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10 THE CALIFORNIA TABLE GRAPE COMMISSION

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12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 THE CALIFORNIA TABLE GRAPE) Case No.
COMMISSION,)
15 Plaintiff,) **COMPLAINT FOR DAMAGES AND**
16) **INJUNCTIVE RELIEF**
v.)
17)
18 RB SANDRINI, INC., RB SANDRINI)
FARMS, L.P. d/b/a/ RB SANDRINI FARMS,)
and RICHARD B. SANDRINI,)
19 Defendants.)
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22 **COMPLAINT**

23 1. The California Table Grape Commission, for its complaint against defendants, RB
24 Sandrini, Inc., RB Sandrini Farms, L.P. d/b/a/ RB Sandrini Farms, and Richard B. Sandrini, alleges
25 as follows:

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THE PARTIES

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2 2. The California Table Grape Commission (“Commission”) is a government
3 corporation of the State of California, established by the 1967 Ketchum Act. Cal. Food & Agric.
4 Code §§ 65550-65551. The Commission’s principal place of business is at 392 W. Fallbrook, Suite
5 101, Fresno, California 93711. The Commission’s purpose is to expand and maintain the market for
6 California table grapes, both domestically and internationally, for the benefit of the State generally
7 as well as the State’s over 500 California table grape growers. The Commission’s work is funded by
8 assessments levied on each shipment of California table grapes and paid by the State’s table grape
9 growers. One of the ways the Commission has worked to expand and maintain demand for
10 California table grapes is by working with the United States Department of Agriculture (“USDA”) to
11 develop and patent new varieties of table grapes and make them available to California table grape
12 growers on equal terms.

13 3. On information and belief, RB Sandrini, Inc. is a California corporation with its
14 principal place of business at 10889 Casey Avenue, Delano, California 93215. On information and
15 belief, RB Sandrini Farms, L.P. d/b/a RB Sandrini Farms is a California limited partnership with its
16 principal place of business at 10889 Casey Avenue, Delano, California 93215. RB Sandrini, Inc.
17 and RB Sandrini Farms, L.P. d/b/a RB Sandrini Farms (hereinafter collectively referred to as
18 “Sandrini Farms”) are engaged in the business of growing and selling table grapes.

19 4. Richard B. Sandrini (“Sandrini”) is a natural person residing in Bakersfield,
20 California. On information and belief, he is an officer, director, manager, principal, and/or
21 beneficial owner of Sandrini Farms.

JURISDICTION AND VENUE

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23 5. This Court has jurisdiction over the Commission’s claims pursuant to 28 U.S.C.
24 §§ 1331, 1338, and 1367(a).

25 6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c),
26 and 1400(b) because Sandrini Farms and Sandrini reside in this judicial district, have regularly
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1 conducted business in this judicial district, and/or have committed acts of infringement in this
2 judicial district.

3 **FACTS**

4 7. As part of its efforts to expand and maintain the market for California table grapes in
5 the United States and internationally, the Commission has provided financial support, input, and
6 guidance to the USDA since the 1980s in the breeding of new varieties of table grapes possessing
7 desirable qualities and traits not available in existing varieties. The process of breeding such new
8 varieties is costly and time consuming. Development of the variety at issue here, known as Autumn
9 King, required over a decade of effort and a significant financial investment by both the Commission
10 and the USDA.

11 8. As a result of the effort described in the preceding paragraph, on February 21, 2006,
12 U.S. Patent No. PP16,284, entitled "Grapevine Denominated Autumn King" ("the '284 patent"), was
13 duly and legally issued to inventors (and USDA employees) David W. Ramming and Ronald E.
14 Tarailo. A true copy of the '284 patent is attached as Exhibit A.

15 9. The United States of America, as represented by the Secretary of Agriculture, is the
16 owner by assignment of the '284 patent.

17 10. The Commission is the exclusive licensee of the '284 patent pursuant to a License
18 Agreement entered into between the United States Government, as represented by the United States
19 Department of Agriculture, Agricultural Research Service ("ARS"), and the Commission on June
20 27, 2005. A true copy of the executed License Agreement is attached as Exhibit B.

21 11. The United States of America, as represented by the Department of Agriculture, has
22 granted its right to enforce the '284 patent to the Commission pursuant to 35 U.S.C. § 207, the
23 License Agreement, and a July 1, 2006 Letter regarding enforcement of the License Agreement. A
24 true copy of the Letter is attached as Exhibit C.

25 12. The Commission has sublicensed its right to grow and propagate the Autumn King
26 variety described in the '284 patent to three public nurseries. Each sublicensed nursery must be a
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1 2006 an audit of the defendants' vineyards to assess the location, quantity, and maturity of the
2 Autumn King vines.

3 16. On February 28, 2006, the Commission requested that defendants Sandrini Farms and
4 Sandrini destroy all unauthorized plant material in their possession and pay a financial penalty for all
5 prior uses and/or sales of the unauthorized Autumn King vines and fruit. In April 2006, defendants
6 Sandrini Farms and Sandrini requested that the Commission conduct DNA testing of the vines in
7 their possession to confirm they were the Autumn King variety claimed in the '284 patent. On April
8 10, 2006, the Commission collected sets of leaf samples from suspected Autumn King vines in four
9 of defendants' vineyards. These samples were submitted for DNA analysis at the Foundation Plant
10 Services ("FPS") of the University of California, Davis. On May 16, 2006, the Commission
11 received a written report from FPS confirming that three of the four leaf samples were the patented
12 Autumn King variety. A copy of the DNA test report is attached as Exhibit D. The fourth set of leaf
13 samples was an old wine grape variety name Ruby Red. When the Commission requested the ability
14 to retest the fourth vineyard, Sandrini said that it was not necessary. He said he knew that there were
15 some Ruby Red vines inadvertently in the fourth vineyard, and he admitted the vineyard was planted
16 predominantly with Autumn King vines.

17 17. On July 1, 2006, the USDA delegated its authority to enforce the '284 patent to the
18 Commission, and the Commission thereafter promptly initiated this lawsuit against Sandrini Farms
19 and Sandrini.

20 18. Defendants Sandrini Farms and Sandrini were not licensed to have the patented
21 Autumn King vines, and the Autumn King vines in their possession were of sufficient maturity that
22 they necessarily were obtained before the Commission had authorized the licensed nurseries to sell
23 the Autumn King vines to growers. On information and belief, defendants Sandrini Farms and
24 Sandrini unlawfully and unfairly obtained and propagated the grapevine plant known as Autumn
25 King prior to the filing and/or issuance of the '284 patent. The Commission believes discovery will
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1 show that the defendants knowingly obtained the Autumn King vines unlawfully from a source they
2 knew was not authorized to provide them.

3 19. In so doing, the defendants circumvented the process by which only licensed,
4 certified nurseries propagate and distribute the Autumn King vines, undercutting the Commission's
5 procedures for ensuring that all growers are afforded access to the new varieties at the same time.
6 Defendants effectively took for themselves without authorization a period of exclusivity, which has
7 permitted them to obtain a significant head start and unfair advantage over those growers who have
8 played by the rules and who are not expected to harvest Autumn King fruit in any significant
9 quantity until 2008 or later. In doing so, defendants have undermined, and absent relief will
10 continue to undermine, the Commission's core goal of ensuring that its investment (which comes
11 from assessments paid by all California growers) and efforts are used to advantage all California
12 table grape growers in an equal and even-handed manner. The Commission did not, and would not,
13 grant an exclusive license to a single grower or otherwise authorize a single grower to obtain a head
14 start in growing, marketing, or developing knowledge and expertise regarding a new variety of table
15 grape.

16 20. Defendants Sandrini Farms and Sandrini have admitted to selling 5,500 boxes of fruit
17 harvested from the patented Autumn King vines in 2005 and have admitted they intend to sell at
18 least 10,000 boxes of the Autumn King fruit in 2006. On information and belief, the defendants
19 have grown and will continue to grow, and are offering for sale and will continue to offer for sale,
20 the fruit of the patented Autumn King vines.

21 21. Despite their knowledge and admissions that making, using, offering for sale, and
22 selling the patented Autumn King vines and their fruit are unlicensed activities that infringe the '284
23 patent, defendants Sandrini Farms and Sandrini have refused to refrain from conducting these
24 activities. Defendants Sandrini Farms and Sandrini have been willfully infringing, are willfully
25 infringing, and will continue to willfully infringe the '284 patent.

1 were authorized to obtain Autumn King plant material. Since the patent issued and at present, only
2 growers who have obtained a license are authorized to acquire the vines.

3 28. In violation of California Business and Professional Code § 17200, defendants
4 Sandrini Farms and Sandrini have unlawfully and unfairly obtained and propagated the grapevine
5 plant known as Autumn King at a time prior to its lawful release. Defendants have sold fruit from
6 those vines and have done so at least two years in advance of anyone who obtained plant material
7 legally. The defendants have continued and will continue to unlawfully and unfairly propagate and
8 grow the Autumn King vines and offer the fruit thereof for sale.

9 29. The unlawful and unfair acts of defendants Sandrini Farms and Sandrini have
10 deprived the Commission and the USDA of the royalties to which they are entitled on the grapevine
11 plants known as Autumn King that are and/or were within the defendants' possession and control.
12 More fundamentally, the defendants' unlawful and unfair acts have undermined the Commission's
13 new variety licensing program and its significant investment in that program by, *inter alia*, obtaining
14 a substantial advantage for a single grower in a manner that is inconsistent with the program's goal
15 of equitably promoting the California table grape industry as a whole and by undercutting the
16 Commission's relationships with the licensed nurseries that form a critical part of the program.

17 30. Unless Sandrini Farms and Sandrini are enjoined, they will continue their unlawful
18 and unfair acts and the Commission and the California table grape industry will continue to be
19 irreparably harmed.

20 **COUNT THREE**

21 **(Intentional Interference with Prospective Economic Relationships)**

22 31. The Commission repeats and re-alleges the allegations of paragraphs 1 through 30
23 above as if fully set forth herein.

24 32. By acquiring and propagating the grapevine plant known as Autumn King without
25 authorization, defendants Sandrini Farms and Sandrini knowingly and intentionally interfered with
26 prospective economic relationships between the Commission and the nurseries licensed to propagate
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1 and sell the patented Autumn King vines, thereby depriving the Commission of economic benefits in
2 the form of lost royalties. Nurseries will be less inclined to contract with the Commission and make
3 the significant investments necessary if growers are permitted to circumvent the authorized process
4 for obtaining the patented varieties of grapes.

5 33. Upon information and belief, defendants Sandrini Farms and Sandrini knew that they
6 were in possession of grapevine plants known as Autumn King that had been unlawfully and
7 unfairly obtained.

8 34. Unless defendants Sandrini Farms and Sandrini are enjoined by this Court, they will
9 continue to interfere with the economic relationships between the Commission and the nurseries
10 licensed to propagate and sell the Autumn King vines, and the Commission will continue to be
11 irreparably harmed.

12 **COUNT FOUR**

13 **(Unjust Enrichment)**

14 35. The Commission repeats and re-alleges the allegations of paragraphs 1 through 34
15 above as if fully set forth herein.

16 36. By acquiring and propagating the Autumn King vines and selling Autumn King
17 grapes, all in an unlawful manner and without authorization, defendants Sandrini Farms and Sandrini
18 have received significant benefits. Defendants have received unauthorized plant material; revenues
19 from the sale of Autumn King grapes; and a significant head start in growing the vines, learning how
20 best to cultivate them, and establishing relationships with retailers for the sale of Autumn King
21 grapes.

22 37. Defendants' unjust receipt and retention of such benefits has unjustly enriched them
23 at the expense of the Commission, the USDA, the nurseries authorized to distribute Autumn King
24 vines, and other California table grape growers.

PRAYER FOR RELIEF

WHEREFORE, plaintiff the Commission prays for the following relief against defendants Sandrini Farms and Sandrini:

1. a preliminary and permanent injunction enjoining defendant Sandrini Farms, its officers, servants, employees, attorneys, all parent and subsidiary corporations, all assignees and successors in interest, and those persons in active concert or participation with Sandrini Farms, including distributors, customers, and defendant Sandrini, enjoining them from growing, using, offering for sale, selling, exchanging, or transferring the Autumn King vines claimed in the '284 patent and the fruit thereof without legal authorization;

2. an award of damages, together with pre-judgment and post-judgment interest;

3. a trebling of said damages pursuant to 35 U.S.C. § 284;

4. an award of attorney's fees;

5. restitution; and

6. any such other relief that this Court deems just and proper.

Respectfully submitted,

BAKER, MANOCK & JENSEN

Dated: July 3, 2006

By: /s/ Robert D. Wilkinson
Robert D. Wilkinson

**ATTORNEYS FOR PLAINTIFF
THE CALIFORNIA TABLE GRAPE COMMISSION**

EXHIBIT A

(12) **United States Plant Patent** (10) Patent No.: **US PP16,284 P2**
Ramming et al. (45) Date of Patent: **Feb. 21, 2006**

(54) **GRAPEVINE DENOMINATED 'AUTUMN KING'**
 (50) Latin Name: *Vitis vinifera L.*
 Varietal Denomination: **Autumn King**
 (75) Inventors: **David W. Ramming, Fresno, CA (US);**
Ronald E. Tarallo, Fresno, CA (US)
 (73) Assignee: **The United States of America as**
represented by the Secretary of
Agriculture, Washington, DC (US)
 (*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 161 days.

(21) Appl. No.: **10/953,387**
 (22) Filed: **Sep. 28, 2004**
 (51) Int. Cl. (2006.01)
A01H 5/00
 (52) U.S. Cl. **Plt./207**
 (58) Field of Classification Search **Plt./207**
 See application file for complete search history.

(56) **References Cited**
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Ramming, D., "USDA Grape Breeding Program and Promising Experimental Selections," San Joaquin Valley Table Grape Seminar, Feb. 21, 2001 Visalia, CA.
 Ramming, D. et al., "Development of Seedless Grapes for the Fresh Market Including Types Resistance to Powdery Mildew—2000," 2000-01 Viticulture Research Report, California Table Grape Commission (2000) vol. XXIX.
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 * cited by examiner
 Primary Examiner—Anne Marie Grunberg
 Assistant Examiner—June Hwu
 (74) Attorney, Agent, or Firm—Margaret A. Connor; John D. Fado; Leslie Shaw

(57) **ABSTRACT**
 A new and distinct variety of grapevine denominated 'Autumn King' which is characterized by its late season ripening seedless fruit, attractive pale green coloration, its cylindrical to ovoid fruit shape, its firm fruit texture with neutral sweet flavor, and its medium to tight cluster.

2 Drawing Sheets

BACKGROUND OF THE INVENTION

The present invention relates to a new and distinct variety of grapevine, *Vitis vinifera L.*, which will hereinafter be denominated varietically as the 'Autumn King' grapevine, and, more particularly, to a grapevine which has fruit maturing for commercial harvesting and shipment approximately October 23 in the San Joaquin Valley of central California. The fruit has an attractive pale green skin coloration at maturity with large cylindrical to ovoid shape seedless berries.

The grapevine of the present invention originated from a hand-pollinated cross of United States Department of Agriculture selection 'A61-20' (unpatented) and the United States Department of Agriculture selection 'B99-131' (unpatented) made in 1993 at the United States Department of Agriculture, Agricultural Research Service, Postharvest Quality and Genetics Research Unit plots at California State University, Fresno, in Fresno Calif. The female was 'A61-20', a seeded white-fruited grapevine having large size, ovoid berries with firm flesh and good skin, and a neutral flavor. The fruit of the 'A61-20' ripen about two weeks before the instant variety. The pollen parent was 'B99-131', a seedless white fruited grape with very large size, oval berries with medium skin and medium firm flesh. The fruit

of the 'B99-131' grapevine ripen one month before the variety of the subject invention. Both of the parents of the instant cultivar are hybrids of the grapevine genus and species *Vitis vinifera L.*

The seeds resulting from this controlled hybridization were germinated in the greenhouse during the winter and spring of 1994. The resulting seedling population totaled 534 individual plants. All seedlings were planted in the spring of 1994 in a vineyard at the United States Department of Agriculture, Agricultural Research Service plots on the California State University, Fresno, campus in Fresno, Calif. The seedlings fruited in the summer of 1996 and one, the grapevine of the present invention, was designated as 'C67-120' and selected for its attractive pale green seedless, medium firm, large berry size, good fruit quality and late maturity.

In 1997 at the inventors' direction, the grapevine of the subject invention was propagated asexually by rooting hardwood cuttings at Fresno, Calif. and a test planting of two grapevines of the subject invention was established in the United States Department of Agriculture, Agricultural Research Service plots on the California State University, Fresno campus. Subsequently in 1998 a larger test planting of 24 vines was established with rooted hardwood cuttings of the instant invention. The instant cultivar rooted readily from hardwood cuttings. All grapevines of the new variety

planted from hardwood cutting propagation, fruited in the third season of growth after planting. All propagules, or resulting plants, of the present invention have been observed by the inventors to be true to type in that all asexual reproduced grapevines of the variety possessed the characteristics identical to those of the original parent grapevine.

SUMMARY OF THE INVENTION

The grapevines of the subject invention possess medium vigor and have produced fruit as own-rooted grapevines. The size of the grapevines was determined by growing the grapevines on a three cross arm 'T' type trellis structure with a top cross arm of 122 cm in length set 189 cm above the ground; a second cross arm of 102 cm in length set 156 cm above the ground; and a third cross arm 91 cm in length set 125 cm above the ground. The trellis structure had two wires per cross arm and indicated a grapevine height of 200 cm and a grapevine spread of 199 cm.

The fruit of the new variety ripens late, about 8 weeks after the 'Thompson Seedless' (non-patented) and 4 weeks after 'Autumn Seedless' (non-patented). The average ripening date in Fresno, Calif. is October 23. Berries adhere medium well to the fruit pedicel and have minimal shatter from the clusters during storage. The fruit is pale green in color at maturity. The fruit shape is cylindrical to ovoid. Fruit skins are medium thick and similar to the 'Thompson Seedless' grapevine. 'Autumn King' differs from 'Thompson Seedless', ripening 8 weeks later. The pulp of the fruit adheres to the skins of the berry and the fruit texture is firm and meaty. The berries are large to very large in size, or 9.8 grams. The flavor of the fruit is sweet and has been rated good. Soluble solids concentration of the juice at fruit maturity averages 18.6% with titratable acid of 0.31 grams/100 milliliters of juice. The fruit is of the stenospermocarpic type of seedlessness and contains small, aborted seed traces that are not noticeable when eaten. The fruit clusters are usually borne on the average of 1.02 per shoot on cane pruned vines. The fruit clusters are conical and are medium in size, or 539 grams, medium to slightly tight and attractive. The fruit cluster peduncles are medium in length.

The grapevine and fruit of the new variety are susceptible to powdery mildew disease of grape plants. A spray program for powdery mildew disease control is required.

BRIEF DESCRIPTION OF THE DRAWINGS

The drawings of the grapevine of the present invention are color photographs showing in FIG. 1 a typical specimen of the fruit and in FIG. 2 a shoot with leaves and a flower cluster all of the new variety of the present invention.

The color of the photographs is as nearly true as it is reasonably possible to provide in such color photographs. Description of the new invention applies to vines of 'Autumn King' grown on its own roots at a density of 1,119 vines per hectare in Fresno County, Calif. in 2002. These vines were in their second year of full production having been planted in 1998.

DETAILED BOTANICAL DESCRIPTION

The new variety cv. 'Autumn King' may be distinguished from other commercial grape cultivars known to us by a combination of characteristics, including its late season ripening seedless fruit with attractive pale green coloration, its medium firm fruit texture with a neutral sweet flavor, its cylindrical to ovoid fruit shape and its medium to tight cluster.

The new variety of grapevine is most similar to its pollen parent 'B99-131' by having similar berry size and pale green

fruit. It is distinguished therefrom and an improvement thereon in a number of fruit characteristics. The flesh of the new variety is firmer, the skin color is more attractive not showing veins. The berry shape is cylindrical to ovoid compared to the oval to round berries of 'B99-131'. The most distinguishing difference is the maturity time, being 4 weeks later than the pollen parent. The new grapevine is also similar to the commercial varieties 'Thompson Seedless' and 'Autumn Seedless' in that they have pale green seedless neutral flavored fruit. It is distinguished therefrom and an improvement thereon in that the berries of the new variety are larger than those of 'Thompson Seedless' and 'Autumn Seedless'. It is also distinguished from 'Thompson Seedless' and 'Autumn Seedless' by ripening 8 and 4 weeks later, respectively.

The new variety also differs substantially from its mother parent 'A61-20'. It is distinguished therefrom and an improvement thereon in that the new variety is seedless, having small aborted (stenospermocarpic) seeds, while 'A61-20' is seeded with functional seeds. The berries of the new variety are substantially larger, being on average about 9.8 grams, while the berries of 'A61-20' are about 6.8 grams.

Referring more specifically to the botanical details of this new and distinct variety of grapevine, the following has been observed under the ecological conditions prevailing at the orchard or origin which is located in Fresno in the San Joaquin Valley of central California. All major color code designations are by reference to the *Dictionary of Color*, by Maerz and Paul, First Edition, 1930. Common color names are also occasionally employed. Where dimensions, sizes, colors and other characteristics are given, it is to be understood that such characteristics are approximations of averages set forth as accurately as practicable. The description hereof was taken from specimens grown in Fresno, Calif. The grapevines used for measurement were grown in a fine sandy loam soil and the grapevines were irrigated using trickle, or drip irrigation. In a substantial part, the data hereof was from grapevines that were five (5) years old.

VINE

Generally:

Size.—Medium. Grapevine size as determined on grapevines growing on a three cross arm 'T' trellis with the top cross arm 122 cm long set 189 cm above the ground; the second cross arm 102 cm long set 156 cm above the ground; and the third cross arm 91 cm long set 125 cm above the ground. There were two wires per cross arm and was trained to produce a grapevine height of 200 cm and a grapevine spread of 199 cm.

Vigor.—Medium vigor. Vigor as measured by weighing prunings at dormant pruning for cane pruned grapevines (with 6 canes and an average of 15 buds per cane) was 4.5 Kg.

Productivity.—Productive, 18.5 Kg per grapevine on grapevines spaced 8 ft. (243.84 cm) by 12 ft. (365.76 cm).

Regularity of bearing.—Regular. Annual pruning of canes is required for reliable production.

CANES

Size.—Diameter — Mature Canes — Medium diameter, medium vigor, upright in growth habit.

Mature canes.—Diameter — Internode Base — 11.8 mm.

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Mature canes.—Diameter — Internode Midpoint — 9.5 mm.
Mature canes.—Diameter — Internode Tip — 4.2 mm.
Mature canes.—Diameter — Node Base — 13.4 mm.
Mature canes.—Diameter — Node Midpoint — 11.6 mm.
Mature canes.—Diameter — Node Tip — 5.5 mm.
Internode length.—Base — 5.9 cm.
Internode length.—Midpoint — 7.4 cm.
Internode length.—Tip — 4.1 cm.
Average length of canes.—263.3 cm.
Surface texture.—Smooth.
Color of mature cane.—Brown (plate 14 D8). No anthocyanin observed on mature canes.
Buds.—Color — Brown (plate 15 A10).
Buds.—Texture — Smooth.
Dormant bud (compound bud or eye).—Width — At base of cane 5.3 mm; at midpoint of cane 6.6 mm and at tip of cane 4.1 mm. The average number of buds on a current, single-season growth cane is 44.
Date of bud break.—March 29, late season.
Young shoots.—Young shoots have cobwebby indument.
Diameter of young shoots in spring (measured when shoots are 24 inches).—At base 8.3 mm, at midpoint 5.8 mm and at tip 2.8 mm.
Internode length.—7.2 cm at 4th internode from base.
Young shoots.—Color — Light yellow green (plate 20 J6) with slight bronze on edge.
Stem of shoot tip.—Color — Yellow green (plate 20 K7) with occasional red on the sun exposed side.
Shoot.—Shape — Straight.
Shoot tip.—Form — Open.
Tendrils.—Size — Length — 18.6 cm.
Tendrils.—Size — Diameter — 2.21 mm.
Tendrils.—Shape — Usually bifurcated or trifurcated and curled on distal end.
Tendrils.—Pattern — Found beginning opposite node 8, then again at nodes 10, 11, 13, 14, 16, 17 with this repeating intermittent pattern to the distal end of the cane.
Tendril.—Color Immature Growth — Yellow green (plate 20 L6).
Disease resistance.—Susceptible to powdery mildew, and fungicides were applied to the grapevines under evaluation to control powdery mildew.
Insect resistance.—Insecticides were applied to the grapevines under evaluation to control grapevine leafhoppers and variegated leafhoppers. No resistances to these pests were determined in these evaluations due to chemical control of these pests.

LEAVES

Size:

Generally.—Leaves simple and alternate. The mid vein (L1) is 14.2 cm long, vein L2 is 11.1 cm long and vein L3 is 7.8 cm long. The angle between the mid vein L1 and L3 is 106 degrees and between L1 and the 1st vein off L3 is 165 degrees.
Average length.—19.5 cm.
Average width.—17.5 cm.
Shape.—Orbicular
Lobes.—Number — Five (5).
Color.—Upwardly Disposed Surface — Dark green (plate 23 L12). Upward surface is glabrous, flat and smooth to bullate.

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Color.—Downwardly Disposed Surface — Green (plate 22 K9). Lower surface is glabrous with very few short hairs along the main midrib vein.
Color.—Leaf Vein — Light green (plate 19 I5) with occasional red (plate 6 I4) on main veins near center of leaf.
Leaf vein.—Thickness — Thickness of mid vein at center of leaf is 1.5 mm.
Main veins.—Anthocyanin — Location — With occasional red (plate 6 I4) on main veins near center of leaf.
Leaf margin.—Serrated with shape of teeth pointed and medium in size.
Petiole sinus.—Lyre shape and usually petiole lobes are half overlapped causing a closed petiole sinus. On mature leaf is 3.4 cm deep and 1.2 cm wide at widest point.
Petiole.—Size — Medium.
Petiole.—Length — 11.5 cm.
Petiole.—Diameter — 2.8 mm.
Petiole.—Color — Yellow green (plate 20 L7) with 50% red (plate 45 J3) covering. Young leaf — Upper Surface — Color — Green (plate 22 L7) with very light cobwebby indument on upper surface.
Young leaf.—Lower Surface — Color — Pale green (plate 21 L8).
Young leaf.—Shape unfolded — Concave to flat.
Petiole of young leaf.—Color — Green (plate 20 L7).
Stipules.—Onion skin.

TRUNK

Size.—Large.
Size.—Height — Approximately 104 cm above the vineyard floor.
Size.—Diameter.—6.47 cm as measured just below the cordon or head point at 81.28 cm above vineyard floor; and 6.63 cm at 15.2 cm above the vineyard floor.
Bark.—Color — (plate 16 C7).

FLOWERS

Flower.—Size — Generally — Medium.
Flower.—Unopened — Diameter — 2.1 mm.
Flower.—Unopened — Length — 2.9 mm.
Flower.—Unopened — Surface Texture — Smooth.
Date of bloom.—First bloom May 7, 2002.
Date of full bloom.—May 16, 2002 at 90%.
Inflorescence.—Panicle.
Cluster size.—At Bloom — Generally, medium.
Cluster.—Length — 17.0 cm.
Cluster.—Width — 11.0 cm.
Peduncle.—Length — 3.9 cm.
Shape of cluster.—Conical with short shoulders.
Calyptra.—Color — Green (plate 20 J7).
Stamens.—Five (5) and erect.
Pistil.—Well developed.
Ovary.—Color — Dark green (plate 22 L9).
Pollen.—Normal, fertile, abundant.
Anthers.—Color — Light yellow (plate 10 J1).

FRUIT

Maturity when described: Ripe for commercial harvesting and shipment approximately October 23 in Fresno, Calif. Late season or 8 weeks after 'Thompson Seedless' grapevine or 4 weeks after 'Autumn Seedless' grapevine.

US PP16,284 P2

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Cluster:

Size.—Cane Pruned Vines — 539 grams.
Length.—28.5 cm.
Width.—16.3 cm.
Shape.—Conical to cylindrical.
Density.—Medium to tight, on average has 55 berries per cluster.
Clusters per vine.—56, cane pruned.
Clusters per shoot.—1.02 clusters per shoot.

Peduncle:

Size.—Length — Medium, 5.0 cm.
Size.—Diameter — Medium, 6.0 mm.
Color.—Green (plate 21 L7).
Texture.—Smooth, glabrous.

Pedicel:

Generally.—There is a medium to good attachment between the berry and the pedicel.
Size.—Length — 8.1 mm.
Size.—Diameter — 1.6 mm.
Color.—Green (plate 21 I5).
Texture.—Glabrous with a few lenticels.
Brush.—Length — 2.8 mm.
Brush color.—Green (plate 19 F1).

Berry:

Size.—Large, avg. 9.8 grams.
Shape.—Cylindrical to ovoid.
Length.—3.1 cm.
Width.—2.3 cm.
Color.—Pale green (plate 19 E1).
Bloom.—Light.
Skin: Generally.—The skin adheres to the flesh.
Thickness.—Medium in thickness.
Texture.—Smooth.
Tendency to crack.—None.

Flesh:

Flesh color.—Translucent and very pale yellow green (plate 19 I1).
Texture.—Firm, meaty.

Juice production.—Medium.

Color of juice.—Clear.

Flavor.—Sweet and sub acid, neutral flavor.

Soluble solids.—18.6%.

Titrate acid.—0.31 g/100 ml juice.

Aroma.—None.

Ripening.—Uniform.

Eating quality.—Very good, sweet.

Character of seeds: Stenospermocarpic seedless, small aborted seed traces that are not noticeable when eaten. Average aborted seed trace when present are 6.4 mg fresh weight, 3.8 mm long and 1.8 mm wide. Seed color is light brown (plate 13 C8).

Use: Fresh market. No wine nor raisin evaluations have been done.

Keeping quality: Very good.

Resistance to disease: No resistance to powdery mildew.

Shipping and handling qualities: Berries ship and handle similar to 'Thompson Seedless' except there is less berry shatter.

Although the new variety of grapevine possesses the described characteristics noted above as a result of the growing conditions prevailing in Fresno, Calif. in the central San Joaquin Valley of California, United States of America, it is to be understood that variations of the usual magnitude and characteristics incident to changes in growing conditions, training, irrigation, fertilization, pruning, pest control, climatic variation and the like are to be expected.

Having thus described and illustrated our new variety of grapevine, what we claim as new and desire to be secured by Plant Letters Patent is:

1. A new and distinct variety of grapevine plant, 'Autumn King', substantially as illustrated and described, characterized by its attractive pale green fruit color, cylindrical to ovoid fruit shape, and firm flesh texture with a neutral sweet flavor.

* * * * *



FIG. 1

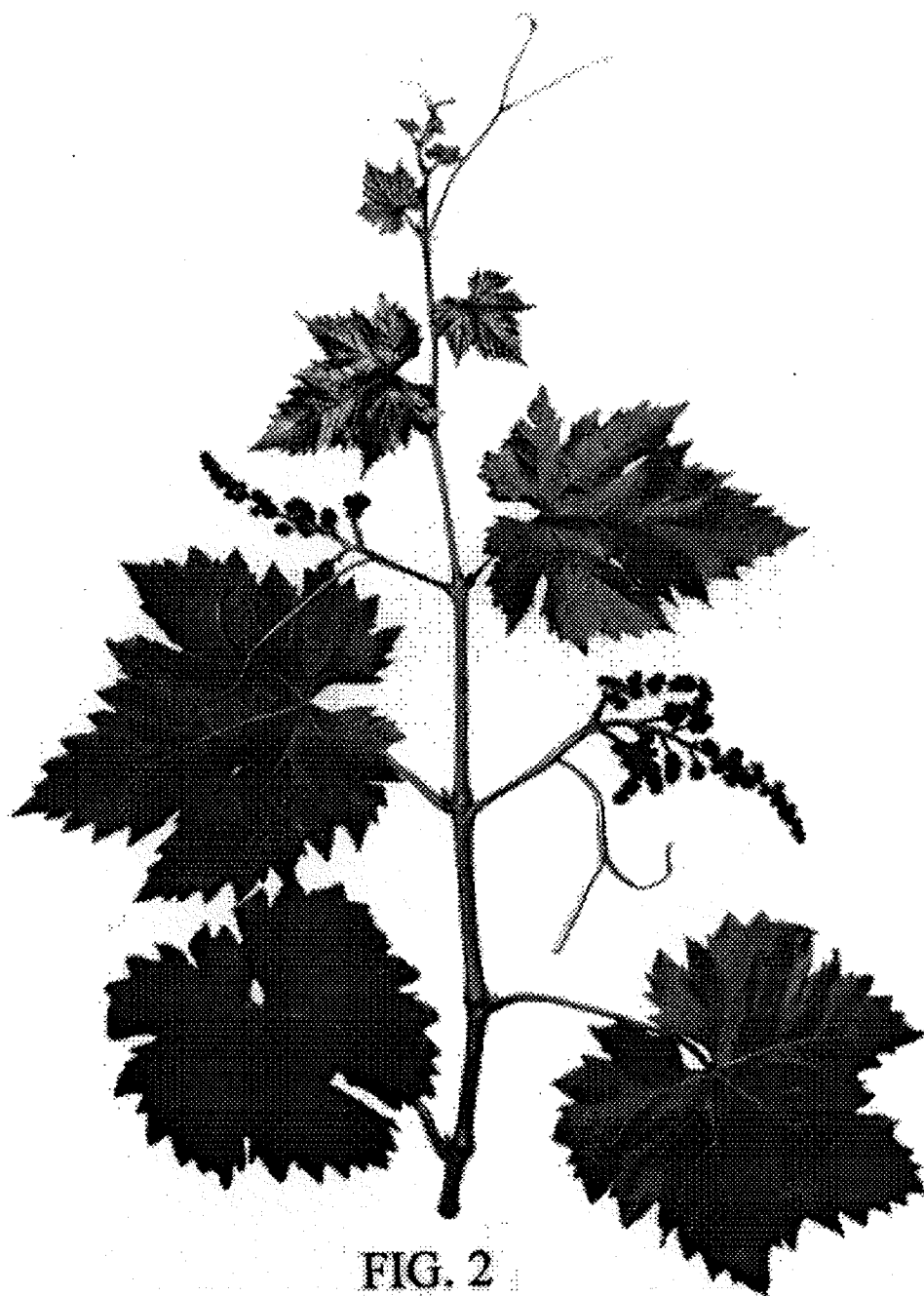


FIG. 2

EXHIBIT B

LICENSE AGREEMENT

This Agreement is entered into between the United States Government as represented by the United States Department of Agriculture, Agricultural Research Service (hereinafter referred to as "USDA") and the California Table Grape Commission, a nonprofit organization authorized by Chapter 3 of Section 22 of the Agricultural Code of the State of California having offices at 392 W. Fallbrook, Suite 101, Fresno, California (hereinafter referred to as "THE COMMISSION").

WHEREAS, USDA has performed research to develop a new table grape variety named "Autumn King," with unique and desirable properties and USDA owns certain valuable property rights thereon; and

WHEREAS, USDA desires, in the public interest, that this variety be propagated and distributed, so that its benefits are readily available to the public; and

WHEREAS, THE COMMISSION represents that it has personnel and expertise to oversee the controlled propagation, maintenance and marketing of this variety and is willing to expend reasonable efforts and resources to do so;

NOW THEREFORE, in consideration of the foregoing and pursuant to 35 USC 207 and 37 CFR 404 and the mutual promises and obligations hereinafter set forth, USDA and THE COMMISSION, intending to be legally bound, agree as follows:

ARTICLE I
DEFINITIONS

1.1 Licensed Patents means (a) U.S. Patent Application No.10/953,387, "Grapevine Denominated as Autumn King," filed on September 28, 2004 and any renewal, division, continuation, continued prosecution application or continuation-in-part thereof, (b) all patents issuing therefrom including any reissues, reexaminations, extensions, divisions, renewals, substitutions, confirmations, registrations, revalidations, revisions, and additions of or to any of the foregoing, (c) any Plant Variety Protection (PVP) applications or certificates protecting the Licensed Variety filed by or for the parties hereunder and (d) any international equivalents of the foregoing.

1.2 Licensed Variety means the table grape described in the Licensed Patents including plants, plant parts, rootstock and other tissues, and fruit thereof.

1.3 Licensed Territory means the United States of America, its territories and possessions, and any foreign territory listed in THE COMMISSION's development and marketing plan for the Licensed Variety where Plant Breeders Rights are available and THE COMMISSION agrees to pay all fees and expenses, including legal fees in filing for, prosecuting and maintaining Plant Breeder's Rights, except for countries excluded by United States Government agencies.

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1.4 Effective Date means the later date on which this Agreement is executed by a party to the Agreement.

ARTICLE II
GRANT

2.1 USDA grants to THE COMMISSION, subject to the terms and conditions herein, an exclusive license, with the right to sublicense in accordance with Section 2.2, to the Licensed Patents in the Licensed Territory to make, use, offer for sale, propagate, maintain, sell and otherwise exploit the Licensed Variety.

2.2 USDA grants to THE COMMISSION the right to grant sublicenses subject to the provisions of this Agreement and to the prior submission to and approval by USDA of the proposed format for sublicense agreements, which approval shall not be unreasonably withheld. All sublicenses shall make reference to this Agreement, including the rights retained by the U.S. Government in accordance with the provisions of Article III below. THE COMMISSION shall provide USDA with a copy of all sublicense agreements that have been executed by THE COMMISSION and the sublicensee.

ARTICLE III
RESERVATION OF RIGHTS

3.1 The license granted in Article II above is subject to the reservation by USDA of an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of the Licensed Patents throughout the world by or on behalf of the United States Government, and on behalf of any foreign government pursuant to any existing or future treaty or agreement to which the United States is a signatory, including the right to engage in research, either alone or with one or more third parties, with the Licensed Variety.

3.2 USDA reserves the right to make propagation material of the Licensed Variety available to third parties for breeding purposes.

3.3 USDA reserves the right to require THE COMMISSION to grant sublicenses in the United States to responsible applicants, on reasonable terms, under the following circumstances:

- (a) such grant is necessary to fulfill health or safety needs; or
- (b) such grant is necessary to insure that Licensed Variety is made available for utilization by the United States public in geographic regions outside of THE COMMISSION's marketing and distribution area.

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ARTICLE IV
FEES, ROYALTIES, AND PAYMENTS

4.1 It is not anticipated that THE COMMISSION will engage in direct sale of the Licensed Variety. If this situation does arise, a mutually agreeable royalty will be negotiated between the parties hereto at that time.

4.2 THE COMMISSION shall pay to USDA forty percent (40%) of the royalties and of other fees paid by each sublicensee to THE COMMISSION pursuant to a sublicense granted by THE COMMISSION of any of the rights granted to THE COMMISSION by the USDA in Section 2.1, as provided in Paragraph 2.2 above. Payment to USDA shall be due and payable upon submission of each royalty report, in accordance with the provisions of Paragraph 5.2 below.

4.3 THE COMMISSION shall reimburse USDA for all fees and expenses, including reasonable legal fees, incurred by USDA in filing, prosecuting and maintaining the Licensed Patents in the United States of America, its territories and possessions, during the term of this Agreement. USDA shall keep THE COMMISSION advised in writing as to the status of the prosecution of the Licensed Patents. THE COMMISSION shall be entitled to review all actions undertaken in the prosecution of the Licensed Patents and shall be given the opportunity to make reasonable requests as to the conduct of such prosecution, provided that all such requests are made in writing to USDA. USDA shall provide THE COMMISSION a statement of all fees and expenses on a quarterly basis, and reimbursement shall be due within thirty (30) days of receipt of such statement.

4.4 All payments due USDA under this Article IV shall be payable in United States dollars for the account of USDA/Agricultural Research Service, License No. 1338-001. All checks and bank drafts shall be drawn on United States banks. A late payment of a license fee or royalty shall automatically raise said fee or royalty by an amount equal to one percent (1%) of the amount due for each month beyond the due date of such late payment. Conversion of foreign currency to United States dollars shall be made on the last business day of the applicable reporting period for the purchase of United States dollar bank wire transfers for settlement of such payment obligations. Any and all loss of exchange, value, taxes, or other expenses incurred in the transfer or conversion of other currency to United States dollars shall be paid entirely by THE COMMISSION.

ARTICLE V
REPORTS AND RECORDS

5.1 THE COMMISSION shall provide written annual reports within sixty (60) days of the end of each year ending on April 30th detailing the status of the licensing program hereunder including sublicenses granted or in negotiation, and progress made in obtaining Plant Breeders Rights as governed by the International Union for the Protection of New Varieties of Plants

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("UPOV") in all foreign territories.

5.2 After notification of the first commercial sale of propagable plant materials of the Licensed Variety by a sublicensee, THE COMMISSION shall submit to USDA within sixty (60) days after each year ending April 30th, annual reports setting forth for the preceding twelve (12) month period the amount of propagable plant materials of the Licensed Variety sold by THE COMMISSION, and its sublicensees, and the fees and royalties due pursuant to Paragraph 4.2 above. The report shall include an itemized accounting of the number of units of propagable plant materials of the Licensed Variety sold, price per unit, and each deduction taken for returns or replacements. A written report shall be due for each reporting period whether or not any royalties are due to USDA.

5.3 THE COMMISSION, and its sublicensees, shall keep accurate and complete records as are required for the determination of royalties owed to USDA pursuant to this Agreement. Such records shall be retained for at least five (5) years following a given reporting period. Upon reasonable written notice and at the expense of USDA, such records shall be available during normal business hours for inspection by an accountant selected by USDA and approved by THE COMMISSION for the sole purpose of verifying reports and payments hereunder. Such accountant shall not disclose to USDA any information other than information relating to the accuracy of reports and payments made under this Agreement.

5.4 Representatives of USDA shall have the right, upon reasonable written notice, to enter the property owned, leased or controlled by THE COMMISSION or its sublicensees, during regular business hours, for the purpose of verifying compliance with the terms and conditions of this Agreement.

ARTICLE VI LICENSEE PERFORMANCE

6.1 THE COMMISSION shall expend reasonable efforts and resources to carry out the development and marketing plan submitted with THE COMMISSION's application for a license and to bring the Licensed Patents to the point of practical application as defined in Title 37 of the Code of Federal Regulations, Section 404.3(d). THE COMMISSION or its sublicensees shall offer the propagable plant materials of the Licensed Variety for sale in the United States within two (2) years of the Effective Date of this Agreement unless this period is extended by mutual agreement of the parties. THE COMMISSION or its sublicensees shall offer the propagable plant materials of the Licensed Variety for sale in the Licensed Territory outside the United States, within (4) four years of the Effective Date of this Agreement unless this period is extended by mutual agreement of the parties. USDA shall not unreasonably withhold approval of any request by THE COMMISSION to extend these periods if such request is supported by evidence of reasonable efforts by THE COMMISSION to bring the Licensed Patents to practical application, including any reasonable and diligent application for regulatory approvals required by any U.S. Government agency.

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6.2 THE COMMISSION is authorized to apply for intellectual property rights in the countries listed in its development and marketing plan, except for the United States, for the Licensed Variety. All such applications shall be made in the name of the United States of America as represented by the Secretary of Agriculture. THE COMMISSION shall be responsible for the preparation and submission of all required documents to the appropriate authorities. USDA shall provide reasonable assistance to THE COMMISSION as required for the preparation and submission of documents. THE COMMISSION shall pay any and all fees required to obtain and maintain the Licensed Patents for the Licensed Variety in the Licensed Territory outside the United States. THE COMMISSION shall provide to USDA copies of all such applications and all issued certificates of protection in a timely manner.

6.3 THE COMMISSION shall not abandon any application for protection of the Licensed Variety without thirty (30) days prior written notice to USDA.

6.4 THE COMMISSION shall exercise due diligence and make reasonable efforts to insure that all of the Licensed Variety sold is of high quality and genetic purity. Sublicenses granted by THE COMMISSION may include one or more of the following provisions, as deemed necessary to insure the quality and reputation of the Licensed Variety:

- (a) a requirement that the Licensed Variety be certified as virus-free;
- (b) a requirement that all plants and/or invoices be marked with the applicable patent or certificate number(s) and the variety name;
- (c) a requirement that catalogs, advertising and/or other commercial documents include a notice that the Licensed Variety is protected under the applicable patent/certificate number(s);
- (d) a requirement that a sublicensee implement and monitor quality assurance standards;
- (e) a right for THE COMMISSION, or its authorized representatives, to enter property owned, leased or controlled by a sublicensee for the purpose of verifying compliance with the terms of a sublicense agreement.

ARTICLE VII
DURATION, MODIFICATION, AND TERMINATION

7.1 This Agreement shall commence on the Effective Date and, unless sooner terminated as provided under this Article VII, shall remain in effect until the expiration of the last to expire

License No. 1338-001

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intellectual property rights within the Licensed Patents.

7.2 This Agreement may be modified or terminated by USDA subject to the provisions of Paragraphs 7.3 and 12.3 below if it is determined that any one of the following has occurred:

- (a) THE COMMISSION, fails to meet the obligations set forth in Article VI above;
- (b) THE COMMISSION has willfully made a false statement or willfully omitted a material fact in the license application or in any report required by this Agreement;
- (c) THE COMMISSION commits a substantial breach of a covenant or agreement contained in this Agreement;
- (d) THE COMMISSION is adjudged bankrupt or has its assets placed in the hands of receiver or makes any assignment or other accommodation for the benefit of creditors; or
- (e) THE COMMISSION is no longer a nonprofit organization authorized by Chapter 3 of Section 22 of the Agricultural Code of the State of California.

7.3 In the event that either USDA or THE COMMISSION becomes aware that a sublicensee (of any rights granted to THE COMMISSION under Section 2.1) of THE COMMISSION has failed to meet the applicable obligations set forth in Article 6 above or has committed a substantial breach of a covenant or agreement required by this Agreement to be present in the sublicense agreement between such sublicensee and THE COMMISSION, that party shall promptly notify the other party in writing and THE COMMISSION shall, at its option, either (a) meet such obligation or cure such breach on its sublicensee's behalf in accordance with Section 7.2; (b) terminate such sublicense agreement; or (c) notify such sublicensee in writing, requiring it to meet such obligations or, if possible, cure such breach within thirty (30) days after THE COMMISSION's notice and, if such obligation is not met or such breach is not cured within such thirty (30) day period, terminate such sublicense agreement.

7.4 Prior to modification or termination of this Agreement, USDA shall furnish THE COMMISSION and any sublicensees of record a written notice of intention to modify or terminate, and THE COMMISSION and any notified sublicensee shall be allowed thirty (30) days after the date of such notice to remedy any breach or default of any covenant or agreement of this Agreement or to show cause why this Agreement should not be modified or terminated.

7.5 THE COMMISSION may terminate this Agreement at any time upon ninety (90) days

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written notice to USDA. Such notice shall include an explanation of the reasons for termination.

7.6 Upon termination of this Agreement, all sums due to USDA pursuant to Article IV hereunder shall become immediately payable. In all other respects, the rights and obligations of the parties hereto concerning the Licensed Variety shall cease as of the effective date of such termination. THE COMMISSION or its sublicensees may, however, sell all plants of the Licensed Variety under propagation and in inventory at the time of termination provided that royalties are paid on any such sales in accordance with the provisions of Article IV.

7.7 In the event of termination of this Agreement, any sublicense of record granted pursuant to Paragraph 2.2 may either be converted to a license directly between sublicensee and USDA or be terminated.

ARTICLE VIII PATENT ENFORCEMENT

8.1 THE COMMISSION shall use all commercially reasonable efforts to protect USDA's property rights in the Licensed Variety and shall notify USDA of any infringement of the Licensed Patents or foreign intellectual property rights for the Licensed Variety that comes to the attention of THE COMMISSION. In the event of such infringement, the parties hereto shall confer and shall use best efforts to reach mutual agreement upon the best course of action, including but not limited to, requiring the infringing party to take a sublicense to the Licensed Patents.

8.2 Neither the United States Government nor THE COMMISSION shall be obligated to enforce the Licensed Patents or other intellectual property rights for the Licensed Variety against infringers, but USDA may grant the right of enforcement to THE COMMISSION, pursuant to Title 35, Section 207(a)(2) and Title 35, Chapter 29, of the U.S. Code. The granting of the right of enforcement to THE COMMISSION shall be given thorough consideration on a case by case basis. THE COMMISSION shall continue to pay royalties and fees accruing to USDA until such time as this Agreement is terminated by either party, even if the U.S. Government elects not to enforce the Licensed Patents or other intellectual property rights for the Licensed Variety against infringers.

ARTICLE IX MARKINGS AND NON-USE OF NAMES

THE COMMISSION shall not use the name of the United States Government, the name of any department or agency of the United States Government, the name of any United States Government employee, or any adaptation of the above in any promotional activity without prior written approval from USDA.

ARTICLE X
REPRESENTATIONS AND WARRANTIES

10.1 USDA represents and warrants that the United States of America as represented by the Secretary of Agriculture owns the Licensed Variety and that USDA has the authority to issue licenses to the Licensed Patents.

10.2 USDA does not warrant that the Licensed Variety can be exploited as provided under this Agreement without infringing the intellectual property rights of others. USDA FURTHER MAKES NO WARRANTIES AS TO THE MERCHANTABILITY OR FITNESS OF THE LICENSED VARIETY OR THE LICENSED PRODUCT FOR ANY PARTICULAR PURPOSE, OR ANY OTHER WARRANTIES EXPRESS OR IMPLIED.

ARTICLE XI
NOTICES

Written notices and reports required to be given under this Agreement, and submission of license execution and maintenance fees and royalties, shall be (a) mailed by first class mail, postage prepaid, (b) delivered by overnight express delivery service by a nationally recognized courier, or (c) transmitted via confirmed facsimile or telecopy, followed within five (5) days by a copy mailed in the preceding manner, and addressed as follows, or to such other names and addresses as properly so notified by the parties involved:

If to USDA:

Deputy Assistant Administrator
USDA, ARS, Office of Technology Transfer
5601 Sunnyside Avenue
Beltsville, Maryland 20705-5131
Facsimile: (301) 504-5060

If to THE COMMISSION:

Kathleen Nave, President
California Table Grape Commission
392 W. Fallbrook, Suite 101
Fresno, California 93711-6150
Facsimile: (559) 447-9184

ARTICLE XII
MISCELLANEOUS PROVISIONS

12.1 This Agreement shall not be transferred or assigned by THE COMMISSION to any party other than to a successor or assignee of the entire business interest of THE COMMISSION relating to the Licensed Variety, but in no event shall THE COMMISSION assign or transfer this Agreement to a party not a citizen, resident, or entity of the United States of America. THE COMMISSION shall notify USDA in writing prior to any transfer or assignment.

License No. 1338-001

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12.2 Subject to Section 7.2, neither party may modify this Agreement or waive or release any of its rights or interest in this Agreement except in writing. The failure of a party to assert a right hereunder or to insist on compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

12.3 The parties shall make every reasonable effort to resolve amicably any dispute concerning a question of fact arising under this Agreement. In accordance with the requirements of 37 CFR 404.11, USDA has established an administrative procedure for resolving disputes not settled amicably between the parties. Any such disputes shall be decided by the Assistant Administrator, Office of Technology Transfer, and Agricultural Research Service (ARS), who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to THE COMMISSION. Any decision of the Assistant Administrator, ARS, whether it be a question of fact, or to modify or terminate this Agreement, may be appealed to the Administrator, ARS, whose decision shall be administratively final and conclusive. This shall not preclude THE COMMISSION from taking additional legal action once all administrative avenues have been exhausted. Pending final decision of a dispute hereunder, THE COMMISSION shall proceed diligently with the performance of its obligations under this Agreement.

12.4 Nothing relating to the grant of this license, nor the grant itself, shall be construed to confer upon THE COMMISSION or its sublicensees, any immunity from or defenses under the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this license shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

12.5 The provisions of this Agreement are severable, and the illegality or invalidity of any provision of this Agreement shall not impair, affect, or invalidate any other provisions of this Agreement.

12.6 Neither party will be liable to the other for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, terrorism, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of, interruption of or delay in third party services, or inability to obtain raw materials, supplies or power used in or equipment needed for provision of the services hereunder.

12.7 This Agreement constitutes the entire agreement and understanding between the parties and neither party shall be obligated by any condition, promise or representation other than those expressly stated herein or as may be subsequently agreed to by the parties hereto in writing.

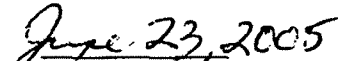
License No. 1338-001

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

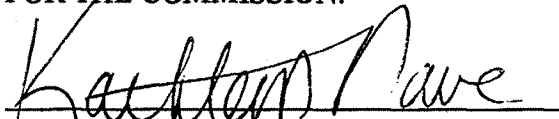
FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE:

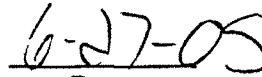

Signature


Date

RICHARD J. BRENNER
Assistant Administrator, Agricultural Research Service

FOR THE COMMISSION:


Signature


Date

KATHLEEN NAVE
President, California Table Grape Commission

EXHIBIT C

Research, Education, and Economics
Agricultural Research Service

July 1, 2006

VIA FEDERAL EXPRESS

REFER TO: USDA License No. 1338-001 for U.S. Plant Patent 16,284, Grapevine
Denominated "Autumn King"

Kathleen Nave, President
California Table Grape Commission
392 W. Fallbrook, Suite 101
Fresno, California 93711-6150

Dear Ms. Nave:

Your organization has requested the right to enforce U.S. Plant Patent 16,284, pursuant to Article VIII of the above referenced license agreement between the U.S. Department of Agriculture, Agricultural Research Service (USDA) and the California Table Grape Commission (THE COMMISSION). I am writing to notify you that USDA hereby grants THE COMMISSION the right to enforce the licensed patent against Mr. Richard Sandrini, R.B. Sandrini Farms, Inc., R.B. Sandrini Farms, L.P., R.B. Sandrini Farms, and R.B. Sandrini, Inc., as authorized pursuant to 35 U.S.C. §207(a)(2) and 37 CFR §404.5(b)(2). This enforcement action shall be at THE COMMISSION's own expense, and in THE COMMISSION's own name.

Sincerely,



RICHARD J. BRENNER
Assistant Administrator

cc: J. Blalock



Office of Technology Transfer
5601 Sunnyside Avenue ♦ Room 4-1159
Beltsville, Maryland 20705-5131
An Equal Opportunity Employer

EXHIBIT D

UNIVERSITY OF CALIFORNIA, DAVIS

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

May 16, 2006

Ross A. Jones
California Table Grape Commission
392 W. Fallbrook Avenue, Suite 101
Fresno, CA 93711

FOUNDATION PLANT SERVICES
ONE SHIELDS AVENUE
DAVIS, CALIFORNIA 95616-8600
TELEPHONE: (530) 752-3590
FAX: (530) 752-2132
E-MAIL: fps@ucdavis.edu
WEB: <http://fps.ucdavis.edu>

Dear Ross,

We have completed our analysis of the 4 grapevine samples we received last month. The samples were small dried leaves contained in our standard sample collection envelopes.

We have identified the 3 samples noted below as '**Autumn King**'.

"4/10/06 Vineyard 1 R12 V5"
"4/10/06 Vineyard 2 R16 V17"
"4/10/06 Vineyard 4 R15 V14"

We have identified the sample noted below as '**Rubired**'.

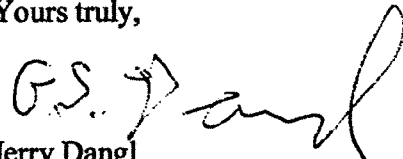
"4/10/06 Vineyard 3 R3 V1"

We analyzed the samples with 8 DNA markers. We then compared this data to our database of over 800 grape cultivars. Your samples exactly match the above noted cultivars at all 8 markers. Our reference profile for 'Autumn King' is based on vines at Foundation Plant Services, UC Davis, as well as materials provided by the California Table Grape Commission. Our reference profile for 'Rubired' is also based on vines at FPS and has been confirmed by pedigree analysis.

Enclosed please find an invoice in the amount of \$1360.00 for the services provided. Please return your payment in the enclosed envelope to the address shown on the invoice.

Thank you for using the FPS plant DNA identification service.

Yours truly,


Jerry Dangl
Plant Identification Lab Manager

Phone: (530) 752-7540
Email: gsdangl@ucdavis.edu

Enclosure

