

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>Huntsman International, LLC,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>Albemarle Corporation, Rockwood Specialties Group, Inc., Rockwood Holdings, Inc., Seifollah "Seifi" Ghasemi, Andrew M. Ross, Thomas J. Riordan, And Michael W. Valente,</p> <p style="text-align: right;">Defendant.</p>
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Index No.: \_\_\_\_\_

**Summons**

Date purchased: February 6, 2017

To the above-named defendant:  
Albemarle Corporation  
c/o Mary C. Zinsner  
1850 Towers Crescent Plaza, Suite 500  
Tysons Corner, VA 22182

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is the place where the action arose and Plaintiff's designated venue, *see* CPLR § 503; a choice-of-law provision, *see* N.Y. GOL § 5-1402; and a forum-selection clause, *see* CPLR § 501, which is New York, New York.

Dated: February 6, 2017  
New York, New York

/s/ Peter A. Bellacosa  
Peter A. Bellacosa

KIRKLAND AND ELLIS LLP  
601 Lexington Avenue  
New York, NY 10022-4611  
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*Attorneys for Plaintiff Huntsman  
International LLC*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>Huntsman International, LLC,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>Albemarle Corporation, Rockwood Specialties Group, Inc., Rockwood Holdings, Inc., Seifollah "Seifi" Ghasemi, Andrew M. Ross, Thomas J. Riordan, And Michael W. Valente,</p> <p style="text-align: right;">Defendant.</p>
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Index No.: \_\_\_\_\_

**Summons**

Date purchased: February 6, 2017

To the above-named defendant:  
Rockwood Specialties Group, Inc.  
c/o Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

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Dated: February 6, 2017  
New York, New York

/s/ Peter A. Bellacosa  
Peter A. Bellacosa

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*Attorneys for Plaintiff Huntsman  
International LLC*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>Huntsman International, LLC,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>Albemarle Corporation, Rockwood Specialties Group, Inc., Rockwood Holdings, Inc., Seifollah "Seifi" Ghasemi, Andrew M. Ross, Thomas J. Riordan, And Michael W. Valente,</p> <p style="text-align: right;">Defendant.</p>
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**Summons**

Date purchased: February 6, 2017

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Rockwood Holdings, Inc.  
c/o Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

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New York, New York

/s/ Peter A. Bellacosa  
Peter A. Bellacosa

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*Attorneys for Plaintiff Huntsman  
International LLC*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>Huntsman International, LLC,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>Albemarle Corporation, Rockwood Specialties Group, Inc., Rockwood Holdings, Inc., Seifollah "Seifi" Ghasemi, Andrew M. Ross, Thomas J. Riordan, And Michael W. Valente,</p> <p style="text-align: right;">Defendant.</p>
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Index No.: \_\_\_\_\_

**Summons**

Date purchased: February 6, 2017

To the above-named defendant:  
Seifollah "Seifi" Ghasemi  
22 Pumphouse Lane  
Basking Ridge, NJ 07920

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is the place where the action arose and Plaintiff's designated venue, *see* CPLR § 503, which is New York, New York.

Dated: February 6, 2017  
New York, New York

/s/ Peter A. Bellacosa  
Peter A. Bellacosa

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*Attorneys for Plaintiff Huntsman  
International LLC*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>Huntsman International, LLC,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>Albemarle Corporation, Rockwood Specialties Group, Inc., Rockwood Holdings, Inc., Seifollah "Seifi" Ghasemi, Andrew M. Ross, Thomas J. Riordan, And Michael W. Valente,</p> <p style="text-align: right;">Defendant.</p>
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Index No.: \_\_\_\_\_

**Summons**

Date purchased: February 6, 2017

To the above-named defendant:  
Andrew M. Ross  
3714 Corey Place N.W.  
Washington, D.C. 20016

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is the place where the action arose and Plaintiff's designated venue, *see* CPLR § 503, which is New York, New York.

Dated: February 6, 2017  
New York, New York

/s/ Peter A. Bellacosa  
Peter A. Bellacosa

KIRKLAND AND ELLIS LLP  
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New York, NY 10022-4611  
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*Attorneys for Plaintiff Huntsman  
International LLC*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>Huntsman International, LLC,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>Albemarle Corporation, Rockwood Specialties Group, Inc., Rockwood Holdings, Inc., Seifollah "Seifi" Ghasemi, Andrew M. Ross, Thomas J. Riordan, And Michael W. Valente,</p> <p style="text-align: right;">Defendant.</p>
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Index No.: \_\_\_\_\_

**Summons**

Date purchased: February 6, 2017

To the above-named defendant:  
Thomas J. Riordan  
9 Marion Court  
Old Bridge, NJ 08857

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

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*Attorneys for Plaintiff Huntsman  
International LLC*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

<p>Huntsman International, LLC,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>Albemarle Corporation, Rockwood Specialties Group, Inc., Rockwood Holdings, Inc., Seifollah "Seifi" Ghasemi, Andrew M. Ross, Thomas J. Riordan, And Michael W. Valente,</p> <p style="text-align: right;">Defendant.</p>
---

Index No.: \_\_\_\_\_

**Summons**

Date purchased: February 6, 2017

To the above-named defendant:  
Michael W. Valente  
635 Lawnside Place  
Westfield, NJ 07090

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

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Dated: February 6, 2017  
New York, New York

/s/ Peter A. Bellacosa  
Peter A. Bellacosa

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*Attorneys for Plaintiff Huntsman  
International LLC*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

HUNTSMAN INTERNATIONAL LLC,

Plaintiff,

v.

ALBEMARLE CORPORATION,  
ROCKWOOD SPECIALTIES GROUP,  
INC., ROCKWOOD HOLDINGS, INC.,  
SEIFOLLAH "SEIFI" GHASEMI,  
ANDREW M. ROSS, THOMAS J.  
RIORDAN, and MICHAEL W. VALENTE,

Defendants.

Index No. \_\_\_\_\_

COMMERCIAL DIVISION PART: \_\_\_\_\_

JUSTICE: \_\_\_\_\_

**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Huntsman International LLC ("Huntsman"), by and through its attorneys, brings this Complaint against Defendants Albemarle Corporation ("Albemarle"), Rockwood Specialties Group, Inc. ("Rockwood Specialties"), Rockwood Holdings, Inc. ("Rockwood Holdings," and together with Rockwood Specialties, "Rockwood"), Seifollah "Seifi" Ghasemi ("Ghasemi"), Andrew M. Ross ("Ross"), Thomas J. Riordan ("Riordan"), and Michael W. Valente ("Valente"), and alleges as follows:



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**I.**  
**NATURE OF THE ACTION**

1. This case involves a massive fraud orchestrated by Rockwood Specialties and its executives against Huntsman International LLC. In 2013, Rockwood approached Huntsman about the sale of Rockwood's \$1.1 billion pigments business, including Rockwood's color pigments division. Rockwood induced Huntsman to enter the deal by representing that Huntsman would be receiving "proven" and "game changing" color pigments technology—Rockwood's so-called "Bluebird" reactor.

2. Rockwood supported its representations with particularized statements and specific data regarding the supposedly high pigment quality and pigment production rates that its new Bluebird technology was achieving and would ultimately achieve. Rockwood also touted a new pigments facility that it was building in Augusta, Georgia, which facility would rely exclusively on Bluebird for its red and yellow pigment production. Rockwood claimed Bluebird and the Augusta plant would eliminate reliance on costly Chinese raw materials and allow Huntsman to close numerous inefficient Rockwood pigment plants that Huntsman would also receive in the deal.

3. Huntsman has now learned that Rockwood's representations and data were false and misleading. Rockwood misrepresented pigments data to Huntsman and lied about the performance of the Bluebird technology, which Rockwood knew did not work. Indeed, Rockwood concealed the truth even after Rockwood "whistleblower" employees made clear to Rockwood senior executives that the Bluebird technology was failing.

**The Underlying Facts**

4. At issue in this dispute is the technology to make yellow and red pigments using iron as a raw material. These yellow and red pigments are used in a variety of applications, most

notably the construction, coatings, and plastics industries. Traditionally, pigment manufacturers relied on iron oxide powders imported from China to make iron oxide pigments. But as the price of these Chinese iron oxide powders skyrocketed in recent years, it became necessary to develop new reactor technology that did not rely upon them. Rockwood's Bluebird technology was designed with just such an aim in mind.

5. Rockwood had designed and built Bluebird reactors at its facility in Turin, Italy, starting in the late 2000s. By the time it approached Huntsman about a deal, Rockwood was already in the process of constructing a new pigments plant in Augusta, Georgia, that would be premised on Bluebird. Rockwood told Huntsman that the Bluebird in Turin was a great success that had been "proven to scale" and "demonstrated" to produce "high quality red and yellow iron oxide pigments" at "high iron scrap dissolution rates" and on a "competitive basis." Rockwood also provided Huntsman with test results that confirmed this success. Citing the proven nature of the Turin Bluebird, Rockwood further claimed that its new facility in Augusta would be "The Game Changer," one that would "fundamentally transform the business" and "[c]hange the value proposition in the Color Pigments business."

6. What Rockwood concealed from Huntsman was that Bluebird technology was neither "proven" nor "demonstrated," allowed for none of the claimed benefits, and rendered the Augusta plant a wholly speculative venture. Simply stated, the Bluebirds were not working, repeatedly failing to make quality pigments and repeatedly failing to meet the desired production rates. To hide these repeated failures, Rockwood provided Huntsman with false and misleading performance results on the Bluebird, representing that the Bluebird had made certain red and yellow pigment grades when in fact it had not, while failing to disclose that most batches had failed quality requirements. Indeed, by the time the acquisition closed in October 2014, it had

been more than two years since any batch had met both the required quality standards and production rates.

7. Even worse, *after* Huntsman signed the deal with Rockwood on September 17, 2013, but *before* the parties closed the deal approximately one year later, Rockwood employees in Turin blew the whistle and made clear to Rockwood senior executives that the Bluebirds were not working. Rockwood retained outside advisors and commissioned a secret investigation into the issue. This investigation resulted in a report that openly acknowledged—directly contrary to Rockwood’s representations to Huntsman—that “there have been significant issues in Turin with the Bluebird reactors” and “at present, these problems remain unresolved.” Rockwood had specialized and exclusive knowledge of the Bluebird technology, including its development and performance; this knowledge was peculiar to Rockwood and was not made known to Huntsman.

8. The implications of the poor Bluebird performance to the pending Huntsman transaction were obvious, as the internal investigation report concluded. With respect to “the accuracy of the presentations to ... Huntsman on, inter alia, the Bluebird reactor”:

[W]e are concerned that they painted ‘too rosy’ a picture of Turin, [and] did not fully explain the issues encountered and the lack of success at that time. Since those presentations have been made, it is not clear the position has materially improved or worsened.

The findings of this internal investigation were made known to Rockwood’s senior executives, who nonetheless kept them hidden from Huntsman.

9. In an effort to appear as though it was being forthcoming and disclosing some issues in due diligence, Rockwood told Huntsman about certain unrelated and less important accounting and environmental problems at Turin. Worse, when Rockwood reported on the status of these internal investigations, it told Huntsman it had talked to numerous Rockwood employees to ensure there were no other issues, and then remarkably (and falsely) represented that

Rockwood felt “pretty good.” Rockwood thereby lulled Huntsman into the deal by keeping secret the biggest issue of all: that the Bluebird technology, the intended foundation of Rockwood’s color pigments business, was not working. Rockwood lulled Huntsman into a false sense of trust and induced Huntsman to purchase Rockwood’s color pigments division as part of a \$1.1 billion stock purchase agreement. That agreement contains provisions for Augusta’s pigment quality and production rate capabilities that Rockwood knew had not been met and could never be met.

### **Why Rockwood Lied**

10. Rockwood and its senior executives had a powerful incentive to deceive Huntsman. Apart from the executives receiving literally millions in cash bonuses as a result of the Huntsman transaction, at the same time that Rockwood was negotiating the sale of its pigments business with Huntsman, Rockwood executives had agreed to sell the balance of Rockwood’s portfolio to Albemarle Corporation. And Albemarle had told Rockwood in no uncertain terms that if Huntsman walked away from its pigments deal with Rockwood, Albemarle’s purchase would be jeopardized.

11. Rockwood knew that if it disclosed to Huntsman that the “proven” Bluebird and “game changing” Augusta facility were fabrications, Huntsman would pull the ripcord and cancel the transaction. But rather than tell the truth, Rockwood’s senior executive team doubled down on its fraud. It ensured that the Huntsman deal closed under false and fraudulent pretenses in order to reap the benefits of Huntsman’s \$1.1 billion payment and avoid Albemarle backing out of its separate agreement with Rockwood.

12. It was only after months of trying to get the Augusta facility up and running according to Rockwood’s blueprint, without the expected results on quality or rate, that

Huntsman realized something was wrong. And it was in the course of that effort that Huntsman recently learned from former Rockwood employees about the many issues with the Bluebirds that Rockwood had kept hidden, as well as the damning internal investigation report that Rockwood had never disclosed.

13. Rockwood's false and fraudulent acts and omissions give rise to the instant suit for fraud and breach of contract, among other claims. As a result of the failure of the Bluebird technology and the Augusta plant, the value of the Rockwood acquisition to Huntsman has been substantially diminished. Huntsman has not realized the millions of dollars in additional cost savings that Rockwood had promised, and Huntsman has been unable to implement the growth strategy that Rockwood laid out during the negotiations. Huntsman therefore brings this action seeking all available damages and any other available forms of relief for Rockwood's intentional deceit and breach of contract.

## **II.** **PARTIES**

### **A. Plaintiff**

14. Plaintiff Huntsman International LLC, a wholly owned subsidiary of publicly traded Huntsman Corporation, is a chemical company that manufactures and markets a broad range of advanced materials, pigments, and polyurethanes for consumer and industrial applications. Huntsman is a Delaware corporation and maintains its principal executive offices at 10003 Woodloch Forest Drive, The Woodlands, Texas, 77380.

15. On October 1, 2014, and through a Stock Purchase Agreement ("SPA"), Huntsman completed its acquisition of the Performance Additives and Titanium Dioxide businesses of Rockwood Holdings for a purchase price of approximately \$1.1 billion.



**B. Defendants**

16. Defendant Albemarle Corporation is a publicly traded Virginia corporation and maintains its principal executive offices at 4350 Congress Street, Suite 700, Charlotte, North Carolina, 28209. On January 12, 2015, Albemarle completed its acquisition of Rockwood Holdings, including Rockwood Holdings' subsidiary, Rockwood Specialties, for a purchase price of approximately \$5.7 billion. By virtue of that acquisition, Albemarle is the successor in liability for Rockwood Holdings and Rockwood Specialties.

17. Defendant Rockwood Specialties Group, Inc. is a Delaware corporation and maintains its principal executive offices at 100 Overlook Center, Princeton, New Jersey, 08540. Rockwood Specialties operates as a subsidiary of Albemarle.

18. Defendant Rockwood Holdings, Inc. is a Delaware corporation and maintains its principal executive offices at 100 Overlook Center, Princeton, New Jersey, 08540. Rockwood Holdings operates as a subsidiary of Albemarle. Pursuant to Section 10.16 of the SPA, Rockwood Holdings is a full and unconditional guarantor of Rockwood Specialties for all of Rockwood Specialties' liabilities and obligations arising under the SPA.

19. Defendant Seifollah "Seifi" Ghasemi was Chairman and Chief Executive Officer of Rockwood Holdings and Rockwood Specialties from 2001 to 2014. Ghasemi was heavily involved in the sale of Rockwood's pigments business to Huntsman and was aware of the problems with Bluebird and Augusta. Ghasemi signed the September 17, 2013 SPA with Huntsman on behalf of Rockwood Holdings and Rockwood Specialties. He also signed the first amendment to the SPA on behalf of Rockwood Specialties. For getting Huntsman to sign and close the SPA, Ghasemi received a \$2.6 million bonus from Rockwood. Ghasemi is a resident of New Jersey.

20. Defendant Andrew M. Ross was a long-time Rockwood senior executive who more recently served as President and Chief Executive Officer of Rockwood Pigments and Additives, a division of Rockwood Specialties. Like Ghasemi, Ross was heavily involved in the sale of Rockwood's pigments business to Huntsman and was aware of the problems with the Bluebird technology and the Augusta plant. Under the SPA, Ross is identified as a person with "knowledge." And he received a \$2.5 million bonus from Rockwood for getting Huntsman to sign and close the SPA. Ross is a resident of the District of Columbia.

21. Defendant Michael W. Valente was Vice President, General Counsel and Assistant Secretary of Rockwood Specialties. Valente was heavily involved in the sale of Rockwood's pigments business to Huntsman and was aware of the problems with Bluebird and Augusta. Valente is a resident of New Jersey.

22. Defendant Thomas J. Riordan served as Executive Vice President of Law and Administration and Corporate Secretary of Rockwood Specialties and Senior Executive Vice President of Rockwood Holdings. Riordan was heavily involved in the sale of Rockwood's pigments business to Huntsman and was aware of the problems with Bluebird and Augusta. Like Ross, Riordan is identified as a person with "knowledge" under the SPA. He also signed Amendment No. 2 to the SPA on behalf of Rockwood Specialties. As a result of closing on the Huntsman acquisition, Riordan received a \$600,000 cash bonus. Riordan is a resident of New Jersey.

### **III.** **JURISDICTION AND VENUE**

23. This Court has jurisdiction over Huntsman's claims pursuant to Sections 202.70(a) and (b)(1) of the Uniform Rules for New York State Trial Courts because Huntsman's damages exceed \$500,000 (exclusive of punitive damages, interests, costs, disbursements, and

attorneys' fees) and because Huntsman's principal claims involve or consist of breach of contract, fraud, and misrepresentation by defendants.

24. This Court has personal jurisdiction over Rockwood Specialties pursuant to Section 10.8(b) of the SPA. Under that provision, Huntsman and Rockwood Specialties expressly agreed that, for "any Proceeding arising out of or relating to" the SPA, each party "consents to, and confers exclusive jurisdiction upon, the courts of the State of New York and the Federal courts of the United States of America located in the Borough of Manhattan." Also, under Section 10.8(b), Rockwood Specialties "waive[d] and agree[d] not to assert, as a defense in any such Proceeding that it is not subject to such jurisdiction or that such Proceeding may not be brought or is not maintainable" in New York courts.

25. As the successor in interest to Rockwood, Albemarle is subject to the forum selection clause in section 10.8(b) of the SPA and thus subject to personal jurisdiction in New York. As the full and unconditional guarantor of Rockwood Specialties for all of Rockwood Specialties' liabilities and obligations arising under the SPA, including for Huntsman's claims brought in this Complaint, defendant Rockwood Holdings is subject to the forum selection clause in section 10.8(b) of the SPA.

26. This Court has personal jurisdiction over all defendants, including defendants Ghasemi, Riordan, Ross, and Valenti, pursuant to New York Civil Practice Law and Rules Section 302, because Defendants transacted business in New York and committed tortious acts in New York. The instant dispute arises from that business and those tortious acts. Specifically, all defendants were involved in meetings with Huntsman in New York concerning the acquisition, and made material misrepresentations during those meetings. In addition, defendants were involved in negotiating or signing the SPA and amendments to the SPA in New York City and

retained New York counsel and investment bankers to assist them with the due diligence process and the acquisition.

27. This Court also has personal jurisdiction over Rockwood Holdings because Rockwood Holdings, as guarantor of Rockwood Specialties' liabilities and obligations arising under the SPA, "contract[ed] to supply services" within the meaning of New York Civil Practice Law and Rules section 302(a)(1).

28. Venue is proper as to defendants Albemarle Corporation, Rockwood Specialties Group, Inc., and Rockwood Holdings, Inc. pursuant to the forum selection clause in section 10.8(b) of the SPA, which specifies that the courts of New York shall have exclusive jurisdiction of the type of suit brought herein.

29. Venue is proper as to all defendants, including all individual defendants, pursuant to New York Civil Practice Law and Rules Section 503(a) insofar as neither Huntsman nor the defendants reside in the State of New York, Huntsman has designated New York County, and the parties signed and negotiated the SPA in the State of New York.

30. Venue is also proper as to Albemarle Corporation, Rockwood Specialties Group, Inc., and Rockwood Holdings, Inc. pursuant to New York General Obligations Law Section 5-1402 insofar as the SPA contains a choice-of-law provision specifying New York, the SPA concerns a transaction "covering in the aggregate, not less than one million dollars," and the parties agreed to submit to the jurisdiction of the New York courts.

31. Venue is also proper as to Albemarle Corporation, Rockwood Specialties Group, Inc., and Rockwood Holdings, Inc. pursuant to New York Civil Practice Law and Rules Section 501 in that the agreement between the parties contains a forum selection clause.

32. The SPA contains a narrow arbitration clause, but it does not apply to the claims in this suit, which are not subject to arbitration.

**IV.**  
**FACTS RELEVANT TO HUNTSMAN'S CLAIMS**

**A. Background on Pigments and Pigment Technology**

**i. Pigments, Pigment Quality, and Reaction Rates**

33. Pigments are insoluble substances, typically powdered, that are used to color, among other things, concrete, paints, coatings, plastic, and ink. Pigments can be formed from naturally occurring materials, such as minerals and clays, or produced synthetically through refining or manufacturing processes typically involving titanium dioxide or iron oxides. Pigments are used in a variety of applications, including construction materials, paint, concretes, plastics, rubbers, cosmetics, ink, and pharmaceuticals.

34. In the case of synthetically-produced pigments, the two primary drivers of value and profitability are pigment quality and pigment production rate. Pigments must be of sufficient quality—and sufficiently consistent quality—to satisfy customer needs. Pigment quality standards include both chemical and physical properties. Customers seek different shades of different colors for different applications. Customers require that pigments are made to certain quality specifications in order to ensure the consistency and uniformity of their own materials.

35. Pigment production rate refers generally to the time it takes to prepare a batch of pigment in a reactor. It is commonly expressed in the weight of pigment created over a period of time, for example, kilograms per hour. A sufficiently high production rate is commercially necessary, lest the costs of running the operation exceed the value of the pigment output.

36. Consistent and consistently high pigment quality and high production rates are both necessary components of a pigments operation. Achieving excellent pigment quality without achieving satisfactory production rates, or vice versa, is uneconomical and does not justify the substantial capital and other investments required to operate a pigment manufacturing plant.

**ii. Iron Oxide Pigments and the Penniman-Zoph Process**

37. Iron-oxide pigments come in shades of black, brown, red, and yellow, and are generally low-cost, nontoxic, weather-resistant, and, in some cases, heat-tolerant. In the United States, slightly more than half of the demand for iron-oxide pigments comes from the construction industry for use in a variety of building materials, such as paving stones, bricks, concrete blocks, roofing tiles, stucco, and mortar.

38. Iron-oxide pigments can be synthesized from different raw materials. The raw materials are typically iron-based waste products of other industries, such as scrap iron. Pigments can be produced from these raw materials via a chemical reaction known as the Penniman-Zoph process, which generates pigment particles. The pigment particles are then processed into finished pigments in powder, liquid, blended-powder, or granular form.

39. In the Penniman-Zoph process, an iron oxide pigment seed is created by precipitation from copperas (ferrous sulfate) in a vessel known as a seed reactor. The copperas is dissolved in water, making a ferrous sulfate solution. An alkali, usually sodium hydroxide (also known as caustic), is also added. The result is a solution that is approximately 1% solid iron oxide—the crystal seeds of pigments—and unreacted copperas (free ferrous sulfate).

40. The solution containing the free ferrous sulfate and pigment seed is then transferred to a second reactor, known as the growth reactor. This reactor contains either iron scrap or metallic iron powder inside it. The pigment seed solution is circulated through the

growth reactor and oxygen is blown through it. The oxygen converts the free ferrous sulfate into iron oxide, a reaction that releases sulfuric acid. That sulfuric acid reacts with the iron scrap or metallic iron powder, creating more free ferrous sulfate, which in turn interacts with oxygen and forms more iron oxide. The cycle effectively “loops” until the pigment particle has grown to the desired size or the iron scrap or metallic iron powder is exhausted. Great efforts are taken to ensure that the scrap iron or metallic iron powder is not exhausted during the reaction, as it adversely impacts the pigment product quality. As new iron oxide is created, it essentially lands on the seed crystals created in the seed reactor, growing those particles into full pigments.

41. Iron scrap (or metallic iron powder) is the raw material used in the Penniman-Zoph growth reactor. Historically, colored pigments businesses enjoyed a high profitability due to access to low-cost iron oxide pigments from China, which they used as an alternative to synthesizing their own iron oxide pigment. However, and as discussed further below, for approximately the last decade, the costs of Chinese iron oxide powders have increased. This caused pigment producers like Rockwood to look for other ways to source iron oxide pigments.

42. As discussed more fully below, Rockwood claimed that it had developed a way to reduce reliance on Chinese iron oxide powders by enhancing the conventional Penniman-Zoph synthesis process. This technology—which Rockwood nicknamed the “Bluebird”—had various claimed advantages over the conventional Penniman-Zoph reactor.

43. Specifically, the conventional Penniman-Zoph reactors had slow iron dissolution rates. With iron scrap, conventional Penniman-Zoph reactors could only be used to produce yellow pigments; producing reds using Penniman-Zoph did not yield a favorable iron dissolution rate. A reactor process reliant on metallic iron powders (as opposed to iron scrap) also incurs far

greater raw materials costs. Finally, conventional reactors using the Penniman-Zoph process had difficulty producing high-quality yellow pigments.

44. The Bluebird technology was intended to address all these limitations through highly proprietary design changes to the growth reactor and the mechanisms for circulating the solution and oxygen through the iron scrap bed. These changes were designed, among other things, to increase the velocity of the fluid over the iron surface (thereby increasing the production rate). They also allowed for the use of iron scrap only in the growth reactor.

**iii. The Significance of Avoiding Reliance on Chinese Iron Oxide Powders**

45. The need to reduce or eliminate reliance on Chinese iron oxide powders was the primary driver of Rockwood's development of the Bluebird. In a Penniman-Zoph process for iron oxides, iron is the critical raw material. Iron, whether in scrap or powder form, is placed in the growth reactor and is what converts to iron oxide during the growth reactor process. Third-party iron oxide pigments constituted Rockwood's largest expenditure on raw materials for its color pigments business.

46. Historically, color pigment producers purchased iron oxide powder from China. These iron oxide particles were available at favorable prices, in part because China offered a Value Added Tax (VAT) refund for the purchase of such materials. Colloquially, iron oxide powders from China are sometimes referred to as "Chox"—China iron oxides.

47. Approximately a decade ago, color pigment producers like Rockwood began to find Chinese iron oxide powder a far more costly option. Among other things, the Chinese government had eliminated the VAT refund; there were greater domestic demands within China for the iron oxide powder, resulting in less supply for export and higher prices; the Chinese



currency had appreciated in value and freight costs had gone up; and Chinese iron oxide powder producers were facing greater labor and energy costs, which were passed down to purchasers.

48. Traditionally, Rockwood's color pigments business primarily purchased iron oxide powders from China. As early as August 9, 2011, however, Rockwood determined that the "China supply chain is forever altered" and that increased costs of Chinese iron oxide powders were "resulting in substantial margin compression." Rockwood thus recognized that to remain competitive, it needed to develop a new production technology that would "enable the business to profitably extinguish its China supply chain dependency."

49. This led Rockwood to the concept of building Augusta with Bluebird technology, which Rockwood believed would "eliminate [its] reliance on Chinese oxide supply," thus "eliminating the most critical vulnerability" for its color pigments business.

#### **B. Rockwood's Fraudulent Representations to Huntsman in April 2013**

50. In spring 2013, Rockwood approached Huntsman about the sale of Rockwood's pigments business. This proposed sale included Rockwood's titanium dioxide (white pigments) business and its color pigments business described above. Huntsman was (and is) a substantial player in the white pigments business but had no experience making or selling color pigments. As to the latter, a critical piece of the proposed transaction was the Bluebird technology and a new pigment facility that Rockwood was constructing in Augusta, Georgia. This new facility was to be premised on Bluebird.

51. The due diligence process for the deal involved several months of discussions by the parties, with Rockwood and its most senior executives making a series of critical representations to Huntsman about Bluebird and Augusta. This included the sharing of data concerning the performance of the Bluebird. Huntsman relied upon Rockwood's

representations, but now knows they were false and misleading in nearly every way and from the very beginning.

**i. Rockwood's April 2013 Statements Regarding its Pigments Business**

52. In April 2013, Rockwood provided information to Huntsman through a lengthy "Information Memorandum" prepared by Lazard Frères & Co. LLC, Rockwood's investment banker. Rockwood, including several of the named individual defendants, provided the underlying information that went into this set of materials.

53. In the April 2013 presentation, Rockwood claimed that its "Pigments and Additives is an attractive business with leading market positions." With respect to the Rockwood color pigments business, Rockwood claimed it was "the second largest global developer and producer of high value-added synthetic iron-oxide and other specialist inorganic pigments," and that "[i]ron oxides are the largest volume color (non-white) inorganic pigments in use, accounting for over 70% of volume."

**ii. Rockwood's April 2013 Representations That Augusta Would Incorporate Bluebird Technology That Had Been "Demonstrated" and "Proven to Scale"**

54. A significant focus of Rockwood's April 2013 submission to Huntsman was the Bluebird technology and the Augusta plant. In this memorandum, Rockwood touted Bluebird as "the ultimate evolution of the Penniman-Zoph process to cost effectively synthesize high quality yellow and red iron oxide pigments."

55. These were not preliminary or qualified conclusions or promises. To the contrary, and critically, Rockwood told Huntsman that the Bluebird technology had been "developed and proven to scale in Turin over the past four years." Rockwood further asserted that "high iron scrap dissolution rates" on the Bluebird reactors had been "achieved by a proprietary high intensity mixing system that allows high quality red and yellow pigments to be produced." This

“new reactor technology,” Rockwood represented, “has been demonstrated in Turin for red and yellow products.”

56. With respect to Augusta, Rockwood confirmed that the facility would incorporate the same Bluebird technology that had been “demonstrated” and “proven to scale” in Turin. Rockwood thus “sold” Augusta to Huntsman based on its alleged success in Turin, maintaining that Augusta “will allow the Business to deploy important recent advancements in its *proven* pigment synthesis technology, hence improving the quality of the product.”

57. The Augusta strategy, Rockwood told Huntsman, was a significant component of the Rockwood color pigments business plan for growth and financial success: “The future growth in this segment will be driven by commissioning of the new production technology in Augusta and expansion and use of such technology at the Turin, Italy site.” Indeed, Rockwood represented, “[u]pon completion (projected for end of 2014), Color Pigments will be the first iron oxide producer to invest in U.S. based capacity in more than 35 years, expanding its unique position among global iron oxide suppliers as the sole U.S. manufacturer of synthetic iron oxide pigments.”

**iii. Rockwood’s April 2013 Representations Regarding Decreased Reliance on Chinese Iron Oxide Particles, Plant Consolidation, and Cost Savings**

58. Rockwood also claimed the Augusta plant, with its “proven” and “demonstrated” Bluebird technology, would yield clear cost savings and sure efficiencies. Specifically, Rockwood committed that its “new Augusta plant will create significant plant consolidation, cost savings opportunities and favorable raw material sourcing.”

59. With respect to plant consolidation, Rockwood told Huntsman that the Augusta plant would allow Rockwood to close numerous aging and inefficient Rockwood pigment plants that Huntsman would be acquiring in the deal. As Rockwood explained:

With the commissioning of the new Augusta facilities, Color Pigments expects to shut down six sites globally in two phases by the end of 2016. The commissioning of the plant combined with the closure of the two sites in phase 1 will generate incremental savings of approximately \$30 million annually. The second phase of the plant consolidation following phase 1 will generate a further savings of approximately \$4 million annually.

According to Rockwood, the Augusta plant “will create significant consolidation and cost saving opportunities following its completion scheduled for late 2014.”

60. Rockwood also promised further extensive cost savings in the form of decreased dependence on Chinese iron oxide powders, which would *not* be necessary in Bluebird reactors that used iron scrap. As Rockwood explained to Huntsman in the April 2013 offering memorandum, Rockwood’s “primary supply of iron oxide particle for construction segment requirements have been sourced historically through numerous Chinese suppliers but will now be replaced to a large extent by [its] own production at its new Augusta, Georgia (USA) facility.” Indeed, with Augusta up and running, Rockwood told Huntsman that it would “eliminate its dependency on Chinese sources.”

61. According to Rockwood, “[s]avings from the [plant] closures combined with the substitution of Chinese oxides purchases by particles produced at Augusta will save \$30 million starting 2016 in production costs and \$10 million in working capital.”

62. There were no qualifications or conditions on Rockwood’s representations in the April 2013 memorandum. Rockwood did not disclose to Huntsman the numerous problems that had plagued the Bluebird technology, that the Bluebird had regularly failed to achieve desired pigment qualities and production rates, or that the technology had not been “proven” or “demonstrated” at Turin.

63. As alleged further below, Rockwood executives and senior managers knew that the information provided to Huntsman in the April 2013 offering memorandum regarding the

Bluebird technology and the Augusta plant was false and misleading, and concealed the true facts from Huntsman.

**C. Rockwood's Fraudulent Representations to Huntsman in May 2013**

64. The false and misleading representations in the April offering memorandum were repeated and reemphasized when the parties met face to face the following month. On May 17, 2013, representatives of Rockwood and Huntsman met in person in New York City. The purpose of the meeting was for Rockwood representatives to provide further information about its pigment operations in the hope that Huntsman would acquire it.

65. Among the Rockwood executives who attended and presented at the May 17, 2013 meeting were defendants Andrew Ross and Thomas Riordan. Marino Sergi ("Sergi"), Managing Director of Rockwood Color Pigments, was also present at the May 17, 2013 presentation in New York.

**i. Rockwood's Continued Emphasis on the "Proven" Bluebird Technology and "Game Changing" Augusta Plant**

66. At the May 17, 2013 management presentation, the critical topics were again the Bluebird technology and Augusta plant. Indeed, Rockwood stepped up its mischaracterizations even further, lauding Augusta as "The Game Changer" that would "fundamentally transform the business" and "[c]hange the value proposition in the Color Pigments business."

67. As it had done in April 2013, Rockwood represented the Bluebird technology as proven. Specifically, according to Rockwood, the "'Bluebird' reactor technology provides the required sustainable, common technology platform" and had been "proven to scale in Turin over the past four years." It was the success in Turin, Rockwood explained, that justified the significant capital outlay required to construct the Augusta facility. In addition, it was

Rockwood's success with the Bluebird in Turin that justified making Augusta dependent on that technology.

68. At the May 2013 presentation, Rockwood further emphasized the critical value-creating issues of pigment quality and production rates. Rockwood represented that Bluebird was “[c]apable of high quality red and yellow iron oxide production on a competitive basis.” And, with respect to production rates, Rockwood touted Bluebird’s “[h]igh yield/productivity” and “[h]igh process reliability and reproducibility.” Indeed, Rockwood represented, “[t]he key to the design of the new reactor is the high iron scrap dissolution rates achieved by a proprietary high intensity mixing system that allows high quality red and yellow iron oxide pigments to be produced.”

**ii. Rockwood’s Continued Emphasis on Cost Savings Through Reduced Reliance on Chinese Iron Oxides and Plant Closures**

69. As it had done in April 2013, at the May 2013 management presentation, Rockwood focused Huntsman’s attention on the great cost efficiencies that the Augusta plant would generate. According to Rockwood, the Augusta plant would “drive technology, supply chain, facility consolidation and cost reduction—a game changer for the business.” These cost savings would “improve the profitability of the business” by, among other things, “[e]liminating dependence on volatile Chinese iron oxide supplies” and “[p]roviding a new platform for additional site consolidation.”

70. With respect to plant consolidation in particular, Rockwood repeated the two-phase plant closure strategy that it claimed would follow the Augusta start-up:

Future Site Closures					
	CURRENT PRODUCTION LOCATION	FUTURE PRODUCTION LOCATION	TONS (000'S)	SAVINGS (\$ MILLIONS)	\$ PER TON SAVINGS
GRANULES	Beltsville	Augusta	13.1	\$10.5	\$802
	Turin	Augusta	6.0	2.5	410
	Walhof	Augusta	1.4	0.4	1,031
	Total Augusta Granules		19.4	\$13.3	\$685
	Walhof	Turin	4.8	2.3	479
Total Granules Savings		24.2	\$15.6	\$644	
YELLOW POWDER	Shenzhen	Augusta	1.7	2.4	1,392
	Taicang	Augusta	2.7	4.7	1,745
	St Louis	Augusta	6.1	8.9	1,442
	Total Yellow Powder		10.6	\$16.0	\$1,511
TOTAL AUGUSTA PRODUCTION		30.0	\$31.6	\$1,053	

71. As was true in the April 2013 memorandum to Huntsman, at no point during the May 2013 presentation did Rockwood disclose the numerous problems that had plagued the Bluebird technology, that the Bluebird had regularly failed to achieve desired pigment qualities and production rates, or that the technology had not been “proven” or “demonstrated” at Turin.

72. As alleged further below, Rockwood executives and senior managers knew that the information provided in the May 2013 management presentation about Bluebird and Augusta was false and misleading, and concealed the true facts from Huntsman.

#### **D. Rockwood’s Fraudulent Representations to Huntsman in June 2013**

73. Rockwood and Huntsman had a second face-to-face meeting on June 28, 2013, when Huntsman’s senior executives, including its CEO and then-President of its Pigments Division, traveled to Turin, Italy, to meet with Rockwood senior executives and managers, including Sergi and defendant Andrew Ross.

74. During this visit, Rockwood gave the Huntsman team a tour of the Turin plant and presented another PowerPoint slide deck focused on and touting the Bluebird technology and Augusta facility. Owing to an alleged need to protect Rockwood’s proprietary and intellectual property in the Bluebird technology, defendant Ross gave Huntsman just limited visibility of the

actual Bluebird technology at the Turin site visit, as he would also do when Huntsman later visited the Augusta plant.

**i. Rockwood's Statements About Bluebird's Supposedly Seamless Development and Scale-Up**

75. During the June 28, 2013 meeting, Rockwood presented at length on the benefits of the Bluebird technology. Rockwood detailed the history of its development of the Bluebird, an “intensive fundamental research program started in 2007” that culminated in “the design of Bluebird Reactor as the first reactor to use [the] conventional [Penniman-Zoff] process for the synthesis of red iron oxide pigments.” And Rockwood described the historical development of the Bluebird as a seamless evolution, claiming as a fact that there had been a “[s]uccessful scale-up from 4 m<sup>3</sup> to 500 m<sup>3</sup>”—a reference to Rockwood’s scale-up from a smaller pilot Bluebird reactor to the larger 500 m<sup>3</sup> Bluebird reactor. In light of its supposedly successful scale-up to 500 m<sup>3</sup>, Rockwood asserted that only a “[l]imited scale-up effect from 500 to 1000 m<sup>3</sup> is expected.” Augusta was to operate on 1000 m<sup>3</sup> reactors.

76. During the June 28, 2013 site visit, Rockwood also touted a number of detailed advantages of Bluebird, including that there is an “[e]asy change over [between batches] with [a] simple washing step” and that “[n]o reactor clean-up is required.” Whether a reactor requires frequent cleaning is an important issue, because cleaning a reactor can take days and sometimes even weeks, leading to downtime in which pigments cannot be produced.



**ii. Rockwood's Presentation of False and Misleading Bluebird Performance Results**

77. Critically, at the June 28, 2013 site visit, Rockwood also provided Huntsman with a detailed overview of the specific results it had allegedly achieved on the pilot and 500 m<sup>3</sup> Bluebirds, specifying those specific red and yellow pigment grades that Rockwood had “produced with the desired quality”:



**Performances**

	Pilot plant	500 m <sup>3</sup>
<b>Pigments produced with the desired quality</b>	208, 212, 216, 218 3048, 1075	206, 208, 212, 216, 217, 218, 219 (217 and 219: new shades) 48, 3048, 1075, 49, 50, 61
<b>Agitation</b>	mechanical on external recirculation	mechanical on external recirculation
<b>Air flow rate</b>	~ 2 stoichiometry under the iron bed	2-2.5 stoichiometry under the iron bed
<b>Iron scrap</b>	~ 2 stoichiometry	2-3 stoichiometry

78. Rockwood presented this slide as hard, factual evidence of the supposedly enormous success it claimed Bluebird had enjoyed in Turin and would likewise enjoy in Augusta. The particular pigments referenced were important, as certain of them (such as yellow 1075 and reds 212 and 217) were among the pigments that Augusta would be producing on a much larger scale.

79. Given Rockwood's many past statements about the "proven" and "demonstrated" Bluebird technology and the promised lack of scale-up issues, Rockwood's "Performances" data slide was intended to convey to Huntsman, and did in fact convey, that Rockwood's factual statements about Bluebird were backed up by actual production results and batch records. As will be discussed further, however, the "Performances" slide presented at the June 28, 2013 Turin site visit was false and misleading. Indeed, some of the pigment grades listed on the "Performances" slide were outright lies.

80. At no point during the presentation of these test results, and at no point during the June 28, 2013 site visit, did Rockwood disclose the numerous problems that had plagued the Bluebird technology, that the Bluebird had regularly failed to achieve desired pigment qualities and production rates, or that the technology had not been "proven" or "demonstrated" at Turin.

81. As alleged further below, Rockwood executives and senior managers knew that the information provided in the June 28, 2013 site visit presentation about Bluebird was false and misleading, and concealed the true facts from Huntsman.

**E. Rockwood Intended For Huntsman To Rely On Its Representations**

82. Throughout due diligence, Rockwood intended that Huntsman rely on its representations about Bluebird and Augusta. While Huntsman had experience with the technology involved in producing titanium dioxide pigments, Rockwood knew that Huntsman had limited familiarity with color pigment technology. Moreover, because of the nature of the color pigment industry, there were no knowledgeable consultants readily available for Huntsman to rely upon in matters concerning the color pigment technology.

83. Huntsman was not—and of necessity could not be—familiar with Rockwood’s highly proprietary Bluebird color pigments technology. Rockwood had specialized knowledge of the Bluebird technology, including its development and performance. This knowledge was peculiar to Rockwood and was not made known to Huntsman. As Rockwood acknowledged privately, “H[untsman] has no knowledge of [the] technology.”

84. That Huntsman lacked such knowledge flowed directly from Rockwood’s stated insistence on protecting the intellectual property associated with the Bluebird technology. As Rockwood privately confirmed and then carried out at the direction of defendant Andrew Ross, “it is imperative that no [intellectual property] is released or conveyed to [Huntsman] specifically around the Bluebirds” and that “no details about the actual design” be provided.

85. Throughout the due diligence process, Rockwood asserted its intellectual property rights and prevented Huntsman from conducting detailed physical inspections of the Bluebird technology or viewing the underlying test data from pigments batches run on the Bluebird. In

the case of Huntsman site visits at Turin and Augusta, defendant Ross insisted that Huntsman not be allowed to get close to the Bluebird reactors.

86. Defendant Ross was equally insistent on having no discussions over email, instead requesting in-person meetings or phone calls to avoid having to put anything in writing.

87. The stated reason for limiting Huntsman's access to information was the secrecy of Rockwood's "game changing" technology, and Huntsman, which also develops and relies on proprietary processes and technology to give it a competitive advantage, had no reason to doubt Rockwood's motives. But the real reason for Rockwood's and Ross's obsession with secrecy, as Huntsman now knows, was to ensure that Rockwood could continue and complete its fraud. Ultimately, Rockwood carefully monitored the information about Bluebird that was given to Huntsman and prevented Huntsman from obtaining more detailed information beyond what Rockwood presented.

88. Rockwood thus intended for Huntsman to rely on Rockwood's specific representations about Bluebird performance quality, consistency, and rate, and Huntsman, for its part, had no reason to question them. Rockwood's representations about Bluebird performance were definitive and offered without caveat, condition, or concern. That Rockwood claimed it was planning to spend in excess of \$172 million on an entirely new facility premised on Bluebird gave Huntsman even less reason to question that technology.

89. Huntsman relied on Rockwood's representations prior to signing the SPA and each amendment to the SPA, and it relied on Rockwood's representations in its decision to close the deal with Rockwood. At no time did Rockwood disclose that the Bluebird technology was in fact unproven and had a history of failing to meet quality standards and production rates. To the contrary, Rockwood made material misstatements and failed to disclose critical information that

would have showed that Rockwood's representations about Bluebird and Augusta were false and misleading.

**F. Rockwood's Continuing Fraud Induces Huntsman To Acquire Rockwood's Color Pigments Business**

90. Following and in reliance upon Rockwood's April, May, and June 2013 presentations, Huntsman signed the SPA on September 17, 2013. As part of this purchase, Huntsman acquired Rockwood's titanium dioxide (white) pigments business and Rockwood's Performance Additives business, which included the color pigments division.

91. In consideration for Rockwood's Performance Additives business, including its color pigments business with the Augusta facility and Bluebird technology, and titanium dioxide businesses, Huntsman agreed to pay Rockwood Specialties an approximate sum of \$1.1 billion.

92. Following the signing of the SPA, Rockwood continued its fraudulent scheme in order to induce Huntsman to actually close on the transaction. Specifically, Rockwood disclosed two problematic issues to Huntsman that related to Turin operations. The first concerned certain accounting irregularities. The second concerned the unauthorized irradiation of certain pigments. Both of these were directly linked to Sergi, leading to his resignation. Rockwood disclosed these issues to create the appearance of being forthcoming, but it continued to hide the biggest issue of all: that the Bluebirds, as represented, were not working and never did.

93. Given Rockwood's false and misleading statements of material fact, Huntsman was fraudulently induced to enter the SPA. Had Huntsman known about the problems with Bluebird and the Augusta plant, Huntsman would not have entered or closed the deal.

94. Although Rockwood Specialties is the signatory to the SPA, Rockwood Holdings "irrevocably guarantee[d] each obligation of [Rockwood Specialties] and the full and timely performance by [Rockwood Specialties] of its obligations, in each case, under the provisions of

[the SPA] and the Ancillary Documents.” Under the SPA, this “guarantee is full and unconditional, and no release or extinguishment of [Rockwood Specialties’] liabilities or obligations . . . will affect the continuing validity and enforceability of this guarantee.”

**i. Rockwood’s Contractual Disclosure Obligations Regarding the Bluebird and Augusta**

95. The SPA imposed on Rockwood various obligations, in the form of representations, warranties, and covenants. As relevant here, these representations, warranties, and covenants required disclosure of adverse information regarding Bluebird or Augusta.

96. Rockwood represented and warranted, pursuant to section 2.6(a)(ii), that “[s]ince the Balance Sheet Date [June 30, 2013] to the date of [the SPA], . . . (ii) there has not been any change, event, occurrence, effect, circumstance, or development that has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.”

97. Under the SPA, a Material Adverse Effect includes, among other things, “any event, change, effect, circumstance or development . . . that individually or in the aggregate, has, had or reasonably could be expected . . . to have a material adverse effect on the business, assets, financial condition or results of operations of the Business taken as a whole.”

98. Under Section 2.6(a)(ii) of the SPA, Rockwood also represented and warranted that there had not been or could not reasonably be expected to be an event or circumstance relating to the Bluebird technology or Augusta that could have a Material Adverse Effect.

99. Moreover, Rockwood covenanted, pursuant to section 4.7(a)(i)(B) of the SPA, that, “[b]etween the date of [the SPA] and the Closing, (i) [Rockwood] will give prompt notice in writing to [Huntsman] of any event, change, effect, circumstance or development of which it has Knowledge, or of which it receives notice, that . . . (B) has had or could reasonably be expected

to have, individually or in the aggregate, taken together with any other event, change, effect, circumstance or development, a Material Adverse Effect.”

100. Under SPA Section 4.7(a)(i)(D), Rockwood also covenanted that “[b]etween the date of this Agreement and the Closing, (i) [Rockwood] will give prompt notice in writing to [Huntsman] of any event, change, effect, circumstance or development of which it has Knowledge, or of which it receives notice, that . . . (D) has resulted, or could reasonably be expected to result, in the failure to satisfy any one or more of the conditions specified in Article V.”

101. Rockwood further covenanted, pursuant to SPA section 4.27(f), that it “shall give reasonably prompt notice to [Huntsman] of any event, change, effect, circumstance, or development of which it has Knowledge, or of which it receives notice, that . . . (ii) raises reasonable concerns about whether the Augusta Facility will be able to achieve successful completion of the Performance Test.”

**ii. The Contractual Performance Requirements for the Augusta Facility Using the Bluebird Technology**

102. Under the SPA, Rockwood covenanted that the Augusta facility would be able to meet certain performance requirements for color pigment production in terms of pigment quality, production rate, and production volume. These performance requirements were embodied in a series of tests referred to in the SPA as the “Performance Test.”

103. The Performance Test requires the Augusta facility to operate consecutively for 31 days and, during that period, to produce certain qualities of pigments “that meet[ ] the specifications set forth on Schedule A-3 of the Disclosure Letter,” an ancillary document to the SPA. Additionally, the Performance Test requires the Augusta facility to produce those quality pigments during the 31 day period “in amount[s] specified in Schedule A-15 of the Disclosure

Letter,” another ancillary document. The point of the Performance Test was to simulate and represent a month of actual, expected pigment production that was critical to achieve in order for Huntsman to get what it had bargained for in the deal.

104. In other words, the Performance Test has a quality component and a rate component, both of which the Augusta facility must satisfy to have successfully completed the Performance Test. With respect to the specified quantities of pigments, Rockwood stipulated that the quantities are “proportional to the annual quantities of the six highest volume products that are expected to be manufactured at the Augusta facility in the coming twelve (12) months.” For the Performance Test to be deemed successful, the Augusta facility is also required to “use the types and grades and quantities of raw materials, utilities and consumables that would normally be used by the Augusta facility on a going-forward basis to produce Product.”

105. Successful completion of the Performance Test is an inherent covenant under the SPA, with Rockwood guaranteeing that the Performance Test could in fact be met. SPA section 4.27(c) prohibits Huntsman from taking certain actions with respect to the Augusta facility “until the Performance Test has been successfully completed.” Rockwood and Huntsman also have certain obligations under section 4.27(g) of the SPA that remain in place “until the Performance Test has been successfully completed.”

106. These and other provisions confirm that the Performance Test is a necessary feature of the SPA. A central covenant of the SPA is that this Test could in fact be achieved using the Bluebird technology. Nothing in the SPA disclosed any problems with the Bluebird technology or Augusta plant.

107. In addition, the SPA reflects Rockwood’s numerous statements to Huntsman that the Augusta plant would lead to extensive cost-savings through consolidation of other Rockwood

facilities, which would inure to Huntsman's benefit after closing. Under SPA section 4.14(b), Rockwood was required to "use its commercially reasonable efforts to continue with the Augusta Related Activities that would be taken by a reasonable and prudent operator that has not entered an agreement to sell the Business." Under the SPA, the "Augusta Related Activities" shall have the meaning specified in Schedule A-10 of the Disclosure Letter," an ancillary document. Schedule A-10 in turn lists the various Rockwood sites that are "planned to be closed following the construction of the Augusta facility." The SPA thus expressly contemplates the closure of these various locations.

**iii. Rockwood Reaffirms its Promises in Three Amendments to the SPA**

108. After signing the SPA, Rockwood Specialties and Huntsman executed three amendments to the SPA over the course of several months that preceded the actual closing.

109. Amendment No. 1 was executed on March 20, 2014 and reflected a price reduction of \$50 million in connection with the accommodation of certain European Commission antitrust approvals.

110. Rockwood reaffirmed in Amendment No. 1 its representations, warranties, and covenants in the SPA. The parties agreed in section 3 of Amendment No. 1 that the amendment "shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of the Parties under the Stock Purchase Agreement or any Ancillary Documents, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Stock Purchase Agreement or any Ancillary Documents, all of which are ratified and affirmed in all respects and shall continue in full force and effect."

111. Rockwood and Huntsman executed Amendment No. 2 on July 24, 2014. Rockwood again reaffirmed in Amendment No. 2 its representations, warranties, and covenants



in the SPA. Similar to Amendment No. 1, the parties agreed in section 3 of Amendment No. 2 that Amendment No. 2 “shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Stock Purchase Agreement or any Ancillary Documents, all of which are ratified and affirmed in all respects and shall continue in full force and effect.”

112. Rockwood and Huntsman executed Amendment No. 3 on September 30, 2014, the day before the closing. Similar to Amendments No. 1 and No. 2, the parties agreed in section 21 of Amendment No. 3 that Amendment No. 3 “shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Stock Purchase Agreement or any Ancillary Documents, all of which are ratified and affirmed in all respects and shall continue in full force and effect.” Rockwood thus reaffirmed in Amendment No. 3 its representations, warranties, and covenants in the SPA.

113. Huntsman and Rockwood closed the transaction on October 1, 2014 by signing documents in New York City, New York. At no point prior to October 1, 2014, or in connection with any of the Amendments to the SPA, did Rockwood disclose that the Bluebird had problems and had repeatedly failed to meet desired pigment qualities and production rates.

**G. Huntsman Starts to Operate the Augusta Plant and Rockwood’s Scheme to Defraud Huntsman Starts to Unravel**

**i. Huntsman Achieves Mechanical Completion and Starts to Make Pigment**

114. Following the October 1, 2014 closing of the Huntsman-Rockwood deal, Huntsman assumed formal control of the Rockwood pigment plants, including the Augusta facility. At this time, the Augusta plant was still under construction. Huntsman diligently assumed responsibility for the project.

115. By November 2015, Huntsman had attained Mechanical Completion, *i.e.*, it had constructed the Augusta plant according to the design specifications. Huntsman thereafter began to use the four 1000 m<sup>3</sup> Bluebird reactors to make color pigments.

**ii. Huntsman Determines that the Bluebirds at Augusta Cannot Meet Expected Pigment Qualities**

116. As the months wore on, however, Huntsman found that the Bluebirds were not functioning as Rockwood had represented. To the contrary, despite Rockwood's representations that Bluebird was "proven to scale" with "demonstrated" success producing high quality red and yellow pigments, Huntsman found that, in reality, the Bluebirds were unable reliably to produce red and yellow pigments at the required qualities on a consistent basis.

117. Batch-to-batch consistency at Augusta was a significant issue. While Huntsman was able to achieve the necessary level of pigment qualities on some isolated batches, it had difficulty doing so on a regular basis, much less the "competitive basis" that Rockwood had guaranteed. This was true with respect to the particular grades of pigment that were the subject of Rockwood's June 28, 2013 site visit—specifically, the exact grades that Rockwood told Huntsman it had already produced to the "desired qualities" on the 500 m<sup>3</sup> Bluebird reactor in Turin.

118. After some trials, Huntsman found that higher quality was more easily achievable when the Augusta reactors were cleaned of residual scrap and pigments from a previously-run batch. But this cleaning process is extremely laborious and can take days and sometimes weeks. The cleaning process is also expensive because of the labor required, the safety precautions that must be observed, and the fact that the reactor is not operational during cleaning. The need for such cleaning to obtain the requisite quality was directly contrary to Rockwood's representation that "[n]o reactor clean-up is required."

**iii. Huntsman Determines that the Bluebirds at Augusta Cannot Meet Expected Production Rates Either**

119. Even when Huntsman was able to achieve from time to time the desired *quality* at Augusta (though not on all grades, and not on a commercially “competitive basis”), it was unable to achieve the expected *rate* of production. As noted above, achieving certain pigments of a certain quality is economically meaningless without being able to do so at a commercially acceptable rate.

120. Pigment production rate is measured by the number of kilograms per hour per cubic meter of the reactor. In the case of Augusta, the intended rate, based on the Performance Test requirements, was to be approximately 0.7 - 0.8 kilograms per hour per cubic meter. But despite numerous batches and various adjustments and modifications, the Augusta Bluebirds have never come close to reaching the necessary rates. Nor is there any prospect that they will do so under the existing reactor design.

121. Pursuant to the SPA, Rockwood covenanted that Augusta would be able to meet required production rates *and* qualities. These requirements were embodied in a Performance Test, which (cross-defined as a “Test Run”) meant “the production by the Augusta Plant in any period of 31 consecutive dates of Product (x) that meets the specifications set forth on Schedule A-3 of the Disclosure Letter and (y) in amounts specified in Schedule A-15 of the Disclosure Letter.”

122. Schedule A-3 of the Disclosure Letter set forth quality specifications for different pigments. Schedule A-15 of the Disclosure Letter set forth for six pigments the required annual tonnages. These six pigments were “stipulated by [Rockwood] to be proportional to the six highest volume products that are expected to be manufactured at the Augusta Facility in the

coming twelve (12) months.” The required production rate for the pigments is a function of the intended quantity per year.

123. As Huntsman continued to operate the Bluebirds at Augusta following Mechanical Completion, it became increasingly clear—and is clear today—that the Bluebirds never did and never will meet the Performance Test. After extensive trials and numerous batches, the Bluebirds are simply incapable of achieving the performance standards and efficiencies that Rockwood had repeatedly promised. The Bluebirds are not just slightly missing the Performance Test requirements, but are in fact nowhere close to meeting them, confirming that the Bluebird technology cannot function as represented.

124. Albemarle, as the successor in interest to Rockwood under the SPA, has expressly acknowledged this fact. On August 18, 2016, Albemarle representatives met with Huntsman representatives in Augusta to review the data and discuss the situation. At that meeting, Albemarle acknowledged the obvious: the Bluebirds could not meet the Performance Test.

**H. Rockwood Knew Prior to Signing the SPA That the Bluebirds Did Not Work and Would Not Work as Represented**

125. As Huntsman investigated how the Augusta figures could be so far off from Rockwood’s test results and clear, unconditional, and specific representations, Huntsman discovered, in fact, that Rockwood’s pre-signing representations were nothing but lies and half-truths. These misrepresentations and material omissions formed the foundation for Rockwood’s fraudulent scheme to misrepresent the Bluebird’s production capabilities and fraudulently induce Huntsman to purchase a color pigments business premised on unproven reactor technology.

126. Rockwood’s representations were false as of September 17, 2013, when Huntsman and Rockwood signed the SPA. They were also false as of April, May, and June 2013, when Rockwood made repeated representations to Huntsman about the Bluebird’s

supposed success in achieving desired pigment qualities and production rates in a fraudulent effort to induce Huntsman to sign the SPA.

127. The following two subsections of this complaint—H(i) and H(ii)—address the state of Rockwood’s pigments data as of September 17, 2013, and demonstrate that Rockwood’s statements about Bluebird were false and misleading as of that time. In Section I, the facts alleged show that, in fact, between the signing of the SPA on September 17, 2013 and the closing of the transaction on October 1, 2014, the situation got even worse. During that time, Rockwood failed to disclose to Huntsman even poorer test results *and* the fact that Turin employees had blown the whistle on the facilities and told Rockwood senior management that the Bluebirds were not working.

**i. Turin Data Showed That the Bluebird Had Failed to Meet Expected Production Rates As Of September 17, 2013**

128. As of September 17, 2013, when the parties signed the SPA, Rockwood had made false and misleading statements about the ability of the Bluebird to meet certain desired production rates.

129. Specifically, Rockwood’s representations about the Bluebird and Augusta were based on Rockwood’s claimed experience with a pilot 4 m<sup>3</sup> Bluebird and a 500 m<sup>3</sup> Bluebird in Turin. Rockwood represented that appropriate production rates and qualities actually had been achieved in Turin. This is what, according to Rockwood, justified building an entire Augusta facility based on the Bluebird technology.

130. After Huntsman began to experience significant problems with the Bluebirds in Augusta, it ordered a review of the data from the batches run on the 500 m<sup>3</sup> Bluebird in Turin. This data, which Rockwood had not produced in due diligence, took Huntsman substantial time

to compile and analyze. Based on that data, Huntsman has now determined that Rockwood's pre-signing representations were false and misleading.

131. The Turin pigments data showed, notwithstanding Rockwood's representations that the Bluebird would generate "high yield/productivity" with "high process reliability and reproducibility," that the Bluebirds had rarely achieved intended production rates in Turin. The notion that Bluebird was "proven to scale in Turin," as Rockwood maintained in a May 2013 presentation to Huntsman, was simply false: The Bluebird was in fact totally unproven, having only sporadically achieved satisfactory rates.

132. Specifically, from December 7, 2009, the time that the 500 m<sup>3</sup> Bluebird in Turin produced its first batch, to June 28, 2013, when Rockwood presented its data on the 500 m<sup>3</sup> Bluebird to Huntsman at the Turin site visit, Rockwood had run 75 batches of red and yellow pigment. As discussed at greater length below, the vast majority of these runs failed to meet quality standards. With respect to production rate, when determining whether a batch met the desired rate, it is only meaningful to consider those batches that met quality specifications, because if a batch is of poor quality it is irrelevant how quickly it was produced.

133. Of the 75 batches run as of the time of the June 28, 2013 site visit presentation, only 16 batches met the requisite quality standards. Of those, only seven, or just 9.3%, also met the desired production rates. The notion that Bluebird had demonstrated a "high yield/productivity" with "high process reliability and reproducibility" on this actual record was thus simply false.

134. A closer examination of the data shows just how poorly the Bluebird had actually performed against the desired rates. *Not a single batch* of yellow pigment made on the 500 m<sup>3</sup> Bluebird had met the required quality standards and production rates as of June 28, 2013. In

fact, even after June 28, 2013 and up to the time of the closing of the transaction on October 1, 2014, *no* batch of yellow met both the quality and rate requirements.

135. With respect to red pigments, the record was not much better. Of the seven different grades of red pigment made on the 500 m<sup>3</sup> Bluebird prior to June 28, 2013, five of them (consisting of 23 total batches) never met the required rate and quality standards. Two grades did, but they consisted of seven batches only of red pigment 217 or 218. In the case of red pigment 217, 29 total batches were run prior to June 28, 2013, the most of any grade. Of these, only six were of acceptable quality, and only four met the required production rate. Thus, of the 29 batches of red 217, only approximately 14% met the desired rates and qualities.

136. Nor could Rockwood claim that the Bluebird was getting better over time. In fact, the opposite is true. Of the seven out of 75 batches that met quality and rate standards, those batches were run either in the summer of 2010 (two batches) or the spring of 2012 (five batches). Thus, at the time of the June 28, 2013 site visit presentation—and, indeed, as of the time of the May 2013 management presentation—it had been more than one year since Rockwood had made a batch of pigment on the 500 m<sup>3</sup> reactor that had met both the rate and quality standards.

137. In fact, of the 75 total batches run prior to June 28, 2013, the last 29 of them—consisting of both red and yellow batches—had all failed to meet the desired rate when the quality standards were met (which itself occurred rarely).

138. As of the time it made representations to Huntsman in April, May, and June 2013, Rockwood thus had extensive data showing that the Bluebird was not reliably meeting the required rates in those rare instances when it was meeting the desired levels of quality. And

Rockwood also had extensive data showing that in the year prior to making its representations to Huntsman, the situation had not improved. If anything, the situation had gotten worse.

139. Rockwood disclosed none of the above facts to Huntsman. Instead, Rockwood falsely represented—and continued to represent throughout—that the Bluebird was “proven to scale” and had “demonstrated” an ability to produce “high quality red and yellow iron oxide pigments” at “high iron scrap dissolution rates” and on a “competitive basis.”

140. Nor did the situation improve prior to signing the SPA. Between the time of the June 28, 2013 Turin site visit presentation and the time the SPA was signed on September 17, 2013, Rockwood had run three more batches of pigment. All of these failed to meet rate and quality requirements. This too was not disclosed to Huntsman.

**ii. Turin Data Showed That the Bluebird Had Failed to Meet Expected Pigment Quality Levels As Of September 17, 2013**



141. As of September 17, 2013, when the SPA was signed, Rockwood had also made false and misleading statements about the Bluebird’s ability to meet pigment quality requirements.

142. Huntsman’s recent review of the Turin batch data that was not provided in due diligence demonstrates that Rockwood made material misstatements and omissions in describing the quality levels reached at Turin. At the June 28, 2013 site visit to Turin, Rockwood provided Huntsman with the following critical information on the performance of the Turin Bluebirds:



**Performances**

	Pilot plant	500 m <sup>3</sup>
<b>Pigments produced with the desired quality</b>	208, 212, 216, 218 3048, 1075	206, 208, 212, 216, 217, 218, 219 (217 and 219: new shades) 48, 3048, 1075, 49, 50, 61
<b>Agitation</b>	mechanical on external recirculation	mechanical on external recirculation
<b>Air flow rate</b>	~ 2 stoichiometry under the iron bed	2-2.5 stoichiometry under the iron bed
<b>Iron scrap</b>	~ 2 stoichiometry	2-3 stoichiometry

The critical data on which to focus is that depicted on the right side of the chart for the 500 m<sup>3</sup> reactor—the largest Bluebird that had been in operation and the one closest in scale to the 1000 m<sup>3</sup> Bluebirds being built in Augusta. Rockwood’s representations about the pigment quality achieved on the 500 m<sup>3</sup> reactor were false and misleading in numerous respects.

143. With respect to three grades of pigment—Red 208, Yellow 50, and Yellow 61—this June 28, 2013 “Performance” slide was outright false. As of June 28, 2013, Rockwood had not made Red 208, Yellow 50, or Yellow 61 to “the desired quality” on the 500 m<sup>3</sup> reactor in Turin. With respect to Red 208, Rockwood had run two batches, but both were of poor quality. With respect to Yellow 50, Rockwood had made only one batch and it failed to meet quality standards. With respect to Yellow 61, Rockwood as of June 28, 2013 had made two batches and neither were of satisfactory quality. Rockwood’s representations to the contrary were simply lies.

144. With respect to the remaining grades of pigment, Rockwood’s “Performances” slide was also false and misleading because Rockwood failed to disclose that most batches actually failed quality standards. Rockwood also failed to disclose certain idiosyncrasies about

the allegedly “successful” batches that made them unrepresentative of a normal production run and perpetuated the falsities.

145. In many cases, batches did not have reported quality data because they had been “sent to black,” meaning that the pigment had actually been used for black pigment instead of red or yellow. This was typically done for two reasons: (1) the pigment was of such an obviously low quality that it was useless for red or yellow; or (2) the point of running the batch was not to make red or yellow pigment in the first place, but instead to flush the reactor of scrap. These latter runs used up valuable reactor time and serve to confirm that the reactor had substantial difficulties producing quality red and yellow pigments without a cleaning.

146. Examining the pigments batch data as a whole, as of June 28, 2013, Rockwood had made 75 batches of pigment on the 500 m<sup>3</sup> reactor in Turin. Of these, only 16 batches met the desired standard for quality. Thus, Rockwood had achieved the requisite quality levels on approximately 21.3% of its batches. An examination of the results on *each* pigment grade demonstrates just how false and misleading Rockwood’s representations were.

147. Red 206: Rockwood’s June 28, 2013 site visit presentation represented that Rockwood had made Red 206 “with the desired quality.” What Rockwood failed to disclose was that, in fact, as of June 28, 2013, Rockwood had run *six* batches of Red 206 and *five* had failed to meet the Red 206 quality standard. With respect to the one batch that was of sufficient quality, batch 572, it was not representative of normal Bluebird production because the batch started in the Bluebird reactor with approximately 18,000 kilograms and ended with approximately 20,000 kilograms, having run for only 8.5 hours. By comparison, the Augusta process description states that the growth period for red iron oxides would be 80–120 hours. In other words, most of this

“quality” batch from batch 572 was not even made in the Bluebird reactor. For all of these reasons, Rockwood’s June 28, 2013 representations about Red 206 were false and misleading.

148. Red 208: Rockwood’s June 28, 2013 site visit presentation represented that Rockwood had made Red 208 “with the desired quality.” As indicated above, this statement was outright false. Rockwood in fact would not make any further batches of Red 208 prior to the closing of the transaction on October 1, 2014, and thus at no point made Red 208 with the desired quality.

149. Red 212: Rockwood’s June 28, 2013 site visit presentation represented that Rockwood had made Red 212 “with the desired quality.” What Rockwood failed to disclose was that, in fact, as of June 28, 2013, Rockwood had run *nine* batches of Red 212 and only *one* met the quality standard. With respect to the sole batch that met the quality standard, batch 543, the production rate was extremely low, approximately half of the intended rate for Augusta. Of all the batches of Red 212 made prior to June 28, 2013, batch 543 was also the batch with the smallest volume, meaning that most of the growth had occurred prior to the Bluebird in the seed reactor. This made it unrepresentative of normal production batches. For all of these reasons, Rockwood’s June 28, 2013 representations about Red 212 were false and misleading.

150. Red 216: Rockwood’s June 28, 2013 site visit presentation represented that Rockwood had made Red 216 “with the desired quality.” What Rockwood failed to disclose was that, in fact, as of June 28, 2013, Rockwood had run two batches of Red 216 and only one met the quality standard. The one batch that hit the anticipated quality level had an extremely low rate. For all of these reasons, Rockwood’s June 28, 2013 representations about Red 216 were false and misleading.

151. Red 217: Rockwood's June 28, 2013 site visit presentation represented that Rockwood had made Red 217 "with the desired quality." What Rockwood failed to disclose was that, in fact, as of June 28, 2013, Rockwood had run 29 batches of Red 217 and only *six* met the quality standard. Of these, only four managed to hit the required production rate. Rockwood's ability to produce quality Red 217 pigment also did not show an upward trajectory because the last six batches of Red 217 failed to meet the desired quality level. For all of these reasons, Rockwood's June 28, 2013 representations about Red 217 were false and misleading.

152. Red 218: Rockwood's June 28, 2013 site visit presentation represented that Rockwood had made Red 218 "with the desired quality." What Rockwood failed to disclose was that, in fact, as of June 28, 2013, Rockwood had run six batches of Red 218 and only four were of the proper quality. Rockwood's June 28, 2013 representations about Red 218 were thus false and misleading.

153. Red 219: Rockwood's June 28, 2013 site visit presentation represented that Rockwood had made Red 219 "with the desired quality." What Rockwood failed to disclose was that, in fact, as of June 28, 2013, Rockwood had run *four* batches of Red 219 and only *one* met the quality standard. The lone batch that did meet the desired quality level, batch 298, failed to meet the production rate requirements. For all of these reasons, Rockwood's June 28, 2013 representations about Red 218 were false and misleading.

154. Yellow 48: Rockwood's June 28, 2013 site visit presentation represented that Rockwood had made Yellow 48 "with the desired quality." What Rockwood failed to disclose was that, in fact, as of June 28, 2013, Rockwood had run *seven* batches of Yellow 48 and only *one* met the quality standard. The one batch that did hit quality, batch 386, was not representative of normal batches because it was made with a cleaned out reactor. In the Bluebird

process, pigment quality is vastly improved when the reactor is clean. Failing to disclose that the one supposedly successful batch meeting the Yellow 48 standard had been made with a clean reactor misrepresented its performance based on an unrealistic situation, given the infrequency with which reactors running in the real world are actually scheduled to be cleaned. In addition, batch 386 technically did not meet the specifications for yellow 48, but in fact overshot the specifications, demonstrating instability in the manufacturing process. For all of these reasons, Rockwood's June 28, 2013 representations about Yellow 48 were false and misleading.

155. Yellow 3048: Rockwood's June 28, 2013 site visit presentation represented that Rockwood had made Yellow 3048 "with the desired quality." Yellow 3048 is the same as Yellow 48, except that it is "micronized" at the end of the process. The results for Yellow 48 apply to Yellow 3048. Thus, Rockwood's June 28, 2013 representations about Yellow 3048 were false and misleading for the same reasons as Yellow 48.

156. Yellow 1075: Rockwood's June 28, 2013 site visit presentation represented that Rockwood had made Yellow 1075 "with the desired quality." In fact, it was only batch 386 that met the requisite quality level. Critically, batch 386 was the exact same batch that Rockwood had used to justify its representations about Yellows 48 and 3048, as noted above. *In other words, because batch 386 technically could be said to meet the Yellow 48 standard even though it had overshot the Yellow 48 specification, Rockwood misleadingly claimed it had made three different grades of yellow based on just one batch.* That one batch was also made in a completely clean reactor, an unrepresentative production scenario. For all of these reasons, Rockwood's June 28, 2013 representations about Yellow 1075 were false and misleading.

157. Yellow 49: Rockwood's June 28, 2013 site visit presentation represented that Rockwood had made Yellow 49 "with the desired quality." What Rockwood failed to disclose

was that, in fact, as of June 28, 2013, Rockwood had run *seven* batches of Yellow 49 and only *one* met the quality standard. That one batch, batch 385, did not meet the required production rate and also was made using a completely cleaned out reactor. For all of these reasons, Rockwood's June 28, 2013 representations about Yellow 49 were false and misleading.

158. Yellow 50: Rockwood's June 28, 2013 site visit presentation represented that Rockwood had made Yellow 50 "with the desired quality." As indicated above, this statement was outright false. Rockwood as of that time had made one batch of Yellow 50 and it had failed quality.

159. Yellow 61: Rockwood's June 28, 2013 site visit presentation represented that Rockwood had made Yellow 61 "with the desired quality." As indicated above, this statement was outright false. Rockwood as of that time had made two batches of Yellow 61 and both failed to hit the desired quality levels. Rockwood would in fact go on to attempt to make other batches of Yellow 61 prior to the closing of the transaction on October 1, 2014, but all other batches were also of insufficient quality.

160. In sum, Rockwood on June 28, 2013 represented that it had made thirteen different grades of red and yellow pigment "with the desired quality." But in fact, as to three of the grades, Rockwood had not made them to the desired quality at all. With respect to the other grades, Rockwood had only made the desired qualities rarely and failed to disclose that, as to numerous batches, the desired qualities had not been met and there was no trend in improvement. In addition, Rockwood failed to disclose that when a batch had met the desired quality, it often involved a situation unrepresentative of actual production.

161. Rockwood's June 28, 2013 "Performances" slide was also misleading because it failed to disclose that even if the various grades had in fact achieved the requisite quality

standards, in the vast majority of instances they had *not* been manufactured according to desired rates. In combination with prior representations about the Bluebird being capable of high rates of production, Rockwood's June 28, 2013 performance data was false and materially misleading because it failed to disclose that, in fact, desired rates had only been met on rare occasions.

162. The underlying data on the Bluebird reactors in Turin was available to Rockwood at the time of Rockwood's April, May, and June 2013 presentations to Huntsman. Rockwood senior leadership, including Sergi, knew or was aware of the actual Turin data on the Bluebird reactors. Sergi was Managing Director of Rockwood Color Pigments, oversaw operations at Rockwood's Turin, Italy plant and was the primary developer of the Bluebird technology.

163. Sergi and other Rockwood personnel knew that the Bluebirds had not regularly achieved the represented rates and qualities and had not demonstrated a successful scale-up from the 4 m<sup>3</sup> to the 500 m<sup>3</sup> Bluebird. Sergi and other Rockwood personnel further knew that the performance information presented to Huntsman on June 28, 2013 was false and misleading.

164. Notwithstanding their knowledge of the Bluebird's true performance, Rockwood and its senior executives knowingly misrepresented the capabilities of the Bluebird and fraudulently portrayed the Bluebird as meeting quality and rate standards. Rockwood failed to disclose that as of the spring and summer of 2013, it was aware that the Bluebirds in fact had experienced significant difficulty consistently meeting quality standards and had essentially no success in meeting desired production rates.

165. In the time period between the June 28, 2013 site visit presentation and the September 17, 2013 execution of the SPA, the Bluebird performance did not improve. During this time, Rockwood ran three batches on the 500 m<sup>3</sup> reactor in Turin and *none* met the desired quality levels. Rockwood also failed to disclose these test results to Huntsman.

166. Since uncovering these issues, Huntsman has talked with several former Rockwood employees who have informed Huntsman that they were shocked when Rockwood announced plans to build an Augusta facility premised on the Bluebird technology and to build a 1000 m<sup>3</sup> Bluebird in Turin. This was because the success of the 500 m<sup>3</sup> Bluebird reactor had not been demonstrated in Turin and instead had encountered a host of problems. Given this troubled history, these former Rockwood employees could not understand why Rockwood, led by defendant Ross and Sergi, would now commit to invest significantly in unproven Bluebird technology.

167. These former Rockwood employees raised their concerns at the time, but their views went unheeded. Instead, Rockwood pressed forward with its plans for Augusta and falsely represented to Huntsman that the Bluebird technology had been “proven” and “demonstrated.”

**I. Rockwood and Its Senior Executives Actively Concealed Whistleblower Revelations That the Bluebirds Were Not Working**

168. Huntsman has learned through its investigation that Rockwood’s fraud and deception was even worse than described above. Huntsman has learned that between the September 17, 2013 signing of the SPA and the October 1, 2014 closing of the Rockwood acquisition, Rockwood and its most senior executives became aware of even more damning information about the Bluebirds’ failure to operate as represented to Huntsman.

169. Instead of disclosing this additional information to Huntsman, Rockwood and its senior executives doubled down, suppressed the truth, and induced Huntsman to close the transaction under false and fraudulent pretenses.

**i. Sergi’s Resignation and the Initial Whistleblower Allegations About Unauthorized Irradiation in Turin**

170. In October 2013, Sergi, the Managing Director of the Turin site and the creator of the Bluebird technology, resigned. As Huntsman has now become aware, Sergi had a history of



wrongful behavior and ethical issues at Rockwood, including allowing the irradiation of certain pigments without proper authorizations, construction of buildings on the Turin site without proper governmental approvals, and secretly starting a new company while employed by Rockwood. He also was responsible for the accounting irregularities at Turin that Rockwood chose to disclose during the due diligence phase, which led to Sergi's separation from Rockwood.

171. In November 2013, following Sergi's departure, Rockwood quality control manager Christian Egger, a Turin employee, contacted defendant Ross to inform him about the unauthorized irradiation of certain pigments in Turin. According to Egger, Sergi had repeatedly promised to address this issue with more senior management but had failed to do so. Egger came forward once Sergi had resigned, concerned, among other things, that Rockwood had not told Huntsman the truth about the irradiation issues during due diligence.

172. After learning of Egger's disclosures about irradiation, Ross ordered an investigation of this issue in late 2013. Rockwood retained outside advisors to conduct an internal investigation of the irradiation allegations.

**ii. Turin Technologists Disclose That the Bluebirds Were Not Working**

173. During the course of the investigation into irradiation, the outside advisors to Rockwood sought to determine whether there were any other potential issues at the Turin plant. They traveled to Turin in early 2014 for meetings with Rockwood's chemists and engineers to find out more.

174. At this time, Turin chemist and process control manager Francesco Garetto came forward to disclose yet another issue that Sergi and Rockwood had suppressed: that the Bluebirds were not working properly.

175. Garetto had extensive experience with the Bluebirds, having worked under Sergi at the inception of the Bluebird project in 2007. By this time, Garetto had approximately seven years of direct experience working with the Bluebirds in Turin. He was intimately involved in operating the Bluebirds and evaluating their performance over the course of many years. Given his hands-on knowledge of the technology and the fact that he had aired his concerns, Garetto's revelations about the Bluebirds sent off shock waves within Rockwood.

176. Following Garetto's disclosures, Rockwood and its outside advisors promptly ordered a secret meeting in Turin with Garetto, Bluebird process engineer Andrea Villa, and Rockwood Pigments and Additives Vice President David Crabbe, among others. Like Garetto, Villa had many years of direct experience operating the Bluebird reactors in Turin. Neither Villa nor Garetto were involved in the negotiations with Huntsman or responsible for statements made to Huntsman in due diligence.

177. At the Turin meeting, which took place on February 4, 2014, Garetto and Villa walked the group through the Bluebird data and were asked to compare that data to the specific representations Rockwood had made to Huntsman. In particular, Garetto and Villa were asked to compare *actual* Bluebird data to the data on the slide about Bluebird performance used with Huntsman at the June 28, 2013 site visit. This was the site visit in which Rockwood claimed it had made quality pigments for various red and yellow grades.

178. At the February 4, 2014 meeting in Turin, the technicians' analysis of the data was sobering: the Bluebird in Turin had experienced significant issues producing quality red and yellow pigments at the expected production rates. Batch after batch had failed testing, contrary to Rockwood's representations to Huntsman that the Bluebird in Turin was "proven" and

“demonstrated.” The implications of the Turin meeting were obvious: Rockwood’s representations to Huntsman were false and misleading.

**iii. An Internal Investigation Report Confirms That the Bluebirds Were Not Working**

179. Following the meeting, Rockwood’s outside advisors memorialized the Turin meeting and their findings in a report. That report is damning, confirming that Rockwood and its senior executives lied to Huntsman and failed to disclose the truth about Bluebird and Augusta even after Rockwood’s engineers and chemists reiterated that the Bluebird was not working.

180. The outside advisors’ report, initially drafted on February 4, 2014, opened with the reason for the internal investigation, namely, that “various employees at Turin have made allegations concerning the ability of the Bluebird reactor to produce satisfactory product.” The advisors further explained that they had “sought to verify the allegations made by the employees through a review of the relevant quality records produced on the individual red and yellow batches in Turin.” This actual performance review referred to the advisors’ meeting with the Turin chemists and engineers to work through the data on the Bluebird 500 m<sup>3</sup> reactor.

181. The results, as set forth in the internal report, confirm the massive fraud perpetrated on Huntsman. The report discusses each of the pigment grades included on the June 28, 2013 site visit presentation slide, grades that Rockwood had told Huntsman it had manufactured to acceptable quality, and then examines those grades against the pigments data that Rockwood possessed as of June 28, 2013. As to most of the grades, the underlying data confirmed what Huntsman has alleged in this complaint—that Rockwood’s statements were false and misleading:

Pigment Grade	Internal Investigation Report Comments
206	"Six batches were produced. Of these, one ... was of good quality."
208	Only one batch was of "borderline quality" and the reactivity rate was "unacceptable."
212	"This is an important colour as it is one of those intended to be produced at [Augusta]." "Eight batches were produced," but only two were of "acceptable quality." The reactivity rate was "unacceptable."
216	Two batches were produced, one acceptable and the other "borderline." Rate, however, was "unacceptable."
217	"This is an important colour as it is intended to be produced at [Augusta]. Twenty four batches were produced, of which two were of acceptable quality."
219	"Four batches were produced, of which one batch ... was of acceptable quality."
48	"Only five batches have been produced of finished product. Of these one was of acceptable quality," but it was "made after the reactor had been cleaned."
3048	"This is made by extension to colour 48. The 'results' for it are therefore dependent on those for colour 48."
1075	One batch of the 48 yellow pigment was "of acceptable quality" when evaluated against the 1075 yellow pigment quality standards, but this one batch "was made after the reactor had been cleaned."
49	"This colour has not been manufactured."

These results showed that Rockwood had failed to disclose extensive evidence that Rockwood had been unable consistently to achieve the desired qualities for red and yellow pigments.

182. Rockwood's advisors recognized the implications of these test results and expressed significant concern about the qualities of the reds and yellows that had been produced at Turin. With respect to the reds, the internal report concluded, "of the two colours which will be the focus of production at [Augusta], 212 and 217, for 212 the reactivity was unacceptable and only two batches were acceptable and for 217, only two batches out of 24 were acceptable."

183. Similarly with respect to the yellows, the report concluded that "[w]hat is of note ... is that the reactor has only produced one batch of yellow of satisfactory finished product at the standard required in [Augusta], which as it is for the US market is higher than the standard

in Turin. Only the first batch of 48 through a cleaned Turin reactor met the standard expected for the US market. This adds to the uncertainty around the [Augusta] project.” Indeed, the report found, “[t]he princip[al] issue” at Turin “has been the lack of ability to meet the standard in Turin for colour 48, let alone the higher US standard for 1075, which will be the princip[al] ‘yellow’ in the US.”

184. In addition to these quality issues for both red and yellow pigments, the report found that “[t]he other issue in Turin has been the rate of reaction.” The report emphasized what Huntsman has alleged is the significance of the rate issue: “[i]f the rate is too low, it adds to the direct cost of production and restricts the amount of product which can be produced as each batch takes longer in the reactor.” The internal report found that the Turin reaction rates were not satisfactory, and that “[f]or some colours the Turin reaction rates are lower than expected for efficient use of the 1000m<sup>3</sup> reactors.”

185. That Rockwood was experiencing difficulty producing yellows at an appropriate rate was particularly significant, because it is more difficult, using the Penniman-Zoph process, to produce red pigments at a high rate. If Rockwood could not meet rates on yellows, it certainly could not do so on reds.

186. In some instances, the internal investigation report did claim that the reaction rates had been “acceptable,” but those statements are not accurate because to arrive at those determinations the report took an average of the production rates of all batches for each grade, regardless of whether the batch met quality. If a batch does not meet the quality levels, it is irrelevant how quickly it was made. Accordingly, the reaction rates for bad batches should not have been considered.

187. The report's "averaging" technique also factored in batches that had been made for black in order to quickly clean out the reactor. Inclusion of these batches brought the "average" up, but again included batches that were not commercially acceptable in terms of red or yellow quality. When considering only those batches that achieved the desired quality, as set forth above, only seven of the 75 total batches made as of June 28, 2013 met both rate and quality requirements. No grade was consistently produced at the required quality or rate.

188. Whereas Rockwood had told Huntsman that the Bluebirds were "proven" and would be a "game changer," Rockwood's advisors in their investigation report to Rockwood's senior executives recognized that just the opposite was true: "In summary, it appears there have been significant issues in Turin with the Bluebird reactors. ... It is also evident that, at present, these problems remain unresolved."

189. The report concluded that Rockwood could not make reds with "consistency" and that "at present there is no clear line of sight to resolving the 'red' issues." In the case of yellows, "the track record is less clearcut," and while efforts were underway to rectify the situation, the Bluebird faces "current problems" and "issues" making yellow pigment. When it came to "reactivity issues," i.e., the rates, the report conceded once again that "there is no clean line of sight" for resolving them.

**iv. The Internal Investigation Report Confirms That Rockwood Made Misrepresentations to Huntsman About Bluebird**

190. The internal report commissioned at Rockwood's request makes obvious that Rockwood's representations to Huntsman about Bluebird were not accurate. But no connecting of the dots is necessary because the internal report recognized this on its own: "We will report separately on the accuracy of the presentations to ... Huntsman on, inter alia, the Bluebird reactor. In summary, we are concerned that they painted 'too rosy' a picture of Turin, [and] did

not fully explain the issues encountered and the lack of success at that time. Since those presentations have been made, it is not clear the position has materially improved or worsened.”

191. The outside advisors’ recognition that Rockwood’s representations to Huntsman were “too rosy” was, if anything, a significant understatement. Their report chronicled Rockwood’s failures on virtually every grade of pigment that Rockwood had told Huntsman it was making to desired qualities. And it further revealed Rockwood had misled Huntsman about the Bluebird’s ability to make quality yellow and red pigments at acceptable rates. Rockwood’s representations to Huntsman were not just “too rosy”; they were materially false and misleading.

192. Notwithstanding the materiality of these issues, and the fact that Rockwood outside advisors were in agreement with Rockwood technicians that the Bluebird had significant problems, Rockwood disclosed none of this to Huntsman. Rockwood provided no information to Huntsman about the problems that the Bluebird was encountering, nor did it disclose that Turin employees had come forward to report these issues. Rockwood likewise did not disclose to Huntsman what its outside advisors had concluded.

193. This non-disclosure was not for lack of obligation. Under SPA section 4.27(f), Rockwood had the obligation, after signing and prior to closing, to “give reasonably prompt notice in writing to [Huntsman] of any event, change, effect, circumstance or development of which it has Knowledge, or of which it receives notice that ... raises reasonable concerns whether the Augusta Facility will be able to achieve successful completion of the Performance Test.”

194. Under SPA section 4.7(a)(i)(B), Rockwood had the further obligation prior to closing to give “notice in writing to [Huntsman] of any event, change, effect, circumstance or development of which it has Knowledge, or of which it receives notice that ... has or could

reasonably be expected to have, individually or in the aggregate, taken together with any other event, change, effect, circumstance or development, a Material Adverse Effect” on the transaction.

195. Finally, pursuant to section 4.7(a)(i)(D) of the SPA, Rockwood was obligated, prior to closing, to “give prompt notice in writing to [Huntsman] of any event, change, effect, circumstance or development of which it has Knowledge, or of which it receives notice, that ... has resulted, or could reasonably be expected to result, in the failure to satisfy any one or more of the conditions specified in Article V.”

196. Rockwood violated these provisions by failing to disclose to Huntsman prior to closing the fact of the Turin employees’ whistleblower disclosures, Rockwood’s internal investigation, and the numerous problems with the Bluebird technology.

**v. Rockwood’s Most Senior Executives Hold an Emergency Meeting in New Jersey on February 18, 2014—And Decide to Conceal Information from Huntsman**

197. Rather than abide by SPA disclosure obligations, Rockwood’s senior executives doubled down and kept the information secret. Rockwood senior executives, including defendants Seifi Ghasemi, Andrew Ross, Thomas Riordan, and Michael Valente, were aware of the Rockwood internal investigation into the Bluebirds and what the results of that investigation had shown. They convened an urgent meeting at Rockwood’s Princeton, New Jersey headquarters on February 18, 2014, to discuss the situation. Attendees included defendants Ghasemi, Ross, Riordan, and Valente, among others.

198. Former Rockwood employees have informed Huntsman that the entire purpose of this secret February 18, 2014 meeting was to discuss the recent revelations about the Bluebird that had come out of Turin. Former Rockwood employees have told Huntsman that the consensus at the February 18, 2014 meeting was that the Bluebirds were not working.



199. In addition, while the internal investigation report written in early February 2014 only commented on the data that existed as of the June 28, 2013 Turin site visit, Rockwood had generated additional data on the 500 m<sup>3</sup> Bluebird reactor between June 28, 2013 and the February 18, 2014 meeting. This data only confirmed the extent of the problem.

200. Specifically, between June 28, 2013 and February 18, 2014, Rockwood had run another twelve batches on the 500 m<sup>3</sup> Bluebird in Turin. Of those, only *two* quality batches had been produced and none had met the required production rate. Combining these twelve batches with the previous 75 batches that Rockwood had run prior to June 28, 2013, only 18 out of 87 batches had met the desired qualities and, of those, only seven had met the production rate. Thus, as of the time of the Princeton meeting on February 18, 2014, only 8% of the batches run on the 500 m<sup>3</sup> Bluebird had met both the quality and rate requirements.

201. Notwithstanding this unambiguous data attesting to the failure of the Bluebird technology, the Rockwood executives at the February 18, 2014 meeting decided to continue their fraudulent scheme and not disclose to Huntsman the problems with the Bluebird and Augusta. Instead, Rockwood's senior executives, including defendant Ghasemi, ordered David Crabbe to try to get to the bottom of the situation and determine if the Bluebirds could be made to perform satisfactorily.

202. Even worse, Rockwood lulled Huntsman into a false sense of security by disclosing the irradiation issue and certain financial issues it had uncovered at Turin, while failing to disclose the much bigger problem that the Bluebirds were not working. In fact, on April 3, 2014, when defendant Valente called Huntsman to update it on the internal investigation of the environmental and financial issues, he told Huntsman that Rockwood had conducted a

large investigation to determine if there were any other issues at Turin, and remarkably (and falsely) represented that there was “nothing else” and that Rockwood felt “pretty good.”

203. Nothing, however, could change the representations that Rockwood had already made to Huntsman, which were materially false and misleading. But even so, in the months following the February 18, 2014 Princeton meeting and April 3, 2014 phone call to Huntsman, no further evidence was obtained showing that the Bluebirds could reliably meet the desired rates and qualities. Between February 18, 2014 and May 30, 2014, Rockwood ran additional trials but did so only on yellow grades. Of the seven batches of yellow that were run during this time, only *four* hit the requisite quality level and *none* of them met the required production rates. These results were not disclosed to Huntsman.

204. Between May 30, 2014 and October 1, 2014, when the acquisition closed, Rockwood ran four additional batches of yellow pigments 48 and 49. This time, no batch met the quality standards. None of these test results were disclosed to Huntsman either.

205. All told, by the time the transaction closed on October 1, 2014, Rockwood had run 98 batches of pigment on the 500 m<sup>3</sup> Bluebird. Of these, only 22 batches, less than 25%, were of acceptable quality. Only seven of those 22 batches, or approximately 7% of the total, met both quality and rate requirements. Once again, none of this was disclosed to Huntsman.

206. To make matters worse, Bluebird performance was on a downward trajectory and Rockwood knew it. The only batches that had met both quality and rate requirements had been run in the summer of 2010 (two batches) and the spring of 2012 (five batches). By the time the acquisition closed on October 1, 2014, it had been more than two years since the Bluebird had produced pigment that met both the quality and rate requirements. With respect to yellows, the

required combination of quality and rates had never been achieved. None of this was disclosed to Huntsman.

207. In short, as of October 1, 2014, nothing about the Bluebird was “proven” any more than it had been in 2013, when Rockwood falsely represented to Huntsman that it had “demonstrated” reactor technology that simply needed to be built in Augusta in order to enjoy the success it had experienced in Turin.

208. At no time prior to the October 1, 2014 closing of the Huntsman-Rockwood transaction—or at any time—did Rockwood inform Huntsman that the Bluebirds had not and could not reliably meet desired quality standards and production rates, that numerous batches had repeatedly failed these requirements, and that the Performance Test could never be met.

209. Notwithstanding the overwhelming evidence that Bluebird technology had failed, Rockwood continued to scheme to make it appear as though it was being forthcoming in due diligence. After the SPA was signed, Rockwood disclosed to Huntsman that it had discovered certain accounting irregularities at Turin and that certain pigments in Turin were irradiated without proper permission. At the same time, however, Rockwood concealed the more important issue that it had been investigating for months: that the Bluebirds were not working and that Rockwood knew it.

210. To date, the Bluebirds at Augusta have not passed the Performance Test, nor will they ever be able to given the inherent limitations of the Bluebird technology concealed by Rockwood. Rockwood engaged in fraud and breach of contract in selling Huntsman an Augusta facility that could never achieve the contractually-promised Performance Test.

**V.**  
**CLAIMS FOR RELIEF**  
**COUNT I**  
**Fraudulent Misrepresentation**  
**(All Defendants)**

211. Huntsman re-alleges and incorporates each and every allegation contained in the paragraphs above, as if fully set forth herein.

212. Prior to entering into the SPA on September 17, 2013, defendants made numerous material representations to Huntsman about the purported proven success and functionality of the Bluebird technology. Among other things, defendants made particularized statements about the pigment quality and production rate that had been and could be achieved using the Bluebirds, including specific data on Bluebird performance.

213. Rockwood's representations to Huntsman about the Bluebirds and the Augusta facility were false and misleading, and Rockwood knew them to be false and misleading at the time Rockwood made them. Rockwood and its senior executives knew, both prior to signing the SPA and after closing, that the Bluebirds were not working and would not work as claimed, and thus that Augusta could not meet the Performance Test or provide the promised cost savings.

214. Rockwood made these false representations and material omissions to Huntsman with the intent to defraud Huntsman.

215. Huntsman justifiably relied on Rockwood's representations about the Bluebirds and the Augusta facility when entering into the SPA, closing the transaction, and negotiating a final agreed-upon purchase price.

216. As a result of defendants' knowing and false and misleading representations about the Bluebirds and the Augusta facility, Huntsman has suffered damages.

217. Accordingly, defendants are liable to Huntsman for fraudulent misrepresentation.

**COUNT II**  
**Fraudulent Inducement**

**(All Defendants)**

218. Huntsman re-alleges and incorporates each and every allegation contained in the paragraphs above, as if fully set forth herein.

219. Prior to entering into the SPA on September 17, 2013, defendants made numerous material representations to Huntsman about the purported proven success and functionality of the Bluebird technology. Among other things, defendants made particularized statements about the pigment quality and production rate that had been and could be achieved using the Bluebirds, including specific data on Bluebird performance.

220. Rockwood's representations to Huntsman about the Bluebirds and the Augusta facility were false and misleading, and Rockwood knew them to be false and misleading at the time Rockwood made them. Rockwood and its senior executives knew, both prior to signing the SPA and after closing, that the Bluebirds were not working and would not work as claimed, and thus that Augusta could not meet the Performance Test or provide the promised cost savings.

221. Rockwood made these misrepresentations and material omissions with the intent to defraud Huntsman and induce Huntsman to sign the SPA and close the transaction.

222. Huntsman justifiably relied on Rockwood's representations about the Bluebirds and the Augusta facility when entering into the SPA, closing the transaction, and negotiating a final agreed-upon purchase price.

223. As a result of defendants' false and misleading representations, Huntsman has suffered damages.

224. Defendants induced Huntsman to enter the SPA and also separately induced Huntsman to enter each of the three Amendments to the SPA, which constitute separate

fraudulent inducements by defendants. In each of the three Amendments, defendants reaffirmed the representations and warranties in the SPA.

225. By reaffirming their representations, warranties, and covenants, while failing to disclose the numerous problems with Bluebird and Augusta of which they were aware, defendants fraudulently induced Huntsman to enter each of the three Amendments to the SPA.

226. Accordingly, defendants are liable to Huntsman for fraudulent inducement.

**COUNT III**  
**Fraudulent Concealment**

**(All Defendants)**

227. Huntsman re-alleges and incorporates each and every allegation contained in the paragraphs above, as if fully set forth herein.

228. Prior to entering into the SPA on September 17, 2013, defendants made numerous material representations to Huntsman about the purported proven success and functionality of the Bluebird technology. Among other things, defendants made particularized statements about the pigment quality and production rate that had been and could be achieved using the Bluebirds, including specific data on Bluebird performance.

229. Defendants' representations to Huntsman about the Bluebirds and the Augusta facility were false and misleading, and defendants knew them to be false and misleading at the time Rockwood made them. Defendants and its senior executives knew, both prior to signing the SPA and after closing, that the Bluebirds were not working and would not work as claimed, and thus that Augusta could not meet the Performance Test or provide the promised cost savings.

230. Defendants failed to disclose and actively concealed material information showing that its representations about Bluebird and Augusta were false and misleading.

Defendants failed to disclose and actively concealed that the Bluebirds were not achieving the pigment qualities and production rates that defendants had represented could be achieved.

231. Defendants likewise failed to disclose that Turin technologists had come forward to make clear to defendants that the Bluebirds were not working, and that an internal investigation report commissioned by defendants reached the same conclusion.

232. All of the withheld information, individually and in combination, was material, because the focus of Huntsman's acquisition of Rockwood's color pigments business was the Augusta site and Bluebird technology. Had defendants disclosed the withheld information showing the problems with Bluebird and Augusta, Huntsman would not have entered the SPA or closed the deal.

233. Rockwood withheld material information about the failures of Bluebird and Augusta with the intent to defraud Huntsman. Rockwood actively concealed information and data about Bluebird, providing Huntsman with false and misleading representations. Rockwood knew that if Huntsman learned that a core component of the acquisition was not viable, then Huntsman would not have entered into the SPA or closed the deal.

234. Rockwood had a duty to disclose the actual state of the Bluebird technology and the internal investigation and subsequent meetings among Rockwood executives. Huntsman had no other way of learning of the critical information because it was in Rockwood's exclusive possession and Rockwood actively concealed it.

235. In each Amendment, defendants reaffirmed the representations and warranties in the SPA. Rockwood thus had a further duty to disclose the actual state of the Bluebird technology in light of the three Amendments to the SPA.

236. Huntsman justifiably relied on Rockwood's representations about the Bluebirds and the Augusta facility when entering into the SPA, closing the transaction, and negotiating a final agreed-upon purchase price.

237. As a result of defendants' false and misleading representations, Huntsman has suffered damages.

238. Accordingly, defendants are liable to Huntsman for fraudulent misrepresentation.

#### COUNT IV

#### **Breach of Contract: Breach of SPA Section 2.6(a)(ii) and Related Provisions**

#### **(as to defendants Albemarle Corporation, Rockwood Specialties Group, Inc., and Rockwood Holdings, Inc.)**

239. Huntsman re-alleges and incorporates each and every allegation contained in the paragraphs above, as if fully set forth herein.

240. Huntsman performed under the terms of the SPA without breach. At the closing of the acquisition, on October 1, 2014, Huntsman delivered the agreed-upon purchase price of approximately \$1.1 billion. Between signing and closing, and since the closing, Huntsman has complied with the terms of the SPA, including making significant investments in attempting to get the Augusta facility to pass the Performance Test.

241. Under Section 2.6(a)(ii) of the SPA, Rockwood represented and warranted that, "[s]ince the Balance Sheet Date to the date of [the signing of the SPA], . . . (ii) there has not been any change, event, occurrence, effect, circumstance, or development that has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect."

242. Under Section 2.6(a)(ii) of the SPA, Rockwood represented and warranted that there had not been or could not reasonably be expected to be an event or circumstance relating to the Bluebird technology or Augusta that could have a Material Adverse Effect on the transaction.



243. Defendants breached Section 2.6(a)(ii) because Rockwood and its senior executives knew that Bluebird had performance problems and knew prior to entering the SPA that the Bluebirds could not meet the Performance Test. The inability of the Bluebirds to perform constitutes a Material Adverse Effect.

244. Given the centrality of the Bluebirds and the Augusta facility to the SPA, Huntsman would not have entered the SPA if Rockwood had disclosed that the Bluebirds could not meet represented qualities and rates and could not meet the Performance Test.

245. Defendants also breached Sections 5.1(c) and 5.8 of the SPA insofar as Rockwood certified that its representation and warranty with respect to Section 2.6(a)(ii) was true and correct and that Rockwood had satisfied Section 2.6(a)(ii) in all respects, with the same effect as though made at and as of the closing date.

246. By breaching Sections 2.6(a)(ii), 5.1(c), and 5.8 of the SPA, defendants also committed separate breaches of Amendment Nos. 1, 2, and 3. In each of those Amendments, defendants reaffirmed the representations and warranties in the SPA. Defendants breached each of the three Amendments through their breaches of SPA Sections 2.6(a)(ii), 5.1(c), and 5.8.

247. Defendants' breaches have caused damage to Huntsman. Had Huntsman known of the underlying data and deficiencies regarding the Bluebirds, Huntsman would not have entered into the SPA. As a result, Huntsman has suffered significant damages.

#### **COUNT V**

#### **Breach of Contract: Breach of SPA Section 4.7(a)(i) and Related Provisions**

#### **(as to defendants Albemarle Corporation, Rockwood Specialties Group, Inc., and Rockwood Holdings, Inc.)**

248. Huntsman re-alleges and incorporates each and every allegation contained in the paragraphs above, as if fully set forth herein.

249. As alleged above, Huntsman performed under the terms of the SPA without breach.

250. Under Section 4.7(a)(i)(B) of the SPA, Rockwood covenanted that “[b]etween the date of this Agreement and the Closing, (i) [Rockwood Specialties] will give prompt notice in writing to [Huntsman] of any event, change, effect, circumstance or development of which it has Knowledge, or of which it receives notice, that . . . (B) has had or could reasonably be expected to have, individually or in the aggregate, taken together with any other event, change, effect, circumstance or development, a Material Adverse Effect.”

251. Moreover, pursuant to SPA Section 4.7(a)(i)(D), Rockwood covenanted that “[b]etween the date of this Agreement and the Closing, (i) [Rockwood Specialties] will give prompt notice in writing to [Huntsman] of any event, change, effect, circumstance or development of which it has Knowledge, or of which it receives notice, that . . . (D) has resulted, or could reasonably be expected to result, in the failure to satisfy any one or more of the conditions specified in Article V.”

252. Defendants breached Section 4.7(a)(i) because Rockwood and its senior executives knew that Bluebird had performance problems and knew prior to entering the SPA that the Bluebirds could not meet the Performance Test. The inability of the Bluebirds to perform constituted not only a Material Adverse Effect but also a failure to satisfy the conditions specified in SPA Article V.

253. Rockwood and its senior executives further breached Section 4.7(a)(i) of the SPA because between the time of the signing of the SPA and the closing, Rockwood and its senior executives received additional information that the Bluebirds were not working. As alleged above, Rockwood and its senior executives were made aware of whistleblower allegations from

technologists in Turin and commissioned an internal investigation resulting in a report that concluded that the Bluebirds were not working. Rockwood breached Section 4.7(a)(i) by disclosing none of this to Huntsman.

254. Given the centrality of the Bluebirds and the Augusta facility to the SPA, Huntsman would not have entered the SPA if Rockwood had disclosed that the Bluebirds could not meet represented qualities and rates and could not meet the Performance Test.

255. By breaching Section 4.7(a)(i) of the SPA, defendants also breached Sections 5.1(c) and 5.8 of the SPA insofar as Rockwood certified that it had “complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Parent at or prior to Closing.”

256. By breaching Sections 4.7(a)(i), 5.1(c), and 5.8 of the SPA, defendants also committed separate breaches of Amendment Nos. 1, 2, and 3. In each of those Amendments, defendants reaffirmed the representations and warranties in the SPA. Defendants breached each of the three Amendments through their breaches of SPA Sections 4.7(a)(i), 5.1(c), and 5.8.

257. Defendants’ breaches have caused damage to Huntsman. Had Huntsman known of the underlying data and deficiencies regarding the Bluebirds, Huntsman would not have entered into the SPA. As a result, Huntsman has suffered significant damages.

#### **COUNT VI**

#### **Breach of Contract: Breach of SPA Section 4.27(f) and Related Provisions**

#### **(as to defendants Albemarle Corporation, Rockwood Specialties Group, Inc., and Rockwood Holdings, Inc.)**

258. Huntsman re-alleges and incorporates each and every allegation contained in the paragraphs above, as if fully set forth herein.

259. As alleged above, Huntsman performed under the terms of the SPA without breach.

260. Rockwood covenanted, pursuant to SPA section 4.27(f), that it “shall give reasonably prompt notice to [Huntsman] of any event, change, effect, circumstance, or development of which it has Knowledge, or of which it receives notice, that . . . (ii) raises reasonable concerns about whether the Augusta Facility will be able to achieve successful completion of the Performance Test.”

261. Defendants had knowledge that raised “reasonable concerns” regarding the ability of the Augusta facility to successfully complete the Performance Test. Prior to signing the SPA, defendants had knowledge raising such reasonable concerns because they possessed data on the Bluebirds from Turin showing that Rockwood’s representations to Huntsman had been false and misleading. Following the signing of the SPA, Rockwood gained even more knowledge through whistleblower disclosures from technologists in Turin. Defendants breached SPA Section 4.27(f) by disclosing none of this knowledge to Huntsman.

262. By breaching Section 4.27(f) of the SPA, defendants also committed separate breaches of Amendment Nos. 1, 2, and 3. In each of those Amendments, defendants reaffirmed the representations and warranties in the SPA. Defendants breached each of the three Amendments through their breaches of Section 4.27(f).

263. Defendants’ breaches have caused damage to Huntsman. Had Huntsman known of the underlying data and deficiencies regarding the Bluebirds, Huntsman would not have entered into the SPA. As a result, Huntsman has suffered significant damages.

**COUNT VII****Breach of Contract: Breach of Covenant to Provide Augusta Facility That Could Meet the Performance Test****(as to defendants Albemarle Corporation, Rockwood Specialties Group, Inc., and Rockwood Holdings, Inc.)**

264. Huntsman re-alleges and incorporates each and every allegation contained in the paragraphs above, as if fully set forth herein.

265. As alleged above, Huntsman performed under the terms of the SPA without breach.

266. Under the SPA, Rockwood covenanted that the Augusta facility would be able to meet certain performance requirements for pigment production, in terms of pigment quality, rate of production, and volume of production. These various performance requirements were embodied in a series of tests referred to in the SPA as the Performance Test. Successful completion of the Performance Test is an inherent covenant under the the SPA, with Rockwood guaranteeing that the Performance Test could in fact be met using the Bluebird technology.

267. Prior to signing the SPA, defendants possessed data on the Bluebirds from Turin showing that Rockwood's representations to Huntsman had been false and misleading, and thus that Augusta could not meet the Performance Test. Following the signing of the SPA, Rockwood gained even more knowledge that the Performance Test could not be met through whistleblower disclosures from technologists in Turin. Based on this information, Rockwood and its senior executives knew that the Performance Test could not be met at Augusta.

268. Defendants breached their covenant to furnish an Augusta facility capable of meeting the Performance Test because despite Huntsman's significant efforts (including those efforts following consultation with defendants), the Bluebirds at Augusta cannot achieve the Performance Test.

269. By breaching its covenant to provide an Augusta facility that could meet the Performance Test, defendants also committed separate breaches of Amendment Nos. 1, 2, and 3. In each of those Amendments, defendants reaffirmed the representations and warranties in the SPA. Defendants breached each of the three Amendments through their failure to provide an Augusta facility that was capable of meeting the Performance Test.

270. Defendants' breaches have caused damage to Huntsman. Had defendants disclosed that the Performance Test could not be met, Huntsman would not have entered into the SPA. As a result, Huntsman has suffered significant damages.

**COUNT VIII**  
**Negligent Misrepresentation**

**(All Defendants)**

271. Huntsman re-alleges and incorporates each and every allegation contained in the paragraphs above, as if fully set forth herein.

272. Defendants had a special relationship with Huntsman in that defendants had exclusive knowledge of the Bluebird technology and Augusta plant. Defendants had developed the Bluebird technology and the Augusta site on which it was based, and only shared limited information about Bluebirds and Augusta, citing their proprietary nature.

273. As a result of this special relationship, defendants had a duty to provide true and accurate information to Huntsman about Bluebird and Augusta.

274. Prior to entering into the SPA on September 17, 2013, defendants made numerous material representations to Huntsman about the purported proven success and functionality of the Bluebird technology. Among other things, defendants made particularized statements about the pigment quality and production rate that had been and could be achieved using the Bluebirds, including specific data on Bluebird performance.

275. Defendants' representations to Huntsman about the Bluebirds and the Augusta facility were false and misleading, and defendants knew them to be false and misleading at the time Rockwood made them. Defendants and its senior executives knew, both prior to signing the SPA and after closing, that the Bluebirds were not working and would not work as claimed, and thus that Augusta could not meet the Performance Test or provide the promised cost savings.

276. Among other things, defendants failed to disclose and actively concealed that the Bluebird was repeatedly failing to meet the pigment qualities and production rates that defendants had represented could be achieved. Defendants further failed to disclose and actively concealed that as a result of the Bluebirds' poor performance, Augusta could not meet the Performance Test. Defendants also failed to disclose that Turin technologists had come forward to make clear to defendants that the Bluebirds were not working.

277. Huntsman justifiably relied on Rockwood's representations about the Bluebirds and the Augusta facility when entering into the SPA and when closing the transaction and negotiating a final agreed-upon purchase price.

278. As a result of defendants' false and misleading representations about the Bluebirds and the Augusta facility, Huntsman has suffered damages.

279. Accordingly, defendants are liable to Huntsman for negligent misrepresentation.

**COUNT IX**  
**Unjust Enrichment**

**(All Defendants)**

280. Huntsman re-alleges and incorporates each and every allegation contained in the paragraphs above, as if fully set forth herein.

281. Pursuant to the terms of the SPA and the Amendments, Rockwood received approximately \$1.1 billion from Huntsman in exchange for all of Rockwood Specialties' stock shares, including ownership of the Augusta facility and Bluebird technology therein.

282. Prior to entering into the SPA on September 17, 2013, defendants made numerous material representations to Huntsman about the purported proven success and functionality of the Bluebird technology. Among other things, defendants made particularized statements about the pigment quality and production rate that had been and could be achieved using the Bluebirds, including specific data on Bluebird performance.

283. Defendants' representations to Huntsman about the Bluebirds and the Augusta facility were false and misleading, and defendants knew them to be false and misleading at the time Rockwood made them. Defendants and its senior executives knew, both prior to signing the SPA and after closing, that the Bluebirds were not working and would not work as claimed, and thus that Augusta could not meet the Performance Test or provide the promised cost savings.

284. Defendants failed to disclose and actively concealed that the Bluebird repeatedly failed to achieve the pigment qualities and production rates that defendants had represented could be achieved. Defendants further failed to disclose and actively concealed that as a result of the Bluebirds' poor performance, Augusta could not meet the Performance Test. Defendants also failed to disclose that Turin technologists had come forward to make clear to defendants that the Bluebirds were not working.

285. Defendants were enriched by Huntsman in that, as a result of defendants' material misrepresentations and omissions, Huntsman entered the SPA and paid defendants approximately \$1.1 billion. Huntsman thus conferred a benefit upon defendants.



286. Under these circumstances, it would be inequitable for defendants to profit from their wrongful conduct.

287. Accordingly, defendants are liable to Huntsman for unjust enrichment.

**COUNT X**  
**Money Had And Received**

**(All Defendants)**

288. Huntsman re-alleges and incorporates each and every allegation contained in the paragraphs above, as if fully set forth herein.

289. Pursuant to the terms of the SPA and the Amendments, Rockwood received approximately \$1.1 billion from Huntsman in exchange for all of Rockwood Specialties' stock shares, including ownership of the Augusta facility and Bluebird technology therein.

290. Prior to entering into the SPA on September 17, 2013, defendants made numerous material representations to Huntsman about the purported proven success and functionality of the Bluebird technology. Among other things, defendants made particularized statements about the pigment quality and production rate that had been and could be achieved using the Bluebirds, including specific data on Bluebird performance.

291. Defendants' representations to Huntsman about the Bluebirds and the Augusta facility were false and misleading, and defendants knew them to be false and misleading at the time Rockwood made them. Defendants and its senior executives knew, both prior to signing the SPA and after closing, that the Bluebirds were not working and would not work as claimed, and thus that Augusta could not meet the Performance Test or provide the promised cost savings.

292. Defendants failed to disclose and actively concealed that the Bluebird had repeatedly failed to achieve the pigment qualities and production rates that defendants had represented could be achieved. Defendants further failed to disclose and actively concealed that

as a result of the Bluebirds' poor performance, Augusta could not meet the Performance Test. Defendants further failed to disclose that Turin technologists had come forward to make clear to defendants that the Bluebirds were not working.

293. Defendants received money from Huntsman and benefited thereby. Defendants profited from their misrepresentations and material omissions in that, as a result of those misrepresentations and omissions, Huntsman entered into the SPA. It is contrary to principles of equity and good conscience to permit defendants to retain what is sought to be recovered.

294. Accordingly, defendants are liable to Huntsman for money had and received.

**COUNT XI**  
**Declaratory Judgment**

**(All Defendants)**

295. Huntsman re-alleges and incorporates each and every allegation contained in the paragraphs above, as if fully set forth herein.

296. Huntsman is entitled under C.P.L.R. § 3001 to a declaratory judgment having the effect of a final judgment as to the rights and legal relations of the parties to this controversy.

297. The Court should find and declare that defendants made material misrepresentations and omissions regarding Bluebird and the Augusta facility, and thereby defrauded Huntsman, and that defendants breached various provisions of the SPA and the Amendments thereto by failing to disclose material information showing the problems with the Bluebird technology and Augusta.

**PRAYER FOR RELIEF**

WHEREFORE, Huntsman prays that this Court enter judgment in its favor on each and every Claim for Relief and award to Huntsman relief, including, but not limited to, the following:

- a. Damages adequate to compensate Huntsman for defendants' unlawful conduct in an amount that exceeds \$500,000 and that will be proven at trial;
- b. Punitive damages to punish and deter defendants, and each of them, in an amount that will be proven at trial;
- c. Any other damages available at law or in equity, including, but not limited to, expectation damages, consequential damages, and restitution, in amounts that will be proven at trial;
- d. Rescission and/or unwinding of the SPA, in order to restore the parties to the status quo ante, or, to the extent that rescission is not feasible, rescissory damages in an amount that will be proven at trial. The parties' contract is subject to rescission because Huntsman was fraudulently induced to enter into the agreement, and because Rockwood's material breach of the agreement frustrated its essential purpose. Huntsman timely seeks rescission, having recently learned of Rockwood's fraud. No remedy at law is adequate to make Huntsman whole;
- e. Pre-judgment and post-judgment interest, attorneys' fees, and costs associated with bringing this action; and
- f. Any other relief that the Court may deem just and appropriate.

**DEMAND FOR JURY TRIAL**

Pursuant to section 4102 of the New York Civil Practice Law and Rules, Huntsman demands a trial by jury in this action of all issues triable by jury.

Dated: February 6, 2017  
New York, New York

By:  /s/ Peter A. Bellacosa

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