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14 Her Majesty the Queen in Right of Canada as
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16 Agri-Food.

17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF WASHINGTON**

19 HER MAJESTY THE QUEEN IN)
20 RIGHT OF CANADA AS)
21 REPRESENTED BY THE MINISTER)
22 OF AGRICULTURE AND AGRI-FOOD,)
23 a Canadian governmental authority,)
24 Plaintiff,)

25 vs.)

26 VAN WELL NURSERY, INC., a)
Washington)
Corporation, MONSON FRUIT)
COMPANY, INC., a Washington)
Corporation, GORDON GOODWIN, an)
individual, and SALLY GOODWIN, an)
individual.)

Defendants)

Case No. CaseNumber

**COMPLAINT FOR: (1) PLANT
PATENT INFRINGEMENT; (2)
CORRECTION OF INVENTORSHIP;
(3) DECLARATION OF
OWNERSHIP; (4) UNFAIR
COMPETITION AND FALSE
DESIGNATION OF ORIGIN UNDER
THE LANHAM ACT; (5) FALSE
ADVERTISING UNDER THE
LANHAM ACT; (6) CONVERSION;
(7) TORTIOUS INTERFERENCE
WITH BUSINESS RELATIONS; AND
(8) UNFAIR COMPETITION.**

DEMAND FOR JURY TRIAL

1 **COMPLAINT**

2 1. Plaintiff Her Majesty the Queen in Right of Canada as represented by the
3 Minister of Agriculture and Agri-Food (“Plaintiff” or “AAFC”), brings this Complaint
4 against Defendants Van Well Nursery, Inc., Monson Fruit Company and Gordon and
5 Sally Goodwin (collectively “Defendants”), for injunctive relief and monetary damages
6 as well as such other relief as specified herein, as follows:

7 **INTRODUCTION**

8 2. This case relates to the protection and enforcement of intellectual property
9 rights in a Canadian bred sweet cherry called Staccato®. Pursuant to a Canadian
10 government funded tree fruit breeding program, Canadian breeder, W. David Lane bred
11 a new sweet cherry tree. One of the most distinguishing characteristics of the new
12 variety was its late maturity. This late fruit maturity extends the cherry harvest season
13 and gives a distinct financial advantage to growers. Agriculture and Agri-Food Canada
14 (“AAFC”) patented the new variety and called it Staccato®. Knowing that Staccato®
15 is an AAFC variety, knowing that it is a patented variety, and knowing that is known to
16 consumers as Staccato®, Defendants Van Well, Monson and Goodwin have and are
17 asexually propagating, possessing, growing, and selling trees and/or fruit they call
18 “Glory,” which is actually AAFC’s Staccato®. AAFC brings this lawsuit to stop this
19 flagrant and willful infringement of AAFC’s Staccato® patent and false, misleading,
20 deceptive and unfair business practices.

21 3. Defendant Van Well came into possession of the variety, when under the
22 protection of a testing agreement, Plaintiff AAFC provided Defendant Van Well with
23 Staccato® for testing and evaluation. The agreement expressly prohibited Van Well
24 from distributing or selling Staccato®. Many years later, Van Well entered into an
25 agreement with AAFC’s commercialization licensee, Summerland Varieties
26 Corporation (“SVC”), then known as PICO, to propagate, market and sell a different

1 AAFC bred cherry variety, Sonata. Pursuant to Van Well's agreement with PICO, Van
2 Well, obtained, planted, and propagated AAFC's Sonata. Sometime after Defendant
3 Van Well received Sonata from PICO, Defendant Goodwin purchased from Defendant
4 Van Well, AAFC's Sonata trees.

5 4. However, on information and belief, when Van Well delivered Sonata
6 trees to Goodwin, Van Well also, without permission from AAFC, delivered AAFC's
7 Staccato® to Goodwin. The Sonata and Staccato® trees were both planted in
8 Goodwin's orchard. Defendant Goodwin later rightfully observed that one of his
9 Sonata trees was different from the others. It was different because the tree he observed
10 was not Sonata but was AAFC's Staccato®.

11 5. When Goodwin noticed that one of the trees was different he filed for a
12 U.S. patent, entitled "Sweet Cherry Tree Named 'Goodwin,'" on the allegedly different
13 tree he observed in his orchard and commercially called it "Glory."

14 6. Goodwin was granted a U.S. plant patent for Glory on May 1, 2012 which
15 he subsequently assigned to Defendant Van Well. However, the variety described and
16 claimed in the "Glory" patent was actually Staccato®. Because the Glory patent claims
17 the Staccato® variety, AAFC breeder W. David Lane is the proper inventor of the
18 variety and AAFC the owner of the "Glory" patent.

19 7. Around 2012, AAFC and SVC learned that Goodwin had an allegedly new
20 variety he called "Glory" in his orchard, had filed for patent protection and that
21 Defendant Van Well was the owner of the patent. In early 2014, after a number of
22 genetic tests were conducted, SVC demanded Van Well stop marketing and selling
23 "Glory" since test results showed that "Glory" was actually AAFC's Staccato®. In
24 2014, SVC and Defendant Van Well settled their dispute, whereby Defendant Van Well
25 agreed not to sell Glory, to sell to SVC whatever Glory trees Van Well had in its
26 possession, and destroy the Glory trees. And, in 2015 Van Well further confirmed to

1 SVC that it had terminated its agreement with Defendant Goodwin relating to “Glory”.
2 Thus, in 2015, AAFC understood and relied upon Van Well’s representations that Van
3 Well was no longer going to grow, asexually propagate, distribute, market or sell Glory
4 trees, that Van Well no longer possessed Glory and that all of Van Well’s business
5 activities relating to Glory had ceased.

6 8. However, in approximately October of 2017, SVC learned Van Well
7 reneged on its agreement with SVC by resuming its propagation of Glory trees for sale
8 of the trees in 2018 and 2019. Accordingly, in February of 2018, SVC repeatedly
9 demanded that Van Well not propagate or sell any Glory trees. And, on March 26,
10 2018, AAFC formally notified Defendant Van Well that it did not have permission
11 from AAFC to propagate or sell Glory and demanded Van Well not to do so.

12 9. In approximately October of 2017, SVC also learned that the Glory trees
13 Van Well planted in 2017 were intended to be shipped and sold to Defendant Monson
14 Fruit Company, a Washington State grower. It was later confirmed by Van Well in
15 March of 2018 that the trees were ready to be shipped to Monson. Thus, beginning in
16 early April of 2018, SVC contacted Defendant Monson regarding Glory and warned
17 Defendant Monson not to take delivery of any Glory trees. But, on May 31, 2018, after
18 SVC followed-up with Monson regarding the Glory trees, Defendant Monson told SVC
19 that the Glory trees had already been planted. On information and belief, Defendant
20 Goodwin also provided Glory budwood to Defendant Monson. And, on information
21 and belief, Defendant Monson has also used the budwood obtained from Goodwin to
22 propagate hundreds of acres of Glory trees.

23 10. Despite unambiguous demands from AAFC and SVC in 2018 to Van Well
24 not to propagate and sell Glory trees and for Monson not to accept the trees, on
25 information and belief, Defendant Van Well has sold thousands of Glory trees to
26 Defendant Monson so that Defendant Monson could plant the trees and sell their fruit.

1 Despite their knowledge that propagating, making, using, offering for sale, and selling
2 Glory, *i.e.*, the patented Staccato® trees and their fruit, are unlicensed activities that
3 infringe the '551 Staccato Patent, Defendant Van Well and Monson refused to refrain
4 from conducting these activities, and misled consumers.

5 11. On information and belief, each Defendant has grown and continues to
6 grow, has offered for sale and continues to offer for sale, and has sold or continues to
7 sell Glory trees or their fruit, which is the patented Staccato®, and will continue to do
8 so unless enjoined by this court.

9 **THE PARTIES**

10 12. Plaintiff Her Majesty the Queen in Right of Canada as represented by the
11 Minister of Agriculture and Agri-Food (“AAFC”) is a governmental authority
12 recognized under the federal laws of Canada. AAFC’s principal place of business is
13 located at 1341 Baseline Road, Ottawa, Ontario, Canada. The AAFC tree fruit
14 breeding program was established in 1924 to provide new varieties for the tree fruit
15 industry of British Columbia, Canada, and the world. Work at AAFC continues to
16 develop fruit varieties with specific traits and qualities. This breeding program at
17 AAFC’s Summerland Research and Development Centre, has produced many new tree
18 fruit varieties over the years including, the sweet cherry variety Staccato®. There are
19 three broad objectives of the cherry breeding program: (1) to diversify the product to
20 allow growers to take advantage of niche markets; (2) to improve environmental
21 adaptation to major fruit growing areas, for consistent production of high quality fruit;
22 and (3) to reduce the cost of production.

23 13. On information and belief, Defendant Van Well Nursery Inc. (“Van
24 Well”), is a Washington state corporation, having a principal place of business at 2821
25 Grant Road, East Wenatchee, Washington. Van Well is engaged in the business of
26 growing and selling fruit trees including, sweet cherry trees.

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