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10 *ChromaDex, Inc.*

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

14
15 ChromaDex, Inc.,

16 Plaintiff,

17 v.

18 Elysium Health, Inc.,

19 Defendant.

20
21 Elysium Health, Inc.

22 Counterclaimant,

23 v.

24 ChromaDex, Inc.,

25 Counter-Defendant.

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

**CHROMADEX’S ANSWER TO
ELYSIUM’S THIRD AMENDED
COUNTERCLAIM**

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

NATURE OF THE CASE

1
2 1. ChromaDex admits that Elysium brings an action for fraud, breach of
3 contract, unfair competition, unjust enrichment, and declaratory judgment which seeks
4 to render ChromaDex’s nicotinamide riboside patent rights unenforceable. ChromaDex
5 notes that the Court dismissed Elysium’s unfair competition claim with prejudice.
6 ChromaDex admits it entered into three contracts with Elysium (the “Agreements”).

7 2. ChromaDex denies knowledge or information sufficient to form a belief
8 about the truth of the allegations.

9 3. Admitted.

10 4. This paragraph contains legal conclusions to which no response is
11 required. To the extent a response is required, ChromaDex denies knowledge or
12 information sufficient to form a belief about the truth of the allegations, and otherwise
13 denies the allegations.

14 5. ChromaDex admits that it has in-licensed several patents relating to
15 nicotinamide riboside. This paragraph contains legal conclusions to which no response
16 is required. Except as expressly admitted herein, denied.

17 6. This paragraph contains legal conclusions to which no response is
18 required. ChromaDex otherwise denies the allegations.

19 7. This paragraph contains legal conclusions to which no response is
20 required. ChromaDex otherwise denies the allegations.

21 8. ChromaDex refers to the NR Supply Agreement itself for the terms of the
22 parties’ agreement. This paragraph contains legal conclusions to which no response is
23 required. ChromaDex otherwise denies the allegations.

24 9. ChromaDex refers to the NR Supply Agreement itself for the terms of the
25 parties’ agreement. This paragraph contains legal conclusions to which no response is
26 required. ChromaDex otherwise denies the allegations.

27 10. ChromaDex refers to the NR Supply Agreement itself for the terms of the
28 parties’ agreement. This paragraph contains legal conclusions to which no response is

1 required. ChromaDex otherwise denies the allegations.

2 11. ChromaDex refers to the NR Supply Agreement itself for the terms of the
3 parties' agreement. This paragraph contains legal conclusions to which no response is
4 required. Except as expressly admitted, ChromaDex denies the allegations.

5 12. ChromaDex refers to the NR Supply Agreement itself for the terms of the
6 parties' agreement. This paragraph contains legal conclusions to which no response is
7 required. Except as expressly admitted, ChromaDex denies the allegations.

8 13. This paragraph contains legal conclusions to which no response is
9 required. ChromaDex otherwise denies the allegations.

10 14. Denied.

11 15. Denied.

12 16. Denied.

13 17. ChromaDex admits that on June 30, 2016, Elysium submitted to
14 ChromaDex purchase orders for 3000 kg of "Nicotinamide Riboside – Niagen" and 580
15 kg of Pterostilbene – pTeroPure." ChromaDex denies knowledge or information
16 sufficient to form a belief about the truth of the remaining allegations, and otherwise
17 denies the allegations.

18 18. Denied.

19 19. Denied.

20 20. Denied.

21 21. Denied.

22 22. Denied.

23 23. ChromaDex admits that Elysium seeks restitution and damages. Except as
24 expressly admitted herein, denied.

25 24. ChromaDex admits that Elysium seeks declaratory judgments that
26 ChromaDex's patent rights are unenforceable and that ChromaDex has not purged the
27 alleged patent misuse. ChromaDex further admits that Elysium seeks restitution for
28 unjust enrichment. Except as expressly admitted herein, denied.

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JURISDICTION AND VENUE

- 25. Admitted.
- 26. Admitted.

THE PARTIES

- 27. ChromaDex denies knowledge or information sufficient to form a belief about the truth of the allegations.
- 28. Admitted.

FACTUAL ALLEGATIONS

- 29. Admitted.
- 30. ChromaDex admits that nicotinamide riboside is found in nature, that Elysium paraphrases the text of ChromaDex’s “marketing materials” that are quoted out of context, and that NIAGEN® is the federally registered trademark ChromaDex uses to market its nicotinamide riboside product. Except as expressly admitted herein, denied.
- 31. This paragraph contains legal conclusions to which no response is required. ChromaDex otherwise denies the allegations.
- 32. ChromaDex admits that its website states that NIAGEN is “the world’s first and only commercially available nicotinamide riboside (NR).” Except as expressly admitted herein, denied.
- 33. Denied.
- 34. ChromaDex admits that it utilizes a third-party contract manufacturer to manufacture NIAGEN and that the third-party contract manufacturer is prohibited from distributing NIAGEN to any other party. Except as expressly admitted herein, denied.
- 35. This paragraph contains legal conclusions to which no response is required. ChromaDex otherwise denies the allegations.
- 36. This paragraph contains legal conclusions to which no response is required. ChromaDex otherwise denies the allegations.
- 37. Admitted.

1 38. Admitted.

2 39. Admitted.

3 40. Admitted.

4 41. Admitted.

5 42. This paragraph contains legal conclusions to which no response is
6 required. ChromaDex otherwise denies the allegations.

7 43. Denied.

8 44. This paragraph contains legal conclusions to which no response is
9 required. ChromaDex otherwise denies the allegations.

10 45. ChromaDex denies knowledge or information sufficient to form a belief
11 about the truth of the allegations.

12 46. Admitted.

13 47. ChromaDex admits that Jaksch sent an email to Leonard Guarante on
14 August 26, 2013, and refers to that email for its contents. Except as expressly admitted,
15 ChromaDex denies the allegations.

16 48. Denied.

17 49. ChromaDex admits that Marcotulli sent an email to ChromaDex on
18 November 8, 2013, and refers to that email for its contents. Except as expressly
19 admitted, ChromaDex denies the allegations.

20 50. ChromaDex admits that Jaksch sent an email to Elysium on December 13,
21 2013, and refers to that email for its contents. Except as expressly admitted,
22 ChromaDex denies the allegations.

23 51. ChromaDex admits that Jaksch sent an email to Elysium on December 13,
24 2013, and refers to that email for its contents. Except as expressly admitted,
25 ChromaDex denies the allegations.

26 52. Denied.

27 53. ChromaDex admits that Jaksch sent an email to Elysium on December 20,
28 2013, and refers to that email for its contents. Except as expressly admitted,

1 ChromaDex denies the allegations.

2 54. ChromaDex admits that Jaksch sent an email to Elysium on December 27,
3 2013, and refers to that email for its contents. Except as expressly admitted,
4 ChromaDex denies the allegations.

5 55. This paragraph contains legal conclusions to which no response is
6 required. ChromaDex otherwise denies the allegations.

7 56. Denied.

8 57. ChromaDex admits that the parties entered into a NR Supply Agreement
9 and a Trademark License and Royalty Agreement on February 3, 2014. ChromaDex
10 refers to the NR Supply Agreement for its contents. Except as expressly admitted,
11 ChromaDex denies the allegations.

12 58. ChromaDex admits that the Supply Agreement contained no express
13 license to ChromaDex's patent rights. Except as expressly admitted, ChromaDex
14 denies the allegations.

15 59. ChromaDex refers to the Trademark License and Royalty Agreement for
16 its contents. Except as expressly admitted, ChromaDex denies the allegations.

17 60. Denied.

18 61. ChromaDex refers to the Trademark License and Royalty Agreement for
19 its contents. Except as expressly admitted, ChromaDex denies the allegations.

20 62. ChromaDex refers to the Trademark License and Royalty Agreement for
21 its contents. Except as expressly admitted, ChromaDex denies the allegations.

22 63. This paragraph contains legal conclusions to which no response is
23 required. ChromaDex otherwise denies the allegations.

24 64. ChromaDex refers to the Supply Agreement, as amended, for its contents.
25 Except as expressly admitted, ChromaDex denies the allegations.

26 65. ChromaDex refers to the Supply Agreement, as amended, for its contents.
27 Except as expressly admitted, ChromaDex denies the allegations.

28 66. ChromaDex admits that the parties amended the Supply Agreement on

1 February 19, 2016. ChromaDex refers to the Supply Agreement, as amended, for its
2 contents. Except as expressly admitted, ChromaDex denies the allegations.

3 67. Denied.

4 68. ChromaDex refers to the Supply Agreement, as amended, for the terms of
5 the parties' agreement. Except as expressly admitted, ChromaDex denies the
6 allegations.

7 69. This paragraph contains legal conclusions to which no response is
8 required. ChromaDex denies knowledge or information sufficient to form a belief about
9 the truth of the allegations. ChromaDex otherwise denies the allegations.

10 70. ChromaDex refers to the Supply Agreement, as amended, for the terms of
11 the parties' agreement. Except as expressly admitted, ChromaDex denies the
12 allegations.

13 71. Denied.

14 72. ChromaDex admits that Alminana sent Jaksch an email on May 29, 2016,
15 and refers to that email for its contents. Except as expressly admitted, ChromaDex
16 denies the allegations.

17 73. ChromaDex admits that Jaksch sent an email to Elysium on June 13, 2016,
18 and refers to the email for its contents. Except as expressly admitted, ChromaDex
19 denies the allegations.

20 74. Denied.

21 75. Denied.

22 76. Denied.

23 77. This paragraph contains legal conclusions to which no response is
24 required. ChromaDex otherwise denies the allegations.

25 78. ChromaDex admits that Jaksch sent an email to Elysium on June 14, 2016,
26 and refers to that email for its contents. Except as expressly admitted, ChromaDex
27 denies the allegations.

28 79. Denied.

1 80. Denied.

2 81. Denied.

3 82. Denied.

4 83. Denied.

5 84. ChromaDex admits that its website refers to pterostilbene as “closely
6 related to resveratrol.” Except as expressly admitted, ChromaDex denies the
7 allegations.

8 85. Denied.

9 86. Denied.

10 87. Denied.

11 88. Denied.

12 89. This paragraph contains legal conclusions to which no response is
13 required. ChromaDex otherwise denies the allegations.

14 90. Denied.

15 91. This paragraph contains legal conclusions to which no response is
16 required. ChromaDex otherwise denies the allegations.

17 92. This paragraph contains legal conclusions to which no response is
18 required. ChromaDex otherwise denies the allegations.

19 93. ChromaDex admits that its analytical testing service offered a
20 “comprehensive suite of analytical services” including “litigation support.” Except as
21 expressly admitted, ChromaDex denies the allegations.

22 94. ChromaDex admits that it provided to some customers, not including
23 Elysium, statements signed by the company’s Director of Quality Assurance attesting
24 to the fact that its nicotinamide riboside was tested for chemicals subject to the
25 requirements of California’s voter initiative. Except as expressly admitted, ChromaDex
26 denies the allegations.

27 95. ChromaDex admits that it did not seek indemnification from Elysium for
28 liability pursuant to the California voter initiative. Except as expressly admitted,

1 ChromaDex denies the allegations.

2 96. ChromaDex admits that it was capable of testing its products for the
3 presence of chemicals subject to the labeling requirements of the California voter
4 initiative and tested the nicotinamide riboside it was supplying. Except as expressly
5 admitted, ChromaDex denies the allegations.

6 97. Denied.

7 98. Denied.

8 99. ChromaDex denies knowledge or information sufficient to form a belief
9 about the truth of the allegations.

10 100. ChromaDex denies knowledge or information sufficient to form a belief
11 about the truth of the allegations.

12 101. ChromaDex denies knowledge or information sufficient to form a belief
13 about the truth of the allegations.

14 102. Denied.

15 103. ChromaDex admits that certain FDA regulatory submissions state that the
16 Regulated Substance is “undetectable” in NIAGEN. Except as expressly admitted,
17 ChromaDex denies the allegations.

18 104. ChromaDex admits that it possessed an in-house comprehensive suite of
19 analytical services. Except as expressly admitted, ChromaDex denies the allegations.

20 105. ChromaDex admits that it tested its nicotinamide riboside for certain
21 substances regulated by the California voter initiative and that testing results were
22 reported on certificates of analysis signed by the Director of Quality Assurance. Except
23 as expressly admitted, ChromaDex denies the allegations.

24 106. Denied.

25 107. ChromaDex denies knowledge or information sufficient to form a belief
26 about the truth of the allegations regarding Elysium’s testing. ChromaDex otherwise
27 denies the allegations.

28 108. Denied.

1 109. ChromaDex admits that it provided lot-specific certificates of analysis.
2 Except as expressly admitted, ChromaDex denies the allegations.

3 110. ChromaDex admits that it provided certificates of analysis to certify that
4 the NR ChromaDex provided had been tested and met applicable quality and safety
5 standards. Except as expressly admitted, ChromaDex denies the allegations.

6 111. ChromaDex denies knowledge or information sufficient to form a belief
7 about the truth of the allegations.

8 112. Denied.

9 113. Denied.

10 114. ChromaDex admits that it had several discussions with Elysium regarding
11 this dispute, and that Jaksch, Will Black, Rob Fried, and Steve Block were involved in
12 some of those discussions. ChromaDex admits that the parties exchanged proposals.
13 Except as expressly admitted, ChromaDex denies the allegations.

14 115. Denied.

15 116. Denied.

16 117. Admitted.

17 118. ChromaDex admits that it issued a non-renewal notice to Elysium that
18 terminated the Supply Agreement as of February 2, 2017. Except as expressly admitted,
19 ChromaDex denies the allegations.

20 119. Denied.

21 120. This paragraph contains legal conclusions to which no response is
22 required. ChromaDex otherwise denies the allegations.

23 121. Denied.

24 122. This paragraph contains legal conclusions to which no response is
25 required. ChromaDex otherwise denies the allegations.

26 123. This paragraph contains legal conclusions to which no response is
27 required. ChromaDex otherwise denies the allegations.

28 124. Admitted.

1 125. This paragraph contains legal conclusions to which no response is
2 required. ChromaDex otherwise denies the allegations.

3 126. Denied.

4 127. ChromaDex denies knowledge or information sufficient to form a belief
5 about the truth of the allegations.

6 128. ChromaDex denies knowledge or information sufficient to form a belief
7 about the truth of the allegations.

8 129. ChromaDex admits that it held a Q1 2017 Results Earning Conference Call
9 on May 11, 2017 and there is a transcript of that call. Except as expressly admitted,
10 ChromaDex denies the allegations.

11 130. ChromaDex admits that it held a Q2 2017 Results Earning Conference Call
12 on August 10, 2017 and that there is a transcript of that call. Except as expressly
13 admitted, ChromaDex denies the allegations.

14 131. ChromaDex admits that it held a Q2 2017 Results Earning Conference Call
15 on August 10, 2017 and that there is a transcript of that call. Except as expressly
16 admitted, ChromaDex denies the allegations.

17 132. This paragraph contains legal conclusions to which no response is
18 required. ChromaDex otherwise denies the allegations.

19 133. This paragraph contains legal conclusions to which no response is
20 required. ChromaDex otherwise denies the allegations.

21 134. ChromaDex refers to its Third Amended Complaint (ECF 48) for its
22 contents. Except as expressly admitted, ChromaDex denies the allegations.

23 135. Denied.

24 136. Admitted.

25 137. This paragraph contains legal conclusions to which no response is
26 required. ChromaDex otherwise denies the allegations.

27 138. ChromaDex admits that it held a Q2 2017 Results Earning Conference Call
28 on August 10, 2017 and that there is a transcript of that call. ChromaDex admits that it

1 filed a Form 10-Q for the period ending July 1, 2017 with the Securities and Exchange
2 Commission on August 10, 2017 and refers to the document itself for its contents.
3 Except as expressly admitted, ChromaDex denies the allegations.

4 139. ChromaDex admits that in its Third Amended Complaint it covenanted to
5 “provide a credit to Elysium for all past royalties against the damages owed by Elysium
6 in this case” (ECF 48 ¶ 64), and that it has not returned the royalties paid by Elysium
7 under the Trademark License and Royalty Agreement. Except as expressly admitted,
8 ChromaDex denies the allegations.

9 140. ChromaDex admits that it filed a Form 10-Q for the period ending July 1,
10 2017 with the Securities and Exchange Commission on August 10, 2017 and refers to
11 the document itself for its contents. Except as expressly admitted, ChromaDex denies
12 the allegations.

13 141. This paragraph contains legal conclusions to which no response is
14 required. To the extent a response is required, ChromaDex denies knowledge or
15 information sufficient to form a belief about the truth of the allegations, and otherwise
16 denies the allegations.

17 142. This paragraph contains legal conclusions to which no response is
18 required. To the extent a response is required, ChromaDex denies knowledge or
19 information sufficient to form a belief about the truth of the allegations, and otherwise
20 denies the allegations.

21 **FIRST COUNTERCLAIM FOR RELIEF**

22 **(Breach of Contract – NR Supply Agreement)**

23 143. ChromaDex incorporates its responses in paragraphs 1 to 142 above as if
24 fully set forth herein.

25 144. Admitted.

26 145. Denied.

27 146. Denied.

28 147. Denied.

1 148. Denied.

2 149. Denied.

3 150. Denied.

4 151. ChromaDex refers to the NR Supply Agreement, as amended, for the terms
5 of the parties' agreement. To the extent a response is required, ChromaDex denies the
6 allegations.

7 152. Denied.

8 153. Denied.

9 154. ChromaDex refers to the NR Supply Agreement, as amended, for the terms
10 of the parties' agreement. To the extent a response is required, ChromaDex denies the
11 allegations.

12 155. Denied.

13 156. Denied.

14 **SECOND COUNTERCLAIM FOR RELIEF**

15 **(Breach of the Implied Covenant of Good**

16 **Faith and Fair Dealing – NR Supply Agreement)**

17 157. ChromaDex incorporates its responses in paragraphs 1 to 156 above as if
18 fully set forth herein.

19 158. This paragraph contains legal conclusions to which no response is
20 required. To the extent a response is required, ChromaDex denies knowledge or
21 information sufficient to form a belief about the truth of the allegations, and otherwise
22 denies the allegations.

23 159. Denied.

24 160. Denied.

25 161. Denied.

26 **THIRD COUNTERCLAIM FOR RELIEF**

27 **(Fraudulent Inducement – License and Royalty Agreement)**

28 162. ChromaDex incorporates its responses in paragraphs 1 to 161 above as if

1 fully set forth herein.

2 163. Admitted.

3 164. Denied.

4 165. Denied.

5 166. Denied.

6 167. Denied.

7 168. Denied.

8 169. Denied

9 **FOURTH COUNTERCLAIM FOR RELIEF**

10 **(Declaratory Judgment of Patent Misuse)**

11 170. ChromaDex incorporates its responses in paragraphs 1 to 169 above as if
12 fully set forth herein.

13 171. Denied.

14 172. Denied.

15 173. Denied.

16 174. Denied.

17 175. Denied.

18 176. Denied.

19 177. ChromaDex admits that it issued a non-renewal notice to Elysium that
20 terminated the Supply Agreement as of February 2, 2017. Except as expressly admitted,
21 ChromaDex denies the allegations.

22 178. ChromaDex denies knowledge or information sufficient to form a belief
23 about the truth of the allegations, and otherwise denies the allegations.

24 179. To the extent this paragraph refers to ChromaDex's statements,
25 ChromaDex refers to the statements themselves for their content. Except as expressly
26 admitted, ChromaDex denies the allegations.

27 180. Admitted.

28 181. Denied.

1 **FIFTH COUNTERCLAIM FOR RELIEF**

2 **(Restitution for Unjust Enrichment)**

3 182. ChromaDex incorporates its responses in paragraphs 1 to 181 above as if
4 fully set forth herein.

5 183. Denied.

6 184. Admitted.

7 185. Denied.

8 186. Denied.

9 187. Admitted.

10 188. ChromaDex admits that in its Third Amended Complaint it covenanted to
11 “provide a credit to Elysium for all past royalties against the damages owed by Elysium
12 in this case....” (ECF 48 ¶ 64) ChromaDex also admits that it has represented to
13 Elysium and the Court that “interest should be included when calculating the credit due
14 to Elysium for past royalties in the Court’s ultimate judgment.” (ECF 67-1 at 18)
15 Except as expressly admitted, ChromaDex denies the allegations.

16 Except as expressly admitted in response to paragraph 188, ChromaDex denies
17 that Elysium is entitled to any of the relief requested.

18
19 **SEPARATE AND ADDITIONAL DEFENSES**

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

21 **FIRST AND SEPARATE ADDITIONAL DEFENSE**

22 Elysium lacks standing to assert the counterclaims.

23 **SECOND AND SEPARATE ADDITIONAL DEFENSE**

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

25 **THIRD AND SEPARATE ADDITIONAL DEFENSE**

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

28

1 **FOURTH AND SEPARATE ADDITIONAL DEFENSE**

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

4 **FIFTH AND SEPARATE ADDITIONAL DEFENSE**

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

6 **SIXTH AND SEPARATE ADDITIONAL DEFENSE**

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

8 **SEVENTH AND SEPARATE ADDITIONAL DEFENSE**

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

11 **EIGHTH AND SEPARATE ADDITIONAL DEFENSE**

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

14 **NINTH AND SEPARATE ADDITIONAL DEFENSE**

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

18 **TENTH AND SEPARATE ADDITIONAL DEFENSE**

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

21 **ELEVENTH AND SEPARATE ADDITIONAL DEFENSE**

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

24 **TWELFTH AND SEPARATE ADDITIONAL DEFENSE**

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

27 ChromaDex denies that it has ever engaged in any act of alleged patent misuse
28 and specifically denies that it has engaged in patent misuse by “tying [] access to its

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

18 ChromaDex likewise unequivocally renounced any rights to charge, obtain, or
19 collect royalties on sales of non-trademark bearing NIAGEN from customers other than
20 Elysium, or to require the use of its trademarks under any such agreement. (ECF 45 ¶
21 92.) ChromaDex represents that it immediately terminated all such trademark license
22 agreements. These terminations were made for the purpose of purging any alleged
23 patent misuse. ChromaDex further refunded and/or credited any and all past royalties
24 paid by all customers pursuant to all “royalty-bearing trademark licenses.” (ECF 45 ¶
25 93.) ChromaDex confirms its representation to the Court that it will provide a credit to
26 Elysium for all past royalties against the damages owed by Elysium in this case,
27 including for the failure to pay for product purchased. (ECF 45 ¶ 93.)
28

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

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

12 **THIRTEENTH AND SEPARATE ADDITIONAL DEFENSE**

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

14 **FOURTEENTH AND SEPARATE ADDITIONAL DEFENSE**

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

16 **RESERVATION OF DEFENSES**

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

21 **PRAYER FOR RELIEF**

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

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

1 deems appropriate.

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DEMAND FOR JURY TRIAL

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

Dated: April 13, 2018

COOLEY LLP
MICHAEL A. ATTANASIO (151529)
EAMONN GARDNER (310834)
JON F. CIESLAK (268951)
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/s/ Michael A. Attanasio
Michael A. Attanasio (151529)
Attorneys for Plaintiff and Counter-
Defendant ChromaDex, Inc.