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

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

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

**CHROMADEx, INC.'S OPPOSITION TO  
ELYSIUM HEALTH, INC.'S 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

20  
21 Elysium Health, Inc.,  
22 Counterclaimant,  
23 v.  
24 ChromaDex, Inc.,  
25 Counter-Defendant.  
26

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1 **I. INTRODUCTION**

2 This case is about Elysium Health, Inc.’s (“Elysium’s”) theft of ChromaDex,  
3 Inc.’s (“ChromaDex’s) product, Elysium’s misappropriation of ChromaDex’s trade  
4 secrets, and Elysium’s conversion of ChromaDex’s valuable material. Now, after  
5 Elysium has spent more than a year playing hide-the-ball in discovery, ChromaDex has  
6 obtained irrefutable evidence to support these claims, including communications  
7 showing that Elysium covertly recruited key ChromaDex employees and directed them  
8 to undermine ChromaDex operations from within. The evidence finally obtained in  
9 discovery further shows that one of these agents abruptly quit ChromaDex on a Friday,  
10 became an Elysium employee on a Monday, and on that same day provided Elysium  
11 with valuable ChromaDex trade secrets and proprietary information. Elysium then  
12 converted much of this material for its own use by simply removing ChromaDex  
13 markings and replacing them with Elysium identifiers.

14 Exploiting what it misappropriated from ChromaDex, Elysium began producing  
15 knockoffs of ChromaDex’s patented products in an effort to drive it from the market.  
16 These facts have come to light only through ChromaDex’s persistent efforts to obtain  
17 routine discovery from Elysium, despite Elysium’s campaign from the moment this  
18 lawsuit was filed to shield its documents and those of its principals from production.  
19 Only recently, for instance, has Elysium produced text messages that clearly reveal the  
20 its unlawful activities. These materials should have been produced long ago.

21 Although Elysium willingly stipulated to the filing of the Fourth Amended  
22 Complaint (“FAC”), it now seeks to dismiss the third, fourth, and fifth claims brought  
23 by ChromaDex. But the FAC’s allegations easily satisfy the liberal pleading standards  
24 articulated by the Ninth Circuit and thus cannot be dismissed under Federal Rule of  
25 Civil Procedure 12(b). Elysium’s arguments to the contrary are unpersuasive,  
26 especially in light of the specific details that the FAC provides with respect to  
27 Elysium’s willful misconduct. It is incontrovertible that Elysium misappropriated  
28 ChromaDex’s “Ingredient Sales Spreadsheet,” a document containing valuable trade

1 secrets, such as the purchasing history of *every single ChromaDex customer* for every  
2 *single sale*, including dates and amounts, since at least 2012. The Spreadsheet appeared  
3 on Elysium’s computers the very same day that ex-ChromaDex employee Mark Morris  
4 started working at Elysium. And the FAC clearly pleads the independent economic  
5 value of, and ChromaDex’s damages arising from, Elysium’s theft of the Spreadsheet.

6 ChromaDex also properly pleads that Elysium converted at least seven  
7 ChromaDex documents by wrongfully obtaining possession of them, removing  
8 ChromaDex markings, and then using the documents as its own. Elysium challenges  
9 the conversion claim by arguing that it is (1) preempted by federal copyright law, (2)  
10 superseded by California’s Uniform Trade Secrets Act (“CUTSA”), and (3) barred by  
11 the economic loss doctrine. These arguments are unconvincing. First, as Elysium  
12 admits, ChromaDex pleads the extra elements necessary to avoid copyright  
13 preemption. Second, the claim is not superseded by CUTSA because ChromaDex’s  
14 property rights are not grounded in the confidentiality of the documents. And third, the  
15 claim is not barred by the economic loss doctrine because Elysium interfered with  
16 ChromaDex’s property rights in the material.

17 Nor do Elysium’s arguments that the FAC does not sufficiently plead ownership  
18 of, or damages from, some of the converted documents pass muster; the FAC provides  
19 more than sufficient detail at this stage of the case. And Elysium’s half-hearted  
20 argument that the FAC does not allege that Elysium violated its confidentiality  
21 obligations is belied by both the contracts and the factual allegations.

22 Elysium’s Motion is also procedurally improper because Elysium violated Local  
23 Rule 7-3 by filing it *the same day* as the required meet and confer. Elysium did not  
24 even *request* a conference until six days before it filed the Motion, and that “request”  
25 did not identify the substance of Elysium’s contemplated Motion. Nor does Elysium  
26 have any excuse for its failure to comply with proper procedure: Elysium received the  
27 FAC on May 17, 2018, engaged in repeated meet-and-confer sessions—during which  
28 Elysium never notified ChromaDex that it would oppose the FAC—and *stipulated to*



1 *ChromaDex filing the FAC*. Because Elysium’s unwarranted delay is inexcusable and  
 2 prejudices both this Court and ChromaDex, the Court should deny the Motion.

## 3 **II. STATEMENT OF FACTS**

### 4 **A. Elysium Executes Its Strategy To Destroy ChromaDex.**

5 ChromaDex develops and sells ingredients to customers in the “dietary  
 6 supplement, food, beverage, skin care, and pharmaceutical markets,” and competes  
 7 directly with Elysium. (FAC ¶¶ 11, 13, 77, 95, 152.) ChromaDex was the “sole United  
 8 States commercial source and supplier” of NR and had made “substantial investments  
 9 . . . in advancing NR and pterostilbene in the market and clearing regulatory hurdles  
 10 necessary to produce and market the ingredients.” (*Id.* ¶¶ 7, 20.) Elysium once  
 11 purchased NR and pterostilbene—branded NIAGEN and pTeroPure, respectively—  
 12 from ChromaDex. (*Id.* ¶¶ 2, 18.) But Elysium, realizing the immense value of what  
 13 ChromaDex had created, plotted to steal ChromaDex’s ingredients, its employees, its  
 14 business secrets, and finally—and shamelessly—even the foundational documents and  
 15 presentations that made ChromaDex function as a going concern. (*See, e.g., id.* ¶¶ 1–  
 16 8.) Elysium wrongfully claimed ChromaDex’s property, information, and knowledge  
 17 as its own, and maliciously turned it against ChromaDex. (*Id.* ¶¶ 21–111, 148–228.)

18 To accomplish its plan, Elysium began recruiting Mark Morris, then-  
 19 ChromaDex Vice President of Business Development, in April 2016. (*Id.* ¶¶ 22–25.) In  
 20 May 2016, to gain favor with his new secret employer, Morris secretly funneled  
 21 confidential ChromaDex sales information to Elysium in a spreadsheet (the “Pricing  
 22 Spreadsheet”). (*Id.* ¶ 73.) Elysium hid its possession of that information while  
 23 simultaneously using it to harm ChromaDex, deploying a mis-interpretation of the  
 24 NIAGEN Supply Agreement as a pretext for its coming bad behavior. (*Id.* ¶¶ 26, 27.)  
 25 The very same day, Elysium’s COO, Daniel Alminana, lied to ChromaDex’s CEO,  
 26 Frank Jaksch, by requesting the same information under a false pretense, and despite  
 27  
 28

1 knowing that it was confidential. (*Id.* ¶ 27.)<sup>1</sup> While Jaksch attempted to resolve the  
2 issue in good faith, Elysium continued to plot in bad faith. (*Id.* ¶ 28.)

3 Elysium’s next move was to stockpile as much NIAGEN and pTeroPure as  
4 possible to provide a stream of income and give it time to copy ChromaDex’s patented  
5 product. (FAC ¶¶ 29–56.) On June 30, 2016, Elysium placed extraordinarily large  
6 orders, totaling nearly \$3 million of ingredients. (*Id.* ¶ 38.) ChromaDex promptly filled  
7 them, relying on Elysium’s lies that it was “ramping up its sales” and “expected to use  
8 all” of the ingredients “in the next few months” and would “place additional large  
9 orders.” (*Id.* ¶¶ 34, 36, 40–42.) No sooner had the final order been shipped than  
10 Elysium reneged on its contractual obligation to pay, and still has not paid. (*Id.* ¶¶ 45,  
11 51.) For several months, Elysium—sitting on its stockpile of ingredients—strung  
12 ChromaDex along by engaging in bad-faith discussions while it used ChromaDex’s  
13 documents to develop competing sources for its ingredients. (*Id.* ¶¶ 46–49, 81.)<sup>2</sup>

14 **B. Elysium Recruits ChromaDex Employees And Steals Its Trade**  
15 **Secrets.**

16 Once secure in its possession of ingredient stockpiles, Elysium ordered its  
17 agents—Morris and Ryan Dellinger, the ChromaDex Director of Scientific Affairs—to  
18 quit and come to work at Elysium. (*Id.* ¶ 50, 52.) Morris left on July 15, 2016, only two  
19 weeks after the final order of NIAGEN was shipped. (*Id.* ¶¶ 50, 69.) He lied to  
20 ChromaDex, failing to disclose that he had been secretly, and would now officially be,  
21 working for Elysium. (*Id.* ¶ 69.) Elysium immediately tasked him with developing a  
22 competing source of NR. (*Id.* ¶ 80.) Dellinger resigned the same day Elysium informed  
23 ChromaDex that it would not pay for the June 30 orders: August 10, 2016. (*Id.* ¶ 45.)

24 \_\_\_\_\_  
25 <sup>1</sup> Elysium represents to the Court in its Third Amended Counterclaims that Alminana’s  
26 email was a “friendly request.” (Dkt. 103 ¶ 72 (“TAC”).)

27 <sup>2</sup> Elysium’s TAC alleges that its “best efforts” to settle the dispute “were hampered by  
28 ChromaDex’s refusal to provide information to Elysium necessary to calculate the  
credit due for ChromaDex’s breach,” (TAC ¶ 114), but the Pricing Spreadsheet reveals  
that Elysium wrongfully possessed that information all along.

1 He also refused to say that he had been hired by Elysium in the same position he held  
2 at ChromaDex: Director of Scientific Affairs. (*Id.* ¶ 98.) Dellinger used his knowledge  
3 of ChromaDex’s scientific operations for Elysium’s benefit, often by using wrongfully-  
4 obtained ChromaDex material. (*Id.* ¶¶ 98, 101–03, 106, 109.)

5 On July 18, 2016, his first day at Elysium and only three days after re-affirming  
6 his confidentiality obligations to ChromaDex, Morris provided Elysium the central  
7 document to ChromaDex’s entire business: the Ingredient Sales Spreadsheet. (*Id.*  
8 ¶¶ 77, 156.) The Spreadsheet is a highly-confidential document that tracks “all sales for  
9 all ingredients by quarter since 2012,” and “contains the detailed purchasing history of  
10 every customer who purchased any ingredient from ChromaDex—including customer  
11 names, prices, volumes, and dates of purchases.” (*Id.* ¶ 77; *see also id.* ¶¶ 150–51.)  
12 ChromaDex took steps to keep the Spreadsheet confidential, including by limiting  
13 access to it, requiring employees to sign employment and confidentiality agreements,  
14 and refusing to share the Spreadsheet outside of the company. (*Id.* ¶ 153.)

15 Elysium willfully and maliciously obtained the Spreadsheet, and all of the trade  
16 secrets it contained, through its agent Morris, notwithstanding Morris’s obligation to  
17 not use or disclose the Spreadsheet outside of ChromaDex. (*Id.* ¶ 154–59.) And once in  
18 possession of the Spreadsheet, Elysium unjustly enriched itself by wrongly accessing  
19 and using the sales information, both to obtain an advantage in the marketplace and in  
20 its negotiations with ChromaDex. (*Id.* ¶¶ 77, 160–61.)

21 **C. Elysium Violates Its Confidentiality Obligations To ChromaDex And**  
22 **Converts ChromaDex Documents.**

23 Elysium was not satisfied with just stealing ChromaDex’s trade secrets; it  
24 wanted the entire market for NR and pterostilbene. To that end, Elysium disclosed  
25 several key ChromaDex files in violation of its confidentiality obligations to  
26 ChromaDex. (*Id.* ¶¶ 126, 137.) These include:

- 27 1. The NRCl Analytical Method, which “ChromaDex developed for analyzing the  
28 concentration of NR chloride by high-performance liquid chromatography.” (*Id.*

- 1 ¶ 88; *see also id.* ¶ 172.)
- 2 2. The NR Specifications, which “described ChromaDex’s specifications for the
- 3 range of acceptable results for several analyses that were regularly performed on
- 4 the NIAGEN ChromaDex sold.” (*Id.* ¶ 90; *see also id.* ¶ 213.)
- 5 3. The pTeroPure GRAS Report, which “detailed the safety of pterostilbene” and
- 6 supported regulatory submissions to the U.S. Food and Drug Administration
- 7 (“FDA”). (*Id.* ¶ 106; *see also id.* ¶ 179.)
- 8 4. The NR Study Data, which “concerned the data from a ChromaDex human study
- 9 examining the effects of NR on NAD+ levels.” (*Id.* ¶ 140.)

10 ChromaDex invested its knowledge, experience, and resources into developing the  
11 content of these documents and the documents themselves. (*Id.* ¶¶ 88, 90, 107, 109,  
12 184.) And Elysium wrongly disclosed them by sending the NRCI Analytical Method  
13 and NR Specifications to its alternative NR manufacturer to use as a shortcut in  
14 developing a competing supply of NR, (*id.* ¶¶ 93–96, 174–76, 215, 217), sending the  
15 pTeroPure GRAS Report to its third-party regulatory consultants as the basis for its  
16 own regulatory filing, (*id.* ¶¶ 109, 129, 182–83), and presenting the NR Study Data to  
17 dozens of potential investors to solicit much-needed capital, (*id.* ¶¶ 140–43).

18 But Elysium did not stop there; it also converted at least *seven* ChromaDex  
19 documents for its own use. In addition to the NRCI Analytical Method, the NR  
20 Specifications, and the pTeroPure GRAS Report, Elysium stole:

- 21 1. The Pricing Spreadsheet, or the information contained therein, which detailed
- 22 ChromaDex sales of NR to another customer. (*Id.* ¶ 206.)
- 23 2. The NR Presentation, which “explain[s] the science supporting the health
- 24 benefits of” NIAGEN. (*Id.* ¶ 101; *see also id.* ¶ 186.)
- 25 3. The Pterostilbene Presentation, which “explain[s] the science supporting the
- 26 health benefits of” pTeroPure. (*Id.* ¶ 101; *see also id.* ¶ 197.)
- 27 4. The NR GRAS Dossier, which “contains extensive information developed and
- 28 compiled by ChromaDex showing the safety of NR for human consumption”  
and “details the methods and processes by which NR is manufactured.” (*Id.*  
¶ 220.)

The material Elysium stole is highly valuable to ChromaDex; for example, GRAS  
designations for its ingredients permit ChromaDex to market them without pre-market

1 approval from FDA and advertise them as “generally recognized as safe.” (*Id.* ¶ 222.)

2 Elysium’s uses for the converted ChromaDex documents were numerous. First,  
3 it used the Pricing Spreadsheet to gain an unfair advantage in contract negotiations  
4 with ChromaDex. (*Id.* ¶¶ 208, 210–11.) It also claimed several documents as its own to  
5 jumpstart the production of an alternative source of NR to compete with ChromaDex’s,  
6 including the NRCI Analytical Method, the NR Specifications, and the NR GRAS  
7 Dossier. (*Id.* ¶¶ 176, 215, 217, 225–26.) And it converted the pTeroPure GRAS Report  
8 to “update” and claim as its own regulatory submission to the FDA. (*Id.* ¶¶ 109, 182.)  
9 Finally, Morris and Dellinger took the NR and Pterostilbene Presentations from  
10 ChromaDex, which Elysium then converted by (a) removing ChromaDex’s logos and  
11 references and replacing them with Elysium’s and (b) claiming and using them with a  
12 potential investor. (*Id.* ¶¶ 100–04, 186–96, 197–205.) Elysium also misused the NR  
13 Presentation by showing it, now with Elysium markings, to the National Advertising  
14 Division of the Better Business Bureau in response to an inquiry on Elysium’s  
15 marketing claims. (*Id.* ¶¶ 105, 193.)

16 **D. The Truth Of Elysium’s Misconduct Slowly Emerges.**

17 On December 29, 2016, ChromaDex—still in the dark about how thoroughly  
18 Elysium had raided its business—filed suit to recover the \$3 million Elysium refused  
19 to pay. (Dkt. 1.) Elysium answered and alleged counterclaims on January 25, 2017.  
20 (Dkt. 11.) Realizing that more than just its shipments had been taken, ChromaDex  
21 alleged its first trade secret claim in its First Amended Complaint on February 15,  
22 2017. (Dkt. 26.) The Court dismissed the claim merely because ChromaDex could only  
23 allege at that time that Elysium had stolen “contact information of its potential  
24 customers and partners.” (Dkt. 44 at 14.) The Court noted that the claim could “be  
25 cured through additional factual allegations,” and allowed leave to amend. (*Id.*)

26 On May 24, 2017, still without the benefit of discovery from Elysium,  
27 ChromaDex alleged a trade secrets claim as to the “Safety Report” and “Study  
28 Proposal.” (Dkt. 45 ¶ 66.) When Elysium informed ChromaDex that those specific

1 documents were likely not trade secrets, ChromaDex freely withdrew the claim, and  
2 has not re-alleged them in the FAC. (Dkt. 48.)<sup>3</sup> ChromaDex’s legitimate suspicions  
3 about Elysium’s theft of its trade secrets have now been vindicated through discovery.

4 **III. LEGAL STANDARD**

5 On a motion to dismiss, “[a]ll allegations of material fact are taken as true and  
6 construed in the light most favorable to the nonmoving party.” *Sprewell v. Golden*  
7 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). The Court should “construe the  
8 complaint liberally and [is] not bound by its formal language.” *Nordstrom, Inc. v.*  
9 *Chubb & Son, Inc.*, 54 F.3d 1424, 1433 (9th Cir. 1995). A complaint need not “allege  
10 ‘specific facts’ beyond those necessary to state [a] claim and the grounds showing  
11 entitlement to relief.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Further,  
12 “a well-pleaded complaint may proceed even if it strikes a savvy judge that actual  
13 proof of those facts is improbable,” *id.* at 556, and “should not be dismissed unless it  
14 appears beyond doubt that the plaintiff can prove no set of facts in support of the claim  
15 that would entitle the plaintiff to relief,” *Sprewell*, 266 F.3d at 988.

16 **IV. ARGUMENT**

17 **A. The Court Should Decline To Hear Elysium’s Motion Because**  
18 **Elysium Failed To Comply With Local Rule 7-3.**

19 Under Local Rule 7-3, “counsel contemplating the filing of any motion shall  
20 first contact opposing counsel to discuss thoroughly . . . the substance of the  
21 contemplated motion and any potential resolution,” and that conference “shall take  
22 place at least seven (7) days prior to the filing of the motion.” Courts in this District  
23 strictly enforce this rule because it “isn’t just a piece of petty pedantry put down to trip  
24 up lawyers. Nor is Local Rule 7-3 a mere formalism simply there to be checked off by  
25 lawyers.” *Lopez v. Wells Fargo Bank, N.A.*, 2016 WL 6088257, at \*2–3 (C.D. Cal. Oct.

26 \_\_\_\_\_  
27 <sup>3</sup> Elysium represented that it did not, as of the filing of the FAC, have any evidence  
28 Anderson ¶ 5 (“Anderson Decl.”).)

1 17, 2016) (denying motion for violation of Local Rule 7-3); *see also Vape Soc’y*  
2 *Supply Corp. v. Zeiadeh*, 2017 WL 2919080, at \*2–3 (C.D. Cal. Feb. 6, 2017) (same).

3 As Elysium represents in its Notice of Motion (Dtk. 111), the required meet and  
4 confer conference occurred on July 9, 2018, *the same day Elysium filed its Motion*.  
5 That is plainly a violation of Local Rule 7-3, and the Court should thus deny the  
6 Motion. *Lopez*, 2016 WL 6088257, at \*2 (denying motion filed same day as meet and  
7 confer); *Alcatel-Lucent USA, Inc. v. Dugdale Commc’ns, Inc.*, 2009 WL 3346784, at  
8 \*3–4 (Oct. 13, 2009) (same); *see also Thomas v. Brett Sports & Entm’t, Inc.*, 2016 WL  
9 4472995, at \*2 (C.D. Cal. Aug. 23, 2016) (five days); *Singer v. Live Nation*  
10 *Worldwide, Inc.*, 2012 WL 123146, at \*2 (C.D. Cal. Jan. 13, 2012) (three days).<sup>4</sup>

11 Both ChromaDex and this Court are prejudiced by Elysium’s blatant disregard  
12 for proper procedure. Elysium received the FAC on May 17, 2018, engaged in multiple  
13 rounds of correspondence and meet-and-confers, and even *stipulated to ChromaDex*  
14 *filing it without opposition*. (Anderson Decl. ¶¶ 2, 3.) Before filing it, ChromaDex  
15 repeatedly asked Elysium whether it would substantively oppose the FAC, but Elysium  
16 remained utterly silent. (*Id.* ¶ 4.) Elysium’s refusal to meaningfully meet-and-confer  
17 gave it *47 days* (between May 17 and July 3) to secretly prepare its Motion, while its  
18 violation of Local Rule 7-3 deprived ChromaDex of *half* of the fourteen days that it  
19 should have had to consider and respond to Elysium’s arguments.<sup>5</sup> Additionally, had  
20 Elysium followed Local Rule 7-3, the parties could have “focus[ed] and clarif[ied]” the  
21 dispute, which is the very purpose of the Rule. *Lopez*, 2016 WL 6088257, at \*2

22 \_\_\_\_\_  
23 <sup>4</sup> Nor can Elysium argue that its July 3 “request” for a meet and confer satisfies Local  
24 Rule 7-3. That email—sent only six days before Elysium filed and on the eve of a  
25 major national holiday—was the first time that Elysium informed ChromaDex that it  
26 would move to dismiss. (Anderson Decl. ¶¶ 6, 7 & Ex. A.) It contained only one line,  
27 failing to even identify the claims that Elysium challenged. (*Id.* ¶ 6, Ex. A.) That is not  
28 sufficient. *Vape Soc’y*, 2017 WL 2919080, at \*2; *Singer*, 2012 WL 123146, at \*2.

<sup>5</sup> Elysium’s unfair litigation tactics continue unabated; it recently served an  
unprecedented 316 new document requests, many of which appear duplicative of  
earlier requests or seek irrelevant materials. (Anderson Decl. ¶ 9.)

1 (finding Local Rule 7-3 “helps ensure counsel fulfill their obligation to ‘secure the just,  
2 speedy, and inexpensive determination of every action and proceeding,’ by avoiding  
3 unnecessary litigation” (quoting Fed. R. Civ. P. 1)); *Alcatel-Lucent*, 2009 WL  
4 3346784, at \*4 (finding “this entire motion could have been avoided if Defendant had  
5 met and conferred with Plaintiffs beyond a mere telephone call on the day of filing”).  
6 For example, while ChromaDex firmly believes that it has sufficiently pleaded its  
7 claims in the FAC, it may have been possible (with sufficient time) to moot some of  
8 Elysium’s arguments through amended allegations. (Anderson Dec. ¶ 8.) Elysium’s  
9 procedurally-improper Motion now forces this Court and ChromaDex to waste  
10 precious time and resources. *Vape Soc’y*, 2017 WL 2919080, at \*2. The Court should  
11 reject Elysium’s attempt to litigate by surprise and deny Elysium’ Motion.

12 **B. ChromaDex States A Claim For Trade Secret Misappropriation.**

13 Elysium wrongly contends that the FAC fails to plead its brazen theft and  
14 misuse of an incredibly-valuable ChromaDex document: the Ingredient Sales  
15 Spreadsheet. (Mot. at 23–25.) The FAC easily satisfies the liberal standard for alleging  
16 that the trade secret is protectable and that Elysium’s possession and misuse of it  
17 damaged ChromaDex. *Cedars Sinai Med. Ctr. v. Quest Diagnostics Inc.*, 2018 WL  
18 2558385, at \*4 (C.D. Cal. Feb. 12, 2018) (holding trade secret claim need only state “a  
19 short and plain statement of the claim showing the pleader is entitled to relief.”  
20 (internal citations and quotation marks omitted)); *see also Duncan v. Stuetzle*, 76 F.3d  
21 1480, 1486 n.9 (9th Cir. 1996) (“[I]t is apparent that California courts would liberally  
22 construe the [CUTSA] allegations.”).<sup>6</sup>

23 **1. The FAC Pleads A Protectable Trade Secret.**

24 Elysium argues that the FAC does not allege sufficient facts to infer that the

25 \_\_\_\_\_  
26 <sup>6</sup> Elysium’s citation to this Court’s prior Order regarding the prior trade secrets claim is  
27 misplaced. (Mot. at 22.) The Court provided ChromaDex leave to amend its trade  
28 secrets claim. (Dkt. 44 at 14.) ChromaDex has now cured any deficiency because it has  
finally obtained—after significant efforts to get Elysium to comply with its discovery  
obligations—the information that Elysium stole. (FAC ¶¶ 77–79, 148–68.)



1 Ingredient Sales Spreadsheet derives economic value from not being generally known.  
2 (Mot. at 22–23.) Wrong. To aver that “trade secrets derive independent economic  
3 value,” a plaintiff need only aver that the material is “not generally known and ‘a  
4 competitor could use this information to market itself more effectively.’” *Nelson Bros.*  
5 *Prof’l Real Estate LLC v. Jaussi*, 2017 WL 8220703, at \*5 (C.D. Cal. Mar. 23, 2017);  
6 *see also AT&T Commc’ns. v. Pac. Bell*, 238 F.3d 427, 2000 WL 1277937, at \*2 (9th  
7 Cir. Sept. 8, 2000) (finding stolen “billing data” has “independent economic value”  
8 under CUTSA because it gave defendant “a ready-made marketing plan for [its] entry  
9 into the [relevant] market”). The FAC plainly does that. “The Ingredient Sales  
10 Spreadsheet derives independent economic value from not being generally known to  
11 the public,” because it includes “the detailed purchasing history of each ChromaDex  
12 ingredient customer, order forecasts, and the prices, volumes, and dates of each  
13 purchase.” (FAC ¶ 151.) Elysium stole and accessed valuable information—such as  
14 how ChromaDex structures its relationships with its customers, as well as market  
15 trends and forecasts—for its own competitive purposes and used it to gain “an  
16 undisclosed upper-hand during contract negotiations with ChromaDex.” (*Id.* ¶ 160.)  
17 The claim is sufficiently pleaded because that proprietary information, “if known  
18 generally, would be diminished.” *Revolution FMO, LLC v. Grant*, 2015 WL 2452824,  
19 at \*3 (C.D. Cal. May 19, 2015); *see also Nelson Bros.*, 2017 WL 8220703, at \*5.<sup>7</sup>

## 20           **2.       The FAC Pleads Damages From Elysium’s Misappropriation.**

21           Elysium also erroneously suggests that the FAC does not adequately plead  
22 ChromaDex’s harm from Elysium’s theft and misuse of its trade secrets. (Mot. at 23–  
23 25.) Not so. At the threshold, “when a trade secret is misappropriated, harm may be  
24 presumed.” *Language Line Servs., Inc. v. Language Servs. Assocs., Inc.*, 944 F. Supp.  
25 2d 775, 783 (N.D. Cal. 2013) (allowing damages claim under CUTSA to go to jury

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26  
27 <sup>7</sup> Elysium’s one cite—*Webpass, Inc. v. Banth*—is wholly inapposite; unlike with the  
28 FAC, the plaintiff in that case did “not set forth facts establishing how the alleged trade  
secrets derive . . . value.” 2014 WL 7206695, at \*3 (N.D. Cal. Dec. 18, 2014).

1 because “defendants accessed and examined [plaintiff’s] data”); *see also Cooper*  
2 *Interconnect, Inc. v. Glenair, Inc.*, 2015 WL 13722129, at \*4 n.4 (C.D. Cal. Feb. 3,  
3 2015) (holding harm is presumed when “defendant misappropriated the plaintiff’s  
4 trade secrets and [] the defendant could still use them”). “[O]nce defendant[] accessed  
5 the misappropriated information from plaintiff[’s] databases and examined that data  
6 they became obligated to pay for their use of that unlawfully acquired information.”  
7 *Language Line*, 944 F. Supp. 2d at 783 (internal quotation marks omitted). Thus,  
8 Elysium’s theft and continued possession of the Ingredient Sales Spreadsheet gives rise  
9 to a presumption that ChromaDex was injured.

10 In any event, the FAC alleges actual injury from Elysium’s misconduct.  
11 Elysium “improperly used the spreadsheet,” including by wrongfully “access[ing] the  
12 detailed purchasing histories of all of its closest competitors” and obtaining “an  
13 advantage in contract negotiations with ChromaDex.” (FAC ¶¶ 152, 154, 160.) That is  
14 sufficient to allege harm. *iBASEt v. Exacore, LLC*, 2014 WL 12576816, at \*3 (C.D.  
15 Cal. Mar. 24, 2014) (Carney, J.) (finding trade secret claim “meritorious” when  
16 complaint alleged party “had access” to and “used” information); *Language Line*, 944  
17 F. Supp. 2d at 783; *AT&T Commc’ns v. Pac. Bell*, 1998 U.S. Dist. LEXIS 13459, at  
18 \*6–7 (N.D. Cal. Aug. 26, 1998); *see also Planned Parenthood Fed’n of Am., Inc. v.*  
19 *Ctr. for Med. Progress*, 214 F. Supp. 3d 808, 827 (N.D. Cal. 2016), *aff’d*, 890 F.3d 828  
20 (9th Cir. 2018) *and* 2018 WL 2229329 (9th Cir. May 16, 2018) (“How far the actual  
21 causal link stretches for each category of damages plaintiffs allege is something that  
22 will need to be developed in discovery and tested on summary judgment.”).

23 Elysium’s arguments to the contrary do not withstand even modest scrutiny.  
24 First, Elysium entirely ignores that ChromaDex was directly damaged by Elysium’s  
25 access to its comprehensive and detailed sales information covering its entire  
26 ingredient business. (FAC ¶¶ 77, 152, 160.) One part of Elysium’s plan to undermine  
27 ChromaDex included “developing its own alternative sources of NR and  
28 pterostilbene.” (FAC ¶ 5; *see also id.* ¶¶ 3, 53, 74, 88–96, 111.) Prior to Elysium’s

1 success in developing those alternative sources, ChromaDex was “the sole United  
2 States commercial source and supplier of NR” and “the exclusive licensee to several  
3 patents” related both “to NR and its manufacture” and “to the synthesis of  
4 pterostilbene”; ChromaDex was damaged (at a minimum) by Elysium’s theft of secrets  
5 concerning those ingredient markets, which gave Elysium inside knowledge of  
6 ChromaDex’s past sales and sales forecasts. (*Id.* ¶¶ 1–8, 15, 17, 20.)<sup>8</sup>

7 While Elysium also argues that the undisclosed advantage it gained over  
8 ChromaDex during contract negotiations from unlawfully possessing ChromaDex  
9 secrets is bare of detail, Elysium concedes that those negotiations are alleged in the  
10 FAC. (FAC ¶¶ 45–49, 152, 160; Mot. at 24–25.) Those allegations are more than  
11 enough, especially in light of Elysium’s broader strategy to harm ChromaDex by  
12 stealing its ingredients, refusing to pay for them, selling product made with them, and  
13 using the withheld payments and profits as a springboard to market dominance. (FAC  
14 ¶¶ 1–8.) That *Elysium* never intended to honor *its* commitments does not mean that  
15 ChromaDex’s information did not give it an advantage in the negotiations or that  
16 ChromaDex was not harmed. Here, Elysium leveraged its improper knowledge of  
17 ChromaDex’s entire sales history and forecasts to anticipate ChromaDex’s willingness  
18 to give it a lower price in exchange for a large order, all while Elysium strung  
19 ChromaDex along until its alternative sources were operational. (*Id.* ¶¶ 45–49, 97.)

20 Second, Elysium takes issue with the FAC’s allegation that “Elysium’s  
21 misappropriation of ChromaDex’s trade secret information has unjustly enriched  
22 Elysium and damaged ChromaDex in an amount to be determined at trial.” (FAC  
23 ¶ 161.) ChromaDex “could prevail on its claim of misappropriation of trade secrets by  
24 showing *either* damage as a result of the misappropriation or unjust enrichment.”  
25

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26 <sup>8</sup> The FAC is thus completely different from the one dismissed in *E. & J. Gallo Winery*  
27 *v. Instituut Voor Landbouw—En Visserijonderzoek*, where the injured party failed to  
28 allege harm because it had divested itself of the business that was harmed by the theft  
of the trade secrets. 2018 WL 2463869, at \*7–8 (E.D. Cal. June 1, 2018).

1 *Therapeutic Research Facility v. NBTY, Inc.*, 488 F. Supp. 2d 991, 1000 (E.D. Cal.  
2 2007) (emphasis in original). Elysium was unjustly enriched by its theft of the  
3 Ingredient Sales Spreadsheet, including by learning what it previously did not know—  
4 the complete history and direction of ChromaDex’s NR and pterostilbene sales (among  
5 others)—as well as by its efforts to scam ChromaDex product, employees, and  
6 documents, and its extended bad-faith contract negotiations.<sup>9</sup> The exact measure of  
7 Elysium’s enrichment can only be learned through discovery. *Pyro-Comm’n Sys. Inc.*  
8 *v. W. Coast Fire & Integration Inc.*, 2015 WL 12765143, at \*7 (C.D. Cal. Apr. 2,  
9 2015) (“Any damages alleged in a complaint . . . are necessarily speculative.”).

10 Finally, under CUTSA, a plaintiff may seek punitive damages for “willful and  
11 malicious misappropriation,” Cal. Civ. Code § 3426.3(c), such as when a defendant  
12 takes “valuable information from Plaintiff and then download[s] it onto the computer  
13 of a competitor,” *Cooper Interconnect*, 2015 WL 13722129, at \*4 n.4. Here, Elysium  
14 recruited Morris, ordered him to spy on, influence, and lie to ChromaDex, Morris stole  
15 the Ingredient Sales Spreadsheet (among other things), and “Elysium saved the stolen  
16 spreadsheet to its servers.” (*Id.* ¶¶ 1–8, 69, 72–80, 85–87, 98–103, 154–59, 162.) The  
17 FAC is therefore “sufficient to support a reasonable inference of malice and willfulness  
18 on the part of” Elysium. *Cooper Interconnect*, 2015 WL 13722129, at \*4 n.4.

19 ChromaDex has thus properly pleaded damages for its trade secrets claim. That  
20 is especially true when further discovery is necessary to determine to what extent  
21 Elysium misused ChromaDex’s trade secrets. *Planned Parenthood*, 214 F. Supp. 3d at  
22 827; *Pyro-Comm’n Sys.*, 2015 WL 12765143, at \*7; Cal. Civ. Code § 3426.3(a)  
23 (permitting damages for threatened losses).

### 24 **C. ChromaDex States A Claim For Conversion.**

#### 25 **1. The Conversion Claim Is Proper As a Matter of Law.**

26 Elysium cites to three inapplicable legal doctrines to argue that ChromaDex’s

27 \_\_\_\_\_  
28 <sup>9</sup> As above, *E. & J. Gallo Winery* is inapt, because the complaint there had “no factual  
allegations” supporting its unjust enrichment claim. 2018 WL 2463869, at \*8 n.4.

1 conversion claim is invalid. Elysium is wrong on each count.

2 **a. The Copyright Act Does Not Preempt The Conversion**  
3 **Claim.**

4 Elysium contends that the Copyright Act preempts the conversion claim. (Mot.  
5 10–11.)<sup>10</sup> Federal copyright law only “prohibits state-law protection for any right  
6 equivalent to those in the Copyright Act.” *G.S. Rasmussen & Assocs., Inc. v. Kalitta*  
7 *Flying Serv., Inc.*, 958 F.2d 896, 904 (9th Cir. 1992) (citing 17 U.S.C. § 301(a)). “In  
8 order for there to be such preemption, the state law claim must meet two requirements.  
9 First, the work at issue must come within the subject matter of copyright. Second, the  
10 rights granted under the state law must be equivalent to [one] of the exclusive rights  
11 within the general scope of copyright.” *Jurisearch Holdings, LLC v. Lawriter, LLC*,  
12 2009 WL 10670588, at \*5 (C.D. Cal. Apr. 13, 2009) (internal quotation marks  
13 omitted). “[T]here is no preemption” where “violation of the state right is predicated  
14 upon an act incorporating elements beyond mere reproduction or the like.” *G.S.*  
15 *Rasmussen*, 958 F.2d at 904 (quoting *Oddo v. Ries*, 743 F.2d 630, 635 (9th Cir. 1984)).

16 Only one extra element beyond a copyright claim need be alleged to avoid  
17 copyright preemption, and the FAC alleges at least two: (1) improper acquisition and  
18 (2) wrongful use of the documents. First, Elysium contends (as it must to argue  
19 copyright preemption) that “the heart of the claim is that Elysium copied, reproduced,  
20 or disseminated content” without ChromaDex’s consent. (Mot. at 11.) But, as Elysium  
21 concedes elsewhere, “the gravamen of [ChromaDex’s conversion] allegations is that  
22 Elysium *improperly acquired or used*” the converted material. (*Id.* at 9 (emphasis  
23 added).) That additional element of misconduct, which goes beyond the mere  
24 “copying” necessary for copyright claims, precludes preemption here. *Gladstone v.*  
25 *Hillel*, 203 Cal. App. 3d 977, 987 (1988) (“Under the extra element test, it is clear that  
26

27 <sup>10</sup> Elysium only asserts (albeit wrongly) that copyright preemption would apply to the  
28 NR GRAS Dossier, NRCl Analytical Method, NR Specifications, pTeroPure GRAS  
Report, and the NR and Pterostilbene Presentations. (Mot. at 11.)

1 federal copyright law does not preempt state [conversion] causes of action” because  
2 “[c]onversion entails [] ‘wrongful possession.’”).

3 As alleged in the FAC, Elysium improperly acquired each of the converted  
4 documents by either (1) breaching the Supply Agreements’ confidentiality provisions  
5 restricting its use of the documents, (*see e.g.*, FAC ¶¶ 173, 174, 180, 181, 215), and/or  
6 (2) obtaining the documents from Morris or Dellinger, who transmitted, retained, or  
7 used ChromaDex information in violation of their employment and confidentiality  
8 agreements, (*see, e.g., id.* ¶¶ 23, 70, 73, 75, 188, 191, 199, 201, 215). Elysium has thus  
9 engaged in wrongful conduct beyond the mere “copying” of ChromaDex’s documents.  
10 *Opperman v. Path, Inc.*, 84 F. Supp. 3d 962, 989 (N.D. Cal. 2015) (finding “Plaintiffs’  
11 allegations involve more than the mere reproduction” of allegedly converted  
12 information because allegations also included “unauthorized access”); *Salestraq Am.,  
13 LLC v. Zyskowski*, 635 F. Supp. 2d 1178, 1183 (D. Nev. 2009) (finding state law  
14 claims not preempted by copyright law where plaintiffs alleged that defendants  
15 “exceeded their authorized access” to copied information).<sup>11</sup>

16 Elysium also wrongfully used each of the documents, which is in itself sufficient  
17 to find that the claims are not preempted. *G.S. Rasmussen*, 958 F.2d at 904 (finding  
18 allegation of improper use sufficient to avoid copyright preemption). Elysium sent the  
19 NRCI Analytical Method, NR Specifications, and NR GRAS Dossier to its alternative  
20 source for NR to use as a shortcut in developing its own commercial supply “of NR  
21 that could likely be certified as GRAS or otherwise safe by the FDA.” (FAC ¶ 226; *see  
22 also id.* ¶¶ 75, 81, 87, 226). Elysium improperly used ChromaDex’s Presentations to  
23 solicit investment, “support its public claims about the science supporting the safety  
24

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25 <sup>11</sup> The cases Elysium cites do not contain this “extra element.” *See Ryoo Dental, Inc. v.*  
26 *Han*, 2015 WL 4208580, at \*3 (C.D. Cal. July 9, 2015) (information copied from  
27 public website); *Firoozye v. Earthlink Network*, 153 F. Supp. 2d 1115, 1130 (N.D. Cal.  
28 2001) (finding “plaintiff sent [the allegedly converted material] to the defendants and  
authorized them to use it” without contractual limitations); *Dielsi v. Falk*, 916 F. Supp.  
985, 992 (C.D. Cal. 1996) (allegedly converted script was given to defendant).

1 and efficacy of Basis and represent itself as an expert and innovator in the field of NR  
2 [and pterostilbene] research and commercial products.” (*Id.* ¶ 193; *see also id.* ¶ 202.)  
3 And Elysium used the pTeroPure GRAS Report “as a shortcut in developing its own  
4 regulatory submission” concerning a product which did not incorporate ChromaDex’s  
5 pTeroPure. (*Id.* ¶¶ 109, 182, 183.) Elysium’s misuse defeats its preemption argument.  
6 *G.S. Rasmussen*, 958 F.2d at 904; *cf. Mktg. Info. Masters, Inc. v. Bd. of Trs. of Cal.*  
7 *State Univ. Sys.*, 2008 WL 11339961, at \*3 (S.D. Cal. Dec. 3, 2008) (“[T]he core of the  
8 conversion claim is the wrongful reproduction of Plaintiff’s property in future  
9 economic impact studies.”).

10 **b. CUTSA Does Not Supersede The Conversion Claims.**

11 Elysium also erroneously claims that ChromaDex’s conversion claim is  
12 superseded by the California Uniform Trade Secrets Act (“CUTSA”). CUTSA only  
13 preempts “common law claims that are based on the same nucleus of facts as [a]  
14 misappropriation of trade secrets claim.” *Leatt Corp. v. Innovative Safety Tech., LLC*,  
15 2010 WL 2803947, at \*6 (S.D. Cal. July 15, 2010) (internal quotation marks  
16 omitted).<sup>12</sup> “Federal courts in California have taken different approaches when  
17 evaluating whether a cause of action based on disclosure of confidential information  
18 that falls short of a ‘trade secret’ escapes the CUTSA’s preemptive reach.” *Manchester*  
19 *v. Sivantos GMBH*, 2018 WL 587849, at \*6 (C.D. Cal. Jan. 29, 2018) (collecting  
20 cases).<sup>13</sup> Because ChromaDex’s conversion claim does not depend on the  
21 confidentiality of the converted documents and information, it is not superseded by  
22 CUTSA under either approach.

23 **(1) The converted material is not alleged to be trade  
secret information.**

24 The more persuasive authority holds that a common law tort claim is not

25 <sup>12</sup> By its terms, CUTSA “does not affect (1) contractual remedies, whether or not based  
26 upon misappropriation of a trade secret, [or] (2) other civil remedies that are not based  
27 upon misappropriation of a trade secret.” Cal. Civ. Code § 3426.7(b).

28 <sup>13</sup> “The California Supreme Court has yet to rule on this issue, and the decisions of the  
California Court of Appeal, while instructive, are not binding on this Court.” *Id.*

1 displaced by CUTSA where the alleged wrongdoing “is not based on the existence of a  
2 trade secret.” *Angelica Textile Servs., Inc. v. Park*, 220 Cal. App. 4th 495, 508 (2013);  
3 *see also e.g., Manchester*, 2018 WL 587849, at \*6; *Leatt*, 2010 WL 2803947, at \*6 n.5  
4 (“[C]UTSA only preempts additional claims that depend on the misappropriation of a  
5 trade secret.”); *Phoenix Techs. Ltd. v. DeviceVM*, 2009 WL 4723400, at \*5 (N.D. Cal.  
6 Dec. 8, 2009) (construing tort allegations “as based on those facts that are not part of  
7 the nexus that forms the basis for [plaintiffs’] CUTSA claim” and therefore not  
8 preempted); *First Advantage Background Servs. Corp. v. Private Eyes, Inc.*, 569 F.  
9 Supp. 2d 929, 942 (N.D. Cal. 2009) (“Private Eyes may continue to pursue the claim  
10 for false promise, so long as the confidential information at the foundation of the claim  
11 is not a trade secret, as that term is defined in CUTSA.”).

12 Under this approach, because none of the documents that Elysium converted are  
13 alleged to be trade secrets in the FAC, they are not preempted. *First Advantage*, 569 F.  
14 Supp. 2d at 942. For example, the FAC specifically alleges that the NR GRAS Dossier  
15 is public. (FAC ¶¶ 82, 220.) And because ChromaDex’s ownership of the NRCl  
16 Analytical Method, NR Specifications, and pTeroPure GRAS Report is not based on  
17 their confidentiality, the FAC also alleges that it disseminated them to customers or  
18 potential customers. (*Id.* ¶¶ 82, 88, 90, 172, 213.)<sup>14</sup> The FAC also does not allege that  
19 the two Presentations are confidential. (*See id.* ¶¶ 101–05, 186–205.)

20 For the Pricing Spreadsheet, the source of the information conveyed to Elysium  
21 can only be uncovered through discovery. *Angelica Textile*, 220 Cal. App. 4th at 505  
22 (“[T]he determination of whether a claim is based on trade secret misappropriation is  
23 largely factual.”); (FAC ¶ 23 (alleging on “information and belief” that Morris either  
24 “gave Elysium [the Pricing Spreadsheet], or the information contained” therein)).  
25

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26 <sup>14</sup> That ChromaDex also alleges that Elysium breached its confidentiality obligations  
27 by distributing some of the documents does not show that the documents were trade  
28 secrets, only that ChromaDex restricted third parties’ rights to distribute its  
information. (FAC ¶¶ 127-129, 136–139, 144–146.)



1 ChromaDex did not know as of May 17, 2018—when it served the FAC on Elysium—  
2 where the Pricing Spreadsheet originated, and thus ChromaDex could not identify the  
3 specific property right with which Elysium interfered. Elysium may not, on that basis,  
4 avoid proper discovery into its misconduct. *Phoenix Techs.*, 2009 WL 4723400, at \*5  
5 (“If, following discovery, there is not sufficient evidence to support these claims based  
6 on a distinct nexus of facts, Defendants may move for summary judgment at that  
7 time”); *First Advantage*, 569 F. Supp. 2d at 942 (same).

8 **(2) ChromaDex’s property rights are not based on the confidentiality of the documents.**

9 The conversion claims in the FAC suffice even under the less persuasive  
10 authority holding that CUTSA supersedes some claims involving non-trade secret  
11 information. Under this approach, such claims are not superseded if they “(1) allege  
12 facts showing that the plaintiff’s property right in the information at issue stems from  
13 some provision of positive law on grounds qualitatively different from grounds upon  
14 which trade secrets are considered property, or (2) allege wrongdoing materially  
15 distinct from the wrongdoing alleged in a CUTSA claim.” *Waymo LLC v. Uber Techs.,*  
16 *Inc.*, 256 F. Supp. 3d 1059, 1063 (N.D. Cal. 2017).

17 ChromaDex’s property rights in the documents and information that Elysium  
18 converted are grounded in provisions of positive law other than trade secret law. To  
19 have a property right, “[f]irst, there must be an interest capable of precise definition;  
20 second, it must be capable of exclusive possession or control; and third, the putative  
21 owner must have established a legitimate claim to exclusivity.” *G.S. Rasmussen*, 958  
22 F.2d at 903. ChromaDex’s property rights are grounded in copyright law (although  
23 only for the purpose of establishing ownership) and in California Civil Code § 655.

24 Because ChromaDex’s documents were copyrightable (even if not registered),  
25 they fall within the subject matter of the Copyright Act and are thus properly owned by  
26 ChromaDex. “[F]ederal copyright law creates exclusive rights in the author of a work  
27 at the time it is fixed in a tangible medium of expression, regardless of registration.”  
28

1 *Jurisearch*, 2009 WL 10670588, at \*5 (holding “the three-part test for an intangible  
2 property right is easily met” where converted material “contains copyrightable  
3 elements”). Collections or compilations of facts are copyrightable if they possess  
4 “originality.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 348 (1991). The  
5 standard for originality is very low: “even a directory that contains absolutely no  
6 protectible [sic] written expression, only facts, meets the constitutional minimum for  
7 copyright protection if it features an original selection or arrangement.” *Id.*

8 The NR GRAS Dossier, NR Analytical Method, NR Specifications, pTeroPure  
9 GRAS, and both Presentations are copyrightable as original collections and  
10 compilations. ChromaDex used its extensive experience and knowledge to compile,  
11 collect, and create the documents and the content they contain. (FAC ¶¶ 88, 90, 106,  
12 186, 197, 220.) Consequently, the test for an intangible property interest in each of the  
13 documents “is easily met.” *Jurisearch*, 2009 WL 10670588, at \*5; *see also Meridian*  
14 *Proj. Sys., Inc. v. Hardin Const. Co.*, 426 F.Supp.2d 1101, 1114 (E.D. Cal. 2006)  
15 (granting summary judgment to plaintiff where infringing documents were “virtually  
16 identical” to documents entitled to only thin copyright protection).<sup>15</sup> And Elysium  
17 violated ChromaDex’s property rights when it took “screenshots,” “retyped . . . word-  
18 for-word,” “updated,” or falsely claimed the documents as its own. (FAC ¶¶ 175, 182,  
19 192, 201, 216, 225).<sup>16</sup> CUTSA preemption therefore does not apply here.

20 ChromaDex also has a property interest in the pTeroPure GRAS Report and NR

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21 <sup>15</sup> Elysium’s claim that ChromaDex does not have a legitimate claim to exclusivity in  
22 the NR GRAS Dossier or NR Specifications fails. As the author of the documents,  
23 ChromaDex had “exclusive rights” in its work at the time it was drafted, even where  
24 the documents are public. *Jurisearch*, 2009 WL 10670588, at \*5. Also, an FDA rule  
25 allowing a manufacturer to incorporate “data” from another GRAS notice does not  
contemplate the use of that notice for the separate purpose of shortcutting the  
development of a GRAS-eligible manufacturing process. (Mot. at 17–18.)

26 <sup>16</sup> That ChromaDex alleges facts showing that its copyright property rights, among  
27 other rights, were converted by Elysium, does not lead to the conclusion that its claim  
28 is preempted by the Copyright Act because, as explained in Section IV.C.1.a,  
ChromaDex alleges that Elysium also improperly accessed and used its property.

1 GRAS Dossier under California Civil Code § 655, which creates a property interest in  
2 “rights created or granted by statute.” First, ChromaDex’s property right is “capable of  
3 precise definition.” *G.S. Rasmussen*, 958 F.2d at 903 (ruling right in FAA  
4 Supplemental Flight Certificate was “capable of precise definition: It enables an  
5 airplane owner to obtain an airworthiness certificate for a particular design  
6 modification without the delay, burden and expense of proving to the FAA that a plane  
7 so modified will be safe”). Under FDA regulations, the pTeroPure GRAS Report and  
8 NR GRAS Dossier allowed ChromaDex to market its products as “generally  
9 recognized as safe” or “GRAS,” and to do so without pre-market approval from FDA.  
10 21 C.F.R. § 170.30; (FAC ¶ 222).

11 Second, ChromaDex’s right is “capable of exclusive possession and control”  
12 because GRAS status is determined according to specific manufacturing methods and  
13 granted to a specific “substance” or “food ingredient” for a specific “intended use.” 21  
14 C.F.R. § 170.30(a), (b), (g); *see also* 21 C.F.R. § 171.1(c), (h)(2), (h)(4). No other  
15 entity may market a product as GRAS based on ChromaDex’s documents.

16 Third, ChromaDex established a legitimate claim to exclusivity: it “expended  
17 considerable time and effort in research and design,” “conducted the appropriate tests  
18 and compiled the necessary data,” “prepared” the GRAS filings, and ensured its  
19 manufacturers met the requirements. *G.S. Rasmussen*, 958 F.2d at 903; (FAC ¶¶ 107,  
20 221.) Further, for the NR GRAS Dossier, ChromaDex “convinced the [FDA] that the  
21 [product] is safe;” and “obtained” the FDA’s affirmation of NIAGEN’s GRAS status.  
22 *G.S. Rasmussen*, 958 F.2d at 903; (FAC ¶¶ 82, 83). ChromaDex “has the type of  
23 reasonable investment-backed expectations that give rise to a legitimate claim of  
24 exclusive control” over its GRAS classifications. *G.S. Rasmussen*, 958 F.2d at 903.

25 Nor can there be any doubt that Elysium interfered with ChromaDex’ property  
26 rights in these documents. Elysium wrongfully used the pTeroPure GRAS Report  
27 (which was not public) “as a shortcut in developing its own regulatory submission”  
28 going to the safety of its consumer product (which no longer included pTeroPure as an

1 ingredient). (FAC ¶¶ 109, 129, 179.) For the NR GRAS Dossier, Elysium improperly  
2 used the required manufacturing process description that it contains as a shortcut in  
3 “creating a process for the commercial production of NR that could likely be certified  
4 as GRAS or otherwise safe by the FDA.” (FAC ¶ 226.)<sup>17</sup>

## 5 **2. The Economic Loss Doctrine Does Not Apply.**

6 In its last attempt to hide its wrongdoing behind legal doctrine, Elysium claims  
7 that ChromaDex’s conversion claims as to the NRCI Analytical Method, the NR  
8 Specifications, and the pTeroPure GRAS Report are barred by the economic loss  
9 doctrine because Elysium also disclosed those documents in violation of its  
10 confidentiality obligations under contract. (Mot. at 18–19.) Elysium is wrong.

11 ChromaDex’s breach of contract claims are distinct from the conversion claims.  
12 On one hand, Elysium breached the parties’ contracts when it disclosed and used these  
13 documents (and the NR Study Data) for purposes other than those expressly  
14 contemplated by the agreements. (FAC ¶¶ 142, 174, 180, 215.) On the other, Elysium  
15 converted the documents by interfering with ChromaDex’s property rights by  
16 dishonestly claiming ownership of them and the information they contained. (FAC ¶¶  
17 175, 176, 182, 216, 217.) That unlawful interference rights constitutes “harm above  
18 and beyond a broken contractual promise”; as such, the economic loss rule does not  
19 apply. (Dkt. 44 at 10 (citing *Robinson Helicopter Co., Inc. v. Dana Corp.*, 34 Cal. 4th  
20 979, 988 (2004)).)

## 21 **3. ChromaDex Adequately Pleads Damages from Conversion.**

22 Elysium’s argument that the FAC fails to plead damages for conversion is wide  
23 of the mark. Damages in a conversion claims are “presumed to be . . . [t]he value of the

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24  
25 <sup>17</sup> As for the Pricing Spreadsheet, there is no provision in the NIAGEN Supply  
26 Agreement stating that Elysium was “entitled to information” concerning other  
27 customers’ purchases. (Mot. at 16–17.) Elysium does not plead such a contractual right  
28 in its counterclaims. (Dkt. 103 ¶¶ 8–9.) If such a right actually existed, Elysium would  
not have needed to surreptitiously obtain the information and keep its possession secret  
from ChromaDex (and even this Court). (FAC ¶ 25.)

1 property at the time of the conversion, with the interest from that time, or, an amount  
2 sufficient to indemnify the party injured for the loss which is the natural, reasonable  
3 and proximate result of the wrongful act complained of.” Cal. Civ. Code § 3336.  
4 Damages can also include the amount in which the defendant has been unjustly  
5 enriched. *Hrothgar Invs., Ltd. v. Houser*, 2015 WL 5853634, at \*7 (N.D. Cal. Aug. 18,  
6 2015); *A & M Records, Inc. v. Heilman*, 75 Cal. App. 3d 554, 570 (1977). Injunctive  
7 relief is also available. *Gladstone*, 203 Cal. App. 3d at 989 (holding “appellants should  
8 not be permitted to benefit from the fruit of their wrongful conversion”).

9 The FAC plainly pleads ChromaDex’s damages. First, it alleges that “[h]ad  
10 Elysium spent the time and resources to develop an alternative source of NR without  
11 stealing ChromaDex’s information, it would have taken [Elysium] a substantially  
12 longer period of time to develop the competing supply of NR,” and that ChromaDex  
13 lost “sales of NIAGEN it otherwise would have made during that period of time.”  
14 (FAC ¶ 111.)<sup>18</sup> Elysium was also unjustly enriched by its conversion of ChromaDex  
15 documents by, for example, utilizing ChromaDex’s NRC1 Analytical Method—a type  
16 of document that “can cost up to \$50,000” to develop—instead of developing its own  
17 standard. (FAC ¶¶ 88, 95.) Elysium thereby “reduced [its] costs for developing a  
18 commercial source of NR.” (*Id.* ¶ 96.) Elysium further “saved . . . money by simply  
19 ‘updating’ the ChromaDex information” when it prepared a regulatory submission that  
20 can “cost several hundred thousands of dollars to develop.” (*Id.* ¶ 109.) Lastly,  
21 ChromaDex expressly seeks injunctive relief to prevent further misuse of its  
22 documents by Elysium. (*Id.* ¶¶ 178, 185, 196, 212, 219, 228.)

23 Elysium’s contrary arguments rely on inapposite authority and inappropriate  
24 factual arguments. For example, Elysium contends that the conclusion that ChromaDex  
25 could seek “forgone licensing or royalty fees” is unsupported because the FAC alleges  
26 that ChromaDex “regularly distributed” the information to its *customers*. (Mot. at 14.)

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27 <sup>18</sup> Elysium attempts to misconstrue the allegations, (Mot. at 13–14 & n.5), but the  
28 Court must consider them liberally in ChromaDex’s favor, *Sprewell*, 266 F.3d at 988.

1 But any such distribution was in connection with those customers’ purchase and use of  
2 ChromaDex products, not for Elysium’s improper purpose of developing a competing  
3 supply of ingredients. (*E.g.*, FAC ¶¶ 88, 90.)<sup>19</sup> Elysium’s argument therefore fails.

4 **D. ChromaDex Properly Alleges That Elysium Breached Its Contractual**  
5 **Confidentiality Obligations.**

6 Elysium fails to justify its wrongful disclosures of the pTeroPure GRAS Report,  
7 the NR Study Data, and the NR Specifications. Notably, through its silence, Elysium  
8 concedes that its disclosure of the NR Analytical Method was a breach, (FAC ¶¶ 138-  
9 39); thus, that allegation stands. *See Eberle v. City of Anaheim*, 901 F.2d 814, 818 (9th  
10 Cir. 1990) (issues raised for the first time in a reply brief are considered waived).

11 ChromaDex alleges that in 2017, Elysium breached the pTeroPure Supply  
12 Agreement by disclosing the pTeroPure GRAS Report to “regulatory consultants” to  
13 shortcut a FDA submission for “pterostilbene manufactured by an entity other than  
14 ChromaDex.” (FAC ¶¶ 106, 129; *id.* Ex. C at 63–64.) In support, Elysium cites  
15 Sections 15.1’s and 15.3’s allowances for disclosures to “consultants” in connection  
16 with activities “expressly authorized by [the] Agreement,” and “governmental  
17 agencies” for approvals of a *pTeroPure* product. (*Id.* Ex. C at 64; Mot. at 20.)  
18 Critically, Elysium’s product did not, and does not, contain pTeroPure, and its  
19 disclosures were not sanctioned by either provision. (FAC ¶ 129.) And even if Section  
20 15.3 applies, Elysium breached by failing to provide ChromaDex “written notice” of,  
21 and “sufficient opportunity to object” to, the disclosure. (*Id.* Ex. C at 64.)

22 Elysium’s arguments that it did not breach the confidentiality provisions of the

23 \_\_\_\_\_  
24 <sup>19</sup> Elysium’s cases are inapposite because they address arguments concerning property  
25 rights, not damages. *See Kasdan, Simonds, McIntyre, Epstein & Martin v. World Sav.*  
26 *& Loan Ass’n*, 317 F.3d 1064, 1071 (9th Cir. 2003) (holding plaintiff was “not entitled  
27 to retain” converted property); *Tyrone Pac. Int’l Inc. v. MV Eurychili*, 658 F.2d 664,  
28 667 (9th Cir. 1981) (ruling plaintiff could not seek damages for property other than that  
converted); *Opperman*, 84 F. Supp. 3d at 990 (finding plaintiffs could not show “a  
protectable interest in their contacts information”); *Low v. LinkedIn Corp.*, 900 F.  
Supp. 2d 1010, 1030 (N.D. Cal. 2012) (same).

1 NIAGEN Supply Agreement fare no better. First, Elysium incorrectly argues that its  
2 disclosure of the NR Study data “during the second half of 2015,” was not a breach  
3 because the data became public over a year later, in October 2016. (Mot. at 21; FAC  
4 ¶¶ 140, 142.) But the NR Study Data was still “Confidential Information” under  
5 Section 1.4 at the time Elysium wrongfully disclosed it. (FAC ¶ 142; *id.* Ex. A at  
6 42.) ChromaDex’s later disclosure of that data does not eliminate the harm it sustained  
7 from Elysium’s breach.

8 Second, Elysium incorrectly argues that its disclosure of ChromaDex’s NR  
9 Specifications to its NR manufacturer was not a breach because the document is not  
10 part of the “terms or conditions” of the agreement under Section 4.2. However, the NR  
11 Specifications are a term of the agreement under Section 1.12. (FAC Ex. A at 43.)  
12 Further, Elysium’s suggestion that ChromaDex also breached when it provided the NR  
13 Specifications to its other customers is wrong. (Mot. at 21–22.) ChromaDex properly  
14 provided its own product information to its customers without identifying the NR  
15 Specifications as a term of its contract with Elysium. That is what the FAC alleges:  
16 there are multiple versions of the NR Specifications and “ChromaDex provided the NR  
17 Specifications to its NR customers” to test NIAGEN. (FAC ¶¶ 90, 92.) Elysium  
18 breached when it sent the NR Specifications to its alternative NR manufacturer as a  
19 description of the product it wanted; i.e., NR made to ChromaDex’s  
20 specifications. Elysium cannot justify its flagrant breach of the agreement.

21 **V. CONCLUSION**

22 For all the foregoing reasons, ChromaDex respectfully requests that the Court  
23 deny, in its entirety, Elysium’s motion to dismiss the FAC’s third, fourth, and fifth  
24 causes of action and breach of contract allegations. In the event the Court finds any  
25 claim insufficient, ChromaDex respectfully requests leave to amend. *Lopez v. Smith*,  
26 203 F.3d 1122, 1130 (9th Cir. 2000) (holding “[l]eave to amend should be granted ‘if it  
27 appears at all possible that the plaintiff can correct the defect’” (citation omitted)).  
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*/s/ Barrett Anderson*  
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