

1 Roberta A. Kaplan (*pro hac vice*)
rkaplan@kaplanhecker.com
2 Gabrielle E. Tenzer (*pro hac vice*)
gtenzer@kaplanhecker.com
3 David Shieh (*pro hac vice*)
4 dshieh@kaplanhecker.com
5 KAPLAN HECKER & FINK LLP
350 Fifth Avenue, Suite 7110
6 New York, NY 10118
7 Telephone: (212) 763-0883

8 Marc S. Williams (Bar No. 198913)
mwilliams@cohen-williams.com
9 Reuven L. Cohen (Bar No. 231915)
rcohen@cohen-williams.com
10 COHEN WILLIAMS LLP
11 724 South Spring Street, 9th Floor
Los Angeles, CA 90014
12 Telephone: (213) 232-5160
13 Facsimile: (213) 232-5167

14 Attorneys for Defendants and Counter-Claimants
15 Elysium Health, Inc. and Mark Morris

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

19 ChromaDex, Inc.,

20
21 Plaintiff,

22 v.

23 Elysium Health, Inc. and Mark Morris,

24 Defendants.
25

26
27 And Related Counterclaims
28

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

DECLARATION OF
ERIC MARCOTULLI

REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL

1 I, Eric Marcotulli, hereby declare and state as follows:

2 1. I am the Chief Executive Officer of Elysium Health, Inc. (“Elysium”). I submit
3 this declaration to change and correct certain testimony about my personal life that I gave at
4 a deposition in this matter on March 27, 2019 (transcript at ECF 284-3). I also submit this
5 declaration under seal pursuant to Local Rule 79-5. I declare that the following statements
6 are true to the best of my knowledge, information, and belief. I have personal knowledge of
7 the facts set forth below and, if called as a witness, I could and would testify competently as
8 follows.
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12 2. On March 27, 2019, I was deposed in the above-captioned action.

13 3. Prior to my deposition, and without my knowledge or consent, Elysium’s prior
14 counsel, Baker & Hostetler LLP (“Baker”), inadvertently produced spreadsheets containing
15 the complete message history of the cell phone that I used between 2012 and 2017 for both
16 personal and business matters, as well as the entire message contents of two cell phones used
17 by Elysium’s Chief Operating Officer, Dan Alminana.
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20 4. Although I understand that Baker made efforts to “claw back” certain text
21 messages on privilege grounds, my purely personal text messages that were not subject to a
22 claim of privilege but were also not responsive to any of the document requests in the case
23 were not returned or destroyed.
24

25 5. I state the following with no intention to waive any privilege or applicable
26 protection. At the time of my deposition, I expected to answer questions regarding the subject
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1 matter of the above-captioned case. Specifically, I expected to answer questions relating to
2 Elysium’s contracts with ChromaDex, including negotiations and performance of those
3 contracts; patent issues; and trade secret allegations. I did not realize, know, or anticipate at
4 the time that ChromaDex would question me about sensitive and wholly personal matters
5 relating to the personal text messages that, without my knowledge, had been produced
6 inadvertently.
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9 6. [REDACTED]

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21 7. [REDACTED]
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13. [REDACTED]

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: December 10, 2020
New York, New York

DocuSigned by:

B4B792469A5242B...
Eric Marcotulli