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Plaintiff T.J. Rodgers (“Rodgers” or “Plaintiff”), by and through his undersigned counsel, alleges on personal knowledge as to himself and his own conduct, and on information and belief as to all other matters, as and for his Verified Complaint for Breach of the Fiduciary Duty of Candor against defendants H. Raymond Bingham, Eric A. Benhamou, W. Steve Albrecht, O.C. Kwon, Wilbert Van Den Hoek, Michael S. Wishart, and Hassane El-Khoury, (collectively, “Defendants” or the “Directors”) as follows:

1. Rodgers is the founder and former President and Chief Executive Officer (“CEO”) of Cypress Semiconductor Corporation (“Cypress” or the “Company”). Rodgers retired from his positions as President and CEO of Cypress

in April 2016 and from the Cypress Board of Directors (the “Board”) in August 2016, but has retained significant holdings in Cypress stock. In particular, Rodgers is the beneficial owner, through two trusts, of seven million seven hundred twenty five thousand six hundred nineteen (7,725,619) shares of common stock of the Company, or approximately 2.35% of the Company’s outstanding shares, with a market value of more than \$108 million as of the market close on April 21, 2017.

2. Since its founding, Cypress has acquired over thirty companies. When Rodgers left the Company in 2016, M&A remained an immensely important component of Cypress’ business model. Acquisitions were and are so important to Cypress that, in 2016, the Board established a board-level M&A evaluation team which receives quarterly M&A updates (the “Cypress M&A Team”). The idea for the Cypress M&A Team was presented to the Board by Defendant H. Raymond Bingham (“Bingham”). Bingham served on the Cypress M&A Team as of August 10, 2016 and, to the best of Rodgers’ knowledge, Bingham continues to serve on the Cypress M&A Team.

3. On November 3, 2016, Rodgers learned, for the first time, that Bingham, Cypress’ Executive Chairman, is a “Founding Partner” of Canyon Bridge Capital Partners (“Canyon Bridge”), a private equity buyout firm that competes directly with Cypress for critical M&A opportunities. Canyon Bridge is funded, according to reporting by Reuters, by the government of the People’s

Republic of China (the “PRC”). On November 3, 2016, Canyon Bridge announced that it had entered into a definitive merger agreement to acquire Lattice Semiconductor (“Lattice”), a company Cypress considered acquiring on two previous occasions, and which approached Cypress as a potential “white knight” in response to Canyon Bridge’s overtures earlier in 2016. Canyon Bridge’s acquisition of Lattice is consistent with the PRC’s 13<sup>th</sup> five-year plan to acquire semiconductor companies in order to reduce the PRC’s reliance on semiconductor products purchased from the United States by raising the PRC’s share of indigenous semiconductor production from 30% to 70%.

4. After researching Canyon Bridge and Bingham’s affiliation with Canyon Bridge, Rodgers grew increasingly concerned that Bingham’s simultaneous employment with Canyon Bridge presented a dangerous conflict of interest that violated numerous provisions of Cypress’ Code of Business Conduct and Ethics (the “Code”) as well as Bingham’s fiduciary duties to Cypress and its stockholders. Thereafter, Rodgers attempted to raise privately with the Board his serious and well-founded concerns regarding Bingham’s conflict of interest and violations of the Code. Rodgers sent the Board a private letter on December 9, 2016 and subsequently sent a private demand for inspection of books and records, both of which the Board ignored.

5. When Rodgers’ attempts to raise his concerns privately fell on deaf ears, Rodgers filed a lawsuit with this Court seeking to enforce his inspection rights under Section 220 of the Delaware General Corporation Law. On April 17, 2017, this Court held that Rodgers is entitled to the inspection he seeks, held that Rodgers established a credible basis to believe Bingham may have engaged in wrongdoing, and ordered Cypress to produce documents responsive to each category of documents sought by Rodgers for which Cypress previously denied inspection.

6. Separate from his Section 220 demand and related litigation, Rodgers nominated two candidates to serve as Cypress directors—J. Daniel McCranie (“McCranie”) and Camillo Martino (“Martino”). Rodgers’ candidates will stand for election at Cypress’ 2017 annual meeting of stockholders (the “Annual Meeting”).

7. The reasons for Rodgers’ nomination of McCranie and Martino are fully set forth in Rodgers’ proxy materials publicly filed with the U.S. Securities and Exchange Commission. In brief, Rodgers believes that his nominees possess the operational expertise necessary to guide Cypress through the next stage of its existence and also believes that his nominees—whose integrity is well-established—will be able to take the appropriate steps to protect Cypress from future conflict of interest issues like the one raised by Bingham’s simultaneous

work on behalf of Canyon Bridge and Cypress. The Company, for its part, has refused to add Rodgers' candidates as candidates nominated by the Board. As a result, Cypress and Rodgers are in the midst of a proxy contest leading up to the Annual Meeting, which is currently scheduled for June 8, 2017.

8. On April 5, 2017, Cypress filed a preliminary proxy statement on Schedule 14A for consideration by Cypress' stockholders in advance of the Annual Meeting (the "Cypress Preliminary Proxy Statement").

9. On April 18, 2017, Cypress issued a press release entitled "Cypress Resolves Lawsuit Brought by Departed CEO T.J. Rodgers" and also filed its release with the SEC as proxy solicitation material (the "Cypress 220 Press Release").

10. On April 19, 2017, Cypress filed its definitive proxy statement (the "Cypress Proxy Statement"). In connection with the Cypress Proxy Statement, Cypress also filed with the SEC on April 19, 2017 a "fight letter" in the ongoing proxy contest (the "Cypress Fight Letter").

11. Despite the Board's duty to disclose to stockholders all facts material to the election, the Cypress 220 Press Release, Cypress Proxy Statement, and Cypress Fight Letter are full of misleading statements, material inaccuracies, and material omissions relating to Bingham's affiliation with Canyon Bridge, Bingham's disclosures to the Board regarding his affiliation with Canyon Bridge,

the steps the Board has taken to address Bingham's conflict, the Court's decision in the Section 220 Action, and Rodgers' credible basis to believe that Bingham violated his fiduciary duties and the Code.

12. Notably, in his December 9, 2016 letter to the Cypress Board, a copy of which is attached as Exhibit A, Rodgers detailed specifically (on page 2) seven ethical guidelines and procedures set forth in Cypress' Code that Bingham violated by founding and acting on behalf of Canyon Bridge, which is a direct competitor to Cypress in the critical semiconductor M&A space.

13. Not one of these seven separate and individually applicable guidelines is even mentioned in the Cypress Proxy Statement, Cypress Fight Letter, or Cypress Section 220 Press Release. Instead, Cypress' proxy solicitation materials seek to mislead Cypress stockholders by creating an alternate universe in which:

- a. Rodgers' concerns regarding Bingham's irreconcilable conflict of interest are unfounded—*despite the fact this Court held in the Section 220 Action that Rodgers established a credible basis to infer that Bingham's relationships with Canyon Bridge and Cypress represent a conflict of interest;*
- b. Rodgers' proxy contest is nothing more than a personal vendetta against Bingham—*despite the fact that the Court rejected that very argument in the Section 220 Action;* and

- c. Cypress' Code of Business Conduct and Ethics is not implicated by Bingham's conduct—*despite the fact that the Court held in the Section 220 Action that Rodgers established a credible basis to infer that Bingham may have violated the Code in multiple different ways.*

14. Through this action, Rodgers seeks to compel Defendants to cause Cypress to issue supplemental and corrective disclosures sufficiently in advance of Cypress' June 8, 2017 Annual Meeting so Rodgers and Cypress' other stockholders can exercise their right to cast an informed vote.

### **RELEVANT NON-PARTY**

15. Cypress Semiconductor Corporation is a Delaware corporation with its principal executive offices at 198 Champion Court, San Jose, California 95134. Cypress was founded by Rodgers in 1982 and is currently the leading global provider of automotive instrument cluster and touchscreen solutions. Shares of Cypress trade on the Nasdaq Global Select Market under the ticker symbol "CY."

### **THE PARTIES AND JURISDICTION**

16. Defendant Ray Bingham is the Executive Chairman of the Cypress Board. Bingham has served on the Board since 2015, and was appointed to the newly-formed Executive Chairman position on August 10, 2016. Bingham also is a co-founder and current partner of Canyon Bridge, a private equity buyout firm. Canyon Bridge is funded in part by the government of the PRC and focused on

“control investments” in technology companies, including semiconductor companies.

17. Defendant Eric A. Benhamou (“Benhamou”) is the Company’s Lead Independent Director. Benhamou has served on the Board since 1993.

18. Defendant W. Steve Albrecht (“Albrecht”) is a director of the Company and has served on the Board since 2003.

19. Defendant O.C. Kwon (“Kwon”) is a director of the Company and has served on the Board since 2015.

20. Defendant Wilbert van den Hoek (“van den Hoek”) is a director of the Company and has served on the Board since 2011.

21. Defendant Michael S. Wishart (“Wishart”) is a director of the Company and has served on the Board since 2015.

22. Defendant Hassane El-Khoury is the President, Chief Executive Office (“CEO”) and a director of the Company. El-Khoury joined the Board and was appointed as the Company’s President and CEO in August 2016.

23. Plaintiff T.J. Rodgers founded the Company in 1982. Rodgers served as a director, President and CEO from the Company’s founding until his resignations last year.

24. This Court has jurisdiction over each of the Defendants pursuant to 10 *Del. C. § 3114*.



## **FACTUAL ALLEGATIONS**

### **A. Rodgers Discovers Bingham's Conflict and Seeks Inspection of Books and Records**

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25. On November 3, 2016, Lattice Semiconductor Corporation ("Lattice") announced that it had entered into a definitive merger agreement with Canyon Bridge.

26. As a result of that announcement, Rodgers learned for the first time that Bingham, the Company's Executive Chairman, is a "Founding Partner" of Canyon Bridge. The news was particularly troubling to Rodgers given that (i) Cypress' survival has always depended and continues to depend, in large part, on its ability to identify and pursue acquisition opportunities, as illustrated by the fact that prior acquisitions provide well over 50% of Cypress' revenue today; and (ii) Cypress had considered engaging in a transaction with Lattice on two prior occasions. Rodgers suspected that Bingham's concurrent employment with Cypress and Canyon Bridge could present a crippling conflict of interest and violated several provisions of the Code.

27. On December 9, 2016, Rodgers wrote a private letter to the Board demanding that the Board "take decisive action promptly" to address Bingham's obvious conflicts of interest and the likely business, financial and reputational harm to the Company inherent in the Company being in any way associated with Canyon Bridge, which had received significant negative publicity in a December 6,

2016 letter signed by 22 Members of Congress, who wrote that Canyon Bridge “appears to be a legal construction intended to obfuscate the involvement of numerous PRC state-owned enterprises . . . .”

28. In support of Rodgers’ request that the Board take action, Rodgers’ December 9, 2016 letter detailed to the Board the provisions of the Code implicated by Bingham’s dual relationships with Cypress and Canyon Bridge:

The Cypress Code of Ethics sets forth crystal-clear policies on conflicts of interest, seven of which were violated [as a result of Bingham’s dual relationships]. We have always taken Cypress’s Code of Ethics seriously. It was approved by the Cypress board, is used to train Cypress managers, resides on our public website and thus sets our investors’ reasonable expectations for our ethical behavior. It sets the standards for behavior regarding conflict of interest for all employees, including Cypress’s officers and directors, who are always expected to demonstrate leadership, not just compliance. Relevant excerpts from Cypress’s Code of Ethics are given below:

**“Conflict of Interest”**

“A conflict of interest exists where the interests or benefits of one person or entity conflict with the interests or benefits of the Company.” **There is no question that what benefits Canyon Bridge conflicts with what benefits Cypress.**

*“Our policies prohibit any employee from accepting simultaneous employment of any kind without written permission of the Company [my emphasis], and prohibits any employee from accepting simultaneous employment with a Company supplier, customer, developer or competitor.”* **There is no question that Canyon Bridge**

**is a competitor of Cypress and that our Executive Chairman holds a management position with our competitor.**

**“It is a conflict of interest to serve as a director of any company that competes with the Company.” Our Executive Chairman is more than just a director of Canyon Bridge; he is one of two Managing Partners that run it.**

**“Although you may serve as a director of [another company], our policy requires that you first obtain approval from the Company’s Chief Financial Officer (CFO) before accepting a directorship.” As stated earlier, our CFO was not asked for approval or even informed of our Executive Chairman’s employment at Canyon Bridge. To my knowledge, the Cypress board was also not informed.**

**“Employees, agents, or contractors should always try to avoid the appearance of impropriety.” The Canyon Bridge phone in the U.S. is a Cypress phone, answered by Cypress secretaries; our “full-time” Executive Chairman spends less than half his time at Cypress on average; and he conducts Canyon Bridge business on Cypress premises.**

**“Additionally, you must disclose to the Company any interest that you have that may conflict with the business of the Company.” If Canyon Bridge is looking at any acquisition opportunities right now, our Executive Chairman has the duty to disclose them to Cypress.**

Ex. A at 2 (emphasis in original).

29. On January 19, 2017, after he received no response to his December 9, 2016 letter, Rodgers served the Company with a demand letter pursuant to 8 *Del. C.* § 220 (the “Section 220 Demand”), seeking to inspect certain books and

records of the Company for the primary purposes of investigating potential wrongdoing associated with (i) Bingham's affiliation with Canyon Bridge and Bingham's disclosures to the Board relating to his affiliation with Canyon Bridge, (ii) what steps the Board took, if any, to protect Cypress from Bingham's conflict of interest and (iii) what, if any, additional steps need to be taken to protect Cypress from Bingham's conflict of interest.

30. On January 26, 2017, Cypress refused to produce even a single document relating to Bingham's affiliation with Canyon Bridge, his disclosures to the Board or the Board's actions, if any, to address Bingham's conflict.

31. On January 30, 2017, Rodgers filed a complaint in this Court seeking to enforce his inspection rights (the "Section 220 Action"). Trial in the Section 220 Action was held on April 12, 2017. On April 17, 2017, the Court issued its post-trial Opinion in the Section 220 Action (the "Opinion"),<sup>1</sup> which among other things (a) held that Rodgers was entitled to the inspection he sought; (b) held that Cypress' defenses to the Section 220 Action were meritless; and (c) required Cypress to produce documents responsive to Rodgers' Section 220 Demand within five days of the entry of the Order implementing the Court's Opinion.

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<sup>1</sup> A copy of the Opinion is attached as Exhibit B.

32. The implementing Order in the Section 220 Action was entered on April 21, 2017.

**B. Rodgers' Nominates Two Candidates For Election To The Board During the 2017 Annual Meeting Of Stockholders Of Cypress**

33. After the Board failed to respond to his December 9, 2016 letter, produce documents responsive to the Section 220 Demand or otherwise assure Rodgers that the Board was adequately protecting Cypress from Bingham's conflict of interest, Rodgers decided to nominate two directors for election to the Board at Cypress' next annual meeting of stockholders.

34. On February 3, 2017, Rodgers nominated McCranie and Martino for election to the Board at the Annual Meeting. The Annual Meeting is scheduled for June 8, 2017.

35. In light of Rodgers' nominations, Cypress' resistance to them, and the stakes for Cypress and its stockholders, the election at the Annual Meeting is hotly contested.

**C. Dissatisfied With The Court's Opinion In The Section 220 Action, Cypress Files A Press Release Mischaracterizing The Opinion, Misleading Cypress Stockholders, And Attacking The Court**

36. In the Section 220 Action, the parties contested Rodgers' right to access certain Cypress books and records to facilitate Rodgers' investigation into Bingham's apparent conflict of interest and the Board's response to Bingham's conduct. After a trial on the merits, the Court concluded that Rodgers established a

proper purpose for his requested inspection of Cypress’ books and records; namely, to investigate Bingham’s potential conflict of interest and the Board’s actions to protect Cypress from being harmed by that conflict. The Court also rejected Cypress’ defenses.

37. In particular, in the Opinion the Court held that:

- a. “[J]udgment will be entered in Rodgers’ favor and Cypress will be required to produce the documents Rodgers sought in his demand letter dated January 19, 2017 (the “Demand”) in the manner set forth below.” Ex. B at 1.
- b. Rodgers established a “credible basis” to believe that Bingham may have engaged in misconduct by violating his fiduciary duties and Cypress’ Code of Business Conduct and Ethics (the “Code”) as a result Bingham’s dual fiduciary conflict. *See* Ex. B at 8–9 (“Thus, a ‘credible basis’ exists to infer that Bingham violated the Code’s prohibition on ‘simultaneous employment of any kind without written permission of the Company.’”); *id.* at 10 (“The dual hats Bingham wears suggest that his interests with respect to Canyon Bridge may well conflict with the business interests of Cypress.”); *id.* (finding that Bingham’s use of a Cypress telephone to conduct Canyon Bridge business provides a credible basis to infer that Bingham violated the

Code’s prohibition on Cypress “employees ‘from engaging in any activity that . . . is . . . in conflict or perceived conflict with the Company.’”); *id.* at 10–11 (“Thus, a credible basis exists to infer that Bingham may have violated the Code’s requirement to ‘disclose to the Company any interest that [he has] that may conflict with the business of the Company.’”).

- c. The evidence presented at trial did not support Cypress’ claim that Rodgers’ purpose in pursuing his Section 220 Demand was a personal vendetta against Bingham. Specifically, the Court found: “Based on Rodgers’ testimony, which I generally found to be highly credible, and the other evidence of record, I am not convinced that Rodgers’ actual purpose is to pursue a personal vendetta against Bingham.” Ex. B at 14.
- d. Each of the disputed categories of documents sought by Rodgers “is essential to the purposes in his Demand,” and noted that Cypress did not “seriously contend otherwise.” Ex. B at 18.

38. In short, the Section 220 Action was resolved through a contested trial that resulted in a judgment in favor of Rodgers and against Cypress.

39. Nonetheless, on April 18, 2017, Cypress issued and filed with the SEC the Cypress 220 Press Release.<sup>2</sup> As noted above, the Cypress 220 Press Release inaccurately claims that *Cypress* “[r]esolve[d]” its dispute with Rodgers. The dispute was in fact resolved by this Court’s decision—after contested litigation and a full trial on the merits—rejecting Cypress’ defenses and finding in favor of Rodgers on the merits. Ex. B at 1.

40. Cypress’ press release is sufficiently misleading that certain outlets reported that Cypress and Rodgers “settled” the Section 220 Action.<sup>3</sup>

41. The Cypress 220 Press Release further inaccurately claims that the Court “has recognized the overly broad nature of Mr. Rodgers’ demands and has appropriately limited the information to be made available to him and its use.” Ex. C at 1.

42. The Court made no such findings. Not only did the Court not limit the information to be provided to Rodgers, the Court held that Rodgers’ Section 220 Demand was circumscribed with such rifled precision that Rodgers was

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<sup>2</sup> A copy of the Cypress 220 Press Release is attached as Exhibit C.

<sup>3</sup> See, e.g., “Cypress Semiconductor (CY) and Former CEO T.J. Rodgers Settle Lawsuit,” *Street Insider* (Apr. 18, 2017), available at <https://www.streetinsider.com/Corporate+News/Cypress+Semiconductor+%28CY%29+and+Former+CEO+T.J.+Rodgers+Settle+Lawsuit/12788107.html>.



entitled to receive *every contested category of documents at issue in the Section 220 Action*. Ex. B at 18.

43. The Court also did not impose a use restriction on the documents and instead held only that the documents would be produced initially pursuant to the Confidentiality Order in place in the Section 220 Action, subject to Rodgers' rights to contest any improper confidentiality designations and to seek public disclosure of documents that Cypress stockholders should be entitled to see. *See* Ex. B at 15-16.

44. The Cypress 220 Press Release also contains an unsupported and gratuitous attack on the supposed "extraneous comments" made by the Court. Ex. C at 1. Cypress makes no effort to identify those comments and instead presents its statement as a bare ad hominem attack on the Court.

45. Finally, the Cypress 220 Press Release omits to mention the Court's conclusions regarding Bingham's potential misconduct and the four core findings by the Court supporting Rodgers' position (and the Court's ultimate conclusion) that there is a credible basis to suspect that Bingham may have violated his fiduciary duties and breached Cypress' Code. *Compare* ¶ 37(b) of this Complaint *with* Ex. C.

46. In short, the Cypress 220 Press Release completely misrepresents the Opinion and misleads Cypress stockholders.

**D. Cypress Files A Proxy Statement and Fight Letter Full of Material Inaccuracies And Materially Misleading Disclosures**

47. As noted above, Cypress filed the Cypress Proxy Statement and the Cypress Fight Letter on April 19, 2017.<sup>4</sup>

48. Despite the Board's duty to disclose to stockholders all facts material to the election of directors at the Annual Meeting, the Cypress Proxy Statement contains numerous material misstatements and omissions relating to, among other things, (i) Bingham's affiliation with Canyon Bridge, (ii) the Board's assessment of Bingham's inherent conflict of interest, and (iii) the steps the Board has taken to address Bingham's conflict.

***1. The Cypress Directors have failed to describe accurately and completely in the Cypress Proxy Statement Bingham's role at Canyon Bridge.***

49. The Cypress Proxy Statement states as follows with respect to Canyon Bridge's acquisition of Lattice:

On November 3, 2016, Lattice announced that it had agreed to be acquired by Canyon Bridge Capital Partners ("Canyon Bridge"). While Mr. Bingham had reached an understanding to join Canyon Bridge's founding team in October 2016, and the Lattice/Canyon Bridge joint press release announcing the transaction prematurely referred to Mr. Bingham as a Founding Partner of Canyon Bridge, Mr. Bingham had not joined Canyon Bridge at the time

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<sup>4</sup> A copy of the Cypress Proxy Statement is attached as Exhibit D. A copy of the Cypress Fight Letter is attached as Exhibit E.

the Lattice transaction was announced, and would not officially join until December 2016.

50. This description misstates and omits to state a number of material facts. First and foremost, the Cypress Proxy Statement claims that the joint Lattice-Canyon Bridge press release, which identifies Bingham and quotes him as follows: “Ray Bingham, *Founding Partner of Canyon Bridge*, noted: ‘Lattice’s low-powered FPGA franchise....’”<sup>5</sup> (emphasis added), “prematurely” identified Bingham as a “Founding Partner” of Canyon Bridge. Since a “founding” partner by definition is a partner at the inception of the entity, it is misleading for the Cypress Proxy Statement to claim that the Lattice/Canyon Bridge press release “prematurely” identified Bingham as a Founding Partner of Canyon Bridge.

51. Indeed, as the Court held after trial in the Section 220 Action, “[b]ecause Bingham was quoted in the press release as the ‘Founding Partner’ of Canyon Bridge, it would be logical to infer that Bingham already was involved with Canyon Bridge before November 3.” Ex. B at 10.

52. Further, three additional disclosures on or prior to November 3, 2016 confirm that the Cypress Proxy Statement is misleading and incomplete in describing the timing and nature of Bingham’s relationship with Canyon Bridge at the time of the Lattice-Canyon Bridge transaction announcement.

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<sup>5</sup> A copy of the joint Lattice-Canyon Bridge press release is attached as Exhibit F.

53. First, the Lattice-Canyon Bridge joint press release identifies Bingham as the investor contact for Canyon Bridge and lists a purported Canyon Bridge telephone number for Bingham that was still answered at Cypress by the Cypress CFO's secretary as recently as April 20, 2017. *See* Ex. F at 3.

54. Second, in filings made by Lattice on November 3, 2016 with respect to communications between representatives of Canyon Bridge and Lattice employees, copies of which are attached hereto as Exhibits G and H, Bingham is touted as a "principal" of Canyon Bridge and his biography is included.

55. Third, the Canyon Bridge website, an excerpt of which is attached as Exhibit I, describes Bingham as a "partner" and "co-founder" of Canyon Bridge.

56. The Cypress Proxy Statement's disclosure regarding the supposed timing of the start of Bingham's affiliation with Canyon Bridge does not address and cannot be reconciled with these four contemporaneous and different statements, including Bingham's quotation in the joint press release on behalf of Canyon Bridge, the identification in that press release of Bingham as a "Founding Partner" of Canyon Bridge, and the continued identification—through the date of this Complaint—of Bingham as a "co-founder" of Canyon Bridge on Canyon Bridge's website.

57. The Board's failure to identify and discuss these irreconcilable statements in publicly-filed documents, as well as the omission of any explanation

of how the Board seeks to reconcile them, constitutes an omission to state material facts necessary for a stockholder of Cypress to make an informed decision in the election of directors of Cypress because Bingham’s dual and conflicted relationships with Canyon Bridge and Cypress—and the Board’s reaction to Bingham’s conflict—is at the heart of the election.

***2. The Cypress Proxy Statement is misleading and fails to state material facts regarding the November 4, 2016 Board meeting held in reaction to the November 3 press release stating that Bingham was a “Founding Partner” of Canyon Bridge.***

58. In describing the Board’s activities immediately after learning of Bingham’s affiliation with Canyon Bridge through the November 3, 2016 Lattice-Canyon Bridge press release, the Cypress Proxy Statement states as follows:

. . . on November 4, 2016, the Board held a meeting, during which the independent directors of the Board discussed and evaluated Mr. Bingham’s continued role as Executive Chairman and determined that Mr. Bingham should continue his role as Executive Chairman until the Board determines the role is no longer needed, and that the Board would continue to monitor the need for this role.

59. The Cypress Proxy Statement fails to disclose what, if anything, the Board discussed at the November 4, 2016 meeting with respect to Bingham’s relationship with Canyon Bridge, Bingham’s compliance with Cypress’ Code governing conflicts of interest and business ethics (or any relevant internal guidelines applicable to such conduct), and the potential risks to Cypress given

Bingham's affiliation with a competitor of Cypress in the semiconductor M&A space.

60. These misstatements and omissions are material to Cypress stockholders. In its post-trial Opinion in the Section 220 Action, the Court found that "the dual hats Bingham wears suggest that his interests with respect to Canyon Bridge may well conflict with the business interests of Cypress." Ex. B at 10. The Court also found that the evidence in the Section 220 Action showed that "Canyon Bridge competes with Cypress in acquiring companies in the semiconductor industry." *Id.* at 9.

61. Because Bingham's dual fiduciary conflict, his apparent lack of compliance with the Code, and the Board's efforts to understand, consider, and evaluate Bingham's conflicted relationships are central to the election of directors, Defendants have a duty to disclose fully and accurately all Cypress director and senior executive discussions and decisions prior to, during, in connection with, or as a result of the November 4, 2016 meeting regarding Bingham's relationship with Canyon Bridge, Bingham's compliance with Cypress' ethical and governance guidelines, and the risks posed to Cypress as a result of Bingham's affiliation with Canyon Bridge.

***3. The Cypress Proxy Statement is misleading and fails to state material facts regarding the December 19, 2016 Board meeting at which Bingham's conflict was further discussed.***

62. In connection with its description of a December 19, 2016 meeting of the Cypress Board, the Cypress Proxy Statement states as follows:

... In order to ensure that it was handling any potential conflicts of interest that would arise in the future appropriately, the Board adopted formal guidelines for evaluating potential conflict of interest situations involving directors, including re-affirming Section B.7 of the Company's Corporate Governance Guidelines, which states, in part, 'The Board does not believe that directors who retire or change from the position they held when they came on the Board should necessarily leave the Board. There should, however, be an opportunity for the Board, via the Nominating and Governance Committee, to review the circumstances to determine whether continued Board membership is appropriate, and recommend to the Board the appropriate course of action.'

63. This statement is both misleading and omits facts material to each stockholder voting in the contested election.

64. The reference to Section B.7. of Cypress' Corporate Governance Guidelines is misleading. That section of the Corporate Governance Guidelines clearly addresses director time commitments rather than conflicts of interest.

65. The misleading nature of Cypress' discussion of Section B.7. is compounded by the Cypress Proxy Statement's omission of any discussion of or

reference to any of the multiple sections of the Corporate Governance Guidelines or the Code that deal directly with conflicts of interest.

66. In his December 9, 2016 letter to the Cypress Board, Rodgers detailed seven ethical guidelines and procedures set forth in Cypress' Code of Business Conduct and Ethics—and unrelated to Section B.7. of Cypress' Corporate Governance Guidelines—that Bingham violated by founding and acting on behalf of Canyon Bridge, which is a direct competitor to Cypress in the critical semiconductor M&A space. Ex. A at 2.

67. Not one of these seven separate and individually applicable guidelines is even mentioned in the Cypress Proxy Statement. Because Bingham's dual fiduciary conflict, his apparent lack of compliance with the Code, and the Board's efforts to understand, consider, and evaluate Bingham's conflicted relationships are central to the election of directors, Defendants have a duty to disclose fully and accurately all Cypress director and senior executive discussions and decisions prior to, during, in connection with, or as a result of the December 19, 2016 meeting regarding Bingham's relationship with Canyon Bridge, Bingham's compliance with Cypress' ethical and governance guidelines, and the risks posed to Cypress as a result of Bingham's affiliation with Canyon Bridge.

68. Rather than complying with that duty, the Board is directing attention to the wrong section of the Corporate Governance Guidelines and failing to



disclose to Cypress’ stockholders the sections of the Code and the Corporate Governance Guidelines that apply to conflict of interest situations rather than directors’ time commitments. For this reason, the Board should be compelled to disclose all sections of the Code and of Corporate Governance Guidelines that are applicable to Bingham’s “dual hat” conflict, that were considered by the Board, that were addressed by the Board, and how they were addressed by the Board rather than being allowed to cherry pick a section of the Corporate Governance Guidelines that is, in the most generous interpretation possible, only marginally relevant to the dual fiduciary conflict faced by Bingham.

69. The Board has a duty to disclose whether the Nominating and Governance Committee or the Board have considered or plan to consider—prior to the June 8, 2017 annual meeting for the election of directors—whether Bingham should continue to serve as a director or Executive Chairman of Cypress.

70. The Board also has a duty to disclose *all* “formal guidelines for evaluating potential conflict of interest situations involving directors” that it adopted at the December 19, 2016 Board meeting. The Cypress Proxy Statement’s reference to the adoption of such guidelines “including” the re-affirmation of Section B.7. demonstrates that additional steps were taken *beyond* re-affirming Section B.7. Defendants’ failure to disclose what other actions were taken, while admitting that re-affirmation of Section B.7. was not the Board’s sole reaction to

the November 3, 2016 revelation of Bingham's conflict of interest, necessarily renders the Cypress Proxy Statement materially incomplete and misleading.

***4. The Cypress Proxy Statement is misleading and fails to state material facts regarding the January 13, 2017 Board meeting at which Bingham's conflict was further discussed.***

71. The Cypress Proxy Statement states as follows with respect to a January 13, 2017 Board meeting:

As discussed below, the Board determined, at a meeting held on January 13, 2017, that there was no corporate opportunity concern with regard to Lattice. Mr. Bingham has confirmed to the Board that he was not involved in sourcing the Lattice transaction, performing due diligence or negotiating the terms of the deal whereby Lattice agreed to be acquired by Canyon Bridge.

. . .

On January 13, 2017, the Board, at its first scheduled meeting in 2017 . . . discussed: (a) Mr. Bingham's involvement with Canyon Bridge, (b) that there was no corporate opportunity concern with regard to Lattice, and (c) the current executive structure with Mr. Bingham serving as Executive Chairman and Mr. El-Khoury serving as President and Chief Executive Officer; and the ideal length of time for Mr. Bingham to continue to serve as Executive Chairman.

72. The Cypress Proxy Statement fails to disclose whether, at the January 13, 2017 meeting, the Board considered or evaluated the "corporate opportunity concern[s]" that necessarily will arise in the future (as opposed to the Lattice transaction, which by that time was a *fait accompli*) as Bingham continues his dual

relationships with Canyon Bridge and Cypress and does not inform Cypress, as is his duty, about M&A opportunities he discovers through his work at Canyon Bridge.

73. The Cypress Proxy Statement also fails to disclose what, if anything, the Board discussed at the January 13, 2017 meeting with respect to Bingham's relationship with Canyon Bridge, Bingham's compliance with Cypress' Code governing conflicts of interest and business ethics (or any relevant internal guidelines applicable to such conduct), and the potential risks to Cypress given Bingham's affiliation with a competitor of Cypress in the semiconductor M&A space.

74. These misstatements and omissions are material to Cypress stockholders. In its post-trial Opinion in the Section 220 Action, the Court found that "the dual hats Bingham wears suggest that his interests with respect to Canyon Bridge may well conflict with the business interests of Cypress." Ex. B at 10. The Court also found that the evidence in the Section 220 Action showed that "Canyon Bridge competes with Cypress in acquiring companies in the semiconductor industry." *Id.* at 9.

75. Because Bingham's dual fiduciary conflict, his apparent lack of compliance with the Code, and the Board's efforts to understand, consider, and evaluate Bingham's conflicted relationships are central to the election of directors,

Defendants have a duty to disclose fully and accurately all Cypress director and senior executive discussions and decisions—whether occurring prior to, during, in connection with, or as a result of the November 4, 2016 meeting, the December 19, 2016 meeting, the January 13, 2017 meeting or any other Board or Board committee meeting or other executive meeting at which Board members or senior executives were present—regarding Bingham’s relationship with Canyon Bridge, Bingham’s compliance with Cypress’ ethical and governance guidelines, and the risks posed to Cypress as a result of Bingham’s affiliation with Canyon Bridge.

***5. The Cypress Proxy Statement is misleading and incomplete in referring to a conference call on January 23, 2017 between Cypress and its counsel and Canyon Bridge and its counsel.***

76. The Cypress Proxy Statement states as follows with respect to a January 23, 2017 telephone call:

At [the January 13, 2017 Board] meeting, Mr. Bingham offered to arrange a call between a representative of the Board and the Managing Partner of Canyon Bridge, including their respective counsel. The Board agreed and directed Mr. Benhamou and outside counsel to participate in such call, which occurred on January 23, 2017.

77. The only purpose for this statement is to provide Cypress’ stockholders with a sense that something was being done to resolve Bingham’s conflict of interest with respect to serving both as executive chairman of Cypress and a founding partner of Canyon Bridge.

78. However, there is absolutely no description in the Cypress Proxy Statement of what was discussed during the call or of the outcome of the conversation.

79. The failure to describe what was discussed, any resolutions reached, and any actions taken as a result of this call are omissions of facts material to a stockholder's decision regarding the election of Cypress directors.

***6. The Cypress Proxy Statement fails to disclose that “proxy access” will not be available to stockholders until the 2018 annual meeting.***

80. The Cypress Proxy Statement states:

The Board also approved a bylaw amendment to implement “proxy access,” permitting stockholders to include stockholder-nominated director candidates in the Company's proxy materials, which would also become effective upon stockholder approval of the proposal to eliminate cumulative voting.

81. Contrary to the misleading impression conveyed by the Cypress Proxy Statement, proxy access will not be available to the Cypress stockholders until the 2018 annual meeting because the deadline for nomination of candidates for the 2017 annual meeting had long passed when the bylaw was adopted.

***7. The Cypress Fight Letter falsely claims that the proxy contest is based on a personal vendetta by Rodgers.***

82. Like the Cypress Proxy Statement, the Cypress Fight Letter contains multiple false and misleading statements and omissions relating to, among other things, (i) the reasons Rodgers has nominated two directors to serve on the Board,

and (ii) the basis established by Rodgers—and the basis accepted by the Court in validating Rodgers’ Section 220 rights—to infer that Bingham has an irreconcilable conflict of interest as a result of the “dual hats” he wears as a “Founding Partner” of Canyon Bridge and the Executive Chairman of Cypress.

83. The Cypress Fight Letter repeatedly claims that Rodgers’ campaign to elect McCranie and Martino is motivated by Rodgers’ purported personal vendetta against Bingham. Ex. E at 2-3.

84. In the Section 220 Action, Cypress cross-examined Rodgers regarding, had the opportunity to present evidence regarding, and focused its defense on, Cypress’ claim that Rodgers’ Section 220 Demand and Rodgers’ proxy contest were motivated by a personal vendetta against Bingham.

85. Rodgers explained during his deposition and trial testimony in the Section 220 Action that he does not have a personal vendetta against Bingham and that his proxy contest is motivated by a desire to put Cypress first and to elect two directors who will address properly any conflict of interest or operational issues that arise at Cypress.

86. The Court, after listening to Rodgers’ in-person testimony during the Section 220 Action and evaluating Cypress’ “personal vendetta” argument, rejected Cypress’ position. Specifically, the Court held that “[b]ased on Rodgers’ testimony, which [the Court] generally found to be highly credible, [the Court is]

not convinced that Rodgers' actual purpose is to pursue a personal vendetta against Bingham." Ex. B at 14.

87. Cypress' claim that Rodgers' proxy contest is nothing more than a personal vendetta is a naked effort to mislead Cypress' stockholders by distracting them from the conflict of interest issues at the heart of the director election at Cypress' upcoming Annual Meeting.

***8. The Cypress Fight Letter falsely claims that Rodgers' claims regarding Bingham's conflict of interest are "unfounded."***

88. In the Section 220 Action, Cypress argued that Rodgers' claims regarding Bingham's conflict were baseless, that no conflict of interest existed, and that Bingham's relationship with Canyon Bridge does not create a conflict.

89. The Court listened to Rodgers' in-person trial testimony, reviewed the evidence, considered the parties' arguments, rejected Cypress' position and found that Rodgers established a credible basis to believe that Bingham's dual fiduciary relationship with Canyon Bridge and Cypress does create a conflict of interest. Opinion at 10 ("The dual hats Bingham wears suggest that his interests with respect to Canyon Bridge may well conflict with the business interests of Cypress.").

90. The Court also found in a post-trial opinion that Rodgers established a credible basis to believe that Bingham violated Cypress' Code in multiple respects. See Opinion at 8–9 ("Thus, a 'credible basis' exists to infer that Bingham violated

the Code’s prohibition on ‘simultaneous employment of any kind without written permission of the Company.’”); *id.* at 10 (finding that Bingham’s use of a Cypress telephone to conduct Canyon Bridge business provides a credible basis to infer that Bingham violated the Code’s prohibition on Cypress “employees ‘from engaging in any activity that . . . is . . . in conflict or perceived conflict with the Company.’”); *id.* at 10–11 (“Thus, a credible basis exists to infer that Bingham may have violated the Code’s requirement to ‘disclose to the Company any interest that [he has] that may conflict with the business of the Company.’”). While it was not an issue in the Section 220 Action, Bingham used his Cypress office to conduct Canyon Bridge business.

91. The Cypress Fight Letter not only fails to disclose these findings but—even worse—makes a claim directly contrary to the Court’s findings that Rodgers has set forth sufficient evidence to permit an inference that Bingham has a conflict of interest and that Bingham’s conflict poses a threat to Cypress.

**COUNT I:  
(Breach of Fiduciary Duty of Candor)**

92. Rodgers repeats and incorporates by reference each of the allegations set forth above.

93. Directors and officers of Delaware corporations owe stockholders a fiduciary duty of candor.



94. Directors have an affirmative duty to disclose fully and fairly all material information in the Board's control when stockholder action is sought.

95. The Defendants breached their fiduciary duty of candor by failing to disclose adequately in the Cypress Proxy Statement, Cypress 220 Press Release, and Cypress Fight Letter information concerning: (a) Bingham's affiliation with Canyon Bridge, (b) Bingham's compliance with Cypress' Code and other relevant internal guidelines and procedures, (c) the Board's assessment of Bingham's conflict of interest, (d) the Board's efforts to address Bingham's conflict of interest, (e) the future corporate opportunity concerns implicated by Bingham's conflict of interest, (f) the conversations between Cypress and Canyon Bridge regarding Bingham's dual fiduciary relationships, and (g) the credible basis established by Rodgers demonstrating Bingham's conflict of interest.

96. The information contained in and omitted from the Cypress Proxy Statement, Cypress 220 Press Release, and Cypress Fight Letter is material information, the full disclosure of which is critically important to stockholders voting in the contested election that will occur at the Annual Meeting on June 8, 2017.

97. The Defendants should be compelled to cause Cypress to file supplemental and corrective disclosures in connection with each of the deficiencies

identified above and any other deficiencies that may come to light prior to a final hearing in this action.

98. Rodgers has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Rodgers respectfully requests that the Court enter an Order:

- a. Entering judgment in favor of Plaintiff and against Defendants;
- b. Ordering Defendants to cause Cypress to issue additional and sufficiently corrective proxy materials at least ten days prior to the Cypress stockholder vote at the 2017 Annual Meeting;
- c. Enjoining Defendants from proceeding with the 2017 Annual Meeting until corrective disclosures have been issued;
- d. Awarding to Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees, expert fees, costs, and expenses; and
- e. Awarding such other and further relief as the Court deems just and proper.

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