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Attorneys for Plaintiffs

Merck Sharp & Dohme Corp., Cubist Pharmaceuticals LLC, Optimer Pharmaceuticals LLC, MSD Investment Holdings (Ireland), and MSD International GmbH

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MERCK SHARP & DOHME CORP.,
CUBIST PHARMACEUTICALS LLC,
OPTIMER PHARMACEUTICALS LLC,
MSD INVESTMENT HOLDINGS (IRELAND), and
MSD INTERNATIONAL GMBH,

Plaintiffs,

v.

ACTAVIS LABORATORIES FL, INC.,
ACTAVIS PHARMA, INC., and ACTAVIS, INC.,

Defendants.

Civil Action No. _____

(Filed Electronically)

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Merck Sharp & Dohme Corp. ("Merck"), Cubist Pharmaceuticals LLC ("Cubist"), Optimer Pharmaceuticals LLC ("Optimer"), MSD Investment Holdings (Ireland) ("MSD Investment Ireland"), and MSD International GmbH ("MSD International") (collectively, "Plaintiffs") for their Complaint against Defendants Actavis Laboratories FL, Inc., Actavis Pharma, Inc., and Actavis, Inc. (collectively, "Actavis " or "Defendants"), hereby allege as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, § 100 *et seq.* This action relates to Abbreviated New Drug Application ("ANDA") No. 208443, which Defendants filed or caused to be filed with the U.S. Food and Drug Administration ("FDA") seeking approval to engage in the commercial manufacture, use, sale, offer for sale, and/or importation of generic copies of Plaintiffs' DIFICID® (fidaxomicin) Tablets prior to the expiration of U.S. Patent No. 7,906,489 ("the '489 Patent"), U.S. Patent No. 8,586,551 ("the '551 Patent"), U.S. Patent No. 7,378,508 ("the '508 Patent"), U.S. Patent No. 7,863,249 ("the '249 Patent"), and U.S. Patent No. 8,859,510 ("the '510 Patent").

PARTIES

2. Plaintiff Merck is a corporation organized and existing under the laws of the State of New Jersey, having a principal place of business at 1 Merck Drive, Whitehouse Station, New Jersey, 08889. Merck is a global research-driven pharmaceutical company that discovers, develops, manufactures and markets a broad range of innovative products to improve health.

3. Plaintiff Cubist is a limited liability company organized and existing under the laws of the State of Delaware, having a principal place of business at 2000 Galloping Hill Road,

Kenilworth, New Jersey 07033. Cubist is a wholly owned subsidiary of Merck & Co., Inc.

Plaintiff Cubist was formerly known as Cubist Pharmaceuticals, Inc.

4. Plaintiff Optimer is a limited liability company organized and existing under the laws of the State of Delaware, having a principal place of business at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033. Optimer is a wholly owned subsidiary of Merck & Co., Inc. Plaintiff Optimer was formerly known as Optimer Pharmaceuticals, Inc.

5. Plaintiff MSD Investment Ireland is an unlimited liability company incorporated under the laws of Ireland with registered number 463181 and having its registered office at Ballydine, Kilsheelan, Clonmel, Co Tipperary, Ireland and its principal place of business at Weystrasse 20, 6000 Lucerne 6, Switzerland. MSD Investment Ireland is a wholly owned subsidiary of Merck & Co., Inc.

6. Plaintiff MSD International is a Swiss limited liability company having its registered office at Weystrasse 20, 6000 Lucerne 6, Switzerland. MSD International is a wholly owned subsidiary of Merck & Co., Inc.

7. Defendant Actavis Laboratories FL, Inc. ("Actavis Labs. FL") is a corporation organized and existing under the laws of the State of Florida, having a principal place of business at Morris Corporate Center III, 400 Interpace Parkway, Parsippany, New Jersey 07054 and at 4955 Orange Drive, Davie, Florida 33314. Actavis Labs. FL is a wholly owned subsidiary of Andrx Corporation, which itself is a wholly owned subsidiary of Actavis, Inc. On information and belief, Actavis Labs. FL is in the business of, among other things, developing and manufacturing generic pharmaceutical products and obtaining regulatory approval for generic pharmaceutical products that it distributes in New Jersey and throughout the United States.

8. Defendant Actavis Pharma, Inc. ("Actavis Pharma") is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at Morris Corporate Center III, 400 Interpace Parkway, Parsippany, New Jersey 07054. Actavis Pharma is a wholly owned subsidiary of Actavis, Inc. Actavis Pharma is registered with the State of New Jersey's Division of Revenue and Enterprise Services as a business operating in New Jersey under Business ID No. 0100573928 and has appointed The Corporation Trust Company, 820 Bear Tavern Road, West Trenton, New Jersey 08628, as its registered agent for service of process in New Jersey. On information and belief, Actavis Pharma is in the business of, among other things, distributing and/or selling generic pharmaceutical products, including those that are manufactured by Actavis Labs. FL, in New Jersey and throughout the United States.

9. Defendant Actavis, Inc. is a corporation organized and existing under the laws of the State of Nevada, having a principal place of business at Morris Corporate Center III, 400 Interpace Parkway, Parsippany, NJ 07054. Actavis, Inc. is a wholly owned subsidiary of Allergan plc f/k/a Actavis plc. Actavis, Inc. has been registered with the State of New Jersey's Division of Revenue and Enterprise Services as a business operating in New Jersey under Business ID No. 0101005391 and has appointed United Corporate Services Inc., 80 Main Street, 5th Floor West, Orange, New Jersey 07052, as its registered agent for service of process in New Jersey. On information and belief, Actavis, Inc., at least through the actions of its subsidiaries, including Actavis Labs. FL and Actavis Pharma, is in the business of, among other things, developing, manufacturing, obtaining regulatory approval for, marketing, distributing and selling generic pharmaceutical products in New Jersey and throughout the United States.

JURISDICTION AND VENUE

10. This action for patent infringement arises under the patent laws of the United States of America, 35 U.S.C. § 100 *et seq.*

11. This Court has subject-matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

12. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

13. This Court has personal jurisdiction over Defendants by virtue of their specific acts in, and their continuous and systematic contacts with, the State of New Jersey.

14. This Court has personal jurisdiction over Actavis Labs. FL by virtue of, among other things: (1) its continuous and systematic contacts with New Jersey, including its principal place of business in Parsippany, New Jersey; (2) its acts of patent infringement that will result in foreseeable harm to Plaintiffs in New Jersey; (3) its purposefully availing itself of the jurisdiction of this Court in the past; and (4) its conduct by, through, and in concert with Actavis Pharma and Actavis, Inc.

15. This Court has personal jurisdiction over Actavis Pharma by virtue of, among other things: (1) its continuous and systematic contacts with New Jersey, including its principal place of business in Parsippany, New Jersey; (2) its acts of patent infringement that will result in foreseeable harm to Plaintiffs in New Jersey; (3) its sale of a substantial volume of pharmaceutical products in New Jersey; (4) its purposefully availing itself of the jurisdiction of this Court in the past; (5) its consent to jurisdiction in New Jersey by its registration to do business in New Jersey and appointment of a registered agent in New Jersey for the receipt of

service of process; and (6) its conduct by, through, and in concert with Actavis Labs. FL and Actavis, Inc.

16. This Court has personal jurisdiction over Actavis, Inc. by virtue of, among other things: (1) its continuous and systematic contacts with New Jersey, including its principal place of business in Parsippany, New Jersey; (2) its acts of patent infringement that will result in foreseeable harm to Plaintiffs in New Jersey; (3) its sale of a substantial volume of pharmaceutical products in New Jersey; (4) its purposefully availing itself of the jurisdiction of this Court in the past; (5) its consent to jurisdiction in New Jersey by its registration to do business in New Jersey and appointment of a registered agent in New Jersey for the receipt of service of process; and (6) its conduct by, through, and in concert with Actavis Labs. FL and Actavis Pharma.

17. As noted above, on information and belief, Actavis Labs. FL has substantial, continuous and systematic contacts with New Jersey, including, *inter alia*, having a principal place of business in New Jersey.

18. Further, Actavis Labs. FL has committed an act of patent infringement under 35 U.S.C. § 271(e)(2), and intends a future course of conduct that includes acts of patent infringement in New Jersey. These acts have led and will lead to foreseeable harm and injury to Plaintiffs, including harm and injury in New Jersey. For example, on information and belief, Actavis Labs. FL is actively preparing to make generic copies of DIFICID® (fidaxomicin) Tablets that are the subject of Actavis's ANDA No. 208443, and is preparing to commercially manufacture, use, sell, offer to sell, and/or import such generic copies in this State and this Judicial District.

19. Actavis Labs. FL has previously submitted to the jurisdiction of this Court and asserted counterclaims in this jurisdiction. *See, e.g., Horizon Pharma, Inc., et al. v. Actavis Labs. FL, Inc., et al.*, Civil Action No. 15-3322; *Supernus Pharms., Inc. v. Actavis Inc., et al.*, Civil Action No. 15-2499; *Vivus, Inc. v. Actavis Labs. FL, Inc., et al.*, Civil Action No. 15-1636; *Orexo Ab v. Actavis Labs. FL, Inc., et al.*, Civil Action No. 15-826; *Astrazeneca Ab, et al. v. Actavis Labs. FL, Inc., et al.*, Civil Action No. 14-7870; *Astrazeneca Ab, et al. v. Actavis Labs. FL, Inc., et al.*, Civil Action No. 14-7263; *Noven Therapeutics, LLC v. Actavis Labs. FL, Inc., et al.*, Civil Action No. 14-6414; *Supernus Pharms., Inc. v. Actavis Inc., et al.*, Civil Action No. 14-6102; and *Vivus, Inc. v. Actavis Labs. FL, Inc., et al.*, Civil Action No. 14-3786.

20. As noted above, on information and belief, Actavis Pharma has substantial, continuous and systematic contacts with New Jersey, including, *inter alia*, having a principal place of business in New Jersey and an appointed registered agent for service of process in New Jersey.

21. Further, Actavis Pharma, at least through the actions of its parent Actavis Inc. and its affiliate Actavis Labs. FL, has committed an act of patent infringement under 35 U.S.C. § 271(e)(2), and intends a future course of conduct that includes acts of patent infringement in New Jersey. These acts have led and will lead to foreseeable harm and injury to Plaintiffs, including harm and injury in New Jersey. For example, on information and belief, Actavis Pharma is actively preparing to commercially manufacture, use, sell, offer to sell, and/or import generic copies of DIFICID® (fidaxomicin) Tablets that are the subject of Actavis's ANDA No. 208443, and is preparing to commercially manufacture, use, sell, offer to sell, and/or import such generic copies in this State and this Judicial District.

22. Actavis Pharma has also previously submitted to the jurisdiction of this Court and asserted counterclaims in this jurisdiction. *See, e.g., Horizon Pharma, Inc., et al. v. Actavis Labs. FL, Inc., et al.*, Civil Action No. 15-3322; *Supernus Pharms., Inc. v. Actavis Inc., et al.*, Civil Action No. 15-2499; *Astrazeneca Ab, et al. v. Actavis Labs. FL, Inc., et al.*, Civil Action No. 14-7870; *Astrazeneca Ab, et al. v. Actavis Labs. FL, Inc., et al.*, Civil Action No. 14-7263; *Noven Therapeutics, LLC v. Actavis Labs. FL, Inc., et al.*, Civil Action No. 14-6414; *Supernus Pharms., Inc. v. Actavis Inc., et al.*, Civil Action No. 14-6102; *Supernus Pharms., Inc. v. Actavis Inc., et al.*, Civil Action No. 14-1981; and *Bayer Pharma AG, et al. v. Watson Labs., Inc., et al.*, Civil Action No. 14-1804.

23. As noted above, on information and belief, Actavis, Inc. also has substantial, continuous and systematic contacts with New Jersey, including, *inter alia*, having a principal place of business in New Jersey and an appointed registered agent for service of process in New Jersey.

24. Further, Actavis, Inc., at least through the actions of its subsidiaries Actavis Labs. FL and Actavis Pharma, has committed an act of patent infringement under 35 U.S.C. § 271(e)(2), and intends a future course of conduct that includes acts of patent infringement in New Jersey. These acts have led and will lead to foreseeable harm and injury to Plaintiffs, including harm and injury in New Jersey. For example, on information and belief, Actavis, Inc., at least through its subsidiaries, is actively preparing to commercially manufacture, use, sell, offer to sell, and/or import generic copies of DIFICID® (fidaxomicin) Tablets that are the subject of Actavis's ANDA No. 208443, and is preparing to commercially manufacture, use, sell, offer to sell, and/or import such generic copies in this State and this Judicial District.

25. Actavis, Inc. too has previously submitted to the jurisdiction of this Court and asserted counterclaims in this jurisdiction. *See, e.g., Horizon Pharma Ireland Ltd., et al. v. Actavis Labs. UT, Inc.*, Civil Action No. 15-6131; *Horizon Pharma Ireland Ltd., et al. v. Actavis Labs. UT, Inc., et al.*, Civil Action No. 15-5025; *Horizon Pharma, Inc., et al. v. Actavis Labs. FL, Inc., et al.*, Civil Action No. 15-3322; *Supernus Pharms., Inc. v. Actavis Inc., et al.*, Civil Action No. 15-2499; *Astrazenica Ab, et al. v. Andrx Labs, LLC, et al.*, Civil Action No. 14-8030; *Horizon Pharma Ireland Ltd., et al. v. Actavis Labs. UT, Inc., et al.*, Civil Action No. 14-7992; *Otsuka Pharm. Co. v. Actavis Elizabeth LLC, et al.*, Civil Action No. 14-7106; *Noven Therapeutics, LLC v. Actavis Labs. FL, Inc., et al.*, Civil Action No. 14-6414; *Supernus Pharms., Inc. v. Actavis Inc., et al.*, Civil Action No. 14-6102; *Supernus Pharms., Inc. v. Actavis Inc., et al.*, Civil Action No. 14-1981; and *Bayer Pharma AG, et al. v. Watson Labs., Inc., et al.*, Civil Action No. 14-1804.

26. On information and belief, Actavis Labs. FL, Actavis Pharma, and Actavis, Inc. hold themselves out as a single entity for the purposes of manufacturing, selling, marketing, distributing, and importing generic drug products in New Jersey and throughout the United States.

27. More specifically, Defendants, on information and belief, collectively share common directors, officers, principals and/or facilities, operate as agents of each other and act in concert with each other in the design, formulation, development, manufacture, packaging, distribution, marketing and/or sale of pharmaceutical products throughout the United States, including New Jersey, and will do the same with respect to Actavis's product for which they have sought approval from the FDA in ANDA No. 208443.

28. On information and belief, Actavis Labs. FL and Actavis Pharma operate as an integrated business ultimately owned and controlled by Actavis, Inc.

29. On information and belief, Defendants have sold a substantial volume of generic pharmaceutical products in New Jersey.

30. On information and belief, Defendants conduct marketing and sales activities in the State of New Jersey, including, but not limited to, the systemic and continuous distribution, marketing and sales of generic pharmaceutical products to New Jersey residents.

31. On information and belief, Defendants acted in concert to develop a generic copy of DIFICID® (fidaxomicin) Tablets and to seek approval from the FDA to sell generic copies of DIFICID® (fidaxomicin) Tablets in New Jersey and throughout the United States.

32. On information and belief, Actavis Pharma and Actavis, Inc., together with and/or through their affiliate and/or agent, Actavis Labs. FL, filed the Actavis ANDA No. 208443, which is at issue in this patent-infringement suit, with the FDA.

33. Plaintiffs' claim for patent infringement arose as a result of Actavis Labs. FL sending the required notice of its ANDA filing. The notice identified the contact information for Actavis Labs. FL's in-house counsel as Morris Corporate Center III, 400 Interpace Parkway, Parsippany, New Jersey 07054.

34. On information and belief, Actavis Pharma and Actavis, Inc., together with their affiliate and/or agent, Actavis Labs. FL, have committed, or aided, abetted, actively induced, contributed to, or participated in the commission of an act of patent infringement under 35 U.S.C. § 271(e)(2) that has led and/or will lead to foreseeable harm and injury to Plaintiffs, including harm and injury in New Jersey.

PLAINTIFFS' DIFICID® (FIDAXOMICIN) TABLETS

35. Plaintiff Cubist is the holder of New Drug Application ("NDA") No. 201699 that has been approved by the FDA for the manufacture and sale of DIFICID® (fidaxomicin) Tablets for oral use ("DIFICID®" or the "DIFICID® drug product"). Plaintiff Cubist was formerly known as Cubist Pharmaceuticals, Inc. On October 24, 2013, Cubist Pharmaceuticals, Inc. acquired Optimer Pharmaceuticals, Inc, which is the entity that originally filed NDA No. 201699. Optimer Pharmaceuticals, Inc. subsequently became Optimer Pharmaceuticals LLC.

36. DIFICID® is approved by the FDA for the treatment of *Clostridium difficile*-associated diarrhea in adults 18 years of age or older. Under NDA No. 201699, DIFICID® is marketed in 200 mg tablets. The drug is marketed under the registered trade name and trademark DIFICID®.

THE PATENTS-IN-SUIT

The '489 Patent

37. The '489 Patent, entitled "18-Membered Macrocycles and Analogs Thereof," was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on March 15, 2011, naming Youe-Kong Shue, Chan-Kou Hwang, Yu-Hung Chiu, Alex Romero, Farah Babakhani, Pamela Sears, and Franklin Okumu as the inventors. A copy of the '489 Patent is attached hereto as Exhibit 1.

38. Plaintiff Merck is the owner, by assignment, of the '489 Patent and has the full right to sue and to recover for infringement thereof. Plaintiff Optimer previously owned the '489 Patent and retains certain interests in the '489 Patent. And Plaintiffs MSD Investment Ireland and MSD International have certain rights in the '489 Patent by license.

39. The '489 Patent is listed in the FDA's publication, *Approved Drug Products with Therapeutic Equivalence Evaluations* (the "Orange Book") as covering the drug DIFICID®, at the dosage of 200 mg, which is the subject of approved NDA No. 201699. In accordance with 21 U.S.C. § 355(b)(1), the '489 Patent is listed in connection with DIFICID® and NDA No. 201699 in the Orange Book as a patent "with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug" DIFICID®.

The '551 Patent

40. The '551 Patent, entitled "18-Membered Macrocycles and Analogs Thereof," was duly and legally issued by the USPTO on November 19, 2013, naming Youe-Kong Shue, Chan-Kou Hwang, Yu-Hung Chiu, Alex Romero, Farah Babakhani, Pamela Sears, and Franklin Okumu as the inventors. A copy of the '551 Patent is attached hereto as Exhibit 2.

41. Plaintiff Merck is the owner, by assignment, of the '551 Patent and has the full right to sue and to recover for infringement thereof. Plaintiff Optimer previously owned the '551 Patent and retains certain interests in the '551 Patent. And Plaintiffs MSD Investment Ireland and MSD International have certain rights in the '551 Patent by license.

42. The '551 Patent is listed in the Orange Book as covering the drug DIFICID®, at the dosage of 200 mg, which is the subject of approved NDA No. 201699. In accordance with 21 U.S.C. § 355(b)(1), the '551 Patent is listed in connection with DIFICID® and NDA No. 201699 in the Orange Book as a patent "with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug" DIFICID®.

The '508 Patent

43. The '508 Patent, entitled "Polymorphic Crystalline Forms of Tiacumicin B," was duly and legally issued by the USPTO on May 27, 2008, naming Yu-Hung Chiu, Tessie Mary Che, Alex Romero, Yoshi Ichikawa, and Youe-Kong Shue as the inventors. A copy of the '508 Patent is attached hereto as Exhibit 3.

44. Plaintiff Merck is the owner, by assignment, of the '508 Patent and has the full right to sue and to recover for infringement thereof. Plaintiff Optimer previously owned the '508 Patent and retains certain interests in the '508 Patent. And Plaintiffs MSD Investment Ireland and MSD International have certain rights in the '508 Patent by license.

45. The '508 Patent is listed in the Orange Book as covering the drug DIFICID®, at the dosage of 200 mg, which is the subject of approved NDA No. 201699. In accordance with 21 U.S.C. § 355(b)(1), the '508 Patent is listed in connection with DIFICID® and NDA No. 201699 in the Orange Book as a patent "with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug" DIFICID®.

The '249 Patent

46. The '249 Patent, entitled "Macrolide Polymorphs, Compositions Comprising Such Polymorphs, and Methods of Use and Manufacture Thereof," was duly and legally issued by the USPTO on January 4, 2011, naming Yu-Hung Chiu, Tessie Mary Che, Alex Romero, Yoshi Ichikawa, and Youe-Kong Shue as the inventors. A copy of the '249 Patent is attached hereto as Exhibit 4.

47. Plaintiff Merck is the owner, by assignment, of the '249 Patent and has the full right to sue and to recover for infringement thereof. Plaintiff Optimer previously owned the '249

Patent and retains certain interests in the '249 Patent. And Plaintiffs MSD Investment Ireland and MSD International have certain rights in the '249 Patent by license.

48. The '249 Patent is listed in the Orange Book as covering the drug DIFICID®, at the dosage of 200 mg, which is the subject of approved NDA No. 201699. In accordance with 21 U.S.C. § 355(b)(1), the '249 Patent is listed in connection with DIFICID® and NDA No. 201699 in the Orange Book as a patent "with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug" DIFICID®.

The '510 Patent

49. The '510 Patent, entitled "Macrocyclic Polymorphs, Compositions Comprising Such Polymorphs, and Methods of Use and Manufacture Thereof," was duly and legally issued by the USPTO on October 14, 2014, naming Yu-Hung Chiu, Tessie Mary Che, Alex Romero, Yoshi Ichikawa, and Youe-Kong Shue as the inventors. A copy of the '510 Patent is attached hereto as Exhibit 5.

50. Plaintiff Merck is the owner, by assignment, of the '510 Patent and has the full right to sue and to recover for infringement thereof. Plaintiff Optimer previously owned the '510 Patent and retains certain interests in the '510 Patent. And Plaintiffs MSD Investment Ireland and MSD International have certain rights in the '510 Patent by license.

51. The '510 Patent is listed in the Orange Book as covering the drug DIFICID®, at the dosage of 200 mg, which is the subject of approved NDA No. 201699. In accordance with 21 U.S.C. § 355(b)(1), the '510 Patent is listed in connection with DIFICID® and NDA No. 201699 in the Orange Book as a patent "with respect to which a claim of patent infringement

could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug" DIFICID®.

ACTAVIS'S ANDA SUBMISSION

52. By letter dated July 23, 2015 (the "Actavis Notice Letter"), Actavis Labs. FL notified Plaintiffs that it had submitted to the FDA ANDA No. 208443 ("Actavis's ANDA") for Actavis's Fidaxomicin Tablets, a drug product that is a generic copy of DIFICID® (fidaxomicin) Tablets (the "ANDA Product" or "Actavis's ANDA Product").

53. On information and belief, Defendants filed or caused to be filed Actavis's ANDA with the FDA, seeking FDA approval to engage in the commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product prior to the expirations of the '489, the '551, the '508, the '249, and the '510 Patents.

54. In the Actavis Notice Letter, Actavis Labs. FL notified Plaintiffs that, as part of its ANDA No. 208443, Actavis had filed certifications of the type described in 21 U.S.C. § 355(j)(2)(A)(vii)(IV) ("Paragraph IV Certification") with respect to the '489, the '551, the '508, the '249, and the '510 Patents. On information and belief, ANDA No. 208443 contains certification(s) pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV) asserting that the '489, the '551, the '508, the '249, and the '510 Patents are invalid, unenforceable and/or will not be infringed by the commercial manufacture, use, sale, offer for sale, or importation of Actavis's ANDA Product.

55. By filing or causing to be filed Actavis's ANDA, Defendants necessarily represented to the FDA that the ANDA Product has the same active ingredient, the same method of administration, the same dosage form, and the same strength as DIFICID® and is bioequivalent to DIFICID®.

56. On information and belief, if Actavis's ANDA is approved by the FDA, the Defendants will, prior to the expiration of the '489, the '551, the '508, the '249, and the '510 Patents, begin commercially manufacturing, using, selling, offering to sell, and/or importing Actavis's ANDA Product.

57. On information and belief, if Actavis's ANDA is approved by the FDA, the Defendants will, prior to the expiration of the '489, the '551, the '508, the '249, and the '510 Patents, begin marketing Actavis's ANDA Product for the treatment of *Clostridium difficile*-associated diarrhea in adults 18 years or older, and doctors and patients will use Actavis's ANDA Product for the indications marketed by the Defendants.

58. Defendants had knowledge of the '489, the '551, the '508, the '249, and the '510 Patents at least as of the date when Actavis's ANDA was submitted to the FDA containing the Paragraph IV Certification with respect to the '489, the '551, the '508, the '249, and the '510 Patents.

59. Defendants' submission of ANDA No. 208443 to the FDA with the Paragraph IV Certification seeking approval to market Actavis's ANDA Product is an act of infringement by the Defendants of one or more claims of each of the '489, the '551, the '508, the '249, and the '510 Patents under 35 U.S.C. § 271(e)(2). This infringement entitles Plaintiffs to the relief provided by 35 U.S.C. § 271(e)(4), including, *inter alia*, an order of this Court that the effective date of approval for ANDA No. 208443 be a date which is not earlier than the expiration date of the last expiring of the '489, the '551, the '508, the '249, and the '510 Patents, including any extensions of that date.

60. Defendants' anticipated commercial manufacture, use, sale, offer for sale and/or importation of Actavis's ANDA Product will infringe one or more claims of the '489, the '551, the '508, the '249, and the '510 Patents under 35 U.S.C. §§ 271(a), (b), and/or (c).

61. This action is being commenced within forty-five days from the date Plaintiffs received the Actavis Notice Letter. The Actavis Notice Letter was dated July 23, 2015 and was received by Plaintiffs after July 23, 2015.

COUNT I: INFRINGEMENT OF THE '489 PATENT

62. Plaintiffs incorporate by reference each of the preceding paragraphs of this Complaint as if fully set forth herein.

63. The use and/or administration of Actavis's ANDA Product is covered by one or more claims of the '489 Patent.

64. By filing or causing to be filed ANDA No. 208443 under 21 U.S.C. § 355(j) with a Paragraph IV Certification regarding the '489 Patent in order to engage in the commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product before the expiration of the '489 Patent, Defendants committed an act of infringement of one or more claims of the '489 Patent under 35 U.S.C. § 271(e)(2)(A).

65. If Defendants commercially manufacture, use, sell, offer to sell, and/or import the ANDA Product in the United States or import the ANDA Product into the United States, or induce or contribute to any such conduct during the term of the '489 Patent, Defendants would further infringe the '489 Patent under 35 U.S.C. §§ 271(a), (b) and/or (c).

66. The use and/or administration of Actavis's ANDA Product, on information and belief in accordance with and as directed by the proposed labeling for that product, before the

expiration of the '489 Patent would infringe one or more claims of the '489 Patent under 35 U.S.C. § 271(a).

67. By seeking approval to distribute the ANDA Product with, on information and belief, its proposed labeling, Defendants intend to cause others, specifically medical professionals, to perform acts that Defendants know will infringe the '489 Patent.

68. Unless enjoined by this Court, Defendants intend to, and will, engage in the infringing commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product immediately and imminently upon approval of Actavis's ANDA.

69. Unless enjoined by this Court, Defendants intend to, and will, actively induce infringement of the '489 Patent when Actavis's ANDA is approved, and intend to, and will do so, immediately and imminently upon approval of Actavis's ANDA.

70. Defendants know that Actavis's ANDA Product and, on information and belief, its proposed labeling are especially made or adapted for use in infringing the '489 Patent, and that Actavis's ANDA Product and, on information and belief, its proposed labeling are not suitable for substantial noninfringing use. Unless enjoined by this Court, Defendants intend to, and will, contribute to the infringement of the '489 Patent immediately and imminently upon approval of Actavis's ANDA.

71. Defendants had knowledge of the '489 Patent at least as of the date Actavis's ANDA was submitted and are knowingly infringing the '489 Patent.

72. Defendants acted without a reasonable basis for believing that they would not be liable for infringing the '489 Patent, actively inducing infringement of the '489 Patent, and/or contributing to the infringement of the '489 Patent.

73. Unless Defendants are enjoined from infringing the '489 Patent, actively inducing infringement of the '489 Patent, and/or contributing to the infringement of the '489 Patent, Plaintiffs will suffer irreparable harm for which they have no adequate remedy at law. Pursuant to 35 U.S.C. §§ 271(e)(4)(B) and 283 and Fed. R. Civ. P. 65, a preliminary and permanent injunction should be entered preventing further infringement.

74. Plaintiffs are entitled to the relief provided by 35 U.S.C. § 271(e)(4), including, *inter alia*, an order of this Court that the FDA set the effective date of approval for ANDA No. 208443 to be a date which is not earlier than the expiration date of the '489 Patent, including any extensions of that date.

75. This case is "exceptional," as that term is used in 35 U.S.C. § 285, and Plaintiffs are entitled to an award of their reasonable attorneys' fees and expenses.

COUNT II: INFRINGEMENT OF THE '551 PATENT

76. Plaintiffs incorporate by reference each of the preceding paragraphs of this Complaint as if fully set forth herein.

77. Actavis's ANDA Product is covered by one or more claims of the '551 Patent.

78. By filing or causing to be filed ANDA No. 208443 under 21 U.S.C. § 355(j) with a Paragraph IV Certification regarding the '551 Patent in order to engage in the commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product before the expiration of the '551 Patent, Defendants committed an act of infringement of one or more claims of the '551 Patent under 35 U.S.C. § 271(e)(2)(A).

79. If Defendants commercially manufacture, use, sell, offer to sell, and/or import the ANDA Product in the United States or induce or contribute to any such conduct during the term

of the '551 Patent, Defendants would further infringe the '551 Patent under 35 U.S.C. §§ 271(a), (b) and/or (c).

80. The commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product before the expiration of the '551 Patent would infringe one or more claims of the '551 Patent under 35 U.S.C. § 271(a).

81. By seeking approval to distribute the ANDA Product, Defendants intend to cause others, specifically medical professionals and patients, to perform acts that Defendants know will infringe the '551 Patent.

82. Unless enjoined by this Court, Defendants intend to, and will, engage in the infringing commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product immediately and imminently upon approval of Actavis's ANDA.

83. Unless enjoined by this Court, Defendants intend to, and will, actively induce infringement of the '551 Patent when Actavis's ANDA is approved, and intend to, and will do so, immediately and imminently upon approval of Actavis's ANDA.

84. Defendants know that Actavis's ANDA Product is especially made or adapted for use in infringing the '551 Patent, and that Actavis's ANDA Product is not suitable for substantial noninfringing use. Unless enjoined by this Court, Defendants intend to, and will, contribute to the infringement of the '551 Patent immediately and imminently upon approval of Actavis's ANDA.

85. Defendants had knowledge of the '551 Patent at least as of the date Actavis's ANDA was submitted and are knowingly infringing the '551 Patent.

86. Defendants acted without a reasonable basis for believing that they would not be liable for infringing the '551 Patent, actively inducing infringement of the '551 Patent, and/or contributing to the infringement of the '551 Patent.

87. Unless Defendants are enjoined from infringing the '551 Patent, actively inducing infringement of the '551 Patent, and/or contributing to the infringement of the '551 Patent, Plaintiffs will suffer irreparable harm for which they have no adequate remedy at law. Pursuant to 35 U.S.C. §§ 271(e)(4)(B) and 283 and Fed. R. Civ. P. 65, a preliminary and permanent injunction should be entered preventing further infringement.

88. Plaintiffs are entitled to the relief provided by 35 U.S.C. § 271(e)(4), including, *inter alia*, an order of this Court that the FDA set the effective date of approval for ANDA No. 208443 to be a date which is not earlier than the expiration date of the '551 Patent, including any extensions of that date.

89. This case is "exceptional," as that term is used in 35 U.S.C. § 285, and Plaintiffs are entitled to an award of their reasonable attorneys' fees and expenses.

COUNT III: INFRINGEMENT OF THE '508 PATENT

90. Plaintiffs incorporate by reference each of the preceding paragraphs of this Complaint as if fully set forth herein.

91. Actavis's ANDA Product is covered by one or more claims of the '508 Patent.

92. By filing or causing to be filed ANDA No. 208443 under 21 U.S.C. § 355(j) with a Paragraph IV Certification regarding the '508 Patent in order to engage in the commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product before the expiration of the '508 Patent, Defendants committed an act of infringement of one or more claims of the '508 Patent under 35 U.S.C. § 271(e)(2)(A).

93. If Defendants commercially manufacture, use, sell, offer to sell, and/or import the ANDA Product in the United States or import the ANDA Product into the United States, or induce or contribute to any such conduct during the term of the '508 Patent, Defendants would further infringe the '508 Patent under 35 U.S.C. §§ 271(a), (b) and/or (c).

94. The commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product before the expiration of the '508 Patent would infringe one or more claims of the '508 Patent under 35 U.S.C. § 271(a).

95. By seeking approval to distribute the ANDA Product, Defendants intend to cause others, specifically medical professionals and patients, to perform acts that Defendants know will infringe the '508 Patent.

96. Unless enjoined by this Court, Defendants intend to, and will, engage in the infringing commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product immediately and imminently upon approval of Actavis's ANDA.

97. Unless enjoined by this Court, Defendants intend to, and will, actively induce infringement of the '508 Patent when Actavis's ANDA is approved, and intend to, and will do so, immediately and imminently upon approval of Actavis's ANDA.

98. Defendants know that Actavis's ANDA Product is especially made or adapted for use in infringing the '508 Patent, and that Actavis's ANDA Product is not suitable for substantial noninfringing use. Unless enjoined by this Court, Defendants intend to, and will, contribute to the infringement of the '508 Patent immediately and imminently upon approval of Actavis's ANDA.

99. Defendants had knowledge of the '508 Patent at least as of the date Actavis's ANDA was submitted and are knowingly infringing the '508 Patent.

100. Defendants acted without a reasonable basis for believing that they would not be liable for infringing the '508 Patent, actively inducing infringement of the '508 Patent, and/or contributing to the infringement of the '508 Patent.

101. Unless Defendants are enjoined from infringing the '508 Patent, actively inducing infringement of the '508 Patent, and/or contributing to the infringement of the '508 Patent, Plaintiffs will suffer irreparable harm for which they have no adequate remedy at law. Pursuant to 35 U.S.C. §§ 271(e)(4)(B) and 283 and Fed. R. Civ. P. 65, a preliminary and permanent injunction should be entered preventing further infringement.

102. Plaintiffs are entitled to the relief provided by 35 U.S.C. § 271(e)(4), including, *inter alia*, an order of this Court that the FDA set the effective date of approval for ANDA No. 208443 to be a date which is not earlier than the expiration date of the '508 Patent, including any extensions of that date.

103. This case is "exceptional," as that term is used in 35 U.S.C. § 285, and Plaintiffs are entitled to an award of their reasonable attorneys' fees and expenses.

COUNT IV: INFRINGEMENT OF THE '249 PATENT

104. Plaintiffs incorporate by reference each of the preceding paragraphs of this Complaint as if fully set forth herein.

105. Actavis's ANDA Product is covered by one or more claims of the '249 Patent.

106. By filing or causing to be filed ANDA No. 208443 under 21 U.S.C. § 355(j) with a Paragraph IV Certification regarding the '249 Patent in order to engage in the commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product before the expiration of the '249 Patent, Defendants committed an act of infringement of one or more claims of the '249 Patent under 35 U.S.C. § 271(e)(2)(A).

107. If Defendants commercially manufacture, use, sell, offer to sell, and/or import the ANDA Product in the United States or import the ANDA Product into the United States, or induce or contribute to any such conduct during the term of the '249 Patent, Defendants would further infringe the '249 Patent under 35 U.S.C. §§ 271(a), (b) and/or (c).

108. The commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product before the expiration of the '249 Patent would infringe one or more claims of the '249 Patent under 35 U.S.C. § 271(a).

109. By seeking approval to distribute the ANDA Product, Defendants intend to cause others, specifically medical professionals and patients, to perform acts that Defendants know will infringe the '249 Patent.

110. Unless enjoined by this Court, Defendants intend to, and will, engage in the infringing commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product immediately and imminently upon approval of Actavis's ANDA.

111. Unless enjoined by this Court, Defendants intend to, and will, actively induce infringement of the '249 Patent when Actavis's ANDA is approved, and intend to, and will do so, immediately and imminently upon approval of Actavis's ANDA.

112. Defendants know that Actavis's ANDA Product is especially made or adapted for use in infringing the '249 Patent, and that Actavis's ANDA Product is not suitable for substantial noninfringing use. Unless enjoined by this Court, Defendants intend to, and will, contribute to the infringement of the '249 Patent immediately and imminently upon approval of Actavis's ANDA.

113. Defendants had knowledge of the '249 Patent at least as of the date Actavis's ANDA was submitted and are knowingly infringing the '249 Patent.

114. Defendants acted without a reasonable basis for believing that they would not be liable for infringing the '249 Patent, actively inducing infringement of the '249 Patent, and/or contributing to the infringement of the '249 Patent.

115. Unless Defendants are enjoined from infringing the '249 Patent, actively inducing infringement of the '249 Patent, and/or contributing to the infringement of the '249 Patent, Plaintiffs will suffer irreparable harm for which they have no adequate remedy at law. Pursuant to 35 U.S.C. §§ 271(e)(4)(B) and 283 and Fed. R. Civ. P. 65, a preliminary and permanent injunction should be entered preventing further infringement.

116. Plaintiffs are entitled to the relief provided by 35 U.S.C. § 271(e)(4), including, *inter alia*, an order of this Court that the FDA set the effective date of approval for ANDA No. 208443 to be a date which is not earlier than the expiration date of the '249 Patent, including any extensions of that date.

117. This case is "exceptional," as that term is used in 35 U.S.C. § 285, and Plaintiffs are entitled to an award of their reasonable attorneys' fees and expenses.

COUNT V: INFRINGEMENT OF THE '510 PATENT

118. Plaintiffs incorporate by reference each of the preceding paragraphs of this Complaint as if fully set forth herein.

119. The use and/or administration of Actavis's ANDA Product is covered by one or more claims of the '510 Patent.

120. By filing or causing to be filed ANDA No. 208443 under 21 U.S.C. § 355(j) with a Paragraph IV Certification regarding the '510 Patent in order to engage in the commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product before the

expiration of the '510 Patent, Defendants committed an act of infringement of one or more claims of the '510 Patent under 35 U.S.C. § 271(e)(2)(A).

121. If Defendants commercially manufacture, use, sell, offer to sell, and/or import the ANDA Product in the United States or import the ANDA Product into the United States, or induce or contribute to any such conduct during the term of the '510 Patent, Defendants would further infringe the '510 Patent under 35 U.S.C. §§ 271(a), (b) and/or (c).

122. The use and/or administration of Actavis's ANDA Product, on information and belief in accordance with and as directed by the proposed labeling for that product, before the expiration of the '510 Patent would infringe one or more claims of the '510 Patent under 35 U.S.C. § 271(a).

123. By seeking approval to distribute the ANDA Product with, on information and belief, its proposed labeling, Defendants intend to cause others, specifically medical professionals, to perform acts that Defendants know will infringe the '510 Patent.

124. Unless enjoined by this Court, Defendants intend to, and will, engage in the infringing commercial manufacture, use, sale, offer for sale, and/or importation of Actavis's ANDA Product immediately and imminently upon approval of Actavis's ANDA.

125. Unless enjoined by this Court, Defendants intend to, and will, actively induce infringement of the '510 Patent when Actavis's ANDA is approved, and intend to, and will do so, immediately and imminently upon approval of Actavis's ANDA.

126. Defendants know that Actavis's ANDA Product and, on information and belief, its proposed labeling are especially made or adapted for use in infringing the '510 Patent, and that Actavis's ANDA Product and, on information and belief, its proposed labeling are not suitable for substantial noninfringing use. Unless enjoined by this Court, Defendants intend to, and will,

contribute to the infringement of the '510 Patent immediately and imminently upon approval of Actavis's ANDA.

127. Defendants had knowledge of the '510 Patent at least as of the date Actavis's ANDA was submitted and are knowingly infringing the '510 Patent.

128. Defendants acted without a reasonable basis for believing that they would not be liable for infringing the '510 Patent, actively inducing infringement of the '510 Patent, and/or contributing to the infringement of the '510 Patent.

129. Unless Defendants are enjoined from infringing the '510 Patent, actively inducing infringement of the '510 Patent, and/or contributing to the infringement of the '510 Patent, Plaintiffs will suffer irreparable harm for which they have no adequate remedy at law. Pursuant to 35 U.S.C. §§ 271(e)(4)(B) and 283 and Fed. R. Civ. P. 65, a preliminary and permanent injunction should be entered preventing further infringement.

130. Plaintiffs are entitled to the relief provided by 35 U.S.C. § 271(e)(4), including, *inter alia*, an order of this Court that the FDA set the effective date of approval for ANDA No. 208443 to be a date which is not earlier than the expiration date of the '510 Patent, including any extensions of that date.

131. This case is "exceptional," as that term is used in 35 U.S.C. § 285, and Plaintiffs are entitled to an award of their reasonable attorneys' fees and expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

- A. Judgment in favor of Plaintiffs and against Defendants;
- B. Judgment that the '489, the '551, the '508, the '249, and the '510 Patents have not been proven invalid or unenforceable.

C. Judgment that the Defendants have infringed, literally or by the doctrine of equivalents, the '489, the '551, the '508, the '249, and the '510 Patents under 35 U.S.C. § 271(e)(2) by the submission of ANDA No. 208443;

D. Judgment declaring that commercial manufacturing, using, selling, offering to sell, and/or importing Actavis's ANDA Product, or inducing or contributing to such conduct, will constitute infringement, active inducement of infringement and/or contributory infringement of the '489, the '551, the '508, the '249, and the '510 Patents by Defendants under 35 U.S.C. §§ 271(a), (b) and/or (c);

E. Judgment, pursuant to 35 U.S.C. § 271(e)(4)(A), that the effective date of any FDA approval of ANDA No. 208443 under § 505(j) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355(j)) shall be a date no earlier than the date of expiration of the last expiring of the '489, the '551, the '508, the '249, and the '510 Patents plus any additional periods of exclusivity to which the Patents are or become entitled;

F. A preliminary and permanent injunction, pursuant to 35 U.S.C. §§ 271(e)(4)(B) and 283 and Fed. R. Civ. P. 65 enjoining Defendants, and their officers, partners, agents, servants, employees, parents, subsidiaries, divisions, affiliate corporations, other related business entities and all other persons acting in concert, participation, or in privity with them, and their successors and assigns, from any commercial manufacture, use, sale, offer to sell, and/or importation within the United States of any drug product described in ANDA No. 208443, and any product that is similar to or only colorably different from those products, before the date of expiration of the last expiring of the '489, the '551, the '508, the '249, and the '510 Patents plus any additional periods of exclusivity to which the Patents are or become entitled;

G. Damages or other monetary relief, including prejudgment and postjudgment interest, if Defendants engage in the commercial manufacture, use, sale, offer to sell, or importation of Actavis's ANDA Product, or any other products that infringe the '489, the '551, the '508, the '249, and the '510 Patents, or that induce or contribute to the infringement of the '489, the '551, the '508, the '249, and the '510 Patents, prior to the expiration of the last expiring of the '489, the '551, the '508, the '249, and the '510 Patents plus any additional periods of exclusivity to which the Patents are or become entitled;

H. A declaration that this an exceptional case and an award to Plaintiffs of their reasonable attorneys' fees and expenses, as provided by 35 U.S.C. §§ 271(e)(4) and 285; and

I. Such other and further relief as this Court may deem just and proper.

Dated: August 31, 2015

Respectfully submitted,

Of Counsel:

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