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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 (SOUTHERN DIVISION)**

ChromaDex, Inc.,
 Plaintiff,
 v.
 Elysium Health, Inc.,
 Defendant.

Case No. 8:16-cv-2277-CJC (DFMx)

**CHROMADEx’S ANSWER TO
 ELYSIUM’S FOURTH AMENDED AND
 RESTATED COUNTERCLAIMS**

Judge: Hon. Cormac J. Carney
 Courtroom: 9B

Elysium Health, Inc.
 Counterclaimant,
 v.
 ChromaDex, Inc.,
 Counter-Defendant.

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
4 made by Defendant Elysium Health, Inc. (“Elysium”) in the Answer to Fourth
5 Amended Complaint and Restated Counterclaims as follows:

6 **ANSWER**

7 189. ChromaDex incorporates its responses in paragraphs 1 to 188 in its Answer
8 to Elysium’s Third Amended Counterclaims (ECF 104) as if fully set forth herein.

9 190. ChromaDex refers to Section 4 of the NR Supply Agreement for its contents.
10 Except as expressly admitted, ChromaDex denies the allegations.

11 191. ChromaDex refers to Section 4.1 of the NR Supply Agreement for its
12 contents. Except as expressly admitted, ChromaDex denies the allegations.

13 192. ChromaDex refers to the Fourth Amended Complaint for its contents.
14 Except as expressly admitted, ChromaDex denies the allegations.

15 193. ChromaDex admits that it provided information about the specifications of
16 its NR product to its other NR customers. Except as expressly admitted, ChromaDex
17 denies the allegations.

18 194. ChromaDex refers to the Fourth Amended Complaint for its contents.
19 Except as expressly admitted, ChromaDex denies the allegations.

20 195. This paragraph contains legal conclusions to which no response is required.
21 To the extent a response is required, ChromaDex denies the allegations.

22 196. Denied.

23 **SEPARATE AND ADDITIONAL DEFENSES**

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

25 **FIRST AND SEPARATE ADDITIONAL DEFENSE**

26 Elysium lacks standing to assert the counterclaims.

27 **SECOND AND SEPARATE ADDITIONAL DEFENSE**

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

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THIRD AND SEPARATE ADDITIONAL DEFENSE

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

FOURTH AND SEPARATE ADDITIONAL DEFENSE

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

FIFTH AND SEPARATE ADDITIONAL DEFENSE

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

SIXTH AND SEPARATE ADDITIONAL DEFENSE

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

SEVENTH AND SEPARATE ADDITIONAL DEFENSE

Elysium is barred from recovery, in whole or in part, by the doctrine of laches, estoppel, election of remedies, and other applicable equitable doctrines.

EIGHTH AND SEPARATE ADDITIONAL DEFENSE

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

NINTH AND SEPARATE ADDITIONAL DEFENSE

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

TENTH AND SEPARATE ADDITIONAL DEFENSE

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

ELEVENTH AND SEPARATE ADDITIONAL DEFENSE

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

TWELFTH AND SEPARATE ADDITIONAL DEFENSE

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2 Elysium's cause of action for declaratory judgment of patent misuse is barred
3 because ChromaDex has purged any and all alleged patent misuse.

4 ChromaDex denies that it has ever engaged in any act of alleged patent misuse
5 and specifically denies that it has engaged in patent misuse by "tying [] access to its
6 patent rights to a royalty-bearing trademark license" and, "in some instances," by
7 "requir[ing] purchasers not only to license, but also to use ChromaDex trademarks in
8 order to obtain a supply of nicotinamide riboside". ChromaDex further denies that
9 Elysium's allegations constitute patent misuse as a matter of law. However, to eliminate
10 an issue from this litigation, to conserve the parties' and the Court's resources and to
11 streamline this action, and without prejudice to ChromaDex's arguments and
12 contentions, ChromaDex unequivocally renounced any rights to collect, charge, or
13 obtain royalties under the Trademark License and Royalty Agreement with Elysium in
14 its Second Amended Complaint (ECF 45 ¶ 91) and Answer to the First Amended
15 Counterclaim (ECF 46 at 10). Pursuant to Section 14.1 of the Trademark License and
16 Royalty Agreement and ChromaDex's notice sent to Elysium on October 31, 2016, the
17 Trademark License and Royalty Agreement was permanently terminated along with the
18 NIAGEN Supply Agreement effective on February 2, 2017. Accordingly, the allegedly
19 offending terms of the Trademark License and Royalty Agreement as alleged by
20 Elysium are no longer of any operative effect. The terminations of both agreements
21 were made in the ordinary course of business and are noted here for the purpose of
22 confirming the purge of any alleged patent misuse.

23 ChromaDex likewise unequivocally renounced any rights to charge, obtain, or
24 collect royalties on sales of non-trademark bearing NIAGEN from customers other than
25 Elysium, or to require the use of its trademarks under any such agreement. (ECF 45 ¶
26 92.) ChromaDex represents that it immediately terminated all such trademark license
27 agreements. These terminations were made for the purpose of purging any alleged
28 patent misuse. ChromaDex further refunded and/or credited any and all past royalties

1 paid by all customers pursuant to all “royalty-bearing trademark licenses.” (ECF 45 ¶
2 93.) ChromaDex confirms its representation to the Court that it will provide a credit to
3 Elysium for all past royalties against the damages owed by Elysium in this case,
4 including for the failure to pay for product purchased. (ECF 45 ¶ 93.)

5 These voluntary and proactive actions by ChromaDex were not an admission of
6 any wrong doing or acts of patent misuse, but instead were intended to prophylactically
7 and completely eliminate issues in this and any other dispute related to ChromaDex’s
8 patents by purging any and all allegedly unlawful conduct with respect to all allegations
9 by Elysium of patent misuse. In particular, these voluntary acts dissipated any and all
10 alleged effects of any alleged patent misuse in the market.

11 These voluntary steps taken by ChromaDex were intended to moot Elysium’s
12 allegation and counterclaim for a declaratory judgment that ChromaDex has misused
13 any of its patents. Such counterclaim should be promptly voluntarily dismissed by
14 Elysium, or dismissed *sua sponte* by the Court based on the unequivocal terminations
15 and renouncements made by ChromaDex.

16 **THIRTEENTH AND SEPARATE ADDITIONAL DEFENSE**

17 Elysium’s cause of action for declaratory judgment of patent misuse is moot.

18 **FOURTEENTH AND SEPARATE ADDITIONAL DEFENSE**

19 Elysium’s counterclaims are barred by their respective statutes of limitations.

20 **RESERVATION OF DEFENSES**

21 ChromaDex reserves the right to add additional defenses as the factual bases for
22 each of Elysium’s claims and allegations become known. Future discovery may reveal
23 additional facts that support additional affirmative defenses presently available to, but
24 unknown to, ChromaDex.

25 **PRAYER FOR RELIEF**

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

27 1. That the Court deny Elysium’s prayer for relief in its entirety and that the
28 Court dismiss the counterclaims with prejudice and enter judgment in ChromaDex’s

1 favor.

2 2. That the Court award ChromaDex costs, expenses, and attorney’s fees as
3 permitted by law.

4 3. That the Court award ChromaDex such other and further relief that it
5 deems appropriate.

6 **DEMAND FOR JURY TRIAL**

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

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9 Dated: August 23, 2018

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13 /s/ Michael A. Attanasio
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16 Defendant ChromaDex, Inc.
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