

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Vince Chhabria Judge

6 CALIFORNIA BERRY CULTIVARS, )  
7 LLC, )  
8 Plaintiffs, )  
9 VS. )  
10 THE REGENTS OF THE UNIVERSITY )  
11 OF CALIFORNIA, )  
12 Defendant. )  
13 THE REGENTS OF THE UNIVERSITY )  
14 OF CALIFORNIA, )  
15 Cross-Complainant, )  
16 VS. )  
17 CALIFORNIA BERRY CULTIVARS, )  
18 DOUGLAS SHAW, AND KIRK LARSON, )  
19 Cross-Defendants. )

NO. C 16-02477 VC

San Francisco, California  
Wednesday, May 24, 2017

TRANSCRIPT OF PROCEEDINGS

Reported By: Lydia Zinn, CSR No. 9223, FCRR, Official Reporter  
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1 Wednesday - May 24, 2017

12:47 p.m.

2 P R O C E E D I N G S

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4 (Proceedings were heard outside the presence of the jury:)  
5 THE COURT: Okay. I've been told that the jury has a  
6 verdict. Do you want to go ahead and bring in the jury?  
7 THE CLERK: Sure.  
8 (Proceedings were heard in the presence of the jury:)  
9 THE CLERK: Please be seated.  
10 THE COURT: Okay. Hello. I understand the jury has  
11 a verdict.  
12 Ms. Hallowell, are you the foreperson?  
13 JUROR HALOWELL: Mm-hm.  
14 THE COURT: Is it correct that you have a verdict?  
15 JUROR HALOWELL: We do.  
16 THE COURT: Okay. I'll have Kristen get it from you,  
17 and she'll hand it up to me.  
18 (Whereupon a document was tendered to the Court.)  
19 THE COURT: Okay. I'll read the verdict.  
20 Question 1. Did UC prove by a preponderance of the  
21 evidence that CBC, Shaw, and/or Larson engaged in conversion,  
22 by interfering with UC's property interests in the Core  
23 Strawberry Germplasm, other unreleased UC varieties, and/or  
24 books and records relating to the Strawberry Breeding Program?  
25 The answer as to CBC, Douglas Shaw, and Kirk Larson is all

1 "Yes," and the property identified for all three defendants  
2 is all three items of property.

3 Question 2. Did UC prove by a preponderance of the  
4 evidence that either Shaw or Larson or both breached the duty  
5 of loyalty owed by employees to their employers?

6 Answer: Yes, as to both Shaw and Larson.

7 Number 3. Did UC prove by a preponderance of the evidence  
8 that Shaw or Larson breached the fiduciary duty owed to UC, by  
9 committing acts contrary to the interests of UC?

10 Answer: Yes, as to both Shaw and Larson.

11 Did UC prove by a preponderance of the evidence that CBC  
12 intentionally interfered with the Patent Agreements between UC  
13 and Shaw and/or Larson?

14 Answer: Yes.

15 5. Did UC prove by a preponderance of the evidence that  
16 CBC, Shaw, and/or Larson intentionally interfered with a  
17 contract between UC, and Lassen Canyon or EuroSemillas?

18 Answer: No, as to all defendants, and as to both  
19 contracts.

20 6. Did UC prove by a preponderance of the evidence that  
21 CBC, Shaw, and/or Larson intentionally interfered with  
22 prospective economic relationships with Lassen Canyon or  
23 EuroSemillas?

24 Answer: No, as to all three defendants, and as to both  
25 contracts.

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1 reflects the verdict of the jury.

2 Mr. Ramirez, Juror Number 1, does that properly reflect  
3 the verdict of the jury?

4 **JUROR RAMIREZ:** Yes.

5 **THE COURT:** And Ms. Halowell, Number 2?

6 **JUROR HALOWELL:** Yes.

7 **THE COURT:** Mr. Hecker, Number 3?

8 **JUROR HECKER:** Yes.

9 **THE COURT:** Ms. Manuel, Number 4?

10 **JUROR MANUEL:** Yes.

11 **THE COURT:** Mr. Russo, Number 5?

12 **JUROR RUSSO:** Yes.

13 **THE COURT:** Ms. Turner, Number 6?

14 **JUROR TURNER:** Yes.

15 **THE COURT:** Mr. -- I'm so sorry -- Bobst?

16 **JUROR BOBST:** Yeah. Yes.

17 **THE COURT:** And it does reflect your verdict?

18 **JUROR BOBST:** Yes.

19 **THE COURT:** And Mr. Lai, Number 8?

20 **JUROR LAI:** Yes.

21 **THE COURT:** Thank you very much.

22 Ladies and gentlemen of the jury, thank you for your  
23 service. It was very obvious throughout this trial that you  
24 were extraordinarily attentive and focused. Thank you for  
25 always being prompt. We very much appreciate your service.

1 7A. Did UC prove by a preponderance of the evidence that  
2 CBC, Shaw, and/or Larson directly infringed or induced  
3 EuroSemillas or its affiliate, International Semillas,  
4 Javier Cano, or David Garcia Sinova to infringe UC's Plant  
5 Patents, through importation and/or use in the U.S. of seeds?

6 Answer is "Yes" as to all patents, and all defendants.

7 Question 7B. Did UC prove by a preponderance of the  
8 evidence that CBC, Shaw, and/or Larson infringed any UC patents  
9 willfully, by importing or using the seeds of UC-patented  
10 plants?

11 Answer: Yes, as to all three defendants.

12 8. Did UC prove by a preponderance of the evidence that  
13 CBC, Shaw, and/or Larson infringed any UC patents willfully by  
14 using UC-patented plants for benchmarking?

15 Answer: No, as to all three defendants.

16 9. Did CBC prove by a preponderance of the evidence that  
17 UC breached the implied covenant of good faith and fare dealing  
18 with respect to UC's determination that the Core Strawberry  
19 Germplasm are patentable, and UC's request for assignment?

20 Answer: No.

21 And the verdict is signed by the foreperson.

22 Would anybody like the jury polled?

23 **MR. LANIER:** Yes, Your Honor.

24 **THE COURT:** Okay. This process of polling the jury  
25 is just asking each of you if the verdict that I read properly

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1 You are now released. And what that means is that those  
2 instructions that I was giving you over and over again no  
3 longer apply. You are free to talk with anybody you would like  
4 to about the case. You do not have to. If somebody asks you  
5 questions about the case, and you don't wish to talk about the  
6 case or your thought process, you certainly do not have to.

7 You may also want to remember -- I mean, in case members  
8 of the media attempt to contact you about the case, there's  
9 always a concern about being misquoted, so think about that  
10 before speaking with the media; but you're perfectly entitled  
11 to do so if you wish.

12 And you can also now do whatever outside research you want  
13 to do, and read those articles about the audit of the UC  
14 President's Office, if you want, or whatever. So you're free  
15 of those restrictions now.

16 What I'd like to do after trials is I like -- I have a few  
17 words that I need to have with the parties while you go back to  
18 the jury room. Kristen will take care of getting you checked  
19 out, as it were; but what I like to do, if you're willing, is  
20 to invite you back to my office to talk to you about the  
21 process, answer any questions that you may have, and, you know,  
22 find out from you if there's anything we can do to make the  
23 experience better for you.

24 And then after that, if the lawyers are interested -- and  
25 I'm guessing they would be -- I let the lawyers hang out here

1 in the courtroom. And after we spend our time talking in the  
 2 office, you're free to go, if you want. You're free to go  
 3 before we go back to my office, if you want; but if you come  
 4 visit with us in the office, and if you're willing, you could  
 5 come back out to the courtroom and speak with the lawyers.

6 And my rule about that is that the clients are not allowed  
 7 to be here. It's only the lawyers. And so that applies to  
 8 you, as well, Dean Delany.

9 So the purpose is really to -- if you're interested -- to  
 10 give the lawyers a chance to seek feedback from you about  
 11 how -- you know, what worked for them and what didn't work; and  
 12 what you liked about their presentations; what you didn't.  
 13 It's not something you're required to do, but I know the  
 14 lawyers would appreciate it if you'd like to do it. And my  
 15 clerks usually sit in on that discussion, as well, both because  
 16 it's a good learning experience for them, and to make sure the  
 17 lawyers aren't conducting themselves inappropriately with the  
 18 jurors.

19 So with that, thank you very much. I hope to see you in a  
 20 few minutes. And you're dismissed. Thank you.

21 (Proceedings were heard outside the presence of the jury:)

22 **THE COURT:** Okay. Now, I have something to say.

23 I've never done this after a jury verdict before, but I want to  
 24 say that although the jury came in -- although the verdict came  
 25 in for the University, I have sat here. And I've now been

1 I will be the one who needs decide what the appropriate remedy  
 2 is, and how the strawberry plants are handled going forward.  
 3 And during that phase we are going to spend some more time  
 4 discussing the University's conduct in this case, but in the  
 5 meantime let me say this.

6 Both sides profess to care a great deal about  
 7 strawberries. And both sides profess to care a great deal  
 8 about California's Strawberry Breeding Program. Frankly, I'm  
 9 not sure whether that's true or not, after hearing the evidence  
 10 in this case; but I will tell you that if you really care about  
 11 the strawberries, and if you really care about California's  
 12 Strawberry Breeding Program, you would figure out a way -- and  
 13 you would have by now figured out a way -- to avoid subjecting  
 14 them to this custody battle; and you'd figure out a way that's  
 15 acceptable to both sides for how to move forward with the  
 16 program, rather than leaving it to a federal Judge, who is much  
 17 less qualified to make that decision.

18 So I urge all of you to think about what happened in this  
 19 trial, and think about what I've said, and see if you can  
 20 figure out a way forward with the program that works for  
 21 everybody.

22 With that, I think I will allow -- we had discussed  
 23 discussing how to proceed with the equitable-relief phase. My  
 24 suggestion perhaps is that we give everybody a chance to absorb  
 25 what happened at trial, and we have maybe a phone conference

1 through summary judgment. And I've listened to the evidence in  
 2 this case. And I can tell you that both sides are to blame for  
 3 this dispute.

4 Clearly, in my view, the defendants conducted themselves  
 5 inappropriately -- and the jury's verdict reflects that they  
 6 conducted themselves inappropriately -- but I believe that the  
 7 University conducted itself inappropriately, as well.

8 I'm not talking now about litigation conduct, although I  
 9 think there are some criticisms that could be leveled at both  
 10 sides about the way they conducted themselves in the  
 11 litigation.

12 I'm talking about the conduct that gave rise to the  
 13 dispute.

14 It's obvious from the evidence that we heard at trial that  
 15 the University did not know what was going on with the  
 16 Strawberry Breeding Program, and did not have a good  
 17 understanding of the scope of its own rights with respect to  
 18 the strawberry plants, and did not communicate well with  
 19 professors or with the Department at UC Davis about its  
 20 intentions with respect to the Strawberry Breeding Program.  
 21 We're here now with a trial in federal court about UC's  
 22 strawberry program, almost as much because of the University's  
 23 bad conduct as the defendants' bad conduct.

24 And, of course, we have another phase coming up in this  
 25 case. And that's the injunctive-relief phase. In that phase,

1 about it tomorrow, let's say, or something like that. I'll  
 2 have Kristen schedule that with you. I think tomorrow  
 3 afternoon would probably be a good time for me. If not that,  
 4 perhaps Friday morning, but probably -- oh, I have a pretrial  
 5 conference Friday morning. So I think probably tomorrow,  
 6 Thursday afternoon. I'll have Kristen reach out to schedule  
 7 that with you. Thank you.

8 (At 1:01 p.m. the proceedings were adjourned.)

9 I certify that the foregoing is a correct transcript from the  
 10 record of proceedings in the above-entitled matter.

11  
 12 *Lydia Zinn*

13 Signature of Court Reporter/Transcriber May 24, 2017  
 14 Lydia Zinn Date