

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

1 MICHAEL R. MATTHIAS, Bar No. 057728
mmathias@bakerlaw.com
2 ELIZABETH M. TRECKLER, Bar No. 282432
etreckler@bakerlaw.com
3 **BAKER & HOSTETLER LLP**
11601 Wilshire Boulevard, Suite 1400
4 Los Angeles, California 90025-0509
Telephone: (310) 820-8800
5 Facsimile: (310) 820-8859

6 JOSEPH N. SACCA, (admitted *pro hac vice*)
jsacca@bakerlaw.com
7 **BAKER & HOSTETLER LLP**
45 Rockefeller Plaza
8 New York, New York 10111-0100
Telephone: (212) 589-4290
9 Facsimile: (212) 589-4201

10 *Counsel continued on following page*

11 **IN THE UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **(WESTERN DIVISION)**

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

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

**NOTICE OF ELYSIUM HEALTH,
INC.'S AND MARK MORRIS'S EX
PARTE APPLICATION AND EX
PARTE APPLICATION TO
CONSOLIDATE MOTION TO SEAL
PROCEDURES WITH RESPECT TO
SUMMARY JUDGMENT MOTIONS**

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

*[Filed Concurrently with Declaration of
Kristin L. Keranen; and (Proposed) Order]*

Judge: Hon. Cormac J. Carney
Date: n/a
Time: n/a

Trial: October 15, 2019
Pretrial Conference: September 18, 2019

1 DONALD R. WARE, (admitted *pro hac vice*)
dware@foleyhoag.com

2 MARCO J. QUINA, (admitted *pro hac vice*)
mquina@foleyhoag.com

3 JULIA HUSTON, (admitted *pro hac vice*)
jhuston@foleyhoag.com

4 **FOLEY HOAG LLP**
155 Seaport Boulevard
5 Boston, Massachusetts 02210
Telephone: (617) 832-1000
6 Facsimile: (617) 832-7000

7 *Attorneys for Defendant and Counterclaimant*
8 **ELYSIUM HEALTH, INC. and Defendant**
MARK MORRIS

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Defendant and Counterclaimant Elysium Health, Inc. and Defendant Mark Morris (together, “Defendants”) hereby make this *Ex Parte* Application for an Order to consolidate the procedures for motions to seal relating to the parties’ summary judgment motions. This application is supported by this Notice of *Ex Parte* Application, the accompanying Memorandum of Points and Authorities, the Declaration of Kristin L. Keranen and accompanying exhibits, all records and papers filed in this action, and any evidence or oral argument offered at any hearing on this application that the Court may order. This application is made following Elysium’s notification to counsel for ChromaDex of its intent to file this application in accordance with Civil Local Rule 7-19. (Declaration of Kristin L. Keranen at ¶¶ 10-13.) Counsel for ChromaDex stated that it does intend to oppose the application. (*Id.* at ¶ 14.)

Dated: August 7, 2019

BAKER & HOSTETLER LLP

/s/ Kristin L. Keranen
KRISTIN L. KERANEN

*Attorneys for Defendant and
Counterclaimant
ELYSIUM HEALTH, INC. and
Defendant MARK MORRIS*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant and Counterclaimant Elysium Health, Inc. (“Elysium”) and Defendant Mark Morris (“Morris,” together, “Defendants”) bring this *ex parte* application (“*Ex Parte* Application”) to consolidate motion to seal procedures with respect to the parties’ summary judgment motions. Defendants seek to consolidate six motions to seal into two motions to seal, and six meet and confers to a single meet and confer. Defendants anticipate that the parties would, as an initial matter, file all summary judgment briefs and accompanying documents under seal. After the completion of summary judgment briefing, the parties would engage in a single meet and confer regarding any documents or information from the entirety of the summary judgment briefing that a party believes meets the sealing standard. Each side would then file a single motion to seal relating to those documents. After the Court rules on the motions to seal, the parties would file on the docket appropriately redacted versions of all summary judgment briefs and their accompanying documents. Given the significant volume of filings that the Court will be receiving in the coming weeks (including motions *in limine*, oppositions thereto, the Memoranda of Contentions of Fact and Law pursuant to Local Rule 16-4, and other trial submissions), and particularly after the advancement of the pretrial conference and the trial date in the August 1, 2019 Order (ECF No. 220), Defendants seek to make efficient use of the Court’s time.

A. Background

On or about June 1, 2019, Plaintiff and Counter-Defendant ChromaDex, Inc. (“ChromaDex”) and Defendants agreed to a revised case schedule, including dates for the submission of summary judgment briefing. (Declaration of Kristin L. Keranen, dated August 7, 2019 (“Keranen Decl.”), Exhibit (“Ex.”) A.) The parties agreed to serve opening summary judgment briefs on August 16, 2019.

On July 16, 2019, Defendants first proposed to ChromaDex a stipulation

1 under which the parties’ opening briefs, opposition briefs, and reply briefs relating
2 to summary judgment would be filed under seal—temporarily—so that the parties
3 could meet and confer only once, instead of the six times that would be required
4 pursuant to the First Amended Stipulated Protective Order (ECF No. 180) (the
5 “Amended Protective Order”) and Local Rule 79-5.2.2(b). (Keranen Decl., Ex. B.)
6 During the proposed single meet and confer, the parties could discuss any
7 documents or information in any of the summary judgment briefs they felt merited
8 being filed under seal. Each side would then file a single motion to seal, instead of
9 each side filing motions to seal for each of their opening, opposition, and reply
10 briefs. The single motion to seal filed by each side would encompass all documents
11 or information used in any of the summary judgment briefing that were believed to
12 merit sealing. This stipulation would conserve Court resources by avoiding the
13 filing of potentially six motions to seal—some of which would undoubtedly refer
14 to the same documents or information—that would otherwise be required pursuant
15 to the Amended Protective Order and Local Rule 79-5.2.2. The parties met and
16 conferred regarding Defendants’ proposal on July 18, 2019. (Keranen Decl. at ¶ 8.)

17 On July 24, 2019, ChromaDex refused Defendants’ proposal. (Keranen
18 Decl., Ex. C.) On August 5, during a meet and confer, Defendants asked Plaintiff
19 to reconsider the proposal for a joint sealing stipulation. (Keranen Decl. at ¶¶ 10-
20 12.) Defendants explained again the burden on the Court, and the waste of the
21 Court’s time and resources that would occur if the parties filed six motions to seal.
22 (*Id.*) On August 6, Defendants again reached out to ChromaDex to inquire if
23 ChromaDex would agree to the proposal (and thereby conserve the Court’s
24 resources). (Keranen Decl., Ex. D.) Defendants informed ChromaDex that if
25 ChromaDex refused to agree, Defendants would be forced to seek Court
26 intervention through this *Ex Parte* Application. (*Id.*) ChromaDex rejected
27 Defendants’ proposal and notified Defendants that it would oppose Defendants’ *Ex*
28 *Parte* Application. (Keranen Decl., Ex. E.)

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1 **II. THE AMENDED PROTECTIVE ORDER AND THE LOCAL RULES**

2 On August 7, 2017, Judge McCormick entered the Stipulated Protective
3 Order (ECF No. 55), which was proposed and stipulated to by Elysium and
4 ChromaDex, and which governs the use of documents and information in this
5 litigation. On January 23, 2019, Judge McCormick entered the Amended
6 Protective Order. The Amended Protective Order was modified from the original
7 stipulated protective order to allow third parties subpoenaed by ChromaDex or
8 Defendants to produce documents under a designation of “Outside Counsel Only.”
9 The Amended Protective Order was not otherwise substantively modified from the
10 original. The parties negotiated the terms of the Protective Order and specified that
11 the parties must file any documents or information designated as “Confidential,”
12 “Highly Confidential – Attorney’s Eyes Only,” or “Outside Counsel Only” under
13 seal.

14 Paragraph 21 of the Amended Protective Order states as follows:

15 **Filing Designated Material Under Seal:** Should any Party seek to file
16 with the Court any material designated as “CONFIDENTIAL,”
17 “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY,” or
18 “OUTSIDE COUNSEL ONLY,” pursuant to Paragraph 4 above, such
19 Party shall, pursuant to Local Rule 79-5.1, request that the Court permit
20 filing of such Designated Material under seal and that such Designated
21 Material be made available only to the Court and to persons authorized
22 by the terms of this Protective Order. The Party filing any paper that
23 contains, summarizes, or reflects any such Designated Material shall
24 request that the material be filed under seal. If filed under seal, such
25 material shall remain sealed while in the office of the Clerk so long as
26 the material retains its status as Designated Material and/or until further
27 order of the Court. Where possible, only portions of the filings
28 designated as “CONFIDENTIAL” “HIGHLY CONFIDENTIAL –
ATTORNEY’S EYES ONLY,” or “OUTSIDE COUNSEL ONLY,” or
supporting papers so designated shall be filed under seal. In such cases,
the filing Party should also file a redacted version of the filing and
supporting papers.

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Local Rule 79-5.2.2(b) states as follows:

Documents Designated by Another as Confidential Pursuant to a Protective Order. At least 3 days before seeking to file under seal a document containing information previously designated as confidential by another pursuant to a protective order, the Filing Party must confer with the person that designated the material confidential (the “Designating Party”) in an attempt to eliminate or minimize the need for filing under seal by means of redaction. If the document cannot be suitably redacted by agreement, the Filing Party may file an Application pursuant to subsection (a), but the supporting declaration must identify the material previously designated as confidential, as well as the Designating Party, and must describe in detail the efforts made to resolve the issue. The declaration must be served on the Designating Party on the same day it is filed, and proof of this service must be filed with the declaration. Subsequently:

- (i) Within 4 days of the filing of the Application, the Designating Party must file a declaration establishing that all or part of the designated material is sealable, by showing good cause or demonstrating compelling reasons why the strong presumption of public access in civil cases should be overcome, with citations to the applicable legal standard. If the Designating Party maintains that only part of the designated material is sealable, the Designating Party must file with its declaration a copy of the relevant material with proposed redactions highlighted. The declaration and, if applicable, the document highlighting proposed redactions will be closed to public inspection. Failure to file a declaration or other required document may be deemed sufficient grounds for denying the Application.
- (ii) If the Application is denied, the Filing Party may file the document in the public case file (*i.e.*, unsealed) no earlier than 4 days, and no later than 10 days, after the Application is denied, unless the Court orders otherwise.

III. GOOD CAUSE EXISTS TO GRANT DEFENDANTS’ APPLICATION BECAUSE DEFENDANTS’ PROPOSAL WILL CONSERVE COURT RESOURCES

It is axiomatic that parties should not seek to waste the resources of the Court. Defendants’ *Ex Parte* Application is an effort to eliminate additional motions that

1 would otherwise be required to be filed before the Court. ChromaDex's sole
 2 articulated reason for opposing Defendants' proposal is that ChromaDex does not
 3 believe there is a large volume of material that will warrant being filed under seal.
 4 (Keranen Decl. at ¶ 11.) Respectfully, ChromaDex misses the point. Defendants
 5 are not seeking to alter the standard for filing material under seal at summary
 6 judgment. (Keranen Decl. at ¶ 7.) Defendants are simply seeking to consolidate
 7 the meet and confer process and the motion process in a way that is most efficient
 8 and most useful to the Court. The Amended Protective Order and Local Rule 79-
 9 5.2.2(b) operate to require the parties to meet and confer potentially six times during
 10 the summary judgment briefing, and to file up to six motions to seal relating to the
 11 briefing. Defendants' proposal would reduce the meet and confer requirement to
 12 one, and the motions to seal from six to two. It would also have the benefit of
 13 eliminating the filing of multiple redacted versions of the briefs on the electronic
 14 docket and allow the parties to file a single set of appropriately redacted briefs after
 15 the Court has ruled on the parties' motions to seal. Defendants seek Court
 16 intervention in order to consolidate the sealing process.

17 **IV. NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL**

18 **ADDRESS OF COUNSEL FOR CHROMADDEX**

19 Pursuant to Civil Local Rule 7-19, the name, address, telephone number,
 20 and e-mail address of counsel for ChromaDex are as follows:

- 21 • COOLEY LLP, 4401 Eastgate Mall San Diego, CA 92121
 - 22 ○ Telephone: (858) 550-6000
 - 23 ○ Attorneys:
 - 24 ■ Michael Attanasio (151529) (mattanasio@cooley.com)
 - 25 ■ Eamonn Gardner (310834) (egardner@cooley.com)
 - 26 ■ Jon F. Cieslak (268951) (jcieslak@cooley.com)
 - 27 ■ Barrett J. Anderson (318539) (banderson@cooley.com)
 - 28 ■ Sophia M. Rios (305801) (srios@cooley.com)

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- Jayme B. Staten (317034) (jstaten@cooley.com)
- COVINGTON & BURLING LLP, 1999 Avenue of the Stars, Suite 3500
Los Angeles, CA 90067-4643
 - Telephone: (424) 332-4800
 - Attorney: Mitchell A. Kamin (202788) (mkamin@cov.com)

V. CONCLUSION

For the foregoing reasons, Defendants respectfully requests that the *Ex Parte* Application be granted; that the Court extend the parties’ time under Local Rule 79-5.2.2 to after all summary judgment briefs have been filed; that the parties file their opening, opposition, and reply briefs for summary judgment, and all accompanying Local Rule 56-2 Statements, declarations and exhibits, under seal temporarily; and that the Court order that each side may file one motion to seal that encompasses documents or information from all of the summary judgment briefing that the parties believe meet the standard for sealing documents. Specifically, Elysium respectfully requests an Order directing the parties to meet and confer no later than Friday, September 6, 2019 and that the parties file their respective motions to seal no later than Monday, September 16, 2019.

Respectfully submitted,

Dated: August 7, 2019

BAKER & HOSTETLER LLP

By: /s/ Kristin Keranen
KRISTIN KERANEN

Attorneys for Defendant and Counterclaimant
ELYSIUM HEALTH, INC. *and Defendant*
MARK MORRIS