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14
15 **UNITED STATES DISTRICT COURT**
16
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 KIMERA LABS INC,

19 Plaintiff,

20 vs.

21 EXOCEL BIO INC., RAJ
22 JAYASHANKAR, ALEJANDRO
23 (ALEX) CONTRERAS, and DEB
24 HUBERS,

25 Defendants.

Case No. 3:21-cv-02137-MMA-DEB

**SECOND AMENDED
COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

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1 **SECOND AMENDED COMPLAINT**

2 Plaintiff Kimera Labs Inc (Kimera) sues Defendants Exocel Bio Inc. (Exocel Bio),
3 Raj Jayashankar (Jayashankar), Alejandro (Alex) Contreras (Contreras), and Deb Hubers
4 (Hubers) (collectively, Defendants), and alleges as follows:
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6 **INTRODUCTION**

7 1. Kimera is an FDA-registered tissue processing laboratory that specializes in
8 scientific research focusing on exosome characterization and placental mesenchymal stem
9 cell exosomes production and optimization. As discussed in further detail herein, Kimera
10 devoted substantial time, effort, and money to develop its proprietary process method of
11 exosome isolation, to create its customer list, and to acquire the expertise necessary to
12 produce the first clinically available exosome product in the world.
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15 2. With the assistance of Kimera’s employee, Dr. Melissa Selinger (Dr.
16 Selinger), Defendants brazenly and secretly engaged in and benefited from corporate
17 espionage. In 2019, Dr. Selinger assisted Jayashankar, Contreras, and Hubers’
18 misappropriation and use of Kimera’s trade secrets and other confidential information to
19 create Exocel Bio, a competing business to manufacture and sell the same kind of product
20 as Kimera. Exocel Bio has used Kimera’s trade secrets and confidential information to
21 directly compete against Kimera in the exosome isolation industry. Exocel Bio has used
22 Kimera’s trade secrets and confidential information to manufacture and sell its competing
23 extracellular vesicle/exosome products.
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THE PARTIES, JURISDICTION, AND VENUE

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2 3. This is an action for injunctive relief and damages under the Defend Trade
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4 Secrets Act, 18 U.S.C. §§ 1831, *et seq.* (DTSA) and Florida law.

5 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
6 (federal question jurisdiction) and 28 U.S.C. § 1367 (supplemental jurisdiction).
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8 5. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part
9 of the wrongful acts giving rise to the claims in this lawsuit occurred within this Court’s
10 judicial district. Defendants misappropriated and used Kimera’s trade secrets and other
11 confidential information within this Court’s judicial district. Further, venue is proper
12 pursuant to 28 U.S.C. § 1391(3) because Defendant Exocel Bio resides in this Court’s
13 judicial district.
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15 6. Kimera is a Florida corporation doing business in Broward County, Florida.
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17 7. Defendant Exocel Bio is a Delaware corporation with its principal place of
18 business in San Diego County, California. This Court has personal jurisdiction over Exocel
19 Bio because Exocel Bio’s residence and principal place of business is within this Court’s
20 judicial district.
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22 8. Defendant Jayashankar lives in Norfolk County, Massachusetts. Jayashankar
23 is a founder of Exocel Bio. Jayashankar presently holds the title of Chief Operating Officer
24 of Exocel Bio, and regularly fulfills his duties as Chief Operating Officer for Exocel Bio
25 within this Court’s judicial district. This Court has personal jurisdiction over Jayashankar
26 because the violations of law at issue in this lawsuit were conducted by Jayashankar within
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1 this Court’s judicial district. Jayashankar acquired Kimera’s trade secrets and confidential
2 Standard Operating Procedures (SOPs) from Kimera’s former employee, Dr. Selinger. The
3 SOPs are not trade secrets. Jayashankar used Kimera’s trade secrets and SOPs to develop
4 and incorporate Exocel Bio within this Court’s jurisdictional district. Exocel Bio uses
5 Kimera’s trade secrets and SOPs to manufacture its competing products within this Court’s
6 judicial district.
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9 9. Defendant Hubers lives in San Diego County, California. Hubers is one of the
10 founders of Exocel Bio. Hubers currently holds the title of Scientific Advisor of Exocel
11 Bio, and fulfills her duties as Scientific Advisor of Exocel Bio within this Court’s judicial
12 district. This Court has personal jurisdiction over Hubers because Hubers committed
13 violations of law at issue in this lawsuit within this Court’s judicial district.
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16 10. Defendant Contreras is a founder and part owner of Exocel Bio. This Court
17 has personal jurisdiction over Contreras because the violations of law at issue in this
18 lawsuit were conducted by Contreras within this Court’s judicial district.
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20 11. Dr. Duncan Ross (Dr. Ross) is the founder and CEO of Kimera.

21 12. Dr. Selinger resides in Miami-Dade County, Florida. Kimera has
22 confidentially settled with Dr. Selinger concerning the claims herein. As part of that
23 confidential settlement, Dr. Selinger provided documents, a sworn statement in front of a
24 court reporter that has been transcribed, and other information via her legal counsel. This
25 Second Amended Complaint is based in part, but not completely, on the information,
26 documents, and sworn statement from Dr. Selinger and at various points herein quotes from
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1 parts of Dr. Selinger’s sworn statement. Notwithstanding the foregoing, this Second
2 Amended Complaint is not, and does not purport to be, a sworn pleading.
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4 13. Any and all conditions precedent to this lawsuit have been satisfied or waived.

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6 **COUNT I: MISAPPROPRIATION OF KIMERA’S PROCESS TRADE SECRET**
7 **PURSUANT TO THE DEFEND TRADE SECRETS ACT, 18 U.S.C. §§ 1836, et seq.**
8 **(Against All Defendants)**

9 14. Kimera realleges and incorporates by reference the allegations contained in
10 paragraphs 1 through 13 as if fully set forth herein.

11 15. Kimera developed an efficient, rapid, and scalable process of producing, on
12 an industrial scale, clinically therapeutic exosome products for humans in a clinical setting,
13 by using recombinant protein isolation methods combined with cellular therapeutic
14 production processes (Kimera’s Process or the Kimera Process). The Kimera Process is a
15 trade secret consisting of a proprietary method of growing, harvesting, and isolating
16 exosomes derived from placental mesenchymal stem cells for use in human therapeutic
17 products. Kimera’s Process involves increasing the quantity of exosomes in cell culture
18 and harvesting and isolating the resulting exosome product in a manner that separates the
19 target exosomes from other biological matter in a highly efficient and rapid method.
20 Kimera’s Process uses tools that are unique to its outcome and includes, but is not limited
21 to, the following steps: collect conditioned medium, filter medium using a cell centric
22 process, transfer isolate, process the resultant medium using a recombinant protein
23 isolation method, resuspend isolate, obtain exosome concentration, adjust product
24 concentration to Kimera’s proprietary quality levels, refilter resuspended isolate, and
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1 transfer suspension to sterile vials to await quality control assessment. Kimera's Process is
2 unique because: (1) the combination of recombinant protein isolation and cellular
3 therapeutic production processes does not exist in any previous process of exosome
4 isolation for clinical usage; (2) it requires the use of tools not used in any previous process
5 of exosome isolation for clinical usage; and (3) the unique properties of large fat-based
6 particles are not amenable to earlier published research methods of isolation. There is no
7 reference to or understanding of Kimera's Process of exosome isolation in the clinical
8 exosome isolation industry, nor is Kimera's Process known to persons skilled in the clinical
9 exosome isolation industry.

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13 16. Kimera takes reasonable measures to maintain the secrecy of Kimera's
14 Process, which include but are not limited to, limiting access to employees that need to
15 know, requiring employees to sign non-disclosure agreements as a condition of
16 employment, and physical security measures, such as implementing and using passwords
17 and locks on Kimera's computers.

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20 17. Kimera's Process derives independent economic value from not being
21 generally known to, or readily ascertainable through proper means by another person who
22 can obtain economic value from the disclosure or use of the information. Nobody in the
23 exosome isolation industry uses a process similar to Kimera's Process. Kimera's Process
24 is the product of many years of research and development at substantial cost to Kimera.
25 Kimera's Process is Kimera's competitive advantage in the exosome isolation industry. A
26 competitor who had knowledge of Kimera's Process without undergoing the time, effort,
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1 and expense incurred by Kimera to create the process would be at a significant advantage
2 because that competitor would undercut Kimera in the marketplace.

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4 18. Kimera's Process has been used in and/or is intended for use in interstate
5 commerce because it produces exosomes for use outside of Florida.

6 19. Kimera employed Dr. Selinger from March 2018 through October 2019.
7 During Dr. Selinger's employment, Dr. Ross told Dr. Selinger that Kimera's Process is a
8 trade secret. Kimera provided Kimera's Process to Dr. Selinger with the explicit
9 understanding, between Kimera and Dr. Selinger, that Dr. Selinger had a duty to maintain
10 its secrecy. To prevent Dr. Selinger from divulging Kimera's Process, Dr. Selinger's
11 employment contract with Kimera required her to execute a non-disclosure agreement. Dr.
12 Selinger signed the non-disclosure agreement. Dr. Selinger's duty to not disclose Kimera's
13 Process to anyone outside Kimera arose from Dr. Selinger's explicit understanding (with
14 her employer Kimera) that she has a duty to maintain the secrecy of Kimera's Process, the
15 non-disclosure agreement she signed, and her employment with Kimera during the period
16 of March 2018 through October 2019.

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21 20. Before Dr. Selinger disclosed the Kimera Process to Jayashankar, Contreras,
22 and Hubers, Dr. Selinger told them that Kimera's Process is Kimera's confidential trade
23 secret information. Jayashankar, Contreras, and Hubers knew that Dr. Selinger was not
24 permitted to disclose Kimera's Process to them. As part of her post-settlement, sworn
25 statement referenced on pages 2-3, ¶ 12 herein, Dr. Selinger testified in part:

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28 Q. You provided to Jayashankar and Contreras some of Kimera's
manufacturing processes, correct?

- 1 A. Yes.
- 2 Q. All right. At the time you provided those processes to Jayashankar and
3 Contreras, did they know that those processes were confidential to
4 Kimera?
- 5 A. Yes.
- 6 Q. And tell me how you knew that they understood that these were secret
7 processes and confidential processes of Kimera.
- 8 A. They were well aware of the situation of me still being on the payroll
9 for the company and the processes possibly being trade secret. And
10 they were very adamant that if I did not provide these documents, then
11 I would be excluded from the formation of the company.
- 12 Q. Did you ever express to them in any way that Kimera views these
13 manufacturing processes as secret?
- 14 A. Yes.
- 15 Q. ... You told them that Kimera views these manufacturing processes to
16 be a trade secret?
- 17 A. Yes. And they told me that it did not apply because I did not have a
18 noncompete or NDA. So I was unaware of federal intellectual property
19 laws at the time. They had me convinced it was not illegal.¹
- 20 Q. And when you provided these manufacturing processes that Kimera
21 had indicated to you were trade secrets, did Jayashankar and Contreras
22 indicate in any way to you that they wanted this information to be kept
23 secret from Kimera?
- 24 A. Yes.
- 25 Q. Did Jayashankar and Contreras ever tell you don't let Kimera know that
26 you're giving us their manufacturing processes?
- 27 A. Yes, of course.
- 28 Q. Did they actually say something like that to you or did they say that to
you specifically?
- A. Yes. They were trying to do this under the radar of not being found out
by Kimera by doing it under a holding company.

¹ Dr. Selinger did, in fact, sign a non-disclosure agreement with Kimera that required her to maintain the secrecy of Kimera's process. In all candor to the Court, however, Dr. Selinger disputed that fact during prior litigation. Regardless, Dr. Selinger was aware that Kimera viewed and treated Kimera's Process as a confidential trade secret and that she was obligated to maintain its confidentiality and secrecy. Dr. Selinger informed Jayashankar, Contreras, and Hubers that Kimera viewed and treated Kimera's Process as a confidential trade secret and that Dr. Selinger was obligated to maintain its confidentiality and secrecy. Therefore, Jayashankar, Conteras, and Hubers knew, and had reason to know, that Kimera's process was a trade secret when they acquired it from Dr. Selinger and when they used Kimera's Process.

1 Q. Did either Contreras or Jayashankar or both of them indicate to you that
2 they wanted essentially to take Kimera’s manufacturing processes and
3 replicate an identical business and profit from the duplication of
4 Kimera’s business?

5 A. Yes.

6 Q. Did they tell you that?

7 A. Yes.

8 ...
9 Q. ... [W]as Hubers innocent in getting these processes or did she have
10 some kind of knowledge that these were secrets of Kimera?

11 A. She was aware that they were secrets of Kimera.

12 Q. How do you know she knew that?

13 A. Because Alejandro [Contreras] discussed it with her, as well as Brad
14 Fox.

15 Q. Were you in the presence of—let me ask you this because I have to
16 know whether it’s hearsay or not. Were you actually physically present
17 in the conversation that you’re referring to with Contreras and Brad Fox
18 with Hubers wherein there was a discussion of Kimera’s secret
19 processes?

20 A. Yes. When I was present in the San Diego offices of La Vita
21 Compounding Pharmacy of Deb Hubers.

22 Q. Who else was present during that conversation?

23 A. Alejandro Contreras.

24 **Defendants’ knowledge concerning the trade secret.**

25 21. Defendants at all relevant times knew, or had reason to know, that the Kimera
26 Process is a trade secret, and knew, or had reason to know, that the disclosing party, Dr.
27 Selinger, had acquired it through improper means and was breaching a duty of
28 confidentiality by disclosing it. DTSA, 18 U.S.C. § 1839(5)(B)(ii)(III), defines
“misappropriation” of a trade secret and the requirement that the defendant know or have
reason to know about the trade secret, in pertinent part:

(5) [T]he term ‘misappropriation’ means –

- A. acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

1 B. disclosure or use of a trade secret of another without express or implied
2 consent by a person who –

- 3 i. used improper means to acquire knowledge of the trade secret;
- 4 ii. at the time of disclosure or use, knew or had reason to know that the
5 knowledge of the trade secret was –
6 (III) derived from or through a person who owed a duty to the
7 person seeking relief to maintain the secrecy of the trade secret or
8 limit the use of the trade secret.

9
10 22. In or about January 2019, unbeknownst to Kimera, Dr. Selinger met with
11 Contreras in Tulum, Mexico. Dr. Selinger and Contreras discussed creating a business.

12 23. In the period February 2019 onward, while still employed by Kimera, Dr.
13 Selinger conspired with Jayashankar, Contreras, and Hubers to create a business to
14 compete against Kimera in the generation of exosomes for pharmaceutical and cosmetic
15 products via the knowing, illicit, and intentional means of using the Kimera Process
16 (Exocel Project). During Dr. Selinger's discussions with Jayashankar, Contreras, and
17 Hubers concerning the Exocel Project, Jayashankar, Contreras, and Hubers knew Dr.
18 Selinger was still a Kimera employee because Dr. Selinger told them she is still employed
19 by Kimera. Despite their knowledge, Jayashankar, Contreras, and Hubers demanded Dr.
20 Selinger provide them Kimera's Process. Jayashankar, Contreras, and Hubers threatened
21 Dr. Selinger's exclusion from profiting from and participating in the competing business if
22 she failed to comply with their demands.

23
24 24. Jayashankar and Contreras asked Dr. Selinger to disclose the Kimera Process
25 to them so they could use it to manufacture their own products in competition against
26 Kimera. Dr. Selinger complied. She disclosed Kimera's Process to them. Jayashankar and
27 Conteras' acquisition of Kimera's Process from Dr. Selinger was improper because they
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1 knew, or had reason to know, that Kimera's Process was acquired by Dr. Selinger through
2 her employment with Kimera and that she was not permitted to disclose Kimera's Process
3 because she agreed with Kimera to maintain its secrecy. Dr. Selinger specifically told
4 Jayashankar and Contreras that Kimera's Process is Kimera's confidential trade secret
5 information.
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8 25. Before Dr. Selinger's improper disclosure and Jayashankar and Contreras'
9 improper use of Kimera's Process, Jayashankar and Contreras knew, and had reason to
10 know, Kimera's Process is Kimera's confidential trade secret because Dr. Selinger
11 specifically told Jayashankar and Contreras that Kimera considered its process confidential
12 trade secret information. Jayashankar and Contreras also knew, and had reason to know,
13 that Dr. Selinger was breaching a duty of confidentiality by disclosing Kimera's Process
14 to them because Dr. Selinger told them that, as part of her employment with Kimera, she
15 agreed to never disclose Kimera's Process to anyone outside Kimera because it is Kimera's
16 trade secret.
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20 26. Dr. Selinger, Hubers, and Contreras subsequently attended a meeting in San
21 Diego to discuss Dr. Selinger, Jayashankar, and Contreras' plan to create the competing
22 business. Hubers agreed to help Dr. Selinger, Jayashankar, and Contreras create and run
23 the competing business. Hubers asked Dr. Selinger to disclose Kimera's Process to her so
24 she could use it to manufacture products for sale. Dr. Selinger complied and disclosed
25 Kimera's Process to Hubers. Hubers' acquisition of Kimera's Process from Dr. Selinger
26 was improper because Hubers knew, or had reason to know, that Kimera's Process was
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1 acquired by Dr. Selinger through her employment with Kimera and that Dr. Selinger was
2 not permitted to disclose Kimera's Process. Dr. Selinger specifically told Hubers that
3 Kimera's Process is Kimera's confidential trade secret information.
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5 27. Dr. Selinger also informed Hubers during the San Diego meeting that Kimera
6 intended to keep Kimera's Process secret. Before Dr. Selinger's improper disclosure and
7 Hubers' improper use of Kimera's Process, Hubers knew, and had reason to know, that
8 Kimera's Process is Kimera's trade secret because Dr. Selinger informed Hubers of that
9 fact during the San Diego meeting. Hubers also knew, and had reason to know, that Dr.
10 Selinger was breaching a duty of confidentiality by disclosing Kimera's Process to them
11 because Dr. Selinger told Hubers that, as part of Dr. Selinger's employment with Kimera,
12 she agreed to never disclose Kimera's Process to anyone outside Kimera because it is
13 Kimera's trade secret.
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17 28. Jayashankar, Contreras, and Hubers knew, and had reason to know, that
18 Kimera took reasonable measures to ensure the secrecy of Kimera's Process because Dr.
19 Selinger specifically told them Kimera required her, as its employee, to keep Kimera's
20 Process secret. In response, Jayashankar, Contreras, and Hubers demanded that Dr.
21 Selinger not tell Kimera she had improperly disclosed Kimera's Process to them. Based on
22 Dr. Selinger's statements to Jayashankar, Contreras, and Hubers indicating that Kimera's
23 Process is economically valuable to the operation of Kimera's business and this is why
24 Kimera keeps it secret, Jayashankar, Contreras, and Hubers knew, and had reason to know,
25 that Kimera's Process derives independent economic value from not being generally
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1 known to, and not being readily ascertainable through proper means by another person who
2 can obtain economic value from the disclosure or use of the information. Jayashankar,
3 Contreras, and Hubers asked Dr. Selinger to give them all Kimera's documents and
4 information concerning Kimera's Process, so they could manufacture products using
5 Kimera's Process and thereby profit from sales of those products.
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8 29. After Dr. Selinger disclosed Kimera's Process to Jayashankar, Contreras, and
9 Hubers, a conflict arose between Dr. Selinger and Jayashankar, Contreras, and Hubers,
10 causing Dr. Selinger to leave the Exocel Project. Dr. Selinger's exit, however, mattered
11 little to Jayashankar, Contreras, and Hubers, who had already received what they needed
12 from Dr. Selinger, namely the Kimera Process.
13

14 **Jayashankar, Contreras, and Hubers created and operated Exocel Bio as a**
15 **competing business premised on using Kimera's trade secret process.**

16 30. In March 2020, Jayashankar, Contreras, and Hubers created Exocel Bio. Upon
17 Exocel Bio's incorporation, Jayashankar, Contreras, and Hubers disclosed Kimera's
18 Process to Exocel Bio without Kimera's express or implied consent. Their disclosure to
19 Exocel Bio was improper because they knew, or had reason to know, that Dr. Selinger
20 owed a duty to Kimera to keep Kimera's Process confidential and not to disclose the
21 process to them or anyone outside Kimera. Jayashankar, Contreras, and Hubers knew
22 disclosure of Kimera's Process was prohibited because Dr. Selinger informed them
23 Kimera's Process was Kimera's confidential trade secret information.
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27 31. Jayashankar, Contreras, and Hubers' knowledge (that Kimera's Process is a
28 trade secret and that Dr. Selinger was breaching her duty of confidentiality by disclosing

1 Kimera's Process) was conveyed to Exocel Bio when Jayashankar, Contreras, and Hubers
2 created and continued to control, direct, manage, and operate Exocel Bio for the purpose
3 of using Kimera's Process to manufacture products. Exocel Bio acquired Kimera's Process
4 from Jayashankar, Conteras, and Hubers. Exocel Bio's acquisition of Kimera's Process
5 was improper because its entire company management knew, or had reason to know, that
6 Kimera's Process was acquired by Dr. Selinger through her employment with Kimera and
7 that Dr. Selinger was not permitted to disclose Kimera's Process to Exocel Bio and its
8 company management because of Dr. Selinger's obligation to Kimera to keep it secret. Dr.
9 Selinger specifically told Exocel Bio's entire company management that Kimera's Process
10 is Kimera's confidential trade secret information.
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14 32. Jayashankar, as a manager of Exocel Bio, directed, oversaw, and had
15 operational control over Exocel Bio's use of Kimera's Process to manufacture products.
16 Contreras, as a manager of Exocel Bio, also directed, oversaw, and had operational control
17 over Exocel Bio's use of Kimera's Process to manufacture products. Hubers, as a manager
18 of Exocel Bio, also directed, oversaw, and had operational control over Exocel Bio's use
19 of Kimera's Process to manufacture products. Exocel Bio used, and currently uses,
20 Kimera's Process to manufacture Exocel Bio's own extracellular vesicle/exosome product
21 "Exovex" for sale. Exocel Bio misrepresents it is the innovator concerning manufacturing
22 of exosomes from placental mesenchymal stem cells, even though it is using Kimera's
23 Process. Exocel Bio's website states, "Exocel Bio employs an innovative proprietary
24 incubation medium and a stringent nine step GXP process, to produce the highest potency
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1 and safety profile of all the EVs currently available.” Exocel Bio currently competes
2 against Kimera through the sale of its Exovex product. Exocel Bio’s Exovex product
3 directly competes against Kimera’s XoGlo product. Exocel Bio’s use of Kimera’s Process
4 was and is improper because its company management has, at all times relevant, known
5 from Dr. Selinger that Kimera’s Process was, and continues to be, confidential trade secret
6 information belonging to Kimera.
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9 33. Jayashankar, Contreras, and Hubers’ improper acquisition of Kimera’s
10 Process from Dr. Selinger, improper disclosure of Kimera’s Process to Exocel Bio, and
11 improper use of the Kimera Process to manufacture products at Exocel Bio for sale, with
12 knowledge (and reason to know) that Kimera’s Process is a trade secret and that Dr.
13 Selinger was breaching her duty of confidentiality to Kimera by disclosing it, constitutes
14 trade secret misappropriation under DTSA. Exocel Bio’s improper use of Kimera’s Process
15 to manufacture its Exovex product, with knowledge (and reason to know) that Kimera’s
16 Process is a trade secret and that Dr. Selinger was breaching her duty of confidentiality to
17 Kimera by disclosing it, qualifies as trade secret misappropriation under DTSA.
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21 34. Defendants’ actions were willful, malicious, and motivated by greed.
22 Defendants willfully and maliciously conspired with Dr. Selinger to create a business that
23 has used, and continues to use, Kimera’s Process to manufacture products for sale in direct
24 competition against Kimera. Defendants willfully and maliciously solicited, and
25 improperly acquired, Kimera’s Process from Dr. Selinger, knowing that Kimera’s Process
26 is a trade secret and that Dr. Selinger was not authorized to use or transmit the Kimera
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1 Process to anyone outside Kimera because it is confidential. Defendants willfully and
2 maliciously misappropriated Kimera's Process in deliberate acts of corporate espionage.
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4 They have used Kimera's Process to manufacture their own exosome product in direct
5 competition against Kimera. Defendants' actions were intentional and done with ill will
6 and conscious disregard for Kimera's exclusive rights to Kimera's Process. Exocel Bio's
7 improper use of Kimera's Process gives Exocel Bio an unfair advantage in competition
8 against Kimera.
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10 35. As a direct and proximate result of Defendants' trade secret misappropriation,
11 Kimera has been injured because Defendants have been unjustly enriched from use of
12 Kimera's Process and Kimera lost sales. Kimera is also threatened with further injury by
13 Defendants' continued improper use of its trade secret process and has incurred, and will
14 continue to incur, additional damages, costs, and expenses, including attorneys' fees
15 resulting from Defendants' trade secret misappropriation.
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18 36. WHEREFORE, based on the foregoing, Kimera respectfully requests the
19 following relief:
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- 21 a. Preliminary and permanent injunctive relief against all Defendants to prevent
22 the actual misappropriation of Kimera's trade secrets and requiring
23 affirmative actions to be taken to protect Kimera's trade secrets, including
24 returning Kimera's Process and any documents containing Kimera's Process
25 and barring dissemination to third parties pursuant to 18 U.S.C.
26 § 1836(b)(3)(A);
- 27 b. damages against all Defendants for actual loss caused by the misappropriation
28 of Kimera's trade secrets pursuant to 18 U.S.C. § 1836(b)(3)(B)(i)(I) and
damages against all Defendants for unjust enrichment caused by the
misappropriation of Kimera's trade secrets that are not addressed in
computing damages for actual loss pursuant to 18 U.S.C. §

1 1836(b)(3)(B)(i)(II); or, in the alternative, and to the extent that it is greater
2 than actual loss and compensation for unjust enrichment, the damages caused
3 by the misappropriation measured by imposition of liability for a reasonable
4 royalty for the misappropriator's unauthorized disclosure or use of the trade
secret pursuant to 18 U.S.C. § 1836(b)(3)(B)(ii);

5 c. exemplary damages pursuant to § 1836(b)(3)(C);

6 d. reasonable attorney's fees and costs against Defendants pursuant to 18 U.S.C.
7 § 1836(b)(3)(D);

8 e. costs; and

9 f. any other relief this Court deems just and proper.
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11 **COUNT II: MISAPPROPRIATION OF KIMERA'S**
12 **CUSTOMER LIST TRADE SECRET PURSUANT TO THE DEFEND TRADE**
13 **SECRETS ACT, 18 U.S.C. §§ 1836, et seq.**
14 **(Against All Defendants)**

15 37. Kimera realleges and incorporates by reference the allegations contained in
16 paragraphs 1 through 13 as if fully set forth herein.

17 38. Kimera's customer list is a trade secret. Kimera's customer list is the product
18 of a substantial amount of time, expense, and effort. Kimera's customer list has substantial
19 commercial value and provides Kimera with considerable business advantage because its
20 disclosure would allow a competitor to direct its sales efforts to those customers who have
21 already shown a willingness to use the unique type of service and therapeutic exosome
22 product manufactured by Kimera. Kimera expended significant time and effort identifying
23 customers with particular needs and characteristics. Kimera's customer list is not generally
24 known or readily ascertainable to reasonably diligent competitors because the list does not
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1 embody information that is readily ascertainable through public sources, such as
2 business directories.

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4 39. Kimera uses reasonable measures to protect its customer list from public
5 disclosure and to keep its secrecy, including, but not limited to, requiring that its employee
6 sign employment agreements with provisions to maintain the confidentiality of trade
7 secrets, advising employees to keep the information confidential, distributing the customer
8 list to employees on an “as needed basis,” and storing the customer list on computers with
9 restricted access and using password protections.
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11
12 40. Kimera’s customer list derives independent economic value from not being
13 generally known to, and not being readily ascertainable by another person who can obtain
14 economic value from the disclosure or use of the information. The customer list is a
15 compilation developed over a period of years, comprised of names, addresses, and contact
16 persons, pricing information, and knowledge about particular needs of customers who
17 purchase Kimera’s therapeutic exosome product. A competitor who acquires Kimera’s
18 customer list without incurring the time, effort, and expense that had been previously
19 incurred by Kimera to create the customer list, would be at a significant and unfair
20 advantage. A competitor who had knowledge of Kimera’s customer list would be able to
21 solicit customers more selectively, effectively, and efficiently. In addition, such a
22 competitor, by saving the time, effort, and expense associated with creating the customer
23 list, would be able to undercut Kimera in the marketplace.
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1 41. Kimera’s customer list has been used in and/or is intended for use in interstate
2 commerce because the list is utilized to provide Kimera’s products to customers outside
3 Florida.
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5 42. Kimera employed Dr. Selinger from March 2018 through October 2019.
6 During Dr. Selinger’s employment, Dr. Ross told Dr. Selinger that Kimera’s customer list
7 is a trade secret. Kimera provided Kimera’s customer list to Dr. Selinger with the strict
8 understanding that Dr. Selinger, as Kimera’s employee, had a duty to maintain its secrecy.
9 To prevent Dr. Selinger from divulging Kimera’s customer list, Dr. Selinger’s employment
10 contract with Kimera required her to execute a non-disclosure agreement. Dr. Selinger
11 signed the non-disclosure agreement. Dr. Selinger’s duty to refrain from divulging
12 Kimera’s customer list to anyone outside Kimera arises from the circumstances of Dr.
13 Selinger’s receipt of Kimera’s customer list, the non-disclosure agreement she signed, and
14 her employment with Kimera during the period March 2018 to October 2019.
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18 **Defendants’ knowledge concerning the trade secret.**

19 43. Defendants knew, or had reason to know, that Kimera’s customer list is a trade
20 secret, and knew, or had reason to know, that the disclosing party, Dr. Selinger, had
21 acquired it through improper means and was breaching a duty of confidentiality by
22 disclosing it. DTSA, 18 U.S.C. § 1839(5)(B)(ii)(III), defines “misappropriation” of a trade
23 secret and the requirement that the defendant know or have reason to know about the trade
24 secret, in pertinent part:
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28 (5) [T]he term ‘misappropriation’ means –

- 1 C. acquisition of a trade secret of another by a person who knows or has reason
2 to know that the trade secret was acquired by improper means; or
3 D. disclosure or use of a trade secret of another without express or implied
4 consent by a person who –
5 i. used improper means to acquire knowledge of the trade secret;
6 ii. at the time of disclosure or use, knew or had reason to know that the
7 knowledge of the trade secret was –
8 (III) derived from or through a person who owed a duty to the
9 person seeking relief to maintain the secrecy of the trade secret or
10 limit the use of the trade secret.

11 44. In or about January 2019, unbeknownst to Kimera, Dr. Selinger met with
12 Contreras in Tulum, Mexico. Dr. Selinger and Contreras discussed creating a business. In
13 the period February 2019 onward, while still employed by Kimera, Dr. Selinger conspired
14 with Jayashankar, Contreras, and Hubers to create a business to compete against Kimera
15 in the generation of exosomes for pharmaceutical and cosmetic products via the knowing,
16 illicit, and intentional means of using Kimera's Process (Exocel Project). During Dr.
17 Selinger's discussions with Jayashankar, Contreras, and Hubers concerning the Exocel
18 Project, Jayashankar, Contreras, and Hubers knew Dr. Selinger was still a Kimera
19 employee because Dr. Selinger told them she is still employed by Kimera. Despite their
20 knowledge, Jayashankar, Contreras, and Hubers demanded that Dr. Selinger provide them
21 Kimera's confidential customer list to assist their competing business. Jayashankar,
22 Contreras, and Hubers threatened Dr. Selinger's exclusion from profiting from and
23 participating in the competing business if she failed to comply with their demands. As part
24 of her post-settlement, sworn statement referenced on pages 2-3, ¶ 12 herein, Dr. Selinger
25 testified in pertinent part:
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- 1 Q. Did Contreras and Jayashankar ask you to divulge to them Kimera's
2 customers?
- 3 A. Yes.
- 4 Q. And did they ask you to divulge those customers so they in turn could
5 sell Exocel's products to those customers?
- 6 ...
- 7 A. Yes.
- 8 Q. Did they tell you that specifically?
- 9 A. They demanded that I turn over the packing slips and invoices from
10 Kimera.
- 11 Q. Did they indicate to you they wanted to keep this secret from Kimera,
12 that they were getting this information?
- 13 A. Yes.
- 14 Q. How did they express this to you? What did they say? To the best of
15 your words, recollection as to how they expressed this to you.
- 16 A. It was done in a threatening manner. I was told to provide certain things
17 or I would be cut out of the incorporation. And one of the things I was
18 forced to provide was, that I didn't feel comfortable with, was the
19 Kimera branded packing slips which contained the purchasers and the
20 amount of money and the personal information of the doctors, et cetera.
- 21 ...
- 22 Q. Did Raj Jayashankar and Alex Contreras ever specifically ask you to
23 provide Kimera's customer list to them for the purposes of their
24 operating and creating a competing business?
- 25 A. Yes.
- 26 Q. And did you ever express to them that Kimera considered its customer
27 list to be secret and proprietary to Kimera?
- 28 A. Yes. I was not comfortable with providing documentation that
contained the Kimera logo or headers or any kind of the identifying
information. And they were very—this is when they were getting very
manipulative about you will do what I say, you will provide what I say
or you will be cut out of the incorporation.
- Q. With both Jayashankar and Contreras making that threat?
- A. Yes.
- Q. ... And with these particular documents that you're providing, did you
express to them that Kimera considers its customer list to be proprietary
to Kimera?
- A. Yes.
- Q. And did you indicate to them or did you tell them that Kimera considers
this customer list to be something that is secret to Kimera, not to be
disclosed to a competitor?

1 A. Yes. And they even responding with asking, Raj [Jayashankar] asking
2 are there certain customers that we should not contact. For example,
3 one customer was the chief medical officer of Kimera, so that was
4 somebody that would not want to be contacted, Dr. Doug Spiel. So there
5 was a do not call list on [sic] created by Raj Jayashankar because he
6 was aware that some of these customers would backfire and make
7 Kimera aware he had the list.

8 Q. Did he express this—did Mr. Jayashankar express to you that he wanted
9 these particular customers to be do-not-contact to avoid detection of
10 Jayashankar and Contreras and Fox and Hubers using Kimera’s
11 customer list to compete?

12 A. Yes.

13 ...

14 Q. Did Deb Hubers know that you were giving them Kimera’s ...
15 confidential and secret customer list?

16 A. Yes.

17 ...

18 Q. Did she know that you were getting this information from Kimera
19 secretly to provide to Jayashankar, Hubers and Contreras?

20 A. Yes.

21 45. Jayashankar and Contreras specifically demanded that Dr. Selinger
22 circumvent Kimera’s efforts to keep its customer list confidential by providing them
23 Kimera’s packing slips and invoices. Jayashankar and Contreras demanded the packing
24 slips and invoices because they disclosed the names, contact information, and purchasing
25 requests, habits, and practices of Kimera’s customers. Jayashankar and Contreras sought
26 this information to facilitate marketing and sale of their competing business’ products to
27 Kimera’s customers. Dr. Selinger complied. She gave Jayashankar and Contreras Kimera’s
28 customer list via its packing slips and invoices. Jayashankar and Conteras’ acquisition of
the customer list from Dr. Selinger was improper because they knew, or had reason to
know, that the customer list was acquired by Dr. Selinger through her employment with

1 Kimera and that she was not permitted to disclose the customer list because she agreed
2 with Kimera that she will maintain its secrecy. Dr. Selinger specifically told Jayashankar
3 and Contreras that the customer list is Kimera's confidential trade secret information.
4

5 46. Before Dr. Selinger's improper disclosure, and Jayashankar and Contreras'
6 improper use of Kimera's customer list, Jayashankar and Contreras knew, and had reason
7 to know, that Kimera's customer list is Kimera's confidential trade secret because Dr.
8 Selinger specifically told Jayashankar and Contreras that Kimera considered its customer
9 list confidential trade secret information. Jayashankar and Contreras also knew, and had
10 reason to know, that Dr. Selinger was breaching a duty of confidentiality by disclosing
11 Kimera's customer list to them because Dr. Selinger told them that, as part of her
12 employment with Kimera, she agreed to never disclose Kimera's customer list to anyone
13 outside Kimera.
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17 47. Dr. Selinger, Hubers, and Contreras subsequently attended a meeting in San
18 Diego to discuss Dr. Selinger, Jayashankar, and Contreras' plan to create the competing
19 business. Hubers agreed to help Dr. Selinger, Jayashankar, and Contreras create and run
20 the competing business. Hubers asked Dr. Selinger to disclose Kimera's customer list to
21 her so she could use it to it to market and sell the competing business' products for sale.
22 Dr. Selinger complied. Dr. Selinger disclosed Kimera's customer list to Hubers. Hubers'
23 acquisition of Kimera's customer list from Dr. Selinger was improper because Hubers
24 knew, and had reason to know, from Dr. Selinger's statements to Hubers, that Kimera's
25 customer list was confidential and secret information, was acquired by Dr. Selinger through
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1 her employment with Kimera, and that Dr. Selinger's employment arrangement with
2 Kimera required that she keep confidential and refrain from disclosing Kimera's customer
3 list because it was a secret of her employer Kimera. Hubers therefore knew, and had reason
4 to know, that Dr. Selinger was breaching her duty of confidentiality to Kimera by
5 disclosing Kimera's customer list to Hubers.
6

7
8 48. Jayashankar, Contreras, and Hubers knew Kimera took reasonable measures
9 to ensure the secrecy of its trade secrets because Dr. Selinger specifically told them Kimera
10 required her, as its employee, to keep its customer list secret. In addition, to conceal from
11 Kimera that Defendants were illegally using its customer list, Jayashankar created a do-
12 not-call list delineating specific Kimera customers to not contact so that the scheme to use
13 Kimera's customer list would not be detected by Kimera. Based on Dr. Selinger's
14 statements indicating that Kimera's customer list is secret and valuable for use in marketing
15 and sale of manufactured products, Jayashankar, Contreras, and Hubers knew that
16 Kimera's customer list derives independent economic value from not being generally
17 known to, and not being readily ascertainable through proper means by another person who
18 can obtain economic value from the disclosure or use of the information. Jayashankar,
19 Contreras, and Hubers asked Dr. Selinger to give them Kimera's customer list so they could
20 profit from the customer list in their competing business.
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23
24

25 49. After Dr. Selinger disclosed Kimera's customer list to Jayashankar, Contreras,
26 and Hubers, a conflict arose between Dr. Selinger and Jayashankar, Contreras, and Hubers,
27 causing Dr. Selinger to leave the Exocel Project.
28

1 **Jayashankar, Contreras, and Hubers created and operated Exocel Bio as a**
2 **competing business premised on using Kimera’s customer list.**

3 50. In March 2020, Jayashankar, Contreras, and Hubers created Exocel Bio. Upon
4 Exocel Bio’s incorporation, Jayashankar, Contreras, and Hubers (all three of whom
5 constituted the entire management of Exocel Bio) disclosed Kimera’s customer list to
6 Exocel Bio without Kimera’s express or implied consent. Their disclosure to Exocel Bio
7 was improper because they knew or had reason to know that Dr. Selinger owed a duty to
8 Kimera to keep the customer list confidential and not to disclose the customer list to anyone
9 outside Kimera. Jayashankar, Contreras, and Hubers knew disclosure of Kimera’s
10 customer list was prohibited because Dr. Selinger informed them that the customer list was
11 Kimera’s confidential trade secret information.

12 51. Jayashankar, Contreras, and Hubers’ knowledge (that Kimera’s customer list
13 is a trade secret and that Dr. Selinger was breaching her duty of confidentiality by
14 disclosing Kimera’s customer list) was conveyed to Exocel Bio when Jayashankar,
15 Contreras, and Hubers created and continued to control, direct, manage, and operate Exocel
16 Bio for the purpose of using Kimera’s customer list to market and sell products. Exocel
17 Bio acquired Kimera’s customer list from Jayashankar, Conteras, and Hubers (i.e., the
18 entire management team of Exocel Bio). Exocel Bio’s acquisition of Kimera’s customer
19 list was improper because its entire company management (consisting of Jayashankar,
20 Contreras, and Hubers) knew, or had reason to know, that Kimera’s customer list was
21 acquired by Dr. Selinger through her employment with Kimera and that Dr. Selinger was
22 not permitted to disclose Kimera’s customer list because of her obligation to Kimera to
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1 keep it secret. Dr. Selinger disclosed to Exocel Bio's entire company management that
2 Kimera's customer list is Kimera's confidential trade secret information
3

4 52. Jayashankar directed Exocel Bio's use of Kimera's customer list to market
5 and sell Exocel Bio's products. Contreras directed Exocel Bio's use of Kimera's customer
6 list to market and sell Exocel Bio's products. Hubers directed Exocel Bio's use of Kimera's
7 customer list to market and sell Exocel Bio's products. Exocel Bio used, and currently uses,
8 Kimera's customer list to market and sell its products.
9

10 53. Upon Exocel Bio's incorporation, all information and other assets which were
11 created or acquired for the Exocel Project came into Exocel Bio's possession and control,
12 including Kimera's customer list. Following incorporation, Exocel Bio implemented, used,
13 and currently uses Kimera's customer list to sell Exocel Bio's own extracellular
14 vesicle/exosome product, "Exovex."
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17 54. Jayashankar, Contreras, and Hubers' acceptance, disclosure to Exocel Bio,
18 retention, and use of Kimera's customer list in its competing business, Exocel Bio, to sell
19 its products to Kimera's customers and generate profit, with knowledge (and reason to
20 know) that Kimera's customer list is a trade secret and that Dr. Selinger was breaching her
21 duty of confidentiality to Kimera by disclosing it, qualifies as trade secret misappropriation
22 pursuant to the DTSA. Exocel Bio's use of Kimera's customer list to sell its Exovex
23 product, with knowledge (and reason to know) that Kimera's customer list is a trade secret
24 and that Dr. Selinger was breaching her duty of confidentiality to Kimera by disclosing it,
25 qualifies as trade secret misappropriation pursuant to the DSTA.
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1 55. Defendants' actions were willful and malicious and motivated by greed.
2 Defendants willfully and maliciously conspired with Dr. Selinger to create a business that
3 would use Kimera's customer list to directly compete against Kimera. Defendants willfully
4 and maliciously solicited Kimera's customer list from Dr. Selinger knowing that Kimera's
5 customer list is a trade secret and that Dr. Selinger was not authorized to use or transmit
6 Kimera's customer list to anyone outside Kimera because disclosure would harm Kimera.
7 Defendants willfully and maliciously stole Kimera's customer list in deliberate acts of
8 corporate espionage for use in the creation of their own business that would directly
9 compete against Kimera. Defendants' actions were intentional and done with ill will and
10 with conscious disregard of Kimera's exclusive rights to its customer list.
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12
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14 56. Exocel Bio's use of Kimera's customer list gives Exocel Bio an unfair
15 advantage in competition against Kimera. Exocel Bio would not be able to sell its Exovex
16 products to Kimera's customers and compete against Kimera without using Kimera's
17 customer list.
18

19 57. As a direct and proximate result of Defendants' conduct, Kimera has been
20 injured because Kimera lost sales. Kimera is also threatened with further injury and has
21 incurred, and will continue to incur, additional damages, costs, and expenses, including
22 attorneys' fees resulting from Defendants' trade secret misappropriation. As a further direct
23 and proximate result of Defendants' trade secret misappropriation and use of Kimera's
24 customer list, Defendants have been unjustly enriched.
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1 58. WHEREFORE, based on the foregoing, Kimera respectfully requests the
2 following relief:

- 3
4 a. Preliminary and permanent injunctive relief against all Defendants to
5 prevent the actual misappropriation of Kimera's trade secrets and requiring
6 affirmative actions to be taken to protect Kimera's trade secrets, including
7 returning Kimera's customer lists and any documents containing Kimera's
8 customer lists and barring dissemination to third parties pursuant to 18
9 U.S.C. § 1836(b)(3)(A);
10
11 b. damages against all Defendants for actual loss caused by the
12 misappropriation of Kimera's trade secrets pursuant to 18 U.S.C. §
13 1836(b)(3)(B)(i)(I) and damages against all Defendants for unjust
14 enrichment caused by the misappropriation of Kimera's trade secrets that
15 are not addressed in computing damages for actual loss pursuant to 18
16 U.S.C. § 1836(B)(i)(II); or, in the alternative, and to the extent that it is
17 greater than actual loss and compensation for unjust enrichment, the
18 damages caused by the misappropriation measured by imposition of
19 liability for a reasonable royalty for the misappropriator's unauthorized
20 disclosure or use of the trade secret pursuant to 18 U.S.C. §
21 1836(b)(3)(B)(ii);
22
23 c. exemplary damages pursuant to § 1836(b)(3)(C);
24
25 d. reasonable attorney's fees and costs against Defendants pursuant to 18
26 U.S.C. § 1836(b)(3)(D);
27
28 e. costs; and
29
30 f. any other relief this Court deems just and proper.

31
32 **COUNT III: UNJUST ENRICHMENT**
33 **(Against Jayashankar, Contreras, and Exocel Bio)**

34 59. Kimera realleges and incorporates by reference the allegations contained in
35 paragraphs 1 through 13 as if fully set forth herein.

36
37 60. Kimera asserts this claim under Florida law.
38

1 61. Kimera's Standard Operating Procedures (SOPs) are documents reflecting the
2 precise procedure to be implemented by employees of Kimera. The SOPs were developed
3 at Kimera's Florida office, by Kimera personnel employed in Florida.
4

5 62. The SOPs address nearly every aspect of Kimera's business, including safety
6 precautions and protocols needed to obtain FDA certification. The SOPs are necessary for
7 regulatory approval, and a competitor would need comparable documents for its own
8 business. The SOPs contain Kimera's confidential proprietary information. The SOPs were
9 created by Kimera at significant expense, including hiring the services of a private
10 contractor to help develop and write these SOPs.
11
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13 63. Dr. Selinger's employment with Kimera allowed her access to Kimera's SOPs
14 and other confidential information to perform her employment duties. Kimera required that
15 Dr. Selinger not disclose Kimera's SOPs and other confidential information to anyone
16 outside Kimera. Dr. Selinger's contract with Kimera required her to execute a non-
17 disclosure agreement as part of her employment, which barred Dr. Selinger from disclosing
18 Kimera's SOPs and other confidential information to anyone outside Kimera. Dr. Selinger
19 signed the non-disclosure agreement.
20
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22 64. In the period February 2019 onward, while still employed by Kimera, Dr.
23 Selinger conspired with Jayashankar, Contreras, and Hubers to create a business to
24 compete against Kimera in the generation of exosomes for pharmaceutical and cosmetic
25 products via the knowing, illicit, and intentional means of using Kimera's Process (Exocel
26 Project). During Dr. Selinger's discussions with Jayashankar, Contreras, and Hubers
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28

1 concerning the Exocel Project, Jayashankar, Contreras, and Hubers knew Dr. Selinger was
2 still a Kimera employee because Dr. Selinger told them she is still employed by Kimera.
3
4 Despite their knowledge, Jayashankar and Contreras asked Dr. Selinger to provide them
5 Kimera's confidential SOPs, that would assist their business. After Jayashankar and
6 Contreras asked for the SOPs from Dr. Selinger, Dr. Selinger responded by providing the
7
8 SOPs to them. Before Dr. Selinger's improper provision of Kimera's SOPs to Jayashankar
9 and Contreras, Jayashankar and Contreras knew, and had reason to know, Kimera's SOPs
10 are Kimera's confidential property because Dr. Selinger specifically told Jayashanka and
11 Contreras that Kimera considered its SOPs to be confidential. Jayashankar and Contreras
12 therefore knew, and had reason to know, that Dr. Selinger was breaching a duty of
13 confidentiality by disclosing Kimera's SOPs to them. As part of her post-settlement, sworn
14
15 statement referenced on pages 2-3, ¶ 12 herein, Dr. Selinger testified in pertinent part:
16

17 Q. So you produced this as part of your disclosures here, correct? As part
18 of this to us in the settlement?

19 A. Yes.

20 Q. ... And this document, did you prepare the redline change to this
21 document?

22 A. Yes.

23 Q. ... And did you prepare these changes based on discussions you had
24 with Contreras and Jayashankar and Hubers and Fox?

25 A. This was at the end of our working relationship together where it
26 became very contentious and abusive and I was threatened to provide
27 additional SOPs [i.e., standard operating procedures] or I would be
28 excluded from the incorporation. So I was forced to create these
documents.

Q. Did they—did any of those people I mentioned, Contreras,
Jayashankar, Hubers or Fox, ask you to specifically take Kimera's
operating procedures—

A. Yes.

Q. --and provide it to them?

- 1 A. Yes.
- 2 Q. ... Was it all of them involved in the request or the insistence they
- 3 provide this or is it just some of those people I mentioned?
- 4 A. I think it was specifically Alejandro Contreras and Raj Jayashankar.
- 5 Q. ... Did they ask you to redline the document to remove Kimera's name
- 6 from the document and instead put the knew [sic] competing product
- 7 Exovex?
- 8 A. Yes.
- 9 Q. And did they ask you to use the name NanoPrizm Bioscience² and
- 10 remove Kimera's name from the document?
- 11 A. Yes.
- 12 Q. And did they want this in Word format so they could modify it further?
- 13 A. Yes.
- 14 Q. So I'm clear, am I correct in understanding you that Jayashankar,
- 15 Contreras asked you to take Kimera's already prewritten standard
- 16 operating procedure document that you created during your
- 17 employment at Kimera and keep the same document, but modify some
- 18 of the names so that it indicates it's from NanoPrizm and it's
- 19 concerning the competing Exovex product they're going to be selling?
- 20 A. Correct.
- 21 Q. Did they—and where it says at the bottom of each page, it says
- 22 confidential; you see where it's making the reference to confidential?
- 23 A. Yes.
- 24 Q. Why that written there?
- 25 A. IT was written as a confidential document of Kimera.
- 26 Q. And did they—when you told them it's a confidential document that
- 27 belongs to Kimera, what was their response?
- 28 A. They were not deterred. They wanted any and all documents that they
- could get from Kimera.
- ...
- Q. And Kimera paid EOC Consultants money to help develop these
- standard operating procedures, correct?
- A. Yes. We worked collaboratively on the creation of 100 SOPs.
- Q. So did Jayashankar and Contreras know from their conversations with
- you that Kimera had paid money for you during your employment as
- well as to this outside consulting firm, EOC, to develop these standard
- operating procedures.
- A. I believe so.

² Defendants Jayashankar, Contreras, and Hubers ultimately never used the company, or company name, "NanoPrizm Bioscience," and instead proceeded forward with their new company Exocel Bio.

1 Q. To the best of your knowledge, did they understand that Kimera spent
2 money to create these standard operating procedures?

3 A. Yes.

4 65. In March 2020, Jayashankar, Contreras, and Hubers created Exocel Bio.
5 Jayashankar, Contreras, and Hubers constituted the entire management of Exocel Bio.
6 Upon Exocel Bio's incorporation, Jayashankar and Contreras disclosed Kimera's SOPs to
7 Exocel Bio without Kimera's express or implied consent. Exocel Bio, via the knowledge
8 of its managers, Jayashankar and Contreras, knew that disclosure of Kimera's SOPs was
9 prohibited because Dr. Selinger informed Exocel Bio's managers that Kimera's SOPs are
10 Kimera's confidential information.
11

12 66. Jayashankar and Contreras, in their capacity as managers of Exocel Bio, used
13 Kimera's SOPs to operate Exocel Bio and obtain regulatory approval/certification from the
14 U.S. Food and Drug Administration (FDA) to operate the business. Exocel Bio's
15 acquisition of Kimera's SOPs was improper because its managers knew that Kimera's
16 SOPs were acquired by Dr. Selinger through her employment with Kimera and that Dr.
17 Selinger was not permitted to disclose Kimera's SOPs because of her obligation to Kimera
18 to keep it secret.
19

20 67. A benefit was conferred upon Jayashankar, Contreras, and Exocel Bio when
21 each received Kimera's SOPs. Kimera's stolen SOPs were essential to the operation of
22 Exocel Bio's business because Kimera's SOPs assist in the operation of a large part of
23 Exocel Bio's business, including safety precautions and protocols needed to obtain FDA
24 certification. The SOPs are necessary for regulatory approval. Jayashankar, Contreras, and
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1 Exocel Bio knowingly and voluntarily accepted and retained the benefits conferred from
2 Kimera's stolen SOPs. Jayashankar, Conteras, and Exocel Bio has each been unjustly
3 enriched by his/its acceptance and retention of Kimera's SOPs because they benefited from
4 the SOPs for business use while simultaneously saving the time, expense, and effort
5 expended by Kimera to create its SOPs.
6

7
8 68. Accordingly, Kimera has conferred a benefit on Jayahsankar, Contreras, and
9 Exocel Bio due to their retention and use of Kimera's SOPs with knowledge that the SOPs
10 belong to Kimera. Jayashakar, Conteras, and Exocel Bio voluntarily accepted and retained,
11 and continue to accept and retain, the benefit conferred. The circumstances are such that it
12 would be inequitable for Jayashankar, Conteras, and Exocel Bio to retain the benefit
13 without first paying the value thereof to Kimera.
14

15
16 69. WHEREFORE, based on the foregoing, Kimera respectfully requests the
17 following relief:

- 18 a. damages arising from Jayashankar's, Contreras', and Exocel Bio's unjust
19 enrichment; and
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21 b. any other relief this Court deems just and proper.
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DEMAND FOR JURY TRIAL

Kimera hereby demands trial by jury for all causes of action, claims, or issues in this action that are triable as a matter of right to a jury.

November 10, 2022

/s/ Jon Cieslak

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