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15 Elysium Health, Inc. and Mark Morris

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**
18

19 ChromaDex, Inc.,
20
21 Plaintiff,
22
23 v.
Elysium Health, Inc. and Mark Morris,
24
25 Defendants.

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

**REPLY IN SUPPORT OF
APPLICATION BY DEFENDANTS
AND COUNTER-CLAIMANTS
ELYSIUM HEALTH, INC. AND
MARK MORRIS FOR LEAVE TO
FILE UNDER SEAL**

26
27 And Related Counterclaims
28

1 ChromaDex’s opposition (ECF 457-1) confirms that the key question here is one of
2 timing. Specifically, ChromaDex does not dispute two critical points:

- 3 • *First*, the changes and corrections to the deposition testimony of Eric Marcotulli
4 and Daniel Alminana that Elysium and Mr. Morris seek to file under seal
5 concern highly sensitive and private aspects of Mr. Marcotulli’s personal life.
- 6 • *Second*, the relevance and admissibility of that testimony and related text
7 messages have not yet been decided by this Court and will be the subject of a
8 *motion in limine* to be decided before trial.

9 Thus, all parties agree that there remains a genuine dispute over the relevance and
10 admissibility of highly sensitive and private testimony that would undeniably harm Mr.
11 Marcotulli’s reputation. Indeed, Mr. Marcotulli has already submitted a declaration detailing
12 the highly private and sensitive nature of the material sought to be sealed. (*See* ECF 455-1.)
13 ChromaDex does not articulate any reason or basis for deciding now – in advance of this
14 Court’s decision on the forthcoming *motion in limine* – that this highly inflammatory and
15 personal information must be filed publicly, other than its transparent desire to embarrass an
16 adversary. Elysium and Mr. Morris request only that the Court grant sealing until it has
17 resolved the relevance and admissibility questions on a complete record in the context of the
18 *motion in limine*. If the Court determines that the evidence concerning Mr. Marcotulli’s
19 private life is inadmissible in this case, it would follow that the declarations about testimony
20 that is sensitive, personal, unrelated to the subject matter or disposition of any claim in this
21 case, and inadmissible should remain sealed.

22 ChromaDex’s focus on different timing considerations – namely, the amount of time
23 that has elapsed since the depositions – is a red herring. As ChromaDex knows, Mr.
24 Marcotulli and Mr. Alminana were represented by different counsel when the text messages
25 about Mr. Marcotulli’s personal life were inadvertently produced, used to their surprise at
26 deposition, and addressed in Elysium’s prior *motion in limine*. Since retaining new counsel,
27 the two have come forward and corrected their deposition testimony, and informed the Court
28 of those corrections. If this Court determines that Mr. Marcotulli’s private issues are relevant

1 and admissible, then ChromaDex may make any arguments it might have about the supposed
2 delay in correcting the record. But any such delay has no bearing on the determination of
3 whether to seal the Marcotulli and Alminana Declarations, which will not, in fact, be at issue
4 until this Court hears and decides the *motion in limine*.

5 Given the passage of time since prior counsel’s initial *motion in limine* regarding Mr.
6 Marcotulli’s personal life and the intersection of the forthcoming *motion in limine* with the
7 issues raised in this sealing application, Elysium and Mr. Morris respectfully request that the
8 Court hold oral argument on the merits of this Application, or, at a minimum to discuss the
9 proper scope of redactions in the public record.

10 Respectfully Submitted,

11 Dated: December 16, 2020

KAPLAN HECKER & FINK LLP

12 By: /s/ Roberta A. Kaplan

13 Roberta A. Kaplan
14 Gabrielle E. Tenzer
David Shieh

15 Dated: December 16, 2020

COHEN WILLIAMS LLP

16 By: /s/ Marc S. Williams

17 Marc S. Williams
18 Reuven L. Cohen

19 *Attorneys for Defendants and Counter-*
20 *Claimants, Elysium Health, Inc. and Mark*
21 *Morris*