



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

UNIVERSITY MEDICAL
PHARMACEUTICALS CORP.,

Plaintiff,

vs.

VALEANT PHARMACEUTICALS
INTERNATIONAL, INC.,

Defendant.

C.A. No. _____ [CCLD]

TRIAL BY JURY DEMANDED

COMPLAINT

Plaintiff UNIVERSITY MEDICAL PHARMACEUTICALS CORP. (“University Medical” or “Plaintiff”) complains and alleges against Defendant VALEANT PHARMACEUTICALS INTERNATIONAL, INC. (“Valeant” or “the Defendant”) based on information and belief as follows:

INTRODUCTION

1. Defendant designed and executed upon a plan to steal Plaintiff’s business, sell it to a third party, and make enormous profit.

2. Here was Defendant’s fraudulent plan: Defendant promised to buy Plaintiff’s business by making to Plaintiff an upfront payment, and promising to make subsequent payments to Plaintiff upon reaching milestones. The upfront payment amount represented only a fraction of the business’s agreed-upon worth. Defendant paid to Plaintiff the upfront payment amount, but never made any subsequent payments to Plaintiff claiming that the milestones were never reached. In truth, however, Defendant knew all along that it would only pay to Plaintiff the upfront amount, and that it would never make any additional or subsequent payments to Plaintiff because Defendant was in control of whether the milestones would ever be

met. Defendant's plan all along, unbeknownst to Plaintiff, was to never achieve the milestones, never make to Plaintiff the additional payments, and to subsequently sell Plaintiff's business to a third party for an amount far above the upfront (and only) amount it paid to Plaintiff.

3. In a matter of days, Defendant will fulfill and finalize this fraudulent plan by selling Plaintiff's business (and other assets) to L'Oréal for over \$1 billion – a sum many times more than the initial (and only) amount it paid to Plaintiff.

PARTIES

I. University Medical

4. Plaintiff University Medical is a California corporation with its principal place of business in Irvine, California.

5. Founded in 1992 and privately held, University Medical manufactures and distributes health and beauty products.

6. University Medical has created some of the most innovative and clinically advanced products in skin, body, and hair care. Its rigorous product development includes partnerships with leading universities across the United States and Europe. It focuses not only on clinical results, but also on products being easy to use. University Medical's number one priority is to help skin keep looking its natural best.

7. At the time it entered into the agreement with Valeant, University Medical had approximately 125 employees.

II. Valeant

8. The Defendant is a Canadian corporation organized and existing under the laws of Canada with its principal place of business in Laval, Quebec.

9. The Defendant is a publicly traded pharmaceutical conglomerate with approximately \$50 billion worth of assets, including numerous pharmaceutical subsidiaries, distribution networks, and manufacturing facilities around the globe. In

2015, its annual revenue eclipsed \$10 billion.

10. At the time of the sales agreement at issue in this Complaint, the Defendant had over 7,000 employees worldwide. Now the Defendant has over 16,000 employees.

JURISDICTION AND VENUE

11. Jurisdiction and venue are proper in this Court because Plaintiff and Defendant agreed to be subject to the jurisdiction of the courts of the State of Delaware in any action arising out of the Agreement.

FACTUAL BACKGROUND

III. University Medical Owned Very Desirable Product Lines

12. Before the execution of the asset purchase agreement with Valeant (the “Agreement”), University Medical owned product lines AcneFree, Regenetresse, and OxygenHY.

A. AcneFree

13. At the time of the Agreement, AcneFree was the leading brand in OTC acne treatments. The AcneFree brand included a variety of creams, wipes, brushes, masks, and solutions that reverse the effects of acne on the skin.

14. AcneFree products were sold at all major retail locations in the United States, including Walmart, Costco, Walgreens, CVS, and numerous grocery stores. By 2012, the number of retail locations selling AcneFree in the United States numbered nearly 300,000.

15. The products were very popular and had generated hundreds of millions of dollars in revenue for University Medical. In the year leading up to the Defendant’s offer to purchase AcneFree, the AcneFree brand had generated \$43 million in gross sales and \$32 million in net sales revenue for University Medical.

16. The AcneFree brand product line was very popular because of a patented “time release” technology that allowed the active ingredient in AcneFree products to

treat patients' symptoms for over 12 hours. As a result of its unique efficacy, AcneFree was the industry leader in OTC acne treatments, and could command a premium on the market.

17. Plaintiff was able to generate significant revenue and growth, despite the company's relatively small size, because the AcneFree products were very effective, and because University Medical had an effective sales force focused on "trade marketing."

18. "Trade marketing" is where a manufacturing and distribution company markets directly to the retailers. For AcneFree, this included advertisements and discount coupons for the product line in the Sunday newspaper, which AcneFree's retailers ran a few times per year, and prominently displaying AcneFree products on retailers' shelves.

19. Those two methods of marketing—advertisements and coupons in the Sunday paper, and prominent displays at retailers—had generated the lion's share of AcneFree sales.

20. University Medical had not, however, used any significant amount of television, radio, or other media for marketing AcneFree, and the company was aware of further growth opportunities in the U.S. through promoting the product line using those other, then-untapped marketing avenues.

21. Through University Medical, the AcneFree line also had had only limited exposure internationally. University Medical had sold a very small amount of AcneFree products in Bahrain, Canada, Singapore, Taiwan, Japan, Australia, and Dubai, but nowhere else.

22. University Medical understood that a much bigger company like the Defendant, with its thousands of employees, billions of dollars in financial resources, and dominating presence in numerous foreign markets, was the perfect vehicle for increasing AcneFree's footprint in the United States and on the international stage.

B. Regenetresse and OxygenHY

23. Regenetresse is an intensive hair loss treatment that was already generating significant sales revenue for University Medical before the sale. Furthermore, at the time of Regenetresse's sale to the Defendant, University Medical had already closed a deal to ship \$1 million worth of Regenetresse to retailers in Canada.

24. OxygenHY was a new facial skincare treatment that University Medical had not yet brought to market, but which was already receiving interest from industry insiders.

IV. The Defendant's CEO Approaches University Medical's CEO

25. Poised for growth both in the United States and abroad, AcneFree drew the interest of several much larger pharmaceutical companies, including the Defendant.

26. In March and April of 2012, the Defendant's then-CEO J. Michael Pearson called and met with University Medical's CEO Raymond J. Francis on several occasions to discuss the Defendant's purchase of AcneFree, along with Regenetresse and OxygenHY.

27. During these discussions, Pearson inquired about purchasing the products for a price determined by multiples of AcneFree's annual "sales revenue." Pearson initially offered a price of 1.0 to 1.5 times AcneFree's "sales revenue," and Francis countered with a price of 2.4 times AcneFree's "sales revenue." Their negotiations reached a turning point when, on or around April 28, 2012, Pearson agreed in an email to Francis that the Defendant would be willing to pay 2.0 times AcneFree's "sales" *plus* "future case milestones based on growth." Francis thought that might work. With a framework that could lead to an agreement, Pearson and Francis agreed to meet at University Medical's office in Irvine, California.

28. The meeting took place on or around April 30, 2012. Both Pearson and

Francis appeared with counsel. Pearson also was accompanied by numerous senior executives at Valeant, including its then-General Counsel Robert Chai-Onn.

29. The first obstacle at the meeting was the definition of “sales revenue.” Pearson explained that when he stated that the Defendant would pay “2.0 times sales” for the product lines, he was referring to “*net* sales revenue,” of which AcneFree had had \$32 million in the year prior. Francis explained that when he stated University Medical’s willingness to accept “2.4 times sales,” he was referring to “*gross* sales revenue,” of which AcneFree had had \$43 million in the year prior. In other words, Pearson’s offer was to pay between \$57.6 and \$60.8 million, and Francis had stated a willingness to accept \$103.2 million. Pearson was willing to come up to 2.0 times net sales, to \$64 million, but no more, and Francis was not interested in dropping the price. Both sides appeared to be at an impasse.

30. Pearson then offered what he claimed was a fair and creative solution to bridge the gap: The Defendant would pay an upfront payment of \$64 million (the “Upfront Payment”), then when AcneFree sales reached certain sales milestones, the Defendant would pay another \$40 million, totaling a \$104 million purchase price. Francis stated that the basic framework could work, but the milestones would have to be easily achievable for the Defendant. Pearson agreed to milestones that would be easy to achieve, and both sides spent the rest of the meeting hammering out a deal.

V. Defendant’s CEO Makes False Representations to University Medical’s CEO

31. During that April 30, 2012 meeting, Pearson made numerous representations, detailed below, which were designed to induce University Medical to sell AcneFree, Regenetresse, and OxygenHY to Valeant for \$64 million plus \$40 million upon achieving the sales milestones, as detailed herein. All of those statements proved to be false, and for reasons outlined in this Complaint, University Medical now believes that Pearson knew the statements were false when he made

them.

32. At the meeting, Pearson and Francis discussed milestones, and ultimately agreed on the following: For the full \$40 million earn-out, the Defendant would have to reach sales milestones of \$52 million in annual net sales revenue for AcneFree products, and \$20 million in annual net sales revenue for Regenetresse and OxygenHY products combined. Moreover, the parties agreed that the Defendant would have plenty of time—five years—to achieve the milestones.

33. During that meeting on or around April 30, 2012, Pearson promised Francis that the Defendant would achieve the sales milestones. Pearson told Francis that the Defendant expected to attain annual net sales revenue for AcneFree of “at least \$80 to \$90 million.” Pearson’s statements were false.

34. At that April 2012 meeting, Pearson made further false statements to Francis, including:

- That the Defendant expected to generate sales revenue “so far above the milestones” that the milestone payments to University Medical would not matter to the Defendant;
- That the Defendant “will be able to sell the heck out of” the AcneFree product line;
- That it “shouldn’t be a big deal” for the Defendant to achieve the milestones;
- That the Defendant was going to expand the product line into Mexico “as quickly as possible,” and that in Mexico the Defendant would be able to distribute the product line through its existing connections with the top OTC retailers in Mexico;
- That expanding the product line into Mexico would generate “at least \$20 million per year” in additional annual net sales revenue for AcneFree, which would be enough to meet the \$52 million AcneFree

milestone when added on top of AcneFree's then-existing annual net sales revenue of \$32 million in the United States;

- That the Defendant was going to “quickly” expand the product line into Brazil, where the Defendant was one of the most dominant OTC distributors;
 - That expanding the product line into Brazil also would generate enough new net sales revenue, on its own, to achieve the \$52 million AcneFree milestone;
 - That the Defendant was going to expand the product line in Asia, Europe, Australia, and Canada;
 - That expanding the product line into Asia, Europe, Australia, and Canada alone would generate enough new net sales revenue to achieve the \$52 million AcneFree milestone;
 - That the Defendant was converting some of its own prescription acne products into OTC treatments, and that when the OTC conversion process was completed, the Defendant would rebrand those products as part of the AcneFree brand, and that those products would count towards the AcneFree milestone;
 - That the prescription products the Defendant was planning to convert into OTC products produced annual net sales revenues over \$100 million, and that adding them to the AcneFree line would be more than enough, by itself, to meet the \$52 million AcneFree milestone; and
 - That the Defendant was going to spend millions in a nationwide campaign using television, radio, and internet advertising, and that the nationwide campaign should be enough to boost AcneFree's annual net sales revenue to \$52 million, thus triggering the sales milestone payment.
35. None of Pearson's promises came to pass. At the time Pearson made

these representations, he knew they were not true. Pearson never expected or intended to pay more than the Upfront Payment.

36. Given the product line's strong intrinsic value, Pearson knew that he could engage in little to no marketing of the AcneFree product line, and he could sell the product line to another company for an amount far greater than the Upfront Payment amount. That is exactly what happened – which had been his fraudulent plan all along.

VI. University Medical Justifiably Relies on the Defendant's Representations

37. Because of Pearson's representations, and because of what University Medical knew about the Defendant's size and potential, University Medical felt assured that if the Defendant put forth even the smallest amount of effort, the Defendant would be able to hit the sales milestones for AcneFree products that Pearson had set forth in the Defendant's offer.

38. The Defendant had a sales force over fifty times greater the size of University Medical's sales force, and the Defendant had access to some of the largest distribution networks for pharmaceutical products in the world. Even with a drastically smaller sales force and a restricted network of distributors, University Medical had been able to attain sales numbers very near those that the Defendant proposed as the milestones, including at that time net sales totaling \$32 million per year (compared to the \$52 million milestone).

39. University Medical also knew of great interest in bringing AcneFree to foreign markets. In Japan, for example, AcneFree's largest OTC acne treatment competitor Proactiv was already doing \$300 million in annual sales—and AcneFree was a superior product. So University Medical was confident that, once in the Japanese market, AcneFree would generate tens of millions in new sales annually, if not more.

40. University Medical also was adding new products to the AcneFree line at

the time of the purchase, which University Medical expected would further increase AcneFree sales.

41. In addition, University Medical already had received an order from Canadian retailers for \$1 million of the Regenetresse product.

VII. Parties Enter into the Agreement

42. On or around May 23, 2012, the parties executed the Agreement.

43. After extensive negotiations and exchange of financial data, both University Medical and the Defendant agreed that the value of the product lines was \$104 million, and that the Upfront Payment amount represented only a fraction of the business's value. The rest of the Agreement was about how the remainder of the business's value was to be paid out.

44. Section 2.8(a) of the Agreement set forth the sales milestones. Subparagraphs (i) and (ii) set forth the milestones for AcneFree: \$10 million in payments to University Medical when AcneFree's net sales revenue reached \$42 million in any four quarters, and \$20 million in further payments when AcneFree's net sales revenue reached \$52 million in any four quarters. Subparagraphs (iii) and (iv) set forth the milestones for Regenetresse and OxygenHY combined: \$5 million when those products' net sales revenue reached \$10 million combined in any four quarters, and another \$5 million when those products' net sales revenue reached \$20 million combined in any four quarters.

45. Section 2.8(c) required the Defendant to expend "commercially reasonable efforts" to sell all of these products.

46. "Commercially reasonable efforts" is an objective standard requiring a business to act reasonably and put forth efforts commensurate with its abilities. In the case of the Defendant, a company over fifty times the size of University Medical, the parties understood "commercially reasonable efforts" to mean that the Defendant would leverage its size and scope to increase the sales of a proven product by an

amount proportional to the Defendant's greater size and scale of operations.

47. Section 2.8(d) required that the Defendant provide sales reports to University Medical every quarter so that University Medical could track Defendant's progress towards the sales milestones.

48. Section 1.1 defined the sales milestones period as ending either five years from the date of the sale, or when the milestones were met, whichever occurred earlier. This in effect gave the Defendant five years to meet the sales milestones.

49. Section 2.10(a) required that the Defendant give notice to University Medical if the Defendant decided not to market the Regenetresse and OxygenHY products. Once Defendant gave that notice, University Medical would have 30 days to exercise its unilateral right to recover the Regenetresse and OxygenHY product lines without further consideration.

50. This section also required the Defendant to pay University Medical 50% of net proceeds from any sale of Regenetresse or OxygenHY to another company, if the milestones had not been met by then.

VIII. The Defendant's Representations to University Medical Were False

51. After the Defendant acquired AcneFree, the Defendant did exactly the opposite of what Pearson had promised to University Medical, and exactly the opposite of what was commercially reasonable for the Defendant to do: The Defendant essentially began winding down AcneFree marketing efforts, including in the following ways:

- The Defendant did not wage a nationwide advertising campaign.
- The Defendant did not expand AcneFree into Mexico or Brazil, nor into Asia, Europe, Australia, or Canada.
- The Defendant did not seek to have assigned to it all of the trademarks for the AcneFree line.

- The Defendant never added its prescription acne products to the AcneFree brand.

52. In fact, in the Defendant's annual report for 2014, the Defendant did not even list "AcneFree" as one of its trademarks. The Defendant touted dozens of other products, but said nothing about AcneFree or about the other products it had purchased from University Medical.

53. The Defendant did not use commercially reasonable efforts to sell AcneFree. In addition to not adding new promotions or expanding AcneFree into new markets, as the Defendant had told University Medical that it would do, the Defendant also cut back on the very limited amount of existing promotions for the product.

54. Where AcneFree once had been in the Sunday newspaper three or four times per year under University Medical's admittedly limited marketing plan, AcneFree ceased to be in the Sunday newspaper under the Defendant's control.

55. Where AcneFree once had been at the top of a shelf of a retail location, with eight different products at eye level, under University Medical's marketing plan, AcneFree products now had been moved to the bottom of the shelf and were down to only three different products under the Defendant's control.

56. Manufacturers and distributors, such as the parties, have to coordinate with retailers for product placement, and they have to coordinate with retailers and with newspapers in order to appear in print with coupons. University Medical had invested in that type of advertising for the AcneFree product line; the Defendant did not.

57. University Medical also had been able to generate thousands of unit sales with "Back to School" programs. The Defendant scaled back on those advertising efforts, too.

58. As a result, AcneFree sales under the Defendant were very disappointing. From the \$32 million in annual sales that University Medical was able to achieve with

its smaller sales force and distribution network, the Defendant's annual AcneFree sales actually dropped to approximately \$24 million in 2013, and to approximately \$17 million in 2014.

59. Francis and other University Medical employees reached out to employees of the Defendant by phone and by email to assist with sales. Their calls and emails were deflected by the Defendant's representatives with more false promises to University Medical of plans to market AcneFree, promises of "we'll take care of it," that University Medical believed at the time.

IX. Defendant's True Intentions

60. Pearson, on behalf of the Defendant, misled University Medical by falsely representing that the Defendant intended to promote the AcneFree brand. The Defendant in fact had no intention of doing so when Pearson made those statements to Francis. Instead, the Defendant wanted to purchase AcneFree for less than the line's intrinsic value, securing the discounted price from University Medical through false promises of giving milestone payments, then resell the line to another company for a fair price, and pocket the difference as profit.

61. When University Medical would not agree to sell the product line for less than its intrinsic value, the Defendant used the sales milestone as a ruse to trick University Medical into parting with its leading product line for what the Defendant wanted to pay. The Defendant knew, but did not disclose to University Medical, that it had no intention of meeting the milestones. Once the Defendant had the product line, the Defendant was in control. The Defendant could sit on the product line and wait to find a new buyer, a buyer actually interested in developing the brand, to purchase it from the Defendant for more than \$64 million—*i.e.*, for what the brand was *actually* worth—allowing the Defendant to pocket the difference between the brand's value and the Upfront Payment as a windfall profit.

62. The Defendant found its buyer in L'Oréal. That company is now

purchasing the AcneFree brand and two other product lines from the Defendant for \$1.3 billion. The sale is expected to close soon.

63. As noted, the Defendant failed miserably to use commercially reasonable efforts to market the product lines. Nevertheless, on information and belief, L'Oréal is paying to the Defendant substantially more for the product lines than the Upfront Payment that the Defendant paid. Accordingly, L'Oréal's willingness to pay a hefty price for the AcneFree product line is a recognition of the brand's intrinsic value and is, in and of itself, evidence that the Defendant engaged in poor marketing efforts, and that the product should have generated much greater revenue. Of course, had the product generated such greater revenue, these milestones would have been met and true value would have been paid to University Medical via the milestone payments.

64. Pearson had a calculated but devious plan centering on the difference between the product line's strong intrinsic value and the lowest upfront payment he could get away with making. He knew that, given the product line's strong intrinsic value, he could sell the product line to a third party for full value, even without commercially reasonable marketing efforts. That is true because a sophisticated third party will look past the product line's actual performance and value it based upon how it will sell with commercially reasonable marketing efforts. Accordingly, Pearson knew that if he could get away with a relatively low upfront payment amount, the value to him would be the difference between that upfront payment amount and the amount that a third party would pay for the line, given its true potential via commercially reasonable efforts.

65. This is exactly what happened here: L'Oréal is purchasing the product line not based on its performance while in the Defendant's hands, but on its true value via commercially reasonable marketing efforts. And the price that L'Oréal is paying for the product line is substantially greater than the Upfront Payment amount that the Defendant made to the Plaintiff.

66. Pearson was intently focused on the difference between the upfront payment amount and the “flip price” of the product line. The “flip price” is the amount that a sophisticated purchaser would pay for the product line, given the product line’s intrinsic value via commercially reasonable marketing efforts, and without regard for how the line actually performed while owned by the Defendant. Specifically, Pearson knew that the flip price dramatically exceeded the Upfront Payment amount; and the beauty of it in Pearson’s eyes, was that the Defendant could secure a flip price substantially greater than the Upfront Payment amount, even if the Defendant engaged in little to no marketing efforts. Of course, by engaging in little to no marketing efforts, the Defendant could ensure that the milestones were not met, thereby ensuring that the Defendant would never pay more than the Upfront Payment amount.

X. The Defendant Also Breached by Failing to Send Quarterly Sales Reports

67. The Agreement included a requirement that the Defendant report on AcneFree product sales on a regular basis. Yet sometime after 2014, the Defendant stopped sending sales reports to University Medical. University Medical representatives called and emailed repeatedly, but the Defendant ignored all of their contacts.

XI. University Medical is Seeking Declaratory Relief

68. After purchasing AcneFree in 2012, the Defendant did not acquire assignment of the trademark “Acne Free” in Australia, China, Singapore, France, Germany, or in the European Community. The Defendant also did not acquire assignment of various other trademarks, including two other trade names in Mexico and the European Community, one other trade name in Canada, and nine different trade names in the United States.

69. On February 16, 2017, a paralegal employed by the Defendant reached out to University Medical regarding assigning AcneFree trademarks to the Defendant.

Later in February 2017, the Defendant’s paralegal also called University Medical and spoke with a University Medical employee, telling her that, personally, he thought it was “crazy” that the Defendant wanted to be assigned these trade names now, because back in 2012 the Defendant did not want the trademark rights. He intimated that, while the Defendant had not cared for these trademarks then, L’Oréal wants them now.

70. Only now that the Defendant’s new buyer for the AcneFree line, L’Oréal, actually wants all of the AcneFree trade names—because L’Oréal actually intends to use commercially reasonable efforts to market these products—is the Defendant asking University Medical to assign the trade names to the Defendant.

71. Because the Defendant breached the Agreement by failing to use commercially reasonable efforts (section 2.8(c)), not sending quarterly sales reports (section 2.8(d)), and not notifying University Medical of the fact that the Defendant was not going to develop Regenetresse and OxygenHY product lines (section 2.10(a)), University Medical believes that it is no longer obligated to perform under section 6.7 of the Agreement by assisting the Defendant with its present requests to transfer trademark rights.

72. On information and belief, the Defendant disagrees with University Medical’s reading of the contract.

73. University Medical does not want to comply with section 6.7 until the Defendant cures its breaches of sections 2.8(c), 2.8(d), and 2.10(a). However, University Medical also does not want to act in violation of any legal or contractual obligation.

74. The parties are in a live controversy regarding University Medical’s obligations under the Agreement, and accordingly, the parties require the Court’s assistance in declaring what University Medical’s obligations are under the law.

FIRST CAUSE OF ACTION

(Common Law Fraud)

75. Plaintiff repeats and realleges each and every allegation contained in this complaint and incorporates the same herein by this reference as though set forth herein.

76. The Defendant's CEO Pearson made numerous misrepresentations and omitted numerous facts in April 2012 in order to induce University Medical's CEO Francis and University Medical itself to enter into the Agreement.

77. Pearson's misrepresentations to Francis in April 2012 included:

- That the Defendant would achieve the sales milestones;
- That the Defendant expected to attain annual net sales revenue for AcneFree of "at least \$80 to \$90 million";
- That the Defendant expected to generate sales revenue "so far above the milestones" that the milestone payments to University Medical would not matter to the Defendant;
- That the Defendant "will be able to sell the heck out of" the AcneFree product line;
- That it "shouldn't be a big deal" for the Defendant to achieve the milestones;
- That the Defendant was going to expand the product line into Mexico "as quickly as possible," and that in Mexico the Defendant would be able to distribute the product line through its existing connections with the top OTC retailers in Mexico;
- That expanding the product line into Mexico would generate "at least \$20 million per year" in additional annual net sales revenue for AcneFree, which would be enough to meet the \$52 million AcneFree

milestone when added on top of AcneFree's then-existing annual net sales revenue of \$32 million in the United States;

- That the Defendant was going to “quickly” expand the product line into Brazil, where the Defendant was one of the most dominant OTC distributors;
- That expanding the product line into Brazil also would generate enough new net sales revenue, on its own, to achieve the \$52 million AcneFree milestone;
- That the Defendant was going to expand the product line in Asia, Europe, Australia, and Canada;
- That expanding the product line into Asia, Europe, Australia, and Canada alone would generate enough new net sales revenue to achieve the \$52 million AcneFree milestone;
- That the Defendant was converting some of its own prescription acne products into OTC treatments, and that when the OTC conversion process was completed, the Defendant would rebrand those products as part of the AcneFree brand, and that those products would count towards the AcneFree milestone;
- That the prescription products the Defendant was planning to convert into OTC products produced annual net sales revenues over \$100 million, and that adding them to the AcneFree line would be more than enough, by itself, to meet the \$52 million AcneFree milestone; and
- That the Defendant was going to spend millions in a nationwide campaign using television, radio, and internet advertising, and that the nationwide campaign should be enough to boost AcneFree's annual net sales revenue to \$52 million, thus triggering the sales milestone payment.

78. None of Pearson's promises came to pass. At the time Pearson made

these representations, he knew they were not true. Pearson never expected or intended to pay more than the Upfront Payment. He knew that, by doing little to no marketing of the AcneFree product line, he could sell the product line for an amount greater than the Upfront Payment, given the AcneFree product line's intrinsic value.

79. Given the product line's strong intrinsic value, Pearson knew that he could engage in little to no marketing, and he could sell the product line to another company for an amount far greater than the Upfront Payment amount. That is exactly what happened – which had been his fraudulent plan all along.

80. However, University Medical justifiably relied on each of those misrepresentations in entering into the Agreement. Each of those misrepresentations were critical to University Medical's decision to enter into the agreement. Had University Medical known the truth, it never would have agreed to the payment structure in the Agreement. University Medical was relying on the Defendant's good faith and representations.

81. University Medical justifiably relied on the Defendant's misrepresentations, for reasons set forth throughout this Complaint, and therefore entered into the Agreement.

82. As a result, University Medical lost \$40 million in milestone payments from the Defendant, which the Defendant now owes to University Medical plus interest and further amounts according to proof, and University Medical watched its former flagship product line AcneFree lose its position in the market, which University Medical had worked so hard to attain, because of the Defendant's inexplicable lack of effort and concern.

83. Because the Agreement is tainted by the Defendant's fraud, University Medical was induced into the Agreement, believing that AcneFree sales were going to increase in the market, when in fact, because of the Defendant's true intentions and broken promises, sales decreased. Having been so deceived, and wanting its former

flagship product line to succeed, which cannot happen given the line's current owner, University Medical is seeking rescission.

84. Moreover, because the Defendant, through its then-CEO Mike Pearson, acted intentionally or recklessly in deceiving and fraudulently inducing University Medical into the Agreement, and acted with wanton and willful disregard of Plaintiff's rights, Plaintiff University Medical is entitled to punitive or exemplary damages.

SECOND CAUSE OF ACTION

(Breach of Contract)

85. Plaintiff repeats and realleges each and every allegation contained in this complaint and incorporates the same herein by this reference as though set forth herein.

86. The Defendant entered into a contract with University Medical, the Agreement, whereby the Defendant agreed in section 2.8(c) to use commercially reasonable efforts to meet certain sales milestones of the AcneFree product line and two other products.

87. Had the Defendant used commercially reasonable efforts to market and sell the AcneFree and other product lines, it would have met and exceeded all of the milestones.

88. Instead, the Defendant breached its agreement with University Medical by failing to use commercially reasonable efforts to market and sell the product lines, as set forth more fully throughout this Complaint.

89. As a result, the Defendant's AcneFree sales dropped below what they had been under University Medical, even though the Defendant had over fifty times the sales force and distribution network that University Medical had. And the Defendant failed to meet any of the sales milestones.

90. The Defendant also breached the agreement by failing to send quarterly sales reports to University Medical, which section 2.8(d) of the Agreement required

the Defendant to do for each of the sold product lines.

91. Further, the Defendant failed to give notice to University Medical that the Defendant was not seeking to develop the Regenetresse and OxygenHY product lines, as required by section 2.10(a). Had the Defendant complied with its contractual obligations, University Medical could have regained control of those product lines and brought them to market, and thereby earned millions of dollars in sales revenue and profits.

92. Because of the Defendant's breaches, University Medical lost \$40 million, plus interest and additional amounts according to proof.

THIRD CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing)

93. Plaintiff repeats and realleges each and every allegation contained in this complaint and incorporates the same herein by this reference as though set forth herein.

94. Implied in the Agreement was the parties' covenant to one another to act in good faith and fair dealing.

95. The Defendant breached this covenant by, for example, failing to use its superior sales force and distribution networks to increase sales of the AcneFree line, failing to use its access to foreign markets to increase the AcneFree sales, failing to merge the AcneFree line with its other acne treatment products, and failing to disclose its true intentions to University Medical. While these requirements were not specifically referenced in the contract, they were made a part of the contract under the implied covenant of good faith and fair dealing.

96. Because of the Defendant's breaches of the covenant, University Medical has been damaged in the sum of \$40 million, plus interest and further amounts according to proof.

FOURTH CAUSE OF ACTION

(Declaratory Relief)

97. Plaintiff repeats and realleges each and every allegation contained in this complaint and incorporates the same herein by this reference as though set forth herein.

98. University Medical and the Defendant entered into the Agreement on May 23, 2012.

99. The Defendant breached the agreement by failing to provide quarterly sales reports, in violation of section 2.8(d).

100. The Defendant further breached the agreement by failing to use “commercially reasonable efforts” to sell AcneFree products, in violation of section 2.8(c).

101. Defendant now seeks University Medical’s assistance with assigning further trademark rights to the Defendant so that the Defendant can sell those rights to a third party, L’Oréal. The Defendant is seeking this assistance per section 6.7 of the Agreement.

102. In light of the Defendant’s breaches, University Medical believes that it is no longer obligated to comply with section 6.7 of the Agreement. The Defendant takes the opposite position, putting the parties in a live judicial controversy that is ripe for determination.

103. University Medical is seeking declaratory relief from the Court to state University Medical’s obligations under the Agreement, given the Defendant’s breaches.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiff prays for judgment as follows:

1. For rescission of the Agreement;
2. For damages in the sum of not less than \$40,000,000, plus additional

amounts according to proof, together with interest thereon, against Defendant;

3. For punitive damages against Defendant;
4. For declaratory relief;
5. For reasonable attorneys' fees and expenses incurred herein against Defendant;
6. For costs of suit incurred herein against Defendant; and
7. For such other and further relief as is just and proper against Defendant.

OF COUNSEL:

Todd C. Theodora
Panteha Abdollahi
Andrew G. Prout
THEODORA ORINGHER PC
535 Anton Boulevard
Ninth Floor
Costa Mesa, CA 92626-7109
(714) 549-6200

By: /s/ Paul A. Fioravanti, Jr.

Bruce E. Jameson (No. 2931)
Paul A. Fioravanti, Jr. (No. 3808)
John G. Day (No. 6023)
1310 King Street
P.O. Box 1328
Wilmington, Delaware 19801
(302) 888-6500

*Attorneys for Plaintiff University
Medical Pharmaceuticals Corp.*

Dated: March 2, 2017