

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
2 Claude M. Stern (Bar No. 96737)
3 claudestern@quinnemanuel.com
4 Evette D. Pennypacker (Bar No. 203515)
5 evettepennypacker@quinnemanuel.com
555 Twin Dolphin Drive, Suite 560
4 Redwood Shores, California 94065-2139
Telephone: (650) 801-5000
5 Facsimile: (650) 801-5100

6 Attorneys for Plaintiffs Theravance Biopharma
7 US, Inc., Theravance Biopharma R&D IP, LLC,
and Theravance Biopharma Antibiotics IP, LLC

8

9
10
11
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

12 THERAVANCE BIOPHARMA US, INC., a
13 Delaware corporation, THERAVANCE
14 BIOPHARMA R&D IP, LLC, a Delaware
15 limited liability company, THERAVANCE
16 BIOPHARMA ANTIBIOTICS IP, LLC, a
17 Delaware limited liability company,

18 Plaintiffs,

19 vs.

20 JUNNING LEE, an individual,

Defendant.

CASE NO. 3:17-cv-05044

**[PROPOSED] ORDER AS MODIFIED
GRANTING PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: October 26, 2017

Time: 10:00 a.m.

Judge: The Honorable Vince Chhabria

Action filed: August 30, 2017

Trial Date: None Set

21 Upon consideration of Plaintiffs' Motion for Preliminary Injunction, and all briefing,
22 evidence, and argument submitted in support and opposition thereof, the Court hereby finds that
23 (1) Plaintiffs Theravance Biopharma US, Inc., Theravance Biopharma R&D IP, LLC, and
24 Theravance Biopharma Antibiotics IP, LLC (collectively, "Theravance") are likely to succeed on
25 the merits of their claims against Defendant Junning Lee for trade secret misappropriation, breach
26 of contract, and breach of fiduciary duty and duty of loyalty; (2) Theravance is likely to suffer
27 irreparable harm absent equitable relief; (3) the balance of equities tips in Theravance's favor; and
28 (4) it is in the public interest to issue a preliminary injunction.

1 THEREFORE, IT IS HEREBY ORDERED that Plaintiffs' Motion is GRANTED, and
2 during the pendency of the trial of this action, or until otherwise Ordered by this Court:

3 A. Defendant Junning Lee and, all persons acting under, in concert with or for him, or
4 anyone who receives actual notice of this Order, whether or not in the United States, are hereby
5 restrained and enjoined from each and all of the following:

6 1. Any and all use, disclosure, providing third parties access to, transferring, copying,
7 duplication, reproduction, publication, distribution, broadcasting or marketing of
8 any version of Theravance Confidential Information, including, but not limited to:
9 (a) documents and materials from proprietary and ongoing Theravance projects
10 (including research and development weekly reports, research project updates,
11 project management reports, clinical and non-clinical test data, manufacturing
12 information, chemistry processes, lab notebooks, regulatory reports, and other
13 highly sensitive information); (b) corporate documents (such as board books,
14 company forms, development leadership team materials, and due diligence
15 documents); (c) documents and materials from various Theravance departments,
16 (including biometrics, finance, human resources, medical affairs, legal, patent, and
17 quality, in addition to tech ops); and (5) user training documents and materials.
18 Confidential Information includes, but is not limited to, trade secrets and other
19 proprietary information from all confidential and non-public Theravance products
20 and projects.

21 2. Destroying, concealing, disposing, deleting, removing or altering any and all
22 documentation of any kind, whether paper or electronic (including but not limited
23 to computer files, emails, hard drives, disk drives, USB drives, zip drives, cloud-
24 based storage accounts), data, drafts or other things or materials:
25 a) obtained from or belonging to Theravance, or containing or derived from
26 Theravance Confidential Information, including but not limited to modified
27 versions of Theravance documentation or data;

- b) relating in any way to Theravance or Theravance Confidential Information, including any use, disclosure, possession and/or transfer of Theravance Confidential Information, including but not limited to modified versions of, copies of and/or references thereto;
- c) relating in any way to the creation, copying, duplication, development, production, distribution, publication and/or broadcast of any version of Theravance Confidential Information or any derivative, copy, or reproduction thereof; and/or
- d) relating in any way to instructions, requests, directives, or agreements with or by any third party concerning the use or disclosure of Theravance Confidential Information, specifically but not limited to instructions, requests, directives or agreements made by and between Lee and any new or potential employer and/or partner.

14 B. Defendant Lee shall, within 48 hours of the issuance of this Order, identify to
15 Theravance's counsel of record, in writing and under oath, the identity and last-known contact
16 information, including the title, email address, physical address, telephone number, employer and
17 other identifying information in Lee's possession, custody or control, of the individuals, groups,
18 companies, governmental entities, or other persons or entities, if any, to whom Lee and, as
19 applicable, his agents and all of those acting in active concert or participation with him, have
20 disclosed, transferred, published, distributed, broadcasted, or marketed any Theravance
21 Confidential Information.

22 C. Defendant Lee and his agents and all of those acting in active concert or
23 participation with him shall, within 48 hours of the issuance of this Order, make the following
24 items in their possession, custody, or control (and not previously returned to Theravance’s counsel
25 of record) available to Theravance’s counsel of record for full-disk forensic imaging and data
26 preservation by Theravance, for Theravance’s counsel’s review on an Attorney’s Eyes Only basis:

27 1. Any computer (laptop and/or desktop) and every form of media, including but not
28 limited to electronic storage devices, external hard drives, zip drives, memory

1 sticks, jump drives, USB/flashdrive devices, CDs, DVDs, floppy disks, email
2 accounts or other cloud storage services, Blackberries, other PDAs, cell phones,
3 and/or tablets with text messaging or electronic mail capabilities, including logon
4 credentials necessary to access such media, which contain or have ever contained
5 Theravance Confidential Information, whether original or derivative, and/or any
6 copies and/or references thereto, including any mirror images of any media,
7 whether or not previously sent by Lee to Theravance and/or its counsel; specific
8 devices include, but are not limited to: Lenovo X1 Carbon laptop, Lenovo X250
9 laptop, Lenovo X230 laptop, Lenovo Yoga laptop, iPad Pro 9.7" 256 Gb, iPad 2,
10 iPhone 7 128 Gb, iPhone 6s 128 Gb, any "family computers" used at any time to
11 access Theravance correspondence or materials, and the following flash drives
12 and/or external media devices:

- 13 • Generic Flash Disk USB Device with serial number 371E7E36;
- 14 • Generic Flash Disk USB Device with serial number 7E7E66F6;
- 15 • Generic Flash Disk USB Device with serial number F627A265;
- 16 • Generic Flash Disk USB Device with serial number
17 CCBB1206121156220168487511;
- 18 • Generic Flash HS-CF USB Device with serial number
19 26020128B005;
- 20 • Generic USB Flash Disk USB Device with serial number
21 00ED375829089F70;
- 22 • HGST HTS 725050A7E630 USB Device with serial number
23 4F655A741326;
- 24 • HP v125w USB Device with serial number AA0C105400064475;
- 25 • iXpand Flash Drive USB Device with serial number
26 058FA5DF2DCC1;
- 27 • JetFlash Transcend 64GB USB Device with serial number
28 12WVXPHCZJL9LXHN;

- 1 • JetFlash Transcend 64GB USB Device with serial number
2 25FURAHC6M87EX7R;
- 3 • Kingston DataTraveler 2.0 USB Device with serial number
4 00241D8CE51BBE80492C910F;
- 5 • Kingston DataTraveler 2.0 USB Device with serial number
6 50E549C202101010A9AB9FCB;
- 7 • Kingston DataTraveler 3.0 USB Device with serial number
8 002618887702F070584BBDFD;
- 9 • Kingston DataTraveler 3.0 USB Device with serial number
10 08606E6B6896F051981E048B;
- 11 • Kingston DataTraveler 3.0 USB Device with serial number
12 08606E6D41E2B021283D3223;
- 13 • Kingston DataTraveler 3.0 USB Device with serial number
14 60A44C41388DF071B9860185;
- 15 • Kingston DataTraveler 3.0 USB Device with serial number
16 60A44C4138F0B071098B002A;
- 17 • Kingston DataTraveler 3.0 USB Device with serial number
18 60A44C4138F0F071B98B011F;
- 19 • Kingston DataTraveler 3.0 USB Device with serial number
20 08606E6B6580B051E832C83D;
- 21 • Kingston DataTraveler 3.0 USB Device with serial number
22 60A44C3FAC2DAF7030000C12;
- 23 • PNY Lovely Attache USB Device with serial number
24 AA04012700007609;
- 25 • SanDisk Cruzer Edge USB Device with serial number
26 20051738200F30431997;
- 27 • SanDisk Cruzer USB Device with serial number
28 4C530001080728109360;

- 1 • SanDisk Cruzer USB Device with serial number
- 2 4C530001190728104410;
- 3 • SanDisk Cruzer USB Device with serial number
- 4 20060775031D52F02715;
- 5 • SanDisk Cruzer USB Device with serial number
- 6 20035001801D52F1B5F4;
- 7 • SanDisk Cruzer USB Device with serial number
- 8 20052243711D52F02ABB;
- 9 • SanDisk Ultra Backup USB Device with serial number
- 10 08769307D092A3D4;
- 11 • Seagate BUP Slim SL USB Device with serial number NA7ZAP0A;
- 12 • Seagate Expansion USB Device with serial number NA427KES;
- 13 • Seagate FreeAgent Go USB Device with serial number 2GE16VW2;
- 14 • Seagate Portable USB Device that includes the following serial numbers: “2GHWXA1H”;
- 15 • Seagate Ultra Slim MT USB Device with serial number NA952EDR;
- 16 • USB2.0 Flash Disk USB Device with serial number RJKGFJ8095006719;
- 17 • WD My Passport 0740 USB Device with serial number 5758423145413146444B5431;
- 18 • CBM Flash Disk USB Device with serial number 111453004D111004;
- 19 • Chipsbnk UDisk USB Device with serial number 130601152606224;
- 20 • Generic Flash Disk USB Device with serial number 2A65388A;
- 21 • Generic Flash Disk USB Device with serial number 04A40057;

- 1 • Generic Flash Disk USB Device with serial number 97AB2DB6;
- 2 • Maxtor OneTouch USB Device that includes the following serial
- 3 numbers: “2HA26E38”;
- 4 • SCSIDISK SCSI_DISK_1234 USB Device with serial number
- 5 120830204111;
- 6 • Seagate Ultra Slim MT USB Device with serial number NA952E69;
- 7 • TOSHIBA TransMemory USB Device with serial number
- 8 7427EAB34F8FCE21C3A122EB;
- 9 • Verbatim STORE N GO USB Device with serial number
- 10 B7A1A77C;
- 11 • Verbatim STORE N GO USB Device with serial number
- 12 04774B000000091C;
- 13 • WD Elements 1042 USB Device with serial number
- 14 575850314541324A4B573038;
- 15 • WD My Passport 0741 USB Device with serial number
- 16 575833314139335; and
- 17 • any other flash drives or external media used to store or transfer
- 18 Theravance Confidential Information.

- 19 2. All documents and things, or other materials containing or derived from
- 20 Theravance Confidential Information;
- 21 3. ~~All documents and things, or other materials including but not limited to records, files, and data, received by Lee and/or, as applicable, his agents and all of those acting in active concert or participation with him, from any company that competes with Theravance or offers products and/or services that compete with Theravance’s products and/or services, from August 20, 2014 through the date of the entry of the preliminary injunction, including but not limited to any and all materials received from Lexen Holdings, Ltd. and any of its affiliates (collectively, “Lexen”).~~

1 4. All documents and things, or other materials including but not limited to records,
2 files, and data, received by Lee and/or, as applicable, his agents and all of those
3 acting in active concert or participation with him, from any company that Lee met
4 and/or conferred with regarding Theravance and/or Theravance Confidential
5 Information, from August 20, 2014 through the date of the entry of this Order,
6 including but not limited to any and all materials received from the China FDA,
7 clinical research organizations (CROs), manufacturing contractors or
8 subcontractors, materials suppliers, banking/financial institutions, and/or venture
9 capitalists (VCs) with whom Lee discussed Theravance and/or Theravance
10 Confidential Information, including, but not limited to:

- 11 • CDH
- 12 • Wuxi Healthcare Ventures
- 13 • Yuanming Capital
- 14 • Fosun Pharma
- 15 • Shenzhen Royal Asset Management Co. Ltd.
- 16 • Beijing Sunforest Capital
- 17 • AdvanTech Capital
- 18 • C Bridge Capital
- 19 • CITIC\Private Equity Funds
- 20 • Hill House Capital Management
- 21 • Sequoia Capital
- 22 • Arch Ventures
- 23 • Pingan Venture
- 24 • Lapam Capital
- 25 • Me Fund Capital
- 26 • Sinopharm Capital
- 27 • Hengdian Apeoloa
- 28 • Biocapital

- 1 • HG Capital
- 2 • BioVenture
- 3 • ObiMed
- 4 • Lilly Asia Venture
- 5 • CLI Venture
- 6 • EFung Capital
- 7 • ORIZA Seed
- 8 • Qiming Venture
- 9 • Vivo Capital
- 10 • Holly High Capital
- 11 • GP Capital
- 12 • Lyfe Capital
- 13 • Apricot Tree Capital
- 14 • Joaquin Torres
- 15 • Li Li

16 **D.** Pursuant to Federal Rule of Civil Procedure 26(d)(1), the parties may commence
17 discovery and any limits on discovery that would be applicable before any Rule 26(f) conference
18 shall be and hereby are waived. Until any other Protective Order is negotiated between the parties,
19 the “Model Protective Order for Litigation Involving Patents, Highly Sensitive Confidential
20 Information and/or Trade Secrets,” included and referenced by the Local Rules for the Northern
21 District of California shall be operative and be deemed by the parties and the Court as being
22 entered in this case upon entry of this Preliminary Injunction.

23 **E.** Theravance shall not be required to post a bond for the issuance of this Preliminary
24 Injunction.

25 **F.** This Preliminary Injunction is issued without prejudice to Theravance or Lee
26 seeking further additional discovery or other relief as appropriate, including further equitable or
27 legal relief.

G. This Preliminary Injunction shall remain in full force and effect through the date on which judgment is entered following the trial of this action.

H. This Preliminary injunction shall become immediately effective upon its entry.

IT IS SO ORDERED.

DATED: October 31, 2017

By Vince Chhabria
United States District Judge Vince Chhabria