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18 **UNITED STATES DISTRICT COURT**
 19 **CENTRAL DISTRICT OF CALIFORNIA**
 20 **(SOUTHERN DIVISION)**

21 ChromaDex, Inc. ,
 22 Plaintiff,
 23 v.
 24 Elysium Health, Inc.,
 25 Defendant.

26 Elysium Health, Inc.,
 27 Counterclaimant,
 28 v.
 ChromaDex, Inc.,
 Counter-Defendant.

Case No. SACV 16-02277-CJC(DFMx)

FOURTH AMENDED COMPLAINT

(1) BREACH OF PTEROPURE SUPPLY AGREEMENT

(2) BREACH OF NIAGEN SUPPLY AGREEMENT

(3) MISAPPROPRIATION OF TRADE SECRETS, CAL. CIV. CODE § 3426, ET SEQ.

(4) MISAPPROPRIATION OF TRADE SECRETS, 18 U.S.C. § 1836.

(5) CONVERSION

DEMAND FOR JURY TRIAL

1 Plaintiff ChromaDex, Inc. (“ChromaDex”) brings this action for breach of
2 contract, misappropriation of trade secrets, and conversion against Elysium Health, Inc.
3 (“Elysium”) and seeks money damages, punitive damages, interest, attorneys’ fees, and
4 other relief. ChromaDex demands a jury trial.

5 **NATURE OF THE CASE**

6 1. This case stems from defendant Elysium’s concerted efforts to undermine
7 and harm ChromaDex through willful breaches of contract, failure to pay for millions
8 of dollars in product it received from ChromaDex and re-sold, poaching of two senior
9 employees, trade secret misappropriation, and conversion of valuable documents and
10 information rightfully owned by ChromaDex.

11 2. ChromaDex was Elysium’s sole supplier of the two fundamental active
12 ingredients in Elysium’s only product: a dietary supplement named “Basis.”
13 ChromaDex owns the United States patent estate covering at least one of those product
14 components and supplied Elysium with NIAGEN®, a patented, proprietary health
15 ingredient that is comprised of nicotinamide riboside (“NR”), and pTeroPure®, a
16 patented, proprietary health ingredient made of pterostilbene. Elysium promised to pay
17 for those products, but now refuses to pay.

18 3. Elysium’s conduct and statements evidence its intent to deliberately
19 weaken and undermine ChromaDex by withholding payments for products it ordered
20 and received, making ChromaDex Elysium’s unwilling lender as it endeavored to create
21 its own supplies of NR and pterostilbene while cheating off of ChromaDex’s
22 confidential and proprietary information in the process.

23 4. Beginning in at least the spring of 2016, Elysium became openly
24 antagonistic towards—and increased efforts to undermine, attack, and harm—
25 ChromaDex. With offers of employment, Elysium induced at least one senior
26 ChromaDex employee to begin feeding Elysium ChromaDex’s confidential information
27 while he was still a ChromaDex employee. This employee acted as Elysium’s inside
28 agent at ChromaDex.

1 principal place of business in California.

2 10. Venue is proper in this District under 28 U.S.C. § 1391 because
3 ChromaDex is located in Orange County, California.

4 **PARTIES**

5 11. Plaintiff ChromaDex is a California Corporation with its principal place of
6 business located at 10005 Muirlands Blvd, Suite G, Irvine, CA 92618. ChromaDex
7 discovers, acquires, develops, and commercializes patented and proprietary ingredient
8 technologies in the dietary supplement, food, beverage, skin care, and pharmaceutical
9 markets. Its portfolio of patented ingredient technologies includes NIAGEN®,
10 pTeroPure®, PUREENERGY®, ProC3G®, and AnthOrigin™.

11 12. Defendant Elysium is a Delaware Corporation with its principal place of
12 business located at 594 Broadway, Suite 707, New York, NY, 10012. Elysium
13 describes itself as a company that utilizes science and technology to create consumer
14 health products.

15 **FACTUAL ALLEGATIONS**

16 **ChromaDex and Elysium**

17 13. ChromaDex sells NIAGEN and other ingredients to customers across the
18 country, one of which was Elysium.

19 14. NIAGEN is composed of NR. NR is found naturally in trace amounts in
20 milk and other foods and is a B3 vitamin metabolite. The body converts NR into
21 Nicotinamide Adenine Dinucleotide (“NAD+”), which is an essential molecule found
22 in every living cell. NR increases NAD+ levels in the body, which promote cellular
23 metabolism, mitochondrial function, and energy production.

24 15. NIAGEN is a patented, proprietary dietary ingredient owned by
25 ChromaDex. ChromaDex is the sole owner of the brand “NIAGEN” and the exclusive
26 licensee to several patents related to NR and its manufacture.

27 16. pTeroPure is made up of pterostilbene, which activates a very specific
28 nuclear receptor known as PPAR-alpha. Nuclear receptors are proteins that activate

1 gene expression. PPAR-alpha is activated during fasting states or the prolonged periods
2 without food. Once activated, PPAR-alpha controls lipid metabolism among other
3 essential functions.

4 17. ChromaDex is the sole owner of the brand “pTeroPure” and the exclusive
5 licensee to several patents related to the synthesis of pterostilbene.

6 18. ChromaDex sold—and Elysium promised to buy and pay for—NIAGEN
7 and pTeroPure pursuant to three contracts: (1) the NIAGEN Supply Agreement, dated
8 February 3, 2014 (attached hereto as Exhibit A), as amended by the Amendment to
9 Supply Agreement, dated February 19, 2016 (attached hereto as Exhibit B) (as so
10 amended, the “NIAGEN Supply Agreement”); (2) the pTeroPure Supply Agreement,
11 dated June 26, 2014 (attached hereto as Exhibit C) (the “pTeroPure Supply Agreement,”
12 and together with the NIAGEN Supply Agreement, the “Supply Agreements”); and
13 (3) a Trademark License and Royalty Agreement, dated February 3, 2014. The
14 NIAGEN Supply Agreement and the Trademark License and Royalty Agreement are
15 now terminated.

16 19. Elysium sells a health supplement named Basis, which combined
17 NIAGEN and pTeroPure, along with other non-active ingredients. Elysium now sells
18 Basis with NR and pterostilbene it obtains from sources other than ChromaDex. On
19 information and belief, Basis is Elysium’s only commercial product.

20 20. ChromaDex was the sole United States commercial source and supplier of
21 NR and was Elysium’s sole supplier of NR and pterostilbene, until Elysium diverted
22 the funds it owed ChromaDex into developing its own alternative sources of both
23 ingredients. Elysium secretly recruited two senior ChromaDex employees to help it
24 achieve its goal before it exhausted nine months’ worth of ingredients it had stockpiled
25 from ChromaDex. Upon Elysium’s unlawful refusal to pay for the product it received,
26 ChromaDex exercised its right to not renew the NIAGEN Supply Agreement effective
27 February 2, 2017.
28

Elysium’s False Pretenses and Promises

1
2 21. ChromaDex and Elysium’s commercial arrangement was expanding but
3 unremarkable until 2016. In the first quarter of 2016, Elysium ordered nearly double
4 the amount of NIAGEN it ordered in all of 2015.

5 22. Unbeknownst to ChromaDex, in April of 2016 Elysium began recruiting a
6 senior ChromaDex employee, Mark Morris, who was at the time ChromaDex’s Vice
7 President of Business Development.

8 23. On information and belief, Elysium induced Morris to breach his loyalty
9 and confidentiality obligations to ChromaDex with offers of employment. Morris began
10 feeding Elysium confidential and proprietary information on ChromaDex’s sales to
11 other customers. In May of 2016, Morris gave Elysium a spreadsheet, or the information
12 contained in a spreadsheet, concerning the prices and volumes of NR ordered by another
13 ChromaDex customer (the “Pricing Spreadsheet”).

14 24. The sales information contained in the Pricing Spreadsheet could have
15 only been known to a ChromaDex employee by virtue of his employment with
16 ChromaDex and was ChromaDex property.

17 25. Elysium knew that it should not have been in possession of the information
18 in the Pricing Spreadsheet and kept its illegal possession of the confidential ChromaDex
19 information secret. ChromaDex did not discover Elysium’s possession of the Pricing
20 Spreadsheet until Elysium produced the document in discovery in this action.

21 26. On information and belief, Elysium used the wrongfully-obtained Pricing
22 Spreadsheet information to construct a plan to try to obtain a market advantage over its
23 competitors, as well as ChromaDex, based on a misconstruction of the NIAGEN Supply
24 Agreement. Elysium improperly used the Pricing Spreadsheet information—without
25 revealing its true intentions—to engage ChromaDex in a series of questions about NR
26 pricing for the purpose of seeking out-of-context statements to support its greedy and
27 dishonest aims.

28 27. To that end, after Elysium surreptitiously and illegally obtained the

1 information in the Pricing Spreadsheet, Dan Alminana, Elysium’s COO, immediately
2 requested the exact same information from Frank Jaksch, ChromaDex’s CEO, under
3 the false pretense that the information was needed for a potential investor. This was the
4 first time Elysium raised concerns about pricing under the NIAGEN Supply Agreement.

5 28. Mr. Jaksch reached out to Elysium in an effort to open a dialogue about
6 their concerns and ultimately resolve them. Elysium, however, refused and/or ignored
7 these offers to talk while it schemed to inflict as much harm as possible on ChromaDex.

8 29. As shown through discovery in this action, in mid-June 2016 Elysium
9 began planning to order a 12-month supply of NIAGEN and pTeroPure from
10 ChromaDex.

11 30. On information and belief, Elysium conspired with Mark Morris to
12 implement this plan. Elysium and Morris agreed that before Morris left ChromaDex to
13 work at Elysium, he would act as Elysium’s inside agent, ensuring the success of
14 Elysium’s scheme to harm ChromaDex by wrongfully giving Elysium information to
15 inform its strategy and by encouraging ChromaDex’s management to accept the
16 extraordinarily large purchase orders Elysium planned to place.

17 31. On June 28, 2016, without any prior discussion or advance notification to
18 ChromaDex, Elysium submitted two extraordinarily large purchase orders for NIAGEN
19 and pTeroPure (the “June 28 Purchase Orders”). These amounts were approximately
20 seven times larger than any previous order from Elysium, and more than double the sum
21 of all Elysium’s prior orders combined. The June 28 Purchase Orders included a
22 demand for the two products at less than half the parties’ agreed price. Elysium never
23 communicated about or discussed the proposed pricing changes with ChromaDex
24 before submitting its June 28 Purchase Orders. Elysium knew or should have known
25 that ChromaDex would not accept the June 28 Purchase Orders at that price.

26 32. Because the June 28 Purchase Orders were wildly inconsistent with the
27 parties’ Supply Agreements and past dealings, and in light of Elysium’s subsequent
28 failure to pay for the NIAGEN and pTeroPure supplied by ChromaDex, ChromaDex

1 alleges on information and belief that Elysium intended to induce ChromaDex to
2 inadvertently supply large amounts of NIAGEN and pTeroPure to Elysium at grossly
3 discounted prices.

4 33. ChromaDex noticed the grossly discounted prices on the June 28 Purchase
5 Orders and did not fulfill them. Instead, ChromaDex reached out to Elysium to discuss
6 the June 28 Purchase Orders and their inconsistency with the parties' Supply
7 Agreements.

8 34. After Elysium again showed an unwillingness to engage with
9 ChromaDex's senior management to discuss the June 28 Purchase Orders, Morris
10 helped schedule a call between ChromaDex and Elysium to address the issues between
11 the parties, including the June 28 Purchase Orders. The call facilitated by Morris was
12 set for June 30, 2016.

13 35. On June 30, 2016, Mr. Jaksch and Will Black of ChromaDex, joined a call
14 with Elysium's CEO, Eric Marcotulli, and Alminana (the "June 30 Call").

15 36. On the June 30 Call, the parties discussed Elysium's concerns and the
16 appropriate pricing of NIAGEN for the orders Elysium wished to place. Alminana and
17 Marcotulli falsely stated that Elysium intended to be a good business partner to
18 ChromaDex and explained that Elysium was ramping up, which was the reason the
19 June 28 Purchase Orders were far larger than their past orders. Alminana and
20 Marcotulli dishonestly represented that, due to the ramp up, Elysium expected to use all
21 the NIAGEN ordered over the next few months and would place additional large orders
22 in Q3 and Q4 2016. In reliance on Elysium's statements and promises, ChromaDex
23 offered Elysium a discounted price for NIAGEN.

24 37. Though Elysium was not entirely satisfied with the discounted price,
25 Marcotulli represented that Elysium would accept that price, place an order so that
26 Elysium's supply was not interrupted, and work to resolve Elysium's remaining
27 concerns at another time.

28 38. Later that same day, June 30, 2016, Elysium submitted two purchase

1 orders to ChromaDex for pTeroPure and NIAGEN (the “June 30 Purchase Orders”).
2 As agreed upon during the June 30 Call, the June 30 Purchase Orders superseded the
3 (in retrospect, disingenuous) June 28 Purchase Orders. Although smaller than the
4 June 28 Purchase Orders, the June 30 Purchase Orders were still three times the size of
5 any of Elysium’s previous fulfilled orders.

6 39. On information and belief, Morris—still a ChromaDex employee at the
7 time—remained silent about the fact that Elysium’s orders were expected to last for
8 nine months.

9 40. According to the terms of the Supply Agreements, and in reliance on the
10 representations Alminana and Marcotulli made on the June 30 Call and Morris’s
11 omissions, ChromaDex accepted the June 30 Purchase Orders.

12 41. On information and belief, Elysium believed that under its incorrect
13 interpretation of the NIAGEN Supply Agreement the June 30 Purchase Orders were
14 large enough to entitle it to reduced pricing. Because Elysium had no intention of
15 paying for any product it received under the June 30 Purchase Orders, the size of the
16 orders further demonstrates Elysium’s bad faith in placing them.

17 42. Unaware of Elysium’s plot to cheat and steal from it, ChromaDex filled
18 the June 30 Purchase Orders on July 1, 2016 and August 9, 2016.

19 43. ChromaDex provided Elysium with three invoices for the shipments by
20 email on July 1, 2016 and August 9, 2016 (the “Past Due Invoices”).

21 44. The total amount ChromaDex invoiced Elysium for the Past Due Invoices
22 is \$2,983,350.

23 45. On August 10, 2016—one day after ChromaDex confirmed that it shipped
24 the last portion of pTeroPure to Elysium—Alminana wrote an email to ChromaDex
25 stating that Elysium would not pay the Past Due Invoices until the additional concerns
26 raised on the June 30 Call were resolved according to terms set by Elysium. However,
27 over the next several weeks, Alminana refused ChromaDex’s offers to meet,
28 constructively engage, and resolve Elysium’s concerns, all the while maintaining that

1 Elysium would not pay for the product that it had received until Elysium's concerns
2 were resolved.

3 46. On August 12, 2016, Mr. Black of ChromaDex responded by requesting
4 an in-person meeting to discuss Elysium's concerns and affirmed ChromaDex's
5 commitment to its relationship with Elysium.

6 47. Mr. Black received no response to his invitation for an in-person meeting,
7 despite exchanging several emails with Alminana. Mr. Black reiterated his invitation
8 on August 17, 2016. Alminana, yet again, ignored this invitation and refused to discuss
9 the issues. Elysium went dark, refusing to communicate with ChromaDex's
10 management team.

11 48. In late August and continuing into October 2016, ChromaDex continued
12 to demand payment from Elysium of the \$2,983,350 due for the Past Due Invoices,
13 while also continuing to extend invitations to work toward a solution for all parties
14 concerned and proposing such solutions.

15 49. Elysium at all times refused to pay the amount due for the Past Due
16 Invoices and to engage in discussions about a resolution. Elysium refused to make good
17 on Alminana and Marcotulli's promises on behalf of Elysium to attempt to resolve their
18 concerns with ChromaDex and refused to pay for the June 30 Orders.

19 50. During this time ChromaDex also learned that two of its senior employees
20 who had abruptly resigned during the summer had begun work at Elysium immediately
21 after leaving ChromaDex. Mark Morris, ChromaDex's former Vice President of
22 Business Development, resigned after many years of employment with one only week
23 notice on July 15, 2016, two weeks after the June 30 Order of NIAGEN was shipped.
24 Ryan Dellinger, ChromaDex's former Director of Scientific Affairs, resigned *effective*
25 *immediately* on August 10, 2016—the same day Elysium notified ChromaDex that it
26 refused to pay the Past Due Invoices.

27 51. To date, Elysium has not paid any sum to ChromaDex for product it
28 ordered, purchased, and received according to the June 30 Purchase Orders.

Elysium's Intent to Harm ChromaDex

1
2 52. At the time Marcotulli and Alminana spoke on the June 30 Call, Elysium
3 had no intention of (1) ever working with ChromaDex to resolve Elysium's concerns
4 about the NIAGEN Supply Agreement, (2) paying for the NIAGEN or pTeroPure
5 ordered in the June 30 Purchase Orders, or (3) ramping up their sales to the degree they
6 represented. Instead, unbeknownst to ChromaDex, Elysium was scheming to, or had
7 already, solicited and recruited two of ChromaDex's key employees with the purpose
8 of exploiting the former ChromaDex employees' knowledge about ChromaDex and its
9 business to assist Elysium as it developed its own manufacturing capabilities.

10 53. After failing to induce ChromaDex to supply NIAGEN and pTeroPure at
11 grossly discounted prices with the June 28 Purchase Orders, Marcotulli and Alminana
12 made their false representations on the June 30 Call with the intent of inducing
13 ChromaDex to provide it with large supplies of NIAGEN and pTeroPure. Marcotulli
14 and Alminana also intended to create financial pressure for ChromaDex by refusing to
15 pay for the orders, making ChromaDex Elysium's unwilling bank and lender while it
16 concurrently obtained an alternative source of NR. At the time of the June 30 Call,
17 ChromaDex had made vast investments of money, time, and resources into the research,
18 necessary regulatory approvals, clinical studies, marketing, and production capacity
19 needed to manufacture and sell NR on a broad scale.

20 54. On information and belief, Alminana and Marcotulli further intended to
21 use that financial pressure as bargaining leverage if and when Elysium ever decided it
22 needed to order NR from ChromaDex again.

23 55. Alminana's and Marcotulli's intent is evidenced by the fact that

- 24 a. within days of placing the June 30 Purchase Orders, Elysium,
25 working with its new employee Morris, concocted and began
26 executing a plan to develop its own source of NR;
27 b. Elysium never ramped up in a way that was consistent with
28 Alminana and Marcotulli's representations on the June 30 Call;

- 1 c. Elysium projected that the NIAGEN and pTeroPure that was
2 delivered in July and August 2016 would be sufficient supply for
3 Elysium well into 2017, and the supply lasted in fact till July 2017,
4 a year after Elysium placed the June 30 Purchase Orders; and
5 d. Elysium did not place any other orders, let alone additional large
6 orders, in Q3 and Q4 2016 as Alminana and Marcotulli represented
7 it would.

8 56. On information and belief, Marcotulli's and Alminana's false promises
9 were further motivated by the fact that Elysium, which was seeking financing during
10 the middle of 2016 and at least into November 2016, has been able to improve its
11 balance sheet by continuing to sell its product for millions of dollars in revenue without
12 paying ChromaDex a dime for the supply, likely engaging in fictional book keeping and
13 deceiving potential or actual investors about Elysium's financial condition.

14 **Breach of the pTeroPure Supply Agreement**

15 57. The pTeroPure Supply Agreement sets forth the terms under which
16 ChromaDex would sell and deliver, and Elysium would purchase, pTeroPure.

17 58. Section 2.1 of the pTeroPure Supply Agreement specifies that Elysium
18 shall place orders for the product by submitting purchase orders.

19 59. Section 2.2 sets the price for pTeroPure and states that "[f]ailure to make
20 prompt and full payment hereunder constitutes a material breach of the Agreement."

21 60. The invoices for the pTeroPure shipped on July 1, 2016 and August 9,
22 2016, contain payment terms specifying that payment must be made "30% Net30 70%
23 Net60," meaning 30% of the payment is due within 30 days of the date of the invoice
24 and 70% of the payment is due within 60 days of the date of the invoice.

25 61. Elysium breached the pTeroPure Supply Agreement on July 31, 2016, by
26 failing to pay 30% of the amount due within 30 days of the July 1, 2016 invoice. It
27 further breached the agreement by failing to pay any monies due before August 30,
28 2016, 60 days after the date of the July 1, 2016 invoice.

1 62. Elysium breached the pTeroPure Supply Agreement on September 8,
2 2016, by failing to pay 30% of the amount due within 30 days of the August 9, 2016
3 invoice. It further breached the agreement by failing to pay any monies due before
4 October 8, 2016, 60 days after the date of the August 9, 2016 invoice.

5 **Breach of the NIAGEN Supply Agreement**

6 63. The NIAGEN Supply Agreement sets forth the terms under which
7 ChromaDex would sell and deliver, and Elysium would purchase, NIAGEN.

8 64. Section 7.4 of the NIAGEN Supply Agreement provides that it shall be
9 governed by and construed in accordance with the laws of the State of California.

10 65. Section 3.1 of the NIAGEN Supply Agreement sets the maximum price
11 for NIAGEN provided by ChromaDex to Elysium.

12 66. Section 3.4 of the NIAGEN Supply Agreement states that “Elysium Health
13 shall pay ChromaDex within thirty (30) days from the date of the applicable invoice by
14 ChromaDex to Elysium Health for all NIAGEN® purchased”

15 67. Elysium breached the NIAGEN Supply Agreement on July 31, 2016 by
16 failing to pay the amount due within 30 days of the July 1, 2016 invoice, as required by
17 Section 3.4 of the agreement.

18 68. On October 31, 2016, ChromaDex sent to Elysium, in writing, a notice
19 letter indicating it would not renew the NIAGEN Supply Agreement. The NIAGEN
20 Supply Agreement, therefore, expired on February 2, 2017, according to Section 5.1 of
21 that agreement, following the initial term of three years.

22 **Morris and Dellinger Help Elysium Steal ChromaDex’s**

23 **Trade Secrets and Other Proprietary Information**

24 69. On July 15, 2016, after many years of employment at ChromaDex, two
25 weeks after the June 30 Orders, fifteen days after ChromaDex shipped the tremendous
26 volume of NIAGEN and pTeroPure to Elysium, and with only one week of notice,
27 Morris abruptly resigned from ChromaDex. When asked about his future professional
28 plans during his exit interview, Morris lied and told ChromaDex that he did not know

1 what his next steps would be. However, Morris had been planning to work for Elysium
2 for months and had already arranged to begin work at Elysium the next business day
3 after his resignation from ChromaDex. Morris is now Elysium's Head of Scientific
4 Technology.

5 70. As a condition of his employment with ChromaDex, Morris entered into
6 both a Confidentiality Agreement and an Employment Agreement. Morris's acts as
7 Elysium's agent during his employment with ChromaDex and the disclosure of
8 ChromaDex's information, violated Morris's contractual obligations to ChromaDex.

9 71. Elysium knew or should have known of Morris's confidentiality
10 obligations to ChromaDex.

11 72. ChromaDex has discovered through documents produced by Elysium in
12 this action, that Morris began working as Elysium's agent before he even departed from
13 ChromaDex.

14 73. On information and belief, Morris began working with Elysium behind
15 ChromaDex's back by at least May 2016, nearly two months before he resigned from
16 ChromaDex, when he sent or otherwise relayed the sales information in the Pricing
17 Spreadsheet to Elysium. Morris wrongfully disclosed the confidential ChromaDex
18 information to Elysium for the purpose of helping Elysium negotiate a better price for
19 NIAGEN and to secure employment with Elysium.

20 74. Further, just days after Elysium placed the June 30 Purchase Orders and
21 while he was still working for ChromaDex, Morris and Elysium agreed that when
22 Morris began working for Elysium, his main duty would be to assist Elysium in
23 developing its alternative supply of NR. Morris did not tell his then-employer
24 ChromaDex about Elysium's intention to develop a competing source of NR and to use
25 the money that Elysium owed ChromaDex for the June 30 Purchase Orders to fund that
26 dishonest goal.

27 75. Before Morris left ChromaDex, he used his personal email account to send
28 Elysium a list of manufacturers who could potentially produce NR for Elysium. He

1 also attached a ChromaDex document that described the manufacturing process for NR.
2 Morris told Elysium it could use the manufacturing information as a shortcut in
3 developing its own commercial supply of NR.

4 76. Also before he left ChromaDex, Morris saved copies of several
5 ChromaDex documents, some containing trade secret, confidential and/or proprietary
6 information, with the intent of using that stolen information for Elysium's purposes.
7 The methods by which Morris saved the ChromaDex documents can only be revealed
8 through further discovery.

9 77. As shown in discovery in this action, on July 18, 2016 (Morris's first
10 official day of employment at Elysium), Elysium came into possession of a spreadsheet
11 containing highly-valued ChromaDex trade secret information: the "Ingredient Sales
12 Spreadsheet." The Ingredient Sales Spreadsheet is the highly-confidential central
13 document at ChromaDex tracking all sales for all ingredients by quarter since 2012. The
14 spreadsheet contains the detailed purchasing history of every customer who purchased
15 any ingredient from ChromaDex—including customer names, prices, volumes, and
16 dates of purchases. More importantly to Elysium, the spreadsheet contains the detailed
17 purchasing histories of all its closest competitors; companies selling NR or chemically
18 synthesized pterostilbene.

19 78. On information and belief, Elysium induced Morris to steal the Ingredient
20 Sales Spreadsheet from ChromaDex, in obvious breach of his Employment and
21 Confidentiality Agreements with ChromaDex.

22 79. Elysium knew that it should not have possessed the stolen trade secret
23 information contained in the Ingredient Sales Spreadsheet. However Elysium saved the
24 stolen spreadsheet to its servers, did not delete it, and kept its possession of the
25 information secret from ChromaDex. ChromaDex did not discover Elysium's
26 possession of the Ingredient Sales Spreadsheet until Elysium produced the document in
27 discovery in this action.

28 80. Shortly after Morris began his *official* employment with Elysium, he

1 started working with a third-party manufacturer to develop a new commercial supply
2 of NR independent of ChromaDex. Morris was, and continues to be, Elysium's main
3 contact with the manufacturer, and closely oversaw the development of a manufacturing
4 process. Given Morris's detailed knowledge of ChromaDex's internal operations, he is
5 well-positioned to use this proprietary information to advance Elysium's competing
6 development.

7 81. When it came time for Elysium to provide instruction to its alternative
8 manufacturer on how to manufacture NR, Elysium relied on proprietary ChromaDex
9 documents to do so.

10 82. To instruct the alternative manufacturer on the process of creating NR,
11 Morris relied on a ChromaDex document submitted to the U.S. Food and Drug
12 Administration ("FDA") to show that NIAGEN was safe for human consumption. This
13 document (the "NR GRAS Dossier") contains a step-by-step guide for manufacturing
14 NR along with a description of each step. FDA requires ingredient manufacturers like
15 ChromaDex to publicly disclose the information like that in the NR GRAS Dossier in
16 order to obtain for their products the marketing designation of "Generally Recognized
17 as Safe" ("GRAS").

18 83. ChromaDex spent millions of dollars to research, test, and perfect the
19 manufacturing process described in the NR GRAS Dossier. ChromaDex then invested
20 additional resources in researching and creating the NR GRAS Dossier itself.
21 ChromaDex's huge investment was rewarded with FDA affirmation of NR's GRAS
22 status on August 3, 2016.

23 84. Elysium knew that the NR GRAS Dossier contains valuable information
24 that belonged to ChromaDex, as evidenced by the prominent statement, "Prepared for
25 ChromaDex, Inc.," that appears on every page of the NR GRAS Dossier and by
26 Elysium's use of the information it contains to jump-start its own production of NR.

27 85. Elysium, through Morris, converted for its own advantage the NR GRAS
28 Dossier and the valuable information it contains. Morris took screenshots of select

1 pages of the document in a way that removed all references to ChromaDex and the FDA
2 submission. Elysium then claimed the document containing screenshots of
3 ChromaDex’s information as its own property by placing a statement at the bottom of
4 each page stating: “This document is proprietary and confidential. No part of this
5 document may be disclosed in any manner.” Finally, on August 1, 2016, Morris
6 provided this fraudulent document to Elysium’s alternative manufacturer on behalf of
7 Elysium as the blueprint for developing a process for the commercial manufacture of
8 NR.

9 86. Also on August 1, 2016, Morris sent Elysium’s management a copy of the
10 confidentiality agreement he and other ChromaDex employees were required to sign as
11 a condition of their employment. On information and belief, Elysium knew of Morris’s
12 confidentiality obligations before this date.

13 87. On August 2, 2016, Morris sent another email to Elysium’s alternative
14 manufacturer with two documents providing further information to guide the
15 development of a new supply of NR. Both documents contained converted ChromaDex
16 information.

17 88. The first document described the method ChromaDex developed for
18 analyzing the concentration of NR chloride by high-performance liquid
19 chromatography (the “NRCl Analytical Method”). The ChromaDex document
20 containing the NRCl Analytical Method was labeled “Confidential” in bold font and
21 was sometimes shared with ChromaDex’s NR customers for the limited purpose of
22 guiding those customers in their testing of the NIAGEN they received from
23 ChromaDex. ChromaDex had a property interest in the NRCl Analytical Method
24 because it invested the resources to develop the relevant techniques and draft the
25 document to provide the information to its customers and to test its own NIAGEN.
26 Development of analytical standards such as the NRCl Analytical Method can cost up
27 to \$50,000.

28 89. ChromaDex sent the NRCl Analytical Method to Elysium in June 2014 for

1 the purposes of testing the NIAGEN Elysium purchased under the NIAGEN Supply
2 Agreement. The document was sent under the confidentiality protections of Section 4
3 of the NIAGEN Supply Agreement, which limited the use and disclosure of each party's
4 confidential information.

5 90. The second document Morris sent to Elysium's alternative NR
6 manufacturer described ChromaDex's specifications for the range of acceptable results
7 for several analyses that were regularly performed on the NIAGEN ChromaDex sold
8 (the "NR Specifications"). ChromaDex provided the NR Specifications to its NR
9 customers for the purposes of testing the NIAGEN ChromaDex sold. ChromaDex has
10 a property interest in the NR Specifications because it invested the resources to develop
11 the specifications, draft the document containing the specifications, and revise the
12 specifications as necessary based on applicable laws and regulations and lessons learned
13 from its experience manufacturing and testing NR.

14 91. The NR Specifications were incorporated into the terms of the NIAGEN
15 Supply Agreement as Exhibit A to the agreement. Under Section 4.2 of the NIAGEN
16 Supply Agreement, the parties are restricted from disclosing "any terms or conditions
17 of [the] Agreement."

18 92. The NR Specifications sent to Elysium's NR manufacturer appear to be
19 based on at least two or more versions of ChromaDex's NR Specifications, showing
20 that Morris wrongfully accessed documents he stole from ChromaDex during his
21 employment when drafting the document falsely labeled as Elysium's property.

22 93. Elysium wrongfully used the NRCl Analytical Method and the NR
23 Specifications documents when (1) it breached the confidentiality obligations of the
24 NIAGEN Supply Agreement by accessing and disclosing the documents for purposes
25 other than those related to the NIAGEN Supply Agreement, and/or (2) Morris breached
26 his confidentiality obligations to ChromaDex by wrongfully accessing ChromaDex
27 documents for Elysium's use after his employment with ChromaDex had terminated.

28 94. Elysium converted the NRCl Analytical Method and the NR Specifications

1 when it retyped the ChromaDex documents nearly word-for-word into two separate
2 documents and claimed the resulting document as its own by placing a statement at the
3 bottom of each document stating: “This document is the property of Elysium Health
4 and contains proprietary and confidential information. No part of this document may be
5 disclosed in any manner.”

6 95. Elysium sent the converted NRCl Analytical Method and NR
7 Specifications to its alternative NR manufacturer to use in the development of a
8 competing supply of NR.

9 96. Elysium’s inequitable reliance and use of ChromaDex’s information and
10 documents, the extent of which can only be revealed through discovery, substantially
11 reduced Elysium’s costs for developing a new commercial source of NR while denying
12 ChromaDex a return on its investment in developing the technical processes and
13 standards, and the documents themselves.

14 97. While Elysium was pursuing and investing in its own manufacturing
15 process for NR, it was still falsely representing to ChromaDex that it would honor its
16 contractual commitments and be a good business partner. Elysium did not notify
17 ChromaDex that it would refuse to pay the Past Due Invoices until August 10, 2016.

18 98. That same day, Dellinger resigned from ChromaDex, effective
19 immediately. During his brief exit interview, Dellinger refused to say where he planned
20 to work after his departure. However, consistent with Elysium’s strategic plan,
21 Dellinger immediately joined Elysium in the same position he held at ChromaDex,
22 Director of Scientific Affairs. Dellinger continues to be employed by Elysium today.

23 99. Just as Morris did, Dellinger also entered into both Confidentiality and
24 Employee Agreements with ChromaDex as a condition of his employment. Both
25 contracts restrict his use and disclosure of ChromaDex’s information and documents.

26 100. Shortly after Dellinger joined Elysium, a potential investor asked Elysium
27 for information concerning the science supporting the marketing claims made by
28 Elysium about its product, Basis. Elysium did not have such a presentation at that time.

1 Elysium requested that its two new former-ChromaDex employees, Morris and
2 Dellinger, create one.

3 101. On information and belief, instead of developing a presentation for
4 Elysium from scratch, Morris and/or Dellinger instead wrongfully converted two
5 presentations owned by ChromaDex the “NR Presentation” and the “Pterostilbene
6 Presentation” (collectively, the “Presentations”). Those Presentations explain the
7 science supporting the health benefits of ChromaDex’s ingredients, including NIAGEN
8 and pTeroPure.

9 102. Morris and Dellinger, while ChromaDex employees, had been responsible
10 for drafting the Presentations. ChromaDex created and refined the Presentations over
11 several years, including by updating them with new information when new scientific
12 articles were published. Thus, the Presentations each represent a significant investment
13 and creation reflecting valuable ChromaDex resources, knowledge, experience, and
14 strategic market acumen. Morris and/or Dellinger violated their Confidentiality and
15 Employment Agreements with ChromaDex when they wrongfully accessed
16 ChromaDex’s Presentations after their employment was terminated, conveyed the
17 Presentations into Elysium’s possession, and then used them for Elysium’s purposes.

18 103. Morris and/or Dellinger blatantly converted the Presentations by placing
19 many of the original slides, with only minor changes, on an Elysium PowerPoint
20 template with Elysium logos and by removing all ChromaDex logos and references to
21 ChromaDex’s branded ingredients, NIAGEN and pTeroPure. Morris informed
22 Elysium’s management that he had used ChromaDex material when drafting the
23 presentation and Elysium’s management consented, expressly or impliedly, to the
24 wrongful use of ChromaDex information.

25 104. On information and belief, Elysium presented the converted Presentations
26 as its own to a potential investor in late August 2016.

27 105. Elysium also presented the converted NR Presentation as its own to the
28 National Advertising Division of the Better Business Bureau in November 2016 in

1 response to an inquiry regarding Elysium’s marketing claims.

2 106. The Presentations are not the only ChromaDex documents that Dellinger
3 helped Elysium convert. In 2017, Dellinger helped Elysium prepare a New Dietary
4 Ingredient Notification (“NDI”) for submission to FDA to prove that Basis is safe for
5 human ingestion. Dellinger worked with Elysium’s regulatory consultants to develop
6 the NDI. Under Dellinger’s knowing guidance, Elysium used a confidential
7 ChromaDex document created in 2011 that detailed the safety of pterostilbene,
8 specifically the pTeroPure ingredient produced by ChromaDex (the “pTeroPure GRAS
9 Report”).

10 107. ChromaDex invested substantial resources, knowledge, and experience
11 into the research and information underlying the pTeroPure GRAS Report and in
12 creating the report itself. ChromaDex clearly marked the document as confidential by
13 labeling it “Confidential” and by restricting its dissemination through confidentiality
14 agreements.

15 108. ChromaDex took steps to protect the confidentiality of the pTeroPure
16 GRAS Report when it shared the document with Elysium during the course of the
17 parties’ relationship. Specifically, the pTeroPure Supply Agreement contains
18 provisions regarding the restricted use and disclosure of confidential information.

19 109. Dellinger provided the pTeroPure GRAS Report to Elysium’s regulatory
20 consultants as a shortcut in developing its own regulatory submission. By wrongfully
21 using the information in the pTeroPure GRAS Report to prepare its own regulatory
22 submission, Elysium profited from ChromaDex’s substantial investment in developing
23 the required safety information. Regulatory submissions such as a GRAS report cost
24 several hundred thousands of dollars to develop and Elysium saved itself time and
25 money by simply “updating” the ChromaDex information in its preparation of an NDI
26 submission for Basis.

27 110. On information and belief, Elysium also wrongfully used ChromaDex
28 documents detailing information concerning the safety of NR in its preparation of the

1 NDI submission, such as the NR GRAS Dossier, thereby further profiting off of
2 ChromaDex’s considerable investments and experience in the research, production, and
3 marketing of NR.

4 111. Elysium’s inequitable reliance and use of ChromaDex’s proprietary
5 information substantially reduced its costs for developing an alternative source of NR.
6 Had Elysium spent the time and resources to develop an alternative source of NR
7 without stealing ChromaDex’s information, it would have taken a substantially longer
8 period of time to develop the competing supply of NR that caused ChromaDex to lose
9 sales of NIAGEN it otherwise would have made during that period of time. Elysium’s
10 further blatant misappropriation of ChromaDex’s investments in developing the
11 information to satisfy key regulatory requirements for NIAGEN and pTeroPure further
12 allowed it to profit while denying ChromaDex a return on its investments. The full
13 extent of Elysium’s conversion of ChromaDex information and documents can only be
14 revealed through further discovery.

15
16 **Elysium’s Allegations of Patent Misuse and ChromaDex’s Denial of Patent**
17 **Misuse and Conduct to Purge Any Such Alleged Misuse**

18 112. Elysium filed its First Amended Counterclaims on March 6, 2017
19 (“FACC”). (Dkt. 31.) Elysium’s Fourth Counterclaim for Relief was for a declaratory
20 judgment of patent misuse. (FACC ¶¶ 111–15.)

21 113. Elysium alleges that ChromaDex engaged in patent misuse by “tying []
22 access to its patent rights to a royalty-bearing trademark license” (FACC ¶ 111) and,
23 “in some instances,” by “requir[ing] purchasers not only to license, but also to use
24 ChromaDex trademarks in order to obtain a supply of nicotinamide riboside” (FACC ¶
25 39).

26 114. ChromaDex moved to dismiss Elysium’s counterclaim for declaratory
27 judgment of patent misuse on March 20, 2017 on multiple grounds and contends that
28 there is no viable allegation of patent misuse as a matter of law and fact. (Dkt.

1 34.) However, the Court denied ChromaDex’s motion to dismiss the patent misuse
2 counterclaim by order dated May 10, 2017, permitting Elysium to attempt to prove its
3 allegation of patent misuse at trial. (Dkt. 44.)

4 115. ChromaDex denies that it has ever engaged in any act of alleged patent
5 misuse and specifically denies that it has engaged in patent misuse by “tying [] access
6 to its patent rights to a royalty-bearing trademark license” (FACC ¶ 111) and, “in some
7 instances,” by “requir[ing] purchasers not only to license, but also to use ChromaDex
8 trademarks in order to obtain a supply of nicotinamide riboside” (FACC
9 ¶ 39). ChromaDex further denies that Elysium’s allegations constitute patent misuse as
10 a matter of law.

11 116. However, to eliminate an issue from this litigation, to conserve the parties’
12 and the Court’s resources and to streamline this action, and without prejudice to
13 ChromaDex’s arguments and contentions, ChromaDex restates that it has already
14 terminated the Trademark License and Royalty Agreement on February 2, 2017 and
15 further, hereby unequivocally renounces any rights to collect, charge, or obtain royalties
16 under the Trademark License and Royalty Agreement with Elysium. Pursuant to
17 Section 14.1 of the Trademark License and Royalty Agreement and ChromaDex’s
18 notice sent to Elysium on October 31, 2016, the Trademark License and Royalty
19 Agreement was permanently terminated along with the NIAGEN Supply Agreement,
20 effective February 2, 2017. Accordingly, the allegedly offending terms of the
21 Trademark License and Royalty Agreement as alleged by Elysium are no longer of any
22 operative effect. The terminations of both agreements were made in the ordinary course
23 of business and is noted here for the purpose of confirming the purge of any alleged
24 patent misuse.

25 117. ChromaDex likewise hereby unequivocally renounces any rights to
26 charge, obtain, or collect royalties on sales of non-trademark bearing NIAGEN from
27 customers other than Elysium, or to require the use of its trademarks under any
28 agreement. ChromaDex represents to the Court that it is immediately terminating all

1 such trademark license agreements. These terminations are made for the purpose of
2 purging any and all allegations of patent misuse.

3 118. ChromaDex is further refunding and/or crediting any and all past royalties
4 paid by all customers pursuant to all “royalty-bearing trademark licenses.” ChromaDex
5 represents to the Court that it will provide a credit to Elysium for all past royalties
6 against the damages owed by Elysium in this case, including for the failure to pay for
7 product purchased.

8 119. These voluntary and proactive actions by ChromaDex are not an admission
9 of any wrongdoing or acts of patent misuse, but instead are intended to prophylactically
10 and completely eliminate issues in this and any other dispute related to ChromaDex’s
11 patents by purging any and all allegedly unlawful conduct with respect to all allegations
12 by Elysium of patent misuse. In particular, these voluntary acts are made to dissipate
13 any and all alleged effects of any alleged patent misuse in the market. These voluntary
14 steps taken by ChromaDex are intended to moot Elysium’s allegation and counterclaim
15 for a declaratory judgment that ChromaDex has misused any of its patents. Such
16 counterclaim should be promptly voluntarily dismissed by Elysium, or dismissed *sua*
17 *sponte* by the Court based on the unequivocal terminations and renouncements made
18 herein.

19 **CAUSES OF ACTION**

20 **FIRST CLAIM FOR RELIEF**

21 **Breach of Contract (pTeroPure Supply Agreement)**

22 120. ChromaDex repeats and realleges the allegations contained in paragraphs
23 1 through 119, above.

24 121. The pTeroPure Supply Agreement is a binding and enforceable contract
25 between ChromaDex and Elysium.

26 122. ChromaDex fulfilled its obligations under the pTeroPure Supply
27 Agreement by fulfilling the June 30, 2016 pTeroPure purchase order.

28 123. Elysium has materially breached the pTeroPure Supply Agreement by

1 refusing to pay the monies owed to ChromaDex for the pTeroPure which ChromaDex
2 delivered to Elysium.

3 124. Elysium's material breach of the pTeroPure Supply Agreement injured
4 ChromaDex and caused it to sustain monetary damages in the amount of \$580,750, plus
5 interest.

6 125. Section 15.1 of the pTeroPure Supply Agreement restricts the parties'
7 disclosure and use of confidential information, including information that is marked
8 confidential at the time of disclosure.

9 126. Under Section 15.1, the parties are prohibited from using or disclosing
10 confidential information except on a need-to-know basis "to the extent such disclosure
11 is reasonably necessary in connection with such party's activities as expressly
12 authorized by [the] Agreement."

13 127. ChromaDex shared the pTeroPure GRAS Report with Elysium during the
14 course of the parties' business dealings under the pTeroPure Supply Agreement.

15 128. The pTeroPure GRAS Report is labeled "confidential."

16 129. Elysium breached Section 15.1 of the pTeroPure Supply Agreement when
17 it disclosed the pTeroPure GRAS Report to its regulatory consultants for the purpose of
18 preparing its NDI submission to FDA regarding a pterostilbene manufactured by an
19 entity other than ChromaDex.

20 130. Elysium's further breach of the pTeroPure Supply Agreement further
21 injured ChromaDex, in an amount to be determined at trial.

22 **SECOND CLAIM FOR RELIEF**

23 **Breach of Contract (NIAGEN Supply Agreement)**

24 131. ChromaDex repeats and realleges the allegations contained in paragraphs
25 1 through 130, above.

26 132. The NIAGEN Supply Agreement is a binding and enforceable contract
27 between ChromaDex and Elysium.

28 133. ChromaDex fulfilled its obligations under the NIAGEN Supply

1 Agreement by fulfilling the June 30, 2016 NIAGEN purchase order within 30 days.

2 134. Elysium has materially breached the NIAGEN Supply Agreement by
3 refusing to pay the monies owed to ChromaDex for the NIAGEN that ChromaDex sold
4 and delivered to Elysium.

5 135. Elysium's material breach of the NIAGEN Supply Agreement injured
6 ChromaDex and caused it to sustain monetary damages in the amount of \$2,402,600,
7 plus interest.

8 136. Section 4 of the NIAGEN Supply Agreement restricts the parties'
9 disclosure of the terms of the agreement as well as the disclosure and use of confidential
10 information.

11 137. Under Section 4.1 of the NIAGEN Supply Agreement, the parties are
12 prohibited from using or disclosing confidential information except on a need-to-know
13 basis "to the extent such disclosure is reasonably necessary in connection with such
14 party's activities as expressly authorized by [the] Agreement." Section 1.4 of the
15 agreement defines "confidential information" to include information "marked,
16 identified, or otherwise acknowledged to be confidential at the time of disclosure."

17 138. ChromaDex labeled the NRCl Analytical Method "confidential" and
18 shared the document with Elysium during the course of the parties' business dealings
19 under the NIAGEN Supply Agreement.

20 139. Elysium breached Section 4.1 of the NIAGEN Supply Agreement when it
21 disclosed the NRCl Analytical Method to its alternative manufacturer of NR for the
22 purpose of developing a competing source of NR.

23 140. In early 2015, ChromaDex drafted a document named "NR increases
24 NAD" which concerned the data from a ChromaDex human study examining the effects
25 of NR on NAD+ levels ("NR Study Data"). ChromaDex labeled the NR Study Data
26 "confidential" in bold font. ChromaDex did not distribute the NR Study Data widely
27 and did not make the data public as it drafted an article describing the results through
28 the end of 2015. In January of 2016, ChromaDex began to use the NR Study Data in

1 marketing material and the data was published publicly in October 2016.

2 141. In April of 2015, Dellinger, then ChromaDex’s Director of Scientific
3 Affairs, was introduced to Elysium’s Chief Scientist, Leonard Guarente, to discuss the
4 science supporting NR and ChromaDex’s clinical studies, among other topics. After the
5 call, Dellinger sent Guarente the NR Study Data.

6 142. However, despite the fact that the NR Study Data was labeled
7 “confidential,” Elysium distributed the NR Study Data to at least two dozen potential
8 investors during the second half of 2015—before the data became public and without
9 ChromaDex’s authorization, as required by the NIAGEN Supply Agreement.

10 143. Elysium breached Section 4.1 of the NIAGEN Supply Agreement when it
11 widely distributed the “confidential” NR Study Data before it became public.

12 144. Under Section 4.2 of the NIAGEN Supply Agreement, the parties are
13 restricted from disclosing “any terms or conditions of [the] Agreement.”

14 145. The NR Specifications were incorporated into the terms of the NIAGEN
15 Supply Agreement as Exhibit A to the agreement.

16 146. Elysium breached Section 4.2 of the NIAGEN Supply Agreement when it
17 disclosed the NR Specifications to its alternative manufacturer of NR for the purpose
18 of developing a competing source of NR.

19 147. Elysium’s further breaches of the NIAGEN Supply Agreement further
20 injured ChromaDex, in an amount to be determined at trial.

21 **THIRD CLAIM FOR RELIEF**

22 **Misappropriation of Trade Secrets**

23 148. ChromaDex repeats and realleges the allegations contained in paragraphs
24 1 through 147, above.

25 149. Elysium’s conduct as alleged herein constitutes misappropriation of trade
26 secrets under California Civil Code § 3426, et seq.

27 150. The Ingredient Sales Spreadsheet is the central sales document at
28 ChromaDex tracking all sales for all ingredients. The spreadsheet Elysium illegally

1 possesses contains the detailed purchasing history of every customer who purchased
2 any ingredient from ChromaDex from 2012 through at least May 27, 2016—including
3 customer names, prices, volumes, and dates of purchases.

4 151. The Ingredient Sales Spreadsheet derives independent economic value
5 from not being generally known to the public. While the fact that certain companies are
6 ChromaDex customers is sometimes public information, the spreadsheet also contains
7 information that cannot be gleaned from public sources, such as the detailed purchasing
8 history of each ChromaDex ingredient customer, order forecasts, and the prices,
9 volumes, and dates of each purchase.

10 152. The information contained in the Ingredient Sales Spreadsheet gives
11 ChromaDex a competitive edge against other ingredient suppliers. Once it was in
12 Elysium’s possession, the Ingredient Sales Spreadsheet provided Elysium with a
13 substantial business advantage against its competitors. The spreadsheet also gave
14 Elysium an advantage in contract negotiations with ChromaDex because Elysium had
15 access to the identities of customers purchasing specific ingredients and the associated
16 prices and volumes.

17 153. ChromaDex made and continues to make efforts reasonable under the
18 circumstances to maintain the secrecy of the Ingredient Sales Spreadsheet. These efforts
19 include limiting access of the Ingredient Sales Spreadsheet to only a few employees
20 within ChromaDex and management. ChromaDex requires these employees, and all
21 employees generally, to enter employment and confidentiality agreements limiting their
22 use and disclosure of “secret processes, inventions, customer and supplier lists and other
23 trade secrets...” The spreadsheet is covered by these agreements as a customer list and
24 trade secret. Further, ChromaDex never shared the Ingredient Sales Spreadsheet outside
25 of the company, except for the rare occasion that such disclosure was necessary to
26 financial professionals retained by ChromaDex.

27 154. Elysium willfully and maliciously acquired the spreadsheet through
28 improper means and, on information and belief, improperly used the spreadsheet.

1 155. Morris, by virtue of his senior sales position with ChromaDex, had access
2 to the Ingredient Sales Spreadsheet, which he agreed to maintain as confidential and not
3 to disclose or use that information in any way contrary to the interests of ChromaDex.

4 156. Morris signed Confidentiality and Employment Agreements when he
5 began his employment with ChromaDex on August 14, 2007 and reaffirmed those
6 obligations at least once more when he left ChromaDex on July 15, 2016. The
7 agreements are valid contracts between ChromaDex and Morris limiting his ability to
8 engage in competitive business during his employment and requiring he keep
9 ChromaDex's information confidential.

10 157. Elysium knew or should have known of Morris's confidentiality and
11 loyalty obligations to ChromaDex and intentionally induced Morris to breach those
12 contractual duties with offers of employment.

13 158. Morris actually breached his contracts with ChromaDex when he saved a
14 copy of the Ingredient Sales Spreadsheet and removed it from ChromaDex for the
15 purposes of conveying it to Elysium while he was still a ChromaDex employee. Morris
16 further breached his contracts with ChromaDex when he wrongfully disclosed the
17 highly-confidential Ingredient Sales Spreadsheet to Elysium on his first day of official
18 employment with Elysium, July 18, 2016.

19 159. Elysium further induced Morris's breaches when it saved the spreadsheet,
20 did not delete it, and did not alert ChromaDex to its possession of the spreadsheet.

21 160. Elysium's acquisition of the spreadsheet enabled Elysium to access the
22 detailed purchasing histories of all of its closest competitors and gave Elysium an
23 undisclosed upper-hand during contract negotiations with ChromaDex.

24 161. Elysium's misappropriation of ChromaDex's trade secret information has
25 unjustly enriched Elysium and damaged ChromaDex in an amount to be determined at
26 trial.

27 162. ChromaDex alleges on information and belief that Elysium's acts were
28 fraudulent, willful, malicious, and oppressive and constitute despicable conduct and

1 subjected ChromaDex to unjust hardship in conscious disregard of ChromaDex's rights
2 so as to justify an award of exemplary or enhanced damages under California Civil
3 Code § 3426.3(c), and attorneys' fees pursuant to California Civil Code § 3426.4.

4 163. Elysium's wrongful conduct in misappropriating ChromaDex's trade
5 secrets, unless and until enjoined and restrained by order of this court, will result in
6 irreparable harm to ChromaDex's business in that ChromaDex trade secrets are being
7 and will continue to be compromised. ChromaDex has no adequate remedy at law and
8 will be irreparably harmed absent relief enjoining such misappropriation.

9 164. ChromaDex has no adequate remedy at law for the injuries it is currently
10 suffering and Elysium will continue to use the misappropriated trade secret information
11 and ChromaDex will be required to maintain a multiplicity of judicial proceedings in
12 order to protect its interest.

13 **FOURTH CLAIM FOR RELIEF**

14 **Federal Defense of Trade Secrets Act**

15 165. ChromaDex repeats and realleges the allegations contained in paragraphs
16 1 through 164, above.

17 166. Elysium has undertaken a deliberate plan to engage in the conduct alleged
18 in this complaint and incorporated into this cause of action. These actions constitute a
19 violation of the Federal Defense of Trade Secrets Act, 18 U.S.C. § 1836, as amended.

20 167. The information contained in ChromaDex's Ingredient Sales Spreadsheet
21 concerns and has been used in interstate commerce, as evidenced by the information on
22 companies located in several different states, and is intended to be used in interstate
23 commerce.

24 168. ChromaDex alleges on information and belief that Elysium acted willfully
25 and maliciously when it misappropriated ChromaDex's trade secret information so as
26 to justify an award of exemplary damages under 18 U.S.C. § 1836(b)(3)(C).

27
28

FIFTH CLAIM FOR RELIEF

Conversion

169. ChromaDex repeats and realleges the allegations contained in paragraphs 1 through 168, above.

170. Elysium converted at least seven documents and/or the information they contain belonging to ChromaDex. The extent of Elysium’s theft, how much it has been unjustly enriched from that theft, and the amount of damages ChromaDex has sustained, can only be revealed through discovery.

171. Elysium’s willful and blatant theft of ChromaDex’s documents and information is so egregious that it warrants punitive damages.

A. Conversion of the NRCl Analytical Method

172. ChromaDex developed an analytical method for determining the concentration of NR Chloride by high-performance liquid chromatography. ChromaDex drafted a document containing the NRCl Analytical Method, boldly labeled the document “confidential,” and sometimes distributed it to customers and potential customers for the purposes of testing the NIAGEN ChromaDex sold. ChromaDex is the exclusive rightful owner of the NRCl Analytical Method.

173. ChromaDex sent the NRCl Analytical Method to Elysium in June 2014 under the NIAGEN Supply Agreement’s Confidentiality Provisions, which restricts Elysium’s disclosure of the document or the information it contains and prohibited Elysium from using the document for purposes other than those related to the NIAGEN Supply Agreement.

174. Elysium wrongfully used the NRCl Analytical Method for purposes other than those related to the NIAGEN Supply Agreement thereby breaching the agreement.

175. Elysium unlawfully converted the NRCl Analytical Method when it retyped the ChromaDex document word-for-word into a separate document and placed a statement at the bottom of the document stating: “This document is the property of Elysium Health and contains proprietary and confidential information. No part of this

1 document may be disclosed in any manner.”

2 176. Elysium wrongfully used the converted information in the retyped NRCI
3 Analytical Method when it sent the document to its new NR manufacturer on August 2,
4 2016, to use in the development of a competing supply of NR.

5 177. ChromaDex was damaged by being denied a return on its investment in
6 creating the NRCI Analytical Method.

7 178. In addition to damages, ChromaDex further demands that Elysium return
8 all copies of the NRCI Analytical Method, whether they are falsely labeled as Elysium’s
9 property or otherwise.

10 **B. Conversion of the pTeroPure GRAS Report**

11 179. In May 2011, ChromaDex created the pTeroPure GRAS Report,
12 establishing that its pterostilbene was generally recognized as safe for consumption as
13 a food additive. This document is nonpublic and was labeled “confidential.”
14 ChromaDex is the exclusive rightful owner of the pTeroPure GRAS Report.

15 180. ChromaDex shared the pTeroPure GRAS Report with Elysium in January
16 2016 under the pTeroPure Supply Agreement’s Confidentiality Provision, which
17 restricts Elysium’s disclosure of the document or the information it contains and
18 prohibited Elysium from using the document for purposes other than those related to
19 the pTeroPure Supply Agreement.

20 181. Elysium used the pTeroPure GRAS Report for purposes other than those
21 related to the pTeroPure Supply Agreement, and therefore unlawfully converted it.

22 182. Elysium wrongfully used the information contained in the pTeroPure
23 GRAS Report as a shortcut in the preparation of an NDI submission for Basis in 2017,
24 in violation of the pTeroPure Supply Agreement’s Confidentiality Provision. In
25 communications about the preparation of that NDI submission, Dellinger stated that
26 Elysium provided the pTeroPure GRAS Report to its regulatory consultants who then
27 “updated” it for Elysium’s own FDA submission.

28 183. On information and belief, by wrongfully using the confidential

1 information contained in the pTeroPure GRAS Report, Elysium reduced its costs in
2 money, time, and other resources related to the development of its own regulatory
3 submission establishing the safety of pterostilbene for human consumption.

4 184. ChromaDex was damaged by Elysium's illegal conversion by being denied
5 a return on its investment in developing the pTeroPure GRAS Report.

6 185. In addition to damages, ChromaDex further demands that Elysium return
7 all copies of the pTeroPure Gras Report.

8 **C. Conversion of the NR Presentation**

9 186. Over several years, ChromaDex developed the NR Presentation, which
10 contains information regarding NR that included the findings of scientific journal
11 articles supporting the safety and efficacy of NR as well as ChromaDex's claims
12 regarding NR's effects in humans and animals.

13 187. ChromaDex exclusively owned the NR Presentation because it invested
14 resources, skill, experience, and its business sense to develop the presentation and
15 periodically update it. The NR Presentation was labeled as a document belonging to
16 ChromaDex.

17 188. On information and belief, Elysium wrongfully obtained possession of the
18 NR Presentation through one or both of its employees who formerly worked for
19 ChromaDex: Morris and Dellinger. Both had access to the NR Presentation during their
20 employment with ChromaDex. Morris emailed a version of the NR Presentation to his
21 personal email account in late 2015, where it would have been available for reference
22 after he resigned from ChromaDex.

23 189. Both Morris and Dellinger were bound by Employee and Confidentiality
24 Agreements restricting their use and disclosure of ChromaDex documents even after
25 their departures from ChromaDex.

26 190. Elysium knew or should have known of Morris's and Dellinger's
27 confidentiality and loyalty obligations to ChromaDex and intentionally induced Morris
28 and Dellinger to breach those contractual duties with offers of employment and

1 continued employment.

2 191. Morris and Dellinger actually breached their contracts with ChromaDex
3 when they retained ChromaDex documents after they terminated their employment with
4 ChromaDex, conveyed possession of those documents to Elysium, and used them for
5 Elysium's purposes.

6 192. Elysium converted the NR Presentation when its employees wrongfully
7 accessed the NR Presentation, added slight and purely cosmetic modifications, and
8 placed it on an Elysium PowerPoint template. These acts were in violation of Morris's
9 and Dellinger's agreements with ChromaDex.

10 193. Elysium then wrongfully used the information compiled by ChromaDex
11 for its own profit and benefit. Elysium wrongfully deployed ChromaDex's NR
12 Presentation to support its public claims about the science supporting the safety and
13 efficacy of Basis and represent itself as an expert and innovator in the field of NR
14 research and commercial products. For example, Elysium sent the NR Presentation,
15 now with Elysium's logo on it, to potential investors in August of 2016 and presented
16 it to the National Advertising Division of the Better Business Bureau in November 2016
17 in response to an inquiry regarding Elysium's marketing claims.

18 194. Elysium wrongfully profited from the use of the presentation by saving the
19 expense of researching and creating a presentation concerning the science of NR itself,
20 as well as from any investments it received as a result of the NR Presentation.

21 195. ChromaDex was damaged by being denied a return on its investment in
22 creating the NR Presentation.

23 196. In addition to damages, ChromaDex further demands the return or
24 destruction of all copies and versions of the NR Presentation, whether or not they
25 contain an Elysium logo, which are in the possession of Elysium or its employees.

26 **D. Conversion of the Pterostilbene Presentation**

27 197. Over several years, ChromaDex developed the Pterostilbene Presentation,
28 which contains information regarding pterostilbene that included the findings of

1 scientific journal articles supporting the health benefits of pterostilbene as well as
2 ChromaDex's claims regarding pterostilbene's effects in humans and animals.

3 198. ChromaDex exclusively owned the Pterostilbene Presentation because it
4 invested resources, skill, experience, and its business sense to develop the presentation
5 and periodically update it. The Pterostilbene Presentation was labeled as a document
6 belonging to ChromaDex.

7 199. On information and belief, Elysium wrongfully obtained possession of the
8 Pterostilbene Presentation through one or both of its employees who formerly worked
9 for ChromaDex: Morris and Dellinger. Both had access to the Pterostilbene
10 Presentation during their employment with ChromaDex.

11 200. Both Morris and Dellinger were bound by Employee and Confidentiality
12 Agreements restricting their use and disclosure of ChromaDex documents even after
13 their departures from ChromaDex.

14 201. Elysium converted the Pterostilbene Presentation when its employees
15 wrongfully accessed the Pterostilbene Presentation, added slight and purely cosmetic
16 modifications, and placed it on an Elysium PowerPoint template. These acts were in
17 violation of Morris's and Dellinger's agreements with ChromaDex.

18 202. Elysium then wrongfully used the information compiled by ChromaDex
19 for its own profit and benefit. Elysium wrongfully deployed ChromaDex's
20 Pterostilbene Presentation to support its public claims about the science supporting the
21 safety and efficacy of Basis and represent itself as an expert and innovator in the field
22 of pterostilbene research and commercial products. For example, Elysium sent the
23 Pterostilbene Presentation, now with Elysium's logo on it, to potential investors in
24 August of 2016.

25 203. Elysium wrongfully profited from the use of the presentation by saving the
26 expense of researching and creating a presentation concerning the science of
27 pterostilbene itself, as well as from any investments it received as a result of the
28 Pterostilbene Presentation.

1 204. ChromaDex was damaged by being denied a return on its investment in
2 creating the Pterostilbene Presentation.

3 205. In addition to damages, ChromaDex further demands the return or
4 destruction of all copies and versions of the Pterostilbene Presentation, whether or not
5 they contain an Elysium logo, which are in the possession of Elysium or its employees.

6 **E. Conversion of the Pricing Spreadsheet**

7 206. In May of 2016, Elysium wrongfully obtained confidential ChromaDex
8 sales information in the Pricing Spreadsheet, including information on the volumes and
9 prices of NIAGEN provided to another ChromaDex customer.

10 207. ChromaDex had a property interest in the confidential sales information in
11 the Pricing Spreadsheet because it could have only been obtained by a ChromaDex
12 employee through their employment with ChromaDex. Any disclosure of the
13 information by a ChromaDex employee would have been in violation of the
14 employment and confidentiality agreements that ChromaDex requires its employees to
15 enter as a condition of their employment.

16 208. Elysium converted the information in the Pricing Spreadsheet when it
17 improperly obtained the confidential information, kept its possession secret from
18 ChromaDex, and used it to gain an advantage in its dealings with ChromaDex.

19 209. ChromaDex was denied possession of the Pricing Spreadsheet because it
20 appears nowhere on ChromaDex's servers.

21 210. Elysium profited from its conversion of the Pricing Spreadsheet because it
22 wrongfully used the confidential information during contract negotiations with
23 ChromaDex that followed its receipt of the information.

24 211. ChromaDex was damaged by Elysium's conversion of the Pricing
25 Spreadsheet and the information contained therein because it was put at a disadvantage
26 during contract negotiations with Elysium. ChromaDex was also damaged by
27 Elysium's plot to order sufficient quantities of NIAGEN to entitle it to receive reduced
28 prices for the ingredient under Elysium's mis-interpretation of the NIAGEN Supply

1 Agreement.

2 212. In addition to damages, ChromaDex further demands that Elysium destroy
3 all copies of the Pricing Spreadsheet and/or the information contained therein.

4 **F. Conversion of the NR Specifications**

5 213. ChromaDex invested the resources to develop the NR Specifications to
6 detail the standards to which NIAGEN was manufactured. The document, and its
7 several revisions, list the various tests that should be performed on the NR manufactured
8 by ChromaDex and the specified range of acceptable results for each test. ChromaDex
9 had a property interest in the NR Specifications because it invested the resources to
10 develop the information and to draft the document to provide the information to its
11 customers and to test its own NIAGEN.

12 214. The NR Specifications were incorporated into the terms of the NIAGEN
13 Supply Agreement as Exhibit A. The NIAGEN Supply Agreement prohibits Elysium
14 from disclosing the terms and conditions of the agreement to third parties.

15 215. Elysium wrongfully used the NR Specifications when it breached the
16 NIAGEN Supply Agreement by disclosing the NR Specifications to its alternative
17 manufacturer of NR. In addition, because the NR Specifications Elysium disclosed
18 contain information from later versions of the NR Specifications, Elysium improperly
19 obtained possession of other versions of the document when Morris breached his
20 confidentiality obligations to ChromaDex by wrongfully accessing a ChromaDex
21 document for the use of his new employer after his employment with ChromaDex had
22 terminated.

23 216. Elysium converted the NR Specifications when it retyped the ChromaDex
24 document word-for-word into a separate document and placed a statement at the bottom
25 of the document stating: “This document is the property of Elysium Health and contains
26 proprietary and confidential information. No part of this document may be disclosed in
27 any manner.”

28 217. Elysium sent the retyped NR Specifications to its new NR manufacturer

1 on August 2, 2016, to use in the development of a competing supply of NR.

2 218. ChromaDex was damaged by being denied a return on its investment in
3 creating the NR Specifications.

4 219. In addition to damages, ChromaDex further demands that Elysium return
5 all copies of the NR Specifications, whether they are falsely labeled as Elysium's
6 property or otherwise.

7 **G. Conversion of the NR GRAS Dossier**

8 220. In 2015, ChromaDex expended valuable resources developing the NR
9 GRAS Dossier and submitting it to FDA. The document contains extensive information
10 developed and compiled by ChromaDex showing the safety of NR for human
11 consumption. The NR GRAS Dossier also details the methods and processes by which
12 NR is manufactured.

13 221. ChromaDex had a property interest in the NR GRAS Dossier because it
14 invested substantial resources to compile and develop the information required to show
15 that NR is safe. FDA affirmed ChromaDex's NR as GRAS after ChromaDex submitted
16 the document to FDA and FDA approved it on August 3, 2016.

17 222. GRAS status, whether self-affirmed or affirmed by the FDA, gives a
18 manufacturer the right to market a particular food substance product without getting
19 pre-market approval from FDA. Further, a GRAS manufacturer can publicly advertise
20 that its product is "generally recognized as safe." And if a manufacturer submits a
21 GRAS application to FDA and FDA has no questions regarding the GRAS conclusion,
22 then a manufacturer can make additional marketing claims, such as that the product has
23 been reviewed by FDA.

24 223. GRAS status is determined according to specific methods of manufacture
25 and specific uses for a specific product. For example, an assessment of the safety of a
26 food substance generally involves, *inter alia*, tests of a food additive for identity,
27 stability, purity, potency, performance, and usefulness. *See* 21 C.F.R. 171.1(h)(4). The
28 stability, purity, and potency of a food substance can be unique to the manufacturing

1 process. Thus, when significant changes are made to the manufacturing process, new
2 regulatory submissions are required.

3 224. On information and belief, no other manufacturer of NR has achieved
4 GRAS for their NR. Thus, because ChromaDex has received an FDA no questions
5 letter, it is the only manufacturer of NR that has the right to market its product without
6 FDA premarket approval and claim that its product is GRAS.

7 225. Elysium converted the NR GRAS Dossier when it took screenshots of the
8 document in a way to remove all language identifying the document as ChromaDex's
9 regulatory submission. Elysium then falsely claimed the resulting document as its own
10 property by adding language stating: "This document is proprietary and confidential.
11 No part of this document may be disclosed in any manner."

12 226. Elysium provided the document to its new NR manufacturer to serve as
13 the blueprint while it was developing a method for the commercial manufacture of NR.
14 Elysium's false assertion of ownership over the document and wrongful use of the
15 information contained therein allowed it to profit by substantially saving on the research
16 and development costs of creating a process for the commercial production of NR that
17 could likely be certified as GRAS or otherwise safe by the FDA.

18 227. ChromaDex was damaged by being denied a return on its investment in
19 developing the regulatory submission and a manufacturing process that produced a
20 product that is GRAS.

21 228. In addition to damages, ChromaDex further demands the destruction of all
22 copies of the NR GRAS Dossier falsely labeled as Elysium's property.

23
24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff ChromaDex requests that Judgment be entered in its
26 favor as follows:

- 27 a) On the First Cause of Action, monetary damages in an amount to be proved at
28 trial, but believed to be no less than \$580,750, plus interest (including

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- prejudgment interest);
- b) On the Second Cause of Action, monetary damages in an amount to be proved at trial, but believed to be no less than \$2,402,600, plus interest (including prejudgment interest);
- c) On the Third Cause of Action, monetary damages in an amount to be proved at trial, plus interest (including prejudgment interest), exemplary damages, disgorgement, and injunctive relief;
- d) On the Fourth Cause of Action, monetary damages in an amount to be proved at trial, plus interest (including prejudgment interest), exemplary damages, disgorgement, and injunctive relief;
- e) On the Fifth Cause of Action, compensatory damages in an amount to be proved at trial, plus interest (including prejudgment interest), and punitive damages;
- f) On the Third, Fourth, and Fifth causes of action, the return and/or destruction of all confidential, trade secret, and converted documents and information;
- g) On all causes of action, for attorney’s fees as allowed by law;
- h) On all causes of action, for such other and further legal and equitable relief as the Court may deem just and proper.

Request for Jury Trial

ChromaDex hereby requests trial by jury on all causes of action for which a jury trial is available.

1 Dated: June 29, 2018

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5
6 /s/ Barrett J. Anderson

Barrett J. Anderson

7 *Attorneys for Plaintiff and Counter-*
8 *Defendant ChromaDex, Inc.*

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