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 19 *ChromaDex, Inc.*

20 **UNITED STATES DISTRICT COURT**  
 21 **CENTRAL DISTRICT OF CALIFORNIA**  
 22 **(WESTERN DIVISION)**

23 ChromaDex, Inc.,  
 24 Plaintiff,  
 25 v.  
 26 Elysium Health, Inc. and Mark  
 27 Morris,  
 28 Defendants.

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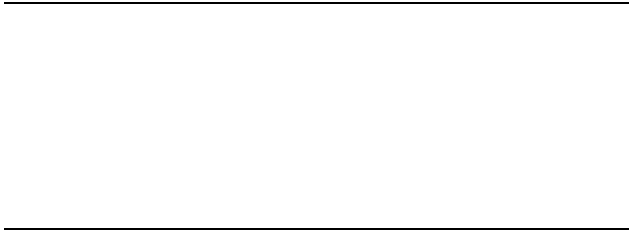
Elysium Health, Inc.,  
 Counterclaimant,  
 v.  
 ChromaDex, Inc.,  
 Counter-Defendant.

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

**FIFTH AMENDED COMPLAINT**

- (1) **BREACH OF PTEROPURE SUPPLY AGREEMENT (Elysium);**
- (2) **BREACH OF NIAGEN SUPPLY AGREEMENT (Elysium);**
- (3) **MISAPPROPRIATION OF TRADE SECRETS, CAL. CIV. CODE § 3426, ET SEQ. (Elysium and Morris);**
- (4) **MISAPPROPRIATION OF TRADE SECRETS, 18 U.S.C. § 1836 (Elysium and Morris);**
- (5) **BREACH OF FEBRUARY CONFIDENTIALITY AGREEMENT (Morris);**
- (6) **BREACH OF JULY CONFIDENTIALITY AGREEMENT (MORRIS)**
- (7) **BREACH OF FIDUCIARY DUTY**

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**(Morris);**  
**(8) AIDING AND ABETTING BREACH OF FIDUCIARY DUTY (Elysium).**

**DEMAND FOR JURY TRIAL**

1 Plaintiff ChromaDex, Inc. (“ChromaDex”) brings this action for breach of  
2 contract, misappropriation of trade secrets, and aiding and abetting breach of fiduciary  
3 duty against Elysium Health, Inc. (“Elysium”), and for breach of contract,  
4 misappropriation of trade secrets, and breach of fiduciary duty against Mark Morris  
5 (“Morris”), an individual, and seeks money damages, punitive damages, interest,  
6 attorneys’ fees, and other relief. ChromaDex demands a jury trial.

7 **NATURE OF THE CASE**

8 1. This case stems from defendant Elysium’s concerted efforts to undermine  
9 and harm ChromaDex through the recruitment of former ChromaDex Vice President of  
10 Business Development, Morris, encouragement and inducement of Morris to breach his  
11 fiduciary duty and contractual obligations to ChromaDex, Morris’s and Elysium’s  
12 coordinated misappropriation of ChromaDex’s trade secrets and other valuable  
13 documents and information, willful breaches of the confidentiality provisions of the  
14 parties’ contracts, Elysium’s failure to pay for millions of dollars in product it received  
15 from ChromaDex and re-sold, and Morris’s and Elysium’s coordinated poaching of  
16 another senior ChromaDex employee.

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

24 3. Elysium’s conduct and statements evidence its intent to deliberately  
25 weaken and undermine ChromaDex by cheating off of ChromaDex’s confidential and  
26 proprietary information with the help of Morris, withholding payments for products it  
27 ordered and received, and making ChromaDex Elysium’s unwilling lender as it  
28 endeavored to create its own supplies of NR and synthetic pterostilbene.

1           4.     Beginning in at least the spring of 2016, Elysium became openly  
2 antagonistic towards—and increased efforts to undermine, attack, and harm—  
3 ChromaDex. With offers of employment, Elysium induced Morris, then ChromaDex’s  
4 Vice President of Business Development, to begin feeding Elysium ChromaDex’s  
5 confidential and trade secret information while he was still a ChromaDex officer. Morris  
6 acted as Elysium’s inside agent at ChromaDex for nearly two months in breach of his  
7 fiduciary duty to ChromaDex and its shareholders before terminating his employment  
8 with ChromaDex and beginning official employment with Elysium.

9           5.     Based on this wrongfully obtained information and with Morris’s inside  
10 and influential help, in June 2016, Elysium induced ChromaDex to accept and fill large  
11 orders of NIAGEN and pTeroPure while never intending to pay for them, all by making  
12 false and misleading representations. On information and belief, Elysium intended to  
13 make ChromaDex its unwilling banker and lender, supporting Elysium’s business by  
14 supplying Elysium with nine months’ worth of the two essential ingredients required  
15 for Elysium’s product, all while Elysium invested the money it owed to ChromaDex  
16 into developing its own alternative sources of NR and pterostilbene.

17           6.     Shortly after ChromaDex shipped most of the extraordinarily large  
18 volumes of ingredients to Elysium, Morris, having achieved his goals for Elysium, left  
19 ChromaDex, taking ChromaDex’s trade secrets along with him to Elysium. Shortly  
20 after the remaining ingredients shipped, Elysium executed the remainder of its planned  
21 employee raid, hiring another senior ChromaDex employee Morris had recruited on its  
22 behalf, before notifying ChromaDex that it would refuse to pay for the product it  
23 ordered.

1 7. Morris and the other former ChromaDex employee took several  
2 ChromaDex documents with them to Elysium and thereby breached their confidentiality  
3 agreements with ChromaDex and assisted Elysium in its misappropriation of  
4 ChromaDex's trade secret information and other proprietary information and  
5 documents. These former ChromaDex employees have enabled Elysium to unlawfully  
6 benefit from the substantial investments ChromaDex has made in advancing NR and  
7 pterostilbene in the market and clearing regulatory hurdles necessary to produce and  
8 market the ingredients.

9 8. Elysium's and Morris's breaches and theft have caused millions of dollars  
10 of damages to ChromaDex and enabled Elysium to profit at ChromaDex's expense.

### 11 **JURISDICTION AND VENUE**

12 9. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because  
13 the matter in controversy exceeds the sum or value of seventy-five thousand U.S.  
14 Dollars (\$75,000), exclusive of interest and costs, and involves a Delaware Corporation  
15 with its principal place of business in New York and a New York resident, and a  
16 California Corporation with its principal place of business in California.

17 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 in  
18 that this case arises under the laws of the laws of the United States pursuant to the  
19 Defend Trade Secrets Act of 2016, specifically 18 U.S.C. § 1836 *et seq.*

20 11. This Court has supplemental jurisdiction over the state law claims under  
21 28 U.S.C. § 1367(a) because the claims are so related to the federal claims that they  
22 form a part of the same case or controversy under Article III of the United States  
23 Constitution.

24 12. Venue is proper in this District under 28 U.S.C. § 1391 because: (1)  
25 ChromaDex is located in Orange County, California; (2) Defendants' tortious conduct  
26 occurred in this district or was directed at this district; and (3) a substantial part of the  
27 events or omissions giving rise to the claims occurred in this district.

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1 **PARTIES**

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

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

12 15. Defendant Mark Morris is an individual who, on information and belief,  
13 resides in New York, NY. Morris is Elysium’s current Vice President of Research and  
14 Development and ChromaDex’s former Vice President of Business Development. On  
15 information and belief, Morris resided in California continuously between at least  
16 November 1999 and August 2016. Further, by virtue of his employment and various  
17 contracts that Morris executed with ChromaDex, Morris agreed to submit to the  
18 jurisdiction of any court in California regarding any dispute arising from his contractual  
19 obligations to ChromaDex.

20 **FACTUAL ALLEGATIONS**

21 **ChromaDex and Morris**

22 16. Morris began employment with ChromaDex in 2007 as a Technical Sales  
23 Representative. In 2009, Morris left ChromaDex to pursue employment elsewhere but  
24 returned to ChromaDex on January 13, 2011, again as a Technical Sales Representative.  
25 Morris was later promoted to the position of Director of Ingredient Sales.

26 17. On November 25, 2013, Morris was promoted from the position of  
27 Director of Ingredient Sales to Vice President of Sales and Marketing.

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1 18. As the Vice President of Sales and Marketing, Morris participated in the  
2 management of ChromaDex. He oversaw the duties of several employees, helped  
3 determine employee compensation, and had input in other personnel decisions, such as  
4 hiring, promoting, disciplining, and terminating ChromaDex employees. Morris also  
5 had input in ChromaDex’s strategic decisions regarding sales and marketing.

6 19. On February 26, 2016, Morris executed a confidentiality agreement  
7 entitled Receipt & Acknowledgment of Employee Handbook (the “February  
8 Confidentiality Agreement”). (See Exhibit A.) Morris was required to enter the  
9 February Confidentiality Agreement as a condition of his continued employment with  
10 ChromaDex.

11 20. The February Confidentiality Agreement executed by Morris states in part:

12 I understand that during the course of my employment, I may  
13 be working with clients, computer systems, software, future  
14 plans, strategies and other information that is the property of  
15 the Company, and that the Company considers proprietary or  
16 confidential. I agree to protect this information by  
17 safeguarding it when using it, filing it properly when not  
18 using it, and discussing it only with those who have a  
19 legitimate business need to know. Furthermore, should I leave  
20 the Company for any reason, I understand that all files,  
21 documents and software remain the property of the Company  
22 and may not be duplicated or removed from the Company.  
23 Even after my employment with the Company has terminated,  
24 I agree to keep strictly confidential that information which is  
25 treated as confidential or proprietary by the Company.

26 21. The February Confidentiality Agreement is a valid contract between  
27 ChromaDex and Morris obligating Morris to keep ChromaDex’s proprietary and  
28 confidential information secret during and after his employment and prohibiting him  
from duplicating or removing all ChromaDex files and documents should he leave  
ChromaDex.

29 22. In 2016, ChromaDex again promoted Morris, this time to the position of  
30 Vice President of Business Development. Morris continued to have a role in the  
31 management of ChromaDex in this position.





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

6           30. NIAGEN is a patented, proprietary dietary ingredient owned by  
7 ChromaDex. ChromaDex is the sole owner of the brand “NIAGEN” and the exclusive  
8 licensee to several patents related to NR and its manufacture.

9           31. pTeroPure is made up of synthetic pterostilbene, which activates a very  
10 specific nuclear receptor known as PPAR-alpha. Nuclear receptors are proteins that  
11 activate gene expression. PPAR-alpha is activated during fasting states or the prolonged  
12 periods without food. Once activated, PPAR-alpha controls lipid metabolism among  
13 other essential functions. Most pterostilbene products on the market are extracted from  
14 biological sources rather than chemically synthesized.

15           32. ChromaDex is the sole owner of the brand “pTeroPure” and the exclusive  
16 licensee to several patents related to the synthesis of pterostilbene.

17           33. ChromaDex sold—and Elysium promised to buy and pay for—NIAGEN  
18 and pTeroPure pursuant to three contracts: (1) the NIAGEN Supply Agreement, dated  
19 February 3, 2014 (attached hereto as Exhibit C), as amended by the Amendment to  
20 Supply Agreement, dated February 19, 2016 (attached hereto as Exhibit D) (as so  
21 amended, the “NIAGEN Supply Agreement”); (2) the pTeroPure Supply Agreement,  
22 dated June 26, 2014 (attached hereto as Exhibit E) (the “pTeroPure Supply Agreement,”  
23 and together with the NIAGEN Supply Agreement, the “Supply Agreements”); and  
24 (3) a Trademark License and Royalty Agreement, dated February 3, 2014. The  
25 NIAGEN Supply Agreement and the Trademark License and Royalty Agreement are  
26 now terminated.

1 34. Elysium sells a health supplement named Basis, which combined  
2 NIAGEN and pTeroPure, along with other non-active ingredients. Elysium now sells  
3 Basis with NR and pterostilbene it obtains from sources other than ChromaDex. On  
4 information and belief, Basis is Elysium's only commercial product.

5 35. ChromaDex was the sole United States commercial source and supplier of  
6 NR and was Elysium's sole supplier of NR and pterostilbene, until Elysium diverted  
7 the funds it owed ChromaDex into developing its own alternative sources of both  
8 ingredients. Elysium secretly recruited two senior ChromaDex employees to help it  
9 achieve its goal before it exhausted nine months' worth of ingredients it had stockpiled  
10 from ChromaDex. Upon Elysium's unlawful refusal to pay for the product it received,  
11 ChromaDex exercised its right to not renew the NIAGEN Supply Agreement effective  
12 February 2, 2017.

13 **Elysium's and Morris's False Pretenses and Promises**

14 36. When Elysium and ChromaDex first began negotiations for the supply of  
15 NR, Elysium demanded a sublicense to ChromaDex's NR patent rights. ChromaDex  
16 rejected that demand. This left Elysium with a trusted supply of NR from ChromaDex  
17 but no ownership. Elysium was not content with this outcome, and thereafter hatched  
18 its plan to steal product and proprietary information from ChromaDex.

19 37. ChromaDex and Elysium's commercial arrangement was expanding but  
20 unremarkable until 2016. In the first quarter of 2016, Elysium ordered nearly double  
21 the amount of NIAGEN it ordered in all of 2015.

22 38. Unbeknownst to ChromaDex, in April of 2016 Elysium began recruiting  
23 ChromaDex's Vice President of Business Development, Mark Morris.  
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1           39. Elysium induced Morris to breach his contractual obligations to  
2 ChromaDex with offers of employment. Morris began feeding Elysium confidential and  
3 proprietary information on ChromaDex's sales to other customers. In May of 2016,  
4 Morris texted Elysium ChromaDex trade secret information concerning the prices and  
5 volumes of NR ordered by another ChromaDex customer. Elysium recorded this  
6 wrongly obtained trade secret information in a spreadsheet.

7           40. The trade secret sales information that Morris sent to Elysium could have  
8 only been known to a ChromaDex employee by virtue of his employment with  
9 ChromaDex and was ChromaDex property. The information is kept in a highly-  
10 confidential central document at ChromaDex called the "Ingredient Sales Spreadsheet,"  
11 which tracks all sales for all ingredients by quarter since 2012.

12           41. The information concerning the purchasing history of the customer Morris  
13 sent to Elysium was extremely valuable to Elysium as that customer was one of  
14 Elysium's largest competitors selling NR in the direct-to-consumer market at the time.

15           42. Elysium encouraged Morris to continue acting on its behalf in violation of  
16 his fiduciary duty to ChromaDex by making a firm offer of employment to Morris in  
17 exchange for his commitment to act as Elysium's inside agent before he terminated his  
18 employment with ChromaDex. Morris accepted that offer, stole proprietary information  
19 from ChromaDex on his way out the door, and began working for Elysium. With a  
20 ChromaDex insider in its pocket, Elysium saw an opportunity to execute on its long-  
21 held desire to take ChromaDex out of the equation, destroy the competition, and execute  
22 its campaign to own NR.

23           43. To enable Morris to further act on its behalf without discovery by  
24 ChromaDex, Elysium kept its knowingly wrongful possession of the confidential  
25 ChromaDex sales information secret. ChromaDex did not discover Elysium's  
26 possession of the ChromaDex trade secret information until Elysium produced a  
27 spreadsheet containing it in discovery in this action.

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1           44. On information and belief, Elysium used the wrongfully-obtained sales  
2 information to construct a plan to try to obtain a market advantage over its competitors,  
3 as well as ChromaDex, based on a misconstruction of the NIAGEN Supply Agreement.  
4 Elysium improperly used the sales information—without revealing its true intentions—  
5 to engage ChromaDex in a series of questions about NR pricing for the purpose of  
6 seeking out-of-context statements to support its greedy and dishonest aims.

7           45. To that end, after Elysium surreptitiously and illegally obtained the trade  
8 secret information from Morris, Dan Alminana, Elysium's COO, immediately  
9 requested the exact same information from Frank Jaksch, ChromaDex's CEO, under  
10 the false pretense that the information was needed for a potential investor. This was the  
11 first time Elysium raised concerns about pricing under the NIAGEN Supply Agreement.

12           46. Mr. Jaksch reached out to Elysium in an effort to open a dialogue about  
13 their concerns and ultimately resolve them. Elysium, however, refused and/or ignored  
14 these offers to talk while it schemed with Morris to inflict as much harm as possible on  
15 ChromaDex.

16           47. As shown through discovery in this action, in mid-June 2016 Elysium  
17 began planning to order a 12-month supply of NIAGEN and pTeroPure from  
18 ChromaDex.

19           48. Elysium conspired with Morris to implement this plan. Elysium and Morris  
20 agreed that before Morris left ChromaDex to work at Elysium, he would act as  
21 Elysium's inside agent, ensuring the success of Elysium's scheme to harm ChromaDex  
22 by wrongfully giving Elysium information to inform its strategy and by abusing the  
23 trust ChromaDex's management and shareholders placed in him to manipulate  
24 ChromaDex into accepting the extraordinarily large purchase orders Elysium planned  
25 to place.

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1           49. Elysium and Morris further agreed to keep Elysium’s plan to compete with  
2 ChromaDex in the manufacture of NR and synthetic pterostilbene secret from  
3 ChromaDex and to use ChromaDex’s confidential and proprietary documents to help  
4 Elysium bring its alternate sources of ingredients to market before it exhausted the  
5 stockpile of NR and pterostilbene it planned to obtain from ChromaDex. Morris knew  
6 that such competition would harm ChromaDex, which has certain patent rights to both  
7 ingredients, and had a fiduciary duty to inform ChromaDex of Elysium’s plans to  
8 displace ChromaDex in the market.

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

18           51. Because the June 28 Purchase Orders were wildly inconsistent with the  
19 parties’ Supply Agreements and past dealings, and in light of Elysium’s subsequent  
20 failure to pay for the NIAGEN and pTeroPure supplied by ChromaDex, ChromaDex  
21 alleges on information and belief that Elysium intended to induce ChromaDex to  
22 inadvertently supply large amounts of NIAGEN and pTeroPure to Elysium at grossly  
23 discounted prices.

24           52. ChromaDex noticed the grossly discounted prices on the June 28 Purchase  
25 Orders and did not fulfill them. Instead, ChromaDex reached out to Elysium to discuss  
26 the June 28 Purchase Orders and their inconsistency with the parties’ Supply  
27 Agreements.

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1 53. After Elysium again showed an unwillingness to engage with  
2 ChromaDex's senior management to discuss the June 28 Purchase Orders, Morris  
3 helped schedule a call between ChromaDex and Elysium to address the issues between  
4 the parties, including the June 28 Purchase Orders. The call facilitated by Morris was  
5 set for June 30, 2016.

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

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

17 56. Though Elysium was not entirely satisfied with the discounted price,  
18 Marcotulli represented that Elysium would accept that price, place an order so that  
19 Elysium's supply was not interrupted, and work to resolve Elysium's remaining  
20 concerns at another time.

21 57. Later that same day, June 30, 2016, Elysium submitted two purchase  
22 orders to ChromaDex for pTeroPure and NIAGEN (the "June 30 Purchase Orders").  
23 As agreed upon during the June 30 Call, the June 30 Purchase Orders superseded the  
24 (in retrospect, disingenuous) June 28 Purchase Orders. Although smaller than the  
25 June 28 Purchase Orders, the June 30 Purchase Orders were still three times the size of  
26 any of Elysium's previous fulfilled orders.

1 58. Morris—still a ChromaDex officer at the time—failed to inform  
2 ChromaDex that Elysium’s orders were expected to last for nine months, that Elysium  
3 did not intend to pay for the orders, and that Elysium was preparing to compete with  
4 ChromaDex by obtaining an alternate source of NR. Morris purposely remained silent  
5 despite knowing that the June 30 Orders would cause damage to ChromaDex.

6 59. According to the terms of the Supply Agreements, and in reliance on the  
7 representations Alminana and Marcotulli made on the June 30 Call and Morris’s  
8 omissions, ChromaDex accepted the June 30 Purchase Orders.

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

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

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

18 63. The total amount ChromaDex invoiced Elysium for the Past Due Invoices  
19 is \$2,983,350.

20 64. On August 10, 2016—one day after ChromaDex confirmed that it shipped  
21 the last portion of pTeroPure to Elysium—Alminana wrote an email to ChromaDex  
22 stating that Elysium would not pay the Past Due Invoices until the additional concerns  
23 raised on the June 30 Call were resolved according to terms set by Elysium. However,  
24 over the next several weeks, Alminana refused ChromaDex’s offers to meet,  
25 constructively engage, and resolve Elysium’s concerns, all the while maintaining that  
26 Elysium would not pay for the product that it had received until Elysium’s concerns  
27 were resolved.  
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1           65. On August 12, 2016, Mr. Black of ChromaDex responded by requesting  
2 an in-person meeting to discuss Elysium’s concerns and affirmed ChromaDex’s  
3 commitment to its relationship with Elysium.

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

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

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

17           69. To date, Elysium has not paid any sum to ChromaDex for the product  
18 Morris’s breaches of fiduciary duty enabled it to order, receive, and sell to consumers  
19 at a profit according to the June 30 Purchase Orders. Thus, Elysium’s profits arising  
20 from the June 30 Purchase Orders resulted from Morris’s breach of fiduciary duty.

21           70. After Elysium’s breaches of the parties’ Supply Agreements, ChromaDex  
22 learned that Morris and another senior employee who had abruptly resigned during the  
23 summer had begun work at Elysium immediately after leaving ChromaDex. Morris had  
24 resigned after many years of employment with one only week notice on July 15, 2016,  
25 two weeks after the June 30 Order of NIAGEN was shipped. Ryan Dellinger,  
26 ChromaDex’s former Director of Scientific Affairs, resigned *effective immediately* on  
27 August 10, 2016—the same day Elysium notified ChromaDex that it refused to pay the  
28 Past Due Invoices.



1           71. On information and belief, Morris helped Elysium recruit Dellinger while  
2 he was still a ChromaDex officer, in further breach of his fiduciary duty to ChromaDex.

3           72. Morris participated in an exit interview before terminating his employment  
4 with ChromaDex.

5           73. When asked about his future professional plans during that interview,  
6 Morris lied and told ChromaDex that he did not know what his next steps would be.  
7 However, Morris had been planning to work for Elysium for months, had already been  
8 acting as Elysium's agent, and had already arranged to begin work at Elysium the day  
9 after his resignation from ChromaDex.

10           74. Morris also reaffirmed his contractual obligations of confidentiality and  
11 stated that he had returned all ChromaDex information in his possession. Those  
12 statements and promises were also lies. Morris already intended to disclose  
13 ChromaDex's confidential and trade secret information to Elysium after his departure  
14 and had likely already saved confidential ChromaDex documents for the purpose of  
15 conveying those documents to Elysium.

16           75. Morris also turned in his company cell phone, which he had previously  
17 used to communicate information to and plot with Elysium, knowing that ChromaDex  
18 would re-issue it to another employee after he departed and thereby hide or otherwise  
19 destroy evidence of his conspiracy with Elysium.

20           76. Morris's acts violated his fiduciary duty to ChromaDex and its  
21 shareholders. Morris's failure to inform ChromaDex of Elysium's scheme to harm it by  
22 withholding payment and further its own competing development of alternate supplies  
23 of NR and pterostilbene, lies concerning his intent to work for Elysium, lies regarding  
24 his return of all ChromaDex information, and failure to otherwise execute his duties in  
25 good faith and in the best interests of ChromaDex, violated Morris's fiduciary duty to  
26 ChromaDex.

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1           77. Elysium knew that Morris was ChromaDex's Vice President of Business  
2 Development and managed other employees, and knew or should have known of  
3 Morris's fiduciary duty to ChromaDex, but encouraged and assisted Morris in his  
4 breaches of that duty.

5           78. Morris's disclosure of ChromaDex's confidential and trade secret  
6 information to Elysium, during and after his employment with ChromaDex, and taking  
7 of ChromaDex confidential and trade secret documents and information violated the  
8 February Confidentiality Agreement Morris entered into with ChromaDex.

9           79. Morris's disclosure of ChromaDex's confidential and trade secret  
10 information to Elysium after his employment with ChromaDex, and taking of  
11 ChromaDex confidential and trade secret documents and information also violated the  
12 July Confidentiality Agreement Morris entered into with ChromaDex.

13           80. Elysium knew or should have known of Morris's contractual  
14 confidentiality obligations to ChromaDex, but induced Morris to breach those  
15 obligations.

16           81. After conveying ChromaDex's valuable information to Elysium, Morris  
17 deleted and otherwise destroyed communications and ChromaDex documents in his  
18 possession evidencing his breaches and conspiracy with Elysium to steal and cheat  
19 ChromaDex. Those deleted communications and documents, if they still existed, would  
20 show that Morris acted as Elysium's agent during his employment, transferred  
21 ChromaDex information to Elysium, solicited Dellinger on Elysium's behalf, and lied  
22 to ChromaDex when he represented that he had returned all ChromaDex information.

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**Elysium's and Morris's Intent to Harm ChromaDex**

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2 82. Morris failed to inform ChromaDex that, at the time Marcotulli and  
3 Alminana spoke on the June 30 Call, Elysium was in possession of ChromaDex's trade  
4 secret sales information concerning another NR customer and had no intention of  
5 (1) ever working with ChromaDex to resolve Elysium's concerns about the NIAGEN  
6 Supply Agreement, (2) paying for the NIAGEN or pTeroPure ordered in the June 30  
7 Purchase Orders, or (3) ramping up their sales to the degree they represented. Instead,  
8 unbeknownst to ChromaDex, Elysium was scheming with Morris to exploit Morris's  
9 and another former ChromaDex employee's knowledge about ChromaDex and its  
10 business to assist Elysium as it developed its own manufacturing capabilities.

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

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

24 85. Alminana's, Marcotulli's, and Morris's intent is evidenced by the fact that  
25 a. within days of placing the June 30 Purchase Orders, Elysium and  
26 Morris began executing a plan to develop an alternate 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 86. 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 87. The pTeroPure Supply Agreement sets forth the terms under which  
16 ChromaDex would sell and deliver, and Elysium would purchase, pTeroPure.

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

19 89. 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 90. 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 91. 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 92. 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 93. The NIAGEN Supply Agreement sets forth the terms under which  
7 ChromaDex would sell and deliver, and Elysium would purchase, NIAGEN.

8 94. 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 95. Section 3.1 of the NIAGEN Supply Agreement sets the maximum price  
11 for NIAGEN provided by ChromaDex to Elysium.

12 96. 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 97. 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 98. 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.

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1 **Morris and Dellinger Help Elysium Steal ChromaDex's**

2 **Trade Secrets and Other Proprietary Information**

3 99. Morris began working with Elysium behind ChromaDex's back by at least  
4 May 2016, nearly two months before he resigned from ChromaDex, when he texted  
5 confidential and trade secret sales information to Elysium. Morris wrongfully disclosed  
6 the confidential ChromaDex information to Elysium for the purpose of helping Elysium  
7 negotiate a better price for NIAGEN and to secure employment with Elysium. Elysium  
8 induced these wrongful acts and encouraged further acts by making a firm offer of  
9 employment to Morris.

10 100. Further, just days after Elysium placed the June 30 Purchase Orders and  
11 while he was still working for ChromaDex, Morris and Elysium agreed that when  
12 Morris began working for Elysium, his main duty would be to assist Elysium in  
13 developing its alternative supply of NR. Morris did not tell his then-employer  
14 ChromaDex about Elysium's intention to develop a competing source of NR and to use  
15 the money that Elysium owed ChromaDex for the June 30 Purchase Orders to fund that  
16 dishonest goal.

17 101. Before Morris left ChromaDex, he used his personal email account to send  
18 Elysium a list of manufacturers who could potentially produce NR for Elysium. He  
19 also attached a ChromaDex document that described the manufacturing process for NR.  
20 Morris told Elysium it could use the manufacturing information as a shortcut in  
21 developing its own commercial supply of NR.

22 102. Also before he left ChromaDex, Morris saved copies of several  
23 ChromaDex documents, some containing trade secret, confidential and/or proprietary  
24 information, with the intent of using that stolen information for Elysium's purposes. On  
25 information and belief, Morris deleted all evidence of the documents and information  
26 he stole on behalf of Elysium to prevent ChromaDex from ever discovering the truth.  
27 The methods by which Morris saved the ChromaDex documents and the content of  
28 those documents can only be revealed through further discovery.

1           103. As shown in discovery in this action, on July 18, 2016, Elysium came into  
2 possession of the spreadsheet containing highly-valued ChromaDex trade secret  
3 information: the “Ingredient Sales Spreadsheet.” The Ingredient Sales Spreadsheet is  
4 the highly-confidential central document at ChromaDex tracking all sales for all  
5 ingredients by quarter since 2012. The spreadsheet contains the detailed purchasing  
6 history of every customer who purchased any ingredient from ChromaDex—including  
7 customer names, prices, volumes, and dates of purchases. More importantly to Elysium,  
8 the spreadsheet contains the detailed purchasing histories of all its closest competitors;  
9 companies selling NR or chemically synthesized pterostilbene.

10           104. On information and belief, Elysium induced Morris to steal the Ingredient  
11 Sales Spreadsheet from ChromaDex while he was still a ChromaDex officer, in obvious  
12 breach of his contractual obligations to ChromaDex.

13           105. Elysium knew that it should not have possessed the stolen trade secret  
14 information contained in the Ingredient Sales Spreadsheet. However Elysium saved the  
15 stolen spreadsheet to its servers, did not delete it, and kept its possession of the  
16 information secret from ChromaDex. ChromaDex did not discover Elysium’s  
17 possession of the Ingredient Sales Spreadsheet until Elysium produced the document in  
18 discovery in this action.

19           106. Shortly after Morris began his *official* employment with Elysium as its  
20 Head of Scientific Technology, he started working with a third-party manufacturer to  
21 develop a new commercial supply of NR independent of ChromaDex. Morris was  
22 Elysium’s main contact with the manufacturer and closely oversaw the development of  
23 a manufacturing process. Given Morris’s detailed knowledge of ChromaDex’s internal  
24 operations, he is well-positioned to use this proprietary information to advance  
25 Elysium’s competing development. Elysium later promoted Morris to Vice President  
26 of Research and Development.

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1 107. When it came time for Elysium to provide instruction to its alternative  
2 manufacturer on how to manufacture NR, Elysium relied on proprietary ChromaDex  
3 documents to do so.

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

12 109. ChromaDex spent millions of dollars to research, test, and perfect the  
13 manufacturing process described in the NR GRAS Dossier. ChromaDex then invested  
14 additional resources in researching and creating the NR GRAS Dossier itself.  
15 ChromaDex’s huge investment was rewarded with FDA affirmation of NIAGEN’s  
16 GRAS status on August 3, 2016.

17 110. Elysium knew that the NR GRAS Dossier contains valuable information  
18 that belonged to ChromaDex, as evidenced by the prominent statement, “Prepared for  
19 ChromaDex, Inc.,” that appears on every page of the NR GRAS Dossier and by  
20 Elysium’s use of the information it contains to jump-start its own production of NR.

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

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

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

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

1 115. ChromaDex sent the NRCl Analytical Method to Elysium in June 2014 for  
2 the purposes of testing the NIAGEN Elysium purchased under the NIAGEN Supply  
3 Agreement. The document was sent under the confidentiality protections of Section 4  
4 of the NIAGEN Supply Agreement, which limited the use and disclosure of each party's  
5 confidential information.

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

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

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

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

1 120. Morris acts with regard to drafting, disclosing, and using all three  
2 documents sent to Elysium’s alternative NR manufacturer were in breach of the  
3 February and July Confidentiality Agreements’ provisions prohibiting Morris from  
4 disclosing confidential ChromaDex information.

5 121. Elysium misappropriated the NRCI Analytical Method and the NR  
6 Specifications when it retyped the ChromaDex documents nearly word-for-word into  
7 two separate documents and claimed the resulting document as its own by placing a  
8 statement at the bottom of each document stating: “This document is the property of  
9 Elysium Health and contains proprietary and confidential information. No part of this  
10 document may be disclosed in any manner.”

11 122. Elysium sent the misappropriated NRCI Analytical Method and NR  
12 Specifications to its alternative NR manufacturer to use in the development of a  
13 competing supply of NR.

14 123. Elysium’s inequitable reliance and use of ChromaDex’s information and  
15 documents, the extent of which can only be revealed through discovery, substantially  
16 reduced Elysium’s costs for developing a new commercial source of NR while denying  
17 ChromaDex a return on its investment in developing the technical processes and  
18 standards, and the documents themselves.

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

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

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1           126. Just as Morris did, Dellinger also entered into confidentiality agreements  
2 with ChromaDex as a condition of his employment. Those contracts restrict his use and  
3 disclosure of ChromaDex’s information and documents.

4           127. Shortly after Dellinger joined Elysium, a potential investor asked Elysium  
5 for information concerning the science supporting the marketing claims made by  
6 Elysium about its product, Basis. Elysium did not have such a presentation at that time.  
7 Elysium requested that its two new former-ChromaDex employees, Morris and  
8 Dellinger, create one.

9           128. On information and belief, instead of developing a presentation for  
10 Elysium from scratch, Morris and/or Dellinger instead wrongfully misappropriated two  
11 presentations owned by ChromaDex the “NR Presentation” and the “Pterostilbene  
12 Presentation” (collectively, the “Presentations”). Those Presentations explain the  
13 science supporting the health benefits of ChromaDex’s ingredients, including NIAGEN  
14 and pTeroPure.

15           129. Morris and Dellinger, while ChromaDex employees, had been responsible  
16 for drafting the Presentations. ChromaDex created and refined the Presentations over  
17 several years, including by updating them with new information when new scientific  
18 articles were published. Thus, the Presentations each represent a significant investment  
19 and creation reflecting valuable ChromaDex resources, knowledge, experience, and  
20 strategic market acumen. Morris and/or Dellinger violated their Confidentiality  
21 Agreements with ChromaDex when they wrongfully accessed ChromaDex’s  
22 Presentations after their employment was terminated, conveyed the Presentations into  
23 Elysium’s possession, and then used them for Elysium’s purposes. Morris’s false  
24 representations that he had returned the Presentations and all other ChromaDex  
25 proprietary and confidential information to ChromaDex during his exit interview,  
26 violated his fiduciary duty to ChromaDex.

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1 130. Morris and/or Dellinger blatantly misappropriated the Presentations by  
2 placing many of the original slides, with only minor changes, on an Elysium PowerPoint  
3 template with Elysium logos and by removing all ChromaDex logos and references to  
4 ChromaDex’s branded ingredients, NIAGEN and pTeroPure. Morris informed  
5 Elysium’s management that he had used ChromaDex material when drafting the  
6 presentation and Elysium’s management consented, expressly or impliedly, to the  
7 wrongful use of ChromaDex information.

8 131. On information and belief, Elysium presented the converted Presentations  
9 as its own to a potential investor in late August 2016.

10 132. Elysium also presented the converted NR Presentation as its own to the  
11 National Advertising Division of the Better Business Bureau in November 2016 in  
12 response to an inquiry regarding Elysium’s marketing claims.

13 133. Discovery in this action has revealed that Elysium did not only improperly  
14 rely on confidential ChromaDex documents concerning NR to compete with  
15 ChromaDex—it also wrongfully disclosed ChromaDex’s “Pterostilbene  
16 Specifications” to potential manufacturers for the purpose of informing their  
17 development of a competing source of synthetic pterostilbene. ChromaDex provided  
18 the Pterostilbene Specifications to its pTeroPure customers for the purposes of testing  
19 the pTeroPure ChromaDex sold. ChromaDex has a property interest in the Pterostilbene  
20 Specifications because it invested the resources to develop the specifications, draft the  
21 document containing the specifications, and revise the specifications as necessary based  
22 on applicable laws and regulations and lessons learned from its experience manufacturing  
23 and testing pterostilbene.

24 134. The Pterostilbene Specifications were incorporated into the terms of the  
25 pTeroPure Supply Agreement as Exhibit A to the agreement. Under Section 15.2 of the  
26 pTeroPure Supply Agreement, the parties are restricted from disclosing any terms or  
27 conditions of the agreement.

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1           135. In September of 2016, Elysium sent ChromaDex’s Pterostilbene  
2 Specifications to at least one potential manufacturer in violation of the pTeroPure  
3 Supply Agreement’s confidentiality provisions. Only further discovery can reveal if  
4 Elysium further wrongfully disclosed the Pterostilbene Specifications in attempt to  
5 develop a competing source of synthetic pterostilbene.

6           136. Elysium continued its misappropriation of ChromaDex documents into the  
7 next year. In 2017, Dellinger helped Elysium prepare a New Dietary Ingredient  
8 Notification (“NDI”) for submission to FDA to prove that Basis is safe for human  
9 ingestion. Dellinger worked with Elysium’s regulatory consultants to develop the NDI.  
10 Under Dellinger’s knowing guidance, Elysium used a confidential ChromaDex  
11 document created in 2011 that detailed the safety of pterostilbene, specifically the  
12 pTeroPure ingredient produced by ChromaDex (the “pTeroPure GRAS Report”).

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

18           138. ChromaDex took steps to protect the confidentiality of the pTeroPure  
19 GRAS Report when it shared the document with Elysium during the course of the  
20 parties’ relationship. Specifically, the pTeroPure Supply Agreement contains  
21 provisions regarding the restricted use and disclosure of confidential information.  
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1 139. Dellinger provided the pTeroPure GRAS Report to Elysium’s regulatory  
2 consultants as a shortcut in developing its own regulatory documents and submission.  
3 By wrongfully using the information in the pTeroPure GRAS Report to prepare its own  
4 regulatory documents, Elysium profited from ChromaDex’s substantial investment in  
5 developing the required safety information. Regulatory submissions such as a GRAS  
6 report cost several hundred thousands of dollars to develop and Elysium saved itself  
7 time and money by simply “updating” the ChromaDex information in its preparation of  
8 an NDI submission or other regulatory documents related to Basis and pterostilbene.

9 140. On information and belief, Elysium also wrongfully used ChromaDex  
10 documents detailing information concerning the safety of NR in its preparation of the  
11 NDI submission and other documents seeking to establish the safety of Elysium’s new  
12 products, such as the NR GRAS Dossier, thereby further profiting off of ChromaDex’s  
13 considerable investments and experience in the research, production, and marketing of  
14 NR.

15 141. Elysium’s inequitable reliance and use of ChromaDex’s proprietary  
16 information substantially reduced its costs for developing alternative sources of NR and  
17 pterostilbene. Had Elysium spent the time and resources to develop alternative sources  
18 of NR and pterostilbene without stealing ChromaDex’s information, it would have  
19 taken a substantially longer period of time to develop the competing supplies. As to the  
20 alternate source of NR, which could not be obtained elsewhere, Elysium’s cheating  
21 caused ChromaDex to lose sales of NIAGEN it otherwise would have made during that  
22 period of time. Elysium’s further blatant misappropriation of ChromaDex’s investments  
23 in developing the information to satisfy key regulatory requirements for NIAGEN and  
24 pTeroPure further allowed it to profit while denying ChromaDex a return on its  
25 investments. The full extent of Elysium’s misappropriation of ChromaDex information  
26 and documents can only be revealed through further discovery.

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1           **Elysium’s Allegations of Patent Misuse and ChromaDex’s Denial of Patent**  
2                           **Misuse and Conduct to Purge Any Such Alleged Misuse**

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

6           143. Elysium alleges that ChromaDex engaged in patent misuse by “tying []  
7 access to its patent rights to a royalty-bearing trademark license” (FACC ¶ 111) and,  
8 “in some instances,” by “requir[ing] purchasers not only to license, but also to use  
9 ChromaDex trademarks in order to obtain a supply of nicotinamide riboside” (FACC ¶  
10 39).

11           144. ChromaDex moved to dismiss Elysium’s counterclaim for declaratory  
12 judgment of patent misuse on March 20, 2017 on multiple grounds and contends that  
13 there is no viable allegation of patent misuse as a matter of law and fact. (Dkt.  
14 34.) However, the Court denied ChromaDex’s motion to dismiss the patent misuse  
15 counterclaim by order dated May 10, 2017, permitting Elysium to attempt to prove its  
16 allegation of patent misuse at trial. (Dkt. 44.)

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

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

15           147. ChromaDex likewise hereby unequivocally renounces any rights to  
16 charge, obtain, or collect royalties on sales of non-trademark bearing NIAGEN from  
17 customers other than Elysium, or to require the use of its trademarks under any  
18 agreement. ChromaDex represents to the Court that it is immediately terminating all  
19 such trademark license agreements. These terminations are made for the purpose of  
20 purging any and all allegations of patent misuse.

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

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

12 **CAUSES OF ACTION**

13 **FIRST CLAIM FOR RELIEF**

14 **Breach of Contract Against Elysium (pTeroPure Supply Agreement)**

15 150. ChromaDex repeats and realleges the allegations contained in paragraphs  
16 1 through 149, above.

17 151. The pTeroPure Supply Agreement is a binding and enforceable contract  
18 between ChromaDex and Elysium.

19 152. ChromaDex fulfilled its obligations under the pTeroPure Supply  
20 Agreement by fulfilling the June 30, 2016 pTeroPure purchase order.

21 153. Elysium has materially breached the pTeroPure Supply Agreement by  
22 refusing to pay the monies owed to ChromaDex for the pTeroPure which ChromaDex  
23 delivered to Elysium.

24 154. Elysium's material breach of the pTeroPure Supply Agreement injured  
25 ChromaDex and caused it to sustain monetary damages in the amount of \$580,750, plus  
26 interest.

1 155. Section 15.1 of the pTeroPure Supply Agreement restricts the parties’  
2 disclosure and use of confidential information, including information that is marked  
3 confidential at the time of disclosure.

4 156. Under Section 15.1, the parties are prohibited from using or disclosing  
5 confidential information except on a need-to-know basis “to the extent such disclosure  
6 is reasonably necessary in connection with such party’s activities as expressly  
7 authorized by [the] Agreement.”

8 157. ChromaDex shared the pTeroPure GRAS Report with Elysium during the  
9 course of the parties’ business dealings under the pTeroPure Supply Agreement.

10 158. The pTeroPure GRAS Report is labeled “confidential.”

11 159. Elysium breached Section 15.1 of the pTeroPure Supply Agreement when  
12 it disclosed the pTeroPure GRAS Report to its regulatory consultants for the purpose of  
13 preparing its NDI submission to FDA regarding a pterostilbene manufactured by an  
14 entity other than ChromaDex.

15 160. On information and belief, by wrongfully using the confidential  
16 information contained in the pTeroPure GRAS Report, Elysium reduced its costs in  
17 money, time, and other resources related to the development of its own regulatory  
18 submission establishing the safety of pterostilbene for human consumption.

19 161. ChromaDex was damaged by being denied a return on its investment in  
20 developing the pTeroPure GRAS Report.

21 162. Section 15.2 of the pTeroPure Supply Agreement restricts the parties from  
22 disclosing “any terms or conditions of [the] Agreement to any Third Party without the  
23 prior consent of the other party.”

24 163. ChromaDex’s Pterostilbene Specifications were incorporated into the  
25 terms of the pTeroPure Supply Agreement as Exhibit A to the agreement.  
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1 164. Elysium breached Section 15.2 of the pTeroPure Supply Agreement when  
2 it disclosed the Pterostilbene Specifications to at least one potential manufacturer to  
3 describe the pterostilbene Elysium wanted that manufacturer to produce on its behalf as  
4 a synthetic pterostilbene product that would compete against ChromaDex's pTeroPure.

5 165. Elysium's further breach of the pTeroPure Supply Agreement further  
6 injured ChromaDex, in an amount to be determined at trial.

7 166. In addition to damages, ChromaDex further demands that Elysium return  
8 all copies of the pTeroPure GRAS Report and the pTeroPure Specifications.

9 **SECOND CLAIM FOR RELIEF**

10 **Breach of Contract Against Elysium (NIAGEN Supply Agreement)**

11 167. ChromaDex repeats and realleges the allegations contained in paragraphs  
12 1 through 166, above.

13 168. The NIAGEN Supply Agreement is a binding and enforceable contract  
14 between ChromaDex and Elysium.

15 169. ChromaDex fulfilled its obligations under the NIAGEN Supply  
16 Agreement by fulfilling the June 30, 2016 NIAGEN purchase order within 30 days.

17 170. Elysium has materially breached the NIAGEN Supply Agreement by  
18 refusing to pay the monies owed to ChromaDex for the NIAGEN that ChromaDex sold  
19 and delivered to Elysium.

20 171. Elysium's material breach of the NIAGEN Supply Agreement injured  
21 ChromaDex and caused it to sustain monetary damages in the amount of \$2,402,600,  
22 plus interest.

23 172. Section 4 of the NIAGEN Supply Agreement restricts the parties'  
24 disclosure of the terms of the agreement as well as the disclosure and use of confidential  
25 information.

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1 173. Under Section 4.1 of the NIAGEN Supply Agreement, the parties are  
2 prohibited from using or disclosing confidential information except on a need-to-know  
3 basis “to the extent such disclosure is reasonably necessary in connection with such  
4 party’s activities as expressly authorized by [the] Agreement.” Section 1.4 of the  
5 agreement defines “confidential information” to include information “marked,  
6 identified, or otherwise acknowledged to be confidential at the time of disclosure.”

7 174. ChromaDex labeled the NRCl Analytical Method “confidential” and  
8 shared the document with Elysium during the course of the parties’ business dealings  
9 under the NIAGEN Supply Agreement.

10 175. Elysium breached Section 4.1 of the NIAGEN Supply Agreement when it  
11 disclosed the NRCl Analytical Method to its alternative manufacturer of NR for the  
12 purpose of developing a competing source of NR.

13 176. In 2014, ChromaDex drafted a document named the “NIAGEN  
14 Investigator’s Brochure,” that was intended to provide ChromaDex’s contract research  
15 organization (“CRO”) all the basic information it needed regarding NR before and  
16 during ChromaDex’s first human clinical trial.

17 177. In early 2015, as Elysium was preparing to conduct its first clinical trial  
18 with the same CRO, it requested information from ChromaDex to support that effort.  
19 In response, Dellinger provided Elysium a copy of the NIAGEN Investigator’s  
20 Brochure, prominently labeled “Confidential” on the front page and stated that Elysium  
21 could use it with its CRO, who already had a copy due to its work with ChromaDex.  
22 However, Elysium did not limit its use of the NIAGEN Investigator’s Brochure to its  
23 first clinical trial with the same CRO as ChromaDex. Elysium wrongfully disclosed the  
24 NIAGEN Investigator’s Brochure, which had been copied into a document named the  
25 “Basis Investigator’s Brochure,” to several other CROs in 2017 and into 2018.

26 178. Elysium breached Section 4.1 of the NIAGEN Supply Agreement when it  
27 distributed the “confidential” information contained in the NIAGEN Investigator’s  
28 Brochure.

1 179. In early 2015, ChromaDex drafted a document named “NR increases  
2 NAD” which concerned the data from a ChromaDex human study examining the effects  
3 of NR on NAD+ levels (“NR Study Data”). ChromaDex labeled the NR Study Data  
4 “confidential” in bold font. ChromaDex did not distribute the NR Study Data widely  
5 and did not make the data public as it drafted an article describing the results through  
6 the end of 2015. In January of 2016, ChromaDex began to use the NR Study Data in  
7 marketing material and the data was published publicly in October 2016.

8 180. In April of 2015, Dellinger, then ChromaDex’s Director of Scientific  
9 Affairs, was introduced to Elysium’s Chief Scientist, Leonard Guarente, to discuss the  
10 science supporting NR and ChromaDex’s clinical studies, among other topics. After the  
11 call, Dellinger sent Guarente the NR Study Data.

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

16 182. Elysium breached Section 4.1 of the NIAGEN Supply Agreement when it  
17 widely distributed the “confidential” NR Study Data before it became public.

18 183. Under Section 4.2 of the NIAGEN Supply Agreement, the parties are  
19 restricted from disclosing “any terms or conditions of [the] Agreement.”

20 184. The NR Specifications were incorporated into the terms of the NIAGEN  
21 Supply Agreement as Exhibit A to the agreement.

22 185. Elysium breached Section 4.2 of the NIAGEN Supply Agreement when it  
23 disclosed the NR Specifications to its alternative manufacturer of NR for the purpose  
24 of developing a competing source of NR.

25 186. ChromaDex was damaged by being denied a return on its investment in  
26 creating the confidential documents described above.

27 187. Elysium’s further breaches of the NIAGEN Supply Agreement further  
28 injured ChromaDex, in an amount to be determined at trial.

1 188. In addition to damages, ChromaDex further demands that Elysium return  
2 all copies of the confidential documents shared under the NIAGEN Supply Agreement,  
3 whether they are falsely labeled as Elysium's property or otherwise.

4 **THIRD CLAIM FOR RELIEF**

5 **Misappropriation of Trade Secrets Against Elysium and Morris (California)**

6 189. ChromaDex repeats and realleges the allegations contained in paragraphs  
7 1 through 188, above.

8 190. Elysium's and Morris's conduct as alleged herein constitutes  
9 misappropriation of trade secrets under California Civil Code § 3426, et seq.

10 191. The Ingredient Sales Spreadsheet is the central sales document at  
11 ChromaDex tracking all sales for all ingredients.

12 192. Morris misappropriated ChromaDex's trade secrets when he sent the  
13 purchasing history of Elysium's largest NR competitor to Elysium via text message in  
14 May 2016. On information and belief, the information conveyed by Morris was  
15 extracted from the Ingredient Sales Spreadsheet.

16 193. Elysium's acquisition of the trade secret information gave Elysium an  
17 undisclosed upper-hand during contract negotiations with ChromaDex.

18 194. Morris further misappropriated ChromaDex's trade secrets when he saved  
19 a copy of the Ingredient Sales Spreadsheet before leaving ChromaDex for the purpose  
20 of conveying the spreadsheet to Elysium. On information and belief, Morris deleted all  
21 records revealing how he transmitted the Ingredient Sales Spreadsheet to Elysium.

22 195. The spreadsheet Elysium now illegally possesses contains the detailed  
23 purchasing history of every customer who purchased any ingredient from ChromaDex  
24 from 2012 through at least May 27, 2016—including customer names, prices, volumes,  
25 and dates of purchases.

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1           196. The Ingredient Sales Spreadsheet, and the purchasing histories of specific  
2 ChromaDex customers within it, derive independent economic value from not being  
3 generally known to the public. While the fact that certain companies are ChromaDex  
4 customers is sometimes public information, the spreadsheet also contains information  
5 that cannot be gleaned from public sources, such as order forecasts, and the prices,  
6 volumes, and dates of each customer’s purchases.

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

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

25           199. Elysium willfully and maliciously acquired the spreadsheet through  
26 improper means and, on information and belief, improperly used the spreadsheet.

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1           200. 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           201. Morris signed the February Confidentiality Agreement with ChromaDex  
5 on February 26, 2016 and the July Confidentiality Agreement on July 15, 2016  
6 (collectively, the “Confidentiality Agreements”). The Confidentiality Agreements are  
7 valid contracts between ChromaDex and Morris require that he keep ChromaDex’s  
8 information confidential.

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

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

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

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

23           206. Elysium’s and Morris’s misappropriation of ChromaDex’s trade secret  
24 information has unjustly enriched Elysium and Morris, and damaged ChromaDex in an  
25 amount to be determined at trial.

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1 219. Morris breached the February Confidentiality Agreement by using his  
2 ChromaDex-issued cell phone to send Elysium confidential and trade secret information  
3 for the purposes of helping Elysium and harming ChromaDex. Morris further breached  
4 the February Confidentiality Agreement when he kept copies of ChromaDex's  
5 confidential and proprietary information after he terminated his employment with  
6 ChromaDex. Morris further breached the February Confidentiality Agreement when  
7 disclosed ChromaDex's confidential and proprietary information, such as the Ingredient  
8 Sales Spreadsheet and other ChromaDex documents, to Elysium after his employment  
9 with ChromaDex terminated for the purposes of helping Elysium and harming  
10 ChromaDex. The full extent of ChromaDex's confidential information disclosed by  
11 Morris to Elysium may not ever be discovered since Morris intentionally deleted  
12 evidence of his misconduct.

13 220. All of the breaches by Morris described above are material breaches of the  
14 February Confidentiality Agreement.

15 221. Morris's material breaches injured ChromaDex and caused it to sustain  
16 monetary damages in an amount to be determined at trial.

17 222. Morris's wrongful conduct is continuing in nature and, unless and until  
18 enjoined and restrained by order of this court, will result in irreparable harm to  
19 ChromaDex's business in that ChromaDex trade secrets and confidential information  
20 are being and will continue to be compromised. ChromaDex has no adequate remedy  
21 at law and will be irreparably harmed absent relief enjoining such misappropriation.

## 22 **SIXTH CLAIM FOR RELIEF**

### 23 **Breach of July Confidentiality Agreement Against Morris**

24 223. ChromaDex repeats and realleges the allegations contained in paragraphs  
25 1 through 222, above.

26 224. On July 15, 2016, Morris and ChromaDex entered the July Confidentiality  
27 Agreement.  
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1           225. The July Confidentiality Agreement is a binding and enforceable contract  
2 between ChromaDex and Morris.

3           226. ChromaDex fulfilled its obligations under the July Confidentiality  
4 Agreement by providing Morris with employment and benefits.

5           227. Since executing the contract on July 15, 2016, Morris has materially  
6 breached several provisions of the agreement.

7           228. Section 2 of the July Confidentiality Agreement prohibits Morris from  
8 using or permitting others to use tangible items furnished to Morris in connection with  
9 his employment duties such as computer stored information and disks, for any purpose  
10 other than enabling Morris to perform duties of employment. Section 2 also required  
11 Morris, upon the termination of employment, to “promptly tender any and all items, and  
12 all reproductions thereof.”

13           229. Morris breached Section 2 of the July Confidentiality Agreement by using,  
14 and permitting Elysium to use, ChromaDex items furnished to Morris by ChromaDex  
15 such as computer stored information and disks, for purposes other than performing his  
16 employment duties. Morris further breached Section 2 when he failed to tender all  
17 ChromaDex items and reproduction thereof to ChromaDex upon termination of his  
18 employment.

19           230. Section 3(a)(3) of the July Confidentiality Agreement prohibits Morris  
20 from divulging ChromaDex’s trade secrets to any person or business entity other than  
21 pursuant to Morris’s employment on behalf of ChromaDex.

22           231. Morris breached Section 3(a)(3) of the July Confidentiality Agreement  
23 when he conveyed a ChromaDex trade secret, the Ingredient Sales Spreadsheet, into  
24 Elysium’s possession after terminating his employment. The exact scope of  
25 ChromaDex’s trade secret information revealed by Morris to Elysium may not ever be  
26 discovered since Morris intentionally deleted evidence of his breach.

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1           240. Morris breached his fiduciary duty to ChromaDex when he failed to act in  
2 the best interests of ChromaDex, committed acts designed to harm ChromaDex, and  
3 failed to act in good faith in his dealings with ChromaDex. On information and belief,  
4 Morris's acts in breach of his fiduciary duty include without limitation: (1) his acts as  
5 an agent of Elysium to undermine and weaken ChromaDex, such as his manipulation  
6 of ChromaDex to take actions advantageous to Elysium and to disadvantage  
7 ChromaDex in contract negotiations; (2) his lying to ChromaDex about his intent to  
8 work for Elysium; (3) his recruitment of Ryan Dellinger on behalf of Elysium; (4)  
9 withholding information about Elysium's intent to stockpile NIAGEN and pTeroPure,  
10 withhold payment from ChromaDex, and develop competing supplies of NR and  
11 pterostilbene, despite knowing that ChromaDex had several patents over the production  
12 of NR and synthetic pterostilbene; (5) his lying regarding his return of all of ChromaDex  
13 trade secrets and confidential information before the termination of his employment  
14 with ChromaDex; and (6) withholding information about Elysium's outreach to  
15 ChromaDex's contractual partners in an effort to undermine ChromaDex.

16           241. Morris was unjustly enriched by his breach of fiduciary duty and should  
17 retain no benefits of that breach.

18           242. ChromaDex was damaged by Morris's breach of fiduciary duty by being  
19 put at a disadvantage in contract negotiations with Elysium, by conveying  
20 extraordinarily large product orders into Elysium's possession without taking measures  
21 to ensure that Elysium would pay, by not knowing of Elysium's competing  
22 development of NR and pterostilbene, and Elysium's likely patent infringement with  
23 regard to its development of a competing source of NR, by not taking measures to  
24 protect the confidentiality of the trade secrets and confidential information in Morris's  
25 possession, by losing sales of NIAGEN it otherwise would have made, and by further  
26 unknown harms.

27           243. Morris's breaches of his fiduciary duty injured ChromaDex and caused it  
28 to sustain monetary damages in an amount to be determined at trial.

**EIGHTH CLAIM FOR RELIEF**

**Aiding and Abetting Breach of Fiduciary Duty Against Elysium**

244. ChromaDex repeats and realleges the allegations contained in paragraphs 1 through 243, above.

245. Elysium knew or should have known that Morris owed a fiduciary duty to ChromaDex as a ChromaDex officer who participated in the management of ChromaDex.

246. Elysium knew that Morris's acts in furtherance of Elysium's goals and to the detriment of ChromaDex breached Morris's fiduciary duty to ChromaDex. Elysium further knew that Morris was helping it secretly embark on a mission to compete with ChromaDex while he was still an officer of ChromaDex.

247. Elysium encouraged and induced Morris to, and intended that he, breach his fiduciary duty through several acts. On information and belief, those acts included cheering and supporting Morris's acts that harmed ChromaDex and aided Elysium, offering Morris employment when Morris agreed to give Elysium ChromaDex's trade secret and confidential information, and by persuading Morris to lie to ChromaDex about his plans for employment with Elysium.

248. Elysium further substantially assisted Morris in his breaches by acting to keep Morris's breaches secret from ChromaDex so that he could commit further acts in breach of his fiduciary duty without being stopped by ChromaDex. Elysium prevented ChromaDex from discovering Morris's breaches by actively concealing the information Morris was feeding it during negotiations with ChromaDex and by affirmatively misrepresenting its knowledge of Morris's departure from ChromaDex after Morris had begun employment with Elysium.

249. Elysium's conduct was a substantial factor in causing harm to ChromaDex arising from Morris's breach of fiduciary duty.

250. Elysium, by aiding and abetting Morris's breach of fiduciary duty, should be liable for all harm caused by that breach.





- 1 i) On the First, Second, Third, Fourth, Fifth, and Sixth causes of action, the return  
2 and/or destruction of all confidential, trade secret, and misappropriated  
3 documents and information;  
4 j) On all causes of action, for attorney's fees as allowed by law;  
5 k) On all causes of action, for such other and further legal and equitable relief as the  
6 Court may deem just and proper.

7 **Request for Jury Trial**

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

10 Dated: November 27, 2018

11 COOLEY LLP  
12 MICHAEL A. ATTANASIO (151529)

13 /s/ Michael A. Attanasio  
14 Michael A. Attanasio

15 *Attorneys for Plaintiff and Counter-*  
16 *Defendant ChromaDex, Inc.*

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