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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **(WESTERN DIVISION)**

14
15 ChromaDex, Inc.,
16 Plaintiff,
17 v.
18 Elysium Health, Inc., and Mark Morris
19 Defendants.

20 Elysium Health, Inc.,
21 Counterclaimant,
22 v.
23 ChromaDex, Inc.,
24 Counter-Defendant.

Case No. 8:16-cv-2277-CJC (DFMx)

CHROMADEx, INC.’S OPPOSITION TO DEFENDANTS’ APPLICATION FOR LEAVE TO FILE UNDER SEAL DECLARATIONS FILED IN SUPPORT OF THEIR NOTICE OF CORRECTION OF DEPOSITIONS

Judge: Hon. Cormac J. Carney
Courtroom: 9B

Pretrial Conf.: Sept. 13, 2020
Trial: Sept. 21, 2020

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26 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE FILED**
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1 **I. INTRODUCTION**

2 Elysium CEO Eric Marcotulli and COO Daniel Alminana repeatedly [REDACTED]
3 [REDACTED] at their depositions in March 2019. Now, *twenty-one months later*, Marcotulli and
4 Alminana have filed extraordinary declarations with this Court in which they [REDACTED]
5 [REDACTED]. The issue before the Court is whether those
6 declarations should be sealed and hidden from the public. There is no basis for secrecy
7 here, and the application to seal should be denied.

8 There is a “strong presumption in favor of access to court records.” *Ctr. For Auto*
9 *Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (quotation omitted).
10 The new declarations reveal wholesale [REDACTED].
11 They do not, however, reveal any basis for insulating the [REDACTED] in a court-
12 sanctioned veil of secrecy. Messrs. Marcotulli and Alminana are the principals of a
13 consumer-facing company that markets and sells a nutritional supplement; they are also
14 the key witnesses in this litigation for Elysium. [REDACTED] and
15 then waited *twenty-one months* to come forward about it. The impact of their
16 [REDACTED] will play out in future motions and at trial, but for present purposes Elysium
17 has made no showing that would justify an exception to the core principle of open public
18 access to court proceedings.

19 **II. LEGAL STANDARD**

20 Requests to seal court filings infringe the “general right to inspect and copy
21 public records and documents, including judicial records and documents.” *Nixon v.*
22 *Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). In the Ninth Circuit, courts “start
23 with a strong presumption in favor of access to court records.” *Foltz v. State Farm Mut.*
24 *Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). “The presumption of access is
25 based on the need for federal courts, although independent—indeed, particularly
26 because they are independent—to have a measure of accountability and for the public
27 to have confidence in the administration of justice.” *Ctr. for Auto Safety*, 809 F.3d at
28 1096 (quotation omitted). Such has been the firm rule in this litigation. (*See* Dkt. 414

1 (denying applications to seal motions for summary judgment and supporting
2 documents); Dkt. 224 (admonishing “under seal filings are strongly disfavored”);
3 Dkt. 108 at 2 (“Any further request to file documents under seal based on the parties’
4 protective order is **strongly disfavored.**”) (emphasis in original).)

5 “A party seeking to seal a judicial record [] bears the burden of overcoming this
6 strong presumption by meeting the ‘compelling reasons’ standard.” *Kamakana v. City*
7 *& Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). To satisfy the standard, the
8 party seeking to seal judicial records “must articulate compelling reasons supported by
9 specific factual findings that outweigh the general history of access and the public
10 policies favoring disclosure, such as the public interest in understanding the judicial
11 process.” *Kamakana*, 447 F.3d at 1178 (cleaned up); *Best Lockers, LLC v. Am. Locker*
12 *Grp., Inc.*, 2013 WL 12143937, at *2 (C.D. Cal. Aug. 18, 2013) (Carney, J.)
13 (“BridgePoint must show compelling reasons supported by specific facts to justify
14 sealing its motion in limine.”). “The mere fact that the production of records may lead
15 to a litigant’s embarrassment, incrimination, or exposure to further litigation will not,
16 without more, compel the court to seal its records.” *Id.* at 1179.

17 **III. THE COURT SHOULD DENY DEFENDANTS’ APPLICATION TO SEAL**

18 Defendants do not provide compelling reasons to seal the Marcotulli and
19 Alminana declarations. The only justification offered is that the [REDACTED]
20 concerns “Mr. Marcotulli’s personal life.” (Dkt. 454 at 4.) That is wrong, as
21 Mr. Marcotulli’s own declaration makes clear. His [REDACTED] and the
22 evidence from which it arises intersect with events at issue in this case, including his
23 work as Elysium’s CEO, his interactions with ChromaDex (the circumstances of which
24 are in dispute), and his credibility, memory, perception, and bias. All of this was
25 exhaustively catalogued in ChromaDex’s Opposition to Defendants’ Motion *in Limine*
26 regarding evidence of the underlying [REDACTED] and the subsequent [REDACTED],
27 which at the time Elysium neither admitted nor corrected despite having ample
28 opportunity to do so. (Dkt. 284-1 at 3–11.) And even if the conduct underlying the

1 [REDACTED] could be damaging to Mr. Marcotulli’s reputation, “[t]he mere fact that
2 the production of records may lead to a litigant’s embarrassment, incrimination, or
3 exposure to further litigation will not, without more, compel the court to seal its
4 records.” *Kamakana*, 447 F.3d at 1179.

5 Defendants contend that the Court should apply the lower “good cause” standard
6 to the declarations “because they pertain to discovery material” and “do not concern
7 any dispositive motion or other dispositive aspect of the case.” (Dkt. 454 at 4.) They
8 are incorrect on both counts. The evidence is not mere “discovery material” because it
9 bears directly on the credibility of two key defense witnesses whose testimony will be
10 critical on several disputed issues. Moreover, the Ninth Circuit has held that requests
11 to seal documents filed with “nondispositive motions—including routine motions in
12 limine”—should be analyzed under the “compelling reasons” standard when they “are
13 strongly correlative to the merits of a case.” *Ctr. for Auto Safety*, 809 F.3d at 1099.
14 Here, the new declarations go directly to the credibility of Elysium’s most important
15 witnesses and the underlying facts about critical events in the case about which those
16 witnesses will testify. (Dkt. 284-1 at 3–11.) The compelling reasons standard should
17 therefore apply. *See, e.g., Best Lockers*, 2013 WL 12143937, at *2 (applying
18 “compelling reasons” standard to “motion in limine”).

19 Even if the Court applies the “good cause” standard, the application does not
20 satisfy it. “For good cause to exist, the party seeking protection must make a
21 particularized showing of the specific prejudice or harm that will result if the
22 information is made public.” *Best Lockers*, 2013 WL 12143937, at *1 (cleaned up).
23 “Broad allegations of harm, unsubstantiated by specific examples or articulated
24 reasoning do not satisfy the good cause standard.” *Id.* (cleaned up). For the reasons
25 articulated above, Defendants’ bald assertion that some of the evidence underlying the
26 [REDACTED] is “highly sensitive” is not sufficient to meet the required
27 particularized showing. *See, e.g., Whitney v. Dep’t of Juvenile Justice Servs.*, 2011 WL
28 4566113, at *1 (D. Utah Sept. 29, 2011) (denying request to seal documents because

1 “Plaintiff has not shown any particular harm that would result from the public having
2 access to” personal information about her that “is at least somewhat relevant to the
3 case”). The application offers no other reasons sufficient to outweigh the “strong
4 presumption in favor of access to court records.” *Ctr. for Auto Safety*, 809 F.3d at 1096
5 (quoting *Foltz*, 331 F.3d at 1135).

6 Finally, even if redactions to some parts of the Marcotulli and Alminana
7 declarations are warranted (and they are not), Defendants’ proposed redactions are too
8 extensive. For example, the current redactions cover both Messrs. Marcotulli’s and
9 Alminana’s admissions [REDACTED], not just the supposedly [REDACTED]
10 [REDACTED]. Defendants provide no basis whatsoever for hiding those admissions of
11 [REDACTED] from the public. *Cf. Acad. of Motion Picture Arts & Scis. v.*
12 *GoDaddy.com, Inc.*, 2015 WL 12698301, at *1 (C.D. Cal. Jan. 22, 2015) (“[A]n order
13 sealing the documents must be narrowly drawn to seal only those portions of the record
14 that, upon a balancing of the relevant interests, ought to be sealed.”)

15 **IV. CONCLUSION**

16 The Defendants have provided no basis for an exception to the general rule
17 mandating public access to court records. The application to seal should be denied.
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19 Dated: December 15, 2020

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