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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SANTA CLARA**

11 YUHUI CHEN,

12 Plaintiff,

13
14 vs.

15 ZINING WU, an individual, INNOGRIT
16 CORPORATION, SHANGHAI YINGREN
17 CHUANG INFORMATION TECHNOLOGY
CO., LTD., and DOES 1 through 100, inclusive,

18 Defendants.

Case No.: 18CV337042

Unlimited Civil Case

COMPLAINT FOR:

1. BREACH OF CONTRACT
2. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING
3. UNJUST ENRICHMENT
4. PROMISSORY FRAUD (FRAUDULENT INDUCEMENT)
5. INTENTIONAL MISREPRESENTATION
6. NEGLIGENT MISREPRESENTATION
7. INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS
8. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
9. RETALIATION (CAL. LABOR CODE § 1102.5(b))
10. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
11. BREACH OF FIDUCIARY DUTY (DIRECT)
12. BREACH OF FIDUCIARY DUTY (DERIVATIVE)
13. DECLARATORY RELIEF

JURY TRIAL DEMANDED

1 Plaintiff YUHUI CHEN (“Plaintiff” or “Dr. Chen”), by his attorneys, brings this action on
2 behalf of himself against Defendant ZINING WU (“Wu”), Defendant INNOGRIT
3 CORPORATION (“InnoGrit” or “the Company”), Defendant SHANGHAI YINGREN CHUANG
4 INFORMATION TECHNOLOGY CO., LTD. (“Shanghai Yingren”), and DOES 1 through 100.
5 Plaintiff hereby alleges as follows:

6 **INTRODUCTION**

7 1. According to the homepage of Defendant InnoGrit’s own website, Plaintiff Dr.
8 Chen and Defendant Wu, co-founders of InnoGrit, are “highly respected technology and business
9 leaders in the Silicon Valley.”¹ In reality, Defendant Wu exploited Plaintiff’s sterling reputation
10 in the industry to attract lead investors and top talent to the fledgling enterprise.

11 2. Plaintiff Dr. Chen and Defendant Wu developed a trusted personal and professional
12 relationship after years of working together at Marvell Technology Group Ltd. (“Marvell”).
13 However, after Plaintiff agreed to co-found InnoGrit with Defendant Wu in 2016, their relationship
14 quickly soured when Wu engaged in a series of fraudulent and unlawful activities against Plaintiff.

15 3. First, Defendant Wu failed to perform his contractual obligations and duties under
16 the binding oral agreement he had reached with Plaintiff, which covered their respective ownership
17 shares and management responsibilities in their jointly founded company.

18 4. Second, Defendant Wu committed fraud by inducing Plaintiff to leave Marvell and
19 join InnoGrit on the basis of false promises and intentional misrepresentations.

20 5. By fraudulently inducing Plaintiff to terminate his employment with Marvell and
21 reject a lucrative offer of employment, Defendant Wu intentionally interfered with Plaintiff’s
22 contractual relations and prospective economic gain.

23 6. Finally, for his own personal gain, Defendant Wu proceeded to breach his fiduciary
24 obligations to Plaintiff as a director and shareholder of InnoGrit.

25 7. Although Plaintiff served as President of the Company and managed the business
26 as a whole, Defendant Wu, serving as CEO, consistently excluded Plaintiff from participating in
27

28 ¹ *About Us*, INNOGRIT, <https://innogritcorp.com/company> (last visited October 31, 2018).

1 key decision-making meetings. Defendant Wu also refused to divvy up profits equitably pursuant
2 to his agreement with Plaintiff.

3 8. Plaintiff retained legal counsel to protect his rights and interests pursuant to the
4 rightful terms of engagement. In response, Defendants retaliated against and wrongfully
5 terminated Plaintiff's employment on April 23, 2018.

6 **JURISDICTION AND VENUE**

7 9. This case is properly before this Court. The matter involves issues of state law. All
8 Defendants, presently and at all times relevant to this action, have conducted substantial and
9 continuous commercial activities in Santa Clara County. Defendant InnoGrit employed Plaintiff
10 in this County, and Plaintiff resides in this County. Defendant Wu also resides in this County.

11 **THE PARTIES**

12 10. Plaintiff Yuhui Chen is the Co-Founder of Defendants InnoGrit and Shanghai
13 Yingren and served as President from March 12, 2017 to April 23, 2018. At all relevant times,
14 Plaintiff was an employee of InnoGrit covered by California law and a minority shareholder of
15 Shanghai Yingren.

16 11. Defendant InnoGrit Corporation develops and markets technology for efficient
17 storage solutions. While its corporate headquarters and principal office are located in the City of
18 San Jose, Santa Clara County, California, its parent company, Shanghai Yingren, is registered in
19 Shanghai, China. InnoGrit Corporation is a fully owned subsidiary of Shanghai Yingren, and its
20 San Jose office employs all employees of InnoGrit Corporation—which comprises about half of
21 the total number of employees of Shanghai Yingren Worldwide. Employees of Shanghai Yingren
22 Worldwide who are not employed by InnoGrit Corporation are located in the People's Republic
23 of China and Taiwan. At all relevant times, Defendant InnoGrit was Plaintiff's employer under
24 California law.

25 12. Defendant Shanghai Yingren Chuang Information Technology Company is the
26 parent company of Defendant InnoGrit. Shanghai Yingren is a Limited Liability Company located
27 and registered in Shanghai, China. Defendant InnoGrit is fully owned by Shanghai Yingren.

28 13. Defendant Zining Wu is the Co-Founder and CEO of InnoGrit. He also serves as

1 the Chairman of the Board of Directors of Shanghai Yingren, as well as a shareholder of
2 approximately 20% of Shanghai Yingren's total shares. He is the primary orchestrator of
3 InnoGrit's scheme to defraud Plaintiff.

4 14. The names and capacities of Defendants sued as Does 1 through 100 are presently
5 not known to Plaintiff. Plaintiff therefore sues said Defendants by such fictitious names pursuant
6 to § 474 of the California Code of Civil Procedure. Plaintiff will seek to amend this Complaint to
7 allege the true names and capacities of these Doe Defendants when they are ascertained. Plaintiff
8 is informed and believes, and therefore alleges that the fictitiously named defendants are
9 responsible in some manner for the conduct alleged herein and for the injuries suffered by Plaintiff
10 and similarly aggrieved shareholders. All named Defendants, and Does 1 through 100, will be
11 collectively referred to as "Defendants."

12 15. At all times mentioned in the cause of action alleged herein, each and every
13 Defendant was an agent, joint venturer, and/or alter ego of each and every other Defendant. In
14 doing the things alleged in the cause of action stated herein, each and every Defendant was acting
15 within the course and scope of this agency or employment and was acting with the consent,
16 permission, authorization, and ratification of every other Defendant or their officers or managing
17 agents.

18 **FACTUAL ALLEGATIONS COMMON TO MULTIPLE CAUSES OF ACTION**

19 16. After receiving his Ph.D. in Electrical Engineering from the University of
20 California, Berkeley, Plaintiff Dr. Chen joined Marvell Technology Group in 2010, a global leader
21 in storage, networking, and connectivity semiconductor solutions headquartered in Santa Clara,
22 California.

23 17. From 2010 to 2016, Plaintiff had a thriving career first as the Special Assistant to
24 the President at Marvell, where he was involved in key corporate strategies, and later as a Vice
25 President responsible for Marvell's Solid-State Drive (SSD) Business Unit. Under Dr. Chen's
26 management since 2014, Marvell's SSD controller business achieved significant growth and
27 established a strong leadership in the worldwide market.

28 18. As Vice President at Marvell, Plaintiff received compensation (including salary and

1 cash bonus) of \$324,000 *per annum* as well as additional financial benefits in the range of \$250,000
2 *per annum* in the form of restricted stock units (RSU), stock options, and an employee stock
3 purchase plan (ESPP). In addition, during his employment with Marvell, Plaintiff received regular
4 promotions and consistently garnered top-grade performance reviews for his work and
5 professionalism. Under his leadership, Marvell’s SSD controllers achieved the No. 1 market share
6 in the world for three consecutive years (2014–2016). As of 2015, Plaintiff had before him the
7 prospect of a secure and lucrative career at Marvell.

8 19. As an employee of Marvell since 1999, and Chief Technology Officer from 2014
9 to 2016, Defendant Wu developed a close working relationship with Plaintiff Dr. Chen. The two
10 became partners in their work at Marvell—Wu was responsible for engineering SSD products,
11 while Dr. Chen oversaw business strategies, marketing, and sales.

12 20. The close working relationship between Dr. Chen and Wu developed into a
13 personal friendship. Based on his numerous conversations and personal interactions with Dr. Chen
14 in both work and social contexts, Wu understood that Dr. Chen held him in high trust and regarded
15 him as an honest and forthcoming person.

16 21. In 2015, Dr. Chen sensed that a significant change in Marvell’s leadership was
17 imminent, which eventually led to the resignations of its CEO and President in April 2016. While
18 Marvell was undergoing its leadership change, Dr. Chen and Wu stood up for each other. Both Dr.
19 Chen and Wu ultimately survived the change and kept their positions.

20 22. In September 2015, Dr. Chen approached Wu with the idea of starting a new
21 company in the semiconductor industry. Given the state of upheaval at Marvell, Dr. Chen hoped
22 his trusted friend would join him in creating a brighter future through a joint venture. Dr. Chen
23 was confident that together they could create a very successful company among the best in the
24 global semiconductor industry.

25 23. From late 2015 to the middle of 2016, Dr. Chen and Wu had numerous discussions
26 about forming the new company, meeting as often as twice a week. They also held multiple
27 discussions with potential lead investor Jian-Yue Pan (“Mr. Pan”), a founding partner of
28 SummitView Capital (“SummitView”).

1 24. During the summer of 2016, Plaintiff Dr. Chen and Defendant Wu formulated a
2 detailed business plan, solidifying the foundations of a prosperous company. They also agreed
3 upon a timeline for their resignations from Marvell so as not to raise suspicions by two senior
4 leaders in the Company exiting at the same time.

5 25. Based on their agreed-upon timeline, Wu would resign from Marvell in September
6 2016, and Dr. Chen would leave in December of that year. Dr. Chen would give up the salary,
7 financial benefits, and employment security that Marvell offered him, and devote the entirety of
8 his time, energies, and professional skills to securing investors and bringing up business for the
9 new company. Before Dr. Chen officially started employment at InnoGrit, both agreed that Dr.
10 Chen would also work for a very brief period of time for THG Ventures—a leading venture capital
11 fund in China—as a Venture Partner in the U.S., which would also serve the interests of the new
12 joint venture.

13 26. In or around July 2016, Plaintiff Dr. Chen, Defendant Wu, and SummitView
14 drafted the Term Sheet for their new company. The Term Sheet listed Dr. Chen and Wu as the key
15 founders and established SummitView as the lead investor for the company’s first round of
16 fundraising. Wu also represented to Dr. Chen that Dr. Chen would be the President of InnoGrit, a
17 member of its Board of Directors, and have equal salary as Wu. The two would become partners
18 with comparable position, power, and compensation.

19 27. According to plan, Defendant Wu left Marvell in or around September 2016 and
20 began to set up the new company. In or around October 2016, the Term Sheet for the new company
21 was finalized. Dr. Chen, Wu, and Mr. Pan agreed that all three would become members of the
22 Board of Directors of the new company. Specifically, Dr. Chen would join the Board as the “Key
23 person” designated in the Term Sheet. Dr. Chen is informed, believes, and thereon alleges that, in
24 or around October 2016, Wu incorporated the new company as a Delaware corporation under the
25 name InnoGrit Corporation.

26 28. Meanwhile, Dr. Chen began to discuss the terms of his resignation from Marvell
27 with the law firm, Fenwick and West (“Fenwick”). Dr. Chen first heard of Fenwick in the summer
28 of 2016 while negotiating the Term Sheet related to InnoGrit and SummitView. At this time,

1 Fenwick represented InnoGrit for the proceedings, and was intimately involved in negotiating the
2 Term Sheet. Therefore, Fenwick had actual knowledge that Dr. Chen would be listed as a key
3 founder of InnoGrit.

4 29. On October 24, 2016, Dr. Chen went to Fenwick's office in Mountain View,
5 California, to seek legal advice related to his resignation from Marvell. He met with David Healy
6 ("Healy"), Co-Chair of Mergers & Acquisitions Practice and a Partner within the Corporate
7 Practice at Fenwick, and Daniel McCoy ("McCoy"), Co-Chair of Fenwick's Employment
8 Practices. Healy and McCoy advised Plaintiff not to inform Marvell that he was resigning to start
9 a new company. Healy and McCoy also advised Plaintiff on how to navigate various legal
10 responsibilities associated with his exit from Marvell, and advised Plaintiff on the legal
11 significance and logistics of his exiting Marvell to work briefly for THG Ventures before coming
12 to InnoGrit.

13 30. On November 14, 2016, after consulting with the attorneys at Fenwick, Plaintiff
14 submitted his resignation to Marvell, specifying that his last day of work would be December 16,
15 2016. Marvell's then-CEO Matthew Murphy ("Murphy") immediately reached out to Plaintiff to
16 urge him to stay. Murphy not only offered Plaintiff a 40% increase in salary and bonus, but also
17 promised him greater responsibilities. Murphy gave Dr. Chen until November 28 to accept or
18 decline the offer of continued employment. Dr. Chen contacted Healy and McCoy again on
19 November 21, 2016 to seek further legal advice.

20 31. On November 26, 2016, Plaintiff went to Defendant Wu's residence to work out
21 details regarding equity in InnoGrit. To Plaintiff's surprise, Wu stated that Plaintiff's ownership
22 interest in the Company would only be 8% while Wu's would retain 32%. Plaintiff was shocked
23 because, based on his previous discussions with Wu, they were in agreement that they would both
24 receive equal salaries of \$200,000 *per annum* and comparable ownership shares.

25 32. Believing that Defendant Wu would uphold the agreed-upon terms and that the
26 two could continue to lead the new company together, Plaintiff proposed to Wu that he would
27 accept an unequal share, but emphasized that their shares were to be comparable. Plaintiff also
28 informed Wu that he had received a lucrative offer from Marvell to stay.

1 33. On the night of November 26, 2016, Plaintiff proposed to Wu an alternative equity
2 split: 35% for Wu and 20% for himself, with the remaining equity of 45% relegated to the
3 employees. Wu responded positively the next day to this proposal and indicated that he was willing
4 “to work it out.” Wu’s response reasonably led Plaintiff to believe that the higher equity percentage
5 was acceptable and the two would ultimately be able to work out any remaining differences.

6 34. On the evening of November 27, Plaintiff attended a meeting with Defendant Wu
7 and Mr. Pan. During the meeting, Plaintiff told Wu that the following day was the deadline to
8 either accept or reject Murphy’s offer for continued employment with Marvell. Dr. Chen was
9 willing to decline Marvell’s lucrative offer only if Wu assured him that his ownership expectations
10 in the new company would be satisfied.

11 35. Wu was fully aware that an 8% interest in the new company was completely
12 unacceptable to Plaintiff, and that Plaintiff would not resign from Marvell unless he was assured
13 of receiving an equity stake of at least 20%. With this knowledge, Wu told Plaintiff to go ahead
14 and decline Marvell’s offer, and assured Plaintiff that they would surely work out their issues.

15 36. On Wu’s word and assurances, Plaintiff decided to commit to InnoGrit. On
16 November 28, Dr. Chen declined Marvell’s employment offer. On December 16, Dr. Chen
17 finished his last day at Marvell.

18 37. While working at THG Ventures as a planned short stint from early January through
19 early March of 2017, Dr. Chen began developing an overall market strategy and working with
20 SummitView to secure potential merger and acquisition targets for InnoGrit.

21 38. At this time, Plaintiff, Defendant Wu, and Mr. Pan conferred regularly in Board
22 meetings. Though Plaintiff was not an employee of InnoGrit, he was an official Board member,
23 co-founder, and a key contributor to the strategic development of the Company.

24 39. While Plaintiff placed so much trust in Wu as his business partner and friend, Wu
25 ultimately chose to betray Plaintiff.

26 40. In January 2017, Plaintiff and Wu met again to revisit the division of their equity
27 in InnoGrit. In direct contradiction to Wu’s earlier representations, Wu informed Plaintiff that he
28 never had any intention of meaningfully increasing Plaintiff’s ownership interest above 8% the

1 entire time.

2 41. Plaintiff had turned down his offer from Marvell under false pretenses. He only
3 resigned based on Wu's promise that he was willing to raise Plaintiff's equity stake in the Company
4 to at-or-near 20%.

5 42. Having cut his ties with Marvell, Wu knew that Plaintiff was in an exceptionally
6 vulnerable position. Indeed, he had created Plaintiff's position by design. Returning to Marvell
7 was not a viable option for Dr. Chen at this point. Moreover, Wu knew that Plaintiff did not want
8 to place any more financial burden on his family by not attempting to turn this new opportunity
9 into a success.

10 43. With full knowledge of Plaintiff's tenuous position, in early March of 2017, Wu
11 presented a 10% ownership interest to Plaintiff on a take-it-or-leave it basis. Wu knew that Plaintiff
12 faced immense pressure to accept this fraudulent offer for a 10% ownership stake. This offer was
13 far less than the approximate 20% interest Plaintiff was led to believe that he would receive based
14 on the representations Wu made in their late 2016 meetings and on the oral agreements they
15 reached during those discussions.

16 44. During discussions in March 2017, Plaintiff raised his concerns over the 10% equity
17 interest. Wu assured Plaintiff that this was only an initial stake in the Company and represented
18 that he would receive a larger ownership share in the near future. Wu made these representations
19 knowing they were false, and knowing that the parties' previous relationship of trust would induce
20 Plaintiff to trust Wu to honor his word.

21 45. On the basis of Wu's renewed promises of a larger ownership share in the near
22 future, Plaintiff signed his Stock Purchase Agreement and other onboarding documents.

23 46. On March 12, 2017, Plaintiff formally joined InnoGrit as President, overseeing the
24 whole of the Company's business operations.

25 47. Plaintiff reasonably believed that he would earn a larger ownership stake in the
26 Company based on his key position and his contributions to the Company—as Wu had represented.

27 48. In reality, Wu gradually reduced Plaintiff's job duties and responsibilities, and
28 ultimately cut Plaintiff out of the Company altogether.

1 49. During the first few months of his leadership of the Company, Plaintiff continued
2 to use his extensive network in SSD-related industries to recruit investors and customers. Despite
3 Defendant Wu’s deceitful conduct up to that point, Plaintiff wholeheartedly attempted to move
4 forward and repair their working relationship. Plaintiff did so both for the sake of InnoGrit’s future
5 success and in the misguided belief that Wu had not intentionally tried to injure Plaintiff, but rather
6 had a momentary lapse of judgment given the stresses of starting the new company.

7 50. In March 2017, Defendant Wu demoted Plaintiff to the status of a Board Observer
8 rather than a full Board Member. Huican Zhu, Managing Partner of Amino Capital, instead took
9 Dr. Chen’s spot as Board Member. Wu refused to include Plaintiff in any Board meetings after
10 that, and refused, under request by Plaintiff and his counsel, to provide any Board document to
11 Plaintiff.

12 51. In September 2017, Plaintiff Dr. Chen and Defendant Wu discussed securing a key
13 customer’s commitment for InnoGrit’s second round of financing planned for the end of 2017.
14 Securing a key customer’s commitment is a crucial milestone for existing lead investor
15 SummitView (as specified in the Term Sheet), as well as for any new investors. The identified key
16 customer was Shenzhen Longsys Electronics Co., Ltd (“Longsys”). Established in 1999, Longsys
17 is a leading storage solution supplier in China, staffed by over 400 engineers and owning over 500
18 patents.

19 52. Even back in September or October of 2016, Defendants solicited feedback from
20 Longsys regarding their product needs. When designing the first and primary product InnoGrit
21 hoped to market, Longsys’ needs were heavily considered.

22 53. Plaintiff Dr. Chen has known Longsys and its Chairman, Huabo Cai (“Mr. Cai”),
23 for a long time. They have a significant and strong working relationship. While Plaintiff worked
24 at Marvell, he and Mr. Cai formed a strategic collaboration between the two companies, allowing
25 Longsys to greatly increase its market share in China and empowering Marvell to make a strong
26 entrance into the China market.

27 54. For these reasons, Mr. Cai and Dr. Chen held a good deal of respect for each other,
28 which was the ultimate reason for Longsys’ decision to support InnoGrit with the requested

1 commitment.

2 55. On November 5, 2017, Plaintiff and Defendant Wu met with Mr. Cai and the
3 Longsys team in Shenzhen. In their first meeting, Longsys was hesitant to commit as InnoGrit's
4 product would not be ready for sale for nearly another year. After the meeting, Wu was visibly
5 worried about Longsys' hesitance and concerned about fundraising prospects without a
6 commitment from Longsys.

7 56. Plaintiff decided to consult Mr. Cai himself. The next day, Plaintiff sent Mr. Cai a
8 respectful message asking whether Longsys could sign a Memorandum of Understanding
9 ("MOU") with InnoGrit memorializing their intention to purchase InnoGrit's product once it was
10 launched. Because of their long working relationship, Mr. Cai promptly agreed to Plaintiff's direct
11 offer. Mr. Cai's decision to contract with InnoGrit was an acknowledgment of his personal respect
12 for Plaintiff and belief in Plaintiff's ability to deliver successful results. Plaintiff secured a signed
13 MOU from Longsys on November 23, 2017, which marked a critical turning point in the future of
14 InnoGrit.

15 57. In December 2017, using the leverage of the MOU with Longsys, Plaintiff further
16 facilitated Defendants in securing funding for InnoGrit's second round of financing. As a result, a
17 major new investor—one of the largest electronics producers in China—led the investment, which
18 yielded approximately \$13 million in additional capital.

19 58. Immediately after Plaintiff expended tremendous personal capital to greatly
20 improve InnoGrit's market and financial position, Defendant Wu started undermining Plaintiff's
21 position at InnoGrit. On December 15, 2017, the Friday before the Company's holiday break,
22 Defendant Wu met with Plaintiff to conduct a performance review for him.

23 59. During the meeting, Defendant Wu delivered dishonestly low ratings to Plaintiff in
24 almost every category. Plaintiff disputed this assessment on the spot, referencing his various
25 achievements in building his team, cultivating customers, and securing funding. In turn, Defendant
26 Wu vaguely nodded at a lack of "proactiveness," though he was unable to explain what he precisely
27 meant.

28 60. From this point through approximately February 2018, Wu, as Board Chairman,

1 and CEO, continued to diminish Plaintiff's scope of responsibilities at InnoGrit. Plaintiff sensed
2 Defendant Wu was trying to push him out of the Company.

3 61. On February 23, 2018, one day before Plaintiff was to leave for an overseas
4 business trip, Wu asked him to interview Keita Kitahama ("Mr. Kitahama") for a marketing and
5 sales role. When asked by Plaintiff Dr. Chen, Wu confirmed that Mr. Kitahama would join
6 Plaintiff's team at InnoGrit.

7 62. Plaintiff conducted the interview and relayed to Defendant Wu that he approved of
8 hiring Mr. Kitahama for a marketing and sales position on his team.

9 63. Later, Plaintiff found it strange that Mr. Kitahama began employment at InnoGrit
10 on March 1, when Plaintiff was still gone on his business trip, given that Mr. Kitahama would be
11 a member of his team. Wu assured Plaintiff that it only made sense for Mr. Kitahama to start on
12 March 1 because his employment benefits started at that time.

13 64. However, when Plaintiff returned from his trip on March 7, Wu told him in a one-
14 on-one meeting the next day that Plaintiff would now answer to Mr. Kitahama. At this point,
15 Plaintiff's fears were confirmed—Wu was trying to force him out of the Company.

16 65. By March 2018, customers at Longsys became aware of problems arising within
17 InnoGrit. That month, Mr. Kitahama and Defendant Wu met with the Head of Longsys' America
18 Office. However, Plaintiff had just had lunch with the Head two days prior. The Longsys
19 representative was perplexed as to why Plaintiff was not present in the follow-up meeting. Other
20 customers (including Toshiba and Exascend) were also perplexed by Plaintiff's absence from their
21 meetings with Wu and Mr. Kitahama.

22 66. At a meeting on March 15, 2018, Plaintiff explained that it would be difficult for
23 Plaintiff and Mr. Kitahama to work at the same company, given the humiliating and duplicitous
24 circumstances Defendant Wu had orchestrated regarding Mr. Kitahama's entrance. Wu expressed
25 a preference for Mr. Kitahama to stay at InnoGrit over his own co-founder, Plaintiff.

26 67. In that same conversation, realizing he would be forced out of InnoGrit one way or
27 another, Plaintiff attempted to negotiate a reasonable separation agreement. He requested that he
28 remain on InnoGrit's payroll for an additional six months and the acceleration of all his shares in

1 InnoGrit, the latter of which represented a total value of approximately \$6 million at that time.

2 68. Wu refused any reasonable offer. They adjourned their meeting with the intention
3 of working out an agreement at a later date.

4 69. Throughout the entire meeting, Plaintiff was clear that he would not agree to resign
5 from InnoGrit unless the two could reach a mutually agreeable separation agreement. However,
6 Wu falsely claimed later that Plaintiff had resigned during this meeting, including in an email from
7 Wu to all InnoGrit employees on April 23, 2018.

8 70. Between March 15 and March 26, 2018, Plaintiff and Wu met several more times
9 to negotiate an agreement for Plaintiff's separation from the Company. Failing to achieve such an
10 agreement, they designated their respective legal counsels to continue the negotiations between
11 March 26 and April 23. During these negotiations, Defendant Wu was represented by Fenwick,
12 the law firm that had given Plaintiff legal advice on his separation from Marvell. The purpose of
13 these negotiations was to resolve the disputes created by Defendant Wu's breach of various
14 contractual obligations and work out an agreeable separation agreement, something that Plaintiff
15 believed was imminently possible.

16 71. Although communications between their attorneys were still ongoing, on the
17 morning of April 23, Defendant Wu and the Vice President of Finance Tao Kuang tried to coerce
18 Plaintiff into signing a letter of resignation. Defendant Wu insisted that he would not leave Plaintiff
19 alone until Plaintiff signed the inequitable resignation letter prepared for him.

20 72. When Plaintiff asked to speak with his attorney first, Defendant Wu refused to
21 provide him with the opportunity. Wu and Tao Kuang finally left the room after approximately
22 twenty minutes of this type of harassment.

23 73. Soon thereafter, Plaintiff, with the help of his counsel, drafted and signed a half-
24 page letter reiterating that Plaintiff was *not* resigning from InnoGrit.

25 74. Finally, in the late morning of April 23, 2018, Plaintiff was escorted out of the
26 building by Defendant Wu and Tao Kuang in front of the rest of the office. This intentionally
27 public and humiliating display involved Wu and Kuang walking Plaintiff out of the office and
28 carrying boxes of his belongings behind him.

1 75. However, while Plaintiff was escorted out of InnoGrit, Defendants provided
2 Plaintiff with no official termination or separation documents, and Plaintiff did not sign any such
3 documents.

4 76. On the evening of April 23, when Plaintiff requested his personnel files from Tao
5 Kuang, who also acted as the head of Human Resources at InnoGrit, Tao Kuang claimed to have
6 never heard of such files. Plaintiff finally received his personnel files from InnoGrit on April 27,
7 2018.

8 77. From late April to early May of 2018, Defendants continued to subject Plaintiff to
9 similar abuse. For example, Plaintiff was in the process of applying for a home mortgage loan so
10 that he could purchase a home. When InnoGrit was contacted as part of this process, Wu threatened
11 to sabotage the mortgage process unless Plaintiff signed a separation agreement with InnoGrit.
12 Plaintiff and his family suffered from immense stress caused by Wu's act of retaliation, but
13 Plaintiff still refused to sign the agreement. Ultimately, Plaintiff's loan did not get approved.

14 78. On April 30, 2018, Fenwick sent Plaintiff and his counsel a correspondence
15 providing Plaintiff with two inequitable and undesirable options regarding the status of Plaintiff's
16 shares with Shanghai Yingren and InnoGrit. The letter claimed that if Plaintiff did not choose one
17 of these unpalatable options within three days, Wu would force Plaintiff to move all of his shares
18 in the Shanghai shareholding entity to the Cayman Islands shareholding entity at great financial
19 loss to Plaintiff.

20 79. Plaintiff requested to see all relevant documents for the Shanghai shareholding
21 entity. Defendants never provided Plaintiff with these documents, and Plaintiff did not hear back
22 from Defendants on this matter.

23 80. Throughout the course of his employment, Plaintiff also discovered that Wu
24 engaged in a series of misconduct that violated his obligations as a co-founder of InnoGrit.
25 InnoGrit's Term Sheet with SummitView clearly specifies that the responsibilities of the founders
26 include an obligation to exclusively work for InnoGrit for four years. Within months of InnoGrit's
27 founding, Defendant Wu violated this obligation. In the summer of 2017, Plaintiff learned that
28 Defendant was deeply involved in the affairs of a different company—one of InnoGrit's

1 investors—Amino Capital.

2 81. When he joined InnoGrit in March 2017, Plaintiff signed an employment agreement
3 that had been drafted by Healy and McCoy, the Fenwick and West attorneys who had advised
4 Plaintiff in October 2016 on matters related to his resignation from Marvell and his co-founding
5 of InnoGrit.

6 82. Healy and McCoy did not issue a Termination Letter after providing legal advice
7 to Plaintiff on his resignation from Marvell and co-founding InnoGrit in 2016, nor did they
8 terminate their representation of Plaintiff in any other manner.

9 83. Due to their failure to terminate their relationship with Dr. Chen, Healy and McCoy
10 represented both Plaintiff and InnoGrit at the time the employment agreement was drafted and at
11 the time the agreement was signed by Plaintiff.

12 84. Because Healy and McCoy represented adverse interests throughout the creation
13 and signing of the employment agreement between Dr. Chen and InnoGrit, the resulting agreement
14 is procedurally unconscionable in its entirety.

15 85. In addition, the purported employment contract was offered on a take-it-or-leave-it
16 basis, and is a contract of adhesion. Plaintiff Chen was not afforded an opportunity to negotiate
17 the terms of the agreement, including specifically the arbitration provision, which was presented
18 as a condition of employment.

19 86. Finally, after laying the salary and benefits that Dr. Chen is to receive, the
20 employment agreement reserves InnoGrit’s right to “change or otherwise modify, in its sole
21 discretion, the preceding terms of employment.” The agreement does not reserve any right to
22 modify the terms for Dr. Chen.

23 87. The one-sided reservation of the right to modify the terms, which gives InnoGrit
24 unfettered discretion to change the fundamental terms of Dr. Chen’s employment while giving Dr.
25 Chen no say whatsoever, is overly harsh and unreasonably favorable to InnoGrit, and renders the
26 employment agreement in its entirety substantially unconscionable.

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1 **FIRST CAUSE OF ACTION**

2 **BREACH OF CONTRACT**

3 **(Against Defendant Wu)**

4 88. Plaintiff repeats and adopts the foregoing paragraphs as though fully set forth
5 herein.

6 89. Starting in late 2015, Plaintiff and Defendant Wu discussed starting a new business
7 in the semiconductor industry. In or around July 2016, Plaintiff and Defendant Wu entered into a
8 valid oral agreement to create a new business entity together as partners. Under this agreement,
9 Plaintiff and Defendant Wu were to split ownership and participate on equal terms in the
10 management and control of their proposed business, which would become Defendants InnoGrit
11 and Shanghai Yingren.

12 90. In consideration of this agreement, Plaintiff was to resign his position at Marvell,
13 thereby relinquishing his stock options, and join the to-be formed business in a leadership role.

14 91. In recognition of the fact that Plaintiff would be taking comparable risks as
15 Defendant Wu in starting the new venture, and making comparable contributions to the venture,
16 Plaintiff was to receive comparable rewards as Defendant Wu. Specifically, Plaintiff was clear in
17 his expectation that, upon incorporation, he would receive an ownership stake that would be equal
18 or comparable to Defendant Wu's share, and would participate as a full member of the Board of
19 Directors of their to-be formed business.

20 92. Defendant Wu agreed with these terms. He expressly agreed that Plaintiff would be
21 an active member of the Board of Directors, and implicitly agreed to Plaintiff's demand for a 20%
22 equity stake in InnoGrit.

23 93. At all times, Plaintiff performed all conditions, covenants, and promises required
24 to be performed on his part in accordance with the terms of the oral agreement between himself
25 and Wu.

26 94. Defendant Wu breached this oral agreement by denying Plaintiff an ownership
27 stake in InnoGrit equal or comparable to Defendant Wu's ownership interest, instead proposing
28 that his share would be merely one-fourth of the interest owned by Defendant Wu, and by refusing

1 to formalize Plaintiff's position as a member of the Board of Directors.

2 95. Defendant Wu also agreed to increase Plaintiff's equity stake in the Company
3 within a short period of time after Plaintiff agreed to join InnoGrit. Wu made this misrepresentation
4 to induce Plaintiff to sign the initial agreement offering Plaintiff 10% equity in the Company.

5 96. Defendants breached this contract when, following Plaintiff's successful efforts as
6 President of InnoGrit, Defendant Wu refused to increase Plaintiff's equity stake.

7 97. As a direct and foreseeable result of the breach of contract by Defendant Wu,
8 Plaintiff suffered damages in an amount according to proof within the jurisdiction of this Court.

9 **SECOND CAUSE OF ACTION**

10 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

11 **(Against Defendant Wu)**

12 98. Plaintiff repeats and adopts the foregoing paragraphs as though fully set forth
13 herein.

14 99. As alleged above, after discussing the potential of starting a new business
15 throughout 2015 and 2016, Plaintiff and Defendant Wu entered into a valid oral agreement to
16 create a new business entity in or around July 2016.

17 100. The agreement between Plaintiff and Defendant Wu contained an implied covenant
18 of good faith and fair dealing that obligated Defendant Wu to perform the terms and conditions of
19 the agreement fairly and in good faith and to refrain from acting in ways that would deprive
20 Plaintiff of its benefits.

21 101. The agreement between Plaintiff and Defendant Wu gave Defendant Wu discretion
22 to determine and/or negotiate the details of the ownership and control of the Company, and to
23 reach an arrangement that would conform to the reasonable expectations of Plaintiff. Defendant
24 Wu was obligated to exercise this discretion in good faith, and therefore to create an arrangement
25 that would give Plaintiff and Defendant Wu equal or comparable ownership and control over the
26 new venture.

27 102. As alleged above, at all times, Plaintiff performed all conditions, covenants and
28 promises required on his part in accordance with the terms of the oral agreement.

1 110. Defendants Wu and InnoGrit's actions resulted in the unjust enrichment of
2 Defendants at the expense of Plaintiff.

3 111. Plaintiff is seeking restitution of the benefits unjustly conferred on Defendants in
4 an amount according to proof within the jurisdiction of this Court.

5 **FOURTH CAUSE OF ACTION**

6 **PROMISSORY FRAUD (FRAUDULENT INDUCEMENT)**

7 **(Against All Defendants)**

8 112. Plaintiff repeats and adopts the foregoing paragraphs as though fully set forth
9 herein.

10 113. Plaintiff and Defendant Wu discussed founding a new business throughout 2015
11 and 2016. During these conversations, Defendant Wu represented to Plaintiff that he would receive
12 an ownership stake in the to-be formed business that would be equal or comparable to the stake
13 that Defendant Wu would acquire. Defendant Wu further represented that Plaintiff would be the
14 President of the Company, and a member of its Board of Directors.

15 114. Defendant Wu never intended to give Plaintiff an equal or comparable ownership
16 stake in the to-be formed business or to make Plaintiff a member of the Company's Board of
17 Directors.

18 115. During their 2016 conversations, Defendant Wu knowingly and willfully
19 misrepresented these facts with the aim of inducing Plaintiff to leave Marvell and join the to-be
20 formed business. Defendant Wu knowingly, and falsely, led Plaintiff to believe that he would
21 become an equal partner in the new venture.

22 116. Further, in response to Plaintiff's proposed equity split of 35% for Defendant Wu
23 and 20% for Plaintiff on November 26, 2016, Defendant Wu made misrepresentations for the
24 purpose of misleading Plaintiff, or knowing that there was a substantial likelihood that Plaintiff
25 would be misled, into believing that he would receive a 20% stake in the company.

26 117. On the following day, November 27, 2016, Defendant Wu again assured Plaintiff
27 that he could trust Defendant Wu and that Plaintiff should go ahead and resign from Marvell.
28 Defendant Wu did so for the purpose of misleading Plaintiff or knowing that there was a substantial

1 likelihood that Plaintiff would be misled into believing that he would receive a 20% stake in the
2 Company.

3 118. On the basis of Defendant Wu's representations, Plaintiff reasonably believed that
4 Defendant Wu agreed to an ownership stake in InnoGrit at or near 20% for Plaintiff.

5 119. In reliance on the misrepresentations about Plaintiff's position at and ownership
6 share of InnoGrit made to him by Defendant Wu, Plaintiff formally resigned his position at
7 Marvell. In doing so, Plaintiff gave up a compensation package with a value exceeding \$800,000
8 *per annum*.

9 120. As a direct and foreseeable result of his reasonable reliance on Defendant Wu's
10 false promises, Plaintiff suffered damages in an amount according to proof within the jurisdiction
11 of this Court.

12 **FIFTH CAUSE OF ACTION**

13 **INTENTIONAL MISREPRESENTATION**

14 **(Against All Defendants)**

15 121. Plaintiff repeats and adopts the foregoing paragraphs as though fully set forth
16 herein.

17 122. As alleged above, Plaintiff and Defendant Wu discussed founding a new business
18 throughout 2015 and 2016. During these conversations, Defendant Wu represented to Plaintiff that
19 he would receive an ownership stake in the to-be formed business that would be equal or
20 comparable to the stake that Defendant Wu would acquire. Defendant Wu further represented that
21 Plaintiff would be the President of the Company, and a member of the Board of Directors of
22 Shanghai Yingren.

23 123. Defendant Wu's representations were not in accordance with reality, as Defendant
24 Wu did not in fact intend to give Plaintiff an equal or comparable ownership stake in InnoGrit, nor
25 did he intend to make Plaintiff a member of the Company's Board of Directors.

26 124. Defendant Wu had actual knowledge of the falsehood of the representations made
27 to Plaintiff.

28 125. As alleged above, Defendant Wu knowingly misrepresented his intentions with the

1 aim of inducing Plaintiff to leave Marvell and join the to-be formed business, leading Plaintiff to
2 believe that he would be an equal partner in the new venture.

3 126. On the basis of Defendant Wu's subsequent misrepresentations, Plaintiff
4 reasonably believed that Defendant Wu would ensure that Plaintiff would receive an equitable
5 ownership stake in InnoGrit.

6 127. Relying on the false representations about his position at and ownership share of
7 InnoGrit made to him by Defendant Wu, Plaintiff formally resigned his position at Marvell.

8 128. As a direct and foreseeable result of his reasonable reliance on Defendant Wu's
9 intentional misrepresentations, Plaintiff suffered damages in an amount according to proof within
10 the jurisdiction of this Court.

11 **SIXTH CAUSE OF ACTION**

12 **NEGLIGENT MISREPRESENTATION**

13 **(Against All Defendants)**

14 129. Plaintiff repeats and adopts the foregoing paragraphs as though fully set forth
15 herein.

16 130. In the event this Honorable Court finds that Defendant Wu's misrepresentation
17 were not made intentionally, Plaintiff pleads the instant cause of action for Negligent
18 Misrepresentation against all Defendants strictly in the alternative.

19 131. As alleged above, Plaintiff and Defendant Wu discussed founding a new business
20 throughout 2015 and 2016. During these conversations, Defendant Wu represented to Plaintiff that
21 he would receive an ownership stake in the to-be formed business that would be equal or
22 comparable to the stake that Defendant Wu would acquire. Defendant Wu further represented that
23 Plaintiff would be the President of the Company, and a member of its Board of Directors.

24 132. Defendant Wu's representations were not in accordance with reality, as Defendant
25 Wu did not in fact intend to give Plaintiff an equal or comparable ownership stake in InnoGrit, nor
26 did he intend to make Plaintiff a member of the Company's Board of Directors.

27 133. Defendant Wu had no reason to believe that Plaintiff would in fact receive an equal
28 or comparable ownership stake in InnoGrit, nor that Plaintiff would in fact become a member of

1 the Company's Board of Directors, as Defendant had no intention of sharing ownership and control
2 on an equal footing with Plaintiff.

3 134. As alleged above, Defendant Wu misrepresented his intentions with the aim of
4 inducing Plaintiff to leave Marvell and join the to-be formed business, leading Plaintiff to believe
5 that he would be an equal partner in the new venture.

6 135. As alleged above, on the basis of Defendant Wu's subsequent misrepresentations,
7 Plaintiff reasonably believed that Defendant Wu would ensure that Plaintiff would receive a fair
8 ownership stake in InnoGrit at or near 20%.

9 136. Relying on the false representations about his position at and ownership share of
10 Shanghai Yingren made to him by Defendant Wu, Plaintiff formally resigned his position at
11 Marvell.

12 137. As a direct and foreseeable result of his reasonable reliance on Defendant Wu's
13 negligent misrepresentations, Plaintiff suffered damages in an amount according to proof within
14 the jurisdiction of this Court.

15 **SEVENTH CAUSE OF ACTION**

16 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

17 **(Against Defendant Wu)**

18 138. Plaintiff repeats and adopts the foregoing paragraphs as though fully set forth
19 herein.

20 139. Until his formal resignation on November 28, 2016, Plaintiff was employed as Vice
21 President heading the SSD Business Unit at Marvell.

22 140. In this position, Plaintiff received cash compensation of \$324,000 *per annum*, as
23 well as additional financial benefits in the form of stocks and stock options of approximately
24 \$250,000 *per annum*, for a total of approximately \$574,000 *per annum*.

25 141. Under Plaintiff's leadership, Marvell became the market leader in SSD controllers,
26 and Plaintiff consistently received top-grade performance reviews and regular promotions.

27 142. Plaintiff was an at-will employee at Marvell and was free to terminate his position
28 at any time. While his employment at Marvell was at the will of himself and his employer, it was

1 not at the will of Defendant Wu.

2 143. Defendant Wu was aware of Plaintiff's employment agreement with Marvell, and
3 they had discussed the details of Plaintiff's responsibilities and compensation in the context of
4 their discussions about the role Plaintiff expected to be occupying at InnoGrit.

5 144. Defendant Wu intentionally represented to Plaintiff that he would receive an
6 ownership interest in InnoGrit that would be equal or comparable to that of Defendant Wu's 35%,
7 and that Plaintiff would be a member of Board of Directors of Shanghai Yingren.

8 145. Defendant Wu made these representations with the intent to induce Plaintiff to
9 terminate his employment agreement with Marvell and join InnoGrit.

10 146. In reliance on Defendant Wu's representations, Plaintiff terminated his
11 employment agreement with Marvell on November 28, 2016.

12 147. Only after Plaintiff officially terminated his employment agreement with Marvell
13 did Defendant Wu insist on different terms than those he had represented to Plaintiff in their prior
14 discussions.

15 148. As a direct and foreseeable result of Defendant Wu's actions that were designed to
16 induce Plaintiff to terminate his employment agreement with Marvell, Plaintiff suffered damages
17 in an amount according to proof within the jurisdiction of this Court.

18 **EIGHTH CAUSE OF ACTION**

19 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

20 **(Against Defendant Wu)**

21 149. Plaintiff repeats and adopts the foregoing paragraphs as though fully set forth
22 herein.

23 150. As alleged above, until his formal resignation on November 28, 2016, Plaintiff was
24 employed as Vice President heading the SSD Business Unit at Marvell.

25 151. As a result of his employment at Marvell, Plaintiff had a long-standing, stable
26 economic relationship with Marvell.

27 152. In response to his initial letter of resignation, submitted on November 14, 2016,
28 Marvell offered Plaintiff an increase of 40% in his financial compensation and increased

1 responsibilities.

2 153. Marvell’s offer, designed to retain Plaintiff as an employee, was certain to confer
3 economic benefits on Plaintiff.

4 154. Defendant Wu was aware of this prospective economic benefit to Plaintiff, because
5 Plaintiff relayed Marvell’s offer to Defendant on November 26, 2016.

6 155. Defendant Wu intentionally represented to Plaintiff that they would be able to come
7 to a mutually agreeable (equal or comparable) division of ownership interest in InnoGrit, with the
8 aim of inducing Plaintiff to turn down Marvell’s offer and instead join InnoGrit.

9 156. In reliance on Defendant Wu’s intentional representations, Plaintiff officially
10 resigned from Marvell on November 28, 2016, thereby forsaking the certain benefits he would
11 receive from the offer of improved compensation and expanded responsibilities at Marvell.

12 157. As a direct and foreseeable result of Defendant Wu’s intentional actions, Plaintiff
13 suffered damages in an amount according to proof within the jurisdiction of this Court.

14 **NINTH CAUSE OF ACTION**

15 **RETALIATION (CAL. LABOR CODE § 1102.5(b))**

16 **(Against All Defendants)**

17 158. Plaintiff repeats and adopts the foregoing paragraphs as though fully set forth
18 herein.

19 159. Cal. Labor Code § 1102.5(b) prohibits retaliation against an employee “because the
20 employer believes that the employee . . . may disclose information[] to a government or law
21 enforcement agency . . . if the employee has reasonable cause to believe that the information
22 discloses a violation of state or federal statute, or a violation of or noncompliance with a local,
23 state, or federal rule or regulation . . .”

24 160. Beginning in or around March of 2018, Plaintiff Chen and Defendant Wu engaged
25 in multiple conversations wherein Dr. Chen raised concerns about the legality of Wu’s actions.

26 161. On April 11, 2018, Dr. Chen, through counsel, notified Defendants Wu and
27 InnoGrit of his reasonable cause to believe Defendants’ actions had violated several laws. Dr. Chen
28

1 alleged that Defendants, among other violations, had violated the California Corporate Code
2 through several unlawful Board actions.

3 162. In direct response to Plaintiff's protected activities, and Defendants' belief that Dr.
4 Chen would disclose publicly these violations of the law, Defendants retaliated against Plaintiff
5 by terminating his employment with InnoGrit days later, on April 23, 2018.

6 163. As a direct and foreseeable result of Defendant's unlawful retaliation, Plaintiff
7 suffered damages in an amount according to proof within the jurisdiction of this Court.

8 **TENTH CAUSE OF ACTION**

9 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

10 **(Against All Defendants)**

11 164. Plaintiff repeats and adopts the foregoing paragraphs as though fully set forth
12 herein.

13 165. As alleged above, Defendants' retaliatory termination of Plaintiff was in violation
14 of Cal. Labor Code § 1102.5(b).

15 166. Cal. Labor Code § 1102.5(b) embodies the vitally important public policy goal of
16 encouraging employees to report suspected violations of law, and it is well established under
17 California law that termination of employment based on the belief that an employee has disclosed
18 or might disclose a violation of state law is injurious to the public and against the public good.

19 167. Because Defendants' termination of Plaintiff was in violation of Cal. Labor Code
20 § 1102.5, Plaintiff was wrongfully terminated in violation of an important public policy.

21 168. As a direct and foreseeable result of Defendant's wrongful termination, Plaintiff
22 suffered damages in an amount according to proof within the jurisdiction of this Court.

23 **ELEVENTH CAUSE OF ACTION**

24 **BREACH OF FIDUCIARY DUTY**

25 **(Against Defendant Wu)**

26 169. Plaintiff repeats and adopts the foregoing paragraphs as though fully set forth
27 herein.

28 170. As a director and shareholder of InnoGrit and Shanghai Yingren, Defendant Wu

1 owed Plaintiff, a minority shareholder, fiduciary duties of due care, loyalty, good faith, and honesty
2 in all dealings.

3 171. The comprehensive rule of good faith and inherent fairness owed to Plaintiff
4 prohibits the use of power by Defendant Wu, as shareholder and director, to control corporate
5 activities to benefit himself or in a manner detrimental to the minority.

6 172. Wu has acted for his own personal gain to the detriment of Plaintiff, including
7 through his attempt to freeze out Plaintiff from the Company, wrongful termination, refusal to
8 uphold assurances of corporate management responsibilities and Board membership, and refusal
9 to fairly value the shares held by Plaintiff. Defendant Wu's wrongful acts constitute willful,
10 malicious, and intentional breach of fiduciary duties owed to Plaintiff.

11 173. Defendant Wu's actions served no valid business purpose and were done solely to
12 eliminate a minority shareholder of the Company. Wu's actions provided no benefit to the
13 Company—quite the opposite—and were undertaken for the sole benefit of his own.

14 174. Defendant Wu's breaches of fiduciary duty constitute intentional misconduct which
15 he knows or believes to be contrary to the best interests of Plaintiff and the Company and show a
16 reckless disregard for his duties to Plaintiff as a minority shareholder.

17 175. As a direct result of Wu's breach of his fiduciary duties, Plaintiff has suffered
18 individualized harm as a minority shareholder independent of any general injury Wu's misconduct
19 has cause the Company. Plaintiff's damages include, without limitation, loss of future pay,
20 severance benefits, value of shares, ownership interests, prospective economic opportunity, out of
21 pocket expenses, and emotional distress, in an amount according to proof within the jurisdiction
22 of this Court.

23 **TWELFTH CAUSE OF ACTION**

24 **BREACH OF FIDUCIARY DUTY**

25 **(By Plaintiff, derivatively on behalf of the Company, Against Defendant Wu)**

26 176. Plaintiff repeats and adopts the foregoing paragraphs as though fully set forth
27 herein.

28 177. Defendant Wu, as a shareholder and director, was charged with the fiduciary

1 obligation to manage the business of InnoGrit and Shanghai Yingren loyally, with due care, and
2 for the benefit of the Company's shareholders. This includes a duty to address in good faith known,
3 material risks that threaten the viability of the business.

4 178. Wu knew or should have known the tremendous value Plaintiff added to the
5 Company, including through Plaintiff's client and investor contacts, industrial knowledge, and
6 management skills.

7 179. Wu knew or should have known that wrongfully terminating Plaintiff exposed the
8 Company to material risks, including to the loss of customers and investors, exposure to litigation
9 that damages the goodwill and value of the Company, and loss of critical strategies and business
10 acumen.

11 180. Defendant Wu's actions are inconsistent with those of someone whose duty is to
12 seek out ways to preserve value for the Company's investors. Rather, they were consistent with
13 someone who desired to benefit personally from the elimination of a minority shareholder, without
14 regard for the interests of the remaining investors or the best interests of the Company.

15 181. Wu further removed a key founder from the Board of Directors in order to place a
16 member of Amino Capital on the Board—a company Defendant Wu was working with outside of
17 the bounds of his fiduciary duty of loyalty owed to InnoGrit. Wu's actions were designed to enrich
18 himself personally and his endeavors with Amino Capital without regard for, and to the detriment
19 of, the best interests of InnoGrit and Shanghai Yingren.

20 182. As a direct result of Defendant Wu's mismanagement and breaches of his fiduciary
21 obligations, the value of the Company has been directly harmed.

22 **THIRTEENTH CAUSE OF ACTION**

23 **DECLARATORY RELIEF**

24 **(Against All Defendants)**

25 183. Plaintiff repeats and adopts the foregoing paragraphs as though fully set forth
26 herein.

27 184. The employment contract between the Parties contains an arbitration provision. On
28 October 25, 2018, Defendants, through counsel, took the position that this arbitration provision is

1 valid and binding and requires the Parties to arbitrate each of Plaintiff's causes of action.

2 185. Plaintiff contends that the employment contract is invalid and unenforceable,
3 including any arbitration agreement included in the employment contract.

4 186. An actual controversy has arisen and now exists between Plaintiff and Defendants
5 concerning their respective rights and duties under the purported employment contract between
6 Plaintiff Chen and Defendant InnoGrit.

7 187. Plaintiff contends the purported employment contract is invalid and unenforceable
8 for two reasons. First, it is procedurally and substantively unconscionable. Second, it is void
9 against public policy.

10 188. The circumstances under which the purported employment agreement was
11 presented to Plaintiff were procedurally unconscionable for, *inter alia*, the following reasons. The
12 purported employment contract was offered on a take-it-or-leave-it basis, and is a contract of
13 adhesion. Plaintiff Chen was not afforded an opportunity to negotiate the terms of the agreement,
14 including specifically the arbitration provision which was presented as a condition of employment.
15 Further, the employment contract was drafted by attorneys at Fenwick, who had undertaken an
16 attorney client relationship with Plaintiff, as described above. Given their representation of
17 Plaintiff in regards to his exit from Marvell to join InnoGrit, Fenwick owed Plaintiff fiduciary
18 duties, including a duty of loyalty to advocate for Plaintiff's interests alone and not undertake a
19 position adverse to Plaintiff's interests.

20 189. The purported employment contract is also substantively unconscionable for, *inter*
21 *alia*, the following reasons. The agreement is unreasonably one-sided in nature. For example, the
22 agreement reserves for InnoGrit "the right to change or otherwise modify, in its sole discretion,
23 the preceding terms of employment."

24 190. The purported employment agreement is also void against public policy. As
25 described, Fenwick failed to disclose a known conflict of interest to its client, Plaintiff. At no time
26 did Fenwick advise Plaintiff of the potential or actual conflict of interest arising from their dual
27 representation of Plaintiff and Defendant InnoGrit. This conduct amounted to a breach of Rule 3-
28 310 of the California Rules of Professional Conduct and Fenwick's fiduciary duties owed to

1 Plaintiff. Fenwick's breaches are fundamental to Fenwick's engagement with Plaintiff and defeat
2 the intent and purpose of the purported employment contract.

3 191. Fenwick's breaches render the resulting employment contract void against public
4 policy and unenforceable.

5 192. Plaintiff therefore requests a judicial determination that the employment agreement,
6 including the arbitration provision, are unenforceable.

7 193. A judicial declaration is necessary and appropriate at this time under the
8 circumstances in order that Plaintiff may ascertain his rights and obligations under the law and
9 purported arbitration provision.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment and relief as follows:

- 12 1. General economic and non-economic damages according to proof;
- 13 2. Special damages according to proof;
- 14 3. Punitive damages according to proof;
- 15 4. Civil penalties under the California Labor Code;
- 16 5. Permanent injunctive relief, including but not limited to:
 - 17 a. an injunction restraining Defendants from continuing or maintaining any
 - 18 policy, practice, custom or usage which prevents or discourages employees
 - 19 from making disclosures or complaints to their employers or government
 - 20 agencies regarding their working conditions;
- 21 6. Reasonable attorneys' fees;
- 22 7. Costs of this suit;
- 23 8. Pre- and post-judgment interest;
- 24 9. Declaratory relief as to the unenforceability of the entire employment agreement
- 25 between Plaintiff Chen and Defendant InnoGrit, including the arbitration provision;
- 26 and
- 27 10. Such other and further relief as the Court deems just and proper.

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JURY TRIAL DEMANDED

Pursuant to Article I, § 16 of the California Constitution, Plaintiff demands a trial by jury on all triable questions of fact raised in this Complaint.

Dated: October 31, 2018

SANFORD HEISLER SHARP, LLP

By: 

Qiaojing Zheng, Esq.
Kevin Sharp, Esq.
Leigh Anne St. Charles, Esq.

Attorneys for Plaintiff David Chen