

Guy Ruttenberg, Bar No. 207937
guy@ruttenbergiplaw.com
Bassil Madanat, Bar No. 285280
bassil@ruttenbergiplaw.com
RUTTENBERG IP LAW,
A PROFESSIONAL CORPORATION
1801 Century Park East, Suite 1920
Los Angeles, CA 90067
Telephone: (310) 627-2270
Facsimile: (310) 627-2260

Attorneys for Plaintiff Armen Mardiros

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ARMEN MARDIROS, *an
individual,*

Plaintiff,

v.

CITY OF HOPE, *a California
nonprofit corporation.*

Defendant.

Case No. 2:19-cv-2196

COMPLAINT FOR:

**(1) BREACH OF CONTRACT;
(2) BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH &
FAIR DEALING;
(3) DECLARATORY JUDGMENT
OF RIGHTS AND OBLIGATIONS
UNDER THE IP POLICY;
(4) CONVERSION;
(5) BREACH OF FIDUCIARY DUTY;
(6) PROMISSORY FRAUD;
(7) CORRECTION OF
INVENTORSHIP OF U.S. PATENT
NO. 9,657,105;
(8) CORRECTION OF
INVENTORSHIP OF U.S. PATENT
NO. 9,914,909;
(9) INEQUITABLE CONDUCT;
(10) DECLARATORY JUDGMENT
OF DR. MARDIROS'S OWNERSHIP
OF THE '909, '105 AND OTHER
PATENTS
JURY TRIAL DEMANDED**

1 **COMPLAINT**

2 Plaintiff Armen Mardiros, Ph.D. (“Dr. Mardiros”), by and through his
3 undersigned attorneys, files this Complaint, and alleges the following:

4 **NATURE OF ACTION**

5 1. City of Hope is engaged in a fraudulent scheme to recruit staff based
6 on false promises of transparency and sharing of licensing revenues. City of Hope
7 recruits talented researchers like Dr. Mardiros by promising that its researchers
8 will share equally in a one-third portion of any moneys or stock received by City of
9 Hope for licensing intellectual property on technology created by the researchers.
10 City of Hope also promises to use applicable legal principles for determining
11 inventorship among the researchers. Unfortunately, City of Hope had no intention
12 of complying with its obligations to staffers. Indeed, City of Hope has been lying
13 to its staffers and cheating them out of millions of dollars in cash and stock earned
14 as a result of those employees’ hard work.

15 2. Dr. Mardiros is one of three researchers who conceived of patented
16 technology that City of Hope licensed in a deal valued at over \$40 million to
17 Mustang Bio, Inc. (“Mustang”). Even so, City of Hope initially paid Dr. Mardiros
18 *nothing*—while Dr. Mardiros very much needed the cash. Indeed, even though
19 City of Hope *admits* that Dr. Mardiros was owed hundreds of thousands (if not
20 millions) of dollars in cash and stock, City of Hope ignored Dr. Mardiros’s
21 demands for over a year and a half until Dr. Mardiros engaged legal counsel.

22 3. City of Hope has gone to great lengths to conceal the payments it
23 received and to concoct excuses for failing to pay researchers like Dr. Mardiros.
24 City of Hope’s IP Policies—which are used to recruit staffers like Dr. Mardiros—
25 include a straightforward provision promising to distribute to researchers like Dr.
26 Mardiros one-third of any moneys and stock received by City of Hope for licensing
27 intellectual property rights on inventions created by the researchers. Among other
28 things, to avoid paying these researchers, City of Hope mischaracterizes much of

1 the licensing moneys under the misleading title of “Sponsored Research
2 Funding”—even if the funding was provided as a condition of the license—just to
3 create an alibi for refusing to distribute the funds. In other instances, City of Hope
4 avoids paying researchers like Dr. Mardiros by taking stock in lieu of cash, and
5 then refusing to distribute the stock at all. In yet other instances, City of Hope tries
6 to go back and retroactively modify its license agreements years later in an attempt
7 to excuse its past misconduct and conceal City of Hope’s failure to pay
8 researchers.

9 4. City of Hope also takes money from researchers like Dr. Mardiros by
10 fraudulently allocating funds among the various staffers. City of Hope’s internal
11 policies include a straightforward “equal” distribution among researchers who
12 create inventions that are subject to a patent application and then licensed. City of
13 Hope simply refuses to comply with that requirement. Indeed, even though Dr.
14 Mardiros was one of three researchers whose technology was licensed under the
15 Mustang deal, City of Hope insists that Dr. Mardiros is entitled to less than 1/18th
16 of the moneys and stock received for that deal.

17 5. Perhaps most egregiously of all, City of Hope is also actively
18 defrauding the patent office. Namely, in order to manipulate the distributions
19 required by its own policies, City of Hope refuses to follow the applicable legal
20 procedures for naming inventors on patents and patent applications. In one
21 particularly disgraceful example detailed below, City of Hope refused (and still
22 refuses) to name Dr. Mardiros as an inventor on one patent—even though City of
23 Hope only obtained the patent by showing the Examiner that Dr. Mardiros’s
24 contribution is novel over the prior art. Worse yet, despite clear rules from the
25 patent office requiring City of Hope to disclose any inventorship disputes, City of
26 Hope refused even to tell the patent office that Dr. Mardiros purports to be an
27 inventor of the claimed technology.

1 21. The IP Policy requires City of Hope professional staff members to
2 assign all intellectual property developed during the course of their employment to
3 City of Hope, and in return City of Hope agrees to provide those staff members
4 with a portion of any associated licensing revenue.

5 22. Section 6.2(a) of the IP Policy requires that City of Hope distribute
6 “one-third” of any “money or stock received by the City of Hope for the transfer of
7 intellectual property . . . as personal income to the staff member(s) who created the
8 intellectual property. If a plurality of staff members are involved and a United
9 States patent application is filed, each staff member named as an inventor on such
10 application shall share equally in such monies.”

11 23. According to Section 7 of the IP Policy, “[t]he identification of
12 inventor(s) to be named on a United States patent application shall be determined
13 by application of the principles set forth in the applicable statutes and appropriate
14 legal decisions.”

15 24. City of Hope’s IP Policy also includes an Agreement Concerning
16 Intellectual Property, which is attached to the IP Policy.

17 25. Section VI of the Agreement Concerning Intellectual Property states
18 that “contracts with third parties pertaining to intellectual property, including
19 commercial organizations funding research, shall be between such organization
20 and [City of Hope] and that negotiations for such contracts shall not proceed
21 without the knowledge of the involved investigator.”

22 26. Dr. Mardiros qualifies as an “investigator” under the IP Policy and
23 Agreement Concerning Intellectual Property.

24 27. As a graduate student at City of Hope, Dr. Mardiros researched the
25 potential for chimeric antigen receptor (CAR) cell therapy to treat brain and blood
26 cancers, which included genetically engineering immune cells to efficiently locate
27 and target cancer cells.

1 28. For example, Dr. Mardiros focused on altering the non-signaling
2 region of CAR molecules known as a “spacer.”

3 29. Among other things, Dr. Mardiros hypothesized that the CAR
4 molecules the Forman Lab researched were losing efficacy due to unintended cell
5 interactions.

6 30. As a solution, in or around 2011, Dr. Mardiros proposed (among other
7 things) including an L235E mutation (changing the amino acid from Leucine to
8 Glutamic Acid) in the CAR molecules’ spacer in an effort to alter the molecules’
9 undesirable interactions with Fc receptor (FcR) expressing cells.

10 31. Dr. Mardiros met with other City of Hope scientists, including Dr.
11 Christine Brown, to discuss his proposed mutation contribution, including the
12 L235E mutation in the CAR molecules’ spacer.

13 32. Dr. Mardiros also focused on optimizing the spacers for a variety of
14 CAR molecules in order to demonstrate that the L235E mutation would reduce
15 undesirable interactions, regardless of the specific CAR molecule.

16 33. Dr. Mardiros also specifically conceived of optimizing the spacer for
17 the anti-IL13R α 2 CAR, which is a specific CAR molecule with promising clinical
18 potential for treating malignant gliomas.

19 34. The anti-IL13R α 2 CAR is structurally and functionally distinct from
20 other CAR molecules, including CAR molecules known as “anti-CD123” and
21 “anti-CD19” CARs.

22 35. For example, anti-CD123 and anti-CD19 CARs utilize single chain
23 variable fragments (scFvs) of monoclonal antibodies as their antigen recognition
24 domains and are fused in-frame to T-cell signaling moieties. In contrast, the anti-
25 IL13R α 2 CAR lacks an scFv and instead utilizes the cytokine IL-13 as its antigen
26 recognition domain. Such distinctions can significantly change the way the
27 molecule interacts with surrounding cells, and can lead to a completely different
28

1 outcome when used in the context of CAR T-cell therapy. Indeed, such structural
2 distinctions can substantially impact the effectiveness of therapies for patients.

3 36. Pursuing the research he suggested, Dr. Mardiros demonstrated that
4 modifying the anti-IL13R α 2 CAR's spacer with the L235E mutation reduced Fc
5 receptor (FcR) mediated interactions without reducing the molecule's ability to
6 target cancer cells. Dr. Mardiros's results were pivotal in the decision to include
7 the L235E mutation in subsequent CAR molecules engineered in the Forman Lab.

8 37. Prior to Dr. Mardiros's involvement, no one in the Forman Lab
9 proposed or documented an L235E mutation contribution to the anti-IL13R α 2
10 CAR.

11 38. Another graduate student, Uma Maheswara Jonnalagadda
12 ("Mahesh"), also worked in the Forman Lab around the same time as Dr. Mardiros,
13 although Mahesh was not experiencing the same level of research success as Dr.
14 Mardiros.

15 39. For example, Mahesh did not meaningfully contribute to weekly lab
16 meetings or collaborate in the same way as Dr. Mardiros.

17 40. For example, graduate students in the Forman Lab routinely provided
18 substantive research updates on a weekly basis. But Mahesh did not provide the
19 Forman Lab with a substantive research update during a lab meeting for many
20 months.

21 41. Instead, during this same time period, Mahesh was relegated to bench
22 work and carrying out experiments that were planned by other scientists.

23 42. For example, during this same time period, Mahesh conducted work
24 for the CAR spacers involving the L235E mutation conceived by Dr. Mardiros.

25 43. City of Hope filed at least three patent applications based on the
26 research of the Forman Lab (including Dr. Mardiros) on CAR T-cell therapy.

27 44. *First*, on March 15, 2013, City of Hope filed U.S. Patent App.
28 13/844,048 (the "'048 Application") for "CD123-Specific Chimeric Antigen

1 Receptor Redirected T-Cells and Methods of Their Use.” The Application Data
2 Sheet filed by City of Hope with the ’048 Application identified only Dr. Mardiros
3 and Dr. Forman as co-inventors of the claimed invention.

4 45. On March 14, 2014, City of Hope filed Patent Cooperation Treaty
5 (“PCT”) Application No. PCT/US2014/029109 (the “’109 PCT Application”),
6 which claims priority to the ’048 Application. The ’109 PCT Application included
7 a copy of the same Application Data Sheet listing Dr. Mardiros and Dr. Forman as
8 co-inventors.

9 46. Mahesh failed to contribute to any of the inventions described in the
10 claims of the ’048 Application or the ’109 PCT Application.

11 47. On information and belief, there are no documents or materials
12 evidencing any inventive contributions by Mahesh to any of the claims of the ’048
13 Application or the ’109 PCT Application.

14 48. Even so, on June 2, 2016, City of Hope filed a Request to add Mahesh
15 and Dr. Brown as additional co-inventors on the ’048 Application.

16 49. The ’048 Application issued on May 23, 2017, as U.S. Patent No.
17 9,657,105 (the “’105 Patent”).

18 50. The ’105 Patent incorrectly identifies Mahesh as a co-inventor.

19 51. City of Hope is currently the assignee of record for the ’105 Patent.

20 52. ***Second***, on January 13, 2014, City of Hope filed U.S. Provisional
21 Patent App. 61/926,881 (the “’881 Provisional Application”) for “Chimeric
22 Antigen Receptors (CARs) Having Mutations in the Fc Spacer Region and
23 Methods for Their Use.”

24 53. On March 14, 2014, City of Hope filed PCT Application No.
25 PCT/US2014/028961 (the “’961 PCT Application”), which claims priority to the
26 ’881 Provisional Application.

27 54. On July 13, 2016, City of Hope filed U.S. Patent App. 15/111,384 (the
28 “’384 Application”), which claims priority to the ’881 Provisional Application and

1 the '961 PCT Application. The application data sheet filed with the '384
2 Application identifies Dr. Mardiros, Dr. Brown, Dr. Forman and Mahesh as co-
3 inventors of the claimed invention.

4 55. As with the '105 Patent, Mahesh failed to contribute to any of the
5 inventions described in the claims of the '384 Application or '961 PCT
6 Application.

7 56. On information and belief, there are no documents or materials
8 evidencing any inventive contributions by Mahesh to any of the claims of the '384
9 Application or '961 PCT Application.

10 57. City of Hope is currently the assignee of record for the '384
11 Application.

12 58. *Third*, on September 19, 2014, City of Hope filed U.S. Provisional
13 Patent Application 62/053,068 (the "'068 Provisional Application") for
14 "Costimulatory Chimeric Antigen Receptor T-Cells Targeting IL13Ra2."

15 59. On September 18, 2015, City of Hope filed PCT Application No.
16 PCT/US2015/051089 (the "'089 PCT Application"), which claims priority to the
17 '068 Provisional Application.

18 60. On May 27, 2016, City of Hope filed U.S. Patent App. No.
19 15/167,869 (the "'869 Application"), which claims priority to the '068 Provisional
20 Application and the '089 PCT Application.

21 61. The '869 Application issued on March 13, 2018, as U.S. Patent No.
22 9,914,909 (the "'909 Patent").

23 62. City of Hope is currently the assignee of the '909 Patent.

24 63. The issued '909 Patent names Dr. Forman and Dr. Brown as co-
25 inventors of the claimed invention.

26 64. Although he is not named as an inventor on the '909 Patent, Dr.
27 Mardiros's inventive contributions are claimed, including his mutation in the anti-
28

IL-13R α 2 CAR spacer identified as amino acid Sequence ID Number 10 (SEQ ID NO:10), which is reflected in all claims of the '909 Patent.

City of Hope Entered into the Royalty-Bearing Mustang License Agreement

65. On March 17, 2015, City of Hope entered into a licensing agreement (the "Mustang License") with Mustang Therapeutics, Inc., a Delaware corporation with a principal place of business at 3 Columbus Circle, New York, NY, 10019 ("Mustang"). Attached hereto as Exhibit A is a document that, on information and belief, is a true and correct copy of the Mustang License, subject to certain redactions shown in the document. On information and belief, the redactions shown in Exhibit A were made by or at the direction of Mustang and/or City of Hope.

66. Under Section 3.1 of the Mustang License, City of Hope grants to Mustang "an exclusive royalty-bearing right and license under the Patent Rights to make, have made, use, offer for sale, sell and import Licensed Products and to perform Licensed Services, in the Field, in the Territory," subject to certain exceptions noted in the same Section 3.1. The capitalized terms are defined in Article 1 of the Mustang License.

67. The "Patent Rights" licensed under the Mustang License are defined under Section 1.25 to mean two specific PCT applications and one specific U.S. patent application. Although the numbers for these specific PCT and U.S. applications are redacted in the publicly available version of the Mustang License, a separate publicly available agreement between City of Hope and Mustang identifies the specified applications as the '961 PCT Application, the '109 PCT Application and the '068 Provisional Application.

68. The licensed "Patent Rights" are also defined to include unspecified "patents, patent applications, continuation and divisional applications and foreign equivalents that claim the same invention(s) and priority date as the foregoing," "continuation-in-part applications that repeat a substantial portion of any of the

1 foregoing applications,” “Letters Patent or the equivalent issued on any of the
2 foregoing applications throughout the world,” and “amendments, extensions,
3 renewals, reissues, and re-examinations of any of the foregoing.”

4 69. In exchange for and as a condition to receiving the licensed rights, the
5 Mustang License requires Mustang to provide City of Hope (i) a one-time up-front
6 payment, (ii) annual non-refundable licensee maintenance fees, (iii) stock
7 certificates for Class A Common Stock in Mustang, (iv) a first public offering fee
8 at the closing of the first Qualified Public Offering of stock, (v) an additional fee
9 upon any change in control of Mustang, (vi) additional moneys characterized as
10 “Research Funds,” (vii) additional milestone payments due after the occurrence of
11 each Milestone Event, (viii) royalties as set forth in the Mustang License, and (ix)
12 sublicense revenues.

13 70. The Mustang License does not allocate any specific payment or stock
14 for any particular patent application. Instead, the Mustang License provides for
15 compensation to City of Hope in exchange for licensing the “Patent Rights” as a
16 whole.

17 **Dr. Mardiros Notifies City of Hope About Inventorship**

18 **Issues in the Licensed Patents**

19 71. Despite its obligation to do so, City of Hope failed to disclose the
20 proper inventors—or even the existence of an inventorship conflict—to the
21 Examiner during prosecution of the ’105 and ’909 Patents.

22 *Inventorship Dispute Involving the ’909 Patent*

23 72. Dr. Mardiros repeatedly notified City of Hope—including in
24 December 2015, March 2016, May 2016, July 2016 and August 2016—that he had
25 been wrongfully omitted as a co-inventor on the then-pending ’869 Application
26 (which ultimately issued as the ’909 Patent) and that his work on the anti-IL13R α 2
27 CAR necessitated correction of inventorship.
28

1 73. Among other things, Dr. Mardiros invented the L235E mutated spacer
2 described in amino acid Sequence ID Number 4 (SEQ ID NO:4) in the '909 Patent.

3 74. SEQ ID NO:4 is also the amino acid sequence of the spacer domain
4 within the CAR having SEQ ID NO:10 in the '909 Patent.

5 75. Claim 1 of the '909 Patent recites the following: "A nucleic acid
6 molecule comprising a nucleotide sequence encoding a chimeric antigen receptor
7 molecule SEQ ID NO:10."

8 76. As used in Claim 1 of the '909 Patent, "SEQ ID NO:10" refers to
9 Sequence ID Number 10, which is described in the specification of the '909 Patent.

10 77. Sequence ID Number 10 (or SEQ ID NO:10) in the '909 Patent
11 includes SEQ ID NO:4.

12 78. City of Hope knows that Dr. Mardiros is an inventor of subject matter
13 claimed in the '909 Patent.

14 79. For example, on May 1, 2017, the Examiner in the '869 Application
15 issued an Office Action requiring City of Hope "to re-write the claims to contain
16 only SEQ ID NO:10 (chimeric antigen receptor . . .) and SEQ ID NO:4 (Spacer
17 . . .) for the purpose of examination."

18 80. In its August 1, 2017 reply to the May 1, 2017 Office Action
19 regarding the '869 Application (the "August 1, 2017 Reply"), City of Hope
20 amended the claims and drafted new ones, with the following explanation: "New
21 claims 46-58 are limited to SEQ ID NO:10 solely to comply with the Examiner's
22 requirement. Applicant has not included claims specifically to SEQ ID NO:4
23 because it is the amino acid sequence of the spacer domain within the CAR having
24 SEQ ID NO:10."

25 81. In its August 1, 2017 Reply, City of Hope also specifically pointed to
26 Dr. Mardiros's amino acid mutation in the spacer of SEQ ID NO:4 (and therefore,
27 SEQ ID NO:10) to demonstrate a distinction over the prior art and to overcome a
28 Section 102 rejection by the Examiner.

1 82. Specifically, in its August 1, 2017 Reply, City of Hope pointed at
2 least to “position 129” in an effort to distinguish SEQ ID NO:10 claimed in the
3 ’869 Application over the prior art.

4 83. As described in City of Hope’s August 1, 2017 Reply, “position 129”
5 specifically refers to the L235E mutation that Dr. Mardiros added to the anti-
6 IL13R α 2 CAR, which is claimed in the ’869 Application.

7 84. In its August 1, 2017 Reply, City of Hope argued that, due to that
8 distinct L235E mutation at position 129, the prior art “cannot anticipate the present
9 claims.”

10 85. Dr. Mardiros conceived of the L235E mutation at position 129
11 referenced in City of Hope’s August 1, 2017 Reply.

12 86. At least as early as August 1, 2017, City of Hope was aware that Dr.
13 Mardiros contributed to and conceived of the L235E mutation at position 129
14 referenced in City of Hope’s August 1, 2017 Reply.

15 87. Accordingly, at least as early as August 1, 2017, City of Hope
16 determined that Dr. Mardiros is an inventor of the technology claimed in the ’869
17 Application.

18 88. City of Hope did not at any time disclose to the USPTO that Dr.
19 Mardiros conceived of the L235E mutation at position 129 that is referenced in
20 City of Hope’s August 1, 2017 Reply.

21 89. City of Hope did not at any time disclose to the USPTO that Dr.
22 Mardiros is an inventor on any subject matter claimed in the ’869 Application or
23 the ’909 Patent.

24 90. At the time of its August 1, 2017 Reply, City of Hope was aware that
25 Dr. Mardiros specifically requested to be named as an inventor on the ’869
26 Application, at least because of his L235E mutation contribution, reflected at least
27 in position 129 of SEQ ID NO:10.
28

1 91. The PTO ultimately agreed with the arguments set forth in City of
2 Hope's August 1, 2017 Reply.

3 92. In response to City of Hope's August 1, 2017 Reply, the Examiner
4 allowed all of the pending claims without any further remarks, argument or
5 amendments from City of Hope.

6 93. On November 8, 2017, in allowing the pending claims in the '869
7 Application, the Examiner issued a Notice of Allowance, explaining that "[t]he
8 claimed invention reciting a nucleic acid molecule encoding a chimeric antigen
9 receptor molecule comprising the amino acid sequence of SEQ ID NO:10 has not
10 been taught, suggested or anticipated by the prior art."

11 94. Despite repeated notifications by Dr. Mardiros that the '869
12 Application includes his invention, and despite its own acknowledgment that Dr.
13 Mardiros's contribution helped the '869 Application overcome prior art, City of
14 Hope failed to add Dr. Mardiros as a named inventor on the '909 Patent.

15 95. At a minimum, during prosecution of the '869 Application, City of
16 Hope knew that Dr. Mardiros contends that he is an inventor with respect to the
17 subject matter claimed in the application, which ultimately issued as the '909
18 Patent.

19 96. During prosecution of the '869 Application, Dr. Mardiros told at least
20 Anita Meiklejohn, Craig Countryman, George Megaw and Sangeeta Cook that he
21 believes himself to be one of the inventors on the subject matter claimed in the
22 application, which ultimately issued as the '909 Patent.

23 97. Dr. Mardiros also substantiated his position in written correspondence
24 to City of Hope officials on various occasions between 2015 and 2016.

25 98. On November 11, 2016, Dr. Mardiros (acting through counsel) wrote
26 to City of Hope's counsel (Craig Countryman of the law firm of Fish &
27 Richardson P.C.) and informed him that Dr. Mardiros "continues to believe that he
28 should be named as an inventor on the IL13 patent" Dr. Mardiros (acting

1 through counsel) also proposed submitting an explanation to the Examiner for the
2 '869 Application "so that the Examiner could evaluate these inventorship issues."

3 99. Even so, City of Hope never informed the Examiner for the '869
4 Application that Dr. Mardiros contends that he is an inventor with respect to the
5 subject matter claimed in the '909 Patent.

6 *Inventorship Dispute Involving the '105 Patent*

7 100. Similarly, City of Hope failed to disclose the correct inventors with
8 respect to the '105 Patent.

9 101. In or around early 2016, Dr. Mardiros learned that City of Hope was
10 considering adding Mahesh as a named inventor on the then-pending '048
11 Application, which ultimately issued as the '105 Patent.

12 102. Dr. Mardiros repeatedly notified City of Hope—including in March
13 2016, May 2016 and July 2016—that Mahesh did not conceive any part of the
14 inventions claimed in the then-pending '048 Application and that he should not be
15 named as an inventor on the '105 Patent that issued from that application.

16 103. For example, during prosecution of the '048 Application, Dr.
17 Mardiros specifically informed Anita Meiklejohn, Craig Countryman, George
18 Megaw and Sangeeta Cook that Mahesh should not be listed as an inventor.

19 104. Ignoring Dr. Mardiros's notifications, on June 2, 2016, City of Hope
20 filed a "Request under Rule 48 correcting inventorship" to add Mahesh as a co-
21 inventor of the invention claimed in the '048 Application.

22 105. On information and belief, there are no documents or materials
23 evidencing any inventive contributions by Mahesh that are claimed in the '048
24 Application.

25 106. Nonetheless, City of Hope (acting through attorney of record Cambria
26 J. Alpha-Cobb from the law firm of Fish & Richardson P.C.) added Mahesh as a
27 co-inventor on the '048 Application despite the fact that he did not conceive of any
28

1 part of the invention claimed in the '048 Application or in the later-issued '105
2 Patent.

3 107. On November 11, 2016, Dr. Mardiros (acting through counsel) wrote
4 to City of Hope's counsel (Craig Countryman also of the law firm of Fish &
5 Richardson) and informed him that Dr. Mardiros "continues to believe that . . . Mr.
6 [Mahesh] Jonnalagadda should not be listed as an inventor" on the '048
7 Application. Dr. Mardiros (acting through counsel) also proposed submitting an
8 explanation to the Examiner for the "so that the Examiner could evaluate these
9 inventorship issues."

10 108. Despite Dr. Mardiros's repeated notifications, City of Hope never
11 removed Mahesh as an inventor on the '048 Application or on the '105 Patent.

12 109. Worse yet, City of Hope failed to inform the Examiner of any
13 inventorship conflict.

14 *City of Hope Breached Its Duty of Candor*

15 110. Under 37 CFR § 1.56, "Each individual associated with the filing and
16 prosecution of a patent application has a duty of candor and good faith in dealing
17 with the Office, which includes a duty to disclose to the Office all information
18 known to that individual to be material to patentability" The obligations
19 imposed by 37 CFR § 1.56 are commonly known as the applicant's "duty of
20 candor."

21 111. Rule 2001 of the PTO's "Manual of Patent Examining Procedures"
22 ("MPEP") confirms that "information" that must be disclosed under the applicant's
23 duty of candor includes "inventorship conflicts."

24 112. City of Hope did not disclose any inventorship conflict to the
25 Examiner in connection with prosecution of the patent that issued as the '105
26 Patent.

1 113. City of Hope did not disclose any inventorship conflict to the
2 Examiner in connection with prosecution of the patent that issued as the '909
3 Patent.

4 **City of Hope Withheld Dr. Mardiros's Cash Royalties**

5 114. City of Hope also failed to transfer the moneys rightfully belonging to
6 Dr. Mardiros.

7 115. Dr. Mardiros did not receive any compensation whatsoever for at least
8 eighteen months after City of Hope executed the Mustang License and received
9 compensation under that agreement. And as explained below, Dr. Mardiros is still
10 owed a significant amount of compensation.

11 116. For example, on information and belief, City of Hope received an
12 "Up-Front Payment" of \$2 million under the Mustang License in or around March
13 or April of 2015.

14 117. City of Hope conceded that Dr. Mardiros was owed at least
15 \$111,111.11 from that initial \$2 million Up-Front Payment that City of Hope
16 received under the Mustang License.

17 118. Between April 2015 and November 2016, Dr. Mardiros made
18 repeated demands to receive his portion of the "Up-Front Payment."

19 119. Between April 2015 and November 2016, Dr. Mardiros and his family
20 experienced significant emotional, physical and financial distress caused by City of
21 Hope's failure to make any payments whatsoever to Dr. Mardiros.

22 120. Among other things, between April 2015 and November 2016, Dr.
23 Mardiros and his family lost out on opportunities to purchase a home because they
24 did not receive the money that rightfully belongs to Dr. Mardiros.

25 121. Among other things, between April 2015 and November 2016,
26 members of Dr. Mardiros's family experienced significant health issues due to the
27 stress caused by City of Hope's failure to turn over money that rightfully belongs
28 to Dr. Mardiros.

1 122. Between April 2015 and November 2016, Dr. Mardiros had to retain
2 and pay for legal counsel in order to demand receipt of money that rightfully
3 belongs to him—even with respect to the amounts that City of Hope conceded
4 were owed to Dr. Mardiros.

5 123. City of Hope only paid Dr. Mardiros that \$111,111.11 amount on
6 November 2, 2016.

7 124. Despite its delay in paying this undisputed amount, City of Hope also
8 refused to pay any interest that accrued on this amount, including under California
9 law.

10 125. City of Hope continues to refuse to pay interest on the \$111,111.11
11 amount as of the date of this filing.

12 126. Further, that \$111,111.11 payment represents only 1/18 of the \$2
13 million Up-Front payment contemplated in the IP Policy, as opposed to the at least
14 1/9th that Dr. Mardiros is entitled to receive under Section 6.2(a) of the IP Policy.

15 127. Through the date of this filing, City of Hope has continued to
16 withhold the outstanding balance of Dr. Mardiros's portion of the Up-Front
17 payment.

18 128. Further, on information and belief, City of Hope received additional
19 funds as a condition of the Mustang License, including at least so-called "Research
20 Funding," Milestone Payments, Royalties and Sublicense Revenues.

21 129. City of Hope refuses to provide Dr. Mardiros with his portion of these
22 additional amounts received by City of Hope under the Mustang License.

23 130. City of Hope refuses to provide Dr. Mardiros with most of his portion
24 of the royalties that City of Hope received under the Mustang License. To date,
25 City of Hope has also not disclosed the total sum of other royalties it has received,
26 nor has it paid Dr. Mardiros his rightful share of those royalties.

City of Hope Withheld Dr. Mardiros's Mustang Shares

131. City of Hope also refused to transfer to Dr. Mardiros his pro rata share of Mustang stock.

132. On or about March 17, 2015, City of Hope received stock certificates evidencing 1,000,000 shares of Class A Common Stock in Mustang.

133. City of Hope conceded in October 2016 that, as of March 17, 2015, Dr. Mardiros was at least the equitable owner of 55,556 shares of Mustang stock.

134. City of Hope later received stock certificates evidencing an additional 293,588 shares of Common Stock in Mustang.

135. City of Hope has conceded that Dr. Mardiros was the equitable owner of 11,068 of these additional shares of Mustang stock.

136. Even while disputing the accuracy of these numbers, Dr. Mardiros repeatedly demanded receipt of his shares of Mustang stock.

137. City of Hope rebuffed Dr. Mardiros's demand to receive the Mustang shares—even for those shares that City of Hope conceded that he owns.

138. Among the excuses given by City of Hope for its failure to transfer Mustang shares owed to Dr. Mardiros was the contention that the shares were not publicly traded and, therefore, could not be readily transferred to Dr. Mardiros.

139. In or around August 2017, Mustang began publicly trading its stock on the New York Stock Exchange.

140. Even after Mustang stock became publicly traded, City of Hope failed to transfer any shares to Dr. Mardiros.

141. In some instances, City of Hope demanded that Dr. Mardiros provide additional consideration, such as additional warranties and representations and an agreement to indemnify City of Hope, as a condition to receiving the stock that he already owns.

142. For example, on November 13, 2017, City of Hope demanded that Dr. Mardiros waive additional rights and incur additional obligations before City of

1 Hope would transfer Dr. Mardiros's Mustang stock to Dr. Mardiros's name, even
2 though such additional obligations are not contemplated in the IP Policy.

3 143. City of Hope insisted that it would continue to withhold Dr.
4 Mardiros's shares, declaring that "[i]f he'd prefer not to satisfy the conditions,
5 that's fine. We'll keep the shares."

6 144. Even when Dr. Mardiros communicated to City of Hope that he
7 desires to sell his stock at the then-prevailing market rate, City of Hope still
8 refused to transfer the stock or pay Dr. Mardiros for the value of the stock.

9 145. By refusing to transfer the shares it conceded were owed to Dr.
10 Mardiros, City of Hope became a constructive trustee of the shares.

11 146. As a constructive trustee of Dr. Mardiros's Mustang shares, City of
12 Hope owed a fiduciary duty of care to Dr. Mardiros.

13 147. By virtue of this fiduciary duty, City of Hope was required to act in
14 the utmost good faith towards Dr. Mardiros and to avoid acts and omissions
15 adverse to Dr. Mardiros's business interests.

16 148. To date, City of Hope still has not provided Dr. Mardiros with his full
17 rightful portion of the 1 million shares of Mustang stock.

18 149. City of Hope still has not provided Dr. Mardiros with his full rightful
19 portion of the approximately 293,588 additional shares of Mustang stock received
20 pursuant to the Mustang License.

21 150. In or around the first half of 2017, City of Hope purported to re-state
22 or restructure the Mustang License.

23 151. On information and belief, there is no new consideration supporting
24 the purported modifications to the Mustang license.

25 152. On information and belief, City of Hope purported to restructure
26 and/or re-state the Mustang License (at least in part) in response to Dr. Mardiros's
27 contentions and to further evade its obligations to Dr. Mardiros.
28

COUNT 1

Breach of Contract

153. Dr. Mardiros restates and incorporates by reference his previous allegations above, as if fully set forth herein.

154. Dr. Mardiros and City of Hope are parties to the IP Policy, which is valid, enforceable and supported by adequate consideration.

155. Dr. Mardiros contributed to the inventions claimed in the '105 and '909 Patents, as well as the '384 Application.

156. Dr. Mardiros substantially complied with his obligations under the IP Policy and/or was precluded from doing so by City of Hope.

157. City of Hope breached the IP Policy by failing to provide Dr. Mardiros with his full rightful portion of the \$2 million Up -Front payment received under the Mustang License, in violation of Section 6.2(a) of the IP Policy.

158. City of Hope breached the IP Policy by failing to provide Dr. Mardiros with his full rightful portion of the Mustang shares received under the Mustang License, in violation of Section 6.2(a) of the IP Policy.

159. City of Hope breached the IP Policy by failing to provide Dr. Mardiros with his full rightful portion of the maintenance and royalty payments received under the Mustang License, in violation of Section 6.2(a) of the IP Policy.

160. City of Hope breached the IP policy by failing to provide Dr. Mardiros with his full rightful portion of the annual funds it received under the Mustang License, in violation of Section 6.2(a) of the IP Policy.

161. Even as to the limited amounts it ultimately provided, City of Hope delayed such payments for over a year and a half and only paid undisputed amounts after Dr. Mardiros engaged legal counsel.

162. City of Hope also breached at least Section VI of the associated Agreement Concerning Intellectual Property by failing to inform Dr. Mardiros in or around early 2017 (shortly before Mustang's shares became public), that City of

1 Hope purported to restructure the Mustang License that contemplates technology
2 he worked on.

3 163. On information and belief, City of Hope restructured the Mustang
4 License in an attempt to carve out and decrease Dr. Mardiros's share in royalties
5 stemming from the agreement.

6 164. Each of the above-referenced breaches of the IP Policy was material.

7 165. As a direct and proximate result of each of the above-referenced
8 breaches, Dr. Mardiros has suffered and will continue to suffer significant
9 damages.

10 166. Among other things, Dr. Mardiros is entitled to receive all stock and
11 payments owed to him under the IP Policy, as well as interest on unpaid amounts
12 and on undisputed amounts that were delayed.

13 167. Among other things, Dr. Mardiros is entitled to receive his attorney
14 fees incurred in enforcing his rights to money and stock under the IP Policy, at
15 least because such fees are a foreseeable consequence of City of Hope's breaches
16 of the implied covenant of good faith and fair dealing, including with respect to its
17 failure to pay Dr. Mardiros moneys and stock City of Hope concedes Dr. Mardiros
18 is owed.

19 168. Among other things, Dr. Mardiros is entitled to compensation for the
20 physical, emotional and financial losses and distress caused by City of Hope's
21 breaches, including with respect to its failure to pay Dr. Mardiros moneys and
22 stock City of Hope concedes Dr. Mardiros is owed.

23 169. In addition, as a result of City of Hope's breaches, Dr. Mardiros
24 should be relieved of his obligations under the IP Policy, including any obligation
25 to assign IP to City of Hope. Any such prior assignments should be rescinded as a
26 result of City of Hope's breaches.

COUNT 2

Breach of the Implied Covenant of Good Faith and Fair Dealing

170. Dr. Mardiros restates and incorporates by reference his previous allegations above, as if fully set forth herein.

171. Dr. Mardiros and City of Hope are parties to the IP Policy, which is valid, enforceable and supported by adequate consideration.

172. Dr. Mardiros substantially complied with his obligations under the IP Policy and/or was precluded from doing so by City of Hope.

173. Any and all conditions required for City of Hope's performance under the IP Policy occurred and/or were satisfied.

174. The purpose of the IP Policy was to recruit top talent like Dr. Mardiros and incentivize them to innovate.

175. As part of the IP Policy, City of Hope touted—and Dr. Mardiros expected—that an inventor would receive his or her pro rata share of compensation received by City of Hope for licensing that inventor's technology in a deal such as the Mustang License.

176. Dr. Mardiros further expected that City of Hope would provide such payments owed in a timely manner.

177. Dr. Mardiros also expected that City of Hope would adequately represent the inventorship of the inventions to the PTO.

178. City of Hope has unfairly interfered with Dr. Mardiros's right to secure the benefits of the IP Policy.

179. Among other things, City of Hope failed to provide any portion of Dr. Mardiros's payment in a timely manner and further refused to provide future payments in a timely manner.

180. City of Hope has still failed to provide Dr. Mardiros with his pro rata share of the money and stock received under the Mustang License for the transfer of intellectual property that Dr. Mardiros developed.

1 181. City of Hope has still failed to properly account for the revenues
2 derived from the Mustang License as it pertains to the intellectual property Dr.
3 Mardiros developed.

4 182. City of Hope refused to provide Dr. Mardiros with any of the stock
5 received under the Mustang License—including the stock that City of Hope admits
6 Dr. Mardiros is entitled to receive.

7 183. City of Hope failed to disclose the receipt of such stock to Dr.
8 Mardiros, nor did it disclose receipt of additional stock. When Dr. Mardiros
9 demanded his stock, City of Hope demanded that Dr. Mardiros provide further
10 promises and representations in order to receive the stock that was his—including
11 (for example) a demand that Dr. Mardiros indemnify City of Hope. Ultimately,
12 City of Hope purported to sell Dr. Mardiros's stock at a price that Dr. Mardiros did
13 not agree to accept—and, in fact, refused to accept.

14 184. City of Hope failed to provide accurate information to the PTO
15 regarding inventorship or the disputes concerning inventorship with respect to the
16 '105 and '909 Patents. Even though the applicable procedures and regulations
17 require City of Hope to disclose such inventorship disputes to the PTO
18 Examiner—and even though Dr. Mardiros asked City of Hope to disclose the
19 inventorship dispute and present the issue to the PTO Examiner—City of Hope
20 refused to do so.

21 185. For over a year and a half, City of Hope refused to provide any
22 compensation whatsoever to Dr. Mardiros until he expended significant resources
23 engaging legal counsel in 2016 and—even then—City of Hope refused to comply
24 with its straightforward obligations.

25 186. City of Hope's conduct violates the implied covenant of good faith
26 and fair dealing. Indeed, such conduct violates the spirit of the agreement and
27 hinders the intent of the parties as contemplated by the IP Policy.
28

1 187. As a direct and proximate result of City of Hope's breaches of the
2 implied covenant of good faith and fair dealing, Dr. Mardiros has suffered and will
3 continue to suffer significant damages.

4 188. Among other things, Dr. Mardiros is entitled to receive all stock and
5 payments owed to him under the IP Policy, as well as interest on unpaid amounts
6 and on undisputed amounts that were delayed.

7 189. Among other things, Dr. Mardiros is entitled to receive his attorney
8 fees incurred in enforcing his rights to money and stock under the IP Policy, at
9 least because such fees are a foreseeable consequence of City of Hope's breaches
10 of the implied covenant of good faith and fair dealing, including with respect to its
11 failure to pay Dr. Mardiros moneys and stock City of Hope concedes Dr. Mardiros
12 he is owed.

13 190. Among other things, Dr. Mardiros is entitled to compensation for the
14 physical, emotional and financial losses and distress caused by City of Hope's
15 breaches of the implied covenant of good faith and fair dealing, including with
16 respect to its failure to pay Dr. Mardiros moneys and stock City of Hope concedes
17 Dr. Mardiros is owed.

18 191. In addition, as a result of City of Hope's breaches, Dr. Mardiros
19 should be relieved of his obligations under the IP Policy, including any obligation
20 to assign IP to City of Hope. Any such prior assignments should be rescinded as a
21 result of City of Hope's breaches.

22 **COUNT 3**

23 **Declaratory Judgment of Rights and Obligations Under the IP Policy**

24 192. Dr. Mardiros restates and incorporates by reference his previous
25 allegations above, as if fully set forth herein.

26 193. An actual controversy has arisen and now exists between Dr.
27 Mardiros and City of Hope concerning City of Hope's obligations under Section
28 6.2(a) of the IP Policy.

203. As a result of City of Hope's unlawful conversion, Dr. Mardiros has suffered and will continue to suffer significant damages in an amount to be proven at trial.

205. City of Hope has also acted with fraud, oppression and/or malice. Accordingly, Dr. Mardiros also seeks an award of punitive and special damages.

Breach of Fiduciary Duty

207. On March 17, 2015, City of Hope entered into the Mustang License, from which it received one million shares of common stock.

209. Among other excuses, City of Hope contended at the time that transferring shares to Dr. Mardiros was difficult because Mustang's stock was not publicly traded.

211. When Mustang's stock became publicly traded, City of Hope received an additional 293,588 "top off" shares of Mustang common stock under the Mustang License.

1 212. In the fall of 2017, City of Hope conceded that Dr. Mardiros is the
2 equitable owner of at least 66,624 shares of Mustang common stock held by City
3 of Hope, including 55,556 of the stock originally received by City of Hope plus
4 11,068 of the top off shares.

5 213. Despite its admission, City of Hope failed to transfer to Dr. Mardiros
6 the shares that he owns.

7 214. By refusing to transfer the shares it conceded were owed to Dr.
8 Mardiros, City of Hope became a constructive trustee of the shares.

9 215. As a constructive trustee of Dr. Mardiros's Mustang shares, City of
10 Hope owed a fiduciary duty of care to Dr. Mardiros.

11 216. By virtue of this fiduciary duty, City of Hope was required to act in
12 the utmost good faith towards Dr. Mardiros and to avoid acts and omissions
13 adverse to Dr. Mardiros's business interests.

14 217. City of Hope breached its fiduciary duties to Dr. Mardiros by *inter*
15 *alia* (a) intentionally stalling the transfer of Dr. Mardiros's Mustang shares after
16 Mustang's stock began publicly trading on the New York Stock Exchange; (b)
17 refusing to sell Dr. Mardiros' shares at the prevailing market price at the time he
18 sought to sell the shares; (c) precluding Dr. Mardiros from selling his own shares at
19 the desired time, and (d) purporting to sell Dr. Mardiros's Mustang shares over his
20 objections and at a significantly lower price than the market price when he
21 originally sought to sell the shares.

22 218. On information and belief, City of Hope knowingly and willfully
23 performed all of the aforementioned activities to benefit its own bargaining power
24 pending inventorship disputes with Dr. Mardiros, and at Dr. Mardiros's expense.

25 219. As a result of City of Hope's breach of fiduciary duties, Dr. Mardiros
26 has been irreparably injured and has suffered significant monetary damages in an
27 amount to be proven at trial.
28

1 229. City of Hope made these promises with the intention of inducing
2 reliance by Dr. Mardiros for the purpose of obtaining valuable research
3 innovations and patent assignments without having to pay Dr. Mardiros's fair share
4 of future royalties.

5 230. Unbeknownst to Dr. Mardiros, when City of Hope made these
6 promises to Dr. Mardiros, it did not intend to distribute "money or stock received
7 by the City of Hope for the transfer of intellectual property" "to the staff
8 member(s) who created the intellectual property."

9 231. Indeed, for over a year and a half, City of Hope did not transfer to Dr.
10 Mardiros any money whatsoever from the moneys received by City of Hope under
11 the Mustang License, until Dr. Mardiros engaged legal counsel.

12 232. Similarly, City of Hope never transferred to Dr. Mardiros any of the
13 Mustang stock that City of Hope received under the Mustang License.

14 233. On the contrary, City of Hope took legal title to all of the stock that it
15 received under the Mustang License.

16 234. On information and belief, in executing and negotiating the Mustang
17 License, City of Hope did not disclose to Mustang that portions of the stock
18 received under the Mustang License belong to Dr. Mardiros.

19 235. On information and belief, in executing and negotiating the Mustang
20 License, City of Hope did not create a mechanism for transferring title of stock
21 received under the Mustang License to Dr. Mardiros.

22 236. On information and belief, when City of Hope promised to distribute
23 stock to staffers like Dr. Mardiros, City of Hope did not have any procedures in
24 place for accomplishing such a stock transfer.

25 237. On information and belief, when City of Hope executed the Mustang
26 License, City of Hope did not have any procedures in place for accomplishing such
27 a stock transfer.

1 238. Indeed, even after the Mustang shares became publicly traded, City of
2 Hope has never provided Dr. Mardiros with any mechanism for obtaining legal
3 title to his shares, short of executing a new agreement requiring Dr. Mardiros to
4 make additional representations and undertake additional liability, including
5 indemnity obligations to City of Hope.

6 239. On information and belief, when making the aforementioned promises
7 to Dr. Mardiros, City of Hope actually intended to withhold moneys and stock
8 from staffers like Dr. Mardiros through a combination of (i) delay tactics, (ii)
9 mischaracterization of funds, (iii) re-stating of agreements, and (iv) selective patent
10 prosecution strategies.

11 240. City of Hope's delay tactics are outlined extensively herein, including
12 its failure to pay any cash to Dr. Mardiros for over a year and a half and its refusal
13 to pay any interest, despite that delay.

14 241. City of Hope also employs a strategy of mischaracterizing funds to
15 defraud staffers like Dr. Mardiros.

16 242. For example, at least \$10,000,000 of funds received as a condition of
17 the Mustang License was labeled "Research Funding" in order to conceal the fact
18 that such funds were simply additional "money . . . received by the City of Hope
19 for the transfer of intellectual property" that should otherwise be distributed "as
20 personal income to the staff member(s) who created the intellectual property."

21 243. Similarly, City of Hope further sought to cover up its fraud by trying
22 to re-state retroactively its agreement with Mustang. For example, when Dr.
23 Mardiros sought his share of compensation received by City of Hope under the
24 Mustang License, Dr. Mardiros pointed out that the Mustang License does not
25 allocate any portion of the funds to any particular patent. On information and
26 belief, City of Hope fraudulent and retroactively attempted to re-state its Mustang
27 License in response to Dr. Mardiros's allegations.

1 244. Further, when Dr. Mardiros demanded correction of inventorship as
2 well as his fair share of payments owed under the IP Policy, City of Hope
3 attempted to retaliate against Dr. Mardiros.

4 245. For example, City of Hope attempted to minimize the number of
5 patent applications naming Dr. Mardiros and then created an (incorrect) allocation
6 of funds based upon City of Hope's decisions to prosecute such applications.

7 246. In at least once instance, City of Hope sought to abandon the '384
8 Application naming Dr. Mardiros, rather than defend the application. On
9 information and belief, City of Hope abandoned the application because City of
10 Hope realized that the (appropriate) arguments for defending the validity of
11 pending claims would also re-affirm Dr. Mardiros's contribution to the '909 Patent
12 and sustain his claims for correction of inventorship.

13 247. City of Hope also had no intention of performing on its promise that
14 "each staff member named as an inventor on such application shall share equally"
15 where "a plurality of staff members are involved and a United States patent
16 application is filed" on intellectual property.

17 248. Instead, City of Hope intended to allocate moneys and stock if, when
18 and how it would choose to do so, without regard to the promises in the IP Policy.

19 249. Similarly, City of Hope had no intention of performing its promise to
20 identify inventors to be named on a United States patent application "by
21 application of the principles set forth in the applicable statutes and appropriate
22 legal decisions."

23 250. Instead, City of Hope intended to identify inventors based on internal
24 political considerations and retaliation against staffers who seek the compensation
25 owed to them.

26 251. As an example of refusing to follow the relevant legal principles, and
27 as explained above, City of Hope refused (and refuses) to add Dr. Mardiros to the
28 '869 Application (which issued as the '909 Patent) even though City of Hope

1 expressly and knowingly relied on Dr. Mardiros's contribution in overcoming the
2 prior art and persuading the Examiner to the allow the claims.

3 252. On information and belief, and unbeknownst to Dr. Mardiros, when
4 City of Hope made the aforementioned promises, it intended to hide the ball
5 regarding how City of Hope actually distributes cash and stock to graduate student
6 researchers and how inventorship on patents is determined.

7 253. As late as 2016, City of Hope also continued to re-state these
8 promises in order to induce further compliance by Dr. Mardiros to his detriment.

9 254. For example, in or around October 2016, City of Hope re-stated its
10 intention to transfer title of stock to Dr. Mardiros—at least with respect to the stock
11 that City of Hope admitted belongs to Dr. Mardiros.

12 255. For example, when City of Hope's representatives met with Dr.
13 Mardiros on November 2, 2016, City of Hope's representatives asked Dr. Mardiros
14 to execute certain patent assignment documents.

15 256. At the same time, on November 2, 2016, City of Hope also suggested
16 that Dr. Mardiros check with his accountant to confirm whether he wants to hold
17 title to the Mustang shares that City of Hope was holding in his name. In order to
18 obtain Dr. Mardiros's continued compliance with his obligations under the IP
19 Policy, City of Hope promised that it would transfer to Dr. Mardiros legal title to
20 his Mustang shares (as required by the IP Policy), should he confirm his desire to
21 hold such title.

22 257. On information and belief, City of Hope had no intention of
23 performing that promise even on November 2, 2016.

24 258. On information and belief, on November 2, 2016, City of Hope did
25 not have any procedures in place for accomplishing such a stock transfer.

26 259. In reliance on these promises—including the original promises when
27 City of Hope recruited him and then re-stated promises in October 2016—Dr.
28 Mardiros executed the assignment documents as requested by City of Hope.

1 290. During prosecution of the application that ultimately issued as the
2 '105 Patent, various City of Hope individuals who were involved in prosecuting
3 the application were aware of an inventorship conflict.

4 291. For example, Mr. George Megaw, Dr. Anita Meiklejohn, Mr. Craig
5 Countryman, Ms. Sangeeta Cook and Dr. Cambria J. Alpha-Cobb were involved
6 in prosecuting the application that ultimately issued as the '909 Patent.

7 292. Mr. George Megaw is and was (at all relevant times) working at City
8 of Hope as the Director of the Office of Technology Licensing.

9 293. Ms. Sangeeta Cook is and was (at all relevant times) working at City
10 of Hope in the Office of Technology Licensing.

11 294. Dr. Meiklejohn, Mr. Countryman and Dr. Alpha-Cobb are and were
12 (at all relevant times) outside attorneys prosecuting patents for City of Hope,
13 including the '909 Patent.

14 295. Each of Mr. Megaw, Dr. Meiklejohn, Mr. Countryman, Ms. Cook and
15 Dr. Alpha-Cobb owed a duty of candor to the Examiner during prosecution of the
16 patent that ultimately issued as the '909 Patent.

17 296. Each of Mr. Megaw, Dr. Meiklejohn, Mr. Countryman, Ms. Cook and
18 Dr. Alpha-Cobb was also aware of an inventorship conflict with respect to the '909
19 Patent during prosecution of the patent.

20 297. Dr. Mardiros repeatedly notified City of Hope, including each of Mr.
21 Megaw, Dr. Meiklejohn, Ms. Cook and Mr. Countryman that he had been
22 wrongfully omitted as a co-inventor on the '909 Patent and that his work on the
23 anti-IL13R α 2 CAR necessitated correction of inventorship.

24 298. On information and belief, Dr. Alpha-Cobb also learned of Dr.
25 Mardiros's contentions concerning inventorship of the '909 Patent from others.

26 299. Despite these repeated notifications, City of Hope (including Mr.
27 Megaw, Dr. Meiklejohn, Mr. Countryman, Ms. Cook and Dr. Alpha-Cobb) failed
28

1 to inform the Examiner that Dr. Mardiros contends that he should be named as an
2 inventor on the '909 Patent.

3 300. City of Hope (including Mr. Megaw, Dr. Meiklejohn, Mr.
4 Countryman, Ms. Cook and Dr. Alpha-Cobb) did not disclose any inventorship
5 conflict to the Examiner in connection with prosecution of the patent that issued as
6 the '909 Patent and, thereby, breached the duty of candor.

7 301. Indeed, during prosecution of the application that ultimately issued as
8 the '909 Patent, Dr. Mardiros (acting through counsel) reminded City of Hope of
9 its obligation to disclose the inventorship conflict and proposed that it do so. Dr.
10 Mardiros specifically suggested that he be entitled to present his views of
11 inventorship to the Examiner. Even so, City of Hope did not disclose any such
12 information or even the existence of a dispute to the Examiner.

13 302. On information and belief, other individuals involved with a duty of
14 disclosure were also aware during prosecution of the '909 Patent of Dr. Mardiros's
15 contention that he should be named as an inventor, and these other individuals
16 withheld that information from the Examiner.

17 303. The various individuals noted above withheld from the Examiner,
18 during prosecution of the application that issued as the '909 Patent, that Dr.
19 Mardiros contends he should be named as an inventor, despite knowing that such
20 information is material and should be disclosed. These individuals withheld the
21 information with intent to deceive the Examiner.

22 304. Indeed, in an August 1, 2017 Reply to an office action concerning the
23 '869 Application (which ultimately issued as the '909 Patent), City of Hope
24 distinguished the prior art at least by pointing to "position 129"—which
25 specifically refers to the L235E mutation that Dr. Mardiros added to the anti-
26 IL13R α 2 CAR claimed in the '869 Application. To overcome a rejection by the
27 Examiner, City of Hope argued that, due to that distinction and others, the prior art
28 "cannot anticipate the present claims."

1 305. Accordingly, on information and belief, City of Hope determined that
2 Dr. Mardiros was an inventor of the subject matter claimed in the '869
3 Application, but failed to disclose this material information to the USPTO.

4 306. Each of Mr. Megaw, Dr. Meiklejohn, Mr. Countryman and Dr. Alpha-
5 Cobb were also involved in prosecuting the application that ultimately issued as
6 the '105 Patent.

7 307. Dr. Meiklejohn, Mr. Countryman and Dr. Alpha-Cobb are and were
8 (at all relevant times) outside attorneys prosecuting patents for City of Hope,
9 including the '105 Patent.

10 308. Each of Mr. Megaw, Dr. Meiklejohn, Mr. Countryman, Ms. Cook and
11 Dr. Alpha-Cobb owed a duty of candor to the Examiner during prosecution of the
12 patent that ultimately issued as the '105 Patent.

13 309. Each of Mr. Megaw, Dr. Meiklejohn, Mr. Countryman, Ms. Cook and
14 Dr. Alpha-Cobb was also aware of an inventorship conflict with respect to the '105
15 Patent during prosecution of the patent.

16 310. Dr. Mardiros repeatedly notified City of Hope (including each of Mr.
17 Megaw, Dr. Meiklejohn, Ms. Cook and Mr. Countryman) that Mahesh did not
18 conceive any part of the inventions claimed in the '105 Patent and that he should
19 not be named as an inventor on that patent.

20 311. On information and belief, Dr. Alpha-Cobb also learned of Dr.
21 Mardiros's contentions concerning inventorship of the '105 Patent from others.

22 312. Ignoring Dr. Mardiros's notifications, City of Hope (acting through
23 Dr. Alpha-Cobb) added Mahesh as a co-inventor to the application that would
24 issue as the '105 Patent despite the fact that he did not conceive of any part of the
25 invention claimed in the '105 Patent.

26 313. City of Hope (including each of Mr. Megaw, Dr. Meiklejohn, Mr.
27 Countryman, Ms. Cook and Dr. Alpha-Cobb) did not disclose any inventorship
28

1 conflict to the Examiner in connection with prosecution of the patent that issued as
2 the '105 Patent.

3 314. Proper inventorship is material to patentability.

4 315. On information and belief, other individuals involved with a duty of
5 disclosure were also aware during prosecution of the '105 Patent of Dr. Mardiros's
6 contention that Mahesh should not be named as an inventor, and these other
7 individuals withheld that information from the Examiner.

8 316. The various individuals noted above withheld from the Examiner,
9 during prosecution of the application that issued as the '105 Patent, that Dr.
10 Mardiros contends Mahesh should not be named as an inventor, despite knowing
11 that such information is material and should be disclosed. These individuals
12 withheld the information with intent to deceive the Examiner.

13 317. City of Hope (including each of Mr. Megaw, Dr. Meiklejohn, Mr.
14 Countryman, Ms. Cook and Dr. Alpha-Cobb) misrepresented and/or omitted
15 information material to patentability (including inventorship) of the '105 and '909
16 Patents from the Examiner.

17 318. City of Hope withheld the inventorship dispute with the specific intent
18 to deceive and/or mislead the Examiner for both the '105 and '909 Patents.

19 319. City of Hope engaged in inequitable conduct during the prosecution of
20 the patents that would issue as the '105 and '909 Patents.

21 320. As a result, the Court should fashion an equitable remedy
22 commensurate with the inequitable conduct described here.

23 321. Among other things, because of its inequitable conduct, City of Hope
24 should not be entitled to use the inventorship determinations on the '105 and/or
25 '909 Patents for purposes for apportioning compensation under Section 6.2 of the
26 IP Policy and/or the Mustang License adversely to Dr. Mardiros.

27 322. Among other things, because of its inequitable conduct, City of Hope
28 should not be entitled to obtain any assignment from Dr. Mardiros with respect to

his rights under the '105 and/or '909 Patents. Any previous assignments by Dr. Mardiros with respect his rights to the '105 and/or '909 Patents, or any related patent or application, should be declared null and void.

COUNT 10

Declaratory Judgment of Dr. Mardiros's Ownership of the '909, '105 and Other Patents

323. Dr. Mardiros restates and incorporates by reference his previous allegations above, as if fully set forth herein.

324. An actual controversy has arisen and now exists between Dr. Mardiros and City of Hope concerning Dr. Mardiros's ownership of the patents licensed under the Mustang License.

325. Dr. Mardiros fulfilled his obligations under the IP Policy and yet City of Hope has refused to provide Dr. Mardiros with the compensation he is owed under Section 6.2(a) of the IP Policy.

326. Because of City of Hope's material breaches, Dr. Mardiros should be relieved of his obligations under the IP Policy, including any obligation to assign IP to City of Hope.

327. Because of City of Hope's material breaches, any assignment of rights by Dr. Mardiros under the IP Policy should be rescinded and voided.

328. As set forth herein, City of Hope obtained assignments of rights by Dr. Mardiros through fraud.

329. Because of the inequitable conduct and other fraud committed by City of Hope with respect to the '909 and '105 Patents, City of Hope is not entitled to any equitable relief involving those patents. Accordingly, the Court should decline to enforce any obligation on the part of Dr. Mardiros to assign his rights to any of these patents, and the Court should void any previous assignments.

1 330. Dr. Mardiros desires a judicial determination of his rights, and a
2 declaration that he is relieved of his assignment obligations under Section 3 of the
3 IP Policy and that any prior assignments of IP to City of Hope are rescinded.

4 331. A judicial declaration is necessary and appropriate at this time under
5 the circumstances in order that Dr. Mardiros may ascertain his rights under the IP
6 Policy.

7 **ADDITIONAL CAUSES OF ACTION RESERVED**

8 332. Dr. Mardiros restates and incorporates by reference his previous
9 allegations above, as if fully set forth herein.

10 333. Dr. Mardiros is continuing to seek information to ascertain a proper
11 accounting of the money and stock provided under the Mustang License. Dr.
12 Mardiros reserves the right to amend his Complaint to reflect additional payments
13 subject to disbursement under the IP Policy.

14 334. Dr. Mardiros is continuing to investigate whether he was omitted from
15 additional patents, including patents that are related to those specified herein. He
16 is also continuing to investigate whether there are errors concerning additional
17 named inventors on the relevant patents. Dr. Mardiros reserves the right to amend
18 his Complaint with respect to such investigations.

19 335. Dr. Mardiros also reserves his right to otherwise amend his Complaint
20 and/or add parties, to the extent permitted by the Court's scheduling order and by
21 the Federal Rules of Civil Procedure.

22 **PRIOR EFFORTS TO RESOLVE THIS MATTER**

23 336. Before bringing suit, Dr. Mardiros made extensive good faith efforts
24 to resolve these disputes through out-of-court negotiations.

25 337. Among other things, during this time period Dr. Mardiros tried to
26 meet with City of Hope on his own before engaging legal counsel.

27 338. On at least two separate occasions, Dr. Mardiros met with City of
28 Hope and its counsel at the offices of Dr. Mardiros's counsel.

1 339. Dr. Mardiros and City of Hope also exchanged extensive
2 correspondence as part of their attempts to resolve these claims.

3 340. At their meeting on September 17, 2018, the parties also expressly
4 agreed to toll any statute of limitations or other time-related defenses, although
5 such tolling was also implicit by other previous negotiations.

6 341. Ultimately, the parties also engaged in an ADR procedure.

7 342. The tolling agreement has continued through March 22, 2019.

8 343. To the extent relevant, any statute of limitations or other time-based
9 defense was tolled during these negotiations.

10 **DEMAND FOR JURY TRIAL**

11 344. Dr. Mardiros hereby demands a jury trial on all claims, damages, and
12 any other issues presented herein that are triable to a jury.

13 **RELIEF REQUESTED**

14 WHEREFORE, Plaintiff Dr. Armen Mardiros prays that the Court enter
15 judgment against Defendant City of Hope and in favor of Dr. Mardiros as follows:

16 A. Enter judgment in favor of Dr. Mardiros on all claims asserted;

17 B. Enter judgment finding City of Hope breached Section 6.2(a) of the IP
18 Policy and breached its duty of good faith and fair dealing;

19 C. Enter judgment that City of Hope converted Dr. Mardiros's property;

20 D. Declare that at least 1/9th of all money and stock provided under the
21 Mustang License—including any so-called "Research Funding," Milestone
22 Payments, Royalties and Sublicense Revenues—belongs to Dr. Mardiros;

23 E. Order an accounting of all licensing and other revenues (including so-
24 called "research funding") relating to the Mustang License, including the re-stated
25 2017 Mustang License.

26 F. Award Dr. Mardiros compensatory damages caused by City of Hope's
27 wrongful conduct outlined herein;

28 G. Award Dr. Mardiros punitive damages;

1 H. Disgorge profits and unjust enrichment that have otherwise accrued to
2 City of Hope as a result of its wrongful conduct outlined above;

3 I. Order correction of inventorship on the '105 Patent by removing
4 Mahesh as a named co-inventor;

5 J. Order correction of inventorship on the '909 Patent by adding Dr.
6 Mardiros as a named co-inventor;

7 K. Declare that the inventorship be so corrected on any related
8 applications or patents;

9 L. Declare that Dr. Mardiros has no obligation to assign patents, and that
10 any previous assignments are null and void, with respect to his rights in the '909
11 Patent, the '105 Patent, the '089 PCT Application, the '961 PCT Application, the
12 '109 PCT Application, the '384 Application, the '881 Provisional Application, the
13 '068 Provisional Application and any related applications or patents or foreign
14 counterparts;

15 M. Find that this case is exceptional under 35 U.S.C. § 285 and award Dr.
16 Mardiros his reasonable attorney's fees;

17 N. Award Dr. Mardiros's pre-judgment and post-judgment interest to the
18 fullest extent provided by law;

19 O. Award Dr. Mardiros his costs to the full extent provided by law; and

20 P. Order such other and further relief as the Court deems just and proper.
21

22 DATED: March 22, 2019

By: /s/ Guy Ruttenberg

23 Guy Ruttenberg
24 guy@ruttenbergiplaw.com
25 Bassil Madanat
26 bassil@ruttenbergiplaw.com
27 RUTTENBERG IP LAW,
28 A PROFESSIONAL CORPORATION
1801 Century Park East, Suite 1920
Los Angeles, CA 90067
Telephone: (310) 627-2270
Facsimile: (310) 627-2260
Attorneys for Plaintiff