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13 | **UNITED STATES DISTRICT COURT**
 14 | **NORTHERN DISTRICT OF CALIFORNIA**
 15 | **SAN JOSE DIVISION**

16 | SECURITIES AND EXCHANGE COMMISSION, Case No.

17 | Plaintiff,

COMPLAINT

18 | vs.

19 | BENJAMIN SILVA, III,

20 | Defendant.

21 | Plaintiff Securities and Exchange Commission (the "Commission") alleges:

22 | **SUMMARY OF THE ACTION**

23 | 1. This matter involves a financial reporting fraud at Tvia, Inc. ("Tvia" or "the Company"), a
 24 | Silicon Valley semiconductor company. From at least September 2005 through June 2006, Benjamin
 25 | Silva, III ("Silva" or "Defendant"), then Tvia's Vice President of Worldwide Sales, caused the
 26 | Company to falsely report millions of dollars in revenue on sales through the use of side agreements
 27 | in which Silva typically promised the customer extended payment terms and obligated Tvia to find a
 28 | buyer for any product that the customer was unable to sell.

29 | 2. Silva knew or was reckless in not knowing that these side agreements made it improper
 30 | for Tvia to recognize revenue on the sales, either under the Company's revenue recognition policy or

1 in accordance with Generally Accepted Accounting Principles (“GAAP”). Thus, in order to carry out
2 his fraud, Silva concealed the side agreements from Tvia’s Chief Executive Officer (“CEO”), its
3 Chief Financial Officer (“CFO”), and the Company’s auditors.

4 3. Silva also caused Tvia to misapply approximately \$300,000 in payments from new
5 customers to pay down other customers’ past due accounts, in order to satisfy collection concerns
6 raised by Tvia’s auditors and avoid the reversal of previously-recognized revenue.

7 4. Silva’s fraud caused Tvia to materially overstate its revenue for multiple reporting
8 periods, including for its second quarter of fiscal 2006 (ended September 30, 2005), its third quarter
9 of fiscal 2006 (ended December 31, 2005), its 2006 year-end results (March 31, 2006), and its first
10 quarter of fiscal 2007 (ended June 30, 2006). Before Silva’s fraud was discovered, Silva exercised
11 and sold all of his vested Tvia options, netting over \$300,000.

12 5. By engaging in the acts alleged in this Complaint, Silva, among other things, violated the
13 antifraud provisions of the federal securities laws, made or caused to be made materially false or
14 misleading statements to Tvia’s auditors, falsified Tvia’s books and records, and caused Tvia to
15 falsely report its financial results. The Commission seeks an order enjoining Silva from future
16 violations of the securities laws, requiring him to disgorge his ill-gotten gains with prejudice
17 interest and pay civil monetary penalties, barring him from serving as an officer or director of a
18 public company, and providing other appropriate relief.

19 JURISDICTION AND VENUE

20 6. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities
21 Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the
22 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d) and 78u(e)].

23 7. This Court has jurisdiction over this action pursuant to Sections 20(c) and 22(a) of the
24 Securities Act [15 U.S.C. §§ 77t(c) and 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §
25 78aa]. The defendant, directly or indirectly, has made use of the means and instrumentalities of
26 interstate commerce, of the mails, or of the facilities of a national securities exchange in connection
27 with the acts, practices and courses of business alleged in this complaint.

28 8. Venue is proper in this District pursuant to Section 22 of the Securities Act [15 U.S.C. §

1 77v], and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Silva resides in the Northern District
2 of California, and acts or transactions constituting violations occurred in this district.

3 **INTRADISTRICT ASSIGNMENT**

4 9. Assignment to the San Jose Division is appropriate pursuant to Civil Local Rules 3-2(c)
5 and 3-2(d) because acts and omissions giving rise to the Commission’s claims occurred, among other
6 places in this district, in Santa Clara County.

7 **DEFENDANT**

8 10. Benjamin Silva, III, age 48, resides in Fremont, California. From September 2004
9 through January 2007, Silva was Tvia’s Vice President of Worldwide Sales. From approximately
10 September 2001 to September 2004, Silva was head of Worldwide Sales for another public
11 company.

12 **RELEVANT ENTITY**

13 11. Tvia is a semiconductor company based in Santa Clara, California. During the time
14 period of the fraud alleged in this Complaint, Tvia’s common stock traded on the NASDAQ Global
15 Market (“NASDAQ”) under the symbol “TVIA,” and the Company was registered with the
16 Commission pursuant to Section 12(g) of the Exchange Act. Tvia’s fiscal year-end is March 31. On
17 January 30, 2007, Tvia issued a press release indicating that the market should not rely on any
18 financial statements, earnings press releases, and similar communications issued by Tvia for its 2006
19 and 2007 fiscal years. On July 12, 2007, NASDAQ delisted the Company’s securities due to lack of
20 compliance with listing requirements. On October 15, 2008, Tvia filed a voluntary petition for
21 reorganization under Chapter 11 of the United States Bankruptcy Code.

22 **FACTUAL ALLEGATIONS**

23 **Background**

24 12. Tvia designs and develops digital display processors for use in LCD and other high-
25 definition TVs. Tvia sells its products into multiple channels, including to original equipment
26 manufacturers, distributors, and end-users. For Tvia’s 2005 fiscal year ended March 31, 2005, before
27 the conduct at issue, the Company posted \$3.3 million in revenue.

28 13. At all relevant times it was improper under GAAP and Tvia’s revenue recognition policy

1 for Tvia to recognize revenue on transactions in which Tvia promised to accept the return of product
2 in the event a customer did not want the product. In addition, it was improper under GAAP and
3 Tvia's revenue recognition policy for Tvia to recognize revenue on transactions in which the
4 Company agreed to provide substantial ongoing and future services as a condition of a sale. Finally,
5 under Tvia's revenue recognition policy it was improper for the Company to recognize revenue on
6 transactions that included extended payment terms over 90 days without CEO approval.

7 *Silva Had a Financial Motive to Commit Fraud*

8 14. When Silva joined Tvia in September 2004, he received options on 250,000 shares of Tvia
9 stock, with one quarter of the options vesting after one year and the remainder vesting monthly
10 thereafter for the next three years. In May 2005, Silva received additional options grants. Silva
11 received a 50,000 share options grant, again with one quarter of the options vesting after one year and
12 the remainder vesting monthly thereafter for the next three years. Silva also received a 70,000 share
13 performance-based options grant, which vested only if the Company achieved \$5 million in revenue
14 in a fiscal quarter by June 30, 2006.

15 15. As Tvia's Vice President of Worldwide Sales, Silva had three primary sales
16 representatives, one for each of Tvia's geographic regions: China/Taiwan, Japan/Korea, and
17 Europe/North America. However, Silva was intimately involved in sales negotiations in each region.

18 16. On multiple occasions, Silva expressed his desire to generate great wealth for himself and
19 his sales team through Tvia. For example, on November 13, 2005, Silva wrote to his sales team:

20 We cannot afford to have an ego, we cannot afford to let pride keep us from
21 driving this stock to \$5 then to \$10. We are in this to win and win big. I will stop
22 at nothing to gaurantee [sic] that this one goes all the way. We have not missed a
23 number and we will not miss a number. I will make you a lot of money and
24 successful whether you want it or not. ... PREPARE TO BE RICH....NO
25 MATTER WHAT.

26 17. Silva also recognized that missing Tvia's quarterly revenue projections could cause the
27 Company's share price to drop. In a November 23, 2005 e-mail to his sales team, after informing
28 them that Tvia had recently attracted its first stock analyst (who was projecting \$2.2 million in

1 quarterly revenue), Silva noted that “if we come in less, our stock will suffer.”

2 **Silva Used Side Agreements to Improperly Boost Tvia’s Reported Revenue**

3 18. Silva began entering into side agreements with Tvia’s customers at least as early as
4 September 2005. Typically, these side agreements promised the customer extended payment terms
5 and obligated Tvia to find a buyer for any product that the customer was unable to sell.

6 19. Based on his experience in sales, both at Tvia and in his prior employment, Silva knew or
7 was reckless in not knowing that such side agreements would make it improper for Tvia to recognize
8 revenue on a sale. Thus, in order to carry out his fraud, Silva concealed the side agreements from
9 Tvia’s CEO, its CFO, and the Company’s auditors.

10 20. For example, once, when asked by Tvia’s CFO whether he was entering into side
11 agreements with customers, Silva replied that “There are no side deals . . . , and you should not even
12 say that.”

13 21. Silva also hid his side agreements from the Company’s auditors. Tvia’s auditors met
14 Silva at the end of each quarter to discuss each and every outstanding receivable in great detail.
15 During these meetings, which would often last hours, the auditors tried to determine why customers
16 were not paying as expected, and yet Silva never disclosed his side agreements extending payment
17 terms and obligating Tvia to find new buyers for any product that the customers could not sell.

18 22. As alleged below, Silva entered into one or more side agreements in each quarter from the
19 second quarter of Tvia’s 2006 fiscal year through the first quarter of its 2007 fiscal year. Silva
20 caused Tvia to recognize revenue which it should not have ranging from approximately \$220,000 to
21 \$3.16 million per quarter, overstating its quarterly revenue by as much as 164.8%.

22 **Tvia’s Second Quarter of Fiscal 2006 (Ended 9/30/2005)**

23 23. On or about September 22, 2005, Tvia received a written purchase order for \$220,000
24 from MicroNetwork Korea (“MNK”), a customer based in South Korea. According to the purchase
25 order, MNK promised to pay Tvia in full on or before December 31, 2005. Based on MNK’s
26 purchase order and other information available to Tvia’s finance department, the Company
27 recognized \$220,000 in revenue on this sale for the second quarter of Tvia’s 2006 fiscal year, which
28 ended September 30, 2005.

1 24. It was improper for Tvia to recognize revenue on this sale because it was subject to
2 additional terms offered by Silva in a side agreement. The side agreement was documented in a letter
3 from Silva to MNK dated September 20, 2005. In the letter, Silva promised that Tvia would grant
4 MNK extended payment terms in the event that MNK could not obtain financing to pay for the
5 product by December 31, 2005. In addition, in the letter Silva promised that Tvia would “dispose” of
6 the product in the event that MNK was unable to sell it to an end user.

7 25. Silva knowingly concealed the existence of the September 20, 2005 side agreement from
8 Tvia’s CEO, CFO, and auditors. As a result of Silva’s fraud, Tvia overstated its revenue for the
9 quarter ended September 30, 2005 by \$220,000, or approximately 14.3%.

10 *Tvia’s Third Quarter of Fiscal 2006 (Ended 12/31/2005)*

11 26. During Tvia’s fiscal 2006 third quarter, ended December 31, 2005, Silva entered into two
12 side agreements, one with MNK and the other with MJL Technology (“MJL”), another South Korean
13 customer. In total, the side agreements caused Tvia to recognize \$335,000 in revenue which it should
14 not have, overstating the Company’s revenue for the quarter by approximately 14.1%.

15 27. On or about December 12, 2005, MNK placed a written purchase order with Tvia for
16 \$225,000, with payment due in full within 90 days of shipment. Based on MNK’s purchase order
17 and other information available to Tvia’s finance department, the Company recognized \$225,000 in
18 revenue on this sale for the quarter ended December 31, 2005.

19 28. It was improper for Tvia to recognize revenue on this sale to MNK because it was subject
20 to additional terms offered by Silva in a side agreement. The side agreement was documented in a
21 letter from Silva to MNK dated December 12, 2005. In the letter, Silva promised that Tvia would
22 grant MNK nearly six months to pay for the product. Silva knowingly concealed this side agreement
23 from Tvia’s CEO, CFO, and auditors.

24 29. On or about December 16, 2005, MJL placed a written purchase order with Tvia for
25 \$110,000. According to the order, MJL agreed to pay Tvia in full within 90 days. Based on MJL’s
26 purchase order and other information available to Tvia’s finance department, the Company
27 recognized \$110,000 in revenue on this sale for the quarter ended December 31, 2005.

28 30. It was improper for Tvia to recognize revenue on this sale because it was subject to

1 additional terms offered by Silva in a side agreement. The side agreement was documented in a letter
2 from Silva to MJL dated December 15, 2005. In the letter, Silva promised that Tvia would grant
3 MJL up to 120 days to pay for the product. Further, Silva promised that, if MJL could not sell the
4 product within 120 days, Tvia would “arrange for MJL to sell the product to a suitable 3rd party”
5 Silva knowingly concealed this side agreement from Tvia’s CEO, CFO, and auditors.

6 *Tvia’s Fourth Quarter of Fiscal 2006 (Ended 3/31/2006)*

7 31. During Tvia’s fiscal 2006 fourth quarter, ended March 31, 2006, Silva entered into side
8 agreements with Advent Technology (“Advent”), MNK, Universal Technology (“EUT”), and
9 Sichuan Friend (also known as Hooray Electronics) (“SFD”). In total, Silva’s conduct in the fourth
10 quarter led Tvia to recognize approximately \$1.6 million in revenue which it should not have,
11 overstating quarterly revenue by 132.3%.

12 32. On or about March 16, 2006, Advent placed a written purchase order with Tvia for
13 \$125,000, with payment due in full within 90 days. Based on Advent’s purchase order and other
14 information available to Tvia’s finance department, Tvia recognized \$125,000 in revenue on this sale
15 for the quarter ended March 31, 2006.

16 33. It was improper for Tvia to recognize revenue on this sale because it was subject to
17 additional terms offered by Silva in a side agreement. The side agreement was documented in a letter
18 from Silva to Advent dated March 15, 2006. In the letter, Silva promised that Tvia would grant
19 Advent up to 120 days to pay for the product. Further, Silva promised that in the event Advent could
20 not sell the product within 120 days, Tvia would “arrange for Advent to sell the products to a suitable
21 3rd party” Silva knowingly concealed this side agreement from Tvia’s CEO, CFO, and auditors.

22 34. On or about March 31, 2006, MNK placed a written purchase order with Tvia for
23 \$325,000, with payment due in full within 90 days after shipment. Based on MNK’s purchase order
24 and other information available to Tvia’s finance department, Tvia recognized \$325,000 in revenue
25 on this sale for the quarter ended March 31, 2006.

26 35. It was improper for Tvia to recognize revenue on this sale because it was subject to
27 additional terms offered by Silva in a side agreement. The side agreement was documented in an e-
28 mail from Silva to MNK dated March 31, 2006. In the e-mail Silva promised that at the end of the

1 payment term Tvia would take back from MNK all or any portion of the product that MNK did not
2 need. Silva knowingly concealed this side agreement from Tvia's CEO, CFO, and auditors.

3 36. On or about March 30, 2006, EUT placed two written purchase orders with Tvia for a
4 total of \$865,000, with payment due in full within 70 days. Purportedly, some of the product from
5 these orders was for EUT, while some was for two other customers, Nucleus and Sino American
6 Electronics ("SAC"). Based on EUT's purchase orders and other information available to Tvia's
7 finance department, Tvia recognized a total of \$865,000 in revenue on these sales for the quarter
8 ended March 31, 2006.

9 37. It was improper for Tvia to recognize revenue on these sales, for two reasons. First, the
10 sales were subject to additional terms offered by Silva in a side agreement. The side agreement was
11 documented in a letter from Silva to EUT dated March 30, 2006. In the letter, Silva promised that in
12 the event that EUT could not "identify a customer projects [sic] to consume these products within the
13 70-day period," Tvia would extend the payment period to 90 days and/or "arrange for EUT to ship
14 the unused remaining products to a Tvia-designated customer or distributor." Silva knowingly
15 concealed this side agreement from Tvia's CEO, CFO, and auditors. Second, in or about March
16 2006, Silva learned that both planned transactions with Nucleus and SAC had fallen through, that
17 neither Nucleus nor SAC wanted the product, and that EUT had only agreed to store the product until
18 Tvia could find another customer. Silva knowingly concealed this information from Tvia's CEO,
19 CFO, and auditors.

20 38. On or about March 30, 2006, SFD placed a written purchase order with Tvia for \$257,000.
21 Based on SFD's purchase order and other information available to Tvia's finance department, Tvia
22 recognized \$257,000 in revenue on this sale for the quarter ended March 31, 2006.

23 39. It was improper for Tvia to recognize revenue on this sale because it was subject to
24 additional terms offered by Silva in a side agreement. The side agreement was documented in a letter
25 of intent signed by Silva dated April 27, 2006. Silva and his sales team had been negotiating the side
26 agreement with SFD since at least March 21, 2006. In the letter of intent, Silva promised that, in
27 exchange for SFD ordering parts from Tvia, Tvia would perform a number of tasks for which it did
28 not have the technical or logistical ability. Under GAAP, the SFD sale was incomplete because it

1 required future performance by Tvia and therefore revenue from the sale could not be recognized.
2 However, Silva concealed this side agreement from Tvia's CEO, CFO, and auditors, and the full
3 amount of the sale was improperly recognized as revenue in Tvia's fourth quarter of fiscal 2006.

4 *Tvia's First Quarter of Fiscal 2007 (Ended 6/30/2006)*

5 40. On or about June 28, 2006, SFD placed an additional written purchase order with Tvia for
6 approximately \$3.16 million. Based on SFD's purchase order and other information available to
7 Tvia's finance department, the Company recognized approximately \$3.16 million in revenue on this
8 sale for the first quarter of Tvia's 2007 fiscal year, which ended June 30, 2006.

9 41. As with the prior SFD order, it was improper for Tvia to recognize revenue on this sale
10 because it was subject to the side agreement documented in the letter of intent signed by Silva and
11 dated April 27, 2006.

12 42. In order to carry out his fraud, Silva continued to conceal this side agreement from Tvia's
13 CEO, CFO, and auditors. As a result, for the quarter ended June 30, 2006, Tvia improperly
14 recognized approximately \$3.16 million in revenue, overstating quarterly revenue by 164.8%.

15 **Silva Misled Tvia and Its Auditors Concerning the**
16 **Collectability of Certain Delinquent Accounts**

17 43. In late 2005, Silva learned that Tvia's auditors were scrutinizing several instances in
18 which customers were delinquent in their payments to the Company. Silva understood that, among
19 other things, the auditors were considering whether to require Tvia to reverse some or all of the
20 revenue it had previously recognized relating to these delinquent accounts, on the ground that it was
21 no longer reasonable to believe that the revenue was collectible.

22 44. In order to mislead Tvia's auditors, and avoid the reversal of revenue, on at least two
23 occasions Silva caused Tvia to misapply a payment it received from a new customer in order to pay
24 down delinquent amounts owed by a separate customer.

25 45. The first instance concerns Ricom, a Chinese customer which by late 2005 was past due
26 on Tvia invoices totaling more than \$740,000. In February 2006, Silva convinced another customer,
27 Protech Perennial Limited ("Protech"), to submit a \$100,000 deposit for a then-unavailable line of
28 Tvia chips. On or about February 24, 2006, Tvia received a wire transfer from Protech for \$100,000.

1 46. In order to convince Tvia's finance staff to apply these funds to Ricom's account, Silva
2 falsely claimed that Protech had wired the money on Ricom's behalf, due to purported Chinese
3 government restrictions on Ricom's wiring money out of that country. By this conduct, Silva misled
4 Tvia's CEO, CFO and auditors regarding the collectability of past due amounts owed by Ricom.

5 47. The second instance concerns EUT and MPEG, two Chinese customers that owed
6 significant past due amounts to Tvia. In June 2006, Silva convinced another customer, Datavision
7 (also known as Data International), to submit a \$200,000 deposit against an expected future order of
8 Tvia product. On or about June 29, 2006, Tvia received a wire transfer from Datavision for
9 \$200,000.

10 48. In order to convince Tvia's finance staff to apply these funds to the accounts of EUT and
11 MPEG, Silva falsely claimed that Datavision had wired the money on EUT's and MPEG's behalf,
12 due to purported Chinese government restrictions on Datavision's wiring money out of that country.
13 By this conduct, Silva misled Tvia's CEO, CFO and auditors regarding the collectability of past due
14 amounts owed by EUT and MPEG.

15 **Tvia's Internal Investigation And Related Matters**

16 49. On January 30, 2007, Tvia issued a press release indicating that the market should not rely
17 on any financial statements, earnings press releases, and similar communications issued by Tvia for
18 its 2006 and 2007 fiscal years. Tvia had already issued one restatement just two months prior.
19 Tvia's November 22, 2006 restatement arose from the Company's inability to timely collect or
20 enforce payment terms on sales to certain of its customers in Asia and a determination by the
21 Company that sales to these customers should have been recognized on sell-through to end users, as
22 evidenced by cash collection.

23 50. In the January 30 press release, Tvia noted the November 22, 2006 restatement of its
24 historical financial statements for the fiscal year ended March 31, 2006 and for the quarters ended
25 December 31, 2005 and June 2006 to defer approximately \$6.4 million of revenue originally
26 recognized on delivery to certain customers. The Company continued:

27 In January 2007, the Company was provided with new evidence with respect to undisclosed
28 side arrangements affecting the payment terms and obligations with certain of its customers.

1 The new review is part of an independent investigation by Tvia’s audit committee to
2 determine the nature and extent of these side arrangements, identify the responsible parties,
3 and determine the appropriate actions, including whether an additional restatement of the
4 financial statements for the above periods is required.

5 51. Soon after announcing the internal investigation, Tvia’s financial situation worsened and
6 the Company thus never restated the transactions at issue.

7 **FIRST CLAIM FOR RELIEF**
8 *(Violations of Section 10(b) of the*
9 *Exchange Act and Rule 10b-5 Thereunder)*

10 52. The Commission realleges and incorporates by this reference Paragraphs 1 through 51,
11 above.

12 53. By engaging in the conduct described above, Silva, directly or indirectly, in connection
13 with the purchase or sale of securities, by the use of means or instrumentalities of interstate
14 commerce, or the mails, with scienter:

- 15 (a) employed devices, schemes, or artifices to defraud;
- 16 (b) made untrue statements of material facts or omitted to state material facts
17 necessary in order to make the statements made, in the light of the
18 circumstances under which they were made, not misleading; and
- 19 (c) engaged in acts, practices, or courses of business which operated or would
20 operate as a fraud or deceit upon other persons, including purchasers and
21 sellers of securities.

22 54. By reason of the foregoing, Silva has violated, and unless restrained and enjoined, will
23 continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R.
24 § 240.10b-5].

25 **SECOND CLAIM FOR RELIEF**
26 *(Aiding and Abetting Violations of Section 10(b) of the*
27 *Exchange Act and Rule 10b-5 Thereunder)*

28 55. The Commission realleges and incorporates by this reference Paragraphs 1 through 51,
29 above.

56. As a result of the conduct described above, Tvia, directly or indirectly, in connection with

1 the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or
2 the mails, with scienter:

- 3 (a) employed devices, schemes, or artifices to defraud;
- 4 (b) made untrue statements of material facts or omitted to state material facts
5 necessary in order to make the statements made, in the light of the
6 circumstances under which they were made, not misleading; and
- 7 (c) engaged in acts, practices, or courses of business which operated or would
8 operate as a fraud or deceit upon other persons, including purchasers and
9 sellers of securities.

10 57. Silva knowingly provided substantial assistance to Tvia’s violations of Section 10(b) of
11 the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5], and therefore is
12 liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

13 58. Unless restrained and enjoined, Silva will continue to violate and aid and abet violations
14 of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

15 **THIRD CLAIM FOR RELIEF**

16 *(Violations of Section 17(a)(1) of the Securities Act)*

17 59. The Commission realleges and incorporates by this reference Paragraphs 1 through 51,
18 above.

19 60. By engaging in the conduct described above, Silva, directly or indirectly, in the offer or
20 sale of securities, by use of the means or instruments of transportation or communication in interstate
21 commerce or by use of the mails with scienter employed devices, schemes, or artifices to defraud.

22 61. By reason of the foregoing, Silva violated, and unless restrained and enjoined, will
23 continue to commit violations of, Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)].

24 **FOURTH CLAIM FOR RELIEF**

25 *(Violations of Sections 17(a)(2) and (3) of the Securities Act)*

26 62. The Commission realleges and incorporates by this reference Paragraphs 1 through 51,
27 above.

28 63. By engaging in the conduct described above, Silva, directly or indirectly, in the offer or
sale of securities, by use of the means or instruments of transportation or communication in interstate

1 commerce or by use of the mails:

- 2 (a) obtained money or property by means of untrue statements of material fact
- 3 or by omitting to state a material fact necessary in order to make the
- 4 statements made, in light of the circumstances under which they were
- 5 made, not misleading; and
- 6 (b) engaged in transactions, practices, or courses of business which operated
- 7 or would operate as a fraud or deceit upon the purchasers.

8 64. By reason of the foregoing, Silva violated, and unless restrained and enjoined, will
9 continue to violate Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)].

10 **FIFTH CLAIM FOR RELIEF**

11 *(False Statements and Omissions to Accountants and Auditors—*
12 *Violation of Rule 13b2-2)*

13 65. The Commission realleges and incorporates by this reference Paragraphs 1 through 51,
14 above.

15 66. By engaging in the acts and conduct alleged above, Silva, directly or indirectly, made or
16 caused to be made a materially false or misleading statements or omitted to state or caused another
17 person to omit to state, material facts necessary in order to make statements made, in light of the
18 circumstances under which such statements were made, not misleading to an accountant in
19 connection with an audit or examination of the financial statements of Tvia required to be made or
20 the preparation or filing of reports required to be filed by Tvia with the Commission.

21 67. By reason of the foregoing, Silva violated and, unless restrained and enjoined, will
22 continue to violate Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

23 **SIXTH CLAIM FOR RELIEF**

24 *(False Periodic Reports—Aiding and Abetting Violations*
25 *of Section 13(a) of the Exchange Act and Rules 12b-20,*
26 *13a-1, 13a-11, and 13a-13 Thereunder)*

27 68. The Commission realleges and incorporates by this reference Paragraphs 1 through 51,
28 above.

69. Tvia filed with the Commission current, quarterly, and annual reports on Forms 8-K, 10-
Q, and 10-K that contained untrue statements of material fact and omitted to state material

1 information required to be stated therein or necessary in order to make the required statements, in the
2 light of the circumstances under which they were made, not misleading, in violation of Section 13(a)
3 of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

4 70. Through the conduct alleged above, Silva knowingly provided substantial assistance to
5 Tvia in its violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-
6 13 thereunder, and therefore is liable as an aider and abettor pursuant to Section 20(e) of the
7 Exchange Act [15 U.S.C. § 78t(e)].

8 71. Silva has aided and abetted and, unless restrained and enjoined, will continue to aid and
9 abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1,
10 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] thereunder.

11 **SEVENTH CLAIM FOR RELIEF**

12 *(Inaccurate Books and Records—Aiding and Abetting Violations of
13 Section 13(b)(2)(A) of the Exchange Act)*

14 72. The Commission realleges and incorporates by this reference Paragraphs 1 through 51,
15 above.

16 73. As a result of the conduct alleged above, Tvia violated Section 13(b)(2)(A) of the
17 Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which obligates issuers of securities registered pursuant to
18 Section 12 of the Exchange Act [15 U.S.C. § 78l] to make and keep books, records and accounts
19 which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets
20 of the issuer.

21 74. By engaging in the conduct alleged above, Silva knowingly provided substantial
22 assistance to Tvia's failure to make and keep books, records and accounts which, in reasonable detail,
23 accurately and fairly reflect its transactions and dispositions of its assets.

24 75. By reason of the foregoing, Silva aided and abetted violations by Tvia of Section
25 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]. Unless restrained and enjoined, Silva
26 will continue to aid and abet such violations.

27 **EIGHTH CLAIM FOR RELIEF**

28 *(Inadequate Internal Accounting Controls—Aiding and Abetting
Violations of Section 13(b)(2)(B) of the Exchange Act)*

76. The Commission realleges and incorporates by this reference Paragraphs 1 through 51,

1 above.

2 77. As a result of the conduct alleged above, Tvia violated Section 13(b)(2)(B) of the
3 Exchange Act [15 U.S.C. § 78m(b)(2)(B)], which obligates issuers of securities registered pursuant to
4 Section 12 of the Exchange Act [15 U.S.C. § 78l] to devise and maintain a sufficient system of
5 internal accounting controls.

6 78. By engaging in the conduct alleged above, Silva knowingly provided substantial
7 assistance to Tvia's failure to devise and maintain a sufficient system of internal accounting controls.

8 79. By reason of the foregoing, Silva aided and abetted violations by Tvia of Section
9 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)]. Unless restrained and enjoined, Silva
10 will continue to aid and abet such violations.

11 **NINTH CLAIM FOR RELIEF**

12 *(Falsifying Books and Records or Circumventing Internal Accounting
13 Controls—Violation of Section 13(b)(5) of the Exchange Act)*

14 80. The Commission realleges and incorporates by this reference Paragraphs 1 through 51,
15 above.

16 81. By the conduct alleged above, Silva violated Section 13(b)(5) of the Exchange Act [15
17 U.S.C. § 78m(b)(5)] which prohibits anyone from knowingly circumventing a system of internal
18 accounting, or knowingly falsifying certain books, records, and accounts.

19 82. Unless restrained and enjoined, Silva will continue to violate Section 13(b)(5) of the
20 Exchange Act [15 U.S.C. § 78m(b)(5)].

21 **TENTH CLAIM FOR RELIEF**

22 *(Falsifying Books and Records—Violation of
23 Rule 13b2-1 of the Exchange Act)*

24 83. The Commission realleges and incorporates by this reference Paragraphs 1 through 51,
25 above.

26 84. By engaging in the conduct described above, Silva falsified or caused to be falsified
27 Tvia's books, records and accounts in violation of Rule 13b2-1 under the Exchange Act [17 C.F.R. §
28 240.13b2-1].

85. Silva has violated and, unless restrained and enjoined, will continue to violate, Rule 13b2-1
under the Exchange Act [17 C.F.R. § 240.13b2-1].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently enjoin Silva from directly or indirectly violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Rules 10b-5, 13b2-1, and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1, and 240.13b2-2], and from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] thereunder;

II.

Prohibit Silva, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from serving as an officer or director of any entity having a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)];

III.

Order Silva to disgorge any wrongfully obtained benefits, including prejudgment interest.

IV.

Order Silva to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal

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1 Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that
2 may be entered, or to entertain any suitable application or motion for additional relief within the
3 jurisdiction of this Court.

4 VII.

5 Grant such other and further relief as this Court may determine to be just and necessary.

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7 DATED: November 17, 2009

Respectfully Submitted,

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11 Sahil W. Desai
12 Attorney for Plaintiff
13 SECURITIES AND EXCHANGE COMMISSION
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