

ERVIN COHEN & JESSUP LLP

1 Russell M. Selmont (SBN 252522)
rselmont@ecjlaw.com
2 **ERVIN COHEN & JESSUP LLP**
9401 Wilshire Boulevard, Twelfth Floor
3 Beverly Hills, California 90212-2974
Telephone (310) 273-6333
4 Facsimile (310) 859-2325

5 Attorneys for Plaintiffs, JOSHUA PORTER and GULSEN KAMA
6
7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10
11 JOSHUA PORTER, an individual, and
GULSEN KAMA, an individual,

12 Plaintiffs,

13 v.

14 NORTHERN DATA US, INC., a
15 Delaware corporation; NORTHERN
DATA US HOLDINGS, INC., a
16 Delaware corporation; and DOES 1
through 10, inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26

Case No. 2:24-CV-03389-ODW (AGRx)

Hon. Otis D. Wright II – Crtrm 5D

**PUBLIC—REDACTS MATERIALS
FROM SEALED RECORD**

**FIRST AMENDED COMPLAINT
FOR:**

1. **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY (PORTER);**
2. **VIOLATION OF LABOR CODE SECTION 1102.5**
3. **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY (KAMA)**
4. **VIOLATIONS OF NEW JERSEY CONSCIENTIOUS EMPLOYEE PROTECTION ACT, N.J.S.A. § 34:19-1, ET SEQ.)**
5. **MISAPPROPRIATION OF NAME AND LIKENESS**
6. **INVASION OF PRIVACY**

DEMAND FOR JURY TRIAL

27
28

1 Plaintiff Joshua Porter (“Plaintiff Porter”), and Plaintiff Gulsen Kama
2 (“Plaintiff Kama”), allege as follows in their First Amended Complaint (hereinafter,
3 jointly “Plaintiffs”) against Defendants Northern Data US, Inc. and Northern Data
4 US Holdings, Inc. (“Defendants”).

5 **SUMMARY OF ACTION**

6 1. Defendants are the US subsidiaries of Northern Data AG (together,
7 “Northern Data”), a publicly traded German company in the cryptocurrency and
8 bitcoin mining industries. Plaintiff Porter was originally hired as Defendants’ Chief
9 Operating Officer but after his exemplary performance over the first 8 months on
10 the job, he was promoted to President and CEO of Defendants. Shortly after his
11 promotion, Plaintiff Porter began raising concerns to his superiors at the Northern
12 Data AG parent company that Northern Data was falsely misrepresenting the
13 strength of its financial condition to investors, regulators and business partners (they
14 were borderline insolvent) and equally problematic, Northern Data was knowingly
15 committing tax evasion to the tune of potentially tens of millions of dollars.
16 Plaintiff Porter’s concerns fell on deaf ears, so he stated his intention to go directly
17 to Northern Data’s Board of Directors to alert them of the companies’ unchecked
18 illegal activity. Shortly after, in obvious retaliation for his whistleblowing activity,
19 Plaintiff Porter was illegally terminated. Defendants claimed the termination was
20 the result of an internal decision to eliminate the position of Northern American
21 Chief Operating Officer. At the time of this termination, however, Plaintiff Porter
22 was Defendants’ President and CEO (and had been for almost two months) and no
23 longer the Chief Operating Officer, so it is manifestly clear that Defendants
24 fabricated this excuse in a failed and transparent attempt to cover their tracks.
25 Defendants’ illegal activity violates California labor laws and subjects Defendants to
26 millions of dollars of liability.

27 2. Plaintiff Kama was originally employed as the North America Chief
28 Financial Officer (“NACFO”) for the Defendants with a start date of July 20, 2022.

1 After her outstanding performance as NACFO, about two months later she was
2 promoted to Group Deputy Chief Financial Officer (“DCFO”) at Northern Data, and
3 about three months after that, she was named Group Chief Financial Officer
4 (“CFO”). Following her promotion, Plaintiff Kama was actively exposing and then
5 attempting to keep Defendants from falsely misrepresenting their financial position
6 to potential auditors, tax advisors and investors. At various junctures, Plaintiff
7 Kama reported her concerns regarding the accounting and securities fraud that she
8 was finding to Northern Data’s global CEO, COO, the Chair of the Supervisory
9 Board and the company’s Chief Legal and Compliance Officer, to no avail, because
10 the CEO and COO were perpetuating the accounting and securities fraud. The CEO
11 and COO intended to deceive existing and potential investors at an upcoming
12 meeting scheduled for June 12, 2023. As a result of Plaintiff Kama repeatedly
13 informing and warning the officers that were responsible for the illegal acts that they
14 were committing fraud, on or about June 8, 2023, Plaintiff Kama was retaliated
15 against and illegally terminated for her whistleblowing activities. Specifically,
16 Kama was terminated for her admonitions that Northern Data was flagrantly
17 violating securities and tax laws and her attempts to ensure Northern Data did not
18 continue to make fraudulent representations in connection with the company’s audit
19 process and to impose audit controls and governance procedures on Northern Data’s
20 most senior management. Defendants’ illegal activity violates California and New
21 Jersey labor laws and subjects Defendants to millions of dollars of liability.
22 Moreover, Defendants misled investors when they published an investor
23 presentation in April 2023 with financials with Plaintiff Kaman’s name, title and
24 picture, but did not ask her to review the presentation, misappropriating her name
25 and image, invading her privacy and showing her image in a false light.
26 Defendants’ illegal activity violates labor laws and common law and also subjects
27 Defendants to millions of dollars of liability.
28 ///

ERVIN COHEN & JESSUP LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PARTIES

3. Plaintiff Porter is an individual who at all relevant times was a resident of the County of Los Angeles, California.

4. Plaintiff Kama is an individual that currently resides in the County of San Diego, California and was a resident of the State of New Jersey for part of the relevant time giving rise to these claims and a resident of the State of California for the other part of the time giving rise to these claims.

5. On information and belief, Defendant, Northern Data US, Inc., is a Delaware corporation with a principal place of business in Reston, Virginia.

6. On information and belief, Defendant, Northern Data US Holdings, Inc., is a Delaware corporation with a principal place of business in Reston, Virginia.

7. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as Does 1 through 10 and thus sues said defendants by their fictitious names.

8. Plaintiffs are informed and believe and thereon allege that one or more of the fictitiously-named defendants is liable in some manner for the claims alleged herein. Plaintiffs will amend this complaint to allege the true names and capacities of the fictitiously-named defendants when the same become known to them.

JURISDICTION AND VENUE

9. Jurisdiction and venue are proper in this Court because at the time of the events giving rise to the labor claims alleged herein, Plaintiff Porter was an employee of Defendants, performing the majority of his work in the County of Los Angeles, California. Furthermore, on information and belief, Defendants have business operations in Los Angeles, California, and the majority of the events giving rise to the causes of action herein occurred in Los Angeles, California. Many of Plaintiff Kama’s claims arose and/or persisted while she was a resident of California. Furthermore, Plaintiff’ Kama’s wrongful termination and retaliation

1 claims arise from the same type of whistleblowing activity as those of Plaintiff
2 Porter and are derived from a common nucleus of operative facts (i.e., Defendants’
3 tax evasion and other material misrepresentations about their financial condition)
4 and there is a near total overlap in witnesses and parties. Accordingly, Kama’s
5 claims are properly jointed to Porter’s, further ensuring jurisdiction and venue are
6 proper for all causes of action alleged herein.

7 10. Furthermore, Defendants have had continuous contacts with the State
8 of California. Aside from employing Plaintiff Porter while he was residing in Los
9 Angeles, California, Defendant attended and was a "Platinum Sponsor" of the 2024
10 GPU Technology Conference (“GTC24”) which occurred on March 18, 2024
11 through March 21, 2024 at the San Jose Convention Center. This event is advertised
12 by NVIDIA as being “the #1 artificial intelligence conference for developers,
13 business leaders and artificial intelligence researchers.” This event had an estimated
14 300,000 attendees appearing both virtually and in person. Roseanne Kincaid-Smith,
15 Northern Data AG’s Chief Person Officer (“Kincaid-Smith”), was one of multiple
16 representatives from Northern Data US Holdings, Inc., in attendance. Defendant
17 published advertisements of the conference dating back to at least one month prior
18 to the event and hosted a panel at GTC24. Additionally, employees of Defendants
19 had a stand which Defendants advertised in an attempt to encourage convention
20 attendees to visit and “explore revolutionary Generative AI innovations” with them
21 and their cloud division. Finally, on information and belief, Defendants also have a
22 branch of Norther Data US Holding, Inc., and/or Northern Data US Inc. located in
23 California.

24 **FACTS COMMON TO ALL CLAIMS**

25 **Plaintiff Joshua Porter**

26 11. Plaintiff Porter is a highly-credentialed and successful technology
27 executive, investor and advisor. After graduating from Columbia University
28 Business School in 2011, Plaintiff Porter joined Goldman Sachs before serving as

ERVIN COHEN & JESSUP LLP

1 Managing Director at Reimagined Ventures, an experienced family investment
2 office, and then as Chief Executive Officer at NoCap, a mobile platform that allows
3 music artists to reach digital live audiences worldwide.

4 12. Defendants recruited Plaintiff Porter to become their Chief Operating
5 Officer in March 2022. On March 31, 2022, Roseanne Kincaid-Smith, Northern
6 Data AG’s Chief Person Officer (“Kincaid-Smith”), emailed Plaintiff Porter an offer
7 of employment. Pursuant to that email, Plaintiff Porter was to receive yearly
8 compensation of between \$630K and \$810K depending on bonuses, as well as 5000
9 options.

10 13. On or about April 11, 2022, Plaintiff Porter signed an Offer Letter with
11 Defendant Northern Data US Holdings, Inc. That agreement called for Plaintiff
12 Porter to commence work on or around May 1, 2022, established that his title was
13 COO, and that his duties were “central operations for the Americas...” It also set
14 forth that he was receiving 5000 options to purchase “shares of NDUS’s ultimate
15 parent, Northern Data AG, which option grant will be subject to your remaining
16 employed by NDUS or one of its affiliates through the date this is six (6) months
17 from the date on which your employment with NDUS commences under this letter.”

18 14. [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 15. [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

ERVIN COHEN & JESSUP LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. In Q3 2022, Plaintiff Porter began negotiating a deal with a Texas-based company for hosting services. In connection with this deal, Plaintiff Porter told Yoshida that Northern Data should recognize its profits in the United States (and thus pay taxes thereon). Thillainathan, however, disagreed even though Deloitte had recently refused to provide the requested opinion letter. Ultimately, Northern Data instructed the Texas counterpart to keep all the Bitcoin owed to Northern Data generated in its own cryptowallet so that no revenue would be generated at that time (and thus no need to make a firm decision on whether to recognize it as US revenue and pay taxes). Plaintiff Porter assumed Northern Data was just kicking the can down the road a little further before it would implement the proper corporate tax structure and reporting protocols [REDACTED]

[REDACTED]

18. In November 2022, Northern Data had to do a round of layoffs. However, not only was Plaintiff Porter not laid off, but he was one of a few key executives the company actually paid a Retention Bonus to keep from leaving. The Retention Bonus, dated December 14, 2022, compensated Plaintiff Porter \$150K and made clear that this payment “does not impact [Plaintiff Porter’s] ability to participate in any other bonus or cash incentive plan for which [Plaintiff Porter is] otherwise eligible.”

19. Lest there be any doubt that Defendants were happy with and impressed by Plaintiff Porter’s job performance during his first eight months of employment, on January 17, 2023, Plaintiff Porter was promoted to Defendants’

1 President/CEO, making him the highest- ranking officer of Northern Data’s North
2 American operations. Defendants subsequently filed multiple public documents
3 memorializing Plaintiff Porter’s promotion and new title.

4 20. After receiving the promotion, Plaintiff Porter for the first time began
5 getting a limited understanding of Northern Data’s financials. Plaintiff Porter was
6 shocked to learn that the company had a \$30M German tax liability and additional
7 liabilities of almost \$8M while simultaneously having only \$17M cash on the
8 balance and a monthly burn rate of \$3M-\$4M.

9 21. Shortly after becoming the President and CEO of Defendants, Plaintiff
10 Porter was asked to sign multiple legal documents including corporate restructuring
11 documents, asset sales and insurance contracts that required Plaintiff Porter to make
12 certain representations and warranties on Northern Data’s behalf, including ones
13 relating to the company’s financial strength and solvency. Throughout February
14 2023, Plaintiff Porter had multiple conversations (via videoconference) with
15 Northern Data’s Executive Leadership Team (“ELT”), including Thillainathan,
16 Yoshida, Black, and Kincaid-Smith (now COO) to express his concerns with the
17 company’s financial state, cash position and solvency (or potential lack thereof).

18 22. In early February 2023, Plaintiff Porter was also very troubled by
19 Northern Data AG’s and Defendants’ handling of their US tax treatment. Following
20 Deloitte’s refusal to provide an opinion letter supporting the companies’ decision
21 not to pay the IRS any taxes for profits generated with cryptominers on US soil,
22 Plaintiff Porter assumed that the companies would change their operational structure
23 and/or tax treatment to not risk being in violation of US tax laws. He also expected
24 that Defendants would take remedial measures to account for their rampant tax
25 evasion during previous years. However, instead, Defendants took actions to
26 unlawfully avoid US taxes, or failing to report US taxable operations, at least for tax
27 year 2021. Plaintiff Porter recognized that the US tax liability could easily be in the
28 tens of millions of dollars and given his existing concerns about the companies’

1 solvency, it was clear that an IRS audit could potentially cause Northern Data to
2 become insolvent.

3 23. On February 3, 2023, Plaintiff Porter informed Black [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 24. Around this time, Thillainathan, Northern Data’s CEO, stopped
11 returning Plaintiff Porter’s communications, including his Microsoft Teams
12 messages, which was the primary method through which the two communicated. In
13 February 2023, Plaintiff Porter began to understand that he was being iced out
14 because of his complaints and concerns regarding the companies’ financial
15 misrepresentations and tax evasion. Plaintiff Porter continued to communicate with
16 Yoshida, who privately stated he shared Plaintiff Porter’s concerns.

17 25. By early March 2023, Plaintiff Porter came to understand that the
18 decision to use the offshore entity and not recognize or pay any US taxes from the
19 US-based cryptomining operations came directly from Thillainathan, who, on
20 information and belief, was also its founder and largest employee shareholder (and
21 thus stood to gain the most if the company propped up its revenue by failing to pay
22 taxes). On further information and belief, while Thillainathan had attempted to
23 couch this decision as purely a business-based risk, he in fact recognized that the
24 companies were very likely in fragrant violation of US tax laws and simply chose to
25 chart this course of action for the companies for his own personal financial self-
26 interest.

27 26. In early March 2023, Plaintiff Porter had numerous conversations with
28 Yoshida about his concerns about the companies’ finances and misrepresentations

1 related thereto, including specifically the US tax evasion which was creating an 8
2 figure tax liability. On multiple occasions, Porter told Yoshida that he was planning
3 on going above Thillainathan to report on Thillainathan's and Defendants' illegal
4 activity, including its tax evasion and fraud. On information and belief, Yoshida
5 relayed Porter's concerns and Porter's stated intent to engage in whistleblowing
6 activity to the ELT. On March 14, 2023, Plaintiff Porter was so concerned that
7 Thillainathan was not looking out for the best interests of the companies that he sent
8 a WhatsApp message to Yoshida stating: "I wonder if this is something we go
9 around [Thillainathan] and directly to the board/shareholders?"

10 27. Three days later, on March 17, 2023, Plaintiff Porter, who had been
11 given a retention bonus just three months prior and promoted to President/CEO of
12 North America two months prior, received notice that Defendants were terminating
13 him. Plaintiff Porter was specifically told that he was not being terminated for cause
14 but rather because Defendants were eliminating the position of North American
15 Chief Operating Officer. However, at that point in time, Plaintiff Porter was no
16 longer the COO but had already been elevated to President and CEO of North
17 America, highlighting that Defendants' purported justification was a complete
18 fabrication. In truth, Plaintiff Porter was terminated for his whistleblowing activity
19 regarding Defendants' tax evasion and misrepresentations regarding its solvency
20 and to prevent him from executing his plan to go directly to Northern Data AG's
21 Board of Directors because the executive officers were not taking proper (or any)
22 steps to address or fix the problems Plaintiff Porter identified.

23 **Plaintiff Gulsen Kama**

24 28. Plaintiff Kama is an experienced accounting and finance professional,
25 having worked in several large public and private companies. She is an expert in
26 corporate accounting.

27 29. She has an engineering degree from Bogazici University in Istanbul,
28 Turkey, and a Master of Business Administration degree from the Terry College of

1 Business at the University of Georgia, in Athens, Georgia, in the United States.

2 30. In the past, Plaintiff Kama worked for several companies in a corporate
3 finance and accounting executive capacity, including, but not limited to, United
4 Airlines, the Great Atlantic & Pacific Tea Company, AIG, Jackson Hewitt Tax
5 Services and Quest Diagnostics.

6 31. On June 21, 2022, Plaintiff Kama was offered a position as NACFO at
7 Northern Data, reporting to Yoshida. Her start date was July 20, 2022.

8 32. Plaintiff Kama's primary duties included central financial activities for
9 the Americas. It required travel outside of New Jersey and the United States. Her
10 base compensation was \$330,000 per year, but there were additional performance
11 bonuses awarded, bringing her Target Total Compensation to \$924,000. She
12 received a \$100,000 signing bonus, subject to a 12-month claw-back. The
13 Agreement also awarded her 5,000 options for Northern Data AG stock, the parent
14 company.

15 33. Like Plaintiff Porter, Plaintiff Kama also was not laid off during the
16 round of layoffs in November 2022. In fact, she was promoted from NACFO to
17 Group DCFO in September 2022 and from Group DCFO to Group CFO in
18 December 2022. Her salary was bumped by \$70,000 from \$330,000 to \$400,000
19 per year as Group CFO. Further, she was awarded a \$110,000 performance bonus
20 in April 2023. Defendants subsequently filed multiple public documents and made
21 public announcements memorializing Plaintiff Kama's promotion and new title.

22 34. KPMG was the auditor for Northern Data AG for the audit of its 2020
23 and 2021 financials. It was understood that KPMG would also be handling the audit
24 for the 2022 financials. As Group DCFO, and later Group CFO, Plaintiff Kama led
25 the interactions with KPMG. Those interactions started in November 2022, and
26 turned into monthly checkpoints. During a February 15, 2023, meeting with the
27 supervisory board, KPMG raised concerns about the liquidity position of the
28 company being a going concern, conditions KPMG gave to sign its engagement

ERVIN COHEN & JESSUP^{LLP}

1 letter as Northern Data’s auditor. KPMG required the requested documentation
2 regarding the company’s position to be provided by mid-March 2023 at the latest in
3 order to support the targeted May 2023 completion date for the audit.

4 35. In a February 22, 2023 email, Plaintiff Kama notified the ELT that the
5 draft liquidity forecast was completed and ready to be shared with KPMG. KPMG
6 asked for “confirmed/signed” commitments to be included in the forecast, and
7 because of the delay in the capital raise and GPU sales contract, Plaintiff Kama
8 wanted to make sure she was setting the right expectation with the auditors.

9 36. Plaintiff Kama then recommended in a series of emails to Kincaid-
10 Smith, Tom Schorling, the Chair of the Supervisory Board, Thillainathan, Black,
11 and the ELT, all dated March 2, 2023, [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 37. In February 2023, Plaintiff Kama began providing weekly updates
25 regarding the liquidity and audit status to the CEO, COO, the ELT and the
26 Supervisory Board. After Plaintiff Kama provided an update on March 6, 2023,
27 Thillainathan indicated that the capital raise should be completed in a week in order
28 to avoid a liquidity crisis.

ERVIN COHEN & JESSUP LLP

1 38. On March 6, 2023, Plaintiff Kama and Black [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]

9 39. Plaintiff Kama recognized that Defendants were not only being
 10 untruthful with their auditors, KPMG, but they were also misrepresenting their
 11 financial position (including possible insolvency) to their current and potential
 12 investors. As soon as Plaintiff Kama raised this issue to members of the ELT, she
 13 was purposefully left out of critical communications and fund-raising activities.

14 40. She attempted to mitigate the situation. On April 3, 2023, Plaintiff
 15 Kama expressed concern to Kincaid-Smith regarding her exclusion from critical
 16 financial conversations, but her concerns were brushed off.

17 41. Then, the ELT actively took numerous steps to hide material company
 18 financial and legal information from her. For example, in April 2023, Thillainathan
 19 created a critical audit deficiency when he released information regarding the
 20 various executive bonuses without giving Plaintiff Kama a calculation or receiving
 21 her written approval for said bonuses beforehand.

22 42. Further, Thillainathan and Kincaid-Smith were about to send out press
 23 releases with financial information without Plaintiff Kama’s review or approval,
 24 falsifying Defendants’ financial status. [REDACTED]

25 [REDACTED]
 26 Again, this would be the same type of securities fraud or misleading the market, for
 27 which a criminal complaint was already previously filed by the German financial
 28 regulators BaFin against Northern Data executives in October 2021.

ERVIN COHEN & JESSUP LLP

1 43. [REDACTED]
2 [REDACTED].

3 44. In addition, Plaintiff Kama advised Thillainathan to get the Finance and
4 Legal departments more involved in the business-impacting decisions early to avoid
5 major risks to corporate governance and the audit, but her advice was again ignored.

6 45. This was odd because Plaintiff Kama’s work was roundly praised. On
7 April 24, 2023, before sending out the forecast submission to KPMG, Plaintiff
8 Kama emailed Black, Kincaid-Smith and Thillainathan, [REDACTED]

9 [REDACTED]
10 [REDACTED]

11 [REDACTED] Kincaid-Smith stated that the submission “looks fab.” As such,
12 the business plan and liquidity forecast with a summary of the underlying
13 assumptions were given to KPMG on April 25, 2023, and a detailed walk-through of
14 the documents took place on May 3, 2023.

15 46. In late April 2023, Plaintiff Kama spoke with Black [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 47. As of May 3, 2023, the KPMG engagement still had not been signed.
22 Thillainathan then demanded that Plaintiff Kama start looking into other auditors for
23 the 2022 and 2023 audits. While he said to look at the top 20-25 ranked auditors; he
24 expressed that he did not care if they were ranked that high, because no one cares
25 who the auditors are. He claimed KPMG was being difficult and unreasonable, but
26 the underlying command was that he wanted a company that would perform the
27 audit with no questions asked. Plaintiff Kama attempted to push back but
28 Thillainathan ordered her to do as instructed and told her point blank that her head

1 was on the chopping block. So to be clear, Thillainathan and Kincaid-Smith were
2 purposefully committing accounting and securities fraud, hiding things from Kama,
3 refusing to give her information, and then overtly threatening her.

4 48. Thillainathan told Plaintiff Kama that Legal and Finance should stay
5 out of his way; they were mere support functions whose purpose was only to
6 execute deals that were negotiated by the CEO and COO, no questions asked. He
7 then stated that Legal and Finance are the “road blockers” and have stood in the way
8 of Northern Data’s ability to take advantage of new opportunities. He stated both
9 departments must follow the COO’s direction. Kama took this to mean in no
10 uncertain terms that she was not to question Thillainathan’s or Kincaid-Smith’s
11 orders nor question their actions, even if they plainly ran afoul of accounting or
12 securities laws or otherwise amounted to fraud.

13 49. Two days later, on May 5, 2023, in a meeting with Kincaid-Smith,
14 Plaintiff Kama was again told to just go along with what Thillainathan wanted, no
15 questions asked. Plaintiff Kama stated that Finance and Legal were there to protect
16 the company, the Board and the CEO from undue risk, and that the departments had
17 to follow regulations and the law and, as such, if Thillainathan wanted to continue
18 with his actions, he at least had notice of the risk. She would not take on personal
19 risk by not making the CEO aware of any and all risks. She also indicated that she
20 may be asked to testify if there is a legal proceeding in the future.

21 50. KPMG notified Plaintiff Kama during a May 9, 2023, Teams call, that
22 the first round of internal reviews was successful; no additional documents were
23 needed. On May 12, 2023 Teams call, KPMG indicated its review was still in
24 progress and it was promising; so, the audit’s time frame discussion could take place
25 the following week.

26 51. In a June 2, 2023, email, Thillainathan requested that Plaintiff Kama
27 provide her with a weekly update on the audit, which she had already been doing for
28 months. Thillainathan expressed his “deep concern regarding the level of

1 information shared” with him during the audit process even though Plaintiff Kama
2 had provided updates to him and the other executives on at least 24 separate
3 occasions since becoming CFO. Thillainathan asked for a report immediately
4 regarding the steps taken to ensure that KPMG sign the engagement letter.

5 52. At that point, in an email dated June 4, 2023, Plaintiff Kama stated that
6 the audit process required significant executive attention and provided Thillainathan
7 with the information requested, noting that until the engagement letter was signed,
8 and KPMG allocated resources to the audit, the timeline could not be finalized. She
9 also reminded him that she had shared at least 24 email updates with him over the
10 last few months. She further stated that audit process would be difficult and time-
11 consuming, “as it will require a critical review and revamp of the company’s
12 corporate governance practices and internal controls for financial and operational
13 management of the business.” She was terminated four days later.

14 53. On information and belief, Black himself grew frustrated and
15 concerned with having to participate, cover and/or prevent Northern Data’s systemic
16 fraud and quit the ELT although Plaintiff Kama does not know the date.

17 54. On June 7, 2023, Plaintiff Kama refuted claims within a June 6, 2023,
18 email from Kincaid-Smith. In the email, Kincaid-Smith alleged that Plaintiff Kama
19 had cancelled all one-on-one budget meetings over the last two months. This was
20 an outright lie and was Kincaid-Smith’s attempt to create a false record. Plaintiff
21 Kama supplied records that demonstrated that all but one meeting was cancelled by
22 Kincaid-Smith, not Plaintiff Kama. Plaintiff Kama only cancelled the meeting
23 scheduled for June 6, 2023. In the June 7, 2023 email, Plaintiff Kama stated again
24 that she was being “threatened and retaliated against for her efforts to complete the
25 company’s audit process, follow the laws and accounting rules, and impose audit
26 controls and governance procedures on management,” and that Kincaid-Smith was
27 circumventing her authority and “violating critical corporate governance and
28 internal controls that are critical for an audit.”

ERVIN COHEN & JESSUP LLP

1 55. Then Plaintiff Kama, via a June 7, 2023, email to the Finance
2 Leadership Team, issued a special “hold notice” to the Accounting and Finance
3 Department in order to ensure proper corporate governance and internal controls
4 required by the audit process. She also issued a directive not to spoliage any
5 accounting records. The notice reads, in part, as follows:

- 6 “1. Effective 1PM EST Jun 6, 2023 there is a hold notice on all
7 e-mails, instant messages, documents, files etc. Please DO NOT
8 spoliage any historical records.
- 9 2. If anybody from the ELT (CEO - Aroosh Thillainathan, COO
10 - Rosanne Kincaid Smith, GC - Jim Black), Managing Directors
11 (Head of Mining - Niek Beudeker, Head of Cloud - Karl Havard,
12 Head of DCI - Corey Needles), VP Corporate Strategy -
13 Stephanie Ehrenberg, Head of Investor Relations - Jens-Philipp
14 Briemle, Chief of Staff - Maximilian Martin, directly reach out to
15 you requesting financial information, analysis, advice, reporting,
16 etc. I need to be made aware of the request immediately.
- 17 3. If any ELT member is on an email where I am not included, it
18 needs to be forwarded to me immediately.
- 19 4. Any meeting with any other ELT member(s) where I am not
20 on the attendee list, I need to be made aware of ahead of the
21 meeting taking place.
- 22 5. Any work product (reports, analysis, working files in Excel,
23 Word, Power Point, etc.) produced by Finance needs to go
24 through my explicit review and approval before it can be
25 released outside of Finance. Examples include but are not
26 limited to, analysis, figures or statements to be used in press
27 releases or any other communication with investors, vendors,
28 partners, clients, advisors.
- 6. Access to live working files on restricted Finance group or
 individual Finance Team member folders should not be granted
 to people outside of Finance. I have shared instances with you
 where assumptions in critical analysis were manipulated and then
 shared with the CEO under the guise of Finance, i.e. the CFO
 approving the numbers. This is a critical gap in the controls and
 corporate governance process that needs to be remedied
 immediately.
- 7. No payments can be made on behalf of the company without
 my explicit review and approval of the payment.”

56. Following that, on June 8, 2023, after receiving a large bonus just two
months prior, Plaintiff Kama was told she was terminated for cause from her
position as CFO via an email from Linda Lee, Head of People Ops. She was

1 specifically told in the email that she was being terminated because other staff
2 members allegedly complained about how she allegedly treated them, although she
3 was never given any notice of said alleged complaints. All of these alleged
4 complaints magically appeared after Plaintiff Kama questioned and complained
5 about the accounting and securities fraud that the executive management, and in
6 particular, Thillainathan and Kincaid-Smith, wished to perpetuate on the investors
7 and KPMG by misleading them as to Defendant's financial status. Defendants'
8 justification was a ruse, a complete fabrication. During her tenure at Northern Data,
9 Plaintiff Kama received numerous messages, including Ims and WhatsApp
10 messages, from the CEO, COO and GC singing her praises. Further, she was
11 offered a severance package, which she would not have been offered had there been
12 any merit whatsoever to Defendants' claims. In reality, Plaintiff Kama was
13 terminated for her repeated whistleblowing activities. She was terminated because
14 she called out her superiors when they were going to perpetuate fraud upon the
15 shareholders and upon the auditor by misrepresenting the company financial
16 position.

17 57. Plaintiff Kama's termination came just one business day before
18 Northern Data's extraordinary shareholders meeting on June 12, 2023, at which
19 resolutions about authorizing additional equity capital diluting the existing
20 shareholders were voted on by only 20% of shareholders who signed up to vote.
21 The shareholders did not hear any announcement about the issues the Plaintiff Kama
22 had raised or the fact that Plaintiff Kama had been terminated after she raised these
23 concerns.

24 58. Northern Data has repeated this scheme numerous times since April 12,
25 2023, just raising capital through additional authorized shares (a move that was
26 approved by only few shareholders who personally benefitted from these
27 transactions), followed by issuing hyped-up press releases to drive up the stock
28 price.

ERVIN COHEN & JESSUP LLP

1 59. Defendants further misled investors by publishing an investor
2 presentation in April 2023 with financials with Plaintiff Kaman’s name, title as CFO
3 and picture. They did not ask Plaintiff Kama to review the presentation. She did
4 not approve it, so Defendants misappropriated her image and showed it in a false
5 light, invading her privacy.

6 **FIRST CAUSE OF ACTION**
7 **(WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
8 **AS TO PLAINTIFF JOSHUA PORTER)**

9 60. Plaintiff Porter incorporates paragraphs 1-59 as though set forth in their
10 entirety herein.

11 61. Defendants terminated Plaintiff Porter’s employment in violation of
12 various fundamental public policies underlying both state and federal law.
13 Specifically, Plaintiff Porter’s employment was terminated because of his
14 whistleblowing complaints, and statements of intent to notify the Board of Directors
15 and others, that Thillainathan and Northern Data had engaged in tax evasion by
16 diverting the profits from the US-based mining operations offshore and not paying
17 any US taxes thereon and his repeated concerns that Northern Data’s frequent
18 statements, representations and warranties about its financial condition and solvency
19 were misleading and/or untrue given the German and US tax liabilities, limited cash
20 on hand and monthly burn rate.

21 62. As a proximate result of Defendants’ wrongful termination of Plaintiff
22 Porter’s employment in violation of fundamental public policies, Plaintiff Porter has
23 suffered and continues to suffer humiliation, emotional distress, and mental and
24 physical pain and anguish, all to his damage in a sum according to proof.

25 63. As a result of Defendants’ wrongful termination of Plaintiff Porter’s
26 employment, he has suffered general and specific damages in sums according to
27 proof.

28 ///

ERVIN COHEN & JESSUP LLP

1 64. Defendants’ wrongful termination of Plaintiff Porter’s employment was
2 done intentionally, in a malicious, fraudulent and oppressive manner, entitling
3 Plaintiff Porter to punitive damages.

4 65. Plaintiff Porter has incurred and will continue to incur legal expenses
5 and attorneys’ fees. Pursuant to CCP section 1021.5 and 1032, Plaintiff Porter is
6 entitled to recover reasonably attorneys’ fees and costs in an amount according to
7 proof.

8 **SECOND CAUSE OF ACTION**
9 **(VIOLATION OF LABOR CODE SECTION 1102.5**
10 **AS TO PLAINTIFF JOSHUA PORTER)**

11 66. Plaintiff Porter incorporates paragraphs 1-66 as though set forth in their
12 entirety herein.

13 67. At all relevant times, Labor Code Section 1102.5 was in effect and was
14 binding on Defendants. This statute prohibits Defendants from retaliating against
15 any employee, including Plaintiff Porter, for raising complaints of illegality.

16 68. As set forth above, Plaintiff Porter complained to Northern Data’s
17 executive officers and stated his intent to inform the Board of Directors of the
18 companies’ illegal behavior including tax evasion and providing misleading and/or
19 false statements, representations and warranties to investors, regulators and business
20 partners about the companies’ solvency and financial condition. Accordingly,
21 Porter put Northern Data on notice that he believed that Northern Data was
22 engaging in underlying fraud as well as actions that would constitute violations of
23 numerous federal laws including at minimum 18 U.S.C. Section 1341, 18 U.S.C.
24 Section 1343, 18 U.S.C. Section 1348, Rev. & Tax Code Section 7152, 26 U.S.C.
25 Section 7201; and 26 U.S.C. Section 7206.

26 69. Plaintiff Porter’s whistleblowing activity commenced in early February
27 2023, shortly after he was promoted, and Defendants took the most punitive adverse
28 employment action possible, terminating him, only six weeks later.

ERVIN COHEN & JESSUP LLP

1 70. As a proximate result of Defendants’ willful, knowing and intentional
2 violations of Labor Code Section 1102.5, Plaintiff Porter has suffered and continues
3 to suffer humiliation, emotional distress, and mental and physical pain and anguish,
4 all to his damage in a sum according to proof.

5 71. As a result of Defendants’ adverse employment actions against Plaintiff
6 Porter, he has suffered general and specific damages in sums according to proof.

7 72. Defendants’ misconduct was done intentionally and in a malicious,
8 fraudulent and oppressive manner, entitling Plaintiff Porter to punitive damages.

9 73. Labor Code Section 1102.5(j) provides for the recovery of attorneys’
10 fees and Plaintiff Porter is entitled to recover his reasonable attorneys’ fees and
11 costs in an amount according to proof.

12 **THIRD CAUSE OF ACTION**
13 **(WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
14 **AS TO PLAINTIFF GULSEN KAMA)**

15 74. Plaintiff Kama incorporates paragraphs 1-73 as though set forth in their
16 entirety herein.

17 75. Defendants terminated Plaintiff Kama’s employment in violation of
18 various fundamental public policies underlying both state and federal law.
19 Specifically, Defendants retaliated against Plaintiff Kama because of her
20 whistleblowing complaints regarding the Defendants’ intention to mislead their
21 potential auditor and the potential and current investors regarding the Defendants’
22 financial position, including with respect to the same liquidity and tax evasion
23 issues that Porter raised and was ultimately terminated for requesting be remedied.
24 Accordingly, Kama complained of activities that constitute the same statutory
25 violations identified by Porter in paragraph 68 above.

26 76. Plaintiff Kama has suffered and continues to suffer humiliation,
27 emotional distress, and mental and physical pain and anguish, and, as a result, she
28 has been damaged in a sum according to proof, as a proximate result of Defendants’

ERVIN COHEN & JESSUP LLP

1 wrongful termination of Plaintiff Kama’s employment in violation of fundamental
2 public policies.

3 77. Defendants’ wrongful termination has caused Plaintiff Kama to suffer
4 general and specific damages in sums according to proof.

5 78. Plaintiff Kama is entitled to punitive damages as Defendants’ wrongful
6 termination of her employment was done intentionally and in a malicious, fraudulent
7 and oppressive manner.

8 **FOURTH CAUSE OF ACTION**

9 **(VIOLATION OF NEW JERSEY’S CONSCIENTIOUS EMPLOYEE**

10 **PROTECTION ACT (“CEPA”), N.J.S.A. § 34:19-1, *ET SEQ.***

11 **AS TO PLAINTIFF GULSEN KAMA)**

12 79. Plaintiff Kama incorporates paragraphs 1-78 as though set forth in their
13 entirety herein.

14 80. At all relevant times, CEPA was in effect and was binding on
15 Defendants. Defendants are prohibited, pursuant to the statute, from retaliating
16 against any employee, including Plaintiff Kama, for raising complaints of illegality.

17 81. As set forth above, Plaintiff Kama complained to Northern Data’s
18 executive officers repeatedly in order to keep them from reporting inaccurate
19 financial information to their auditors and/or investors and to try to stop them from
20 providing misleading and/or false statements, representations and warranties to
21 investors, regulators and business partners about the companies’ solvency and
22 financial condition. Accordingly, Kama complained of activities that constitute the
23 same statutory violations identified by Porter in paragraph 68 above.

24 82. Plaintiff Kama’s whistleblowing activity commenced in or about late
25 March 2023 and progressively ramped up until she was terminated on June 8, 2023,
26 in retaliation for said whistleblowing activity.

27 83. Defendants took the most punitive adverse employment action possible,
28 terminating her in retaliation for her whistleblowing activities.

ERVIN COHEN & JESSUP^{LLP}

1 84. Plaintiff Kama had a reasonable belief that the Defendants’ conduct
2 was violating either a law, rule, regulation, or public policy and as a result, she
3 performed a "whistle blowing" activity. There was an adverse employment action
4 in that she was terminated. The causal connection exists in that Plaintiff Kama had
5 repeatedly warned the Defendants about its inappropriate and illegal conduct.

6 85. As a proximate result of Defendants’ willful, knowing and intentional
7 violations of New Jersey’s CEPA, N.J.S.A. § 34:19-1, *et seq.* Plaintiff Kama has
8 suffered and continues to suffer humiliation, emotional distress, and mental and
9 physical pain and anguish, all to her damage in a sum according to proof.

10 86. Plaintiff Kama has suffered general and specific damages in sums
11 according to proof as a result of Defendants’ adverse employment actions against
12 her.

13 87. Plaintiff Kama is entitled to punitive damages as Defendants’
14 misconduct was done intentionally and in a malicious, fraudulent and oppressive
15 manner.

16 88. CEPA provides for the recovery of attorneys’ fees and Plaintiff Kama
17 is entitled to recover her reasonable attorneys’ fees and costs in an amount
18 according to proof.

19 **FIFTH CAUSE OF ACTION**

20 **(MISAPPROPRIATION OF NAME AND LIKENESS**

21 **AS TO PLAINTIFF GULSEN KAMA)**

22 89. Plaintiff Kama incorporates paragraphs 1-88 as though set forth in their
23 entirety herein.

24 90. California’s and New Jersey’s common-law rights of publicity protect
25 people from the unauthorized appropriation of their identity by another for
26 commercial gain.

27 91. Defendants have used the Plaintiff Kama’s identity by publishing her
28 name, title and image in such a way that it looks like she authored and/or reviewed

ERVIN COHEN & JESSUP LLP

1 an authorized a presentation for investors or potential investor beginning in April
2 2023, when she never reviewed or approved the presentation, and which was placed
3 on Defendants’ website. On information and belief, Defendants have continued to
4 publish this presentation after Kama was terminated and became a California
5 resident and, on further information and belief, the investor presentation of April
6 2023 is still available on Northern Data’s website, accessible by anyone.

7 92. At no time has Defendants sought consent from Plaintiff Kama prior to
8 publication, or even after publication of said presentation.

9 93. Defendants’ appropriation and use of Plaintiff Kama’s name,
10 photograph and likeness without her consent injured Plaintiff Kama by violating her
11 privacy.

12 94. In particular, Defendants have prevented and continue to prevent
13 Plaintiff Kama from retaining control over the dissemination of her personal
14 information.

15 95. Plaintiff Kama also suffered economic injury because she was not
16 compensated by Defendants for the use of the photo, name and likeness. Further,
17 her name and likeness appear in a document with fraudulent financial information
18 that she did not review and approve beforehand; which could lead to the conclusion
19 that she approved the publication of the investor presentation with misleading or
20 false information. Plaintiff Kama alleges that it is highly offensive that she would
21 be publicly associated with outward facing fraudulent statements, particularly given
22 her professional career as someone responsible for ensuring the accuracy of
23 company’s financial information.

24 96. Kama is entitled to compensatory damages in an amount to be proven
25 at trial.

26 ///

27 ///

28 ///

ERVIN COHEN & JESSUP^{LLP}

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH CAUSE OF ACTION
(FALSE LIGHT INVASION OF PRIVACY
AS TO PLAINTIFF GULSEN KAMA)

97. Plaintiff Kama incorporates paragraphs 1-96 as though set forth in their entirety herein.

98. Plaintiff Kama has a prima facie case for invasion of privacy by appropriation of name or likeness requires as Defendants appropriated Plaintiff Kama’s name or likeness and are still appropriating Plaintiff Kama’s name and likeness.

99. Defendants never obtained Plaintiff Kama’s consent at all, ever, for their use of her name and likeness as part of a financial document that she had never reviewed or approved and that likely contained misleading or false information.

100. As her name and likeness was on a document, an investor presentation, that obviously would be sent to investors and potential investors, as well as others, and was easily accessible from Defendants’ website, the name and likeness was used for the Defendants’ use or benefits. It also presented Plaintiff Kama in a false light because it portrayed her as approving of the publication of the investor presentation with misleading or false information. As a highly trained professional whose entire career is focused on ensuring accurate financial reporting and truthful financial disclosures to auditors and investors, Plaintiff Kama was uniquely harmed by Defendants’ creating the inference, via the false investor report, that Plaintiff Kama supported, encouraged and/or authorized the publication of false financial information.

101. The report contained false information, which makes Plaintiff Kama unintentionally complicit in Defendants’ fraud upon its auditors and current or potential investors. This is particularly problematic for Kama whose chosen profession involves vetting the accuracy of company’s disseminated financial information.

ERVIN COHEN & JESSUP_{LLP}

1 102. In addition, she was shown in a false light to be employed Defendants
2 when the document still remained on the website after she was terminated.

3 103. Plaintiff Kama was damaged by Defendants’ unauthorized and
4 purposeful use of her name and likeness. She suffered harm to her reputation and
5 damage to her occupation in an amount to be proven at trial.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiffs demand trial of this matter by jury.


8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 10 1. For general, compensatory and special damages according to proof;
- 11 2. For exemplary damages according to proof;
- 12 3. For pre-judgment and post-judgment interest on all damages awarded;
- 13 4. For costs of suit, including attorneys’ fees to the extent allowed by law;
- 14 and
- 15 5. For such other and further relief as the Court deems just and proper.

16
17 DATED: June 14, 2024

ERVIN COHEN & JESSUP LLP

18
19 By: 

20 Russell M. Selmont
21 Attorneys for Plaintiffs, Joshua Porter
22 And Gulsen Kama
23
24
25
26
27
28