

1 MONIQUE C. WINKLER (Cal. Bar No. 213031)
 winklerm@sec.gov
 2 STEVEN D. BUCHHOLZ (Cal. Bar No. 202638)
 buchholzs@sec.gov
 3 JOHN P. MOGG (Cal. Bar No. 219875)
 moggj@sec.gov
 4 44 Montgomery Street, Suite 2800
 San Francisco, California 94104
 5 Telephone: (415) 705-2500
 Facsimile: (415) 705-2501
 6

7 JOSEPH G. SANSONE (NY Bar No. 4043659)
 sansonej@sec.gov
 100 Pearl St., Suite 20-100
 8 New York, NY 10004-2616
 Telephone: (212) 336-1100
 9

Attorneys for Plaintiff
 10 SECURITIES AND EXCHANGE COMMISSION

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 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 SECURITIES AND EXCHANGE COMMISSION, 17 Plaintiff, 18 v. 19 NICHOLAS DANIEL, 20 Defendant. 21	Case No. 3:22-cv-4711 COMPLAINT
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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
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1 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].

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

6 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
21 in Delaware and now a subsidiary of Infineon, manufactures and sells embedded semiconductor
22 products for automotive, industrial, consumer, and enterprise markets. Before market open on June
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
26 ticker “CY.” Cypress’s principal corporate offices at all relevant times have been in San Jose,
27 California.

1 28, 2019, which was attended by, among other people, senior Cypress employees, including at least
2 one Cypress senior executive and a member of his staff. During the party, Daniel observed this
3 family member leave the party for an unusual private meeting with these senior Cypress employees in
4 the family member's home office. At this private meeting, the family member and the other senior
5 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.

19 25. On May 29, 2019 at 8:11 AM, Daniel received a phone call from his mother, who was
20 also at the close family member's home, lasting approximately 6 minutes. During this call, Daniel
21 learned that this family member was working on urgent issues that morning related to the article's
22 publication and that an acquisition of Cypress would likely occur soon. Daniel learned this
23 confidential information during the telephone call and understood that he was expected not to trade in
24 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.

B. Daniel Immediately Seeks to Trade in Cypress Call Options

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 he held a brokerage account in his name. On the call, Daniel asked the brokerage representative to "make sure the account was active and able to trade and receive money" because he "hadn't used [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.

28. During this phone call between Daniel and the brokerage representative, Daniel 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 approximately 9:30 AM, Daniel submitted an application to the brokerage firm to trade in options contracts.

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

29. After receiving material nonpublic information on May 29, 2019 about Cypress's impending acquisition, Daniel asked his mother to lend him \$50,000. Daniel told his mother that he needed the money for a real estate transaction, when in fact Daniel intended to use the money to purchase Cypress call option contracts. Later on May 29, 2019, Daniel and his mother called his 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 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.

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

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

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 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 contracts
23 on the basis of 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.

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

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.

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Dated: August 17, 2022

Respectfully submitted,

/s/ John P. Mogg

John P. Mogg
Attorney for Plaintiff
SECURITIES AND EXCHANGE
COMMISSION