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 12 **UNITED STATES DISTRICT COURT**  
 13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
 14 **(SOUTHERN DIVISION)**

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. SACV 16-02277-CJC(DFMx)

**JOINT REPORT REGARDING  
 PARTIES' RULE 26(F) CONFERENCE**

Judge: Hon. Cormac J. Carney

Magistrate Judge: Hon. Douglas F.  
 McCormick

FAC Filed: February 15, 2017

FACC Filed: March 6, 2017

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1 Pursuant to Federal Rule of Civil Procedure 26(f) and Central District Local  
2 Rule 26-1, Plaintiff and Counter-Defendant ChromaDex, Inc. (“ChromaDex”), and  
3 Defendant and Counterclaimant Elysium Health Inc. (“Elysium”) (collectively  
4 referred to herein as the “Parties”), by and through their respective counsel of record,  
5 hereby provide their Joint Report regarding the conference held pursuant to Rule  
6 26(f) of the Federal Rules of Civil Procedure and Local Rule 26-1. The telephonic  
7 conference was held on March 14, 2017.

8 **I. STATEMENT OF THE CASE**

9 **A. ChromaDex’s Statement**

10 ChromaDex is the only United States authorized commercial supplier of  
11 nicotinamide riboside (“NR”), a vitamin B<sub>3</sub> metabolite covered by ChromaDex’s  
12 patent estate and sold under the brand name NIAGEN. In 2013 Elysium, a start-up  
13 at the time with no product and limited resources, approached ChromaDex about  
14 obtaining a supply of NIAGEN. The parties negotiated a supply agreement through  
15 the end of 2013 and into 2014, and in February 2014 entered the NIAGEN Supply  
16 Agreement and a Trademark License and Royalty Agreement, which contains  
17 guidelines for the optional use of ChromaDex’s trademarks and an independent  
18 royalty obligation on sales of products containing NIAGEN. In June 2014, the  
19 parties entered an agreement for the supply of pterostilbene, another health  
20 supplement ingredient supplied by ChromaDex under the name pTeroPure. Pursuant  
21 to these agreements, ChromaDex supplies Elysium with NIAGEN and pTeroPure,  
22 and Elysium combines the two ingredients and sells them to consumers in its sole  
23 product “Basis.” Elysium pays for the NIAGEN and pTeroPure through upfront  
24 payments and royalties on sales. This arrangement was negotiated after Elysium  
25 professed an inability to pay for all the product it ordered with “up front” initial  
26 payments, and instead sought a deal in which it could pay for the ordered product  
27 over time.

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1 The parties' arrangement was unremarkable until 2016. In the second quarter  
2 of 2016, large growth in Elysium's sales and corresponding purchases of NIAGEN,  
3 caused the parties to question whether a most favored nation pricing provision in the  
4 NIAGEN Supply Agreement now applied to Elysium's orders. ChromaDex  
5 discussed the issue with Elysium and believed it had been resolved. It became clear  
6 that was not the case when, on June 28, 2016, Elysium, without any sort of prior  
7 notice, submitted purchase orders for more than *double* the amount of product than  
8 all of Elysium's past orders combined, at *less than half* the parties' agreed price.

9 ChromaDex initiated a discussion with Elysium concerning its orders. On a  
10 June 30, 2016 phone call, Elysium's principals made a number of false statements to  
11 ChromaDex with the intent of (1) inducing ChromaDex to fill the unreasonably  
12 disproportionate orders (2) at a price materially lower than the parties agreed-upon  
13 price, and (3) to never pay for the product in order to exploit the financial pressure  
14 such nonpayment would cause in any dispute between the two companies. Relying  
15 on these representations, ChromaDex filled the extraordinarily large orders, and  
16 discounted the price of NIAGEN. ChromaDex estimates that Elysium owes it  
17 \$5,234,586.79, including interest, for its breaches of contract and fraud.

18 The day after the last product shipped, Elysium made clear its intent not to pay  
19 until ChromaDex caved to Elysium's demands regarding alleged breaches of the  
20 NIAGEN Supply Agreement. The *same day*, Ryan Dellinger, ChromaDex's  
21 Director of Scientific Affairs, resigned *effective immediately*. ChromaDex later  
22 learned that Mr. Dellinger went to work for Elysium—joining Mark Morris,  
23 ChromaDex's former Vice President of Business Development, who had also  
24 abruptly resigned less than a month earlier. ChromaDex's investigation revealed that  
25 these two employees' relationship with Elysium during their employ with  
26 ChromaDex was far cozier than either had let on and that, in violation of their  
27 confidentiality agreements, the employees had transmitted ChromaDex trade secrets  
28 and confidential information to Elysium without ChromaDex's knowledge or

1 consent.

2 ChromaDex filed its Complaint against Elysium in December 2016 for breach  
3 of contract and fraud, and later supplemented its allegations with a trade secret  
4 misappropriation claim in a First Amended Complaint. Elysium currently owes  
5 ChromaDex over \$4 million on the breach of contract claims alone. In response,  
6 Elysium filed a Counterclaim and then a First Amended Counterclaim that  
7 essentially disputes the amount owed to ChromaDex under the contracts and adds  
8 claims for fraud, unfair competition, and patent misuse. ChromaDex denies  
9 Elysium's allegations and has moved to dismiss the specious causes of actions,  
10 including Elysium's fraud and unfair competition claims, which are an attempt to  
11 rewrite the parties' negotiated agreements, and its claim for patent misuse, which is  
12 not a valid cause of action. Elysium has moved to dismiss ChromaDex's fraud and  
13 trade secret misappropriation claims.

14 **B. Elysium's Statement**

15 Elysium sells the groundbreaking proprietary dietary supplement, Basis, which  
16 combines nicotinamide riboside (or "NR") and pterostilbene (or "PT") with other  
17 ingredients. To obtain a supply of NR and PT for use in Basis, Elysium contracted  
18 with ChromaDex. The Parties' contracts are memorialized in, among other things,  
19 an NR Supply Agreement, dated February 3, 2014 and amended on February 19,  
20 2016 (as amended, the "NR Supply Agreement") and a Trademark License and  
21 Royalty Agreement, dated February 3, 2014 (the "License and Royalty Agreement").

22 ChromaDex has failed to comply with its obligations to Elysium in numerous  
23 respects. For example, under the NR Supply Agreement, ChromaDex covenanted  
24 not to sell NR to other customers buying the same or lesser quantities for a price less  
25 than it was selling NR to Elysium (the "MFN Provision"). In a June 2016 email sent  
26 in an effort to deceive Elysium into believing ChromaDex was complying with the  
27 NR Agreement, ChromaDex's CEO inadvertently disclosed to Elysium that in fact  
28 ChromaDex was selling NR to other customers for less than Elysium had been

1 paying, in breach of the MFN Provision. Elysium submitted purchase orders for NR  
2 and PT on June 30, 2016 (the “June 30 Purchase Orders”), with the understanding  
3 that ChromaDex would promptly issue a refund or credit to Elysium on account of  
4 ChromaDex’s breach of the MFN Provision. ChromaDex, however, steadfastly  
5 refused to provide Elysium the information necessary to determine the scope and  
6 extent of ChromaDex’s breaches of the MFN provision and therefore determine the  
7 amount ChromaDex owed Elysium as compensation for the breaches, eventually  
8 instructing Elysium to conduct an audit, and then ignoring Elysium’s request to do  
9 just that. Elysium’s efforts to resolve this dispute amicably – which included  
10 multiple conversations with ChromaDex officers and directors – were hampered by  
11 ChromaDex’s refusal to provide information to Elysium necessary to calculate the  
12 amount due to Elysium for ChromaDex’s breaches of the MFN Provision.

13 Separately, the NR Supply Agreement prohibits ChromaDex from selling, or  
14 licensing or enabling any third party to manufacture or sell, a product containing  
15 both NR and either PT or any ingredient substantially similar to PT (the “Exclusivity  
16 Provision”). Only after submitting the June 30 Purchase Orders did Elysium learn  
17 that ChromaDex was also breaching the Exclusivity Provision by (1) enabling other  
18 customers to manufacture and sell products that combined NR and PT or the  
19 substantially similar ingredient resveratrol, and (2) recommending to other customers  
20 that they create such products to compete with Basis.

21 Elysium’s damages resulting from ChromaDex’s breaches of the MFN and  
22 Exclusivity Provisions remain to be determined. Elysium believes discovery will  
23 identify additional breaches by ChromaDex of the agreements between them.

24 Separately, ChromaDex induced Elysium into signing the License and Royalty  
25 Agreement by misrepresenting that all ChromaDex customers who signed purchase  
26 agreements to obtain NR were also required to sign separate trademark license and  
27 royalty agreements, whether they wanted to or intended to use ChromaDex marks or  
28 not. As a result of this misconduct, ChromaDex deceived Elysium into paying

1 royalties to ChromaDex on Elysium product sales. This fraud entitles Elysium to  
2 rescission of the License and Royalty Agreement or damages. And, by conditioning  
3 its execution of the NR Supply Agreement on Elysium’s execution of a trademark  
4 license (even though Elysium had no interest in licensing ChromaDex’s trademarks),  
5 ChromaDex exploited its NR patents and market power in the NR market, engaging  
6 in patent misuse and unfair competition.

7 In its First Amended Counterclaims, Elysium alleges fraud, breach of contract,  
8 breach of the implied covenant of good faith and fair dealing, unfair competition and  
9 declaratory judgment. Elysium denies, among other things, ChromaDex’s assertions  
10 in the First Amended Complaint that Elysium (1) induced ChromaDex to fill  
11 abnormally large purchase orders for NR and PT – a claim that simply restates  
12 ChromaDex’s contract causes of action – and (2) misappropriated ChromaDex’s  
13 trade secrets, which the FAC does not define in anything more than vague  
14 generalities. The Parties have filed pending cross-motions to dismiss the non-  
15 contract claims.

16 **II. RULE 26(F)(3) DISCOVERY PLAN**

17 **A. Rule 26(f)(3)(A) – Initial Disclosures**

18 The Parties intend to exchange initial disclosures on March 28, 2017.

19 **B. Rule 26(f)(3)(B) – Subjects, Completion Date, and Phasing of**  
20 **Discovery**

21 **1. Phasing of Discovery**

22 **a. ChromaDex’s Statement**

23 ChromaDex proposes staged discovery and specifically that the Parties  
24 immediately start discovery on all claims that are not subject to a pending motion to  
25 dismiss, which are the Parties’ breach of contract claims. ChromaDex is willing to  
26 defer discovery regarding the remaining non-contract claims until after the motions  
27 to dismiss are resolved and the pleadings are set.

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**b. Elysium’s Statement**

Elysium anticipates conducting discovery on the following subjects:

- The Parties’ negotiations of their contracts, including the NR Supply Agreement and Trademark License and Royalty Agreement.
- ChromaDex’s fraudulent inducement of the Trademark License and Royalty Agreement, as alleged in the First Amended Counterclaims.
- ChromaDex’s breaches of the NR Supply Agreement, including but not limited to the MFN Provision and Exclusivity Provision as alleged in the First Amended Counterclaims.
- The terms of ChromaDex’s sales of NR or PT to Elysium or any third-party customer for all sales pre-dating the last such sale to Elysium, including without limitation the extent to which such customers pay royalties to ChromaDex.
- The similarity between PT and resveratrol, including without limitation any statements or materials prepared or used by ChromaDex referring to the relationship between PT and resveratrol.
- ChromaDex’s enablement or encouragement of third parties to create products containing both NR and PT or substantially similar ingredients.
- ChromaDex’s encouragement of any third party to create or market a product to compete with Elysium’s Basis.
- ChromaDex’s market power in the market for supply of NR in the United States and worldwide.
- ChromaDex’s tying of its patent rights to a trademark license with anticompetitive effects, as alleged in the First Amended Counterclaims.
- The Fraudulent Spreadsheet, as defined and alleged in the First Amended Counterclaims.
- Documents sufficient to calculate the amount of the credit owed to Elysium as a consequence of ChromaDex’s breach of the MFN Provision, as alleged in the First Amended Complaint.
- Communications between and among ChromaDex management, board members and Elysium about the Parties’ relationship.
- The damages caused by ChromaDex’s contractual breaches and violations of law on all claims.

1                   **3. Completion Date of Discovery**

2                   See Section IV for the Parties' estimate for the completion of discovery.

3                   **C. Rule 26(f)(3)(C) – Electronic Discovery**

4                   The Parties agree to produce and receive document productions as TIFF files  
5 with metadata in load files, with native files as appropriate (*e.g.* Excel, PowerPoint).  
6 The exact details of document productions will be further specified in the stipulated  
7 ESI protocol discussed below.

8                   **D. Rule 26(f)(3)(D) – Claims of Privilege**

9                   The Parties intend to include a Federal Rule of Evidence section 502(d)  
10 provision in the stipulated protective order discussed below.

11                   **E. Rule 26(f)(3)(E) – Changes to Limitations of Discovery**

12                   The Parties do not presently anticipate any changes to limitations of discovery.

13                   **F. Rule 26(f)(3)(F) –Other Orders**

14                   1. Service: The parties agree that service may be effected through  
15 electronic means. This statement constitutes the written consent requirement set forth  
16 in Fed. R. Civ. P. 5(b)(2)(E).

17                   2. Stipulated Protective Order: The parties agree that the entry of a  
18 protective order governing confidential information is appropriate in this case and  
19 are presently negotiating the terms of a protective order that will govern the  
20 disclosure and use of confidential information. The parties will submit the proposed  
21 Stipulated Protective Order to the Court as soon as is practicable.

22                   3. Stipulated ESI Protocol: The parties agree that the entry of an ESI  
23 Protocol is appropriate in this case and are presently negotiating the terms of a  
24 protocol that will govern the format of and methods for the production of  
25 electronically stored information. The parties will submit the proposed ESI Protocol  
26 to the Court as soon as is practicable.

27                   4. Summary Judgment Motions: Both Parties anticipate filing affirmative  
28 motions for summary judgment according to the schedules proposed in Section IV.

1 **III. REQUIREMENTS OF LOCAL RULE 26-1**

2 Pursuant to L.R. 26-1 governing the conference of parties and this report, the  
3 Parties state the following:

4 **A. Complex Cases [L.R. 26-1(a)]**

5 The Parties do not contend that this action will require compliance with the  
6 procedures of the Manual for Complex Litigation.

7 **B. Motion Schedule [L.R. 26-1(b)]**

8 See Section IV for the Parties’ proposed motion schedule.

9 **C. ADR [L.R. 26-1(c)]**

10 The Parties believe that this case is best suited for private mediation (ADR  
11 Procedure No. 3 per L.R. 16-15). ChromaDex has offered to immediately mediate  
12 this case. Elysium has indicated that mediation is premature in its view.

13 **D. Trial Estimate [L.R. 26-1(d)]**

14 The Parties estimate that the time required for trial will be 5–10 days.

15 **E. Additional Parties [L.R. 26-1(e)]**

16 The Parties do not presently anticipate joining additional parties.

17 **F. Expert Witnesses [L.R. 26-1(f)]**

18 See Section IV for the Parties’ proposed dates for expert discovery.

19 **IV. DEADLINES PROPOSED BY THE PARTIES**

20 ChromaDex proposes that discovery begin immediately on all claims that are  
21 not subject to a pending motion to dismiss and that discovery regarding the  
22 remaining claims be deferred until after the motions to dismiss are resolved and the  
23 pleadings are set. Elysium proposes that discovery commence as to all claims after  
24 the motions to dismiss are resolved and the pleadings are set. The Parties agree on  
25 the remainder of the schedule as follows:

Event	Date
Initial Disclosures Due	March 28, 2017
Case Management Conference	To be determined by the Court

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Fact Discovery Closes	December 11, 2017 or such other date as ordered by the Court;
Expert Discovery Begins	At the close of fact discovery
Rule 26(a)(2) Expert Disclosures & Reports Due	January 31, 2018
Expert Rebuttal Reports Due	February 28, 2018
Expert Discovery Closes	March 30, 2018
Deadline for Dispositive Motions	May 25, 2018
Trial	July 10, 2018

Dated: March 28, 2017 COOLEY LLP

By: /s/ Jon F. Cieslak  
JON F. CIESLAK  
Attorneys for Plaintiff ChromaDex, Inc.

*The filer, Jon F. Cieslak, attests that the other signatory listed, on whose behalf the filing is submitted, concurs in the filing's content and has authorized the filing.*

Dated: March 28, 2017 SKADDEN, ARPS, SLATE,  
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By: /s/ Joseph N. Sacca  
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