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19
20 **UNITED STATES DISTRICT COURT**
21 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
22 **(SOUTHERN DIVISION)**

23 ChromaDex, Inc.,

24 Plaintiff,

25 v.

26
27 Elysium Health, Inc. and Mark
28 Morris,

Case No. 8:16-cv-02277-CJC(DFMx)

Judge: Hon. Cormac J. Carney

NOTICE OF SERVICE OF SUBPOENA

Defendants.

Elysium Health, Inc.,

Counterclaimant,

v.

ChromaDex, Inc.,

Counter-Defendant.

Discovery Cut-Off: April 5, 2019

Pretrial Conference: July 1, 2019

Trial: July 9, 2019

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiff and Counter-Defendant ChromaDex, Inc. will serve a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action on non-party General Catalyst Group Management, LLC. A copy of the subpoena is attached hereto as "EXHIBIT A."

Dated: February 1, 2019

Respectfully Submitted,

COVINGTON & BURLING LLP

By: /s/ Mitchell A. Kamin

Mitchell A. Kamin

Attorneys for Plaintiff and Counter-Defendant ChromaDex, Inc.

EXHIBIT A

UNITED STATES DISTRICT COURT

for the

Central District of California

ChromaDex, Inc.

Plaintiff

v.

Elysium, Inc.

Defendant

Civil Action No. 8:16-cv-02277-CJC-DFM

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

General Catalyst Group Management, LLC
c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Attachment 1

Place: Covington & Burling LLP
One Front Street
San Francisco, CA 94111

Date and Time:

3/6/2019 2:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/01/2019

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Mitchell A. Kamin

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* ChromaDex, Inc., who issues or requests this subpoena, are:

Mitchell A. Kamin, 1999 Avenue of the Stars, Ste. 3500, Los Angeles, CA 90067, mkamin@cov.com, 424-332-4800

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 8:16-cv-02277-CJC-DFM

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT 1

Definitions

- A. “ACTION” means the above-captioned litigation instituted by ChromaDex on December 29, 2016.
- B. “CHROMADEX” means ChromaDex, Inc. and each of its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents.
- C. “COMMUNICATION” means any transmission of information from one person or entity to another by any means in the form of facts, ideas, inquiries, or otherwise.
- D. A request to provide information “CONCERNING” something means relating to directly or indirectly, referring to, describing, referencing, evidencing, or constituting a stated subject matter.
- E. “DOCUMENT” is used in its broadest sense, and means any written, printed, typed, recorded, magnetic, punched copied, graphic or other tangible thing in, upon, or from which information may be embodied, translated, conveyed, or stored (including, but not limited to, correspondence, memoranda, notes, records, books, papers, telegrams, telexes, dictation or other audio tapes, video tapes, computer tapes, computer discs, computer printouts, microfilm, microfiche, worksheets, diaries, calendars, photographs, charts, drawings, sketches, and all other writings or drafts thereof) as defined in Federal Rule of Civil Procedure 34(a), Federal Rule of Civil Procedure 45, and Federal Rule of Evidence 1001, whether or not labeled “confidential.” A draft or non-identical copy is a separate DOCUMENT within the meaning of this term.
- F. “ELYSIUM” means Elysium, Inc. and each of its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents.
- G. “NICOTINAMIDE RIBOSIDE” means the chemical compound nicotinamide riboside, sometimes abbreviated as “NR,” whether or not sold under the brand name “NIAGEN.”
- H. PERSON means any natural PERSON or any business, legal, or governmental entity or association or any other cognizable entity, including, without limitation, corporations, proprietorships, partnerships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies, and orders.
- I. “PTEROSTILBENE” means the chemical compound pterostilbene, whether or not sold under the brand name “PTEROPURE.”
- J. “YOU,” “YOUR,” or “YOURS” means General Catalyst and each of its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents.

Instructions

1. If a document request is silent as to the time period for which information is sought, YOU should include all DOCUMENTS from June 1, 2013 to the present.
2. Pursuant to Rule 34 of the Federal Rules of Civil Procedure, YOU are to produce all DOCUMENTS and things within the scope of the definitions set forth herein that are within YOUR possession, custody, or control as well as all DOCUMENTS within the possession, custody, or control of anyone acting on YOUR behalf including, but not limited to, YOUR agents, representatives, employees, officers, directors, and attorneys.
3. YOU shall produce DOCUMENTS and electronically stored information ("ESI") pursuant to the Stipulated ESI Order filed in this ACTION.
4. These document requests embrace originals, identical copies if originals are unavailable, and non-identical copies (whether different from the originals because of notes made on such copies or otherwise) of the DOCUMENTS described in these document requests.
5. Each document request shall be complied with fully unless it is objected to in good faith, in which event the reasons for YOUR objection shall be stated in detail. If an objection pertains to only a portion of the document request, or a word, phrase, or clause contained within it, YOU are required to state YOUR objection to that portion and to comply with the remainder of the request, using YOUR best efforts to do so.
6. Pursuant to Federal Rule of Civil Procedure 34, DOCUMENTS produced in response to these document requests shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories in the demand. DOCUMENTS attached to each other consisting of multiple pages must not be separated.
7. DOCUMENTS are to be produced in their full and unredacted form; redacted DOCUMENTS shall not constitute compliance with these document requests, unless such DOCUMENTS are redacted pursuant to a claim of privilege, as set forth below.
8. If YOU or YOUR counsel assert that any information responsive to any document request is privileged or otherwise protected from discovery, YOU are to comply with the requirements of Federal Rule of Civil Procedure 26(b)(5) and the Stipulated ESI and/or Stipulated Protective Order filed in this ACTION as to each DOCUMENT, thing, or piece of information for which a claim of privilege or protection from discovery is made.
9. If any responsive DOCUMENT is no longer in existence, cannot be located or is not in YOUR possession, custody, or control, then identify the DOCUMENT, describe its subject matter, and describe its disposition, including, without limitation, identifying the PERSON having knowledge of the disposition.

10. If production of any requested DOCUMENT(S) is objected to on the grounds that production is unduly burdensome or the DOCUMENT(S) is not reasonably accessible as defined in Rule 26(b)(2) of the Federal Rules of Civil Procedure, describe in detail the burden or expense of producing the requested DOCUMENT(S), including but not limited to identification of the steps that would be necessary to retrieve and produce the DOCUMENT(S) and a dollar estimate of the cost of performing those steps.
11. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, these document requests are continuing in nature and YOU are to promptly supplement (i) if YOU learn that the information YOU disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to ChromaDex during the discovery process or in writing, or (ii) if ordered by the court.
12. The use of the singular form of any word includes the plural, and use of the plural form includes the singular form.
13. Each paragraph herein shall be construed independently and not by reference to any other paragraph for the purpose of limitation.

Documents Requested

1. All COMMUNICATIONS between YOU and ELYSIUM CONCERNING CHROMADEX.
2. All COMMUNICATIONS between YOU and ELYSIUM CONCERNING ELYSIUM's contracts with CHROMADEX, including but not limited to COMMUNICATIONS concerning pricing, orders, most favored nation provisions, or any payments made or owed under such contracts.
3. All COMMUNICATIONS between YOU and ELYSIUM CONCERNING ELYSIUM's supply or supply chain for NICOTINAMIDE RIBOSIDE or PTEROSTILBENE, including but not limited to COMMUNICATIONS CONCERNING any planned or actual change in the supplier or manufacturer of NICOTINAMIDE RIBOSIDE or PTEROSTILBENE to be used by ELYSIUM.
4. All COMMUNICATIONS between YOU and ELYSIUM CONCERNING the market for NICOTINAMIDE RIBOSIDE, including but not limited to information CONCERNING the volumes and prices of NICOTINAMIDE RIBOSIDE or PTEROSTILBENE purchased by ELYSIUM or others.
5. All COMMUNICATIONS between YOU and ELYSIUM CONCERNING Mark Morris or Ryan Dellinger.
6. All COMMUNICATIONS between YOU and ELYSIUM CONCERNING any litigation between ELYSIUM and CHROMADEX.
7. All COMMUNICATIONS between YOU and ELYSIUM CONCERNING any intellectual property (including but not limited to trade secrets and patents) concerning NICOTINAMIDE RIBOSIDE or PTEROSTILBENE.
8. All COMMUNICATIONS between YOU and ELYSIUM CONCERNING trading in CHROMADEX stock, including but not limited to short selling of CHROMADEX's stock in June 2016.
9. All DOCUMENTS memorializing, reflecting, or CONCERNING the COMMUNICATIONS requested in Request Nos. 1-8 above, including but not limited to any notes or summaries of oral COMMUNICATIONS between YOU and ELYSIUM falling within the scope of Request Nos. 1-8 above.