

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, EX REL.  
MOISEY TEYTELBOYM, PH.D.,

PLAINTIFF,

V.

M.L. ENERGIA, INC. and MOSHE LAVID,  
PH.D.,

DEFENDANTS.

**FILED UNDER SEAL**

As Required By  
31 U.S.C. § 3730(b)(2)

Civ. Action No. 00-4010 (DMC)

**FIRST AMENDED  
COMPLAINT AND DEMAND  
FOR JURY TRIAL**

Relator-Plaintiff Moisey Teytelboym, Ph.d. ("Relator Teytelboym"), through his attorneys, files this Complaint and Demand For Jury Trial under seal against Defendants M.L. Energia, Inc. and Moshe Lavid, Ph.d., (referred to herein collectively as "Defendants"), and alleges as follows:

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## I. NATURE ACTION

1. Relator Teytelboym brings this action on behalf of the United States against Defendants for treble damages and civil penalties arising from the Defendants' violations of the Federal Civil False Claims Act, Title 31, United States Code, Section § 3729, et seq. (the "False Claims Act" or "FCA").

2. In connection with the application and receipt of federal grants, primarily under the Small Business Innovation Research Program ("SBIR Program"), Defendants (a) knowingly presented, and caused to be presented, to an officer and employee of the United States Government false and fraudulent claims for payment and approval; (b) knowingly made, used, and caused to be made and used, false records and statements to get false and fraudulent claims paid and approved by the Government; and (c) conspired to defraud the Government by getting false and fraudulent claims allowed or paid, in violation of Title 31, United States Code, Sections 3729(a)(1), (2) and (3).

3. More specifically, this action arises from Defendants efforts to obtain Government Contracts and SBIR funding unlawfully for Defendant M.L. Energia, Inc. ("Energia") through false and fraudulent claims and statements to various federal agencies. Such false and fraudulent claims and statements concern, among other things: Energia's duplication and resale of research among federal agencies, the commercial viability of Energia's technology and products, the identities of the people or entities actually performing work under SBIR contracts awarded to Energia, and Energia's expenditure of funds associated with government contracts, as more fully alleged in Section VII below.

## II. JURISDICTION

4. This Court has subject matter jurisdiction over the claims alleged in this Complaint under 28 U.S.C. §§ 1331 (Federal question), 1345 (United States as plaintiff) and 31 U.S.C. § 3732(a) (False Claims Act).

5. This Court has personal jurisdiction over the Defendants named in the Complaint pursuant to 31 U.S.C. § 3732(a), because at least one of the Defendants can be found, resides, and transacts business in the District of New Jersey and because an act proscribed by 31 U.S.C. § 3729 occurred within this District. Section 3732(a) further provides for nationwide service of process.

6. This action is not jurisdictionally precluded by the False Claims Act's public disclosure bar, 31 U.S.C. § 3730(e)(4). Upon information and belief, there has been no "public disclosure" of the matters alleged herein and this action is not "based upon" any such disclosure. Notwithstanding the foregoing, through his employment with Defendant Energia and his interactions with various individual defendants and other persons, Relator Teytelboym has "direct and independent knowledge" of the instant allegations. Additionally, Relator Teytelboym has "voluntarily provided," and offered to provide, this information to the Government prior to the filing of this complaint. Therefore, to the extent any of these allegations is deemed to have been based upon a public disclosure, Relator Teytelboym is an "original source" of this information within the meaning of the False Claims Act and is expressly excepted from its public disclosure bar.

### **III. VENUE**

7. Venue is proper in the District of New Jersey, under 28 U.S.C. §§ 1391(b) and (c), and 31 U.S.C. § 3732(a), because (a) the Defendants resides in this District, (b) a substantial part of the events or omissions giving rise to the violations of 31 U.S.C. § 3729 alleged in the Complaint occurred in this District, and (c) because at least one of the Defendants can be found and transacts business within this District.

### **IV. PERSONS AND ENTITIES**

8. The United States is the real party in interest plaintiff in this action. It provides the funding for, and regulates and administers, the SBIR Program, which is described in greater detail in Section VI below.

9. Relator Teytelboym is a resident of the State of New Jersey. He holds a doctorate degree in chemistry and has been employed as a senior scientist by Defendant Energia since in or about 1994.

10. Defendant Energia is a privately owned research and consulting laboratory performing advanced research and development contracts. It was founded in or about 1982 and is located in Plainsboro, New Jersey. Energia has entered into numerous contracts with various agencies of the United States, primarily through the SBIR Program.

11. Defendant Moshe Lavid, Ph.d., (“Defendant Moshe Lavid”), is a resident of New Jersey. He is the President of Energia and is its nominal Principal Investigator (or “PI”) on all Energia SBIR proposals and projects. Upon information and belief, Defendant Moshe Lavid has operated and managed Energia since its inception. Defendant Moshe Lavid is a signatory on

Energia's SBIR proposals (as the Principal Investigator) and on other documents relevant to this action.

12. Nira Lavid is the wife of Defendant Moshe Lavid (they are sometimes referred to jointly in this complaint as the "Lavids"). She is the Vice President of Finance & Administration for Energia and is its nominal owner: to obtain favorable grant decisions, the Lavids routinely certify on SBIR proposals that Energia is a "woman-owned small business." Nira Lavid is a signatory on Energia's SBIR proposals (as the Corporate/Business Official) and on other documents relevant to this action.

13. Roper Scientific, Inc., is a manufacturer of electro-optic instruments for scientific and industrial applications, located in Trenton, New Jersey. Upon information and belief, in or about 1998, Roper acquired Princeton Instruments, Inc., a manufacturer and developer of CCD cameras used for scientific and industrial applications also located in Trenton, New Jersey. Upon information and belief, Princeton Instruments is now a division of Roper.

14. In or about 1997, Yair Talmi ("Talmi") was the President of Princeton Instruments. Upon information and belief, Talmi was a friend of Defendant Moshe Lavid. Upon further information and belief, Princeton Instruments was not involved in the scientific field related to a particular National Science Foundation contract awarded to Energia (number DMI-9704053) and had no genuine business interest in any technology or products produced under it. Nevertheless, in or about March 1997, Talmi caused Princeton Instrument to submit a Follow-on Funding Commitment ("FCC") letter to NSF concerning contract DMI-9704053. The FCC letter purported to offer post-SBIR funding to Energia and was intended to persuade the NSF of the commercial viability of Energia's efforts under this SBIR project.

15. Rutgers, The State University ("Rutgers") was created by New Jersey statute in 1956 as a corporation that "is the instrumentality of the state [of New Jersey] for the purpose of operating the state university." NJSA 18A:65-2. Rutgers' primary purpose is the provision of higher education. NJSA 18A:65-2. Rutgers receives funding from at least three sources other than state appropriations. Upon information and belief, a judgment against Rutgers can be paid from non-state funds under Rutgers' discretionary control. Rutgers is largely autonomous and subject only to minimal state supervision and control. Rutgers is not an "arm", or "alter ego", of the State of New Jersey. Kovats v. Rutgers, 822 F.2d 1303 (3d Cir. 1987). Accordingly, Rutgers is a "person" subject to liability under the False Claims Act.

16. Henrik Pedersen, Ph.d., ("Professor Pedersen"), is a Professor of Chemical and Biochemical Engineering at Rutgers, and is the Director of its Biotechnology Training Program ("BTP").

17. Princeton University ("Princeton"), located in Princeton, New Jersey, is a private university with both undergraduate and graduate programs. It was chartered in 1746 as the College of New Jersey and was officially renamed Princeton University in honor of its host community.

18. Richard B. Professor Miles, Ph.d., ("Professor Miles"), is a Professor of Mechanical and Aerospace Engineering at Princeton and is head of his Department's Lasers and Applied Physics Group.

19. Upon information and belief, defendant Moshe Lavid is fully familiar with the rules and regulations governing the SBIR Program.

## V. FALSE CLAIMS ACT

20. The False Claims Act provides, in pertinent part, that:

(a) Any person who...(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government...a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; [or] (3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;...

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is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person....

(b) For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information...(1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

31 U.S.C. § 3729.

## VI. THE SBIR PROGRAM

21. The SBIR Program was established in 1982. Its purpose is to stimulate scientific and technological innovation by private small businesses, increase small business participation in meeting federal research and development needs, and promote the commercialization of federal research and development. In short, the goal of the Program is to provide the Government with new and cost effective solutions to complex scientific and technical problems while also encouraging small businesses to market such technology in the private sector, thereby helping to stimulate the U.S. economy. At the same time, the SBIR Program seeks to foster participation in

science and technology by socially and economically disadvantaged small business concerns and small businesses that are owned and controlled by women.

22. The SBIR Program was created by The Small Business Innovation Development Act of 1982, Title 15, United States Code, Section 638 (the "Act of 1982"). The Act of 1982 establishes a system for channeling federal monies to for profit small businesses engaged in scientific and/or engineering research or research and development. The goal is for these small businesses to take seed money from the Government and develop useful technology that ultimately can be sold by the small businesses in the market place for a significant profit.

23. Under the Act of 1982, each executive agency with an extramural budget for research or research and development (other than those within the Intelligence Community) must establish and administer an independent SBIR Program. § 638(f). Under these separate programs, each agency must distribute a minimum percent of its extramural research budget (currently not less than 2.5%) to small business concerns. *Id.*

24. The Act of 1982 further provides that each agency is to distribute SBIR funds to small business concerns by unilaterally (1) determining suitable projects and research topics within its SBIR program, (2) issuing small business innovation research solicitations, (3) receiving and evaluating proposals, and (4) awarding grants to qualified participants. § 638(g). The actual payment of monies to an awardee is accomplished via a "funding agreement" between the awarding agency and the small business. § 638(e)(3) and (g)(4)-(7). Among other things, the funding agreement sets out a schedule for the distribution of funding, which is tied to certain the achievement of certain performance Professor Milestones.

25. Each awarding agency promulgates its own set of SBIR regulations and instructions and distributes its own forms. Most, if not all, of these rules and documents are now

available on the awarding agencies' web sites. For example, the National Science Foundation has issued Phase I Program Solicitation & Phase II Instructions, NSF 99-57 (the "NSF Instructions"), available on the Internet at <http://www.nsf.gov/pubs/1999/nsf9957/start.htm>.

26. The following ten federal agencies are required to set aside a portion of their research and development budgets exclusively for SBIR contracts: the Departments of Defense, Agriculture, Commerce, Education, Energy, Health and Human Services, and Transportation, and the Environment Protection Agency, National Science Foundation, and National Aeronautics and Space Administration.

27. The SBIR Program is comprised of three distinct contract phases. Phase I contracts determine the feasibility of new technology and are currently awarded in amounts up to \$100,000. They are awarded for research lasting nine months or less. Phase II contracts are awarded only to successful Phase I participants and are based on Phase I results. Phase II contracts are not only for continuing research on scientific and technical issues, but are also for determining the potential commercial applications of new technology and products ("commercialization"). Phase II contracts typically are for terms of approximately two years and are currently awarded in amounts up to \$750,000. Phase III involves private sector or non-SBIR federal agency funding to patent, market, license, manufacture, or in other ways, commercialize Phase II projects.

28. In prior years, the maximum values of Phase I and Phase II contracts were less than the current amounts set forth above. Upon information and belief, Defendant Energia usually sought the maximum amount available at the time it submitted its various proposals.

29. SBIR contracts are competitively awarded based on not only scientific and technical merit but also potential commercialization. Panels of scientists and engineers evaluate

proposals. Among other things, in recommending the awarding of contracts these evaluators consider the qualifications of the PI and key personnel, the soundness and technical merit of the proposed approach, the potential commercial applications of the project and the likelihood that the proposed research will fulfill the requirements of the topic or problem the awarding agency sought to be addressed.

## **VII. DEFENDANTS' FALSE CLAIMS SCHEMES**

30. Upon information and belief, from as early as 1992, up to and including the filing of this Complaint, Defendant Moshe Lavid, together at various times with the other named defendants and others persons, engaged in a continuous scheme to defraud the SBIR Program (and occasionally to obtain non-SBIR government contracts) through the submission of false claims for payment and false statements in support of claims for payments. These false claims and statements were in the form of false SBIR Proposals, reports, correspondence and oral statements to awarding agencies and in false financial reports, correspondence and oral statements to government auditors, as set forth below.

### **A. FALSE SBIR PROPOSALS AND REPORTS**

#### **Duplication Of Research**

31. Ordinarily, the Government will not pay twice for the same research under the SBIR Program.

32. Upon information and belief, all awarding agencies attempt to ensure that the United States pays only once for particular research by instructing SBIR applicants that they can not seek duplicate funding and by requiring applicants to either disclose duplicate projects or

certify on their proposals that they have not duplicated, and are not intending to duplicate, the proposed research for other federal agencies.

33. For example, Part 9 of the NSF Instructions concerning Phase I proposals is captioned “Equivalent or Overlapping Proposals To Other Federal Agency” and informs the applicant that:

A firm may elect to submit proposals for essentially equivalent work under other Federal program solicitations or may have received or expect to receive other Federal awards for essentially equivalent work. In these cases, the proposer **MUST** [bold, all caps in original] inform NSF of related proposals and awards and must first certify on the Proposal Cover page whether the proposer (a) has received Federal government awards for related work, or (b) has submitted currently active proposals for similar work under other Federal government program solicitations or intends to submit proposals for such work to other agencies during 1999. For all such cases, the following information is required:

- The name, address and telephone contact of the sponsoring agency to which the proposal was or will be submitted;
- Date(s) of proposal submission(s);
- Title, number, and date of Solicitation under which the proposal was submitted or will be submitted;
- Title and performance period of the proposal; and
- Name and title of Principal Investigator (person-months (per year) (calendar-months) devoted by any personnel on the equivalent or overlapping project who overlap with PI and senior personnel on this proposal)

If no equivalent or overlapping proposals are under consideration, state none. NSF will not make awards that essentially duplicate research funded (or expected to be funded) by other agencies, although in some cases NSF may fund portions of work described in an overlapping proposal provided that the budgets appropriately allocate costs among the various sponsors. **IF A PROPOSER FAILS TO DISCLOSE EQUIVALENT OR OVERLAPPING PROPOSALS AS PROVIDED IN THIS SECTION, THE PROPOSER COULD BE LIABLE FOR ADMINISTRATIVE, CIVIL, OR CRIMINAL SANCTIONS** [bold, red caps in original.]

See also Part 10 of the NSF Instructions concerning Phase II proposals.

34. Additionally, upon information and belief, the Phase I proposal used by each awarding agency asks the applicant to certify that it is not seeking duplicate funding.

35. For example, Question 4 of NSF's Phase I Proposal Cover Page asks for a "yes" or "no" answer to the following statement: "NSF is the only Federal agency that has received an equivalent or overlapping proposal from the small business concern." It adds, "If NO, you must disclose equivalent or overlapping proposals and awards as required by this SBIR Solicitation."

36. Similarly, upon information and belief, the Phase II proposal used by each awarding agency asks the applicant to certify that it is not seeking duplicate funding.

37. For example, the NSF SBIR Phase II Report Cover page contains a certification, which provides, in part:

I certify that the work under this project has , has not , been submitted for funding to another Federal agency and that it has , has , been funded under any other Federal grant, contract or subcontract.

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I certify that the best of my knowledge (1) the statements herein...are true and complete, and (2) the text and graphics in this report...are the original work of the signatories or individuals working under their supervision. I understand that the willful provision of false information or concealing a material fact in this report or any other communication submitted to NSF is a criminal offense (U.S. Code, Title 18, Section 1001).

See NSF Instructions. (Emphasis added.)

38. Notwithstanding the foregoing instructions and notices, which it has received, Energia fraudulently sought, and obtained, funding from different federal agencies for the same research.

39. On numerous occasions, the Lavids prepared, signed and submitted SBIR proposals which falsely certified that Energia was not seeking duplicate funding and which failed to comply with the awarding agencies' instructions concerning the disclosure of duplicative or potentially duplicative research.

40. For example, Energia has sought and obtained a number of SBIR contracts from different federal agencies for research involving the safe and economical disposal of ozone depleting substances ("ODS"), such as chlorofluorocarbons ("CFCs") and bromochlorofluorocarbons ("halons"). In each instance Energia proposed the development of a photochemical process, which Energia sometimes calls "Photothermal Hydrodehalogenation" (or "PTH"), to transform ODS into "environmentally acceptable materials having commercial value." The commercial appeal of this process, according to Energia's proposals, is that it can "convert[] environmental liabilities into assets that can be reused or resold."

41. Ironically, many of the SBIR projects Energia sought and undertook, including, for example those regarding the disposal of ODS, consisted of little more than the "recycling" of the same research, data and technology. Some of these are listed in the table below:

Table: Duplicative ODS Contracts

Contract No.	Agency	Phase	Approximate Proposal Date	Approximate Contract Date	Award Amount
F08635-92-C-0085	AF	2	12/91	8/92-12/96	\$692,773
68D30074	EPA	2	5/93	9/93-9/95	\$150,000
N68335-94-C-0013	Navy	1	6/92	12/93-8/94	\$50,000
DMI-9704053	NSF	2	10/96	8/98-to date	\$300,000

42. In many instances, Energia merely "cut and pasted" the concepts, text, data and tables from one of the above contracts and simply inserted it, in whole or in part, into another without performing any additional substantive research or analysis.

43. By way of illustration, the “work plan” or “tasks” for the proposal for EPA Phase II Contract No. 68D30074 almost mirrors the work plan of Air Force Phase II Contract No. F08635-92-C-0085. Both involved the same technology (PTH) and both proposed to test the same compounds (Halon 1301, CFC-114 and HCFC-22). The overlapping work plan tasks are depicted in the table below:

Table: Duplicative Proposals

EPA Phase 2 Proposal for Contract No. 68D30074 [Fig., Tbl., Task] @ Page	Air Force Proposal for Contract No. F08635-92-C-0085 [Fig., Tbl., Task] @ Page
Task 1 @ 13-22	N/A
Task 2 @ 22-43	Task 1 @ 19-34
Task 3 @ 44-46	Task 2 @ 35-47 (except 6 gases to be tested in Air Force and only 3 in EPA Proposal)
Task 4 @ 46-47	Task 3 @ 48-52
Fig. 11 @ 32	Fig. 2 @ 21

44. Similarly, nearly all of the many charts, tables and data contained in the Final Report for EPA Phase II Contract No. 68D30074 are found in reports from either Air Force Contract No. F08635-92-C-0085 (indicated with an A in column two) or Navy Contract N68335-94-C-0013 (indicated with a B in column two), as shown below:

Table: Duplicative Reports

Final Report for EPA Phase II Contract No. 68D30074 [Fig., Tbl., Task] @ Page	Duplicate Item Contract [Fig., Tbl., Task] @ Page
Fig. 1 @ 3	B-1 Fig.2 @ 6
Fig. 2 @ 6	A-11 Fig. 4 @ 10
Fig. 3 @ 9	B-2 Fig. 20 @ 54 (top figure)
Fig. 4 @ 11	B-2 Fig. 21 @ 56
Fig. 5 @ 12	A-11 Fig. 19 @ 32
Fig. 6 @ 13	A-11 Fig. 20 @ 35
Fig. 7 @ 14	B-2 Fig. 28 @ 65
Fig. 8 @ 15	B-2 Fig. 29 @ 65

Fig. 9 @ 16	A-11 Fig. 21 @ 37
Fig. 10 @ 19	B-2 Fig. 31 @ 70
Fig. 11 @ 20	B-2 Fig. 33 @ 73
Fig. 12 @ 21	A-11 Fig. 26 @ 44
Fig. 13 @ 22	A-11 Fig. 27 @ 44
Fig. 14 @ 27	B-2 Fig. 51 @ 104
Fig. 15 @ 27	B-2 Fig. 52 @ 104
Fig. 16 @ 30	B-2 Fig. 55 @ 108
Fig. 17 @ 30	B-2 Fig. 56 @ 108
Fig. 18 @ 32	B-2 Fig. 57 @ 110
Fig. 19 @ 32	B-2 Fig. 59 @ 111
Fig. 20 @ 34	B-2 Fig. 65 @ 117
Fig. 21 @ 35	B-2 Fig. 66 @ 117
Fig. 22 @ 37	B-2 Fig. 67 @ 120
Fig. 23 @ 38	B-2 Fig. 68 @ 121
Fig. 24 @ 43	A-11 Fig. 46 @ 92
Fig. 25 @ 46	A-11 Fig. 47 @ 95
Tbl. II @ 7	A-11 Tbl. II @ 9
Tbl. III @ 13	A-11 Tbl. VIII @ 34
Tbl. IV @ 18	B-2 Tbl. X @ 66
Tbl. V @ 36	B-2 Tbl. XV @ 119
Tbl. VI @ 47	A-7 Tbl. I @ 2
Task 1 @ 5-41	various
Task 2 @ 41-50	A-11 Task 3 @ 91-97
Task 3 @ 50-55	B-2 "Cost Analysis" @ 132-37 and A-11 Task 4 @ 98-101

Note to Table:

A-7 refers to the 10th Quarterly Progress Report for that Contract. A-11 refers to its Final Report. B-1 and B-2 refer to the proposal and final report, respectively, for Phase I Navy Contract N68335-94-C-0013.

45. Upon information and belief, if the awarding agencies knew of the degree of overlap among the foregoing proposals and reports, they would not have awarded the SBIR contracts to Energia.

46. Additionally, under the SBIR Program Energia was required to create, maintain and produce upon request of the awarding agencies (and its designated auditors) "time and effort work sheets" reflecting time and effort expended on SBIR contracts. Since little time and scientific effort was actually spent on contracts which were merely duplicated from other projects (and indeed, most of Energia's employees were laid off during many contract periods), in many instances Defendant Moshe Lavid falsified Energia time and effort work sheets and consultant invoices. He also made false statements to awarding agencies or auditors concerning who was working on SBIR contracts and the amount of time expended and the kind of tasks that had been performed.

#### False Statements Concerning Commercialization

47. The awarding agencies advise SBIR applicants that commercial viability is significant factor in the decision to award both Phase I and Phase II contracts.

48. For example, the NSF Instructions concerning Phase I and Phase II proposals, see Chapter 3, Part 5, Chapter 4 and Chapter 10, Part 14, repeatedly emphasize the importance of commercialization. Section 4.2.1 states that "**it is incumbent upon the proposer to make a persuasive case for a significant probability of commercial success.**" (Bold in original.) and Section 4.2.2. states that "In order to succeed in the SBIR/STTR Program, the small business must convert the research results into innovative, competitive technology. A top-notch management team is obviously a necessary requirement for this part of the process. The commercialization plan and the follow-on funding commitment play a key role in NSF's evaluation." Follow-on Funding Commitment ("FFC") refers to Phase III funding.

49. To emphasize the importance of FFC agreements as a criterion for awarding contracts, the NSF Instructions require that applicants include the following certification in their proposals:

**The undersigned certify that they agree to this funding commitment and that this information will be used by NSF in evaluating the commercial potential of the company's innovation and, therefore, that information will be a significant factor in determining whether the SBIR/STTR Phase II proposal will be funded. They further understand that willfully making a false statement or concealing a material fact in this commitment or any other communication submitted to the NSF is a criminal offense." (U.S. Code, Title 18, Section 1001) (Red type in original.)**

50. In order to obtain SBIR contracts that it would otherwise not receive, Energia repeatedly submitted false information concerning commercialization and FFCs in its SBIR proposals.

51. For example, the Phase II Proposal for NSF Contract No. DMI-9704053 contains a section dealing with commercialization (at pp. 19-22). The section contains statements about Energia's research history, support it has and will receive from the private sector, and Energia's commercialization record. The statements contained in this section are false and misleading.

(a) Energia boasts of a pilot project involving EPA's Superfund Innovation Technology Evaluation (SITE-E05) program. This statement is false because Energia never conducted the claimed pilot-scale demonstration. Moreover, Energia had not even designed, let alone constructed, a pilot-scale reactor.

(b) Energia suggests that it has teamed up with an industrial partner (referring to DuPont). This suggestion is misleading because, while DuPont had at one time expressed an interest in Energia's proposed technology and even provided Energia with several FFCs in or about 1991 through 1994, nothing tangible ever came out of these transactions. Upon

information and belief, DuPont had lost interest in Energia's technology and, in or about 1996, formally terminated its cooperation with Energia. Upon further information and belief, Energia has never received any funds from DuPont.

(c) Likewise, Energia promised that it would provide NSF with the names of two "major manufacturers" whom agreed to provide FFCs. Upon information and belief, Energia tried but failed to get FFC commitments from two major manufacturers of fluorocarbons (namely, DuPont and Allied Signal).

(d) Upon further information and belief, Energia tried to make up for its failure to secure FFC by obtaining a bogus FFC commitment letter from Defendant Moshe Lavid's friend at Princeton Instruments, Tamli. On behalf of Princeton Instruments, its President, Defendant Talmi, submitted a FFC commitment letter to NSF in or about March 1997. Upon information and belief, Princeton Instruments never intended to provide any such funding to Energia. The March 1997 FFC commitment letter was intended solely to mislead NSF

52. Upon information and belief, virtually all of Energia's SBIR proposals contained false and misleading statements regarding its commercialization history, prospects and follow-on funding similar to those set forth above.

#### Miscellaneous Misrepresentations

53. In order to obtain SBIR contracts, Energia's proposals contained material misrepresentations in addition to those concerning duplication and commercialization.

54. In various proposals, Energia misrepresented information concerning its personnel. For example, In Phase II NASA Proposal (entitled "Laser Ignition of Liquid Oxygen/Ethanol Propellants"), submitted on or about October 7, 1998, Energia claimed

that two of its employees would participate in the Project: Dr. B. F. Gajdeczko and an unnamed “Engineer/Technician.” In fact, Dr. Gajdeczko was employed by Princeton University at the time the application was submitted, as well as when the contract was awarded and performed. Upon information and belief, he has not been employed by Energia. Additionally, Energia did not employ any Engineer/Technician at the time the application was submitted, or when the contract was awarded and performed.

55. In various proposals, Energia misrepresented information concerning the place of the contract performance. For example, in the above-mentioned NASA proposal, on NSF Form 1448, Energia claimed that the project would be performed in “Energia’s Lab., Plainsboro, NJ.” Whereas, in fact, as the Lavid’s well knew, the contract was to be performed, and was performed, at Princeton University.

56. In various proposals, Energia misrepresented information concerning the equipment it had available for performing research and testing. For example, on or about January 10, 2000, Energia submitted an Air Force proposal entitled “Jet Engine Test Cell Pollution Control.” In the proposal, Defendant Moshe Lavid wrote : “Energia’s laser capabilities are excellent; there are only a few other small-business laboratories in the USA with matching laser capabilities.” He then listed five separate lasers, which he claimed were owned by Energia. In fact, none of the listed lasers belonged to Energia: both title and possession had been transferred to Princeton University. The same was true regarding Energia’s claim that it had a Nicolet 750 FTIR spectrometer. Energia made similar false claims concerning equipment in many other proposals submitted during last several years.

57. Such misrepresentations referred to in the above paragraphs of this Complaint were intended by the Lavids to obtain SBIR contracts that would not have been awarded if the awarding agencies knew the true state of Energia's business and resources.

#### **B. MISALLOCATED DIRECT EXPENSES**

58. Even though SBIR awards (and other Government contracts) are often fixed-priced grants, an awardee is required to maintain an adequate accounting system to account for the expenditure of federal funds in accordance with any applicable regulations and the terms and conditions of the awards. To ensure that such a system is maintained, an awardee is required to submit to an audit by a designated entity, frequently, the Defense Contract Audit Agency ("DCAA"). There may also be occasions when an awardee must provide fiscal information to an awarding agency to verify that costs contained in a SBIR proposal have in fact been incurred. SBIR instructions expressly state that proposed costs which cannot be supported by adequate cost/pricing data (as well as "unallowable" costs, as defined in Title 48, Code of Federal Regulations, Subpart 31.2, Federal Acquisition Regulations (FAR), Chapter 1, Parts 1 through 51), will not be funded and will result in a reduction of the requested and/or awarded funding. Additionally, there may be times, when an awardee seeks to have withheld payments released or to receive supplemental payments because of accounting errors or cost overruns.

59. It was not only self-evident that one should prepare and submit truthful financial documents to the United States in connection with the SBIR Program, but SBIR instructions to applicants expressly warn both the grantee small business and the PI that they are each responsible for accurate and valid financial information and, among other things, face civil and

criminal penalties for withholding, falsifying or misrepresenting such information to the Government.

60. Notwithstanding the forgoing, acting on behalf of Energia, Defendant Moshe Lavid repeatedly submitted false financial documents and reports under the SBIR Program (and for at least two non-SBIR Government contracts) to: (a) justify past payments which had been questioned by the DCAA; (b) wrongly obtain monies that awarding agencies had withheld; and (c) support surcharge claims for bogus cost overruns or accounting errors. These false documents and reports usually were for consulting fees and fees to subcontractors that Energia paid to outsiders who purportedly worked on specific SBIR projects.

61. More specifically, as part of a scheme to defraud the United States, Defendant Moshe Lavid misallocated consulting and subcontracting fees among different contracts: falsely attributing certain payments made on contracts that were not under review to those contracts that were being scrutinized by the DCAA or awarding agencies. In some instances, he also mischaracterized these payments as "direct" expense when they should have been reported as "overhead" items. As a result of submitting such false documents and reports, Energia received, or sought to receive, overpayments for "direct" expenses, as described more fully below.

62. Under the SBIR Program, payments for consulting work actually performed on the projects (as distinct from consulting work done on proposals, marketing or other activities) constitute "direct expenses" and can be recoverable costs. Therefore, by overstating consulting fees, a SBIR participant could improperly receive overpayments for direct expenses. This is what Defendant Moshe Lavid did and has sought to do.

#### False Submissions to DCAA

63. In or about 1996, the DCAA conducted an audit of Energia's books, records and accounting; it questioned a number of payments made under the SBIR Program and asked Energia to justify certain claims for direct expenses as well as certain overhead costs.

64. In response to the DCAA's request, Defendant Moshe Lavid prepared and submitted various reports showing purported direct and indirect expenses by contract and by fiscal period. As part of his fraudulent scheme, Defendant Moshe Lavid took at least approximately 25 consulting and subcontractor fee payments that Energia had made under contracts that were not being questioned by the auditors (usually SBIR Phase I contracts for which reporting requirements were relaxed) and allocated them to contracts that were under review. He also treated all of these consulting fees as direct expenses when in fact some were overhead costs (because they related to work done in preparing the proposals or other tasks; not work done on the projects themselves).

65. The following table lists some of the false consulting and subcontractor payments reported to the DCAA:

Misrepresented Payments to Consultants/Subcontractors (direct expenses)

Payee	Check #	Date	Amt.	Reported Contract	Actual Contract
Princeton	3323	6/30/93	5,000	SBIR Air Force Phase II Contract No. F08635-92-C-0085 ("AF2")	SBIR Army Phase I Contract No. DAAH01-93-C- R114
Princeton	3172	12/7/92	3,000	AF2	SBIR Army Phase I Contract No.

					DAAA15-92-C-0040 ("BRL")
Deyu Zhou	3224	1/29/93	912	AF2	BRL
Deyu Zhou	3169	11/30/92	1,500	AF2	?
Deyu Zhou	3196	12/28/92	2,330	AF2	?
Walter Lempert	3300	5/28/93	2,500	AF2	?
Walter Lempert	3261	3/30/93	1,500	AF2	BRL
Avinah Gupta	3502	1 /24/94	1,407	AF2	Business and Planning (Overhead)— Writing Proposals ("B&P")
Javad Tavakoli	3711	7/31/94	3,000	AF2	SBIR NSF Phase I Contract No. DMI-9362153 ("NSF")
Javad Tavakoli	3734	8/31/94	3,000	AF2	NSF
Javad Tavakoli	3783	9/30/94	3,500	AF2	NSF
Javad Tavakoli	3675	6/30/94	4,000	non-SBIR Army Contract No. DAAA21-93-C-0097 ("FTKI")	NSF

Princeton	3552	3/9/94	2,000	FTKI	?
Princeton	3634	5/20/94	5,000	FTKI	?
Princeton	3672	6/30/94	4,000	FTKI	?
Walter Lempert	3477	1/7/94	5,000	FTKI	?
Walter Lempert	3595	4/30/94	5,000	FTKI	?
Walter Lempert	3677	6/30/94	5,000	FTKI	?
Richard Professor Miles	3673	6/30/94	6,500	FTKI	?
K.K. Lehmann	3674	6/30/94	1,000	FTKI	?
Philip Howard	3163	1/23/92	1,500	non-SBIR EPA Contract No. CR 819603-01-0 ("E05")	BRL
Deyu Zhou	3224	1/29/93	915	E05	?
Princeton	3324	6/30/93	5,000	E05	SBIR Navy Phase I Contract No. N60921-93-C-0013
Avinah Gupta	3452	12/22/93	593	E05	B&P
Richard Professor Miles	3478	1/7/94	5,000	SBIR NASA Phase II Contract No. NAS3- 26924	?

66. Defendant Moshe Lavid knew that the foregoing payments were being improperly allocated among contracts. Upon information and belief, he reviewed an earlier-prepared report that correctly listed certain consulting fees and their corresponding contracts. At least six of the 25 fees referred to in the foregoing paragraph were shown in the earlier report with their corresponding contracts properly identified, but were associated in the 1996 report given to the DCAA with entirely different contracts.

#### Fraudulent Requests for Monies Due

67. Defendant Moshe Lavid has frequently sought to obtain monies after the performance of contracts on the grounds of accounting errors or improper retention of amounts due Energia by submitting false documents to the government. Two such examples are discussed below.

#### Air Force Contract 08635

68. Between in or about November 1999 and February 2000, Defendant Moshe Lavid provided documents to a DCAA auditor to obtain \$8,000 for what he characterized as cost "overruns" on Air Force SBIR contract F08635-92-C-0085. Defendant Moshe Lavid claimed that Energia had paid two checks to Princeton in the amounts of \$5,000 and \$3,000 for direct expenses that were supposedly incurred in connection with this contract.

69. In fact, the \$5,000 expense had been incurred on Army Contract DAAH 01-93-C-R114 in 1993 and the \$3,000 expense had been incurred on Army Contract DAAA 15-92-C-0040 in or about 1992.

70. Upon information and belief, Defendant Moshe Lavid well knew that the above payments to Princeton were not related to Air Force Contract 08635 because, among other things, Princeton was not involved at all on that project.

#### Army Contract FTKI

71. In or about March 2000, Defendant Moshe Lavid sent documents to an Army contract administrator in an attempt to receive withheld payments and surcharges because of supposed accounting errors in connection with non-SBIR Army Contract number DAAA 21-93-C-0097 (known as the "FTKI Contract"). The total amount he sought was \$32,872, which included \$3,157 for a supposed "arithmetic error." Imbedded in the direct expenses for which Defendant Moshe Lavid sought reimbursement were payments to Princeton, Professor Richard Professor Miles and other consultants (see Table, *supra*) aggregating approximately \$37,500. In fact, neither Princeton or Professor Miles nor other consultants listed in the Table performed substantial services on the FTKI research project.

72. The FTKI Contract was unusual in that it was terminated by the Army prematurely--Energia never completed the research or final report and in fact did relatively little work on it. Nevertheless, during in or about 1993 and 1994, Energia billed for and received approximately \$563,000 in funding. Because it had actually spent few hours on this project, Energia had to fabricate expenses justifying its receipt of these monies. At or about the time of the contract performance period, Defendant Moshe Lavid prepared times sheets grossly exaggerating the number of hours he had spent on the FTKI Contract. Additionally, Defendant Moshe Lavid caused at least two Energia employees to prepare false time sheets to justify other

direct labor expenses on this contract. Defendant Moshe Lavid submitted such false information concerning his hours and those of Energia employees to the Army and/or DCAA.

73. The submission of false time sheets is contrary to an explicit SBIR requirement that "time and efforts records [in the prescribed form] must be maintained for an awardee's employees so that salary charges to a grant can be adequately supported."

### **C. INFLATED OVERHEAD COSTS**

74. In its SBIR proposal, an applicant is supposed include information on proposed costs. This is done so that the amount of the award will permit the awardee to recover "allowable costs" plus earn a reasonable fee for profits. Among potentially allowable costs are "indirect costs" (which is a sub-category of overhead). Under SBIR rules, indirect costs are recoverable pursuant to a "negotiated indirect cost rate" agreement between the awardee and the awarding agency (and/or the DCAA). Typically, the indirect cost rate is expressed as a percentage of the proposed direct labor costs. For example, an applicant may submit a budget with \$100,000 in proposed direct labor expenses. With a 1.5 indirect cost rate, the amount allowable for indirect costs would be \$150,000.

75. The negotiated rate itself is based largely upon historical indirect cost data, which the applicant must provide to the awarding agency or the DCAA. Presenting overstated historical costs for overhead to the United States would have the effect of permitting the awardee to use a larger overhead factor in future SBIR contracts, thereby resulting in overpayments.

76. The Lavid's have repeatedly run personal expenses and other unallowable costs through Energia's indirect cost accounts and, in doing so, have overstated its overhead expenses in reports given to the DCAA and used by Energia and the Government to calculate the indirect

cost rate to be used on SBIR contracts. As a result, Energia received more money for overhead than it was entitled to receive, as described below.

#### Personal Expenses in Energia Overhead

77. The Lavid's have engaged in a pervasive pattern of paying personal expenses through Energia's overhead accounts, thereby bumping up its indirect cost rate. By way of illustration, and not as an exhaustive list, the Lavid's have used Energia funds to pay for repairs to their home's boiler, monetary gifts to their children disguised as "consulting" or services fees, and Moshe Lavid's legal expenses. For example:

(a) In or about September 1999, the Lavid's caused Energia to issue a check (4747) in the amount of \$2,260 to Spencer Heating for repairs to their home boiler. Energia itself did not incur such expenses because its landlord was responsible for providing utilities and making heating repairs.

(b) Similarly, in or about December 5, 1997, check (4540) in the amount of \$3,600 was issued to Spencer Heating.

(c) On or about September 30, 1999 (on the last day of its fiscal year), Energia paid \$20,000 (check 4765) to the Lavid's daughter, Mayrav, for purported consulting services on five SBIR proposals. These services were itemized in an invoice presented to Energia dated in or about September 30, 1999. In fact, the daughter performed little or no work at all on the listed contracts. Also, on or about September 30, 1999, Energia paid to Mayrav Lavid \$20,000 (check 4754) for purported consulting services on three SBIR proposals as well as for accounting and bookkeeping services. A similar payment in the amount of \$18,000 (check 4656) was made to Mayrav Lavid at the close of the 1998 fiscal year.

(d) On or about September 30, 1999, Energia paid \$20,000 (check 4764) to one of the Lavid's sons, Raviv. Of this amount, \$12,500 was for purported technical writing and editing services on SBIR contracts and proposals. These services were itemized in an invoice presented to Energia in or about September 1999. The invoice stated that Raviv had performed 500 hours of such work. In fact, he performed little or no work at all on the contracts and was residing with his wife and two children in Israel and working there for an Israeli company during most of the relevant period. The remaining \$7,500 was supposedly for "handling and serving papers in Israel" regarding two lawsuits filed in Israel, one of which names Moshe Lavid personally.

(e) In or about August 1999, Energia paid to Raviv Lavid \$6,000 (check 4738) for purported technical writing and editing services on SBIR contracts and proposals that were itemized in an invoice presented to Energia in or about August 1999. The invoice stated that the son had performed 200 hours of such work. A similar payment in the amount of \$18,000 (check 4652) was made to Raviv Lavid at the close of the 1998 fiscal year. In fact, Raviv Lavid did not perform the services for Energia for which he was being compensated. The Lavid's also caused Energia to pay for the son's personal travel between Israel and the United States.

(f) On or about September 30, 1999, the Lavid's caused Energia to pay Israeli attorney Shlomo Friedman, Esq., \$32,175 (check 4753), which, upon information and belief, included legal fees for a lawsuit filed in Israel that names Moshe Lavid personally.

(g) On or about July 18, 1996, the Lavid's caused Energia to issue a check (4295) in the amount of \$600 to Boris Boretsky, a home repair contractor. Similar payments were made to Mr. Boretsky on or about July 27, 1996, check (4308) in the amount of \$600 and on or about August 14, 1996, check (4310) in the amount of \$900.

#### **D. UNIVERSITY SUBCONTRACTING**

78. Upon information and believe, the place where SBIR research is to be conducted, the identity of the single person who is responsible for the scientific and technical direction of the SBIR project (known as the "principal investigator" or "PI", see Title 42, Code of Federal Regulations, Part 2) and the personnel resources of a prospective awardee are material to the awarding agencies' decision to provide SBIR funding.

79. To achieve its various program objectives, SBIR regulations mandate that at least two-thirds of Phase I work and at least one-half of Phase II word be performed by the proposing small business. These requirements are spelled out in instructions given to SBIR applications and such applicants are required to certify on the coversheets of the SBIR proposals that they will comply with them.

80. SBIR instructions to applicants also expressly state that the PI "is considered the key to the success of the effort" and therefore a PI's involvement with the project must be "substantial." Applicants are further advised that "Co-PIs are not permitted." Moreover, the applicant must certify that the PI's (as well as other senior personnel's) primary employment will be with the awardee at the time of the award and during the conduct of the project. Further, an academician can only serve as an SBIR PI if he is on a formal sabbatical leave from his academic institution.

81. On at least three occasions, the Lavids subcontracted work to professors from two prestigious universities to fraudulently obtain Phase I SBIR funding for Energia. In each instance, the Lavids submitted Phase I Proposals which falsely certified that at least two-thirds of the Phase I work would be done by Energia's researchers under the direction of Moshe Lavid,

when, in fact, as the Lavidis knew, virtually all of the work would be done (and was done) by the university professors, and their staff and students, at the universities' facilities. In exchange for their roles in furthering this activity, the professors and/or their universities received monies and equipment from the Lavidis and Energia. In many instances, these payments were falsely characterized as "gifts" to the universities, when, in fact, as the Lavidis knew, they were actually compensation for work done on the Phase I Projects.

82. As a further part of this activity, and to create the false impression that Energia was capable of performing at least two-thirds of the Phase I work, the three SBIR Proposals referred to above also contained misrepresentations about the Energia employees who would be working on the projects. All three applications listed a specific person as an Energia employee and stated that he would serve as a project "researcher," when, in fact, this person was employed by a governmental agency located outside of New Jersey at the time the applications were submitted, as well as when the contracts were awarded and performed. Two of the applications also stated that an unnamed engineer employed by Energia would work on the projects as a "lab technician," when, in fact, Energia did not have such a person on its staff at the time of the applications --or at any time during the contract periods.

83. Two of the false Phase I Proposals involve Rutgers University; the other involves Princeton University, all as discussed in detail below.

#### The Rutgers' Activity

##### The USDA Project

84. In or about August 1997, the Lavidis submitted a Phase I SBIR Proposal entitled "On-Line Monitoring of Moisture during Food Processing" to the United Department of

Agriculture, (the "USDA Project"). It sought funding in the amount of \$65,000. The USDA awarded the Proposal to Energia in or about 1998.

85. On the USDA Proposal cover sheet, the Lavids certified that Energia and its employees would perform a minimum of two-thirds of the Phase I research for the USDA Project.

86. In fact, Professor Pedersen performed virtually all of the USDA Project work at Rutgers. Professor Pedersen (and/or his students) carried out the entire research plan at Rutgers using the university's facilities. Professor Pedersen led the research effort, developed the proposed technical approach and authored nearly the entire technical content of the USDA Proposal and reports that were submitted to the USDA. In short, Professor Pedersen was the actual Principal Investigator (PI) on the USDA Project.

87. The USDA Proposal also listed Dr. Jay Grinstead as an Energia employee and stated that he would participate in the USDA Project as a researcher.

88. In fact, from in or about 1997 to the present, Dr. Grinstead has worked for the National Institute of Standards and Technology (NIST) in Gaithersburg, Maryland. For two years prior to that he was carrying out post-doctoral research at Princeton University. Upon information and belief, Dr. Grinstead has never been an employee of Energia and did not perform any substantive work on the USDA Project.

89. Energia received \$65,000 from the USDA as Phase I SBIR funding. It retained \$50,750 of these monies and paid \$14,250 to Rutgers University and/or Pedersen on the following dates and in the following ways:

(a) On or about May 18, 1998, the Lavids sent Professor Pedersen a letter under Nira Lavid's signature and a check in the amount of \$5,000. The letter falsely stated that

the money was intended as a “gift” to Rutgers Biotechnology Training Program (BTP), whose director was Defendant Professor Pedersen.

(b) On or about June 9, 1998, the Rutgers University Foundation processed the above check as a gift designated to the BTP. On or about June 16, 1998, Rutgers University President Francis Lawrence sent the Lavid's a letter thanking them for the \$5,000 “gift” to the BTP. The letter falsely stated that no goods or services were exchanged in consideration for the contribution so that the full amount was eligible as a charitable contribution.

(c) On or about September 30, 1998, Professor Pedersen faxed three invoices and a cover letter to Defendant Moshe Lavid. The first invoice (for \$5,000), dated May 17, 1998, was for research laboratory supplies. The second invoice (for \$3,000), dated September 25, 1998, was for research (student) support. The third invoice (for \$6,250), dated September 25, 1998, was for consulting services. In the letter, Professor Pedersen advised Defendant Moshe Lavid that first invoice has been paid, the second invoice should be paid in a similar fashion (meaning, as a “gift” to BTP), and the third invoice was to be paid to him directly.

(d) On or about September 30, 1998, the Lavid's sent Professor Pedersen a letter under Nira Lavid's signature and a check in the amount of \$3,000 as payment on the second invoice. The letter falsely stated that the money was intended as a “gift” to the BTP.

(e) In or about November 1998, President Lawrence sent a letter to Nira Lavid at Energia thanking her for a \$3,000 “donation” to the BTP. The Rutgers University Foundation also sent a grant payment receipt to Energia acknowledging the receipt of a \$3,000 “contribution”, which it had processed on October 22, 1998. The receipt falsely stated that there were no substantial goods or services exchanged in consideration for the contribution.

(f) Upon information and belief, the Lavidis paid \$6,250 directly to Professor Pedersen in satisfaction of the third invoice.

#### The DOE Project

90. On or about February 26, 1999, the Lavidis submitted a Phase I SBIR Proposal entitled "Optical Fiber Fluorescent Based Water Vapor Sensor" to the United States Department of Energy (the "DOE Project"). It sought funding in the amount of \$100,000. The DOE awarded the Proposal to Energia in or about 1999.

91. On the DOE Proposal cover sheet, the Lavidis certified that Energia and its employees would perform a minimum of two-thirds of the Phase I research for the DOE Project.

92. In fact, just as he did on the USDA Project, Professor Pedersen performed virtually all of the DOE Project work at Rutgers University and was the *de facto* PI on it.

93. The DOE Proposal also falsely listed Dr. Jay Grinstead as an Energia employee and stated that he would participate in the DOE Project as a researcher, when in fact he was an NIST employee and did not perform any substantive work on the DOE Project.

94. The DOE Proposal also stated that Energia would assign an unnamed engineer to be a lab technician on the DOE Project.

95. In fact, Energia did not employ any engineers at the time of the Proposal and did not hire one during the Phase I performance period.

96. Energia received \$100,000 from the DOE as Phase I SBIR funding. It retained \$70,000 of the funding and paid \$30,000 to Rutgers and/or Professor Pedersen on the following dates and in the following ways:

(a) On September 24, 1999, Professor Pedersen faxed three invoices and a cover letter to Defendant Moshe Lavid. The first invoice (for \$5,000), dated September 24, 1999, was for research laboratory supplies. The second invoice (for \$15,000), dated September 24, 1999, was for research (graduate assistance) support. The third invoice (for \$10,000), dated September 24, 1999, was for consulting services. In the letter, Professor Pedersen advised Defendant Moshe Lavid that first and second invoices should be paid to BTP and the third invoice was to be paid to him directly.

(b) Upon information and belief, the Lavids sent Energia checks in the amounts of \$20,000 and \$10,000 to Rutgers and Professor Pedersen, respectively.

(c) On or about October 15, 1999, Professor Pedersen sent a letter to Defendant Moshe Lavid, thanking him for the recent "donation" in support of the BTP.

(d) On or about November 8, 1999, Rutgers President Lawrence sent a letter to Defendant Moshe Lavid acknowledging the receipt of a \$20,000 "grant" to the BTP. The Rutgers University Foundation also sent a grant payment receipt to Energia acknowledging the receipt of a \$20,000 "contribution," which it had processed on October 22, 1999. The receipt falsely stated that there were no substantial goods or services exchanged in consideration of the contribution.

97. The payments from the Lavids and Energia to Rutgers University and Professor Pedersen were in furtherance of the scheme to violate the FCA by causing the United States to grant SBIR funds to Energia that it was otherwise not entitled to receive.

### The Princeton Activity

98. On or about February 26, 1999, the Lavids submitted a Phase I SBIR Proposal entitled "Filtered Coherent Thomson Scattering for Plasma Diagnostics" to the DOE (the "Second DOE Project"). It sought funding in the amount of \$100,000. The DOE awarded the Proposal to Energia in or about 1999.

99. On the DOE Proposal cover sheet, the Lavids certified that Energia and its employees would perform a minimum of two-thirds of the Phase I research for the Second DOE Project.

100. In fact, Professor Miles (and/or his co-workers, including Dr. Peter Barker) carried out the entire research plan at Princeton University. Professor Miles led the research effort, he and his co-workers developed the proposed technical approach, and he and/or his co-workers authored almost the entire technical content of the Phase I Proposal and reports that were submitted to DOE on the Second Project. Just like Professor Pedersen on the other projects, Professor Miles was the true PI on this one.

101. The Second DOE Proposal also falsely listed Dr. Jay Grinstead as an Energia employee and stated that he would participate in the Second DOE Project as a researcher, when in fact he was an NIST employee.

102. The Second DOE Proposal also stated that Energia would assign an unnamed engineer to be a lab technician on that Project.

103. In fact, Energia did not employ any engineers at the time of the Second DOE Proposal and did not hire one during the Phase I performance period.

104. Upon information and belief, Energia received, or will receive, \$100,000 from the DOE as Phase I SBIR funding for the Second DOE Proposal. Upon further information and

belief, Energia retained, or will retain, \$70,000 of the funding and has paid, or will pay, Princeton University and Professor Miles the remaining \$30,000.

105. From in or about 1997 to the present, the Lavidis have caused Energia to transfer possession and ownership of most of its equipment, including an FTIR spectrometer and all of its lasers, to Professor Miles' group at Princeton University. Upon information and belief, the Lavidis have treated, or intend to treat, these transfers as gifts and charitable deductions on their individual income tax returns. Notwithstanding such transfers, to create a further false impression of Energia's resources, the Lavidis caused Energia to continue to list these items as its equipment in subsequent SBIR proposals.

106. The payments from the Lavidis and Energia to Princeton University and Professor Miles were in furtherance of the scheme to violate the FCA by causing the United States to grant SBIR funds to Energia that it was otherwise not entitled to receive.

## COUNTS

### FIRST CAUSE OF ACTION

(Federal False Claims Act Violations)

(31 U.S.C. § 3729(a)(1), (2) and (3))

1. Relator Teytelboym incorporates by reference paragraphs 1 through 106 of this Complaint, as if fully set forth herein.

2. **DEFENDANTS ENERGIA and MOSHE LAVID**, in connection with Energia's participation in the SBIR Program and Energia's application for non-SBIR contracts from in or about 1992 to the date of this Complaint, engaged in a continuous practice of: (a) knowingly presenting, and causing to be presented, to an officer and employee of the United States Government, false and fraudulent claims for payment and approval; (b) knowingly making, using, and causing to be made and used, false records and statements to get false and fraudulent claims paid and approved by the Government; and (c) conspiring to defraud the Government by getting false and fraudulent claims allowed or paid. .All in violation of 31 U.S.C. §§ 3729(a)(1), (2) and (3).

3. The Government of the United States of America made payments to Energia upon the Lavid's false, fictitious, or fraudulent claims and was therefore damaged.

**SECOND CAUSE OF ACTION**

(31 U.S.C. § 3729(a)(1), (2), and (3))

1. Relator Teytelboym incorporates by reference paragraphs 1 through 106 of this Complaint, as if fully set forth herein.

2. **DEFENDANTS ENERGIA and MOSHE LAVID**, in connection with the application and receipt of federal grants, namely, NSF Phase II Proposal for Contract No. DMI-9704053, (a) knowingly presented, and caused to be presented, to an officer and employee of the United States Government, namely, representatives of the NSF, false and fraudulent claims for payment and approval; (b) knowingly made, used, and caused to be made and used, false records and statements to get false and fraudulent claims paid and approved by the Government; and (c) conspired to defraud the Government by getting false and fraudulent claims allowed or paid, in that they caused Energia to submit a Phase II Proposal which falsely stated that Princeton Instruments would provide follow-on funding to Energia in connection with Contract No. DMI-9704053, when, as the Defendants knew or should have known, Princeton Instruments never intended to provide such funding. All in violation of 31 U.S.C. §§ 3729(a)(1), (2) and (3).

3. Such misrepresentations were material to the NSF's decision to award Energia a SBIR Phase II contract.

4. The United States made payment upon the foregoing false, fictitious, or fraudulent claim and was therefore damaged.

### THIRD CAUSE OF ACTION

(31 U.S.C. § 3729(a)(1), (2), and (3))

1. Relator Teytelboym incorporates by reference paragraphs 1 through 106 of this Complaint, as if fully set forth herein.

2. **DEFENDANTS ENERGIA and MOSHE LAVID**, in connection with the application and receipt of federal grants, namely, a USDA Phase I SBIR Proposal entitled “On-Line Monitoring of Moisture during Food Processing” and a DOE Phase I SBIR Proposal entitled “Optical Fiber Fluorescent Based Water Vapor Sensor,” (a) knowingly presented, and caused to be presented, to an officer and employee of the United States Government, namely, representatives of the USDA and DOE, false and fraudulent claims for payment and approval; (b) knowingly made, used, and caused to be made and used, false records and statements to get false and fraudulent claims paid and approved by the Government; and (c) conspired to defraud the Government by getting false and fraudulent claims allowed or paid, in that they caused Energia to submit a Phase I Proposal which falsely stated that at least two-thirds of the project work would be done by Energia with Defendant Moshe Lavid as the PI, when, as the Defendants knew or should have known, almost all of the work was to be done by Rutgers University under the direction of Professor Pedersen. All in violation of 31 U.S.C. §§ 3729(a)(1), (2) and (3).

3. Such misrepresentations were material to the DOE’s decision to award Energia a SBIR Phase I contract.

4. The United States made payment upon the foregoing false, fictitious, or fraudulent claim and was therefore damaged.

## FOURTH CAUSE OF ACTION

(31 U.S.C. § 3729(a)(1), (2), and (3))

1. Relator Teytelboym incorporates by reference paragraphs 1 through 106 of this Complaint, as if fully set forth herein.

2. **DEFENDANTS ENERGIA and MOSHE LAVID**, in connection with the application and receipt of federal grants, namely, DOE Phase I SBIR Proposal entitled “Filtered Coherent Thomson Scattering for Plasma Diagnostics,” (a) knowingly presented, and caused to be presented, to an officer and employee of the United States Government, namely, representatives of the DOE, false and fraudulent claims for payment and approval; (b) knowingly made, used, and caused to be made and used, false records and statements to get false and fraudulent claims paid and approved by the Government; and (c) conspired to defraud the Government by getting false and fraudulent claims allowed or paid, in that they caused Energia to submit a Phase I Proposal which falsely stated that at least two-thirds of the project work would be done by Energia with Defendant Moshe Lavid as the PI, when, as the Defendants knew or should have known, almost all of the work was to be done by Princeton University under the direction of Professor Miles. All in violation of 31 U.S.C. §§ 3729(a)(1), (2) and (3).

3. Such misrepresentations were material to the DOE’s decision to award Energia a SBIR Phase I contract.

4. The United States made payment upon the foregoing false, fictitious, or fraudulent claim and was therefore damaged.

## PRAYER FOR RELIEF

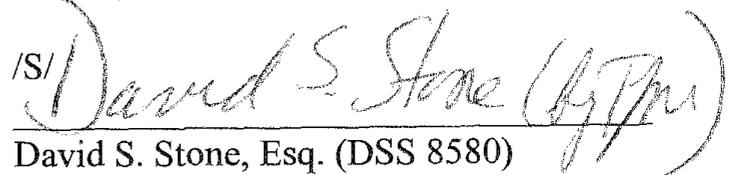
WHEREFORE, Relator Teytelboym, on behalf of himself individually, and acting on behalf, and in the name, of the Government of the United States, respectively, demands and prays that judgment be entered against the Defendants as follows:

1. That the Defendants be ordered to cease and desist from violating the False Claims Act, 31 U.S.C. § 3729 *et. seq.*
2. On the First through Fourth Causes of Action under the False Claims Act, judgment against Defendants in the amount of three times the amount of damages the United States has sustained because of Defendants' actions, plus a civil penalty of \$10,000.00 for each act in violation of the False Claims Act, as provided by Section 3729(a), with interest.
3. That Relator Teytelboym be awarded the maximum amount available under Section 3730(d) of the False Claims Act for bringing this action, namely, 25 percent of the proceeds of the action or settlement of the claim if the Government intervenes in the matter (or pursues its claim through any alternate remedy available to the Government, Section 3730(c)(5)), or, alternatively, 30 percent of the proceeds of the action or settlement of the claim, if the Government declines to intervene.
4. That Relator Teytelboym be awarded all reasonable expenses that were necessarily incurred in prosecution this action, plus all reasonable attorneys' fees and costs, as provided by Section 3730(d).
5. And, such other relief for the United States and Relator Teytelboym as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relator Teytelboym hereby demands trial by jury.

Respectfully submitted,

/s/  (DSS)

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Dated: Newark, New Jersey

November 7, 2005

**OF COUNSEL**

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