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Attorneys for Cross-Complainant and
 Defendant CALIFORNIA BERRY
 CULTIVARS, LLC and Defendants
 DOUGLAS SHAW and KIRK LARSON

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

**CBC'S RESPONSE TO THE
 UNIVERSITY OF CALIFORNIA'S
 NOTICE OF EQUITABLE RELIEF
 REQUESTED**

1 California Berry Cultivars, LLC, Douglas Shaw, and Kirk Larson (collectively, "CBC")
2 hereby respond to the Notice of Equitable Relief Requested by the University of California
3 ("UC") as set forth in the attached Exhibit A. That document is a table that recites UC's specific
4 requests for relief (numbered for ease of reference) and provides CBC's response to each. CBC's
5 responses set forth in Exhibit A are made without waiver of and expressly preserve all objections
6 and responses to UC's entitlement to equitable relief as set forth in the briefing or argument on
7 summary judgment, motions in limine, jury instructions, Rule 50 motions and other pretrial and
8 trial arguments and rulings, as well as those objections and responses to be set forth in the
9 upcoming briefing on equitable relief and post trial motions, as ordered by the Court.

10 Dated: May 26, 2017

Respectfully submitted,

11 Jones Day

12 By: /s/ Tharan Gregory Lanier

13 Tharan Gregory Lanier

14 Counsel for Cross-Complainant and
15 Defendant CALIFORNIA BERRY
16 CULTIVARS, LLC and Defendants
17 DOUGLAS SHAW and KIRK LARSON
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EXHIBIT A
UC's REQUESTS FOR EQUITABLE RELIEF
AND CBC'S SUMMARY RESPONSES

UC's Position	CBC's Position
Claims for Conversion, Breach of Duty of Loyalty, Breach of Fiduciary Duty, and Patent Infringement	
<p>1. An injunction preventing any breeding activity using (1) UC unreleased plants, (2) UC patented or patent pending plants in the United States, (3) UC patented or patent pending plants outside the United States where the purpose is to import seeds from such a plant into the United States, and (4) progeny of any plant described in items (1)-(3) (no matter how many generations removed), and further preventing any importation or use of infringing seeds;</p>	<p>CBC opposes relief relating to progeny of unreleased or patented (including patent pending) plants, patented plants that are not mother plants, conduct outside the United States (with respect to patented varieties), or based on unspecified "purpose". CBC further opposes this relief on the grounds that the request for relief "further preventing" is impermissibly vague.</p>
<p>2. An injunction prohibiting benchmarking with UC patented plants;</p>	<p>CBC does not oppose this relief.</p>
<p>3. An injunction/constructive trust requiring CBC to transfer to UC possession of (1) all UC patented, patent pending, or unreleased plants, and (2) progeny of all UC unreleased plants and UC patented or patent pending mother plants (no matter how many generations removed) together with records sufficient to show their pedigrees and objective observations made about those plants and their potential suitability for release to growers, e.g., plant size, yield, fruit characteristics, disease resistance, and any other observational data collected by CBC and/or from any grower trials;</p>	<p>CBC opposes relief relating to lawfully purchased UC patented plants and progeny of unreleased plants and patent pending or patented plants, and requiring CBC to turn over its books and records of information generated by CBC or on behalf of CBC or at CBC's expense.</p>

1	4. An injunction/constructive trust requiring Drs. Shaw and Larson to transfer possession of all books and records regarding UC Strawberry Breeding Program germplasm to UC, including but not limited to all pedigrees and objective observations made about the plants comprising the germplasm and their potential suitability for release to growers, e.g., plant size, yield, fruit characteristics, disease resistance, and any other observational data collected by Drs. Shaw and Larson and/or from any grower trials;	CBC opposes this relief to the extent it goes beyond seeking access to copies of books and records generated while Drs. Shaw and Larson were employed at UC and within the course and scope of their employment at UC.
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10	5. An accounting providing a complete inventory of all plants in CBC's possession including progeny of UC unreleased plants and/or UC patented or patent pending mother plants (no matter how many generations removed);	CBC opposes this relief to the extent it goes beyond an inventory of progeny of UC unreleased plants or UC patented mother plants, and further opposes the request for an "accounting" of plants as impermissibly vague to the extent it goes beyond an inventory.
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14	6. Sampling of plants by UC for DNA testing of all plants resulting from CBC's 2016 crosses (and any other plants within CBC's possession which UC has not already sampled and tested) to verify their pedigrees;	CBC opposes this relief to the extent it goes beyond plants resulting from 2016 crosses.
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17	Breach of Contract and Interference with Contract Claims as to the Patent Agreements	
18	7. Specific performance: an order requiring Drs. Shaw and Larson to execute any documents and do all things necessary to assign to UC all rights, title, and interest in the Core Strawberry Germplasm and to assist UC in securing patent protection thereon, including but not limited to the form of assignment Mr. Carriere provided to them in June 2014;	CBC opposes this relief as inconsistent with the Court's rulings on summary judgment, but does not oppose relief requiring CBC itself to assign to UC, under protest, those patent rights in the CSG Shaw and Larson assigned to CBC. CBC further opposes this relief because Larson is not in a position to provide information or take steps to cooperate with ongoing prosecution, due to his mental condition.
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24	8. Specific performance: an order requiring Dr. Shaw and Dr. Larson to furnish UC with complete information regarding the Core Strawberry Germplasm;	CBC opposes this relief to the extent it goes beyond requiring Shaw and Larson to permit access to books and records generated while Shaw and Larson were employed at UC and within the course and scope of their employment at UC. CBC further opposes this relief because Larson is not in a position to provide information due to his mental condition.
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Declaratory Relief Claim	
9. A declaration that UC owns all plants sent to Spain under test agreements with Eurosemillas;	CBC does not oppose this relief.
10. A declaration that UC owns all progeny of UC unreleased plants and/or UC patented or patent pending mother plants (no matter how many generations removed) and that CBC and Drs. Shaw and Larson had no right to use the Core Strawberry Germplasm for any of their own benefit as a matter of law at any time due to the University's ownership of the tangible property rights in these varieties and its equitable title to any inventions in these varieties arising when they were made;	CBC opposes this relief to the extent it relates to progeny of UC unreleased, patent pending or patented varieties.
11. 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;	CBC opposes this relief as inconsistent with the Court's rulings on summary judgment, but does not oppose relief requiring CBC itself to assign to UC, under protest, those patent rights in the CSG Shaw and Larson assigned to CBC.
12. A declaration that UC may deduct certain expenses from Drs. Shaw and Larson's royalties pursuant to their Patent Agreements.	CBC opposes this relief as inconsistent with the Patent Agreements and unsupported by any claim in this action, to the extent CBC understands what is sought by the general reference to "certain expenses."