SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FERNANDO ESPINOSA ABDALÁ, LEOPOLDO DE JESÚS ESPINOSA ABDALÁ, Plaintiffs, -against- LEMERY, S.A. DE C.V., Defendant.	Index No.: **SUMMONS** Plaintiff designates New York County as the place of trial. Venue is proper in this County pursuant to CPLR § 501.

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the date of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial.

Venue is proper under CPLR § 501 because this action arises out of and relates to the Share Purchase Agreement (the "SPA") entered into between Plaintiffs Fernando Espinosa Abdalá and Leopoldo de Jesús Espinosa Abdala and Defendant Lemery. In Section 12.13 of the SPA, the parties agreed that the County of New York is a proper venue for any such claims.

DATED: New York, New York
September 12, 2016

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

FERNANDO ESPINOSA ABDALÁ, LEOPOLDO DE JESÚS ESPINOSA ABDALÁ, Plaintiffs, -against- LEMERY, S.A. DE C.V., Defendant.	**Index No. _____/2016** **The Honorable _____** **COMPLAINT**

Plaintiffs Fernando Espinosa Abdalá and Leopoldo de Jesús Espinosa Abdalá (collectively, the "Sellers" or the "Espinosa Brothers") by their attorneys, Quinn Emanuel Urquhart & Sullivan, LLP, bring this Complaint against Lemery, S.A. de C.V. ("Lemery" or "Defendant"), a subsidiary of Teva Pharmaceutical Industries Limited ("Teva"), and respectfully allege as follows:

INTRODUCTION

1. This is a classic case of buyer's remorse. Teva is an Israeli-based U.S.-publicly listed company. It is the world's largest manufacturer of generic pharmaceutical drugs and one of the 15 largest overall pharmaceutical manufacturers in the world.[1]

2. Representaciones e Investigaciones Médicas, S.A. de C.V. ("Rimsa") was established in 1970 by the Espinosa Brothers' late father, Leopoldo Espinosa. Rimsa started with three employees in a small office in Mexico City and, together with other pharmaceutical companies that the Espinosa Brothers established (collectively, the "Rimsa Companies"), grew

[1] A generic is a drug that has lost patent protection and can be produced and sold by manufacturers other than the initial manufacturer.

to become Mexico's most profitable pharmaceutical conglomerate, producing several dozen pharmaceutical products, employing over 2,200 employees and generating USD 220 million in annual revenues as of March 2016.

3. The Rimsa Companies focused on pain relief medications, gynecological treatments and drugs to treat heart and respiratory diseases. They had over 1,000 sales representatives and sold products to distributors and pharmacies. Sales to Mexican federal and state governments comprised a significant percentage of their customer base.

4. Every month, the Rimsa Companies' sales force, one of the strongest in Mexico, visited over 60,000 physicians, 4,500 pharmacies, 4,300 anesthesiologists, 1,300 supermarkets and 1,000 hospitals to educate them on the Rimsa Companies' products and treatments. The Rimsa Companies' distribution network was one of its core strengths.

5. The Rimsa Companies were highly innovative. Indeed, approximately 25 per cent of the Rimsa Companies' products, responsible for almost 40 per cent of their revenue, were patented.

6. The Espinosa Brothers became leaders in the Mexican pharmaceutical industry. For example, in 1987, at age 33, Fernando Espinosa was appointed chairman of Mexico's national association of pharmaceutical companies (*Camara Nacional de la Industria Farmaceutica*). He was the youngest chairman ever to lead the association.

7. Starting in 1987, he represented the Mexican government in negotiating sections of international treaties, including the North America Free Trade Agreement between Canada, the United States and Mexico, regulating the pharmaceutical industry. He was also the Mexican pharmaceutical representative to the Latin American Integration Association (*Asociacion*

Latinoamericana de Integracion), an international organization devoted to regional economic development.

8. The Rimsa Companies have received the highest industry certifications and awards from Mexican regulators and the most prestigious pharmaceutical associations in Mexico. For example, (a) the Rimsa Companies' manufacturing practices are certified by the Federal Commission for Protection Against Health Risks (*Comision Federal Para La Proteccion Contra Riesgos Sanitarios*, the "COFEPRIS"), the Rimsa Companies' primary regulator in Mexico, which is the most difficult governmental manufacturing certification to obtain; (b) the Rimsa Companies are certified as a "clean company" by the Federal Commission for Environmental Protection (*Procuraduria Federal de Proteccion al Ambiente*), Mexico's environmental protection agency, which is the most difficult governmental environmental certification to obtain; (c) the Mexican Ethics and Transparency Council for the Pharmaceutical Industry (*Consejo de Etica y Transparencia de la Industria Farmaceutica*), which is responsible for ensuring that pharmaceutical advertising is not misleading, certified the Rimsa Companies' advertisement practices as being truthful and accurate; and (d) the Mexican Association of Pharmaceutical Distributors (*Asociacion Nacional de Distribuidores de Medicina*) recognized the Rimsa Companies as the fastest growing pharmaceutical company in Mexico from 2006 to 2010.

9. Additionally, the Rimsa Companies had relationships with prestigious international pharmaceutical companies and universities. Specifically, the Rimsa Companies (a) were the authorized manufacturers in Mexico for two of the largest pharmaceutical companies in the world: AstraZeneca plc and Schering-Plough Corporation ("Schering-Plough"); (b) licensed several of their products to Schering-Plough for many years; and (c) worked with prestigious

universities such as the University of Pavia in Italy (*Universita degli studi di Pavia*) and the Autonomous University of Guadalajara in Mexico (*Universidad Autonoma de Guadalajara*) to develop new products.

10. In September 2015, Teva purchased the Rimsa Companies from the Espinosa Brothers for USD 460 million, subject to purchase price adjustments. Through a completely separate agreement, Teva acquired the patents and trademarks protecting the Rimsa Companies' products for approximately USD 1.8 billion.

11. Shortly after the acquisition, Teva concluded that it had substantially overpaid for the Rimsa Companies. It is now desperately seeking what is in effect a retroactive discount or purchase price adjustment for which it did not negotiate. It is doing so by (a) alleging that the Espinosa Brothers fraudulently induced it to purchase the Rimsa Companies; and (b) arbitrarily seeking a return of a significant portion of the purchase price.

12. Teva has based its growth strategy in large part on acquisitions rather than on creation of its own products. In the last ten years, it has acquired at least a dozen companies throughout the world for over USD 50 billion, focusing on growth in emerging markets such as Mexico, where the Rimsa Companies are based.

13. Teva has had numerous criminal, regulatory and civil problems. For example, in the last five years alone, Teva (a) entered into a USD 1.2 billion settlement with the Federal Trade Commission and a parallel USD 512 million class action settlement as a result of its antitrust violations consisting of paying competitors to delay production of competing drugs and denying patients access to lower-cost drugs; (b) admitted that it has bribed foreign government officials in Europe, Latin America and Russia as a result of investigations by the U.S. Department of Justice (the "DOJ") and the U.S. Securities and Exchange Commission for

violations of the Foreign Corrupt Practices Act; (c) reached a USD 27.6 million settlement with the DOJ and the State of Illinois for bribing physicians to prescribe its drugs; and (d) has had numerous product recalls.

14. The Rimsa Companies, on the other hand, have never been prosecuted for any criminal or regulatory conduct. They have never been sanctioned by Mexican regulators. They have never had any product recalls. And, indeed, they have never been sued by their customers for any product defects or any other reason. In fact, the Espinosa Brothers are widely recognized as market leaders. Under their leadership, the Rimsa Companies were at the pinnacle of the industry in terms of product safety, quality and manufacturing practices.

15. Through vague and completely unsupported allegations, Teva alleges, among other things, that the Espinosa Brothers failed to disclose to Teva purported differences between the manufacturing processes for most of the Rimsa Companies' products and the descriptions contained in the product registrations filed by the Rimsa Companies with the COFEPRIS, the Rimsa Companies' primary regulator in Mexico. The Espinosa Brothers categorically deny these allegations.

16. The facts belie Teva's baseless allegations. During the due diligence process, the Rimsa Companies' management disclosed to Teva the Rimsa Companies' current and past product registrations. Most importantly, to the extent there are any differences in the manufacturing processes they did not have any impact on the safety or effectiveness of the products, nor has Teva asserted otherwise. Indeed, the COFEPRIS has accepted the Rimsa Companies' product registrations and updated registrations without objection.

17. Furthermore, Teva had, and availed itself of, unfettered access to the Rimsa Companies' manufacturing facilities, books and records five months prior to closing and never

raised any concerns regarding the current and past manufacturing processes for any product. After closing, Teva continued selling the purportedly affected products for several months after it supposedly discovered the discrepancies, and it has not recalled any products nor has it made any related disclosures in the United States as a publicly-listed company.

18. The fact is that Teva completely misunderstood what it was purchasing and wants to undo the transaction by any desperate measure, including making false accusations of fraud. It did not understand the Rimsa Companies or the Mexican market. It has terminated virtually the entire management team. It unilaterally ceased manufacturing most of the Rimsa Companies' products. It has destroyed the Rimsa Companies and now wants its money back because otherwise Teva knows its management will be held accountable by its shareholders and other constituents for their negligence and incompetence.

PARTIES

19. The Espinosa Brothers are Mexican nationals.

20. Defendant Lemery is a Mexican pharmaceutical company and a subsidiary of Teva, a global pharmaceutical company publicly traded on the New York Stock Exchange. Lemery maintains its principal place of business at Pasaje Interlomas No. 16, 5th floor, Col. San Fernando La Herradura, Huixquilucan, CP52784, México State.

JURISDICTION AND VENUE

21. This Court has jurisdiction over Lemery because under Section 12.13 of the Share Purchase Agreement (the "SPA"), the Espinosa Brothers and Lemery submitted to the exclusive jurisdiction of the courts of the State of New York or any United States District Court located in the State of New York.

22. Venue is proper in this Court pursuant to CPLR § 501 and because under Section 12.13 of the SPA the parties contractually waived any objection regarding venue in the County of New York.

23. This case does not present any federal question and there is no diversity because both parties are subjects of Mexico.

FACTUAL BACKGROUND

I. Teva's Acquisition of the Rimsa Companies

A. Auction

24. In early 2015, the Espinosa Brothers decided to sell the Rimsa Companies. They had been working for over 45 years and are both over 60 years old. The Espinosa Brothers engaged Goldman Sachs Co. ("Goldman") as their advisor.

25. Goldman conducted an auction. The world's largest pharmaceutical companies participated in the auction and submitted offers, including Teva through its subsidiary Lemery. Teva aggressively pursued the Rimsa Companies and ultimately won the auction.

26. Teva's financial advisor was Citigroup Inc., which is one of the world's largest financial services firms. Its legal counsel was Greenberg Traurig, P.A., one of the largest law firms in the world.

27. On September 30, 2015, the Espinosa Brothers and Teva, through Lemery, executed the SPA. The sale closed on March 3, 2016 and Teva paid the adjusted purchase price of USD 409 million for the Rimsa Companies. As further described below, pursuant to a separate agreement, Teva also paid approximately USD 1.8 billion for the patents and trademarks used by the Rimsa Companies.

B. Due Diligence

28. All bidders conducted extensive and detailed due diligence on the Rimsa Companies, including by reviewing hundreds of thousands of documents and records, inspecting the Rimsa Companies' manufacturing facilities and participating in numerous due diligence meetings and telephone conferences. The Espinosa Brothers, through Goldman, made available to the bidders, including Teva, any and all information they requested. They did not reject any due diligence request by Teva or its advisors.

29. Upon execution of the SPA, Teva gained and availed itself of unfettered access to the Rimsa Companies' records, personnel and facilities. Specifically, from September 30, 2015 to March 3, 2016, when the sale closed and Teva paid the purchase price, Teva enjoyed full access to the Rimsa Companies. It had ample time to further assess the Rimsa Companies prior to closing. In total, it had nine months to identify any issues with the Rimsa Companies prior to closing.

C. Agreements

30. Pursuant to the SPA, Teva acquired from the Espinosa Brothers their shares in the Rimsa Companies for USD 409 million (USD 460 million less certain adjustments). The SPA, less schedules and exhibits, is attached as Exhibit A.

31. The SPA comprised the Espinosa Brothers' 100 per cent ownership of Rimsa and the following companies, which were responsible for specific brands and products: (a) Immobiliaria Leyfe, S.A. de C.V. ("Leyfe") and Inter Lab Pharmaceutica, S.A. de C.V. ("Inter Lab"), two Mexican companies focused on pharmaceutical products and services; and (b) Rimsa Colombia, SAS ("Rimsa Colombia"), a Colombian pharmaceutical company, (collectively with Rimsa, the "Rimsa Companies").

32. Simultaneously, on September 30, 2015, in an agreement completely separate from the SPA, Teva, through Lemery, purchased for approximately USD 1.8 billion from an intellectual property holding company all the patents and trademarks utilized by the Rimsa Companies (the "Asset Purchase Agreement" or "APA").

D. Indemnification Obligations Under the SPA

33. Pursuant to Section 10.6(b) of the SPA, the Espinosa Brothers left USD 45 million in escrow (the "Escrow Funds") to indemnify Lemery should it suffer any losses resulting from any breach of the SPA, including the Espinosa Brothers' representations, warranties and covenants. The Espinosa Brothers left an additional USD 55 million in escrow (the "Excess Escrow") to cover any potential tax liabilities. Teva vigorously negotiated for the Escrow Funds and the Excess Escrow.

34. Lemery's sole source of payment for its claims are the Escrow Funds (Section 10.6(c)). Lemery may only pursue additional indemnification from the Espinosa Brothers personally in instances of fraud (Section 10.6(c)).

35. Importantly, Lemery agreed to take "commercially reasonable steps to mitigate" any losses resulting from a purported breach of the SPA by the Espinosa Brothers (Section 10.6(k)).

E. The SPA's Dispute Procedures

36. Pursuant to Section 10.7(b) of the SPA, for Lemery to assert a claim against the Espinosa Brothers, Lemery must send them a written notice describing "in reasonable detail" its claims and setting forth a "good faith calculation" of the losses caused by the Sellers' breach of the SPA (the "Claim Notice"). Upon receipt of a valid Claim Notice, the Sellers have 30 days to object in writing to the Claim Notice (the "Dispute Notice"). The parties then have 30 days to

use reasonable efforts in good faith to settle the dispute. If they fail to do so, they may seek judicial relief.

37. Also pursuant to Section 10.7(b), at all times following receipt of a Claim Notice, and to ensure that the parties engage in good faith efforts to settle, Lemery and the Espinosa Brothers are required to cooperate with and make available to each other all information, records and data, and to permit reasonable access to the Rimsa Companies' facilities and personnel.

1. *Teva Sent a Deficient Claim Notice to the Espinosa Brothers*

38. On July 14, 2016, almost ten months after execution of the SPA and more than a year after Teva began its due diligence of the Rimsa Companies, Teva sent to the Espinosa Brothers a vague and deficient Claim Notice accusing them of breaching representations, warranties and covenants in the SPA and of defrauding Teva. Lemery's two-page Claim Notice accused the Espinosa Brothers of violating Mexican law by submitting unspecified product registrations to the COFEPRIS containing manufacturing process descriptions that did not correspond to the Rimsa Companies' actual manufacturing processes. The Claim Notice is attached as Exhibit B.

39. In violation of the SPA, the Claim Notice (a) completely failed to describe Lemery's claims "in reasonable detail;" and (b) failed to set forth a "good faith calculation" of losses. The allegations in the Claim Notice lack any detailed supporting information.

40. Lemery likewise failed to provide any evidence substantiating its allegations.

41. Notably, the Claim Notice failed to point to any investigation, much less a finding, by any Mexican authority against the Espinosa Brothers or the Rimsa Companies. Indeed, as set forth above, neither the Espinosa Brothers nor the Rimsa Companies have ever been the subject of any criminal, regulatory or civil action or investigation.

42. Based on these vague allegations, Lemery argued in its Claim Notice that the Espinosa Brothers breached the following sections of the SPA:

(1) Section 5.6, regarding the methodology for preparing financial statements of the Rimsa Companies (*i.e.*, in compliance with Mexican accounting principles). Lemery, however, failed to (a) identify any specific financial statements; or (b) explain how or why such financial statements purportedly violated Mexican accounting principles.

(2) Section 5.7, regarding whether the Rimsa Companies had conducted their business since January 1, 2015 "consistent with past practice" and in a manner that had not caused a "material adverse effect" on their operations or financial condition. Lemery, however, failed to (a) identify any specific business practice; or (b) explain how or why such practice purportedly caused a "material adverse effect" on the operations and finances of the Rimsa Companies.

(3) Section 5.8, regarding whether the Rimsa Companies had conducted their business since January 1, 2010 "in all material respects" in compliance with Mexican law. Lemery, however, failed to (a) identify any specific provisions of Mexican law; or (b) explain how or why the Rimsa Companies (much less the Espinosa Brothers) purportedly violated such provisions in material respects.

(4) Section 5.11, regarding disclosure to Lemery of all of the Rimsa Companies' ongoing contracts and whether those contracts were valid and not in default. Lemery, however, failed to identify which contracts (a) the Sellers supposedly failed to disclose; or (b) why and since when the Rimsa Companies are purportedly in default.

(5) Section 5.13, regarding disclosure to Lemery of all licenses and other agreements involving patents, trademarks or other intellectual property to which the Rimsa Companies were parties. Lemery, however, failed to identify which licenses or agreements the Sellers supposedly failed to disclose.

(6) Section 7.1, regarding whether the Sellers caused the Rimsa Companies from the date of execution of the SPA until closing to conduct their business consistent with past business practice and preserving their organization and structure. Lemery, however, failed (a) to identify any specific business practice and how or why it was inconsistent with past practice; or (b) explain how the Sellers altered the Rimsa Companies' organization and structure.

43. Standing on these baseless accusations, Lemery demanded that the Espinosa Brothers relinquish the Escrow Funds (USD 45 million) and stated that it would seek additional indemnification from the Espinosa Brothers individually for fraud, including by attaching the Excess Escrow (USD 55 million).

44. Lemery has acted in bad faith by failing to provide any evidence that substantiate its claims. Likewise, Lemery has not granted the Espinosa Brothers access to the Rimsa Companies' facilities and personnel, as required by the SPA.

2. *The Sellers Objected to Lemery's Deficient Claim Notice*

45. On August 11, 2016, the Sellers sent an Ad Cautelam Dispute Notice to Lemery, objecting to the Claim Notice and stating that (a) the Claim Notice failed to provide any reasonable detail or a good faith estimation of losses, as required by the SPA; (b) the Claim Notice failed to set forth any valid claim for indemnification under the SPA and that they did not consent to any release of the Escrow Funds; and (c) Lemery should produce detailed information

and evidence to substantiate its accusations. The Ad Cautelam Dispute Notice is attached as Exhibit C.

3. *The Sellers Have Satisfied the SPA's Procedures to Bring This Action*

46. As described above, the Sellers sent their Ad Cautelam Dispute Notice to Lemery on August 11, 2016. Therefore, because more than 30 days have elapsed without reaching a settlement, the Sellers are entitled to bring this action.

II. The Espinosa Brothers Did Not Breach the SPA and Did Not Defraud Teva

47. As set forth above, during the due diligence process, the Rimsa Companies' management disclosed to Teva the Rimsa Companies' current and past product registrations.

48. Indeed, the COFEPRIS has accepted the Rimsa Companies' product registrations and updated registrations without objection.

49. Most importantly, to the extent there were any differences in the manufacturing processes, they did not have any impact on the safety or effectiveness of the products, nor can Teva claim otherwise.

50. Moreover, Teva had every opportunity to request additional information from the Rimsa Companies regarding the COFEPRIS registrations during its due diligence and during the five-month period prior to closing, during which time it had full access to the Rimsa Companies, including their records, facilities and personnel.

51. Furthermore, Teva itself continued selling the purportedly affected products for several months after it supposedly discovered the discrepancies. And, it has not recalled any products nor has it made any related regulatory disclosures in the United States.

III. Status of the Rimsa Companies

52. As of the time of closing, the Rimsa Companies were operating at 100 per cent capacity, employing approximately 2,200 employees, producing several dozens products and generating approximately USD 220 million in annual revenue.

53. The Rimsa Companies are currently operating at a substantially diminished capacity. Teva has terminated almost all members of management and unilaterally halted production of most of its products. Indeed, Teva has largely destroyed the value of the Rimsa Companies within just six months after assuming control and ownership of them. As such, Teva breached the SPA by completely failing to take commercially reasonable steps to mitigate any losses.

IV. Teva Is Suffering From Buyer's Remorse

54. Teva is suffering from buyer's remorse and is desperately trying to find a way to obtain a dramatic reduction in the purchase price.

55. Teva has destroyed the Rimsa Companies, a group of companies built by the Espinosa family over three generations from a three-person small business into Mexico's leading independently owned pharmaceutical company.

56. The Espinosa Brothers bring this action to prevent Teva from using them as scapegoats for Teva's own negligence and incompetence.

FIRST CAUSE OF ACTION

Declaratory Judgment
(No Fraud by the Sellers)

57. The Sellers repeat and re-allege the allegations set forth above as though fully set forth herein.

58. In an effort to pursue indemnification personally from the Espinosa Brothers, Lemery contends in its Claim Notice that the Espinosa Brothers engaged in fraud.

59. Lemery's accusations are completely meritless. The Sellers did not engage in fraud or other wrongful conduct. Lemery's motivation is to obtain a dramatic discount of the purchase price.

60. Therefore, an actual and justiciable controversy exists between the Sellers and Lemery.

61. This controversy is ripe for determination because Lemery is asserting these incendiary and baseless fraud claims as a pretext to pursue indemnification from the Sellers personally, and exceed the Escrow Funds and the Excess Escrow, which are Teva's only source of possible indemnification for any breach of contract.

62. The Sellers are entitled to a declaration pursuant to NY CPLR § 3001 that Lemery's fraud claims against the Sellers are legally baseless.

SECOND CAUSE OF ACTION

Declaratory Judgment
(Non-Breach of Sections 5.6, 5.7, 5.8, 5.11, 5.13 and 7.1 of the SPA by the Sellers)

63. The Sellers repeat and re-allege the allegations set forth above as though fully set forth herein.

64. In an effort to take over the Escrow Funds and attach the Excess Escrow, Lemery contends in its Claim Notice that the Espinosa Brothers breached certain representations, warranties and covenants of the SPA. Specifically, the Claim Notice alleges that the Espinosa Brothers breached (a) the following representations and warranties: (i) Section 5.6; (ii) Section 5.7; (iii) Section 5.8; (iv) Section 5.11; and (v) Section 5.13; and (b) the covenant in Section 7.1.

65. Lemery's accusations are completely meritless. The Sellers did not breach any of these representations, warranties and covenants. Lemery's motivation is to obtain a dramatic discount of the purchase price.

66. Therefore, an actual and justiciable controversy exists between the Sellers and Lemery.

67. This controversy is ripe for determination because Lemery is asserting these incendiary and baseless claims for indemnification as a pretext to take over the Escrow Funds and the Excess Escrow.

68. The Sellers are entitled to a declaration pursuant to NY CPLR § 3001 that Lemery's breach of contract claims against the Sellers are legally baseless.

THIRD CAUSE OF ACTION

(Declaratory Judgment)
(Breach of Section 10.7(b) of the SPA by Lemery)

69. The Sellers repeat and re-allege the allegations set forth above as though fully set forth herein.

70. Lemery has breached its obligation under Section 10.7(b) of the SPA to (a) assert any claims for indemnification through a Claim Notice that "provides reasonable detail" and a "good faith calculation of losses" because its Claim Notice completely failed to provide any detailed information and lacked any estimation of losses; and (b) engage in good faith efforts to settle because it has failed to cooperate with and make available to the Espinosa Brothers all information, records and data, purportedly supporting its Claim Notice, including granting them access to the Rimsa Companies' facilities and personnel.

71. Therefore, an actual and justiciable controversy exists between the Sellers and Lemery.

72. This controversy is ripe for determination because Lemery is asserting these vague claims as a pretext to take over the Escrow Funds and the Excess Escrow and pursue fraud claims against the Sellers.

73. The Sellers are entitled to a declaration pursuant to NY CPLR § 3001 that Lemery has breached Section 10.7(b) of the SPA.

FOURTH CAUSE OF ACTION

(Declaratory Judgment)
(Breach of Section 10.6(k) of the SPA by Lemery)

74. The Sellers repeat and re-allege the allegations set forth above as though fully set forth herein.

75. Lemery violated Section 10.6(k) of the SPA by unilaterally ceasing to produce most of the Rimsa Companies' products, destroying the value of the Rimsa Companies. Lemery was obligated by the SPA to adopt all commercially reasonable steps to mitigate any losses.

76. Therefore, an actual and justiciable controversy exists between the Sellers and Lemery.

77. This controversy is ripe for determination because Lemery completely failed to mitigate the losses it now claims from the Espinosa Brothers.

78. The Sellers are entitled to a declaration pursuant to NY CPLR § 3001 that Lemery has breached Section 10.6(k) of the SPA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

79. Entry of judgment in favor of the Sellers against Lemery as follows:

(a) A declaration that Lemery's fraud claims are legally baseless;

(b) A declaration that Lemery's breach of contract claims of Sections 5.6, 5.7, 5.8, 5.11, 5.13 and 7.1 of the SPA are legally baseless;

(c) A declaration that Lemery breached Section 10.7(b) of the SPA;

(d) A declaration that Lemery breached Section 10.6(k) of the SPA; and

(e) Such other and further relief as this Court deems just and proper.

80. The Sellers reserve the right to seek all remedies available at law and equity.

DATED: New York, New York
September 12, 2016

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