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16 UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 IN RE INVISION TECHNOLOGIES, INC.
20 SECURITIES LITIGATION

Case No. C-04-3181 (MJJ)

CONSOLIDATED COMPLAINT

21 This Document Relates To:

All Actions.

Jury Trial Demanded

22 Lead Plaintiffs Glazer Capital Management LP and Glazer Offshore Funds, Ltd. (hereinafter
23 referred to as "Plaintiffs" or the "Glazer Funds") for their Consolidated Complaint, allege upon
24 personal knowledge as to themselves and their own acts, and on information and belief as to all other
25 matters:

26 **NATURE OF THE ACTION**

27 1. This action is being brought on behalf of a class (the "Class") consisting of all persons
28 who purchased the securities of InVision Technologies, Inc. ("InVision" or the "Company") between
March 15, 2004 and July 30, 2004, inclusive (the "Class Period.")

2. On the first day of the Class Period, March 15, 2004, InVision announced a proposed
merger (the "Merger") whereby a wholly-owned subsidiary of General Electric Company ("GE")
would acquire InVision through paying \$50.00 for each share of InVision common stock with the

1 Merger expected to close in July, 2004. On the same day, InVision's senior most executives certified
2 the purportedly high standards of internal controls being employed by InVision and publicly
3 disseminated a copy of the merger agreement with GE in which InVision made a specific
4 representation and warranty that it was in compliance with all governing provisions of law applying
5 to InVision's operations.

6 3. In reaction to the announcement of the proposed merger and the representations made
7 by InVision that it conducted its operations in a lawful manner, the price of InVision common stock
8 increased from its opening price of \$41.22 per share to close at \$49.35 per share, a gain of almost
9 20% in a single day's trading.

10 4. The drumbeat of reassuring statements continued with Defendants issuing a proxy
11 statement seeking approval of the proposed merger and continuing to certify in filings made with the
12 Securities and Exchange Commission ("SEC") that it maintained internal controls necessary to
13 assure compliance with the governing legal requirements.

14 5. Plaintiffs and other members of the Class purchased InVision securities at prices
15 which were artificially inflated due to these misrepresentations and the expectation that the merger
16 would be promptly completed as scheduled.

17 6. On July 30, 2004, InVision disclosed that the Merger would not proceed as previously
18 scheduled because transactions which likely violated the Foreign Corrupt Practices Act, 15 U.S.C.
19 §78m (b) (2), had been recently uncovered. In reaction to disclosure of these facts, InVision's stock
20 dropped on the next trading day from its opening price of \$49.66 per share to close at \$ 43.27 per
21 share, a drop of more than 12%, causing members of the Class to suffer substantial damages. This
22 action seeks to recover the damages which Class Members suffered.

23 JURISDICTION AND VENUE

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

1 options which Magistri owned.

2 14. Defendant Ross Mulholland (“Mulholland”) was, at all relevant times, the Company’s
3 Chief Financial Officer, and Senior Vice President. Mulholland owned options to acquire 149,000
4 shares of InVision common stock, of which options to acquire 101,953 shares were to vest once the
5 Merger became effective. Mulholland was expected to receive net proceeds of \$2,738,240 based
6 upon the difference between the \$50.00 price set in the Merger and the exercise price of the options
7 which Mulholland owned.

8 15. Defendants Magistri and Mulholland are collectively referred to hereinafter as the
9 “Executive Defendants.”

10 **PLAINTIFFS’ CLASS ACTION ALLEGATIONS**

11 16. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil
12 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise
13 acquired the securities of InVision between March 15, 2004 and July 30, 2004, inclusive (the “Class
14 Period”), and who were damaged thereby. Excluded from the Class are Defendants, the officers and
15 directors of the Company, at all relevant times, members of their immediate families and their legal
16 representatives, heirs, successors or assigns and any entity in which the Defendants have or had a
17 controlling interest.

18 17. The members of the Class are so numerous that joinder of all members is
19 impracticable. Throughout the Class Period, InVision’s securities were actively traded on the
20 NASDAQ National Market System. While the exact number of Class members is unknown to
21 Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe
22 there are hundreds or thousands of members in the proposed Class. Record owners and other
23 members of the Class may be identified from records maintained by InVision or its transfer agent
24 and may be notified of the pendency of this action by mail, using the form of notice similar to that
25 customarily used in securities class actions.

1 InVision acquired Yxlon on March 31, 2003. Other products include landmine detection systems,
2 wood products and advanced personnel checkpoints systems. A substantial portion of the
3 Company's operations are conducted overseas. According to the Company's publicly filed reports,
4 approximately 20% of the EDS machines were installed at airports outside the United States. In
5 addition, the NDT unit made many of its sales outside the United States.

6 **Materially False And Misleading**
7 **Statements Issued During The Class Period**

8 23. On March 15, 2004, InVision issued a press release announcing that, subject to
9 regulatory approval, GE had agreed to acquire InVision, in an all-cash transaction valued at
10 approximately \$900 million, or \$50 per share. The press release quoted defendant Magistri as stating
11 that:

12 We're excited to become part of GE[.]...This transaction will
13 improve market reach of the merged companies and accelerate
14 development of technology and products to protect the public
15 worldwide. I look forward to InVision's scientists working with
16 GE's Global Research Center and GE's CT medical imaging
17 capabilities.

18 24. On March 15, 2004, InVision also filed its Annual Report on Form 10-K (the "Form
19 10-K") with the SEC. The Form 10-K was signed by, among others, defendants Magistri and
20 Mulholland.

21 25. Included as Exhibit 31.1 to the Form 10-K was a certification, as required by the
22 Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), signed by defendant Magistri stating, in relevant
23 part that:

24 4. The registrant's other certifying officer and I are responsible for
25 establishing and maintaining disclosure controls and procedures (as
26 defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the
27 registrant and have:

28 (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;

1 (b) valued the effectiveness of the registrant's disclosure
2 controls and procedures and presented in this report our conclusions
3 about the effectiveness of the disclosure controls and procedures, as
4 of the end of the period covered by this report based on such
5 evaluation; and

6 (c) Disclosed in this report any change in the registrant's internal
7 control over financial reporting that occurred during the registrant's
8 fourth fiscal quarter that has materially affected, or is reasonably
9 likely to materially affect, the registrant's internal control over
10 financial reporting

11 26. Included as Exhibit 31.2 to the Form 10-K was a Sarbanes-Oxley certification signed
12 by defendant Mulholland containing the identical representation about InVision's internal controls.

13 27. Included as Exhibit 2.2 to the Form 10-K was the operative merger agreement
14 between GE and InVision which was titled "AGREEMENT AND PLAN OF MERGER Dated as
15 of March 15, 2004 among GENERAL ELECTRIC COMPANY, JET ACQUISITION SUB, INC.
16 and INVISION TECHNOLOGIES, INC." (referred to herein as the "Merger Agreement.") Among
17 the representations and warranties made by InVision in the Merger Agreement, and disclosed to the
18 investing public by attaching the Merger Agreement as an exhibit to the Form 10-K was, as stated
19 in relevant part (in section 3.8(a)), that:

20 The Company and its Subsidiaries are (and since January 1, 2002
21 have been) in compliance in all material respects with all laws
22 (including common law), statutes, ordinances, codes, rules,
23 regulations, decrees and orders of Governmental Authorities
24 (collectively, "Laws") applicable to the Company or any of its
25 Subsidiaries, any of their properties or other assets or any of their
26 businesses or operations (including those Laws related to Export
27 Control Requirements and improper payments).

28 28. On or about May 7, 2004, InVision filed its quarterly report for the fiscal quarter
ended March 28, 2004 with the SEC (the "First Quarter 10-Q"). Included in the First Quarter 10-Q
were the following exhibits: (a) Exhibit 31.1 which was a certification signed by defendant Magistri
identical to that contained in Exhibit 31.1 to the Form 10-K and (b) Exhibit 31.2 which was a
certification signed by defendant Mulholland identical to that contained in Exhibit 31.2 to the Form
10-K.

29 29. On May 24, 2004, InVision filed a proxy statement (the "Proxy Statement") with the
30 SEC which was also mailed to InVision shareholders in order to solicit their vote in favor of the

1 Merger. Included within the Proxy Statement as Appendix A was the Merger Agreement which
2 continued to represent that InVision had been, and was at that time, conducting all of its business
3 operations in accordance with governing legal requirements. Defendants omitted to disclose in the
4 Proxy Statement either that the Company's internal controls and procedures were deficient to such
5 an extent that they allowed violations of the law, including potential violations of the Foreign
6 Corrupt Practices Act to go undetected or that they willfully or recklessly ignored such internal
7 controls and procedures and refrained from taking steps necessary to discover violations of the law,
8 including potential violations of the Foreign Corrupt Practices Act.

9 **Defendants' Statements Were Materially**
10 **False and Misleading and Made with Scienter**

11 30. The statements made by Defendants concerning the integrity of the Company's
12 systems of internal controls and the Company's compliance with governing legal requirements in
13 performing its operations were materially false and misleading. In truth and in fact, InVision was
14 violating the Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§78m (b)(2), 78dd-1, 78dd-2, in its
15 operations by making unlawful payments to foreign persons or entities in order to secure contracts
16 for the purchase of its equipment.

17 31. Defendants either knew or recklessly disregarded the fact that such unlawful
18 payments had been made or, alternatively, knew or recklessly disregarded that, contrary to the
19 Sarbanes-Oxley certifications contained in the Form 10-K, the First Quarter 10-Q and the Proxy
20 Statement, the Company did not, in fact, maintain a system of internal controls adequate to uncover
21 unlawful activities or to insure compliance with the requirements of the Exchange Act and, in
22 particular, the Foreign Corrupt Practices Act, which is a provision of the Exchange Act.

23 32. The knowledge of the Executive Defendants stems from their roles and
24 responsibilities within InVision as the Chief Executive Officer and the Chief Financial Officer.
25 Individuals acting in that capacity for a company whose securities are publicly traded and registered
26 with the SEC have the duty and obligation to insure the adequacy of internal controls designed to
27 prevent unlawful conduct. In addition, to the extent such executives are unable to insure the
28 adequacy of a company's internal controls or its compliance with lawful requirements, such

1 individuals are charged with knowledge as to such inadequacies as evidenced by the requirements
2 of Sarbanes-Oxley that they sign sworn certifications as to the integrity of a company's systems of
3 internal controls and compliance with the requirements of the Exchange Act.

4 33. In addition, the Executive Defendants each had a motive for making the materially
5 false or misleading statements and/or omissions complained of in this action. The Merger would
6 allow the Executive Defendants to sell all the InVision securities they owned and to accelerate the
7 vesting of options for the purchase of InVision common stock. Defendant Magistri was expected
8 to receive net proceeds of \$22,562,564 and defendant Mulholland would receive proceeds of
9 \$2,738,240 when the Merger closed and they were able to dispose of all of their InVision securities.

10 **Disclosure of Adverse Facts**

11 34. On July 30, 2004, after the market closed, InVision announced that it had met with
12 the Department of Justice and the SEC concerning its disclosure of an internal investigation of
13 certain possible offers of improper payments by distributors in connection with foreign sales
14 activities. The Company, in its press release, stated:

15 InVision has been informed that the Department of Justice and the
16 Securities and Exchange Commission may commence an
17 investigation of InVision with respect to these matters, including with
18 respect to possible violations of the Foreign Corrupt Practices Act. InVision's internal investigation has been conducted in consultation
19 with General Electric (NYSE:GE), which has agreed to acquire
20 InVision in a cash merger. InVision intends to cooperate fully with
21 any governmental investigation of these matters.

22 The internal investigation and any related investigation by the
23 Department of Justice and/or the Securities and Exchange
24 Commission may not be completed by October 31, 2004. Completion
25 of the acquisition of InVision by GE remains subject to the closing
26 conditions in the merger agreement, including regulatory approvals.
27 If the acquisition is not completed by October 31, 2004, either
28 InVision or GE may be entitled to terminate the merger agreement.

35. The news shocked the market and, although not canceling the Merger, materially
increased the risk of either a substantial delay in effectuating the Merger, a change in the terms of
the Merger or even potentially the Merger being cancelled. Since a situation of near certainty for
completion of the Merger had been transformed into one rife with uncertainty, the price of InVision
common stock fell \$6.39 or more than 12%, on August 2, 2004, the next trading day, to close at

1 \$43.27 per share, reflecting the heightened risk which had previously gone undetected. The facts
2 relating to the violation of the Foreign Corrupt Practices Act were material facts that Defendants had
3 a duty to disclose but, nonetheless, failed to disclose.

4 **Plaintiffs and the Class Were Damaged**

5 36. Plaintiffs, other public investors and the securities markets relied on the truth of the
6 statements made by Defendants concerning InVision's compliance with governing provisions of law
7 and the integrity of the Company's systems of internal controls designed to detect such violations
8 of the law. Prior to the July 30, 2004 announcement, they did not know and had no way of knowing
9 these material adverse facts. The disclosure of the materially adverse facts and the prior
10 misstatements of fact were a direct and proximate cause of the decline in InVision's stock on August
11 2, 2004.

12 37. At all relevant times, the market for InVision securities was an efficient market for
13 the following reasons, among others:

14 (a) InVision stock met the requirements for listing, and was listed and actively
15 traded on the NASDAQ National Market System, a highly efficient and automated market;

16 (b) As a regulated issuer, InVision filed periodic public reports with the SEC and
17 the NASDAQ;

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

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

26 (e) The price of InVision securities reacted rapidly to news announcements and
27 other developments affecting the value of InVision and its securities.

1 38. As a result, all purchasers of InVision securities during the Class Period suffered
2 similar injury through their purchase of InVision securities at artificially inflated prices and a
3 presumption of reliance applies.

4 39. On December 6, 2004, InVision announced that it had entered into a non-prosecution
5 agreement with the Criminal Division, Fraud Section, of the United States Department of Justice
6 (“DOJ”). Pursuant to the non-prosecution agreement, the DOJ has agreed not to prosecute InVision
7 under the Foreign Corrupt Practices Act or specified other federal criminal statutes for conduct that
8 potentially violates the Foreign Corrupt Practices Act based on the transactions and events identified
9 in the non-prosecution agreement. InVision also agreed to:

- 10 (a) make a payment of \$800,000 to the United States Treasury;
- 11 (b) accept responsibility in a manner defined in the agreement for specified
12 actions or omissions of employees;
- 13 (c) negotiate in good faith a settlement with the SEC; and
- 14 (d) continue to cooperate with the DOJ and the SEC in their investigations of the
15 matters covered by the non-prosecution agreement.

16 40. InVision also announced that it had submitted an offer of settlement to the Staff of
17 the SEC that the Staff had agreed to recommend to the SEC. The proposed agreement, under which
18 the Company will not admit or deny any wrongdoing, will, if approved by the Commission,
19 purportedly fully resolve the matters that the SEC has been investigating with respect to InVision.

20 41. In connection with announcing its agreement with the DOJ, InVision also announced
21 that GE had completed its acquisition of the Company. However, Plaintiffs and other members of
22 the Class had already been damaged through paying artificially inflated prices for InVision securities
23 which failed to reflect the risks that the Merger would not proceed or its closing would be delayed
24 because of the Company’s violation of the law, including the Foreign Corrupt Practices Act.

1 **FIRST CLAIM**

2 **Violation of Section 10(b) of**
3 **The Exchange Act and Rule 10b-5**
4 **Promulgated Thereunder Against All Defendants**

5 42. Plaintiffs repeat and reallege each and every allegation contained above as if fully set
6 forth herein.

7 43. During the Class Period, Defendants carried out a plan, scheme and course of conduct
8 which was intended to and, throughout the Class Period, did: (a) deceive the investing public,
9 including Plaintiffs and other Class members, as alleged herein; and (b) cause Plaintiffs and other
10 members of the Class to purchase InVision securities at artificially inflated prices. In furtherance
11 of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions
12 set forth herein.

13 44. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue
14 statements of material fact and/or omitted to state material facts necessary to make the statements
15 not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud
16 and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high
17 market prices for InVision securities in violation of Section 10(b) of the Exchange Act and Rule 10b-
18 5.

19 45. Defendants, individually and in concert, directly and indirectly, by the use, means or
20 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
21 continuous course of conduct to conceal adverse material information about the business, operations
22 and future prospects of InVision as specified herein.

23 46. Defendants employed devices, schemes and artifices to defraud, while in possession
24 of material adverse non-public information and engaged in acts, practices, and a course of conduct
25 as alleged herein in an effort to assure investors of InVision value and performance and continued
26 substantial growth, which included the making of, or the participation in the making of, untrue
27 statements of material facts and omitting to state material facts necessary in order to make the
28 statements made about InVision and its business operations and future prospects in the light of the

1 circumstances under which they were made, not misleading, as set forth more particularly herein,
2 and engaged in transactions, practices and a course of business which operated as a fraud and deceit
3 upon the purchasers of InVision securities during the Class Period.

4 47. Each of the Executive Defendants by virtue of their responsibilities and activities as
5 a senior executive officers was aware of the Company's dissemination of information to the
6 investing public which they knew or recklessly disregarded was materially false and misleading.

7 48. Defendants had actual knowledge of the misrepresentations and omissions of material
8 facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and
9 to disclose such facts, even though such facts were available to them. Defendants' material
10 misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and
11 effect of concealing InVision's violations of the Foreign Corrupt Practices Act and InVision's failure
12 to implement a system of internal controls adequate or sufficient to detect violations of the law,
13 including potential violations of the Foreign Corrupt Practices Act. Defendants, if they did not have
14 actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain
15 such knowledge by deliberately refraining from taking those steps necessary to discover whether
16 those statements were false or misleading.

17 49. The facts which Defendants misstated and/or failed to disclose and which are the
18 subject of this Complaint were material. This is demonstrated, in part, by the substantial decline in
19 the trading price of InVision common stock upon disclosure of the relevant facts. In ignorance of
20 the fact that market prices of InVision publicly-traded securities were artificially inflated, and relying
21 directly or indirectly on the false and misleading statements made by Defendants, or upon the
22 integrity of the market in which the securities trade, and/or on the absence of material adverse
23 information that was known to or recklessly disregarded by Defendants but not disclosed in public
24 statements by Defendants during the Class Period, Plaintiffs and the other members of the Class
25 acquired InVision securities during the Class Period at artificially high prices and were damaged
26 thereby.

1 to prevent the issuance of the statements or cause the statements to be corrected.

2 55. In particular, each of the Executive Defendants had direct and supervisory
3 involvement in the day-to-day operations of the Company and, therefore, is presumed to have had
4 the power to control or influence the particular transactions, statements and/or non-disclosures giving
5 rise to the securities violations as alleged herein, and exercised the same.

6 56. InVision violated Section 10(b) and Rule 10b-5 by its acts and omissions as alleged
7 in this Complaint. By virtue of their positions as controlling persons of InVision, the Executive
8 Defendants are liable as control persons pursuant to Section 20(a) of the Exchange Act.

9 **Basis for Information and Belief**

10 57. Plaintiffs base their information and belief on: (a) filings made with the SEC
11 referenced in this Complaint as well as Forms 8-K filed by the Company with the SEC; (b) press
12 releases of InVision and news reports concerning the Company; (c) reports of securities analysts
13 concerning InVision; and (d) a review of publicly available information concerning the trading
14 history of InVision common stock.

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

16 (a) Determining that this action is a proper class action, and certifying Plaintiffs
17 as class representatives under Rule 23 of the Federal Rules of Civil Procedure;

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

21 (c) Awarding Plaintiffs and the Class their reasonable costs and expenses incurred
22 in this action, including counsel fees and expert fees; and

23 (d) Such other and further relief as the Court may deem just and proper.
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JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: December 9, 2004 GLANCY BINKOW & GOLDBERG LLP

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