



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JLI INVEST S.A., and LIN INVEST S.A.,

Plaintiffs,

v.

THOMAS J. COOK, in his individual capacity and official capacity as the Secretary of Finance for the State of Delaware; DAVID M. GREGOR, in his individual capacity and official capacity as the State Escheator of the State of Delaware; RICHARD S. CORDREY, in his individual capacity; GARY M. PFEIFFER, in his individual capacity; MARK E. UDINSKI, in his individual capacity; and the STATE OF DELAWARE,

Defendants.

C.A. No. _____

VERIFIED COMPLAINT

Plaintiffs JLI Invest S.A. and LIN Invest S.A., for their claims against Defendants Thomas J. Cook, in his individual capacity and official capacity as the Secretary of Finance for the State of Delaware; David M. Gregor, in his individual capacity and official capacity as the State Escheator of the State of Delaware; Richard S. Cordrey, in his individual capacity; Gary M. Pfeiffer, in his individual capacity; Mark E. Udinski, in his individual capacity; and the State of Delaware, hereby allege as follows:

NATURE OF THE ACTION

1. Plaintiffs JLI Invest S.A. and LIN Invest S.A. file this Complaint against Defendants Thomas J. Cook, in his individual capacity and official capacity as the Secretary of Finance for the State of Delaware; David M. Gregor, in his individual capacity and official capacity as the State Escheator of the State of Delaware; Richard S. Cordrey, in his individual capacity; Gary M. Pfeiffer, in his individual capacity; Mark E. Udinski, in his individual capacity; and the State of Delaware (collectively, “Defendants”) to recover the value of shares of stock owned by, and in the possession of, Plaintiffs that Defendants wrongfully seized, purportedly under Delaware’s Escheats Law, and which Defendants wrongfully sold, after placing a “sell order” on Plaintiffs’ shares a mere three days after the shares were unlawfully seized. Defendants never attempted to locate or contact Plaintiffs regarding their alleged unclaimed property, even though, at all times, they knew how to locate and contact Plaintiffs and the primary purpose of the Escheats Law is to return unclaimed property to the owner. Defendants’ acts violate the Delaware Escheats Law, federal common law, the Due Process Clauses of the United States and Delaware Constitutions, the Takings Clauses of the United States and Delaware Constitutions, the Commerce Clause of the United States Constitution, and the Friendship, Establishment and Navigation Treaty entered into between the United States and Belgium. Defendants’ acts also constitute gross

negligence and conversion. As a result of Defendants' wrongful and tortious actions, Plaintiffs lost over \$12 million, money that represents the value of their years of hard work, extraordinary biopharmaceutical discoveries, and invaluable research benefiting worldwide public health.

THE PARTIES

2. Plaintiff JLI Invest S.A. ("JLI") is a citizen of Belgium. It is duly organized and existing under the laws of Belgium and has its principal place of business in Brussels, Belgium.

3. Plaintiff LIN Invest S.A. ("LIN") is a citizen of Belgium. It is duly organized and existing under the laws of Belgium and has its principal place of business in Brussels, Belgium.

4. Defendant Thomas J. Cook is the Secretary of Finance of the State of Delaware (the "Secretary"). His office is located at Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801. On information and belief, the Secretary resides in and is a citizen of the State of Delaware. Delaware's unclaimed property law provides that "[t]here shall be an Escheator of the State, who shall be the Secretary of Finance or the Secretary's delegate. The administration and enforcement of [the Delaware Escheats Law] are vested in the Secretary of Finance or the Secretary's delegate." 12 *Del. C.* § 1102. Defendant

Thomas J. Cook is named in his individual capacity and in his official capacity as the Delaware Secretary of Finance.

5. Defendant David M. Gregor is the Secretary's delegate as the Delaware State Escheator ("the State Escheator"). His office is located at Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801. On information and belief, the State Escheator resides in and is a citizen of the State of Delaware. "The State Escheator may make such rules and regulations as the Escheator may deem necessary to enforce [the Delaware Escheats Law]." 12 *Del. C.* § 1154. Defendant David M. Gregor is named in his individual capacity and in his official capacity as the Delaware State Escheator.

6. Defendant Richard S. Cordrey is the former Delaware Secretary of Finance ("Former Secretary Cordrey") during the time when Plaintiffs' shares were seized by Delaware. On information and belief, Former Secretary Cordrey resides in and is a citizen of the State of Delaware. Defendant Richard S. Cordrey is named in his individual capacity.

7. Defendant Gary M. Pfeiffer is the former Delaware Secretary of Finance ("Former Secretary Pfeiffer") during the time when Plaintiffs' shares were wrongfully liquidated by Delaware. On information and belief, Former Secretary Pfeiffer resides in and is a citizen of the State of Delaware. Defendant Gary M. Pfeiffer is named in his individual capacity.

8. Defendant Mark E. Udinski is the former Delaware State Escheator (the “Former State Escheator”) during the time when Plaintiffs’ shares were seized by Delaware and wrongfully liquidated. On information and belief, the Former State Escheator resides in and is a citizen of the State of Delaware. Defendant Mark E. Udinski is named in his individual capacity.

9. Defendant the State of Delaware (“Delaware” or the “State”) is a sovereign state in the United States of America, with an office at 150 Martin Luther King Jr. Blvd. South, 2nd Floor, Dover, DE 19901. The State is being named as a party for purposes of complying with the Declaratory Judgment Act and because the validity of the State’s legislation is at issue in this action.

JURISDICTION

10. This Court has subject matter jurisdiction over this action pursuant to 10 *Del. C.* § 341, 10 *Del. C.* § 4001, 12 *Del. C.* § 1146, and the Delaware Declaratory Judgment Act 10 *Del. C.* § 6501, *et seq.*

11. This Court has personal jurisdiction over Defendants because they reside in and are citizens of the State of Delaware; they are current and former public officials serving or who served in those capacities in the State of Delaware. This Court has personal jurisdiction over the State of Delaware pursuant to 10 *Del. C.* § 4001 and 10 *Del. C.* § 3103.

FACTUAL ALLEGATIONS

General Background

12. LIN is owned 99.99% by Dr. Gilles Gosselin and 0.01% by Dr. Jean Louis Imbach, and JLI is owned 99.99% by Dr. Imbach and 0.01% by Dr. Gosselin. These companies were established to hold Dr. Gosselin's and Dr. Imbach's shares in Idenix Pharmaceuticals, Inc. ("Idenix"), a biopharmaceutical company engaged in the discovery and development of drugs for the treatment of human viral diseases.

13. Dr. Gosselin and Dr. Imbach headed a research team that, in 1997, synthesized a new drug (Telbivudine) that was found to be active against the Hepatitis B virus.

14. Idenix was established the following year to develop this drug in collaboration with Novartis Pharma AG and the Centre National de la Recherche Scientifique.

15. Dr. Gosselin and Dr. Imbach were key participants in Idenix's business and were well known to Idenix's senior management, including top executives and directors.

16. LIN owned 320,000 shares of Idenix, and JLI owned 240,000 shares of Idenix. On information and belief, during the relevant time period such shares constituted, in the aggregate, around ten percent (10%) of the total outstanding

shares of Idenix. During all relevant times, LIN and JLI had physical possession of these shares, and still have physical possession of the shares.

17. Idenix was fully aware of the relationship between Dr. Gosselin and Dr. Imbach and LIN and JLI. In fact, Dr. Gosselin and Dr. Imbach, who had originally held these shares directly, had transferred the shares to LIN and JLI upon the advice and recommendation of Idenix.

18. On information and belief, Equiserve acted as Idenix's transfer agent until 2005, at which time Equiserve was acquired by Computershare Trust Company N.A. ("Computershare"). Thereafter, and at all relevant times beginning in 2005, Computershare acted as Idenix's transfer agent.

19. As part of Computershare's transfer agent services, Computershare also agreed to provide services related to the escheatment of Idenix's abandoned or unclaimed securities. These services included, without limitation, services to locate lost shareholders and to communicate with shareholders to prevent escheatment and services to determine whether Idenix shares constituted unclaimed property.

Plaintiffs' Communications With Idenix and Computershare

20. At all relevant times, both Computershare and Idenix had a written record of each Plaintiff's mailing address, both of which were (and are) in Brussels, Belgium.

21. Idenix periodically communicated with Plaintiffs regarding their shares prior to escheat of their shares.

22. Idenix periodically sent correspondence to Plaintiffs regarding their shares, which Plaintiffs received. On information and belief, no correspondence sent to Plaintiffs by Idenix or Computershare was ever returned as undeliverable.

23. From the time of Idenix's formation through 2009, and afterwards, Dr. Gosselin, on behalf of LIN, worked with Idenix on an ongoing basis and had regular contact and communications with Idenix in the course of their relationship.

24. From the time of Idenix's formation through at least the end of 2006, Dr. Imbach, on behalf of JLI, worked with Idenix on an ongoing basis and had regular contact and communications with Idenix in the course of their relationship.

25. Certain of those communications, including communications that occurred within the relevant time period of 2006 through 2008, specifically related to Plaintiffs' ownership interests – *i.e.*, stock – in Idenix.

26. For example, LIN entered into a consulting agreement with Idenix on January 1, 2007, that specifically acknowledged LIN's shares in Idenix. Idenix made periodic payments to LIN under this consulting agreement for four years, which LIN received and cashed. Idenix and LIN, by and through Dr. Gosselin, had ongoing and continuous communications with one another with respect to the consulting agreement until it was terminated in March 2011.

27. Similarly, JLI entered into a consulting agreement with Idenix on January 1, 2003, that specifically acknowledged JLI's shares in Idenix. Idenix made periodic payments to JLI under this consulting agreement for four years, through December 2006, which JLI received and cashed. Idenix and JLI, by and through Dr. Imbach, had ongoing and continuous communications with one another with respect to the consulting agreement until it was terminated on December 31, 2006.

Escheat of Plaintiffs' Shares to the State of Delaware

28. All 50 states (plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands) have adopted unclaimed property laws that require companies holding unclaimed property, whether tangible or intangible, to turn that property over to the state. The states do not take title to the property, but instead hold it as custodians on behalf of the owners of the property. The primary purpose of unclaimed property laws is to preserve the property for the owners and to try to locate the owners in order to return their property to them.

29. Delaware regulates the reporting and collection of unclaimed property pursuant to the Delaware Escheats Law, 12 *Del. C.* §§ 1101 *et seq.* Under the Delaware Escheats Law, holders of unclaimed or abandoned property are required to report and remit such property to the State.

30. No provision of the Delaware Escheats Law permits or requires the escheat of property belonging to foreign persons such as Plaintiffs, and any such escheat would be contrary to federal law.

31. During the years at issue, Delaware required holders to escheat securities only if both (1) there had been five years of no contact by the shareholder; and (2) the location of the shareholder was unknown, as established by mail returned as undeliverable. *See 12 Del. C. § 1198(9)*.

32. Notwithstanding the fact that both Computershare and Idenix were always, at all times, fully aware of the location of Plaintiffs and their principals and that such location was outside the United States, that no mail they sent to Plaintiffs was ever returned as undeliverable, and that Plaintiffs were in fact in physical possession of their shares, Computershare, acting as the agent of Idenix and on behalf of the State of Delaware, erroneously reported to Delaware in November 2008 that 560,000 shares owned by Plaintiffs had been “abandoned” and constituted “unclaimed property” and then delivered Plaintiffs’ 560,000 shares to Delaware on January 2, 2009. That is, they escheated the shares to Delaware.

33. Computershare and Idenix later (in 2015) attempted to justify the escheat based on a June 30, 2008 amendment to the Delaware Escheats Law (the “2008 Amendment”). *See 12 Del. C. § 1198(9)*. Computershare stated that the 2008 Amendment decreased the dormancy period from five years to three years

and eliminated the returned mail standard to adopt an “inactivity” or “no contact” standard, and that, under this new “inactivity”/“no contact” standard, owners of shares are required to take an affirmative action to contact the holder of the shares at least every three years to prevent the dormancy period from running.

34. To the contrary, during all relevant times (including well after the 2008 Amendment was adopted), the Delaware Escheat Handbook provided that escheat of securities was only required for “lost” owners. Under federal securities laws, a lost securityholder is defined as someone who has been sent correspondence that is subsequently returned undeliverable by the postal service and for whom the transfer agent, broker, or dealer has not received information regarding the securityholder’s new address. 17 C.F.R. § 240.17Ad-17. The Delaware State Escheator’s website similarly stated, at all relevant times herein, that escheat of securities was only required after due diligence had been completed *in accordance with federal securities laws*. No due diligence was required under federal securities laws for Plaintiffs’ shares because no mail sent to Plaintiffs had ever been returned as undeliverable. Thus, the escheat of such shares was not required or permitted.

35. It was not until February 3, 2012 when, in an e-mail to The Securities Transfer Association, Inc. (the “STA”), Mark E. Udinski, the then Delaware State Escheator, stated for the first time that he interpreted the change in law – *i.e.*, the

2008 Amendment – to require escheat of securities even when the owner was not “lost” but simply inactive. Mr. Udinski then offered to extend the deadline for reporting unclaimed securities by a mere two months from March 1, 2012 to May 1, 2012 “due to the necessity to reach out to shareholders and reestablish contact on their accounts prior to escheatment to the State of Delaware.”

36. On information and belief, prior to this e-mail, there had been no indication from the State Escheator’s office, or the Department of Finance, that shares of inactive but not “lost” shareholders were escheatable to Delaware, though this clearly did not stop Defendants from wrongfully escheating Plaintiffs’ shares and then liquidating them.

37. On information and belief, despite this potentially drastic change in the law and the fact that the 2008 Amendment would have automatically deemed Plaintiffs’ shares to be escheatable under this interpretation (assuming, contrary to law, that the 2008 Amendment could apply retroactively and assuming, contract to law and fact, that Plaintiffs had no contact within the prior three years and Delaware could escheat foreign-owned shares physically in the possession of Plaintiffs), Defendants did not instruct Computershare or Idenix to “reach out” to Plaintiffs to “reestablish contact” notwithstanding the fact that they apparently recognized the “necessity” of doing so prior to escheatment of their shares, and

even though Delaware had the opportunity to do so after the shares were reported in November 2008 but before they were escheated in January 2009.

38. In response to Mr. Udinski's February 3, 2012 e-mail, Charles V. Rossi, Executive Vice President, U.S. Client Services for Computershare, and then President of the STA, sent two letters dated March 27, 2012 and April 4, 2012 to the Honorable Jack Markell, Governor of Delaware, objecting to the Delaware State Escheator's novel interpretation. Mr. Rossi's letters stated that one concern with the State Escheator's interpretation was that "the requirement for the federally regulated due diligence would in the majority of cases never be triggered before the property is deemed abandoned by the State of Delaware. In effect, the State Escheator's interpretation would result in the transfer agents needing to choose between complying with federal law or state law." True and correct copies of Mr. Rossi's letters are attached as Exhibit A.

39. Mr. Rossi's letters also stated that "these recent directives from the State Escheator are not based in law, have not been vetted by the legislature or agency through any public process, and the securities industry was not given the opportunity to explain the mechanics in order to arrive at an operable solution for both the state and the industry. The State's desire for these types of 'non lost' shareholder property to be reported came to light recently as a result of preliminary audit findings made by Kelmar Associates, as the designated contract audit firm for

the State Escheator's office. There had been no indication from the State Escheator's office that the 2009, 2010 and 2011 filings were problematic having not included 'non lost' shareholder accounts."

40. Mr. Rossi's letters also admitted that "there is likewise no requirement in the Delaware statute that foreign property be turned over to Delaware" and stated that the 60-day extension to report unclaimed securities was "unreasonable" because "to perform outreach programs to foreign residents, many of whom did not have English as a first language, in such a short timeframe is not feasible and the imposition of this deadline will result in many shareholders being unjustly disenfranchised from their property." Indeed, this is the precise fate that befell Plaintiffs.

41. Furthermore, even if the 2008 Amendment did require the escheat of securities where the owner was merely inactive and not "lost," the escheat of Plaintiffs' shares was still wrongful and illegal because, among other reasons, (1) as Computershare itself acknowledged and even argued, foreign-owned stock is not required to be escheated to Delaware; (2) the new dormancy standard could not legally be applied retroactively to "deem" Plaintiffs' shares to be abandoned as of the effective date of the 2008 Amendment; (3) at all relevant times, Plaintiffs were in physical possession of their shares and were well aware that they had the shares, and thus cannot be said to have abandoned them in any conceivable manner; and

(4) at all relevant times Idenix was in regular contact with Plaintiffs regarding their shares and both Computershare and Idenix were aware of Plaintiffs' location and knew how to reach them and communicate with them (and in fact Idenix was even sending them regular payments under their consulting agreements).

Plaintiffs Unsuccessfully Attempted to Recover Their Shares From Defendants

42. Even though Computershare reported Plaintiffs' shares to Delaware in late 2008 and delivered those shares to Delaware in January 2009, it was not until July 9, 2012—after Plaintiffs made an inquiry concerning their stock—that Computershare informed Plaintiffs for the first time that their shares had been escheated to Delaware.

43. Neither Plaintiffs nor any of their representatives ever consented to the escheat of their shares.

44. Shortly thereafter, in September 2012, Plaintiffs began to pursue a claim with Defendants through the Delaware Office of Unclaimed Property to determine if their shares had in fact been escheated, as Computershare stated, and if so, to recover their shares.

45. However, before Defendants would even confirm whether they in fact held Plaintiffs' shares, they demanded substantial documentation from Plaintiffs. Plaintiffs provided the requested documentation to the Delaware Office of Unclaimed Property in October and December 2012.

46. Months later, in April 2013, Cynthia Valdez of the Delaware Office of Unclaimed Property informed Plaintiffs that their claims were still “pending further research” and that, only once the research was complete would a claim form be provided. In May 2013, Plaintiffs followed up with Ms. Valdez, and were told that their claims were still being “reviewed” and that it may take as many as four more months to research the claim. Four months later, in September 2013, Plaintiffs followed up again with Ms. Valdez and were told that the “claim is still pending further research.”

47. As a result of the substantial delays by Delaware in processing Plaintiffs’ claims and returning their property to them, Plaintiffs reached out to Computershare and Idenix to request documentation to facilitate recovery of their shares from Delaware, including proof that the shares were in fact escheated as Computershare had claimed. However, Computershare and Idenix did not respond to Plaintiffs’ requests, were unable or unwilling to help Plaintiffs, or were delinquent in providing minimal assistance to Plaintiffs.

48. On May 22, 2014, Melissa Haugh of the Delaware Office of Unclaimed Property sent an e-mail to Computershare confirming that Delaware had Plaintiffs’ securities, that Plaintiffs had filed a claim, and stating: “At this time we are waiting for the proceeds from the sale of the shares to be applied. This would be a certain sale considering the year the property was escheated.” Ms.

Haugh also provided a claim number for the first time. This was the first time that Plaintiffs received information *indicating* that their shares had possibly been liquidated by Delaware, although it was still unconfirmed.

49. Inexplicably, on May 23, 2014, Kisha Hines of the Delaware Office of Unclaimed Property directed Plaintiffs to complete and file a new “Request Form,” noting that a response could take another twelve weeks.

50. A few days later, on May 29, 2014, Plaintiffs sent a letter to Patrick Carter, Director of the Delaware Division of Revenue, requesting information and action regarding the claim.

Merck Tender Offer for Idenix Shares

51. Meanwhile, on June 9, 2014, Merck and Idenix announced that the companies had entered into a definitive agreement under which Merck would acquire Idenix for \$24.50 per share in cash.

52. Plaintiffs desired to participate in the Merck tender offer and would have been eligible to participate in the tender offer had their shares not been escheated by Delaware. Plaintiffs had no intent to sell their shares prior to the Merck tender offer.

53. Merck’s tender offer of Idenix was completed on August 4, 2014, after which all Idenix shares were canceled and converted into the right to receive cash equal to the \$24.50 offer price per share.

54. If Plaintiffs had been able to participate in Merck's tender offer, LIN would have been entitled to receive \$7,840,000.00 (320,000 shares x \$24.50 per share price) and JLI would have been entitled to receive \$5,880,000.00 (240,000 shares x \$24.50 per share price) in exchange for their shares pursuant to the Merck tender offer, for a total of \$13,720,000.00.

Defendants' Liquidation of Plaintiffs' Shares

55. In August 2014, having still received no definitive response or answer from Delaware, Plaintiffs contacted Defendant David M. Gregor, Delaware State Escheator, and Thomas Eoppolo, Assistant Director of the Delaware Office of Unclaimed Property, regarding the status of the claim.

56. On September 8, 2014, April Martin, Compliance Supervisor of the Delaware Office of Unclaimed Property, e-mailed Plaintiffs, finally providing an owner claim form and requesting additional information to process the claim. Plaintiffs again requested confirmation whether and when their securities had been sold, and for how much, and on October 9, 2014, Ms. Martin responded by e-mail finally confirming, for the first time, that, in fact, the shares were liquidated. Ms. Martin represented that they were liquidated "in June 2014" in the amounts of \$726,792.00 for JLI and \$969,059.75 for LIN for a total of \$1,695,851.75.

57. Plaintiffs requested a copy of sale of the Idenix shares, and on October 30, 2014, Ms. Martin provided the copy of sale, which showed that

Delaware had in fact placed a “sell” order on Plaintiffs’ shares a mere three days after the shares were escheated (on January 5, 2009), and that the shares were sold by Delaware in a series of transactions from March 24, 2009 to April 6, 2009 for a total of \$1,695,851.75.

58. Although Idenix was publicly traded, the market for Idenix stock was illiquid in early 2009 because very few investors were buying or selling Idenix stock. Indeed, on information and belief, at the time that Plaintiffs’ shares were liquidated, Idenix only had about fifty (50) shareholders. Thus, the amounts that Delaware received for the Idenix stock in early 2009 did not reflect, and in fact were substantially below, its true market value.

59. Delaware did not act in good faith in selling Plaintiffs’ shares so soon after acquiring the shares and for the amount received, particularly given that the primary purpose of escheating the shares was to return the property to Plaintiffs, which it never even attempted.

Plaintiffs Claimed Their Shares or the Current Fair Market Value Thereof

60. The Delaware Escheats Law permits an owner of property to recover the property escheated or, at the election of the owner, the proceeds from the sale thereof. 12 *Del. C.* § 1206.

61. Plaintiffs submitted a completed claim form, along with all requested documentation, on March 27, 2015. The claim form requested a return of

Plaintiffs' 560,000 shares or the current fair market value thereof equal to \$13,720,000.00, based on the Merck tender offer.

62. On March 31, 2015, Ms. Martin informed Plaintiffs that, "[a]fter review, the refund in the amount of \$1,695,851.75 can be processed without any additional documentation." Plaintiffs received a check from the State of Delaware in such amount on June 8, 2015. On July 8, 2015, the State of Delaware agreed that the acceptance of such payment by Plaintiffs does not affect Plaintiffs' rights to seek any additional monies related to their claim or to file any complaint related to their claim. Pursuant to this agreement, Plaintiffs intend to deposit the check received by Delaware, under protest and without prejudice.

Defendants Failed to Notify Plaintiffs That Their Shares Were Escheated, Could Be Liquidated or Were In Fact Liquidated

63. The Delaware Escheats Law requires a publication each year in a daily newspaper of the State of abandoned or unclaimed property paid or remitted to the State, including a publication of the names and addresses of the owner of such property and whether the property was converted into money. 12 *Del. C.* § 1142. The State Escheator may not waive the publication of notice required by Section 1142. 12 *Del. C.* § 1151.

64. On information and belief, when Computershare reported Plaintiffs' shares to Delaware, Computershare provided Plaintiffs' names and addresses to Delaware.

65. Nonetheless, on information and belief, the State of Delaware failed to publish the names and addresses of Plaintiffs in any newspaper.

66. The Delaware State Escheator operates a website where it lists the owners of unclaimed property, so that the owners can find and recover their property. However, the Delaware State Escheator failed to publish the names and addresses of Plaintiffs on this website.

67. Furthermore, at no time did Delaware attempt to contact Plaintiffs to notify them that their shares had been escheated. Nor did Delaware ever attempt to return Plaintiffs' shares before Delaware sold them. Nor did Delaware ever attempt to notify Plaintiffs that their shares had been liquidated by the State, on what date or for what amounts. Moreover, after the liquidation of the shares, Delaware did not attempt to pay Plaintiffs the amounts that Delaware had received in early 2009 in liquidation of the shares.

68. In addition, neither Computershare nor Idenix—both of which acted as agents of the State in escheating Plaintiffs' shares—notified Plaintiffs that their shares may be escheated to the State. Nor did they ever attempt to contact Plaintiffs prior to escheating their shares, even though Idenix and Plaintiffs were in regular contact with one another in connection with the consulting agreements or otherwise, and both Idenix and Computershare knew where Plaintiffs were located and how to contact Plaintiffs. This failure is particularly egregious considering

that, on information and belief, Idenix only had about fifty (50) shareholders at the time and therefore it would have been obvious from even a cursory review of a list of supposedly abandoned shares that Plaintiffs were not in fact “lost” and had not abandoned their shares.

69. Furthermore, on information and belief, Computershare did not perform a due diligence search to locate or communicate with Plaintiffs before declaring their property to be abandoned.

70. Neither Computershare nor Idenix ever provided Plaintiffs with any notice that their shares in Idenix could potentially be or actually would be escheated if any particular action was not taken before the shares were escheated.

71. Before May 22, 2014, no Defendant (nor Computershare or Idenix, as their agents) had ever confirmed to Plaintiffs that their shares had been taken and sold by Delaware.

Damages to Plaintiffs

72. But for the wrongful acts committed by Defendants in seizing Plaintiffs’ shares and liquidating them, all without notice and in violation of both Delaware and federal law, LIN would have been entitled to receive \$7,840,000.00 (320,000 shares x \$24.50 per share price), and JLI would have been entitled to receive \$5,880,000.00 (240,000 shares x \$24.50 per share price) in exchange for their shares pursuant to the Merck tender offer.

73. As a result of Delaware's payment to Plaintiffs in the amount of \$1,695,851.75, which operates as an offset, Plaintiffs have been damaged by Defendants' conduct in an amount equal to \$12,024,148.25.

Appeal

74. The Delaware Escheats Law provides that, at any time within four months after the State Escheator has made a determination with respect to a claim by the owner to recover its property, the owner "may" apply for a hearing and determination of the claim by the Tax Appeal Board. 12 *Del. C.* § 1146(b).

75. The Delaware Escheats Law also provides that, within 30 days after a decision by the Tax Appeal Board, the owner may appeal such decision to the Delaware Court of Chancery. 12 *Del. C.* § 1146(c).

76. In order to pursue all potential avenues for recovery and to preserve their rights, Plaintiffs intend to file a timely appeal of their claim with the Tax Appeal Board. Plaintiffs, however, will do so voluntarily; they do not believe or concede that such an appeal is required at all, let alone before filing this action in this Court, particularly with respect to their constitutional and tort claims.

77. Accordingly, Plaintiffs have filed this action to preserve their claims against Defendants in the event that it is determined, as Plaintiffs believe, that the Tax Appeal Board does not have jurisdiction to resolve Plaintiffs' claims.

**Count I: Violation of the Delaware Escheats Law
(Against All Defendants)**

78. Plaintiffs incorporate by reference all the foregoing paragraphs above as though fully set forth herein.

79. Defendants violated the Delaware Escheats Law by wrongfully escheating Plaintiffs' shares. In particular, the Delaware Escheats Law does not permit the escheat by Delaware of foreign-owned shares. In addition, Plaintiffs' shares were not required or permitted to be escheated under the Delaware Escheats Law because, among other reasons, neither Plaintiffs nor their shares were "lost" or "abandoned", Plaintiffs had (and still have) possession of their shares, and Plaintiffs did, in fact, have contact with Idenix regarding their shares.

80. Defendants also violated the Delaware Escheats Law by applying the 2008 Amendment retroactively to Plaintiffs' shares.

81. Defendants also violated the Delaware Escheats Law by wrongfully liquidating Plaintiffs' shares and doing so in the absence of good faith. The Delaware Escheats Law provides that the State Escheator may be held liable for liquidating property where such act is not made in good faith. 12 *Del. C.* § 1143(c). Given that the primary purpose of the Delaware Escheats Law is to return unclaimed property to the owner of such property, and further given that Defendants failed to provide any notice whatsoever to Plaintiffs that their shares had been escheated or may be liquidated, Defendants' issuance of a "sell" order

with respect to Plaintiffs' shares a mere three days after receiving such shares and subsequent liquidation of the shares in an illiquid market for Plaintiffs' shares were not in good faith.

82. Defendants also violated the Delaware Escheats Law by failing to publish the fact that Plaintiffs' shares had been escheated, as required by such law.

83. Defendants also violated the Delaware Escheats Law by failing to return Plaintiffs' property to them or pay them the fair market value of such property.

84. Defendants also violated the Delaware Escheats Law by causing undue delay in the processing of Plaintiffs' claims with respect to their shares, providing Plaintiffs with false or incorrect information, and otherwise failing to process such claims in a timely and reasonable manner.

85. As a result of Defendants' violation of the Delaware Escheats Law, Plaintiffs have been damaged in an amount not less than \$12,024,148.25.

86. Plaintiffs seek declaratory relief establishing, among other things, that Plaintiffs' shares are not escheatable or subject to the Delaware Escheats Law; Delaware's escheat and liquidation of Plaintiffs' shares was unlawful; Delaware's escheat and sale of foreign-owned property, including stocks, is unlawful; and Delaware's implementation and retroactive enforcement of the 2008 Amendment was unlawful and unconstitutional.

87. Plaintiffs seek injunctive relief prohibiting Defendants from continuing to engage in conduct in furtherance of these unlawful activities.

**Count II: Violation of Federal Common Law
(Against All Defendants)**

88. Plaintiffs incorporate by reference all the foregoing paragraphs above as though fully set forth herein.

89. The United States Supreme Court, pursuant to its exercise of original jurisdiction, established federal common law rules for determining when states have the right and jurisdiction to escheat unclaimed intangible property. Under these rules, a state is not permitted to escheat property where the last known address of the owner of the property is located in a foreign country. *Texas v. New Jersey*, 379 U.S. 674 (1965).

90. Defendants had no right or jurisdiction to escheat Plaintiffs' shares because Plaintiffs' shares were owned by foreign persons. Under these federal common law rules, Plaintiffs—both citizens of Belgium, duly organized and existing under the laws of Belgium and having their principal places of business in Brussels, Belgium—have a federally protected right that their shares may not be escheated by any state, including Delaware.

91. In requiring that Plaintiffs' shares be escheated to the State, Defendants violated the federal common law jurisdictional escheat rules.

92. As a result of Defendants' violation of the federal common law, Plaintiffs have suffered injury in fact in an amount not less than \$12,024,148.25.

93. Plaintiffs are also entitled to declaratory relief establishing, among other things, that Plaintiffs' shares are not escheatable or subject to the Delaware Escheats Law; and Delaware's escheat and sale of foreign-owned property, including stocks, is unlawful and unconstitutional. Plaintiffs seek injunctive relief prohibiting Defendants from continuing to engage in conduct in furtherance of these unlawful and unconstitutional activities.

**Count III: Violation of the Due Process Clauses of the U.S. Constitution
and the Delaware Constitution
(Against All Defendants)**

94. Plaintiffs incorporate by reference all the foregoing paragraphs above as though fully set forth herein.

95. The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law.”

96. The Delaware Constitution similarly provides that “every person for an injury done him or her in his or her reputation, person, movable or immovable possessions, shall have remedy by the due course of law, and justice administered

according to the very right of the cause and the law of the land, without sale, denial, or unreasonable delay or expense.” DEL. CONST. Art. I, § 9.

97. Defendants violated the Due Process Clauses of the U.S. and Delaware Constitutions, including both substantive and procedural due process, by, among other means, (1) failing to require Computershare and/or Idenix to notify Plaintiffs that their shares could potentially be or actually would be escheated to the State; (2) wrongfully escheating Plaintiffs’ shares in violation of federal and Delaware law; (3) wrongfully escheating Plaintiffs’ shares even though such shares were at all times in the physical possession of Plaintiffs and thus could not have been abandoned; (4) applying the 2008 Amendment retroactively to Plaintiffs’ shares; (5) failing to notify Plaintiffs that their shares had been escheated to the State; (6) failing to attempt to return Plaintiffs’ shares to them prior to liquidating such shares; (7) failing to publish notice that the State held Plaintiffs’ shares in a newspaper or on the State Escheator’s website in violation of the Delaware Escheats Law; (8) wrongfully liquidating Plaintiffs’ shares in violation of federal and Delaware law in bad faith and in a manner contrary to the primary purpose of the Delaware Escheats Law of returning unclaimed property to the owner; (9) failing to notify Plaintiffs that their shares had been liquidated; (10) failing to attempt to return the proceeds from the liquidation of Plaintiffs’ shares to Plaintiffs; and (11) causing undue delay in the processing of Plaintiffs’ claims with

respect to their shares, providing Plaintiffs with false or incorrect information, and otherwise failing to process such claims in a timely and reasonable manner.

98. Indeed, on January 5, 2009, a mere three days after Plaintiffs' shares had been escheated, Defendants placed a "sell" order on Plaintiffs' shares. At no time before or after January 5, 2009 did Defendants ever attempt to locate Plaintiffs or to notify Plaintiffs that their shares had been escheated to the State, nor did Defendants attempt to return Plaintiffs' shares to them before Defendants sold them, or even pay the proceeds from the sale of those shares to Plaintiffs. Defendants did not even comply with the inadequate notice provisions set forth in the Delaware Escheats Law. As a result, Plaintiffs were provided no reasonable opportunity to learn of the escheat and of its effect on Plaintiffs' shares, or to appear in order to protect their shares and property rights. Defendants' conduct violated the Due Process Clauses of the United States and Delaware Constitutions.

99. Furthermore, the Delaware Escheats Law itself violates the Due Process Clauses of the U.S. and Delaware Constitutions and is unconstitutional because it merely requires notice to owners of escheated property by annual publication in a daily newspaper of the State. 12 *Del. C.* § 1142. The notice provisions provided in the Delaware Escheats Law provide no meaningful notice to owners whose property has been escheated to the State. Further, this notice provision is of no help to property owners like Plaintiffs whose property was

liquidated by the State a mere three days after receipt. Indeed, 12 *Del. C.* § 1142 does not even require notice by publication before property is sold and, thus, does not provide notice to apprise owners of the fact that their property has been seized or provide owners a meaningful opportunity to recover their property before their property is liquidated. The Delaware Escheats Law is also constitutionally defective because it does not provide notice that is reasonably calculated, under all circumstances, to alert Plaintiffs or other property owners whose addresses are known to Delaware, that their property has been seized and will be sold for the use of the State. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-315 (1950) (when an owner’s address is known more than publication notice is required, and at least notice by ordinary mail to the record address is required).

100. Furthermore, the Securities and Exchange Commission (the “Commission”) promulgated 17 C.F.R. § 240.17Ad-17 to protect Plaintiffs and other securityholders from having their shares escheated, by requiring transfer agents, brokers and dealers to exercise reasonable care to attempt to locate “lost securityholders.” For this purpose, 17 C.F.R. § 240.17Ad-17 defines a “lost securityholder” to mean a securityholder to whom mail has been sent at the address of record and returned as undeliverable and for whom the transfer agent, broker, or dealer has not received information regarding the securityholder’s new address.

101. To the extent that Delaware's inactivity standard is applied to a securityholder that is not "lost," as has been done with respect to Plaintiffs' shares, then the securityholder's shares would be deemed abandoned and escheated before the federal requirement for due diligence has been triggered. Such an inactivity standard would therefore conflict with the purposes and objectives of federal laws by denying due process to Plaintiffs and triggering the escheat and loss of these securities, which 17 C.F.R. § 240.17Ad-17 was specifically designed to prevent. Delaware's inactivity standard is thus preempted by federal law. Delaware's illegal actions, taken in direct contravention of federal law and pursuant to preempted state law, were void *ab initio*.

102. As a result of Defendants' violation of Plaintiffs' Due Process rights, Plaintiffs have suffered injury in fact in an amount not less than \$12,024,148.25.

103. Plaintiffs are also entitled to declaratory relief establishing, among other things, that Plaintiffs' shares are not escheatable or subject to the Delaware Escheats Law; that Delaware's escheat and liquidation of Plaintiffs' shares was unlawful and unconstitutional and violated Plaintiffs' Due Process rights; that Delaware's escheat and sale of foreign-owned property, including stocks, is unlawful and unconstitutional; that Delaware's lack of due diligence and failure to provide Plaintiffs with any notice whatsoever concerning their property and the planned and actual liquidation of their shares, and Delaware's retroactive

enforcement of the 2008 Amendment, was unlawful and unconstitutional; that the Delaware Escheats Law is constitutionally defective because it does not require notice by the State to property owners either pre-escheat, post-escheat or pre-liquidation; and that the Delaware Escheats Law, as applied in this case, conflicts with the purposes and objectives of federal laws, is preempted, and, as such, all actions taken pursuant to that law in contravention of federal law are void *ab initio*. Plaintiffs seek injunctive relief prohibiting Defendants from continuing to engage in conduct in furtherance of these unlawful and unconstitutional activities thereby effectuating violations of individuals' Due Process rights.

**Count IV: Violation of the Takings Clauses of the U.S. Constitution
and the Delaware Constitution
(Against All Defendants)**

104. Plaintiffs incorporate by reference all the foregoing paragraphs above as though fully set forth herein.

105. The Takings Clause of the Fifth Amendment of the U.S. Constitution provides, in part, that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” The Fourteenth Amendment to the U.S. Constitution makes this prohibition applicable to the states.

106. The Delaware Constitution similarly provides that “nor shall any person’s property be taken or applied to public use without the consent of his or

her representatives, and without compensation being made.” DEL. CONST. Art. I, § 8.

107. By wrongfully seizing Plaintiffs’ shares, particularly without notice and without the right or jurisdiction to escheat foreign-owned shares, and in conflict with federal securities laws, and immediately selling Plaintiffs’ shares in an illiquid market a mere three days after the property was seized, and receiving substantially less than the fair market value of the shares, Defendants effected a deprivation and taking of Plaintiffs’ property without just compensation.

108. Neither Plaintiffs nor any of their representatives consented to the escheat of their shares, as required by the Delaware Constitution. Neither Plaintiffs nor any of their representatives consented to the sale of their shares.

109. Plaintiffs’ shares were taken for public use. Indeed, on information and belief, the money received from the liquidation of Plaintiffs’ shares was deposited into the General Fund of the State. *See 12 Del. C. § 1131.*

110. Plaintiffs have not received just compensation for their shares. The \$1,695,851.75 paid by Delaware to Plaintiffs is substantially less than both the current fair market value of the shares as well as the fair market value of the shares at the time they were liquidated.

111. Accordingly, the escheat and sale of Plaintiffs’ shares constitutes a taking in violation of the U.S. and Delaware Constitutions.

112. As a result of Defendants' Takings violations, Plaintiffs have suffered injury in fact in an amount not less than \$12,024,148.25.

113. Plaintiffs are entitled to declaratory relief establishing, among other things, that Delaware's escheat and liquidation of Plaintiffs' shares was unlawful and unconstitutional and violated Plaintiffs' rights under the Takings Clauses of the U.S. and Delaware Constitutions. Plaintiffs seek injunctive relief prohibiting Defendants from continuing to engage in conduct in furtherance of these unlawful and unconstitutional activities thereby effectuating Takings violations with respect to many individuals' property.

**Count V: Violation of the Commerce Clause
(Against All Defendants)**

114. Plaintiffs incorporate by reference all the foregoing paragraphs above as though fully set forth herein.

115. Under the Commerce Clause of Article 1, section 8, of the U.S. Constitution, Congress has the authority "[t]o regulate Commerce with foreign Nations. . . ." (the "Foreign Commerce Clause").

116. The U.S. Supreme Court has held that when construing Congress' power to "regulate commerce with foreign Nations," a more extensive constitutional inquiry is required." *Japan Line, Ltd. v. Los Angeles County*, 441 U.S. 434, 446 (1979). In that case, in the context of taxation, the Supreme Court held if the state law contravenes either the risk of international multiple taxation or

prevents the Federal Government from “speaking with one voice when regulating commercial relations with foreign governments,” it is unconstitutional under the Commerce Clause. *Id.* at 446-51.

117. Pursuant to the Commerce Clause of the United States Constitution, Plaintiffs have a federally protected right to expect that their shares would be regulated by Congress, if at all, rather than by any individual state. If the Delaware Escheats Law applied to Plaintiffs’ shares, Plaintiffs—both citizens of Belgium, duly organized and existing under the laws of Belgium and having their principal places of business in Brussels, Belgium—would be at risk of multiple escheat and Congress would be prevented from achieving federal uniformity in regulating commercial relations with foreign governments and their citizens. As a result, Plaintiffs have a federally protected right to expect that their shares would not be subject to escheat by any state, including Delaware.

118. In requiring that Plaintiffs’ shares be escheated to the State, Defendants violated the Foreign Commerce Clause.

119. As a result of Defendants’ Foreign Commerce Clause violation, Plaintiffs have suffered injury in fact in an amount not less than \$12,024,148.25.

120. Plaintiffs are entitled to declaratory relief establishing, among other things, that Delaware’s escheat and liquidation of Plaintiffs’ shares was unlawful and unconstitutional and violated Plaintiffs’ rights under the Foreign Commerce

Clause of the U.S. Constitution; and that Delaware's escheat and sale of foreign-owned property, including stocks, is unlawful and unconstitutional and violates the Foreign Commerce Clause. Plaintiffs seek injunctive relief prohibiting Defendants from continuing to engage in conduct in furtherance of these unlawful and unconstitutional activities.

**Count VI: Violation of the Friendship, Establishment and Navigation Treaty
Between the United States and Belgium
(Against All Defendants)**

121. Plaintiffs incorporate by reference all the foregoing paragraphs above as though fully set forth herein.

122. The United States entered into a Friendship, Establishment and Navigation Treaty with Belgium that has been in force since October 3, 1963. Treaty of Friendship, Establishment and Navigation, US-Belgium, October 3, 1963, 14 UST 1284 (the "Treaty"). The Treaty, which was duly ratified by the United States Senate on September 11, 1961 and proclaimed by the President of the United States of America on September 26, 1963, was made under Article VI of the U.S. Constitution and constitutes a self-executing treaty. As a self-executing treaty, the Treaty is "binding within the territorial limits of the states as they are elsewhere throughout the dominion of the United States." *Baldwin v. Franks*, 120 U.S. 678, 682-83 (1887).

123. The Treaty provides that property owned by nationals and companies of either the United States or Belgium within the territory of the other “shall enjoy constant security therein through full legal and judicial protection.” Treaty at Art. 3.

124. The Treaty also provides that nationals and companies of the United States or Belgium “shall not be expropriated of their property within the territories of the other [country] except for public benefit and with prompt payment of just compensation. Such compensation shall be an effectively realizable form and shall represent the full equivalent of the property taken. Furthermore, adequate provision shall have been made not later than the time of taking for the determination and payment thereof.” *Id.* at Art. 4.

125. The Treaty provides Plaintiffs with an absolute protected private right to not be expropriated of their shares (or other property) except for public benefit with the prompt payment of just compensation, which must be made no later than the time of the taking.

126. By wrongfully seizing Plaintiffs’ shares, particularly without notice and without the right or jurisdiction to escheat foreign-owned shares, and immediately selling Plaintiffs’ shares in an illiquid market a mere three days after the property was seized, and receiving far less than the fair market value of the

shares, Defendants effected a deprivation and taking of Plaintiffs' property without just compensation.

127. Defendants did not promptly pay just compensation to Plaintiffs upon taking Plaintiffs' property, either at the time of escheat or at the time of liquidation of the shares. Indeed, Defendants did not even attempt to locate or notify Plaintiffs that Defendants had liquidated Plaintiffs' shares. Defendants also did not pay Plaintiffs any amount with respect to their shares until *more than six years* after the shares were escheated and liquidated and only in response to numerous requests, submissions of claim forms and supporting documentation, and persistent follow up by Plaintiffs and attorneys they were compelled to retain for such purpose. Furthermore, the amount that Defendants paid Plaintiffs does not constitute just compensation, as it does not reflect the fair market value of Plaintiffs' shares, either currently or at the time they were liquidated.

128. By escheating Plaintiffs' shares and selling Plaintiffs' shares without prompt payment of just compensation, Defendants violated the Treaty between the United States and Belgium.

129. As a result of Defendants' violation of the Treaty, Plaintiffs have been damaged in an amount not less than \$12,024,148.25.

130. Plaintiffs are entitled to declaratory relief establishing, among other things, that Delaware's escheat and liquidation of Plaintiffs' shares was unlawful and violated Plaintiffs' rights under the Treaty.

131. Plaintiffs are also entitled to injunctive relief prohibiting Defendants from engaging in continued acts in violation of the Treaty.

**Count VII: Negligence
(Against All Defendants)**

132. Plaintiffs incorporate by reference all the foregoing paragraphs above as though fully set forth herein.

133. The Delaware Escheats Law provides that “[t]he care and custody . . . of all abandoned property paid to the State Escheator is assumed for the benefit of those entitled to receive the same and the State shall hold itself responsible for the payment of all claims established thereto pursuant to law” 12 Del. C. § 1131; *see also Unclaimed Property: FAQs*, Delaware Dep’t of Fin., Div. of Rev., http://revenue.delaware.gov/information/faqs_unprop.shtml (last updated Nov. 18, 2011) (“The State acts only as custodian for the missing owners, holding the property in trust until it is claimed. There is no statute of limitations regarding refund requests.”).

134. Defendants thus owed duties to Plaintiffs to, among other things, exercise due care and diligence in preserving and protecting Plaintiffs' property and property rights; exercise due care and diligence in the disposition of Plaintiffs'

shares; manage and handle Plaintiffs' shares in a manner that complied fully with international, federal and state law; fairly and accurately interpret and apply the law to ensure that the Delaware Escheats Law was constitutional and did not conflict with federal or international law; and to ensure that the Delaware Escheats Law would not be applied arbitrarily or unlawfully in such a way as to violate individuals' constitutional rights.

135. Defendants breached their duties to Plaintiffs by wrongfully escheating Plaintiffs' shares in violation of federal and Delaware law. In particular, neither federal law nor Delaware law permits the escheat by Delaware of foreign-owned shares, and Plaintiffs' shares were also not escheatable under Delaware law because, among other reasons, Plaintiffs were not "lost," Plaintiffs were in possession of the shares and thus had not "abandoned" them, and Plaintiffs had contact with respect to their shares.

136. Defendants also breached their duties to Plaintiffs by failing to conduct, and failing to require Computershare and Idenix to conduct, due diligence to determine, among other things, whether Plaintiffs' shares were actually abandoned.

137. Defendants also breached their duties to Plaintiffs by wrongfully liquidating Plaintiffs' shares in violation of federal and Delaware law, particularly considering that Delaware did not even attempt to notify Plaintiffs prior to such

liquidation and that Defendants issued a “sell” order with respect to Plaintiffs’ shares a mere three days after receiving such shares, all such actions contrary to the express purpose of the Delaware Escheats Law in returning unclaimed property to the owner.

138. Defendants also breached their duties to Plaintiffs by, among other things, (a) failing to timely notify Plaintiffs that their shares had been escheated to the State; (b) failing to place Plaintiffs on its annual list of unclaimed property published by the State to provide notice to owners of property escheated to the State; (c) failing to publish notice that the State held Plaintiffs’ shares on the Delaware State Escheator’s unclaimed property website; (d) failing to notify Plaintiffs that Defendants intended to sell Plaintiffs’ shares; and (e) failing to timely notify Plaintiffs that the shares had been liquidated.

139. Defendants also breached their duties to Plaintiffs by not attempting to locate Plaintiffs or return Plaintiffs’ shares or the monies the State received in the liquidation of Plaintiffs’ shares.

140. Defendants also breached their duties to Plaintiffs by causing undue delay in the processing of Plaintiffs’ claims with respect to their shares, providing Plaintiffs with false or incorrect information, and otherwise failing to process their claims in a timely and reasonable manner.

141. By all of the foregoing negligent acts and omissions on the part of Defendants constituting breaches of Defendants' duties owed to Plaintiffs, Defendants acted with gross or wanton negligence. Defendants' acts and omissions and myriad breaches of their duties owed to Plaintiffs were carried out with deliberate indifference to, and in conscious disregard of, Plaintiffs' rights, both constitutional and otherwise.

142. As a result of Defendants' gross or wanton negligence, Plaintiffs have been damaged in an amount not less than \$12,024,148.25.

**Count VIII: Conversion
(Against All Defendants)**

143. Plaintiffs incorporate by reference all the foregoing paragraphs above as though fully set forth herein.

144. Plaintiffs owned a combined total of 560,000 shares in Idenix prior to the time that Computershare and Idenix wrongfully escheated their shares to the State of Delaware.

145. In requiring the wrongful escheat of the shares and wrongfully selling the shares, Defendants exercised ownership, control, and/or dominion over Plaintiffs' property, to which they had no right of possession, thereby depriving Plaintiffs of their valuable property.

146. As a result of Defendants' conversion, Plaintiffs have been damaged in an amount not less than \$12,024,148.25.

Count IX: Violations of 42 U.S.C. § 1983
(Against the Secretary, Former Secretary Cordrey, Former Secretary Pfeiffer,
the State Escheator and the Former State Escheator)

147. Plaintiffs incorporate by reference all the foregoing paragraphs above as though fully set forth herein.

148. Pursuant to 42 U.S.C. § 1983, “[e]very person who, acting under color of any statute . . . of any States . . . subjects, or causes to be any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law.”

149. Plaintiffs were the rightful owners of 560,000 Idenix shares escheated to the State. Plaintiffs had a property interest in the shares escheated to Delaware.

150. Defendants Former Secretary Cordrey and Former State Escheator required Computershare and Idenix to escheat Plaintiffs’ shares pursuant to the Former Secretary Cordrey’s and the Former State Escheator’s interpretation of the Delaware Escheats Law. Defendants Former Secretary Pfeiffer and Former State Escheator also validated the escheat of Plaintiffs’ shares by receiving and subsequently liquidating Plaintiffs’ shares.

151. Defendants Former Secretary Cordrey, Former Secretary Pfeiffer and Former State Escheator’s actions were taken under color of law in their official capacities as state officials.

152. In encouraging and requiring that Plaintiffs' shares be escheated to Delaware allegedly pursuant to the Delaware Escheats Law, particularly without notice to Plaintiffs, Defendants Former Secretary Cordrey and Former State Escheator, acting under color of law, effected a deprivation and taking of Plaintiffs' property without Due Process of law as required by the Fourteenth Amendment to the United States Constitution.

153. In validating the escheatment of Plaintiffs' shares and in encouraging and requiring that Plaintiffs' shares be sold, allegedly pursuant to the Delaware Escheats Law, particularly without notice to Plaintiffs and in an illiquid market for substantially less than fair market value, Defendant Former Secretary Pfeiffer, acting under color of law, effected a deprivation and taking of Plaintiffs' property without Due Process of law as required by the Fourteenth Amendment to the United States Constitution.

154. In encouraging and requiring that Plaintiffs' shares be escheated to Delaware and sold allegedly pursuant to the Delaware Escheats Law, particularly without notice to Plaintiffs and in an illiquid market for substantially less than fair market value, Defendant Former State Escheator, acting under color of law, effected a deprivation and taking of Plaintiffs' property without Due Process of law as required by the Fourteenth Amendment to the United States Constitution.

155. Defendants Former Secretary Cordrey, Former Secretary Pfeiffer and Former State Escheator further violated Plaintiffs' due process rights by failing to notify, or even attempt to notify, Plaintiffs that Defendants held their shares or the proceeds from their shares, even though Defendants knew where Plaintiffs were located and how to contact them.

156. Furthermore, in encouraging and requiring that Plaintiffs' shares be escheated to Delaware without prompt payment of just compensation, Defendants Former Secretary Cordrey, Former Secretary Pfeiffer and Former State Escheator, acting under color of law, violated the Treaty. The Treaty provides Plaintiffs with an absolute protected private right to not be expropriated of their shares (or other property) except for public benefit with the prompt payment of just compensation, which must be made no later than the time of the taking.

157. Furthermore, under federal common law rules created by the United States Supreme Court for determining when states have the right and jurisdiction to escheat unclaimed intangible property, the State of Delaware had no right or jurisdiction to escheat Plaintiffs' shares because Plaintiffs' shares were owned by foreign persons. Courts, including this Court, have held that states may not escheat unclaimed property in a manner contrary to these rules. Accordingly, under these federal common law rules, Plaintiffs—both citizens of Belgium, duly organized and existing under the laws of Belgium and having their principal places of

business in Brussels, Belgium—have a federally protected right that their shares may not be escheated by any state, including Delaware.

158. Similarly, under the Foreign Commerce Clause of the United States Constitution, Plaintiffs have a federally protected right to expect that their shares would be regulated by Congress, if at all, rather than by any individual state. As a result, Plaintiffs have a federally protected right to expect that their shares would not be subject to escheat by any state, including Delaware.

159. Defendants Secretary and State Escheator violated Plaintiffs' due process rights by causing undue delay in the processing of Plaintiffs' claims with respect to their shares, providing Plaintiffs with false or incorrect information, and otherwise failing to process such claims in a timely and reasonable manner. Defendants Secretary and State Escheator also violated Plaintiffs' due process rights by failing to notify, or even attempt to notify, Plaintiffs that they held the proceeds from the sale of Plaintiffs' shares, even though Defendants knew where Plaintiffs were located.

160. Defendants' conduct caused Plaintiffs to sustain substantial actual damages in at least the combined amount of \$12,024,148.25.

Count X: Injunctive Relief
(Against Defendants the State of Delaware, the Secretary and the State Escheator)

161. Plaintiffs incorporate by reference all the foregoing paragraphs above as though fully set forth herein.

162. The manner in which Defendants have exceeded their authority in enforcing the Delaware Escheats Law violates Plaintiffs' federally-protected and state-protected rights, including but not limited to Plaintiffs' due process rights.

163. Defendants have adopted policies that, when combined with the failure to provide notice as required by the Due Process Clauses of the U.S. and Delaware Constitutions and the fact that Defendants escheated foreign-owned property outside the scope of the State's authority, inflicts immediate and irreparable harm on Plaintiffs that is capable of repetition to Plaintiffs and similarly situated persons. For example, Defendants' policy permitting the selling of property immediately after it has been transferred to the State, which is purportedly transferred for the purpose of protecting an owner's property until the owner is located, effectively makes it impossible for the owner to recover the property itself. As was the case with Plaintiffs, Defendants seized Plaintiffs' shares without the authority to escheat the foreign-owned property and did so without attempting to notify Plaintiffs that their property had escheated to the State. Defendants knowingly failed to provide notice, even the inadequate notice required under

Section 1142 of the Delaware Escheats Law, and made it impossible for Plaintiff to recover the shares as they were originally seized by the State.

164. Defendants' policy and practice of escheating securities where the owner of the securities is not "lost" also conflicts with federal securities laws. The Commission promulgated 17 C.F.R. § 240.17Ad-17 to protect Plaintiffs and other securityholders from having their shares escheated, by requiring transfer agents, brokers and dealers to exercise reasonable care to attempt to locate "lost securityholders." For this purpose, 17 C.F.R. § 240.17Ad-17 defines a "lost securityholder" to mean a securityholder to whom mail has been sent at the address of record and returned as undeliverable and for whom the transfer agent, broker, or dealer has not received information regarding the securityholder's new address.

165. To the extent that Delaware's inactivity standard is applied to a securityholder that is not "lost," as has been done with respect to Plaintiffs' shares, then the securityholder's shares would be deemed abandoned and escheated before the federal requirement for due diligence has been triggered. Such an inactivity standard would therefore conflict with the purposes and objectives of these laws in preventing escheat and loss of these securities. Delaware's inactivity standard is thus preempted by federal law. As such, all actions taken by Delaware in furtherance of its preempted state law are void *ab initio*.

166. Plaintiffs have a strong likelihood of success on the merits of their claims.

167. Plaintiffs have no plain, adequate, or speedy remedy at law, and will suffer significant, permanent and irreparable harm if a permanent injunction is not entered enjoining Defendants the State of Delaware, the Secretary and the State Escheator from continuing unlawfully to seize property and selling such property immediately upon taking custody of it without providing owners with notice and an opportunity to claim their property, enjoining these Defendants from escheating securities where the securityholder is not “lost” as defined by applicable federal securities laws, and ordering these Defendants to comply with the law, as set forth above.

**Count XI: Declaratory Judgment
(Against All Defendants)**

168. Plaintiffs incorporate by reference all the foregoing paragraphs above as though fully set forth herein.

169. Plaintiffs are entitled to a declaratory judgment establishing, among other things, the following: (a) Plaintiffs’ shares were not escheatable or subject to the Delaware Escheats Law; (b) Delaware’s escheat and liquidation of Plaintiffs’ shares was unlawful and unconstitutional and violated Plaintiffs’ Due Process rights; (c) Delaware’s escheat and sale of foreign-owned property, including stocks, is unlawful and unconstitutional; (d) Delaware’s lack of due diligence and

failure to provide Plaintiffs with any notice whatsoever concerning their property and the planned and actual liquidation of their shares was unlawful and unconstitutional; (e) Delaware's retroactive application of the 2008 Amendment was unlawful and unconstitutional; (f) the Delaware Escheats Law is constitutionally defective because it does not require notice by the State to property owners either pre-liquidation or post-escheat; (g) Delaware's escheat and sale of Plaintiffs' shares violated the Treaty; and (h) Delaware's inactivity standard is preempted by federal securities laws and, as such, all actions taken pursuant to that law in contravention of federal law are void *ab initio*.

Prayer For Relief

WHEREFORE, Plaintiffs request the following relief:

1. Plaintiffs' damages, costs, attorneys' fees, pre-judgment and post-judgment interest, as permitted by applicable law;
2. Just compensation for the injury in fact Plaintiffs sustained as a result of Defendants' numerous constitutional violations;
3. Plaintiffs' attorneys' fees and punitive damages pursuant to 42 U.S.C. § 1983;
4. A declaratory judgment providing Plaintiffs with the declaratory relief set forth in Count XI;

5. A permanent injunction restraining Defendants from engaging in continued unlawful and/or improper transactions allegedly pursuant to the Delaware Escheats Law, as alleged in this Complaint; and

6. Such other and further relief as the Court may deem just and proper.

Dated: July 9, 2015

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