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13  
14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
16 **(SOUTHERN DIVISION)**

17 CHROMADEX, INC., ) Case No. 8:16-cv-02277-CJC-DFM  
18 ) Plaintiff, )  
19 v. ) **ELYSIUM HEALTH, INC.’S**  
20 ELYSIUM HEALTH, INC., ) **MEMORANDUM OF POINTS**  
21 ) **AND AUTHORITIES IN**  
22 ) **SUPPORT OF MOTION TO**  
23 ) **DISMISS FOURTH, FIFTH AND**  
24 ) **SIXTH CLAIMS OF FIRST**  
25 ) **AMENDED COMPLAINT**  
26 )  
27 ) Date: April 3, 2017  
28 ) Time: 1:30 p.m.  
Courtroom: 9B, 9<sup>th</sup> Floor  
Judge: Hon. Cormac J. Carney

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1 **I. PRELIMINARY STATEMENT**

2 Defendant and Counterclaimant Elysium Health, Inc. (“Elysium”) is the  
3 highly successful and rapidly growing seller of a groundbreaking proprietary dietary  
4 supplement, Basis™, which combines nicotinamide riboside (“NR”) and  
5 pterostilbene (“PT”) with other ingredients. Plaintiff and Counterclaim Defendant  
6 ChromaDex, Inc. (“ChromaDex”) has historically supplied Elysium with NR (sold  
7 by ChromaDex under the brand name Niagen) and PT (sold by ChromaDex under  
8 the name pTeroPure). The parties’ relationship, which is memorialized in a series of  
9 contracts, soured when Elysium discovered that ChromaDex had induced Elysium to  
10 enter into the contracts under false pretenses and then breached those contracts in  
11 material respects.

12 Instead of trying to resolve the parties’ differences in good faith, ChromaDex  
13 instead filed this lawsuit. In its First Amended Complaint, ChromaDex asserts six  
14 causes of action: three for breach of contract (first, second and third claims), one for  
15 fraudulent deceit (fourth claim) and two for misappropriation of trade secrets (fifth  
16 and sixth claims). Elysium now moves to dismiss the fourth, fifth and sixth causes  
17 of action with prejudice for failure to state a claim upon which relief may be granted.

18 *First*, ChromaDex’s claim for fraudulent deceit (fourth claim) is barred by the  
19 economic loss rule because it simply recasts ChromaDex’s breach of contract claims  
20 as a claim for fraud. It is well settled that “[a] breach of contract is tortious only  
21 when some *independent duty arising from tort law* is violated.” *UMG Recordings,*  
22 *Inc. v. Glob. Eagle Entm’t, Inc.*, 117 F. Supp. 3d 1092, 1103 (C.D. Cal. 2015)  
23 (emphasis added) (citation omitted). ChromaDex fails to allege facts supporting the  
24 existence of any duty distinct from the parties’ contracts, but rather alleges only that  
25 Elysium, through “false promises” it purportedly broke, undermined the parties’  
26 contractual expectations. This is not a fraud claim. *See, e.g., JMP Sec. LLP v. Altair*  
27 *Nanotechnologies Inc.*, 880 F. Supp. 2d 1029, 1042 (N.D. Cal. 2012) (“[N]o tort  
28 cause of action will lie where the breach of duty is nothing more than a violation of a

1 promise which undermines the expectations of the parties to an agreement.”  
2 (citation omitted)). Moreover, even if it were not barred by the economic loss rule,  
3 ChromaDex’s claim for fraudulent deceit fails adequately to plead reliance because  
4 all ChromaDex claims to have done in response to Elysium’s allegedly “false  
5 promises” is perform its preexisting duty to fulfill Elysium’s orders under the  
6 contract. *See, e.g., Singh v. Wells Fargo Bank*, No. 1:10-CV-1659 AWI SMS, 2012  
7 WL 691705, at \*5-6 (E.D. Cal. Mar. 2, 2012) (“Performing a preexisting duty does  
8 not constitute detrimental reliance sufficient to state a cause of action for fraud.”).  
9 These deficiencies cannot be cured by amendment.

10 *Second*, ChromaDex’s claims for misappropriation of trade secrets under  
11 California law (fifth claim) and federal law (sixth claim) likewise fail to state claims  
12 upon which relief may be granted. Other than through rote, formulaic recitations of  
13 the elements of the claims that this Court need not and should not accept as true,  
14 ChromaDex fails to allege in anything more than conclusory terms the existence of  
15 any protected trade secret, any misappropriation by Elysium, or any damages – and  
16 thus fails adequately to plead any one, let alone all three, of the essential elements of  
17 a claim for misappropriation. ChromaDex further fails to identify the alleged trade  
18 secrets with the requisite specify and, with respect to the federal Defend Trade  
19 Secrets Act (“DTSA”), fails to point to an act of misappropriation occurring after the  
20 effective date of the DTSA.

21 If one can navigate past ChromaDex’s obfuscation, the only purported trade  
22 secrets that can be gleaned from the First Amended Complaint are (1) unspecified  
23 and unidentified “information,” such as a name or contact information, about one or  
24 more potential ChromaDex “customers and collaborators” or “partners,” and (2)  
25 unspecified and undescribed “clinical study designs, clinical safety reports, and  
26 clinical study data.” These generic categories of purported secrets are too vague to  
27 survive a motion to dismiss. *See, e.g., Farhang v. Indian Inst. of Tech., Kharagpur*,  
28 No. C-08-02658 RMW, 2010 WL 2228936, at \*14 (N.D. Cal. June 1, 2010). In any



1 event, the First Amended Complaint fails to plead any *facts* to show that these items  
2 were plausibly trade secrets. *See, e.g., Humphreys & Assocs., Inc. v. Cressman*, No.  
3 SACV 15-0782 AG (RNBx), 2015 WL 12698428, at \*4 (C.D. Cal. Aug. 31, 2015)  
4 (describing “clients, business strategies, and expansion and marketing plans” in  
5 “conclusory” terms was not sufficient to qualify the information as trade secrets).  
6 Further, ChromaDex – which is not even a competitor of Elysium – alleges no facts  
7 that would demonstrate it was or could be damaged by the alleged misappropriation.  
8 *See, e.g., Magic Laundry Servs., Inc. v. Workers United Serv. Emps. Int’l Union*, No.  
9 CV-12-9654-MWF (AJWx), 2013 WL 1409530, at \*3 (C.D. Cal. Apr. 8, 2013).  
10 These fundamental defects are inherent in ChromaDex’s claims and likewise cannot  
11 be cured by amendment.

12 For these reasons, set forth in more detail below, the Court should dismiss  
13 with prejudice the fourth, fifth and sixth causes of action in the First Amended  
14 Complaint.

## 15 **II. STATEMENT OF FACTS**

16 ChromaDex supplies Elysium with two ingredients: NR and PT.  
17 (ChromaDex’s First Amended Complaint dated Feb. 15, 2017, ECF 26 (“FAC”) ¶ 2.)  
18 NR and PT are the two active ingredients in Elysium’s sole commercial product, a  
19 dietary health supplement called Basis. (*Id.*) Three contracts govern ChromaDex  
20 and Elysium’s business relationship: an NR Supply Agreement, dated February 3,  
21 2014, and amended February 19, 2016 (as amended, the “NR Supply Agreement”)  
22 (*id.* ¶ 16; FAC Exs. A, B); a PT Supply Agreement, dated June 26, 2014 (the “PT  
23 Supply Agreement”) (*id.* ¶ 16; FAC Ex. C); and a Trademark License and Royalty  
24 Agreement, dated February 3, 2014 (the “Trademark License and Royalty  
25 Agreement”) (*id.* ¶ 16; FAC Ex. D).

26 The NR Supply Agreement provides that “ChromaDex shall sell and deliver,  
27 and Elysium Health shall purchase from ChromaDex, such Niagen as Elysium  
28 Health orders from time to time.” (FAC Ex. A § 3.) The NR Supply Agreement, as

1 amended, includes a minimum annual purchase requirement but no maximum  
2 purchase limit. (FAC Ex. B ¶ 4.)

3         The NR Supply Agreement also includes a “most favored nations” pricing  
4 clause, under which if “ChromaDex supplies Niagen (or a substantially similar  
5 product) to a Third Party at a price that is lower than that at which Niagen is supplied  
6 to Elysium Health,” then “ChromaDex shall promptly provide Elysium Health with  
7 any refund or credits thereby created; provided Elysium Health purchases equal  
8 volumes or higher volumes than the Third Party” (the “MFN Clause”). (FAC Ex. A  
9 § 3.1.) Furthermore, the NR Supply Agreement includes an exclusivity provision  
10 that prohibits ChromaDex from directly or indirectly selling, transferring or  
11 otherwise providing to any third party, or licensing or enabling any third party to  
12 make, “any products containing both Niagen and pTeroPure (or any ingredients that  
13 are substantially similar thereto)” (the “Exclusivity Provision”). (FAC Ex. B ¶ 4, §  
14 3.11.3.) In the second quarter of 2016, Elysium “raised concerns about pricing under  
15 the [NR] Supply Agreement directly with” ChromaDex officers (FAC ¶ 21), or, in  
16 other words, questioned ChromaDex’s compliance with the MFN Clause.

17         Similar to the NR Supply Agreement, the PT Supply Agreement provides that  
18 Elysium “shall periodically submit purchase orders” for pterostilbene. (FAC Ex. C  
19 § 2.1.) The PT Supply Agreement includes a “minimum purchase order quantity”  
20 but no other minimum or maximum purchase provision. (FAC Ex. C § 2.1.)

21         On December 29, 2016, ChromaDex filed its Complaint in this action for  
22 breach of contract (claims one, two and three) and fraudulent deceit (claim four).  
23 (Complaint, ECF 1.) Elysium answered the Complaint and asserted six  
24 counterclaims against ChromaDex on January 25, 2017. (Elysium’s Answer and  
25 Counterclaims, ECF 11.) On February 15, 2017, ChromaDex filed a First Amended  
26 Complaint effectively rewriting the allegations of the original Complaint and adding  
27 new claims for misappropriation of trade secrets under California law (claim five)  
28 and federal law (claim six).

1 ChromaDex’s fourth claim for fraudulent deceit alleges that Elysium induced  
2 “ChromaDex to provide it with unusually large supplies of NIAGEN and  
3 pTeroPure.” (FAC ¶ 100.) ChromaDex further alleges that Elysium had “concerns  
4 about the [NR] Supply Agreement” before placing these orders. (*Id.* ¶ 41.) Elysium  
5 then “failed [to make] payments,” causing ChromaDex to file the instant lawsuit to  
6 “obtain the monies owed under the Agreements.” (*Id.* ¶ 44.)

7 With respect to the FAC’s new claims for misappropriation of trade secrets,  
8 ChromaDex alleges that Mark Morris was its Vice President of Business  
9 Development (*id.* ¶ 69) and Ryan Dellinger was its Director of Scientific Affairs (*id.*  
10 ¶ 70). ChromaDex alleges that “Elysium induced Morris and Dellinger to breach  
11 their confidentiality agreements [with ChromaDex] by wrongfully divulging  
12 ChromaDex’s confidential and proprietary information.” (*Id.* ¶ 72.) The FAC  
13 alleges that “[o]n or around April 28, 2016,” Morris informed Elysium officers  
14 “about ChromaDex’s confidential business dealings and information ChromaDex  
15 had acquired about one or more potential partners.” (*Id.* ¶ 73.) The FAC does not  
16 allege that Elysium asked for this information. Additionally, ChromaDex alleges  
17 that on or around May 25, 2016, “Morris made an unusual request for the contact  
18 information for one of ChromaDex’s research partners from Dellinger, which  
19 Dellinger provided.” (*Id.* ¶ 74.) The FAC does not allege that Elysium asked for this  
20 researcher’s contact information, or that Morris provided it to Elysium. The  
21 following month, ChromaDex alleges, Dellinger “was contacted by that ChromaDex  
22 partner, who informed him that he had been contacted by Elysium.” (*Id.*) Dellinger  
23 allegedly “encouraged that ChromaDex partner to talk with Elysium.” (*Id.*) “On  
24 information and belief,” ChromaDex alleges that Morris and Dellinger “further  
25 disclosed ChromaDex’s confidential and proprietary information to Elysium.” (FAC  
26 ¶ 77.) ChromaDex alleges that it “suffered actual damages” as a result of  
27 misappropriation of trade secrets, but does not allege how it purportedly was harmed.  
28 (*Id.* ¶ 114.) Morris resigned from ChromaDex on July 16, 2016, and Dellinger

1 resigned from ChromaDex on August 10, 2016. (*Id.* ¶¶ 75-76.) Morris and  
2 Dellinger both joined Elysium thereafter. (*Id.*)

3 Elysium now moves to dismiss ChromaDex’s fourth, fifth and sixth claims for  
4 fraudulent deceit and misappropriation of trade secrets on the grounds that they fail  
5 to state a claim upon which relief may be granted.

6 **III. LEGAL STANDARD**

7 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the  
8 legal sufficiency of the claims asserted in the complaint.” *Perreault v. NDEx W.,*  
9 *LLC*, No. SACV 10-00337-CJC(RNBx), 2011 WL 11682629, at \*1 (C.D. Cal. Feb.  
10 10, 2011) (Carney, J.). In order to avoid dismissal for failure to state a claim under  
11 Rule 12(b)(6), a plaintiff must allege facts sufficient to “raise a right to relief above  
12 the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In  
13 other words, a complaint must plead “enough facts to state a claim to relief that is  
14 plausible on its face.” *Id.* at 570. A claim is plausible “when the plaintiff pleads  
15 factual content that allows the court to draw the reasonable inference that the  
16 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
17 (2009). The Court need not accept conclusory allegations as factual assertions, and  
18 “a formulaic recitation of the elements of a cause of action will not do.” *Twombly*,  
19 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678 (2009) (holding that to state a claim,  
20 a plaintiff must plead more than an “unadorned, the-defendant-unlawfully-harmed-  
21 me accusation”).

22 **IV. ARGUMENT**

23 **A. ChromaDex Has Failed to State a Claim for Fraudulent Deceit**

24 The Court should dismiss ChromaDex’s fourth claim for fraudulent deceit  
25 because it fails to state a claim upon which relief can be granted.

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1                   1.     ChromaDex’s Claim for Fraudulent Deceit Is Barred by the  
2                                    Economic Loss Rule

3             First, ChromaDex’s claim for fraudulent deceit fails to state a claim upon  
4 which relief may be granted because ChromaDex has simply repackaged its breach  
5 of contract claims as a tortious fraud claim. “[T]he California Supreme Court has  
6 ‘reiterated the important differences between contract and tort theories of recovery.’”  
7 *Cty. of Orange v. McGraw-Hill Cos. (In re Cty. of Orange)*, 245 B.R. 138, 148 (C.D.  
8 Cal. 1997) (citation omitted). This distinction is driven by the economic loss rule,  
9 which “‘generally bars tort claims for contract breaches’” unless the conduct in  
10 question “‘also violates a duty *independent of the contract* arising from principles of  
11 tort law.’” *Goodbreak, LLC v. Hood By Air, LLC*, No. CV 15-03897 DDP (Asx),  
12 2016 WL 146418, at \*5 (C.D. Cal. Jan. 12, 2016) (emphasis added) (citations  
13 omitted). This rule is needed to “‘prevent[] the law of contract and the law of tort  
14 from dissolving into one another.’” *UMG Recordings, Inc. v. Glob. Eagle Entm’t,*  
15 *Inc.*, 117 F. Supp. 3d 1092, 1103-04 (C.D. Cal. 2015) (quoting *Robinson Helicopter*  
16 *Co. v. Dana Corp.*, 34 Cal. 4th 979, 988 (2004)).

17             In *Goodbreak, LLC v. Hood by Air LLC*, for instance, a clothing manufacturer  
18 sued a retailer for breach of contract and fraud after the retailer allegedly made false  
19 promises to induce the plaintiff to manufacture clothing on a trial basis at a  
20 discounted rate and then failed to pay the amount owed. 2016 WL 146418, at \*1.  
21 Like this case, the crux of the fraud claim in *Goodbreak* was a failure to pay the  
22 amount owed under a contract. Because the retailer failed to “‘identify any duty’” the  
23 manufacturer owed it “‘other than the alleged contractual duty,’” the court dismissed  
24 the fraud claim. *Id.* at \*5.

25             Likewise, in *UMG Recordings*, the court held that fraud claims were  
26 “‘deficiently pled and must be dismissed under the economic loss rule’” where they  
27 were based entirely on a contractual agreement. 117 F. Supp. 3d at 1104, 1106.  
28 Like ChromaDex alleges here, the plaintiffs in *UMG Recordings* alleged a

1 promissory fraud claim. *See id.* at 1104. But “district courts applying California  
2 law” have repeatedly found “tort claims barred in cases in which one party breached  
3 a purported contract that it allegedly never intended to perform.” *Id.*; *see also id.* at  
4 1105 (““Businesses should not have to worry that simple disputes about bills and  
5 contract performance will routinely lead to the threat of punitive damages. To allow  
6 claims in actions such as this one would collapse the carefully-guarded distinction  
7 between contract and tort law.”” (quoting *Oracle USA, Inc. v. XL Global Servs., Inc.*,  
8 No. 09-00537 MHP, 2009 WL 2084154, at \*7 (N.D. Cal. July 13, 2009))); *JMP Sec.*  
9 *LLP v. Altair Nanotechnologies Inc.*, 880 F. Supp. 2d 1029, 1042 (N.D. Cal. 2012)  
10 (noting that ““no tort cause of action will lie where the breach of duty is nothing  
11 more than a violation of a promise which undermines the expectations of the parties  
12 to an agreement”” (citation omitted)).

13 That ChromaDex’s fraud claim implicates the economic loss rule is readily  
14 apparent from its allegations. ChromaDex does not state a claim for fraudulent  
15 *inducement* because there is no allegation that Elysium fraudulently induced  
16 ChromaDex to *enter into* the Agreements. Rather, ChromaDex alleges only that  
17 Elysium induced ChromaDex to *perform* under the NR and PT Supply Agreements –  
18 installment contracts that permit Elysium to order as much NR and PT as it sees fit  
19 (beyond minimum purchase requirements) – but then did not perform its own  
20 obligation to pay. (*See* FAC Ex. A § 3, Ex. B ¶ 4, Ex. C § 2.1.) ChromaDex asserts  
21 that Elysium “made a false promise to pay a discounted price” for an NR order (*id.*  
22 ¶ 97); that Elysium knew it “would not pay for the goods delivered” (*id.* ¶ 98); and  
23 that Elysium “made these false promises and representations with the intent of  
24 inducing ChromaDex to provide it with unusually large supplies of NIAGEN and  
25 pTeroPure” (*id.* ¶ 100). All of these allegations relate to an order placed, fulfilled  
26 and delivered pursuant to the supply agreements. It is well settled that “when a  
27 plaintiff links its fraud claim to a party’s alleged failure to comply with a contractual  
28 duty, the proper claim is breach of contract – not fraud.” *Hale Bros. Inv. Co. v.*

1 *StudentsFirst Inst.*, No. 2:16-cv-02284-JAM-EFB, 2017 WL 590255, at \*5-7 (E.D.  
2 Cal. Feb. 14, 2017) (plaintiff’s fraud claim merely incorporated preceding contract  
3 claims and added additional facts that all implicated contract at issue).

4           2.     ChromaDex Fails to Plead Justifiable Reliance

5           Justifiable reliance is an element of a fraud claim, *Perreault*, 2011 WL  
6 11682629, at \*9, and ChromaDex does not and cannot plead it here.

7           ChromaDex alleges that Elysium induced it to fulfill orders for “unusually  
8 large supplies of NIAGEN and pTeroPure.” (FAC ¶ 100.) Reliance is plainly absent  
9 here because ChromaDex was *already contractually obligated* to fulfill these orders.  
10 (*See* FAC Ex. A § 3 (“ChromaDex *shall sell and deliver . . .* such Niagen as Elysium  
11 Health orders from time to time . . . .”) (emphasis added)); FAC Ex. C § 2.1  
12 (describing ChromaDex’s obligation to fulfill PT orders submitted 30 days or more  
13 before the delivery date and its obligation to “use commercially reasonable efforts to  
14 fulfill” all other orders.) The Agreements contain no provision that would permit  
15 ChromaDex to *decline* fulfilling these orders. (*See generally* FAC Exs. A, C.) If a  
16 plaintiff is already legally obligated to perform under a contract, then its performance  
17 in reliance on any purported misrepresentation cannot be detrimental as a matter of  
18 law. *Singh*, 2012 WL 691705, at \*5–6 (“Performing a preexisting duty does not  
19 constitute detrimental reliance sufficient to state a cause of action for fraud.”); *see*  
20 *also Auerbach v. Great W. Bank*, 74 Cal. App. 4th 1172, 1185–86 (1999) (dismissing  
21 claim where “theory of recovery is based on the premise that a party duped into  
22 performing an existing contractual obligation has suffered damage”); *Conrad v. Bank*  
23 *of Am.*, 45 Cal. App. 4th 133, 158 (1996) (rejecting argument that bank’s “false  
24 promise” to approve new loan, allegedly made to induce plaintiffs to allow the bank  
25 to use certain proceeds to pay down existing loan balance, supported claim of fraud;  
26 “[W]ell before the alleged promise of a loan, the Bank had the legal right to use the .  
27 . . . proceeds for payment of its loans and plaintiffs had no legal right to prevent that  
28 procedure.”); *cf. Newgent v. Wells Fargo Bank, N.A.*, No. 09cv1525 WQH (WMC),

1 2010 WL 761236, at \*7 (S.D. Cal. Mar. 2, 2010). Consequently, to the extent it  
2 relied on anything, ChromaDex relied on its *own contractual promises* in fulfilling  
3 the purchase orders, not on Elysium’s purported misrepresentations. This is fatal to  
4 the element of reliance and to ChromaDex’s claim for fraud.

5 **B. ChromaDex Has Failed to State a Claim for Misappropriation of**  
6 **Trade Secrets under the CUTSA or the DTSA**

7 Under the California Uniform Trade Secrets Act (“CUTSA”), “[a] prima facie  
8 claim for misappropriation of trade secrets requires the plaintiff to demonstrate: (1)  
9 the plaintiff owned a trade secret, (2) the defendant acquired, disclosed, or used the  
10 plaintiff’s trade secret through improper means, and (3) the defendant’s actions  
11 damaged the plaintiff.” *Magic Laundry Servs., Inc. v. Workers United Serv. Emps.*  
12 *Int’l Union*, No. CV-12-9654-MWF (AJWx), 2013 WL 1409530, at \*3 (C.D. Cal.  
13 Apr. 8, 2013) (quoting *Cytodyn, Inc. v. Amerimmune Pharm., Inc.*, 160 Cal. App. 4th  
14 288, 297 (2008)). The elements of a prima facie claim under the federal Defend  
15 Trade Secrets Act (“DTSA”) are materially identical. *See, e.g., Phyllis Schlafly*  
16 *Revocable Tr. v. Cori*, No. 4:16CV01631 JAR, 2016 WL 6611133, at \*2 (E.D. Mo.  
17 Nov. 9, 2016) (comparing the DTSA with the Uniform Trade Secrets Act).  
18 ChromaDex has failed to allege even one, much less all three, of these essential  
19 elements of a claim for misappropriation of trade secrets, and its claims accordingly  
20 should be dismissed.

21 1. **ChromaDex Has Failed to Plead the Existence of a Protectable**  
22 **Trade Secret**

23 ChromaDex has failed to allege the predicate of any trade secret  
24 misappropriation claim: the existence of a protectable trade secret. Under the  
25 CUTSA, a trade secret is defined as “information, including a formula, pattern,  
26 compilation, program, device, method, technique, or process, that: (1) derives  
27 independent economic value, actual or potential, from not being generally known to  
28 the public or to other persons who can obtain economic value from its disclosure or



1 use; and (2) is the subject of efforts that are reasonable under the circumstances to  
2 maintain its secrecy.” Cal. Civ. Code § 3426.1(d). The definition under the DTSA  
3 is materially similar.<sup>1</sup>

4 ChromaDex’s FAC, at most, alleges the following to be purported trade  
5 secrets: “confidential business dealings and information ChromaDex had acquired  
6 about one or more potential partners” (FAC ¶ 73); “contact information for one of  
7 ChromaDex’s research partners” (*id.* ¶ 74); “the identity of potential customers and  
8 collaborators, knowledge of those customers, and the contact information of one or  
9 more partners of ChromaDex” (*id.* ¶ 111); and “the identity and contact information  
10 of ChromaDex’s partners, clinical study designs, clinical safety reports, and clinical  
11 study data” (*id.* ¶ 112). These allegations fail adequately to plead a protected trade  
12 secret.

13 (a) *ChromaDex Has Not Identified the Purported Trade*  
14 *Secrets with the Requisite Specificity*

15 Under California law, “the alleged trade secrets [must] be specifically  
16 identified.” *GeoData Sys. Mgmt., Inc. v. Am. Pac. Plastic Fabricators, Inc.*, No.  
17 CV 15-04125 MMM (JEMx), 2015 WL 12731920, at \*11 (C.D. Cal. Sept. 21, 2015)  
18 (citation omitted). Although the plaintiff need not spell out every detail of the  
19 alleged trade secret to avoid dismissal, it must “describe the subject matter of the  
20 trade secret with sufficient particularity to separate it from matters of general  
21 knowledge in the trade or of special knowledge of those persons who are skilled in  
22

23 <sup>1</sup> See 18 U.S.C. § 1839(3) (defining a trade secret as “information, including  
24 patterns, plans, compilations, program devices, formulas, designs, prototypes,  
25 methods, techniques, processes, procedures, programs, or codes, whether tangible or  
26 intangible, and whether or how stored, compiled, or memorialized physically,  
27 electronically, graphically, photographically, or in writing if – (A) the owner thereof  
28 has taken reasonable measures to keep such information secret; and (B) the  
information derives independent economic value, actual or potential, from not being  
generally known to, and not being readily ascertainable through proper means by,  
another person who can obtain economic value from the disclosure or use of the  
information”).

1 the trade, and to permit the defendant to ascertain at least the boundaries within  
2 which the secret lies.” *Id.* (citation omitted). Courts routinely dismiss claims for  
3 misappropriation of trade secrets where the plaintiff fails to identify the subject  
4 matter of the purported trade secret with specificity. *See, e.g., id.; Qpid.me, Inc. v.*  
5 *Schrom*, No. 13-CV-583-IEG NLS, 2013 WL 4833990, at \*5 (S.D. Cal. Sept. 9,  
6 2013) (granting motion to dismiss where “[t]he contemplated trade secret is not  
7 evident from the phrase ‘business plans and strategies’”); *Logtale, Ltd. v. IKOR, Inc.*,  
8 No. C 11-5452 CW, 2013 WL 4427254, at \*5 (N.D. Cal. Aug. 14, 2013) (granting  
9 motion to dismiss where “[a]lthough IKOR alleges that it shared numerous  
10 manufacturing, packaging, and marketing ‘protocols’ with Logtale and NEWAI, it  
11 fails to explain which of these protocols, if any, are proprietary and actually pertain  
12 to its own pharmaceutical products”); *S. California Inst. of Law v. TCS Educ. Sys.*,  
13 No. CV 10-8026 PSG (AJWx), 2011 WL 1296602, at \*7 (C.D. Cal. Apr. 5, 2011)  
14 (granting motion to dismiss where plaintiff alleged that defendant “gained access to  
15 plaintiff’s most valuable trade secrets and confidential information”); *Farhang*, 2010  
16 WL 2228936, at \*14.

17       These cases confirm that a plaintiff cannot simply plead broad categories of  
18 information – even if they relate to a specific item or product – to survive a motion to  
19 dismiss. In *GeoData*, for example, the plaintiff was the seller of a naval target  
20 known as the “Killer Tomato.” 2015 WL 12731920, at \*2. In its complaint, the  
21 plaintiff alleged that the defendants misappropriated trade secrets, including “all of  
22 the information regarding the ‘Killer Tomato’ product, its applications, its customers,  
23 its improvements, its problems and issues.” *Id.* at \*12. The court held that the  
24 plaintiff’s description of the purported trade secrets was insufficient as a matter of  
25 law and accordingly dismissed the claim. *See id.*

26       *Farhang* further clarifies the level of detail a plaintiff must supply in the  
27 complaint to survive dismissal. In that case, the plaintiff alleged misappropriation of  
28 trade secrets in the form of specific “core technology [that was] described in a patent

1 application.” 2010 WL 2228936, at \*13. That allegation, without more, was  
2 insufficient to plead the existence of a trade secret. However, after the plaintiff  
3 *identified* the specific patent application in an amended complaint, the court agreed  
4 with the plaintiff that the defendants had “reasonable notice of the issues which must  
5 be met at the time of trial and . . . reasonable guidance in ascertaining the scope of  
6 appropriate discovery.” *Id.* (citation omitted). On the other hand, the plaintiff’s  
7 allegation that the defendant misappropriated “specific business models and  
8 implementations” relating to two of the plaintiff’s business endeavors (the ‘global  
9 railways and Indian Railways project’) was legally insufficient where those projects  
10 were not described in the patent application and were not disclosed in any greater  
11 detail in the complaint. *Id.* at \*14.

12 In this case, ChromaDex has failed to identify any trade secret with the  
13 specificity needed to survive a motion to dismiss. The FAC repeatedly refers to  
14 ChromaDex’s supposed “confidential business dealings,” “confidential proprietary  
15 information” and “trade secret and proprietary information” (FAC ¶¶ 71-73, 77, 111-  
16 113) – phrases that are plainly insufficient to permit Elysium to ascertain “the  
17 boundaries within which the secret lies.” *GeoData Sys. Mgmt.*, 2015 WL  
18 12731920, at \*11 (citation omitted). ChromaDex peppers these deficient allegations  
19 throughout the FAC (*see* FAC ¶¶ 71-73, 77, 111-113), but repeating the same vague  
20 claim – even five or six times – does not make it any more “particular.” Repetitive  
21 prolixity is not the same as required particularity.

22 Nor do ChromaDex’s other sweeping categories of claimed trade secrets –  
23 “confidential business dealings and information ChromaDex had acquired about one  
24 or more potential partners” (*id.* ¶ 73); “contact information for one of ChromaDex’s  
25 research partners” (*id.* ¶ 74); “the identity of potential customers and collaborators,  
26 knowledge of those customers, and the contact information of one or more partners  
27 of ChromaDex” (*id.* ¶ 111); and “the identity and contact information of  
28 ChromaDex’s partners, clinical study designs, clinical safety reports, and clinical

1 study data” (*id.* ¶ 112) – fare any better. Courts have declined to find allegations of  
2 trade secrets sufficient even where the plaintiff pleaded *far more* detail than  
3 ChromaDex does here. *See, e.g., GeoData Sys. Mgmt.*, 2015 WL 12731920, at \*11  
4 (“information regarding the ‘Killer Tomato’ product, its applications, its customers,  
5 its improvements, its problems and issues” insufficient); *Logtale, Ltd.*, 2013 WL  
6 4427254, at \*5 (“market research, manufacturing protocols, and packaging  
7 procedures” insufficient); *Farhang*, 2010 WL 2228936, at \*14 (“business models  
8 and implementations” relating to the “global railways and Indian Railways project”  
9 insufficient); *cf. Mitigation Techs., Inc. v. Pennartz*, No. ED CV 14-01954-AB  
10 (SPx), 2015 WL 12656936, at \*6-7 (C.D. Cal. Mar. 13, 2015) (descriptions such as  
11 “[c]ustomer list and quotations” and “[p]ricing and materials information for  
12 products using [a particular technology]” were insufficient to determine the existence  
13 of protectable trade secrets). ChromaDex’s allegations are even more deficient than  
14 those in *GeoData*, *Logtale* and *Farhang*, as none ““describe the subject matter of the  
15 trade secret with sufficient particularity to separate it from matters of general  
16 knowledge in the trade or of special knowledge of those persons who are skilled in  
17 the trade, and to permit the defendant to ascertain at least the boundaries within  
18 which the secret lies.”” *GeoData Sys. Mgmt.*, 2015 WL 12731920, at \*11 (citation  
19 omitted). ChromaDex’s claims for misappropriation of trade secrets should be  
20 dismissed on this ground.

21 (b) *ChromaDex Has Not Alleged Protectable Subject Matter*

22 Even if the FAC sufficiently described a purported trade secret (which it does  
23 not), ChromaDex has failed to plead facts showing that the subject matter of its  
24 purported trade secrets is protectable, and dismissal is warranted on that independent  
25 basis. To state a claim for misappropriation of trade secrets, the plaintiff must allege  
26 “*facts* establishing that the information and methods alleged to constitute its trade  
27 secrets derive independent economic value from not being generally known to the  
28 public or to other persons who can obtain economic value from their disclosure.”

1 *Webpass Inc. v. Banth*, No. C14-02291 HRL, 2014 WL 7206695, at \*3 (N.D. Cal.  
2 Dec. 18, 2014) (emphasis added). It is not enough that the complaint “conclusorily  
3 allege[] that the information had and continues to have significant independent  
4 economic value by virtue of not being generally known to the public or to Plaintiff’s  
5 competitors.” *Id.* Rather, the complaint but must plead *how* the trade secrets “derive  
6 such value.” *Id.* ChromaDex falls far short of meeting this standard.

7 ChromaDex alleges merely that it “has developed and used trade secrets,” that  
8 those “trade secrets . . . have tremendous economic value from not being generally  
9 known” and that, as a general proposition, ChromaDex “has made reasonable efforts  
10 to ensure that its trade secret information remains secret.” (FAC ¶¶ 105-107.) This  
11 type of conclusory language, wholly unsupported by allegations of actual facts, fails  
12 to explain how the purported trade secrets at issue here are, in fact, protectable as  
13 trade secrets. *Cf. Webpass*, 2014 WL 7206695, at \*3. Although ChromaDex lists  
14 categories of information – “contact information for one of ChromaDex’s research  
15 partners” (FAC ¶ 74); “the identity of potential customers and collaborators,  
16 knowledge of those customers, and the contact information of one or more partners  
17 of ChromaDex” (*id.* ¶ 111); and “the identity and contact information of  
18 ChromaDex’s partners, clinical study designs, clinical safety reports, and clinical  
19 study data” (*id.* ¶ 112) – it does not even attempt to plead facts demonstrating that  
20 these categories of information qualify as trade secrets by having independent  
21 economic value by being unknown to the public.<sup>2</sup> *Cf., e.g., Epicor Software Corp. v.*  
22 *Alternative Tech. Sols., Inc.*, No. SACV 13-00448-CJC(RNBx), 2013 WL 12130024,  
23 at \*3 (C.D. Cal. Dec. 2, 2013) (Carney, J.) (dismissing claim for misappropriation of

24  
25 \_\_\_\_\_  
26 <sup>2</sup> The inability of ChromaDex to plead the economic value of these supposed “trade  
27 secrets” is in many respects readily explainable. How could a third-party  
28 researcher’s contact information (*see* FAC ¶ 74) possibly be a valuable secret  
belonging to ChromaDex? *See Cytodyn, Inc. v. Amerimmune Pharm., Inc.*, 160 Cal.  
App. 4th 288, 297 (2008) (requiring that the plaintiff own the trade secret).

1 trade secrets where “Alternative failed to plead *facts* showing the independent  
2 economic value of this information” (emphasis added)).<sup>3</sup>

3 Thus, even if the FAC describes the contours of the alleged trade secret with  
4 sufficient specificity, it fails to plead facts showing that any of the subject matter has  
5 independent economic value or otherwise meets the requirements to receive trade  
6 secret protection. For that separate reason, the Court should dismiss ChromaDex’s  
7 claims for misappropriation of trade secrets.

8 2. ChromaDex Has Failed to Plead a Misappropriation

9 ChromaDex’s trade secret claims also fail for the separate and independent  
10 reason that they do not allege a second essential element: a misappropriation. The  
11 CUTSA defines “misappropriation,” in relevant part, as “(1) acquisition of a trade  
12 secret of another by a person who knows or has reason to know that the trade secret  
13 was acquired by improper means; or (2) disclosure or use of a trade secret of another  
14 without express or implied consent by a person who . . . [u]sed improper means to  
15 acquire knowledge of the trade secret.” Cal. Civ. Code § 3426.1(b). The DTSA  
16 contains a materially similar definition and likewise requires that a wrongful  
17

18 \_\_\_\_\_  
19 <sup>3</sup> Moreover, even if ChromaDex were to seek to plead facts about economic value, at  
20 least some (if not all) of ChromaDex’s alleged trade secrets are simply *never* trade  
21 secrets as a matter of law, and amendment would thus be futile. ChromaDex’s  
22 claims focus largely on “information” about one of its “research partners” and  
23 “potential customers and collaborators.” (FAC ¶¶ 74, 111.) But the identity and  
24 contact information of these individuals is *not* a protectable trade secret, no matter  
25 how that information is acquired or used. *See, e.g., Humphreys & Assocs., Inc. v.*  
26 *Cressman*, No. SACV 150782 AG (RNBx), 2015 WL 12698428, at \*4 (C.D. Cal.  
27 Aug. 31, 2015) (defendant’s use of information “concerning [plaintiff’s] clients,  
28 business strategies, and expansion and marketing plans for the Sterling Heights,  
Michigan market” to “selectively and more effectively target clients without  
expending the time and resources spent by H&A” could not be characterized as trade  
secret); *Am. Paper & Packaging Prods., Inc. v. Kirgan*, 183 Cal. App. 3d 1318, 1326  
(1986) (no protectable trade secret where information sought to be protected was  
“lists of customers who operate manufacturing concerns and who need shipping  
supplies to ship their products to market”). If an entire compilation of business  
contacts is not protectable as a trade secret, then, *a fortiori*, neither is the identity or  
contact information of a single “research partner.”

1 acquisition be “by a person who knows or has reason to know that the trade secret  
2 was acquired by improper means.” 18 U.S.C. § 1839(5).

3 As these statutes confirm, the defendant’s mere possession of trade secrets is  
4 not enough; rather, to state a claim under the CUTSA, the plaintiff must allege facts  
5 sufficient to show that the defendant “acquired, disclosed, or used the plaintiff’s  
6 trade secret *through improper means.*” *Cytodyn, Inc. v. Amerimmune Pharm., Inc.*,  
7 160 Cal. App. 4th 288, 297 (2008) (emphasis added) (citation omitted). “Improper  
8 means” include “theft, bribery, misrepresentation, breach or inducement of a breach  
9 of a duty to maintain secrecy, or espionage through electronic or other means.” Cal.  
10 Civ. Code § 3426.1(a). The definition of “improper means” under the DTSA is  
11 materially identical. *See* 18 U.S.C. § 1839(6). As with the other elements of  
12 misappropriation of trade secrets, the plaintiff may not rely on “conclusory,  
13 formulaic allegation[s]” to salvage the element of misappropriation. *Epicor Software*  
14 *Corp.*, 2013 WL 12130024, at \*3.

15 Here, ChromaDex fails to allege a *single act* by Elysium – not a phone call,  
16 meeting, e-mail or anything else – where Elysium allegedly sought information that  
17 was purportedly a trade secret. As a woefully inadequate substitute, ChromaDex  
18 simply parrots a few choice words from the statutes: “ChromaDex is informed and  
19 believes and based thereon alleges that Elysium *knew or had reason* to know that  
20 Morris and Dellinger had a *duty to maintain secret* the confidential and proprietary  
21 information disclosed to Elysium, and that its acquisition of that information from  
22 Morris and Dellinger was *improper.*” (FAC ¶ 113 (emphases added).) ChromaDex  
23 also vaguely alleges that Morris and Dellinger disclosed information at Elysium’s  
24 “behest,” that Elysium “induced” Morris and Dellinger to disclose information or  
25 that Elysium “conspired with Morris and Dellinger” to harm ChromaDex. (*Id.* ¶¶ 72,  
26 110-112.) But, again, nowhere does ChromaDex allege any *facts* to indicate that  
27 Elysium took any action to solicit information from Morris or Dellinger or that  
28 Elysium knew of Morris’s or Dellinger’s supposed duty to maintain secret certain

1 information – like the identity or contact information of a research partner or  
2 potential customer or collaborator. Indeed, these allegations are conspicuously  
3 absent. (*See id.* ¶ 73 (alleging that Morris informed Elysium of certain information,  
4 but not that Elysium sought the information); *id.* ¶ 74 (alleging that Morris requested  
5 information from Dellinger *while both were employed by ChromaDex*.) This court,  
6 like many others, has previously rejected precisely this strategy of relying on  
7 conclusory assertions without factual support. *See Epicor Software Corp.*, 2013 WL  
8 12130024, at \*3 (allegation that “Epicor has, without authorization, acquired  
9 Alternative’s Service Identification Information and customer information”  
10 insufficient to survive a motion to dismiss). Once ChromaDex’s conclusory  
11 allegations are disregarded, as they should be, it is evident that ChromaDex has  
12 failed to state a claim. *See, e.g., Iqbal*, 556 U.S. at 678 (stating that to state a claim,  
13 a plaintiff must plead more than an “unadorned, the-defendant-unlawfully-harmed-  
14 me accusation”); *see also Bioriginal Food & Sci. Corp. v. Biotab Nutraceuticals*  
15 *Inc.*, No. CV13-5704 CAS (Ex), 2013 WL 6572573, at \*5 (C.D. Cal. Dec. 13, 2013)  
16 (dismissing claim for misappropriation of trade secrets where the complaint did not  
17 supply enough “factual content” to demonstrate that defendants acquired information  
18 through “improper means”).

19 In addition to its failure to plead a misappropriation, ChromaDex equally fails  
20 to allege – in anything other than the most conclusory fashion – an imminent,  
21 threatened misappropriation. It alleges only that Elysium “intend[s] to use”  
22 ChromaDex’s trade secret information at some future point, without identifying  
23 specific words or conduct by Elysium to justify such a concern. (FAC ¶ 110.) This  
24 bare allegation cannot save ChromaDex’s claims from dismissal. *See S. California*  
25 *Inst. of Law*, 2011 WL 1296602, at \*8 (granting motion to dismiss because “[m]erely  
26 reciting SC Law’s belief that TCS intends to disclose information without any facts  
27 plausibly suggesting ‘words or conduct’ that would indicate imminent misuse falls  
28 well short of what is required to plead a CUTSA violation”); *Epicor Software Corp.*,



1 2013 WL 12130024, at \*3 (conclusory allegations of misappropriation insufficient to  
2 survive a motion to dismiss).

3 Because it has failed to identify any wrongful conduct on the part of Elysium  
4 in anything other than the most conclusory fashion, ChromaDex has failed to allege a  
5 misappropriation of a trade secret, and claims five and six of the FAC should be  
6 dismissed on that independently sufficient basis.

7 3. ChromaDex Has Failed to Plead Damages

8 ChromaDex’s claims for misappropriation of trade secrets additionally fail for  
9 a third, independent reason: they do not contain any plausible, nonconclusory  
10 allegation of damages. Damages is an essential element of a claim for  
11 misappropriation of trade secrets. *See, e.g., Cytodyn, Inc.*, 160 Cal. App. 4th at 297.  
12 In the FAC, ChromaDex alleges – in another textbook example of a “conclusory”  
13 statement – only that “[a]s a proximate result of Elysium’s misappropriation of  
14 ChromaDex’s trade secrets and confidential information, ChromaDex has suffered  
15 actual damages in an amount to be proven at trial.” (FAC ¶ 114.) Nowhere does  
16 ChromaDex allege any facts to support this threadbare assertion. Moreover, the  
17 assertion of damage is not facially plausible: Because ChromaDex and Elysium are  
18 not competitors, Elysium’s knowledge of the identity or contact information of a  
19 ChromaDex research partner, or its knowledge of or about a ChromaDex customer,  
20 would in no manner be harmful to ChromaDex.

21 Under *Twombly* and *Iqbal*, the FAC plainly fails to raise ChromaDex’s  
22 claimed right to relief above the speculative level and should be dismissed. *See, e.g.,*  
23 *Magic Laundry Servs.*, 2013 WL 1409530, at \*4 (dismissing claim for  
24 misappropriation of trade secrets absent facts to support the contention “that any  
25 such disclosure harmed Magic Laundry”).

26  
27  
28

1                   4.     ChromaDex’s Claims under the DTSA Fail Because the Alleged  
2                                   Misconduct Precedes the DTSA’s Effective Date

3                   Claim six in the FAC fails for yet another reason: the failure to allege any  
4                   conduct governed by the DTSA. By its own terms, the DTSA, which became  
5                   effective on May 11, 2016, applies to “any misappropriation of a trade secret . . . for  
6                   which any act occurs on or after the date of the enactment of [the] Act.” Defend  
7                   Trade Secrets Act of 2016, Pub. L. 114-153, May 11, 2016, 130 Stat. 376; *Avago*  
8                   *Techs. U.S. Inc. v. Nanoprecision Prods., Inc.*, No. 16-cv-03737-JCS, 2017 WL  
9                   412524, at \*8 (N.D. Cal. Jan. 31, 2017). If information that qualifies as a trade  
10                  secret was originally wrongfully disclosed *before* May 11, 2016, it is of no moment  
11                  that the same information was again disclosed after that date. For the DTSA to  
12                  apply, the plaintiff must identify a new disclosure of a separate trade secret. *See*  
13                  *Avago Techs. U.S. Inc.*, 2017 WL 412524, at \*9.

14                  Here, ChromaDex alleges that “[o]n or around *April 28, 2016*, Morris  
15                  informed Alminana and Marcotulli about ChromaDex’s confidential business  
16                  dealings and information ChromaDex had acquired about one or more potential  
17                  partners.” (FAC ¶ 73 (emphasis added).) ChromaDex subsequently repeats, without  
18                  identifying any other date of an alleged disclosure to Elysium, that Morris and  
19                  Dellinger “wrongfully disclosed” confidential information to Elysium during their  
20                  employment with ChromaDex (*id.* ¶¶ 111, 112) – a time period that largely precedes  
21                  the DTSA’s effective date. Although ChromaDex alleges that on or around May 25,  
22                  2016 – after the effective date of the DTSA – *Morris* made an unusual request for  
23                  information to *Dellinger*, while both were employed by ChromaDex, and that  
24                  *Dellinger* later encouraged a ChromaDex partner to talk with Elysium (*id.* ¶ 74),  
25                  these allegations do not identify any act *by Elysium* to obtain information from  
26                  ChromaDex after the effective date and thus fail to bring the claim within the  
27                  DTSA’s purview.

