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Before: HONORABLE GABRIEL W. GORENSTEIN
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA	: <u>SEALED COMPLAINT</u>
- v. -	: Violations of 18 U.S.C.
TODD NEWMAN,	: §§ 2, 371; 15 U.S.C. §§
ANTHONY CHIASSON,	: 78j(b), 78ff; 17 C.F.R.
JON HORVATH, and	: § 240.10b-5
DANNY KUO,	: COUNTY OF OFFENSE:
Defendants.	: NEW YORK
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DAVID MAKOL, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE
(Conspiracy to Commit Securities Fraud)

1. From in or about 2008 through in or about 2009, in the Southern District of New York and elsewhere, TODD NEWMAN, JON HORVATH, and DANNY KUO, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit an offense against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

2. It was a part and object of the conspiracy that TODD NEWMAN, JON HORVATH, and DANNY KUO, the defendants, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in

connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

Overt Acts

3. In furtherance of the conspiracy and to effect the illegal object thereof, TODD NEWMAN, JON HORVATH, and DANNY KUO, the defendants, and their coconspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about August 5, 2008, a coconspirator sent NEWMAN an email that contained material, nonpublic information about Dell, Inc. ("Dell"), a public company listed on the Nasdaq Stock Market.

b. On or about August 25, 2008, HORVATH sent an email to a portfolio manager that contained material, nonpublic information about Dell.

c. On or about February 10, 2009, KUO sent an email to the portfolio manager for whom he worked containing material, nonpublic information about Nvidia Corporation ("Nvidia"), a public company listed on the Nasdaq Stock Market.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Conspiracy to Commit Securities Fraud)

4. From in or about 2008 through in or about 2009, in the Southern District of New York and elsewhere, ANTHONY CHIASSON, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit an offense against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

5. It was a part and object of the conspiracy that ANTHONY CHIASSON, the defendant, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

Overt Acts

6. In furtherance of the conspiracy and to effect the illegal object thereof, ANTHONY CHIASSON, the defendant, and his coconspirators committed the following overt act, among others, in the Southern District of New York and elsewhere:

a. On or about August 27, 2008, CHIASSON discussed material, nonpublic information about Dell during a telephone conversation.

(Title 18, United States Code, Section 371.)

COUNT THREE

(Securities Fraud)

7. In or about August 2008, in the Southern District of New York and elsewhere, TODD NEWMAN, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of

business which operated and would operate as a fraud and deceit upon persons, to wit, NEWMAN caused a hedge fund located in Stamford, Connecticut to execute securities transactions in Dell based on material, nonpublic information NEWMAN obtained from a coconspirator.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5,
and Title 18, United States Code, Section 2.)

COUNT FOUR

(Securities Fraud)

8. In or about August 2008, in the Southern District of New York and elsewhere, ANTHONY CHIASSON, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, CHIASSON caused a hedge fund located in New York, New York to execute securities transactions in Dell based on material, nonpublic information CHIASSON obtained from a coconspirator.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5,
and Title 18, United States Code, Section 2.)

COUNT FIVE

(Securities Fraud)

9. In or about August 2008, in the Southern District of New York and elsewhere, JON HORVATH, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes and artifices to defraud; (b)

making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, HORVATH caused a hedge fund located in New York, New York to execute securities transactions in Dell based on material, nonpublic information HORVATH obtained from a coconspirator.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5,
and Title 18, United States Code, Section 2.)

COUNT SIX
(Securities Fraud)

10. In or about August 2008, in the Southern District of New York and elsewhere, DANNY KUO, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, KUO caused a hedge fund located in California to execute securities transactions in Dell based on material, nonpublic information KUO obtained from a coconspirator.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5,
and Title 18, United States Code, Section 2.)

The bases for my knowledge and the foregoing charges are, in part, as follows:

11. I have been a Special Agent with the FBI for approximately nine years. I am currently assigned to a squad responsible for investigating violations of the federal securities laws and related offenses. I have participated in numerous investigations of such offenses and I have made and

participated in making arrests of individuals for participating in such offenses.

12. The information contained in this Complaint is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including, but not limited to: (a) business records and other documents provided by various entities; (b) publicly available documents; (c) analyses of court-authorized pen register records and telephone toll records; (d) information, documents, and other evidence provided by Jesse Tortora ("Tortora"); (e) information and other evidence provided by Spyridon Adondakis, a/k/a "Sam Adondakis" ("Adondakis"); (f) information, documents and other evidence provided by Sandeep Goyal, a/k/a "Sandy Goyal" ("Goyal"); (g) conversations with other FBI agents and my review of reports prepared by other FBI agents; and (h) business records and documents obtained in the execution of search warrants on various hedge funds. Because this Complaint is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions and statements of and conversations with others are reported herein, they are reported in substance and in part. Where figures, calculations, and dates are set forth herein, they are approximate, unless stated otherwise.

Relevant Entities

13. At all times relevant to this Complaint, Hedge Fund A was an investment firm with its headquarters and principal place of business located in Stamford, Connecticut.

14. At all times relevant to this Complaint, Hedge Fund B was an investment firm with its principal place of business located in New York, New York.

15. At all times relevant to this Complaint, Hedge Fund C was an investment firm with its headquarters located in Stamford, Connecticut, and an office located in New York, New York.

16. At all times relevant to this case, Investment Firm D was a wealth management company headquartered on the West Coast, with an office in South Pasadena, California.

17. At all times relevant to this Complaint, Dell was a technology company headquartered in Round Rock, Texas and

listed on the Nasdaq Stock Market (ticker symbol: DELL). Furthermore, at all times relevant to this Complaint, Dell's policies prohibited the unauthorized disclosure of Dell's confidential information.

18. At all times relevant to this Complaint, Nvidia was a technology company headquartered in Santa Clara, California, and listed on the Nasdaq stock market (ticker symbol: NVDA). Furthermore, at all times relevant to this Complaint, Nvidia's policies prohibited the unauthorized disclosure of Nvidia's confidential information.

Relevant Individuals

19. At all times relevant to this Complaint, TODD NEWMAN, the defendant, was a portfolio manager at Hedge Fund A.

20. At all times relevant to this Complaint, ANTHONY CHIASSON, the defendant, was one of the founders of, and a portfolio manager at, Hedge Fund B.

21. At all times relevant to this Complaint, JON HORVATH, the defendant, was an analyst at Hedge Fund C, who worked in the office located in New York, New York.

22. At all times relevant to this Complaint, DANNY KUO, the defendant, was a fund manager who worked in the South Pasadena office of Investment Firm D.

23. At all times relevant to this Complaint, Tortora was an analyst at Hedge Fund A. During Tortora's employment at Hedge Fund A, Tortora obtained material, nonpublic information ("Inside Information") for the benefit of Hedge Fund A. As part of this investigation, I and another agent approached Tortora in an effort to obtain his cooperation. Tortora has since entered a guilty plea pursuant to a cooperation agreement to charges of conspiracy and securities fraud. Tortora has been cooperating with the Government in the hope of receiving a reduced sentence. Certain information Tortora has provided has proven to be reliable and has been corroborated by, among other things, the statements of other cooperating witnesses, consensually recorded conversations and court authorized interceptions of telephone calls, telephone records, trading records, documents provided by Tortora, and electronic communications and other documents obtained from Hedge Fund A and Hedge Fund B.

24. At all times relevant to this Complaint, Adondakis was an analyst at Hedge Fund B. During Adondakis's employment at

Hedge Fund B, Adondakis obtained Inside Information for the benefit of Hedge Fund B. As part of this investigation, I and another agent approached Adondakis in an effort to obtain his cooperation. Adondakis has since entered a guilty plea pursuant to a cooperation agreement to charges of conspiracy and securities fraud. Adondakis has been cooperating with the Government in the hope of receiving a reduced sentence. Certain information Adondakis has provided has proven to be reliable and has been corroborated by, among other things, the statements of other cooperating witnesses, consensually recorded conversations and court authorized interceptions of telephone calls, telephone records, trading records, and electronic communications and other documents obtained from Hedge Fund A and Hedge Fund B.

25. At all times relevant to this Complaint, Goyal was an associate analyst for a global asset management firm headquartered in New York, New York ("Investment Firm 1"). Prior to working at Investment Firm 1, Goyal worked for Dell in an office located in Round Rock, Texas. During Goyal's employment at Investment Firm 1, Goyal obtained Inside Information from employees of Dell. As part of this investigation, I and another agent approached Goyal in an effort to obtain his cooperation. Goyal has since entered a guilty plea pursuant to a cooperation agreement to charges of conspiracy and securities fraud. Goyal has been cooperating with the Government in the hope of receiving a reduced sentence. Certain information Goyal has provided has proven to be reliable and has been corroborated by, among other things, the statements of other cooperating witnesses, telephone records, trading records, documents provided by Goyal, and electronic communications and other documents obtained from Hedge Fund A.

Overview Of The Insider Trading Scheme

26. As set forth in more detail below, I have probable cause to believe that from at least in or about 2008 through in or about 2009, JON HORVATH and DANNY KUO, the defendants, along with Tortora and Adondakis, were friends who worked as analysts at various investment firms and who exchanged with each other Inside Information obtained directly or indirectly from employees of publicly-traded technology companies.

27. For example, from in or about 2008 through in or about 2009, Tortora provided to JON HORVATH and DANNY KUO, the defendants, and Adondakis Inside Information regarding Dell's financial condition, including gross margin information (the "Dell Inside Information"). Tortora had obtained this Inside

Information from Goyal, who, in turn, obtained the information from an employee at Dell (the "Dell Insider"). At times, the Dell Insider worked in Dell's investor relations department. As set forth in more detail below, the Dell Insider at times provided initial information concerning Dell's financial condition prior to the close of the quarter, and provided more specific information about Dell's quarterly results after the close of the quarter but prior to Dell's public announcement of those results. Goyal informed Tortora that the Dell Inside Information came from an employee at Dell. At various times when Goyal provided the Dell Inside Information to Tortora, Tortora was located in New York, New York.

28. Similarly, JON HORVATH and DANNY KUO, the defendants, obtained Inside Information, directly or indirectly, from employees at one or more publicly-traded technology companies and provided that Inside Information to Tortora and others. At times, HORVATH and KUO informed Tortora and/or Adondakis that the Inside Information originated with one or more employees at the respective technology companies.

29. Tortora also passed the Dell Inside Information to TODD NEWMAN, the defendant, for whom Tortora worked at Hedge Fund A. Tortora informed NEWMAN that the Dell Inside Information came from Goyal, and that Goyal had obtained the information from a source at Dell. NEWMAN caused Hedge Fund A to execute securities transactions based, in whole or in part, on the Dell Inside Information in advance of Dell's first and second quarter 2008 earnings announcements, resulting in approximately \$3.8 million in illegal profits.

30. Adondakis passed the Dell Inside Information to ANTHONY CHIASSON, the defendant, among others at Hedge Fund B. Adondakis informed CHIASSON that the Dell Inside Information came from a source at Dell. CHIASSON, along with others at Hedge Fund B, caused Hedge Fund B to execute securities transactions based in whole or in part on the Dell Inside Information in advance of Dell's first and second quarter 2008 earnings announcements, resulting in approximately \$57 million in illegal profits.

31. After receiving the Dell Inside Information from Tortora, JON HORVATH, the defendant, caused Hedge Fund C to execute securities transactions based in whole or in part on the Dell Inside Information in advance of Dell's second quarter 2008 earnings announcements, resulting in approximately \$1,000,000 in illegal profits for Hedge Fund C.

32. After receiving the Dell Inside Information from Tortora, DANNY KUO, the defendant, caused Investment Firm D to execute securities transactions based in whole or in part on the Dell Inside Information in advance of Dell's second quarter 2008 earnings announcements, avoiding losses of approximately \$78,000.

Hedge Fund A Pays Goyal For The Inside Information

33. Based on my interviews with Tortora and Goyal, my conversations with other FBI agents and my review of reports prepared by other FBI agents, my review of business records, including emails, of Hedge Fund A, and my review of bank records, I have learned that Hedge Fund A paid Goyal for information, including the Dell Inside Information, via a purported consulting arrangement with another individual ("Individual 1"). Specifically, I have learned the following:

a. In or about late 2007, Tortora and Goyal discussed the possibility of Goyal receiving payment for information that he was providing to Hedge Fund A.

b. Following this conversation, Tortora arranged with TODD NEWMAN, the defendant, to pay Individual 1 as a "consultant" for Hedge Fund A. The payment arrangement was accomplished through soft dollars.¹

d. Business records of Hedge Fund A show that, between in or about February 2008 and in or about September 2008, Hedge Fund A caused four payments to be made to Individual 1 each in the amount of \$18,750. The reference note for each of the four payments indicated that the payments were for "Research/Consulting services to [Hedge Fund A], including Market Research, Industry and Company Analysis, and Network with industry contacts for the Semiconductors and IT Hardware industries." Bank records for a joint account held by Goyal and Individual 1 ("the Goyal Joint Account") reflect four deposits each in the amount of \$18,750 in 2008.

e. On or about December 22, 2008, Tortora sent an email to Individual 1 stating: "Just wanted to let you know

¹ "Soft dollar" payments occur when an investment firm causes its trading activity to be directed through a designated broker-dealer, so that the commissions or fees from the executed trading activity of the firm can then be used to pay for goods and services consumed by the investment firm, such as payment for the services of a research consultant utilized by the firm.

you will receive a bonus for 100k for your service provided through 9/30/08." In fact, according to Tortora and Goyal, at least some of the \$100,000 payment constituted an advance payment to Goyal for Goyal to continue to supply information, including the Dell Inside Information, to Hedge Fund A in 2009.

f. Business records of Hedge Fund A reflect that Hedge Fund A caused a soft dollar payment of approximately \$100,000 to Individual 1 on or about January 12, 2009, with the same reference note as the four quarterly payments set forth in subparagraph (d) above. Bank account records for the Goyal Joint Account reflect a deposit of approximately \$100,000 on or about January 29, 2009.

g. According to Goyal and Tortora, Individual 1 never provided - and was never expected to provide - research services to Hedge Fund A.

**Hedge Fund A Made Approximately \$1 Million In Illegal Profits
Based On The Dell Inside Information In Advance Of
Dell's May 29, 2008 Earnings Announcement**

34. From my conversations with Tortora and Goyal, my conversations with other FBI agents and my review of reports prepared by other FBI agents, my review of electronic communications and other business records obtained from Hedge Fund A and Hedge Fund B, my review of documents provided by Tortora and Goyal, my review of various telephone records and trading records of Hedge Fund A, and representations made by Hedge Fund A, I have learned that Goyal provided the Dell Inside Information to Tortora in advance of Dell's May 29, 2008 quarterly earnings announcement and that Tortora passed the Dell Inside Information to TODD NEWMAN, the defendant. More specifically, I have learned the following:

a. In advance of Dell's May 29, 2008 quarterly earnings announcement, the Dell Insider provided to Goyal, who, in turn, provided to Tortora Inside Information indicating that Dell's gross margin numbers for the quarter ended April 30, 2008 would be higher than market expectations.

b. Telephone records indicate that on or about May 15, 2008, at approximately 9:41 p.m., Goyal and the Dell Insider spoke by telephone for approximately 16 minutes. Immediately thereafter, Goyal made a call to Tortora that lasted a few seconds. Tortora returned Goyal's call at approximately 10:26 p.m., and that call lasted approximately 8 minutes.

c. The next morning, on or about May 16, 2008, at approximately 7:41 a.m., Tortora sent an email to Goyal titled "dell," which stated: "Hey Sandy - let me know if you have a couple of minutes just to run through the model before the open today." Tortora sent another email to Goyal at approximately 7:53 a.m. with the subject line "re: Dell," stating: "Hey street at 33, I get 36-37, let me know if you agree." Goyal responded to Tortora by email at approximately 8:28 a.m., stating "I get around 36 too." Based on my conversations with Tortora and Goyal, to arrive at the numbers in these emails, which represented "earnings per share" or "EPS" numbers for Dell's stock, both Tortora and Goyal inserted the Dell Inside Information relayed by the Dell Insider into their respective financial models for Dell. The EPS number that they each calculated, i.e. 36 cents, was higher than the expectations of the market or the "street".

d. Also on or about May 16, 2008, at approximately 8:57 a.m. - shortly after the exchange of emails described in subparagraph (c) above - telephone records reflect a call between Tortora's cellular phone and Goyal's office line that lasted approximately 6 minutes. Immediately thereafter, at approximately 9:03 a.m., telephone records reflect that Tortora called NEWMAN's cellular phone and that call lasted approximately two minutes. Telephone records also reflect an approximately 4 minute call between Tortora and NEWMAN's office line at approximately 9:17 a.m.

e. Based on my review of trading records for Hedge Fund A, I have learned that on or about May 16, 2008, between approximately 9:35 a.m. and 3:22 p.m., a portfolio at Hedge Fund A over which NEWMAN had investment discretion purchased approximately 475,000 shares of Dell, at a total cost of approximately \$10 million.

35. Based on my review of publicly available information, I have learned that Dell publicly announced its quarterly earnings results after the close of the market (at 4:00 p.m.) on May 29, 2008.² Within one trading day of Dell's May 29, 2008 quarterly earnings announcement, Dell's stock price increased by more than 5% over the previous day's close.

² Dell's fiscal year ends January 31. Thus, Dell's first quarter includes earnings for the months of February, March, and April.

36. From my review of trading records for the portfolio at Hedge Fund A over which TODD NEWMAN, the defendant, had investment discretion, I have learned the following:

a. Between on or about May 16, 2008 and on or about May 29, 2008, NEWMAN executed or caused to be executed, on behalf of Hedge Fund A, a series of securities transactions that resulted in the portfolio he managed holding a long position of approximately 450,000 shares of Dell stock as of the close of the market on or about May 29, 2008.

b. Between on or about May 29, 2008, after the close of the market, and on or about June 3, 2008, Hedge Fund A sold the 450,000 shares it held as of the close of the market on May 29, 2008.

c. Hedge Fund A realized an illegal profit of approximately \$1 million based on the sale of those 450,000 shares.

**Hedge Fund A Made Approximately \$2.8 Million In
Illegal Profits Based On The Dell Inside Information
In Advance of Dell's August 28, 2008 Earnings Announcement**

37. From my conversations with Tortora, Adondakis, and Goyal, my conversations with other FBI agents and my review of reports prepared by other FBI agents, and my review of electronic communications and other business records obtained from Hedge Fund A and Hedge Fund B, my review of documents provided by Tortora, my review of various telephone records, my review of trading records for Hedge Fund A, and representations made by Hedge Fund B, I have learned that, in advance of Dell's August 28, 2008 quarterly earnings announcement, the Dell Inside Information was passed from the Dell Insider to Goyal to Tortora to TODD NEWMAN, the defendant. More specifically, I have learned the following:

a. Beginning in or about July 2008, the Dell Insider provided to Goyal initial information concerning Dell's revenues and/or gross margin. Goyal, in turn, provided this information to Tortora. As the quarter progressed, Goyal obtained and provided information indicating that Dell's gross margin would be lower than market expectations.

b. Telephone records reflect that, on or about July 2, 2008, at approximately 7:00 p.m., Goyal had a 31 minute call with the Dell Insider. The same evening, at approximately 10:43 p.m., Goyal and Tortora spoke for 10 minutes. The next morning, on or about July 3, 2008, at approximately 8:30 a.m.,

telephone records reflect that Tortora called NEWMAN at Hedge Fund A and that call lasted approximately 13 minutes.

c. Based on my review of trading records for Hedge Fund A, I have learned that, beginning at approximately 9:31 a.m. on or about July 3, 2008, the portfolio at Hedge Fund A over which NEWMAN had investment control sold short 225,000 shares of Dell.³

d. After the close of Dell's second quarter in 2008, but prior to Dell's public earnings announcement, the Dell Insider provided to Goyal, and Goyal, in turn, provided to Tortora, more specific information concerning Dell's margins that confirmed that Dell's gross margin would be lower than market expectations.

e. Thus, on or about August 4, 2008, at approximately 10:23 a.m., Tortora wrote an email to Goyal with the subject "dell," in which Tortora requested that Goyal "keep [Tortora] posted" if he heard "anything new." Goyal responded to the email at approximately 10:24 a.m. stating that he "plan[ed] to check today evening." The same day, at approximately 8:55 p.m., telephone records reflect that Goyal spoke with the Dell Insider by telephone for approximately 40 minutes.

f. The next day, on or about August 5, 2008, at approximately 8:32 a.m., telephone records reflect that Tortora received a call from a phone number that I know to be assigned to Investment Firm 1 (where Goyal worked), which lasted approximately 9 minutes. At approximately 8:39 a.m. that same day, Tortora sent an email to NEWMAN which included the Dell Inside Information Tortora had received from Goyal. The email, with the subject "dell," stated:

Dell checks
-Q [quarter]⁴ finished on fri, numbers still coming in
-rev [Dell's quarterly revenue number] could be slightly above 16B [\$16 billion], street

³ A short sale is the sale of a security that an investor does not own or a sale which is consummated by the delivery of a security borrowed by the investor.

⁴ Included in brackets are my interpretations of the words/phrases that precede the brackets in the email. The interpretations are based on my experience and/or my conversations with Tortora.

at 15.9 [\$15.9 billion], implying a 1% top line beat
-gm [gross margin] looking at 17.5% vs street at 18.3%, however could go higher as things get rolled up
-as of now, best guess 35c-36c [referring to earnings per share] vs street at 36c
-doesn't sound good, but still very prelim and could change
-sounds like could be short after run and DB preview that got expectations up

g. Following that email on or about August 5, 2008, Tortora and NEWMAN continued to communicate by instant message ("IM") as follows:

(i) At approximately 8:40 a.m. (immediately after receiving the email set forth above), NEWMAN sent an IM to Tortora stating: "the Dell from sandy?"

(ii) Tortora responded at approximately 8:40 a.m.: "y on with him him now." As set forth above, telephone records reflect that Tortora was on the telephone with Investment Firm 1 (where Goyal worked) at the time of this IM communication.

(iii) At approximately 8:43 a.m., after Tortora and Goyal ended their telephone conversation, Tortora reported: "hey off now, so doesnt [sic] sound good, but still need to monitor as always changes with rebates etc, but for now its [sic] looking neg[,]" meaning that Dell's earnings would be perceived negatively.

h. Based on my review of trading records for Hedge Fund A, I have learned that on or about August 5, 2008, beginning at approximately 9:39 a.m., Hedge Fund A sold short an additional 180,000 shares of Dell stock.⁵

i. In the days before the August 28, 2008 earnings announcement, Goyal had additional communications with Tortora concerning Dell's financial condition, including Dell's gross margin, and confirmed that Dell's gross margin would be

⁵ By the end of the day on or about July 24, 2008, NEWMAN had closed out the short position he had previously started to accumulate beginning on or about July 3, 2008, and did not hold any position in Dell between on or about July 25, 2008 and on or about August 5, 2008.

lower than market expectations. Tortora passed this information on to NEWMAN.

j. According to Tortora, Goyal's information was particularly significant to the direction of Dell's stock price because market expectations were positive as to Dell prior to the second quarter 2008 earnings announcement.

38. From my review of publicly available information, I have learned that Dell publicly announced its second quarter earnings results (for the months of May, June, and July) after the close of the market (at 4:00 p.m.) on August 28, 2008. Within one trading day of Dell's second quarter earnings announcement, Dell's stock price fell by approximately 13% over the previous day's close.

39. Based on my review of trading records for the portfolio at Hedge Fund A over which TODD NEWMAN, the defendant, had investment discretion, I have learned the following:

a. Between on or about July 3, 2008, and the close of the market on or about August 28, 2008, NEWMAN executed or caused to be executed, on behalf of Hedge Fund A, a series of securities transactions that resulted in the portfolio he managed holding a short position of approximately 700,000 shares of Dell as of the close of the market on or about August 28, 2008.

b. Between on or about August 29, 2008 and on or about September 4, 2008, Hedge Fund A covered its entire short position in Dell stock.

c. Additionally, Hedge Fund A purchased put option contracts⁶ in Dell between on or about August 15, 2008 and on or about August 28, 2008, which Hedge Fund A sold on or about August 29, 2008.

d. Hedge Fund A realized an illegal profit of approximately \$2.8 million based on the securities transactions described in this paragraph.

⁶ A put option contract gives the holder the of the contract the right to sell a specified number of shares at a specified price by a certain date, known as the exercise date.

**Hedge Fund B Made Over \$4 Million In Illegal Profits
Based On The Dell Inside Information In Advance Of
Dell's May 29, 2008 Earnings Announcement**

40. From my conversations with Tortora and Adondakis, my conversations with other FBI agents and my review of reports prepared by other FBI agents, my review of electronic communications and other business records obtained from Hedge Fund A and Hedge Fund B, my review of telephone records, and my review of trading records for Hedge Fund B, I have learned that, in advance of Dell's May 29, 2008 quarterly earnings announcement, Adondakis passed the Dell Inside Information to ANTHONY CHIASSON, the defendant. More specifically, I have learned the following:

a. According to Adondakis, in advance of Dell's May 29, 2008 quarterly earnings announcement, Tortora provided to Adondakis information indicating that Dell's overall margin numbers for the first quarter would be higher than market expectations. Adondakis passed the Dell Inside Information to CHIASSON and Hedge Fund B executed securities transactions based in part on that Inside Information.

b. Telephone records reflect that on or about May 11, 2008, at approximately 8:57 p.m., the Dell Insider and Goyal spoke by telephone for approximately 32 minutes, and that, later that same night, at approximately 9:44 p.m., Goyal spoke to Tortora by telephone for approximately 24 minutes. The next morning, on or about May 12, 2008 at approximately 8:46 a.m., Tortora sent an email to Adondakis with the subject "dell/amd", which stated: "hey, lets [sic] catch up on dell and amd pre-open if free." The same day, at approximately 8:54 a.m. and at approximately 9:41 a.m., telephone records reflect that Adondakis had two calls with Tortora that lasted 14 and 8 minutes respectively. At approximately 11:44 a.m. on or about May 12, 2008, telephone records reflect that Adondakis called CHIASSON's office line at Hedge Fund B and that call lasted approximately 13 minutes.

c. Based on my review of trading records of Hedge Fund B, I have learned that: (1) on or about May 12, 2008, at approximately 3:41 p.m., Hedge Fund B purchased 3,500 Dell call option contracts⁷; and (2) on or about May 13, 2008, Hedge Fund B purchased 175,000 shares of Dell stock.

⁷ A call option contract gives the holder of the contract the right to buy a certain number of shares at a specified price by a certain date.

d. Similarly, after the series of telephone calls and emails between Goyal and Tortora on or about May 15, 2008 and May 16, 2008 that are set forth in paragraph 34 above, on or about May 16, 2008, at approximately 9:05 a.m., telephone records reflect that Tortora called Adondakis at Hedge Fund B, in a call that lasted approximately 9 minutes.

e. Based on my review of trading records of Hedge Fund B, I have learned that on or about May 16, 2008, at approximately 9:29 a.m., Hedge Fund B purchased an additional 750,000 shares of Dell stock.

41. Based on my review of trading records of Hedge Fund B, I have learned the following:

a. Between on or about May 13, 2008 and on or about May 28, 2008, Hedge Fund B purchased approximately 1.7 million shares of Dell stock. Hedge Fund B sold these shares between on or about May 29, 2008, after the quarterly earnings announcement, and on or about June 2, 2008.

b. On or about June 2, 2008, Hedge Fund B sold the 3,500 Dell call option contracts that it had purchased on or about May 12, 2008.

c. Hedge Fund B realized an illegal profit of over \$4 million based on the securities transactions described above.

**Hedge Fund B Made Over \$50 Million In Illegal Profits
Based On The Dell Inside Information In Advance Of
Dell's August 28, 2008 Earnings Announcement**

42. From my conversations with Tortora and Adondakis, my conversations with other FBI agents and my review of reports prepared by other FBI agents, and my review of electronic communications and other business and trading records obtained from Hedge Fund A and Hedge Fund B, my review of various telephone records, and representations of Hedge Fund B, I have learned that, in advance of Dell's August 28, 2008 quarterly earnings announcement, Adondakis passed the Dell Inside Information to ANTHONY CHIASSON, the defendant, among others at Hedge Fund B. Specifically, I have learned that:

a. According to Adondakis, Tortora provided Adondakis the Dell Inside Information in advance of the Dell second quarter earnings announcement. Specifically, Tortora told Adondakis that Dell's gross margin for the second quarter would be lower than market expectations. Adondakis provided this

information to CHIASSON, informing him that the information came from a source at Dell.

b. On or about July 3, 2008, at approximately 8:46 a.m., three minutes after Tortora ended his conversation with TODD NEWMAN, the defendant, see *supra* at ¶ 37(b), Tortora sent an email to Adondakis stating that he had "updates on dell and semicap." The next day, at approximately 5:46 p.m. and at approximately 5:55 p.m., telephone records reflect that Tortora had two calls with Adondakis that lasted approximately 4 minutes in total. Tortora had another call with Adondakis on or about July 7, 2008 at approximately 2:27 p.m. that lasted approximately 16 minutes, and a further call on July 8, 2008 at approximately 9:12 a.m. that lasted approximately six minutes.

c. Based on my review of trading records for Hedge Fund B, I have learned that, on or about July 8, 2008 at approximately 9:33 a.m., Hedge Fund B sold short approximately 1.45 million shares of Dell stock.

d. On or about August 5, 2008, at approximately 8:41 a.m., Tortora forwarded to Adondakis (as well as to JON HORVATH and DANNY KUO, the defendants) the email he had sent to TODD NEWMAN, the defendant, with the subject "dell" that contained the information pertaining to Dell's gross margin. See *supra* ¶ 37(f). Adondakis provided the information about Dell's gross margins to CHIASSON and one or more other individuals at Hedge Fund B. CHIASSON and another individual at Hedge Fund B ("Individual 2") instructed Adondakis to analyze the effect on Dell's stock price based on the Dell Inside Information Adondakis had received.

e. Thereafter, Adondakis prepared the analysis and, on or about August 8, 2008, met with CHIASSON and Individual 2 in CHIASSON's office to discuss it.

f. Based on my review of trading records for Hedge Fund B, on or about August 11, 2008, at approximately 10:29 a.m., Hedge Fund B sold short an additional 100,000 shares of Dell stock, and purchased 5000 put option contracts in Dell, with expiration dates of September 25, 2008, a date that was after Dell's expected public earnings announcement.

g. Subsequently, CHIASSON additionally instructed Adondakis to write up an investment thesis for Dell which supported the theory that gross margins would be "light," but which omitted the fact that the information came from a contact at Dell. Adondakis prepared this analysis and sent it by

email on or about August 15, 2008 at approximately 1:43 p.m. to an email group at Hedge Fund B that included CHIASSON.

h. On or about Monday, August 18, 2008, at approximately 8:43 a.m., Tortora sent an email to Adondakis stating: "Call me, I have an update for you today," referring to an update with respect to the Dell Inside Information. At approximately 9:13 a.m., on or about August 18, 2008, telephone records reflect that Tortora and Adondakis spoke by telephone for approximately 18 minutes. At the time, Adondakis was in California attending a conference with CHIASSON and Individual 2. Adondakis met with CHIASSON and Individual 2 shortly after his call with Tortora.

i. On or about August 18, 2008, beginning at approximately 3:29 p.m., CHIASSON exchanged a series of emails with a trader at Hedge Fund B. In those emails, CHIASSON discussed the status of Hedge Fund B's short position in Dell and instructed the trader to increase the short position in Dell.

j. Based on my review of trading records for Hedge Fund B, I have learned that on or about August 18, 2008 Hedge Fund B sold short an additional 700,000 shares of Dell stock.

k. On or about August 18, 2008, CHIASSON exchanged a series of emails regarding Dell with an individual who worked at another investment firm ("Individual 3"). At approximately 6:34 p.m., CHIASSON wrote to Individual 3: "Gm 17.4-17.7." Individual 3 responded: "But that's nearly a 1% gm% miss." In a subsequent email later that same evening, CHIASSON, stated, among other things, that: "My call starts with gm."

l. On or about August 19, 2008, CHIASSON, Individual 2, and a trader at Hedge Fund B exchanged emails in which they discussed increasing Hedge Fund B's short position in Dell and acquiring additional put option contracts in Dell.

m. Based on my review of trading records for Hedge Fund B, I have learned that on or about August 19, 2008 Hedge Fund B sold short an additional 1,150,000 shares of Dell stock and acquired an additional 5,900 put option contracts in Dell.

n. On or about August 27, 2008, Adondakis provided a further update on the Dell Inside Information to CHIASSON, Individual 2 and another individual at Hedge Fund B ("Individual 4"). Adondakis sent an email at approximately 12:49 p.m. to CHIASSON, Individual 2, and Individual 4 indicating that

Adondakis had an update on Dell. Subsequent emails between Adondakis, CHIASSON, Individual 2, and Individual 4 confirmed they were available for a telephone call shortly after Adondakis's email.

o. According to Adondakis, that same day, shortly after these emails were sent, Adondakis participated in a telephone call with CHIASSON, Individual 2, and Individual 4. During the telephone call, Adondakis discussed the gross margin information that Adondakis had received from Tortora and the market expectations as to Dell's gross margins.

p. Telephone records reflect a call on or about August 27, 2008, at approximately 12:56 p.m., between Adondakis and a telephone number assigned to Hedge Fund B that lasted approximately 40 minutes.

q. At approximately 1:33 p.m. on or about August 27, 2008, Individual 4 sent an IM to various traders at Hedge Fund B stating: "shrt 250 dell".

r. Based on my review of trading records for Hedge Fund B, I have learned that on or about August 27, 2008, at approximately 1:34 p.m., Hedge Fund B placed an order to sell short an additional 250,000 shares of Dell stock.

43. From my review of trading records for Hedge Fund B, I have learned that:

a. Between on or about July 8, 2008, and on or about August 28, 2008, Hedge Fund B accumulated a net short position in Dell stock of approximately 8.6 million shares. Between on or about August 29, 2008 (the day after Dell's public earnings announcement) and on or about September 16, 2008, Hedge Fund B covered its entire short position in Dell.

b. Between on or about August 11, 2008 and on or about August 26, 2008, Hedge Fund B purchased put option contracts in Dell, which Hedge Fund B sold between on or about August 29, 2008 and on or about September 16, 2008.

c. Hedge Fund B realized an illegal profit of approximately \$53 million based on the securities transactions described above.

**Hedge Fund C Made Approximately \$1,000,000 In Illegal Profits
Based On The Dell Inside Information In Advance Of
Dell's August 28, 2008 Earnings Announcement**

44. From my conversations with Tortora, my conversations with other FBI agents and my review of reports prepared by other FBI agents, my review of electronic communications records obtained from Hedge Fund A and Hedge Fund B, and provided by Hedge Fund C, my review of trading records for Hedge Fund C, and my review of various telephone records, I have learned that Tortora provided the Dell Inside Information to JON HORVATH, the defendant, in connection with Dell's August 28, 2008 quarterly earnings announcement. Specifically, I have learned that:

a. On multiple occasions in 2008 and 2009, Tortora provided the Dell Inside Information to HORVATH.

b. Telephone records reflect a call on or about July 3, 2008, at approximately 9:56 a.m., between Tortora and HORVATH's work telephone number that lasted approximately one minute and another call at approximately 9:57 a.m. between Tortora and HORVATH's cellular telephone that also lasted approximately one minute.

c. On or about July 24, 2008, at approximately 3:35 p.m., Tortora sent an email to HORVATH and DANNY KUO, the defendants, and Adondakis, with the subject line: "FW: dell."⁸ The email stated:

Dell checks:

- same message
- rev fine
- opex fine
- gm could be an issue, will know more in 2 weeks

d. Telephone records reflect that on or about July 24, 2008, between approximately 4:58 p.m. and 5:01 p.m., Tortora and HORVATH exchanged a series of text messages using their cellular telephones.

⁸ On or about July 24, 2008, at approximately 1:23 a.m., telephone records reflect a call between Goyal and the Dell Insider that lasted approximately 35 minutes. Additionally, at approximately 3:15 p.m. that same day, telephone records reflect a call between Tortora and Investment Firm 1 (where Goyal worked) that lasted approximately four minutes.

e. As noted above, on or about August 5, 2008, at approximately 8:41 a.m., Tortora sent an email containing the Dell Inside Information to HORVATH. See *supra* ¶ 37(f).

f. Telephone records reflect a call between Tortora and HORVATH on or about August 6, 2008, at approximately 10:32 a.m., which lasted for approximately 6 minutes.

g. On or about August 18, 2008, at approximately 12:20 p.m., telephone records reflect a call between Tortora and HORVATH that lasted approximately 10 minutes. Minutes later, at approximately 12:34 p.m., telephone records reflect that HORVATH called the portfolio manager at Hedge Fund C for whom HORVATH worked ("Portfolio Manager 1") and they spoke for approximately 1 minute.

h. Based on my review of trading records for Hedge Fund C, I have learned that on or about August 18, 2008, at approximately 12:37 p.m., the portfolio over which Portfolio Manager 1 had investment authority started to sell short shares of Dell.

i. On or about August 25, 2008, at approximately 12:57 p.m., Tortora sent an email to HORVATH, KUO, and Adondakis stating, in relevant part: "did new apple and dell checks today and both sound bad, same as before, so no change to thinking. Well [sic] catch up later." Shortly thereafter, at approximately 1:15 p.m., HORVATH sent an email to Portfolio Manager 1 and another individual, with the subject line "[Dell - 1] short IR convo." In that email, HORVATH reported, in relevant part, that he had had a "[v]ery short" call with Dell's Investor Relations department, that he "would describe the tone as cranky with IR saying didn't want to talk as it was is [sic] too close to EPS but I don't recall this being an issue before when I am only asking them to go over housekeeping items (like what they've said about restructuring progress etc)." In the same email, HORVATH also noted that "JT also spoke with them again and his check was unchanged."

j. Later the same day, at approximately 2:21 p.m., HORVATH sent another email to Portfolio Manager 1 in which he stated:

[T]he data is second hand but this contact was correct in the last two quarters. JT did diff't checks 7/3, 7/24, and 8/5 all the while the message was revs small upside, opex in-line but GMs under pressure but said he wasn't sure magnitude until the final roll up. Then final

read came thru on 8/18 and was 50-80 bps GMS miss, revs small upside, and opex in line netting out to EPS miss. I think investors understand that GM will be down slightly q/q and could even miss consensus GM but I don't think they are expecting a big miss on GM. Not a good set up to be long as I think DELL probably has to show \$0.02 upside for the stock to go up after all these positive reviews.

k. On or about August 27, 2008, at approximately 1:07 p.m., HORVATH sent an email to Portfolio Manager 1 and another individual at Hedge Fund C with the subject "[DELL - 1] EPS preview." The email stated: "I think we have roughly \$6M exposure here right now and I think we should increase it \$1 - 2M and possibly more if it [meaning Dell's stock] rallies further into the print." The email further contained numbers for Dell's earnings, including a gross margin number of "17.7% . . . Vs street . . . with GM 18.3%."

l. The same day, on or about August 27, 2008, at approximately 1:11 p.m., Portfolio Manager 1 sent an email to HORVATH with the subject line, "Dell action," which stated: "Very remiscent [sic] of last qtr, up everyday into the print. Were [sic] near \$10mln. Have u double checked JT this week?" HORVATH responded at approximately 1:15 p.m., stating: "Yes he checked in a couple of days ago, same read no change."

45. Based on my review of trading records for Hedge Fund C, I have learned the following:

a. Between on or about August 18, 2008 and on or about August 28, 2008, the portfolio over which Portfolio Manager 1 had investment authority accumulated a net short position in Dell stock as of 4:00 p.m. on or about August 28, 2008 of over 150,000 shares. Between on or about August 29, 2008 and on or about September 2, 2008, Hedge Fund C covered its entire short position in Dell.

b. Between on or about August 19, 2008 and on or about September 2, 2008, the portfolio over which Portfolio Manager 1 had investment authority acquired and subsequently liquidated put option contracts in Dell.

c. Hedge Fund C realized a profit of approximately \$1,000,000 based on the securities transactions described above.

**Investment Firm D Avoided Losses of Approximately \$78,000
Based On The Dell Inside Information In Advance Of
Dell's August 28, 2008 Earnings Announcement**

46. From my conversations with Tortora, my conversations with other FBI agents and my review of reports prepared by other FBI agents, my review of electronic communications records obtained from Hedge Fund A and Hedge Fund B, and a review of electronic communications and other documents provided by Investment Firm D, my review of trading records for Investment Firm D, and my review of various telephone records and trading records, I have learned that Tortora provided the Dell Inside Information to DANNY KUO, the defendant, in connection with Dell's August 28, 2008 quarterly earnings announcement. Specifically, I have learned that:

a. On multiple occasions in 2008 and 2009, Tortora provided the Dell Inside Information to KUO.

b. On or about July 3, 2008, at approximately 11:50 a.m., after the series of calls described in paragraph 37(b) above, telephone records reflect a call between Tortora and KUO's work telephone number that lasted approximately 5 minutes.

c. Based on my review of trading records for Investment Firm D, I have learned that the portfolio over which the portfolio manager to whom KUO reported ("Portfolio Manager 2") had investment discretion had a long position of approximately 37,700 shares of Dell as of July 7, 2008. On or about July 8, 2008 and on or about July 9, 2008, the portfolio over which Portfolio Manager 2 had investment discretion sold 1,000 and 3,500 shares of Dell respectively.

d. As noted above, on or about August 5, 2008, at approximately 8:41 a.m., Tortora sent an email containing the Dell Inside Information to KUO. See *supra* ¶ 37(f).

e. Telephone records reflect a series of short calls on or about August 18, 2008, beginning at approximately 12:07 p.m., between Tortora's cellular telephone and KUO's cellular telephone and work telephone.

f. Based on my review of trading records for Investment Firm D, I have learned that on or about August 18, 2008, at approximately 12:33 p.m., the portfolio over which Portfolio Manager 2 had investment discretion sold an additional 9,300 shares of Dell.

g. On or about August 19, 2008, at approximately 10:15 p.m., after a series of emails discussing positive news for another stock, KUO sent an email to Tortora stating in relevant part: "do you think Dell will be fine as well then? checks are okay." Tortora responded by email at approximately 10:32 p.m.: "No I told you yesterday about dell, call me tomorrow if you forgot".

47. Based on my review of trading records for Investment Firm D, I have learned the following:

a. Between on or about July 8, 2008 and on or about August 28, 2008, the portfolio over which Portfolio Manager 2 had investment authority sold approximately 28,495 shares of Dell stock, avoiding losses of approximately \$78,000.

KUO Provides Nvidia Inside Information To The Circle of Analysts

48. From my conversations with Tortora and Adondakis, my conversations with other FBI agents and my review of reports prepared by other FBI agents, my review of emails obtained from Hedge Fund A and Hedge Fund B, my review of emails provided by Hedge Fund C, Investment Firm D and Tortora, I have learned that the following:

a. As noted above, from at least in or about 2008 through in or about 2009, JON HORVATH, DANNY KUO, the defendants, Tortora and Adondakis exchanged Inside Information concerning various publicly traded technology companies, which they each obtained directly or indirectly from sources at those companies. This circle of friends exchanged the Inside Information for the purpose of executing profitable securities transactions.

b. Among other information KUO shared within this circle of friends, KUO provided Inside Information concerning Nvidia to Tortora, Adondakis and HORVATH. According to Tortora and Adondakis, KUO informed them that the Nvidia information came, directly or indirectly, from an insider at Nvidia.

c. For example, on or about February 9, 2009 at approximately 8:05 a.m., the day before Nvidia's public earnings announcement, KUO sent an email to Portfolio Manager 2 that contained Inside Information concerning Nvidia. KUO immediately forwarded this email to Tortora, Adondakis and HORVATH. Specifically, that email stated:

Check with an accounting manager at NVDA through a friend of mine

Jan quarter revenues at \$481M, down 46.4% qoq
Consensus at \$489M, down 45% qoq [quarter over quarter]
NVDA preannounced the quarter and guided for revenues to decline 40-50% qoq
My friend forgot to ask for GM [gross margin] but says will call this guy again today
No read on guidance

d. The next day, on or about February 10, 2009 at approximately 12:26 p.m., KUO sent another email to Tortora, Adondakis, and HORVATH, which stated, in relevant part: "NVDA Jan Q GAAP GM will be 29.4%."

e. Similarly, on or about May 4, 2009 at approximately 9:50 a.m., KUO sent an email to Portfolio Manager 2, which KUO also forwarded to Tortora, Adondakis and HORVATH stating, among other things:

NVDA checks over the weekend, after the close of quarter

April quarter revenues around \$668 million
Came in better than the last read (mid April) due to strong pickup in demand and unit shipment in the last week of April

April quarter revenues were in line with earlier read of \$650-680M at the end of March

April quarter GM 30%

f. Further, on or about August 6, 2009 at approximately 9:56 a.m., KUO sent an email to Portfolio Manager 2, which KUO also forwarded to Tortora, Adondakis and HORVATH, stating, among other things:

NVDA checks - final read before the print

Initial projections for July quarter was \$750M and 33.5 - 34.5% GM and they came in a little better on a strong finish to the quarter

July quarter revenues \$777M
GAAP GM in the 20% range.

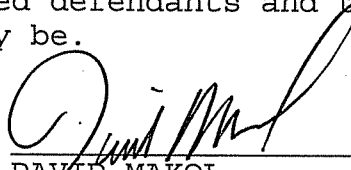
49. Based on my review of publicly available information, I have learned the following:

a. Nvidia publicly announced its quarterly earnings results for the fourth quarter of fiscal year 2009 after the close of the market (at 4:00 p.m.) on February 10, 2009.⁹ In that earnings announcement, Nvidia reported fourth quarter revenues of \$481.1 million and GAAP gross margins of 29.4 percent.

b. Nvidia publicly announced its quarterly earnings for the first quarter of fiscal year 2010 after the close of the market (at 4:00 p.m.) on May 7, 2009. In that earnings announcement, Nvidia reported second quarter revenues of \$664.2 million and Non-GAAP gross margins of 30.6 percent.

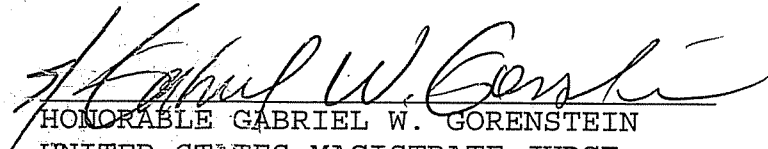
c. Nvidia publicly announced its quarterly earnings for the second quarter of fiscal year 2010 after the close of the market (at 4:00 p.m.) on August 6, 2009. In that earnings announcement, Nvidia reported second quarter revenues of \$776.5 million and GAAP gross margins of 20.2 percent.

WHEREFORE, deponent prays that arrest warrants be issued for the above-named defendants and that they be imprisoned or bailed as the case may be.



DAVID MAKOL
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Sworn to before me this
17TH day of January 2012



HONORABLE GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

⁹ Nvidia's fiscal year ends January 31. Thus, Nvidia's fourth quarter includes earnings for the months of November, December, and January.