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19 UNITED STATES DISTRICT COURT
20 SOUTHERN DISTRICT OF CALIFORNIA
21

22 APPLE INC.,

23 Plaintiff,

24 vs.

26 QUALCOMM INCORPORATED,

27 Defendant.
28

Case No. '17CV0108 GPC NLS

**REDACTED COMPLAINT FOR
DAMAGES, DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF**

DEMAND FOR JURY TRIAL

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1 Plaintiff Apple Inc. (“Apple”), through its undersigned counsel, complains
2 and alleges against QUALCOMM Incorporated (“Qualcomm”) as follows:

3 **NATURE OF THE ACTION**

4 1. Law-enforcement agencies around the globe are actively investigating
5 Qualcomm’s illegal business practices; in the past two years alone, Qualcomm has
6 been declared a monopolist by three separate governments. Qualcomm pursues its
7 illegal practices through a secret web of agreements designed to obfuscate its
8 conduct. In at least one such agreement, Qualcomm inserted a gag order that
9 prevented an aggrieved party from seeking relief that could curb Qualcomm’s
10 illegal conduct, in an effort to keep courts and regulators in the dark and its coerced
11 customers quiet.

12 2. Qualcomm was one among many companies that contributed to the
13 development of standards related to how cellular phones connect to voice and data
14 networks. As a contributor, Qualcomm is entitled to a fair royalty based on the
15 value of its particular contribution. Qualcomm is not entitled to collect royalties
16 based on the contribution of others to the standard, or unrelated innovation by
17 companies that utilize the standard—but this is precisely the business model that
18 Qualcomm has established and that it protects through monopoly power and
19 unlawful licenses. In order to purchase Qualcomm chips or obtain access to patents
20 pledged to a cellular standard, Qualcomm demands that third parties pay Qualcomm
21 a royalty much greater than the value of Qualcomm’s contribution to the standard—
22 a value based on the entire price of the innovative products that only incidentally
23 incorporate the standard.

24 3. What this means in the case of the iPhone® is that when Apple
25 engineers create a revolutionary new security feature such as touch ID, which
26 enables breakthrough technologies like Apple Pay, Qualcomm insists on royalties
27 for these and other innovations it had nothing to do with and royalty payments go
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1 up. When Apple spends billions redefining the concept of a smartphone camera,
2 Qualcomm’s royalty payments go up. Even when Apple sells an iPhone with added
3 memory—256GB instead of 128GB—Qualcomm collects a larger royalty just
4 because of that added memory. Apple products are among the most innovative in
5 the world, yet because of its monopoly power, its suppression of the disclosure of
6 information to government agencies investigating Qualcomm, and an abusive
7 licensing model, Qualcomm believes it is entitled to collect its “tribute” on every
8 such improvement.

9 4. Apple, which has been overcharged billions of dollars on Qualcomm’s
10 illegal scheme, brings this action to recover its damages, enjoin Qualcomm from
11 further violations of the law, and request declaratory relief. Among Apple’s
12 damages are nearly \$1 billion that Qualcomm owes to Apple under an agreement
13 between the two companies. Qualcomm claims that Apple has forfeited those
14 amounts by responding to requests in the course of an investigation by the Korea
15 Fair Trade Commission (“KFTC”), which recently levied the largest fine in its
16 history against Qualcomm. Qualcomm has withheld the required contractual
17 payments from Apple even though the agreement clearly permits Apple to respond
18 to the KFTC’s lawful investigation and requests for information. If that were not
19 enough, Qualcomm then attempted to extort Apple into changing its responses and
20 providing false information to the KFTC in exchange for Qualcomm’s release of
21 those payments to Apple. Apple refused.

22 5. Apple also seeks redress for Qualcomm’s abuse of its monopoly power
23 in the technologies used to connect to cellular networks. Constant connectivity over
24 cellular networks has become part of our everyday lives. The iPhone was not the
25 first cellular phone or even the first smartphone, but it revolutionized the industry
26 and is the gold standard by which all other smartphones are judged. To be a cellular
27 phone at all, an iPhone must be able to connect to the wide variety of cellular
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1 networks in use around the world.

2 6. Having a common set of standards for these cellular networks is
3 beneficial to consumers because it encourages investment in infrastructure and
4 technology. Common standards allow cellular phones to work together and then
5 permit companies like Apple the opportunity to innovate in building great products.

6 7. Standardization can be beneficial, but only if those holding intellectual
7 property that is part of the standard make that intellectual property widely available
8 on terms that fairly compensate the holder of the intellectual property while
9 recognizing the monopoly power obtained through standardization. That is why, for
10 patents that companies have declared “essential” to cellular standards, patent law is
11 reinforced by contractual obligations to license such patents on fair, reasonable, and
12 non-discriminatory (“FRAND” or “RAND”) terms. FRAND commitments are the
13 heart of the standard setting process.

14 8. Qualcomm broke its promise and has breached its FRAND
15 commitments. Qualcomm illegally double-dips by selling chipsets that allow mobile
16 telephones to connect to cellular networks and then separately licensing (but never
17 to competitors) the purportedly necessary intellectual property. By tying together
18 the markets for chipsets and licenses to technology in cellular standards, Qualcomm
19 illegally enhances and strengthens its monopoly in each market and eliminates
20 competition. Then, Qualcomm leverages its market power to extract exorbitant
21 royalties, later agreeing to reduce those somewhat only in exchange for additional
22 anticompetitive advantages and restrictions on challenging Qualcomm’s power,
23 further solidifying its stranglehold on the industry. All of this has been forced on
24 Apple because the iPhone and the iPad® have required Qualcomm chips.

25 9. Qualcomm’s abusive practices have particularly harmed Apple, the
26 prime innovator in the mobile device industry. In recent licensing discussions with
27 Apple, Qualcomm has asserted that it has a “good faith belief” that Apple’s
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1 products—which now use both Qualcomm and Intel chipsets to connect to cellular
2 networks—infringe many Qualcomm patents simply because Qualcomm “holds a
3 great many patents that are essential to cellular standards implemented by Apple
4 products,” including the 3G/UMTS and/or 4G/LTE standards.

5 10. Qualcomm has recently demonstrated that it will file lawsuits following
6 threats to assert its patents. The asserted patents in this case include patents that are
7 U.S. counterparts of Chinese patents that Qualcomm has asserted in litigation
8 against Meizu Technology Co., Ltd. (“Meizu”) and that Qualcomm has declared as
9 essential to the 3G/UMTS and/or 4G/LTE standard. These patents are not, in fact,
10 essential to 3G/UMTS or 4G/LTE and are not infringed by Apple. Moreover, if any
11 of these patents were essential, Qualcomm’s licensing demands violate patent law
12 and its FRAND obligations.

13 11. For years, Qualcomm has abused its business relationships with Apple
14 and blocked competitors from selling chipsets. Qualcomm’s recent effort to cover
15 its tracks—by punishing Apple for providing truthful testimony at the request of
16 government regulators—underscores the lengths to which Qualcomm will go to
17 protect its extortion scheme. Accordingly, Apple seeks this Court’s intervention,
18 bringing breach of contract claims, patent claims, and antitrust claims, as the basis
19 for declaratory relief, injunctive relief, and damages.

20 **PARTIES**

21 12. Apple is a California corporation having its principal place of business
22 at 1 Infinite Loop, Cupertino, California 95014. Apple designs, manufactures, and
23 markets mobile communication and media devices, personal computers, and
24 portable music players, as well as related software, accessories, and content.

25 13. Qualcomm is a Delaware corporation having its principal place of
26 business at 5775 Morehouse Drive, San Diego, California 92121. Qualcomm is a
27 global semiconductor company that designs and markets wireless
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1 telecommunications products and services.

2 14. Qualcomm has offices and employees in this District and regularly
3 conducts business in this District.

4 15. Qualcomm includes Qualcomm Technology Licensing (“QTL”);
5 Qualcomm Technologies Inc. (“QTI”); and Qualcomm CDMA Technologies
6 (“QCT”). QTI is wholly owned by Qualcomm, and QCT is operated by QTI and its
7 subsidiaries.

8 **JURISDICTION**

9 16. Apple brings this action for damages, declaratory relief, costs of suit,
10 and reasonable attorneys’ fees arising under, *inter alia*, the patent laws of the United
11 States, 35 U.S.C. § 1 *et seq.*; Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2;
12 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Accordingly, this
13 Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question),
14 1337 (commerce and antitrust regulation), and 1338(a) (patents).

15 17. Apple has standing to bring this action under Section 4 of the Clayton
16 Act, 15 U.S.C. § 15.

17 18. This Court has subject matter jurisdiction over Apple’s pendent state
18 law claims pursuant to 28 U.S.C. § 1367. Each of Apple’s state law claims arises
19 out of the same factual nucleus as its federal law claims.

20 19. This Court has personal jurisdiction over Qualcomm because it has its
21 principal place of business in this District, and because Qualcomm’s actions cause
22 harm in this District. Further, Qualcomm’s wrongful conduct, in the form of
23 unreasonable demands made during licensing discussions with Apple (e.g., in-
24 person licensing meetings with Apple), has been purposefully conducted within the
25 District (e.g., at Qualcomm’s offices in San Diego, California), and Apple’s injuries
26 relate to such conduct in the District.

27 20. The facts in this Complaint support jurisdiction in this case.
28

VENUE

21. Venue is proper within this District under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) and Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 28.

22. The facts in this Complaint support venue in this case.

23. Venue is also proper because the parties’ Business Cooperation and Patent Agreement contains a forum selection clause requiring Apple to file litigation regarding the agreement’s terms in state or federal court in San Diego County, California. [**Exhibit A**, BCPA attachment 2.]

FACTUAL ALLEGATIONS

Apple’s Revolutionary Products

24. When Apple unveiled the iPhone in 2007, it revolutionized the telecommunications industry and completely redefined what users can do on their mobile phones. The iPhone combined three products—a revolutionary mobile phone, a widescreen iPod® music player, and a breakthrough computer/Internet communications device—into one small and lightweight handheld device with a large, color multi-touch display; a distinctive user interface; and a sophisticated computing platform for mobile apps. Apple patented many of these innovations.

25. In 2010, Apple created and defined an entirely new category of devices with the revolutionary iPad. The iPad connects users with their apps and content in a much more intimate, intuitive, and fun way. The iPad is an elegantly designed computer tablet with a color multi-touch screen, a user interface akin to the iPhone, and robust functionality that spans both mobile computing and media storage and playback. As a result of its innovative technology and distinctive design, the iPad achieved instant success and continues to hold a considerable share of the U.S. tablet market.

26. Apple’s iPhone and iPad products are the result of Apple’s own creative

1 achievement, technical innovation, differentiated technology, and astute business
2 judgment.

3 27. Among many other functions, both the iPhone and certain models of the
4 iPad can send and receive, over cellular networks, telephone calls and/or other voice
5 and video communications, text messages, and Internet data. Except when
6 connected to a Wi-Fi network, a mobile wireless device like an iPhone or iPad
7 cannot be used for communication without a baseband processor chipset, a
8 component that, among other functions, acts as a small wireless radio and “plugs
9 in” to a standardized telecommunications network. Such networks are created and
10 maintained by carrier companies, including, for example, AT&T, Verizon, Sprint,
11 and T-Mobile.

12 28. The baseband processor chipset is just one component out of thousands
13 of components and technologies contained in the Apple iPhone and iPad. Apple,
14 sometimes through third-parties, purchases components and technologies from
15 third-parties, such as Qualcomm.

16 **Standards and Their Economic Effects**

17 29. For a cellular network to operate—and for each component to work
18 with the other components, regardless of which company made each part—carriers,
19 base station manufacturers, mobile wireless device manufacturers, and baseband
20 processor chipset manufacturers must agree to follow a common set of standards,
21 which control how each part of a network communicates with the other parts. Thus,
22 for decades, cellular service providers, baseband processor chipset manufacturers,
23 and wireless device manufacturers have formed and joined standard setting
24 organization (“SSOs”), which create and distribute common standards for all
25 members to follow.

26 30. Standards are absolutely critical in creating a common technology
27 platform because they allow different network components to be delivered by
28

1 multiple vendors, promote interoperability of products, and incentivize investments
2 in infrastructure. The net effect of standards is to increase competition, innovation,
3 product quality, and consumer choice.

4 31. A system of uniform standards requires companies and consumers to
5 make certain tradeoffs. For example, a company implementing standards in a
6 product must use certain mandated technologies, even where viable, perhaps even
7 superior, alternatives exist. Once a standard is adopted, participants begin to make
8 investments tied to the implementation of the standard—such as engineering
9 compliant parts, building compliant cellular towers, and designing handsets around
10 particular capabilities. Because these participants may face substantial switching
11 costs in abandoning initial designs and substituting a different technology, an entire
12 industry will become “locked in” to a standard. Similarly, once a standard is
13 adopted and implemented, a company cannot substitute alternative technologies in
14 its products because those products will no longer work with any established
15 network. For this reason, standard-setting is accompanied by safeguards to prevent
16 the abuse of monopoly power, discussed further below.

17 32. Where standardized technologies are covered by patents, called
18 standard-essential patents (“SEPs”), companies that choose to implement a standard
19 are often required to practice those patents. Without safeguards, patent holders
20 could demand inflated or discriminatory royalties from product companies who
21 have no choice but to use the technology, threaten to block a targeted company
22 from implementing or practicing the standard, and demand and obtain royalty
23 payments based not on the market value of their patents over alternative
24 technologies, but on the costs and impossibility of switching away from
25 standardized technology. This abuse is called “patent hold-up” and occurs “when
26 the holder of a standard-essential patent (“SEP”) demands excessive royalties after
27 companies are locked into using a standard.” Ericsson, Inc. v. D-Link Sys., Inc.,
28

1 773 F.3d 1201, 1209 (Fed. Cir. 2014); see also U.S. Dep’t of Justice & U.S. Dep’t
2 of Commerce, Patent & Trademark Office, Policy Statement on Remedies for
3 Standards-Essential Patents Subject to Voluntary F/RAND Commitments (Jan. 8,
4 2013), <https://www.justice.gov/sites/default/files/atr/legacy/2014/09/18/290994.pdf>.
5 Higher royalties eliminate choice and may be passed on in the form of higher
6 prices, harming consumers. The threat of hold-up also tends to reduce the value of
7 standard setting, leading firms to rely less on the standard-setting process and
8 depriving consumers of the substantial procompetitive benefits of standard setting.

9 33. Patent “hold-up” can be exacerbated by “over-declaration” of patents as
10 essential to a standard. Patent owners, like Qualcomm, can claim that their patents
11 are SEPs without having to prove that they are essential. Many SSOs expressly
12 declare that they do not test declarations of essentiality or validity for accuracy. For
13 example, one widely recognized SSO, the European Telecommunications Standards
14 Institute (“ETSI”), affirmatively states that it has “No involvement” in “the
15 assessment of the validity and essentiality of patents declared as SEPs.” [Legal
16 Considerations, ETSI Seminar 2014, [http://www.etsi.org/images/](http://www.etsi.org/images/files/ETSISeminar/ETSI%20Seminar%206-1%20IPR.pdf)
17 [files/ETSISeminar/ETSI%20Seminar%206-1%20IPR.pdf](http://www.etsi.org/images/files/ETSISeminar/ETSI%20Seminar%206-1%20IPR.pdf).] Thus, a product
18 company like Apple can be faced with claims of patent infringement based on
19 nothing more than the unilateral assertion by a company like Qualcomm that its
20 patents are essential.

21 34. The term essential need not mean the patent is essential for a required
22 implementation of a standard; it might mean the patent is essential to an optional
23 implementation. Manufacturers can choose one of the options without infringing
24 patents that are essential for implementing another option. See Microsoft Corp. v.
25 Motorola, Inc., No. C10-1823JLR, 2013 WL 2111217, at *10, *20 (W.D. Wash.
26 Apr. 25, 2013) (“[A] specific SEP may contribute greatly to an optional portion of a
27 given standard, but if that portion is not used by the implementer, the specific SEP
28

1 may have little value to the implementer.”).

2 35. The aforementioned economic problems are compounded by “royalty
3 stacking,” the “payment of excessive royalties to many different holders of SEPs.”
4 Microsoft, 2013 WL 2111217, at *11. Like many technologies, the
5 telecommunications standards described herein are complex, and many different
6 entities claim to have patents that read on some aspect of the standard.

7 **The FRAND Bargain**

8 36. To address the economic effects of standardization that would
9 artificially inflate royalties for SEPs, SSOs require participants claiming to own
10 SEPs to identify and disclose those patents publicly and to promise to offer licenses
11 for those patents to all implementers of the standard either royalty-free or on
12 FRAND terms. If a patent holder does not choose to make this promise, SSOs
13 generally design the standard without using the patented technology. Qualcomm’s
14 failure to stick to its end of the FRAND bargain is an essential element of its
15 scheme of relentless extortion. Qualcomm induced SSOs to adopt Qualcomm
16 technology within the standard and then knowingly repudiated its obligation to
17 license its SEPs on reasonable terms.

18 37. FRAND royalties must start with the proper royalty base and a proper
19 royalty rate, as required by the patent laws, but also must meet additional criteria
20 designed to prevent misuse of the monopoly power conferred by adoption of a
21 standard. In particular, FRAND royalties must be limited by the actual technical
22 contribution of the patented technology to the standard, rather than (a) the “lock-in”
23 value that arises from standardization of technologies, i.e., the value gained simply
24 because companies are forced to use the technology mandated in the standard,
25 (b) the value of all the technologies incorporated in an entire standard, or (c) the
26 competing value of the many technologies, and many other standards that make up
27 the actual device.

1 38. A SEP holder that makes a FRAND commitment also promises to
2 license its SEPs to anyone willing to accept a license, i.e., a “willing licensee,” and
3 thus relinquishes its right to exclude a willing licensee from the standards-based
4 technologies. Such a commitment is an important check on the patent holder’s
5 power to use SEPs to “hold up” implementers of the standard by refusing to license
6 competitors or the customers of competitors, or by licensing competitors or their
7 customers only on discriminatory terms that undermine competition among
8 implementers of the standard. Without the FRAND commitment, SEP holders
9 would take an easy path to monopoly profits because the standard requires use of
10 the patented technology.

11 39. The FRAND promise is a critical tool in preventing monopoly hold-up
12 and ensuring that the standard remains accessible to all who wish to implement it.
13 See Microsoft, 2013 WL 2111217, at *11 (noting that SSOs combat hold-up
14 through the use of the FRAND commitment).

15 40. FRAND obligations are more than a matter of a private contract
16 between owners of technology, on the one hand, and SSOs and their other members
17 (and implementers of the standard as intended third-party beneficiaries), on the
18 other. Instead, they are a core precondition for antitrust tolerance of the industry
19 collaboration on which standard-setting depends.

20 41. As the Third Circuit Court of Appeals has found:

21 a standard, by definition, eliminates alternative technologies. When a
22 patented technology is incorporated in a standard, adoption of the
23 standard eliminates alternatives to the patented technology. Although
24 a patent confers a lawful monopoly over the claimed invention, its
25 value is limited when alternative technologies exist. That value
26 becomes significantly enhanced, however, after the patent is
27 incorporated in a standard. Firms may become locked in to a standard
28 requiring the use of a competitor’s patented technology. The patent
holder’s IPRs, if unconstrained, may permit it to demand
supracompetitive royalties. It is in such circumstances that measures
such as FRAND commitments become important safeguards against
monopoly power.

1 Broadcom Corp. v. Qualcomm Inc., 501 F.3d 297, 314 (3d Cir. 2007) (citations
2 omitted).

3 42. Violation of the FRAND bargain can take several forms, including
4 demanding unreasonable royalties; applying royalties discriminatorily (for example,
5 charging different licensees different amounts or imposing differing conditions on
6 different licensees, or conditioning royalties on licensees' agreement to advantage
7 the patent owner's products); and asserting that patents are essential to the standard
8 when in fact they are not. Qualcomm is guilty of all three.

9 **ETSI and Qualcomm's Contractual FRAND Obligations**

10 43. Qualcomm and Apple are both members of ETSI, an SSO based in
11 Sofia Antipolis, France, which includes more than 800 members from countries
12 across five continents. ETSI produces globally accepted standards for the
13 telecommunications industry. For example, ETSI created or helped to create
14 numerous telecommunication standards, including the 2G/GSM, 3G/UMTS, and
15 4G/LTE cellular communication standards, described further below.

16 44. Like other SSOs, ETSI requires participants to commit to abide by its
17 Intellectual Property Rights ("IPR") Policy, which sets forth the rights and
18 obligations of its members. Pursuant to the IPR Policy, members are required to
19 disclose standard-essential and potentially standard-essential patents and patent
20 applications in a timely fashion. [ETSI Rules of Procedure, Annex 6, Clause 4,
21 http://www.etsi.org/website/document/legal/etsi_ipr-policy.pdf.]

22 45. The IPR Policy further requires that SEP owners submit a written
23 commitment that they are prepared to grant irrevocable licenses on FRAND terms.
24 If no FRAND commitment is made, the IPR Policy provides for ETSI to investigate
25 alternative technology options for the standard to avoid the patent in question. [Id.
26 at Clause 6.]

27 46. According to ETSI's self-reporting portal, Qualcomm has declared over
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1 30,000 global assets to be “ESSENTIAL IPR.” No objective party has tested the
2 actual essentiality or validity of these assets.

3 47. Qualcomm has submitted IPR undertakings to ETSI with regard to each
4 of the patents at issue in this matter. By submitting those declarations, Qualcomm
5 promised that “[t]o the extent that the IPR(s) . . . are or become, and remain
6 ESSENTIAL in respect of the ETSI Work Item, STANDARD and/or TECHNICAL
7 SPECIFICATION,” Qualcomm is “prepared to grant irrevocable licenses under
8 this/these IPR(s) on terms and conditions which are in accordance with Clause 6.1
9 of the ETSI IPR Policy.” [Id. at App’x A.]

10 48. Qualcomm, therefore, is contractually obligated to grant licenses on
11 FRAND terms to these patents to Apple and other manufacturers of products that,
12 through the baseband processor chipsets they use, conform to ETSI standards, as
13 well as to third-party suppliers of baseband processor chipsets. Qualcomm made
14 similar promises to other SSOs as well.

15 49. Because Apple is a third party that wishes, through the baseband
16 processor chipsets it uses, to implement 3G/UMTS and 4G/LTE standard-compliant
17 technology in the products it sells, Apple is a third-party beneficiary of the contracts
18 between Qualcomm and ETSI.

19 50. Apple relied on Qualcomm’s promises to ETSI. Specifically, Apple and
20 other wireless device manufacturers made a conscious choice to develop and sell
21 products compatible with 3G/UMTS and 4G/LTE, relying on Qualcomm’s promise
22 that any third-party supplier of baseband processor chipsets or products using them
23 could avoid patent litigation and obtain a license to any patents that Qualcomm has
24 declared essential to the 3G/UMTS and 4G/LTE standards.

25 51. Qualcomm’s breach of its FRAND commitments, described in
26 significant detail below, is a foundation of its scheme to acquire and abuse
27 monopoly power in the cellular industry. By refusing to license its SEPs to
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1 competing chipset manufacturers, and by refusing to sell its chipsets to customers
2 unless they first license Qualcomm’s SEPs, Qualcomm forced purchasers of its
3 chipsets to take a license to its SEPs at extortion-level royalties. By threatening
4 “disloyal” chipset customers with even less-favorable royalties and license terms if
5 they purchased chipsets from Qualcomm’s competitors, discriminating between
6 potential licensees by refusing to license its SEPs to competitors, and offering only
7 “rebates” rather than a direct FRAND license, Qualcomm excluded competition in
8 the chipset market. And by foreclosing competitors from dealing with Apple, a key
9 purchaser of chipsets, Qualcomm facilitated the marginalization and exit of many of
10 those competitors, enhancing its own monopoly power.

11 **Qualcomm’s Dominant Market Position and Cellular Standards**

12 52. Wireless standards have evolved in distinct generations, as consumers
13 demanded more features. The earliest cellular telephones and networks used analog
14 technology which allowed only voice transmission and very slow data transmission.
15 This first-generation technology was characterized by significant capacity
16 limitations, poor data transfer, and low security.

17 53. Second generation (“2G”) cellular technology implemented, among
18 others, the “Global System for Mobile Communications” (“GSM”) standard and the
19 “Code Division Multiple Access” (“CDMA”) standard. 2G technology provided
20 improved voice and data capacity, supported limited additional functions such as
21 text and multimedia messages, and offered greater privacy and security at lower
22 prices. Most cellular telephones today use (at a minimum) 2G technology and
23 standards, with GSM being the most widely used 2G technology.

24 54. Third generation (“3G”) cellular technology included the “Universal
25 Mobile Telecommunications Service” (“UMTS”) standard, which used “Wideband
26 Code Division Multiple Access” (“WCDMA”) technology allowing for even further
27 increased data speed and capacity. 2G and 3G technologies continue to be
28

1 simultaneously deployed in products, and devices with only 3G/UMTS/WCDMA
2 technology are rare. Instead, 3G/UMTS/WCDMA products function in combination
3 with 2G technology.

4 55. LTE, sometimes referred to as a 4G cellular standard, is an upgrade to
5 3G/UTMS/WCDMA, providing an enhanced radio interface and all-IP networking
6 technology. The LTE standard has continually advanced, and progressive updates to
7 the LTE standard have specified higher download speeds, carrier aggregation, and
8 advanced power-saving features, among other functions.

9 56. 3G and 4G technology are often used in tandem through “multimode”
10 chipsets that are compatible with both sets of standards.

11 57. Baseband processor chipsets implement one or more of these standards.

12 58. Each of these major cellular standards has carrier networks that employ
13 them. One family of standards, used by carriers in the United States such as AT&T
14 and T-Mobile, employs the GSM standard for 2G communications and the
15 complementary UMTS standard for 3G communications. A rival family of
16 standards, used by U.S. carriers including Verizon and Sprint, employs the CDMA
17 standard and related technologies, e.g., CDMA2000. The technologies in these two
18 standards families each have advantages and disadvantages. Both families,
19 however, have adopted the LTE standard, while requiring backwards compatibility
20 to their respective 2G and 3G technologies.

21 59. Mobile devices that are configured for a particular carrier, such as
22 AT&T or Verizon, are generally locked in to that carrier’s network. Cellular
23 network standards also may vary based on region and country.

24 60. Chipsets designed for a particular wireless device must conform to the
25 standards technology chosen for that network. For example, CDMA networks
26 demand chipsets that conform to the CDMA standards, and only LTE-enabled
27 chipsets can be used in devices designed for LTE networks. As a result, chipsets
28

1 that comply with a given standard are not substitutes for, and have different price
2 and demand characteristics from, chipsets that comply with other standards.
3 Downstream consumers purchase cell phones that include chipsets configured to
4 operate using the standards chosen for a particular network, inextricably tying those
5 consumers to that standard.

6 61. Qualcomm has for many years had monopoly power in the sale of
7 baseband processor chipsets that implement several of these various cellular
8 standards and generations.

9 62. First, Qualcomm has monopoly power in the supply of chipsets that
10 support CDMA, on which devices sold by Verizon and Sprint continue to depend.
11 OEMs seeking to sell devices on CDMA networks must use CDMA chipsets, which
12 means that these OEMs depend on access to Qualcomm's chipsets. Qualcomm has
13 had a share of over 80 percent of the CDMA chipset market for many years, despite
14 the attempts of competitors such as Intel, VIA Telecom, Texas Instruments, and
15 Eonex to enter and gain a foothold. Since 2011, when Apple introduced the first
16 CDMA version of its products, Qualcomm has charged Apple a monopolistic
17 premium for access to CDMA chipsets that are in all other respects identical to
18 chipsets sold to Apple without CDMA functionality enabled. Qualcomm prices its
19 CDMA chipsets without regard to competitive alternatives. Qualcomm has used its
20 monopoly power in CDMA chipsets to obtain anticompetitive license and chipset
21 supply terms from Apple.

22 63. Second, Qualcomm also has monopoly power in the market for
23 premium LTE-enabled chipsets, particularly when coupled with CDMA
24 functionality. Premium LTE chipsets, typically used in flagship smartphones, are
25 sold by Qualcomm at different, and higher, prices. For device manufacturers
26 seeking to sell flagship smartphones with advanced features for use on networks
27 requiring LTE chipsets, there is no reasonable substitute for these chipsets.
28

1 Qualcomm recognizes in its 2016 Annual Report, for example, market segments for
2 “premium-tier integrated circuit products” and “premium-tier smartphones.”
3 Qualcomm has for many years maintained a dominant share of premium LTE
4 chipsets sold in the relevant market of 80 percent or more. Qualcomm has used its
5 monopoly power in premium LTE chipsets to obtain anticompetitive license and
6 chipset supply terms from Apple.

7 64. Qualcomm’s dominance in all of the relevant product markets is
8 protected by substantial barriers to entry and expansion of new competitors. These
9 barriers include, but are not limited to: (a) the time and cost of product development
10 and network certification, including necessary economies of scale, scope, and
11 learning by doing; (b) the intellectual property rights of Qualcomm and others; (c)
12 establishment of product reputation and compatibility; and (d) Qualcomm’s
13 exclusionary conduct.

14 65. The development of a commercially viable chipset takes years of
15 complex engineering work and an R&D investment of hundreds of millions, and
16 perhaps billions, of dollars. These barriers to entry increase as a function of the
17 processing power and functionality of a particular chipset, and as such are
18 especially pronounced in the premium LTE chipset market. Obtaining the
19 certification of network operators for the use of baseband processor chipsets sold
20 for use on their network is another barrier to entry, often involving significant
21 expenditures of time and money.

22 66. Qualcomm has declared thousands of patents as essential to the CDMA,
23 UMTS, and LTE standards. Moreover, Qualcomm, while not asserting essentiality
24 to the implementation of these standards, has asserted additional patents that it says
25 cover specific implementations of these standards. Navigating this thicket of patents
26 increases the costs and risks associated with new entry into the chipset market,
27 foreclosing the field for new entrants.

28

1 67. Chipset purchasers generally require that suppliers be capable of
2 reliably achieving roadmap performance milestones and have a good working
3 relationship with network operators, ensuring these suppliers can obtain all of the
4 required certifications from operators for their chipsets. Sourcing from a credible
5 chipset supplier ensures that chipset purchasers will meet their product launch dates
6 and will have uninterrupted and reliable supply of chipsets.

7 68. Qualcomm’s unfair and exclusionary conduct maintained and
8 strengthened its monopoly position in the relevant product markets by depriving
9 rival chipset manufacturers of necessary economies of scale, scope, and essential
10 experience.

11 69. In 2006, there were multiple vendors of baseband chipsets, including
12 Broadcom, Ericsson, Renesas, and Texas Instruments. Today, Intel is Qualcomm’s
13 only competitor in the market for premium LTE chipsets, and Qualcomm has no
14 competition at all in the market for premium LTE chipsets with CDMA
15 functionality. Not coincidentally, Intel has been the target of Qualcomm’s
16 exclusionary efforts to force Apple to refrain from introducing Intel chipsets in
17 Apple products.

18 70. Qualcomm’s monopoly power is also shown by its ability to repeatedly
19 coerce Apple into undesirable, one-sided, and unreasonable contract terms, terms
20 that are unprecedented in Apple’s experience. At various times, Qualcomm has
21 refused to guarantee Apple’s supply of chipsets, arbitrarily limited its liability for
22 failure to supply chipsets, refused to offer industry-standard indemnity and warranty
23 terms, forced Apple to refrain from challenging Qualcomm’s patents, and forced
24 Apple to refrain from asserting its own patents against Qualcomm or Qualcomm
25 licensees, as well as other terms. Qualcomm expropriates the fruits of Apple’s
26 investments in customizing Qualcomm’s chipsets for use in Apple products, and
27 uses Apple’s innovations to sell Qualcomm chipsets to Apple’s competitors. With
28

1 respect to each of these contract terms, Qualcomm’s potential competitors have
2 offered or would offer better contract terms to Apple, but Apple has often been
3 unable to accept those terms due to Qualcomm’s monopoly power.

4 **Qualcomm’s Secret Manufacturer License Agreements**

5 71. Given Qualcomm’s foreclosure of competition and the resulting
6 absence of choice, Apple has been forced to maintain a commercial relationship
7 with Qualcomm over many generations of Apple’s iPhone and iPad product lines.
8 The foundation of this commercial relationship is Qualcomm’s supply of chipsets
9 and licenses for use in Apple-designed iPhones and iPads.

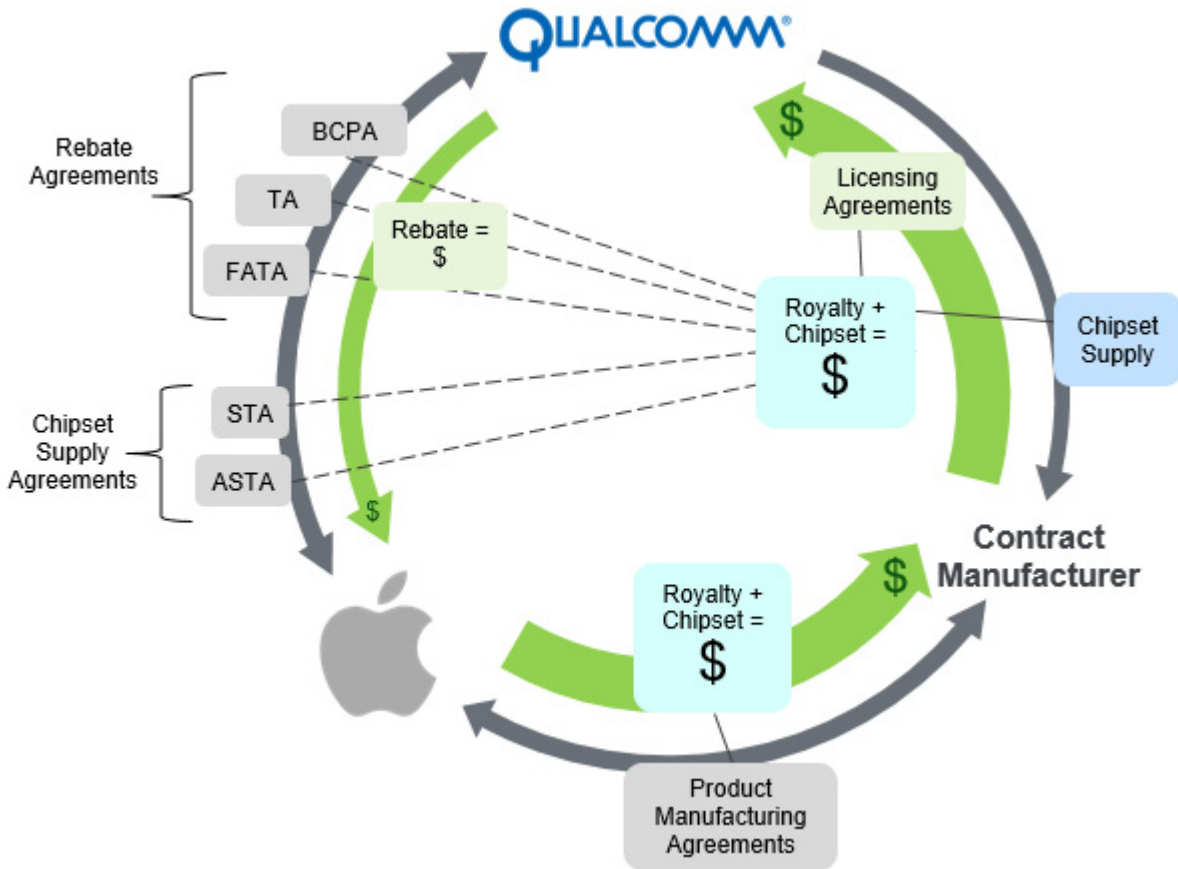
10 72. Apple has been indirectly paying Qualcomm licensing fees since 2007,
11 when it released the iPhone. Apple became even more reliant on Qualcomm in 2011
12 due to Apple’s desire to release an iPhone that could connect to CDMA networks,
13 such as Verizon’s. For many years, Qualcomm ensured that it was the only possible
14 supplier of CDMA chipsets, and it remains so today for the chipsets used in Apple’s
15 flagship iPhone product line. As a monopoly supplier of an essential input,
16 Qualcomm had the power to constrict and disrupt chipset supply, which (coupled
17 with Qualcomm’s refusal to enter into industry-standard supply agreements that
18 would have guaranteed supply to Apple, absent unusual or unforeseen
19 circumstances) would have been disastrous to Apple’s business.

20 73. In 2007, Apple released the first iPhone using Intel (then Infineon)
21 baseband processor chipsets. Qualcomm required licensing fees for using these
22 chipsets. Rather than grant Apple a direct license on FRAND terms, Qualcomm has
23 instead entered into confidential licenses with specific Apple contract
24 manufacturers (“CMs”), the third-party manufacturers who make and assemble
25 Apple products. The CMs pay the exorbitant royalties Qualcomm demands and pass
26 the costs along to Apple in full.

27 74. Qualcomm uses these secret licenses to conceal its anticompetitive
28

1 licensing practices. Here is how it works: Qualcomm knows that Apple is
 2 shouldering the entire royalty burden, but by licensing the CMs and not Apple,
 3 Qualcomm can demand higher royalties because the CMs have no incentive to
 4 negotiate. In fact, the CMs have agreed to license Qualcomm’s SEPs on non-
 5 FRAND terms, locking Apple into outrageous royalties. And the agreements are
 6 confidential; Apple cannot even see or review them. The CMs have expressed
 7 willingness to show Apple their Qualcomm licenses, subject to Qualcomm’s
 8 consent, but Qualcomm has refused to give that consent.

9 75. The following diagram illustrates the complex web of contracts, some
 10 of them secret contracts, that underlie Qualcomm’s scheme of relentless extortion
 11 and govern the two companies’ business relationship:



26 76. Because Qualcomm conceals the CM licenses from Apple, it is not
 27 clear what patents Apple is paying for its CMs to license. For years, Qualcomm
 28

1 assured Apple that virtually all of the Qualcomm patent portfolio was effectively
2 licensed to Apple through these CM agreements, but Qualcomm recently has
3 suggested that these licenses are more limited such that Apple's iPhone and iPad
4 products are not fully covered. Thus, Apple has been unable to confirm the present
5 scope of its license rights to Qualcomm patents through Qualcomm's various
6 agreements with Apple's CMs, including the extent to which Apple's products are
7 licensed and the Qualcomm patents that are licensed.

8 77. In addition, by withholding the scope, terms, and value of the
9 Qualcomm licenses with Apple's CMs, Qualcomm has deliberately deprived Apple
10 of any assurance that renewing the indirect licensing framework with Apple's CMs
11 would be consistent with Qualcomm's obligations to grant licenses to SEPs on
12 FRAND terms.

13 78. Apple and Qualcomm have periodically discussed a direct license, but
14 Qualcomm's direct license proposals have not complied with its FRAND
15 obligations. It likely follows that Qualcomm's concealment of its indirect licensing
16 framework is further evidence that the current terms are not consistent with
17 Qualcomm's FRAND obligations.

18 79. Qualcomm's exorbitant royalties are price gouging, plain and simple:
19 between [REDACTED] per device, [REDACTED]. In 2016, this was an order of
20 magnitude greater than the royalties that Apple pays to any other patent holder, and
21 indeed is more than Apple pays to all other cellular patent holders combined.

22 80. By way of illustration, in 2016, Apple's four largest direct licenses for
23 cellular-related SEPs, excluding Qualcomm, were with [REDACTED]
24 [REDACTED], each of which has made claims similar to Qualcomm about the
25 strength and value of their respective portfolios of 3G and 4G cellular SEPs.
26 Together, these four licensors represent [REDACTED] of all 4G cellular SEP declarations,
27 significantly above the 23.5% self-declared by Qualcomm, and in fiscal 2016
28

1 accounted for [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED].
5 81. Despite having declared a significantly smaller number of 4G cellular
6 SEPs, Qualcomm is collecting [REDACTED] than the royalties paid to the
7 four other SEP holders combined. Moreover, Qualcomm currently is demanding
8 Apple pay [REDACTED] that amount starting January 1, 2017.¹

9 **Qualcomm “Double-Dips” Royalties and Chipset Sales**

10 82. For the entire patent licensing world outside of Qualcomm, a customer
11 that purchases a patented product automatically receives a license by operation of
12 law to the seller’s patents pursuant to the “first sale,” or patent exhaustion, doctrine.
13 Qualcomm, however, negates any first sale doctrine rights by insisting that its
14 customers, such as Apple’s CMs, pay for a separate patent license: what the Federal
15 Trade Commission (“FTC”), in its January 17, 2017 complaint against Qualcomm,
16 called Qualcomm’s “no license-no chips” policy.

17 83. To put this into perspective, a baseband processor chipset sells for
18 around \$10 to \$20. Patent royalties typically are set as a fraction of a percent of the
19 patented item (e.g., the smallest salable patent practicing unit); for FRAND
20 encumbered patents, royalties typically follow the same approach and are a fraction
21 of a percent of the smallest salable patent practicing unit (here, the baseband
22 processor chipset). Qualcomm’s royalty demands approach and in some cases
23 surpass [REDACTED] of the baseband processor sales price.

24 84. Therefore, Apple, through its CMs, buys Qualcomm components and

25 ¹ These multiples actually underestimate the excessiveness of Qualcomm’s
26 licensing demands, in part because [REDACTED]
27 [REDACTED]

1 also, indirectly, pays Qualcomm for a separate license for the intellectual property
2 embodied in those components.

3 85. Qualcomm is the only Apple supplier that both sells components and
4 also requires a separate license to those same components.

5 86. By requiring Apple’s CMs to take a separate patent license for the same
6 components that they purchase, Qualcomm is double-dipping.

7 87. This double-dipping of royalty fees on top of chipset sales is prohibited
8 by the patent exhaustion doctrine. Under that doctrine, the “authorized sale of an
9 article that substantially embodies a patent exhausts the patent holder’s rights and
10 prevents the patent holder from invoking patent law to control postsale use of the
11 article.” Quanta Computer, Inc. v. LG Elecs., Inc., 553 U.S. 617, 638 (2008).

12 88. The FTC recently alleged, after a two-year investigation of Qualcomm,
13 that Qualcomm’s “no license-no chips” policy was an aberrant departure from
14 prevailing patent licensing practices. According to the FTC, “Qualcomm is unique
15 in requiring an OEM, as a condition of sales, to secure a separate patent license
16 requiring royalty payments for handsets that use a competitor’s components.”
17 Complaint for Equitable Relief (“FTC Compl.”) ¶ 68, FTC v. Qualcomm Inc., No.
18 5:17-cv-00220 (N.D. Cal. Jan. 17, 2017), ECF. No. 1.

19 89. Qualcomm has attempted to evade the patent exhaustion doctrine by
20 selling baseband processor chipsets to Apple’s CMs through QTC, which is
21 operated by QTI, which is in turn a wholly owned subsidiary of Qualcomm.

22 90. Qualcomm is playing a shell game to get around the law. In its press
23 release announcing the corporate restructuring that enables this evasion, Qualcomm
24 admitted that the change in corporate structure would not result in “any change to
25 the way in which it defines its operating segments for financial reporting purposes.”
26 [Press Release, Qualcomm Implements New Corporate Structure, Qualcomm (Oct.
27 1, 2012), <https://www.qualcomm.com/news/releases/2012/10/01/qualcomm->
28

1 implements-new-corporate-structure.]

2 **Qualcomm Gouges Apple**

3 91. Since 2006, Apple has looked for ways to reduce its exorbitant royalty
4 burden. And after this date, Apple attempted to negotiate a lower royalty rate in the
5 form of a worldwide FRAND license directly from Qualcomm that would obviate
6 the need for this “pass-through” license structure, but Qualcomm has never made a
7 worldwide offer on FRAND terms for a direct license to Apple.

8 92. Instead, Apple has had no choice but to settle on a model whereby
9 Qualcomm remits payments back to Apple in exchange for additional promises,
10 terms, and conditions from Apple. In this way, Qualcomm conditioned a degree of
11 royalty relief, offsetting the royalty burden that Qualcomm imposes on Apple’s
12 CMs and that the CMs pass on to Apple, on Apple’s acceptance of exclusionary and
13 anticompetitive contract terms that cement Qualcomm’s monopoly power in
14 baseband processor chipsets. In other words, Qualcomm used its anticompetitive
15 leverage to gain even greater anticompetitive leverage and used unreasonable terms
16 to gain even more unreasonable terms.

17 93. Specifically, since 2011, Qualcomm has conditioned billions of dollars
18 in rebates on exclusivity or de facto exclusivity from Apple. The monopoly power
19 that Qualcomm enjoys today in the market for premium LTE chipsets is directly
20 related to Qualcomm’s foreclosure of Apple’s business to actual and potential
21 competitors in the premium LTE chipset market.

22 94. It was only with the iPhone 7—released in September 2016—that
23 Apple was able to use a competitor’s chipsets (Intel’s) as well as Qualcomm
24 chipsets in its cellular-enabled devices. This choice to introduce competition cost
25 Apple [REDACTED] in exclusivity-based royalty relief.

26 95. For several years, Qualcomm’s actions deterred Apple from switching
27 to Intel’s or other potential competitors’ chipsets, substantially diminishing
28

1 competition in the interim. Even today, Qualcomm is actively engaging with
2 network carriers in the United States, attempting to persuade them not to support or
3 sell Apple devices with Intel chipsets.

4 96. Although Qualcomm refused to characterize its payments to Apple as
5 “rebates” on the license fee, and insisted on titling these payments with descriptions
6 like [REDACTED] and [REDACTED] these titles were window-dressing.
7 Apple was under little to no obligation to use many of these funds for any particular
8 purpose. Instead, the sole purpose of these payments was to reduce Apple’s royalty
9 burden in exchange for exclusivity.

10 97. Qualcomm has refused to call these payments “rebates” on the license
11 fee because it knows that the license fee it charges the CMs does not comply with
12 its promise to license its patents on FRAND terms.

13 98. These rebates are provided for by contracts between the parties.
14 Through these contracts, Qualcomm extracted additional terms and conditions from
15 Apple.

16 99. The parties’ Business Cooperation and Patent Agreement (“BCPA”),
17 for example, expressly calculates a series of quarterly payments to Apple (“BCP
18 Payments”), as a cap on the royalties that Apple pays to Qualcomm, setting the
19 amount of the payment at a lump sum that effectively reduced Apple’s per-device
20 royalty payment to [REDACTED] per iPhone and [REDACTED] per iPad. [Exhibit A, BCPA §§ 7–8.]

21 100. The rebates reduced, but by no means eliminated, Apple’s overpayment
22 of royalties to Qualcomm. Taken together, these rebates reduced the effective
23 royalty burden on Apple to around [REDACTED] per iPhone and iPad through 2016. This
24 represents an amount that is still significantly larger than the royalty Apple pays for
25 [REDACTED]—licenses that collectively represent a far
26 greater percentage of the patents declared as essential to the cellular standard.
27 Under every conceivable test, this royalty fails to meet the definition of FRAND. It
28

1 unjustifiably enriches Qualcomm at the expense of Apple and Apple’s customers.

2 101. In general, the BCPA, effective January 1, 2013, provided certain
3 incentives to Apple in exchange for specifically defined business cooperation, and
4 provided Qualcomm certain rights to Apple’s patents. The BCPA expired on
5 December 31, 2016, and is attached hereto as **Exhibit A**.

6 102. Under the BCPA, Apple agreed to cooperate with Qualcomm in two
7 limited ways: (1) Apple agreed to use certain technological standards (CDMA,
8 CDMA2000, WCDMA, and FYX) in the iPhone and iPad, and (2) the parties
9 agreed to meet semiannually to discuss new technologies that may be mutually
10 beneficial. [**Exhibit A**, BCPA § 3.] The parties did not agree to any broader
11 definition of cooperation.

12 103. In addition, in exchange for these BCP Payments, Qualcomm severely
13 restricted Apple’s ability to sue or induce certain kinds of lawsuits or enforcement
14 actions against Qualcomm. Specifically, Qualcomm required Apple to agree that its
15 obligations to pay applied



23 [**Exhibit A**, BCPA § 7, second paragraph.]

24 104. Qualcomm insisted on these restrictions because it knows its business
25 model is vulnerable to legal challenges based on, among other claims, lack of
26 FRAND terms and patent exhaustion.

27 105. Apple objected to this term during negotiations. At the time the contract
28 was entered into, Qualcomm had leverage over Apple because of Qualcomm’s

1 market power in chipsets and its ability to disrupt Apple’s supply of chipsets, thus
2 preventing Apple from challenging Qualcomm on these grounds in any event.

3 106. Despite the BCPA’s restrictions, the contract recognized Apple’s
4 responsibility to respond freely to a request or inquiry from a governmental entity.

5 That carve-out provision states:



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15 [Exhibit A, BCPA § 7, third paragraph.]

16 107. Qualcomm has since acknowledged that it was not the intent of the
17 BCPA to “dissuade Apple from providing truthful, factual responses to inquiries
18 from government agencies or to interfere with any government agency’s gathering
19 of information.”

20 108. Among other agreements, Qualcomm and Apple have also entered into
21 the following contracts:

22 109. The 2007 Marketing Incentive Agreement (“MIA”) capped Apple’s
23 royalties for UMTS chipsets, payable at that time on purchases of Infineon’s
24 chipsets. In exchange, Apple was obliged to refrain from marketing wireless
25 devices implementing a competing wireless communication standard, WiMAX.
26 Qualcomm forced Apple to renounce WiMAX just as WiMAX was gaining traction
27 in the marketplace. Qualcomm acted to eliminate the competitive threat posed by
28 WiMAX by ensuring that Apple would not market wireless devices with WiMAX

1 technology. The MIA is attached hereto as **Exhibit B**.

2 110. The 2009 Strategic Terms Agreement (“STA”) addresses the process by
3 which Qualcomm supplies chipsets and associated software to Apple. It also
4 restricts Apple’s ability to sue Qualcomm for patent infringement concerning
5 Qualcomm chipsets. While Apple generally negotiates firm supply commitments
6 with its component vendors, Qualcomm refused to provide Apple such a
7 commitment, instead arbitrarily capping its liability for failure to supply, and
8 reserving for itself the ability to terminate its obligation to supply chipsets to
9 Apple’s CMs. Qualcomm’s unilateral right to terminate supply of chipsets to
10 Apple’s CMs was retained in the Amended and Restated Strategic Terms
11 Agreement (“ASTA”), effective February 28, 2013. The STA and the ASTA are
12 attached hereto as **Exhibits C and D**, respectively.

13 111. The 2011 Transition Agreement (“TA”) provided for the extension of
14 the royalty relief embodied in the MIA to CDMA-compliant iPhones, contingent
15 upon Apple’s agreement to use Qualcomm’s baseband processor chipsets
16 exclusively. This royalty relief was disguised by Qualcomm as a marketing
17 payment paid pursuant to the TA. As part of that agreement, Apple could not
18 initiate any action or litigation against Qualcomm for intellectual-property
19 infringement. The TA is attached hereto as **Exhibit E**.

20 112. Under the First Amendment to Transition Agreement (“FATA”),
21 effective January 1, 2013, Qualcomm was obliged to make various payments to
22 Apple in exchange for Apple’s exclusive use of Qualcomm baseband processor
23 chipsets. As with the TA, a portion of the payments made by Qualcomm pursuant to
24 that FATA were understood by the parties to be a form of royalty relief, conditioned
25 on Apple’s agreement to deal with Qualcomm exclusively. The FATA is attached
26 hereto as **Exhibit F**.

27 113. None of the above agreements directly addresses a license to the
28

1 parties' patents that have been declared essential to any standard.

2 **Apple and Qualcomm's Licensing Discussions**

3 114. Discussions dating back to at least November 2014 between Apple and
4 Qualcomm about a direct license for certain patents were conducted with the
5 knowledge that certain of the agreements governing the parties' commercial
6 relationship, such as the TA and BCPA, were set to expire at the end of 2016.

7 115. In 2015, Qualcomm made an "offer" to Apple to license Qualcomm's
8 Chinese 3G/4G declared-essential patents on terms purportedly "consistent" with
9 those that resolved an inquiry by Chinese regulators into Qualcomm's licensing
10 practices, called the "National Development and Reform Commission resolution"
11 ("NDRC resolution" or "rectification plan" for short). Apple immediately rejected
12 the proposal because it was not FRAND, was excessive as compared to other
13 licenses to cellular SEPs Apple negotiated at arm's length, and was of limited value
14 to resolving the parties' worldwide licensing dispute.

15 116. On February 5, 2016, Apple reiterated its interest in exploring a direct
16 license to certain patents in Qualcomm's patent portfolio. During subsequent
17 discussions, Qualcomm asserted that it had a "good-faith belief" that Apple's
18 products infringe many Qualcomm patents because "Apple products have been
19 certified as compliant with CDMA/WCDMA (3G) and LTE (4G) networks around
20 the world" and Qualcomm "holds a great many patents that are essential to cellular
21 standards implemented by Apple products." According to Qualcomm, "Apple
22 products that have been certified as compliant with a standard necessarily practice
23 every patent claim that is essential to any mandatory portions of that standard."
24 Shortly after this assertion, Qualcomm demanded that Apple identify any listed
25 portions of the standards that are not implemented in Apple's 3G/4G-capable
26 products. Apple rejected Qualcomm's attempt to shirk its burden to prove the merits
27 of its claims. Qualcomm thereafter removed from its website its public list of U.S.
28

1 patents disclosed to ETSI and precluded archive searching of that list. Consistent
2 with Qualcomm's other hide-the-ball behavior, this action makes it harder for a
3 licensee to determine which patents Qualcomm has declared to be essential to
4 cellular standards.

5 117. During these 2016 discussions, Qualcomm sent Apple a draft Chinese
6 3G/4G SEP license agreement that demanded a [REDACTED] royalty on
7 CDMA/UMTS-capable devices and a [REDACTED] royalty on LTE-only devices,
8 calculated from a royalty base of [REDACTED] of the net selling price of the device.
9 Qualcomm did not and has not provided any explanation for its chosen royalty base.
10 Qualcomm also did not and has not provided any determination as to which of its
11 Chinese patent claims are essential to a covered standard implemented as to each
12 proposed covered Apple product. As described herein and below, Qualcomm's
13 demand violates the law governing patent royalties, as well as Qualcomm's
14 FRAND promises to ETSI and others. Qualcomm repeated such non-FRAND terms
15 in a draft "rest of the world" 3G/4G SEP license.

16 118. Despite Qualcomm's non-FRAND terms, during this time period Apple
17 attempted to negotiate in good faith with Qualcomm, including providing
18 Qualcomm with a FRAND offer, which included not only significant payments to
19 Qualcomm over the next seven years but also the methodology used to arrive at
20 such offer. Qualcomm rejected Apple's attempt to negotiate and instead reverted to
21 its prior terms.

22 119. After 25 months of negotiation and numerous requests for information
23 from Apple, Qualcomm finally agreed to share with Apple patent information about
24 Qualcomm's SEP portfolio, sharing such information right before the 2016
25 holiday.² Over the course of two in-person meetings with Qualcomm engineers,

26 ² Qualcomm had previously conditioned patent infringement allegations on
27 Apple's agreement in writing not to disclose to government agencies or use the
28 information outside of the parties' licensing negotiations, despite the parties'

1 Qualcomm outside counsel, and Apple in-house and outside counsel, Qualcomm
2 provided infringement allegations about 20 U.S. patents it has declared to ETSI as
3 essential to 3G/UMTS and/or 4G/LTE.

4 120. During this period of negotiation, Qualcomm became increasingly
5 aggressive with respect to its cellular SEP portfolio. In addition to removing the list
6 of potentially essential U.S. patents from its website to prevent searches and
7 attempting to bar Apple from sharing patent infringement allegations, Qualcomm
8 asserted patents that it had declared to ETSI as essential to 3G or 4G in a blitzkrieg
9 of patent infringement litigation. For example, when Meizu, China's eighth-biggest
10 smartphone maker in 2015, did not accept Qualcomm's rectification plan terms,
11 Qualcomm filed 18 separate actions against Meizu including 17 patent infringement
12 cases.³

13 121. On June 23, 2016, Qualcomm filed a complaint against Meizu, seeking
14 rulings that (1) the terms of a patent license offered by Qualcomm to Meizu comply
15 with China's Anti-Monopoly Law and Qualcomm's FRAND licensing obligations,
16 and (2) the offered patent license terms should form the basis for a patent license
17 with Meizu for Qualcomm's technologies patented in China for use in mobile
18 devices, including those relating to 3G and 4G wireless communications standards.⁴
19

20 previously agreeing, in March 2016, that any materials used during licensing
21 negotiations could be used outside of those negotiations. Apple refused this
22 condition.

23 ³ [John Ruwitch and Brenda Goh, Qualcomm Files 17 New Complaints in China
24 Courts Against Smartphone Maker Meizu, Reuters (June 30, 2016),
25 <http://www.reuters.com/article/us-qualcomm-meizu-patents-idUSKCN0ZG1I6>.]

26 ⁴ [Press Release, Qualcomm Files Complaint Against Meizu in China, Qualcomm
27 (June 24, 2016), [https://www.qualcomm.com/news/releases/2016/06/23/
28 qualcomm-files-complaint-against-meizu-china](https://www.qualcomm.com/news/releases/2016/06/23/qualcomm-files-complaint-against-meizu-china).] Days later, on June 30, 2016,
Qualcomm filed patent infringement actions in China against Meizu, where it
asserted Chinese patents declared to ETSI as essential to 3G/UMTS and/or
4G/LTE. [Press Release, Qualcomm Files Patent Infringement Complaints Against
Meizu in China, Qualcomm (June 30, 2016), <https://www.qualcomm.com>.

Patents-in-Suit

122. Each of the Patents-in-Suit (a) has been declared to ETSI by Qualcomm to be essential to 3G/UMTS and/or 4G/LTE and (b) is either a U.S. counterpart to a Chinese patent asserted by Qualcomm in litigation or a U.S. patent for which Qualcomm provided infringement allegations during the parties' licensing negotiations. These facts create a substantial case or controversy between Apple and Qualcomm regarding (a) whether the Patents-in-Suit are actually essential to the 3G/UMTS and/or 4G/LTE standards and infringed by Apple's products that support those standards, and (b) if any of these patents are actually essential, how to set a FRAND royalty for such patents.

123. Qualcomm purports to be the owner of U.S. Patent No. 7,246,242 ("the '242 patent"). On July 17, 2007, the '242 patent, entitled "Integrity Protection Method for Radio Network Signaling," issued to Valteri Niemi, Jaakko Rajaniemi, and Ahti Muhonen. Nokia Corporation is listed as the assignee on the face of the '242 patent. The '242 patent is the U.S. counterpart to Chinese Patent No. CN1134200C, asserted against Meizu. A copy of the '242 patent is attached to this Complaint as **Exhibit G**.

124. Qualcomm purports to be the owner of U.S. Patent No. 6,556,549 ("the '549 patent"). On April 29, 2003, the '549 patent, entitled "Method and Apparatus for Signal Combining in a High Data Rate Communication System," issued to Paul E. Bender, Matthew S. Grob, Gadi Karmi, and Roberto Padovani. Qualcomm is listed as the assignee on the face of the '549 patent. The '549 patent is a U.S. counterpart to Chinese Patent No. CN100367694C, asserted against Meizu. A copy of the '549 patent is attached to this Complaint as **Exhibit H**.

125. Qualcomm purports to be the owner of U.S. Patent No. 9,137,822 ("the

com/news/releases/2016/06/30/qualcomm-files-patent-infringement-complaints-against-meizu-china.]

1 '822 patent"). On September 15, 2015, the '822 patent, entitled "Efficient Signaling
2 over Access Channel," issued to Arak Sutivong, Edward Harrison Teague, and
3 Alexei Gorokhov. Qualcomm is listed as the assignee on the face of the '822 patent.
4 The '822 patent is the U.S. counterpart to Chinese Patent No. CN1918839B. A copy
5 of the '822 patent is attached to this Complaint as **Exhibit I**.

6 126. Qualcomm purports to be the owner of U.S. Patent No. 7,289,630 ("the
7 '630 patent"). On October 30, 2007, the '630 patent, entitled "Counter Initialization,
8 Particularly for Radio Frames," issued to Jukka Vialén and Valteri Niemi. The '630
9 patent is a U.S. counterpart to Chinese Patent No. CN1193641C. A copy of the '630
10 patent is attached to this Complaint as **Exhibit J**.

11 127. Qualcomm purports to be the owner of U.S. Patent No. 8,867,494 ("the
12 '494 patent"). On October 21, 2014, the '494 patent, entitled "System and Method
13 for Single Frequency Dual Cell High Speed Downlink Packet Access," issued to
14 Josef J. Blanz and Sharad Deepak Sambhwani. Qualcomm is listed as the assignee
15 on the face of the '494 patent. Qualcomm presented infringement allegations for the
16 '494 patent during the parties' December 2016 in-person meetings. A copy of the
17 '494 patent is attached to this Complaint as **Exhibit K**.

18 128. Qualcomm purports to be the owner of U.S. Patent No. 7,095,725 ("the
19 '725 patent"). On August 22, 2006, the '725 patent, entitled "Method and Apparatus
20 for Data Transmission on a Reverse Link in a Communication System," issued to
21 Christopher Gerard Lott and Jean Put Ling Au. Qualcomm is listed as the assignee
22 on the face of the '725 patent. Qualcomm presented infringement allegations for the
23 '725 patent during the parties' December 2016 in-person meetings. A copy of the
24 '725 patent is attached to this Complaint as **Exhibit L**.

25 129. Qualcomm purports to be the owner of U.S. Patent No. 6,694,469 ("the
26 '469 patent"). On February 17, 2004, the '469 patent, entitled "Method and an
27 Apparatus for a Quick Retransmission of Signals in a Communication System,"
28

1 issued to Ahmad Jalali, Eduardo A. S. Esteves, Nagabhushana T. Sindhushayana,
2 Peter J. Black, and Rashid A. Attar. Qualcomm is listed as the assignee on the face
3 of the '469 patent. Qualcomm presented infringement allegations for the '469 patent
4 during the parties' December 2016 in-person meetings. A copy of the '469 patent is
5 attached to this Complaint as **Exhibit M**.

6 130. Qualcomm purports to be the owner of U.S. Patent No. 9,059,819 (“the
7 '819 patent”). On June 16, 2015, the '819 patent, entitled “Flexible Uplink Control
8 Channel Configuration,” issued to Arjun Bharadwaj and Sharad Deepak
9 Sambhwani. Qualcomm is listed as the assignee on the face of the '819 patent.
10 Qualcomm presented infringement allegations for the '819 patent during the parties'
11 December 2016 in-person meetings. A copy of the '819 patent is attached to this
12 Complaint as **Exhibit N**.

13 131. Qualcomm purports to be the owner of U.S. Patent No. 7,096,021 (“the
14 '021 patent”). On August 22, 2006, the '021 patent, entitled “Method for Initiating
15 in a Terminal of a Cellular Network the Measurement of Power Levels of Signals
16 and a Terminal,” issued to Otto Lehtinen, Antti Toskala. Qualcomm presented
17 infringement allegations for the '021 patent during the parties' December 2016 in-
18 person meetings. A copy of the '021 patent is attached to this Complaint as **Exhibit**
19 **O**.

20 132. None of these patents is essential to any Apple-practiced 3G/UMTS or
21 4G/LTE standard or infringed by Apple. Moreover, for each of these patents,
22 Qualcomm has breached its FRAND commitment.

23 **Qualcomm’s SEP Licensing Practices Are Not FRAND and Foreclose**
24 **Competition**

25 133. For nearly ten years, Qualcomm has failed to offer Apple a license for
its cellular SEPs on FRAND terms.

26 134. By charging Apple [REDACTED] per device for a license to an unspecified
27 portion of its portfolio of patents on top of the price of the chipset itself, in a license
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1 fee expressed as a percentage of the entire value of Apple’s iPhones and iPads, and
2 only reducing that royalty in exchange for additional conditions (such as exclusivity
3 and restraints on approaching competition authorities), Qualcomm’s licensing
4 practices violate its FRAND promise in a number of distinct but overlapping ways.

5 **135. Leveraging a “thicket” of patents to extort royalties.** Qualcomm
6 purports to own very large numbers of patents around the world that have been
7 disclosed to ETSI as potentially essential to one or more cellular standards.
8 According to ETSI’s self-reporting portal, Qualcomm has declared over 30,000
9 global assets to be “ESSENTIAL IPR.”

10 136. Qualcomm’s licensing practices are premised on every licensee taking a
11 license to a large, but unspecified, number of patents—an entire portfolio. By
12 leveraging the “thicket,” Qualcomm attempts to avoid the patent-by-patent analysis
13 that is ordinarily required for any licensing demand, instead hiding behind the sheer
14 volume of its patent portfolio to extort royalties from potential licensees.

15 137. A patent-by-patent (or patent family-by-patent family) analysis is
16 necessary because Qualcomm’s unilateral declaration that its patents are standard-
17 essential does not necessarily mean that those patents are valid and infringed by
18 Apple. Rather, one or all of the following may be true: (a) those patents read only
19 on an optional implementation of a standard that Apple does not practice; (b)
20 Qualcomm has over-declared its patents and those patents are not in fact essential to
21 any standard, something that the SSOs, including ETSI, do not police; and/or (c)
22 those patents are invalid, again something that the SSOs, including ETSI, do not
23 test. If the patent at issue is not valid or not infringed, it is obviously of little to no
24 value to Apple. See Microsoft, 2013 WL 2111217, at *20 (“[B]ecause an ‘essential’
25 patent is one that is necessary to implement either an optional or mandatory
26 provision of a standard, a specific SEP may contribute greatly to an optional portion
27 of a given standard, but if that portion is not used by the implementer, the specific
28

1 SEP may have little value to the implementer.”).

2 138. Moreover, as discussed in more detail below, even if a patent is
3 declared essential to a standard, the appropriate royalty will vary on a patent-by-
4 patent basis, as the strength of each patent and the value compared to commercially
5 available alternatives examined prior to the patent’s incorporation into a standard
6 must be taken into account. See id. at *13, 19 (“If alternatives available to the
7 patented technology would have provided the same or similar technical contribution
8 to the standard, the actual value provided by the patented technology is its
9 incremental contribution.”).

10 139. Similarly, where a patent is directed to a particular component rather
11 than the device or technology as a whole, the appropriate royalty will reflect each
12 patent’s contribution to the relevant component. See LaserDynamics, Inc. v. Quanta
13 Computer, Inc., 694 F.3d 51, 67 (Fed. Cir. 2012).

14 140. Further, the royalty rates that Qualcomm demands, a simple percentage
15 of the final price of the finished device, have no apparent tie to the merits of
16 Qualcomm’s cellular SEP portfolio. For example, Qualcomm demands royalty rates
17 that fail to account for its pro rata share as compared to other cellular SEP holders
18 so as to avoid obvious royalty stacking issues. In the context of Qualcomm’s
19 FRAND obligations, the size of Qualcomm’s cellular SEP portfolio and number of
20 self-declared cellular SEPs are not acceptable substitutes for substantive analysis as
21 to why each patent is essential to the standard, or any showing as to the quality of
22 patents included in the portfolio, particularly as compared to other cellular SEP
23 holders. By requiring a license to the full cellular SEP portfolio, Qualcomm forces
24 licensees to take and pay for a license regardless of whether the patent is valid and
25 infringed.

26 141. Failing to offer an individual license on a patent-by-patent basis (or a
27 patent family-by-patent family basis) violates Qualcomm’s FRAND obligation.

1 142. Charging an exorbitantly high royalty that is expressed as a
2 percentage of the entire market value of the finished device. The exorbitant
3 royalty demanded by Qualcomm, [REDACTED] per device, is based on the
4 net selling price of the final iPhone or iPad. Even Qualcomm’s current license
5 offer— [REDACTED] of the final selling price, “consistent” with the NDRC
6 resolution—is simply a smaller percentage of the entire value of the finished iPhone
7 or iPad. This fee does not comply with patent law or Qualcomm’s FRAND
8 obligations.

9 143. First, this practice discriminates against potential licensees.
10 Specifically, Qualcomm’s royalty base does not equally account for whether the
11 licensee makes chips, chipsets, and/or handsets. Apple, as a manufacturer of a more
12 complex final device, is taxed simply for its place in the supply chain, while a
13 manufacturer of a chipset would pay less.

14 144. In addition, a royalty base premised on final selling prices means that
15 Qualcomm charges manufacturers of high-value, feature-rich smartphones
16 substantially more for a license than it charges manufacturers of basic cellphones,
17 despite the fact that the embodied wireless communications functionality in the two
18 products is similar or identical. This is inconsistent with the FRAND promise. In re
19 Innovatio IP Ventures, LLC Patent Litig., No. 11 C 9308, 2013 WL 5593609, at
20 *38 (N.D. Ill. Oct. 3, 2013) (A RAND licensor “cannot discriminate between
21 licensees on the basis of their position in the market.”).

22 145. For example, Apple sells high-end products with a selling price
23 between \$399 for a 16GB iPhone SE and \$969 for a 256GB iPhone 7 Plus, whereas
24 Walmart sells an unlocked 16GB Kyocera 4G LTE smartphone for under \$100.
25 [Apple, www.apple.com/iphone; Walmart, [https://www.walmart.com/ip/Kyocera-](https://www.walmart.com/ip/Kyocera-DuraForce-E6560-16GB-Unlocked-GSM-4G-LTE-Military-Grade-Smartphone-w-8MP-Camera-Black/117746885)
26 [DuraForce-E6560-16GB-Unlocked-GSM-4G-LTE-Military-Grade-Smartphone-w-](https://www.walmart.com/ip/Kyocera-DuraForce-E6560-16GB-Unlocked-GSM-4G-LTE-Military-Grade-Smartphone-w-8MP-Camera-Black/117746885)
27 [8MP-Camera-Black/117746885.](https://www.walmart.com/ip/Kyocera-DuraForce-E6560-16GB-Unlocked-GSM-4G-LTE-Military-Grade-Smartphone-w-8MP-Camera-Black/117746885)] The two phones have different costs, different
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1 consumer appeal, and different prices, for reasons almost entirely unrelated to the
2 wireless voice and data capability contributed by Qualcomm’s purportedly
3 standard-essential patents. Yet Qualcomm insists on a far-greater royalty payment
4 for the use of its SEPs in the more expensive phone, even though the contribution of
5 wireless capability to both phones is similar. As a result, Apple’s royalty payment
6 for the 16GB iPhone 6 SE would be about four to nine times more than Kyocera’s
7 royalty for its smartphone. This disparity flouts the fundamental premise of, among
8 others, the “non-discriminatory” aspect of FRAND obligations—allowing
9 competitors who implement the standards access to the SEPs on a level playing
10 field, with no one competitor paying more for the same technology than others.

11 146. The impropriety of Qualcomm’s proposed royalty base becomes even
12 more apparent when one considers that Apple sells multiple versions of an iPhone
13 or iPad product, each having a different price but including identical, or similar,
14 baseband processor chipsets (and therefore containing the same functionality that
15 allegedly infringes SEPs). For example, the Apple iPhone 7 is sold with different
16 memory configurations resulting in a difference of ~\$200 in the adjusted net selling
17 price as between an iPhone 7 with 32GB of memory and one with 256GB of
18 memory. Even though both devices provide exactly the same standardized cellular
19 functionality, Qualcomm is effectively demanding that Apple pay a cellular SEP
20 royalty on the 256GB iPhone 7 that is [REDACTED] more than the royalty paid on the
21 phone with 32GB of memory. As a result, Apple would pay essentially a [REDACTED]
22 additional royalty based on the presence of additional flash memory, which has
23 nothing to do with Qualcomm’s cellular SEP patents or even Qualcomm’s products.
24 Apple’s royalty payment should not fluctuate based on purchasing decisions by
25 downstream customers, who desire features, such as more memory, that are not
26 covered by Qualcomm’s SEP patents.

27 147. Second, Qualcomm’s offer, which sets the royalty base at [REDACTED] of
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1 the average selling price of the device, ignores binding Supreme Court and Federal
2 Circuit precedent that forbids basing a royalty on an entire device unless the patent
3 at issue drives consumer demand for the whole device. Instead, patent holders are
4 required to base royalties, at most, on the smallest salable patent-practicing unit.
5 LaserDynamics, 694 F.3d at 67 (“Where small elements of multi-component
6 products are accused of infringement, calculating a royalty on the entire product
7 carries a considerable risk that the patentee will be improperly compensated for
8 non-infringing components of that product. Thus, it is generally required that
9 royalties be based not on the entire product, but instead on the ‘smallest salable
10 patent-practicing unit.’”); Golden Bridge Tech. v. Apple Inc., No. 5:12-cv-04882-
11 PSG, 2014 WL 2194501, at *6 (N.D. Cal. May 18, 2014) (“[I]n any case involving
12 multi-component products, patentees may not calculate damages based on sales of
13 the entire product, as opposed to the smallest saleable patent-practicing unit
14 [‘SSPPU’], without showing that the demand for the entire product is attributable to
15 the patented feature.”). Furthermore, “[w]here the smallest salable unit is, in fact, a
16 multi-component product containing several non-infringing features with no
17 relation to the patented feature . . . , the patentee must do more to estimate what
18 portion of the value of that product is attributable to the patented technology.”
19 VirnetX, Inc. v. Cisco Sys., Inc., 767 F.3d 1308, 1327 (Fed. Cir. 2014). A royalty
20 that fails to comply with these requirements violates the FRAND promise.
21 Innovatio IP Ventures, 2013 WL 5593609, at *13 (applying the smallest salable unit
22 requirement to FRAND royalties); Microsoft, 2013 WL 2111217, at *20 (A
23 reasonable royalty must take into account not only the contribution of the patented
24 technology to the standard, but the “contribution of those capabilities of the
25 standard to the implementer and the implementer’s products.”).

26 148. Here, the smallest salable unit for a cellular SEP license should be no
27 greater than the baseband processor chipset, where all or substantially all of the
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1 inventive aspects of the patented cellular standard-essential technology is
2 implemented or substantially practiced. See GPNE Corp. v. Apple, Inc., No. 12-CV-
3 02885-LHK, 2014 WL 1494247, at *13 (N.D. Cal. Apr. 16, 2014) (holding “as a
4 matter of law that in this case [where the asserted patents were claimed to be
5 essential to 3G and 4G cellular standards], the baseband processor is the proper
6 smallest saleable patent-practicing unit”).

7 149. Qualcomm’s offer also ignores Federal Circuit precedent relating to
8 royalties for SEPs that requires one to apportion the patented features of the
9 smallest salable unit from the unpatented ones as well as the value derived by the
10 standard’s adoption of the patented technology. Ericsson, 773 F.3d at 1232 (“When
11 dealing with SEPs, there are two special apportionment issues that arise. First, the
12 patented feature must be apportioned from all of the unpatented features reflected in
13 the standard. Second, the patentee’s royalty must be premised on the value of the
14 patented feature, not any value added by the standard’s adoption of the patented
15 technology.”); VirnetX, 767 F.3d at 1327 (“[T]he requirement that a patentee
16 identify damages associated with the smallest salable patent-practicing unit is
17 simply a step toward meeting the requirement of apportionment. . . . [T]he patentee
18 must do more to estimate what portion of the value of that product is attributable to
19 the patented technology.”); see also Commonwealth Sci. & Indus. Research Org. v.
20 Cisco Sys., Inc. (CSIRO), 809 F.3d 1295, 1305 (Fed. Cir. 2015), cert. denied, 136 S.
21 Ct. 2530 (2016) (“[R]easonable royalties for SEPs generally . . . must not include
22 any value flowing to the patent from the standard’s adoption.”).

23 150. Qualcomm has not even attempted this required apportionment, and
24 thus has failed to specify the value attributable to the patented technology, separate
25 and apart from the other value attributable to, among other things, (i) non-patented
26 features, (ii) standardization itself, and (iii) unrelated technology.

27 151. Third, Qualcomm’s selected [REDACTED] (CDMA/UMTS-capable devices)
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1 and [REDACTED] (LTE-only devices) royalty rates also do not account for the entire
2 potential royalty stack. See, e.g., Microsoft, Inc., 2013 WL 2111217, at *74 (“[T]he
3 court must determine a reasonable royalty rate . . . based on the principles
4 underlying the RAND commitment, one of which is the concern of royalty
5 stacking.”). At a minimum, Qualcomm’s offered rates do not account for its pro rata
6 share of 3G and 4G SEPs compared to the total, industry-wide pool of such SEPs.
7 Indeed, Qualcomm has refused to furnish its pro rata share of 3G and 4Gs SEPs.
8 Based on publicly available data from ETSI, Qualcomm’s self-declarations to
9 3G/4G standards account for about 23.5 percent of all cellular SEP declarations.
10 Extrapolating the projected royalty per device Apple would pay to Qualcomm under
11 its proposed licensing structure [REDACTED] to the aggregate royalty yields a staggering
12 [REDACTED] per device royalty for all declared-essential cellular patents.

13 152. Qualcomm’s high nominal royalty rates for its SEPs are well above the
14 upper bounds of a reasonable royalty under FRAND, particularly for feature-rich
15 smartphones and tablets that offer a number of technologies and features other than
16 those covered by its purportedly standard-essential patents. Qualcomm’s excessive
17 royalties and royalty base levy a tax on the production of complementary products
18 or features that consumers desire, allowing Qualcomm to extract for itself value
19 created by downstream innovators, value that has no relationship to the ex ante
20 value of the SEPs at issue and does not account for the royalty stack. In addition,
21 Qualcomm’s exorbitant royalty demands lay the foundation for the exclusive
22 dealing and tying arrangements that it uses to exclude chipset competitors, giving
23 Qualcomm leverage to foreclose its competitors from accessing chipset customers.

24 153. **Discriminating between potential licensees by failing to license its**
25 **competitors.** The requirement that a license to a SEP be non-discriminatory helps
26 “to insure that standards do not allow essential patent owners to extort their
27 competitors or prevent them from entering the marketplace.” Apple, Inc. v.
28

1 Motorola Mobility, Inc., No. 11-cv-178-bbc, 2011 WL 7324582, at *1 (W.D. Wis.
2 June 7, 2011). Qualcomm breached its FRAND promise by failing to offer its
3 competitor baseband processor chipset manufacturers a license, harming
4 competition in the industry.

5 154. Prior to 2008, Qualcomm licensed its FRAND-encumbered cellular
6 SEPs to competing chipset manufacturers, and acknowledged its obligations to do
7 so pursuant to its FRAND commitments. For example, in response to an
8 investigation by the European Commission of its anticompetitive conduct,
9 Qualcomm stated publicly in 2005 that it had “never refused to license our essential
10 patent to any company to supply chips, handsets, infrastructure or test equipment.”
11 In the same year, Qualcomm claimed that it had licensed numerous chipset
12 manufacturers, including competitors such as Nokia, Texas Instruments, and NEC,
13 and that these licenses showed that Qualcomm “has lived up to its commitments to
14 SSOs to license its essential patents on fair and reasonable terms.”

15 155. In 2007, Qualcomm claimed publicly that competing manufacturers of
16 CDMA and UMTS/WCDMA chipsets “have to take out a license from Qualcomm”
17 and that Qualcomm had been “pretty consistent in that model.” Again in 2007,
18 Qualcomm represented to the United States Supreme Court that it had granted
19 worldwide licenses to chipset manufacturers with a running royalty calculated as a
20 percentage of the selling price of the chipset. Brief of Qualcomm Inc. as Amicus
21 Curiae Supporting Respondent at 7, Quanta Computer, Inc. v. LG Elecs., Inc., 553
22 U.S. 617 (2008) (No. 06-937). In the same filing, Qualcomm identified its practice
23 of “licensing its intellectual property to entities that produce (non-Qualcomm)
24 chips” as one of its three “primary sources of revenue,” thereby acknowledging the
25 feasibility and efficiency of licensing at the chipset level. Id.

26 156. Around 2007, Qualcomm’s practice of licensing its FRAND-
27 encumbered cellular SEPs to competitors changed. In 2006, Qualcomm’s 10-K
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1 stated that it entered into “License Agreements” with competing chipset
2 manufacturers, and received royalties thereunder. In Qualcomm’s 2007 10-K, the
3 term “License Agreements” was replaced by “Agreements.” Qualcomm’s 2008 10-
4 K provided that in “every case, these agreements do not allow such integrated
5 circuit suppliers to pass through rights under Qualcomm’s patents to such suppliers’
6 customers, and such customers’ sales of CDMA-based wireless subscriber devices
7 into which such suppliers’ integrated circuits are incorporated are subject to the
8 payment of royalties to us in accordance with the customers’ separate licensing
9 arrangements with us.”

10 157. Qualcomm has been unwilling since at least 2008 to license its SEPs to
11 competitors, refusing to provide such licenses when requested. Qualcomm’s 2014
12 10-K stated that Qualcomm’s policy was to enter into “arrangements,” but not
13 exhaustive licenses, with competing chipset manufacturers. According to the KFTC,
14 Samsung, Intel, and VIA Telecom have all requested SEP licenses from Qualcomm,
15 and been refused.

16 158. A patent non-assert agreement or other contractual arrangement short of
17 an exhaustive license is not a substitute for an exhaustive license because it gives
18 Qualcomm the ability and incentive to interfere with its competitors’ relationships
19 with their customers. By contrast, a FRAND license would give competing chipset
20 manufacturers the right to market authorized, patent-exhaustive sales of chipsets to
21 Apple and other mobile device suppliers. Qualcomm’s failure to license on FRAND
22 terms eliminates the ability of Apple and other mobile device suppliers to purchase
23 chipsets from Qualcomm’s competitors without also paying royalties to Qualcomm,
24 and thus exposes Apple and other mobile device suppliers to the threat of exorbitant
25 non-FRAND royalties based on the price of their mobile devices, a threat which
26 Qualcomm has used to force Apple to deal exclusively with Qualcomm on the
27 purchase of chipsets.

28

1 **159. Preventing Apple from bringing its concerns to law enforcement.**

2 As a condition of even partial relief from its non-FRAND royalties, Qualcomm
3 sought to gag Apple and prevent it from bringing its concerns to law enforcement or
4 challenging Qualcomm’s compliance with FRAND commitments.

5 160. As described above, through the second paragraph of Section 7 of the
6 BCPA, Qualcomm conditioned royalty relief on a provision that restricted Apple
7 from initiating or inducing certain legal actions in three particular identified areas:
8 (a) assertion of patents against Qualcomm; (b) claims that Qualcomm failed to offer
9 a license to its SEPs on FRAND terms; and (c) claims that Qualcomm’s patent
10 rights were exhausted. [**Exhibit A**, BCPA § 7, paragraph 2.] The BCPA carved out,
11 as it must, an acknowledgment that Apple has a responsibility to respond to
12 enforcement agencies’ requests for information. But in restraining Apple from
13 initiating action or bringing concerns to law enforcement, Qualcomm conditioned
14 billions of dollars on Apple’s silence before courts and regulators about
15 Qualcomm’s business practices. And Qualcomm is now interpreting that agreement
16 to retaliate against Apple for responding to requests for information about
17 Qualcomm’s practices from competition agencies, inhibiting law-enforcement
18 review of Qualcomm’s anticompetitive practices.

19 161. The FTC recently alleged that Qualcomm’s ongoing anticompetitive
20 scheme is premised on avoiding governmental scrutiny of its non-FRAND licensing
21 scheme, including by deterring device manufacturers from seeking FRAND
22 determinations by withholding supply of Qualcomm’s monopoly chipsets.
23 According to the FTC, Qualcomm’s “no license-no chip” policy effectively denies
24 OEMs the opportunity to challenge Qualcomm’s royalty demands” by
25 “dramatically increasing OEMs’ costs of going to court.” FTC Compl. ¶ 78,
26 Qualcomm, No. 5:17-cv-00220. The BCPA’s gag clause is just another such
27 contract term, one that has the purpose and effect of keeping Qualcomm’s
28

1 monopoly power safe from the rule of law.

2 **Competition Agencies Around the World Investigate and Take Action Against**
3 **Qualcomm**

4 162. Despite Qualcomm’s efforts to conceal its illegal business practices
5 from regulators, the past few years have seen government investigations into
6 Qualcomm by competition authorities in China, South Korea, Taiwan, Japan,
7 Europe, and the United States.

8 163. Competition law enforcement agencies in China, Japan, South Korea,
9 and the European Commission have already found Qualcomm to be in violation of
10 the competition laws of their respective jurisdictions.

11 164. The U.S. FTC, just this week, filed a lawsuit against Qualcomm,
12 charging it with monopolizing the market for baseband processor chipsets. The FTC
13 notified Qualcomm of an investigation in September 2014. On January 17, 2017,
14 the FTC sued Qualcomm, charging it with monopolizing the market for CDMA and
15 premium LTE baseband processor chipsets. The FTC’s complaint alleged the same
16 integrated cycle of anticompetitive conduct which Apple alleges here, including
17 Qualcomm’s refusal to license its competitors, its refusal to sell chipsets without a
18 license, and its imposition of exclusivity on Apple in exchange for a degree of
19 royalty relief, all of which has had, according to the FTC, the effect of
20 marginalizing Qualcomm’s competitors and elevating prices above competitive
21 levels. FTC Compl., Qualcomm, No. 5:17-cv-00220. [See also Press Releases, FTC
22 Charges Qualcomm With Monopolizing Key Semiconductor Device Used in Cell
23 Phones, FTC (Jan. 17, 2017), [https://www.ftc.gov/news-events/press-](https://www.ftc.gov/news-events/press-releases/2017/01/ftc-charges-qualcomm-monopolizing-key-semiconductor-device-used)
24 [releases/2017/01/ftc-charges-qualcomm-monopolizing-key-semiconductor-device-](https://www.ftc.gov/news-events/press-releases/2017/01/ftc-charges-qualcomm-monopolizing-key-semiconductor-device-used)
25 [used.](https://www.ftc.gov/news-events/press-releases/2017/01/ftc-charges-qualcomm-monopolizing-key-semiconductor-device-used)]

26 165. Even before the U.S. FTC began investigating Qualcomm, in November
27 2013, China’s National Development and Reform Commission (“NDRC”) launched
28 an investigation into Qualcomm’s anticompetitive practices. On February 10, 2015,

1 the NDRC found that Qualcomm violated the abuse of dominance provisions of the
2 China Anti-Monopoly Law and, inter alia, imposed a fine of eight percent of
3 Qualcomm’s annual revenue within the territory of China for 2013—a \$975 million
4 fine. The NDRC found Qualcomm was dominant in a number of SEP licensing and
5 baseband processor chipset markets, including CDMA and LTE chipsets, and that
6 this dominant position was protected by barriers to entry. The NDRC also found
7 that Qualcomm acted anticompetitively by, among other things, forcing device
8 manufacturers to take a license to Qualcomm’s SEPs on unreasonable terms and as
9 a condition of purchasing Qualcomm’s chipsets.

10 166. Soon after the NDRC issued its decision, Qualcomm implemented a
11 rectification plan that purportedly modifies certain of its business practices in
12 China. That plan has never been adopted or endorsed by any agency or court;
13 however, Qualcomm purports to have executed numerous license agreements with
14 Chinese manufacturers on terms consistent with the rectification plan. Notably,
15 under the rectification plan Qualcomm unilaterally set the 5 percent and 3.5 percent
16 royalty rates as well as selected the base of 65 percent of the net selling price of the
17 device. [See Press Release, Qualcomm and China’s National Development and
18 Reform Commission Reach Resolution, Qualcomm (Feb. 9, 2015),
19 [https://www.qualcomm.com/news/releases/2015/02/09/qualcomm-and-chinas-](https://www.qualcomm.com/news/releases/2015/02/09/qualcomm-and-chinas-national-development-and-reform-commission-reach)
20 [national-development-and-reform-commission-reach.](https://www.qualcomm.com/news/releases/2015/02/09/qualcomm-and-chinas-national-development-and-reform-commission-reach)] [REDACTED]

21 [REDACTED] No declaration or
22 statement by any administrative body has found these terms to be consistent with
23 Qualcomm’s obligations to grant licenses to SEPs on FRAND terms.

24 167. The Japan Fair Trade Commission (“JFTC”) has been investigating
25 Qualcomm since 2006. In September 2009, the JFTC concluded that Qualcomm
26 violated the Japanese Antimonopoly Act by forcing licensees to cross-license their
27 patents on a royalty-free basis and agree to a non-assert provision, and ordered the
28

1 company to cease these practices.

2 168. The KFTC has been investigating Qualcomm’s anticompetitive
3 practices for close to a decade. In July 2009, the KFTC levied the largest fine it had
4 ever imposed on a company—\$207 million—on Qualcomm for abusing its
5 dominant share of the CDMA chipset market. Undeterred, Qualcomm doubled
6 down on its unlawful conduct. After initiating a new investigation into Qualcomm’s
7 monopolization of additional chipset markets, and holding numerous hearings at
8 which both Apple and Qualcomm presented evidence, the KFTC announced a
9 decision in December 2016 to impose an even larger fine—1.03 trillion South
10 Korean Won, or more than \$850 million—for Qualcomm’s monopolistic conduct,
11 and to mandate changes to Qualcomm’s business model. Specifically, the KFTC
12 found that Qualcomm was dominant in the markets for CDMA chipsets and LTE
13 chipsets, and that Qualcomm acted anticompetitively by, *inter alia*, refusing to
14 license its cellular SEPs to competitors, in violation of its FRAND commitments,
15 and by forcing device manufacturers to enter into unfair license agreements by
16 using its chipset supply as leverage. [Press Release, KFTC Imposes Sanctions
17 Against Qualcomm’s Abuse of SEPs of Mobile Communications, KFTC (Dec. 28,
18 2016), [http://www.ftc.go.kr/eng/solution/solution.jsp?file_name1=/files/bbs/2017/&
19 file_name2=KFTC%20imposes%20sanctions%20against%20Qualcomm%A1%AF
20 s%20abuse%20of%20SEPs%20of%20mobile%20communications.pdf](http://www.ftc.go.kr/eng/solution/solution.jsp?file_name1=/files/bbs/2017/&file_name2=KFTC%20imposes%20sanctions%20against%20Qualcomm%A1%AFs%20abuse%20of%20SEPs%20of%20mobile%20communications.pdf).]

21 169. In October 2014, the European Commission (“EC”) notified Qualcomm
22 of its investigation. The EC issued two Statements of Objections against Qualcomm
23 in December 2015, one of which alleged that Qualcomm’s exclusivity arrangements
24 with “a major smartphone and tablet manufacturer” harmed chipset competition.
25 [Press Release, Antitrust: Commission Sends Two Statements of Objections on
26 Exclusivity Payments and Predatory Pricing to Qualcomm, European Commission
27 (Dec. 8, 2015), http://europa.eu/rapid/press-release_IP-15-6271_en.htm.] That
28

1 manufacturer is Apple; the contract that the EC has preliminarily found to be
2 unlawful is among the agreements at issue in this case.

3 170. Today, investigations and/or hearings of Qualcomm are ongoing before
4 the JFTC and the Taiwan Fair Trade Commission (“TFTC”).

5 **Apple Responds to Agency Requests**

6 171. Government agencies investigating Qualcomm have sought information
7 from third parties who do business with Qualcomm, including Apple. Apple has
8 responded to requests for information from the FTC, the EC, the KFTC, and the
9 TFTC about its contractual relationship with Qualcomm.

10 172. Specifically, Apple has produced documents to the FTC under
11 subpoena and a civil investigative demand,⁵ and two Apple executives have testified
12 under subpoena at FTC depositions. At the KFTC’s request, on August 17, 2016,
13 Apple testified in an open session about Qualcomm’s business model and licensing
14 practices. Apple also provided detailed narrative answers to factual questionnaires
15 from the EC and the TFTC, and has responded to other requests for information
16 from the agencies.

17 173. Qualcomm has had the opportunity to advocate on its own behalf in
18 these investigations, by making submissions of its own and cross-examining
19 witnesses. For example, Qualcomm representatives were present when Apple made
20 its presentation to the KFTC, and those representatives (including Qualcomm’s
21 President) were given the opportunity to comment on Apple’s testimony.

22 174. As described above, the BCPA permits Apple to respond to requests
23 from governmental agencies on any topic and in any way it sees fit. [**Exhibit A**,

24
25 ⁵ Civil investigative demands, or CIDs, are authorized by the Antitrust Civil
26 Process Act, 15 U.S.C. § 1311 *et seq.*, and are considered by Congress to be “the
27 basic investigative tools necessary for expeditious investigations into possible civil
28 violations of the federal antitrust laws.” H.R. Rep. No. 94–1343, 1976 U.S. Code
Cong. & Admin. News 2572, 2596.

1 BCPA § 7, paragraph 3.] Apple has provided information and presentations only at
2 the requests of the agencies. Apple has not “induced” any agency or any other third
3 party to take action against Qualcomm on grounds that Qualcomm’s licensing
4 practices violated the FRAND promise or that Qualcomm’s patents were exhausted.

5 175. Apple has complied with all of the other conditions and requirements of
6 the BCPA.

7 **Qualcomm Retaliates By Withholding Nearly \$1 Billion From Apple**

8 176. From 2013 through mid-2016, Apple received quarterly rebates from
9 Qualcomm, including the rebates required under the BCPA, called BCP Payments.

10 177. Qualcomm abruptly changed course for the second quarter 2016 BCP
11 Payment.

12 178. In September 2016, Qualcomm stopped making BCP Payments without
13 warning. The BCP Payment for the second quarter of 2016, in the amount of
14 approximately [REDACTED], fully accrued on June 30, 2016 and was due on
15 September 13, 2016. [Exhibit A, BCPA §§ 7, 8.] Apple submitted all the required
16 documentation, and all other conditions in the normal reporting and payment
17 periods were fulfilled. However, Apple did not receive the payment as scheduled.

18 179. Notably, Qualcomm and Apple executives had met in mid-September
19 2016, the week that the second quarter BCP Payment was due, and Qualcomm did
20 not notify Apple that it intended to withhold payment, nor did Qualcomm raise any
21 other issue.

22 180. The date of Qualcomm’s first refusal to pay the rebate it owed is not
23 coincidental. Apple made a presentation to the KFTC, at the KFTC’s request, on
24 August 17, 2016, just a few weeks before Qualcomm refused to pay this BCP
25 Payment. In other words, not even one month later, Qualcomm retaliated against
26 Apple for its testimony.

27 181. In an effort to discern why Qualcomm was withholding [REDACTED]
28

1 [REDACTED], Apple reached out to Qualcomm shortly after Qualcomm
2 refused to make the BCP Payment for the second quarter of 2016.

3 182. In response to Apple’s inquiry, Qualcomm indicated it would withhold
4 all future payments due to “legal issues” regarding Apple’s interactions with the
5 KFTC and other competition agencies. Qualcomm confirmed that it “will not make
6 any further BCP Payments to Apple” after the first quarter of 2016.

7 183. Apple explained that it was providing information only at the agencies’
8 request, as allowed by the BCPA, and that Qualcomm’s series of pretextual excuses
9 for withholding BCP Payments found no support in the BCPA or in fact.

10 184. For example, Qualcomm has claimed Apple triggered the second
11 paragraph of Section 7 of the BCPA, relieving Qualcomm of its obligation to make
12 BCP Payments, by “making untrue and misleading statements about Qualcomm to
13 government agencies.” This argument is both false and irrelevant.

14 185. All of Apple’s statements to government agencies investigating
15 Qualcomm’s anticompetitive and extortionist licensing practices were true, to the
16 best of Apple’s knowledge and understanding at the time the statements were made.
17 Qualcomm has identified only a handful of statements that it contends were
18 inaccurate, none of which was inaccurate.

19 186. Apple’s interactions with government agencies regarding Qualcomm in
20 the last three years, including the KFTC, have all been at the request of those
21 agencies. The KFTC independently reached out to Apple for information about
22 Qualcomm’s business and licensing practices, well after the KFTC had initiated its
23 investigation of Qualcomm.

24 187. Because Apple’s actions fall squarely within the unconditional
25 exception in the third paragraph of Section 7 of the BCPA for responses to
26 government requests, Qualcomm has no basis to challenge those statements further.

27 188. It would be irrational and harmful to public policy to permit Qualcomm
28

1 to censor Apple’s statements, or punish Apple for cooperating with government
2 investigations, based on Qualcomm’s naked assertion that Apple’s statements were
3 wrong—particularly when it was granted no such right in the BCPA.

4 189. As another example of a meritless and pretextual excuse, Qualcomm
5 claimed that Apple induced Samsung, a third party (and, coincidentally, Apple’s
6 fiercest competitor and bitter rival), to advocate to the KFTC that it pursue an
7 investigation of Qualcomm’s licensing practices. Qualcomm claimed that an
8 unnamed “senior Apple executive” took such actions.

9 190. Despite Apple’s requests, Qualcomm has never identified the
10 “executive” it claims induced Samsung to take agency action. Instead, Qualcomm
11 has repeatedly shifted the burden to Apple to prove the negative, and claimed that
12 Apple should provide Qualcomm with extensive information about Apple’s
13 communications with Samsung. No provision of the BCPA requires this.

14 191. Qualcomm gave other excuses for withholding payment under the
15 second paragraph of Section 7 of the BCPA, none of which is based in law or fact.

16 192. After Apple rebutted Qualcomm’s arguments and explained that they
17 have no basis in fact or law, on December 2, 2016, Qualcomm stated that it believed
18 that “the parties’ dispute could be resolved,” if Apple retracted and corrected its
19 statements to government agencies. Qualcomm offered to “work with Apple on
20 such corrective statements.”

21 193. Specifically, Qualcomm offered to pay Apple the nearly \$1 billion it
22 owed if Apple would, in Qualcomm’s words:

- 23 (i) publicly and specifically retract and correct each of Apple’s
24 misstatements about Qualcomm to regulatory agencies, including
25 those detailed above; (ii) inform the relevant agencies that such
26 statements were and are untrue; (iii) disclose Apple’s correspondence
with any agencies relating to any investigation of Qualcomm;⁶ (iv)

27 ⁶ Notably, Qualcomm may be demanding this discovery in an attempt to make an
28 end-run around a court order. On January 7, 2016, Qualcomm filed an ex parte

1 provide any and all additional facts to regulators and Qualcomm
2 relating to Apple's dealings with Intel concerning any possible or
3 actual consideration from Intel to Apple relating to Apple's
4 implementation of WiMax or the use of Intel chips; and (v) provide
5 Qualcomm with the requested information about any communications
6 between Apple's senior executives and Samsung.

7 194. Thus, in an extraordinary and transparent effort to manipulate
8 regulatory investigations into its anticompetitive behavior, Qualcomm offered to
9 repay Apple nearly \$1 billion in withheld BCP Payments if Apple recanted its true
10 and, in many cases, sworn testimony before government agencies and instead gave
11 false testimony favorable to Qualcomm.

12 195. Qualcomm's actions—interpreting BCPA Section 7, paragraph 2 to
13 give it the power to restrict Apple's responses to government investigations,
14 withholding payments that it owes Apple in retaliation for providing information to
15 competition agencies, and offering to pay Apple the money Qualcomm owes only if
16 Apple recants—violate the express terms of the BCPA, and also violate public
17 policy in favor of full and fair disclosure to governmental investigators without fear
18 of retaliation. Apple is under no obligation to deceive regulators or recant its
19 truthful testimony in order to receive the money it is owed.

20 196. Apple had a legal duty to comply with all subpoenas and civil
21 investigative demands from the FTC. E.g., 15 U.S.C. §§ 49, 57b-1; 16 C.F.R. §§
22 2.7, 2.10, 2.11, 2.12. And FTC Rule of Practice 2.4 expressly encourages
23 cooperation and full disclosure in any competition investigation, both compulsory
24 and voluntary:

25 The Commission encourages cooperation in its investigations. In all
26 matters, whether involving compulsory process or voluntary requests

27 application in the Northern District of California for third-party discovery from
28 Apple and other companies that the KFTC had contacted in its investigation of
Qualcomm. The KFTC opposed Qualcomm's request, arguing that this discovery
would "discourage third parties from cooperating with the KFTC." The Court
denied Qualcomm's request. In re Ex Parte Application of Qualcomm Inc., 162 F.
Supp. 3d 1029 (N.D. Cal. 2016).

1 for documents and information, the Commission expects all parties to
 2 engage in meaningful discussions with staff to prevent confusion or
 3 misunderstandings regarding the nature and scope of the information
 and material being sought, in light of the inherent value of genuinely
 cooperative discovery.

4 16 C.F.R. § 2.4. The FTC’s public comments on this rule stated that it “affirmed
 5 the Commission’s endorsement of voluntary cooperation in all investigations.”
 6 FTC Rules of Practice, 77 Fed. Reg. 188 (Sep. 27, 2012) (to be codified at 16
 7 C.F.R. pts. 2 & 4).

8 197. Similarly, the International Competition Network, of which the FTC,
 9 the EC, and the TFTC are members, states in its Guidance on Investigative Process:

10 Cooperation and engagement from parties and third parties are key
 11 contributing factors to an agency’s ability to pursue fair and effective
 12 investigations. The credibility of a competition agency and, more
 13 broadly, of the overall mission of competition enforcement are closely
 14 tied to the integrity of the agency’s investigative process and public
 15 understanding of such process. . . . Engagement with third parties
 16 (e.g., competitors, customers, sector regulators, or other non-parties
 17 that agencies may contact during an investigation) also promotes more
 informed and robust enforcement. Agencies should provide interested
 third parties with the opportunity to submit views to the agency during
 an investigation, and where appropriate, the opportunity to meet or
 discuss their views with the agency.

18 [International Competition Network, Guidance on Investigative Process at 1, 5,
 19 <http://www.internationalcompetitionnetwork.org/uploads/library/doc1028.pdf>.]

20 198. Retaliation against cooperating third parties violates established public
 21 policy. For example, responses to civil investigative demands, such as Apple’s
 22 responses to the FTC’s requests, are generally required to remain confidential “to
 23 safeguard the rights of individuals under investigation and to protect witnesses from
 24 retaliation.” In re Air Passenger Computer Reservation Sys. Antitrust Litig., 116
 25 F.R.D. 390, 392 (C.D. Cal. 1986) (quoting Illinois v. Abbott, 460 U.S. 557 (1983))
 26 (emphasis added); see also A. Michael’s Piano, Inc. v. FTC, 18 F.3d 138, 144–46
 27 (2d Cir. 1994) (voluntary disclosures within the FTC’s subpoena power also treated
 28 as confidential under 15 U.S.C. § 57b-2). Qualcomm’s demand that Apple disclose

1 its communications with agencies, on pain of a nearly-billion-dollar penalty,
2 violates this established public policy in favor of confidentiality and protecting
3 against retaliation.

4 199. The same is true outside the United States. The KFTC has stated that it
5 “relies heavily on third parties to gain information relevant to ongoing
6 investigations and to detect anticompetitive activity in Korea,” and like “many of its
7 international counterparts, the KFTC often depends on the cooperation of third
8 parties when investigating alleged antitrust violations.” Ex Parte Application of
9 Qualcomm, 162 F. Supp. 3d 1 at 1032.

10 200. Retaliation against cooperating third parties is forbidden in Korea. The
11 Korean Monopoly Regulation and Fair Trade Act expressly states that an entity
12 cannot retaliate against a third party for “[c]ooperating in investigations conducted
13 by the Fair Trade Commission under Article 50.” Korean Monopoly Regulation and
14 Fair Trade Act art. 23-2. And Article 23-3 of that Act prohibits entrepreneurs from
15 discontinuing transactions, reducing quantities, or giving “any disadvantage” to
16 another entrepreneur who has cooperated in investigations by the KFTC. Id. art. 23-
17 3. Indeed, the KFTC is currently investigating Qualcomm’s behavior in retaliating
18 against Apple for its interactions with the agency, and may impose sanctions as a
19 result.

20 201. Courts routinely invalidate contracts that restrain witnesses from
21 engaging in government investigation. E.g., Cariveau v. Halferty, 99 Cal. Rptr. 2d
22 417, 423–24 (Ct. App. 2000) (invalidating clause that prohibited customer from
23 disclosing securities broker’s misconduct); D’Arrigo Bros. of Cal. v. United
24 Farmworkers of Am., 169 Cal. Rptr. 3d 171, 181 (Ct. App. 2014) (refusing to
25 interpret settlement-agreement clause to prohibit union from cooperating with
26 Agricultural Labor Relations Board investigation); EEOC v. Astra U.S.A., Inc., 94
27 F.3d 738, 745 (1st Cir. 1996) (holding that settlement agreements could not prohibit
28

1 employees from assisting an EEOC investigation); SEC v. Lipson, No. 97 C 2661,
2 1997 WL 801712, at *2 (N.D. Ill. Oct. 28, 1997) (holding that an “effort to preclude
3 voluntary cooperation by potential witnesses with the SEC is unenforceable as
4 against public policy”); see also Lachman v. Sperry-Sun Well Surveying Co., 457
5 F.2d 850, 853–54 (10th Cir. 1972) (“It is public policy in Oklahoma and
6 everywhere to encourage the disclosure of criminal activity.”).

7 202. Despite these and other established public policies encouraging free
8 exchange of information and prohibiting retaliation, Qualcomm has not paid Apple
9 what it owes. As of the date of filing this Complaint, Qualcomm has failed to pay
10 either the [REDACTED] that it owed for the second quarter of 2016, which was due
11 in September 2016 or the [REDACTED] BCP Payment for the third quarter of 2016,
12 which fully accrued on September 30, 2016, and was due on December 14, 2016.

13 203. Based on Qualcomm’s statement that it would not make “any further
14 payments” to Apple, Apple expects Qualcomm to fail to make the final BCP
15 Payment, for the fourth quarter of 2016; that BCP Payment fully accrued on
16 December 31, 2016, and will become due on March 16, 2017. Apple estimates that
17 payment to be worth [REDACTED].

18 204. Thus, Qualcomm is withholding a substantial amount, nearly \$1 billion,
19 that it owes Apple under the BCPA, in breach of its obligations and in retaliation for
20 Apple’s cooperation with competition authorities.

21 205. This behavior is an egregious overreach and violation of the law, even
22 against the backdrop of Qualcomm’s extensive illegal business practice. It confirms
23 that Qualcomm will go to great lengths to ensure that these practices are concealed
24 from government regulators with the power to mandate changes and impose
25 substantial fines.

1 **CLAIMS AND PRAYER FOR RELIEF**

2 **COUNT I**

3 **Breach of Contract**

4 206. Apple restates and incorporates by reference each of the allegations set
5 forth above.

6 207. As alleged herein, Qualcomm entered into express or implied
7 contractual commitments with Apple, including the BCPA [**Exhibit A**].

8 208. The BCPA between Apple and Qualcomm was supported by adequate
9 consideration for all parties.

10 209. Apple has complied with its obligations under the BCPA.

11 210. Under the BCPA, Qualcomm was contractually obligated, among other
12 things, to make quarterly BCP Payments to Apple as specified in the agreements.

13 211. For the second and third quarters of 2016, Qualcomm breached the
14 BCPA by refusing to tender payment after it had accrued and become payable.

15 212. The payment for the fourth quarter of 2016 will be due in March 2017.

16 213. Qualcomm has indicated a clear intent to withhold its payment for the
17 fourth quarter of 2016.

18 214. By reason of the foregoing, Qualcomm materially breached the BCPA.
19 Qualcomm's breach of the BCPA is total.

20 215. Qualcomm has no excuse for its breach, and all conditions precedent for
21 Qualcomm's performance have been fulfilled.

22 216. As a result of Qualcomm's contractual breach, Apple has been injured
23 in its business or property, and is threatened by imminent loss of profits, loss of
24 customers and potential customers, and loss of goodwill and product image.

25 217. Among other things, Apple is entitled to (a) a declaration that
26 Qualcomm has breached its commitments, and (b) its economic damages, including
27 payment of the BCP Payments in full, plus interest.

28

1 218. In compliance with the dispute resolution procedures set forth in the
2 BCPA, Apple and Qualcomm engaged in two 30-day periods of executive
3 negotiations. The parties were unable to resolve these issues.

4 219. As a result of Qualcomm’s withholding of BCPA Payments to Apple,
5 Apple has no choice but to withhold the same amount from its CMs, which are
6 Qualcomm licensees.

7 220. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 221. Apple is bringing this Complaint now, in light of the FTC filing a
13 lawsuit against Qualcomm on January 17, 2017, because Apple is identified as a
14 key purchaser of Qualcomm chipsets in the FTC complaint, and Qualcomm has
15 demonstrated its willingness to retaliate swiftly against Apple when it believes
16 agency or other actions are contrary to its interests.

17 **COUNT II**

18 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

19 222. Apple restates and incorporates by reference each of the allegations set
20 forth above.

21 223. At all relevant times, Qualcomm agreed and was required by law to act
22 fairly and in good faith with respect to its obligations under the BCPA.

23 224. Qualcomm breached this implied covenant of good faith and fair
24 dealing by, among other actions, withholding BCP Payments in retaliation for
25 Apple’s interactions with government regulators, and improperly advancing
26 pretextual and meritless excuses for its breach that find no support in the BCPA.

27 225. Qualcomm’s actions have unfairly frustrated the essential purpose of
28

1 the BCPA, and Apple has not obtained the reasonably and justifiably intended and
2 expected benefit of its bargain with Qualcomm.

3 226. By reason of the foregoing, Qualcomm has breached the implied
4 covenant of good faith and fair dealing.

5 227. As a result of Qualcomm’s breach of the implied covenant of good faith
6 and fair dealing, Apple has been injured in its business or property, and is
7 threatened by imminent loss of profits, loss of actual and potential customers, and
8 loss of goodwill and product image.

9 228. Among other things, Apple is entitled to (a) a declaration that
10 Qualcomm has breached its commitments, and (b) Apple’s economic damages.

11 **COUNT III**

12 **Violation of Cal. Civ. Code § 1671(b)**

13 229. Apple restates and incorporates by reference each of the allegations set
14 forth above.

15 230. Under California Civil Code § 1671(b), a provision in a contract
16 liquidating damages is void where the provision was “unreasonable under the
17 circumstances existing at the time the contract was made.”

18 231. Apple’s actions have not contravened any provision of the BCPA, and
19 Apple owes no damages to Qualcomm. Qualcomm’s actions interpreting and acting
20 on second paragraph of Section 7 of the BCPA impose an unlawful penalty on
21 Apple under § 1671(b).

22 232. Qualcomm interprets the second paragraph of Section 7 of the BCPA to
23 permit Qualcomm to withhold BCP Payments in retaliation for Apple’s interaction
24 with competition agencies, and to give Qualcomm the ability to censor the contents
25 of those statements. If Qualcomm’s interpretation were adopted, this would be an
26 unlawful liquidated damages provision under § 1671(b) because it contemplates a
27 single, definite performance—Apple’s forbearance from making negative
28

1 statements to agencies about Qualcomm—and imposes a penalty contingent on
2 breach of that performance.

3 233. As interpreted by Qualcomm, the liquidated damages set out in the
4 second paragraph of Section 7 of the BCPA arise from a breach and contemplate a
5 fixed and certain sum that has no proportional relation to the damages which may
6 actually flow from a failure to perform under the contract.

7 234. As interpreted by Qualcomm, the liquidated damages provision in
8 Section 7 of the BCPA is unreasonable because the withholding of BCP Payments
9 bears no reasonable relationship to the range of actual damages that Qualcomm or
10 Apple could have anticipated would flow from a breach of performance at the time
11 the contract was made.

12 235. Because Qualcomm’s interpretation of the second paragraph of Section
13 7 of the BCPA is void, Qualcomm has no excuse for its nonperformance.

14 236. In light of the illegality and unreasonableness of Qualcomm’s
15 interpretation of the second paragraph of Section 7 of the BCPA, Apple is entitled
16 to the monetary, restitutionary, declaratory, and other relief requested herein,
17 including but not limited to the payment of all BCP Payments wrongfully withheld
18 by Qualcomm, with interest and other consideration in light of the wrongful delay
19 in payment.

20 **COUNT IV**

21 **Declaratory Relief—Cal. Code Civ. Proc. § 1060**

22 237. Apple restates and incorporates by reference each of the allegations set
23 forth above.

24 238. California Code of Civil Procedure § 1060 provides that:

25 Any person interested under a written instrument, excluding a will or
26 a trust, or under a contract . . . may, in cases of actual controversy
27 relating to the legal rights and duties of the respective parties, bring an
28 original action or cross-complaint in the superior court for a
declaration of his or her rights and duties in the premises, including a
determination of any question of construction or validity arising under

1 the instrument or contract. He or she may ask for a declaration of
2 rights or duties, either alone or with other relief; and the court may
3 make a binding declaration of these rights or duties, whether or not
4 further relief is or could be claimed at the time. The declaration may
5 be either affirmative or negative in form and effect, and the
6 declaration shall have the force of a final judgment. The declaration
7 may be had before there has been any breach of the obligation in
8 respect to which said declaration is sought.

9 239. Declaratory relief is appropriate because the rights and obligations
10 under the BCPA between Apple and Qualcomm are at issue.

11 240. An actual controversy has arisen and now exists between Apple and
12 Qualcomm concerning their respective rights and obligations under the BCPA
13 because (a) Qualcomm has announced that it will refuse to pay, and is refusing to
14 pay, currently accrued and due BCP Payments totaling nearly \$1 billion; and (b) the
15 pretextual reasons for its breach that Qualcomm is advancing are wrong as a matter
16 of contract interpretation and law, and in any event, run afoul of public policy and
17 law of this and other jurisdictions.

18 241. Apple desires a judicial determination as to the parties' rights and
19 obligations under the BCPA, and a declaration of the following:

- 20 • That Qualcomm has breached its obligations under the BCPA;
- 21 • That Apple's actions did not trigger the second paragraph of Section 7
22 of the BCPA;
- 23 • That Qualcomm must pay the remaining BCP Payments, plus interest;
- 24 • That the second paragraph of Section 7 of the BCPA does not survive
25 termination or expiration of the BCPA;
- 26 • That Apple did not breach its express or implied obligations under the
27 BCPA; and/or
- 28 • That Apple did not breach the implied covenant of good faith and fair
dealing or any other implied covenant of the BCPA.

29 242. A judicial determination is necessary and appropriate at this time in
order for Apple to ascertain its rights and obligations under the BCPA. The parties'

1 relationship is ongoing, and a judicial determination would inform the parties’
 2 future conduct. In addition, a judicial determination is necessary and appropriate at
 3 this time in order to eliminate uncertainties in Apple’s future conduct, including its
 4 petitions to the Courts.

5 **COUNT V**

6 **Declaration of Noninfringement of U.S. Patent No. 7,246,242**

7 243. Apple restates and incorporates by reference each of the allegations set
 8 forth above.

9 244. Representative claim 1 of the ’242 patent reads as follows (claim
 10 element enumeration added for convenience):

Claim 1	
[a]	A method for checking integrity of messages transmitted during a connection between a first party and a second party, comprising:
[b]	specifying a first value at the first party, a second value at least partly at the first party and a count value at least partly at the second party to calculate an authentication value of a message, the first value being valid for one connection between the first party and the second party only;
[c]	transmitting the message and calculated authentication value from the first party to the second party;
[d]	calculating a second authentication value at the second party based on the received message;
[e]	comparing the calculated authentication value with the second authentication value to determine whether the authentication values match;
[f]	accepting the message if the authentication values match;
[g]	wherein the authentication values are calculated based on the message, the first value specified by the first party and the counter value at least partly specified by the second party.

22 245. The ’242 patent is not essential to the 3G/UMTS standard, including,
 23 but not limited to, the standard described in 3GPP Technical Specification (“TS”)
 24 33.102, at least because, by way of non-limiting example, the 3G/UMTS standard
 25 does not require the following claim limitation: 1.[b].

26 246. No claim of the ’242 patent has been or is infringed, either directly,
 27 contributorily, or by inducement, literally or under the doctrine of equivalents, by
 28

1 Apple or the purchasers of Apple's products through the manufacture, use,
2 importation, sale, and/or offer for sale of Apple's products, at least because, by way
3 of non-limiting example, Apple's products do not satisfy the following claim
4 limitation: 1.[b].

5 247. As a result of the acts described in the foregoing paragraphs, there
6 exists a definite and concrete, real and substantial, justiciable controversy between
7 Apple and Qualcomm regarding the noninfringement of the '242 patent with respect
8 to Apple's products. This controversy is of sufficient immediacy and reality to
9 warrant the issuance of a Declaratory Judgment.

10 248. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et
11 seq., Apple requests the declaration of the Court that Apple does not infringe and
12 has not infringed any claim of the '242 patent.

13 **COUNT VI**

14 **Declaration of FRAND Royalties for U.S. Patent No. 7,246,242**

15 249. Apple restates and incorporates by reference each of the allegations set
16 forth above.

17 250. Qualcomm has contractually obligated to license the '242 patent on
18 FRAND terms and conditions.

19 251. As a result of the acts described in the foregoing paragraphs, there
20 exists a definite and concrete, real and substantial, justiciable controversy between
21 Apple and Qualcomm regarding the FRAND royalty for the '242 patent with
22 respect to Apple's products. This controversy is of sufficient immediacy and reality
23 to warrant the issuance of a Declaratory Judgment.

24 252. To the extent that the '242 patent is actually essential to a standard and
25 infringed by Apple, then Qualcomm must (a) select as a royalty base, at most, the
26 smallest salable unit substantially embodying the '242 patent, and (b) apply to that
27 royalty base a reasonable royalty rate that reflects the actual technical contribution
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1 to the standard that is attributable to the patent. See CSIRO, 809 F.3d at 1305;
 2 Ericsson, 773 F.3d 1209; Innovatio IP Ventures, 2013 WL 5593609, at *13;
 3 Microsoft, 2013 WL 2111217, at *74. As discussed above, Qualcomm has not
 4 complied with these requirements, and has not offered FRAND terms, even if Apple
 5 has been benefitting from a license between Qualcomm and Apple’s CMs. As an
 6 alternative to its request for a declaration of noninfringement, Apple is entitled to a
 7 judicial declaration that sets a FRAND royalty for the ’242 patent in this manner.

8 **COUNT VII**

9 **Declaration of Noninfringement of**
 10 **U.S. Patent No. 6,556,549**

11 253. Apple restates and incorporates by reference each of the allegations set
 12 forth above.

13 254. Representative claim 1 of the ’549 patent reads as follows (claim
 14 element enumeration added for convenience):

Claim 1	
[a]	In a communication system in which each base station in communication with a remote station transmits a reverse link busy bit indicating whether its reverse link capacity has been exhausted, a method of determining the reverse link transmission rate of said remote station comprising:
[b]	determining a reverse link transmission rate in accordance with a combined reverse link busy signal generated in accordance with reverse link busy bits transmitted by each of said base stations; and
[c]	transmitting reverse link data in accordance with said reverse link transmission rate.

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22 255. The ’549 patent is not essential to the 3G/UMTS standard, including,
 23 but not limited to, the standard described in 3GPP TS 25.211, 25.212, 25.214, at
 24 least because, by way of non-limiting example, the 3G/UMTS standard does not
 25 require the following claim limitation: 1.[b].

26 256. No claim of the ’549 patent has been or is infringed, either directly,
 27 contributorily, or by inducement, literally or under the doctrine of equivalents, by
 28 Apple or the purchasers of Apple’s products through the manufacture, use,

1 importation, sale, and/or offer for sale of Apple’s products, at least because, by way
2 of non-limiting example, Apple’s products do not satisfy the following claim
3 limitation: 1.[b].

4 257. As a result of the acts described in the foregoing paragraphs, there
5 exists a definite and concrete, real and substantial, justiciable controversy between
6 Apple and Qualcomm regarding the noninfringement of the ’549 patent with respect
7 to Apple’s products. This controversy is of sufficient immediacy and reality to
8 warrant the issuance of a Declaratory Judgment.

9 258. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et
10 seq., Apple requests the declaration of the Court that Apple does not infringe and
11 has not infringed any claim of the ’549 patent.

12 **COUNT VIII**

13 **Declaration of FRAND Royalties for**
14 **U.S. Patent No. 6,556,549**

15 259. Apple restates and incorporates by reference each of the allegations set
16 forth above.

17 260. Qualcomm has contractually obligated to license the ’549 patent on
18 FRAND terms and conditions.

19 261. As a result of the acts described in the foregoing paragraphs, there
20 exists a definite and concrete, real and substantial, justiciable controversy between
21 Apple and Qualcomm regarding the FRAND royalty for the ’549 patent with
22 respect to Apple’s products. This controversy is of sufficient immediacy and reality
23 to warrant the issuance of a Declaratory Judgment.

24 262. To the extent that the ’549 patent is actually essential to a standard and
25 infringed by Apple, then Qualcomm must (a) select as a royalty base, at most, the
26 smallest salable unit substantially embodying the ’549 patent, and (b) apply to that
27 royalty base a reasonable royalty rate that reflects the actual technical contribution
28 to the standard that is attributable to the patent. See CSIRO, 809 F.3d at 1305;

1 Ericsson, 773 F.3d 1209; Innovatio IP Ventures, 2013 WL 5593609, at *13;
 2 Microsoft, 2013 WL 2111217, at *74. As discussed above, Qualcomm has not
 3 complied with these requirements, and has not offered FRAND terms, even if Apple
 4 has been benefitting from a license between Qualcomm and Apple’s CMs. As an
 5 alternative to its request for a declaration of noninfringement, Apple is entitled to a
 6 judicial declaration that sets a FRAND royalty for the ’549 patent in this manner.

7 **COUNT IX**

8 **Declaration of Noninfringement of U.S. Patent No. 9,137,822**

9 263. Apple restates and incorporates by reference each of the allegations set
 10 forth above.

11 264. Representative claim 12 of the ’822 patent reads as follows (claim
 12 element enumeration added for convenience):

Claim 12	
[a]	In a wireless communication system, an apparatus to determine an indicator of channel quality, the apparatus comprising:
[b]	a processor configured to determine a metric of forward link geometry as a function of an observed transmission, wherein said observed transmission is selected from a group consisting of pilot signals, noise, and traffic on data channels, or any combination thereof, and to determine an estimate of channel quality as a function of at least the metric of the observed transmission;
[c]	a memory element configured to store a plurality of groups of access sequences, wherein the plurality of groups of access sequences correspond to different ranges of channel quality values,
[d]	and a plurality of access sequences in the plurality of groups of access sequences are distributed non-uniformly, such that the plurality of access sequences are distributed in proportion to a number of access terminals requiring a given amount of power needed to send an indicator of acknowledgment to an access terminal; and
[e]	a selector configured to select an access sequence, randomly, from the group of the plurality of groups corresponding to a determined channel quality value.

26 265. The ’822 patent is not essential to the 4G/LTE standard, including, but
 27 not limited to, the standard described in 3GPP TS 36.300, 36.321, at least because,
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1 by way of non-limiting example, the 4G/LTE standard does not require the
2 following claim limitation: 12.[d].

3 266. No claim of the '822 patent has been or is infringed, either directly,
4 contributorily, or by inducement, literally or under the doctrine of equivalents, by
5 Apple or the purchasers of Apple's products through the manufacture, use,
6 importation, sale, and/or offer for sale of Apple's products, at least because, by way
7 of non-limiting example, Apple's products do not satisfy the following claim
8 limitation: 12.[d].

9 267. As a result of the acts described in the foregoing paragraphs, there
10 exists a definite and concrete, real and substantial, justiciable controversy between
11 Apple and Qualcomm regarding the noninfringement of the '822 patent with respect
12 to Apple's products. This controversy is of sufficient immediacy and reality to
13 warrant the issuance of a Declaratory Judgment.

14 268. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et
15 seq., Apple requests the declaration of the Court that Apple does not infringe and
16 has not infringed any claim of the '822 patent.

17 **COUNT X**

18 **Declaration of FRAND Royalties for U.S. Patent No. 9,137,822**

19 269. Apple restates and incorporates by reference each of the allegations set
20 forth above.

21 270. Qualcomm has contractually obligated to license the '822 patent on
22 FRAND terms and conditions.

23 271. As a result of the acts described in the foregoing paragraphs, there
24 exists a definite and concrete, real and substantial, justiciable controversy between
25 Apple and Qualcomm regarding the FRAND royalty for the '822 patent with
26 respect to Apple's products. This controversy is of sufficient immediacy and reality
27 to warrant the issuance of a Declaratory Judgment.

1 272. To the extent that the '822 patent is actually essential to a standard and
 2 infringed by Apple, then Qualcomm must (a) select as a royalty base, at most, the
 3 smallest salable unit substantially embodying the '822 patent, and (b) apply to that
 4 royalty base a reasonable royalty rate that reflects the actual technical contribution
 5 to the standard that is attributable to the patent. See CSIRO, 809 F.3d at 1305;
 6 Ericsson, 773 F.3d 1209; Innovatio IP Ventures, 2013 WL 5593609, at *13;
 7 Microsoft, 2013 WL 2111217, at *74. As discussed above, Qualcomm has not
 8 complied with these requirements, and has not offered FRAND terms, even if Apple
 9 has been benefitting from a license between Qualcomm and Apple's CMs. As an
 10 alternative to its request for a declaration of noninfringement, Apple is entitled to a
 11 judicial declaration that sets a FRAND royalty for the '822 patent in this manner.

12 **COUNT XI**

13 **Declaration of Noninfringement of**
 14 **U.S. Patent No. 7,289,630**

15 273. Apple restates and incorporates by reference each of the allegations set
 16 forth above.

17 274. Representative claim 1 of the '630 patent reads as follows (claim
 18 element enumeration added for convenience):

Claim 1	
[a]	A method for protecting traffic in a radio access network supporting multiple radio bearers to/from a mobile station, the radio access network being connected to at least two core networks;
[b]	the method comprising:
[c]	maintaining a core network-specific authentication protocol;
[d]	maintaining a radio bearer-specific ciphering process;
[e]	generating, for each ciphering process, a count parameter comprising a cyclical sequence number and a hyperframe number which is incremented each time the cyclical sequence number completes one cycle; and
[f]	for each core network or authentication protocol:
[g]	initializing a first radio bearer of a session with a hyperframe number exceeding the highest hyperframe number used during the previous session; and

1 [h] at the end of a session, storing at least part of the highest hyperframe
2 number used during the session.

3 275. The '630 patent is not essential to the 3G/UMTS standard, including,
4 but not limited to, the standards described in 3GPP TS 23.236, 25.331, 33.102, at
5 least because, by way of non-limiting example, the 3G/UMTS standard does not
6 require the following claim limitation: 1.[h].

7 276. No claim of the '630 patent has been or is infringed, either directly,
8 contributorily, or by inducement, literally or under the doctrine of equivalents, by
9 Apple or the purchasers of Apple's products through the manufacture, use,
10 importation, sale, and/or offer for sale of Apple's products, at least because, by way
11 of non-limiting example, Apple's products so not satisfy the following claim
12 limitation: 1.[h].

13 277. As a result of the acts described in the foregoing paragraphs, there
14 exists a definite and concrete, real and substantial, justiciable controversy between
15 Apple and Qualcomm regarding the noninfringement of the '630 patent, with
16 respect to Apple's products. This controversy is of sufficient immediacy and reality
17 to warrant the issuance of a Declaratory Judgment.

18 278. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et
19 seq., Apple requests the declaration of the Court that Apple does not infringe and
20 has not infringed any claim of the '630 patent.

21 **COUNT XII**

22 **Declaration of FRAND Royalties for
23 U.S. Patent No. 7,289,630**

24 279. Apple restates and incorporates by reference each of the allegations set
25 forth above.

26 280. Qualcomm has contractually obligated to license the '630 patent on
27 FRAND terms and conditions.

28 281. As a result of the acts described in the foregoing paragraphs, there

1 exists a definite and concrete, real and substantial, justiciable controversy between
 2 Apple and Qualcomm regarding the FRAND royalty for the '630 patent with
 3 respect to Apple's products. This controversy is of sufficient immediacy and reality
 4 to warrant the issuance of a Declaratory Judgment.

5 282. To the extent that the '630 patent is actually essential to a standard and
 6 infringed by Apple, then Qualcomm must (a) select as a royalty base, at most, the
 7 smallest salable unit substantially embodying the '630 patent, and (b) apply to that
 8 royalty base a reasonable royalty rate that reflects the actual technical contribution
 9 to the standard that is attributable to the patent. See CSIRO, 809 F.3d at 1305;
 10 Ericsson, 773 F.3d 1209; Innovatio IP Ventures, 2013 WL 5593609, at *13;
 11 Microsoft, 2013 WL 2111217, at *74. As discussed above, Qualcomm has not
 12 complied with these requirements, and has not offered FRAND terms, even if Apple
 13 has been benefitting from a license between Qualcomm and Apple's CMs. As an
 14 alternative to its request for a declaration of noninfringement, Apple is entitled to a
 15 judicial declaration that sets a FRAND royalty for the '630 patent in this manner.

16 **COUNT XIII**

17 **Declaration of Noninfringement of U.S. Patent No. 8,867,494**

18 283. Apple restates and incorporates by reference each of the allegations set
 19 forth above.

20 284. Representative claim 17 of the '494 patent reads as follows (claim
 21 element enumeration added for convenience):

Claim 17	
[a]	A method for communication in a wireless network, comprising:
[b]	receiving first information on a first downlink channel from a first sector, and second information on a second downlink channel from a second sector, on a first downlink carrier frequency;
[c]	receiving first information on a first downlink channel from a first sector, and second information on a second downlink channel from a second sector, on a first downlink carrier frequency;
[d]	transmitting the jointly encoded first and second feedback information on an uplink channel over a first uplink carrier frequency.

1 285. The '494 patent is not essential to any Apple-practiced 3G/UMTS
2 standard, including, but not limited to, the standard described in 3GPP TS 25.212,
3 25.214, 25.308, at least because, by way of non-limiting example, the 3G/UMTS
4 standard does not require the following claim limitation: 17.[b].

5 286. No claim of the '494 patent has been or is infringed, either directly,
6 contributorily, or by inducement, literally or under the doctrine of equivalents, by
7 Apple or the purchasers of Apple's products through the manufacture, use,
8 importation, sale, and/or offer for sale of Apple's products, at least because, by way
9 of non-limiting example, Apple's products do not satisfy the following claim
10 limitation: 17.[b].

11 287. As a result of the acts described in the foregoing paragraphs, there
12 exists a definite and concrete, real and substantial, justiciable controversy between
13 Apple and Qualcomm regarding the noninfringement of the '494 patent with respect
14 to Apple's products. This controversy is of sufficient immediacy and reality to
15 warrant the issuance of a Declaratory Judgment.

16 288. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et
17 seq., Apple requests the declaration of the Court that Apple does not infringe and
18 has not infringed any claim of the '494 patent.

19 **COUNT XIV**

20 **Declaration of FRAND Royalties for U.S. Patent No. 8,867,494**

21 289. Apple restates and incorporates by reference each of the allegations set
22 forth above.

23 290. Qualcomm has contractually obligated to license the '494 patent on
24 FRAND terms and conditions.

25 291. As a result of the acts described in the foregoing paragraphs, there
26 exists a definite and concrete, real and substantial, justiciable controversy between
27 Apple and Qualcomm regarding the FRAND royalty for the '494 patent with
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1 respect to Apple’s products. This controversy is of sufficient immediacy and reality
 2 to warrant the issuance of a Declaratory Judgment.

3 292. To the extent that the ’494 patent is actually essential to a standard and
 4 infringed by Apple, then Qualcomm must (a) select as a royalty base, at most, the
 5 smallest salable unit substantially embodying the ’494 patent, and (b) apply to that
 6 royalty base a reasonable royalty rate that reflects the actual technical contribution
 7 to the standard that is attributable to the patent. See CSIRO, 809 F.3d at 1305;
 8 Ericsson, 773 F.3d 1209; Innovatio IP Ventures, 2013 WL 5593609, at *13;
 9 Microsoft, 2013 WL 2111217, at *74. As discussed above, Qualcomm has not
 10 complied with these requirements, and has not offered FRAND terms, even if Apple
 11 has been benefitting from a license between Qualcomm and Apple’s CMs. As an
 12 alternative to its request for a declaration of noninfringement, Apple is entitled to a
 13 judicial declaration that sets a FRAND royalty for the ’494 patent in this manner.

14 **COUNT XV**

15 **Declaration of Noninfringement of U.S. Patent No. 7,095,725**

16 293. Apple restates and incorporates by reference each of the allegations set
 17 forth above.

18 294. Representative claims 9 and 26 of the ’725 patent reads as follows
 19 (claim element enumeration added for convenience):

Claim 9	
[a]	An apparatus comprising:
[b]	a transmit subsystem;
[c]	a processor coupled to the transmit subsystem and configured to control a data transmission rate of the transmit subsystem;
[d]	wherein the processor is configured to determine a new data transmission rate which is constrained to decrease by a limited amount from a current data transmission rate,
[e]	wherein the processor is configured to determine the new data transmission rate by determining a plurality of limiting rates and selecting a minimum of the limiting rates as the new data transmission rate; and

1	[f]	a transmit queue, wherein the limiting rates comprise at least a data-justified rate corresponding to an amount of data in the transmit queue.
2	Claim 26	
3	[a]	An apparatus comprising:
4	[b]	a transmit subsystem; and
5	[c]	a processor coupled to the transmit subsystem and configured to determine a new data transmission rate of the transmit subsystem by selecting the new rate from a plurality of limiting rates when the wireless communication system is in a not-busy state,
6		
7	[d]	wherein the limiting rates include a ramp-up-limited rate which is set equal to the greater of a current data transmission rate and a sticky rate.
8		

9 295. The '725 patent is not essential to the 3G/UMTS standard, including,
10 but not limited to, the standard described in 3GPP TS 25.309, 25.321, at least
11 because, by way of non-limiting example, the 3G/UMTS standard does not require
12 the following claim limitations: 9.[d], 26.[d].

13 296. No claim of the '725 patent has been or is infringed, either directly,
14 contributorily, or by inducement, literally or under the doctrine of equivalents, by
15 Apple or the purchasers of Apple's products through the manufacture, use,
16 importation, sale, and/or offer for sale of Apple's products, at least because, by way
17 of non-limiting example, Apple's products do not satisfy the following claim
18 limitations: 9.[d], 26.[d].

19 297. As a result of the acts described in the foregoing paragraphs, there
20 exists a definite and concrete, real and substantial, justiciable controversy between
21 Apple and Qualcomm regarding the noninfringement of the '725 patent with respect
22 to Apple's products. This controversy is of sufficient immediacy and reality to
23 warrant the issuance of a Declaratory Judgment.

24 298. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et
25 seq., Apple requests the declaration of the Court that Apple does not infringe and
26 has not infringed any claim of the '725 patent.

1 **COUNT XVI**

2 **Declaration of FRAND Royalties for U.S. Patent No. 7,095,725**

3 299. Apple restates and incorporates by reference each of the allegations set
4 forth above.

5 300. Qualcomm has contractually obligated to license the '725 patent on
6 FRAND terms and conditions.

7 301. As a result of the acts described in the foregoing paragraphs, there
8 exists a definite and concrete, real and substantial, justiciable controversy between
9 Apple and Qualcomm regarding the FRAND royalty for the '725 patent with
10 respect to Apple's products. This controversy is of sufficient immediacy and reality
11 to warrant the issuance of a Declaratory Judgment.

12 302. To the extent that the '725 patent is actually essential to a standard and
13 infringed by Apple, then Qualcomm must (a) select as a royalty base, at most, the
14 smallest salable unit substantially embodying the '725 patent, and (b) apply to that
15 royalty base a reasonable royalty rate that reflects the actual technical contribution
16 to the standard that is attributable to the patent. See CSIRO, 809 F.3d at 1305;
17 Ericsson, 773 F.3d 1209; Innovatio IP Ventures, 2013 WL 5593609, at *13;
18 Microsoft, 2013 WL 2111217, at *74. As discussed above, Qualcomm has not
19 complied with these requirements, and has not offered FRAND terms, even if Apple
20 has been benefitting from a license between Qualcomm and Apple's CMs. As an
21 alternative to its request for a declaration of noninfringement, Apple is entitled to a
22 judicial declaration that sets a FRAND royalty for the '725 patent in this manner.

23 **COUNT XVII**

24 **Declaration of Noninfringement of U.S. Patent No. 6,694,469**

25 303. Apple restates and incorporates by reference each of the allegations set
26 forth above.

27 304. Representative claim 11 of the '469 patent reads as follows (claim
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1 element enumeration added for convenience):

Claim 11	
2 [a]	An apparatus configured to retransmit signals in a communication system, comprising:
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4 [b]	a decoder configured to decode contents of a unit of received signal;
5 [c]	a first feedback signal generator configured to generate a first feedback signal;
6 [d]	a first processor configured to determine a quality metric of said unit of signal; and instruct said feedback signal generator to generate a feedback signal in accordance with said quality metric; and
7	
8 [e]	a preamble detector configured to detect and decode a preamble of said unit of signal; and wherein said first processor is further configured to prevent decoding of said unit of signal if said preamble indicates that said unit of signal is not to be decoded.
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11 305. The '469 patent is not essential to the 3G/UMTS or the 4G/LTE
12 standard, including, but not limited to, the standard described in 3GPP TS 25.211,
13 25.221, 25.321, 25.322, 36.213, 36.300, 36.321, 36.322, at least because, by way of
14 non-limiting example, the 3G/UMTS or the 4G/LTE standard does not require the
15 following claim limitation: 11.[e].

16 306. No claim of the '469 patent has been or is infringed, either directly,
17 contributorily, or by inducement, literally or under the doctrine of equivalents, by
18 Apple or the purchasers of Apple's products through the manufacture, use,
19 importation, sale, and/or offer for sale of Apple's products, at least because, by way
20 of non-limiting example, Apple's products do not satisfy the following claim
21 limitation: 11.[e].

22 307. As a result of the acts described in the foregoing paragraphs, there
23 exists a definite and concrete, real and substantial, justiciable controversy between
24 Apple and Qualcomm regarding the noninfringement of the '469 patent with respect
25 to Apple's products. This controversy is of sufficient immediacy and reality to
26 warrant the issuance of a Declaratory Judgment.

27 308. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et
28 seq., Apple requests the declaration of the Court that Apple does not infringe and

1 has not infringed any claim of the '469 patent.

2 **COUNT XVIII**

3 **Declaration of FRAND Royalties for U.S. Patent No. 6,694,469**

4 309. Apple restates and incorporates by reference each of the allegations set
5 forth above.

6 310. Qualcomm has contractually obligated to license the '469 patent on
7 FRAND terms and conditions.

8 311. As a result of the acts described in the foregoing paragraphs, there
9 exists a definite and concrete, real and substantial, justiciable controversy between
10 Apple and Qualcomm regarding the FRAND royalty for the '469 patent with
11 respect to Apple's products. This controversy is of sufficient immediacy and reality
12 to warrant the issuance of a Declaratory Judgment.

13 312. To the extent that the '469 patent is actually essential to a standard and
14 infringed by Apple, then Qualcomm must (a) select as a royalty base, at most, the
15 smallest salable unit substantially embodying the '469 patent, and (b) apply to that
16 royalty base a reasonable royalty rate that reflects the actual technical contribution
17 to the standard that is attributable to the patent. See CSIRO, 809 F.3d at 1305;
18 Ericsson, 773 F.3d 1209; Innovatio IP Ventures, 2013 WL 5593609, at *13;
19 Microsoft, 2013 WL 2111217, at *74. As discussed above, Qualcomm has not
20 complied with these requirements, and has not offered FRAND terms, even if Apple
21 has been benefitting from a license between Qualcomm and Apple's CMs. As an
22 alternative to its request for a declaration of noninfringement, Apple is entitled to a
23 judicial declaration that sets a FRAND royalty for the '469 patent in this manner.

24 **COUNT XIX**

25 **Declaration of Noninfringement of U.S. Patent No. 9,059,819**

26 313. Apple restates and incorporates by reference each of the allegations set
27 forth above.

1 314. Representative claim 1 of the '819 patent reads as follows (claim
2 element enumeration added for convenience):

Claim 1	
[a]	A method for wireless communications, comprising:
[b]	estimating channel quality information for a plurality of downlink carriers;
[c]	identifying a number of activated carriers in the plurality of downlink carriers; and
[d]	configuring an uplink control channel based at least in part on a number of activated carriers in the plurality, of downlink carriers,
[e]	wherein the uplink control channel is configured using an encoding scheme selected based at least in part on the number of activated carriers while maintaining a constant feedback cycle independent of the number of activated carriers.

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11 315. The '819 patent is not essential to any Apple-practiced 3G/UMTS
12 standard, including, but not limited to, the standard described in 3GPP TS 25.212, at
13 least because, by way of non-limiting example, the 3G/UMTS standard does not
14 require the following claim limitation: 1.[b].

15 316. No claim of the '819 patent has been or is infringed, either directly,
16 contributorily, or by inducement, literally or under the doctrine of equivalents, by
17 Apple or the purchasers of Apple's products through the manufacture, use,
18 importation, sale, and/or offer for sale of Apple's products, at least because, by way
19 of non-limiting example, Apple's products do not satisfy the following claim
20 limitation: 1.[b].

21 317. As a result of the acts described in the foregoing paragraphs, there
22 exists a definite and concrete, real and substantial, justiciable controversy between
23 Apple and Qualcomm regarding the noninfringement of the '819 patent with respect
24 to Apple's products. This controversy is of sufficient immediacy and reality to
25 warrant the issuance of a Declaratory Judgment.

26 318. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et
27 seq., Apple requests the declaration of the Court that Apple does not infringe and
28 has not infringed any claim of the '819 patent.

COUNT XX

Declaration of FRAND Royalties for U.S. Patent No. 9,059,819

319. Apple restates and incorporates by reference each of the allegations set forth above.

320. Qualcomm has contractually obligated to license the '819 patent on FRAND terms and conditions.

321. As a result of the acts described in the foregoing paragraphs, there exists a definite and concrete, real and substantial, justiciable controversy between Apple and Qualcomm regarding the FRAND royalty for the '819 patent with respect to Apple's products. This controversy is of sufficient immediacy and reality to warrant the issuance of a Declaratory Judgment.

322. To the extent that the '819 patent is actually essential to a standard and infringed by Apple, then Qualcomm must (a) select as a royalty base, at most, the smallest salable unit substantially embodying the '819 patent, and (b) apply to that royalty base a reasonable royalty rate that reflects the actual technical contribution to the standard that is attributable to the patent. See CSIRO, 809 F.3d at 1305; Ericsson, 773 F.3d 1209; Innovatio IP Ventures, 2013 WL 5593609, at *13; Microsoft, 2013 WL 2111217, at *74. As discussed above, Qualcomm has not complied with these requirements, and has not offered FRAND terms, even if Apple has been benefitting from a license between Qualcomm and Apple's CMs. As an alternative to its request for a declaration of noninfringement, Apple is entitled to a judicial declaration that sets a FRAND royalty for the '819 patent in this manner.

COUNT XXI

Declaration of Noninfringement of U.S. Patent No. 7,096,021

323. Apple restates and incorporates by reference each of the allegations set forth above.

324. Representative claim 12 of the '021 patent reads as follows (claim

1 element enumeration added for convenience):

Claim 12	
2 [a]	A terminal of a cellular radio system configures to initiate, while using a first cellular radio system, measurement of the power levels of signals transmitted by at least one second cellular radio system for a decision to change over to said second cellular radio system, comprising:
3 [b]	means for receiving at least one threshold value transmitted to the terminal by the first cellular radio system,
4 [c]	means for measuring a power level of a signal transmitted by at least one base station of the first cellular radio system,
5 [d]	means for comparing the measured power level with said at least one threshold value,
6 [e]	means for transmitting to the first cellular radio system a request for a free time period in which to perform the measurement, said means being arranged to transmit the request for the free time period in which to perform the measurement only after said measured power level remains below said at least one threshold value, and
7 [f]	means for initiating the measurement of the power level of the signal of at least one base station of said at least one second cellular radio system during at least one said free time period in which to perform the measurement,
8 [g]	wherein the terminal maintains radio connection with the first cellular radio system while measuring the second cellular radio system.

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325. The '021 patent is not essential to the 3G/UMTS or the 4G/LTE standard, including, but not limited to, the standard described in 3GPP TS 36.214, 36.300, 36.331, at least because, by way of non-limiting example, the 4G/LTE standard does not require the following claim limitation: 12.[e].

326. No claim of the '021 patent has been or is infringed, either directly, contributorily, or by inducement, literally or under the doctrine of equivalents, by Apple or the purchasers of Apple's products through the manufacture, use, importation, sale, and/or offer for sale of Apple's products, at least because, by way of non-limiting example, Apple's products do not satisfy the following claim limitation: 12.[e].

327. As a result of the acts described in the foregoing paragraphs, there exists a definite and concrete, real and substantial, justiciable controversy between Apple and Qualcomm regarding the noninfringement of the '021 patent with respect

1 to Apple's products. This controversy is of sufficient immediacy and reality to
2 warrant the issuance of a Declaratory Judgment.

3 328. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et
4 seq., Apple requests the declaration of the Court that Apple does not infringe and
5 has not infringed any claim of the '021 patent.

6 **COUNT XXII**

7 **Declaration of FRAND Royalties for U.S. Patent No. 7,096,021**

8 329. Apple restates and incorporates by reference each of the allegations set
9 forth above.

10 330. Qualcomm has contractually obligated to license the '021 patent on
11 FRAND terms and conditions.

12 331. As a result of the acts described in the foregoing paragraphs, there
13 exists a definite and concrete, real and substantial, justiciable controversy between
14 Apple and Qualcomm regarding the FRAND royalty for the '021 patent with
15 respect to Apple's products. This controversy is of sufficient immediacy and reality
16 to warrant the issuance of a Declaratory Judgment.

17 332. To the extent that the '021 patent is actually essential to a standard and
18 infringed by Apple, then Qualcomm must (a) select as a royalty base, at most, the
19 smallest salable unit substantially embodying the '021 patent, and (b) apply to that
20 royalty base a reasonable royalty rate that reflects the actual technical contribution
21 to the standard that is attributable to the patent. See CSIRO, 809 F.3d at 1305;
22 Ericsson, 773 F.3d 1209; Innovatio IP Ventures, 2013 WL 5593609, at *13;
23 Microsoft, 2013 WL 2111217, at *74. As discussed above, Qualcomm has not
24 complied with these requirements, and has not offered FRAND terms, even if Apple
25 has been benefitting from a license between Qualcomm and Apple's CMs. As an
26 alternative to its request for a declaration of noninfringement, Apple is entitled to a
27 judicial declaration that sets a FRAND royalty for the '021 patent in this manner.
28

COUNT XXIII

Declaration of Unenforceability Due to Exhaustion

333. Apple restates and incorporates by reference each of the allegations set forth above.

334. Qualcomm sells baseband processor chipsets to Apple’s CMs through its sales subsidiary or branch, QCT.

335. The sale of Qualcomm chipsets to Apple’s CMs is authorized by Qualcomm.

336. Under the patent exhaustion doctrine, this authorized sale of chipsets by Qualcomm to Apple’s CMs exhausts Qualcomm’s patent rights with respect to all patents embodied in those chipsets. Quanta Computer, 553 U.S. at 638.

337. As described above, Qualcomm has sought, and continues to seek, separate patent license fees from Apple’s CMs for patents embodied in the chipsets Qualcomm sells to Apple’s CMs, a practice that is prohibited under the patent exhaustion doctrine. Apple’s CMs pass on these license fees to Apple in full.

338. Apple pays the entirety of both the license fee and the cost of the chipset itself through the web of agreements described herein. Apple pays the fees that Qualcomm demands through Qualcomm’s agreements with Apple’s CMs. Despite requests, Qualcomm has refused to give Apple access to the CMs’ agreements with Qualcomm.

339. Qualcomm has attempted to evade the patent exhaustion doctrine by reorganizing its corporate structure to create an artificial division between (a) Qualcomm Inc., which holds Qualcomm’s patents, (b) Qualcomm’s wholly owned subsidiary QTI, and (c) Qualcomm’s sales segment QTC, which is operated by QTI and its subsidiaries.

340. Qualcomm, QTI, and QCT should be treated as a single entity for purposes of the patent exhaustion doctrine. Qualcomm’s parent and subsidiary

1 entities share such a unity of interest that the separate personalities of the
2 corporations no longer exist. The purported division between Qualcomm’s parent
3 and subsidiary entities is illusory and an attempt to evade the patent laws.
4 Qualcomm, QTI, and QCT collude in refusing to sell chipsets to manufacturers
5 unless they enter into separate patent license agreements, demonstrating a unity of
6 interest of extracting excess royalties for Qualcomm for patents that would
7 otherwise be exhausted through sale. Respecting Qualcomm’s corporate
8 separateness will lead to an inequitable result, allowing Qualcomm to continue to
9 “double-dip” and collect excess royalties for patents exhausted through the
10 authorized sale of Qualcomm chipsets.

11 341. As a result of the acts described in the foregoing paragraphs, there
12 exists a definite and concrete, real and substantial, justiciable controversy between
13 Apple and Qualcomm regarding the exhaustion of Qualcomm’s patent rights with
14 respect to patents embodied in baseband processor chipsets sold by Qualcomm to
15 Apple’s CMs. This controversy is of sufficient immediacy and reality to warrant the
16 issuance of a Declaratory Judgment.

17 342. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et
18 seq., Apple requests a judicial declaration that the sale of Qualcomm’s baseband
19 processor chipsets to Apple’s CMs exhausts Qualcomm’s patent rights for patents
20 embodied in those chipsets.

21 **COUNT XXIV**

22 **Monopolization**

23 343. Qualcomm’s conduct, as alleged herein, constitutes unlawful
24 monopolization of the market for CDMA and premium LTE chipsets in violation of
25 Section 2 of the Sherman Act, 15 U.S.C. § 2.

26 344. The relevant technology markets for Apple’s monopolization claims are
27 the markets for the technology embodied in its cellular SEPs. ETSI and other SSOs
28

1 have promulgated standards for a number of wireless communication standards,
2 including LTE. By declaring its patents to be essential to those standards, and
3 inducing reliance on its FRAND commitments, Qualcomm acquired monopoly
4 power in the market for the technologies on which each relevant SEP reads, and any
5 ex ante alternatives to those technologies.

6 345. Before a standard is adopted, all of the alternative technologies to
7 perform each particular function within the standard compete in a relevant product
8 market consisting of all technologies capable of performing that function. Once a
9 SSO selects a particular patented technology to perform a particular function,
10 competition within that technology market is eliminated, as competing technologies
11 are no longer available as alternative means of implementing the standard. As a
12 result, standardization confers monopoly power on patented technologies embodied
13 in the standard, including the relevant standards on which Qualcomm's declared-
14 essential patents read.

15 346. Alternatives to Qualcomm's declared-essential patents were available in
16 the LTE standard setting process. Qualcomm's FRAND commitments induced
17 ETSI and other SSOs to incorporate the technologies covered by Qualcomm's
18 declared-essential patents in the LTE standard, thereby eliminating competition
19 within the relevant technology markets and conferring monopoly power within
20 those markets on Qualcomm.

21 347. One relevant product market for the purposes of Apple's
22 monopolization claim is the sale of premium LTE baseband processor chipsets. No
23 other product, including 3G UMTS, CDMA, or low-end or mid-range LTE chipsets,
24 are a substitute for premium LTE chipsets for use in flagship devices such as
25 Apple's iPhone intended for use on carrier networks that require LTE compatibility,
26 and no other product constrains the price of premium LTE chipsets at levels below
27 the monopoly price.

28

1 348. Another relevant product market for the purposes of Apple's
2 monopolization claim is the sale of CDMA baseband processor chipsets. No other
3 product, including 3G UMTS or LTE chipsets, are a substitute for CDMA chipsets
4 for use in devices intended for use on carrier networks that require CDMA
5 compatibility, and no other product constrains the price of CDMA chipsets at levels
6 below the monopoly price.

7 349. The relevant geographic market is worldwide.

8 350. As alleged above, Qualcomm's monopoly power in the relevant product
9 markets is shown by its high and durable market shares, substantial barriers to
10 entry, and Qualcomm's demonstrated ability to repeatedly force Apple to accept
11 one-sided, non-standard, and unreasonable supply terms.

12 351. Since at least 2007, Qualcomm has engaged in systematic, continuous
13 conduct to exclude competition in the relevant chipset markets. Qualcomm's
14 anticompetitive and exclusionary conduct is a multi-faceted but synergistic whole,
15 with each of the parts making possible and reinforcing the effects of the others.
16 Qualcomm's anticompetitive conduct is based on the breach of its FRAND
17 commitments for its SEPs, which in turn gives Qualcomm the power to force
18 purchasers of its chipsets to first take a license to its SEPs, threaten disloyal chipset
19 customers with exorbitant SEP royalties, and to tie access to lower (but still far
20 above FRAND) royalties to exclusivity or near-exclusivity in the purchase of
21 Qualcomm chipsets. This conduct has foreclosed Qualcomm's competitors from
22 dealing with Apple, a key purchaser of chipsets, leading to the marginalization and
23 exit of many of those competitors, and to the acquisition and maintenance by
24 Qualcomm of monopoly power. But-for Qualcomm's conduct as alleged herein,
25 rival chipset manufacturers would have become stronger competitors to Qualcomm.

26 352. Qualcomm's exclusionary conduct includes (i) refusing to deal with
27 competitors, in contravention of its FRAND commitments, (ii) gagging Apple's
28

1 ability to challenge Qualcomm's non-FRAND licensing scheme, through paragraph
2 2 of Section 7 of the BCPA; (iii) tying the purchase of its chipsets to the licensing
3 of its SEPs; and (iv) requiring exclusivity from Apple as a condition of partial relief
4 from Qualcomm's exorbitant and non-FRAND royalties.

5 353. First, Qualcomm's refusal to offer SEP licenses on FRAND terms to its
6 competitors, as alleged above, is an unlawful refusal to deal with competitors and
7 an act of monopolization under Section 2 of the Sherman Act. A FRAND license
8 would give competing chipset manufacturers the right to market authorized, patent-
9 exhaustive sales of chipsets to Apple and other mobile device suppliers.
10 Qualcomm's failure to license on FRAND terms eliminates the ability of Apple and
11 other mobile device suppliers to purchase chipsets from Qualcomm's competitors
12 without also paying royalties to Qualcomm, and thus exposes Apple and other
13 mobile device suppliers to the threat of exorbitant non-FRAND royalties based on
14 the price of their mobile devices, a threat which Qualcomm uses to force Apple and
15 others to deal exclusively or near-exclusively with Qualcomm on the purchase of
16 chipsets. In this way, Qualcomm's refusal to offer a FRAND license to competitors
17 has a close causal connection with the acquisition and maintenance of monopoly
18 power in the LTE chipset market. But-for Qualcomm's FRAND evasion,
19 Qualcomm would have been forced to offer exhaustive patent licenses to its cellular
20 SEPs on FRAND terms to Intel, Broadcom, and others. An exhaustive patent
21 license to Qualcomm's cellular SEPs would have made these chipset suppliers more
22 effective competitors to Qualcomm in the chipset market, leading to lower prices
23 and enhanced innovation in the chipset market, to the benefit of Apple and
24 ultimately of consumers.

25 354. There is no legitimate business justification for Qualcomm's strategic
26 refusal to license other chipset manufacturers. Qualcomm for many years licensed
27 such manufacturers. Qualcomm itself insists that device manufacturers do precisely
28

1 what Qualcomm refuses to do: grant licenses to their SEPs to Qualcomm’s chipset
2 unit. Given the relative paucity of chipset competitors and the fact that Qualcomm’s
3 cellular SEPs are generally embodied in the chipset (or components thereof), it
4 would be considerably more efficient for licensing to occur first and foremost at the
5 chipset level.

6 355. Second, paragraph 2 of Section 7 of the BCPA violates Section 2 of the
7 Sherman Act by shielding Qualcomm’s non-FRAND licensing scheme from
8 scrutiny by the judiciary and by government enforcement agencies. The BCPA’s
9 gag clause prevented Qualcomm’s illegal and extortionate scheme from coming to
10 light for years, and thereby enhanced and extended Qualcomm’s monopoly power
11 in the relevant chipset markets.

12 356. Qualcomm’s recent conduct confirms the exclusionary purpose and
13 effect of the BCPA’s gag clause. Qualcomm’s interpretation and enforcement of the
14 gag clause, penalizing Apple for engaging with competition enforcement agencies,
15 reveals the fundamentally anticompetitive nature of that provision, and its integral
16 role in Qualcomm’s multi-faceted scheme to evade FRAND and exclude chipset
17 competitors.

18 357. Practices that eliminate or make less likely the prospect that invalid or
19 abusive patent licensing schemes will be challenged fall within the scope of the
20 antitrust laws. As the Supreme Court made clear in FTC v. Actavis, Inc., the
21 antitrust and patent laws alike seek to “eliminate unwarranted patent grants so the
22 public will not ‘continually be required to pay tribute to would-be monopolists
23 without need or justification.’” 133 S. Ct. 2223, 2233 (2013) (quoting Lear, Inc. v.
24 Adkins, 395 U.S. 653, 670 (1969)).

25 358. As alleged above, Qualcomm’s FRAND commitment is—or at least
26 should have been—an essential bulwark against the exercise of the power conferred
27 on Qualcomm through the standardization process. By evading its FRAND
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1 commitments, Qualcomm gained the power to exclude competition in the chipset
2 market, thereby harming Apple, and by penalizing Apple's ability to challenge
3 Qualcomm's FRAND evasion, Qualcomm maintained that power. Qualcomm's
4 FRAND evasion, and paragraph 2 of Section 7 of the BCPA which protected that
5 evasion against legal challenge, contributed to the maintenance of monopoly power
6 by allowing Qualcomm to continue the anticompetitive and exclusionary conduct
7 made possible by its FRAND evasion. But-for paragraph 2 of Section 7 of the
8 BCPA, Qualcomm's FRAND evasion, and its grasp on monopoly power in the
9 CDMA chipset market and the premium LTE chipset market, would have been
10 eliminated sooner, saving Apple and consumers at least hundreds of millions of
11 dollars.

12 359. The exclusionary tendency of paragraph 2 of Section 7 of the BCPA is
13 magnified by the fact that Apple was one of the device manufacturers best
14 positioned, and most highly motivated, to challenge Qualcomm's compliance with
15 FRAND. By muzzling Apple, Qualcomm eliminated a key constraint on its ability
16 to evade FRAND and exclude chipset competition, thereby meaningfully
17 contributing to the acquisition and maintenance of monopoly power in the relevant
18 chipset markets.

19 360. FRAND challenges by implementers of a standard such as Apple are
20 vital to the enforcement of the FRAND commitment. Just as implementers are
21 normally in the best position to determine whether or not an intellectual property
22 right is invalid, implementers are often well positioned to know whether a licensor's
23 terms are compliant with FRAND. Apple's prolific track record as a willing
24 licensee of cellular SEPs from other patentees gives it insight into what FRAND is
25 and how far Qualcomm's terms depart from FRAND, and positioned it well to
26 challenge Qualcomm's FRAND evasion.

27 361. Similarly, implementers such as Apple generally have the greatest
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1 economic incentive to challenge the terms of Qualcomm’s SEP licensing. A
2 successful FRAND challenge by Apple would result directly in a more competitive
3 chipset market, and lower SEP royalties and chipset prices, to the benefit of Apple
4 and consumers. As a large and strategic purchaser of chipsets, Apple had
5 particularly strong incentives in this regard. No other device manufacturer likely
6 would have benefitted as much as Apple from the introduction of additional
7 competition in the chipset market, and for these reasons muzzling Apple through
8 Section 7, paragraph 2 of the BCPA contributed significantly to the maintenance of
9 Qualcomm’s non-FRAND licensing and the monopoly power it made possible.

10 362. By exposing Apple to billions of dollars in additional royalty payments
11 during the term of a FRAND challenge, Section 7, paragraph 2 of the BCPA
12 reduced Apple’s ability and incentive to enforce Qualcomm’s FRAND
13 commitments.

14 363. By limiting Apple’s ability and incentive to challenge Qualcomm’s
15 compliance with FRAND, Section 7, paragraph 2 of the BCPA harmed competition
16 and consumers. Specifically, Section 7, paragraph 2 allowed Qualcomm to continue
17 to charge non-FRAND royalties at the expense of consumers, and to extend its
18 exclusionary and non-FRAND licensing scheme.

19 364. Section 7, paragraph 2 is outside the scope of Qualcomm’s patent
20 rights. The restriction of Apple’s freedom to challenge Qualcomm’s compliance
21 with FRAND is not an incident of Qualcomm’s patent rights. See Bendix Corp. v.
22 Balax, Inc., 421 F.2d 809, 821 (7th Cir. 1970) (“From all this we can only conclude
23 that the right to estop licensees from challenging a patent is not part of the ‘limited
24 protection’ afforded by the patent monopoly.”).

25 365. Competition agencies around the world have found similar restraints to
26 be anticompetitive. For example, the European Commission found it
27 anticompetitive that a SEP owner insisted, under the threat of the enforcement of an
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1 injunction, that Apple give up its rights to challenge the validity or infringement by
2 Apple's mobile devices of those SEPs. Similarly, the NDRC in 2015 fined
3 Qualcomm nearly \$1 billion for anticompetitive conduct that included the
4 imposition of contract terms on device manufacturers that penalized, but did not
5 expressly prevent, them from challenging Qualcomm's SEP licensing. The FTC
6 recently alleged that Qualcomm's anticompetitive business model was premised on
7 just such a practice of coercing customers into abandoning FRAND determinations
8 by the courts or neutral third parties, and filed suit to permanently enjoin the
9 scheme.

10 366. Third, for many years, Qualcomm has tied together the sale of its
11 baseband processor chipsets and licenses to its SEPs. Qualcomm will sell baseband
12 processor chipsets only to "Authorized Purchasers," who in turn must license a
13 broad portfolio of patent rights, including Qualcomm's SEPs. Under this
14 arrangement, Apple's CMs were required to enter into contracts with Qualcomm
15 conditioning sales of baseband processor chipsets on the license of Qualcomm's
16 patent portfolio, passing licensing fees along to Apple. Due to Qualcomm's refusal
17 to license rival chipset manufacturers, device manufacturers purchasing baseband
18 processor chipsets from Qualcomm's competitors must also become Authorized
19 Purchasers of Qualcomm, despite the fact that they may purchase few or no chipsets
20 from Qualcomm, and similarly take a license to Qualcomm's patent rights,
21 including its SEPs. In essence, Qualcomm makes licenses to its SEPs available to
22 only those who purchase its chipsets, and chipsets available to only those who
23 license its SEPs. In this manner, Qualcomm ensures that all chipset purchasers,
24 whether they buy chipsets from Qualcomm or a competitor, must negotiate with
25 Qualcomm for a license.

26 367. By ensuring that all chipset purchasers must negotiate a license to
27 Qualcomm's SEPs, regardless of where those chipsets are purchased, Qualcomm
28

1 gains the ability to levy a tax—in the form of non-FRAND royalties—on the
2 chipsets sold by Qualcomm’s competitors. By giving Qualcomm the ability to levy
3 a tax on the chipsets sold by its competitors, the Authorized Purchaser requirement
4 gives Qualcomm the ability to raise its rivals’ costs and make them less effective
5 competitors. In this way, the Authorized Purchaser requirement is exclusionary,
6 giving Qualcomm the power to exclude competition and harm device
7 manufacturers, including Apple, through the imposition of non-FRAND royalties
8 and monopoly overcharges on chipsets.

9 368. Qualcomm’s high nominal royalty rates for its SEPs give handset
10 manufacturers powerful incentives to seek discounts off those rates, particularly
11 manufacturers of feature-rich smartphones and tablets such as Apple, who are
12 disproportionately burdened by Qualcomm’s royalty structure. Qualcomm uses the
13 threat of its high nominal royalty rates for its SEPs to force Apple and other device
14 manufacturers to purchase substantial quantities of its baseband processor chipsets,
15 offering in exchange to reduce the royalty for its SEPs to levels closer to, although
16 still far above, the range required by FRAND.

17 369. Through threatening to impose non-FRAND royalties for its SEPs, and
18 then conditioning discounts off of those confiscatory royalty rates on chipset
19 loyalty, Qualcomm exercises substantial market power. In particular, Qualcomm
20 exercises this power directly, by charging SEP royalties far in excess of FRAND
21 rates, and indirectly, by forcing the purchase of substantial quantities of a second
22 product—baseband processor chipsets—that Apple and other customers would
23 prefer to purchase from Qualcomm’s rivals, and by seeking to impose other
24 burdensome terms, including cross-licenses to non-SEPs. Qualcomm’s ability to
25 impose a burdensome tie of a license to its SEPs and its baseband processor chipsets
26 is direct evidence of the exercise of monopoly power.

27 370. Qualcomm ties licenses to its SEPs to purchases of baseband processor
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1 chipsets despite the requests of device manufacturers for the provision of these
2 products on an unbundled basis. Given the opportunity, many device manufacturers,
3 including Apple, would prefer to license Qualcomm's SEPs at FRAND rates, and to
4 purchase baseband processor chipsets from Qualcomm's competitors, rather than be
5 forced to purchase from Qualcomm a bundle comprising a license to Qualcomm's
6 SEPs and substantial quantities of baseband processor chipsets.

7 371. Qualcomm's tie of licenses to its SEPs and baseband processor chipsets
8 forecloses substantial portions of the baseband processor chipset market to
9 Qualcomm's competitors, particularly the sale of premium LTE chipsets for use in
10 the feature-rich smartphones and tablets disproportionately burdened by
11 Qualcomm's royalty structure. Due to the importance of scale economies in the
12 manufacture and sale of baseband processor chipsets, and the significant
13 commercial validation and learning-by-doing that would be available to rivals but-
14 for Qualcomm's foreclosure of sales to Apple, the foreclosure attributable to
15 Qualcomm's tie of baseband processor chipsets and licenses to its SEPs is
16 substantial and significantly contributes to the creation and maintenance of
17 Qualcomm's monopoly power.

18 372. There is no procompetitive justification for the Authorized Purchaser
19 requirement. Other suppliers convey intellectual property rights in the sale of the
20 products embodying that intellectual property, as does Qualcomm in markets where
21 it lacks monopoly power.

22 373. Fourth, since 2011, Qualcomm has conditioned billions of dollars in
23 lump sum payments, discounts, rebates, and royalty rebates and caps on the express
24 agreement by Apple to purchase chipsets for smartphones and tablet computers
25 exclusively from Qualcomm, through the TA and the FATA. It has done so in a
26 variety of ways, including (a) specific forward-looking loyalty rebates on chipset
27 prices that are expressly conditioned on exclusivity; (b) clawback of previously paid
28

1 rebates if Apple uses any non-Qualcomm chipsets; and (c) a royalty cap implicitly
2 conditioned on chipset exclusivity. [**Exhibit E**, TA § 1.5; **Exhibit F**, FATA
3 §§ 1.3A(c), 1.3B(b), 1.5, 1.5A.]

4 374. Until recently, these payments have precluded Apple from cost-
5 effectively shifting even a portion of its chipset purchases from Qualcomm to
6 Qualcomm's competitors, because shifting even a small portion of Apple's
7 purchases to a competitor would result in lost price and royalty concessions on all
8 purchases from Qualcomm (including in many cases price concessions on past
9 purchases), including on many products and product lines that Qualcomm's
10 competitors could not supply at all (i.e., CDMA chipsets) or in sufficient quantities
11 to meet all of Apple's needs (e.g., premium LTE chipsets). Although Apple has for
12 many years been ready and able to switch a smaller portion of its baseband
13 processor chipset purchases (e.g., for non-CDMA iPads) to Qualcomm's rivals,
14 Qualcomm's imposition of exclusivity has prevented Apple from switching
15 suppliers on a less than full-line basis, even with non-Qualcomm chipsets priced
16 substantially lower than comparable Qualcomm chipsets.

17 375. But-for these exclusivity conditions, to which Apple was forced to
18 agree to avoid paying royalty rates on all purchases of chipsets practicing
19 Qualcomm's SEPs that were well above FRAND levels, Apple would have shifted
20 at least a portion of its chipset purchases to Qualcomm's rivals, thereby making
21 those rivals more effective competitors to Qualcomm in the future, and providing to
22 Apple the benefit of a more competitive baseband processor chipset market.

23 376. However, until recently, these penalties have made it economically
24 infeasible for Apple to purchase any baseband processor chipsets from Qualcomm's
25 competitors. It is not feasible to switch a substantial portion of Apple's
26 requirements to a new supplier all at once, or even over a short period of time, and
27 therefore Qualcomm's rivals could not compete on the all-or-nothing terms imposed
28

1 by Qualcomm.

2 377. As a result, from Fall 2011 through Spring 2016, all of Apple’s new
3 cellular devices used Qualcomm chipsets exclusively. Apple used only Qualcomm
4 baseband processor chipsets in the iPhone 4s, iPhone 5, iPhone 5s, iPhone 5c,
5 iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, and iPhone SE and in cellular-
6 enabled models of the iPad third generation, iPad fourth generation, iPad Air, iPad
7 Air 2, iPad Minis, and iPad Pros.

8 378. The anticompetitive effects of Qualcomm’s conduct include the
9 elevation of CDMA and premium LTE chipset prices above competitive levels, the
10 imposition on Apple of onerous, unreasonable, and costly supply terms, the
11 suppression of innovation in the chipset market, and the elimination of Apple’s
12 ability to choose its supplier of chipsets in a competitive market.

13 379. Foreclosure of Apple was competitively significant due to Apple’s
14 status as a high-volume purchaser of CDMA and premium LTE chipsets, as well as
15 the significant benefits that come from being a component supplier to Apple. Those
16 benefits include the opportunity to learn about consumer demand from Apple, to
17 learn about Apple’s demanding technical requirements, to sell large volumes of
18 chipsets to a single buyer for a single model sold world-wide, and the commercial
19 validation that comes from supplying components to Apple. By foreclosing
20 competitors from dealing with Apple, Qualcomm deprived those competitors of
21 these benefits, cementing its grasp on monopoly power in the CDMA and premium
22 LTE chipset markets.

23 380. There is no procompetitive justification for the exclusivity terms or
24 royalty rebates. Qualcomm’s imposition of exclusivity was not reasonably
25 necessary to protect any investments that Qualcomm made in customizing its
26 products for Apple, for which Qualcomm separately charges Apple, or to encourage
27 Qualcomm to make available sufficient supply for Apple’s products.

28

COUNT XXV

Violations of the California Unfair Competition Law

381. Apple restates and incorporates by reference each of the allegations set forth above.

382. By the acts alleged, Qualcomm has engaged in unfair competition within the meaning of California Business & Professional Code § 17200, et seq., (the “Unfair Competition Law” or “UCL”), which prohibits “unlawful, unfair or fraudulent” business acts and practices.

383. For example, it is unlawful under the Unfair Competition Law for Qualcomm to withhold nearly a billion dollars in BCP Payments in retaliation for Apple’s engagement with competition and other regulatory bodies. The interpretation that Qualcomm is advancing—importing a term into the BCPA that would allow Qualcomm to withhold payments based on its view of the truth or falsity of a statement and to retaliate against Apple for responding to agency requests, for example—violates public policy by discouraging Apple’s cooperation with agency investigations. In addition, by discouraging Apple from cooperating with antitrust agency investigations, which by definition protect consumers from anticompetitive conduct, Qualcomm is violating the antitrust laws. Columbia Metal Culvert Co. v. Kaiser Aluminum & Chem. Corp., 579 F.2d 20, 30–32 (3d Cir. 1978) (holding that retaliation against customer for placing orders to competitor could constitute monopolization or attempted monopolization in violation of Section 2 of the Sherman Act).

384. Moreover, Qualcomm’s withholding of nearly a billion dollars in BCP Payments is unlawful because Qualcomm’s interpretation of that provision and actions in withholding payment constitute an unreasonable penalty within the meaning of California Civil Code § 1671(b). As Qualcomm is interpreting it, the second paragraph of Section 7 of the BCPA is an unreasonable liquidated damages

1 provision because the BCP Payments that Qualcomm withheld bear no reasonable
2 relationship to the range of actual damages that Qualcomm or Apple could have
3 anticipated would flow from a breach at the time the contract was made. Thus,
4 Qualcomm's interpretation creates an unlawful penalty against Apple, and Apple
5 has suffered harm as a result.

6 385. In addition, as alleged above, Qualcomm has unlawfully monopolized
7 the markets for CDMA chipsets and premium LTE chipsets, in violation of Section
8 2 of the Sherman Act, 15 U.S.C. § 2. This action "threatens an incipient violation of
9 an antitrust law, or violates the policy or spirit of one of those laws because its
10 effects are comparable to or the same as a violation of the law, or otherwise
11 significantly threatens or harms competition." Cel-Tech Comm'ns, Inc. v. L.A.
12 Cellular Tel. Co., 973 P.2d 527, 544 (Cal. 1999).

13 386. As another example, Qualcomm engaged in unlawful conduct by
14 refusing to offer licenses consistent with its FRAND commitments with respect to
15 the Patents-in-Suit, despite its commitments to, among other SSOs, ETSI, and
16 despite the market's reliance on Qualcomm's FRAND commitments. Believing
17 Qualcomm was acting in good faith, these SSOs agreed to incorporate Qualcomm's
18 patents into various mobile wireless standards, including standards for LTE. Now,
19 having obtained the dominant position that comes with having its patents declared
20 essential, Qualcomm seeks and has sought to use its dominant position to exact the
21 very unfair royalties it promised to eschew. Qualcomm seeks and has sought to use
22 its dominant position in the supply of CDMA and premium LTE chipsets to exact
23 unfair, unreasonable, and discriminatory royalties.

24 387. Qualcomm's unlawful business acts and practices significantly threaten
25 and harm competition in the market for mobile wireless handsets, tablets, and other
26 CDMA- and LTE-compliant products, in California and elsewhere, thereby causing
27 injury to consumers. These threatened injuries include the inevitable passing on to
28

1 consumers of improper royalties demanded by Qualcomm.

2 388. Qualcomm's unlawful and deceptive business acts and practices are a
3 direct and proximate cause of injury to Apple. Apple has suffered harm in
4 California and elsewhere as a supplier of handsets, tablets, and other CDMA- and
5 LTE-compatible products. Further, Apple has suffered or faces the threat of loss of
6 profits, loss of customers and potential customers, and loss of goodwill and product
7 image in the market for CDMA- and LTE-compatible products.

8 389. Apple thus seeks an injunction pursuant to Section 17203 of the
9 California Business and Professions Code prohibiting Qualcomm from engaging in
10 these unlawful and deceptive business practices in the future, including an
11 injunction preventing Qualcomm from retaliating against Apple for its lawful
12 engagement with regulatory authorities, and other remedies available at law and
13 equity for the harm caused by Qualcomm's conduct.

14 **JURY DEMAND**

15 Apple demands a trial by jury on all issues so triable.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Apple prays for relief, as follows:

- 18 A. Adjudge and decree that Qualcomm is liable for breach of contract;
19 B. Adjudge and decree that Qualcomm breached the implied covenant of
20 good faith and fair dealing;
21 C. Adjudge and decree that Qualcomm must pay the remaining BCP
22 Payments, or damages in the amount of the accrued but unpaid
23 payments, plus interest;
24 D. Adjudge and decree that Apple did not breach its obligations under
25 the BCPA;
26 E. Adjudge and decree that each of the Patents-in-Suit is not essential to
27 any Apple-practiced 3G/UMTS and/or 4G/LTE standard and is not
28

1 infringed by Apple, or the purchasers of Apple’s products, through the
2 making, using, offering to sell, sale, or import of Apple’s products
3 that support 3G/UMTS and 4G/LTE;

4 F. As an alternative, for any of the Patents-in-Suit found to be actually
5 essential to any Apple-practiced 3G/UMTS and/or 4G/LTE standard
6 and infringed by Apple, adjudge and decree that Qualcomm has not
7 offered Apple a non-discriminatory license, with reasonable rates and
8 with reasonable terms and conditions;

9 G. As an alternative, for any of the Patents-in-Suit found to be actually
10 essential to any Apple-practiced 3G/UMTS and/or 4G/LTE standard
11 and infringed by Apple, adjudge, set, and decree a FRAND royalty
12 that (a) uses a royalty base of (at most) the smallest salable unit
13 substantially embodying the claimed invention and (b) sets a
14 reasonable rate applied to that royalty base that reflects the actual
15 technical contribution to the standard that is attributable to the patent;

16 H. As an alternative, if any of the Patents-in-Suit found to be actually
17 essential to any Apple-practiced 3G/UMTS and/or 4G/LTE standard
18 and infringed by Apple, declare that the Patents-in-Suit are
19 unenforceable as against Apple for patent exhaustion, where those
20 patents are embodied in Qualcomm chipsets used in Apple products;

21 I. Enjoin Qualcomm from further demanding excessive royalties from
22 Apple that are not consistent with Qualcomm’s obligations;

23 J. Order Qualcomm to disgorge non-FRAND royalties that Qualcomm
24 previously extracted from Apple, including royalties paid through
25 Apple’s CMs, and pay such unjust gain to Apple;

26 K. Adjudge and decree that Qualcomm cannot seek injunctive relief or
27 exclusion orders against Apple based on the Patents-in-Suit, but rather
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1 is limited to (at most) FRAND royalties as described above;

2 L. Adjudge and decree that Qualcomm has violated Section 2 of the
3 Sherman Act and enjoin Qualcomm from further violations of that
4 statute;

5 M. Adjudge and decree that Qualcomm violated the California Unfair
6 Competition Law and enjoin Qualcomm from further violations of
7 that Law;

8 N. Adjudge and decree that Qualcomm may not interrupt chipset supplies
9 relating to Apple’s iPhones and iPads;

10 O. Enjoin Qualcomm from taking any adverse or legal action against
11 Apple’s CMs related to the allegations in the Complaint;

12 P. Enjoin Qualcomm from imposing or enforcing any unlawful and/or
13 non-FRAND terms and conditions relating to Apple’s iPhones and
14 iPads;

15 Q. Enjoin Qualcomm from further unlawful actions;

16 R. Enter judgment awarding Apple its expenses, costs, and attorneys’
17 fees in accordance with Rule 54(d) of the Federal Rules of Civil
18 Procedure;

19 S. Award reasonable attorneys’ fees;

20 T. Award costs of suit; and

21 U. Award such other and further relief as the Court deems just and
22 proper.

23
24 Dated: January 20, 2017

Respectfully submitted,

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