IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OKLAHOMA MEDICAL RESEARCH FOUNDATION,	§	
Plaintiff,	§	Civil Action File No. _____
v.	§	JURY TRIAL DEMANDED
ALEXION PHARMACEUTICALS, INC.,	§	07CV 163 GKF SAJ
Defendant.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

I. SUMMARY

1. In 1989, scientists at the Oklahoma Medical Research Foundation ("OMRF") discovered a molecule that plays an important role in controlling the immune system. OMRF patented this discovery and licensed it to Alexion Pharmaceuticals, Inc. ("Alexion"), a for-profit biotechnology company, in 1992. Over the next 15 years, Alexion used OMRF's technology as the basis of its efforts to create a drug to treat human disease. Alexion now has succeeded in transforming OMRF's work into a treatment for a rare blood disorder, a treatment Alexion has stated will come with an annual price tag of at least $100,000 per patient. However, in the wake of this success, Alexion has informed OMRF that it has no intention of paying the 6 percent royalty due OMRF under the license for sales of the drug. Accordingly, OMRF respectfully files its complaint against Alexion, and shows the following:

II. PARTIES, JURISDICTION AND VENUE

2. Plaintiff Oklahoma Medical Research Foundation ("OMRF") is an Oklahoma not-for-profit corporation organized and incorporated under the laws of the State of Oklahoma with its principal place of business at 825 Northeast 13th Street, Oklahoma City, Oklahoma.

3. Defendant Alexion Pharmaceuticals, Inc. ("Alexion") is a corporation organized and incorporated under the laws of the state of Connecticut with its principal place of business at 352 Knotter Drive, Cheshire, Connecticut, 06410. Alexion's agent for service of process is CT Corporation System, One Commercial Plaza, Hartford, CT 06103.

4. This Court has subject matter jurisdiction over the claims and causes of action asserted in this complaint pursuant to: (a) 28 U.S.C. § 1338 because this matter involves infringement of a U.S. patent, and (b) 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of $75,000, exclusive of interests and costs, and is between citizens of different states.

5. Jurisdiction and venue are appropriate in this district and division because: (a) in the license agreement between Alexion and OMRF that is central to this dispute, Alexion contractually agreed that it consented "to the jurisdiction and venue of the courts of the State of Oklahoma, U.S.A., including federal courts located therein, in any action arising under or relating to this Agreement" and that it was "transacting business within the State of Okalahoma, U.S.A., for purposes of subjecting itself to the jurisdiction of such courts," and (b) Alexion resides in this jurisdiction pursuant to 28 U.S.C. § 1391(c) because it is authorized to transact, and is transacting, business in this district and division.

III. General Background

The Oklahoma Medical Research Foundation – Discoveries That Make A Difference

6. The Oklahoma Medical Research Foundation is a private, nonprofit, biomedical research institute located in Oklahoma City. Chartered in 1946 and built with the proceeds of a 77-county statewide fund drive, OMRF has grown to become one of the premier independent biomedical research institutes in the nation. It is home to Oklahoma's only Howard Hughes investigator and Oklahoma's only member of the prestigious National Academy of Sciences.

OMRF's scientists study diseases that affect millions of Americans: heart disease, stroke, Alzheimer's disease, lupus, cancer and children's diseases. OMRF employs approximately 500 Oklahoma residents and holds more than 100 U.S. patents. Its work has led to the first FDA-approved treatment for severe sepsis, a breast cancer risk assessment test, the first drug licensed under the European Union's centralized licensing procedure, and numerous other discoveries that have advanced human health. As a nonprofit research institute, OMRF's operations depend on funding from competitive grants, personal donations from thousands of Oklahomans and on royalty revenues generated by the licensing of its discoveries.

Bringing OMRF's Discoveries From The Lab To Patients

7. OMRF itself is not in the pharmaceutical business. As a nonprofit organization, OMRF simply does not possess the millions and millions of dollars necessary to take a discovery all the way from its laboratories to patients' bedsides. To bring the groundbreaking discoveries of its scientists from its research labs in Oklahoma to the pharmaceutical marketplace, OMRF relies on license agreements, like the one at issue in this lawsuit. Through such agreements, OMRF provides its technology to commercial partners like Alexion, which then develop that technology into a commercial product. These partnerships allow for-profit companies like Alexion to generate revenues (a small portion of which they contractually agree to share with OMRF as royalties) and allow OMRF to achieve its mission of helping "more live longer, healthier lives" by delivering life-changing treatments to patients.

OMRF Discovers A Lifesaving Treatment For "PNH", A Rare Blood Disorder

8. In the 1980s, OMRF scientists Peter J. Sims, Ph.D., and Therese Wiedmer, Ph.D., developed methods and compositions for treating autoimmune disease. Autoimmune diseases are a category of disorders that cause the body to turn the weapons of its own immune system

against itself. More than 40 autoimmune diseases have been identified, and they include well-known illnesses such as type I (juvenile) diabetes and lupus, as well as rare conditions such as the blood disorder known as paroxysmal nocturnal hemoglobinuria ("**PNH**"). PNH is an acquired genetic blood disorder that causes the body's "complement" system (part of the immune system) to destroy red blood cells and activate clot-forming platelets. Drs. Sims and Wiedmer discovered that patients with PNH lack naturally occurring **complement inhibitors** that would otherwise prevent red blood cell destruction and platelet activation. Based on that discovery, OMRF patented technologies, including compositions and methods, that would, among other things, selectively block (inhibit) the production of a certain component of the body's complement system – known as the C5b-9 terminal complex – to reverse the effects of uncontrolled complement in PNH patients.

OMRF Patents This Lifesaving "Complement Inhibitor" Discovery – The '178 Patent

9. A major step in OMRF's efforts to patent this complement inhibitor technology occurred on June 12, 1989, when it filed a (parent) patent application. As a result of that application, on June 3, 1997, the United States Patent and Trademark Office ("USPTO") issued Patent No. 5,635,178 (the **'178 Patent**") to OMRF researchers Peter J. Sims and Theresa Wiedmer ("**Exhibit A**"), who assigned the '178 Patent to OMRF. The '178 Patent is entitled *Inhibition of Complement Mediated Inflammatory Response Using Monoclonal Antibodies Specific For A Component Forming The C5b-9 Complex Which Inhibit The Platelet Or Endothelial Cell Activating Function Of The C5b-9 Complex*". As assignee, OMRF owns all right, title and interest in the '178 Patent.

The Formation Of Alexion And The 1992 License Of OMRF "Complement Inhibitor" Technology To Alexion

10. Alexion (formerly known as UDEC Pharmaceuticals, Inc.) was formed in 1992, in part by former OMRF scientists. Alexion was formed for the very purpose of developing complement inhibitor drugs.

11. Alexion's core asset was the OMRF patent portfolio consisting of complement inhibitor discoveries, and other OMRF technical information, compositions, know-how, test results, and other intellectual property, all licensed by OMRF to Alexion on June 19, 1992, when Alexion entered into an Exclusive License Agreement with OMRF (the "**License**").

12. The License ("**Exhibit B**") extends through at least the year 2014. It allows Alexion to utilize particular OMRF data, information, technology and patents, including what subsequently issued as the '178 Patent. . In exchange, Alexion agreed to pay OMRF a royalty "equal to six percent (6%) of the Net Selling Price of Licensed Products." (Sec. 4, "Royalties, Payments and Reimbursements"). The License defined a Licensed Product, in relevant part, as one that, "if not licensed, would infringe an issued claim contained in the Licensed patents" (Sec. 1.6, "Licensed Product(s)"). These two sections of the License are central to the current dispute.

13. In addition, Alexion obligated itself to, among other things:

(a) protect OMRF's confidential and proprietary information (Sec. 9 "Confidentiality"),

(b) use good faith and due diligence to vigorously exploit the rights granted under the License, to bring Licensed Products to market, to create, supply and service as extensive a market as practical to maximize sales of products and services emanating from OMRF's technology and patents (Sec. 3, "Diligence"),

(c) provide regular reports and records relating to Alexion's sales (Sec. 6, "Reports"),

(d) mark all Licensed Products and services with the applicable OMRF U.S. Patent numbers (Sec. 14.5, "Patent Marking"), and

(e) if Alexion enters into a sublicense, to provide prior written notice to OMRF (Sec 2.3, "Sublicenses") and to provide in that sublicense that Alexion's obligations under the License shall be binding upon the sublicensee as if it were a party to the License (Sec. 2.4, "Sublicensee Obligations).

Alexion's Use Of OMRF's Technology And Research To Develop Soliris™

14. Over the next decade, Alexion worked to develop OMRF's technology into treatments for human disease, and OMRF oversaw the prosecution of the patent portfolio with input and comment from Alexion. During this period, Alexion met periodically with representatives from OMRF to provide updates on the company's progress. Also during this time, Alexion twice requested—and OMRF twice granted—amendments to the License. These amendments were executed by OMRF in order to give strategic benefit to Alexion as it sought to create a marketable pharmaceutical product.

15. Throughout the 1990s, Alexion focused on the pre-clinical and clinical development of a drug called eculizumab for the treatment of the autoimmune diseases rheumatoid arthritis, lupus and nephritis. However, around 2000, Alexion switched the focus of its development of eculizumab to another autoimmune disease: PNH, a rare blood disorder for which no direct treatments existed. "[T]here was no competition in this arena, [so] it was a setting we could excel in," a company executive would later explain.

16. Alexion initiated human clinical trials of eculizumab for the treatment of PNH, and in December 2002, announced preliminary results at the American Society of Hematology's annual meeting. Those preliminary results, gathered as part of what's known as a phase 1b clinical trial, showed that in 11 PNH patients, three months of eculizumab therapy reduced the need for blood transfusions by 68 percent. The patients also showed improvement in physical functioning, global health status, fatigue and other physical and biochemical parameters. The principal investigator on the study described the effects of the drug as "dramatic."

17. That same month, Alexion contacted OMRF and presented—yet another—proposal to amend the License. This time, Alexion sought to reduce the royalty OMRF would receive on any initial sales of eculizumab or other Licensed Products. In what Alexion described as a "win-win" scenario, it proposed to offset this initial reduction by, among other things, increasing back-end payments under the License and additionally compensating OMRF with warrants to purchase 50,000 shares of Alexion stock. The goal of these amendments, according to Alexion representatives, was to provide Alexion increased funds upfront to market the drug once it obtained approval from the U.S. Food and Drug Administration for the treatment of PNH.

18. In its presentation of this proposal, Alexion also represented to OMRF that:

- Alexion's development of eculizumab for the treatment of PNH (as well as for the treatment of three other autoimmune disorders: rheumatoid arthritis, membranous nephritis and dermatomyositis) was pursuant to and covered by the License,

- eculizumab's use for the treatment of such diseases qualified it as a Licensed Product under the License,
- there would be significant sales of eculizumab covered by the License,
- OMRF would receive significant cash flows from Alexion's sales of eculizumab under the License,
- OMRF's royalties under the License for Alexion's sales of eculizumab would run from approximately 2004 through 2014,
- by amending the License, OMRF would receive royalties on foreign sales of eculizumab and royalties for an extended period of time, and
- Alexion's sales in the U.S. of eculizumab for the treatment of PNH and other disorders would result in royalties to OMRF under the License of at least $8,970,000.

19. OMRF considered Alexion's proposal in good faith and began negotiations to amend the License in a manner that was acceptable to both parties. Those negotiations dragged on for almost 3 ½ years. During those negotiations, Alexion acknowledged and promised to OMRF that:

- OMRF would "stand to benefit significantly" from such amendments,
- Alexion's work on eculizumab for the treatment of PNH was covered by the License,
- the product resulting therefrom (eculizumab, now known as Soliris™) was a Licensed Product for which royalties would be due OMRF under the License, and
- Alexion would therefore pay royalties to OMRF on sales of Soliris™.

20. Throughout these discussions, Alexion also continued to represent to OMRF its opinions of the value of the License, based in part on what it knew was covered by the License – sales of eculizumab for the treatment of PNH.

The Goal Is In Reach

21. In early 2006, Alexion was still seeking and utilizing OMRF's technical assistance with the development of eculizumab under the License. Alexion also was ramping up its pre-launch preparations for Soliris™ after obtaining favorable results from a PNH clinical trial (known as the "TRIUMPH" study) that Alexion touted as "an important accomplishment in the evolution of Alexion toward a commercial entity."

22. Even as of this time, however, Alexion was continuing to acknowledge and represent to OMRF that its development of eculizumab was under the License and that, because eculizumab was a Licensed Product, OMRF stood to receive substantial royalties pursuant to the License. In fact, in March 2006, Alexion was working to convince OMRF to agree to another amendment to the License, which would establish a deferred royalty payment schedule.

23. Although OMRF attempted in good faith to finalize yet another renegotiation of the License, negotiations never reached fruition – purportedly because Alexion still was attempting to accurately determine the actual net present value of the License (based in part on forecasted sales of eculizumab). This stall tactic was only the final chapter in a saga that played out for well over a decade, a tale marked by Alexion's repeated assurances and promises to OMRF that eculizumab and its use to treat PNH were covered by the License.

24. By March 2006, Alexion: (1) was on track to submit marketing applications for Soliris™ in both the United States and Europe, and (2) was well on the way to obtaining FDA

approval for the use of eculizumab (which it intends to market under the trade name Soliris™) to treat PNH. Finally, Alexion was within reach of the goal that underlay OMRF's decision to partner with Alexion for more than a decade – using OMRF discoveries to develop a lifesaving drug.

Alexion's Reversal Of Position – Patent, What Patent?

25. Now that FDA approval was near — and after utilizing OMRF's technology and patents for almost 15 years to develop Soliris™ — Alexion announced to OMRF (in late March 2006) that it had concluded that Soliris™ did not fall under the License after all. Thus, Alexion would not honor its commitments to pay royalties to OMRF on sales of Soliris™.

26. Alexion's 180-degree reversal flew in the teeth of the repeated statements and assurances it had made to OMRF for more than a decade (including just days before, in its ostensible License amendment "negotiations" with OMRF): that Soliris™ was a Licensed Product.

27. Alexion's new position also sharply contrasted with representations it previously had made to:

(a) the United States Patent and Trademark Office ("USPTO"), to whom it had accurately stated that the then-pending claims (later issued as part of the '178 Patent) covered eculizumab for the uses now approved and marketed; and

(b) the investing public and the scientific community, to whom it had acknowledged that eculizumab inhibits platelet activation.

The End?

28. Alexion is now a publicly traded biotechnology company with a market capitalization of approximately $1.5 billion, and it expects to receive FDA approval to market Soliris™ within the month of March 2007. "The successful completion of . . . clinical trials

now gives way to our preparation for a successful global launch of Soliris," said Alexion's chief executive, who has stated that the company expects to charge $100,000 to $200,000 a year for the drug. An analyst at the investment bank William Blair & Company recently estimated that sales of Soliris™ would generate revenue for Alexion of $33 million in 2007 and $112.8 million in 2008.

29. Alexion has, upon information and belief, entered into a manufacturing agreement with Lonza Biologics to produce the drug, and it also has purchased a manufacturing facility in Rhode Island, which it is now equipping for future Soliris™ production. In November, Alexion secured approximately $140 million in additional capital through a stock offering. "Alexion is keenly focused on progressing our regulatory applications for Soliris in PNH, and on preparing for global commercialization," said Alexion's chief executive last year. And by ignoring its legal obligation to pay OMRF a 6 percent royalty on sales of the drug, Alexion now has what it has long desired: ample additional funds to support its initial marketing efforts for Soliris™.

30. OMRF's technology played a key role in the creation of Soliris™, and OMRF has faithfully partnered with Alexion for 15 years to help develop a lifesaving drug. Now that those efforts have, at long last, succeeded, Alexion stands to make hundreds of millions of dollars. Meanwhile, OMRF stands empty-handed.

IV. CAUSES OF ACTION

COUNT 1 - Breach of Contract

31. Plaintiff adopts and incorporates herein by reference the facts and allegations in all preceding paragraphs as if they were fully set forth herein.

32. Alexion's conduct set forth above, and its position that the product (Soliris™) developed under the License, utilizing OMRF's Licensed Technology, does not constitute a "Licensed Product" is unsupportable, contrary to its many representations and

acknowledgments throughout the term of the contract, and constitutes an egregious breach of contract.

33. Alexion has notified OMRF that because of its position that eculizumab (Soliris™) is not a Licensed Product, it will not honor its commitments under the License, such as making the required royalty payments relating to Soliris™ under Section 4 (entitled "Royalties, Payments, and Reimbursement"). Alexion's anticipatory breach of the License also includes its breach of duties to provide OMRF with records of sales (Section 5, entitled "Records"), with business reports (Section 6, entitled "Reports"), and its duty to mark resultant products and services with OMRF's patent numbers (Section 14.5, entitled "Patent Marking").

34. Alexion also has, upon information and belief, entered into a manufacturing agreement with Lonza Biologics to produce Soliris™. Such agreement constitutes a "sublicense" under the License, yet Alexion has breached its duties under the License to provide OMRF with prior notice of such sublicense (Section 2.3, "Sublicense") and, upon information and belief, also to provide in that sublicense that Alexion's obligations under the License shall be binding upon Lonza Biologics as if it were a party to the License (Sec. 2.4, "Sublicensee Obligations).

35. Alexion further failed to use good faith in its development of eculizumab, in its conduct set forth above, and by failing to exercise diligence in bringing a Licensed Product to market, all in violation of Section 3 (entitled "Diligence).

36. Such conduct constitutes a material breach (and anticipatory breach) of the License, causing OMRF to sustain significant damages in the present and in the future.

37. If this Court determines that eculizumab (Soliris™) is not a "Licensed Product" within the meaning of the License, then Alexion has breached both its implied (and express)

covenant of good faith in performing the License and its express obligation to use commercially reasonable efforts throughout the term of the License to bring a Licensed Product subject to the License to market.

38. Alexion's abandonment, without notice to OMRF, of its development efforts to bring a product subject to the License to market - and instead shifting its efforts to commercialize its own pharmaceutical product containing an anti-C5 complement monoclonal antibody - was a flagrant breach of its obligations to OMRF pursuant to the License.

39. OMRF has been substantially damaged by Alexion's breach of contract in an amount to be determined by the trier of fact.

COUNT 2 – Patent Infringement

40. Plaintiff adopts and incorporates herein by reference the facts and allegations in all preceding paragraphs as if they were fully set forth herein.

41. Alexion has, in view of its breach of the License and its activities in making, using, offering for sale, and selling Soliris™ as described above, commenced acts of making, having made, using, offering for sale, and selling the invention covered by the '178 Patent without OMRF's authority. Pursuant to 35 U.S.C. § 271 such acts constitute infringement of OMRF's '178 Patent.

COUNT 3 - Willful Infringement

42. Plaintiff adopts and incorporates herein by reference the facts and allegations in all preceding paragraphs as if they were fully set forth herein.

43. Alexion commenced its acts of patent infringement despite knowledge of the '178 Patent, despite having entered into a License concerning the '178 Patent, and despite having been contractually obligated to use commercially reasonable efforts to develop a product practicing or capable of practicing the '178 Patent.

44. Alexion made the numerous representations and acknowledgements set forth above, indicating its knowledge that Soliris was covered by the '178 Patent, and thus the License, yet nonetheless continued to infringe the '178 Patent.

45. Alexion's infringement of the '178 Patent is willful.

COUNT 4 - Unjust Enrichment

46. Plaintiff adopts and incorporates herein by reference the facts and allegations in all preceding paragraphs as if they were fully set forth herein.

47. Alexion obtained substantial benefits from OMRF. For instance, OMRF's successful research and its sharing of such research with Alexion led, in part, to Alexion's interest in developing eculizumab for use in treating PNH and other diseases.

48. Additionally, during the period in which Alexion was developing eculizumab (Soliris™), Alexion received the benefit of exclusive rights to the '178 Patent and the Licensed Technology.

49. The exclusive rights gained by Alexion precluded OMRF from licensing those aspects of the Licensed Technology and the '178 Patent to third parties, with the result that Alexion was able to develop Soliris™ with the assurance of no competition once Soliris™ is approved.

50. Alexion has been unjustly enriched in that it developed eculizumab/Soliris™, obtained expedited consideration from the FDA, and is gearing up to launch the sale of Soliris™ worldwide, expecting to obtain a great amount of revenues and profits from such sales. Additionally, as Soliris™ will be (and has been promoted by Alexion as soon being) the first FDA-approved drug for treating PNH, Alexion has received public acclaim for its development efforts while denying OMRF's role in the development of eculizumab/Soliris™ .

51. Alexion's enrichment was unjust, especially considering OMRF's actions in conferring the benefit of an exclusive license to the '178 Patent in connection with eculizumab, and/or OMRF's actions in alerting Alexion to the opportunity to develop eculizumab for use in treating PNH and in assisting Alexion in that endeavor.

52. Alexion's actions toward OMRF (including its conduct undertaken with its acknowledgements and representations that Soliris was a Licensed Product) were taken with reckless disregard for the rights of OMRF, entitling OMRF to all damages also afforded under 23 Okla. Stat. § 9.1.

COUNT 5 – Promissory and Equitable Estoppel

53. Plaintiff adopts and incorporates herein by reference the facts and allegations in all preceding paragraphs as if they were fully set forth herein.

54. OMRF relied in good faith upon Alexion's statements, promises, representations, and omissions set forth above (including its promises to pay royalties on sales of Soliris). Further, OMRF has been damaged by Alexion's recent effort to deny that the Soliris™ product is a "Licensed Product."

55. If Alexion now contends that its representations were false, or the trier of fact so finds, estoppel applies to prevent inequitable consequences to OMRF.

56. Alexion's representations, promises, concealments and omissions estop Alexion from now denying that: (1) eculizumab/Soliris™ was and is a covered Licensed Product subject to the License, and (2) eculizumab/Soliris™ and its use according to its FDA approved package insert (and any other and future FDA approvals) are covered by the Licensed Patents, the '178 Patent, and the License.

COUNT 6 - Declaratory Judgment

57. Plaintiff adopts and incorporates herein by reference the facts and allegations in all preceding paragraphs as if they were fully set forth herein.

58. OMRF respectfully requests this Court to construe the contractual rights among the parties, and their rights, status and legal relations thereunder pursuant to the Oklahoma Declaratory Judgment Act, 12 Okla. Stat. § 1651, et seq.

COUNT 7 - Request For Court-Ordered Accounting

59. Plaintiff adopts and incorporates herein by reference the facts and allegations in all preceding paragraphs as if they were fully set forth herein.

60. OMRF respectfully requests the Court to order Alexion and its principals to account for the following:

(a) All sales of (and monies, profits, or other things of value derived by Alexion, its affiliates, licensees, or related entities, or any entity owned or controlled by Alexion from the sale of) eculizumab (Soliris™),

(b) All royalties or license fees (or any remuneration related to any license or other agreement) paid or received and related to the sales of (and monies, profits, or other things of value derived by Alexion, its affiliates, licensees, or related entities, or any entity owned or controlled by Alexion) eculizumab or Soliris™,

(c) All documents (including but not limited to correspondence, sales forecasts, financial documents, spreadsheets, cash flow summaries, etc.) that reflect royalties or cash flows to be paid by Alexion, or to be paid to OMRF, relating to the sales of eculizumab (Soliris™),

(d) All documents indicating Alexion's purported ownership or assigned rights in patents or other intellectual property obtained by Alexion and pertaining to eculizumab (other than patents defined as Licensed Patents in the License), either through patents or otherwise to allow the court to consider further requests as to the true ownership of said rights,

(e) All documents identifying the sellers, resellers, users, or manufacturers of eculizumab that are in privity with Alexion or its related entities, and

(f) All documents and data (including electronic data) reflecting all of the items set forth above.

Attorneys Fees, Expenses And Costs

61. Plaintiff adopts and incorporates herein by reference the facts and allegations in all preceding paragraphs as if they were fully set forth herein.

62. As a result of Alexion's conduct, OMRF has been forced to retain the services of attorneys to represent it in seeking to have Alexion honor its commitments. OMRF is entitled to an award of all of its reasonable and necessary attorneys fees, expenses and costs pursuant to all common law and statutes affording same, including but not limited to 35 U.S.C. §§ 284 and 285, and 12 *Okla.Stat.* § 936.

Damages

63. As a direct and proximate consequence of Alexion's wrongful acts and omissions described above, OMRF has suffered substantial actual and consequential damages. Such actual and consequential damages exceed the minimum jurisdictional limits of this Court.

64. Alexion's actions toward OMRF (including its conduct undertaken with its acknowledgements and representations that Soliris was a Licensed Product) were taken with reckless disregard for the rights of OMRF.

65. OMRF requests that it be awarded all actual, compensatory, consequential, and punitive damages against Alexion in such amount as the jury may determine.

66. All conditions precedent have been performed or have occurred.

V. JURY TRIAL DEMANDED

67. OMRF hereby demands a trial by jury, a right many have sacrificed to protect.

VI. PRAYER

WHEREFORE, OMRF prays:

(a) **Declaration:** that this Court declare that: Soliris™ is a "Licensed Product" as that term is defined in the License, and it is covered by or usable in a method of treatment covered by a Valid Claim of the '178 Patent;

(b) **Damages (Including Enhanced Damages and Attorneys Fees) for Patent Infringement and Willful Infringement:** that OMRF be awarded all damages, and enhanced damages, attorneys fees, costs, reasonable royalties and enhanced royalties as a result of Alexion's infringement and willful infringement of OMRF's patent, as provided in 35 U.S.C. §§ 284 and 285;

(c) **Specific Performance**: that this Court order Alexion to comply with the License and pay all compensable royalties on eculizumab (in any final product form, including Soliris™) to OMRF;

(d) **Declaration**: that this Court declare that Alexion is estopped from denying (1) that eculizumab was developed utilizing the Licensed Technology and is therefore subject to the License royalty provisions, (2) that Soliris™ is a "Licensed Product" as that term is defined in the License, and (3) that Soliris™ and its use according to its FDA approved package insert(s) are covered by the '178 Patent;

(e) **Damages for Express/Implied Obligations**: alternatively, if this Court determines that Soliris™ is not a "Licensed Product" as that term is used in the License or that Alexion is not estopped from so denying, that OMRF be awarded all damages it has incurred by reason of Alexion's breach of its express and implied obligations to OMRF pursuant to the License, common law, and statutory law,

(f) **All Actual, Compensatory, and Consequential Damages**: that this Court award OMRF its actual, compensatory, and consequential damages;

(g) **Unjust Enrichment:** that this Court award OMRF relief sufficient to account for Alexion's unjust enrichment, including Alexion's profits or a portion thereof for sales of Soliris™;

(h) **Accounting**: that this Court exercise its equitable power and order Defendant to render an accounting of all assets and records of Alexion, and Alexion's sales of Soliris™, profits from such sales, disposition of any Licensed information or data, and/or disposition or sale of any product or thing of value arising from the License, and as pled above;

(i) **Escrow**: that this Court order that Alexion escrow a 6% royalty on all sales of Soliris™ into an interest-bearing escrow account;

(j) **Attorneys Fees/Costs/Expenses**: that this Court award attorneys fees, costs, and all expenses incurred by Plaintiff under all applicable statutes or common law affording same;

(k) **Pre-Judgment and Post-Judgment Interest**: that this Court award pre- and post-judgment interest at the maximum rate permitted by law; and

(l) **Other Relief:** that this Court award to OMRF such other and further relief as this Court deems just and proper.

Respectfully submitted,

Joel L. Wohlgemuth by Adrienne Robertson

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