CALIFORNIA BERRY CULTIVARS, LLC, Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a corporation

Defendant.

CASE NO. RG 16 81 3870

VERIFIED COMPLAINT FOR:

(1) BREACH OF CONTRACT
(2) CONVERSION
(3) BREACH OF FIDUCIARY DUTY
(4) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(5) UNFAIR COMPETITION

DEMAND FOR JURY TRIAL
Plaintiff California Berry Cultivars, LLC ("CBC" or "Plaintiff"), assignee of certain rights of Dr. Douglas V. Shaw ("Dr. Shaw") and Dr. Kirk David Larson ("Dr. Larson" and together with Dr. Shaw, the "Breeders"), for its Complaint against Defendant The Regents of the University of California ("University" or "Defendant"), alleges as follows:

**INTRODUCTION**

1. This action concerns the University’s disruption of a highly successful breeding program that created new valuable varieties of strawberries for the benefit of California’s strawberry industry and California consumers. In its own words, the University’s policy has long been to discharge its duty to license research results and to encourage the application of research for the “broad public benefit.” For years, it did so under the guidance of two faculty members, who, among their various academic responsibilities, led a strawberry breeding program with stunning results. California is now the top strawberry producing state, strawberries are one of California’s top five valued commodities, more than 2 billion pounds of strawberries are harvested each year in California, most of the world’s strawberries are produced from cultivars invented by these faculty members, and the University program was widely recognized as the foremost strawberry breeding program in the world.

2. These two faculty members, the Breeders, retired from the University in 2014, but have assigned their rights to Plaintiff CBC who wants to continue developing and breeding new, distinct, and valuable varieties for California agribusiness. Plaintiff also wants to prompt wide distribution of breeding varieties to the public and to generate licensing income for the University and for Plaintiff to fund their breeding programs.

3. To this end, by this action Plaintiff seeks to license on a non-exclusive basis at a reasonable royalty some of the strawberry varieties that the Breeders invented. These varieties would be used for breeding and further development by Plaintiff and by all others, including Defendant, interested in breeding and developing these varieties. Under the Breeders’ agreements with Defendant, CBC has the right to licenses for these varieties and much more. Among other rights, if the varieties are being patented, the University has the obligation to license the varieties to Plaintiff and others and to generate a royalty stream for Plaintiff as the assignee.
The University is required to work with Plaintiff in doing so. If the University elects not to patent
varieties, Plaintiff has the right to do so. For varieties in early stages of development, Plaintiff
has the right to release these to the public and to continue their development.

4. The University, through its representatives at the Davis campus, has broken its
agreements, has converted and endangered the Breeders’ material, has denied all of these rights
with respect to the plants at issue, has risked the loss and destruction of the varieties, and has put
them in a “black hole,” unavailable to Plaintiff and unavailable to California agribusiness, all in
an apparent attempt to suppress competition. And since doing so, the University has created no
new, valuable variety invented by others and, by its conduct, has taken steps to prevent others
from doing so, in breach of its duties and in violation of its policies.

5. To right these wrongs, Plaintiff brings this action for breach of contract,
conversion, breach of fiduciary duty, breach of the implied covenant of good faith and fair
dealing, and unfair competition. CBC seeks equitable and monetary relief for injuries that have
been, and will continue to be, caused by the University’s unlawful conduct.

PARTIES AND BACKGROUND

6. Dr. Shaw was a Professor of Plant Sciences at the University’s Davis campus, with
a special focus in the fields of genetics. Dr. Shaw began teaching at the University’s Davis
campus in 1986. Dr. Shaw taught at the UC Davis Plant Breeding Academy, where his role was
to provide instruction in population and quantitative genetics applicable to plant breeding. Dr.
Shaw also was a project leader of the University’s Davis campus Breeding Program (the
“Breeding Program”) from 1988 until he left the University.

7. Dr. Shaw obtained his Bachelor’s Degree from the University of California of San
Diego, La Jolla in 1976 and his Ph.D. from the University’s Davis campus in 1981. Dr. Shaw
published a number of works on the subject of strawberry breeding, including “Strawberry
breeding improves genetic resistance to Verticillium wilt,” along with making contributions to
“Strawberry Production in California” and “Integrated Pest Management for Strawberries, 2nd
Edition.”

8. Dr. Larson was previously employed by the University as an Extension and
Experiment Station Specialist at the University’s Davis campus and, in the course of his academic work, Dr. Larson joined the Breeding Program in 1991.

9. CBC is a limited liability company organized under the laws of California with its principal place of business in Irvine, California. CBC is consortium of California strawberry growers and shippers dedicated to ensuring continuous supply of new and improved strawberry varieties for California agribusiness and consumers. The Breeders are both members of CBC and serve as employees or consultants to CBC.

10. CBC is the assignee of: (a) the Breeders’ rights in all germplasm not reduced to patent, including the transition cultivars described in paragraph 22; (b) income from patenting or licensing of the Breeders’ genetic stocks for breeding new cultivars, including the core strawberry germplasm described in paragraph 22; (c) the Breeders’ rights to damages for unpaid royalties, including those that would have been paid but for the University’s unlawful conduct set forth in this Complaint and those arising from the Breeders’ right of reimbursement from the University from royalties contributed by the Breeders to the Breeding Program; and (d) all intellectual property rights of the Breeders in all materials created during their employment at the University in connection with the creation, development and invention of the germplasm, including transition cultivars and the core strawberry germplasm described in paragraph 22.

11. On information and belief, the University is a registered California corporation with its principal place of business in Oakland, California.

12. As one of California’s top five valued commodities, strawberries are important in California business and agriculture. California is the top strawberry producing state within the United States. In 2014, more than 2.3 billion pounds of strawberries were harvested in California, which were valued at approximately $2.6 billion and accounted for approximately 88% of the entire United States strawberry crop. The continued development of new strawberry varieties is important to maintain strawberry crop volumes in light of climate changes, pests, diseases affecting currently grown varieties, labor shortages, and consumer demand.

13. The University’s Davis College of Agriculture has historically been the leading driver for the development of new varieties of strawberries. In 1930, researchers from the
University initiated the Breeding Program to develop and breed improved varieties of strawberry cultivars, which are plant varieties produced in cultivation by selective breeding, for release to the public. The Breeding Program was initially run out of the University’s Berkeley campus, but was moved to the Davis campus in 1946. Today, about 55% of the acres of strawberries grown in California are produced from cultivars released from the Breeding Program, producing about 70% of the state’s strawberries.

14. The University’s Davis campus has a mandate to develop agricultural innovations in support of agribusiness and the public good. Furthermore, the University’s stated policies on licensing technology resulting from research are intended to provide a mechanism for transferring and disseminating the results of University research to the public for the public benefit.

15. The University’s Davis campus has now disrupted the previously successful breeding efforts. At the approximate time of the Breeders’ retirement in late 2014 and early 2015, the University released the last 4 new cultivars invented by the Breeders from the Breeding Program; these cultivars are subject to pending patent applications listing the Breeders as the inventors. Since then, the University has not released any new cultivars and the process of selecting, reducing, and developing germplasm toward new cultivars has wound down. The University is also preventing CBC from completing the evaluation of the transition cultivars described in paragraph 22.

16. CBC wishes to continue the Breeders’ efforts in developing new strawberry cultivars for the public benefit. The Breeders formed, along with other growers and suppliers, CBC in order to continue these research and commercialization efforts.

17. In disregard of the California strawberry growers it serves, the University at the Davis campus refuses to license the rights to propagate and breed cultivars of strawberry varieties invented by the Breeders. The University also refuses to allow CBC any access to the plant material created by the Breeders and assigned to CBC, thereby preventing CBC from using the Plant Types at Issue (as defined in paragraph 22) to develop new and distinct strawberry cultivars for California’s strawberry industry.

18. Since at least 2013, the Breeders, and later CBC, have proposed taking a non-
exclusive license on reasonable terms in order to continue the research and development of new strawberry cultivars for agribusiness. Specifically, CBC has requested a royalty-bearing non-exclusive license to the cultivars and genotypes at issue here. Relying on a series of pretextual excuses, the University, through its representatives at the Davis campus, has refused to license CBC or the Breeders or to even discuss licenses on fair and equitable terms, even though the cultivars and other plant material are the Breeders’ own inventions that were assigned to CBC.

19. The terms of the proposed licenses offered by the Breeders, and now CBC, would generate royalties for both CBC and the University. The contemplated license would also promote cooperation between the industry and the University and expand the number of researchers developing new strawberry varieties in California, providing a steady stream of new strawberry varieties for commercialization by California growers and producers.

JURISDICTION AND VENUE

20. This Court has jurisdiction and venue over the claims herein because the University resides in and has its principal place of business in Oakland, California, which is in Alameda County.

THE PLANTS AT ISSUE

21. The plants at issue in this case are the plant varieties created, asexually reproduced, and invented by the Breeders during their time participating in the Breeding Program.

22. There are two groups of plant varieties at issue. The first group, known as the “Core Strawberry Germplasm,” consists of the approximately 168 cultivars developed by the Breeders, which are subject to a pending United States plant patent application. The second group, known as “Transition Cultivars,” consists of approximately 250 plant varieties developed by the Breeders that may have value as breeding stock. The Core Strawberry Germplasm and the Transition Cultivars are collectively referred to as the “Plant Types at Issue.”

23. The Plant Types at Issue are a subset of the full germplasm collection of approximately 1,500 genotypes of strawberries in the Breeding Program.

24. At the University’s request in December 2013, the Breeders transferred a complete set of plant material to the University, including the Plant Types at Issue. Such plant material of
the Plant Types at Issue is hereinafter referred to as the “Plant Material.” At the time, the
University acknowledged that the official request to transfer the Breeders’ Plant Material to the
department was “highly unusual” and agreed that the transfer was for preservation only and that
“the [Department of Plant Sciences at the University Davis campus] will guarantee the security of
the material to protect [the Breeders’ and now CBC’s as their assignee] commercial and research
interests in any and all materials transferred.”

25. Although Plaintiff as the assignee of the Breeders has rights in the plants, the Plant
Material wrongfully remains in the University’s possession. The University asserted it requested
this highly unusual transfer of materials because of the then pending litigation (the “Commission
Litigation”) between the University and the California Strawberry Commission (the
“Commission”). After learning that the litigation between the University and the Commission
settled, Plaintiff and before it, the Breeders, requested the return of the Plant Material, but the
University refused and continues to refuse to turn it over.

THE PARTIES’ AGREEMENTS

26. Under federal and state law, the general rule is that the rights in an invention
belong to an inventor. An inventor may assign all or part of his rights in an invention by express
agreement.

27. The Breeders, whose rights have been assigned to Plaintiff CBC, each have Patent
Agreements with the University. Dr. Shaw’s Patent Agreement is dated February 25, 1986 and
Agreements are substantially similar in most respects, including in those respects discussed in this
Complaint (except the inventors are entitled to varying percentages of royalties in each of the
agreements). The Patent Agreements preserve the rights of the Breeders as inventors of the plants
they develop with a partial and limited exception which accords the University a right of first
refusal to patent the invented variety but with an obligation to share royalties for the variety in
consideration of the Breeders’ assignment of those patent rights. These Patent Agreements
required disclosure of “possibly patentable . . . plant[s]” conceived of or developed by the
Breeders while employed by the University (“Covered Inventions”), consistent with their rights as
inventors and in furtherance of the University Policy Regarding Patents ("Patent Policy"), which is incorporated in the Breeders' Patent Agreements. For any inventions or developments that were not Covered Inventions, including the Transition Cultivars, the Breeders retained full rights to those inventions, which have subsequently been assigned to CBC. Here, CBC as the assignee merely wants a non-exclusive license that makes the Transition Cultivars available to the public and to the University with a financial advantage for the University.

28. The Patent Agreements provided that if the University decided to pursue patent protection for a disclosed Covered Invention, the parties made a further deal – the University would generate and share a royalty stream for the variety in exchange for the Breeder's assignment of his patent rights for the variety. Those royalties were typically generated by licenses and were the specific consideration for the assignment of the patent rights to the Covered Invention. Pursuant to the Patent Policy incorporated into the Patent Agreements, the University had the "duty . . . to negotiate licenses and related agreements . . . concerning patent and related property rights held by the [University]." Here, with respect to the Core Strawberry Germplasm, the University, in breach, has refused to generate a royalty stream for the Breeders' assignee CBC; and, because of the University's breach, any assignment to the University of the rights to the varieties is excused, rescinded, or avoided. The University also acknowledged that, after a patent application is filed, it "shall" work with the breeder/inventor (now, Plaintiff CBC) "to determine the appropriate time and method for releasing plant materials into commercial/public use." Here, with respect to the Core Strawberry Germplasm, the patent applications are listed as having been filed on June 3, 2015, but the University refused and refuses to work with CBC to license or otherwise release the material, in violation and breach of its policy and agreement.

29. For Covered Inventions developed by the Breeders that were not deemed by the "University to be patentable" and/or for which the University did not seek "patent protection," the Breeders retained and have now assigned to CBC their full rights in the plants as well as the option to release the plant selection to the public pursuant to the University's policies incorporated into the Patent Agreements.

30. The Breeders also retained and assigned to CBC their rights to Covered Inventions
in the event the criteria set forth in the Patent Policy were met or where the “equity of the
situation clearly” indicated that the inventors’ rights should be honored. The Patent Policy
prominently included:

(a) “administering intellectual property rights for the public benefit;”
(b) recognizing the “desirability of encouraging the broad utilization of the results of
   . . . research . . . for the general public benefit;” and
(c) encouraging “the practical application of University research for the broad public
   benefit.”

Those policies will be met and equity served by the University broadly licensing the Plant Types
at Issue and providing the requested licenses to CBC.

31. CBC, as assignee of the rights of the Breeders, is entitled to receive a percentage
of the net royalties received by the University for the licensing of certain plants developed by the
Breeders, which the University has sought to patent. That promised royalty flow requires the
University to license the Core Strawberry Germplasm promptly after submitting its patent
application for these varieties in order to meet its contractual obligation. CBC, as assignee of the
Breeders, also received: (a) the rights to varieties developed by the Breeders that the University
elects not to patent; (b) the rights to varieties that are not Covered Inventions, such as the
Transition Cultivars; and (c) the rights to the varieties which the University sought to obtain
assignments of rights (i.e., the Core Strawberry Germplasm), but which the University has
relinquished because of its breach of its obligation to pay for those rights. All of the Plant Types
at Issue fall within one or more of these rights belonging to CBC. CBC also succeeds to the
Breeders’ rights consistent with the Patent Policy incorporated into the Patent Agreements.

32. The Breeders also entered into a letter agreement for a joint venture to obtain
additional research funding for the Breeding Program (the “JV Agreement”), dated March 20,
2000, for the mutual benefit of the co-venturers. The terms of the JV Agreement provided that
the University and the Breeders would provide discounted licenses to certain licensees who were
to provide research funding to fund the “strawberry breeding and commercialization program . . .
managed by Douglas Shaw and/or Kirk Larson, during their tenures . . . and thereafter...”

VERIFIED COMPLAINT
33. In exchange for that funding arrangement, the Breeders agreed to a reduction in their share of royalties, which provided for the funding of the Breeding Program in an amount exceeding $9 million. The JV Agreement reaffirmed all of the Breeders’ rights under the Patent Policy, the Patent Agreements, or otherwise in law or in equity, all of which remain in full force and effect, as assigned to Plaintiff.

**FIRST CAUSE OF ACTION BY PLAINIFF AGAINST DEFENDANT FOR BREACH OF CONTRACT**

34. CBC incorporates by reference, as though fully set forth, paragraphs 1 through 33 of this Complaint.

35. As set forth above, the Breeders are parties to Patent Agreements with the University, copies of which are attached as Exhibits 1 and 2.

36. The Breeders have at all times performed the terms of their respective Patent Agreements in the manner specified by the Patent Agreements.

37. The Breeders bargained for and assigned to CBC the right to: (a) use the plants they invented, (b) patent them under certain circumstances, (c) obtain a license for them, and (d) make them available to the public. The Breeders also bargained for and assigned to CBC a royalty stream of income from the licensing of the plants they invented and the University elected to patent in exchange for the assignment of the Breeders’ rights, which the University has represented it received nearly 30 years ago in its recorded assignment filed with the United States Patent and Trademark Office on March 1, 2016, for the Core Strawberry Germplasm patent application.

38. The University has failed and refused, and continues to refuse, to tender its performance as required by the Patent Agreements. The breaches of the Patent Agreements, include but are not limited to the following:

(a) the University has refused to recognize the Breeders’ rights to the Plant Types at Issue, and on approximately a dozen times over the past two years has refused to license the Plant Types at Issue to CBC;

(b) the University has refused to return the Breeders’ Plant Material for both the Core
Strawberry Germplasm and the Transition Cultivars;
(c) the University has refused CBC’s request to start a licensing program that would generate income for the University and CBC and would facilitate other breeding programs that would serve the University’s mission;
(d) the University has sought to exercise the right to patent the Core Strawberry Germplasm based on an assignment of those rights from the Breeders, but has refused to pay for that assignment by licensing and generating a royalty stream owed to CBC as the assignee of the Breeders; and
(e) the University has refused even to discuss with CBC releasing the Core Strawberry Germplasm into commercial/public use.

39. The University’s breaches have directly and proximately caused CBC past and continuing injury including among others: (a) the diminished opportunity to continue developing new strawberry cultivars for several seasons; (b) the loss of the royalty income that would have been generated by the licensing of the germplasm from the Breeding Program; (c) the loss of future income from the licensing of the germplasm from the Breeding Program; and (d) the fraudulent arrogation of the rights of assignment of the Breeders rights without paying for those rights, requiring the rescission of these assignments and the reversion of those assigned rights to the Breeders’ assignee CBC.

40. CBC is entitled to: (a) the licenses requested; (b) the plants necessary to practice the licenses; (c) compensatory damages for the lost opportunity to develop the Plant Types at Issue and for the lost licensing income resulting from the University’s failure to license the Plant Types at Issue; and (d) the rescission and reversion to CBC of the Breeders’ fraudulently induced assigned rights to the University.

SECOND CAUSE OF ACTION BY PLAINTIFF AGAINST DEFENDANT FOR
CONVERSION

41. CBC incorporates by reference, as though fully set forth, paragraphs 1 through 33 and paragraphs 35 through 40 of this Complaint.

42. Inventors have a property right in their inventions absent assignment or operation

VERIFIED COMPLAINT
of law as described above. CBC, as assignee of the Breeders, has a property right in all of the
Plant Types at Issue and in the Plant Material at issue here as described above.

43. The Breeders’ Plant Material is not a thing acquired, nor were the plants acquired
by the Breeders. The Plant Material was created and invented by the Breeders, and subsequently
assigned to CBC.

44. Further, CBC as the assignee of Breeders has an interest in the genotypes of the
Plant Types at Issue, because the Breeders invented them and paid for their development as part
of the joint venture with the University for strawberry breeding and commercialization under the
JV Agreement.

45. At the University’s fraudulent request, the Breeders, prior to their retirement,
temporarily transferred all of their Plant Material, including necessarily the unique genotypes of
each of the plants within that Plant Material. The Breeders relied on the University’s false
representation that it needed access to the Plant Material in connection with the Commission
Litigation, that the Plant Material would be returned, and that the University would guarantee to
protect Dr. Shaw’s commercial and research interest in the Plant Material. The University itself
recognized that the transfer was “highly unusual.”

46. Even though the Commission Litigation has been settled, the University
wrongfully continued and continues to exercise control over the Plant Material and refused and
continues to refuse requests to turn over the Breeders’ Plant Material to CBC.

47. Contrary to the University’s guarantee to protect the Breeders’, and now CBC’s,
commercial and research interest in the Plant Material and as further acts of conversion, the
University is failing to maintain the Plant Material in a healthy viable condition. In so failing, the
University is threatening the use of the Plant Material for breeding purposes and is threatening the
very survival of the genetic code of the affected plants.

48. As a direct and proximate result of the University’s acts of conversion and failure
to return the Breeders’ Plant Material, CBC has been damaged and prevented from enjoying the
benefits of its property and continuing the research and commercialization efforts in breeding
strawberries using the Plant Types at Issue.
49. CBC is entitled to damages and reposssession of the Plant Material and the rights to
the Plant Types at Issue. CBC is further entitled to compensation for the time and money
expended in pursuit of the Plant Material and rights to the Plant Types at Issue.

50. In committing the acts described above, the University acted with oppression,
fraud, malice, and in conscious disregard of the rights of CBC, and CBC is entitled to exemplary
and punitive damages.

THIRD CAUSE OF ACTION BY PLAINTIFF AGAINST DEFENDANT FOR BREACH
OF FIDUCIARY DUTY

51. CBC incorporates by reference, as though fully set forth, paragraphs 1 through 33,
paragraphs 35 through 40, and paragraphs 42 through 50 of this Complaint.

52. The JV Agreement between the Breeders and the University created a joint venture
in the Breeding Program and imposed on the University a fiduciary duty that continues to exist.
Under the JV Agreement, the Breeders and the University, directly and indirectly, together would
fund the Breeding Program and together would share the benefits of that Breeding Program, while
preserving the Breeders’ full rights. This duty required and requires the University to act with the
highest loyalty and utmost good faith towards the Breeders, and now CBC, and required and
requires the University to share, to protect, and to preserve the assets of the joint venture. The
Plant Types at Issue and the Breeders’ Plant Material were invented by the Breeders, paid for by
the Breeders, and are the product and asset of the joint venture.

53. The University breached its fiduciary duty by failing to share by license or
otherwise, to protect, and to preserve joint venture assets, specifically by denying CBC access to
the Plant Material and the Plant Types at Issue.

54. As a direct and proximate result of the University’s conduct, CBC has been
damaged and continues to be damaged because it has been denied access to the Plant Material and
the Plant Types at Issue and is unable to continue efforts to breed and commercialize new
strawberry cultivars with these plants and their unique genotypes.

55. CBC continues to be damaged by the threatened harm to the Plant Material and the
Plant Types at Issue. Each of the cultivars has a unique genotype or genetic code that cannot be
reproduced by planting seeds or recreating the crosses of the parent varieties. The code can only be preserved by cloning or asexually reproducing the plant in the breeding stock. If the plants of a particular variety are allowed to die, their genotype dies with them forever. The genotype of each of those unique plants must be propagated and preserved to prevent the loss of the genetic code by neglect, design, or natural happenstance.

56. As a result of the University’s breach of fiduciary duty, CBC is entitled to compensatory damages in an amount to be determined at trial and to a constructive trust to protect the Plant Materials and the Plant Types at Issue

57. In committing the acts described above, the University acted with oppression, fraud, malice, and in conscious disregard of the rights of CBC, and CBC is entitled to exemplary and punitive damages.

FOURTH CAUSE OF ACTION PLAINTIFF AGAINST DEFENDANT FOR BREACH OF
THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

58. CBC incorporates by reference, as though fully set forth, paragraphs 1 through 33, paragraphs 35 through 40, paragraphs 42 through 50, and paragraphs 52 through 57 of this Complaint.

59. Under California law, there is an implied covenant of good faith and fair dealing under every contract, and the Patent Agreements are governed by California law.

60. Implied by the Patent Agreements was a covenant that the University would act in good faith and deal fairly and that the University would do nothing to interfere with the rights of the Breeders to receive the benefits of the Patent Agreements and the royalties promised to the Breeders in connection with the licensing of patented strawberry cultivars.

Refusal to License Plant Types at Issue

61. The University failed and continues to fail to license the Plant Types at Issue to CBC, which in turn would prompt further licensing and the promised royalty stream to CBC. The University has done this in bad faith and in contradiction of the University’s Davis campus Department of Plant Sciences Cultivar Release Committee’s recommendation in 2013 that the Core Strawberry Germplasm be licensed on a non-exclusive basis to external researchers,
including CBC.

62. As a direct and proximate result of the University failure to license the Plant Types at Issue, CBC has been deprived of its rights to the Plant Materials, the Plant Types at Issue, and the royalties in an amount to be determined at trial, income that was promised under the Patent Agreements.

Filing Plant Patent Applications for the Core Strawberry Germplasm

63. The University filed plant patent applications for all Core Strawberry Germplasm, even though many genotypes in the Core Strawberry Germplasm will not be commercially valuable. The University did so to prompt assignments from the Breeders for their patent rights and to attempt to prevent the exercise of rights in those varieties to their rightful owners, the Breeders and now their assignee, CBC.

64. As a direct and proximate result of the University’s bad faith decision to apply for plant patents on non-commercially valuable varieties of the Core Strawberry Germplasm, CBC has been deprived of its rights in the varieties as well as the ability to use the varieties for breeding new possibly patentable cultivars.

Failure to Collect License Royalties Due

65. The University failed and continues to fail to collect license royalties and late fees owed by licensees of some or all of the 24 released cultivars invented by the Breeders and assigned to the University for licensing (the “Released Cultivars”), in violation of the implied covenant of good faith and fair dealing. The California State Auditor report identified at least $157,000 in interest charges due from three licensed nurseries for late royalty payments over a three year period. The University also continued to give certain licensees discounted royalties after the Breeders terminated the JV Agreement, without even collecting contributions from those licensees in return.

66. As a direct and proximate result of the University’s failure to collect all license royalties due, CBC has been deprived of its full royalty income.
Failure to Charge Reasonable Royalty Rates

67. The University failed and continues to fail to charge reasonable royalty rates for Released Cultivars in violation of the implied covenant of good faith and fair dealing and to CBC's detriment. Industry peers like the University of Florida and Oregon State University charge $10 to $20 per 1,000 plants, respectively, and private companies like Planasa, Plant Sciences, and Driscoll's charge up to effective rates of $300 per 1,000 plants, whereas the University only charges $8 per 1,000 plants invented by the Breeders, resulting in lost royalty income to CBC.

68. As a direct and proximate result of the University's failure to charge reasonable royalty rates, CBC has been deprived of the reasonable amount of royalty income owed.

Unreasonable Delay in Releasing Patented Cultivars

69. The University has delayed and continues to delay the licensing and release of newly released cultivars, including in the release of 18 of the Released Cultivars, to growers outside of California for two years after the release of a given cultivar to growers in California, causing the Breeders to lose two years of royalties from growers outside of California. The University also prohibits California nurseries from selling any newly released cultivars outside of the State of California, which eliminates a secondary market for California nurseries that in turn grow fewer plants for fear they will not be able to sell any excess inventory. This prohibition reduced the royalties the Breeders received from California nurseries who grow fewer plants of newly released cultivars. The right to these lost royalties has been assigned to CBC.

70. As a direct and proximate result of the University's policies delaying the licensing newly released cultivars outside of California, CBC has been deprived of significant royalty income that would have otherwise been collected from licensees both in California and outside California.

71. CBC is entitled to compensatory damages for its losses in an amount to be determined.
FIFTH CAUSE OF ACTION BY PLAINTIFF AGAINST DEFENDANT FOR COMMON LAW UNFAIR COMPETITION

72. CBC incorporates by reference, as though fully set forth, paragraphs 1 through 33, paragraphs 35 through 40, paragraphs 42 through 50, paragraphs 52 through 57, and paragraphs 59 through 71 of this Complaint.

73. The Breeders are now members of CBC and serve as employees or consultants to CBC. CBC is in the business of developing new and distinct strawberry varieties and CBC now competes with the University’s Breeding Program.

74. CBC, as the assignee, has an interest in the Plant Types at Issue as well as the Plant Material that was transferred to the University under false pretenses. The University led the Breeders to believe that the University needed the Plant Material in connection with the Commission Litigation and that the Plant Material would be returned to the Breeders. The Commission Litigation concluded more than a year ago and the University refuses to return the Plant Material to its rightful owners.

75. The University never intended to return the Plant Material to the Breeders, or their assignee CBC, as part of its efforts: (a) to prevent CBC and the Breeders from continuing to develop new strawberry cultivars; (b) to restrain trade; (c) to prevent CBC and the Breeders from continuing research and competing with the University and the Commission members in the commercialization of new strawberry varieties; and (d) to prevent CBC and the Breeders from utilizing their trade secrets.

76. CBC has also made numerous requests for a non-exclusive license to use the Plant Types at Issue, but the University inappropriately seeks to prevent licensing the Plant Types at Issue to CBC in order to unfairly prevent competition.

77. The University is attempting to coerce disclosure of trade secrets by continuing to insist that the Breeders reveal their trade secrets before the University will even discuss offering a license to CBC or return the Plant Materials needed for CBC to make use of the trade secrets. Based on their years of experience, the Breeders have information and insight into the Plant Types at Issue and the likely crossbreeds of the Plant Types at Issue that will yield patentable and

VERIFIED COMPLAINT
licensable strawberry genotypes. The Breeders' information has potential economic value in the
future licensing of the Plant Types at Issue that, through development and crossbreeding, may
become commercially useful. This information is contained in the minds of the Breeders, and the
value can only be realized by allowing CBC and the Breeders access to their Plant Material that
the University is holding hostage.

78. Furthermore, the University is conspiring with the Commission to restrain trade
and unfairly prevent CBC from continuing the research and commercialization of new strawberry
varieties using the Plant Types at Issue. For example, at a meeting held on February 26, 2014,
CBC's counsel and representatives met with members of the Commission, the president of the
Commission's board of directors, and the Commission's legal counsel. At that meeting, the
Commission representatives stated bluntly that the goal of the Commission Litigation was to deny
Dr. Shaw access to the Breeding Program germplasm and materials, because Dr. Shaw's
involvement would compete with the strawberry breeding program that the Commission and the
University desired to put into place. The University has conspired and agreed to this effort to
suppress competition and has committed various overt acts pursuant to this conspiracy, including
denying CBC a license, converting the Plant Types at Issue and Plant Material, and trying to
coerce the Breeders to work exclusively in support of the University Breeding Program.

79. On information and belief, the University is refusing to turn over the Transition
Cultivar Plant Material so that the University can pass off the Transition Cultivars as its own by
selling or licensing those cultivars to nurseries for sale to the consuming public.

80. The University has taken the actions set forth in paragraphs 74 through 79, among
others, to usurp CBC's future business in licensing new and distinct strawberry varieties. The
University's actions are unethical, oppressive, and constitute common law unfair competition.

81. As a direct and proximate result of the University's wrongful acts, CBC has been
damaged and prevented from enjoying the benefits of its property and from researching and
commercializing new strawberry varieties. CBC is entitled to damages, repossession of the Plant
Material, and a license to use the Plant Types at Issue.

82. CBC, as assignee of the Breeders, is entitled to: (a) the licenses requested by the
Breeders, (b) the plants necessary to practice the licenses, and (c) immediate return of the Plant
Material.

83. The University committed the actions set forth in paragraphs 74 through 79 in
conscious disregard for the rights of CBC, justifying an award of punitive damages.

**PRAYER FOR RELIEF**

WHEREFORE, CBC respectfully requests judgment against the University as follows:

1. That the University be immediately required to provide CBC or a nursery that can
act as an escrow agent with 5 plants of each cultivar of the Plant Types at Issue for preservation
and propagation to prevent the University from destroying or otherwise losing the unique
genotypes created by the Breeders pending the outcome of this case.

2. That the University be required to place the Plant Materials in a constructive trust.

3. That the University be required to return at least 5 plants of each cultivar of the
Plant Types at Issue to CBC.

4. That the University be restrained from continuing to refuse to license on
reasonable terms the Plant Types at Issue.

5. That the University be required to adhere to its publicly proclaimed policies to
share the Breeders’ research for the broad public benefit.

6. That the assignment of the patent rights to the Core Strawberry Germplasm be
rescinded or avoided.

7. That CBC be awarded compensatory damages in an amount to be determined.

8. That CBC be awarded their reasonable costs and attorneys’ fees.

9. That CBC be awarded punitive damages.

10. That CBC be awarded such other and further relief as the Court may deem
equitable.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial for all issues triable by jury.

**VERIFIED COMPLAINT**
Dated: May 2, 2016

Jones Day

By: Rick L. McKnight

Attorneys for Plaintiff
CALIFORNIA BERRY CULTIVARS, LLC
VERIFICATION

I, Douglas V. Shaw, am a member and employee of Plaintiff, California Berry Cultivars, LLC. I have read the Complaint and know the contents thereof. The allegations set forth in the Complaint are true and correct to the best of my own knowledge, except as to the matters which are therein stated on information and belief and those matters set forth in paragraphs 11, 20, 65, 67, 75, and 79, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 2, 2016, at DAVIS, CALIFORNIA

By:

[Signature]

Douglas V. Shaw
VERIFICATION

I, A.G. Kawamura, am the President of Plaintiff, California Berry Cultivars, LLC and am authorized to make this verification. I have read the Complaint and know the contents thereof. The allegations set forth in the Complaint are true on information and belief, except as to the matters that are set forth in paragraphs 9, 10, 12-19, 31, 73-74, and 76, which are true and correct to the best of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 2, 2016, at Irvine, CA.

By: [Signature]

A.G. Kawamura
STATE OATH OF ALLEGIANCE

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Taken and subscribed before me this

25th Day of February, 1986

Signature of Authorized Official

Administrative Assistant

Title

Yolo County

CA

State

Oath must be administered by either (1) a person having general authority by law to administer oaths—for example: Notaries Public, Civil Executive Officers (Section 1013 of Government Code), Judicial Officers, Justices of the Peace, and county officials named in Section 24500, 24507 of Government Code e.g., district attorneys, sheriffs, county clerks, members of boards of supervisors, etc., or (2) by any University Officer or employee who has been authorized in writing by the Regents to administer such oaths.

WHO MUST SIGN THE OATH: All persons (other than aliens) employed by the University, in common with all other California public employees, whether with or without compensation, must sign the Oath. (Calif. Constitution, Article XX, Section 3, Calif. Government Codes, Sections 3100-3102.)

All persons re-employed by the University after a termination of service must sign a new Oath if the date of re-employment is more than one year after the date on which the previous Oath was signed (Calif. Government Code, Section 3102).

WHEN MUST OATH BE SIGNED: The Oath must be signed BEFORE the individual enters upon the duties of employment. (Calif. Constitution, article XX, Section 3, Calif. Government Code Section 3102).

WHERE OATHS ARE FILED: The Oaths of all employees of the University shall be filed with the Campus Accounting Office.

FAILURE TO SIGN OATH: No compensation for service performed prior to his subscribing to the Oath or affirmation may be paid to a University employee, and no reimbursement for expenses incurred may be made prior to his subscribing to the Oath or affirmation. (Calif. Government Code, Section 3107).

Penalty: "Every person who, while taking and subscribing to the Oath or affirmation required by this chapter, states as true any material matter which he knows to be false, is guilty of perjury, and is punishable by imprisonment in the state prison not less than one or more than 14 years." (Calif. Government Code, Section 3108).

UNIVERSITY POLICY REGARDING PATENTS

PREAMBLE

The Regents of the University of California, in administering intellectual property rights for the public benefit, desire to encourage and assist members of the faculty, employees, and others associated with the University in the use of the patent system with respect to their discoveries and inventions in a manner that is equitable to all parties involved.

The Regents recognize the need for and desirability of encouraging the broad utilization of the results of University research not only by scholars in practical application for the general public benefit and acknowledge the importance of the patent system in bringing innovative research findings to practical application.

Within the University, innovative research findings often give rise to patentable inventions as fortuitous by-products, even though the research was conducted for the primary purpose of gaining new knowledge. Equity in such patentable inventions may involve parties other than the Inventor and The Regents. The use of University facilities or services, particular assignment of duties or conditions of employment, possible claims of a cooperating agency where research is supported from extramural funds, and other situations may give rise to a complex of interrelated equities or rights, which must be appraised and appropriately disposed by agreement between the parties.

Therefore, to encourage the practical application of University research for the broad public benefit, to appraise and determine relative rights and equities of all parties concerned, to facilitate patent applications, licensing, equitable distribution of royalties, if any, to assist in obtaining further research, to provide for the use of invention-related income to the further support of research and education, and to provide a uniform procedure in patent matters where The Regents have a right or equity, the following policy is adopted.

STATEMENT OF POLICY

1. All matters relating to patents in which the University of California is in any way concerned shall be administered by an agency known as the University of California Board of Patents.

2. a. The Board of Patents shall be appointed by The Regents. It shall have full power of organization, except as herein provided, subject to the provision that it shall meet at least once a year. The members shall serve without extra compensation at the pleasure of The Regents. The normal term of appointment shall be for three years.

b. The Board of Patents shall consist of eleven persons selected from among the faculties and the administration of the University, and of such other groups as The Regents may determine, but of this number the Committee on Committees of the Academic Senate shall select from the Senates at large as one person to serve as a member for the normal term. The Chairman of the Board of Patents and Patent

(POLICY IS CONTINUED... Please sign Patent Agreement on reverse side)

ATTACH TO PERSONNEL ACTION FORM (UPAY 586)

REEL: 0378866 FRAME: 0420
b. To authorize applications for patent and to retain patent counsel, in cooperation with the General Council, for matters pertaining to the filing of patent applications, the prosecution thereof, and the litigation that may arise therefrom.

c. To determine the patent and related rights of equities held by The Regents in any invention, and to negotiate agreements with cooperating organizations, if any, with respect to such rights or equities.

d. In the absence of overriding obligations to outside sponsors of research, to retain patent rights to inventions before they are presented to the General Council, for purposes of obtaining grants, contracts, or other agreements to be funded in whole or in part by such cooperating organizations, and to negotiate Institutional Patent Agreements or other agreements with Federal agencies regarding the disposition of patent rights.

e. To recommend to the President appropriate exemptions from the agreement to assign inventions and patents to The Regents or the President shall direct.

f. To make such reports and recommendations to The Regents as The Regents or the President shall direct.

g. An agreement to assign inventions and patents to The Regents, except those resulting from permissible consulting activities without use of University facilities, shall not be valid for employees, for persons not employed by the University but who use University research facilities, and for those who receive grant or contract funds through the University. Exemptions from such agreements to assign may be authorized in those circumstances where the mission of the University is better served by such action, provided that overriding obligations to other parties are real and such exemptions are not inconsistent with other University policies.

h. To negotiate licenses and related agreements with other parties concerning patented and related property rights held by The Regents.

i. To arrange for and direct the collection of royalties and fees and the distribution thereof to the entities entitled thereto.

j. To assist University officials in negotiating agreements with cooperating organizations concerning prospective rights to patentable inventions or discoveries made as a result of research carried out under grants, contracts, or other agreements to be funded in whole or in part by such cooperating organizations, and to negotiate Institutional Patent Agreements or other agreements with Federal agencies regarding the disposition of patent rights.

k. To recommend to the President appropriate exemptions from the agreement to assign inventions and patents to The Regents or as required by paragraph 4 of this policy.

l. To make such reports and recommendations to The Regents as The Regents or the President shall direct.

m. To negotiate licenses and related agreements with other parties concerning patented and related property rights held by The Regents.

n. To arrange for and direct the collection of royalties and fees and the distribution thereof to the entities entitled thereto.

o. To assist University officials in negotiating agreements with cooperating organizations concerning prospective rights to patentable inventions or discoveries made as a result of research carried out under grants, contracts, or other agreements to be funded in whole or in part by such cooperating organizations, and to negotiate Institutional Patent Agreements or other agreements with Federal agencies regarding the disposition of patent rights.

p. To recommend to the President appropriate exemptions from the agreement to assign inventions and patents to The Regents or as required by paragraph 4 of this policy.

q. To make such reports and recommendations to The Regents as The Regents or the President shall direct.

r. To negotiate licenses and related agreements with other parties concerning patented and related property rights held by The Regents.

s. To arrange for and direct the collection of royalties and fees and the distribution thereof to the entities entitled thereto.

1. To assist University officials in negotiating agreements with cooperating organizations concerning prospective rights to patentable inventions or discoveries made as a result of research carried out under grants, contracts, or other agreements to be funded in whole or in part by such cooperating organizations, and to negotiate Institutional Patent Agreements or other agreements with Federal agencies regarding the disposition of patent rights.

2. To recommend to the President appropriate exemptions from the agreement to assign inventions and patents to The Regents or as required by paragraph 4 of this policy.

3. To make such reports and recommendations to The Regents as The Regents or the President shall direct.

4. To negotiate licenses and related agreements with other parties concerning patented and related property rights held by The Regents.

5. To arrange for and direct the collection of royalties and fees and the distribution thereof to the entities entitled thereto.

6. To assist University officials in negotiating agreements with cooperating organizations concerning prospective rights to patentable inventions or discoveries made as a result of research carried out under grants, contracts, or other agreements to be funded in whole or in part by such cooperating organizations, and to negotiate Institutional Patent Agreements or other agreements with Federal agencies regarding the disposition of patent rights.

7. To recommend to the President appropriate exemptions from the agreement to assign inventions and patents to The Regents or as required by paragraph 4 of this policy.

8. To make such reports and recommendations to The Regents as The Regents or the President shall direct.
UNIVERSITY OF CALIFORNIA
STATE OATH OF ALLEGIANCE
and
PATENT AGREEMENT

UNIV 555 (11/7/90)

EMPLOYEE'S NAME (Last, first, middle initial)
Larson Kirk

DATE PREPARED
6/7 / 91

DEPARTMENT
Entomology

EMPLOYMENT DATE
6/7 / 91

STATE OATH OF ALLEGIANCE

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Taken and subscribed before me this 16th day of July, 1991

Signature of Officer or Employee (DO NOT SIGN UNLESS IN THE PRESENCE OF PROPER WITNESS)

NOTE: No fee may be charged for administering this oath.

Oath must be administered by either (1) a person having general authority by law to administer oaths—for example: Notary Public, Civil Executive Officers (Section 1001 of Government Code), Judicial Officers, Justices of the Peace, and county officials named in sections 64900, 24057.1, or (2) by any University Official or employee who has been authorized in writing by The Regents to administer such oaths.

WHO MUST SIGN THE OATH: All persons (other than aliens) employed by the University, in common with all other California public employees, whether with or without compensation, must sign the Oath. (Calif. Constitution, Article XX, Section 2; Calif. Government Code, Sections 3100-3102.)

All persons re-employed by the University after a termination of service must sign a new Oath if the date of re-employment is more than one year after the date on which the previous Oath was signed (Calif. Government Code, Section 3102).

WHEN MUST OATH BE SIGNED: The Oath must be signed BEFORE the individual enters upon the duties of employment. (Calif. Constitution, Article XX, Section 3: Calif. Government Code Section 3102.)

WHERE OATHS ARE FILED: The Oaths of all employees of the University shall be filed with the Campus Accounting Office.

FAIL Safe TO SIGN OATH: No compensation for service performed prior to his subscribing to the Oath or affirmation may be paid to a University employee. And no reimbursement for expenses incurred may be made prior to his subscribing to the Oath or affirmation. (Calif. Government Code, section 3107.)

PENALTIES: "Every person who, while taking and subscribing to the Oath or affirmation required by this chapter, states as true any material which he knows to be false, is guilty of perjury, and is punishable by imprisonment in the state prison not less than one or more than 14 years." (Calif. Government Code, Section 3108.)

UNIVERSITY OF CALIFORNIA PATENT POLICY

I. PREAMBLE

It is the intent of the President of the University of California, in administering intellectual property rights for the public benefit, to encourage and assist members of the University faculty and others associated with the University in the use of the patent system with respect to their discoveries and Inventions in a manner that is equitable to all parties involved.

The University recognizes the need and desirability of encouraging the broad utilization of the results of University research, not only by scholars but also in practical application for the general public benefit, and acknowledges the importance of the patent system in bringing innovative research findings to practical application.

Within the University, innovative research findings often give rise to patentable inventions as fortuitous by-products, even though the research was conducted for the primary purpose of gaining new knowledge. To encourage the practical application of University research for the broad public benefit, to preserve and determine relative rights and equities of all the parties concerned, to facilitate patent applications, licensing, equitable distribution arrangements, it falls to assist in obtaining funds for research, to provide for the use of inventions resulting from the further support of research and education, and to provide a uniform standard of patent matters when the University has a right-or-equity, the following policies and procedures for the California Patent Policy is adopted.

II. STATEMENT OF POLICY

A. An agreement to assign Inventions and patents to the University, except those resulting from permissible consulting activities without use of University facilities, shall be mandatory for all employees, for persons not employed by the University but who use University research facilities, and for those who receive gift, grant, or contract funds through the University. Exemptions from such agreements to assign may be authorized in those circumstances when the mission of the University is better served by such action, provided that overriding obligations to other parties are met and such exemptions are not inconsistent with other University policies.

B. Those individuals who have no agreed to assign Inventions and patents shall promptly report and fully disclose the conception and reduction to practice of potentially patentable Inventions to the Director of the Patent, Trademark, and Copyright Office. They shall execute such declarations, assignments, or other documents as may be necessary in the course of invention evaluation, patent prosecution, or protection of patent or analogous property rights, to assure that title in such Inventions shall be held by the University or by such other parties designated by the University as may be appropriate under the circumstances. Such circumstances would include, but not be limited to, those situations where there are.

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ATTACH TO PERSONNEL ACTION FORM (UPAY 550)

PATENT
REEL: 037866 FRAME: 0422

EO420

71445:180
UNIVERSITY PATENT POLICY, continued...

- net royalties and fees per invention received by the University. Net royalties are defined as gross royalties and fees, less 15% thereof for administrative costs, and less the costs of patenting, protecting, and preserving patent rights, maintaining patents, the licensing of patent and related property rights, and such other costs, taxes or reimbursements as may be necessary or required by law.

When there are two or more inventors, each inventor shall share equally in the inventor's share of royalties, unless all inventors previously have agreed in writing to a different distribution of such share.

Distribution of the inventors' shares shall be made annually in February from the amount received during the immediately preceding calendar year. In the event of any litigation, actual or imminent, or any other action to protect patent rights, the University may withhold distribution of imposed royalties until resolution of the matter.

D. In the disposition of any net income accruing to the University from patents, first consideration shall be given to the support of research.

III. PATENT RESPONSIBILITIES AND ADMINISTRATION

A. Pursuant to Standing Order 100.4(a), the President has responsibility for all matters relating to patents in which the University of California is in any way concerned.

B. The President is advised on such matters by the Intellectual Property Advisory Council (IPAC), which is chaired by the Senior Vice President—Academic Affairs. The membership of IPAC includes representatives from campuses, Agriculture and Natural Resources, the Department of Energy Laboratories, and the Director of the Patent, Trademark, and Copyright Office. IPAC is responsible for:

1. reviewing and proposing University policy on intellectual property matters including patents, copyrights, trademarks, and tangible research products;
2. reviewing proposed exceptions to established policies; and
3. advising the President on related matters as requested.

C. The Senior Vice President—Administration is responsible for implementation of this Policy, including the following:

1. Evaluating inventions and discoveries for patentability, as well as the scientific, merit and practical application, and requesting the filing and prosecution of patent applications.

2. Evaluating the patent or analogous property rights or equities held by the University in an invention, and negotiating agreements with cooperating organizations, if any, with respect to such rights or equities.

3. Negotiating licenses and license option agreements with other parties concerning patent and/or analogous property rights held by the University.

4. Directing and arranging for the collection and appropriate distribution of royalties and fees.

5. Assisting University officers in negotiating agreements with cooperating organizations concerning prospective rights in patentable inventions or discoveries made as a result of research carried out under grants, contracts, or other agreements to be funded in whole or in part by such cooperating organizations, and negotiating with Federal agencies regarding the disposition of patent rights.

6. Recommending to the President appropriate action on exemptions from the agreement to assign inventions and patents to the University as required by Section II, A, above.

Revised April 10, 1990

PATENT AGREEMENT

(please read Patent Policy on reverse side and above)

This agreement is made by me with the Regents of the University of California, a corporation, hereinafter called "University," in part consideration of my employment, and of wages and/or salary to be paid to me during any period of my employment, by University, and/or my utilization of University research facilities and/or my receipt of gift, grant, or contract research funds through the University.

By execution of this agreement I understand that I am not waiving any rights to a percentage of royalty payments received by University, as set forth in University Patent Policy, hereinafter called "Policy."

I agree that every possibly patentable device, process, plant, or product, hereinafter referred to as "Invention," which I conceive or develop while employed by University, or during the course of my utilization of any University research facilities or any connection with my use of gift, grant, or contract research funds received through the University, shall be examined by University to determine rights and equities therein in accordance with the Policy, and I shall promptly furnish University with complete information with respect to each.

In the event any such invention shall be deemed by University to be patentable and University desires, pursuant to determination by University as to its rights and equities therein, to seek patent protection thereon, I shall execute any documents and do all things necessary, at University's expense, to assign to University all rights, title and interest therein and to assist University in securing patent protection thereon. The scope of this provision is limited by California Labor Code section 4599.1, to which reference is given below; the event I protect the University's determination regarding any rights or interest in an Invention. I agree: (a) to proceed with any University requested assignment or assistance; (b) to give University notice of any patent without the execution date of any of the above-described documents or assignment and (c) to reimburse University for all expenses and costs incurred in its patent application attempts, if any, except for, as is subsequently satisfied or agreed to.

I shall do all things necessary to enable University to perform the obligations to grant or碍 of funds for research or contracting agencies as said obligations have been undertaken by University.

University may relinquish to me all or a part of its right to any such invention, it, its judgment, the criteria set forth in the Policy have been met.

I agree to bind and to comply with the terms of this agreement and all sub-agreements entered into during the course of my utilization of any University research facilities or any gift, grant, or contract research funds received through the University.

INw N O T I C E

This agreement does not apply to an Invention which qualifies under the provisions of Labor Code section 4599 of the State of California which provides that if any other provisions in any employment agreement which states that an employee shall assign, or offer to assign, any of his or her rights or obligations relating to inventions or inventions to his or her employer shall not apply to an Invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of the Invention to the employer's business, or (2) Result from any work performed by the employee for the employer. (b) By the employee for the employer to assign an invention in writing otherwise excused from being required to be assigned under subdivision (a), the provision to or the sale of property of this state and is unenforceable.

In any suit or action arising under this law the burden of proof shall be on the individual claiming the benefits of this provision.

Employee/Guest Name: Kirk Larson
Witness Signature: [Signature]
Date: 7/1/91

Employee/Guest Signature: [Signature]
(Please complete with withholding certificate and State Oath, etc.)

PAY: ACCOUNTING-5 yrs. after expiration, except to cases of disability, retirement or disciplinary action, in which cases retain until age 70.

Other Copies: 0-4 years after separation.

ATTACH TO PERSONNEL ACTION FORM (UPAY 560)

PATENT

REEL: 037866 FRAME: 0423

RECORDED: 03/01/2016

Form UR 559 (R790)