disparaging Elysium, all of which are aimed at having consumers in New York and across the country make purchasing decisions based upon them.

19. In its craven pursuit of profit above all else, ChromaDex cynically preys on those suffering from life-altering, and even life-threatening, diseases like Alzheimer's disease, Parkinson's disease, and heart disease to make utterly unfounded claims that its product offers them a cure.

20. ChromaDex perpetuates this deceptive advertising campaign by placing targeted advertisements – through which customers are a simple click away from ChromaDex's website

on which its product can be purchased – on an affiliate website maintained by one of its shareholders with the grandiose title “Right of Assembly,” but which almost exclusively touts ChromaDex’s product and chronicles various disputes between ChromaDex and Elysium. That blogger is an affiliate of ChromaDex who is compensated for every sale made by ChromaDex to a consumer who navigates to ChromaDex’s Tru Niagen website from the blog and makes a purchase, and ChromaDex is as responsible for the contents of the blogger’s statements as if it made them directly. Moreover, by taking the affirmative intentional step of placing its advertising on the blog, ChromaDex impliedly endorses the claims made by the blogger.

21. Appended to nearly every post on that blog is a statement that FDA will not permit ChromaDex to make claims that its NR product treats any disease, but that the affiliate does not believe those same restrictions apply to him, after which he claims that ChromaDex’s NR product can prevent or treat a whole litany of diseases. ChromaDex exploits the affiliate’s recklessness by endorsing those disease claims by placing targeted advertising on the blog. This conduct is not just unlawful, it is reprehensible.

22. Through these Counterclaims, Elysium seeks to (a) protect unsuspecting consumers in New York and across the country, as well as the public at large, from purchasing ChromaDex’s Tru Niagen product based on ChromaDex’s deceptive and false claims that it discovered NR, is the only seller of NR, sells NR that has been rigorously reviewed by FDA for both safety and efficacy, sells a product that is more efficacious than it actually is at the recommended intake, and sells NR that prevents or treats numerous serious diseases; and (b) to recover damages for the harm suffered by Elysium as a result of ChromaDex’s willful and predatory conduct.

FACTUAL ALLEGATIONS

23. Both ChromaDex's Tru Niagen and Elysium's Basis contain NR as an ingredient in their dietary supplements, and both ChromaDex and Elysium market their products in New York and in interstate commerce nationwide through their respective websites. Elysium is a former customer of ChromaDex, which used to supply NR to Elysium. Elysium now has another source of supply for NR. ChromaDex and Elysium sell NR containing supplements directly to consumers, and are competitors of each other.

24. ChromaDex markets nationwide through the promotion of its interactive website at www.TruNiagen.com, through which it sells its Tru Niagen direct to consumers. The website displays prominently in multiple locations "Buy Now" buttons, which direct visitors to a page where they can buy Tru Niagen in lots of one, three, six, or twelve bottles, or can subscribe to receive three bottles every three months. Through this website, ChromaDex has knowingly transacted for the sale of Tru Niagen to New York residents. It has further targeted New York residents through additional advertising, by presenting at industry conferences in New York, and otherwise.

ChromaDex Falsely Claims It Discovered NR in 2004 Even Though NR Was Discovered Over 50 Years Ago

25. In an apparent effort to bolster the legitimacy of its product over those of its competitors (especially Elysium's) and in an effort to deceive consumers and the public at large, ChromaDex conceives a misleading story on the website through which it markets its Tru Niagen product that conveys to consumers the falsity that ChromaDex's lead scientist discovered NR in 2004, even though NR was discovered more than 50 years ago. These statements are intentionally false, misleading, and designed to, among other things, deceive consumers and

influence them to purchase NR from ChromaDex, as well as divert sales of NR from its competitors, such as Elysium.

26. On the “FAQ” page of its Tru Niagen website, ChromaDex advertises that “[i]n 2004, Charles Brenner PhD discovered a unique and overlooked form of vitamin B3 (nicotinamide riboside) that is a natural precursor to NAD.” (**Exhibit 1.**)

27. Prominently displayed on another portion of the Tru Niagen website, entitled “Our Product,” ChromaDex doubles down on its NR origin story, responding to the question it posed to itself “How is Tru Niagen different from other vitamin B3?” by saying: “Tru Niagen is a specialized form of vitamin B3 **discovered by our Chief Scientific Advisor Charles Brenner, PhD** and developed specifically to increase NAD more effectively than any other B3 before it.” (**Exhibit 2** [emphasis added].)

28. Brenner did not discover NR.

29. ChromaDex knows that Brenner did not discover NR.

30. ChromaDex’s statements that Brenner discovered NR are not true.

31. ChromaDex’s misrepresentation that Brenner discovered NR is a willful attempt to deceive, as is evident from the Tru Niagen website itself. Buried on the FAQ page is a slip-up by ChromaDex where it varies from its fictional story on the origins of NR and admits the truth – that NR was actually discovered in the 1940s.

32. ChromaDex’s false claims to the discovery of NR are material to customers, as demonstrated by the fact that it has made these claims the centerpiece of its advertising strategy. Claiming discovery of NR represents a strategy by ChromaDex to falsely convince customers that it is responsible for all knowledge concerning NR, and thus lead them to believe that ChromaDex is the most scientifically-sound source of NR. This strategy harms consumers, and

also harms Elysium, which itself is responsible for significant advancements in the science surrounding NR.

33. Not only are these misrepresentations deceptive on their face, they are meant to confuse and influence consumers to purchase ChromaDex's product in New York and elsewhere in the United States. ChromaDex's false and misleading claims are designed to have consumers equate NR with ChromaDex and to divert sales away from its competitors, such as Elysium.

ChromaDex Falsely Claims That It is the Only Seller of NR

34. ChromaDex's Tru Niagen website also falsely represents to consumers and the public at large that ChromaDex is the only seller of NR, which according to the website, can only be found under ChromaDex's trade name, Niagen.

35. On the Tru Niagen "Unauthorized NR" page, ChromaDex advertises that NR is an ingredient "only sold as 'NIAGEN®'" and directs consumers to "look at your label to ensure 'NIAGEN®' appears under the 'Supplement Facts.'" (**Exhibit 3.**)

36. The Tru Niagen "Unauthorized NR" page even goes so far as to falsely imply that the NR in Elysium's Basis is "counterfeit."

37. These statements by ChromaDex are false on their face, meant to mislead customers and the public at large into believing ChromaDex is the only seller of NR, and part of ChromaDex's organized campaign to penetrate the market and influence consumers to purchase NR from ChromaDex, rather than its competitors.

38. ChromaDex is well aware that Elysium, its competitor, sells NR as an ingredient in Basis.

39. In fact, ChromaDex has claimed in the past to have performed compositional testing on Basis that showed Basis to contain NR – testing that actually showed Elysium's NR to

be more pure than ChromaDex's. Thus, ChromaDex knows full well that Basis contains actual NR, not "counterfeit" NR as its advertising suggests.

40. ChromaDex's misleading statements are a direct attack on any competitor to Tru Niagen, and specifically on Elysium's Basis.

41. These false statements are highly material to potential consumers, as they are intended to persuade consumers that any NR product they purchase from any seller not using the trade name "Niagen" does not actually contain NR. These false statements aimed to, and do in fact, harm and divert sales from Elysium.

ChromaDex Falsely Advertises that Tru Niagen Has Been Rigorously Reviewed for Safety And Efficacy By FDA, When in Fact, FDA Did Neither

42. One of the driving claims behind ChromaDex's advertising campaign for Tru Niagen is its false assertion that Niagen has been rigorously reviewed by FDA for both safety and efficacy. In reality, FDA has done neither.

43. ChromaDex misrepresents that FDA has, following rigorous review, determined its Tru Niagen product is safe. ChromaDex claims on its Tru Niagen website "3 FDA Safety Reviews", which it claims to be two reviews under FDA's new dietary ingredient ("NDI") notification program and one notification to FDA of its product as GRAS.

44. Both ChromaDex's own website and its Tru Niagen website mislead consumers to believe that FDA has made an affirmative determination regarding the safety of its product.

45. However, ChromaDex has merely made submissions to FDA in which it asserts its NR is safe, and FDA has accepted those submissions without conducting its own independent review.

46. The manner in which ChromaDex presents these submissions creates a false and misleading narrative that will cause consumers to believe that ChromaDex's product has been safety-tested by FDA, when it has not. Indeed, ChromaDex is well aware that it has not.

47. At ChromaDex.com, customers can view a "Niagen" webpage, where they will be greeted by the title "NIAGEN® - The world's first and only FDA-safety reviewed form of nicotinamide riboside (NR)." (**Exhibit 4.**)

48. Under the "Unauthorized NR" section of ChromaDex's Tru Niagen website, the company asserts that "NIAGEN® is the only nicotinamide riboside that has been rigorously tested for safety and efficacy with the US FDA GRAS (Generally Recognized as Safe) and two 'New Dietary Ingredient' (NDI) notifications." (**Exhibit 3.**) ChromaDex also claims on the same page that "[a]ny nicotinamide riboside product that does not say 'NIAGEN®' on its label has not been rigorously reviewed by the US FDA." (**Exhibit 3.**) It advertises on its "Our Product" page that Niagen has been through "3 FDA Safety Reviews." (**Exhibit 2.**)

49. ChromaDex's characterizations of the GRAS and NDI submissions as "safety reviews" by FDA are intentionally misleading and meant to influence consumers to purchase its product under the false belief that Tru Niagen has been rigorously reviewed by FDA.

50. These false statements are highly material to consumers. As ChromaDex well knows and intends, consumers are far more likely to buy a nutritional supplement if they believe FDA, a government agency charged with protecting the public, has conducted an independent review and determined the supplement to be safe.

51. A simple read of FDA's responses to ChromaDex's GRAS and NDI submissions reveals the falsity of the statements made throughout ChromaDex's advertising. For example, on or about August 24, 2015, ChromaDex submitted an NDI notification for an ingredient identified

as Niagen (“NDI 882”). ChromaDex supplemented its NDI filing on October 13, 2015 and October 30, 2015.

52. On or about November 3, 2015, ChromaDex received confirmation from FDA that its NDI 882 was filed. (**Exhibit 5.**) In response to the NDI filing, FDA stated that it was required to acknowledge receipt of ChromaDex’s NDI filing, and explicitly reaffirmed that “acceptance of this notification for filing is a procedural matter, and thus, *does not constitute a finding by FDA that the new dietary ingredient or supplement that contains the new dietary ingredient is safe or is not adulterated under 21 U.S.C. 342.*” (*Id.* [emphasis added].)

53. On or about December 27, 2017, ChromaDex submitted a new NDI (“NDI 1062”) to FDA for Niagen. FDA responded to NDI 1062, once again stating that it was required to acknowledge receipt of ChromaDex’s NDI filing, and once again explicitly reaffirming that “acceptance of this notification for filing is a procedural matter, and thus, *does not constitute a finding by FDA that the new dietary ingredient or supplement that contains the new dietary ingredient is safe or is not adulterated under 21 U.S.C. § 342.*” (**Exhibit 6** [emphasis added].)

54. ChromaDex operates a regulatory consulting business, Spherix Consulting, Inc., that specifically advertises advising on NDI submissions as one of its services. ChromaDex is acutely aware that the submission to and acknowledgment of the NDI submissions by FDA does not, in any way, render Niagen, or its Tru Niagen product, independently reviewed and “rigorously tested for safety” by FDA as falsely claimed on the ChromaDex and Tru Niagen websites.

55. ChromaDex takes a similar deceptive approach in its advertising that references its GRAS submission.

56. On or about March 8, 2016, ChromaDex, through Spherix Consulting, submitted a GRAS notice to FDA as to its Niagen-branded NR. The notice informed FDA that *it was ChromaDex's view* that NR is GRAS.

57. On or about August 3, 2016, FDA responded to ChromaDex's GRAS submission, stating that "the agency ha[d] no questions at [that] time regarding ChromaDex's conclusion that NR is GRAS under the intended conditions of use." (**Exhibit 7.**)

58. FDA also stated that "this response should not be construed to be a statement that foods that contain NR, if introduced or delivered for introduction into interstate commerce, would not violate section 301(II) [of the FD&C Act]." (**Exhibit 7.**) The response also provided that "*[t]he agency has not, however, made its own determination regarding the GRAS status of the subject use of NR.*" (*Id.* [emphasis added].)

59. On October 5, 2017, ChromaDex submitted an addendum to its GRAS notice, to which FDA has not responded publicly.

60. ChromaDex's regulatory consulting business specifically advertises advising on GRAS notices. As with the NDIs, ChromaDex is acutely aware that submission to FDA of its GRAS notice, and FDA's response to the submission with a statement that it has no questions, did not render Niagen or its Tru Niagen product independently reviewed or "rigorously tested for safety" by FDA as falsely claimed on the ChromaDex and Tru Niagen websites.

61. To the extent FDA's responses to the NDI or GRAS submissions constituted "review" – and certainly none was a rigorous review – ChromaDex's advertising that these FDA responses establish the safety of its product is materially misleading because FDA's responses were irredeemably tainted by ChromaDex's dishonesty in its submissions.

62. Had FDA conducted any sort of “rigorous review” of the original NDI submission and original GRAS notice as ChromaDex misleadingly touts on its website, FDA would have discovered that ChromaDex falsely represented in each of those submissions that its product did not contain detectable levels of acetamide, an industrial solvent and plasticizer.

63. In the fall of 2017, Elysium undertook to test a selection of Niagen that ChromaDex had supplied to it after Elysium learned that acetamide was a byproduct of the NR manufacturing process, which Elysium has undertaken significant efforts to remove from the NR incorporated in Basis once Elysium stopped purchasing NR from ChromaDex and developed a new source of supply.

64. To confirm the presence of acetamide in Niagen, Elysium also undertook to test a selection of Niagen-containing products on the market against the baseline of the “safe harbor limit” established by California’s Proposition 65, which requires warning labels on products containing substances considered to be generally hazardous to human health.

65. Nine of the eleven Niagen-containing products, including ChromaDex’s own direct-to-consumer product, Tru Niagen, contained levels of the acetamide in excess of the “safe harbor limit.”

66. Had FDA conducted its own independent, rigorous review of ChromaDex’s product, as ChromaDex falsely implies FDA did in its advertising, it would have undoubtedly discovered the same detectable levels of acetamide in ChromaDex’s Niagen and Tru Niagen.

67. ChromaDex’s original NDI and GRAS submissions were further misleading in another material respect. Both purported to establish the safety of ChromaDex’s NR at intake levels up to 180 mg per day. ChromaDex, however, sells its Niagen-containing Tru Niagen at a recommended intake of 250 mg per day, the safety of which was not addressed, much less

supported, in its original NDI and GRAS submissions. To the extent FDA conducted “reviews” of these submissions, neither spoke to the safety of ChromaDex’s Niagen-containing Tru Niagen, and ChromaDex’s touting those purported reviews on the website it uses to sell Tru Niagen is therefore grossly misleading.

68. Neither ChromaDex’s NDI submission nor its GRAS submissions even purported to establish that Niagen or Tru Niagen are effective in raising levels of NAD.

69. The NDI and GRAS processes are, in fact, not concerned with efficacy. NDI and GRAS submissions only make claims of safety, not efficacy.

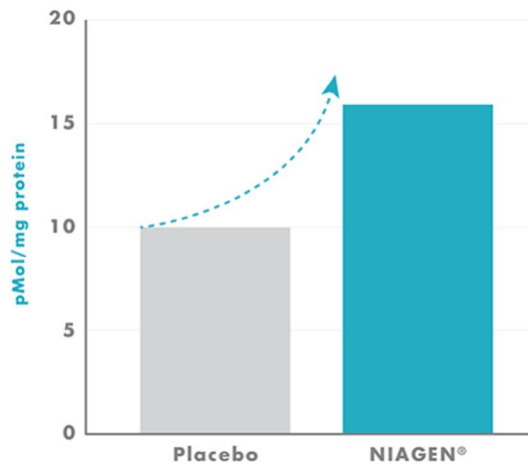
70. Yet, ChromaDex misleadingly creates the impression on the “Unauthorized NR” page of its Tru Niagen website that FDA, in response to its NDI and GRAS submissions, “rigorously tested” Niagen for both “safety and efficacy.”

71. ChromaDex’s pervasive campaign of false advertisements claiming that FDA has rigorously reviewed and deemed Tru Niagen safe and effective deceives and misleads consumers and the public at large, disingenuously influence customers to purchase from ChromaDex, and diverts consumers from purchasing products with NR from anyone other than ChromaDex, such as Elysium.

ChromaDex Misleadingly Advertises the Efficacy of Its Product to Create the False Impression that Tru Niagen is More Effective Than Elysium’s Basis

72. On the “The Science” page of its Tru Niagen website, ChromaDex includes a chart titled “NIAGEN® increases NAD by 60%”:

**NIAGEN® increases
NAD by 60%[‡]**



Martens, et al., 2018

[‡] On average at 1000 mg / day for 6 weeks in 21 people

73. Buried at the bottom of that chart, in a font much smaller and fainter than that comprising the chart and its title, is a bland footnote reading “On average at 1000 mg / day for 6 weeks in 21 people.”

74. What ChromaDex fails to disclose in connection with this chart is that 1,000 mg of Niagen per day is *four times* the daily intake of 250 mg of Niagen it recommends to its customers (through consumption of two capsules of Tru Niagen containing 125 mg of Niagen each). Thus, when a customer clicks the website’s “Buy Now” link and learns she can subscribe to purchase three bottles of Tru Niagen every three months for \$105, she will not know that to obtain the 60% increase in NAD ChromaDex advertises on that same website, she would need actually to quadruple that subscription, increasing her cost to \$420 every three months.

75. That ChromaDex’s misrepresentation of the efficacy of its product is willful is evident from a review of its Tru Niagen page on Amazon.com, where in a footnote to a similar chart claiming its product increases NAD by 60%, it does actually disclose, albeit in vanishingly small print, that those results can be obtained only at four times the recommended daily intake.

76. Why ChromaDex seeks to mislead customers in this way is obvious.

77. Elysium, when discussing the proven efficacy of its Basis, truthfully and without obfuscation discloses that, at the recommended daily intake level, Basis has been shown to increase NAD by 40%. In contrast, ChromaDex does not advertise on its Tru Niagen page what results a customer can expect from taking its recommended daily amount of Tru Niagen.

78. ChromaDex thus hopes to dupe unwitting customers to believe that they can see a more significant increase in NAD levels by taking Tru Niagen than by taking Basis without realizing that doing so would come at the enormous cost of buying four times as much Tru Niagen as ChromaDex itself actually recommends they take.

79. This deceptive conduct harms both consumers and Elysium.

ChromaDex's Deceptive Marketing Practices Deceive Consumers into Believing that Tru Niagen Cures Diseases

80. ChromaDex uses its deceptive marketing practices to prey on those with life-altering and life-threatening diseases by using an affiliate's website to peddle the purported preventative and curative effects of its product to the public. ChromaDex misleadingly creates the impression with consumers that its Niagen-containing Tru Niagen prevents and cures diseases.

81. ChromaDex is well aware that it is not allowed to say directly that NR treats any disease because it lacks the kind of extensive clinical data FDA regulations require to support statements like that. Indeed, the Tru Niagen website has a disclaimer in tiny text at the bottom of practically every page that states "These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease." Thus, ChromaDex is knowingly deceiving customers and misleading the public through statements made on its affiliate's blog.

82. Seeking to accomplish indirectly what it is not brazen enough to do directly, ChromaDex misleads the public and consumers by placing its advertisements and direct links to purchase Tru Niagen on blog posts created and maintained by one of its shareholders, who purports to be a non-practicing lawyer, on a website he maintains, right-of-assembly.org. This blogger discloses on his blog that he is “a ChromaDex associate, and may earn a small commission on purchases from ChromaDex if you were referred directly from this site and completed a purchase.” This makes him a ChromaDex affiliate, and makes ChromaDex as responsible for the content of his statements about NR, Niagen, and Tru Niagen as if it had made the statements directly.

83. ChromaDex is well aware of this blogger and the contents of his website. He has written about discussions he has had with ChromaDex management, including during a visit to ChromaDex headquarters.

84. Through an investment advisor barred by FINRA for acts including improper promotion of ChromaDex stock, ChromaDex has caused a number of the blog posts to be widely distributed to individuals who had signed up to receive investor alerts from ChromaDex, including at least one New York resident.

85. At least one of those blog posts had been forwarded to the investment advisor by ChromaDex’s then-CEO.

86. Because it was aware that this blogger, who as a shareholder has an obvious and direct financial interest in helping ChromaDex, wrote posts that contained fawning coverage of ChromaDex, were harshly critical of Elysium, and giddily praised Tru Niagen, ChromaDex decided that the blog was an ideal vehicle through which it could target credulous

consumers. Thus, it elected to place advertising for Tru Niagen on virtually every blog posted. By doing so, it implicitly vouched for their content.

87. The ChromaDex affiliate makes repeated claims about the efficacy of Tru Niagen in preventing and/or curing diseases on upwards of 20 blog posts – posts that are flooded with advertisements for Tru Niagen, and with direct links to purchase the product. In these posts, the affiliate states:

ChromaDex isn't allowed to say that NR treats any disease, because the FDA has not approved that. But the FDA does not regulate me, so I am free to tell you that the scientific evidence is growing that NR supplements replenish cellular NAD, which can protect against MANY ailments, including Alzheimers, Heart Disease, Parkinson's Disease, Breast Cancer, alcohol induced liver poisoning, chemotherapy induced peripheral neuropathy, organ injury from sepsis and in my own experience, Restless Legs Syndrome (RLS). You can find out more here: AboutNAD.com.

88. AboutNAD.com is a website maintained by ChromaDex.

89. ChromaDex is responsible for these statements by its affiliate. Moreover, it impliedly endorses them by placing advertising on the blog. ChromaDex is preying on consumers suffering from or living in fear of the listed diseases and conditions, giving them false hope that Tru Niagen will cure or prevent their suffering. These representations are false, misleading to consumers, and meant to influence consumers to purchase NR from ChromaDex, and drive sales away from its competitors, including Elysium.

90. And there can be no doubt that these advertisements touting NR as a cure or preventative for disease are hitting their mark. Indeed, customers of Tru Niagen have posted product reviews on Amazon's Tru Niagen page, stating that they made their purchases for reasons that strongly echo the blog's disease claims. For example:

- A customer review dated September 18, 2018, stated, "While there is research linking NR supplementation and cardiovascular health, the only cognitive benefits I could see are related to Alzheimer's and Parkinson[']s."

- A customer review dated September 10, 2018, stated “I bought it to help stave off Alzheimer’s.”
- A customer review dated February 18, 2018, stated, “the research also says that replenishing NAD appears to protect against Alzheimer[’]s, breast cancer, heart disease, and more.”

91. In addition to the economic harm caused to Elysium by ChromaDex’s false disease claims in the form of lost sales, ChromaDex’s false advertising also damages Elysium’s reputation and the goodwill it has built up over years of effort and substantial investment. The affiliate’s claims regarding treatment of disease refer to “NR supplements,” not solely to ChromaDex’s Niagen or Tru Niagen. Accordingly, customers suffering from or fearing any of the diseases the affiliate claims NR can prevent or treat, could be misled by this affiliate into purchasing Elysium’s Basis, which is, after all, a supplement containing NR, in the expectation that it will cure or protect them. Elysium, the seller of the NR supplement they take, will then be the likely subject of their ire should they conclude they have been misled, notwithstanding the fact that it will have been ChromaDex, through its affiliate, not Elysium, that gave them that false hope.

FIRST COUNTERCLAIM FOR RELIEF
(FALSE ADVERTISING UNDER 15 U.S.C. § 1125(a))

92. Elysium incorporates and re-alleges each and every allegation in paragraphs 1 to 91 above as if fully set forth herein.

93. ChromaDex markets itself to give the false impression that it discovered NR and is the only company that sells NR. ChromaDex claims repeatedly on both its website and the Tru Niagen website that its Niagen and Tru Niagen products are the only NR-based products that have been rigorously reviewed for safety and efficacy by FDA – even though that is false. ChromaDex misleadingly represents the efficacy of its product. ChromaDex also claims its NR

is the only NR to have undergone extensive safety testing, when Elysium's NR has been extensively tested for safety and is GRAS. Further, ChromaDex markets its Tru Niagen product as preventing or treating diseases through targeted marketing on an affiliate website, without any legitimate basis to do so.

94. ChromaDex's marketing, advertising and promotional statements and activities are false and misleading misrepresentations of fact, and confuse consumers in New York and across the country into believing that its Niagen and Tru Niagen products (a) contain an ingredient (NR) that was discovered by ChromaDex's lead scientist, when it was not; (b) contain NR from the "only" seller of the ingredient, which is patently false; (c) have been "rigorously tested" and "rigorously reviewed" by FDA for safety and efficacy, which they have not; (d) can raise NAD levels by 60%, without disclaiming that such an increase has only been observed in subjects taking four times the recommended amount; and (e) can treat or prevent serious and potentially life-threatening diseases, when there is no adequate basis for these claims. ChromaDex also misleads customers to believe that Elysium's Basis contains "counterfeit" NR when, as ChromaDex well knows, it contains actual NR.

95. ChromaDex's false and misleading advertising harms not only consumers, but also its direct competitors, such as Elysium, by influencing consumers to purchase NR from ChromaDex; diverting customers away from Elysium; and injuring Elysium's business reputation, goodwill it has built up over years of effort and substantial investment, and stature in the industry, as well as its customer opportunities.

96. ChromaDex is therefore engaging in false advertising in violation of 15 U.S.C. § 1125(a), which prohibits a party from "misrepresenting the nature, characteristics, [or] qualities" of a product in "commercial advertising or promotion." ChromaDex misrepresents the nature,

characteristic, and qualities of the Tru Niagen supplement in violation of the law, causing Elysium and consumers alike irreparable harm for which Elysium has no adequate remedy at law.

SECOND COUNTERCLAIM FOR RELIEF
(FEDERAL UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a))

97. Elysium incorporates and re-alleges each and every allegation in paragraphs 1 to 96 above as if fully set forth herein.

98. ChromaDex's marketing and promotion of its Niagen and Tru Niagen products gives the false impression that it discovered NR and is the only company that sells NR. ChromaDex also claims on its website and the Tru Niagen website that its Niagen and Tru Niagen products are the only NR-based products that have been as rigorously reviewed for safety and efficacy by FDA – even though that is false. ChromaDex misleadingly represents the efficacy of its product. ChromaDex further claims that its NR is the only NR to have undergone extensive safety testing, when Elysium's NR has been extensively tested for safety and is GRAS. Additionally, ChromaDex markets its Tru Niagen product as treating diseases through targeted marketing on an affiliate website, without any legitimate basis to do so. Consumers across the country are likely to be confused by this false and misleading information.

99. ChromaDex's false and deceptive marketing, promotion, and sale of its Niagen and Tru Niagen products in interstate commerce, in competition with Elysium, harms consumers and Elysium. Consumers are likely to rely on this information in their purchasing decisions at commercial detriment to Elysium. In addition, it injures Elysium's business reputation, goodwill it has built up over years of effort and substantial investment, and stature in the industry, as well as its customer opportunities.

100. ChromaDex is therefore engaged in unfair competition in violation of 15 U.S.C. § 1125(a) and has caused Elysium irreparable harm for which Elysium has no adequate remedy at law.

THIRD COUNTERCLAIM FOR RELIEF
(DECEPTIVE PRACTICES UNDER NEW YORK GENERAL BUSINESS LAW § 349)

101. Elysium incorporates and re-alleges each and every allegation in paragraphs 1 to 100 above as if fully set forth herein.

102. By the acts described herein, ChromaDex has engaged in deceptive acts and practices directed at consumers in the conduct of its business by disseminating misleading information to induce the purchase of its product, injuring New York consumers' financial well-being, in violation of New York General Business Law § 349(h).

103. ChromaDex's acts alleged herein have caused monetary damages to Elysium in an amount to be proven at trial in excess of \$75,000.

104. ChromaDex's acts have caused, and will continue to cause, irreparable injury to Elysium and its business and reputation unless and until ChromaDex is permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE Elysium prays that:

A. ChromaDex, its employees, representatives, and agents be enjoined from making false and/or misleading statements that it discovered NR, that it is the only seller of NR, that its NR products have been rigorously reviewed by FDA for both safety and efficacy, that its NR products can raise NAD levels by up to 60% without disclosing that such an increase would require four times the recommended intake, that Elysium's NR is "counterfeit," and that its NR products prevent or treat any diseases;

B. ChromaDex be ordered to publish for a period of not less than twelve months corrective advertising in all media cogently correcting all the misleading and false statements, including, but not limited to, ChromaDex's false statements that it discovered NR, that it is the only seller of NR, that its NR products have been rigorously reviewed by FDA for both safety and efficacy, that its product can raise NAD levels by 60%, that Elysium's NR is "counterfeit," and that its NR products prevent or treat any disease;

C. The Court grant any and all relief to which Elysium may be entitled pursuant to the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, including but not limited to treble damages and attorneys' fees, in an amount to be proven at trial;

D. The Court grant any and all relief to which Elysium may be entitled pursuant to state law and state common law, including enhanced damages and attorneys' fees;

E. The costs of this action be taxed against ChromaDex; and

F. The Court grant Elysium such other and further relief as the Court may deem just and proper.

Dated: October 12, 2018

BAKER HOSTETLER LLP

By: /s/ Joseph N. Sacca
Joseph N. Sacca
Esterina Giuliani
Benjamin David Pergament
45 Rockefeller Plaza
New York, New York 10111-0100
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
jsacca@bakerlaw.com

Counsel for Elysium Health, Inc.