

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

1 MICHAEL R. MATTHIAS, Bar No. 057728
mmathias@bakerlaw.com
2 ELIZABETH M. TRECKLER, Bar No. 282432
etreckler@bakerlaw.com
3 **BAKER & HOSTETLER LLP**
11601 Wilshire Boulevard, Suite 1400
4 Los Angeles, California 90025-0509
Telephone: (310) 820-8800
5 Facsimile: (310) 820-8859
6 JOSEPH N. SACCA, (admitted *pro hac vice*)
jsacca@bakerlaw.com
7 ESTERINA GIULIANI (admitted *pro hac vice*)
egiuliani@bakerlaw.com
8 BENJAMIN D. PERGAMENT (admitted *pro hac vice*)
bpergament@bakerlaw.com
9 KRISTIN L. KERANEN (admitted *pro hac vice*)
kkeranen@bakerlaw.com
10 **BAKER & HOSTETLER LLP**
45 Rockefeller Plaza
11 New York, New York 10111-0100
Telephone: (212) 589-4290
12 Facsimile: (212) 589-4201

Counsel continued on following page

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

17 ChromaDex, Inc.,
18 Plaintiff,
19 v.
20 Elysium Health, Inc. and Mark
Morris,
21 Defendants.

Case No.: 8:16-cv-02277-CJC (DFM)
[Assigned to the Hon. Cormac J. Carney]
**ELYSIUM HEALTH, INC.'S AND
MARK MORRIS'S MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF THEIR MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Hearing
Date: September 16, 2019
Time: 1:30 p.m.
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24 Elysium Health, Inc.,
Counterclaimant,
25 v.
26 ChromaDex, Inc.,
27 Counter-Defendant.

*[Filed concurrently with Notice of Motion;
Appendix of Evidence; Statement of
Uncontroverted Facts and Conclusions of
Law; (Proposed) Order]*
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1 DONALD R. WARE (admitted *pro hac vice*)
dware@foleyhoag.com

2 MARCO J. QUINA (admitted *pro hac vice*)
mquina@foleyhoag.com

3 JULIA HUSTON (admitted *pro hac vice*)
jhuston@foleyhoag.com

4 **FOLEY HOAG LLP**
155 Seaport Boulevard
5 Boston, Massachusetts 02210
Telephone: (617) 832-1000
6 Facsimile: (617) 832-7000

7 *Attorneys for Defendant and Counterclaimant*
ELYSIUM HEALTH, INC.

8 *Attorneys for Defendant*
9 MARK MORRIS

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 This litigation arises out of a contract dispute between a former supplier,
4 ChromaDex, Inc. (“ChromaDex”), and its former customer, Elysium Health, Inc.
5 (“Elysium”), a direct-to-consumer (“DTC”) seller of a dietary supplement (“Basis”)
6 that combines nicotinamide riboside (“NR”) and pterostilbene (“PT”). ChromaDex
7 overcharged Elysium by more than \$4 million in breach of the “most favored nations”
8 provision of the parties’ supply agreement, hid evidence of its wrongdoing from
9 Elysium, and then terminated their relationship as part of ChromaDex’s plan to “[b]e
10 our own ‘Elysium’” by pushing Elysium out of the DTC market it had successfully
11 created.¹ Over the course of this years-long case, ChromaDex has continually sought
12 to expand it, adding claims for trade secret misappropriation, breach of
13 confidentiality agreements, and breach of contract and fiduciary duties against
14 Elysium employee Mark Morris (“Morris,” and together with Elysium,
15 “Defendants”), a former ChromaDex employee.

16 Now that discovery has closed, Elysium is entitled to partial summary
17 judgment on its claim for ChromaDex’s breach of their supply agreement’s pricing
18 provision (First Claim). The plain language of that agreement, plus ChromaDex’s
19 own records of its sales, establish that there is no genuine issue of material fact that
20 ChromaDex failed to provide Elysium the credits or refunds due to it when
21 ChromaDex repeatedly sold NR to other customers at lower prices than it charged
22 Elysium for its larger orders.

23 Moreover, Defendants are entitled to summary judgment on ChromaDex’s
24 claims for trade secret misappropriation under California and federal law (Third and
25 Fourth Claims), because ChromaDex cannot raise a question of fact as to its

26 _____
27 ¹ Elysium’s and Morris’s Statement of Uncontroverted Facts and Conclusions of Law in Support
28 of Their Motion for Partial Summary Judgment Pursuant to Local Rule 56-1 (“LR 56-1”) at ¶¶ 25-26, 32,
34-46, 59; Declaration of Joseph N. Sacca (“Sacca Decl.”) at Exs. 65, 66. Unless otherwise stated, all
references to Exhibit(s) herein refer to exhibits attached to the Sacca Declaration.

1 purported damages. ChromaDex relies exclusively on its expert as its only “proof”
2 of damages. That expert, however, does not apportion damages even on a claim-by-
3 claim basis (*e.g.*, individually to trade secret misappropriation, breach of contract,
4 etc.), much less on a trade secret-by-trade secret basis. Instead, he offers only an
5 undifferentiated analysis attributing all the alleged damages to all the alleged wrongs
6 at issue in the case, without any attempt to establish causation or identify which
7 damages flowed from which wrongs. This approach leaves ChromaDex without any
8 proof of damages specific to its trade secret misappropriation claims – a failure of
9 proof warranting summary judgment.

10 Third, Defendants are also entitled to summary judgment on ChromaDex’s
11 Claims concerning the alleged misuse of purportedly confidential or proprietary
12 information (which ChromaDex identifies through a list of over 140 items), because,
13 again, ChromaDex’s expert’s damages calculation bundles all alleged wrongs and
14 makes no attempt to attribute damages to any specific wrongful act, claim or
15 defendant. Because ChromaDex is unable to prove damages, Defendants are entitled
16 to summary judgment on ChromaDex’s claims for: breach of contract against
17 Elysium (First and Second Claims, in part), breach of contract against Morris (Fifth
18 and Sixth Claims), breach of fiduciary duty against Morris (Seventh Claim), and
19 aiding and abetting breach of fiduciary duty against Elysium (Eighth Claim).

20 Finally, Morris is entitled to summary judgment on ChromaDex’s claim that
21 he breached the Confidentiality and Non-Solicitation Agreement (For New
22 Employees) (the “New Employee Agreement”) (Sixth Claim), which Morris signed
23 at the very end of his last day as an employee of ChromaDex. ChromaDex’s attempt
24 to saddle Morris with ongoing confidentiality obligations on his way out the door
25 fails because the undisputed facts establish that the contract is not supported by
26 consideration, and further that it is void as a matter of law.

27
28

1 **II. STATEMENT OF FACTS**

2 The relationship between Elysium and ChromaDex began in 2013, when
3 Elysium sought to purchase NR from ChromaDex. (LR 56-1 ¶ 7). ChromaDex was
4 the license holder for several patents relating to NR, was the sole commercial supplier
5 of NR in the United States, and sold ingredients only on a business-to-business basis
6 rather than directly to consumers. (LR 56-1 ¶¶ 1-3). Elysium was a startup company
7 looking to launch its first product, a dietary supplement called Basis. (LR 56-1 ¶ 4).
8 NR (which ChromaDex brands as Niagen) became one of the two principal
9 ingredients in Basis, the other being PT. (LR 56-1 ¶ 5). Elysium purchased both of
10 these ingredients from ChromaDex until 2016. (LR 56-1 ¶ 16).

11 Between 2013 and 2016, the parties extensively negotiated the terms of their
12 relationship, which ultimately culminated in the following agreements: the Niagen
13 Supply Agreement (“NR Supply Agreement”) executed on February 3, 2014, and
14 amended on February 19, 2016 (the “Amendment”), the Trademark License and
15 Royalty Agreement executed on February 3, 2014, and the pTeroPure Supply
16 Agreement executed on June 26, 2014, also amended on February 19, 2016. (LR 56-
17 1 ¶¶ 8-12). The NR Supply Agreement and Amendment contained several key
18 provisions which were important to Elysium and its strategy, including: (1) a most
19 favored nations pricing provision (“MFN Provision”); (2) a provision requiring
20 ChromaDex to supply Elysium with NR manufactured to a more stringent standard
21 than the standards specified by the U.S. Food and Drug Administration for the
22 manufacture of dietary supplements like Basis; (3) a provision granting Elysium
23 exclusivity over the combination of NR and PT or any substantially similar
24 ingredients; and (4) a provision requiring ChromaDex to provide Elysium notice of
25 issues relating to the purity of the NR it supplied, among other matters. (LR 56-1 ¶¶
26 13-15). From 2014 to 2016, Elysium successfully carved out a space for Basis in the
27 dietary supplement market and its business expanded exponentially. (LR 56-1 ¶ 17).
28

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1 From January 2011 to July 2016, Mark Morris was an employee at
2 ChromaDex. (LR 56-1 ¶ 102). While at ChromaDex, as their Vice President of
3 Business Development, Morris’s responsibilities included developing ChromaDex’s
4 and Elysium’s growing business relationship, and was Elysium’s main point of
5 contact for much of the relationship. (LR 56-1 ¶¶ 18-19).

6 In 2016, Elysium raised concerns about whether it was receiving the pricing to
7 which it was entitled under the MFN Provision. (LR 56-1 ¶ 47). As ChromaDex’s
8 former CFO testified, it was Morris’s responsibility to inform Elysium if it was
9 entitled to adjustments to its pricing under the MFN Provision. (LR 56-1 ¶ 72). After
10 some preliminary discussions with Morris, Elysium brought its concerns to
11 ChromaDex’s then-CEO, Frank Jaksch. (LR 56-1 ¶ 47). In response to Elysium’s
12 inquiry, Jaksch sent what he described as a blinded Excel spreadsheet to Elysium,
13 intending to convince Elysium that ChromaDex was in compliance with the MFN
14 Provision (“MFN Breach Spreadsheet”). (LR 56-1 ¶ 48). Jaksch failed, however, to
15 remove a tab from the spreadsheet containing detailed pricing and other information
16 for certain of ChromaDex’s other customers that appeared to reveal that ChromaDex
17 was not complying with its obligations under the MFN Provision. (LR 56-1 ¶¶ 49-
18 54).

19 After several attempts to obtain more information regarding the extent of the
20 MFN breach so it could determine the appropriate price for its next purchase order,
21 as well as the amount of the credit or refund it was due under the MFN Provision for
22 previous orders, Elysium placed an order on June 28, 2016, including a price per
23 kilogram (“kg”) intended to start a productive conversation about the price for NR
24 that Elysium was entitled to receive under the contract. (LR 56-1 ¶¶ 54-56).
25 Elysium’s order had its intended effect, and on June 30, 2016, Elysium and
26 ChromaDex had a phone call in which Jaksch informed Elysium that ChromaDex
27 had sold NR to a company called Live Cell for \$800/kg, which was \$200/kg below
28 the price ChromaDex had been charging Elysium for its most recent orders. (LR 56-

1 ¶ 57). In emails sent in advance of the call, Jaksch told Elysium that Live Cell was
2 a lower volume customer than Elysium, and that it had placed its last significant order
3 in the third quarter of 2015. (LR 56-1 ¶¶ 77-78). After this discussion, ChromaDex
4 agreed to a revised purchase order (the “June 30 Purchase Order”) with an \$800/kg
5 price. (LR 56-1 ¶¶ 58-59). This, however, did not resolve the issue of the credit or
6 refund due to Elysium for the prior orders it had placed for which it was entitled to a
7 lower price. (LR 56-1 ¶ 60). Further, as discussed below, discovery has revealed
8 that even the \$800/kg price point offered by ChromaDex was too high because of
9 multiple sales at lower volumes to other customers at lower prices. (*See* Section
10 V(A), *infra*.)

11 In 2016, Morris approached Elysium and stated a desire to resign from
12 ChromaDex. (LR 56-1 ¶ 104). Morris gave notice to ChromaDex on July 12, 2016,
13 and his last date of employment was July 15, 2016. (LR 56-1 ¶¶ 105-107). In the
14 late afternoon of July 15, 2016, Morris met with Jenny Robles, the Human Resources
15 Manager at ChromaDex. (LR 56-1 ¶¶ 113-114). There, he signed a checklist
16 (“Checklist”) (LR 56-1 ¶ 115-116), which confirmed that Morris had returned his
17 ChromaDex computer, cellular phone, office key, and other ChromaDex-issued
18 items. (Ex. 64). After signing the Checklist, Morris was asked to execute the “New
19 Employee Agreement.” (LR 56-1 ¶ 117; Ex. 66). At that meeting, Robles stated that
20 she had a check in her possession issued to Morris covering both compensation for
21 his accrued but unused vacation days and his final paycheck. (LR 56-1 ¶¶ 118-119).
22 Robles told Morris that she could not give him the check unless Morris signed the
23 New Employee Agreement. (LR 56-1 ¶ 120). Morris signed the New Employee
24 Agreement, received his check, promptly departed ChromaDex’s office, and did not
25 return. (LR 56-1 ¶¶ 121-124).

26 Throughout 2016, ChromaDex refused to give Elysium the refund or credit to
27 which it was entitled, and refused even to give Elysium the information it needed to
28 calculate the correct amount. By this time, Elysium had discovered additional

1 breaches of the NR Supply Agreement by ChromaDex and declined to make further
2 payments to ChromaDex until the pricing and other breaches were addressed. (LR
3 56-1 ¶ 60).

4 In November 2016, ChromaDex sent a letter terminating the NR Supply
5 Agreement, effective as of February 2, 2017. (LR 56-1 ¶ 30). Unbeknownst to
6 Elysium, starting in 2015, ChromaDex had devised a plan to sell an NR-containing
7 product directly to consumers, in competition with Elysium. (LR 56-1 ¶ 20). It
8 would do so by taking a stake in a company called Healthspan Research LLC
9 (“Healthspan”)—a company ChromaDex helped create by partnering with its now-
10 CEO, then a Board member of ChromaDex. (LR 56-1 ¶¶ 20-21). During 2016,
11 ChromaDex began negotiations to purchase Healthspan outright, and internal
12 memoranda from that time show that ChromaDex intended to phase out its ingredient
13 business – including by eliminating NR sales to customers, like Elysium, in the DTC
14 market – to become a DTC business and “[b]e our own ‘Elysium.’” (LR 56-1 ¶¶ 22-
15 29). One month before ChromaDex closed on its purchase of Healthspan and began
16 to compete directly with Elysium in earnest, ChromaDex’s termination of the NR
17 Supply Agreement took effect. (LR 56-1 ¶¶ 30-31).

18 **III. PROCEDURAL HISTORY**

19 On December 29, 2016, ChromaDex filed its complaint. (ECF No. 1).
20 Elysium filed its Answer, asserting six counterclaims. (ECF No. 11). ChromaDex
21 then filed its First Amended Complaint, adding new claims for misappropriation of
22 trade secrets. (ECF No. 30). In May of 2017, this Court dismissed certain of
23 ChromaDex’s claims, including its misappropriation of trade secrets claims, on the
24 grounds that ChromaDex failed to allege any protectable trade secret. (ECF No. 44
25 at 13-14). ChromaDex filed a Second Amended Complaint in May 2017 (ECF No.
26 45), which ChromaDex later amended a third time to withdraw its trade secret
27 misappropriation claims after Elysium’s counsel advised ChromaDex’s counsel that
28

1 the claims included demonstrable falsehoods. (Third Amended Complaint, ECF No.
2 48).

3 ChromaDex again amended its complaint in June 2018, alleging a claim for
4 trade secret misappropriation relating to a document it called the “Ingredient Sales
5 Spreadsheet” (“ISS”), which tracked ChromaDex’s quarterly ingredient sales by
6 customer, amount, and price, among other information. (Fourth Amended
7 Complaint, ECF No. 109). ChromaDex also added a new claim for the alleged
8 conversion of certain documents for which it could not make out a trade secret claim,
9 which this Court dismissed with prejudice because CUTSA “serves to preempt all
10 claims premised on the wrongful taking and use of confidential business and
11 proprietary information, even if that information does not meet the statutory
12 definition of a trade secret.” (ECF No. 115 at 7-8).

13 In November 2018, ChromaDex filed its *fifth* amended complaint adding its
14 former employee Morris as a defendant, bringing claims against Morris for, among
15 other things, breach of contract and breach of fiduciary duty, and against Elysium for
16 aiding and abetting breach of fiduciary duty. (ECF No. 153). In February 2019, the
17 Court denied Defendants’ motion to dismiss certain of those claims. (ECF No. 182).
18 Elysium and Morris thereafter filed their answer, along with Elysium’s
19 counterclaims. (ECF No. 192).

20 **IV. LEGAL STANDARD**

21 “A party may move for summary judgment, identifying each claim or
22 defense—or the part of each claim or defense—on which summary judgment is
23 sought.” Fed. R. Civ. P. 56(a). A court will grant a motion for summary judgment
24 “if the movant shows that there is no genuine dispute as to any material fact and the
25 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see also*
26 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). “A fact is ‘material’ only if it
27 might affect the outcome of the case, and a dispute is ‘genuine’ only if a reasonable
28 trier of fact could resolve the issue in the non-movant's favor.” *Fresno Motors, LLC*

1 v. *Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014) (citing *Anderson*
2 v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

3 “On an issue as to which the nonmoving party will have the burden of proof,
4 however, the movant can prevail merely by pointing out that there is an absence of
5 evidence to support the nonmoving party’s case.” *Soremekun v. Thrifty Payless, Inc.*,
6 509 F.3d 978, 984 (9th Cir. 2007). To defeat summary judgment, “a plaintiff must
7 set forth non-speculative evidence of specific facts, not sweeping conclusory
8 allegations.” *Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1061 (9th Cir.
9 2011). The “mere possibility of a factual dispute,” without more, is insufficient to
10 defeat summary judgment. *Nat’l Union Fire Ins. Co. of Pittsburgh, Pa. v. Argonaut*
11 *Ins. Co.*, 701 F.2d 95, 97 (9th Cir. 1983).

12 **V. ARGUMENT**

13 **A. There is No Genuine Dispute that ChromaDex Breached the MFN**
14 **Provision of the NR Supply Agreement.**

15 The evidence shows that, beginning almost immediately after the parties
16 executed the NR Supply Agreement and continuing throughout their relationship,
17 ChromaDex breached § 3.1 of the NR Supply Agreement (ECF No. 153-03) by
18 repeatedly charging Elysium more per kilogram than it charged third parties, even
19 though Elysium’s purchase orders were larger than the third party purchase orders,
20 and failing to promptly credit or refund Elysium to account for the lower price it
21 should have received. “[A] breach of contract is a failure, without legal excuse, to
22 perform any promise that forms the whole or part of a contract.” *Hosp. of Barstow,*
23 *Inc. v. California Nurses Ass’n*, 2013 WL 6095559, at *5 (C.D. Cal. Nov. 18, 2013).
24 The NR Supply Agreement set a maximum price of \$1,300/kg, but its MFN Provision
25 required that price to be reduced in certain circumstances:

26 If, at any time during the Term, ChromaDex supplies
27 Niagen (or a substantially similar product) to a Third Party
28 at a price that is lower than that at which Niagen is
supplied to Elysium Health under this Agreement, then the
price of Niagen supplied under this Agreement shall be

1 revised to such Third Party price with effect from the date
2 of the applicable sale to such Third Party and ChromaDex
3 shall promptly provide Elysium Health with any refund or
4 credits thereby created; provided Elysium Health
purchases equal volumes or higher volumes than the Third
Party. For the sake of clarity this Section does not apply to
inter-Affiliate transfers.

5 (ECF No. 153-03 at § 3.1).

6 The NR Supply Agreement defined “the Term” to be the three years following
7 execution of the agreement plus any renewal periods. (*Id.*). It defined “Third Party”
8 to be “any Person, other than ChromaDex, Elysium Health and their respective
9 Affiliates.” (*Id.* § 1.15). On February 5, 2014, ChromaDex sold ██████████ of
10 Niagen to a customer called Innovations 4 Health (a “Third Party,” as defined in the
11 agreement) at a price of ██████████ per kilogram. (LR 56-1 at ¶ 34). On June 27, 2014,
12 ChromaDex supplied 100 kilograms of Niagen to Elysium at a price of \$1,300 per
13 kilogram. (LR 56-1 at ¶ 35). Under the MFN Provision, Elysium was entitled to the
14 lower price given to Innovations 4 Health, because Elysium purchased a higher
15 volume of NR from ChromaDex than Innovations 4 Health had. (LR 56-1 at ¶¶ 34-
16 35).

17 Subsequently, on February 2, 2015, ChromaDex sold ██████████ of
18 Niagen to Proctor & Gamble (“P&G”) (a “Third Party,” as defined in the agreement)
19 at a price of ██████████ per kilogram. (LR 56-1 at ¶ 36). Following that February 2, 2015
20 sale to P&G, ChromaDex on eight occasions supplied Niagen to Elysium at prices of
21 either \$1,300, \$1,000, or \$800 per kilogram. (LR 56-1 ¶¶ 38-40, 42-44, 46, 58). For
22 each of these eight sales, which ranged in volume from 60 kilograms to 3,000
23 kilograms, ChromaDex failed to give Elysium the lower price given to P&G, even
24 though each time Elysium purchased higher volumes of NR from ChromaDex than
25 P&G had. (*Id.*). Instead, ChromaDex concealed that it was not complying with its
26 obligations under the MFN Provision, and never issued Elysium a refund or a credit
27 as required. Based on the MFN Provision’s plain meaning, the uncontested record
28 of ChromaDex’s sales to third parties in violation of it, and ChromaDex’s failure to

1 issue Elysium a refund or credit, Elysium is entitled to summary judgment on the
2 issue of ChromaDex’s liability for breach of the MFN Provision. *See RCRV Inc. v.*
3 *J L J Inc.*, 2013 WL 12133691, at *13 (C.D. Cal. Jan. 30, 2013) (granting partial
4 summary judgment as to liability for breach of contract).

5 **B. ChromaDex Is Unable to Prove Damages For Its Trade Secret**
6 **Misappropriation Claims.**

7 Defendants are entitled to summary judgment on ChromaDex’s claims for
8 trade secret misappropriation (Third and Fourth Claims) under California’s Uniform
9 Trade Secrets Act (“CUTSA”) and the federal Defend Trade Secrets Act (“DTSA”)
10 because ChromaDex cannot adequately prove damages, a necessary element of its
11 claims. *Prunty v. Ark. Freightways, Inc.*, 16 F.3d 649, 652 (5th Cir. 1994). (“[W]hen
12 one of the prima facie elements of a claim is damages and the claimant fails to
13 introduce evidence of those damages, he or she commits a fatal error.”).

14 Under CUTSA, “a prima facie claim for misappropriation of trade secrets
15 requires the plaintiff to demonstrate that: (1) the plaintiff owned a trade secret, (2)
16 the defendant acquired, disclosed, or used the plaintiff’s trade secret through
17 improper means, and (3) the defendant’s actions damaged the plaintiff.” *Sci. of*
18 *Skincare, LLC v. Phytoceuticals, Inc.*, 2009 WL 2050042, at *5 (C.D. Cal. July 7,
19 2009). *See S. Cal. Inst. of Law v. TCS Educ. Sys.*, 2011 WL 1296602, at *7 (C.D.
20 Cal. Apr. 5, 2011) (holding that “[a]lleging mere possession of trade secrets is not
21 enough” to state a claim under CUTSA). A DTSA plaintiff must likewise offer proof
22 of damages, unjust enrichment, or a reasonable royalty to prevail on its claim. *See*
23 18 U.S.C.A. § 1836(b)(3)(B); *Cedars Sinai Med. Ctr. v. Quest Diagnostic Inc.*, 2018
24 WL 2558388, at *3 (C.D. Cal. Feb. 27, 2018) (“Because the pleading standards of
25 Cedars–Sinai’s DTSA and CUTSA claims are the same, the Court will analyze those
26 two claims together.”).

27 Throughout discovery—including throughout its initial disclosures,
28 interrogatory responses, and fact witness testimony (LR 56-1 ¶¶ 95-97)—

1 ChromaDex consistently deferred to its expert as its sole means to provide evidence
2 of damages, leaving ChromaDex reliant on the testimony and reports of its expert
3 Lance E. Gunderson (“Gunderson”), dated June 21, 2019 and July 26, 2019 (Exs. 46
4 and 68) for the damages element of its claims. Absent Gunderson, ChromaDex offers
5 no evidence of damages.

6 Gunderson does not purport to calculate damages by alleged act of
7 wrongdoing, or by Claim, or even by defendant, much less apportion damages on a
8 trade secret-by-trade secret basis. (LR 56-1 ¶¶ 98-100). Nor does he provide the
9 methodology to do so. (Ex. 46). Instead, he bundles all of ChromaDex’s alleged
10 damages together and takes the position that *all* of those damages are available *for*
11 *each and every Claim individually*, notwithstanding that the legal and factual bases
12 of the Claims vary substantially. (LR 56-1 ¶¶ 98-100). These errors—the failure to
13 apportion damages on a trade secret-by-trade secret basis, and the failure even to
14 separate damages among ChromaDex’s various claims—leave ChromaDex without
15 sufficient proof on the damages element of its trade secret claims, entitling Elysium
16 to summary judgment on ChromaDex’s Third and Fourth Claims. *McGlinchy v.*
17 *Shell Chem. Co.*, 845 F.2d 802, 808 (9th Cir. 1988) (“Summary judgment is
18 appropriate where appellants have no expert witnesses or designated documents
19 providing competent evidence from which a jury could fairly estimate damages.”);
20 *Unicon Fin. Servs., Inc. v. InterCept*, 2006 WL 8431500, at *13 (C.D. Cal. Jan. 17,
21 2006), *aff’d sub nom. Unicon Fin. Servs., Inc. v. InterCept*, 256 F. App’x 27 (9th Cir.
22 2007) (“[I]n the Ninth Circuit, when a defense motion for summary judgment
23 challenges plaintiff’s ability to prove damages, plaintiff must adduce evidence from
24 which ‘a jury could fairly estimate damages.’”) (*quoting McGlinchy*, 845 F.2d at
25 808).

26 1. ChromaDex’s Failure to Apportion its Alleged Damages Among
27 its Alleged Trade Secrets is Fatal to its Trade Secret Claims.

28 On the night discovery closed, ChromaDex belatedly identified the twelve
trade secrets it now claims were misappropriated, which it divided into four

1 categories. (LR 56-1 ¶¶ 91-93). ChromaDex’s expert, however, did not apportion
2 the damages arising from the purported misappropriation among the twelve items at
3 issue, nor even among the four categories of trade secret information ChromaDex
4 claims they fall into. This problem is fatal to ChromaDex’s claims, because the
5 undisputed facts establish that ChromaDex is unable to prove its trade secret
6 misappropriation claims with respect to at least two of the allegedly misappropriated
7 items: the ISS (the spreadsheet recording information about ingredient sales) and
8 information Morris sent Elysium about Live Cell’s orders (date, price and volume).
9 Because ChromaDex’s claims fail as a matter of law with respect to the alleged
10 misappropriation of the ISS and the Live Cell information, and because
11 ChromaDex’s expert provides no basis on which to calculate damages independent
12 of those purported trade secrets, ChromaDex is left without any proper proof of
13 damages at all, and is thus unable to prove its claims.

14 ChromaDex’s claims with regard to the ISS fail as a matter of law because
15 ChromaDex is unable to prove its allegation that Elysium’s possession of it benefited
16 Elysium in its negotiations with ChromaDex. (5AC ¶¶ 197, 205-206). The evidence
17 is undisputed that Elysium negotiated its last purchase from ChromaDex on June 30,
18 2016, but did not possess the ISS until weeks later. (LR 56-1 ¶¶ 16, 58, 65, 103,
19 125). Elysium could not have benefited during that negotiation from information it
20 did not then have. ChromaDex also alleges that Elysium could have derived some
21 competitive benefit from knowing its competitors’ purchases (5AC ¶¶ 197, 205-206),
22 but there is no evidence in the record that anybody at Elysium even saw the ISS
23 before Morris deleted it from his computer, much less that Elysium took action to
24 change any part of its competitive strategy on the basis of the ISS. (LR 56-1 ¶¶ 65-
25 68). ChromaDex’s theory that Elysium was unjustly enriched by the possession of
26 the ISS is therefore “blatantly contradicted by the record.” *Scott v. Harris*, 550 U.S.
27 372, 380 (2007). As a matter of law, ChromaDex is unable to prove its
28 misappropriation claims with respect to the ISS.

1 ChromaDex’s claims with respect to the Live Cell information likewise fail as
2 a matter of law. ChromaDex contends that Morris disclosed trade secrets to Elysium
3 by telling it in May 2016 that ChromaDex sold NR to a customer called Live Cell for
4 \$800/kg (which was below Elysium’s price), and the date and volume of Live Cell’s
5 recent purchases. ChromaDex’s then-CFO testified that it was part of Morris’s
6 responsibilities at ChromaDex to inform Elysium if it was entitled to a lower price
7 per the MFN provision, (LR 56-1 ¶ 72), which is exactly what Morris did. And the
8 undisputed evidence shows that ChromaDex’s own CEO did likewise, also telling
9 Elysium that Live Cell paid \$800/kg and was a lower volume purchaser than
10 Elysium—the same information Morris allegedly wrongfully conveyed. (LR 56-1 ¶¶
11 77-80). As a result, ChromaDex cannot premise its claim on Morris’s alleged
12 disclosure of information that: (1) he was authorized to disclose to Elysium in the
13 first place, and (2) Elysium was also receiving from others at ChromaDex, both of
14 which demonstrate that that ChromaDex did not consider Live Cell’s price and
15 volume information to be a trade secret, and that neither Elysium nor Morris
16 misappropriated the Live Cell information. Further, given that Jaksch gave
17 substantively the same information as Morris gave Elysium during the course of the
18 negotiations over the June 30 order, it would be impossible to conclude that Elysium
19 derived some benefit from the information provided by Morris. (LR 56-1 ¶¶ 48-53,
20 57, 72, 77-80). As a matter of law, ChromaDex is unable to prove its trade secret
21 misappropriation claims with regard to the Live Cell information. *See Propulsion*
22 *Techs., Inc. v. Attwood Corp.*, 369 F.3d 896, 905 (5th Cir. 2004) (“the missing link
23 for recovery of such damages remains: there is no evidence that Attwood used trade
24 secrets to generate those profits”); *Sci. of Skincare*, 2009 WL 2050042, at *5
25 (granting motion for summary judgment because “[p]laintiff has not sufficiently
26 shown a causal link between a potential misappropriation of a trade secret and the
27 alleged damages.”).

28

1 The elimination of the ISS and the Live Cell information as potentially
2 misappropriated trade secrets renders Gunderson’s opinion – ChromaDex’s only
3 damages evidence – fatally flawed. Gunderson does not apportion damages among
4 the alleged trade secrets at issue, and instead purports only to determine damages
5 based on not just all of the trade secrets in the aggregate, but the entirety of
6 Defendants’ alleged wrongful acts in the aggregate, including those having nothing
7 to do with the alleged trade secrets. (LR 56-1 ¶¶ 98-100; Ex. 46). He therefore
8 provides no “reasonable basis” on which to calculate damages flowing from the
9 alleged misappropriation of the specific remaining alleged trade secrets once either
10 or both of the ISS and the Live Cell information are removed from the claims. *O2*
11 *Micro Intern. Ltd. v. Monolithic Power Sys. Inc.*, 399 F. Supp. 2d 1064, 1079 (N.D.
12 Cal. 2005). This collective approach to trade secrets damages is “useless” where, as
13 here, the plaintiff cannot prove each and every alleged misappropriation on which its
14 damages opinion is based. *Id.*

15 In *LivePerson, Inc. v. [24]7.AI, Inc.*, for example, the plaintiff’s expert
16 analyzed the collective damages flowing from misappropriation of all 28 alleged
17 trade secrets at issue, but the initial trial in the case only concerned 15 of those alleged
18 trade secrets. 2018 WL 6257460, at *2 (N.D. Cal. Nov. 30, 2018). Because the
19 expert did “not apportion trade secret misappropriation damages among particular
20 alleged trade secrets, and offer[ed] no methodology for the jury to calculate trade
21 secret misappropriation damages on fewer than all of the 28 alleged trade secrets in
22 the case,” the expert’s testimony was excluded. *Id.* Similarly, the damages expert in
23 *O2 Micro* based his damages calculation “on an assumption that all of the trade
24 secrets were misappropriated.” 399 F. Supp. 2d at 1076. That opinion was rendered
25 “useless” when the jury concluded that only some of the trade secrets had been
26 misappropriated. *Id.* at 1077.

27 So too here. Gunderson’s opinion is predicated on ChromaDex proving every
28 one of its 12 allegedly misappropriated trade secrets and provides no methodology

1 for determining damages when any one of its misappropriation theories fails. (LR
2 56-1 ¶¶ 93, 98-100; Ex. 46). Elimination of the ISS or the Live Cell information
3 renders the Gunderson Report fatally flawed, leaving ChromaDex unable to prove an
4 essential element of its trade secret misappropriation claims, and warrants summary
5 judgment on these claims.

6 2. ChromaDex Fails to Provide Evidence of Damages For Trade
7 Secrets Claims Separate and Apart From Other Alleged Wrongs
8 and Claims.

9 Gunderson also fails to provide sufficient evidence of ChromaDex’s purported
10 trade secret damages for a second reason: he never opines on damages attributable
11 solely to misappropriation of the alleged trade secrets even as a class. (LR 56-1 ¶¶
12 98-100). Instead, he takes the position, both in his reports and in his testimony, that
13 all of the alleged harm to ChromaDex or unjust enrichment to Elysium are equally
14 attributable to almost every alleged wrong and claim asserted in this case by
15 ChromaDex, including claims relating to non-trade secret (indeed, in some cases,
16 public) documents.² (*Id.*). As a result, ChromaDex seeks to recover under trade
17 secret law for alleged acts that trade secret law does not prohibit, including Elysium’s
18 alleged acts ChromaDex claims to be in breach of the parties’ contracts (LR 56-1 ¶
19 100; Ex. 46), for Morris’s alleged acts ChromaDex contends were in breach of his
20 fiduciary duties to ChromaDex (*Id.*), and for Morris’s alleged acts ChromaDex
21 contends were in breach of his contracts. (*Id.*). This “spaghetti-at-the-wall” approach
22 permeates Gunderson’s opinion on trade secret damages and fails as a matter of law.
23 *See MGE UPS Sys., Inc. v. GE Consumer & Indus., Inc.*, 622 F.3d 361, 369 (5th Cir.
24 2010) (“MGE has not presented evidence that provides any means of distinguishing
25 revenue PMI gained from other sources from revenue gained through

26 ² For example, Gunderson bases his trade secrets damages analysis in part on Elysium’s alleged
27 disclosure of ChromaDex’s specifications for NR and PT, both of which ChromaDex filed publicly with
28 the SEC as attachments to a quarterly filing. (LR 56-1 ¶¶ 86-89; Exs. 46, 53). These documents cannot
possibly be trade secrets. *In re Providian Credit Card Cases*, 96 Cal. App. 4th 292, 304 (Cal. Ct. App.
2002) (“[p]ublic disclosure, that is the absence of secrecy, is fatal to the existence of a trade secret”).

1 misappropriation of MGE’s trade secrets . . .”).

2 ChromaDex’s attempt to recover under damages trade secret law for the
3 disclosure of *public* documents is particularly inappropriate and directly contravenes
4 the Ninth Circuit’s holding in *Management and Engineering Technologies*
5 *International, Inc. v. Information Systems Support, Inc.* that the trade secret damages
6 opinion in that case did not support the jury award because it was based in part on
7 disclosure of public documents. 490 F. App’x 30, 33–34 (9th Cir. 2012). In that case,
8 the jury had found that some of the purported trade secret information on which the
9 expert based his report was public and thus not trade secrets at all. *Id.* The Ninth
10 Circuit vacated the jury award and remanded to the district court, holding that the
11 expert report, which “did not apportion value among the legally valid and invalid
12 alleged trade secrets,” was “insufficient to support” the award. *Id.* Here, Gunderson
13 admits that his opinion on damages for trade secret misappropriation is based in part
14 on the alleged use of public, non-trade secret information (LR 56-1 ¶ 100), and thus,
15 as with the damages evidence in *Management & Engineering Technologies*,
16 Gunderson’s opinion – which, again, is the only damages evidence ChromaDex puts
17 forth – fails as a matter of law.

18 Because there is no evidence in the record that differentiates between damages
19 supposedly caused by alleged trade secret misappropriation and damages caused by
20 any other alleged acts, including breaches of contract or fiduciary duties, ChromaDex
21 is left without proof on an essential element of its trade secret claims, entitling
22 Elysium to summary judgment. *See McGlinchy*, 845 F.2d at 808; *Resonance Tech.,*
23 *Inc. v. Koninklijke Philips Elecs., N.V.*, 2008 WL 4330288, at *3 (C.D. Cal., Sept.
24 17, 2008) (a prima facie case of misappropriation of trade secrets includes damages);
25 *Prunty v. Ark. Freightways, Inc.*, 16 F.3d 649, 652 (5th Cir. 1994) (“[W]hen one of
26 the prima facie elements of a claim is damages and the claimant fails to introduce
27 evidence of those damages, he or she commits a fatal error.”).

28

1 **C. There is No Genuine Dispute that ChromaDex Cannot Show**
2 **Damages on the Bulk of its Remaining Claims for Breach of**
3 **Contract and Breach of Fiduciary Duty.**

4 Similar to ChromaDex’s misappropriation of trade secrets claims, ChromaDex
5 has not proved damages for its claims for breach of contract, breach of fiduciary duty,
6 or aiding and abetting a breach thereof, warranting summary judgment in favor of
7 Defendants on these claims as well. *Goodworth Holdings, Inc. v. Suh*, 99 F. App’x.
8 806, 808 (9th Cir. 2004) (affirming grant of summary judgment on breach of
9 fiduciary duty and breach of contract claims for failure to prove damages); *Finnegan*
10 *v. CITI*, 2016 WL 5938724, at *4 (C.D. Cal. Jan. 25, 2016) (granting summary
11 judgment on conversion, fraud, breach of fiduciary duty, breach of contract, and civil
12 RICO claims for failure to prove damages).

13 Gunderson testified that he does not calculate damages individually for any of
14 ChromaDex’s claims. (LR 56-1 ¶¶ 98, 100). Instead, as to each of those claims, he
15 simply “incorporate[s] by reference” what he calls his “analysis of trade secret
16 misappropriation claims.” (Ex. 46). And, as his report makes clear and his testimony
17 confirms, what he describes as an “analysis of trade secret misappropriation claims”
18 is not limited at all to the alleged trade secrets, but rather is based on virtually all the
19 alleged wrongdoing ChromaDex asserts in the case. (LR 56-1 ¶¶ 98-100; Ex. 46).

20 One consequence of this, by way of example, is that ChromaDex seeks to hold
21 *Morris* accountable in contract for alleged damages arising from *Elysium’s* alleged
22 disclosure of the “NR Study Data” in alleged violation of the confidentiality
23 provisions of the NR Supply Agreement between Elysium and ChromaDex. (5AC ¶
24 182). That alleged disclosure has nothing to do with ChromaDex’s contract claims
25 against *Morris*, and therefore cannot form part of any damages on those claims. *State*
26 *Farm Mut. Auto. Ins. Co. v. Superior Court*, 123 Cal. App. 4th 1424, 1434 (2004)
27 (“Only damages proximately resulting from the breach—such as consequent
28 economic loss or emotional distress, for example—are recoverable as compensation
 . . .”). And Gunderson further opines that Elysium should be answerable in contract

1 under the NR Supply Agreement not just for the purported damages arising from the
2 alleged disclosure of the only four documents it alleges Elysium wrongfully disclosed
3 under that agreement, but rather in an amount that would account for the harm to
4 ChromaDex or benefit to Elysium supposedly attributable to Elysium’s alleged use
5 of the overwhelming majority of over 140 items Gunderson describes as “trade
6 secrets, confidential and/or proprietary information” that does *not* form the basis of
7 ChromaDex’s contract claim. (LR 56-1 ¶¶ 81-84, 86; Exs. 46, 53).

8 This is manifestly improper and renders defective the proof of damages for
9 each claim. *See, e.g., Mattel, Inc. v. MGA Entmn’t, Inc.*, 616 F.3d 904, 910–11 (9th
10 Cir. 2010) (rejecting over-inclusive damages award that included amounts not
11 traceable to the actionable wrong); *In re Novatel Wireless Sec. Litig.*, 2013 WL
12 494361, at *4 (S.D. Cal. Feb. 7, 2013) (excluding export report that “did not
13 apportion the loss causation and damages among the individual claims alleged by
14 Plaintiffs or provide a method for the Court to do so.”); *Intimate Bookshop v. Barnes*
15 *& Noble, Inc.*, 2003 WL 22251312, at *8 (S.D.N.Y. Sept. 30, 2003) (granting
16 summary judgment because “[a]s noted, Intimate’s unsupported assumption of
17 causation and supposition that all of its losses were caused by defendants’ allegedly
18 unlawful conduct, and failure to account for defendants’ lawful conduct and
19 intervening market factors are fatal to its claim.”). *As a matter of law*,
20 misappropriation of non-trade secret material does not give rise to trade secret
21 damages. *Boland, Inc. v. Rolf C. Hagen (USA) Corp.*, 685 F. Supp. 2d 1094, 1109-
22 110 (E.D. Cal. 2010). *As a matter of law*, disclosure of a document not covered by
23 the confidentiality provisions of a contract does not give rise to damages for breach
24 of that contract. Cal. Civ. Code § 3300 (damages for breach of contract are those that
25 are “proximately caused” by “breach of an obligation arising from” the contract).
26 *And as a matter of law*—and as this Court previously ruled—the misappropriation of
27 a trade secret or the wrongful taking and use of confidential business and proprietary
28 information does not give rise to damages for breach of fiduciary duty, due to

1 preemption.³ (ECF No. 182 at 9 (“CUTSA provides the exclusive civil remedy for
2 conduct based upon misappropriation of a trade secret.”)) (citations and internal
3 quotations omitted)).

4 Speculative proof of damages cannot survive summary judgment. *Master*
5 *Replicas, Inc. v. Levitation Arts, Inc.*, 2009 WL 10673278 at *3 (C.D. Ca. June 18,
6 2009). Here, ChromaDex’s alleged harms do not even rise to the speculative level.
7 Instead, as to each claim, ChromaDex seeks to recover for alleged harms that, with
8 absolute certainty, do not arise from the alleged wrongs upon which that claim is
9 based. Defendants are therefore entitled to summary judgment with respect to
10 ChromaDex’s claims for breach of contract against Elysium (Claims One and Two),
11 breach of contract against Morris (Claims Five and Six), breach of fiduciary duty
12 against Morris (Claim Seven), and aiding and abetting against Elysium (Claim
13 Eight).⁴

14 **D. The New Employee Agreement is Void and Unenforceable.**

15 ChromaDex’s attempt to impose retroactive confidentiality obligations on
16 Morris by forcing him to sign the New Employee Agreement during his last hour of
17 his last day of employment fails on two grounds: The contract lacks consideration
18 and is void as a matter of California law. Although ChromaDex’s conclusory
19 allegations may have allowed this claim to survive a motion to dismiss (5AC ¶ 226;
20 ECF No. 182 at 8), at the summary judgment stage, ChromaDex can adduce no
21 evidence to support its allegations. First, contrary to what ChromaDex previously
22 alleged, the evidence shows that (1) Morris did not receive continued employment or
23 any other benefits pursuant to this agreement; (2) ChromaDex did not provide Morris
24 with access to confidential information after he signed the agreement; and (3)

25 ³ “CUTSA provides the exclusive civil remedy for conduct based upon misappropriation of a trade
26 secret.” (ECF No. 182 at 9) (citations and internal quotations omitted).

27 ⁴ ChromaDex’s First and Second Claims also allege breach of contract for Elysium’s alleged
28 failure to pay amounts due. While Elysium disputes the merits of that claim, Gunderson does set forth a
separately identifiable, specific damages analysis for that alleged breach. Thus, ChromaDex’s First and
Second Claims, to the extent they are based on non-payment, are not the subject of this motion.

1 ChromaDex did not forebear any legal rights in exchange for Morris’s signature. (LR
2 56-1 ¶¶ 105-124). Second, the undisputed facts establish that ChromaDex violated
3 the California Labor Code by threatening to withhold Morris’s final paycheck—more
4 than \$12,000—in order to coerce Morris into signing the New Employee Agreement,
5 rendering the contract void under California Civil Code § 1608. (LR 56-1 ¶¶ 117-
6 122).

7 1. The New Employee Agreement Lacks Consideration.

8 First, the New Employee Agreement lacks consideration, which is an essential
9 aspect of contract formation. *Patriot Sci. Corp. v. Korodi*, 504 F. Supp. 2d 952, 960
10 (S.D. Cal. 2007) (“It is hornbook law that a contract, to be enforceable, must be
11 supported by consideration.”). California Civil Code § 1605 defines consideration
12 as “[a]ny benefit conferred, or agreed to be conferred, upon the promisor, by any
13 other person, to which the promisor is not lawfully entitled, or any prejudice suffered,
14 or agreed to be suffered, by such person, other than such as he is at the time of consent
15 lawfully bound to suffer, as an inducement to the promisor, is a good consideration
16 for a promise.” Consistent with § 1605, a promise to perform a pre-existing duty is
17 not valid consideration. *See Auerbach v. Great W. Bank*, 74 Cal. App. 4th 1172,
18 1185 (Ct. App. 1999) (“Generally speaking, a commitment to perform a preexisting
19 contractual obligation has no value. In contractual parlance, for example, doing or
20 promising to do something one is already legally bound to do cannot constitute the
21 consideration needed to support a binding contract.”); *O’Byrne v. Santa Monica-*
22 *UCLA Med. Ctr.*, 94 Cal. App. 4th 797, 808 (Ct. App. 2001) (“a statutory or legal
23 obligation to perform an act may not constitute consideration for a contract.”).

24 The undisputed facts are: (1) Morris gave his notice on Tuesday, July 12, 2016;
25 (2) his last day of employment by ChromaDex was Friday, July 15, 2016; (3) Morris
26 signed the New Employee Agreement on July 15, 2016, immediately before he exited
27 ChromaDex’s office for the last time; and (4) before Morris signed the New
28 Employee Agreement, ChromaDex had collected Morris’s devices and had

1 terminated his access to ChromaDex’s network. (LR 56-1 ¶¶ 105-109, 112, 121-
2 124). These undisputed facts establish that ChromaDex did not provide Morris with
3 employment or benefits to which he was not already entitled, nor did ChromaDex
4 provide him with access to confidential information after he executed the New
5 Employee Agreement.⁵

6 ChromaDex’s forbearance theory of consideration likewise fails. Although
7 ChromaDex alleged that, in exchange for Morris’s promises in the New Employee
8 Agreement, it “did not take further action to protect its information,” (5AC ¶ 26), it
9 has failed to substantiate the allegation in discovery. There is no evidence,
10 testimonial or otherwise, indicating that ChromaDex had any right to take such
11 undefined “further action,” or that it refrained from taking such action as
12 consideration for the New Employee Agreement. Moreover, while a party’s
13 forbearance from exercising a right may satisfy the consideration requirement, there
14 must be a meeting of the minds that the forbearance is part of the bargained-for
15 exchange. *Blonder v. Gentile*, 149 Cal. App. 2d 869, 875 (1957) (stating that the
16 surrendering of a legal right is valid consideration if “the minds of the party meet on
17 the relinquishment of the right as a consideration.”). There is no evidence on the
18 record of any meeting of the minds between Morris and ChromaDex about
19 ChromaDex’s allegations of forbearance—because it never happened.

20 Second, because the undisputed facts establish a lack of consideration,
21 ChromaDex can no longer rely on the presumption under California Civil Code
22 § 1614 that a written instrument is evidence of consideration. On summary
23 judgment, where, as here, a party challenging a contract shows that the contract lacks
24

25 ⁵ Nor can Morris’s final paycheck be consideration for the New Employee Agreement. Under
26 California Labor Code § 2927, which imposes a statutory obligation to compensate an employee for
27 services rendered up to the time of the termination of employment, Morris was already entitled to be paid
28 through his last day of work (including any unused vacation time) and his final paycheck cannot be
consideration for signing the New Employee Agreement. (LR 56-1 ¶¶ 118-120). Compliance with this
pre-existing statutory obligation cannot be consideration for the New Employee Agreement. *See* Cal. Civ.
Code § 1605 (requiring that consideration be something “to which the promisor is not lawfully entitled”).

1 consideration, the presumption “disappear[s].” *Tursi v. Lane Labs, a New Jersey*
2 *Corp.*, 53 F. App’x 466, 467 (9th Cir. 2002) (“Lane introduced sufficient evidence
3 to make the presumption [under California Civil Code § 1614], which affects only
4 the burden of production, disappear.”). *See also Swift Harvest USA, LLC v. Dollar*
5 *Gen. Corp.*, 2018 WL 7348845, at *3 (C.D. Cal. Dec. 28, 2018) (“The presumption
6 is rebuttable, and extrinsic evidence is admissible to show lack of consideration.”).
7 Because the undisputed facts conclusively establish a lack of consideration, and
8 ChromaDex cannot raise an issue of fact as to whether it forbore from taking “further
9 action,” the New Employee Agreement lacks consideration and is therefore
10 unenforceable. Morris is entitled to summary judgment on ChromaDex’s Sixth
11 Claim.

12 2. ChromaDex’s Threat to Withhold Morris’s Last Paycheck Voids
13 the New Employee Agreement.

14 The New Employee Agreement is also void as a matter of law. In California,
15 the entire contract is void “if any part of a single consideration for one or more
16 objects, or of several considerations for a single object, is unlawful,” Cal. Civ. Code
17 § 1608. “[U]nlawful” is defined as: “1. Contrary to an express provision of law;
18 2. Contrary to the policy of express law, though not expressly prohibited; or,
19 3. Otherwise contrary to good morals.” Cal. Civ. Code § 1667. Under the California
20 Labor Code, when an employee provides more than seventy-two hours’ notice, the
21 employer must give the employee his or her final paycheck on the employee’s final
22 day. Cal. Lab. Code § 202(a). California Labor Code § 206 requires that an employer
23 timely pay an employee’s wages “without condition.” *Sullivan v. Del Conte Masonry*
24 *Co.*, 238 Cal. App. 2d 630, 633 (Ct. App. 1965) (“Thus, upon termination of an
25 employee’s services, the employer is bound to pay the employee all wages conceded
26 to be due, and can require no condition in connection with payment.”). Here, it is
27 undisputed that Morris gave notice on or about Tuesday, July 12, 2016, and that his
28 last day was Friday, July 15. (LR 56-1 ¶¶ 105-107, 124). ChromaDex was therefore

1 obligated under the California Labor Code to provide Morris with his final paycheck
2 on July 15, 2016 without condition.

3 Rather than comply with its clear obligation, the evidence shows that
4 ChromaDex refused to give Morris his already-earned final paycheck of over
5 \$12,000 unless he signed the New Employee Agreement, a violation of California
6 Labor Code §§ 202(a) and 206. ChromaDex’s threat to withhold Morris’s final
7 paycheck in exchange for Morris’s signature renders the New Employee Agreement
8 void as a matter of law. Cal. Civ. Code § 1608 (a contract is void “if any part [of the
9 consideration supporting it] is unlawful”); *R. M. Sherman Co. v. W. R. Thomason,*
10 *Inc.*, 191 Cal. App. 3d 559, 563 (Ct. App. 1987) (“Civil Code sections 1598 and 1608
11 make a contract ‘void’ if it has an unlawful object or an unlawful consideration.”).
12 Morris is entitled to summary judgment both because the New Employee Agreement
13 lacks consideration, and because it is voided by ChromaDex’s actions in threatening
14 to withhold his already-earned final paycheck.

15 **VI. CONCLUSION**

16 For the foregoing reasons, Defendants’ motion for summary judgment should
17 be granted in favor of Elysium as to liability for ChromaDex’s breach of the MFN
18 Provision (Elysium’s First Counterclaim) and in favor of Defendants as to
19 ChromaDex’s claims for trade secret misappropriation (Third and Fourth Claims).
20 Summary judgment should also be granted in favor of Elysium and against
21 ChromaDex on: ChromaDex’s claims against Elysium for breach of contract (First
22 and Second Claims) except as those claims relate to Elysium’s alleged failure to pay
23 invoices issued in connection with its June 30, 2016 orders; ChromaDex’s claims
24 against Morris for breach of contract (Fifth and Sixth Claims); ChromaDex’s claim
25 against Morris for breach of fiduciary duty (Seventh Claim); and ChromaDex’s claim
26 against Elysium for aiding and abetting breach of fiduciary duty (Eighth Claim).

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Respectfully submitted,

Dated: August 16, 2019

BAKER & HOSTETLER LLP

By: /s/ Joseph N. Sacca
JOSEPH N. SACCA

*Attorneys for Defendant and
Counterclaimant* ELYSIUM HEALTH,
INC. *and Defendant*
MARK MORRIS

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES