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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

CHROMADEX, INC.,

Plaintiff,

v.

ELYSIUM HEALTH, INC.,

Defendant.

ELYSIUM HEALTH, INC.,

Counter Claimant,

v.

CHROMADEX, INC.,

Counter Defendant.

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

**ORDER GRANTING IN PART AND
DENYING IN PART ELYSIUM'S
MOTION TO DISMISS**

1 **I. INTRODUCTION**

2
3 Plaintiff ChromaDex, Inc. (“ChromaDex”) filed this action against Defendant
4 Elysium Health, Inc. (“Elysium”) on December 29, 2016. (Dkt. 1 [Complaint].) On June
5 29, 2018, pursuant to the parties’ stipulation, ChromaDex filed a Fourth Amended
6 Complaint. (Dkt. 109 [Fourth Amended Complaint, hereinafter “FAC”].) Before the
7 Court is Elysium’s motion to dismiss the third, fourth, and fifth claims in the FAC. (Dkt.
8 111 [Motion], Dkt. 111-1 [Memorandum, hereinafter “Mot.”].) For the following
9 reasons, the motion is GRANTED IN PART AND DENIED IN PART.¹

10
11 **II. BACKGROUND**

12
13 The FAC alleges the following facts. ChromaDex is a corporation that develops
14 patented ingredients for use in dietary supplements, food, beverages, skin care, and
15 pharmaceuticals. (FAC ¶ 11.) Elysium is a corporation that sells a dietary supplement
16 named “Basis.” (*Id.* ¶ 2.) ChromaDex alleges that it was “Elysium’s sole supplier of the
17 two fundamental active ingredients” in Basis. (*Id.*) These two ingredients are
18 NIAGEN®, a health ingredient that is comprised of nicotinamide riboside (“NR”), and
19 pTeroPure®, a health ingredient made of pterostilbene. (*Id.*)

20
21 ChromaDex and Elysium entered into three contracts under which ChromaDex
22 sold and Elysium bought NIAGEN and pTeroPure. (*Id.* ¶ 18.) The contracts are: (1) the
23 NIAGEN Supply Agreement, dated February 3, 2014, (2) the pTeroPure Supply
24 Agreement, dated June 26, 2014, and (3) a Trademark License and Royalty Agreement,
25 dated February 3, 2014. (*Id.*)

26
27
28 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
for August 6, 2018, at 1:30 p.m. is hereby vacated and off calendar.

1 ChromaDex and Elysium’s dealings were “unremarkable” until 2016. (*Id.* ¶ 21.)
2 Then, in 2016, Elysium secretly began developing an alternative manufacturing source
3 for NR. (*Id.* ¶ 52.) To further this plan, Elysium recruited two of ChromaDex’s key
4 employees, Mark Morris and Ryan Dellinger. (*Id.*) Morris allegedly began giving to
5 Elysium “confidential and proprietary information on ChromaDex’s sales to other
6 customers,” including a spreadsheet that contained the prices and volumes of NR ordered
7 by another ChromaDex customer (“Pricing Spreadsheet”). (*Id.* ¶ 23.) Then, in June
8 2016, Elysium used the information in the spreadsheet to negotiate with ChromaDex a
9 better price for NIAGEN. (*Id.* ¶¶ 26–27, 73.) Elysium placed two large purchase orders
10 on June 28, 2016, which demanded a discounted price. (*Id.* ¶ 31.) ChromaDex refused to
11 fill these orders at the requested prices, and discussed the orders with Elysium during a
12 phone call on June 30, 2016. (*Id.* ¶¶ 33–37.) During the phone call, Elysium represented
13 that their business was “ramping up,” and that they would place additional large orders
14 that year. (*Id.* ¶ 36.) Based on the phone call, Elysium submitted later on June 30 two
15 revised purchase orders, which were smaller than the June 28 purchase orders but still
16 larger than any previous order. (*Id.* ¶ 38.) ChromaDex filled the purchase orders on July
17 1 and August 9, 2016, but Elysium has never paid for the products. (*Id.* ¶¶ 42, 51.)
18 ChromaDex claims that Elysium never intended to pay for the products, (*id.* ¶ 41), and
19 instead planned to use the money to develop its alternative manufacturing capabilities,
20 (*id.* ¶ 53).

21
22 ChromaDex’s former employees, Morris and Dellinger, resigned from ChromaDex
23 in July and August 2016 to work for Elysium. (*Id.* ¶¶ 69, 97–98.) ChromaDex contends
24 that Morris and Dellinger began working with Elysium in secret at least two months
25 before they resigned. (*Id.* ¶ 73.) During that period, Morris and Dellinger allegedly
26 disclosed ChromaDex’s confidential information to Elysium. (*Id.*) Morris gave to
27 Elysium a list of manufacturers that could potentially produce NR and a ChromaDex
28 document that described the manufacturing process for NR. (*Id.* ¶ 75.) Morris also

1 purportedly gave Elysium ChromaDex’s “Ingredient Sales Spreadsheet,” which tracks all
2 of ChromaDex’s sales since 2012, including customer names, prices, volumes, and dates
3 of purchases. (*Id.*) ChromaDex claims that this spreadsheet contains “stolen trade secret
4 information.” (*Id.* ¶ 79.)

5
6 ChromaDex alleges that after Morris and Dellinger officially began working for
7 ChromaDex, they used several “proprietary ChromaDex documents” to help develop an
8 alternative source for NR. (*Id.* ¶ 81.) Morris allegedly relied on a ChromaDex document
9 that had been submitted to the U.S. Food and Drug Administration (“FDA”) and publicly
10 disclosed, the “NR GRAS Dossier,” which “contains a step-by-step guide for
11 manufacturing NR.” (*Id.* ¶ 82.) Morris allegedly “took screenshots of select pages” of
12 the NR GRAS Dossier and then Elysium used the screenshots to create their own
13 document. (*Id.* ¶ 85.)

14
15 Morris also allegedly sent to Elysium’s alternative manufacturer a document
16 containing ChromaDex’s method for analyzing the concentration of NR chloride, the
17 “NRCI Analytical Method.” (*Id.* ¶ 88.) This document “was sometimes shared with
18 ChromaDex’s NR customers for the limited purposes of guiding those customers in their
19 testing of the NIAGEN they received from ChromaDex.” (*Id.*) This document had been
20 sent to Elysium in June 2014, but ChromaDex limited Elysium’s use of the information
21 under the terms of the NIAGEN Supply Agreement. (*Id.* ¶ 89.) Morris also sent to the
22 alternative manufacturer a ChromaDex document containing “NR Specifications,” which
23 reflects “the range of acceptable results for several analyses that were regularly
24 performed on the NIAGEN ChromaDex sold,” and which ChromaDex provided to its NR
25 customers to test its NIAGEN. (*Id.* ¶ 90.) Elysium allegedly converted these
26 ChromaDex documents by using them in documents that Elysium created and sent to the
27 alternative manufacturer. (*Id.* ¶¶ 94–95.)

28

1 Morris and Dellinger also allegedly used two Powerpoint presentations created by
2 ChromaDex to create a presentation for Elysium. (*Id.* ¶¶ 100–101.) The presentations
3 “explain the science supporting the health benefits of ChromaDex’s ingredients,
4 including NIAGEN and pTeroPure.” (*Id.* ¶ 101.) Morris and Dellinger “blatantly
5 converted” the ChromaDex presentations by using many of the slides in a presentation
6 they created for Elysium. (*Id.* ¶ 103.)

7
8 Finally, Dellinger also purportedly used another confidential ChromaDex
9 document, the “pTeroPure GRAS Report,” in 2017 when Dellinger helped Elysium
10 prepare a submission to the FDA. (*Id.* ¶ 106.) The pTeroPure GRAS Report details the
11 safety of psterostilbene, and ChromaDex shared it with Elysium “during the course of the
12 parties’ relationship.” (*Id.* ¶¶ 106–108.)

13
14 In its third, fourth, and fifth causes of action, ChromaDex brings claims for
15 misappropriation of trade secrets under California’s Uniform Trade Secrets Act
16 (CUTSA), violation of the federal Defense of Trade Secrets Act (“DTSA”), and
17 conversion. (*Id.* ¶¶ 148–228.) Elysium moves to dismiss each of these claims under
18 Federal Rule of Civil Procedure 12(b)(6).

19
20 **III. LEGAL STANDARD**

21
22 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal
23 sufficiency of the claims asserted in the complaint. The issue on a motion to dismiss for
24 failure to state a claim is not whether the claimant will ultimately prevail, but whether the
25 claimant is entitled to offer evidence to support the claims asserted. *Gilligan v. Jamco*
26 *Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997). Rule 12(b)(6) is read in conjunction with
27 Rule 8(a), which requires only a short and plain statement of the claim showing that the
28 pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). When evaluating a Rule 12(b)(6)

1 motion, the district court must accept all material allegations in the complaint as true and
2 construe them in the light most favorable to the non-moving party. *Moyo v. Gomez*, 32
3 F.3d 1382, 1384 (9th Cir. 1994).

4
5 However, “the tenet that a court must accept as true all of the allegations contained
6 in a complaint is inapplicable to legal conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
7 (2009); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (stating that while
8 a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual
9 allegations, courts “are not bound to accept as true a legal conclusion couched as a factual
10 allegation” (citations and quotes omitted)). Dismissal of a complaint for failure to state a
11 claim is not proper where a plaintiff has alleged “enough facts to state a claim to relief
12 that is plausible on its face.” *Twombly*, 550 U.S. at 570. In keeping with this liberal
13 pleading standard, the district court should grant the plaintiff leave to amend if the
14 complaint can possibly be cured by additional factual allegations. *Doe v. United States*,
15 58 F.3d 494, 497 (9th Cir. 1995).

16 17 **IV. DISCUSSION**

18 19 **A. Conversion**

20
21 In support of its conversion claim, ChromaDex alleges that Elysium converted the
22 following documents: the NRCI Analytical Method, (FAC ¶¶ 172–78), the pTeroPure
23 GRAS Report, (*id.* ¶¶ 179–85), ChromaDex’s Powerpoint presentations, (*id.* ¶¶ 186–
24 205), the Pricing Spreadsheet, (*id.* ¶¶ 206–12), the NR Specifications, (*id.* ¶¶ 213–19),
25 and the NR GRAS Dossier, (*id.* ¶¶ 220–28). ChromaDex claims that it invested
26 significant resources to create these documents, and was damaged because it was denied
27 a return on its investment when Elysium used the documents. (*Id.* ¶¶ 172–228.) As to
28 the Pricing Spreadsheet, ChromaDex claims it was damaged because its disclosure placed

1 ChromaDex at a disadvantage during contract negotiations. (*Id.* ¶ 211.) Elysium moves
2 to dismiss ChromaDex’s conversion claim because it is preempted by CUTSA. (Mot. at
3 8–10.) The Court agrees that the claim is preempted and accordingly **GRANTS**
4 Elysium’s motion as to the conversion claim.

5
6 In California, CUTSA provides “the exclusive civil remedy” for conduct “based
7 upon misappropriation of a trade secret.” *Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App.
8 4th 210, 236 (2010), *disapproved of on other grounds, Kwikset Corp. v. Superior Court*,
9 51 Cal. 4th 310 (2011). CUTSA serves to preempt all claims premised on the wrongful
10 taking and use of confidential business and proprietary information, even if that
11 information does not meet the statutory definition of a trade secret. *See Silvaco*, 184 Cal.
12 App. 4th at 239 n.2; *Mattel, Inc. v. MGA Entm’t, Inc. & Consol. Actions*, 782 F. Supp. 2d
13 911, 987 (C.D. Cal. 2010) (“[C]UTSA supersedes claims based on the misappropriation
14 of confidential information, whether or not that information meets the statutory definition
15 of a trade secret.”); *SunPower Corp. v. SolarCity Corp.*, No. 12-CV-00694-LHK, 2012
16 WL 6160472, at *7 (N.D. Cal. Dec. 11, 2012) (same).

17
18 Here, ChromaDex alleges that Elysium took confidential and proprietary
19 information and misappropriated it for Elysium’s own use, including by copying and
20 using the information to gain a commercial advantage. ChromaDex argues that CUTSA
21 suppression nevertheless does not apply because the allegedly converted documents are
22 not trade secrets. The Court rejects ChromaDex’s argument and instead “follows the lead
23 of numerous other courts that adopt a broad reading of ‘trade secret’ and ‘emphatically
24 reject’ the proposition that CUTSA does not preempt claims ‘based on the taking of
25 information that, although not a trade secret, [is] nonetheless of value to the claimant.’”
26 *Epicor Software Corp. v. Alternative Tech. Sols., Inc.*, No. SACV1300448CJCRNBX,
27 2015 WL 12724073, at *3 (C.D. Cal. Apr. 2, 2015) (*quoting Mattel*, 782 F. Supp. 2d at
28 986). Because the allegations in support of the conversion claim allege conduct that

1 clearly amounts to misappropriation of ChromaDex’s business information, the claim is
2 preempted by CUTSA and **DISMISSED WITHOUT LEAVE TO AMEND**.²

3
4 **B. Trade Secrets Claims**

5
6 Elysium moves to dismiss ChromaDex’s trade secret misappropriation claims
7 under CUTSA and the DTSA. According to the allegations, the purported trade secret
8 Elysium misappropriated is ChromaDex’s Ingredient Sales Spreadsheet. (FAC ¶¶ 148–
9 168.)

10
11 Elysium argues that ChromaDex fails to allege the existence of a protectable trade
12 secret. (Mot. at 22.) “‘Trade secret’ means information, including a formula, pattern,
13 compilation, program, device, method, technique, or process, that: (1) Derives
14 independent economic value, actual or potential, from not being generally known to the
15 public or to other persons who can obtain economic value from its disclosure or use; and
16 (2) Is the subject of efforts that are reasonable under the circumstances to maintain its
17 secrecy.” Cal. Civ. Code § 3426.1(d) (CUTSA); *see also* 18 U.S.C. § 1839(3) (providing
18 a substantially similar definition under the DTSA).

19
20 The Court finds that ChromaDex has alleged a protectable trade secret.
21 ChromaDex claims that the Ingredient Sales Spreadsheet “contains the detailed
22 purchasing history of every customer who purchased any ingredient from ChromaDex
23 from 2012 through at least May 27, 2016.” (FAC ¶ 150.) ChromaDex also alleges that
24 the spreadsheet includes information that cannot be gained from public sources, including

25
26 ² Elysium also seeks to dismiss ChromaDex’s first and second causes of action for breach of contract,
27 but only to the extent that ChromaDex alleges unlawful disclosure of its confidential documents
28 breached the parties’ contracts. (Mot. at 21–22.) The Court **DENIES** Elysium’s motion as to
ChromaDex’s first and second causes of action. ChromaDex adequately pleads that alleged disclosure
of the information was governed by the confidentiality provisions of the parties’ agreement and that
Elysium breached those provisions.

1 order forecasts, prices, volumes, and dates of each purchase. (*Id.* ¶ 151.) ChromaDex
2 claims it makes efforts to maintain the secrecy of the spreadsheet’s contents and limits
3 access to only a few employees. (*Id.* ¶ 153.) ChromaDex alleges that these employees
4 are required to enter into confidentiality agreements that limit their disclosure of the
5 spreadsheet. (*Id.*)

6
7 Lists containing customer information, like ChromaDex’s Ingredient Sales
8 Spreadsheet, can constitute trade secrets “where the employer has expended time and
9 effort identifying customers with particular needs or characteristics Such lists are to
10 be distinguished from mere identities and locations of customers where anyone could
11 easily identify the entities as potential customers.” *Morlife, Inc. v. Perry*, 56 Cal. App.
12 4th 1514, 1521–22 (1997). Moreover, “a customer list can be found to have economic
13 value because its disclosure would allow a competitor to direct its sales efforts to those
14 customers who have already shown a willingness to use a unique type of service or
15 product as opposed to a list of people who only might be interested.” *Id.* at 1522.
16 ChromaDex’s allegations adequately show that the Ingredient Sales Spreadsheet details
17 the specific needs and purchase history of its customers, and that disclosure of this
18 information would allow a competitor to gain a significant business advantage.
19 ChromaDex also adequately pleads that it takes reasonable steps to protect disclosure of
20 the Ingredient Sales Spreadsheet.

21
22 Elysium also claims that ChromaDex fails to plead damages under the trade secrets
23 claims. (Mot. at 23.) The Court disagrees. ChromaDex alleges that Elysium has been
24 unjustly enriched by the disclosure of the Ingredient Sales Spreadsheet, because it gave
25 Elysium unfair bargaining power in its contract negotiations with ChromaDex. (FAC ¶
26 160.) This theory of unjust enrichment adequately pleads damages to support
27 ChromaDex’s trade secrets claims. *Therapeutic Research Faculty v. NBTY, Inc.*, 488 F.
28 Supp. 2d 991, 1000 (E.D. Cal. 2007) (A plaintiff “could prevail on its claim of

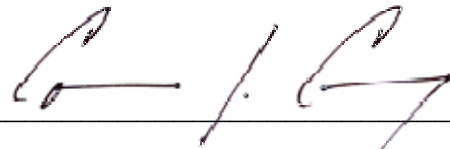
1 misappropriation of trade secrets by showing either damage as a result of the
2 misappropriation or unjust enrichment.”).

3
4 Because ChromaDex has sufficiently pled the existence of a protectable trade
5 secret and damages from Elysium’s purported misappropriation, Elysium’s motion to
6 dismiss the third and fourth causes of action is **DENIED**.

7
8 **V. CONCLUSION**

9
10 For the foregoing reasons, Elysium’s motion is **GRANTED IN PART AND**
11 **DENIED IN PART**.³ ChromaDex’s fifth cause of action for conversion is hereby
12 **DISMISSED WITHOUT LEAVE TO AMEND**.

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15 DATED: July 26, 2018



16
17 CORMAC J. CARNEY

18 UNITED STATES DISTRICT JUDGE

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27 ³ ChromaDex claims that Elysium violated Local Rule 7-3, which provides that a meet and confer
28 conference must occur at least 7 days prior to filing a motion. ChromaDex urges the Court to deny the
motion because Elysium filed it the same day the parties met and conferred. The Court declines to deny
the motion for violation of Local Rule 7-3.