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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DRISCOLL’S INC. and DRISCOLL’S OF
EUROPE B.V.,

Plaintiffs,

v.

CALIFORNIA BERRY CULTIVARS,
LLC and DOUGLAS SHAW,

Defendants.

No. 2:19-cv-00493-TLN-CKD

ORDER

This matter is before the Court pursuant to Defendants California Berry Cultivars, LLC (“CBC”) and Douglas Shaw’s (“Shaw”) (collectively, “Defendants”) Motion to Dismiss and Motion to Strike. (ECF No. 7.) Plaintiffs Driscoll’s Inc. and Driscoll’s of Europe B.V. (collectively, “Driscoll’s”¹) oppose Defendants’ motions. (ECF No. 10.) Defendants have filed a reply. (ECF No. 11.) Having carefully considered the briefing filed by both parties, the Court hereby GRANTS in part and DENIES in part Defendants’ Motion to Dismiss and Motion to Strike. (ECF No. 7.)

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¹ The singular “Driscoll’s” is how Plaintiffs Driscoll’s, Inc. and Driscoll’s of Europe B.V. refer to themselves in their Complaint and thus how the Court refers to them in this Order.

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 Driscoll’s is a holder of strawberry patents who allege patent infringement by Defendants.
3 Driscoll’s began as the Strawberry Institute of California and received the first patent on a
4 strawberry variety in 1958. (ECF No. 1 at ¶ 5.) Driscoll’s continues to breed new berry varieties
5 today, which are grown by independent farmer growers and then sold exclusively by Driscoll’s.
6 (*Id.*) Driscoll’s uses contracts “to maintain control over its proprietary strawberry varieties,”
7 which specify farmers “only have the right to grow the varieties for sale of the fruit by Driscoll’s
8 under Driscoll’s brand.” (*Id.* at ¶ 7.) The contracts “do not permit growers or nurseries to use the
9 varieties for any other purpose, expressly exclude breeding as a permitted purpose, and prevent
10 the growers of nurseries from transferring the varieties to others and from disclosing any
11 proprietary information about the varieties.” (*Id.*)

12 Shaw left the University of California, Davis in 2014 and established CBC, a private
13 strawberry breeding program. (*Id.* at ¶ 8.) In May 2017, a jury in the Northern District of
14 California found Defendants “committed willful patent infringement by using eleven of the
15 [University of California’s] patented varieties in CBC’s breeding program without the
16 University’s permission” and also “engaged in conversion by interfering with the University’s
17 property interests in its proprietary strawberry breeding material.” (*Id.* at ¶ 9.) Driscoll’s alleges
18 witnesses and exhibits revealed during the trial CBC had not only improperly used the
19 University’s proprietary strawberry varieties in its breeding program, but also those of Driscoll’s
20 and others. (*Id.* at ¶ 10.) Specifically, “at least four Driscoll’s patented varieties — Camarillo,
21 Amesti™, Lusa™, and Marquis™ — were used in CBC’s breeding program.” (*Id.*)

22 Driscoll’s alleges “Shaw prepared CBC’s breeding plans and directed the use of Driscoll’s
23 proprietary strawberry varieties in these plans” and “CBC or Shaw could not have obtained these
24 varieties except in contravention of Driscoll’s agreements with its growers and nurseries.” (*Id.*)
25 Driscoll’s alleges “Shaw, CBC, CBC’s members or agents, and/or others acting in concert with
26 CBC or Shaw have had, and still have, possession of progeny that resulted from unauthorized
27 crossbreeding with Driscoll’s proprietary strawberry varieties within this district, including at
28 CBC’s French Camp facilities.” (*Id.*)

1 On March 20, 2019, Driscoll’s filed the instant action with this Court. (*See generally id.*)
2 Driscoll’s seeks declaratory relief, injunctive relief, a constructive trust, damages, restitution, and
3 attorneys’ fees. (*Id.* at 13–14.) On June 14, 2019, Defendants filed a motion to dismiss and
4 motion to strike. (ECF No. 7.) On June 25, 2019, Driscoll’s filed an opposition (ECF No. 10),
5 and on August 1, 2019, Defendants filed a reply (ECF No. 11).

6 II. STANDARD OF LAW

7 A. Motion to Dismiss

8 A motion to dismiss for failure to state a claim upon which relief can be granted under
9 Federal Rule of Civil Procedure (“Rule”) 12(b)(6) tests the legal sufficiency of a complaint.
10 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Rule 8(a) requires that a pleading contain
11 “a short and plain statement of the claim showing that the pleader is entitled to relief.” *See*
12 *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). Under notice pleading in federal court, the
13 complaint must “give the defendant fair notice of what the claim . . . is and the grounds upon
14 which it rests.” *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotations omitted).
15 “This simplified notice pleading standard relies on liberal discovery rules and summary judgment
16 motions to define disputed facts and issues and to dispose of unmeritorious claims.” *Swierkiewicz*
17 *v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

18 On a motion to dismiss, the factual allegations of the complaint must be accepted as true.
19 *Cruz v. Beto*, 405 U.S. 319, 322 (1972). A court is bound to give the plaintiff the benefit of every
20 reasonable inference to be drawn from the “well-pleaded” allegations of the complaint. *Retail*
21 *Clerks Int’l Ass’n v. Schermerhorn*, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not allege
22 “‘specific facts’ beyond those necessary to state his claim and the grounds showing entitlement to
23 relief.” *Twombly*, 550 U.S. at 570.

24 Nevertheless, a court “need not assume the truth of legal conclusions cast in the form of
25 factual allegations.” *U.S. ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986).
26 While Rule 8(a) does not require detailed factual allegations, “it demands more than an
27 unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. A
28 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the

1 elements of a cause of action.” *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678
2 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory
3 statements, do not suffice.”). Moreover, it is inappropriate to assume the plaintiff “can prove
4 facts that it has not alleged or that the defendants have violated the . . . laws in ways that have not
5 been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459
6 U.S. 519, 526 (1983).

7 Ultimately, a court may not dismiss a complaint in which the plaintiff has alleged “enough
8 facts to state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 697 (quoting
9 *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
10 content that allows the court to draw the reasonable inference that the defendant is liable for the
11 misconduct alleged.” *Id.* at 680. While the plausibility requirement is not akin to a probability
12 requirement, it demands more than “a sheer possibility that a defendant has acted unlawfully.”
13 *Id.* at 678. This plausibility inquiry is “a context-specific task that requires the reviewing court to
14 draw on its judicial experience and common sense.” *Id.* at 679.

15 In ruling on a motion to dismiss, a court may only consider the complaint, any exhibits
16 thereto, and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201.
17 *See Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988); *Isuzu Motors Ltd. v.*
18 *Consumers Union of U.S., Inc.*, 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998).

19 If a complaint fails to state a plausible claim, “[a] district court should grant leave to
20 amend even if no request to amend the pleading was made, unless it determines that the pleading
21 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122,
22 1130 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)).

23 B. Motion to Strike

24 Rule 12(f) provides that a court “may strike from a pleading an insufficient defense or any
25 redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). A court will
26 only consider striking a defense or allegation if it fits within one of these five categories. *Yursik*
27 *v. Inland Crop Dusters Inc.*, No. CV-F-11-01602-LJO-JLT, 2011 WL 5592888, at *3 (E.D. Cal.
28 Nov. 16, 2011) (citing *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973–74 (9th Cir.

1 2010)). “[T]he function of a 12(f) motion to strike is to avoid the expenditure of time and money
2 that must arise from litigating spurious issues by dispensing with those issues prior to trial.”
3 *Sidney-Vinsein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). However, Rule 12(f)
4 motions are “generally regarded with disfavor because of the limited importance of pleading in
5 federal practice, and because they are often used as a delaying tactic.” *Neilson v. Union Bank of*
6 *Cal., N.A.*, 290 F. Supp. 2d 1101, 1152 (C.D. Cal. 2003). “Ultimately, whether to grant a motion
7 to strike lies within the sound discretion of the district court.” *Id.* Unless it would prejudice the
8 opposing party, courts freely grant leave to amend stricken pleadings. *Foman v. Davis*, 371 U.S.
9 178, 182 (1962); *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973); *see also* Fed. R.
10 Civ. P. 15(a)(2). If the court is in doubt as to whether the challenged matter may raise an issue of
11 fact or law, the motion to strike should be denied, leaving the assessment of the sufficiency of the
12 allegations for adjudication on the merits after proper development of the factual nature of the
13 claims through discovery. *See generally Whittlestone, Inc.*, 618 F.3d at 974–75.

14 Where a defendant seeks to challenge the sufficiency of factual allegations in a complaint,
15 it must do so through a Rule 12(b)(6) motion, not a Rule 12(f) motion. *Kelley v. Corr. Corp. of*
16 *Am.*, 750 F. Supp. 2d 1132, 1146 (E.D. Cal. 2010) (citing *Consumer Solutions REO, LLC v.*
17 *Hillery*, 658 F. Supp. 2d 1002, 1020 (N.D. Cal. 2009)). “[W]here a motion is in substance a Rule
18 12(b)(6) motion, but is incorrectly denominated as a Rule 12(f) motion, a court may convert the
19 improperly designated 12(f) motion into a Rule 12(b)(6) motion.” *Id.* (citing *Consumer Solutions*
20 *REO, LLC*, 658 F. Supp. 2d at 1021).

21 III. ANALYSIS

22 The Complaint alleges the following claims: (1) declaratory relief in the form of a
23 judgment from this Court; (2) infringement of U.S. Plant Patent No. 14,771 (“Camarillo”); (3)
24 infringement of U.S. Plant Patent No. 18,878 (“Amesti™”); (4) infringement of U.S. Plant Patent
25 No. 22,247 (“Lusa™”); (5) infringement of U.S. Plant Patent No. 23,400 (“Marquis™”); (6)
26 intentional interference with a contract; (7) conversion; and (8) unfair competition in violation of
27 Cal. Bus. & Prof. Code §§ 17200–17210. (*See* ECF No. 1.) Defendants move to dismiss Claims
28 Two through Seven for failure to state a claim upon which relief may be granted and move to

1 strike or dismiss Claims One and Eight as “redundant.” (*See* ECF No. 7.) The Court will first
2 evaluate the claims Defendants move to dismiss — Claims Two through Five together (as
3 Defendants make overlapping arguments regarding the patent infringement claims), Six, and
4 Seven. The Court will then evaluate the claims Defendants move to strike or dismiss — Claims
5 One and Eight.

6 A. Claims Two through Five: Patent Infringement

7 Driscoll’s alleges Defendants “have infringed and continue to infringe” Camarillo,
8 Amesti™, Lusa™, and Marquis™ “in violation of 35 U.S.C. §§ 163 and 271.”² (ECF No. 1 at ¶¶
9 22, 27, 32, 37.) Defendants argue the patent infringement claims fail because the Complaint fails
10 to allege: (1) “the plants at issue were the product of asexual reproduction in the U.S.”; (2) direct
11 infringement, as neither “exercising control over [plants]” nor “putting [plants] into service” is
12 “identified as an infringing activity in the patent statutes,” nor does the law prohibit those
13 activities from being “carried out abroad”; and (3) indirect infringement, as Driscoll’s does not
14 plead acts contributing to infringement or inducement of infringement. (ECF No. 7-1 at 15–18.)
15 Defendants further argue Driscoll’s allegations against Shaw fail as a matter of law because “the
16 ‘corporate veil’ shields a company’s officers from personal liability.” (*Id.* at 19.)

17 In opposition, Driscoll’s maintains the claim is sufficiently pleaded, as: (1) the plant
18 patent statute prohibits not only asexual reproduction, but also importing, using, offering for sale,
19 or selling the plant or any of its parts; (2) the statute “can reach certain overseas conduct where
20 part of that conduct also has a domestic focus” and Defendants in the U.S. “import[ed] Driscoll’s
21 patented varieties ‘or part(s) thereof (such as seeds)’”; and (3) Driscoll’s claims of Defendants’
22 use of “at least four Driscoll’s patented varieties” in its breeding plans and that “Shaw prepared
23 CBC’s breeding plans and directed the use of [the patented varieties]” is sufficient to plead

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25 ² Defendants raise the issue of a possible lack of standing, as the patent documents identify
26 a third entity — Driscoll’s Strawberry Associates, Inc. — which is not a party to this suit. (ECF
27 No. 7-1 at 7.) At the pleading stage, all reasonable inferences are to be construed in Driscoll’s
28 favor. The reasonable inference is that Driscoll’s Strawberry Associates, Inc., named as the
assignee in the patent documents attached to the Complaint (*see* ECF Nos. 1-1, 1-2, 1-3, 1-4) in
support of Driscoll’s claims, is related to Driscoll’s. Driscoll’s must, however, prove ownership
of the patents at issue in a future dispositive motion or at trial.

1 inducement of infringement. (ECF No. 10 at 13–16.) Driscoll’s maintains that “[f]or veil
2 piercing to apply, it would be up to Defendants to allege and then to prove that *all* of Shaw’s
3 actions relating to Driscoll’s claims were conducted in the name of the corporation.” (*Id.* at 18.)
4 The Court will first address the elements of the claim and then turn to an evaluation of piercing
5 the corporate veil.

6 *i. Elements of the Patent Infringement Claim*

7 A patent infringement claim requires determination of whether an individual “(1) without
8 authority (2) makes, uses, offers to sell, sells, or imports (3) the patented invention (4) within the
9 United States, its territories, or its possessions (5) during the term of the patent.” *Cal. Table*
10 *Grape Comm’n v. RB Sandrini, Inc.*, No. 1:06-cv-00842-OWW-TAG, 2007 WL 1847631, at *17
11 (E.D. Cal. Jun. 27, 2007) (citing *Van Well Nursery, Inc. v. Mony Life Ins. Co.*, 421 F. Supp. 2d
12 1321, 1334 (E.D. Wash. 2006)). Plant patent law specifically provides the plant patent “shall
13 include the right to exclude others from asexually reproducing the plant, and from using, offering
14 for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or
15 from importing the plant so reproduced, or any parts thereof, into the United States.” 35 U.S.C. §
16 163.

17 With respect to the third element, the patent holder must prove under 35 U.S.C. § 163
18 “that the alleged infringing plant is an asexual reproduction,” meaning it is “the progeny of the
19 patented plant via ‘grafting, budding, cuttings, layering, division and the like, but not by seeds.’”
20 *Imazio Nursery, Inc. v. Dania Greenhouses*, 69 F.3d 1560, 1569 (Fed. Cir. 1995) (reversing
21 district court’s holding of infringement, as the alleged infringing plant was not an asexual
22 reproduction of the patented plant, but rather an asexual reproduction of a plant with the same
23 essential characteristics as the patented plant); *Cal. Table Grape Comm’n*, 2007 WL 1847631, at
24 *17; *Van Well Nursery, Inc.*, 421 F. Supp. 2d at 1334.

25 Here, Driscoll’s alleges Defendants “actively induce[d] the use, importation, and/or
26 asexual reproduction of” its patented plant varieties — namely, Camarillo, Amesti™, Lusa™, and
27 Marquis™. (ECF No. 1 at ¶¶ 23, 28, 33, 38.) Driscoll’s does not provide any further factual
28 allegations to explain how Defendants have produced an infringing plant that is an asexual

1 reproduction of any of its patented plant varieties. As such, the Court finds that Driscoll’s has not
2 pleaded “factual content that allows the [C]ourt to draw the reasonable inference that the
3 [D]efendant[s] [are] liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 680.

4 Of note, the Court finds the remainder of the elements are adequately pleaded. With
5 respect to the first, second, and fourth elements, Driscoll’s alleges Defendants engaged in
6 “unlicensed and unauthorized acts of infringement,” which includes: “direct infringement by
7 using, importing, and/or asexually reproducing” its patented varieties or parts thereof; “direct
8 infringement by exercising control over and putting” its patented varieties or parts thereof “into
9 service from within the United States”; causing its patented varieties or parts thereof “to be
10 supplied from the United States in such a manner as to actively induce the use, importation,
11 and/or asexual reproduction of” its patented varieties or parts thereof “with [themselves] or
12 another strawberry variety”; and “indirect infringement by inducing or contributing to the
13 infringement of third parties that used, imported, and/or asexually reproduced” its patented
14 varieties or parts thereof. (ECF No. 1 at ¶¶ 23, 28, 33, 38.) With respect to the fifth element,
15 Driscoll’s attached to its Complaint the patent documents for Camarillo, Amesti™, Lusa™, and
16 Marquis™ (see ECF Nos. 1-1, 1-2, 1-3, 1-4), which indicate Defendants’ alleged actions all
17 occurred during the term of the patents.³

18 *ii. Piercing the Corporate Veil*

19 Defendants note that Driscoll’s alleges Shaw “infringed the patents through his actions on
20 behalf of CBC, acting as an employee of CBC, not as an individual.” (ECF No. 7-1 at 19 (citing
21 ECF No. 1 at ¶¶ 8–10).) Defendants maintain Driscoll’s therefore fails to state a claim against
22 Shaw individually and the corporate veil shields him from liability. (*Id.*) In opposition,
23 Driscoll’s maintains it alleges Shaw’s conduct began “before the founding of CBC” and “it is
24 unclear whether Shaw currently works for CBC as an employee or simply advises as an outside
25

26 ³ 35 U.S.C. § 154(a)(2) provides the term of a patent “begin[s] on the date on which the
27 patent issues and end[s] 20 years from the date on which the application for the patent was filed
28 in the United States or, if the application contains a specific reference to an earlier filed
application or applications under [§§] 120, 121, 365(c), or 386(c), from the date on which the
earliest such application was filed.”

1 ‘member.’” (ECF No. 10 at 18 (citing ECF No. 1 at ¶¶ 4, 8).) Driscoll’s contends that even if
2 Shaw did act on behalf of CBC, case law has “recognized and imposed personal liability on
3 corporate officers for participating in, inducing, and approving acts of patent infringement.” (*Id.*)

4 “[O]fficers of a corporation are personally liable for tortious conduct of the corporation if
5 they personally took part in the commission of the tort or specifically directed other officers,
6 agents, or employees of the corporation to commit the tortious act.” *Orthokinetics, Inc. v. Safety*
7 *Travel Chairs, Inc.*, 806 F.2d 1565, 1579 (Fed. Cir. 1986) (citation omitted). “The cases are
8 legion in which courts have recognized and imposed personal liability on corporate officers for
9 participating in, inducing, and approving acts of patent infringement.” *Id.* (citing *White v. Mar-*
10 *Bel, Inc.*, 509 F.2d 287 (5th Cir. 1975); *Rex Chainbelt, Inc. v. General Kinematics Corp.*, 363
11 F.2d 336 (7th Cir. 1966)); *Fromson v. Citiplate, Inc.*, 886 F.2d 1300, 1304 (Fed. Cir. 1989).

12 Here, it is unclear from Driscoll’s Complaint when CBC was founded. It is therefore
13 difficult to ascertain whether or not Shaw engaged in the allegedly infringing acts prior to CBC’s
14 founding. With respect to acts taken after the founding of CBC, Driscoll’s does not allege how
15 Shaw “personally took part in the commission” of the alleged patent infringement, or how he
16 “specifically directed other officers, agents, or employees” of CBC to commit the alleged patent
17 infringement. (*See generally* ECF No. 1); *see also Orthokinetics, Inc.*, 806 F.2d at 1579.
18 Driscoll’s therefore fails to adequately plead sufficient facts to find Shaw personally liable for
19 patent infringement.

20 Based on the foregoing, Defendants’ Motion to Dismiss Claims Two through Five is
21 GRANTED with leave to amend.

22 B. Claim Six: Intentional Interference with a Contract

23 Driscoll’s alleges Defendants, Defendants’ members, agents, and/or others acting in
24 concert with Defendants “have intentionally interfered with the contractual relationship between
25 Driscoll’s and one or more of its growers or nurseries through acts intended and designed to
26 induce breach and/or disruption of said contractual relationship.” (ECF No. 1 at ¶ 44.) Driscoll’s
27 alleges Defendants “depriv[ed] Driscoll’s of the exclusive benefit from the genetics of its
28 proprietary strawberry varieties and contravening the express terms of the contract.” (*Id.*)

1 Defendants argue Driscoll’s claim fails because it is preempted by federal patent law.
2 (ECF No. 7-1 at 20–21.) Defendants also argue Driscoll’s fails to adequately state a claim by
3 failing “to allege what ‘contracts’ even exist” and “whether the contracts are ‘at will,’ which
4 governs whether [Driscoll’s] must also allege whether [Defendants’] supposed ‘interference’ is
5 ‘independently wrongful’ beyond the interference itself.” (*Id.* at 22–23.) In opposition,
6 Driscoll’s asserts patent law does not preempt the claim, as the state claim “includes additional
7 elements not found in the federal [claim].” (ECF No. 10 at 20–21.) Driscoll’s also maintains its
8 claim is adequately pleaded — Rule 8 does not require more than what it has pleaded and whether
9 its agreements with its growers and nurseries were “at will” is not an element of the claim. (*Id.* at
10 21–22.)

11 The elements of a claim for the tort of intentional interference with a contract include: “(1) a
12 valid contract between a plaintiff and a third party; (2) defendant’s knowledge of this contract; (3)
13 defendant’s intentional acts designed to induce a breach or disruption of the contractual
14 relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting
15 damage.” *United Nat. Maint., Inc. v. San Diego Convention Ctr., Inc.*, 766 F.3d 1002, 1006 (9th
16 Cir. 2014) (citing *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118 (1990)).

17 Here, Driscoll’s alleges it “has valid express and implied contracts with its growers and
18 nurseries in the United States and abroad.” (ECF No. 1 at ¶ 42.) Driscoll’s alleges the contracts
19 forbid “(1) the sale or transfer of Driscoll’s proprietary strawberry varieties to third parties and (2)
20 their use for any plant breeding purpose not authorized by Driscoll’s, including crossbreeding by
21 third parties.” (*Id.*) Driscoll’s further alleges Defendants “knew or should have known of
22 Driscoll’s contractual relationship with its growers and nurseries.” (*Id.* at ¶ 43.) There are no
23 facts to show how Defendants knew about Driscoll’s contracts or the entities with which
24 Driscoll’s entered into contracts. Therefore, Driscoll’s cannot and does not plead facts regarding
25 the third element to show how Defendants’ acts of interference with such contracts were
26 intentionally designed to induce a breach or disruption. As such, the Court finds here again that
27 Driscoll’s has not pleaded “factual content that allows the [C]ourt to draw the reasonable
28 inference that the [D]efendant[s] [are] liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 680.

1 Of note, the Court finds the remainder of the elements are also inadequately pleaded.
2 With respect to the first element, Driscoll's does not allege which contracts are at issue — it just
3 plainly alleges Defendants “intentionally interfered with the contractual relationship between
4 Driscoll's and one or more of its growers or nurseries.” (ECF No. 1 at ¶ 44.) With respect to the
5 second element, Driscoll's does not allege how Defendants have knowledge of these contracts.
6 Finally, with respect to the fourth and fifth elements, if Driscoll's does not allege which contracts
7 are at issue, it cannot plead how there was an actual breach or disruption of the relationship, or
8 how it was damaged in this process.

9 Based on the foregoing, Defendants' Motion to Dismiss Claim Six is GRANTED with
10 leave to amend.

11 C. Claim Seven: Conversion

12 Driscoll's alleges Defendants “intentionally and wrongfully exercised control over
13 Driscoll's proprietary strawberry varieties and/or intentionally and substantially interfered with
14 Driscoll's property rights.” (ECF No. 1 at ¶ 48.) Defendants argue this claim is preempted by
15 federal patent law and that it is inadequately pleaded. (ECF No. 7-1 at 19–20.) Defendants
16 maintain the claim also fails because Driscoll's cannot state a conversion claim with respect to
17 overseas property and conduct. (*Id.* at 19 (citing ECF No. 1 at ¶¶ 23, 28, 33, 38).)

18 In opposition, Driscoll's asserts its claim is not preempted because it is based on physical
19 property rights (“the living plants”), not the “alleged misappropriation of patent rights.” (ECF
20 No. 10 at 19–20.) Driscoll's also notes that it alleges “significant *domestic* conduct,” as
21 “Defendants have ‘possession of progeny that resulted from the unauthorized crossbreeding . . .’
22 within the state. . . .” (*Id.* at 20.)

23 There are three forms of federal preemption: (1) explicit preemption of state law by
24 Congress; (2) field preemption, where the “federal scheme may occupy a given field and thus
25 preempt state law in that field;” and (3) conflict preemption, where “compliance with both state
26 and federal law is impossible” and “the conflicting state law is preempted.” *Univ. of Colo.*
27 *Found., Inc. v. Am. Cyanamid Co.*, 342 F.3d 1298, 1305 (Fed. Cir. 2003). “State law claims that
28 frustrate the objectives embodied in the federal patent scheme are subject to conflict preemption.”

1 See *Gerawan Farming, Inc. v. Rehrig Pac. Co.*, No. 1:11-cv-01273 LJO, 2012 WL 691758, at *7
2 (E.D. Cal. Mar. 2, 2012) (discussing third form of preemption), *aff'd*, 587 F. App'x 654 (Fed. Cir.
3 2014). In patent cases, therefore, “federal preemption occurs whenever a state law impermissibly
4 attempts to provide patent-like protection to subject matter addressed by federal patent law.” *Id.*

5 With respect to conversion claims specifically, case law has treated claims “dependent on
6 a determination of patent inventorship or ownership” or “based on alleged misappropriation of
7 patent rights” differently from claims “based on a non-patent theory of conversion.” *Id.*; *Gen.*
8 *Elec. Co. v. Wilkins*, No. 1:10-cv-00674-OWW, 2011 WL 3163348, at *8 (E.D. Cal. Jul. 26,
9 2011). The former-type claims are generally preempted by patent law, while the latter-type
10 claims are not as long as they “can be established without reference to patent inventorship or
11 ownership.” *Gerawan Farming, Inc.*, 2012 WL 691758, at *7; *see also Lyden v. Nike Inc.*, No.
12 3:13-cv-00662-HZ, 2014 WL 2563401, at *3 (D. Or. Jun. 6, 2014) (finding the bases for
13 damages — defendant’s rejection of plaintiff’s offer to purchase or license his intellectual
14 property and defendant’s subsequent patenting of subject matter plaintiff revealed to defendant —
15 identical between the plaintiff’s patent infringement claim and conversion claim and the latter
16 therefore preempted); *compare Smith v. Healy*, 744 F. Supp. 2d 1112, 1130 (D. Or. 2010)
17 (finding plaintiffs’ conversion claim seeking “damages for the copying and sale of their idea
18 rather than for the sale of the physical device itself,” was preempted as it concerned not their
19 “tangible property but rather their intangible idea”) *with HIF Bio, Inc. v. Yung Shin Pharms.*
20 *Indus. Co.*, 600 F.3d 1347, 1355 (Fed. Cir. 2010) (finding a non-patent theory entitles plaintiffs to
21 relief, as they “could establish conversion by reference to defendants’ alleged misappropriation of
22 ‘experiments, pre-publication experimental data, and nonpublic, pre-publication drafts of
23 papers”).

24 Here, Driscoll’s alleges it “had and continues to have ownership rights and rights to
25 possession of its proprietary strawberry varieties, including intellectual and tangible property
26 rights.” (ECF No. 1 at ¶ 47.) Driscoll’s alleges Defendants or their “members or agents, and/or
27 others acting in concert with [Defendants] took possession of Driscoll’s proprietary strawberry
28 varieties and/or used them for crossbreeding purposes without Driscoll’s consent,” which

1 “contravened Driscoll’s existing contractual relations on the use of its proprietary strawberry
2 varieties.” (*Id.* at ¶ 48.) Driscoll’s maintains that it “had a right to possess, and/or maintain
3 ownership of, its proprietary strawberry varieties at the time of Defendants’ wrongful exercise of
4 control,” which caused “harm to [Driscoll’s] contractual relationships and its economic interests.”
5 (*Id.* at ¶¶ 48–49.)

6 In contrast, Driscoll’s alleges in its patent infringement claims that Defendants “actively
7 induce[d] the use, importation, and/or asexual reproduction of” its patented varieties and
8 “induc[ed] or contribut[ed] to the infringement of third parties that used, imported, and/or
9 asexually reproduced” its patented varieties. (*Id.* at ¶¶ 23, 28, 33, 38.) The basis for both claims
10 is the same: Driscoll’s alleges Defendants either crossbred or asexually reproduced its patented
11 varieties and Defendants impaired Driscoll’s contractual relations governing the use of its
12 patented varieties. As Driscoll’s conversion claim is “dependent on a determination of patent
13 inventorship or ownership,” it is preempted by federal patent law. *Gerawan Farming, Inc.*, 2012
14 WL 691758, at *7. As the Court finds this claim is preempted, it declines to evaluate the claim
15 on its merits. Accordingly, Defendants’ Motion to Dismiss Claim Seven is GRANTED without
16 leave to amend.

17 D. Claim Eight: Unfair Competition

18 Driscoll’s alleges Defendants, Defendants’ members, agents, and/or others acting in
19 concert with Defendants’ use “of Driscoll’s proprietary strawberry varieties to further CBC’s own
20 breeding program [. . .] constitute[s] unlawful, unfair, and/or deceptive business practices or acts
21 under [Cal. Bus. & Prof. Code §§ 17200–17210].” (ECF No. 1 at ¶ 51.) Defendants argue
22 Driscoll’s unfair competition claim is “redundant,” “does nothing more than allege that
23 [Defendants’] use of the strawberry varieties in their purported breeding program constitutes
24 unfair competition,” and “should be stricken under Rule 12(f) or dismissed.” (ECF No. 7-1 at
25 24.) Defendants note if Driscoll’s “is alleging that there is some other activity on the part of
26 [Defendants] that is not encompassed by the patent infringement, conversion, and interference
27 claims, then [Driscoll’s] has failed to make sufficient factual allegations to state a claim.” (*Id.*)
28 Defendants also maintain that, “to the extent [it] is premised on patent infringement, it is

1 preempted by federal patent law.” (*Id.*)

2 In opposition, Driscoll’s asserts the claim is not redundant because it is required to allege
3 an underlying unlawful, unfair, or deceptive act. (ECF No. 10 at 23.) Driscoll’s identifies the
4 unlawful acts as “interference with Driscoll’s ‘contracts with its growers and nurseries, and
5 conversion of Driscoll’s proprietary strawberry varieties.’” (*Id.* (citing ECF No. 1 at ¶ 52).)
6 Driscoll’s also notes this claim is not preempted because “it protects interests different from
7 federal patent law.” (*Id.* at 24.)

8 California law prohibits “any unlawful, unfair or fraudulent business act.” Cal. Bus. &
9 Prof. Code § 17200. “By proscribing any unlawful business practice, [§] 17200 borrows
10 violations of other laws and treats them as unlawful practices that the unfair competition law
11 makes independently actionable.” *Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20
12 Cal. 4th 163, 180 (1999) (internal citations and quotations omitted). The “unlawful” practices
13 prohibited by this law include “any practices forbidden by law, be it civil or criminal, federal,
14 state, or municipal, statutory, regulatory, or court-made.” *Saunders v. Superior Ct.*, 27 Cal. App.
15 4th 832, 838–39 (1994) (citing *People v. McKale*, 25 Cal. 3d 626, 632 (1979)).

16 Here, as noted previously, the unfair competition claim is premised on the intentional
17 interference with a contract and conversion claims. Because the Court finds Driscoll’s has failed
18 to adequately plead the underlying claims, the derivative unfair competition claim is inadequately
19 pleaded as well. Accordingly, Defendants’ Motion to Dismiss Claim Eight is GRANTED with
20 leave to amend.

21 E. Claim One: Declaratory Relief

22 Driscoll’s alleges “[a]n actual controversy has arisen and now exists” between themselves
23 and Defendants “as to the use, importation, and benefit from Driscoll’s proprietary strawberry
24 varieties and any progeny thereof and the ownership and disposition of any such progeny.” (ECF
25 No. 1 at ¶ 19.) Defendants argue this claim is “redundant as it ‘consists of allegations that
26 constitute a needless repetition of other averments in the pleading’ and should be stricken under
27 Rule 12(f),” or dismissed as duplicative. (ECF No. 7-1 at 24.) In opposition, Driscoll’s asserts
28 the claim is not “redundant,” nor “duplicative or unnecessary” because the claim “seeks to ‘settle

1 the parties' future rights and obligations.” (ECF No. 10 at 23.)

2 “Claims for declaratory relief . . . are ultimately prayers for relief, and not causes of
3 action.” *Javaheri v. JP Morgan Chase Bank, N.A.*, No. 2:10-cv-08185-ODW (FFMx), 2012 WL
4 3426278 at *8 (C.D. Cal. Aug. 13, 2012) (citing *Lane v. Vitek Real Estate Indus. Grp.*, 713 F.
5 Supp. 2d 1092, 1104 (E.D. Cal. 2010)). 28 U.S.C. § 2201 provides, “any court of the United
6 States, upon the filing of an appropriate pleading, may declare the rights and other legal relations
7 of any interested party seeking such declaration, whether or not further relief is or could be
8 sought.” “Declaratory relief should be denied when it will neither serve a useful purpose in
9 clarifying and settling the legal relations in issues nor terminate the proceedings and afford relief
10 from the uncertainty and controversy faced by the parties.” *United States v. Washington*
11 (*Washington*), 759 F.2d 1353, 1357 (9th Cir. 1985) (citations omitted). A claim
12 for declaratory relief is unnecessary where an adequate remedy exists under another cause of
13 action. *Mangindin v. Washington Mut. Bank*, 637 F. Supp. 2d 700, 707 (N.D. Cal. 2009).

14 Here, Driscoll's patent infringement, intentional interference with a contract, conversion,
15 and unfair competition claims seek redress in the form of an injunction, a constructive trust,
16 damages, restitution, and attorneys' fees and costs (*see* ECF No. 1 at 13–14), while Driscoll's
17 declaratory relief claim seeks a declaration from this Court confirming that:

18 (1) unauthorized use (including any breeding program use), importation, and/or
19 propagation (sexual or asexual) of Driscoll's patented varieties or their parts by
20 Shaw, CBC, CBC's members or agents, and/or others acting in concert with CBC
21 or Shaw constitutes patent infringement; (2) Driscoll's is the rightful owner of the
22 intellectual and tangible property rights in its proprietary strawberry varieties and
23 any progeny thereof in the possession of Shaw, CBC, CBC's members or agents,
and/or others acting in concert with CBC or Shaw that could not have been created
but for the unauthorized use of those varieties; and (3) Shaw, CBC, CBC's members
or agents, and/or others acting in concert with CBC or Shaw are not bona fide
purchasers (or licensees) for value of Driscoll's proprietary strawberry varieties.

24 (*Id.* at ¶ 20.) Driscoll's other claims seek an injunction, constructive trust, damages, and
25 restitution to redress current and past wrongs, while Driscoll's declaratory relief claim goes one
26 step further to define the rights and duties of Driscoll's and Defendants. Driscoll's declaratory
27 relief claim seeks a different form of relief from its other claims, and thus the Court cannot
28 conclude the claims are duplicative or redundant. This claim will “serve a useful purpose in

1 clarifying and settling the legal relations in issues [or] terminate the proceedings and afford relief
2 from the uncertainty and controversy faced by the parties.” *Washington*, 759 F.2d at 1357.
3 Accordingly, Defendants’ Motion to Strike Claim One is DENIED.

4 **IV. CONCLUSION**

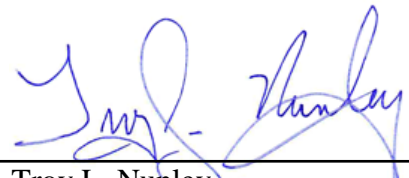
5 For the aforementioned reasons, the Court hereby GRANTS in part and DENIES in part
6 Defendants’ Motion to Dismiss and Motion to Strike (ECF No. 7) as follows:

- 7 1. Defendants’ Motion to Strike Claim One is DENIED;
8 2. Defendants’ Motion to Dismiss Claims Two through Six and Claim Eight is
9 GRANTED with leave to amend; and
10 3. Defendants’ Motion to Dismiss Claim Seven is GRANTED without leave to amend.

11 Driscoll’s may file an amended complaint consistent with this Court’s ruling not more
12 than 30 days from the electronic filing of this Order. Defendants shall file a response to the
13 amended complaint in accordance with the Local Rules and Federal Rules of Civil Procedure.

14 IT IS SO ORDERED.

15 DATED: July 1, 2021

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17
18 
19 _____
Troy L. Nunley
United States District Judge