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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE INVENSENSE, INC. SECURITIES
LITIGATION.

Case No. [15-cv-00084-JD](#)

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 64

This is a securities fraud class action brought by lead plaintiff the Vossen Group on behalf of all persons or entities who purchased the publicly-traded common stock of InvenSense, Inc. (“InvenSense” or “Company”) between July 29, 2014 and October 28, 2014. Dkt. No. 62 ¶¶ 1, 25.¹ The Vossen Group alleges in the operative consolidated complaint that defendants InvenSense, its CEO and President, Behrooz Abdi (“Abdi”), and its former CFO and Vice President, Alan Krock (“Krock”) made false and misleading public statements in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b), 78t(a), and Securities and Exchange Commission (“SEC”) Rule 10b-5, 17 C.F.R. § 240.10b-5. *See id.* ¶¶ 1, 28, 31. Defendants move to dismiss the complaint for failure to state a claim under the pleading standards of the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4. Dkt. No. 64. The Court grants the motion.

BACKGROUND

As alleged in the complaint, InvenSense is a technology company which “was a pioneer in the advancement of motion processing solutions and micro-electro-mechanical system (‘MEMS’)

¹ The Vossen Group is made up of putative class members Gregory Vossen, Albert Di Rienzo and Ed Farley, who collectively “purchased 33,183 shares of InvenSense during the Class Period.” Dkt. No. 62 ¶ 25.

1 technology.” Dkt. No. 62 ¶ 2. “The Company’s MEMS chips are used to track complex user
2 motions through motion sensors, including microscopic gyroscopes and accelerometers,” based on
3 patented technology. *Id.*

4 Plaintiff alleges that the market for MEMS chips “began to explode” after Apple Inc.
5 (“Apple”) introduced the original iPhone in June 2007, and that ever since, it has been an
6 important goal for InvenSense to obtain Apple as a customer. *Id.* ¶¶ 4, 66. After some difficulties
7 and losses (particularly to its rival, STMicroelectronics N.V. (“STMicro”)), InvenSense finally
8 accomplished that goal when Apple selected InvenSense’s 6-axis MEMS chip in June 2014 for
9 use in the iPhone 6 and 6 Plus. *Id.* ¶¶ 3-13.

10 Despite that success, plaintiff alleges that defendants made actionable false statements and
11 material omissions in two ways in connection with the June 2014 Apple design win (and
12 InvenSense’s failed efforts for previous generations of iPhones that preceded that win). The first
13 has to do with inventory. On October 28, 2014, InvenSense announced that it needed to write
14 down \$7.4 million for “excess or obsolete ‘earlier generation inventory.’” *Id.* ¶ 52. Plaintiff
15 alleges that the “earlier generation inventory” referred to in this statement was “largely the 20
16 million 3-axis MEMS chips that had been built for the iPhone 5S and 5C” which Apple ultimately
17 did not buy from InvenSense, and that InvenSense had been too slow in writing down the value of
18 this inventory. *Id.* ¶ 19. Plaintiff alleges that defendants should have written off “\$6.90 million of
19 product inventory” for these chips earlier than it did, and that defendants “knew or were reckless
20 in not knowing [that this inventory] was excess, obsolete or unsalable by no later than June 29,
21 2014.” *Id.* ¶ 57.

22 Plaintiff also takes issue with another announcement the Company made on October 28,
23 2014 -- that its “gross margins had plummeted to 37%, substantially lower than the 50% gross
24 margin defendants had reported on July 29, 2014, which they assured the market would remain
25 ‘consistent’ through 2Q15.” *Id.* ¶ 51. Plaintiff alleges that the earlier assurances of consistent
26 gross margins were false and misleading because Apple’s June 2014 purchase order for the
27 Company’s 6-axis MEMS chips “set pricing below InvenSense’s other ‘10% customers’
28 (customers whose purchases were 10% or more of InvenSense’s sales volume),” and defendants

1 knew or were reckless in not knowing that this pricing would reduce InvenSense’s margins. *Id.*
2 ¶ 13.

3 Plaintiff consequently sues for defendants’ “misleading statements and material omissions
4 on July 29, 2014 and August 7, 2014 regarding InvenSense’s excess and obsolete inventory and
5 the Company’s pricing and margin on chips to be sold to Apple Inc. (‘Apple’) for use in the
6 iPhone 6 and 6 Plus.” *Id.* ¶ 1. Defendants raise the usual objection in securities cases that
7 plaintiffs’ allegations do not satisfy the heightened pleading standards required in a securities
8 fraud action. Specifically, defendants contend that plaintiffs have failed sufficiently to plead
9 falsity and scienter. Dkt. No. 64 at 2. Defendants additionally contend that “[t]he margin forecast
10 qualifies for the safe harbor” provided for forward-looking statements under the PSLRA, and as
11 such, “cannot serve as a basis for liability in this case.” *Id.*

12 **DISCUSSION**

13 **I. LEGAL STANDARD**

14 Well-established standards govern this motion to dismiss. To comply with the pleading
15 requirements of Federal Rule of Civil Procedure 8(a)(2) and survive a Rule 12(b)(6) motion to
16 dismiss, a plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.”
17 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the
18 pleaded factual content allows the court to draw the reasonable inference that the defendant is
19 liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly* at
20 556). In evaluating a motion to dismiss, the Court assumes that the plaintiff’s allegations are true
21 and draws all reasonable inferences in his or her favor. *Usher v. City of Los Angeles*, 828 F.2d
22 556, 561 (9th Cir. 1987). The Court need not, however, “accept as true allegations that are merely
23 conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec.*
24 *Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). If the Court dismisses a complaint, it “should grant
25 leave to amend even if no request to amend the pleading was made, unless it determines that the
26 pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d
27 1122, 1130 (9th Cir. 2000) (internal quotation marks and citation omitted).

28

1 Additional requirements apply because this is a securities fraud class action alleging
2 violations of Sections 10(b) and 20(a) of the Securities Exchange Act and SEC Rule 10b-5. “To
3 plead a claim under Section 10(b) and Rule 10b-5, the plaintiff must allege: (1) a material
4 misrepresentation or omission; (2) scienter; (3) a connection between the misrepresentation or
5 omission and the purchase or sale of a security; (4) reliance; (5) economic loss; and (6) loss
6 causation.” *Oregon Pub. Emps. Ret. Fund v. Apollo Grp. Inc.*, 774 F.3d 598, 603 (9th Cir. 2014)
7 (citing *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 157 (2008)). Here,
8 defendants do not contest elements (3) through (6), and so the Court focuses on whether plaintiff
9 has adequately pled the first two elements: falsity and scienter.

10 In a securities fraud action, the circumstances constituting the alleged fraud must be stated
11 with particularity under Federal Rule of Civil Procedure 9(b). *See Oregon Pub. Emps. Ret. Fund*,
12 774 F.3d at 604. In addition, pursuant to the PSLRA, the complaint must “specify each statement
13 alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an
14 allegation regarding the statement or omission is made on information and belief, the complaint
15 shall state with particularity all facts on which that belief is formed.” 15 U.S.C. § 78u-4(b)(1).
16 For each alleged misstatement or omission, the complaint must also “state with particularity facts
17 giving rise to a strong inference that the defendant acted with the required state of mind.” *Id.*
18 § 78u-4(b)(2)(A).

19 **II. SECTION 10(b) CLAIM**

20 Plaintiff challenges nine specific statements made by defendants on two different dates,
21 July 29, 2014 and August 7, 2014. *See* Dkt. No. 62-1 (Ex. A to consolidated complaint). Plaintiff
22 groups the statements into two categories: statements about InvenSense’s (1) “excess and obsolete
23 inventory,” and (2) “pricing and margin on chips to be sold to Apple Inc. (‘Apple’) for use in the
24 iPhone 6 and 6 Plus.” Dkt. No. 62 ¶ 1.

25 **A. Statements re Inventory**

26 For the inventory-related statements, defendants’ primary line of attack is that plaintiff has
27 failed adequately to plead falsity. *See* Dkt. No. 72 at 1-6. A statement or omission is actionably
28 false if it creates an “impression of a state of affairs that differ[s] in a material way from the one

1 that actually exist[s].” *Reese v. Malone*, 747 F.3d 557, 570 (9th Cir. 2014) (citation omitted). To
2 plead falsity under the PSLRA, plaintiffs must “specify each statement alleged to have been
3 misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding
4 the statement or omission is made on information and belief, . . . all facts on which that belief is
5 formed.” 15 U.S.C. § 78u-4(b)(1)(B).

6 Plaintiff challenges these statements as false:

- 7 • In the July 29, 2014 press release (and as was “repeated at [the] 7/29/14
8 earnings conference call and in [the] 8/7/14 Form 10-Q”), defendants
9 stated the value of InvenSense’s “inventories” as of June 29, 2014 as
10 \$77,513,000. Dkt. No. 62-1 at 1. Plaintiff explains that this statement
11 was false and misleading because, among other things, “InvenSense
12 improperly failed to write-off at least \$6.90 million of excess, obsolete or
13 unsalable 3-axis MEMS chip inventory by no later than the quarter ended
14 6/29/14 (1Q15) pursuant to GAAP.” *Id.*
- 15 • In an earnings conference call on July 29, 2014, Abdi stated, “Having
16 strategically built inventory ahead of anticipated demand for our second
17 generations [*sic*] 6-axis products in previous quarters, we are now able to
18 meet significant new customer requirements even while we continue to
19 add manufacturing capacity and ramp into production our third-
20 generation 6-axis products.” *Id.* at 2.
- 21 • In the same conference call, Krock stated, “To support this Q2 fiscal 2015
22 revenue outlook, we currently have backlog in place representing a
23 majority of this total current quarter revenue target.” *Id.*

19 Critical to the determination of this motion is the reason why plaintiff believes the
20 statements above are false and misleading. The essential allegations on that point are:

- 21 • InvenSense was unsuccessful in securing a “design win” for the original
22 iPhone (June 2007), the follow-on iPhone 3, the iPhone 4 (2010), and
23 iPhone 5 (September 2012). Dkt. No. 62 ¶¶ 4-7. Apple instead selected
24 STMicro’s chips for inclusion in the iPhone 4 and iPhone 5. *Id.* ¶¶ 5, 7.
- 25 • One of the reasons identified for these losses was the concern that
26 InvenSense “was too small to have the capacity or financial resources to
27 support the volume of chips Apple demanded.” *Id.* ¶ 5.
- 28 • After the loss to STMicro for the iPhone 5 in September 2012, defendant
Abdi ousted InvenSense’s founder and then-CEO Steve Nasiri from the
Company and installed himself as the new CEO and President, “with a
promise to get InvenSense’s chips into an Apple iPhone.” *Id.* ¶¶ 2, 7.

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- InvenSense was “given the opportunity to work with Apple to develop a MEMS chip specifically for the [iPhone] 5S and 5C handsets,” scheduled for release in September 2013. *Id.* ¶ 8. “To allay any concerns Apple had about InvenSense’s manufacturing capacity, InvenSense began volume production of 3-axis MEMS sensors for the iPhone 5S and 5C before Apple had committed to putting the chips into the handsets. By the end of June 2013, InvenSense had built up an inventory of approximately 20 million 3-axis MEMS chips that were specifically for the iPhone 5S and 5C.” *Id.*
- Apple ultimately again chose STMicro’s chips for inclusion in the iPhone 5S and 5C, and so “InvenSense was left with approximately 20 million 3-axis MEMS chips specifically designed for the iPhone 5S and 5C.” *Id.* ¶ 9.
- For various reasons, these 3-axis chips became “excess, obsolete or unsalable by no later than June 29, 2014,” and consequently, under GAAP, their value should have been written down prior to July 29, 2014, the beginning of the Class Period. *Id.* ¶¶ 9, 48, 57-65.
- InvenSense, however, failed to take this charge until October 28, 2014, when it announced that it would be taking a \$7.4 million dollar charge “to write down earlier generation inventory that is now [in] excess or obsolete.” *Id.* ¶ 19.
- Moreover, this failure to take the write-down earlier was intentional on InvenSense’s part. InvenSense chose to keep “nearly all of the approximately 20 million iPhone 5S and 5C chips on its books at full value” and even “reported significant increases in the value of the Company’s inventory for the quarters ended December 29, 2013 and March 30, 2014 (3Q14 and 4Q14),” so that it could show the public and Apple “that inventory and capacity were not a concern.” *Id.* ¶ 11. (And InvenSense was in fact rewarded with a design win at last for the Apple iPhone 6 and 6 Plus in June 2014. *Id.* ¶ 13.)

These are not trivial allegations, and if the test were simply *Twombly* plausibility alone, the Court would find that plaintiff has amply stated a claim. Even under the PSLRA, the Court would find that plaintiff has adequately specified each statement alleged to have been misleading, and the reason or reasons why the statement is misleading. *See* 15 U.S.C. § 78u-4(b)(1).

But the allegations fall just shy of enough. This is because plaintiff has failed to meet the heightened particularity requirement imposed by Federal Rule of Civil Procedure 9(b), as well as the PSLRA’s additional requirement that, when “an allegation regarding [a] statement or omission

1 is made on information and belief, the complaint shall state with particularity all facts on which
2 that belief is formed.” 15 U.S.C. § 78u-4(b)(1).

3 It is important to note here that, as the Court stated at the hearing on this motion with no
4 objection by defendants, a securities plaintiff is not required to have confidential witnesses as a
5 source for the allegations in the complaint. *See* Dkt. No. 75 at 8:7-11. Plaintiff does, however,
6 need to identify *some* source for how it knows of the key, very detailed factual allegations in its
7 complaint that support its theory of falsity, *e.g.*, that “by the end of June 2013, InvenSense had
8 built up an inventory of approximately 20 million 3-axis MEMS chips that were specifically for
9 the iPhone 5S and 5C”; or that these chips, which had an “approximate cost of \$0.44 per chip”
10 became unsalable because, among other things, they “suffered from manufacturing yield problems
11 and did not meet any high-volume customer’s specifications.” Dkt. No. 62 ¶¶ 8, 58-60.

12 It is not enough for plaintiff simply to state as an introduction to the complaint that its
13 allegations are “based upon personal knowledge . . . , and upon an investigation conducted by and
14 through lead plaintiff’s attorneys, which included, *inter alia*, a review of the United States
15 Securities and Exchange Commission (‘SEC’) filings made by InvenSense, Inc. (‘InvenSense’ or
16 the ‘Company’), Company releases, conference calls, public statements issued by defendants,
17 media reports, analyst reports and consultation with persons familiar with InvenSense’s business
18 including former employees of InvenSense.” *Id.* at 1. And it most definitely is not enough for
19 plaintiff merely to allege that it “believes substantial additional evidentiary support will likely
20 exist for the allegations set forth herein after a reasonable opportunity for discovery.” *Id.*

21 Because this case is governed by Rule 9(b) and the PSLRA, plaintiff must do more than
22 these current efforts to get past a Rule 12(b)(6) challenge. As our Circuit held in *In re Silicon*
23 *Graphics Inc. Securities Litigation*, 183 F.3d 970, 985 (1999), the requirement that a plaintiff must
24 “state ‘with particularity all facts on which [her] belief is formed,’” means that “a plaintiff must
25 provide, in great detail, all the relevant facts forming the basis of her belief. It is not sufficient for
26 a plaintiff’s pleadings to set forth a belief that certain unspecified sources will reveal, after
27 appropriate discovery, facts that will validate her claim.”

28

1 In *In re Textainer Partnership Securities Litigation*, Case No. C-05-0969 MMC, 2005 WL
2 3801596 (N.D. Cal. Mar. 8, 2005), Judge Chesney dismissed for this very reason another
3 securities complaint that was also subject to the PSLRA. In that case, one of plaintiff’s main
4 allegations was that defendants had made a materially false and misleading statement because of
5 their failure to disclose that “the price of shipping containers had increased by approximately 18-
6 20%.” The Court dismissed that claim with leave to amend because plaintiff had “cite[d] no
7 source for his contention that container prices rose 18-20% between July 2004 and January 2005.”
8 *Id.* at *2, 7. The Court found that this did not meet the PSLRA’s requirement that a complaint
9 reveal “facts demonstrating the reliability of [plaintiff’s] assertions.” *Id.* (citing *Silicon Graphics*,
10 183 F.3d at 985).

11 The Court finds that the same conclusion applies here, and consequently dismisses
12 plaintiff’s claims for the inventory-related statements with leave to amend. Any amended
13 complaint must add allegations identifying the sources of plaintiff’s beliefs for the factual
14 allegations that support plaintiff’s claims of falsity.²

15 **B. Statements re Gross Margin**

16 Plaintiff also challenges statements about the Company’s gross margin. There are six
17 statements, all of which were made during an earnings conference call on July 29, 2014. The first
18 statement was made by Abdi, and the rest were made by then-CFO Krock:

- 19 • “While we expect gross margins at some of our top tier customers to
20 remain under pressure, as a result of high-volume pricing, as well as
21 lower initial manufacturing yields as we ramp new products into
22 production, we believe our higher value system solutions combined with
23 our aggressive manufacturing cost reductions, will keep our overall gross
24 margins at consistent levels.” Dkt. No. 62-1 at 8.

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27 ² Because plaintiffs have failed sufficiently to plead falsity, the Court need not reach the issue of
28 scienter. See *In re Mellanox Tech., Ltd.*, No. 13-cv-4909-JD, 2014 WL 7204864, at *5 (N.D. Cal.
2014). The scienter analysis on the next round of 12(b)(6) motions (if there is one), will likely
depend a great deal on the sources plaintiff newly identifies in the amended complaint. The Court
consequently declines to address the parties’ scienter arguments at this time.

- 1 • “Product mix for the current quarter continues to favor our highest
2 volume mobile customers. And we should generate a total gross margin
3 in line with recent levels. We believe that on a GAAP basis our Q2 FY15
4 gross margin will be in a range around 48% continuing to now modestly
5 reflect the impact of additional cost of amortization of intangibles
6 acquired.” *Id.*
- 7 • “On a non-GAAP basis, Q2 FY15 gross margin is expected to be
8 consistent with recent past quarters that is in the range around 50%. In
9 future quarters, lower-cost of products, additional production volumes,
10 and improving product yields should contribute to a favorable impact on
11 our gross margin. Therefore our target non-GAAP gross margin remains
12 unchanged.” *Id.* at 9.
- 13 • “We expect our spending in margin opportunities for our FY15 -- we
14 continue to expect gross margins generally consistent with our recent past
15 and FY14 on a non-GAAP basis and on a GAAP basis in a range of
16 around approximately 48%.” *Id.*
- 17 • “There’s no significant difference in trends quarter on quarter. I know
18 many investors do look at the SEC filings and so forth, which include
19 information on that. Generally percentage of 6-axis average selling price
20 of 6-axis product, steps we take to manufacture, or manage manufacturing
21 cost and so forth generally very consistent trends with recent past.
22 Therefore, generating a very consistent gross margin level with the last
23 couple quarters as well.” *Id.* at 10.
- 24 • “But generally it’s about the value of these sensor function in the market
25 with the Gyro and integrated sensor attached. So there’s no one customer
26 with any particular window of pricing that’s relevant.” *Id.*

27 Defendants’ main attack is that these statements are not actionable because they fall under
28 the “safe harbor” provided by the PSLRA. Dkt. No. 64 at 6-8. The PSLRA “provides an
additional barrier at the pleading stage in the form of a safe harbor for ‘forward-looking
statements.’” *In re Cutera*, 610 F.3d 1103, 1111 (9th Cir. 2010). Forward-looking statements fall
within the safe harbor set out in 15 U.S.C. § 78u-5(c)(1) in either of these two circumstances: “if
they were identified as forward-looking statements and accompanied by meaningful cautionary
language, under subsection (A)(i); or if the investors fail to prove the projections were made with
actual knowledge that they were materially false or misleading, under subsection (B).” *Id.* at
1111-12 (emphasis in original). Under the former subsection, “if a forward-looking statement is
identified as such and accompanied by meaningful cautionary statements, then the state of mind of
the individual making the statement is irrelevant, and the statement is not actionable regardless of

1 the plaintiff’s showing of scienter.” *Id.* at 1112. That is the situation defendants contend applies
2 to the gross margin statements here. Dkt. No. 64 at 8.

3 The questions, then, are whether the gross margin statements identified by plaintiff are
4 “forward-looking statements” under the statute, and if so, whether they were accompanied by
5 “meaningful cautionary statements.” On the first question, even plaintiff acknowledges that
6 defendants’ statements regarding gross margin “were couched as statements of expectations.”
7 Dkt. No. 69 at 8. The Court finds that these statements are quintessential forward-looking
8 statements. Significantly, the PSLRA itself expressly defines as a “forward-looking statement” a
9 statement “containing a projection of revenues, income (including income loss), earnings
10 (including earnings loss) per share, capital expenditures, dividends, capital structure, *or other*
11 *financial items*,” as well as “a statement of future economic performance.” 15 U.S.C. § 78u-
12 5(i)(1)(A) & (C) (emphasis added). The Court has no doubt that the statements challenged by
13 plaintiff squarely fit these definitions.

14 Plaintiff suggests that these statements should not be treated as forward-looking within the
15 safe harbor because “they were purportedly predicated on then-known and current facts”
16 Dkt. No. 69 at 8. But the Court rejects this argument. The PSLRA expressly includes in its
17 definition of “forward-looking statement” “any statement of the assumptions underlying or
18 relating to any statement described in subparagraph (A), (B), or (C)” (*i.e.*, statements projecting
19 revenues, income or other financial items, statements of the plans and objectives of management
20 for future operations, and statements of future economic performance). 15 U.S.C. § 78u-5(D).
21 Plaintiff’s “then-known and current facts” argument is simply another way of taking issue with
22 defendants’ statements about the assumptions underlying or relating to their forward-looking,
23 gross margin statements. But defendants’ statements about those assumptions, too, are expressly
24 protected as forward-looking statements in their own right under the PSLRA.

25 Under *Police Retirement System of St. Louis v. Intuitive Surgical, Inc.*, 759 F.3d 1051,
26 1059 (9th Cir. 2014), statements are protected as forward-looking statements if, “examined as a
27 whole, the challenged statements related to future expectations and performance.” That
28 description fits the statements here. Even to the extent the statements identified by plaintiff may

1 be interpreted to contain some non-forward looking portions, “in context,” these statements are
2 “properly understood as regarding [defendants’] expectations of [what] the future” gross margins
3 would be. *Id.* at 1059. They may consequently be regarded in their entirety as forward-looking
4 statements falling within the scope of the safe harbor.

5 Plaintiff also takes issue with the fact that the supposed cautionary language put forward
6 by defendants “was virtually identical to the introductory language with which they began each of
7 InvenSense’s five prior earnings calls.” Dkt. No. 69 at 8. But plaintiff cites no case holding that
8 cautionary language becomes less effective with each repetition, and the Court is aware of no case
9 so holding. Rather, the Court finds that the cautionary language used here is “virtually identical to
10 the cautionary language approved” in other cases. *Police Retirement System*, 759 F.3d at 1059.

11 All six of the gross margin-related statements challenged by plaintiff were made in the July
12 29, 2014 earnings conference call. Dkt. No. 62-1 at 8-10. That call began with this statement by
13 Leslie Green, in InvenSense’s “IR” (presumably investor relations) department:

14 Leslie Green - InvenSense Inc - IR

15 Thank you, Whitley, and good afternoon, everyone. I would like to begin our
16 call with the Safe Harbor disclaimer related to forward-looking statements.

17 Statements in this conference call, that are not historical, are forward-looking
18 statements as the term is defined in the Private Securities Litigation Reform
19 Act of 1995. Forward-looking statements are generally in the future tense
20 and/or are preceded by words such as will, expect, anticipates or other words
21 that imply or predict a future state.

22 Forward-looking statements include any projection of revenue, gross margin,
23 which can be significantly impacted by product yields and inventory carrying
24 values. Expense or other financial items discussed in this conference call,
25 including the expansion of our customer design pipeline. And the potential
26 for continued gains in our share of the mobile, computing, and consumer
27 segment.

28 Investors are cautioned that all forward-looking statements involve risks and
uncertainties that can cause actual results to differ from those currently
anticipated due to a number factors including without limitation, the continued
adoption of microphones, MotionTracking and motion sensing as an interface
in consumer electronic products, our achievement of design wins, consumer
acceptance of customers products that incorporate our solutions, intense
competition in our industry.

1 Our dependence on a limited number of customers for substantial portion of
2 our revenues, our lack of long-term supply contracts and dependence upon a
3 limited sources of supply. Our ability to continue to develop and introduce
4 new and enhanced products on a timely basis and potential decreases in
5 average selling prices for our products, as well as changes in economic
6 conditions and other risk factors discussed in documents filed by us with these
7 Securities and Exchange Commission from time to time.

8 Copies of InvenSense SEC filings are posted on the Company's website and
9 are therefore available from the Company, without charge. Forward-looking
10 statements are made as of the date of this conference call. And the Company
11 does not undertake any obligation to update its forward-looking statements to
12 reflect future events or circumstances.

13 With that, let me introduce, Behrooz Abdi, President and CEO.

14 Dkt. No. 65, Ex. 3 (Transcript of July 29, 2014 earnings call) at ECF pp. 220-21.³

15 This was a fulsome disclaimer, and what is striking about it is that it encompasses and
16 significantly expands on the kind of language our Circuit has already found to be adequate. *See*
17 *Police Retirement System*, 759 F.3d at 1059 (quoting disclaimer, and finding it “virtually identical
18 to the cautionary language approved in *Cutera*: “[T]hese prepared remarks contain forward-
19 looking statements concerning future financial performance and guidance . . . management may
20 make additional forward-looking statements in response to questions, and . . . factors like Cutera’s
21 ability to continue increasing sales performance worldwide could cause variance in the results.”)
22 (quoting *Cutera*, 610 F.3d at 1112). As the Circuit found in those cases, here, too, the Court finds
23 the cautionary language quoted above was sufficient to count as “meaningful” under the PSLRA.
24 It is consequently the Court’s finding that the forward-looking statements relating to gross margin
25 that have been challenged here by plaintiff are exempt from liability under PSLRA’s safe harbor
26 provision. *See Police Retirement System*, 759 F.3d at 1060. The Court therefore dismisses with
27 prejudice plaintiff’s claims to the extent they challenge defendants’ gross margin-related
28 statements identified in the complaint.

³ Defendants have requested that the Court take judicial notice of this document. Dkt. No. 65. Plaintiff does not object to the taking of judicial notice, although plaintiff does object to the Court “accept[ing] any of the materials for the truth of the matters asserted.” Dkt. No. 71. The Court consequently takes judicial notice of this document. The Court finds it unnecessary to review or to address the propriety of the other documents the parties have put before the Court on this motion. Dkt. Nos. 65, 70.

