

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

CHROMADEX, INC.,

Plaintiff,

v.

ELYSIUM HEALTH, INC.,

Defendant.

Case No.: SACV 16-02277-CJC(DFMx)

**ORDER GRANTING CHROMADEX,
INC.'S MOTION FOR LEAVE TO
FILE FIFTH AMENDED
COMPLAINT [Dkt. 146]**

ELYSIUM HEALTH, INC.,

Counterclaimant,

v.

CHROMADEX, INC.,

Counter-Defendant.

1 **I. INTRODUCTION & BACKGROUND**

2
3 The present dispute arises out of soured relations between two former business
4 partners, ChromaDex, Inc. (“ChromaDex”) and Elysium Health, Inc. (“Elysium”).
5 Elysium sells one product: a dietary supplement called “Basis.” (Dkt. 109 [Fourth
6 Amended Complaint, hereinafter “FAC”] ¶ 2.) ChromaDex used to be Elysium’s sole
7 supplier for two active ingredients in Basis: (1) NIAGEN, a patented, proprietary health
8 ingredient comprised of nicotinamide riboside, and (2) pTeroPure, a patented, proprietary
9 health ingredient of pterostilbene. (*Id.*) After the business relationship fell apart,
10 ChromaDex brought this action for breach of contract, misappropriation of trade secrets,
11 and conversion against Elysium. (*See generally* FAC.) Elysium has brought
12 counterclaims for breach of contract and patent misuse, among other claims. (Dkts. 11,
13 118.)

14
15 Since ChromaDex filed its Fourth Amended Complaint, it has discovered new
16 information from documents produced by Elysium during discovery. (Dkt. 146-2
17 [Declaration of Barrett J. Anderson, hereinafter “Anderson Decl.”] ¶¶ 3–10.) This
18 information concerns actions taken by Elysium and Mark Morris, Elysium’s current Vice
19 President of Research and Development who was previously ChromaDex’s Vice
20 President of Business Development. (*Id.*; *see also* Dkt. 146-3 [Proposed Fifth Amended
21 Complaint] ¶ 15.) Morris allegedly provided proprietary and confidential information to
22 Elysium while he was at ChromaDex. (*See id.* ¶ 39.) Morris apparently texted trade
23 secret information to Elysium concerning the prices and volumes of orders from
24 ChromaDex’s other customers, which Elysium recorded in a spreadsheet. (*Id.*)

25
26 Before the Court is ChromaDex’s unopposed motion for leave to file a fifth
27 amended complaint. (Dkt. 146 [Motion]; Dkt. 146-1 [Memorandum, hereinafter
28 “Mot.”].) ChromaDex seeks to add Morris as a defendant and assert five causes of action

1 against him, including misappropriation of trade secret claims, breach of certain
2 confidential agreements between Morris and ChromaDex, and breach of fiduciary duty.
3 (*Id.* at 4–5.) ChromaDex also seeks to add two new causes of action against Elysium for
4 aiding and abetting Morris’s breach of fiduciary duty and for breach of contract with
5 respect to Elysium’s confidentiality obligations to ChromaDex. (*Id.* at 5.) For the
6 following reasons, the motion is **GRANTED**.¹

7 8 **II. DISCUSSION**

9
10 Federal Rule of Civil Procedure 15 provides that after a party has been served with
11 a responsive pleading, “a party may amend its pleading only with the opposing party’s
12 written consent or the court’s leave. The court should freely give leave when justice so
13 requires.” Fed. R. Civ. P. 15(a)(2). “In the absence of any apparent or declared reason—
14 such as undue delay, bad faith or dilatory motive on the part of the movant, repeated
15 failure to cure deficiencies by amendments previously allowed, undue prejudice to the
16 opposing party by virtue of allowance of the amendment, futility of amendment, etc.—
17 the leave sought should, as the rules require, be ‘freely given.’” *Eminence Capital, LLC*
18 *v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (quoting *Foman v. Davis*, 371 U.S.
19 178, 182 (1962)). The policy favoring amendment is to be applied with “extreme
20 liberality.” *Id.* at 1051. Absent prejudice, or a strong showing of the remaining factors,
21 there exists a presumption under Rule 15(a) in favor of granting leave to amend.
22 *Eminence Capital*, 316 F.3d at 1052. Where a plaintiff seeks to add a new defendant,
23 Federal Rule of Civil Procedure 21 also governs. The addition of a new defendant is
24 proper so long as it does not prejudice the new party. *DCD Programs, Ltd. v. Leighton*,
25 833 F.2d 183, 187 (9th Cir. 1987).

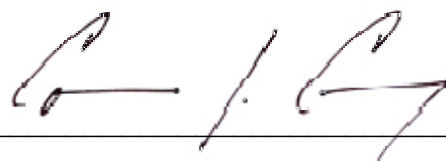
26
27
28 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
for December 10, 2018, at 1:30 p.m. is hereby vacated and off calendar.

1 The Court finds that the circumstances here warrant giving ChromaDex leave to
2 amend. Neither Morris nor Elysium would be unduly prejudiced by the amendment.
3 Discovery is still ongoing. (Mot. at 6.) The same law firm that represents Elysium will
4 also represent Morris. (Anderson Decl. ¶ 13.) Neither party has taken a deposition or
5 exchanged expert reports, so Morris will be able to take part in those discovery efforts.
6 (Mot. at 7.) Morris, as former ChromaDex employee and current Elysium employee, has
7 also had at least constructive notice of the dispute. He was served with a subpoena in
8 August 2017, (Anderson Decl. ¶ 2), he was referenced by name repeatedly in the Fourth
9 Amended Complaint, (*see, e.g.*, FAC ¶¶ 22–23, 30), and his conduct has been the subject
10 of several of ChromaDex’s discovery requests to Elysium, (Mot. at 7). Rule 15(a)(2)’s
11 mandate that leave to amend should be “freely give[n]” also weighs in favor of granting
12 ChromaDex’s motion. ChromaDex has not unduly delayed, as it served the proposed
13 fifth amended complaint on Elysium only six weeks after Elysium produced the latest
14 batch of documents under a new confidentiality declaration. (Anderson Decl. ¶ 10.)
15 ChromaDex’s proposed claims are based on new information learned through proper
16 discovery.

17
18 **III. CONCLUSION**

19
20 For the foregoing reasons, ChromaDex’s motion for leave to file a fifth amended
21 complaint is **GRANTED**.

22
23
24
25 DATED: November 27, 2018



26
27 CORMAC J. CARNEY

28 UNITED STATES DISTRICT JUDGE