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CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a corporation,

Plaintiff,

v.

CALIFORNIA BERRY CULTIVARS, LLC,
DOUGLAS SHAW, AND KIRK LARSON

Defendants.

CALIFORNIA BERRY CULTIVARS, LLC

Cross-Complainant,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a corporation,

Crossclaim Defendants.

Case No. 3:16-cv-02477-VC

**THE UNIVERSITY'S MOTION IN
LIMINE # 3: TO EXCLUDE
INFORMATION AND
ARGUMENTS REGARDING
IRRELEVANT ASPECTS OF THE
UNIVERSITY'S MANAGEMENT
OF THE STRAWBERRY
BREEDING PROGRAM –
COLLATED SET**

1 Pursuant to the Court's Standing Order for Civil Trials, p.4, ll. 5-10, Plaintiff and
2 Crossclaim Defendant The Regents of the University of California ("the University") submit this
3 collated set of the moving papers and opposition to the University's Motion *In Limine* No. 3.
4

5 Dated: May 1, 2017

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BREEDING PROGRAM**

I. INTRODUCTION

The Regents of the University of California (“the University”) respectfully request that the Court exclude any and all evidence, references to evidence, testimony, or argument concerning irrelevant aspects of the University’s management of its strawberry breeding program, including: (1) the University’s alleged decision to shut down the program; (2) the University’s breeding and research activities, including germplasm selection, after Drs. Shaw and Larson retired; and (3) the health of the plants in the program. This evidence has no probative value for the jury, and is likely to mislead and confuse them.

II. ARGUMENT

A. Evidence or Argument Concerning the University’s Germplasm Selection and Research Decisions After Drs. Shaw and Larson Retired Should be Excluded Under Fed. R. Evid. 402 and 403.

In its April 27, 2017, Summary Judgment Order, the Court ruled that (1) the University is the owner of tangible property rights in the Core Strawberry Germplasm and Transition Cultivars in its possession; (2) Drs. Shaw and Larson breached their employment contract with the University by failing to assign their rights to the Core Strawberry Germplasm; and (3) CBC is not a bona fide purchaser of any rights in the Core Strawberry Germplasm and Transition Cultivars. The University nonetheless understands from statements by their counsel that Defendants California Berry Cultivars, LLC, Doug Shaw, and Kirk Larson (“CBC”) intend to offer evidence and argument that the University has improperly “destroyed” TCs in its possession since Dr. Shaw retired, despite the fact that Dr. Knapp has simply advanced the collection through the same selection process used in the program for decades. (Ex. 1 at 183:13-23.)

Because CBC has no rights of any kind in the TCs, it cannot have any cognizable claim regarding how the University chose to manage the collection of TCs. How the University conducts its breeding program, with tangible strawberry germplasm that CBC has no rights to, cannot possibly bear on CBC’s claims or legal defenses, and is therefore inadmissible. Fed. R. Evid. 402. The discarding of plants that fail to show promise is a routine part of strawberry breeding, and has always been the practice of the University’s breeding program, including during Dr. Shaw’s tenure. (Ex. 1 at 183:13-23; *see* Ex. 2 at 241:23-243:14 (explaining that some

2012 crosses were selected for further analysis and others were culled as part of the continuation of the breeding program after Dr. Shaw's retirement).) In fact, in 2014, while still directing the University's breeding program, Dr. Shaw told his staff that not a single one of his 2013 crosses was worth keeping and directed that they be all be plowed under. (ECF No. 156-15.)

The only purpose of this evidence is to confuse the jury, re-litigate the issue of TC ownership, and prejudice the jury against the University by characterizing the University as a bad actor despite the fact that the University is free to (and obligated by its academic mission to) manage the breeding program in the manner it deems best. This type of prejudicial, misleading, and confusing evidence and argument should be excluded. Fed. R. Evid. 403.

B. Evidence or Argument Concerning the University's Alleged Decision to Shut Down the Strawberry Breeding Program Should Be Excluded Under Fed. R. Evid. 801, 802, 803, 805, 402, and 403.

The University understands that CBC intends to offer meeting minutes of the California Strawberry Commission ("CSC") to establish that the University was shutting down its strawberry breeding program. For instance, April 3, 2013, CSC minutes state that University Dean Mary Delany said that the University "does not currently plan to replace the existing breeders' faculty positions when they retire." (ECF No. 173-07 at CBC00002659.) September 4, 2014, CSC minutes state that Rick Tomlinson, of CSC, said that the University "has terminated the public strawberry breeding program." (ECF No. 173-10 at CBC00002791.)

Both sets of minutes are hearsay within hearsay: the minutes themselves are hearsay, and the statements attributed to individuals within the minutes are also hearsay. Fed. R. Evid. 801. They are therefore inadmissible unless an exception applies to both levels of hearsay. Fed. R. Evid. 802 & 805.

The minutes themselves should be excluded because they are not a trustworthy business record. *See* Fed. R. Evid. 803(6)(E). The minutes were recorded by CSC, which was gearing up to sue the University, seeking ownership and control over the program based on their strawberry research grant agreements with the University. (Ex. 3 at 8; Ex. 4 at 220:5-7, 215:7-216:20 (the minutes were a "misinterpretation" of Delany's message to CSC), 219:25-220:4 (as of September

1 2014, the University was already in the process of hiring a replacement program director).) As to
2 the minutes containing Tomlinson's supposed statements, Tomlinson is a third party unconnected
3 to this litigation, and his out of court statements are also hearsay that do not fall within any
4 exception to the rule. Fed. R. Evid. 801 & 802.

5 The University also understands that CBC intends to offer evidence that the University
6 issued layoff notices (shortly afterwards rescinded) to breeding program staff as part of its
7 supposed plan to shut down the breeding program. (*See, e.g.*, ECF No. 173-09.) CBC may also
8 argue that Dr. Knapp's hiring and subsequent control of the breeding program is tantamount to
9 shutting it down. (*See, e.g.*, Ex. 5 at 137:13-140:14 (critiquing the hiring of a geneticist (as
10 opposed to a traditional breeder) as Dr. Shaw's replacement.)

11 All of the above evidence only pertains to the question of whether and how the University
12 intended to continue the breeding program after Dr. Shaw's retirement. But those issues are not
13 germane to any of CBC's remaining claims or legal defenses, given the Court's rulings, and
14 should thus be excluded. Fed. R. Evid. 402. Furthermore, the notion that the University had
15 decided to shut down the program after Dr. Shaw's retirement is patently false. As of September
16 2014, before Dr. Shaw retired, the University's hiring process for a new director of breeding was
17 well under way. Dr. Knapp started work on February 1, 2015, and the program is alive and well,
18 with crosses and plantings done in 2016 and planned for 2017. The only purpose this evidence
19 serves is to improperly bias and confuse the jury. The evidence will be used to obscure the fact
20 that the only people who tried to shut down the breeding program were Dr. Shaw and those he
21 recruited to help set up CBC. (*See* ECF No. 178 at 1.) This confusing, misleading, and
22 prejudicial evidence should be excluded. Fed. R. Evid. 403.

C. Evidence or Argument Concerning the Alleged Poor Health of the Plants in the Strawberry Breeding Program Should Be Excluded Under Fed. R. Evid. 402 and 403.

Notwithstanding the rulings the Court described to the parties on April 12, 2017, the University understands that CBC may attempt to offer evidence or argument regarding the alleged poor health of certain plants in the breeding program in 2016.¹ How the University manages its tangible property, which CBC has no rights to under the Court's Summary Judgment Order, cannot possibly bear on CBC's claims or defenses before the jury. Fed. R. Evid. 402. In addition, the health of the plants in the University's possession during the relevant time period is no longer disputed. (Ex. 6 at 75:9-13 ("MR. LIPPETZ: . . . It turns out that additional information has come to light which suggest that there are other copies of those plants which are healthy and alive, but that issue is – is not really a major issue anymore.")) Finally, like evidence of the University's alleged decision to shut down the program or that it has "destroyed" TCs, the plant health issue is an attempt to confuse and bias the jury against the University by pointing to irrelevant, alleged missteps in the management of the program. This type of confusing, misleading, and prejudicial evidence should be excluded. Fed. R. Evid. 403.

III. CONCLUSION

The above evidence amounts to nothing more than a laundry list of grievances CBC has with how the University conducts its affairs and manages the resources it exclusively owns. None of these grievances are relevant to CBC's claims or legal defenses. Their only purpose is to bias and confuse the jury by attempting to focus the jury's attention on the allegedly flawed decision-making of the University instead of the claims and defenses at issue in the case. The University respectfully requests that this irrelevant, prejudicial, misleading, and confusing evidence be excluded.

¹ CBC made the same argument in its application for a temporary restraining order a year ago. (ECF No. 19-13 at 6-7.) The University presented evidence that the plants were in good health, and that there was no risk to the genetic viability of the program's germplasm collection. (ECF No. 2-4 at 49-57.) The restraining order application was denied, because CBC's assertion that program plants might become unavailable was "far too speculative." (ECF No. 31 at 2.)

1 Dated: April 17, 2017

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**OPPOSITION TO THE
 UNIVERSITY'S MOTION IN
 LIMINE # 3: TO EXCLUDE
 INFORMATION AND ARGUMENTS
 REGARDING THE UNIVERSITY'S
 MANAGEMENT OF THE
 STRAWBERRY BREEDING
 PROGRAM**

Date: May 8, 2017
 Time: 10:00 am
 Courtroom: 4
 Judge: Hon. Vince Chhabria

1 **I. INTRODUCTION**

2 In its omnibus motion to exclude all evidence and argument bearing on its management of
 3 the strawberry breeding program, UC effectively seeks a second summary judgment ruling on all
 4 of its claims that include an intent element. In essence, UC proposes to present its case that Dr.
 5 Doug Shaw and Dr. Kirk Larson committed misconduct, while simultaneously precluding
 6 Defendants from proffering the evidence necessary to support their defenses and claims. UC's
 7 request is understandable, in view of the Court's conclusion that there is evidence suggesting that
 8 UC acted in bad faith, but honoring that request would be unfairly prejudicial to CBC, Shaw and
 9 Larson. *See* ECF No. 240 at 9, 18. Evidence regarding UC's management (or, rather,
 10 mismanagement) of the strawberry breeding program is highly relevant to the claims and defenses
 11 in this case, and no Rule of Evidence—hearsay or otherwise—bars its admission.

12 **II. ARGUMENT**

13 **A. Evidence of UC's Destruction of Transition Cultivars is Relevant.**

14 UC first contends that evidence UC unilaterally destroyed valuable Transition Cultivars is
 15 irrelevant because Defendants have no ownership interest in those plants. In fact, however, while
 16 the Court found that UC owns the tangible property rights in the Transition Cultivars, *see* ECF
 17 No. 240 at 5, the Court has not similarly ruled with respect to CBC's intellectual property rights
 18 in the Transition Cultivars. To the contrary, the Court has expressed its position that neither
 19 statutory law, common law, policies, nor contract have divested Drs. Shaw and Larson of their
 20 "the intellectual property" in the Transition Cultivars. Tr. of Hearing at 4:5-15 (Mar. 30, 2017);
 21 *see also* ECF No. 240 at 5-7.

22 Nor did the Doctors' intellectual property rights in the Transition Cultivars transfer to UC
 23 under the parties' Patent Agreements. *See* ECF No. 240 at 7. The Patent Agreements obligated
 24 the Doctors to disclose only "possibly patentable ... plant[s]." ECF No. 145-5. Upon disclosure,
 25 and in the event UC deemed the plant to be "patentable," the Doctors promised to assign all
 26 rights, title and interest therein. ECF No. 145-5. The undisputed evidence is that that the
 27 Transition Cultivars are not possibly patentable. ECF Nos. 145-48 at 2, 145-49 at 150:18-156:4.
 28 UC conceded the point in its summary judgment pleadings, acknowledging that "no one – not

1 Drs. Shaw or Larson, nor anyone else at the University – has yet suggested that any varieties
2 within this category [of Transition Cultivars] are possibly patentable....” ECF No. 162 at 17:1-3.

3 Because Drs. Shaw and Larson have intellectual property rights in the Transition
4 Cultivars—rights assigned to CBC—they are entitled to prove to the jury that UC caused millions
5 in dollars of damage by acting in bad faith and destroying the varieties necessary to practice their
6 intellectual property rights. Just as an employer cannot destroy the schematics for a valuable
7 semiconductor chip without violating the inventor’s intellectual property rights, UC’s unilateral
8 decision to destroy the only remaining copies of valuable Transition Cultivars violates the
9 Doctors’ intellectual property rights.¹ See, e.g., *WesternGeco v. Ion Geophysical Corp.*, No.
10 CIV.A. 09-CV-1827, 2009 WL 3497123, at *3 (S.D. Tex. Oct. 28, 2009) (“courts have
11 recognized that intangible intellectual property can be reduced to tangible forms which are
12 thereby subject to conversion”); see also *Calabrese Found., Inc. v. Inv. Advisors, Inc.*, 831 F.
13 Supp. 1507, 1515 (D. Colo. 1993) (“tangible objects which are highly important to the exercise of
14 an intangible right” are subject to conversion claim). Accordingly, evidence of UC’s unilateral
15 destruction of Transition Cultivars is highly relevant to CBC’s claims in this case.

16 **B. Evidence Documenting UC’s Intention to Shut Down the Breeding Program**
17 **Is Relevant and Not Hearsay.**

18 CBC is also entitled to prove to the jury that UC intended—and expressed its intention—
19 to shut down the strawberry breeding program upon the Doctors’ retirements. What more logical
20 explanation for UC’s bad faith conduct in depriving the Doctors of the benefits of their patent
21 agreement? The evidence is clear and should be heard by the jury.

22 CSC minutes dated April 3, 2013 establish that Dr. Mary Delany—then Dean of the UC
23 Davis College of Agricultural and Environmental Sciences—announced “that the University does
24 not currently plan to replace the existing breeders’ faculty positions when they retire.” ECF No.
25 173-07. CSC minutes dated September 4, 2014 include a report from CSC’s President, Rick
26 Tomlinson, that “the University of California has terminated the public strawberry breeding

27 ¹ UC cites no evidence for its suggestion that the destroyed materials “fail[ed] to show
28 promise.”

1 program that has existed since 1956....” ECF No. 173-10.

2 Contrary to UC’s assertion, the hearsay rule does not bar admission of the CSC minutes.
3 The hearsay rule includes an exception for business records kept in the course of regularly
4 conducted activity of an organization unless the opponent can “show that the source of
5 information or the method or circumstances of preparation indicate a lack of trustworthiness.”
6 Fed. R. Evid. 803(6). Business records are presumed reliable and trustworthy because employees
7 have a strong incentive to be accurate and because routine and habitual patterns of creation lend
8 reliability to business records. *See United States v. Scholl*, 166 F.3d 964, 978 (9th Cir. 1999);
9 *Certain Underwriters at Lloyd’s, London v. Sinkovich*, 232 F.3d 200, 204-05 (4th Cir. 2000).

10 UC claims the minutes are untrustworthy because they “misinterpret[ed]” what Dr.
11 Delany intended to say. But objections that a document contains inaccuracies or omissions goes
12 to the weight of the evidence, not admissibility. *Scholl*, 166 F.3d at 978. UC also claims the
13 minutes are not trustworthy because CSC “was gearing up to sue [UC].” But CSC was not
14 “gearing up” for litigation in April 2013, when Dr. Delany first disclosed UC’s intention to shut
15 down the breeding program. And UC fails to explain why CSC would forge its September 2014
16 minutes merely to confirm Dr. Delany’s prior statements in anticipation of litigation. Moreover,
17 this was part of a continuum, as UC’s Professor DeJong testified about a 2009 incident “I think its
18 likely that I heard [that the dean sometimes was threatening to terminate the breeding program] at
19 that time.” Ex. B to Decl. of Garrett ISO CBC Opp. To UC MIL 1 at 101:9-14, 101:17-18.

20 Nor are the statements contained in the minutes themselves hearsay. Dr. Delany’s
21 statement is the statement of a University agent made on a matter within the scope of her
22 employment relationship. *See* Fed. R. Evid. 801(d)(2); *United States v. Bonds*, 608 F.3d 495, 512
23 (9th Cir. 2010) (“such statements are considered admissions of a party litigant”). And CBC does
24 not intend to introduce Mr. Tomlinson’s statement for the truth of the matter asserted—*i.e.*, that
25 UC had in fact shut down its program—but rather to establish that third parties *believed* UC
26 intended to shut down the program. Mr. Tomlinson’s statement is thus not hearsay at all. *See*
27 *Hensley-Maclean v. Safeway, Inc.*, No. 11-CV-01230-RS, 2015 WL 3956099, at *3 (N.D. Cal.
28 June 29, 2015) (“If the significance of an offered statement lies solely in the fact that it was made,

1 no issue is raised as to the truth of anything asserted, and the statement is not hearsay.”). And
2 even if it were, CBC is entitled to introduce the statement as evidence of Mr. Tomlinson’s state of
3 mind. *See* Fed. R. Evid. 803(3).

4 Finally, UC argues that all evidence regarding UC’s plan to shut down the breeding
5 program—including UC’s issuance of layoff notices—is irrelevant. But it is not irrelevant at all.
6 At the least, evidence that UC did not intend to continue the breeding program bears on UC’s
7 claim for breach of the duty of loyalty, which turns on whether Drs. Shaw and Larson knowingly
8 acted against UC’s interests by starting a private venture. *See* Judicial Council of California Civil
9 Jury Instruction No. 4102. As UC’s Professor DeJong testified about Dean Delany’s March 2014
10 announcement to suspend breeding progress, it would make no sense at that time for Dr. Shaw to
11 make crosses “if you didn’t have anybody at the other end to make selections...” ECF 173-30 at
12 230:7-24, 231:2-3.

13 **C. The Poor Health of Plants in the Strawberry Breeding Program is Relevant.**

14 UC moves to exclude evidence or argument concerning the health of plants in the
15 breeding program in 2016. UC’s management (or mismanagement) of the strawberry program
16 after the Doctors’ retirement is highly relevant to CBC’s claim that UC violated the Doctors’
17 intellectual property rights in the Transition Cultivars. As explained above, UC persuaded the
18 Doctors to turn over copies of their strawberry variety inventions on the assurance they would be
19 preserved. Again, UC appears to be seeking summary judgment of a claim on the merits by
20 excluding the most relevant evidence simply because it does not like the evidence; Rule 403 does
21 not go so far.

22 The evidence is also relevant to the remedies sought by both parties. CBC seeks access to
23 the plant materials currently in UC’s possession and, to the extent UC is destroying or failing to
24 main in good health that material, UC is eradicating CBC’s main recourse in this litigation. UC
25 seeks “lost profits” in the form of licensing revenues UC alleges it would have made absent
26 alleged CBC misconduct, and thus must show “a reasonable probability that [UC] would have
27 made the asserted sales ‘but for’ the infringement.” *Grain Processing Corp. v. Am.Maize-Prods.*
28 *Co.*, 185 F.3d 1341, 1349 (Fed Cir. 1999) (citations omitted). The current status of UC breeding

1 program is essential to UC's burden of proof and to CBC's defense of those UC damages claims.

2 **D. UC's Decision to File a Plant Patent on 168 CSG Varieties is Relevant.**

3 CBC, Dr. Shaw, and Dr. Larson are also entitled to show evidence of relating to UC's
4 omnibus application to patent 168 varieties in the Core Strawberry Germplasm, evidence this
5 Court acknowledged might show "the University did not behave well and bungled this" and that
6 UC acted in bad faith. Tr. of Hearing at 63:16-20 (Mar. 30, 2017); *see also* ECF No. 240 at 9.
7 UC cannot simply present the evidence it wants the jury to see and exclude the remainder.

8 The evidence is relevant first to UC's claim for breach of contract, which alleges that Drs.
9 Shaw and Larson breached their Patent Agreements by not executing "*appropriate* documents ...
10 to assign to University all rights, title, and interest" in the Core Strawberry Germplasm. ECF No.
11 104 ¶ 47 (emphasis added). As explained in CBC's summary judgment papers, a central defense
12 to the UC's contract claim is that the Core Strawberry Germplasm assignment form was not
13 appropriate because, among other things, an inventor cannot be compelled to sign a "false"
14 assignment or one that the investor "honestly and in good faith" does not believe to be true."
15 ECF No. 216 at 20:26-28 (quoting *Guth v. Minnesota Min. & Mfg. Co.*, 72 F.2d 385, 390 (7th
16 Cir. 1934)). Cross-Defendants are entitled to proffer evidence that Dr. Shaw refused to sign the
17 assignment form because he honestly and in good faith believed it would be fraud on the PTO to
18 file an omnibus plant patent for 168 varieties that are not yet patentable. *See* ECF No. 145-48.

19 Second, evidence of the CSG application is central to CBC's claim that UC breached the
20 implied covenant of good faith. *See* ECF No. 2-2 ¶¶ 63-64. Even if UC had a contractual right to
21 demand assignments of possibly patentable plants, California law required UC to exercise that
22 right in good faith. *See Ladd v. Warner Bros. Entm't*, 184 Cal.App.4th 1298, 1306 (2010). This
23 Court has acknowledge there is evidence to support CBC's contention that UC acted in bad faith,
24 *see* ECF No. 240 at 9, and CBC is entitled to demonstrate that UC did not demand assignment
25 and seek to patent the CSG in good faith, but rather to deprive the Doctors of any arguable
26 ownership right.

27 **III. CONCLUSION**

28 For these reasons, UC's Motion in Limine # 3 should be denied.

1 Dated: April 30, 2017

Respectfully submitted,

2 Jones Day

3 By: /s/ Tharan Gregory Lanier

4 Tharan Gregory Lanier

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**DECLARATION OF MATTHEW
CHIVVIS IN SUPPORT OF THE
UNIVERSITY'S MOTION IN
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OF THE STRAWBERRY
BREEDING PROGRAM**

1 I, Matthew A. Chivvis, do hereby declare as follows:

2 1. I am a partner with the law firm of Morrison & Foerster LLP and an attorney of
3 record for Movant The Regents of the University of California (the "University") in the above-
4 captioned matter. I am admitted to practice law in the State of California and before this Court. I
5 submit this declaration in support of The Regents of the University of California's Motion *in*
6 *Limine* No. 3: To Exclude Information and Arguments Regarding Irrelevant Aspects of the
7 University's Management of the Strawberry Breeding Program. I have personal knowledge of
8 the facts stated in this declaration, and I could and would competently testify to them if called as a
9 witness.

10 2. Attached as **Exhibit 1** is a true and correct copy of excerpts of the transcript of the
11 January 5, 2017, Deposition of Lucky Westwood.

12 3. Attached as **Exhibit 2** is a true and correct copy of excerpts of the transcript of the
13 December 16, 2016, Deposition of Steven Knapp.

14 4. Attached as **Exhibit 3** is a true and correct copy of the complaint filed by CSC
15 against the University on October 8, 2013.

16 5. Attached as **Exhibit 4** is a true and correct copy of excerpts of the transcript of the
17 December 9, 2016, Deposition of Mary Delany.

18 6. Attached as **Exhibit 5** is a true and correct copy of excerpts of the transcript of the
19 December 14, 2016, Deposition of Arthur Gen Kawamura.

20 7. Attached as **Exhibit 6** is a true and correct copy of excerpts of the transcript of the
21 February 8, 2017, discovery hearing in the above-captioned matter.

22
23 I declare under penalty of perjury that the foregoing is true and correct.

24 Executed on May 1, 2017, in San Francisco, CA.

25
26 /s/ Matthew A. Chivvis

27 MATTHEW A. CHIVVIS

Exhibit 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS, LLC,)

Plaintiff,)

vs.) Case No.

THE REGENTS OF THE UNIVERSITY OF) 3:16-cv-02477-VC

CALIFORNIA, a corporation,)

Defendant.)

-----)
THE REGENTS OF THE UNIVERSITY OF)

CALIFORNIA, a corporation,)

Cross-Complainant,)

vs.)

CALIFORNIA BERRY CULTIVARS, LLC,)

DOUGLAS SHAW, and KIRK LARSON,)

Cross-Defendants.)

-----)
OUTSIDE COUNSEL'S EYES ONLY

VIDEOTAPED DEPOSITION OF LUCKY WESTWOOD

Palo Alto, California

Thursday, January 5, 2017

Volume I

Reported by:

CARLA SOARES

CSR No. 5908

JOB No. 2511059

PAGES 1 - 269

Page 1

Palo Alto, California

Thursday, January 5, 2017

10:07 a.m.

P R O C E E D I N G S

THE VIDEO OPERATOR: Good morning. We're
on the record at 10:07 a.m. on January 5th, 2017.
This is the video-recorded deposition of Lucky
Westwood.

My name is Jeffree Anderson, here with our 10:07:22
court reporter, Carla Soares. We're here from
Veritext Legal Solutions at the request of counsel
for defendant and cross-complainant. This
deposition is being held at 1755 Embarcadero Road in
Palo Alto, California. 10:07:39

The caption of this case is California
Berry Cultivars, LLC, versus the Regents of the
University of California, Case No. 3:16-cv-02477-VC.

Please note that audio- and
video-recording will take place unless all parties 10:07:56
agree to go off the record. Microphones are
sensitive and may pick up whispers, private
conversations, and cellular interference, so please
be aware of that.

Please state your name and the firm you 10:08:07

Page 8

1 represent, beginning with the noticing attorney. 10:08:08

2 MR. EWERDT: Jake Ewerdt, with Morrison &
3 Foerster, on behalf of the Regents of the University
4 of California.

5 MR. MCKNIGHT: Rick McKnight of Jones Day, 10:08:17
6 on behalf of the witness and on behalf of CBC, Kirk
7 Larson and Doug Shaw.

8 THE VIDEO OPERATOR: Thank you.

9 Will the court reporter please swear in
10 the witness. 10:08:29

11 LUCKY WESTWOOD,
12 having been administered an oath, was examined and
13 testified as follows:

14 EXAMINATION

15 BY MR. EWERDT: 10:08:38

16 Q Good morning.

17 A Good morning.

18 Q Can you please state your name and spell
19 it for the record?

20 A Lucky Westwood. L-U-C-K-Y, 10:08:44
21 W-E-S-T-W-O-O-D.

22 Q By whom are you employed?

23 A California Giant, Inc.

24 Q Are you employed by CBC?

25 A No. 10:08:59

Page 9

1 discussed above" -- do you understand the strawberry 17:00:24
2 varieties discussed above to be the University of
3 California-patented varieties?

4 A Okay.

5 Q -- "CBC has grown for evaluation certain 17:00:31
6 new strawberry varieties it received from
7 International Semillas, LLC, referred to as IS new
8 varieties."

9 Do you see that?

10 A Yes. 17:00:42

11 Q What specifically does "grown for
12 evaluation" mean?

13 A Well, as I described a moment ago, you
14 plant them in a commercial way. I mean, you plant
15 them just at the time and in the same way that the 17:01:07
16 commercial growers do it, but you section them off
17 so that the individual varieties are apart from each
18 other so you can tell them apart.

19 And then we rate them every week, like I
20 said. And that's the evaluation process. And the 17:01:21
21 analysis of the data that's gained from the weekly
22 ratings is what determines the material that moves
23 forward or is discarded.

24 Q Does CBC own the IS new varieties?

25 A No. 17:01:44

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [x] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21 Dated: 1/9/2017

22
23 

24 CARLA SOARES

25 CSR No. 5908

California Berry Cultivars, LLC v. The Regents of the University of California
Case No. 3:16-cv-02477-VC

ERRATA SHEET

Witness: Lucky Westwood
Deposition Date: January 5, 2017

PAGE	LINE	CHANGE	REASON
93	17	"patent cultivar" should be "patented cultivar"	Transcription error
19	7	No, I don't dispute that the UC owns the Patent Rights to the cultivars	mispoke

ACKNOWLEDGMENT OF DEPONENT

I, Lucky Westwood, declare under penalty of perjury that I have read the foregoing pages 1 to 269 and that the same is a correct transcription of the answers given by me to the questions herein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

2/27/16
DATE


SIGNATURE

Exhibit 2

Highly Confidential – Attorneys' Eyes Only
Steven Knapp Ph.D. – December 16, 2016

Page 1

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS,)
LLC,)
Plaintiffs,)
vs.) Case No. 3:16-cv-02477
THE REGENTS OF THE UNIVERSITY) VC
OF CALIFORNIA,)
Defendant.)
and Related Claims.)

HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY

VIDEO DEPOSITION OF STEVEN J. KNAPP, Ph.D.
San Francisco, California
Friday, December 16, 2016
Volume I

REPORTED BY:
REBECCA L. ROMANO, RPR, CSR No. 12546

Highly Confidential – Attorneys' Eyes Only
Steven Knapp Ph.D. – December 16, 2016

Page 8

1 San Francisco, California

2 Friday, December 16, 2016

3 9:15 a.m.

4 ---oOo---

5
6 THE VIDEOGRAPHER: Good morning. Here
7 begins Video No. 1, Volume I, in the deposition of
8 Steven Knapp, in the matter of
9 California Berry Cultivars versus The Regents of
10 the University of California.

11 Today's date is December 16th, 2016, and
12 the time is 9:15 a.m. This deposition is being
13 taken at Morrison & Foerster in
14 San Francisco, California.

15 My name is Cyril Suschkiewicz. I'm the
16 videographer, and the court reporter is
17 Rebecca Romano. We're both here representing
18 Gregory Edwards, LLC.

19 Counsel, would you please identify
20 yourselves for the record.

21 MS. REISMAN: Sharyl Reisman on behalf of
22 California Berry Cultivars, CBC, and Douglas Shaw
23 and Kirk Larson.

24 MS. KREVANS: Rachel Krevans,
25 Morrison & Foerster, on behalf of

Highly Confidential – Attorneys' Eyes Only
Steven Knapp Ph.D. – December 16, 2016

Page 9

1 The Regents of the University of California and
2 the witness. And with me is my colleague,
3 Jake Ewerdt.

4 THE VIDEOGRAPHER: The court reporter may
5 swear in the witness.

6 THE REPORTER: If you could raise your
7 right hand for me, please.

8 THE DEPONENT: (Complies.)

9 THE REPORTER: You do solemnly state,
10 under penalty of perjury, that the testimony you
11 are about to give in this deposition, shall be the
12 truth, the whole truth and nothing but the truth?

13 THE DEPONENT: I do.

14

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Highly Confidential - Attorneys' Eyes Only
Steven Knapp Ph.D. - December 16, 2016

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1 you're saying.

2 A. Yeah.

3 Q. You -- you -- you've told -- let me
4 start --

5 A. All right.

6 Q. -- anew.

7 Bruce Campopiano told you that there were
8 materials that Doug Shaw had on a discard list, but
9 those materials were turned over to the university;
10 is that correct?

11 A. I believe they had been, yes.

12 Q. Okay. What is the status of the
13 materials that were on the discard list that
14 Doug Shaw turned over to the university?

15 A. Some of those are maintained in the
16 collection and some we have sel- -- we have not
17 selected to advance.

18 Q. So when you say some you have not
19 selected to advance, have you discarded some of
20 those?

21 A. Yes.

22 Q. How many?

23 A. I believe we have -- in the 2012, we have
24 200 accessions that we're advancing.

25 Q. Out of how many?

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Steven Knapp Ph.D. - December 16, 2016

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1 A. There were 312, I believe, in that --
2 that Doug had, and there were some 290 or so that
3 were -- that we discovered in Irvine.

4 Q. So 3 -- 312 2012s up north and 290 2012s
5 from south?

6 A. Right.

7 Q. And so that is?

8 A. About 600, 601.

9 Q. 602.

10 A. Yeah.

11 Q. So you have discarded approximately 400
12 of the 2012 genotypes?

13 A. Right.

14 Q. Do you maintain any -- any copies of the
15 genotypes you've discarded?

16 A. No.

17 Q. So those 400 are just gone from the
18 collection; is that correct?

19 A. Correct.

20 Q. Were any of those on the discard list
21 that Doug had left behind?

22 A. I believe so, yes.

23 Q. So, in essence, if you had followed
24 Doug's instructions and the evaluations he had
25 done, it would have saved you some work; is that

Highly Confidential – Attorneys' Eyes Only
Steven Knapp Ph.D. – December 16, 2016

Page 243

1 right?

2 A. Yeah, almost two years' worth.

3 Q. So he left you some helpful information,
4 but you didn't want to trust that work when he left
5 it to you?

6 A. No. I had no -- no relationship or
7 communication with him, and the -- the instruction
8 from Mary Delany was just preserve -- just keep it
9 going. Glenn Cole and I indicated that we needed
10 to pare things down and start moving in a normal
11 breeding process.

12 Q. And part of the normal breeding process
13 is to select, cull and discard, right?

14 A. Correct.

15 Q. And Doug Shaw had left you helpful
16 information to guide that process with respect to
17 various of the material that you've discarded; is
18 that correct?

19 A. I had a list of things that, ostensibly,
20 he was recommending were dis- -- to be discarded,
21 yes.

22 Q. And you reached the same conclusion,
23 right?

24 A. We grew material and decided that -- that
25 it would only merit it advancing a fraction of it,

Highly Confidential – Attorneys' Eyes Only
Steven Knapp Ph.D. – December 16, 2016

Page 373

1 STATE OF CALIFORNIA) ss:
2 COUNTY OF CONTRA COSTA)

3

4 I, Rebecca L. Romano, CSR. 12546, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was
9 administered the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel
19 for any party to said action, nor am I related to
20 any party to said action, nor am I in any way
21 interested in the outcome thereof.

22 IN WITNESS WHEREOF, I have subscribed my name
23 this 4th day of January, 2017.

24

25

Rebecca L. Romano, RPR,
CSR. No 12546

ERRATA SHEET

Case Title: California Berry Cultivars, LLC v. The Regents of the University of California (U.S.D.C. N.D. Cal. Case No. 3:16-cv-02477-VC)

Testimony of: Steven J. Knapp, Ph.D.

Date Taken: December 16, 2016

Reason Codes: 1. To clarify the record.
 2. To conform to the facts.
 3. To correct transcript errors.

Page 128 Line 20 – change “That’s correct.” to “That’s correct, although Julia Harshman worked on strawberries at University of Maryland as well.”

Reason: 1

Page 197 Line 60 – change “76” to “576”

Reason: 3

Page 202 Line 17 – change “Yes.” to “I don’t know.”

Reason: 2

Page 203 Line 4 – change “Yes.” to “No.”

Reason: 2

Page 204 Line 6 – change “No.” to “For the Scarlet that we have, which is a USDA plant introduction, we do not need a license because it is a publicly available European cultivar.”

Reason: 2

Page 207 Line 12 – change “allow head-to-head comparisons” to “allow head-to-head comparisons without a license”

Reason: 1

Page 207 Line 23 – change “Correct.” to “Correct. We are using the publicly available Scarlet variety.”

Reason: 2

Page 208 Line 18 – change “No, that wouldn't be surprising to me.” to “No, that wouldn't be surprising to me, so long as they had a test agreement.”

Reason: 1

Page 214 Line 25 – change “It was due to the use of high-elevation” to “Liz said it was due to the use of high-elevation”

Reason: 1

Page 215 Line 21 – change “the concern was” to “Liz’s concern was”

Reason: 1

Page 216 Line 19 – change “Correct.” to “I don’t know.”

Reason: 2

Page 216 Line 21 – change “Correct.” to “I don’t know.”

Reason: 2

Page 217 Line 16 – change “Yes, I believe.” to “Yes, I now believe.”

Reason: 1

Page 223 Line 13 – change “We chose to split the planting.” to “We originally chose to split the planting for reasons independent from Lassen. However, we did a second planting at Cedar Point after we had concerns about the relationship with Lassen.”

Reason: 2

Page 224 Line 1 – change “That is correct.” to “That is correct, for the embryo within the seed only.”

Reason: 1

Page 353 Line 17 – change “Correct.” to “Correct, there is no longer a risk.”

Reason: 1

Subject to the above changes, I certify that the transcript is true and correct.


STEVEN J. KNAPP, Ph.D.

Exhibit 3



FILED
ALAMEDA COUNTY

13 OCT -8 PM 2:17

M Hayes

RUTAN & TUCKER, LLP
Michael Adams (State Bar No. 185835)
madams@rutan.com
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Facsimile: 714-546-9035

Attorneys for Plaintiff
California Strawberry Commission

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CALIFORNIA STRAWBERRY
COMMISSION,

Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA and DOES 1 through 50,
Defendants.

Case No. **RG 13698448**

COMPLAINT FOR:

- (1) BREACH OF CONTRACT
- (2) BREACH OF IMPLIED CONTRACT
- (3) DECLARATORY RELIEF

Plaintiff California Strawberry Commission (the "Commission") hereby alleges for its Complaint against The Regents of the University of California ("University") as follows:

PARTIES

1. The Commission is a state-chartered agency of the California Department of Food and Agriculture, headquartered in Watsonville, California. The Commission represents California's strawberry growers. Its mission is to promote California strawberries and manage industry issues, with a focus on production and nutrition research, trade relations, public policy, marketing and communications.

2. Defendant University is, and at all times relevant to this action was, a California Constitutional Corporation authorized and empowered to administer the public

1 trust known as the University of California, with full powers of organization and
 2 government thereof. The University administers, among other things, the University of
 3 California at Davis.

4 3. The Commission is unaware of the true names and capacities, whether
 5 individual, corporate, associate or otherwise of Does 1 through 50, inclusive, and therefore
 6 sues these defendants and real parties in interest by such fictitious names. The
 7 Commission will amend this pleading to show their true names and capacities when they
 8 have been ascertained, or upon proof at trial. The Commission is informed and believes
 9 that each of the Doe defendants is responsible for the liabilities, breaches, damages, and
 10 harms alleged in this action.

11 4. The Commission is informed and believes and on that basis alleges that at all
 12 relevant times the University and the Doe Defendants, and each of them, were the agents,
 13 servants, and employees of each of the other defendants, and were acting within the full
 14 course and scope of said agency and employment with the full knowledge and consent,
 15 either express or implied, of each of the other defendants and are responsible therefore.

16 NATURE OF THE ACTION

17 5. Over the past thirty years, the Commission has spent millions of dollars
 18 funding the University's research program for breeding new varieties of strawberries so
 19 that the Commission's growers can obtain the most advanced varieties that result from that
 20 program. The Commission is forced to bring this lawsuit because the University seeks to
 21 exclude the Commission from the results of the research that the Commission funded, and
 22 instead enter into a licensing agreement with a private entity that will not provide new
 23 strawberry varieties to the Commission's growers. The University thereby seeks to
 24 appropriate for itself and a private entity, to the exclusion of the Commission, the fruits
 25 (both literally and figuratively) of decades-long research that the Commission funded for
 26 its benefit.

27 ///

28 ///

OPERATIVE FACTS

6. The University operates a program for researching and breeding new varieties of strawberries ("Pomology Program") out of the University of California at Davis.

7. Since 1980, two researchers have directed the course of the Pomology Program -- Doug Shaw and Kirk Larson ("Shaw and Larson").

8. The objective of the Pomology Program has been the development of a strawberry germplasm and new varieties of strawberries. A germplasm is a living tissue built upon, improved on, and modified over many years from which new varieties of plants, such as strawberries, are grown. It can be in the form of seeds or another plant part such as a stem, leaf, pollen, or a few cells that can be cultured into a whole plant.

9. Since 1980, the Commission has funded the Pomology Program in exchange for access to the results of the program, which include the germplasm, the research data, and the varieties of strawberries grown from the germplasm.

10. Each year from 1980 through 2012, the University submitted a Project Plan/Research Grant Proposal ("Project Plan") requesting a specific amount of money from the Commission to fund the Pomology Program.

11. Each year from 1980 through 2012, the Commission and the University entered into a Research Agreement, which incorporated the Project Plan. Each Research Agreement:

- a. Provides that it is a contractual agreement between the Commission and University under the direction of Shaw and Larson;
- b. Provides that Shaw and Larson will perform services for the Commission in accordance with the Project Plan; that the immediate goal of the research is the release of new strawberry varieties; and that the longer-term goal is the development of improved germplasm from which new strawberry varieties can be grown;
- c. Sets forth the amount the Commission will pay to the University; and

1 d. Provides that all results achieved in connection with the project shall
2 be maintained for inspection by the Commission.

3 12. In accordance with the Research Agreements, from 1980 through 2012, the
4 University under the direction of Shaw and Larson developed the improved germplasm
5 and used the germplasm to grow improved strawberry varieties. The Commission's
6 strawberry growers obtained access to the new varieties of strawberries grown from the
7 germplasm by, among other things, acquiring clones of the new varieties from the
8 University.

9 13. In late 2012, Shaw and Larson stated their intent to resign from the
10 Pomology Program and take the results of the Pomology Program, including the
11 germplasm, to establish their own private company to research and breed strawberries.
12 The majority of the Commission's growers will not obtain the new strawberry varieties
13 that Shaw and Larson will develop from the germplasm because Shaw and Larson intend
14 to exclusively distribute the new strawberry varieties to select growers.

15 14. In spring of 2012, the University informed the Commission that it will not
16 replace Shaw and Larson upon their departure, and that it intends to terminate the
17 Pomology Program such that the University will no longer develop and sell new
18 strawberry varieties to the Commission's growers. Instead, the University will license the
19 results of the Pomology Program to Shaw and Larson and/or their private company.

20 15. Although the Commission funded the Pomology Program and the
21 development of the germplasm for over thirty years so that the Commission's growers can
22 obtain new strawberry varieties, the University and Shaw and Larson thus intend to
23 appropriate for themselves all the benefits resulting from the Pomology Program. The
24 University and Shaw and Larson, if permitted to carry out their plan, will themselves
25 continue to economically benefit from the results of the Pomology Program that the
26 Commission funded, while the Commission's growers will be left with nothing.

27 16. Additionally, the University's conduct jeopardizes the integrity of the
28 germplasm, including the living plants from which new varieties are grown, which need

1 constant maintenance and care. The University has failed to give the Commission
 2 reasonable assurance that such maintenance and care will be provided when it terminates
 3 its Pomology Program.

4 FIRST CAUSE OF ACTION

5 (Breach of Contract)

6 17. Plaintiff realleges and incorporates by reference paragraphs 1 through 16 as
 7 though set forth in full.

8 18. From 1980 through 2012, the Commission and the University entered into a
 9 series of Research Agreements.

10 19. Except for obligations which were excused, waived, discharged, or which the
 11 University is estopped to assert, the Commission has performed all terms, conditions and
 12 obligations on its part to be performed under the Research Agreements.

13 20. The University has materially breached the Research Agreements by, among
 14 other things, repudiating its obligations to provide the Commission with the results of the
 15 Pomology Program, including without limitation, access to the new strawberry varieties
 16 and the germplasm. The University has further breached the Research Agreements by
 17 failing to give reasonable assurances that it will continue to maintain the germplasm.

18 21. The University's wrongful conduct in repudiating its obligations under the
 19 Research Agreements will cause great and irreparable injury to the Commission unless and
 20 until enjoined by order of this Court. The Commission's growers cannot obtain new
 21 strawberry varieties from the germplasm if the University is permitted to license the
 22 germplasm to Shaw and Larson's private entity and terminate the Pomology Program
 23 while simultaneously assuring to itself the continuing economic benefits of the
 24 Commission's decades-long investment.

25 22. The Commission is informed and believes, and based thereon alleges, that
 26 without issuance of the injunction by this Court, the University will continue the acts
 27 herein complained of by licensing the germplasm to Shaw and Larson and/or their private
 28 entity, terminating the Pomology Program, and not providing the necessary care and

1 maintenance of the germplasm.

2 23. The Commission has no adequate remedy at law for this imminent and
3 irreparable harm.

4 24. As a further direct and proximate result of the University's acts of breach
5 described herein, the Commission has suffered damages in excess of the jurisdictional
6 amount of this Court in an amount to be proved at trial, together with penalties and/or
7 interest as allowed by law.

8 SECOND CAUSE OF ACTION

9 (Breach of Implied Contract)

10 25. The Commission realleges and incorporates by reference paragraphs 1
11 through 24 as though set forth in full.

12 26. Alternatively, an implied-in-fact contract exists requiring the University (1)
13 to provide the Commission with the results of the Pomology Program, including without
14 limitation access to the germplasm and the new strawberry varieties grown from the
15 germplasm, and (2) to maintain the germplasm for the Commission's benefit.

16 27. This contract is implied from at least the following conduct: (1) the
17 University sought funding from the Commission every year from 1980 through 2012 for
18 the Pomology Program, the goal of which is to release new strawberry varieties to the
19 Commission's growers and develop improved germplasm from which new strawberry
20 varieties can be grown and supplied to the Commission's growers; (2) the Commission
21 provided the requested funding every year from 1980 through 2012; and (3) the University
22 provided the Commission's growers new strawberry varieties grown from the germplasm
23 each year from 1980 through 2012.

24 28. The University has materially breached the Research Agreements by
25 repudiating its obligations to provide the Commission with the results of the Pomology
26 Program, including without limitation, access to the germplasm and the new strawberry
27 varieties grown from the germplasm. The University has further breached the Research
28 Agreements by failing to give the Commission reasonable assurances that it will continue

1 to maintain the germplasm.

2 29. The University's wrongful conduct in repudiating its obligations under the
3 Research Agreements will cause great and irreparable injury to the Commission unless and
4 until enjoined by order of this Court. The Commission's growers cannot obtain new
5 strawberry varieties from the germplasm if the University is permitted to license the
6 germplasm to Shaw and Larson and/or their private entity and terminate the Pomology
7 Program while simultaneously assuring to itself the continuing economic benefits of the
8 Commission's decades-long investment.

30. The Commission is informed and believes, and based thereon alleges, that without issuance of the injunction by this Court, the University will continue the acts herein complained of by licensing the germplasm to Shaw and Larson and/or their private entity, terminating the Pomology Program, and not providing the necessary care and maintenance of the germplasm.

14 31. The Commission has no adequate remedy at law for this imminent and
15 irreparable harm.

32. As a further direct and proximate result of the University's acts of breach described herein, the Commission has suffered damages in excess of the jurisdictional amount of this Court in an amount to be proved at trial, together with penalties and/or interest as allowed by law.

THIRD CAUSE OF ACTION

(Declaratory Relief)

22 33. Plaintiff realleges and incorporates by reference paragraphs 1 through 32 as
23 though set forth in full.

24 34. An actual controversy has arisen and now exists between the Commission,
25 on the one hand, and the University, on the other hand, regarding their respective rights,
26 remedies, liabilities, and obligations under the contracts between these parties.

35. The Commission contends that under the contracts between the parties, the University is required (1) to provide the Commission access to the results of the Pomology

1 Program, which include the germplasm, the research data, and the varieties of strawberries
 2 grown from the germplasm, and (2) maintain the germplasm in good condition and
 3 preserve its integrity.

4 36. The Commission is informed and believes and on that basis alleges that the
 5 University disputes each of these contentions.

6 37. The Commission thus seeks a judicial determination of the respective rights,
 7 remedies, and obligations of the parties with respect to the contracts between the
 8 Commission and the University. Such a declaration is appropriate at this time to allow the
 9 parties to ascertain their respective rights, duties, and obligations under the contracts.

10 PRAYER FOR RELIEF

11 **WHEREFORE**, the Commission prays for judgment against the University as
 12 follows:

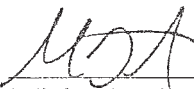
13 1. For a preliminary and permanent injunction: (1) enjoining the University
 14 from licensing the germplasm to Shaw and Larson and/or any entity under their direction
 15 or control; (2) enjoining the University from denying the Commission access to the results
 16 of the Pomology Program, including the germplasm, the research data, and the varieties of
 17 strawberries grown from the germplasm, and (3) directing the University to maintain and
 18 preserve the germplasm.

19 2. For damages according to proof; and

20 3. For such other and further relief as the Court deems just and proper.

21 Dated: October 8, 2013

RUTAN & TUCKER, LLP

22
 23 By: 

24 Michael Adams
 25 Attorneys for Plaintiff
 26 California Strawberry Commission
 27
 28

Exhibit 4

Highly Confidential – Attorneys' Eyes Only
Mary Delany – December 9, 2016

Page 1

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS,)
LLC,)
)
Plaintiffs,)
)
vs.)
)
THE REGENTS OF THE UNIVERSITY)
OF CALIFORNIA,)
)
Defendant.)
)
)
and Related Claims.)
)

Case No. 3:16-cv-02477
VC

HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF MARY DELANY
San Francisco, California
Friday, December 9, 2016
Volume I

REPORTED BY:
REBECCA L. ROMANO, RPR, CSR No. 12546

Highly Confidential – Attorneys' Eyes Only
Mary Delany – December 9, 2016

Page 11

1 Morrison & Foerster, representing
2 The Regents of the University of California and the
3 witness.

4 Also with me here today is my colleague,
5 Alex Haddock. He may be in and out of the
6 deposition, but I want to put on the record now
7 that he is present now and will be here throughout
8 the day at various times.

9 THE VIDEOGRAPHER: The court reporter may
10 swear in the witness.

11 THE REPORTER: If you could raise your
12 right hand for me, please.

13 THE DEPONENT: (Complies.)

14 THE REPORTER: You do solemnly state,
15 under penalty of perjury, that the testimony you
16 are about to give in this deposition, shall be the
17 truth, the whole truth and nothing but the truth?

18 THE DEPONENT: I do.

19

20

21

22

23

24

25 /////

Highly Confidential – Attorneys' Eyes Only
Mary Delany – December 9, 2016

Page 12

1 MARY DELANY

2 having been administered an oath, was examined and
3 testified as follows:

4

5 EXAMINATION

6 BY MR. LIPPETZ:

7 Q. Good morning.

8 A. Good morning.

9 Q. We met briefly off the record, but could
10 you please state your name for the record.

11 A. Yes. My name is Mary Delany.

12 Q. And who are you currently employed by?

13 A. I'm employed -- employed by the
14 University of California, Davis.

15 Q. And what is the relationship between the
16 University of California, Davis and the named party
17 in this case, The Regents of the University of
18 California?

19 A. The Regents of the University of
20 California have authority for the University of
21 California sister campuses, so they are the
22 oversight, the Board of Regents.

23 Q. Okay. And -- and this is obviously not
24 meant to trick you, although --

25 A. Yeah.

Highly Confidential – Attorneys' Eyes Only
Mary Delany – December 9, 2016

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1 various activities elaborating.

2 And then I -- you know, it's -- it's --
3 it's encapture -- it's encapsulated in here, "does
4 not currently plan." We had no plans of what we
5 were or we were not going to do.

6 Q. (By Mr. Lippetz) Okay.

7 A. And I know the commission was very
8 concerned. And I could see where somebody
9 misinterpreted what I was trying to explain to the
10 commission, probably very carefully.

11 Q. Okay. Does the university's position on
12 what was said by Dr. Delany at this April 3rd
13 meeting depend entirely on Dr. Delany's memory, as
14 she sits here today, of that event?

15 A. Does the university -- so I can answer --

16 Q. I know this is strange. I've got to do
17 it this way. I'm sorry.

18 MS. KREVANS: Yeah, I'm not quite sure
19 why you guys are talking about her in the third
20 person, but...

21 THE DEPONENT: Yeah, but I -- it's
22 confusing to me, too.

23 Q. (By Mr. Lippetz) Well, does -- does --
24 did -- did you talk Dr. Pathak, for example, about
25 this meeting before today in preparation for your

Highly Confidential – Attorneys' Eyes Only
Mary Delany – December 9, 2016

Page 216

1 deposition?

2 A. No, I didn't talk with anyone.

3 Q. So as you sit here right now, when we're
4 talking about this subject, you --

5 A. Yes. So -- so we're not --

6 Q. Let me finish my question.

7 You've seen this document and you're
8 thinking through what's in your mind.

9 Is there any other source of
10 information --

11 A. No.

12 Q. -- that you're relying on right now?

13 A. So I have not -- I -- you know, I haven't
14 talked to anybody who was also listed as being at
15 the meeting.

16 Q. So --

17 A. So my evaluation here of what I,
18 Dr. Delany, would have said, I have to tell you
19 that it's incomprehensible that I would have said
20 it so definitively.

21 Q. So let me now ask you personally, and
22 we'll be finished with this, I promise.

23 As you sit here today, you can't say that
24 you specifically recall telling the
25 California Strawberry Commission on April 3rd that

Highly Confidential - Attorneys' Eyes Only
Mary Delany - December 9, 2016

Page 219

1 have ceased operations. "

2 I am anticipating you're going to tell me
3 that it was not a true statement that the
4 University of California had terminated its public
5 broad- -- strawberry breeding program as of
6 September 4th, 2014; is that correct?

7 A. That's correct.

8 Q. And correct that that's an incorrect
9 statement, right?

10 A. Yes, that's an in- -- so these are the
11 minutes.

12 Q. Correct.

13 A. Right.

14 Q. So these minutes were incorrect when they
15 reported that the university had terminated the
16 breeding program on September 4th, 2014, and you
17 believed the minutes were incorrect when they
18 reported that you told them you were not replacing
19 the breeders, in April 2013, correct?

20 A. Right, currently no plan, which
21 translated into "We had not made a decision." By
22 here we -- and by -- by -- this is 2014 and that
23 was --

24 Q. 2013.

25 A. -- 2013. So this is a year and month --

Highly Confidential – Attorneys' Eyes Only
Mary Delany – December 9, 2016

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1 many months later. And at this point the search
2 had been opened, advertised and interview
3 candidates were on the way, which underpins that
4 the university had not terminated the program.

5 Q. In October 2013, CSC filed a lawsuit
6 against the university, correct?

7 A. Yes. Correct.

8 Q. In that lawsuit, the
9 California Strawberry Commission alleges that,
10 quote: In the spring of 2012, the university
11 informed the commission that it will not replace
12 Shaw and Larson upon their departure and that it
13 intends to terminate the pomology program such that
14 the university will no longer develop and sell new
15 strawberry varieties to the -- to the commission's
16 growers.

17 Was that a correct statement of what the
18 university intended to do or -- strike that.

19 Was that a correct description of what
20 the university told the commission in the spring of
21 2012?

22 A. Which -- spring 2012?

23 Q. Correct.

24 A. In -- or spring 2013? I -- because --

25 Q. The complaint says 2012.

Highly Confidential – Attorneys' Eyes Only
Mary Delany – December 9, 2016

Page 332

1 STATE OF CALIFORNIA) ss:
2 COUNTY OF CONTRA COSTA)

3

4 I, Rebecca L. Romano, CSR. 12546, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was
9 administered the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel
19 for any party to said action, nor am I related to
20 any party to said action, nor am I in any way
21 interested in the outcome thereof.

22 IN WITNESS WHEREOF, I have subscribed my name
23 this 23rd day of December, 2016.

24

25

Rebecca L. Romano, RPR,
CSR. No 12546

Highly Confidential - Attorneys' Eyes Only
Mary Delany - December 9, 2016

Page 333

1	DEPOSITION ERRATA SHEET		
2	Case Name: California Berry Cultivars, LLC v. The Regents of the University of California		
3	Name of Witness: Mary Delany, Ph.D.		
4	Date of Deposition: December 9, 2016		
5	Job No.: 120916-RRD		
6	Reason Codes: 1. To clarify the record.		
7	2. To conform to the facts.		
8	3. To Correct transcript errors.		
9	Page <u>55</u>	Line <u>5</u>	Reason <u>(3)</u>
10	From <u>SITTING</u>	to <u>SIFTING</u>	
11	Page <u>168</u>	Line <u>21</u>	Reason <u>(3)</u>
12	From <u>the VIDEOGRAPHER</u>	to <u>the DEPONENT</u>	
13	Page <u>235</u>	Line <u>7</u>	Reason <u>(3)</u>
14	From <u>THE VIDEOGRAPHER</u>	to <u>the DEPONENT</u>	
15	Page <u>245</u>	Line <u>12</u>	Reason <u>(3)</u>
16	From <u>SITTING</u>	to <u>SIFTING</u>	
17	Page <u>322</u>	Line <u>14</u>	Reason <u>(3)</u>
18	From <u>Forward</u>	to <u>Board</u>	
19	Page <u> </u>	Line <u> </u>	Reason <u> </u>
20	From <u> </u>	to <u> </u>	
21	Page <u> </u>	Line <u> </u>	Reason <u> </u>
22	From <u> </u>	to <u> </u>	
23	Page <u> </u>	Line <u> </u>	Reason <u> </u>
24	From <u> </u>	to <u> </u>	
25	Page <u> </u>	Line <u> </u>	Reason <u> </u>
	From <u> </u>	to <u> </u>	

Highly Confidential - Attorneys' Eyes Only
Mary Delany - December 9, 2016

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1 DEPOSITION ERRATA SHEET

2 Page ____ Line ____ Reason ____

3 From ____ to ____

4 Page ____ Line ____ Reason ____

5 From ____ to ____

6 Page ____ Line ____ Reason ____

7 From ____ to ____

8 Page ____ Line ____ Reason ____

9 From ____ to ____

10 Page ____ Line ____ Reason ____

11 From ____ to ____

12 Page ____ Line ____ Reason ____

13 From ____ to ____

14 Page ____ Line ____ Reason ____

15 From ____ to ____

16 Page ____ Line ____ Reason ____

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18 Page ____ Line ____ Reason ____

19 From ____ to ____

20 Page ____ Line ____ Reason ____

21 From ____ to ____

22 ☒ Subject to the above changes, I certify that
the transcript is true and correct

23 ☐ No changes have been made. I certify that
the transcript is true and correct.

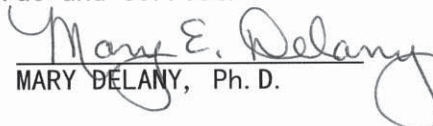
24 
25 MARY DELANY, Ph.D.

Exhibit 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS, LLC,)
)
Plaintiff,)
) Case No.
vs.) 3:16-cv-02477-VC
)
THE REGENTS OF THE UNIVERSITY OF)
CALIFORNIA, a corporation,)
)
Defendant.)
-----)
)
THE REGENTS OF THE UNIVERSITY OF)
CALIFORNIA, a corporation,)
)
Cross-Complainant,)
)
v.)
)
CALIFORNIA BERRY CULTIVARS, LLC,)
DOUGLAS SHAW, and KIRK LARSON,)
)
Cross-Defendants.)
-----)

VIDEOTAPED DEPOSITION OF ARTHUR GEN KAWAMURA
Palo Alto, California
Wednesday, December 14, 2016
Volume I

Reported by:
CARLA SOARES
CSR No. 5908
Job No. 2487797
Pages 1 - 376

1 Palo Alto, California

2 Wednesday, December 14, 2016

3 9:24 a.m.

4
5 P R O C E E D I N G S

6 THE VIDEO OPERATOR: Good morning. We're
7 on the record. The time is 9:24 a.m., and the date
8 is December 14, 2016. This begins the videotaped
9 deposition of A.G. Kawamura.

10 My name is Sean Grant, here with our court 09:24:01
11 reporter, Carla Soares. We're here from Veritext
12 Legal Solutions at the request of counsel for
13 defendant.

14 This deposition is being held at Jones Day
15 in Palo Alto, California. The caption of this case 09:24:11
16 is California Berry Cultivars, LLC, versus the
17 Regents of the University of California, and related
18 cross-actions, Case No. 3:16-cv-02477-VC.

19 Please note that audio- and
20 video-recording will take place unless all parties 09:24:32
21 have agreed to go off the record. Microphones are
22 sensitive and may pick up whispers, private
23 conversations, or cellular interference.

24 At this time, will counsel please identify
25 themselves and state whom they represent. 09:24:45

Page 9

1 MS. KREVANS: Rachel Krevans for the 09:24:47
2 Regents of the University of California.

3 MR. LIPPETZ: Greg Lippetz of Jones Day
4 for California Berry Cultivars, Douglas Shaw and
5 Kirk Larson. 09:24:56

6 MS. KREVANS: And are you representing the
7 witness as well?

8 MR. LIPPETZ: And the witness.

9 MS. KREVANS: Thank you.

10 THE VIDEO OPERATOR: Thank you. 09:25:01

11 Will the certified court reporter please
12 swear in the witness.

13 ARTHUR GEN KAWAMURA,
14 having been administered an oath, was examined and
15 testified as follows: 09:25:02

16 EXAMINATION

17 BY MS. KREVANS:

18 Q Good morning, Mr. Kawamura.

19 A Good morning.

20 Q Could you start by stating your full name 09:25:18
21 and spelling it for the record?

22 A It is Arthur Gen, G-E-N, Kawamura,
23 K-A-W-A-M-U-R-A.

24 Q And your home address?

25 A 32 Rue Fontainbleau, 09:25:29

Page 10

1 witness is losing his voice. 12:14:05

2 MS. KREVANS: We're off the record.

3 THE VIDEO OPERATOR: Going off the record,

4 the time is 12:14 p.m.

5 (Recess, 12:14 p.m. - 12:16 p.m.) 12:14:11

6 THE VIDEO OPERATOR: Back on the record.

7 The time is 12:16 p.m.

8 BY MS. KREVANS:

9 Q Okay. You said, "They hired an individual

10 who had expertise in genomics, in genetic sciences," 12:16:09

11 you made some comments about that, "and they opted

12 not to hire a traditional breeder."

13 Are you saying it is CBC's view that

14 Dr. Knapp has no expertise in breeding?

15 A It's my observation that he has no 12:16:33

16 experience in strawberries, and it's also my

17 experience that the -- the combination of skill sets

18 in breeding has both an observational and obviously

19 a technical side to it.

20 And what separates different breeders from 12:16:57

21 different -- different pursuits, it's one thing if

22 you're trying to determine certain traits -- drought

23 tolerance, salt tolerance -- you can see these

24 things in your field -- they're a little bit more --

25 less subjective -- they're a little more objective 12:17:20

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1 than subjective.

12:17:23

2 And I think what we believe in is, part of
3 the success of Dr. Shaw and Dr. Larson is, over a
4 period of time, they developed tremendous skill sets
5 in the subjective side of understanding why -- how
6 and why a berry -- the traits that would lend a
7 berry to be successful in the field for a grower
8 like me.

12:17:36

9 To bring someone in with no prior
10 experience in some of these more subjective traits,
11 and think that you can ramp up very quickly -- not
12 to say that he can't acquire those traits, but it's
13 very important to think that, you know, you're
14 hanging your hat on a person to ramp -- to become an
15 expert very quickly in an area that -- that he has
16 no experience in, other than it's a plant, and he's
17 going to try and open up the -- the coding keys of
18 what's going on with it genetically.

12:17:51

12:18:11

19 So it's an important area. You know, the
20 genetic -- the ability to genetically map any of
21 these new plants or animals is a tremendously
22 important tool set, and it is a part of where so
23 much of our science is heading.

12:18:37

24 But you can't forget the plant and the
25 relationship that a breeder has with the plant,

12:18:53

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1 okay? And then the subjective intimacies, if you
2 will, that you have within the breeding process
3 itself.

12:18:57

4 That's where some of the alarm was about
5 this individual, of whether he would rise to that 12:19:09
6 level, especially given his age. Not that that's
7 probably politically appropriate, but it takes time.
8 And even by his own -- his own statements, it might
9 take him seven, eight, nine years before he ever
10 comes out with a variety that is ready for 12:19:24
11 commercialization.

12 And all of us, to a man in the industry,
13 were thinking, "What are they thinking? Why would
14 they hire someone without that background, without
15 that time frame ahead of him?" 12:19:41

16 Although, you know, we all see people
17 working hard now into their 90s. So maybe that's
18 not an accurate concern.

19 But our concern is, in this hiring, that
20 the University has acted very quickly to create a 12:19:59
21 position that is -- arguably is a -- has a lot of
22 work ahead of him.

23 Not to say that -- it might be very
24 successful. We would hope there's success. In
25 fact, we were hoping that there would be a nice 12:20:16

1 parallel program so that -- this is a researcher 12:20:19
2 that could create and give us genes that are
3 salt-tolerant, drought-tolerant, move that genetic
4 material forward, and then a breeding operation like
5 ours could take those new materials and then quickly 12:20:30
6 put in the subjective traits, the great traits that
7 would be there that make a -- would characterize a
8 great strawberry.

9 And that's what our hope is still -- it
10 actually is what our hope is still today, is that 12:20:44
11 you have this combined collaborative programming
12 going on with two programs, breeding programs, that
13 will help the industry really accomplish a lot and
14 solve some of our biggest problems.

15 Q When you say, "a breeding program like 12:20:57
16 ours," you're referring to CBC?

17 A Like CBC.

18 Q Okay. Just to clean up a couple of little
19 pieces in that so that they're clear, your view was,
20 Dr. Knapp had breeding experience but not 12:21:10
21 specifically strawberry breeding experience, right?

22 A Yes.

23 Q And when you say he wasn't a traditional
24 breeder, that was because he uses these genomic and
25 genetic techniques to try to help analyze what the 12:21:25

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [x] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21
22 Dated: 12/29/2016

23 
24

25 CARLA SOARES

CSR No. 5908

INSTRUCTIONS FOR READING/CORRECTING YOUR DEPOSITION

To assist you in making corrections to your deposition testimony, please follow the directions below. If additional pages are necessary, please furnish them and attach the pages to the back of the errata sheet.

This is the final version of your deposition transcript.

Please read it carefully. If you find any errors or changes you wish to make, insert the corrections on the errata sheet beside the page and line numbers.

If you are in possession of the original transcript, do NOT make any changes directly on the transcript.

Do NOT change any of the questions.

After completing your review, please sign the last page of the errata sheet, above the designated ☐Signature☐line.

ERRATA SHEET

Page	Line	
<u>43</u>	<u>12</u>	Change: <u>Fujishige Farms to Ocean Farms</u> Reason: <u>correct the legal entity for Fujishige family</u>
<u>44</u>	<u>12</u>	Change: <u>Western Berry Cultivars to Western Berry</u> Reason: <u>correct the legal entities name...</u>
<u>280</u>	<u>25</u>	Change: <u>...field just went down...</u> Reason: <u>typo</u>
<u>350</u>	<u>9,10</u>	Change: <u>Royce Bringhurst</u> Reason: <u>spelling typo...</u>

INSTRUCTIONS FOR READING/CORRECTING YOUR DEPOSITION

To assist you in making corrections to your deposition testimony, please follow the directions below. If additional pages are necessary, please furnish them and attach the pages to the back of the errata sheet.

This is the final version of your deposition transcript.

Please read it carefully. If you find any errors or changes you wish to make, insert the corrections on the errata sheet beside the page and line numbers.

If you are in possession of the original transcript, do NOT make any changes directly on the transcript.


Do NOT change any of the questions.

After completing your review, please sign the last page of the errata sheet, above the designated ☐Signature☐line.


ERRATA SHEET

Page	Line	
<u>91</u>	<u>22</u>	Change: <u>Add: "As a result, CBC does not believe that</u> Reason: <u>To clarify my previous testimony</u>
<u>91</u>	<u>22</u>	Change: <u>any of the crosses, whether in the US or</u> Reason: <u>...to clarify previous testimony</u>
<u>91</u>	<u>22</u>	Change: <u>Spain, are patent infringements."</u> Reason: <u>...to clarify previous testimony</u>
<u>92</u>	<u>10</u>	Change: <u>"CBC understands that the crosses</u> Reason: <u>To clarify previous testimony...</u>

Page	Line	Change:
92	11	mentioned above are not patent infringing
		Reason: ...clarify previous testimony
		Change: based upon our expert's opinion. I believe
92	11	Reason: ...clarify previous testimony
		Change: 'that' is what we understood in 2014."
92	11	Reason: Confusion over the term "that" in questioning.
		Change:
		Reason:
		Change:
		Reason:
		Change:
		Reason:
		Change:
		Reason:
		Change:

 X Subject to the above changes, I certify that the transcript is true and correct.

No changes have been made. I certify that the transcript is true and correct.


Signature

January 27, 2017

Date _____

Exhibit 6

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Before The Honorable Vince Chhabria, Judge

CALIFORNIA BERRY CULTIVARS,)
LLC,)
Plaintiff,)
vs.) No. C 16-02477-VC
THE REGENTS OF THE UNIVERSITY) Related Case:
OF CALIFORNIA,) No. 16MC80265-VC
Defendant.)

San Francisco, California
Wednesday, February 8, 2017

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
RECORDING 10:03 - 11:41 = 98 MINUTES

APPEARANCES:

For Plaintiff:

Jones Day
Silicon Valley Office
1755 Embarcadero Road
Palo Alto, California 94303
BY: GREGORY LOUIS LIPPETZ, ESQ.

Jones Day
555 California Street
26th Floor
San Francisco, California
94104
BY: NATHANIEL PERDON GARRETT, ESQ.
PAUL C. HINES, ESQ.

(APPEARANCES CONTINUED ON NEXT PAGE)

1 schedule that -- what was it? What was the TRO? What were
2 you trying to get?

3 MR. LIPPETZ: Your Honor, we had information at
4 the time suggesting that the most important varieties of
5 plants that were at the University were not being cared for
6 properly, should be put in escrow so that they would be
7 preserved while this lawsuit played itself out to --

8 THE COURT: Okay.

9 MR. LIPPETZ: -- to determine who owned them. It
10 turns out that additional information has come to light
11 which suggests that there are other copies of those plants
12 which are healthy and alive, but that issue is -- is not
13 really a major issue anymore.

14 THE COURT: Okay. So that -- because I remember
15 -- I was just sort of curious because I seem to remember
16 imposing on you or giving you a very accelerated schedule in
17 this case so that we'd be in a position to do summary
18 judgment in the springtime because of this issue that you
19 initially raised. But it sounds like that issue is gone
20 now.

21 MR. LIPPETZ: Yes, but there is -- and part of our
22 discussion revolves around a key date of July 1st. So this
23 trial's timing is relevant now for the broader picture. The
24 seeds that will result from the crossing activity being done
25 now need to be germinated starting July 1st for this

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



Echo Reporting, Inc., Transcriber

Monday, February 20, 2017

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a corporation,

Plaintiff,

v.

CALIFORNIA BERRY CULTIVARS, LLC,
DOUGLAS SHAW, AND KIRK LARSON,

Defendants.

CALIFORNIA BERRY CULTIVARS, LLC,

Cross-Complainant,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a corporation,

Crossclaim Defendant.

Case No. 3:16-cv-02477-VC

**[PROPOSED] ORDER GRANTING
THE UNIVERSITY’S MOTION IN
LIMINE # 3: TO EXCLUDE
INFORMATION AND
ARGUMENTS REGARDING
IRRELEVANT ASPECTS OF THE
UNIVERSITY’S MANAGEMENT
OF THE STRAWBERRY
BREEDING PROGRAM**

1 Having considered the University's Motion *in limine* No. 3: To Exclude Information and
2 Arguments Regarding Irrelevant Aspects of the University's Management of the Strawberry
3 Breeding Program, the evidence submitted therewith, the opposition thereto, and all related
4 documents on file in this action, the Court hereby GRANTS the University's Motion *in limine*
5 No. 3 and orders that the parties may not reference or introduce evidence, testimony, or argument
6 concerning the aspects of the University's management of the strawberry breeding program set forth
7 in the University's motion.

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9 **IT IS SO ORDERED.**

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11 Dated: _____

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15 The Honorable Vince Chhabria
16 United States District Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Plaintiff,

v.

CALIFORNIA BERRY CULTIVARS, LLC,
DOUGLAS SHAW, AND KIRK LARSON,

Defendants.

CALIFORNIA BERRY CULTIVARS, LLC,

Cross-Complainant,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Cross-Defendant.

Case No. 3:16-CV-02477-VC

**[PROPOSED] ORDER DENYING
THE UNIVERSITY’S MOTION IN
LIMINE NO. 3: TO EXCLUDE
INFORMATION AND ARGUMENTS
REGARDING THE UNIVERSITY’S
MANAGEMENT OF THE
STRAWBERRY BREEDING
PROGRAM**

1 Having considered The Regents of the University of California's (the "University")
2 Motion In Limine No. 3 to Exclude Information and Arguments Regarding the University's
3 Management of the Strawberry Breeding Program and California Berry Cultivars, LLC, Douglas
4 Shaw, and Kirk Larson's Opposition thereto, the supporting memoranda of points and authorities,
5 the evidence submitted therewith, the arguments of counsel for the parties in connection
6 therewith, if any, and finding good cause therefore, this Court **HEREBY DENIES** the
7 University's motion in its entirety.

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9 **IT IS SO ORDERED.**

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12 Dated:

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14 HONORABLE VINCE CHHABRIA
15 U.S. DISTRICT COURT JUDGE
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