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Attorneys for Defendants
Eugene Mechetner and Missag H. Parseghian

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

SANTOS BIOTECH INDUSTRIES, INC., a Nevada corporation; and STASON PHARMACEUTICALS, INC., a California corporation;

Plaintiffs,

vs.

EUGENE MECHETNER, an individual; and MISSAG PARSEGHIAN, an individual;

Defendants.

Case No. 30-2013-00624425-CU-FR-CJC

[Hon. Sheila B. Fell, Dept. C-22]

JUDGMENT OF DISMISSAL FOLLOWING SUSTAINING OF DEMURRER WITHOUT LEAVE TO AMEND

Pursuant to the Court's Order dated August 21, 2013, sustaining Defendants EUGENE MECHETNER and MISSAG PARSEGHIAN's Demurrer to Plaintiffs SANTOS BIOTECH INDUSTRIES, INC. and STASON PHARMACEUTICALS, INC.'s Complaint without leave to amend:

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiffs SANTOS BIOTECH INDUSTRIES, INC., and STASON PHARMACEUTICALS, INC.'s Complaint is dismissed with prejudice as to Defendants EUGENE MECHETNER and MISSAG PARSEGHIAN, and that judgment be entered in favor of Defendants.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

Defendants EUGENE MECHETNER and MISSAG PARSEGHIAN shall recover from Plaintiffs SANTOS BIOTECH INDUSTRIES, INC., and STASON PHARMACEUTICALS, INC., costs of suit in the sum of $_____ to be determined by motion and/or a Memorandum of Costs.

Dated: September 18, 2013

By: Sheila Fell
Hon. Sheila B. Fell
Judge of the Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

SANTOS BIOTECH INDUSTRIES, INC., a Nevada corporation; and STASON PHARMACEUTICALS, INC., a California corporation;

Plaintiffs,

vs.

EUGENE MECHETNER, an individual; and MISSAG PARSEGHIAN, an individual;

Defendants.

Case No. 30-2013-00624425-CU-FR-CJC

[Hon. Andrew P. Banks, Dept. C-11]

DEFENDANTS EUGENE MECHETNER AND MISSAG PARSEGHIAN'S NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFFS' COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[*Filed concurrently with Defendants' Notice of Lodgment of Exhibits In Support of Demurrer to Complaint; and Defendants' Request for Judicial Notice*]

Complaint Filed:	January 15, 2013
Trial Date:	February 24, 2014
Hearing Date:	August 23, 2013
Time:	1:30 p.m.

TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD HEREIN:

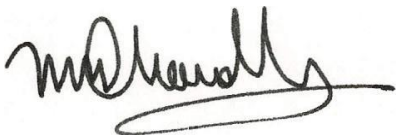
PLEASE TAKE NOTICE THAT on August, 23 2013 at 1:30 p.m., or as soon thereafter as the matter may be heard, before the Honorable Andrew P. Banks, in Department C-11 of the Orange County Superior Court, Central Justice Center, located at 700 Civic Center Drive West, Santa Ana, California 92701, Defendants EUGENE MECHETNER and MISSAG PARSEGHIAN (collectively referred to herein as "Defendants"), hereby demur, jointly and severally, to Plaintiffs Santos Biotech Industrial, Inc. and Santos Pharmaceuticals, Inc.'s Complaint.

This Demurrer is based upon this Notice, the Demurrer, the accompanying Memorandum of Points and Authorities, the Notice of Lodgment of Exhibits In Support of Defendants Eugene Mechetner and Missag Parseghian's Demurrer to Plaintiffs' Complaint, as well as the Request for Judicial Notice filed concurrently herewith, the complete records and files in this action, and such other evidence and argument as the Court shall permit at the hearing of this matter.

Dated: May 28, 2013

Respectfully submitted,

Law Offices of MANBIR S. CHOWDHARY,
A Professional Law Corporation



By: _____
Manbir S. Chowdhary, Esq.
Attorneys for DEFENDANTS
EUGENE MECHETNER and MISSAG H. PARSEGHIAN

DEMURRERS

Defendants EUGENE MECHETNER and MISSAG H. PARSEGHIAN hereby demur, jointly and severally, generally and specially, to Plaintiffs' Complaint on the following grounds:

DEMURRER TO FIRST CAUSE OF ACTION

1. The first purported cause of action for "intentional misrepresentation" is barred by res judicata and collateral estoppel. *Vendenberg v. Superior Court*, 21 Cal. 4th 815, 828 (1999); *Code of Civil Procedure* §§ 430.10 and 430.30(a).
2. The first purported cause of action for "intentional misrepresentation" is barred pursuant to *Code of Civil Procedure* § 426.30.
3. The first purported cause of action for "intentional misrepresentation" is barred by the statute of limitations pursuant to *Code of Civil Procedure* § 338.
4. The first purported cause of action for "intentional misrepresentation" fails for failure to join an indispensable party pursuant to *Code of Civil Procedure* §§ 389 and 430.10(d).

DEMURRER TO SECOND CAUSE OF ACTION

5. The second purported cause of action for "negligent misrepresentation" is barred by res judicata and collateral estoppel. *Vendenberg v. Superior Court*, 21 Cal. 4th 815, 828 (1999); *Code of Civil Procedure* §§ 430.10 and 430.30(a).
6. The second purported cause of action for "negligent misrepresentation" is barred pursuant to *Code of Civil Procedure* § 426.30.
7. The second purported cause of action for "negligent misrepresentation" is barred by the statute of limitations pursuant to *Code of Civil Procedure* § 338.
8. The second purported cause of action for "negligent misrepresentation" fails for failure to join an indispensable party pursuant to *Code of Civil Procedure* §§ 389 and 430.10(d).

DEMURRER TO THIRD CAUSE OF ACTION

9. The third purported cause of action for "breach of fiduciary duty" is barred by res judicata and collateral estoppel. *Vendenberg v. Superior Court*, 21 Cal. 4th 815, 828 (1999); *Code of Civil Procedure* §§ 430.10 and 430.30(a).
10. The third purported cause of action for "breach of fiduciary duty" is barred pursuant to *Code of Civil Procedure* § 426.30.
11. The third purported cause of action for "breach of fiduciary duty" is barred by the statute of limitations pursuant to *Code of Civil Procedure* § 338.

DEMURRER TO FOURTH CAUSE OF ACTION

12. The fourth purported cause of action for "fraudulent concealment" is barred by res judicata and collateral estoppel. *Vendenberg v. Superior Court*, 21 Cal. 4th 815, 828 (1999); *Code of Civil Procedure* §§ 430.10 and 430.30(a).
13. The fourth purported cause of action for "fraudulent concealment" is barred pursuant to *Code of Civil Procedure* § 426.30.
14. The fourth purported cause of action for "fraudulent concealment" is barred by the statute of limitations pursuant to *Code of Civil Procedure* § 338.
15. The fourth purported cause of action for "fraudulent concealment" fails for failure to join an indispensable party pursuant to *Code of Civil Procedure* §§ 389 and 430.10(d).

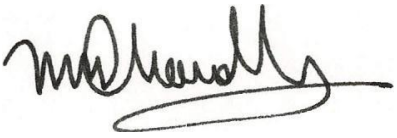
WHEREFORE, Demurring Parties, Eugene Mechetner and Missag Parseghian pray as follows:

1. That this demurrer be sustained without leave to amend;
2. That demurring parties be awarded their costs of suit herein; and
3. For such other and further relief as the Court deems just and proper.

Dated: May 28, 2013

Respectfully submitted,

Law Offices of MANBIR S. CHOWDHARY,
A Professional Law Corporation



By: _____
Manbir S. Chowdhary, Esq.
Attorneys for DEFENDANTS
EUGENE MECHETNER and MISSAG H. PARSEGHIAN

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Santos Biotech Industries, Inc. and Stason Pharmaceuticals, Inc.'s (collectively referred to herein as "Plaintiffs") Complaint against Eugene Mechetner and Missag Parseghian ("Moving Defendants") fails to state a claim upon which relief can be granted for multiple, independent reasons.

First, Plaintiffs' Complaint is barred by collateral estoppel, as it admittedly is based on the same issues decided in previous litigation involving Eugene Mechetner, Missag Parseghian, and Stonsa Biopharm, Inc., Santos Biotech Industries, Inc., and Stason Pharmceuticals, Inc. Whereas the Court in the prior action determined that Moving Defendants (Mechetner and Parseghian) fulfilled the obligations of their respective contractual agreements and ruled that the evidence at trial *did not* indicate that they [Mechetner and Parseghian] failed to do what their employment required. (See *Final Ruling After Trial*, Pg. 5:21 to 6:5, Request for Judicial Notice in Support of Demurrer to Complaint by Defendants Eugene Mechetner and Missag Parseghian ("RJN") ¶ 7; Notice of Lodgment of Exhibits in Support of Demurrer to Complaint by Defendants Eugene Mechetner and Missag Parseghian ("NOL") Exh. 7), Plaintiffs now bring this lawsuit on the grounds that Moving Defendants made intentional and negligent misrepresentations, breached their alleged fiduciary duty, and fraudulently concealed information arising from their employment with Stonsa Biopharm, Inc. ("Stonsa"), a start-up company which employed Mechetner and Parseghian from 2010 until November 2011.

The current lawsuit brought by Plaintiffs stems from the same set of events, transactions and agreements asserted in the prior action, and relates to the formation and operation of Stonsa, the entity charged with the development and commercialization of Tumor Necrosis Therapy Technology ("TNT Technology"), via a May 3, 2010 Assignment Agreement and Licensing Agreement between Plaintiff Stason Pharmaceuticals, Inc. ("Stason") and Peregrine Pharmaceuticals, Inc. ("Peregrine"). These agreements are collectively referred to herein as "Stason/Peregerine Licensing Agreements", and are attached hereto as NOL Exh. 15 and Exh. 16. Plaintiffs' claims in the present action fall directly within the doctrine of collateral estoppel and the strong public policy against a multiplicity of lawsuits and endless litigation of issues.

Secondly, Plaintiffs' claims are barred by the compulsory counterclaim rule codified in *California Code of Civil Procedure* § 426.30. There is no dispute that Plaintiffs' claims arise from the same issues, let alone the same controversy - the standard necessary for the compulsory counterclaim rule to apply. Plaintiffs had the opportunity to timely bring their compulsory counterclaims in the Underlying Action, and chose *not* to do so. The compulsory counterclaim rule is mandatory and must be applied here where Plaintiffs waived their opportunity to bring the claims for misrepresentations, breach of fiduciary duty, and fraudulent concealment they now assert against Eugene Mechetner and Missag Parseghian.

Moreover, Santos and Stason's claims fail because they are barred by the three-year statute of limitations applicable to such misrepresentation and fraud claims. Plaintiffs' allegations in the present suit, and Moving Defendants' Complaint in the underlying action, conclusively show that Santos and Stason were on notice of their claims no later than December 17, 2009 after conducting their own due diligence into the TNT Technology, independent of Defendant Mechetner's email representations, entering into a Letter of Intent with Peregrine, and affirming their commitment to enter into a seven year multi-million dollar licensing deal, with Peregrine, in which Stason received a limited exclusive right to Peregrine's TNT Technology (See *Letter Agreement* dated December 17, 2009, between Stason Chief Executive Officer, Harry Fan, and Peregrine Chief Executive Officer, Steve King; NOL Exh. 11). Accordingly, the limitation period on Santos and Stason's claims expired no later than December 17, 2012.

Lastly, Santos and Stason's claims fail because there has been a failure to join an indispensable party, Peregrine, pursuant to *Code of Civil Procedure* § 389. Defendant Mechetner worked as Head of New Ventures and Business Development at Peregrine during the course of his alleged misrepresentations regarding the TNT Technology. Mechetner's role as Head of New Ventures and Business Development at Peregrine was to find investors for the TNT technology. Peregrine developed the TNT Technology, and still holds the proprietary rights to said technology. Moreover, Peregrine is the contracting party to the Stason/Peregrine Licensing Agreements with Plaintiff Stason – *not* the Defendants.

For each of the above reasons, Eugene Mechetner ("Mechetner") and Missag Parseghian ("Parseghian") respectfully request the Court sustain their demurrer, with prejudice, jointly and

severally, against each and every cause of action asserted by Santos Biotech Industries, Inc. ("Santos") and Stason Pharmaceuticals, Inc. ("Stason").

II. PROCEDURAL HISTORY

A. Mechetner and Parseghian File a Lawsuit Against Stonsa Biopharm, Inc., Stason Pharmaceuticals, Inc., and Santos Biotech Industries, Inc.

On January 13, 2012, Eugene Mechetner and Missag Parseghian filed a lawsuit against their employer Stonsa Biopharm, Inc., and five other named Defendants, including Stason Pharmaceuticals, Inc., and Santos Biotech Industries, Inc. for, *inter alia*, breach of contract, unpaid wages, fraudulent inducement, intentional misrepresentation, and negligent representation relating to the TNT Technology and the formation and operation of Stonsa Bioharm, Inc. (the "Underlying Action"). (See *Underlying Complaint*; Request for Judicial Notice in Support of Demurrer to Complaint by Defendants Eugene Mechetner and Missag Parseghian ("RJN") ¶ 1; Notice of Lodgment of Exhibits in Support of Demurrer to Complaint by Defendants Eugene Mechetner and Missag Parseghian ("NOL") Ex. 1.)

On February 21, 2012, counsel for all Defendants, Mr. Matthew D. Taylor filed a joint Answer in which Santos and Stason raised the affirmative defenses of *fraud* and *unclean hands* against Mechetner and Parseghian. (*See Answer* ¶¶ 5, 7; RJN ¶ 2; NOL Ex. 2).

B. Stason and Santos Seek to Obtain Leave to Cross-Complaint Against Mechetner and Parseghian in the Underlying Action.

On December 12, 2012, Santos and Stason sought leave in the Underlying Action to file a Cross-Complaint against Mechetner and Parseghian alleging claims of intentional misrepresentation, negligent misrepresentation, breach of fiduciary duty and fraudulent concealment. (See *Motion for Leave to File Cross-Complaint*, RJN ¶ 3; NOL Ex. 3).

On January 8, 2013, the Court denied Santos and Stason leave to assert their proposed Cross-Complaint. (See Court's Minute Order, RJN ¶ 6; NOL Ex. 6).

C. The Court Enters a Monetary Judgment in Favor of Mechetner and Parseghian

On April 30, 2013, the Court entered judgment in favor of Mechetner and Parseghian against their employer, Stonsa Biopharm, Inc., in the amount of $427,177.11 based on the breach of

contract and stock causes of action. The Court also ruled in favor of the Santos, Stonsa and the other Defendants on the remaining causes of action (See *Final Ruling After Trial*, RJN ¶ 7; NOL Ex. 7; and, *Judgment*, RJN ¶ 8; NOL Ex. 8.)

D. Mechetner and Parseghian are Served with the Present Lawsuit

This present suit, originally filed with the Court on January 15, 2013 was served on Eugene Mechenter on April 25, 2013 and Missag Parseghian on May 3, 2013. This demurrer ensued.

III. SUMMARY OF SANTOS AND STASON'S ALLEGATIONS

Santos and Stason's Complaint is based on the same issues arising from Moving Defendants' employment with Stonsa. These issues include whether Moving Defendants breached their respective obligations during their employment with Stonsa, the obligations of all parties in the Underlying Action regarding Stonsa's formation and operation, and the commercialization and development of TNT Technology by Stonsa, and have previously been litigated and resolved by the Underlying Action. Santos and Stason's Complaint is *identical* to their Cross-Complaint in the Underlying Action.

The present Complaint alleges that Mechetner made a series of false and misleading statements to Plaintiffs regarding the TNT Technology. These statements were allegedly made prior to Stonsa's formation and on an ongoing basis thereafter during the course of Mechetner's employment with Stonsa.

Furthermore, the Complaint alleges that Mechetner, along with Parseghian, during the course of their employment with Stonsa, concealed vital information regarding an alleged mutation in the TNT Technology which, if known to Plaintiffs, would have prevented investment in Stonsa.

IV. PLAINTIFFS' COMPLAINT IS BARRED BY COLLATERAL ESTOPPEL

The current Complaint is based on the same issues determined in the Underlying Action and is, therefore, precluded by collateral estoppel. Collateral estoppel, a component of res judicata, precludes relitigation of issues that were necessarily decided in prior proceedings. *Vendenberg v. Superior Court*, 21 Cal. 4th 815, 828 (1999); *Lucido v. Superior Court*, 51 Cal. 3d 335, 341 (1990). California courts have generally evaluated three elements in applying collateral estoppel: (1)

whether the issue presented in the current litigation was decided in previous litigation; (2) whether a final judgment on the merits was made; and (3) whether the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication. *Burdette v. Carrier Corp.*, 158 Cal. App. 4th 1668, 1688 (2008). All of these factors strongly support collateral estoppel against Santos and Stason here.

A. Santos and Stason's Complaint is Based on Issues That Have Already Been Adjudicated

Collateral estoppel applies when the same issues are relitigated, regardless of whether the claims or causes of action are the same. As explained by the California Supreme Court in *Vendenberg*:

"[R]es judicata does not merely bar relitigation of identical claims or causes of action. Instead, in its collateral estoppel aspect, the doctrine may also preclude a party to prior litigation from redisputing issues therein decided against him, even when those issues bear on different claims raised in a later case." *Vendenberg*, 21 Cal. 4th at 828. Collateral estoppel not only encompasses different claims, it also applies where different factual or legal arguments are presented on the issue that is being relitigated. *Lucas v. County of Los Angeles*, 47 Cal. App. 4th 277, 286 (1996); *Burdette*, 158 Cal. App. 4th at 1688; *Branson v. Sun --Diamond Growers*, 24 Cal. App. 4th 327, 346 (1994). "The doctrine of collateral estoppel applies on issues litigated even though some factual matters or legal arguments which could have been raised were not." *Lucas* 47 Cal. App. 4th at 286 (1996); Burdette, 158 Cal. App. 4th at 1688; see also, *Mark v. Spencer*, 166 Cal. App. 4th 219, 229 (2008) (finding that collateral estoppel applies if the party "has litigated, or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction.")

Santos and Stason's claims in the present action are barred by collateral estoppel because they are based on precisely the same issues arising from Moving Defendants' employment with Stonsa. These issues include whether Moving Defendants breached their respective obligations during their employment with Stonsa, the obligations of Moving Defendants and Plaintiffs regarding Stonsa's formation, operation, and its commercialization and development of the TNT Technology.

In fact, an essential element of Mechetner and Parseghian's claim for breach of contract and unpaid wages in the Underlying Action, upon which judgment was granted, is whether they had breached their respective obligations relating to the formation and operation of Stonsa. *Day v. Alta Bates Medical Center*, 98 Cal. App. 4th 243, 248 (2002).

The Court was unequivocal on this very point in the Underlying Action: "**The contracts contain Stonsa's obligation to pay certain wages and offer certain perquisites…Mechetner and Parseghian fulfilled their obligations under the contract. Stonsa tried, right before trial, to amend its answer to add cross-complaints against the plaintiffs for fraud and misrepresentation, including things done during their employment with Stonsa. The court denied the motion.** ***Further, at trial, there was insufficient evidence to meet Stonsa's burden of proof regarding any failure of plaintiffs to do what their employment contract required. Consequently, the court concludes that plaintiffs were not themselves in violation of the employment agreement, making the obligations of Stonsa unconditional."*** (*See Final Ruling After Trial,* Pgs. 5:19 to 6:5, RJN ¶ 5; NOL Ex. 5 (emphasis added)).

If an issue is raised in the pleadings and treated as an issue in prior litigation, it is conclusively determined by the prior judgment and triggers collateral estoppel in future litigation. *Burdette*, 158 Cal. App. 4th at 1690. Here, a determination by the Court that Mechetner and Parseghian were *not* in breach of their obligations to Stonsa, decides whether they fraudulently concealed information related to the TNT Technology during the course of their employment, and whether they breached any related fiduciary duties arising from said employment. *Vendenberg*, 21 Cal. 4th at 828.

On May 24, 2013, Mechetner and Parseghian filed a Notice of Related Case under *California Rule of Court* 3.300. *California Rule of Court* 3.300 states that cases are related if they "[i]nvolve the same parties and are based on the same or similar claims; or ... [a]rise from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact."

Notably, Santos and Stason have already conceded that the *exact* issues raised in the new lawsuit involve the same issues as the Underlying Action. In Santos and Stason's Motion for Leave to File a Cross Complaint in the Underlying Action, Santos and Stason admit that their claims

involve the same issues: "There can be little doubt that these claims are 'logically related' to the underlying suit." (See *Motion for Leave to File Cross Complaint*, Pg. 4, Lns. 15-16; RJN ¶ 3, NOL Ex. 3.) Santos and Stason cannot now introduce new or different evidence to relitigate these issues. *Burdette*, 158 Cal. App. 4th at 1688-89.

B. A Final Judgment Was Entered In the Prior Action Involving the Same Parties

As with the similarity between the issues presented, there can be no dispute that the issues have been adjudicated, as the Underlying Action resulted in a final judgment on the merits. (See *Final Ruling After Trial*, RJN ¶ 7; NOL Ex. 7; and, *Judgment*, RJN ¶ 8; NOL Ex. 8.) As noted above, in ruling on Mechetner and Parseghian's claims, the Court determined that Moving Defendants fulfilled the obligations of their respective contractual agreements during their employment with Stonsa, and there was insufficient evidence at trial to meet Stonsa's burden of proof regarding any failure of plaintiffs to do what their contracts required. (*Final Ruling After Trial*, RJN ¶ 7; NOL Ex. 7, Pgs. 5:19 - 6:5). Accordingly, collateral estoppel applies to Santos and Stason's new claims.

V. SANTOS AND STASON'S COMPLAINT IS BARRED BY THE COMPULSORY COUNTERCLAIM RULE

Santos and Stason's Complaint is also precluded by *Code of Civil Procedure* § 426.30, which bars claims that should have been asserted as compulsory counterclaims in a previous action. Section 426.30 states that, "if a party against whom a complaint has been filed and served fails to allege in a cross-complaint any related cause of action which... he has against the plaintiff, such party may not thereafter in any other action assert against the plaintiff the related cause of action not pleaded." *Code of Civil Procedure* § 426.30(a).

This rule has an even broader scope than collateral estoppel, precluding any related claims that arise from the same controversy that was the subject of previous litigation. *Hulsey v. Koehler*, 218 Cal. App. 3d 1150, 1156-57 (1990); *Currie v. Medical Specialties, Inc. v. Bowen*, 136 Cal. App. 3d 774, 776-77 (1982). Thus, the compulsory counterclaim rule applies to bar even "issues which were never litigated and never actually decided." *Hulsey*, 218 Cal. App. 3d at 1157.

The primary consideration in determining whether section 426.30 applies is whether the

claims are related, that is, whether they arose from the same nucleus of facts. Id. Related causes of action under § 426.30 "should be interpreted broadly to encourage the joining of all claims arising from 'a series of acts or occurrences logically interrelated.' " *Ranchers Bank v. Pressman*, 19 Cal. App. 3d 612, 620 (1971) (interpreting § 426.30's predecessor, former § 439); *Currie*, 136 Cal. App. 3d at 777. In furtherance of strong public policy against a multiplicity of lawsuits, the law is clear that "[t]he waiver provision of section 426.30 is mandatory, the policy in favor of hearing all related claims in a single action controlling." *Currie*, 136 Cal. App. 3d at 777; *Carroll v. Import Motors, Inc.*, 33 Cal. App. 4th 1429, 1435 (1995); *Hulsey*, 218 Cal. App. 3d at 1157.

As noted above, there is no dispute that Santos and Stason's new claims are related to the Underlying Action. (See *Motion for Leave to File Cross Complaint*, Pg. 4, Lns. 15-16; RJN ¶ 3, NOL Ex. 3.)

In the prior litigation, Mechetner and Parseghian sued Stason and Santos for, *inter alia*, misrepresentations and non-payment of wages related to the commercialization and development of TNT Technology. If Stason and Santos believed they had claims against Mechetner and/or Parseghian arising from the TNT Technology, Santos and Stason were required to bring them in the earlier action. *Saunders v. New Capital for Small Businesses, Inc*., 231 Cal. App. 2d 324, 337-338 (1964). In this situation, "the rights of both parties herein flow from a common source and should have been determined in the prior action." Id. at 713; see also, *AL Holding Company v. O'Brien & Hicks, Inc.*, 75 Cal. App. 4th 1310, 1312-14 (2000); *Currie*, 136 Cal. App. 3d at 776-77; *Carroll v. Import Motors, Inc*., 33 Cal. App. 4th 1429 (1995).

In fact, Santos and Stason sought to obtain leave in the Underlying Action to bring a cross-complaint against Mechetner and Parseghian based on the same *identical facts* that underlie their present claims (*See Cross-Complaint*, RJN ¶ 4; NOL Ex. 4). However, they did so within a month of the trial date in the Underlying Action and were denied leave by the Court.

Accordingly, Santos and Stason had the opportunity to bring their current claims against Mechetner and Parseghian in the Underlying Action. They did not do so in a timely manner and asked the Court for leave 10 months *after* filing their joint Answer, and *less than one month before trial* in the Underlying Action. Consequently, the Court denied leave because "*they [Santos and Stason] failed to show that their failure to assert the claims in a timely manner was in good faith*

under California Code of Civil Procedure §426.50." (*See Court's Minute Order* dated January 8, 2013; RJN ¶ 6; NOL Ex. 6). Plaintiffs had a chance to timely bring their compulsory claims in the Underlying Action, and chose not to do so. Plaintiffs' claims are now barred by *California Code of Civil Procedure* § 426.30.

VI. SANTOS AND STASON'S CLAIMS ARE TIME-BARRED

Santos and Stason's causes of action also fail because they have been brought outside the applicable limitation period for such claims. The statute of limitations for fraud-based claims, as are all four causes of action in the present Complaint, is three years (*Code of Civil Procedure* §338). Plaintiffs' Complaint alleges that the critical misrepresentations occurred on or about April 28, 2009 (Complaint ¶¶ 20, 21). The statute of limitations period is triggered as soon as a plaintiff suspects that he or she was injured. See, *Bernson v. Browning-Ferris Industries of Cal., Inc.*, 7 Cal. 4th 926, 932 (1994); *Jolly v. Eli Lilly & Co*., 44 Cal. 3d 1103, 1111 (1988). As explained by the California Supreme Court in *Jolly*:

"Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her."

Jolly, 44 Cal. 3d at 1111. After becoming aware of an injury giving rise to a claim, plaintiffs are charged with knowledge of information that would have been revealed had they investigated the facts surrounding the injury. *Fox v. Ethicon Endo-Surgery, Inc*., 35 Cal. 4th 797, 807 (2005).

Here, Plaintiffs can be charged with *actual knowledge* of Moving Defendants' alleged fraud no later than November 17, 2009 after conducting their own due diligence into the TNT Technology, independent of Mechetner's email representations, and entering into a Letter of Intent with Peregrine Pharmaceuticals, Inc., and confirming their intention to enter into a "definitive agreement granting Stason limited exclusive development and marketing rights to Peregrine's tumor necrosis therapy (TNT) technologies" (See *Letter Agreement* dated December 17, 2009, between Stason Chief Executive Officer, Harry Fan, and Peregrine Chief Executive Officer, Steve King; NOL Exh. 11). Santos and Stason's requisite due diligence is further warranted by the fact that Stason *did* enter into a seven year, multi-million dollar licensing agreement with Peregrine on May

3, 2010, (See *Stason/Peregrine Press Release*, NOL Exh. 14; *Stason/Peregrine Assignment Agreement*, NOL Exh. 15; *Stason/Peregrine License Agreement*, NOL Exh, 16) and formed Stonsa Biopharm, Inc. to develop the TNT Technology (See *Offer Letter to Eugene Mechetner from Stason*, dated April 15, 2010, NOL Exh. 12; and, *Stason/Peregrine Press Release*, NOL Exh. 14).

Accordingly, the three year limitation period for Santos and Stason's current claims expired no later than November 17, 2012. For this reason, Santos and Stason's Complaint should be dismissed with prejudice.

VII. PLAINTIFFS' FIRST, SECOND AND FOURTH CAUSES OF ACTION FAIL TO NAME AN INDISPENSABLE PARTY TO THE ACTION AND THUS FAIL FOR DEFECT (NONJOINDER) OF PARTIES

Lastly, Plaintiffs' Complaint fails to join an indispensable party, namely Peregrine Pharmaceuticals, Inc. *Code of Civil Procedure* § 430.10, subdivision (d), permits a demurrer where "[t]here is a defect or misjoinder of parties."

A plaintiff is required to join as parties to the action any person whose interest is such that: (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. *Code of Civil Procedure* § 389 (a).

Wherever plaintiff fails to join some person necessary for a just adjudication, the court shall order that person be made a party to the action. *Code of Civil Procedure* § 389 (a). If such person cannot be joined, the court must then decide whether—"in equity and in good conscience"—the action should proceed without him, or should be dismissed without prejudice. *Code of Civil Procedure* § 389(b); see also *Koster v. County of San Joaquin* (1996) 47 Cal. App. 4th 29, 44; *Kaczorowski v. Mendocino County Bd. of Supervisors* (2001) 88 Cal.App.4th 564, 570.

Here, prior to their employment with Stonsa, Moving Defendants both worked for Peregrine Pharmaceuticals, Inc. Mechetner was Head of New Technology Ventures for Peregrine at the time

of his alleged misrepresentations (See *Mechetner/Peregrine Consulting Agreement*, NOL Exh. 9). Eugene Mechetner's first ever contact with Stason and its Chief Executive Officer, Harry Fan, regarding the TNT Technology at issue in this case was on April 28, 2009 in Mechetner's capacity as Peregrine's Head of New Technology Ventures (See *Email from Mechetner to Harry Fan*, dated April 28, 2009, NOL Exh. 10). It was an inherent part of Defendant Mechetner's job responsibility at Peregrine to find investors related to the TNT Technology. The initial understanding to license the TNT Technology to Stason was signed in November 2009, by Steve King, as the Chief Executive Officer of Peregrine, and Harry Fan, as Chief Executive Officer of Stason. (See *Letter Agreement* dated December 17, 2009, between Peregrine and Stason; NOL Exh. 11). Accordingly, the alleged representations in Plaintiffs' Complaint were made in the course and scope of Mechetner's role as Head of New Technology Ventures at Peregrine. Moreover, Peregrine developed the TNT Technology, tested it over an 18 year period, and purportedly holds the proprietary rights to said technology.

Finally, Peregrine is the licensor of the TNT Technology, and the party that contracted with Stason to enter into a seven year licensing deal regarding the TNT Technology. (See *Peregrine/Stason Licensing Agreements*, NOL Exh. 15, Exh. 16, Exh. 19). Moving Defendants, Mechetner and Parseghian were *not* parties to said agreements.

Should this action proceed without naming Peregrine as a defendant, Defendants Mechetner and Parseghian will suffer prejudice and a substantial risk of incurring double, multiple, or otherwise inconsistent obligations. *Code of Civil Procedure* § 389. The prejudice that will be suffered by the Defendants in this matter is sufficient to sustain a demurrer to all of Plaintiffs' causes of action. *Code of Civil Procedure* § 430.10(d).

VIII. CONCLUSION

Moving Defendants respectfully request the Court sustain their demurrer, with prejudice, to each and every cause of action asserted by Santos and Stason where Santos and Stason's claims are barred by collateral estoppel and the compulsory counterclaim rule, have been brought nearly eight months after the limitation period for such claims expired, and have failed to join an indispensable party.

Dated: May 28, 2013

Respectfully submitted,

Law Offices of MANBIR S. CHOWDHARY,
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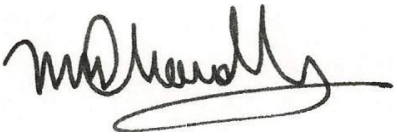

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