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

15 ChromaDex, Inc.,  
 16  
 17 Plaintiff,  
 18  
 19 v.  
 20 Elysium Health, Inc. and Mark Morris,  
 21  
 22 Defendants.

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

**CHROMADEx’S NOTICE OF *EX PARTE***  
**APPLICATION TO MODIFY THE**  
**BRIEFING SCHEDULE FOR**  
**RESPONDING TO THE COURT’S ORDER**  
**(DKT. 369)**

20 Elysium Health, Inc.,  
 21  
 22 Counterclaimant,  
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 24 v.  
 25 ChromaDex, Inc.,  
 26  
 27 Counter-Defendant.

Judge: Hon. Cormac J. Carney  
 Courtroom: 7C

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that Plaintiff and Counter-Defendant ChromaDex,  
3 Inc. (“ChromaDex”) hereby makes this *ex parte* application to modify the briefing  
4 schedule for responding to the Court’s order (Dkt. 369) (the “Application”). This  
5 Application is based on this Notice of *Ex Parte* Application and *Ex Parte* Application,  
6 the accompanying Memorandum of Points and Authorities, the Declaration of  
7 Michael A. Attanasio and attached Exhibits, and all records and papers on file in this  
8 action, and any evidence or oral argument offered at any hearing on this Application  
9 that the Court may order.

10 This Application is made following a conference of counsel, which took place  
11 on October 10, 2019. Counsel for Defendants Elysium Health, Inc. and Mark Morris  
12 (“Defendants”) stated that Defendants intend to oppose the Application.

13 Dated: October 10, 2019 COOLEY LLP

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16 /s/ Michael A. Attanasio  
Michael A. Attanasio (151529)

17 Attorneys for Plaintiff and Counter-  
18 Defendant ChromaDex, Inc.

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18 **UNITED STATES DISTRICT COURT**  
 19 **CENTRAL DISTRICT OF CALIFORNIA**  
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21 ChromaDex, Inc.,  
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 23 Plaintiff,  
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 25 v.  
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 27 Elysium Health, Inc. and Mark Morris,  
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 29 Defendants.

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

**CHROMADEx’S MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT OF *EX PARTE* APPLICATION  
 TO MODIFY THE BRIEFING SCHEDULE  
 FOR RESPONDING TO THE COURT’S  
 ORDER (DKT. 369)**

Judge: Hon. Cormac J. Carney  
 Courtroom: 7C

30 Elysium Health, Inc.,  
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 32 Counterclaimant,  
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 34 v.  
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 36 ChromaDex, Inc.,  
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 38 Counter-Defendant.

1 The Court has posed several questions to ChromaDex regarding its damages  
2 claims and causation. (Dkt. 369.) These questions are readily answered with  
3 evidence that ChromaDex has submitted to the Court, additional evidence it will  
4 submit, and still more evidence that it would prove at trial but will advance now in  
5 response to the Court’s order. This evidence is overwhelming, and will prove beyond  
6 doubt that Morris and Elysium’s theft of ChromaDex’s confidential information and  
7 trade secrets—framed by Morris’s pledge to “destroy” ChromaDex in order to benefit  
8 Elysium’s founders, to whom he promised “unconditional loyalty” while he was still a  
9 ChromaDex executive—materially and economically benefitted Elysium and Morris  
10 and hurt ChromaDex. And all of these issues, and the Court’s questions, must be  
11 evaluated and addressed in a way that is faithful to clear authority establishing the  
12 parties’ respective burdens at summary judgment and at trial, the importance of  
13 circumstantial evidence in precisely this type of case, and the reluctance expressed by  
14 most courts to reward wrongdoers who steal trade secrets and confidential information  
15 only to cover their tracks once it is safely in their hands and capable of being deployed  
16 in multiple, creative, and secretive ways.

17 This is a case concerning trade secrets, confidential information, and breach of  
18 fiduciary duty. It is not simply a breach of contract case. The text messages alone are  
19 extraordinarily powerful evidence that defendant Morris and defendant Elysium  
20 conspired to steal both confidential information and trade secrets from ChromaDex,  
21 conspired to hide their conduct, and conspired to use that information to help Elysium  
22 “destroy” ChromaDex—Morris’s word, not ChromaDex’s—with its investors, its  
23 supplier, and its intellectual property partners. One does not steal information in order  
24 to destroy a company and then decide never to use the stolen information. Morris and  
25 Elysium are not bank robbers who held up the teller, took the money, got in the  
26 getaway car, and then inexplicably decided never to spend their ill-gotten proceeds.  
27 And ChromaDex will prove their misuse of the information at trial with  
28 overwhelming evidence of their strategic and calculated perfidy.

1 For present purposes, the point is that the Court's pointed but readily  
 2 answerable questions concerning causation have been put to ChromaDex, not  
 3 Defendants, notwithstanding that it is *Defendants'* burden to show both that there is  
 4 no genuine dispute as to any material fact and that they are entitled to judgment as a  
 5 matter of law.<sup>1</sup> As such, ChromaDex respectfully submits that it should have the  
 6 opening brief and reply on those questions. This approach is consistent with the law,  
 7 custom, and fairness. For those reasons, ChromaDex respectfully requests that the  
 8 Court modify the briefing schedule as follows:

- 9 • ChromaDex shall file a supplemental brief, not to exceed 15 pages,  
 10 addressing the Court's questions on causation by **October 30, 2019**.
- 11 • Elysium shall file a supplemental brief, not to exceed 15 pages,  
 12 addressing the Court's questions on patent misuse by **October 30, 2019**.
- 13 • ChromaDex and Defendants shall file opposition briefs, not to exceed  
 14 15 pages, by **November 18, 2019**.
- 15 • ChromaDex and Elysium shall file reply briefs, not to exceed 10 pages,  
 16 by **November 27, 2019**.

17 These are the same briefing deadlines set by the Court; the only change is the manner  
 18 in which the Court's questions are addressed.

19 An *ex parte* application is necessary to avoid further delay of the summary  
 20 judgment hearing and trial, a delay that has been particularly harmful to ChromaDex  
 21 (a public company), its employees, and its investors. *See Horne v. Wells Fargo Bank,*  
 22 *N.A.*, 969 F. Supp. 2d 1203, 1205 (C.D. Cal. 2013) ("The use of [an *ex parte*  
 23 application] is justified [where] . . . the party seeks a routine procedural order that  
 24

25 <sup>1</sup> *See Bladeroom Grp. Ltd. v. Emerson Elec. Co.*, 2018 WL 2021884, at \*1 (N.D. Cal.  
 26 May 1, 2018) ("The issue of causation may be decided as a question of law only if,  
 27 under undisputed facts, there is no room for a reasonable difference of opinion."  
 28 (internal quotation marks omitted)); *Security Alarm Financing Enters., L.P. v. Alder*  
*Holdings, LLC*, 2017 WL 5230571, at \*8 (D. Alaska Feb. 3, 2017) (denying summary  
 judgment on trade secrets claim where plaintiff "presented sufficient evidence of some  
 damage, albeit disputed").

1 cannot be obtained through a regularly noticed motion (*i.e.*, to file an overlong brief or  
 2 shorten the time within which a motion may be brought).”). That harm is especially  
 3 acute here given that the patent infringement action filed against Elysium by  
 4 ChromaDex and the Trustees of Dartmouth College in the District of Delaware has  
 5 been stayed—by Elysium’s motion—pending the outcome of the patent misuse  
 6 counterclaim before this Court. (Ex. A to Declaration of Michael A. Attanasio  
 7 (“Attanasio Decl.”).) Further delay in this case therefore advantages Elysium and  
 8 continues to deprive ChromaDex of its legal right to assert its patents and stop  
 9 Elysium’s ongoing infringement of its product. And ChromaDex’s false advertising  
 10 and unfair business practices lawsuit against Elysium in the Southern District of New  
 11 York has also been paused in anticipation of the outcome of trial before this Court.  
 12 (Ex. B, Attanasio Decl.) More delay here therefore causes more delay in those courts,  
 13 and justice delayed is justice denied.

14 For the above reasons, ChromaDex respectfully requests that the Court grant  
 15 this Application and modify the briefing schedule accordingly.<sup>2</sup>

16 Dated: October 10, 2019

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23 /s/ Michael A. Attanasio  
 24 Michael A. Attanasio (151529)

25 *Attorneys for Plaintiff and Counter-Defendant*  
 26 *ChromaDex, Inc.*

27 <sup>2</sup> Local Rule 7-19 requires disclosure of the name, address, telephone number, and e-  
 28 mail address of Defendants’ counsel. ChromaDex’s attorneys spoke with the  
 following attorney for Defendants about the Application: Kristin Keranen;  
 BakerHostetler, 45 Rockefeller Plaza, New York, NY 10111-0100; (212) 589-4600;  
 kkeranen@bakerlaw.com.