**SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF NEW YORK: COMMERCIAL DIVISION**

REPRESENTACIONES E INVESTIGACIONES MÉDICAS, S.A. DE C.V., as successor to TEVA PHARMACEUTICALS HOLDINGS MÉXICO, S.A. DE C.V.; and LEMERY, S.A. DE C.V., a subsidiary of TEVA PHARMACEUTICAL INDUSTRIES LIMITED,

Plaintiffs,

v.

FERNANDO ESPINOSA ABDALÁ; LEOPOLDO DE JESÚS ESPINOSA ABDALÁ; and PPTM INTERNATIONAL S.à.r.l.,

Defendants.

Index No. _____

**SUMMONS**

Plaintiffs designate New York County as the place of trial.

The basis for venue is New York General Obligations Law § 5-1402 and CPLR § 501.

TO DEFENDANTS:

Fernando Espinosa Abdalá
San Sebastian #34 Col. Chimalistac
Mexico DF 01070

Leopoldo de Jesús Espinosa Abdalá
Circuito Madrigal 1640 Col. Colinas de San Javier
Zapopan, Jalisco 45100

PPTM International S.à.r.l.
2 rue Nicolas Bové, L-1253
Luxembourg
Grand Duchy of Luxembourg
Attention: Board of Managers

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not

personally delivered to you within the State of New York. If you fail to answer, judgment will be taken against you by default for the relief demanded herein.

This Court has jurisdiction over Defendants pursuant to New York General Obligations Law § 5-1402. Venue is proper pursuant to New York General Obligations Law § 5-1402, CPLR § 501, and the consent of the parties.

Dated: September 27, 2016
New York, New York

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| REPRESENTACIONES E INVESTIGACIONES MÉDICAS, S.A. DE C.V., as successor to TEVA PHARMACEUTICALS HOLDINGS MÉXICO, S.A. DE C.V.; and LEMERY, S.A. DE C.V., a subsidiary of TEVA PHARMACEUTICAL INDUSTRIES LIMITED,<br><br>Plaintiffs,<br><br>v.<br><br>FERNANDO ESPINOSA ABDALÁ; LEOPOLDO DE JESÚS ESPINOSA ABDALÁ; and PPTM INTERNATIONAL S.à.r.l.,<br><br>Defendants. | Index No. _____<br><br>**COMPLAINT**<br><br>JURY TRIAL DEMANDED |

Plaintiffs Representaciones e Investigaciones Médicas, S.A. de C.V. ("Rimsa"), as successor to Teva Pharmaceuticals Holdings México, S.A. de C.V.; and Lemery, S.A. de C.V., a subsidiary of Teva Pharmaceutical Industries Limited, bring this Complaint against Defendants Fernando Espinosa Abdalá, Leopoldo de Jesús Espinosa Abdalá, and PPTM International S.à.r.l., alleging as follows:

## NATURE OF THE ACTION

1. This is an action for fraud and breach of contract in a corporate acquisition. Defendants affirmatively lied and concealed extraordinary legal violations to obtain $2.3 billion through the sale of a Mexican pharmaceutical manufacturer and its intellectual property. Plaintiffs have suffered substantial losses as a result. The legal violations prevent the

manufacturer from selling its products, seriously undermining the value of the assets Plaintiffs acquired in the transaction.

2. Teva Pharmaceutical Industries Limited is a leading global manufacturer of generic and specialty pharmaceutical products. In 2015, Teva decided to acquire one of the largest independent Mexican pharmaceutical companies, Representaciones e Investigaciones Médicas, S.A. de C.V. – better known as "Rimsa." Plaintiffs are the two Teva subsidiaries through which Teva acquired Rimsa and its intellectual property. Defendants Fernando and Leopoldo Espinosa are the two Mexican brothers who sold Rimsa to Teva, and Defendant PPTM International S.à.r.l. is a holding company set up in Luxembourg by the Espinosas that formerly held Rimsa's intellectual property.

3. Teva acquired Rimsa to expand into the growing Mexican market while maintaining its strong reputation for quality – a reputation that is not just a key corporate value but also an important competitive advantage. Unbeknownst to Teva, Rimsa was engaged in a years-long scheme to sell defective and unlawful products and to conceal those violations from Mexican regulators.

4. A Mexican pharmaceutical company seeking to launch a new product must submit the product's formulation for approval to the *Comisión Federal para la Protección Contra Riesgos Sanitarios*, or "COFEPRIS" – the Mexican equivalent of the Food and Drug Administration. The products the company manufactures and sells must strictly comply with that approved formulation. COFEPRIS periodically audits manufacturers to ensure compliance.

5. Rimsa employed an elaborate, long-running scheme to avoid those legal requirements. Instead of registering the actual formulations for finished products, Rimsa made up false "paper" formulations for products not yet developed or tested. Rimsa then submitted those false "paper" formulations to COFEPRIS even though it had no expectation that they

would match the formulations of the products ultimately manufactured and sold. That scheme allowed Rimsa to avoid the burdens and delays of developing and testing products before submitting them for registration. Rimsa would then fraudulently launch its actual products under the guise of those made-up formulations – even though the actual products were often completely different. Rimsa referred to that scheme internally as its "Fast Track" program.

6. Rimsa clearly knew its Fast Track program was illegal. In August 2010, for example, Rimsa's Quality Director sent an email to other senior officers expressing alarm that COFEPRIS might uncover the fraud. Quoting provisions of Mexican criminal law, she pleaded: "I am really very worried, and I do not want to suffer the legal consequences of what we are doing outside the law. You know I have two children that depend solely on me . . . ."[1]

7. Rimsa devised increasingly sophisticated ploys to conceal its fraud from COFEPRIS auditors. First, Rimsa developed a system referred to internally as "double paperwork." Rimsa kept one set of records reflecting the true product formulations for its internal use, and a second set reflecting the false "paper" formulations that could be shown to auditors. Rimsa later developed similar parallel computing systems for its electronic data, one containing true data for internal use and another with false data to show to regulators.

8. Rimsa's corruption extended beyond its product formulations and pervaded other important aspects of its regulatory submissions as well. Rimsa submitted fraudulent information to COFEPRIS about the suppliers for the active pharmaceutical ingredients that were the key ingredients in its pharmaceutical products. It lied about the laboratory tests it claimed to have performed, including the stability tests designed to ensure that the stated shelf life of each product was accurate and that the product would remain stable, and thus safe and effective,

[1] Certain documents quoted in this Complaint have been translated from the original Spanish.

throughout that period. In many instances, Rimsa concealed test results showing that products would ***not*** remain stable. Rimsa used the same double paperwork and parallel computing systems to conceal all of those frauds as well.

9. The Espinosas knew about and participated in Rimsa's frauds. They were not only owners of the company but also senior officers who controlled and participated in the day-to-day management of its affairs. As a result, the Espinosas were intimately familiar with Rimsa's Fast Track program, its other legal violations, and the double paperwork Rimsa used to conceal those violations from COFEPRIS. Numerous Rimsa employees have confirmed the Espinosas' knowledge and participation in the frauds. The Espinosas attended internal meetings where the frauds were discussed, and they regularly received emails addressing Fast Track and double paperwork.

10. Rimsa's quality department, moreover, began compiling a "Master List" tracking the various respects in which its products did not comply with the law. That list enumerated the products that either did not match the registered formulation, had unauthorized ingredient suppliers, or lacked the stability tests required to show they would remain intact. The list even included pie charts depicting the massive percentage of Rimsa products that were out of compliance. The Espinosas received copies of that list by email on numerous occasions and discussed it with Rimsa's management – discussions chronicled in the company's email records.

11. The Espinosas blatantly lied to Teva during the acquisition. They led a management meeting in New York where Teva was given false information about the validity of Rimsa's product registrations. And during a site visit to Rimsa's plant in Guadalajara, Teva was shown dossiers containing false product formulations, stability tests, and other information – the same double paperwork used to defraud COFEPRIS for years.

12. The ultimate lies came in the acquisition agreements themselves. In those contracts, the Espinosas made a series of broad representations and warranties. One of them – entitled "Compliance with Applicable Laws" – represented that Rimsa was "currently conducting, and ha[d] since January 1, 2010, conducted [its] operations ***in compliance in all material respects with the Laws***, judgments and orders applicable to [it]." That was a lie, and the Espinosas knew it. Far from complying with applicable laws, Rimsa had built its corrupt business model on outright regulatory fraud.

13. Teva relied on those false representations and warranties as well as the false information it received in due diligence. Those misrepresentations deceived Teva into believing that Rimsa's products were in full compliance with Mexican law. Teva conducted thorough due diligence to confirm that belief. But the fraudulent double paperwork prevented Teva from being able to detect the violations. Teva reported its findings to its senior executives, who authorized the company to pay approximately $2.3 billion for Rimsa and its intellectual property.

14. Just one week after the transaction closed, Teva received an anonymous email alerting it to Rimsa's false product registrations, double paperwork, and "all-around fraud." Teva investigated and discovered what the Espinosas had known all along – that the Espinosas were corrupt and that Rimsa was selling countless products in violation of the law, either because they did not match their registered formulations, they had ingredients from unapproved suppliers, they were not supported by the necessary tests, or some combination of the foregoing.

15. The results of uncovering the Espinosas' fraud have been far-reaching. Teva realized that it could not lawfully sell many of the products Rimsa had been manufacturing. Teva engaged in a dialogue with COFEPRIS about the problems, and COFEPRIS conducted a three-day inspection of Rimsa's plant. As a result of that inspection, COFEPRIS ordered Teva to halt production of 44 different products. Teva complied with that order and also halted its

commercial manufacture and sale of numerous other products as well. Ultimately, COFEPRIS shut down the plant entirely.

16. The financial impact goes to the root of the transaction. Teva agreed to pay $2.3 billion for Rimsa and its intellectual property based on forecasts that assumed that Rimsa would continue to sell products it had marketed in the past. At this point it is unknown when, if ever, the defective products will return to the market. The Espinosas thus defrauded Teva out of the value it reasonably expected to obtain for the $2.3 billion it paid in the transaction.

17. The business that Teva acquired was so infected by the Espinosas' corrupt practices that it puts Teva's reputation and stature as a manufacturer of high-quality pharmaceuticals at risk. Patient safety and compliance with the laws governing the commercialization of medicines are indispensable in this industry and essential to Teva's corporate values. Rimsa's unprecedented and dramatic departure from industry practice is fundamentally incompatible with those standards.

18. Accordingly, Plaintiffs bring this action to seek redress for Defendants' fraud, breaches of contract, and other claims set forth herein.

## THE PARTIES

19. Plaintiff Representaciones e Investigaciones Médicas, S.A. de C.V. ("Rimsa") is a private limited liability company (*sociedad anónima de capital variable*) incorporated under the laws of Mexico, and is a successor by merger to Teva Pharmaceuticals Holdings México, S.A. de C.V. ("TPHM"). TPHM was an indirect subsidiary of Teva Pharmaceutical Industries Limited, a global pharmaceutical company incorporated under the laws of Israel. TPHM was one of the two corporate entities that Teva used to acquire Rimsa and its intellectual property. Following the acquisition, TPHM was merged into Rimsa, which succeeded to TPHM's rights in connection with the acquisition.

20. Plaintiff Lemery, S.A. de C.V. is a private limited liability company (*sociedad anónima de capital variable*) incorporated under the laws of Mexico. Lemery is another indirect subsidiary of Teva Pharmaceutical Industries Limited, and was the other corporate entity that Teva used to acquire Rimsa from the Espinosas.

21. Defendant Fernando Espinosa Abdalá is a natural person who resides in Mexico City, Mexico. He was formerly an owner of Rimsa as well as its Operational President, and he sold the company to TPHM and Lemery.

22. Defendant Leopoldo de Jesús Espinosa Abdalá is a natural person who resides in Zapopan, near Guadalajara, Mexico. He is the brother of Fernando Espinosa. Leopoldo Espinosa was formerly an owner of Rimsa as well as its Executive President, and he sold the company to TPHM and Lemery.

23. Defendant PPTM International S.à.r.l. ("PPTM") is a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of Luxembourg. PPTM held various patents, trademarks, and other intellectual property that Rimsa uses in its business. PPTM is owned through a complex chain of trusts and other entities, but is ultimately beneficially owned and controlled by the Espinosas and their related parties or affiliates. PPTM sold its intellectual property to TPHM in connection with the acquisition of Rimsa.

**JURISDICTION AND VENUE**

24. This Court has jurisdiction pursuant to New York General Obligations Law § 5-1402. Defendants Fernando Espinosa, Leopoldo Espinosa, and PPTM are not residents of this State. The action arises out of and relates to a Share Purchase Agreement and Asset Purchase Agreement that designate New York law as the applicable law pursuant to General Obligations Law § 5-1401. The Share Purchase Agreement and Asset Purchase Agreement provide for consideration in excess of one million dollars and relate to an obligation arising out

of a transaction that covers more than one million dollars. The Share Purchase Agreement and Asset Purchase Agreement each contain a provision whereby Defendants agreed to submit to the jurisdiction of the courts of this State.

25. This Court has personal jurisdiction over Defendants because they consented to jurisdiction in the Share Purchase Agreement and Asset Purchase Agreement.

26. Venue is proper in this Court pursuant to New York General Obligations Law § 5-1402, CPLR § 501, and the consent of the parties as set forth above.

## FACTUAL ALLEGATIONS

### *Teva's Plans To Acquire Rimsa from the Espinosas*

27. Teva Pharmaceutical Industries Limited is a global pharmaceutical company committed to increasing access to high-quality healthcare by developing, producing, and marketing affordable generic and specialty pharmaceutical products. Incorporated in Israel in 1944 as the successor to other companies dating back to 1901, Teva now operates in markets throughout the world.

28. Teva is the leading generic drug company in both the United States and Europe, with a global portfolio of over 1,000 different molecules. In addition to generic products, Teva also has an extensive portfolio of patented and other specialty medicines. Those products include Copaxone, the leading multiple sclerosis therapy in the United States and worldwide, as well as other treatments for central nervous system and respiratory disorders.

29. While Teva is a global company, its presence in the United States through its subsidiary Teva Pharmaceuticals USA, Inc. is particularly substantial. More than 50% of Teva's worldwide revenue comes from U.S. sales. Teva maintains its North American headquarters in North Wales, Pennsylvania, and employs approximately 7,500 people across the continent.

30. Quality is one of Teva's key corporate values. The company is committed not only to complying with minimum regulatory requirements, but also to developing and leveraging quality as a competitive advantage. Teva continues to focus on building a solid and sustainable quality compliance foundation and making quality a priority beyond compliance that is part of its corporate culture.

31. To expand its presence throughout the world, Teva has often acquired or collaborated with other companies. In November 2015, for example, Teva agreed to a new venture with Takeda Pharmaceutical Company Limited in Japan, seeking to combine Takeda's leading brand reputation and strong distribution presence with Teva's operational expertise. In July 2015, Teva announced an agreement with Allergan plc, a global pharmaceutical company based in Ireland, to acquire Actavis Generics for approximately $34 billion in cash and 100 million Teva shares – a transaction that has since closed. Teva has proceeded with those acquisitions and collaborations to expand its presence in other markets while maintaining its reputation for product quality.

32. It was with those same goals in mind that Teva contemplated acquiring one of the leading independent Mexican pharmaceutical companies, Representaciones e Investigaciones Médicas, S.A. de C.V. – a company better known as "Rimsa." Founded in 1970 in Mexico City by Leopoldo Espinosa, the father of the two individual defendants in this case, Rimsa was originally a pharmaceutical distributor. Over the ensuing 45 years, it expanded into manufacturing and developed an extensive portfolio of specialty pharmaceutical products. Rimsa became one of the largest and most well-known independent pharmaceutical companies in Mexico.

33. Defendants Fernando and Leopoldo Espinosa worked at their father's company throughout its 45-year history and continued to manage the company following his death in

2010. Fernando Espinosa served as Rimsa's Operational President, while Leopoldo Espinosa served as its Executive President.

34. Rimsa appeared to be an ideal fit for Teva's strategy of increasing its product offerings in key emerging markets in a manner consistent with its reputation for product quality. Mexico is the second largest market in Latin America and one of the top five emerging markets globally. Rimsa appeared to offer Teva a significant platform for growth by combining a strong brand in Mexico, a portfolio of patent-protected products, and a loyal customer base of physicians, patients, and healthcare providers.

***Rimsa's Concealed History of Illegal Conduct***

35. Unbeknownst to Teva, the true situation at Rimsa was very different. Rimsa had a longstanding history of unlawful conduct that went to the heart of its product integrity and compliance obligations.

36. As in the United States, Mexico's pharmaceutical sector is a closely regulated industry. Mexico's General Health Law and implementing regulations thoroughly regulate both the manufacture and sale of pharmaceutical products. Those laws are administered by the Ministry of Health as well as the *Comisión Federal para la Protección Contra Riesgos Sanitarios*, or "COFEPRIS" – the Mexican equivalent of the Food and Drug Administration. COFEPRIS is responsible for enforcing and supervising compliance with Mexico's pharmaceutical laws and regulations.

37. To protect the public health, Mexican law requires pharmaceutical companies to obtain a "sanitary registration" from COFEPRIS for each product the company seeks to commercialize. COFEPRIS grants a sanitary registration only after determining that the composition of a product and the manufacturing process comply with applicable safety, efficacy, and quality requirements. The pharmaceutical company must apply for a registration and submit

to COFEPRIS all necessary information required by Mexican law, including the proposed formulation, the suppliers of the active pharmaceutical ingredients, the manufacturing process, the validation process and analytical methods, and test results demonstrating the product's stability over time.

38. Once COFEPRIS grants a sanitary registration, Mexican law requires strict compliance with its terms. The composition of the product must conform to the specifications COFEPRIS approved, and the manufacturer must comply with all the processes listed above. If a pharmaceutical product deviates from the registration in its identity, pureness, preservation, preparation, dosage, or manufacturing, Mexican law holds both the owner of the facility and its designated Health Compliance Officer jointly liable. COFEPRIS periodically audits pharmaceutical manufacturers to ensure their compliance.

39. As in the United States, violations of those requirements can result in substantial penalties. Mexican law provides for a range of penalties including fines, revocation of sanitary registrations, suspension of operations, permanent closure, or even detention. Given the potential health risks, Mexican law also prescribes criminal penalties for certain violations. Manufacturing of pharmaceutical products without the necessary registrations is punishable by three to fifteen years' imprisonment, as well as substantial fines.

40. Rimsa was subject to those obligations and was required to obtain a registration for each pharmaceutical product it manufactured or distributed. But Rimsa devised a scheme to evade those requirements. Rather than submitting formulations to COFEPRIS for final products ready to launch, Rimsa submitted made-up "paper" formulations for products not yet developed or tested. Rimsa did so even though it had no expectation that the formulations for the finished products would correspond to the ones it was submitting. By submitting those false "paper" formulations early in the product development process, Rimsa sought to avoid the risks, delays,

and burdens of registering finished, tested products. Rimsa referred to that scheme internally as "Fast Track" or "FT."

41. Rimsa used its Fast Track program to register numerous products over the years. The scheme proved particularly useful in connection with a regulatory change that occurred in early 2008. That year, Mexican authorities altered the registration requirements for new "combination" products with multiple active pharmaceutical ingredients. Before 2008, regulators generally did not require clinical studies or similar tests for combination products so long as the constituent ingredients had each been separately approved. The 2008 amendment did away with that exemption.

42. Many of Rimsa's products were combination products. Upon learning of the proposed change, Rimsa foresaw a serious obstacle to the new combination products in its development pipeline.

43. Rimsa used its Fast Track program to circumvent that change by submitting false "paper" formulations for combination products in its pipeline before the effective date of the 2008 amendment. Fact Track dramatically increased the number of registrations Rimsa was able to obtain before the regulations went into effect. A tracking chart from November 2007 shows 25 different products being registered through "Fast Track" procedures with accelerated registration schedules. By contrast, the chart lists only 11 products slated for registration through "Normal" (*i.e.*, legal) procedures – most with significantly later projected registration dates.

44. Rimsa's paper formulations were based on speculation about what the finished products would contain rather than accurate information about what the products actually did contain. As a result, many of the products Rimsa launched departed substantially from their registered formulations. By August 2010, Rimsa was manufacturing at least 40 products whose formulations did not match their registrations. As Rimsa well knew, that manufacture and sale

of unregistered or fraudulently registered pharmaceutical products was a serious violation of Mexican law.

45. Some Rimsa employees expressed alarm about the company's corrupt practices. In August 2010, for example, Rimsa's Quality Director drafted an email intended for the Espinosas warning about an upcoming COFEPRIS audit, which she shared with other senior management. That email stated: "In this visit they will verify, among other things, that we are manufacturing products according to the conditions set forth in the authorized Official Registration Letters. I do not need to remind you that as a result of the Fast Track products, this does not comply, and we keep increasing our list of noncompliance . . . ." Quoting provisions of Mexican criminal law that prescribed lengthy prison terms for selling unregistered pharmaceuticals, she implored: "I am really very worried, and I do not want to suffer the legal consequences of what we are doing outside the law. You know I have two children that depend solely on me . . . ."

46. Rimsa dismissed those concerns. Another senior officer responded to the draft email by pointing out that Rimsa had "grant[ed] extraordinary financial bonuses" to the quality department and that "there were no complaints in that regard." "[T]he salary we get," he chided, "is to provide solutions and not problems . . . ."

47. Rather than fix the problems, Rimsa devised increasingly sophisticated schemes to conceal its wrongdoing. Those schemes were designed to deceive COFEPRIS and prevent the agency from uncovering the Fast Track program during audits.

48. First, Rimsa crafted a scheme it referred to internally as "double paperwork." Under that scheme, Rimsa would create two sets of documents for the products it expected COFEPRIS to inspect. One set would contain true information for Rimsa's own internal use. The second set would contain false information that matched the registrations COFEPRIS had

issued based on Rimsa's fraudulent submissions. Rimsa would then ensure that COFEPRIS saw only that second, false set of paperwork during audits.

49. At one point, Rimsa developed a system to distinguish between the two sets of documents. Rimsa placed a footer on the bottom of the document whose location indicated whether the information was true or false. A footer on the left side of the page meant the document contained true information and therefore could not be shown to COFEPRIS. A footer on the right side meant the document contained false information – but information that matched the registrations and could therefore be shown.

50. Rimsa took a similar approach with its electronic files. Rimsa kept much of its corporate data on a SAP system, a third-party software platform many businesses use for enterprise management. In addition, Rimsa maintained a separate system known as the RAP, or *Revisión Anual de Producto* – specialized software used to track manufacturing information that Mexican law required it to keep. Just as with its double paperwork, Rimsa maintained two different versions of those systems. One contained true data for Rimsa's own internal use. The other contained false data that matched the registrations and could thus be shown during audits.

51. Rimsa made those parallel systems as discreet as possible. Its information technology department engineered the RAP so that, if a Rimsa employee clicked the left button on the mouse, the system would display true data for Rimsa's own internal use. If the employee clicked the right button, the system would display false information to show COFEPRIS.

52. Rimsa's regulatory fraud was not limited to its false product formulations. Rimsa also had to obtain COFEPRIS approval for the suppliers of the active pharmaceutical ingredients in its products. In many cases, Rimsa acquired ingredients from suppliers other than the ones registered with COFEPRIS. Rimsa used double paperwork to conceal that fraud from the agency

as well, maintaining one set of documents for internal use with the true suppliers and a different, false set to show during audits.

53. Rimsa also lied about its stability testing. In applying for a registration, Rimsa had to submit stability test results to COFEPRIS showing that its products would remain stable, and thus safe and effective, throughout their specified shelf life. Even after obtaining a registration, Rimsa was required by regulation to continue monitoring its products to ensure they remained stable. If a product failed to meet stability requirements, Rimsa was required to notify COFEPRIS and take appropriate remedial actions.

54. In many cases, Rimsa failed to conduct the required stability tests. In other cases, Rimsa did conduct tests, but the results affirmatively showed that the products were unstable, and Rimsa failed to notify COFEPRIS or take any appropriate remedial action. Rimsa concealed those deficiencies from COFEPRIS, relying on its double paperwork once again to hide the truth.

55. Rimsa falsified other test results as well. After the 2008 amendment, for example, Rimsa was required to support certain registration or renewal applications with "bioequivalence" studies showing that its products had biological effects comparable to other "reference" products already on the market. In some cases, Rimsa performed those tests by purchasing the reference product and passing it off as Rimsa's own – a procedure that of course guaranteed a favorable result when the product was then tested against itself to show bioequivalence. In other cases, Rimsa did not use the reference product at all, but instead merely divided a batch of its own product into two portions, dyed each one a different color, and then tested them against each other – another procedure that of course guaranteed a favorable outcome.

56. Rimsa also concealed other serious problems at its plant. On almost a dozen occasions since 2014, Rimsa detected contamination at the plant in excess of permissible levels.

Rimsa ignored the violations, concealed them from COFEPRIS, and failed to take the necessary remedial measures.

57. Increasingly concerned by its rampant legal violations, Rimsa devised a new strategy in or around 2013 known as "Plan COFEPRIS." That plan had two components. The first was an effort to bring its products into compliance – a laudable goal but one that confirms the company's knowledge of the existing violations. The second component was an effort to minimize the risk that Rimsa's violations would be detected. That part of the plan was just a continuation of what Rimsa had been doing all along – double paperwork and other ploys to conceal its fraud from COFEPRIS.

58. In practice, Rimsa made only half-hearted efforts to fix the problems with its products. Rimsa's use of double paperwork continued unabated. COFEPRIS audited Rimsa every two years – and twice in 2015. During those audits, Rimsa used double paperwork to deceive COFEPRIS inspectors. Due to the sophisticated schemes Rimsa used, COFEPRIS was unable to detect the fraud during its inspections.

59. As Rimsa's fraud continued, its quality department began compiling a "Master List" that tracked all of Rimsa's actual product formulations and ingredients and compared them with the information Rimsa had submitted to COFEPRIS. That Master List included pie charts showing what fraction of Rimsa's products violated the law. As of August 2015 – just one month before the sale to Teva – Rimsa's Master List showed that 58 out of 142 products – more than ***40 percent*** – did not comply with the law, because they were being sold under false formulations, made from unapproved ingredients, or both.

60. Rimsa's Master List showed that the departures from registered formulations were substantial. Many products contained significantly different proportions of active ingredients – in some cases differing by as much as 100% from the registered formulation. In other cases,

Rimsa was adding ingredients to its products that were not listed in the registrations at all. For several products, ***more than half*** of the ingredients in the product were missing from the registration entirely.

61. Rimsa's Master List also tracked the company's failure to perform required stability tests. As of August 2015, the Master List showed 52 out of 142 products for which stability test results are listed as either "No," "NA," "Missing," or blank. For another 37 products, the list showed that Rimsa had conducted stability tests but that the results were incomplete or the products had failed the tests.

62. COFEPRIS requires registration of product formulations, ingredient suppliers, and manufacturing and validation processes precisely because those requirements help ensure the safety and efficacy of pharmaceutical products sold to the public. Any responsible and law-abiding pharmaceutical company would strictly comply with those fundamental requirements. Similarly, if a product is not stable for the duration of its shelf life, the active pharmaceutical ingredient or other components could degrade to the point where the product is no longer effective for its intended purpose or presents entirely new health hazards. By falsifying stability tests and failing to report adverse results, Rimsa concealed those risks from the public.

***Defendants' Knowledge of Rimsa's Violations***

63. Defendants were fully aware of Rimsa's legal violations. As explained above, the Espinosas were not only the sole owners of the company but also senior managers in charge of its day-to-day operations who had grown up in the business founded by their father. Fernando Espinosa served as Rimsa's Operational President, while Leopoldo served as its Executive President.

64. By virtue of their management roles, the Espinosas fully understood that Rimsa had submitted false product formulations through its Fast Track program. They also knew that

Rimsa's products did not match the registered formulations, that the products were made with ingredients from unapproved suppliers, and that the products were missing required stability tests. According to numerous Rimsa employees, the Espinosas were well aware of those issues and participated in meetings where they were discussed.

65. The Espinosas repeatedly received emails concerning Rimsa's Fast Track program, dating back to at least 2007. On May 18, 2010, for example, Leopoldo Espinosa received an email in which Rimsa's Quality Director stated that the company had "several issues regarding [a particular product], which are forcing us to generate a FT, since otherwise we wouldn't be ready for the renewal of the health registration." She explained that, among other things, Rimsa was currently obtaining the active ingredient from an unapproved supplier and that it had not completed the required stability studies. She accordingly proposed that the company prepare "a super FT to file" in the next few days.

66. When Rimsa's Quality Director drafted her August 2010 email to the Espinosas warning about the criminal consequences of the company's illegal conduct, she prefaced her comments with "***I do not need to remind you*** that as a result of the Fast Track products, this does not comply." That phrasing makes clear that Rimsa's management understood the Espinosas were well aware of the violations.

67. The Espinosas were likewise fully familiar with Rimsa's use of double paperwork to conceal its fraud. Once again, numerous Rimsa employees have confirmed that the Espinosas knew about that scheme and participated in meetings where it was discussed. According to one employee, Fernando and Leopoldo Espinosa told Rimsa's staff that the double paperwork was necessary because, without it, product manufacturing would stop, the company would go broke, and all the employees would lose their jobs.

68. The Espinosas received several emails discussing Rimsa's use of double paperwork. Some of the emails were particularly hard to miss, considering that they bore the subject line "DOUBLE PAPERWORK" and contained discussions of Rimsa products that did not match their registered formulations.

69. The Espinosas were also thoroughly familiar with the Master List and similar documents Rimsa used to track its violations. On April 29, 2014, Rimsa's CEO sent Leopoldo Espinosa an early version of the Master List recently prepared by then-Quality Director Francisco Cabrera. The CEO explained that the table showed "the actual status of our products" and warned, "you need to read it carefully." Leopoldo Espinosa responded, "It is very important that we have a meeting with the people involved as soon as possible."

70. Soon after, on May 9, 2014, Fernando Espinosa participated in a meeting with other Rimsa management to discuss those problems. The documents reviewed with Fernando Espinosa at that meeting were then emailed to Leopoldo Espinosa a few days later, on May 13. Those documents showed that Rimsa's problems were serious. They listed 92 different products for which formulations did not match registrations. And they listed numerous products for which stability testing was either missing or still in progress, even though the products had already been commercialized. An accompanying summary slide, entitled "Regulatory Compliance Analysis," reported that, out of 181 registered products, only ***seven*** were fully compliant with COFEPRIS requirements. The remainder either did not match their registered formulations, were missing stability tests, or both.

71. On August 13, 2014, Rimsa's CEO sent the Espinosas an updated version of Francisco Cabrera's Master List, advising them that Mr. Cabrera would be in Mexico the following day "to review them one by one." That Master List included summary pie charts showing that 60 out of 144 Rimsa products did not match their registered formulations, 43 of 266

active ingredients were out of compliance due to supplier issues, and 102 out of 168 products had manufacturing process defects.

72. The Espinosas' failure to take steps to remedy the problems that Mr. Cabrera identified led to internal conflict at Rimsa. According to Rimsa employees, Mr. Cabrera began to insist that Rimsa stop manufacturing products that had compliance problems. Other Rimsa managers, however, insisted that manufacturing continue so as not to reduce revenues. The Espinosas sided with the latter camp and directed the company to keep selling products despite the violations. Ultimately, Mr. Cabrera was forced to leave the company as a result of those disputes. Following his departure, Rimsa approved for sale a number of product batches that Mr. Cabrera had previously rejected.

73. On December 3, 2014, someone sent an anonymous email to numerous Rimsa employees protesting those developments. The email complained that "[t]he firing of Engineer Francisco Cabrera is in line with the policy wanting us to produce products seeking only profit and not producing products with true quality." Urging that quality was "not a joke," the email protested that "management's decision makes us think that what we do in the quality unit, as professionals, has no value whatsoever; like a performance mounted just to pretend before the COFEPRIS something that in reality does not exist." One of the recipients forwarded the email to Leopoldo Espinosa the next day, who responded, "*ESTÁ CABRÓN*, SEND IT TO THE [CEO]."

74. The Espinosas forged ahead with the fraud. On February 6, 2015, Leopoldo Espinosa received another updated version of the Master List from Rimsa management and forwarded it to Fernando, describing it as "the results of today's meeting." That version contained pie charts showing that 71 out of 146 products – nearly 50% – violated the law either because the formulation did not match the registration or because ingredients were being obtained from unapproved suppliers.

75. Around the same time, the Espinosas also participated in email exchanges over the need to hire additional staff to address the problems. Rimsa's new Quality Director sent Leopoldo Espinosa an email seeking permission to hire 23 more people in various departments dedicated solely to Plan COFEPRIS.

76. The Espinosas knew that Rimsa's systemic corruption was still ongoing at the time they sold the company to Teva and made representations about its legal compliance. On May 27, 2015 – just four months before the sale – Rimsa's Quality Director sent an email to both Espinosas reporting the latest data from the Master List. That email asserted that Rimsa had "made good progress" because, by that point, a mere 37% of Rimsa's products (56 out of 150) violated the law for failing to comply with registered formulations or authorized suppliers. The email explained that the company had scheduled "a meeting with some strategic people from the different areas of RIMSA" to discuss the products but planned not to "go[ ] into more detail, given the confidentiality of the information." A presentation attached to the email contained a lengthy list of 71 products that could not be shown to COFEPRIS auditors due to the violations.

77. Shortly after the parties executed the acquisition agreements but before the transaction closed, Leopoldo Espinosa directed several members of Rimsa's senior management to delete any emails that referenced the terms Fast Track, double paperwork, or Plan COFEPRIS, and to instruct their subordinates to do the same. That instruction confirmed both the Espinosas' awareness of the legal violations and their consciousness of guilt.

***Teva's Due Diligence***

78. Teva conducted extensive due diligence before deciding to commit $2.3 billion to acquire Rimsa. Far from disclosing the long history of regulatory violations that clearly affected Rimsa's value, the Espinosas concealed the violations from Teva and repeatedly provided false

or misleading information. As a result, Teva was unable to detect the fraud despite the thorough due diligence it conducted.

79. Between July and August 2015, Teva submitted more than 500 different due diligence requests. More than 140 were classified as "Regulatory," "Compliance," "QA" (quality assurance), or "PhV" (pharmacovigilance). The Espinosas, through their investment bank Goldman Sachs, responded to those inquiries by providing answers on an electronic tracking document or posting materials to an electronic data room.

80. Many of those responses were false or misleading. In response to one question about two products, for example, the tracking sheet stated, "Our registration files are made according to COFEPRIS requirements only." That was a lie: As explained above, Rimsa maintained two different files for its products, one with false information shown to COFEPRIS and a second with the true information.

81. Other responses were blatantly misleading. In response to a question about adverse event reports submitted to COFEPRIS, for example, the tracking sheet stated, "Even [if] we have not received [adverse event reports], our pharmacovigilance procedures consider: collection of exposure during pregnancy, with no known AE, [l]actation reports with no AE, lack of efficacy, overdose, misuse and abuse with no AE and off label use with no AE." That response was misleading in that it failed to disclose that the reports Rimsa was submitting to COFEPRIS related to products registered under completely different formulations.

82. In addition to exchanging those written questions and answers, Teva's officers also participated in an in-person meeting with the Espinosas and other senior Rimsa management. That meeting was held at the Conrad Hotel in New York on August 4, 2015, and featured an 88-page management presentation. The Espinosas personally presented a portion of the slide deck.

83. That management presentation contained more false statements about Rimsa's violations. An entire section was devoted to "Quality Assurance." Those slides asserted that "Quality Assurance Participates Throughout the Production Process" and emphasized Rimsa's "Reliable Quality Assurance" and "[s]trong track record of compliance with local and international manufacturing regulations." Those statements were false and misleading. In reality, Rimsa had an abysmal record of noncompliance.

84. The Quality Assurance section of the presentation also included an entire slide devoted to "Regulatory Affairs." That slide asserted that Rimsa had "170 Registers [*i.e.*, sanitary registrations]" in Mexico and that, of those, there were "95% currently valid" and "5% in process." The slide also asserted that Rimsa had "36% Registers valid for at least 4 years." Those statements were false. The statistics were all materially overstated because a substantial portion of Rimsa's product registrations were falsified and therefore ***not*** "valid."

85. The Espinosas knew that the information they were presenting was false. The compliance rates in the management presentation fraudulently misrepresented the actual compliance rates reflected in Rimsa's internal Master List – compliance rates that had been sent to the Espinosas just a few months earlier. The Espinosas had ultimate authority over the contents of the management presentation and participated in its preparation. Nonetheless, the Espinosas did nothing to correct the false statistics or alert Teva to their inaccuracy.

86. Following that presentation, the Espinosas and Goldman Sachs arranged for Teva to conduct a site visit at Rimsa's plant in Guadalajara on August 19 to 20, 2015. During that visit, Teva personnel interviewed Rimsa employees and inspected Rimsa's books and records. The site visit addressed a number of different due diligence topics, including regulatory affairs, compliance, pharmacovigilance, and research and development, among others.

87. The pharmaceutical industry is subject to extensive regulation – for good reason. Teva's regulatory due diligence was therefore particularly relevant. Even before the site visit, Teva had conducted a substantial investigation into Rimsa's regulatory compliance. Teva had reviewed publicly available information from the COFEPRIS website and elsewhere. It had also purchased Rimsa products from retailers and reviewed their labels for regulatory issues.

88. During the site visit, Teva built upon that review of public sources by inspecting Rimsa's internal records. Teva focused its review on 18 specific products. Teva selected those products on the ground that they accounted for a particularly large portion of Rimsa's sales and thus were especially important to Teva's decision to proceed with the acquisition.

89. For each of those 18 products, Teva compared the COFEPRIS registrations against product dossiers from the company's own books and records. Teva examined the product formulations, the manufacturers of the active pharmaceutical ingredients, the manufacturing processes, and the stability test results, relying on the integrity of the information provided. Based on that review, Teva concluded that all 18 products matched their registrations and were supported by appropriate stability tests. Teva recorded those observations in a "checklist" that it prepared for each product.

90. Teva reached those favorable conclusions only because it was shown fraudulent paperwork for the products. In reality, most of the 18 products had serious problems with their formulations, ingredient suppliers, or stability tests. According to Rimsa's own internal Master List that was concealed from Teva, nine of the products did not match their registered formulations or approved suppliers, and eight were either missing required stability tests or had stability failures. Some of the violations were egregious: For four products, for example, more than half the ingredients that Rimsa was adding were missing from the registrations entirely.

91. The product dossiers shown to Teva during the site visit did not reflect any of those serious problems. Rather, those records uniformly indicated that the product formulations matched their registrations, that Rimsa was acquiring the ingredients from approved suppliers, and that the products were supported by appropriate stability tests. The inescapable conclusion is that Teva was shown false documents – the same "double paperwork" that Rimsa had been using to defraud COFEPRIS for years.

92. Given their intimate familiarity with Rimsa's use of double paperwork, the Espinosas must have known that Teva would be shown those fraudulent documents during its site visit. The Espinosas had ultimate authority over what documents were shown during the site visit, but they simply stood by while Teva was defrauded with that double paperwork. Those fraudulent documents prevented Teva from being able to detect Rimsa's violations despite the thorough due diligence it conducted in the transaction.

93. Teva's regulatory affairs team prepared a report summarizing their findings from the site visit. Based on the information they had received, that report concluded – incorrectly – that "[t]he products reviewed are in compliance with the Mexican regulation[s] and have no[ ] risk [of not being] renewed," that "[t]he current portfolio in Mexico is being maintained and there are no[ ] sig[n]s of regulatory risk," and that "[f]rom the regulatory perspective there is no[ ] major risk with the Mexican licenses."

94. Teva reached those conclusions only because of the false and misleading information the Espinosas had provided. Had Teva received truthful information, it would have learned that Rimsa's products did not in fact comply with Mexican regulations and that there were major regulatory risks with the products, including serious risks of non-renewal. The head of Teva's regulatory affairs due diligence team believes that the violations are so serious that,

had Teva received true information during the site visit, he would have recommended against proceeding with the acquisition – at any price.

95. Teva created presentations for its senior executives to aid their deliberations over the acquisition. Those documents included a page devoted solely to the results of Teva's regulatory affairs due diligence. That page reiterated Teva's findings that the registrations were "in conformance with the current regulation and no major issues were identified," that there were "[n]o renewal or other signs of regulatory risk," and that "[f]rom the regulatory perspective there is no[ ] major risk with the Mexican licenses." Teva's senior executives relied on those findings in deciding to proceed.

96. In addition, the presentations contained financial analyses supporting the purchase price that Teva was paying in the transaction. Those analyses were based on revenue projections for the products that Teva expected Rimsa to continue selling as well as anticipated synergies. Had Teva known that the legal violations would force it to stop selling many of Rimsa's products and that those synergies would not materialize, Teva would not have proceeded with the transaction.

***The Representations and Warranties***

97. Relying on those lies, Teva moved forward with the acquisition. The parties structured the transaction through two principal contracts. One was a Share Purchase Agreement between Teva's Mexican subsidiary Lemery, S.A. de C.V. and the Espinosas. Under that agreement, Lemery agreed to pay approximately $460 million to purchase all outstanding shares of Rimsa from the Espinosas as well as the shares of three Rimsa affiliates also included in the deal (all included within the term "Rimsa" for purposes of this Complaint). A copy of the Share Purchase Agreement is attached as Exhibit A.

98. The second contract was an Asset Purchase Agreement between Lemery and PPTM. PPTM is a Luxembourg company that the Espinosas created to hold Rimsa's patents, trademarks, and other intellectual property. The company owned that intellectual property and then licensed it back to Rimsa. PPTM is owned through a complex chain of trusts and other entities, but is ultimately beneficially owned and controlled by the Espinosas and their related parties or affiliates. Under the Asset Purchase Agreement, Lemery agreed to pay $1.84 billion to acquire that intellectual property from PPTM. A copy of the Asset Purchase Agreement is attached as Exhibit B.

99. To ensure that Rimsa's operations and products met Teva's high standards and expectations for the transaction, Teva insisted on express representations and warranties from the Espinosas. Article V of the Share Purchase Agreement thus contains a number of explicit representations and warranties concerning the operations of the "Target Companies" – *i.e.*, Rimsa and the three affiliates acquired in the transaction. Rimsa's concealed history of violations rendered several of those representations and warranties blatantly false.

100. For example, in Section 5.8, entitled "Compliance with Applicable Laws," the Espinosas represented:

> The Target Companies are currently conducting, and have since January 1, 2010, conducted their operations in compliance in all material respects with the Laws, judgments and orders applicable to any Target Company.

The term "Law" is defined broadly as "any law, statute, rule, regulation and any judgment or order of any Governmental Authority," which in turn includes "any supra-national, national, state, municipal or local government (including any subdivision, court of competent jurisdiction, administrative agency or commission or other authority thereof), stock exchange or self-regulatory organization exercising any regulatory, taxing, importing, environmental or any other

governmental authority." The term thus includes health, safety, and quality regulations promulgated by Mexican administrative agencies like COFEPRIS.

101. That representation was false. As explained above, Rimsa violated numerous Mexican regulatory requirements concerning the manufacture and sale of its products. Those violations included the registration of false product formulations with COFEPRIS and the subsequent sale of products containing formulations that deviated substantially from the registered formulations; the improper use of unapproved active pharmaceutical ingredients; the submission of false stability and other test results to COFEPRIS; the failure to perform required tests; and the failure to report adverse stability or other test results required to be reported. Moreover, Rimsa's various schemes to conceal those violations from regulators – including double paperwork and parallel computing systems – were independent violations of Mexican law. The Espinosas were well aware of those violations and thus well aware that this representation and warranty was false.

102. Similarly, in Section 5.6 of the Share Purchase Agreement, entitled "Financial Statement Preparation," the Espinosas represented:

> The Financial Statements have been prepared from the books, records and accounts of the Target Companies . . . in accordance with the Accounting Principles as in effect for the periods covered thereby and present fairly in all material respects the financial condition of the Target Companies . . . . None of the Target Companies . . . have any Liabilities that would be required by Mexican [financial reporting standards] . . . to be reflected on a consolidated balance sheet other than Liabilities . . . that are reflected in the Most Recent Financial Statements . . . .

"Liabilities" are defined broadly as "any and all Indebtedness, liabilities and obligations, whether accrued or fixed, known or unknown, absolute or contingent, matured or unmatured or determined or determinable."

103. That representation was likewise false. Rimsa's violations of Mexican regulatory requirements and other conduct set forth above constituted loss contingencies that were material in relation to Rimsa's overall operations. The violations also substantially impaired the value of many of the assets on Rimsa's financial statements – including, for example, Rimsa's product inventory. Rimsa's financial statements did not disclose or account for any of those problems, contrary to applicable accounting requirements.

104. In Section 5.7 of the Share Purchase Agreement, entitled "Position Since Reference Date," the Espinosas represented:

> Since the Reference Date [*i.e.*, December 31, 2014] . . . (a) the Target Companies have not conducted their respective business in any material respect not in the Ordinary Course of Business and (b) there has not been any event, circumstance, development, state of facts, occurrence, change or effect which has had a Company Material Adverse Effect, and no event, circumstance, development, state of facts, occurrence, change or effect exists or has occurred which would reasonably be expected, individually or in the aggregate, to result in a Company Material Adverse Effect.

A "Company Material Adverse Effect" includes "any fact, circumstance, occurrence, change or event that has a material adverse effect on . . . the business, results of operations or financial condition of the Target Companies."

105. That representation was false. Rimsa committed serious, ongoing violations of Mexican law and other significant deviations from generally accepted good manufacturing practices for the pharmaceutical industry as set forth above. Those violations and deviations continued throughout the period between the Reference Date on December 31, 2014, and the execution of the Share Purchase Agreement on September 30, 2015. Those practices both constituted a Company Material Adverse Effect and would reasonably be expected to result in a Company Material Adverse Effect upon their discovery by Teva or other parties.

106. In Section 5.13, entitled "Intellectual Property," the Espinosas represented:

> All the computer systems, including the software, firmware, hardware, networks, interfaces, platforms and related systems owned or used by the Target Companies . . . are appropriate given the industry in which the Target Companies operate . . . .

107. That representation was false. Rimsa designed its computer systems specifically to deceive Mexican regulators. Those systems included parallel SAP and RAP systems that allowed Rimsa to present one set of false data to regulators while maintaining a second set for internal use. Those systems were not "appropriate" for the industry in which Rimsa operated.

108. In addition to those representations and warranties, the Espinosas also agreed to certain covenants in Article VII of the Share Purchase Agreement governing its conduct following the execution of the agreement. In particular, in Section 7.1, entitled "Conduct of the Business of the Target Companies," the Espinosas promised:

> From the date of this Agreement until the Closing Date, . . . the Sellers shall cause the Target Companies to (A) conduct their respective operations . . . only in the ordinary course of business, consistent with past practice . . . and (B) to use their commercially reasonable efforts to preserve intact their respective business organizations, keep available the services of their officers and employees and maintain satisfactory relationships with licensors, suppliers, distributors, clients and others having business relationships with them.

109. The Espinosas breached that covenant. The violations of Mexican law and significant deviations from generally accepted good manufacturing practices set forth above continued throughout the period between the execution of the Share Purchase Agreement on September 30, 2015 and the closing of the transaction on March 3, 2016. The Espinosas failed to cause Rimsa to conduct its operations in the ordinary course of business as a result of those violations and deviations. The Espinosas also failed to cause Rimsa to use commercially reasonable efforts to maintain satisfactory relationships with suppliers, distributors, clients, and regulators as a result of those violations and deviations.

110. In addition to the Espinosas' representations and warranties in the Share Purchase Agreement, PPTM made its own representations and warranties in the Asset Purchase Agreement. For example, in Section 5.5, entitled "Financial Statement Preparation," PPTM represented:

> The Financial Statements have been prepared from the books, records and accounts of the Seller . . . in accordance with the Accounting Principles as in effect for the periods covered thereby and present fairly in all material respects the financial condition of the Seller . . . . The Seller does not have any Liabilities that would be required by the Accounting Principles to be reflected on a consolidated balance sheet other than Liabilities . . . that are reflected in the Most Recent Financial Statements . . . .

"Liabilities" are defined broadly as "any and all Indebtedness, liabilities and obligations, whether accrued or fixed, known or unknown, absolute or contingent, matured or unmatured or determined or determinable."

111. That representation was false. Rimsa's regulatory violations substantially impaired the true value of the entire business, including the patents, trademarks, associated goodwill, and other intellectual property reflected as assets on PPTM's balance sheet. PPTM's financial statements did not disclose or account for any of those problems, contrary to applicable accounting requirements.

112. In Section 5.6 of the Asset Purchase Agreement, entitled "Position Since Reference Date," PPTM represented:

> Since the Reference Date [*i.e.*, December 31, 2014] . . . (a) the Seller has not conducted its business in any material respect not in the Ordinary Course of Business and (b) there has not been any event, circumstance, development, state of facts, occurrence, change or effect which has had a Material Adverse Effect, and no event, circumstance, development, state of facts, occurrence, change or effect exists or has occurred which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

A "Material Adverse Effect" includes "any fact, circumstance, occurrence, change or event that has a material adverse effect on . . . the Purchased Assets."

113. That representation was false. Rimsa's serious, ongoing violations of Mexican law and other significant deviations from generally accepted good manufacturing practices continued throughout the period between the Reference Date on December 31, 2014, and the execution of the Asset Purchase Agreement on September 30, 2015. Those practices had a substantial impact on the true value of the patents, trademarks, associated goodwill, and other intellectual property acquired from PPTM. That impact both constituted a Material Adverse Effect and would reasonably be expected to result in a Material Adverse Effect upon its discovery by Teva or other parties.

114. In Section 5.11 of the Asset Purchase Agreement, entitled "Intellectual Property," PPTM represented:

> Except to the extent indicated on such Schedule 5.11(a), the patents and registrations forming part of the Owned Seller Intellectual Property [are] valid and to the Knowledge of the Seller, enforceable.

115. That representation was false. Rimsa's use of false "paper" formulations and ongoing sale of products in violation of Mexican law substantially weakened and jeopardized the patents, trademarks, and other intellectual property acquired in the transaction. None of those issues was disclosed in the schedules to the Asset Purchase Agreement.

116. To provide a remedy for any breaches of representations and warranties or covenants, both the Share Purchase Agreement and the Asset Purchase Agreement obligate the Espinosas and PPTM, respectively, to indemnify Teva and its affiliates for various losses. For example, Section 10.3 of the Share Purchase Agreement provides:

> [The Espinosas] shall indemnify and hold harmless [Lemery] and its respective . . . stockholders . . . from and against . . . any and all Losses suffered, incurred or

> paid, directly or indirectly . . . as a result of: (a) any breach of or inaccuracy in any of the representations and warranties of the Sellers contained in this Agreement; [and] (b) any breach of any of the covenants or agreements of the Sellers or the Target Companies contained in this Agreement . . . .

"Losses" include, among other things, "any and all losses," "Liabilities," or "expenses (including reasonable attorneys' fees and expenses)." And "Liabilities," as already noted, is defined as "any and all Indebtedness, liabilities and obligations, whether accrued or fixed, known or unknown, absolute or contingent, matured or unmatured or determined or determinable."

117. Section 10.4 of the Share Purchase Agreement purports to make indemnification the exclusive remedy for Losses "arising out of or otherwise in respect of the matters set forth in this Agreement." In addition, Section 10.6(c) purports to limit the purchaser's recourse to an escrow account set up to cover indemnification claims rather than the sellers' personal assets. By its terms, however, that provision exempts claims involving "instances of fraud, *dolo* [deceit] or *mala fe* [bad faith] (in each case, as finally determined by a court of competent jurisdiction)," as well as claims for breach of the covenants in Article VII. As to those claims, the contract permits recovery from the Espinosas personally.

118. The Asset Purchase Agreement contains similar indemnification provisions and purported limitations of liability. Like the Share Purchase Agreement, it purports to limit liability to an escrow set up to cover indemnification claims. But it exempts claims involving "instances of fraud (as finally determined by a court of competent jurisdiction)."

***Execution and Closing***

119. Based on the express representations and warranties the Espinosas and PPTM had made, as well as the false and misleading statements made during due diligence, Teva and Lemery decided to proceed with the execution of the Share Purchase Agreement and Asset Purchase Agreement.

120. Teva and Lemery relied on the Espinosas' and PPTM's false representations and warranties in the Share Purchase Agreement and Asset Purchase Agreement in deciding to execute the agreements. They also relied on the false and misleading representations made during due diligence. Those statements fraudulently induced Teva and Lemery to proceed with the transaction.

121. Had Teva and Lemery known that the representations and warranties in the Share Purchase Agreement and Asset Purchase Agreement were false as set forth above, they would not have executed the agreements. Indeed, they would not have agreed to acquire Rimsa or its intellectual property at all.

122. Similarly, had Teva and Lemery known that the statements made during due diligence were false and misleading as set forth above, they would not have executed the Share Purchase Agreement or Asset Purchase Agreement. They would not have agreed to acquire Rimsa or its intellectual property at all.

123. The parties executed the Share Purchase Agreement and Asset Purchase Agreement on September 30, 2015. Fernando and Leopoldo Espinosa each personally signed the Share Purchase Agreement, thereby reaffirming the truth of the representations and warranties they had made. Through their control over PPTM, the Espinosas also caused a manager of PPTM to execute the Asset Purchase Agreement on behalf of that entity. The Espinosas physically signed the Share Purchase Agreement at the offices of Skadden, Arps, Slate, Meagher & Flom LLP in New York, and Lemery's officers physically signed both agreements there.

124. The Share Purchase Agreement and Asset Purchase Agreement each contain a New York choice of law clause. They also provide for exclusive jurisdiction in New York state and federal courts, expressly reciting that the jurisdictional requirements of New York General Obligations Law § 5-1402 are met.

125. On January 15, 2016, after execution of the Share Purchase Agreement and Asset Purchase Agreement but before closing, the parties restructured the transaction slightly. A new indirect subsidiary of Teva Pharmaceutical Industries Limited named Teva Pharmaceuticals Holdings México, S.A. de C.V. ("TPHM") was brought in as a party to the two agreements. The parties agreed that, other than the right to purchase one share of Rimsa stock, all the other rights and interests of Lemery under the agreements – including the right to enforce the representations and warranties and covenants – would become rights and interests of TPHM. Copies of those amendments are attached as Exhibits C and D.

126. In agreeing to those amendments, Teva and TPHM relied on the false representations and warranties made in the Share Purchase Agreement and Asset Purchase Agreement and on the false and misleading statements made in due diligence. Those statements fraudulently induced Teva and TPHM to proceed with the transaction. Had Teva and TPHM known that the representations were false as set forth above, they would not have executed the amendments.

127. The acquisition closed on March 3, 2016. Under the contracts, that closing was scheduled to take place in Skadden's offices in New York, although it was ultimately handled electronically instead. Shortly after the closing, TPHM was merged into Rimsa. As a result, Rimsa succeeded to all of TPHM's rights under the agreements, including its right to enforce the representations and warranties and covenants.

128. Upon closing, the $2.3 billion purchase price was wired in cash to the Espinosas and PPTM, save for $105 million withheld in escrow and certain other deductions. Those payments promptly landed the Espinosa family on Forbes's list of wealthiest Mexicans, among the ranks of such other notable Mexican billionaires as Carlos Slim.

***Teva's Discovery of the Fraud and Resulting Damages***

129. On March 10, 2016 – one week after the acquisition closed – an anonymous individual sent an email to the Teva/Rimsa transition team with the subject line "Corruption." That email reported that there were "many irregularities and many corrupt people in the Guadalajara plant." It explained that multiple products "do not comply with registration" and that Rimsa's quality department was an "all-around fraud." The email alerted Teva to the existence of "double paperwork," explaining that "there exists a real record for a product and another one shown during inspections." It warned about "incomplete stability tests" and "products that are approved that do not meet required quality standards." The email concluded by naming specific Rimsa officers responsible for the fraud and "observe[d] with rage that the causes of these aforementioned irregularities give off the image of being excellent employees."

130. Teva promptly investigated the allegations. Over the ensuing months, it learned of rampant corruption by the Espinosas and throughout the company. In numerous cases, Rimsa was unlawfully manufacturing products according to formulations different from the false formulations it had registered with COFEPRIS. In other cases, Rimsa was illegally using ingredients from unauthorized suppliers. Rimsa was also manufacturing products without the stability tests required to show that the product would remain stable throughout its stated shelf life. In many cases, Rimsa was illegally manufacturing products despite test results affirmatively showing that the products would ***not*** remain stable.

131. Although Teva's investigation remains ongoing, of the more than 110 product formulations studied so far, approximately 50 products were being manufactured with formulations or ingredient suppliers that did not match their registrations, and more than 80 products (including many of the 50 in the first category) lacked the required stability tests or had

test results affirmatively showing they were not stable. Those problems are serious violations of Mexican law.

132. Teva's investigation into the 18 high-value products that its regulatory affairs team had studied in due diligence was particularly revealing. Of those 18 products, at least 10 – ***more than half*** – were being manufactured illegally with formulations that did not match their registrations. At least four were being manufactured illegally with ingredients from unauthorized suppliers. And at least 14 were being manufactured illegally with either missing stability tests or test results showing they were unstable.

133. As a result of Teva's investigation, the company began classifying each Rimsa product as either "high risk," "medium risk," or "low risk" based on the severity of the problems. To date, approximately 100 product formulations – the substantial majority of those studied – have been categorized as "high risk." That number continues to climb as additional defects are identified.

134. Teva also engaged in an ongoing dialogue with COFEPRIS about the problems. From June 22 to 24, 2016, COFEPRIS conducted a three-day inspection of Rimsa's plant in Guadalajara. As a result of that inspection, COFEPRIS formally ordered Teva to halt production of 44 different products. Teva was also forced to stop its commercial manufacture and sale of numerous other products, including all the products it had classified as "high risk." Teva has continued to cooperate fully with COFEPRIS to address the problems.

135. Teva's inability to manufacture and market Rimsa's products has had significant consequences. Teva agreed to acquire Rimsa and its intellectual property based on financial forecasts that assumed that Rimsa was operating its business in a lawful manner and would be able to continue selling its products. As a result of the fraud, Teva is now unable to derive any revenue from numerous products that it can no longer lawfully sell. The financial impact is

particularly severe given that the high-value products Teva analyzed during due diligence were disproportionately plagued with concealed violations.

136. It is unknown when Teva will be able to remediate those problems and start to recover that lost revenue. In addition, the damage to the Rimsa brand has undermined the synergies anticipated from the transaction. Rimsa's concealed regulatory violations have thus had a substantial financial impact on both the revenues that Teva expected to achieve through the transaction and the value of the company it acquired on the date of the transaction.

137. Rimsa's concealed violations also substantially reduced the value of the intellectual property that Teva acquired from PPTM. Those patents and trademarks derived most of their value from their use in Rimsa's business. Rimsa's violations prevent Teva from using those patents and trademarks now that products are off the market. They also jeopardize the patents themselves. And they have permanently damaged the value of the trademarks by destroying Rimsa's reputation as a manufacturer of quality products.

138. Rimsa's legal violations have also caused a wide range of other harm. Teva has incurred significant costs from idle capacity at Rimsa's plant due to its inability to manufacture or sell defective products. Teva has had to lay off Rimsa employees, making substantial severance payments. Teva is also incurring substantial out-of-pocket costs investigating the problems and attempting to develop and implement remediation plans – plans that become more expensive and far-reaching as more and more defects are discovered.

139. The Rimsa debacle also puts Teva's reputation as a reliable manufacturer of quality pharmaceuticals at risk. Success in the highly regulated pharmaceutical industry demands quality, patient safety, and legal compliance. Those are essential components of Teva's corporate strategy. Teva decided to proceed with the Rimsa acquisition based on the reasonable

assumption that Rimsa shared its corporate values and that the combined entity would advance rather than undermine that mission.

140. In reality, Rimsa operated in flagrant violation of the law with no regard for basic principles of compliance, patient safety, and good business practices. Rimsa's legal violations are dramatic and unprecedented departures from normal industry practice. Those violations are wholly incompatible with Teva's reputation for quality.

141. On July 14, 2016, Lemery served a purchaser claim notice on the Espinosas concerning the matters set forth above. On August 8, 2016, Rimsa served a similar notice. On September 13, 2016, Rimsa and Lemery served a purchaser claim notice on PPTM. That same day, Rimsa and Lemery also served a formal demand for rescission on the Espinosas and PPTM, tendering back the Rimsa shares, intellectual property, and other consideration received.

142. On August 25, September 7, and September 9, 2016, the parties met in connection with the matters above. Those meetings did not resolve the dispute.

143. On September 13, 2016, the Espinosas filed a suit against Lemery in this Court, docketed at Index No. 654824/2016. That suit was an effort to preempt this action and spin a story that minimized the flagrant corruption in which the Espinosas had engaged. The complaint seeks a declaratory judgment that the Espinosas did not commit fraud or breach of contract. It touts Rimsa's reputation for quality and notes that the company "ha[s] never been sanctioned by Mexican regulators." The complaint fails to mention that Rimsa achieved that track record only through a years-long campaign of fraud on COFEPRIS and the Mexican public.

144. The day after the Espinosas filed that suit, COFEPRIS sent a team of officials to Rimsa's plant in Guadalajara. Those officials served an order imposing a complete suspension of all commercial manufacturing operations at the plant.

145. COFEPRIS then conducted another inspection from September 19 to 21, 2016. At the end of that inspection, COFEPRIS issued a report confirming Rimsa's extensive legal violations prior to the sale to Teva. That report concluded that, since at least 2012, Rimsa had used parallel systems to "manipulate orders and manufacturing registries so that the lot for commercialization coincided with the qualitative-quantitative formula declared in the sanitary registrations, when in reality the lot had been manufactured without adhering to the authorized conditions." Those false records were then "shown [to COFEPRIS] during audits as if they were real manufacturing documents." Rimsa's actions not only threatened the "quality, safety, and effectiveness of the products manufactured" but also reflected "an intent to manipulate [regulators] to give the appearance of oversight that was in compliance with applicable regulations."

146. Concluding that "the anomalies described herein represent a risk to the public health," COFEPRIS ordered that "the products manufactured . . . cannot be commercialized."

**COUNT I: FRAUD**

147. Plaintiffs re-allege the allegations set forth in paragraphs 1-146 above as if fully set forth herein.

148. Defendants made numerous misrepresentations of fact, both in the express representations and warranties in the Share Purchase Agreement and Asset Purchase Agreement, and also in the statements made during due diligence. Those misrepresentations included false statements about Rimsa's compliance with the law, Rimsa's and PPTM's financial statements, the absence of material adverse effects, and Rimsa's intellectual property.

149. Defendants made most of those misrepresentations personally. With respect to the remainder, Defendants either directed or authorized others to make the misrepresentations on their behalf, participated in making the misrepresentations, ratified the misrepresentations,

exercised control over the contents of the misrepresentations, or conspired with and aided and abetted others who made the misrepresentations while providing substantial assistance with the knowledge and intent that the misrepresentations would be made.

150. Those misrepresentations were false and misleading. Rimsa's operations were plagued with serious legal violations. Among other things, Rimsa sold products that departed substantially from the formulations it had registered with COFEPRIS. It obtained ingredients from unauthorized suppliers. And it sold products without tests confirming their stability and despite test results showing that the products were not stable and would break down before their stated expiration dates. Those problems were serious violations of Mexican pharmaceutical laws and regulations.

151. In addition, Rimsa's and PPTM's financial statements substantially overstated the value of Rimsa and its intellectual property. Rimsa's ongoing legal violations constituted a material adverse effect that was fraudulently concealed. And Rimsa's violations substantially weakened and jeopardized its patents, trademarks, and other intellectual property.

152. All of those misrepresentations were material. Any reasonable pharmaceutical company in Plaintiffs' position would have deemed Rimsa's regulatory violations serious and important in deciding whether to proceed with an acquisition. The same is true of the integrity of Rimsa's and PPTM's financial statements, the absence of material adverse effects, and the validity of Rimsa's intellectual property.

153. Defendants were well aware of Rimsa's legal violations and thus well aware that their representations were false. Among other things, the Espinosas participated in meetings where Rimsa's efforts to defraud regulators were discussed and received numerous emails and other communications addressing those violations, including Rimsa's "Master List" and similar documents enumerating the various ways that Rimsa's products violated the law. The Espinosas

were thus personally well aware of the fraud, and PPTM – by virtue of the Espinosas' control and ultimate beneficial ownership – was well aware of the fraud too.

154. Defendants intended to induce Plaintiffs' reliance on their misrepresentations. Due to their long history in the pharmaceutical industry, Defendants knew that any potential acquirer would attach great importance to Rimsa's compliance record in deciding whether to proceed with the transaction – as well as the integrity of Rimsa's and PPTM's financial statements, the absence of material adverse effects, and the validity of Rimsa's intellectual property. Defendants knowingly misrepresented those facts to deceive Plaintiffs into proceeding with the acquisition. The Espinosas personally defrauded Plaintiffs into signing the Share Purchase Agreement, and they worked together with PPTM to defraud Plaintiffs into signing the Asset Purchase Agreement as well.

155. Plaintiffs relied on Defendants' misrepresentations in deciding to acquire Rimsa and its intellectual property, deciding to pay $2.3 billion to acquire Rimsa and its intellectual property, executing the Share Purchase Agreement and Asset Purchase Agreement, and executing the amendments to those agreements. Had Plaintiffs known the truth, they would not have done any of those things. That reliance is reflected in, among other things, the regulatory due diligence analysis that Teva presented to its senior executives as well as the revenue forecasts Teva relied on to justify the $2.3 billion purchase price. Plaintiffs were thus fraudulently induced into entering into the Share Purchase Agreement and Asset Purchase Agreement and the amendments to those agreements.

156. Plaintiffs' reliance was reasonable and justified under the circumstances. Plaintiffs conducted extensive due diligence into Rimsa and its intellectual property before deciding to proceed, including an extensive set of questions and answers, a management meeting, and a site visit to review Rimsa's books and records. That due diligence failed to

uncover the fraud only because of the sophisticated double paperwork used to conceal the wrongdoing – a scheme that had already succeeded in deceiving Mexican regulators for years. In addition to their due diligence, Plaintiffs reasonably sought to protect their interests by insisting on express representations and warranties in the governing agreements.

157. Plaintiffs suffered substantial harm as a result of Defendants' fraud. Among other things, the problems with Rimsa's products are serious violations of Mexican law that in many cases prevent the products from being manufactured or sold. As a result, Defendants' fraud has substantially reduced the actual value of Rimsa and its intellectual property and thus the actual value of what Plaintiffs received in return for the $2.3 billion they paid in the transaction. Plaintiffs have also suffered various other damages such as employee severance costs, idle capacity, and harm to Teva's business and standing as a reputable manufacturer of quality pharmaceutical products.

158. Defendants' fraud was so substantial and fundamental as to defeat the essential purpose of the transaction. Plaintiffs are accordingly entitled to rescission or, in the event that rescission is not feasible, rescissory damages.

159. Defendants' fraud was egregious and continuing in nature and was directed not only to Plaintiffs but to Mexican regulators and to the public generally. Plaintiffs are accordingly entitled to an award of punitive damages.

160. To the extent any provision of the Share Purchase Agreement or Asset Purchase Agreement purports to preclude Plaintiffs from asserting a claim for fraud, the provision is unenforceable as a result of Defendants' fraud, reckless misconduct, and gross negligence.

**COUNT II: BREACH OF CONTRACT**

161. Plaintiffs re-allege the allegations set forth in paragraphs 1-160 above as if fully set forth herein.

162. Lemery entered into a Share Purchase Agreement with the Espinosas on September 30, 2015. The Share Purchase Agreement, as amended, is a valid and binding contract as against the Espinosas.

163. Lemery entered into an Asset Purchase Agreement with PPTM on September 30, 2015. The Asset Purchase Agreement, as amended, is a valid and binding contract as against PPTM.

164. TPHM and Lemery entered into amendments to the Share Purchase Agreement and Asset Purchase Agreement on January 15, 2016. Those amendments are valid and binding contracts as against the Espinosas and PPTM, respectively.

165. By the terms of the January 15, 2016 amendments, TPHM succeeded to the contractual rights of Lemery under the Share Purchase Agreement and Asset Purchase Agreement. Rimsa then succeeded to the contractual rights of TPHM by virtue of the merger of those two entities.

166. Plaintiffs fully complied with all obligations under the Share Purchase Agreement and Asset Purchase Agreement as amended, the nonperformance of which would have excused Defendants' noncompliance.

167. The Espinosas made representations and warranties about Rimsa's compliance with the law, financial statement preparation, position since reference date, and computer systems in Sections 5.6, 5.7, 5.8, and 5.13 of the Share Purchase Agreement. The Espinosas also made covenants about Rimsa's operations between execution and closing in Section 7.1 of the Share Purchase Agreement.

168. The Espinosas breached the representation and warranty in Section 5.8 of the Share Purchase Agreement. As set forth above, Rimsa was not conducting and had not conducted its operations in material compliance with the laws and regulations applicable to its business.

169. The Espinosas breached the representation and warranty in Section 5.6 of the Share Purchase Agreement. As set forth above, Rimsa's financial statements were not prepared in accordance with applicable accounting principles, did not fairly present its financial condition, and failed to disclose liabilities required to be disclosed.

170. The Espinosas breached the representation and warranty in Section 5.7 of the Share Purchase Agreement. As set forth above, Rimsa committed ongoing violations of Mexican law and other deviations from generally accepted good manufacturing practices between December 31, 2014, and the execution of the Share Purchase Agreement on September 30, 2015. Those violations constituted a Company Material Adverse Effect and would reasonably be expected to result in a further Company Material Adverse Effect upon discovery.

171. The Espinosas breached the representation and warranty in Section 5.13 of the Share Purchase Agreement. Rimsa's computer systems, including its parallel SAP and RAP systems, were not appropriate for the industry in which Rimsa operated.

172. The Espinosas breached the covenant in Section 7.1 of the Share Purchase Agreement. Between execution of the agreement on September 30, 2015, and the closing on March 3, 2016, the Espinosas failed to cause Rimsa to conduct its operations in the ordinary course of business and failed to cause Rimsa to use commercially reasonable efforts to maintain satisfactory relationships with suppliers, distributors, clients, and regulators.

173. PPTM made its own representations and warranties about its financial statement preparation, position since reference date, and intellectual property in Sections 5.5, 5.6, and 5.11 of the Asset Purchase Agreement.

174. PPTM breached the representation and warranty in Section 5.5 of the Asset Purchase Agreement. As set forth above, PPTM's financial statements were not prepared in

accordance with applicable accounting principles and did not fairly present its financial condition.

175. PPTM breached the representation and warranty in Section 5.6 of the Asset Purchase Agreement. As set forth above, Rimsa's ongoing violations of Mexican law and other deviations from generally accepted good manufacturing practices between December 31, 2014, and the execution of the Asset Purchase Agreement on September 30, 2015, constituted a Material Adverse Effect and would reasonably be expected to result in a further Material Adverse Effect upon discovery.

176. PPTM breached the representation and warranty in Section 5.11 of the Asset Purchase Agreement. As set forth above, Rimsa's use of false "paper" formulations and ongoing sale of products in violation of Mexican law substantially weakened and jeopardized the patents, trademarks, and other intellectual property acquired in the transaction.

177. Plaintiffs suffered harm as a result of Defendants' breaches. Plaintiffs have been unable to manufacture and market a substantial portion of Rimsa's products, depriving Plaintiffs of revenue they reasonably anticipated. Further, as a result of the breaches, the actual values of Rimsa and its intellectual property were far less than Plaintiffs reasonably expected, depriving Plaintiffs of their benefit of the bargain in the acquisition. Plaintiffs have also suffered various other damages such as employee severance costs and idle capacity. Finally, Rimsa's track record of egregious regulatory violations has caused and will continue to cause serious harm to Teva's business and standing as a reputable manufacturer of quality pharmaceutical products.

178. All of the foregoing harms were proximately caused by Defendants' breaches and were reasonably foreseeable to Defendants.

179. Defendants' breaches of contract were so substantial and fundamental as to defeat the essential purpose of the transaction. Plaintiffs are accordingly entitled to rescission or, in the event that rescission is not feasible, rescissory damages.

180. To the extent any provision of the Share Purchase Agreement or Asset Purchase Agreement purports to preclude Plaintiffs from asserting a claim for breach of contract, the provision is unenforceable as a result of Defendants' fraud, reckless misconduct, and gross negligence.

**COUNT III: INDEMNIFICATION**

181. Plaintiffs re-allege the allegations set forth in paragraphs 1-180 above as if fully set forth herein.

182. The Share Purchase Agreement, as amended, is a contract between Plaintiffs and the Espinosas that is valid and binding as against the Espinosas. The Asset Purchase Agreement, as amended, is a contract between Plaintiffs and PPTM that is valid and binding as against PPTM.

183. Section 10.3 of each agreement provides that Plaintiffs are entitled to indemnification for losses resulting from breaches of Defendants' representations and warranties or covenants. The losses subject to indemnification are expressly defined to include reasonable attorney's fees and expenses.

184. Defendants breached their representations and warranties and covenants as set forth above. Plaintiffs suffered losses as a result of those breaches – including, among other things, attorney's fees and expenses incurred both in this action and in other proceedings brought by Defendants or third parties. Plaintiffs are entitled to indemnification for those losses.

185. Plaintiffs complied with all procedural conditions for indemnification under the Share Purchase Agreement, including by serving purchaser claim notices pursuant to Section 10.7 on July 14 and August 8, 2016.

186. Defendants have refused to authorize disbursement of any escrow funds to pay Plaintiffs' claims and have otherwise failed to satisfy their indemnification obligations.

187. Plaintiffs are accordingly entitled to an award of indemnification for the losses set forth above.

**COUNT IV: DECLARATORY JUDGMENT**

188. Plaintiffs re-allege the allegations set forth in paragraphs 1-187 above as if fully set forth herein.

189. Section 10.6(c) of the Share Purchase Agreement purports to limit indemnification to the funds held in escrow but contains an exception for losses resulting from "instances of fraud, *dolo* [deceit] or *mala fe* [bad faith] (in each case, as finally determined by a court of competent jurisdiction)" as well as losses resulting from breaches of the Espinosas' covenants. As to those losses, the Share Purchase Agreement states that the Espinosas may be held personally liable.

190. Section 10.6(d) of the Share Purchase Agreement purports to limit each seller's liability to "the portion of the Purchase Price actually received by such Seller." That provision likewise contains an exception for "instances of fraud, *dolo* or *mala fe* (in each case, as determined by a court of competent jurisdiction)."

191. Section 10.6(c) of the Asset Purchase Agreement purports to limit indemnification to the funds held in escrow but contains an exception for losses resulting from "instances of fraud (as finally determined by a court of competent jurisdiction)." As to those losses, PPTM may be held personally liable.

192. Section 10.6(d) of the Asset Purchase Agreement purports to limit PPTM's liability to "the portion of the Purchase Price actually received by the Seller." That provision

likewise contains an exception for "instances of fraud (as determined by a court of competent jurisdiction)."

193. There is a controversy between the parties over whether Plaintiffs' losses resulted from "instances of fraud, *dolo* or *mala fe*," "instances of fraud," or breaches of covenants within the meaning of those provisions. That controversy is an actual and justiciable controversy involving a legally protectable interest that is directly in issue and appropriate for determination through a declaratory judgment. By expressly providing that the existence of fraud, *dolo* or *mala fe* must be "finally determined by a court of competent jurisdiction," the parties necessarily contemplated judicial resolution of that specific issue.

194. Plaintiffs' losses resulted from instances of fraud, *dolo*, and *mala fe* within the meaning of the agreements. As set forth above, Defendants defrauded Plaintiffs both through statements made during due diligence and in the express representations and warranties in the governing agreements. The conduct set forth above also constitutes deceit and bad faith and therefore amounts to *dolo* or *mala fe* within the meaning of the Share Purchase Agreement.

195. Further, as set forth above, Plaintiffs' losses resulted from the Espinosas' breach of covenant under Section 7.1 of the Share Purchase Agreement. The Espinosas failed to cause Rimsa to conduct its operations in the ordinary course of business and failed to cause Rimsa to use commercially reasonable efforts to maintain satisfactory relationships with suppliers, distributors, clients, and regulators between the execution of the Share Purchase Agreement and the closing of the acquisition.

196. Plaintiffs are entitled to a declaratory judgment that the losses they suffered are recoverable against the Espinosas and PPTM personally and without limitation pursuant to the express exceptions in Section 10.6(c) and (d) of the agreements.

## PRAYER FOR RELIEF

WHEREFORE, judgment should be entered in favor of Plaintiffs and against Defendants, jointly and severally, as follows:

a. compensatory damages in excess of $2.3 billion;

b. rescission and/or rescissory damages;

c. punitive damages in excess of $2.3 billion;

d. declaratory judgments as set forth above;

e. prejudgment and post-judgment interest;

f. attorney's fees, litigation expenses, and costs; and

g. such other relief as may be just and proper.

## DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury in this action of all issues so triable.

Dated: September 27, 2016
New York, New York

Respectfully submitted,

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