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**VIA ELECTRONIC FILING**

The Honorable Colm F. Connolly  
J. Caleb Boggs Federal Building  
844 N. King Street  
Unit 31, Room 4124  
Wilmington, DE 19801-3555

Re: *ChromaDex, Inc., et al. v. Elysium Health, Inc., C.A. No. 18-1434-CFC*

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Dear Judge Connolly:

Plaintiffs ChromaDex, Inc. and Trustees of Dartmouth College respectfully write to provide answers to two questions your Honor asked during the teleconference earlier this week regarding Plaintiffs' motion to amend and Defendant Elysium Health Inc.'s motion to dismiss.

1. Your Honor asked whether there are additional cases that followed the principle in *WiAV Sols. LLC v. Motorola, Inc.*, 631 F.3d 1257, 1266–67 (Fed. Cir. 2010) that “if an exclusive licensee has the right to exclude others from practicing a patent, and a party accused of infringement does not possess, and is incapable of obtaining, a license of those rights from any other party, the exclusive licensee’s exclusionary right is violated.” We are aware of the following additional cases: *Smith v. Garlock Equip. Co.*, C.A. No. 13-104 (SJ)(GAF), 2014 WL 12606657, at \*9 (W.D. Mo. Nov. 4, 2014); *AstraZeneca AB v. Apotex Corp.*, 985 F. Supp. 2d 452, 493 (S.D.N.Y. 2013), *aff’d in part, rev’d in part on other grounds*, 782 F.3d 1324 (Fed. Cir. 2015); *Ivera Med. Corp. v. Excelsior Med. Corp.*, C.A. No. 13-465 H (RBB), 2013 WL 12170511, at \*2 (S.D. Cal. Oct. 18, 2013). The decisions in *Smith v. Garlock Equipment Co.* and *AstraZeneca v. Apotex* are particularly instructive. In *Smith*, the court found that

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Raptor was an exclusive licensee with standing and thus a proper co-plaintiff even though Smith, the other co-plaintiff and owner of the patent, had the ability to grant licenses to others to settle infringement lawsuits. 2014 WL 12606657, at \*9 (citing *Alfred E. Mann Found. for Scientific Research v. Cochlear Corp.*, 604 F.3d 1354 (Fed. Cir. 2010)). In *AstraZeneca*, the court found that four affiliates had standing and thus were proper co-plaintiffs based on the agreements and understandings among them. 985 F. Supp. 2d 452 at 493–96. See also *Sanofi-Aventis Deutschland GmbH v. Glenmark Pharm. Inc., USA*, 748 F.3d 1354, 1363–64 (Fed. Cir. 2014) (holding that two Abbott affiliates had standing as co-plaintiffs because agreements and the conduct of the parties evidenced intent to make those affiliates exclusive licensees).

2. Your Honor asked whether ChromaDex, Inc. (“ChromaDex”) or Healthspan Research LLC (“Healthspan”) legally could independently license the Asserted Patents to Elysium, putting aside whether they would do so as a factual matter. The following cases make clear that ChromaDex and Healthspan would be legally foreclosed from doing so: *Anadarko Petroleum Corp. v. Panhandle E. Corp.*, 545 A.2d 1171, 1174 (Del. 1998) (“[I]n a parent and wholly-owned subsidiary context, the directors of the subsidiary are obligated only to manage the affairs of the subsidiary in the best interests of the parent and its shareholders.”); *Grace Bros. v. Uniholding Corp.*, C.A. No. 17612, 2000 WL 982401, at \*12 (Del. Ch. July 12, 2000) (holding that, where members of a parent company’s board of directors also serve on the board of the parent’s wholly-owned subsidiary or “have knowledge of proposed action at the subsidiary level that is detrimental to the parent company, they have a fiduciary duty, as part of their management responsibilities, to act in the best interests of the parent and its stockholders.”); *Unzipped Apparel, LLC v. Sweet Sportswear, LLC*, No. B203995, 2010 WL 2677441, at \*37 (Cal. Ct. App. July 7, 2010), as modified on denial of reh’g (Aug. 4, 2010) (citing *Grace Bros.*).

Should Your Honor have any questions regarding this information, counsel for Plaintiffs are available at the Court’s convenience.

Respectfully submitted,

/s/ Adam W. Poff

Adam W. Poff (No. 3990)

cc: All Counsel of Record (via electronic mail)