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13 *Counsel continued on following page*

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 ChromaDex, Inc.,
18 Plaintiff,
19 v.
20 Elysium Health, Inc. and Mark
Morris,
21 Defendants.

Case No.: 8:16-cv-02277-CJC-DFM
[Assigned to the Hon. Cormac J. Carney]
**ELYSIUM HEALTH, INC.'S AND
MARK MORRIS'S STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT
[C.D. Local Rule 56-1]**

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

Hearing
Date: September 16, 2019
Time: 1:30 p.m.
Crtm: 7C
*[Filed concurrently with Notice of Motion;
Memorandum of Points and Authorities;
Appendix of Evidence; (Proposed) Order]*
Trial Date: October 15, 2019

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1 Defendant and counterclaimant Elysium Health, Inc. (“Elysium”) and
 2 defendant Mark Morris (“Morris”) hereby submit this Statement of Uncontroverted
 3 Facts and Conclusions of Law in support of their Motion for Partial Summary
 4 Judgment, pursuant to Local Rule 56-1. All references to “Sacca Decl. Ex. _” refer
 5 to exhibits attached to the Declaration of Joseph Sacca in Support of Defendants’
 6 Motion for Partial Summary Judgment, dated August 16, 2019.

<u>Uncontroverted Facts</u>	<u>Supporting Evidence</u>
I. Background	
1. ChromaDex, Inc. (“ChromaDex”) was an ingredient supplier of nicotinamide riboside (“NR”), which it sold under the trade name Niagen, and pterostilbene (“PT”), which it sold under the trade name pTeroPure.	1. Fifth Amended Complaint (“5AC”), at ¶¶ 28-32, 35 (ECF No. 153-00).
2. ChromaDex is the license holder for several patents relating to NR.	2. 5AC, at ¶ 30.
3. ChromaDex is the sole supplier of NR in the United States.	3. 5AC, at ¶ 35.
4. Elysium is a company that utilizes science and technology, including the research of its co-founder Dr. Leonard Guarente, to create a direct-to-consumer dietary supplement called Basis.	4. 5AC, at ¶ 34; Sacca Decl. Ex. 1 at 35:16-36:11.
5. Basis is principally comprised of NR and PT.	5. Sacca Decl. Ex. 2 at 175:9-17.
6. Mark Morris is Elysium’s current Vice	6. 5AC, at ¶ 15; Sacca Decl. Ex. 3

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<p>President of Research and Development and ChromaDex’s former Vice President of Business Development.</p>	<p>at 67:21-67:24, 71-72:7.</p>
<p>7. The relationship between ChromaDex and Elysium (“the Parties”) began in 2013 when Elysium sought to purchase NR from ChromaDex.</p>	<p>7. Sacca Decl. Ex. 4.</p>
<p>8. The Parties entered into three agreements.</p>	<p>8. 5AC, at ¶ 33.</p>
<p>9. On February 3, 2014, the Parties entered into the Niagen Supply Agreement (“NR Supply Agreement”).</p>	<p>9. 5AC, Ex. C (ECF No. 153-03).</p>
<p>10. On February 3, 2014, the Parties entered into the Trademark License and Royalty Agreement.</p>	<p>10. Sacca Decl. Ex. 5.</p>
<p>11. On June 26, 2014, the Parties entered into the pTeroPure Supply Agreement.</p>	<p>11. 5AC, Ex. E (ECF No. 153-05).</p>
<p>12. On February 19, 2016, the Parties executed the Amendment to the NR Supply Agreement.</p>	<p>12. 5AC, Ex. D (ECF No. 153-04).</p>
<p>13. The NR Supply Agreement contained a most favored nations (“MFN”) pricing provision.</p>	<p>13. 5AC, Ex. C, at Section 3.1.</p>
<p>14. The NR Supply Agreement contained (1) a warranty that the Niagen ChromaDex sold Elysium would be</p>	<p>14. 5AC, Ex. C, at Sections 1.3, 3.7, and 3.9.</p>

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<p>manufactured in accordance with current good manufacturing practices (“cGMP”) as described in Parts 210 and 211 of Title 21 of the United States Code of Federal Regulations, and (2) a provision requiring ChromaDex to provide notice to Elysium of issues relating to the purity of the NR it supplied, among other matters.</p>	
<p>15. The Amendment to the NR Supply Agreement contained an exclusivity provision which prohibited ChromaDex “directly or indirectly, sell[ing], transfer[ing] or otherwise provid[ing] to any Third Party, or licens[ing] or otherwise enabl[ing] any Third Party to make, any products containing both Niagen and pTeroPure® (or any ingredients that are substantially similar thereto) in combination, whether in the same delivery mechanism (including tablet, capsule, melt or liquid form) or packaging or in separate form or packaging but marketed together”</p>	<p>15. 5AC, Ex. D, at Section 3.11.3.</p>
<p>16. Elysium purchased NR and PT from ChromaDex until 2016.</p>	<p>16. Sacca Decl. Ex. 6 at ELY_0048077; Sacca Decl. Ex. 7 at ELY_0046722 – 723.</p>

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17. Over the course of 2014 to 2016, Elysium’s business grew.	17. Sacca Decl. Ex. 8; Sacca Decl. Ex. 9. at CDXCA_00270548.
18. Morris was responsible for developing ChromaDex’s business relationships.	18. Sacca Decl. Ex. 10 at 92:3-23.
19. Morris became Elysium’s main point of contact at ChromaDex.	19. Sacca Decl. Ex. 1 at 100:3-17; Sacca Decl. Ex. 11.
20. On August 28, 2015, ChromaDex acquired a stake in a direct-to consumer company called Healthspan Research, LLC (“Healthspan”).	20. Sacca Decl. Ex. 12 at CDXCA_00059152-231.
21. Healthspan was founded by ChromaDex’s Board member Robert Fried (“Fried”). Fried is now the CEO of ChromaDex.	21. Sacca Decl. Ex. 13 at 47:17, 64:1-6; Sacca Decl. Ex. 14.
22. On November 9, 2016, ChromaDex and Healthspan were discussing the possibility of ChromaDex acquiring Healthspan.	22. Sacca Decl. Ex. 15.
23. On November 17, 2016, Will Black (“Black”), ChromaDex’s Vice President of Sales & Marketing, sent an email to Frank Jaksch (“Jaksch”), ChromaDex’s then-CEO, a document entitled “Cornerstones for Agreement with Rob Fried.”	23. Sacca Decl. Ex. 16 at CDXCA_00153608.
24. The “Cornerstones for Agreement with Rob Fried” stated as its “Purpose and	24. Sacca Decl. Ex. 16 at CDXCA_00153609.

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<p>Objectives” to “[d]evelop a [new]* Direct sell to Consumer (DTC) brand” and the “[n]ew brand will replace current DTC brands of Maac 10; Nektar 7; Live Cell; HPN; Thrive Now Health and Elysium. New brand will provide ChromaDex with higher ingredient revenue than the discontinued brands.”</p>	
<p>25. On November 20, 2016, Jaksch sent an email to members of ChromaDex’s board of directors with the subject line, “RE: CDXC DTC Channel Development: Discussion Paper.”</p>	<p>25. Sacca Decl. Ex. 9 at CDXCA_00270547; Sacca Decl. Ex. 17.</p>
<p>26. In the “RE: CDXC DTC Channel Development: Discussion Paper” email Jaksch stated “[i]f we are going to seriously consider an option where we would restructure ChromaDex, which is an ingredient company, into a consumer products company, ie. Be our own Elysium, I think we need to see a very detailed business plan outlining what this strategy would look like.”</p>	<p>26. Sacca Decl. Ex. 9 at CDXCA_00270547.</p>
<p>27. On November 22, 2016, Jaksch sent an email to ChromaDex’s board of directors , with the subject line,</p>	<p>27. Sacca Decl. Ex. 17; Sacca Decl. Ex. 18 at CDXCA_00173464.</p>

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<p>“Options,” containing two attachments: (1) “ChromaDex--Outline of Healthspan Agreement--FJ with SAB Comments--11-19-16.docx”; and (2) “Outline for a ChromaDex Direct to Consumer Subsidiary 11 22 2016.docx.”</p>	
<p>28. The “ChromaDex—Outline of Healthspan Agreement—FJ with SAB Comments—11-19-2016” outlined its “Purposes and Objectives” to “[d]evelop a Direct sell to Consumer (DTC) brand under Healthspan (‘HS’)...HS will replace current DTC brands of Maac10; Nektar 7; Live Cell; HPN; Thrive Now Health and Elysium (the ‘Discontinued Customers’).”</p>	<p>28. Sacca Decl. Ex. 18 at CDXCA_00173465.</p>
<p>29. In June 2016, ChromaDex launched its direct-to-consumer product, TruNiagen.</p>	<p>29. Sacca Decl. Ex. 19.</p>
<p>30. On November 1, 2016, ChromaDex sent Elysium a non-renewal letter, terminating the NR Supply Agreement effective February 2, 2017.</p>	<p>30. Sacca Decl. Ex. 6 at ELY_0048077-079.</p>
<p>31. On March 12, 2017, ChromaDex acquired all outstanding equity interests of Healthspan it did not already own.</p>	<p>31. Sacca Decl. Ex. 20.</p>

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II. Elysium’s First Counterclaim for ChromaDex’s Breach of the MFN Provision of the NR Supply Agreement

32. Section 3.1 of the NR Supply Agreement, the MFN provision, states, in relevant part: “With respect to all Niagen provided by ChromaDex to Elysium Health under this Agreement Elysium Health shall pay to ChromaDex a maximum price of one thousand three hundred US dollars per kilogram (\$1,300 per kg) (“Maximum Price”); If, at any time during the Term, ChromaDex supplies Niagen (or a substantially similar product) to a Third Party at a price that is lower than that at which Niagen is supplied to Elysium Health under this Agreement, then the price of Niagen supplied under this Agreement shall be revised to such Third Party price with effect from the date of the applicable sale to such Third Party and ChromaDex shall promptly provide Elysium Health with any refund or credits thereby created; provided Elysium Health purchases equal volumes or higher volumes than the Third Party.”

32. 5AC, Ex. C, at Section 3.1 (ECF No. 153-03).

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<p>33. Section 7.5 of the NR Supply Agreement states, in relevant part: “This Agreement and the Trademark License and Royalty Agreement entered into between the parties as of the Effective Date contains the entire understanding of the parties with respect to the subject matter hereof. All express or implied representations, agreements and understandings, either oral or written, heretofore made are expressly superseded by this Agreement.”</p>	<p>33. 5AC, Ex. C, at Section 7.5 (ECF No. 153-03).</p>
<p>34. On February 5, 2014, ChromaDex sold █ kilogram of NR to Innovations 4 Health for █ per kilogram.</p>	<p>34. Sacca Decl. Ex. 21 at Tab: Raw Data, Line 15.</p>
<p>35. On June 27, 2014, Elysium sent its first purchase order to ChromaDex for 100 kilograms of NR at \$1,300 per kilogram.</p>	<p>35. Sacca Decl. Ex. 22 at CDXCA_00071711-712.</p>
<p>36. On February 2, 2015, ChromaDex sold █ kilogram of NR to Proctor & Gamble for █ per kilogram.</p>	<p>36. Sacca Decl. Ex. 21 at Tab: Raw Data, Line 68.</p>
<p>37. On February 10, 2015, ChromaDex sold █ kilograms of NR to Live Cell for █ per kilogram.</p>	<p>37. Sacca Decl. Ex. 21 at Tab: Raw Data, Line 69.</p>
<p>38. On February 11, 2015, Elysium placed</p>	<p>38. Sacca Decl. Ex. 21 at Tab: Raw</p>

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<p>a purchase order for 60 kilograms of NR at \$1,300 per kilogram.</p>	<p>Data, Line 70; Sacca Decl. Ex. 23 at CDXCA_00071798 – 799.</p>
<p>39. On May 27, 2015, Elysium placed a purchase order for 100 kilograms of NR at \$1,300 per kilogram.</p>	<p>39. Sacca Decl. Ex. 24 at CDXCA_00071833 – 834.</p>
<p>40. On July 2, 2015, Elysium placed a purchase order for 150 kilograms of NR at \$1,300 per kilogram.</p>	<p>40. Sacca Decl. Ex. 25 at CDXCA_00071836 – 837.</p>
<p>41. On August 24, 2015, ChromaDex sold [REDACTED] kilograms of NR to Live Cell for [REDACTED] per kilogram.</p>	<p>41. Sacca Decl. Ex. 21 at Tab: Raw Data, Line 130.</p>
<p>42. On October 2, 2015, Elysium placed a purchase order for 300 kilograms of NR at \$1,000 per kilogram.</p>	<p>42. Sacca Decl. Ex. 26 at (CDXCA_00071840 –841.</p>
<p>43. On November 5, 2015, Elysium placed a purchase order for 300 kilograms of NR at \$1,000 per kilogram.</p>	<p>43. Sacca Decl. Ex. 27 at CDXCA_00070645 – 646.</p>
<p>44. On February 22, 2016, Elysium placed a purchase order for 600 kilograms of NR at \$1,000 per kilogram.</p>	<p>44. Sacca Decl. Ex. 28 at CDXCA_00108258 – 259.</p>
<p>45. On March 29, 2016, ChromaDex sold [REDACTED] kilograms of NR to Lief Organics for [REDACTED] per kilogram.</p>	<p>45. Sacca Decl. Ex. 21 at Tab: Raw Data, Lines 187-88.</p>
<p>46. On April 1, 2016, Elysium placed a purchase order for 900 kilograms of NR at \$1,000 per kilogram.</p>	<p>46. Sacca Decl. Ex. 29 at CDXCA_00101784 – 785.</p>
<p>47. On May 30, 2016, Dan Alminana</p>	<p>47. Sacca Decl. Ex. 30.</p>

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<p>(“Alminana”) emailed Jaksch requesting the “sales and price data or NR that ChromaDex has sold to other customers to demonstrate that [Elysium] has been receiving the lowest price of NR since [Elysium] began purchasing the ingredient.”</p>	
<p>48. On June 13, 2016, in response to Alminana’s request, Jaksch sent Elysium a spreadsheet containing a “blinded summary of supply agreements for NR.”</p>	<p>48. Sacca Decl. Ex. 31 at CDXCA_00172596.</p>
<p>49. Jaksch failed to remove a tab from the spreadsheet that “wasn’t supposed to be on there” because “[i]t was an internal document that was being used to generate the other document and should have been removed, but it wasn’t.”</p>	<p>49. Sacca Decl. Ex. 31; Sacca Decl. Ex. 32 at 206:6-12.</p>
<p>50. The first tab of the spreadsheet, “Sheet 1 (TR) (2),” included the price per kilogram, the royalty percentage, equity percentage, market segment, and a notes section listing specific obligations of twelve purchasers, including Elysium.</p>	<p>50. Sacca Decl. Ex. 31 at CDXCA_00172600.</p>
<p>51. The second tab of the spreadsheet, “Sheet 1 (TR)” contained the detailed</p>	<p>51. Sacca Decl. Ex. 31 at CDXCA_00172600.</p>

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<p>pricing information for many of ChromaDex’s customers including the name of each purchaser, the date their supply agreement was executed, the purchaser’s operating territory, any exclusivity rights to which each purchaser was entitled, excluded products, excluded fields or channels for each purchaser, terms and termination clauses from each purchaser’s supply agreement, mandatory obligations for each purchaser, trademark agreement status for each purchaser, price per kilogram for each purchaser, royalty percentage, and equity percentage.</p>	
<p>52. The second tab of the spreadsheet contained information relating to Live Cell.</p>	<p>52. Sacca Decl. Ex. 31 at CDXCA_00172600.</p>
<p>53. Under the column entitled “Obligations,” the spreadsheet listed Live Cell’s minimum purchase order quantity as 10 kilograms and a price of \$900 per kilogram, or \$700 per kilogram for any purchase orders for over 2400 kilograms.</p>	<p>53. Sacca Decl. Ex. 31 at CDXCA_00172600.</p>
<p>54. On June 13, 2016, Alminana responded</p>	<p>54. Sacca Decl. Ex. 33.</p>

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<p>to Jaksch noting that “[t]he second two sheets in the attached workbook don’t seem to fully align with the first.”</p>	
<p>55. On June 28, 2016, Elysium submitted a purchase order for 6600 kilograms of NR at \$400 per kilogram.</p>	<p>55. Sacca Decl. Ex. 34 at ELY_0046717.</p>
<p>56. Elysium chose the \$400 per kilogram price to start a conversation around what it should be paying under the MFN.</p>	<p>56. Sacca Decl. Ex. 1 at 226:10-12; 227:10-18.</p>
<p>57. On June 30, 2016, the Parties had a call during which Jaksch informed Elysium that ChromaDex had sold NR to a customer called Live Cell at a price point of \$800/kg.</p>	<p>57. Sacca Decl. Exs. 35 & 36; Sacca Decl. Ex. 32 at 249:17-250:3; Sacca Decl. Ex. 37 at 255:17-258:5; Sacca Decl. Ex. 38.</p>
<p>58. After the June 30 call, Elysium placed a revised purchase order for 3000 kilograms of NR at \$800 per kilogram.</p>	<p>58. Sacca Decl. Ex. 7 at ELY_0046722 – 723.</p>
<p>59. ChromaDex agreed to the \$800 per kilogram price of NR to Elysium.</p>	<p>59. Sacca Decl. Ex. 38; Sacca Decl. Ex. 39 at 117:15-20; Sacca Decl. Exs. 40 & 41.</p>
<p>60. After placing the June 30, 2016 purchase order, Elysium sought to determine what it was “fairly owed.”</p>	<p>60. Sacca Decl. Ex. 42 at CDXCA_00209931.</p>

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III. ChromaDex’s Claim Against Elysium and Morris for Misappropriation of Trade Secrets	
<p>61. Section 1.4 of the NR Supply Agreement states, in relevant part: “Confidential Information” shall mean, with respect to a party, all information of any kind whatsoever, and all tangible and intangible embodiments thereof of any kind whatsoever, which is disclosed by such party to the other party and is marked, identified as or otherwise acknowledged to be confidential at the time of disclosure to the other party. Notwithstanding the foregoing, Confidential Information of a party shall not include information which the other party can establish by written documentation (a) to have been publicly known prior to disclosure of such information by the disclosing party to the other party, (b) to have become publicly known, without fault on the part of the other party, subsequent to disclosure of such information by the disclosing party to the other party, (c) to have been</p>	<p>61. 5AC, Ex. C, at ¶ 1.4 (ECF No. 153-03).</p>

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<p>received by the other party at any time from a source, other than the disclosing party, rightfully having possession of and the right to disclose such information, (d) to have been otherwise known by the other party prior to disclosure of such information by the disclosing party to the other party, or (e) to have been independently developed by employees or agents of the other party without access to or use of such information disclosed by the disclosing party to the other party. For the avoidance of doubt, all Royalty Reports and any information concerning the pricing and sale of Niagen products shall be Elysium Health Confidential Information for purposes of this Agreement.</p>	
<p>62. In the 5AC, ChromaDex alleges two trade secrets, both related to a spreadsheet that ChromaDex refers to as the Ingredient Sales Spreadsheet (“ISS”).</p>	<p>62. 5AC, at ¶ 103 (ECF No. 153-00).</p>

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<p>63. The first trade secret alleged in the 5AC is the ISS.</p>	<p>63. 5AC, at ¶ 103 (ECF No. 153-00).</p>
<p>64. The ISS contained the name of each purchaser of ChromaDex ingredients, the price per kilogram each purchaser paid, the quantity of each purchase, the total amount each purchaser spent per quarter, and the dates of orders and shipments.</p>	<p>64. Sacca Decl. Ex. 43.</p>
<p>65. At some time during his first few weeks of employment with Elysium, Morris unintentionally downloaded the ISS to his computer at Elysium.</p>	<p>65. Sacca Decl. Ex. 3 at 6-30:12, 26:22-27:4; Sacca Decl. Ex. 44 at 5.</p>
<p>66. “Morris did not share the [ISS] with anyone other than employees or officers of ChromaDex, which occurred during the time Morris was employed by ChromaDex” and deleted the ISS from his computer at Elysium shortly after having downloaded it.</p>	<p>66. Sacca Decl. Ex. 3 at 29:9-15; 31:10-14; Sacca Decl. Ex. 44 at 5.</p>
<p>67. When asked about the ISS at his deposition, Alminana testified, “I have never seen this document.”</p>	<p>67. Sacca Decl. Ex. 1 at 277:17-278:20.</p>

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<p>68. When asked whether he recognized the ISS, Marcotulli responded, “No, I do not,” and he stated that he had never seen it before.</p>	<p>68. Sacca Decl. Ex. 37 at 316:14-318:16.</p>
<p>69. The second trade secret alleged in the 5AC was a May 2016 text message from Morris to Alminana.</p>	<p>69. 5AC, at ¶ 103 (ECF No. 153-00).</p>
<p>70. The May 29, 2016 text message sent from Morris to Alminana stated: “Dan - Live Cell was at \$1400 until 8/29/14 when we sold them 100kg at \$900. Then on 2/27/15 we sold them 300kg at \$800. They have been there ever since including orders for 250kg on both 4/28/16 and 5/19/16. They never payed [sic] a royalty.”</p>	<p>70. Sacca Decl. Ex. 45; Sacca Decl. Ex. 46 at n. 234; 5AC, at ¶¶ 39, 192 (ECF No. 153-00).</p>
<p>71. On May 29, 2016, Morris in a separate text message, wrote to Alminana stating: “As you know, it’s in your contract and you deserve it. You are honoring the contract and so should ChromaDex.”</p>	<p>71. Sacca Decl. Ex. 45.</p>
<p>72. It was Morris’s responsibility to inform Elysium if it was entitled to a lower price for NR.</p>	<p>72. Sacca Decl. Ex. 10 at 91:19-93:2.</p>

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<p>73. During the June 30, 2016 telephone call, Jaksch told Elysium the profit margin ChromaDex wanted to maintain on sales of NR: “I think what I would have said is that we would want to maintain a margin [REDACTED] [REDACTED] [REDACTED] [REDACTED]”</p>	<p>73. Sacca Decl. Ex. 32 at 251:10-16.</p>
<p>74. When asked if you can figure out if “you know someone’s margins and you know the price at which they’re selling, what their cost is?” ChromaDex’s expert testified that “[y]ou can.”</p>	<p>74. Sacca Decl. Ex. 47 at 102:18-103:6; 133:14-135.</p>
<p>75. In ChromaDex’s July 9, 2013 Form 8-K, it disclosed the volume and price for NR listed in a customer’s supply agreement.</p>	<p>75. Sacca Decl. Ex. 48 at 2, 6.</p>
<p>76. On March 1, 2016 Jaksch texted Will McCamy, the President of Thorne Research, a competitor of Elysium, “We signed a multimillion dollar take or pay agreement with Elysium for the combination which is the core of their Basis product and they have started a nice sized clinical trial on the combo which they are paying for. Not to</p>	<p>76. Sacca Decl. Ex. 8; Sacca Decl. Ex. 32 at 9:9-21, 10:20-24.</p>

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<p>mention they are buying close to \$600k month right now in ingredients from us . . . soon to be closer to \$1 million a month.”</p>	
<p>77. On June 14, 2016, Jaksch told Alminana that “[w]e have no contractual agreement with Live Cell, and as such there is no contractual arrangement for pricing, however, they were purchasing NR for less than \$1000/kg in 2015 . . .”</p>	<p>77. Sacca Decl. Ex. 49.</p>
<p>78. On June 29, 2016, Jaksch told Alminana that “[c]ompared to your \$1000/kg pricing as we ended 2015, only one other customer (LC) had lower pricing. That customer took over 3X the volume as Elysium in 2015. For 1st half 2016, to date, Elysium is ahead of that customer on volume and we are prepared to adjust pricing for Q3 and Q4.”</p>	<p>78. Sacca Decl. Ex. 50 at CDXCA_00061381.</p>
<p>79. On September 8, 2016, Tom Varvaro emailed Alminana and Marcotulli an email with two attachments stating</p> <p>██</p> <p>██</p> <p>██</p>	<p>79. Sacca Decl. Ex. 51 at CDXCA_00086077.</p>

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<p>[REDACTED]</p>	
<p>80. The two attachments to the September 8, 2016 email [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>	<p>80. Sacca Decl. Ex. 51 at CDXCA_00086078 – 079.</p>
<p>81. On March 6, 2019, ChromaDex’s Response to Morris’s Interrogatory No. 1 identified over 140 items of “‘confidential and proprietary’ information and documents, ‘trade secrets and other valuable documents’” that are the subject of its claims in this case.</p>	<p>81. Sacca Decl. Ex. 52 at 6-11.</p>
<p>82. On June 21, 2019, ChromaDex served the report (the “Gunderson Report”) of its damages expert, Lance Gunderson (“Gunderson”).</p>	<p>82. Sacca Decl. Ex. 46.</p>
<p>83. Attached to the Gunderson Report was Schedule 15, which he described as “[a] listing of ChromaDex’s asserted trade secrets information at issue</p>	<p>83. Sacca Decl. Ex. 46 at 49; Sacca Decl. Ex. 53.</p>

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<p>includes, but may not be limited to, the documents shown in Schedule 15.”</p>	
<p>84. Schedule 15 identified four alleged trade secrets and cited to ten documents and the deposition transcripts of Daniel Magida and Mark Morris.</p>	<p>84. Sacca Decl. Ex. 46 at 175; Sacca Decl. Ex. 53.</p>
<p>85. The Gunderson Report included three alleged trade secrets that were not originally listed in ChromaDex’s March 6, 2019 response to Morris’s Interrogatory No. 1.</p>	<p>85. Sacca Decl. Ex. 46 at 175; Sacca Decl. Exs. 45, 53, 52 at 5-11.</p>
<p>86. The Gunderson Report also included Schedule 15A, titled “ChromaDex’s Trade Secrets, Confidential, and/or Proprietary Information at Issue,” which listed over 140 items.</p>	<p>86. Sacca Decl. Ex. 46 at 176-79; Sacca Decl. Ex. 53 at 2-5.</p>
<p>87. Schedule 15A lists, among other things, documents described as the NR Specifications, the PT Specifications, NR GRAS Report, and the NRCl Analytical Method.</p>	<p>87. Sacca Decl. Ex. 46 at 176-79; Sacca Decl. Ex. 53 at 2-5; Sacca Decl. Ex. 55 at ELY_0078089; Sacca Decl. Ex. 56 at ELY_0022798 and ELY_0022804; Sacca Decl. Ex. 57 at ELY_0090347.0002.</p>
<p>88. The NR Specifications and the pTeroPure Specifications were disclosed in a ChromaDex Form 10-Q</p>	<p>88. Sacca Decl. Ex. 58 at 30, 38.</p>

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<p>filed with the United States Securities and Exchange Commission for the quarterly period ended April 2, 2016.</p>	
<p>89. At his deposition, Jaksch admitted that while ChromaDex had redacted certain information from the copies of the NR Supply Agreement and pTeroPure Supply Agreement filed with the SEC, ChromaDex had not redacted either the NR Specifications or pTeroPure Specifications.</p>	<p>89. Sacca Decl. Ex. 32 at 161:16 – 165:5.</p>
<p>90. The NR GRAS Report is publicly available on the FDA’s website.</p>	<p>90. Sacca Decl. Ex. 59. (https://www.fda.gov/files/food/published/GRAS-Notice-000635--Nicotinamide-riboside-chloride.pdf)</p>
<p>91. On the evening of August 9, 2019, the close of discovery, ChromaDex supplemented its March 6, 2019 response to Morris’s Interrogatory No. 1 to identify the purported trade secrets that it asserts were misappropriated in this case.</p>	<p>91. Sacca Decl. Ex. 60 at 16-23.</p>
<p>92. In its August 9, 2019 supplemental response, ChromaDex gave four categories of alleged trade secrets: “(1) ChromaDex’s ingredient sales</p>	<p>92. Sacca Decl. Ex. 60 at 16.</p>

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<p>information, including customer purchasing histories and customers; relative market positions; (2) the price ChromaDex paid to obtain NR from its contract manufacturer; (3) ChromaDex’s research and development work regarding different salts for use in manufacturing NR; and (4) ChromaDex’s research and development work regarding different methods for manufacturing NR.”</p>	
<p>93. On the August 9, 2019 supplemental response, ChromaDex identified 12 items as included in the four categories of alleged trade secrets.</p>	<p>93. Sacca Decl. Ex. 60 at 16.</p>
<p>94. Eight of the alleged trade secrets were first disclosed on March 6, 2019 in the list of 140 items of “‘confidential and proprietary’ information and documents, ‘trade secrets and other valuable documents . . .’”</p>	<p>94. Sacca Decl. Ex. 52 at 6-11.</p>
<p>95. In its January 14, 2019 Supplemental Initial Disclosures, ChromaDex stated that it would rely on its damages expert to prove damages in support of its trade secrets misappropriation claims.</p>	<p>95. Sacca Decl. Ex. 61 at 14.</p>

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<p>“Damages arising from Elysium’s and Morris’s misappropriation of ChromaDex’s trade secrets (Third and Fourth Claims for Relief) are unknown at this time and ChromaDex will require further discovery, including expert assistance, to ascertain all damages. At this time, ChromaDex intends to pursue compensatory damages, a reasonable royalty, the amounts by which Elysium was unjustly enriched by its conduct, and punitive damages.”</p>	
<p>96. In its March 6, 2019 response to Morris’s Interrogatory No. 9, ChromaDex again deferred to its expert on damages for all its claims against Morris (Third through Seventh Claims).</p>	<p>96. Sacca Decl. Ex. 52 at 25-27.</p>
<p>97. ChromaDex’s 30(b)(6) witness refused to answer questions concerning damages sought in the case, claiming that “[t]o be able to determine what the damages are for any one document is difficult, if not impossible, unless you’re an expert.”</p>	<p>97. Sacca Decl. Ex. 62 at 298:16-300:6.</p>

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<p>98. Gunderson testified that he “[didn’t] parse out damages attributable to any piece of information” when conducting his damages analysis.</p>	<p>98. Sacca Decl. Ex. 47 at 124:4-10.</p>
<p>99. At his deposition, Gunderson could not explain how the jury could come up with a damages number related to individual alleged trade secrets.</p>	<p>99. Sacca Decl. Ex. 47 at 97:11-20.</p>
<p>100. Gunderson’s unjust enrichment calculation was based on “alleged misuse of confidential information,” “alleged use of proprietary information,” and “alleged aiding and abetting of Mr. Morris’s fiduciary duty, breach fiduciary duty.”</p> <p>When asked directly if he had apportioned damages between misappropriation of trade secrets, breach of fiduciary duties, and/or breach of contract, he testified truthfully that he had not.</p>	<p>100. Sacca Decl. Ex. 47 at 200:18 - 203:23.</p>
<p>101. During the relevant time period, Basis’s price has remained consistent.</p>	<p>101. Sacca Decl. Ex. 2. at 193:25-194:11.</p>

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IV. ChromaDex’s Claim Against Morris for Breach of July Agreement	
102. Mark Morris was employed by ChromaDex from June 2007 to August 2009.	102. Declaration of Mark Morris in Support of Motion for Partial Summary Judgment, (“Morris Decl.”) at ¶ 2.
103. Morris was employed again by ChromaDex from January 13, 2011 to July 15, 2016.	103. Morris Decl. at ¶ 3.
104. During the course of their interactions, Morris informed Alminana and Marcotulli that he intended to resign from ChromaDex. This conversation took place sometime in the second quarter of 2016.	104. Sacca Decl. Ex. 37 at 188:24-189:15, 189:22-24; Sacca Decl. Ex. 1 at 106:17-107:25.
105. On or about July 12, 2016, at approximately 9:00am, Morris notified Troy Rhonemus that he intended to leave his employment with ChromaDex.	105. Morris Decl. at ¶ 4.
106. Shortly thereafter, Morris also notified Jaksch that he was leaving his employment with ChromaDex.	106. Morris Decl. at ¶ 5.

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<p>107. During subsequent discussions with individuals at ChromaDex on or about July 12, 2016 or July 13, 2016, Morris offered that his final day of employment would be July 15, 2016. ChromaDex accepted that date.</p>	<p>107. Morris Decl. at ¶ 6.</p>
<p>108. After Morris gave notice, he immediately began to transition my responsibilities to his designated colleagues and provided his ChromaDex hard copy files to his colleagues from on or about July 12, 2016.</p>	<p>108. Morris Decl. at ¶ 7.</p>
<p>109. On or about the evening of July 14, 2016, at approximately 5 p.m., Morris returned his company-issued mobile phone, laptop, and office entry key to those ChromaDex employees responsible for collecting such items.</p>	<p>109. Morris Decl. at ¶ 8.</p>
<p>110. On July 15, 2016, Morris arrived at ChromaDex's office in the late morning.</p>	<p>110. Morris Decl. at ¶ 9.</p>
<p>111. On July 15, 2016, Morris had several verbal conversations with colleagues concerning business topics for the purposes of transferring responsibilities and open tasks to</p>	<p>111. Morris Decl. at ¶ 10.</p>

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<p>other ChromaDex employees.</p>	
<p>112. On July 15, 2016, Morris did not have access to email or ChromaDex computer systems and no longer had ChromaDex hard copy documents.</p>	<p>112. Morris Decl. at ¶ 11.</p>
<p>113. In the late afternoon of July 15, 2016, at approximately 3:30 or 4:00 p.m., Morris had met with Jenny Robles, the Human Resources Manager at ChromaDex.</p>	<p>113. Morris Decl. at ¶ 12.</p>
<p>114. The meeting lasted approximately 35 minutes and began with cordial conversation.</p>	<p>114. Morris Decl. at ¶ 13.</p>
<p>115. After engaging in “small talk” for approximately 20-30 minutes, Robles asked Morris to sign a checklist, which confirmed to the human resources department that he had:</p> <ul style="list-style-type: none"> • Completed his resignation form; • Returned his company laptop/docking station; • Returned his company-issued phone; • Returned his security system fob; • Returned his office keys; and • Returned his desk/file keys. 	<p>115. Sacca Decl. Ex. 63; Morris Decl. at ¶ 14.</p>

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116. Robles then signed the checklist in Morris’s presence.	116. Sacca Decl. Ex. 63; Morris Decl. at ¶ 15.
117. After signing the checklist, Robles also asked that Morris sign a Confidentiality and Non-Solicitation Agreement (for New Employees) (“The New Employee Agreement”).	117. Morris Decl. at ¶ 16.
118. Robles then noted that Morris had accumulated two months’ worth of salary due to vacation days that he had not used previously.	118. Morris Decl. at ¶ 17.
119. Robles had a check in her possession issued to Morris in the amount of \$12,456.43, which was compensation for his accrued but unused vacation and his final paycheck.	119. Morris Decl. at ¶ 18.
120. Robles stated that in order for Morris to receive that check, which was compensation for his accrued but unused vacation days and his final paycheck, he would first need to sign the New Employee Agreement.	120. Morris Decl. at ¶ 19.
121. At the July 15 meeting, Morris signed the New Employee Agreement.	121. Sacca Decl. Ex. 64; Morris Decl. at ¶ 20; 5AC, Ex. B.

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122. After Morris signed the New Employee Agreement, Robles handed him a check in the amount of \$12,456.43 as compensation for his accrued, unused vacation days and his final paycheck.	122. Morris Decl. at ¶ 21.
123. At that time, the July 15 meeting with Robles concluded.	123. Morris Decl. at ¶ 22.
124. After the July 15 meeting concluded, Morris promptly left ChromaDex’s offices and did not return.	124. Morris Decl. at ¶ 23.
125. Morris began his employment with Elysium the following week.	125. Sacca Decl. Ex. 3 at 307:24-308:4.

V. CONCLUSIONS OF LAW

1. ChromaDex breached the MFN Provision of the NR Supply Agreement.
2. ChromaDex has not proved causation or damages as to its First Claim for Relief, except Elysium does not seek summary judgment insofar as the First Claim for Relief relates to Elysium’s alleged failure to pay amounts due to ChromaDex for pTeroPure which Elysium purchased from ChromaDex.
3. ChromaDex has not proved causation or damages as to its Second Claim for Relief, except Elysium does not seek summary judgment insofar as the Second Claim for Relief relates to Elysium’s alleged failure to pay amounts due to ChromaDex for NR which Elysium purchased from ChromaDex.
4. ChromaDex has not proved causation or damages on its Third Claim for Relief (for misappropriation of trade secrets under California’s Uniform Trade

1 Secrets Act).

2 5. ChromaDex has not proved causation or damages on its Fourth Claim
3 for Relief (for misappropriation of trade secrets under the Defend Trade Secrets Act).

4 6. ChromaDex has not proved causation or damages on its Fifth Claim for
5 Relief (for breach of contract against Morris).

6 7. ChromaDex has not proved causation or damages on its Sixth Claim for
7 Relief (for breach of contract against Morris).

8 8. ChromaDex's Sixth Claim for Relief fails because the New Employee
9 Agreement is not supported by consideration and is void as a matter of law.

10 9. ChromaDex has not proved causation or damages on its Seventh Claim
11 for Relief (for breach of fiduciary duty against Morris).

12 10. ChromaDex has not proved causation or damages on its Eighth Claim
13 for Relief (for aiding and abetting breach of fiduciary duty against Elysium).

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16 Dated: August 16, 2019

BAKER & HOSTETLER LLP

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By: /s/ Joseph N. Sacca

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JOSEPH N. SACCA

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MARK MORRIS

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