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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

14 ChromaDex, Inc.,
15 Plaintiff,
16 v.
17 Elysium Health, Inc.,
18 Defendant.

Case No.: 8:16-cv-02277-CJC-DFM

**ELYSIUM HEALTH, INC.'S
SUPPLEMENTAL BRIEF IN
OPPOSITION TO
CHROMADEx'S MOTION TO
COMPEL DOCUMENTS**

Date: November 13, 2018
Time: 10:00 a.m.
Crtn: 6B
Judge: Hon. Douglas F. McCormick

21 Elysium Health, Inc.,
22 Counterclaimant,
23 v.
24 ChromaDex, Inc.,
25 Counter-Defendant.

Discovery Cut-Off: December 21, 2018
Pretrial Conference: March 25, 2019
Trial: April 2, 2018

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1 ChromaDex’s motion to compel the production of documents that relate
2 solely to its dismissed-with-prejudice conversion claim, its continued attempts to
3 fish for new potential claims through impermissible discovery, and its efforts to
4 disguise its own contractual breaches by claiming entitlement to know the content
5 of entirely separate contracts to which it is not a party should be seen for what they
6 are: A cynical ploy in furtherance of its policy to force a competitor from a
7 lucrative market and a distraction from its own malfeasance.

8 **I. FACTUAL AND PROCEDURAL BACKGROUND**

9 The facts and procedural history are laid out in the parties’ previous briefing.
10 (*See* ECF Nos. 103, 109, 111, 112.) ChromaDex used Elysium to develop the
11 market for nicotinamide riboside (“NR”), then entered the market itself, and
12 repeatedly lied to Elysium and breached its contracts with Elysium in an effort to
13 appropriate Elysium’s success and eliminate a customer it had turned into a
14 competitor. Among other abuses, ChromaDex fraudulently induced Elysium to
15 agree to a trademark licensing and royalty agreement, breached Elysium’s “most-
16 favored-nation” pricing clause in the NIAGEN Supply Agreement between the two
17 parties, deceived Elysium about that breach, violated the manufacturing provisions
18 of the parties’ contract, and hid the presence of acetamide in the NR it sold to
19 Elysium. (Joint Stipulation Under Local Rule 37-2 Regarding ChromaDex, Inc.’s
20 Motion to Compel Further Responses From Elysium Health, Inc. (ECF Nos. 133-
21 01, 135-01) (“Joint Stipulation” or “JS”) at 4.)

22 Struggling to compete with Elysium, ChromaDex has continually sought to
23 undermine Elysium by attempting to expand the scope of this litigation through a
24 succession of mislead, meritless claims that have largely been dismissed or
25 withdrawn. (JS at 5.) Undaunted by the recent dismissal with prejudice of a
26 conversion claim it sought to plead, ChromaDex is still doggedly pursuing
27 documents relevant only to that claim, while also pushing for an admitted fishing
28 expedition in an attempt to uncover more potential claims to assert. Neither

1 complies with the discovery rules. *See, e.g., Bryant v. Mattel, et al.*, 2007 WL
2 5432959, at *3 (C.D. Cal. Apr. 19, 2007) (citing Fed. R. Civ. P. 26(b)(1)).

3 **II. CHROMADEx DEMANDS DOCUMENTS THAT IT KNOWS ARE**
4 **NOT RELATED TO ANY CLAIMS OR DEFENSES AT ISSUE IN**
5 **THIS LITIGATION.**

6 Elysium has already produced tens of thousands of documents in connection
7 with the more than 180 document requests that ChromaDex has served.
8 Unsatisfied, ChromaDex now demands the production of still more documents that
9 in no way relate to the claims or defenses actually plead by either party.
10 ChromaDex either ignores or elides this point in the Joint Stipulation, in an effort to
11 fish for new potential claims and in the hopes of acquiring sensitive commercial
12 information about a competitor's business. (*See, e.g., JS at 54-56, 60-78, 93-103.*)
13 ChromaDex ignores or attempts to downplay the numerous instances in which
14 Elysium has agreed to produce *relevant* documents in response to ChromaDex's
15 requests, arguing instead for the production of "all" documents, even when those
16 documents could not possibly be relevant. (*Id. at 5-6, 58-59, 78-80, 82, 87, 91-92,*
17 *104, 107, 114.*) It is clear that ChromaDex does not seek these documents in an
18 effort to "secure the *just, speedy, and inexpensive* determination of every action,"
19 *Mailhoit v. Home Depot U.S.A., Inc.*, 285 F.R.D. 566, 569 (C.D. Cal. 2012)
20 (emphasis in original), but rather is engaging in impermissible discovery tactics as a
deliberate strategy.

21 For example, ChromaDex asserts that it is entitled to "[a]ll samples of
22 [Elysium's] alternate source of nicotinamide riboside [Elysium] incorporated into
23 [Elysium's] product Basis and which [Elysium] tested for quality or purity,"
24 (Narrowed Request No. 129) and "[a]ll Certificates of Analysis related to
25 [Elysium's] product Basis and/or the ingredients contained therein" (Request No.
26 130), because "[t]he Basis COAs are thus relevant to determining whether the
27 [acetamide] Elysium alleges was present because of ChromaDex's NIAGEN, may
28 instead have come from another source" (JS at 101) and "ChromaDex must be

1 permitted to test samples of Elysium’s new source of NR to compare levels of
2 [acetamide] in that NR to levels allegedly found in ChromaDex’s NIAGEN.” (JS at
3 101-02.)

4 ChromaDex’s assertions that this information is relevant to defend against
5 Elysium’s counterclaims are based on a stark misrepresentation of Elysium’s
6 allegations. Elysium’s counterclaim at issue is for ChromaDex’s breach of the NR
7 Supply Agreement. As relevant here, Elysium alleges that ChromaDex violated its
8 contractual obligations to inform Elysium that acetamide was present in the NR that
9 ChromaDex sold to Elysium – *not that acetamide was present in Elysium’s product*
10 *Basis, or that acetamide is currently present in Basis.* (See, e.g., Third Amended
11 Counterclaim (ECF No. 103) at ¶¶ 90-113, 143-156.) The issue is whether
12 ChromaDex supplied Elysium with NR that contained acetamide at levels over the
13 limits set by California’s Proposition 65.¹ The only relevant tests are the tests of
14 the NR supplied by ChromaDex during the contractual period – a position endorsed
15 by ChromaDex when it deemed it advantageous. (See JS at 106-07.) Elysium’s
16 new source of NR, or the other ingredients in Basis, are simply irrelevant to the
17 question of whether ChromaDex’s NR contained acetamide.

18 This pattern of irrelevance runs throughout ChromaDex’s discovery requests
19 at issue. ChromaDex’s claim for conversion of documents was dismissed with
20 prejudice (see July 26 Order (ECF No. 115) at 7-8), and discovery is not allowed
21 for dismissed causes of action. See, e.g., *Patterson v. Johnson*, No. CV-16-03949-
22 PHX-GMS, 2017 WL 3315239, at *1 (D. Ariz. Aug. 2, 2017) (“Of course, there is
23 no authority that would allow a party to conduct discovery on dismissed claims.”)
24 In order to get around the dismissal of its claim for conversion of documents,
25 ChromaDex now argues that the documents it originally claimed were converted –
26 documents it expressly disclaimed as trade secrets (see, e.g., ECF No. 115 at 7; JS
27

28 ¹ As explained in more detail in the Joint Stipulation, ChromaDex was aware of the
presence of acetamide in its NR. (JS at 109-10.)

1 at 83) – are relevant to its claims of trade secret misappropriation and breach of
2 contract to show intent or a pattern and practice of alleged misbehavior (Requests
3 141, 143-146, 148-155, 159-160). (JS at 63, 80-82.)

4 This fails for two reasons: (1) documents not alleged to be trade secrets
5 cannot be evidence of an alleged “intent” to misappropriate trade secrets, and (2)
6 intent is not an element of either a claim for the misappropriation of trade secrets or
7 a breach of contract, and therefore Elysium’s alleged “intent” is irrelevant and non-
8 discoverable. *See, e.g., Lightning Box Games Pty, Ltd, v. Plaor, Inc.*, 2017 WL
9 7310782, at *6-7 (N.D. Cal. Dec. 29, 2017); *Bakst v. Cmty. Mem’l Health Sys.*,
10 2011 WL 13214315, at *14 (C.D. Cal. Mar. 7, 2011); *see also* JS at 81-82. Nor
11 would Elysium’s intent be relevant to ChromaDex’s request for punitive damages,
12 because the Requests at issue do not relate to the conduct for which ChromaDex
13 purports to seek punitive damages. *See, e.g., State Farm Mut. Auto. Ins. Co. v.*
14 *Campbell*, 538 U.S. 408, 419, 422-423 (2003) (a court may not “award [] punitive
15 damages to punish and deter conduct that bore no relation to the [plaintiff’s]
16 harm”); *cf. Mattel, Inc. v. MGA Entm’t, Inc.*, 801 F. Supp. 2d 950 (C.D. Cal. 2011)
17 (exemplary damages awarded for repeated violations of CUTSA). (*See* JS at 82-
18 84.)

19 Similarly, with respect to Requests 93-98, ChromaDex demands “all”
20 documents and communications relating to Elysium’s negotiations and contracts
21 with third parties relating to various aspects of cGMP standards, despite the fact
22 that ChromaDex has previously taken the position that the only relevant documents
23 are “documents showing the exact cGMP status of NIAGEN sold to Elysium . . .
24 during the contract period.” (JS at 106-07.) Elysium’s contracts with third parties
25 have no relevance to whether or not ChromaDex breached its contract with
26 Elysium, a fact that ChromaDex has used to resist discovery into its own actions.
27 (JS at 106-07.)
28

1 **III. ATTORNEYS’ FEES ARE INAPPROPRIATE BECAUSE ELYSIUM**
2 **WAS SUBSTANTIALLY JUSTIFIED IN ITS OBJECTIONS.**

3 Federal Rule of Civil Procedure 37(a)(5) provides that a court “must not
4 order” the payment of attorneys’ fees, even if the opposing party loses the motion to
5 compel, if “the opposing party’s nondisclosure, response, or objection was
6 substantially justified.” As Elysium explained in the Joint Stipulation,
7 “substantially justified” means that reasonable people could differ as to the
8 appropriateness of the contested action. *Pierce v. Underwood*, 487 U.S. 552, 565
9 (1988).

10 Elysium has explained at length and in in detail why ChromaDex’s document
11 requests are irrelevant, impermissible, and at times duplicative. (JS at 57-59, 86-89,
12 91, 104-06, 109, 114.) Elysium has also explained that it has produced, in good
13 faith and after a reasonable search, non-privileged documents that are relevant to
14 the claims and defenses at issue, and in proportion to the needs of the case. No
15 more is required under the discovery rules, and ChromaDex’s demand for
16 attorneys’ fees for bringing this motion should be denied. *Cf. Hyde & Hyde, Inc. v.*
17 *Mount Franklin Food, LLC*, 2012 WL 12862827, at *1 (W.D. Tex. Mar. 1, 2012)
18 (finding defendants’ refusal to comply with plaintiffs’ discovery request was
19 substantially justified because “it was a close question whether the requested
20 discovery was relevant and likely to lead to admissible evidence”).

21 Elysium has complied with its discovery obligations, and respectfully
22 requests that ChromaDex’s motion to compel and for attorneys’ fees be denied in
23 its entirety.

24 Dated: October 30, 2018

Respectfully submitted,

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