

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT

BUSINESS LITIGATION SESSION

TEKMIRA PHARMACEUTICALS)
CORPORATION and PROTIVA)
BIOTHERAPEUTICS, INC.,)

Plaintiffs,)

v.)

ALNYLAM PHARMACEUTICALS, INC.)
and ALCANA TECHNOLOGIES, INC.,)
Defendants.)

Civil Action No. 11-1010-BLS2

AMENDED COMPLAINT

Plaintiffs Tekmira Pharmaceuticals Corp. (“TPC”) and its wholly-owned subsidiary Protiva Biotherapeutics, Inc. (“Protiva”) (collectively, “Tekmira”) allege as follows against defendants Alnylam Pharmaceuticals, Inc. (“Alnylam”) and AlCana Technologies, Inc. (“AlCana”).

NATURE OF ACTION

1. This is an action for preliminary and permanent injunctive relief, an equitable accounting, a constructive trust, termination of license, damages, and other relief arising out of Alnylam and AlCana’s misappropriation of Tekmira’s confidential and proprietary information and trade secrets, civil conspiracy, tortious interference with contractual relationships, unjust enrichment, breach of contract, breach of the implied covenant of good faith and fair dealing, unfair competition, false advertising, and unfair and deceptive trade practices.

PARTIES

2. TPC is a corporation duly organized and existing under the laws of British Columbia, Canada, and has its principal place of business in Burnaby, British Columbia.

3. Protiva is a corporation duly organized and existing under the laws of British Columbia, Canada, and has its principal place of business in Burnaby, British Columbia.

4. Tekmira is informed and believes, and thereupon alleges, that Alnylam is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business in Cambridge, Massachusetts.

5. Tekmira is informed and believes, and thereupon alleges, that AlCana is a corporation duly organized and existing under the laws of British Columbia, Canada, and has its principal place of business in Vancouver, British Columbia.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction pursuant to M.G.L. c. 212, § 3, because the amount in controversy exceeds \$25,000.

7. The Court has general and specific personal jurisdiction over Alnylam pursuant to M.G.L. c. 223A, § 3, due to its residence in Massachusetts and because Alnylam has waived its right to arbitrate certain claims that otherwise were subject to arbitration provisions.

8. Tekmira is informed and believes, and thereupon alleges, that in connection with the actions alleged herein, AlCana, and AlCana's officers, agents, executives, and employees, had frequent and systematic contact with Massachusetts, by means of AlCana patent prosecution activities directed by Alnylam in Massachusetts, and

by means of business transactions and communications with Alnylam and Alnylam personnel residing in Massachusetts.

9. Accordingly, the Court has general and specific personal jurisdiction over AICana due to its systematic and continuous contacts with the Commonwealth of Massachusetts and its purposeful acts and/or transactions directed toward Massachusetts.

10. Venue is proper in the Business Litigation Session, Suffolk County, because this case involves claims concerning unfair trade practices, confidential and proprietary information, trade secrets, and intellectual property.

BACKGROUND

siRNA Technology

11. Ribonucleic acid (RNA) is one of the three major macromolecules (along with DNA and proteins) that are essential for life. Messenger RNA (or “mRNA”) is a type of RNA molecule that carries genetic information from DNA to produce proteins. mRNA is the intermediary for the production of proteins within the body, and each specific mRNA directs the production of a specific protein.

12. Another type of RNA molecule called small interfering RNA (“siRNA”) does not lead to the production of proteins, but instead interferes with the production of proteins. siRNA does so by binding itself to a particular mRNA molecule, which leads to the destruction of the mRNA. Through this targeted destruction of particular mRNA molecules, the siRNA interferes with the production of the protein that would otherwise have been produced by the mRNA molecule.

13. The process of siRNA targeting mRNA molecules occurs naturally and plays an important role in regulating the production of proteins in the body, and in protecting against infectious diseases. For example, some viruses use RNA as their

genetic material. siRNA molecules can bind themselves to RNA viruses and target them for destruction, and in so doing disrupt the course of viral infections.

14. In the RNA interference (“RNAi”) field, scientists have researched ways to use siRNA to combat diseases, such as by attempting to create specially-tailored siRNA drugs to “turn off” the production of proteins associated with diseases or viruses. This requires not only identifying, designing, and modifying siRNA sequences for use in the drug, but also developing a delivery system to deliver the siRNA molecule safely and efficiently through the bloodstream to its intended destination in the body. Although scientists have had success developing siRNA molecules to use in these types of drugs, it has been far more difficult to figure out how to deliver siRNA molecules to their target site efficiently and safely through the bloodstream.

15. Delivering siRNA through the bloodstream poses several complex challenges. First, the siRNA has to survive transport to disease sites without degradation. Second, the siRNA must be sufficiently shielded from components of the immune system during transport to avoid unwanted immune effects. Third, the siRNA must actually reach its intended target within the body. Fourth, once the siRNA reaches its intended target, it must be efficiently released into the interior of the cells of the target tissue. Adding to the challenge, all of the above must occur at an appropriate rate and level to achieve the best therapeutic outcome.

Tekmira Pioneered The Development Of siRNA Delivery Technology

16. Tekmira has been a leader in overcoming these challenges and in developing siRNA delivery systems. Tekmira’s delivery technology has proven effective in reducing the levels of bad cholesterol in the bloodstream, combating the Ebola virus, inhibiting tumor growth, and treating hepatitis virus infection. Tekmira is informed and

believes, and thereupon alleges, that to this day its delivery technology is the only technology that has been validated in multiple human clinical trials as being effective for delivery of siRNA through the bloodstream.

17. Tekmira's delivery technology uses complex mixtures that contain novel lipids (or fat molecules) in different proportions and in combination with other components to form a particle to transport siRNA through the bloodstream. Tekmira has experimented with several hundred of these particles, also known as "formulations," to make them both safe and effective. Tekmira has spent more than 500 person-years of effort and over \$200 million in developing proprietary and confidential novel lipids and formulations, as well as proprietary techniques for robust large-scale manufacturing of its formulations. The knowledge and information gained by Tekmira through its years of formulation and manufacturing work are all part of Tekmira's siRNA delivery technology.

18. Tekmira's delivery technology includes confidential and proprietary information and trade secrets that Tekmira owns and has continuously used in its business. Tekmira restricts access to such information and has taken reasonable efforts under the circumstances to maintain its secrecy, including but not limited to restricting access to the information and requiring employees and collaborators to sign non-disclosure agreements. Tekmira's confidential and proprietary information and trade secrets derive value from not being generally known to the public or to others who can obtain value from their disclosure or use. Tekmira expended considerable sums of money and time developing its confidential and proprietary information and trade secrets.

19. One example of Tekmira's trade secrets relates to the compositions of Tekmira's delivery formulations. Each of these formulations consists of highly complex, multi-component mixtures of different types of lipids, present in precise ratios, as well as non-lipid additives, which in combination achieve optimum performance for the therapeutic application of interest.

20. Another example of Tekmira's trade secrets relates to the chemical structure of the lipids in Tekmira's formulations, and the design rationales that informed the structure of the lipids.

21. Tekmira's trade secrets also include information about how to manufacture Tekmira's formulations, such as the identity, type, and specifications of the equipment used in Tekmira's manufacturing process, the highly detailed and precise methodology for manipulating the various components in the formulation in order to assemble a stable, reproducible, and efficacious end-product, and proprietary process controls to carefully monitor each step in the process and to maintain specific and proprietary tolerance parameters using Tekmira's proprietary assays. Together, these manufacturing trade secrets are critical to Tekmira's success in achieving reproducibly high-quality and clinical-grade product, and in being able to manufacture its product on a large scale without compromising reproducibility or performance.

Alnylam And Tekmira Were Collaborators Pursuant To Written Agreements

22. Alnylam collaborated with each of TPC and Protiva before TPC acquired Protiva in May 2008. Generally speaking, Alnylam contributed by providing siRNA molecules (the payload) and funding, and TPC or Protiva contributed by providing the delivery technology that transports the payload through the bloodstream. The siRNA and

delivery technology can be combined to form a therapeutic drug that can be used to treat specific diseases and viruses. In addition to providing the delivery technology, TPC and Protiva each provided the capability to manufacture the siRNA-lipid formulation combined therapeutic drugs.

23. Alnylam continued collaborating with both entities after TPC's acquisition of Protiva. For several months after TPC acquired Protiva, the two companies kept their activities strictly separate. This period of separate conduct, known as the "Restriction Period," began on May 30, 2008 and lasted through October 9, 2008. During this period, Protiva and TPC acted separately, and their actions were governed by respective agreements they each had with Alnylam. Protiva entered into an agreement with Alnylam on May 30, 2008 called the "Amended and Restated Cross-License Agreement between Alnylam Pharmaceuticals, Inc. and Protiva Biotherapeutics Inc." (hereinafter, the "Protiva Agreement"). TPC entered into an agreement with Alnylam on the same date called the "Amended and Restated License and Collaboration Agreement by and between Tekmira Pharmaceuticals Corporation and Alnylam Pharmaceuticals, Inc." (hereinafter, the "Tekmira Agreement").

24. Tekmira (*i.e.*, both TPC and Protiva) made a number of disclosures of its delivery technology to Alnylam during the course of the parties' collaboration under the protection of these written agreements. The agreements restricted Alnylam's right to use Tekmira's confidential information and trade secrets, and strictly prohibited Alnylam from disclosing such information to third parties without first obtaining Tekmira's consent. Tekmira did not grant Alnylam ownership of its delivery technology; the delivery technology remained Tekmira's property before, during, and after Tekmira's

collaboration with Alnylam. The provisions in these agreements restricting Alnylam's right to access, use, and disclose Tekmira's technology are set forth in greater detail below.

Alnylam Took Advantage Of The Collaboration To Gain Access To, Exploit, And Claim Ownership Interests In Tekmira's Technology

25. In a series of wrongful acts further set forth below, Alnylam took advantage of its confidential relationship as a collaborator to gain access to and exploit for its own benefit some of Tekmira's most valuable and highly confidential technology, for purposes and activities that were not authorized by Tekmira.

26. Alnylam, with the help of AlCana, abused its confidential status by, among other things:

- claiming ownership over Tekmira's proprietary delivery technology by applying for patents on Tekmira's technology in Alnylam's and AlCana's name, without Tekmira's knowledge or consent and for their own benefit;
- using Tekmira's technology without Tekmira's knowledge or consent to derive additional lipids and formulations for Alnylam's and AlCana's own use and benefit, outside the collaboration;
- disclosing Tekmira's proprietary technology to at least one third party without Tekmira's knowledge or consent;
- passing off Tekmira's technology as Alnylam's own to industry partners;
- disseminating deceptive advertisements to the public in which Alnylam claimed to own technology that actually contains, is based on, or is in whole or in part developed from Tekmira's technology.

27. Tekmira is informed and believes, and thereupon alleges, that Alnylam, and, at least to the extent indicated below, AlCana, engaged in and continues to engage in at least the following wrongful conduct without Tekmira's authorization or consent.

Alnylam Improperly Used And Disclosed TPC's "MC" Formulations To Apply For Patents In Alnylam's Own Name And To Develop Derivative Formulations

28. The Tekmira Agreement is both a collaboration agreement and a license agreement. The nature and scope of the collaboration is set forth in a research and development plan ("Research Plan"), detailing the respective roles of TPC and Alnylam: TPC was assigned the role of identifying, evaluating, synthesizing, comparing, selecting, and screening liposomal formulations, and Alnylam was assigned the task of funding these activities. Alnylam also provided siRNA molecules for testing. TPC and Alnylam agreed to establish a Joint Research Committee ("JRC") to monitor the progress of the collaboration under the Research Plan.

29. Under the Tekmira agreement, TPC agreed to license to Alnylam the right, with certain restrictions, to use "Tekmira Technology," and Alnylam agreed to pay TPC royalties in exchange for its license. The Tekmira Technology included Tekmira know-how and patent rights controlled by TPC as of May 30, 2008, or first discovered or created by TPC prior to the end of the Restriction Period (*i.e.*, October 9, 2008). §6.1.1, Tekmira Agreement ("Tekmira License Grant"); §1.107, Tekmira Agreement (defining Tekmira Technology as, collectively, Tekmira Know-How and Tekmira Patent Rights).

30. Among the developments that TPC made prior to the end of the Restriction period was a novel group of cationic lipids referred to generically herein as the "MC" class of cationic lipids, and including specifically the cationic lipid named "MC2." These lipids were designed for use in Tekmira's siRNA delivery technology.

On or about October 9, 2008, Tekmira filed a provisional patent application (Ser. No. 61/104,291) disclosing the MC2 compound.

31. A patent application is a document that an inventor files with the U.S. Patent and Trademark Office (“Patent Office”) (or equivalent foreign patent office) in order to claim ownership rights over an invention. The application lists the inventors and describes the invention, and Patent Office staff known as patent examiners review the application, in confidence, to ensure that the invention meets the requirements under federal law to qualify for patent protection. The process of applying for a patent (known as “patent prosecution”) can take several years. When a patent application is first filed, it is kept under seal (impounded) at the Patent Office and is not available to the public. Within a year of filing a provisional application, the patentee must file a non-provisional (also known as a “utility”) patent application claiming the benefit of the provisional application, or the provisional application becomes public. Eighteen months after the earliest priority date to which a utility patent application claims a benefit, federal law requires that the Patent Office unseal the utility patent application and make it, and any underlying provisional applications, available to the public. Eventually, if the Patent Office decides to issue a patent on the invention, the owner of the patent has the right to prevent others from making any product that practices the invention.

32. In addition to developing MC2, TPC discovered an approach for improving the siRNA delivery of ionizable lipids, including the MC class of cationic lipids. More specifically, TPC discovered that siRNA delivery in formulations that include ionizable lipids can be altered (and improved) by varying the number of carbon atoms separating certain functional groups present in the lipids. The carbon atom is

represented by the “C” in the name “MC2”; TPC discovered that delivery could be improved by adding carbon atoms to MC2 to make MC3, MC4, etc. TPC synthesized and tested multiple MC lipids, varying the number of carbon atoms between these functional groups, to establish the validity of this discovery. The MC class of cationic lipids and associated know-how constitutes Tekmira Technology pursuant to the Tekmira Agreement for which Alnylam was obligated to pay Tekmira royalties. The MC class of cationic lipids and related know-how is referred to herein as the “MC Trade Secrets.”

33. TPC and Tekmira took and continue to take reasonable steps to maintain the confidentiality of the MC Trade Secrets. Tekmira did not publicly disclose any of the MC class of cationic lipids until on or about April 15, 2010, when its non-provisional patent application that disclosed and claimed the MC2 cationic lipid was published. (“MC2 Patent Application”). Certain MC related know-how has still not been publicly disclosed by Tekmira.

34. Prior to its filing of the provisional patent application disclosing and staking its claim of ownership of the MC2 compound, Tekmira confidentially disclosed the MC Trade Secrets to Alnylam pursuant to the Research Plan of the Tekmira Agreement.

35. After learning Tekmira’s MC Trade Secrets in the collaboration, Alnylam misused those trade secrets by, among other things, filing for patents in its own name, and without including any Tekmira inventors, on a lipid structure that was broad enough to include the MC class of cationic lipids developed by Tekmira. In so doing, Alnylam improperly claimed ownership over Tekmira’s MC Trade Secrets, including the MC class of cationic lipids, for itself. Alnylam’s broad patent applications effectively claim rights

to prevent Tekmira from making and using Tekmira proprietary technology that Tekmira solely developed and confidentially provided to Alnylam — *i.e.*, the MC class of cationic lipids. Alnylam’s broad patent applications seek the rights to license, and thus, get paid royalties for, others’ manufacturing or use of the MC class of cationic lipids that Tekmira solely developed and confidentially provided to Alnylam. Alnylam has made more than a dozen such broad patent filings to date. Those patent filings are referred to herein as “Alnylam’s MC Patent Filings.”

36. Through Alnylam’s MC Patent Filings, Alnylam wrongfully disclosed Tekmira’s MC Trade Secrets to third party patent examiners, and ultimately to the public upon the Patent Office’s publication of certain of those patent filings, which was a foreseeable consequence of filing Alnylam’s MC Patent Filings. Alnylam did not obtain Tekmira’s written consent prior to making these third party disclosures. Each of these filings and foreseeable publications of Alnylam’s MC Patent Filings constitutes an unauthorized disclosure of Tekmira’s MC Trade Secrets to third parties.

37. Tekmira is informed and believed, and thereupon alleges, that in addition to filing Alnylam’s MC Patent Filings, Alnylam has used and is using Tekmira’s MC Trade Secrets without authorization to develop a broader class of lipids and additionally to develop additional species of this broader class of lipids.

38. Alnylam’s wrongful disclosure of Tekmira’s MC Trade Secrets to third party patent examiners, and ultimately the public upon their foreseeable publication, and its use of the MC Trade Secrets to claim ownership over Tekmira technology through its patent filings and to develop derivative lipids, were in breach of the Tekmira Agreement in several respects.

39. First, the Tekmira Agreement required Alnylam to obtain Tekmira's written consent before disclosing confidential information received from Tekmira to third parties. Alnylam's patent filings breached this provision.

40. Second, Alnylam was not allowed to use Tekmira's confidential information *for any purpose* other than those purposes set forth in the Tekmira Agreement without first obtaining Tekmira's consent for such use, or to use or disclose Tekmira's confidential information *except as reasonably required in order to perform its obligations under the agreement*, and only then to the extent reasonably necessary to do so. §8.1, Tekmira Agreement ("Tekmira Confidentiality Provision"). Alnylam's use of Tekmira's confidential information for Alnylam's sole benefit, both through its patent filings and its development of derivative lipids and formulations, was not in furtherance of any of the purposes of the Tekmira Agreement, for at least the following reasons:

- Alnylam's uses of the Tekmira's MC Trade Secrets to apply for patents on and develop non-royalty-bearing products do not further the purpose of the Tekmira Agreement. The agreement is a product license, intended to generate revenue through the development of royalty-bearing products. The license grant under the agreement is confined to Alnylam Royalty Products (Alnylam products covered by Tekmira patent rights) and to Tekmira Royalty Products (Tekmira products covered by Alnylam patent rights). For example, Alnylam Royalty Products (*i.e.*, products that generate a royalty for Tekmira) are defined in the Tekmira Agreement as:

[A]ny RNAi Product or a miRNA Product that, but for the licenses granted hereunder, would be Covered by one or more Valid Claims of the Tekmira Patent Rights.

§1.13, Tekmira Agreement. Alnylam's MC Patent Filings and development frustrate the agreement's purpose because they convert technology that *should* bring royalties to Tekmira to technology that instead brings royalties *only* to Alnylam.

- The lipids and formulations developed by Alnylam using Tekmira's MC Trade Secrets were not among the specific liposomal formulations set forth in the Research Plan. Tekmira provided the MC Trade Secrets to Alnylam pursuant to the Research Plan. Under the Research Plan, Tekmira and Alnylam were to collaborate on developing specific liposomal formulations as set forth in the Research Plan. By developing lipids and formulations that were outside the Research Plan, Alnylam was acting outside the purposes of the Tekmira Agreement.

- Alnylam was not supposed to be developing lipids and formulations as part of the collaboration. Tekmira was to provide the lipids and formulations to the collaboration, whereas Alnylam was to provide the siRNA (and funding) to the collaboration. By developing lipids and formulations with Tekmira's technology, Alnylam acted without authorization and outside the purposes of the collaboration.

41. Alnylam's MC Patent Filings also violated Tekmira's patent-related contractual rights under the Tekmira Agreement. Tekmira retained all rights to apply for patents that include Tekmira Technology, including Tekmira Technology developed in the course of its collaboration with Alnylam pursuant to the Tekmira Agreement. Under the Tekmira Agreement, Tekmira had "*the sole responsibility,*" at Tekmira's discretion, to file, prosecute, and maintain, among other things, "*all Patent Rights comprising Tekmira Technology*" in Tekmira's name. §10.2.2, Tekmira Agreement ("Tekmira Patent

Rights and Know-How”). Tekmira alone had the right to make the MC Patent Filings; Alnylam had no right to do so.

42. Further, because there is no provision *allowing* for Alnylam’s MC Patent Filings in the Tekmira Agreement, these filings are directly in breach of the provision in the Tekmira Agreement that prohibits a party from claiming an ownership right in the other party’s technology. The Agreement provides: “Except as otherwise expressly provided in this Agreement, under no circumstances shall a Party hereto, as a result of this Agreement, obtain any ownership interest, license or other right in any Intellectual Property Rights of the other Party, including rights owned, controlled or developed by the other Party, or provided by the other Party to the receiving Party at any time pursuant to this agreement.” §6.6, Tekmira Agreement (“Tekmira Ownership Provision”).

43. By filing Alnylam’s MC Patent Filings, Alnylam also breached the Tekmira Agreement’s requirement that the parties “endeavor in good faith to coordinate their efforts with each other so as to minimize or avoid interference with the prosecution and maintenance of the other party’s patent applications.” §10.25, Tekmira Agreement (“Tekmira Cooperation Provision”). By disclosing and claiming Tekmira inventions in Alnylam’s MC Patent Filings, Alnylam directly interfered with Tekmira’s own patent estate, *preventing Tekmira from patenting its own inventions*.

44. Alnylam’s MC Patent Filings also breached the express publicity obligations of the Tekmira Agreement, in which Alnylam agreed to exchange copies of proposed disclosures of collaboration results prior to submission for publication or presentation to allow Tekmira the opportunity to suggest modifications. Alnylam also agreed that if Tekmira requested modifications to the publication or presentation,

Alnylam would edit the publication to prevent disclosure of trade secret or proprietary business information prior to submission of the publication or presentation. §8.2.1, Tekmira Agreement (“Tekmira Publicity Provision”). Alnylam did not comply with this provision in making its MC Patent Filings.

45. Alnylam’s MC Patent Filings and Alnylam’s use of Tekmira MC Trade Secrets for its own purposes were in breach of the Tekmira Confidentiality Provision, Publicity Provision, Patent Cooperation Provision, and Ownership Provision.

Alnylam Wrongfully Formed And Used AlCana As An Instrument To Avoid Its Obligations Under The Tekmira And Protiva Agreements And Conspired With AlCana To Gain Ownership Over Tekmira Technology For Their Own Interests

46. At the conclusion of the Restriction Period (*i.e.*, October 9, 2008), once TPC and Protiva were allowed to work together as the collective entity Tekmira, Tekmira terminated the employment of certain TPC scientists in connection with the reorganization of the companies. These ex-TPC employees and consultants are referred to hereafter as “ex-Tekmira employees.” During their lengthy employment with TPC, each of these ex-Tekmira employees, along with all other Tekmira employees, executed an employment agreement that included a non-compete clause. This non-compete clause, which applied to all employees terminated “for any reason whatsoever,” had a term of twelve months.

47. TPC also required that all of its employees and consultants sign employment agreements agreeing to protect the confidentiality of TPC’s confidential information, including trade secrets. The ex-Tekmira employees agreed that they would maintain the confidentiality of TPC’s confidential information, including trade secrets, both during and after their employment with Tekmira. They also agreed that “all rights, title and

interest in and to the Confidential Information, whether or not developed by the Employee, will be and remain the Company's exclusive property."

48. TPC also required its employees and consultants to assign to TPC all of their development, discoveries, know-how, and inventions while working for TPC: The ex-Tekmira employees agreed in writing that TPC "will have exclusive ownership in all ideas, discoveries, inventions, formulae, algorithms, techniques, processes, know how, trade secrets and other intellectual property, including all expressions of such intellectual property in tangible form, which are used in or relate to [TPC's] business and which the Employee conceives of or makes for [TPC] or its subsidiaries or affiliates during the Employee's employment with [TPC] (together, 'Inventions') and that the Employee will promptly disclose the Inventions to [TPC] in writing. This will be the case [whether the Invention] is conceived or made by the Employee alone or jointly with others." The ex-Tekmira employees were all bound to that assignment agreement.

49. In January 2009, unbeknownst to Tekmira, Alnylam hired these ex-Tekmira employees. On information and belief, Alnylam knew that the ex-Tekmira employees were subject to non-competition obligations to TPC. Because these employees were engaged in the same type of work as at TPC, they were working as consultants for Alnylam in violation of their non-compete obligations to Tekmira.

50. In February 2009, also unbeknownst to Tekmira, Alnylam supported the formation of a Canada corporation, AlCana, and installed one of the ex-Tekmira employees as President and CEO of AlCana. On information and belief, Alnylam retained several of the other ex-Tekmira employees as AlCana employees.

51. Tekmira is informed and believes, and thereupon alleges, that in all relevant aspects, AICana (a name that is a contraction of “Alnylam Canada”) was and is an instrument of Alnylam — AICana is controlled by, and operates for the benefit of, Alnylam. On information and belief, Alnylam funded and orchestrated the creation of AICana, pays the salaries of AICana’s employees, funds AICana’s research, controls AICana’s patenting activities (including handling the actual filing of patent applications and the prosecution of each application filed in AICana’s name), dictates decisions on ownership of AICana’s purported inventions, and makes itself the exclusive licensee of any AICana purported inventions, with unlimited rights to sublicense in the siRNA field.

52. On information and belief, through the AICana vehicle, Alnylam sought to escape the licensing and royalty obligations of the Tekmira and Protiva Agreements, and to acquire exclusive rights to Tekmira confidential information, including trade secrets, depriving Tekmira both of royalty streams and the right to use Tekmira’s own confidential information, including trade secrets, for its own purposes.

53. On information and belief, Alnylam and AICana, took Tekmira’s confidential information, including trade secrets, claimed them as AICana inventions by wrongfully filing patent applications on AICana’s behalf, and then assigning Alnylam ownership interests (or alternatively, exclusive license rights) to Tekmira’s confidential information, including trade secrets.

54. For example, on information and belief, AICana used Tekmira’s MC Trade Secrets to make a compound known as MC3. This compound is a species of the class of compounds incorporating MC Trade Secrets. MC3 contained, was based on, and was derived from Tekmira’s MC Trade Secrets. At least one or more of the ex-Tekmira

employees who developed MC2 also developed, or were aware of, Tekmira's know-how of modifying MC2 to make MC3 while working for TPC.

55. On information and belief, Alnylam and AICana were fully aware that MC3 contained, was based on, and was derived from Tekmira's MC Trade Secrets, and that the ex-Tekmira employees had obligations to assign any and all development, discoveries, know-how, and inventions to TPC under their assignment agreement. Alnylam nevertheless caused one of the ex-Tekmira employees to apply for a provisional patent application on MC3 and to assign it to AICana (ser. No. 61/185,800), in breach of the assignment provision of his employment agreement. Alnylam then obtained an exclusive license from AICana to use the MC3 compound in the siRNA field, and once the provisional application matured into a non-provisional application (PCT application WO 2010/144740A1), Alnylam had AICana assign its ownership rights in the application to Alnylam. Because the ex-Tekmira employee obtained the know-how for MC3 while he was at TPC, he should have assigned MC3 to TPC, and Alnylam should be obligated to pay Tekmira royalties on MC3. Thus, Alnylam, with AICana's assistance, used AICana to funnel Tekmira's MC Trade Secrets to Alnylam — a deliberate, deceitful, and unfair scheme designed to avoid royalty obligations to Tekmira, to deprive Tekmira of its exclusive ownership of these compounds, and to prevent Tekmira from using its own confidential information, including trade secrets.

56. Alnylam's wrongful acts with respect to MC3 did not end with its efforts to avoid its royalty obligations to Tekmira. On information and belief, the MC3 compound was synthesized after the end of the Restriction Period. As a result, Alnylam would at best have been entitled to a *non-exclusive* right to use MC3. This is because

after the expiration of the Restriction Period, the Tekmira Agreement harmonized the license grants and royalty and milestone payment obligations under the Tekmira and Protiva Agreements by effectively having the terms of the Protiva Agreement control the parties' relationship going forward. Because the Protiva Agreement only grants a non-exclusive (rather than exclusive) license to Alnylam, Tekmira would have licensed any Tekmira intellectual property, confidential information, or trade secrets developed *after* the end of the Restriction Period to Alnylam at most *non-exclusively*, rather than exclusively. Thus, not only should the ownership of MC3 rightfully remain with Tekmira, with Alnylam obligated to make royalty payments to Tekmira for products incorporating this lipid, but Tekmira also should retain non-exclusive use of the MC3 lipid, as well as any other MC lipids developed after the end of the Restriction Period.

Alnylam Improperly Disclosed And Used Protiva's "Lead Formulation" To Make Patent Filings And To Develop Derivative Formulations For Its Own Benefit.

57. Protiva's collaboration with Alnylam was governed by a Research and Development Research Plan ("R&D Research Plan"). This R&D Research Plan defined the parties' respective roles. Protiva's role was to "seek to identify and develop Formulations using Protiva's SNALP Technology" (Protiva's term for lipid delivery technology) and Alnylam's role was to "deliver[] siRNA drug molecules." §5.4(b), Protiva Agreement. The R&D Research Plan further stipulated that these formulations were "expected to be covered by Protiva Patent Rights." *Id.*

58. As contemplated under the R&D Research Plan of the Protiva Agreement, Protiva provided Alnylam with a formulation for its consideration as the delivery vehicle for Alnylam's "VSP" product. Alnylam selected a formulation known as the "Lead Formulation."

59. The Lead Formulation was developed solely by Protiva and maintained by Protiva/Tekmira as a trade secret until Tekmira decided to patent it, which resulted in its publication in a patent application on July 9, 2009. The trade secrets relating to the Lead Formulation include not only the identity of the various components of the formulation, but also such useful and valuable information as the molar amounts of each of these components within the formulation, and the relative ratio of the components in the formulation to each other. This set of trade secrets is referred to collectively as the “Lead Formulation Trade Secrets.”

60. Prior to their publication, Protiva and Tekmira took reasonable steps to maintain the confidentiality of Protiva’s Lead Formulation Trade Secrets. Protiva provided its Lead Formulation Trade Secrets to Alnylam pursuant to the Protiva Agreement, which required Alnylam to maintain their confidentiality and governed what use of the secrets was authorized. The Protiva Agreement specifically stated that only Protiva was to make any adjustments to its Lead Formulation, and that once the formulation was provided to Alnylam, “no further formulation adjustments, or improvements are anticipated”:

It is expected that formulated material using a number of different initial Formulations would be delivered by Protiva to Alnylam, tested by Alnylam, and (on the basis of such tests, and subsequent iterative tests if needed) culled or otherwise adjusted by Protiva to the point where both parties believe that no further formulation adjustments, or improvements are anticipated under the R&D Research Plan That Formulation is the Lead Formulation in that situation.

§1.28, Protiva Agreement (“Lead Formulation Provision”).

61. Under the Protiva Agreement, Alnylam was authorized only to use Protiva’s Lead Formulation as the delivery vehicle for royalty-bearing products.

62. Alnylam did not abide by this restriction. Alnylam took Protiva's Lead Formulation Trade Secrets and filed a series of patent applications and other patent filings in which it disclosed to the Patent Office and attempted to claim an exclusive ownership over Protiva's Lead Formulation Trade Secrets. For example, on or about March 5, 2008, Alnylam filed a provisional patent application having serial no. 61/034,019. That application included a specific reference to "1:57 cDMA SNALP," the ratio of one of the lipids in the composition (a cDMA lipid) to a second lipid in the composition (a cationic lipid). The ratio of lipids in the formulation was at 1 mole % and 57 mole %, respectively, hence the ratio 1:57. This 1:57 ratio is the *exact* ratio used in Protiva's Lead Formulation. In its patent applications, Alnylam claimed to have invented this ratio, even though it actually learned the ratio in confidence from Protiva under the parties' collaboration.

63. Over the following years, Alnylam continued to file patent applications in which it improperly disclosed and claimed ownership over Protiva's Lead Formulation Trade Secrets. For example:

- On June 9, 2009, Alnylam filed provisional patent application serial no. 61/185,545. That application discloses the identity of each of the Lead Formulation's components and the molar ratio of each of these components within the Lead Formulation.

- On or about January 29, 2010, Alnylam filed PCT no. WO 2010/088537, which includes a claim (claim 34) broad enough to cover Protiva's Lead Formulation. By filing this application, Alnylam sought to claim ownership over the Protiva's Lead Formulation Trade Secrets.

- On or about May 5, 2010, Alnylam filed PCT no. WO 2010/033777, which uses nearly the same relative ratio of lipids used in the Lead Formulation, but instead of using Tekmira's cationic lipid, it substitutes in a lipid known as a "lipidoid," developed by Alnylam in concert with the Massachusetts Institute of Technology ("MIT"). Such lipidoid molecules do not function alone and are of no value unless formulated in a delivery formulation. The relative ratio of lipids used in the Lead Formulation was secret information that Alnylam was permitted only to use and disclose pursuant to the terms of the Protiva Agreement.

64. Alnylam has filed at least twenty-three patent applications (including provisionals) disclosing and claiming Protiva's Lead Formulation Trade Secrets, in which Alnylam attempts to claim ownership to the Lead Formulation Trade Secrets. Those patent filings are referred to herein as "Alnylam's Lead Formulation Patent Filings."

65. Alnylam did not obtain Tekmira's written consent before filing its Alnylam Lead Formulation Patent Filings. Alnylam made those patent filings without Tekmira's knowledge. Each of these filings by Alnylam constitutes an unauthorized disclosure of Protiva's Lead Formulation Trade Secrets to third parties, including the Patent Office, as well as the public at large upon the foreseeable publication of each of these applications by the Patent Office. The agreement prohibited Alnylam from disclosing Protiva's confidential information to third parties without written consent from Protiva. Even within Alnylam, Alnylam was only allowed to disclose Protiva's confidential information to those employees "who have a legitimate business need to know" that information. These restrictions applied with equal force to persons not

employed by Alnylam, as well as to third parties. §§8.1, 8.2, Protiva Agreement (“Protiva Confidentiality Provision”).

66. Alnylam’s use was also unauthorized in multiple respects. As an initial matter, the use was unauthorized because the Protiva Agreement, pursuant to which Protiva provided its Lead Formulation Trade Secrets to Alnylam, does not provide Alnylam with the right to claim sole ownership to Protiva development, discoveries, know-how, and inventions. Alnylam could only claim sole ownership over inventions discovered and reduced to practice *solely* by Alnylam. §7.1, Protiva Agreement (“Protiva Ownership Provisions”). As stated in the Protiva Agreement, except for the rights expressly granted by Protiva to Alnylam, Protiva expressly retained all other rights. §4.2, Protiva Agreement.

67. Alnylam’s use of the Lead Formulation to attempt to obtain patent and effectively ownership rights to the formulation also was unauthorized because it exceeded the scope of the license grant of the Protiva Agreement. The Protiva Agreement includes a license provision, in which Tekmira provided Alnylam with a *non-exclusive license* to certain Protiva development, discoveries, know-how, inventions, and other intellectual property. §§3.3, 4.1, Protiva Agreement (“Protiva License Grant”). By applying for patents on this formulation, Alnylam attempted to gain *exclusive ownership* to Protiva’s development, discoveries, know-how, inventions, and other intellectual property — actions that are outside of the scope of the Protiva Agreement.

68. Alnylam’s Lead Formulation Patent Filings also were unauthorized because the confidentiality provision of the Protiva Agreement prohibited Alnylam from using Protiva Confidential Information for purposes and activities outside of that

Agreement. The agreement allowed Alnylam to use Protiva’s confidential information *only* “in connection with the activities contemplated by [the Protiva] Agreement or in order to further the purposes of [the Protiva] Agreement.” §§8.1, 8.2, Protiva Agreement (“Protiva Confidentiality Provision”). Alnylam’s use of Protiva’s Lead Formulation Trade Secrets to try to gain an exclusive ownership interest to the Lead Formulation was not an activity contemplated by the Protiva Agreement, and did not further a purpose of the Protiva Agreement, in several respects:

- The Lead Formulation was provided as part of the R&D Research Plan, as agreed to in the Protiva Agreement. Protiva’s purpose of providing the Lead Formulation Trade Secrets in the R&D Research Plan was to allow Alnylam to select a Lead Formulation for an R&D Research Plan product — *not* to allow Alnylam to convert the Lead Formulation into Alnylam property. Allowing Alnylam to obtain patents and effectively ownership rights in the Lead Formulation would not only provide Alnylam with exclusive rights to Protiva’s Lead Formulation Trade Secrets, but also *exclude* Tekmira from practicing its own technology.

- Alnylam’s use of Protiva’s Lead Formulation Trade Secrets to develop a competing formulation using an MIT lipoid also did not further a purpose of the Protiva Agreement.

- Alnylam went outside of the purpose and contemplated activities of the Protiva Agreement by using Protiva’s Lead Formulation Trade Secrets to make *derivatives* of the Lead Formulation (hereinafter, “Lead Formulation Derivatives”) — *i.e.*, on information and belief, Alnylam did not independently develop the Lead Formulation Derivatives, but instead used Protiva’s Lead Formulation Trade Secrets as a starting point

to develop them. Alnylam's use of Tekmira's Lead Formulation Trade Secrets to make the Lead Formulation Derivatives for Alnylam's *independent* use does not further any of the purposes of the Protiva Agreement. Protiva obtains no benefit from such use, but instead is harmed by Alnylam's attempts to claim patent and ownership rights to this technology, which if granted will *narrow* Protiva's patent and ownership rights and limit Protiva's ability to use the Lead Formulation to make its own derivatives and ultimately apply for patents for such derivatives. Through its actions, Alnylam has diminished rather than increased Protiva's ability to use, and therefore realize the benefit of, its own Lead Formulation.

- Alnylam is attempting to gain an ownership interest in the Lead Formulation Derivatives by making unauthorized patent filings claiming ownership of them. For example, on or about January 29, 2009, Alnylam filed provisional patent application serial no. 61/148,366 that, on information and belief, contained scores of Lead Formulation Derivatives nearly identical to the Lead Formulation, only slightly differing by the ratios of the different components of the Lead Formulation. Those ratios are strikingly similar to, and on information and belief contain, are based on, and/or are derived from the ones used for each of the components in the Lead Formulation.

69. Alnylam's use of Protiva's Lead Formulation Trade Secrets to seek patent and ownership rights in its own name and to develop derivatives are not activities contemplated by the Protiva Agreement. As stated in the Protiva Agreement, the Lead Formulation *is the end product of the R&D Research Program*, and "all parties agreed" that the Lead Formulation did not require any further adjustment once selected as a Lead Formulation. To the extent that any adjustments needed to be made to the Lead

Formulation, they were to be made by Protiva — *not Alnylam*. Thus, Tekmira did not give Alnylam any right under the Protiva Agreement to engage in formulation development work using the Lead Formulation as a starting point, let alone the right to apply for patent applications and ownership of formulations, including Lead Formulation Derivatives, based on such prohibited activity. Alnylam's uses of the Lead Formulation Trade Secrets frustrated, rather than furthered, the purpose of the Protiva Agreement.

70. The Alnylam Lead Formulation Patent Filings also breached the Protiva patent cooperation provision (§7.4, Protiva Agreement, "Protiva Cooperation Provision"), which mirrors the language of the Tekmira Cooperation Provision, and the Protiva Publicity Provision (§8.3, Protiva Agreement, "Protiva Publicity Provision"), which mirrors the Tekmira Publicity Provision.

71. As with its use of the Lead Formulation to make unauthorized Alnylam Lead Formulation Patent Filings, Alnylam's development and use of the Lead Formulation Derivatives, and subsequent patent filings claiming ownership of those derivatives, breaches the Confidentiality Provision, the Publicity Provision, the Cooperation Provision, and the Ownership Provisions of the Protiva Agreement.

72. Tekmira is informed and believes that Alnylam is continuing to prosecute the Alnylam Lead Formulation Patent Filings and that it is using Protiva's Lead Formulation Trade Secrets on an on-going basis to obtain additional new derivatives and formulations. Tekmira is further informed and believes that Alnylam will continue to engage in these activities unless ordered to stop.

Alnylam Improperly Disclosed Portions Of Tekmira’s Secret Step-By-Step Formulation Manufacturing Instructions To At Least One Third Party

73. When a pharmaceutical company seeks U.S. Food & Drug Administration (“FDA”) approval to manufacture a new drug product for clinical testing, federal regulations require that the company use a document known as a “Master Batch Record” or “MBR” to ensure consistent production. Federal regulations also require that the company seeking FDA approval (here Alnylam), or else a qualified representative of the company, review this MBR prior to beginning the clinical testing of the manufactured product. This document sets out in step-by-step detail the entire process for manufacturing the product under clinical investigation. For a product that includes a delivery formulation, among the multitude of details that must be set forth in the MBR are the specific components of the formulation, the quantities and sources of each component, the various additives included in the formulation, the parameters for processing the components, instructions for operation of any associated manufacturing equipment, temperature controls, and quality controls implemented at different phases of the manufacturing processes — in short, the MBR is a very detailed recipe for making a particular formulation.

74. Tekmira devoted years of effort and millions of dollars researching and developing know-how relating to the many components and steps necessary to manufacture its lipid formulations reproducibly and efficiently for human use. Tekmira treats its manufacturing know-how, including know-how as set forth in its MBRs, as highly valuable information that is proprietary to Tekmira, and took and continues to take reasonable steps to ensure its confidentiality. The confidential information relating to

this manufacturing technology, including the MBRs themselves, is referred to herein as the “MBR Trade Secrets.”

75. Alnylam has sought FDA approval to manufacture for clinical testing products that use Protiva’s Lead Formulation. As part of its “Investigational New Drug” (“IND”) application, Alnylam was required to be familiar with Tekmira’s MBRs. Tekmira agreed to provide manufacturing information, including its MBRs, for review by a limited set of approved Alnylam employees solely in order for Alnylam to comply with its regulatory obligations.

76. In September 2008, Tekmira and Alnylam entered into a written agreement pursuant to which Tekmira agreed to provide Alnylam with the MBR for manufacturing Protiva’s Lead Formulation that was selected for delivery of Alnylam’s “VSP02” siRNA product on the condition that Alnylam agree to restrict access internally within Alnylam to specific individuals (“September 2008 MBR Agreement”). On September 16, 2008, Tekmira’s CEO, Mark Murray, sent an email to Alnylam’s Vice-President of Manufacturing Operations, David Konys, in which Mr. Murray confirmed the terms of the parties’ understanding:

I am proceeding with your assurances that the batch record need not and will not be seen or reviewed by anyone at ALNY other than this immediate group who has a regulatory obligation to review it in compliance with your IND [Investigational New Drug application]. Under no circumstances is ALNY authorized to disclose its contents or to use the information contained in this batch record for any other purpose.

In consideration for Alnylam receiving the MBR, Mr. Konys confirmed Alnylam’s agreement by return email the next day, stating:

I can assure you that only those people who have direct responsibility for specific portions of the IND will see this information. You have my personal commitment to contain the exposure of this document within our organization, and that we will treat it with the utmost sensitivity.

77. Tekmira provided the MBR for the Lead Formulation, which is one of Tekmira's MBR Trade Secrets, to Mr. Konys and specific, identified employees within Alnylam pursuant to the terms of the September 2008 MBR Agreement. Tekmira tightly controlled access to this information, including by securing the MBR computer files with password protection in order to limit the universe of individuals within Alnylam who could gain access to the MBR Trade Secrets.

78. Alnylam and Tekmira also entered into a January 2, 2009 Development, Manufacturing and Supply Agreement (the "Manufacturing and Supply Agreement"). Under that agreement, Alnylam retained Tekmira as its exclusive manufacturer and supplier of Alnylam's delivery formulation requirements for Alnylam Royalty Products pursuant to the Tekmira Agreement, and for Alnylam Licensed Products pursuant to the Protiva Agreement. As part of its obligations under the Manufacturing and Supply Agreement, Tekmira was required to transfer to Alnylam confidential technical information that was necessary either to manufacture a specific product or to obtain regulatory approval of a specific product ("Technical Transfer"). Tekmira's MBRs are expressly included in the Technical Transfer information.

79. The Manufacturing and Supply Agreement severely limits the circumstances under which a Technical Transfer is permitted, the use of any such information transferred, and the procedures accompanying any such transfer. For example, Alnylam acknowledged and agreed that even within Alnylam, "all uses and disclosures of [this information are to] be isolated . . . solely to those of Alnylam's full-time employees who meet all of the following: (1) they have an established need to know the [information] for purposes bearing directly on the Manufacture or regulatory approval

for such specific Product, (2) they have been named in writing to Tekmira in advance of any such use or disclosure by or to them, and (3) they have agreed in writing, explicitly for the benefit of Tekmira, that they will at all times during and following their employment by Alnylam protect and preserve such Confidential Information and Intellectual Property consistently with this Agreement.” §11.3.1 (a), Manufacturing and Supply Agreement.

80. Further, Alnylam was prohibited from providing such information to third parties without Tekmira’s full knowledge and consent:

(c) prior to the provision of any Methods under Section 11.2 or of any Technical Transfer or any other Tekmira Confidential Information and Tekmira Intellectual Property to an Third Party, including without limitation an alternate supplier, such Third Party shall be required to execute and deliver to Tekmira the written agreement(s) of such Third Party to be bound by the foregoing provisions of this Section 11.3.1 and by Article 14 of this Agreement, explicitly for the benefit of Tekmira, which agreement(s) must be in form and substance reasonably acceptable to Tekmira.

§11.3.1 (c), Manufacturing and Supply Agreement.

81. In 2008, Alnylam announced that it was going to enter into a strategic business relationship in the RNAi field with a third party pharmaceutical company called Takeda. On information and belief, as a result of forming this alliance, Takeda paid Alnylam an upfront payment of \$100 million, with the promise of an additional \$50 million in near-term downstream technology transfer payments and up to \$171 million in additional downstream milestones and royalties. On information and belief, Takeda estimated the overall value of the alliance potentially in excess of \$1 billion. Tekmira is informed and believes, and thereupon alleges, that in order to secure the benefits of its deal with Takeda, Alnylam either wrongfully claimed Tekmira’s delivery or

manufacturing technology as its own, or falsely represented that it was authorized to disclose the technology to Takeda, and disclosed highly secret information from Tekmira's MBR to Takeda. Tekmira learned about Alnylam's wrongful disclosure of Tekmira's MBR Trade Secrets to Takeda when Alnylam's David Konys told Tekmira that Alnylam had received questions from Takeda about Tekmira's delivery technology. Mr. Konys forwarded Takeda's questions and asked Tekmira to answer them. The questions included information taken directly from Tekmira's MBR.

82. On information and belief, Alnylam has given its employees unfettered access to all of the MBR Trade Secrets that Tekmira has provided to Alnylam, in violation of the access, use, and disclosure restrictions in the Protiva Agreement, Tekmira Agreement, 2008 MBR Agreement, and Manufacturing and Supply Agreement.

Alnylam Manufactured Delivery Technology For Third Parties In Breach Of The Confidentiality And Use Restrictions In The Agreements, And Its Obligation To Use Tekmira As Its Sole Manufacturer For Delivery Technology

83. On information and belief, Alnylam is manufacturing delivery formulations for at least Takeda and has also done so for another third party pharmaceutical company called Novartis. On further information and belief, the delivery technology that Alnylam is providing contains, is based upon, and derives in whole or in part from Tekmira technology, including its confidential information and trade secrets. Alnylam's use of Tekmira's manufacturing and delivery technology to manufacture formulations for third parties is not authorized by the restrictions on use and disclosure in the Protiva Agreement, Tekmira Agreement, September 2008 MBR Agreement, and Manufacturing and Supply Agreement. Alnylam's manufacturing activity also constitutes a breach of the Manufacturing Requirements provisions of the agreements,

which require Alnylam to use Tekmira as its “exclusive manufacturer to Manufacture and supply its requirements” for toxicology and other non-clinical studies and clinical development, through the completion of all Phase II studies for each product licensed from Tekmira. §11.1.1, Manufacturing and Supply Agreement.

Alnylam Included Tekmira’s Highly Detailed And Confidential Information Provided To Alnylam Solely For Its Confidential Regulatory Filings In Alnylam’s Patent Filings

84. Tekmira also provided its confidential information and trade secrets to Alnylam in order to assist Alnylam in preparing a section of Alnylam’s FDA IND regulatory filings known as the chemistry, manufacturing, and control section, or “CMC.” Those confidential information and trade secrets of Tekmira set out in great detail the specifications and process controls used by Tekmira in evaluating the purity, identity, strength, and quality of its formulation, including the assays used in making these determinations and associated acceptance criteria, as well as stability and storage criteria and results. Those proprietary, confidential information and trade secrets of Tekmira are referred to herein as the “Process Control Trade Secrets.”

85. Tekmira took reasonable steps to maintain the confidentiality of the Process Control Trade Secrets. Tekmira limited Alnylam’s use of the Process Control Trade Secrets to the CMC submission to the FDA that, pursuant to federal regulations, the FDA is obligated not to disclose publicly except under special circumstances that do not apply here. Alnylam used and disclosed Tekmira’s Process Control Trade Secrets in its patent filings. But for Alnylam’s wrongful disclosure of Tekmira’s Process Control Trade Secrets to the Patent Office, and resulting, foreseeable publication of those applications, Tekmira’s Process Control Trade Secrets would still be confidential.

**Alnylam Is Falsely Representing To Current And Potential Industry Partners That
It Invented, Developed, And Owns Formulation Technology That
It Stole From Tekmira**

86. Tekmira is informed and believes that Alnylam has represented to the pharmaceutical industry and specific industry partners that it invented, developed, and owns lipid delivery technology, including formulations that include the cationic lipid MC3. Based on the facts set forth above, Tekmira contends that these representations are false. Alnylam's lipid delivery formulations are derived from the wrongful use of Tekmira proprietary, confidential information and trade secrets, and therefore Alnylam does not have any right to use said formulations or to offer said formulations to potential industry partners.

87. As one example, on February 17, 2011, Alnylam issued a press release representing that it owns lipid formulations that it has elsewhere identified as "MC3." Tekmira is informed and believes, and thereupon alleges, that in fact, Alnylam stole MC3 from Tekmira. Alnylam disseminated this information even though it knew, or might on reasonable investigation have ascertained, that it did not own MC3.

88. Tekmira is informed and believes, and thereupon alleges, that Alnylam disseminated this information to create public demand for that delivery technology and to gain for itself the value the market places on effective delivery technology, which is widely recognized as the most important aspect of successful RNAi products.

89. Tekmira is informed and believes, and thereupon alleges, that Alnylam's dissemination of this information and its other wrongful conduct injured and continues to injure Tekmira's position in the market for delivery technology.

90. On information and belief, Alnylam's representations that it can provide lipid delivery formulations independent of Tekmira has harmed Tekmira and confused

the marketplace as to Tekmira's contribution and value to siRNA delivery. The harm from these representations is further exacerbated by the confusion in the marketplace as to the proper ownership of Tekmira delivery formulations disclosed and claimed in Alnylam and AlCana's patent applications.

91. A further example of Alnylam's misrepresentations and its pattern of treating Tekmira's technology as its own relates to Tekmira's discovery that a particular protein known as ApoE facilitates uptake of delivery formulations in the liver, as well as by other cells or tissues in the body where the specific low-density lipid ("LDL") receptor family members are highly expressed. This discovery was kept as a trade secret by Tekmira, and disclosed as confidential information to Alnylam. Alnylam took this information and presented this discovery at a scientific conference as its own. In a subsequent press release summarizing its presentation, Alnylam stated that "it has discovered a key mechanism related to the systemic delivery of RNAi therapeutics using lipid nanoparticles." This statement was false; Alnylam did not discover the key mechanism relating to the use of ApoE and liver uptake — Tekmira did.

COUNT ONE

Common Law Misappropriation Of Confidential And Proprietary Information (Against Alnylam And AlCana)

92. Tekmira realleges and incorporates by reference paragraphs 1 to 91 above.

93. Tekmira owns confidential and proprietary information in its delivery and manufacturing technology.

94. Alnylam knew or should have known that it gained access to and learned Tekmira's confidential and proprietary information in confidence, and was under a duty not to use or disclose such information without Tekmira's authorization and consent.

95. AICana acquired Tekmira's confidential and proprietary information knowing or having reason to know that the confidential and proprietary information was acquired by improper means, and disclosed and used it without Tekmira's authorization and consent, knowing or having reason to know that it used improper means to acquire it, or that it acquired it from or through another who was under a duty to maintain its secrecy or limit its use.

96. Alnylam and AICana misappropriated Tekmira's confidential and proprietary information by using and disclosing it, and by continuing to use and disclose it, without Tekmira's consent or authorization.

97. By reason of their wrongful conduct, Alnylam and AICana misappropriated Tekmira's confidential and proprietary information in violation of the common law.

98. Alnylam's and AICana's misappropriation was and is a substantial factor in directly and proximately causing damages and irreparable harm to Tekmira, and unjust enrichment of Alnylam and AICana.

99. Tekmira is informed and believes, and thereupon alleges, that Alnylam and AICana acted willfully and maliciously.

100. Tekmira has been and continues to be irreparably harmed by Alnylam's and AICana's actions.

COUNT TWO

Misappropriation Of Trade Secrets In Violation Of M.G.L. c. 93, § 42 (Against Alnylam And AICana)

101. Tekmira realleges and incorporates by reference paragraphs 1 to 100 above.

102. Tekmira's delivery and manufacturing technology includes information that constitutes a trade secret under Massachusetts law.

103. Alnylam knew or should have known that it gained access to and learned Tekmira's trade secrets in confidence, and was under a duty not to use or disclose Tekmira's trade secrets without Tekmira's authorization and consent.

104. AlCana acquired Tekmira's trade secrets knowing or having reason to know that the trade secrets were acquired by improper means, and disclosed and used them without Tekmira's authorization and consent, knowing or having reason to know that it used improper means to acquire them, or that it acquired them from or through another who was under a duty to maintain its secrecy or limit its use.

105. Alnylam and AlCana misappropriated Tekmira's trade secrets by improperly using and disclosing them, and by continuing improperly to use and disclose them, without Tekmira's consent or authorization.

106. Tekmira is informed and believes, and thereupon alleges, that Alnylam and AlCana intended and intend to convert Tekmira's trade secrets to their own use.

107. By reason of their wrongful conduct, Alnylam and AlCana misappropriated Tekmira's trade secrets in violation of M.G.L. c. 93, § 42.

108. Alnylam's and AlCana's misappropriation was and is a substantial factor in directly and proximately causing damages and irreparable harm to Tekmira, and unjust enrichment of Alnylam and AlCana.

109. Tekmira is informed and believes, and thereupon alleges, that Alnylam and AlCana acted willfully and maliciously.

110. Tekmira has been and continues to be irreparably harmed by Alnylam's and AlCana's actions.

COUNT THREE

Civil Conspiracy (Against Alnylam And AlCana)

111. Tekmira realleges and incorporates by reference paragraphs 1 to 110 above.

112. Alnylam and AlCana formed a common plan to file patent applications claiming Tekmira technology as their own, and to deprive Tekmira of its ownership interest in lipids and formulations based on or derived from Tekmira MC Trade Secrets.

113. Alnylam and AlCana's plan was designed to achieve through tortious acts the wrongful purpose of gaining ownership interests in Tekmira technology, discoveries, development, know-how, and inventions, and to avoid Alnylam's royalty obligations to Tekmira under their agreements and thereby deprive Tekmira of royalties to its intellectual property.

114. Alnylam and AlCana took affirmative steps including the filing patent applications that claim ownership of Tekmira technology, know-how, and inventions, and gave each other substantial assistance as to the same in furtherance of their plan.

115. Alnylam's and AlCana's conspiracy was and is a substantial factor in directly and proximately causing harm to Tekmira, and unjust enrichment of Alnylam and AlCana.

COUNT FOUR

Tortious Interference With Contractual Relationships (Against Alnylam And AICana)

116. Tekmira realleges and incorporates by reference paragraphs 1 to 115 above.

117. TPC had written contracts with the ex-Tekmira employees that imposed continuing obligations on them (a) not to use or disclose TPC's confidential information after their employment with TPC ended; and (b) to assign to TPC any technology, development, discoveries, know-how, and inventions they conceived of while they were working for TPC.

118. On information and belief, Alnylam and AICana intentionally induced the ex-Tekmira employees not to honor the confidentiality and assignment provisions in their employment agreements but instead induced them to breach these provisions by using Tekmira's confidential information while employed as consultants for Alnylam and/or in the course of employment at AICana, and assigning Tekmira's technology, development, discoveries, know-how, and inventions to AICana, and later to Alnylam. On further information and belief, Alnylam's and AICana's interference was intentional and was improper in motive or means; Alnylam and AICana induced these breaches of the Tekmira employment confidentiality and assignment provisions for the improper motives of acquiring exclusive rights to Tekmira's development, discoveries, know-how, and inventions and avoiding Alnylam's royalty obligations to Tekmira.

119. Alnylam's and AICana's actions were a substantial factor in directly and proximately causing harm to Tekmira.

COUNT FIVE

**Unjust Enrichment
(Against Alnylam And AICana)**

120. Tekmira realleges and incorporates by reference paragraphs 1 to 119 above.

121. Tekmira conferred benefits on Alnylam by providing Tekmira's valuable technology, development, discoveries, know-how, and inventions to Alnylam in connection with the parties' collaboration relationships. AICana obtained such benefits indirectly through Tekmira's former employees and from Alnylam.

122. Alnylam and AICana accepted and retained Tekmira's valuable technology, and they used the technology, development, discoveries, know-how, and inventions to their own advantage, at Tekmira's expense. Alnylam and AICana appreciate or know what benefits they are deriving from Tekmira's technology, development, discoveries, know-how, and inventions.

123. Alnylam and AICana have been unjustly enriched as a direct and proximate result of their unlawful use and disclosure of Tekmira technology, development, discoveries, know-how, and inventions, and it would be inequitable for Alnylam or AICana to retain those benefits under the circumstances without payment for their value.

COUNT SIX

**Breach Of Tekmira Agreement
(Against Alnylam)**

124. Tekmira realleges and incorporates by reference paragraphs 1 to 123 above.

125. The Tekmira Agreement contained provisions restricting Alnylam's use of Tekmira's confidential information, preventing the unauthorized disclosure and the unauthorized use of this information.

126. Alnylam breached the Confidentiality Provision of the Tekmira Agreement by making unauthorized use and unauthorized disclosures of Tekmira's confidential information, by disclosing this information to third parties, by attempting to gain ownership of Tekmira's confidential information through unauthorized patenting activities, and by using Tekmira's confidential information to make unauthorized derivative formulations.

127. Alnylam breached the Publicity Provision of the Tekmira Agreement by making unauthorized patent filings of Tekmira's technology, development, discoveries, know-how, and inventions, and allowing them to publish.

128. In filing patent applications claiming Tekmira's technology, development, discoveries, know-how, and inventions, Alnylam breached the Ownership Provision of the Tekmira Agreement.

129. Alnylam's patent filings claiming and disclosing Tekmira's technology, development, discoveries, know-how, and inventions also constitute a breach of the Patent Cooperation Provision of the Tekmira Agreement. Deprived of the opportunity to review these patent filings in advance, Tekmira could not coordinate its own patent strategy to ensure that none of the disclosures in Alnylam's filings interfered with Tekmira's patent filings. For example, disclosure of Tekmira technology (even if not claimed) in an Alnylam filing that predates Tekmira patent filings claiming the same

subject matter could create statutory bars and other validity issues, particularly in foreign jurisdictions, preventing Tekmira from enjoying the full benefit of its own inventions.

130. By manufacturing delivery formulations for itself and for third parties that incorporate Tekmira's technology, development, discoveries, know-how, and inventions, Alnylam breached the restrictions on use and disclosure, and the Manufacturing Requirements provisions of the Tekmira Agreement.

131. Tekmira performed under the Tekmira Agreement.

132. Alnylam's breaches of the agreement were a substantial factor in directly and proximately causing harm to Tekmira.

COUNT SEVEN

Breach Of The Implied Covenant Of Good Faith And Fair Dealing In The Tekmira Agreement (Against Alnylam)

133. Tekmira realleges and incorporates by reference paragraphs 1 to 132 above.

134. The Tekmira Agreement is a contract existing between Alnylam and Tekmira. The contract includes an implied covenant of good faith and fair dealing under Delaware law.

135. Alnylam acted in bad faith and with an improper motive in its failure to perform under the Tekmira Agreement, in breach of the implied covenant of good faith and fair dealing.

136. Alnylam's performance under the Tekmira Agreement violates the reasonable and justifiable expectations of Tekmira under the Tekmira Agreement and has the effect of injuring Tekmira's right to receive the fruits of the Tekmira Agreement. Tekmira had the reasonable expectation that Alnylam would only use TPC confidential

information for the purposes of the agreement. Through its actions of using Tekmira Technology for its own independent purposes, and not for the development of a Royalty-Product as defined in the Tekmira Agreement, Alnylam has frustrated the purpose of the agreement. Additionally, Alnylam has frustrated the purpose of the agreement and violated Tekmira's reasonable expectations under the agreement by, *inter alia*, interfering with Tekmira's patent rights, claiming ownership to Tekmira technology, development, discoveries, know-how, and inventions; seeking to gain exclusive rights to non-exclusively licensed technology, development, discoveries, know-how, and inventions, seeking to gain patent rights that will prevent Tekmira from using its own technology, development, discoveries, know-how, and inventions, and using Tekmira's technology, development, discoveries, know-how, and inventions to compete directly with, rather than in collaboration with, Tekmira.

137. Alnylam's breach of the implied covenant of good faith and fair dealing was a substantial factor in directly and proximately causing harm to Tekmira.

COUNT EIGHT

Breach Of Protiva Agreement (Against Alnylam)

138. Tekmira realleges and incorporates by reference paragraphs 1 to 137 above.

139. The Protiva Agreement contained provisions restricting Alnylam's use of Tekmira's confidential information, preventing the unauthorized disclosure and the unauthorized use of this information.

140. Alnylam breached the confidentiality provisions of the Protiva Agreement by making unauthorized use and unauthorized disclosures of Tekmira's confidential

information, by disclosing this information to third parties, including disclosing information included in Tekmira's MBRs to at least third party Takeda and by providing unfettered access of MBRs to Alnylam employees, by attempting to gain ownership of Tekmira's confidential information through unauthorized patenting activities, and by using Tekmira's confidential information to make unauthorized derivative formulations.

141. Alnylam breached the Publicity Provision of the Protiva Agreement by making unauthorized patent filings of Tekmira's technology, development, discoveries, know-how, and inventions and allowing them to publish.

142. In filing patent applications claiming Tekmira's technology, development, discoveries, know-how, and inventions, Alnylam breached the Ownership Provision of the Protiva Agreement.

143. Alnylam's patent filings claiming and disclosing Tekmira technology, development, discoveries, know-how, and inventions also constitute a breach of the Patent Cooperation Provision of the Protiva Agreement.

144. By manufacturing delivery formulations for itself and for third parties that incorporate Tekmira's technology, development, discoveries, know-how, and inventions, Alnylam breached the restrictions on use and disclosure, and the Manufacturing Requirements provisions of the Protiva Agreement.

145. Tekmira performed under the Protiva Agreement.

146. Alnylam's breaches of the agreement were a substantial factor in directly and proximately causing harm to Tekmira.

COUNT NINE

**Breach Of The Implied Covenant Of Good Faith And Fair Dealing
In The Protiva Agreement
(Against Alnylam)**

147. Tekmira realleges and incorporates by reference paragraphs 1 to 146 above.

148. The Protiva Agreement is a contract existing between Alnylam and Tekmira. The contract includes an implied covenant of good faith and fair dealing under Delaware law.

149. Alnylam acted in bad faith and with an improper motive in its failure to perform under the Protiva Agreement, in breach of the implied covenant of good faith and fair dealing.

150. Alnylam's performance under the Protiva Agreement violates the reasonable and justifiable expectations of Tekmira under the Protiva Agreement and has the effect of injuring Tekmira's right to receive the fruits of the Protiva Agreement. Tekmira had the reasonable and justifiable expectation that Alnylam would use the confidential information provided to it pursuant to the Protiva Agreement only for the purposes of, and activities contemplated in, the Protiva Agreement. Through its actions of using this information, including the Lead Formulation provided under the agreement, for its own independent purposes, and applying for patents in its own name, claiming the Lead Formulation as well as derivatives made based on this Lead Formulation, Alnylam has frustrated the purpose of the agreement by inter alia, interfering with Tekmira's patent rights, claiming ownership to Tekmira's technology, development, discoveries, know-how, and inventions, seeking to gain exclusive rights to non-exclusively licensed technology, development, discoveries, know-how, and inventions, seeking to gain patent

rights that will prevent Tekmira from using its own technology, development, discoveries, know-how, and inventions, and using Tekmira technology, development, discoveries, know-how, and inventions to compete directly with, rather than in collaboration with, Tekmira.

151. Alnylam's breach of the implied covenant of good faith and fair dealing was a substantial factor in directly and proximately causing harm to Tekmira.

COUNT TEN

Breach Of Manufacturing And Supply Agreement (Against Alnylam)

152. Tekmira realleges and incorporates by reference paragraphs 1 to 151 above.

153. The Manufacturing and Supply Agreement contained provisions restricting Alnylam's use of Tekmira's confidential information, preventing the unauthorized disclosure and the unauthorized use of this information.

154. Alnylam breached the confidentiality provisions of the Manufacturing and Supply Agreement by making unauthorized use and unauthorized disclosures of Tekmira's confidential information, and by disclosing that information to third parties.

155. By manufacturing delivery formulations for itself and for third parties that incorporate Tekmira's technology, development, discoveries, know-how, and inventions, Alnylam breached the restrictions on use and disclosure, and the Manufacturing Requirements provisions of the Manufacturing and Supply Agreement.

156. Tekmira performed under the Manufacturing and Supply Agreement.

157. Alnylam's breaches of the agreement were a substantial factor in directly and proximately causing harm to Tekmira.

COUNT ELEVEN

Breach Of The Implied Covenant Of Good Faith And Fair Dealing In The Manufacturing And Supply Agreement (Against Alnylam)

158. Tekmira realleges and incorporates by reference paragraphs 1 to 157 above.

159. The Manufacturing and Supply Agreement is a contract existing between Alnylam and Tekmira. The contract includes an implied covenant of good faith and fair dealing under Delaware law.

160. Alnylam acted in bad faith and with an improper motive in its failure to perform under the Manufacturing and Supply Agreement, in breach of the implied covenant of good faith and fair dealing.

161. Alnylam's performance under the Manufacturing and Supply Agreement violates the reasonable and justifiable expectations of Tekmira under the Manufacturing and Supply Agreement and has the effect of injuring Tekmira's right to receive the fruits of the Manufacturing and Supply Agreement. In using confidential information provided pursuant to the Manufacturing and Supply Agreement for its own manufacturing purposes, and as well in providing said information to at least third party Takeda, Alnylam has violated the reasonable and justifiable expectation of Tekmira that Tekmira's confidential manufacturing information would not be used by Alnylam for incorporation into its manufacturing process, and additionally that this information would not be provided to any third party without Tekmira's written consent (which consent was never provided).

162. Alnylam's breach of the implied covenant of good faith and fair dealing was a substantial factor in directly and proximately causing harm to Tekmira.

COUNT TWELVE

**Breach Of The September 2008 MBR Agreement
(Against Alnylam)**

163. Tekmira realleges and incorporates by reference paragraphs 1 to 162 above.

164. Alnylam and Tekmira entered into the September 2008 MBR Agreement to restrict access to Tekmira's MBRs.

165. Tekmira performed under the agreement by providing MBRs to Alnylam.

166. Alnylam breached the agreement by disclosing MBR information to unauthorized persons within Alnylam, and to at least one third party, Takeda.

167. Alnylam's breach of the agreement was a substantial factor in directly and proximately causing harm to Tekmira.

COUNT THIRTEEN

**Common Law Unfair Competition
(Against Alnylam)**

168. Tekmira realleges and incorporates by reference paragraphs 1 to 167 above.

169. Alnylam has represented and continues to represent to the public that it developed and owns technology that actually contains, is based on, and/or is derived in whole or in part from Tekmira's technology, development, discoveries, know-how, and inventions without Tekmira's authorization or consent.

170. In so doing, Alnylam is passing off Tekmira's technology, development, discoveries, know-how, and inventions as Alnylam technology in violation of the common law.

171. Tekmira is informed and believes, and thereupon alleges, that Alnylam's wrongful passing off of Tekmira's technology, development, discoveries, know-how, and inventions as Alnylam's own has caused and will cause consumer confusion, and has been a substantial factor in directly and proximately causing damages and irreparable harm to Tekmira.

COUNT FOURTEEN

**False Advertising In Violation of M.G.L. c. 266, § 91
(Against Alnylam)**

172. Tekmira realleges and incorporates by reference paragraphs 1 to 171 above.

173. By reason of its wrongful conduct, including but not limited to promoting and advertising Tekmira's technology, development, discoveries, know-how, and inventions as its own, Alnylam violated M.G.L. c. 266, § 91.

174. Alnylam's wrongful conduct was a substantial factor in directly and proximately causing damages and irreparable harm to Tekmira, and Tekmira will continue to be harmed so long as Alnylam's wrongful conduct continues.

COUNT FIFTEEN

**Unfair And Deceptive Acts And Practices In Violation Of M.G.L. c. 93A
(Against Alnylam And AlCana)**

175. Tekmira realleges and incorporates by reference paragraphs 1 to 174 above.

176. Alnylam engaged in trade or commerce with Tekmira through its collaboration relationships with TPC, Protiva, and the merged entity Tekmira. AlCana engaged in trade or commerce with Tekmira through its dealings including entering into a

July 27, 2009 “Supplemental Agreement” by and among Alnylam, TPC, Protiva, the University of British Columbia, and AlCana.

177. Alnylam’s and AlCana’s wrongful acts as alleged herein constitute unfair and deceptive acts and practices in violation of M.G.L. c. 93A.

178. Alnylam’s and AlCana’s unfair and deceptive acts occurred primarily and substantially in Massachusetts.

179. Alnylam’s and AlCana’s unfair and deceptive acts were a substantial factor in directly and proximately causing loss of money and/or property, and irreparable harm, to Tekmira.

180. Tekmira is informed and believes, and thereupon alleges, that Alnylam and AlCana acted willfully and knowingly.

PRAYER FOR RELIEF

WHEREFORE, Tekmira prays that the Court grant the following relief:

- A. Judgment in Tekmira’s favor on each count;
- B. Compensatory damages;
- C. Exemplary, enhanced, double, and/or treble damages;
- D. An award directing Alnylam and AlCana to disgorge to Tekmira all monies and/or profits derived from the wrongful conduct alleged herein;
- E. An award to Tekmira of the amount by which Alnylam and AlCana have been unjustly enriched;
- F. Reasonable royalties for Alnylam’s and AlCana’s improper use of Tekmira’s technology;

G. A preliminary and permanent injunction enjoining and restraining Alnylam and AlCana, and their officers, directors, agents, servants, employees, attorneys, and all others acting under, by, or through them, directly or indirectly, from improperly possessing, obtaining, transferring, using, or disclosing any Tekmira confidential and proprietary information or trade secrets, including any Alnylam and AlCana material, products, or technology that wrongfully contain, are based on, and/or are derived in whole or in part from any of Tekmira's confidential and proprietary information or trade secrets;

H. A preliminary and permanent injunction enjoining and restraining Alnylam and AlCana, and their officers, directors, agents, servants, employees, attorneys, and all others acting under, by or through them, directly or indirectly, from making, publishing, disseminating, circulating, or placing before the public statements in which Alnylam or AlCana claim ownership of siRNA delivery technology that wrongfully contains, is based on, and/or is derived in whole or in part from any Tekmira confidential and proprietary information and/or trade secrets;

I. An accounting of any monetary or other benefits received by Alnylam and AlCana as a result of their wrongful conduct;

J. A constructive trust over all information, patent applications, patents, technology, products, and other materials in the possession, custody, or control of Alnylam and AlCana that wrongfully constitute, contain, were based on, and/or derived in whole or in part from the use of Tekmira's confidential and proprietary information and/or trade secrets, and an order that Alnylam and AlCana immediately transfer to

Tekmira all right, title, and interest in such information, patent applications, patents, materials, technology, and products;

K. A declaration that Alnylam is in material breach of the Tekmira, Protiva, September 2008 MBR, and Manufacturing and Supply Agreements;

L. Termination of Alnylam's licenses under the Tekmira and Protiva Agreements;

M. Prejudgment interest according to proof;

N. Reasonable attorneys' fees and costs of suit; and

O. Such other relief that the Court deems just and proper.

TEKMIRA DEMANDS A JURY TRIAL

Dated: June 3, 2011

TEKMIRA PHARMACEUTICALS CORP. and
PROTIVA BIOTHERAPEUTICS, INC.

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