

1 COOLEY LLP  
MICHAEL A. ATTANASIO (151529)  
2 (mattanasio@cooley.com)  
EAMONN GARDNER (310834)  
3 (egardner@cooley.com)  
JON F. CIESLAK (268951)  
4 (jcieslak@cooley.com)  
BARRETT J. ANDERSON (318539)  
5 (banderson@cooley.com)  
SOPHIA M. RIOS (305801)  
6 (srios@cooley.com)  
JAYME B. STATEN (317034)  
7 (jstaten@cooley.com)  
4401 Eastgate Mall  
8 San Diego CA 92121  
Telephone: (858) 550-6000  
9 Facsimile: (858) 550-6420

10 *Attorneys for Plaintiff and Counterdefendant*  
11 *ChromaDex, Inc.*

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14 **(WESTERN DIVISION)**

16 ChromaDex, Inc.,

17 Plaintiff,

18 v.

19 Elysium Health, Inc.,

20 Defendant.

21 \_\_\_\_\_  
22 Elysium Health, Inc.

23 Counterclaimant,

24 v.

25 ChromaDex, Inc.,

26 Counter-Defendant.  
27  
28

Case No. 8:16-cv-2277-CJC (DFMx)

**CHROMADEx, INC.'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT  
OF ITS UNOPPOSED MOTION FOR LEAVE  
TO FILE FIFTH AMENDED COMPLAINT**

Hon. Cormac J. Carney

Date: December 10, 2018  
Time: 1:30 p.m.  
Courtroom: 7C

Discovery Cut-Off: December 21, 2018  
Pretrial Conference: March 25, 2018  
Trial: April 2, 2018

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1     **I. INTRODUCTION**

2           Plaintiff ChromaDex, Inc. (“ChromaDex”) seeks leave to file an amended  
3 complaint based on newly discovered and de-designated information produced by  
4 Defendant Elysium Health, Inc. (“Elysium”). An amended pleading is warranted  
5 because the information on which the new claims in the proposed Fifth Amended  
6 Complaint (“PFAC”) are premised only became available to ChromaDex after it filed  
7 its current Fourth Amended Complaint.<sup>1</sup> Further, Elysium does not oppose  
8 ChromaDex’s filing of the PFAC.

9           The PFAC includes new claims against Elysium and claims against a new  
10 defendant: Mark Morris, an individual. Adding Mr. Morris as a defendant to the case  
11 at this stage is proper and will not cause prejudice to either him or Elysium (collectively,  
12 the “Defendants”). First, Mr. Morris has retained the same counsel as Elysium, and will  
13 benefit from his lawyers’ knowledge of the case. He will also benefit from the current  
14 state of discovery between the parties, which already includes discovery requests  
15 directed at his involvement and documents in his possession. Further, because neither  
16 ChromaDex nor Elysium has yet taken a deposition or exchanged an expert report, Mr.  
17 Morris will be permitted to take part in that next stage of discovery. Finally,  
18 ChromaDex and Elysium jointly seek an extension of the case deadlines, including  
19 discovery, to eliminate any potential lingering prejudice to either defendant. (*See* Joint  
20 Stipulation to Request the Court Amend the Scheduling Order (“Joint Extension  
21 Request”), filed concurrently with this submission.)

22           Second, Mr. Morris will not be prejudiced by the PFAC because he is a current  
23 employee of Elysium and former employee of ChromaDex, and his actions vis-à-vis  
24 both parties with respect to this case have been relevant since ChromaDex first filed  
25 this action in December 2016. Mr. Morris has thus been constructively and actually  
26

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27     <sup>1</sup> The PFAC is attached as Exhibit 1 to the Declaration of Barrett J. Anderson ISO  
28 ChromaDex’s Motion (“Anderson Decl.”). A redline between the Fourth Amended  
Complaint and the PFAC is attached as Exhibit 2 to the Anderson Declaration.

1 aware of this case and his connection to it. However, ChromaDex was unaware of the  
2 full extent of his involvement until ChromaDex was permitted to view and consider  
3 documents recently produced and de-designated by Elysium, and thus was unable to  
4 bring the claims against Mr. Morris in the PFAC until now.

5 For those reasons, ChromaDex’s Unopposed Motion for Leave to Amend to File  
6 Fifth Amended Complaint (the “Motion”) satisfies both Federal Rule of Civil Procedure  
7 15 and the test for an amended pleading set out in *Foman v. Davis*, 371 U.S. 178 (1962).  
8 “Because leave to amend should be granted with extreme liberality,” [Dkt. 98 at 5], and  
9 because Elysium does not oppose amendment here, ChromaDex respectfully requests  
10 the Court grant the Motion and allow ChromaDex to file the PFAC.

## 11 **II. RELEVANT HISTORY**

### 12 **A. The Parties’ Present Allegations**

13 ChromaDex filed this action on December 29, 2016 (the “Action”), asserting  
14 breach of contract for certain shipments of ingredients that Elysium had ordered and  
15 received, but for which it has never paid. [Dkt. 1.] Elysium answered on January 25,  
16 2017, and alleged counterclaims for (among other things) breach of contract and patent  
17 misuse. [Dkt. 11.] By April 2018, after lengthy motion practice, the Action had  
18 resolved into the claims and defenses asserted in four pleadings: ChromaDex’s Third  
19 Amended Complaint, [Dkt. 48], Elysium’s Answer, [Dkt. 51], Elysium’s Third  
20 Amended Counterclaims, [Dkt. 103], and ChromaDex’s Answer [Dkt. 104].

21 Elysium thereafter produced a large batch of documents on April 2, 2018. In that  
22 production, ChromaDex discovered information providing grounds to bring new  
23 allegations. (Anderson Decl. ¶ 3.) On May 17, 2018, ChromaDex wrote to Elysium,  
24 requesting consent to file a Fourth Amended Complaint with claims for  
25 (1) misappropriation of trade secrets, (2) conversion of seven different ChromaDex  
26 documents, and (3) additional breach of contract claims. (*Id.* ¶ 4.) After protracted  
27 negotiations, ChromaDex agreed to a three-month extension of the case schedule and  
28 Elysium consented to the filing of the Fourth Amended Complaint. (*Id.*) Elysium

1 provided its supporting declaration on June 22, 2018, (*id.* ¶ 5), which allowed  
2 ChromaDex to file a redacted version of the Fourth Amended Complaint the same day,  
3 [see Dkt. 107, *et seq.*]. The Court then ordered ChromaDex to file an unredacted version  
4 of the Fourth Amended Complaint, which ChromaDex did on June 29, 2018. [Dkt. 108,  
5 109.] On July 24, 2018, the Court issued the Second Amended Scheduling Order. [Dkt.  
6 114.]

7 On July 9, 2018, Elysium moved to dismiss certain claims in the Fourth Amended  
8 Complaint, [Dkt. 111], and ChromaDex opposed, [Dkt. 112]. The Court sustained  
9 ChromaDex’s new claims for misappropriation of trade secrets and breach of contract,  
10 but dismissed ChromaDex’s conversion claim. [See generally Dkt. 115.] Elysium  
11 subsequently answered ChromaDex’s remaining claims from the Fourth Amended  
12 Complaint and alleged a new counterclaim for breach of contract. [Dkt. 118.]

13 **B. Relevant Discovery Between the Parties**

14 Following Elysium’s production on April 2, 2018, Elysium did not produce  
15 another batch of documents until May 25, 2018, almost two weeks after ChromaDex  
16 had requested Elysium’s consent to file the Fourth Amended Complaint. (Anderson  
17 Decl. ¶ 6.) These are the Elysium documents from which many of the new allegations  
18 and claims in ChromaDex’s PFAC arise.

19 However, ChromaDex could not immediately view and consider the documents  
20 Elysium produced on May 25. Elysium designated a large portion of that material as  
21 “Highly Confidential – Attorney’s Eyes Only” (“AEO”) under the parties’ stipulated  
22 protective order (the “Protective Order”). [Dkt. 55.] As such, ChromaDex’s counsel  
23 was unable to show those documents, or even discuss the contents and import of those  
24 documents, with their client. (Anderson Decl. ¶ 6.) On June 29, 2018, ChromaDex  
25 requested that Elysium de-designate the material pursuant to paragraph 18 of the  
26 Protective Order. (*Id.* ¶ 7.) On July 9, 2018, Elysium responded and rejected  
27 ChromaDex’s request, thereby maintaining the “AEO” designation on those documents.  
28 (*Id.*) Pursuant to Local Rule 37, ChromaDex notified Elysium on July 20, 2018 that

1 ChromaDex intended to move to compel de-designation of certain of those documents.  
2 (*Id.* ¶ 8.) On August 1, 2018, after extended negotiations between the parties, Elysium  
3 agreed to consider de-designation of certain of the relevant documents on which the  
4 allegations and claims in the PFAC are premised. (*Id.*)

5 Elysium re-produced some of the requested documents on August 10, 2018, this  
6 time with a “Confidential” designation under the Protective Order, thereby permitting  
7 ChromaDex’s lawyers to consult with and advise their client about the contents of those  
8 re-designated documents. (*Id.* ¶ 9.) On August 24, 2018, ChromaDex informed  
9 Elysium that there were more documents for it to de-designate and, on August 28,  
10 ChromaDex provided a list of those additional documents. (*Id.* ¶ 10.) On September  
11 7, 2018, Elysium re-produced more of the material at issue under a “Confidential”  
12 designation. (*Id.*) As before, now ChromaDex was allowed to review and consider the  
13 contents of those re-designated documents. (*Id.*)

14 On October 19, 2018—only six weeks after receiving Elysium’s permission to  
15 review the Elysium material and consider its import—ChromaDex served Elysium with  
16 the PFAC. (*Id.* ¶ 11.) ChromaDex also provided a redline comparison between the  
17 Fourth Amended Complaint and the PFAC. (*Id.*) The parties met and conferred by  
18 phone on October 30 and 31, 2018. (*Id.* ¶ 12.) Among other things, Elysium agreed  
19 not to oppose ChromaDex’s filing of the PFAC, and the parties jointly agreed to seek  
20 an extension of the case schedule to accommodate the new claims and the addition of a  
21 new defendant, Mr. Morris. (*Id.*) During a meet-and-confer call on November 7, 2018,  
22 counsel for Elysium confirmed that the same law firm would represent Mr. Morris in  
23 response to the allegations in the PFAC. (*Id.* ¶ 13.)

### 24 **C. ChromaDex’s Proposed Allegations**

25 Based on the new information now available to ChromaDex, ChromaDex seeks  
26 to add claims against Elysium and the new individual defendant, Mr. Morris.

#### 27 **1. Proposed Claims Against Mr. Morris**

28 ChromaDex seeks to add five causes of action against Mr. Morris. First, the

1 PFAC includes claims against Mr. Morris for misappropriation of trade secret claims  
2 under the California Uniform Trade Secrets Act (“CUTSA”) and the federal Defend  
3 Trade Secrets Act (“DTSA”). (Ex. 1, PFAC ¶ 192.) While ChromaDex currently  
4 maintains these two causes of action against Elysium, the new information from  
5 Elysium’s documents has also provided the grounds to allege them against Mr. Morris  
6 personally. Second, the PFAC adds two causes of action for breach of certain  
7 confidentiality agreements between Mr. Morris and ChromaDex. (*Id.* ¶¶ 19, 20, 23–  
8 25.) Third, the PFAC includes a claim for breach of the fiduciary duty that Mr. Morris,  
9 as a manager of ChromaDex, owed to the corporation. (*Id.* ¶¶ 27, 76.)

10 2. Proposed New Claims Against Elysium

11 ChromaDex seeks to add a new cause of action against Elysium: aiding and  
12 abetting Mr. Morris’s breach of fiduciary duty to ChromaDex. (Ex. 1, PFAC ¶¶ 244–  
13 51.) The PFAC also includes a new count for breach of contract with respect to  
14 Elysium’s confidentiality obligations to ChromaDex. (*Id.* ¶¶ 162–66.)

15 **III. LEGAL STANDARD**

16 Under Rule 15 of the Federal Rules of Civil Procedure, leave to amend is freely  
17 given whenever justice so requires. Fed. R. Civ. P. 15(a)(2). “[L]eave to amend should  
18 be granted with extreme liberality . . . .” [Dkt. 98 at 5.] When considering whether to  
19 grant leave to amend, courts weigh five factors: (1) undue prejudice; (2) undue delay;  
20 (3) bad faith or dilatory motive by the moving party; (4) futility of amendment; and (5)  
21 repeated failures to cure deficiencies by previous amendments. *Foman*, 371 U.S. at  
22 182. Although prejudice is the “touchstone of the inquiry under [R]ule 15(A) . . .  
23 [a]bsent prejudice, or a strong showing of any of the remaining *Foman* factors, there  
24 exists a *presumption* under Rule 15(a) in favor of granting leave to amend.” *Eminence*  
25 *Capital, LLC v. Aspeon Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (internal citations and  
26 quotation marks omitted) (emphasis in original).

27 Federal Rule of Civil Procedure 21 governs the addition of a defendant. Adding  
28 a new defendant is proper so long as it does not prejudice the new party; specifically,

1 the inquiry is whether the addition of a new defendant is so prejudicial such that it  
2 outweighs Rule 15’s mandate that leave to amend “shall be freely given.” *See Copart,*  
3 *Inc. v. Sparta Consulting, Inc.*, 2016 WL 3126108, at \*5–6 (E.D. Cal. June 2, 2016);  
4 *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987) (“[A]voiding  
5 prejudice to the party to be added thus becomes [the] major objective.”) (internal  
6 quotation marks omitted) (alterations added).

7 **IV. ARGUMENT**

8 Each of the *Foman* factors weigh in favor of granting the unopposed Motion, and  
9 thus the Court should permit ChromaDex to file the PFAC.

10 **A. Mr. Morris and Elysium Are Not Prejudiced By This Amendment**

11 The factor of undue prejudice “carries the greatest weight.” *Eminence*, 316 F.3d  
12 at 1052. Undue prejudice exists where additional claims would significantly shift the  
13 nature of the case, requiring the opposing party to engage in new discovery or “an  
14 entirely new course of defense” late in the case. *Leonard Roofing, Inc. v. Aspen*  
15 *Specialty Ins. Co.*, 2013 WL 12144112, at \*3 (C.D. Cal. Jan. 9, 2013). However, any  
16 prejudice incurred by the addition of a defendant “can be offset by further modifications  
17 to the case schedule.” *Copart*, 2016 WL 3126108, at \*5. Under this standard, neither  
18 Mr. Morris nor Elysium is prejudiced by the filing of the PFAC.

19 First, Mr. Morris is not prejudiced (let alone unduly) because discovery is still  
20 ongoing between ChromaDex and Elysium. *Pipe Restoration Techs., LLC v. Pipeline*  
21 *Restoration Plumbing*, No. 00499, slip. op. at 2 (C.D. Cal. Apr. 11, 2014) (Carney, J.)  
22 (holding that there was no undue prejudice when “discovery [had] not closed in this  
23 case . . .”). The same law firm that currently represents Elysium informed ChromaDex  
24 that it will also be representing Mr. Morris, and therefore his defense will benefit from  
25 the knowledge of the case that his counsel already possesses. (Anderson Decl. ¶ 13.)  
26 Further, given that Mr. Morris is integral to several of ChromaDex’s claims against  
27 Elysium, Mr. Morris will benefit because much of the relevant material has already been  
28 identified, collected, reviewed, and exchanged between the parties. (*Id.* ¶¶ 2, 14.)

1 Further, neither party has yet taken a deposition or exchanged an expert report, so Mr.  
2 Morris will be able to take part in those discovery efforts. (*Id.* ¶ 2.) And the parties  
3 have agreed to seek an extension of the case deadlines by three months to eliminate any  
4 possible lingering prejudice to Mr. Morris. (*See* Joint Extension Request.) Because  
5 Mr. Morris will both benefit from the current discovery and have the opportunity to  
6 seek his own, he will not be prejudiced by being added as a defendant now.

7 Additionally, Mr. Morris will not be prejudiced by his addition to the case  
8 because he has been on constructive (and likely actual) notice that ChromaDex could  
9 seek to add him as a defendant. Mr. Morris is both a former ChromaDex employee and  
10 a current Elysium employee. ChromaDex cites Mr. Morris by name repeatedly in the  
11 Fourth Amended Complaint, alleging his actions as an agent of Elysium. [*See, e.g.*,  
12 Dkt. 109 ¶¶ 22, 23, 30, 34, 55.] Further, ChromaDex served Mr. Morris with a subpoena  
13 related to this Action on August 31, 2017, and his conduct has also been the subject of  
14 several discovery requests to Elysium, likely requiring Elysium’s counsel to  
15 communicate with him about the pending claims. (Anderson Decl. ¶¶ 2, 14.) It is  
16 inconceivable that Mr. Morris would be unaware that his actions, once fully uncovered  
17 by ChromaDex, would not provide grounds for ChromaDex to add him as a defendant.

18 Second, Elysium is also not prejudiced by the PFAC because the parties are still  
19 engaged in discovery. Elysium has taken no depositions and exchanged no expert  
20 reports, (*id.* ¶ 2), and will have the opportunity to serve additional document discovery,  
21 if warranted. Courts regularly find no undue prejudice for an amended pleading when  
22 discovery has yet to close. *Pipe*, No. 00499, slip. op. at 2 (Carney, J.) ( holding that  
23 there was no undue prejudice when “discovery [had] not closed in this case...”); *Hip*  
24 *Hop Beverage Corp. v. RIC Representcoes Importacao e Comercio Ltda.*, 220 F.R.D.  
25 614, 622 (C.D. Cal. 2003) (“However, [defendant’s] Motion for Leave is not an  
26 ‘eleventh hour’ action; the discovery cut-off is two months away . . .”). And the Joint  
27 Extension Request will eliminate any potential remaining prejudice with respect to case  
28 deadlines. *Copart*, 2016 WL 3126108, at \*5 (holding “prejudice can be offset by further

1 modifications to the case schedule.”).

2 In any event, the new claims in the PFAC will require little (if any) additional  
3 discovery because they do not improperly enlarge the factual scope of the case from the  
4 allegations in the Fourth Amended Complaint. For that reason, there can be no undue  
5 prejudice to Elysium because “[t]he basic fact pattern will remain the same. All that is  
6 being added is another legal string to the same old bow.” *Navarro v. Eskanos & Adler*,  
7 2006 WL 3533039, at \*3 (N.D. Cal. Dec. 7, 2006). There can also be no prejudice to  
8 Elysium because it has long been in possession of the very documents that form the  
9 basis of the new allegations and claims in the PFAC. *See e.g., Dexcowin Glob., Inc. v.*  
10 *Aribex, Inc.*, 2017 WL 3485790, at \*4 (C.D. Cal. Mar. 23, 2017) (finding no undue  
11 prejudice where “the relevant evidence has always been in possession of the [non-  
12 moving party]”); *Trimble Navigation Ltd. v. RHS, Inc.*, 2007 WL 2727164, at \*11 (N.D.  
13 Cal. Sept. 17, 2007) (finding no undue prejudice to plaintiff when “defendants’ new  
14 allegations all relate to evidence and discovery that is in plaintiff’s possession and  
15 control”).

16 For the above reasons, neither Mr. Morris nor Elysium will be prejudiced by the  
17 PFAC. This *Foman* factor therefore weighs in favor of permitting the amendment.

18 **B. The Other *Foman* Factors Weigh Toward Granting Leave to Amend**

19 In the absence of undue prejudice, only “a strong showing of any of the remaining  
20 *Foman* factors” will overcome Rule 15(a)(2)’s mandate that “leave [to amend] shall be  
21 freely given when justice so requires.” *Eminence*, 316 F.3d at 1052 (internal quotation  
22 marks omitted). Here, the remaining factors support ChromaDex’s unopposed Motion.

23 1. ChromaDex Did Not Unduly Delay

24 ChromaDex did not unduly delay bringing the PFAC. ChromaDex first viewed  
25 and considered all of the relevant documents undergirding the new claims in the PFAC  
26 on September 7, 2018, when Elysium produced the last batch under a new  
27 confidentiality designation. (Anderson Decl. ¶ 10.) ChromaDex thereafter served the  
28 PFAC on Elysium on October 19, 2018, only six weeks later. (*Id.* ¶ 11.) That is not

1 undue delay. In any event, there is no undue delay when the amendment is filed within  
2 the deadline set by the court’s scheduling order. *Excela Creative, LLC v. Deal*  
3 *Segments, LLC*, 2014 WL 12589653, at \*8 (C.D. Cal. Dec. 5, 2014) (“Defendants,  
4 moreover, filed their motion to amend within the deadline for amendment set by the  
5 scheduling order . . . there is no indication that they ‘unduly delayed.’”). Pursuant to  
6 the Second Amended Scheduling Order, “[t]he parties shall have until **February 4,**  
7 **2019** to file and have heard all other motions, including motions to join or amend the  
8 pleadings.” [Dkt. 114 at 1 (emphasis in original).] That deadline is still three months  
9 away, rendering this Motion timely.

10 2. ChromaDex Does Not Seek Leave For Improper Reasons

11 ChromaDex does not seek leave to amend in bad faith or with a dilatory motive.  
12 “A party acts in bad faith when it seeks to amend its pleadings solely for a ‘wrongful  
13 motive’ such as unnecessary delay or harassment.” *Excela*, 2014 WL 12589653, at \*7  
14 (internal quotation marks omitted). Here, ChromaDex seeks to add new allegations  
15 based on new information learned through proper discovery and its efforts to de-  
16 designate Elysium information, and not to delay the case or harass Elysium.

17 3. The Proposed Amendment Would Not Be Futile

18 ChromaDex’s proposed amendments are not futile with respect to either Mr.  
19 Morris or Elysium. “A ‘proposed amendment is futile only if no set of facts can be  
20 proved under the amendment to the pleadings that would constitute a valid and  
21 sufficient claim or defense.’” *Banc of California, Inc. v. Farmers and Merchants Bank*  
22 *of Long Beach*, 2017 WL 2972338, at \*1 (C.D. Cal. Apr. 19, 2017) (Carney, J.).

23 First, the new claims against Mr. Morris are not futile. ChromaDex seeks to add  
24 causes of action against Morris for misappropriation of trade secrets, breach of contract,  
25 and breach of fiduciary duty. The Court already ruled that ChromaDex “sufficiently  
26 pled the existence of a protectable trade secret and damages from Elysium’s purported  
27 misappropriation.” [Dkt. 115 at 10.] The PFAC alleges that Mr. Morris personally is  
28 liable for the same basic conduct. (Ex. 1, PFAC ¶¶ 189–213.) ChromaDex’s claims for

1 misappropriation of trade secrets under both CUTSA and the DTSA therefore constitute  
2 valid claims for misappropriation of trade secrets against Mr. Morris. Likewise,  
3 ChromaDex has adequately pleaded that Elysium’s “alleged disclosure of information  
4 was governed by the confidentiality provisions.” [Dkt. 115 at 8 n.2.] ChromaDex  
5 alleges similar facts against Mr. Morris for his breaches of his contractual obligations,  
6 (Ex. 1, PFAC ¶¶ 214-237), and ChromaDex’s claims against him are sufficient for the  
7 same reasons. The PFAC also contains facts that constitute a valid claim against Mr.  
8 Morris for breach of fiduciary duty. The PFAC alleges that: (1) Mr. Morris, as an officer  
9 of ChromaDex who participated in management, owed ChromaDex a fiduciary duty;  
10 (2) he engaged in conduct in blatant violation of his fiduciary duties; and (3) he was  
11 aware that his actions would harm ChromaDex. (*Id.* ¶¶ 27, 42, 49.) The new claims  
12 against Mr. Morris are thus not futile.

13 Second, the new claims against Elysium are also sufficiently pleaded. With  
14 respect to the claim for aiding and abetting Mr. Morris’s breach of fiduciary duty,  
15 ChromaDex (1) alleges that Elysium was aware of his fiduciary obligations to  
16 ChromaDex and knew that Mr. Morris’s actions were in violation of his fiduciary  
17 duties; (2) identifies the actions that constitute Elysium’s encouragement of and further  
18 inducement for his breach; (3) describes the substantial acts Elysium undertook to assist  
19 him in his breach; and (4) avers that Elysium’s conduct was a substantial factor in  
20 causing harm to ChromaDex. (*Id.* ¶¶ 245–49.) And with respect to the additional count  
21 of breach of Elysium’s confidentiality obligations to ChromaDex, the Court has  
22 determined that “ChromaDex adequately pleads that alleged disclosure of the  
23 information was governed by the confidentiality provisions of the parties’ agreement  
24 and that Elysium breached those provisions” for breach of a similar contract between  
25 ChromaDex and Elysium. [*See* Dkt. 115 at 8 n.2.] ChromaDex’s new claims against  
26 Elysium are therefore not futile.

27 4. The PFAC Is Not An Attempt To Cure A Prior Pleading Deficiency

28 ChromaDex has not attempted to previously allege the same claims as those in

1 the PFAC. This is thus not a situation “where prior attempts have failed to cure a  
2 deficiency and it is clear that the proposed amendment likewise does not correct the  
3 defect.” *Excelsa*, 2014 WL 12589653, at \*7. Rather, ChromaDex seeks leave to amend  
4 because documents produced and de-designated during discovery in this Action have  
5 provided it the grounds to do so.

6 **C. The Parties Request the Court Extend Discovery by Three Months**

7 The Joint Extension Request filed by the parties concurrently with this Motion  
8 requests that the Court grant a three-month extension to the current case schedule. As  
9 stated in the Joint Extension Request, the parties request that the Court find good cause  
10 under Federal Rule of Civil Procedure 16(b) to extend the discovery and trial dates in  
11 order to eliminate any possible prejudice to the Defendants. The parties agree that three  
12 months will be sufficient. Under the current Second Amended Scheduling Order,  
13 discovery closes on December 21, 2018, and the trial begins on April 2, 2019. [Dkt.  
14 114 at 1.] The parties therefore propose an extension of the discovery deadline to April  
15 5, 2019, and the trial date to July 2019, based on the Court’s availability. (*See* Joint  
16 Extension Request.)

17 **V. CONCLUSION**

18 For the foregoing reasons, ChromaDex respectfully requests that the Court grant  
19 ChromaDex’s unopposed Motion and permit it to file the PFAC.

20  
21 Dated: November 08, 2018

COOLEY LLP  
BARRETT J. ANDERSON (318539)

22  
23  
24 /s/ Barrett J. Anderson

Barrett J. Anderson

25 Attorneys for Plaintiff and Counter-  
26 Defendant ChromaDex, Inc.