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CLERK OF THE SUPERIOR COURT

By Asari Deputy

15 Attorneys for PLAINTIFFS
 16 ATUL KAPADIA, HARI IYER, and ROHIT ARORA

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

21 ATUL KAPADIA, HARI IYER, and ROHIT
 22 ARORA,

23 Plaintiffs,

24 v.

25 ENVIA SYSTEMS, INC., a Delaware
 26 corporation, SUJEET KUMAR, and DOES
 27 1 through 10,

Case No.: **RG13704405** FAX

COMPLAINT FOR:

- (1) Fraud in the Inducement of Employment
- (2) Wrongful Termination in Violation of Public Policy
- (3) Retaliation in Violation of Labor Code §

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Defendants.

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(4) Unfair Business Practices (Business & Professions Code § 17200)

(5) Defamation *Per Quod*

(6) Defamation *Per Se*

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COMPLAINT

Plaintiffs Atul Kapadia, Hari Iyer, and Rohit Arora (collectively, "Plaintiffs"), by and through their attorneys, allege as follows:

PARTIES

1. Plaintiff Atul Kapadia is a resident of Santa Clara County in the State of California. He was the Chairman and Chief Executive Officer at Defendant Envia Systems, Inc. ("Envia" or "the Company").

2. Plaintiff Hari Iyer is a resident of Alameda County, in the State of California. He was the Executive Vice-President of Commercialization at Envia.

3. Plaintiff Rohit Arora is a resident of Santa Clara County, in the State of California. He was a Vice-President of Business Operations at Envia.

4. Defendant Envia ("Envia" or the "Company") is a Delaware corporation with its principal place of business in Alameda County, in the State of California.

5. Defendant Sujeet Kumar is a resident of Alameda County, in the State of California. He is Envia's Co-Founder and held titles of President, and Chief Technology Officer as of August 29, 2013.

6. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will pray for leave to amend and serve such fictitiously named Defendants pursuant to California Code of Civil Procedure § 474, once their names and capacities become known.

7. Upon information and belief, Plaintiffs allege that DOES 1 through 10 are the partners, agents, owners, shareholders, managers, directors, or employees of Envia acting on Envia's behalf with respect certain of the wrongs complained of herein.

8. Upon information and belief, Plaintiffs allege that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Envia, Kumar, and DOES 1 through 10, with each having the legal authority to act as the agent for the other. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

1 9. Upon information and belief, Plaintiffs allege that Envira, Kumar, and DOES
2 1 through 10 ratified each and every act or omission of which Plaintiffs complain.
3 Defendants aided and abetted the acts and omissions of the other Defendants in
4 proximately causing the damages Plaintiffs allege.

5 10. Upon information and belief, Plaintiffs allege that each Defendant is in some
6 manner intentionally, negligently, or otherwise responsible for the acts, omissions,
7 occurrences, and transactions alleged herein. It shall be deemed that whenever and
8 wherever in this complaint any defendant, whether specifically named or not, is the
9 subject of any charging allegation, DOES 1 to 10 are likewise the subject of that allegation.

10 **JURISDICTION AND VENUE**

11 11. This Court has jurisdiction over this action pursuant to the California
12 Constitution, Article VI, Section 10, which grants the Superior Court "original jurisdiction
13 in all causes except those given by statute to other courts." The statutes under which this
14 action is brought do not specify any other basis for jurisdiction.

15 12. This Court has jurisdiction over all Defendants because, upon information
16 and belief, each Defendant is either a citizen of California, has sufficient minimum
17 contacts in California, or otherwise intentionally avails itself or him/herself of the
18 California market so as to render the exercise of jurisdiction over it by the California
19 courts consistent with traditional notions of fair play and substantial justice.

20 13. Venue is proper in this Court because one or more of the named Defendants
21 resides, transacts business, or has offices in Alameda County, and the acts and omissions
22 alleged herein took place in this judicial district.

23 **FACTUAL ALLEGATIONS**

24 **Sujeet Kumar Fraudulently Induces Plaintiffs to Join Envira**

25 14. Envira designs and manufactures lithium-ion battery materials and lithium-
26 ion cells in prototype quantities to be used in electric drive vehicles.

27 15. Each Plaintiff separately was induced to join Envira because of the alleged
28 proprietary technological advances each Plaintiff was led to believe Envira had made on

1 cathode battery materials and intellectual property licensed from Argonne National
2 Laboratories ("ANL") in the realm of lithium-ion batteries.

3 16. Each Plaintiff's interest in joining Envia was initially piqued when each met
4 separately with Kumar, Envia's co-Founder and the individual who Envia actively
5 promotes as the "brains" behind its technology. Kumar extolled the successes of Envia,
6 and told Plaintiffs that the Company had developed, and exclusively owned,
7 revolutionary cathode technology and related intellectual property that was at least twice
8 as effective as that of any close competitor. Kumar described this intellectual property to
9 each Plaintiff as a major "breakthrough" developed by Envia under his direction, that
10 would make mass-market electric vehicles a reality.

11 17. In August 2010, as a result of Kumar's representations, Kapadia left his
12 position as Managing General Partner at Bay Partners, one of Envia's early investors, to
13 join Envia as its Chief Executive Officer.

14 18. As a result of Kumar's representations, in January of 2011, Iyer ended his
15 employment discussions with several major automobile manufacturers and venture
16 capital firms to join Envia as its Director of Strategic Marketing.

17 19. As a result of Kumar's representations, Arora gave up his positions as Vice
18 President of Corporate Development at GlobalWatt, Inc. and Partner at uGroup, to join
19 Envia in December of 2010 as Director of Business Operations.

20 20. During Plaintiffs' employment with Envia, its organization was divided into
21 two divisions – a technology division with most Envia employees, led by Sujeet Kumar,
22 and a business division consisting of Kapadia, Iyer, Arora, and a handful of others.

23 21. Sujeet Kumar's co-founder Mike Sinkula, nominally a member of the
24 business division, had a sporadic presence at Envia because of his ongoing commitment
25 to a part-time MBA program.

26 22. Kumar and Sinkula collaborated to write applications for government
27 grants, which function was in the exclusive purview of the technology division of Envia,
28 with no input or control by Envia's business division, or any Plaintiff. In fact, Kumar and

1 Sinkula persistently refused to disclose the grants to Kapadia, Iyer or Arora.

2 23. As of August 29, 2013 Envia's Board of Directors was comprised of venture
3 capital investors John Walecka from Redpoint Ventures; Purnesh Seegopaul, a
4 representative of Bay Partners, and a member of Pangaea Ventures; Takashi Morishita, a
5 representative of Asahi Kasei Corporate Venture Capital; Arun Majumdar, a former
6 Director until June, 2012 of Advanced Research Products Agency-Energy (ARPA-E"), an
7 agency of the United States Department of Energy responsible for investing government
8 funds into alternative energy technologies, including electric car technology such as the
9 batteries under development at Envia; Sujeet Kumar; and Kapadia. Jon Lauckner and an
10 Asahi Glass Corporation designee were also observers on the Board of Directors from GM
11 Ventures. When Kapadia joined Envia in 2010, , Seegopaul was a board observer but did
12 not have a seat on the Board of Directors.

13 24. In or about October of 2010, Seegopaul urged Kapadia and Kumar to join
14 the Board of Directors, and Kapadia agreed, with the express understanding that
15 Seegopaul would serve as a check on Kumar, and that Seegopaul would serve the critical
16 purpose of being the technology governance leader on Envia's Board given Seegopaul's
17 direct and relevant experience in the area of materials science technology. Kapadia
18 requested that Bay Partners, an early Envia investor, allow Seegopaul to occupy its board
19 seat. Seegopaul joined Envia's Board in June of 2011.

20 **Kumar Steals Nanoexa's Cathode Technology and Uses it to Start Envia**

21 25. In February 2012, Kumar's former employer, Nanoexa, filed in this Court a
22 lawsuit against Envia, Kumar, Sinkula, Kapadia, and other defendants asserting claims
23 based on the misappropriation of Nanoexa's trade secrets and intellectual property.

24 26. The Nanoexa lawsuit alleges that Kumar, Sinkula, and others
25 misappropriated Nanoexa's trade secrets and proprietary cathode technology, and used
26 it to found and operate Envia to the detriment of Nanoexa. While Kapadia has been
27 dismissed as a defendant in the case with prejudice, the lawsuit is still ongoing against
28 the other defendants.

1 27. Although Kumar and related defendants in the NanoeXa litigation have
2 vigorously contested the claims asserted therein, Plaintiffs in this case have recently
3 reviewed direct evidence confirming that in the days and months prior to his resignation
4 and eventual departure from NanoeXa on June 19, 2007, Kumar downloaded in excess of
5 ninety-nine files containing more than a gigabyte of highly confidential internal NanoeXa
6 documents, including NanoeXa's most valuable trade secrets and technical know-how –
7 in effect, NanoeXa's "crown jewels." Most of the downloads occurred in the hours prior
8 to Kumar's abrupt resignation from NanoeXa. These downloads contained technology for
9 consumer applications (laptops and mobile phones), electric vehicles, pluggable hybrid
10 electric vehicles, and hybrid electric vehicles. It included cell designs, thousands of hours
11 worth of proprietary, experimental test results, synthesis and manufacturing methods,
12 including chemical formulae and process parameters, detailed business plans, NanoeXa's
13 intellectual property strategy, and certain confidential disclosures related to intellectual
14 property.

15 28. Extensive forensic evidence confirms that Kumar had several download
16 sessions on June 19, 2007 with no discernable business purpose, including downloads to
17 various portable memory devices he attached to NanoeXa's servers. The forensic
18 evidence further reveals that after completing the downloads, Kumar attempted to erase
19 all evidence having done so; i.e., to cover his data tracks. But a mirror backup server had
20 recorded his every move.

21 29. Kumar used the stolen data to form Envia and falsely represented to the
22 public that he personally had independently developed and produced Envia's
23 "revolutionary" technology.

24 30. E-mail evidence from NanoeXa demonstrates that the week before his
25 departure from NanoExa, Kumar solicited venture capital financing from Rockport
26 Capital for a lithium-ion battery company based on ANL technology (eventually, Envia).
27 These documents reinforce Kumar's intent to steal NanoeXa's trade secrets for his new
28 start-up company (Envia), and the unlawful means he was prepared to take to solicit

1 funding to exploit the stolen technology even while he was on the payroll of his prey. Not
2 only did Kumar solicit such financing, but he claimed that he had obtained a financing
3 term sheet from Rockport Capital to Kapadia in July 2007, by email recollecting the events
4 of July 2007 to Kapadia in October of 2009, and to Iyer in 2013.

5 31. The proprietary information that Kumar stole from NanoeXa included
6 process parameters such as temperature and duration for drying and sintering, and co-
7 precipitation reactor conditions such as stirring rpm and pH levels for synthesizing ANL
8 cathode materials.

9 32. It was not Kumar's genius, but the stolen material from NanoeXa, that gave
10 Envia a significant leg-up at its inception. In fact, within one month of his sudden
11 departure from NanoExa and prior to receiving any outside funding, Kumar claimed in
12 his business plan presentation to investors that Envia cathode technology had achieved
13 the highest capacity against its competitors, and that Envia cells had already cycled 1,000
14 times. In reality, it would have taken Envia or any other start-up company months to get
15 1,000 cycles worth of data. The data cycles that Sujeet Kumar falsely claimed as Envia's
16 were, in fact, the research cycles completed at NanoeXa while Kumar was employed
17 there, which data Kumar stole just before he left NanoeXa.

18 33. On February 7, 2008, Kumar presented to Envia's Board of Directors a
19 method to synthesize ANL cathode materials that he claimed included Envia's
20 proprietary information, such as temperature and duration for drying and sintering.
21 Kumar claimed that this method was proprietary to Envia, suggesting that he had
22 personally developed it while at Envia, and that this cathode technology was the reason
23 that Envia enjoyed a significant lead on its competitors. In fact, Kumar derived the
24 method entirely from the stolen NanoeXa data.

25 34. Kapadia agreed to serve as Envia's CEO primarily to raise capital for Envia
26 on the strength of what he was falsely told throughout his tenure at Envia was Envia's
27 exclusive, proprietary technology developed by or under Kumar at Envia.

28 35. In his aggressive attempts to induce Kapadia to join Envia, Kumar falsely

1 stated that Envia had a proprietary cathode synthesis process that included temperature
2 and duration for drying and sintering. This process gave it a two-year lead over its
3 competitors, claimed Kumar.

4 36. Upon information and belief, Kumar targeted Kapadia to be the CEO of
5 Envia because of Kapadia's skill in fundraising he acquired during his venture capital
6 career. Upon information and belief, Kumar knew that he could only attract an executive
7 with Kapadia's credentials by selling Envia to Kapadia as having groundbreaking
8 technology, and by concealing the fact that Kumar had actually stolen all of the cathode
9 technology from NanoeXa.

10 37. Kumar's fraudulent representations about the technology he stole from
11 NanoeXa extended beyond Envia insiders and prospective employees. Kumar also
12 attempted to dupe third parties to get them interested in Envia to either buy Envia or
13 invest in Envia. On October 6, 2010 in a meeting with Umicore, a leader in the cathode
14 market, Kumar specifically asserted to Marcel Meeus, a Umicore cathode executive, that
15 Envia's proprietary cathode synthesis process was the basis of all cathode innovation
16 related to ANL materials. Kumar also falsely asserted to Meeus that Envia was the only
17 company that could produce tens of kilograms of ANL materials (whether high-power or
18 high-energy), and that this capacity had enabled Envia to achieve customer interest from
19 automakers like General Motors and Honda. Kumar further misrepresented to Meeus
20 that Envia's synthesis capability allowed Envia to test high-power and high-energy
21 materials exhaustively.

22 38. In October of 2013, Plaintiffs first learned that the synthesis process to
23 manufacture ANL cathode materials was entirely stolen from NanoeXa by Kumar, and
24 that Kumar had extensively lied to Meeus and other third parties concerning Envia's
25 exclusive capability to produce sufficient quantities of ANL cathode materials for the
26 volume of testing required to commercialize the technology.

27 39. On December 2, 2010, unaware that Kumar had stolen the entirety of
28 Envia's cathode technology from NanoeXa, under Kapadia's leadership, Envia closed a

1 \$17 million Series C financing round with Asahi Kasei, Asahi Glass, and GM Ventures.
2 Concurrent to this Series C financing, General Motors secured a license to Envia's
3 proprietary cathode technology, including "the process by which the material is made."

4 40. Based on information from outside parties such as GM and LG, which were
5 testing Envia's cathode materials, in mid-2011 Plaintiffs began to develop concerns about
6 the allegedly "breakthrough" cathode technology used to lure them into joining Envia,
7 particularly the means by which the cathode technology was developed, and the accuracy
8 of Kumar's other specific representations to them before they joined the Envia.

9 41. In a meeting between LG Chem, General Motors, and Envia on June 13,
10 2011, LG Chem representative Dr. Geun-Chang Chung asserted that Envia technology did
11 not work as advertised. Geun-Chang also offered that if Envia technology had worked as
12 Kumar advertised, he would have been willing to sponsor LG Chem either to purchase
13 Envia or license Envia's technology. Despite these concerns, Plaintiffs assumed, due to
14 Kumar's passionate assertions, that the LG representatives' allegations were primarily
15 made against Envia because LG and Envia competed to invent new technologies to solve
16 automotive cathode problems. In addition to innovating, LG also manufactured batteries
17 made with cathode material.

18 42. Prior to their employment with Envia, none of the Plaintiffs had worked in
19 the battery industry. Plaintiffs continued to defend Envia's technology and Kumar, its
20 lead technologist, to third parties such as LG, General Motors, and others. However, after
21 having stolen cathode technology from Nanoexa, Kumar was unable to productize it for
22 commercial applications in the time frame required by paying customers. Kumar's known
23 misrepresentations during Plaintiffs' employment at Envia included claims that the
24 battery product was ready. Following their termination, it became clear to the Plaintiffs
25 that not only was the product not ready, but also that the technology was stolen by
26 Kumar.

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**ARPA-E Grant to Marry Stolen Cathode Technology
with Misrepresented Anode Technology**

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3 43. Under Kumar's leadership, Envia applied for a grant from ARPA-E, an
4 agency of the Department of Energy, then headed by current Envia board member
5 Majumdar, and was awarded \$4 million on October 26, 2009. On October 29, 2009,
6 Kumar represented to the Envia Board of Directors that the project goal for the \$4 million
7 grant was to combine Envia's "proprietary" cathode with a novel high-capacity anode.
8 Kumar also announced an additional \$1 million in funding from the California Energy
9 Commission for the same project. Even though Sinkula took the lead in writing these
10 grant applications, they were drafted under Kumar's direction. Plaintiffs not only had no
11 input on the applications, but Kumar persistently refused to allow them to review those
12 applications.

13 44. Kumar's misrepresentations that Envia owned its own valuable cathode
14 synthesis process in funding applications to federal and state government agencies,
15 including the Department of Energy and the California Energy Commission, perpetuated
16 a massive fraud on the government and taxpayers.

17 45. In October of 2011, Kumar informed Plaintiffs that, under the ARPA-E
18 program, Envia had achieved a world-record 400 Wh/kg energy density using Envia's
19 proprietary cathode, and that Envia had developed a new Si-C based anode material.

20 46. On January 10, 2012, Kumar launched a tirade against Envia's entire
21 business team, rueing the fact that Envia's business team did not get the attention of the
22 press that its established competitors had. He explicitly referenced the positive press that
23 Envia's competitor, A123 Systems, Inc. ("A123"), had garnered. Kumar explicitly alleged
24 to Plaintiffs (and, upon information and belief, to others) that Yet-Min Chiang, Founder of
25 A123, had stolen its technology from the University of Texas at Austin. Kumar asserted
26 that, despite A123 not having any of its own technology, A123 shareholders were able to
27 reap financial benefits because A123 had significantly greater publicity in the press.
28 These issues came to a head on February 23, 2012 when Kapadia sent an email to Kumar

1 suggesting, "Let's do everything opposite of A123 and build a real company," the
2 implication of "real company" being one based on proprietary technology, a unique
3 business model, and not just publicity.

4 47. With pressure from Kumar, Envia management with assistance from ARPA-
5 E, embarked on a press tour. On February 27, 2012, Envia issued a press release
6 announcing that, with funding from the Department of Energy's ARPA-E, it had
7 produced lithium-ion cells with a world-record energy density of 400Wh/kg. Kumar
8 claimed that this feat was achieved using Envia's proprietary cathode and proprietary
9 anode technology. In fact, the cathode technology had been stolen by Kumar from
10 NanoeXa, while unbeknownst to Envia's business team, the anode material based on the
11 Japanese company, Shin-Etsu's proprietary technology, which had been purchased and
12 falsely represented by Kumar as Envia's own, without attribution to Shin-Etsu (a
13 requirement of the confidentiality agreement between Envia and Shin-Etsu).

14 48. Kumar and Envia attracted a significant amount of media attention
15 following the ARPA-E announcement. The magazine *Scientific American* described
16 Envia's innovation as an example of ARPA-E's efficacy in fostering innovative
17 technologies that drive the clean energy revolution.

18 49. Several days after issuing the press release, as a part of Envia's press
19 interviews, Kumar delivered the same technical – and false – message at ARPA-E's
20 Energy Innovation Summit in Washington, D.C. In his keynote speech, ARPA-E's then
21 director Arun Majumdar (who later in 2012 joined Envia's board of directors after the
22 President withdrew Majumdar's nomination to be Undersecretary of the Department of
23 Energy) lauded Envia's achievement as an example of technology that could enable
24 electric cars to have a range and cost comparable to that of gasoline-powered cars.
25 Although scientists around the globe viewed the announcement with skepticism, the
26 announcement generally received an overwhelmingly positive response from conference
27 attendees, the press, and others in the industry given the major advance it represented.
28 Little did consumers of Envia's press – whether in the company's business division, or in

1 the public at large – know that Envia’s vaunted technological advances in cathode and
2 anode technology were either stolen outright, as in the case of NanoeXa’s cathode
3 technology purloined by Kumar, or falsely claimed by Kumar to be Envia’s own, rather
4 than purchased under a confidentiality agreement, as in the case of Shin-Etsu’s anode
5 technology.

6 50. In March, 2012, Majumdar again highlighted Envia’s allegedly ground-
7 breaking technological achievements at a House Appropriations Committee budget
8 hearing as an example of the success of ARPA-E grants in funding projects that “create
9 quantum leaps in energy technology” and that “have the potential to be transformative
10 and make large societal impact in the next 10-20 years.” Far from being quantum leaps or
11 any kind of leaps, Envia’s anode and cathode technology had been developed by others
12 and was either stolen or used without attribution.

13 51. In his numerous statements to journalists and in his many presentations and
14 public statements, Kumar highlighted the new anode that Envia had purportedly
15 developed through the funding it received from its ARPA-E grant, and claimed that this
16 performance was possible because of Envia’s proprietary cathode technology. At no point
17 did Kumar say or imply that Envia had utilized the proprietary information of a
18 company, without authorization, to develop its cathode or anode material to achieve the
19 400Wh/kg density results. To the contrary, Kumar consistently misrepresented the
20 misappropriated technology as Envia’s own, attempting to conceal from the public his
21 theft and his fraud, while simultaneously benefiting from both.

22 **Kumar Knowingly Misrepresents Anode Technology Source to GM**

23 52. On March 15, 2012, in an email, Kumar sent a presentation directly to
24 Damon Frisch and Thomas Grezler, members of the Engineering and R&D teams,
25 respectively, from General Motors (“GM”), and copied Kapadia and Iyer. This email
26 contained pictures, logos and technical information of cathode materials and anode
27 materials that had allegedly been developed at Envia and that had led to 400 Wh/kg
28 energy density cells. Kumar also sent similar communications to LG on February 27, 2012,

1 touting Envia's proprietary cathode and anode material technology.

2 53. In response to Kumar's communication, GM initiated serious business
3 discussions with Kapadia and Iyer about securing a license to Envia's anode material
4 technology. GM had secured rights to Envia's stolen cathode material technology in 2010
5 at the time of its investment in Envia.

6 54. Before negotiating the anode material license terms, GM wanted to measure
7 the efficacy of the technology and the validity of the stated energy density level that Envia
8 had supposedly achieved. GM engineers asked Iyer numerous in-depth technical
9 questions about Envia's anode technology, all of which he referred to Kumar.

10 55. In April 2012, Sinkula told Kapadia, who in turn immediately told Arora
11 and Iyer, that the ARPA-E cells used anode material developed by Shin-Etsu. Although
12 well-liked at Envia, Sinkula had little credibility in the organization. Despite the lack of
13 Sinkula's credibility, the gravity of the statement in light of Envia's repeated public
14 statements and its representations to GM, concerned Kapadia.

15 56. Kapadia raised his concerns in telephone calls to Seegopaul, and eventually
16 in an email dated June 8, 2012 regarding Sinkula's performance, referenced Sinkula's
17 assertion regarding the sourcing of anode material. Seegopaul was an Envia board
18 member with a Ph.D. in materials science, and significant experience in the advanced
19 materials industry. Speaking with Seegopaul was Kapadia's first step to escalate this
20 situation. Seegopaul brushed off the allegations, stating "Great entrepreneurs bluff their
21 way through. Look at Steve Jobs." Seegopaul added that Kumar and his team would
22 soon catch-up with the inflated technology claims and develop Envia's own anode
23 material, enabling the achievement of claimed energy density of the ARPA-E cells with
24 Envia's material rather than the purchased materials that Envia was already publicly and
25 falsely touting.

26 57. During the nine-month negotiation period with GM, Kumar had several
27 opportunities to alert GM and Plaintiffs that the anode material in the 400 Wh/kg cells
28 was Shin-Etsu's confidential information, not Envia's proprietary material. Kumar never

1 once admitted the true source of the anode material. In addition to these omissions, on
2 October 19, 2012, during an email discussion in which Kumar approved a draft
3 description of the anode technology to be inserted in the GM license agreement, Kumar
4 stated that the anode material was Envia's proprietary technology and intellectual
5 property. Given his expertise and position as Envia's Chief Technology Officer, , Kapadia
6 and Iyer relied on his representations and deferred to him with respect to technology
7 matters.

8 **Envia Directors Ignore or Enable Corporate Governance Breaches by Sujeet Kumar,**
9 **While Business Division Expresses Concern, Seeks to Mitigate Risk**

10 58. Kapadia and Iyer became concerned when other potential customers and
11 potential partners such as Nissan Motors, through its representative, Kenzo Oshihara on
12 May 29, 2012, sent out urgent messages to Envia in the middle of the night, and Samsung,
13 on April 20, 2012, through its representative, Sun-Ho Kang, sent emails to Iyer, alerting
14 them that the cells Kumar had sent them for testing had gassed and ballooned and caused
15 a safety hazard. When Kapadia confronted Kumar as to why Envia was shipping cells to
16 BMW, Volkswagen, and WuXi Industrial Development Group ("WuXi") without
17 informing Kapadia or Iyer, Kumar asserted that it was his right to send these cells to
18 whomever he wished. Kapadia repeatedly reached out to Walecka and Seegopaul,
19 members of Envia's Compensation Committee, by email and by telephone to seek their
20 help to rein in Kumar. Kapadia's pleas for responsible corporate governance intervention
21 were ignored by Walecka and Seegopaul.

22 59. Kapadia persistently recruited Majumdar to Envia's Board over a span of six
23 months starting on July 4, 2012, to be a check on Kumar's increasingly reckless conduct.
24 Majumdar had enormous technical stature in the clean tech industry by virtue of his
25 tenure as Founding Director of ARPA-E and as Director of the Environment Energy
26 Technologies Division at Lawrence Berkeley National Laboratories. Kapadia also sent an
27 email to Walecka on November 7, 2012, asking if Envia could attract Intermolecular's
28 CEO, David Lazovsky, whom both Walecka and Kapadia held in high esteem. Kapadia

1 wanted to ensure Envia did not make any technological missteps or misrepresentations
2 that could put the entire company and its hard-working scientists at risk. Since neither
3 Walecka nor Seegopaul seemed interested in reining in Kumar, Kapadia was forced to
4 look for alternative avenues for governance on technical matters, and Majumdar's
5 recruitment was a key part of that critical need.

6 60. In 2011, Envia had considered and decided not to enter into a business
7 agreement with WuXi as a partner to make batteries for electric buses because of
8 conflicting priorities with other projects and limited resources. On September 27, 2012,
9 Kumar invited Kapadia to a meeting at Envia, where Kapadia was surprised to find a
10 large team of Senior Executives from WuXi visiting Envia for a ribbon-cutting ceremony
11 and to sign a term sheet agreement whereby Envia would license its technology to form a
12 joint venture in China. Kapadia learned that, unbeknownst to Plaintiffs or other Board
13 members, Kumar had travelled to China and agreed to form a joint venture with WuXi.

14 61. Prior to the September 27, 2012 meeting, Kumar had agreed to license
15 Envia's technology to WuXi. Kapadia was appalled at being asked by Kumar to sign the
16 Wuxi term sheet under duress. Kapadia was highly concerned, because Envia needed
17 Board approval to license any technology, and Kapadia had never before seen the term
18 sheet that he would have had to sign within the hour. Moreover, with Envia's prospective
19 customers such as Nissan dangerously unhappy because of Envia's cells' gassing, it
20 made no business sense to engage in further licensing until the technical issues were
21 addressed. In addition, Kapadia did not have the benefit of a legal opinion on whether it
22 were even permissible under U.S. import/export regulations to license Envia's battery
23 technology to a Chinese company. Kapadia highlighted these issues to Walecka and
24 Seegopaul. Neither Seegopaul nor Walecka took any action concerning the matters
25 relating to Kumar's reckless or intentional misconduct about which Kapadia had warned
26 them. They continued to ask Kapadia to find a way to work with Kumar, apparently
27 willing to turn a blind eye to Kumar's failings and his putting Envia at risk.

28 ///

1 62. Kapadia refused to sign a term sheet with WuXi that he had not yet seen.
2 Kapadia confronted Kumar, who was visibly upset and asserted that "this term sheet is
3 not binding. We can walk away from it after signing, if the Board does not agree." In a fit
4 of rage, Kumar also disparaged the two senior technology leaders at Envia, Mani
5 Venkatachalam and Herman Lopez, by stating that "those idiot scientists are not able to
6 solve technical problems. Why are you holding me back for their failures? In China you
7 can go from 0 to billion in 6 months." Kumar told Kapadia that he would never work
8 with "those characters" again. After this meeting, Kumar sent the term sheet that
9 Kapadia was to sign to Kapadia by email. In a Compensation Committee meeting on
10 November 29, 2012 at Envia, Seegopaul and Walecka agreed that Envia could not enter
11 into a joint venture in China at that time.

12 **Envia Secures Lucrative GM Deal Through Kumar's False Representations**

13 63. In or around December 3, 2012, Envia and GM entered into a highly
14 profitable eighteen-year contract ("the Contract") under which Envia licensed to GM its
15 400 Wh/kg technology and all its components. In that Contract, Envia expressly
16 warranted that it owned "all rights, title and interest in, or otherwise has the right to
17 license, the intellectual property listed or otherwise described in the license grant." The
18 Contract guaranteed Envia a multimillion-dollar revenue stream over several years. It
19 also entitled Envia to an extremely lucrative royalty per vehicle by to industry standards.

20 64. Envia's Board of Directors and the individual Board members viewed the
21 GM contract as a great success, and commended Kapadia and Iyer, the deal's business
22 negotiators, on the highly favorable terms, noting the significant non-dilutive cash stream
23 and royalties it would provide, along with Envia's reservation of the right to license the
24 technology to other companies. In recognition of their success with the GM deal, in
25 December 2012, the Board awarded Kapadia, Iyer, and Arora nearly 45% of the new stock
26 options granted to over 25 employees. No new options were granted to Kumar or
27 Sinkula. Envia also promoted Arora to Vice President of Business Operations, and Iyer
28 to Executive Vice President of Commercialization.

Kumar Suggests Fabricating M&A Term Sheet

1
2 65. After executing the GM Contract, Envia focused on finding a buyer for the
3 Company. The executive team met several times in December 2012 and January 2013 to
4 discuss a merger & acquisition ("M&A") strategy, as well as the retention of an
5 investment bank to represent it in the process. With an introduction from Envia's legal
6 counsel, Patrick Pohlen, Kapadia succeeded in attracting one of the top bankers at
7 Goldman Sachs to undertake representation of Envia in this process.

8 66. While the executive team was discussing acquisition issues on January 11,
9 2013, Kumar suggested that, instead of undertaking what he considered a labor-intensive
10 and costly M&A process, Envia should simply fabricate a term sheet containing the terms
11 of a prospective deal with Samsung at a high valuation. Kumar then suggested that either
12 Envia or Goldman Sachs leak that fabricated term sheet to the media. He explained that, if
13 other companies believed that Samsung sought to purchase Envia, these companies
14 would rush to do the same. Arora strenuously objected to such conduct, and promptly
15 sent a text message to Kapadia alerting him that such conduct could land the responsible
16 executives behind bars. In the meeting attended by Arora, Kapadia, Kumar, Iyer, Lopez
17 and Sinkula, a concerned Kapadia stated that such a proposal was "shady" and such
18 ideas would not be received well by Goldman Sachs.

19 67. Kapadia detailed issues related to Kumar's fraudulent Samsung suggestions
20 and potential illegal conduct in a detailed email to Seegopaul, who, by now was taking a
21 central role in communicating with Kapadia regarding Kumar-related activities on
22 January 28, 2013.

23 68. In several emails to Seegopaul following Kapadia's disclosure of Kumar's
24 suggested illegal conduct toward potential Envia suitors, Kapadia requested that Kapadia
25 and Kumar's roles and goals be clearly defined, that Kumar not attend any M&A brain-
26 storming meetings with Goldman Sachs, and that the Board clearly limit Kumar's role to
27 the technical side of the M&A process.

28 ///

1 69. An email dated February 24, 2013, from Kapadia to Seegopaul regarding
2 Kumar's misconduct made its way to Kumar. In a private meeting with Iyer on or
3 around March 1, 2013, Kumar claimed that he and Seegopaul were working very closely,
4 and that Seegopaul would forward Kapadia's emails about Kumar to Kumar. At that
5 time, Kumar showed Iyer Kapadia's February 24, 2013 email that Seegopaul had
6 forwarded to Kumar. In short, rather than observing his fiduciary duties, Seegopaul fed
7 whistleblower complaints about Kumar directly to Kumar.

8 70. Kumar made known his anger at Kapadia and the others who had rejected
9 his proposal to leak a false term sheet, and at Kapadia's efforts to reduce Kumar's
10 involvement in the M&A process, which Arora and Iyer supported. He exhibited an open
11 hostility toward Kapadia, Iyer and Arora. On February 22, 2013, Kumar refused to assist
12 in the preparation of a due diligence plan requested by Goldman Sachs, unless Kapadia
13 would allow Kumar to attend the M&A brainstorming meetings. Earlier in the day,
14 Walecka called Kapadia and requested that he include Kumar in all M&A brainstorming
15 meetings – once again turning a blind eye to Kumar's failings.

16 71. Word of the friction that had developed as a result of Kumar's reaction to
17 the steps Mr. Kapadia had taken and the concerns he had raised reached Walecka, one of
18 the more senior and active Envia board members. On February 26, 2013, Walecka
19 requested a one-on-one meeting with Kapadia for February 27, 2013. Kapadia told
20 Walecka that he was disappointed that the Board of Directors was turning a blind eye to
21 Kumar and Envia's technology failings. Kapadia also proceeded to give Walecka the
22 milestones Kumar had agreed to in conjunction with a stock compensation acceleration
23 and that Kumar had fallen woefully short of those milestones.

24 72. On February 27, 2013, Walecka requested one-on-one meetings with Arora
25 and Iyer to take place on February 28, 2013. Walecka also requested that Kumar,
26 Kapadia, Seegopaul (by telephone), and Walecka meet at Envia on February 28, 2013.
27 Kumar demanded that Envia immediately terminate Kapadia's employment, and that
28 Seegopaul become the Interim CEO of Envia. In his meeting with Walecka, Arora

1 expressed his concerns about having to sign the representations and warranties required
2 in the event of a sale or merger given Kumar's unethical behavior and the problems with
3 the technology that had begun to come to light. Walecka brushed off Arora's concerns as
4 "personality issues." Similarly, Iyer voiced his concerns about the status of the
5 technology overall and about GM's cell testing going poorly. Specifically, Iyer stated that
6 there were several technological challenges like DCR, cycle life, and calendar life that
7 needed to be solved, and that Kumar was not competent to tackle these challenges.
8 Walecka reiterated to Iyer the position he had taken with Arora, stating that the problems
9 between Kapadia and Kumar were merely personal. After their meetings with Walecka, it
10 grew unavoidably clear that Kumar, Walecka, and Seegopaul (present by phone in the
11 meetings) viewed Kapadia, Iyer, and Arora as closely aligned in their position with
12 respect to Kumar's ethics and their concerns about Kumar's representations about Envia's
13 technology.

14 73. Failing to find any active partners for his fraudulent schemes, Kumar
15 proceeded to use threats to recruit Arora and Iyer into opposing Kapadia within the
16 company and in conversations with the Board. On March 1, 2013, Kumar asked Arora for
17 a meeting. Kumar and Arora met outside the Envia facility for nearly two hours, during
18 which Kumar proceeded to repeatedly disparage Kapadia and the business team. Kumar
19 claimed that Kapadia was destroying value in the company because of a personal
20 vendetta against Kumar. Kumar suggested that the only value that had been created in
21 the company was Kumar's technology, and that the business team was doing a sub-par
22 job. Kumar threatened Arora with dire consequences if either Arora or Iyer did not offer
23 support for Kumar's business practices. In addition, Kumar falsely asserted to Arora that
24 Kapadia was a "convicted felon." Arora immediately informed Kapadia and Iyer of this
25 disturbing conversation with Kumar, and expressed his fear that Kumar would
26 manipulate Board members into terminating Arora and Iyer.

27 74. Envia's attempt to find a buyer was not successful. Goldman Sachs reported
28 to the M&A Committee that several prospective buyers declined to pursue discussions

1 because of concerns about the performance of Envia's technology.

2 75. Upon information and belief, Samsung and LG declined to purchase Envia
3 after having independently tested the technology during normal business activities from
4 2010-13.

5 76. Upon information and belief, Asahi Kasei, another potential buyer, declined
6 to proceed with the purchase of Envia because it had received a negative reference about
7 Envia and Kumar from two major Japanese automobile manufacturers (one of which was
8 Honda).

9 Envia Fails to Deliver on the GM Deal

10 77. In December 2012, Envia began to work on the GM project and delivered its
11 first shipment of cells and Shin-Etsu anode material, touted as Envia anode material, to
12 GM that same month.

13 78. In February of 2013, GM notified Envia that it could not replicate the results
14 that Envia had touted at the ARPA-E summit the previous year. GM also noted a
15 significant discrepancy between Kumar's representations regarding the performance of
16 the ARPA-E cells and the performance of the cells delivered to it in the December
17 shipment.

18 79. In preparation for the first quarterly steering committee meeting, a few GM
19 scientists and GM program managers visited Envia in early March. In preparation for
20 this visit, Iyer met with Envia scientists to explore potential causes of the performance
21 deficiencies in the cells. One of the scientists mentioned during this conversation that
22 instead of using Envia's proprietary anode material, the 400 Wh/kg results were achieved
23 using anode material that was purchased from another source. Kumar sent this
24 purchased anode material to GM for testing, purportedly under the guise of being Envia's
25 own proprietary anode material.

26 80. Concerned by GM's findings and Envia's scientists' statements that Kumar
27 may have used purchased materials in the cells, but failed to disclose this material fact,
28 Iyer emphasized to Kumar that Envia must deal truthfully with GM. Given the number

1 of times that Kumar had represented the anode material in the cells as Envia-developed
2 material to the press, at conferences (including AABC), to GM, and to Iyer himself, and
3 given the certainty with which he made these representations, Iyer did not immediately
4 assume the truth of the scientists' claims. Because Kumar was responsible for all of the
5 technology at Envia, and that the GM deal was the sole revenue source for Envia, Iyer
6 would have expected Kumar to disclose this material information to Envia's Board. In
7 light of Kumar's recent conduct, however, Iyer decided to inform Kapadia verbally on
8 March 4, 2013 after the meeting with GM, and pressured Kumar to handle this matter
9 truthfully.

10 81. On March 4, 2013, Kumar, Iyer, and several Envia scientists met with a team
11 from GM. The meeting focused on the performance deficiency of the cells. Kumar
12 struggled to allay GM's concerns. Kumar described the process for developing the anode
13 material but made no mention of Envia's sourcing from Shin-Etsu the anode material it
14 had falsely claimed as its own.

15 82. Kumar stated to the GM representatives that some of the anode material
16 had been "sent to Japan for post-processing." This statement was an utter fabrication by
17 Kumar. Envia had not sent the material to Japan for processing. The truth that Kumar
18 continued to suppress was that Envia had purchased, under a non-disclosure agreement,
19 the anode material from Shin-Etsu. Iyer, as a marketing executive for the company, was
20 not in a position to contradict Kumar – Envia's Chief Technology Officer in front of GM's
21 key battery R&D leader, Mark Verbrugge. The statements Iyer had recently heard from
22 the Envia scientists, and Kumar's misrepresentations at the meeting on March 4, 2013,
23 along with his recollection of the rumors Kapadia had mentioned in 2012, concerned Iyer
24 enough that he reported issues regarding the anode material used in the ARPA-E cells
25 verbally to Kapadia that evening. With Walecka and Seegopaul turning a blind eye on all
26 technology and Kumar-related issues, Kapadia tried to reach Majumdar by phone, but
27 was unable to speak with Majumdar until late on March 5, 2013.

28

1 Envia, Kumar Retaliate Against Plaintiffs For Raising Concerns

2 83. On March 5, 2013, Kumar and Seegopaul began moving to force out of the
3 Company those individuals who had repeatedly challenged, as described above,
4 Kumar's willingness to make material misrepresentations that could harm the Company.
5 Seegopaul, Kumar, Walecka, and Envia's legal counsel at Latham & Watkins, Jim
6 Morrone, notified Kapadia that the Board had decided to narrow the scope of Kapadia's
7 duties. Kapadia was told that he would focus only on the M&A process and resolution of
8 the NanoeXa lawsuit. They further advised Kapadia that he would have no responsibility
9 for any other areas, and that his employment with Envia would end upon completion of
10 the M&A process. Citing the example of HP's allegations of fraud against Autonomy's
11 founder, Kapadia expressed his concern about signing any representations or warranties,
12 as CEOs are typically required to do as part of an M&A process. The board brushed aside
13 the very serious allegations of Kumar's fraud and misconduct that Kapadia repeatedly
14 had brought to the Board's attention.,.

15 84. Following his misrepresentations to GM in the meetings on March 4 and 5,
16 Kumar again falsely represented that the ARPA-E cell contained Envia's proprietary
17 anode material -- this time, to a prospective buyer during a meeting with Asahi Kasei
18 executives on March 6, 2013. Kumar made several other misrepresentations. For
19 example, Kumar stated that he was in Japan in a conference the previous week; instead,
20 Kumar was in the US. For Kapadia, Iyer and Arora, this latest lie was the final straw.
21 Plaintiffs collectively decided that they had an obligation to escalate this matter further.

22 85. In a late telephone call on March 6, Kapadia asked Board Member Arun
23 Majumdar for advice on how to handle Kumar's continuing misconduct properly.
24 Majumdar encouraged Kapadia to speak with Kumar before speaking with legal counsel.

25 86. On March 7, 2013, Kapadia spoke with Pohlen. Kapadia sent a detailed
26 account of the issues to Seegopaul and Walecka several hours later. Kapadia notified
27 them of the repeated misrepresentations by Kumar regarding the ownership of the anode
28 material, significant problems with the GM program, and Kumar's patently false

1 assurances to the M&A Committee that the meetings with GM had gone well. Kapadia
2 recommended, "that we understand the facts deeply and proactively to develop a plan so
3 we can contain the damage at General Motors." He added, "[b]ased on those facts and its
4 materiality, we can make a joint determination as to how to approach General Motors and
5 the other Board Members. In any case, I request that you immediately authorize me to
6 stop forward progress on any PR on the GM deal or for that matter any other PR related
7 activities. I am happy to cooperate in any way I can to preserve the value but I am deeply
8 concerned and want nothing more but to find the facts and do the right disclosures [...]."

9 87. Walecka, Seegopaul and Kapadia agreed that the Board would form a
10 Technology Committee to investigate the concerns regarding the anode material and
11 assigned Seegopaul and Majumdar to the Committee Kumar still did not admit the third-
12 party sourcing of the anode technology until the following week, when it became
13 unavoidably clear that Envia would have to disclose fully to GM the contents of the
14 anode cells and that the GM program was in jeopardy. In fact, after having claimed for
15 years that Envia's real intellectual property was in the materials, Kumar began touting the
16 power of electrode formulation technology in order to obfuscate the truth and distract
17 from the real issue of his impropriety coming to light.

18 88. On March 13, 2013, in a meeting with Iyer, Kumar used several disparaging
19 terms and expressed dismay that Kapadia had put the issues regarding stolen IP and false
20 claims in writing because they were now discoverable. Iyer confronted Kumar, telling
21 him that, if there were no misrepresentations by Kumar, he should not worry about
22 Kapadia putting these issues in writing. At that point, Kumar finally disclosed to Iyer for
23 the first time that the ARPA-E cells and the cells shipped to GM did not contain Envia
24 anode material, as he had persistently represented. He admitted that he had purchased
25 the materials from Shin-Etsu. Iyer immediately insisted that Envia make a full disclosure
26 to GM and that they work to save the relationship with GM. Later that day, Kumar went
27 to Arora's office and told Arora that if Kapadia would withdraw the written
28 memorandum highlighting Kumar's misrepresentations, Kumar would apologize to

1 Kapadia. Arora immediately informed Kapadia and Iyer of this conversation with
2 Kumar.

3 89. At 11:30 a.m. on March 13, 2013, Iyer notified Kapadia via email of Kumar's
4 disclosure, and recommended a full disclosure by the Company to all affected customers.
5 Kapadia forwarded Iyer's email to Majumdar, Walecka, and Seegopaul. Kapadia further
6 highlighted the concerns caused by the misrepresentation with respect to the GM
7 program, and concurred with Iyer's strong recommendation that Envia immediately
8 disclose the misrepresentations to GM. Kapadia also noted Kumar's misrepresentations
9 in a trade magazine and to a prospective purchaser, Asahi Kasei, the week before.

10 90. Iyer and Kapadia had previously expressed concern that Envia had
11 breached the confidentiality agreement with Shin-Etsu by sending the anode cells to GM
12 for testing and sending Shin-Etsu's anode powder for analysis by GM, not permitted
13 under the Shin-Etsu confidentiality agreement. But Seegopaul had warned Iyer and
14 Kapadia not to disclose the existence of Shin-Etsu confidentiality agreement to GM (or the
15 use of Shin-Etsu's confidential materials passed off as Envia's own) on the pretext that the
16 Shin-Etsu confidentiality agreement did not permit such disclosure.

17 91. Envia ultimately concluded that it had not breached the confidentiality
18 agreement between Envia and Shin-Etsu because the original bottle in which the anode
19 material had arrived could not be located. Kumar supported this conclusion by noting the
20 label on the bottle did not identify its contents as confidential. Finally, the argument was
21 made that because the confidentiality agreement was drafted by Shin-Etsu, Envia could
22 allege that it was vague.

23 92. On March 14, 2013, GM sent a letter to Envia demanding an explanation of
24 the performance deficiency relative to the one announced exactly a year prior in Kumar's
25 direct email to GM and in the press. Kapadia forwarded the letter, and in a private email
26 communication to Walecka, explained how embarrassing it was for Envia to be accused
27 of misrepresenting technology. In a March 14, 2013 call with Walecka, Iyer explained to
28 Walecka the significance of the misrepresentations and stressed the need to make a full

1 official disclosure to GM. During that call, Walecka simply characterized the matter as a
2 personal issue between Kapadia and Kumar. Walecka persisted with this characterization
3 in a telephone conversation with Iyer several days later, and requested that Iyer talk to
4 Kumar and Kapadia to help resolve their differences.

5 93. On March 15, 2013, Iyer spoke again with Kumar. Iyer emphasized that GM
6 would undertake a careful evaluation of the cell contents and the technology, and he
7 again insisted that Envia make a full disclosure.

8 94. By that point, Kumar's obstinance appeared to have sufficiently weakened
9 in light of the numerous issues and disclosures that Plaintiffs believed that the Board
10 could have persuasively directed Kumar to do the right thing and then focus on repairing
11 the GM relationship. However, the Technology Committee, led by Seegopaul, issued a
12 report on March 18, 2013 in which it evasively concluded that Envia did have an "Si-
13 based anode fabricated from Envia engineered formulations," and supported its
14 conclusion by explaining that "the intellectual property resides in both the composition of
15 the raw materials, the process of fabricating the electrodes, the design of the cell and its
16 operation." The Committee also recommended the "usage of correct terminology to
17 avoid confusion," falsely suggesting that the entire issue arose merely from confusion
18 regarding the terms used in describing Envia's breakthrough development and in
19 negotiating the deal with GM. With respect to the performance problems the Committee
20 merely concluded that the performance of the cells delivered to GM "did not match,"
21 effectively ignoring the significant disparity GM had noted in the performance of the
22 ARPA-E cells and attributing the problem to quality control and testing issues.

23 95. As confessed by Seegopaul himself in an email, the fact that the anode
24 material was not Envia's was not a surprise to Seegopaul. In his initial memo on March 7
25 to Seegopaul and Walecka, Kapadia used the phrase, "anode" instead of "anode material"
26 in referring to Kumar's misrepresentations. Seegopaul authored a report that took
27 advantage of that industry-accepted nomenclature and disingenuously concluded that
28 "Envia indeed had an anode"

1 96. Kapadia was shocked that Seegopaul tried to obfuscate the fundamental fact
2 that Kumar had misrepresented the source of anode material to the business team, GM,
3 and others, by using phrases like "confusion" and "quality control." As part of the
4 investigation led by Seegopaul Majumdar visited Envia on March 13, 2013 to discuss the
5 matters with Kumar and Kapadia. Seegopaul did not attend this meeting or confer with
6 Kapadia regarding the allegations. During this meeting, Kapadia asserted that Envia had
7 never demonstrated 400 Wh/kg energy density using Envia's anode material. Majumdar
8 confronted Kumar because earlier that week Kumar had told Majumdar that Envia had,
9 in fact, achieved 400 Wh/kg energy density using Envia's anode material. Following
10 Majumdar's lead, Kumar changed his story to say that energy density was achieved in a
11 "cell model," not an actual cell. Kapadia also showed the presentation and email that
12 Kumar had sent to GM that falsely showed that the 400 Wh/kg energy density cells were
13 made with Envia anode material. Kapadia also sent this email and presentation to
14 Seegopaul by email during the meeting.

15 97. When the Technology Committee's report was issued, Kapadia realized
16 Seegopaul's motivation for creating rules by which Kapadia was prohibited from
17 discussing the investigation or showing the Technology Committee report to Iyer and
18 Arora. Meanwhile, Kumar proceeded to show investigation material to Iyer and
19 continued to cover up the "Confidential" designation on the presentation with his hand.
20 Seegopaul did not confer with any scientists, nor did Majumdar. Kapadia was surprised
21 by Seegopaul's actions because Seegopaul had corporate governance duties and, in
22 addition, was supposed to be a check on Kumar. Worse yet, the potential acquirer at that
23 point was Asahi Kasei, an investor in Seegopaul's venture capital fund and Morishita
24 from Asahi Kasei, his fellow Board Member. Seegopaul's conflicts were obvious.

25 98. Seegopaul, the Envia Director that the Board chose to lead its Technology
26 investigation, had demonstrated unethical conduct in the past at Envia, making him a
27 regrettable choice for such a company-critical investigation for the Company. For
28 example, on November 30, 2010 and December 29, 2010, Seegopaul had forwarded to

1 Kapadia highly confidential presentation materials and Seegopaul's meeting notes from
2 his meeting with a start-up company, Primet. Primet is a competitor to Envia in the field
3 of cathode synthesis. In addition, as Kapadia later learned from two of Seegopaul's
4 limited partners, Seegopaul had communicated to his Limited Partners that Envia had a
5 strong technologist, great technology, and the potential of obtaining a large financial
6 outcome for his fund. Seegopaul therefore had a motive to suppress all of Kumar's
7 transgressions.

8 99. During the March 24, 2013 M&A Committee telephonic meeting, upon
9 Majumdar's suggestion, Kapadia presented different scenarios as to how GM executives
10 would react in the Quarterly Steering Committee meeting scheduled for March 26, 2013 at
11 Envia. Iyer and Kapadia again recommended as the best course of action that Kumar
12 acknowledge the issue during the Quarterly Steering Committee Meeting and that Envia
13 proactively offer GM certain economic and exclusivity concessions in exchange for
14 extended time to meet baseline technical performance.

15 100. Bolstered by support from Seegopaul, Kumar claimed that Envia anode
16 material was performing better than the Shin-Etsu anode material and that Kumar had
17 sufficient contacts with GM Ventures to manage the situation. Seegopaul put Kumar in
18 charge of the GM meeting, and truthful disclosure to GM was taken off the table. Kumar
19 said, "it does not matter what has happened, if GM needs us and we are the only
20 company that has this technology, they will stay with us".

21 101. Based in part on the series of events described above, it became clear to
22 Plaintiffs that Seegopaul was Kumar's enabler in Kumar's nefarious scheme to continue
23 to do whatever he needed to conceal his misconduct concerning the battery composition
24 and performance issues, and that Kumar and Seegopaul were in fact actively conspiring
25 together, each for his own reasons.

26 102. Kapadia called Majumdar early in the morning on March 25, 2013 to seek
27 his advice on the matter. Although sympathetic, Majumdar asserted that he was new to
28 the Board and advised Kapadia to talk one-on-one with Seegopaul.

1 103. Kapadia called Seegopaul less than an hour later. In the fifty-minute call,
2 laced with direct and indirect threats against Kapadia, Seegopaul insisted to Kapadia that
3 he accept the Committee's report, without which the M&A process would not go forward
4 and Kapadia would lose all of his job duties. On that call Seegopaul asserted a familiar
5 warning to Kapadia, and insisted that Kapadia not put any such issues in writing since
6 they were all discoverable during M&A due diligence. He also told Kapadia that he must
7 learn how to "manage these situations."

8 104. On March 26, 2013, Kumar, as authorized by Seegopaul, led the meeting
9 with GM, and did not come clean or apologize regarding the anode sourcing or
10 performance. Instead, he made inflated claims about Envia's anode material. GM was
11 dismissive, mocked Kumar, and demanded that Envia produce cells that replicate the
12 performance Kumar claimed to have achieved in March of 2012. Kumar stated how
13 confident he was of reaching the March, 2012 milestones in the next cell build. Larry Nitz,
14 an executive from GM, told Kumar that it was the "next cell build or bust" for Envia.

15 105. At the second quarterly steering committee meeting with GM, held on July
16 22, 2013, Kumar admitted that Envia was not able to replicate the March, 2012 results.
17 Joshua and Nitz of GM accused Kumar of misrepresenting the technology. Worse yet, in
18 a private meeting with Kumar, Nitz, Kapadia, and Joshua, Joshua pointed to Kumar and
19 told him that he had made material misrepresentations during contract negotiations.
20 Joshua also reprimanded Kumar for involving GM in Envia's internal issues and
21 misrepresenting Kapadia's employment status with the Company. Kumar apologized to
22 Joshua and Nitz. Joshua was referring to yet another lie from Kumar earlier that morning
23 when Kumar claimed to the GM team that Envia's Board had fired Kapadia and that
24 Kapadia was not needed in the meeting. Kumar had also falsely told Iyer that GM
25 Ventures had requested that Kapadia not be part of the meeting. Iyer informed Kapadia
26 of this via text message. Upon learning that GM requested he not attend the meeting,
27 Kapadia wrote an email to Joshua and Lauckner. After a flurry of emails between GM
28 representatives and Kapadia, Kapadia learned that neither GM nor GM Venture had

1 requested that Kapadia be excluded from the meeting. When it became apparent that
2 Envia's results yet again fell far short of the mark, Joshua demanded that Kapadia be
3 brought into the meeting. After it came to light that Kumar had masterminded the plan to
4 keep Kapadia out of the meeting, Iyer brought Kapadia into the meeting.

5 106. Kapadia knew that without GM's quarterly payments, Envia would suffer a
6 severe cash deficit. It was Kapadia's understanding that payments from GM were subject
7 to attendance by all steering committee members, but since Kumar had manipulated the
8 situation to keep Kapadia out of the steering committee meeting, Envia could potentially
9 suffer if GM withheld the quarterly payment of \$2 million because of a technicality.

10 Unbeknownst to Kumar, a concerned Kapadia was in email communication with GM and
11 Joshua during the meeting regarding this matter while the meeting was in progress.

12 Kapadia highlighted this severely ethically challenged conduct by Kumar to the entire
13 Board of Directors. Seegopaul minimized the impact of Kumar's conduct by brushing it
14 off, as was his usual response to such concerns.

15 107. In an informal meeting of all the Directors on July 29, 2013 and in a letter
16 dated August 4, 2013, Kapadia set out the options he saw for Envia in light of GM's
17 expected revocation of the December, 2012 agreement. He proposed full disclosure to
18 GM and the sale of all of Envia's assets or, alternatively, a more modest agreement with
19 GM, and possibly other investors, to fund the development of cathode technology.
20 Kapadia offered his resignation if the Board would not give him support for the plan
21 outlined in his letter. In his proposal, Kapadia offered concessions that included him
22 stepping down from the CEO position. Privately, on August 2, 2013, in a meeting at
23 Asahi Kasei Corporate Venture Capital's Menlo Park office, Morishita had expressed to
24 Kapadia and Iyer that Kumar should be out of the Company and Envia should transform
25 into a cathode company (clearly not being aware that even Envia's cathode technology
26 was stolen). Morishita also expressed that Asahi Kasei would consider incremental
27 funding for Envia, or that it would be best to shut down Envia.

28 ///

1 108. On July 30, 2013, Envia held a meeting of its Board of Directors. At the
2 Board meeting, Iyer confronted Kumar about his misrepresentations to GM and the
3 position he had put Iyer in by not telling him about the anode during the 2012
4 negotiations. Another Board member confronted Kumar and asked whether GM should
5 feel that they were misled. Kumar said, "Yes, they should feel that way." Kumar asked
6 again that Kapadia's employment be terminated.

7 109. The Board convened again on August 5, 2013 early in the morning to review
8 Kapadia's plan. Kapadia explained his plan. Seegopaul stated that any action on
9 Kapadia's plan could only be taken if GM had given anything in writing to Envia. An
10 hour after the conclusion of this Board call, Walecka called Kapadia and said the Board
11 was inclined to accept Kapadia's plan. Kapadia felt that Walecka had finally taken charge,
12 despite Seegopaul's attempts to cover-up Kumar's conduct.

13 110. On August 8, 2013, GM wrote to Envia stating that its decision to enter into
14 the December, 2012 agreement was "predicated on a number of statements and
15 representations made by Envia and Envia's representatives that, in retrospect and in light
16 of more recent statements by Envia, appear to have been inaccurate and misleading," and
17 that GM was "well within its rights to terminate the December 2012 Agreement." Kapadia
18 forwarded this letter to the Board members. On August 9, 2013, Kapadia and Majumdar
19 spoke several times on the phone. Majumdar asserted at that point that there was then
20 written evidence with which GM could to take action. The Board convened without
21 Kumar and Kapadia. Seegopaul foolishly recommended that Envia adopt a legal strategy
22 to fight GM. Envia elected not to send a legal response after other Board Members
23 including Majumdar insisted that it was better to let Kapadia peacefully navigate the
24 conclusion or rebirth of the GM contract.

25 111. The complete silence and inaction by the Board of Directors clearly
26 suggested to Kapadia, Iyer, and Arora that their employment with Envia was now short-
27 lived. Envia scheduled a board meeting for August 30, 2013. Irrespective of the fate of
28 their employment tenure at Envia, on August 28, 2013, Kapadia and Iyer took a red-eye

1 flight to Detroit to obtain the pending \$2 million from GM for Envia, and a release from
2 GM for all claims against Envia related to the misrepresentations Kumar had made.

3 112. Kapadia and Iyer fought hard in a meeting with visibly and justifiably
4 angry GM executives to secure the legal release and the \$2 million payment. Kapadia and
5 Iyer wanted to mitigate the employment and immigration risk on the hard-working
6 scientists at Envia who were likely to be adversely affected because of the poor decision-
7 making of the Board as to how to manage Seegopaul and Kumar's schemes. GM informed
8 Kapadia and Iyer that it was cancelling the project between the two companies.

9 Envia Scapegoats, Terminates Plaintiffs

10 113. On August 30, at the scheduled board meeting, the Board opened the
11 meeting by asking Kapadia and Iyer to provide an update on the GM release. After
12 Kapadia and Iyer informed the Board that GM had cancelled the Contract, but that the
13 release was in place, the Board put its plan in motion. Walecka and Majumdar informed
14 Kapadia that the Board had accepted Kapadia's August 4, 2013 resignation, saying, "We
15 are accepting your very well laid out resignation." Immediately following that, Arora and
16 Iyer were informed by the Board that each one's respective employment with Envia had
17 been terminated. The Board requested each of them to stay with the Company for two
18 more weeks in order to assist with the transition of duties. Later in the day, Seegopaul,
19 anointed as the new CEO of Envia, informed Arora and Iyer that they had been asked to
20 stay for two weeks in order to avoid the bad impression that might be created if all three
21 executives left on same day. The only explanation Seegopaul gave for firing Iyer and
22 Arora was that they had done a poor job negotiating the GM agreement. Specifically,
23 Seegopaul claimed that the milestones in the agreement were very demanding and that
24 no company in the world could achieve them. Contrary to Seegopaul's bogus revisionist
25 history, ten months prior to the closing of the GM agreement, Kumar had claimed that
26 milestones for the first year of the GM deal had already been achieved. In addition,
27 Kumar and Seegopaul were informed on a weekly basis of the progress on these technical
28 milestones. In fact, Kumar led the discussion on the technical milestones directly with

1 GM. The explanation by Seegopaul regarding the milestones was pretextual, as the Board
2 voted to grant Plaintiffs stock options in recognition of their work on the GM deal. The
3 failure of the deal was solely attributable to Kumar's misrepresentations and fraud, and
4 Envia's resultant inability to reproduce the technology it claimed to have developed in
5 March 2012.

6 114. Upon information and belief, because Iyer frequently confronted Kumar
7 about his misrepresentations to GM and the media, because Iyer reported this illegal
8 conduct to the Board, because Iyer refused to take part in the fraud, and because Iyer was
9 associated with Kapadia, Iyer was terminated.

10 115. Upon information and belief, Kumar carried out his earlier delivered threat
11 to Arora and lobbied his partner Seegopaul to terminate Arora. Arora was terminated
12 because he had refused to agree or to participate in any of Kumar's unlawful business
13 schemes, because he had confronted Kumar about his fraudulent misrepresentations,
14 because he refused to take part in the fraud, and because he was associated with Kapadia.

15 **Kumar Repeatedly Defames Plaintiffs**

16 116. Kumar made disparaging and defamatory remarks against each Plaintiff,
17 both before and after each was terminated from Envia.

18 117. On June 20, 2013, Kumar falsely reported to Iyer that Kapadia had never
19 met with Director Morishita and that since Kapadia had not met Morishita, Morishita had
20 never asserted that Asahi Kasei had lost interest in M&A because of negative references
21 from Honda. In July 30, 2013 meeting, it became apparent that Kumar also told Envia's
22 Board of Directors that Kapadia had lied about learning that Asahi Kasei had refused to
23 purchase Envia because it had received a negative reference from Honda. In fact Kumar
24 asserted that even though Honda would not extend the joint development agreement and
25 pay Envia at the rate at which it paid in 2011 and 2012, Honda was now bullish on Envia.
26 Upon information and belief, based on these false statements to Envia's Board of
27 Directors, Purnesh Seegopaul concluded that Kapadia had interfered and caused the
28 M&A to fail. Upon information and belief, he and the Board also concluded that Kapadia

1 was not worthy of being Envia's Chief Executive Officer. In reality, Morishita had met
2 with Kapadia on June 8, 2013 at Azuma Japanese Cuisine in Cupertino, where Morishita
3 had asserted that Asahi Kasei had decided not to purchase Envia because of the negative
4 reference it had received from Honda. Upon information and belief, these false statements
5 by Kumar were used by the Board of Directors when it decided to constructively
6 terminate Kapadia.

7 118. On June 25, 2013, Kumar told Iyer and Arora that Kapadia had badly
8 mismanaged the M&A by asking for too high a price. This false assertion was refuted by
9 Goldman Sachs, since valuation was never discussed with any of the candidates.

10 119. Kumar also told Iyer and Arora that the GM deal negotiated by Kapadia
11 was bad for Envia because milestones and deliverables could not be met. This false
12 assertion was belied by the fact that Kumar and Envia's Board of Directors
13 wholeheartedly endorsed Plaintiffs' performance in negotiating the GM deal, awarding
14 them a significant tranche of stock options for so doing.

15 120. After Plaintiffs' termination from Envia, Kumar stated to Envia employees
16 that Plaintiffs had been running "a black box operation" and had "kept Kumar in the
17 dark" about GM negotiations and milestones, as well as company finances and
18 expenditures. This was untrue. E-mail trails demonstrate that Kumar participated in
19 every GM meeting and was consulted to approve each milestone query from GM,
20 routinely approved purchase orders, and signed every check for expenditures above
21 \$1,000. These materially false statements were designed to, and did, undermine Plaintiffs'
22 reputations with the Board, and ultimately lead to the termination of their employment.

23 121. In a meeting in or about October 1, 2013 with Deepak Upadhyaya, the
24 Founder of Kalp-Tree, Upadhyaya informed Kapadia, Iyer and Arora, that he had heard
25 from a mutual acquaintance, that all three Plaintiffs had been terminated from Envia
26 because they had "messed up" the transaction with GM. Because of this, Upadhyaya
27 refused to work with Plaintiffs when they contacted him for employment with his
28 company.

1 122. On March 1, 2013, Kumar told Arora that Kapadia was a convicted felon,
2 when in fact he is not, and that Arora should look into that fact. He further told Arora
3 that Kapadia was only good at value destruction, and cautioned Arora to be careful of
4 aligning with Kapadia. As a result, Arora had doubts about Kapadia and second guessed
5 their relationship because he did not believe that something so serious could have been
6 fabricated.

7 123. On March 1, 2013, Kumar came into Iyer's office and began speaking with
8 him. During that discussion, Kumar told Iyer that Kapadia was a convicted felon, when in
9 fact he is not, and that Iyer was not to associate with him. As a result, Iyer had doubts
10 about Kapadia and second guessed their relationship because he did not believe that
11 something so serious could have been fabricated.

12 124. Kumar also directed Envia technical employees to draft defamatory letters
13 to the Company's Board of Directors about Kapadia, even going so far as to ghost-write
14 defamatory letters by scientists. In at least one such instance, Kumar instructed an
15 employee to advise the Board that Kumar was not present in the GM negotiations. See
16 **Exhibit A**. The employee was also instructed to tell the Board that Kapadia was "doing a
17 lot of finger-pointing" in his dispute with Kumar, instead of working together on a
18 solution to the dispute. The employee was also coached by Kumar to express the alleged
19 concerns of other employees that they were unaware as to whether Kapadia still worked
20 at Envia because the employee had only seen him "one or twice the last couple of
21 months."

22 125. Kumar constantly and routinely disparaged third parties as well, in
23 detailed, graphic, and factual terms. Kumar's practice of repeatedly defaming others was
24 habitual and well known to Envia's board members:

25 a) Kumar repeatedly disparaged Michael Pak, the CEO of NanoeXa, who
26 Kumar said was "wanted by the Korean SEC". Kumar also claimed that if Pak ever went
27 to Korea, he would be arrested at the airport. Kumar alleged that, with regard to
28 NanoeXa, Kumar did not understand why Latham and Kapadia could not settle. After

1 all, Kumar claimed he had given a "lot of dirt" about Michael Pak to Latham.

2 b) After Kapadia's offer letter was finalized for the position of CEO of Envia in
3 2011, Kumar told Kapadia to restructure the Board of Directors and target Walecka
4 because "Walecka is tainted by Solyndra and is not technical or knowledgeable about
5 cleantech." Kumar consistently reminded plaintiffs that Walecka had asked Envia and
6 Kumar to follow Solyndra in how to secure funding from the Department of Energy
7 during a Board meeting, but that Envia was far better than Solyndra. Kumar narrated a
8 conversation Kumar had with Walecka at the Village Pub in Woodside during a Board
9 dinner, at which Plaintiffs were not present in March 2010, where Kumar "realized" that
10 Walecka compensated for his poor technical knowledge and venture capital expertise by
11 paying restaurant bills, and that Walecka had paid for that particular Envia Board dinner.
12 Kumar also narrated a private conversation Kumar had with Walecka upon closing of
13 Series A where Walecka told Kumar, "We are 50-50 partners now". Mockingly Kumar
14 said, "John wants to be 50-50 partners with me. He should have his head checked."

15 c) Kumar took exception to the stock option acceleration provisions in
16 Majumdar's offer to join Envia's Board of Directors. Kumar asserted to the Plaintiffs in
17 February, 2013 that Majumdar was of no use to Envia now that he was no longer part of
18 the Department of Energy. Kumar stated that Majumdar was useful before he went to the
19 Department of Energy and that this is why Kumar offered him an advisory board
20 position (and stock options) before he joined the Obama administration. Kumar stated
21 that Envia won the ARPA-E award because of his offer to Majumdar prior to Majumdar
22 joining the Department of Energy. He also asserted repeatedly that Majumdar was a
23 failed entrepreneur and that NEA had lost several millions of dollars working with
24 Majumdar and his friend, attorney Kitu Bindra.

25 126. Given Kumar's prolific, almost daily spewing of vitriolic defamation against
26 business partners, employees, professionals, board members, government officials, and
27 competitors, it is clear that Envia's board members were aware of Kumar's extreme
28 propensity to subject Envia to liability for these false, damaging statements, yet they

1 chose to enable his loose cannon behavior rather than rein him in, ultimately terminating
2 three competent executives who complained about his misconduct rather than
3 disciplining or terminating Kumar.

4 **FIRST CAUSE OF ACTION**

5 **Fraudulent Inducement of Employment**

6 **(By All Plaintiffs)**

7 **(Against Envia and Kumar)**

8 127. Plaintiffs incorporate by reference and re-allege as if fully stated herein the
9 allegations set out in the preceding paragraphs.

10 128. On or about August 2010, Kumar, acting on behalf of Envia, met with
11 Kapadia to discuss his joining the Company. At that time, Kumar extolled the successes of
12 Envia and told Kapadia that the Company owned technology and intellectual property
13 that would allow it to develop a battery cell with a density level sufficient to enable an
14 electric vehicle to travel a distance of 300 miles on a single charge. Kumar described this
15 technology and intellectual property as "breakthrough." Kumar told Kapadia that if he
16 joined Envia, he would help make mass-market electric vehicles a reality. Kumar
17 specifically withheld from Kapadia that he had misappropriated, on a massive scale, most
18 if not all of Envia's valuable trade secrets and intellectual property from his former
19 employer, NanoeXa.

20 129. On or about January 2011, Kumar, acting on behalf of Envia met with Iyer to
21 discuss his joining Envia. In this conversation, he made the same misrepresentations and
22 material omissions to Iyer that he had made to Kapadia.

23 130. On or about December 2010, Kumar, acting on behalf of Envia met with
24 Arora to discuss his joining Envia. In this conversation, he made the same
25 misrepresentations and material omissions to Arora that he had made to Kapadia and
26 Iyer.

27 131. Each of the representations made to Kapadia, Iyer, and Arora were false
28 because the technology was neither breakthrough nor Envia's. In fact, the cathode

1 technology had been stolen by Kumar from NanoeXa.

2 132. Kumar knew that the representations he had made to Plaintiffs were untrue
3 because he was a co-Founder of the Company and its Chief Technology Officer.
4 Therefore, he participated in the purchase of the anode technology from Shin-Etsu, which
5 he later falsely passed off as Envia's intellectual property. He also knew that the
6 Company was founded using the misappropriated trade secrets and intellectual property
7 of NanoeXa, because he personally downloaded those assets immediately prior to
8 resigning from NanoeXa and co-founding Envia.

9 133. Kumar, acting on behalf of Envia, intended to induce Plaintiffs to join Envia
10 because of their successes in the business and technology fields. He used the
11 misrepresentations as a method of attracting them because he knew each had an interest
12 in making mass-market electric vehicles a reality. He and Envia would benefit
13 substantially from their contributions as employees of the Company.

14 134. Plaintiffs justifiably relied on Kumar's misrepresentations by leaving their
15 previous employment and/or business opportunities. No Plaintiff would have joined
16 Envia, had they known the true facts about Kumar's theft of NanoeXa's core technology,
17 or his lies in promoting NanoeXa's technology as his own.

18 135. Plaintiffs' reliance was justifiable because they had no reason to believe that
19 Kumar was lying or withholding information. Each Plaintiff performed research on the
20 Company, and found nothing alarming. Therefore, they had no way of knowing that
21 Kumar was grossly misrepresenting the facts underlying Envia's founding and allegedly
22 proprietary technology.

23 136. As a direct and proximate result of Envia and Kumar's fraud, Plaintiffs have
24 suffered and will continue to suffer loss of income, loss of employment benefits, loss of
25 future earnings capacity and other related economic losses, and other general and special
26 damages according to proof.

27 137. Plaintiffs agreed to certain contractual obligations required by Envia of its
28 executives, such as confidentiality agreements, collateral to their employment and that

1 were induced by fraud, as was the employment itself. These fraudulently induced
2 obligations are voidable; Plaintiffs elect to void them; and Plaintiffs seek a declaration
3 from the court that each is relieved of any ongoing obligations whatsoever to Envia.

4 138. Upon information and belief, Plaintiffs allege that Envia and Kumar's
5 fraudulent inducement of their employment was wanton, willful and intentional, and
6 committed with malicious and reckless disregard for Plaintiffs' rights. These actions by
7 Envia and Kumar were so cold, callous, and reckless as to be malicious. Plaintiffs are
8 therefore entitled to an award of punitive damages in an amount to be proven at trial.

9 **SECOND CAUSE OF ACTION**

10 **Wrongful Termination in Violation of Public Policy**

11 **(By All Plaintiffs)**

12 **(Against Envia)**

13 139. Plaintiffs incorporate by reference and re-allege as if fully stated herein the
14 allegations set out in the preceding paragraphs.

15 140. The fundamental public policy of the State of California prohibits an
16 employer from retaliating against an employee who objects to conduct that the employee
17 reasonably and in good faith believes unlawful. California fundamental public policy
18 also prohibits an employer from retaliating against an employee for refusing to engage in
19 conduct that the employee reasonably and in good faith believes unlawful.

20 141. Plaintiffs genuinely and in good faith believed that Kumar's fraudulent
21 conduct, alleged herein, violated a laws proscribing fraud, including but not limited to
22 California Civil Code section 1572, and California Business & Professions Code sections
23 17200 *et seq*

24 142. In direct retaliation for his opposition to and reporting of the fraudulent
25 conduct by Kumar and others, and in retaliation for his refusal to participate in such
26 conduct, as alleged above, Envia subjected Kapadia working conditions so intolerable at
27 the time of Kapadia's resignation that any reasonable person in his position would have
28 resigned. Envia intentionally caused or knowingly permitted these working conditions to

1 exist.

2 143. In direct retaliation for their opposition to and reporting of the fraudulent
3 conduct by Kumar and others, and in retaliation for their refusal to participate in such
4 conduct, as alleged above, Envia terminated the employment of Plaintiffs Iyer and Arora.

5 144. In taking these actions, Envia acted with malice, fraud, and oppression, and
6 in reckless disregard of Plaintiffs' rights.

7 145. As a direct and proximate result of the unlawful conduct by Envia, Plaintiffs
8 have suffered and will continue to suffer loss of income, loss of employment benefits, loss
9 of future earnings capacity and other related economic losses, and other general and
10 special damages according to proof. Plaintiffs seeks relief from from Envia as set forth
11 below in her prayer for relief.

12 **THIRD CAUSE OF ACTION**

13 **Retaliation in Violation of Labor Code § 1102.5**

14 **(By All Plaintiffs)**

15 **(Against Envia)**

16 146. Plaintiffs incorporate by reference and re-allege as if fully stated herein the
17 allegations set out in the preceding paragraphs.

18 147. California Labor Code section 1102.5(c) prohibits an employer from
19 retaliating against employees for refusing to participate in an activity that would result in
20 a violation or noncompliance with a state or federal rule or regulation.

21 148. In taking the actions alleged herein and in terminating the employment of
22 each Plaintiff, Envia retaliated against them for objecting to conduct they reasonably
23 believed unlawful and for refusing to participate in such unlawful conduct. . Such
24 conduct violated Labor Code section 1102.5(c). In taking these actions, Envia acted with
25 malice, fraud, and oppression, and in reckless disregard of Plaintiffs' rights.

26 149. As a direct and proximate result of the unlawful conduct by Envia, Plaintiffs
27 have suffered and will continue to suffer loss of income, loss of employment benefits, loss
28 of future earnings capacity and other related economic losses, and other general and

1 special damages according to proof. Plaintiffs seeks relief from from Envia as set forth
2 below in her prayer for relief.

3 **FOURTH CAUSE OF ACTION**

4 **Unfair Competition in Violation of Business and Professions Code § 17200 *et seq.***

5 **(By All Plaintiffs)**

6 **(Against Envia)**

7 150. Plaintiffs incorporate by reference and re-allege as if fully stated herein the
8 allegations set out in the preceding paragraphs.

9 151. The California Unfair Competition Law ("UCL"), Business and Professions
10 Code sections 17200 *et seq.*, defines unfair competition to include, disjunctively, any
11 unlawful, unfair, or fraudulent business act or practice.

12 152. The UCL "borrows violations" from other statutes, state or federal, and
13 authorizes any person who has suffered injury in fact and who has lost money or
14 property as a result of such unfair competition to bring an action for relief under the
15 statute. The UCL also provides that a court may enjoin acts of unfair competition, issue
16 declaratory and other equitable relief, and order restitution of money or property
17 acquired by means of unfair competition.

18 153. As alleged above, Envia engaged in conduct that is expressly declared as
19 unlawful in violation of the California Labor Code, including, but not limited to,
20 violations of:

21 a. California Labor Code section 1102.5 (retaliation for refusing to participate
22 in illegal activity); and

23 b. California Civil Code section 1572 (Fraud).

24 154. Envia's misconduct described above serves as unlawful predicate acts
25 resulting in economic harm and injury in fact to Plaintiffs.

26 155. As alleged above, Envia engaged in business practices that were unfair,
27 including but not limited to retaliating against Plaintiffs in violation of California Labor
28 Code section 1102.5 and fraudulently inducing Plaintiffs to join Envia in violation of

1 California Civil Code section 1572.

2 156. Envia's business practices described above resulted in economic harm and
3 injury in fact to Plaintiffs.

4 157. The acts and practices described in this Complaint constitute unlawful,
5 unfair and fraudulent business practices, and unfair competition, within the meaning of
6 Business and Professions Code sections 17200 *et seq.*

7 158. As a direct and proximate result of the aforementioned acts, Envia received
8 and continues to hold ill-gotten gains belonging to Plaintiffs because Envia has profited in
9 that amount from its unlawful practices.

10 159. Business & Professions Code section 17203 provides that the Court may
11 restore to any person in interest any money or property which may have been acquired
12 by means of such unfair competition and order disgorgement of all profits gained by
13 Envia by operation of the practices alleged therein.

14 160. Upon information and belief, Plaintiffs allege that the unlawful conduct
15 alleged herein is continuing, and there is no indication that Envia will refrain from
16 continuing such activity into the future. Plaintiffs allege that if Envia is not enjoined from
17 the conduct set forth in this Complaint, Envia will, inter alia, continue to violate
18 California labor laws and unlawfully retaliate against employees who make reports of
19 unlawful activity in the workplace and refuse to participate in the same.

20 161. Plaintiffs' success in this action will enforce important rights affecting the
21 public interest. Plaintiffs seek and are entitled to their unpaid wages, lost benefits, and
22 any other remedy owing to them.

23 **FIFTH CAUSE OF ACTION**

24 ***Defamation Per Quod***

25 **(By All Plaintiffs)**

26 **(Against Envia and Kumar)**

27 162. Plaintiffs incorporate by reference and re-allege as if fully stated herein the
28 allegations set out in the preceding paragraphs.

1 163. Each individual to whom Kumar made the defamatory statements
2 described above concerning Plaintiffs understood that the statements were about
3 Plaintiffs, because in each instance, Kumar referenced Plaintiffs by name.

4 164. Kumar's statements tended to injure Plaintiffs in their occupations; to
5 expose them to hatred, contempt, ridicule, and shame by the local alternative energy and
6 business community, and to discourage other members of the local alternative energy and
7 business community from associating, dealing with, or employing Plaintiffs.

8 165. Kumar knew the statements were false at the time made and he made each
9 such statement with the intent of causing harm or injury to the Plaintiff to whom the
10 statement pertained.

11 166. Kumar took no steps to ascertain whether the statements he made about
12 Plaintiffs were true or false.

13 167. Kumar's statements about Plaintiffs were a substantial factor in causing
14 injury to Plaintiffs' profession, since Envia's Board of Directors and third parties relied on
15 those false statements in terminating and refusing to hire them, respectively.

16 168. Kumar's statements were communicated to others in the local alternative
17 energy and business community, which became a substantial factor in harming Plaintiffs'
18 reputations in this community. This resulted in the loss of their professional reputations
19 and the refusal of third parties, including Deepak Upadhyaya, to hire Plaintiffs. Kumar's
20 statements further caused Plaintiffs shame, mortification, and hurt feelings.

21 169. Kumar's false and defamatory statements about Plaintiffs to third parties
22 can reasonably be understood to have been made by and on behalf of Envia, given
23 Envia's persistent promotion of Kumar's interests and holding out of Kumar as an officer
24 and co-founder of the company.

25 170. Because Envia was aware of Kumar's defamatory statements about
26 Plaintiffs, and habitually enabled such conduct, Envia is liable for Kumar's defamatory
27 statements about Plaintiffs.

28 171. Upon information and belief, Plaintiffs allege that Kumar's false statements

1 against Plaintiffs were wanton, willful and intentional, and committed with malicious
2 and reckless disregard for Plaintiffs' reputations. These actions by Kumar were so cold,
3 callous, and reckless as to be malicious. Plaintiffs are therefore entitled to an award of
4 punitive damages in an amount to be proven at trial.

5 **SIXTH CAUSE OF ACTION**

6 **Defamation *Per Se***

7 **(By Kapadia)**

8 **(Against Kumar)**

9 172. Kumar incorporates by reference and re-allege as if fully stated herein the
10 allegations set out in the preceding paragraphs.

11 173. Each person to whom Kumar made the untrue defamatory statements to the
12 effect that Kapadia is a convicted felon, reasonably understood that Kumar's statements
13 were about Kapadia, because Kumar referenced Kapadia by name. These statements
14 tended directly to damage Kapadia with respect to his profession, trade, or business, by
15 imputing to him general disqualification in those respects which her occupation
16 peculiarly requires and by imputing something with reference to their profession, trade,
17 or business that has a natural tendency to lessen his profits.

18 174. Kumar's statement to Iyer and to Arora about Kapadia's history as a
19 convicted felon caused both Iyer and Arora to doubt Kapadia and to second-guess their
20 relationships.

21 175. Kumar knew that the statements he made were false at the time made, and
22 he made each such statement with the intent of causing harm or injury to Kapadia.

23 176. Kumar took no steps to ascertain whether the statements he made about
24 Kapadia's alleged felony history were true or false.

25 177. Kumar's statements about Kapadia were a substantial factor in causing
26 injury to Plaintiffs' profession. Kumar's statements further caused Kapadia shame,
27 mortification, and hurt feelings.

28 178. Upon information and belief, Kapadia alleges that Kumar's false statements

1 against him were wanton, willful and intentional, and committed with malicious and
2 reckless disregard for his reputations. These actions by Kumar were so cold, callous, and
3 reckless as to be malicious. Kumar is therefore entitled to an award of punitive damages
4 in an amount to be proven at trial.

5 PRAYER FOR RELIEF

6 Plaintiffs Kapadia, Iyer, and Arora demand judgment from Defendants as follows:

- 7 1. For all actual, compensatory, consequential, including lost wages and
8 benefits, according to proof;
- 9 2. For civil and statutory penalties as provided by statute;
- 10 3. For punitive and exemplary damages according to proof;
- 11 4. For prejudgment interest;
- 12 5. For attorneys' fees and costs as provided by statute;
- 13 6. For costs of action incurred herein, including expert fees;
- 14 7. For injunctive relief to address the wrongs alleged herein;
- 15 8. For an award of restitution and injunctive relief pursuant to Business and
16 Professions Code sections 17200 *et seq.*;
- 17 9. For an order declaring Envia's policies and practices to be unfair and
18 unlawful and requiring Defendants to cease and desist from unfair business practices and
19 unlawful activities in violation of California Business and Professions Code sections 17200
20 *et seq.*;
- 21 10. For an order declaring that Envia has knowingly and intentionally violated
22 the following provisions of law:
 - 23 a. California Labor Code section 1102.5 (Retaliation for refusing to
24 participate in unlawful activity); and
 - 25 b. California Civil Code section 1572 (Fraud);
- 26 11. For an order declaring that Plaintiffs are relieved of any alleged contractual,
27 statutory or common-law duty or obligation to Envia arising from their former
28 employment relationships that were induced by fraud;

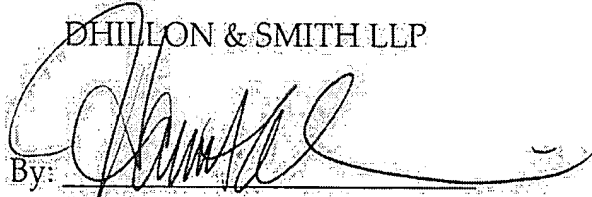
1 12. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 REQUEST FOR JURY TRIAL

4 Plaintiffs Kapadia, Iyer, and Arora request a trial by jury.

5 Dated: November 22, 2013.

DHILLON & SMITH LLP

6
7
8 By: 

9 HARMEET K. DHILLON
10 KEN LAU
11 JOHN-PAUL S. DEOL
12 ATTORNEYS FOR PLAINTIFFS
13 KAPADIA, IYER, and ARORA

14 JOHN HYLAND
15 MELINDA PILLING
16 ATTORNEYS FOR PLAINTIFFS
17 KAPADIA, IYER, and ARORA

EXHIBIT A



Technology - Automotive today
[time]

• CIM "Mis sep."

• — open transparent cultural
exchange including AK know

— Presented to Damon March 2012
before deal negotiation.

Damon calls *misunderstanding*
— vague on purpose if deal would happen

• Real issue & work

negotiation between AK & Math

"Black box"

• Envia is a CIM company. We
should solve together.

• Impossible schedule⁽¹⁾

— We thought 4 yrs to
solve the problem.



Academy for Educational Development

Conference Center

- Beyond culture -
 - Scientist will leave
 - "CEO"
 - N

~~goal~~

\$ 5M -

- Appare

- Google

- USABC Dec

- ABR 2-2 in out/w.

- VW - -

-

I am very concerned about the company: *we are in a bad situation and if nothing is done we will fail!*

1. There are concerns that Envia does not have any technology
 - a. Envia is the leader in cathode development with respect to capacity, DC-R, voltage fade, cycle life and calendar life. This is why GM, Honda, USABC is working with us. Please ask Michael Thackeray!
 - b. Anode technology: Material IP, electrode formulation IP, Prelithiation IP, Cell design IP
 - c. Leader in high energy cell development
 - d. Process development and manufacturing
 - e. Even the last technical review with GM they were praising us of our progress, but still the aggressive deliverables are very real and nearly impossible
2. Entire mess about misrepresentation to GM:
 - a. Envia has a very open and transparent culture. All of the scientific team and management team including AK, ... Knew. We presented to the GM team ~ March 2012 and during the entire meeting we shared details of the cell design and were never asked about what exact anode was in the cell. We do not share the exact details because there was no deal signed
 - b. Even Damond Fitch, GM program manager, calls it misunderstanding
 - c. During the GM deal negotiations, my understanding is that SK was not involved only AK and HA - black box
 - d. In March 2013 when we were asked about the anode we clearly answered about ShinEtsu anode
 - e. There are probably discussions about possible legal action. I hear about a letter from Matt J., but I consider Envia to be a GM company. Why wouldn't we work together to resolve any issues
3. I am not seeing any immediate positive resolution for Envia's internal conflict with AK and SK. As you know there are conflicts between AK and SK and instead of working together on a solution AK seems to be doing a lot of finger pointing.
 - a. Right now we do not have a CEO, I have seen him once or twice the last couple of months
 - b. Employees are asking if AK still works at Envia Systems
 - c. Employees are worried about their jobs both scientist and technicians are concerned.
 - d. The word is that techs are looking for jobs before the ship sinks
 - e. I can honestly say that there is no company without SK. Many people will leave including myself
4. I'm convinced that with the current team and our technology, that we can make it if we have the right leadership. As you know funding is an issue and will run out of money in the next few months if we don't get help from you the BOARD. If we do nothing or continue to be in limbo, Envia will die. I am convinced that our technology speaks for itself and we will survive with the right leadership.
 - a. ARPA-E - 800K
 - b. Google - 650K
 - c. USABC - ~Dec Jan 3M
 - d. ABR, ~Oct 2M
 - e. VW JDA
 - f. Other JDA's