

1 PETER B. MORRISON (State Bar No. 230148)
peter.morrison@skadden.com
2 JULIA M. NAHIGIAN (State Bar No. 307508)
julia.nahigian@skadden.com
3 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Avenue, Suite 3400
4 Los Angeles, California 90071-3144
Telephone: (213) 687-5000
5 Facsimile: (213) 687-5600

6 JOSEPH N. SACCA (admitted *pro hac vice*)
joseph.sacca@skadden.com
7 BRADLEY E. HONIGMAN (admitted *pro hac vice*)
bradley.honigman@skadden.com
8 MICHAEL M. POWELL (admitted *pro hac vice*)
michael.powell@skadden.com
9 SPENCER A. GOTTLIEB (admitted *pro hac vice*)
spencer.gottlieb@skadden.com

10 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Four Times Square
11 New York, New York 10036
Telephone: (212) 735-3000
12 Facsimile: (212) 735-2000

13 *Counsel continued on following page*

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15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
17 **(SOUTHERN DIVISION)**

18 CHROMADEX, INC.,
19 Plaintiff,
20 v.
21 ELYSIUM HEALTH, INC.,
22 Defendant.

Case No. 8:16-cv-02277-CJC-DFM

**ELYSIUM HEALTH, INC.'S
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION TO
DISMISS THIRD, FOURTH, AND
FIFTH CLAIMS OF THE
FOURTH AMENDED
COMPLAINT**

Date: August 6, 2018
Time: 1:30 p.m.
Courtroom: 9B, 9th Floor

Judge: Hon. Cormac J. Carney

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1 DONALD R. WARE (admitted *pro hac vice*)
dware@foleyhoag.com
2 MARCO J. QUINA (admitted *pro hac vice*)
mquina@foleyhoag.com
3 FOLEY HOAG LLP
155 Seaport Boulevard
4 Boston, MA 02210
Telephone: (617) 832-1000
5 Facsimile: (617) 832-7000
6 *Attorneys for Defendant and Counterclaimant*
Elysium Health, Inc.

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1 **I. PRELIMINARY STATEMENT**

2 Its first attempts to plead the misappropriation of trade secrets already
3 dismissed by this Court and its second withdrawn when its counsel was made aware
4 its allegations were demonstrably false, Plaintiff and Counterdefendant ChromaDex¹
5 comes before this Court to try a third time to bring claims relating to Elysium's
6 hiring of two former ChromaDex employees who left the company after its attempts
7 to deceive Elysium had come to light. But while ChromaDex has scoured the
8 discovery produced by Elysium in search of evidence of impropriety, this effort has
9 resulted only in claims for theft of trade secrets and conversion premised,
10 remarkably, on Elysium's: (i) discovery that it was being cheated by ChromaDex and
11 (ii) supposed misuse of materials that ChromaDex contends are its property, but
12 which it widely distributed to advertise its NR ingredient product and, in any event,
13 largely just reproduced material in the public domain or created by third parties.
14 Indeed, because these qualities preclude any good faith claim to trade secret or
15 copyright protection, ChromaDex instead brings an inapt claim for conversion that is
16 preempted by state and federal law. The conversion claim further fails because those
17 same qualities ensure that ChromaDex cannot assert ownership over many of the
18 purportedly stolen documents, cannot plausibly contend that Elysium misused them,
19 and can identify no manner in which it was injured by Elysium's alleged use.

20 Too, its claims for trade secret misappropriation and new allegations of
21 breach of contract suffer from a number of fatal defects that mandate their dismissal.
22 These include a failure to adequately allege the existence of a protectable trade secret
23 or any form of damage from any alleged use and ChromaDex's failure to plead the
24 existence of a contractual breach through allegations that rely on an utterly

25 _____
26 ¹ Capitalized terms not defined herein shall have the same meanings ascribed
27 to them in the Third Amended Counterclaims (Dkt. 103). All emphases are added
and internal citations and quotations are omitted unless otherwise stated.

1 implausible interpretation of the parties' contract and conduct consistent with
2 contractual compliance. For these reasons, the Court should dismiss with prejudice
3 the Third, Fourth, and Fifth Causes of Action and the First and Second Causes of
4 Action insofar as they are based on the allegations described below in Part V.

5 **II. STATEMENT OF FACTS**

6 The relationship between ChromaDex and Elysium reaches back to 2014 and
7 arises out of their common interest in the commercialization of nicotinamide riboside
8 ("NR"). ChromaDex, the licenseholder for several patents relating to NR, was the
9 sole commercial supplier of NR in the United States during the course of the parties'
10 contractual relationship. (*See* Fourth Amended Complaint, Dkt. 109 ("FAC") ¶¶ 15,
11 20.) NR is the principal ingredient in Elysium's sole product, a health supplement
12 called Basis that also features pterostilbene. (*Id.* ¶ 19.) From 2014 to 2016, Elysium
13 incorporated NR and pterostilbene supplied by ChromaDex into Basis. (*Id.*) The
14 parties' relationship was governed by three contracts: an NR supply agreement dated
15 February 3, 2014, and amended on February 19, 2016 (as amended, the "NR Supply
16 Agreement"); a pterostilbene supply agreement dated June 26, 2014 (the "PT Supply
17 Agreement," and together with the NR Supply Agreement, the "Supply
18 Agreements"); and a trademark license and royalty agreement dated February 3,
19 2014 (the "Royalty Agreement"). (*See* FAC ¶ 18 & FAC Exs. A-C.)

20 The NR Supply Agreement sets forth that "ChromaDex shall sell and deliver,
21 and Elysium Health shall purchase from ChromaDex, such Niagen as Elysium
22 Health orders from time to time." (FAC Ex. A § 3.) The NR Supply Agreement
23 includes a "most favored nations" pricing provision, under which, if "ChromaDex
24 supplies Niagen (or a substantially similar product) to a Third Party at a price that is
25 lower than that at which Niagen is supplied to Elysium Health," then "the price of
26 Niagen supplied under this Agreement shall be revised to such Third Party price with
27 effect from the date of the applicable sale to such Third Party and ChromaDex shall

1 promptly provide Elysium Health with any refund or credits thereby created;
2 provided Elysium Health purchases equal volumes or higher volumes than the Third
3 Party" (the "MFN Provision"). (FAC Ex. A § 3.1.) Both the Supply Agreements
4 contain provisions governing the parties' exchange and treatment of confidential
5 information during their collaboration. (*See* FAC Ex. A §1.4 & Ex. C § 15.)

6 In the second quarter of 2016, Elysium "raised concerns about pricing under
7 the [NR] Supply Agreement" with ChromaDex's CEO (FAC ¶ 27), *i.e.*, sought to
8 confirm ChromaDex's compliance with the MFN Provision. Elysium had received
9 information (set forth in the "MFN Breach Spreadsheet") indicating that another
10 customer was receiving pricing far less than that awarded to Elysium at volumes
11 below what Elysium had ordered. (*See id.* ¶¶ 23, 26.) Elysium explained to
12 ChromaDex's CEO that it needed to confirm that it was receiving the pricing to
13 which it was entitled for a potential investor. (*See id.* ¶ 27.)

14 After discussion between Elysium and ChromaDex, Elysium placed purchase
15 orders for NR and pterostilbene on June 30, 2016. (*Id.* ¶ 27-36.) Following the
16 provision of three invoices to Elysium by ChromaDex on July 1, 2016, and August 9,
17 2016, Elysium informed ChromaDex that it would make payment on the June 30,
18 2016 purchase orders once ChromaDex addressed Elysium's articulated concerns that
19 ChromaDex's pricing was not in compliance with the MFN Provision, *i.e.*, that
20 ChromaDex had secretly been offering Elysium's competitors lower prices on NR in
21 violation of the NR Supply Agreement. (*Id.* ¶¶ 43, 45.)

22 Resolution and a refund from ChromaDex not forthcoming (*see id.* ¶ 45-49),
23 Elysium grew concerned about continued access to a source of NR and, in mid-July
24 2016, elected to begin exploring development of a new supply chain for the
25 ingredient that would not depend on its untrustworthy contractual partner but would
26 instead be entirely within Elysium's control. (*See id.* ¶ 74-75.) Elysium hired Mark
27

1 Morris, its relationship manager at ChromaDex, to assist with this project. (*See id.*
2 ¶¶ 74-75, 80-95.)

3 After locating a potential manufacturer, Morris prepared for it a packet of
4 information relating to the manufacture of NR. (*See id.* ¶ 80-94.) This included:

- 5 • Information drawn from the "NR GRAS Dossier," a publicly-filed
6 regulatory submission submitted to the FDA by Spherix Consulting,
7 Inc., that describes, *inter alia*, the manufacturing process for
8 nicotinamide riboside chloride, which ChromaDex purports to have
9 "perfected" rather than created (*see* FAC ¶ 83 & Powell Decl. Ex. A);²
- 10 • A description of a method of using of high-performance liquid
11 chromatography to analyze a product's NR concentration, which
12 ChromaDex purports to have developed and admits that it regularly
13 distributes (the "NRCl Analytical Method," *see* FAC ¶ 88);
- 14 • A list of specifications for nicotinamide riboside chloride that sets a
15 level of purity for the product and draws on extant regulatory standards
16 regarding allowable levels of residual solvents, heavy metals, and other
17 contaminants, and which is similar to the specifications to which
18 ChromaDex and Elysium agreed for the Niagen sold by ChromaDex.
19 (the "NR Specifications," *see* FAC ¶ 90.)

20 With millions of dollars of investment (*see* FAC ¶ 20), Elysium was able to
21 establish a new NR supply chain and was no longer reliant on ChromaDex to source
22 its two primary ingredients. Unaware of these efforts, ChromaDex continued to
23 refuse to award Elysium the refund to which it was entitled throughout 2016, and on
24 December 29, 2016, ChromaDex filed its complaint in this action based on Elysium's
25 withholding of payment for the June 30, 2016 orders as it awaited the refund or
26 credit it was due under the MFN Provision. (*See* Dkt. 1.) On January 25, 2017,

27 ² All references to "Powell Decl. Ex." are to the Exhibit referenced in the
28 concurrently-filed Declaration of Michael M. Powell, unless otherwise noted. The
Court is entitled to take judicial notice of this document on this motion to dismiss
without conversion into a motion for summary judgment as it is a publicly-available
document incorporated by reference or "integral" to the complaint and underlying
ChromaDex's claims here. *See Figueroa v. Law Offices of Patenaude & Felix*, 2014
U.S. Dist. LEXIS 194467, at *5 (C.D. Cal. May 30, 2014); *In re Am. Apparel, Inc.*
S'holder Litig., 855 F. Supp. 2d 1043, 1060 (C.D. Cal. 2012) (in a motion to dismiss,
courts can consider regulatory filings that "that are publicly available").

1 Elysium answered the Complaint and asserted six counterclaims against ChromaDex
2 relating to, *inter alia*, ChromaDex's initial breaches of contract that had sparked the
3 parties' dispute and its misuse of the NR-related patents and unfair competition
4 practices arising out of its requirement that Elysium execute the Royalty Agreement
5 and licensing of ChromaDex trademarks as a condition of entry into the Supply
6 Agreement. (*See* Dkt. 11.) On February 15, 2017, ChromaDex filed a First
7 Amended Complaint to add new claims for misappropriation of trade secrets under
8 California law and federal law. (*See* Dkt. 30.)

9 On May 10, 2017, this Court dismissed the majority of ChromaDex's claims.
10 (*See* Dkt. 44 (the "Order").) The Court dismissed ChromaDex's claims for
11 misappropriation of trade secrets because it failed to allege any protectable trade
12 secret, instead "simply alleg[ing] in a conclusory fashion that [the purported trade
13 secrets] are not generally known." (*Id.* at 13-14.) The Court gave leave to amend
14 the claims for trade secret misappropriation (*id.* at 14), and ChromaDex filed a
15 Second Amended Complaint on May 24, 2017. (Dkt. 45.) In that complaint,
16 ChromaDex added a handful of additional allegations relating to Morris and
17 ChromaDex's former Director of Scientific Affairs, Ryan Dellinger. ChromaDex
18 alleged that Elysium "seduced, induced, and encouraged" Dellinger and Morris to
19 breach certain obligations imposed by the confidentiality agreements both had
20 executed while employed by ChromaDex to effect Elysium's commission of trade
21 secret misappropriation. (Dkt. 30 ¶ 59-60.) Embarrassingly for ChromaDex,
22 however, documentary evidence established that these allegations were completely
23 false, and ChromaDex was forced to withdraw the allegations and its trade secret
24 claims in a Third Amended Complaint. (*See* Powell Decl. ¶ 2-4 & Dkt. 48.)

25 By establishing its own supply chain, Elysium eliminated its reliance on
26 ChromaDex and, correspondingly, ChromaDex's ability to take advantage of that
27 reliance through fraud and deception. The FAC represents ChromaDex's third bite at

1 the apple in its attempt to retaliate against Elysium for removing itself from that
2 position. In addition to alleging conversion of the NR GRAS Dossier, NRCl
3 Analytical Method, and NR Specifications based on their transmission to Elysium's
4 new NR manufacturer, ChromaDex claims:

- 5 • that Elysium engaged in conversion of the information in the MFN
6 Breach Spreadsheet (*see* FAC ¶ 206-212) that revealed ChromaDex's
7 breach of the MFN Provision; conversion of the "NR Presentation" and
8 "Pterostilbene Presentation" through modification and reuse of two
9 slide decks originally created by Morris and Dellinger, which contain
10 excerpts from the scientific research on both ingredients (*see* FAC ¶
11 100-03); and conversion of a second regulatory document, the
12 "pTeroPure GRAS Report," through reliance on the information in the
13 report to prepare a regulatory submission for Basis (*see* FAC ¶ 179-
14 182);
- 15 • that Elysium engaged in trade secret misappropriation based on its
16 possession of a spreadsheet (the "Ingredient Sales Spreadsheet")
17 outlining the pricing ChromaDex extended to its ingredients customers,
18 including its NR customers whose pricing implicated the MFN
19 Provision (*see* FAC ¶ 148-168), which purportedly made it more
20 difficult for ChromaDex to defraud Elysium about its compliance with
21 the contract; and
- 22 • that Elysium's transmission of (i) the pTeroPure GRAS Report in
23 connection with a regulatory submission; (ii) the NR Specifications and
24 NRCl Analytical Method to its new NR manufacturer; and (iii) study
25 data (the "NR Study Data") that ChromaDex distributed, used in
26 marketing material, and published, to potential investors breached the
27 Supply Agreements. (*See* FAC ¶ 120-147.)

28 These cobbled-together allegations of misuse of materials ChromaDex didn't
own, didn't keep confidential, and didn't value are intended to suggest that Elysium
engaged in wrongdoing by disentangling itself from ChromaDex, but fail to state any
claim. Elysium accordingly moves for dismissal of the new claims here.

29 **III. LEGAL STANDARD**

30 To avoid dismissal under Rule 12(b)(6), a plaintiff must allege facts sufficient
to "raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*,

1 550 U.S. 544, 555 (2007). In other words, a complaint must plead "enough facts to
2 state a claim to relief that is plausible on its face." *Id.* at 570. A claim is plausible
3 "when the plaintiff pleads factual content that allows the court to draw the reasonable
4 inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*,
5 556 U.S. 662, 678 (2009). "[A] formulaic recitation of the elements of a cause of
6 action will not do." *Twombly*, 550 U.S. at 555.

7 **ARGUMENT**

8 **IV. ChromaDex's Claim for Conversion Fails as a Matter of Law.**

9 Under the mistaken impression that the same aspects of its conduct that
10 foreclose a number of potential claims—its failure to maintain confidentiality a bar
11 to a trade secret claim, for example—do not act as a bar to a catchall claim of
12 conversion, ChromaDex attempts to fit a square peg in a round hole by pleading that
13 Elysium engaged in conversion. In so doing, it points to Elysium's possession of
14 material to which it was contractually entitled (in essence alleging Elysium "stole"
15 the information that it was being cheated by ChromaDex) and its use of information
16 ChromaDex widely distributed and largely sourced from third parties, the use of
17 which caused ChromaDex no harm whatsoever. Conversion is "any act of dominion
18 wrongfully exerted over another's personal property in denial of or inconsistent with
19 his rights therein." *Tyrone Pac. Int'l, Inc. v. MV Eurychili*, 658 F.2d 664, 666 (9th
20 Cir. 1981). To state a claim for the tort, a plaintiff must plead "(1) the plaintiff's
21 ownership or right to possession of the property; (2) the defendant's conversion by
22 wrongful act inconsistent with the property rights of the plaintiff; and (3) damages."
23 *Slaieh v. Simons*, 2018 U.S. Dist. LEXIS 7624, at *14-16 (C.D. Cal. Jan. 16, 2018)
24 (citing *In re Emery*, 317 F.3d 1064, 1069 (9th Cir. 2003)). ChromaDex's attempts to
25 plead each of these elements suffer from fatal flaws that mandate the claim's
26 dismissal here.

27 **A. Any Conversion Claim Is Preempted by State and Federal Law.**

1 ChromaDex's claim for conversion is entirely preempted. ChromaDex
2 contends that "Elysium converted at least seven documents and/or the information
3 they contain belonging to ChromaDex" but does not allege that Elysium
4 dispossessed it of any physical property. (FAC ¶ 170.) Instead, it alleges that
5 Elysium, Morris, or Dellinger wrongfully "accessed," "took screenshots of,"
6 "retyped," "sent," or "disclosed" information—contained within an electronic file
7 such as a spreadsheet or PowerPoint—that ChromaDex considers its valuable,
8 proprietary, and confidential creation. (*See, e.g.*, FAC ¶¶ 92, 94, 175, 180, 193, 202,
9 208, 215, 225, 226.) This claim must be dismissed with prejudice because it is
10 completely superseded by the California Uniform Trade Secrets Act (the "CUTSA")
11 and preempted by the Copyright Act.

12 The CUTSA supersedes "all claims premised on the wrongful taking and use
13 of confidential business and proprietary information, even if that information does
14 not meet the statutory definition of a trade secret." *Teva Pharm. USA, Inc. v. Health*
15 *IQ, LLC*, 2013 WL 12132029, at *5 (C.D. Cal. Apr. 29, 2013) (Carney, J.); *see also*
16 *Mattel, Inc. v. MGA Entm't, Inc.*, 782 F. Supp. 2d 911, 987 (C.D. Cal. 2011). As this
17 Court has recognized, "[t]o allow claims based on the misappropriation of
18 information that does not rise to the level of a trade secret would undermine the
19 purpose of the UTSA by allowing plaintiffs to 'alternatively plead[] claims with less
20 burdensome requirements of proof.'" *Band Pro Film & Digital, Inc. v. ARRI Inc.*,
21 2012 WL 12888099, at *3 (C.D. Cal. Oct. 10, 2012) (Carney, J.) (quoting *Mattel*,
22 782 F. Supp. 2d at 985). Thus, the CUTSA supersedes common-law claims alleging
23 conversion of "information . . . of value," even if that information does not rise to the
24 level of a trade secret. *Id.* at *2 (quoting *Silvaco Data Sys. v. Intel Corp.*, 184 Cal.
25 App. 4th 210, 239 n.22 (2010)).

26 As this Court has noted, "the critical inquiry in evaluating the applicability of
27 CUTSA supersession is whether the gravamen of [the] claims rests on the *improper*

1 *acquisition and/or use of information that is treated as confidential.*" *Epicor*
2 *Software Corp. v. Alt. Tech. Sols., Inc.*, 2015 WL 12724073, at *2 (C.D. Cal. Apr. 2,
3 2015) (Carney, J.); *see also Sunpower Corp. v. Solar City*, 2012 WL 6160472, at *13
4 (N.D. Cal. Dec. 11, 2012) (non-trade secret claims superseded if they allege "in
5 essence" that the defendant violated the plaintiff's "rights by acquiring, disclosing,
6 and/or using" the plaintiff's information without consent). This test is readily met
7 here, even looking no further than the words ChromaDex has chosen to use in its
8 claim for relief. ChromaDex contends that Elysium:

- 9 • "wrongfully used the NRC1 Analytical Method," which was "boldly
10 labeled" as "confidential" and "restrict[ed]" from disclosure (FAC ¶¶
11 172-76);
- 12 • "wrongfully used the pTeroPure GRAS Report," which "is nonpublic
13 and was labeled 'confidential'" and is "restrict[ed]" from disclosure (*Id.*
14 ¶¶ 179-182);
- 15 • "wrongfully obtained," "wrongfully used the information compiled by,"
16 and "wrongfully deployed" the NR Presentation and Pterostilbene
17 Presentation, which "belong[] to ChromaDex" and were "restric[ed]" in
18 their "use and disclosure" by "confidentiality and loyalty obligations"
19 (*Id.* ¶¶ 188-93, 198-202);
- 20 • "wrongfully obtained confidential . . . sales information" that was
21 prohibited from "disclosure" by "confidentiality agreements" and then
22 "used the confidential information during contract negotiations" (*Id.* ¶¶
23 206-210);
- 24 • "wrongfully used the NR Specifications," which were "prohibit[ed] . . .
25 from disclos[ure] . . . to third parties" and "improperly obtained
26 possession of other versions of the document when Morris breached his
27 confidentiality obligations to ChromaDex" (*Id.* ¶¶ 214-15); and
- 28 • "wrongful[ly] used the information contained" in the NR GRAS Dossier
that ChromaDex considered "valuable" and "had a property interest in,"
and "falsely claimed the resulting document as its own property." (*Id.* ¶¶
84, 221-26.)

25 Because the gravamen of these allegations is that Elysium improperly acquired
26 or used information that ChromaDex claims to be proprietary and confidential,
27

1 ChromaDex's conversion claim is superseded by the CUTSA. *See Epicor Software,*
2 2015 WL 12724073, at *4; *SunPower Corp.*, 2012 WL 6160472, at *13.

3 Further, ChromaDex's conversion claim is also preempted by the Copyright
4 Act. The Copyright Act "broad[ly]" preempts "state-law claims which come within
5 the subject matter of copyright law and which protect rights equivalent to any of the
6 exclusive rights within the scope of federal copyright law." *Jurisearch Holdings,*
7 *LLC v. Lawriter, LLC*, 2009 WL 10670588, at *5 (C.D. Cal. Apr. 13, 2009) (quoting
8 *Firoozye v. Earthlink Network*, 153 F. Supp. 2d 1115, 1122 (N.D. Cal. 2001)).
9 Allegations that a defendant "wrongfully used and distributed [a] work of
10 authorship"³ are "clearly equivalent to a copyright claim" and are thus preempted.
11 *Dielsi v. Falk*, 916 F. Supp. 985, 992 (C.D. Cal. 1996) (dismissing claim for
12 conversion). This is true even if the plaintiff alleges that his ideas were not just
13 copied, but "misappropriated." *Id.* (claim for converting intangible property is "part
14 and parcel" of a copyright claim).

15 This Court, and others within this Circuit, have repeatedly deemed conversion
16 claims to be preempted by the Copyright Act where, as here, the essence of the claim
17 was unauthorized copying, reproduction, or dissemination of the content of a
18 document the plaintiff purports to have authored, including electronic documents.
19 *See, e.g., Ryoo Dental, Inc. v. Han*, 2015 WL 4208580, at *1 (C.D. Cal. July 9, 2015)
20 (conversion claim preempted where defendant copied content from plaintiff's website
21 and placed it on his own); *Mktg. Info. Masters, Inc. v. Bd. of Trustees of Cal. State*
22 *Univ. Sys.*, 2008 WL 11339961, at *3 (S.D. Cal. Dec. 3, 2008) (dismissing
23 conversion claim as preempted where defendant allegedly copied "substantial
24

25 ³ Expressions of an idea, process or procedure are "works of authorship" that
26 fall within the subject matter of the Copyright Act. *Mktg. Info. Masters, Inc. v. Bd.*
27 *of Trustees of Cal. State Univ. Sys.*, 2008 WL 11339961, at *2 (S.D. Cal. Dec. 3,
2008).

1 portions of Plaintiff's 2003 Economic Impact Report" and used those portions, with
2 some edits, to create its own economic impact report); *Firoozye*, 153 F. Supp. 2d at
3 1130 (conversion claim preempted where defendant reproduced and used plaintiff's
4 software program in its own software package). Conversion claims like these are
5 preempted if they seek to vindicate rights the Copyright Act protects: to reproduce
6 the work, to prepare derivative works, to distribute copies, and, in some instances, to
7 display the work publicly. *See* 17 U.S.C. § 106.

8 In this case, ChromaDex alleges that (1) Elysium "retyped" and redistributed a
9 document ChromaDex had drafted describing its NRC1 Analytical Method (FAC ¶
10 175); (2) shared and "updated" the pTeroPure GRAS Report in order to generate its
11 own regulatory submission (*id.* ¶¶ 180-182); (3) "added slight and purely cosmetic
12 modifications" to the NR Presentation and Pterostilbene Presentation "and placed
13 [them] on an Elysium PowerPoint template" for distribution to potential investors
14 (*id.* ¶¶ 192-93, 201-02); (4) "retyped" the NR Specifications "word-for-word into a
15 separate document" and disseminated the new document to an alternative supplier
16 (*id.* ¶¶ 216-17); and (5) "took screenshots of the" NR GRAS Dossier "in a way to
17 remove all language" associating it with ChromaDex, who had allegedly authored it.
18 (*Id.* ¶ 225.) ChromaDex's claim based on these allegations is thus preempted by the
19 Copyright Act because the heart of the claim is that Elysium copied, reproduced, or
20 disseminated content that ChromaDex purports to have drafted without its consent.
21 *See, e.g., Ryoo Dental, Inc.*, 2015 WL 4208580, at *3. Because ChromaDex's claim
22 for conversion is completely preempted by the CUTSA and the Copyright Act, it
23 should be dismissed with prejudice. *Id.* (dismissing preempted claim with prejudice
24 because the claim could "not be saved by amendment").

25 **B. ChromaDex Fails to Plead Damages from Any Alleged Conversion.**

26 ChromaDex's claim for conversion also fails to adequately plead injury as a
27 result of Elysium's alleged conduct. A plaintiff that does not allege injury resulting

1 from the alleged conversion lacks standing. *See Trs. of S. Cal. Pipe Trades Health &*
2 *Welfare Tr. Fund v. Temecula Mech., Inc.*, 438 F. Supp. 2d 1156, 1170 (C.D. Cal.
3 2006) (dismissing conversion claim for lack of standing where plaintiffs pled neither
4 injury nor loss but only injury to third parties); *see also Kasdan, Simonds, McIntyre,*
5 *Epstein & Martin v. World Sav. & Loan Ass'n (In re Emery)*, 317 F.3d 1064, 1069
6 (9th Cir. 2003) (affirming grant of summary judgment on conversion claim where
7 plaintiff had suffered no injury). ChromaDex alleges two forms of injury here, both
8 inadequate: (i) that ChromaDex was damaged by "being denied a return on its
9 investment" in creating or developing the NRCl Analytical Method, the pTeroPure
10 GRAS Report, the NR Presentation, the Pterostilbene Presentation, the NR
11 Specifications, and the NR GRAS Dossier and underlying manufacturing process
12 (*see* FAC ¶¶ 177, 184, 195, 204, 218, 227); and (ii) that the purported conversion of
13 the MFN Breach Spreadsheet meant that ChromaDex was "put at a disadvantage
14 during contract negotiations" and "damaged by Elysium's plot to order sufficient
15 quantities of NIAGEN to entitle it to receive reduced prices for the ingredient under
16 Elysium's mis-interpretation of the NIAGEN Supply Agreement." (*See id.* ¶ 211.)

17 ChromaDex's first theory fails under California law. Although California
18 Civil Code Section 3336 describes a presumed methodology for calculating damages
19 from conversion, *see* Cal. Civ. Code § 3336, the statute describes "an appropriate
20 measure of damages, and does not provide that a plaintiff alleging conversion is
21 entitled to a presumption of injury;" rather, "[a] conversion plaintiff in California
22 court must still prove 'the fact of proximately caused injury.'" *Opperman v. Path,*
23 *Inc.*, 84 F. Supp. 3d 962, 990 (N.D. Cal. 2015). In vaguely alleging a denial of its
24 return on investment, ChromaDex fails to meet this burden. Simply, ChromaDex
25 does not describe what "return on investment" it expected and has been denied by
26 virtue of Elysium's conduct. Nor is such an allegation inferable from the text of the
27 FAC. First, ChromaDex contends that much of the allegedly converted material was

1 created in connection with ChromaDex's efforts to sell its Niagen and pTeroPure
2 ingredients,⁴ and ChromaDex alleges no manner in which Elysium's purported
3 conversion reduced its sales. For the other of the allegedly converted documents,
4 ChromaDex includes no description of its expectations in creating the allegedly
5 converted material and, correspondingly, no description whatsoever of the manner in
6 which it has been denied a return on investment.

7 Nor does it allege any other form of injury relating to these documents.
8 ChromaDex does not allege, for example, that it has been denied the value of the
9 allegedly converted materials through deprivation of physical possession or use, and
10 identifies no manner in which the allegedly converted information or materials have
11 been made less valuable to ChromaDex as a result of the alleged conversion. *See*
12 *Opperman*, 84 F. Supp. 3d at 990 (dismissing conversion claim for failure to allege
13 injury where plaintiffs had not provided details on how value of allegedly converted
14 property was "diminished" by defendants' conduct); *see also Low v. LinkedIn Corp.*,
15 900 F. Supp. 2d 1010, 1030 (N.D. Cal. 2012) (dismissing conversion claim for
16 failure to allege damages where plaintiff "failed to allege how he was foreclosed
17 from capitalizing on the value" of property). Nor does ChromaDex plead that
18 Elysium's use of the allegedly misappropriated documents or information has
19 allowed it to garner profits that would have otherwise accrued to ChromaDex.⁵

20 _____
21 ⁴ *See* FAC ¶ 172 (NRCI Analytical Method); ¶ 82-83 (NR GRAS Dossier);
22 ¶ 90 (NR Specifications); ¶ 106-07 (pTeroPure GRAS Report).

23 ⁵ Although ChromaDex alleges that "[h]ad Elysium spent the time and
24 resources to develop an alternative source of NR without stealing ChromaDex's
25 information, it would have taken a substantially longer period of time to develop the
26 competing supply of NR that caused ChromaDex to lose sales of NIAGEN it
27 otherwise would have made during that period of time" (FAC ¶ 111), this vague
assertion that ChromaDex lost out on sales it would have made to Elysium is
substantially at odds with the allegations made elsewhere in the FAC that Elysium
purchased sufficient supplies of NR in June 2016 to last it until well after the NR
Supply Agreement was terminated. (*See, e.g.*, FAC ¶ 55(c).) ChromaDex may not
plead as part of its contract breach claim that Elysium ordered ingredients that would

(cont'd)

1 ChromaDex further does not allege that the converted documents constitute
2 commercial property whose purported misuse caused injury in the form of forgone
3 licensing or royalty payments, likely because its limited or non-existent property
4 rights in the subject documents (as described below) would preclude any form of
5 licensing or pursuit of royalties. *See id.* (distinguishing cases where plaintiffs pled
6 the existence of "indisputably commercial intellectual property" and forgone
7 licensing and royalty fees); *compare to G.S. Rasmussen & Assocs. v. Kalitta Flying*
8 *Serv.*, 958 F.2d 896, 899-906 (9th Cir. 1992) (conversion plaintiff successfully pled
9 damages from denial on return in investment in FAA certificate that was capable of
10 being licensed by pleading that he had offered to license certificate to defendant who
11 had "pirated" the certificate instead of paying license fee). ChromaDex makes no
12 such allegation here about seeking licensing arrangements for any of the purportedly
13 converted material, and its admissions that it regularly distributed much of it to
14 customers or made it publicly available are at odds with such an inference. As such,
15 its claim for conversion should be dismissed. *See Tyrone Pac. Int'l.*, 658 F.2d at 667
16 (affirming dismissal of conversion claim for lack of cognizable damages where there
17 was no evidence that value of allegedly converted property had declined or
18 conversion caused plaintiff to lose opportunity to resell converted property).

19 ChromaDex's theory of damages for conversion of the MFN Breach
20 Spreadsheet based on the purported "disadvantage" it sustained during pricing
21 negotiations and "Elysium's plot to order sufficient quantities of NIAGEN to entitle
22 it to receive reduced prices for the ingredient under Elysium's mis-interpretation of

23

24 *(cont'd from previous page)*

25 last it through the contractual term while simultaneously pleading as part of its
26 conversion claim that ChromaDex was denied additional sales it would have made
27 Elysium during that same contractual term. *See Yau v. Deutsche Bank Nat'l Tr. Co.*
Ams., 2011 U.S. Dist. LEXIS 138584, at *31 (C.D. Cal. Nov. 8, 2011) (dismissing
breach claim where damages theory contradicted other allegations in complaint),
aff'd in part, 525 F. App'x 606, 608 (9th Cir. 2013).

28

1 the NIAGEN Supply Agreement" is no better pled. (FAC ¶ 211.) The MFN
2 Provision lays out an objective method of calculating the pricing due to Elysium
3 based on the pricing extended to third parties: If ChromaDex supplies Niagen to a
4 third party "at a price that is lower than that at which Niagen is supplied to Elysium
5 Health under this Agreement, then the price of Niagen supplied under this
6 Agreement shall be revised to such Third Party price . . . provided Elysium Health
7 purchases equal volumes or higher volumes than the Third Party." (See FAC Ex. A
8 § 3.1.) Accordingly, the only "disadvantage" to ChromaDex that can be inferred
9 from the FAC arising out of Elysium's possession of the information in the MFN
10 Breach Spreadsheet (which ChromaDex never alleges to be inaccurate or untrue) is
11 that Elysium received indication that it was entitled to, and had been denied, lower
12 prices for Niagen than ChromaDex had been charging—exactly the exchange of
13 information contemplated by the MFN Provision and that ChromaDex had agreed to
14 in entering into the contract. "[C]ompliance with a preexisting duty is not cognizable
15 harm." *Oster v. OneWest Bank, F.S.B.*, 2012 WL 13015020, at *7 (C.D. Cal. July 5,
16 2012); see also *Selective Ins. Co. of Am. v. Kuan-Tsan Yu*, 2014 WL 12674384, at *4
17 (W.D. Wash. Nov. 21, 2014) ("[R]equiring a party to comply with its contractual
18 obligations does not constitute harm.").

19 Finally, ChromaDex's contention of damage based on "Elysium's plot to order
20 sufficient quantities of NIAGEN to entitle it to receive reduced prices for the
21 ingredient under Elysium's mis-interpretation of the NIAGEN Supply Agreement" is
22 nonsensical. (FAC ¶ 211.) As described above, the pricing structure set forth in the
23 MFN Provision is mechanical and the pricing due to Elysium under that provision an
24 objective matter. ChromaDex thus essentially contends, again, that it was damaged
25 by the functioning of the contract as the parties had contemplated. This is
26 insufficient to plead injury. See *Oster*, 2012 WL 13015020, at *7.

27
28

1 MFN Provision that would trigger Elysium's entitlement to lower pricing. (*See id.*)
2 Having agreed to make information regarding its pricing to third parties the basis for
3 its pricing extended to Elysium, ChromaDex cannot now plausibly contend that it
4 had a "legitimate claim to exclusivity" relating to that information. *See, e.g.,*
5 *Kasdan*, 317 F.3d at 1071-72 (affirming dismissal of conversion claim where
6 defendant's actions were "consistent with [plaintiff's] limited property interest");
7 *Bank of N.Y. v. Fremont Gen. Corp.*, 523 F.3d 902, 914 (9th Cir. 2008) (affirming
8 dismissal of conversion claim where plaintiff consented to "exercise of dominion").

9 ChromaDex similarly contends that Elysium converted the NR Specifications,
10 in which it asserts a property interest "because it invested the resources to develop
11 the specifications, draft the document containing the specifications, and revise the
12 specifications as necessary." (FAC ¶ 90.) ChromaDex elsewhere admits, however,
13 that the NR Specifications were "incorporated into the terms of the NIAGEN Supply
14 Agreement." (*Id.* ¶ 91.) While its suggestion that the NR Specifications were terms
15 of the Agreement subject to non-disclosure obligations is misguided as described
16 below (*see infra*, Part V), its admission that the NR Specifications themselves were
17 part of the parties' agreement critically undermines its assertion of their ownership.⁶

18 Next, ChromaDex claims that Elysium converted "the NR GRAS Dossier and
19 the valuable information it contains" (*see* FAC ¶ 85), yet omits that the NR GRAS
20 Dossier is a **publicly available** document whose access and use by the public and
21 other manufacturers is expressly contemplated by FDA regulations. *See, e.g.,* 21
22 C.F.R. § 170.215 (2018) (describing incorporation into GRAS notice of "data and
23 information submitted by another party," such as that "contained in a previous GRAS

24 _____
25 ⁶ Further, ChromaDex essentially admits that it did not have a property interest
26 in the NR Specifications by alleging that the specifications sent to Elysium's NR
27 manufacturer "appear to be based on at least two or more versions of ChromaDex's
28 NR Specifications" (FAC ¶ 92), *i.e.*, did not constitute any set of specifications
ChromaDex actually purports to own.

1 notice"). Tellingly, ChromaDex only conclusorily alleges that the NR GRAS
2 Dossier contains "valuable information that belonged to ChromaDex" (*see* FAC
3 ¶ 84) and makes no statement about the nature of its alleged property right, of either
4 the information or the document. *Compare to G.S. Rasmussen*, 958 F.2d at 900
5 (FAA certification was cognizable property interest because, *inter alia*, certification
6 was "transferable" and "may be licensed"). ChromaDex therefore fails to plead a
7 "claim to exclusivity" relating to the NR GRAS Dossier or information within it—
8 including the NR Specifications, *see* Powell Decl. Ex. A at 17—with which Elysium
9 interfered, and its claim relating to conversion of the NR GRAS Dossier and NR
10 Specifications must therefore be dismissed. *See Amgen Inc. v. Sandoz Inc.*, 2015
11 U.S. Dist. LEXIS 34537, at *28 (N.D. Cal. Mar. 19, 2015) (dismissing claim for
12 conversion of FDA submission where FDA regulation "expressly contemplated" that
13 new applicants would rely on previous FDA submissions and "publicly available
14 safety and efficacy information"), *aff'd in part*, 794 F.3d 1347 (Fed. Cir. 2015).

15 **D. Much of ChromaDex's Claim for**
16 **Conversion Is Barred by the Economic Loss Doctrine.**

17 Further, the economic loss doctrine compels dismissal of ChromaDex's claim
18 of conversion insofar as it is based on the alleged conversion of the NRCl Analytical
19 Method, the NR Specifications, and the pTeroPure GRAS Report. (*See* FAC ¶ 172-
20 78, 179-185, 213-19.) As this Court explained in dismissing ChromaDex's
21 previously-asserted claim of fraud, the economic loss doctrine "generally bars tort
22 claims based on contract breaches, and 'requires a purchaser to recover in contract
23 for purely economic loss due to disappointed expectations, unless he can
24 demonstrate harm above and beyond a broken contractual promise.'" (Order at 10
25 (*citing Robinson Helicopter Co. v. Dana Corp.*, 34 Cal. 4th 979, 988 (2004)).
26 ChromaDex makes no such demonstration here. The purported misuse of these
27 documents is based on their disclosure to, respectively, Elysium's NR manufacturer

1 and Elysium's regulatory consultants for what ChromaDex contends to be purposes
2 not contemplated by the contracts. (See FAC ¶¶ 176, 182, 217.) ChromaDex
3 simultaneously alleges, however, that the same disclosure of these documents
4 violated provisions in the Supply Agreements. (See FAC ¶¶ 129, 139, 146.)
5 ChromaDex thus seeks to recover in tort "purely economic loss due to disappointed
6 expectations." Accordingly, its claims are barred by the economic loss doctrine.⁷
7 See *O'M & Assocs., Ltd. Liab. Co. v. Ozanne*, 2011 U.S. Dist. LEXIS 107677, at
8 *11-12 (S.D. Cal. Sept. 21, 2011) (dismissing conversion claims based on economic
9 loss doctrine where plaintiff had also alleged failure to return converted funds was
10 breach of contract).

11 **V. ChromaDex's New Allegations in Support of Its**
12 **Claims for Breach of Contract Are Legally Deficient.**

13 **A. ChromaDex Pleads No New Breach of the PT Supply Agreement.**

14 The new allegations that ChromaDex seeks to add in support of its claim for
15 breach of the PT Supply Agreement do not allege the existence of any breach at all.
16 Under California law, a defendant's breach is a necessary element of the cause of
17 action. See *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821, 124 Cal. Rptr.
18 3d 256, 263, 250 P.3d 1115, 1121 (2011). ChromaDex's new allegations of
19 Elysium's purported breach, however, are entirely consistent with Elysium's
20 *compliance* with the PT Supply Agreement. ChromaDex acknowledges that Section

21 ⁷ That ChromaDex's allegations of breach of contract relating to these
22 documents are deficient does not change this result. As described, both contracts
23 contain exceptions and limitations on application that ChromaDex fails to show do
24 not apply to bar its breach claims here. To allow ChromaDex to circumvent the
25 terms of the parties' negotiated relationship by bringing in tort a claim that it cannot
26 bring in contract would accomplish exactly the result the economic loss doctrine is
27 intended to foreclose. "[W]hen two parties make a contract, they agree upon the
28 rules and regulations which will govern their relationship; the risks inherent in the
agreement and the likelihood of its breach. . . . Under such a scenario, *it is*
appropriate to enforce only such obligations as each party voluntarily assumed,
and to give him only such benefits as he expected to receive; this is the function of
contract law.'" *Robinson Helicopter Co.*, 34 Cal. 4th at 992.

1 15.1 of the PT Supply Agreement permits some disclosure of information "on a
2 need-to-know basis 'to the extent such disclosure is reasonably necessary in
3 connection with such party's activities as expressly authorized by [the] Agreement"
4 (FAC ¶ 126), but omits the remainder of the section specifically allowing disclosure
5 to "consultants" and mention of Section 15.3, "Permitted Disclosures," stating that
6 the confidentiality obligations described in the agreement shall not apply where the
7 receiving party "is required . . . to disclose information to any governmental agency
8 for purposes of obtaining approval to test or market a [pTeroPure] product"
9 (*See* FAC Ex. C § 15.3.) ChromaDex alleges that Elysium breached the PT Supply
10 Agreement by disclosing the pTeroPure GRAS Report to its consultants in
11 connection with a submission to the FDA for its pTeroPure-containing product,
12 Basis (*see* FAC ¶¶ 106, 109)—exactly the situation of permitted disclosure
13 contemplated by Sections 15.1 and 15.3. In almost entirely disregarding these
14 provisions, and providing only a single conclusory allegation suggesting they do not
15 apply,⁸ ChromaDex fails to plausibly allege the existence of any breach. *See Asner*
16 *v. Actors' Equity Ass'n*, 2016 U.S. Dist. LEXIS 188801, at *6 (C.D. Cal. Dec. 8,
17 2016) (dismissal where claimed breach was "not inconsistent with the agreement").

18 **B. ChromaDex's New Allegations of Breach**
19 **of the NR Supply Agreement State No Claim.**

20 ChromaDex purports to bolster its claim for breach of the NR Supply
21 Agreement through new claims of misuse of purportedly confidential information,
22

23 ⁸ Although ChromaDex inserts a single allegation that the FDA submission
24 was regarding "a pterostilbene manufactured by an entity other than ChromaDex"
25 (FAC ¶ 124) this is contradicted by its other allegations that the submission was for
26 Basis. (*See* FAC ¶¶ 106, 110.) ChromaDex also alleges that Elysium incorporated
27 the pTeroPure it purchased from ChromaDex into Basis through July 2017. (*See*
28 FAC ¶ 55(c).) In light of this contradiction, the Court need not credit this allegation.
See Warner v. Tinder Inc., 105 F. Supp. 3d 1083, 1098 (C.D. Cal. 2015) (noting
contradictory allegations are inherently implausible and do not meet Rule 8
standards).

1 but nearly every new allegation fails. First, ChromaDex's claim insofar as it is based
2 on Elysium's purported disclosure of the NR Study Data must be dismissed. Section
3 1.4 of the NR Supply Agreement unequivocally states that "Confidential
4 Information" "shall not include information which [has] become publicly known,
5 without fault on the part of the other party, subsequent to disclosure of such
6 information by the disclosing party to the other party." (*See* FAC Ex. A § 1.4.)
7 ChromaDex *admits* that it publicized the NR Study Data, including through
8 inclusion in marketing material and outright publication, subsequent to the alleged
9 disclosure (*see* FAC ¶ 140), rendering the NR Study Data not "Confidential
10 Information" under the plain terms of Section 1.4. Accordingly, ChromaDex's claim
11 of breach insofar as it is based on disclosure of the NR Study Data must be
12 dismissed. *See, e.g., Freeman Inv. Mgmt. Co., LLC v. Frank Russell Co.*, 2016 U.S.
13 Dist. LEXIS 136220, at *40 (S.D. Cal. Sept. 30, 2016) (dismissing breach claim
14 under Washington law where plaintiff made supposed confidential information
15 public, which thus did not constitute confidential information protected by NDA).

16 Second, ChromaDex's claim of breach insofar as it arises from the purported
17 disclosure of the NR Specifications also fails. Although ChromaDex conclusorily
18 alleges that the NR Specifications were "incorporated into the terms of the NIAGEN
19 Supply Agreement as Exhibit A to the agreement" and suggests that they were
20 thereby subject to Section 4.2's restriction on disclosure of "any terms or conditions
21 of [the] Agreement" (FAC ¶ 91), the Court is "not bound to accept as true [this] legal
22 conclusion couched as a factual allegation" on a motion pursuant to Rule 12(b)(6).
23 *See Ecojet, Inc. v. Pure Spa Components, Inc.*, 2017 U.S. Dist. LEXIS 183625, at
24 *16 (C.D. Cal. Feb. 10, 2017). And the wrongheadedness of that legal conclusion is
25 in fact easily inferable from ChromaDex's other allegations that it "provided the NR
26 Specifications to its NR customers" (*see* FAC ¶ 90)—thereby, under its own
27 purported interpretation of the NR Supply Agreement, repeatedly violating the

1 parties' *mutual* obligation to refrain from disclosure of the agreement's "terms."
2 Thus, ChromaDex's *ipse dixit* contention that the NR Specifications constituted a
3 "term" of the NR Supply Agreement subject to Section 4.2's nondisclosure obligation
4 is simply implausible. Its claim insofar as it is based on that contention should be
5 dismissed here. *See, e.g., Spirtos v. Anderson (In re Spirtos)*, 2011 Bankr. LEXIS
6 907, at *21-22 (B.A.P. 9th Cir. Feb. 2, 2011) (affirming dismissal of breach claim
7 where plaintiff's interpretation of terms in relevant agreement was "implausible").

8 **VI. ChromaDex Fails to Adequately Allege Trade Secret Misappropriation.**

9 ChromaDex's original claims for trade secret misappropriation were dismissed
10 by this Court for its failure to adequately plead a protectable trade secret. (*See Order*
11 *at 12-14.*) The FAC fares no better. The CUTSA sets forth that "[a] prima facie
12 claim for misappropriation of trade secrets requires the plaintiff to demonstrate: (1)
13 the plaintiff owned a trade secret, (2) the defendant acquired, disclosed, or used the
14 plaintiff's trade secret through improper means, and (3) the defendant's actions
15 damaged the plaintiff." *Magic Laundry Servs, Inc. v. Workers United Serv.*
16 *Employees Int'l Union*, 2013 WL 1409530, at *3 (C.D. Cal. Apr. 8, 2013). The
17 elements of a prima facie claim under the federal Defend Trade Secrets Act
18 ("DTSA") are materially identical. *See* 18 U.S.C. § 1836, *et seq.* Though this is its
19 third attempt to allege claims for misappropriation of trade secrets, ChromaDex still
20 fails to adequately allege several of these essential elements for its claim of theft of
21 information in the Ingredient Sales Spreadsheet, and its claims accordingly must be
22 dismissed.

23 **A. ChromaDex Has Failed to Plead the Existence of a**
24 **Protectable Trade Secret in the Ingredient Sales Spreadsheet.**

25 Under the CUTSA, a trade secret is defined as information that "derives
26 independent economic value, actual or potential, from not being generally known to
27 the public or to other persons who can obtain economic value from its disclosure or

1 use.” Cal. Civ. Code § 3426.1(d). ChromaDex utterly fails to allege that the
2 information in the Ingredient Sales Spreadsheet "derive[s] independent economic
3 value from not being generally known," and thus fails to plead the existence of a
4 protectable trade secret. *Webpass Inc. v. Banth*, 2014 WL 7206695, at *3 (N.D. Cal.
5 Dec. 18, 2014). It is not enough that the complaint "conclusorily allege[] that the
6 information had and continues to have significant independent economic value by
7 virtue of not being generally known to the public or to Plaintiff's competitors," *id.*,
8 yet ChromaDex barely does even that: It alleges only that the Ingredient Sale
9 Spreadsheet "derives independent economic value from not being generally known
10 to the public" and "gives ChromaDex a competitive edge against other ingredient
11 suppliers," with no description of this "edge" whatsoever. (FAC ¶¶ 151, 152.)
12 ChromaDex thus does not even attempt to support its contention that the Ingredient
13 Sales Spreadsheet has independent economic value derived from its confidentiality,
14 and its conclusory assertions are insufficient as a matter of law. *Webpass*, 2014 WL
15 7206695, at *3.

16 **B. ChromaDex Fails to Plead Damages from**
17 **Any Alleged Trade Secret Misappropriation.**

18 Even if ChromaDex had adequately alleged the existence of protectable trade
19 secrets (which, for the reasons described above, it has not done), its claims for
20 misappropriation of trade secrets fail for another independent reason: It fails to allege
21 damages. Damages is an essential element of a claim for misappropriation of trade
22 secrets. *See Contemporary Servs. Corp. v. Landmark Event Staffing Servs. Inc.*,
23 2017 U.S. App. LEXIS 5572, at *3 (9th Cir. Mar. 30, 2017) (listing elements); *see*
24 *also Teva Pharm. USA, Inc. v. Health IQ, LLC*, 2013 WL 12134185, at *3 (C.D. Cal.
25 July 2, 2013) (Carney, J.) (listing "resulting or threatened injury to the plaintiff" as
26 element of trade secret claim). ChromaDex fails to show that it was damaged by any
27 alleged misappropriation and its claims thus must be dismissed.

1 ChromaDex claims that Elysium's alleged misappropriation has "unjustly
2 enriched Elysium and damaged ChromaDex in an amount to be determined at trial."
3 (FAC ¶ 161.) The forms of injury it alleges in its FAC, however, belie this desultory
4 pleading. First, it is apparent that ChromaDex alleges no manner in which it, rather
5 than a third party, has sustained damage as the claim requires. "[A] prima facie
6 claim for misappropriation of trade secrets requires the plaintiff to demonstrate the
7 defendant's actions damaged *the plaintiff*." *Contemporary Servs. Corp. v. Landmark*
8 *Event Staffing Servs., Inc.*, 677 F. App'x at 314-15. ChromaDex contends that
9 possession of the Ingredient Sales Spreadsheet gave Elysium a "substantial business
10 advantage against it[s] competitors" (FAC ¶ 152) but admits it was not a competitor
11 of Elysium's; rather, it alleges that its *customers* are Elysium's competitors. (FAC ¶
12 77.) As such, ChromaDex does not plausibly allege that it, rather than its customers
13 or Elysium's competitors, sustained harm by virtue of Elysium's "substantial business
14 advantage." *See E.&J. Gallo Winery v. Instituut Voor Landbouw-En*
15 *Visserijonderzoek*, 2018 WL 2463869, at *7-8 (E.D. Cal. June 8, 2018) (dismissing
16 misappropriation claim where plaintiff had not pled that it, rather than other parties,
17 sustained harm from defendant's use of trade secrets).

18 Next, ChromaDex suggests that possession of the Ingredient Sales Spreadsheet
19 "gave Elysium an advantage in contract negotiations with ChromaDex because
20 Elysium had access to the identities of customers purchasing specific ingredients and
21 the associated prices and volumes." (FAC ¶ 152.) Although the FAC purports
22 elsewhere to describe the negotiations over the credit due Elysium that followed the
23 alleged misappropriation of the Ingredient Sales Spreadsheet on July 18, 2016 (*see*
24 FAC ¶ 45-49), this allegation is bare of detail of any manner in which Elysium held
25 or used an "advantage" over ChromaDex arising out of its possession of the
26 Ingredient Sales Spreadsheet, and that it used such an advantage is contradicted by
27 ChromaDex's allegation that the negotiations culminated in ChromaDex's

