

1 **I. INTRODUCTION & BACKGROUND**

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3 In this case, Plaintiff ChromaDex, Inc. (“ChromaDex”) and Defendant Elysium
4 Health, Inc. (“Elysium”) each alleged that the other party breached the parties’ Niagen
5 Supply Agreement. (Dkt. 239-6 [hereinafter the “Agreement”].) Under that Agreement,
6 ChromaDex supplied Elysium with ingredients that Elysium used in a dietary
7 supplement. (Dkt. 295-1 ¶¶ 4–5.)

8
9 In the central dispute of this case, ChromaDex alleged Elysium failed to pay for
10 ingredients it ordered on June 30, 2016 (“the June 30 orders”). Elysium never disputed
11 that it did not pay for the June 30 orders or that the amount invoiced for those orders was
12 \$2,983,350. Rather, it argued that ChromaDex’s breach of the “Most-Favored Nation”
13 (“MFN”) provision of the Agreement meant that Elysium did not owe the full amount
14 invoiced. The MFN provision reads:

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16 If . . . ChromaDex supplies Niagen . . . to a Third Party at a
17 price that is lower than that at which Niagen is supplied to
18 Elysium Health under this Agreement, then the price of Niagen
19 supplied under this Agreement shall be revised to such Third
20 Party price with effect from the date of the applicable sale to
21 such Third Party and ChromaDex shall promptly provide
22 Elysium Health with any refund or credits thereby created;
23 provided Elysium Health purchases equal volumes or higher
24 volumes than the Third Party.

25 (Agreement § 3.1.) Elysium claimed that ChromaDex sold ingredients to other
26 companies for a lower price than it sold them to Elysium, but failed to refund or credit
27 Elysium under the MFN provision. ChromaDex denied that Elysium was entitled to any
28 refund or credit under the MFN provision and asserted that Elysium owed the full
\$2,983,350. The parties’ negotiations over the amount Elysium owed for the June 30
orders were stymied by their disagreement over how much information ChromaDex had

1 to provide Elysium regarding other customers' orders; Elysium contended that
2 ChromaDex never gave it enough information to determine exactly how much it owed.

3
4 Precisely how much Elysium owed for the June 30 orders was a major issue at
5 trial. Elysium presented evidence that ChromaDex sold ingredients to other customers
6 for much lower prices than the price it gave Elysium, and argued that ChromaDex should
7 have disclosed the details of those transactions and given Elysium a corresponding refund
8 or credit. ChromaDex did not seriously dispute that it had sold NR to other customers at
9 lower prices, but rather argued that none of the deals it gave other customers entitled
10 Elysium to a refund or credit under the MFN provision. In September 2021, the jury
11 concluded that Elysium breached its agreement to pay for the June 30 orders and that
12 ChromaDex's damages were \$2,983,350. (Dkt. 570 [Verdict Form] at 2.) However, the
13 jury also concluded that ChromaDex breached the MFN provision, and that as a result
14 ChromaDex overcharged Elysium \$625,000 on the June 30 orders. (*Id.* at 9–10.)¹

15
16 Now before the Court is ChromaDex's motion for prejudgment interest, in which it
17 seeks prejudgment interest on the jury's \$2,983,350 award. (Dkt. 580 [hereinafter
18 "Mot."].) Elysium opposes, arguing that (1) ChromaDex is not entitled to prejudgment
19 interest at all because Elysium was never able to calculate how much it owed on the June
20 30 orders, and (2) even if ChromaDex is entitled to prejudgment interest, it should only
21 recover interest on the balance remaining once Elysium's damages are deducted from
22 ChromaDex's recovery. (Dkt. 581 [Opposition, hereinafter "Opp."].) For the following
23 reasons, ChromaDex's motion for prejudgment interest is **DENIED**.²

24
25 ¹ The jury also concluded that ChromaDex fraudulently induced Elysium to enter into another
26 agreement—the Trademark License and Royalty Agreement—under which Elysium paid \$250,000 in
27 royalties. (Verdict Form at 10.) The jury further awarded Elysium \$1,025,000 in punitive damages
28 against ChromaDex for ChromaDex's fraud. (*Id.*)

² Having read and considered the papers presented by the parties, the Court finds these matters
appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the
hearing set for February 14, 2022 at 1:30 p.m. is hereby vacated and off calendar.

1 III. ANALYSIS

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3 A party's entitlement to prejudgment interest depends on whether the amount owed
4 was certain or capable of being made certain by calculation (sometimes referred to as
5 "liquidated"), or uncertain (sometimes referred to as "unliquidated"). "Every person who
6 is entitled to recover damages certain, or capable of being made certain by calculation,
7 and the right to recover which is vested in him upon a particular day, is entitled also to
8 recover interest thereon from that day." Cal. Civ. Code § 3287(a). Prejudgment interest
9 is therefore "allowable—as of right—where the amount due plaintiff is fixed by the terms
10 of a contract," but "is not allowable where the amount of the damages depends upon a
11 judicial determination based on conflicting evidence." *Thompson v. Asimos*, 6 Cal. App.
12 5th 970, 991 (2016) (cleaned up); *see Duale v. Mercedes-Benz USA, LLC*, 148 Cal. App.
13 4th 718, 729 (2007) ("[W]here the amount of damages cannot be resolved except by
14 verdict or judgment, prejudgment interest is not appropriate.") (emphasis removed).

15
16 When determining whether damages are certain or capable of being made certain
17 by calculation under Section 3287(a), courts "focus on the *defendant's* knowledge about
18 the amount of the plaintiff's claim." *Chesapeake Indus., Inc. v. Togova Enterprises, Inc.*,
19 149 Cal. App. 3d 901, 906 (1983) (emphasis in original). The test "is whether *defendant*
20 actually know[s] the amount owed or from reasonably available information could the
21 defendant have computed that amount." *Duale*, 148 Cal. App. 4th at 729 (emphasis in
22 original); *Chesapeake*, 149 Cal. App. 3d at 906. In other words, just because a defendant
23 knows one figure necessary to calculate how much is owed, or the general universe of
24 what the defendant could owe, does not mean that a plaintiff's claim is either certain or
25 calculable. *Chesapeake*, 149 Cal. App. 3d at 906, 914; *see Wisper Corp. v. California*
26 *Com. Bank*, 49 Cal. App. 4th 948, 961 (1996). Rather, "a person who does not know
27 what sum is owed cannot be in default for failure to pay." *Chesapeake*, 149 Cal. App. 3d
28 at 906; *see id.* at 907 (explaining that Chesapeake was "only liable for prejudgment

1 interest on the net sum due under this lease if it knew or could have calculated the
2 amount of th[e] deficit” or offset to be applied).

3
4 In this case, the evidence showed that Elysium could not have calculated from
5 reasonably available information the amount it owed on the June 30 orders. To make
6 such a calculation, Elysium would have needed to know the prices ChromaDex gave
7 other customers, the volumes at which ChromaDex gave other customers those prices,
8 and the date of relevant sales to other customers. (*See* Agreement § 3.1; Opp. at 4, 8.)
9 Elysium did not have all of that information. *See Chesapeake*, 149 Cal. App. 3d at 911
10 (explaining that a party could not calculate how much was owed when the other party
11 was “the only party in possession of the data required to determine the extent of [the]
12 liability under the lease” and did not provide that data). Indeed, at trial both parties
13 heavily contested the amount Elysium owed, including issues relating to (1) whether any
14 other customers’ orders triggered the MFN provision, (2) if so, which orders did, and
15 (3) how much of a credit or refund Elysium deserved based on those orders. (*See* Mot. at
16 5 [“The MFN award is unliquidated because ChromaDex and Elysium heavily disputed
17 both before and at trial the amount of any damages owed under the MFN provision.”].)
18 ChromaDex argued that no refund or credit was due under the MFN provision, or that at
19 most \$300,000 was appropriate. (*Id.*) On the other hand, Elysium argued that it deserved
20 a \$1,744,000 or \$3,394,000 refund or credit under the MFN provision. (*Id.*) The amount
21 Elysium owed for the June 30 purchase orders was simply not a sum certain, nor was it
22 calculable without the jury’s determination based on conflicting evidence. *See*
23 *Thompson*, 6 Cal. App. 5th at 991.

24
25 *Chesapeake* helps show why this is the case. There, Chesapeake leased real
26 property from Togova for 10 years with rent payable monthly. However, Chesapeake
27 vacated the premises with three-and-a-half years remaining on the lease. Because
28 Togova relet the premises, Chesapeake became liable for the difference between its rental

1 amount and the rental amounts Togova obtained from the substitute lessee. When
2 Chesapeake sought an accounting from Togova of all rents received from the substitute
3 lessee, Togova stated that although it did not know the exact amount at that time, the
4 deficit exceeded \$115,000. In the end, the trial court concluded that Chesapeake owed
5 Togova \$50,323.84 and awarded prejudgment interest. The Court of Appeal reversed the
6 interest award, explaining that Chesapeake could not have known or calculated based on
7 information reasonably available the amount it owed—its rent minus the rent Togova
8 received from the subsequent lessee—because Togova was exclusively in possession of
9 the data needed to calculate the offset and did not provide it to Chesapeake.

10
11 Similarly, here, Elysium could not have known or calculated the amount owed on
12 the June 30 orders because it could not calculate based on reasonably available
13 information what refund or credit it was due under the MFN provision. ChromaDex was
14 the only party with that information and it did not provide it to Elysium. Determining
15 how much Elysium owed required the jury to determine (1) whether ChromaDex
16 breached the MFN provision, (2) which orders created such a breach, and (3) what refund
17 or credit Elysium was owed based on the price ChromaDex gave the other customers, for
18 what volume, and when those customers' orders were made. Doing so was clearly not a
19 straightforward process, as the jury did not select the figures offered by either side. (*See*
20 *Mot. at 5.*)

21
22 Indeed, the fact that the jury concluded that Elysium was overcharged by over 20%
23 confirms that awarding prejudgment interest is not appropriate in this case. When there
24 is a large discrepancy between the amount of damages demanded and the size of the
25 eventual award, it is less likely that damages were certain. *Wisper Corp.*, 49 Cal. App.
26 4th at 961. On the other hand, when there is no significant disparity between the amount
27 claimed and the final judgment amount, it is more likely that damages were certain or
28 capable of calculation. *Id.* The jury's conclusion that Elysium was overcharged

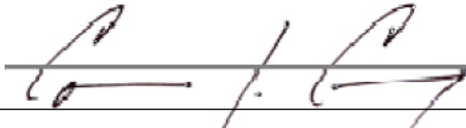
1 \$650,000 on a \$2,983,350 order reflects a significant disparity in the amount claimed and
2 the final judgment amount, indicating that prejudgment interest is not warranted.

3
4 ChromaDex argues that the amount it sought was certain and prejudgment interest
5 should be awarded because the Agreement required Elysium to pay the full \$2,983,350
6 for the June 30 orders, with Elysium’s entitlement to any refund or credit under the MFN
7 provision to be determined separately after Elysium paid the full amount. (*See* Mot. at 6–
8 7; Dkt. 582 [Reply] at 3–4.) However, the evidence presented at trial does not support
9 ChromaDex’s argument. For example, the evidence showed that at least some of the
10 purchases made by other customers that could have entitled Elysium to a lower price
11 based on the MFN provision occurred before the June 30 orders were placed, so Elysium
12 arguably should have been given a lower price on the ingredients it purchased for
13 \$2,983,350 before the June 30 orders were even invoiced. In other words, the Agreement
14 made clear that ChromaDex was supposed to give Elysium the best price for the
15 ingredients it purchased. Elysium argued ChromaDex did not give them that best price,
16 and the jury agreed. Awarding prejudgment interest under these circumstances would not
17 be fair or equitable.

18
19 **V. CONCLUSION**

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21 For the foregoing reasons, ChromaDex’s motion for prejudgment interest is
22 **DENIED.**

23
24 DATED: February 10, 2022

25 
26 _____
27 CORMAC J. CARNEY

28 UNITED STATES DISTRICT JUDGE