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7

8 **UNITED STATES BANKRUPTCY COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 In re) Case No. 12-05752-LT7
12)
13 TRAVERSA THERAPEUTICS, INC.,) Chapter 7
14) Adversary No. 14-90056
Plaintiff,)

15) **ANSWER TO COMPLAINT FOR BREACH**
16) **OF FIDUCIARY DUTY; BREACH OF DUTY**
17) **OF LOYALTY; AVOIDANCE AND**
18) **RECOVERY OF FRAUDULENT**
19) **TRANSFERS; UNFAIR COMPETITION;**
20) **AND UNJUST ENRICHMENT**

19 RICHARD M KIPPERMAN, Chapter 7 Trustee)
for the estate of Traversa Therapeutics, Inc.,) **JURY TRIAL DEMANDED**
20)
Plaintiff,)

21 vs.)

22 CURT BRADSHAW, an individual,)
23)
Defendant.)
24)

1 Defendant Curt Bradshaw (“Bradshaw” or “Defendant”), by and through his undersigned
2 counsel, hereby responds to the Complaint for Breach of Fiduciary Duty; Breach of Duty of Loyalty;
3 Avoidance and Recovery of Fraudulent Transfers; Unfair Competition; and Unjust Enrichment (the
4 “Complaint”) filed by Richard M Kipperman (“Plaintiff”), the chapter 7 Trustee of Traversa
5 Therapeutics, Inc. (“Traversa” or “Debtor”), and states as follows:

6 **GENERAL ALLEGATIONS**

7 1. Bradshaw admits that on April 23, 2013 Traversa filed a voluntary petition under chapter
8 7 of title 11 of the United States Code (the “Bankruptcy Code”) and that Plaintiff is the chapter 7
9 Trustee for Traversa. Bradshaw lacks information or belief sufficient to form a belief as to the truth or
10 meaning of Plaintiff’s allegation that “Traversa was engaged in the business of researching and
11 developing biotechnology intellectual property” and, on that basis, denies the remaining allegations in
12 paragraph 1 of the Complaint.

13 2. Bradshaw admits that he was the Chief Scientific Officer for Traversa from December
14 2009 until March 9, 2012. However, Bradshaw denies the allegations contained in paragraph 2 of the
15 Complaint to the extent such allegations imply or could be read to mean that Bradshaw was a duly
16 appointed officer of Traversa during the period alleged in paragraph 2 of the Complaint.

17 3. Paragraph 3 of the Complaint contains legal conclusions to which no response is
18 required. To the extent a response is required, Bradshaw denies that this Court has the constitutional
19 authority to enter a final order the issues presented in the Complaint. Bradshaw further denies that this
20 Court has jurisdiction under General Order 312-D of the United States District Court for the Southern
21 District of California. Bradshaw admits that pursuant to General Order 312-E of the United States
22 District Court for the Southern District of California this Court can oversee some or all of this adversary
23 proceeding and submit proposed findings of fact and conclusions of law to the District Court.

24 4. Bradshaw admits the allegations contained in paragraph 4 of the Complaint.

25 5. Paragraph 5 of the Complaint contains legal conclusions or statements of Plaintiff’s
26 position in this adversary proceeding to which no response is required. To the extent that a response is
27 required, Bradshaw denies that counts one, two, six and seven of the Complaint constitute “core”
28 proceedings and the remaining counts while arguable “core” proceedings are not “constitutional core”

1 and this Court does not, absent consent, have authority under the United States Constitution to enter
2 final orders with respect to these remaining counts. Moreover, pursuant to Federal Rule of Bankruptcy
3 Procedure 7012, Bradshaw does not consent to the entry of final orders or judgment by the Court if it is
4 determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent
5 with Article III of the United States Constitution.

6 **BACKGROUND**

7 6. Bradshaw lacks information or belief sufficient to form a belief as to the truth or meaning
8 of Plaintiff's allegation in paragraph that "Traversa was engaged in the business of researching and
9 developing certain biotechnology intellectual property" and, on that basis, denies the allegation in the
10 first sentence of paragraph 6 of the Complaint. Bradshaw admits the remaining allegations in paragraph
11 6 of the Complaint.

12 7. Bradshaw lacks information or belief sufficient to form a belief as to the truth of the
13 allegations contained in the first and third sentence of paragraph 7 of the Complaint and, on that basis,
14 denies the allegations contained in the first and third sentence of paragraph 7 of the Complaint.
15 Bradshaw denies the allegations contained in the second sentence of paragraph 7 of the Complaint.

16 8. Bradshaw admits that on or about March 1, 2012 he accepted a calendar invitation from
17 Steve Dowdy. Bradshaw admits that the subject line of the calendar invitation sent by Dowdy was
18 "naming party". Bradshaw denies the remaining allegations in the first sentence of paragraph 8 of the
19 Complaint to the extent such allegations infer or imply that there was any significance to the subject line
20 of the calendar invitation and/or that Bradshaw did anything improper. Bradshaw denies the allegations
21 contained in the second, third and fourth sentence of paragraph 8 of the Complaint. Bradshaw admits
22 the last sentence of paragraph 8 of the Complaint.

23 9. Bradshaw lacks information or belief sufficient to form a belief as to the truth of the
24 allegations contained in the first sentence of paragraph 9 of the Complaint and, on that basis, denies the
25 allegations contained in the first sentence of paragraph 9 of the Complaint. Bradshaw denies that he has
26 ever met with anyone by the name of "Corey Goodwin" as alleged in paragraph 9 of the Complaint.
27 Bradshaw denies the allegation that he and Mr. Dowdy travelled to San Francisco "for the purpose of
28 soliciting venture capital funds for Solstice." Bradshaw denies the allegations contained in the last

1 sentence of paragraph 9 of the Complaint.

2 10. Bradshaw admits that on or about March 9, 2012 Traversa ceased normal business
3 operations. Bradshaw denies the remaining allegations in paragraph 10 of the Complaint.

4 11. Bradshaw lacks information or belief sufficient to form a belief as to the truth of the
5 allegations contained in paragraph 11 of the Complaint and, on that basis, denies the allegations
6 contained in paragraph 11 of the Complaint.

7 12. Bradshaw lacks information or belief sufficient to form a belief as to the truth of the
8 allegations contained in paragraph 12 of the Complaint and, on that basis, denies the allegations
9 contained in paragraph 12 of the Complaint.

10 13. Bradshaw lacks information or belief sufficient to form a belief as to the truth of the
11 allegations contained in the first and second sentences of paragraph 13 of the Complaint as well as the
12 allegation in the final sentence that “a competing buyer was willing to purchase it for \$8,000” and, on
13 that basis, denies the allegations contained in the first, second and final sentences of paragraph 13 of the
14 Complaint. Bradshaw admits that he purchased the “Mermade” from Traversa for \$1,000. Bradshaw
15 denies that the “Mermade” was “valuable” or that he paid a “steeply discounted price” as alleged in the
16 third sentence of paragraph 13 of the Complaint.

17 14. Bradshaw admits that after being terminated (without notice) by Traversa, Mr. Lack, on
18 behalf of Traversa, retained him to assist with the liquidation of Traversa’s assets, sign checks on behalf
19 of Traversa and perform other tasks in connection with the orderly shutdown of Traversa in preparation
20 for a bankruptcy. Bradshaw further admits that, but for his assistance and the assistance of others, at the
21 time of Traversa’s bankruptcy filing, Plaintiff would have been forced to clean an entire scientific
22 laboratory, dispose of potentially dangerous chemicals, and dispose of various specimens and live mice.
23 Bradshaw admits that Traversa paid him \$43,430 for the services he rendered during this period.
24 Bradshaw denies the allegation in the second sentence of paragraph 14 of the Complaint as Bradshaw
25 was not receiving any of the benefits that he previously received from Traversa, including, but not
26 limited to, health insurance and employer paid portion of payroll taxes. Bradshaw lacks information or
27 belief sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 14 of
28 the Complaint and, on that basis, denies the remaining allegations contained in paragraph 14 of the

1 Complaint.

2 15. Bradshaw admits the allegations in paragraph 15 of the Complaint.

3 16. Bradshaw admits that on or about June 2012 Solstice signed a non-binding document
4 with VenBio, that on or about June 2012 Solstice signed a letter of intent with UCSD and that Solstice is
5 using the “Mermade” acquired by Bradshaw from Traversa. Bradshaw denies the remaining allegations
6 contained in paragraph 16 of the Complaint.

7 **FIRST CLAIM FOR RELIEF**

8 **(Breach of Fiduciary Duty)**

9 17. Bradshaw hereby incorporates all preceding paragraphs as if fully restated herein.

10 18. Paragraph 18 of the Complaint contains legal conclusions or statements to which no
11 response is required. To the extent a response is required, Bradshaw has insufficient knowledge or
12 information sufficient to form a belief as to the truth of the allegations contained in paragraph 18, and,
13 on that basis, denies the allegations in paragraph 18. Moreover, Bradshaw denies the allegations
14 contained in paragraph 18 of the Complaint to the extent such allegations imply or could be read to
15 mean that Bradshaw was at all times prior to March 9, 2012 a duly appointed officer of Traversa.

16 19. Paragraph 19 of the Complaint contains legal conclusions or statements to which no
17 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
18 19.

19 20. Paragraph 20 of the Complaint contains legal conclusions or statements to which no
20 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
21 20.

22 21. Paragraph 21 of the Complaint contains legal conclusions or statements to which no
23 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
24 21.

25 **SECOND CLAIM FOR RELIEF**

26 **(Breach of Duty of Loyalty)**

27 22. Bradshaw hereby incorporates all preceding paragraphs as if fully restated herein.

28 23. Paragraph 23 of the Complaint contains legal conclusions or statements to which no

1 response is required. To the extent a response is required, Bradshaw has insufficient knowledge or
2 information sufficient to form a belief as to the truth of the allegations contained in paragraph 18, and,
3 on that basis, denies the allegations in paragraph 23. Moreover, Bradshaw denies the allegations
4 contained in paragraph 23 of the Complaint to the extent such allegations imply or could be read to
5 mean that Bradshaw was a duly appointed officer or employee of Traversa during “all relevant times”.

6 24. Paragraph 24 of the Complaint contains legal conclusions or statements to which no
7 response is required. To the extent a response is required, denies the allegations in paragraph 24.

8 25. Paragraph 25 of the Complaint contains legal conclusions or statements to which no
9 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
10 25.

11 26. Paragraph 26 of the Complaint contains legal conclusions or statements to which no
12 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
13 26.

14 **THIRD CLAIM FOR RELIEF**

15 **(Avoidance and Recovery of Fraudulent Transfers)**

16 27. Bradshaw hereby incorporates all preceding paragraphs as if fully restated herein.

17 28. Paragraph 28 of the Complaint contains legal conclusions or statements to which no
18 response is required. To the extent a response is required, Bradshaw admits that he received \$43,430.00
19 from Traversa for services rendered between March 12, 2012 and April 9, 2012 and that he purchased a
20 “Mermaid” for \$1,000. Further, Bradshaw has insufficient knowledge or information sufficient to form
21 a belief as to the truth of the allegations contained in paragraph 28, and, on that basis, denies the
22 allegations in paragraph 28.

23 29. Paragraph 29 of the Complaint contains legal conclusions or statements to which no
24 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
25 29.

26 30. Paragraph 30 of the Complaint contains legal conclusions or statements to which no
27 response is required. To the extent a response is required, Bradshaw has insufficient knowledge or
28 information sufficient to form a belief as to the truth of the allegations contained in paragraph 30, and,

1 on that basis, denies the allegations in paragraph 18.

2 31. Paragraph 31 of the Complaint contains legal conclusions or statements to which no
3 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
4 31.

5 **FOURTH CLAIM FOR RELIEF**

6 **(Avoidance and Recovery Fraudulent Transfer)**

7 32. Bradshaw hereby incorporates all preceding paragraphs as if fully restated herein.

8 33. Paragraph 33 of the Complaint contains legal conclusions or statements to which no
9 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
10 33.

11 34. Paragraph 34 of the Complaint contains legal conclusions or statements to which no
12 response is required. To the extent a response is required, Bradshaw has insufficient knowledge or
13 information sufficient to form a belief as to the truth of the allegations contained in paragraph 34, and,
14 on that basis, denies the allegations in paragraph 34.

15 35. Paragraph 35 of the Complaint contains legal conclusions or statements to which no
16 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
17 35.

18 **FIFTH CLAIM FOR RELIEF**

19 **(Avoidance and Recovery of Fraudulent Transfers)**

20 36. Bradshaw hereby incorporates all preceding paragraphs as if fully restated herein.

21 37. Paragraph 37 of the Complaint contains legal conclusions or statements to which no
22 response is required. To the extent a response is required, Bradshaw has insufficient knowledge or
23 information sufficient to form a belief as to the truth of the allegations contained in paragraph 37, and,
24 on that basis, denies the allegations in paragraph 37.

25 38. Paragraph 38 of the Complaint contains legal conclusions or statements to which no
26 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
27 38.

1 **SIXTH CLAIM FOR RELIEF**

2 **(Unfair Competition)**

3 39. Bradshaw hereby incorporates all preceding paragraphs as if fully restated herein.

4 40. Paragraph 40 of the Complaint contains legal conclusions or statements to which no
5 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
6 40.

7 41. Paragraph 41 of the Complaint contains legal conclusions or statements to which no
8 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
9 41.

10 42. Paragraph 42 of the Complaint contains legal conclusions or statements to which no
11 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
12 42.

13 **SEVENTH CLAIM FOR RELIEF**

14 **(Unjust Enrichment)**

15 43. Bradshaw hereby incorporates all preceding paragraphs as if fully restated herein.

16 44. Paragraph 44 of the Complaint contains legal conclusions or statements to which no
17 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
18 44.

19 45. Paragraph 45 of the Complaint contains legal conclusions or statements to which no
20 response is required. To the extent a response is required, Bradshaw denies the allegations in paragraph
21 45.

22 **AFFIRMATIVE DEFENSES**

23 Bradshaw alleges the following affirmative defenses with respect to the purported claims for
24 relief alleged in the Complaint.

25 **FIRST AFFIRMATIVE DEFENSE**

26 **(Failure to State a Cause of Action)**

27 As a separate an affirmative defense to the Complaint, and to each purported cause of action
28 thereof, Bradshaw submits that the Complaint, and each purported cause of action thereof, fails to state a

1 claim against Bradshaw and fails to state facts sufficient to constitute a cause of action against Bradshaw
2 pursuant to Federal Rules of Civil Procedure 9 and 12(b)(6) and other applicable law. Accordingly, the
3 Complaint and the causes of action asserted therein should be dismissed.

4 **SECOND AFFIRMATIVE DEFENSE**

5 **(Business Judgment Rule)**

6 As a separate an affirmative defense to the Complaint, and to each purported cause of action
7 thereof, Bradshaw is not liable in the capacity in which he has been sued in that at all times he was
8 exercising his best business judgment and cannot be held liable for his acts, actions or omissions
9 pursuant to the Business Judgment Rule.

10 **THIRD AFFIRMATIVE DEFENSE**

11 **(Setoff/Recoupment)**

12 As a separate an affirmative defense to the Complaint, and to each purported cause of action
13 thereof, Bradshaw submits that the Complaint, and each purported cause of action thereof, is barred by
14 the doctrine of setoff and/or recoupment.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 **(Reasonably Equivalent Value)**

17 As a separate an affirmative defense to the Complaint, and to each purported cause of action
18 thereof, Bradshaw submits that the purported claims and causes of action against Bradshaw are barred,
19 in whole or in part, because Bradshaw provided and Traversa received reasonably equivalent vale in
20 exchange for the alleged transfers in the Complaint. Accordingly, the alleged transfers described in the
21 Complaint are neither avoidable nor recoverable and the Complaint and the causes of action asserted
22 therein should be dismissed.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 **(No Damage)**

25 As a separate an affirmative defense to the Complaint, and to each purported cause of action
26 thereof, Bradshaw, without admitting that the Complaint states a claim, submits that Plaintiff's claims
27 are barred, in whole or in part, because neither Plaintiff nor Traversa have sustained any loss, damage,
28 harm or detriment in any amount.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Duplicative Claims)**

3 As a separate an affirmative defense to the Complaint, and to each purported cause of action
4 thereof, Bradshaw, without admitting that the Complaint states a claim, submits that Plaintiff's alleged
5 remedies are limited to the extent Plaintiff seeks overlapping and duplicative recovery based on various
6 claims against Bradshaw for any alleged single wrong.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 **(Cal. Bus. & Prof. Code §16600)**

9 As a separate an affirmative defense to the Complaint, and to each purported cause of action
10 thereof, Bradshaw submits that the Complaint, and each purported cause of action thereof, is barred by
11 Cal. Bus & Prof. Code §16600 which prohibits the restraint of any lawful profession, trade or business.

12 **EIGHTH AFFIRMATIVE DEFENSE**

13 **(Waiver)**

14 As a separate an affirmative defense to the Complaint, and to each purported cause of action
15 thereof, Bradshaw submits that the Complaint, and each purported cause of action thereof, is barred by
16 the doctrine of waiver.

17 **NINTH AFFIRMATIVE DEFENSE**

18 **(Estoppel)**

19 As a separate an affirmative defense to the Complaint, and to each purported cause of action
20 thereof, Bradshaw submits that the Complaint, and each purported cause of action thereof, is barred by
21 the doctrine of estoppel.

22 **TENTH AFFIRMATIVE DEFENSE**

23 **(Laches)**

24 As a separate an affirmative defense to the Complaint, and to each purported cause of action
25 thereof, Bradshaw submits that the Complaint, and each purported cause of action thereof, is barred by
26 the doctrine of laches.

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 **(Indemnification)**

3 As a separate an affirmative defense to the Complaint, and to each purported cause of action
4 thereof, Bradshaw, without admitting that the Complaint states a claim, submits that the Traversa
5 bankruptcy estate is obligated to indemnify Bradshaw for any damages awarded to Plaintiff.

6 **TWELFTH AFFIRMATIVE DEFENSE**

7 **(Statute of Limitations)**

8 As a separate an affirmative defense to the Complaint, and to each purported cause of action
9 thereof, Bradshaw, without admitting that the Complaint states a claim, submits that the Complaint and
10 each purported cause of action thereof, is barred by the applicable statute of limitations, including, but
11 not limited to Cal. Code Civ. Proc. §359, 343, 338 and 17208.

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 **(Reservation of Rights and Non-Waiver)**

14 Bradshaw reserves the right to assert additional defenses, including affirmative defenses, based
15 upon further investigation and/or discovery. Bradshaw also reserves the right to amend or supplement
16 this Answer based on further formal or informal discovery and/or in response to any amendments or
17 supplements to the Complaint made by Plaintiff, and for any such amendments or supplements to the
18 Answer to relate back to the filing of the original Answer.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Bradshaw prays for relief and judgment as follows:

- 21 1. that the Court deny Plaintiff's prayer for relief in its entirety and that the Court enter
22 judgment in Bradshaw's favor;
- 23 2. that the Court award Bradshaw its costs and expenses incurred in this action and
24 attorneys' fees as permitted by law, plus interest; and
- 25 3. that the Court award Bradshaw such other and further relief that it deems appropriate.
- 26
27
28

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Bradshaw demands a trial by jury for all issues so triable.

DATED: May 14, 2014

FOLEY & LARDNER LLP

Nancy L. Stagg

Matthew J. Riopelle

/s/ Matthew J. Riopelle

Matthew J. Riopelle

Attorneys for Defendant, Curt Bradshaw

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to this action; my current business address is 3579 Valley Centre Drive, Suite 300, San Diego, CA 92130.

On May 14, 2014, I served the foregoing document(s) described as: **Answer to Complaint for Breach of Fiduciary Duty; Breach of Duty of Loyalty; Avoidance and Recovery of Fraudulent Transfers; Unfair Competition; and Unjust Enrichment** on the interested parties in this action as follows:

X BY CM/ECF NOTICE OF ELECTRONIC FILING

X by causing such document(s) listed above to be served through this Court's electronic transmission facilities via the Notice of Electronic Filing (NEF) and hyperlink, to the parties and/or counsel who are determined this date to be registered CM/ECF Users set forth in the service list obtained from this Court on the Electronic Mail Notice List.

Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive e-mail notice/service for this case.

- Kit J. Gardner kgardner@gardnerlegal.com
- Richard M Kipperman teresaj@corpmgt.com, ca82@ecfcbis.com

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

X Executed on May 14, 2014, at San Diego, California.

/s/ Raechelle Hurst
Raechelle Hurst