

[Counsel on Signature Page]

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,

Defendant.

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

**NOTICE OF EQUITABLE RELIEF
REQUESTED BY THE REGENTS
OF THE UNIVERSITY OF
CALIFORNIA**

CALIFORNIA BERRY CULTIVARS, LLC,

Cross-Complainant,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a corporation,

Crossclaim Defendants.

1 Plaintiff hereby provides this notice of equitable relief requested, as discussed at the
 2 Court's May 25, 2017, conference regarding the upcoming bench trial on equitable issues.¹

3 With respect to UC's claims for conversion, breach of duty of loyalty, breach of fiduciary
 4 duty, and patent infringement, UC requests the following relief:²

- 5 • An injunction preventing any breeding activity using (1) UC unreleased plants, (2)
 6 UC patented or patent pending plants in the United States, (3) UC patented or
 7 patent pending plants outside the United States where the purpose is to import
 8 seeds from such a plant into the United States, and (4) progeny of any plant
 9 described in items (1)-(3) (no matter how many generations removed), and further
 10 preventing any importation or use of infringing seeds;
- 11 • An injunction prohibiting benchmarking with UC patented plants;
- 12 • An injunction/constructive trust requiring CBC to transfer to UC possession of (1)
 13 all UC patented, patent pending, or unreleased plants, and (2) progeny of all UC
 14 unreleased plants and UC patented or patent pending mother plants (no matter how
 15 many generations removed) together with records sufficient to show their
 16 pedigrees and objective observations made about those plants and their potential
 17 suitability for release to growers, e.g., plant size, yield, fruit characteristics, disease
 18 resistance, and any other observational data collected by CBC and/or from any
 19 grower trials;
- 20 • An injunction/constructive trust requiring Drs. Shaw and Larson to transfer
 21 possession of all books and records regarding UC Strawberry Breeding Program
 22 germplasm to UC, including but not limited to all pedigrees and objective
 23 observations made about the plants comprising the germplasm and their potential
 24 suitability for release to growers, e.g., plant size, yield, fruit characteristics, disease

25 ¹ UC requests this equitable relief without prejudice to later claiming damages.

26 ² UC's unjust enrichment and UCL claims are directed to obtaining similar relief based on
 27 the same conduct, though the available equitable relief for these claims may be somewhat
 28 different than under UC's already-decided tort claims.

1 resistance, and any other observational data collected by Drs. Shaw and Larson
2 and/or from any grower trials;

- 3 • An accounting providing a complete inventory of all plants in CBC's possession
4 including progeny of UC unreleased plants and/or UC patented or patent pending
5 mother plants (no matter how many generations removed);
- 6 • Sampling of plants by UC for DNA testing of all plants resulting from CBC's
7 2016 crosses (and any other plants within CBC's possession which UC has not
8 already sampled and tested) to verify their pedigrees;

9 With respect to UC's breach of contract and interference with contract claims as to the
10 Patent Agreements, UC requests the following relief:

- 11 • Specific performance: an order requiring Drs. Shaw and Larson to execute any
12 documents and do all things necessary to assign to UC all rights, title, and interest
13 in the Core Strawberry Germplasm and to assist UC in securing patent protection
14 thereon, including but not limited to the form of assignment Mr. Carriere provided
15 to them in June 2014;
- 16 • Specific performance: an order requiring Dr. Shaw and Dr. Larson to furnish UC
17 with complete information regarding the Core Strawberry Germplasm;

18 With respect to UC's declaratory relief claim, UC requests the following relief:

- 19 • A declaration that UC owns all plants sent to Spain under test agreements with
20 Eurosemillas;
- 21 • A declaration that UC owns all progeny of UC unreleased plants and/or UC
22 patented or patent pending mother plants (no matter how many generations
23 removed) and that CBC and Drs. Shaw and Larson had no right to use the Core
24 Strawberry Germplasm for any of their own benefit as a matter of law at any time
25 due to the University's ownership of the tangible property rights in these varieties
26 and its equitable title to any inventions in these varieties arising when they were
27 made;

- A declaration voiding the purported assignment of rights in the Core Strawberry Germplasm and Transition Cultivars from Drs. Shaw and Larson to CBC, and voiding the purported assignment of rights in the progeny of the CSG, TCs, and patented varieties;
- A declaration that UC may deduct certain expenses from Drs. Shaw and Larson's royalties pursuant to their Patent Agreements.

Respectfully submitted,

Dated: May 26, 2017

MORRISON & FOERSTER, LLP

By: /s/ Matthew Chivvis

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