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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

	)	
<b>SECURITIES AND EXCHANGE COMMISSION,</b>	)	
	)	<b>COMPLAINT</b>
<b>PLAINTIFF,</b>	)	
	)	
<b>v.</b>	)	Civil No. _____
	)	
<b>SUBRAMANIAN KRISHNAN,</b>	)	Judge _____
	)	
<b>DEFENDANT.</b>	)	
	)	

Plaintiff, Securities and Exchange Commission (the “Commission”), for its Complaint against Krishnan alleges as follows:

**INTRODUCTION**

1. This matter involves a course of conduct by Subramanian Krishnan (“Krishnan”), former Chief Financial Officer of Digi International, Inc. (“Digi” or the “Company”), which resulted in the filing of inaccurate reports and accompanying certifications in the Company’s annual reports on Form 10-K and in the Company’s quarterly reports on Form 10-Q for the period from March 2005 through May 2010.

2. Krishnan, in his role as Chief Financial Officer, caused Digi to make material misstatements or omissions in annual and quarterly reports filed with the Commission and engaged in certain actions and inactions, a result of which corporate funds were used to pay for unauthorized expenses.

3. Krishnan authorized such expenses for Digi employees, resulting in the filing of inaccurate expense reports, caused the Company to file inaccurate reports, failed to enforce Digi's internal controls, demonstrated a lack of management integrity, failed to act to reveal inaccurate reports and wrongly certified that he evaluated the effectiveness of Digi's internal controls and disclosed they were effective.

#### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction by authority of Section 20 and 21 of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t, 77v] and Sections 21 and 27 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78u and 78aa].

5. Defendant, directly and indirectly, made use of the means and instrumentalities of interstate commerce and the mails in connection with the transactions, acts and courses of business alleged herein, certain of which have occurred within the District of Minnesota.

6. Venue for this action is proper in the District of Minnesota under Section 20(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa], because certain of the transactions, acts, practices, and courses of business alleged in this Complaint took place in this District and because the defendant resides in and transacts business in this District.

7. Defendant, unless restrained and enjoined by this Court, may continue to engage in the transactions, acts, practices, and course of business alleged herein and in transactions, acts, practices, and courses of business of similar purport and object.

8. Defendant's conduct took place in connection with the offer, purchase, and/or sale of Digi securities.

#### **DEFENDANT**

9. **Subramanian Krishnan**, age 58, is a resident of Plymouth, Minnesota. Krishnan served as Chief Financial Officer and Senior Vice President of Digi from February 9, 1999, until his resignation on May 7, 2010. Krishnan has been licensed as a CPA in Minnesota since 1983.

#### **RELATED PARTIES**

10. **Digi International, Inc.**, is a Delaware corporation headquartered in Minnetonka, Minnesota. At all relevant times, Digi's common stock was registered with the Commission pursuant to Section 12 of the Exchange Act and traded on the NASDAQ. Digi manufactures device networking products for businesses.

#### **STATEMENT OF FACTS**

11. Krishnan became the CFO of Digi on February 9, 1999, and resigned on May 7, 2010. Prior to his resignation, Digi conducted an internal audit and forensic accounting examination which concluded that Krishnan failed to properly devise, maintain and abide by a system of internal controls, which resulted in approval of expense reports that were inconsistent with Digi policies and payments for employees that were personal in nature.

12. As CFO of Digi, Krishnan's responsibilities included providing documents and information to Digi's outside auditor to enable the auditor to certify Digi's financial statements,

providing management representations to the auditor, implementing internal accounting controls for each Digi office and implementing Digi's travel and entertainment policy.

13. Beginning in at least March 2005 through May 7, 2010 (the "relevant time period"), Krishnan engaged in a course of conduct in which Digi corporate funds were used to pay for unauthorized personal expenses for Digi employees.

14. During the relevant time period, Krishnan approved corporate travel and entertainment expenses which appeared to have marginal, if any, business purpose.

15. Krishnan maintained a system of internal controls that allowed for hotel and entertainment expenses to be submitted to and paid by the Asia Pacific Regional office, which was located in Hong Kong. This practice resulted in Krishnan's hotel and entertainment expenses not being approved by the CEO as required by company policy. Instead, as CFO, Krishnan had authorization and the final approval for all of those expenses. As a result, Krishnan reviewed and approved his own expense reports which included unauthorized expenses.

16. By doing so, Krishnan demonstrated a lack of management integrity. This was a material weakness in Digi's internal controls over financial reporting.

17. For over five years, Krishnan submitted or approved expense reports which included charges for employees' personal expenses. Krishnan personally authorized these payments as work and travel expenses.

18. Krishnan also approved cash payments in the Hong Kong office which were not supported by documentation or explanation.

19. Krishnan knew or should have known that such unsupported, personal expenses violated Digi's travel and entertainment policy because Krishnan personally drafted, authorized and approved Digi's policy.

20. Krishnan, as CFO, was responsible for supervising Digi's accounting and finance operations. Krishnan signed Digi's public filings, prepared Digi's financial statements and reviewed both to determine the accuracy and completeness of Digi's financial disclosures.

21. Krishnan also represented in Digi's Commission filings that he had assessed the effectiveness of Digi's internal control over financial reporting and concluded that internal control over financial reporting was effective.

22. This representation was untrue, as Digi's internal control over financial reporting was not effective.

23. As CFO, Krishnan was also responsible for providing information to Digi's outside auditor including, among other things, (1) responding to quarterly inquiries regarding the existence and risk of fraud, and (2) signing management representations indicating that management was not aware of any fraud.

24. Beginning in March 2005 and ending in the first quarter of fiscal 2010, the outside auditor made specific inquiries of Krishnan regarding his knowledge of any fraud. Krishnan represented to the outside auditor that he had no knowledge of any fraud.

25. Krishnan also signed approximately 20 management representation letters asserting that he had "no knowledge of fraud or suspected fraud affecting the company involving management [or] employees who have significant roles in internal controls over financial reporting."

26. Krishnan's representations were untrue as Krishnan knew or should have known of the inaccurate expense reports that he approved and that Digi's internal control over financial reporting was not effective.

27. Krishnan signed inaccurate Forms 10-K and Forms 10-Q on behalf of Digi, as well as materially misrepresented his assessment of the effectiveness of Digi's internal controls in the corresponding certifications, from March 2005 through May 7, 2010.

28. Krishnan's misrepresentations and omissions were material.

**FIRST CAUSE OF ACTION**  
**Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]**

29. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 28, above.

30. Krishnan, by engaging in conduct described above, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, with scienter, employed devices, schemes, or artifices to defraud.

31. By reason of the foregoing, Krishnan, directly or indirectly, violated, and unless restrained and enjoined by this Court, will continue to violate, Section 17(a)(1) of the Securities Act.

**SECOND CAUSE OF ACTION**  
**Violations of Section 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2), (3)]**

32. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 28, above.

33. Krishnan, by engaging in the conduct described above, directly and indirectly, in the offer and sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, obtained money or property by

means of untrue statements of material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

34. By reason of the foregoing, Krishnan, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Section 17(a)(2) and 17(a)(3) of the Securities Act.

**THIRD CAUSE OF ACTION**  
**Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and**  
**Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

35. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 28, above.

36. Krishnan, by engaging in conduct described in Paragraphs 1 through 28, above, directly or indirectly, in connection with the purchase and sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, with scienter: (1) employed devices, schemes or artifices to defraud; (2) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon other persons.

37. By reason of the foregoing, Krishnan, directly or indirectly, violated, and unless restrained and enjoined by this Court, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder. [17 C.F.R. § 240.10b-5].

**FOURTH CAUSE OF ACTION**

**Aiding and Abetting Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. 240.12b-20, 240.13a-1, and 240.13a-13]**

38. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 28, above.

39. Krishnan, by engaging in the conduct described in Paragraphs 1 through 28, above, directly and indirectly, filed or caused to be filed with the Commission annual reports on Form 10-K, quarterly reports on Form 10-Q, and any amendments thereto, and accompanying 302 certifications, each containing untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

40. By reason of the foregoing, Krishnan, directly or indirectly, aided and abetted violations and, unless restrained and enjoined, will continue to aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. 240.12b-20, 240.13a-1, and 240.13a-13].

**FIFTH CAUSE OF ACTION**

**Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]**

41. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 28, above.

42. Based on the conduct described above, Digi violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which obligates issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to make or keep books, records or accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the issuer's assets.

43. By engaging in the conduct described above, Krishnan knowingly provided substantial assistance to Digi's failure to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of Digi's assets.

44. By reason of the foregoing, Krishnan aided and abetted, and unless restrained and enjoined will continue to aid and abet, violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

**SIXTH CAUSE OF ACTION**  
**Violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)]**

45. The Commission realleges and incorporates by reference the allegations contained in Paragraph 1 through 28, above.

46. Based on the conduct described above, Digi violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] which obligates issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that: transactions were executed in accordance with management's general and specific authorization; transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or any other criteria applicable to such statements; and to maintain accountability for assets.

47. By engaging in the conduct described above, Krishnan knowingly provided substantial assistance to Digi's failure to maintain a system of internal accounting controls.

48. By reason of the foregoing, Krishnan aided and abetted, and unless restrained and enjoined will continue to aid and abet, violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

**SEVENTH CAUSE OF ACTION**

**Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]**

49. Paragraphs 1 through 28 are re-alleged and incorporated herein by reference.

50. By engaging in the conduct described above, Krishnan directly or indirectly, knowingly circumvented or failed to implement a system of internal accounting controls and knowingly falsified a book, record or account.

51. By reason of the foregoing, Krishnan violated and, unless restrained or enjoined, will continue to violate Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

**EIGHTH CAUSE OF ACTION**

**Violations of Section 13(b) of the Exchange Act [15 U.S.C. § 78m(b)] and Rule 13b2-1 Thereunder [17 C.F.R. 240.13b2-2]**

52. Paragraphs 1 through 28 are re-alleged and incorporated herein by reference.

53. By engaging in the conduct described above, Krishnan, directly or indirectly, falsified or caused to be falsified, a book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act.

54. By reason of the foregoing, Krishnan violated and, unless restrained or enjoined, will continue to violate Section 13(b) of the Exchange Act [15 U.S.C. § 78m(b)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1].

**NINTH CAUSE OF ACTION**

**Violations of Section 13(b) of the Exchange Act [15 U.S.C. § 78m(b)] and Rule 13b2-2 Thereunder [17 C.F.R. 240.13b2-2]**

55. Paragraphs 1 through 28 are re-alleged and incorporated herein by reference.

56. By engaging in the conduct described above, Krishnan, as an officer or director of the issuer, directly or indirectly, made or caused to be made a materially false or misleading statement to an accountant in connection with the preparation or filing of any document or report required to be filed with the Commission.

57. By reason of the foregoing, Krishnan violated and, unless restrained or enjoined, will continue to violate Section 13(b) of the Exchange Act [15 U.S.C. § 78m(b)] and Rule 13b2-2 thereunder [17 C.F.R. § 240.13b2-2].

**TENTH CAUSE OF ACTION**  
**Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rule 13a-14**  
**Thereunder [17 C.F.R. 240.13a-14]**

58. Paragraphs 1 through 28 are re-alleged and incorporated herein by reference.

59. By engaging in the conduct described above, Krishnan falsely signed personal certifications under Rule 13a-14 of the Exchange Act, indicating, in part that he assessed the effectiveness of Digi's internal controls over financial reporting and concluded that such controls were effective.

60. Krishnan's representations in Digi's public filings were false and misleading.

61. Krishnan's representations that he reviewed certain Digi periodic reports filed with the Commission and that, based on his knowledge, the reports did not contain untrue statements of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which statements were made, not misleading with respect to the period covered by the report was also untrue.

62. By reason of the foregoing, Krishnan violated and, unless restrained or enjoined, will continue to violate Rule 13a-14 under the Exchange Act [C.F.R. § 240.13a-14].

**RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court:

**I**

Issue findings of fact and conclusions of law that Krishnan committed the violations charged herein;

**II**

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure an order that permanently restrains and enjoins, Krishnan, and his officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

### III

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure an order that permanently restrains and enjoins, Krishnan, and his officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 thereunder and from aiding and abetting violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)];

### IV

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure an order that permanently restrains and enjoins, Krishnan, and his officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object from aiding and abetting violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)];

### V

Issue, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, orders that preliminarily and permanently enjoin Krishnan, and his officers, agents, servants,

employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

**VI**

Issue, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, orders that preliminarily and permanently enjoin Krishnan, and his officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violating Section 13(a) of the Exchange Act and Rule 13a-14 thereunder.

**VII**

Bar Krishnan from serving as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, as amended, or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

**VIII**

Enter an order directing Krishnan to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

**IX**

Enter an order directing Krishnan to disgorge all ill-gotten gains received during the period of violative conduct and to pay prejudgment interest thereon.

**X**

Grant such further equitable relief as this Court deems just, appropriate, and necessary.

**XI**

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.

Dated this 28th day of September 2012.

Respectfully submitted,

/s/ Daniel J. Wadley

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