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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

ChromaDex, Inc.,

Plaintiff,

v.

Elysium Health, Inc. and Mark Morris,

Defendants.

Elysium Health, Inc.,

Counterclaimant,

v.

ChromaDex, Inc.,

Counter-Defendant.

Case No.: 8:16-cv-02277-CJC-DFM
[Assigned to the Hon. Cormac J. Carney]

ELYSIUM HEALTH, INC.'S AND MARK MORRIS'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION FOR REVIEW OF THE MAGISTRATE JUDGE'S ORDER MODIFYING THE PROTECTIVE ORDER

Hearing
Date: January 27, 2019
Time: 1:30 pm
Ctrm: 7C

Pre-Trial Conference: TBD
Trial: TBD

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A. Preliminary Statement

The key problem with the Magistrate Judge's December 6 Order modifying the Protective Order (the "Modification Order") is not that it permits the use in the SDNY Action of *relevant* materials that were produced in this case.[1] (Although Defendants do object to the modification for that purpose, because the original protective order would not prevent a party from cross-designating its own documents, nor would it prevent the New York court from ordering production if *that court* found such documents to be relevant and discoverable.) The key problem with the Modification Order is that on its face it purports to permit ChromaDex to "use" *any* materials produced in this litigation as though they had been produced in New York, even if the New York court would have otherwise determined that the discovery requests in response to which those documents were produced were not relevant or proportional to the claims or defenses at issue in the New York litigation.[2] This was an error of law, as it misunderstands *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122 (9th Cir. 2003), and contravenes the Federal Rules of Civil Procedure, which provide that discovery disputes are decided by the court before which the litigation is pending.

ChromaDex offers no legal support—because there is none—for the radical proposition that it can modify a protective order in a California federal district court in order to prevent a New York federal district court from addressing threshold issues of relevance and discoverability in an entirely separate litigation. ChromaDex effectively seeks to remove the ability of the Chief Judge of the Southern District of

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in Defendants' initial Memorandum of Points and Authorities in Support of their Motion for Review of the Magistrate Judge's Order Modifying the Protective Order, ECF No. 398-01.

[2] If the Court does not read the Modification Order to do so, Defendants request the Court clarify that the effect of the Modification Order is limited to removing the protective order's bar against use of relevant discovery from the California Action in the SDNY Action and does not purport to determine whether such discovery is relevant or discoverable in the SDNY Action.

New York to control her own courtroom, in violation of all precedent and comity. This is a straightforward attempt to nullify the live discovery dispute pending in the SDNY Action as to the discoverability of the California documents, because ChromaDex fears the outcome of that dispute. This Court should not permit such subterfuge.

Contrary to ChromaDex's arguments, Defendants raised precisely these issues before Magistrate Judge McCormick, arguing that ChromaDex improperly relied on *Foltz* because it cannot meet the required showing of relevance, which is necessary to "prevent collateral litigants from gaining access to discovery materials merely to subvert limitations on discovery in another proceeding." Exhibit A[3] at 2, quoting *Foltz*, 331 F.3d at 1133. Defendants further argued that ChromaDex is seeking to misuse *Foltz* to circumvent a discovery dispute currently pending before the New York judge and obtain documents it knows will not be produced in New York, and that ChromaDex does not have "the right to decide what Elysium documents are responsive in the New York action." Tr. at 9:5-10.[4] Defendants also sought and were denied additional briefing to explain that they do not agree that "*Foltz* implicates the rules of discovery in a different forum." *Id*. at 14:10-11.[5]

Like Magistrate Judge McCormick, ChromaDex focuses exclusively on whether the cases are sufficiently related under *Foltz* to justify *any* modification of the protective order here. To be clear, as Defendants argued before Judge McCormick and as further discussed below, Defendants do not believe the current

[3] All references to "Exhibit" are to the exhibits filed with the December 20, 2019 Declaration of Kristin L. Keranen in support of Defendants' motion. (ECF No. 398-02).

[4] All references to "Tr." are to transcript of the December 6, 2019 hearing held before Judge McCormick.

[5] ChromaDex violated Magistrate Judge McCormick's informal discovery process by submitting separate two-page briefs for each of the two issues then before the court (one of which is not at issue here), essentially doubling their briefing without Judge McCormick's permission. Defendants abided by the rules, submitted only one letter-brief, and were therefore unfairly disadvantaged.

situation satisfies even this standard. The purpose of *Foltz* is to reduce the burden on parties: here, modification serves no such purpose. ChromaDex argues the touchstone of *this* case to be an alleged breach of fiduciary duty that is entirely irrelevant to the SDNY Action and has argued that years' worth of documents produced here are irrelevant in the SDNY Action. Moreover, the parties already have possession of the produced documents and therefore it would be sufficient for the producing party to cross-designate responsive documents to avoid the burden of duplicative productions; additionally, the protective order already provides that any document ordered to be produced by a judge in another forum will be made available. Because modifying the protective order can only increase rather than decrease the burdens of discovery in New York, Defendants believe Magistrate Judge McCormick abused his discretion in modifying the order.

It was clear legal error[6], however, for Magistrate Judge McCormick to modify the protective order in a way that, beyond merely removing a bar to relevant discovery, purports to resolve the live discovery dispute in the SDNY Action. ChromaDex effectively concedes as much by failing to offer any support for his authority to do so. Because there is no basis for this Court to decide live discovery disputes currently pending before a federal court in New York, Defendants request

[6] The portion of Magistrate Judge McCormick's ruling challenged here was not as to relevance and is not entitled to the deferential standard of review that ChromaDex seeks. Instead, the ruling hinged squarely on a legal (mis)application of *Foltz*. Respectfully, by interpreting *Foltz* to allow a protective order modification that squarely interferes with a collateral court's control over discovery matters, Magistrate Judge McCormick committed a clear error of law that is subject to *de novo* review. *See Green v. Baca*, 219 F.R.D. 485, 489 (C.D. Cal. 2003) ("The 'contrary to law' standard . . . permits independent review of purely legal determinations by the magistrate judge.") (citation omitted); *Ronda v. Quality Loan Servs. Corp.*, 2019 WL 3240101, at *2 (C.D. Cal. May 31, 2019) ("Under the 'contrary to law' standard, district courts review a Magistrate Judge's legal conclusions de novo, while the 'clearly erroneous' standard applies to factual findings.") (citation omitted); *Franco-Gonzalez v. Napolitano*, 2011 WL 13318185, at *2 (C.D. Cal. Sept. 23, 2011) (finding magistrate judge's entry of protective order to be contrary to law).

that the Court vacate the Modification Order and enter the proposed order previously submitted at ECF No. 398-5.

B. The Modification Order Contravenes *Foltz*

The law is clear on the modification of protective orders with respect to other litigation: "[T]he Ninth Circuit has not adopted a policy that permits collateral litigants to be automatically given access to confidential information produced during discovery in another action." *Darby v. Safeco Ins. Co. of Am.*, 2012 WL 5512576, at *1 (D. Ariz. Nov. 14, 2012). Instead, under *Foltz*, "if the court modifies the protective order to permit the discovery, responsibility shifts to the court overseeing the collateral litigation to determine whether the collateral litigants may ultimately obtain the materials in discovery." *IceMOS Tech. Corp. v. Omron Corp.*, 2019 WL 5268872, at *2 (D. Ariz. Oct. 17, 2019). The Modification Order, by permitting *use* of Designated Material from the California Action proceeding in an entirely separate proceeding currently pending in the Southern District of New York between Elysium and ChromaDex, impermissibly removes the ability of the New York court to make threshold discoverability determinations in the litigation pending before it, in violation of *Foltz*.[7]

The Ninth Circuit narrowly described the district court's task on a motion to modify a protective order for use in a collateral litigation: "the only issue it determines is whether the protective order will bar the collateral litigants from gaining access to the discovery already conducted." *Foltz*, 331 F.3d at 1132-33. But the Ninth Circuit was unmistakable in its command that "disputes over the ultimate discoverability of specific materials covered by the protective order must be resolved by the collateral courts." *Id.* at 1133. Other Circuit Courts of Appeal have likewise cautioned that a modification order should *never* provide a litigant with an end-run

[7] The Modification Order provides that Designated Material may be used "only for the purposes of this Action or Case No. 1:17-cv-07394(CM) (S.D.N.Y.) (the "New York Action," together with the Action the "Actions")." ECF No. 395 ¶ 12.

around discovery limitations in the collateral proceeding. *See Wilk v. Am. Med. Ass'n*, 635 F.2d 1295, 1300 (7th Cir. 1980) ("From that principle, it also follows that a collateral litigant has no right to obtain discovery materials that are privileged or otherwise immune from eventual involuntary discovery in the collateral litigation."). Simply put, "the fact that [Defendants] produced certain documents in the [California action] does not necessarily make them available in the [SDNY Action]. Rather, [ChromaDex] must specifically ask for the documents [it] wants and be able to demonstrate that the information [it] seeks is relevant to [its] claims in [the SDNY Action]." *Chen v. Ampco Sys. Parking*, 2009 WL 2496729 (S. D. Cal. Aug. 14, 2009). ChromaDex has not made any relevance showing in the SDNY Action; instead of bringing this dispute before Chief Judge McMahon, where it belongs, ChromaDex attempted to circumvent what it anticipates will be an unfavorable ruling from Chief Judge McMahon on the issue.

ChromaDex acknowledges that *Foltz* was a case about providing litigants *access* to documents, and that there is a distinction between access and "use." Opp. Br. at 16.[8] It also acknowledges *Foltz*'s admonition that discovery disputes "must be resolved by the collateral courts." Opp. Br. at 16, quoting *Foltz*, 331 F.3d at 1133. But ChromaDex asserts that this admonition applies only to the "kind of discovery dispute" where the party seeking the documents is not already in possession of them. *Id.* Apparently, according to ChromaDex, all discovery disputes over what documents are required to be produced in another forum—such as relevance, privilege, and the like—are automatically overruled as "duplicative discovery" if the demanding party already has access to the documents. ChromaDex offers no basis for this remarkable proposition: the only case it references other than *Foltz* is inapposite, as the court there allowed limited access to documents for a specific

[8] All references to "Opp. Br." are to ChromaDex Inc.'s Opposition to Defendants' Motion for Review of the Magistrate Judge's Order Modifying the Protective Order (ECF No. 405-00).

purpose, and there was no collateral litigation or relevance determination at issue. *See Oracle Corp. v. SAP AG*, 2010 WL 545842, at *3 (N.D. Cal. Feb. 12, 20100). In fact, the law is the opposite: modification of protective orders may not serve to circumvent discovery disputes in other forums, period. *See Stokes v. Life Ins. Co. of N. Am.*, 2009 WL 8397036, at *4 (D. Idaho Aug. 31, 2009) (rejecting proposed modification "because it would have circumvented the very relevance inquiry called for in *Foltz*."); *Kelly v. Provident Life & Accident Ins. Co.*, 2008 WL 5132851, at *2 (S.D. Cal. Dec. 5, 2008) (rejecting modification request which would allow the plaintiff to use the documents "without requiring the collateral courts to resolve any disputes which may arise with respect to discoverability of the materials in the collateral cases."). This rule applies even where, as here, a party seeks to use documents from one litigation in a collateral proceeding. *Biovail Labs., Inc. v. Anchen Pharma., Inc.*, 463 F. Supp. 2d 1073, 1084 (C.D. Cal. 2006) (request to use documents from litigation in proceedings before the FDA "to be an improper attempt to circumvent the FDA's policies and regulations, [thus] Bioavail is not entitled to a modification of the Protective Order.").

ChromaDex asserts that "in cases like this one, where the parties already possess the discovery, there is no need to burden the parties by requiring them to produce material again." Opp. Br. at 16. Peculiarly, ChromaDex's position ignores the most efficient mode of discovery, which is for the producing party to simply cross-designate whatever documents it produced in California that it deems relevant and responsive in the SDNY Action. If the parties disagree about whether a document should be so designated, they must take up the issue with the New York court and, if it agrees, the New York court will order it produced. It is not a "burden" on the parties to be required to distinguish between documents in their possession and documents that may be "used" in the other litigation; to the contrary, it protects the appropriate discovery process in the SDNY Action. *See Heartland Payment Sys., Inc. v. Mercury Payments Sys. LLC*, 2015 WL 4776339, at *3 (N.D. Cal. Aug. 13,

2015) ("[F]ederal civil discovery may not be used merely to subvert limitations on discovery in another proceeding . . . [and] a collateral litigant has no right to obtain discovery materials that are privileged or otherwise immune from eventual involuntary discovery in the collateral litigation.") (quoting *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1428 (10th Cir.1990)). As explained above, the case law does not support the Magistrate Judge's unprecedented interference in a sister court's administration of discovery matters before it. The discovery order issued by the Magistrate Judge usurps the New York court's authority to determine relevance in that proceeding in violation of *Foltz*, and should be reversed.

Elysium's relevant, discoverable information is freely available to ChromaDex through the normal discovery procedures available in the SDNY Action, rendering modification of the protective order unnecessary. In contrast, in the usual third-party context, the third party cannot obtain the documents in the collateral litigation absent modification of a protective order. *See Pac. Fuel Co. LLC v. Shell Oil Co.*, 2008 WL 11340297, at *2 (C.D. Cal. Sept. 22, 2008) ("If the district court does modify its protective order, it does not decide whether the collateral litigants will ultimately obtain the discovery materials . . . That determination must be made by the court overseeing the collateral matter.") (internal citation omitted); *Gil v. Ford Motor Co.*, 2007 WL 2580792, at *5 (N.D.W. Va. Sept. 4, 2007) ("These decisions all also involve collateral litigant's request for modification of an existing non-sharing order so those collateral litigants could receive the information. Here, Currence is a litigant in the case at bar. He will not be precluded in any way from receiving discovery due to the non-sharing protective order."). Indeed, *Foltz* itself cabins its analysis to cases where modification of the protective order is needed "so that collateral litigants are not precluded from obtaining relevant material . . . ." *Foltz*, 331 f.3d at 1132. Here, ChromaDex cannot establish that "the existing Protective Order prevents Plaintiff or any other litigant from obtaining *relevant* discovery from [Elysium] in [the] other litigation" – precisely because Elysium is a party to that litigation and is already

obligated to produce *relevant* documents therein. *Shalaby*, 2018 WL 500948, at *5 (emphasis added).

C. ChromaDex's Case Law Does Not Support the Magistrate Judge's Unprecedented Order

ChromaDex does not explain how a modification order that moots a live discovery dispute in another forum can possibly be consistent with the rule from *Foltz* that "disputes over the ultimate discoverability of specific materials covered by the protective order *must be resolved by the collateral courts*." *Foltz*, 331 F.3d at 1133 (emphasis added). And ChromaDex's attempt to distinguish the cases cited by Defendants fails, as none of those cases suggest that the rule from *Foltz*—that a modification order must not interfere with the collateral court's ultimate authority over the conduct of discovery in the action before it—somehow disappears when a party seeks to use documents from one litigation in a collateral litigation. *See Kelly*, 2008 WL 5132851, at *2 (rejecting proposed order that would allow sharing of documents "without requiring the collateral courts to resolve any disputes which may arise with respect to discoverability of the materials in the collateral cases."); *Shalaby*, 2018 WL 500948, at *6 ("Whether the protected material is discoverable in Plaintiff's other cases is a question for those courts."); *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 2008 WL 4191780 (N.D. Cal. Sept. 10, 2008) ("[S]uch a broad request risks colliding with the Ninth Circuit's decree that collateral litigants not be allowed to gain access to underlying discovery materials merely to subvert limitations on discovery in collateral litigation."); *Siefe v. Unum Grp.*, 2018 WL 6340751, at *4 (C.D. Cal. June 11, 2018) (rejecting proposed order because it allowed use of documents "without requiring the unspecified collateral courts to first resolve any disputes which may arise with respect to discoverability of the materials in the collateral cases."); *Biovail*, 463 F. Supp. 2d at 1084 ("Since Biovail's motion appears to be an improper attempt to circumvent the FDA's polices and regulations,

Biovail is not entitled to a modification of the Protective Order."). Application of that rule here requires that the Modification Order be vacated.

The cases on which ChromaDex relies do not support its position either, because none of them support amending a protective order to resolve a discovery dispute or allow the use of irrelevant documents in another proceeding. *See Cummins-Allison Corp. v. SBM Co., Ltd.*, 2013 WL 12250448, at *2 (D. Haw. Nov. 8, 2013) (allowing modification based on finding that such modification "will not impair or interfere with the [foreign] court's ability to restrict the evidence before it."); *Oracle Corp. v. SAP AG*, 2010 WL 545842, at *3 (where no collateral proceeding existed, granting "use of protected information for the limited purpose that Plaintiffs now seek to use it-consultation with foreign counsel"); *Infineon Techs. AG v. Green Power Techs., Ltd.* 247 F.R.D. 1 (D.D.C. 2005) (modifying a protective order to allow foreign counsel to use documents in connection with a foreign proceeding where Federal Rules of Civil Procedure were inapplicable).

In fact, the relevant ChromaDex cases support Defendants' position. In *BCG Partners, Inc. v. Avison Young (Canada) Inc.*, for example, the modification order stated it shall "not preclude the parties from using relevant information," and that court explicitly cautioned that "[t]he courts in the related cases must ultimately decide whether confidential information produced in this action is relevant and admissible in regard to the claims and defenses in those cases." *Id.* at *5. And in *INVISTA N. Am. S.a.r.l. v. M&G USA Corp.*, 2013 WL 1867345, at *2-3 (D. Del. Mar. 28, 2013), the court modified the protective order to allow foreign counsel *access* to protected discovery and to permit *use* of twelve specific redacted documents in the foreign proceedings. Tellingly, the Court observed that the narrow scope of the request in that case "help[ed] to blunt Defendants' argument that INVISTA's true motive is to . . . gain access to documents for use in a foreign proceeding in a way that flouts foreign discovery rules." *Id.*

D. ChromaDex's Skewed Discussion of *Foltz* Factors Underscores the Magistrate Judge's Error of Law

Magistrate Judge McCormick's legal error does not rest on the Court's discretionary analysis of the *Foltz* factors, which is not the basis of this appeal, but an analysis of those factors underscores the impropriety (and unhelpfulness) of the Modification Order.

Most importantly, a modification of a protective order is not based on an abstract analysis of whether cases are "related:" the relatedness of cases is a tool to allow the court to assess whether modification "advance[s] the interests of judicial economy" and reduce the burden on the parties and the courts. *Cummins-Allison Corp.*, 2013 WL 12250448, at *1. Here, the parties have access to all the relevant documents and can cross-designate as appropriate. The issue here, therefore, is not whether the cases can be described as related; the question is whether the cases are related in such a way that a wholesale "dump" of documents produced in the California Action into the SDNY Action would be more efficient than a deliberative review by the producing party.

Despite ChromaDex's current position, ChromaDex has previously acknowledged, as it must, the difference between the parties and issues in the and California Actions. Indeed, it was *ChromaDex* that filed an independent complaint in the SDNY on December 29, 2016, thus initiating the SDNY Action; ChromaDex's statement that "it was Elysium that chose to initiate the New York Action," Opp. Br. at 19, is simply not true. *See ChromaDex v. Elysium*, 16-cv-2277 (CM), ECF No. 1. ChromaDex's discovery in the SDNY Action has been handled by entirely different lawyers who are not involved in the California Action, and ChromaDex's attorneys handling the California Action have not appeared in the SDNY Action. Opp. Br. at 1. In the SDNY Action, Chief Judge McMahon explicitly warned the parties that she would not relitigate the California Action in New York, and ChromaDex agreed that the cases are indeed different. ChromaDex recently claimed to this Court that "the

heart" of the California Action is a breach of fiduciary duty by Mark Morris, an issue that it entirely irrelevant to the false advertising claims in the SDNY Action: Morris is not even a defendant there. As this Court recognized, the real heart of the California Action is the breach of contract claims between ChromaDex (as supplier) and Elysium (as purchaser), which are also plainly irrelevant to the SDNY Action. That case concerns disputes that have arisen between ChromaDex and Elysium as *competitors* and has nothing to do with the allegations in the California Action about their former relationship as ingredient supplier and purchaser.

The differences between the Actions are borne out by the discovery to date. As noted in Defendants' opening brief, more than 500 of Elysium's requests for production to ChromaDex in the California Action are concededly irrelevant to the SDNY Action, while ChromaDex issued 246 requests for production that do not relate to the SDNY Action—45 of which were addressed to entities or individuals that are not parties to the SDNY Action. Exhibit A at Appendices A & B. Twenty-nine third parties were subpoenaed for documents in the California Action, but most of their documents are not relevant to the claims or defenses at issue in the SDNY Action.[9] Further, there are ten ChromaDex custodians from whom documents were produced in the California Action but from whom documents will not be produced in the SDNY Action, and an additional ten Elysium custodians from which ChromaDex has requested documents be produced in the SDNY Action, but from whom documents were not produced in the California Action.

Given the dissimilarity of parties, issues, claims, laws, time periods, custodians, and relevant third parties, a wholesale production of all the California documents in New York could only increase the cost and burden of motion practice there. The majority of the irrelevant documents that ChromaDex now seeks to use

[9] Eleven of the third parties were subpoenaed solely with regard to ChromaDex's breach of the exclusivity provision of the Niagen Supply Agreement—an issue entirely absent from the SDNY Action.

in the SDNY Action concern time periods that ChromaDex has explicitly described as being *irrelevant* to that action—irrefutably establishing that ChromaDex seeks not to streamline discovery in the SDNY Action but rather to improperly end-run the New York court's determination as to whether prejudicial and irrelevant documents may be used in the SDNY Action.[10]

E. Defendants' *Foltz* Argument Is Not Waived

Defendants expressly argued to Magistrate Judge McCormick that ChromaDex's proposed modification improperly circumvents Chief Judge McMahon's authority over discoverability determinations in the SDNY Action, and this argument is not waived. As Defendants wrote to Magistrate Judge McCormick: "ChromaDex relies on *Foltz v. State Farm Mut. Auto. Ins. Co.* but fails to meet the standard it requires: '[A] litigant must demonstrate the relevance of the protected discovery to the collateral proceedings and its general discoverability therein. Requiring a showing of relevance prevents collateral litigants from gaining access to discovery materials merely to subvert limitations on discovery in another proceeding.'" Exhibit A at 3 (quoting *Foltz*, 331 F.3d at 1132).

During argument on ChromaDex's motion to modify the protective order, when it became clear that Magistrate Judge McCormick seemed inclined to credit ChromaDex's arguments on the required showing of relevance, counsel for Elysium elaborated that the modification motion was merely an attempt to circumvent a discovery dispute, arguing that "this dispute is properly before" Chief Judge McMahon and that "this is really an attempt by [ChromaDex] to get a series of documents that were inadvertently produced by Elysium . . . They know those documents are not responsive; they know they will not be produced in the [SDNY Action], and this was an -- an attempt to modify the protective order to get the

[10] Contrary to ChromaDex's assertion, Defendants did in fact object as to the overlap between the two cases and as to whether the proposed modification advanced the interests of judicial economy. Opp. Br. at 13; Tr. at 5:7-6:5; 8:25-9:10.

documents in the [SDNY Action] so they can continue to harass our clients with them without going before [Chief Judge McMahon] to actually argue a motion to compel." Tr. at 5-6.

While Defendants do not believe any modification to the protective order is warranted or appropriate, at a minimum the language must be clarified to comport with the law and limited to the use of *relevant* documents in the SDNY Action while preserving each court's proper role under *Foltz*. ChromaDex's insistence that "the Court should refuse to consider the new language submitted by Defendants" undermines the "interests of judicial efficiency" ChromaDex purports to value.

F. ChromaDex's Request For Fees Should Be Denied

Because the Modification Order contravenes Ninth Circuit precedent barring a litigant from circumventing a collateral court's authority, Defendants' motion is amply justified and should be granted. As shown above, Defendants' arguments are well grounded in extensive case law and were presented to the Magistrate Judge during oral argument.[11] ChromaDex's request for fees should be denied. *See Colaco v. ASIC Advantage Simplified Pension Plan*, 301 F.R.D. 431, 436 (N.D. Cal. 2014) (finding motion to be substantially justified when "the case law on this issue is not fully delineated or settled").

G. Conclusion

To preserve the proper roles for each court consistent with *Foltz*, and to further the efficient administration of justice in both the California and SDNY Actions, Defendants respectfully request that the Court vacate the Modification Order and

[11] ChromaDex's conclusory argument that Defendants somehow failed to satisfy Local Civil Rule 7-3 is incorrect. The parties extensively conferred over the protective order modification in advance of the hearing and the Magistrate Judge's ruling. Nothing more is required. A meet and confer regarding Defendants' motion would be futile by definition, as the parties cannot agree to modify the Magistrate Judge's order. *See also Lin v. Kia Motors Am., Inc.*, WL 12887102, at *2 (C.D. Cal. Aug. 27, 2012) (ruling on an objection to a Magistrate Judge's order and stating that "[t]he Court finds that in light of the previous discussion on the matter [the parties' prior meetings and conferences], it will address the merits and not require a further meet and confer.").

further request that the Court enter the Proposed Order attached as Exhibit C to the Declaration of Kristin Keranen, ECF No. 398-08.

Respectfully submitted,

Dated: January 13, 2020

BAKER & HOSTETLER LLP

By: */s/ Joseph N. Sacca*
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