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12					
13	UNITED STATES DISTRICT COURT				
14	NORTHERN DISTRICT	OF CALIFORNIA			
15	SAN JOSE DIVISION				
16	SECURITIES AND EXCHANGE COMMISSION,	Case No. 3:22-cv-4711			
17	Plaintiff,	COMPLAINT			
18	v.				
19	NICHOLAS DANIEL,				
20	Defendant.				
21					
22	Plaintiff Securities and Exchange Commission (the "Commission") alleges:				
23	SUMMARY				
24	1. This action concerns insider trading by Defendant Nicholas Daniel ("Defendant" or				
25	"Daniel") in the securities of Cypress Semiconductor Corporation ("Cypress" or "the Company"), a				
26	San Jose, California maker of embedded semiconductor products whose stock was publicly traded.				
27	Daniel misappropriated material nonpublic information that he learned in confidence regarding the				
28					

Case 3:22-cv-04711 Document 1 Filed 08/17/22 Page 2 of 10

impending acquisition of Cypress and obtained approximately \$350,000 by unlawfully purchasing
 call options on the basis of that inside information.

On the morning of May 29, 2019, a media article reported a rumor that Cypress had
 received "takeover interest," with no specific details. At the time, Daniel's mother was living with a
 close family member of Daniel and his mother. This family member was a senior employee at Cypress.
 Approximately an hour after the publication of this article, during a telephone conversation with his
 mother, Daniel learned in confidence that this close family member was working that morning at home
 on urgent matters related to the article and, furthermore, that an acquisition of Cypress was likely to
 occur soon.

10 3. Immediately after learning of the impending Cypress acquisition, Daniel-who had not traded securities in approximately 10 years and had only \$34.31 in his brokerage account—took steps 11 12 to borrow funds to trade on that information and to obtain broker authorization to trade in options. He borrowed \$50,000 from his mother, falsely telling her that he needed the money for a real estate 13 transaction. As soon as the money reached his brokerage account, he used it all to purchase 1,366 14 Cypress call option contracts on May 30 and 31, 2019. All of the options were short term; they were 15 set to expire on the earliest possible expiration date, June 21, 2019, and most of the options had strike 16 prices that were "out of the money," meaning the options would expire worthless on the expiration 17 date if Cypress's stock price did not increase above the strike price levels. 18

Before market open on June 3, 2019, Cypress announced that it would be acquired by
 Infineon Technologies AG ("Infineon"), a German corporation. On June 3, 2019, Cypress's stock
 price increased by 27.9%. Daniel sold all 1,366 Cypress call option contracts on June 3 and June 4,
 2019 for a profit of \$349,588—a nearly 700% return.

5. By engaging in insider trading as described in this Complaint, Defendant violated
Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and
Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

26

JURISDICTION AND VENUE

27 6. The Commission brings this action pursuant to Sections 21(d) and 21A of the
28 Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and 78u-1].

COMPLAINT

CASE NO. 3:22-cv-4711

7. This Court has jurisdiction over this action pursuant to Sections 21(d), 21A, and 27 of
 2 the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1 and 78aa].

8. Defendant, directly or indirectly, made use of the means or instrumentalities of
interstate commerce, and of the mails, and of the facilities of a national securities exchange, in
connection with the transactions, acts, practices and courses of business alleged herein.

9. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C.
7 § 78aa], because a substantial part of the acts and transactions constituting the violations alleged in
8 this Complaint occurred within the Northern District of California.

9

INTRADISTRICT ASSIGNMENT

10 10. Under Civil Local Rule 3-2(e), this civil action should be assigned to the San Jose
11 Division, because a substantial part of the events which give rise to the claims alleged herein
12 occurred in Santa Clara County.

13

DEFENDANT

14 11. Nicholas Daniel ("Daniel") is 57 years old and resides in South Miami, Florida.
15 Daniel has owned and operated sunglasses sales businesses and has held a Florida real estate broker's
16 license since July 2016. A close member of Daniel's family was a senior employee of Cypress who
17 worked on confidential business related to Cypress's potential acquisition from at least April 26,
18 2019 through June 2, 2019.

19

RELEVANT ENTITIES

20 12. Cypress Semiconductor Corporation ("Cypress" or the "Company"), incorporated in Delaware and now a subsidiary of Infineon, manufactures and sells embedded semiconductor 21 products for automotive, industrial, consumer, and enterprise markets. Before market open on June 22 23 3, 2019, Cypress announced that it had entered into an agreement to be acquired by Infineon, and the 24 acquisition closed on April 16, 2020. Prior to the closing of the acquisition, Cypress's securities were 25 listed on the NASDAQ Global Select Market and the Chicago Board Options Exchange under the ticker "CY." Cypress's principal corporate offices at all relevant times have been in San Jose, 26 California. 27

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COMPLAINT

CASE NO. 3:22-cv-4711

Case 3:22-cv-04711 Document 1 Filed 08/17/22 Page 4 of 10

Infineon Technologies AG ("Infineon") develops, manufactures, and markets
 semiconductor products worldwide. Infineon is a stock corporation organized under the laws of
 Germany and is listed on the Frankfurt Stock Exchange under the ticker IFX, with ADRs quoted on
 NASDAQ and traded over-the-counter in the U.S.

5 14. DS Group LLC ("DS Group") is a Wyoming limited liability company and is wholly
6 owned by Daniel.

7

8

9

FACTUAL ALLEGATIONS

A. Daniel Learns Material Nonpublic Information Regarding Cypress's Impending Acquisition

10 15. At all relevant times, Daniel had a close family member who was a senior employee of
11 Cypress with management responsibilities. Beginning on or around April 26, 2019, this family
12 member's work at Cypress involved nonpublic and highly confidential matters related to the potential
13 acquisition of Cypress, until the Company publicly announced its agreement to be acquired by
14 Infineon on June 2, 2019 at 11:28 PM.¹

15 16. At all relevant times, Daniel was aware that this close family member was a senior
16 employee with management responsibilities at Cypress.

17 17. Daniel, his mother, and the family member all shared a very close personal
18 relationship with each other. They had a history, pattern, or practice of sharing confidences with each
19 other. Among other things, Daniel, his mother, and the family member all communicated regularly
20 over the telephone with each other, shared confidential details about their lives, and relied on each
21 other for both emotional and financial support. Between approximately February 2019 and June
22 2019, Daniel's mother was staying with the family member in his home near San Jose, California.

23

24

18. On or around April 26, 2019, a representative of Cypress contacted Infineon and other companies to discuss their interest in participating in a potential strategic review of Cypress.

25 19. On or around April 26, 2019, Daniel traveled across the country to visit his close
26 family member and Daniel's mother at the family member's home near San Jose, California. While
27 staying at the family member's home, Daniel attended a party that the family member hosted on April

²⁸

¹ All times in this Complaint are in Pacific time. COMPLAINT 4

Case 3:22-cv-04711 Document 1 Filed 08/17/22 Page 5 of 10

28, 2019, which was attended by, among other people, senior Cypress employees, including at least
 one Cypress senior executive and a member of his staff. During the party, Daniel observed this
 family member leave the party for an unusual private meeting with these senior Cypress employees in
 the family member's home office. At this private meeting, the family member and the other senior
 Cypress employees discussed matters related to a potential acquisition of Cypress.

6 20. On or around May 16, 2019, Infineon delivered an initial written proposal to acquire
7 Cypress.

8 21. On or around May 24, 2019, Infineon delivered another written proposal to acquire
9 Cypress, which commenced final negotiations regarding the terms of the acquisition.

10 22. On or around May 27, 2019, Infineon and Cypress began the final stages of 11 negotiating terms of the draft merger agreement and conducting additional due diligence.

12 23. On May 29, 2019 at 6:59 AM, a media article was published stating that Cypress was
13 "exploring strategic options including a potential sale after receiving takeover interest," but "[n]o
14 final decision has been made and it could opt to remain independent."

15 24. On May 29, 2019 between approximately 7:55 AM and 8:14 AM, Daniel's close
16 family member who worked at Cypress communicated by phone from his home with several senior
17 employees of Cypress about the article's publication and matters related to the Company's impending
18 acquisition.

25. On May 29, 2019 at 8:11 AM, Daniel received a phone call from his mother, who was
also at the close family member's home, lasting approximately 6 minutes. During this call, Daniel
learned that this family member was working on urgent issues that morning related to the article's
publication and that an acquisition of Cypress would likely occur soon. Daniel learned this
confidential information during the telephone call and understood that he was expected not to trade in
Cypress securities based on this material nonpublic information.

25 26. Daniel knew or was reckless in not knowing that the information he learned about
26 Cypress's impending acquisition was material, highly confidential and nonpublic. Daniel also knew,
27 should have known, or was reckless in not knowing that he had a duty of trust and confidence to keep
28 this information confidential and not trade in Cypress securities based on this information.

COMPLAINT

CASE NO. 3:22-cv-4711

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B. Daniel Immediately Seeks to Trade in Cypress Call Options

2 27. On May 29, 2019 at 8:20 AM, approximately three minutes after speaking with his mother and learning about Cypress's impending acquisition, Daniel called the brokerage firm where 3 he held a brokerage account in his name. On the call, Daniel asked the brokerage representative to 4 "make sure the account was active and able to trade and receive money" because he "hadn't used 5 6 [his] account in a very long time." Daniel had not made any trades in his account since 2009. As of this call on May 29, 2019, Daniel's brokerage account had a balance of \$34.31. 7

8 28. During this phone call between Daniel and the brokerage representative, Daniel 9 indicated his intent to purchase options contracts. The representative noted, however, that Daniel was not approved to trade in options contracts, and would have to submit an application to do so. At 10 11 approximately 9:30 AM, Daniel submitted an application to the brokerage firm to trade in options 12 contracts.

13 14

C. Daniel Borrows \$50,000 from His Mother Under False Pretenses and Purchases Cypress **Call Options**

15 29. After receiving material nonpublic information on May 29, 2019 about Cypress's 16 impending acquisition, Daniel asked his mother to lend him \$50,000. Daniel told his mother that he 17 needed the money for a real estate transaction, when in fact Daniel intended to use the money to 18 purchase Cypress call option contracts. Later on May 29, 2019, Daniel and his mother called his 19 mother's brokerage firm and requested that they send paperwork for Daniel's mother to wire Daniel the money from her brokerage account. When Daniel's mother had not yet received the paperwork 20 21 later on the afternoon of May 29, 2019, Daniel followed up with representatives of his mother's brokerage firm to make sure they would send the relevant documents as soon as possible. 22

23 30. On May 30, 2019 at 6:51 AM, Daniel and his mother received an email from his 24 mother's brokerage firm, which contained a draft letter of authorization for Daniel's mother to send 25 money to Daniel.

26 31. On May 30, 2019 at 7:04 AM, Daniel called his own brokerage firm, expressed 27 urgency to add funds to his account, and asked the best way to receive funds so that they would "be ²⁸ available immediately for trading." Daniel asked the representative if the brokerage firm would "take 6

Case 3:22-cv-04711 Document 1 Filed 08/17/22 Page 7 of 10

1	cash at the branch." Daniel was advised by the representative that, while the branch could not accept		
2	cash, a wire would be an "immediate" way to have money available for trading.		
3	32.	On May 30, 2019 at 7:22 AM, Daniel's mother sent the signed letter of authorization	
4	to her brokerage firm to wire \$50,000 to Daniel's brokerage account.		
5	33.	On May 30, 2019 at 7:25 AM, Daniel called his mother's brokerage firm and	
6	conferenced his mother into the call to verbally authorize the \$50,000 wire from his mother's		
7	brokerage account to his own. The \$50,000 wire was sent at approximately 7:30 AM on May 30,		
8	2019.		
9	34.	On May 30, 2019 at approximately 8:30 AM, Daniel wired \$3,000 from a bank	
10	account he controlled in the name of his entity DS Group to his personal brokerage account.		
11	35.	On May 30, 2019 between approximately 9:43 AM and 10:01 AM, shortly after he	
12	2 was approved to trade options and while Cypress stock was trading at approximately \$18 per share,		
13	Daniel bought	1,355 Cypress call option contracts on the basis of the material nonpublic information	
14	he had learned the day before, as follows:		
15	a.	340 Cypress call option contracts with a strike price of \$18 and an expiration date of	
16		June 21, 2019, at a total cost of \$22,100;	
17	b.	515 out of the money Cypress call option contracts with a strike price of \$19 and an	
18		expiration date of June 21, 2019, at a total cost of \$19,540; and	
19	c.	500 out of the money Cypress call option contracts with a strike price of \$20 and an	
20		expiration date of June 21, 2019, at a total cost of \$10,000.	
21	36.	On May 31, 2019 between approximately 1:08 PM and 1:28 PM, while Cypress stock	
22	was trading at approximately \$18 per share, Daniel bought 11 additional Cypress call option contract		
23	on the basis of	f the material nonpublic information he had learned about Cypress's impending	
24	acquisition, as follows:		
25	a.	10 out of the money Cypress call option contracts with a strike price of \$19 and an	
26		expiration date of June 21, 2019, at a total cost of \$380; and	
27	b.	1 out of the money Cypress call option contract with a strike price of \$21 and an	
28		expiration date of June 21, 2019, at a total cost of \$15.	

COMPLAINT

Case 3:22-cv-04711 Document 1 Filed 08/17/22 Page 8 of 10

1	37. Daniel used almost all of the money available in his brokerage account to purchase		
2	these Cypress call option contracts, leaving a balance of only \$440.74. At the time of his Cypress		
3	trades, Daniel was an inexperienced trader and had not made any trades in securities for		
4	approximately 10 years.		
5	38. The expiration date of June 21, 2019 for all call option contracts purchased by Daniel was		
6	the earliest expiration date for Cypress call option contracts that could be purchased on these dates.		
7	D. Daniel's Profits from His Insider Trading		
8	39. Before market open on June 3, 2019, Cypress announced that it would be acquired by		
9	Infineon. On June 3, 2019, Cypress's stock price increased by 27.9%.		
10	40. On June 3 and June 4, 2019, Daniel sold all 1,366 Cypress call option contracts that he		
11	had purchased for total proceeds of \$401,623, reaping a profit of \$349,588.		
12	FIRST CLAIM FOR RELIEF		
13	Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder		
14	41. Paragraphs 1 through 40 are hereby re-alleged and are incorporated herein by		
15	reference.		
16	42. At the time of the trading described above, Daniel knew, or was reckless in not		
17	knowing, that the information he learned about an impending acquisition of Cypress was material and		
18	nonpublic. Daniel also knew, should have known, or was reckless in not knowing that he was		
19	expected to maintain the confidentiality of information that he learned related to the acquisition of		
20	Cypress and had a duty of trust and confidence not to trade in Cypress securities on the basis of that		
21	information. Daniel misappropriated the information about Cypress's acquisition and fraudulently		
22	breached his duty by purchasing securities on the basis of that information.		
23	43. By engaging in the conduct described above, Daniel, with scienter, in connection with		
24	the purchase or sale of securities as set forth above, directly or indirectly:		
25	a. employed devices, schemes, or artifices to defraud;		
26	b. made untrue statements of material facts and omitted to state material facts necessary		
27	in order to make the statements made, in light of the circumstances under which they		
28	were made, not misleading; and		
	•		

COMPLAINT

1	c. engaged in acts, practices, and courses of business which operated or would operate as		
2	a fraud or deceit upon other persons, including purchasers and sellers of securities;		
3	by the use of the means or instrumentalities of interstate commerce, and of the mails, and the		
4	facilities of a national securities exchange.		
5	44. By reason of the foregoing, Defendant, directly or indirectly, violated, and unless		
6	restrained and enjoined, will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. §		
7	78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].		
8	PRAYER FOR RELIEF		
9	WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:		
10	I.		
11	Finding that Defendant violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and		
12	Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].		
13	II.		
14	Permanently restraining and enjoining Defendant from directly or indirectly violating Section		
15	10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].		
16	III.		
17	Ordering Defendant to disgorge, with prejudgment interest, all illicit trading profits and other		
18	ill-gotten gains received by him, directly or indirectly, as a result of the conduct alleged herein.		
19	IV.		
20	Ordering Defendant to pay civil penalties pursuant to Section 21A of the Exchange Act		
21	[15 U.S.C. § 78u-1].		
22	V.		
23	Retain jurisdiction of this action in accordance with the principles of equity and the Federal		
24	Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that		
25	may be entered, or to entertain any suitable application or motion for additional relief within the		
26	jurisdiction of this Court.		
27	VI.		
28	Granting such other and further relief as this Court may deem just, equitable, and necessary.		
I	COMPLAINT 9 CASE No. 3:22-cv-4711		

Case 3:22-cv-04711 Document 1 Filed 08/17/22 Page 9 of 10

1		
2	Dated: August 17, 2022	Respectfully submitted,
3		
4		/S/ John P. Mogg
5		John P. Mogg Attorney for Plaintiff SECURITIES AND EXCHANGE
6		SECURITIES AND EXCHANGE COMMISSION
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