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 9 *ChromaDex, Inc.*

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**
 12 **(SOUTHERN DIVISION)**

14 ChromaDex, Inc. ,
 15 Plaintiff,
 16 v.
 17 Elysium Health, Inc.,
 18 Defendant.

19 Elysium Health, Inc.,
 20 Counterclaimant,

21 v.
 22 ChromaDex, Inc.,
 23 Counter-Defendant.

Case No. 16-cv-2277-KES
FIRST AMENDED COMPLAINT
(1–3) BREACH OF CONTRACT;
(4) FRAUDULENT DECEIT;
(5) MISAPPROPRIATION OF TRADE
SECRETS, CAL. CIV. CODE § 3426,
ET SEQ.; AND
(6) MISAPPROPRIATION OF TRADE
SECRETS, 18 U.S.C. § 1836.

DEMAND FOR JURY TRIAL

1 Plaintiff ChromaDex, Inc. (“ChromaDex”), by and through its undersigned
2 attorneys, brings this action for breach of contract, fraudulent deceit, and
3 misappropriation of trade secrets against Elysium Health, Inc. (“Elysium”) and seeks
4 money damages, punitive damages, interest, disgorgement, attorney’s fees, injunctive
5 relief, and other relief. ChromaDex demands a jury trial.

6 **NATURE OF THE CASE**

7 1. ChromaDex brings this action for relief from a concerted attack by
8 Elysium to undermine and harm ChromaDex through willful breaches of contract and
9 theft of ChromaDex’s confidential and proprietary information, all inuring to
10 Elysium’s commercial benefit.

11 2. ChromaDex is Elysium’s sole supplier of the two active ingredients in
12 Elysium’s only product: a dietary supplement named “Basis.” Specifically,
13 ChromaDex supplies Elysium with NIAGEN®, a patented, proprietary health
14 ingredient that is comprised of nicotinamide riboside (“NR”), and pTeroPure®, a
15 patented, proprietary health ingredient made of pterostilbene, in return for product
16 payments and sales royalties for NIAGEN.

17 3. Beginning in the spring of 2016, Elysium became antagonistic towards—
18 and began its efforts to undermine, attack, and harm—ChromaDex. In June 2016,
19 Elysium, through several false representations, induced ChromaDex to fill large orders
20 of NIAGEN and pTeroPure while never intending to pay for them. In doing so,
21 Elysium intended to use the economic stress its nonpayment would cause to exert
22 pressure on ChromaDex while negotiating the price for NIAGEN.

23 4. While Elysium was making its misrepresentations, but before it informed
24 ChromaDex it would not pay for the product it ordered, Elysium also conspired with
25 two ChromaDex employees to steal ChromaDex’s confidential and proprietary
26 information in order to disrupt ChromaDex’s commercial relationships and activities.
27 Elysium successfully prevailed upon ChromaDex’s employees to misappropriate
28 ChromaDex’s trade secrets in violation of their confidentiality agreements with

1 ChromaDex. Elysium then used that information to its benefit knowing it had been
2 improperly taken from ChromaDex. After wrongfully disclosing ChromaDex’s trade
3 secrets, both employees resigned from ChromaDex and immediately began working
4 for Elysium.

5 5. Elysium’s breaches and unlawful conduct have caused millions of dollars
6 of damages to ChromaDex, which brings this lawsuit for relief.

7 **JURISDICTION AND VENUE**

8 6. This Court has subject matter jurisdiction over ChromaDex’s claim for
9 violation of the Federal Defense of Trade Secrets Act, 18 U.S.C. § 1836, pursuant to
10 28 U.S.C. § 1331. The Court can exercise supplemental subject-matter jurisdiction
11 over ChromaDex’s state-law claims under 28 U.S.C. § 1367(a), and it should do so in
12 order to promote judicial economy, avoid duplicative procedures, and avert the risk of
13 inconsistent adjudications of the same issues of fact and law.

14 7. Diversity jurisdiction is also conferred upon this Court by 28 U.S.C.
15 § 1332 because the matter in controversy exceeds the sum or value of seventy-five
16 thousand U.S. Dollars (\$75,000), exclusive of interest and costs, and involves a
17 Delaware Corporation with its principal place of business in New York and a
18 California Corporation with its principal place of business in California.

19 8. Venue is proper in this District under 28 U.S.C. § 1391 because
20 ChromaDex is located in Orange County, California and the parties agreed to this
21 forum to resolve disputes under Section 15.2 of the Royalty Agreement, which states
22 that “[a]ny dispute arising out of this Agreement shall be brought in, and the parties
23 consent to personal and exclusive jurisdiction of and venue in the Federal District
24 Court in Orange County, California.”

25 **PARTIES**

26 9. Plaintiff ChromaDex is a California Corporation with its principal place
27 of business located at 10005 Muirlands Blvd, Suite G, Irvine, CA 92618.
28 ChromaDex discovers, acquires, develops, and commercializes patented and

1 proprietary ingredient technologies in the dietary supplement, food, beverage, skin
2 care, and pharmaceutical markets. Its portfolio of patented ingredient technologies
3 includes NIAGEN®, pTeroPure®, PUREENERGY®, ProC3G®, and AnthOrigin™.

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

8 FACTUAL ALLEGATIONS

9 ChromaDex and Elysium

10 11. ChromaDex sells NIAGEN and other ingredients to customers across the
11 country, one of which is Elysium.

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

17 13. NIAGEN is a patented, proprietary dietary ingredient owned by
18 ChromaDex. ChromaDex is the sole owner of the brand “NIAGEN” and the
19 exclusive licensee to several patents related to NR and its manufacture.

20 14. pTeroPure is made up of pterostilbene, which activates a very specific
21 nuclear receptor known as PPAR-alpha. Nuclear receptors are proteins that activate
22 gene expression. PPAR-alpha is activated during fasting states or the prolonged
23 periods without food. Once activated, PPAR-alpha controls lipid metabolism among
24 other essential functions.

25 15. pTeroPure is a patented, proprietary dietary ingredient owned by
26 ChromaDex. ChromaDex is the sole owner of the brand “pTeroPure.”

27 16. ChromaDex sells—and Elysium buys—NIAGEN and pTeroPure subject
28 to three contracts: (1) the NIAGEN Supply Agreement, dated February 3, 2014

1 (attached hereto as Exhibit A), as amended by the Amendment to Supply Agreement,
2 dated February 19, 2016 (attached hereto as Exhibit B) (as so amended, the “NIAGEN
3 Supply Agreement”); (2) the pTeroPure Supply Agreement, dated June 26, 2014
4 (attached hereto as Exhibit C) (the “pTeroPure Supply Agreement,” and together with
5 the NIAGEN Supply Agreement, the “Supply Agreements”); and (3) the Trademark
6 License and Royalty Agreement, dated February 3, 2014 (attached hereto as Exhibit
7 D) (the “Royalty Agreement”) (collectively, the “Agreements”).

8 17. ChromaDex and Elysium entered the NIAGEN Supply Agreement and
9 the Royalty Agreement on February 3, 2014. The parties entered an Amendment to
10 the NIAGEN Supply Agreement on February 9, 2016.

11 18. The parties entered the pTeroPure Supply Agreement on June 26, 2014.

12 19. Elysium sells a health supplement called Basis which combines NIAGEN
13 and pTeroPure, along with other non-active ingredients. Basis is Elysium’s sole
14 product on the market. ChromaDex is the sole source and supplier of NR, and is
15 Elysium’s sole supplier of NR and pterostilbene.

16 **Elysium’s False Promises**

17 20. ChromaDex’s and Elysium’s commercial arrangement was expanding
18 but unremarkable until June 28, 2016. In the first quarter of 2016, Elysium ordered
19 nearly double the amount of NIAGEN it ordered in all of 2015.

20 21. In the second quarter of 2016, Elysium first raised concerns about pricing
21 under the NIAGEN Supply Agreement directly with Frank Jaksch, co-founder and
22 CEO of ChromaDex, and Will Black, ChromaDex’s Vice President of Sales and
23 Marketing. Mr. Jaksch reached out to Elysium in an effort to open a dialogue about
24 their concerns and ultimately resolve them. Elysium, however, refused and/or ignored
25 these offers to talk.

26 22. On June 28, 2016, without any prior discussion or advance notification,
27 Elysium submitted two extraordinarily large purchase orders for NIAGEN and
28 pTeroPure (the “June 28 Purchase Orders”). These amounts were approximately four

1 times larger than any previous order from Elysium, and more than double the sum of
2 all Elysium's prior orders. The June 28 Purchase Orders included a demand for the
3 two products at less than half the parties' agreed price. Elysium never communicated
4 about or discussed the proposed pricing changes with ChromaDex before submitting
5 its June 28 Purchase Orders. Elysium knew or should have known that ChromaDex
6 would not accept the June 28 Purchase Orders at that price.

7 23. Because the June 28 Purchase Orders were wildly inconsistent with the
8 parties' Supply Agreements and past dealings, and in light of Elysium's subsequent
9 failure to pay for the NIAGEN and pTeroPure supplied by ChromaDex, ChromaDex
10 alleges on information and belief that Elysium intended to induce ChromaDex to
11 inadvertently supply large amounts of NIAGEN and pTeroPure to Elysium at grossly
12 discounted prices.

13 24. ChromaDex noticed the grossly discounted prices on the June 28
14 Purchase Orders and did not fulfill them. Instead, ChromaDex reached out to Elysium
15 to discuss the June 28 Purchase Orders and their inconsistency with the parties'
16 Supply Agreements.

17 25. After Elysium again showed an unwillingness to engage with
18 ChromaDex's senior management to discuss the June 28 Purchase Orders, Mark
19 Morris—who was at the time ChromaDex's Vice President of Business Development
20 and the one person at ChromaDex whom Elysium would respond to in a productive
21 manner—helped schedule a call between ChromaDex and Elysium to address the
22 issues between the parties, including the June 28 Purchase Orders. The call facilitated
23 by Morris was set for June 30, 2016.

24 26. On June 30, 2016, Mr. Jaksch and Mr. Black of ChromaDex, joined a call
25 with Elysium's CEO, Eric Marcotulli, and COO, Dan Alminana (the "June 30 Call").

26 27. On the June 30 Call, the parties discussed Elysium's concerns and the
27 appropriate pricing of NIAGEN for the orders Elysium wished to place. Alminana
28 and Marcotulli stated that Elysium intended to be a good business partner to

1 ChromaDex and explained that Elysium was ramping up, which was the reason the
2 June 28 Purchase Orders were far larger than their past orders. Alminana and
3 Marcotulli represented that, due to the ramp up, Elysium expected to use all the
4 NIAGEN ordered over the next few months and would place additional large orders in
5 Q3 and Q4 2016. In reliance on Elysium's statements and promises, ChromaDex
6 offered Elysium a discounted price for NIAGEN.

7 28. Though Elysium was not entirely satisfied with the discounted price,
8 Marcotulli represented that Elysium would accept that price, place an order so that
9 Elysium's supply was not interrupted, and work to resolve Elysium's remaining
10 concerns at another time.

11 29. Later that same day, June 30, 2016, Elysium submitted two purchase
12 orders to ChromaDex for pTeroPure and NIAGEN (the "June 30 Purchase Orders").
13 As agreed upon during the June 30 Call, the June 30 Purchase Orders superseded the
14 (in retrospect, disingenuous) June 28 Purchase Orders. And, although smaller than the
15 June 28 Purchase Orders, the June 30 Purchase Orders were still two times the size of
16 any of Elysium's previous fulfilled orders.

17 30. According to the terms of the Supply Agreements, and in reliance on the
18 representations Alminana and Marcotulli made on the June 30 Call, ChromaDex filled
19 the June 30 Purchase Orders on July 1, 2016 and August 9, 2016. ChromaDex
20 provided Elysium with three invoices for the shipments by email on July 1, 2016 and
21 August 9, 2016 (the "Past Due Invoices").

22 31. The total amount Elysium owes ChromaDex for the Past Due Invoices is
23 \$2,983,350.

24 32. On July 18, 2016, in response to an email from Thomas Varvaro,
25 ChromaDex's CFO, requesting an estimate of royalties to be due for Q2 2016,
26 Elysium, through Alminana, provided an estimate for the royalties due for Q2,
27 implying that the Royalty Report and payment would be made as usual.

28 33. On August 9, 2016, Mr. Varvaro emailed Mr. Alminana to request a final

1 Royalty Report for Q2 2016. However, Alminana did not respond.

2 34. On August 10, 2016—one day after ChromaDex confirmed that it
3 shipped the last portion of pTeroPure to Elysium—Alminana wrote an email to
4 ChromaDex stating that Elysium would not pay the Past Due Invoices until the
5 additional concerns raised on the June 30 Call were resolved according to terms set by
6 Elysium. However, over the next several weeks, Alminana refused ChromaDex’s
7 offers to meet, constructively engage, and resolve Elysium’s concerns, all the while
8 maintaining that Elysium would not pay for the product that it ordered until Elysium’s
9 concerns were resolved.

10 35. On August 12, 2016, Mr. Black of ChromaDex responded by requesting
11 an in-person meeting to discuss Elysium’s concerns and affirmed ChromaDex’s
12 commitment to its relationship with Elysium.

13 36. Mr. Black received no response to his invitation for an in-person
14 meeting, despite exchanging several emails with Alminana. Mr. Black reiterated his
15 invitation on August 17, 2016. Alminana, yet again, ignored this invitation and
16 refused to discuss the issues even by phone. For all intents and purposes, Elysium
17 went dark, refusing to communicate with ChromaDex’s management team.

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

22 38. Elysium at all times refused to pay the amount due for the Past Due
23 Invoices and to engage in discussions about a resolution. Elysium has refused to
24 make good on Alminana and Marcotulli’s promises on behalf of Elysium to attempt to
25 resolve their concerns with ChromaDex and have refused to pay for the June 30
26 Orders.

27 **Elysium’s Fraudulent Intent**

28 39. At the time Marcotulli and Alminana spoke on the June 30 Call, Elysium

1 had no intention of (1) ever working with ChromaDex to resolve Elysium's concerns
2 about the NIAGEN Supply Agreement, (2) paying for the NIAGEN or pTeroPure
3 ordered in the June 30 Purchase Orders, or (3) ramping up their sales to the degree
4 they represented.

5 40. Instead, having failed to induce ChromaDex to supply NIAGEN and
6 pTeroPure at grossly discounted prices with the June 28 Purchase Orders, Marcotulli
7 and Alminana made their false representations on the June 30 Call with the intent of
8 inducing ChromaDex to provide it with large supplies of NIAGEN and pTeroPure and
9 to then exert financial pressure on ChromaDex by refusing to pay for the orders.

10 41. Alminana and Marcotulli further intended to use that financial pressure as
11 bargaining leverage if and when Elysium ever decided to resolve their concerns about
12 the NIAGEN Supply Agreement.

13 42. Alminana's and Marcotulli's intent is evidenced by the fact that
14 (1) Elysium never ramped up in a way that was consistent with Alminana and
15 Marcotulli's representations on the June 30 Call; (2) the NIAGEN and pTeroPure that
16 was delivered in July and August 2016 has been sufficient supply for Elysium until
17 the present and it is expected to last well into 2017, months beyond what Alminana
18 and Marcotulli projected on the June 30 Call; and (3) Elysium did not place any other
19 orders, let alone additional large orders, in Q3 and Q4 2016 as Alminana and
20 Marcotulli represented it would.

21 43. Marcotulli and Alminana's false promises were further motivated by the
22 fact that Elysium, which was seeking financing during the middle of 2016 and at least
23 into November 2016, has been able to improve its balance sheet by continuing to sell
24 its product for millions of dollars in revenue without paying ChromaDex a dime for
25 the supply, likely engaging in fictional book keeping and deceiving potential or actual
26 investors about Elysium's financial condition.

27 44. Elysium's continued refusal to engage in substantive discussions
28 regarding its failed payments and terms for moving forward, has forced ChromaDex

1 to file this Complaint in order for it to obtain the monies owed under the Agreements.

2 **Breach of the pTeroPure Supply Agreement**

3 45. The pTeroPure Supply Agreement sets forth the terms under which
4 ChromaDex would sell and deliver, and Elysium would purchase, pTeroPure.

5 46. Section 2.1 of the pTeroPure Supply Agreement specifies that Elysium
6 shall place orders for the product by submitting purchase orders.

7 47. Section 2.2 sets the price for pTeroPure and states that “[f]ailure to make
8 prompt and full payment hereunder constitutes a material breach of the Agreement.”

9 48. The invoices for the pTeroPure shipped on July 1, 2016 and August 9,
10 2016, contain payment terms specifying that payment must be made “30% Net30 70%
11 Net60,” meaning 30% of the payment is due within 30 days of the date of the invoice
12 and 70% of the payment is due within 60 days of the date of the invoice.

13 49. Elysium breached the pTeroPure Supply Agreement on July 31, 2016, by
14 failing to pay 30% of the amount due within 30 days of the July 1, 2016 invoice. It
15 further breached the agreement by failing to pay any monies due before August 30,
16 2016, 60 days after the date of the July 1, 2016 invoice.

17 50. Elysium breached the pTeroPure Supply Agreement on September 8,
18 2016, by failing to pay 30% of the amount due within 30 days of the August 9, 2016
19 invoice. It further breached the agreement by failing to pay any monies due before
20 October 8, 2016, 60 days after the date of the August 9, 2016 invoice.

21 **Breach of the NIAGEN Supply Agreement**

22 51. The NIAGEN Supply Agreement sets forth the terms under which
23 ChromaDex would sell and deliver, and Elysium would purchase, NIAGEN.

24 52. Section 7.4 of the NIAGEN Supply Agreement provides that it shall be
25 governed by and construed in accordance with the laws of the State of California.

26 53. Section 3.1 of the NIAGEN Supply Agreement sets the maximum price
27 for NIAGEN provided by ChromaDex to Elysium.

28 54. Section 3.4 of the NIAGEN Supply Agreement states that “Elysium

1 Health shall pay ChromaDex within thirty (30) days from the date of the applicable
2 invoice by ChromaDex to Elysium Health for all NIAGEN® purchased”

3 55. Elysium breached the NIAGEN Supply Agreement on July 31, 2016 by
4 failing to pay the amount due within 30 days of the July 1, 2016 invoice, as required
5 by Section 3.4 of the agreement.

6 56. On October 31, 2016, ChromaDex sent to Elysium, in writing, a notice
7 letter indicating it would not renew the NIAGEN Supply Agreement. Thus the
8 NIAGEN Supply Agreement will expire, according to Section 5.1 of that agreement,
9 after the initial term of three years on February 3, 2017.

10 **Breach of the Royalty Agreement**

11 57. According to the terms of the Royalty Agreement, Elysium is required to
12 pay royalties to ChromaDex based on its net sales of product containing NIAGEN.

13 58. Section 15.2 of the Royalty Agreement provides that “all actions for the
14 breach thereof will be governed, construed, and interpreted in accordance with the
15 laws of the State of California.”

16 59. Section 15.2 of the Royalty Agreement further provides that “any non-
17 contractual cause of action that either party may assert . . . will be governed by U.S.
18 federal law and the law of the State of California.”

19 60. Pursuant to Section 9.2 of the Royalty Agreement, the royalty rate
20 Elysium is to pay to ChromaDex is determined according to the total cumulative
21 worldwide net sales of products containing NIAGEN by Elysium and the
22 corresponding royalty rate as specified in the table in Section 9.2 of the Royalty
23 Agreement.

24 61. Under Section 9.4 of the Royalty Agreement, Elysium is required to
25 “furnish to ChromaDex a quarterly written report showing in reasonably specific
26 detail the calculation of royalties owing for the reporting period.” Section 9.4 further
27 states that “[r]eports shall be due on the ninetieth (90th) day following the close of
28 each quarter.”

1 62. Section 9.7 of the Royalty Agreement provides that “royalties shown to
2 have accrued by each Royalty Report provided for under Section 9.4 above shall be
3 due on the date such Royalty Report is due.”

4 63. On September 28, 2016, 90 days after the close of the quarter ended
5 June 30, 2016, Elysium breached the Royalty Agreement by failing to furnish to
6 ChromaDex the Royalty Report and payment required under Section 9.4.

7 64. On December 31, 2016, 90 days after the close of the quarter ended
8 September 30, 2016, Elysium breached the Royalty Agreement by failing to furnish to
9 ChromaDex the Royalty Report and payment required under Section 9.4.

10 65. Based on its refusal to pay the royalties due on September 28, 2016 and
11 December 31, 2016, ChromaDex alleges on information and belief that Elysium will
12 continue to breach the Royalty Agreement because it does not intend to furnish the
13 required Royalty Report or payment for the quarter ending December 31, 2016, which
14 will come due on March 31, 2017.

15 66. The information necessary to determine the total amount of royalties due
16 under the Royalty Agreement for the quarters ended June 30, 2016, September 30,
17 2016, and December 31, 2016, is within the sole possession of Elysium. However,
18 Elysium’s sales of product containing NIAGEN increased in the first half of 2016, and
19 by all accounts, continued to increase in the second half of 2016. ChromaDex
20 therefore believes that royalties due for each successive quarter have increased as
21 well. This conclusion is supported by Alminana’s estimate of the Q2 2016 royalty, a
22 nearly significant increase over the royalty paid for Q1 2016.

23 67. Based on Elysium’s continued growth in sales, ChromaDex estimates
24 that the total amount of royalties due for Q2, Q3, and Q4 of 2016 will be no less than
25 \$1 million.

26 **Mark Morris and Ryan Dellinger Conspire with and Aid Elysium**

27 68. While engaged in the above fraudulent and unlawful conduct, Elysium
28 was also soliciting confidential information about ChromaDex’s operations from two

1 ChromaDex employees: Mark Morris and Ryan Dellinger.

2 69. Beginning in 2015, Mark Morris, who was the Vice President of
3 Business Development of ChromaDex at the time, but is now the Head of Scientific
4 Technology at Elysium, was the primary relationship manager of Elysium's account at
5 ChromaDex.

6 70. Ryan Dellinger, in his role as Director of Scientific Affairs at
7 ChromaDex, was integrally involved in the development of products, including
8 coordination of clinical studies with ChromaDex's partners.

9 71. Both Morris and Dellinger agreed to keep confidential and not to disclose
10 ChromaDex's trade secret and proprietary information in express employee
11 confidentiality agreements.

12 72. Elysium induced Morris and Dellinger to breach their confidentiality
13 agreements by wrongfully divulging ChromaDex's confidential and proprietary
14 information, and to conspire with Elysium to injure ChromaDex to Elysium's benefit.

15 73. On or around April 28, 2016, Morris informed Alminana and Marcotulli
16 about ChromaDex's confidential business dealings and information ChromaDex had
17 acquired about one or more potential partners.

18 74. On or around May 25, 2016, Morris made an unusual request for the
19 contact information for one of ChromaDex's research partners from Dellinger, which
20 Dellinger provided. Less than a month later, on or around June 24, 2016, Dellinger
21 was contacted by that ChromaDex partner, who informed him that he had been
22 contacted by Elysium. Dellinger encouraged that ChromaDex partner to talk with
23 Elysium and did not inform anyone at ChromaDex about Elysium's activity.

24 75. On July 16, 2016, Morris resigned from ChromaDex. Shortly thereafter,
25 he joined Elysium.

26 76. On August 10, 2016—the same day that Elysium notified ChromaDex
27 that it would not pay the Past Due Invoices—Dellinger resigned from ChromaDex
28 effective immediately. Shortly thereafter, Dellinger joined Elysium.

1 85. The NIAGEN Supply Agreement is a binding and enforceable contract
2 between ChromaDex and Elysium.

3 86. ChromaDex fulfilled its obligations under the NIAGEN Supply
4 Agreement by fulfilling the June 30, 2016 NIAGEN purchase order within 30 days.

5 87. Elysium has materially breached the NIAGEN Supply Agreement by
6 refusing to pay the monies owed to ChromaDex for the NIAGEN which ChromaDex
7 sold and delivered to Elysium.

8 88. Elysium's material breach of the NIAGEN Supply Agreement injured
9 ChromaDex and caused it to sustain monetary damages in the amount of \$2,402,600,
10 plus interest.

11 **THIRD CLAIM FOR RELIEF**

12 **Breach of Contract (Royalty Agreement)**

13 89. ChromaDex repeats and realleges the allegations contained in paragraphs
14 1 through 89, above.

15 90. The Royalty Agreement is a binding and enforceable contract between
16 ChromaDex and Elysium.

17 91. ChromaDex acted in good faith and in accordance with the Royalty
18 Agreement at all times.

19 92. Elysium has materially breached the Royalty Agreement by refusing to
20 pay the royalties owed based on its net sales of products containing NIAGEN.

21 93. Elysium's material breach of the Royalty Agreement injured ChromaDex
22 and caused it to sustain monetary damages in an amount estimated to be no less than
23 \$1 million, plus interest.

24 **FOURTH CLAIM FOR RELIEF**

25 **Fraudulent Deceit**

26 94. ChromaDex repeats and realleges the allegations contained in paragraphs
27 1 through 93, above.

28 95. On the June 30 Call, Alminana and Marcotulli falsely represented that

1 Elysium was ramping up and needed large volumes of NIAGEN and pTeroPure over
2 the next few months.

3 96. At the time Alminana and Marcotulli made this representation, they had
4 no intention of ramping up their sales to the degree that they represented.

5 97. Also on the June 30 Call, Marcotulli made a false promise to pay a
6 discounted price for the anticipated order of NIAGEN and to work with ChromaDex
7 to resolve Elysium's concerns about the NIAGEN Supply Agreement.

8 98. At the time Marcotulli made such promise, he knew that he and
9 Alminana would not work with ChromaDex to resolve their concerns and would not
10 pay for the goods delivered.

11 99. On July 18, 2016, when Alminana emailed the estimate for royalties due
12 for Q2 2016, Alminana and Elysium had no intent of paying the royalties due for Q2
13 2016 and instead intended to induce ChromaDex to ship the remaining portion of
14 pTeroPure that Elysium ordered on July 1, 2016.

15 100. Marcotulli and Alminana made these false promises and representations
16 with the intent of inducing ChromaDex to provide it with unusually large supplies of
17 NIAGEN and pTeroPure that would last it through any dispute with ChromaDex and
18 which would also serve as leverage in any dispute between the two companies by
19 placing financial pressure on ChromaDex.

20 101. Based on more than two years of performance under the Agreements and
21 the parties' business relationship, ChromaDex justifiably relied on Elysium's
22 promises and representations.

23 102. Elysium's false promises and representations injured ChromaDex and
24 caused it to sustain monetary damages in an amount to be proved at trial, plus interest.

25 **FIFTH CLAIM FOR RELIEF**

26 **Misappropriation of Trade Secrets**

27 103. ChromaDex repeats and realleges the allegations contained in paragraphs
28 1 through 102, above.

1 104. Defendants' conduct as alleged herein constitutes misappropriation of
2 trade secrets under California Civil Code § 3426, et seq.

3 105. Since ChromaDex's inception in 1999 the company has developed and
4 used trade secrets consisting of its technology and research related to ingredients
5 together with proprietary information related to ChromaDex's scientific studies,
6 clinical trials, business strategies, sourcing, customer and potential customer relations,
7 personal information about its key customer and partner contacts, price, product costs,
8 sales, and other confidential information. ChromaDex's trade secret proprietary
9 information also includes information about the skills and abilities of its employees
10 and agents, and their salaries and benefits.

11 106. ChromaDex's trade secrets as described above have tremendous
12 economic value from not being generally known in that their use has resulted and
13 continues to result in retention and renewal of existing accounts and customers as well
14 as referrals to other potential customers and accounts.

15 107. ChromaDex has made reasonable efforts to ensure that its trade secret
16 information remains secret by, among other things: (1) informing its employees of the
17 restricted and prohibited use of the information and that it constitutes a trade secret;
18 (2) making its employees with access to such information party to confidentiality
19 agreements as conditions of their employment with ChromaDex; (3) by restricting
20 access to its trade secret information to only employees who have executed its
21 confidentiality agreement and acknowledged and agreed to keep ChromaDex's trade
22 secrets secret; and (4) employing policies restricting the dissemination and use of its
23 proprietary information.

24 108. Morris, by virtue of his position with ChromaDex, had access to
25 ChromaDex's proprietary and confidential information and trade secrets, which he
26 agreed to maintain as confidential and not to disclose or use that information in any
27 way contrary to the interests of ChromaDex.

28 109. Dellinger, by virtue of his position with ChromaDex, had access to

1 ChromaDex's proprietary and confidential information and trade secrets, which he
2 agreed to maintain as confidential and not to disclose or use that information in any
3 way contrary to the interests of ChromaDex.

4 110. ChromaDex is informed and believes and based thereon alleges that
5 Elysium conspired with Morris and Dellinger to misappropriate ChromaDex's trade
6 secrets, and have used or intend to use that information to (1) demand more favorable
7 pricing from ChromaDex; (2) induce customers to sever their relationships with
8 ChromaDex; and (3) induce or attempt to induce additional ChromaDex employees to
9 leave ChromaDex and join Elysium.

10 111. During his employment with ChromaDex, at the behest of Elysium,
11 Morris wrongfully disclosed confidential proprietary information to Elysium,
12 including without limitation the identity of potential customers and collaborators,
13 knowledge of those customers, and the contact information of one or more partners of
14 ChromaDex.

15 112. During his employment with ChromaDex, at the behest of Elysium,
16 Dellinger wrongfully disclosed confidential proprietary information to Elysium,
17 including without limitation the identity and contact information of ChromaDex's
18 partners, clinical study designs, clinical safety reports, and clinical study data.

19 113. ChromaDex is informed and believes and based thereon alleges that
20 Elysium knew or had reason to know that Morris and Dellinger had a duty to maintain
21 secret the confidential and proprietary information disclosed to Elysium, and that its
22 acquisition of that information from Morris and Dellinger was improper.

23 114. As a proximate result of Elysium's misappropriation of ChromaDex's
24 trade secrets and confidential information, ChromaDex has suffered actual damages in
25 an amount to be proven at trial.

26 115. ChromaDex alleges on information and belief that Elysium's acts were
27 willful and malicious acts in that they misappropriated ChromaDex's trade secrets
28 with a deliberate intent to injure ChromaDex's business and improve Elysium's

1 business, thereby depriving ChromaDex of property and legal rights otherwise causing
2 injury. Such actions were fraudulent, willful, malicious, and oppressive and constitute
3 despicable conduct and subjected ChromaDex to unjust hardship in conscious
4 disregard of ChromaDex's rights so as to justify an award of exemplary or enhanced
5 damages under California Civil Code § 3426.3(c), and attorney's fees pursuant to
6 California Civil Code § 3426.4.

7 116. Elysium's wrongful conduct in misappropriating ChromaDex's trade
8 secrets, unless and until enjoined and restrained by order of this court, will result in
9 irreparable harm to ChromaDex's business in that ChromaDex trade secrets are being
10 and will continue to be compromised, ChromaDex is in danger of losing profitable
11 business partners, and in addition, ChromaDex's business in this market will be
12 substantially damaged or destroyed before this action can be brought to trial.
13 ChromaDex has no adequate remedy at law and will be irreparably harmed absent
14 relief enjoining such misappropriation.

15 117. ChromaDex has no adequate remedy at law for the injuries it is currently
16 suffering and Defendants will continue to use the misappropriated trade secrets of
17 ChromaDex and ChromaDex will be required to maintain a multiplicity of judicial
18 proceedings in order to protect its interest.

19 **SIXTH CLAIM FOR RELIEF**

20 **Federal Defense of Trade Secrets Act**

21 118. ChromaDex repeats and realleges the allegations contained in paragraphs
22 1 through 117, above.

23 119. Defendants have undertaken a deliberate plan to engage in the conduct
24 alleged in this complaint and incorporated into this cause of action. These actions
25 constitute a violation of the Federal Defense of Trade Secrets Act, 18 U.S.C. § 1836,
26 as amended.

27 120. The products and information embodying ChromaDex's technology have
28 been used in interstate commerce, as evidenced by the business relationship with

1 Elysium in New York, and are intended to be used in interstate commerce.

2 121. ChromaDex alleges on information and belief that Defendants acted
3 willfully and maliciously in that they misappropriated ChromaDex's trade secrets so
4 as to justify an award of exemplary damages under 18 U.S.C. § 1836(b)(3)(C).

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff ChromaDex requests that Judgment be entered in its
7 favor as follows:

- 8 a) On the First Cause of Action, monetary damages in an amount to be proved at
9 trial, but believed to be no less than \$580,750, plus interest (including
10 prejudgment interest);
- 11 b) On the Second Cause of Action, monetary damages in an amount to be proved
12 at trial, but believed to be no less than \$2,402,600, plus interest (including
13 prejudgment interest);
- 14 c) On the Third Cause of Action, monetary damages in an amount to be proved at
15 trial, but believed to be no less than \$1 million, plus interest (including
16 prejudgment interest);
- 17 d) On the Fourth Cause of Action, monetary damages in an amount to be proved at
18 trial, plus interest (including prejudgment interest) and punitive damages;
- 19 e) On the Fifth Cause of Action, monetary damages in an amount to be proved at
20 trial, plus interest (including prejudgment interest), exemplary damages,
21 disgorgement, and injunctive relief;
- 22 f) On the Sixth Cause of Action, monetary damages in an amount to be proved at
23 trial, plus interest (including prejudgment interest), exemplary damages,
24 disgorgement, and injunctive relief;
- 25 g) On all causes of action, for attorney's fees as allowed by law;
- 26 h) On all causes of action, for such other and further legal and equitable relief as
27 the Court may deem just and proper.
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Request for Jury Trial

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

Dated: February 15, 2017

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