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

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

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

**JOINT STIPULATION UNDER LOCAL  
RULE 37-2 REGARDING CHROMADEx,  
INC.'S MOTION TO COMPEL FURTHER  
RESPONSES FROM ELYSIUM HEALTH,  
INC.**

Date: November 13, 2018  
Time: 10:00 a.m.  
Courtroom: 6B  
Judge: Hon. Douglas F. McCormick

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

Discovery Cut-Off: December 21, 2018  
Pretrial Conference: March 25, 2019  
Trial: April 2, 2018

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1 Pursuant to Rule 37 of the Federal Rules of Civil Procedure and Central District  
2 Local Rule 37-2, Plaintiff and Counter-Defendant ChromaDex, Inc. (“ChromaDex”),  
3 and Defendant and Counterclaimant Elysium Health Inc. (“Elysium”) (collectively  
4 referred to herein as the “Parties”), submit the following Joint Stipulation Regarding  
5 ChromaDex’s Motion to Compel Further Responses. The parties have attempted  
6 unsuccessfully to resolve their disputes and therefore seek the assistance of the Court.

7 **I. INTRODUCTORY STATEMENTS**

8 **A. ChromaDex’s Introductory Statement**

9 This case is about Elysium’s campaign to steal property and trade secrets from  
10 ChromaDex. Elysium’s motive? To drive ChromaDex from the anti-aging supplement  
11 market in which the two companies compete.

12 Elysium is a former customer of ChromaDex’s that once used patented  
13 ChromaDex ingredients to make its consumer product. But Elysium wanted more. It  
14 carried out a plan to order an enormous amount of ChromaDex ingredients at once,  
15 stockpiled them to sustain its business, refused to pay the \$3 million it owed for those  
16 shipments in order to harm ChromaDex financially, and used the money it refused to  
17 pay (plus the profits from the sale of its product made with the stockpiled ingredients)  
18 to surreptitiously develop competing sources of ingredients using ChromaDex’s  
19 confidential and proprietary information. ChromaDex therefore has asserted causes of  
20 action for breach of contract and trade secret misappropriation against Elysium. By  
21 this Motion, ChromaDex seeks documents relevant to both its claims and defenses to  
22 Elysium’s claims.

23 *First*, because Elysium cannot explain away its contract violations, it has  
24 instead sought to offset what it owes to ChromaDex through allegations about the  
25 quality and purity of the ingredients that ChromaDex provided (but which Elysium  
26 sold to consumers at full price). Elysium suggests that ChromaDex (1) failed to  
27 provide nicotinamide riboside (“NR”), sold under the brand name “NIAGEN,” that  
28 was manufactured in accordance with current good manufacturing practices

1 (“cGMPs”) for pharmaceutical products (“Pharma cGMPs”),<sup>1</sup> and (2) failed to inform  
2 Elysium that NIAGEN contained amounts of a substance that exceeded permissible  
3 levels set by a California voter initiative (the “Substance”). But after Elysium ran out  
4 of the stockpiled ChromaDex ingredients, it incorporated ingredients from alternate  
5 sources into its consumer product. ChromaDex seeks to discover the cGMP standards  
6 Elysium required from those new manufacturers and whether there are other possible  
7 sources of the Substance in Elysium’s supply chain. This evidence is critical to  
8 ChromaDex’s case because it could show (1) that Elysium was well aware of the  
9 cGMP status of NIAGEN and thus waived any claim for noncompliance, (2) that no  
10 other supplier complied with Pharma cGMPs and thus Elysium’s product was not  
11 materially affected by ChromaDex’s alleged failure to comply with Pharma cGMPs,  
12 (3) whether there are possibly other sources of the Substance in Elysium’s product;  
13 and (4) that Elysium was not damaged by the presence of the Substance in NIAGEN.

14 *Second*, Elysium also has no explanation for its misappropriation of  
15 ChromaDex trade secrets and other documents, and instead seeks to hide its  
16 misconduct through discovery delays and gamesmanship, which include violating this  
17 Court’s December 20, 2017 Order compelling it to produce documents (“December 20  
18 Order”). ChromaDex alleges that Elysium engaged in a pattern of willful and  
19 malicious conduct whereby it misappropriated ChromaDex trade secrets and  
20 confidential information with the aid of former ChromaDex employees, who Elysium  
21 hired as part of its plan to displace ChromaDex. (ChromaDex’s Fourth Amended  
22 Complaint, ECF 109, Rios Decl. Ex. A ¶¶ 73, 75, 76, 77, 78, 82, 87, 98, 101.)  
23 ChromaDex seeks to discover the full universe of material misappropriated by  
24 Elysium through those employees in order to understand how Elysium induced them  
25 to breach their confidentiality and loyalty obligations to ChromaDex, the avenues by  
26 which the documents were stolen, and the scope of Elysium’s willful and malicious

27 \_\_\_\_\_  
28 <sup>1</sup> “Pharma cGMPs” refers to the Current Good Manufacturing Practice regulations as set forth in 21 C.F.R. Sections 210 and 211.

1 scheme. This material is not only central to ChromaDex’s trade secret  
2 misappropriation claim, it is also necessary for ChromaDex’s unclean hands defense  
3 to Elysium’s claims, for impeachment of Elysium witnesses, and to ChromaDex’s  
4 claim for punitive damages.

5 Elysium’s only objection is that because the requested documents were also  
6 relevant to ChromaDex’s conversion claim—which was dismissed purely on  
7 preemption grounds in an order that said *nothing* about the relevance of the  
8 documents—ChromaDex is somehow not entitled to its rightful discovery. Elysium is  
9 wrong. The dismissal of one claim for reasons unrelated to the underlying factual  
10 dispute does not extinguish the numerous other grounds for relevance for the material.  
11 The scope of relevance in discovery is broad and easily encompasses the requested  
12 documents. *Caballero v. Bodega Latina Corp.*, 2017 WL 3174931, at \*8 (D. Nev.  
13 July 25, 2017) (“Relevancy under Fed. R. Civ. P. 26 is liberally construed.”). Elysium  
14 has further failed to support its boilerplate proportionality and burden objections,  
15 which should be dismissed by the Court. *A. Farber and Partners, Inc. v. Garber*, 234  
16 F.R.D. 186, 188 (C.D. Cal. 2006). And any purported burden resulting from the  
17 review and production of documents concerning Elysium’s misappropriation is due to  
18 Elysium’s own wrongful conduct; it cannot forestall ChromaDex’s right to prosecute  
19 its claims and defenses.

20 Pursuant to Civil Local Rule 37-1, ChromaDex conferred with Elysium on  
21 October 2, 2018, in a good-faith effort to resolve the disputes between the parties.  
22 (Rios Decl. ¶¶ 7, 8.) Pursuant to Civil Local Rule 37-2.2, on October 10, 2018,  
23 ChromaDex submitted its portion of the Joint Stip. regarding its planned Motion to  
24 Compel Further Responses and De-designation to Elysium. (*Id.* ¶ 9.) On October 17,  
25 2018—the day Elysium was due to return its portion of the Joint Stip.—counsel for  
26 Elysium requested an extension of that deadline until October 19, 2018. (*Id.*)  
27 Counsel for ChromaDex granted that request. (*Id.*) On October 18, 2018, counsel  
28 for Elysium notified counsel for ChromaDex that Elysium agreed to re-designate as

1 Confidential all of the documents at issue in ChromaDex’s Motion to Compel De-  
2 designation. (*Id.*) ChromaDex accordingly deleted portions of the Joint Stip.  
3 concerning de-designation. (*Id.*) On October 19, 2018, counsel for Elysium  
4 requested another extension of the deadline for Elysium to return its portion of the  
5 Joint Stip. until October 22, 2018. ChromaDex granted that extension. (*Id.*) This  
6 Motion concerns the remaining disputes between the parties. Therefore, ChromaDex  
7 respectfully requests an order compelling Elysium to produce documents in response  
8 to ChromaDex’s Requests as described below.

9 **B. Elysium’s Introductory Statement**

10 ChromaDex and Elysium are now competitors. This case, however, relates to  
11 the time when ChromaDex was Elysium’s supplier of nicotinamide riboside (“NR”), a  
12 relationship characterized by ChromaDex’s pattern of incessant dishonesty.  
13 ChromaDex lied to Elysium when it misrepresented the terms of the agreements it  
14 purportedly demanded from all its customers, in order to induce Elysium to agree to a  
15 trademark licensing and royalty agreement that required Elysium to make payments to  
16 ChromaDex above and beyond those required for the simple purchase of NR under the  
17 NIAGEN Supply Agreement between the two parties. ChromaDex lied to Elysium  
18 when it promised not to sell NR more cheaply to any customer buying the same or  
19 lesser quantities of NR as Elysium. ChromaDex lied to Elysium about its sales to  
20 other customers when Elysium sought confirmation that Elysium was receiving the  
21 “most favored nation” status to which it was contractually entitled. ChromaDex lied  
22 to Elysium when it contracted that it would not enable any of its other customers to  
23 sell products containing the same or similar combinations of the ingredients Elysium  
24 sold. ChromaDex lied to Elysium when it contracted to sell Elysium NR  
25 manufactured in accordance with current cGMPs for pharmaceutical products. And  
26 ChromaDex lied to Elysium when it hid the presence of acetamide, an industrial  
27 solvent and plasticizer, in the NR it sold to Elysium.

28 One might reasonably question why an ingredient supplier would treat its best

1 customer so contemptuously. The answer is now clear.

2 While ChromaDex was supplying NR to Elysium, it began also to supply NR to  
3 a company formed by one of its directors and its chief scientific advisor. ChromaDex  
4 later purchased this company and currently operates it as a subsidiary to sell its own  
5 product, Tru Niagen, in competition with Elysium's product, Basis. When formed,  
6 this company intended to market an NR-containing supplement to consumers. Its  
7 founders—a former movie producer and an academic—had no competence to market  
8 NR effectively. Nor had ChromaDex itself found any success in marketing direct to  
9 consumers. ChromaDex thus used Elysium, which was remarkably successful in  
10 explaining the benefits of NR to potential customers, to develop a market for NR as a  
11 dietary supplement.

12 Once Elysium created a viable market, ChromaDex terminated its supply  
13 contract with Elysium in an attempt to force Elysium from the market and usurp for  
14 itself the benefits of Elysium's substantial efforts to build that market. This litigation  
15 represents nothing more than a cynical attempt to further that scheme.

16 ChromaDex has continually attempted to expand the scope of this case, largely  
17 without success. Early on, it asserted claims for trade secret misappropriation that the  
18 Court dismissed. It re-pled those claims, only to withdraw them when Elysium  
19 demonstrated them to be based on provable falsehoods. ChromaDex then sought to  
20 plead against Elysium a claim for conversion, based on allegations that Elysium  
21 purportedly misappropriated a handful of ChromaDex documents, and a claim for  
22 trade secret misappropriation relating to a single document. The Court dismissed the  
23 conversion claim with prejudice. Yet, as this motion makes apparent, ChromaDex  
24 seeks to evade that order by continuing to pursue discovery requests that relate to the  
25 dismissed-with-prejudice conversion claim.

26 ChromaDex argues for exceedingly broad discovery because it “alleges that  
27 Elysium engaged in a pattern of willful and malicious conduct whereby it  
28 misappropriated ChromaDex trade secrets and confidential information,” but it



1 steadfastly refuses to acknowledge, and refuses to inform this Court, that Elysium has  
2 agreed to produce, and has produced, documents relevant to the claim that Elysium  
3 misappropriated trade secrets through possession of a single spreadsheet. ChromaDex  
4 also refuses to acknowledge that it has no live claim for a “pattern” of  
5 “misappropriated” “confidential” information, because that claim was dismissed with  
6 prejudice by the Court.

7 ChromaDex also seeks to justify its sweeping pursuit of discovery on the  
8 grounds that information related to the dismissed conversion claim also relates to  
9 Elysium’s counterclaims. The two particular elements of Elysium’s counterclaims  
10 ChromaDex puts at issue here – ChromaDex’s false representation that the NR it sold  
11 Elysium was manufactured in accordance with Pharma cGMPs, and ChromaDex’s  
12 failure to inform Elysium that the NR it sold to Elysium contained acetamide in  
13 quantities great enough to violate California’s Proposition 65 – are straightforward.  
14 Elysium has already agreed to produce, and has in fact produced, documents relating  
15 to these claims, including documents concerning Elysium’s knowledge of both  
16 ChromaDex’s compliance or non-compliance with Pharma cGMPs and the presence  
17 or absence of acetamide in the NR ChromaDex sold.

18 Unable to meet these claims on their merits, ChromaDex pursues a strategy of  
19 fishing expeditions and irrelevancies. For example, it seeks to discover details of  
20 contracts between Elysium and Elysium’s current suppliers, though those contracts  
21 have no bearing on *ChromaDex’s* compliance with its own contract with Elysium.  
22 Similarly, ChromaDex seeks to pursue discovery into the composition of Elysium’s  
23 product *after* the termination of the parties’ supply contract, which has no bearing on  
24 whether the NR ChromaDex supplied to Elysium contained acetamide.

25 Discovery is not an unlimited exercise. Rule 26(b) of the Federal Rules of Civil  
26 Procedure provides the parameters within which discovery may occur: the discovery  
27 sought must both be relevant to a party’s claim or defense and proportional to the  
28 needs of the case. Documents regarding the dismissed conversion claim are, by

1 definition, not relevant to a claim or defense.

2 Elysium respectfully requests an order denying ChromaDex's Motion to  
3 Compel on all outstanding issues.

4 **II. CHROMADEx MOVES TO COMPEL FURTHER RESPONSES TO REQUESTS FOR**  
5 **PRODUCTION (REQUEST NOS. 93, 94, 95, 96, 97, 98, 129, 130, 141, 143, 144,**  
6 **145, 146, 148, 149, 150, 151, 152, 153, 154, 155, 159, AND 160).**

6 In response to ChromaDex's Requests for Production Nos. 93, 94, 95, 96, 97,  
7 98, 100, 101, 129, 130, 141, 143, 144, 145, 146, 148, 149, 150, 151, 152, 153, 154,  
8 155, 159, and 160, Elysium refuses to produce documents either in whole or in part.  
9 As a result of the parties' meet-and-confer discussions, and in an effort to address  
10 Elysium's objections and work with Elysium to find a reasonable compromise,  
11 ChromaDex agreed to narrow some of its original Requests, as detailed below.  
12 Elysium has amended its objections and responses to the Requests several times, as  
13 set forth below.

14 ***REQUEST FOR PRODUCTION NO. 93:***

15 *ALL DOCUMENTS and COMMUNICATIONS CONCERNING any of YOUR*  
16 *requests or requirements that a supply chain partner comply with CGMP standards.*

17 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 93:***

18 *Elysium objects to this Request as overly broad and unduly burdensome, and*  
19 *seeking information that is irrelevant to any claim or defense of any party, as*  
20 *Elysium's relationships with any "supply chain partner" and requests or*  
21 *requirements conveyed to those parties bear no relationship to the contracts at issue*  
22 *in this action (i.e., the NR Supply Agreement, the pTeroPure Supply Agreement, and*  
23 *the Trademark License and Royalty Agreement); the claims for breach of the*  
24 *pTeroPure Supply Agreement and the NR Supply Agreement asserted by ChromaDex;*  
25 *the claims for breach of the NR Supply Agreement and breach of the covenant of good*  
26 *faith and fair dealing implied in the NR Supply Agreement, fraudulent inducement*  
27 *relating to the Trademark License and Royalty Agreement, and patent misuse asserted*  
28 *by Elysium; or any defenses. Nor are they related to the Counterclaims, which arise*

1 out of ChromaDex's failure to comply with the cGMP Provision and its failure to  
2 comply with the Product Purity Provision through its sale of Niagen that was not  
3 produced in compliance with Pharmaceutical cGMPs and its failure to inform  
4 Elysium of information concerning the purity and the quality of the Niagen sold.  
5 Elysium further objects to the Request as seeking discovery that is disproportionate to  
6 the needs of the case. Elysium also objects to this Request to the extent it seeks  
7 discovery of information or documents protected by the attorney-client privilege, the  
8 attorney work product doctrine, or any other applicable privileges and protections  
9 against disclosures. Elysium additionally objects that the Request is vague and  
10 ambiguous with respect to the meaning of "requests or requirements" and "supply  
11 chain partner." Elysium further objects on the grounds and to the extent it seeks  
12 discovery of information or documents already within ChromaDex's possession,  
13 custody, or control.

14 Subject to the foregoing general and specific objections, Elysium will produce  
15 non-privileged, non-attorney work product-protected documents within Elysium's  
16 possession, custody, or control relating to Elysium's requests or requirements that  
17 ChromaDex comply with cGMP standards that can be identified through a reasonable  
18 search.

19 **NARROWED REQUEST FOR PRODUCTION NO. 93:**

20 ALL DOCUMENTS and COMMUNICATIONS CONCERNING any of YOUR  
21 requests or requirements that a supply chain partner related to YOUR product BASIS  
22 comply with CGMP standards.

23 **REQUEST FOR PRODUCTION NO. 94:**

24 ALL DOCUMENTS and COMMUNICATIONS CONCERNING the negotiation  
25 of CGMP Standards to be used for ingredients supplied or potentially supplied to  
26 YOU.

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 94:**

28 Elysium objects to this Request as overly broad and unduly burdensome, and

1 *seeking information that is irrelevant to any claim or defense of any party, as*  
2 *Elysium's negotiation of CGMP Standards to be used for ingredients supplied or*  
3 *potentially supplied from any supplier other than ChromaDex bears no relationship to*  
4 *the contracts at issue in this action (i.e., the NR Supply Agreement, the pTeroPure*  
5 *Supply Agreement, and the Trademark License and Royalty Agreement); the claims*  
6 *for breach of the pTeroPure Supply Agreement and the NR Supply Agreement*  
7 *asserted by ChromaDex; the claims for breach of the NR Supply Agreement and*  
8 *breach of the covenant of good faith and fair dealing implied in the NR Supply*  
9 *Agreement, fraudulent inducement relating to the Trademark License and Royalty*  
10 *Agreement, and patent misuse asserted by Elysium; or any defenses. Nor is it related*  
11 *to the Counterclaims, which arise out of ChromaDex's failure to comply with the*  
12 *cGMP Provision and its failure to comply with the Product Purity Provision through*  
13 *its sale of Niagen that was not produced in compliance with Pharmaceutical cGMPs*  
14 *and its failure to inform Elysium of information concerning the purity and the quality*  
15 *of the Niagen sold. Elysium further objects to the Request as seeking discovery that is*  
16 *disproportionate to the needs of the case. Elysium also objects to this Request to the*  
17 *extent it seeks discovery of information or documents protected by the attorney-client*  
18 *privilege, the attorney work product doctrine, or any other applicable privileges and*  
19 *protections against disclosures. Elysium further objects on the grounds and to the*  
20 *extent it seeks discovery of information or documents already within ChromaDex's*  
21 *possession, custody, or control.*

22 *Subject to the foregoing general and specific objections, Elysium will produce*  
23 *non-privileged, non-attorney work product-protected documents within Elysium's*  
24 *possession, custody, or control relating to the negotiation of CGMP Standards to be*  
25 *used for ingredients supplied or potentially supplied to Elysium by ChromaDex that*  
26 *can be identified through a reasonable search.*

27 ***NARROWED REQUEST FOR PRODUCTION NO. 94:***

28 ***ALL DOCUMENTS and COMMUNICATIONS CONCERNING the negotiation***

1 of CGMP Standards to be used for ingredients supplied or potentially supplied to  
2 YOU related to YOUR product Basis.

3 **REQUEST FOR PRODUCTION NO. 95:**

4 ALL DOCUMENTS and COMMUNICATIONS CONCERNING the CGMP  
5 standards requirements with which any of YOUR supply chain partners must comply.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 95:**

7 Elysium objects to this Request as overly broad and unduly burdensome, and  
8 seeking information that is irrelevant to any claim or defense of any party, as  
9 Elysium's "CGMP standards requirements" imposed on any supply chain partner  
10 other than ChromaDex bear no relationship to the contracts at issue in this action  
11 (i.e., the NR Supply Agreement, the pTeroPure Supply Agreement, and the Trademark  
12 License and Royalty Agreement); the claims for breach of the pTeroPure Supply  
13 Agreement and the NR Supply Agreement asserted by ChromaDex; the claims for  
14 breach of the NR Supply Agreement and breach of the covenant of good faith and fair  
15 dealing implied in the NR Supply Agreement, fraudulent inducement relating to the  
16 Trademark License and Royalty Agreement, and patent misuse asserted by Elysium;  
17 or any defenses. Nor are they related to the Counterclaims, which arise out of  
18 ChromaDex's failure to comply with the cGMP Provision and its failure to comply  
19 with the Product Purity Provision through its sale of Niagen that was not produced in  
20 compliance with Pharmaceutical cGMPs and its failure to inform Elysium of  
21 information concerning the purity and the quality of the Niagen sold. Elysium further  
22 objects to the Request as seeking discovery that is disproportionate to the needs of the  
23 case. Elysium additionally objects that the Request is vague and ambiguous with  
24 respect to the meaning of "CGMP standards requirements" and "supply chain  
25 partner." Elysium also objects to this Request to the extent it seeks discovery of  
26 information or documents protected by the attorney-client privilege, the attorney work  
27 product doctrine, or any other applicable privileges and protections against  
28 disclosures. Elysium further objects on the grounds and to the extent it seeks

1 *discovery of information or documents already within ChromaDex's possession,*  
2 *custody, or control.*

3 *Subject to the foregoing general and specific objections, Elysium will produce*  
4 *non-privileged, non-attorney work product-protected documents within Elysium's*  
5 *possession, custody, or control relating to the cGMP standards requirements with*  
6 *which ChromaDex was obligated to comply that can be identified through a*  
7 *reasonable search.*

8 ***NARROWED REQUEST FOR PRODUCTION NO. 95:***

9 *ALL DOCUMENTS and COMMUNICATIONS CONCERNING the CGMP*  
10 *standards requirements with which YOUR supply chain partners related to YOUR*  
11 *product Basis must comply.*

12 ***REQUEST FOR PRODUCTION NO. 96:***

13 *ALL DOCUMENTS and COMMUNICATIONS CONCERNING any statements*  
14 *about the CGMP standards to which any or all of the ingredients contained in YOUR*  
15 *product Basis were manufactured.*

16 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 96:***

17 *Elysium objects to this Request as overly broad and unduly burdensome, and*  
18 *seeking information that is irrelevant to any claim or defense of any party, as*  
19 *statements about the CGMP standards to which any or all of the ingredients*  
20 *contained in Basis were manufactured that come from any supplier other than*  
21 *ChromaDex bear no relationship to the contracts at issue in this action (i.e., the NR*  
22 *Supply Agreement, the pTeroPure Supply Agreement, and the Trademark License and*  
23 *Royalty Agreement); the claims for breach of the pTeroPure Supply Agreement and*  
24 *the NR Supply Agreement asserted by ChromaDex; the claims for breach of the NR*  
25 *Supply Agreement and breach of the covenant of good faith and fair dealing implied*  
26 *in the NR Supply Agreement, fraudulent inducement relating to the Trademark*  
27 *License and Royalty Agreement, and patent misuse asserted by Elysium; or any*  
28 *defenses. Nor are they related to the Counterclaims, which arise out of ChromaDex's*

1 *failure to comply with the cGMP Provision and its failure to comply with the Product*  
2 *Purity Provision through its sale of Niagen that was not produced in compliance with*  
3 *Pharmaceutical cGMPs and its failure to inform Elysium of information concerning*  
4 *the purity and the quality of the Niagen sold. Elysium further objects to the Request as*  
5 *seeking discovery that is disproportionate to the needs of the case. Elysium also*  
6 *objects to this Request to the extent it seeks discovery of information or documents*  
7 *protected by the attorney-client privilege, the attorney work product doctrine, or any*  
8 *other applicable privileges and protections against disclosures. Elysium further*  
9 *objects on the grounds and to the extent it seeks discovery of information or*  
10 *documents already within ChromaDex’s possession, custody, or control. Elysium will*  
11 *produce no documents in response to this Request.*

12 ***REQUEST FOR PRODUCTION NO. 97:***

13 *ALL DOCUMENTS and COMMUNICATIONS CONCERNING YOUR “efforts*  
14 *to exceed applicable standards and ensure superior product quality” as alleged in*  
15 *paragraph 69 of the COUNTERCLAIMS.*

16 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 97:***

17 *Elysium objects to this Request as overly broad and unduly burdensome, and*  
18 *seeking information that is irrelevant to any claim or defense of any party, as*  
19 *Elysium’s “efforts to exceed applicable standards and ensure superior product*  
20 *quality” relating to any ingredient other than NR from any supplier other than*  
21 *ChromaDex bears no relationship to the contracts at issue in this action (i.e., the NR*  
22 *Supply Agreement, the pTeroPure Supply Agreement, and the Trademark License and*  
23 *Royalty Agreement); the claims for breach of the pTeroPure Supply Agreement and*  
24 *the NR Supply Agreement asserted by ChromaDex; the claims for breach of the NR*  
25 *Supply Agreement and breach of the covenant of good faith and fair dealing implied*  
26 *in the NR Supply Agreement, fraudulent inducement relating to the Trademark*  
27 *License and Royalty Agreement, and patent misuse asserted by Elysium; or any*  
28 *defenses. Nor are they related to the Counterclaims, which arise out of ChromaDex’s*

1 *failure to comply with the cGMP Provision and its failure to comply with the Product*  
2 *Purity Provision through its sale of Niagen that was not produced in compliance with*  
3 *Pharmaceutical cGMPs and its failure to inform Elysium of information concerning*  
4 *the purity and the quality of the Niagen sold. Elysium further objects to the Request as*  
5 *seeking discovery that is disproportionate to the needs of the case. Elysium also*  
6 *objects to this Request to the extent it seeks discovery of information or documents*  
7 *protected by the attorney-client privilege, the attorney work product doctrine, or any*  
8 *other applicable privileges and protections against disclosures.*

9 *Subject to the foregoing general and specific objections, Elysium will produce*  
10 *non-privileged, non-attorney work product-protected documents within Elysium's*  
11 *possession, custody, or control relating to its efforts to exceed applicable standards*  
12 *and ensure superior product quality through negotiation of the cGMP Provision that*  
13 *can be identified through a reasonable search.*

14 ***NARROWED REQUEST FOR PRODUCTION NO. 97:***

15 *ALL DOCUMENTS and COMMUNICATIONS CONCERNING YOUR "efforts*  
16 *to exceed applicable standards and ensure superior product quality" as alleged in*  
17 *paragraph 69 of the COUNTERCLAIMS, as related to CGMP STANDARDS and*  
18 *California Proposition 65 as related to YOUR product Basis.*

19 ***REQUEST FOR PRODUCTION NO. 98:***

20 *ALL DOCUMENTS and COMMUNICATIONS CONCERNING the value of*  
21 *ingredients manufactured in accordance with PHARMACEUTICAL CGMPs*  
22 *compared to the value of ingredients manufactured in accordance with any other*  
23 *CGMP standards.*

24 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 98:***

25 *Elysium objects to this Request as overly broad and unduly burdensome, and*  
26 *seeking information that is irrelevant to any claim or defense of any party, to the*  
27 *extent it seeks information relating to the value of any ingredient other than NR,*  
28 *which bears no relationship to the contracts at issue in this action (i.e., the NR Supply*



1 Agreement, the pTeroPure Supply Agreement, and the Trademark License and  
2 Royalty Agreement); the claims for breach of the pTeroPure Supply Agreement and  
3 the NR Supply Agreement asserted by ChromaDex; the claims for breach of the NR  
4 Supply Agreement and breach of the covenant of good faith and fair dealing implied  
5 in the NR Supply Agreement, fraudulent inducement relating to the Trademark  
6 License and Royalty Agreement, and patent misuse asserted by Elysium; or any  
7 defenses. Nor is it related to the Counterclaims, which arise out of ChromaDex's  
8 failure to comply with the cGMP Provision and its failure to comply with the Product  
9 Purity Provision through its sale of Niagen that was not produced in compliance with  
10 Pharmaceutical cGMPs and its failure to inform Elysium of information concerning  
11 the purity and the quality of the Niagen sold. Elysium further objects to the Request as  
12 seeking discovery that is disproportionate to the needs of the case. Elysium also  
13 objects to this Request to the extent it seeks discovery of information or documents  
14 protected by the attorney-client privilege, the attorney work product doctrine, or any  
15 other applicable privileges and protections against disclosures. Elysium further  
16 objects on the grounds and to the extent it seeks discovery of information or  
17 documents already within ChromaDex's possession, custody, or control. Elysium  
18 additionally objects that the Request is vague and ambiguous with respect to the  
19 meaning of "value of ingredients manufactured in accordance with  
20 PHARMACEUTICAL CGMPs compared to the value of ingredients manufactured in  
21 accordance with any other CGMP standards."

22 Subject to the foregoing general and specific objections, Elysium will produce  
23 non-privileged, non-attorney work product-protected documents within Elysium's  
24 possession, custody, or control relating to the value of Niagen manufactured in  
25 accordance with Pharmaceutical CGMPs compared to the value of Niagen  
26 manufactured in accordance with any other CGMP standards that can be identified  
27 through a reasonable search.

28 **NARROWED REQUEST FOR PRODUCTION NO. 98:**

1            *ALL DOCUMENTS and COMMUNICATIONS CONCERNING the value of*  
2 *ingredients in YOUR product Basis manufactured in accordance with*  
3 *PHARMACEUTICAL CGMPs compared to the value of ingredients manufactured in*  
4 *accordance with any other CGMP standards.*

5            ***REQUEST FOR PRODUCTION NO. 100:***

6            *ALL DOCUMENTS and COMMUNICATIONS CONCERNING documents*  
7 *regarding the generally recognized as safe status of NIAGEN.*

8            ***RESPONSE TO REQUEST FOR PRODUCTION NO. 100:***

9            *Elysium objects to this Request as overly broad and unduly burdensome, and*  
10 *seeking information that is irrelevant to any claim or defense of any party, as the*  
11 *purported generally recognized as safe status of Niagen bears no relationship to the*  
12 *contracts at issue in this action (i.e., the NR Supply Agreement, the pTeroPure Supply*  
13 *Agreement, and the Trademark License and Royalty Agreement); the claims for*  
14 *breach of the pTeroPure Supply Agreement and the NR Supply Agreement asserted by*  
15 *ChromaDex; the claims for breach of the NR Supply Agreement and breach of the*  
16 *covenant of good faith and fair dealing implied in the NR Supply Agreement,*  
17 *fraudulent inducement relating to the Trademark License and Royalty Agreement, and*  
18 *patent misuse asserted by Elysium; or any defenses. Nor is it related to the*  
19 *Counterclaims, which arise out of ChromaDex's failure to comply with the cGMP*  
20 *Provision and its failure to comply with the Product Purity Provision through its sale*  
21 *of Niagen that was not produced in compliance with Pharmaceutical cGMPs and its*  
22 *failure to inform Elysium of information concerning the purity and the quality of the*  
23 *Niagen sold. Elysium further objects to the Request as seeking discovery that is*  
24 *disproportionate to the needs of the case. Elysium objects to this Request to the extent*  
25 *it seeks discovery of information or documents protected by the attorney-client*  
26 *privilege, the attorney work product doctrine, or any other applicable privileges and*  
27 *protections against disclosures. Elysium further objects on the grounds and to the*  
28 *extent it seeks discovery of information or documents already within ChromaDex's*

1 possession, custody, or control. Elysium additionally objects that the Request is  
2 vague and ambiguous with respect to the meaning of “the generally recognized as  
3 safe status of NIAGEN.” Elysium also objects to this Request to the extent it purports  
4 to state a legal conclusion regarding the purported generally recognized as safe  
5 status of Niagen. Elysium will not produce documents in response to this Request.

6 **REQUEST FOR PRODUCTION NO. 101:**

7 ALL DOCUMENTS and COMMUNICATIONS CONCERNING documents  
8 regarding the new dietary ingredient notification for NIAGEN.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 101:**

10 Elysium objects to this Request as overly broad and unduly burdensome, and  
11 seeking information that is irrelevant to any claim or defense of any party, as the  
12 purported new dietary ingredient notification for Niagen bears no relationship to the  
13 contracts at issue in this action (i.e., the NR Supply Agreement, the pTeroPure Supply  
14 Agreement, and the Trademark License and Royalty Agreement); the claims for  
15 breach of the pTeroPure Supply Agreement and the NR Supply Agreement asserted by  
16 ChromaDex; the claims for breach of the NR Supply Agreement and breach of the  
17 covenant of good faith and fair dealing implied in the NR Supply Agreement,  
18 fraudulent inducement relating to the Trademark License and Royalty Agreement, and  
19 patent misuse asserted by Elysium; or any defenses. Nor are they related to the  
20 Counterclaims, which arise out of ChromaDex’s failure to comply with the cGMP  
21 Provision and its failure to comply with the Product Purity Provision through its sale  
22 of Niagen that was not produced in compliance with Pharmaceutical cGMPs and its  
23 failure to inform Elysium of information concerning the purity and the quality of the  
24 Niagen sold. Elysium further objects to the Request as seeking discovery that is  
25 disproportionate to the needs of the case. Elysium also objects to this Request to the  
26 extent it seeks discovery of information or documents protected by the attorney-client  
27 privilege, the attorney work product doctrine, or any other applicable privileges and  
28 protections against disclosures. Elysium further objects on the grounds and to the

1 *extent it seeks discovery of information or documents already within ChromaDex's*  
2 *possession, custody, or control. Elysium additionally objects that the Request is*  
3 *vague and ambiguous with respect to the meaning of "documents and*  
4 *communications concerning documents regarding the new dietary ingredient*  
5 *notification for NIAGEN." Elysium also objects to this Request to the extent it*  
6 *purports to state a legal conclusion regarding the purported new dietary ingredient*  
7 *notification for Niagen. Elysium will not produce documents in response to this*  
8 *Request.*

9 ***REQUEST FOR PRODUCTION NO. 129:***

10 *All samples of YOUR product Basis YOU tested for safety, identity, strength,*  
11 *quality, or purity.*

12 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 129:***

13 *Elysium objects that the Request is vague and ambiguous with respect to the*  
14 *meaning of "samples." Elysium also objects to this Request as overly broad and*  
15 *unduly burdensome, and seeking information that is irrelevant to any claim or defense*  
16 *of any party, as information relating to samples of Basis tested for safety, identity,*  
17 *strength, quality, or purity bear no relationship to the contracts at issue in this action*  
18 *(i.e., the NR Supply Agreement, the pTeroPure Supply Agreement, and the Trademark*  
19 *License and Royalty Agreement); the claims for breach of the pTeroPure Supply*  
20 *Agreement and the NR Supply Agreement asserted by ChromaDex; the claims for*  
21 *breach of the NR Supply Agreement and breach of the covenant of good faith and fair*  
22 *dealing implied in the NR Supply Agreement, fraudulent inducement relating to the*  
23 *Trademark License and Royalty Agreement, and patent misuse asserted by Elysium;*  
24 *or any defenses. Nor are they related to the Counterclaims, which arise out of*  
25 *ChromaDex's failure to comply with the cGMP Provision and its failure to comply*  
26 *with the Product Purity Provision through its sale of Niagen that was not produced in*  
27 *compliance with Pharmaceutical cGMPs and its failure to inform Elysium of*  
28 *information concerning the purity and the quality of the Niagen sold. Elysium further*

1 *objects to the Request as seeking discovery that is disproportionate to the needs of the*  
2 *case. Elysium objects to this Request to the extent it seeks discovery of information or*  
3 *documents protected by the attorney-client privilege, the attorney work product*  
4 *doctrine, or any other applicable privileges and protections against disclosures.*  
5 *Elysium will produce no samples in response to this Request.*

6 ***NARROWED REQUEST FOR PRODUCTION NO. 129:***

7 *All samples of YOUR alternate source of nicotinamide riboside YOU*  
8 *incorporated into YOUR product Basis and which YOU tested for quality or purity.*

9 ***REQUEST FOR PRODUCTION NO. 130:***

10 *All Certificates of Analysis related to YOUR product Basis and/or the*  
11 *ingredients contained therein.*

12 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 130:***

13 *Elysium objects to this Request on the grounds that it is cumulative and*  
14 *duplicative of Request No. 114, and thus is unduly burdensome. Elysium objects to*  
15 *this Request as overly broad and unduly burdensome, and seeking information that is*  
16 *irrelevant to any claim or defense of any party, as Certificates of Analysis related to*  
17 *ingredients contained in Basis that come from any supplier other than ChromaDex*  
18 *bear no relationship to the contracts at issue in this action (i.e., the NR Supply*  
19 *Agreement, the pTeroPure Supply Agreement, and the Trademark License and*  
20 *Royalty Agreement); the claims for breach of the pTeroPure Supply Agreement and*  
21 *the NR Supply Agreement asserted by ChromaDex; the claims for breach of the NR*  
22 *Supply Agreement and breach of the covenant of good faith and fair dealing implied*  
23 *in the NR Supply Agreement, fraudulent inducement relating to the Trademark*  
24 *License and Royalty Agreement, and patent misuse asserted by Elysium; or any*  
25 *defenses. Nor are they related to the Counterclaims, which arise out of ChromaDex's*  
26 *failure to comply with the cGMP Provision and its failure to comply with the Product*  
27 *Purity Provision through its sale of Niagen that was not produced in compliance with*  
28 *Pharmaceutical cGMPs and its failure to inform Elysium of information concerning*

1 *the purity and the quality of the Niagen sold. Elysium further objects to the Request as*  
2 *seeking discovery that is disproportionate to the needs of the case. Elysium further*  
3 *objects on the grounds and to the extent it seeks discovery of information or*  
4 *documents already within ChromaDex’s possession, custody, or control. Elysium will*  
5 *produce no documents in response to this Request.*

6 **REQUEST FOR PRODUCTION NO. 141:**

7 *All DOCUMENTS and COMMUNICATIONS with Mark Morris*  
8 *CONCERNING CHROMADDEX, its products, and/or its DOCUMENTS or*  
9 *information, from January 1, 2016 through the present.*

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 141:**

11 *Elysium objects that the Request is vague and ambiguous with respect to the*  
12 *meaning of “DOCUMENTS . . . with Mark Morris CONCERNING ChromaDex.”*  
13 *Elysium also objects to this Request on the grounds that it is cumulative and*  
14 *duplicative of Request No. 142, and thus is unduly burdensome. Elysium objects to*  
15 *this Request to the extent it seeks discovery of information or documents protected by*  
16 *the attorney-client privilege, the attorney work product doctrine, or any other*  
17 *applicable privileges and protections against disclosures. Elysium further objects on*  
18 *the grounds and to the extent it seeks discovery of information or documents already*  
19 *within ChromaDex’s possession, custody, or control. Elysium further objects to the*  
20 *Request as seeking discovery that is disproportionate to the needs of the case.*

21 *Subject to the foregoing general and specific objections, Elysium will produce*  
22 *non-privileged, non-attorney work product-protected documents within its possession,*  
23 *custody, or control.*

24 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 141:**

25 *Elysium objects that the Request is vague and ambiguous with respect to the*  
26 *meaning of “DOCUMENTS . . . with Mark Morris CONCERNING ChromaDex.”*  
27 *Elysium also objects to this Request on the grounds that it is cumulative and*  
28 *duplicative of Request No. 142, and thus is unduly burdensome. Elysium further*

1 *objects to the extent that the documents sought are not relevant in light of the Court’s*  
2 *July 27, 2018 Order, in which it dismissed ChromaDex’s fifth cause of action for*  
3 *conversion. Elysium objects to this Request to the extent it seeks discovery of*  
4 *information or documents protected by the attorney-client privilege, the attorney work*  
5 *product doctrine, or any other applicable privileges and protections against*  
6 *disclosures. Elysium further objects on the grounds and to the extent it seeks*  
7 *discovery of information or documents already within ChromaDex’s possession,*  
8 *custody, or control. Elysium further objects to the Request as seeking discovery that*  
9 *is disproportionate to the needs of the case.*

10 *Elysium responds that all non-privileged, non-attorney work product-protected*  
11 *documents within its possession, custody, or control that can be identified through a*  
12 *reasonable search and that are responsive to this Request have previously been*  
13 *produced. Should Elysium identify additional documents that were not previously*  
14 *produced and that relate to the Ingredient Sales Spreadsheet, as that term is used in*  
15 *ChromaDex’s Fourth Amended Complaint, Dkt. 109, subject to the foregoing general*  
16 *and specific objections, Elysium will produce non-privileged, non-attorney work*  
17 *product-protected documents.*

18 **SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION**  
19 **NO. 141:**

20 *Elysium objects that the Request is vague and ambiguous with respect to the*  
21 *meaning of “DOCUMENTS . . . with Mark Morris CONCERNING ChromaDex.”*  
22 *Elysium also objects to this Request on the grounds that it is cumulative and*  
23 *duplicative of Request No. 142, and thus is unduly burdensome. Elysium further*  
24 *objects to the extent that the documents sought are not relevant in light of the Court’s*  
25 *July 27, 2018 Order, in which it dismissed ChromaDex’s fifth cause of action for*  
26 *conversion. Elysium objects to this Request to the extent it seeks discovery of*  
27 *information or documents protected by the attorney-client privilege, the attorney work*  
28 *product doctrine, or any other applicable privileges and protections against*

1 *disclosures. Elysium further objects on the grounds and to the extent it seeks*  
2 *discovery of information or documents already within ChromaDex’s possession,*  
3 *custody, or control. Elysium also objects to this Request as overly broad and unduly*  
4 *burdensome, and seeking information that is irrelevant to any claim or defense of any*  
5 *party, to the extent it seeks documents relating to “communications with Mark Morris*  
6 *concerning ChromaDex, its products, and/or its documents or information” that bears*  
7 *no relationship to the contracts at issue in this action (i.e., the NR Supply Agreement,*  
8 *the pTeroPure Supply Agreement, and the Trademark License and Royalty*  
9 *Agreement); the claims for breach of the pTeroPure Supply Agreement and the NR*  
10 *Supply Agreement, or misappropriation of trade secrets asserted by ChromaDex; the*  
11 *claims for breach of the NR Supply Agreement and breach of the covenant of good*  
12 *faith and fair dealing implied in the NR Supply Agreement, fraudulent inducement*  
13 *relating to the Trademark License and Royalty Agreement, and patent misuse asserted*  
14 *by Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of*  
15 *ChromaDex’s failure to comply with the cGMP Provision and its failure to comply*  
16 *with the Product Purity Provision through its sale of Niagen that was not produced in*  
17 *compliance with Pharmaceutical cGMPs and its failure to inform Elysium of*  
18 *information concerning the purity and the quality of the Niagen sold. Elysium further*  
19 *objects to the Request as seeking discovery that is disproportionate to the needs of the*  
20 *case.*

21 *Elysium responds that all non-privileged, non-attorney work product-protected*  
22 *documents within its possession, custody, or control that can be identified through a*  
23 *reasonable search and that are responsive to this Request have previously been*  
24 *produced. Should Elysium identify additional documents that were not previously*  
25 *produced and that relate to the Ingredient Sales Spreadsheet, as that term is used in*  
26 *ChromaDex’s Fourth Amended Complaint, Dkt. 109, subject to the foregoing general*  
27 *and specific objections, Elysium will produce non-privileged, non-attorney work*  
28 *product-protected documents.*



1           **REQUEST FOR PRODUCTION NO. 143:**

2           *All CHROMADEx DOCUMENTS and COMMUNICATIONS retained by Mark*  
3 *Morris after his employment with CHROMADEx was terminated.*

4           **RESPONSE TO REQUEST FOR PRODUCTION NO. 143:**

5           *Elysium objects to this Request to the extent it seeks discovery of information or*  
6 *documents protected by the attorney-client privilege, the attorney work product*  
7 *doctrine, or any other applicable privileges and protections against disclosures.*  
8 *Elysium further objects on the grounds and to the extent it seeks discovery of*  
9 *information or documents already within ChromaDex's possession, custody, or*  
10 *control. Elysium further objects to the Request as seeking discovery that is*  
11 *disproportionate to the needs of the case.*

12           *Subject to the foregoing general and specific objections, Elysium will produce*  
13 *non-privileged, non-attorney work product-protected documents within its possession,*  
14 *custody, or control.*

15           **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 143:**

16           *Elysium objects to the extent that the documents sought are not relevant in light*  
17 *of the Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of*  
18 *action for conversion. Elysium objects to this Request to the extent it seeks discovery*  
19 *of information or documents protected by the attorney-client privilege, the attorney*  
20 *work product doctrine, or any other applicable privileges and protections against*  
21 *disclosures. Elysium further objects on the grounds and to the extent it seeks*  
22 *discovery of information or documents already within ChromaDex's possession,*  
23 *custody, or control. Elysium further objects to the Request as seeking discovery that*  
24 *is disproportionate to the needs of the case.*

25           *Elysium responds that all non-privileged, non-attorney work product-protected*  
26 *documents within its possession, custody, or control that can be identified through a*  
27 *reasonable search and that are responsive to this Request have previously been*  
28 *produced. Should Elysium identify additional documents that were not previously*

1 produced and that relate to the Ingredient Sales Spreadsheet, as that term is used in  
2 ChromaDex's Fourth Amended Complaint, Dkt. 109, subject to the foregoing general  
3 and specific objections, Elysium will produce non-privileged, non-attorney work  
4 product-protected documents.

5 **SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION**  
6 **NO. 143:**

7 Elysium objects to the extent that the documents sought are not relevant in light  
8 of the Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of  
9 action for conversion. Elysium objects to this Request to the extent it seeks discovery  
10 of information or documents protected by the attorney-client privilege, the attorney  
11 work product doctrine, or any other applicable privileges and protections against  
12 disclosures. Elysium further objects on the grounds and to the extent it seeks  
13 discovery of information or documents already within ChromaDex's possession,  
14 custody, or control. Elysium also objects to this Request as overly broad and unduly  
15 burdensome, and seeking information that is irrelevant to any claim or defense of any  
16 party, to the extent it seeks documents relating to "communications retained by Mark  
17 Morris after his employment with ChromaDex was terminated" that bears no  
18 relationship to the contracts at issue in this action (i.e., the NR Supply Agreement, the  
19 pTeroPure Supply Agreement, and the Trademark License and Royalty Agreement);  
20 the claims for breach of the pTeroPure Supply Agreement and the NR Supply  
21 Agreement, or misappropriation of trade secrets asserted by ChromaDex; the claims  
22 for breach of the NR Supply Agreement and breach of the covenant of good faith and  
23 fair dealing implied in the NR Supply Agreement, fraudulent inducement relating to  
24 the Trademark License and Royalty Agreement, and patent misuse asserted by  
25 Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of  
26 ChromaDex's failure to comply with the cGMP Provision and its failure to comply  
27 with the Product Purity Provision through its sale of Niagen that was not produced in  
28 compliance with Pharmaceutical cGMPs and its failure to inform Elysium of

1 *information concerning the purity and the quality of the Niagen sold.*

2 *Elysium responds that all non-privileged, non-attorney work product-protected*  
3 *documents within its possession, custody, or control that can be identified through a*  
4 *reasonable search and that are responsive to this Request have previously been*  
5 *produced. Should Elysium identify additional documents that were not previously*  
6 *produced and that relate to the Ingredient Sales Spreadsheet, as that term is used in*  
7 *ChromaDex's Fourth Amended Complaint, Dkt. 109, subject to the foregoing general*  
8 *and specific objections, Elysium will produce non-privileged, non-attorney work*  
9 *product-protected documents.*

10 ***REQUEST FOR PRODUCTION NO. 144:***

11 *All DOCUMENTS and COMMUNICATIONS CONCERNING YOUR*  
12 *recruitment of, offers of employment to, hiring of, and terms of employment agreed to*  
13 *with Ryan Dellinger.*

14 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 144:***

15 *Elysium objects to this Request to the extent it seeks discovery of information or*  
16 *documents protected by the attorney-client privilege, the attorney work product*  
17 *doctrine, or any other applicable privileges and protections against disclosures.*  
18 *Elysium also objects to this Request as overly broad and unduly burdensome, and*  
19 *seeking information that is irrelevant to any claim or defense of any party, to the*  
20 *extent it seeks information relating to Elysium's "recruitment of, offers of employment*  
21 *to, hiring of, and terms of employment agreed to with Ryan Dellinger," that bears no*  
22 *relationship to the contracts at issue in this action (i.e., the NR Supply Agreement, the*  
23 *pTeroPure Supply Agreement, and the Trademark License and Royalty Agreement);*  
24 *the claims for breach of the pTeroPure Supply Agreement and the NR Supply*  
25 *Agreement, misappropriation of trade secrets, or conversion asserted by ChromaDex;*  
26 *the claims for breach of the NR Supply Agreement and breach of the covenant of good*  
27 *faith and fair dealing implied in the NR Supply Agreement, fraudulent inducement*  
28 *relating to the Trademark License and Royalty Agreement, and patent misuse asserted*

1 by Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of  
2 ChromaDex's failure to comply with the cGMP Provision and its failure to comply  
3 with the Product Purity Provision through its sale of Niagen that was not produced in  
4 compliance with Pharmaceutical cGMPs and its failure to inform Elysium of  
5 information concerning the purity and the quality of the Niagen sold. Elysium further  
6 objects to the Request as seeking discovery that is disproportionate to the needs of the  
7 case.

8 Subject to the foregoing general and specific objections, Elysium will produce  
9 non-privileged, non-attorney work product-protected documents within its possession,  
10 custody, or control.

11 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 144:**

12 Elysium objects to this Request to the extent it seeks discovery of information or  
13 documents protected by the attorney-client privilege, the attorney work product  
14 doctrine, or any other applicable privileges and protections against disclosures.  
15 Elysium also objects to this Request as overly broad and unduly burdensome, and  
16 seeking information that is irrelevant to any claim or defense of any party, to the  
17 extent it seeks information relating to Elysium's "recruitment of, offers of employment  
18 to, hiring of, and terms of employment agreed to with Ryan Dellinger," that bears no  
19 relationship to the contracts at issue in this action (i.e., the NR Supply Agreement, the  
20 pTeroPure Supply Agreement, and the Trademark License and Royalty Agreement);  
21 the claims for breach of the pTeroPure Supply Agreement and the NR Supply  
22 Agreement, or misappropriation of trade secrets asserted by ChromaDex; the claims  
23 for breach of the NR Supply Agreement and breach of the covenant of good faith and  
24 fair dealing implied in the NR Supply Agreement, fraudulent inducement relating to  
25 the Trademark License and Royalty Agreement, and patent misuse asserted by  
26 Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of  
27 ChromaDex's failure to comply with the cGMP Provision and its failure to comply  
28 with the Product Purity Provision through its sale of Niagen that was not produced in

1 *compliance with Pharmaceutical cGMPs and its failure to inform Elysium of*  
2 *information concerning the purity and the quality of the Niagen sold. Elysium further*  
3 *objects that the documents sought are not relevant in light of the Court’s July 27,*  
4 *2018 Order, in which it dismissed ChromaDex’s fifth cause of action for conversion.*  
5 *Elysium also objects to the Request as seeking discovery that is disproportionate to*  
6 *the needs of the case. Elysium will produce no documents in response to this Request.*

7 **SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION**  
8 **NO. 144:**

9 *Elysium objects to this Request to the extent it seeks discovery of information or*  
10 *documents protected by the attorney-client privilege, the attorney work product*  
11 *doctrine, or any other applicable privileges and protections against disclosures.*  
12 *Elysium also objects to this Request as overly broad and unduly burdensome, and*  
13 *seeking information that is irrelevant to any claim or defense of any party, to the*  
14 *extent it seeks information relating to Elysium’s “recruitment of, offers of employment*  
15 *to, hiring of, and terms of employment agreed to with Ryan Dellinger,” that bears no*  
16 *relationship to the contracts at issue in this action (i.e., the NR Supply Agreement, the*  
17 *pTeroPure Supply Agreement, and the Trademark License and Royalty Agreement);*  
18 *the claims for breach of the pTeroPure Supply Agreement and the NR Supply*  
19 *Agreement, or misappropriation of trade secrets asserted by ChromaDex; the claims*  
20 *for breach of the NR Supply Agreement and breach of the covenant of good faith and*  
21 *fair dealing implied in the NR Supply Agreement, fraudulent inducement relating to*  
22 *the Trademark License and Royalty Agreement, and patent misuse asserted by*  
23 *Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of*  
24 *ChromaDex’s failure to comply with the cGMP Provision and its failure to comply*  
25 *with the Product Purity Provision through its sale of Niagen that was not produced in*  
26 *compliance with Pharmaceutical cGMPs and its failure to inform Elysium of*  
27 *information concerning the purity and the quality of the Niagen sold. Elysium further*  
28 *objects that the documents sought are not relevant in light of the Court’s July 27,*

1 2018 Order, in which it dismissed ChromaDex's fifth cause of action for conversion.  
2 Elysium also objects to the Request as seeking discovery that is disproportionate to  
3 the needs of the case. Elysium will produce no documents in response to this Request.

4 **REQUEST FOR PRODUCTION NO. 145:**

5 All DOCUMENTS and COMMUNICATIONS CONCERNING Ryan Dellinger's  
6 duties to CHROMADEx, contractual or otherwise, and YOUR knowledge of those  
7 duties, including without limitation duties of confidentiality and loyalty, from January  
8 1, 2016 through the present.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 145:**

10 Elysium objects to this Request to the extent it seeks discovery of information or  
11 documents protected by the attorney-client privilege, the attorney work product  
12 doctrine, or any other applicable privileges and protections against disclosures.  
13 Elysium further objects on the grounds and to the extent it seeks discovery of  
14 information or documents already within ChromaDex's possession, custody, or  
15 control and objects to the extent that the phrase "duties, contractual or otherwise"  
16 calls for a legal conclusion. Elysium also objects to this Request as overly broad and  
17 unduly burdensome, and seeking information that is irrelevant to any claim or defense  
18 of any party, to the extent it seeks information relating to "Ryan Dellinger's duties to  
19 ChromaDex, contractual or otherwise, and Your knowledge of those duties, including  
20 without limitation duties of confidentiality and loyalty" that bears no relationship to  
21 the contracts at issue in this action (i.e., the NR Supply Agreement, the pTeroPure  
22 Supply Agreement, and the Trademark License and Royalty Agreement); the claims  
23 for breach of the pTeroPure Supply Agreement and the NR Supply Agreement,  
24 misappropriation of trade secrets, or conversion asserted by ChromaDex; the claims  
25 for breach of the NR Supply Agreement and breach of the covenant of good faith and  
26 fair dealing implied in the NR Supply Agreement, fraudulent inducement relating to  
27 the Trademark License and Royalty Agreement, and patent misuse asserted by  
28 Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of

1 *ChromaDex's failure to comply with the cGMP Provision and its failure to comply*  
2 *with the Product Purity Provision through its sale of Niagen that was not produced in*  
3 *compliance with Pharmaceutical cGMPs and its failure to inform Elysium of*  
4 *information concerning the purity and the quality of the Niagen sold. Elysium*  
5 *further objects to the Request as seeking discovery that is disproportionate to the*  
6 *needs of the case.*

7 *Subject to the foregoing general and specific objections, Elysium will produce*  
8 *non-privileged, non-attorney work product-protected documents within its possession,*  
9 *custody, or control.*

10 ***AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 145:***

11 *Elysium objects that the documents sought are not relevant in light of the*  
12 *Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of action*  
13 *for conversion. Elysium also objects to this Request to the extent it seeks discovery of*  
14 *information or documents protected by the attorney-client privilege, the attorney work*  
15 *product doctrine, or any other applicable privileges and protections against*  
16 *disclosures. Elysium further objects on the grounds and to the extent it seeks*  
17 *discovery of information or documents already within ChromaDex's possession,*  
18 *custody, or control. Elysium further objects to the Request as seeking discovery that*  
19 *is disproportionate to the needs of the case. Elysium will produce no documents in*  
20 *response to this Request.*

21 ***SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION***  
22 ***NO. 145:***

23 *Elysium objects that the documents sought are not relevant in light of the*  
24 *Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of action*  
25 *for conversion. Elysium also objects to this Request to the extent it seeks discovery of*  
26 *information or documents protected by the attorney-client privilege, the attorney work*  
27 *product doctrine, or any other applicable privileges and protections against*  
28 *disclosures. Elysium further objects on the grounds and to the extent it seeks*

1 *discovery of information or documents already within ChromaDex’s possession,*  
2 *custody, or control and objects to the extent that the phrase “duties, contractual or*  
3 *otherwise” calls for a legal conclusion. Elysium also objects to this Request as overly*  
4 *broad and unduly burdensome, and seeking information that is irrelevant to any claim*  
5 *or defense of any party, to the extent it seeks information relating to “Ryan*  
6 *Dellinger’s duties to ChromaDex, contractual or otherwise, and Your knowledge of*  
7 *those duties, including without limitation duties of confidentiality and loyalty” that*  
8 *bears no relationship to the contracts at issue in this action (i.e., the NR Supply*  
9 *Agreement, the pTeroPure Supply Agreement, and the Trademark License and*  
10 *Royalty Agreement); the claims for breach of the pTeroPure Supply Agreement and*  
11 *the NR Supply Agreement, or misappropriation of trade secrets asserted by*  
12 *ChromaDex; the claims for breach of the NR Supply Agreement and breach of the*  
13 *covenant of good faith and fair dealing implied in the NR Supply Agreement,*  
14 *fraudulent inducement relating to the Trademark License and Royalty Agreement, and*  
15 *patent misuse asserted by Elysium; or any defenses. Nor is it related to the*  
16 *Counterclaims, which arise out of ChromaDex’s failure to comply with the cGMP*  
17 *Provision and its failure to comply with the Product Purity Provision through its sale*  
18 *of Niagen that was not produced in compliance with Pharmaceutical cGMPs and its*  
19 *failure to inform Elysium of information concerning the purity and the quality of the*  
20 *Niagen sold. Elysium further objects to the Request as seeking discovery that is*  
21 *disproportionate to the needs of the case. Elysium will produce no documents in*  
22 *response to this Request.*

23 ***REQUEST FOR PRODUCTION NO. 146:***

24 *All DOCUMENTS and COMMUNICATIONS with Ryan Dellinger*  
25 *CONCERNING CHROMADDEX, its products, and/or its DOCUMENTS or*  
26 *information, from January 1, 2016 through the present.*

27 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 146:***

28 *Elysium objects that the Request is vague and ambiguous with respect to the*



1 *meaning of “DOCUMENTS . . . with Ryan Dellinger CONCERNING ChromaDex.”*  
2 *Elysium also objects to this Request on the grounds that it is cumulative and*  
3 *duplicative of Request No. 145, and thus is unduly burdensome. Elysium objects to*  
4 *this Request to the extent it seeks discovery of information or documents protected by*  
5 *the attorney-client privilege, the attorney work product doctrine, or any other*  
6 *applicable privileges and protections against disclosures. Elysium further objects on*  
7 *the grounds and to the extent it seeks discovery of information or documents already*  
8 *within ChromaDex’s possession, custody, or control. Elysium further objects to the*  
9 *Request as seeking discovery that is disproportionate to the needs of the case.*

10 *Subject to the foregoing general and specific objections, Elysium will produce*  
11 *non-privileged, non-attorney work product-protected documents within its possession,*  
12 *custody, or control.*

13 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 146:**

14 *Elysium objects that the documents sought are not relevant in light of the*  
15 *Court’s July 27, 2018 Order, in which it dismissed ChromaDex’s fifth cause of action*  
16 *for conversion. Elysium further objects that the Request is vague and ambiguous with*  
17 *respect to the meaning of “DOCUMENTS . . . with Ryan Dellinger CONCERNING*  
18 *ChromaDex.” Elysium also objects to this Request on the grounds that it is*  
19 *cumulative and duplicative of Request No. 147, and thus is unduly burdensome.*  
20 *Elysium objects to this Request to the extent it seeks discovery of information or*  
21 *documents protected by the attorney-client privilege, the attorney work product*  
22 *doctrine, or any other applicable privileges and protections against disclosures.*  
23 *Elysium further objects on the grounds and to the extent it seeks discovery of*  
24 *information or documents already within ChromaDex’s possession, custody, or*  
25 *control. Elysium further objects to the Request as seeking discovery that is*  
26 *disproportionate to the needs of the case.*

27 *Elysium will produce no documents in response to this Request.*

28 **SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION**

1 **NO. 146:**

2 *Elysium objects that the documents sought are not relevant in light of the*  
3 *Court’s July 27, 2018 Order, in which it dismissed ChromaDex’s fifth cause of action*  
4 *for conversion. Elysium further objects that the Request is vague and ambiguous with*  
5 *respect to the meaning of “DOCUMENTS . . . with Ryan Dellinger CONCERNING*  
6 *ChromaDex.” Elysium also objects to this Request on the grounds that it is*  
7 *cumulative and duplicative of Request No. 147, and thus is unduly burdensome.*  
8 *Elysium objects to this Request to the extent it seeks discovery of information or*  
9 *documents protected by the attorney-client privilege, the attorney work product*  
10 *doctrine, or any other applicable privileges and protections against disclosures.*  
11 *Elysium further objects on the grounds and to the extent it seeks discovery of*  
12 *information or documents already within ChromaDex’s possession, custody, or*  
13 *control. Elysium also objects to this Request as overly broad and unduly burdensome,*  
14 *and seeking information that is irrelevant to any claim or defense of any party, to the*  
15 *extent it seeks information relating to “communications with Ryan Dellinger*  
16 *concerning ChromaDex, its products, and/or its documents or information” that bears*  
17 *no relationship to the contracts at issue in this action (i.e., the NR Supply Agreement,*  
18 *the pTeroPure Supply Agreement, and the Trademark License and Royalty*  
19 *Agreement); the claims for breach of the pTeroPure Supply Agreement and the NR*  
20 *Supply Agreement, or misappropriation of trade secrets asserted by ChromaDex; the*  
21 *claims for breach of the NR Supply Agreement and breach of the covenant of good*  
22 *faith and fair dealing implied in the NR Supply Agreement, fraudulent inducement*  
23 *relating to the Trademark License and Royalty Agreement, and patent misuse asserted*  
24 *by Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of*  
25 *ChromaDex’s failure to comply with the cGMP Provision and its failure to comply*  
26 *with the Product Purity Provision through its sale of Niagen that was not produced in*  
27 *compliance with Pharmaceutical cGMPs and its failure to inform Elysium of*  
28 *information concerning the purity and the quality of the Niagen sold. Elysium further*

1 *objects to the Request as seeking discovery that is disproportionate to the needs of the*  
2 *case.*

3 *Elysium will produce no documents in response to this Request.*

4 ***REQUEST FOR PRODUCTION NO. 148:***

5 *All CHROMADEx DOCUMENTS and COMMUNICATIONS retained by Ryan*  
6 *Dellinger after his employment with CHROMADEx was terminated.*

7 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 148:***

8 *Elysium objects to this Request to the extent it seeks discovery of information or*  
9 *documents protected by the attorney-client privilege, the attorney work product*  
10 *doctrine, or any other applicable privileges and protections against disclosures.*  
11 *Elysium further objects on the grounds and to the extent it seeks discovery of*  
12 *information or documents already within ChromaDex's possession, custody, or*  
13 *control. Elysium further objects to the Request as seeking discovery that is*  
14 *disproportionate to the needs of the case.*

15 *Subject to the foregoing general and specific objections, Elysium will produce*  
16 *non-privileged, non-attorney work product-protected documents within its possession,*  
17 *custody, or control.*

18 ***AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 148:***

19 *Elysium objects that the documents sought are not relevant in light of the*  
20 *Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of action*  
21 *for conversion. Elysium further objects to this Request to the extent it seeks discovery*  
22 *of information or documents protected by the attorney-client privilege, the attorney*  
23 *work product doctrine, or any other applicable privileges and protections against*  
24 *disclosures. Elysium further objects on the grounds and to the extent it seeks*  
25 *discovery of information or documents already within ChromaDex's possession,*  
26 *custody, or control. Elysium further objects to the Request as seeking discovery that*  
27 *is disproportionate to the needs of the case.*

28 *Elysium will produce no documents in response to this Request.*

1           **SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION**  
2 **NO. 148:**

3           *Elysium objects that the documents sought are not relevant in light of the*  
4 *Court’s July 27, 2018 Order, in which it dismissed ChromaDex’s fifth cause of action*  
5 *for conversion. Elysium further objects to this Request to the extent it seeks discovery*  
6 *of information or documents protected by the attorney-client privilege, the attorney*  
7 *work product doctrine, or any other applicable privileges and protections against*  
8 *disclosures. Elysium further objects on the grounds and to the extent it seeks*  
9 *discovery of information or documents already within ChromaDex’s possession,*  
10 *custody, or control. Elysium also objects to this Request as overly broad and unduly*  
11 *burdensome, and seeking information that is irrelevant to any claim or defense of any*  
12 *party, to the extent it seeks “documents and communications retained by Ryan*  
13 *Dellinger after his employment with ChromaDex was terminated” that bear no*  
14 *relationship to the contracts at issue in this action (i.e., the NR Supply Agreement, the*  
15 *pTeroPure Supply Agreement, and the Trademark License and Royalty Agreement);*  
16 *the claims for breach of the pTeroPure Supply Agreement and the NR Supply*  
17 *Agreement, or misappropriation of trade secrets asserted by ChromaDex; the claims*  
18 *for breach of the NR Supply Agreement and breach of the covenant of good faith and*  
19 *fair dealing implied in the NR Supply Agreement, fraudulent inducement relating to*  
20 *the Trademark License and Royalty Agreement, and patent misuse asserted by*  
21 *Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of*  
22 *ChromaDex’s failure to comply with the cGMP Provision and its failure to comply*  
23 *with the Product Purity Provision through its sale of Niagen that was not produced in*  
24 *compliance with Pharmaceutical cGMPs and its failure to inform Elysium of*  
25 *information concerning the purity and the quality of the Niagen sold. Elysium further*  
26 *objects to the Request as seeking discovery that is disproportionate to the needs of the*  
27 *case.*

28           *Elysium will produce no documents in response to this Request.*

1           **REQUEST FOR PRODUCTION NO. 149:**

2           All DOCUMENTS and COMMUNICATIONS CONCERNING the document  
3 YOU produced bearing Bates number ELY\_0002646, including but not limited to all  
4 copies and drafts of the document, the origin of the document, why the document was  
5 created, and any use of or reliance on the document.

6           **RESPONSE TO REQUEST FOR PRODUCTION NO. 149:**

7           Elysium objects on the grounds and to the extent this Request seeks discovery of  
8 information or documents already within ChromaDex's possession, custody, or  
9 control. Elysium further objects to this Request to the extent it seeks discovery of  
10 information or documents protected by the attorney-client privilege, the attorney work  
11 product doctrine, or any other applicable privileges and protections against  
12 disclosures.

13           Subject to the foregoing general and specific objections, Elysium will produce  
14 non-privileged, non-attorney work product-protected documents within its possession,  
15 custody, or control.

16           **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 149:**

17           Elysium objects that the documents sought are not relevant in light of the  
18 Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of action  
19 for conversion. Elysium objects on the grounds and to the extent this Request seeks  
20 discovery of information or documents already within ChromaDex's possession,  
21 custody, or control. Elysium further objects to this Request to the extent it seeks  
22 discovery of information or documents protected by the attorney-client privilege, the  
23 attorney work product doctrine, or any other applicable privileges and protections  
24 against disclosures.

25           Elysium will produce no documents in response to this Request.

26           **SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION**  
27 **NO. 149:**

28           Elysium objects that the documents sought are not relevant in light of the

1 Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of action  
2 for conversion. Elysium objects on the grounds and to the extent this Request seeks  
3 discovery of information or documents already within ChromaDex's possession,  
4 custody, or control. Elysium also objects to this Request as overly broad and unduly  
5 burdensome, and seeking information that is irrelevant to any claim or defense of any  
6 party, to the extent it seeks information relating to this document that bears no  
7 relationship to the contracts at issue in this action (i.e., the NR Supply Agreement, the  
8 pTeroPure Supply Agreement, and the Trademark License and Royalty Agreement);  
9 the claims for breach of the pTeroPure Supply Agreement and the NR Supply  
10 Agreement, or misappropriation of trade secrets asserted by ChromaDex; the claims  
11 for breach of the NR Supply Agreement and breach of the covenant of good faith and  
12 fair dealing implied in the NR Supply Agreement, fraudulent inducement relating to  
13 the Trademark License and Royalty Agreement, and patent misuse asserted by  
14 Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of  
15 ChromaDex's failure to comply with the cGMP Provision and its failure to comply  
16 with the Product Purity Provision through its sale of Niagen that was not produced in  
17 compliance with Pharmaceutical cGMPs and its failure to inform Elysium of  
18 information concerning the purity and the quality of the Niagen sold. Elysium further  
19 objects to this Request to the extent it seeks discovery of information or documents  
20 protected by the attorney-client privilege, the attorney work product doctrine, or any  
21 other applicable privileges and protections against disclosures.

22 Elysium will produce no documents in response to this Request.

23 **REQUEST FOR PRODUCTION NO. 150:**

24 All DOCUMENTS and COMMUNICATIONS CONCERNING the inquiry YOU  
25 received from the NAD, as referenced by the document YOU produced bearing Bates  
26 number ELY\_0002645.

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 150:**

28 Elysium objects on the grounds and to the extent this Request seeks discovery of

1 information or documents already within ChromaDex's possession, custody, or  
2 control. Elysium further objects to this Request to the extent it seeks discovery of  
3 information or documents protected by the attorney-client privilege, the attorney work  
4 product doctrine, or any other applicable privileges and protections against  
5 disclosures. Elysium also objects to this Request as overly broad and unduly  
6 burdensome, and seeking information that is irrelevant to any claim or defense of any  
7 party, to the extent it seeks "the record of telephone calls between Ryan Dellinger and  
8 Elysium" that bears no relationship to the contracts at issue in this action (i.e., the NR  
9 Supply Agreement, the pTeroPure Supply Agreement, and the Trademark License and  
10 Royalty Agreement); the claims for breach of the pTeroPure Supply Agreement and  
11 the NR Supply Agreement, misappropriation of trade secrets, or conversion asserted  
12 by ChromaDex; the claims for breach of the NR Supply Agreement and breach of the  
13 covenant of good faith and fair dealing implied in the NR Supply Agreement,  
14 fraudulent inducement relating to the Trademark License and Royalty Agreement, and  
15 patent misuse asserted by Elysium; or any defenses. Nor is it related to the  
16 Counterclaims, which arise out of ChromaDex's failure to comply with the cGMP  
17 Provision and its failure to comply with the Product Purity Provision through its sale  
18 of Niagen that was not produced in compliance with Pharmaceutical cGMPs and its  
19 failure to inform Elysium of information concerning the purity and the quality of the  
20 Niagen sold. Elysium further objects to the Request as seeking discovery that is  
21 disproportionate to the needs of the case. Elysium will not produce documents in  
22 responsive to this Request.

23 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 150:**

24 Elysium objects that the documents sought are not relevant in light of the  
25 Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of action  
26 for conversion. Elysium also objects on the grounds and to the extent this Request  
27 seeks discovery of information or documents already within ChromaDex's possession,  
28 custody, or control. Elysium further objects to this Request to the extent it seeks

1 *discovery of information or documents protected by the attorney-client privilege, the*  
2 *attorney work product doctrine, or any other applicable privileges and protections*  
3 *against disclosures.*

4 *Elysium will produce no documents in response to this Request.*

5 **SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION**  
6 **NO. 150:**

7 *Elysium objects that the documents sought are not relevant in light of the*  
8 *Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of action*  
9 *for conversion. Elysium also objects on the grounds and to the extent this Request*  
10 *seeks discovery of information or documents already within ChromaDex's possession,*  
11 *custody, or control. Elysium further objects to this Request to the extent it seeks*  
12 *discovery of information or documents protected by the attorney-client privilege, the*  
13 *attorney work product doctrine, or any other applicable privileges and protections*  
14 *against disclosures. Elysium also objects to this Request as overly broad and unduly*  
15 *burdensome, and seeking information that is irrelevant to any claim or defense of any*  
16 *party, to the extent it seeks information relating to "the inquiry you received from the*  
17 *NAD," that bears no relationship to the contracts at issue in this action (i.e., the NR*  
18 *Supply Agreement, the pTeroPure Supply Agreement, and the Trademark License and*  
19 *Royalty Agreement); the claims for breach of the pTeroPure Supply Agreement and*  
20 *the NR Supply Agreement, or misappropriation of trade secrets asserted by*  
21 *ChromaDex; the claims for breach of the NR Supply Agreement and breach of the*  
22 *covenant of good faith and fair dealing implied in the NR Supply Agreement,*  
23 *fraudulent inducement relating to the Trademark License and Royalty Agreement, and*  
24 *patent misuse asserted by Elysium; or any defenses. Nor is it related to the*  
25 *Counterclaims, which arise out of ChromaDex's failure to comply with the cGMP*  
26 *Provision and its failure to comply with the Product Purity Provision through its sale*  
27 *of Niagen that was not produced in compliance with Pharmaceutical cGMPs and its*  
28 *failure to inform Elysium of information concerning the purity and the quality of the*



1 *Niagen sold. Elysium further objects to the Request as seeking discovery that is*  
2 *disproportionate to the needs of the case.*

3 *Elysium will produce no documents in response to this Request.*

4 ***REQUEST FOR PRODUCTION NO. 151:***

5 *All DOCUMENTS and COMMUNICATIONS CONCERNING the document*  
6 *YOU produced bearing Bates number ELY\_0037480, including but not limited to all*  
7 *copies and drafts of the document, the origin of the document, why the document was*  
8 *created, and any use of or reliance on the document.*

9 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 151:***

10 *Elysium objects on the grounds and to the extent this Request seeks discovery of*  
11 *information or documents already within ChromaDex's possession, custody, or*  
12 *control. Elysium further objects to this Request to the extent it seeks discovery of*  
13 *information or documents protected by the attorney-client privilege, the attorney work*  
14 *product doctrine, or any other applicable privileges and protections against*  
15 *disclosures.*

16 *Subject to the foregoing general and specific objections, Elysium will produce*  
17 *non-privileged, non-attorney work product-protected documents within its possession,*  
18 *custody, or control.*

19 ***AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 151:***

20 *Elysium objects that the documents sought are not relevant in light of the*  
21 *Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of action*  
22 *for conversion. Elysium also objects on the grounds and to the extent this Request*  
23 *seeks discovery of information or documents already within ChromaDex's possession,*  
24 *custody, or control. Elysium further objects to this Request to the extent it seeks*  
25 *discovery of information or documents protected by the attorney-client privilege, the*  
26 *attorney work product doctrine, or any other applicable privileges and protections*  
27 *against disclosures.*

28 *Elysium will produce no documents in response to this Request.*

1           **SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION**  
2 **NO. 151:**

3           *Elysium objects that the documents sought are not relevant in light of the*  
4 *Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of action*  
5 *for conversion. Elysium also objects on the grounds and to the extent this Request*  
6 *seeks discovery of information or documents already within ChromaDex's possession,*  
7 *custody, or control. Elysium also objects to this Request as overly broad and unduly*  
8 *burdensome, and seeking information that is irrelevant to any claim or defense of any*  
9 *party, to the extent it seeks information relating to this document that bears no*  
10 *relationship to the contracts at issue in this action (i.e., the NR Supply Agreement, the*  
11 *pTeroPure Supply Agreement, and the Trademark License and Royalty Agreement);*  
12 *the claims for breach of the pTeroPure Supply Agreement and the NR Supply*  
13 *Agreement, or misappropriation of trade secrets asserted by ChromaDex; the claims*  
14 *for breach of the NR Supply Agreement and breach of the covenant of good faith and*  
15 *fair dealing implied in the NR Supply Agreement, fraudulent inducement relating to*  
16 *the Trademark License and Royalty Agreement, and patent misuse asserted by*  
17 *Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of*  
18 *ChromaDex's failure to comply with the cGMP Provision and its failure to comply*  
19 *with the Product Purity Provision through its sale of Niagen that was not produced in*  
20 *compliance with Pharmaceutical cGMPs and its failure to inform Elysium of*  
21 *information concerning the purity and the quality of the Niagen sold. Elysium further*  
22 *objects to this Request to the extent it seeks discovery of information or documents*  
23 *protected by the attorney-client privilege, the attorney work product doctrine, or any*  
24 *other applicable privileges and protections against disclosures.*

25           *Elysium will produce no documents in response to this Request.*

26           **REQUEST FOR PRODUCTION NO. 152:**

27           *All DOCUMENTS and COMMUNICATIONS CONCERNING any investments*  
28 *and/or interest in investing YOU received from PERSONS who received or viewed the*

1 documents YOU produced bearing Bates numbers ELY\_0037480 and/or  
2 ELY\_0002646, or any versions thereof.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 152:**

4 Elysium objects that the Request is vague and ambiguous with respect to the  
5 meaning of “interest in investing.” Elysium further objects to this Request to the  
6 extent it seeks discovery of information or documents protected by the attorney-client  
7 privilege, the attorney work product doctrine, or any other applicable privileges and  
8 protections against disclosures. Elysium also objects to this Request as overly broad  
9 and unduly burdensome, and seeking information that is irrelevant to any claim or  
10 defense of any party, as the investments in question bear no relationship to the  
11 contracts at issue in this action (i.e., the NR Supply Agreement, the pTeroPure Supply  
12 Agreement, and the Trademark License and Royalty Agreement); the claims for  
13 breach of the pTeroPure Supply Agreement and the NR Supply Agreement,  
14 misappropriation of trade secrets, or conversion asserted by ChromaDex; the claims  
15 for breach of the NR Supply Agreement and breach of the covenant of good faith and  
16 fair dealing implied in the NR Supply Agreement, fraudulent inducement relating to  
17 the Trademark License and Royalty Agreement, and patent misuse asserted by  
18 Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of  
19 ChromaDex’s failure to comply with the cGMP Provision and its failure to comply  
20 with the Product Purity Provision through its sale of Niagen that was not produced in  
21 compliance with Pharmaceutical cGMPs and its failure to inform Elysium of  
22 information concerning the purity and the quality of the Niagen sold. Elysium further  
23 objects to the Request as seeking discovery that is disproportionate to the needs of the  
24 case. Elysium will not produce documents in response to this Request.

25 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 152:**

26 Elysium objects that the documents sought are not relevant in light of the  
27 Court’s July 27, 2018 Order, in which it dismissed ChromaDex’s fifth cause of action  
28 for conversion. Elysium also objects on the grounds and to the extent this Request

1 seeks discovery of information or documents already within ChromaDex's possession,  
2 custody, or control. Elysium further objects to this Request to the extent it seeks  
3 discovery of information or documents protected by the attorney-client privilege, the  
4 attorney work product doctrine, or any other applicable privileges and protections  
5 against disclosures.

6 Elysium will produce no documents in response to this Request.

7 **SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION**  
8 **NO. 152:**

9 Elysium objects that the documents sought are not relevant in light of the  
10 Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of action  
11 for conversion. Elysium also objects on the grounds and to the extent this Request  
12 seeks discovery of information or documents already within ChromaDex's possession,  
13 custody, or control. Elysium further objects to this Request to the extent it seeks  
14 discovery of information or documents protected by the attorney-client privilege, the  
15 attorney work product doctrine, or any other applicable privileges and protections  
16 against disclosures. Elysium also objects to this Request as overly broad and unduly  
17 burdensome, and seeking information that is irrelevant to any claim or defense of any  
18 party, as the investments in question bear no relationship to the contracts at issue in  
19 this action (i.e., the NR Supply Agreement, the pTeroPure Supply Agreement, and the  
20 Trademark License and Royalty Agreement); the claims for breach of the pTeroPure  
21 Supply Agreement and the NR Supply Agreement or misappropriation of trade secrets  
22 asserted by ChromaDex; the claims for breach of the NR Supply Agreement and  
23 breach of the covenant of good faith and fair dealing implied in the NR Supply  
24 Agreement, fraudulent inducement relating to the Trademark License and Royalty  
25 Agreement, and patent misuse asserted by Elysium; or any defenses. Nor is it related  
26 to the Counterclaims, which arise out of ChromaDex's failure to comply with the  
27 cGMP Provision and its failure to comply with the Product Purity Provision through  
28 its sale of Niagen that was not produced in compliance with Pharmaceutical cGMPs

1 *and its failure to inform Elysium of information concerning the purity and the quality*  
2 *of the Niagen sold. Elysium further objects to the Request as seeking discovery that is*  
3 *disproportionate to the needs of the case.*

4 *Elysium will produce no documents in response to this Request.*

5 ***REQUEST FOR PRODUCTION NO. 153:***

6 *All DOCUMENTS and COMMUNICATIONS CONCERNING the document*  
7 *YOU produced bearing Bates number ELY\_0014602 and/or the information contained*  
8 *therein, including but not limited to all copies of the document, the origin of the*  
9 *information, how YOU obtained the information, and any use of or reliance on the*  
10 *information.*

11 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 153:***

12 *Elysium objects on the grounds and to the extent this Request seeks discovery of*  
13 *information or documents already within ChromaDex's possession, custody, or*  
14 *control. Elysium further objects to this Request to the extent it seeks discovery of*  
15 *information or documents protected by the attorney-client privilege, the attorney work*  
16 *product doctrine, or any other applicable privileges and protections against*  
17 *disclosures.*

18 *Subject to the foregoing general and specific objections, Elysium will produce*  
19 *non-privileged, non-attorney work product-protected documents within its possession,*  
20 *custody, or control.*

21 ***AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 153:***

22 *Elysium objects to the extent that the documents sought are not relevant in light*  
23 *of the Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of*  
24 *action for conversion. Elysium also objects on the grounds and to the extent this*  
25 *Request seeks discovery of information or documents already within ChromaDex's*  
26 *possession, custody, or control. Elysium further objects to this Request to the extent it*  
27 *seeks discovery of information or documents protected by the attorney-client*  
28 *privilege, the attorney work product doctrine, or any other applicable privileges and*

1 *protections against disclosures.*

2 *Subject to the foregoing general and specific objections, Elysium will produce*  
3 *non-privileged, non-attorney work product-protected documents within its possession,*  
4 *custody, or control relating to the document bearing Bates number ELY\_0014602.*

5 ***SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION***  
6 ***NO. 153:***

7 *Elysium objects to the extent that the documents sought are not relevant in light*  
8 *of the Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of*  
9 *action for conversion. Elysium also objects on the grounds and to the extent this*  
10 *Request seeks discovery of information or documents already within ChromaDex's*  
11 *possession, custody, or control. Elysium also objects to this Request as overly broad*  
12 *and unduly burdensome, and seeking information that is irrelevant to any claim or*  
13 *defense of any party, to the extent it seeks documents relating to this document that*  
14 *bear no relationship to the contracts at issue in this action (i.e., the NR Supply*  
15 *Agreement, the pTeroPure Supply Agreement, and the Trademark License and*  
16 *Royalty Agreement); the claims for breach of the pTeroPure Supply Agreement and*  
17 *the NR Supply Agreement or misappropriation of trade secrets asserted by*  
18 *ChromaDex; the claims for breach of the NR Supply Agreement and breach of the*  
19 *covenant of good faith and fair dealing implied in the NR Supply Agreement,*  
20 *fraudulent inducement relating to the Trademark License and Royalty Agreement, and*  
21 *patent misuse asserted by Elysium; or any defenses. Nor is it related to the*  
22 *Counterclaims, which arise out of ChromaDex's failure to comply with the cGMP*  
23 *Provision and its failure to comply with the Product Purity Provision through its sale*  
24 *of Niagen that was not produced in compliance with Pharmaceutical cGMPs and its*  
25 *failure to inform Elysium of information concerning the purity and the quality of the*  
26 *Niagen sold. Elysium further objects to this Request to the extent it seeks discovery of*  
27 *information or documents protected by the attorney-client privilege, the attorney work*  
28 *product doctrine, or any other applicable privileges and protections against*

1 *disclosures.*

2 *Elysium will produce no documents in response to this Request.*

3 ***REQUEST FOR PRODUCTION NO. 154:***

4 *All DOCUMENTS and COMMUNICATIONS CONCERNING the Generally*  
5 *Recognized as Safe status of NIAGEN, including but not limited to all copies of the*  
6 *Generally Recognized as Safe submission and any use of or reliance on the*  
7 *information contained therein.*

8 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 154:***

9 *Elysium objects to this Request on the grounds that it is cumulative and*  
10 *duplicative of Request Nos. 127 and 128, and thus is unduly burdensome. Elysium*  
11 *also objects on the grounds and to the extent this Request seeks discovery of*  
12 *information or documents already within ChromaDex's possession, custody, or*  
13 *control. Elysium further objects to this Request to the extent it seeks discovery of*  
14 *information or documents protected by the attorney-client privilege, the attorney work*  
15 *product doctrine, or any other applicable privileges and protections against*  
16 *disclosures. Elysium also objects to this Request as overly broad and unduly*  
17 *burdensome, and seeking information that is irrelevant to any claim or defense of any*  
18 *party, to the extent it seeks information relating to the "Generally Recognized as Safe*  
19 *status of NIAGEN," which bears no relationship to the contracts at issue in this action*  
20 *(i.e., the NR Supply Agreement, the pTeroPure Supply Agreement, and the Trademark*  
21 *License and Royalty Agreement); the claims for breach of the pTeroPure Supply*  
22 *Agreement and the NR Supply Agreement, misappropriation of trade secrets, or*  
23 *conversion asserted by ChromaDex; the claims for breach of the NR Supply*  
24 *Agreement and breach of the covenant of good faith and fair dealing implied in the*  
25 *NR Supply Agreement, fraudulent inducement relating to the Trademark License and*  
26 *Royalty Agreement, and patent misuse asserted by Elysium; or any defenses. Nor is it*  
27 *related to the Counterclaims, which arise out of ChromaDex's failure to comply with*  
28 *the cGMP Provision and its failure to comply with the Product Purity Provision*

1 *through its sale of Niagen that was not produced in compliance with Pharmaceutical*  
2 *cGMPs and its failure to inform Elysium of information concerning the purity and the*  
3 *quality of the Niagen sold.*

4 *Subject to the foregoing general and specific objections, Elysium will produce*  
5 *non-privileged, non-attorney work product-protected documents within its possession,*  
6 *custody, or control relating to the Generally Recognized as Safe submission.*

7 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 154:**

8 *Elysium objects to this Request on the grounds that it is cumulative and*  
9 *duplicative of Request Nos. 127 and 128, and thus is unduly burdensome. Elysium*  
10 *also objects on the grounds and to the extent this Request seeks discovery of*  
11 *information or documents already within ChromaDex's possession, custody, or*  
12 *control. Elysium further objects to this Request to the extent it seeks discovery of*  
13 *information or documents protected by the attorney-client privilege, the attorney work*  
14 *product doctrine, or any other applicable privileges and protections against*  
15 *disclosures.*

16 *Elysium responds that all non-privileged, non-attorney work product-protected*  
17 *documents within its possession, custody, or control that can be identified through a*  
18 *reasonable search and that are responsive to this Request have previously been*  
19 *produced. Should Elysium identify additional documents that were not previously*  
20 *produced and that are responsive to this Request, subject to the foregoing general and*  
21 *specific objections, Elysium will produce non-privileged, non-attorney work product-*  
22 *protected documents within its possession, custody, or control.*

23 **SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION**  
24 **NO. 154:**

25 *Elysium objects to the extent that the documents sought are not relevant in light*  
26 *of the Court's July 27, 2018 Order, in which it dismissed ChromaDex's fifth cause of*  
27 *action for conversion. Elysium objects to this Request on the grounds that it is*  
28 *cumulative and duplicative of Request Nos. 127 and 128, and thus is unduly*



1 *burdensome. Elysium also objects on the grounds and to the extent this Request seeks*  
2 *discovery of information or documents already within ChromaDex’s possession,*  
3 *custody, or control. Elysium further objects to this Request to the extent it seeks*  
4 *discovery of information or documents protected by the attorney-client privilege, the*  
5 *attorney work product doctrine, or any other applicable privileges and protections*  
6 *against disclosures. Elysium also objects to this Request as overly broad and unduly*  
7 *burdensome, and seeking information that is irrelevant to any claim or defense of any*  
8 *party, to the extent it seeks information relating to the “Generally Recognized as Safe*  
9 *status of NIAGEN,” which bears no relationship to the contracts at issue in this action*  
10 *(i.e., the NR Supply Agreement, the pTeroPure Supply Agreement, and the Trademark*  
11 *License and Royalty Agreement); the claims for breach of the pTeroPure Supply*  
12 *Agreement and the NR Supply Agreement or misappropriation of trade secrets*  
13 *asserted by ChromaDex; the claims for breach of the NR Supply Agreement and*  
14 *breach of the covenant of good faith and fair dealing implied in the NR Supply*  
15 *Agreement, fraudulent inducement relating to the Trademark License and Royalty*  
16 *Agreement, and patent misuse asserted by Elysium; or any defenses. Nor is it related*  
17 *to the Counterclaims, which arise out of ChromaDex’s failure to comply with the*  
18 *cGMP Provision and its failure to comply with the Product Purity Provision through*  
19 *its sale of Niagen that was not produced in compliance with Pharmaceutical cGMPs*  
20 *and its failure to inform Elysium of information concerning the purity and the quality*  
21 *of the Niagen sold. Elysium further objects to the Request as seeking discovery that is*  
22 *disproportionate to the needs of the case.*

23 *Elysium will produce no documents in response to this Request.*

24 ***REQUEST FOR PRODUCTION NO. 155:***

25 *All DOCUMENTS and COMMUNICATIONS CONCERNING the New Dietary*  
26 *Ingredient Notification for NIAGEN, including but not limited to all copies of the New*  
27 *Dietary Ingredient Notification and any use of or reliance on the information*  
28 *contained therein.*

1           **RESPONSE TO REQUEST FOR PRODUCTION NO. 155:**

2           *Elysium objects to this Request to the extent it seeks discovery of information or*  
3 *documents protected by the attorney-client privilege, the attorney work product*  
4 *doctrine, or any other applicable privileges and protections against disclosures.*  
5 *Elysium also objects to this Request as overly broad and unduly burdensome, and*  
6 *seeking information that is irrelevant to any claim or defense of any party, to the*  
7 *extent it seeks information relating to “New Dietary Ingredient Notification for*  
8 *NIAGEN” that bears no relationship o the contracts at issue in this action (i.e., the*  
9 *NR Supply Agreement, the pTeroPure Supply Agreement, and the Trademark License*  
10 *and Royalty Agreement); the claims for breach of the pTeroPure Supply Agreement*  
11 *and the NR Supply Agreement, misappropriation of trade secrets, or conversion*  
12 *asserted by ChromaDex; the claims for breach of the NR Supply Agreement and*  
13 *breach of the covenant of good faith and fair dealing implied in the NR Supply*  
14 *Agreement, fraudulent inducement relating to the Trademark License and Royalty*  
15 *Agreement, and patent misuse asserted by Elysium; or any defenses. Nor is it related*  
16 *to the Counterclaims, which arise out of ChromaDex’s failure to comply with the*  
17 *cGMP Provision and its failure to comply with the Product Purity Provision through*  
18 *its sale of Niagen that was not produced in compliance with Pharmaceutical cGMPs*  
19 *and its failure to inform Elysium of information concerning the purity and the quality*  
20 *of the Niagen sold. Elysium further objects to the Request as seeking discovery that is*  
21 *disproportionate to the needs of the case. Elysium will produce no documents in*  
22 *response to this Request.*

23           **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 155:**

24           *Elysium objects to this Request to the extent it seeks discovery of information or*  
25 *documents protected by the attorney-client privilege, the attorney work product*  
26 *doctrine, or any other applicable privileges and protections against disclosures.*  
27 *Elysium also objects to this Request as overly broad and unduly burdensome, and*  
28 *seeking information that is irrelevant to any claim or defense of any party, to the*

1 *extent it seeks information relating to “New Dietary Ingredient Notification for*  
2 *NIAGEN” that bears no relationship to the contracts at issue in this action (i.e., the*  
3 *NR Supply Agreement, the pTeroPure Supply Agreement, and the Trademark License*  
4 *and Royalty Agreement); the claims for breach of the pTeroPure Supply Agreement*  
5 *and the NR Supply Agreement, or misappropriation of trade secrets asserted by*  
6 *ChromaDex; the claims for breach of the NR Supply Agreement and breach of the*  
7 *covenant of good faith and fair dealing implied in the NR Supply Agreement,*  
8 *fraudulent inducement relating to the Trademark License and Royalty Agreement, and*  
9 *patent misuse asserted by Elysium; or any defenses. Nor is it related to the*  
10 *Counterclaims, which arise out of ChromaDex’s failure to comply with the cGMP*  
11 *Provision and its failure to comply with the Product Purity Provision through its sale*  
12 *of Niagen that was not produced in compliance with Pharmaceutical cGMPs and its*  
13 *failure to inform Elysium of information concerning the purity and the quality of the*  
14 *Niagen sold. Elysium further objects to the Request as seeking discovery that is*  
15 *disproportionate to the needs of the case. Subject to the foregoing general and*  
16 *specific objections, Elysium will produce no documents in response to this Request.*

17 **SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION**  
18 **NO. 155:**

19 *Elysium objects to this Request to the extent it seeks discovery of information or*  
20 *documents protected by the attorney-client privilege, the attorney work product*  
21 *doctrine, or any other applicable privileges and protections against disclosures.*  
22 *Elysium also objects to this Request as overly broad and unduly burdensome, and*  
23 *seeking information that is irrelevant to any claim or defense of any party, to the*  
24 *extent it seeks information relating to “New Dietary Ingredient Notification for*  
25 *NIAGEN” that bears no relationship to the contracts at issue in this action (i.e., the*  
26 *NR Supply Agreement, the pTeroPure Supply Agreement, and the Trademark License*  
27 *and Royalty Agreement); the claims for breach of the pTeroPure Supply Agreement*  
28 *and the NR Supply Agreement, or misappropriation of trade secrets asserted by*

1 *ChromaDex; the claims for breach of the NR Supply Agreement and breach of the*  
2 *covenant of good faith and fair dealing implied in the NR Supply Agreement,*  
3 *fraudulent inducement relating to the Trademark License and Royalty Agreement, and*  
4 *patent misuse asserted by Elysium; or any defenses. Nor is it related to the*  
5 *Counterclaims, which arise out of ChromaDex's failure to comply with the cGMP*  
6 *Provision and its failure to comply with the Product Purity Provision through its sale*  
7 *of Niagen that was not produced in compliance with Pharmaceutical cGMPs and its*  
8 *failure to inform Elysium of information concerning the purity and the quality of the*  
9 *Niagen sold. Elysium further objects to the Request as seeking discovery that is*  
10 *disproportionate to the needs of the case. Subject to the foregoing general and*  
11 *specific objections, Elysium will produce no documents in response to this Request.*

12 ***REQUEST FOR PRODUCTION NO. 159:***

13 *All DOCUMENTS CONCERNING pTeroPure or NIAGEN that YOU provided*  
14 *to YOUR regulatory consultants while preparing any regulatory filing or document*  
15 *going to the safety of any of YOUR ingredients, including any COMMUNICATIONS*  
16 *CONCERNING those DOCUMENTS.*

17 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 159:***

18 *Elysium objects that the Request is vague and ambiguous with respect to the*  
19 *meaning of "regulatory consultants" and "regulatory filing or document going to the*  
20 *safety" Elysium also objects to this Request as overly broad and unduly burdensome,*  
21 *and seeking information that is irrelevant to any claim or defense of any party, as*  
22 *information relating to "the safety of any of [Elysium's] ingredients" bears no*  
23 *relationship to the contracts at issue in this action (i.e., the NR Supply Agreement, the*  
24 *pTeroPure Supply Agreement, and the Trademark License and Royalty Agreement);*  
25 *the claims for breach of the pTeroPure Supply Agreement and the NR Supply*  
26 *Agreement, misappropriation of trade secrets, or conversion asserted by ChromaDex;*  
27 *the claims for breach of the NR Supply Agreement and breach of the covenant of good*  
28 *faith and fair dealing implied in the NR Supply Agreement, fraudulent inducement*

1 relating to the Trademark License and Royalty Agreement, and patent misuse asserted  
2 by Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of  
3 ChromaDex's failure to comply with the cGMP Provision and its failure to comply  
4 with the Product Purity Provision through its sale of Niagen that was not produced in  
5 compliance with Pharmaceutical cGMPs and its failure to inform Elysium of  
6 information concerning the purity and the quality of the Niagen sold. Elysium further  
7 objects to the Request as seeking discovery that is disproportionate to the needs of the  
8 case. Elysium objects to this Request to the extent it seeks discovery of information or  
9 documents protected by the attorney-client privilege, the attorney work product  
10 doctrine, or any other applicable privileges and protections against disclosures.  
11 Elysium will produce no documents in response to this Request.

12 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 159:**

13 Elysium objects that the Request is vague and ambiguous with respect to the  
14 meaning of "regulatory consultants" and "regulatory filing or document going to the  
15 safety" Elysium also objects to this Request as overly broad and unduly burdensome,  
16 and seeking information that is irrelevant to any claim or defense of any party, as  
17 information relating to "the safety of any of [Elysium's] ingredients" bears no  
18 relationship to the contracts at issue in this action (i.e., the NR Supply Agreement, the  
19 pTeroPure Supply Agreement, and the Trademark License and Royalty Agreement);  
20 the claims for breach of the pTeroPure Supply Agreement and the NR Supply  
21 Agreement, or misappropriation of trade secrets asserted by ChromaDex; the claims  
22 for breach of the NR Supply Agreement and breach of the covenant of good faith and  
23 fair dealing implied in the NR Supply Agreement, fraudulent inducement relating to  
24 the Trademark License and Royalty Agreement, and patent misuse asserted by  
25 Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of  
26 ChromaDex's failure to comply with the cGMP Provision and its failure to comply  
27 with the Product Purity Provision through its sale of Niagen that was not produced in  
28 compliance with Pharmaceutical cGMPs and its failure to inform Elysium of

1 *information concerning the purity and the quality of the Niagen sold. Elysium further*  
2 *objects to the Request as seeking discovery that is disproportionate to the needs of the*  
3 *case. Elysium objects to this Request to the extent it seeks discovery of information or*  
4 *documents protected by the attorney-client privilege, the attorney work product*  
5 *doctrine, or any other applicable privileges and protections against disclosures.*  
6 *Elysium will produce no documents in response to this Request.*

7 ***SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION***  
8 ***NO. 159:***

9 *Elysium objects to the extent that the documents sought are not relevant in light*  
10 *of the Court’s July 27, 2018 Order, in which it dismissed ChromaDex’s fifth cause of*  
11 *action for conversion. Elysium objects that the Request is vague and ambiguous with*  
12 *respect to the meaning of “regulatory consultants” and “regulatory filing or*  
13 *document going to the safety.” Elysium also objects to this Request as overly broad*  
14 *and unduly burdensome, and seeking information that is irrelevant to any claim or*  
15 *defense of any party, as information relating to “the safety of any of [Elysium’s]*  
16 *ingredients” bears no relationship to the contracts at issue in this action (i.e., the NR*  
17 *Supply Agreement, the pTeroPure Supply Agreement, and the Trademark License and*  
18 *Royalty Agreement); the claims for breach of the pTeroPure Supply Agreement and*  
19 *the NR Supply Agreement, or misappropriation of trade secrets asserted by*  
20 *ChromaDex; the claims for breach of the NR Supply Agreement and breach of the*  
21 *covenant of good faith and fair dealing implied in the NR Supply Agreement,*  
22 *fraudulent inducement relating to the Trademark License and Royalty Agreement, and*  
23 *patent misuse asserted by Elysium; or any defenses. Nor is it related to the*  
24 *Counterclaims, which arise out of ChromaDex’s failure to comply with the cGMP*  
25 *Provision and its failure to comply with the Product Purity Provision through its sale*  
26 *of Niagen that was not produced in compliance with Pharmaceutical cGMPs and its*  
27 *failure to inform Elysium of information concerning the purity and the quality of the*  
28 *Niagen sold. Elysium further objects to the Request as seeking discovery that is*

1 *disproportionate to the needs of the case. Elysium objects to this Request to the extent*  
2 *it seeks discovery of information or documents protected by the attorney-client*  
3 *privilege, the attorney work product doctrine, or any other applicable privileges and*  
4 *protections against disclosures. Elysium will produce no documents in response to*  
5 *this Request.*

6 ***REQUEST FOR PRODUCTION NO. 160:***

7 *DOCUMENTS sufficient to show all invoices incurred for the purpose of*  
8 *preparing any regulatory filing or document described in Request No. 159.*

9 ***RESPONSE TO REQUEST FOR PRODUCTION NO. 160:***

10 *Elysium objects that the Request is vague and ambiguous with respect to the*  
11 *meaning of “regulatory filing or document.” Elysium also objects to this Request as*  
12 *overly broad and unduly burdensome, and seeking information that is irrelevant to*  
13 *any claim or defense of any party, as information relating to “invoices incurred for*  
14 *the purpose of preparing any regulatory filing or document” bears no relationship to*  
15 *the contracts at issue in this action (i.e., the NR Supply Agreement, the pTeroPure*  
16 *Supply Agreement, and the Trademark License and Royalty Agreement); the claims*  
17 *for breach of the pTeroPure Supply Agreement and the NR Supply Agreement,*  
18 *misappropriation of trade secrets, or conversion asserted by ChromaDex; the claims*  
19 *for breach of the NR Supply Agreement and breach of the covenant of good faith and*  
20 *fair dealing implied in the NR Supply Agreement, fraudulent inducement relating to*  
21 *the Trademark License and Royalty Agreement, and patent misuse asserted by*  
22 *Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of*  
23 *ChromaDex’s failure to comply with the cGMP Provision and its failure to comply*  
24 *with the Product Purity Provision through its sale of Niagen that was not produced in*  
25 *compliance with Pharmaceutical cGMPs and its failure to inform Elysium of*  
26 *information concerning the purity and the quality of the Niagen sold. Elysium further*  
27 *objects to the Request as seeking discovery that is disproportionate to the needs of the*  
28 *case. Elysium objects to this Request to the extent it seeks discovery of information or*

1 documents protected by the attorney-client privilege, the attorney work product  
2 doctrine, or any other applicable privileges and protections against disclosures.  
3 Elysium will produce no documents in response to this Request.

4 **AMENDED RESPONSE TO REQUEST FOR PRODUCTION NO. 160:**

5 Elysium objects that the Request is vague and ambiguous with respect to the  
6 meaning of “regulatory filing or document.” Elysium also objects to this Request as  
7 overly broad and unduly burdensome, and seeking information that is irrelevant to  
8 any claim or defense of any party, as information relating to “invoices incurred for  
9 the purpose of preparing any regulatory filing or document” bears no relationship to  
10 the contracts at issue in this action (i.e., the NR Supply Agreement, the pTeroPure  
11 Supply Agreement, and the Trademark License and Royalty Agreement); the claims  
12 for breach of the pTeroPure Supply Agreement and the NR Supply Agreement, or  
13 misappropriation of trade secrets asserted by ChromaDex; the claims for breach of  
14 the NR Supply Agreement and breach of the covenant of good faith and fair dealing  
15 implied in the NR Supply Agreement, fraudulent inducement relating to the  
16 Trademark License and Royalty Agreement, and patent misuse asserted by Elysium;  
17 or any defenses. Nor is it related to the Counterclaims, which arise out of  
18 ChromaDex’s failure to comply with the cGMP Provision and its failure to comply  
19 with the Product Purity Provision through its sale of Niagen that was not produced in  
20 compliance with Pharmaceutical cGMPs and its failure to inform Elysium of  
21 information concerning the purity and the quality of the Niagen sold. Elysium further  
22 objects to the Request as seeking discovery that is disproportionate to the needs of the  
23 case. Elysium objects to this Request to the extent it seeks discovery of information or  
24 documents protected by the attorney-client privilege, the attorney work product  
25 doctrine, or any other applicable privileges and protections against disclosures.  
26 Elysium will produce no documents in response to this Request.

27 **SECOND AMENDED RESPONSE TO REQUEST FOR PRODUCTION**  
28 **NO. 160:**



1           *Elysium objects to the extent that the documents sought are not relevant in light*  
2 *of the Court’s July 27, 2018 Order, in which it dismissed ChromaDex’s fifth cause of*  
3 *action for conversion. Elysium objects that the Request is vague and ambiguous with*  
4 *respect to the meaning of “regulatory filing or document.” Elysium also objects to*  
5 *this Request as overly broad and unduly burdensome, and seeking information that is*  
6 *irrelevant to any claim or defense of any party, as information relating to “invoices*  
7 *incurred for the purpose of preparing any regulatory filing or document” bears no*  
8 *relationship to the contracts at issue in this action (i.e., the NR Supply Agreement, the*  
9 *pTeroPure Supply Agreement, and the Trademark License and Royalty Agreement);*  
10 *the claims for breach of the pTeroPure Supply Agreement and the NR Supply*  
11 *Agreement, or misappropriation of trade secrets asserted by ChromaDex; the claims*  
12 *for breach of the NR Supply Agreement and breach of the covenant of good faith and*  
13 *fair dealing implied in the NR Supply Agreement, fraudulent inducement relating to*  
14 *the Trademark License and Royalty Agreement, and patent misuse asserted by*  
15 *Elysium; or any defenses. Nor is it related to the Counterclaims, which arise out of*  
16 *ChromaDex’s failure to comply with the cGMP Provision and its failure to comply*  
17 *with the Product Purity Provision through its sale of Niagen that was not produced in*  
18 *compliance with Pharmaceutical cGMPs and its failure to inform Elysium of*  
19 *information concerning the purity and the quality of the Niagen sold. Elysium further*  
20 *objects to the Request as seeking discovery that is disproportionate to the needs of the*  
21 *case. Elysium objects to this Request to the extent it seeks discovery of information or*  
22 *documents protected by the attorney-client privilege, the attorney work product*  
23 *doctrine, or any other applicable privileges and protections against disclosures.*  
24 *Elysium will produce no documents in response to this Request.*

25           **A. Legal Standard**

26                   **1. ChromaDex’s Contentions and Points of Authorities**

27           Rule 26(b)(1) states that “[p]arties may obtain discovery regarding any  
28 nonprivileged matter that is relevant to any party’s claim or defense and proportional

1 to the needs of the case . . . .” Fed. R. Civ. P. 26(b)(1). “Relevancy under Fed. R. Civ.  
2 P. 26 is liberally construed. To that end, discovery is ordinarily allowed under the  
3 concept of relevancy unless the information sought has no bearing on the claims and  
4 defenses of the parties.” *Caballero*, 2017 WL 3174931, at \*8. When determining  
5 whether discovery is “proportional to the needs of the case,” the Court must examine  
6 the information requested in light of six factors: “[1] the importance of the issues at  
7 stake in action, [2] the amount in controversy, [3] the parties’ relative access to  
8 relevant information, [4] the parties’ resources, [5] the importance of the discovery in  
9 resolving the issues, and [6] whether the burden or expense of the proposed discovery  
10 outweighs its likely benefit.” *Id.* at \*2. There is “a shared responsibility on all the  
11 parties to consider the factors bearing on proportionality . . . .” *Sperling v. Stein Mart,*  
12 *Inc.*, 2017 WL 90370, at \*1 (C.D. Cal. Jan. 10, 2017) (citation omitted).

13 “[G]eneral or boilerplate objections such as ‘overly burdensome and harassing’  
14 are improper—especially when a party fails to submit any evidentiary declarations  
15 supporting such objections.” *A. Farber*, 234 F.R.D. at 188. Thus, as to its  
16 proportionality objections, it is Elysium’s burden to come forward with specific  
17 information supporting the factors for which only it can have information, such as its  
18 resources and burden. *See Carr v. State Farm Mut. Auto. Ins. Co.*, 312 F.R.D. 459,  
19 468 (N.D. Tex. 2015) (“[A] party seeking to resist discovery on [proportionality]  
20 grounds still bears the burden of making a specific objection”).

21 The seemingly large number of ChromaDex’s Requests for Production (the  
22 “Requests”) at issue in this Motion underscores Elysium’s failure to fairly comply  
23 with its discovery obligations, and highlights Elysium’s repeated efforts to delay and  
24 conceal relevant evidence. Yet while ChromaDex’s Requests reach into the hundreds,  
25 that number pales in comparison to Elysium’s burdensome and overbroad requests,  
26 which have been served in seven distinct sets and now number 436. (Rios Decl. ¶ 2.)  
27 ChromaDex has willingly produced tens of thousands of documents in response to  
28 Elysium’s requests, but Elysium has refused to similarly cooperate, and instead has

1 stymied ChromaDex’s proper Requests.

2 Elysium’s refusals to produce the requested documents are not justified.  
3 Elysium has not met the burden of showing that any of the requested discovery is not  
4 relevant or proportional to the needs of the case. The documents ChromaDex has  
5 requested are relevant because they concern issues central to the parties’ claims and  
6 defenses. Elysium has also failed to substantiate its proportionality objections. Despite  
7 specific inquiries from ChromaDex regarding Elysium’s purported burden for  
8 producing the requested material, Elysium has—at the time ChromaDex’s portion of  
9 this joint stipulation was served on Elysium—provided no specific grounds detailing  
10 any burden whatsoever. (*Id.* ¶ 17.) ChromaDex even provided suggested search terms  
11 for Elysium to apply to the material in its database, but Elysium has refused to  
12 respond as to whether it has attempted to apply those search terms or the amount of  
13 documents responsive to those search terms, let alone provide an explanation of how  
14 that number would make providing the documents not proportional to the needs of the  
15 case here. (*Id.* ¶ 8.) Elysium has thus failed to make a specific proportionality  
16 objection as to any of the Requests. *Carr*, 312 F.R.D. 459, 468 (N.D. Tex. 2015).

17 Elysium’s continued delays are prejudicial to ChromaDex and have left  
18 ChromaDex no choice but to proceed with this Motion. ChromaDex noticed this  
19 Motion on September 20, 2018. (Rios Decl. ¶ 7.) The parties met and conferred on  
20 October 2, 2018, in a good-faith effort to resolve the disputes between the parties. (*Id.*  
21 ¶ 8.) Later that day, counsel for ChromaDex provided Elysium with additional  
22 authority in support of its Motion and proposed search terms for many of the Requests  
23 at issue. (*Id.*) Elysium never responded regarding its application of the search terms  
24 and the parties did not resolve any of the remaining disputes. (*Id.*) In any event,  
25 ChromaDex’s Requests are relevant and proportional to the needs of the case, for the  
26 reasons explained below. Thus, ChromaDex moves the Court for an order compelling  
27 Elysium to produce documents in response to the Requests and narrowed Requests  
28 through February 28, 2018—the parties agreed discovery cutoff. (*Id.* ¶ 4.)

1                   **2. Elysium’s Contentions and Points of Authorities**

2           ChromaDex is engaged in an impermissible fishing expedition and its Motion to  
3 Compel should be denied for three main reasons: (1) the discovery sought is not  
4 relevant, (2) the discovery sought is cumulative and duplicative of discovery requests  
5 in response to which Elysium has already produced relevant documents, and (3) the  
6 discovery sought is not proportional to the needs of the case.

7           *First*, ChromaDex impermissibly seeks documents relating to a dismissed  
8 claim, as well as discovery it hopes might help it to develop new claims. Limitations  
9 on discovery to “‘relevant’ materials must be ‘firmly applied’ as ‘the discovery  
10 provisions, like all of the Federal Rules of Civil Procedure, are subject to the  
11 injunction of Rule 1 that they ‘be construed to secure the *just, speedy, and inexpensive*  
12 *determination of every action.*”” *Mailhoit v. Home Depot U.S.A., Inc.*, 285 F.R.D.  
13 566, 569 (C.D. Cal. 2012) (quoting *Herbert v. Lando*, 441 U.S. 153, 177 (1979))  
14 (emphasis in original). Though seemingly broad, Rule 26(b) limits discovery to  
15 information that is non-privileged and relevant to the claim or defense of any party.  
16 Fed. R. Civ. P. 26(b)(1). “Fishing expeditions to discover new claims, however, is not  
17 permitted.” *Bryant v. Mattel, et al.*, CV 04-09059, 2007 WL 5432959, at \*3 (C.D. Cal.  
18 Apr. 19, 2007) (citing Fed. R. Civ. P. 26(b)(1); *Rivera v. NIBCO, Inc.*, 364 F.3d 1057,  
19 1072 (9th Cir.2004); *Bernstein v. Travelers Ins. Co.*, 447 F. Supp. 2d 1100, 1102  
20 (N.D.Cal.2006)), and no party is entitled to discovery on a claim that was dismissed.  
21 *GMAC Real Estate, LLC v. Gate City Real Estate Pocatello, Inc.*, No. CV-05-520-E-  
22 BLW, 2008 WL 711203, at \*3 (D. Idaho Mar. 13, 2008) (denying motion to compel  
23 insofar as it sought information relating to dismissed claim and “therefore does not  
24 seek information that is relevant.”). Moreover “[t]he district court enjoys broad  
25 discretion when resolving discovery disputes, which should be exercised by  
26 determining the relevance of discovery requests, assessing oppressiveness, and  
27 weighing these factors in deciding whether discovery should be compelled.”  
28 *Mailhoit*, 285 F.R.D. at 571 (quoting *Favale v. Roman Catholic Diocese of*

1 *Bridgeport*, 235 F.R.D. 553, 558 (D. Conn. 2006)). Here, ChromaDex seeks to  
2 circumvent the Court’s Order dismissing its conversion claim by seeking discovery  
3 that relates only to that dismissed claim. In contrast, Elysium itself amended and  
4 withdrew requests for production that were subject to the conversion claim once this  
5 Court issued its Order dismissing the claim with prejudice. (Declaration of Elizabeth  
6 Treckler, dated October 22, 2018 (“Treckler Decl.”) Exhibit (“Ex.”) 1 at 2 n.1, 3 n.4;  
7 Ex. 2 at 1-2; Ex. 3 at 1.)

8 *Second*, ChromaDex’s requests are duplicative and cumulative of prior requests  
9 in response to which Elysium has produced documents, as detailed below. To the  
10 extent that any of the document requests call for documents that are relevant to the  
11 claims and defenses in this action, Elysium has produced any such non-privileged  
12 documents. Thus, there is nothing for ChromaDex to compel.

13 *Third*, ChromaDex’s requests are not proportional to the needs of the case. The  
14 amended Rule 26(b) states that discovery must be “proportional to the needs of the  
15 case, considering the importance of the issues at stake in the action, the amount in  
16 controversy, the parties’ relative access to relevant information, the parties’ resources,  
17 the importance of the discovery in resolving the issues, and whether the burden or  
18 expense of the proposed discovery outweighs its likely benefit.” *Ortolani v. Freedom*  
19 *Mortg. Corp.*, Case No. 17-1462, 2018 WL 1662510, at \*2 (C.D. Cal. Apr. 4, 2018).  
20 The burden to determine proportionality is shared among the parties and the court.  
21 *See Menell v. Rialto Unified Sch. Dist.*, Case No. EDCV 15-2124, 2016 WL 3452920,  
22 at \*1 (C.D. Cal. June 20, 2016) (“[t]he parties and the court have a collective  
23 responsibility to consider the proportionality of all discovery and consider it in  
24 resolving discovery disputes.”) (citing Fed. R. Civ. P. 26 advisory committee notes  
25 (2015 amendments)). Thus, there is “a shared responsibility on all the parties to  
26 consider the factors bearing on proportionality before propounding discovery requests,  
27 issuing responses and objections, or raising discovery disputes before the courts.” *Id.*  
28 Notably, “relevancy alone is no longer sufficient to obtain discovery, the discovery

1 requested must also be proportional to the needs of the case.” *Lopez v. Sanchez*, Case  
2 No. EDCV 16-1527, 2017 WL 901890, at \*2 (C.D. Cal. Mar. 7, 2017) (quoting  
3 *Centeno v. City of Fresno*, No. 1:16-CV-653 DAD SAB, 2016 WL 7491634, at \*4  
4 (E.D. Cal. Dec. 29, 2016)).

5 By demanding the production of materials relating to Elysium’s receipt,  
6 treatment of, and use of documents relevant only to the now nonexistent conversion  
7 claim, ChromaDex seeks to effectively double the amount of discovery Elysium has  
8 produced in response to ChromaDex’s requests that relate to the viable claims alleged  
9 in ChromaDex’s Fourth Amended Complaint (the “FAC”). Moreover, requests  
10 relating to the dismissed conversion claim call for the production of documents  
11 relating to aspects of Elysium’s business and operations that otherwise have no  
12 relationship to this litigation, such as “all” documents relating to investments in  
13 Elysium by – or even mere indications of “interest” received from – certain  
14 investors. (*See* Request No. 152.) A preliminary investigation has confirmed that  
15 these Requests impose a disproportionate burden and require review of thousands of  
16 additional documents. (Treckler Decl. Ex. 4 at 3.)

17 Elysium has already produced tens of thousands of documents in connection  
18 with the more than 180 discovery requests that ChromaDex has served. ChromaDex  
19 accuses Elysium of gamesmanship and “wrongful delay” because it made a  
20 supposedly large production of documents to ChromaDex on April 2, 2018. Given  
21 that production was almost seven months ago (and more than nine months before the  
22 close of discovery on December 21, 2018), its argument is nonsensical.<sup>2</sup> Equally  
23 unavailing is ChromaDex’s accusation that Elysium has lodged boilerplate objections,  
24

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25 <sup>2</sup> ChromaDex also accuses Elysium of violating this Court’s December 20 Order,  
26 albeit only through bare assertions unsupported by evidence, and omits the full story.  
27 Subsequent to the Court’s Order and Elysium’s production of documents to  
28 ChromaDex in response to that Order, the parties, through negotiations, added  
additional custodians and expanded the time period for production, which resulted in  
the production of additional documents. Elysium will not further burden the Court  
with a response to conclusory allegations that are irrelevant to this Motion.

1 when a simple review of the responses, quoted above, reveal that Elysium articulated  
2 precisely why production would be overly burdensome and harassing. (*See, e.g.*,  
3 Elysium’s Responses and Objections to Request Nos. 143, 145, 146, 148, 150, 152,  
4 153, 154, 159, 160.)

5 **B. Requests For Production Relevant to Proprietary and Confidential**  
6 **Materials Elysium Misappropriated (Request Nos. 141, 143, 144, 145,**  
7 **146, 148, 149, 150, 151, 152, 153, 154, 155, 159, and 160).**

8 **1. ChromaDex’s Contentions and Points of Authorities**

9 ChromaDex moves the Court to compel Elysium to produce documents that are  
10 relevant to ChromaDex’s claim for misappropriation of trade secrets, as well as  
11 ChromaDex’s claims for breaches of the confidentiality provisions of the parties’  
12 supply agreements and impeaching the credibility of Elysium’s witnesses. In its  
13 Fourth Amended Complaint (“FAC”), filed on June 29, 2019, ChromaDex brought  
14 new claims against Elysium for trade secret misappropriation, conversion, and breach  
15 of the confidentiality provisions in the parties’ Supply Agreements. (Rios Decl. Ex.  
16 A.) On July 26, 2018, the Court sustained ChromaDex’s new claims for trade secret  
17 misappropriation and breach of confidentiality over Elysium’s Motion to Dismiss  
18 them (the “July 26 Order”). (ECF 115, Rios Decl. Ex. C.) ChromaDex alleges that  
19 Mark Morris (“Morris”), ChromaDex’s former Vice President of Business  
20 Development, acted as Elysium’s inside agent at ChromaDex in May of 2016 and  
21 continuing until he terminated his employment on July 15, 2016 and began working  
22 for Elysium immediately thereafter. (Rios Decl. Ex. A ¶¶ 4, 30, 50.) In addition to  
23 helping Elysium successfully place \$3 million in product orders from ChromaDex in  
24 June 2016 (for which Elysium never paid), ChromaDex alleges that Morris  
25 transmitted confidential and trade secret information to Elysium both during and after  
26 his employment with ChromaDex. (*Id.* ¶¶ 7, 30, 34, 39, 73, 75, 76, 77.) On August 10,  
27 2016, another senior ChromaDex employee, Ryan Dellinger, also quit at the direction  
28 of Elysium and immediately began working for Elysium. (*Id.* ¶¶ 50, 98.)

Before he quit, Morris saved a copy of ChromaDex’s highly-valued “Ingredient

1 Sales Spreadsheet” and handed it to Elysium the Monday after he terminated his  
2 employment. (*Id.* ¶ 77.) “The Ingredient Sales Spreadsheet is the highly-confidential  
3 central document at ChromaDex tracking all sales for all ingredients by quarter since  
4 2012. The spreadsheet contains the detailed purchasing history of every customer who  
5 purchased any ingredient from ChromaDex—including customer names, prices,  
6 volumes, and dates of purchases.” (*Id.* ¶ 77.) However, the Ingredient Sales  
7 Spreadsheet is not the only document ChromaDex’s former employees helped  
8 Elysium misappropriate. ChromaDex alleges that Elysium misappropriated *seven*  
9 *additional* ChromaDex documents: (1) the “NRCl Process” (*id.* ¶ 75), (2) the “NR  
10 Specifications” (*id.* ¶ 90), (3) the “NRCl Analytical Method” (*id.* ¶¶ 88, 93), (4) the  
11 report regarding pTeroPure’s Generally Recognized As Safe (“GRAS”) status (*id.* ¶  
12 109), (5) the “NR Presentation” (*id.* ¶ 102), (6) the “Pterostilbene Presentation” (*id.* ¶  
13 102), and (7) the information contained in the “Pricing Spreadsheet” (*id.* ¶ 73).<sup>3</sup>  
14 Elysium misappropriated all of these documents with the help of Morris or Dellinger.  
15 Further, ChromaDex alleges that Elysium wrongfully disclosed several of these  
16 documents in violation of the confidentiality obligations contained in the parties’  
17 supply agreements. (Rios Decl. Ex. A ¶¶ 129, 139, 143, 146.)

18 ChromaDex’s amended allegations were informed mainly by Elysium’s  
19 document production on April 2, 2018 (“April 2 Production”)—the production with  
20 which Elysium represented it had substantially completed document production in  
21 response to ChromaDex’s first round of document requests. (Rios Decl. ¶ 10.)  
22 Elysium repeatedly confirmed that it would not hold back documents for an enormous  
23 “document dump” right at the end, but notwithstanding those promises, the April 2  
24

25 <sup>3</sup> ChromaDex recently discovered an *eighth additional* document that Elysium  
26 misappropriated: ChromaDex’s NIAGEN Investigator’s Brochure. (Rios Decl. ¶ 16.)  
27 That confidential document was incorporated verbatim into Elysium’s “Basis  
28 Investigator’s Brochure,” labeled as Elysium’s property, and then distributed to third  
parties. (*Id.*) Given Elysium’s continued efforts to avoid its discovery obligations,  
there may be yet more documents that Elysium has stolen from ChromaDex that have  
yet to come to light.



1 Production was Elysium’s single largest document production and was equal to 40%  
2 of the total documents Elysium produced by that date. (*Id.*) As ChromaDex reviewed  
3 the April 2 Production, it became clear that Elysium had improperly withheld the most  
4 damaging documents for as long as it could. Such documents included ChromaDex’s  
5 trade secret, the Ingredient Sales Spreadsheet. (*Id.*) The April 2 Production also  
6 included documents revealing that Elysium had breached the confidentiality  
7 provisions of the NIAGEN Supply Agreement in its quest to obtain an alternate source  
8 of NR, and hundreds more documents related to Elysium’s alternate source of NR. (*Id.*  
9 ¶¶ 10, 11.)

10 Notably, Elysium’s wrongful delay in producing the hundreds of documents on  
11 its alternate source of NR constitutes a violation of this Court’s December 20, 2017  
12 Order (the “December 20 Order”). (ECF 81, Rios Decl. Ex. D.) ChromaDex  
13 previously moved to compel Elysium to produce documents concerning its alternate  
14 source of NR, and the Court granted that motion and ordered Elysium to produce all  
15 responsive documents concerning its alternate source of NR by January 10, 2018. (*Id.*  
16 at 130) However, Elysium produced hundreds of documents responsive to the  
17 December 20 Order on April 2, 2018, and has continued to produce responsive  
18 documents as recently as August 28, 2018. (Rios Decl. ¶ 11.) And, after the April 2  
19 Production, it became clear that Elysium withheld the most damaging of those  
20 documents for *three months*. The prejudice to ChromaDex is clear, and underscores  
21 Elysium’s bad-faith discovery gamesmanship over the course of this litigation.<sup>4</sup>

22 On July 9, 2018, Elysium moved to dismiss ChromaDex’s new claims. In the  
23 July 26 Order, the Court granted in part and denied in part Elysium’s motion. (Rios  
24 Decl. Ex C.) First, the Court dismissed ChromaDex’s conversion claim, but only on  
25 the ground that it was superseded by the California Uniform Trade Secrets Act  
26 (“CUTSA”). (*Id.* at 124-25) Second, the Court denied Elysium’s motion as to the

27 \_\_\_\_\_  
28 <sup>4</sup> ChromaDex reserves all of its rights to seek sanctions against Elysium for its violation of the Court’s December 20 Order.

1 trade secret misappropriation and breach of confidentiality claims, finding that  
2 ChromaDex had sufficiently pleaded both and could fully prosecute its claims before  
3 this Court, including by taking discovery. (*Id.* at 125 n.2, 126-27.)

4 The ChromaDex Requests at issue here generally seek documents concerning  
5 ChromaDex documents that Elysium misappropriated or wrongfully disclosed to third  
6 parties, Elysium's use and reliance on those documents, the extent to which Elysium  
7 benefitted from the use of those ChromaDex documents, copies of ChromaDex  
8 documents improperly maintained by ChromaDex's former employees who are now  
9 Elysium employees, Elysium's terms of employment with those former ChromaDex  
10 employees, and Elysium's understanding of those former ChromaDex employees'  
11 confidentiality obligations to ChromaDex. These documents are all relevant to  
12 ChromaDex's trade secret misappropriation claim, and each Request is relevant on  
13 specific other grounds as well.

14 *First*, with respect to relevance under the trade secret misappropriation claim,  
15 the documents are relevant to showing Elysium's intent to misappropriate  
16 ChromaDex's trade secrets and its general pattern and practice of doing so.  
17 ChromaDex alleges Elysium's overarching scheme to destroy ChromaDex, in part  
18 through the theft and misuse of its material. Elysium denies those allegations, and thus  
19 ChromaDex is entitled to discovery to reveal the full scope of Elysium's misconduct.<sup>5</sup>

20 *Second*, the documents are relevant to ChromaDex's claim for punitive  
21 damages against Elysium, and will help establish Elysium's malicious and willful  
22 theft of ChromaDex trade secrets. Under CUTSA, "[i]f willful and malicious

23 \_\_\_\_\_  
24 <sup>5</sup> All Requests except for Request Nos. 150, 152, and 160, which seek to discover how  
25 Elysium benefited from the misappropriation of ChromaDex's business information,  
26 could result in the discovery of additional misappropriation by Elysium. While the  
27 phrase "may lead to the discovery of relevant evidence" was removed from Federal  
28 Rule of Civil Procedure 26 in 2015, the 2015 amendments did not alter the scope of  
relevancy for document discovery. *See, e.g., Henry v. Morgan's Hotel Grp., Inc.*, 2016  
WL 303114, at \*3 (S.D.N.Y. Jan. 25, 2016) ("Under the amended Rule, '[r]elevance  
is still to be 'construed broadly to encompass any matter that bears on, or that  
reasonably could lead to other matter that could bear on' any party's claim or  
defense.'" (alteration in the original)).

1 misappropriation exists, the court may award exemplary damages in an amount not  
2 exceeding twice” the compensatory award. Cal. Civ. Code § 3426.3. “Though the  
3 existence of willful and malicious misappropriation is ordinarily considered a fact that  
4 a jury must find by clear and convincing evidence, the court calculates the amount of  
5 exemplary damages.” *Mattel, Inc. v. MGA Entm’t, Inc.*, 801 F. Supp. 2d 950, 953  
6 (C.D. Cal. 2011). An award of exemplary damages under CUTSA “must reasonably  
7 correspond with the reprehensibility of the misconduct, the harm or potential harm  
8 suffered by the plaintiff, and civil penalties authorized or imposed in comparable  
9 cases.” *Id.* “To determine if, and to what extent, misconduct is reprehensible, courts  
10 must consider,” among other factors, “*whether . . . the misconduct was repeated.*” *Id.*  
11 at 953-54 (citing *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419  
12 (2003)) (emphasis added). Other district courts have held that “U.S. Supreme Court  
13 decisions make clear [that] past similar conduct is relevant to determine whether  
14 [d]efendants’ conduct was reprehensible.” *City of San Diego v. Kinder Morgan*  
15 *Energy Partners*, 2011 WL 5827206, at \*2 (S.D. Cal. Nov. 18, 2011), *on*  
16 *reconsideration in part*, 2012 WL 12884789 (S.D. Cal. Feb. 7, 2012). Thus even  
17 where there was a “lack of available evidence . . . suggesting that [d]efendants’  
18 conduct was reprehensible,” courts have found that “[p]laintiffs are nonetheless  
19 entitled to reasonably explore through the discovery process, the existence of such  
20 facts, or facts that are likely to lead to admissible evidence that establish [d]efendants’  
21 alleged reprehensible conduct.” *Id.*

22 Under this clear authority, ChromaDex’s Requests seek documents that will  
23 shed light on both (1) Elysium’s willful and malicious misappropriation of  
24 ChromaDex documents, and (2) whether the misappropriation was repeated, as  
25 necessary for the Court to determine the amount of exemplary damages to which  
26 ChromaDex is entitled. Elysium’s productions are replete with evidence that Elysium  
27 misappropriated ChromaDex documents; Elysium’s refusal to produce documents  
28 concerning additional instances where it misappropriated ChromaDex’s documents

1 and information is merely Elysium’s attempt to hide further damaging information.  
2 Those documents will likely show that Elysium’s misappropriation of the Ingredient  
3 Sales Spreadsheet was not an accident, but part of a willful and malicious pattern and  
4 practice executed by Elysium to financially harm ChromaDex, take its place in the  
5 market, and obtain an alternate source of NR. This “repeated misconduct is more  
6 reprehensible than an individual instance of malfeasance,” and is relevant to punitive  
7 damages. *State Farm*, 538 U.S. at 423 (citation omitted). The documents will also  
8 allow ChromaDex to rebut Elysium’s anticipated argument that it did not, or would  
9 not have, willfully misappropriated the Ingredient Sales Spreadsheet. The Requests  
10 are both plainly relevant and critical to ChromaDex’s claim for punitive damages.

11 The documents ChromaDex seeks are relevant regardless of whether or not the  
12 other information Elysium misappropriated was a trade secret under CUTSA. For  
13 example, in *Mattel*, in determining the award of exemplary damages, the court  
14 considered evidence on a broad array of Mattel’s wrongful acts, not just its  
15 misappropriation of trade secrets. In the decision, the Court noted that:

16 Mattel’s conduct fell far short of basic ethical standards. For  
17 years, the company’s senior management encouraged  
18 employees to use false pretenses to access competitors’  
19 private displays at international toy fairs and improperly  
20 acquire competitive information, including price lists,  
21 advertising plans, and unreleased product attributes. Mattel  
22 disseminated the improperly acquired information through  
23 internal memoranda, and company-wide presentations,  
praised the employees that committed the wrongdoing, used  
MGA’s trade secret information to preempt MGA’s  
unreleased products, and reaped \$85 million in unjust  
enrichment. . . . Faced with competition and innovation that  
it ‘didn’t relish,’ Mattel resorted to nefarious tactics in an  
attempt to cling to its market position.

24 *Mattel*, 801 F. Supp. 2d at 954–55 (internal citations omitted). While some of the  
25 conduct at issue in *Mattel* did not reach the level of trade secret misappropriation, the  
26 court nevertheless found that conduct relevant in determining exemplary damages for  
27 willful and malicious trade secret misappropriation. The Court should allow  
28 ChromaDex its requested discovery so that ChromaDex can establish the same

1 misconduct on Elysium’s part.

2 Elysium bases its refusal to respond to ChromaDex’s Requests concerning that  
3 misappropriated material entirely on the July 26 Order. (Rios Decl. Ex. E.) Elysium’s  
4 incorrect position is that discovery concerning the other documents it stole from  
5 ChromaDex is now irrelevant because the conversion claim was “entirely  
6 unconnected” to ChromaDex’s claim for trade secret misappropriation. (*Id.* at 132.)  
7 But the July 26 Order did not find that those responsive documents are suddenly  
8 irrelevant simply because a legal doctrine prevents ChromaDex from pursuing  
9 Elysium’s obvious theft of its non-trade secret material via a conversion claim. To the  
10 contrary, the Court necessarily drew a direct connection between ChromaDex’s trade  
11 secret misappropriation claim and the documents that Elysium took, stating that “the  
12 allegations in support of the conversion claim allege conduct that clearly amount to  
13 **misappropriation** of ChromaDex’s business information.” (Rios Decl. Ex. C at 124-  
14 25 (emphasis added).) The Court thus recognized that, at a minimum, the documents  
15 ChromaDex alleges Elysium converted were the subject to similar acts of misconduct  
16 by Elysium, i.e., misappropriation, and are thus relevant to ChromaDex’s trade secret  
17 misappropriation claim.

18 The cases cited by Elysium in correspondence—*GMAC Real Estate, LLC v.*  
19 *Gate City Real Estate Pocatello, Inc.*, 2008 WL 711203 (D. Idaho Mar. 13, 2008), and  
20 *Hupp v. San Diego Cty.*, 2014 WL 2480586 (S.D. Cal. June 3, 2014)—do not hold  
21 otherwise. (Rios Decl. Ex. E.) Those cases merely rule that, if a claim is dismissed  
22 and there are no other grounds for a document’s relevance to the case, then the  
23 document need not be produced. Neither of those cases address a situation where, as  
24 here, the discovery sought is relevant to other claims or defenses in the litigation.  
25 Tellingly, the court in *Hupp*—a case relied on by Elysium—specifically held that the  
26 discovery at issue would have been proper if it has been “salient to Hupp’s  
27 prosecution of his surviving claims.” 2014 WL 2480586 at \*6. That is the case here.

28 At bottom, Elysium’s misguided attempt to restrict ChromaDex’s discovery to a

1 narrow set of material only concerning the Ingredient Sales Spreadsheet itself is yet  
2 another attempt to prevent ChromaDex from discovering the full scope of Elysium’s  
3 wrongdoing. These same dilatory tactics are what led to ChromaDex filing its first  
4 motion to compel. And when Elysium finally got around to producing most of the  
5 documents this Court ordered it to produce ChromaDex found the smoking gun  
6 evidence of Elysium’s and its former employees’ coordinated misappropriation and  
7 wrongful disclosures of ChromaDex’s confidential documents. Now, Elysium  
8 outrageously claims that it need not produce evidence of its misconduct and scheme of  
9 stealing ChromaDex documents. That is not the law. ChromaDex is entitled to  
10 discover the extent of Elysium’s wrongful misappropriation and disclosure of its  
11 documents, and to learn exactly how Elysium used and commanded ChromaDex’s  
12 former employees to assist in that effort.

13 For those reasons, the Court should grant ChromaDex’s Motion because the  
14 Requests are relevant to ChromaDex’s claim for trade secret misappropriation. But  
15 the Court may also grant the Motion for the additional, Request-specific reasons  
16 explained below.

17 **a. Request Nos. 141 and 143.**

18 The Requests concern documents that Mark Morris, a former ChromaDex-  
19 turned-Elysium employee, took with him when he changed employers. Elysium has  
20 agreed to produce documents concerning Morris’s disclosure of ChromaDex’s trade  
21 secrets, but still refuses to produce documents concerning any other ChromaDex  
22 documents (Request No. 143) or information (Request No. 141) that Morris  
23 wrongfully disclosed to Elysium. As discussed above, Elysium improperly asserts that  
24 the July 26 Order renders request for these documents irrelevant. In addition to  
25 reasons above, these Requests are relevant for five more reasons.

26 *First*, ChromaDex is entitled to learn the full scope of the documents Morris  
27 took with him from ChromaDex to Elysium, because they are relevant in assessing  
28 Morris’s motive and intent. The Ingredient Sales Spreadsheet—the very heart of

1 ChromaDex’s entire sales business—first appeared on Elysium’s servers on July 18,  
2 2016, the same day Morris arrived in New York to meet with Elysium after  
3 terminating his employment with ChromaDex. Elysium has still not produced any  
4 document showing how the Ingredient Sales Spreadsheet was transferred to its  
5 servers, despite ChromaDex’s repeated efforts to discover that information. Other  
6 documents taken by Morris at the same time may have been transferred by the same  
7 method and discovering them will shed light on his efforts.<sup>6</sup>

8 *Second*, the requested documents, and material relating to those documents, are  
9 also relevant to understanding Morris’s improper purpose for bringing the Ingredient  
10 Sales Spreadsheet to Elysium. For example, when Morris took all of the ChromaDex  
11 documents, he certainly did not discriminate by whether the documents would later be  
12 legally ruled trade secrets (if he even understood that distinction); he simply stole  
13 whatever confidential ChromaDex information that he thought would be important to  
14 Elysium. ChromaDex’s Requests are thus targeted to determining what his motive  
15 was for stealing them. And the documents may also shed light on Elysium’s purpose  
16 for ordering Morris to steal ChromaDex’s trade secrets. For example, Elysium may  
17 have wanted the information to use against ChromaDex in the parties’ contract  
18 dispute, or to learn detailed and confidential information about ChromaDex’s  
19 customers (and Elysium’s competitors). Or it could be both, or additional as-yet-  
20 unknown reasons. ChromaDex must see the documents to know Elysium’s improper  
21 motives, and thus to prove its case.

22 *Third*, the documents Morris stole from ChromaDex are likely to evidence that  
23 Elysium engaged in a pattern and practice of misappropriating ChromaDex documents  
24 and information through ChromaDex’s former employees. Elysium has not produced  
25

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26 <sup>6</sup> The requested documents may also lead to the discovery of further trade secret  
27 misappropriation by Elysium, which is additional grounds for their relevance. *See,*  
28 *e.g., Henry*, 2016 WL 303114, at \*3 (relevance is construed “to encompass any matter  
that bears on, or that reasonably could lead to other matter that could bear on’ any  
party’s claim or defense”).

1 documents showing how it came into possession of other ChromaDex documents,  
2 such as investor presentations concerning NIAGEN and another ChromaDex  
3 ingredient called pTeroPure. (Rios Decl. Ex. A ¶ 103.) Documents showing that  
4 Elysium misappropriated these presentations through Morris are relevant to  
5 supporting ChromaDex claim that Elysium also misappropriated the Ingredient Sales  
6 Spreadsheet through Morris.

7 *Fourth*, the documents are relevant to ChromaDex’s defense that Elysium has  
8 unclean hands with respect to Elysium’s counterclaims that ChromaDex breached the  
9 NIAGEN Supply Agreement. Elysium alleges that ChromaDex breached the  
10 NIAGEN Supply Agreement by (1) failing to give Elysium the lowest price for  
11 NIAGEN when it purportedly became ChromaDex’s largest NIAGEN customer, and  
12 (2) failing to ensure that Elysium was the exclusive retailer of products that combined  
13 NIAGEN and pTeroPure, or any substantially similar ingredients. (Rios Decl. Ex. B  
14 ¶¶ 64–66, 81, 83). ChromaDex denies these allegations. However, Elysium has  
15 produced documents showing that Morris wrongfully conveyed confidential  
16 ChromaDex information to Elysium regarding the volumes and prices of other  
17 ChromaDex customer’s NIAGEN purchases—while he was still a ChromaDex  
18 employee—for the purpose of aiding Elysium as it sought to develop allegations that  
19 ChromaDex breached the NIAGEN Supply Agreement and to give Elysium leverage  
20 over ChromaDex in the coming contract dispute. (Rios Decl. Ex. A ¶ 23.) Elysium  
21 has produced further documents that Morris also conveyed confidential ChromaDex  
22 information to Elysium for the purposes of informing its claim under the exclusivity  
23 provision of the NIAGEN Supply Agreement. (Rios Decl. ¶ 14.) Therefore, with  
24 respect to ChromaDex’s unclean hands defense, it is critical for ChromaDex to  
25 discover documents showing that Elysium knew or should have known that it was  
26 wrong to encourage a ChromaDex employee to send that information and that it was  
27 wrong for it to receive and use such information to craft the very allegations of breach  
28 it brings in this action. Thus, the content of the other documents and information



1 Morris wrongfully conveyed to Elysium may help inform ChromaDex's defense.<sup>7</sup>

2 *Fifth*, evidence of the full scope of documents that Morris took with him when  
3 he left ChromaDex after more than seven years of employment are relevant to  
4 impeaching Morris's credibility as a witness. For example, Morris may claim that he  
5 did not intend to harm ChromaDex or that he did not take information which he  
6 believed was valuable. Morris may also offer reasons why he left ChromaDex.  
7 ChromaDex will be at a distinct disadvantage to combat such claims if it blocked from  
8 discovering what Morris took with him when he left. *Oakes v. Halvorsen Marine Ltd.*,  
9 179 F.R.D. 281, 283 (C.D. Cal. 1998) ("Rule 26 . . . permits the discovery of  
10 information which may simply relate to the credibility of a witness or other evidence  
11 in the case.").

12 Request Nos. 141 and 143 are also proportional to the needs of the case. The  
13 documents and information Morris misappropriated lie at the heart of ChromaDex's  
14 claim for trade secret misappropriation, and are thus relevant. For its part, Elysium  
15 has failed to provide any information concerning the purported burden in responding  
16 to these Requests. *A. Farber*, 234 F.R.D. at 188. Elysium's failure to provide its  
17 burden is likely because such a burden is minimal; the Requests are targeted to  
18 ChromaDex documents and information communicated by Morris to Elysium, a  
19 universe of documents that is easily collected. Insofar as there is a larger than  
20 suspected burden, it could only be because Elysium has used ChromaDex documents  
21 and information so extensively to further its own business that it cannot distinguish  
22 between ChromaDex and Elysium information any longer. In that case, the burden  
23

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24 <sup>7</sup> In correspondence, Elysium relied on *Kaiser Foundation Hospitals v. Superior*  
25 *Court*, 128 Cal. App. 4th 85, 111 (2005) to argue that ChromaDex may not obtain  
26 discovery related to misconduct during the parties contract dispute to support its  
27 unclean hands defense. (Rios Decl. Ex. E at 134.) But the court in *Kaiser* merely held  
28 that the plaintiff could not assert an unclean hands defense based on the existence of a  
duty which the Court had already found not to exist. *Kaiser*, 128 Cal. App. 4th at 111.  
The Court has made no such finding here, and Elysium's duty to refrain from  
interfering in ChromaDex's employees' confidentiality agreements and duties of  
loyalty cannot be denied.

1 would be entirely Elysium's fault and cannot be grounds to refuse to produce relevant  
2 and responsive documents. Therefore, because Request Nos. 141 and 143 are both  
3 relevant and proportional, Elysium should be compelled to produce responsive  
4 documents to the Requests in full.

5 **b. Request Nos. 144, 145, 146, and 148.**

6 These Requests seek documents concerning Elysium's relationship with Ryan  
7 Dellinger, ChromaDex's former Director of Scientific Affairs and Elysium's present  
8 Director of Scientific Affairs. Like Morris, Dellinger abruptly quit his position at  
9 ChromaDex and mislead ChromaDex as to the reasons for his departure. (Rios Decl.  
10 Ex. A ¶¶ 50, 98.) Once at Elysium, Dellinger assisted Elysium in its misappropriation  
11 of ChromaDex documents such as the NR Presentation, the Pterostilbene Presentation,  
12 and the pTeroPure GRAS Report. (*Id.* ¶¶ 103, 106, 109.)

13 Elysium refuses to produce any documents concerning the terms of Dellinger's  
14 employment with Elysium (Request No. 144), Elysium's knowledge of Dellinger's  
15 duties of confidentiality and loyalty to ChromaDex (Request No. 145), Dellinger's  
16 disclosure of ChromaDex information to Elysium (Request No. 146), and ChromaDex  
17 documents and information Dellinger maintained in his possession after he terminated  
18 his employment with ChromaDex (Request No. 148). As discussed in Section II.B.1,  
19 *supra*, Elysium improperly asserts that in light of the July 26 Order, these Requests  
20 are no longer relevant. Elysium is wrong, for the reasons already discussed, and for  
21 the additional four reasons below.

22 *First*, documents concerning the terms of Dellinger's employment with Elysium  
23 are relevant to impeaching Dellinger's credibility and determining whether Elysium  
24 complied with its preservation obligations in this action. When he left, Dellinger told  
25 ChromaDex specific reasons why he quit, and he may offer additional reasons when  
26 he testifies. (Rios Decl. ¶ 15.) Documents concerning his employment with Elysium,  
27 including Elysium's offer of employment, may reveal Dellinger's motivations for  
28 leaving and may show that he lied to ChromaDex. Such evidence is relevant to

1 impeaching Dellinger’s credibility or contradicting evidence that he later offers.  
2 *Oakes*, 179 F.R.D. at 283 (“Rule 26 . . . permits the discovery of information which  
3 may simply relate to the credibility of a witness or other evidence in the case.”).

4 *Second*, ChromaDex has sought responsive text messages from Dellinger’s cell  
5 phone for more than a year, but Elysium has only recently informed ChromaDex that  
6 Dellinger deleted responsive text messages. (Rios Decl. ¶ 12.)<sup>8</sup> Documents  
7 concerning Dellinger’s employment will reveal whether Elysium had custody or  
8 control over Dellinger’s text messages, such that those messages should have been  
9 within the scope of Elysium’s litigation hold. Thus, Request No. 144, which covers  
10 documents such as Elysium’s policies regarding its employees’ use of personal mobile  
11 phones for work purposes, seeks information that will allow ChromaDex to determine  
12 whether Elysium has fulfilled its preservation obligations.

13 *Third*, documents concerning Elysium’s understanding of Dellinger’s  
14 confidentiality obligations go to the willfulness of Elysium’s wrongful use and  
15 reliance on documents and information improperly disclosed by Dellinger and Morris.  
16 As ChromaDex employees, Morris and Dellinger executed nearly identical contracts  
17 with ChromaDex concerning their obligations to guard ChromaDex’s trade secret and  
18 confidential information during and after their employment. The information sought  
19 by ChromaDex would thus shed light on what Elysium knew with respect to  
20 Dellinger’s obligations to ChromaDex. While it denies the relevance of this  
21 information with respect to Dellinger, Elysium admits that the request seeking similar  
22 information with regard to Morris is relevant because ChromaDex alleges Morris stole  
23 its trade secrets on behalf of Elysium. (Rios Decl. ¶ 18.) Therefore, even if  
24

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25 <sup>8</sup> Specifically, ChromaDex has learned that both Morris and Dellinger have deleted all  
26 relevant text messages and emails located in their personal email accounts. (*Id.*)  
27 ChromaDex has demanded the personal cell phones and computers used to access  
28 personal email accounts for both Morris and Dellinger in order to conduct a forensic  
examination to determine if those text messages are recoverable, and—as of the  
service of its portion of the joint stipulation on Elysium—is awaiting Elysium’s  
response to those requests.

1 Dellinger’s own actions were not relevant to ChromaDex’s claim (they are), Request  
2 No. 145 seeks relevant documents because they will reveal Elysium’s knowledge and  
3 understanding of *Morris’s* identical contractual confidentiality obligations. *Bertrand*  
4 *v. Yale Univ.*, 2016 WL 2743489, at \*3 (D. Conn. May 11, 2016) (permitting  
5 discovery into comparative evidence because “the evidence sought by plaintiff is  
6 relevant to interpreting plaintiff’s contractual agreement with defendant.”).

7 *Fourth*, documents concerning Dellinger’s disclosure of ChromaDex  
8 documents and information to Elysium is also relevant to establishing whether  
9 Elysium engaged in a pattern and practice of wrongfully misappropriating  
10 ChromaDex’s documents and information with the aid of its former employees. As  
11 noted above with regard to the Requests for documents that Morris improperly  
12 retained, Elysium has yet to produce documents showing how it came into possession  
13 of two ChromaDex presentations that Dellinger and Morris misappropriated. Both  
14 Dellinger and Morris drafted Elysium presentations by placing some of the content of  
15 those ChromaDex presentations on an Elysium template with some minor changes.  
16 (Rios Decl. Ex. A ¶ 103.) ChromaDex seeks to discover if Dellinger enabled  
17 Elysium’s misappropriation of those documents by wrongfully maintaining copies of  
18 the presentations after he terminated his employment with ChromaDex (Request No.  
19 148).

20 Request Nos. 144, 145, 146 and 148 are proportional to the needs of the case.  
21 Each of the Requests speak directly to the misconduct at issue in ChromaDex’s trade  
22 secrets misappropriation claim. Elysium has not provided any information going to  
23 the burden or proportionality of these Requests, nor could it. *A. Farber*, 234 F.R.D. at  
24 188. Any burden in responding to the Requests is minimal given that they seek  
25 targeted information concerning Dellinger and ChromaDex information in his  
26 possession. Therefore, because Request Nos. 144, 145, 146, and 148 are each relevant  
27 and proportional, the Court should compel Elysium to produce responsive documents.  
28

1                   **c. Request Nos. 149, 150, 151, 152, and 153.**

2           These Requests concern certain documents that Elysium stole and fraudulently  
3 copied from ChromaDex documents. ChromaDex alleges that Elysium  
4 misappropriated several documents, two of which are presentations concerning  
5 ChromaDex’s ingredients NIAGEN (“the NR Presentation”) and pTeroPure (“the  
6 Pterostilbene Presentation”). (Rios Decl. Ex. A ¶ 103.) Elysium, through its new  
7 employees Morris and Dellinger, took these ChromaDex presentations, made small  
8 edits to them, and placed them on an Elysium template before distributing it to  
9 potential investors, as well as the National Advertising Division of the Better Business  
10 Bureau in support of Elysium’s marketing claims. (*Id.* ¶¶ 104–05.) The third  
11 ChromaDex document was misappropriated by Elysium, through Morris, when Morris  
12 took screenshots of a ChromaDex FDA submission that describes the manufacturing  
13 process for NR (“the NRCl Process”). (*Id.* ¶¶ 72, 82–85). Specifically, Morris took  
14 screenshots in order to remove all reference to ChromaDex, and then incorrectly  
15 labeled the document as Elysium’s property and sent it a manufacturer to jumpstart  
16 the production of Elysium’s alternate source of NR. (*Id.* ¶ 85.)<sup>9</sup>

17           Elysium refuses to produce any documents concerning Elysium’s distribution  
18 and use of the presentations (Request Nos. 149, 151), the unjust benefits it received  
19 from the use of the presentations (Request Nos. 150, 152), and documents concerning  
20 the NRCl Process (Request No. 153). Elysium asserts that these documents are no  
21 longer relevant given the July 26 Order. These documents are relevant, both for the  
22

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23 <sup>9</sup> The NRCl Process is also relevant to Elysium’s claim for patent misuse because the  
24 document concerns its efforts to obtain an alternate source of NR and is thus  
25 responsive to ChromaDex’s Request Nos. 49 and 50; Requests for which this Court  
26 has already ordered Elysium to produce responsive documents. (Rios Decl. Ex. D at  
27 130 (noting that Elysium’s allegations alone were “sufficient to make the information  
28 ChromaDex seeks about Elysium’s other sources of NR relevant to Elysium’s patent  
misuse claim”.) Elysium should have thus already produced all documents  
concerning the NRCl Process, which was central to its efforts to obtain an alternate  
source of NR, by January 10, 2018. Elysium’s continued refusal to produce  
responsive documents here thus violates the December 20 Order, as well as  
ChromaDex’s rights to relevant discovery.

1 reasons discussed above, and the additional two reasons below.

2 *First*, the requested documents are relevant to ChromaDex’s trade secret  
3 misappropriation claim as they will support ChromaDex’s argument that Elysium had  
4 a pattern and practice of willfully and maliciously misappropriating ChromaDex  
5 information with the aid of ChromaDex’s former employees. In addition to the  
6 grounds for relevance explained in Section II.B.1, the documents may reveal the  
7 extent to which Elysium was willing to represent ChromaDex’s information as its own  
8 to critical investors (Request No. 152) and even industry watchdogs (Request No.  
9 150), and thus help rebut any argument Elysium may present regarding whether it  
10 would have improperly misused the Ingredient Sales Spreadsheet.

11 *Second*, the fact that Elysium stole and then fraudulently claimed these  
12 ChromaDex documents as its own property (Rios Decl. Ex. A ¶¶ 85, 103), is powerful  
13 evidence of Elysium’s dishonesty in its dealings with ChromaDex. Further,  
14 information concerning Elysium’s intent and motive to claim ChromaDex material as  
15 its own is relevant to rebutting Elysium’s (and its employees’) claims of good faith.  
16 Thus, the requested documents, and the material concerning those documents  
17 (Request Nos. 149, 151, 153), are relevant to impeach the credibility of the Elysium  
18 employees who drafted the fraudulent Elysium versions or knew about the document’s  
19 origins. *Oakes*, 179 F.R.D. at 283 (“Rule 26 . . . permits the discovery of information  
20 which may simply relate to the credibility of a witness or other evidence in the case.”).

21 Elysium also objects that these Requests are not proportional to the needs of  
22 the case because it claims the burden of collecting, reviewing, and producing materials  
23 is unduly large. (Rios Decl. Ex. E at 134.) Again, Elysium offers no specific evidence  
24 to substantiate its position, such as the number of documents that hit on ChromaDex’s  
25 proposed search terms or any other estimate of the number of additional documents it  
26 would be required to review as a result of the Requests. *A. Farber*, 234 F.R.D. at 188.  
27 Moreover, these Requests are proportional to the needs of the case because they are  
28 targeted to specific documents that were uncontrovertibly the product of Elysium’s

1 misappropriation and go directly to the credibility of key witnesses, *i.e.*, ChromaDex’s  
2 former employees. If there were a large number of documents stemming from the  
3 misappropriated ChromaDex documents, it would only be because Elysium’s  
4 wrongdoing was so widespread. The Court should not allow Elysium to use a burden  
5 created entirely by its own misconduct to escape its discovery obligations. Therefore,  
6 because Request Nos. 149, 150, 151, 152, and 153 are each relevant and proportional,  
7 Elysium should be compelled to produce responsive documents.

8 **d. Request Nos. 154, 155, 159, 160.<sup>10</sup>**

9 These Requests concern Elysium’s misuse of ChromaDex’s regulatory filings  
10 and the damages sustained by ChromaDex as a result. For example, ChromaDex  
11 alleges that Elysium inappropriately relied on and incorporated information  
12 concerning the regulatory status of ChromaDex’s ingredients NIAGEN and pTeroPure  
13 in Elysium’s regulatory filings. (Rios Decl. Ex. A ¶¶ 109–10.) This allegation is  
14 supported by Elysium documents stating that Elysium’s regulatory consultants were  
15 provided ChromaDex documents to “update” or otherwise rely on while drafting  
16 Elysium’s versions. (*Id.* ¶ 109.) And one of the ChromaDex documents at issue in  
17 these Requests, the pTeroPure GRAS Report, is subject to ChromaDex’s claim that  
18 Elysium breached the confidentiality provisions of the pTeroPure Supply Agreement  
19 by wrongfully disclosing the confidential document to third-parties to support  
20 competing sources of pterostilbene. (*Id.* ¶¶ 125–29.)

21 Specifically, Elysium refuses to produce documents concerning the GRAS  
22 status of NIAGEN (Request No. 154), the NIAGEN New Dietary Ingredient  
23 Notification (“NDIN”) (Request No. 155), documents concerning ChromaDex  
24 products pTeroPure or NIAGEN that Elysium provided to its regulatory consultants  
25 (Request No. 159), and any invoices for the regulatory filings drafted by those  
26

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27 <sup>10</sup> As discussed in Section II.C.1.b below, Request Nos. 154 and 155 are also relevant  
28 to ChromaDex’s defenses to Elysium’s claims that it breached the NIAGEN Supply Agreement.

1 regulatory consultants (Request No. 160). Both the NIAGEN GRAS and NDIN are  
2 documents filed by ChromaDex with the FDA. Elysium contends that these Requests  
3 are irrelevant in light of the July 26 Order. Not so, as discussed above and for the two  
4 additional reasons below.

5 *First*, documents responsive to Request Nos. 159 and 160 are relevant to  
6 ChromaDex's claim for breach of the pTeroPure Supply Agreement. While Elysium  
7 has agreed to produce documents related to the pTeroPure GRAS Report itself, it is  
8 now refusing to produce other documents concerning ChromaDex's pTeroPure which  
9 it also disclosed to third parties, possibly in further breach of the confidentiality  
10 provisions of the pTeroPure Supply Agreement. (Rios Decl. Ex. A ¶ 126.) Request  
11 No. 160 seeks to discover the amount by which Elysium benefitted from the improper  
12 use of ChromaDex's confidential document in the form of reduced or lower than  
13 average fees from regulatory consultants who used the pTeroPure GRAS Report as a  
14 shortcut to creating Elysium's version. Similarly, documents concerning Elysium's  
15 disclosure of documents concerning NIAGEN to third parties (Request No. 159) may  
16 reveal a further breach of the NIAGEN Supply Agreement's confidentiality  
17 provisions.

18 *Second*, documents concerning Elysium's reliance on and use of ChromaDex's  
19 NIAGEN GRAS and NDIN, or any other documents concerning NIAGEN or  
20 pTeroPure, are relevant to ChromaDex's claim for misappropriation of trade secrets.  
21 Elysium's clear instructions to its consultants regarding these documents are relevant  
22 to showing that Elysium intended to wrongfully use ChromaDex's documents for its  
23 own benefit. Further, the invoices from draft regulatory consultants will show how  
24 much money Elysium saved on developing its versions of those regulatory documents  
25 by relying on ChromaDex's work. Those documents would also demonstrate that  
26 Elysium willfully and maliciously stole from ChromaDex, as relevant to  
27 ChromaDex's claim for punitive damages. *State Farm*, 538 U.S. at 422.

28 These Requests are also proportional to the needs of the case. This material



1 will help inform ChromaDex’s calculation of damages arising from Elysium’s  
2 wrongful disclosure of the pTeroPure GRAS Report, show that Elysium used  
3 ChromaDex’s documents for its financial benefit, and may reveal further similar  
4 wrongdoing by Elysium. As with the requests above, Elysium has failed to  
5 substantiate the burden in responding to the Requests by, for example, indicating the  
6 number of documents that hit on ChromaDex’s proposed search terms or otherwise  
7 estimating the number of documents it would be required to review. *A. Farber*, 234  
8 F.R.D. at 188. Therefore, because Request Nos. 154, 155, 159, and 160 are each  
9 relevant and proportional, Elysium should be compelled to produce responsive  
10 documents.

## 11 2. Elysium’s Contentions and Points of Authorities

12 ChromaDex seeks to disguise from the Court, using rhetoric and speculation,  
13 the simple facts of this discovery dispute: that its claim for misappropriation of trade  
14 secrets relates to a single document, and that its claim for breach of contract relates to  
15 the alleged confidentiality of four additional documents. ChromaDex has previously  
16 served discovery requests on Elysium relating to those five documents, and Elysium  
17 agreed to produce, and indeed has produced, all non-privileged relevant documents  
18 responsive to those document requests. ChromaDex does not and cannot dispute that.

19 In its FAC, ChromaDex also alleged conversion of documents, a number of  
20 which were not subject to the trade secret misappropriation or breach of contract  
21 claims. ChromaDex’s claim for conversion was dismissed with prejudice by the  
22 Court. (July 26 Order at 7-8.) ChromaDex has no live claim relating to the  
23 documents that solely underlie the dismissed conversion claim and, therefore, those  
24 documents are not properly the subject of any document request.

25 ChromaDex argues that these documents are still relevant because the Court, in  
26 dismissing the conversion claim, “necessarily drew a direct connection” between the  
27 trade secret misappropriation claim and the documents that ChromaDex alleges that  
28 Elysium converted. However, as the Court itself clearly noted, the CUTSA “serves to

1 preempt all claims premised on the wrongful taking and use of confidential business  
2 and proprietary information, even if that information does not meet the statutory  
3 definition of a trade secret.” (July 26 Order at 7.) Accordingly, the preemption of  
4 ChromaDex’s claim was entirely unconnected to its claims for trade secret  
5 misappropriation and the Court drew no “connection,” direct or otherwise, between  
6 the claims. ChromaDex also argues that the Court “did not find” that the documents  
7 relating to the dismissed conversion claim are “suddenly irrelevant” to the existing  
8 claims. That argument is entirely disingenuous, because the issue of the relevancy of  
9 the documents allegedly converted was not before the Court. The Court’s decision  
10 however, certainly contains nothing that would make this case an exception to the  
11 general rule that discovery on dismissed causes of action is not permissible. *See, e.g.,*  
12 *Patterson v. Johnson*, No. CV-16-03949-PHX-GMS, 2017 WL 3315239, at \* (D.  
13 Ariz. Aug. 2, 2017) (“Of course, there is no authority that would allow a party to  
14 conduct discovery on dismissed claims.”)

15 A fundamental flaw in ChromaDex’s motion is that the requests that are the  
16 subject of this motion are overly broad. As written, the requests call for documents  
17 that are not relevant solely to ChromaDex’s misappropriation of trade secrets or  
18 breach of contract claims. This is of significance here, because to the extent the  
19 requests call for documents relevant to those claims, Elysium has produced them.  
20 ChromaDex describes its requests as seeking documents “concerning ChromaDex  
21 documents that Elysium misappropriated or wrongfully disclosed to third parties,  
22 Elysium’s use and reliance on those documents, the extent to which Elysium  
23 benefitted from the use of those ChromaDex documents, copies of ChromaDex  
24 documents improperly maintained by ChromaDex’s former employees who are now  
25 Elysium employees, Elysium’s terms of employment with those former ChromaDex  
26 employees, and Elysium’s understanding of those former ChromaDex employees’  
27 confidentiality obligations to ChromaDex.” (Section II.B.1, ChromaDex’s  
28 Contentions and Points of Authorities.) Nowhere in this statement does ChromaDex

1 advise the Court that Elysium has agreed to, and has, produced documents relating to  
2 the single document that underlies the trade secret misappropriation claim and the  
3 alleged “wrongfully disclosed” documents, and thus it necessarily omits that these  
4 requests implicate numerous documents that are the subject only of the dismissed  
5 conversion claim (or of claims that have never been plead, such as any relating to  
6 Elysium’s hiring of former ChromaDex employees). There is nothing for ChromaDex  
7 properly to compel.

8 ChromaDex makes two main arguments in support of its motion: (1) the  
9 documents sought “are relevant to showing Elysium’s intent to misappropriate  
10 ChromaDex’s trade secrets and its general pattern and practice of doing so” and (2)  
11 that the documents sought “are relevant to ChromaDex’s claim for punitive damages  
12 against Elysium, and will help establish Elysium’s malicious and willful theft of  
13 ChromaDex trade secrets.” ChromaDex is incorrect on both accounts.

14 *First*, documents that are subject to this motion are not alleged by ChromaDex  
15 to be trade secrets, so none of them can be relevant to showing an intent to  
16 misappropriate, or a pattern and practice of misappropriation of, trade secrets.

17 ChromaDex’s allegations of a “general pattern and practice” of Elysium  
18 misappropriating supposedly confidential information are baseless and again designed  
19 to obfuscate the fact that its trade secret claim relates to a single document, about  
20 which Elysium has already agreed to produce and has produced relevant documents.  
21 ChromaDex cannot allege that a single document meets the necessary “pattern and  
22 practice” standard for admissible evidence under Federal Rule of Evidence 406, which  
23 permits evidence of a party’s habit or routine practice “to prove that on a particular  
24 occasion the person or organization acted in accordance with the habit or routine  
25 practice.” Such evidence is only admissible when the examples offered to establish  
26 the pattern of conduct or habit are numerous enough to base an inference of systematic  
27 conduct and to establish one’s regular response to a repeated specific situation or, to  
28 use the language of a leading text, where they are “sufficiently regular or the

1 circumstances sufficiently similar to outweigh the danger, if any of prejudice and  
2 confusion.” *Classical Silk, Inc., v. Dolan Grp., Inc.*, No. 14-CV-9224, 2016 WL  
3 7638112, at \*10-11 (C.D. Cal. Mar. 21, 2016) (citing *Wilson v. Volkswagen of Am.,*  
4 *Inc.*, 561 F.2d 494, 511 (4th Cir. 1977) and *Mathes v. The Clipper Fleet*, 774 F.2d  
5 980, 984 (9th Cir. 1985)). Thus, “[i]n deciding whether certain conduct constitutes  
6 habit, courts consider three factors: (1) the degree to which the conduct is reflexive or  
7 semi-automatic as opposed to volitional; (2) the specificity or particularity of the  
8 conduct; and (3) the regularity or numerosity of the examples of the conduct.” *United*  
9 *States v. Angwin*, 271 F.3d 786, 799 (9th Cir. 2001).<sup>11</sup>

10 Moreover, “intent” is not an element of trade secret misappropriation.<sup>12</sup> Under  
11 both California and federal law, to establish a claim for trade secret misappropriation,  
12 a party must establish that: (1) it owned a trade secret; (2) the defendant acquired,  
13 disclosed, or used the trade secret through improper means; and (3) the  
14 misappropriation damaged the owner of the trade secret. *Lightning Box Games Pty,*  
15 *Ltd, v. Plaor, Inc.*, Case No. 17-CV-3764, 2017 WL 7310782, at \*6-7 (N.D. Cal. Dec.  
16 29, 2017). Misappropriation is defined as the “[a]cquisition of a trade secret of  
17 another by a person who knows or has reason to know that the trade secret was  
18 acquired by improper means” or “[d]isclosure or use of a trade secret of another  
19 without express or implied consent by a person who [u]sed improper means to acquire  
20 knowledge of the trade secret” or otherwise knowingly acquired it from a person who  
21 obtained it through improper means or from a source that owed a duty to maintain the  
22 trade secret’s secrecy. *Be In, Inc. v. Google Inc.*, Case No. 12-CV-3373, 2013 WL

23  
24 <sup>11</sup> Evidence of a “pattern and practice” would also not be admissible at trial since it  
25 violates Federal Rule of Evidence 404, which prohibits evidence of a wrong or other  
act to prove a person’s character in order to show that on a particular occasion the  
person acted in accordance with his character. Fed. R. Evid. 404(b)(1).

26 <sup>12</sup> Additionally, motive is irrelevant to breach of contract claims, including with  
27 respect to damages. *See, e.g., Bakst v. Cmty. Mem’l Health Sys.*, Case No. CV 09-  
08241, 2011 WL 13214315, at \*14 (C.D. Cal. Mar. 7, 2011); *It’s Just Lunch Int’l LLC*  
28 *v. Nichols*, Case No. EDCV061127VAPOPX, 2009 WL 10674210, at \*1 (C.D. Cal.  
Aug. 31, 2009); *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal.4th 503, 516  
(1994).

1 5568706 \*3 (N.D. Cal. Oct. 9, 2013) (citing Cal. Civ. Code § 3426.1(b)(1) and (2)).

2 In any event, Elysium has agreed to produce documents relating to the sole  
3 spreadsheet that forms the basis of ChromaDex’s claim for trade secret  
4 misappropriation. (Treckler Decl. Ex. 4 at 3-4.) Thus, to the extent documents exist  
5 that would relate to the manner by which Elysium obtained the document or what, if  
6 anything, Elysium knew about the spreadsheet’s purported secrecy, Elysium has  
7 produced them.

8 *Second*, ChromaDex’s argument that the discovery requests are relevant to its  
9 claim for punitive damages against Elysium for alleged trade secret misappropriation  
10 is equally unavailing. In its FAC, ChromaDex’s claim for misappropriation of trade  
11 secrets (its Third Claim for Relief) alleges that its former employee, Mark Morris,  
12 saved a copy of an “Ingredient Sales Spreadsheet” from his time at ChromaDex, and  
13 “removed it from ChromaDex for the purposes of conveying it to Elysium while he  
14 was still a ChromaDex employee.” (FAC at ¶ 158.) ChromaDex then summarily  
15 alleges that Elysium “willfully and maliciously acquired the [Ingredient Sales  
16 Spreadsheet] through improper means and, on information and belief, improperly used  
17 the spreadsheet.” (FAC at ¶ 154.) ChromaDex goes on to allege in conclusory  
18 fashion that “Elysium’s acts were fraudulent, willful, malicious, and oppressive and  
19 constitute despicable conduct and subjected ChromaDex to unjust hardship in  
20 conscious disregard of ChromaDex’s rights so as to justify an award of exemplary or  
21 enhanced damages under California Civil Code § 3426.3(c), and attorneys’ fees  
22 pursuant to California Civil Code § 3426.4.” (FAC at ¶ 162.) ChromaDex relies on  
23 the same alleged misappropriation of a single document – the Ingredient Sales  
24 Spreadsheet – to support its Fourth Claim for Relief (Federal Defense of Trade  
25 Secrets). (See FAC at ¶¶ 166-168.) As such, any discovery regarding trade secret  
26 misappropriation is limited to conduct involving the Ingredient Sales Spreadsheet, and  
27 any damages resulting therefrom. The discovery requests at issue, however, go well  
28 beyond the scope of these claims.

1 ChromaDex argues that the Court should compel the production of these  
2 documents because they “will likely show” a pattern and practice of Elysium  
3 misappropriating documents, but that argument fails for two reasons. First,  
4 ChromaDex’s claim for misappropriation of trade secrets relates to a single document  
5 – the Ingredient Sales Spreadsheet – and Elysium is producing all non-privileged  
6 documents relating to it. Second, ChromaDex did not plead that the documents that  
7 underlie the dismissed conversion claim include trade secrets, and in fact it expressly  
8 disclaimed them as trade secrets before the Court (*see* July 26 Order at 7).  
9 ChromaDex cannot seek punitive damages for its trade secret claim based on  
10 documents that ChromaDex itself admits are not trade secrets. ChromaDex distorts  
11 the authority it purports to cite as support. Indeed, in *State Farm Mut. Auto. Ins. Co.*  
12 *v. Campbell*, 538 U.S. 408, 419 (2003), the Court explained that a court may not  
13 “award [] punitive damages to punish and deter conduct that bore no relation to the  
14 [plaintiff’s] harm.”

15 In *State Farm*, the defendant insurer’s wrongful conduct toward the individual  
16 State Farm plaintiffs was its bad-faith refusal to settle a third party tort suit against the  
17 plaintiffs, its insureds. *Id.* The plaintiffs, however, introduced evidence of other  
18 assertedly fraudulent State Farm business practices encompassing many years and  
19 many states, most of which “bore no relation to third-party automobile insurance  
20 claims.” *Id.* at 415. Consequently, the Supreme Court concluded that the case “was  
21 used as a platform to expose, and punish, the perceived deficiencies of State Farm’s  
22 operations throughout the country.” *Id.* at 420. The Supreme Court held that the  
23 evidence of wide-ranging business practices could not, consistent with due process, be  
24 used to show reprehensibility that would support a large (\$145 million) punitive  
25 damages award for two reasons: First, “[a] State cannot punish a defendant for  
26 conduct that may have been lawful where it occurred.” *Id.* at 421. Second, and “more  
27 fundamental[ly],” “[a] defendant’s dissimilar acts, independent from the acts upon  
28 which liability was premised, may not serve as the basis for punitive damages. A

1 defendant should be punished for the conduct that harmed the plaintiff, not for being  
2 an unsavory individual or business.” *Id.* at 422–423. Thus, the discovery that  
3 ChromaDex seeks that is not premised on the alleged misappropriation of trade secrets  
4 bears no relevance to a claim for punitive damages for the alleged misappropriation of  
5 trade secrets.

6 In addition, in *Mattel, Inc. v. MGA Entm’t, Inc.*, 801 F. Supp. 2d 950 (C.D. Cal.  
7 2011), upon which ChromaDex relies so heavily, the jury found Mattel’s conduct to  
8 be sufficiently ‘reprehensible’ such that exemplary damages should be awarded when  
9 it was presented with evidence that Mattel encouraged its employees to repeatedly  
10 violate CUTSA in the manner at issue in the pleadings, *i.e.*, by using false pretenses to  
11 access competitors’ private displays at international toy fairs and improperly acquire  
12 competitive information, including price lists, advertising plans, and unreleased  
13 product attributes. (*Id.* at 953.) The same cannot be said here, as ChromaDex’s claim  
14 for trade secret misappropriation relies on a single document; there is no claim for  
15 repeated trade secret violations, and ChromaDex cannot bootstrap documents relevant  
16 to its dismissed conversion claim (or its live breach of contract claim) into that empty  
17 space.

18 As explained above, Elysium is not withholding any non-privileged documents  
19 relating to the single document relevant to the misappropriation of trade secrets claim.  
20 ChromaDex’s requests are intended to improperly circumvent the Court’s Order  
21 dismissing the conversion claim by inappropriately interjecting that non-viable claim  
22 back in the case.

23 As to ChromaDex’s overly broad and harassing document requests targeted at  
24 Morris and Ryan Dellinger (another former ChromaDex employee) (*see* Request Nos.  
25 141, 143, 144, 145, 146, 148), both of whom are non-parties, Elysium has conducted a  
26 reasonable, diligent search and already produced a significant number of documents  
27 from Morris’s and Dellinger’s files, spanning a wide range of issues, including  
28 relating to the Ingredient Sales Spreadsheet and ChromaDex’s breach of contract

1 claim. Although ChromaDex asserts that it has found “found the smoking gun  
2 evidence of Elysium’s and its former employees’ coordinated misappropriation and  
3 wrongful disclosures of ChromaDex’s confidential documents” and seeks more of the  
4 same, but it again omits to mention that it has no claim for the misappropriation of  
5 confidential information, as that claim – styled as one for conversion – has been  
6 dismissed with prejudice by the Court. This is a fishing expedition, nothing more, and  
7 is impermissible. *See, e.g., Bryant*, 2007 WL 5432959, at \*3 (“Fishing expeditions to  
8 discover new claims, however, are not permitted.”); *see also Rivera v. NIBCO, Inc.*,  
9 364 F.3d 1057, 1072 (9th Cir. 2004) (“District courts need not condone the use of  
10 discovery to engage in ‘fishing expeditions.’”); *Bernstein v. Travelers Ins. Co.*, 447  
11 F.Supp.2d 1100, 1102 (N.D.Cal.2006) (citing Rule 26(b), Advisory Committee’s Note  
12 to Amendments Effective December 1, 2000) (Revisions to the language of Rule  
13 26(c), substituting the words “claim or defense” for the phrase “subject matter  
14 involved in the pending action,” were intended to target discovery that swept far  
15 beyond the claims and defenses of the parties and that seemed designed not to fairly  
16 litigate the issues presented by the pleadings, but to develop new claims or defenses.)

17 With respect to documents concerning Elysium’s alleged reliance on and use of  
18 various documents, including ChromaDex’s NIAGEN GRAS and NDIN submissions  
19 to the Food and Drug Administration (the “FDA”) and the pTeroPure GRAS report  
20 and other similar documents (Requests No. 149, 150-155, 159, 160), these requests  
21 are overbroad because they call for documents that are not relevant to any current  
22 claim or defense, including documents that were relevant solely to the dismissed  
23 conversion claim. To the extent that Request No. 159 implicates documents relating  
24 to the pTeroPure Gras Report, ChromaDex is fully aware that Elysium has agreed to  
25 produce those documents. (*See supra*, at II.B.1.d. at ¶ 3.) Thus, Elysium has  
26 complied with its discovery obligations under Rule 26 by engaging in reasonable  
27 searches for, and producing, relevant, non-privileged documents that are proportional  
28 to the needs of the case.



1                   **a. Request Nos. 141 and 143.**

2           ChromaDex seeks to compel documents responsive to these overly broad  
3 requests concerning Morris by asserting that documents (Request No. 143) and  
4 information (Request No. 141) that Morris allegedly “misappropriated” are at the  
5 “heart of ChromaDex’s claim for trade secret misappropriation” and argues that  
6 Elysium is withholding those documents from production. That simply is not true.  
7 Elysium produced all non-privileged documents concerning the Ingredient Sales  
8 Spreadsheet identified through a reasonable search. (Treckler Decl. Ex. 4 at 3-4; *see*  
9 *also* Elysium’s Second Amended Response & Objections to Requests 141 and 143,  
10 above.) This Motion relates to the hypothetical possibility that Elysium could locate  
11 other documents *unrelated* to the Ingredient Sales Spreadsheet, which comprises not  
12 just the “heart” of ChromaDex’s claims, but is the sum total of the trade secret  
13 misappropriation claims.

14           Importantly, ChromaDex fails to acknowledge that Elysium agreed to produce  
15 and produced all non-privileged documents responsive to these requests that it had  
16 located through a reasonable search. (*Id.*) Elysium also agreed that, should it identify  
17 additional documents that were not previously produced that relate to the Ingredient  
18 Sales Spreadsheet, it would produce those documents as well. Thus, the only  
19 hypothetical limitation on Elysium’s production of documents responsive to these  
20 requests is if it now discovers (*i.e.*, after producing all documents that it could find  
21 after a reasonable search that are responsive to these requests) documents that relate to  
22 issues not relevant to the claims and defenses in this case. This limitation is the result  
23 of the Court’s July 26, 2018 Order, in which it dismissed with prejudice ChromaDex’s  
24 fifth cause of action for conversion, rendering many documents responsive to these  
25 requests irrelevant to the current claims and defenses (notwithstanding that Elysium  
26 already produced those documents).

27           With respect to ChromaDex’s remaining arguments, to the extent that  
28 documents relating to Morris’s purpose, motive and intent concerning the alleged

1 misappropriation of the single document that is at issue in the trade secret claim exist,  
2 those documents have already been produced. Requests that seek “information” or  
3 “documents” that were the subject of ChromaDex’s dismissed claim of conversion are  
4 not permissible. ChromaDex cites no case that support that it is entitled to discovery  
5 on a claim dismissed with prejudice. ChromaDex has no live claim for  
6 “misappropriated” and/or “confidential” information and has no live claim against  
7 Morris for breach of any obligation of confidentiality.<sup>13</sup> ChromaDex also speculates  
8 that documents unrelated to the trade secret claim may somehow “shed light” on the  
9 alleged misappropriation of the single document that is the subject of the trade secrets  
10 claim, but that is simply a pretense to conduct an impermissible fishing expedition in  
11 hopes to discover new claims.

12 In an attempt to justify the irrelevant documents it seeks, ChromaDex argues  
13 that it seeks documents to impeach Morris’s credibility. The belief that such  
14 documents even exist is entirely speculative and constitutes another admission that  
15 ChromaDex improperly seeks discovery on a claim that the Court has dismissed. The  
16 theft of “documents and information” is simply not at issue at this case; ChromaDex’s  
17 sole viable misappropriation claim relates to a single document as to which Elysium  
18 has agreed to produce, and has produced documents. *Cf. Hood v. Fiberweb, Inc.*,  
19 Case No. 3-10-0355, 2010 WL 4102219, at \*2-3 (M.D. Tenn. Oct. 18, 2010)  
20 (Discovery related to impeachment “should be limited to those subjects upon which  
21 there is some reason to believe that the plaintiff testified untruthfully” and is not  
22

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23 <sup>13</sup> After the close of business on October 19, 2018, while the parties were in the  
24 process of exchanging their portions of this Joint Stipulation, counsel for ChromaDex  
25 sent counsel for Elysium a request to meet and confer regarding ChromaDex’s  
26 intention to bring a Motion for Leave to File a Fifth Amended Complaint.  
27 ChromaDex seeks, among other items, to add claims against Morris. As of the time  
28 Elysium served its portion of the Joint Stipulation, the parties had yet to discuss  
ChromaDex’s request, but the draft Fifth Amended Complaint appears to be another  
attempt to make an end-run around the dismissal, with prejudice, of ChromaDex’s  
claim for conversion. If ChromaDex does obtain leave to file this complaint, it will  
substantially alter the course of discovery and may well moot many of the issues  
briefed here.

1 permitted “when the discovery is not otherwise relevant to the claims and defenses in  
2 this case.”).

3 Last, ChromaDex’s claim that it is entitled to seek discovery relating to its  
4 dismissed claim to support an unclean hands defense ignores the proposition that an  
5 unclean hands defense may not be used “attempt to bring in through the back door  
6 arguments [the Court has] turned away at the front door.” *Kaiser Found. Hosps. v.*  
7 *Superior Court*, 128 Cal. App. 4th 85, 111, 26 Cal. Rptr. 3d 744, 763 (2005). Indeed,  
8 to establish a clean hands defense, ChromaDex must show “(1) inequitable conduct by  
9 [Elysium]; (2) that [Elysium’s] conduct directly relates to the claim which it has  
10 asserted against [ChromaDex]; and (3) [Elysium’s] conduct injured [ChromaDex].”  
11 *Surefire, LLC v. Jetbeam USA*, Case No. 12-CV-121, 2014 WL 1512983, at \*2 (S.D.  
12 Cal. Apr. 16, 2014) (citing *Metro–Goldwyn–Mayer Studios, Inc. v. Grokster, Ltd.*, 518  
13 F. Supp. 2d 1197, 1223 (C.D. Cal. 2007); *Survivor Prods. LLC v. Fox Broadcasting*  
14 *Co.*, No. CV 01-3234, 2001 WL 35829270, at \*3 (C.D. Cal. June 12, 2001)). The  
15 documents that are the subject of ChromaDex’s motion – *i.e.*, documents that  
16 potentially relate to alleged misappropriation of confidential information – simply do  
17 not relate to Elysium’s counterclaims, which are for fraudulent inducement of a  
18 trademark license and royalty agreement, breach of the NR Supply Agreement, and  
19 patent misuse.

20 **b. Request Nos. 144, 145, 146 and 148.**

21 ChromaDex seeks to compel the production of documents relating to  
22 Dellinger’s employment and documents and/or information ChromaDex claims he  
23 misappropriated. These requests are overly broad and seek documents irrelevant to  
24 any live claim in this action.

25 ChromaDex contends that the documents that it seeks to compel Elysium to  
26 produce concern “the terms of Dellinger’s employment with Elysium (Request No.  
27 144), Elysium’s knowledge of Dellinger’s duties of confidentiality and loyalty to  
28 ChromaDex (Request No. 145), Dellinger’s disclosure of ChromaDex information to

1 Elysium (Request No. 146), and ChromaDex documents and information Dellinger  
2 maintained in his possession after he terminated his employment with ChromaDex  
3 (Request No. 148).” (See ChromaDex’s Contentions and Points of Authorities,  
4 II.B.1.b.)

5 Requests concerning Dellinger’s recruitment and employment at Elysium  
6 (Request No. 144) and “duties” to ChromaDex (Request No. 145) are wholly  
7 irrelevant. ChromaDex has asserted no wrongful hiring claims in this case, nor does it  
8 have any claim for the breach of any obligation that Dellinger purportedly owed to  
9 ChromaDex.<sup>14</sup>

10 ChromaDex contends that Dellinger “assisted Elysium in its misappropriation  
11 of ChromaDex documents such as the NR Presentation, the Pterostilbene Presentation,  
12 and the pTeroPure GRAS Report.” (See ChromaDex’s Contentions and Points of  
13 Authorities, II.B.1.b.) However, the NR Presentation and the Pterostilbene  
14 Presentation are documents that solely relate to ChromaDex’s dismissed conversion  
15 claim, and therefore documents relating to those presentations are irrelevant to any  
16 live claim or defense. See *Vendavo, Inc. v. Price f(x) AG*, Case No. 17-cv-06930,  
17 2018 WL 3655917, at \*2 (N.D. Cal. Aug. 2, 2018) (“an order granting the motion to  
18 dismiss the trade secrets claims . . . would moot the need for discovery of the trade  
19 secrets claims.”). ChromaDex has no claim for a “pattern” of “misappropriated”  
20 and/or “confidential” information, since its trade secret claim relates to a single  
21 document, and it has no claim against Dellinger for breach of any obligation of  
22 confidentiality. These documents thus have no relevance to this case.

23 As to the pTeroPure GRAS Report, ChromaDex in fact acknowledges that  
24 Elysium has already agreed to produce documents relating to the report itself. (See  
25 ChromaDex’s Contentions and Points of Authorities, II.B.1.d.)

26 Although ChromaDex argues also argues that documents relevant to the

27 \_\_\_\_\_  
28 <sup>14</sup> Moreover, ChromaDex has no claims against Dellinger in its proposed Fifth Amended Complaint.

1 dismissed conversion claim are also relevant to its trade secret misappropriation claim,  
2 that argument lacks merit. ChromaDex contends that because Dellinger allegedly  
3 “drafted Elysium presentations by placing some of the content of those ChromaDex  
4 presentations on an Elysium template with some minor changes” (*see* ChromaDex’s  
5 Contentions and Points of Authorities, II.B.1.b), it now “seeks to discover if Dellinger  
6 enabled Elysium’s misappropriation of those documents by wrongfully maintaining  
7 copies of the presentations after he terminated his employment with ChromaDex.”  
8 (*Id.*) ChromaDex completely ignores the fact that it has no claim for misappropriation  
9 of those presentations, and that it previously represented to this Court that those  
10 documents did not constitute trade secrets. (July 26 Order at 7-8.) The sole claim  
11 ChromaDex has for misappropriation relates to the Ingredient Sales Spreadsheet,  
12 about which Elysium has already produced documents. Moreover, ChromaDex does  
13 not allege that Dellinger had any involvement in the conduct supposedly underlying  
14 ChromaDex’s misappropriation of trade secrets claim. (*See* FAC at ¶ 148-64.)  
15 Finally, any request aimed at Dellinger’s credibility is purely speculative and cannot  
16 constitute the basis for discovery. *Cf. Hood*, 2010 WL 4102219, at \*2-3.

17 **c. Request Nos. 149, 150, 151, 152 and 153.**

18 Request Nos. 149-153 seek documents related to Elysium’s alleged distribution  
19 and use of presentations that ChromaDex alleged that Elysium converted – the NR  
20 Presentation and the pTeroPure Presentation. In other words, these requests seek  
21 documents that solely relate to the dismissed-with-prejudice conversion claim.

22 ChromaDex again argues a host of strained rationales for why Elysium should  
23 produce these documents but, again, they are all an attempt to expand this litigation  
24 through briefing and fish for speculative claims they have not alleged. Elysium has  
25 thoroughly responded to these contentions, and therefore merely summarizes its  
26 responses here. (*See supra*, at II.A.2 and II.B.2.) ChromaDex again argues that these  
27 documents supposedly are “relevant to impeach the credibility of the Elysium  
28 employees,” but that again is based on pure speculation. ChromaDex also argues that

1 these documents are relevant to the single-document misappropriation of trade secrets  
2 claims or punitive damages relating to those claims, notwithstanding that ChromaDex  
3 does not allege that any of these documents are trade secrets. ChromaDex further  
4 argues that these documents are relevant to a claim that Elysium had a “pattern and  
5 practice of willfully and maliciously misappropriating ChromaDex information” but  
6 there is no such claim in the FAC for that either. Last, in another strained attempt to  
7 obtain documents that were relevant only to the dismissed conversion claim,  
8 ChromaDex argues (in a footnote) that these documents are relevant to Elysium’s  
9 patent misuse claim because they “concern Elysium’s efforts to obtain an alternate  
10 source of NR.” However, Elysium had already produced documents relating to its  
11 alternative source for NR. (*See* n.18.) To the extent that these requests seek  
12 documents also related to that topic, they are duplicative of what has already been  
13 produced.

14 **d. Request Nos. 154, 155, 159 and 160.**

15 Similarly, these overly broad requests seek documents that have relevance only  
16 to the dismissed conversion claim (and their relevance to that claim is marginal at  
17 best), and, to the extent they call for documents that are relevant to any claim or  
18 defense, Elysium has produced them.

19 ChromaDex seeks to compel documents concerning the GRAS status of  
20 NIAGEN (Request No. 154), the NIAGEN New Dietary Ingredient Notification  
21 (“NDIN”) (Request No. 155), documents concerning ChromaDex products pTeroPure  
22 or NIAGEN that Elysium provided to its regulatory consultants (Request No. 159),  
23 and any invoices for the regulatory filings drafted by those regulatory consultants  
24 (Request No. 160). (*See supra*, at II.B.d. ¶ 1.)

25 ChromaDex acknowledges that only “**one** of the ChromaDex documents at  
26 issue in these Requests, the pTeroPure Gras Report, is subject to ChromaDex’s claim  
27 that Elysium breached the confidentiality provision of the pTeroPure Supply  
28 Agreement . . . .” (*see supra*, at II.B.1.d. ¶ 1) (emphasis added). ChromaDex also

1 acknowledges that Elysium has already agreed to produce documents related to the  
2 pTeroPure Gras Report.” (*See supra*, at II.B.1.d. ¶ 3.) Because Elysium has produced  
3 the documents relevant to the pTeroPure Gras Report, and that is the only document  
4 that is admittedly relevant to ChromaDex’s claim for breach of the confidentiality  
5 provision of the pTeroPure Supply Agreement, there is nothing for ChromaDex to  
6 compel.

7 As for the remaining documents, Elysium has already explained that they relate  
8 solely to ChromaDex’s dismissed claim for conversion and have not been plead by  
9 ChromaDex in relation to a live claim or defense. ChromaDex may not rely on the  
10 allegations underlying its dismissed claim to circumvent the Court’s Order and obtain  
11 discovery relating to those documents. ChromaDex also incorrectly alleges that the  
12 requested documents are relevant to its trade secrets claim for misappropriation of a  
13 single document because they “are relevant to showing that Elysium intended to  
14 wrongfully use ChromaDex’s documents for its own benefit” and “would also  
15 demonstrate that Elysium willfully and maliciously stole from ChromaDex, as  
16 relevant to ChromaDex’s claim for punitive damages.” (*See ChromaDex’s*  
17 *Contentions and Points of Authorities*, II.B.1.d.) However, nowhere in its FAC does  
18 ChromaDex allege that any of the requested documents are trade secrets, and  
19 ChromaDex affirmatively disclaimed them as trade secrets before this Court. (July 26  
20 Order at 7-8.) As explained previously, ChromaDex cannot bootstrap unrelated  
21 documents into its claim for punitive damages as a result of trade secret appropriation.  
22 (*See supra*, at II.B.2.) Nor would alleged “inten[t] to wrongfully use” documents bear  
23 on ChromaDex’s breach of contract claim, as intent is irrelevant to breach of contract,  
24 including with respect to damages. *See, e.g., Bakst v. Cmty. Mem’l Health Sys.*, Case  
25 No. CV 09-08241, 2011 WL 13214315, at \*14 (C.D. Cal. Mar. 7, 2011); *It’s Just*  
26 *Lunch Int’l LLC v. Nichols*, No. EDCV061127VAPOPX, 2009 WL 10674210, at \*1  
27 (C.D. Cal. Aug. 31, 2009); *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal.4th  
28 503, 516 (1994). ChromaDex’s attempts to compel discovery of these requests are

1 nothing more than a fishing expedition in the hopes of discovering new claims, which  
2 is not permitted. *Bryant*, 2007 WL 5432959, at \*3.

3  
4 These requests are not proportional to the needs of the case. These requests are  
5 exceptionally broad and, given that they are not relevant to any claims or defenses, the  
6 burden of searching for, reviewing and producing them is disproportionate to the  
7 needs of the case.

8 **C. Requests for Production Relevant to ChromaDex’s Defenses to**  
9 **Elysium’s cGMP and Substance Allegations (Request Nos. 93, 94, 95,**  
10 **96, 97, 98, 100, 101, 129, 130, 154, and 155).**

11 **1. ChromaDex’s Contentions and Points of Authorities**

12 ChromaDex moves the Court to compel further responses from Elysium for  
13 Requests that seek material relevant to (1) Elysium’s allegations that ChromaDex  
14 breached the cGMP Warranty and Product Safety Warranty of the NIAGEN Supply  
15 Agreement, and (2) ChromaDex’s defenses.

16 The documents ChromaDex seeks are relevant to Elysium’s affirmative  
17 allegations. On March 30, 2018, Elysium filed its Third Amended Counterclaims  
18 (“TACC”) adding allegations that ChromaDex breached Sections 3.7 and 3.9 of the  
19 NIAGEN Supply Agreement. (ECF 103, Rios Decl. Ex. B ¶¶ 152, 155; Rios Decl. Ex.  
20 A at 58, 59.) As to Section 3.7 (the “cGMP Warranty”), Elysium alleges that  
21 ChromaDex failed to manufacture NR sold to Elysium in accordance with certain  
22 manufacturing standards, specifically Pharma cGMPs. Elysium alleges that, because  
23 the NR ChromaDex sold to it was manufactured in accordance with cGMPs for food  
24 products (“Food cGMPs”),<sup>15</sup> Elysium was somehow damaged. (Rios Decl. Ex. B ¶¶  
25 152, 153, 156.) As to Section 3.9 (the “Safety Warranty”), Elysium alleges that  
26 ChromaDex did not warn it of potential concerns in the NR it delivered to Elysium  
27 based on the purported presence of the Substance. (*Id.* ¶ 91.)<sup>16</sup>

28 <sup>15</sup> “Food cGMPs” refers to the Current Good Manufacturing Practice regulations as set forth in 21 C.F.R. Section 110.

<sup>16</sup> Section 3.9 covenants that ChromaDex should inform Elysium of information



1 The documents sought by ChromaDex are also critical to ChromaDex’s defense  
2 of these allegations. The NIAGEN Supply Agreement contains an express waiver of  
3 warranties by Elysium. Specifically, Section 3.7 of the agreement is titled “Limited  
4 Warranty and Disclaimer of all other Warranties,” and it states in all capital letters  
5 that:

6 (x) ALL CLAIMS MADE WITH RESPECT TO THE  
7 PRODUCT SHALL BE DEEMED WAIVED BY  
8 ELYSIUM HEALTH UNLESS MADE IN WRITING AND  
9 RECEIVED BY CHROMADDEX WITHIN THIRTY (30)  
10 DAYS OF DELIVERY; (y) ELYSIUM HEALTH MUST  
11 MAKE ANY CLAIM FOR . . . BREACH OF WARRANTY  
12 WITH RESPECT TO THE NIAGEN SOLD, OR ANY  
13 CLAIM OF ANY NATURE WHATSOEVER WITH  
14 RESPECT TO THE NIAGEN SOLD HEREUNDER IN  
15 WRITING WITHIN THIRTY (30) DAYS AFTER  
16 ELYSIUM HEALTH’S RECEIPT OF NIAGEN; AND (z)  
17 ELYSIUM HEALTH IRREVOCABLY WAIVES AND  
18 RELEASES ALL CLAIMS THAT ARE NOT PROPERLY  
19 MADE WITHIN SAID PERIOD.

20 (Rios Decl. Ex. A at 55-56.) Thus, ChromaDex seeks documents to support its defense  
21 that Elysium irrevocably waived and released “any claim of any nature whatsoever  
22 with respect to the NIAGEN sold” that was not made within 30 days after Elysium’s  
23 receipt of the product.

24 ChromaDex’s position is that Elysium was aware that NIAGEN was allegedly  
25 manufactured according to Food cGMPs as early as February 5, 2016. On that day,  
26 ChromaDex sent Elysium the NIAGEN GRAS Expert Panel Statement. (Rios Decl.  
27 Ex. F.) The four page document states *four different times on the first page* that  
28 NIAGEN “is manufactured in a facility that complies with *cGMP for foods.*” (*Id.* at  
139. *See also id.* (“Product specifications are set to ensure *a food-grade product.*  
Finished product batches reproducibly meet product specifications and comply with  
limits on contaminants appropriate for *food-grade ingredients.* All processing aids

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concerning the “safety, identity, strength, quality, or purity” of the NR sold to  
Elysium. (Rios Decl. Ex. A at 56.) However, the issue has been limited to the “quality  
or purity” of NR through the parties’ meet-and-confers. (Rios Decl. ¶ 25.)

1 used in the production are determined GRAS for their use and/or comply with  
2 regulations set forth in *21 CFR for use in food.*” (emphasis added)). After receiving  
3 this document, Elysium never raised any concerns with ChromaDex about the cGMP  
4 standards used in the manufacture of NIAGEN. Further inconsistent with Elysium’s  
5 breach of contract claim is the fact that Elysium placed a large order for NIAGEN two  
6 weeks after receiving the document, and even more orders after that date. (Rios Decl.  
7 ¶ 21.) Other documents produced by Elysium show that it was evaluating a claim  
8 against ChromaDex for breach of the cGMP Warranty as early as September 2016.  
9 (*Id.* ¶ 22.) Despite these documents showing that Elysium was informed regarding the  
10 alleged cGMP standards for NIAGEN, Elysium never raised the issues with  
11 ChromaDex until it provided notice that it intended to file its TACC.

12 Further, the full NIAGEN GRAS, which contains the Expert Panel Statement,  
13 describes the potential presence of the Substance in NIAGEN and even sets a  
14 specification for allowable amounts of the Substance in NIAGEN. (*Id.* ¶ 23.) The  
15 NIAGEN NDIN contains similar information. (*Id.*) Thus despite having access to  
16 these documents which informed Elysium about the potential presence of the  
17 Substance in NIAGEN, Elysium never requested more information from ChromaDex,  
18 conducted its own testing, or otherwise raised concerns with ChromaDex about the  
19 NIAGEN ChromaDex supplied until Elysium provided notice that it intended to file  
20 its TACC. Therefore, ChromaDex also intends to raise the defense that Elysium  
21 waived the right to bring a claim that ChromaDex’s NIAGEN contained excessive  
22 levels of the Substance under Section 3.7 of the NIAGEN Supply Agreement.

23 ChromaDex’s Requests aim to discover Elysium’s knowledge of the cGMP  
24 standards used in the manufacture of NIAGEN, Elysium’s knowledge of the potential  
25 presence of the Substance in NIAGEN, the cGMP standards used in the production of  
26 Basis, possible other sources of the Substance in Basis, and samples of Elysium’s  
27 alternate source of NR that Elysium has tested for quality and purity so that  
28 ChromaDex may conduct comparative testing. In response, Elysium (again) refuses to

1 produce relevant documents or samples. The material sought by these Requests is not  
2 only relevant, it is also necessary to ChromaDex's defenses, and Elysium's refusal to  
3 produce the information undermines ChromaDex's ability to defend itself. Given that  
4 Elysium's own counterclaims make this material relevant, ChromaDex respectfully  
5 requests that the Court compel Elysium's production in response to the following  
6 Requests.

7 **a. Requests Nos. 93, 94, 95, 96, 97, 98.**

8 Elysium refuses to produce documents that concern its cGMP requirements for  
9 other suppliers in the Basis supply chain. ChromaDex's Requests go to Elysium's  
10 requests that other suppliers comply with certain cGMP standards (Request No. 93),  
11 the negotiation of those requirements (Request No. 94), the requirements it agreed to  
12 (Request No. 95), its statements about the cGMP standards applied in the Basis supply  
13 chain (Request No. 96), its efforts to exceed applicable cGMP standards (Request No.  
14 97), and the value of ingredients manufactured in accordance with Pharma cGMPs as  
15 compared to other cGMP standards (Request No. 98).<sup>17</sup> Elysium objects to producing  
16 documents concerning Basis or the ingredients in Basis other than NR, contending  
17 that the documents are not relevant because only NR is at issue. (Rios Decl. ¶ 19.)<sup>18</sup>  
18 However, these documents are relevant for at least two reasons.

19 *First*, the documents are necessary to ChromaDex's defense that Elysium  
20 waived its right to bring a claim regarding the cGMP status of NIAGEN. Elysium's  
21 negotiations concerning, and requirements for, certain cGMP standards from other  
22 suppliers will show that Elysium willingly purchased components that were made  
23 with Food cGMPs and incorporated them into Basis. Those documents would support  
24

25 <sup>17</sup> Many of the requested documents go to modifications in the cGMP standards  
26 utilized in the Basis supply chain and are thus responsive to part 3 of ChromaDex's  
27 Request Nos. 42, 43, and 61; Requests for which Elysium stipulated to producing  
28 documents. (ECF 76, Rios Decl. Ex. G at 148.) Elysium's refusal as to these  
documents is therefore improper.

<sup>18</sup> Elysium has agreed to produce documents regarding NIAGEN and its alternate  
source of NR in response to these Requests. (*Id.* ¶ 19.)

1 ChromaDex’s argument that Elysium knowingly accepted NIAGEN manufactured  
2 according to Food cGMPs and chose not to raise a claim with ChromaDex. Further,  
3 Elysium’s refusal to produce documents about its statements regarding the cGMP  
4 status of Basis as a whole is clearly an attempt to hide its knowledge of the cGMPs  
5 used in the manufacture of Basis. For example, based on this objection Elysium may  
6 be withholding documents that represent that Basis is produced according to Food  
7 cGMPs. Any such statements about Basis would necessarily reveal Elysium’s  
8 understanding of its entire product, including the NIAGEN within it.

9 *Second*, the Requests seek documents relevant to ChromaDex’s defense that  
10 Elysium was not damaged by ChromaDex’s alleged breach of the cGMP Warranty.  
11 Specifically, Elysium alleges that “if ChromaDex were permitted to sell to Elysium  
12 nicotinamide riboside that was not manufactured in accordance with pharmaceutical  
13 cGMPs . . . , Elysium’s business could be irreparably damaged.” (Rios Decl. Ex. B ¶  
14 71.) And Elysium alleges that its intent to purchase NIAGEN manufactured according  
15 to Pharma cGMPs “is consistent with Elysium’s efforts to exceed applicable standards  
16 and ensure superior product quality, which is an essential part of its business model  
17 and commitment to customers.” (*Id.* ¶ 69.) Thus, ChromaDex seeks documents that  
18 will show that other Basis supply chain partners did not comply with Pharma cGMPs  
19 and that Elysium was thus not “irreparably damaged” by ChromaDex’s alleged  
20 breach. For example, if most other components of Basis were not produced according  
21 to Pharma cGMPs, ChromaDex will be able to persuasively argue that Elysium was  
22 not damaged by, or that its damages were minimal for, any purported failure by  
23 ChromaDex to provide NIAGEN meeting that standard. If other suppliers did not  
24 comply with Pharma cGMPs, that would also undermine Elysium’s allegation that it  
25 consistently sought ingredients manufactured under Pharma cGMPs, and establish that  
26 ChromaDex’s alleged breach did not materially affect the cGMP status of Basis as a  
27 whole. Further, the NIAGEN Supply Agreement does not contain a liquidated  
28 damages provision for non-compliance with the cGMP Warranty. Thus, if Elysium

1 did seek compliance with Pharma cGMPs from other Basis supply chain partners,  
2 those documents are relevant to determining the amount by which Elysium was  
3 purportedly damaged by revealing how much Elysium valued compliance with  
4 Pharma cGMPs (which are not required under existing laws for dietary supplements).

5 The production of these documents is proportional to the needs of the case  
6 because the documents are relevant, as explained above, and Elysium has not provided  
7 any specific evidence that it faces any large burden in producing them. Elysium’s  
8 objections are merely an attempt to block discovery into the cGMP standards with  
9 which it actually required its suppliers to comply, while baselessly claiming that it  
10 was somehow damaged by ChromaDex’s alleged use of Food cGMPs.

11 During meet-and-confer discussions on this topic, Elysium contended that the  
12 requests for communications regarding the cGMPs used in the production of Basis  
13 “sweep far more broadly than is warranted by the topic” and offered to produce  
14 documents solely in response to Request No. 98, regarding Pharma cGMPs, in  
15 exchange for ChromaDex doing the same for all of its ingredients. (Rios Decl. ¶ 20.)  
16 ChromaDex rejected this supposed “compromise” for three reasons. *First*, Elysium  
17 has not substantiated the burden of reviewing the additional documents as necessary to  
18 conduct a proportionality analysis. Instead, Elysium has merely argued that because  
19 “these materials are not relevant, . . . any burden associated with their review and  
20 production is disproportionate to the needs of the case.” (*Id.*) This objection is  
21 duplicative of Elysium’s relevancy objection, completely unsubstantiated, and should  
22 be dismissed by the Court. *A. Farber*, 234 F.R.D. at 188. *Second*, the other documents  
23 ChromaDex seeks, including Elysium’s communications reflecting requests that its  
24 suppliers comply with specific cGMPs and its representations regarding Basis, are key  
25 to ChromaDex’s defenses, and that need justifies the unsubstantiated burden. *Third*,  
26 Elysium’s attempt to barter its compliance with its discovery obligations to obtain  
27 further, unrequested and expansive discovery from ChromaDex, is just a delay tactic  
28 and should be rejected as such. Elysium should be compelled to produce the

1 documents.

2 **b. Request Nos. 100, 101, 154, and 155.**<sup>19</sup>

3 These Requests seek documents concerning two key ChromaDex regulatory  
4 submissions: the NIAGEN GRAS (Request No. 100) and the NIAGEN NDIN  
5 (Request No. 101), and Elysium’s use of and reliance on these documents (Request  
6 Nos. 154–55). Both the NIAGEN GRAS and NDIN discuss in detail the cGMP  
7 standards used in the manufacture of NIAGEN, the potential presence of the  
8 Substance in the product, and state a specification for the amounts of the Substance  
9 that could be found in NIAGEN. (Rios Decl. ¶ 23.) The NIAGEN GRAS also contains  
10 the Expert Panel Statement which, discussed above, states several times on the first  
11 page that NIAGEN is manufactured according to Food cGMPs. (*Id.* ¶¶ 21, 23.)

12 Elysium refuses to produce any documents in response to these Requests,  
13 claiming that it has fulfilled its discovery obligations by producing documents in  
14 response to other Requests where Elysium explicitly discusses cGMPs used in the  
15 manufacture of NIAGEN or the Substance. (*Id.* ¶ 24.) Thus, Elysium claims that  
16 these Requests are unduly burdensome because the GRAS status of NIAGEN and the  
17 NIAGEN NDIN “have no relationship to” ChromaDex’s alleged breach the NIAGEN  
18 Supply Agreement. (*Id.*) This claim is wrong. The Requests relate to ChromaDex’s  
19 defenses to those allegations.

20 Specifically, Elysium alleges that it “did not know, and ***had no reason to know***  
21 ***at the time***, that the nicotinamide riboside sold and shipped to it by ChromaDex was  
22 not manufactured in accordance with Pharmaceutical cGMPs.” (Rios Decl. Ex. B ¶  
23 88 (emphasis added).) Elysium also alleges that ChromaDex did not disclose that  
24 NIAGEN contained amounts of the Substance and that “Elysium ***had no reason to***  
25 ***commission further special testing***” of NIAGEN for the Substance. (*Id.* ¶¶ 91, 111  
26

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27 <sup>19</sup> ChromaDex also moves to compel Elysium’s responses to Request Nos. 154 and  
28 155 based on the relevancy of the documents to its trade secret misappropriation and  
breach of contract claims, among other grounds, as discussed in Section II.B.1.d.

1 (emphasis added).) In short, Elysium alleges that ChromaDex was hiding certain  
2 information about NIAGEN. But the requested documents will show that Elysium  
3 knew that NIAGEN was allegedly manufactured according to Food cGMPs and knew  
4 that the Substance could possibly be found in NIAGEN, because it was very familiar  
5 with documents containing that information. Elysium's circulation and reliance on the  
6 NIAGEN GRAS and NDIN would reveal the full extent of Elysium's knowledge of  
7 and familiarity with the contents of those documents, even where cGMPs or the  
8 Substance are not expressly discussed. Therefore, the documents are relevant to  
9 ChromaDex's defense that Elysium contractually waived those claims by knowing  
10 about them, but failing to raise them within the proper time frame under the contract.

11 Elysium also objects on proportionality grounds to Request Nos. 100, 101, 154,  
12 and 155. However, Elysium has not substantiated the purported burden or identified  
13 parts of the Requests which it contends are overbroad. For example, Elysium has  
14 refused to inform ChromaDex about the number of documents that hit on  
15 ChromaDex's proposed search terms related to these Requests. Boilerplate objections  
16 lacking accompanying reasons are insufficient to discharge Elysium of its obligation  
17 to produce responsive and relevant documents. Fed. R. Civ. P. 34(b)(2)(B); *A. Farber*,  
18 234 F.R.D. at 188. Elysium should be compelled to produce responsive documents.

19 **c. Request No. 130.**

20 As to Request No. 130, Elysium has refused to produce any documents in  
21 response to the request for the Certificates of Analysis ("COAs") for the ingredients  
22 used in Basis.<sup>20</sup> Elysium objects on relevance and proportionality grounds. Both are  
23 incorrect.

24 The COAs for Basis are relevant to Elysium's claim regarding ChromaDex's  
25 alleged breach of the Safety Warranty. COAs may show the cGMP standards applied  
26 to the production of ingredients and the results of routine testing performed on

27 \_\_\_\_\_  
28 <sup>20</sup> Elysium agreed to produce all COAs for its alternate source of NR but has failed to  
produce all the COAs. (Rios Decl. ¶ 26.)

1 specific batches of those ingredients. COAs also reveal the most common types of  
2 impurities in a product. The Basis COAs are thus relevant to determining whether the  
3 Substance Elysium alleges was present because of ChromaDex's NIAGEN, may  
4 instead have come from another source. The COAs will also show the levels of the  
5 Substance that were present in Elysium's alternate source of NR. Therefore the COAs  
6 are relevant to determining whether Elysium was harmed by the alleged presence of  
7 the Substance in NIAGEN by showing that Elysium knowingly accepted and sold NR  
8 with higher levels of the Substance than that allegedly found in the NIAGEN it  
9 purchased from ChromaDex.

10 As for its proportionality objection, Elysium's only ground for that objection is  
11 that the documents are not relevant, and thus any production burden would be too  
12 much. (Rios Decl. ¶ 17.) But the COAs sought by this Request are plainly relevant,  
13 and thus under Elysium's position are also proportional to the needs of the case.  
14 Insofar as Elysium identifies any specific burden, and it had not as of the time when  
15 this joint stipulation was served on it, the COAs are specific documents and therefore  
16 review and production of them cannot be burdensome. In light of Elysium's claim  
17 that it should not pay for any of the NIAGEN it received because of this alleged  
18 breach—despite the fact that it used that NIAGEN in its consumer product and sold all  
19 of it for a profit—ChromaDex's benefit from discovery of these documents vastly  
20 outweighs any burden or expense Elysium would incur in their production. Therefore,  
21 because Request No. 130 is both relevant and proportional, Elysium should be  
22 compelled to produce responsive documents.

23 **d. Request No. 129.**

24 Elysium improperly objects to Request No. 129, which seeks samples of  
25 Elysium's alternate source of NR. Specifically, Elysium alleges that ChromaDex's  
26 NIAGEN did not meet certain purity standards because it contained levels of the  
27 Substance. (Rios Decl. Ex. B ¶ 97.) ChromaDex must be permitted to test samples of  
28 Elysium's new source of NR to compare levels of the Substance in that NR to levels



1 allegedly found in ChromaDex’s NIAGEN.

2 Elysium concedes that it tests each lot of its alternate source of NR for the  
3 Substance, and Elysium’s (incorrect) position is that it has already produced sufficient  
4 documents regarding the presence of the Substance in the NR it purchased from  
5 ChromaDex and its alternate source of NR, and that those documents should be  
6 sufficient to build ChromaDex’s defense. (Rios Decl. ¶ 24.) But Elysium has  
7 obviously not produced all responsive documents related to those results. (*See supra*  
8 Section II.C.1.d (requesting that the Court compel Elysium to produce all of the COAs  
9 for its alternate source of NR, among other documents).) In any event, it is not for  
10 Elysium to decide what relevant documents or samples ChromaDex may need for its  
11 defense. *Holguin v. City of Los Angeles*, 2011 WL 7128640, at \*1 (C.D. Cal. Oct. 12,  
12 2011) (ruling “it is not up to defendants to decide what plaintiff needs to pursue this  
13 action.”). Notwithstanding the small number of documents Elysium has produced,  
14 Elysium must also produce samples of NR from its alternate source.

15 Samples of Elysium’s alternate source of NR are relevant to Elysium’s  
16 allegations that ChromaDex failed to meet Elysium’s standards for purity. Elysium  
17 alleges its business would be “irreparably damaged” if ChromaDex sold to Elysium  
18 NR that was compromised in purity or quality. (Rios Decl. Ex. B ¶ 71.) This  
19 allegation squarely puts at issue the standards for purity and quality that Elysium  
20 knowingly accepted for its alternate source of NR, and whether those standards were  
21 different than those for the NIAGEN it purchased from ChromaDex. For example,  
22 Elysium has produced documents showing that it accepted and sold NR with *five*  
23 *times* the amount of the Substance than that contained in any batch of NIAGEN sold  
24 to it by ChromaDex, according to ChromaDex’s testing of the NIAGEN sold to  
25 Elysium. (Rios Decl. ¶ 30.) Such a double-standard would, at least, be relevant to  
26 showing that Elysium’s quality and purity standards are much lower than it alleges.

27 As of now, Elysium has only produced some documents showing results from  
28 its own testing. But the tests used by the parties are different, and ChromaDex thus

1 cannot use Elysium’s test results to meaningfully compare the levels of the Substance  
2 in Elysium’s NR with the levels that ChromaDex’s testing would reveal, or with the  
3 levels that ChromaDex’s testing has shown in its own NIAGEN.<sup>21</sup> (*Id.* ¶ 29.) Elysium  
4 must provide samples of the alternate source of NR that it incorporated into Basis so  
5 that ChromaDex can evaluate the purity and quality of that alternative source of NR to  
6 determine the damage, if any, its purported breach caused to Elysium. If Elysium’s  
7 alternative source of NR has lesser purity and quality than NIAGEN, but Elysium  
8 sells its consumer product containing the alternative NR for the same price as it did  
9 the product containing NIAGEN, ChromaDex will be able to show that Elysium  
10 suffered no damages from any purported breach.

11 As to burden, Elysium merely asserts that there is an “extreme burden  
12 associated with Request No. 129 given the testing that Basis undergoes as a general  
13 matter.” (*Id.* ¶ 31.) This claim is nonsense for two reasons. *First*, Elysium fails to  
14 explain what “extreme burden” is associated with producing the samples of product.  
15 Nor could it. Samples of the product can be shipped via regular shipping without any  
16 special arrangements, and that is hardly an “extreme burden.” (*Id.* ¶ 32.) *Second*,  
17 Elysium has not produced all of its test results for the Substance in its alternate source  
18 of NR, and thus any “burden” on Elysium—insofar as any exists—is justified to  
19 enable ChromaDex to fully prepare its defense. Therefore, because Request No. 129  
20 is relevant, and imposes no undue burden on Elysium, Elysium should be compelled  
21 to produce responsive documents.

## 22 2. Elysium’s Contention and Points of Authorities

23 ChromaDex is seeking (1) “documents that concern [Elysium’s] cGMP  
24 requirements for other suppliers in the Basis supply chain;” (2) “documents  
25 concerning two key ChromaDex regulatory submissions: the NIAGEN GRAS and the  
26

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27 <sup>21</sup> Elysium claims without support that its test is better than ChromaDex’s. (*Id.* ¶ 28.)  
28 ChromaDex cannot evaluate that claim without samples of Elysium’s NR so that it  
can directly compare results of the two tests.

1 NIAGEN NDIN, and Elysium’s use of and reliance on these documents;” (3) “[a]ll  
2 Certificates of Analysis related to [Elysium’s] product Basis and/or the ingredients  
3 contained therein;” and “[a]ll samples of [Elysium’s] alternate sources of nicotinamide  
4 riboside [Elysium] incorporated into [its] product Basis and which [Elysium] tested  
5 for quality or purity.” In other words, ChromaDex is seeking Elysium’s confidential,  
6 irrelevant business documents that have nothing to do with the question of whether  
7 ChromaDex complied with its contractual obligations to Elysium, including  
8 documents about Elysium’s contracts with third parties and samples of Elysium’s  
9 current source of NR, as well as seeking documents Elysium already agreed to  
10 produce.

11 *First*, as explained in detail below, Elysium has produced, agreed to produce, or  
12 offered to produce documents in response to many of these Requests, subject to  
13 appropriate limitations. In fact, ChromaDex attempts to use Elysium’s willingness to  
14 do so as a cudgel to argue that because Elysium previously has produced relevant  
15 documents, Elysium should be disallowed from objecting to additional document  
16 demands.

17 *Second*, ChromaDex’s requests demand “all” documents and communications  
18 relating to various aspects of cGMP standards, but only the NR sold by ChromaDex is  
19 the subject of Elysium’s claim for breach of the cGMP Provision. Indeed,  
20 ChromaDex previously took the position that only the cGMP status of Niagen sold to  
21 Elysium during the contract period is relevant to the claim. (Treckler Decl. Ex. 5.)  
22 ChromaDex does not, and cannot, explain how Elysium’s contracts with third parties  
23 relate to ChromaDex’s alleged breach of separate contracts between Elysium and  
24 ChromaDex. Instead, ChromaDex attempts to argue that these documents are  
25 necessary to investigate whether Elysium actually meant the contract terms that it  
26 agreed to with ChromaDex, based on unrelated actions between Elysium and third  
27 parties. This is not a permissible way to conduct discovery.

28 *Third*, ChromaDex demands additional documents because it says it needs to

1 examine whether the acetamide present in Basis (as a result of using ChromaDex’s  
2 product Niagen) “was present because of ChromaDex’s NIAGEN, [or] may instead  
3 have come from another source.” As explained below, [REDACTED]

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED] Because the issue is whether NIAGEN contained acetamide, the  
7 Certificates of Analysis for the other ingredients in Basis are simply irrelevant to that  
8 question, and therefore should not have to be produced.

9 *Finally*, in an apparent attempt to use discovery to educate itself about the  
10 current product of its competitors, ChromaDex demands samples of Elysium’s current  
11 supply of NR. There is simply no reason that Elysium’s current supply of NR could  
12 be relevant to the question of whether the NR supplied by ChromaDex contained  
13 acetamide in excess of the amount permissible under California Proposition 65 –

14 [REDACTED] Nor does the level  
15 of acetamide, if any, in Basis as currently manufactured bear on Elysium’s damages  
16 claim.

17 **a. Request Nos. 93, 94, 95, 96, 97 and 98.**

18 ChromaDex argues that it needs “documents that concern [Elysium’s] cGMP  
19 requirements for other suppliers in the Basis supply chain” – including documents not  
20 relevant to NR or Niagen – and that the documents are critical for two reasons: (1)  
21 “the documents are necessary to ChromaDex’s defense that Elysium waived its right  
22 to bring a claim regarding the cGMP status of NIAGEN” and (2) the documents are  
23 “relevant to ChromaDex’s defense that Elysium was not damaged by ChromaDex’s  
24 alleged breach of the cGMP Warranty.”

25 *First*, as ChromaDex acknowledges above in footnote 18, Elysium has agreed  
26 to produce documents regarding NIAGEN and its alternate source of NR in response  
27 to these Requests and has offered to produce additional documents. (*See* Elysium’s  
28 Reponses and Objections, included above; *see also* Treckler Decl. Ex. 6 at 2; Rios

1 Decl. ¶ 19.) In a letter dated July 30, 2018, Elysium specifically informed  
2 ChromaDex that while it continues to believe that “documents relating to the cGMP  
3 standards applied to the non-NR ingredients in Basis are simply irrelevant, and  
4 ChromaDex’s contention otherwise displays a facile application of damages theory,”  
5 in the interest of “avoid[ing] burdening the Court with a motion to compel, Elysium is  
6 willing to produce documents sufficient to show whether the other ingredients in  
7 Basis are manufactured in facilities compliant with pharmaceutical, dietary  
8 supplement, or food cGMPs.” Later, on August 6, 2018, Elysium offered to produce  
9 documents in response to Request No. 98, which most closely relates to ChromaDex’s  
10 proffered rationale of relevance, in exchange for ChromaDex making a reciprocal  
11 production. (Treckler Decl. Ex. 7 at 3.) ChromaDex declined. (Treckler Decl. Ex. 8  
12 at 3.) Confusingly, ChromaDex argues that because Elysium previously agreed to  
13 produce documents concerning a subset of these topics, in response to ChromaDex’s  
14 Requests 42, 43, and 61, Elysium is not permitted to object to producing additional  
15 documents in response to broader requests from ChromaDex. (*See* n.17.) Even more  
16 puzzling, ChromaDex concedes that “[m]any of the requested documents” are  
17 responsive to its Requests 42, 43, and 61, which ChromaDex admits that Elysium  
18 produced documents in response to, without acknowledging that these new requests  
19 are, by its own admission, duplicative. (*See* n.17.)

20 *Second*, ChromaDex’s Requests are both patently overbroad, calling for the  
21 production of “all” documents and communications relating to various aspects of  
22 cGMP standards, and impermissibly seek irrelevant documents, since only the NR  
23 sold by ChromaDex is the subject of Elysium’s claim for breach of the cGMP  
24 Provision. Therefore, only the NR sold by ChromaDex is relevant to ChromaDex’s  
25 defenses in this action. Elysium’s negotiations and contracts with third parties, which  
26 are the subject of Requests 93-96, are simply irrelevant to whether or not ChromaDex  
27 breached its own contract with Elysium and the damages stemming from that breach.  
28 Indeed, when Elysium sought discovery relating to the cGMP status of the NIAGEN

1 sold by ChromaDex after the termination of the contract with Elysium, ChromaDex  
2 refused, arguing that the only relevant documents were “documents showing the exact  
3 cGMP status of NIAGEN sold to Elysium and ChromaDex’s knowledge of acetamide  
4 in NIAGEN during the contract period.” (Treckler Decl. Ex. 5 at 2.) If only the  
5 cGMP status of NIAGEN sold to Elysium during the contract period is relevant, per  
6 ChromaDex, then it follows that Elysium’s negotiations and contracts with third  
7 parties after that period cannot be relevant.

8 **b. Request Nos. 100, 101, 154 and 155.**

9 ChromaDex demands “documents concerning two key ChromaDex regulatory  
10 submissions: the NIAGEN GRAS (Request No. 100) and the NIAGEN NDIN  
11 (Request No. 101), and Elysium’s use of and reliance on these documents (Request  
12 Nos. 154-55),” because the requested documents “will show that Elysium knew that  
13 NIAGEN was allegedly manufactured according to Food cGMPs and knew that the  
14 Substance [*i.e.*, acetamide] could possibly be found in NIAGEN.”

15 Elysium has already agreed to produce and has produced any documents that  
16 address Elysium’s consideration of NIAGEN’s cGMP status, which encompasses the  
17 relevant discovery ChromaDex is requesting. For example, relevant documents  
18 sought by ChromaDex for these four requests were produced, to the extent they  
19 existed, in response to ChromaDex’s Requests Nos. 99 and 105. (Treckler Decl. Ex. 9  
20 at 1-2 (agreeing to produce certain documents); *see also* Treckler Decl. Ex. 10 at 15,  
21 19-20.) Instead, it claims that it needs broader discovery regarding Elysium’s general  
22 understanding of aspects of those documents that are *unrelated* to the cGMP and  
23 acetamide issues, purportedly to establish Elysium’s constructive knowledge of  
24 ChromaDex’s contractual breaches relating to the cGMP and acetamide issues. This  
25 is nonsensical, for a number of reasons.

26 *First*, although the GRAS dossier does say, as ChromaDex asserts, that the  
27 product to which it relates is manufactured in a facility that “complies with cGMPs for  
28 foods,” ChromaDex omits to mention that the product is described as “an ingredient in

1 vitamin waters, protein shakes, nutrition bars, gum and chews,” and nowhere  
2 mentions use as an ingredient in dietary supplements, which is what ChromaDex sold  
3 Elysium. (Treckler Decl. Ex. 11 at 1.)

4 *Second*, and even more astonishing, is ChromaDex’s argument that its NDIN  
5 and GRAS submissions should have put Elysium on notice that acetamide was present  
6 in the NR that ChromaDex sold. To be sure, as ChromaDex says, both submissions  
7 reflect that acetamide was a byproduct of the manufacturing process. However,  
8 ChromaDex omits to advise the Court of the crucial fact that both submissions  
9 represented to FDA that acetamide was *undetectable in the final product*. The GRAS  
10 submission represented that “Acetamide is undetectable in the final product; it is  
11 removed based on its high solubility in solvents (alcohol, water) used to wash the  
12 product.” (Treckler Decl. Ex. 11 at 16.) ChromaDex’s NDIN for NIAGEN (a  
13 document numbering 942 pages) also contains a table representing that acetamide is  
14 not detected in its final product. (Treckler Decl. Ex. 12 at 49-50.) ChromaDex’s  
15 implicit assertion that Elysium should have concluded that ChromaDex lied to FDA  
16 about the presence of acetamide in NIAGEN is baffling.

17 In any event, Elysium agreed to produce documents relating to its  
18 understanding of the GRAS and NDIN submissions as those submissions relate to  
19 NIAGEN’s cGMP and acetamide, which are the relevant issues in this case. Elysium  
20 should not have to produce documents concerning its general understanding of either  
21 the GRAS or NDIN on matters unrelated to cGMP or acetamide.

22 **c. Request No. 130.**

23 ChromaDex claims that it requires “[a]ll Certificates of Analysis related to  
24 [Elysium’s] product Basis and/or the ingredients contained therein” (Request No.  
25 130), because “[t]he Basis COAs are thus relevant to determining whether the  
26 Substance Elysium alleges was present because of ChromaDex’s NIAGEN, may  
27 instead have come from another source” and “[t]he COAs will also show the levels of  
28

1 the Substance that were present in Elysium’s alternate source of NR.”<sup>22</sup> [REDACTED]

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 (Treckler Decl. Ex. 13 at 4.) In light of this evidence, ChromaDex’s contention that it  
8 needs additional documents in order to explore whether the acetamide present in Basis  
9 (as a result of using ChromaDex’s product NIAGEN) “was present because of  
10 ChromaDex’s NIAGEN, [or] may instead have come from another source” is  
11 unwarranted and strains credulity. The issue is not whether Basis contained  
12 acetamide, but whether NIAGEN contained acetamide. The Certificates of Analysis  
13 for the other ingredients in Basis are simply irrelevant to that question, and therefore  
14 should not have to be produced.

15 Finally, ChromaDex argues that “Elysium has produced documents showing  
16 that it accepted and sold NR with five times the amount of [acetamide] than that  
17 contained in any batch of NIAGEN sold to it by ChromaDex, according to  
18 ChromaDex’s testing of the NIAGEN sold to Elysium.” (See ChromaDex’s  
19 Contentions and Points of Authorities, II.C.1.d.) This is an apples-to-oranges  
20 comparison. As ChromaDex acknowledges, the parties are utilizing different tests,  
21 and it is readily apparent that Elysium’s test is far more accurate in detecting  
22 acetamide than is ChromaDex’s test. (*Id.*) Moreover, it is inappropriate even for  
23 ChromaDex to make this argument, given that it has refused to produce to Elysium the  
24 results of its “testing of the NIAGEN sold to Elysium.” (Treckler Decl. Ex. 9 at 2.)

25  
26 <sup>22</sup> ChromaDex also asserts that “Elysium agreed to produce all COAs for its alternate  
27 source of NR but has failed to produce all the COAs.” (*See supra*, at n.20.)  
28 ChromaDex has never informed Elysium which COAs ChromaDex believes are  
missing. If it does so, Elysium will search for and produce any such “missing” COAs  
relating to its alternate source of NR.



1 The remainder of ChromaDex’s arguments are pure speculation and do not rise  
2 to the level that justifies discovery. *See, e.g., Mailhot*, 2012 WL 128841129, at \*2  
3 (C.D. Cal. Sept. 4, 2012) (“Where discovery requests seek information which bears no  
4 relationship to the subject matter of the complaint, courts appropriately deny  
5 enforcement”); *see also Blanton v. Torrey Pines Property Mgmt.*, No. 15-CV-0892,  
6 2017 WL 1957560, at \*3 (S.D. Cal. May 10, 2017) (denying plaintiffs’ motion to  
7 compel because interrogatories were irrelevant to plaintiffs’ claims or defenses, “even  
8 if perhaps relevant to the subject matter of the litigation”).

9 **d. Request No. 129.**

10 ChromaDex demands “[a]ll samples of [Elysium’s] alternate sources of  
11 nicotinamide riboside [Elysium] incorporated into [its] product Basis and which  
12 [Elysium] tested for quality or purity,” because those materials “are relevant to  
13 Elysium’s allegations that ChromaDex failed to meet Elysium’s standards for purity,”  
14 specifically with respect to the damages Elysium may have suffered. As Elysium  
15 explained to ChromaDex in a letter dated July 30, 2018, Elysium disagrees that  
16 Elysium’s production of documents concerning its acetamide testing – which  
17 ChromaDex concedes Elysium produced – is insufficient. (*See also* Treckler Decl.  
18 Ex. 6 at 2 (“Elysium performed testing of NR alone and . . . it tested the NIAGEN  
19 produced from ChromaDex. Documents relating to that testing will be included  
20 within Elysium’s next production.”) More curiously, when faced with a similar  
21 request from Elysium regarding 2018 testing of products for acetamide, ChromaDex  
22 asserted that such documents would be “privileged under the work product doctrine.”  
23 (Treckler Decl. Ex. 9 at 2.)

24 As stated above, [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED] (Treckler

1 Decl. Ex. 13 at 4.) The composition of NR currently being obtained by Elysium from  
2 a source other than ChromaDex simply has no bearing on whether *ChromaDex's* NR  
3 contained acetamide in excess of the amount permissible under California Proposition  
4 65. Nor does the level of acetamide, if any, in Basis as currently manufactured bear  
5 on Elysium's damages claim, which relates to the product ChromaDex sold to it in  
6 breach of the Supply Agreement between Elysium and ChromaDex.

7 The Elysium counterclaims at issue here are straightforward. ChromaDex made  
8 a representation in the NR Supply Agreement that the NR it supplied was  
9 manufactured in accordance with Pharma cGMPs. That was untrue, and ChromaDex  
10 knew it to be untrue. At the same time, ChromaDex promised Elysium that it would  
11 disclose to Elysium issues like the fact that the NR it sold to Elysium contained  
12 acetamide above the levels established by California's Proposition 65, and it failed to  
13 make those disclosures. The current content of Basis has no bearing on those  
14 breaches of contract. Any information regarding Elysium's new NR used in its  
15 product Basis is both immaterial to the claims and defenses at issue, and competitively  
16 sensitive, and Elysium should not be required to produce samples of its newly sourced  
17 NR to a business competitor attempting to drive it from the market. With respect to  
18 the remainder of ChromaDex's arguments, ChromaDex is otherwise engaged in pure  
19 speculation and that does not rise to the level that justifies discovery. *See, e.g.,*  
20 *Mailhot*, 2012 WL 128841129, at \*2 (C.D. Cal. Sept. 4, 2012) ("Where discovery  
21 requests seek information which bears no relationship to the subject matter of the  
22 complaint, courts appropriately deny enforcement"); *see also Blanton v. Torrey Pines*  
23 *Property Mgmt.*, No. 15-CV-0892, 2017 WL 1957560, at \*3 (S.D. Cal. May 10, 2017)  
24 (denying plaintiffs' motion to compel because interrogatories were irrelevant to  
25 plaintiffs' claims or defenses, "even if perhaps relevant to the subject matter of the  
26 litigation). Accordingly, Elysium respectfully requests that ChromaDex's requests be  
27 denied.

1 **III. ATTORNEYS' FEES**

2 **A. ChromaDex's Contentions and Points of Authorities**

3 Federal Rule of Civil Procedure 37(a)(5) provides that if a motion to compel is  
4 granted, "the court must, after giving an opportunity to be heard, require the party or  
5 deponent whose conduct necessitated the motion, the party or attorney advising that  
6 conduct, or both to pay the movant's reasonable expenses incurred in making the  
7 motion, including attorney's fees," unless "the opposing party's nondisclosure,  
8 response, or objection was substantially justified."

9 As explained in this brief, Elysium has continued to engage in dilatory  
10 discovery tactics throughout this action. The unreasonableness of Elysium's delay in  
11 producing documents is evidenced by the fact that many of the documents are relevant  
12 to Requests propounded by ChromaDex long ago—on June 30, 2017 (Request Nos.  
13 42, 43, 61, 49, 50), February 23, 2018 (Request Nos. 93, 94, 95, 96, 97, 98, 100, 101),  
14 and March 20, 2018 (Request Nos. 129, 130). (Rios Decl. ¶ 3.) Further, Elysium's  
15 transgressions include violating this Court's December 20 Order, holding back the  
16 most relevant (and damaging) documents from production until the parties' agreed  
17 substantial completion date, and now brandishing a legal preemption doctrine to  
18 suggest that responsive material is not relevant, even where ChromaDex has offered  
19 several additional explanations for how those documents are relevant to the parties'  
20 existing claims and defenses. *Colombia Pictures Indus., Inc. v. Bunnell*, 2007 WL  
21 4916964, at \*13 (C.D. Cal. May 7, 2007) (Tentatively awarding expenses and fees  
22 where the document requests at issue had been pending for 13 months and  
23 "defendants still ha[d] not fully responded to said requests and, as to some of the  
24 requests, ha[d] violated the February 13 Order directing them to do so."). Reasonable  
25 people cannot differ on the fact that Elysium has offered no authority supporting its  
26 position. See 8B Charles Alan Wright et al., *Federal Practice and Procedure* § 2288  
27 (4th ed. 2017) (noting opposition to a discovery motion is substantially justified where  
28 it raises issues "about which reasonable people could genuinely differ"). Further, the

1 sheer number of Requests for which Elysium refuses to produce documents, despite  
2 ChromaDex’s repeated reasonable explanations of relevance, and Elysium’s repeated  
3 failure to substantiate its purported proportionality objections, indicate that its refusals  
4 are not substantially justified but instead an improper litigation strategy. *City of*  
5 *Colton v. Am. Promotional Events, Inc.*, 2012 WL 13013391, at \*2 (C.D. Cal. Mar.  
6 29, 2012) (finding that multiple violations of a party’s discovery obligations “cannot  
7 be seen as substantially justified” and recommending that the non-moving party pay  
8 reasonable expenses, including attorneys’ fees).

9 With the clear relevance of the information sought by ChromaDex’s Requests,  
10 combined with Elysium lack of support in opposing them, the Court should find that  
11 Elysium is unjustifiably blocking ChromaDex from discovering its wrongdoing and  
12 defending itself against Elysium’s claims. ChromaDex therefore requests that, should  
13 its Motion be granted, the Court award ChromaDex its expenses and attorneys’ fees  
14 incurred in bringing this Motion after it is given an opportunity to submit evidence  
15 regarding costs and fees. *Biovail Labs., Inc. v. Anchen Pharm., Inc.*, 233 F.R.D. 648,  
16 655 (C.D. Cal. 2006) (awarding attorneys’ fees on a motion to compel and requiring  
17 (1) movant to present a bill of costs to the opposing party, which the opposing party  
18 had to pay within 30 days, and (2) requiring movant to file a declaration of counsel  
19 within 10 days to instruct the court’s award of fees); *Carson Cheng v. AIM Sports,*  
20 *Inc.*, 2011 WL 13175663, at \*10 (C.D. Cal. Aug. 23, 2011).

21 **B. Elysium’s Contentions and Points of Authorities**

22 ChromaDex’s request for attorneys’ fees is meritless. Federal Rule of Civil  
23 Procedure 37(a)(5) states that “if the motion is granted--or if the disclosure or  
24 requested discovery is provided after the motion was filed--the court must, after  
25 giving an opportunity to be heard, require the party or deponent whose conduct  
26 necessitated the motion, the party or attorney advising that conduct, or both to pay the  
27 movant’s reasonable expenses incurred in making the motion, including attorney’s  
28 fees. But the court must not order this payment if: (i) the movant filed the motion

1 before attempting in good faith to obtain the disclosure or discovery without court  
2 action; (ii) the opposing party’s nondisclosure, response, or objection was  
3 substantially justified; or (iii) other circumstances make an award of expenses unjust.”

4 “Substantially justified” means that reasonable people could differ as to the  
5 appropriateness of the contested action. *Pierce v. Underwood*, 487 U.S. 552, 565  
6 (1988). This standard was recently repeated by the Ninth Circuit. *See Sali v. Corona*  
7 *Reg’l Med. Ctr.*, 884 F.3d 1218, 1224 (9th Cir. 2018) (“Even if the party could have  
8 [complied] but fails to do so, the party can still avoid incurring ‘reasonable expenses  
9 ... caused by the failure’ if it ‘was substantially justified or other circumstances make  
10 an award of expenses unjust.’”). Elysium is required only to produce documents that  
11 are relevant and in proportion to the needs of this case. As explained above, Elysium  
12 has produced documents directly relating to the claims and defenses at issue in  
13 response to past discovery requests, and even in response to numerous of the Requests  
14 that are the subject of this Motion. The current requests are overbroad and plainly a  
15 fishing expedition, to which Elysium has responded with appropriate objections and  
16 good-faith offers of compromise. Any additional production would not only be  
17 unreasonably duplicative, it would also be irrelevant. Elysium is not in violation of a  
18 court order – tellingly, ChromaDex has not moved on that basis.

19 Attorneys’ fees are not warranted here. *Cf. Hyde & Hyde, Inc. v. Mount*  
20 *Franklin Food, LLC*, No. EP-11-CA-08-FM, 2012 WL 12862827, at \*1 (W.D. Tex.  
21 Mar. 1, 2012) (finding defendants’ refusal to comply with plaintiffs’ discovery request  
22 was substantially justified because “it was a close question whether the requested  
23 discovery was relevant and likely to lead to admissible evidence”). Elysium’s refusal  
24 to provide irrelevant documents out of proportion to the needs of the case in response  
25 to overbroad document requests was substantially justified. Elysium, as demonstrated  
26 above, engaged in extensive good-faith efforts to narrow the scope of ChromaDex’s  
27 discovery requests and agreed to provide subsets of relevant documents in response to  
28 overbroad requests. By acknowledging that it has already received documents from

1 Elysium in response to prior discovery requests, encompassing the same topics on  
2 which it now moves to compel, ChromaDex itself concedes that it made unreasonably  
3 duplicative requests. Elysium is in compliance with its discovery obligations.

4 In sum, Elysium requests that the Court denying ChromaDex's motion to  
5 compel in its entirety and deny ChromaDex's request for attorneys' fees.

6  
7  
8  
9 Dated: October 23, 2018

COOLEY LLP

10  
11 /s/ Barrett Anderson

Barrett Anderson

12  
13 Attorneys for Plaintiff

ChromaDex, Inc.

14  
15 *The filer, Barrett Anderson, attests that the other signatory listed, on whose behalf  
16 the filing is submitted, concurs in the filing's content and has authorized the filing.*

17 Dated:

BAKER & HOSTETLER LLP

18  
19 /s/ Joseph N. Sacca

JOSEPH N. SACCA

20  
21 Attorneys for Defendant and

22 Counterclaimant Elysium Health, Inc.  
23  
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