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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11

12
13 **SECURITIES AND EXCHANGE**
14 **COMMISSION,**

15 Plaintiff,

16 vs.

17 **ANAND JAYAPALAN, ANANDA**
18 **KUMAR ANANDA, also known as**
19 **“Kumar Ananda,” RAJNI NAIR, and**
VIJAYA ANANDA,

20 Defendants.
21

Case No.

COMPLAINT

JURY TRIAL DEMANDED

22 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

23 **JURISDICTION AND VENUE**

24 1. This Court has jurisdiction over this action pursuant to Sections 21(d)(1),
25 21(d)(3)(A), 21(e) and 27(a) of the Securities Exchange Act of 1934 (“Exchange
26 Act”), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa(a).

27 2. Defendants Anand Jayapalan (“Jayapalan”), Ananda Kumar Ananda
28 (“Kumar”), Rajni Nair (“Nair”), and Vijaya Ananda (“Vijaya”) (collectively,

1 “Defendants”) have, directly or indirectly, made use of the means or instrumentalities
2 of interstate commerce, of the mails, or of the facilities of a national securities
3 exchange in connection with the transactions, acts, practices and courses of business
4 alleged in this complaint.

5 3. Venue is proper in this district pursuant to Section 22(a) of the Securities
6 Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a),
7 because certain of the transactions, acts, practices and courses of conduct constituting
8 violations of the federal securities laws occurred within this district. In addition,
9 venue is proper in this district because all of the Defendants reside in this district.

10 SUMMARY

11 4. This case involves insider trading among family members in the
12 securities of Fusion, Inc. (“Fusion”) between May 27, 2014 and June 11, 2014.
13 Shortly before SanDisk Corporation (“SanDisk”) announced on June 16, 2014 that it
14 was commencing a tender offer for Fusion’s stock at a price of \$11.25 per share,
15 defendants Kumar and Vijaya - who are defendant Jayapalan’s uncle and aunt and
16 had never previously traded in Fusion - purchased over 78,000 shares of Fusion’s
17 common stock, including approximately 1,000 shares through a brokerage account
18 Vijaya shared with Jayapalan’s wife, Nair. Kumar, Vijaya, and Nair sold their shares
19 after news of the tender offer broke, reaping collective profits of more than \$215,000.

20 5. Kumar, Vijaya, and Nair learned of the tender offer from Jayapalan, who
21 worked for SanDisk as a General Manager. Jayapalan first learned that SanDisk was
22 entering into exclusive negotiations to acquire Fusion on or about May 22, 2014.
23 SanDisk told Jayapalan and other employees on multiple occasions that they were not
24 to share information about the tender offer with anyone outside of SanDisk.
25 Jayapalan breached this trust and passed the inside information to Nair, and to Kumar
26 and Vijaya, sometime between May 23, 2014 and May 26, 2014.

27 6. On May 27, 2014, the very next day the stock markets were open,
28 Kumar and Vijaya began buying up large amounts of Fusion stock at or around 6:10

1 a.m. Again, this was the first time that Kumar and Vijaya had ever purchased shares
2 of Fusion stock and they continued buying it up in the following days and weeks. By
3 June 11, 2014, they had purchased approximately 78,900 shares of Fusion stock using
4 eight different brokerage accounts for \$665,778.26.

5 7. Kumar spent approximately \$647,522.26 to purchase approximately
6 76,700 shares of Fusion across six brokerage accounts. He financed these purchases
7 with approximately \$27,459.66 in cash from his brokerage accounts, approximately
8 \$356,534.79 in stock sales, and approximately \$263,661.10 in margin loans.

9 8. Kumar made this large and substantially leveraged investment in Fusion
10 stock at a time when his medical practice was in substantial decline, he owed nearly
11 \$100,000 in credit card debt, and after he had suffered what he described as a
12 “drastic” reduction in his personal income between 2012 and 2014, as his salary
13 dropped by approximately one-third.

14 9. Vijaya spent approximately \$18,256 to purchase approximately 2,200
15 shares of Fusion stock using two brokerage accounts. She purchased 1,000 shares of
16 the Fusion stock for herself and Nair using a brokerage account they had opened
17 jointly in 2011. Vijaya and Nair had previously agreed to split the costs of this joint
18 brokerage account, so when Vijaya bought the 1,000 shares of Fusion stock she
19 withdrew approximately \$4,300 from Nair’s personal bank account and used it to pay
20 for approximately half of the purchase price (\$8,440). Over the next several days,
21 Vijaya purchased an additional 1,200 shares of Fusion stock for herself using her
22 individual brokerage account.

23 10. On June 16, 2014, SanDisk publicly announced that it had offered to
24 acquire Fusion’s stock at a price of \$11.25 per share, causing the value of Fusion’s
25 stock to jump from \$9.28 per share to \$11.36 per share (approximately 22 percent).

26 11. Approximately one month after they began buying large amounts of
27 Fusion stock and after news of the tender offer broke, Kumar and Vijaya began
28 liquidating the shares. Taking advantage of the 22% increase in Fusion’s stock price,

1 Kumar, Vijaya, and Nair together made an aggregate combined profit of
2 approximately \$215,086.01.

3 **THE DEFENDANTS**

4 12. **Anand Jayapalan** is 46 years old and resides in Simi Valley, California.
5 Jayapalan is employed by SanDisk, where he began working in August 2013. In
6 April or May 2014, SanDisk promoted Jayapalan to General Manager of Enterprise
7 Storage. In 2016, Western Digital Corporation (“Western Digital”) acquired SanDisk
8 and SanDisk became a wholly owned subsidiary of Western Digital. Jayapalan has
9 continued to work at SanDisk. Jayapalan is the nephew of codefendants Kumar and
10 Vijaya.

11 13. **Ananda Kumar Ananda, a.k.a. Kumar Ananda**, is 64 years old and
12 resides in Camarillo, California. Kumar is a pediatrician and neonatologist. At the
13 time of the allegations in this Complaint, Kumar was self-employed and owned his
14 own pediatric practice. Kumar is the uncle of codefendant Jayapalan through his
15 marriage to codefendant Vijaya.

16 14. **Rajni Nair** is 41 years old and resides in Simi Valley, California. Nair
17 is a corporate audit director for a publicly traded biopharmaceutical company located
18 in or around Los Angeles. Nair is the wife of codefendant Jayapalan and the niece of
19 codefendants Vijaya and Kumar.

20 15. **Vijaya Ananda** is 60 years old and resides in Camarillo, California.
21 Vijaya is the wife of codefendant Kumar. Vijaya is currently a homemaker and was
22 previously employed as a secretary in Kumar’s medical practice from 2005 to 2014,
23 when the practice closed. Vijaya is the aunt of codefendants Jayapalan and Nair.

24 **RELEVANT ENTITIES**

25 16. **SanDisk** is a Delaware corporation headquartered in Milpitas,
26 California. SanDisk’s common stock was previously registered with the Commission
27 pursuant to Section 12(b) of the Exchange Act and was traded on the NASDAQ
28 under the ticker symbol “SNDK.” SanDisk’s core business is data storage. By 2011,

1 SanDisk had expanded its business to include “enterprise storage.” In 2014,
2 approximately two years before it was acquired by Western Digital, SanDisk was
3 looking to continue its expansion into enterprise storage by acquiring a company that
4 would give it stronger capabilities in PCIe technology, which is a form of “flash” data
5 storage.

6 17. **Fusion** was a Delaware corporation headquartered in Salt Lake City,
7 Utah. Fusion’s common stock was formerly registered with the Commission
8 pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock
9 Exchange under the ticker symbol “FIO.” Fusion was a pioneer in PCIe technology.
10 SanDisk had tried unsuccessfully to acquire Fusion and its PCIe technology in late
11 2013. In May 2014, SanDisk began taking substantial steps toward renewing its
12 efforts to acquire Fusion and on June 16, 2014 publicly announced that it made a
13 tender offer for Fusion’s shares at a price of \$11.25 per share.

14 **FACTUAL ALLEGATIONS**

15 **A. SanDisk Takes Highly Confidential and Substantial Steps to Acquire** 16 **Fusion**

17 18. On or about August 12, 2013, SanDisk hired Jayapalan as a Senior
18 Director of Corporate Strategy, where he directly reported to the Vice President of
19 Corporate Development (“Jayapalan’s supervisor”). On or about February 18, 2014,
20 Jayapalan’s supervisor informed Jayapalan of SanDisk’s efforts to acquire PCIe
21 technology.

22 19. SanDisk took several precautions to keep its efforts to acquire PCIe
23 technology confidential. For instance, SanDisk used the code name “Project Lake
24 Victoria” to describe these efforts. Jayapalan’s supervisor told Jayapalan in an email,
25 which Jayapalan has acknowledged receiving, he had “an obligation to take all
26 reasonable steps to protect the confidentiality of all information related to this project,
27 and indeed, even of its existence.”

28 20. Initially, SanDisk’s effort to acquire PCIe technology was focused on

1 two companies. Fusion was one of those companies and the effort to acquire its
2 PCIe technology was given the code name “Flight.”

3 21. On or about April 29, 2014, Jayapalan’s supervisor presented a plan to
4 the SanDisk Strategic Transactions Board (“STB”), which was made up of senior
5 executive officers at SanDisk, and recommended that SanDisk focus its efforts to
6 acquire PCIe technology on Fusion (or Flight). The STB accepted this
7 recommendation and decided to drop its efforts to acquire the second company and
8 focus all of its efforts on acquiring Fusion.

9 22. On May 1, 2014, Jayapalan’s supervisor sent an email to Jayapalan and
10 others informing them that Fusion was the “prime target” for acquisition and that
11 management planned to seek SanDisk’s Board of Directors’ approval for a
12 transaction with Fusion on May 12, 2014.

13 23. On or about May 12, 2014, the SanDisk board authorized its
14 management team to pursue the transaction with Fusion, including undertaking due
15 diligence and making a non-binding price proposal to Fusion.

16 24. In or about May 2014, Jayapalan was promoted from Senior Director of
17 Corporate Strategy to General Manager of Enterprise Storage, where he was tasked
18 with finding ways to grow the enterprise storage business. Because Fusion would
19 have to be integrated into SanDisk’s enterprise storage business unit, Jayapalan was
20 assigned to assist with the due diligence efforts for Flight. This meant Jayapalan
21 attended meetings relating to the acquisition of Fusion and had access to files
22 provided by Fusion during the due diligence process.

23 25. On or about May 13, 2014, SanDisk contacted Fusion and began
24 negotiating a price for the acquisition of Fusion’s stock.

25 26. On or about May 16, 2014, SanDisk submitted a non-binding statement
26 of interest to acquire all outstanding shares of Fusion’s common stock at a price of
27 approximately \$10.80 per share.

28 27. On or about May 20, 2014, Jayapalan attended a meeting where his

1 supervisor offered a “rough project timeline” for the tender offer and explained that
2 SanDisk expected to sign a letter of intent and exclusivity agreement with Fusion in
3 the next five days to three weeks, and announce the acquisition publicly by the end of
4 June 2014. Jayapalan’s supervisor informed Jayapalan and the others at the meeting,
5 as well as in a follow up email, that they did not have a “green light yet” and would
6 be kept informed of the progress of the negotiation.

7 28. On or about May 21, 2014, SanDisk reached an understanding with
8 Fusion to proceed with further discussions regarding the acquisition at a price of
9 \$11.25 per share. That night, at approximately 10:28 p.m., Jayapalan and others
10 received an email from SanDisk’s in-house counsel titled, “Project Lake Victoria:
11 TRADING WINDOW IS NOW CLOSED,” which stated that, “I wanted to let you
12 know that a blackout has been imposed and your trading window has closed. Please
13 do not trade in either SanDisk or Flight stock.”

14 29. The following day, on or about May 22, 2014, Jayapalan and others
15 received an email stating that “we will be entering into exclusivity with Flight today.”

16 **B. Jayapalan Breaches his Fiduciary Duty by Tipping Nair, Kumar, and**
17 **Vijaya**

18 30. On or about August 11, 2013, Jayapalan signed a Proprietary
19 Information and Inventions Agreement with SanDisk. Jayapalan acknowledged,
20 among other things, that his employment with SanDisk created a relationship of
21 confidence and trust between himself and SanDisk with respect to any information
22 applicable to the business of SanDisk.

23 31. Jayapalan also acknowledged that from time to time he might be in
24 possession of material non-public information of SanDisk and agreed to comply with
25 the restrictions imposed by the United States securities laws regarding the purchase or
26 sale of securities by any person who has received material, non-public information.

27 32. On or about August 11, 2013, Jayapalan signed an Acknowledgment for
28 New Hires, acknowledging that he had read and agreed to abide by SanDisk’s Insider

1 Trading Policy. That same day, Jayapalan also acknowledged that he had received
2 and read the SanDisk Worldwide Code of Business Conduct and Ethics dated as of
3 March 17, 2011, and agreed that he would comply with the code of conduct and
4 ethics at all times during his employment with SanDisk.

5 33. Although Jayapalan worked at SanDisk's offices in Milpitas, California,
6 he and his family resided in Simi Valley, California. As a result, Jayapalan typically
7 flew up to Northern California on Monday morning and flew back down to Southern
8 California on Friday night.

9 34. On Friday night, May 23, 2014, the day after he learned that SanDisk
10 was entering into an exclusivity agreement to acquire Fusion, Jayapalan flew back to
11 Southern California and returned to his home in Simi Valley, California. It was the
12 beginning of the three-day Memorial Day weekend.

13 35. During that three-day weekend, numerous telephone calls occurred
14 between the telephone that Jayapalan and Nair have in their home ("Jayapalan's
15 house phone") and the telephone that Kumar and Vijaya have in their home
16 ("Kumar's house phone").

17 36. On Saturday, May 24, 2014, at approximately 8:40 a.m., Jayapalan's
18 house phone made a call lasting thirty minutes to Kumar's house phone.

19 37. This call was followed by several other shorter telephone calls over the
20 course of the three-day weekend.

21 38. Then, on Monday, May 26, 2014, at approximately 4:57 p.m.,
22 Jayapalan's house phone placed a call lasting approximately 14 seconds to a cellular
23 telephone registered to Kumar ("Kumar's cell").

24 39. A table showing these and several other telephone calls among the
25 Defendants over the three-day weekend is set forth below:
26
27
28

DAY	TIME	ORIGINATING	TERMINATING	DURATION
Saturday 5/24/2014	8:40 a.m.	Jayapalan House	Kumar House	30:26
	12:15 p.m.	Kumar House	Jayapalan House	0:33
	12:16 p.m.	Nair Cell	Kumar House	7:00
	12:42 p.m.	Vijaya Cell	Jayapalan House	10:04
	3:28 p.m.	Vijaya Cell	Nair Cell	2:34
	5:50 p.m.	Nair Cell	Kumar House	4:00
Sunday 5/25/2014	8:32 p.m.	Nair Cell	Kumar House	6:00
	8:38 p.m.	Nair Cell	Kumar House	3:00
Monday 5/26/2014 (Memorial Day)	1:14 p.m.	Kumar House	Jayapalan House	0:35
	2:35 p.m.	Jayapalan House	Kumar House	1:11
	2:36 p.m.	Jayapalan House	Vijaya Cell	2:49
	4:42 p.m.	Jayapalan House	Vijaya Cell	0:04
	4:56 p.m.	Jayapalan House	Kumar House	1:10
	4:57 p.m.	Jayapalan House	Kumar Cell	0:14
	4:57 p.m.	Jayapalan House	Vijaya Cell	0:04
	5:07 p.m.	Vijaya Cell	Jayapalan House	0:32
	7:03 p.m.	Jayapalan House	Kumar House	1:12
	7:07 p.m.	Jayapalan House	Kumar House	0:13
	7:07 p.m.	Jayapalan House	Kumar House	1:58
	7:44 p.m.	Nair Cell	Kumar Son's Cell	1:00

40. On information and belief, between May 23, 2014 and May 26, 2014, Jayapalan breached his fiduciary duty of trust and confidence to SanDisk by sharing inside information about SanDisk entering into an exclusivity agreement to acquire Fusion. On information and belief, Jayapalan shared this inside information with his wife Nair between May 23, 2014 and May 26, 2014, and with his uncle Kumar and his aunt Vijaya during one or more of the telephone calls listed above.

1 41. On information and belief, Kumar and Nair knew, or should have
2 known, that Jayapalan breached his fiduciary duty to SanDisk by giving them the
3 inside information.

4 **C. Kumar and Vijaya Trade on Material, Nonpublic Information, Including**
5 **on Behalf of Nair**

6 42. On May 27, 2014, the first day that the stock markets were open after the
7 three-day weekend, Kumar and Vijaya started purchasing large amounts of Fusion
8 stock at or around 6:10 a.m.

9 43. On information and belief, Vijaya informed Nair beforehand, during one
10 or more of the telephone calls listed above, that some of the Fusion shares would be
11 purchased using the brokerage account they jointly owned.

12 44. On information and belief, Nair authorized Vijaya to take money out of
13 Nair's personal bank account to purchase these Fusion shares, knowing that the
14 purchase of the Fusion shares would be made while she and Vijaya were in
15 possession of material nonpublic information.

16 45. This would be the first time that Kumar, Vijaya, or Nair would own
17 shares of Fusion's stock.

18 **1. Vijaya's purchases of Fusion stock**

19 46. On or about May 27, 2014, Vijaya purchased 1,000 shares of Fusion
20 stock for approximately \$8,440 using the brokerage account that she jointly owned
21 with Nair.

22 47. Vijaya and Nair shared this joint brokerage account, in part, because of
23 their close relationship, and with the understanding that Vijaya primarily controlled
24 the account. Because Vijaya and Nair had agreed to fund the account on a 50/50
25 basis, Nair gave Vijaya access to the joint bank account she owned with Jayapalan
26 (through the online brokerage account interface) and allowed Vijaya to withdraw
27 money from Nair's bank account to finance trades for the brokerage account.

28 48. On or about May 27, 2014, Vijaya withdrew \$4,300 from Nair's

1 personal bank account to help finance the purchase of 1,000 shares of Fusion stock.

2 49. This was the largest single trade ever executed in Vijaya's and Nair's
3 joint brokerage account and the most money that Vijaya had ever withdrawn from
4 Nair's bank account at one time in connection with a trade.

5 50. Between on or about June 2, 2014 and on or about June 9, 2014, after
6 buying the 1,000 shares of Fusion stock using her joint brokerage account with Nair,
7 Vijaya bought an additional 1,200 shares of Fusion stock using her individual
8 brokerage account for approximately \$9,816.

9 51. In total, between on or about May 27, 2014 and on or about June 11,
10 2014, Vijaya purchased a total of 2,200 shares of Fusion stock for approximately
11 \$18,256.

12 2. Kumar's purchases of Fusion stock

13 52. On or about May 27, 2014, Kumar purchased approximately 42,600
14 shares of Fusion stock for approximately \$360,952.08, using five different brokerage
15 accounts that he owned individually or jointly with Vijaya, and one brokerage
16 account that Kumar controlled but which had been opened in his adult son's name.

17 53. Between on or about May 27, 2014 and on or about June 11, 2014,
18 Kumar purchased a total of approximately 76,700 shares of Fusion stock for
19 approximately \$647,522.26, using six different brokerage accounts. A table showing
20 these purchases is set forth below:

21 DATE	ACCOUNT	SHARES	AMOUNT
22 5/27/14	Joint Fidelity with Vijaya	6,000	\$50,879.40
		6,500	\$54,795
	Fidelity individual (account 24 number x3290)	3,200	\$27,103.68
		2,400	\$20,184
	Fidelity individual (account 26 number x8437)	5,000	\$42,500
	27 Scottrade individual	10,000	\$85,000

DATE	ACCOUNT	SHARES	AMOUNT
	Joint Schwab with Vijaya	6,500	\$54,990
	Kumar's son's E*Trade	3,000	\$25,500
5/28/14	Joint Fidelity with Vijaya	6,000	\$49,920
		3,200	\$26,751.68
		3,300	\$27,588
5/29/14	Joint Schwab with Vijaya	5,100	\$43,350
		1,400	\$11,898.60
	Fidelity individual x3290	3,100	\$26,133
6/2/14	Fidelity individual x8437	200	\$1,608
		2,200	\$17,666.22
6/3/14	Joint Schwab with Vijaya	400	\$3,184
		2,600	\$20,745.40
6/6/14	Joint Schwab with Vijaya	4,000	\$33,200
6/11/14	Joint Fidelity with Vijaya	5,000	\$43,799.50

54. Kumar financed these purchases with approximately \$27,459.66 in cash from his brokerage accounts, approximately \$356,534.79 in stock sales, and approximately \$263,661.10 in margin loans.

55. Kumar made these purchases of Fusion stock at a time when his medical practice was in substantial decline, he owed nearly \$100,000 in credit card debt, and after he had suffered what he described as “drastic” reduction in his personal income between 2012 and 2014, as it decreased by approximately one-third.

3. Vijaya's and Kumar's combined purchases of Fusion stock

56. Collectively, over the period from on or about May 27, 2014 to on or about June 11, 2014, Kumar and Vijaya (including on behalf of Nair), purchased approximately 78,900 shares of Fusion stock for approximately \$665,778.26.

57. A reasonable investor would have viewed the information that Jayapalan disclosed to Kumar, Vijaya, and Nair—that SanDisk was entering into an exclusivity agreement to acquire Fusion—as being important to his or her investment decision and as significantly altering the total mix of information available to an investor.

D. Kumar and Vijaya Sell the Shares Shortly After SanDisk Publicly Announces Its Plans to Acquire Fusion

58. On or about June 16, 2014, SanDisk publicly announced that it would commence a tender offer of Fusion's stock at a price of \$11.25 per share. This material information caused the value of Fusion's stock to jump from approximately \$9.28 per share to approximately \$11.36 per share, an increase of approximately 22 percent. In addition, Fusion's stock showed an increased trading volume of 1,563 percent.

59. On or about June 25, 2014, Kumar began liquidating his shares in Fusion. The only shares Kumar did not sell were approximately 3,000 Fusion shares in his son's brokerage account, which were forcibly sold after the merger between SanDisk and Fusion went through. A table showing Kumar's and the forced sale of the Fusion shares is set forth below:

DATE	ACCOUNT	SHARES	TOTAL
6/25/14	Joint Fidelity with Vijaya	5,000	\$56,501
6/26/14	Joint Fidelity with Vijaya	2,500	\$28,300
7/7/14	Joint Fidelity with Vijaya	9,000	\$101,520
		8,000	\$90,240
		5,500	\$62,040
	Joint Schwab with Vijaya	20,000	\$225,600
	Fidelity individual x3290	8,700	\$98,136
	Fidelity individual x8437	2,600	\$29,302
	Scottrade individual	10,000	\$112,800
8/15/14	Kumar's Son E*Trade	3,000	\$33,750

60. On or about July 3, 2014, Vijaya began liquidating the shares of Fusion she had purchased for herself and Nair. Like Kumar, Vijaya sold the bulk of the Fusion shares on or about July 7, 2014. This was the first time since Vijaya and Nair opened their brokerage account together in June 2010 that there was parallel “round-trip trading” between Kumar and Vijaya (*i.e.* trades in which both Kumar and Vijaya bought and sold the same security in the same direction on the same day). A table showing Vijaya’s sales of the Fusion shares is set forth below:

DATE	ACCOUNT	SHARES	TOTAL
7/3/14	Joint w/ Nair	1000	\$11,290.10
7/7/14	Vijaya Individual	1200	\$13,536

61. The combined profit from Kumar’s, Vijaya’s, and Nair’s trades, directly and indirectly, in Fusion’s stock was approximately \$215,086.01.

E. The Personal Benefit Received by Jayapalan

62. Jayapalan received a substantial personal benefit from tipping Nair, Kumar, and Vijaya. To start, they are all very close family members of Jayapalan.

63. Nair is Jayapalan’s wife. Jayapalan married Nair in 2000 and shortly thereafter she moved from India to the United States. Nair gave birth to Jayapalan’s daughter and only child in 2003. Nair has moved with Jayapalan to Southern California, Arizona, Canada, and India, and contributes financially to the household that she shares with Jayapalan and their daughter.

64. Jayapalan has a very close relationship with his aunt and uncle, Kumar and Vijaya, as well as their son. Vijaya is Jayapalan’s maternal aunt and is married to Kumar. Jayapalan lived with Kumar and Vijaya from time-to-time after he moved to the United States in 1997, including living with them for several weeks at a time. Jayapalan’s wife, Nair, and their daughter have also lived with Kumar and Vijaya, including for several months at a time.

1 65. In 1999, Kumar helped Jayapalan find work in the United States by
2 sending Jayapalan's resume out to several people and by introducing Jayapalan to his
3 contacts, including a contact at a company where Jayapalan was ultimately hired.

4 66. In 2003, when Nair and Jayapalan's daughter was born, Kumar became
5 her pediatrician and provided her with medical care.

6 67. Likewise, Kumar and Vijaya have a son who is close to Jayapalan.
7 Kumar's son is sometimes called the "big brother" of Jayapalan's daughter and he
8 has often tutored her. Jayapalan compensated Kumar's son for tutoring his daughter
9 and, in June 2015, as a graduation gift, invited Kumar's son to join his family on a
10 two week trip to Spain, paying the cost of the entire trip, including flights, hotels,
11 activities, and meals.

12 68. Nair also has a very close relationship with Kumar, Vijaya, and their
13 son. Nair moved from India to Southern California in 2000, after marrying
14 Jayapalan. Kumar, Vijaya, and their son are the only family Nair and Jayapalan have
15 in Southern California. Even when work has required Jayapalan and Nair to move
16 out of California, Kumar and Vijaya have stayed in touch by going to visit them in
17 places like Arizona and Canada.

18 69. Nair has called on Vijaya and Kumar to help her provide care for her
19 daughter and often seeks out Kumar for medical advice. In the same way, Vijaya and
20 Kumar have relied on Nair for help in caring for their son, and have selected Nair as
21 their son's guardian for estate planning purposes.

22 70. Nair and Vijaya have a particularly close relationship and speak to each
23 other by telephone on a regular basis.

24 **F. Defendants' Inconsistent and Misleading Statements Regarding the**
25 **Trades**

26 71. On or about October 13, 2014, in-house counsel at SanDisk asked
27 Jayapalan whether he recognized any names on a list that the Financial Industry
28 Regulatory Authority ("FINRA") had compiled relating to the Fusion trades. The

1 name recognition list that was provided to Jayapalan included “Ananda, Kumar,
2 Vijaya, [and their son].”

3 72. Rather than acknowledge his familial relationship with all three of these
4 individuals and explain that they were his uncle, aunt, and nephew, respectively,
5 Jayapalan only acknowledged that he knew Kumar.

6 73. When questioned about the nature and history of his relationship with
7 Kumar, Jayapalan described him only as someone known to him through his
8 “mother’s side of the family,” and did not explain that Kumar was his uncle or that
9 the person from his “mother’s side of the family” was Vijaya, another person listed
10 on the name recognition list.

11 74. Kumar, Vijaya, and Nair attempted to further the scheme by denying
12 their involvement when questioned about the Fusion trades under oath during the
13 SEC’s investigation.

14 75. For instance, Kumar claimed that he never told Vijaya that he thought
15 SanDisk would acquire Fusion before they bought shares in that company, whereas
16 Vijaya testified that Kumar told her before she bought the Fusion shares that Kumar
17 thought Micron, Qualcomm, or SanDisk would acquire Fusion.

18 76. Nair claimed that she never knew about the Fusion trades until after she
19 received a subpoena from the SEC, whereas Vijaya admitted that she told Nair about
20 the Fusion trades long before Nair received the subpoena and she specifically told
21 Nair the name of the stock, that Kumar had recommended it, and that it was a
22 takeover target.

23 **G. The Highly Suspicious Nature of the Fusion Trades**

24 77. The circumstances surrounding Kumar’s and Vijaya’s purchase and sale
25 of Fusion shares are highly suspicious because:

26 (a) They began buying large amounts of Fusion stock on the same
27 day at or around the same time;

28 (b) This was the first time that either of them had ever purchased

1 Fusion stock;

2 (c) Their purchases occurred just days after Jayapalan, a close family
3 member, had learned firsthand that his employer, SanDisk, entered into an exclusivity
4 agreement with Fusion to acquire all of its outstanding stock at a substantial
5 premium;

6 (d) There were several telephone calls between Jayapalan's and
7 Kumar's households in the days leading up to the trades, including a telephone call
8 that lasted 30 minutes on or about the morning of May 24, 2014;

9 (e) There was a 14-second telephone call from Jayapalan's and Nair's
10 residence to Kumar's cell phone on or about May 26, 2014, the day before Kumar
11 started buying large amounts of Fusion stock, a highly unusual call even considering
12 the regular telephone contact between Vijaya and Nair;

13 (f) Almost half of the Fusion shares that Vijaya purchased went
14 through a brokerage account that Vijaya owned jointly with Nair, which resulted in
15 Vijaya taking approximately \$4,300 from Nair's personal bank account to help
16 finance the purchase of these shares;

17 (g) This was the largest single trade Vijaya had ever executed in the
18 brokerage account with Nair and the most money that she had ever withdrawn from
19 Nair's bank account at one time in connection with a trade. Indeed, in all of 2013,
20 Vijaya had only withdrawn a total of approximately \$405 from Nair's personal bank
21 account;

22 (h) On or about June 15, 2014, the day before SanDisk publicly
23 announced its plans to acquire Fusion's stock, there was a call from Kumar's cell to
24 Jayapalan's house phone at approximately 5:44 p.m., which lasted approximately 10
25 seconds. Later that night, at approximately 10:51 p.m., Jayapalan's cell called
26 Kumar's house phone and the call lasted approximately 2 minutes. These calls
27 shortly before the deal was publicly announced were highly unusual, even
28 considering the regular telephone contact between Vijaya and Nair;

1 (i) On or about June 21, 2014, the first Saturday after the deal was
2 publicly announced, there were two telephone calls between Kumar's cell and
3 Jayapalan's cell. Kumar began selling his Fusion shares on or about June 25, 2014.
4 These calls before Kumar began selling his Fusion shares were also highly unusual,
5 even considering the regular telephone contact between Vijaya and Nair. Indeed,
6 over a period of three years, there were only three calls directly between Kumar's cell
7 and Jayapalan's cell, and two of those three calls took place on or about June 21,
8 2014, right in the middle of Kumar's trading activity in Fusion;

9 (j) Kumar and Vijaya bought and sold many of their Fusion shares on
10 the same day at or around the same time, the first time that such parallel trading had
11 ever happened since Vijaya began trading in her joint account with Nair; and

12 (k) Kumar's sales of the Fusion shares within approximately one
13 month of purchasing them was inconsistent with the trading pattern for his accounts,
14 where he typically held significant blocks of securities for longer durations.

15 **FIRST CLAIM FOR RELIEF**

16 **Fraud in the Connection with the Purchase and Sale of Securities**

17 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**
18 **(against Defendants Jayapalan, Kumar, and Nair)**

19 78. The SEC realleges and incorporates by reference paragraphs 1 through
20 77 above.

21 79. By engaging in the conduct described above, Kumar and Nair, directly
22 or indirectly, purchased shares in Fusion between on or about May 27, 2014 and on
23 or about June 11, 2014, while in possession of a tip of material, non-public
24 information of SanDisk and its plans to acquire Fusion's stock as part of a tender
25 offer, a tip which they knew or should have known, came from Jayapalan in breach of
26 his fiduciary duty to SanDisk and for his own personal benefit.

27 80. By engaging in the conduct described above, Defendants Jayapalan,
28 Kumar, and Nair, and each of them, directly or indirectly, in connection with the

1 purchase or sale of a security, by the use of means or instrumentalities of interstate
2 commerce, of the mails, or of the facilities of a national securities exchange: (a)
3 employed devices, schemes, or artifices to defraud; (b) made untrue statements of a
4 material fact or omitted to state a material fact necessary in order to make the
5 statements made, in the light of the circumstances under which they were made, not
6 misleading; and (c) engaged in acts, practices, or courses of business which operated
7 or would operate as a fraud or deceit upon other persons, in violation of Section
8 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a), 10b-5(b), and
9 10b-5(c) thereunder, 17 C.F.R. §§ 240.10b-5(a), 240.10b-5(b) & 240.10b-5(c), and
10 unless restrained and enjoined will continue to violate them.

11 **SECOND CLAIM FOR RELIEF**

12 **Fraud With Respect to Tender Offer**

13 **Violation of Section 14(e) of the Exchange Act and Rule 14e-3**

14 **(against All Defendants)**

15 81. The SEC realleges and incorporates by reference paragraphs 1 through
16 77 above.

17 82. By engaging in the conduct described above, Kumar, Nair, and Vijaya
18 directly or indirectly, purchased shares in Fusion between May 27, 2014 and June 11,
19 2014, while in possession of material, non-public information regarding SanDisk and
20 the substantial steps it had taken toward acquiring Fusion's stock as part of a tender
21 offer, information which they knew or had reason to know, came directly or
22 indirectly from Jayapalan, someone working on behalf of SanDisk.

23 83. By engaging in the conduct described above, Jayapalan, someone
24 working on behalf of SanDisk, directly or indirectly, communicated material, non-
25 public information regarding SanDisk and the substantial steps it had taken toward
26 acquiring Fusion's stock as part of a tender offer to Kumar, Nair, and Vijaya, and did
27 so under circumstances in which it was reasonably foreseeable that such
28 communication was likely to result in insider trading.

1 84. By engaging in the conduct described above, Defendants Jayapalan,
2 Kumar, Nair, and Vijaya, each of them, directly or indirectly, violated Section 14(e)
3 of the Exchange Act, 15 U.S.C. § 78n(e) and Rules 14e-3(a) and (d) thereunder, 17
4 C.F.R. § 240.14e-3, and unless restrained and enjoined will continue to violate them.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, the SEC respectfully requests that the Court:

7 **I.**

8 Issue findings of fact and conclusions of law that the Defendants committed the
9 alleged violations.

10 **II.**

11 85. Issue judgments, in forms consistent with Rule 65(d) of the Federal
12 Rules of Civil Procedure, permanently enjoining Defendants Jayapalan, Kumar, and
13 Nair, and their officers, agents, servants, employees and attorneys, and those persons
14 in active concert or participation with any of them, who receive actual notice of the
15 judgment by personal service or otherwise, and each of them, from violating Section
16 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a), 10b-5(b), and
17 10b-5(c) thereunder, 17 C.F.R. §§ 240.10b-5(a), 240.10b-5(b) & 240.10b-5(c).

18 **III.**

19 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
20 Civil Procedure, permanently enjoining Defendants Jayapalan, Kumar, Nair, and
21 Vijaya, and their officers, agents, servants, employees and attorneys, and those
22 persons in active concert or participation with any of them, who receive actual notice
23 of the judgment by personal service or otherwise, and each of them, from violating
24 Section 14(e) of the Exchange Act, 15 U.S.C. § 78n(e) and Rule 14e-3 thereunder, 17
25 C.F.R. § 240.14e-3.

26 **IV.**

27 Order Defendants to disgorge all funds received from their illegal conduct,
28 together with prejudgment interest thereon.

1 **V.**

2 Order Defendants to pay civil penalties under Section 20(d) of the Securities
3 Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §
4 78u(d)(3)].

5 **VI.**

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

10 **VII.**

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

13 Dated: September 29, 2017

14 */s/ Douglas M. Miller*

15 DOUGLAS M. MILLER

16 Attorney for Plaintiff

17 Securities and Exchange Commission
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From: cacd_ecfmail@cacd.uscourts.gov
To: ecfnf@cacd.uscourts.gov
Subject: Activity in Case 2:17-cv-07186 Securities and Exchange Commission v. Jayapalan et al Complaint (Attorney Civil Case Opening)
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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Case Number: [2:17-cv-07186](#)
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Docket Text:

[COMPLAINT No Fee Required - US Government, filed by Plaintiff Securities and Exchange Commission. \(Attorney Douglas M Miller added to party Securities and Exchange Commission\(pty:pla\)\)\(Miller, Douglas\)](#)

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