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11 | **UNITED STATES DISTRICT COURT**
12 | **NORTHERN DISTRICT OF CALIFORNIA**
13 | **SAN JOSE DIVISION**

14 | SECURITIES AND EXCHANGE COMMISSION, Case No.

15 | Plaintiff,

16 | vs.

17 | DIANE BJORKSTROM,

18 | Defendant.

COMPLAINT

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

20 | **SUMMARY OF THE ACTION**

21 | 1. This matter involves misconduct on the part of Diane Bjorkstrom ("Bjorkstrom" or
22 | "Defendant"), who served as the Chief Financial Officer of Tvia, Inc. ("Tvia" or "the Company")
23 | from September 2004 to October 2006. Bjorkstrom's wrongdoing fell into two areas.

24 | 2. First, Bjorkstrom caused Tvia to improperly recognize revenue from a \$325,000 delayed
25 | delivery sale that Tvia shipped at 10:00 p.m. on the last day of Tvia's 2006 fiscal year, causing Tvia
26 | to materially overstate its reported revenue for that year. The sale, which shipped despite the fact that
27 | the customer had not agreed to accept delivery until 6-10 weeks after year-end, went to a third-party
28 | warehouse, and the product sat unused for months. The recognition of this revenue violated

1 Generally Accepted Accounting Principles (“GAAP”) and Tvia’s revenue recognition policy, since
2 the sale never occurred in accordance with the buyer’s delivery instructions and therefore should not
3 have been recognized as revenue during the fiscal 2006 period.

4 3. Second, Bjorkstrom failed to stand up to efforts by Benjamin Silva, III (“Silva”), then
5 Tvia’s Vice President of Worldwide Sales, who manipulated Tvia’s internal accounting records by
6 applying funds from one customer to aged receivables of another. On at least two occasions,
7 Bjorkstrom did not challenge Silva’s dubious explanations when he asked Bjorkstrom and others in
8 Tvia’s finance department to apply incoming funds from one customer to improperly pay down a
9 separate customer’s aged receivables. These actions (and inactions) caused Tvia’s artificially-
10 decreased receivables to be concealed from Tvia’s outside auditors.

11 4. As a result, Tvia materially overstated its revenue for its 2006 year-end results (March 31,
12 2006) and its first quarter of fiscal 2007 (ended June 30, 2006), and the press releases announcing
13 those results (May 26, 2006 and August 7, 2006).

14 **JURISDICTION AND VENUE**

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

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

23 7. Venue is proper in this District pursuant to Section 22 of the Securities Act [15 U.S.C. §
24 77v], and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Bjorkstrom resides within the
25 Northern District of California, and acts or transactions constituting violations occurred within this
26 district.

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INTRADISTRICT ASSIGNMENT

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

DEFENDANT

9. Diane Bjorkstrom, age 54, resides in Palo Alto, California. From September 2004 through October 2006, Bjorkstrom served as Tvia’s Chief Financial Officer (“CFO”). Prior to joining Tvia, Bjorkstrom served as CFO and interim CFO of various high-tech companies. Bjorkstrom holds an inactive license from the state of Pennsylvania to practice as a Certified Public Accountant.

RELEVANT ENTITY

10. Tvia is a semiconductor company based in Santa Clara, California. During the time period of the fraud alleged in this Complaint, Tvia’s common stock traded on the NASDAQ Global Market (“NASDAQ”) under the symbol “TVIA,” and the Company was registered with the Commission pursuant to Section 12(g) of the Exchange Act. Tvia’s fiscal year-end is March 31. On January 30, 2007, Tvia issued a press release indicating that the market should not rely on any financial statements, earnings press releases, and similar communications issued by Tvia for its 2006 and 2007 fiscal years. On July 12, 2007, NASDAQ delisted the Company’s securities due to lack of compliance with listing requirements. On October 15, 2008, Tvia filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code. In April 2009, the bankruptcy court approved the appointment of a Chapter 11 trustee.

FACTUAL ALLEGATIONS

Background

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

12. At the time of the conduct at issue, it was improper under GAAP and Tvia’s revenue

1 recognition policy to recognize revenue on a transaction in which the customer did not want
2 immediate delivery of the product nor the financial obligation to pay Tvia until several quarters in the
3 future. These unusual terms would preclude immediate revenue recognition.

4 **Bjorkstrom Recognized Revenue From Year-End Sale Without Proper Purchase Order**

5 13. During the relevant time period, the bulk of Tvia's shipping typically occurred at quarter-
6 and year-end from Tvia's facility in Hefei, China. Bjorkstrom routinely traveled to China at these
7 times to oversee all shipments. Bjorkstrom went to China at each quarter-end to ensure Tvia's
8 policies and procedures would be followed, and that the company would receive the appropriate
9 documentation from customers before the company would ship product and recognize revenue from a
10 sale. One of the pieces of documentation required before shipping product was a customer purchase
11 order with delivery terms for the shipment.

12 14. On or about March 31, 2006, Tvia received a written purchase order for \$325,000 in
13 product from MicroNetwork Korea ("MNK"), a customer based in South Korea. According to the
14 purchase order, MNK promised to pay Tvia in full within 90 days of shipment and requested delivery
15 in 6-10 weeks. On or about 10:00 p.m. on March 31, Bjorkstrom approved shipping MNK's product
16 to a Hong Kong warehouse operated by a third-party logistics company, where the product sat unused
17 for months. The Company recognized \$325,000 in revenue on this sale for the fourth quarter of
18 Tvia's 2006 fiscal year, which ended March 31, 2006.

19 15. It was improper for Tvia to immediately recognize revenue on this sale because Tvia did
20 not have a customer purchase order requesting prompt delivery of the product. Bjorkstrom approved
21 the recognition of revenue from the sale despite the lack of this documentation. Bjorkstrom should
22 have known that the recorded sale did not occur in accordance with the buyer's delivery instructions
23 (i.e., 6 to 10 weeks) and therefore should not have been recognized as revenue. As a result of
24 Bjorkstrom's actions, Tvia overstated its revenue for the quarter ended March 31, 2006 by \$325,000,
25 or approximately 13%.

26 **Bjorkstrom Failed To Investigate Unidentified Customer Payments**

27 16. On more than one occasion, Silva, Tvia's then-VP of Worldwide Sales, asked Bjorkstrom
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1 and others in Tvia's finance department to apply incoming funds from one customer to improperly
2 pay down a separate customer's aged receivables. By failing to question the explanations given by
3 Silva for these cash applications, Bjorkstrom allowed Tvia to decrease its receivables and thus
4 concealed potential revenue recognition problems.

5 17. In late 2005, Silva learned that Tvia's auditors were scrutinizing several instances in
6 which customers were delinquent in their payments to the Company. The auditors were considering
7 whether to require Tvia to reverse some or all of the revenue it had previously recognized relating to
8 these delinquent accounts, on the ground that it was no longer reasonable to believe that the revenue
9 was collectible.

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

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

17 20. In order to convince Bjorkstrom to apply these funds to Ricom's account, Silva falsely
18 claimed that Protech had wired the money on Ricom's behalf, due to purported Chinese government
19 restrictions on Ricom's wiring money out of that country. Bjorkstrom did not question Silva's
20 explanation or obtain customer confirmation, despite knowing that Ricom typically wired payments
21 through its Hong Kong subsidiary, which was not constrained by Chinese currency restrictions. The
22 unusual arrangement outlined by Silva should have raised red flags that Bjorkstrom should have
23 investigated.

24 21. The second instance concerns EUT and MPEG, two Chinese customers that owed
25 significant past due amounts to Tvia. In June 2006, Silva convinced another customer, Datavision
26 (also known as Data International), a customer located in Taiwan, to submit a \$200,000 deposit
27 against an expected future order of Tvia product. On or about June 29, 2006, Tvia received a wire
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1 transfer from Datavision for \$200,000.

2 22. In order to convince Bjorkstrom to apply these funds to the accounts of EUT and MPEG,
3 Silva falsely claimed to Bjorkstrom that Datavision had wired the money on EUT's and MPEG's
4 behalf, due to purported Chinese government restrictions on Datavision's wiring money out of that
5 country. Again, Bjorkstrom did not question the large \$200,000 cash payment or obtain customer
6 confirmation, even though there were discrepancies that should have prompted her to investigate.
7 For example, Silva repeatedly changed how the Taiwanese company's wire transfer should be
8 allocated to the two other customers, and at times he mistakenly allocated over \$200,000 in total to
9 the two accounts. In addition, the purported payments from EUT and MPEG did not appear to
10 correspond to how much either customer actually owed Tvia, as Silva directed that the payment be
11 applied first to the smaller receivable, with the remainder to be applied to the other customer's
12 account.

13 23. If, as Silva claimed, the two customers used the Taiwanese customer as a third party
14 wiring service, Bjorkstrom should have expected that the customers (and thus Silva, who was
15 relaying their information) would have known precisely how much each customer was wiring and
16 thus how much to apply to each account. Moreover, it was at the very least coincidental that the
17 individual payments by the two customers, which were combined into one wire transfer from Taiwan,
18 totaled exactly \$200,000.00. Given Tvia's limited business volume, these issues should have
19 prompted additional questions or follow-up from Bjorkstrom.

20 24. Bjorkstrom's failure to investigate despite the red flags raised by Silva's explanations
21 caused Tvia to materially misstate its 2006 year-end and first quarter of fiscal 2007 results.

22 **FIRST CLAIM FOR RELIEF**

23 *(False Statements in Offer or Sale of Securities—Violations of*
24 *Sections 17(a)(2) and (3) of the Securities Act)*

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

27 26. By engaging in the conduct described above, Bjorkstrom, directly or indirectly, in the
28 offer or sale of securities, by use of the means or instruments of transportation or communication in

1 interstate commerce or by use of the mails:

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

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

10 **SECOND CLAIM FOR RELIEF**

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

14 28. The Commission realleges and incorporates by this reference Paragraphs 1 through 24,
15 above.

16 29. Based on the conduct alleged above, Tvia filed with the Commission current, quarterly,
17 and annual reports on Forms 8-K, 10-Q, and 10-K that contained untrue statements of material fact
18 and omitted to state material information required to be stated therein or necessary in order to make
19 the required statements, in the light of the circumstances under which they were made, not
20 misleading, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and
21 13a-13 thereunder.

22 30. Through the conduct alleged above, Bjorkstrom knowingly provided substantial assistance
23 to Tvia in its violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and
24 13a-13 thereunder, and therefore is liable as an aider and abettor pursuant to Section 20(e) of the
25 Exchange Act [15 U.S.C. § 78t(e)].

26 31. Bjorkstrom has aided and abetted and, unless restrained and enjoined, will continue to aid
27 and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20,
28 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]

1 thereunder.

2 **THIRD CLAIM FOR RELIEF**

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

5 32. The Commission realleges and incorporates by this reference Paragraphs 1 through 24,
6 above.

7 33. Based on the conduct alleged above, Tvia violated Section 13(b)(2)(A) of the Exchange
8 Act [15 U.S.C. § 78m(b)(2)(A)], which obligates issuers of securities registered pursuant to Section
9 12 of the Exchange Act [15 U.S.C. § 78l] to make and keep books, records and accounts which, in
10 reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the
11 issuer.

12 34. By engaging in the conduct alleged above, Bjorkstrom knowingly provided substantial
13 assistance to Tvia's failure to make and keep books, records and accounts which, in reasonable detail,
14 accurately and fairly reflect its transactions and dispositions of its assets.

15 35. By reason of the foregoing, Bjorkstrom aided and abetted violations by Tvia of Section
16 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]. Unless restrained and enjoined,
17 Bjorkstrom will continue to aid and abet such violations.

18 **FOURTH CLAIM FOR RELIEF**

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

21 36. The Commission realleges and incorporates by this reference Paragraphs 1 through 24,
22 above.

23 37. Based on the conduct alleged above, Tvia violated Section 13(b)(2)(B) of the Exchange
24 Act [15 U.S.C. § 78m(b)(2)(B)], which obligates issuers of securities registered pursuant to Section
25 12 of the Exchange Act [15 U.S.C. § 78l] to devise and maintain a sufficient system of internal
26 accounting controls.

27 38. By engaging in the conduct alleged above, Bjorkstrom knowingly provided substantial
28 assistance to Tvia's failure to devise and maintain a sufficient system of internal accounting controls.

39. By reason of the foregoing, Bjorkstrom aided and abetted violations by Tvia of Section

1 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)]. Unless restrained and enjoined,
2 Bjorkstrom will continue to aid and abet such violations.

3 **FIFTH CLAIM FOR RELIEF**

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

6 40. The Commission realleges and incorporates by this reference Paragraphs 1 through 24,
7 above.

8 41. By the conduct alleged above, Bjorkstrom violated Section 13(b)(5) of the Exchange Act
9 [15 U.S.C. § 78m(b)(5)] which prohibits anyone from knowingly circumventing a system of internal
10 accounting, or knowingly falsifying certain books, records, and accounts.

11 42. Unless restrained and enjoined, Bjorkstrom will continue to violate Section 13(b)(5) of the
12 Exchange Act [15 U.S.C. § 78m(b)(5)].

13 **SIXTH CLAIM FOR RELIEF**

14 *(Falsifying Books and Records—Violations of*
15 *Rule 13b2-1 of the Exchange Act)*

16 43. The Commission realleges and incorporates by this reference Paragraphs 1 through 24,
17 above.

18 44. By engaging in the conduct described above, Bjorkstrom falsified or caused to be falsified
19 Tvia’s books, records and accounts in violation of Rule 13b2-1 under the Exchange Act [17 C.F.R. §
20 240.13b2-1].

21 45. Bjorkstrom has violated and, unless restrained and enjoined, will continue to violate, Rule
22 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1]

23 **SEVENTH CLAIM FOR RELIEF**

24 *(Falsely Certifying Financial Records—Violations of*
25 *Rule 13a-14 of the Exchange Act)*

26 46. The Commission realleges and incorporates by this reference Paragraphs 1 through 24,
27 above.

28 47. Bjorkstrom signed, as Tvia’s Chief Financial Officer, false certifications pursuant to Rule
13a-14 of the Exchange Act that were included in Tvia’s fiscal 2006 annual report filed on Form 10-
K, as well as its quarterly reports filed in fiscal 2006 and 2007.

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I.

Permanently enjoin Bjorkstrom from directly or indirectly violating Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)] and Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rules 13a-14 and 13b2-1 thereunder [17 C.F.R. §§ 240.13a-14 and 240.13b2-1], and from aiding and abetting violations of 13(a), 13(b)(2)(A), 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] thereunder;

II.

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

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III.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

IV.

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

DATED: November 17, 2009

Respectfully Submitted,

Sahil W. Desai
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION