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Filing date: **03/26/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202162
Party	Defendant ChromaDex Inc.
Correspondence Address	JOSEPH T NABOR FITCH EVEN TABIN & FLANNERY 120 S LASALLE ST , STE 1600 CHICAGO, IL 60603-3590 UNITED STATES trademark@fitcheven.com
Submission	Other Motions/Papers
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Signature	/Alisa C. Simmons/
Date	03/26/2012
Attachments	Motion to Suspend.PDF (3 pages)(41990 bytes) Exhibit A - Motion to Suspend - First Amended Complaint.pdf (38 pages)(1708886 bytes) Exhibit B - Motion to Suspend - Answer in Civil Case.pdf (24 pages)(1971585 bytes)

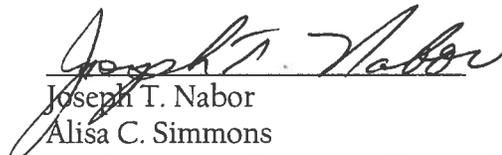
of court litigation between the same parties including related issues. *Whopper-Burger, Inc. v. Burger King Corporation*, 171 USPQ 805 (TTAB 1971). Applicant seeks the requested suspension in the interests of judicial economy and to reduce duplication of effort and expense to the parties, because resolution of the matters at issue in the District Court Litigation will likely be dispositive of matters at issue in this Opposition Proceeding.

The issues to be litigated in the District Court Litigation include trademark infringement, unfair competition, and the Opposer's affirmative defense of unenforceability of the Applicant's mark, among others. The issue of descriptiveness of the Applicant's mark that is central to this Opposition Proceeding is also at issue in the District Court Litigation. With its allegations in the Notice of Opposition, Opposer even acknowledges that the issues to be considered in the District Court Litigation will have a bearing on the issues to be decided in this Opposition Proceeding. In Paragraph 16 of the Notice of Opposition, the Opposer specifically alleges the descriptiveness of the Applicant's mark and relies upon the District Court Litigation as part of the basis for its having brought this Opposition Proceeding.

For the above reasons, Applicant respectfully requests that the Board grant its motion to suspend.

Respectfully submitted,

Dated: March 26, 2012


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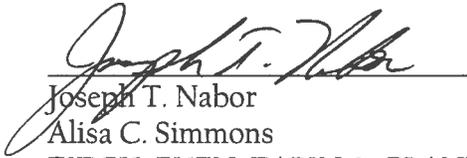
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing APPLICANT'S MOTION TO SUSPEND PENDING OUTCOME OF CIVIL LITIGATION was served by first class mail, postage prepaid, upon:

Mr. Aaron Shechet
Chandler & Shechet LLP
1844 Bagley Avenue
Los Angeles, CA 90035
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Attorney for Opposer Biotivia, LLC.

On this 26th day of March, 2012



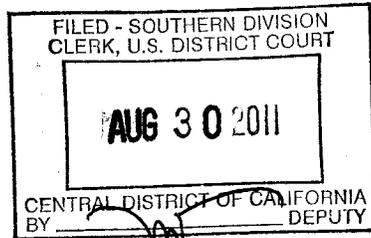
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Exhibit A

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11 ChromaDex, Inc.



12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 CHROMADEX, INC., a California
15 Corporation,

16 Plaintiff,

17 vs.

18 BIOTIVIA LLC, a Delaware Limited
19 Liability Company; BIOTIVIA
20 BIOCEUTICALS, LLC, a Delaware
21 Limited Liability Company,

22 Defendants.

Case No.: SACV11-01273 CJC (MLGx)

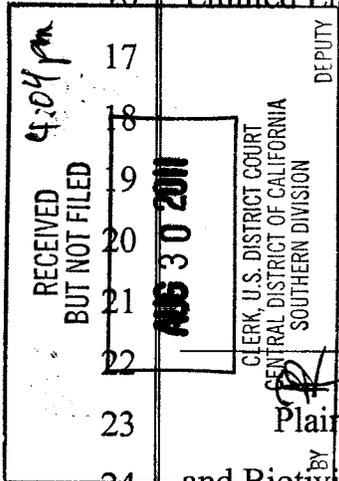
**FIRST AMENDED COMPLAINT
FOR:**

- (1) Trademark Infringement;
- (2) Federal Unfair Competition/False Advertising;
- (3) Copyright Infringement;
- (4) Unfair Competition per Cal.Bus. & Prof. Code § 17200;
- (5) Common Law Unfair Competition; and
- (6) Unjust Enrichment

JURY TRIAL DEMANDED

ORIGINAL

BY FAX



23 Plaintiff ChromaDex, Inc. brings this action against Defendants Biotivia LLC
24 and Biotivia Bioceuticals, LLC (collectively, "Defendants") and alleges as follows:

JURISDICTION AND VENUE

25 1. This action arises under the Acts of Congress under the Trademark and
26 Lanham Acts, Title 15 U.S.C. § 1051, et seq., Copyright Act, 17 U.S.C. § 101 et seq.,
27 and common law. As such, this Court has subject matter jurisdiction under the
28

1 provisions of Title 28 U.S.C. §§ 1331 and 1338 because this action involves federal
2 questions of law. A substantial part of the events giving rise to this action have
3 occurred and continue to occur in this judicial district. As such, this court has subject
4 matter jurisdiction under the provisions of Title 28 U.S.C. §§ 1331 and 1338 because
5 this action involves federal questions of law. A substantial part of the events giving
6 rise to this action have occurred and continue to occur in this judicial district. As
7 such, Defendants should reasonably expect that their activities might have
8 consequences herein.

9 2. This Court has original jurisdiction over the claims brought under federal
10 law pursuant to 28 U.S.C. §§ 1331 and 1338(b) and 15 U.S.C. § 1121.

11 3. This Court has supplemental jurisdiction over the claims in this
12 Complaint that arise under state statutory and common law in the State of California
13 pursuant to 28 U.S.C. §1367(a), because the state law claims are so related to the
14 federal claims that they form part of the same case or controversy and derive from a
15 common nucleus of operative facts.

16 4. This Court has personal jurisdiction over Defendants and each of them
17 because they reside in the Central District of California, have a place of business
18 within this judicial district and conduct substantial business within this judicial district
19 related to the unlawful activity at issue in this Complaint.

20 5. Venue is proper in this court pursuant to 28 U.S.C. §1391 because
21 Defendants reside in this judicial district, conducts business in this business district,
22 and because a substantial part of the events or omissions giving rise to ChromaDex's
23 claims occurred and are continuing to occur in this judicial district.

24 **THE PARTIES**

25 6. Plaintiff ChromaDex Inc. ("Plaintiff" or "ChromaDex") is a California
26 corporation with its principal place of business at 10005 Muirlands, Suite G, Irvine,
27 California 92618.

1 7. Upon information and belief, Defendant Biotivia LLC is a Delaware
2 Limited Liability Company, with a principal place of business at 1 River Place, Ste.
3 1001, New York, NY 10036 and offices in Los Angeles, California.

4 8. 8. Upon information and belief, Defendant Biotivia Bioceuticals LLC
5 is a Delaware Limited Liability Company, with a principal place of business at 1
6 River Place, Ste. 1001, New York, NY 10036 and offices in Los Angeles, California.
7 Upon information and belief, Defendant Biotivia Bioceuticals LLC is a dba of or
8 otherwise is directly affiliated with Biotivia LLC.

9
10 **BACKGROUND AS TO CHROMADEx'S**
BUSINESS AND ITS INTELLECTUAL PROPERTY

11 9. ChromaDex was established in 1999 and is an innovative natural products
12 company that provides proprietary, science-based solutions and ingredients to the
13 dietary supplement, food and beverage, cosmetic and pharmaceutical industries.

14 10. On April 26, 2010, ChromaDex launched pTeroPure® Pterostilbene
15 (hereafter PTEROPURE®), a proprietary, ultrapure formulation of the naturally
16 occurring compound pterostilbene, found in blueberries. PTEROPURE® is a
17 synthetic pterostilbene, which is a dietary supplement to support anti-aging, heart
18 health, oxidative stress, and memory.

19 11. On June 13, 2011, ChromaDex launched BluScience, a line of dietary
20 supplements which feature PTEROPURE®. The BluScience line of pterostilbene-
21 based products is distributed through GNC at more than 7,300 locations throughout
22 the United States and via the internet.

23 12. ChromaDex is the owner of certain intellectual property rights, including
24 numerous federally registered trademarks and copyrights, as well as common law
25 trademark and copyright rights.

26 13. ChromaDex is the owner of trademark rights in and to the
27 PTEROPURE®, CHROMADEx®, THE NEXT GENERATION RESVERATROL,
28 BLUSCIENCE and BLUSCIENCE THE FUSION OF BLUEBERRIES AND

1 SCIENCE marks including the following registrations and applications with the
2 United States Patent and Trademark Office:- U.S. Reg. No. 3932510 for pTeroPure
3 for “Phytochemicals for use in the manufacturing of dietary supplements and
4 nutritional products” in International Class 1 attached as Exhibit A;

5 - U.S. Reg. No 3999086 for CHROMADEX for “Chemical reagents for non-
6 medical purposes; Chemical test kits for analytical measurement of raw material
7 identify, potency and formulation consistency for laboratory or research use;
8 Chemicals for use in industry and science; Chemicals for use in the biochemical and
9 chemical industry; Assays for research purposes” in International Class 1, and for
10 “Chemical, biochemical, biological and bacteriological research and analysis;
11 Consulting in the field of product development in the field of chemicals; Development
12 and establishment of testing specifications and procedures in the field of chemicals;
13 Development and test of chemical production methods; Development of voluntary
14 standards for chemicals; Executing of chemical analyses; Industrial research in the
15 field of chemicals; Pharmaceutical research and development; Product research and
16 development; Research and development and consultation related thereto in the field
17 of chemicals; Testing of raw materials” in International Class 42 attached as Exhibit
18 B;

19 - U.S. App. Serial No. 85193003 for THE NEXT GENERATION
20 RESVERATROL for “Phytochemicals for use in the manufacturing of dietary
21 supplements, nutritional supplements, nutritional beverages, pharmaceuticals and
22 cosmetics,” in International Class 1;

23 - U.S. App. Serial No. 85306142 for BLUSCIENCE for “Dietary and
24 nutritional supplements,” in International Class 5; and

25 - U.S. App. Serial No. 85306158 for BLUSCIENCE THE FUSION OF
26 BLUEBERRIES AND SCIENCE (stylized) for “Dietary and nutritional
27 supplements,” in International Class 5.
28

1 14. Since at least March 11, 2010, ChromaDex has used the PTEROPURE®
2 trademark in commerce.

3 15. ChromaDex has expended significant time, energy, and resources in the
4 protection and promotion of its PTEROPURE® mark.

5 16. Since at least October 1999, ChromaDex has used the CHROMADEX®
6 trademark in commerce with regard to International class 001, and at least June 2000,
7 in International class 042.

8 17. ChromaDex has expended significant time, energy, and resources in the
9 protection and promotion of its CHROMADEX® mark.

10 18. ChromaDex filed for trademark registration under section 1B on
11 December 8, 2010 for the mark THE NEXT GENERATION RESVERATROL. The
12 mark is currently in use on ChromaDex's website and is to be published for
13 opposition on August 23, 2011.

14 19. ChromaDex filed for trademark registration under section 1B for the mark
15 BLUSCIENCE on April 27, 2011.

16 20. ChromaDex filed for trademark registration under section 1B for the mark
17 BLUSCIENCE THE FUSION OF BLUEBERRIES AND SCIENCE on April 27,
18 2011.

19 21. ChromaDex uses the BLUSCIENCE and BLUSCIENCE THE FUSION
20 OF BLUEBERRIES AND SCIENCE marks on its website, chromadex.com, in
21 connection with the advertising and sale of its BluScience line of products, all of
22 which utilize the PTEROPURE®.

23 22. ChromaDex is the owner of certain copyrighted works including as
24 relevant here:

25 - U.S. Copyright Reg. No. TXu001746330 for a work entitled "pTeroPure
26 Brochure;" attached as Exhibit C; and

1 - U.S. Copyright Reg. No. TXu001745172 for a work entitled “pTteroPure
2 Pterostilbene: The Next Generation Resveratrol (Complete Presentation),” attached as
3 Exhibit D.

4 **DEFENDANTS’ UNLAWFUL CONDUCT**

5 23. Defendants own and operate at least two websites which target the United
6 States market, Biotivialabs.com and Biotivia.com (“Biotivia Websites”).

7 24. Defendants sell various nutraceutical supplements on the Biotivia
8 Websites and through other third-party stores such as drugstores and other vendors of
9 dietary supplements. Defendants’ products are available for purchase both from
10 internet websites and at local third-party stores.

11 25. The Biotivia Websites are active websites through which Defendants
12 solicit business throughout the United States, and sell products to consumers
13 throughout the United States, including consumers in the Central District of
14 California.

15 26. In or about December 2010, via the Biotivia Websites, Defendants began
16 advertising and selling a product called PteroMax that contains pterostilbene.

17 27. Defendants’ PteroMax product directly competes with ChromaDex’s
18 BluScience line of products.

19 28. No association or relationship exists between ChromaDex and
20 Defendants.

21 29. The PteroMax product sold by Defendants is not manufactured or
22 affiliated in any way with ChromaDex, PTEROPURE® or ChromaDex’s BluScience
23 line of products.

24 **Defendants’ False Advertising and Unfair Competition on its Websites**

25 30. The Biotivia Websites contain numerous false and misleading statements
26 regarding Defendants’ PteroMax product which are intended to deceive the
27 purchasing public and/or cause confusion with the purchasing public. Examples of
28

1 the myriad false and misleading statements reflected on Defendants' Websites
2 include:

3 a) Defendants falsely state that there is a partnership between
4 ChromaDex and Defendants;

5 b) Defendants falsely claim that their PteroMax product was
6 developed prior to the PTEROPURE® product;

7 c) Defendants falsely claim that they introduced the world to
8 pterostilbene when there were at least 15 pterostilbene-based products on the market
9 before the PteroMax product;

10 d) Defendants falsely claim that the PTEROPURE® product was
11 created "based on the Biotivia Labs' formulation for PteroMax";

12 e) Defendants falsely claim that the PTEROPURE® formulation is a
13 "weakened version" of the competing PteroMax product;

14 f) Defendants falsely claim that the price of PteroMax is substantially
15 less than PTEROPURE®;

16 g) Defendants falsely state that their PteroMax product has hundreds
17 of times the amount of pterostilbene contained in other pterostilbene-based products,
18 including PTEROPURE®;

19 h) Defendants falsely state that PteroMax is 100% pure pterostilbene;

20 i) Defendants falsely claim that PteroMax contains over 100 times
21 the potency of competing supplements;

22 j) Defendants falsely state that PteroMax is cheaper than other
23 similar products;

24 k) Defendants falsely state that only PteroMax contains Polydatin;

25 l) Defendants falsely state that more of the world's leading medical
26 research institutions chose Defendants for human clinical trials than all other suppliers
27 combined;

1 m) Defendants falsely claim that PteroMax is the result of over four
2 year of Defendants' research, testing and analysis;

3 n) Defendants falsely claim that PteroMax has the highest antioxidant
4 rating of any supplement ever tested, and more that double that of any competing
5 pterostilbene product ever tested;

6 o) Defendants falsely claim that PteroMax is the only pterostilbene
7 supplement designed by health scientists to match the specific proportions and
8 concentrations found to be most effective in published scientific studies;

9 p) Defendants falsely claim that PteroMax contains the highest
10 amount of pterostilbene in its product;

11 q) Defendants falsely claim that dosages of less than 100 mg per
12 capsule have not been shown effective in humans;

13 r) Defendants falsely claim that no company or institution has more
14 experience and expertise in the development and manufacturing of resveratrol than
15 Defendants; and

16 s) Defendants falsely state that their product, PteroActiv, is a "pure"
17 pterostilbene and has something to do with SIRT1 activation.

18 31. Defendants also used PteroMax in connection with words and phrases
19 similar to ChromaDex's THE NEXT GENERATION RESVERATROL mark on the
20 Biotivia Websites.

21 32. Defendants uses their PteroMax name in connection with the phrase
22 "Pterostilbene has been described as the taking Resveratrol to the next level" on the
23 Biotivialabs.com website. Defendants also use the phrase "PteroMax, in many
24 important ways, takes resveratrol to a new level," on the Biotivia.com website.

25 33. The combined use of the PteroMax name and the phrases incorporating
26 "taking resveratrol to the next level," and "takes resveratrol to a new level" are likely
27 to confuse consumers based on the similarity of the name and phrases to the
28 PTEROPURE® and THE NEXT GENERATION RESVERATROL marks.

1 34. Defendants are unfairly competing with ChromaDex through the
2 unauthorized and unlawful use of ChromaDex's marks.

3 35. Defendants' conduct is willful in nature.

4 **Defendants' Conduct In Unlawfully Directing**

5 **Internet Users to Their Websites by Using ChromaDex's Trademarks**

6 36. Defendants, without authorization, used ChromaDex's CHROMADEx®,
7 PTEROPURE® and BLUSCIENCE marks as ad keywords on various search engines
8 so as to unlawfully deceive consumers into believing that there was an affiliation
9 between ChromaDex and Defendants.

10 37. Defendants purchased keywords utilizing ChromaDex's marks to drive
11 web traffic to its competing website to sell its products on at least Google.com,
12 Ask.com, and Answer.com.

13 38. Defendants purchased several of ChromaDex's trademarks, including,
14 *inter alia*, ChromaDex's CHROMADEx®, PTEROPURE® and BLUSCIENCE
15 marks, as keywords on internet search engines Google.com and Ask.com, among
16 other internet search engines.

17 39. By purchasing ChromaDex's identical trademarked terms as keywords,
18 Defendants are seeking to drive consumer traffic to its own websites through the
19 unauthorized and infringing use of ChromaDex's marks. As a result, consumers are
20 likely to be confused as to whether Defendants' PteroMax product is affiliated with
21 ChromaDex and its products, including PTEROPURE®.

22 40. Defendants' purchase of ChromaDex's CHROMADEx®,
23 PTEROPURE® and BLUSCIENCE marks as key ad words for the sale of products in
24 the same fields is likely to cause confusion to consumers and constitutes trademark
25 infringement.

26 41. In addition to the purchase of ChromaDex's marks as key ad words,
27 Defendants used ChromaDex's CHROMADEx®, PTEROPURE® and
28 BLUSCIENCE marks in their metadata with the intent to use the ChromaDex marks

1 to drive ChromaDex customers to the Biotivia Websites through general internet
2 searches.

3 42. Defendants' use of ChromaDex's marks in their metadata is likely to
4 confuse consumers as to the source and affiliation of ChromaDex's products.

5 43. Defendants unlawfully used the CHROMADDEX®, PTEROPURE® and
6 BLUSCIENCE marks in commerce in connection with the sale or advertising for the
7 sale of Defendants' competing products. Such use in commerce in connection with
8 the sale or advertising for Defendants' products was and is unauthorized.

9 44. Defendants are unfairly competing with ChromaDex through the
10 unauthorized and unlawful use of ChromaDex's marks.

11 45. Defendants' conduct is willful in nature.

12 **Defendants' Copyright Infringement of ChromaDex's Promotional Materials**

13 46. In September 2010, ChromaDex emailed PTEROPURE® and
14 pterostilbene materials, including a brochure, to Defendants. An updated and revised
15 version of the PTEROPURE® brochure is accessible on the ChromaDex
16 pTeroPure.com website.

17 47. The brochure sent to Defendants in September 2010 and the updated
18 version on the ChromaDex website are protected by copyright.

19 48. As the owner of the United States Copyright Registration Nos.
20 TXu001746339 and TXu001746330, ChromaDex has the exclusive right to
21 reproduce, distribute, display, and prepare derivative works based on the copyrighted
22 work. 17 U.S.C. §§ 106 and 113.

23 49. The Biotivia Websites contain statements regarding PteroMax, including
24 how it was developed, how it is made, benefits of taking the supplement, and
25 comparing the product to other similar products.

26 50. Many of the statements found on The Biotivia Websites were copied in
27 whole or in part from ChromaDex's copyrighted works. For example, the
28 ChromaDex copyrighted brochures contain the following statements:

1 pTeroPure is a nature identical form of trans-pterostilbene.
2 Pterostilbene is the next generation of resveratrol:

- 3 • **a methylated resveratrol analog naturally found in berries**
- 4 • **superior biological activity**
- 5 • **better oral bioavailability**
- 6 • **metabolizes more slowly in the body, allowing more time for its antioxidant activities to act.**

7 The Biotivia Website contains the following statements, among others, which reflect
8 copying of the statements in the copyrighted ChromaDex materials:

9 Found in plants like blueberries, pterostilbenes have been a
10 feature of Ayurvedic medicine for hundreds of years. The
11 highlights of pterostilbenes are:

- 11 • **a methylated resveratrol analog naturally found in berries**
- 12 • **superior biological activity**
- 13 • **better oral bioavailability**
- 14 • **metabolizes more slowly in the body.**

15 51. Defendants have used ChromaDex's copyrighted materials, including the
16 examples above, without ChromaDex's authorization or consent. Defendants used the
17 materials to promote their competing pterostilbene and resveratrol products.

18 52. The continued use of ChromaDex's copyrighted materials on Defendants'
19 websites has caused and is causing ChromaDex to suffer serious and substantial
20 damages resulting from Defendants' acts of copyright infringement, and the damages
21 are causing irreparable injury to ChromaDex for which there is no adequate remedy at
22 law.

23 **ChromaDex's Attempts to Have Defendants Cease Their Infringing Activity**

24 53. In or about April 28, 2011, ChromaDex sent a letter to Defendants
25 demanding that they cease the use of ChromaDex's intellectual property. To date,
26 Defendants have failed to comply with ChromaDex's demands.

27 54. Defendants have not received authorization, a license, or any other
28 authority to utilize any of ChromaDex's trademarks or other intellectual property for

1 any purpose, nor has ChromaDex acquiesced to Defendants' use of any of its
2 intellectual property.

3 55. Defendants' infringing activities are likely to cause confusion or mistake
4 among prospective consumers and are likely to mislead and/or deceive prospective
5 consumers with respect to the origin and quality of ChromaDex's products.

6 **FIRST CLAIM FOR RELIEF**

7 **Trademark Infringement under the Lanham Act -15 U.S.C. §1114 Against**
8 **Biotivia LLC and Biotivia Biocenticals, LLC**

9 56. ChromaDex realleges and incorporates by this reference each and every
10 allegation set forth in paragraphs 1 through 55, above.

11 57. Defendants own and operates at least two websites which target the
12 United States market, Biotivialabs.com and Biotivia.com.

13 58. Defendants sell various nutraceutical supplements on the Biotivia
14 Websites and through other third-party stores such as drugstores and other vendors of
15 dietary supplements. Defendants' products are available for purchase both from
16 internet websites and at local third-party stores.

17 59. The Biotivia Websites are active websites that solicit business throughout
18 the United States, and sell products to consumers throughout the United States,
19 including consumers in the Central District of California.

20 60. On or about December 2010, via the Biotivia Websites, Defendants began
21 advertising and selling a product called PteroMax that contains pterostilbene.

22 61. Defendants' PteroMax product directly competes with ChromaDex's
23 BluScience line of products.

24 62. No association or relationship exists between ChromaDex and
25 Defendants.

26 63. The PteroMax product sold by Defendants is not manufactured or
27 affiliated in any way with ChromaDex, PTEROPURE® or ChromaDex's BluScience
28 line of products.

1 64. Defendants, without authorization, used ChromaDex's CHROMADDEX®,
2 PTEROPURE® and BLUSCIENCE marks as ad keywords on various search engines
3 so as to unlawfully deceive consumers into believing that there was and is an
4 affiliation between ChromaDex and Defendants.

5 65. Defendants purchased keywords utilizing ChromaDex's marks to drive
6 web traffic to its competing website to sell its products on at least Google.com,
7 Ask.com, and Answer.com.

8 66. Defendants purchased several of ChromaDex's trademarks, including,
9 *inter alia*, ChromaDex's CHROMADDEX®, PTEROPURE® and BLUSCIENCE
10 marks, as keywords on internet search engines Google.com and Ask.com, among
11 other internet search engines.

12 67. By purchasing ChromaDex's identical trademarked terms as keywords,
13 Defendants are seeking to drive consumer traffic to its own website through the
14 unauthorized and infringing use of ChromaDex's marks. As a result, consumers are
15 likely to be confused as to whether PteroMax is affiliated with ChromaDex and with
16 its ChromaDex's PTEROPURE®.

17 68. Defendants' purchase of ChromaDex's CHROMADDEX®,
18 PTEROPURE® and BLUSCIENCE marks as key ad words for the sale of products in
19 the same fields is likely to cause confusion to consumers and constitutes trademark
20 infringement.

21 69. In addition to the purchase of ChromaDex's marks as key ad words,
22 Defendants used ChromaDex's CHROMADDEX®, PTEROPURE® and
23 BLUSCIENCE marks in its metadata with the intent to use the ChromaDex marks to
24 drive ChromaDex customers to Defendants' website through general internet searches.

25 70. Defendants' use of ChromaDex's marks in Defendants' metadata is likely
26 to confuse consumers as to the source and affiliation of ChromaDex's products.

27 71. Defendants unlawfully used the CHROMADDEX®, PTEROPURE® and
28 BLUSCIENCE marks in commerce in connection with the sale or advertising for the

1 sale of Defendants' competing products. Such use in commerce in connection with
2 the sale or advertising for Defendants' products was and is unauthorized.

3 72. The federal registrations of ChromaDex's CHROMADDEX® and
4 PTEROPURE® mark evidences ChromaDex's exclusive right to use its
5 CHROMADDEX® and PTEROPURE® marks in connection with Phytochemicals for
6 use in the manufacturing of dietary supplements and nutritional products. 15 U.S.C. §
7 1115.

8 73. Defendants purchased ad words through Google and other internet search
9 engines for ChromaDex's CHROMADDEX® and PTEROPURE® marks.

10 74. Defendants used ChromaDex's CHROMADDEX® and PTEROPURE®
11 marks in their metadata with the intent to use the ChromaDex marks to drive
12 ChromaDex customers to Defendants' Websites through general internet searches.

13 75. Defendants' wrongful and unauthorized use of the CHROMADDEX® and
14 PTEROPURE® marks as delineated above constitutes trademark infringement
15 pursuant to 15 U.S.C. § 1114.

16 76. Defendants' unauthorized use of the CHROMADDEX® and
17 PTEROPURE® marks in connection with the sale of the competing PteroMax product
18 is likely to cause confusion, or mistake, or to deceive as to the source, affiliation, or
19 sponsorship with ChromaDex, in violation of 15 U.S.C. § 1051 et seq.

20 77. Defendants' use and adoption of ChromaDex's exact marks, which are
21 utilized in the same field as ChromaDex's marks, constitutes infringement of
22 ChromaDex's registered CHROMADDEX® and PTEROPURE® marks, in violation of
23 15 U.S.C. §§ 1051 et seq., to the substantial and irreparable injury of the public and of
24 ChromaDex's marks, business, reputation, and goodwill.

25 78. Defendants' conduct has caused and will continue to cause damage to
26 ChromaDex in an amount to be proved at trial, and if not enjoined, will cause
27 irreparable harm to ChromaDex for which there is no adequate remedy at law.
28

1 79. ChromaDex is further entitled to recover damages and to recover its other
2 costs herein. Defendants will be irreparably harmed if the unlawful, fraudulent and
3 unfair conduct is not stopped and damages are an insufficient remedy. Accordingly,
4 ChromaDex is also entitled to injunctive relief against Defendants.

5 80. ChromaDex is further entitled to recover statutory damages, treble
6 damages and attorneys' fees.

7 **SECOND CLAIM FOR RELIEF**

8 **Unfair Competition/False Advertising Under the Lanham Act**

9 **15 U.S.C. §1125(a) against Defendants Biotivia LLC and**

10 **Biotivia Bioceuticals, LLC**

11 81. ChromaDex realleges and incorporates by this reference each and every
12 allegation set forth in paragraphs 1 through 80, above.

13 82. Defendants own and operate at least two websites which target the United
14 States market, Biotivialabs.com and Biotivia.com.

15 83. Defendants sell various nutraceutical supplements on the Biotivia
16 Websites and through other third-party stores such as drugstores and other vendors of
17 dietary supplements. Defendants' products are available for purchase both from
18 internet websites and at local third-party stores.

19 84. The Biotivia Websites are active websites that are used by Defendants to
20 solicit business throughout the United States and sell products to consumers
21 throughout the United States, including consumers in the Central District of
22 California.

23 85. In or about December 2010, via the Biotivia Websites, Defendants began
24 advertising and selling a product called PteroMax that contains pterostilbene.

25 86. Defendants' PteroMax product directly competes with ChromaDex's
26 BluScience line of products.

27 87. No association or relationship exists between ChromaDex and
28 Defendants.

1 88. The PteroMax product sold by Defendants is not manufactured or
2 affiliated in any way with ChromaDex, PTEROPURE® or ChromaDex's BluScience
3 line of products.

4 89. The Biotivia Websites contain numerous false and misleading statements
5 regarding its PteroMax product and ChromaDex and its products which are intended
6 to deceive the purchasing public and/or cause confusion with the purchasing public.
7 Examples of the myriad false and misleading statements reflected on the Biotivia
8 Websites include:

9 a) Defendants falsely state that there is a partnership between
10 ChromaDex and Defendants;

11 b) Defendants falsely claim that PteroMax product was developed
12 prior to the PTEROPURE® product;

13 c) Defendants falsely claim that Defendants introduced the world to
14 pterostilbene when there were at least 15 pterostilbene-based products on the market
15 before the PteroMax product;

16 d) Defendants falsely claim that the PTEROPURE® product was
17 created "based on the Biotivia Labs' formulation for PteroMax";

18 e) Defendants falsely claim that the PTEROPURE® formulation is a
19 "weakened version" of the competing PteroMax;

20 f) Defendants falsely claim that the price of PteroMax is substantially
21 less than PTEROPURE®;

22 g) Defendants falsely state that the PteroMax product has hundreds of
23 times the amount of pterostilbene than what is contained in other pterostilbene
24 supplements, including PTEROPURE®;

25 h) Defendants falsely state that PteroMax is 100% pure pterostilbene;

26 i) Defendants falsely claim that PteroMax contains over 100 times
27 the potency of competing supplements;

28

1 j) Defendants falsely state that PteroMax is cheaper than other
2 similar products;

3 k) Defendants falsely state that only PteroMax contains Polydatin;

4 l) Defendants falsely state that more of the world's leading medical
5 research institutions chose Defendants for human clinical trials than all other suppliers
6 combined;

7 m) Defendants falsely claim that PteroMax is the result of over four
8 year of Defendants' researching, testing and analysis;

9 n) Defendants falsely claim that PteroMax has the highest antioxidant
10 rating of any supplement ever tested, and more that double that of any competing
11 pterostilbene product ever tested;

12 o) Defendants falsely claim that PteroMax is the only pterostilbene
13 supplement designed by health scientists to match the specific proportions and
14 concentrations found to be most effective in published scientific studies;

15 p) Defendants falsely claim that PteroMax contains the highest
16 amount of pterostilbene in its product;

17 q) Defendants falsely claim that dosages of less than 100 mg per
18 capsule have not been shown effective in humans;

19 r) Defendants falsely claim that no company or institution has more
20 experience and expertise in the development and manufacturing of resveratrol than
21 Defendants; and

22 s) Defendants falsely state that the product, PteroActiv, is a "pure"
23 pterostilbene and has something to do with SIRT1 activation.

24 90. Defendants also used PteroMax in connection with words and phrases
25 similar to ChromaDex's THE NEXT GENERATION RESVERATROL mark on the
26 Biotivia Websites.

27 91. Defendants use their PteroMax name, in connection with the phrase,
28 "Pterostilbene has been described as the taking Resveratrol to the next level," on its

1 Biotivialabs.com website. Defendants also use the phrase “PteroMax, in many
2 important ways, takes resveratrol to a new level,” on the Biotivia.com website.

3 92. The combined use of the PteroMax name and the phrases incorporating
4 “taking resveratrol to the next level,” and “takes resveratrol to a new level” are likely
5 to confuse consumers based on the similarity to the PTEROPURE® and THE NEXT
6 GENERATION RESVERATROL marks.

7 93. Defendants are unfairly competing with ChromaDex through the
8 unauthorized and unlawful use of ChromaDex’s marks and through the use of false
9 and misleading statements and copyright infringement alleged herein.

10 94. Defendants’ conduct is willful in nature.

11 95. Defendants, without authorization, used ChromaDex’s CHROMADEx®,
12 PTEROPURE® and BLUSCIENCE marks as ad keywords on various search engines
13 so as to unlawfully deceive consumers into believing that there was an affiliation
14 between ChromaDex and Defendants.

15 96. Defendants purchased keywords utilizing ChromaDex’s marks to drive
16 web traffic to its competing website to sell its products on at least Google.com,
17 Ask.com, and Answer.com.

18 97. Defendants purchased several of ChromaDex’s trademarks, including,
19 *inter alia*, ChromaDex’s CHROMADEx®, PTEROPURE® and BLUSCIENCE
20 marks, as keywords on internet search engines Google.com and Ask.com, among
21 other internet search engines.

22 98. By purchasing ChromaDex’s identical trademarked terms as keywords,
23 Defendants are seeking to drive consumer traffic to their own websites through the
24 unauthorized and infringing use of ChromaDex’s marks. As a result, consumers are
25 likely to be confused as to whether PteroMax is affiliated with ChromaDex’s
26 PTEROPURE® and with ChromaDex in general.

27 99. Defendants’ purchase of ChromaDex’s, CHROMADEx®,
28 PTEROPURE® and BLUSCIENCE marks as key ad words for the sale of products in

1 the same fields as well as the false and misleading statements on the Biotivia Websites
2 are likely to cause confusion to consumers and constitutes trademark infringement.

3 100. In addition to the purchase of ChromaDex's marks as key ad words,
4 Defendants used ChromaDex's CHROMADDEX®, PTEROPURE® and
5 BLUSCIENCE marks in their metadata with the intent to use the ChromaDex marks
6 to drive ChromaDex customers to Defendants' website through general internet
7 searches.

8 101. Defendants' use of ChromaDex's marks in their metadata and the false
9 and misleading statements on the Biotivia Websites are likely to confuse consumers as
10 to the source and affiliation of ChromaDex's products.

11 102. Defendants unlawfully used the CHROMADDEX®, PTEROPURE® and
12 BLUSCIENCE marks in commerce in connection with the sale or advertising for the
13 sale of Defendants' competing products. Such use in commerce in connection with
14 the sale or advertising for Defendants' products was unauthorized.

15 103. Defendants are unfairly competing with ChromaDex through the
16 unauthorized and unlawful use of ChromaDex's marks and through the false and
17 misleading statements set forth on the Biotivia Websites.

18 104. Defendants' conduct is willful in nature.

19 105. Defendants' conduct is likely to cause confusion, or to cause mistake, or
20 to deceive customers as to the nature of the goods, causing great harm to ChromaDex.

21 106. Defendants are unfairly benefiting from the false or intentionally
22 misleading statements on its website and marketing materials to the detriment of
23 ChromaDex.

24 107. ChromaDex has been damaged by these acts in an amount to be proven at
25 trial.

26 108. ChromaDex will be irreparably harmed if the improper conduct is not
27 stopped and damages are an insufficient remedy. ChromaDex is also entitled to
28 injunctive and equitable relief against Defendants.

THIRD CLAIM FOR RELIEF

Copyright Infringement against Defendants Biotivia LLC and Biotivia Bioceuticals LLC

109. ChromaDex realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 108, above.

110. Defendants without authorization copied portions, in whole or in part, of ChromaDex's copyright protected materials.

111. ChromaDex has registered the works in Exhibits C and D with the United States Copyright Office as reflected in the attached registrations.

112. ChromaDex has complied in all respects with 17 U.S.C. §§ 101 et seq., and secured the exclusive rights and privileges in and to the copyrights of the above reference works. ChromaDex is the rightful and sole owner of all rights, title, and interest in and to the copyrights and their respective works.

113. Defendants' conduct violates ChromaDex's exclusive rights as owners of the copyrights under 17 U.S.C. § 106.

114. Defendants' unauthorized use of ChromaDex's copyright-protected works on their websites constitutes copyright infringement under 17 U.S.C. § 101 et. seq.

115. As a direct and proximate result of Defendants' wrongful conduct, Defendants have realized and continue to realize profits and other benefits rightly belonging to ChromaDex.

116. ChromaDex seeks an award of damages pursuant to 17 U.S.C. §§ 504 and 505, including actual damages, or, in the alternative, statutory damages.

117. ChromaDex will be irreparably harmed if the infringing conduct is not stopped and damages are an insufficient remedy and as such is entitled to injunctive relief.

118. Upon information and belief, Defendants have engaged in willful infringement of the rights owned exclusively by ChromaDex, and ChromaDex is therefore, entitled to the maximum statutory damages available.

FOURTH CLAIM FOR RELIEF

Unfair Competition- CAL. BUS. & PROF. CODE §17200 et. seq. against Defendants Biotivia LLC and Biotivia Bioceuticals, LLC

119. ChromaDex realleges and incorporates by this reference each and every allegation set forth in paragraphs 1 through 118, above.

120. Defendants own and operate at two websites which target the United States market, Biotivialabs.com and Biotivia.com.

121. Defendants sell various nutraceutical supplements on the Biotivia Websites and through other third-party stores such as drugstores and other vendors of dietary supplements. Defendants' products are available for purchase both from internet websites and at local third-party stores.

122. The Biotivia Websites are active websites through which Defendants solicit business throughout the United States, and sell products to consumers throughout the United States, including consumers in the Central District of California.

123. In or about December 2010, via the Biotivia Websites, Defendants began advertising and selling a product called PteroMax that contains pterostilbene.

124. Defendants' PteroMax product directly competes with ChromaDex's BluScience line of products.

125. No association or relationship exists between ChromaDex and Defendants.

126. The PteroMax product sold by Defendants is not manufactured by ChromaDex or affiliated in any way with ChromaDex, PTEROPURE® or ChromaDex's BluScience line of products.

127. The Biotivia Websites contain numerous false and misleading statements regarding the PteroMax product which are intended to deceive the purchasing public and/or cause confusion with the purchasing public. Examples of the myriad false and misleading statements reflected on the Biotivia Websites include:

1 a) Defendants falsely state that there is a partnership between
2 ChromaDex and Defendants;

3 b) Defendants falsely claim that PteroMax product was developed
4 prior to the PTEROPURE® product;

5 c) Defendants falsely claim that Defendants introduced the world to
6 pterostilbene when there were at least 15 pterostilbene-based products on the market
7 before the PteroMax product;

8 d) Defendants falsely claim that the PTEROPURE® product was
9 created “based on the Biotivia Labs’ formulation for PteroMax”;

10 e) Defendants falsely claim that the PTEROPURE® formulation is a
11 “weakened version” of the competing PteroMax;

12 f) Defendants falsely claim that the price of PteroMax is substantially
13 less than PTEROPURE®;

14 g) Defendants falsely state that the PteroMax product has hundreds of
15 times the amount of pterostilbene than what is contained in other pterostilbene
16 supplements, including PTEROPURE®;

17 h) Defendants falsely state that PteroMax is 100% pure pterostilbene;

18 i) Defendants falsely claim that PteroMax contains over 100 times
19 the potency of competing supplements;

20 j) Defendants falsely state that PteroMax is cheaper than other
21 similar products;

22 k) Defendants falsely state that only PteroMax contains Polydatin;

23 l) Defendants falsely state that more of the world’s leading medical
24 research institutions chose Defendants for human clinical trials than all other suppliers
25 combined;

26 m) Defendants falsely claim that PteroMax is the result of over four
27 year of Defendants’ researching, testing and analysis;

28

1 n) Defendants falsely claim that PteroMax has the highest antioxidant
2 rating of any supplement ever tested, and more that double that of any competing
3 pterostilbene product ever tested;

4 o) Defendants falsely claim that PteroMax is the only pterostilbene
5 supplement designed by health scientists to match the specific proportions and
6 concentrations found to be most effective in published scientific studies;

7 p) Defendants falsely claim that PteroMax contains the highest
8 amount of pterostilbene in the product;

9 q) Defendants falsely claim that dosages of less than 100 mg per
10 capsule have not been shown effective in humans;

11 r) Defendants falsely claim that no company or institution has more
12 experience and expertise in the development and manufacturing of resveratrol than
13 Defendants; and

14 s) Defendants falsely state that the product PteroActiv, is a "pure"
15 pterostilbene and has something to do with SIRT1 activation.

16 128. Defendants also used PteroMax in connection with words and phrases
17 similar to ChromaDex's THE NEXT GENERATION RESVERATROL mark on the
18 Biotivia Websites.

19 129. Defendants use the PteroMax name in connection with the phrase,
20 "Pterostilbene has been described as the taking Resveratrol to the next level," on its
21 Biotivialabs.com website. Defendants also use the phrase "PteroMax, in many
22 important ways, takes resveratrol to a new level," on *inter alia* the Biotivia.com
23 website.

24 130. The combined use of the PteroMax name and the phrases incorporating
25 "taking resveratrol to the next level," and "takes resveratrol to a new level" are likely
26 to confuse consumers based on the similarity to the PTEROPURE® and THE NEXT
27 GENERATION RESVERATROL marks.

28

1 131. Defendants are unfairly competing with ChromaDex through the
2 unauthorized and unlawful use of ChromaDex's marks.

3 132. Defendants' conduct is willful in nature.

4 133. Defendants, without authorization, used ChromaDex's CHROMADEX®,
5 PTEROPURE® and BLUSCIENCE marks as ad keywords on various search engines
6 so as to unlawfully deceive consumers into believing that there was an affiliation
7 between ChromaDex and Defendants.

8 134. Defendants purchased keywords utilizing ChromaDex's marks to drive
9 web traffic to its competing website to sell its products on at least Google.com,
10 Ask.com, and Answer.com.

11 135. Defendants purchased several of ChromaDex's trademarks, including,
12 inter alia, ChromaDex's CHROMADEX®, PTEROPURE® and BLUSCIENCE
13 marks, as keywords on internet search engines Google.com and Ask.com, among
14 other internet search engines.

15 136. By purchasing ChromaDex's identical trademarked terms as keywords,
16 Defendants are seeking to drive consumer traffic to its own website through the
17 unauthorized and infringing use of ChromaDex's marks. As a result, consumers are
18 likely to be confused as to whether PteroMax is affiliated with ChromaDex's
19 PTEROPURE®.

20 137. Defendants' purchase of ChromaDex' CHROMADEX®, PTEROPURE®
21 and BLUSCIENCE marks as key ad words for the sale of products in the same fields
22 is likely to cause confusion to consumers and constitutes trademark infringement.

23 138. In addition to the purchase of ChromaDex's marks as key ad words,
24 Defendants used ChromaDex's CHROMADEX®, PTEROPURE® and
25 BLUSCIENCE marks in its metadata with the intent to use the ChromaDex marks to
26 drive ChromaDex customers to Defendants' websites through general internet
27 searches.
28

1 139. Defendants' use of ChromaDex's marks in Defendants' metadata is likely
2 to confuse consumers as to the source and affiliation of ChromaDex's products.

3 140. Defendants unlawfully used the CHROMADEx®, PTEROPURE® and
4 BLUSCIENCE marks in commerce in connection with the sale or advertising for the
5 sale of Defendants' competing products. Such use in commerce in connection with
6 the sale or advertising for Defendants' products was unauthorized.

7 141. Defendants are unfairly competing with ChromaDex through the
8 unauthorized and unlawful use of ChromaDex's marks.

9 142. Defendants' conduct is willful in nature.

10 143. The acts and conduct of Defendants as alleged above constitute unfair
11 competition as defined by California Business and Professions Code §17200 et. seq.
12 as the conduct is unlawful, unfair and fraudulent.

13 144. The acts and conduct of Defendants are likely to cause confusion and
14 mistake among customers and the public as to the origin or association of Defendants'
15 infringing products.

16 145. Defendants' unlawful, unfair, and deceptive trade practices, and other
17 conduct described above, constitutes unfair competition in violation of California
18 Business and Professions Code §17200 et. seq.

19 146. ChromaDex will be irreparably harmed if the unlawful, fraudulent and
20 unfair conduct is not stopped and damages are an insufficient remedy. As a result,
21 ChromaDex is entitled to injunctive and equitable relief against Defendants.

22
23 **FIFTH CLAIM FOR RELIEF**

24 **Common Law Unfair Competition against Defendants Biotivia LLC and Biotivia
25 Biocenticals, LLC**

26 147. ChromaDex realleges and incorporates by this reference each and every
27 allegation set forth in paragraphs 1 through 146 above.

28 148. The acts and conduct of Defendants as alleged above in this Complaint
constitute unfair competition pursuant to the common law.

1 149. ChromaDex's marks are distinctive and were distinctive at the time of all
2 acts alleged herein. As a result of ChromaDex's substantial investment, the
3 ChromaDex marks have developed extensive goodwill in the market. Accordingly,
4 the ChromaDex marks are extremely valuable to ChromaDex.

5 150. Defendants are not affiliated with or sponsored by ChromaDex and have
6 not been authorized by ChromaDex to use any mark that is identical to the
7 ChromaDex marks.

8 151. Defendants' activities complained of herein constitute willful and
9 intentional tort, in derogation of ChromaDex's rights. Acts of unfair competition
10 commenced and have continued in spite of the Defendants' knowledge that the use of
11 the ChromaDex marks were and are in contravention of ChromaDex's rights.

12 152. ChromaDex's damages from the aforesaid unlawful actions of
13 Defendants, to the extent ascertainable, have not yet been determined.

14 153. ChromaDex seeks attorney's fees and costs given the willful conduct of
15 Defendants.

16 154. Defendants' actions were committed intentionally, maliciously, willfully
17 and, wantonly. ChromaDex is entitled to an award of punitive damages.

18 **SIXTH CLAIM FOR RELIEF**

19 **Unjust Enrichment against Defendants Biotivia LLC and Biotivia Biocenticals,**
20 **LLC**

21 155. ChromaDex realleges and incorporates by this reference each and every
22 allegation set forth in paragraphs 1 through 154 above.

23 156. The acts of Defendants complained of herein constitute unjust enrichment
24 at ChromaDex's expense in violation of the common law of California.

25 157. ChromaDex has suffered and is continuing to suffer irreparable injury for
26 which there is no adequate remedy at law.

27 158. ChromaDex has been damaged in an amount to be proven at trial.
28

PRAYER FOR RELIEF

1
2 WHEREFORE, ChromaDex respectfully requests that the Court enter judgment
3 against Defendants as follows:

4 1. That the Court issue temporary and permanent injunctive relief against
5 Defendants and each of them and that Defendants, their officers, agents,
6 representatives, servants; employees, attorneys, successors and assignees, and all
7 others in active concert or participation with Defendants, and each of them, be
8 enjoined and restrained from:

9 a) using ChromaDex's trade names, trademarks, or copyrights in
10 connection with the description, marketing, promotion, advertising, or sale of any of
11 Defendants' products;

12 b) infringing ChromaDex's trademarks and service marks

13 c) infringing ChromaDex's copyrights;

14 d) engaging in any acts or activities directly or indirectly calculated to
15 infringe ChromaDex's CHROMADEx®, PTEROPURE®, BLUSCIENCE, and THE
16 NEXT GENERATION RESVERATROL marks.

17 e) otherwise competing unfairly with ChromaDex in any manner
18 whatsoever;

19 2. That the Court award ChromaDex actual damages, liquidated damages,
20 statutory damages and punitive damages, in amount to be proven at trial;

21 3. That the Court Order Defendants and each of them to account for an pay
22 over to ChromaDex all profits received by Defendants and each of them from the
23 unlawful acts, and for the unjust enrichment;

24 4. That the Court enter an order placing reasonable but effective restrictions
25 on the future transactions and activities of Defendants and each of them so as to
26 prevent fraud on the Court and so as to ensure the capacity of Defendants, and each of
27 them, to pay, and the prompt payment of, any judgment entered against Defendants in
28 this action;

1 5. That the Court award ChromaDex its compensatory, incidental, and
2 consequential damages;

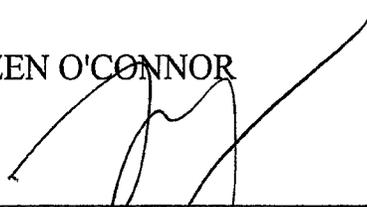
3 6. That the Court award ChromaDex treble damages in an amount to be
4 proven at trial;

5 7. That the Court award ChromaDex its attorneys' fees and costs incurred
6 herein, including prejudgment and post judgment interest; and

7 8. That the Court grant ChromaDex all other relief to which it' is entitled
8 and such other or additional relief as is just and proper under these circumstances.

9
10 DATED: August 30, 2011

COZEN O'CONNOR

11
12 By: 

13 ERIK L. JACKSON
14 KYLE VOS STRACHE
15 Attorneys for Plaintiff,
16 CHROMADEx, INC.
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DEMAND FOR JURY TRIAL

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ChromaDex demands a trial by jury on all triable issues of fact.

DATED: August 30, 2011

COZEN O'CONNOR

By:

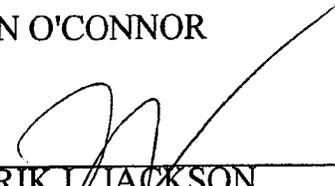

ERIK L. JACKSON
KYLE VOS STRACHE
Attorneys for Plaintiff,
CHROMADEx, INC.

EXHIBIT A

United States of America

United States Patent and Trademark Office

pTeroPure

Reg. No. 3,932,510

CHROMADEX INC. (CALIFORNIA CORPORATION)
10005 MUIRLANDS SUITE G
IRVINE, CA 92618

Registered Mar. 15, 2011

Int. Cl.: 1

FOR: PHYTOCHEMICALS FOR USE IN THE MANUFACTURING OF DIETARY SUPPLEMENTS AND NUTRITIONAL PRODUCTS, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

TRADEMARK

FIRST USE 3-11-2010; IN COMMERCE 3-11-2010.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-939,875, FILED 2-19-2010.

MARY BOAGNI, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT B

United States of America

United States Patent and Trademark Office

CHROMADEX

Reg. No. 3,999,086

Registered July 19, 2011

Int. Cls.: 1 and 42

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

CHROMADEX INC. (CALIFORNIA CORPORATION)
10005 MUIRLANDS SUITE G
IRVINE, CA 92618

FOR: CHEMICAL REAGENTS FOR NON-MEDICAL PURPOSES; CHEMICAL TEST KITS FOR ANALYTICAL MEASUREMENT OF RAW MATERIAL IDENTITY, POTENCY AND FORMULATION CONSISTENCY FOR LABORATORY OR RESEARCH USE; CHEMICALS FOR USE IN INDUSTRY AND SCIENCE; CHEMICALS FOR USE IN THE BIOCHEMICAL AND CHEMICAL INDUSTRY; ASSAYS FOR RESEARCH PURPOSES, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 10-0-1999; IN COMMERCE 10-0-1999.

FOR: CHEMICAL, BIOCHEMICAL, BIOLOGICAL AND BACTERIOLOGICAL RESEARCH AND ANALYSIS; CONSULTING IN THE FIELD OF PRODUCT DEVELOPMENT IN THE FIELD OF CHEMICALS; DEVELOPMENT AND ESTABLISHMENT OF TESTING SPECIFICATIONS AND PROCEDURES IN THE FIELD OF CHEMICALS; DEVELOPMENT AND TEST OF CHEMICAL PRODUCTION METHODS; DEVELOPMENT OF VOLUNTARY STANDARDS FOR CHEMICALS; EXECUTING OF CHEMICAL ANALYSES; INDUSTRIAL RESEARCH IN THE FIELD OF CHEMICALS; PHARMACEUTICAL RESEARCH AND DEVELOPMENT; PRODUCT RESEARCH AND DEVELOPMENT; RESEARCH AND DEVELOPMENT AND CONSULTATION RELATED THERETO IN THE FIELD OF CHEMICALS; TESTING OF RAW MATERIALS, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 6-0-2000; IN COMMERCE 6-0-2000.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-939,870, FILED 2-19-2010.

MARY BOAGNI, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT C

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante
Register of Copyrights, United States of America

Registration Number
TXu 1-746-330

Effective date of registration:
February 14, 2011

Title

Title of Work: pTeroPure Brochure

Completion/Publication

Year of Completion: 2010

Author

Author: ChromaDex, Inc., dba pTeroPure

Author Created: text, compilation

Work made for hire: Yes

Citizen of: United States

Copyright claimant

Copyright Claimant: ChromaDex, Inc., dba pTeroPure

10005 Muirlands Boulevard, Suite G, Irvine, CA, 92618, United States

Limitation of copyright claim

Material excluded from this claim: text, artwork

~~New material included in claim:~~ text, compilation

Rights and Permissions

Organization Name: ChromaDex, Inc.

Telephone: 949-419-0288

Address: 10005 Muirlands Boulevard

Suite G

Irvine, CA 92618 United States

Certification

Name: Durrell Washington

Date: January 21, 2011

EXHIBIT D

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
TXu 1-745-172

Effective date of
registration:

January 14, 2011

Title

Title of Work: pTeroPure Pterostilbene: The Next Generation Resveratrol
(Complete Presentation)

Completion/Publication

Year of Completion: 2010

Author

Author: ChromaDex, Inc., dba pTeroPure

Author Created: text, compilation

Work made for hire: Yes

Citizen of: United States

Copyright claimant

Copyright Claimant: ChromaDex, Inc., dba pTeroPure

10005 Muirlands Boulevard, Suite G, Irvine, CA, 92618, United States

Limitation of copyright claim

Material excluded from this claim: text, artwork

New material included in claim: 2-dimensional artwork, compilation, text

Rights and Permissions

Organization Name: ChromaDex, Inc.

Telephone: 949-419-0288

Address: 10005 Muirlands Boulevard

Suite G

Irvine, CA 92618 United States

Certification

Exhibit B

1 MICHAEL D. DEMPSEY (State Bar No. 43310)
bruinlaw@dempseyjohnson.com
2 DEMPSEY & JOHNSON P.C.
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5 AARON SHECHET (State Bar No. 249002)
ashechet@candsllp.com
6 CHANDLER & SHECHET, LLP
1844 Bagley Avenue
7 Los Angeles, CA 90035
Telephone: (310) 339-1354
8 Facsimile: (310) 558-1519

9 Attorneys for Defendant Biotivia, LLC
also named herein as "Biotivia Bioceuticals, LLC"

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHROMADDEX, INC. a California
Corporation,

Plaintiff,

v.

BIOTIVIA, LLC, a Delaware
Limited Liability Company;
BIOTIVIA BIOCEUTICALS, LLC,
a Delaware Limited Liability
Company,

Defendants.

Case No.: 8:11-cv-01273-CJC-MLG

**ANSWER TO FIRST AMENDED
COMPLAINT**

Judge: Hon. Cormac J. Carney

Filing Date: August 24, 2011

Pretrial Conference: None

Trial: None

1 Defendant Biotivia, LLC, also named herein as “Biotivia Bioceuticals, LLC”
2 (“Defendant”), answers the First Amended Complaint (“FAC”) of Plaintiff,
3 Chromadex, Inc., as follows:

4 **JURISDICTION AND VENUE**

- 5 1. The allegations contained in Paragraph 1 of the FAC are admitted.
- 6 2. The allegations contained in Paragraph 2 of the FAC are admitted.
- 7 3. The allegations contained in Paragraph 3 of the FAC are admitted.
- 8 4. The allegations contained in Paragraph 4 of the FAC are admitted.
- 9 5. The allegations contained in Paragraph 5 of the FAC are admitted.

10 **THE PARTIES**

- 11 6. The allegations contained in Paragraph 6 of the FAC are admitted.
- 12 7. The allegations contained in Paragraph 7 of the FAC are admitted.
- 13 8. Defendant admits that the name and mark “Biotivia Bioceuticals LLC”
14 is a dba of or otherwise is directly affiliated with Biotivia LLC, which has its
15 principal place of business at 1 River Place, Ste. 1001, New York, NY 10036. The
16 remaining allegations in Paragraph 8 of the FAC are denied.

17 **BACKGROUND AS TO CHROMADDEX’S BUSINESS AND ITS**
18 **INTELLECTUAL PROPERTY**

- 19 9. Defendant admits that according to the public record, ChromaDex was
20 established in 2000. The remaining allegations in Paragraph 9 are denied.
- 21 10. The allegations contained in Paragraph 10 of the FAC are denied for
22 lack of knowledge and information sufficient to justify a belief therein.
- 23 11. The allegations contained in Paragraph 11 of the FAC are denied for
24 lack of knowledge and information sufficient to justify a belief therein.
- 25 12. The allegations contained in Paragraph 12 of the FAC are admitted.
- 26 13. Defendant admits that ChromaDex has filed an application with the United
27 States Patent and Trademark Office with U.S. App. Serial No. 85193003 for “THE
28 NEXT GENERATION RESVERATROL for “Phytochemicals for use in the

1 manufacturing of dietary supplements, nutritional supplements, nutritional beverages,
2 pharmaceuticals and cosmetics, “in International Class 1, but denies ChromaDex is
3 the owner of trademark rights in and to “THE NEXT GENERATION
4 RESVERATROL.” Defendant admits that ChromaDex has filed an application with
5 the United States Patent and Trademark Office with U.S. App. Serial No. 85306158
6 for “BLUSCIENCE THE FUSION OF BLUEBERRIES AND SCIENCE” for
7 “Dietary and nutritional supplements, “ in International Class 5, but denies
8 ChromaDex is the owner of trademark rights in and to “BLUESCIENCE THE
9 FUSION OF BLUEBERRIES AND SCIENCE.” The remaining allegations in
10 Paragraph 13 of the FAC are admitted.

11 14. Defendant admits that ChromaDex claims in public records to have used
12 the PTEROPURE trademark in commerce since at least March 11, 2010. Whether
13 that claim is true, and the other allegations contained in Paragraph 14 of the FAC, are
14 denied for lack of knowledge and information sufficient to justify a belief therein.

15 15. The allegations contained in Paragraph 15 of the FAC are denied for
16 lack of knowledge and information sufficient to justify a belief therein.

17 16. Defendant admits ChromaDex claims in public records that since at least
18 October 1999, it has used the CHROMADDEX trademark in commerce with regard to
19 International Class 001, and at least June 2000 in International Class 042. Whether
20 that claim is true and the other allegations contained in Paragraph 16 of the FAC are
21 denied for lack of knowledge or information sufficient to justify a belief therein.

22 17. The allegations contained in Paragraph 17 of the FAC are denied for
23 lack of knowledge and information sufficient to justify a belief therein.

24 18. The allegations contained in Paragraph 18 of the FAC are admitted.

25 19. The allegations contained in Paragraph 19 of the FAC are admitted.

26 20. The allegations contained in Paragraph 20 of the FAC are admitted.

27 21. The allegations contained in Paragraph 21 of the FAC are admitted.

28 22. The allegations contained in Paragraph 22 of the FAC are admitted.

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DEFENDANT'S ALLEGED UNLAWFUL CONDUCT

23. The allegations contained in Paragraph 23 of the FAC are admitted.
24. The allegations contained in Paragraph 24 of the FAC are admitted.
25. The allegations contained in Paragraph 25 of the FAC are admitted.
26. The allegations contained in Paragraph 26 of the FAC are admitted.

27. Defendant admits that PteroMax was in the marketplace before BluScience, that Defendant and ChromaDex had discussions in 2010 for ChromaDex to supply raw materials to Defendant for Defendant’s products, that those discussions did not result in an agreement for ChromaDex to supply raw materials, and that ChromaDex then created a competing product or line of products called BluScience that directly competes with PteroMax.

28. Defendant admits that no current formal association or relationship presently exists between ChromaDex and Defendant. Defendant denies that no association or relationship ever existed between ChromaDex and Defendant.

29. The allegations contained in Paragraph 29 of the FAC are admitted.

Defendant's Alleged False Advertising and Unfair Competition on its Websites

30. The allegations contained in Paragraph 30 of the FAC are denied, in part because the content of the website is written and speaks for itself.

31. The allegations contained in Paragraph 31 of the FAC are denied, in part because the content of the website is written and speaks for itself.

32. The allegations contained in Paragraph 32 of the FAC are admitted.

33. The allegations contained in Paragraph 33 of the FAC are denied.

34. The allegations contained in Paragraph 34 of the FAC are denied.

35. Defendant denies any wrongful conduct, whether willful or otherwise.

Defendant's Conduct In Allegedly Unlawfully Directing Internet Users to Its Websites by Using ChromaDex’s Trademarks

36. Defendant denies “purchasing” (as that term implies a level of ownership which prohibits others from using those keywords, and/or an up-front

1 exchange of money) keywords utilizing ChromaDex’s marks. Defendant admits to
2 “bidding on”/“using” keywords utilizing ChromaDex’s marks on Google.com in a
3 legal and legitimate manner to display Defendant’s advertisements, which did not
4 include any ChromaDex marks. Defendant’s use did not exclude ChromaDex from
5 “bidding on”/“using” those same marks on the same search engine, and Defendant’s
6 use has been upheld by caselaw and is a standard practice in the marketplace.
7 Defendant denies “bidding on”/“using” or purchasing keywords utilizing
8 ChromaDex’s marks on any other search engine. Defendant denies that it is unlawful
9 to “bid on,” “purchase,” or “use” keywords utilizing ChromaDex’s marks on search
10 engines.

11 37. Defendant denies “purchasing” (as that term implies a level of
12 ownership which prohibits others from using those keywords, and/or an up-front
13 exchange of money) keywords utilizing ChromaDex’s marks. Defendant admits to
14 “bidding on”/“using” keywords utilizing ChromaDex’s marks on Google.com in a
15 legal and legitimate manner to display Defendant’s advertisements, which did not
16 include any ChromaDex marks. Defendant’s use did not exclude ChromaDex from
17 “bidding on”/“using” those same marks on the same search engine, and Defendant’s
18 use has been upheld by caselaw and is a standard practice in the marketplace.
19 Defendant denies “bidding on”/“using” or purchasing keywords utilizing
20 ChromaDex’s marks on any other search engine. Defendant denies that it is unlawful
21 to “bid on,” “purchase,” or “use” keywords utilizing ChromaDex’s marks on search
22 engines.

23 38. Defendant denies “purchasing” (as that term implies a level of
24 ownership which prohibits others from using those keywords, and/or an up-front
25 exchange of money) keywords utilizing ChromaDex’s marks. Defendant admits to
26 “bidding on”/“using” keywords utilizing ChromaDex’s marks on Google.com in a
27 legal and legitimate manner to display Defendant’s advertisements, which did not
28 include any ChromaDex marks. Defendant’s use did not exclude ChromaDex from

1 “bidding on”/”using” those same marks on the same search engine, and Defendant’s
2 use has been upheld by caselaw and is a standard practice in the marketplace.
3 Defendant denies “bidding on”/”using” or purchasing keywords utilizing
4 ChromaDex’s marks on any other search engine. Defendant denies that it is unlawful
5 to “bid on,” “purchase,” or “use” keywords utilizing ChromaDex’s marks on search
6 engines.

7 39. The allegations contained in Paragraph 39 of the FAC are denied.

8 40. The allegations contained in Paragraph 40 of the FAC are denied.

9 41. Defendant admits to using CHROMADDEX and PTEROPURE in its
10 metadata. The remaining allegations in Paragraph 41 are denied.

11 42. The allegations contained in Paragraph 42 of the FAC are denied.

12 43. The allegations contained in Paragraph 43 of the FAC are denied.

13 44. The allegations contained in Paragraph 44 of the FAC are denied.

14 45. Defendant denies any wrongful conduct, whether willful or otherwise.

15 **Defendant's Alleged Copyright Infringement of ChromaDex’s Promotional**
16 **Materials**

17 46. Defendant admits ChromaDex emailed materials related to
18 PTEROPURE and pterostilbene to Defendant. Defendant admits a PTEROPURE
19 brochure is accessible on the ChromaDex pTeroPure.com website. The remaining
20 allegations in Paragraph 46 of the FAC are denied.

21 47. Defendant denies receiving a brochure in September 2010. The
22 remaining allegations contained in Paragraph 47 of the FAC are admitted.

23 48. Defendant is without knowledge as to whether any copyright licenses,
24 transfers, or other grants or permissions exist with respect to the registrations in
25 Paragraph 48. Accordingly, the allegations contained in Paragraph 48 of the FAC are
26 denied for lack of knowledge and information sufficient to justify a belief therein.

27 49. The allegations contained in Paragraph 49 of the FAC are admitted.
28

1 50. The allegations contained in Paragraph 50 of the FAC are denied, in part
2 because the writings speak for themselves.

3 51. The allegations contained in Paragraph 51 of the FAC are denied.

4 52. The allegations contained in Paragraph 52 of the FAC are denied.

5 **ChromaDex’s Attempts to Have Defendant Cease Its Allegedly Infringing**
6 **Activity**

7 53. Defendant admits that it received a letter on or about April 28, 2011
8 from attorney Joseph T. Nabor at the law firm Fitch, Evan, Tabin, and Flannery on
9 behalf of Chromadex. Defendant denies that the letter demanded that Defendant
10 cease the use of any copyrighted material or the marks “BLUSCIENCE” or
11 “BLUSCIENCE THE FUSION OF BLUEBERRIES AND SCIENCE.” Defendant
12 denies the remaining allegations contained in Paragraph 53 of the FAC.

13 54. The allegations contained in Paragraph 54 of the FAC are denied.

14 55. The allegations contained in Paragraph 55 of the FAC are denied.

15 **FIRST CLAIM FOR RELIEF**

16 **Alleged Trademark Infringement under the Lanham Act –15 U.S.C. §1114**

17 **Against Biotivia LLC and Biotivia Bioceuticals, LLC**

18 56. Defendant realleges and incorporates its admissions and denials of the
19 allegations set forth in paragraphs 1 through 55 of the FAC as though set forth in full
20 at this point.

21 57. The allegations contained in Paragraph 57 of the FAC are admitted.

22 58. The allegations contained in Paragraph 58 of the FAC are admitted.

23 59. The allegations contained in Paragraph 59 of the FAC are admitted.

24 60. The allegations contained in Paragraph 60 of the FAC are admitted.

25 61. Defendant admits that PteroMax was in the marketplace before
26 BluScience, that Defendant and ChromaDex had discussions in 2010 for ChromaDex
27 to supply raw materials to Defendant for Defendant’s products, that those discussions
28 did not result in an agreement for ChromaDex to supply raw materials, and that

1 ChromaDex then created a competing product or line of products called BluScience
2 that directly competes with PteroMax.

3 62. Defendant admits that no current formal association or relationship
4 exists between ChromaDex and Defendant. Defendant denies that no association or
5 relationship ever existed between ChromaDex and Defendant.

6 63. The allegations contained in Paragraph 63 of the FAC are admitted.

7 64. Defendant denies “purchasing” (as that term implies a level of
8 ownership which prohibits others from using those keywords, and/or an up-front
9 exchange of money) keywords utilizing ChromaDex’s marks. Defendant admits to
10 “bidding on”/“using” keywords utilizing ChromaDex’s marks on Google.com in a
11 legal and legitimate manner to display Defendant’s advertisements, which did not
12 include any ChromaDex marks. Defendant’s use did not exclude ChromaDex from
13 “bidding on”/“using” those same marks on the same search engine, and Defendant’s
14 use has been upheld by caselaw and is a standard practice in the marketplace.
15 Defendant denies “bidding on”/“using” or purchasing keywords utilizing
16 ChromaDex’s marks on any other search engine. Defendant denies that it is unlawful
17 to “bid on,” “purchase,” or “use” keywords utilizing ChromaDex’s marks on search
18 engines.

19 65. Defendant denies “purchasing” (as that term implies a level of
20 ownership which prohibits others from using those keywords, and/or an up-front
21 exchange of money) keywords utilizing ChromaDex’s marks. Defendant admits to
22 “bidding on”/“using” keywords utilizing ChromaDex’s marks on Google.com in a
23 legal and legitimate manner to display Defendant’s advertisements, which did not
24 include any ChromaDex marks. Defendant’s use did not exclude ChromaDex from
25 “bidding on”/“using” those same marks on the same search engine, and Defendant’s
26 use has been upheld by caselaw and is a standard practice in the marketplace.
27 Defendant denies “bidding on”/“using” or purchasing keywords utilizing
28 ChromaDex’s marks on any other search engine. Defendant denies that it is unlawful

1 to “bid on,” “purchase,” or “use” keywords utilizing ChromaDex’s marks on search
2 engines.

3 66. Defendant denies “purchasing” (as that term implies a level of
4 ownership which prohibits others from using those keywords, and/or an up-front
5 exchange of money) keywords utilizing ChromaDex’s marks. Defendant admits to
6 “bidding on”/“using” keywords utilizing ChromaDex’s marks on Google.com in a
7 legal and legitimate manner to display Defendant’s advertisements, which did not
8 include any ChromaDex marks. Defendant’s use did not exclude ChromaDex from
9 “bidding on”/“using” those same marks on the same search engine, and Defendant’s
10 use has been upheld by caselaw and is a standard practice in the marketplace.
11 Defendant denies “bidding on”/“using” or purchasing keywords utilizing
12 ChromaDex’s marks on any other search engine. Defendant denies that it is unlawful
13 to “bid on,” “purchase,” or “use” keywords utilizing ChromaDex’s marks on search
14 engines.

15 67. The allegations contained in Paragraph 67 of the FAC are denied.

16 68. The allegations contained in Paragraph 68 of the FAC are denied.

17 69. Defendant admits to using CHROMADDEX and PTEROPURE in its
18 metadata. The remaining allegations in Paragraph 69 are denied.

19 70. The allegations contained in Paragraph 70 of the FAC are denied.

20 71. The allegations contained in Paragraph 71 of the FAC are denied.

21 72. Defendant is without knowledge as to whether any trademark licenses,
22 transfers, or other grants or permissions exist with respect to the registrations in
23 Paragraph 72. Defendant is also without knowledge as to whether any individuals or
24 entities have superior rights with respect to the registrations in Paragraph 72, who
25 may seek to cancel the registrations. Accordingly, the allegations contained in
26 Paragraph 72 of the FAC are denied for lack of knowledge and information sufficient
27 to justify a belief therein.
28

1 73. Defendant denies “purchasing” (as that term implies a level of
2 ownership which prohibits others from using those keywords, and/or an up-front
3 exchange of money) keywords utilizing ChromaDex’s marks. Defendant admits to
4 “bidding on”/“using” keywords utilizing ChromaDex’s marks on Google.com in a
5 legal and legitimate manner to display Defendant’s advertisements, which did not
6 include any ChromaDex marks. Defendant’s use did not exclude ChromaDex from
7 “bidding on”/“using” those same marks on the same search engine, and Defendant’s
8 use has been upheld by caselaw and is a standard practice in the marketplace.
9 Defendant denies “bidding on”/“using” or purchasing keywords utilizing
10 ChromaDex’s marks on any other search engine. Defendant denies that it is unlawful
11 to “bid on,” “purchase,” or “use” keywords utilizing ChromaDex’s marks on search
12 engines.

13 74. Defendant admits to using CHROMADDEX and PTEROPURE in its
14 metadata. The remaining allegations in Paragraph 74 are denied.

15 75. The allegations contained in Paragraph 75 of the FAC are denied.

16 76. The allegations contained in Paragraph 76 of the FAC are denied.

17 77. The allegations contained in Paragraph 77 of the FAC are denied.

18 78. The allegations contained in Paragraph 78 of the FAC are denied.

19 79. The allegations contained in Paragraph 79 of the FAC are denied.

20 80. The allegations contained in Paragraph 80 of the FAC are denied.

21 **SECOND CLAIM FOR RELIEF**

22 **Alleged Unfair Competition/False Advertising Under the Lanham Act 15 U.S.C.**

23 **§1125(a)**

24 81. Defendant realleges and incorporates its admissions and denials of
25 paragraphs 1 through 80 of the FAC as though set forth in full at this point.

26 82. The allegations contained in Paragraph 82 of the FAC are admitted.

27 83. The allegations contained in Paragraph 83 of the FAC are admitted.

28 84. The allegations contained in Paragraph 84 of the FAC are admitted.

1 85. The allegations contained in Paragraph 85 of the FAC are admitted.

2 86. Defendant admits that PteroMax was in the marketplace before
3 BluScience, that Defendant and ChromaDex had discussions in 2010 for ChromaDex
4 to supply raw materials to Defendant for Defendant's products, that those discussions
5 did not result in an agreement for ChromaDex to supply raw materials, and that
6 ChromaDex then created a competing product or line of products called BluScience
7 that directly competes with PteroMax.

8 87. Defendant admits that no current formal association or relationship
9 exists between ChromaDex and Defendant. Defendant denies that no association or
10 relationship ever existed between ChromaDex and Defendant.

11 88. The allegations contained in Paragraph 88 of the FAC are admitted.

12 89. The allegations contained in Paragraph 89 of the FAC are denied, in part
13 because the websites are written and speak for themselves.

14 90. The allegations contained in Paragraph 90 of the FAC are denied, in part
15 because the alleged use is written so speaks for itself.

16 91. The allegations contained in Paragraph 91 of the FAC are admitted.

17 92. The allegations contained in Paragraph 92 of the FAC are denied.

18 93. The allegations contained in Paragraph 93 of the FAC are denied.

19 94. Defendant denies any wrongful conduct, whether willful or otherwise.

20 95. Defendant denies "purchasing" (as that term implies a level of
21 ownership which prohibits others from using those keywords, and/or an up-front
22 exchange of money) keywords utilizing ChromaDex's marks. Defendant admits to
23 "bidding on"/"using" keywords utilizing ChromaDex's marks on Google.com in a
24 legal and legitimate manner to display Defendant's advertisements, which did not
25 include any ChromaDex marks. Defendant's use did not exclude ChromaDex from
26 "bidding on"/"using" those same marks on the same search engine, and Defendant's
27 use has been upheld by caselaw and is a standard practice in the marketplace.

28 Defendant denies "bidding on"/"using" or purchasing keywords utilizing

1 ChromaDex's marks on any other search engine. Defendant denies that it is unlawful
2 to "bid on," "purchase," or "use" keywords utilizing ChromaDex's marks on search
3 engines.

4 96. Defendant denies "purchasing" (as that term implies a level of
5 ownership which prohibits others from using those keywords, and/or an up-front
6 exchange of money) keywords utilizing ChromaDex's marks. Defendant admits to
7 "bidding on"/"using" keywords utilizing ChromaDex's marks on Google.com in a
8 legal and legitimate manner to display Defendant's advertisements, which did not
9 include any ChromaDex marks. Defendant's use did not exclude ChromaDex from
10 "bidding on"/"using" those same marks on the same search engine, and Defendant's
11 use has been upheld by caselaw and is a standard practice in the marketplace.

12 Defendant denies "bidding on"/"using" or purchasing keywords utilizing
13 ChromaDex's marks on any other search engine. Defendant denies that it is unlawful
14 to "bid on," "purchase," or "use" keywords utilizing ChromaDex's marks on search
15 engines.

16 97. Defendant denies "purchasing" (as that term implies a level of
17 ownership which prohibits others from using those keywords, and/or an up-front
18 exchange of money) keywords utilizing ChromaDex's marks. Defendant admits to
19 "bidding on"/"using" keywords utilizing ChromaDex's marks on Google.com in a
20 legal and legitimate manner to display Defendant's advertisements, which did not
21 include any ChromaDex marks. Defendant's use did not exclude ChromaDex from
22 "bidding on"/"using" those same marks on the same search engine, and Defendant's
23 use has been upheld by caselaw and is a standard practice in the marketplace.

24 Defendant denies "bidding on"/"using" or purchasing keywords utilizing
25 ChromaDex's marks on any other search engine. Defendant denies that it is unlawful
26 to "bid on," "purchase," or "use" keywords utilizing ChromaDex's marks on search
27 engines.

28 98. The allegations contained in Paragraph 98 of the FAC are denied.

- 1 99. The allegations contained in Paragraph 96 of the FAC are denied.
- 2 100. Defendant admits to using CHROMADEx and PTEROPURE in its
3 metadata. The remaining allegations in Paragraph 100 are denied.
- 4 101. The allegations contained in Paragraph 101 of the FAC are denied.
- 5 102. The allegations contained in Paragraph 102 of the FAC are denied.
- 6 103. The allegations contained in Paragraph 103 of the FAC are denied.
- 7 104. Defendant denies any wrongful conduct, whether willful or otherwise.
- 8 105. The allegations contained in Paragraph 105 of the FAC are denied.
- 9 106. The allegations contained in Paragraph 106 of the FAC are denied.
- 10 107. The allegations contained in Paragraph 107 of the FAC are denied.
- 11 108. The allegations contained in Paragraph 108 of the FAC are denied.

12 **THIRD CLAIM FOR RELIEF**

13 **Alleged Copyright Infringement**

- 14 109. Defendant realleges and incorporates its admissions and denials of of
15 the allegations set forth in paragraphs 1 through 108 of the FAC as though set forth in
16 full at this point.
- 17 110. The allegations contained in Paragraph 110 of the FAC are denied.
- 18 111. The allegations contained in Paragraph 111 of the FAC are admitted.
- 19 112. Defendant is without knowledge as to whether any copyright licenses,
20 transfers, or other grants or permissions exist with respect to the registrations in
21 Paragraph 112. Accordingly, the allegations contained in Paragraph 112 of the FAC
22 are denied for lack of knowledge and information sufficient to justify a belief therein.
- 23 113. The allegations contained in Paragraph 113 of the FAC are denied.
- 24 114. The allegations contained in Paragraph 114 of the FAC are denied.
- 25 115. The allegations contained in Paragraph 115 of the FAC are denied.
- 26 116. The Prayer for Relief is written and speaks for itself, and no answer is
27 required.
- 28 117. The allegations contained in Paragraph 117 of the FAC are denied.

1 118. The allegations contained in Paragraph 118 of the FAC are denied.

2 **FOURTH CLAIM FOR RELIEF**

3 **Alleged Unfair Competition- CAL. BUS. & PROF. CODE §17200 et. Seq.**

4 119. Defendant realleges and incorporates by reference its admissions and
5 denials of the allegations set forth in paragraphs 1 through 118 of the FAC as though
6 set forth in full at this point.

7 120. The allegations contained in Paragraph 120 of the FAC are admitted.

8 121. The allegations contained in Paragraph 121 of the FAC are admitted.

9 122. The allegations contained in Paragraph 122 of the FAC are admitted.

10 123. The allegations contained in Paragraph 123 of the FAC are admitted.

11 124. Defendant admits that PteroMax was in the marketplace before
12 BluScience, that Defendant and ChromaDex had discussions in 2010 for ChromaDex
13 to supply raw materials to Defendant for Defendant's products, that those discussions
14 did not result in an agreement for ChromaDex to supply raw materials, and that
15 ChromaDex then created a competing product or line of products called BluScience
16 that directly competes with PteroMax.

17 125. Defendant admits that no current formal association or relationship
18 exists between ChromaDex and Defendant. Defendant denies that no association or
19 relationship ever existed between ChromaDex and Defendant.

20 126. The allegations contained in Paragraph 126 of the FAC are admitted.

21 127. The allegations contained in Paragraph 127 of the FAC are denied, in
22 part because the websites are written and speak for themselves.

23 128. The allegations contained in Paragraph 128 of the FAC are denied.

24 129. The allegations contained in Paragraph 129 of the FAC are admitted.

25 130. The allegations contained in Paragraph 130 of the FAC are denied.

26 131. The allegations contained in Paragraph 131 of the FAC are denied.

27 132. Defendant denies any wrongful conduct, whether willful or otherwise.
28

1 133. Defendant denies “purchasing” (as that term implies a level of
2 ownership which prohibits others from using those keywords, and/or an up-front
3 exchange of money) keywords utilizing ChromaDex’s marks. Defendant admits to
4 “bidding on”/“using” keywords utilizing ChromaDex’s marks on Google.com in a
5 legal and legitimate manner to display Defendant’s advertisements, which did not
6 include any ChromaDex marks. Defendant’s use did not exclude ChromaDex from
7 “bidding on”/“using” those same marks on the same search engine, and Defendant’s
8 use has been upheld by caselaw and is a standard practice in the marketplace.
9 Defendant denies “bidding on”/“using” or purchasing keywords utilizing
10 ChromaDex’s marks on any other search engine. Defendant denies that it is unlawful
11 to “bid on,” “purchase,” or “use” keywords utilizing ChromaDex’s marks on search
12 engines.

13 134. Defendant denies “purchasing” (as that term implies a level of
14 ownership which prohibits others from using those keywords, and/or an up-front
15 exchange of money) keywords utilizing ChromaDex’s marks. Defendant admits to
16 “bidding on”/“using” keywords utilizing ChromaDex’s marks on Google.com in a
17 legal and legitimate manner to display Defendant’s advertisements, which did not
18 include any ChromaDex marks. Defendant’s use did not exclude ChromaDex from
19 “bidding on”/“using” those same marks on the same search engine, and Defendant’s
20 use has been upheld by caselaw and is a standard practice in the marketplace.
21 Defendant denies “bidding on”/“using” or purchasing keywords utilizing
22 ChromaDex’s marks on any other search engine. Defendant denies that it is unlawful
23 to “bid on,” “purchase,” or “use” keywords utilizing ChromaDex’s marks on search
24 engines.

25 135. Defendant denies “purchasing” (as that term implies a level of
26 ownership which prohibits others from using those keywords, and/or an up-front
27 exchange of money) keywords utilizing ChromaDex’s marks. Defendant admits to
28 “bidding on”/“using” keywords utilizing ChromaDex’s marks on Google.com in a

1 legal and legitimate manner to display Defendant's advertisements, which did not
2 include any ChromaDex marks. Defendant's use did not exclude ChromaDex from
3 "bidding on"/"using" those same marks on the same search engine, and Defendant's
4 use has been upheld by caselaw and is a standard practice in the marketplace.
5 Defendant denies "bidding on"/"using" or purchasing keywords utilizing
6 ChromaDex's marks on any other search engine. Defendant denies that it is unlawful
7 to "bid on," "purchase," or "use" keywords utilizing ChromaDex's marks on search
8 engines.

9 136. The allegations contained in Paragraph 136 of the FAC are denied.

10 137. The allegations contained in Paragraph 137 of the FAC are denied.

11 138. Defendant admits to using CHROMADEx and PTEROPURE in its
12 metadata. The remaining allegations in Paragraph 138 are denied.

13 139. The allegations contained in Paragraph 139 of the FAC are denied.

14 140. The allegations contained in Paragraph 140 of the FAC are denied.

15 141. The allegations contained in Paragraph 141 of the FAC are denied.

16 142. Defendant denies any wrongful conduct, whether willful or otherwise.

17 143. The allegations contained in Paragraph 143 of the FAC are denied.

18 144. The allegations contained in Paragraph 144 of the FAC are denied.

19 145. The allegations contained in Paragraph 145 of the FAC are denied.

20 146. The allegations contained in Paragraph 146 of the FAC are denied.

21 **FIFTH CLAIM FOR RELIEF**

22 **Alleged Common Law Unfair Competition**

23 147. Defendant realleges and incorporates by reference its admissions and
24 denials of the allegations set forth in paragraphs 1 through 146 of the FAC as though
25 set forth in full at this point.

26 148. The allegations contained in Paragraph 148 of the FAC are denied.

27 149. Defendant admits that Chromadex alleges its marks are distinctive and
28 were distinctive. Whether they are or were is at issue in this litigation and before

1 government regulatory bodies. The remaining allegations in Paragraph 149 are
2 denied.

3 150. Defendant admits that it is not currently formally affiliated with or
4 sponsored by ChromaDex. The remaining allegations in Paragraph 150 are denied.

5 151. The allegations contained in Paragraph 151 of the FAC are denied.

6 152. Defendant denies that ChromaDex has been damaged in any way, or at
7 all.

8 153. Defendant admits that Chromadex seeks attorney's fees and costs.
9 Defendant denies willful, wrongful conduct that would justify an award of attorney's
10 fees and costs.

11 154. Defendant denies willfull or intentionally wrongful conduct. The
12 remaining allegations in Paragraph 154 are denied.

13 **SIXTH CLAIM FOR RELIEF**

14 **Alleged Unjust Enrichment**

15 155. Defendant realleges and incorporates by reference as though set forth in
16 full at this point, its admissions and denials of the allegations set forth in paragraphs 1
17 through 155 of the FAC as though set forth in full at this point.

18 156. The allegations contained in Paragraph 156 of the FAC are denied.

19 157. Defendant denies that any wrongful or illegal conduct by it has caused or
20 is causing ChromaDex to suffer or continue to suffer irreparable injury. Defendant is
21 without knowledge as to whether ChromaDex has suffered and is continuing to suffer
22 irreparable injury for which there is no adequate remedy at law caused by any other
23 party or parties. Accordingly, the allegations contained in Paragraph 157 of the FAC
24 are also denied for lack of knowledge and information sufficient to justify a belief
25 therein.

26 158. The allegations contained in Paragraph 158 of the FAC are denied.

27 **AFFIRMATIVE DEFENSES**

28 **FIRST AFFIRMATIVE DEFENSE**

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(Failure to State a Claim)

159. The First Amended Complaint, and each cause of action alleged therein, fails to state facts sufficient to constitute a cause of action against this answering Defendant.

SECOND AFFIRMATIVE DEFENSE

(Estoppel)

160. Plaintiff accepted, authorized, approved and ratified Defendant's conduct. Furthermore, Plaintiff did not notify Defendant about any issues regarding search engine ad words or copyrights until this lawsuit, despite an opportunity to do so and Defendant's compliance with the April 28, 2011 letter. In reliance on said conduct and representations by Plaintiff, Defendant acted as it did and Plaintiff is estopped by its own conduct.

THIRD AFFIRMATIVE DEFENSE

(Laches)

161. Plaintiff unreasonably delayed in providing notice and in commencing and prosecuting this action, which caused unfair prejudice to Defendant, barring any recovery against Defendant under the equitable doctrine of laches. Plaintiff did not notify Defendant about any issues regarding search engine ad words or copyrights until this lawsuit, despite an opportunity to do so and Defendant's compliance with the April 28, 2011 letter.

FOURTH AFFIRMATIVE DEFENSE

(Mitigation)

162. Plaintiff's alleged damages or injuries, if any, were aggravated by the plaintiff's failure to use reasonable diligence to mitigate them.

FIFTH AFFIRMATIVE DEFENSE

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(Unclean Hands)

163. Plaintiff is not entitled to the relief sought by reason of its own unclean hands with regard to the matters alleged in the First Amended Complaint.

SIXTH AFFIRMATIVE DEFENSE

(Fair Use of Trademark)

164. Defendant's alleged use of Plaintiff's marks constituted fair use and was not likely to cause consumer confusion. *See generally, Network Automation, Inc. v. Advanced Systems Concepts, Inc.*, 638 F.3d 1137 (9th Cir. 2011). Plaintiff's claims are barred by the doctrine of fair use.

SEVENTH AFFIRMATIVE DEFENSE

(Fair Competition)

165. Plaintiff's claims are barred because Defendant's actions as alleged in the First Amended Complaint were and are protected by the privilege of fair competition.

EIGHTH AFFIRMATIVE DEFENSE

(Invalidity or Unenforceability of Intellectual Property Rights)

166. Some or all of the intellectual property rights asserted by Plaintiff, including trademarks and/or copyrights, are invalid and/or unenforceable.

NINTH AFFIRMATIVE DEFENSE

(Authorized Use and Implied License)

167. Plaintiff authorized, implicitly or explicitly, Defendant's allegedly infringing activities, and the claims are therefore barred by the doctrine of implied license.

TENTH AFFIRMATIVE DEFENSE

(License, Consent, and Acquiescence)

168. Plaintiff's claims are barred by Plaintiff's license, consent, and acquiescence to Defendant's use.

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ELEVENTH AFFIRMATIVE DEFENSE

(Innocent Intent)

169. Plaintiff's claims are barred, in whole or in part, because Defendant's conduct was in good faith and with non-willful intent, at all times.

TWELFTH AFFIRMATIVE DEFENSE

(First Amendment)

170. Plaintiff's claims are barred to the extent that Defendant's actions and speech are protected by the First Amendment of The Constitution of the United States.

THIRTEENTH AFFIRMATIVE DEFENSE

(Fair Use of Copyright)

171. Defendant's alleged use of Plaintiff's copyrighted material constituted fair use. 17 U.S.C. § 107.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to State a Claim for Attorney's Fees)

172. The First Amended Complaint, and each cause of action advanced therein, fails to state a claim sufficient for an award of attorney's fees.

FIFTEENTH AFFIRMATIVE DEFENSE

(Failure to State a Claim for Injunctive Relief)

173. The First Amended Complaint, and each cause of action advanced therein, fails to state a claim sufficient for an award of injunctive relief.

SIXTEENTH AFFIRMATIVE DEFENSE

(Lack of Particularity)

174. Plaintiff has failed to allege its causes of action with enough particularity to enable Defendant to raise all appropriate defenses and therefore Defendant reserves the right to assert additional affirmative defenses as the factual basis for each defense becomes known.

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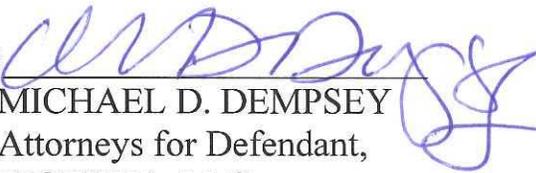
PRAYER

WHEREFORE, Biotivia LLC prays for relief as follows:

1. That Plaintiff take nothing by way of its First Amended Complaint;
2. That judgment be entered in favor of Biotivia LLC and against Plaintiff;
3. For costs of suit incurred herein, including such reasonable attorneys' fees as may be allowed by case and statutory authority and/or agreements of the parties; and
4. For such other and further relief as the Court may deem just and proper.

DATED: October 19, 2011

DEMPSEY & JOHNSON, P.C.

By: 
MICHAEL D. DEMPSEY
Attorneys for Defendant,
BIOTIVIA, LLC

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and am not a party to the within action. I am employed by the law firm of Dempsey & Johnson, located at 1880 Century Park East, Suite 516, Los Angeles, California 90067,

On October 19, 2011, I served the foregoing document(s) described as **ANSWER TO FIRST AMENDED COMPLAINT** by enclosing the document(s) in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I am readily familiar with the business's practice of collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited in the United States Postal Service the same day as the day of collection in the ordinary course of business. The sealed envelope with postage thereon fully prepaid was placed for collection and mailing on the above date following ordinary business practices.

BY MESSENGER SERVICE: I served the documents by placing them in an envelope or package addressed to the person[s] at the [ABOVE ADDRESS/ADDRESSES ON ATTACHED SERVICE LIST] and providing them to a professional messenger service for service.

BY FAX TRANSMISSION: Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the person[s] at the fax numbers [ABOVE/ON ATTACHED SERVICE LIST]. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I transmitted a PDF version of this document by electronic mail [via CM/ECF system] to the party(s) identified on the attached service list using the e-mail address(es) indicated.

(Federal) I declare that I am employed in the office of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on October 19, 2011, at Los Angeles, California.

Myrna Yzaguirre
Type or Print Name


Signature

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SERVICE LIST

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