CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

Lead Plaintiffs Junie L. Morris and Lisa G. Morris ("Plaintiffs") allege the following based upon the investigation of Plaintiffs’ counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings by Ener1, Inc. ("Ener1" or the "Company"), securities analysts’ reports and advisories about the Company, press releases and other public statements issued by the Company, interviews with former employees of Ener1, EnerDel, Think Holdings AS, and/or Think Global AS, and media reports about the Company. Additionally, Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

I. INTRODUCTION AND OVERVIEW

1. This is a federal securities class action on behalf of purchasers of the common stock of Ener1 during the period November 4, 2010 through August 15, 2011, inclusive (the "Class Period"), seeking to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act").

2. Ener1 designs, develops, and manufactures high-performance, prismatic, rechargeable lithium-ion batteries and battery pack systems for energy storage. Ener1 also conducts research and development activities on fuel cells and nano-coating processes. In 2009 and 2010, Ener1 made separate investments in Think Holdings, AS ("Think Holdings"), a
Norwegian limited liability company and the majority owner of Think Global, AS ("Think Global") (collectively "Think"), an electric vehicle ("EV") manufacturer. As of October 25, 2010, Enerl controlled approximately 48% of the outstanding voting power in Think Holdings and two individuals on the Board of Directors of Enerl, including Enerl’s Chief Executive Officer, also served on the board of directors of Think Holdings.

3. In addition, as of December 31, 2010, Enerl reported an accounts receivable balance from Think Global in the amount of $13.6 million, of which $8.5 million was deemed past due. As of March 31, 2011, Enerl reported an accounts receivable balance from Think Global in the amount of $14.1 million, all of which was deemed past due.

4. As of December 31, 2010, Enerl reported a loans receivable balance from Think Global in the amount of approximately $14.05 million. As of March 31, 2011, Enerl reported a loans receivable balance from Think Holdings in the amount of $18.2 million, of which $9.1 million was outstanding under a revolving line of credit and $9.1 million was outstanding pursuant to short-term working capital loans.

5. On May 10, 2011, the Company announced its financial results for the 2011 fiscal first quarter and reported a net loss of $84.7 million, or diluted net loss per share of $0.51 for the quarter, mostly as a result of a one-time $59.4 million impairment recorded during the quarter to write down the Company’s investment in Think Holdings and a $13.9 million loss on financial instruments, which was primarily attributable to the impaired value of the investment. The impairment charge and loss on financial instruments totaled $73.3 million, or $0.44 per diluted share, for the three months ending March 31, 2011.

6. On this news, the price of Enerl’s stock declined $0.67 per share, or 27.35%, to close on May 11, 2011, at $1.78 per share, on usually heavy volume.
7. On June 22, 2011, the Company disclosed that the Audit Committee of the Board of Directors of Enerl, the Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO") of Enerl concluded that a material charge was required under generally accepted accounting principles ("GAAP") applicable to Enerl related to the loans receivable of Think Holdings and accounts receivable of Think Global held by Enerl. Further, the Company indicated that this conclusion was based on the announcement by Think Global that, following an extended and ultimately unsuccessful search for long-term financing, it would be filing for bankruptcy proceedings in the Norwegian courts on June 22, 2011. Enerl estimated that the amount of the charge would be $35.4 million, subject to change to the extent that the Company received any recovery as a result of the liquidation of Think Global. The Company, however, commented that any such recovery, to the extent it occurred at all, would likely be insignificant.

8. On this news, the price of Enerl’s stock declined $0.07 per share, more than 5%, on unusually heavy volume, and further declined $0.16 per share, or 12.4%, to close on June 23, 2011, at $1.13 per share, also on unusually heavy volume.

9. On August 9, 2011, after the market closed, the Company disclosed accounting errors “related to the loans receivable of Think Holdings, AS (Think Holdings) and accounts receivable of Think Global, AS (Think Global) held by Enerl.” The Company also disclosed a delay in filing its quarterly report on Form 10-Q for the quarter ended June 30, 2011.

10. On these revelations, the Company’s shares fell $0.08 or 9.6%, to close at $0.75 on August 10, 2011, on heavy trading volume.

11. On August 15, 2011, after the market closed, Enerl disclosed that on August 10, 2011, the Audit Committee of the Board of Directors of Enerl, based upon a recommendation from management, determined that the Company’s financial statements for the year ended
December 31, 2010 and for the quarterly period ended March 31, 2011, respectively, should no longer be relied upon and should be restated. Further, the Company disclosed that the determination was made following an assessment of certain accounting matters related to the loans receivable owed to Enerl by Think Holdings and accounts receivable owed to Enerl by Think Global, and the timing of the recognition of the impairment charge related to the Company’s investment in Think Holdings originally recorded during the quarter ended March 31, 2011. Enerl concluded that it was necessary to amend its Form 10-K for the year ended December 31, 2010 and its Form 10-Q for the quarter ended March 31, 2011 in order to restate its financial statements to: (1) reflect as of December 31, 2010 the impairments of (i) our investment in Think Holdings (which had previously been recorded in the first quarter of 2011), (ii) our accounts receivable with Think Global and (iii) our loans receivable with Think Holdings, including accrued interest, (2) reflect the corrected accounting for revenue recognized in connection with transactions with Think Holdings and Think Global during the year ended December 31, 2010 and the three months ended March 31, 2011, (3) reflect the impact these adjustments have on the fair value of financial instruments and (4) to adjust the elimination of certain intercompany receivables. The Company further announced that these adjustments were the result of one or more material weaknesses in Enerl’s internal controls over financial reporting.

12. On this news, shares of Enerl declined $0.33 per share, or 42.31%, to close on August 16, 2011, at $0.45 per share, on unusually heavy volume.

13. Following the August 15, 2011 announcements, the Company continued to disclose adverse facts to investors.
14. On September 9, 2011, Ener1 filed a Form 8-K disclosing that the Company had received a notice of delisting from the NASDAQ stock market.

15. On September 27, 2011, Ener1 announced the termination of Defendant Charles Gassenheimer as CEO and Chairman of Ener1, effective as of September 26, 2011.

16. On October 25, 2011, Melissa Debes resigned from her positions as Chief Accounting Officer of Ener1 and as CFO of the Company’s subsidiary EnerDel.

17. On November 1, 2011, Christopher Cowger resigned from his positions as CEO of Ener1, as CEO of EnerDel and as a director of Ener1. Also on November 1, 2011, Defendant Jefferey Seidel resigned from his position as CFO of Ener1, effective as of November 13, 2011.

18. On November 10, 2011, Ener1 filed a Form 8-K with the SEC, which explained, in pertinent part, that the Company did not expect it would be able to complete the restatements and financial statements necessary for filing its Form 10-Q for the third quarter ended September 30, 2011 by November 14, 2011 and that Ener1 was unable to predict when it would be able to do so. The Form 8-K further disclosed that in connection with preparing the restatements, Ener1 determined that it expected to write down its recorded goodwill to zero as of December 31, 2010, which would result in an impairment loss of approximately $51.8 million. Lastly, the Form 8-K disclosed that a change in accounting relating to certain long-term construction contracts would be necessary, resulting in a restatement of previously recognized revenue and expenses (and therefore gross profit) previously reported in the statements of operations for the year ended December 31, 2010 and the three months ended March 31, 2011. Though the Company had not yet "completed quantifying the impact of these changes on its statements of operations," Ener1 disclosed that it expects “a significant reduction of previously recognized revenue and costs of sales.”

20. On March 15, 2012, the Company filed in the bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of New York an Application for an Order Authorizing Debtor to Retain and Employ Gibson Dunn & Crutcher LLP as Special Counsel Nunc Pro Tunc. In the application, the Company explained that on February 1, 2012, Enerl received a subpoena from the SEC dated January 31, 2012. The subpoena demanded that Enerl produce a variety of documents in connection with the SEC’s investigation of the Company’s compliance with accounting and disclosure obligations under the federal securities laws.

21. On March 30, 2012, the Company announced that its bankruptcy reorganization plan had been declared effective as of that date, that the Company was now a privately owned company, that its common stock had been cancelled, and that its shareholders did not receive any distribution of any kind under the reorganization plan. The Company further reported that, effective March 30, 2011, it was no longer an SEC reporting company and no longer had reporting obligations to file Forms 10-K, 10-Q, and 8-K.

22. Throughout the Class Period, Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, business prospects, financial position and results of operations. Specifically, Defendants made false and/or misleading statements in that they failed to disclose that: (1) Think Global lacked adequate capital to continue operating; (2) Think Holdings did not have the ability to raise capital to continue operations; (3) the Company’s Think Holdings investments were severely impaired; (4) the Company’s loans receivable and accounts receivable from Think Holdings and
Think Global were uncollectible; (5) the Company improperly recognized revenue in connection with battery sales to Think Global; (6) the Company’s goodwill was severely impaired; (7) the Company’s financial statements were not prepared in accordance with GAAP; (8) the Company lacked adequate internal and financial controls; and (9) as a result of the above, the Company’s financial statements were materially false and misleading at all relevant times.

23. Also, pursuant to SEC Regulation S-K, Item 303(a) (17 CFR §229.303), Defendants were required to, but did not, disclose in the non-financial portions of their Forms S-3, 10-K, and 10-Q that: (1) “Think and the EV industry more broadly” were experiencing “structural challenges” that would make EV adoption slower than predicted; (2) Think Holdings did not have the ability to raise capital to continue operations; (3) the declining ability of Enerl to collect outstanding loans receivable and accounts receivable from Think Holdings and Think Global; (4) Think Global had excess battery inventory on hand; (5) in January 2011 the Company had stopped shipping batteries to Think Global; and (6) by March/April 2011, Think Global was in “inventory depletion mode,” trying to get rid of its inventory on hand without any intention to sell additional units. These events and circumstances constituted events, uncertainties, and trends that reasonably suggested a material unfavorable impact on revenues or income from continuing operations and were required to be disclosed under Item 303(a) of Regulation S-K. Defendants were further required to impair Enerl’s investment in Think as a result of Think’s continued inability to raise capital to continue as a going concern. Defendants also were required to change their revenue recognition practices for transactions involving Think based on mounting evidence that such “revenue” would not be collectible and was thus not realized or realizable. Moreover, Defendants were required to write-down Enerl’s goodwill to account for changes in projected revenues due to the elimination of future revenue from Think
Global and due to a decrease in demand for Ener1’s products overall.

24. Not only did the omissions of these material events and trends violate Item 303 of the Regulation S-K, but they also rendered statements made by Defendants in Ener1’s Class Period Forms S-3, 10-K, 10-Q, and 8-K filings materially false and/or misleading.

25. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in the market value of the Company’s securities, Plaintiffs and other Class members purchased Ener1 securities during the Class Period at artificially inflated prices and have suffered significant losses and damages.

II. JURISDICTION AND VENUE

26. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).

27. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

28. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. §1391(b), because the Company maintains an office in this District and many of the acts and practices complained of herein occurred in substantial part in this District.

29. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.
III. PARTIES

30. Plaintiffs Junie L. Morris and Lisa G. Morris, as set forth in the certifications previously filed with the Court, purchased the common stock of Enerl during the Class Period and have been damaged thereby.

31. Defendant Charles Gassenheimer ("Gassenheimer") was, at all relevant times, CEO and Chairman of the Board of Enerl, and was, at all relevant times, a Director of Think Holdings. Defendant Gassenheimer signed: the Company's third quarter 2009 Form 10-Q filed on November 4, 2011; the Company's Registration Statement on Form S-3 filed on November 8, 2010 and made effective on December 29, 2010; the Company's Form S-3 filed February 11, 2011 and made effective on May 6, 2011; the Company's 2010 Form 10-K filed March 10, 2011; the Company's amended Registration Statements on Form S-3/A filed on March 25, 2011, April 13, 2011 and April 29, 2011; and the Company's first quarter 2010 Form 10-Q filed on May 10, 2011. Gassenheimer is highly experienced in issues related to finance, accounting, and economics. From 2002 through 2005, Gassenheimer was the portfolio manager of Satellite Asset Management Convertible Arbitrage Division and managing director and portfolio manager of its Private Investment Group. From 2001 through 2002, Gassenheimer was a portfolio manager and head of the distressed securities investment group at Tribeca Investments (now Citigroup Global Investments). Prior to 2001, Gassenheimer was vice president of Credit Suisse First Boston, where he served as investment manager of a proprietary hedge fund focused on private investments in public equity securities. He began his career as a financial consultant that led financial and operational corporate turnarounds for PricewaterhouseCoopers. Gassenheimer has a B.A. in Economics from the University of Pennsylvania.

32. Defendant Jeffrey Seidel ("Seidel") was, at all relevant times, CFO of Enerl. Defendant Seidel signed: the Company's third quarter 2009 Form 10-Q filed on November 4,
2011; the Company's Registration Statement on Form S-3 filed on November 8, 2010 and made effective on December 29, 2010; the Company's Form S-3 filed February 11, 2011 and made effective on May 6, 2011; the Company's 2010 Form 10-K filed March 10, 2011; the Company's amended Registration Statements on Form S-3/A filed on March 25, 2011, April 13, 2011 and April 29, 2011; and the Company's first quarter 2010 Form 10-Q filed on May 10, 2011. Prior to accepting the role of CFO, Seidel served as the Company's Chief Strategy Officer and Vice President of Corporate Strategy. Before joining Ener1, Seidel used his financial expertise at Acuity Capital Fund in Greenwich, Connecticut, where he developed volatility and special situation based strategies for the fund's core convertible arbitrage discipline. Prior to joining Acuity Capital Fund, Seidel worked at Credit Suisse in various positions, including Director of Convertible Strategy, Global Head of Convertible Research, Vice President of Equity Convertible Arbitrage, Assistant Vice President of Equity Convertible Arbitrage, and Assistant Vice President of Equity Financial Strategies. Seidel spent nearly 20 years at Credit Suisse. Seidel has a B.A. in Economics from Kenyon College and an MBA from New York University. Seidel is considered an expert in strategic planning, business strategy, financial analysis, strategic financial planning, equity derivatives, financial modeling, corporate finance, capital structure, investment banking, equities, structured finance, and due diligence.

33. Defendant Robert R. Kamischke ("Kamischke") was, at all relevant times, Chief Accounting Officer and Vice President of Finance of Ener1. Defendant Kamischke signed: the Company’s third quarter 2009 Form 10-Q filed on November 4, 2011; the Company’s Registration Statement on Form S-3 filed on November 8, 2010 and made effective on December 29, 2010; the Company’s Form S-3 filed February 11, 2011 and made effective on May 6, 2011; the Company’s 2010 Form 10-K filed March 10, 2011; the Company’s amended Registration
Statements on Form S-3/A filed on March 25, 2011, April 13, 2011 and April 29, 2011; and the
Company’s first quarter 2010 Form 10-Q filed on May 10, 2011. Prior to joining Enerl,
Kamischke spent 31 years at General Motors. He worked at General Motors as a plant
controller, finance director of General Motor’s parts division, and the CFO of one of General
Motors’ foreign subsidiaries. He has spent more than 30 years working in finance. Kamsichke
holds a B.S.B.A. in Accounting from Northern Michigan University and a M.S. in
Manufacturing from Kettering University.

34. Defendant Kenneth Baker ("Baker"), was, at all relevant times, a Director of
Enerl and was, at all relevant times, a director of Think Holdings until April 26, 2011. During
the Class Period, Baker additionally served as a consultant for Think Global, for which he
received compensation from Think Global.\(^1\) Defendant Baker signed: the Company’s
Registration Statement on Form S-3 filed on November 8, 2010 and made effective on December
29, 2010; the Company’s Form S-3 filed February 11, 2011, 2011 and made effective on May 6,
2011; Enerl’s 2010 Form 10-K filed March 10, 2011; and The Company’s amended Registration
became a director of Enerl in July 2007. He is the president and CEO of Altarum Institute, a
nonprofit research institute in the areas of national defense, healthcare, homeland security and
environment. Prior to retiring in 1999, Baker had a 30 year career at General Motors, where he
served in various roles, including Vice President of Global Research and Development. Baker is

\(^1\) See Enerl’s 2010 Form 10-K at pp. 97, filed on March 10, 2011: “Mr. Baker who serves on the Board of
Directors of Enerl, receives compensation from Think Global for consulting services performed on behalf
of Think Global.”
a founding member of the U.S. Advanced Battery Consortium, which provided significant financing for Ener1’s lithium-ion battery development.

35. Defendant Elliot Fuhr ("Fuhr") was, at all relevant times, a Director of Ener1 and was, at all relevant times, a member of the Company’s Board of Directors’ Audit Committee. Defendant Fuhr signed: the Company’s Registration Statement on Form S-3 filed on November 8, 2010 and made effective on December 29, 2010; the Company’s Form S-3 filed February 11, 2011 and made effective on May 6, 2011; Ener1’s 2010 Form 10-K filed March 10, 2011; and the Company’s amended Registration Statements on Form S-3/A filed on March 25, 2011, April 13, 2011 and April 29, 2011. Fuhr has been a director of Ener1 since October 2008. He is currently the Senior Managing Director of FTI Consulting. Prior to FTI Consulting, Fuhr was a partner at PricewaterhouseCoopers, a senior associate at AlixPartners specializing in crisis management consulting, and was a manager at Deloitte & Touche. Fuhr holds a B.S.Che. in Chemical Engineering from the University of Pennsylvania and an M.B.A. in Finance from New York University.

36. Defendant Nora Brownell ("Brownell") was, at all relevant times, a Director of Ener1 and was, at all relevant times, a member of the Company’s Board of Directors’ Audit Committee. Defendant Brownell signed: the Company’s Registration Statement on Form S-3 filed on November 8, 2010 and made effective on December 29, 2010; the Company’s Form S-3 filed February 11, 2011 and made effective on May 6, 2011; Ener1’s 2010 Form 10-K filed March 10, 2011; and the Company’s amended Registration Statements on Form S-3/A filed on March 25, 2011, April 13, 2011 and April 29, 2011. Brownell is the President of BC Strategies, Inc., an energy consulting firm. Prior to becoming President of BC Strategies, Inc., Brownell served as a commissioner at the Federal Energy Regulatory Commission and the Pennsylvania
Public Utility Commission. She served as the Senior Vice President of Meridian Bancorp, Inc.’s Corporate Affairs Unit from 1992 through 1996.

37. Defendant Thomas Snyder ("Snyder") was, at all relevant times, a Director of Ener1 and was, at all relevant times, a member of the Company’s Board of Directors’ Audit Committee. Defendant Snyder signed: the Company’s Registration Statement on Form S-3 filed on November 8, 2010 and made effective on December 29, 2010; the Company’s Form S-3 filed February 11, 2011 and made effective on May 6, 2011; Ener1’s 2010 Form 10-K filed March 10, 2011; and the Company’s amended Registration Statements on Form S-3/A filed on March 25, 2011, April 13, 2011 and April 29, 2011. Snyder was the president and CEO of Remy International, Inc., an auto parts manufacturer, until 2006. He is currently the president of Ivy Tech Community College of Indiana.

38. The Audit Committee (members Fuhr, Brownell, and Snyder) is and was charged with overseeing the accounting and financial reporting processes of Ener1 and the audits of the Company’s financial statements.

39. The audit committee plays an important part in a board of director’s oversight of any company. The members of the audit committee are charged with superior knowledge, and they are presumed to be knowledgeable about the basis of the financial information a company releases to the public. According to SEC Release No. 33-8220 (April 9, 2003):

Accurate and reliable financial reporting lies at the heart of our disclosure-based system for securities regulation, and is critical to the integrity of the U.S. securities markets. Investors need accurate and reliable financial information to make informed investment decisions. Investor confidence in the reliability of corporate financial information is fundamental to the liquidity and vibrancy of our markets.

Effective oversight of the financial reporting process is fundamental to preserving the integrity of our markets. The board of directors, elected by and accountable to shareholders, is the focal point of the corporate
governance system. The audit committee, composed of members of the board of directors, plays a critical role in providing oversight over and serving as a check and balance on a company’s financial reporting system. The audit committee provides independent review and oversight of a company’s financial reporting processes, internal controls and independent auditors. It provides a forum separate from management in which auditors and other interested parties can candidly discuss concerns. By effectively carrying out its functions and responsibilities, the audit committee helps to ensure that management properly develops and adheres to a sound system of internal controls, that procedures are in place to objectively assess management’s practices and internal controls, and that the outside auditors, through their own review, objectively assess the company’s financial reporting practices.

40. Defendants Gassenheimer, Seidel, Kamischke, Baker, Fuhr, Brownell, and Synder are collectively referred to herein as the “Individual Defendants.”

41. Non-party Ener1\(^2\) designs, develops, and manufacturers high-performance, prismatic, rechargeable lithium-ion batteries and battery pack systems for energy storage. Ener1 also conducts research and development activities on fuel cells and nano-coating processes. In 2009 and 2010, Ener1 made separate investments in Think Holdings, a Norwegian limited liability company and the majority owner of Think Global, an electric vehicle (“EV”) manufacturer. As of March 31, 2011, Ener1 controlled approximately 48% of the outstanding voting power in Think Holdings and two individuals on the Board of Directors of Ener1 – Gassenheimer and Baker – also served on the board of directors of Think Holdings.

\(^2\) Plaintiffs are not pursuing claims against the corporate entity pursuant to the Company’s financial restructuring under Chapter 11 of the Bankruptcy Code. See Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, In re Ener1, Inc., No. 12-10299-MG (Bankr. S.D.N.Y.) (Doc. 3); Notice of the Occurrence of the Effective Date of the Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, In re Ener1, Inc., No. 12-10299-MG (Bankr. S.D.N.Y.) (Doc. 82).
42. During the Class Period, the Individual Defendants, as senior executive officers and/or directors of Ener1, were privy to confidential and proprietary information concerning Ener1, its operations, finances, financial condition, and present and future business prospects. Because of their positions with Ener1, the Individual Defendants had access to adverse, undisclosed information about the Company’s business, finances, products, markets, and present and future business prospects via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and/or board of directors meetings and committees thereof, and via reports and other information provided to them in connection therewith. Because of their possession of such information, the Individual Defendants knew or recklessly disregarded that the adverse facts specified herein had not been disclosed to, and were being concealed from, the investing public.

43. Defendants Gassenheimer, Seidel, Kamischke and Baker are liable as direct participants in the wrongs complained of herein. In addition, the Individual Defendants, by reason of their status as senior executive officers and/or directors, were “controlling persons” within the meaning of Section 20(a) of the Exchange Act and had the power and influence to cause the Company to engage in the unlawful conduct complained of herein. Because of their positions of control, the Individual Defendants were able to and did, directly or indirectly, control the conduct of Ener1’s business.

44. Defendants Gassenheimer, Seidel, Kamischke and Baker, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, reports, press releases, other public statements pertaining to the Company during the Class Period, as well as presentations to securities analysts and through them, to the investing public. The Individual Defendants were provided with copies
of the Company's reports and press releases alleged herein to be misleading, prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Thus, the Individual Defendants were responsible for the accuracy of the public reports and releases detailed herein and are therefore primarily liable for the representations contained therein.

45. As senior executive officers and/or directors and as controlling persons of a publicly traded company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was, and is, traded on the NASDAQ Stock Market ("NASDAQ") and governed by the federal securities laws, the Individual Defendants had a duty to promptly disseminate accurate and truthful information with respect to Ener1's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously issued statements that had become materially misleading or untrue, so that the market price of Ener1's common stock would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

IV. CLASS ACTION ALLEGATIONS

46. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all persons or entities who purchased or otherwise acquired the common stock of Ener1 during the Class Period (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest.
47. The members of the Class are so numerous and geographically dispersed that joinder of all members is impracticable. Ener1 stock was actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Ener1 or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

48. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

49. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

50. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

   (a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

   (b) whether statements made by Defendants to the investing public misrepresented material facts about the business, operations, and management of Ener1;

   (c) whether the price of Ener1 common stock was artificially inflated during the Class Period; and
(d) to what extent the members of the Class have sustained damages and the proper measure of damages.

51. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

V. SUBSTANTIVE ALLEGATIONS

A. The Company and Its Relationship with Think

52. Ener1 describes itself as a designer, developer, and manufacturer of “high-performance, prismatic, rechargeable, lithium-ion batteries and battery pack systems for energy storage.” Ener1’s main focus has been the development of power systems for the next generation of hybrid electric vehicles (“HEV”), plug-in hybrid electric vehicles (“PHEV”) and electric vehicles (“EV”). In the grid energy storage markets, Ener1 develops energy storage applications for utility grid and commercial applications.

53. In 2007, Ener1’s wholly-owned subsidiary, EnerDel, Inc. (“EnerDel”) entered into an agreement with Think Global, under which EnerDel would supply Think Global with lithium ion battery packs. In an October 15, 2007 press release, Ener1 stated that “production orders under the contract are expected to result in EnerDel battery sales of $70 million over the two-year period ending in 2010. Under Think Global’s growth plan, the total value of the contract could eventually exceed $200 million.” Thus, the agreement was touted as the largest automotive grade lithium ion battery contract in history. Defendant Gassenheimer commented on the agreement, stating, “[t]his contract with Think is the commercial breakthrough that will
provide the investment community with a clear picture of the substantial revenues and cash flows that are possible in the Li ion battery market.” The agreement was revised in September 2009 to give Ener1 an exclusive right to supply Think Global with battery packs.

54. In August 2009, Ener1 participated in a $43 million investment in Think Holdings, the controlling shareholder of Think Global, by entering into a Securities Investment and Subscription Agreement (“SISA”), whereby Ener1 committed to invest $19 million in exchange for voting and equity rights of approximately 34% and 32%, respectively. In February 2010, the Company fulfilled its obligations under the August 2009 SISA by purchasing 10,826,640 shares of Think Holdings’ Series B Stock for approximately $18.8 million.

55. Additionally in August 2009, Ener1 entered into a purchase and assignment agreement with Bzinf, S.A., a major investor in Think and Ener1, to acquire its rights under approximately $3.0 million of debt which Bzinf, S.A. lent to Think Global pursuant to a loan facility with Think Global and warrants to purchase 3,600,000 of common stock of Think Global (the “Bridge Loan”). As consideration, Ener1 issued Bzinf, S.A. 896,986 shares of Ener1 common stock, valued at approximately $5.8 million. Ener1 subsequently exchanged the Bridge Loan for 1,809,419 shares of Think Holdings Series B Stock and warrants to purchase additional shares of Think Holdings Series B Stock.

56. On May 5, 2010, Ener1 entered into a second SISA (“Second SISA”) with Think Holdings and as of June 2010, the Company fulfilled its obligation under the SISA by purchasing 7,500,000 shares of Think Holdings’ Series B Stock for approximately $11.9 million. In connection with Ener1’s investment in Think Holdings under the Second SISA, the Company agreed to grant (the “Ener1 Put Option”) to other investors that purchased Series B Stock under the Second SISA. Under the Ener1 Put Option, the Company agreed that certain investors that
purchased Think Holdings Series B Stock could require Enerl to issue shares of Enerl common stock to these investors in exchange for their shares of Think Holdings Series B Stock, along with one-half of their warrants to purchase shares of Series B Stock. In connection with the Enerl Put Option, the agreed upon exchange price for one share of Series B Stock would be $1.67, and the price at which Enerl common stock would be valued by the then 15 day moving average of Enerl’s common stock trading price, but in no event less than $4.00 per share.

57. In October 2010, Rockport Capital, an investor that purchased Series B Stock under the Second SISA, exercised its rights under the Enerl Put Option. The investor transferred 7,500,000 shares of Series B Stock to Enerl and the Company issued 3,131,250 unregistered shares of Enerl common stock to the investor, which increased Enerl’s investment in Think Holdings by approximately $12.4 million. Enerl also extended to this investor the right to transfer to Enerl an additional 2,706,660 shares of Series B Stock under the same terms and conditions of the Enerl Put Option. Rockport Capital exercised this right and on October 25, 2010, transferred such additional shares of Series B Stock to Enerl in exchange for 1,130,031 unregistered shares of Enerl common stock, which increased the Company’s investment in Think Holdings by an additional $4.5 million. After taking into consideration the effect of the October 25, 2010 transactions, Enerl’s investment in Think Holdings totaled approximately $58.6 million, leaving the Company with approximately 48% of the outstanding voting power of Think Holdings.

58. Additionally in October 2010, Enerl extended short-term working capital loans to Think Holdings totaling $6.4 million, with an interest rate of 5.0% per annum, originally scheduled to mature on December 31, 2010. In November 2010, the Company issued 625,000 shares of Enerl common stock to an existing creditor of Think Holdings in exchange for that
creditor’s $2.5 million receivable from Think Holdings, with an interest rate of 5.0% per annum, originally scheduled to mature on December 31, 2010. On February 28, 2011, Ener1 extended the maturity date of the foregoing loans made to Think Holdings that were originally scheduled to mature on December 31, 2010 to mature on May 1, 2011.

59. In November 2010, Ener1 entered into a revolving line of credit agreement (Revolving LOC Agreement) with Think Holdings and established a line of credit for Think Holdings in the aggregate principal amount of $5.0 million, with an original maturity date of February 28, 2011. On February 28, 2011, the Company amended the Revolving LOC Agreement (Amended Revolving LOC Agreement) with Think Holdings and increased the principal amount of the Revolving LOC Agreement from $5 million to $15 million and extended the maturity date from February 28, 2011 to March 31, 2011. During January 2011, Ener1 advanced approximately $2.8 million in working capital loans to Think Holdings and on February 28, 2011, in connection with the amendment to the Revolving LOC Agreement applied the working capital advances to the outstanding balance pursuant to the Amended Revolving LOC Agreement. As of March 31, 2011, Think Holdings had borrowed $7.8 million under the Amended Revolving LOC Agreement. On March 9, 2011, Ener1 extended the maturity date of the Amended Revolving LOC Agreement from March 31, 2011 to May 1, 2011. In May, Ener1 again extended the maturity date to June 15, 2011.

60. In January 2011, Ener1 entered into an expanded put right agreement (the "Expanded Put Right") with Investinor AS, an existing shareholder of Think Holdings. Pursuant to the Expanded Put Right, Investinor AS provided $2.5 million in bridge financing to Think Holdings and waived certain shareholder rights in Think Holdings. In connection with the bridge financing by Investinor AS, Ener1 agreed that Investinor AS could require Ener1 to issue
shares of Ener1 common stock to Investinor AS in exchange for their shares of Series B Stock into which such bridge financing would be converted. Ener1 initially recognized the fair value of the Expanded Put Right by increasing its reported investment in Think Holdings by approximately $731,000. Ener1 also extended to Investinor AS, under the Expanded Put Right, the right to transfer to Ener1 an additional 3,007,400 shares of Think Holdings Series B Stock under the same terms and conditions of the Expanded Put Right. If Investinor AS were to exercise their rights under the Ener1 Put Option and the Expanded Put Right in full, Investinor AS could require Ener1 to issue approximately 2.8 million shares of Ener1 common stock in exchange for approximately 6.5 million shares of Series B Stock, increasing the Company's control over the outstanding voting power of Think Holdings to greater than 50% which would require the consolidation of the accounts of Think Holdings with the accounts of Ener1 on such date of exercise.3

61. In January 2011, Ener1 entered into an expanded put right agreement (the Scatec Expanded Put Right) with Scatec AS (Scatec), an existing shareholder of Think Holdings in connection with Scatec's agreement to provide bridge financing of $2.4 million Norwegian Kroner to Think Holdings in January 2011. The Scatec Expanded Put Right provided Scatec with

3 In January 2011, Investinor AS attempted to exercise its rights under the Expanded Put Right, but Ener1 contested the exercise at that time and did not transfer those shares of Ener1 common stock to Investinor AS. In April 2011, Ener1 amended the Expanded Put Right (the "Amended Investinor Expanded Put Right") to, among other things, suspend Investinor's right to put their shares of Series B Stock to Ener1 until the earlier to occur of: (i) June 15, 2011 or (ii) the date on which Ener1's ownership of the outstanding voting equity of Think Holdings falls below 20%. In addition, Investinor was given the right to, at such date, exchange its rights under the $2.5 million in bridge financing for shares of Ener1 common stock and no longer had to first convert the bridge financing it provided to Think Holdings into shares of Series B Stock. Ener1 also agreed to issue shares of Ener1 common stock to Investinor upon exercise of the Amended Investinor Expanded Put Right under a registration statement.
the right to put up to 259,740 shares of Series B Stock as well as the 240,000 shares of Series B Stock into which the bridge financing could be converted to Enerl in exchange for shares of Enerl common stock. Scatec originally had until May 5, 2011 to exercise the Scatec Expanded Put Right and, upon exercise, would receive unregistered shares of Enerl common stock.\(^4\)

62. Throughout the Class Period, two directors of Enerl, Defendants Gassenheimer and Baker, also served on the board of directors of Think Holdings and Baker was a paid consultant to Think Global.

63. Through the Company’s exclusive supply agreement with Think Global, Enerl’s repeated investments in Think Holdings, culminating in a 48% ownership interest, and Enerl’s financing of Think Holdings, and the simultaneous directorships of Defendants Gassenheimer and Baker on the boards of Enerl and Think Holdings, Defendants were unquestionably in a position to know about Think Holdings’ financial position, sales figures and forecasts, business prospects, and ability to raise capital at any and all times during the Class Period.

B. Think Holding’s History of Financial Troubles and Bankruptcies

64. Think Global is a Norwegian electric vehicle manufacturer which was attempting to commercialize a vehicle called the Think City, a plastic car originally developed by Ford. Think Global was originally founded in 1991 for the purpose of developing innovative electric vehicles. Ford eventually acquired 51% of Think Global, which it held until selling out in 2003. In 2003, Think Global was sold to the KamKorp Group. After several failed attempts to put a viable product on the market, Think filed for public administration (the Norwegian version of Chapter 11) in 2002. It would be the first of four bankruptcy filings between 2003 and the

\(^4\) As of the Company’s first quarter Form 10-Q filed on May 10, 2011, Enerl was in the process of negotiating a Put Right Extension with Scatec.
present. In March 2006, Think Global was acquired by the Norwegian investment group InSpire, which revived Ford’s Think City idea and sought to put a model into production. In 2007, Think Global entered a $70 million Supply Agreement with Enerl to purchase battery technology for the Think City. The Supply Agreement immediately made Think Enerl’s largest automotive customer. In October 2008, pursuant to the Supply Agreement, Think Global made a $34,000,000 purchase order from Enerl.

65. Two months later, in December 2008, Think Global announced that it had insufficient working capital to continue production of the Think City and that it was filing for public administration for the second time. Recognizing that the financial insolvency of Think Global, Enerl’s largest customer, would be disastrous for the Company, a group of investors led by Enerl Group, Enerl's largest shareholder, stepped into the breach with $5.7 million in bridge funding. Again, in 2009, Think Global filed for public administration and again Enerl came to the rescue with additional loans. Indeed, since 2009 Enerl took the lead in arranging additional financing for Think, leading to a sizeable equity interest and 48% voting power in Think Holdings stock.

66. In March 2011, European output of Think's lone model, the Think City, stopped. At the time, Think claimed that it halted the production line at contract manufacturer, Valmet Automotive, in order to rebalance its parts inventory. Only 1,043 units of the Think City minicar had been sold by Think in 2010.

67. On June 22, 2011, Think announced that it was, once again, filing bankruptcy proceedings in Norwegian courts. It was Think’s fourth financial collapse in just 10 years. Enerl’s financial exposure to Think was massive.
C. **Plaintiffs’ Investigation Reveals Significant Problems at Enerl’s Think Global and Think Holding and Defendants’ Knowledge that the Company Would Report Impairments**

68. In addition to admissions made by the Company, Plaintiffs’ allegations concerning Defendants’ intentional or reckless delay of reporting Enerl’s increasingly bleak prospects in the EV market; the deteriorating sales and financial condition of Think (Enerl’s most significant customer with which Enerl had a 48% equity interest and a company for which Enerl had provided significant loans); the impairment of the Company’s investment in Think Holdings, its accounts receivable from Think Global, and its loans receivable from Think Holdings; the improper accounting for revenue recognized from transactions with Think Holdings and Think Global; and the impairment of Enerl’s goodwill are based upon the statements of several former employees of Enerl, EnerDel, Think Holdings and/or Think Global who had personal knowledge of the events and circumstances described herein.

69. **Confidential Informant 1 ("CI 1")** – CI 1 is the former Controller for Think Global’s North American operations and worked there from July 2010 to September 2011. CI 1 reported to Think Global CFO, CI 2, who reported directly to Think’s CEO Richard Canny. CI 1 interacted with Enerl executives on a regular basis.

70. CI 1 was responsible for establishing the financial controls for Think’s North American operations. CI 1 and Think’s CFO (Confidential Informant 2) initiated an effort to implement a variety of standard operating procedures and internal controls to assist Think in tracking costs in connection with product development, manufacturing, sales, and so forth. In this regard, CI 1 “worked very closely” with Think’s CFO. Given his position, CI 1 had an intimate understanding of Think’s financial health, primarily within North America. CI 1 was
also aware of Think’s financial position globally, as a result of his regular interactions with
Think’s CFO, among others.

71. During CI 1’s tenure, the North American Operations received a total of 350
electric automobiles from Think’s Oslo, Norway headquarters/plant. When CI 1 joined Think in
July 2010, the company’s North American sales target was 1,000 units within 18 months.
However, actual sales did not come anywhere close to this target. By the time CI 1 left Think in
September 2011, CI 1 believes that at least 100 vehicles of the initial 350 still remained in
inventory.

72. Due to the hugely disappointing sales of Think’s vehicles, CI 1 recalled that
during the course of CI 1’s tenure, Think’s business objective changed drastically from initially
projecting to sell 1,000 vehicles in North America, to “going into inventory depletion mode.” CI
1 explained that Think was transitioning from a strategy of selling vehicles on a go forward basis
(and beyond its existing inventory), to getting rid of its on-hand inventory, without any further
intention to sell additional units. CI 1 explained that Think’s transition into inventory depletion
mode was incremental, as CI 2 (Think’s CFO), Canny (Think’s CEO), and Think’s board came
to realize that the demand for Think vehicles was nowhere close to what they had hoped. CI 1
said that Think’s financial concerns were known to CI 1 and generally by Think’s executives and
Think’s Board from the beginning of CI 1’s employment at Think in July 2010. CI 1 believes
that Think’s shift to “inventory depletion mode” took place in or about March/April 2011.

73. CI 1 said that Think had been relying on the anticipated revenue derived from
selling the projected 1,000 vehicles to keep the company financially solvent, which meant that
the slower than expected EV sales were devastating to Think. As CI 1 put it, “the cars weren’t
selling fast enough to keep operations afloat.” In an attempt to ensure that Think had the
necessary capital to remain operational, CI 1 explained that Think's CEO, Think's CFO, and Defendant Gassenheimer were "actively pursuing financing" from potential investors. Unfortunately, due to lackluster sales and failed efforts to obtain financing, CI 1 explained it became abundantly clear that Think was going to go under.

74. CI 1 described Gassenheimer as "very active in Think." CI 1 communicated with Gassenheimer on a fairly regular basis. CI 1, CI 2 (Think's CFO), and Gassenheimer participated in "three-way conversations" by phone, email, and in person, "sometimes a few times a month" to discuss Think's financial and operational situation. In addition, CI 1 stated that Gassenheimer participated in executive-level meetings with Think's CEO, Think's CFO, and other Think executives at the Dearborn offices, on a frequent basis. CI 1 also explained that as board members of Think Holdings, Gassenheimer and Baker participated in Think board meetings at Think's Dearborn, MI office at least every quarter. CI 1 "contributed [financial] data for [Think] board meetings, including sales forecasts," and CI 1 explained that CI 1's "forecasts were not rosy" due to the severe lack of sales. CI 1 was not alone in his negative assessment of Think. CI 1 described that on various occasions Think's CFO (CI 2) "expressed concerns to me about Think's financial health."

75. In addition to the aforementioned meetings, CI 1 stated that Gassenheimer would frequently communicate with Think's CFO about Think's finances. According to CI 1, Think's CFO and Gassenheimer "did not agree on the future of Think." CI 1 believes that Think's CFO directly informed Gassenheimer that Think lacked sufficient capital.

76. CI 1 said that the internal cost of each fully-equipped Think car was $41,000, which was broken down as $24,000 for the car itself and $17,000 for the battery. CI 1 acknowledged that the retail price of the car was roughly equivalent to its production cost.
77. Confidential Informant 2 ("CI 2") – CI 2 served as CFO of Think Holdings. CI 2 held the CFO position from July 2009 to September 2011. CI 2 reported to Think CEO Richard Canny.

78. According to CI 2, Think was not selling electric vehicles at the rate the company had hoped. CI 2 explained that Think struggled to maintain sufficient working capital and had a major concern with securing long term capital. Because of these concerns, Think spent substantial time and resources in conducting roadshows in an attempt to obtain financial backing. CI 2 said Canny (Think’s CEO) and Gassenheimer were involved in such roadshows. CI 2 also participated in roadshows but not with Canny and Gassenheimer.

79. CI 2 explained that he managed “the liquidity of the business” and that type of information was very important to understand since “everyone goes out of business because of liquidity.” CI 2 said that generally speaking, he adopted a “very conservative” approach to managing company finances, which meant that if a company did not have six months to a year’s worth of cash on hand, CI 2 could not characterize the Company as a “going concern.”

80. CI 2 explained, however, that under Norwegian law it was the board’s responsibility, and not executive officers like CI 2, to determine whether a company would be able to meet its financial obligations. CI 2 emphasized that it was the duty of Think’s board to “review the financials” and make decisions as to whether Think could remain solvent or instead would have to file for bankruptcy. Thus, according to CI 2, a main issue at Think was whether the board believed “there was sufficient liquidity to keep the company afloat.” When asked whether through his attendance at board meetings whether CI 2 had an opinion of the board’s judgment on the above, CI 2 did not provide a direct response. CI 2 said that Defendants
Gassenheimer and Baker, as board members of Think, were regular attendees of Think’s board meetings.

81. CI 2 prepared materials for and participated in Think board meetings. The materials CI 2 prepared related to financial information about Think, including the condition of the company “on a going forward basis and on an actual basis.” CI 2 explained that “when you have a business that was in trouble – as we did – we had board meetings on a very regular basis.”

82. CI 2 stated that CI 2 met with Gassenheimer outside of board meetings to discuss Think’s financial position. With regard to Think, CI 2 described himself as “pretty outspoken” with Gassenheimer.

83. Confidential Informant 3 (“CI 3”) – CI 3 worked as EnerDel’s Director of Test and Validation from June 2010 until December 2011. Based in EnerDel’s Noblesville, Indiana office, CI 3 was in charge of about 24 personnel and oversaw the testing and performance of the Company’s lithium batteries. EnerDel’s batteries were installed in Think Global’s vehicles, and the vehicles were warehoused at EnerDel’s headquarters in Indianapolis, Indiana. CI 3 initially reported to Ron Pogue, the Director of Engineering, and later to Naoki Ota, the Company’s Chief Technology Officer.

84. New and prospective customers called on EnerDel to provide them with prototypes of the lithium-ion batteries to test compatibility and performance with the customers’ vehicles. It was CI 3’s responsibility to, among other things, test the batteries for compliance with standards and performance before they were shipped to the customers. CI 3 explained that initially, EnerDel was “scrambling to keep up with the demand for the prototypes.”

85. In November 2010, CI 3 heard that employees of Think Global were leaving the company as its business struggled. CI 3 learned this during a period when CI 3 was meeting
with Think’s representatives on a weekly basis for the development and testing of batteries. CI 3 also learned that EnerDel’s production output of batteries was reduced as Think’s vehicle orders declined in November/December 2010. According to CI 3, a second generation of batteries that were under development at Enerl for Think’s fleet “never got traction.”

86. As a result of the problems at Think, CI 3 recalled that at the end of 2010, EnerDel’s manufacturing plant slowed down production, going from three shifts to just one. CI 3 further explained that in December 2010 or January 2011, “we [EnerDel’s employees] were told that Think was having issues. They didn’t tell us too much internally about Think’s problems. We were told that the price point for their vehicles was too high.” CI 3 started getting nervous about EnerDel’s future around the beginning of 2011. “We had a lot of inventory at Think’s plant,” CI 3 explained.

87. CI 3 recalled that in the spring of 2011, Gassenheimer called an “all hands meeting” and held a videoconference with about 100 people who gathered at the Mount Comfort complex to hear him speak from a big screen. This videoconference is believed to have taken place in April 2011. According to CI 3, Gassenheimer told the group that Think was “going through a tough time” and that Think’s car production had declined as well as Think’s demand for EnerDel’s batteries. “He had to say something,” CI 3 said, explaining that by that point it had become obvious that Think was not performing well.

88. When Think’s problems were becoming apparent to EnerDel’s employees as a result of the decline in battery production, CI 3 and other employees checked the press releases that Enerl had released in early spring of 2011. CI 3 said that “the press releases didn’t tell the whole story. They left out a lot of things. That’s how we felt. We knew there was something wrong at Think.”
89. **Confidential Informant 4 ("CI 4")** – CI 4 was a Manager of manufacturing at EnerDel from September 2009 until November 2011. CI 4 reported to the Company’s CEO, first Rick Stanley (Stanley served as President of EnerDel and COO of Ener1), then to Christopher Cowger. CI 4 was responsible for the coating of the lithium-ion batteries, and managed a team of eight. “Think had problems from day one;” CI 4 said. “It had gone bankrupt years before Ener1 got involved. Ener1’s biggest problem is that they put all their eggs in one basket -- Think Global,” CI 4 said.

90. Based in Indianapolis, CI 4 recalled a meeting in April 2011 in which Gassenheimer told employees about Think Global’s problems with production and meeting its sales forecasts. CI 4 could not recall the specifics of what Gassenheimer told the employees, but CI 4 could tell from the conversation that Think Global was struggling to make its goals. “Start-ups are not easy,” CI 4 recalled Gassenheimer telling the employees of EnerDel.

91. **Confidential Informant 5 ("CI 5")** – CI 5 worked as Ener1’s Manager of Branding and Creative Marketing from February 2009 until April 2011. CI 5 was terminated by Chris Cowger soon after Cowger became President of Ener1 (in March 2011) as part of a cost-cutting initiative. CI 5 was based in the New York City headquarters and reported to VP of Corporate Communications Rachel Carroll. CI 5 worked very closely with Defendants Gassenheimer and Seidel. CI 5 noted that “the [New York] office was very small” and said “we all knew what was going on with each other.”

92. CI 5 was charged with developing a “visual identity” for Ener1 through multiple initiatives, including the design of a new Company logo, as well as through the creation of various visual aids of Ener1’s products and business strategies. CI 5 also devised a product-naming system – primarily in connection with Think automobiles – that was designed to more
effectively create product awareness and communicate the benefits of these vehicles to consumers. CI 5 also served to “clean up the language” in the Company’s various and ongoing presentations to potential investors and at trade shows, as well as with public announcements, press releases and SEC filings. As CI 5 explained, “all presentations needed to go through me and our General Counsel.” CI 5 also travelled to Enerl’s Indianapolis, Indiana office regularly, and conducted photo shoots of the Think cars there on several occasions. CI 5 also created visual graphics and animation for presentations relating to the batteries utilized in the Think cars, in order to demonstrate the battery technology.

93. CI 5 worked directly with Gassenheimer on a regular basis in an effort to make Think cars more appealing. CI 5 said CI 5 spent many late nights in Gassenheimer’s office participating in one-on-one strategies with Gassenheimer in regard to Think. As CI 5 recalled “we were struggling to make Think more attractive to consumers.”

94. CI 5 characterized Gassenheimer as very hands on and said that he “looked at the financials for everything,” including Think. CI 5 explained that Gassenheimer was particularly attentive to matters involving Think, explaining that “Think was Charles’s baby.” According to CI 5, Gassenheimer was advised about the “risks and downsides” of Think by various personnel on a regular basis, but stubbornly refused to heed such advice, because he was “drinking his own Kool-Aid.”

95. CI 5’s desk was adjacent to Czarnecki’s — who handled quantitative/qualitative business analysis and financial modeling for Enerl. CI 5 recalled that Gassenheimer was “constantly” at the desk of Czarnecki, to review financial information. CI 5 strongly believed that Gassenheimer personally conducted (or at least closely oversaw) the financial analysis on
Think both prior to Enerl investing in Think, and throughout the course of the business relationship between the companies.

96. CI 5 also said that Defendant Seidel, Enerl’s CFO, played a key role in assessing and monitoring the Think investment. However, in stark contrast to Gassenheimer’s enthusiasm for Think, CI 5 described that “Jeff [Seidel] hated Think” because Seidel did not believe Think was a viable investment. On the subject of Think, CI 5 said that Seidel had a running joke. As part of CI 5’s responsibilities, CI 5 regularly presented Seidel with various logos, images, product-related statements/phrases related to the branding of Think, for his review. CI 5 explained that when presenting such materials to Seidel, the joke was that Seidel would summarily respond every time with a look of disgust and by saying something like “don’t even show me that stuff.” Additionally, CI 5 explained that Seidel would sometimes refer to Think as “Stink.”

97. According to CI 5, Seidel “was adamant with Charles in expressing his [i.e., Seidel’s] distaste for Think.” CI 5 was aware of the above communications through CI 5’s regular interactions with both executives, and frequently as a witness to such exchanges. CI 5 also said that other employees communicated concerns about Think’s future to Gassenheimer. However, as CI 5 put it, “Charles did what Charles wanted to do, and the rest of us were left holding the mess.” In January 2011, CI 5 directly expressed concerns about Think to Gassenheimer, stating that if the Think investment “falls through, as it looks like it might,” Enerl would not have the funding to support the initiatives it was then planning. According to CI 5, Gassenheimer dismissed these comments. When it came to business concerns at Enerl (including the various challenges with Think), CI 5 recalled that “if we [i.e., the Enerl staff at the headquarters] couldn’t convince Charles [that the direction Gassenheimer proposed was
problematic], Jeff was the only one who might change his mind." However, according to CI 5, despite Seidel’s repeated efforts to express concerns to Gassenheimer about Think specifically, Gassenheimer constantly rebuffed all such suggestions.

98. CI 5 believed that Think was a lost cause. “You’re not going to get Americans to buy this [i.e., Think] car,” CI 5 said. CI 5 explained that the price point of $40,000 was the biggest challenge noting that such a price was “crazy” because “you can buy two cars with that [amount of money].” CI 5 said there was also a “fear factor” among American consumers in that this new type of product took consumers out of their “comfort zone.” There were multiple other reasons why CI 5 believed Think was destined to fail including the car’s lack of a rapid battery recharger, and even the fact that the car “looked like a toy.” As noted above, CI 5 (as well as other staff) communicated the above concerns about Think to Gassenheimer over the course of CI 5’s tenure.

99. Confidential Informant 6 (“CI 6”) – CI 6 served as Manager of Business Development from October 2010 to October 2011. CI 6 was based out of the Indianapolis, Indiana office and initially reported to the President of Grid Energy Storage Bruce Curtis until Curtis’s departure in July 2011, at which point CI 6 reported to the President of Enerl, Chris Cowger.

100. CI 6 was initially involved in developing business opportunities for “Grid Energy” storage systems. However, early in CI 6’s tenure at Enerl, CI 6 became involved in Think matters, including assessing secondary and alternative uses of the batteries from the cars manufactured by Think.

101. According to CI 6, Enerl sought to devise a system that would enable the Company to establish “residual value” of the Think batteries, in an effort to lower the overall
cost of Think vehicles. CI 6 noted that the cost of the Think cars themselves proved to be the largest deterrent for prospective customers. However, CI 6 explained that the batteries within the cars were a substantial reason why Think cars were so expensive in the first place. CI 6 recalled that Ener1 struggled to develop a successful business model for Think cars and batteries, and that the Company was unable to achieve a commercially viable solution. As CI 6 put it, “we were scrambling to do anything we could to make the [Think] car successful.”

102. Although CI 6 was not knowledgeable about details relating to Think’s financial issues given CI 6’s position at Ener1, CI 6 was aware of Think’s financial troubles, noting that Think “owed us [i.e., Ener1] eighteen million dollars.” CI 6 recalled that beginning in January 2011 and for the duration of CI 6’s tenure, “comments were made” by key staff at meetings CI 6 attended, that Ener1’s investment in Think was problematic and a concern.

103. According to CI 6, Gassenheimer had ownership of all Think-related matters. Moreover, CI 6 explained that when Chris Cowger came on board as Ener1’s President in March 2011, Cowger had “already written [Think] off. [Cowger] realized we weren’t going to make any money on it. [Cowger] wanted Charles [Gassenheimer] to handle Think.”

104. Confidential Informant 7 (“CI 7”) – CI 7 worked at Ener1 as an Investor Relations Associate from 2008 until July 2011. CI 7 worked at the corporate headquarters in New York City and reported initially to VP of Corporate Communications Rachel Carroll. Upon Carroll’s departure in November 2010, CI 7 reported directly to Gassenheimer. CI 7 left the Company because CI 7 “was not happy with the Company culture,” recalling that Ener1 was “very disorganized.”

105. Throughout CI 7’s tenure, CI 7 participated in daily “ad hoc” meetings with Gassenheimer and other executives including Defendant CFO Seidel (at times) and General
Counsel Nick Brunero. CI 7 recalled that Gassenheimer was “very hands on” and that Ener1’s acquisition/investment strategy was “very top driven.”

106. As to CI 7’s own duties, CI 7 interfaced with nine external Research Analysts from various banking/finance institutions, that analyzed and covered Enerl. CI 7 prepared press releases in connection with Company announcements and SEC filings, and fielded media inquiries with regard to these releases. CI 7 also participated in analyst/investor conference calls, and prepared the opening scripts for these calls, as well as other portions of the scripts at times, as directed. However, CI 7 said that Gassenheimer always insisted on preparing his own opening script, which was one example of Gassenheimer’s “hands on” approach, according to CI 7.

107. Confidential Informant 8 (“CI 8”) – CI 8 worked as Enerl’s VP of HR in the Indianapolis, Indiana office from June 2011 to December 2012. CI 8 reported directly to Defendant CEO Charles Gassenheimer. CI 8 attended bi-weekly executive meetings at the Indianapolis office with senior staff including, Defendant Seidel and Defendant Gassenheimer, among others.

108. Due to CI 8’s position in the Company, CI 8 was not aware of specific information in connection with Think. However, based on CI 8’s regular interactions with senior-level executives including Gassenheimer, CI 8 said that Gassenheimer was “heavily involved” in all matters relating to Think. As CI 8 put it, “Think was Charles’s baby.”

109. Confidential Informant 9 (“CI 9”) – CI 9 worked as a Program Manager for EnerDel from November 2008 to February 2011. CI 9 reported to Sean Hendrix, who remains EnerDel’s Director of Product Development. CI 9 coordinated the development of EnerDel’s

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5 This was the exact statement made by CI 5.
lithium-ion battery with Think Global. CI 9 frequently travelled to Oslo, Norway to work with Think’s engineering teams.

110. CI 9, who left EnerDel in February 2011, was aware that Think was not meeting its sales and production goals and that it was awaiting federal funds from the U.S. and Norwegian governments to help finance its operations and the development of a manufacturing facility in Elkhart, Indiana. As a result of the funding shortage, CI 9 said that Think’s operations and demand for EnerDel’s batteries were sporadic. CI 9 attributed EnerDel’s production delays to Think’s need for funding and government grants, neither of which arrived as early as expected.

111. CI 9 recalled an “all hands meeting” held by Gassenheimer in the late summer of 2010 in which the CEO told EnerDel’s employees that Think was still awaiting the Norwegian government’s approval for loans and for U.S. grants to build Think’s Elkhart, Indiana plant. “Everyone was waiting for funding,” CI 9 explained.

112. An article entitled “Inside the Think Bankruptcy: Was the Plastic Electric Too Late, Too Expensive?,” written by Sebastian Blanco and posted on the website AutoblogGreen, supports the information provided by the confidential informants. Indeed, the article, among other things, explains that problems with Think became readily apparent to EnerDel management by December 2010 or January 2011 and that EnerDel management had been warned of Think’s escalating financial problems by various individuals. The article stated, in relevant part:

On the one hand, the fact that Think needed to file for bankruptcy — again — yesterday was not a big surprise. The company has had a hard time selling its plasticky two-seat commuter car in a world that also includes the cheaper, better-equipped Nissan Leaf. The Think City starts at $36,495 in the U.S. (but a strange combination of incentives meant it was possible for some lucky people to get one for just $17,995 recently), while the Leaf, even if it is a different segment vehicle, starts at $32,780 ($25,280 after federal incentives). On the other hand, the reason for the bankruptcy filing are not at all transparent, so we went out and got as
much information as we could about what happened behind the scenes. Turns out, sources were willing to talk, but only off the record, so take what follows as the truth from people who were there (or were close) but who do need to protect themselves. Here's the story:

*Some time around December of 2010 or January of 2011, it became pretty clear inside Think that the company was starting to run into financial difficulties. The Norwegian company had excess inventory of around 500 cars that could not be sold, and some were shipped to the U.S. to try and move them here. A four-seat version was introduced (well, reintroduced, since it was first promised in 2008), but only a small handful were ever delivered. There was talk that Russian investor Boris Zingarevich, who is Ener1’s largest shareholder thus had the most to lose if Think went under (battery company Ener1 has been Think’s supply partner since 2007), would step in – and he did provide some short-term loans – but it was not enough to save Think. Its partners were hurt – Ener1 took a $71 million hit in its Q1 earnings call earlier this year – and at some point this spring, Think City production was halted at Valmet. It seems that Think stopped paying some suppliers earlier this year, too. In May, Ener1 ended its deal with Think. (Continue reading...)*

Think's problems extend to its home country of Norway, too, as these electric vehicle sales numbers for January-May of 2011 sent to us show:

- Mitsubishi iMiiev: 532 sales and 62% of the market
- **Think City: 85 sales and 10% of the market**
- Citroen C-Zero: 79 sales and 9% of the market
- Pure Mobility Buddy: 72 sales and 8% of the market
- Peugot iOn: 54 sales and 6% of the market
- Tesla Roadster: 14 sales and 2% of the market
- Tazzari: 10 sales and 1% of the market
- Reva 8 sales and 1% of the market
- Fiat 500 Microvett converion: 2 sales and 0% of the market

As one source told us that, "At the end of the day the Think City did not survive the introduction of the iMiEV triplets. At an identical price of $44,000, the iMiEV had an easy match against the home team supporters who were thirsty for something just a little bit bigger." *Everyone we talked to mentioned the too-high price of the Think City, and some were in a position to let those in charge know, but all to no avail....*

(Emphasis added.)
D. Ener1’s SEC Filings, Public Statements, and Materially False and Misleading Statements Made during the Class Period.

113. The Class Period begins on November 4, 2010. On that date, Ener1 issued a press release announcing its third quarter results for 2010. The press release, in relevant part, stated:

New York, NY (November 4, 2010) – ENER1, Inc. (NASDAQ: HEV), today announced financial results for its third quarter ended September 30, 2010. Net sales were $17.3 million in the third quarter of 2010, an increase of 113% over net sales of $8.1 million in the third quarter of 2009. Net sales were $44.3 million for the nine months ended September 30, 2010, an increase of 86% over net sales of $23.9 million in the prior year nine month period. Basic and diluted net loss per share was $0.18 in the third quarter of 2010 compared to $0.14 in the third quarter of 2009. Weighted basic and diluted shares outstanding were 148.6 million in the third quarter of 2010 compared to basic shares of 131.8 million and fully diluted shares of 135.95 million in the second quarter of 2010.

Third quarter highlights and subsequent events:

***

- Ener1 delivered its fifth quarter of sequential revenue growth, and has successfully launched commercial products in the transportation, grid energy storage and small format business verticals.

- Ener1 announced the completion of its targeted capital raise of $160 million in 2010, through a combination of private and strategic investments. This included $24 million in equity from Ener1 Group, $55 million of senior unsecured notes to certain investment funds, and $10 million in senior convertible notes from strategic partner ITOCHU Corporation during the third quarter. These funds allow Ener1 to expand its global manufacturing footprint to 260 MWh of capacity.

- Ener1 Korea is on target to ramp production from 2.6 MWh per month in the second and third quarter of 2010, to 9.2 MWh in the fourth quarter of 2010. Ener1 US has produced 572 commercial EV battery packs at its Indianapolis facilities since the start of production in May, 2010. Using additional cell capacity from Ener1 Korea, Ener1 expects to ship over 300 EV packs to THINK per month, beginning in November.

“Ener1 is segmenting the business into three verticals, to allow greater flexibility to pursue the high growth opportunities in grid energy storage, transportation and small format pack markets,” said Charles Gassenheimer, Chairman and CEO of Ener1....
"The completion of Ener1’s targeted capital raise of $160 million this quarter will allow Ener1 to expand its global manufacturing facilities to 260 MWh of capacity, for which it has solid demand visibility," continued Gassenheimer. "Using a bottoms-up analysis of announced projects within the transportation and grid energy storage markets, Ener1 anticipates it can grow revenues to between six and eight hundred million dollars in 2013, with a shifting bias towards the heavy-duty bus markets, and grid energy storage applications."

"Ener1 continues to ramp its manufacturing facilities in Korea and the US, and anticipates a four-fold increase in cell manufacturing throughput in Korea from the third to fourth quarter in 2010.”

(Emphasis added).

114. That same day, Ener1 filed its Form 10-Q for the third quarter ending September 30, 2010 with the SEC, which reiterated the financial results announced in the earnings press release. The Form 10-Q was signed by Defendants Gassenheimer, Seidel, and Kamischke. The Form 10-Q stated, in pertinent part:

Executive Summary and Recent Developments

* * *

We design, develop and manufacture high-performance, rechargeable, lithium-ion batteries and battery systems for energy storage in the transportation market, stationary power market, and small format products market. We believe a confluence of market forces and government policy initiatives may lead to a transition from oil-fueled vehicles and energy inefficient electricity production to electric vehicles and more efficient grid storage and energy management. We further believe that the fuel economy standards and rules of the United States, together with the stringent carbon dioxide emissions standards of the European Economic Community, will likely cause many automobile manufacturers to manufacture some form of electric cars, trucks, and buses. The automotive industry has plans to introduce additional HEV, EV, and PHEV models, the introduction of which is expected to increase the total number of electric vehicle models available worldwide to approximately 120 by the end of 2012.

Our primary products for the transportation market consist of battery solutions for hybrid electric vehicles (HEVs), plug-in hybrid electric vehicles (PHEVs), electric vehicles (EVs), and other vehicles such as trucks and buses. In May 2010, we commenced commercial production and shipment of lithium-ion battery packs for Think Global, an EV manufacturer in Norway.

* * *
We manufacture and assemble lithium-ion batteries and battery systems in the United States through our subsidiary EnerDel, Inc. (EnerDel) and in South Korea through Ener1 Korea. We are currently expanding production capacity at our facilities in the United States.

We were awarded a grant of $118.5 million from the United States Department of Energy (DOE) in August 2009, under the Automotive Battery Manufacturing Initiative (ABMI) to help finance our United States battery plant capacity expansion. We are reimbursed under the grant as we make equipment purchases, and we are required to match grant proceeds with an equal amount of our own funds. Using funds provided under the ABMI, we are expanding our production capacity in Indiana. We expect our worldwide automotive production capacity will increase during 2011 to the equivalent of 900 EV packs per month as a result of our battery plant expansion.

We have also applied to the DOE for a long-term low interest loan of approximately $290.0 million under the Advanced Technology Vehicle Manufacturing Incentives Program (ATVM). We would use the proceeds of this loan to further expand our battery production capacity. We are currently negotiating a term sheet in connection with this loan. If we receive an ATVM loan, the ATVM loan program will require us to match every eighty cents of loan proceeds with twenty cents of our own investment. Indiana state and local government authorities have also provided us approximately $80.0 million of grants and tax offsets to assist in our expansion plans. With proceeds under the ATVM loan, if approved, and combined with the funds available to us under the ABMI program and the State of Indiana incentives, we plan to increase our domestic production capacity to an estimated manufacturing capacity of 120,000 equivalent EV battery packs per year.

Results of Operations

Three Months ended September 30, 2010 compared to the Three Months ended September 30, 2009

The following information has been derived from the accompanying unaudited consolidated financial statements for the three months ended September 30, 2010 and 2009 and is presented in thousands. With the commencement of commercial production in May 2010, certain expenses previously classified as research and development are now classified as general and administrative.
Net sales, Cost of sales and Gross profit

*The increase in net sales is due to an increase in EV battery pack commercial sales to Think Global of approximately $4.3 million as shipments to Think Global under our Supply Agreement commenced in May 2010, as well as a $1.9 million increase in EV battery pack prototype sales to various customers from $0.4 million for the three months ended September 30, 2009 to $2.3 million for the same period in 2010. In addition, domestic sales of small cell battery packs to commercial customers increased from $5.3 million during the three months ended September 30, 2009 to $8.8 million for the same period in 2010, an increase of approximately $3.5 million, or 66%, due to an increase in demand.*

**Nine Months ended September 30, 2010 as compared to the Nine Months Ended September 30, 2009**
The following information has been derived from the accompanying unaudited consolidated financial statements for the nine months ended September 30, 2010.
and 2009 and is presented in thousands. With the commencement of commercial production in May 2010, certain expenses previously classified as research and development are now classified as general and administrative.

<table>
<thead>
<tr>
<th>Net sales</th>
<th>Cost of sales</th>
<th>Gross profit</th>
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<tbody>
<tr>
<td>$44,288</td>
<td>$23,846</td>
<td>$20,442</td>
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<td>$23,846</td>
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**Operating expenses:**

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<th>General and administrative</th>
<th>Research and development, net</th>
<th>Grant proceeds recognized</th>
<th>Depreciation and amortization</th>
<th>Total operating expenses</th>
<th>Loss from operations</th>
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<tr>
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<td>46%</td>
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<td>17%</td>
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**Loss from operations:**

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<td>17%</td>
<td>23%</td>
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**Other income (expense):**

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<th>Interest expense</th>
<th>Debt conversion expense</th>
<th>Gain on derivative liabilities</th>
<th>Grant proceeds recognized</th>
<th>Depreciation and amortization</th>
<th>Total other income (expense)</th>
<th>Loss before income taxes</th>
<th>Income tax expense (benefit )</th>
<th>Net loss</th>
<th>Net loss attributable to noncontrolling interests</th>
<th>Net loss attributable to Enerl, Inc.</th>
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<tbody>
<tr>
<td>(7,563)</td>
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<td>3,145</td>
<td>509</td>
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<td>(16,711)</td>
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<td>(1,632)</td>
<td>(36,353)</td>
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<td>(1,633)</td>
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<td>(13,245)</td>
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<td>64</td>
<td>(15,079)</td>
<td>(21,520)</td>
<td>113</td>
<td>(21,633)</td>
<td>258 -79%</td>
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</table>

**Net sales, Cost of sales and Gross profit**

The increase in net sales is due to an increase in EV battery pack commercial sales to Think Global of approximately $7.7 million as shipments to Think Global under our Supply Agreement commenced in May 2010 and an increase in EV battery pack prototype sales to various customers from $0.9 million during the nine months ended September 30, 2009 to $3.5 million for the same period of 2010, an increase of approximately $2.6 million. In addition, domestic sales of small cell battery packs to commercial customers increased from $14.3 million during the nine months ended September 30, 2009 to $24.1 million during the same period of 2009, an increase of approximately $9.8 million, or 69%, due to an increase in demand.

115. In discussing Think, the Form 10-Q stated as follows, in relevant part:
We expect Think will become a significant customer in 2011. A delay in the delivery of battery packs to Think or delays in Think’s start-up plans and financing activities, however, would adversely affect our expected 2010 and 2011 revenues and profitability and could have a material adverse effect on our business and our investment in Think.

116. The press release and Form 10-Q contained statements that were materially false and/or misleading when made. The Company omitted the following known material facts: (1) as admitted by Gassenheimer in the first quarter 2011 earnings conference call held on May 10, 2011, by the second quarter 2010 “Think and the EV industry more broadly” were experiencing “structural challenges” that would make EV adoption slower than predicted, and management viewed the electric vehicle segment as “look[ing] bleak in the near-term”\(^6\); and (2) Think’s sales of EVs were drastically lower than previously expected to the extent that Enerl was in the process of cutting back its production of batteries. These facts were required to be disclosed so as to not make statements like “We expect our worldwide automotive production capacity will increase during 2011 to the equivalent of 900 EV packs per month as a result of our battery plant expansion” and “[u]sing additional cell capacity from Enerl Korea, Enerl expects to ship over 300 EV packs to THINK per month, beginning in November,” not materially misleading. To the exact contrary of disclosing the known material adverse facts, Defendants instead stated that they “expect Think will become a significant customer in 2011.” Each of these statements was materially false or misleading when made for the aforementioned reasons in addition to the fact that Enerl was already in the process of providing Think with working capital loans in order to keep Think temporarily solvent.

\(^6\) Indeed, according to Defendant Gassenheimer’s own statements in the Company’s Q1 2011 earnings call on May 10, 2011, Enerl’s management was aware of the problems facing EV adoption by at least the second quarter of 2010. See ¶¶188 and 189.
117. The Form 10-Q specifically admitted that financing problems and delays in the deliveries of battery packs to Think would be material by stating: “A delay in the delivery of battery packs to Think or delays in Think’s start-up plans and financing activities, however, would adversely affect our expected 2010 and 2011 revenues and profitability and could have an adverse effect on our business and our investment in Think.” Yet despite the explicit recognition that delayed/reduced orders and financial problems at Think were material, Defendants failed to disclose that deliveries of battery packs to Think were, in fact, being substantially cut back. See ¶85-86. By failing to disclose these known adverse facts regarding Think and its future prospects, Defendants violated SEC Regulation S-K, Item 303(a), and further omitted material facts that were required to be disclosed so as not to render the statements made in the aforementioned materially misleading.

118. Pursuant to Item 303(a)(3)(ii) of Regulation S-K, a registrant must “[d]escribe any known trends or uncertainties . . . that the registrant reasonably expects will have a material . . . unfavorable impact on . . . revenues or income from continuing operations.” 17 C.F.R. § 229.303(a)(3). Instruction 3 to paragraph 303(a) provides that “[t]he discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition.” 17 C.F.R. § 229.303(a), Instruction 3.

119. Defendants disclosed in the Form 10-Q that the increases in net sales for the three months ended and nine months ended September 30, 2010 were due to an increase in EV battery pack commercial sales to Think Global of approximately $4.3 million and $7.7 million, respectively, as shipments to Think Global under Ener1’s Supply Agreement commenced in May 2010. However, Defendants failed to disclose the above-referenced known events, uncertainties
and trends "that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition," in violation of Item 303(a) of Regulation S-K.

120. In connection with the Form 10-Q, Defendants Gassenheimer, Seidel, and Kamischke signed certifications pursuant to Section 302 of the Sarbanes-Oxley Act and Gassenheimer signed a certification pursuant to Section 906 of the Sarbanes-Oxley Act in which they certified that the Form 10-Q did not contain materially false and misleading statements and that Enerl's internal controls over financial reporting were effective. In particular the Section 302 certification provided:

1. I have reviewed this quarterly report on Form 10-Q of Enerl, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be
designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

121. The Section 906 certifications provided:

In connection with the Quarterly Report of Ener1, Inc., a Florida corporation (the Company), on Form 10-Q for the quarter ended September 30, 2010, as filed with the Securities and Exchange Commission (the Report), Charles Gassengermer, Chief Executive Officer of the Company, does hereby certify, pursuant to § 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. § 1350), that to his knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the
122. These certifications of Defendants Gassenheimer, Seidel, and Kamischke were materially false and/or misleading when made because the certifications falsely asserted that the 10-Q did not include material misrepresentations or omissions when, in fact, the 10-Q materially misrepresented and omitted the adverse facts identified in ¶¶116-117.

123. Also on November 4, 2010, the Company held a conference call with investors, analysts, and other market participants to discuss Ener1’s financial results for the third quarter 2010. During the conference call, Defendant Gassenheimer, in relevant part, stated:

Ener1 announced last week, as a subsequent event to the end of the quarter, that its equity ownership stake in Think is now about 44%. This increase in ownership did not impact Ener1’s cash position as the increased equity ownership in Think was obtained in exchange for Ener1 common stock.

*Think is projected to sell 1,700 Think City vehicles in 2010, ramping to approximately 6,000 units in 2011 in the European and North American markets.* Think is additionally exploring other opportunities in the Asian market, especially drive train partnership opportunities in China, and it continues to sell to a wide mix of customers.

Norway is largely a retail market, and due to the favorable avoidance of 100% VAT tax on an imported vehicle with an internal combustion engine, the Think City can achieve an attractive price point.

Additional benefits for Think and all other electric vehicles in other European markets include use of the HOV lane, free parking at or close to choice retail locations, and access to prime charge polls where ICE cars don’t have access.

Additionally, Think is seeing opportunities in the fleet markets. Notably, the recent GE announcement is a prime example of the type of behavior we are now seeing from large corporations and growing opportunities in the fleet sector as a whole.

Think has had over $200 million invested in its product development and now has over 30 million miles of all-electric drive experience. This makes Think one of the most mature drive trains in the industry with a modular platform architecture that can be adapted for numerous plug and play drive train sale opportunities. This has led to a potential ancillary drive train business with opportunities in Japan, China and Europe.
124. In response to a question from an analyst, Defendant Gassenheimer, further stated, in relevant part:

I think in terms of the inside baseball comments, I mean look, 2011 is going to be one of the more exciting years to be around electrification. You’ve got green energy storage really starting to take off and obviously I think our entry into that business has been well timed, and vehicle electrification, you’ve got some very exciting product coming to market with the Leaf, with the Volt. *Clearly Think is coming to North America, and we’re starting production in Elkhart Indiana in the fourth quarter so we’re excited about that. So, I think a lot of the pieces are starting to come together.*

(Emphasis added.)

125. Defendant Gassenheimer’s statements were materially false and/or misleading when made. Specifically, Defendant Gassenheimer omitted the following known material facts: (1) “Think and the EV industry more broadly” were experiencing “structural challenges” that would make EV adoption slower than predicted; (2) management viewed the electric vehicle segment as “look[ing] bleak in the near-term”\(^7\); (3) Think’s sales of EVs were drastically lower than previously expected to the extent that Ener1 was in the process of cutting back its production of batteries. In contrast to these known problems with Think and Think’s future prospects, Defendant Gassenheimer exuded nothing but positivity regarding Think, stating, *inter alia,* “Clearly Think is coming to North America, and we’re starting production in Elkhart Indiana in the fourth quarter so we’re excited about that. So, I think a lot of the pieces are starting to come together.” Moreover, in the earnings call, Defendant Gassenheimer emphasized Think’s projected sales and suggested that Think was selling cars at the anticipated rates: “Think

\(^7\) Indeed, according to Defendant Gassenheimer’s own statements in the Company’s Q1 earnings call, Ener1’s management was aware of the problems facing EV adoption by at least the second quarter of 2010. *See ¶¶85-86.*
is projected to sell 1,700 Think City vehicles in 2010, ramping to approximately 6,000 units in 2011 in the European and North American markets.” In reality, Think was experiencing significant difficulties in selling their then-existing EV inventory. According to Cl 1, as of July 2010, Think’s North American Operations had received a total of 350 electric cars from Think’s Oslo plant and was initially projecting to sell 1,000 units over an 18 month period. However, actual sales were nowhere near this 1,000 target to the extent that by the time Cl 1 left Think in September 2011, Cl 1 believes that at least 100 vehicles of the initial 350 cars were still in inventory. Cl 3 described similar problems at Think, explaining that by November 2010, EnerDel’s production of Think batteries was slowing, and that before the end of 2010, EnerDel had reduced its shifts from three to just one in response to Think’ stagnant sales. In fact, Cl 3 explained that by November 2010, the problems at Think were causing its employees to begin leaving the company. Because of these known adverse facts, Defendant Gassenheimer’s unqualified optimism about Think and its projected future sales were materially false and/or misleading statements.

126. On November 8, 2010, the Company filed a shelf Registration Statement with the SEC on Form S-3\(^8\), and on December 21, 2010 and December 28, 2010 the Company filed

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\(^8\) A shelf registration statement is a filing with the SEC to register a public offering, usually where there is no present intention to immediately sell all the securities being registered. A shelf registration statement permits multiple offerings based on the same registration. With an effective shelf registration statement, when the issuer wants to offer securities, it takes them “off the shelf.” These “shelf takedowns” usually are offered with a base prospectus and a prospectus supplement or supplements. A “base” prospectus is filed in order to comply with the applicable disclosure requirements to have a shelf registration statement declared effective by the SEC staff, with more information to follow. Under SEC Rules 430B and 430C, prospectus supplements are deemed part of, and included in, the registration statement containing the base prospectus to which the prospectus supplement relates at specified dates (generally the earlier of the date the prospectus supplement is first used or the date of the first contract of sale for securities in the offering described in the prospectus supplement). Rules 430B and Rule 430C prescribe that date
amendments to the Registration Statement on Forms S-3/A (collectively the "Registration Statement"). Each Defendant signed the Form S-3 and Forms S-3/A. The Registration Statement was declared effective by the SEC on December 29, 2010.

127. Form S-3 is a streamlined registration form available only to certain well-capitalized and widely followed issuers about which a significant amount of public information is already available. A registrant on Form S-3 accomplishes disclosure in part by incorporating in the prospectus by reference its most recent Form 10-K and interim Forms 10-Q and other documents filed pursuant to the Securities Exchange Act.

128. Item 11(a) to Form S-3 requires that the issuer (registrant) describe in the portion of the registration statement comprising the prospectus:

*any and all material changes in the registrant's affairs* which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders and which have not been described in a report on Form 10-Q...or Form 8-K...filed under the Exchange Act.

(Emphasis added).

129. The primary purpose of the "material changes" disclosure requirement of Item 11(a) is to ensure that the prospectus provides investors with an *update* of the information required to be disclosed in the incorporated Exchange Act filings, including the information provided in those filings concerning known events, uncertainties and trends (SEC Regulation S-K, Item 303(a) (17 CFR §229.303)).

131. In the Registration Statement, the Company stated, in relevant part, the following:

* * *

A significant portion of our revenue is expected to be generated from a limited number of customers, with sales to Think Global representing nearly all of our forecasted automotive revenue for the foreseeable future. We entered into an amended Supply Agreement with Think to supply lithium-ion battery packs for the Think City EV commencing in 2010. We are also a significant investor in Think Holdings, have voting power of approximately 48% of their equity, and we have contractual arrangements with certain other shareholders of Think Holdings which allow them to put their preferred shares in Think Holdings to us in exchange for our common stock. In addition, two of our directors are directors of Think Holdings. We expect Think will become a significant customer in 2011. A delay in the delivery of battery packs to Think or delays in Think’s start-up plans and financing activities, however, would adversely affect our expected 2010 and 2011 revenues and profitability and could have a material adverse effect on our business and our investment in Think. . . .

(Emphasis added.)

132. In the “Material Changes” section of the Registration Statement, the Company stated that “[t]here have been no material changes in our affairs which have occurred since December 31, 2009 and which have not been described in a report on Form 10-Q or Form 8-K filed under the Exchange Act.”

133. On December 30, 2010, the Company filed a Supplemental Prospectus on Form 424B3 pursuant to the shelf Registration Statement pursuant to the shelf Registration Statement filed by Enerl on November 8, 2010 and declared effective on December 29, 2010.

134. In the “Material Changes” section of the Prospectus Supplement, the Company stated that “[t]here have been no material changes in our affairs which have occurred since December 31, 2009 and which have not been described in a report on Form 10-Q or Form 8-K filed under the Exchange Act.”
135. On January 3, 2011, the Company filed a Prospectus Supplement on Form 424B5 pursuant to the shelf Registration Statement filed by Ener1 on November 8, 2010 and declared effective on December 29, 2010.

136. In the “Material Changes” section of the Prospectus Supplement, the Company stated that “[t]here have been no material changes in our affairs which have occurred since December 31, 2009 and which have not been described in a report on Form 10-Q or Form 8-K filed under the Exchange Act.”

137. The Registration Statement and Prospectus Supplements contained statements that were materially false and/or misleading when made. Specifically, the Company failed to disclose that: (1) Think Global lacked adequate capital to continue operating; (2) Think Holdings did not have the ability to raise capital to continue operations; (3) as the Company has since admitted, the current outstanding loans receivable in the amount of $18.1 million and accounts receivable in the amount of $18.4 million due from Think Holdings and Think Global were uncollectible; (4) as the Company has since admitted, the Company’s investment in Think Holdings was impaired in the amount of $73.3 million; (5) as the Company has since admitted, Ener1’s goodwill was impaired in the amount of $51.8 million; (6) “Think and the EV industry more broadly” were experiencing “structural challenges” that would make EV adoption slower than predicted; (7) management viewed the electric vehicle segment as “look[ing] bleak in the near-term”; (8) Think’s sales of EVs were drastically lower than previously expected to the extent that EnerDel had substantially cut back its production of batteries; and (9) the Company lacked adequate internal and financial controls.

138. Moreover, the Registration Statement and Prospectus Supplement materially misrepresented that there had been “no material changes in our affairs” when, in actuality, the
aforementioned adverse facts had arisen and were material and should, therefore, have been disclosed. Defendants’ knowledge of the falsity of the above statements are evidenced by Defendant Gassenheimer’s own incriminating admissions that, by at least as early as the second quarter of 2010, Enerl’s management thought the electric vehicle segment “looked bleak in the near-term” thereby causing management to “sharpen[] [its] emphasis on portfolio mix of products.” In fact, as explained by CI 3, the situation at Think had gotten so bad by November 2010 that substantial numbers of employees began leaving the company due to concerns about Think’s future and by the end of 2010 EnerDel’s manufacturing plant slowed down production from three shifts to one in response to sales struggles at Think. Defendants’ material misstatements and omissions violated SEC Regulation S-K, Item 303(a), and further omitted material facts that were required to be disclosed so as not to render the statements made in the aforementioned materially misleading.

139. On January 10, 2011, Enerl filed a Current Report with the SEC on Form 8-K. The Company’s Current Report on Form 8-K was signed by Defendant Gassenheimer. Therein, the Company, in relevant part, stated:

Item 1.01 Entry into a Material Definitive Agreement.

On January 4, 2011, Enerl, Inc. (“Enerl”) and Investinor AS (“Investinor”) entered into an Expanded Put Right Agreement. Ener 1 may enter into additional similar agreements (collectively, the “Put Agreements”) in connection with the efforts by Think Holdings, AS, a Norwegian company (“Think”), to raise approximately $10 million in bridge financing, which is intended to be subsequently converted into Series B Convertible Preferred Stock (the “Series B Shares”) or other equity in Think. Enerl intends to make a $1.67 million loan in the same bridge financing, which is also intended to be converted into Series B Shares or other equity in Think. Think is a Norwegian based company that

9 These statements came from the Company’s Q1 2011 Earnings Call held on May 10, 2011. See ¶¶188-189.
develops and produces electric vehicles, and is also a significant customer of Ener1. Both Ener1 and Investinor have substantial equity interests in Think.

Pursuant to Investinor's Put Agreement, Investinor agreed to provide $2.5 million in bridge financing to Think and waive certain shareholder rights in Think. (As stated above, it is the intent of the parties for this bridge loan to be converted into Think equity.) As a condition thereto, Ener1 granted Investinor the right to "put" (or exchange) the equity into which such bridge loan is intended to be converted and also the right to put a prior investment Investinor made in Think in August of 2009 ($5.0 million of Series B Shares), in each case, for restricted shares of Ener1 common stock. (Under the Think amended and restated shareholders agreement (previously filed as Exhibit 10.7 on Ener1's Quarterly Report on Form 10-Q filed with the Commission on May 10, 2010), Investinor and certain other investors received an additional right to put their investments made in Think in May of 2010 for restricted shares of Ener1 common stock. Investinor purchased $3.3 million of Series B Shares in May of 2010.) All of the foregoing put rights expire on May 5, 2011.

The price at which Ener1 common stock would be issued in connection with a put would be the 15-day volume weighted average trading price of Ener1 common stock, determined as of the date on which the applicable put notice is delivered (subject to a floor of $4.00). As of the date hereof, Investinor has not elected to exercise its put rights, however, if Investinor exercised its put rights in full today, Ener1 would be obligated to issue approximately 2.7 million shares of Ener1 common stock to Investinor, and in exchange therefore, Ener1 would receive a total of approximately 6.5 million Series B Shares and warrants exercisable for an additional 1.5 million Series B Shares.

Ener1 may enter into additional Put Agreements with investors participating in the remaining balance of Think's bridge financing. These investors, like Investinor, would intend to have their bridge loans converted into Series B Shares, and have the right to put their new Series B Shares to Ener1 for restricted shares of Ener1 common stock. The pricing terms of each put is intended to be the same as the terms given to Investinor as described above. If and to the extent an investor owns Series B Shares that were purchased in August of 2009 (which do not have put rights), it is intended that such investor will receive the right to put 1.08 of such "non-puttable" Series-B Share for each new Series B share purchased.

Ener1 has agreed to register for resale all of the shares of Ener1 common stock that may be issued in connection with these put rights.

The foregoing description of the Put Agreements is qualified in its entirety by the full text of Investinor's Put Agreement, which is attached hereto as Exhibit 10.1, and which is hereby incorporated herein by reference.

If Think is successful in raising the remaining balance of approximately $6.0
million of its bridge financing, then, upon the anticipated conversion of such loans into Series B Shares, Enerl’s corresponding put obligations would be approximately 3.1 million shares of Enerl common stock (using the $4.00 floor price). The foregoing, coupled with all existing put obligations of Enerl, obligates Enerl to issue up to an aggregate of approximately 8.7 million shares of common stock in exchange for a total of approximately 21 million Think Series B Shares and warrants exercisable for approximately 6.7 million Series B Shares. If all of such puts are exercised, Enerl would own approximately 68% of the outstanding shares of Think.

It is possible that, through the eventual exercise of some or all of these put rights, Enerl could become a majority shareholder of Think. If this occurs, Enerl will be required to consolidate Think’s results in its financial statements.

140. The press release omitted material adverse facts relating to Think. Specifically, Defendants failed to disclose that: (1) Think Global lacked adequate capital to continue operating; (2) Think Holdings did not have the ability to raise capital to continue operations; and (3) Enerl’s investment in Think Holdings was materially impaired and of no value. Defendants were required to disclose these adverse facts in order to make Enerl’s announced investment in Think not materially misleading. Indeed, the press release relates to Enerl’s continued investment in a company that Defendants have now admitted was materially and completely impaired at the time this press release was issued, see infra ¶187, yet Defendants failed to disclose even any of the aforementioned problems that were the cause of the impairment. Thus, Defendants’ statements regarding the Company’s recent investment in Think were materially misleading because, among other things, the press release failed to disclose that Enerl’s investment in Think was materially impaired or provide any information about the resulting risk exposure.

141. On February 11, 2011, Enerl filed a Form S-3 Registration Statement with the SEC. The Registration Statement was signed by Defendants Gassenheimer, Seidel, Kamischke, Baker, Fuhr, Brownell and Snyder.
142. The Form S-3 incorporated by reference its most recent Form 10-K and interim Forms 10-Q and other documents filed pursuant to the Securities Exchange Act.

143. In the “Material Changes” section of the Registration Statement, the Company stated that “[t]here have been no material changes in our affairs which have occurred since December 31, 2009 and which have not been described in a report on Form 10-Q or Form 8-K filed under the Exchange Act.”

144. The Registration Statement also disclosed the following principle risk factors, warning of risks that certain adverse events may occur, even though such risks had actually already materialized.

*Viable markets for our products may never develop, may take longer to develop than we anticipate or may not be sustainable.*

Our energy products and technologies target new and developing markets, and we do not know the extent to which these markets, including the market for electric vehicles (EVs) and hybrid electric vehicles (HEVs), will develop. We currently have one commercially developed product, which began production in 2010. *If viable markets fail to develop or develop more slowly than we anticipate, we may be unable to recover the losses we will have incurred to develop our products and may be unable to achieve profitability. In addition, the development of a viable market for our products may be impacted by many factors which are partly or totally out of our control, including:*

- the cost competitiveness of our products;
- consumer reluctance to try a new product;
- regulatory requirements;
- barriers to entry created by existing energy providers;
- government funding of electric vehicle technologies; and
- emergence of newer, more competitive technologies and products.

*Our future growth is dependent upon consumers’ willingness to adopt electric vehicles.*
Our growth is highly dependent upon the adoption by consumers of EVs. If the market for EVs does not develop as we anticipate or develops more slowly than we expect, our business, operating results, financial condition and prospects will be harmed. The market for EVs is relatively new, rapidly evolving, characterized by rapidly changing technologies, price competition, additional competitors, evolving government regulation and industry standards, frequent new vehicle announcements and changing consumer demands and behaviors. Factors that influence the rate at which consumers adopt EVs include:

- perceptions about EV quality, safety (in particular with respect to lithium-ion battery packs), design, performance and cost, especially if adverse events or accidents occur that are linked to the quality or safety of EVs and/or lithium-ion battery packs;
- the limited range over which EVs may be driven on a single battery charge;
- the decline of an EV's range resulting from deterioration over time in the battery's ability to hold a charge;
- concerns about electric grid capacity and reliability, including access to charging stations;
- improvements in the fuel economy of the internal combustion engine;
- the environmental consciousness of consumers;
- volatility in the cost of oil and gasoline; and
- government regulations and economic incentives promoting fuel efficiency and alternate forms of energy.

The influence of any of the factors described above may cause current or potential consumers not to purchase EVs, which would materially adversely affect our business, operating results, financial condition and prospects.

We depend on a limited number of customers, including Think Global for a significant portion of our revenue, and the loss of our most significant or several of our smaller customers could materially adversely affect our business and results of operation.

A significant portion of our revenue is expected to be generated from a limited number of customers, with sales to Think Global representing nearly all of our forecasted automotive revenue for the foreseeable future. We entered into an amended Supply Agreement with Think to supply lithium-ion battery packs for the Think City EV commencing in 2010. We are also a significant investor in
Think Holdings, have voting power of approximately 48% of their equity, and we have contractual arrangements with certain other shareholders of Think Holdings which allow them to put their preferred shares in Think Holdings to us in exchange for our common stock. In addition, two of our directors are directors of Think Holdings. We expect Think will become a significant customer in 2011. A delay in the delivery of battery packs to Think or delays in Think's start-up plans and financing activities, however, would adversely affect our expected 2010 and 2011 revenues and profitability and could have a material adverse effect on our business and our investment in Think. Think, in its corporate history, has been through insolvency proceedings on three separate occasions, including most recently in 2009. Think is increasing production and entering new markets and faces the risks associated with the launch of a new vehicle, including achieving production levels, managing production costs, managing their supply chain, financing the costs associated with increased production levels and higher working capital requirements, gaining consumer acceptance, delivering vehicles on time, servicing new customers, satisfying warranty claims and other issues related to manufacturing, selling and servicing automobiles; through our ownership in Think Holdings, we are also exposed to these risks. Think also faces many of the same (or similar) risks as are inherent in our business. Moreover, based on our current ownership interest in Think Holdings and the possibility that we may eventually acquire a majority interest in and control of Think Holdings, we are exposed to any additional risks that may be inherent in any consolidation of Think Holdings with our company. Although the composition of our customer base will vary from period to period, we expect that most of our automotive revenue will continue, for the foreseeable future, to come from a relatively small number of customers.

(Emphasis added).

145. The Registration Statement contained statements that were materially false and/or misleading when made. Specifically, the Company failed to disclose or indicate that: (1) Think Global lacked adequate capital to continue operating; (2) Think Holdings did not have the ability to raise capital to continue operations; (3) as the Company has since admitted, the current outstanding loans receivable in the amount of $18.1 million and accounts receivable in the amount of $18.4 million due from Think Holdings and Think Global were uncollectible; (4) as the Company has since admitted, the Company's investment in Think Holdings was impaired in the amount of $73.3 million; (5) as the Company since admitted, the Company improperly recognized revenue that was not realizable in connection with transactions with Think Holdings
and Think Global during 2010; (6) as the Company has since admitted, Ener1’s goodwill was impaired in the amount of $51.8 million; (7) “Think and the EV industry more broadly” were experiencing “structural challenges” that would make EV adoption slower than predicted; (8) since the second quarter 2010, management viewed the electric vehicle segment as “look[ing] bleak in the near-term;”\textsuperscript{10} and (9) Think’s sales of EVs were drastically lower than previously expected to the extent that Ener1 had cut back its production of batteries by approximately two thirds.

Moreover, the Registration Statement materially misrepresented that there had been “no material changes in our affairs” when, in actuality, the aforementioned adverse facts had arisen. Defendants’ knowledge of the falsity of the above statements are evidenced by: (1) Defendant Gassenheimer’s own incriminating admissions that, by at least as early as the second quarter of 2010, Ener1’s management thought the electric vehicle segment “looked bleak in the near-term” thereby causing management to “sharpen[] [its] emphasis on portfolio mix of products”\textsuperscript{11}; (2) the continued and increasingly large loans Ener1 was in the process of extending to Think in order to keep Think solvent; (3) the fact that, in December 2010 or January 2011, EnerDel’s employees were told that Think was having issues and were told “that the price point for their vehicles was too high;” and (4) as belatedly admitted by the Company in its 2010 Form10-K filed March 10, 2011, Ener1 halted production of batteries to Think since January 2011 as a result of Think’s request that Ener1 stop battery shipments. CI 3 further described that the situation at Think had gotten so dire by November 2010 that substantial numbers of

\textsuperscript{10} These statements came from the Company’s Q1 2011 Earnings Call.

\textsuperscript{11} These statements came from the Company’s Q1 2011 Earnings Call.
employees began leaving the company due to concerns about Think’s future and additionally explained that by the end of 2010 EnerDel’s manufacturing plant slowed down production from three shifts to one in response to sales struggles at Think. Moreover, in January 2011, CI 5 recalled having voiced concerns about Ener1’s involvement in Think to Defendant Gasseheimer, stating that if the Think Investment “falls through, as it looks like it might,” Ener1 would not have the funding to support the initiatives it was then planning.

147. Defendants’ material misstatements and omissions further violated SEC Regulation S-K, Item 303, and further omitted material facts that were required to be disclosed so as not to render the statements made in the aforementioned materially misleading.

148. In particular the following additional statements were rendered materially misleading by Defendants failure to disclose the aforementioned adverse facts:

- We expect Think will become a significant customer in 2011. A delay in the delivery of battery packs to Think or delays in Think’s start-up plans and financing activities, however, would adversely affect our expected 2010 and 2011 revenues and profitability and could have a material adverse effect on our business and our investment in Think.

- Our growth is highly dependent upon the adoption by consumers of EVs. If the market for EVs does not develop as we anticipate or develops more slowly than we expect, our business, operating results, financial condition and prospects will be harmed.

149. Defendants only warned that these material adverse events might occurred when they in fact had already materialized.

150. On March 10, 2011, Ener1 issued a press release entitled, “Ener1 Reports Fourth Quarter and Year-End Results for 2010.” Therein, the Company, in relevant part, stated:

Ener1, Inc. (NASDAQ: HEV), a leading manufacturer of lithium-ion energy storage systems for transportation, utility grid and industrial applications, today announced financial results for the fourth quarter and full year ending December 31, 2010. Net sales were $33.1 million in the year’s final quarter, an increase of 202% over net sales of $11.0 million in the fourth quarter of 2009. For fiscal year
2010, net sales were $77.4 million, an increase of 122% over net sales of $34.8 million for 2009. Gross profit margin improved to 25.8% in the fourth quarter of 2010, up from 9.8% in the fourth quarter of 2009. For the full year, gross profit margin increased to 17.9% from 11.7% in 2009.

"We believe our financial results demonstrate that 2010 was a successful year for Ener1," said Ener1 Chairman and CEO Charles Gassenheimer. "Our strategy of creating three business units-transportation, grid and small-pack has put us on the right track by bringing a laser focus to our solutions-based execution." Gassenheimer added: "But, Ener1 is more than just a lithium-ion battery manufacturer. Our cells and our modular packaging design are distinct advantages over our competitors, and we have used this advantage to create best-in-class product suites for each business segment. This approach has helped us secure incremental orders from existing customers, and quickly ramp-up to win opportunities from customers in new industry segments."

***

2010 highlights:

- Secured $40MM supply agreement with MGTES division of Russia’s Federal Grid Company, as well as a second MOU to explore the development of additional projects
- Finalized Zhejiang Wanxiang Ener1 Power Systems Ltd. joint venture agreement in China
- Developing secondary use applications for community and home energy storage with Duke Energy
- Launched three separate grid energy storage demonstration projects in Japan with ITOCHU Corporation
- Invested in third manufacturing facility based near Indianapolis
- Completed $187.3MM in capital raises through strategic and private investments

(Emphasis added).

151. On March 10, 2011, Ener1 filed its Annual Report with the SEC on Form 10-K for the 2010 fiscal year. The Company’s Form 10-K was signed by Defendants Gassenheimer, Seidel, Kamischke, Baker, Fuhr, Brownell, and Snyder, and reaffirmed the Company’s financial results announced that same day. In the Form 10-K, Defendants reported the Company’s accounts receivable for the year ended December 31, 2010 as $23.882 million, its loan receivable as $14.048 million, its investment in unconsolidated entity (i.e., Think Holdings) as $58.625 million, and its goodwill as $51.845 million.
152. With respect to Ener1’s investment in Think Holdings, the 2010 Form 10-K disclosed the following:

**Investment in Unconsolidated Entity**

***

At December 31, 2010, we controlled approximately 48% of the outstanding voting power in Think Holdings and Mr. Gassenheimer and Mr. Baker, who serve on the Board of Ener1, also serve on the board of directors of Think Holdings. We continue to monitor our activity with Think Holdings for potential transactions that may require the consolidation of the accounts of Think Holdings with the accounts of Ener1.

The components of the investment in the unconsolidated entity are as follows (in thousands):

<table>
<thead>
<tr>
<th>December 31,</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance, beginning of year</td>
<td>$19,177</td>
<td>$   -</td>
</tr>
<tr>
<td>Cash investment, SISA</td>
<td>5,752</td>
<td>13,022</td>
</tr>
<tr>
<td>Equity investment</td>
<td>-</td>
<td>5,830</td>
</tr>
<tr>
<td>Cash investment, Second SISA</td>
<td>11,867</td>
<td>-</td>
</tr>
<tr>
<td>Cash investment, Other</td>
<td>9</td>
<td>325</td>
</tr>
<tr>
<td>Ener1 Put Option, at inception</td>
<td>4,945</td>
<td>-</td>
</tr>
<tr>
<td>Ener1 Put Option, exercised</td>
<td>12,400</td>
<td>-</td>
</tr>
<tr>
<td>Rockport Put Option, exercised</td>
<td>4,475</td>
<td>-</td>
</tr>
<tr>
<td>Balance, end of year</td>
<td>$58,625</td>
<td>$19,177</td>
</tr>
</tbody>
</table>

In accordance with applicable accounting standards, we have accounted for this investment under the cost method, as the Series B Stock is not considered to be equivalent to common stock for accounting purposes. We review this investment for potential impairment at each reporting period using a three-step process. In the first step we determine if impairment indicators are present. If an impairment indicator is present then the second step of the test is to determine if the impairment is temporary or other than temporary. If the impairment is other than temporary, then the last step is to determine the fair value of the investment and record an impairment loss for the difference between the fair value and the cost of the investment.
Based on our review of this investment at December 31, 2010, we determined no impairment indicators were present and as a result we are not estimating the fair value of the investment at December 31, 2010 and concluded that the investment is not subject to impairment. We continue to evaluate whether events and circumstances have occurred to determine if impairment indicators are present.

(Emphasis added.)

153. With respect to Ener1's accounts receivable, the 2010 Form 10-K stated as follows, in pertinent part:

**Accounts Receivable**

As of December 31, 2010, the accounts receivable balance with Think Global totaled approximately $13.6 million, of which $8.5 million is past due. As of February 28, 2011, the accounts receivable balance is approximately $14.3 million, all of which is past due. As of December 31, 2010 and February 28, 2011, we have not established an allowance for doubtful accounts as management believes the accounts receivable balance is collectible. Although there remains a possibility that we may receive cash in payment of these past due accounts receivables, we currently expect to accept additional equity in Think Holdings for at least a portion of these receivables.

(Emphasis added.)

154. With respect to Ener1's loans receivable, the 2010 Form 10-K disclosed the following:

**Loan Receivable**

In October 2010, we made short-term working capital loans to Think Holdings totaling $6.4 million, with an interest rate of 5.0% per annum, originally scheduled to mature on December 31, 2010. In November 2010, we issued 625,000 shares of Enerl common stock to an existing debtor of Think Holdings in exchange for that debtor's $2.5 million receivable from Think Holdings, with an interest rate of 5.0% per annum, originally scheduled to mature on December 31, 2010. We may, at our option, convert the foregoing loans, which total approximately $9.0 million, including accrued and unpaid interest, into shares of Think Holdings Series B Stock.

On February 28, 2011, we extended the maturity date of the foregoing loans made to Think Holdings that were originally scheduled to mature on December 31, 2010 to mature on May 1, 2011. In November 2010, we entered into a revolving line of credit agreement (Revolving LOC Agreement) with Think Holdings and established a line of credit for Think Holdings in the aggregate principal amount of $5.0 million, with an original maturity date of February 28, 2011. On February
28, 2011, we amended the Revolving LOC Agreement (Amended Revolving LOC Agreement) with Think Holdings and increased the principal amount from $5 million to $15 million and extended the maturity date to March 31, 2011. All funds advanced to Think Holdings under the Revolving LOC Agreement and the Amended Revolving LOC Agreement bear interest at a rate of 12% per annum and are secured by the assets and properties of Think North America, Inc., an indirect subsidiary of Think Holdings, pursuant to a security agreement. During January 2011, we advanced approximately $2.8 in working capital loans to Think Holdings and on February 28, 2011, in connection with the amendment to the Revolving LOC, we applied the working capital advances to the outstanding balance pursuant to the Amended Revolving LOC Agreement. Think Holdings has currently borrowed $7.8 million under the Amended Revolving LOC Agreement. On March 9, 2011, we extended the maturity date of the Amended Revolving LOC Agreement from March 31, 2011 to May 1, 2011.

The components of the loan receivable, including accrued interest receivable, are as follows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2010</td>
</tr>
<tr>
<td>Balance, beginning of year</td>
<td>$ -</td>
</tr>
<tr>
<td>Advances</td>
<td>5,000</td>
</tr>
<tr>
<td>Repayments</td>
<td>-</td>
</tr>
<tr>
<td>Other</td>
<td>9,048</td>
</tr>
<tr>
<td>Balance, end of year</td>
<td>$14,048</td>
</tr>
</tbody>
</table>

With respect to the Company’s goodwill, the 2010 Form 10-K stated as follows, in pertinent part:

**Impairment of Goodwill**

Goodwill represents the difference between the purchase price paid for an acquisition and the fair value of the net assets acquired in a business combination. Goodwill is not amortized, but is tested for impairment at the reporting unit level (operating segment or one level below an operating segment) annually, unless an event occurs that would cause us to believe the value is impaired at an interim date.

We perform a two-step process impairment test. In the first step, we compare the fair value of the reporting unit to its carrying value, including goodwill. We generally determine the fair value of our reporting units using the income approach methodology of valuation that includes the discounted cash flow method. This valuation method requires a projection of revenue, operating expenses, and capital expenditures over a five to ten year period. In addition, management estimates the weighted average cost of capital to determine an appropriate discount rate. If the carrying value of the net assets assigned to the
reporting unit exceeds the fair value of the reporting unit, then the second step of the impairment test is performed in order to determine the implied fair value of the reporting unit’s goodwill. If the carrying value of a reporting unit’s goodwill exceeds its implied fair value, then the company records an impairment loss equal to the difference.

Our annual impairment test as of October 1, 2010, indicated the fair value of each operating segment exceeded the carrying value, including goodwill. As such, the Company’s goodwill is not subject to impairment as of October 1, 2010. We continue to evaluate whether events and circumstances have occurred that indicate the balance of goodwill may not be recoverable. Such evaluations for impairment are significantly impacted by estimates of future revenues, costs and expenses as well as other factors. A significant change in these estimates could result in an impairment of goodwill.

* * *

We have approximately $51.8 million in goodwill as of December 31, 2010. As of December 31, 2010, we believe our goodwill is not impaired, however, changes in the economy, the industries in which we operate and our own relative performance could change the assumptions used to evaluate goodwill. In the event that we determine that goodwill has been impaired, we would recognize an impairment charge equal to the amount by which the carrying amount of the goodwill exceeds the implied fair value.

Note 6 – Intangible Assets and Goodwill

* * *

The changes in the carrying amount of goodwill for 2010 and 2009 are summarized below (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>December 31, 2010</th>
<th>December 31, 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance, beginning of year</td>
<td>$51,019</td>
<td>$48,674</td>
</tr>
<tr>
<td>Purchase price adjustments</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Translation and other</td>
<td>826</td>
<td>2,343</td>
</tr>
<tr>
<td>Balance, end of year</td>
<td>$51,845</td>
<td>$51,019</td>
</tr>
</tbody>
</table>

156. The $51.8 million in goodwill was assigned to Ener l’s battery operating segment reporting unit. With respect to the Company’s operating segments the Form 10-K disclosed:

Operating segments are designed to allocate resources internally and provide a framework for management responsibility. Operating segments are defined as components of an enterprise about which separate financial information is
available that is evaluated regularly by the chief operating decision maker, or
decision making group, in deciding how to allocate resources and in assessing
performance. Our chief operating decision maker is our Chief Executive Officer.

As of December 31, 2010, we have identified three reportable operating
segments: battery, fuel cell and nanotechnology. The battery business designs,
develops and manufactures high-performance, prismatic, rechargeable,
lithium-ion batteries and battery systems for energy storage in the
transportation, grid energy storage and small pack, or consumer cell products
market. The fuel cell business develops and markets fuel cells and fuel cell
systems. The nanotechnology business develops nanotechnology related
manufacturing processes and materials.

(Emphasis added).

157. With respect to the Company’s revenue recognition, the 2010 Form 10-K
disclosed the following:

Revenue Recognition
Revenue is recognized when persuasive evidence of a sales arrangement exists,
the price is fixed or determinable, title and risk of loss are transferred,
collectability is reasonably assured, product returns are reasonably estimable
and there are no remaining significant obligations or customer acceptance
requirements. When a sale arrangement contains multiple elements, we evaluate
the agreement to determine if separate units of accounting exist within the
arrangement. If separate units of accounting exist within the arrangement, we
allocate revenue to each element based on the relative fair value of each of the
elements.

(Emphasis added).

158. Additionally, the Company’s 2010 Annual Report on Form 10-K, in relevant part,

stated:

Our primary products for the transportation market consist of battery solutions for
HEVs, PHEVs, EVs and other vehicles such as trucks and buses. In 2007,
pursuant to a supply agreement (the Think Supply Agreement) with Think Global,
we began developing a lithium-ion battery pack designed specifically for the
Think City EV. Think Global refinanced its operations in August 2009 after
reorganization under Norwegian law. In September 2009, we amended the
existing Think Supply Agreement which provided us with, among other rights, an
exclusive right to supply battery packs for a certain period and a right of first
refusal if Think Global seeks to obtain battery supplies from other battery
suppliers. In May 2010, we commenced commercial production and shipment of
lithium-ion battery packs for Think Global’s Think City electric vehicle utilizing
During 2010, we shipped over 1,000 battery packs to Think Global. However, in January 2011, we temporarily stopped shipping battery packs to Think Global at their direction until the company rebalanced its overall inventory levels for the Think City in Europe and the United States.

(Emphasis added).

159. Finally, in the 2010 Form 10-K Ener1 represented that its internal control over financial reporting was effective:

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We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports we file or submit under the Securities Exchange Act of 1934, as amended (Exchange Act), is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms and that such information is accumulated and communicated to our management including our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer, as appropriate, to allow timely decisions regarding required disclosure.

As of December 31, 2010, we carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Exchange Act Rules 13a-15(e) and 15d-15(e). This evaluation was done under the supervision and with the participation of our management, including our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer. Based on this evaluation, our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer have concluded that as of December 31, 2010, such disclosure controls and procedures were effective.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting for the Company (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)). Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of our financial statements in accordance with
generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company’s assets that could have a material effect on our financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

Our management has assessed the effectiveness of the Company’s internal control over financial reporting as of December 31, 2010. In making its assessment of internal control over financial reporting, management used the criteria described in Internal Control – Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this evaluation, management concluded that the Company’s internal control over financial reporting was effective as of December 31, 2010.

(Emphasis added).

160. The statements contained in the press release and Form 10-K were materially false and/or misleading when made because Defendants failed to disclose or indicate that: (1) Think Global lacked adequate capital to continue operating; (2) Think Holdings did not have the ability to raise capital to continue operations; (3) as the Company has since admitted, the current outstanding loans receivable in the amount of $18.1 million and accounts receivable in the amount of $18.4 million due from Think Holdings and Think Global were uncollectible; (4) as the Company has since admitted, the Company’s investment in Think Holdings was impaired in the amount of $73.3 million; (5) as the Company has since admitted, the Company improperly recognized revenue that was not realizable in connection with transactions with Think Holdings and Think Global during 2010; (6) as the Company has since admitted, Ener1’s goodwill was impaired in the amount of $51.8 million; (7) “Think and the EV industry more broadly” were experiencing “structural challenges” that would make EV adoption slower than predicted; (8)
since the second quarter 2010, management viewed the electric vehicle segment as "look[ing] bleak in the near-term"\textsuperscript{12}; (9) the Company's financial statements were not prepared in accordance with GAAP; (10) the Company lacked adequate internal and financial controls; and (11) as a result of the above, the Company's financial statements were materially false and misleading at all relevant times.

161. Additionally, the following specific statements were materially false and misleading, as so admitted by Defendants in Ener1's August 15, 2011 and November 10, 2011 Form 8-Ks:

a) Based on our review of this investment at December 31, 2010, we determined no impairment indicators were present and as a result we are not estimating the fair value of the investment at December 31, 2010 and concluded that the investment is not subject to impairment.

b) Revenue is recognized when persuasive evidence of a sales arrangement exists, the price is fixed or determinable, title and risk of loss are transferred, collectibility is reasonably assured, product returns are reasonably estimable and there are no remaining significant obligations or customer acceptance requirements.

c) As of December 31, 2010, the accounts receivable balance with Think Global totaled approximately $13.6 million, of which $8.5 million is past due. As of February 28, 2011, the accounts receivable balance is approximately $14.3 million, all of which is past due. As of December 31, 2010 and February 28, 2011, we have not established an allowance for doubtful accounts as management believes the accounts receivable balance is collectible.

d) We have approximately $51.8 million in goodwill as of December 31, 2010. As of December 31, 2010, we believe our goodwill is not impaired, however, changes in the economy, the industries in which we operate and our own relative performance could change the assumptions used to evaluate goodwill.

\textsuperscript{12} These statements came from the Company's Q1 2011 Earnings Call.
e) [I]n January 2011, we temporarily stopped shipping battery packs to Think Global at their direction until the company rebalanced its overall inventory levels for the Think City in Europe and the United States.

f) Our management has assessed the effectiveness of the Company’s internal control over financial reporting as of December 31, 2010.... Based on this evaluation, management concluded that the Company’s internal control over financial reporting was effective as of December 31, 2010.

(Emphasis added).

162. Additionally, in the Form 10-K, Defendants materially understated Enerl’s losses and expenses and instead overstated its revenues, overstated its accounts receivables, overstated it loans receivable, overstated the value of its goodwill, and overstated the fair value of its financial instruments. The falsity of these financial statements is undeniable as Defendants have admitted in the August 15, 2011 and November 10, 2011 Forms 8-K. See infra ¶¶209, 216.

163. Defendants had knowledge of Think Holdings’ increasingly problematic financial position and had knowledge of Think’s desperately low sales figures and therefore acted knowingly or recklessly in making the materially false and misleading statements identified in ¶¶160-161. Indeed, as admitted by Defendant Gassenheimer, beginning as early as the second quarter of 2010, Enerl management had identified “structural challenges” at Think and were aware that EV adoption would be slower than predicted. Moreover, CI 1 explained that “the cars weren’t selling fast enough to keep operations afloat” at Think. CI 3 further described that the situation at Think had gotten so dire by November 2010 that substantial numbers of employees began leaving the company due to concerns about Think’s future and additionally explained that by the end of 2010 EnerDel’s manufacturing plant slowed down production from three shifts to one in response to sales struggles at Think. CI 3 additionally explained that in December 2010 or January 2011, “we [EnerDel’s employees] were told that Think was having issues.” CI 3 started getting nervous about EnerDel’s future around the beginning of 2011. “We had a lot of
inventory at Think's plant," CI 3 explained. Relatedly, in January 2011, CI 5 recalled having voiced concerns about Ener1's involvement in Think to Defendant Gasseheimer, stating that if the Think Investment falls through, as it looks like it might," Ener1 would not have the funding to support the initiatives it was then planning. The confidential informants' representations on these matters are corroborated by Think's decision by January 2011 to halt additional battery pack orders from Ener1.

164. In addition, beginning in October 2010 and continuing into November 2010, January 2011, and February 2011, Ener1 extended repeated and increasingly sizeable loans to Think in an apparent attempt to provide life-support to the flagging company. See supra ¶¶54-61. Ener1's continued loans and loan extensions to Think provided Defendants with specific knowledge of Think's financial position. First, the fact that Think required working capital demonstrates that the company was having liquidity problems. Second, prior to lending the funds to Think, Ener1 would have (or certainly should have) assessed the risk associated with such loans. In assessing the likelihood that Think would repay its loans, Defendants must have (or certainly should have) discovered that Think was experiencing devastatingly low sales volumes and difficulties in obtaining funding from sources other than Ener1.

165. The identified structural challenges and EV adoption delays, the continually disappointing EV sales, the exodus of concerned employees, the production cutbacks at EnerDel, and Think's inability to self-sustain sufficient working capital, were events known by Defendants and were required to be disclosed so as not to make the aforementioned statements materially false and/or misleading. Moreover, these adverse facts constituted, impairment indicators, triggering events and circumstances which indicated that the Company's loans receivable, accounts receivable, goodwill, and equity investment were, in fact, impaired.
Nevertheless, Defendants continued to understate the Company’s losses and expenses and, instead, overstated its revenues, overstated its accounts receivables, overstated its loans receivable, overstated the value of its goodwill, and overstated the fair value of its investment in Think Holdings and financial instruments.

166. Defendants, as executive officers and/or directors of Ener1 were intimately involved in Think’s business and strategy. Gassenheimer, Seidel, and Baker, in particular, had substantial involvement in Think and, according to the accounts of various CIs were responsible for reviewing Think’s sales data and financial information.

167. Defendants Gassenheimer and Baker, as members of Think’s board, were largely responsible for planning Think’s business strategies and for assessing Think’s financial position. As CI 2 emphasized, it was the duty of Think’s board to “review the financials” and make decisions as to whether Think could remain solvent or instead would have to file for bankruptcy. In fact, according to CI 2, a main issue at Think was whether the board believed “there was sufficient liquidity to keep the company afloat.” CI 2 participated in and prepared materials for Think board meetings. The materials CI 2 prepared related to financial information about Think, including the condition of the company “on a going forward basis and on an actual basis.” CI 1 also “contributed [financial] data for [Think] board meetings, including sales forecasts,” and CI 1 explained that CI 1’s “forecasts were not rosy” due to the severe lack of sales. Both CI 1 and CI 2 said that Defendants Gassenheimer and Baker, as board members of Think, were regular attendees of Think’s board meetings and were therefore involved in reviewing Think’s sales figures and financial information. CI 2 explained that Think’s board had frequent meetings, stating, “When you have a business that was in trouble – as we did – we had board meetings on a
very regular basis.” Baker was exposed to additional information regarding Think based on his role as a consultant for Think.

168. CI 1 described Gassenheimer as “very active in Think” and CI 6 also described Gassenheimer as having ownership of all Think-related matters. CI 5 and CI 8 similarly explained that Gassenheimer was particularly attentive to matters involving Think. Both CI 5 and CI 8 specifically stated that “Think was Charles’s baby.” CI 5 said CI 5 spent many sessions in Gassenheimer’s office participating in one-on-one strategies with Gassenheimer in regard to Think. As CI 5 recalled “we were struggling to make Think more attractive to consumers.”

169. Multiple informants have also explained that Gassenheimer was not only involved in Think’s business strategies but was also involved in reviewing and securing financing for Think. CI 1, CI 2 (Think’s CFO), and Gassenheimer participated in “three-way conversations” by phone, email, and in person, “sometimes a few times a month” to discuss Think’s financial and operational situation. CI 1 stated that, in addition to participating in Think’s board meetings, Gassenheimer participated in executive-level meetings with Think’s CEO, Think’s CFO, and other Think executives at the Dearborn offices, on a frequent basis. CI 1 also explained that Gassenheimer would frequently communicate with Think’s CFO on an individual basis about Think’s finances. In response to increasingly disappointing demand for Think’s cars, CI 1 and CI 2 explained that Think’s CEO, Think’s CFO, and Defendant Gassenheimer began “actively pursuing financing” from potential investors by participating in roadshows.

170. Moreover, CI 7 recalled that Gassenheimer was “very hands on” and that Ener1’s acquisition/investment strategy was “very top driven.” CI 5 also believed that Gassenheimer personally conducted (or at least closely oversaw) the financial analysis on Think both prior to
Enerl investing in Think, and throughout the course of the business relationship between the companies. According to CI 5, Gassenheimer was advised about the “risks and downsides” of Think by various personnel on a regular basis, but stubbornly refused to heed such advice, because he was “drinking his own Kool-Aid.” In January 2011, CI 5 directly expressed concerns about Think to Gassenheimer, stating that if the Think investment “falls through, as it looks like it might,” Enerl would not have the funding to support the initiatives it was then planning.

171. CI 5 also said that Defendant Seidel, Enerl’s CFO, played a key role in assessing and monitoring the Think investment. However, in stark contrast to Gassenheimer’s enthusiasm for Think, CI 5 described that “Jeff [Seidel] hated Think” because Seidel did not believe Think was a viable investment. CI 5 explained that Seidel would sometimes refer to Think as “Stink.” CI 5 further explained that Seidel “was adamant with Charles in expressing his [i.e., Seidel’s] distaste for Think.”

172. Pursuant to GAAP (Accounting Standards Codification (“ASC”) 320-10-35-25, Enerl was required to “evaluate whether an event or change in circumstances has occurred” during 2010 “that may have a significant adverse effect on the fair value of the investment [in Think Holdings] (an impairment indicator).” Impairment indicators specifically enumerated under GAAP (ASC 320-10-35-27) include (1) “[a] significant deterioration in the earnings performance, credit rating, asset quality, or business prospects of the investee,” (2) “[a] significant adverse change in the ... economic ... environment of the investee,” (3) “[a] significant adverse change in the general market condition of ... the industry in which the investee operates,” (4) “[f]actors that raise significant concerns about the investee’s ability to continue as a going concern, such as negative cash flows from operations, working capital deficiencies, or noncompliance with statutory capital requirements or debt covenants.” Each of
the impairment indicators were in existence, as of December 31, 2010 as Defendants, particularly Gassenheimer, Baker and Sediel, were aware. See ¶¶247-252 (discussing GAAP and Defendants' scienter).

173. Under GAAP, impairment of receivables shall be recognized when, based on all available information, it is probable that a loss has been incurred based on past events and conditions existing at the date of the financial statements. ASC 310-10-35-4. ASC 450-20, Loss Contingencies, requires recognition of a loss when (1) information available before the financial statements are issued indicates that it is probable that an asset has been impaired at the date of the financial statements, and (2) the amount of the loss can be reasonably estimated. ASC 310-10-35-8. If, based on current information and events, it is probable that the entity will be unable to collect all amounts due according to the contractual terms of the receivable, a loss must be recognized. ASC 310-10-35-10. The conditions for accrual of a loss are not intended to be so rigid that they require virtual certainty before a loss is accrued. ASC 310-10-35-19. They require only that it be probable that an asset has been impaired or a liability has been incurred and that the amount of loss be reasonably estimable. Id. Probable does not mean virtually certain. Id. Defendants have admitted that it was probable Enerl's loans receivable and accounts receivable from Think were not collectible as of December 31, 2010. Based on the circumstances that at existed at the time Defendants knew, or were reckless in not recognizing, same. See ¶¶247-252 (discussing GAAP and Defendants' scienter).

174. GAAP (ASC 605-10-25-1) provides that revenue is not recognizable until realized or realizable and earned. SEC Staff Accounting Bulletin (“SAB”) provides that revenue generally is realized or realizable when: (1) persuasive evidence of an arrangement exists, (2) delivery has occurred or services have been rendered, (3) the seller's price to the buyer is fixed.
or determinable, and (4) collectibility is reasonably assured. If collection is not reasonably assured the general principle in FASB Concepts Statement No. 5, *Revenue and Measurement in Financial Statements of Business Enterprises*, of being realized or realizable, is not met, and revenue recognition is precluded until collection is reasonably assured. See *id.*; ASC 605-10-25-10. The customer’s financial condition is an indicator of both its ability to pay and, in turn, whether or not revenue is realizable. Grant Thorton, *Revenue Recognition, A guide to navigating through the maze*, at 14. Defendants have admitted that revenues recognized from Ener1’s sales of battery packs to Think in 2010 and the first quarter 2011 were not realizable and thus, were recognized in violation of GAAP. Based on the circumstances and events that existed at the time Defendants knew, or were reckless in not recognizing, same. See ¶247-252 (discussing GAAP and Defendants’ scienter).

175. GAAP (ASC 350-30-35) requires that a company review its goodwill to determine if the asset is impaired. A goodwill impairment exists when the carrying amount of goodwill exceeds its implied fair value. 350-20-35-2. *Goodwill must be tested at least annually for impairment, and more often when events or circumstances arise that indicate the goodwill could be impaired.* ASC 350-20-35-30. One example of such events or circumstances – “triggering events” – that indicate goodwill testing is “[a] significant adverse change… in the business climate” of an entity. ASC 350-20-35-30. Clearly, by the end of 2010, the business climate for Ener1’s Battery segment to which goodwill from the EnerDel and EnerTech acquisitions was allocated in 2008 had changed significantly for the worse due to the deteriorating situation at Think, and Defendants knew about it. In determining fair value of its reporting units the Company utilized and utilizes the income approach which measures the discounted expected cash flows to the reporting unit. Clearly, at year end 2010 and first quarter
ending 2011, the expected cash flows from EV sales had greatly diminished. Think was taking far less batteries from Ener1 -- by January 2011, it was taking no batteries -- and EnerDel had reduced production from three shifts to no more than one shift. Clearly, goodwill impairment testing was indicated at least by December 2010 and goodwill was in fact impaired by such time if not much earlier. And there is a strong inference that Defendants were aware of these facts or were extremely reckless in not recognizing these facts if they were in fact unaware of them. See ¶\(\text{J247-252}\) (discussing GAAP and Defendants’ scienter).

176. The Company’s Form 10-K also contained a Sarbanes-Oxley required certification identical to those set forth in ¶¶120-121, signed by Defendants Gassenheimer, Seidel, and Kamischke, in which they certified that the Form 10-Q did not contain materially false and misleading statements and that Ener1’s internal controls over financial reporting were effective.

177. These certifications of Defendants Gassenheimer, Seidel, and Kamischke were materially false and misleading when made for the following reasons: (i) the certifications falsely asserted that the 10-K did not include material misrepresentations or omissions when, in fact, the 10-K materially misrepresented and omitted the adverse facts alleged herein and (ii) the certifications falsely stated that the Defendants had designed and implemented reasonably effective internal controls over disclosure and financial reporting when they had not.

178. On March 10, 2011, the Company held a conference call with investors, analysts, and other market participants to discuss Ener1’s financial results for the 2010 fiscal year. Defendant Gassenheimer, Defendant Seidel, and Tom Goesch (President of Transportation) participated in the call. During the conference call, when responding to an analyst’s question about Think Holdings, Defendant Gassenheimer, in relevant part, stated:
[Analyst]: Hi. I think you said that you would be idling on your production of THINK batteries for the short term. Can you give us a little color on what the situation is over there, have they gone through the backlog of orders that they had before production started? I guess I'm getting out of this is it's a production, slowness of production of THINK and you got too many batteries already shift or is it a lack of sales going forward. So any color on that as well as kind of an outlook for the first quarter revenue if possible?

[Defendant Gassenheimer]: Sure. So I'll take it. It's Charles and Jeff can step in. First of all, let me say obviously that in terms of the revenue picture for 2011 and in particular the first quarter, we are very confident that the first quarter revenue numbers are going to be unaffected by any slowdown in THINK. That's principally because our revenue associated with the $40 million grid energy storage contract with the Federal Grid Company of Russia. A large portion of that will flow through the first quarter.

** **

Coming back to THINK, they are working through the excess inventory problems, and you're absolutely right, they asked us to slow down production until they were able to work through their inventory. At this point in time, we will continue to be patient, and look to THINK to be upside to the revenue range that we've now provided for 2011.

[Analyst:] Okay. And on the funding situation at THINK, I mean, it looks like you pushed out the maturity on the -or the expiration of the line of credit to them. What are the -what's their situation in terms of their own cash levels and funding situation. I mean, I'm just getting -trying to get a sense of what should what we should be expecting in terms of overall production for THINK this year.

[Defendant Gassenheimer:] Yeah, I mean, it's hard to -- THINK is a private company, Dan. So it's hard for me to speculate. Obviously, Enerl is a shareholder, and board member. Like other shareholders and board members THINK is pulling together their business plans for 2011. And at this point in time, it's difficult for us to give you more color than that because it's not something that we're permitted to discuss. What I would say is though that we are very supportive of THINK and the go-forward plan, we are helping them. Tom, I don't know, maybe could make mention of some of the work we're doing to help Think in the state of Indiana and the US in terms of vehicle sales.

[Tom Goesch]: Sure. Be glad to, Charles. We've set up additional support for Think on a number of fronts. One of them is on the sales front. We've helped them to find some additional salespeople to put shoes on the ground so to speak, and help get through the group of cars that are in Elkhart, waiting to be sold.

There's a pretty good commitment from the state of Indiana to help us with a
project in Indianapolis that will help us relieve that by up to 200 vehicles. That's going very well. And we've just about completed the sale of the first 100. That will be done by hopefully next Friday. The other things we're doing is helping them from a technical aspect for providing technical resources that we have to help them get through any production issues that they have run into, and all of this is going very smoothly.

(Emphasis added.)

179. Later in the call, Defendant Gassenheimer discussed the Company's diversified portfolio in response to an analyst's question:

[Analyst]: Hi. Thanks for taking my question. Charles, can you maybe talk about the split of business for 2011 between grid and transportation and then small pack the $130 million to $150 million range, and can you give us a sense of what kind of gross margins are getting in grid? I know you're saying better than the transportation segment, but give us the range of what margins look like there. Thank you.

[Defendant Gassenheimer]:

***

So coming back to your question, in 2011 the range we gave you only assumes about 10% from transportation. We do expect upside to that number, as we get more clarity and sales information from Think as they rewrite their business plan. And so there is some tremendous upside, I think, to that number.

***

So I think there's a lot of good news here about our portfolio, our product mix, and our confidence in the business. And to be fair, this is both to Dan's question and yours, Vishal, I've never been more confident in Ener1's business because I've never seen a backlog as strong, as diversified, and as highly rated from a credit quality perspective. This is the best I've ever seen in Ener1's -- my five and a quarter history here at Ener1.

(Emphasis added.)

180. The aforementioned statements made during the earnings call were materially false and/or misleading when made because defendants failed to disclose or indicate that: (1) Think Global lacked adequate capital to continue operating; (2) Think Holdings did not have the ability to raise capital to continue operations; (3) "Think and the EV industry more broadly" were experiencing "structural challenges" that would make EV adoption slower than predicted;
and (8) management viewed the electric vehicle segment as “look[ing] bleak in the near-term.”

In fact, instead of disclosing these adverse facts, Defendant Gassenheimer offered investors a solemn assurance that “the first quarter revenue numbers are going to be unaffected by any slowdown in THINK,” and advised investors that the Company would “look to Think to be upside to the revenue range that we’ve now provided for in 2011.” “We do expect upside to that number, as we get more clarity and sales information from Think as they rewrite their business plan. And so there is some tremendous upside, I think, to that number,” Gassenheimer said. These statements were clearly false given the Company’s later impairment of the Q1 2011 revenues. See infra ¶187. Given Defendant Gasseneheimer’s intimate knowledge of Think and its financial position, Gasseheimer acted either knowingly or recklessly in making the above statements when they were in fact false. See supra ¶¶167-170.


182. Each of the Forms S-3/A filed on March 25, 2011, April 13, 2011, and April 29, 2011, included the following statements:

*Our investment in Think Holdings and our dependence on Think Global as an automotive customer could materially adversely affect our profitability and business.*

We entered into an amended Supply Agreement with Think Global to supply lithium-ion battery packs for the Think City EV commencing in 2010. We are also a significant investor in Think Holdings, which is the majority owner of Think Global. In January 2011, we temporarily stopped shipping battery packs to Think Global at their direction until the company rebalances its overall inventory levels for the Think City in Europe and the United States. We cannot
assure you when we will recommence shipments to Think Global. We will not recognize further revenue from sales to Think Global until they recommence production of Think City. *This temporary cessation of shipments, any other delay in the delivery of battery packs to Think Global or delays in Think Global's start-up plans and financing activities, would adversely affect our expected 2011 and 2012 revenues and profitability, based on the percentage of automotive sales anticipated to be from Think Global, and could have a material adverse effect on our business and our investment in Think Holdings.* Think Global, in its corporate history, has been through insolvency proceedings on three separate occasions, including most recently in 2009. Think Global is increasing production and entering new markets and faces the risks associated with the launch of a new vehicle, including achieving production levels, managing production costs, managing their supply chain, financing the costs associated with increased production levels and higher working capital requirements, gaining consumer acceptance, delivering vehicles on time, servicing new customers, satisfying warranty claims and other issues related to manufacturing, selling and servicing automobiles. As a result of the above operational and profitability challenges Think Global and Think Holdings have been facing, and we expect may continue to face, we are exposed to these risks indirectly through our current ownership in Think Holdings. If we were required to consolidate the results of Think Holdings into our own financial results and financial statements, we would face these risks and the negative financial results of Think Holdings directly. In addition, any revenue we derive from sales to Think Global would be eliminated in the process of consolidating their financial results with ours. Think Holdings and Think Global also face many of the same (or similar) risks as we do, including, among others, transportation industry-related risks, manufacturing-related risks and risks associated with the need for additional financing, and which are contained in these risk factors.

183. In the “Material Changes” section of the Forms S-3/A, the Defendants stated that “[t]here have been no material changes in our affairs which have occurred since December 31, 2009 and which have not been described in a report on Form 10-Q or Form 8-K filed under the Exchange Act.”

184. The amended Registration Statements contained statements that were materially false and/or misleading when made. Specifically, the Company failed to disclose that: (1) Think Global lacked adequate capital to continue operating; (2) Think Holdings did not have the ability to raise capital to continue operations; (3) as the Company has since admitted, the current outstanding loans receivable in the amount of $18.1 million and accounts receivable in the
amount of $18.4 million due from Think Holdings and Think Global were uncollectible; (4) as the Company has since admitted, the Company's investment in Think Holdings was impaired in the amount of $73.3 million; (5) as the Company has since admitted, the Company improperly recognized revenue that was not realizable in connection with transactions with Think Holdings and Think Global during 2010 and first quarter 2011; (6) the Company's goodwill was impaired and had no value; (7) "Think and the EV industry more broadly" were experiencing "structural challenges" that would make EV adoption slower than predicted; (8) management viewed the electric vehicle segment as "look[ing] bleak in the near-term"; (9) the Company's financial statements were not prepared in accordance with GAAP; (10) the Company lacked adequate internal and financial controls; and (11) as a result of the above, the Company's financial statements were materially false and misleading at all relevant times.

185. Moreover, the Forms S-3/A materially misrepresented that there had been "no material changes in our affairs" when, in actuality, the aforementioned adverse facts had arisen. Defendants' knowledge of the falsity of the above statements are evidenced by Defendant Gassenheimer's own incriminating admissions that, by at least as early as the second quarter of 2010, Ener1's management thought the electric vehicle segment "looked bleak in the near-term" thereby causing management to "sharpen[ its] emphasis on portfolio mix of products." 13 Additionally, Defendants knew or should have known of the falsity of the aforementioned statements given that by this time, as explained by CI 1, Think's business objective had changed "into inventory depletion mode," wherein Think's strategy shifted away from intending to sell 1,000 vehicles in North America to simply trying to get rid of its on-hand inventory without

13 These statements came from the Company's Q1 2011 Earnings Call.
further intention of selling additional units.

186. Defendants’ material misstatements and omissions further violated SEC Regulation S-K, Item 303(a), and further omitted material facts that were required to be disclosed so as not to render the statements made in the aforementioned materially misleading.

187. On May 10, 2011, Enerl issued a press release entitled, “Enerl Reports First-Quarter Results for 2011.” Therein, the Company, in relevant part, stated:

Enerl, Inc. (NASDAQ: HEV), a leading manufacturer of lithium-ion energy storage systems for transportation, utility grid and industrial applications, today announced financial results for the first fiscal quarter of 2011 ending March 31, 2011.

“We believe our first-quarter results represent another step forward in building a profitable business,” said Enerl Chairman and CEO Charles Gassenheimer. “We took definitive steps on the path toward achieving our goal of being EBITDA positive. More importantly, we have laid a strong foundation within our grid energy storage business, and we anticipate rapid revenue growth in the second half of 2011. We are also seeing positive revenue from our industrial small pack business, and we have repositioned our transportation business to attack the medium-and heavy-duty markets. In addition, we expect our joint venture with Wanxiang to come on-line in the second half of 2011 adding to our growth trajectory this year.

Total consolidated revenue for the quarter was $23.1 million, an increase of 110% over the first quarter of 2010. Consolidated gross profit margin improved to 24%, compared to 10% in the year-ago quarter. Due primarily to an impairment charge, the company reported a net loss of $84.7 million, or diluted net loss per share of $0.51 for the quarter. The impairment charge represents a $69.4 million increase in net loss, which represents a one-time $59.4 million impairment recorded during the first quarter to write down the company's investment in Think Holdings and a $13.9 million loss on financial instruments, which is primarily attributable to the impaired value of the investment. The impairment charge and loss on financial instruments totaled $73.3 million, or $0.44 per diluted share, for the three months ending March 31, 2011. This compares to a net loss of $15.3 million, or diluted net loss per share of $0.13, during the same period last year.

(Emphasis added).
188. That same day, the Company held a conference call with investors, analysts, and other market participants to discuss Ener1’s financial results for the 2011 fiscal first quarter. During the conference call, Defendant Gassenheimer, in relevant part, stated:

We also believe that our work with THINK helped us gain rapid market entry in a way that established not only industry presence, but also industry leadership, for Ener1. Over the past 12 months, Ener1 has used actual market data to adjust our revenue goals and our business objectives. This data helped us create a strong business plan, which we believe differentiated us from other battery makers, and our pro forma financial performance now reflects the evolution of that vision. We have achieved consistent and positive gross margins over the past three years, while continuing to grow our product-delivery and manufacturing footprint without exceeding customer demand. The business development results over the first quarter were again very strong, resulting from the objectives we set from the start of our operations.

* * *

Having discussed the benefits of our association with THINK earlier on the call, we thought it would be useful to provide clarity on the impairment loss we are recognizing in the quarter. As part of our increased involvement in the Company last year, we came to recognize that THINK needed a new management team to perform a thorough analysis of the structural challenges, quotes, usage patterns, consumer behavior, and distribution for THINK and the EV industry more broadly.

Our conclusion from this strategic assessment was that electric vehicles and lithium-ion battery technology are the winning combination, but after much buildup around the industry, the reality was that EV adoption would be slower than some had predicted. In our view, this was primarily due to vehicle costs and slower than expected build out of charging infrastructure. This conclusion was consistent with the views adopted by Ener1 management since the second quarter of 2010, and as we sharpened our emphasis on portfolio mix of products.

All this having been said, THINK faces the need to recapitalize its go-forward business plan. While THINK faces this challenge, Ener1 will be guided by two principles. No additional funds will be provided to THINK by Ener1, and Ener1 will work to avoid consolidating or increasing its equity exposure to THINK. Based on THINK’s inability to raise additional capital, and due to its longer than anticipated delay in recommencing operations, Ener1 management has decided to fully impair its equity position in THINK.

Now that we’ve written down our shares, we’ve taken the additional step of returning our shares to THINK in an effort to avoid any possible consolidation
issues. Ener1 anticipates supporting THINK in recapitalization with a debt-for-equity swap, and Ener1 will maintain a minority acquisition in the newly capitalized entity. While the total impact was $73.3 million, I'd like to point out that only $30 million of the write-down represents actual cash investments. The balance represents equity that was exchanged for securities of THINK at prices in excess of $4.00 per Ener1 share.

(Emphasis added.)

189. Later in the conference call, when responding to an analyst’s question about Think Holdings and the EV market more generally, Defendant Gassenheimer stated the following:

[Analyst]: Thank you. Charles, I’m just a little bit confused about the auto market. Your competitor’s losing plenty of money on everything they sell into that market. THINK’s not working out. Isn’t this a market -- can you define the situation under which this market will be profitable for any one of the battery companies, you or anyone else, or is this just a complete -- there’s no way to make money in the automotive segment? I appreciate what you’re saying on the diversification side, but this part, the auto part looks terrible.

[Defendant Gassenheimer]: Theo, thanks for your question. It’s hard for me to argue in a quarter where I had to take a $73 million write-down. But I think you’ve heard from Ener1 management since the second quarter of 2010, that we thought that market looked bleak in the near term. But let me at least try to paint the bull case, because I don’t -- while I agree with you that the picture is bleak today, I do see an incremental improvement in that end of the market. And let me lay out how I think we get there. Certainly, let’s say this is Ener1’s viewpoint.

I guess you suggested, unlike my competitors, I don’t believe generating negative 80% or 100% gross margins and trying to make it up in volume is the right answer, so let’s say we agree with you on that particular piece. Coming around to what do we believe. I think there’s a couple of points that we believe in. I think the first thing is that without some demand creation from governments, whether it be the DOE, whether it be China with $18,000 of credits, whether it be mainland Europe with VAT and other tax incentives. Without some government intervention, this business doesn’t work in the near term.

I think the second point that we’ve been fairly consistent about is that you can’t charge an automotive consumer 100% for a battery product they only use 20% on, right? Once again, let’s call this lessons learned from THINK. What we know for sure is the driver experience for the THINK city vehicle is incredibly positive. In fact, the cumulative market data we have is that people really enjoy
driving the car. That is unanimous across the board, not just in Europe. In the US even, which, I know the thought of a two-door plastic car for some is a four-letter word. But I’m telling you that the driving experience that car is very positive, even here in the US.

But the idea of price is where we start to have a real challenge. From our perspective, if you could charge $15,000 for that car, plus $100 a month lease for the battery, I think we feel pretty strong that that car could fly off the shelf. I think it comes back to secondary use. Ener1 has done some fairly advanced work on this. And again, if you come back to our basic building block of why we think our module is so compelling, it’s that same module that we use to build our THINK pack, that we are using for grid energy storage units over in Russia. There’s no difference in the module design.

**Pulling that pack out of the THINK after five years, breaking that pack down to the module level, which is where most of the value resides, and repurposing that module for grid energy storage is not going to be a challenging endeavor.** So, hopefully that gives you some sense of the path to creating profitability in light-duty automotive. It starts with residual value. The second step is being able to repurpose that product after five years.

And the third step is then having some sort of life-cycle management company for the battery that exists, that buys the battery, leases the battery to the automotive consumer, and then repurposes it for secondary and even tertiary third uses, like data-center backup storage, which is a market where the battery doesn’t cycle very often. And a third-use lithium-ion battery would be a hell of a lot better than a lead acid battery.

All of these steps are possible. Who do I think the life-cycle management company will be? It’s most likely to involve the utilities. I refer back to the MOU that was signed between Duke and ITOCHU in November of last year, and Indiana, where they’ve agreed to partner up and start exploring the secondary-use market. *I don’t think we’re two or three years away from this. I think we really are going to see at least trial programs or pilot programs in this area here in 2011.*

* * *

[Analyst]: Well, it sounds like if you take the price of the battery out of the equation, then the car will sell.

[Defendant Gassenheimer]: Well, yes.

[Chris Cowger]: Certainly that’s one way to think about it, although the battery is about 50% of the cost of the car today. I think what I’m saying is that you need to disaggregate the cost of the battery from the vehicle and sell the two as separate components, because right now today, as an automotive company, you’re trying
to sell 100% of a product that your current automotive consumer will only use 20 or 30% of. I guess what I’m saying is more you need to break the value chain into its pieces and sell them separately to the consumer than try to sell them as a package.

(Emphasis added.)

190. Despite Gassenheimer’s assertion that Ener1 management had been warning investors since the second quarter of 2010 that management “thought the market looked bleak in the near future,” such statements were not made to the public. To the contrary, since the second quarter 2010, Defendants continued to reassure the public that “Think will become a significant customer in 2011.” See supra ¶¶114, 131. Even after first disclosing that Ener1 had stopped shipping battery backs to Think Global at the company’s request, Defendants in the Form 10-K filed March 10, 2011, and during the earnings call held that same day insisted that: (i) the halted shipping was temporary; 14 (ii) the delayed battery shipments were simply to allow Think to “rebalance[] its overall inventory levels”; 15 (iii) Ener1 management was “very confident that the first quarter revenue numbers are going to be unaffected by any slowdown at Think,” and; (iv) Ener1 management was “very supportive of Think and the go-forward plan.” See ¶¶178. Moreover, the May 10, 2011 earnings call marked the first time that Ener1 management discussed the unsustainable pricing of Think’s EVs and/or the plan to separate the battery price from the rest of the car.

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14 Indeed, it was not until the first quarter Form 10-Q filed on May 10, 2011 that the Company correctly explained that Ener1 did not know “when or if we will recommence shipping battery packs to Think Global.”

15 Again, it was not until the first quarter Form 10-Q filed on May 10, 2011 that Ener1 disclosed that the halted battery shipments were a result of Think Holding’s difficulties raising “sufficient capital to continue operations” and were not the result of Think Global’s need to “rebalance” its inventory.
191. Also on May 10, 2011, Enerl filed its Quarterly Report with the SEC on Form 10-Q for the 2011 fiscal first quarter. The Company’s Form 10-Q was signed by Defendants Gassenheimer, Seidel, and Kamischke, and reaffirmed the Company’s financial statements announced that same day. The Company’s Form 10-Q also contained Sarbanes-Oxley required certifications, signed by Defendants Gassenheimer, Seidel, and Kamischke, substantially similar to the certification contained in ¶¶120-121, supra. Additionally, therein, the Company’s Form 10-Q, in relevant part, stated:

**Revenue Recognition**
Revenue is recognized when persuasive evidence of a sales arrangement exists, the price is fixed or determinable, title and risk of loss are transferred, *collectability is reasonably assured*, product returns are reasonably estimable and there are no remaining significant obligations or customer acceptance requirements....

***

**Accounts Receivable**
As of March 31, 2011, our accounts receivable balance with Think Global totaled approximately $14.1 million, all of which is past due. *As of March 31, 2011, we have not established an allowance for doubtful accounts as our management believes we will realize full value on these accounts receivable, which may include our receipt of equity or other value in connection with a potential equity restructuring of Think Holdings.* We will continue to evaluate whether events or circumstances have occurred or have failed to occur which may impact the collectability of these accounts receivable. If we determine the collectability of these accounts receivable are impacted, we will recognize a loss up to approximately $14.1 million, which could have a material adverse affect on our financial position and results of operations in future reporting periods.

**Loans Receivable**
As of March 31, 2011, the outstanding balance of our loans receivable with Think Holdings, including accrued interest, totaled approximately $18.2 million, of which $9.1 million is outstanding under a revolving line of credit and $9.1 million is outstanding pursuant to short-term working capital loans.

(Emphasis added.)
In its Form 10-Q for the first quarter 2011 Enerl further discussed its transactions with Think Holdings, including the enormous write-off of its investment in Think Holdings:

**Transactions with Think Holdings**

In September 2009, we amended the existing supply agreement with Think Global, an EV manufacturer, for our production of battery packs for their Think City EV. During 2009 and 2010, Enerl gradually increased its equity investment in Think Holdings, AS (Think Holdings) the majority owner of Think Global. This increased commitment to Think Holdings reflected our strategic assessment of the potential significance of EVs in the transportation industry as a market for lithium-ion battery technology. While we continue to believe that EVs are a significant potential market for lithium-ion battery technology, we also now expect EV adoption will be at a more gradual pace and take longer than had been expected due primarily to vehicle cost and slower build out of infrastructure than originally anticipated. We do not currently intend to loan any additional funds to Think Holdings or purchase additional equity securities from Think Holdings.

In January 2011, we stopped shipping battery packs to Think Global at their direction. We do not know when or if we will recommence shipping battery packs to Think Global, the timing of which will depend on Think Holdings' ability to raise sufficient capital to continue operations. In April, Think Global received approximately $3.5 million and anticipates receiving an additional $2 million, from Bzinfin which, based on our knowledge, we expect will enable the company to continue its operations through May 31, 2011.

As of March 31, 2011, our accounts receivable balance with Think Global totaled approximately $14.1 million, all of which is past due. We have not established an allowance for doubtful accounts as management believes we will realize full value on these accounts receivable, which may include our receipt of equity or other value in connection with a potential equity restructuring of Think Holdings. We will continue to evaluate whether events or circumstances have occurred or have failed to occur which may impact the collectability of these accounts receivable. If we determine the collectability of these accounts receivable are impacted, we will recognize a loss up to approximately $14.1 million, which could have a material adverse affect on our financial position and results of operations in future reporting periods.

As of March 31, 2011, we have outstanding loans receivable from Think Holdings, including accrued interest, totaling approximately $18.2 million, of which $9.1 million is outstanding under a revolving line of credit and $9.1 million is outstanding pursuant to short-term working capital loans. On February 28, 2011, we amended the revolving line of credit to increase the principal amount from $5 million to $15 million and during the three months
ended March 31, 2011, we advanced approximately $3.8 million under this line of credit. All funds advanced to Think Holdings under the revolving line of credit bear interest at a rate of 12% per annum and are secured by the assets and properties of Think North America, Inc., an indirect subsidiary of Think Holdings, pursuant to a security agreement. We may, at our option, convert the $9.1 million of short-term working capital loans into shares of Think Holdings Series B Covertible Preferred Stock (Series B Stock). In May, we extended the maturity dates of both the revolving line of credit and the short-term working capital loans to June 15, 2011. Management believes we will realize full value of these loans receivable, which may include our receipt of equity or other value in connection with a potential equity restructuring of Think Holdings. We will continue to evaluate whether events or circumstances have occurred or have failed to occur which may impact the collectability of these loans. If we determine the collectability of these loans receivable are impacted, we will recognize a loss up to approximately $18.2 million which could have a material adverse affect on our financial position and results of operations in future reporting periods.

We reviewed our equity investment in Think Holdings for potential impairment at March 31, 2011 and we determined that our investment in Think Holdings was impaired primarily due to the uncertainty of when or if Think Global will recommence operations, which will depend on Think Holdings’ ability to raise sufficient capital to continue operations. As a result, we recorded an impairment loss of approximately $59.4 million during the three months ended March 31, 2011.

At March 31, 2011, we controlled approximately 48% of the outstanding voting power in Think Holdings and Mr. Gassenheimer, one of our directors, also serves on the board of directors of Think Holdings. Mr. Baker, who is also one of our directors, served on the board of directors of Think Holdings until April 26, 2011, when he resigned from Think Holdings board. On May 9, 2011, we surrendered to Think Holdings, for no consideration, all shares of Think Holdings’ voting equity held by Ener1, including, without limitation, all shares of Series B Stock, based on our determination that our investment in Think Holdings was impaired and written down to zero.

During 2010 and 2011, we granted to certain shareholders of Think Holdings the right to exchange a portion of their shares of Series B Stock in Think Holdings for unregistered shares of Ener1 common stock (the Put Options). Certain investors have notified us of their intention to exercise their rights pursuant to the Put Options and we are currently in negotiations with these investors to postpone the date on which the Put Options may be exercised to September 15, 2011. In addition, during 2011 we granted to Investinor, AS (Investinor), an existing shareholder of Think Holdings, the right to exchange all of their shares of Series B Stock in Think Holdings and their rights under a $2.5 million convertible note from Think Holdings for registered shares of Ener1 common stock. Investinor
may exercise these rights on the earlier of June 15, 2011 or the date Ener1 owns less than 20% of the outstanding voting equity of Think Holdings.

As described in Part II, Item 1A, Risk Factors of this Quarterly Report on Form 10-Q, upon the occurrence of certain events, we may be required to consolidate Think Holdings’ operating results with our own. The potential consequences of consolidating Think Holdings’ operating results with our own are also discussed in Risk Factors in the 2010 Form 10-K.

* * *

The $69.4 million increase in net loss was a result of the one-time $59.4 million impairment charge recorded during the three months ended March 31, 2011 to write down the investment in Think Holdings and the $13.9 million loss on financial instruments, which is primarily attributable to the impaired value of the investment in Think Holdings. The impairment charge and loss on financial instruments totaled $73.3 million, or $0.44 per diluted share, for the three months ended March 31, 2011.

193. In its Form 10-Q for the third quarter 2011 the Company also reported $52.8 million in goodwill:

We have approximately $52.8 million in goodwill as of March 31, 2011. As of March 31, 2011, we believe our goodwill is not impaired; however, changes in the economy, the industries in which we operate and our own relative performance could change the assumptions used to evaluate goodwill. In the event that we determine that goodwill has been impaired, we would recognize an impairment charge equal to the amount by which the carrying amount of the goodwill exceeds the implied fair value.

194. Finally, in the Form 10-Q for the first quarter ending 2011 Ener1 represented that its internal control over financial reporting was effective:

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports we file or submit under the Securities Exchange Act of 1934, as amended (Exchange Act), is recorded, processed, summarized, and reported within the time periods specified in the Commission’s rules and forms and that such information is accumulated and communicated to our management including our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer, as appropriate, to allow timely decisions regarding required disclosure.
As of March 31, 2011, we carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Exchange Act Rules 13a-15(e) and 15d-15(e). This evaluation was done under the supervision and with the participation of our management, including our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer. Based on this evaluation, our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer have concluded that as of March 31, 2011, such disclosure controls and procedures were effective. There were no changes in our internal control over financial reporting during the quarter ended March 31, 2011 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

195. The May 10, 2011 statements by Defendants constitute a partial disclosure, in part, because Enerl recognized an impairment loss of approximately $73.3 million. Despite Defendants’ acknowledgement, the Company omitted numerous material facts and continued to make several material misrepresentations.

196. The statements made in the Q1 press release, earnings call, and Form 10-Q, were materially false and/or misleading when made for the reasons identified in ¶¶199-202, infra and because defendants failed to disclose or indicate that: (l) Think Global lacked adequate capital to continue operating; (2) Think Holdings did not have the ability to raise capital to continue operations; (3) as the Company has since admitted, the current outstanding loans receivable in the amount of $18.1 million and accounts receivable in the amount of $18.4 million due from Think Holdings and Think Global were uncollectible; (4) as the Company has since admitted, the Company improperly recognized revenue in connection with transactions with Think Holdings and Think Global in the first quarter 2011; (5) as the Company has since admitted, Enerl’s goodwill was impaired in the amount of $51.8 million; (6) the Company’s financial statements were not prepared in accordance with GAAP; (7) the Company lacked adequate internal and financial controls; and (8) as a result of the above, the Company’s financial statements were materially false and misleading at all relevant times.
Additionally, the following statements were specifically materially false and misleading, as Defendants have admitted in the August 15, 2011 and November 10, 2011 Forms 8-K:

a) Revenue is recognized when persuasive evidence of a sales arrangement exists, the price is fixed or determinable, title and risk of loss are transferred, collectibility is reasonably assured, product returns are reasonably estimable and there are no remaining significant obligations or customer acceptance requirements.

b) As of March 31, 2011, our accounts receivable balance with Think Global totaled approximately $14.1 million, all of which is past due. We have not established an allowance for doubtful accounts as management believes we will realize full value on these accounts receivable, which may include our receipt of equity or other value in connection with a potential equity restructuring of Think Holdings.

c) As of March 31, 2011, we have outstanding loans receivable from Think Holdings, including accrued interest, totaling approximately $18.2 million, of which $9.1 million is outstanding under a revolving line of credit and $9.1 million is outstanding pursuant to short-term working capital loans. On February 28, 2011, we amended the revolving line of credit to increase the principal amount from $5 million to $15 million and during the three months ended March 31, 2011, we advanced approximately $3.8 million under this line of credit. In May, we extended the maturity dates of both the revolving line of credit and the short-term working capital loans to June 15, 2011. Management believes we will realize full value of these loans receivable, which may include our receipt of equity or other value in connection with a potential equity restructuring of Think Holdings.

d) We have approximately $52.8 million in goodwill as of March 31, 2011. As of March 31, 2011, we believe our goodwill is not impaired; however, changes in the economy, the industries in which we operate and our own relative performance could change the assumptions used to evaluate goodwill.

e) As of March 31, 2011, we carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Exchange Act Rules 13a-15(e) and 15d-15(e). Based on this evaluation, our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer have concluded that as of March 31, 2011, such disclosure controls and procedures were effective.

(Emphasis added).
198. Additionally, in the Form 10-Q, Defendants materially understated Ener1’s losses and expenses and, instead, overstated its revenues, overstated its accounts receivables, overstated its loans receivable, and overstated the value of its goodwill. The falsity of these financial statements is undeniable as Defendants have admitted same in the August 15, 2011 and November 10, 2011 Forms 8-K. See infra ¶¶209, 216.

199. Defendants had knowledge of the falsity of the material misstatements and omissions identified supra in paragraphs 196-197. Indeed, by the time of these May 10, 2011 statements, the situation at Think Holdings had become even worse than Defendants disclosed. By March 2011, European production of Think’s EVs was halted. Also, in March 2011 when Chris Cowger was appointed Ener1’s President, CI 6 explained that Cowger immediately wrote Think off because Cowger “realized we weren’t going to make any money on it [Think].” Additionally in March/April 2011, CI 1 explained that Think had shifted into “inventory depletion mode,” under which Think changed from a strategy of selling vehicles on a go forward basis (and beyond its existing inventory), to a strategy of getting rid of its on-hand inventory, without any further intention to sell additional units. Moreover, by at least April 2011, according to CI 5, Defendant Seidel had developed concerns about Think and expressed these concerns to Defendant Gassenheimer. CI 5, who left the Company in April 2011 before the first quarter 10-Q was filed, described that Defendant “Jeff [Seidel] hated Think” because Seidel did not believe Think was a viable investment and that Seidel “was adamant with Charles [Gassenheimer] in expressing his distaste for Think.” Moreover, CI 5 recalled that numerous Ener1 employees had communicated concerns about Think’s future to Defendant Gassenheimer before and/or during April 2011. Interestingly, by April 2011, Defendant Gassenheimer was apparently acknowledging the worsening problems at Think since, according to CI 4 and CI 3,
Gassenheimer held a videoconference with EnerDel’s employees in which Gassenheimer told EnerDel employees that Think Global was struggling to make its goals. “Start-ups are not easy,” CI 4 recalled Gassenheimer telling the employees of EnerDel. According to CI 3, Gassenheimer told the group that Think was “going through a tough time” and that Think’s car production had declined as well as Think’s demand for EnerDel’s batteries. “He had to say something,” CI 3 said, explaining that by that point it had become obvious that Think was not performing well. The May 10, 2011 statements were additionally materially misleading for the reasons identified in ¶163-175.

200. Moreover, Defendants’ knowledge of the problems at Think is evidenced by the fact that in the very same 2011 Q1 Form 10-Q, Ener1 disclosed that it had impaired its investment in Think “primarily due to the uncertainty of when or if Think Global will recommence operations, which will depend on Think Holdings’ ability to raise sufficient capital to continue operations.” And during the first quarter 2011 earnings conference call held May 10, 2011, Defendant Gassenheimer “agree[d] with an analyst “that the picture [with respect to the EV market] is bleak today,” and observed that “[w]ithout some government intervention, this business doesn’t work in the near term. See supra ¶188-189.

201. Because Ener1’s management specifically recognized uncertainty about whether Think Global would ever recommence operations and further acknowledged that Think Holdings’ was desperately seeking capital to continue operations, Defendants acted either knowingly or recklessly in making the aforementioned material misrepresentations and omissions.

202. Despite Defendants’ knowledge of adverse circumstances at Think Holdings, the Company continued to understate its losses and expenses and, instead, overstated its revenues,
overstated its accounts receivables, overstated its loans receivable, and overstated the value of its goodwill. In fact, the circumstances that required impairment testing and impairment charges had become even more prominent than at December 31, 2010 and March 10, 2011 (the date of the filing of 2010 10-K). See ¶¶163-175.

203. The disclosures in the May 10, 2011 press release, earnings call, and Form 10-Q constitute a partial disclosure. In response to the May 10, 2011 news, shares of Enerl declined $0.67 per share, or 27.35%, to close on May 11, 2011, at $1.78 per share, on usually heavy volume.

204. On June 22, 2011, the month immediately following the filing of Enerl’s 2011 Form 10-Q, Enerl filed a Current Report with the SEC on Form 8-K signed by Defendant Gassenheimer. Therein, the Company, in relevant part, stated:

Item 2.06 Material Impairments.

On June 22, 2011, the Audit Committee of the Board of Directors of Enerl, Inc. (“Enerl”), the Chief Executive Officer and the Chief Financial Officer of Enerl concluded that a material charge was required under generally accepted accounting principles applicable to Enerl related to the loans receivable of Think Holdings, AS and accounts receivable of Think Global, AS (“Think Global”) held by Enerl. The Audit Committee, Chief Executive Officer and Chief Financial Officer made this conclusion based on the announcement by Think Global that, following an extended and ultimately unsuccessful search for long-term financing, it will file bankruptcy proceedings in the Norwegian courts on June 22, 2011. Enerl estimates that the amount of the charge is $35.4 million. This amount is subject to change to the extent that we receive any recovery as a result of the liquidation of Think Global; we presently believe that any such recovery, to the extent it occurs at all, is not likely to be significant.

(Emphasis in original).

205. The June 22, 2011 press release was a partial corrective disclosure. Following the June 22, 2011 announcement, the price of Enerl’s stock declined $0.07 per share, more than 5%,
on unusually heavy volume, and further declined $0.16 per share, or 12.4%, to close on June 23, 2011, at $1.13 per share, also on unusually heavy volume.

206. The statements made in the June 22, 2011 press release were, nevertheless, materially false and/or misleading when made because defendants failed to disclose or indicate that: (1) the Company failed to timely impair the value of its Think Holdings investments; (2) the Company failed to timely impair the loans receivable and accounts receivable due from Think Holdings and Think Global; (3) the Company improperly recognized revenue in connection with transactions with Think Holdings and Think Global; (4) the Company’s goodwill was impaired; (5) the Company’s previously issued financial statements were not prepared in accordance with GAAP; (6) the Company lacked adequate internal and financial controls; and (6) as a result of the above, the Company’s financial statements were materially false and misleading at all relevant times.

VI. THE TRUTH EMERGES

207. On August 9, 2011, after the market closed, the Company disclosed accounting errors “related to the loans receivable of Think Holdings, AS (Think Holdings) and accounts receivable of Think Global, AS (Think Global) held by Enerl.” As such, the Company disclosed a delay in filing its quarterly report on Form 10-Q for the quarter ended June 30, 2011.

208. On these revelations, the Company’s shares fell $0.08 or 9.6%, to close at $0.75 on August 10, 2011.

209. On August 15, 2011, after the market closed, Enerl filed a Current Report with the SEC on Form 8-K. Therein, the Company, in relevant part, stated:

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.

Item 4.02(a)
On August 10, 2011, the Audit Committee of the Board of Directors of Enerl, Inc. (the Company), based upon a recommendation from management, determined that the Company's financial statements for the year ended December 31, 2010 and for the quarterly period ended March 31, 2011, respectively, should no longer be relied upon and should be restated. This determination was made following an assessment of certain accounting matters related to the loans receivable owed to us by Think Holdings, AS (Think Holdings) and accounts receivable owed to us by Think Global, AS (Think Global) held by the Company and the timing of the recognition of the impairment charge related to the Company’s investment in Think Holdings originally recorded during the quarter ended March 31, 2011.

The Company concluded that it was necessary to amend its Annual Report on Form 10-K for the year ended December 31, 2010 and its Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 in order to restate its financial statements to (1) reflect as of December 31, 2010 the impairments of (i) our investment in Think Holdings (which had previously been recorded in the first quarter of 2011), (ii) our accounts receivable with Think Global and (iii) our loans receivable with Think Holdings, including accrued interest, (2) reflect the corrected accounting for revenue recognized in connection with transactions with Think Holdings and Think Global during the year ended December 31, 2010 and the three months ended March 31, 2011, (3) reflect the impact these adjustments have on the fair value of financial instruments and (4) to adjust the elimination of certain intercompany receivables. While the Company has not finalized the consideration of the impact of these adjustments on its assessment of internal control over financial reporting, the Company has concluded that these adjustments were the result of one or more material weaknesses in internal control over financial reporting. Enerl is currently in the process of determining whether the Company has sufficient liquidity to fund its operations.

* * *

The Company will file an amendment to its Form 10-K for the year ended December 31, 2010 and Form 10-Q for the quarterly period ended March 31, 2011. The company is still assessing the adjustments and the following is a summary of the amounts originally reported and as preliminarily restated for the applicable periods:

<table>
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<th>Year Ended December 31, 2010</th>
<th>Three Months Ended March 31, 2011</th>
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<tr>
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<td>As previously reported</td>
<td>(1) As restated</td>
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<td>Accounts receivable, net</td>
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<td>Loans receivable</td>
<td>$ 14,048</td>
<td>-</td>
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<tr>
<td>Prepaid expenses and other</td>
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99
current assets
Investment in unconsolidated entity $ 58,625 $ - $ - $ - $ - $ - $ - 

Derivative and financial instruments $ 15,453 $ 25,724 $ 25,054 $ 25,054 

Accumulated deficit $(410,306) $ (506,822) $ (495,024) $ (527,306) 

Net sales $ 77,406 $ 58,457 $ 23,084 $ 22,553 

Gross profit (loss) $ 13,867 $ (5,082) $ 5,465 $ 4,934 

Impairment loss $ - $ 67,296 $ 59,433 $ 10,408 

Loss from operations $ (51,914) $ (138,159) $ (71,910) $ (23,416) 

Other income (expense) $ (16,926) $ (27,197) $ (12,716) $ 3,024 

Net loss attributable to Enerl, Inc. $ (68,801) $ (165,317) $ (84,718) $ (20,484) 

Net loss per share attributable to Enerl, Inc.: 
Basic $ (0.48) $ (1.17) $ (0.51) $ (0.12) 

Diluted $ (0.51) $ (1.19) $ (0.51) $ (0.14) 

(1) The company is still assessing the adjustments and the as restated amounts above are subject to change following further analysis.

(Emphasis added).


NEW YORK, Aug. 16, 2011 /PRNewswire via COMTEX/-Enerl, Inc. (NASDAQ: HEY), announced today that the company will be restating its financial statements for the period included in an amended annual report on Form 10-K/A for the year ended December 31, 2010, as well as an amended Form 10-Q/A for the quarter ended March 31, 2011.

The company will restate its financial statements to reflect as of December 31, 2010 the impairments of its investment in Think Holdings (which had previously been recorded in the first quarter of 2011), its accounts receivable with Think Global and its loans receivable with Think Holdings, including accrued interest. The restatement will also reflect the corrected accounting for revenue recognized in connection with transactions with Think Holdings and Think Global during the year ended December 31, 2010 and the three months ended March 31, 2011, the impact these adjustments have on the fair value of financial instruments and to adjust the elimination of certain intercompany receivables.
211. In response to these announcements, the price of Enerl’s stock fell $0.33 per share, or 42.31%, to close on August 16, 2011, at $0.45 per share, on unusually heavy volume.


NEW YORK (August 19, 2011) – Enerl, Inc. (NASDAQ: HEV) (the “Company”), today reported that it has received a letter from The NASDAQ Stock Market (“NASDAQ”) stating that it is not in compliance with Listing Rule 5250(c)(1) because the Company did not timely file its Quarterly Report on Form 10-Q for the period ended June 30, 2011. The NASDAQ letter was issued in accordance with standard NASDAQ procedures due to the delayed filing, which the Company previously disclosed on Form 12b-25 filed with the Securities and Exchange Commission on August 9, 2011.

The Company intends to file its Form 10-Q for the quarter ended June 30, 2011 with the Securities and Exchange Commission to regain compliance with NASDAQ Listing Rule 5250(c)(1). In addition to filing the Form 10-Q, the Company intends to submit a plan to regain compliance to NASDAQ no later than October 17, 2011. No assurance can be given that NASDAQ will accept the company’s compliance plan or grant an exception for the full 180-day period contemplated by the NASDAQ Listing Rules. Under the NASDAQ rules, the Company’s common stock will continue to be listed on NASDAQ until October 17, 2011, and for any exception period that may be granted to the Company by NASDAQ. However, until the company regains compliance, quotation information for the Company’s common stock will include an indicator of the Company’s non-compliance and the Company will be included in a list of non-compliant companies on the NASDAQ website.

213. On September 27, 2011, Enerl filed a Form 8-K with the SEC, which disclosed the termination of Defendant Gassenheimer as CEO and Chairman of Enerl, effective as of September 26, 2011. The Form 8-K explained that Thomas J. Snyder had been appointed to serve as Chairman of the Board and that Christopher L. Cowger had been appointed to serve as CEO of Enerl.

214. On October 25, 2011, Enerl filed a Form 8-K with the SEC, which stated, in pertinent part:
On October 19, 2011, Enerl, Inc. (the "Company") received a Staff Determination Letter (the "Notice") from The NASDAQ Stock Market LLC ("NASDAQ") indicating that the Company did not comply with NASDAQ's filing requirements for continued inclusion in Listing Rules 5250(c)(1) (regarding timely filing of periodic financial reports with the Securities and Exchange Commission (the "SEC")) because the Company failed to file its Form 10-Q for the period ended June 30, 2011 (the "June 30, 2011 Form 10-Q") on a timely basis. In addition, the Notice states that NASDAQ Staff had determined that the September 12, 2011 amendment to the Company's Line of Credit Agreement with Bzinfin S.A., dated June 29, 2011 (the "Amended LOC Agreement") violated NASDAQ's shareholder approval requirements contained in Listing Rules 5635(c) and (d) (regarding shareholder approval requirements prior to certain issuances of listed equity securities). According to the Notice, the Staff determined that the issuance of shares of the Company's common stock as provided in the Amended LOC Agreement could result in a 20% or greater issuance at a discount to market and book value, and would be considered equity compensation because the issuance could result in shares issued at a discount to market to an affiliate of a Company director.

As of October 19, 2011, the Company had not filed the June 30, 2011 Form 10-Q with the SEC or submitted a plan to regain compliance with NASDAQ Listing Rules 5250(c)(1), which plan was due by October 17, 2011.

The Notice states that, unless the Company requests an appeal of the determination, trading of the Company's common stock will be suspended at the opening of business on October 28, 2011, and a Form 25-NSE will be filed with the SEC to remove the Company's common stock from listing and registration on NASDAQ. The Company has elected not to file an appeal of the Notice with the NASDAQ Hearings Panel.

215. On October 25, 2011, Melissa Debes resigned from her positions as Chief Accounting Officer of Enerl and as CFO of the Company's subsidiary EnerDel. On November 1, 2011, Christopher Cowger resigned from his positions as CEO of Enerl, as CEO of EnerDel and as a director of Enerl. Also on November 1, 2011, Defendant Seidel resigned from his position as CFO of Enerl, effective as of November 13, 2011.

216. On November 10, 2011, Enerl filed a Form 8-K with the SEC, which stated, in pertinent part:

Enerl, Inc. ("Enerl") is unable, without unreasonable effort or expense, to file its Quarterly Report on Form 10-Q for the quarter ended September 30, 2011 (the
“9/30/11 Form 10-Q”) with the Securities and Exchange Commission (the “SEC”) by November 9, 2011. As described in Ener1’s current report on Form 8-K dated June 22, 2011, the Audit Committee of the Board of Directors of Ener1, together with the then-Chief Executive Officer and then-Chief Financial Officer of Ener1, had concluded that Ener1 was required, under generally accepted accounting principles, to record a material charge related to the loans receivable of Think Holdings, AS (“Think Holdings”) and accounts receivable of Think Global, AS (“Think Global”) held by Ener1. In addition, as disclosed in Ener1’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011, Ener1 recorded an impairment charge to write off its investment in Think Holdings. Thereafter, as described in Ener1’s current report on Form 8-K dated August 10, 2011 (the “8/10/11 Form 8-K”), the Audit Committee of the Board of Directors of Ener1, based upon a recommendation from management, determined that Ener1’s financial statements for the year ended December 31, 2010, and for the quarter ended March 31, 2011, should no longer be relied upon and should be restated. This determination was made following an assessment of certain accounting matters related to the Think Holdings loans receivable and Think Global accounts receivable and the timing of the recognition of the impairment charge related to Ener1’s investment in Think Holdings originally recorded during the quarter ended March 31, 2011.

As described in the 8/10/11 Form 8-K, Ener1 concluded as a result of these issues that it was necessary to amend its Annual Report on Form 10-K for the year ended December 31, 2010 (the “2010 Form 10-K”) and its Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (the “3/31/11 Form 10-Q”), in order to restate its financial statements for the year ended December 31, 2010, and the quarter ended March 31, 2011. Until the restatements are completed, Ener1 cannot complete and file its 9/30/11 Form 10-Q or its Quarterly Report on Form 10-Q for the quarter ended June 30, 2011 (the “6/30/11 Form 10-Q”).

In addition, Ener1 has experienced further business disruptions, including management changes and liquidity concerns, since the filing of the 8/10/11 Form 8-K. Ener1 expects to receive, in its amended 2010 Form 10-K, an explanatory paragraph in the audit opinion on its financial statements as of and for the year ended December 31, 2010, describing substantial doubt about Ener1’s ability to continue as a going concern. Ener1 is currently exploring its options, including a potential in-court or out-of-court financial restructuring.

Ener1 continues to work to complete the restatement of its financial statements for the year ended December 31, 2010, and the quarter ended March 31, 2011, as well as its financial statements for the second and third quarters of 2011. However, despite such efforts, Ener1 does not expect it will be able to complete the restatements and financial statements and file the 9/30/11 Form 10-Q by November 14, 2011, and is unable to predict when it will be able to do so.
In connection with the preparation of the restatements described above, **Ener1 has determined that a write-down of goodwill and a change in accounting relating to certain long-term construction contracts may be necessary.** Further information regarding these determinations is provided in the attachment hereto.

**As reported in the 8/10/11 Form 8-K, Ener1 has concluded that the adjustments resulting in the determination that it was necessary to restate its financial statements for the year ended December 31, 2010, and the quarter ended March 31, 2011, were the result of one or more material weaknesses in internal control over financial reporting. As a result, Ener1 expects that it would report such material weaknesses in its amendments to the 2010 Form 10-K and 3/31/11 Form 10-Q, as well as in the 6/30/11 Form 10-Q and 9/30/11 Form 10-Q.** Additional control deficiencies related to the periods covered by those reports may be identified by management prior to filing, and those deficiencies may also individually or in the aggregate constitute one or more material weaknesses. The existence of one or more material weaknesses precludes a conclusion by management that Ener1's internal control over financial reporting was effective as of the respective dates of the affected reports. A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.

***

**ATTACHMENT**

As reported in the 8/10/11 Form 8-K, Ener1 intends to amend the 2010 Form 10-K and 3/31/11 Form 10-Q in order to restate its financial statements to, among other things, (1) reflect as of December 31, 2010 the impairments of (i) its investment in Think Holdings (which impairment had previously been recorded in the first quarter of 2011), (ii) its accounts receivable from Think Global and (iii) its loans receivable from Think Holdings, including accrued interest, (2) reflect the corrected accounting for revenue recognized in connection with transactions with Think Holdings and Think Global during the year ended December 31, 2010 and the three months ended March 31, 2011 and (3) reflect the impact these adjustments have on the fair value of financial instruments.

In connection with the preparation of the restatement of its financial statements, Ener1 is considering the impact these adjustments have on the assumptions used to evaluate goodwill for potential impairment at December 31, 2010, including, in particular, **changes in projected revenues due to the elimination of future revenue from Think Global and to a decrease in demand for Ener1's products. While a final determination has not yet been made by Ener1's management or Audit Committee, an evaluation of the fair value of the reporting units based on preliminary assessments indicated goodwill was impaired and that there was no implied fair value of the reporting units' goodwill at December 31, 2010.**
result, based on these preliminary assessments, and subject to final assessment, review and approval by management and the Audit Committee, Enerl expects to write goodwill down to zero as of December 31, 2010, which would result in an impairment loss of approximately $51.8 million.

In addition, Enerl has historically applied the percentage of completion method to revenue recognition under long-term construction contracts. Under the percentage of completion method, expected revenue and expenses are recognized in proportion to the percentage of the contract completion. Therefore, use of this method depends on the ability to make reasonably dependable estimates, including estimates of the extent of progress toward completion, contract revenues and contract costs. Due to significant changes with respect to certain projects, Enerl has determined that it is no longer able to make reasonably dependable estimates with respect to the related construction contracts, and will instead account for those contracts using the completed contract method of accounting from inception of the contract. Therefore, revenue and expenses related to these contracts will not be recognized in the statements of operations until the applicable contract is completed. This will result in the reversal of previously recognized revenue and expenses (and therefore gross profit) from the statements of operations. Enerl has not yet completed quantifying the impact of these changes on its statements of operations, but expects there will be a significant reduction of previously recognized revenue and cost of sales previously reported in the statements of operations for the year ended December 31, 2010, and the three months ended March 31, 2011.

Until the financial assessment and review described above in Part III have been completed, the Company cannot estimate the final impact that the results of the review will have on its revenues, results of operations and financial position to be reported in the 9/30/11 Form 10-Q or in the 6/30/11 Form 10-Q or the amendments to the 2010 Form 10-K and the 3/31/11 Form 10-Q that have not yet been filed.

217. On January 26, 2012, Enerl issued a press release entitled, “Enerl, Inc. Reaches Agreement with Primary Investors and Lenders on Plan to Reduce Debt and Secure New Equity Funding to Support Its Long-Term Business Strategy.” The press release announced that “the Company has voluntarily initiated a ‘pre-packaged’ Chapter 11 case in U.S. Bankruptcy Court in the Southern District of New York, in which it is requesting that the court confirm a pre-packaged Plan of Reorganization to implement the restructuring.” The press release further stated:
"This was a difficult, but necessary, decision for our company. We are extremely pleased to have the strong support of our primary investors and lenders to substantially reduce the Company's debt," stated Ener1 CEO Alex Sorokin. "Their support demonstrates that our business partners have an appreciation for our future business opportunities in providing energy storage solutions for electric grid, transportation and industrial applications. We expect the new funding to provide ample liquidity for our subsidiaries to meet their ongoing obligations to employees, customers and suppliers."

"We moved aggressively to reduce costs and shift focus when the marketplace did not evolve as quickly as anticipated. Our business plan was impacted when demand for lithium-ion batteries slowed due to lower-than-expected adoption for electric passenger vehicles," continued Sorokin. "That pressure was exacerbated by volatility in the debt and equity markets that further limited our borrowing ability and the loss of a major customer, Think Global, which filed for bankruptcy in June 2011, and for which we were exclusively providing commercial lithium-ion battery packs. We believe that the restructuring plan will enable us to address our business and financial challenges comprehensively, quickly and efficiently, and position us to compete much more effectively in the energy storage market."

On December 12, 2011, the Company's common stock was delisted from NASDAQ. Pursuant to the Plan, that common stock will be extinguished at the conclusion of the reorganization case and current equity holders will not receive any distributions.

218. On March 15, 2012, the Company filed an Application for an Order Authorizing Debtor to Retain and Employ Gibson Dunn & Crutcher LLP as Special Counsel Nunc Pro Tunc. In the application, the Company explained that on February 1, 2012, Ener1 received a subpoena from the SEC dated January 31, 2012. The subpoena demanded that Ener1 produce a variety of documents in connection with an investigation of the Company's compliance with accounting and disclosure obligations under the federal securities laws during times prior to the date Ener1 filed for bankruptcy.

219. The market for Ener1 common stock was open, well-developed and efficient at all relevant times. As a result of Defendants materially false and misleading statements and omissions, Ener1 common stock traded at artificially inflated prices during the Class Period. Plaintiffs and other members of the Class purchased or otherwise acquired Ener1 common stock
relying upon the integrity of the market price of Enerl common stock and market information
relating to Enerl, and have been damaged thereby.

220. During the Class Period, Defendants materially misled the investing public,
thereby inflating the price of Enerl common stock, by publicly issuing false and misleading
statements and omitting to disclose material facts necessary to make Defendants’ statements, as
set forth herein, not misleading. Said statements and omissions were materially false and
misleading in that they failed to disclose material adverse information and misrepresented the
truth about the Company, its business, its operations, and its financial position, as alleged herein.

221. At all relevant times, the material misrepresentations and omissions particularized
herein directly or proximately caused, or were a substantial contributing cause of, the damages
sustained by Plaintiffs and other members of the Class. As described herein, during the Class
Period, Defendants made or caused to be made a series of materially false or misleading
statements about Enerl’s business, prospects and operations. These material misstatements and
omissions had the cause and effect of creating in the market an unrealistically positive
assessment of Enerl and its business, prospects and operations, thus causing the Company’s
common stock to be overvalued and artificially inflated at all relevant times. Defendants’
materially false and misleading statements during the Class Period resulted in Plaintiffs and other
members of the Class purchasing the Company’s common stock at artificially inflated prices,
thus causing the damages complained of herein.

E. Defendants Failed to Disclose Existing Events, Uncertainties, and Trends in
Violation of SEC Regulation S-K, Item 303(a), which Rendered Class Period
Statements Materially False or Misleading

222. SEC Regulation S-K (and SEC Forms S-3, 10-K and 10-Q) requires disclosure of
certain information, including information required to be disclosed under Item 303(a) of

223. Pursuant to Subsection (a)(3)(ii) of Item 303, a registrant must “[d]escribe any known trends or uncertainties . . . that the registrant reasonably expects will have a material . . . unfavorable impact on . . . revenues or income from continuing operations.” 17 C.F.R. § 229.303(a)(3). Instruction 3 to paragraph 303(a) provides that “[t]he discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition.” 17 C.F.R. § 229.303(a), Instruction 3. The SEC’s interpretive release regarding Item 303 clarifies that the Regulation imposes a disclosure duty “where a trend, demand, commitment, event or uncertainty is both [1] presently known to management and [2] reasonably likely to have material effects on the registrant’s financial condition or results of operations.” Management’s Discussion and Analysis of Financial Condition and Results of Operations, Securities Act Release No. 6835, Exchange Act Release No. 26,831, Investment Company Act Release No. 16,961, 43 SEC Docket 1330 (May 18, 1989).

224. Beginning by at least the second quarter 2010, and continuing through May 2011, Defendants were aware of material unfavorable circumstances at Think Global and Think Holdings and in the EV market as a whole that they reasonably expected to: (1) result in impairment to Ener1’s outstanding loans receivable and accounts receivable from Think Global and Think Holdings; (2) result in impairment charges to Ener1’s investment in Think Holdings and Ener1’s goodwill; and (3) reduce battery sales, each would, and in fact did, affect income and revenues from continuing operations. In fact, Defendant Gassenheimer has admitted that
beginning as early as the second quarter of 2010, Ener1 management had identified “structural challenges” at Think and was aware that EV adoption would be slower than predicted. “[S]ince the second quarter of 2010…we thought that [the EV] market looked bleak in the near term,” Gassenheimer admitted on May 10, 2011. By November 2010 substantial numbers of employees began leaving Think due to concerns about Think’s future. By the end of 2010 EnerDel’s manufacturing plant slowed down production from three shifts to one in response to sales struggles at Think. In January 2011, the Company “stopped shipping battery packs to Think Global at their direction until the company rebalances its overall inventory levels for the Think City in Europe and the United States,” the Company admitted in March 2011 (in the interim Ener1’s Form S-3 filed February 11, 2011 made no mention). In March/April 2011, CI 1 explained, Think shifted into full “inventory depletion mode,” under which Think changed from a strategy of selling vehicles on a go forward basis (and beyond its existing inventory), to a strategy of getting rid of its on-hand inventory, without any further intention to sell additional units. Defendants were required to, but did not, disclose this, and other, information in the non-financial portions of their Forms S-3, 10-K, and 10-Q, which constituted events, uncertainties, and trends that reasonably suggested a material unfavorable impact on revenues from continuing operations.

F. Ener1’s GAAP Violations

225. GAAP are those principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. Those principles are the official standards adopted by the American Institute of Certified Public Accountants ("AICPA"), a private professional association, through three
successor groups it established: the Committee on Accounting Procedure, the Accounting Principles Board, and the Financial Accounting Standards Board ("FASB").

226. On July 1, 2009, FASB approved the Accounting Standards Codification ("ASC" or the "Codification") as the single source of authoritative U.S. accounting and reporting standards, other than guidance issued by the SEC. The Codification is effective for interim and annual periods ending after September 15, 2009. All existing accounting standards documents are superseded as described in FASB Statement No. 168, The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles. All other accounting literature — other than SEC accounting literature and guidance — not included in the Codification is non-authoritative.

227. The Codification reorganizes the thousands of U.S. GAAP pronouncements into roughly 90 accounting topics and displays all topics using a consistent structure. It also includes relevant SEC guidance that follows the same topical structure in separate sections in the Codification.

228. The Codification does not change GAAP, it introduces a new structure — one that is organized in an easily accessible, user-friendly online research system.

229. As stated above, GAAP are those principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practices at a particular time. As set forth in FASB Statements of Concepts ("Concepts Statement") No. 1, one of the fundamental objectives of financial reporting is that it provide accurate and reliable information concerning an entity’s financial performance during the period being presented. Concepts Statement No. 1, paragraph 42, states:

Financial reporting should provide information about an enterprise’s financial performance during a period. Investors and creditors often use information about
the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors’ and creditors’ expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance.

230. Indeed, compliance with GAAP is a basic fundamental obligation of publicly traded companies. As set forth in SEC Rule 4-01(a) of SEC Regulation S-X, “[f]inancial statements filed with the [SEC] which are not prepared in accordance with [GAAP] will be presumed to be misleading or inaccurate.” 17 C.F.R. § 210.4-01(a)(1).

1. Enerl Failed to Timely Recognize the Impairment of its Investment in Think Holdings in Violation of GAAP

231. In its SEC filings, Enerl disclosed that it accounted for its 48% investment in Think Holdings under the cost method:

We account for our investment in Think Holdings, an entity over which we exercise significant influence but do not exercise control, using the cost method because the form of our investment is not deemed to be equivalent to common stock for accounting purposes.

232. GAAP provisions contained in ASC 325, Investments -- Other -- and ASC 320, Investments Debt & Equity Securities, were applicable to Enerl’s 48% investment in Think Holdings.

233. Under the cost method, an investor shall recognize an investment in the stock of an investee as an asset. ASC 325-20-25-1. An investment in the stock of an investee recognized under ASC 325-20-25-1 shall be measured initially at cost. ASC 325-20-30-1.

234. ASC 325-20-35-2 provides:

Financial statements of an investor prepared under the cost method may not reflect substantial changes in the affairs of an investee. A series of operating losses of an investee or other factors may indicate that a decrease in value of the investment has occurred that is other than temporary and shall be recognized. Paragraphs 320-10-35-17 through 35-35 discuss the methodology for determining impairment and evaluating whether the impairment is other than temporary and shall be recognized.
235. Enerl disclosed that, as required by GAAP, it reviewed its investment in Think Holding for potential impairment at each reporting period. See also ASC 320-10-35-22 (“Except as provided in paragraphs 320-10-35-25 through 35-27, an entity shall assess whether an investment is impaired in each reporting period. For entities that issue interim financial statements, each interim period is a reporting period.”).

236. An investment is impaired if the fair value of the investment is less than its cost. ASC 320-10-35-21.

237. Impairment review is a three-step process. The first step of that process is to determine if impairment indicators are present.

238. Because the fair value of cost-method investments is not readily determinable, the evaluation of whether an investment is impaired shall be determined as follows:

a. If an entity has estimated the fair value of a cost-method investment (for example, for disclosure under Section 825-10-50), that estimate shall be used to determine if the investment is impaired for the reporting periods in which the entity estimates fair value. If the fair value of the investment is less than its cost, proceed to Step 2.

b. For reporting periods in which an entity has not estimated the fair value of a cost-method investment, the entity shall evaluate whether an event or change in circumstances has occurred in that period that may have a significant adverse effect on the fair value of the investment (an impairment indicator).

ASC 320-10-35-25 (emphasis added).

239. ASC 320-10-35-27 identifies certain “impairment indicators:”

Impairment indicators include, but are not limited to the following:

a. A significant deterioration in the earnings performance, credit rating, asset quality, or business prospects of the investee

b. A significant adverse change in the regulatory, economic, or technological environment of the investee
c. **A significant adverse change in the general market condition of** either the geographic area or **the industry in which the investee operates**

d. A bona fide offer to purchase (whether solicited or unsolicited), an offer by the investee to sell, or a completed auction process for the same or similar security for an amount less than the cost of the investment

e. **Factors that raise significant concerns about the investee’s ability to continue as a going concern, such as negative cash flows from operations, working capital deficiencies, or noncompliance with statutory capital requirements or debt covenants.**

(emphasis added).

240. **If an impairment indicator is present, the entity shall estimate the fair value of the investment.** ASC 320-10-35-29. If the fair value of the investment is less than its cost then the entity must proceed to Step 2, *id.*, which requires the evaluation of whether the impairment is other than temporary.

241. ASC 320-10-35-30 provides:

If the fair value of an investment is less than its amortized cost basis at the balance sheet date of the reporting period for which impairment is assessed, the impairment is either temporary or other than temporary. In addition to the guidance in this Section, an entity shall apply other guidance that is pertinent to the determination of whether an impairment is other than temporary, such as the guidance in Section 325-40-35, as applicable. **Other than temporary** does not mean permanent.

242. If it is determined in Step 2 that the impairment is other than temporary, then an impairment loss shall be recognized in earnings equal to the entire difference between the investment’s cost and its fair value at the balance sheet date of the reporting period for which the assessment is made. ASC 320-10-35-34.

243. In its Form 10-K for the year ending December 31, 2010 filed on March 10, 2011, and the audited financial statements included therein, Enerl reported its investment in Think Holdings in the amount of $58.625 million. In the 2010 Form 10-K, Enerl further disclosed that “[b]ased on our review of this investment at December 31, 2010, we determined
no impairment indicators were present and as a result we are not estimating the fair value of the investment at December 31, 2010 and concluded that the investment is not subject to impairment:

The components of the investment in the unconsolidated entity are as follows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2010</td>
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<tr>
<td>Balance, beginning of year</td>
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<tr>
<td>Cash investment, SISA</td>
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<td>Cash investment, Second SISA</td>
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<tr>
<td>Cash investment, Other</td>
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<td>Ener1 Put Option, at inception</td>
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<tr>
<td>Ener1 Put Option, exercised</td>
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<tr>
<td>Rockport Put Option, exercised</td>
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<tr>
<td>Balance, end of year</td>
<td>$58,625</td>
</tr>
</tbody>
</table>

In accordance with applicable accounting standards, we have accounted for this investment under the cost method, as the Series B Stock is not considered to be equivalent to common stock for accounting purposes. We review this investment for potential impairment at each reporting period using a three-step process. In the first step we determine if impairment indicators are present. If an impairment indicator is present then the second step of the test is to determine if the impairment is temporary or other than temporary. If the impairment is other than temporary, then the last step is to determine the fair value of the investment and record an impairment loss for the difference between the fair value and the cost of the investment.

Based on our review of this investment at December 31, 2010, we determined no impairment indicators were present and as a result we are not estimating the fair value of the investment at December 31, 2010 and concluded that the investment is not subject to impairment. We continue to evaluate whether events and circumstances have occurred to determine if impairment indicators are present.

(Emphasis added).
244. Contrary to Defendants' representations, however, and as Defendants knew and ultimately admitted, many impairment indicators were present as of December 31, 2010.

245. Pursuant to ASC 320-10-35-25 Ener1 was required to “evaluate whether an event or change in circumstances has occurred” during 2010 “that may have a significant adverse effect on the fair value of the investment (an impairment indicator).”

246. Impairment indicators specifically enumerated under ASC 320-10-35-27 include (1) “[a] significant deterioration in the earnings performance, credit rating, asset quality, or business prospects of the investee,” (2) “[a] significant adverse change in the ... economic ... environment of the investee,” (3) “[a] significant adverse change in the general market condition of ... the industry in which the investee operates,” (4) “[f]actors that raise significant concerns about the investee’s ability to continue as a going concern, such as negative cash flows from operations, working capital deficiencies, or noncompliance with statutory capital requirements or debt covenants.” Each of these impairment indicators were in existence as of December 31, 2010 and Defendants, particularly Gassenheimer, Baker and Sediel, were aware of same.

247. First, Defendant Gassenheimer has admitted that beginning as early as the second quarter of 2010, Ener1 management had identified “structural challenges” at Think and was aware that EV adoption would be slower than predicted:

As part of our increased involvement in the Company last year [2010], we came to recognize that THINK needed a new management team to perform a thorough analysis of the structural challenges, quotes, usage patterns, consumer behavior, and distribution for THINK and the EV industry more broadly.

Our conclusion from this strategic assessment was that electric vehicles and lithium-ion battery technology are the winning combination, but after much buildup around the industry, the reality was that EV adoption would be slower than some had predicted. In our view, this was primarily due to vehicle costs and slower than expected build out of charging infrastructure. This conclusion was consistent with the views adopted by Ener1 management since the second
quarter of 2010, and as we sharpened our emphasis on portfolio mix of products.

(Emphasis added). Indeed, Gassenheimer described the outlook for the EV market at the second quarter 2010 as bleak: “I think you’ve heard from Ener1 management since the second quarter of 2010, that we thought that market looked bleak in the near term. ...I agree with you that the picture is bleak today [May 10, 2011].” Clearly, by the end of 2010 the situation had not gotten any better.

248. Second, as described by CI 3, the situation at Think had gotten so dire by November 2010 that substantial numbers of employees began leaving the company due to concerns about Think’s future. Moreover, as further related by CI 3, by the end of 2010 EnerDel’s manufacturing plant slowed down production from three shifts to one in response to sales struggles at Think. CI 3 additionally explained that in December 2010 or January 2011, “we [EnerDel’s employees] were told that Think was having issues.: Relatedly, in January 2011, CI 5 recalled having voiced concerns about Ener1’s involvement in Think to Defendant Gasseheimer, stating that “if the Think investment falls through, as it looks like it might,” Ener1 would not have the funding to support the initiatives it was then planning. CI 3 started getting nervous about EnerDel’s future around the beginning of 2011. “We had a lot of inventory at Think’s plant,” CI 3 explained.

249. Third, as reported by AutoblogGreen in an article that relied on in-the-know sources who agreed to talk off the record, “[s]ome time around December of 2010 or January of 2011, it became pretty clear inside Think that the company was starting to run into financial difficulties. The Norwegian company had excess inventory of around 500 cars that could not be sold.” AutoblogGreen further reported that “[e]veryone we talked to mentioned the too-high
price of the Think City, and some were in a position to let those in charge know, but all to no avail."

250. Fourth, as admitted by Defendant Gassenheimer, in January 2011 the Company "stopped shipping battery packs to Think Global at their direction until the company rebalances its overall inventory levels for the Think City in Europe and the United States." Although this "subsequent event" occurred shortly after the year 2010 it "provid[ed] additional evidence about conditions that existed at the date of the balance sheet," December 31, 2010, and Ener1 was required to take it into account when determining the existence of impairment indicators and whether its investment in Think Holdings was impaired as of December 31, 2010. See ASC 855-10-25-1; ASC 855-10-20; ASC 855-10-25-1. As suggested by the testimony of CI 6, Ener1’s President Chris Cowger recognized that Ener1’s investment was impaired at the time he assumed the position in March 2011: When Chris Cowger was appointed Ener1’s President, CI 6 explained, Cowger immediately wrote Think off because, according to CI 6, Cowger “realized we weren’t going to make any money on it [Think].”

251. Fifth, CI 2 explained that Think struggled to maintain sufficient working capital and had a major concern with securing long term capital. As CI 1 put it, “the cars weren’t selling fast enough to keep operations afloat.” Because of these concerns, both CI 2 and CI 1 said Think, including its board member Defendant Gassenheimer, spent substantial time and resources in conducting roadshows in an attempt to obtain financial backing. Moreover, it is obvious that Think was struggling with maintaining working capital and liquidity in that it constantly required capital infusions and loans from Ener1 throughout 2010 and into 2011 simply to stay afloat.
252. As described above, as of December 31, 2010, numerous impairment indicators existed and, as Defendants have admitted, Ener1’s investment was severely impaired. Moreover, Defendants, particularly Gassenheimer, Kamischke Baker and Seidel, knew, or were reckless in not recognizing, same. Defendants statements in Ener1’s 2010 Form 10-K that there were no impairment indicators and that its investment in Think was not impaired was materially false. Similarly Defendants’ statements in the Forms S-3 filed on November 8, 2010 and February 11, 2011 and the Prospectus Supplements filed December 30, 2010 and January 3, 2011 that “[t]here have been no material changes in our affairs which have occurred since December 31, 2009 and which have not been described in a report on Form 10-Q or Form 8-K filed under the Exchange Act,” were materially false. Given the numerous impairment indicators that were present and of which Defendants were aware, such false statements were made with knowledge or deliberate recklessness.

2. Ener1 Failed to Timely Recognize the Impairment of Loans and Accounts Receivable from Think Holdings in Violation of GAAP

253. Receivables may arise from credit sales, loans, or other transactions. ASC 310-10-05-4. The GAAP provisions contained in ASC 310, Receivables, applies to the recognition and impairment of receivables, including accounts receivable and loans. ASC 310-10-15-2.

254. ASC 310-10-20 defines “loans” as follows:

A contractual right to receive money on demand or on fixed or determinable dates that is recognized as an asset in the creditor’s statement of financial position. Examples include but are not limited to accounts receivable (with terms exceeding one year) and notes receivable.

255. ASC defines “recorded investment” as follows:

The amount of the investment in a loan, which is not net of a valuation allowance, but which does reflect any direct write-down of the investment.
256. ASC 310-10-35, *Subsequent Measurement*, provides guidance on an entity’s subsequent measurement and subsequent recognition of an item. Situations that may result in subsequent changes to carrying amount include impairment. ASC 310-10-35 provides subsequent measurement guidance for, among other things, “loan impairment” and “credit losses for loans and trade receivables.” ASC 310-10-35-1.

257. ASC 450-20, *Loss Contingencies*, provides the basic guidance for recognition of impairment losses for all receivables (except those receivables specifically addressed by other Topics, such as debt securities). ASC 310-10-35-2. ASC 310-10-35 provides more specific guidance on measurement and disclosure for a subset of the population of loans. *Id.* That subset consists of loans that are identified for evaluation and that are individually deemed to be impaired (because it is probable that the creditor will be unable to collect all the contractual interest and principal payments as scheduled in the loan agreement). *Id.*

258. The concept in GAAP is that impairment of receivables shall be recognized when, based on all available information, it is probable that a loss has been incurred based on past events and conditions existing at the date of the financial statements. ASC 310-10-35-4.

259. The conditions under which receivables exist usually involve some degree of uncertainty about their collectability, in which case a contingency exists. ASC 310-10-35-7.

260. ASC 450-20, *Loss Contingencies*, requires recognition of a loss when both of the following conditions are met:

a. Information available before the financial statements are issued or are available to be issued (as discussed in Section 855-10-25) indicates that it is probable that an asset has been impaired at the date of the financial statements.

b. The amount of the loss can be reasonably estimated.

ASC 310-10-35-8.
261. Losses from uncollectible receivables shall be accrued when both of the preceding conditions are met. ASC 310-10-35-9.

262. ASC 855-10-25-1 prescribes that "[a]n entity shall recognize in the financial statements the effects of all subsequent events that provide additional evidence about conditions that existed at the date of the balance sheet, including the estimates inherent in the process of preparing financial statements. See paragraph 855-10-55-1 for examples of recognized subsequent events." (emphasis in original). An SEC filer, like Enerl "shall evaluate subsequent events through the date the financial statements are issued." ASC 855-10-25-1A.

263. ASC 855-10-20, Subsequent Events, defines subsequent events as follows:

Events or transactions that occur after the balance sheet date but before financial statements are issued or are available to be issued. There are two types of subsequent events:

a. The first type consists of events or transactions that provide additional evidence about conditions that existed at the date of the balance sheet, including the estimates inherent in the process of preparing financial statements (that is, recognized subsequent events).

b. The second type consists of events that provide evidence about conditions that did not exist at the date of the balance sheet but arose subsequent to that date (that is, nonrecognized subsequent events).

(Emphasis added).

264. The following is an example of a recognized subsequent event addressed in ASC 855-10-25-1:

Subsequent events affecting the realization of assets, such as receivables and inventories or the settlement of estimated liabilities, should be recognized in the financial statements when those events represent the culmination of conditions that existed over a relatively long period of time. For example, a loss on an uncollectible trade account receivable as a result of a customer's deteriorating financial condition leading to bankruptcy after the balance sheet date but before the financial statements are issued or are available to be issued ordinarily will be indicative of conditions existing at the balance sheet date. Thus, the effects of the customer's bankruptcy filing shall be considered in determining the amount of
uncollectible trade accounts receivable recognized in the financial statements at balance sheet date.

ASC 855-10-55-1.

265. ASC 310-10-35-10 provides:

*If, based on current information and events, it is probable that the entity will be unable to collect all amounts due according to the contractual terms of the receivable, the condition in paragraph 450-20-25-2(a) is met.* As used here, all amounts due according to the contractual terms means that both the contractual interest payments and the contractual principal payments will be collected as scheduled according to the receivable’s contractual terms. However, a creditor need not consider an insignificant delay or insignificant shortfall in amount of payments as meeting the condition in paragraph 450-20-25-2(a). Whether the amount of loss can be reasonably estimated (the condition in paragraph 450-20-25-2(b)) will normally depend on, among other things, the experience of the entity, information about the ability of individual debtors to pay, and appraisal of the receivables in light of the current economic environment. In the case of an entity that has no experience of its own, reference to the experience of the other entities in the same business may be appropriate.

266. The guidance does not specify how a creditor should identify loans that are to be evaluated for collectability. ASC 310-10-35-14. A creditor shall apply its normal loan review procedures in making that judgment. ASC 310-10-35-14. Sources of information useful in identifying loans for evaluation include the following:

a. A specific materiality criterion

***

b. Borrowers experiencing problems such as operating losses, marginal working capital, inadequate cash flow, or business interruptions

***

c. Loans to borrowers in industries or countries experiencing economic instability.

ASC 310-10-35-14.

267. A loan is impaired when, based on current information and events, it is probable that a creditor will be unable to collect all amounts due according to the contractual terms of the
loan agreement. ASC 310-10-35-16. All amounts due according to the contractual terms means that both the contractual interest payments and the contractual principal payments of a loan will be collected as scheduled in the loan agreement. ASC 310-10-35-16.

268. The guidance does not specify how a creditor should determine that it is probable that it will be unable to collect all amounts due according to the contractual terms of a loan. ASC 310-10-35-17. A creditor shall apply its normal loan review procedures in making that judgment. *Id.* An insignificant delay or insignificant shortfall in amount of payments does not require application of this guidance. *Id.* A loan is not impaired during a period of delay in payment if the creditor expects to collect all amounts due, including interest accrued at the contractual interest rate for the period of delay. *Id.* Thus, a demand loan or other loan with no stated maturity is not impaired if the creditor expects to collect all amounts due, including interest accrued at the contractual interest rate during the period the loan is outstanding. *Id.*

269. The term *probable* is defined as an area within a range of the likelihood that a future event or events will occur confirming the fact of the loss. ASC 310-10-35-18. That range is from probable to remote, as follows:

a. Probable. The future event or events are likely to occur.

b. Reasonably possible. The chance of the future event or events occurring is more than remote but less than likely.

c. Remote. The chance of the future event or events occurring in slight.

ASC 310-10-35-18.

270. The conditions for accrual of a loss are not intended to be so rigid that they require virtual certainty before a loss is accrued. ASC 310-10-35-19. They require only that it be probable that an asset has been impaired or a liability has been incurred and that the amount
of loss be reasonably estimable. *Id.* Probable does not mean virtually certain. *Id.* Probable is a higher level of likelihood than more likely than not. *Id.*

When a loan is impaired as defined in paragraphs 310-10-35-16 through 35-17, a creditor shall measure impairment based on the present value of expected future cash flows discounted at the loan’s effective interest rate, except that as a practical expedient, a creditor may measure impairment based on a loan’s observable market price, or the fair value of the collateral if the loan is a collateral-dependent loan.

ASC 310-10-35-22 (emphasis in original).

271. Defendants have admitted that as of December 31, 2010 it was not probable that the loans receivable and accounts receivable from Think would be collected. *See supra ¶209.* Moreover, for the reasons set forth in paragraphs 166-171, *supra,* Defendants, particularly Gassenheimer, Baker and Seidel, knew, or were reckless in not recognizing same. This is especially true given Baker’s and Gassenheimer’s participation in Think board meetings in which financial information was discussed in detail. In addition, by March 31, 2011 and May 10, 2011 (the day the first quarter 2011 10-Q was filed), additional circumstances and events, which Plaintiffs have alleged, existed that indicated to Defendants that it was not probable these receivables would be collected.

272. By March/April 2011, CI 1 explained, Think had shifted into “inventory depletion mode,” under which Think changed from a strategy of selling vehicles on a go forward basis (and beyond its existing inventory), to a strategy of getting rid of its on-hand inventory, without any further intention to sell additional units. Moreover, by at least April 2011, according to CI 5, Defendant Seidel had expressed concerns about Think to Defendant Gassenheimer. In fact, CI 5 recalled that numerous Ener1 employees had communicated concerns about Think’s future to Defendant Gassenheimer before CI 5’s departure from the Company in April 2011. By at least this time, according to CI 5, Defendant “Jeff [Seidel] hated Think” because Seidel did not
believe Think was a viable investment. In fact, Seidel sometimes referred to Think as “Stink.” According to CI 5, by this time Seidel “was adamant with Charles [Gassenheimer] in expressing his [i.e., Seidel’s] distaste for Think.” Moreover, by this time, Defendant Gassenheimer was apparently acknowledging the worsening problems at Think since, according to CI 4 and CI 3, Gassenheimer held a videoconference with EnerDel’s employees in which Gassenheimer told EnerDel employees that Think Global was struggling to make its goals. “Start-ups are not easy,” CI 4 recalled Gassenheimer telling the employees of EnerDel. According to CI 3, Gassenheimer told the group that Think was “going through a tough time” and that Think’s car production had declined as well as Think’s demand for EnerDel’s batteries. “He had to say something,” CI 3 said, explaining that by that point it had become obvious that Think was not performing well.

273. In fact, at the first quarter 2011 earnings conference call held on May 10, 2011, Defendant Gassenheimer “agree[d] with an analyst “that the picture [with respect to the EV market] is bleak today.” During that same conference call Gassenheimer stated, “[w]ithout some government intervention, this business doesn’t work in the near term.”

274. Under GAAP, impairment of receivables shall be recognized when, based on all available information, it is probable that a loss has been incurred based on past events and conditions existing at the date of the financial statements. ASC 310-10-35-4. ASC 450-20, Loss Contingencies, requires recognition of a loss when (1) information available before the financial statements are issued indicates that it is probable that an asset has been impaired at the date of the financial statements, and (2) the amount of the loss can be reasonably estimated. ASC 310-10-35-8. If, based on current information and events, it is probable that the entity will be unable to collect all amounts due according to the contractual terms of the receivable, a loss must be recognized. ASC 310-10-35-10. The conditions for accrual of a loss are not intended to be so
rigid that they require virtual certainty before a loss is accrued. ASC 310-10-35-19. They require only that it be probable that an asset has been impaired or a liability has been incurred and that the amount of loss be reasonably estimable. Id. Probable does not mean virtually certain. Id.

275. Defendants have admitted that it was probable Ener1’s loans receivable and accounts receivable from Think were not probable as of December 31, 2010 and March 31, 2011 and were uncollectable. See ¶4. Based on the circumstances described in paragraphs 166-171, 247-52, 272-73, supra, Defendants knew, or were reckless in not recognizing same.

3. Ener1 Recognized Revenue that was Not Realizable in Violation of GAAP

276. ASC 605-10-25-1 provides that revenue is not recognizable until realized or realizable and earned. SEC Staff Accounting Bulletin (“SAB”) provides that revenue generally is realized or realizable when: (1) persuasive evidence of an arrangement exists, (2) delivery has occurred or services have been rendered, (3) the seller’s price to the buyer is fixed or determinable, and (4) collectibility is reasonably assured. See also SAB Topic 13.

277. If collection is not reasonably assured the general principle in FASB Concepts Statement No. 5, Revenue and Measurement in Financial Statements of Business Enterprises, of being realized or realizable, is not met, and revenue recognition is precluded until collection is reasonably assured. See id.; ASC 605-10-25-10.

278. The customer’s financial condition is an indicator of both its ability to pay and, in turn, whether or not revenue is realizable. Grant Thorton, Revenue Recognition, A guide to navigating through the maze, at 14.

279. Ener1 disclosed in its SEC filings the following:

Revenue Recognition
Revenue is recognized when persuasive evidence of a sales arrangement exists, the price is fixed or determinable, title and risk of loss are transferred, *collectibility is reasonably assured*, product returns are reasonably estimable and there are no remaining significant obligations or customer acceptance requirements.

(Emphasis added).

280. Defendants have admitted that revenues recognized from Enerl’s sales of battery packs to Think in 2010 and the first quarter 2011 were not realizable and thus, were recognized in violation of GAAP. Thus, Defendants have admitted that the Company materially overstated its revenues for those periods. Based on the circumstances and events described in paragraphs 166-171, 247-52, 272-75, supra, Defendants knew, or were reckless in not recognizing, same.

4. **Enerl Failed to Timely Recognize the Impairment of its Goodwill in Violation of GAAP**

281. During the Class Period, Defendants knowingly or recklessly overstated the amount of Enerl’s goodwill, which, in turn, understated the Company’s expenses and materially inflated the amount of the Company’s income (or understated its losses).

282. GAAP required Enerl to account for its business combinations, including its acquisitions of EnerDel and Enertech, using the purchase method of accounting as set forth in FASB Statement of Financial Accounting Standards ("SFAS") No. 141, *Business Combinations* (now ASC 805). Under the purchase method of accounting, the assets acquired and liabilities assumed are initially recorded at their respective fair market values. The excess of the purchase price over the fair value of the net assets acquired is recognized and reported as an asset called goodwill.

283. In August 2008, Enerl acquired the remaining 19.5% of EnerDel from Delphi (having previously acquired the other 80.5%) in a transaction that was valued at $32 million for accounting purposes. Of that total, $18.2 million was recognized as goodwill. In October 2008
Ener1 acquired an 83% majority interest in Enertech in a transaction that was valued at $47.4 million. Of that total, $29.7 million was recognized as goodwill. As of December 31, 2010 the Company reported $51.8 million of goodwill, all of which was assigned to its battery segment reporting unit.

284. Goodwill is an asset representing the future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized. Goodwill is intended to reflect the going concern value of the business acquired and its expected contribution to future earnings growth.

285. After initial recognition, an acquirer accounts for goodwill acquired in a business combination under ASC 350-30-35.

286. ASC 350-30-35 requires that a company review its goodwill to determine if the asset is impaired. A goodwill impairment exists when the carrying amount of goodwill exceeds its implied fair value. 350-20-35-2. Goodwill must be tested at least annually for impairment, and more often when events or circumstances arise that indicate the goodwill could be impaired.

287. ASC 350-20-35-30 provides:

Goodwill of a reporting unit shall be tested for impairment between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. Examples of such events or circumstances include the following:

a. A significant adverse change in legal factors or in the business climate
b. An adverse action or assessment by a regulator
c. Unanticipated competition
d. A loss of key personnel
e. A more-likely-than-not expectation that a reporting unit or a significant portion of a reporting unit will be sold or otherwise disposed of
f. The testing for recoverability under the Impairment or Disposal of Long-Lived Assets Subsections of Subtopic 360-10 of a significant asset group within a reporting unit.

g. Recognition of a goodwill impairment loss in the financial statements of a subsidiary that is a component of a reporting unit.

288. Enerl disclosed in its SEC filings the Company tests for goodwill impairment annually as of October 1st of each year. In its Form 10-K for the year ending December 31, 2010 the Company disclosed:

**Impairment of Goodwill**

Goodwill represents the difference between the purchase price paid for an acquisition and the fair value of the net assets acquired in a business combination. Goodwill is not amortized, but is tested for impairment at the reporting unit level (operating segment or one level below an operating segment) annually, unless an event occurs that would cause us to believe the value is impaired at an interim date.

*See also ASC 350-20-35-1.*

289. In Form 10-K for the year ending December 31, 2010, Enerl reported that its goodwill was not impaired as of October 1, 2010 and December 31, 2010.

290. However, at least by year end 2010, as Defendants now have admitted, existing events and circumstances indicated that the carrying amount of Enerl’s goodwill recognized in connection with the Company’s acquisition of EnerDel and Enertech might not be, and in fact was not, recoverable as of December 31, 2010. The Company further reported in the first quarter 2011 10-Q that goodwill was not impaired as of March 31, 2011. These events and circumstances should have triggered goodwill impairment analyses at least by the end of 2010.

291. As alleged in detail herein, Defendants were aware of these impairment testing and “triggering” events and circumstances.

292. Testing for goodwill impairment is a two-step process. *ASC 350-20-35-3.* The first step in the process is used to identify potential goodwill impairment while the second step is
used to measure the amount of the impairment. A company performs goodwill testing at a reporting unit level. ASC 350-20-35-1.

293. The first step of the goodwill impairment test, used to identify potential impairment, compares the fair value of a reporting unit with its carrying amount, including goodwill. ASC 350-20-35-4. If the fair value of a reporting unit exceeds its carrying amount, goodwill of the reporting unit is considered not impaired, thus the second step of the impairment test is unnecessary. ASC 350-20-35-6. However, if the carrying amount of a reporting unit exceeds its fair value, the second step of the goodwill impairment test shall be performed to measure the amount of impairment loss, if any. ASC 350-20-35-8.

294. The second step of the goodwill impairment test, used to measure the amount of impairment loss, compares the implied fair value of reporting unit goodwill with the carrying amount of that goodwill. ASC 350-20-35-9. If the carrying amount of a reporting unit’s goodwill exceeds the implied fair value of that goodwill, an impairment loss shall be recognized in an amount equal to that excess. ASC 350-20-35-10. The loss recognized cannot exceed the carrying amount of goodwill. Id.

295. The implied fair value of goodwill shall be determined in the same manner as the amount of goodwill recognized in a business combination would be determined. ASC 350-20-35-14. That is, an entity shall assign the fair value of a reporting unit to all of the assets and liabilities of that unit (including any unrecognized intangible assets) as if the reporting unit had been acquired in a business combination. Id.

296. In determining fair value, valuation techniques consistent with the market approach, income approach, and/or cost approach may be used. ASC 820-10-35-28. The present value of cash flow estimates is generally the best technique to measure an impairment loss when
quoted market prices for the relevant assets are unavailable. In addition, cash flow estimates in measuring any impairment loss must be based on reasonable and supportable assumptions. See ASC 820-10-35-53; ASC 820-10-55-4.

297. In its Form 10-K for the year-ended 2010, Enerl disclosed that it uses the income approach to determine the fair value of its reporting units. The income approach is an approach that uses valuation techniques to convert future amounts (for example, cash flows or earnings) to a single present amount (discounted). ASC 820-10-35-32. The measurement is based on the value indicated by current market expectations. *Id.* In its Form 10-K for the year ending December 31, 2010, the Company disclosed:

We perform a two-step process impairment test. In the first step, we compare the fair value of the reporting unit to its carrying value, including goodwill. We generally determine the fair value of our reporting units using the income approach methodology of valuation that includes the discounted cash flow method. This valuation method requires a projection of revenue, operating expenses, and capital expenditures over a five to ten year period. In addition, management estimates the weighted average cost of capital to determine an appropriate discount rate. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then the second step of the impairment test is performed in order to determine the implied fair value of the reporting unit’s goodwill. If the carrying value of a reporting unit’s goodwill exceeds its implied fair value, then the company records an impairment loss equal to the difference.

298. Throughout the Class Period the Company’s goodwill was overstated and severely impaired as the Company admitted in its Form 8-K filed November 10, 2011:

As reported in the 8/10/11 Form 8-K, Enerl intends to amend the 2010 Form 10-K and 3/31/11 Form 10-Q in order to restate its financial statements to, among other things, (1) reflect as of December 31, 2010 the impairments of (i) its investment in Think Holdings (which impairment had previously been recorded in the first quarter of 2011), (ii) its accounts receivable from Think Global and (iii) its loans receivable from Think Holdings, including accrued interest, (2) reflect the corrected accounting for revenue recognized in connection with transactions with Think Holdings and Think Global during the year ended December 31, 2010 and the three months ended March 31, 2011 and (3) reflect the impact these adjustments have on the fair value of financial instruments.
In connection with the preparation of the restatement of its financial statements, Enerl is considering the impact these adjustments have on the assumptions used to evaluate goodwill for potential impairment at December 31, 2010, including, in particular, changes in projected revenues due to the elimination of future revenue from Think Global and to a decrease in demand for Enerl’s products. While a final determination has not yet been made by Enerl’s management or Audit Committee, an evaluation of the fair value of the reporting units based on preliminary assessments indicated goodwill was impaired and that there was no implied fair value of the reporting units’ goodwill at December 31, 2010. As a result, based on these preliminary assessments, and subject to final assessment, review and approval by management and the Audit Committee, Enerl expects to write goodwill down to zero as of December 31, 2010, which would result in an impairment loss of approximately $51.8 million.

(Emphasis added).

299. Goodwill of a reporting unit shall be tested for impairment between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. ASC 350-20-35-30. One example of such events or circumstances – “triggering events” – that indicate goodwill testing is “[a] significant adverse change... in the business climate” of an entity. ASC 350-20-35-30.

300. Clearly, by the end of 2010, the business climate for Enerl’s Battery segment to which goodwill from the EnerDel and EnerTech acquisitions was allocated in 2008 had changed significantly for the worse, and Defendants knew about it. By March 31, 2011 and May 10, 2011, the dates of the first quarter financial statements and first quarter 2011 10-Q, the situation was worse.

301. In November 2010, CI 3 heard that employees of Think Global were leaving the company as its business struggled. CI 3 also learned that EnerDel’s production output of batteries was reduced as Think’s vehicle orders declined in November/December 2010. According to CI 3, a second generation of batteries that were under development at Enerl for Think’s fleet “never got traction.”
302. As a result of the problems at Think, CI 3 recalled that at the end of 2010, EnerDel's manufacturing plant slowed down production, going from three shifts to just one. CI 3 further explained that in December 2010 or January 2011, “we [EnerDel’s employees] were told that Think was having issues. They didn’t tell us too much internally about Think’s problems. We were told that the price point for their vehicles was too high.” By March/April 2011, CI 1 explained, Think shifted into “inventory depletion mode,” under which Think changed from a strategy of selling vehicles on a go forward basis (and beyond its existing inventory), to a strategy of getting rid of its on-hand inventory, without any further intention to sell additional units.

303. Defendant Gasseheimer was a very “hands on” executive, involved in all things “Think” and clearly was aware of these developments.

304. Moreover, as admitted by Defendant Gassenheimer, beginning as early as the second quarter of 2010, Enerl management had identified “structural challenges” at Think and was aware that EV adoption would be slower than predicted. Gassenheimer further admitted that in January 2011, Enerl “stopped shipping battery packs to Think Global at their direction until the company rebalances its overall inventory levels for the Think City in Europe and the United States.” According to CI 3, Gassenheimer told a large group of EnerDel employees in April 2011 that Think was “going through a tough time” and that Think’s car production had declined as well as Think’s demand for EnerDel’s batteries. On May 10, 2011, Defendant Gassenheimer “agree[d] with an analyst “that the picture [with respect to the EV market] is bleak today,” and “[w]ithout some government intervention, this business doesn’t work in the near term.

305. In determining fair value of its reporting units the Company utilized and utilizes the income approach which measures the discounted expected cash flows to the reporting unit.
Clearly, at year end 2010 and first quarter ending 2011, the expected cash flows from EV sales had greatly diminished. Think was taking far less batteries from Ener1 -- by January 2011, it was taking no batteries -- and EnerDel had reduced production from three shifts to no more than one shift.

306. Clearly, goodwill impairment testing was indicated at least by December 2010 and goodwill was in fact impaired by such time if not much earlier. And there is a strong inference that Defendants were aware of these facts or were extremely reckless in not recognizing these facts if they were in fact unaware of them.

G. **Director Defendants Fuhr, Brownell, and Snyder, Recklessly Abandoned Their Oversight Duties**

307. In addition to their general fiduciary duties as directors, Ener1’s Directors assumed specific duties and responsibilities as a result of their Board and/or Committee positions.

308. The directors who served on the Audit Committee during the Class Period, Fuhr (Chairman), Brownell, and Snyder assumed even greater duties. In addition to the Board’s general oversight of management, the Audit Committee is charged with overseeing the accounting and financial reporting processes of Ener1 and the audits of the Company’s financial statements. These duties include oversight responsibilities regarding the integrity of the Company’s financial statements, the Company’s compliance with legal and regulatory requirements, the independent auditor’s qualifications and independence, and the performance of the Company’s internal audit function and independent auditor. Ener1’s Audit Committee was charged with overseeing the accounting and financial reporting processes of Ener1 and the audits of the Company’s financial statements. Pursuant to its Charter, the Audit Committee is required
to meet at least four (4) times per year, meet with the Company’s independent auditor periodically, and review the accuracy and integrity of the Company’s public financial statements.

309. Specifically, the Company’s Board of Director’s Audit Committee Charter provides that the Audit Committee is responsible to or for:

(a) Monitoring the integrity of the Company’s financial statements;

(b) Monitoring the independence and qualifications of the Company’s external auditor;

(c) Monitoring the Company’s system of internal controls;

(d) Monitoring the performance of the Company’s internal audit process and external auditor;

(e) Monitoring the Company’s compliance with laws and regulations and its codes of conduct;

(f) Inquire of management and the independent auditors about significant risks or exposures facing the Company, assess the steps management has taken or proposes to take to minimize such risks to the Company, and periodically review compliance with such steps;

(g) Review the Company’s internal controls; and

(h) Review with the general counsel legal and regulatory matters that may have a material impact on the financial statements, related company compliance policies, and programs and reports received from regulators.

310. Defendants Fuhr, Brownell, and Snyder as Audit Committee members were responsible for “monitoring,” among other things, “the Company’s system of internal controls.” However, throughout the Class Period, Ener1’s Board and its Audit Committee failed to conduct
little if any oversight of the Company’s internal controls over accounting, and financial reporting and consciously disregarded their duties to monitor such controls and accounting. Because Defendants Fuhr, Brownell, and Snyder each had a duty to examine the internal controls over financial reporting processes yet failed to identify the existing material weaknesses, Defendants were either fraudulent or reckless in concluding that the “disclosure controls and procedures were effective.” These Defendants completely failed to perform their duties in good faith to protect the Company from Think Holdings’ financial failure and/or reveal the truth about Think Holdings’ to investors and the public as required by law.

H. Additional Scienter Allegations

311. As alleged herein, Defendants acted with scienter in that they: knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding Ener1, their control over, and/or receipt and/or modification of Ener1’s allegedly materially misleading misstatements, and/or their associations with Ener1 and Think which was also Ener1’s most significant customer and was a company in which Ener1 had a 48% interest, which made them privy to confidential proprietary information concerning Ener1, participated in the fraudulent scheme alleged herein.

1. Motive

312. Each Defendant was motivated to delay disclosing the true adverse facts based on Ener1’s complete dependence on its business relationships with Think to raise the capital Ener1 needed to continue as a going concern. Ener1 relied on its ability to raise funds and borrow
money. As the Company described it in its 2010 Form 10-K, “For the last several years, we have financed our operations and capital expenditures through the sale of our securities and by borrowing money.” Without the availability of outside funding, Ener1 could not continue its operations. Indeed, the Company has stated, “If we do not obtain adequate short-term working capital and permanent financing, whether through credit or capital markets or through government programs, we would have to curtail our development and production activities and adopt an alternative operating model to continue as a going concern.” Id. Ener1 has further explained that: “Our ability to obtain additional financing will be subject to a number of factors, including the development of the market for HEVs and EVs, commercial acceptance of our products, our operating performance, the terms of our existing indebtedness and the credit and capital markets.” See Ener1’s 2010 Form 10-K. In other words, to sell securities and borrow money, Ener1 needed to portray itself as a successful company, and the success of Ener1’s business revolved around Think and the ability to sell batteries to Think for Think’s electric vehicles.

313. Thus, instead of disclosing the known adverse facts about Think and the EV market as they became known, Defendants delayed such disclosures and similarly delayed properly accounting for revenues and/or impairing its investments, its loans receivable, its accounts receivable, and its goodwill. Part of Defendants’ strategy in delaying the necessary disclosures appears to have related to Ener1’s anticipation of government reimbursements and loans. Indeed, Cl 9 described Ener1’s business as entirely dependent on government funding and grants. As explained by Cl 9, “Everyone was waiting for funding.” Ener1’s disclosures further evidence the Company’s reliance on government financing, and specifically on EV funding:

*In August 2009, we were awarded a grant of $118.5 million from the DOE, under the ABMI [Automotive Battery Manufacturing Initiative] to help finance*
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our United States battery plant capacity expansion. We are reimbursed under the grant as we make equipment purchases, and we are required to match grant proceeds with an equal amount of our own funds. Using funds provided under the ABMI, we are expanding our production capacity in the United States. *We expect our worldwide production capacity will increase during 2011 to the equivalent of 900 EV packs per month as a result of our expansion.* Through December 31, 2010, we have been reimbursed from the DOE for $44.7 million, which includes manufacturing engineering, building improvement, manufacturing equipment and application engineering expenditures. *We anticipate that proceeds from the ABMI grant with our matching contributions, will be sufficient to fund our United States manufacturing expansion plans through 2012.*

***

We have also applied to the DOE for a long-term low interest loan of approximately $290 million under the Advanced Technology Vehicle Manufacturing Incentives Program (ATVM). We originally submitted our application on December 30, 2008, and our application was determined to be “substantially complete” on January 22, 2009. We are currently negotiating a term sheet in connection with this loan. If we receive the ATVM loan, we would anticipate using the proceeds to further expand our battery production capacity in 2013 and 2014. In addition, if we receive the ATVM loan, the loan program will require us to match every eighty cents of loan proceeds with twenty cents of our own investment. *However, we expect to receive credit for capital invested in expanding our battery production capacity prior to January 22, 2009, which would be considered eligible for financing under the ATVM loan. We estimate this amount to be $27.8 million.*

***

State Initiatives

Indiana state and local government authorities have also provided us with approximately $80 million of grants and tax offsets to assist in our expansion plans over the next five (5) years. *With proceeds under the ATVM loan, if approved and received, and combined with the funds available under the ABMI program and the Indiana state and local incentives, we plan to increase our domestic production capacity to an estimated manufacturing capacity of 3.12GWh, or 120,000 equivalent EV battery packs per year, in the 2015 timeframe.*

314. Later in the Form 10-K, the Company stated, *“If the [$290 million ATVM] loan is not approved or is approved in a substantially reduced dollar amount, our future expansion plans would have to be significantly curtailed and our near term prospects would be materially*
adversely affected.” The Company additionally explained that, “access to both grant and loan funds will also be conditioned on our continued compliance with the terms and conditions of the grant and loan programs. If we fail to comply with the terms and conditions of, and as a result lose access to, the grant and loan funds, this would affect our capacity expansion plans, which would, in turn, have a material adverse effect on our ability to develop our manufacturing capacity and expertise, sell our battery packs to new customers and grow our business.”

315. Thus, not only was Ener1 reliant on government funds, but Ener1’s ability to receive reimbursements under existing government loans and its ability to receive additional government loans was conditioned on the Company’s ability to, among other things, meet certain capital requirements. Defendants Seidel and Gassenheimer described this process and Ener1’s anticipated grants in the May 10, 2011 earnings call:

[Defendant Seidel]: Steve, on the capital raising side, we do have commitments with DOE to raise a certain amount of capital prior to closing the DOE loan. It does jive very, very well with what our financial model projects for 2011 and into 2012, in terms of moving towards cash flow positive. The number I still maintained is at $50 million in Q3. That more than encompasses planned CapEx for the remainder of 2012. OpEx expenditures in line with our expectations and DOE’s.

[Analyst]: So DOE is going to give you some money even though you haven't finalized the loan?

[Defendant Seidel]: Well, I mean that's a little bit presumptuous, but that's part of the negotiation.

* * *

[Defendant Gassenheimer]: Obviously, we'd like to point out that there have been no new loans since November of last year. November of not last year but the year before last, right? So clearly, there's been a bunch of high-priority loans that they've tagged. They have given Ener1 all assurances that we're on the top of that list. The other thing I would add, Steve, let's say just to articulate and buttress what Jeff is saying. One of the things that we do believe, is that on the capital market side, and clearly, given where our stock is, we're relatively confident we would do that in the private markets rather than the public markets.
And again, the $50 million we're relatively confident is not a problem, given some of the backers we've had historically and certainly over the last 12 months in particular. So we feel pretty confident that we're in good shape on the loan and we're in good shape on the liquidity and financial resources to fund our Company through to EBITDA positive. And again, we're on the march to get there this year, which we feel is going to be well in advance of our competitors.

***

[Analyst]: Hey, good afternoon. I just want to clarify. You're saying that you need to raise capital before the DOE will agree to give you a loan. Is that correct? It's not that the DOE is going to give you that capital?

[Defendant Gassenheimer]: Yes. Let me answer that question a different way, just so we're all clear. I think what we're essentially trying to say -- obviously, while loan negotiations are typically a private matter, and the fact that we feel that we're pretty close to the goal line, we certainly don't want to release information at the wrong time. We feel that we are making really, really good progress. We have to be a bit careful.

I think what we are saying is that the DOE may be ready to go to conditional commitment with Ener1, with just a commitment of capital, but not having raised the actual capital itself, with the subsequent funding of that coming prior to some date certain as part of the conditional commitment.

316. Were Defendants to have disclosed the extent of problems plaguing Think and the EV market and/or properly account for Think's failed business plan, Ener1 would have been unable to meet the DOE's capital requirements, would have been unable to receive capital from either government programs or private investors, and thus would have likely been unable to continue its operations. As discussed, Think was Ener1's most significant customer. Ener1 touted the 2007 supply agreement between EnerDel and Think Global under which EnerDel expected battery sales of $70 million over the two-year period ending in 2010 and the total value of which was projected to exceed $200 million. As explained in the Company's 2010 Form 10-K filed March 10, 2011, “We depend on a limited number of customers, including Think Global, Motorola, and MGTES, for a significant portion of our revenue, and the loss of our most significant or several of our smaller customers would materially adversely affect our business and results of operation....” Additionally, the Form 10-K disclosed that “[s]ales to Think Global
have represented nearly all of our automotive revenue in the past...’’ As CI 4 described it, “Ener1’s biggest problem is that they put all their eggs in one basket – Think Global.”

317. Not only was Think Ener1’s most significant customer, but it was also a company in which Ener1 had invested substantial sums of money. By October 2010, Ener1 owned approximately 48% of Think Holdings. Accordingly, by March 31, 2011, Ener1’s equity investment in Think totaled $73.3 million with goodwill from that investment totaling an additional $51.8 million. Moreover, as a result of Ener1’s continued loans to Think, Ener1 had outstanding loans receivable with Think in the amount of approximately $18.18 million. As such, Ener1’s investments and loans in Think exposed the Company to potential investment-related impairments in the amount of $143.28 million.

318. Ener1’s sheer dependence on Think to facilitate continued operations for the Company is evidenced by Ener1’s swift demise following the Company’s adverse disclosures. Indeed, within months of Think’s bankruptcy, Ener1’s business fell into unrecoverable disarray, which included massive financial restatements, delisting from NASDAQ, the terminations and/or resignations of Ener1’s key employees, Ener1’s voluntary bankruptcy proceedings, and a formal SEC investigation into possible violations of federal securities laws.

319. Defendant Baker was further and separately motivated to engage in this fraudulent course of conduct in order to enable him to sell a significant amount of his personally-held Ener1 shares for substantial proceeds. According to a Form 4 filed with the SEC, on January 18, 2011, Defendant Baker exercised 20,000 stock options that were exercisable since July 2008 and simultaneously sold all 20,000 shares of his personally held Ener1 stock for proceeds of $100,000 when the price of exercising the stock options is subtracted, Baker profited by $58,000. This sale occurred after Baker, a Think board member and consultant, had sufficient
knowledge of problems with Think Holdings that would require an impairment of the Company’s loans receivable, accounts receivable, goodwill, and intangible assets but before Defendants disclosed this adverse information to the public. Moreover, the sale of 20,000 shares constituted a sale of two-thirds of Defendant Baker’s stock holdings in Enerl and was unusual in its size/scope compared to Baker’s other Enerl trades. This sizeable sell-off suggests not only that Defendant Baker knew that Enerl’s stock price was temporarily artificially inflated, but it also suggests that Defendant Baker was motivated to conceal the truth from the public so as to facilitate a profit before the truth about Enerl was ultimately revealed. As discussed supra, in addition to serving as a Director of Enerl, Defendant Baker served as a member of Think’s board and was also a consultant for Think Global during the Class Period. In these positions, Defendant Baker had specific knowledge that Think was not selling EVs at nearly the rate it had projected and was also aware of Think’s solvency problems. Indeed, CI 1 and CI 2 have explained that Defendant Baker attended Think board meetings in which the board would review the financial statements and make decisions as to Think’s solvency.

2. Defendants had Access to Information that Was Contrary to Information Disclosed

320. As further detailed above, Defendants had access to information that was contrary to the information contained in their materially false and misleading publicly disclosed statements. As detailed in the following timeline, each of the below identified events occurred during the Class Period and gave Defendants more than sufficient knowledge of the falsity or misleading nature of the aforementioned material misstatements and omissions made during the Class Period:
Second quarter 2010 – Ener1’s management thought the electric vehicle segment “looked bleak in the near-term” thereby causing management to “sharpen[] its emphasis on portfolio mix of products.”

October 2010 - Ener1 extended short-term working capital loans to Think Holdings totaling $6.4 million, with an interest rate of 5.0% per annum, originally scheduled to mature on December 31, 2010.

November 2010 - The Company issued 625,000 shares of Ener1 common stock to an existing creditor of Think Holdings in exchange for that creditor’s $2.5 million receivable from Think Holdings, with an interest rate of 5.0% per annum, originally scheduled to mature on December 31, 2010. On February 28, 2011, Ener1 extended the maturity date of the foregoing loans made to Think Holdings that were originally scheduled to mature on December 31, 2010 to mature on May 1, 2011.

November 2010 - Ener1 entered into a revolving line of credit agreement (Revolving LOC Agreement) with Think Holdings and established a line of credit for Think Holdings in the aggregate principal amount of $5.0 million, with an original maturity date of February 28, 2011.

November 2010 - CI 3 heard that employees of Think Global were leaving the company as its business struggled

November/December 2010 – CI 3 learned that EnerDel’s production output of batteries was reduced as Think’s vehicle orders declined in November/December 2010

End of 2010 – according to CI 3, EnerDel’s manufacturing plant slowed down production, going from three shifts to just one

December 2010/January 2011 - according to CI 3, “we [EnerDel’s employees] were told that Think was having issues. They didn’t tell us too much internally about Think’s problems. We were told that the price point for their vehicles was too high.”

January 2011 – Ener1 halts shipments of batteries to Think at Think’s request

January 2011 – Ener1 advanced approximately $2.8 million in working capital loans to Think Holdings and on February 28, 2011, in connection with the amendment to the Revolving LOC Agreement applied the working capital

\[16\] These statements were made by Gassenheimer at the Company’s Q1 2011 Earnings Call.
advances to the outstanding balance pursuant to the Amended Revolving LOC Agreement. As of March 31, 2011, Think Holdings had borrowed $7.8 million under the Amended Revolving LOC Agreement. On March 9, 2011, Ener1 extended the maturity date of the Amended Revolving LOC Agreement from March 31, 2011 to May 1, 2011.

- January 2011 – CI 5 directly expressed concerns about Think to Gassenheimer, stating that if the Think investment “falls through, as it looks like it might,” Ener1 would not have the funding to support the initiatives it was then planning. According to CI 5, Gassenheimer dismissed these comments.

- January 2011 - CI 6 recalled that beginning in January 2011 and for the duration of CI 6’s tenure, “comments were made” by key staff at meetings CI 6 attended, that Ener1’s investment in Think was problematic and a concern.

- January 2011 - problems with Think became readily apparent to Ener1 management by December 2010 or January 2011 and Ener1 management had been warned of Think’s escalating financial problems by various individuals. (AutoblogGreen)

- On February 28, 2011, the Company amended the Revolving LOC Agreement (Amended Revolving LOC Agreement) with Think Holdings and increased the principal amount of the Revolving LOC Agreement from $5 million to $15 million and extended the maturity date from February 28, 2011 to March 31, 2011. Ener1 also extended the maturity date of Think’s short-term working capital loans to May 1, 2011.

- March 10, 2011 – Ener1 announces “temporary” stop of shipping battery packs to Think and announces that it will not continue to recognize revenue from Think until shipments resume.

- March 2011 – European output of Think’s lone model, the Think City, are stopped. At the time, Think claimed that it halted the production line at contract manufacturer and Think investor, Valmet Automotive, in order to rebalance its parts inventory.

- March 2011 – Chris Cowger is appointed President of Ener1 and by March 2011, according to CI 6, had already “written [Think] off. CI explained that “[Cowger] realized we weren’t going to make any money on it. [Cowger] wanted Charles [Gassenheimer] to handle Think.”

- March/April 2011 – Ener1 shifts into “inventory depletion mode,” under which Think transitioned from a strategy of selling vehicles on a go forward basis (and beyond its existing inventory), to getting rid of its on-hand inventory, without any further intention to sell additional units. CI 1
explained that this transition was the result of key officers and directors (including Defendant Gassenheimer and Baker, as members of Think’s board) became increasingly aware that demand for Think’s vehicles was nowhere close to what they had hoped.

- April 2011 (and earlier) – Seidel typically expresses his distaste for Think, sometimes referring to it as “Stink.” Seidel additionally expresses his concerns about Think to Gassenheimer, according to CI 5. CI 5 also recalls several employees communicating concerns about Think’s future to Gassenheimer. These events would have taken place before CI 5’s departure from the Company in April 2011.

- April 2011 – Ener1 holds meeting with EnerDel employees in which Gassenheimer tells EnerDel employees that Think Global was struggling to make its goals. “Start-ups are not easy,” CI 4 recalled Gassenheimer telling the employees of EnerDel. CI 3 recalled that Gassenheimer said that Think was “going through a tough time.”

- May 10, 2011 – Ener1 files its 2011 Q1 Form 10-Q, which recognizes an investment impairment related to the Company’s investment in Think.

- May 2011 – Ener1 extends the maturity dates of both the Amended Revolving LOC Agreement and the short-term working capital loans to Think to June 15, 2011.

- June 22, 2011 – Think files for bankruptcy and Ener1 files a Form 8-K stating that the Audit Committee, Gassenheimer, and Seidel have determined that a material charge was required under generally accepted accounting principles applicable to Ener1 related to the loans receivable of Think Holdings, AS and accounts receivable of Think Global, AS (“Think Global”) held by Ener1. Defendants estimated the amount of charge to be $35.4 million.

- August 9, 2011 – The Company discloses accounting errors “related to the loans receivable of Think Holdings, AS (Think Holdings) and accounts receivable of Think Global, AS (Think Global) held by Ener1.” As such, the Company discloses a delay in filing its quarterly report on Form 10-Q for the quarter ended June 30, 2011.

- August 15, 2011 – Ener1 files a Form 8-K explaining that, as a result of material weaknesses in the Company’s internal control over financial reporting, Ener1 will be restating the financial statements contained in its Form 10-K for the year ended December 31, 2010 and its Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 in order to: (1) reflect as of December 31, 2010 the impairments of (i) Ener1’s investment in Think Holdings (which had previously been recorded in the first quarter of 2011), (ii) Ener1’s accounts receivable with Think Global and (iii) Ener1’s loans
receivable with Think Holdings, including accrued interest, (2) reflect the corrected accounting for revenue recognized in connection with transactions with Think Holdings and Think Global during the year ended December 31, 2010 and the three months ended March 31, 2011, (3) reflect the impact these adjustments have on the fair value of financial instruments and (4) to adjust the elimination of certain intercompany receivables.

- November 10, 2011 - Ener1 announces its goodwill is likely impaired and its value zero.

321. Because Defendants had access to numerous facts that contradicted the information contained in the materially false and misleading earnings calls, press releases, Forms 10-Q, Form 10-K, Forms 8-K and Forms S-3, Defendants acted either knowingly or recklessly in issuing the materially false and misleading statements. In fact, employees such as CI 3, who did not have access to nearly as much information as Defendants, knew enough to realize that Ener1’s spring press releases “didn’t tell the whole story” and “left out a lot of things.”

VII. LOSS CAUSATION/ECONOMIC LOSS

322. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated the prices of Ener1 common stock and operated as a fraud or deceit on Class Period purchasers of Ener1 common stock by failing to disclose and misrepresenting the adverse facts detailed herein. When Defendants’ prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, the price of Ener1 common stock fell precipitously as the prior artificial inflation came out. As a result of their purchases of Ener1 common stock during the Class Period, Plaintiffs and the other Class members suffered economic loss, i.e., damages, under the federal securities laws.

323. By failing to disclose to investors the adverse facts detailed herein, Defendants presented a misleading picture of Ener1’s business and prospects, financial position, and results of operations. Defendants’ false and misleading statements had the intended effect and caused
Enerl common stock to trade at artificially inflated levels throughout the Class Period, reaching as high as $5.90 per share on January 18, 2011.

324. In response to the May 10, 2011 partial corrective disclosure, the Company’s stock price declined $0.67 per share, or 27.35%, to close on May 11, 2011, at $1.78 per share, on usually heavy volume. Then, in response to the June 22, 2011 partial disclosure, the price of Enerl’s stock declined $0.07 per share, more than 5%, on unusually heavy volume, and further declined $0.16 per share, or 12.4%, to close on June 23, 2011, at $1.13 per share, also on unusually heavy volume. Again, in response to the August 9, 2011 partial disclosure, the price of Enerl’s stock fell $0.08 or 9.6%, to close at $0.75 on August 10, 2011. Finally, in response to the August 15, 2011 disclosure, the price of Enerl’s stock fell $0.33 per share, or 42.31%, to close on August 16, 2011, at $0.45 per share, on unusually heavy volume.

325. Thus, as a direct result of Defendants’ disclosures on May 10, 2011, June 22, 2011, August 9, 2011 and August 15, 2011, the price of Enerl common stock fell precipitously, ultimately declining from its closing price of $2.44 per share on May 10, 2011, to $0.45 per share on August 16, 2011 – a cumulative loss of $1.99 per share, or 82%, in just over a three month period. The aforementioned drops removed the inflation from the price of Enerl common stock, causing real economic loss to investors who had purchased Enerl common stock during the Class Period.

326. The decline was a direct result of the nature and extent of Defendants’ fraud finally being revealed to investors and the market. The timing and magnitude of the price decline in Enerl common stock negates any inference that the loss suffered by Plaintiffs and the other Class members was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to Defendants’ fraudulent conduct. The economic loss, i.e.,
damages, suffered by Plaintiffs and the other Class members was a direct result of Defendants’ fraudulent scheme to artificially inflate the prices of Enerl common stock and the subsequent significant decline in the value of Enerl common stock when Defendants’ prior misrepresentations and other fraudulent conduct were revealed.

VIII. APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET DOCTRINE

327. At all relevant times, the market for Enerl common stock was an efficient market for the following reasons, among others:

a) Enerl common stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

b) As a regulated issuer, Enerl filed periodic public reports with the SEC and the NASDAQ;

c) Enerl regularly communicated with public investors via established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

d) Enerl was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

328. As a result of the foregoing, the market for Enerl common stock promptly digested current information regarding Enerl from all publicly available sources and reflected such information in the prices of the stock. Under these circumstances, all purchasers of Enerl
common stock during the Class Period suffered similar injury through their purchase of Ener1 common stock at artificially inflated prices and a presumption of reliance applies.

IX.    NO SAFE HARBOR

329. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as “forward-looking statements” when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements were made, the particular speaker knew that the particular forward-looking statement was false, and/or that the forward-looking statement was authorized and/or approved by an executive officer of Ener1 who knew that those statements were false when made.

X.    CLAIMS

COUNT I

Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against Defendants Gassenheimer, Seidel, Kamischke and Baker

330. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

331. During the Class Period, Ener1 and the Defendants Gassenheimer, Seidel, Kamischke and Baker disseminated or approved the materially false and misleading statements specified above, which they knew or deliberately disregarded were misleading in that they
contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

332. Enerl and Defendants Gassenheimer, Seidel, Kamischke and Baker: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company’s common stock during the Class Period.

333. Plaintiffs and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Enerl common stock. Plaintiffs and the Class would not have purchased Enerl common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Enerl Defendants Gassenheimer, Seidel, Kamischke and Baker’s misleading statements.

334. As a direct and proximate result of Defendants’ wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their purchases of Enerl common stock during the Class Period.

**COUNT II**

**Violation of Section 20(a) of the Exchange Act**

**Against the Individual Defendants**

335. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

336. The Individual Defendants acted as controlling persons of Enerl within the meaning of Section 20(a) of the Exchange Act as alleged herein. By reason of their positions as officers and/or directors of Enerl, the Individual Defendants had the power and authority to cause Enerl to engage in the wrongful conduct complained of herein.
By reason of such conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

A. Determining that this action is a proper class action and certifying Plaintiffs as Class representatives under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiffs and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Granting such other and further relief as deemed appropriate by the Court.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Dated: April 7, 2012

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Lead Counsel for Plaintiffs
CERTIFICATE OF SERVICE

This is to certify that on April 9, 2012, I served the above Consolidated Amended Class Action Complaint, via Electronic Filing, to:

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