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David H. Yarrasich, Clerk of the Superior Court
County of Santa Clara, California

By: [Signature]
Deputy Clerk

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1 COLT WALLERSTEIN LLP
2 Thomas E. Wallerstein (Bar No. 232086)
3 twallerstein@coltwallerstein.com
4 Doug Colt (Bar No. 210915)
5 dcolt@coltwallerstein.com
6 Paragon Point
7 Three Lagoon Drive, Suite 260
8 Redwood Shores, California 94065
9 Telephone: (650) 453-1980
10 Facsimile: (650) 472-8078

11 Attorneys for Plaintiff Glenridge Pharmaceuticals LLC

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF SANTA CLARA

14 UNLIMITED CIVIL

15 GLENRIDGE PHARMACEUTICALS LLC,

16 Plaintiff,

17 v.

18 QUESTCOR PHARMACEUTICALS, INC., a
19 California corporation, and DOES 1 through 5,

20 Defendants.

CASE NO.

111 CV 203554

**COMPLAINT FOR DAMAGES:
BREACH OF WRITTEN CONTRACT**

JURY TRIAL DEMANDED

BY FAX

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PARTIES

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1. Plaintiff Glenridge Pharmaceuticals LLC (“Glenridge”) is a California limited liability company whose principal place of business is in Mountain View, California.
2. Defendant Questcor Pharmaceuticals, Inc. (“Questcor”) is a California corporation with a place of business in Hayward, California.
3. Plaintiff is unaware of the true names and capacities of defendants sued herein as Does 1 through 5, inclusive, and therefore plaintiff sues these defendants by such fictitious names. Plaintiff will amend this Complaint for Damages to allege the Does’ true names and capacities when ascertained.
4. Plaintiff is informed and believes that at all relevant times, defendants, and each of them, were the agents of their co-defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency.
5. Upon information and belief, at all times herein mentioned, each defendant acted individually and/or as the agent, co-conspirator, aider, abettor, joint-venturer, alter ego, third party beneficiary, employee, officer, director, or representative of the other defendants and in doing the things hereinafter averred, acted within the course and scope of such agency, employment, or conspiracy, and with the consent, permission, and authorization of each of the remaining defendants. Upon information and believe all actions of each defendant as averred herein were ratified and approved by every other defendant or their agents.

BACKGROUND

6. Defendant Questcor was formed on November 17, 1999 to develop, manufacture and sell pharmaceutical products.
7. In late December 1999 through mid 2000, plaintiff Glenridge identified a very promising pharmaceutical product known as Acthar Gel (“Acthar”). Acthar was one of the first effective medications approved by the U.S. Food and Drug Administration (“FDA”) in the early 1950’s for the treatment of acute exacerbations in adults with Multiple Sclerosis. Acthar has also been shown to be uniquely effective – and in 2010 received FDA approval – for the treatment

- 1 of infantile spasms, a rare and serious type of infant seizure disorder. Left untreated, infantile
2 spasms can lead to life-long disability or death.
- 3 8. In 2000, the rights to Acthar were owned by Aventis Pharmaceuticals Products, Inc.
4 ("Aventis"). Aventis was interested in selling its rights to Acthar to a company which could
5 more successfully produce, market and sell the product.
- 6 9. Although many companies initially were interested in acquiring Acthar, they ultimately
7 declined to do so, largely because they were unable to develop a strategy that would allow
8 them to successfully navigate the FDA regulatory challenges associated with transferring the
9 manufacture of Acthar away from Aventis and to ultimately be able to profitably manufacture
10 the product themselves.
- 11 10. Glenridge developed a novel regulatory and manufacturing strategy for the transfer of Acthar
12 away from Aventis and thus Glenridge intended to purchase Acthar from Aventis, and
13 believed that Acthar could be profitably produced and marketed.
- 14 11. Thus, in late December 1999 through mid 2000, Glenridge entered into negotiations with
15 Aventis to acquire the rights to Acthar, and to purchase the New Drug Application for Acthar
16 then owned by Aventis.
- 17 12. As part of this due diligence effort, Glenridge worked with both the FDA and patient
18 advocacy groups to assure that Glenridge's proposed new approach to transfer the
19 manufacturing for Acthar would be acceptable to the FDA.
- 20 13. Glenridge and Aventis thus reached an agreement in principle in June 2000 by which
21 Glenridge would purchase Acthar from Aventis.
- 22 14. In July 2000, Glenridge informed Questcor about Acthar's potential if Glenridge's regulatory
23 and manufacturing strategy was pursued. Questcor began negotiating with Glenridge for
24 Questcor to obtain from Glenridge the rights to Acthar, even though Glenridge and Aventis
25 had not yet formally executed their agreement.
- 26 15. Ultimately Glenridge and Questcor agreed that Questcor would substitute for Glenridge in the
27 agreement with Aventis.
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16. Glenridge and Questcor agreed that if Questcor and Aventis consummated the deal already negotiated by Glenridge, then Questcor and Glenridge would enter into a royalty agreement by which Questcor would pay a modest royalty to Glenridge based on Questcor's sales of Acthar.

17. In July 2001, Questcor and Aventis entered into an asset purchase agreement by which Questcor acquired the rights to Acthar from Aventis. The agreement was deemed by Questcor to be critically important to its future growth and in fact saved Questcor from possible bankruptcy.

18. But for substituting Questcor for Glenridge, the asset purchase agreement between Questcor and Aventis was largely identical to the agreement which Glenridge had already successfully negotiated with Aventis.

19. In January 2002, as had previously been agreed upon, Questcor and Glenridge entered into a written contract entitled Royalty Agreement and Release ("Agreement") providing the modest royalty to Glenridge for valuable consideration, including its critical role in developing Acthar's potential and allowing Questcor to step into Glenridge's place in acquiring the rights to Acthar from Aventis. A copy of the Agreement is attached as Exhibit A.

20. Immediately prior to the acquisition of Acthar by Questcor, the product was generating revenue of approximately \$500,000 per year. In calendar year 2004 the gross sales of Acthar were \$9,980,421. In calendar year 2010 the gross sales of Acthar were \$154,197,723.

21. Today, Acthar accounts for virtually all of Questcor's total annual Net Sales.

FIRST CAUSE OF ACTION

(BREACH OF WRITTEN CONTRACT)

22. Plaintiff Glenridge hereby incorporates by reference the preceding paragraphs as though fully set forth herein.

23. The Agreement provides that:

For so long as Questcor sells the Product, Questcor shall pay to Glenridge a quarterly royalty payment (the "Royalty Payment") equal to: five percent (5%) of the Net Sales of the Product which occur during the period from July 27, 2001 through July 26, 2002; four percent (4%) of the Net Sales of the Product which occur during the

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1 period from July 27, 2002 through July 26, 2003; and three percent
2 (3%) of the Net Sales of the Product which occur after July 27, 2003.

3 24. The Agreement further provides that:

4 "Net Sales" shall mean the amounts billed by Questcor for the Product
5 shipped to customers, in each case after deduction for: (i) quantity, cash
6 or other discounts or rebates that are consistent with industry practices
7 and actually given or paid by Questcor; (ii) credits, allowances,
8 refunds, discounts and rebates to customers; (iii) the costs of all
9 customs duties, tariffs and sales, use, excise and value-added taxes; and
10 (iv) the costs of freight, transportation, shipping and handling costs,
11 and insurance charges.

12 25. The intention of the parties was that royalty payments under the Agreement would be
13 calculated by employing a cash basis of accounting; that is, deductions used to arrive at "Net
14 Sales" would be calculated using a cash not accrual basis of accounting.

15 26. From October 2001 to December 2010, the course of performance of the parties confirmed
16 this understanding of the Agreement. That is, Questcor made royalty payments to Glenridge
17 by using a cash basis of accounting when calculating the Net Sales for which royalties are
18 due.

19 27. At least twice between 2004 and December 2010, Questcor proposed changing the Agreement
20 and using an accrual basis, not a cash basis, of accounting for Net Sales. Each time, the
21 parties confirmed their understanding that the Agreement required using cash basis
22 accounting when calculating Net Sales. Each time, the parties confirmed that Net Sales
23 would continue to be calculated by using cash basis accounting.

24 28. In early 2011, Questcor unilaterally, and without consultation with Glenridge, changed its
25 interpretation of the Agreement. Questcor told Glenridge that, notwithstanding the language
26 of the Agreement and the course of conduct of the parties, Questcor intended to use accrual
27 basis accounting instead of cash basis accounting when calculating Net Sales and royalties
28 due.

29 Questcor also told Glenridge that it was applying its new interpretation retroactively to when
30 sales began in the fall of 2001, notwithstanding the language of the Agreement and the course
31 of performance of the parties.

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1 30. Thus, in early 2011, Questcor notified Glenridge that it would withhold \$485,845.68 in future
2 royalty payments to "catch up" for past payments that Questcor claimed should not have been
3 due based on Questcor's new interpretation of the Agreement.

4 31. In May 2011, Questcor notified Glenridge that it had done further accounting and now
5 intended to withhold \$599,752.47 in future royalty payments to "catch up" for past payments
6 that Questcor claimed should not have been due based on Questcor's new interpretation of the
7 Agreement.

8 32. In April 2011, based on its new interpretation of the Agreement, Questcor breached the
9 Agreement and underpaid Glenridge \$161,948.56 for the 4th Quarter 2010 royalty period.

10 33. In May 2011, again based on its new interpretation of the Agreement, Questcor also breached
11 the Agreement and underpaid Glenridge another \$161,948.56 for the 1st Quarter 2011 royalty
12 period, bringing the combined underpayment for both Quarters to a total of \$323,897.12.

13 34. Questcor has informed Glenridge that it intends to further breach the Agreement and underpay
14 Glenridge at least another \$275,855.35 in royalties.

15 35. Questcor has informed Glenridge that in addition to the \$275,855.35 in royalties it intends to
16 withhold, it also intends to continue to further breach the Agreement and underpay Glenridge
17 an undetermined amount in the future.

18 36. Plaintiff Glenridge performed all conditions, covenants, and promises to be performed on its
19 part with regard to the Agreement with defendant Questcor.

20 37. Defendant Questcor breached the Agreement with plaintiff Glenridge as set forth above.

21 38. As a result of the breaches, plaintiff Glenridge has suffered economic losses and other
22 general, consequential, and specific damages. Wherefore, plaintiff Glenridge prays for relief
23 as set forth below.

24 **SECOND CAUSE OF ACTION**

25 **(BREACH OF WRITTEN CONTRACT)**

26 39. Plaintiff Glenridge hereby incorporates by reference the preceding paragraphs as though fully
27 set forth herein.

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1 49. By way of another example, Questcor has deducted from its calculation of Net Sales an item it
2 describes only as a "Medicare Part D - Donut Hole." That deduction is not permitted under
3 the Agreement.

4 50. On information and belief, Questcor has deducted from its calculation of Net Sales other
5 items that are not permitted under the Agreement.

6 51. Thus, Questcor has breached the Agreement by improperly including deductions to Net Sales
7 that are not contemplated under the Agreement.

8 52. Plaintiff Glenridge performed all conditions, covenants, and promises to be performed on its
9 part with regard to the Agreement with defendant Questcor.

10 53. Defendant Questcor breached the Agreement with plaintiff Glenridge as set forth above.

11 54. As a result of the breaches above, plaintiff Glenridge has suffered economic losses and other
12 general, consequential, and specific damages. Wherefore, plaintiff Glenridge prays for relief
13 as set forth below.

14 **PRAYER**

15 WHEREFORE, plaintiff prays for judgment as follows:

16 1. That the Court declare, adjudge, and decree that defendant Questcor breached its
17 written contract with plaintiff Glenridge.

18 2. That the Court award damages to plaintiff Glenridge, including interest, in an amount
19 to be determined at trial.

20 3. That the Court declare, adjudge and decree that plaintiff Glenridge is entitled to an
21 annual audit of Questcor's purported Net Sales.

22 3. That the Court award punitive damages to plaintiff Glenridge in an amount to be
23 determined at trial.

24 4. That the Court award to plaintiff its attorneys' fees and costs of suit.

25 5. That the Court grant such other relief as it deems proper.

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1 DATED: June 21, 2011

COLT WALLERSTEIN LLP

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4 By: *Thomas E. Wallerstein*

5 Thomas E. Wallerstein
6 Attorneys for Glenridge Pharmaceuticals LLC
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