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 17 *Electronics, Inc., FIH Mobile Ltd., Hon Hai*
Precision Industry Co., Ltd., Pegatron
 18 *Corporation, and Wistron Corporation*

19 *(Additional counsel listed below signature line)*

20 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

21 QUALCOMM INCORPORATED,

22 Plaintiff,

23 v.

24 COMPAL ELECTRONICS, INC., FIH
 25 MOBILE LTD., HON HAI PRECISION
 26 INDUSTRY CO., LTD., PEGATRON
 CORPORATION, and WISTRON
 CORPORATION,

27 Defendants.

Case No. 3:17-CV-01010-GPC-MDD

**DEFENDANTS' ANSWER AND
 DEFENSES; COUNTERCLAIMS;
 DEMAND FOR JURY TRIAL**

Judge: Hon. Gonzalo P. Curiel

PUBLIC REDACTED VERSION

28 **DEFENDANTS' ANSWER AND DEFENSES;
 COUNTERCLAIMS; DEMAND FOR JURY
 TRIAL**

Case No. 3:17-CV-01010-GPC-MDD

1 COMPAL ELECTRONICS, INC., FIH
2 MOBILE LTD., HON HAI PRECISION
3 INDUSTRY CO., LTD., PEGATRON
CORPORATION, and WISTRON
CORPORATION,

4 Counterclaimants,

5 v.

6 QUALCOMM INCORPORATED,

7 Counter Defendant.

8 COMPAL ELECTRONICS, INC., FIH
9 MOBILE LTD., HON HAI PRECISION
10 INDUSTRY CO., LTD., PEGATRON
CORPORATION, and WISTRON
CORPORATION,

11 Third-Party Plaintiffs,

12 v.

13 APPLE INC.

14 Third-Party Defendant.
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25
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27
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TABLE OF CONTENTS

	<u>Page</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
DEFENDANTS’ ANSWER AND AFFIRMATIVE DEFENSES	1
NATURE OF THE ACTION	2
PARTIES	11
JURISDICTION AND VENUE	13
FACTUAL ALLEGATIONS	14
I. ALLEGATIONS REGARDING QUALCOMM’S ALLEGED INNOVATION AND PATENT PORTFOLIO.....	14
II. ALLEGATIONS REGARDING QUALCOMM’S ALLEGED AGREEMENTS WITH EACH DEFENDANT	18
A. Allegations Regarding Qualcomm’s Alleged Agreement with Compal.....	18
B. Allegations Regarding Qualcomm’s Alleged Agreement with Foxconn	19
C. Allegations Regarding Qualcomm’s Alleged Agreement with Wistron	21
D. Allegations Regarding Qualcomm’s Alleged Agreement with Pegatron	22
E. Allegations Regarding Alleged Master Software Agreements	24
III. ALLEGATIONS REGARDING ALLEGED PAYMENT OF ROYALTIES	24
A. Allegations Regarding Alleged Manufacture of Non-Apple Products	25
B. Allegations Regarding Apple’s Alleged Entry into the Cellular Market.....	26
C. Allegations Regarding Alleged Royalty Payments for Apple and Non-Apple Products	28
IV. ALLEGATIONS REGARDING ALLEGED WITHHOLDING OF ROYALTIES	30
A. Allegations Regarding Alleged Failure To Pay Royalties During Fourth Quarter of 2016	31
B. Allegations Regarding Alleged Refusal to Pay Royalties for Apple Products ..	33

TABLE OF CONTENTS
(continued)

1		<u>Page</u>
2		
3	V. ALLEGATIONS REGARDING ALLEGED BREACH OF	
4	AGREEMENTS WITH QUALCOMM.....	39
5	A. Allegations Regarding Alleged Breach for Failing to Pay Royalties	39
6	B. Allegations Regarding Alleged Breach of Audit Obligations.....	41
7	C. Allegations Regarding Alleged Breach of Reporting Obligations.....	42
8	D. Allegations Regarding Alleged Breach of Master Software Agreement.....	42
9	COUNT I	43
10	Foxconn’s Alleged Breach of License Agreement.....	43
11	A. Foxconn’s Alleged Refusal to Pay Royalties.....	44
12	B. Foxconn’s Alleged Failure to Cooperate with Audits.....	46
13	C. Foxconn’s Alleged Reporting of Sales Information	47
14		
15	COUNT II	48
16	Foxconn’s Alleged Breach of Master Software Agreement.....	48
17	COUNT III.....	50
18	Pegatron’s Alleged Breach of License Agreement.....	50
19	A. Pegatron’s Alleged Refusal to Pay Royalties.....	51
20	B. Pegatron’s Alleged Failure to Cooperate with Audits	53
21	C. Pegatron’s Alleged Reporting of Sales Information	54
22	COUNT IV.....	55
23	Pegatron’s Alleged Breach of Master Software Agreement	55
24	COUNT V	57
25	Wistron’s Alleged Breach of License Agreement.....	57
26	A. Wistron’s Alleged Refusal to Pay Royalties	58
27	B. Wistron’s Alleged Failure to Cooperate with Audits.....	59
28		

TABLE OF CONTENTS
(continued)

1		<u>Page</u>
2		
3	C. Wistron’s Alleged Reporting of Sales Information.....	60
4	COUNT VI.....	61
5	Wistron’s Alleged Breach of Master Software Agreement.....	61
6	COUNT VII	63
7	Compal’s Alleged Breach of License Agreement	63
8	A. Compal’s Alleged Refusal to Pay Royalties	65
9	B. Compal’s Alleged Failure to Cooperate with Audits	66
10	C. Compal’s Alleged Reporting of Sales Information.....	68
11	COUNT VIII.....	69
12	Compal’s Alleged Breach of Master Software Agreement.....	69
13	COUNT IX.....	71
14	Declaratory Relief.....	71
15	JURY DEMAND	71
16	ANSWER TO QUALCOMM’S PRAYER FOR RELIEF	72
17	DEFENSES.....	72
18	AFFIRMATIVE DEFENSES.....	72
19	FIRST ADDITIONAL AFFIRMATIVE DEFENSE.....	72
20	(Failure to State a Claim).....	72
21	SECOND ADDITIONAL AFFIRMATIVE DEFENSE.....	72
22	(Not Entitled to Declaratory Judgment)	72
23	THIRD ADDITIONAL AFFIRMATIVE DEFENSE.....	73
24	(No Injunctive Relief).....	73
25	FOURTH ADDITIONAL AFFIRMATIVE DEFENSE.....	73
26	(Antitrust Violations).....	73
27	FIFTH ADDITIONAL AFFIRMATIVE DEFENSE.....	73
28	(Cartwright Act Violations).....	73

TABLE OF CONTENTS
(continued)

		<u>Page</u>
1		
2		
3	SIXTH ADDITIONAL AFFIRMATIVE DEFENSE	73
4	(Illegality)	73
5	SEVENTH ADDITIONAL AFFIRMATIVE DEFENSE.....	73
6	(Unenforceable Liquidated Damages / Penalty).....	73
7	EIGHTH ADDITIONAL AFFIRMATIVE DEFENSE	74
8	(Unconscionability).....	74
9	NINTH ADDITIONAL AFFIRMATIVE DEFENSE	74
10	(Unenforceability).....	74
11	TENTH ADDITIONAL AFFIRMATIVE DEFENSE.....	74
12	(Estoppel Due to FRAND Commitment)	74
13	ELEVENTH ADDITIONAL AFFIRMATIVE DEFENSE	74
14	(Estoppel).....	74
15	TWELFTH ADDITIONAL AFFIRMATIVE DEFENSE	75
16	(Excuse)	75
17	THIRTEENTH ADDITIONAL AFFIRMATIVE DEFENSE.....	75
18	(Breach by Qualcomm).....	75
19	FOURTEENTH ADDITIONAL AFFIRMATIVE DEFENSE.....	75
20	(Unclean Hands)	75
21	FIFTEENTH ADDITIONAL AFFIRMATIVE DEFENSE	75
22	(Unjust Enrichment).....	75
23	SIXTEENTH ADDITIONAL AFFIRMATIVE DEFENSE.....	75
24	(Patent Exhaustion).....	75
25	SEVENTEENTH ADDITIONAL AFFIRMATIVE DEFENSE	75
26	(License or Consent).....	75
27	EIGHTEENTH ADDITIONAL AFFIRMATIVE DEFENSE.....	76
28	(Licensed by Apple).....	76
	NINETEENTH ADDITIONAL AFFIRMATIVE DEFENSE.....	76

TABLE OF CONTENTS
(continued)

		<u>Page</u>
1		
2		
3	(Patent Misuse)	76
4	TWENTIETH ADDITIONAL AFFIRMATIVE DEFENSE.....	76
5	(Expiration of Patents)	76
6	TWENTY-FIRST ADDITIONAL AFFIRMATIVE DEFENSE.....	76
7	(Preemption by Federal Copyright Law).....	76
8	TWENTY-SECOND ADDITIONAL AFFIRMATIVE DEFENSE.....	76
9	(Copyright Misuse)	76
10	TWENTY-THIRD ADDITIONAL AFFIRMATIVE DEFENSE	76
11	(Lack of Injury).....	76
12	TWENTY-FOURTH ADDITIONAL AFFIRMATIVE DEFENSE.....	77
13	(Satisfaction of Duties)	77
14	TWENTY-FIFTH ADDITIONAL AFFIRMATIVE DEFENSE	77
15	(Lack of Causation).....	77
16	TWENTY-SIXTH ADDITIONAL AFFIRMATIVE DEFENSE.....	77
17	(Actions Justified or Privileged).....	77
18	TWENTY-SEVENTH ADDITIONAL AFFIRMATIVE DEFENSE	77
19	(Failure to Mitigate).....	77
20	TWENTY-EIGHTH ADDITIONAL AFFIRMATIVE DEFENSE.....	77
21	(Statute of Limitations).....	77
22	TWENTY-NINTH ADDITIONAL AFFIRMATIVE DEFENSE	77
23	(Laches / Waiver).....	77
24	THIRTIETH ADDITIONAL AFFIRMATIVE DEFENSE.....	78
25	(Ratification, Agreement, Acquiescence or Consent)	78
26	THIRTY-FIRST ADDITIONAL AFFIRMATIVE DEFENSE.....	78
27	(Res Judicata or Collateral Estoppel)	78
28	THIRTY-SECOND ADDITIONAL AFFIRMATIVE DEFENSE.....	78
	(Economic Loss Doctrine)	78

TABLE OF CONTENTS
(continued)

1		<u>Page</u>
2		
3	THIRTY-THIRD ADDITIONAL AFFIRMATIVE DEFENSE.....	78
4	(Reformation).....	78
5	THIRTY-FOURTH ADDITIONAL AFFIRMATIVE DEFENSE.....	78
6	(Rescission).....	78
7	THIRTY-FIFTH ADDITIONAL AFFIRMATIVE DEFENSE.....	78
8	(Offset).....	78
9	THIRTY-SIXTH ADDITIONAL AFFIRMATIVE DEFENSE.....	79
10	(Reservation of Rights).....	79
11	COUNTERCLAIMS	80
12	I. NATURE OF THE CASE.....	80
13	II. JURISDICTIONAL STATEMENT.....	88
14	A. Jurisdiction.....	88
15	B. Venue.....	89
16	III. THE PARTIES	89
17	IV. INDUSTRY BACKGROUND.....	91
18	A. Cellular Technology	91
19	B. Baseband Processors, or “Modem Chips”.....	92
20	C. Cellular Devices	93
21	D. Qualcomm’s Dominance in Modem Chip Supply	95
22	CDMA MODEM CHIPS.....	95
23	Premium LTE Modem Chips.....	96
24	V. QUALCOMM’S FRAND-ENCUMBERED CELLULAR STANDARD	
25	ESSENTIAL PATENTS	98
26	VI. QUALCOMM’S ALLEGED PATENT RIGHTS	107
27		
28		

TABLE OF CONTENTS
(continued)

		<u>Page</u>
1		
2		
3	VII. QUALCOMM USES ITS DOMINANT POSITION IN MODEM CHIPS	
4	TO PRECLUDE OEMS AND CMS FROM CHALLENGING ITS	
5	PREFERRED LICENSE TERMS.....	108
6	A. Qualcomm’s Agreements with Compal	109
7	B. Qualcomm’s Agreements with FIH and Hon Hai.....	110
8	C. Qualcomm’s Agreements with Wistron.....	112
9	D. Qualcomm’s Agreements with Pegatron.....	113
10	E. Qualcomm’s Announced Corporate Structure Is Designed to Implement the “No	
11	License-No Chips” Policy	115
12	F. Qualcomm’s “No License-No Chips” Policy Is Anomalous Among Component	
13	Suppliers	117
14	G. Qualcomm’s “No License-No Chips” Policy Is Anomalous Among SEP	
15	Licensors.....	118
16	H. Qualcomm’s “No License-No Chips” Policy Denies CMs and OEMs the	
17	Opportunity to Challenge Qualcomm’s License Terms in Court or to Negotiate	
18	Royalties Against the Backdrop of a Potential Challenge	119
19	I. Qualcomm’s “No License-No Chips” Policy Compels OEMs to Accept	
20	Qualcomm’s Preferred License Terms.....	122
21	J. Qualcomm’s “No License-No Chips” Policy Has Harmed Competition and	
22	Inflicted Antitrust Injury on Counterclaimants	123
23	VIII. QUALCOMM REFUSES TO LICENSE FRAND-ENCUMBERED SEPS	
24	TO ITS COMPETITORS	126
25	IX. QUALCOMM EXTRACTED MODEM CHIP EXCLUSIVITY FROM	
26	APPLE IN EXCHANGE FOR PARTIAL ROYALTY RELIEF	129
27	X. QUALCOMM BREACHES ITS CONTRACTS WITH	
28	COUNTERCLAIMANTS.....	134
	XI. QUALCOMM SEEKS TO ENFORCE ITS ANTICOMPETITIVE	
	SCHEME THROUGH LITIGATION	142

TABLE OF CONTENTS
(continued)

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XII. QUALCOMM PREVENTED APPLE FROM BRINGING ITS CONCERNS TO LAW ENFORCEMENT..... 143

Qualcomm Bundles, Ignores Patent Exhaustion Principles, Prevents Patent Exhaustion Suits 144

Qualcomm Demands Above-FRAND Royalties from Apple’s CMs for Exhausted Patents..... 147

Apple Responds to Agency Requests 148

Qualcomm Retaliates by Withholding Nearly \$1 Billion from Apple, While Demanding the Same from Apple’s CMs 149

XIII. QUALCOMM’S MONOPOLY AND MARKET POWER 154

XIV. HARM TO COMPETITION AND COUNTERCLAIMANTS CAUSED BY QUALCOMM’S PRACTICES..... 156

CLAIMS AND PRAYER FOR RELIEF 158

COUNT I..... 158

Sherman Act § 2..... 158

COUNT II..... 170

Sherman Act § 1..... 170

COUNT III 173

Cartwright Act (Cal. Bus. & Prof. Code § 16700 et seq.)..... 173

COUNT IV..... 176

Violations of the California Unfair Competition Law..... 176

COUNT V 177

Breach of Contract (FRAND Commitments)..... 177

COUNT VI..... 178

Breach of Implied Covenant of Good Faith and Fair Dealing (FRAND Commitments) 178

COUNT VII..... 179

Promissory Estoppel 179

COUNT VIII..... 180

TABLE OF CONTENTS
(continued)

		<u>Page</u>
1		
2		
3	Declaratory Judgment that Qualcomm Did Not Comply with Its Obligations	180
4	COUNT IX	180
5	Waiver.....	180
6	COUNT X	181
7	Negligent Misrepresentation.....	181
8	COUNT XI	182
9	Breach of Contract (License Agreements)	182
10	COUNT XII	183
11	Declaration of Unenforceability Under Cal. Civ. Code §§ 1598–99	183
12	COUNT XIII	186
13	Declaration of Noninfringement of U.S. Patent No. 7,246,242	186
14	COUNT XIV	187
15	Declaration of Invalidity of U.S. Patent No. 7,246,242	187
16	COUNT XV	188
17	Declaration of FRAND Royalties for U.S. Patent No. 7,246,242.....	188
18	COUNT XVI	189
19	Declaration of Noninfringement of U.S. Patent No. 6,556,549	189
20	COUNT XVII	190
21	Declaration of Invalidity of U.S. Patent No. 6,556,549	190
22	COUNT XVIII	191
23	Declaration of FRAND Royalties for U.S. Patent No. 6,556,549.....	191
24	COUNT XIX	192
25	Declaration of Noninfringement of U.S. Patent No. 9,137,822	192
26	COUNT XX	193
27	Declaration of Invalidity of U.S. Patent No. 9,137,822	193
28	COUNT XXI	194
	Declaration of FRAND Royalties for U.S. Patent No. 9,137,822.....	194

TABLE OF CONTENTS
(continued)

		<u>Page</u>
1		
2		
3	COUNT XXII	195
4	Declaration of Noninfringement of U.S. Patent No. 7,289,630	195
5	COUNT XXIII	196
6	Declaration of Invalidity of U.S. Patent No. 7,289,630	196
7	COUNT XXIV	197
8	Declaration of FRAND Royalties for U.S. Patent No. 7,289,630	197
9	COUNT XXV	198
10	Declaration of Noninfringement of U.S. Patent No. 8,867,494	198
11	COUNT XXVI	199
12	Declaration of Invalidity of U.S. Patent No. 8,867,494	199
13	COUNT XXVII	200
14	Declaration of FRAND Royalties for U.S. Patent No. 8,867,494	200
15	COUNT XXVIII	201
16	Declaration of Noninfringement of U.S. Patent No. 7,095,725	201
17	COUNT XXIX	202
18	Declaration of Invalidity of U.S. Patent No. 7,095,725	202
19	COUNT XXX	203
20	Declaration of FRAND Royalties for U.S. Patent No. 7,095,725	203
21	COUNT XXXI	204
22	Declaration of Noninfringement of U.S. Patent No. 6,694,469	204
23	COUNT XXXII	206
24	Declaration of Invalidity of U.S. Patent No. 6,694,469	206
25	COUNT XXXIII	207
26	Declaration of FRAND Royalties for U.S. Patent No. 6,694,469	207
27	COUNT XXXIV	208
28	Declaration of Noninfringement of U.S. Patent No. 9,059,819	208
	COUNT XXXV	209

DEFENDANTS’ ANSWER AND DEFENSES; COUNTERCLAIMS; DEMAND FOR JURY TRIAL ^x Case No. 3:17-CV-01010-GPC-MDD

TABLE OF CONTENTS
(continued)

		<u>Page</u>
1		
2		
3	Declaration of Invalidity of U.S. Patent No. 9,059,819	209
4	COUNT XXXVI	210
5	Declaration of FRAND Royalties for U.S. Patent No. 9,059,819	210
6	COUNT XXXVII	211
7	Declaration of Noninfringement of U.S. Patent No. 7,096,021	211
8	COUNT XXXVIII	213
9	Declaration of Invalidity of U.S. Patent No. 7,096,021	213
10	COUNT XXXIX	214
11	Declaration of FRAND Royalties for U.S. Patent No. 7,096,021	214
12	COUNT XL	215
13	Declaration of Noninfringement of U.S. Patent No. 7,061,890	215
14	COUNT XLI	216
15	Declaration of Invalidity of U.S. Patent No. 7,061,890	216
16	COUNT XLII	217
17	Declaration of FRAND Royalties for U.S. Patent No. 7,061,890	217
18	COUNT XLIII	218
19	Declaration of Noninfringement of U.S. Patent No. 8,000,717	218
20	COUNT XLIV	220
21	Declaration of Invalidity of U.S. Patent No. 8,000,717	220
22	COUNT XLV	221
23	Declaration of FRAND Royalties for U.S. Patent No. 8,000,717	221
24	COUNT XLVI	222
25	Declaration of Noninfringement of U.S. Patent No. 8,614,975	222
26	COUNT XLVII	223
27	Declaration of Invalidity of U.S. Patent No. 8,614,975	223
28	COUNT XLVIII	224
	Declaration of FRAND Royalties for U.S. Patent No. 8,614,975	224

TABLE OF CONTENTS
(continued)

		<u>Page</u>
1		
2		
3	COUNT XLIX	225
4	Declaration of Noninfringement of U.S. Patent No. 8,761,068	225
5	COUNT L	226
6	Declaration of Invalidity of U.S. Patent No. 8,761,068	226
7	COUNT LI	227
8	Declaration of FRAND Royalties for U.S. Patent No. 8,761,068.....	227
9	COUNT LII	228
10	Declaration of Noninfringement of U.S. Patent No. 8,861,424	228
11	COUNT LIII	229
12	Declaration of Invalidity of U.S. Patent No. 8,861,424	229
13	COUNT LIV	230
14	Declaration of FRAND Royalties for U.S. Patent No. 8,861,424.....	230
15	COUNT LV	231
16	Declaration of Noninfringement of U.S. Patent No. 8,873,471	231
17	COUNT LVI	232
18	Declaration of Invalidity of U.S. Patent No. 8,873,471	232
19	COUNT LVII	233
20	Declaration of FRAND Royalties for U.S. Patent No. 8,873,471.....	233
21	COUNT LVIII	234
22	Declaration of Noninfringement of U.S. Patent No. 8,989,140	234
23	COUNT LIX	236
24	Declaration of Invalidity of U.S. Patent No. 8,989,140	236
25	COUNT LX	237
26	Declaration of FRAND Royalties for U.S. Patent No. 8,989,140.....	237
27	COUNT LXI	238
28	Declaration of Noninfringement of U.S. Patent No. 9,007,974	238
	COUNT LXII	239

TABLE OF CONTENTS
(continued)

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Declaration of Invalidity of U.S. Patent No. 9,007,974 239

COUNT LXIII 240

Declaration of FRAND Royalties for U.S. Patent No. 9,007,974..... 240

COUNT LXIV 241

Declaration of Noninfringement of U.S. Patent No. 9,144,071 241

COUNT LXV 242

Declaration of Invalidity of U.S. Patent No. 9,144,071 242

COUNT LXVI 243

Declaration of FRAND Royalties for U.S. Patent No. 9,144,071 243

COUNT LXVII..... 244

Declaration of Unenforceability Due to Exhaustion 244

JURY DEMAND 247

PRAYER..... 247

ANSWER

DEFENDANTS’ ANSWER AND AFFIRMATIVE DEFENSES

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3 Defendant contract manufacturers Compal Electronics, Inc. (“Compal”); FIH
4 Mobile Ltd. and Hon Hai Precision Industry Co. (together, “Foxconn”); Pegatron
5 Corporation (“Pegatron”); and Wistron Corporation (“Wistron”) (collectively, “the
6 CMs”), by their undersigned attorneys, hereby answer the Complaint of Plaintiff
7 Qualcomm Inc. (“Qualcomm”). The numbered paragraphs below correspond to the
8 numbered paragraphs in the Complaint and constitute the CMs’ responsive admissions,
9 denials, and allegations thereto. Except as otherwise expressly set forth below, each
10 CM denies each and every allegation contained in the Counterclaims, including without
11 limitation the Table of Contents, headings, subheadings, footnotes, diagrams and tables
12 contained in the Complaint.

13 This lawsuit is yet another chapter of Qualcomm’s anticompetitive scheme to
14 dominate modem chip markets, extract supracompetitive royalties, and break its
15 commitments to license its cellular technology on fair, reasonable and non-
16 discriminatory (“FRAND”) terms. In the past two years alone, three separate foreign
17 antitrust enforcers have declared Qualcomm a monopolist and collectively have fined
18 the company over \$1 billion. In the United States, Qualcomm faces similar challenges
19 from the Federal Trade Commission (“FTC”), antitrust class actions and civil litigation
20 by Apple Inc. (“Apple”). Now, Qualcomm has defiantly doubled down by suing the
21 CMs for gross royalties—an amount that vastly exceeds the already above-FRAND
22 amounts that Qualcomm netted from each CM after rebates to Apple—rebates that
23 Qualcomm has now unlawfully terminated. Qualcomm should not be rewarded for its
24 continuing monopolistic practices which have caused significant harm to each CM.

25 Each CM specifically denies liability to Qualcomm, or that Qualcomm has
26 suffered any legally cognizable damage for which it is responsible. Each CM expressly
27 reserves the right to amend and/or supplement its answer and defenses.

1 Subject to the foregoing, each CM states as follows:

2 No response is required to the preamble and footnote 1 of Qualcomm’s
3 Complaint. To the extent a response is required, each CM admits that Qualcomm
4 purports to bring the Complaint against it, but specifically denies that there are any
5 valid bases for Qualcomm’s purported claims. Each CM is without knowledge or
6 information sufficient to form a belief as to the truth or falsity of the allegations in the
7 preamble and footnote 1, and therefore denies them on that basis. Except as expressly
8 admitted, each CM denies, generally and specifically, the remaining allegations and
9 characterizations in the preamble and footnote 1.

10 **NATURE OF THE ACTION**

11 1. Each CM admits that it has entered into certain licensing arrangements with
12 Qualcomm and that these agreements grant each CM certain rights to Qualcomm’s
13 intellectual property in exchange for certain royalty payments. Each CM admits that its
14 license agreement purports to require quarterly payments of royalties to Qualcomm.
15 Each CM lacks knowledge or information sufficient to form a belief as to the truth or
16 falsity of the remaining allegations in paragraph 1 of the Complaint, including the total
17 of any collective royalties that Qualcomm claims is due and owing, and therefore denies,
18 generally and specifically, the remaining allegations and characterizations in paragraph
19 1.

20 2. The allegations in paragraph 2 contain legal conclusions to which no
21 response is required. To the extent a response is required, each CM admits that it has
22 paid royalties to Qualcomm under the terms of its license agreement and admits that it is
23 an “independent compan[y].” Each CM further admits that it has entered into an
24 agreement with Apple in which, among other things, each party agreed to indemnify the
25 other under certain circumstances, according to the terms and conditions of the contract.
26 Except as expressly admitted, each CM denies, generally and specifically, the remaining
27 allegations and characterizations in paragraph 2.

1 3. Each CM lacks knowledge or information sufficient to form a belief as to
2 the truth or falsity of the allegations in paragraph 3 of the Complaint and therefore
3 denies, generally and specifically, each and every allegation and characterization in
4 paragraph 3.

5 4. Compal admits that it entered into a license agreement with Qualcomm in
6 the year 2000, over “17 years ago.” Foxconn, Pegatron and Wistron lack knowledge or
7 information sufficient to form a belief as to the truth of this allegation and therefore deny
8 it. Each CM admits that it has paid Qualcomm license royalties pursuant to its license
9 agreement. Except as expressly admitted, each CM denies, generally and specifically,
10 the remaining allegations and characterizations in paragraph 4.

11 5. Each CM admits, on information and belief, that Qualcomm has
12 participated in the development of cellular communications technology. Each CM
13 further admits that paragraph 5 of the Complaint purports to define certain terms related
14 to Qualcomm’s cellular and non-cellular patent portfolio without admitting or denying
15 the accuracy of those definitions. Each CM lacks knowledge or information sufficient to
16 form a belief as to the truth or falsity of the remaining allegations in paragraph 5 of the
17 Complaint and therefore denies, generally and specifically, the remaining allegations
18 and characterizations in paragraph 5.

19 6. Each CM admits that Qualcomm has licensed its patents to cellular device
20 manufacturers. Each CM specifically denies that Qualcomm’s license terms “reflect the
21 established market value” of its patent portfolio. Each CM lacks knowledge or
22 information sufficient to form a belief as to the truth or falsity of the remaining
23 allegations in paragraph 6 of the Complaint and therefore denies, generally and
24 specifically, the remaining allegations and characterizations in paragraph 6.

25 7. Each CM admits that it manufactures certain consumer electronics
26 products, including “wireless products (phones and/or tablets) that comply with 3G and
27 4G LTE cellular standards.” Each CM admits that it has entered into a certain licensing
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1 agreement with Qualcomm. Except as expressly admitted, each CM denies, generally
2 and specifically, the remaining allegations and characterizations in paragraph 7.

3 8. Compal admits that it entered into a “Subscriber Unit License Agreement”
4 with Qualcomm on February 10, 2000 (“Compal License Agreement”). Compal lacks
5 knowledge or information sufficient to form a belief as to the truth or falsity of the
6 allegations in paragraph 8 as to Foxconn, Pegatron and Wistron and therefore denies
7 them on that basis. Except as expressly admitted, Compal denies, generally and
8 specifically, the remaining allegations and characterizations in paragraph 8.

9 Foxconn admits that FIH Mobile Ltd. (formerly, Foxconn International Holdings
10 Ltd.) entered into a “Subscriber Unit License Agreement” with Qualcomm on October
11 18, 2005 (“Foxconn License Agreement”). Foxconn admits that Hon Hai Precision
12 Industry Co. is also a signatory to certain aspects of the Foxconn License Agreement.
13 Foxconn lacks knowledge or information sufficient to form a belief as to the truth or
14 falsity of the allegations in paragraph 8 as to Compal, Pegatron and Wistron and
15 therefore denies them on that basis. Except as expressly admitted, Foxconn denies,
16 generally and specifically, the remaining allegations and characterizations in paragraph
17 8.

18 Pegatron admits that it entered into a “Subscriber Unit License Agreement” with
19 Qualcomm on April 29, 2010 (“Pegatron License Agreement”). Pegatron lacks
20 knowledge or information sufficient to form a belief as to the truth or falsity of the
21 allegations in paragraph 8 as to Compal, Foxconn and Wistron and therefore denies
22 them on that basis. Except as expressly admitted, Pegatron denies, generally and
23 specifically, the remaining allegations and characterizations in paragraph 8.

24 Wistron admits that it entered into a “Subscriber Unit License Agreement” with
25 Qualcomm on May 23, 2007 (“Wistron License Agreement”). Wistron lacks
26 knowledge or information sufficient to form a belief as to the truth or falsity of the
27 allegations in paragraph 8 as to Compal, Foxconn and Pegatron and therefore denies
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1 them on that basis. Except as expressly admitted, Wistron denies, generally and
2 specifically, the remaining allegations and characterizations in paragraph 8.

3 9. Each CM admits that the allegations of paragraph 9 purport to describe and
4 characterize certain terms contained in each of its licensing agreements with Qualcomm
5 and refers to the contents of those agreements without admitting or denying the accuracy
6 of any such description. Paragraph 9 contains legal conclusions to which no response is
7 required. To the extent a response is required, each CM denies, generally and
8 specifically, each and every allegation and characterization in paragraph 9.

9 10. Compal admits that it manufactures products that are sold to consumers
10 under the brands of other companies. Compal further admits that it has manufactured
11 cellular devices for companies. Compal lacks knowledge or information sufficient to
12 form a belief as to the truth or falsity of the allegations in paragraph 10 as to Foxconn,
13 Pegatron and Wistron and therefore denies them on that basis. Except as expressly
14 admitted, Compal denies, generally and specifically, the remaining allegations and
15 characterizations in paragraph 10.

16 Foxconn admits that it manufactures products that are sold to consumers under
17 the brands of other companies. Foxconn further admits that it has manufactured
18 cellular devices for different companies. Foxconn lacks knowledge or information
19 sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 as
20 to Compal, Pegatron and Wistron and therefore denies them on that basis. Except as
21 expressly admitted, Foxconn denies, generally and specifically, the remaining
22 allegations and characterizations in paragraph 10.

23 Pegatron admits that it manufactures products that are sold to consumers under
24 the brands of the other companies. Pegatron further admits that it has manufactured
25 cellular devices for different companies. Pegatron lacks knowledge or information
26 sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 as
27 to Compal, Foxconn and Wistron and therefore denies them on that basis. Except as
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1 expressly admitted, Pegatron denies, generally and specifically, the remaining
2 allegations and characterizations in paragraph 10.

3 Wistron admits that it manufactures products that are sold to consumers under
4 the brands of other companies. Wistron further admits that it has manufactured cellular
5 devices for different companies. Wistron lacks knowledge or information sufficient to
6 form a belief as to the truth or falsity of the allegations in paragraph 10 as to Compal,
7 Foxconn and Pegatron and therefore denies them on that basis. Except as expressly
8 admitted, Wistron denies, generally and specifically, the remaining allegations and
9 characterizations in paragraph 10.

10 11. Compal admits that it has manufactured cellular devices for Apple,
11 including iPads, since in or around 2014. Compal is without sufficient knowledge or
12 information to form a belief as to the truth or falsity of the allegations in paragraph 11
13 regarding Foxconn, Pegatron and Wistron and therefore denies them on that basis.
14 Except as expressly admitted, Compal denies, generally and specifically, the remaining
15 allegations and characterizations in paragraph 11.

16 Foxconn admits that it has manufactured cellular devices for Apple, including
17 iPhones, since in or around 2007. Foxconn is without sufficient knowledge or
18 information to form a belief as to the truth or falsity of the allegations in paragraph 11
19 regarding Compal, Pegatron and Wistron and therefore denies them on that basis.
20 Except as expressly admitted, Foxconn denies, generally and specifically, the remaining
21 allegations and characterizations in paragraph 11.

22 Pegatron admits that it has manufactured cellular devices for Apple, including
23 iPhones, since in or around 2011. Pegatron is without sufficient knowledge or
24 information to form a belief as to the truth or falsity of the allegations in paragraph 11
25 regarding Compal, Foxconn and Wistron and therefore denies them on that basis.
26 Except as expressly admitted, Pegatron denies, generally and specifically, the remaining
27 allegations and characterizations in paragraph 11.

1 Wistron admits that it has manufactured cellular devices for Apple, including
2 iPhones, since in or around 2014. Wistron is without sufficient knowledge or
3 information to form a belief as to the truth or falsity of the allegations in paragraph 11
4 regarding Compal, Foxconn and Pegatron and therefore denies them on that basis.
5 Except as expressly admitted, Wistron denies, generally and specifically, the remaining
6 allegations and characterizations in paragraph 11.

7 12. Paragraph 12 contains legal conclusions to which no response is required.

8 To the extent a response is required, each CM admits that the allegations of
9 paragraph 12 purport to describe and characterize certain terms contained in each of the
10 CM's licensing agreements with Qualcomm and refers to the contents of those
11 agreements without admitting or denying the accuracy of any such description.

12 Compal admits that it has paid royalties to Qualcomm under the Compal License
13 Agreement related to the sale of Apple and non-Apple products. Compal is without
14 sufficient knowledge or information to form a belief as to the truth or falsity of the
15 allegations in paragraph 12 regarding Foxconn, Pegatron and Wistron and therefore
16 denies them on that basis. Except as expressly admitted, Compal denies, generally and
17 specifically, the remaining allegations and characterizations in paragraph 12.

18 Foxconn admits that it has paid royalties to Qualcomm under the Foxconn
19 License Agreement related to the sale of Apple and non-Apple products. Foxconn is
20 without sufficient knowledge or information to form a belief as to the truth or falsity of
21 the allegations in paragraph 12 regarding Compal, Pegatron and Wistron and therefore
22 denies them on that basis. Except as expressly admitted, Foxconn denies, generally and
23 specifically, the remaining allegations and characterizations in paragraph 12.

24 Pegatron admits that it has paid royalties to Qualcomm under the Pegatron
25 License Agreement related to the sale of Apple and non-Apple products. Pegatron is
26 without sufficient knowledge or information to form a belief as to the truth or falsity of
27 the allegations in paragraph 12 regarding Compal, Foxconn and Wistron and therefore

1 denies them on that basis. Except as expressly admitted, Pegatron denies, generally and
2 specifically, the remaining allegations and characterizations in paragraph 12.

3 Wistron admits that it has paid royalties to Qualcomm under the Wistron
4 License Agreement related to the sale of Apple and non-Apple products. Wistron is
5 without sufficient knowledge or information to form a belief as to the truth or falsity of
6 the allegations in paragraph 12 regarding Compal, Foxconn and Pegatron and therefore
7 denies them on that basis. Except as expressly admitted, Wistron denies, generally and
8 specifically, the remaining allegations and characterizations in paragraph 12.

9 13. Each CM denies, generally and specifically, each and every allegation and
10 characterization in paragraph 13.

11 14. Each CM lacks knowledge or information sufficient to form a belief as to
12 the truth or falsity of the allegations in paragraph 14 of the Complaint, including the
13 total of any collective royalties that Qualcomm claims is due and owing, and therefore
14 deny, generally and specifically, each and every allegation in paragraph 14. Each CM
15 specifically denies that it breached its License Agreement with Qualcomm.

16 15. To the extent the allegations in paragraph 15 and footnote 2 of the
17 Complaint are directed to Compal, Compal admits that it paid royalties to Qualcomm for
18 Q4 2016. Compal is without sufficient knowledge or information to form a belief as to
19 the truth or falsity of the allegations in paragraph 15 and footnote 2 regarding Foxconn,
20 Pegatron and Wistron, including the total of any collective royalties that Qualcomm
21 claims is due and owing, and therefore denies them on that basis. Except as expressly
22 admitted, Compal denies, generally and specifically, the remaining allegations and
23 characterizations in paragraph 15 and footnote 2.

24 Foxconn, Pegatron and Wistron admit that the allegations in paragraph 15 and
25 footnote 2 purport to describe certain “royalty reports” and state that, if and to the
26 extent the royalty reports are held to be admissible, they will speak for themselves.

27 Foxconn is without sufficient knowledge or information to form a belief as to
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1 the truth or falsity of the allegations in paragraph 15 and footnote 2 regarding Compal,
2 Pegatron and Wistron, including the total of any collective royalties that Qualcomm
3 claims is due and owing, and therefore denies them on that basis. Except as expressly
4 admitted, Foxconn denies, generally and specifically, the remaining allegations and
5 characterizations in paragraph 15 and footnote 2.

6 Pegatron is without sufficient knowledge or information to form a belief as to
7 the truth or falsity of the allegations in paragraph 15 and footnote 2 regarding Compal,
8 Foxconn and Wistron, including the total of any collective royalties that Qualcomm
9 claims is due and owing, and therefore denies them on that basis. Except as expressly
10 admitted, Pegatron denies, generally and specifically, the remaining allegations and
11 characterizations in paragraph 15 and footnote 2.

12 Wistron is without sufficient knowledge or information to form a belief as to the
13 truth or falsity of the allegations in paragraph 15 and footnote 2 regarding Compal,
14 Foxconn and Pegatron, including the total of any collective royalties that Qualcomm
15 claims is due and owing, and therefore denies them on that basis. Except as expressly
16 admitted, Wistron denies, generally and specifically, the remaining allegations and
17 characterizations in paragraph 15 and footnote 2.

18 16. Each CM denies the allegations in paragraph 16 that it breached its
19 licensing agreement with Qualcomm and denies that the alleged breach “continued and
20 expanded with respect to [its] Q1 2017 royalty payments.” Paragraph 16 contains legal
21 conclusions to which no responsive pleading is required.

22 To the extent the allegations in paragraph 16 of the Complaint are directed to
23 Compal, Compal is without sufficient knowledge or information to form a belief as to
24 the truth or falsity of the allegations in paragraph 16 regarding Foxconn, Pegatron and
25 Wistron and therefore denies them on that basis. Except as expressly admitted, Compal
26 denies, generally and specifically, the remaining allegations and characterizations in
27 paragraph 16.

1 Foxconn is without sufficient knowledge or information to form a belief as to
2 the truth or falsity of the allegations in paragraph 16 regarding Compal, Pegatron and
3 Wistron and therefore denies them on that basis. Except as expressly admitted,
4 Foxconn denies, generally and specifically, the remaining allegations and
5 characterizations in paragraph 16.

6 Pegatron is without sufficient knowledge or information to form a belief as to
7 the truth or falsity of the allegations in paragraph 16 regarding Compal, Foxconn and
8 Wistron and therefore denies them on that basis. Except as expressly admitted,
9 Pegatron denies, generally and specifically, the remaining allegations and
10 characterizations in paragraph 16.

11 Wistron is without sufficient knowledge or information to form a belief as to the
12 truth or falsity of the allegations in paragraph 16 regarding Compal, Foxconn and
13 Pegatron and therefore denies them on that basis. Except as expressly admitted,
14 Wistron denies, generally and specifically, the remaining allegations and
15 characterizations in paragraph 16.

16 17. Each CM denies, generally and specifically, each and every allegation and
17 characterization in paragraph 17.

18 18. Each CM is without sufficient knowledge or information to form a belief as
19 to the truth or falsity of the allegations in paragraph 18 regarding communications
20 between Apple and Qualcomm and therefore denies them on that basis. Each CM
21 denies, generally and specifically, the remaining allegations and characterizations in
22 paragraph 18.

23 19. Each CM denies, generally and specifically, each and every allegation and
24 characterization in paragraph 19.

25 20. Each CM admits that it has entered into a Master Software Agreement
26 (“MSA”) with Qualcomm. Each CM also admits that the allegations of paragraph 20
27 purport to describe and characterize certain terms contained in each of its MSAs with
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1 Qualcomm and refers to the contents of those agreements without admitting or denying
2 the accuracy of any such description. Paragraph 20 contains legal conclusions to which
3 no response is required. To the extent further response is required, each CM denies,
4 generally and specifically, the remaining allegations and characterizations in paragraph
5 20.

6 21. Each CM admits that Qualcomm is seeking injunctive relief, specific
7 performance, declaratory relief, compensatory and consequential damages and
8 attorneys' fees, but specifically denies that Qualcomm is entitled to any relief. Except as
9 expressly admitted, each CM denies, generally and specifically, the remaining
10 allegations and characterizations in paragraph 21.

11 **PARTIES**

12 22. Each CM lacks knowledge or information sufficient to form a belief as to
13 the truth or falsity of the allegations in paragraph 22 of the Complaint and therefore
14 denies, generally and specifically, each and every allegation in paragraph 22.

15 23. Foxconn admits that HonHai Precision Industry Co., Ltd. ("Hon Hai") is a
16 corporation organized under the laws of Taiwan, with its principal place of business at
17 No. 66, Zhongshan Road, Tucheng Industrial Zone, Tucheng District, New Taipei City,
18 Taiwan, R.O.C. Foxconn also admits that Hon Hai manufactures and sells products,
19 including electronic products that have cellular capabilities. Except as expressly
20 admitted, Foxconn denies, generally and specifically, the remaining allegations and
21 characterizations in paragraph 23.

22 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
23 a belief as to the truth or falsity of the allegations in paragraph 23 of the Complaint and
24 therefore deny, generally and specifically, each and every allegation and
25 characterization in paragraph 23.

26 24. Foxconn admits that FIH Mobile Ltd. ("FIH") is a corporation organized
27 under the laws of the Cayman Islands, with its principal place of business at 18 Youyi
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1 Road, Langfang Economic and Technological Development Zone, Hebei Province,
2 People’s Republic of China. Foxconn admits that FIH is a subsidiary of Hon Hai.
3 Foxconn also admits that FIH manufactures and sells products, including electronic
4 products that have cellular capabilities. Except as expressly admitted, Foxconn denies,
5 generally and specifically, the remaining allegations and characterizations in paragraph
6 24.

7 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
8 a belief as to the truth or falsity of the allegations in paragraph 24 of the Complaint and
9 therefore deny, generally and specifically, each and every allegation and
10 characterization in paragraph 24.

11 25. Pegatron admits that it is a corporation organized under the laws of Taiwan.
12 Pegatron further admits that its principal place of business is at 5F, No. 76, Ligong
13 Street, Beitou District, Taipei City 112, Taiwan, R.O.C. Pegatron also admits that it
14 manufactures and sells products, including electronic products that have cellular
15 capabilities. Except as expressly admitted, Pegatron denies, generally and specifically,
16 the remaining allegations and characterizations in paragraph 25.

17 Compal, Foxconn and Wistron, lack knowledge or information sufficient to
18 form a belief as to the truth or falsity of the allegations in paragraph 25 of the
19 Complaint and therefore deny, generally and specifically, each and every allegation and
20 characterization in paragraph 25.

21 26. Wistron admits that it is a corporation organized under the laws of Taiwan,
22 with its principal place of business at 158, Singshan Rd., Neihu, Taipei, 11469, Taiwan,
23 R.O.C. Wistron also admits that it manufactures and sells products, including electronic
24 products that have cellular capabilities. Except as expressly admitted, Wistron denies,
25 generally and specifically, the remaining allegations and characterizations in paragraph
26 26.

27 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
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1 form a belief as to the truth or falsity of the allegations in paragraph 26 of the
2 Complaint and therefore deny, generally and specifically, each and every allegation and
3 characterization in paragraph 26.

4 27. Compal admits that it is a corporation organized under the laws of Taiwan,
5 with its principal place of business at Nos. 581 & 581-1, Ruiguang Road, Neihu District,
6 Taipei City, 11492, Taiwan, R.O.C. Compal also admits that it manufactures and sells
7 products, including electronic products that have cellular capabilities. Except as
8 expressly admitted, Compal denies, generally and specifically, the remaining allegations
9 and characterizations in paragraph 27.

10 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
11 form a belief as to the truth or falsity of the allegations in paragraph 27 of the
12 Complaint and therefore deny, generally and specifically, each and every allegation and
13 characterization in paragraph 27.

14 **JURISDICTION AND VENUE**

15 28. Paragraph 28 is a legal conclusion to which no response is required. To the
16 extent any response is required, each CM admits that Qualcomm purports to bring an
17 action under 28 U.S.C. § 1332(a)(2) and further admits that Qualcomm is seeking relief
18 under 28 U.S.C. §§ 2201(a) and 2202, but specifically denies that Qualcomm is entitled
19 to any relief. Except as expressly admitted, each CM denies, generally and specifically,
20 the remaining allegations and characterizations in paragraph 28.

21 29. Paragraph 29 is a legal conclusion to which no response is required. To the
22 extent any response is required, each CM admits that Qualcomm purports to base
23 personal jurisdiction on specific provisions of its contract with Qualcomm and states
24 that, if and to the extent the document is ever held to be admissible, the cited document
25 speaks for itself. Each CM denies, generally and specifically, the remaining allegations
26 and characterizations in paragraph 29, including that each CM's actions could be
27 expected to harm, and have caused harm to, Qualcomm in California.

1 CM denies, generally and specifically, the remaining allegations and characterizations in
2 paragraph 38.

3 39. Compal admits that it has purchased modem chips from Qualcomm or its
4 subsidiary for use in cellular products that it manufactures for Apple and other
5 customers but denies that it has been purchasing Qualcomm chips for use in Apple's
6 products since 2011. Compal is without sufficient knowledge or information to form a
7 belief as to the truth or falsity of the allegations in paragraph 39 regarding Foxconn,
8 Pegatron and Wistron and therefore denies them on that basis. Except as expressly
9 admitted, Compal denies, generally and specifically, the remaining allegations and
10 characterizations in paragraph 39.

11 Foxconn admits that it has purchased modem chips from Qualcomm or its
12 subsidiary for use in cellular products that it manufactures for Apple and other
13 customers. Foxconn is without sufficient knowledge or information to form a belief as
14 to the truth or falsity of the allegations in paragraph 39 regarding Compal, Pegatron and
15 Wistron and therefore denies them on that basis. Except as expressly admitted,
16 Foxconn denies, generally and specifically, the remaining allegations and
17 characterizations in paragraph 39.

18 Pegatron admits that it has purchased modem chips from Qualcomm or its
19 subsidiary for use in cellular products that it manufactures for Apple and other
20 customers. Pegatron is without sufficient knowledge or information to form a belief as
21 to the truth or falsity of the allegations in paragraph 39 regarding Compal, Foxconn and
22 Wistron and therefore denies them on that basis. Except as expressly admitted,
23 Pegatron denies, generally and specifically, the remaining allegations and
24 characterizations in paragraph 39.

25 Wistron admits that it has purchased modem chips from Qualcomm or its
26 subsidiary for use in cellular products that it manufactures for Apple and other
27 customers. Wistron is without sufficient knowledge or information to form a belief as
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1 to the truth or falsity of the allegations in paragraph 39 regarding Compal, Foxconn and
2 Pegatron and therefore denies them on that basis. Except as expressly admitted,
3 Wistron denies, generally and specifically, the remaining allegations and
4 characterizations in paragraph 39.

5 40. Compal admits that it signed a Master Software Agreement with Qualcomm
6 (“Compal MSA”). Compal is without sufficient knowledge or information to form a
7 belief as to the truth or falsity of the allegations in paragraph 40 regarding Foxconn,
8 Pegatron and Wistron and therefore denies them on that basis. Except as expressly
9 admitted, Compal denies, generally and specifically, the remaining allegations and
10 characterizations in paragraph 40.

11 Foxconn admits that it signed a Master Software Agreement with Qualcomm
12 (“Foxconn MSA”). Foxconn is without sufficient knowledge or information to form a
13 belief as to the truth or falsity of the allegations in paragraph 40 regarding Compal,
14 Pegatron and Wistron and therefore denies them on that basis. Except as expressly
15 admitted, Foxconn denies, generally and specifically, the remaining allegations and
16 characterizations in paragraph 40.

17 Pegatron admits that it signed a Master Software Agreement with Qualcomm
18 (“Pegatron MSA”). Pegatron is without sufficient knowledge or information to form a
19 belief as to the truth or falsity of the allegations in paragraph 40 regarding Compal,
20 Foxconn and Wistron and therefore denies them on that basis. Except as expressly
21 admitted, Pegatron denies, generally and specifically, the remaining allegations and
22 characterizations in paragraph 40.

23 Wistron admits that it signed a Master Software Agreement with Qualcomm
24 (“Wistron MSA”). Wistron is without sufficient knowledge or information to form a
25 belief as to the truth or falsity of the allegations in paragraph 40 regarding Compal,
26 Foxconn and Pegatron and therefore denies them on that basis. Except as expressly
27 admitted, Wistron denies, generally and specifically, the remaining allegations and
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1 characterizations in paragraph 40.

2 **II. ALLEGATIONS REGARDING QUALCOMM’S ALLEGED**
3 **AGREEMENTS WITH EACH DEFENDANT**

4 41. Paragraph 41 contains legal conclusions to which no response is required.
5 To the extent a response is required, each CM denies, generally and specifically, each
6 and every allegation and characterization in paragraph 41.

7 **A. Allegations Regarding Qualcomm’s Alleged Agreement with Compal**

8 42. Compal admits that it entered into the Compal License Agreement on
9 February 10, 2000. Compal admits that paragraph 42 purports to describe and
10 characterize certain terms contained in the Compal License Agreement and refers to its
11 contents without admitting or denying the accuracy of any such description. Paragraph
12 42 contains legal conclusions to which no response is required. To the extent a response
13 is required, Compal denies, generally and specifically, the remaining allegations and
14 characterizations in paragraph 42.

15 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
16 form a belief as to the truth or falsity of the allegations in paragraph 42 of the
17 Complaint and therefore deny, generally and specifically, each and every allegation and
18 characterization in paragraph 42.

19 43. Compal admits that paragraph 43 purports to describe and characterize
20 certain terms of the Compal License Agreement and refers to its contents without
21 admitting or denying the accuracy of any such description. Paragraph 43 contains legal
22 conclusions to which no response is required. To the extent a response is required,
23 Compal denies, generally and specifically, the remaining allegations and
24 characterizations in paragraph 43.

25 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
26 form a belief as to the truth or falsity of the allegations in paragraph 43 of the
27 Complaint and therefore deny, generally and specifically, each and every allegation and
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1 characterization in paragraph 43.

2 44. Compal admits that paragraph 44 purports to describe and characterize
3 certain terms of the Compal License Agreement and refers to its contents without
4 admitting or denying the accuracy of any such description. Paragraph 44 contains legal
5 conclusions to which no response is required. To the extent a response is required,
6 Compal admits that its License Agreement purports to require quarterly payments of
7 royalties to Qualcomm. Compal denies, generally and specifically, the remaining
8 allegations and characterizations in paragraph 44.

9 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to form
10 a belief as to the truth or falsity of the allegations in paragraph 44 of the Complaint and
11 therefore deny, generally and specifically, each and every allegation and characterization
12 in paragraph 44.

13 45. Compal admits that it signed amendments to the Compal License
14 Agreement on November 4, 2002; February 1, 2006; June 22, 2007; April 15, 2008; and
15 February 27, 2014. Paragraph 45 contains legal conclusions to which no response is
16 required. To the extent a response is required, Compal denies, generally and
17 specifically, the remaining allegations and characterizations in paragraph 45.

18 Foxconn, Wistron, and Pegatron lack knowledge or information sufficient to
19 form a belief as to the truth or falsity of the allegations in paragraph 45 of the
20 Complaint and therefore deny, generally and specifically, each and every allegation and
21 characterization in paragraph 45.

22 **B. Allegations Regarding Qualcomm’s Alleged Agreement with Foxconn**

23 46. Foxconn admits that it entered into the Foxconn License Agreement on
24 October 18, 2005. Foxconn admits that paragraph 46 and footnote 3 purport to describe
25 and characterize certain terms contained in the Foxconn License Agreement and “a
26 separate agreement” and refers to their contents without admitting or denying the
27 accuracy of any such description. Paragraph 46 and footnote 3 contain legal conclusions
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1 to which no response is required. To the extent a response is required, Foxconn denies,
2 generally and specifically, the remaining allegations and characterizations in paragraph
3 46 and footnote 3.

4 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
5 a belief as to the truth or falsity of the allegations in paragraph 46 and footnote 3 of the
6 Complaint and therefore deny, generally and specifically, each and every allegation and
7 characterization in paragraph 46 and footnote 3.

8 47. Foxconn admits that paragraph 47 purports to describe and characterize
9 certain terms of the Foxconn License Agreement and refers to its contents without
10 admitting or denying the accuracy of any such description. Paragraph 47 contains legal
11 conclusions to which no response is required. To the extent a response is required,
12 Foxconn denies generally and specifically, the remaining allegations and
13 characterizations in paragraph 47.

14 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
15 a belief as to the truth or falsity of the allegations in paragraph 47 of the Complaint and
16 therefore deny, generally and specifically, each and every allegation and
17 characterization in paragraph 47.

18 48. Foxconn admits that paragraph 48 purports to describe and characterize
19 certain terms of the Foxconn License Agreement and refers to its contents without
20 admitting or denying the accuracy of any such description. Paragraph 48 contains legal
21 conclusions to which no response is required. To the extent a response is required,
22 Foxconn admits that the Foxconn License Agreement purports to require quarterly
23 payments of royalties to Qualcomm. Foxconn denies, generally and specifically, the
24 remaining allegations and characterizations in paragraph 48.

25 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
26 a belief as to the truth or falsity of the allegations in paragraph 48 of the Complaint and
27 therefore deny, generally and specifically, each and every allegation and

1 characterization in paragraph 48.

2 49. Foxconn admits that it signed amendments to the Foxconn License
3 Agreement on April 6, 2006; December 7, 2007; March 31, 2009; and September 24,
4 2012. Paragraph 49 contains legal conclusions to which no response is required. To the
5 extent a response is required, Foxconn denies, generally and specifically, the remaining
6 allegations and characterizations in paragraph 49.

7 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
8 a belief as to the truth or falsity of the allegations in paragraph 49 of the Complaint and
9 therefore deny, generally and specifically, each and every allegation and
10 characterization in paragraph 49.

11 **C. Allegations Regarding Qualcomm’s Alleged Agreement with Wistron**

12 50. Wistron admits that it entered into the Wistron License Agreement on May
13 23, 2007. Wistron admits that paragraph 50 purports to describe and characterize certain
14 terms contained in the Wistron License Agreement and refers to its contents without
15 admitting or denying the accuracy of any such description. Paragraph 50 contains legal
16 conclusions to which no response is required. To the extent a response is required,
17 Wistron denies, generally and specifically, the remaining allegations and
18 characterizations in paragraph 50.

19 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
20 form a belief as to the truth or falsity of the allegations in paragraph 50 of the
21 Complaint and therefore deny, generally and specifically, each and every allegation and
22 characterization in paragraph 50.

23 51. Wistron admits that paragraph 51 purports to describe and characterize
24 certain terms of the Wistron License Agreement and refers to its contents without
25 admitting or denying the accuracy of any such description. Paragraph 51 contains legal
26 conclusions to which no response is required. To the extent a response is required,
27 Wistron denies, generally and specifically, the remaining allegations and
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1 characterizations in paragraph 51.

2 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
3 form a belief as to the truth or falsity of the allegations in paragraph 51 of the
4 Complaint and therefore deny, generally and specifically, each and every allegation and
5 characterization in paragraph 51.

6 52. Wistron admits that paragraph 52 purports to describe and characterize
7 certain terms of the Wistron License Agreement and refers to its contents without
8 admitting or denying the accuracy of any such description. Paragraph 52 contains legal
9 conclusions to which no response is required. To the extent a response is required,
10 Wistron admits that the Wistron License Agreement purports to require quarterly
11 payments of royalties to Qualcomm. Wistron denies, generally and specifically, the
12 remaining allegations and characterizations in paragraph 52.

13 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
14 form a belief as to the truth or falsity of the allegations in paragraph 52 of the
15 Complaint and therefore deny, generally and specifically, each and every allegation and
16 characterization in paragraph 52.

17 53. Paragraph 53 contains legal conclusions to which no response is required.
18 To the extent a response is required, Wistron denies, generally and specifically, each and
19 every allegation and characterization in paragraph 53.

20 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
21 form a belief as to the truth or falsity of the allegations in paragraph 53 of the
22 Complaint and therefore deny, generally and specifically, each and every allegation and
23 characterization in paragraph 53.

24 **D. Allegations Regarding Qualcomm’s Alleged Agreement with Pegatron**

25 54. Pegatron admits that it entered into the Pegatron License Agreement with
26 Qualcomm on April 29, 2010. Pegatron admits that paragraph 54 purports to describe
27 and characterize certain terms contained in the Pegatron License Agreement and refers
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1 to its contents without admitting or denying the accuracy of any such description.
2 Paragraph 54 contains legal conclusions to which no response is required. To the extent
3 a response is required, Pegatron denies, generally and specifically, the remaining
4 allegations and characterizations in paragraph 54.

5 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
6 a belief as to the truth or falsity of the allegations in paragraph 54 of the Complaint and
7 therefore deny, generally and specifically, each and every allegation and
8 characterization in paragraph 54.

9 55. Pegatron admits that paragraph 55 purports to describe and characterize
10 certain terms of the Pegatron License Agreement and refers to its contents without
11 admitting or denying the accuracy of any such description. Paragraph 55 contains legal
12 conclusions to which no response is required. To the extent a response is required,
13 Pegatron denies, generally and specifically, the remaining allegations and
14 characterizations in paragraph 55.

15 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
16 a belief as to the truth or falsity of the allegations in paragraph 55 of the Complaint and
17 therefore deny, generally and specifically, each and every allegation and
18 characterization in paragraph 55.

19 56. Pegatron admits that paragraph 56 purports to describe and characterize
20 certain terms of the Pegatron License Agreement and refers to its contents without
21 admitting or denying the accuracy of any such description. Paragraph 56 contains legal
22 conclusions to which no response is required. To the extent a response is required,
23 Pegatron admits that the Pegatron License Agreement purports to require quarterly
24 payments of royalties to Qualcomm. Pegatron denies, generally and specifically, the
25 remaining allegations and characterizations in paragraph 56.

26 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
27 a belief as to the truth or falsity of the allegations in paragraph 56 of the Complaint and
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1 therefore deny, generally and specifically, each and every allegation and
2 characterization in paragraph 56.

3 57. Pegatron admits that it signed amendments to the Pegatron License
4 Agreement on June 1, 2010; June 30, 2010; and May 23, 2011. Paragraph 57 contains
5 legal conclusions to which no response is required. To the extent a response is required,
6 Pegatron denies, generally and specifically, the remaining allegations and
7 characterizations in paragraph 57.

8 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
9 a belief as to the truth or falsity of the allegations in paragraph 57 of the Complaint and
10 therefore deny, generally and specifically, each and every allegation and
11 characterization in paragraph 57.

12 **E. Allegations Regarding Alleged Master Software Agreements**

13 58. Each CM admits that it has “purchased chips from Qualcomm” and admits
14 that it entered into a “separate (non-patent) license agreement with Qualcomm in 2010.”
15 Each CM further admits that paragraph 58 purports to describe the terms of Qualcomm’s
16 MSA with each CM without admitting or denying the accuracy of any such description.
17 Each CM lacks knowledge or information sufficient to form a belief as to the truth or
18 falsity of the allegations in paragraph 58 referring to Apple and therefore denies,
19 generally and specifically, the allegations and characterizations referring to Apple in
20 paragraph 58. Except as expressly admitted, each CM denies, generally and specifically,
21 the remaining allegations and characterizations in paragraph 58.

22 **III. ALLEGATIONS REGARDING ALLEGED PAYMENT OF ROYALTIES**

23 59. Each CM admits that it has paid royalties to Qualcomm related to the sale
24 of both Apple and non-Apple products under the terms of its License Agreement but
25 denies, generally and specifically, the remaining allegations and characterizations in
26 paragraph 59.

1 **A. Allegations Regarding Alleged Manufacture of Non-Apple Products**

2 60. Each CM admits that it is among the leading manufacturers of an array of
3 electronic products, including cellular products, and has manufactured certain products
4 for Apple and other electronics companies. Except as expressly admitted, each CM
5 denies, generally and specifically, the remaining allegations and characterizations in
6 paragraph 60.

7 61. Compal admits that it began manufacturing cellular products under the
8 Compal License Agreement in or around 2002. Compal also admits that it has
9 manufactured cellular products for companies other than Apple. Except as expressly
10 admitted, Compal denies, generally and specifically, the remaining allegations and
11 characterizations in paragraph 61.

12 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
13 form a belief as to the truth or falsity of the allegations in paragraph 61 of the
14 Complaint and therefore deny, generally and specifically, each and every allegation and
15 characterization in paragraph 61.

16 62. Foxconn admits that it began manufacturing cellular products under the
17 Foxconn License Agreement in or around 2005. Foxconn also admits that it has
18 manufactured cellular products for companies other than Apple. Except as expressly
19 admitted, Foxconn denies, generally and specifically, the remaining allegations and
20 characterizations in paragraph 62.

21 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
22 a belief as to the truth or falsity of the allegations in paragraph 62 of the Complaint and
23 therefore deny, generally and specifically, each and every allegation and
24 characterization in paragraph 62.

25 63. Pegatron admits that it began manufacturing cellular products under the
26 Pegatron License Agreement in or around 2010. Pegatron also admits that it has
27 manufactured cellular products for companies other than Apple. Except as expressly
28

1 admitted, Pegatron denies, generally and specifically, the remaining allegations and
2 characterizations in paragraph 63.

3 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
4 a belief as to the truth or falsity of the allegations in paragraph 63 of the Complaint and
5 therefore deny, generally and specifically, each and every allegation and
6 characterization in paragraph 63.

7 64. Wistron admits that it was manufacturing cellular products under the
8 Wistron License Agreement in 2013. Wistron also admits that it has manufactured
9 cellular products for companies other than Apple. Except as expressly admitted,
10 Wistron denies, generally and specifically, the remaining allegations and
11 characterizations in paragraph 64.

12 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
13 form a belief as to the truth or falsity of the allegations in paragraph 64 of the
14 Complaint and therefore deny, generally and specifically, each and every allegation and
15 characterization in paragraph 64.

16 **B. Allegations Regarding Apple's Alleged Entry into the Cellular Market**

17 65. Each CM lacks knowledge or information sufficient to form a belief as to
18 the truth or falsity of the allegations in paragraph 65 of the Complaint and therefore
19 denies, generally and specifically, each and every allegation and characterization in
20 paragraph 65.

21 66. Compal admits that it began manufacturing products for Apple in or around
22 mid-2014 and that it has remitted royalty payments to Qualcomm related to these
23 products. Compal lacks knowledge or information sufficient to form a belief as to the
24 truth or falsity of the allegations in paragraph 66 of the Complaint related to Apple,
25 Foxconn, Pegatron and Wistron and therefore denies them on that basis. Except as
26 expressly admitted, Compal denies, generally and specifically, the remaining allegations
27 and characterizations in paragraph 66.

1 Foxconn lacks knowledge or information sufficient to form a belief as to the
2 truth or falsity of the allegations in paragraph 66 of the Complaint related to Apple,
3 Compal, Pegatron and Wistron and therefore denies them on that basis. Except as
4 expressly admitted, Foxconn denies, generally and specifically, the remaining
5 allegations and characterizations in paragraph 66.

6 Pegatron admits that it began manufacturing products for Apple in or around
7 2011 and that it has remitted royalty payments to Qualcomm related to these products.
8 Pegatron lacks knowledge or information sufficient to form a belief as to the truth or
9 falsity of the allegations in paragraph 66 of the Complaint related to Apple, Compal,
10 Foxconn and Wistron and therefore denies them on that basis. Except as expressly
11 admitted, Pegatron denies, generally and specifically, the remaining allegations and
12 characterizations in paragraph 66.

13 Wistron admits that it began manufacturing products for Apple in or around
14 2014 and that it has remitted royalty payments to Qualcomm related to these products.
15 Wistron lacks knowledge or information sufficient to form a belief as to the truth or
16 falsity of the allegations in paragraph 66 of the Complaint related to Apple, Compal,
17 Foxconn and Pegatron and therefore denies them on that basis. Except as expressly
18 admitted, Wistron denies, generally and specifically, the remaining allegations and
19 characterizations in paragraph 66.

20 67. Each CM admits that it has purchased Qualcomm modem chips at the
21 direction of Apple for use in Apple cellular devices manufactured by it. Each CM
22 further admits that Qualcomm has required entry into a software licensing agreement in
23 connection with the sale of modem chips. Each CM lacks knowledge or information
24 sufficient to form a belief as to the truth of the remaining allegations and
25 characterizations in paragraph 67 and footnote 4 of the Complaint and therefore denies,
26 generally and specifically, the remaining allegations and characterizations in paragraph
27 67 and footnote 4.

1 Wistron License Agreement and states that, if and to the extent the document is ever
2 held to be admissible, it will speak for itself. Wistron lacks knowledge or information
3 sufficient to form a belief as to the truth or falsity of the allegations in paragraph 69
4 related to Compal, Foxconn and Pegatron and therefore denies them on that basis.
5 Except as expressly admitted, Wistron denies, generally and specifically, the remaining
6 allegations and characterizations in paragraph 69.

7 70. Each CM admits that paragraph 70 purports to describe and characterize
8 certain terms contained in its licensing agreement with Qualcomm without admitting or
9 denying the accuracy of any such description. Except as expressly admitted, each CM
10 denies, generally and specifically, the remaining allegations and characterizations in
11 paragraph 70.

12 71. Each CM admits that paragraph 71 purports to describe and characterize
13 certain terms contained in each of the Defendant's licensing agreements with Qualcomm
14 and refer to the contents of those agreements without admitting or denying the accuracy
15 of any such description. Paragraph 71 contains legal conclusions to which no response
16 is required. To the extent a further response is required, Compal admits that its
17 customers include companies other than Apple. Compal lacks knowledge or
18 information sufficient to form a belief as to the truth or falsity of the allegations in
19 paragraph 71 related to Foxconn, Pegatron and Wistron and therefore denies them on
20 that basis. Except as expressly admitted, Compal denies, generally and specifically, the
21 remaining allegations and characterizations in paragraph 71.

22 Foxconn admits that its customers include companies other than Apple.
23 Foxconn lacks knowledge or information sufficient to form a belief as to the truth or
24 falsity of the allegations in paragraph 71 related to Compal, Pegatron and Wistron and
25 therefore denies them on that basis. Except as expressly admitted, Foxconn denies,
26 generally and specifically, the remaining allegations and characterizations in paragraph
27 71.

1 Pegatron admits that its customers include companies other than Apple.
2 Pegatron lacks knowledge or information sufficient to form a belief as to the truth or
3 falsity of the allegations in paragraph 71 related to Compal, Foxconn and Wistron and
4 therefore denies them on that basis. Except as expressly admitted, Pegatron denies,
5 generally and specifically, the remaining allegations and characterizations in paragraph
6 71.

7 Wistron admits that its customers include companies other than Apple. Wistron
8 lacks knowledge or information sufficient to form a belief as to the truth or falsity of
9 the allegations in paragraph 71 related to Compal, Foxconn and Pegatron and therefore
10 denies them on that basis. Except as expressly admitted, Wistron denies, generally and
11 specifically, the remaining allegations and characterizations in paragraph 71.

12 72. Each CM admits that paragraph 72 purports to describe and characterize
13 certain terms contained in each of its licensing agreement with Qualcomm and refers to
14 the contents of those agreements without admitting or denying the accuracy of any such
15 description. To the extent a further response is required, each CM admits that its
16 payment obligations under the licensing agreement do not depend on whether the
17 manufactured product uses a Qualcomm chip or software. Except as expressly admitted,
18 each CM denies, generally and specifically, the remaining allegations and
19 characterizations in paragraph 72.

20 73. Each CM admits that it has made payments to Qualcomm under its
21 licensing agreement but denies, generally and specifically, the remaining allegations and
22 characterizations in paragraph 73.

23 74. Each CM denies, generally and specifically, each and every allegation and
24 characterization in paragraph 74.

25 **IV. ALLEGATIONS REGARDING ALLEGED WITHHOLDING OF**
26 **ROYALTIES**

27 75. Each CM denies that it is a party to a scheme to coerce below-market
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1 royalty rates from Qualcomm. Each CM lacks knowledge or information sufficient to
2 form a belief as to the truth of the remaining allegations and characterizations in
3 paragraph 75 of the Complaint and therefore denies, generally and specifically, the
4 remaining allegations and characterizations in paragraph 75.

5 76. Each CM lacks knowledge or information sufficient to form a belief as to
6 the truth or falsity of the allegations in paragraph 76 of the Complaint and therefore
7 denies, generally and specifically, each and every allegation and characterization in
8 paragraph 76.

9 77. Each CM denies, generally and specifically, each and every allegation and
10 characterization in paragraph 77.

11 **A. Allegations Regarding Alleged Failure To Pay Royalties During Fourth**
12 **Quarter of 2016**

13 78. On information and belief, each CM admits that Apple has filed a lawsuit
14 against Qualcomm in this Court. Each CM lacks knowledge or information sufficient to
15 form a belief as to the truth of the remaining allegations and characterizations in
16 paragraph 78 of the Complaint and therefore denies, generally and specifically, the
17 remaining allegations and characterizations in paragraph 78.

18 79. Each CM lacks knowledge or information sufficient to form a belief as to
19 the truth or falsity of the allegations in paragraph 79 of the Complaint, including the
20 total of any collective royalties that Qualcomm claims is due and owing, and therefore
21 denies, generally and specifically, each and every allegation and characterization in
22 paragraph 79.

23 80. Foxconn admits that paragraph 80 purports to recite from a document
24 prepared by Foxconn and states that, if and to the extent the document is ever held to be
25 admissible, it will speak for itself. Except as expressly admitted, Foxconn denies,
26 generally and specifically, the remaining allegations and characterizations in paragraph
27 80.

1 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
2 a belief as to the truth or falsity of the allegations in paragraph 80 of the Complaint and
3 therefore deny, generally and specifically, each and every allegation and
4 characterization in paragraph 80.

5 81. Foxconn admits that paragraph 81 purports to recite from correspondence
6 between Foxconn and Qualcomm and states that, if and to the extent the correspondence
7 is ever held to be admissible, it will speak for itself. Except as expressly admitted,
8 Foxconn denies, generally and specifically, the remaining allegations and
9 characterizations in paragraph 81.

10 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
11 a belief as to the truth or falsity of the allegations in paragraph 81 of the Complaint and
12 therefore deny, generally and specifically, each and every allegation and
13 characterization in paragraph 81.

14 82. Pegatron admits that paragraph 82 purports to recite from correspondence
15 between Pegatron and Qualcomm and states that, if and to the extent the correspondence
16 is ever held to be admissible, it will speak for itself. Except as expressly admitted,
17 Pegatron denies, generally and specifically, the remaining allegations and
18 characterizations in paragraph 82.

19 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
20 a belief as to the truth or falsity of the allegations in paragraph 82 of the Complaint and
21 therefore deny, generally and specifically, each and every allegation and
22 characterization in paragraph 82.

23 83. Wistron admits that paragraph 83 purports to recite from correspondence
24 between Wistron and Qualcomm and states that, if and to the extent the correspondence
25 is ever held to be admissible, it will speak for itself. Except as expressly admitted,
26 Wistron denies, generally and specifically, the remaining allegations and
27 characterizations in paragraph 83.

1 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
2 form a belief as to the truth or falsity of the allegations in paragraph 83 of the
3 Complaint and therefore deny, generally and specifically, each and every allegation and
4 characterization in paragraph 83.

5 84. Compal admits that paragraph 84 purports to recite from correspondence
6 between Compal and Qualcomm and states that, if and to the extent the correspondence
7 is ever held to be admissible, it will speak for itself. Except as expressly admitted,
8 Compal denies, generally and specifically, the remaining allegations and
9 characterizations in paragraph 84.

10 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
11 form a belief as to the truth or falsity of the allegations in paragraph 84 of the
12 Complaint and therefore deny, generally and specifically, each and every allegation and
13 characterization in paragraph 84.

14 85. Each CM lacks knowledge or information sufficient to form a belief as to
15 the truth or falsity of the allegations in paragraph 85 of the Complaint, including the
16 total of any collective royalties that Qualcomm claims is due and owing, and therefore
17 denies, generally and specifically, each and every allegation and characterization in
18 paragraph 85.

19 **B. Allegations Regarding Alleged Refusal to Pay Royalties for Apple**
20 **Products**

21 86. Paragraph 86 contains legal conclusions to which no response is required.
22 To the extent a response is required, Compal denies, generally and specifically, each and
23 every allegation and characterization in paragraph 86. Compal lacks knowledge or
24 information sufficient to form a belief as to the truth or falsity of the allegations in
25 paragraph 86 related to Foxconn, Pegatron and Wistron and therefore denies them on
26 that basis.

27 Foxconn denies, generally and specifically, each and every allegation and
28

1 characterization in paragraph 86. Foxconn lacks knowledge or information sufficient to
2 form a belief as to the truth or falsity of the allegations in paragraph 86 related to
3 Compal, Pegatron and Wistron and therefore denies, generally and specifically, them on
4 that basis.

5 Pegatron denies, generally and specifically, each and every allegation and
6 characterization in paragraph 86. Pegatron lacks knowledge or information sufficient to
7 form a belief as to the truth or falsity of the allegations in paragraph 86 related to
8 Compal, Foxconn and Wistron and therefore denies, generally and specifically, them on
9 that basis.

10 Wistron denies, generally and specifically, each and every allegation and
11 characterization in paragraph 86. Wistron lacks knowledge or information sufficient to
12 form a belief as to the truth or falsity of the allegations in paragraph 86 related to
13 Compal, Foxconn and Pegatron and therefore denies, generally and specifically, them
14 on that basis.

15 87. Paragraph 87 does not identify the “Certain [CMs]” to which the allegations
16 are directed. Each CM therefore lacks knowledge or information sufficient to form a
17 belief as to the truth or falsity of the allegations in paragraph 87 of the Complaint and
18 therefore denies, generally and specifically, each and every allegation and
19 characterization in paragraph 87.

20 88. Each CM admits that the allegations in paragraph 88 purport to describe
21 royalty reports purportedly submitted by each CM to Qualcomm and that, if and to the
22 extent the reports are held to be admissible, they will speak for themselves. To the
23 extent a further response is required, Compal lacks knowledge or information sufficient
24 to form a belief as to the truth or falsity of the allegations in paragraph 88 related to
25 Foxconn, Pegatron and Wistron and therefore denies, generally and specifically, them on
26 that basis. Except as expressly admitted, Compal denies, generally and specifically, the
27 remaining allegations and characterizations in paragraph 88.

1 Foxconn lacks knowledge or information sufficient to form a belief as to the
2 truth or falsity of the allegations in paragraph 88 related to Compal, Pegatron and
3 Wistron and therefore denies, generally and specifically, them on that basis. Except as
4 expressly admitted, Foxconn denies, generally and specifically, the remaining
5 allegations and characterizations in paragraph 88.

6 Pegatron lacks knowledge or information sufficient to form a belief as to the
7 truth or falsity of the allegations in paragraph 88 related to Compal, Foxconn and
8 Wistron and therefore denies, generally and specifically, them on that basis. Except as
9 expressly admitted, Pegatron denies, generally and specifically, the remaining
10 allegations and characterizations in paragraph 88.

11 Wistron lacks knowledge or information sufficient to form a belief as to the truth
12 or falsity of the allegations in paragraph 88 related to Compal, Foxconn and Pegatron
13 and therefore denies, generally and specifically, them on that basis. Except as expressly
14 admitted, Wistron denies, generally and specifically, the remaining allegations and
15 characterizations in paragraph 88.

16 89. Each CM lacks knowledge or information sufficient to form a belief as to
17 the truth or falsity of the allegations in paragraph 89 of the Complaint and therefore
18 denies, generally and specifically, each and every allegation and characterization in
19 paragraph 89.

20 90. Each CM admits that paragraph 90 purports to recite from and describe a
21 statement issued by Apple and states that, if and to the extent the statement is ever held
22 to be admissible, it will speak for itself. Each CM lacks knowledge or information
23 sufficient to form a belief as to the truth or falsity of the remaining allegations in
24 paragraph 90 of the Complaint and therefore denies, generally and specifically, the
25 remaining allegation and characterization in paragraph 90.

26 91. Each CM admits that it has entered into an agreement with Apple in which,
27 among other things, each party agreed to indemnify the other under certain

1 circumstances, according to the terms and conditions of those contracts. Except as
2 expressly admitted, Each CM denies, generally and specifically, the remaining
3 allegations and characterizations in paragraph 91.

4 92. Each CM lacks knowledge or information sufficient to form a belief as to
5 the truth or falsity of the allegations in paragraph 92 of the Complaint, including the
6 total of any collective royalties that Qualcomm claims is due and owing, and therefore
7 denies, generally and specifically, each and every allegation and characterization in
8 paragraph 92.

9 93. Foxconn admits that the allegations in paragraph 93 purport to recite from
10 an alleged email from Foxconn to Qualcomm and states that, if and to the extent the
11 document is ever held to be admissible, it will speak for itself. Except as expressly
12 admitted, Foxconn denies, generally and specifically, the remaining allegations and
13 characterizations in paragraph 93.

14 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
15 a belief as to the truth or falsity of the allegations in paragraph 93 of the Complaint and
16 therefore deny, generally and specifically, each and every allegation and
17 characterization in paragraph 93.

18 94. Foxconn admits that the allegations in paragraph 94 purport to describe and
19 characterize alleged emails from Foxconn to Qualcomm and states that, if and to the
20 extent those documents are ever held to be admissible, they will speak for themselves.
21 Foxconn further admits that it has made royalty payments to Qualcomm for Q1 2017.
22 Except as expressly admitted, Foxconn denies, generally and specifically, the remaining
23 allegations and characterizations in paragraph 94.

24 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
25 a belief as to the truth or falsity of the allegations in paragraph 94 of the Complaint and
26 therefore deny, generally and specifically, each and every allegation and
27 characterization in paragraph 94.

1 95. Pegatron admits that the allegations in paragraph 95 purport to describe and
2 characterize alleged statements made by Pegatron and states that, if and to the extent
3 those statements are ever held to be admissible, they will speak for themselves. Except
4 as expressly admitted, Pegatron denies, generally and specifically, the remaining
5 allegations and characterizations in paragraph 95.

6 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
7 a belief as to the truth or falsity of the allegations in paragraph 95 of the Complaint and
8 therefore deny, generally and specifically, each and every allegation and
9 characterization in paragraph 95.

10 96. Pegatron admits that it has paid royalties to Qualcomm for Q1 2017 cellular
11 products. Except as expressly admitted, Pegatron denies, generally and specifically, the
12 remaining allegations and characterizations in paragraph 96.

13 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
14 a belief as to the truth or falsity of the allegations in paragraph 96 of the Complaint and
15 therefore deny, generally and specifically, each and every allegation and
16 characterization in paragraph 96

17 97. Compal admits that the allegations in paragraph 97 purport to recite from an
18 alleged email from Compal to Qualcomm and states that, if and to the extent the
19 document is ever held to be admissible, it will speak for itself. Except as expressly
20 admitted, Compal denies, generally and specifically, the remaining allegations and
21 characterizations in paragraph 97.

22 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
23 form a belief as to the truth or falsity of the allegations in paragraph 97 of the
24 Complaint and therefore deny, generally and specifically, each and every allegation and
25 characterization in paragraph 97.

26 98. Compal admits that the allegations in paragraph 98 purport to recite from an
27 alleged email from Compal to Qualcomm and states that, if and to the extent the

1 document is ever held to be admissible, it will speak for itself. Except as expressly
2 admitted, Compal denies, generally and specifically, the remaining allegations and
3 characterizations in paragraph 98.

4 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
5 form a belief as to the truth or falsity of the allegations in paragraph 98 of the
6 Complaint and therefore deny, generally and specifically, each and every allegation and
7 characterization in paragraph 98.

8 99. Compal admits that the allegations in paragraph 99 purport to describe and
9 characterize an alleged email from Compal to Qualcomm and states that, if and to the
10 extent the document is ever held to be admissible, it will speak for itself. Compal
11 further admits that it has paid royalties to Qualcomm for Q1 2017 cellular products.
12 Except as expressly admitted, Compal denies, generally and specifically, the remaining
13 allegations and characterizations in paragraph 99.

14 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
15 form a belief as to the truth or falsity of the allegations in paragraph 99 of the
16 Complaint and therefore deny, generally and specifically, each and every allegation and
17 characterization in paragraph 99.

18 100. Wistron admits that the allegations in paragraph 100 purport to describe
19 royalty reports submitted by Wistron to Qualcomm and that, if and to the extent the
20 reports are held to be admissible, they will speak for themselves. Except as expressly
21 admitted, Wistron denies, generally and specifically, the remaining allegations and
22 characterizations in paragraph 100.

23 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
24 form a belief as to the truth or falsity of the allegations in paragraph 100 of the
25 Complaint and therefore deny, generally and specifically, each and every allegation and
26 characterization in paragraph 100.

27 101. Wistron admits that it has paid royalties to Qualcomm for Q1 2017 cellular
28

1 products. Except as expressly admitted, Wistron denies, generally and specifically, the
2 remaining allegations and characterizations in paragraph 101.

3 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
4 form a belief as to the truth or falsity of the allegations in paragraph 101 of the
5 Complaint and therefore deny, generally and specifically, each and every allegation and
6 characterization in paragraph 101.

7 102. Paragraph 102 contains legal conclusions to which no response is required.
8 To the extent a response is required, each CM denies, generally and specifically, each
9 and every allegation and characterization in paragraph 102.

10 103. Each CM admits that it has paid royalties to Qualcomm related to Q1 2017
11 cellular products. Each CM denies, generally and specifically, the remaining allegations
12 and characterizations in paragraph 103.

13 **V. ALLEGATIONS REGARDING ALLEGED BREACH OF AGREEMENTS**
14 **WITH QUALCOMM**

15 104. Each CM denies, generally and specifically, each and every allegation and
16 characterization in paragraph 104.

17 **A. Allegations Regarding Alleged Breach for Failing to Pay Royalties**

18 105. Each CM admits that its license agreement purports to require quarterly
19 payment of royalties to Qualcomm and refers to the contents of those agreements.
20 Paragraph 105 contains legal conclusions to which no response is required. To the
21 extent a further response is required, each CM denies, generally and specifically, the
22 remaining allegations and characterizations in paragraph 105.

23 106. Paragraph 106 contains legal conclusions to which no response is required.
24 To the extent a response is required, each CM admits that it paid royalties to Qualcomm
25 related to sales of cellular products, including for Q4 2016 and Q1 2017. Paragraph 106
26 does not identify the CMs to which the allegations regarding “most of the [CMs]” are
27 directed and therefore each CM lacks knowledge or information sufficient to form a
28

1 belief as to the truth of those allegations and denies them on that basis. Each CM denies,
2 generally and specifically, the remaining allegations and characterizations in paragraph
3 106.

4 107. Each CM admits that it is an independent company and each further admits
5 that it has entered into its own agreement with Apple in which, among other things, each
6 party agreed to indemnify the other under certain circumstances, according to the terms
7 and conditions of those contracts. Except as expressly admitted, each CM denies,
8 generally and specifically, the remaining allegations and characterizations in paragraph
9 107.

10 108. Each CM denies, generally and specifically, each and every allegation and
11 characterization in paragraph 108.

12 109. Each CM denies, generally and specifically, each and every allegation and
13 characterization in paragraph 109.

14 110. Foxconn denies, generally and specifically, each and every allegation and
15 characterization in paragraph 110.

16 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
17 a belief as to the truth or falsity of the allegations in paragraph 110 of the Complaint
18 and therefore deny, generally and specifically, each and every allegation and
19 characterization in paragraph 110.

20 111. Pegatron denies, generally and specifically, each and every allegation and
21 characterization in paragraph 111.

22 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
23 a belief as to the truth or falsity of the allegations in paragraph 111 of the Complaint
24 and therefore deny, generally and specifically, each and every allegation and
25 characterization in paragraph 111.

26 112. Wistron denies, generally and specifically, each and every allegation and
27 characterization in paragraph 112.

1 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
2 form a belief as to the truth or falsity of the allegations in paragraph 112 of the
3 Complaint and therefore deny, generally and specifically, each and every allegation and
4 characterization in paragraph 112.

5 113. Compal denies, generally and specifically, each and every allegation and
6 characterization in paragraph 113.

7 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
8 form a belief as to the truth or falsity of the allegations in paragraph 113 of the
9 Complaint and therefore deny, generally and specifically, each and every allegation and
10 characterization in paragraph 113.

11 114. Each CM denies, generally and specifically, each and every allegation and
12 characterization in paragraph 114.

13 **B. Allegations Regarding Alleged Breach of Audit Obligations**

14 115. Each CM admits that the allegations in paragraph 115 purport to describe
15 and characterize certain terms contained in each of the CM's Licensing Agreements with
16 Qualcomm and refers to the contents in those agreements without admitting or denying
17 the accuracy of any such description. Paragraph 115 contains legal conclusions to which
18 no response is required. To the extent a response is required, each CM denies, generally
19 and specifically, each and every allegation and characterization in paragraph 115.

20 116. Each CM denies, generally and specifically, each and every allegation and
21 characterization in paragraph 116.

22 117. Each CM denies, generally and specifically, each and every allegation and
23 characterization in paragraph 117.

24 118. Foxconn denies, generally and specifically, each and every allegation and
25 characterization in paragraph 118.

26 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
27 a belief as to the truth or falsity of the allegations in paragraph 118 of the Complaint
28

1 and therefore deny, generally and specifically, each and every allegation and
2 characterization in paragraph 118.

3 119. Each CM denies, generally and specifically, each and every allegation and
4 characterization in paragraph 119.

5 **C. Allegations Regarding Alleged Breach of Reporting Obligations**

6 120. Each CM denies, generally and specifically, each and every allegation and
7 characterization in paragraph 120.

8 121. Each CM admits that the allegations in paragraph 121 purport to describe
9 and characterize certain terms contained in each of the CM's licensing agreements with
10 Qualcomm and refers to the contents of those agreements without admitting or denying
11 the accuracy of any such description. Paragraph 121 contains legal conclusions to which
12 no response is required. To the extent a further response is required, each CM denies,
13 generally and specifically, the remaining allegations and characterizations in paragraph
14 121.

15 122. Each CM denies, generally and specifically, each and every allegation and
16 characterization in paragraph 122.

17 123. Each CM denies, generally and specifically, each and every allegation and
18 characterization in paragraph 123.

19 **D. Allegations Regarding Alleged Breach of Master Software Agreement**

20 124. Each CM denies, generally and specifically, each and every allegation and
21 characterization in paragraph 124.

22 125. Each CM admits that the allegations in paragraph 125 purport to describe
23 and characterize certain terms contained its licensing agreements with Qualcomm and
24 refers to the contents of those agreements without admitting or denying the accuracy of
25 any such description. Paragraph 125 contains legal conclusions to which no response is
26 required. To the extent a response is required, each CM denies, generally and
27

1 specifically, each and every allegation and characterization in paragraph 125.

2 126. Paragraph 126 contains legal conclusions to which no response is required.
3 To the extent a response is required, each CM denies, generally and specifically, each
4 and every allegation and characterization in paragraph 126.

5 **COUNT I**

6 **Foxconn’s Alleged Breach of License Agreement**

7 127. Paragraphs 1-126 of each CM’s Answer are incorporated by reference as if
8 set forth herein.

9 128. Paragraph 128 contains legal conclusions to which no response is required.
10 To the extent a response is required, Foxconn denies, generally and specifically, each
11 and every allegation and characterization in paragraph 128.

12 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
13 a belief as to the truth or falsity of the allegations in paragraph 128 of the Complaint
14 and therefore deny, generally and specifically, each and every allegation and
15 characterization in paragraph 128.

16 129. Paragraph 129 contains legal conclusions to which no response is required.
17 Foxconn lacks knowledge or information sufficient to form a belief as to the truth or
18 falsity of the allegations in paragraph 129 of the Complaint and therefore denies,
19 generally and specifically, each and every allegation and characterization in paragraph
20 129.

21 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
22 a belief as to the truth or falsity of the allegations in paragraph 129 of the Complaint
23 and therefore deny, generally and specifically, each and every allegation and
24 characterization in paragraph 129.

25 130. Foxconn denies, generally and specifically, each and every allegation and
26 characterization in paragraph 130.

27 Compal, Pegatron and Wistron lack knowledge or information sufficient to form

1 a belief as to the truth or falsity of the allegations in paragraph 130 of the Complaint
2 and therefore deny, generally and specifically, each and every allegation and
3 characterization in paragraph 130.

4 131. Paragraph 131 contains legal conclusions to which no response is required.
5 To the extent a response is required, Foxconn denies, generally and specifically, each
6 and every allegation and characterization in paragraph 131.

7 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
8 a belief as to the truth or falsity of the allegations in paragraph 131 of the Complaint
9 and therefore deny, generally and specifically, each and every allegation and
10 characterization in paragraph 131.

11 **A. Foxconn's Alleged Refusal to Pay Royalties**

12 132. Foxconn admits that the allegations in paragraph 132 purport to describe
13 and characterize certain terms contained in the Foxconn License Agreement and refers
14 to the contents of that agreement without admitting or denying the accuracy of any such
15 description. Paragraph 132 contains legal conclusions to which no response is required.
16 To the extent a response is required, except as expressly admitted, Foxconn denies,
17 generally and specifically, the remaining allegations and characterizations in paragraph
18 132.

19 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
20 a belief as to the truth or falsity of the allegations in paragraph 132 of the Complaint
21 and therefore deny, generally and specifically, each and every allegation and
22 characterization in paragraph 132.

23 133. Foxconn admits that paragraph 133 purports to recite from and characterize
24 a document prepared by Foxconn but states that, if and to the extent the document is
25 ever held to be admissible, it will speak for itself. Except as expressly admitted,
26 Foxconn denies, generally and specifically, the remaining allegations and
27 characterizations in paragraph 133.

1 **B. Foxconn’s Alleged Failure to Cooperate with Audits**

2 137. Foxconn admits that the allegations in paragraph 137 purport to describe
3 and characterize certain terms contained in the Foxconn License Agreement and refers
4 to that agreement without admitting or denying the accuracy of any such description.
5 Paragraph 137 contains legal conclusions to which no response is required. To the extent
6 a response is required, except as expressly admitted, Foxconn denies, generally and
7 specifically, the remaining allegations and characterizations in paragraph 137.

8 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
9 a belief as to the truth or falsity of the allegations in paragraph 137 of the Complaint
10 and therefore deny, generally and specifically, each and every allegation and
11 characterization in paragraph 137.

12 138. Foxconn admits that the allegations in paragraph 138 purport to describe
13 and characterize certain terms contained in the Foxconn License Agreement and refers
14 to that agreement without admitting or denying the accuracy of any such description.
15 Paragraph 138 contains legal conclusions to which no response is required. To the
16 extent a further response is required, and except as expressly admitted, Foxconn denies,
17 generally and specifically, the remaining allegations and characterizations in paragraph
18 138.

19 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
20 a belief as to the truth or falsity of the allegations in paragraph 138 of the Complaint
21 and therefore deny, generally and specifically, each and every allegation and
22 characterization in paragraph 138.

23 139. Foxconn denies, generally and specifically, each and every allegation and
24 characterization in paragraph 139.

25 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
26 a belief as to the truth or falsity of the allegations in paragraph 139 of the Complaint
27 and therefore deny, generally and specifically, each and every allegation and
28

1 characterization in paragraph 139.

2 140. Foxconn denies, generally and specifically, each and every allegation and
3 characterization in paragraph 140.

4 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
5 a belief as to the truth or falsity of the allegations in paragraph 140 of the Complaint
6 and therefore deny, generally and specifically, each and every allegation and
7 characterization in paragraph 140.

8 **C. Foxconn's Alleged Reporting of Sales Information**

9 141. Foxconn admits that the allegations in paragraph 141 purport to describe
10 and characterize certain terms contained in the Foxconn License Agreement and refers
11 to that agreement without admitting or denying the accuracy of any such description.
12 Paragraph 141 contains legal conclusions to which no response is required. To the extent
13 a response is required, except as expressly admitted, Foxconn denies, generally and
14 specifically, the remaining allegations and characterizations in paragraph 141.

15 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
16 a belief as to the truth or falsity of the allegations in paragraph 141 of the Complaint
17 and therefore deny, generally and specifically, each and every allegation and
18 characterization in paragraph 141.

19 142. Foxconn admits that the allegations in paragraph 142 purport to describe
20 and characterize certain terms contained in the Foxconn License Agreement and refers
21 to that agreement without admitting or denying the accuracy of any such description.
22 Paragraph 142 contains legal conclusions to which no response is required. To the extent
23 a response is required, except as expressly admitted, Foxconn denies, generally and
24 specifically, the remaining allegations and characterizations in paragraph 142.

25 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
26 a belief as to the truth or falsity of the allegations in paragraph 142 of the Complaint
27 and therefore deny, generally and specifically, each and every allegation and
28

1 characterization in paragraph 142.

2 143. Foxconn denies, generally and specifically, each and every limitation in
3 paragraph 143.

4 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
5 a belief as to the truth or falsity of the allegations in paragraph 143 of the Complaint
6 and therefore deny, generally and specifically, each and every allegation and
7 characterization in paragraph 143.

8 **COUNT II**

9 **Foxconn's Alleged Breach of Master Software Agreement**

10 144. Paragraphs 1-143 of CMs' Answer are incorporated by reference as if set
11 forth herein.

12 145. Paragraph 145 contains legal conclusions to which no response is required.
13 To the extent a response is required, Foxconn denies, generally and specifically, each
14 and every allegation and characterization in paragraph 145.

15 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
16 a belief as to the truth or falsity of the allegations in paragraph 145 of the Complaint
17 and therefore deny, generally and specifically, each and every allegation and
18 characterization in paragraph 145.

19 146. Paragraph 146 contains legal conclusions to which no response is required.
20 Foxconn lacks knowledge or information sufficient to form a belief as to the truth or
21 falsity of the allegations in paragraph 146 of the Complaint and therefore denies,
22 generally and specifically, each and every allegation and characterization in paragraph
23 146.

24 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
25 a belief as to the truth or falsity of the allegations in paragraph 146 of the Complaint
26 and therefore deny, generally and specifically, each and every allegation and
27 characterization in paragraph 146.

1 147. Foxconn denies, generally and specifically, each and every allegation and
2 characterization in paragraph 147.

3 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
4 a belief as to the truth or falsity of the allegations in paragraph 147 of the Complaint
5 and therefore deny, generally and specifically, each and every allegation and
6 characterization in paragraph 147.

7 148. Foxconn admits that the allegations in paragraph 148 purport to describe
8 and characterize certain terms contained in the Foxconn MSA and refers to that
9 agreement without admitting or denying the accuracy of any such description.
10 Paragraph 148 contains legal conclusions to which no response is required. To the extent
11 a response is required, except as expressly admitted, Foxconn denies, generally and
12 specifically, the remaining allegations and characterizations in paragraph 148.

13 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
14 a belief as to the truth or falsity of the allegations in paragraph 148 of the Complaint
15 and therefore deny, generally and specifically, each and every allegation and
16 characterization in paragraph 148.

17 149. Paragraph 149 contains legal conclusions to which no response is required.
18 To the extent a response is required, Foxconn denies, generally and specifically, each
19 and every allegation and characterization in paragraph 149.

20 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
21 a belief as to the truth or falsity of the allegations in paragraph 149 of the Complaint
22 and therefore deny, generally and specifically, each and every allegation and
23 characterization in paragraph 149.

24 150. Paragraph 150 contains legal conclusions to which no response is required.
25 To the extent a response is required, Foxconn denies, generally and specifically, each
26 and every allegation and characterization in paragraph 150.

27 Compal, Pegatron and Wistron lack knowledge or information sufficient to form
28

1 a belief as to the truth or falsity of the allegations in paragraph 150 of the Complaint
2 and therefore deny, generally and specifically, each and every allegation and
3 characterization in paragraph 150.

4 **COUNT III**

5 **Pegatron's Alleged Breach of License Agreement**

6 151. Paragraphs 1-150 of CMs' Answer are incorporated by reference as if set
7 forth herein.

8 152. Paragraph 152 contains legal conclusions to which no response is required.
9 To the extent a response is required, Pegatron denies, generally and specifically, each
10 and every allegation and characterization in paragraph 152.

11 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
12 a belief as to the truth or falsity of the allegations in paragraph 152 of the Complaint
13 and therefore deny, generally and specifically, each and every allegation and
14 characterization in paragraph 152.

15 153. Paragraph 153 contains legal conclusions to which no response is required.
16 Pegatron lacks knowledge or information sufficient to form a belief as to the truth or
17 falsity of the allegations in paragraph 153 of the Complaint and therefore denies,
18 generally and specifically, each and every allegation and characterization in paragraph
19 153.

20 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
21 a belief as to the truth or falsity of the allegations in paragraph 153 of the Complaint
22 and therefore deny, generally and specifically, each and every allegation and
23 characterization in paragraph 153.

24 154. Pegatron denies, generally and specifically, each and every allegation and
25 characterization in paragraph 154.

26 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
27 a belief as to the truth or falsity of the allegations in paragraph 154 of the Complaint

1 and therefore deny, generally and specifically, each and every allegation and
2 characterization in paragraph 154.

3 155. Paragraph 155 contains legal conclusions to which no response is required.
4 To the extent a response is required, Pegatron denies, generally and specifically, each
5 and every allegation and characterization in paragraph 155.

6 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
7 a belief as to the truth or falsity of the allegations in paragraph 155 of the Complaint
8 and therefore deny, generally and specifically, each and every allegation and
9 characterization in paragraph 155.

10 **A. Pegatron's Alleged Refusal to Pay Royalties**

11 156. Pegatron admits that the allegations in paragraph 156 purport to describe
12 and characterize certain terms contained in the Pegatron License Agreement and refers
13 to the contents of that agreement without admitting or denying the accuracy of any such
14 description. Paragraph 156 contains legal conclusions to which no response is required.
15 To the extent a response is required, except as expressly admitted, Pegatron denies,
16 generally and specifically, the remaining allegations and characterizations in paragraph
17 156.

18 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
19 a belief as to the truth or falsity of the allegations in paragraph 156 of the Complaint
20 and therefore deny, generally and specifically, each and every allegation and
21 characterization in paragraph 156.

22 157. Pegatron admits that paragraph 157 purports to recite from and characterize
23 a document prepared by Pegatron but states that, if and to the extent the document is
24 ever held to be admissible, it will speak for itself. To the extent a response is required,
25 Pegatron denies, generally and specifically, the remaining allegations and
26 characterizations in paragraph 157.

27 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
28

1 a belief as to the truth or falsity of the allegations in paragraph 157 of the Complaint
2 and therefore deny, generally and specifically, each and every allegation and
3 characterization in paragraph 157.

4 158. Pegatron admits that paragraph 158 purports to describe and characterize
5 documents and statements by Pegatron and states that, if and to the extent the documents
6 and statements are ever held to be admissible, they will speak for themselves. Except as
7 expressly admitted, Pegatron denies, generally and specifically, the remaining
8 allegations and characterizations in paragraph 158.

9 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
10 a belief as to the truth or falsity of the allegations in paragraph 158 of the Complaint
11 and therefore deny, generally and specifically, each and every allegation and
12 characterization in paragraph 158.

13 159. Paragraph 159 contains legal conclusions to which no response is required.
14 To the extent a response is required, Pegatron paid royalties to Qualcomm for Q1 2017
15 cellular products. Except as expressly admitted, Pegatron denies, generally and
16 specifically, the remaining allegations and characterizations in paragraph 159.

17 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
18 a belief as to the truth or falsity of the allegations in paragraph 159 of the Complaint
19 and therefore deny, generally and specifically, each and every allegation and
20 characterization in paragraph 159.

21 160. Pegatron denies, generally and specifically, each and every allegation and
22 characterization in paragraph 160.

23 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
24 a belief as to the truth or falsity of the allegations in paragraph 160 of the Complaint
25 and therefore deny, generally and specifically, each and every allegation and
26 characterization in paragraph 160.

1 164. Pegatron denies, generally and specifically, each and every allegation and
2 characterization in paragraph 164.

3 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
4 a belief as to the truth or falsity of the allegations in paragraph 164 of the Complaint
5 and therefore deny, generally and specifically, each and every allegation and
6 characterization in paragraph 164.

7 **C. Pegatron’s Alleged Reporting of Sales Information**

8 165. Pegatron admits that the allegations in paragraph 165 purport to describe
9 and characterize certain terms contained in the Pegatron License Agreement and refers
10 to that agreement without admitting or denying the accuracy of any such description.
11 Paragraph 165 contains legal conclusions to which no response is required. To the
12 extent a response is required, except as expressly admitted, Pegatron denies, generally
13 and specifically, the remaining allegations and characterizations in paragraph 165.

14 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
15 a belief as to the truth or falsity of the allegations in paragraph 165 of the Complaint
16 and therefore deny, generally and specifically, each and every allegation and
17 characterization in paragraph 165.

18 166. Pegatron admits that the allegations in paragraph 166 purport to describe
19 and characterize certain terms contained in the Pegatron License Agreement and refers
20 to that agreement without admitting or denying the accuracy of any such description.
21 Paragraph 166 contains legal conclusions to which no response is required. To the
22 extent a response is required, except as expressly admitted, Pegatron denies, generally
23 and specifically, the remaining allegations and characterizations in paragraph 166.

24 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
25 a belief as to the truth or falsity of the allegations in paragraph 166 of the Complaint
26 and therefore deny, generally and specifically, each and every allegation and
27 characterization in paragraph 166.

1 167. Pegatron denies, generally and specifically, each and every allegation and
2 characterization in paragraph 167.

3 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
4 a belief as to the truth or falsity of the allegations in paragraph 167 of the Complaint
5 and therefore deny, generally and specifically, each and every allegation and
6 characterization in paragraph 167.

7 **COUNT IV**

8 **Pegatron’s Alleged Breach of Master Software Agreement**

9 168. Paragraphs 1-167 of CMs’ Answer are incorporated by reference as if set
10 forth herein.

11 169. Paragraph 169 contains legal conclusions to which no response is required.
12 To the extent a response is required, Pegatron denies, generally and specifically, each
13 and every allegation and characterization in paragraph 169.

14 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
15 a belief as to the truth or falsity of the allegations in paragraph 169 of the Complaint
16 and therefore deny, generally and specifically, each and every allegation and
17 characterization in paragraph 169.

18 170. Paragraph 170 contains legal conclusions to which no response is required.
19 Pegatron lacks knowledge or information sufficient to form a belief as to the truth or
20 falsity of the allegations in paragraph 170 of the Complaint and therefore denies,
21 generally and specifically, each and every allegation and characterization in paragraph
22 170.

23 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
24 a belief as to the truth or falsity of the allegations in paragraph 170 of the Complaint
25 and therefore deny, generally and specifically, each and every allegation and
26 characterization in paragraph 170.

27 171. Pegatron denies, generally and specifically, each and every allegation and
28

1 characterization in paragraph 171.

2 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
3 a belief as to the truth or falsity of the allegations in paragraph 171 of the Complaint
4 and therefore deny, generally and specifically, each and every allegation and
5 characterization in paragraph 171.

6 172. Pegatron admits that the allegations in paragraph 172 purport to describe
7 and characterize certain terms contained in the Pegatron MSA and refers to that
8 agreement without admitting or denying the accuracy of any such description.
9 Paragraph 172 contains legal conclusions to which no response is required. To the
10 extent a response is required, and except as expressly admitted, Pegatron denies,
11 generally and specifically, the remaining allegations and characterizations in paragraph
12 172.

13 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
14 a belief as to the truth or falsity of the allegations in paragraph 172 of the Complaint
15 and therefore deny, generally and specifically, each and every allegation and
16 characterization in paragraph 172.

17 173. Paragraph 173 contains legal conclusions to which no response is required.
18 To the extent a response is required, Pegatron denies, generally and specifically, each
19 and every allegation and characterization in paragraph 173.

20 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
21 a belief as to the truth or falsity of the allegations in paragraph 173 of the Complaint
22 and therefore deny, generally and specifically, each and every allegation and
23 characterization in paragraph 173.

24 174. Paragraph 174 contains legal conclusions to which no response is required.
25 To the extent a response is required, Pegatron denies, generally and specifically, each
26 and every allegation and characterization in paragraph 174.

27 Compal, Foxconn and Wistron lack knowledge or information sufficient to form
28

1 a belief as to the truth or falsity of the allegations in paragraph 174 of the Complaint
2 and therefore deny, generally and specifically, each and every allegation and
3 characterization in paragraph 174.

4 **COUNT V**

5 **Wistron's Alleged Breach of License Agreement**

6 175. Paragraphs 1-174 of CMs' Answer are incorporated by reference as if set
7 forth herein.

8 176. Paragraph 176 contains legal conclusions to which no response is required.
9 To the extent a response is required, Wistron denies, generally and specifically, each and
10 every allegation and characterization in paragraph 176.

11 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
12 form a belief as to the truth or falsity of the allegations in paragraph 176 of the
13 Complaint and therefore deny, generally and specifically, each and every allegation and
14 characterization in paragraph 176.

15 177. Paragraph 177 contains legal conclusions to which no response is required.
16 To the extent a response is required, Wistron lacks knowledge or information sufficient
17 to form a belief as to the truth or falsity of the allegations in paragraph 177 of the
18 Complaint and therefore denies, generally and specifically, each and every allegation
19 and characterization in paragraph 177.

20 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
21 form a belief as to the truth or falsity of the allegations in paragraph 177 of the
22 Complaint and therefore deny, generally and specifically, each and every allegation and
23 characterization in paragraph 177.

24 178. Wistron denies, generally and specifically, each and every allegation and
25 characterization in paragraph 178.

26 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
27 form a belief as to the truth or falsity of the allegations in paragraph 178 of the

1 Complaint and therefore deny, generally and specifically, each and every allegation and
2 characterization in paragraph 178.

3 179. Paragraph 179 contains legal conclusions to which no response is required.
4 To the extent a response is required, Wistron denies, generally and specifically, each and
5 every allegation and characterization in paragraph 179.

6 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
7 form a belief as to the truth or falsity of the allegations in paragraph 179 of the
8 Complaint and therefore deny, generally and specifically, each and every allegation and
9 characterization in paragraph 179.

10 **A. Wistron’s Alleged Refusal to Pay Royalties**

11 180. Wistron admits that the allegations in paragraph 180 purport to describe and
12 characterize certain terms contained in the Wistron License Agreement and refers to the
13 contents of that agreement without admitting or denying the accuracy of any such
14 description. Paragraph 180 contains legal conclusions to which no response is required.
15 To the extent a response is required, and except as expressly admitted, Wistron denies,
16 generally and specifically, the remaining allegations and characterizations in paragraph
17 180.

18 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
19 form a belief as to the truth or falsity of the allegations in paragraph 180 of the
20 Complaint and therefore deny, generally and specifically, each and every allegation and
21 characterization in paragraph 180.

22 181. Wistron admits that paragraph 181 purports to recite from and characterize
23 a document reported by Apple but states that, if and to the extent the document is ever
24 held to be admissible, it will speak for itself. Except as expressly admitted, Wistron
25 denies, generally and specifically, each and every allegation and characterization in
26 paragraph 181.

27 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
28

1 form a belief as to the truth or falsity of the allegations in paragraph 181 of the
2 Complaint and therefore deny, generally and specifically, each and every allegation and
3 characterization in paragraph 181.

4 182. Wistron admits that paragraph 182 purports to recite from and characterize
5 statements by Wistron but states that, if and to the extent the statements are ever held to
6 be admissible, they will speak for themselves. Except as expressly admitted, Wistron
7 denies, generally and specifically, the remaining allegations and characterizations in
8 paragraph 182.

9 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
10 form a belief as to the truth or falsity of the allegations in paragraph 182 of the
11 Complaint and therefore deny, generally and specifically, each and every allegation and
12 characterization in paragraph 182.

13 183. Wistron denies, generally and specifically, each and every allegation and
14 characterization in paragraph 183.

15 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
16 form a belief as to the truth or falsity of the allegations in paragraph 183 of the
17 Complaint and therefore deny, generally and specifically, each and every allegation and
18 characterization in paragraph 183.

19 **B. Wistron's Alleged Failure to Cooperate with Audits**

20 184. Wistron admits that the allegations in paragraph 184 purport to describe and
21 characterize certain terms contained in the Wistron License Agreement and refers to that
22 agreement without admitting or denying the accuracy of any such description.
23 Paragraph 184 contains legal conclusions to which no response is required. To the
24 extent a response is required, except as expressly admitted, Wistron denies, generally
25 and specifically, the remaining allegations and characterizations in paragraph 184.

26 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
27 form a belief as to the truth or falsity of the allegations in paragraph 184 of the
28

1 Complaint and therefore deny, generally and specifically, each and every allegation and
2 characterization in paragraph 184.

3 185. Wistron admits that the allegations in paragraph 185 purport to describe and
4 characterize certain terms contained in the Wistron License Agreement and refers to that
5 agreement without admitting or denying the accuracy of any such description.

6 Paragraph 185 contains legal conclusions to which no response is required. To the
7 extent a response is required, except as expressly admitted, Wistron denies, generally
8 and specifically, the remaining allegations and characterizations in paragraph 185.

9 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
10 form a belief as to the truth or falsity of the allegations in paragraph 185 of the
11 Complaint and therefore deny, generally and specifically, each and every allegation and
12 characterization in paragraph 185.

13 186. Wistron denies, generally and specifically, each and every allegation and
14 characterization in paragraph 186.

15 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
16 form a belief as to the truth or falsity of the allegations in paragraph 186 of the
17 Complaint and therefore deny, generally and specifically, each and every allegation and
18 characterization in paragraph 186.

19 187. Wistron denies, generally and specifically, each and every allegation and
20 characterization in paragraph 187.

21 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
22 form a belief as to the truth or falsity of the allegations in paragraph 187 of the
23 Complaint and therefore deny, generally and specifically, each and every allegation and
24 characterization in paragraph 187.

25 **C. Wistron’s Alleged Reporting of Sales Information**

26 188. Wistron admits that the allegations in paragraph 188 purport to describe and
27 characterize certain terms contained in the Wistron License Agreement and refers to that

1 agreement without admitting or denying the accuracy of any such description.

2 Paragraph 188 contains legal conclusions to which no response is required. To the
3 extent a response is required, except as expressly admitted, Wistron denies, generally
4 and specifically, the remaining allegations and characterizations in paragraph 188.

5 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
6 form a belief as to the truth or falsity of the allegations in paragraph 188 of the
7 Complaint and therefore deny, generally and specifically, each and every allegation and
8 characterization in paragraph 188.

9 189. Wistron admits that the allegations in paragraph 189 purport to describe and
10 characterize certain terms contained in the Wistron License Agreement and refers to that
11 agreement without admitting or denying the accuracy of any such description.

12 Paragraph 189 contains legal conclusions to which no response is required. To the
13 extent a response is required, except as expressly admitted, Wistron denies, generally
14 and specifically, the remaining allegations and characterizations in paragraph 189.

15 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
16 form a belief as to the truth or falsity of the allegations in paragraph 189 of the
17 Complaint and therefore deny, generally and specifically, each and every allegation and
18 characterization in paragraph 189.

19 190. To the extent a response is required, Wistron denies, generally and
20 specifically, each and every allegation and characterization in paragraph 190.

21 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
22 form a belief as to the truth or falsity of the allegations in paragraph 190 of the
23 Complaint and therefore deny, generally and specifically, each and every allegation and
24 characterization in paragraph 190.

25 **COUNT VI**

26 **Wistron's Alleged Breach of Master Software Agreement**

27 191. Paragraphs 1-190 of CMs' Answer are incorporated by reference as if set

1 forth herein.

2 192. Paragraph 192 contains legal conclusions to which no response is required.
3 To the extent a response is required, Wistron denies, generally and specifically, each and
4 every allegation and characterization in paragraph 192.

5 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
6 form a belief as to the truth or falsity of the allegations in paragraph 192 of the
7 Complaint and therefore deny, generally and specifically, each and every allegation and
8 characterization in paragraph 192.

9 193. Paragraph 193 contains legal conclusions to which no response is required.
10 To the extent a response is required, Wistron lacks knowledge or information sufficient
11 to form a belief as to the truth or falsity of the allegations in paragraph 193 of the
12 Complaint and therefore denies, generally and specifically, each and every allegation
13 and characterization in paragraph 193.

14 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
15 form a belief as to the truth or falsity of the allegations in paragraph 193 of the
16 Complaint and therefore deny, generally and specifically, each and every allegation and
17 characterization in paragraph 193.

18 194. Wistron denies, generally and specifically, each and every allegation and
19 characterization in paragraph 194.

20 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
21 form a belief as to the truth or falsity of the allegations in paragraph 194 of the
22 Complaint and therefore deny, generally and specifically, each and every allegation and
23 characterization in paragraph 194.

24 195. Wistron admits that the allegations in paragraph 195 purport to describe and
25 characterize certain terms contained in the Wistron MSA and refers to that agreement
26 without admitting or denying the accuracy of any such description. Paragraph 195
27 contains legal conclusions to which no response is required. To the extent a response is
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1 required, except as expressly admitted, Wistron denies, generally and specifically, the
2 remaining allegations and characterizations in paragraph 195.

3 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
4 form a belief as to the truth or falsity of the allegations in paragraph 195 of the
5 Complaint and therefore deny, generally and specifically, each and every allegation and
6 characterization in paragraph 195.

7 196. Paragraph 196 contains legal conclusions to which no response is required.
8 To the extent a response is required, Wistron denies, generally and specifically, each and
9 every allegation and characterization in paragraph 196.

10 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
11 form a belief as to the truth or falsity of the allegations in paragraph 196 of the
12 Complaint and therefore deny, generally and specifically, each and every allegation and
13 characterization in paragraph 196.

14 197. Paragraph 197 contains legal conclusions to which no response is required.
15 To the extent a response is required, Wistron denies, generally and specifically, each and
16 every allegation and characterization in paragraph 197.

17 Compal, Foxconn and Pegatron lack knowledge or information sufficient to
18 form a belief as to the truth or falsity of the allegations in paragraph 197 of the
19 Complaint and therefore deny, generally and specifically, each and every allegation and
20 characterization in paragraph 197.

21 **COUNT VII**

22 **Compal's Alleged Breach of License Agreement**

23 198. Paragraphs 1-197 of CMs' Answer are incorporated by reference as if set
24 forth herein.

25 199. Paragraph 199 contains legal conclusions to which no response is required.
26 To the extent a response is required, Compal denies, generally and specifically, each and
27 every allegation and characterization in paragraph 199.

1 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
2 form a belief as to the truth or falsity of the allegations in paragraph 199 of the
3 Complaint and therefore deny, generally and specifically, each and every allegation and
4 characterization in paragraph 199.

5 200. Paragraph 200 contains legal conclusions to which no response is required.
6 To the extent a response is required, Compal lacks knowledge or information sufficient
7 to form a belief as to the truth or falsity of the allegations in paragraph 200 of the
8 Complaint and therefore denies, generally and specifically, each and every allegation
9 and characterization in paragraph 200.

10 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
11 form a belief as to the truth or falsity of the allegations in paragraph 200 of the
12 Complaint and therefore deny, generally and specifically, each and every allegation and
13 characterization in paragraph 200.

14 201. Compal denies, generally and specifically, each and every allegation and
15 characterization in paragraph 201.

16 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
17 form a belief as to the truth or falsity of the allegations in paragraph 201 of the
18 Complaint and therefore deny, generally and specifically, each and every allegation and
19 characterization in paragraph 201.

20 202. Paragraph 202 contains legal conclusions to which no response is required.
21 To the extent a response is required, Compal denies, generally and specifically, each and
22 every allegation and characterization in paragraph 202.

23 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
24 form a belief as to the truth or falsity of the allegations in paragraph 202 of the
25 Complaint and therefore deny, generally and specifically, each and every allegation and
26 characterization in paragraph 202.

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1 **A. Compal’s Alleged Refusal to Pay Royalties**

2 203. Compal admits that the allegations in paragraph 203 purport to describe and
3 characterize certain terms contained in the Compal License Agreement and refers to the
4 contents of that agreement without admitting or denying the accuracy of any such
5 description. Paragraph 203 contains legal conclusions to which no response is required.
6 To the extent a response is required, except as expressly admitted, Compal denies,
7 generally and specifically, the remaining allegations and characterizations in paragraph
8 203.

9 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
10 form a belief as to the truth or falsity of the allegations in paragraph 203 of the
11 Complaint and therefore deny, generally and specifically, each and every allegation and
12 characterization in paragraph 203.

13 204. Compal admits that the allegations in paragraph 204 purport to describe and
14 characterize an alleged report from Compal to Qualcomm and states that, if and to the
15 extent the document is ever held to be admissible, it will speak for itself. Except as
16 expressly admitted, Compal denies, generally and specifically, the remaining allegations
17 and characterizations in paragraph 204.

18 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
19 form a belief as to the truth or falsity of the allegations in paragraph 204 of the
20 Complaint and therefore deny, generally and specifically, each and every allegation and
21 characterization in paragraph 204.

22 205. Compal admits that the allegations in paragraph 205 purport to recite from
23 an alleged email from Compal to Qualcomm and states that, if and to the extent the
24 document is ever held to be admissible, it will speak for itself.

25 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
26 form a belief as to the truth or falsity of the allegations in paragraph 205 of the
27 Complaint and therefore deny, generally and specifically, each and every allegation and
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1 characterization in paragraph 205.

2 206. Compal admits that the allegations in paragraph 206 purport to recite from
3 an alleged email from Compal to Qualcomm and states that, if and to the extent the
4 document is ever held to be admissible, it will speak for itself. Except as expressly
5 admitted, Compal denies, generally and specifically, the remaining allegations and
6 characterizations in paragraph 206.

7 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
8 form a belief as to the truth or falsity of the allegations in paragraph 206 of the
9 Complaint and therefore deny, generally and specifically, each and every allegation and
10 characterization in paragraph 206.

11 207. Paragraph 207 contains legal conclusions to which no response is required.
12 To the extent a response is required, Compal admits that it paid royalties to Qualcomm
13 for Q1 2017 cellular products. Except as expressly admitted, Compal denies, generally
14 and specifically, the remaining allegations and characterizations in paragraph 207.

15 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
16 form a belief as to the truth or falsity of the allegations in paragraph 207 of the
17 Complaint and therefore deny, generally and specifically, each and every allegation and
18 characterization in paragraph 207.

19 208. Compal denies, generally and specifically, each and every allegation and
20 characterization in paragraph 208.

21 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
22 form a belief as to the truth or falsity of the allegations in paragraph 208 of the
23 Complaint and therefore deny, generally and specifically, each and every allegation and
24 characterization in paragraph 208.

25 **B. Compal's Alleged Failure to Cooperate with Audits**

26 209. Compal admits that the allegations in paragraph 209 purport to describe and
27 characterize certain terms contained in the Compal License Agreement and refers to that
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1 agreement without admitting or denying the accuracy of any such description.

2 Paragraph 209 contains legal conclusions to which no response is required. To the
3 extent a response is required, except as expressly admitted, Compal denies, generally
4 and specifically, the remaining allegations and characterizations in paragraph 209.

5 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
6 form a belief as to the truth or falsity of the allegations in paragraph 209 of the
7 Complaint and therefore deny, generally and specifically, each and every allegation and
8 characterization in paragraph 209.

9 210. Compal admits that the allegations in paragraph 210 purport to describe and
10 characterize certain terms contained in the Compal License Agreement and refers to that
11 agreement without admitting or denying the accuracy of any such description.

12 Paragraph 210 contains legal conclusions to which no response is required. To the
13 extent a response is required, except as expressly admitted, Compal denies, generally
14 and specifically, the remaining allegations and characterizations in paragraph 210.

15 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
16 form a belief as to the truth or falsity of the allegations in paragraph 210 of the
17 Complaint and therefore deny, generally and specifically, each and every allegation and
18 characterization in paragraph 210.

19 211. Compal denies, generally and specifically, each and every allegation and
20 characterization in paragraph 211.

21 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
22 form a belief as to the truth or falsity of the allegations in paragraph 211 of the
23 Complaint and therefore deny, generally and specifically, each and every allegation and
24 characterization in paragraph 211.

25 212. Compal denies, generally and specifically, each and every allegation and
26 characterization in paragraph 212.

27 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
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1 form a belief as to the truth or falsity of the allegations in paragraph 212 of the
2 Complaint and therefore deny, generally and specifically, each and every allegation and
3 characterization in paragraph 212.

4 **C. Compal's Alleged Reporting of Sales Information**

5 213. Compal admits that the allegations in paragraph 213 purport to describe and
6 characterize certain terms contained in the Compal License Agreement and refers to that
7 agreement without admitting or denying the accuracy of any such description.

8 Paragraph 213 contains legal conclusions to which no response is required. To the
9 extent a response is required, except as expressly admitted, Compal denies, generally
10 and specifically, the remaining allegations and characterizations in paragraph 213.

11 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
12 form a belief as to the truth or falsity of the allegations in paragraph 213 of the
13 Complaint and therefore deny, generally and specifically, each and every allegation and
14 characterization in paragraph 213.

15 214. Compal admits that the allegations in paragraph 214 purport to describe and
16 characterize certain terms contained in the Compal License Agreement and refers to that
17 agreement without admitting or denying the accuracy of any such description.

18 Paragraph 214 contains legal conclusions to which no response is required. To the
19 extent a response is required, except as expressly admitted, Compal denies, generally
20 and specifically, the remaining allegations and characterizations in paragraph 214.

21 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
22 form a belief as to the truth or falsity of the allegations in paragraph 214 of the
23 Complaint and therefore deny, generally and specifically, each and every allegation and
24 characterization in paragraph 214.

25 215. Compal denies, generally and specifically, each and every allegation and
26 characterization in paragraph 215.

27 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
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1 form a belief as to the truth or falsity of the allegations in paragraph 215 of the
2 Complaint and therefore deny, generally and specifically, each and every allegation and
3 characterization in paragraph 215.

4 **COUNT VIII**

5 **Compal's Alleged Breach of Master Software Agreement**

6 216. Paragraphs 1-215 of CMs' Answer are incorporated by reference as if set
7 forth herein.

8 217. Paragraph 217 contains legal conclusions to which no response is required.
9 To the extent a response is required, Compal denies, generally and specifically, each and
10 every allegation and characterization in paragraph 217.

11 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
12 form a belief as to the truth or falsity of the allegations in paragraph 217 of the
13 Complaint and therefore deny, generally and specifically, each and every allegation and
14 characterization in paragraph 217.

15 218. Paragraph 217 contains legal conclusions to which no response is required.
16 To the extent a response is required, Compal lacks knowledge or information sufficient
17 to form a belief as to the truth or falsity of the allegations in paragraph 218 of the
18 Complaint and therefore denies, generally and specifically, each and every allegation
19 and characterization in paragraph 218.

20 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
21 form a belief as to the truth or falsity of the allegations in paragraph 218 of the
22 Complaint and therefore deny, generally and specifically, each and every allegation and
23 characterization in paragraph 218.

24 219. To the extent a response is required, Compal denies, generally and
25 specifically, each and every allegation and characterization in paragraph 219.

26 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
27 form a belief as to the truth or falsity of the allegations in paragraph 219 of the

1 Complaint and therefore deny, generally and specifically, each and every allegation and
2 characterization in paragraph 219.

3 220. Compal admits that the allegations in paragraph 220 purport to describe and
4 characterize certain terms contained in the Compal MSA and refer to that agreement
5 without admitting or denying the accuracy of any such description. Paragraph 220
6 contains legal conclusions to which no response is required. To the extent a response is
7 required, except as expressly admitted, Compal denies, generally and specifically, the
8 remaining allegations and characterizations in paragraph 220.

9 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
10 form a belief as to the truth or falsity of the allegations in paragraph 220 of the
11 Complaint and therefore deny, generally and specifically, each and every allegation and
12 characterization in paragraph 220.

13 221. Paragraph 221 contains legal conclusions to which no response is required.
14 To the extent a response is required, Compal denies, generally and specifically, each and
15 every allegation and characterization in paragraph 221.

16 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
17 form a belief as to the truth or falsity of the allegations in paragraph 221 of the
18 Complaint and therefore deny, generally and specifically, each and every allegation and
19 characterization in paragraph 221.

20 222. Paragraph 222 contains legal conclusions to which no response is required.
21 To the extent a response is required, Compal denies, generally and specifically, each and
22 every allegation and characterization in paragraph 222.

23 Foxconn, Pegatron and Wistron lack knowledge or information sufficient to
24 form a belief as to the truth or falsity of the allegations in paragraph 222 of the
25 Complaint and therefore deny, generally and specifically, each and every allegation and
26 characterization in paragraph 222.

COUNT IX

Declaratory Relief

223. Paragraphs 1-222 of CMs’ Answer are incorporated by reference as if set forth herein.

224. Paragraph 224 contains legal conclusions to which no response is required. To the extent a response is required, each CM denies, generally and specifically, each and every allegation and characterization in paragraph 224.

225. Paragraph 225 contains legal conclusions to which no response is required. To the extent a response is required, each CM denies, generally and specifically, each and every allegation and characterization in paragraph 225.

226. Each CM admits that Qualcomm seeks declaratory relief but denies that it is entitled to such relief. Each CM denies, generally and specifically, the remaining allegations and characterizations in paragraph 226.

227. Paragraph 227 contains legal conclusions to which no response is required. To the extent a response is required, each CM denies, generally and specifically, each and every allegation and characterization in paragraph 227.

228. Each CM admits that Qualcomm seeks declaratory relief but denies that it is entitled to such relief. Each CM denies, generally and specifically, the remaining allegations and characterizations in paragraph 228.

229. Paragraph 229 contains legal conclusions to which no response is required. To the extent a response is required, each CM denies, generally and specifically, each and every allegation and characterization in paragraph 229.

JURY DEMAND

A response is not required to Qualcomm’s demand for a jury trial. To the extent a response is deemed required, each CM admits Qualcomm demands a trial by jury, but denies that Qualcomm is entitled to any relief that it has requested in its Complaint. Each CM also requests a jury trial for all issues so triable, pursuant to Rule 38 of the

1 Federal Rules of Civil Procedure.

2 **ANSWER TO QUALCOMM’S PRAYER FOR RELIEF**

3 In reply to Qualcomm’s Prayer for Relief (including subparts (a) through (n)
4 thereof), each CM denies, generally and specifically, the allegations contained therein
5 and further denies that Qualcomm is entitled to any relief whatsoever with respect to its
6 claims against each CM. Qualcomm’s Prayer for Relief should therefore be denied in
7 its entirety and with prejudice, and Qualcomm should take nothing therefor. To the
8 extent not expressly addressed above, the factual allegations in the Complaint are
9 denied.

10 **DEFENSES**

11 **AFFIRMATIVE DEFENSES**

12 Further answering Qualcomm’s Complaint and as additional answers thereto, each
13 CM asserts the following affirmative defenses below. Assertion of any such defense is
14 not a concession that the CMs have the burden of proving the matter asserted. Each CM
15 reserves the right to assert additional defenses, including as warranted by facts learned
16 through investigation and discovery.

17 **FIRST ADDITIONAL AFFIRMATIVE DEFENSE**

18 **(Failure to State a Claim)**

19 Qualcomm’s Complaint, and each and every claim stated therein, fails to state a
20 claim upon which relief can be granted.

21 **SECOND ADDITIONAL AFFIRMATIVE DEFENSE**

22 **(Not Entitled to Declaratory Judgment)**

23 Qualcomm’s claims for declaratory relief are barred in whole or in part because
24 there is no active case or controversy under the Declaratory Judgment Act, 28 U.S.C. §§
25 2201-2202.

THIRD ADDITIONAL AFFIRMATIVE DEFENSE

(No Injunctive Relief)

Qualcomm’s claims are barred in whole or in part because Qualcomm is not entitled to injunctive relief. Any alleged injury to Qualcomm is not immediate or irreparable and Qualcomm has an adequate remedy at law.

FOURTH ADDITIONAL AFFIRMATIVE DEFENSE

(Antitrust Violations)

Qualcomm is not entitled to any relief against the CMs because the contracts at issue are illegal and unenforceable because they violate United States Federal antitrust laws, including, at least, 15 U.S.C. §§ 1-2.

FIFTH ADDITIONAL AFFIRMATIVE DEFENSE

(Cartwright Act Violations)

Qualcomm is not entitled to any relief against the CMs because the contracts at issue violate California Business and Professions Code § 16700 *et seq.* and are therefore void and unenforceable.

SIXTH ADDITIONAL AFFIRMATIVE DEFENSE

(Illegality)

Qualcomm is not entitled to any relief against the CMs because the contracts at issue are illegal and voidable.

SEVENTH ADDITIONAL AFFIRMATIVE DEFENSE

(Unenforceable Liquidated Damages / Penalty)

Qualcomm’s claims are barred in whole or in part, at least, because if Qualcomm’s claims and interpretations are credited, the contracts at issue would amount to unenforceable liquidated damages provisions under California Civil Code § 1671 and/or would be an unenforceable penalty.

EIGHTH ADDITIONAL AFFIRMATIVE DEFENSE

(Unconscionability)

Qualcomm cannot enforce the contracts at issue because the terms are substantively and/or procedurally unconscionable.

NINTH ADDITIONAL AFFIRMATIVE DEFENSE

(Unenforceability)

Qualcomm is not entitled to any relief against the CMs because the contracts at issue are unenforceable due to, at least, California’s Unfair Competition Laws, California Business and Professions Code § 17200 *et seq.*; public policy; exhaustion of the rights to collect licensing fees for the purportedly licensed patents; and/or Qualcomm’s contractual commitment to license its standard essential patents on fair, reasonable, and non-discriminatory terms. Qualcomm has made a binding, enforceable contract, at least, with ETSI, TIA, and ATIS, and each CM is an intended third-party beneficiary.

TENTH ADDITIONAL AFFIRMATIVE DEFENSE

(Estoppel Due to FRAND Commitment)

Qualcomm is estopped from recovering damages in excess of a fair, reasonable, and non-discriminatory rate based on its commitment to numerous standard-setting organizations, including, at least, ETSI, TIA and ATIS. The CMs reasonably relied upon Qualcomm’s commitments to these standard-setting organizations. The CMs’ reliance was reasonable and foreseeable and the CMs were harmed as a result of that reliance.

ELEVENTH ADDITIONAL AFFIRMATIVE DEFENSE

(Estoppel)

Qualcomm’s claims are barred in whole or in part by the doctrine of equitable estoppel.

TWELFTH ADDITIONAL AFFIRMATIVE DEFENSE

(Excuse)

The CMs are excused from performance, at least, because the current royalty rate is illegal and/or not in compliance with Qualcomm’s contractual commitments to standard-setting organizations, including, at least, ETSI, TIA and ATIS, and/or because Qualcomm’s right to collect licensing fees for its patents has been exhausted.

THIRTEENTH ADDITIONAL AFFIRMATIVE DEFENSE

(Breach by Qualcomm)

Qualcomm is not entitled to any relief against the CMs because Qualcomm materially breached the licensing agreement.

FOURTEENTH ADDITIONAL AFFIRMATIVE DEFENSE

(Unclean Hands)

Qualcomm’s claims are barred by the doctrine of unclean hands.

FIFTEENTH ADDITIONAL AFFIRMATIVE DEFENSE

(Unjust Enrichment)

Qualcomm’s claims are barred by the doctrine of unjust enrichment.

SIXTEENTH ADDITIONAL AFFIRMATIVE DEFENSE

(Patent Exhaustion)

Qualcomm is not entitled to any relief against the CMs because Qualcomm’s right to collect licensing fees for its patents was exhausted when Qualcomm sold its components to the CMs.

SEVENTEENTH ADDITIONAL AFFIRMATIVE DEFENSE

(License or Consent)

Qualcomm is not entitled to any relief against the CMs because the CMs have an express license, consent, and/or an implied license based upon Qualcomm’s sale of modem chips to the CMs.

EIGHTEENTH ADDITIONAL AFFIRMATIVE DEFENSE

(Licensed by Apple)

Qualcomm is not entitled to any relief against the CMs because Apple has obtained or will obtain a license or is otherwise permitted or will be permitted to practice Qualcomm’s patents.

NINETEENTH ADDITIONAL AFFIRMATIVE DEFENSE

(Patent Misuse)

Qualcomm is not entitled to any relief against the CMs because the contracts at issue are unenforceable due to patent misuse.

TWENTIETH ADDITIONAL AFFIRMATIVE DEFENSE

(Expiration of Patents)

Qualcomm is not entitled to any relief against the CMs because it purports to enforce a license on patents that have expired and/or been abandoned.

TWENTY-FIRST ADDITIONAL AFFIRMATIVE DEFENSE

(Preemption by Federal Copyright Law)

Qualcomm’s claims for breach of contract of the Master Software Agreements are preempted by Federal Law, at least, under 17 U.S.C. § 301.

TWENTY-SECOND ADDITIONAL AFFIRMATIVE DEFENSE

(Copyright Misuse)

Qualcomm is not entitled to any relief against the CMs because the Master Software Agreements at issue are unenforceable due to copyright misuse.

TWENTY-THIRD ADDITIONAL AFFIRMATIVE DEFENSE

(Lack of Injury)

Qualcomm is not entitled to any relief because Qualcomm has not identified any cognizable harm as a result of the alleged breach by the CMs.

TWENTY-FOURTH ADDITIONAL AFFIRMATIVE DEFENSE

(Satisfaction of Duties)

Qualcomm is not entitled to any relief because each CM satisfied its valid legal obligations to Qualcomm in all material respects.

TWENTY-FIFTH ADDITIONAL AFFIRMATIVE DEFENSE

(Lack of Causation)

Qualcomm’s claims are barred in whole or in part because of a lack of causation, including, without limitation, because any injuries or damages that may have been suffered were not caused solely or proximately by any act or omission of the CMs.

TWENTY-SIXTH ADDITIONAL AFFIRMATIVE DEFENSE

(Actions Justified or Privileged)

Qualcomm’s claims are barred in whole or in part because the CMs’ acts and omissions were justified and/or privileged.

TWENTY-SEVENTH ADDITIONAL AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Upon information and belief, Qualcomm’s claims are barred in whole or in part by a failure to mitigate.

TWENTY-EIGHTH ADDITIONAL AFFIRMATIVE DEFENSE

(Statute of Limitations)

Qualcomm’s claims are barred in whole or in part by the relevant statute of limitations.

TWENTY-NINTH ADDITIONAL AFFIRMATIVE DEFENSE

(Laches / Waiver)

Qualcomm’s claims are barred in whole or in part by the doctrines of laches and/or waiver.

THIRTIETH ADDITIONAL AFFIRMATIVE DEFENSE

(Ratification, Agreement, Acquiescence or Consent)

Qualcomm’s claims are barred in whole or in part because of ratification of, agreement to, acquiescence in, or consent to CM’s alleged conduct.

THIRTY-FIRST ADDITIONAL AFFIRMATIVE DEFENSE

(Res Judicata or Collateral Estoppel)

Qualcomm’s claims are barred in whole or in part by the doctrines of res judicata and collateral estoppel.

THIRTY-SECOND ADDITIONAL AFFIRMATIVE DEFENSE

(Economic Loss Doctrine)

Qualcomm’s claims are barred in whole or in part by the economic loss doctrine.

THIRTY-THIRD ADDITIONAL AFFIRMATIVE DEFENSE

(Reformation)

Qualcomm is not entitled to any relief against the CMs because the contracts at issue must be reformed to be consistent with Qualcomm’s contractual commitment to license its standard essential patents on fair, reasonable and non-discriminatory terms.

THIRTY-FOURTH ADDITIONAL AFFIRMATIVE DEFENSE

(Rescission)

Qualcomm is not entitled to any relief against the CMs because the contracts at issue must be rescinded in so far as the contracts seek relief beyond Qualcomm’s contractual commitment to license its standard essential patents on fair, reasonable and non-discriminatory terms.

THIRTY-FIFTH ADDITIONAL AFFIRMATIVE DEFENSE

(Offset)

Qualcomm’s claims are barred in whole or in part by equitable and/or statutory set-off or offset.

THIRTY-SIXTH ADDITIONAL AFFIRMATIVE DEFENSE

(Reservation of Rights)

Each CM has insufficient knowledge or information upon which to form a belief as to whether it may have yet unstated separate and additional defenses available. Each CM reserves the right to amend this Answer to add, delete or modify defenses based upon legal theories, which may or will be divulged through clarification of Qualcomm’s claims, through discovery, or through further legal analysis of Qualcomm’s claims and positions in this litigation.

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1 **COUNTERCLAIMS**

2 Thanks to the efforts of antitrust enforcers around the world, Qualcomm’s
3 anticompetitive practices and patent licensing abuses, long hidden through a web of
4 secret agreements, are finally coming to light. Defendants and Counterclaimants
5 Compal Electronics, Inc. (“Compal”), Hon Hai Precision Industry Co., Ltd. and its
6 subsidiary FIH Mobile Ltd. (together, “Foxconn,” and, separately, “Hon Hai” and
7 “FIH”), Pegatron Corporation (“Pegatron”), and Wistron Corporation (“Wistron”)
8 (collectively, “the Counterclaimants”) bring these counterclaims against Qualcomm to
9 end its unlawful conduct, to seek damages for their injuries and to seek the restoration
10 of competitive conditions in the markets affected. Each Counterclaimant brings its
11 counterclaims based upon its own knowledge and/or on information and belief, as the
12 terms of each Counterclaimant’s agreements with Qualcomm were intended to be and
13 have been kept confidential from each other.

14 **I. NATURE OF THE CASE**

15 1. Qualcomm is a global semiconductor company that has reaped billions of
16 dollars in unearned profits from an illegal and monopolistic scheme that violates the
17 antitrust laws and inflicts continuing antitrust injury on Counterclaimants. Law
18 enforcement authorities around the world are actively investigating Qualcomm’s
19 illegal business practices and, in the past two years alone, three separate foreign
20 governments have declared Qualcomm a monopolist and collectively have fined the
21 company over \$1 billion. The U.S. Federal Trade Commission (“FTC”) has also
22 launched an enforcement action to challenge Qualcomm’s anticompetitive conduct.

23 2. In December 2016, after conducting an investigation into Qualcomm’s
24 monopolization of additional modem chip markets and holding numerous hearings at
25 which Qualcomm presented evidence, the Korea Fair Trade Commission (“KFTC”)
26 announced a decision to impose *a record fine*—1.03 trillion South Korean Won, or
27 more than \$850 million—for Qualcomm’s monopolistic conduct, and to mandate

1 changes to Qualcomm’s business model in Korea. This decision followed the KFTC’s
2 decision in July 2009, when the KFTC levied the largest fine it had ever imposed on a
3 company to date—\$207 million—on Qualcomm for abusing its dominant share of the
4 CDMA modem chip market.

5 3. In December 2015, following an investigation, the European Commission
6 (“EC”) issued two Statements of Objections against Qualcomm, one of which alleged
7 that Qualcomm’s exclusivity arrangements with “a major smartphone and tablet
8 manufacturer” harmed chipset competition. Press Release, *Antitrust: Commission*
9 *Sends Two Statements of Objections on Exclusivity Payments and Predatory Pricing to*
10 *Qualcomm*, European Commission (Dec. 8, 2015), [http://europa.eu/rapid/press-](http://europa.eu/rapid/press-release_IP-15-6271_en.htm)
11 [release_IP-15-6271_en.htm](http://europa.eu/rapid/press-release_IP-15-6271_en.htm). That manufacturer is Apple; the contract that the EC has
12 preliminarily found to be unlawful is among the agreements at issue in this case.

13 4. On February 10, 2015, China’s National Development and Reform
14 Commission (“NDRC”) found that Qualcomm violated the abuse of dominance
15 provisions of the China Anti-Monopoly Law and, inter alia, imposed a fine of 8% of
16 Qualcomm’s annual revenue within the territory of China for 2013—a \$975 million
17 fine. This finding followed the NDRC’s investigation, which began in November
18 2013, of Qualcomm’s anticompetitive practices.

19 5. Even as competition agencies around the world investigate and take action
20 against Qualcomm, Qualcomm doubles down on its illegal behavior by seeking this
21 Court’s imprimatur on its illegal scheme by using the Court’s authority to compel
22 performance of illegal and onerous licensing deals and other unreasonable terms that
23 Qualcomm requires as a precondition to purchasing its semiconductors, or “modem
24 chips.” These agreements, which Qualcomm has imposed upon Counterclaimants and
25 others, are at the heart of a pending enforcement action brought by the Federal Trade
26 Commission in the Northern District of California alleging that Qualcomm’s conduct
27 violates Sections 1 and 2 of the Sherman Act (and therefore violates Section 5 of the
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1 FTC Act). *FTC v. Qualcomm Inc.*, No. 17-CV-00220-LHK, slip op. at 18 (N.D. Cal.
 2 June 26, 2017). In that action, U.S. District Judge Lucy Koh recently denied
 3 Qualcomm’s Motion to Dismiss the FTC’s Complaint, finding that the FTC had pled
 4 viable claims for illegal monopolization, unlawful restraint of trade, and unfair
 5 competition. Judge Koh held that the FTC had properly alleged: that Qualcomm is a
 6 monopolist in possession of monopoly power in the markets for CDMA and premium-
 7 LTE modem chips (*id.* at 19); that Qualcomm’s challenged agreements amount to
 8 coerced contracts, combinations or agreements in restraint of trade in those markets
 9 (*id.* at 18-19 & n.2); and that Qualcomm’s conduct is monopolistic and anticompetitive
 10 (*id.* at 19-50). In particular, Judge Koh found that the FTC adequately alleged: that
 11 Qualcomm uses its monopolistic chokehold on modem chips to compel its customers
 12 (which include Counterclaimants) to license its cellular standard essential patents
 13 (“SEPs”) (*id.* at 21-24, 31-35); that Qualcomm imposes royalty and licensing terms in
 14 excess of fair, reasonable and nondiscriminatory (“FRAND”) levels in breach of
 15 Qualcomm’s FRAND commitments to standard setting organizations (“SSOs”) (*id.* at
 16 24-29); that Qualcomm imposes excessive royalties even when customers buy modem
 17 chips from Qualcomm’s rivals, thus deterring and foreclosing competition (*id.* at 32-
 18 35); that Qualcomm refuses to deal with its rivals and denies them the FRAND
 19 licenses that would permit them to compete on a level playing field (*id.* at 38-46); and
 20 that Qualcomm altogether closed off competition for Apple devices (manufactured by
 21 Counterclaimants) by trading partial relief from its monopolistic overcharges in
 22 exchange for exclusivity (*id.* at 46-50).

23 6. Counterclaimants are contract manufacturers (“CMs”) who assemble, test
 24 and produce various cellular products, including phones, tablets, and cellular-enabled
 25 computers. They are significant customers of Qualcomm—collectively they have
 26 purchased millions of modem chips from Qualcomm since 2013. Counterclaimants
 27 incorporate Qualcomm’s modem chips into products they manufacture, including

1 cellular devices, on behalf of original equipment manufacturers (“OEMs”) such as
 2 Apple, [REDACTED]. Counterclaimants do not have fixed-quantity contracts
 3 with Apple or other OEMs, but, rather, accept orders from time to time, which vary at
 4 the OEM’s election. Qualcomm’s royalties impose a direct monopolistic overcharge
 5 on Counterclaimants, as well as on the economically unified affiliates of each,
 6 reducing their respective sales and profits by decreasing OEMs’ demand for
 7 purchasing cellular devices (compared to the competitive “but-for” world where, as
 8 discussed below, the all-in price of modem chips would be substantially lower).

9 7. This action challenges Qualcomm’s unlawful monopoly maintenance,
 10 restraint of trade, unfair competition and breaches of FRAND promises in the markets
 11 for “modem chips,”¹ semiconductor devices that enable cellular communications in
 12 cell phones, tablets, cellular-enabled computers, and other cellular products.
 13 Qualcomm has engaged in anticompetitive and exclusionary conduct that forecloses its
 14 competitors’ modem chip sales, reduces their ability and incentive to innovate,
 15 artificially inflates prices paid by Counterclaimants and other direct and indirect
 16 Qualcomm customers, and raises prices for U.S. consumers for cell phones, tablets and
 17 cellular-enabled computers.

18 8. Qualcomm is both a dominant supplier of modem chips and a licensor of
 19 patents that Qualcomm has declared essential to widely adopted cellular standards.
 20 Cellular devices sold by Qualcomm’s customers must comply with these standards,
 21 even when they incorporate modem chips supplied by Qualcomm’s competitors. In
 22 order to have its patents incorporated into the standards, Qualcomm promised SSOs
 23 that it would license standard-essential patents to all applicants on FRAND terms.

24
 25
 26 ¹ These semiconductor devices are also referred to as “baseband processors,”
 27 “processors,” “chips,” and “chipsets.” For simplicity, Counterclaimants refer to
 28 these semiconductor devices throughout as “modem chips,” consistent with the
 court’s terminology in *FTC v. Qualcomm, Inc.*

1 Counterclaimants are third-party beneficiaries of these commitments, which
2 Qualcomm has breached.

3 9. Qualcomm was one among many companies that contributed to the
4 development of standards related to how cellular devices connect to voice and data
5 networks. As a contributor, Qualcomm is entitled to reasonable compensation based
6 on the value of its particular contribution. Qualcomm is not entitled to collect royalties
7 based on the contribution of others, or unrelated innovation by companies that utilize
8 the standards—but this is precisely the business model that Qualcomm has established
9 and that it protects through monopoly power, a web of restrictive agreements and
10 unlawful licenses. In order to purchase Qualcomm modem chips or obtain access to
11 patents pledged to a cellular standard, Qualcomm demands that third parties pay
12 Qualcomm a royalty much greater than the value of Qualcomm’s contribution to that
13 standard—a value based on the entire price of the innovative products that only
14 incidentally incorporate the standard, as well as Qualcomm’s entire patent portfolio,
15 and not just the portion relating to the standard.

16 10. Qualcomm has excluded competitors, and restrained and harmed
17 competition through a set of interrelated policies and practices, including the
18 following:

19 a. Qualcomm withholds its modem chips unless a customer, including
20 each Counterclaimant, accepts a license to standard-essential patents on terms
21 imposed by Qualcomm, including outrageous and excessive royalties that the
22 customer must pay even when using competitors’ chips (broadly referred to as
23 “no license-no chips”).²

24
25 ² Qualcomm admits that “[t]he Contract Manufacturers’ agreements are generally
26 similar to the license agreements Qualcomm has entered into with hundreds of
27 other cellular device manufacturers.” Qualcomm’s Mot. for Anti-Suit Injunction at
28 7, *Apple Inc. v. Qualcomm Inc.*, Case No. 17-cv-0108-GPC-MDD (S.D. Cal. July
14, 2017), ECF No. 91-1.

1 litigation against Apple. Def’s Answer & Am. Countercl., *Apple Inc. v.*
2 *Qualcomm Inc.*, No. 17-cv-0108-GPC-MDD (S.D. Cal. May 24, 2017).

3 11. Qualcomm’s “no license-no chips” policy of tying together the sale of its
4 modem chips and licenses to its SEPs, while refusing to license its SEPs to competing
5 chip manufacturers, along with its other exclusionary and anticompetitive conduct,
6 dramatically increases customers’ (and Counterclaimants’) costs of challenging
7 Qualcomm’s preferred license terms before a court or other neutral arbiter—including
8 on the basis that those terms are above-FRAND—or to negotiate royalties in the
9 shadow of such a challenge. This leaves Counterclaimants and Qualcomm’s
10 customers generally in a markedly different position than they would be in a typical
11 patent licensing negotiation with a standards-setting participant. As a result,
12 Counterclaimants, like other Qualcomm customers, have been forced to accept
13 excessive royalties—including an added amount to ensure continued access to
14 Qualcomm’s modem chip supply—and other onerous license terms that do not reflect
15 an assessment of terms that a court or other neutral arbiter would determine to be fair
16 and reasonable.

17 12. By using its monopoly power to obtain excessive royalties that apply to
18 modem chips supplied by its competitors, Qualcomm in effect collects a surcharge on
19 Counterclaimants and other cellular device manufacturers even when they use non-
20 Qualcomm modem chips. This surcharge weakens Qualcomm’s competitors,
21 including by reducing demand for their modem chips, and serves to maintain
22 Qualcomm’s monopoly in modem chip markets.

23 13. Qualcomm’s refusal to license its competitors, such as Intel to
24 manufacture and sell modem chips, bolsters and perpetuates its ability to maintain
25 excessive royalties and other unreasonable license terms in agreements with
26 Counterclaimants and other Qualcomm customers. Qualcomm’s competitors, unlike
27 Counterclaimants and Qualcomm’s other customers, do not depend on Qualcomm for

1 modem chip supply, and would be better positioned than Counterclaimants or other
2 customers to negotiate licenses on FRAND terms. Moreover, Qualcomm's rivals
3 generally do (or, in the but-for world, would) rely on component sales, rather than
4 separate intellectual property licenses, to convey to their OEM and CM customers the
5 intellectual property rights that those customers need in order to use or resell the
6 components they have purchased. Qualcomm's competitors would thus be both better
7 positioned and motivated to negotiate licenses on FRAND terms allowing them to
8 market and sell authorized, unencumbered, patent-exhaustive modem chips, in turn
9 forcing Qualcomm to sell modem chips on the same basis to remain competitive.

10 14. Each Counterclaimant has been directly overcharged and injured as a
11 result of Qualcomm's illegal scheme and brings this action to recover its damages, to
12 enjoin Qualcomm from further violations of the law, and to request additional
13 appropriate relief. Counterclaimants have each paid excessive royalties to Qualcomm
14 and collectively have paid billions of dollars in excessive royalties over the last four
15 years alone. As an illustrative example, Pegatron has paid almost \$ [REDACTED] since
16 2013. As another illustrative example, since 2013, Foxconn has paid over \$ [REDACTED]
17 and Wistron has paid almost \$ [REDACTED]. These three Counterclaimants alone have
18 collectively paid well over \$ [REDACTED] in vastly inflated royalties to Qualcomm since
19 2013. For perspective, Qualcomm demands royalties that are a multiple of the
20 royalties that are charged by some other SEP licensors. These vast sums bear no
21 reasonable relationship to the value of Qualcomm's intellectual property rights but,
22 instead, reflect a tax on the innovations of others. As direct purchasers from
23 Qualcomm, each Counterclaimant is entitled to recover the entirety of the overcharges
24 imposed by Qualcomm, regardless of whether or not any or all of the overcharge was
25 passed on to Apple or to Counterclaimants' other customers. In any event, by means
26 of its complaint in this matter, Qualcomm is seeking to force Counterclaimants to
27 absorb 100% of Qualcomm's overcharges in connection with cellular products sold by

1 Counterclaimants to Apple. Apple has indirectly borne billions of dollars of those
2 overcharges in the past but, when Apple sought relief from Qualcomm’s excessive
3 royalty burden, Qualcomm conditioned partial relief on Apple’s exclusive use of
4 Qualcomm modem chips from 2011 to 2016, which in turn imposed such exclusivity
5 for Apple products on Counterclaimants. Qualcomm’s coercive exclusive supply
6 arrangement with Apple denied other modem chip suppliers the benefits of working
7 with a particularly important cell phone and tablet manufacturer and Counterclaimants,
8 and hampered the development of those suppliers into effective competitors.

9 15. Qualcomm’s conduct has harmed competition and the competitive
10 process. At a time when cellular technologies are expanding to new and varied
11 applications, Qualcomm’s practices threaten further consumer harm in an industry in
12 which competition and innovation are vitally important.

13 **II. JURISDICTIONAL STATEMENT**

14 **A. Jurisdiction**

15 16. This action for damages, declaratory relief, costs of suit, and reasonable
16 attorneys’ fees arises under, inter alia, the patent laws of the United States, 35 U.S.C.
17 § 1 *et seq.*; the Sherman Antitrust Act, 15 U.S.C. §§ 1 and 2 *et seq.*; and the
18 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Accordingly, this Court has
19 subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question), 1337
20 (commerce and antitrust regulation), and 1338(a) (patents).

21 17. This court also has jurisdiction over these claims, and the pendent state
22 law claims, pursuant to 28 U.S.C. § 1367. Each of the state law claims arises out of
23 the same factual nucleus as the federal law claims.

24 18. The CMs have standing to bring this action for treble damages and other
25 relief under Section 4 of the Clayton Act, 15 U.S.C. § 15.

26 19. This Court has personal jurisdiction over Qualcomm because it has its
27 principal place of business in this District, and because Qualcomm’s actions cause

1 harm in this District. Certain agreements that have been entered into by Qualcomm
2 and each of the Counterclaimants are at the heart of this dispute, and they provide that
3 they are made and entered into in the State of California. Further, Qualcomm’s
4 wrongful conduct has been purposefully conducted within the District (*e.g.*, at
5 Qualcomm’s offices in San Diego, California), and Counterclaimants’ injuries relate to
6 such conduct in the District. The Court further has jurisdiction over Qualcomm
7 because it has filed suit in this District against Counterclaimants in order to enforce its
8 illegal scheme.

9 **B. Venue**

10 20. Venue is proper in this District because Qualcomm brought this action
11 and thereby consented to venue. Alternately, venue is proper in this District under 28
12 U.S.C. §§ 1391(b), 1391(c), 1391(d), and 1400(b) and Sections 4 and 12 of the
13 Clayton Act, 15 U.S.C. §§ 15 and 22.

14 **III. THE PARTIES**

15 21. Pegatron Corporation (“Pegatron”) is a corporation organized and existing
16 under the laws of Taiwan, with its principal place of business at 5F, No. 76, Ligong
17 Street, Beitou District, Taipei City 112, Taiwan, R.O.C. Pegatron designs,
18 manufactures, and sells a variety of consumer electronic products, including cellular
19 phones, tablets, game consoles, televisions and multimedia players, as well as laptop
20 and desktop computers, motherboards, and broadband and networking devices.

21 22. Hon Hai Precision Industry Co., Ltd. (“Hon Hai”) is a corporation
22 organized and existing under the laws of Taiwan, with its principal place of business at
23 No. 66, Zhongshan Road, Tucheng Industrial Zone, Tucheng District, New Taipei
24 City, Taiwan, R.O.C. Hon Hai designs, manufactures, and sells a variety of consumer
25 electronic products, including cellular phones and tablets, electrical components, and
26 laptop and desktop computers.

1 Qualcomm purports to license or otherwise provides rights to use portions of
2 Qualcomm’s intellectual property portfolio through Qualcomm Technology Licensing
3 (“QTL”) and/or Qualcomm Incorporated. QCT is operated by Qualcomm
4 Technologies, Inc. (“QTI”), another wholly-owned subsidiary of Qualcomm. In the
5 fiscal year ending in September 2016, Qualcomm reported that QCT had over \$15.4
6 billion in revenues and earnings before taxes of \$1.8 billion; and that QTL had over
7 \$7.6 billion in revenues and earnings before taxes of \$6.5 billion.

8 27. Qualcomm has offices and employees in this District and regularly
9 conducts business in this District.

10 28. Qualcomm includes Qualcomm Technology Licensing (“QTL”);
11 Qualcomm Technologies Inc. (“QTI”); Qualcomm CDMA Technologies (“QCT”); and
12 Qualcomm CDMA Technologies Asia Pacific Pte. Ltd. (“QCTAP”). QTI is wholly
13 owned by Qualcomm, and both QCT and QCTAP are operated by QTI and its
14 subsidiaries.

15 **IV. INDUSTRY BACKGROUND**

16 **A. Cellular Technology**

17 29. Cellular communications depend on widely distributed networks
18 implementing standardized protocols. Network operators, such as Verizon, AT&T, T-
19 Mobile, and Sprint, make substantial investments to build networks that comply with
20 these standardized protocols.

21 30. Since the introduction of commercial cellular handsets, there have been
22 four “generations” of cellular communication standards.

23 a. First-generation (“1G”) standards, introduced in the 1980s, support
24 analog transmission of voice calls.

25 b. Second-generation (“2G”) standards, first deployed in the early
26 1990s, support digital transmission of voice calls. The leading 2G standards
27 families are the Global System for Mobile communications (“GSM”) and
28

1 second-generation Code Division Multiple Access (“2G-CDMA”). In the
2 United States, AT&T and T-Mobile operate legacy GSM networks, while
3 Verizon and Sprint operate legacy 2G-CDMA networks.

4 c. Third-generation (“3G”) standards, first deployed in the late 1990s
5 and early 2000s, support higher data-transmission speeds. The leading 3G
6 standards families are the Universal Mobile Telecommunications System
7 (“UMTS”) and third-generation CDMA (“3G-CDMA”). UMTS allowed GSM-
8 network operators to transition economically to a 3G standard. 3G-CDMA did
9 the same for 2G-CDMA-network operators.

10 d. Fourth-generation (“4G”) standards, first deployed in late 2009 and
11 the early 2010s, support substantially higher data-transmission speeds than 3G
12 standards can support. The leading 4G standard is Long-Term Evolution
13 (“LTE”). Most major network operators worldwide have deployed LTE.

14 **B. Baseband Processors, or “Modem Chips”**

15 31. Baseband processors are semiconductor devices (sometimes referred to as
16 “chips,” “chipsets,” or “modems,” and referred to herein as “modem chips”) within
17 cellular devices. Modem chips allow handsets, tablets, cellular-enabled computers and
18 other cellular devices to communicate with an operator’s cellular network by
19 performing functions such as signal generation, modulation, and encoding.

20 32. To communicate with an operator’s network, a cellular device must
21 contain a modem chip that complies with cellular communications standards that the
22 network supports. For example, a handset containing a modem chip that complies only
23 with UMTS standards cannot communicate with a 3G-CDMA network.

24 33. Modem chips that comply with more than one standard are known as
25 “multi-mode” modem chips. A device that contains a multi-mode modem chip is
26 capable of communicating with networks that deploy more than one standard or with
27 multiple networks deploying different standards.

1 volumes of data. Cellular data traffic has grown exponentially in recent years, while
2 the volume of cellular voice traffic has remained nearly flat.

3 **D. Qualcomm’s Dominance in Modem Chip Supply**

4 44. Qualcomm has long been the leading supplier of modem chips worldwide.
5 Qualcomm has been particularly dominant in the supply of two types of modem chips:
6 (i) modem chips that comply with CDMA standards; and (ii) premium modem chips,
7 which comply with advanced LTE standards.

8 **CDMA Modem Chips**

9 45. A number of major carriers worldwide have deployed CDMA networks,
10 including Verizon and Sprint in the United States. For most leading OEMs, leaving
11 CDMA-compatible handsets out of their product lines has not been a realistic option.
12 It is similarly unrealistic to ignore demand for CDMA-compatibility for tablets and
13 computers with cellular capability. To manufacture and sell devices, including
14 handsets, tablets and cellular-enabled computers, that operate on these networks,
15 OEMs and CMs have therefore had to use modem chips that comply with CDMA
16 standards (“CDMA modem chips”).

17 46. Qualcomm has long been the dominant supplier of CDMA modem chips.
18 Each year from at least 2006 through September 2015 (the end of Qualcomm’s fiscal
19 year), Qualcomm’s worldwide share of CDMA modem chip sales exceeded 80%.

20 47. Qualcomm has aggressively protected its monopoly position and faces
21 limited competition for the supply of CDMA modem chips. For most of the past ten
22 years, the only supplier of CDMA modem chips other than Qualcomm has been Via
23 Technologies, a Taiwan-based semiconductor company. Via’s CDMA modem chip
24 sales have focused on modem chip used in lower-tier handsets. This is in part because
25 Via has not offered multi-mode modem chips that combine CDMA functionality with
26 UMTS or LTE functionality. In 2015, Intel Corporation acquired Via’s CDMA

1 business. Intel has not yet commercialized a modem chip product that integrates Via's
2 CDMA technology with Intel's own multi-mode modem chip technologies.

3 48. MediaTek Inc., another Taiwan-based semiconductor company, licensed
4 technology from Via in late 2013 and began to offer CDMA modem chips in 2015.
5 MediaTek has not offered multi-mode CDMA modem chips suitable for use in
6 flagship handsets, however, and its sales of CDMA modem chips have been small.

7 49. OEMs and CMs have had limited practical alternatives to Qualcomm for
8 the supply of CDMA modem chips. Qualcomm has used its dominant position to
9 obtain onerous and anticompetitive supply and licensing terms from OEMs and CMs,
10 which have created substantial barriers to entry for would-be modem chip competitors.

11 **Premium LTE Modem Chips**

12 50. Most major network operators worldwide have deployed LTE networks,
13 including U.S. operators Verizon, AT&T, T-Mobile, and Sprint.

14 51. Since the introduction of the first LTE networks around 2010, LTE
15 functionality has continually advanced, and the relevant standard-setting organizations
16 have released a series of updated standards. Advances have included progressively
17 faster data speeds to allow for data-intensive uses. For example, an early LTE release,
18 Category 1, supported download speeds of 10 megabits per second (Mbps); a later
19 LTE release, Category 6, supported download speeds of 300 Mbps; and a more recent
20 LTE release, Category 12, supports download speeds of 600 Mbps.

21 52. As LTE technology has progressed, modem chip manufacturers have had
22 to add features to keep up. Today, modem chips that comply with advanced LTE
23 standards support advanced data download and upload speeds; advanced carrier
24 aggregation and multiple-input multiple-output ("MIMO") capabilities; and advanced
25 power-saving features, among other functions.

26 53. OEMs and CMs typically require modem chips with advanced LTE
27 functionality for premium-tier cellular communications. For an OEM or CM

1 manufacturing a premium-tier product, a modem chip that only supports earlier LTE
2 features would not be a reasonable substitute for a modem chip that supports advanced
3 LTE standards and features.

4 54. Competition among manufacturers of LTE modem chips thus occurs in
5 tiers, including premium (sometimes further divided into “premium” and “high”), mid,
6 and low tiers. A premium LTE modem chip supports advanced LTE functionality.

7 55. Qualcomm recognizes that handsets and modem chips compete in various
8 tiers. Qualcomm’s 2016 annual report, for example, refers to both “premium-tier
9 smartphones” and Qualcomm’s “premium-tier integrated circuit products.”

10 56. Qualcomm has consistently been the dominant supplier of premium LTE
11 modem chips. From at least 2012 through September 2015, Qualcomm’s annual
12 worldwide share of premium LTE modem chip sales exceeded 80%.

13 57. Qualcomm has faced limited competition in the manufacture and supply
14 of premium LTE modem chips, in no small part due to Qualcomm’s demands for chip
15 exclusivity from OEMs and, by extension, CMs, including Counterclaimants.
16 MediaTek, for instance, has lagged behind Qualcomm in LTE modem chip sales and
17 has not supplied premium LTE modem chips for flagship handsets or tablets. Intel has
18 had even more limited LTE modem chip sales and achieved modest success in
19 premium LTE modem chips supply only recently, when it began to supply a portion of
20 Apple’s modem chip requirements for the iPhone 7. On information and belief, Intel
21 was able to penetrate Apple’s exclusivity with Qualcomm only because, at the time,
22 Qualcomm faced investigations, and in some instances fines, from various competition
23 regulators, including the Korea Fair Trade Commission, Japan Fair Trade Commission,
24 China’s National Development and Reform Commission, the European Commission,
25 and the Taiwan Fair Trade Commission.³ Samsung and Huawei have recently self-

26 ³ Br. of *Amicus Curiae* Intel Corporation In Supp. Of Pl.’s Opp’n To Def.’s Mot. To
27 Dismiss at 5, 21, *FTC v. Qualcomm Inc.*, No. 5:17-cv-00220-LHK (N.D. Cal. May
28 12, 2017).

1 supplied some premium LTE modem chips for Samsung and Huawei handsets,
2 respectively, but this has not provided Qualcomm with meaningful competition in the
3 merchant market. [REDACTED]

4 [REDACTED]
5 58. OEMs and CMs, including Counterclaimants, have had limited practical
6 alternatives to Qualcomm for the supply of premium LTE modem chips. Qualcomm
7 has used its dominant position to obtain onerous and anticompetitive supply and
8 licensing terms from Counterclaimants and, on information and belief, other OEMs
9 and CMs. It has used litigation against Counterclaimants as a tool to reinforce and
10 perpetuate its exclusionary conduct.

11 **V. QUALCOMM’S FRAND-ENCUMBERED CELLULAR STANDARD**
12 **ESSENTIAL PATENTS**

13 59. SSOs adopt cellular communications standards, including CDMA and
14 LTE standards. Through SSOs, industry participants that may otherwise compete with
15 each other collaborate on evaluating and selecting technologies for standardization.
16 These collaborations can provide important benefits by resolving interoperability
17 problems.

18 60. Standardization can also present competitive risks. Standard-setting
19 participants often hold patents covering technologies that are incorporated into a
20 standard. Once a standard incorporating proprietary technology is adopted, the
21 potential exists for opportunistic patent holders to insist on patent licensing terms that
22 capture not just the value of the underlying technology, but also the value of
23 standardization itself. To address this “hold-up” risk, SSOs often require patent
24 holders to disclose their patents and commit to license SEPs on FRAND terms. Absent
25 such requirements, a patent holder might be able to parlay the standardization of its
26 technology into a monopoly in standard-compliant products. If a patent holder does
27

1 not choose to make this promise, SSOs generally design the standard without using the
2 patented technology.

3 61. By making a FRAND commitment, a patent holder accepts the benefits of
4 participating in standards development and of seeking incorporation of its patented
5 technologies into a standard, but agrees in exchange not to exercise any market power
6 resulting from its patents' incorporation into that standard.

7 62. FRAND royalties must start with the proper royalty base and a proper
8 royalty rate, as required by the patent laws, but also must meet additional criteria
9 designed to prevent misuse of the monopoly power conferred by adoption of a
10 standard. In particular, FRAND royalties must be limited by the actual technical
11 contribution of the patented technology to the standard, rather than (a) the "lock-in"
12 value that arises from standardization of technologies, i.e., the value gained simply
13 because companies are forced to use the technology mandated in the standard, (b) the
14 value of all the technologies incorporated in an entire standard, or (c) the competing
15 value of the many technologies, and many other standards that make up the actual
16 device.

17 63. An SEP holder that makes a FRAND commitment also promises to
18 license its SEPs to anyone willing to accept a license, i.e., a "willing licensee," and
19 thus relinquishes its right to exclude a willing licensee from the standards-based
20 technologies. Such a commitment is an important check on the patent holder's power
21 to use SEPs to "hold up" implementers of the standard by refusing to license
22 competitors or the customers of competitors, or by licensing competitors or their
23 customers only on discriminatory terms that undermine competition among
24 implementers of the standard. Without the FRAND commitment, SEP holders would
25 take an easy path to monopoly profits because the standard requires use of the patented
26 technology.

1 64. Most SSOs neither prescribe FRAND license terms nor offer a centralized
2 dispute-resolution mechanism in the event that a patent holder and standard
3 implementer cannot agree on such terms. Instead, most SSOs rely on the outcome of
4 individual negotiations between the parties, and resort to remedies available from
5 courts in the event of disagreement. Individual negotiations conducted in the shadow
6 of a judicial determination of FRAND terms are therefore essential to the efficacy of
7 the FRAND commitment.

8 65. FRAND obligations are more than a matter of a private contract between
9 owners of technology, on the one hand, and SSOs and their other members (and
10 implementers of the standard as intended third-party beneficiaries), on the other.
11 Instead, they are a core precondition for antitrust tolerance of the industry
12 collaboration on which standard-setting depends.

13 66. As the Third Circuit Court of Appeals has found:

14 [a] standard, by definition, eliminates alternative technologies. When a
15 patented technology is incorporated in a standard, adoption of the standard
16 eliminates alternatives to the patented technology. Although a patent
17 confers a lawful monopoly over the claimed invention, its value is limited
18 when alternative technologies exist. That value becomes significantly
19 enhanced, however, after the patent is incorporated in a standard. Firms
20 may become locked in to a standard requiring the use of a competitor's
21 patented technology. The patent holder's IPRs, if unconstrained, may
22 permit it to demand supracompetitive royalties. It is in such circumstances
23 that measures such as FRAND commitments become important safeguards
24 against monopoly power. *See Daniel G. Swanson & William J. Baumol,*
Reasonable and Nondiscriminatory (RAND) Royalties, Standards
Selection, and Control of Market Power, 73 Antitrust L.J. 1, 5, 10-11
(2005).

24 *Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297, 314 (3d Cir. 2007) (citations
25 omitted).

26 67. Violation of the FRAND bargain can take several forms, including
27 demanding unreasonable royalties; applying royalties discriminatorily (for example,
28

1 advantaging the patent owner’s products by charging different licensees different
2 amounts or imposing differing conditions on different licensees, or by conditioning
3 royalties on licensees’ agreement to foreclose rivals to the patent owner’s products);
4 and asserting that patents are essential to the standard when in fact they are not.
5 Qualcomm is guilty of all of these practices.

6 68. SSOs that adopt cellular telecommunications standards include the
7 European Telecommunication Standards Institute (“ETSI”), the Telecommunications
8 Industry Association (“TIA”), and the Alliance for Telecommunications Industry
9 Solutions (“ATIS”). In some instances, telecommunications standards have been
10 developed through partnerships among SSOs. For example, the Third Generation
11 Partnership Project (“3GPP”) focuses on the evolution of GSM, UMTS, and LTE
12 technology, and the Third Generation Partnership Project 2 (“3GPP2”) focuses on the
13 development of CDMA technology.

14 69. ETSI, TIA, and ATIS require each party that participates in the standards-
15 development process to commit to license its SEPs to firms that implement the
16 standard on FRAND terms.

17 70. Qualcomm admits that it has participated in cellular standard setting
18 processes through ETSI, TIA, and ATIS, and has participated in 3GPP and 3GPP2.
19 Def’s Answer ¶ 54, *FTC v. Qualcomm Inc.*, No. 5:17-CV-00220-LHK-NMC (N.D.
20 Cal. July 10, 2017) (“QC Answ.”). Qualcomm was a leading developer and proponent
21 of CDMA technology, which underlies the 2G-CDMA and cdma2000 standards and
22 held a correspondingly high share of all patents declared essential to 2G-CDMA
23 standards.

24 71. Qualcomm also admittedly participated in 3G-standard setting, QC Answ.
25 ¶ 55, though its share of all patents declared essential to 3G-UMTS and 3G-CDMA
26 standards is smaller than its share of 2G-CDMA SEPs.

1 72. Qualcomm initially advocated a 4G standard known as Ultra-Mobile
2 Broadband, but its advocacy was unsuccessful. Qualcomm later supported LTE
3 standards, which other industry participants had initially proposed. Qualcomm’s share
4 of patents declared essential to LTE standards is much lower than its share of CDMA
5 SEPs, and is roughly equal to the shares of other industry participants. One study of
6 declared LTE SEPs found that Qualcomm had a 13% share of “highly novel” essential
7 LTE patents, compared to 19% for Nokia and 12% for each of Ericsson and Samsung.

8 73. Qualcomm has admittedly committed to certain SSOs that promulgate
9 cellular standards, including ETSI, TTA, ATIS, that it will license its standard-essential
10 patents consistent with the respective SSOs’ intellectual property rights policy. QC
11 Answ. ¶ 57. Under these policies, Qualcomm is obligated to license its cellular SEPs
12 covering 2G, 3G, and 4G technologies on FRAND terms.

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

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

25 76. The IPR Policy further requires that SEP owners submit a written
26 commitment that they are prepared to grant irrevocable licenses on FRAND terms. If
27 no FRAND commitment is made, the IPR Policy provides for ETSI to investigate
28

1 alternative technology options for the standard to avoid the IPR in question. *Id.* at
2 Clause 6.

3 77. According to ETSI’s self-reporting portal, Qualcomm has declared over
4 30,000 global assets to be “ESSENTIAL IPR.” No objective party has tested the
5 actual essentiality or validity of these assets.

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

13 79. Qualcomm, therefore, is contractually obligated to grant licenses on
14 FRAND terms to these patents to Counterclaimants and other manufacturers of
15 products that, through the modem chips they use, conform to ETSI standards, as well
16 as to third-party suppliers of modem chips. Qualcomm made similar promises to other
17 SSOs as well.

18 80. As part of the FRAND determination, courts have generally recognized
19 that any FRAND rate should account for the concept of “royalty stacking.” “Royalty
20 stacking” arises because standards often implicate hundreds, if not thousands, of
21 patents. If companies are forced to pay royalties to every SEP holder, the royalties will
22 “stack” on top of each other and quickly become excessive. *See Ericsson, Inc. v. D-*
23 *Link Sys., Inc.*, 773 F.3d 1201, 1209 (Fed. Cir. 2014). By way of example,
24 Qualcomm’s extracted royalty of 5% of the total purchase price is inherently
25 unreasonable because it fails to account for all of the other SEPs owned by other
26 companies. If Qualcomm’s royalty were reasonable and it was “stacked” with the
27 other SEP holders’ essential patents that charged the same rate as Qualcomm, the total

1 royalties that would have to be paid by the OEMs would likely constitute more than
2 half of the total purchase price.

3 81. Because Counterclaimants are third parties that, through the modem chips
4 they use, implement 3G/UMTS and 4G/LTE standard-compliant technology in the
5 products they sell, Counterclaimants are third-party beneficiaries of the contracts
6 between Qualcomm and ETSI, as well as the similar contracts between Qualcomm and
7 other SSOs.

8 82. Counterclaimants relied on Qualcomm's promises to ETSI and on
9 Qualcomm's similar promises to other SSOs. Specifically, Counterclaimants and other
10 wireless device manufacturers made a conscious choice to develop and sell products
11 compatible with 3G/UMTS and 4G/LTE, relying on Qualcomm's promise that any
12 third-party supplier of modem chips or products using them could avoid patent
13 litigation and obtain a license to any patents that Qualcomm has declared essential to
14 the 3G/UMTS and 4G/LTE standards.

15 83. Qualcomm's breach of its FRAND commitments, described in significant
16 detail below, is a foundation of its scheme to acquire and abuse monopoly power in the
17 cellular industry. By refusing to license its SEPs to competing modem chip
18 manufacturers, and by refusing to sell its modem chips to customers unless they first
19 license Qualcomm's SEPs, among other burdensome terms, Qualcomm forced
20 purchasers of its modem chips to pay extortion-level royalties. By asserting that
21 patents are essential to the standard when in fact they are not, Qualcomm seeks to
22 justify its extortion-level royalties. By threatening "disloyal" modem chip customers
23 with even less-favorable royalties and license terms if they purchased modem chips
24 from Qualcomm's competitors, discriminating between potential licensees by refusing
25 to license its SEPs to competitors, and offering only "rebates" (and no FRAND
26 license) to OEMs rather than charging CMs FRAND terms, Qualcomm excluded
27 competition in the modem chip markets. And by foreclosing competitors from dealing

1 with Apple (and its CMs), a key purchaser of modem chips, Qualcomm facilitated the
2 marginalization and exit of many of those competitors, enhancing its own monopoly
3 power.

4 84. Qualcomm has licensed its cellular SEPs to each counterclaimant and to
5 others. Qualcomm has historically offered licenses at a base royalty rate of about 5%
6 of the net selling price of a “Subscriber Unit,” which may include a handset, tablet, or
7 cellular-enabled computers.

8 85. Currently, the royalty rate [REDACTED]
9 for Pegatron [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 86. Currently, the royalty rate [REDACTED]
16 for Foxconn [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 87. Currently, the royalty rate [REDACTED]
23 for Wistron [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 88. Currently, the royalty rate [REDACTED]
 4 for Compal [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]

10 89. The rate paid by each Counterclaimant to Qualcomm is significantly
 11 higher than the rates charged by other licensors of cellular SEPs.

12 90. Qualcomm refuses to license FRAND-encumbered cellular SEPs to
 13 competing suppliers of modem chips, despite its FRAND commitments.

14 91. Among SEP holders, Qualcomm garners an outsized share of licensing
 15 revenues paid by OEMs and CMs. OEMs and CMs pay Qualcomm far more in
 16 royalties than they pay other SEP licensors, even those with comparable portfolios of
 17 cellular SEPs. For example, the royalty demanded by Qualcomm is a multiple of the
 18 royalty demanded [REDACTED] another SEP license.

19 92. The royalties demanded by Qualcomm have been found by the district
 20 court presiding over the FTC’s case against Qualcomm in the Northern District of
 21 California to be plausibly alleged as “above-FRAND.” *FTC v. Qualcomm Inc.*, slip
 22 op. at 27. The royalties are manifestly excessive even if Qualcomm has historically
 23 collected a royalty rate of 5%. Indeed, the claim that Qualcomm has continued to
 24 extract the same 5% royalty on the total value of a cellular device supports, rather than
 25 contradicts, Counterclaimants’ complaint that Qualcomm’s royalty is above FRAND.
 26 *Id.* at 27-28. Early handsets were primarily used only to transmit voice calls and
 27 Qualcomm’s cellular communications SEPs arguably contributed significantly to the

1 functionality and value of an early handset. By contrast, handsets today contain
 2 numerous features that are unrelated to cellular network connectivity, such as cameras,
 3 Wi-Fi access, and data storage. *See* Section IV(C), *supra*. Moreover, tablets and
 4 cellular-enabled computers in particular contain feature-rich aspects unrelated to voice
 5 call transmission. Thus, Qualcomm's SEPs contribute far less to the value of a 2017
 6 cellular device than they contributed to the value of a 2007 phone. Nonetheless,
 7 Qualcomm continues to demand a 5% royalty from the total value of the cellular
 8 device today for Qualcomm's cellular communications SEPs, just as it did a decade
 9 ago.

10 93. Moreover, Qualcomm has continued to earn the same 5% royalty on the
 11 sale of a cellular device despite the fact that Qualcomm's SEP portfolio has declined
 12 throughout cellphone standard generations. As described herein, Qualcomm held a
 13 high share of all patents declared essential to 2G-CDMA standards, but its share of
 14 patents declared essential to LTE standards is much lower than its share of CDMA
 15 SEPs and is roughly equal to the shares of other industry participants such as Nokia,
 16 Ericsson, and Samsung. *See* Section V, *supra*. Nonetheless, Qualcomm continues to
 17 extract the same royalty rate despite its increasingly diminished role.

18 94. In short, that Qualcomm collects the same 5% royalty on the total value of
 19 a 2017 cellular device as Qualcomm collected on the total value of a 2007 cellular
 20 device, despite the fact that both device technology and Qualcomm's SEP portfolio has
 21 changed dramatically over the past decade, is compelling evidence that Qualcomm's
 22 SEP royalty rates are above FRAND.

23 **VI. QUALCOMM'S ALLEGED PATENT RIGHTS**

24 95. Qualcomm asserts rights under multiple patents based upon
 25 Counterclaimants' current activity of manufacturing and selling cellular devices.
 26 These patents include at least U.S. Patent Nos. 7,246,242; 6,556,549; 9,137,822;
 27 7,289,630; 8,867,494; 7,095,725; 6,694,469; 9,059,819; 7,096,021; 7,061,890;

1 8,000,717; 8,614,975; 8,761,068; 8,861,424; 8,873,471; 8,989,140; 9,007,974; and
2 9,144,071 (collectively, “Patents-in-Suit”).

3 96. By way of example, Qualcomm has alleged that, “Absent
4 [Counterclaimants’] License Agreements, the cellular products they manufacture (for
5 Apple and others) would infringe many thousands of patents in Qualcomm’s
6 portfolio.” Dkt. 1 ¶ 42; *see also* Dkt. 35 at 6 (“Absent [Counterclaimants’] license
7 agreements, the devices manufactured by [Counterclaimants], including Apple devices,
8 would infringe numerous Qualcomm patents.”).

9 97. Counterclaimants plan to continue to manufacture and sell cellular
10 products.

11 98. Counterclaimants contend that they have the right to manufacture and sell
12 cellular products without the need of a license from Qualcomm on the patents
13 identified in paragraph 95.

14 99. Counterclaimants need not risk a suit for infringement by engaging in the
15 identified activity before seeking a declaratory judgment of its legal rights.

16 **VII. QUALCOMM USES ITS DOMINANT POSITION IN MODEM CHIPS**
17 **TO PRECLUDE OEMS AND CMS FROM CHALLENGING ITS PREFERRED**
18 **LICENSE TERMS**

19 100. Qualcomm’s “no license-no chips” policy conditions OEMs’ and CMs’—
20 including Counterclaimants’—access to its modem chips on acceptance of a license to
21 Qualcomm’s cellular SEPs on Qualcomm’s preferred terms—including the payment of
22 substantial royalties to Qualcomm on sales of cellular devices using a modem chip
23 purchased from Qualcomm’s competitors.

24 101. As alleged below, Qualcomm’s policy is anticompetitive and
25 exclusionary. The policy skews Qualcomm’s license negotiations toward outcomes
26 that raise the all-in prices that OEMs and CMs, including Counterclaimants, must pay
27 on both Qualcomm modem chips and those supplied by Qualcomm’s competitors.

1 These higher all-in prices reduce demand for competitors’ modem chips, raise prices
2 paid by consumers, and reduce demand for Counterclaimants’ cellular products.

3 **A. Qualcomm’s Agreements with Compal**

4 102. On February 10, 2000, Compal and Qualcomm entered into a Subscriber
5 Unit License Agreement (“Compal SULA”). Under the Compal SULA, Compal has
6 the right to manufacture and sell Subscriber Units, such as tablets, that incorporate
7 certain Qualcomm intellectual property.

8 103. The Compal SULA grants Compal certain rights to certain patents owned
9 by Qualcomm, including both SEPs and patents that are not essential to any relevant
10 standard (“NEPs”). In exchange, the Compal SULA purports to obligate Compal to
11 pay Qualcomm [REDACTED] upfront license fees as well as royalties on a
12 quarterly basis. Compal’s royalties are calculated as a percentage of the Net Selling
13 Price, or NSP (as defined in the Compal SULA) for each cellular product sold by
14 Compal during the relevant calendar quarter—even if no product contains a *Qualcomm*
15 *modem chip*. The Compal SULA also requires Compal to provide a [REDACTED]
16 [REDACTED] cross-license to Compal’s intellectual
17 property related to certain technology. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 104. Compal and Qualcomm have executed amendments to the Compal SULA
24 at various times.

25 105. [REDACTED]
26 [REDACTED]
27 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 106. On January 13, 2010, Compal and Qualcomm entered into a Master
5 Software Agreement (“Compal MSA”). In exchange for upfront license fees, the
6 Compal MSA grants Compal the copyright right with respect to certain Qualcomm
7 software [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 107. Pursuant to its “no license-no chips” policy, Qualcomm requires entry
13 into the Compal SULA in connection with the sale of modem chips to Compal. Since
14 2010, Qualcomm has also required entry into the Compal MSA and addenda thereto in
15 connection with the sale of modem chips to Compal.

16 **B. Qualcomm’s Agreements with FIH and Hon Hai**

17 108. On October 18, 2005, FIH and Qualcomm entered into a Subscriber Unit
18 License Agreement (“FIH SULA”). Hon Hai also signed the FIH SULA with respect
19 to two sections. Under the FIH SULA, FIH has the right to manufacture and sell
20 Subscriber Units, such as cellular devices and tablets, that incorporate Qualcomm’s
21 intellectual property.

22 109. Also on October 18, 2005, Qualcomm, FIH, and Hon Hai entered into a
23 separate agreement granting Hon Hai a sublicense of FIH’s rights under the FIH
24 SULA.

25 110. FIH and Qualcomm executed amendments to the FIH SULA at various
26 times.

1 111. Pursuant to the FIH SULA, FIH and Hon Hai are granted certain rights to
2 certain patents owned by Qualcomm, including both SEPs and NEPs. In exchange, the
3 FIH SULA purports to obligate them to pay Qualcomm [REDACTED] upfront
4 license fees as well as royalties on a quarterly basis. Their royalties are calculated as a
5 percentage of the Net Selling Price, or NSP (as defined in the FIH SULA) for each
6 cellular product during the relevant calendar quarter—even if no product contains a
7 *Qualcomm modem chip*. The FIH SULA also requires FIH to provide a [REDACTED]
8 [REDACTED] cross-license to FIH’s intellectual property
9 related to certain technology. [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 112. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 113. On January 11, 2010, FIH and Qualcomm entered into a Master Software
26 Agreement (“FIH MSA”). In exchange for upfront license fees, the FIH MSA grants
27 FIH the copyright right with respect to certain Qualcomm software [REDACTED]

[REDACTED]

114. Pursuant to its “no license-no chips” policy, Qualcomm requires entry into the FIH SULA in connection with the sale of modem chips to FIH or Hon Hai. Since 2010, Qualcomm has also required entry into the FIH MSA and addenda thereto in connection with the sale of modem chips to FIH or Hon Hai.

C. Qualcomm’s Agreements with Wistron

115. On May 23, 2007, Wistron and Qualcomm entered into a Subscriber Unit License Agreement (“Wistron SULA”). Under the Wistron SULA, Wistron has the right to manufacture and sell Subscriber Units, such as cellular devices, that incorporate certain Qualcomm intellectual property.

116. The Wistron SULA grants Wistron certain rights to certain patents owned by Qualcomm, including both SEPs and NEPs. In exchange, the Wistron SULA purports to obligate Wistron to pay Qualcomm [REDACTED] upfront license fees as well as royalties on a quarterly basis. Wistron’s royalties are calculated as a percentage of the Net Selling Price, or NSP (as defined in the Wistron SULA) for each cellular product during the relevant calendar quarter—even if no product contains a *Qualcomm modem chip*. The Wistron SULA also requires Wistron to provide a [REDACTED] cross-license to Wistron’s intellectual property related to certain technology. [REDACTED]

[REDACTED]

117. [REDACTED]

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[REDACTED]

118. On April 7, 2010, Wistron and Qualcomm entered into a Master Software Agreement (“Wistron MSA”). In exchange for upfront license fees, the Wistron MSA grants Wistron the copyright right with respect to certain Qualcomm software [REDACTED]

[REDACTED]

119. Pursuant to its “no license-no chips” policy, Qualcomm requires entry into the Wistron SULA in connection with the sale of modem chips to Wistron. Since 2010, Qualcomm has also required entry into the Wistron MSA and addenda thereto in connection with the sale of modem chips to Wistron.

D. Qualcomm’s Agreements with Pegatron

120. In 2007, Pegatron was formed as a wholly-owned subsidiary of ASUSTek Computer, Inc. (“ASUS”). [REDACTED]

[REDACTED]

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1 [REDACTED]
2 [REDACTED]

3 121. [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 122. On April 29, 2010, Pegatron and Qualcomm entered into a Subscriber
12 Unit License Agreement (“Pegatron SULA”). Under the Pegatron SULA, Pegatron
13 has the right to manufacture and sell Subscriber Units, such as cellular devices and
14 tablets, that incorporate Qualcomm’s intellectual property. The Pegatron SULA grants
15 Pegatron certain rights to certain patents owned by Qualcomm, including both SEPs
16 and NEPs. In exchange, the Pegatron SULA purports to obligate Pegatron to pay
17 Qualcomm [REDACTED] upfront license fees, as well as royalties on a
18 quarterly basis. Pegatron’s royalties are calculated as a percentage of the Net Selling
19 Price, or NSP (as defined in the Pegatron SULA) for each cellular product during the
20 relevant calendar quarter—even if no product contains a *Qualcomm modem chip*. The
21 Pegatron SULA also requires Pegatron to provide a [REDACTED]
22 [REDACTED] cross-license to Pegatron’s intellectual property related to
23 certain technology. [REDACTED]

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

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1 [REDACTED] Pegatron and Qualcomm have executed
2 amendments to the Pegatron SULA at various times.

3 123. On July 13, 2010, Pegatron and Qualcomm entered into a Master
4 Software Agreement (“Pegatron MSA”). In exchange for upfront license fees, the
5 Pegatron MSA grants Pegatron the copyright right with respect to certain Qualcomm
6 software [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 124. Pursuant to its “no license-no chips” policy, Qualcomm requires entry
14 into the Pegatron SULA in connection with the sale of modem chips to Pegatron.
15 Since 2010, Qualcomm has also required entry into the Pegatron MSA and addenda
16 thereto in connection with the sale of modem chips to Pegatron.

17 **E. Qualcomm’s Announced Corporate Structure Is Designed to**
18 **Implement the “No License-No Chips” Policy**

19 125. Qualcomm is party to the agreements through which it licenses its cellular
20 SEPs to Counterclaimants.

21 126. Qualcomm sells modem chips to Counterclaimants through its
22 subsidiaries or branches, QCT and QCTAP. The sale of Qualcomm modem chips to
23 Counterclaimants through QCT and/or QCTAP is authorized by Qualcomm.

24 127. Qualcomm’s QTL division, by contrast, is responsible for licensing
25 thousands of patents that Qualcomm has declared are essential to the 3G-CDMA,
26 UMTS, and LTE standards.

1 131. Ultimately, in December 2015, Qualcomm announced the completion of
2 its strategic review and decided not to break up the company. According to
3 Qualcomm’s CEO, “[t]he strategic benefits and synergies of our model are not
4 replicable” if Qualcomm split apart the two parts of its business.⁴ These “benefits and
5 synergies” include the anticompetitive conduct and royalties described herein.
6 Qualcomm has acknowledged that the “current structure . . . driv[es] enhanced overall
7 financial performance of the Company.” *Id.*

8 **F. Qualcomm’s “No License-No Chips” Policy Is Anomalous Among**
9 **Component Suppliers**

10 132. Qualcomm’s “no license-no chips” policy sets Qualcomm apart from
11 other suppliers of semiconductor and cellular-equipment components.

12 133. Other component suppliers have relied upon component sales, rather than
13 separate patent licenses or separate copyright licenses, to convey to their OEM and
14 CM customers the intellectual property rights that those customers need in order to use
15 or resell the components they have purchased.

16 134. When a supplier sells a component, such as a modem chip, to an OEM or
17 CM, that sale, under the doctrine of patent exhaustion, ordinarily terminates any right
18 of the supplier under patent law to control any further use or sale of the component.
19 Similarly, under the first-sale doctrine, the first sale of a copyrighted work exhausts the
20 copyright holder’s rights in that copy of the work.

21 135. Thus, for example, when a CM or OEM uses a chip from another of
22 Qualcomm’s competitors, the CM or OEM would be able to use or resell the chip—
23 with code loaded thereon—without first obtaining a separate patent or copyright
24

25 _____
26 ⁴ Press Release, Qualcomm, *Qualcomm Completes Review of Corporate and*
27 *Financial Structure* (December 15, 2015), available at
28 <https://www.qualcomm.com/news/releases/2015/12/15/qualcomm-completes-review-corporate-and-financial-structure>.

1 license from the competitor—just as a consumer buying a smartphone or tablet does
2 not have to obtain a separate patent license from the seller of the smartphone or tablet.

3 136. More generally, OEMs and CMs, including Counterclaimants, purchase
4 components from hundreds of suppliers. Among these suppliers, Qualcomm is unique
5 in requiring, as a condition of a modem chip sale, a separate patent license and a
6 separate software license requiring royalty payments for devices that use a
7 competitor’s components.

8 **G. Qualcomm’s “No License-No Chips” Policy Is Anomalous Among**
9 **SEP Licensors**

10 137. Qualcomm’s “no license-no chips” policy also sets Qualcomm apart from
11 other licensors of SEPs.

12 138. Ordinarily, if a SEP holder and a potential licensee can neither agree on
13 license terms nor agree to submit those terms to binding arbitration, the SEP holder
14 initiates a patent-infringement suit in which a court resolves issues of patent validity
15 and infringement and, if the court deems a patent valid and infringed, determines and
16 awards reasonable royalties. In some instances, a potential licensee may seek a
17 declaratory judgment addressing the same issues.

18 139. These suits, when litigated to judgment, have resulted in royalties well
19 below those that SEP holders offered prior to litigation. In one leading case, an SEP
20 holder demanded royalties of between \$6 and \$8 per gaming console. The district
21 court ultimately determined that the FRAND rate for the SEPs was \$0.04 per console.
22 *Microsoft Corp. v. Motorola, Inc.*, No. C10-1823, 2013 WL 2111217, at *99–101
23 (W.D. Wash. Apr. 25, 2013). In another case, an SEP holder demanded royalties that
24 exceeded the selling price of the standard-compliant products. The district court
25 ultimately determined that the cumulative FRAND royalty for the patents at issue was
26 0.19% of the selling price. *Realtek Semiconductor Corp. v. LSI Corp.*, No. C-12-3451,
27 2014 WL 2738226, at *6 (N.D. Cal. June 16, 2014).

1 140. A potential licensee’s ability to secure a FRAND determination from a
2 court affects SEP-license negotiations. If the potential licensee’s costs of going to
3 court are low, relative to the value of the royalties and other terms that the parties are
4 negotiating, both parties to the negotiation know that the potential licensee, if offered
5 unreasonable terms, can choose to decline the offer and go to court to seek better
6 terms.

7 141. Thus, the parties’ expectations about the probable outcome of litigation
8 determine the negotiated terms. In this sense, bargaining over royalties and other
9 licensing terms occurs “in the shadow of the law.”

10 142. Negotiated royalties will approximate judicially determined reasonable
11 royalties, however, only if the costs to the prospective licensee of challenging the
12 licensor’s royalty demands are low, relative to the royalties demanded.

13 143. As the costs to the potential licensee of going to court rise, this becomes a
14 less attractive option, and thus provides less protection to the potential licensee against
15 unreasonable royalty demands.

16 **H. Qualcomm’s “No License-No Chips” Policy Denies CMs and OEMs**
17 **the Opportunity to Challenge Qualcomm’s License Terms in Court**
18 **or to Negotiate Royalties Against the Backdrop of a Potential**
19 **Challenge**

20 144. Many OEMs and CMs, including Counterclaimants, regard Qualcomm’s
21 royalties as above FRAND, and, absent Qualcomm’s “no license-no chips” policy,
22 they would have the ability and incentive to challenge Qualcomm’s royalty demands in
23 court.

24 145. Before a court, OEMs and CMs, including Counterclaimants, could
25 challenge Qualcomm’s royalty demands on several grounds, including by citing
26 evidence that:
27

1 a. Qualcomm’s royalties are disproportionately high relative to the
2 value contributed by its patented inventions, and often are several times higher
3 than the royalties of other SEP licensors that have made similar technical
4 contributions;

5 b. Qualcomm has continued to insist on royalties calculated as a
6 percentage of a device’s price, even though, for example, handsets today offer a
7 number of features—including cameras, high-resolution touch-screen displays,
8 powerful applications and graphics processors—other than cellular connectivity;

9 c. Qualcomm’s standard royalty rate has not fallen, even though many
10 of Qualcomm’s patents related to CDMA technology have expired and even
11 though Qualcomm’s SEPs contribute far less to the value of more recent models
12 of phones than they contributed to a 2007 phone;

13 d. Qualcomm has required OEMs and CMs, including
14 Counterclaimants, to grant Qualcomm [REDACTED] cross-licenses (in some
15 cases, to both SEPs and non-SEPs), often with pass-through rights to other
16 Qualcomm customers, and has failed to adjust its royalty rate to account for the
17 value of the cross-licensed patents; and

18 e. Qualcomm has asserted unreasonable royalties demands, including
19 contending that [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 146. Qualcomm’s “no license-no chips” policy effectively denies OEMs and
4 CMs, including Counterclaimants, the opportunity to challenge Qualcomm’s royalty
5 demands on these and other grounds by dramatically increasing the costs of going to
6 court.

7 147. As a result of Qualcomm’s policy, the costs that a CM or OEM must incur
8 to challenge Qualcomm’s royalties are not simply attorneys’ fees and other litigation
9 costs, but also include actual or threatened loss of access to Qualcomm’s modem chips.

10 148. Loss of access to Qualcomm’s modem chips imposes substantial costs on
11 CMs and OEMs. Given the dominant position that Qualcomm has had in the supply of
12 CDMA and premium LTE modem chips, a CM or OEM unable to purchase such chips
13 from Qualcomm would be severely hampered in efforts to design and sell critically
14 important premium-tier phones, tablets and cellular-enabled computers, and phones,
15 tablets and cellular-enabled computers for use on CDMA networks. This is
16 particularly true for each Counterclaimant. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 149. Qualcomm has also used its dominant position to negotiate supply terms
22 that leave OEMs and CMs, including Counterclaimants, vulnerable to a supply
23 disruption in the event of a license dispute. Once a CM or OEM begins testing a
24 device with a Qualcomm modem chip, the OEM is effectively “locked in” to that chip,
25 and remains so over the commercial life of the device.

26 150. Absent Qualcomm’s dominance in CDMA and premium LTE modem
27 chips, a CM or OEM could protect itself against a supply disruption either (i) by

1 substituting non-Qualcomm chips in new device designs or (ii) by using the prospect
2 of substitution to negotiate supply terms with Qualcomm that protect the OEM from
3 such a disruption. Qualcomm has used its dominance, however, to obtain terms that
4 impede or prevent these measures.

5 151. These supply terms leave CMs and OEMs vulnerable to supply
6 disruptions with serious consequences for their businesses. To avoid these
7 consequences, OEMs and CMs, including Counterclaimants, have acceded to royalties
8 and other licensing terms that Qualcomm demanded even when they believed those
9 terms to be above-FRAND. No Counterclaimant has succeeded in negotiating
10 FRAND terms with Qualcomm.

11 152. Accordingly, because of Qualcomm’s “no license-no chips” policy, these
12 two processes for determining a reasonable royalty rate—i.e., bilateral negotiations in
13 the shadow of the law, or a lawsuit itself—have been functionally foreclosed to OEMs
14 and CMs.

15 **I. Qualcomm’s “No License-No Chips” Policy Compels OEMs to**
16 **Accept Qualcomm’s Preferred License Terms**

17 153. Qualcomm’s “no license-no chips” policy has significantly influenced the
18 course of license negotiations with a number of OEMs and CMs, including
19 Counterclaimants, over the last decade.

20 154. To maintain access to Qualcomm’s modem chips, OEMs and CMs,
21 including Counterclaimants, have accepted royalty and other license terms that they
22 would not otherwise accept. Specifically, as a result of Qualcomm’s “no license-no
23 chips” policy, the royalties that OEMs and CMs, including Counterclaimants, pay
24 Qualcomm on devices using non-Qualcomm modem chips do not reflect assessments
25 of royalties that a court or neutral arbiter would deem reasonable, including in light of
26 Qualcomm’s FRAND commitments. The royalties that OEMs and CMs, including
27 Counterclaimants, pay do not reflect the value of Qualcomm’s SEPs, but also reflect

1 Qualcomm’s dominant position in modem chips, and include an added increment that
 2 OEMs and CMs, including Counterclaimants, pay Qualcomm to avoid disruption of
 3 chip supply. For example, Samsung, an important OEM, contends that Qualcomm
 4 leveraged its cellular SEPs to coerce unreasonable licensing terms that have
 5 anticompetitive, trade-restraining effects. Brief of *Amici Curiae* Samsung Electronics
 6 Co. Ltd. and Samsung Semiconductor, Inc. in Opposition to Qualcomm Incorporated’s
 7 Motion to Dismiss (“Samsung Amici Br.”) at 7, *FTC v. Qualcomm Inc.*, No. 5:17-cv-
 8 00220-LHK-NMC (N.D. Cal. May 15, 2017). From Samsung’s perspective:
 9 “Qualcomm coerces handset manufacturers to sign long-term licenses that
 10 disincentivize handset manufacturers from seeking alternative [modem chip] suppliers
 11 and enable Qualcomm to extract monopoly profits from the full handset *whether or not*
 12 *the value is derived from Qualcomm’s SEPs.*” *Id.* at 10 (emphasis in original).

13 155. In other words, Qualcomm’s “no license-no chips” policy, together with
 14 its other exclusionary and anticompetitive conduct, means that the “all-in” price of any
 15 modem chip now consists of (i) the nominal price of the modem chip itself, which the
 16 OEM or CM must pay the modem chip manufacturer; (ii) a FRAND royalty, which the
 17 OEM or CM must pay to Qualcomm to practice Qualcomm’s SEPs to the extent that
 18 such IP rights are valid and have not been exhausted; and (iii) an added surcharge,
 19 which the OEM or CM must pay to Qualcomm in order to ensure continued access to
 20 Qualcomm’s modem chip supply.

21 **J. Qualcomm’s “No License-No Chips” Policy Has Harmed**
 22 **Competition and Inflicted Antitrust Injury on Counterclaimants**

23 156. The incremental royalty that OEMs and CMs, including
 24 Counterclaimants, pay to Qualcomm operates as a surcharge that raises OEMs’ and
 25 CMs’ costs of using modem chips supplied by Qualcomm’s competitors, reduces
 26 demand for competitors’ chips, and reduces the ability and incentive of competitors to
 27

1 invest and innovate. The surcharge thereby maintains Qualcomm’s monopoly power
2 and raises handset prices paid by U.S. consumers.

3 157. When evaluating device designs, OEMs and CMs consider the all-in cost
4 of a modem chip, consisting of both (i) the nominal price of the chip; and (ii) any
5 patent royalties that the OEM or CM must pay to use that chip in a device.

6 158. Qualcomm’s surcharge, by raising the latter cost component, increases the
7 all-in cost to an OEM or CM of using a competitor’s modem chip, and thus weakens
8 the competitive constraint on Qualcomm’s own all-in modem chip price. Qualcomm
9 further seeks to insulate its all-in price from competitive constraint by, [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 159. By raising OEMs’ and CMs’ all-in costs of using competitors’ modem
15 chips, the surcharge diminishes CMs’ and OEMs’ demand for those chips and reduces
16 competitors’ sales and margins.

17 160. A supplier of CDMA and premium LTE modem chips must ship
18 substantial volumes of chips and earn significant margins on those shipments to sustain
19 the research and development required to maintain a viable business. Reduced sales
20 and margins resulting from Qualcomm’s surcharge diminish competitors’ abilities and
21 incentives to invest and innovate.

22 161. The above-FRAND royalties that Qualcomm extracts from OEMs and
23 CMs, including Counterclaimants, through Qualcomm’s “no license-no chips” policy
24 thus affects the markets for modem chips and harms competition in the modem chip
25 markets. As described above, Qualcomm’s “no license-no chips” policy entrenches
26 Qualcomm’s monopoly power in the sale of CDMA and premium LTE modem chips.
27 That entrenched power allows Qualcomm to continue breaching its FRAND obligation

1 to license competitors. All of this impairs competitors' abilities to invest and innovate
2 in next-generation technologies.

3 162. By using its modem chip dominance to levy a surcharge on its
4 competitors, Qualcomm has also limited competitors' ability to discipline the all-in
5 prices that Qualcomm charges for modem chips. If Qualcomm used its dominance
6 solely to raise the nominal prices of its own chips, those price increases would spur
7 OEMs and CMs to seek substitutes and would attract entry and competitive pricing
8 from modem chip competitors. By contrast, imposing a surcharge—which OEMs and
9 CMs must pay regardless of whether they use modem chips supplied by Qualcomm or
10 a Qualcomm competitor—enables Qualcomm to raise the all-in prices of chips without
11 spurring substitution or attracting entry.

12 163. As the district court presiding over the FTC's case against Qualcomm has
13 held, it is irrelevant that "Qualcomm nominally imposes the same surcharge on all
14 modem chip sales," because "Qualcomm's surcharge does not affect Qualcomm and
15 its competitors equally." *FTC v. Qualcomm Inc.*, slip op. at 33. For Qualcomm,
16 "Qualcomm's surcharge is a means for Qualcomm to functionally extract a higher
17 price for Qualcomm's own modem chips without being underbid in the modem chips
18 market by competing modem chip manufacturers." *Id.* The revenue from
19 Qualcomm's surcharge comes back to Qualcomm as profit, helping it to maintain its
20 modem chips monopoly. *Id.* And, in any event, Qualcomm can (as it has in the past)
21 offer OEMs and CMs royalty relief conditioned on modem chip exclusivity. *Id.*
22 Qualcomm's competitors, by contrast, cannot offer any such relief from Qualcomm's
23 above-FRAND royalties, and "Qualcomm's surcharge works to reduce competitors'
24 modem chips sales and margins, which prevents these competitors from effectively
25 competing with Qualcomm." *Id.*

26 164. In effect, Qualcomm's surcharge artificially stunts its competitors' ability
27 to effectively grow and challenge Qualcomm on the merits. Moreover, the surcharge
28

1 represents higher profits to Qualcomm, both because the surcharge brings additional
2 revenue to Qualcomm and because the reduction in competition enables Qualcomm to
3 capture more of the modem chips market.

4 165. The district court has also found that Qualcomm’s alleged course of
5 conduct may “violat[e] its FRAND obligations twice over,” and that “by not licensing
6 its competitors and by threatening to withhold its chips to induce OEMs to pay an
7 above-FRAND royalty rate[,] Qualcomm raises the ‘all-in’ modem chip price that
8 OEMs pay on *all* modem chips.” *FTC v. Qualcomm Inc.*, slip op. at 32. But for this
9 conduct, Qualcomm’s all-in prices would be far lower, and CMs and OEMs would
10 likely pass some or all of these lower prices on to their customers in the form of lower
11 device prices or increased features.

12 166. Qualcomm executives have recognized that Qualcomm’s “no license-no
13 chips” policy requires OEMs and CMs to accept higher royalties than they would
14 otherwise accept.

15 167. In a June 2015 internal Qualcomm presentation, the presentation proposed
16 that Qualcomm form a “5G Consortium” with major infrastructure-equipment
17 manufacturers wherein members of the consortium would not sell a product to a carrier
18 that is not licensed by the Consortium.

19 168. The internal presentation proposed that the consortium “pursue licensing
20 on a non-FRAND basis for SEPs” because conditioning carrier access to equipment on
21 the acceptance of a separate patent license would “Convinc[e] Carriers to Pay.” This
22 internal presentation noted that Qualcomm “employs this strategy today.” *FTC v.*
23 *Qualcomm Inc.*, slip op. at 11.

24 **VIII. QUALCOMM REFUSES TO LICENSE FRAND-ENCUMBERED SEPS**
25 **TO ITS COMPETITORS**

26 169. The intellectual property rights policies of relevant SSOs do not restrict
27 who is eligible to receive a FRAND license from a holder of a FRAND-encumbered

1 patent. For instance, the ETSI IPR policy requires standard-setting participants to
2 commit to provide “irrevocable licenses on fair, reasonable and non-discriminatory
3 (‘FRAND’) terms and conditions.” The TIA policy requires any SEP holder that
4 wishes to monetize its essential patents to commit to license SEPs “to all applicants
5 under terms and conditions that are reasonable and non-discriminatory . . . to the extent
6 necessary for the practice of . . . the Standard.” The ATIS policy requires SEP holders
7 to license SEPs “under reasonable terms and conditions that are demonstrably free of
8 any unfair discrimination” to “applicants desiring to utilize the license for the purpose
9 of implementing the standard.”

10 170. Qualcomm’s FRAND commitments require it to license its competitors to
11 make and sell modem chips using Qualcomm’s SEPs.

12 171. Qualcomm itself recognizes that FRAND commitments are designed to
13 ensure open access to standardized technologies. It argued in a past litigation filing
14 that FRAND commitments “ensure[] that all industry participants will be able to
15 develop, manufacture and sell products compliant with the relevant standard without
16 incurring the risk that patent holders will be able to shut down those operations.”

17 172. Similarly, in its 2016 annual report, Qualcomm stated: “The mobile
18 communications industry generally recognizes that a company seeking to develop,
19 manufacture and/or sell products that use CDMA- and/or LTE-based standards will
20 require a patent license from us.”

21 173. Qualcomm has also insisted on [REDACTED] cross-licenses to its licensees’
22 SEPs, for the benefit of Qualcomm’s modem chip business and the customers of that
23 business.

24 174. In breach of its FRAND commitments, at odds with its recognition that
25 other industry participants “will require” a license to its FRAND-encumbered SEPs,
26 and in tension with its practice of securing patent licenses for the benefit of its own
27 customers, Qualcomm has consistently refused to license its SEPs to competing
28

1 suppliers of modem chips. Several of Qualcomm’s former and current competitors,
2 including Intel, MediaTek and Samsung, have sought exhaustive SEP licenses from
3 Qualcomm for the purpose of manufacturing modem chips. In each instance,
4 Qualcomm refused to grant an SEP license. QC Answ. ¶ 112.

5 175. A license to Qualcomm’s cellular SEPs would provide substantial benefits
6 to other modem chip suppliers and to their actual or potential customers, including
7 Counterclaimants. Because Qualcomm refuses to license FRAND-encumbered SEPs
8 to its competitors, these competitors cannot offer OEMs or CMs, including
9 Counterclaimants, modem chips that convey the rights to Qualcomm’s cellular SEPs.
10 If Qualcomm *did* license its SEPs to competing modem chip manufacturers, those
11 modem chip manufacturers could sell licensed modem chips to OEMs and CMs and,
12 under the doctrine of patent exhaustion, the OEM or CM would obtain the right to use
13 the patents practiced by those modem chips without having to pay Qualcomm a royalty
14 on the sale of those modem chips.

15 176. Instead, because Qualcomm refuses to license its modem chips to
16 competitors and licenses its SEPs only to OEMs and CMs who make and sell handsets,
17 tablets and cellular-enabled computers, Qualcomm collects a royalty on all handsets,
18 tablets and cellular-enabled computers sold by an OEM, calculated as a percentage of
19 the value of the device, regardless of whose components are in the device.

20 177. Qualcomm’s ability to sustain a surcharge on its competitors’ sales via
21 patent license terms with OEMs would be limited if it licensed cellular SEPs to its
22 competitors. Qualcomm’s competitors, unlike its OEM and CM customers, do not
23 depend on Qualcomm for modem chip supply. As a result, Qualcomm could not use a
24 threatened disruption of modem chip supply to skew SEP-license negotiations with its
25 competitors, and the royalties that would emerge from those negotiations would reflect
26 the royalties that a court would deem reasonable.

27

28

1 178. Qualcomm’s refusal to license competing manufacturers of modem chips,
2 in contravention of its FRAND commitments, contributes to its ability to sustain a
3 surcharge on its competitors’ sales, extract exorbitant royalties by forcing a model
4 where royalties are calculated on the value of the cellular device manufactured by CMs
5 including Counterclaimants, and maintain its monopoly.

6 **IX. QUALCOMM EXTRACTED MODEM CHIP EXCLUSIVITY FROM**
7 **APPLE IN EXCHANGE FOR PARTIAL ROYALTY RELIEF**

8 179. On some occasions, Qualcomm has induced certain OEMs to accept its
9 preferred license terms (including terms imposed on CMs) using both the “stick” of
10 threatened supply disruption and the “carrot” of funds to be used for strategic or
11 marketing purposes (“strategic funds”) conditioned on the OEM’s acceptance of
12 Qualcomm’s preferred terms. QC Answ. ¶ 103.

13 180. These strategic funds have, in some cases, accrued based on OEMs’ or
14 CMs’, including Counterclaimants’, purchase of Qualcomm’s modem chips. QC
15 Answ. ¶ 103.

16 181. In effect, Qualcomm pays OEMs to accept Qualcomm’s preferred
17 licensing terms (including terms imposed on CMs).

18 182. Conditioning such funds on OEMs’ acceptance of license terms has
19 helped Qualcomm “close the gap” with OEMs that resist license terms that they regard
20 as unfair, and to maintain high royalties on devices that use competitors’ modem chips.

21 183. Qualcomm’s payment of these strategic funds are thus a way for
22 Qualcomm to continue and maintain its “no license-no chips” policy consistently
23 across all OEMs and CMs.

24 184. Apple’s licensing negotiations and arrangements with Qualcomm, as
25 alleged by Apple, are illustrative examples of Qualcomm’s use of “carrots” and
26 “sticks.”

27
28

1 185. Apple alleges that, like other OEMs, Apple’s leverage in negotiations
2 with Qualcomm has been constrained by Apple’s need for access to a supply of
3 Qualcomm’s CDMA and premium LTE modem chips. Pl’s Compl. ¶116, *FTC v.*
4 *Qualcomm, Inc.*, No. 5:17-cv-00220-LHK-NMC (N.D. Cal Jan. 17, 2017) (“FTC
5 Compl.”); Pl’s Am. Compl. ¶108, *Apple Inc. v. Qualcomm Inc.*, No. 17-cv-0108-GPC-
6 MDD (S.D. Cal. June 20, 2017) (“Apple FAC”).

7 186. Unlike other OEMs, however, Apple is not a direct Qualcomm licensee.
8 Instead, Apple employs contract manufacturers that are licensed by Qualcomm,
9 including Counterclaimants, and the contract manufacturers, under the terms of their
10 respective agreements with Apple, look to Apple to reimburse the costs of the
11 Qualcomm royalties they pay in connection with Apple devices. FTC Compl. ¶117;
12 Apple FAC ¶ 74.

13 187. Apple, like other OEMs, regards Qualcomm’s license terms, including the
14 effective royalties charged by Qualcomm under its licenses with Apple’s contract
15 manufacturers, as inconsistent with Qualcomm’s FRAND commitments. FTC Compl.
16 ¶118; Apple FAC ¶¶ 159, 169.

17 188. According to Apple, it has negotiated with Qualcomm in an effort to
18 reduce the royalty burden that Apple bears indirectly through its contract
19 manufacturers. As a result of these negotiations, Apple entered into agreements with
20 Qualcomm in 2007, 2011, and 2013. FTC Compl. ¶119; Apple FAC ¶¶ 94, 112, 114-
21 115.

22 189. According to Apple, under a 2007 agreement, Qualcomm agreed to rebate
23 to Apple royalties that Qualcomm received from Apple’s CMs (including certain
24 counterclaimants) in excess of a specified per-handset cap. Qualcomm’s payment
25 obligations were conditioned on certain exclusionary terms, including, among others,
26 Apple not selling or licensing a handset implementing the WiMax standard, a
27

1 prospective fourth-generation cellular standard championed by Intel and opposed by
2 Qualcomm. FTC Compl. ¶120; Apple FAC ¶ 112.

3 190. Apple alleges that Qualcomm and Apple entered into additional
4 agreements in 2011 and 2013. Under these agreements, Qualcomm provided Apple
5 large lump sum payments that constituted partial relief from Qualcomm royalties (*i.e.*,
6 the “carrot”). Qualcomm conditioned this relief on Apple’s (and, therefore,
7 Counterclaimants’) exclusive use of Qualcomm modem chips in new iPhone and iPad
8 models. FTC Compl. ¶121; Apple FAC ¶¶ 114-115.

9 191. Under Qualcomm’s 2011 agreement with Apple, Qualcomm agreed to
10 make substantial incentive payments from 2011 through 2016, explicitly conditioned
11 upon Apple (and, therefore, Counterclaimants) using Qualcomm modem chips
12 exclusively in all new iPhone and iPad models. If, during this period, Apple launched
13 a new handset with a non-Qualcomm modem chip, it would forfeit all future payments
14 and, depending on when a handset launched, could be required to refund past
15 payments. FTC Compl. ¶122; Apple FAC ¶ 114.

16 192. Qualcomm’s 2013 agreements with Apple modified and extended the
17 exclusivity arrangement set forth in the companies’ 2011 agreement. Under the 2013
18 agreements, Qualcomm agreed to rebate to Apple royalties that Qualcomm collected
19 directly from Apple’s contract manufacturers in excess of modified per-handset caps.
20 Qualcomm’s obligation to make these rebate payments was subject to, among other
21 terms, a new condition—that Apple neither initiate nor induce others to initiate
22 litigation claiming that Qualcomm had failed to offer a license on FRAND terms.
23 Qualcomm also agreed to make substantial incentive payments in 2013, 2014, 2015,
24 and 2016, explicitly conditioned on Apple sourcing modem chips for new iPad and
25 iPhone models exclusively from Qualcomm. If, during this period, Apple launched a
26 new handset with a non-Qualcomm modem chip, it would forfeit all future incentive
27

1 payments and, depending on when a device launched, could be required to refund past
2 incentive payments. FTC Compl. ¶123; Apple FAC ¶ 115

3 193. In all, Qualcomm’s 2011 and 2013 agreements with Apple provided for
4 billions of dollars in conditional rebates from Qualcomm to Apple for modem chip
5 sales from 2011 to 2016. These conditional rebates effectively penalized Apple’s (and,
6 therefore, Counterclaimants’) use of any modem chips supplied by Qualcomm’s
7 competitors. FTC Compl. ¶124; Apple FAC ¶ 96.

8 194. According to Apple, Qualcomm’s 2011 and 2013 agreements with Apple
9 were, and were intended by Qualcomm to be, *de facto* exclusive deals that were as
10 effective as express purchase requirements and that effectively foreclosed Qualcomm’s
11 competitors from gaining modem chip business for Apple cellular devices
12 manufactured by Counterclaimants. FTC Compl. ¶125; Apple FAC ¶ 96.

13 a. Apple and Counterclaimants had at all relevant times an interest in
14 developing and working with additional suppliers of modem chips.

15 b. The large penalties that Apple would face under its agreements
16 with Qualcomm if it sourced modem chips from another chip supplier prevented
17 Apple (and, therefore, Counterclaimants with respect to Apple devices) from
18 using alternative suppliers during the effective exclusivity period under these
19 agreements.

20 195. As a result of the exclusivity terms in its coerced agreements with
21 Qualcomm, Apple (and, therefore, Counterclaimants) sourced modem chips
22 exclusively from Qualcomm for all new iPad and iPhone products that it launched over
23 the five-year period from October 2011 until September 2016. FTC Compl. ¶126;
24 Apple FAC ¶¶ 96-97, 112-115.

25 196. Qualcomm’s coerced exclusive deal with Apple excluded competition
26 from other modem chip suppliers and harmed competition.

1 197. Apple is a particularly important OEM from the perspective of a nascent
2 modem chip supplier and confers benefits on a nascent supplier that make the supplier
3 a stronger contender for other OEMs' and for CMs' business.

4 a. Apple sells large volumes of premium handsets that require
5 premium LTE modem chips. These chips ordinarily command higher prices and
6 margins than lower-tier modem chips. Supplying Apple helps a nascent supplier
7 to achieve a scale of business that confers research-and-development flexibility,
8 among other things.

9 b. A nascent supplier learns directly from engagement with Apple's
10 engineering teams and this engagement improves the supplier's modem chip
11 offerings. Likewise, a nascent supplier benefits greatly from engaging directly
12 with the CMs' technical and engineering teams as they are the teams who
13 manufacture and assemble products for sale to OEMs.

14 c. A nascent supplier achieves technical validation by demonstrating
15 its ability to meet Apple's demanding technical requirements.

16 d. A nascent supplier engaged by Apple can field-test its chips
17 through global launches that require real-world work with network operators and
18 infrastructure vendors.

19 e. A nascent supplier obtains a reputational halo effect from selling to
20 Apple. This reputational boost may help a supplier win sales at other OEMs.

21 198. Qualcomm's coerced exclusive agreements with Apple prevented
22 Qualcomm's competitors from attaining these benefits during the term of the
23 exclusivity period. These agreements also foreclosed a substantial share of the market
24 for premium LTE modem chips. The agreements significantly impeded the
25 development of other modem chip suppliers into effective competitors to Qualcomm
26 reducing choice and innovation to the detriment of modem chip purchasers, including
27 Counterclaimants.

1 199. Counterclaimants have been further injured by Qualcomm’s use of
2 conditional rebates in lieu of reducing the above-FRAND royalties paid directly by
3 Counterclaimants. Qualcomm has claimed, and has sued Counterclaimants for,
4 royalties in excess of those to be paid indirectly by Apple (after netting out conditional
5 rebates)—and even when Qualcomm is aware that Apple has not remitted funds to
6 Counterclaimants to cover such royalties. Qualcomm is also aware that Apple has also
7 not remitted funds to pay amounts that Qualcomm claims Counterclaimants have
8 incurred (but that Counterclaimants dispute) such as [REDACTED]

9 **X. QUALCOMM BREACHES ITS CONTRACTS WITH**
10 **COUNTERCLAIMANTS**

11 200. At all relevant times, Qualcomm agreed and was required by law to act in
12 accordance with the express and implied terms (including, but not limited to, the
13 implied covenant of good faith and fair dealing) of the SULAs, the MSAs, and its
14 contractual commitments to SSOs (to which Counterclaimants are third-party
15 beneficiaries). Qualcomm has breached these agreements, as the following examples
16 illustrate.

17 201. As noted above, each of the SULAs entered into between Qualcomm and
18 each of the Counterclaimants provide that royalties are calculated as a percentage of
19 the Net Selling Price, or NSP (as defined in the SULA) for each cellular product sold
20 during the relevant calendar quarter.

21 202. The SULAs also entitle Qualcomm to conduct limited audits of
22 Counterclaimants’ applicable books and records.

23 203. Consistent with its overall strategy, Qualcomm has wielded its audit
24 authority in bad faith in order to demand royalties that are excessive, non-FRAND, and
25 not contemplated within the express terms or purpose of the SULAs or the justified
26 expectations of Counterclaimants.

1 204. First, [REDACTED]

[REDACTED]

8 205. Second, [REDACTED]

[REDACTED]

12 206. Third, [REDACTED]

[REDACTED]

21 207. Qualcomm's unreasonable royalty assessments violate the SULAs. As
22 noted above, the SULAs provide that [REDACTED]

[REDACTED]

26 [REDACTED] Qualcomm's demands have no basis in the contracts executed between it and
27 each counterclaimant. Qualcomm has no right to use or threaten to use the alleged

1 unpaid royalties described in paragraphs 204 through 206 as a basis to interfere in any
2 way with Counterclaimants’ rights under the SULAs.

3 208. Qualcomm’s conduct also breaches the implied covenant of good faith
4 and fair dealing that is implied in its SULAs with each Counterclaimant and has denied
5 each Counterclaimant the terms to which it agreed, and the benefits of its justifiable
6 expectations with respect to such terms.

7 209. Further, as discussed herein, pursuant to its FRAND commitments,
8 Qualcomm made numerous voluntary commitments to license its SEPs on fair,
9 reasonable, and non-discriminatory terms. By imputation, Qualcomm represents that
10 the royalties it charges Counterclaimants are fair, reasonable, and non-discriminatory.
11 In reality, the royalties are anything but, as they are inflated by Qualcomm’s “no
12 license-no chips” policy in addition to its other anticompetitive conduct. The royalties
13 not only include fair compensation for Qualcomm’s SEPs (which Counterclaimants
14 agreed to pay) but also include an additional increment reflecting Qualcomm’s modem
15 chips monopoly (which Counterclaimants did not agree to pay). In this way,
16 Qualcomm deprives Counterclaimants of their rights to be charged fair and reasonable
17 royalties, within the contemplation of the parties. Moreover, Qualcomm’s refusal to
18 license competitors, enabled and sustained by its “no license-no chips” policy, not only
19 helps to sustain its excessive, above-FRAND rates, but also deprives Counterclaimants
20 of the benefit of purchasing chips from Qualcomm’s competitors, by foreclosing
21 competition and thereby making chip alternatives unavailable to Counterclaimants.

22 [REDACTED]
23 [REDACTED] but by refusing to license rivals and imposing exclusivity deals on
24 OEMs, Qualcomm has [REDACTED] against the
25 common purpose and justifiable expectations of the parties.

26 210. By this and other conduct, Qualcomm breaches the express and implied
27 terms of the SULAs. This conduct also breaches the implied covenant of good faith

1 and fair dealing inherent in Qualcomm’s agreements with ETSI, TIA, and ATIS,
2 insofar as it deprives Counterclaimants of their rights to a FRAND rate.

3 211. Further, by suing Counterclaimants for a sum of royalties that includes an
4 amount of royalty rebates that Qualcomm has withheld from Apple, Qualcomm is now
5 attempting to reap from its conduct an amount far in excess of what it would be
6 entitled to under its agreements with Counterclaimants.

7 212. To understand why, one must view the SULAs in the context of
8 Qualcomm’s agreements with Apple, and in light of the expectations of the parties
9 (including Counterclaimants, Qualcomm, and Apple) with respect to payment of
10 royalties.

11 213. To explain: Counterclaimants generally do not advance their own funds
12 to pay the patent royalties. Instead, the standard practice is for Counterclaimants to
13 charge and collect the royalty payment from its customers (*i.e.*, Apple), before then
14 paying Qualcomm.

15 214. But this initial royalty is only half the story. From 2013 through mid-
16 2016, Qualcomm provided Apple with royalty rebates under a Business Cooperation
17 and Patent Agreement (“BCPA”) between Apple and Qualcomm. These rebates are
18 designed to reduce the royalty burden borne by Apple, indirectly through its CMs, by a
19 substantial amount. Qualcomm uses these rebates as “carrots,” conditioned on OEMs’,
20 like Apple’s, acceptance of Qualcomm’s oppressive terms, in order to “close the gap”
21 in some licensing negotiations. These “carrots” are a way for Qualcomm to continue
22 to maintain its “no license-no chips” policy—and the above-FRAND royalties that
23 result—consistently across all OEMs and CMs.

24 215. Qualcomm is fully aware of the mechanics by which the royalties are
25 paid: Counterclaimants are generally reimbursed for the royalties first by Apple;
26 Counterclaimants then pay royalties to Qualcomm, at which point Qualcomm remits a
27 portion back to Apple. This arrangement has been in effect for much of the time for
28

1 which Counterclaimants have been manufacturing products for Apple. Apple FAC ¶¶
2 73-76, 94-102.

3 216. In September 2016, Qualcomm improperly ceased making rebate
4 payments to Apple to retaliate against Apple for providing information to competition
5 agencies. However, Qualcomm continues to demand the full amount of royalties from
6 Counterclaimants, rather than the amount of royalties that is net of the rebate payments
7 it owes to Apple—*all while it continues to pocket the rebates it owes to Apple*. This
8 conduct results in Qualcomm attempting to reap significantly more than what it
9 bargained for under the agreements.

10 217. Qualcomm is attempting, therefore, to enforce the SULAs in a manner
11 that unfairly frustrates Counterclaimants' rights under the Agreements, in violation of
12 the express and implied terms of the SULAs. This conduct also breaches the implied
13 covenant of good faith and fair dealing inherent in Qualcomm's agreements with ETSI,
14 TIA, and ATIS, insofar as it deprives Counterclaimants of their rights to a FRAND
15 rate.

16 218. Additionally, Qualcomm has not provided to any Counterclaimant a list of
17 the specific patents that it has declared as essential, nor has it provided a list of the
18 patents that are practiced by those products manufactured by the Counterclaimants.
19 Nor has Qualcomm demonstrated why or how its intellectual property is essential to
20 the cellular standard implemented by Counterclaimants' products. Indeed, Qualcomm
21 has played hide-the-ball. For example, when asked by one Counterclaimant to identify
22 its current, non-expired cellular SEPs, Qualcomm offered no information, but
23 unhelpfully directed it to search the entire contents of the U.S. Patent and Trade Office
24 website. Meanwhile, Qualcomm has also removed from its website its public list of
25 U.S. patents disclosed to ETSI and precluded archive searching of that list. This
26 uncooperative conduct makes it difficult, if not impossible, for a licensee to determine
27 which patents Qualcomm has declared to be currently essential to cellular standards.

1 219. Furthermore, patent licensing offers made by Qualcomm as the result of a
2 Chinese regulatory finding also demonstrate Qualcomm’s bad faith in refusing to
3 distinguish between essential and non-essential patents and in the royalty rates that it is
4 charging. In 2015, China’s National Development and Reform Commission
5 (“NDRC”) completed an inquiry into Qualcomm’s licensing practices. The NDRC
6 determined that Qualcomm had abused its dominant market position, ordered
7 Qualcomm to cease such illegal activities, and imposed a fine upon Qualcomm
8 equaling eight percent of its sales in China in 2013. Qualcomm subsequently
9 submitted a rectification plan to the NDRC, which the NDRC reviewed and approved
10 (the “NDRC resolution” or “rectification plan”).

11 220. Qualcomm has made an “offer” [REDACTED],
12 according to Apple, to Apple, to license Qualcomm’s Chinese 3G/4G declared-
13 essential patents on terms purportedly “in accordance with” the rectification plan. [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 Qualcomm’s blatantly unreasonable demand frustrates the purpose behind its
23 agreements with SSOs, such as ETSI. *Microsoft Corp. v. Motorola, Inc.*, 864 F. Supp.
24 2d. 1023, 1038 (W.D. Wash. 2012); *Realtek Semiconductor Corp. v. LSI Corp.*, No. C-
25 12-03451, 2012 WL 4845628, at *4 (N.D. Cal. Oct. 10, 2012). In addition, Qualcomm
26 did not and has not provided any determination as to which of its Chinese patent
27 claims are essential to a covered standard implemented as to each proposed covered
28

1 product. As described herein and below, Qualcomm’s demand violates the law
2 governing patent royalties, as well as the implied covenant of good faith and fair
3 dealing in Qualcomm’s FRAND commitments to ETSI and others.

4 221. At a minimum, Qualcomm has evidenced bad faith in its interpretation of
5 license terms in a manner not contemplated by the parties or the general purpose of the
6 license agreements, and in claiming that the patents to which it is granting a license are
7 essential to a standard—and a product’s implementation of such standard—when they
8 are not. Qualcomm has neither provided Counterclaimants with meaningful
9 information that could permit them to determine which of Qualcomm’s patents are
10 essential to the cellular standards used by their products, nor has Qualcomm engaged
11 in the rigorous analysis needed to prove that its patents are valid, enforceable,
12 essential, and infringed, and, consequently, the FRAND royalty for each of such
13 patents. This has denied Counterclaimants the benefits of Qualcomm’s FRAND
14 commitments and helps Qualcomm extract extortion-level royalty rates for its patent
15 portfolio by virtue of simply alleging that it “holds a great many patents that are
16 essential to cellular standards.”

17 222. Indeed, Qualcomm appears to be trying to shield its patents from legal
18 scrutiny. According to Apple, it has been attempting to negotiate in good faith with
19 Qualcomm since 2015 for a license agreement consistent with Qualcomm’s FRAND
20 obligations. Apple FAC ¶ 123. In connection with such negotiations, Apple provided
21 Qualcomm with a FRAND offer, which included significant payments to Qualcomm
22 over the next seven years, the methodology used to arrive at such offer, and a bank
23 guarantee of the royalty amount offered. Qualcomm rejected Apple’s attempt to
24 negotiate and, instead, reverted to its prior terms.

25 223. According to Apple, Qualcomm ultimately agreed to share with Apple
26 patent information about Qualcomm’s SEP portfolio, including infringement
27 allegations about 20 U.S. patents it has declared to ETSI as essential to 3G/UMTS

1 and/or 4G/LTE. Apple FAC ¶ 124. After a number of back-and-forth exchanges, on
2 March 18, 2016, Qualcomm then provided a list of “the patents Qualcomm
3 Incorporated has disclosed to ETSI as potentially containing ESSENTIAL IPR” as
4 well as “the portion of the standards to which each of the patents relate.” Apple FAC ¶
5 138.

6 224. After such negotiations ultimately failed, Apple brought suit against
7 Qualcomm in the related, co-pending matter of *Apple Inc. v. Qualcomm Inc.* In that
8 case, Apple has brought declaratory judgment claims of noninfringement and
9 invalidity of 18 patents against Qualcomm: Apple asserted declaratory judgment
10 claims of noninfringement of nine patents in its initial Complaint filed on January 20,
11 2017 (the “Original Patents-in-Suit”), and then asserted declaratory judgment claims of
12 invalidity of the Original Patents-in-Suit, plus declaratory judgment claims of
13 noninfringement and invalidity of nine additional patents in its Amended Complaint
14 filed on June 20, 2017. According to Apple, these additional nine patents appear on
15 the March 18, 2016 list that Qualcomm sent to Apple as alleged evidence that Apple
16 should pay Qualcomm’s usurious above-FRAND royalties. Apple FAC ¶ 146.

17 225. Though Qualcomm has denied the allegations that the Original Patents-in-
18 Suit are “not essential to the 3G/UMTS standard” and that no claim of those patents
19 “has been or is infringed, either directly, contributorily, or by inducement, literally or
20 under the doctrine of equivalents, by Apple or the purchasers of Apple’s products
21 through the manufacture, use, importation, sale, and/or offer for sale of Apple’s
22 products,” Qualcomm did not assert infringement counterclaims against Apple for the
23 Original Patents-in-Suit. Apple FAC ¶¶ 140-141. Qualcomm will respond with
24 respect to the remaining patents by July 21, 2017.

25 226. On information and belief, Qualcomm’s decision not to assert formal
26 infringement counterclaims for the Original Patents-in-Suit against Apple is part of
27 Qualcomm’s improper efforts to evade its burden to show, as a condition predicate to
28

1 receiving any FRAND royalties, that it possesses a valid and enforceable patent that is
2 actually essential to the standard(s) to which Qualcomm has declared it, which has not
3 been exhausted by authorized sales of Qualcomm modem chips, and that Apple
4 products infringe that patent. Apple FAC ¶ 144.

5 **XI. QUALCOMM SEEKS TO ENFORCE ITS ANTICOMPETITIVE**
6 **SCHEME THROUGH LITIGATION**

7 227. Another component of Qualcomm’s unlawful scheme is its initiation of
8 litigation which is “causally connected” to the independent anticompetitive harm
9 caused by Qualcomm’s “No License-No Chips” policy and its other exclusionary
10 conduct. *Microsoft Mobile Inc. v. Interdigital, Inc.*, No. 15-723-RGA, 2016 WL
11 1464545 (D. Del. Apr. 13, 2016). On May 17, 2017, Qualcomm filed a lawsuit against
12 Counterclaimants, alleging that each breached its SULA [REDACTED] by failing to remit
13 to Qualcomm certain royalty payments that are being challenged as illegal by the FTC,
14 enforcement agencies around the world, Counterclaimants and Apple, among others.
15 Qualcomm seeks injunctive relief that would force Counterclaimants to immediately
16 resume payment. In that lawsuit, Qualcomm seeks to use litigation as a tool to
17 effectuate its scheme by compelling payment of the challenged supracompetitive
18 above-FRAND royalties.

19 228. Qualcomm’s efforts to extract supracompetitive above-FRAND royalties
20 from resistant customers would be ineffective without the threat of litigation. For this
21 reason, Qualcomm’s litigation conduct gives rise to an independent but related
22 antitrust injury on the part of Counterclaimants, in that it imposes litigation fees and
23 costs necessary to defend against the payment of supracompetitive licensing terms;
24 induces Counterclaimants and OEMs, such as Apple, to license Qualcomm’s
25 technology and purchase Qualcomm’s modem chips; prevents Counterclaimants and
26 OEMs from obtaining access to alternative modem chip technology; and underlines the
27 substantial threat that Counterclaimants and others will be forced to capitulate to

1 Qualcomm’s business demands, including its extortionary royalty rates, to avoid
2 further litigation.

3 229. The *Noerr-Pennington* doctrine does not immunize Qualcomm’s conduct
4 from scrutiny. “[O]therwise protected litigation can be a part of an ‘anticompetitive
5 scheme’ claim” where, as here, “the other aspects of the scheme independently
6 produce anticompetitive harms.” *Hynix Semiconductor Inc. v. Rambus, Inc.*, 527 F.
7 Supp. 2d 1084, 1097 (N.D. Cal. 2007); see also *Zenith Electronics, LLC v. Sceptre,*
8 *Inc.*, No. 14-cv-5150, 2015 WL 12765633 (C.D. Cal. Feb. 5, 2015). The lawsuits
9 brought by Qualcomm to collect its unlawful royalties are components of its larger
10 monopolistic scheme; the other aspects of that scheme independently maintain
11 Qualcomm’s monopoly power and effectuate its hold-up power to demand the
12 supracompetitive royalties that Qualcomm seeks to collect through the processes of
13 this Court.

14 **XII. QUALCOMM PREVENTED APPLE FROM BRINGING ITS**
15 **CONCERNS TO LAW ENFORCEMENT**

16 **Qualcomm Muzzles Apple**

17 230. As a condition of even partial relief from its above-FRAND royalties,
18 Qualcomm sought to gag Apple and prevent it from bringing its concerns to law
19 enforcement or challenging Qualcomm’s compliance with FRAND commitments.

20 231. As alleged by Apple, through the terms of the BCPA, Qualcomm
21 conditioned royalty relief on a provision that restricted Apple from initiating or
22 inducing certain legal actions in three particular identified areas: (i) assertion of
23 patents against Qualcomm; (ii) claims that Qualcomm failed to offer a license to its
24 SEPs on FRAND terms; and (iii) claims that Qualcomm’s patent rights were
25 exhausted. Apple FAC ¶ 185. The BCPA carved out an acknowledgment that Apple
26 has a responsibility to respond to enforcement agencies’ requests for information. *Id.*
27 But in restraining Apple from initiating action or bringing concerns to law

1 enforcement, Qualcomm conditioned billions of dollars on Apple’s silence before
2 courts and regulators about Qualcomm’s business practices. And Qualcomm is now
3 interpreting that agreement to retaliate against Apple for responding to requests for
4 information about Qualcomm’s practices from competition agencies, inhibiting law-
5 enforcement review of Qualcomm’s anticompetitive practices. *Id.*

6 232. The FTC recently alleged that Qualcomm’s ongoing anticompetitive
7 scheme is premised on avoiding judicial scrutiny of its non-FRAND licensing scheme,
8 including by deterring device manufacturers from seeking FRAND determinations by
9 relying on its power to withhold supply of Qualcomm’s modem chips. According to
10 the FTC, Qualcomm’s “‘no license-no chips’ policy effectively denies OEMs the
11 opportunity to challenge Qualcomm’s royalty demands . . . dramatically increasing
12 OEMs’ costs of going to court.” FTC Compl. ¶ 78. The BCPA’s gag clause is another
13 such effort to evade scrutiny, one that has the purpose and effect of keeping
14 Qualcomm’s monopoly power safe from the rule of law.

15 **Qualcomm Bundles, Ignores Patent Exhaustion Principles, Prevents Patent**
16 **Exhaustion Suits**

17 233. As explained above, Qualcomm demands that its customers not only pay
18 to purchase modem chips, but also requires customers to take a license for patents that
19 may be substantially embodied in those chips. In doing so, Qualcomm is forcing its
20 customers, including Counterclaimants, to pay for exhausted patent rights and take
21 licenses that they do not need. This violates established principles of patent
22 exhaustion. *Impression Prod., Inc. v. Lexmark Int’l, Inc.*, No. 15-1189, 2017 WL
23 2322830, at *14 (U.S. May 30, 2017).

24 234. Moreover, to the extent Qualcomm is demanding that customers take a
25 license for a portfolio that includes both exhausted and non-exhausted patents,
26 Qualcomm is forcing its customers to pay for a license to exhausted patents in order to
27 obtain a license to non-exhausted patents.

1 235. These actions are improper attempts to extend Qualcomm’s patent
2 monopoly. It is black-letter law that a patentee must respect “established limits ... in
3 employing the leverage of his patent to control or limit the operations of the licensee.”
4 *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 135-36 (1969). A
5 patentee must ensure any license restrictions and conditions it imposes are “reasonably
6 within the reward which the patentee by the grant of the patent is entitled to secure.”
7 *Gen. Talking Pictures Corp. v. W. Elec. Co.*, 305 U.S. 124, 127 (1938) (quotation
8 omitted). By insisting that purchasers of its modem chips take a license to and pay
9 royalties on exhausted patents in addition to paying a purchase price for the chips,
10 Qualcomm is demanding more than the “one reward” that the Patent Act’s “right to
11 exclude” entitles it to receive and, as a result, is impermissibly extending the temporal
12 scope of its patent monopoly. *Brulotte v. Thys Co.*, 379 U.S. 29, 32-33 (1964) (“[W]e
13 conclude that a patentee’s use of a royalty agreement that projects beyond the
14 expiration date of the patent is unlawful *per se.*”); *Kimble v. Marvel Entm’t, LLC*, 135
15 S. Ct. 2401, 2413 (2015) (“That patent (not antitrust) policy gave rise to the Court’s
16 conclusion that post-patent royalty contracts are unenforceable — utterly ‘regardless of
17 a demonstrable effect on competition.’”). The result of this extension is that the
18 offending license provisions are unenforceable. *Zila, Inc. v. Tinnell*, 502 F.3d 1014,
19 1023 (9th Cir. 2007).

20 236. Qualcomm is similarly attempting improperly to extend its copyright
21 monopoly. Virtually identical principles apply when purchasers of Qualcomm’s
22 modem chips (such as Counterclaimants) are forced to take a license (the MSA) for
23 copyrights that may be substantially embodied in those chips. In doing so, Qualcomm
24 is forcing its customers, including Counterclaimants, to pay for exhausted copyrights,
25 and thereby take an unnecessary license for such copyrights. “Differentiating between
26 the patent exhaustion and copyright first sale doctrines would ... make little theoretical
27 or practical sense: The two share a ‘strong similarity ... and identity of purpose’”

1 *Lexmark*, slip op. at 4 (quoting *Bauer & Cie v. O'Donnell*, 229 U. S. 1, 13 (1913)).
2 “[P]ublic policy ... forbids the use of the [copyright] to secure an exclusive right or
3 limited monopoly not granted by the [Copyright] Office and which it is contrary to
4 public policy to grant.” *Lasercomb Am., Inc. v. Reynolds*, 911 F.2d 970, 977 (4th Cir.
5 1990) (bracketed language in original; citation omitted).

6 237. Qualcomm has gone to great lengths to prevent its practices from being
7 challenged in the courts.

8 238. First, as alleged by Apple, through the BCPA, Qualcomm imposed a gag
9 order on Apple to prevent it from bringing a claim that Qualcomm’s patents were
10 exhausted. Apple FAC ¶ 191. With the BCPA’s expiration, Qualcomm has now
11 asserted a counterclaim alleging that Apple’s obligation not to file an exhaustion suit
12 continued beyond the expiration date of the BCPA. Qualcomm also asserts that
13 Apple’s exhaustion claim releases Qualcomm from any obligation to make past
14 payments it has already withheld under the BCPA due to Apple’s provision of
15 information requested by competition agencies. Qualcomm’s First Am. Countercl., ¶¶
16 378–379.

17 239. Second, as alleged by Apple, Qualcomm limited Apple’s financial
18 incentives to bring an exhaustion claim by requiring Apple to pay for exhausted
19 patents, even if a court were to determine that no licensing fee is owed. Apple FAC ¶
20 192.

21 240. Third, Qualcomm interprets a different agreement with Apple, the Master
22 Software Agreement, as forbidding Apple from bringing an exhaustion count as well,
23 claiming that Apple breached that agreement by asserting exhaustion claims in this
24 Court and in actions outside of the United States. Qualcomm’s First Am. Countercl.,
25 Count XI, ¶¶ 388–396.

1 **Qualcomm Demands Above-FRAND Royalties from Apple’s CMs for Exhausted**
2 **Patents**

3 241. On May 17, 2017, in retaliation for Apple’s lawsuit against Qualcomm,
4 Qualcomm filed the instant lawsuit, suing Counterclaimants for royalty payments that
5 Qualcomm claims are due under its license agreements [REDACTED] with them. And
6 Qualcomm has now moved for a preliminary injunction, seeking to force the CMs to
7 pay royalties that Qualcomm claims they owe.

8 242. However, as Apple alleged, most of the licensing fees that Qualcomm has
9 sued Counterclaimants to recover are royalty rebates Qualcomm has withheld from
10 Apple as part of Qualcomm’s scheme to thwart government enforcement worldwide of
11 competition laws. Apple FAC ¶ 195. Qualcomm has expressly withheld these rebates
12 from Apple because of Apple’s responses to requests for information from government
13 agencies enforcing competition laws. *Id.* Qualcomm is thus demanding that
14 Counterclaimants pay those monies that would otherwise be rebated to Apple except
15 for Qualcomm’s obstruction of justice.

16 243. The licensing fees that Qualcomm has sued Counterclaimants to recover
17 also include royalties that Apple has challenged as unlawful in litigation with
18 Qualcomm as violations of Qualcomm’s FRAND obligations and the antitrust laws.

19 244. According to Apple, it has made clear that while “Qualcomm’s refusal to
20 meet its FRAND commitments and its insistence on taxing [Apple’s] innovation is
21 both illegal and anticompetitive,” Apple is “ready to pay a fair and reasonable amount
22 for the use of Qualcomm’s patented technologies.” Apple FAC, Ex. Z. According to
23 Apple, it informed Qualcomm, prior to Qualcomm’s commencement of litigation
24 against Counterclaimants, that it has posted a bank guarantee reflecting a FRAND
25 royalty rate, and expressed a willingness to provide further guarantees for future years
26 as needed. Apple FAC ¶ 198.

1 business and licensing practices, well after the KFTC had initiated its investigation of
2 Qualcomm. Apple FAC ¶ 224.

3 256. Apple’s communications with government agencies regarding Qualcomm
4 were related to and in furtherance of the agencies’ investigations or administrative
5 proceedings. Apple FAC ¶ 225.

6 257. Because Apple’s actions fall squarely within the unconditional exception
7 in the third paragraph of Section 7 of the BCPA for responses to government requests,
8 Qualcomm has no basis to challenge those statements further. Apple FAC ¶ 226.

9 258. Apple alleges that, further, Qualcomm offered to pay Apple the nearly \$1
10 billion it owed if Apple would, in Qualcomm’s words:

11 (i) publicly and specifically retract and correct each of Apple’s misstatements
12 about Qualcomm to regulatory agencies, including those detailed above; (ii)
13 inform the relevant agencies that such statements were and are untrue; (iii)
14 disclose Apple’s correspondence with any agencies relating to any investigation
15 of Qualcomm; (iv) provide any and all additional facts to regulators and
16 Qualcomm relating to Apple’s dealings with Intel concerning any possible or
17 actual consideration from Intel to Apple relating to Apple’s implementation of
18 WiMax or the use of Intel chips; and (v) provide Qualcomm with the requested
19 information about any communications between Apple’s senior executives and
20 Samsung.

18 Apple FAC ¶ 232.

19 259. Qualcomm offered to repay Apple nearly \$1 billion in withheld BCP
20 Payments if Apple recanted its true and, in many cases, sworn testimony before
21 government agencies. Apple FAC ¶ 233.

22
23
24 ⁵ Notably, Qualcomm may be demanding this discovery in an attempt to make an end-
25 run around a court order. On January 7, 2016, Qualcomm filed an ex parte
26 application in the Northern District of California for third-party discovery from
27 Apple and other companies that the KFTC had contacted in its investigation of
28 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, 1042 (N.D. Cal. 2016).

1 (emphasis added); *see also A. Michael's Piano, Inc. v. FTC*, 18 F.3d 138, 144–46 (2d
2 Cir. 1994) (voluntary disclosures within the FTC's subpoena power also treated as
3 confidential under 15 U.S.C. § 57b-2). Qualcomm's demand that Apple disclose its
4 communications with agencies, on pain of a nearly-billion-dollar penalty, violates this
5 established public policy in favor of confidentiality and protecting against retaliation.

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

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

21 266. Courts routinely invalidate contracts that restrain witnesses from engaging
22 in government investigation. E.g., *Cariveau v. Halferty*, 99 Cal. Rptr. 2d 417, 423–24
23 (Ct. App. 2000) (invalidating clause that prohibited customer from disclosing
24 securities broker's misconduct); *D'Arrigo Bros. of Cal. v. United Farmworkers of Am.*,
25 169 Cal. Rptr. 3d 171, 181 (Ct. App. 2014) (refusing to interpret settlement-agreement
26 clause to prohibit union from cooperating with Agricultural Labor Relations Board
27 investigation); *EEOC v. Astra U.S.A., Inc.*, 94 F.3d 738, 745 (1st Cir. 1996) (holding

1 that settlement agreements could not prohibit employees from assisting an EEOC
2 investigation); *SEC v. Lipson*, No. 97 C 2661, 1997 WL 801712, at *2 (N.D. Ill. Oct.
3 28, 1997) (holding that an “effort to preclude voluntary cooperation by potential
4 witnesses with the SEC is unenforceable as against public policy”); *see also Lachman*
5 *v. Sperry-Sun Well Surveying Co.*, 457 F.2d 850, 853–54 (10th Cir. 1972) (“It is public
6 policy in Oklahoma and everywhere to encourage the disclosure of criminal activity.”).

7 267. 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 money that it owed for the second quarter of 2016, which was due in
11 September 2016, or the BCP Payment for the third quarter of 2016, which fully
12 accrued on September 30, 2016, and was due on December 14, 2016. Apple FAC ¶
13 241.

14 268. Qualcomm also failed to make the final BCP Payment, for the fourth
15 quarter of 2016; that BCP Payment fully accrued on December 31, 2016, and became
16 due on March 16, 2017. Apple FAC ¶ 242.

17 269. In total, Qualcomm is withholding a substantial amount — nearly \$1
18 billion — that it owes Apple under the BCPA, in breach of its obligations and in
19 retaliation for Apple’s cooperation with competition authorities. Apple FAC ¶ 243.

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

25 271. Any alleged amount that Qualcomm contends it is owed by Apple’s CMs
26 must take into account the BCP Payments that it owes to Apple. These BCP Payments
27 are intended to offset the royalty burden that Qualcomm imposes on Apple, through its
28

1 CMs. Qualcomm is unjustifiably withholding the BCP Payments, in furtherance of its
2 scheme to thwart government enforcement worldwide of competition laws.

3 272. It would be against public policy to allow Qualcomm to recover from
4 Counterclaimants those monies that would otherwise be rebated to Apple except for
5 Qualcomm's obstruction of justice.

6 **XIII. QUALCOMM'S MONOPOLY AND MARKET POWER**

7 273. The relevant technology markets at issue here are the markets for the
8 technology embodied in Qualcomm's cellular SEPs. ETSI and other SSOs have
9 promulgated standards for a number of wireless communication standards, including
10 LTE. By declaring its patents to be essential to those standards, and inducing reliance
11 on its FRAND commitments, Qualcomm acquired monopoly power in the market for
12 the technologies on which each relevant SEP reads, and any ex ante alternatives to
13 those technologies.

14 274. Before a standard is adopted, all of the alternative technologies to perform
15 each particular function within the standard compete in a relevant product market
16 consisting of all technologies capable of performing that function. Once an SSO
17 selects a particular patented technology to perform a particular function, competition
18 within that technology market is eliminated, as competing technologies are no longer
19 available as alternative means of implementing the standard. As a result,
20 standardization confers monopoly power on patented technologies embodied in the
21 standard, including the relevant standards on which Qualcomm's declared-essential
22 patents read.

23 275. Alternatives to Qualcomm's declared-essential patents were available in
24 the LTE standard-setting process. Qualcomm's FRAND commitments induced ETSI
25 and other SSOs to incorporate the technologies covered by Qualcomm's declared-
26 essential patents in the LTE standard, thereby eliminating competition within the
27

1 relevant technology markets and conferring monopoly and market power within those
2 markets on Qualcomm.

3 276. Demand for the technology embodied in Qualcomm’s cellular SEPs is
4 distinct and independent from demand for Qualcomm’s chips. For example,
5 competitor modem chip manufacturers have sought patent licenses to Qualcomm’s
6 cellular SEPs that, if granted, would allow competitors to offer modem chips on an
7 authorized, unencumbered, and patent-exhaustive basis.

8 277. Qualcomm also has monopoly and market power with respect to CDMA
9 modem chips and premium LTE modem chips. Direct evidence of this power includes
10 evidence of Qualcomm’s ability to use threatened loss of access to modem chips to
11 raise the all-in prices of modem chips, prices that include both nominal chip prices and
12 license fees. Qualcomm’s ability to impose burdensome terms, including the
13 requirement that customers grant [REDACTED] cross-licenses and accept ties of various
14 unwanted licenses for intellectual property to the purchase of Qualcomm’s modem
15 chips, is further direct evidence of the existence and exercise of monopoly power.

16 278. Qualcomm’s monopoly and market power is also established through
17 circumstantial evidence, including dominant shares of relevant markets with
18 substantial barriers to entry. The relevant markets for the purposes of assessing
19 Qualcomm’s monopoly and market power are no broader than the worldwide markets
20 for (i) CDMA modem chips; and (ii) premium LTE modem chips. Modem chips
21 without CDMA functionality are not close enough substitutes to prevent Qualcomm
22 from raising all-in prices for CDMA modem chips. No other product, including 3G
23 UMTS or LTE modem chips, is a substitute for CDMA modem chips for use in
24 devices intended for use on carrier networks that require CDMA compatibility, and no
25 other product constrains the all-in price of CDMA modem chips at levels below the
26 monopoly price. Similarly, modem chips without premium LTE functionality are not
27 close enough substitutes to prevent Qualcomm from raising all-in prices for premium

1 LTE modem chips. No other product, including 3G UMTS, CDMA, or low-end or
2 mid-range LTE modem chips, is a substitute for premium LTE modem chips for use in
3 flagship devices, such as Apple’s iPhone, intended for use on carrier networks that
4 require LTE compatibility, and no other product constrains the all-in price of premium
5 LTE modem chips at levels below the monopoly price.

6 279. Qualcomm has maintained dominant shares of the CDMA and premium
7 LTE modem chip markets. Each year from at least 2006 through September 2015,
8 Qualcomm’s worldwide share of CDMA modem chip sales exceeded 80%. From at
9 least 2012 through September 2015, Qualcomm’s annual share of worldwide premium
10 LTE modem chip sales has also exceeded 80%.

11 280. Entry into the markets for CDMA and premium LTE modem chips is
12 difficult, costly, and time-consuming. Barriers to entry include the need to make
13 substantial, costly, and time-consuming investments in technology research and
14 development; the need to develop ongoing customer relationships with leading OEMs
15 and CMs; and certification requirements imposed by network operators. Qualcomm’s
16 conduct—including (i) the effective surcharge that Qualcomm imposes on the modem
17 chip sales of competitors and potential competitors, (ii) Qualcomm’s exclusive dealing
18 agreements and (iii) Qualcomm’s refusal to license to its competitors FRAND-
19 encumbered patents essential to CDMA and LTE standards—is another significant
20 barrier to entry.

21 281. The relevant geographic market is worldwide. There are no material
22 geographic barriers to competition for modem chip sales.

23 **XIV. HARM TO COMPETITION AND COUNTERCLAIMANTS CAUSED BY**
24 **QUALCOMM’S PRACTICES**

25 282. Qualcomm’s anticompetitive practices have excluded competitors,
26 increased prices for CMs, OEMs, and their customers, including U.S. consumers,
27 restricted output, and suppressed innovation.

1 283. Qualcomm’s anticompetitive conduct has relaxed the constraints that
2 competitors’ entry and expansion would otherwise impose on all-in prices in modem
3 chip markets.

4 284. Through its “no license-no chips” policy, Qualcomm has increased CMs’,
5 including Counterclaimants’, and OEMs’ all-in costs of using competitors’ modem
6 chips. Qualcomm’s conduct has also diminished demand for those chips, reduced
7 competitors’ sales and margins, and diminished competitors’ ability and incentive to
8 invest and innovate.

9 285. Developments in the cellular modem chip industry reflect the natural
10 consequences of Qualcomm’s conduct. Several former competitors of Qualcomm
11 have sold off or shuttered their modem chip businesses, unable to achieve the sales
12 volumes and margins needed to sustain a viable business. While Intel and MediaTek
13 have remained in the business, these firms have felt significant pressures, including on
14 modem chip margins.

15 286. If Qualcomm’s remaining competitors were to exit the business as a result
16 of Qualcomm’s anticompetitive conduct, this would have a significant further adverse
17 impact on competition in modem chip markets and on innovation.

18 287. Competition often drives firms to innovate in next-generation
19 technologies and products. Competing firms often approach research and development
20 efforts differently, increasing the likelihood of successful innovation.

21 288. Enhanced innovation in mobile technologies would offer substantial
22 benefits to OEMs and CMs, including Counterclaimants, along with their customers,
23 especially as these technologies expand to new applications, including extending
24 mobile connectivity to consumer appliances, vehicles, buildings, and other products.
25 By suppressing innovation, Qualcomm’s anticompetitive practices threaten these
26 benefits.

1 289. Qualcomm’s anticompetitive conduct, however, skews its licensing
2 negotiations toward outcomes that reflect not only the value of its patents and
3 copyrights, but also its monopoly power in modem chips. Absent Qualcomm’s
4 unlawful conduct, Qualcomm would not seek royalties for expired, exhausted,
5 unwanted, or unneeded intellectual property, and Qualcomm’s licenses would include
6 fair, reasonable, and non-discriminatory terms, and would not include elevated
7 royalties that impose a surcharge on Qualcomm’s competitors. Absent Qualcomm’s
8 unlawful conduct, Qualcomm could obtain fair compensation for its valid intellectual
9 property, while its competitors could compete based on the merits of their respective
10 offerings.

11 290. Qualcomm’s practices have harmed competition and customers (like
12 Counterclaimants) both within the markets for CDMA and premium LTE modem
13 chips and in other modem chip markets in which OEMs pay Qualcomm inflated
14 royalties. These include markets for UMTS-compliant modem chips and lower-tier
15 LTE modem chips.

16 291. Qualcomm’s practices are not reasonably necessary to accomplish any
17 significant procompetitive benefits. The anticompetitive harm from those practices
18 outweighs any procompetitive benefits, and Qualcomm could reasonably achieve any
19 procompetitive goals through less restrictive alternatives.

20 **CLAIMS AND PRAYER FOR RELIEF**

21 **COUNT I**

22 **Sherman Act § 2**

23 292. Counterclaimants restate and incorporate by reference each of the
24 allegations set forth above and in the counts below.

25 293. Qualcomm’s conduct, as alleged herein, constitutes unlawful
26 monopolization of the markets for CDMA and premium LTE modem chips in
27 violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

1 294. One relevant product market for the purposes of Counterclaimants’
2 monopolization claim is the sale of premium LTE modem chips.

3 295. Another relevant product market for the purposes of Counterclaimants’
4 monopolization claim is the sale of CDMA modem chips.

5 296. The relevant geographic market is worldwide in each case.

6 297. As alleged above, Qualcomm’s monopoly power in the relevant markets
7 is shown by its high and durable market shares, substantial barriers to entry, and
8 demonstrated ability to repeatedly force customers, such as CMs, including
9 Counterclaimants and their economically unified affiliates, and OEMs, such as Apple,
10 to accept one-sided, non-standard, and unreasonable supply terms. Moreover, when
11 faced with allegations that Qualcomm has monopoly power in these markets,
12 Qualcomm has not disputed them.⁶

13 298. As alleged above and in further detail below, Qualcomm has willfully
14 acquired or maintained its monopoly power in the relevant markets by engaging in
15 exclusionary and anticompetitive acts. Qualcomm has been engaged in a continuing
16 violation of the law; each time it has used its monopoly power to commit an overt
17 exclusionary act it has inflicted new and accumulating injury on Counterclaimants and
18 others. Since at least as early as 2007, Qualcomm has engaged in systematic,
19 continuous conduct to exclude competition in the relevant markets. Qualcomm’s
20 anticompetitive and exclusionary conduct is a multi-faceted but synergistic and
21 interrelated whole, with each of the parts making possible and reinforcing the effects
22 of the others.

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24
25 ⁶ Def. Qualcomm Incorporated’s Administrative Mot. To File Under Seal Portions
26 Of Its Mot. To Dismiss And Mem. Of P. & A. In Supp., *FTC v. Qualcomm Inc.*,
27 No. 5:17-cv-00220-LHK (N.D. Cal. Apr. 3, 2017); *FTC v. Qualcomm Inc.*, No. 17-
28 CV-00220-LHK, slip op. at 19 (“Qualcomm does not contest that FTC has
adequately alleged that Qualcomm has ‘monopoly power’ in the markets for
CDMA and premium-LTE modem chips.”).

1 299. Qualcomm’s exclusionary and anticompetitive conduct includes (i)
2 withholding its modem chips unless a customer, including each Counterclaimant or its
3 economically unified affiliate, accepts a license to standard-essential patents and other
4 intellectual property on terms demanded by Qualcomm, including outrageous and
5 excessive royalties that the customer must pay even when using competitors’ chips, in
6 contravention of its FRAND commitments; (ii) refusing to license its cellular standard-
7 essential patents to its competitors, foreclosing them from effectively competing for
8 sales to Counterclaimants and other Qualcomm customers, in violation of Qualcomm’s
9 FRAND commitments; (iii) coercing exclusivity from Apple as a condition of partial
10 relief from Qualcomm’s exorbitant and non-FRAND royalties and contractually
11 “gagging” customers, depriving them of any ability to challenge Qualcomm’s non-
12 FRAND licensing scheme; (iv) using litigation as a tool to effectuate the
13 independently-anticompetitive aspects of its scheme by suing for payment of the
14 challenged supracompetitive above-FRAND royalties; (v) in its agreements with
15 OEMs and/or CMs, utilizing [REDACTED]
16 [REDACTED]; and (vi) engaging in the
17 exclusionary and anticompetitive acts and practices set forth in Count II below, each
18 act also violating Section 1 of the Sherman Act. Qualcomm’s licensing practices and
19 its modem chip practices are inextricably intertwined with each other (e.g., absent its
20 “no license, no chips” policy, Qualcomm could not sustain its refusal to license
21 competitors), and all of these practices are central components of Qualcomm’s overall
22 monopolistic and anticompetitive scheme. This conduct has foreclosed Qualcomm’s
23 competitors from dealing with Counterclaimants and with Apple, and other OEMs and
24 CMs, leading to the marginalization and exit of many of those competitors, and to the
25 acquisition and maintenance by Qualcomm of monopoly power and its imposition and
26 perpetuation of supracompetitive royalties and pricing.

1 300. First, for many years, Qualcomm has tied together the sale of its modem
2 chips and licenses to its SEPs. Qualcomm will sell modem chips only to “Authorized
3 Purchasers,” who must first license a broad portfolio of patent rights, including
4 Qualcomm’s SEPs. Since 2010, Qualcomm has also required purchasers of modem
5 chips to take a license to copyrighted software under an MSA. Under Qualcomm’s
6 licensing structure, Counterclaimants, their economically unified affiliates, and others
7 were required to enter into contracts with Qualcomm conditioning sales of modem
8 chips on the license of Qualcomm’s patent portfolio, and were also required to enter
9 into contracts licensing specified copyrighted software used in connection with the
10 modem chips. Due to Qualcomm’s refusal to license rival chipset manufacturers,
11 device manufacturers purchasing modem chips from Qualcomm’s competitors must
12 also become Authorized Purchasers of Qualcomm, even if they may purchase few or
13 no modem chips from Qualcomm, and similarly must take a license to Qualcomm’s
14 patent rights, including its SEPs, and its copyrighted software. In essence, Qualcomm
15 has structured its licensing such that it makes licenses available to only those who
16 purchase its modem chips, and modem chips available to only those who have licensed
17 from it. In this manner, Qualcomm ensures that all modem chip purchasers, whether
18 they buy modem chips from Qualcomm or a competitor, must negotiate with
19 Qualcomm for a license.

20 301. By virtue of its “no license-no chips” policy, and the other exclusionary
21 and anticompetitive conduct alleged herein, Qualcomm gains the ability to levy a
22 surcharge—in the form of non-FRAND royalties—on the modem chips sold by
23 Qualcomm’s competitors. Qualcomm also imposes substantial lump-sum payment
24 obligations for its licenses. Qualcomm’s ability in particular to levy a surcharge on the
25 modem chips sold by its competitors forecloses demand for those chips and makes
26 them less effective competitors. In this way, Qualcomm’s conduct is exclusionary and
27 anticompetitive, giving Qualcomm the power to exclude competition and harm device
28

1 manufacturers, including Counterclaimants and their economically unified affiliates,
2 through the imposition and maintenance of non-FRAND royalties and monopoly
3 overcharges on modem chips, including by forcing Counterclaimants, their affiliates,
4 and others to accept other burdensome terms, such as [REDACTED] cross-licenses [REDACTED]
5 [REDACTED]

6 302. Qualcomm's high nominal royalty rates for its SEPs give some OEMs
7 powerful incentives to seek discounts off those rates, particularly manufacturers of
8 feature-rich smartphones and tablets, such as Apple, who are disproportionately
9 burdened by Qualcomm's royalty structure. Qualcomm uses the threat of its high
10 nominal royalty rates for its SEPs to force Apple and others to demand substantial
11 quantities of its modem chips, offering in exchange to reduce the royalty for its SEPs
12 to levels closer to, although still far above, the range required by FRAND. Such relief,
13 however, was withheld from Counterclaimants and their affiliates, Qualcomm's direct
14 purchasers, in order to perpetuate the illusion that Qualcomm charges the same royalty
15 rate to all customers.

16 303. Qualcomm ties licenses to its SEPs and software copyrights to purchases
17 of modem chips, despite the requests of device manufacturers for the provision of
18 these products on an unbundled basis. Given the opportunity, Counterclaimants, their
19 affiliates, and many other CMs and OEMs, including Apple, would prefer to be free
20 both to license Qualcomm's SEPs at FRAND rates and to purchase modem chips from
21 Qualcomm's competitors, rather than be forced to purchase from Qualcomm a bundle
22 comprising a license to Qualcomm's SEPs, copyrights, and substantial quantities of
23 modem chips.

24 304. Qualcomm's tie of licenses and modem chips forecloses substantial
25 portions of the modem chip market to Qualcomm's competitors, particularly the sale of
26 premium LTE modem chips for use in the feature-rich smartphones and tablets
27 disproportionately burdened by Qualcomm's royalty structure. Due to the importance
28

1 of scale economies in the manufacture and sale of modem chips, and the significant
2 commercial validation and learning-by-doing that would be available to rivals but for
3 Qualcomm’s foreclosure of sales to Counterclaimants, the foreclosure attributable to
4 Qualcomm’s tie of modem chips and licenses is substantial and significantly
5 contributes to the creation and maintenance of Qualcomm’s monopoly power.

6 305. There is no procompetitive justification for the “no license-no chips”
7 policy. Other suppliers convey intellectual property rights in the sale of the products
8 embodying that intellectual property, as does Qualcomm in markets where it lacks
9 monopoly power.

10 306. Second, Qualcomm’s refusal to offer SEP licenses on FRAND terms to its
11 competitors, as alleged above, is an unlawful refusal to deal with competitors and an
12 act of monopolization under Section 2 of the Sherman Act. *See FTC v. Qualcomm*
13 *Inc.*, slip op. at 43 (“Qualcomm’s voluntary commitment to license its SEPs on
14 FRAND terms pursuant to the standard setting process, are the type of voluntary
15 actions that can support an antitrust duty to deal.”). A FRAND license would give
16 competing modem chips manufacturers the right to market authorized, unencumbered,
17 patent-exhaustive sales of modem chips to Apple, its CMs, and other mobile device
18 suppliers. Qualcomm’s failure to license on FRAND terms eliminates the ability of
19 Counterclaimants, their affiliates, and other mobile device suppliers to purchase
20 modem chips from Qualcomm’s competitors without also paying royalties to
21 Qualcomm, and thus exposes Counterclaimants, their affiliates, and other mobile
22 device suppliers to the threat of exorbitant non-FRAND royalties, based on the price of
23 their mobile devices, a threat which Qualcomm uses to force Apple (and, therefore,
24 Counterclaimants and their affiliates) and others to deal exclusively or nearly
25 exclusively with Qualcomm on the purchase of modem chips. In this way,
26 Qualcomm’s refusal to offer a FRAND license to competitors has a close causal
27 connection with the acquisition and maintenance of monopoly power in the LTE

1 chipset market. But for Qualcomm's FRAND evasion, Qualcomm would have been
2 forced to offer exhaustive patent licenses to its cellular SEPs on FRAND terms to Intel,
3 Broadcom, and others. An exhaustive patent license to Qualcomm's cellular SEPs
4 would have made these modem chips suppliers more effective competitors to
5 Qualcomm in the modem chips markets, leading to lower prices and enhanced
6 innovation in the modem chips markets, to the benefit of Counterclaimants, their
7 affiliates, Apple, other OEMs, and ultimately consumers.

8 307. There is no legitimate business justification for Qualcomm's strategic
9 refusal to license other modem chips manufacturers. Qualcomm for many years
10 licensed such manufacturers. Qualcomm, as alleged above, also engaged in a
11 voluntary course of dealing with its rivals by participating in the standard-setting
12 process and committing to SSOs that it would license its SEPs to its modem chip
13 competitors, but then altered this voluntary course of dealing by refusing to license its
14 modem chip rivals once its IP was incorporated into cellular communications
15 standards. This refusal is motivated by anticompetitive malice and amounts to a
16 willingness to sacrifice short-term profits (licensing of competitors at profitable
17 FRAND rates) in a manner that is irrational but for its tendency to harm competition.
18 Qualcomm itself insists that device manufacturers do precisely what Qualcomm
19 refuses to do: grant licenses to their SEPs to Qualcomm's modem chips unit. Further,
20 given the relative paucity of modem chips competitors and the fact that Qualcomm's
21 cellular SEPs are generally embodied in the modem chip (or components thereof), it
22 would be considerably more efficient for licensing to occur first and foremost at the
23 modem chip level.

24 308. Third, since 2011, Qualcomm has conditioned billions of dollars in lump
25 sum payments, discounts, rebates, and royalty rebates and caps on the express
26 agreement by Apple (imposed in turn on Counterclaimants and their affiliates) to
27 purchase modem chips for Apple smartphones and tablet computers exclusively from
28

1 Qualcomm, through the TA and the FATA. It has done so in a variety of ways,
2 including (i) specific forward-looking loyalty rebates on modem chip prices that are
3 expressly conditioned on exclusivity; (ii) clawback of previously paid rebates if Apple
4 uses any non-Qualcomm modem chips; and (iii) a royalty cap implicitly conditioned
5 on chip exclusivity.

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

19 310. But for these exclusivity conditions, to which Apple was forced to agree
20 to avoid absorbing royalty rates on all purchases of modem chips practicing
21 Qualcomm's SEPs that were well above FRAND levels, Apple, Counterclaimants and
22 their affiliates would have shifted at least a portion of modem chip purchases to
23 Qualcomm's rivals, thereby making those rivals more effective competitors to
24 Qualcomm in the future, and providing to Counterclaimants, their affiliates, and Apple
25 the benefit of a more competitive modem chip market.

26 311. However, until recently, these penalties have made it economically
27 infeasible to purchase any modem chips from Qualcomm's competitors. It is not
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1 feasible to switch a substantial portion of Apple’s requirements to a new supplier all at
2 once, or even over a short period of time, and therefore Qualcomm’s rivals could not
3 compete on the all-or-nothing terms imposed by Qualcomm.

4 312. As a result, from fall 2011 through spring 2016, all of Apple’s new
5 cellular devices used Qualcomm modem chips exclusively. Apple used only
6 Qualcomm modem chips in the iPhone 4s, iPhone 5, iPhone 5s, iPhone 5c, iPhone 6,
7 iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, and iPhone SE and in cellular-enabled
8 models of the iPad third generation, iPad fourth generation, iPad Air, iPad Air 2, iPad
9 Minis, and iPad Pros. Each Counterclaimant manufactured one or more of these Apple
10 devices.

11 313. The anticompetitive effects of Qualcomm’s conduct include the elevation
12 of CDMA and premium LTE modem chip all-in prices above competitive levels, the
13 imposition on Counterclaimants and their affiliates of onerous, unreasonable, and
14 costly supply terms, the suppression of innovation in the modem chip markets, and the
15 elimination of choice in the modem chip markets.

16 314. Similar to the TA and FATA, the BCPA conditioned a degree of royalty
17 relief, offsetting the royalty burden that Qualcomm directly imposes on Apple’s CMs
18 and that the CMs seek to pass on to Apple, on Apple’s acceptance of anticompetitive
19 contract terms that cement Qualcomm’s monopoly power in modem chips. Paragraph
20 2 of Section 7 of the BCPA between Qualcomm and Apple violates Section 2 of the
21 Sherman Act by shielding Qualcomm’s non-FRAND licensing scheme from scrutiny
22 by the judiciary and by government enforcement agencies. The BCPA’s gag clause
23 prevented Qualcomm’s illegal and extortionate scheme from coming to light for years,
24 and thereby enhanced and extended Qualcomm’s monopoly power in the relevant
25 modem chips markets.

26 315. FRAND challenges by implementers of a standard such as Apple are vital
27 to the enforcement of the FRAND commitment. Just as implementers are normally in
28

1 the best position to determine whether or not an intellectual property right is invalid,
2 implementers are often well-positioned to know whether a licensor's terms are
3 compliant with FRAND. Apple's prolific track record as a willing licensee of cellular
4 SEPs from other patentees gives it insight into what FRAND is and how far
5 Qualcomm's terms depart from FRAND, and positioned it well to challenge
6 Qualcomm's FRAND evasion.

7 316. Similarly, implementers, such as Apple, generally have the greatest
8 economic incentive to challenge the terms of Qualcomm's SEP licensing. A
9 successful FRAND challenge by Apple would result directly in more competitive
10 modem chips markets, and lower SEP royalties and modem chip prices, to the benefit
11 of Apple, its CMs and consumers. As a large and strategic indirect purchaser of
12 modem chips, Apple had particularly strong incentives in this regard. No other device
13 manufacturer likely would have benefitted as much as Apple from the introduction of
14 additional competition in the modem chips market, and, for these reasons, muzzling
15 Apple through Section 7, paragraph 2 of the BCPA contributed significantly to the
16 maintenance of Qualcomm's non-FRAND licensing and the monopoly power it made
17 possible.

18 317. By exposing Apple to billions of dollars in additional royalty payments
19 during the term of a FRAND challenge, Section 7, paragraph 2 of the BCPA reduced
20 Apple's ability and incentive to enforce Qualcomm's FRAND commitments.

21 318. By limiting Apple's ability and incentive to challenge Qualcomm's
22 compliance with FRAND, Section 7, paragraph 2 of the BCPA harmed competition
23 and consumers. Specifically, Section 7, paragraph 2 allowed Qualcomm to continue to
24 charge Counterclaimants and their affiliates non-FRAND royalties at the expense of
25 consumers, and to extend its exclusionary and non-FRAND licensing scheme.

26 319. Section 7, paragraph 2 is outside the scope of Qualcomm's patent rights.
27 The restriction of Apple's freedom to challenge Qualcomm's compliance with
28

1 FRAND is not an incident of Qualcomm’s patent rights. *See Bendix Corp. v. Balax,*
2 *Inc.*, 421 F.2d 809, 821 (7th Cir. 1970) (“From all this we can only conclude that the
3 right to estop licensees from challenging a patent is not part of the ‘limited protection’
4 afforded by the patent monopoly.”).

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

16 321. Additionally, as a component of its unlawful scheme, Qualcomm has
17 initiated legal proceedings, including against Counterclaimants, in order to improperly
18 use the judiciary’s enforcement power to compel payment of its supracompetitive
19 above-FRAND royalties. These legal proceedings include the following: On May 17,
20 2017, Qualcomm filed a lawsuit against Counterclaimants, alleging that each breached
21 its SULA [REDACTED] by failing to remit to Qualcomm certain royalty payments that are
22 being challenged as illegal by the FTC, enforcement agencies around the world,
23 Counterclaimants and Apple, among others. Qualcomm seeks preliminary and
24 permanent injunctive relief that would force Counterclaimants to resume payment.
25 Qualcomm seeks to use litigation as a tool to effectuate its scheme by compelling
26 payment of the challenged supracompetitive above-FRAND royalties.

1 322. Qualcomm’s litigation conduct is “causally connected” to the independent
2 anticompetitive harm caused by Qualcomm’s “No License-No Chips” policy and its
3 other exclusionary conduct. *Microsoft Mobile Inc. v. Interdigital, Inc.*, No. 15-723-
4 RGA, 2016 WL 1464545 (D. Del. Apr. 13, 2016). Qualcomm’s efforts to extract
5 supracompetitive above-FRAND royalties from resistant customers would be
6 ineffective without the threat of litigation. Qualcomm’s litigation conduct therefore
7 gives rise to an independent but related antitrust injury on the part of Counterclaimants
8 and others in that it imposes litigation fees and costs necessary to defend against the
9 payment of supracompetitive licensing terms, induces Counterclaimants and OEMs,
10 such as Apple, to license Qualcomm’s technology and purchase Qualcomm’s modem
11 chips, prevents Counterclaimants and OEMs from obtaining access to alternative
12 modem chip technology, and underlines the substantial threat that Counterclaimants
13 and others will be forced to capitulate to Qualcomm’s business demands, including its
14 extortionary royalty rates, to avoid litigation.

15 323. Qualcomm’s conduct is not immunized by the *Noerr-Pennington*
16 doctrine. “[O]therwise protected litigation can be a part of an ‘anticompetitive
17 scheme’ claim” where, as here, “the other aspects of the scheme independently
18 produce anticompetitive harms.” *Hynix Semiconductor Inc. v. Rambus, Inc.*, 527 F.
19 Supp. 2d 1084, 1097 (N.D. Cal. 2007); *see also Zenith Electronics, LLC v. Sceptre,*
20 *Inc.*, No. 14-cv-5150, 2015 WL 12765633 (C.D. Cal. Feb. 5, 2015). As previously
21 alleged, the lawsuits brought by Qualcomm to enforce its licensing agreements are
22 components of its larger monopolistic scheme.

23 324. Qualcomm’s exclusionary and anticompetitive conduct has caused each
24 Counterclaimant to suffer antitrust injury and damages, including the payment of
25 supracompetitive overcharges and surcharges, and the loss of profits.

COUNT II

Sherman Act § 1

1
2
3 325. Counterclaimants restate and incorporate by reference each of the
4 allegations set forth above and in the counts above and below.

5 326. Qualcomm’s agreements, as alleged herein, constitute unlawful restraints
6 of trade in the relevant markets for CDMA and premium LTE modem chips in
7 violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The contracts, combinations,
8 or agreements necessary to support an antitrust action under Section 1 can be found
9 when a single actor successfully coerces unwilling participants to enter into or adhere
10 to agreements that have anticompetitive effects. As alleged above, Qualcomm entered
11 into and engaged in coercive contracts, combinations, or agreements in restraint of
12 trade with multiple parties (including Counterclaimants, their affiliates, Apple and
13 other OEMs) who were forced to accept anticompetitive and exclusionary terms as a
14 result of Qualcomm’s monopoly power. Qualcomm has not contested that the Federal
15 Trade Commission similarly “adequately alleged a ‘contract, conspiracy, or
16 combination’ sufficient for its §1 theories.” *FTC v. Qualcomm Inc.*, slip op. at 19, n.2.

17 327. Such contracts, combinations, or agreements constitute unreasonable and
18 unlawful restraints of trade in the relevant modem chip markets alleged herein, in
19 which Qualcomm possesses monopoly power, and such restraints lack any
20 countervailing procompetitive justification. As alleged above and below, Qualcomm
21 engages in a scheme of coercing others into illegal agreements in restraint of trade
22 which caused injury to competition and harm to Counterclaimants and their affiliates.

23 328. For many years, Qualcomm has tied together the sale of its modem chips
24 and licenses to its SEPs. Qualcomm will sell modem chips only to “Authorized
25 Purchasers,” who must first license a broad portfolio of patent rights, including
26 Qualcomm’s SEPs. Since 2010, Qualcomm has also required purchasers of modem
27 chips to take a license to copyrighted software under an MSA. Under Qualcomm’s

1 licensing structure, Counterclaimants, their affiliates, and others were forced to enter
2 into contracts with Qualcomm conditioning sales of modem chips on the license of
3 Qualcomm's patent portfolio, and were also required to enter into contracts licensing
4 specified copyrighted software used in connection with the modem chips. In essence,
5 Qualcomm has structured its licensing such that it makes licenses available to only
6 those who purchase its modem chips, and modem chips available to only those who
7 have licensed from it. In this manner, Qualcomm ensures that all modem chip
8 purchasers, whether they buy modem chips from Qualcomm or a competitor, must
9 negotiate with Qualcomm for a license.

10 329. Qualcomm ties licenses to its SEPs and software copyrights to purchases
11 of modem chips despite the requests of device manufacturers for the provision of these
12 products on an unbundled basis. Given the opportunity, Counterclaimants, their
13 affiliates, and many other CMs and OEMs, including Apple, would prefer to have the
14 opportunity both to license Qualcomm's SEPs at FRAND rates, and to purchase
15 modem chips from Qualcomm's competitors, rather than be forced to purchase from
16 Qualcomm a bundle comprising a license to Qualcomm's SEPs, copyrights, and
17 substantial quantities of modem chips.

18 330. As described above, Qualcomm possesses sufficient economic power in
19 the relevant modem chip markets to force purchasers to make separate purchases of
20 tied IP rights. Absent this unlawful tie, purchasers would choose to acquire IP rights
21 elsewhere or on different terms, (e.g., from rivals of Qualcomm who market and sell or
22 who in the but-for world would be able to market and sell authorized, unencumbered,
23 patent-exhausted modem chips). Qualcomm's tying conduct has involved the
24 imposition of billions of dollars of above-FRAND royalties for the tied IP rights and
25 has foreclosed competition.

26 331. There is no procompetitive justification for the "no license-no chips"
27 policy. Other suppliers convey intellectual property rights in the sale of the products

1 embodying that intellectual property, as does Qualcomm in markets where it lacks
2 monopoly power.

3 332. Qualcomm’s “no license-no chips” policy (i.e., its conditioning of the
4 supply of modem chips on the coerced purchase of one or more separate IP rights) is,
5 both alone and as intertwined with the restraints alleged above and below, unlawful
6 under Section 1.

7 333. These and other restraints of trade, including the following, are also
8 unlawful under Section 1: (i) coerced agreements between Qualcomm and
9 Counterclaimants and their affiliates incorporating anticompetitive terms such as (but
10 not limited to) tying and bundling arrangements (tying the right to buy modem chips to
11 one or more of the following: SEP licenses, copyright licenses, and licenses for
12 expired or exhausted patents and/or copyrights; and tying or bundling together SEP
13 licenses, non-SEP licenses, copyright licenses, and licenses for expired or exhausted
14 patents and/or copyrights), express or implied exclusivity terms, requirements to grant
15 [REDACTED] cross-licenses to Qualcomm and [REDACTED]
16 [REDACTED], above-FRAND
17 royalty terms imposing royalties (including monopoly surcharges) on the sale of
18 devices regardless of whether the device contains a Qualcomm modem chip, audit
19 terms facilitating after-the-fact efforts to threaten or impose further excessive and non-
20 FRAND royalty terms (such as [REDACTED]
21 [REDACTED]
22 [REDACTED] and terms (such as
23 confidentiality provisions) shielding Qualcomm’s non-FRAND licensing scheme from
24 scrutiny by the judiciary and by government enforcement agencies; (ii) coerced
25 agreements between Qualcomm and OEMs, such as Apple, incorporating
26 anticompetitive terms such as (but not limited to) express or implied exclusivity terms,
27 terms facilitating the imposition and collection of above-FRAND royalties (including

1 monopoly surcharges) on the sale of devices regardless of whether the device contains
2 a Qualcomm modem chip, and terms (such as gag provisions) shielding Qualcomm’s
3 non-FRAND licensing scheme from scrutiny by the judiciary and by government
4 enforcement agencies; and (iii) coerced agreements between Qualcomm and other
5 CMs and OEMs incorporating anticompetitive terms, such as (but not limited to) tying
6 and bundling arrangements, express or implied exclusivity terms, requirements to grant
7 cross-licenses to Qualcomm on non-compensatory terms and other IP and commercial
8 restrictions, above-FRAND royalty terms imposing royalties (including monopoly
9 surcharges) on the sale of devices regardless of whether the device contains a
10 Qualcomm modem chip, audit terms facilitating after-the-fact efforts to threaten or
11 impose further excessive and non-FRAND royalty terms, and terms (such as
12 confidentiality provisions) shielding Qualcomm’s non-FRAND licensing scheme from
13 scrutiny by the judiciary and by government enforcement agencies.

14 334. Qualcomm’s anticompetitive restraints of trade have caused each
15 Counterclaimant and its economically unified affiliates to suffer antitrust injury and
16 damages, including the payment of supracompetitive overcharges and surcharges, and
17 the loss of sales and profits.

18 **COUNT III**

19 **Cartwright Act (Cal. Bus. & Prof. Code § 16700 et seq.)**

20 335. Counterclaimants restate and incorporate by reference each of the
21 allegations set forth above.

22 336. California is the world’s sixth largest economy and the home of Silicon
23 Valley. California companies (like Apple and Intel) have transformed the world
24 through their inventions and created hundreds of thousands of jobs both on their own
25 and through the companies that have grown as a result of the products that they have
26 developed. California has a strong interest in insuring the continued development of
27 its economy by protecting against unfair and unlawful business emanating from

1 California and conducted by companies with their principal places of business in
2 California. Qualcomm’s anticompetitive conduct occurred in California, and the
3 connection between such conduct and California is not merely “slight and casual” or
4 *de minimis*.

5 337. Qualcomm is a citizen of California, with its principal place of business in
6 San Diego, California, subject to general jurisdiction in all courts located within the
7 State of California. California was the nexus of Qualcomm’s unlawful and
8 anticompetitive business practices alleged in these counterclaims. Qualcomm devised
9 its anticompetitive business decisions in California and extracted unlawful profits in
10 California. Each SULA with each Counterclaimant was made and entered into in the
11 State of California. Qualcomm’s largest indirect customer for its modem chips—
12 Apple—is headquartered in California. Qualcomm’s largest remaining competitor in
13 the modem chip manufacturing business—Intel—is headquartered in California.
14 Qualcomm’s chips were contained in, and Qualcomm’s intellectual property was
15 embodied in, millions of cellular devices that were sold in California, including large
16 numbers manufactured by Counterclaimants, which California sales were foreseen by
17 Qualcomm. Qualcomm’s unreasonable licensing demands of Apple alleged above
18 were made during in-person meetings at Qualcomm’s offices in San Diego, California.

19 338. The State of California has a clear, substantial, legitimate, and compelling
20 interest in protecting competition in California and entertaining claims by all victims
21 of Qualcomm’s unlawful and anticompetitive conduct that emanated from within
22 California’s borders.

23 339. Qualcomm’s agreements, as alleged above, constitute unlawful “trusts”
24 (“combination[s] of capital, skill or acts by two or more persons” for anticompetitive
25 purposes) under the California Cartwright Act. Cal. Bus. & Prof. Code § 16700 *et seq.*
26 The Cartwright Act applies to the anticompetitive, trade-restraining conduct of a single
27 firm when that firm by coercive conduct, imposes restraints to which customers or

1 others involuntarily adhere. If a “single trader” pressures customers into
2 anticompetitive contract terms, including exclusive dealing arrangements or illegal tie-
3 ins, an unlawful combination is established within the meaning of the Cartwright Act,
4 irrespective of any monopoly or conspiracy. Stated differently, a “combination”
5 within the meaning of the Cartwright Act is formed where a trader uses coercive
6 tactics to impose restraints on uncooperative businesses. As alleged above, Qualcomm
7 entered into and engaged in trusts or combinations in restraint of trade by coercing
8 multiple parties (including Counterclaimants, their affiliates, Apple, and other OEMs).
9 *Id.* § 16720 *et seq.* Such trusts or combinations constitute unreasonable and unlawful
10 restraints of trade in the relevant modem chip markets alleged herein, in which
11 Qualcomm possesses monopoly power, and lack any countervailing procompetitive
12 justifications. These trusts or combinations are unlawful under the Cartwright Act.

13 340. Qualcomm’s conduct also violates Business and Professions Code §
14 16727, which makes it unlawful for “any person to lease or make a sale or contract for
15 the sale of ... commodities ... or to fix a price charged therefor, or discount from, or
16 rebate upon, such price, on the condition, agreement or understanding that the lessee or
17 purchaser thereof shall not use or deal in the goods, merchandise, machinery, supplies,
18 commodities, or services of a competitor or competitors of the lessor or seller, where
19 the effect ... may be to substantially lessen competition or tend to create a monopoly in
20 any line of trade or commerce in any section of the State.”

21 341. The trusts or combinations alleged herein are unlawful, against public
22 policy and void. *Id.* § 16726. Further, the coerced anticompetitive contracts and
23 agreements alleged above are absolutely void and not enforceable at law or in equity.
24 *Id.* § 16722.

25 342. Counterclaimants are “persons” within the meaning of the Cartwright Act
26 as defined in California Business and Professions Code § 16702.

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1 343. Qualcomm’s violations are continuing and will continue unless enjoined
2 by the Court.

3 344. Qualcomm’s violations of the Cartwright Act have caused each
4 Counterclaimant to suffer antitrust injury and damages, including the payment of
5 supracompetitive overcharges and surcharges, and the loss of sales and profits.

6 **COUNT IV**

7 **Violations of the California Unfair Competition Law**

8 345. Counterclaimants restate and incorporate by reference each of the
9 allegations set forth above.

10 346. By the acts alleged, Qualcomm’s conduct constitutes a violation of
11 California Business & Professional Code § 17200, *et seq.* (the “Unfair Competition
12 Law” or “UCL”), which prohibits “unlawful, unfair or fraudulent” business acts and
13 practices.

14 347. Qualcomm has engaged in multiple unlawful business acts or practices as
15 alleged above and herein. Qualcomm’s conduct violates, *inter alia*, the Sherman Act,
16 the Federal Trade Commission Act, and the Cartwright Act. As such, Qualcomm’s
17 acts also constitute unlawful conduct under the UCL.

18 348. Qualcomm’s act and practices as alleged above and herein are also unfair.

19 349. Qualcomm’s unlawful and unfair business acts and practices significantly
20 threaten and harm competition in the relevant markets alleged above and in the
21 markets for mobile wireless handsets, tablets, cellular-enabled computers, and other
22 CDMA- and LTE-compliant products, in California and elsewhere.

23 350. Counterclaimants seek, and are entitled to, all forms of relief available
24 under California’s Unfair Competition Law. Pursuant to § 17203, Counterclaimants
25 seek from Qualcomm restitution and disgorgement of all earnings, profits,
26 compensation, benefits, and other ill-gotten gains obtained by Qualcomm as a result of
27 its conduct in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*

1 351. Pursuant to Cal. Bus. & Prof. Code § 17204, Counterclaimants also seek
2 an order enjoining Qualcomm from continuing to engage in the acts as set forth in
3 these counterclaims. Counterclaimants, and the public, will be irreparably harmed if
4 such an order is not granted.

5 **COUNT V**

6 **Breach of Contract (FRAND Commitments)**

7 352. Counterclaimants reallege and incorporate by reference each of the
8 allegations set forth above.

9 353. Qualcomm entered into express or implied contractual commitments with
10 at least ETSI, TIA, and ATIS relating to the cellular standards for, *inter alia*, 2G-
11 CDMA, 3G, and 4G/LTE cellular technologies.

12 354. As part of its contractual commitment, Qualcomm pledged to offer
13 irrevocable licenses for any of Qualcomm's alleged SEPs, including at least U.S.
14 Patent Nos. 7,246,242; 6,556,549; 9,137,822; 7,289,630; 8,867,494; 7,095,725;
15 6,694,469; 9,059,819; 7,096,021; 7,061,890; 8,000,717; 8,614,975; 8,761,068;
16 8,861,424; 8,873,471; 8,989,140; 9,007,974; and 9,144,071 on FRAND terms to any
17 third-party planning to practice the standard.

18 355. Every third party that would potentially implement 2G-CDMA, 3G, and
19 4G/LTE cellular technologies was an intended third-party beneficiary of those
20 contracts.

21 356. Counterclaimants are third parties that implement 2G-CDMA, 3G, and
22 4G/LTE cellular technologies in products that they manufacture.

23 357. Counterclaimants are therefore third-party beneficiaries to the contractual
24 commitments that Qualcomm made with at least ETSI, TIA, and ATIS.

25 358. Qualcomm had a contractual obligation to offer irrevocable licenses on
26 FRAND terms for its SEPs to Counterclaimants.

1 359. Qualcomm breached that commitment by failing to offer licenses to its
2 SEPs under reasonable rates, with reasonable terms, and on a non-discriminatory basis.
3 Although Counterclaimants ultimately signed patent licensing agreements with
4 Qualcomm, Qualcomm leveraged its monopoly over the modem chip market to force
5 Counterclaimants to sign a license with unfair and unreasonable terms.

6 360. As a result of Qualcomm's contractual breach, Counterclaimants have
7 been injured in their business and are threatened by imminent loss of profits, loss of
8 customers and potential customers, and loss of goodwill and product image.

9 361. Counterclaimants have suffered and will suffer irreparable injury by
10 reason of the acts, practices and conduct of Qualcomm, as described above, unless the
11 Court enjoins such acts, practices, and conduct.

12 **COUNT VI**

13 **Breach of Implied Covenant of Good Faith and Fair Dealing**
14 **(FRAND Commitments)**

15 362. Counterclaimants reallege and incorporate by reference each of the
16 allegations set forth above.

17 363. Qualcomm's actions, as alleged above, constitute breaches of its implied
18 covenant of good faith and fair dealing under Qualcomm's contracts with at least
19 ETSI, TIA, and ATIS.

20 364. By violating its FRAND commitment to license any SEPs, including at
21 least U.S. Patent Nos. 7,246,242; 6,556,549; 9,137,822; 7,289,630; 8,867,494;
22 7,095,725; 6,694,469; 9,059,819; 7,096,021; 7,061,890; 8,000,717; 8,614,975;
23 8,761,068; 8,861,424; 8,873,471; 8,989,140; 9,007,974; and 9,144,071, on fair,
24 reasonable, and non-discriminatory terms, including by: (i) offering blatantly
25 unreasonable licensing terms to Counterclaimants, (ii) charging Counterclaimants
26 exorbitant non-FRAND royalties and refusing to license competitors, and (iii)
27 demanding royalty payments from Counterclaimants that exceed the net royalty

1 payment to which Qualcomm is entitled in light of and because of Qualcomm's
2 withholding of rebates from Apple, and by bringing suit for licensing fees that include
3 those fees illegally withheld from Apple, Qualcomm has violated its implied covenant
4 of good faith and fair dealing under Qualcomm's contracts with at least ETSI, TIA,
5 and ATIS, and Counterclaimants are entitled to bring suit as third-party beneficiaries.

6 365. As a result of Qualcomm's breach of the implied covenant of good faith
7 and fair dealing, Counterclaimants have been injured in their business and are
8 threatened by imminent loss of profits, loss of customers, and loss of goodwill and
9 product image.

10 366. Counterclaimants have suffered and will suffer irreparable injury by
11 reason of the acts, practices, and conduct of Qualcomm, as described above, unless the
12 Court enjoins such acts, practices, and conduct.

13 COUNT VII

14 **Promissory Estoppel**

15 367. Counterclaimants reallege and incorporate by reference each of the
16 allegations set forth above.

17 368. Qualcomm made a clear and definite promise to potential licensees
18 through its commitments to at least ETSI, TIA, and ATIS that Qualcomm had granted,
19 or would grant, licenses to any essential patents under fair and reasonable rates, with
20 fair and reasonable terms, and on a non-discriminatory basis.

21 369. The intended purpose of Qualcomm's promises was to induce reliance
22 upon this promise so that companies like Counterclaimants would manufacture
23 electronics with cellular capabilities compatible with the relevant standards—e.g., 2G-
24 CDMA, 3G, and 4G/LTE. Qualcomm knew or should have reasonably expected to
25 know that it would induce reliance on these promises by companies such as
26 Counterclaimants.

1 370. Counterclaimants contracted with companies, like Apple, to manufacture
2 products compliant with the relevant standards in reliance on Qualcomm’s promises.

3 371. Qualcomm is estopped from renegeing on its promises to at least ETSI,
4 TIA, and ATIS under the doctrine of promissory estoppel.

5 372. Counterclaimants have been harmed as a result of their reasonable
6 reliance on Qualcomm’s promises and are threatened by imminent loss of profits, loss
7 of customers and potential customers, and loss of goodwill and product image.

8 373. Counterclaimants have suffered and will suffer irreparable injury by
9 reason of the acts, practices and conduct of Qualcomm, as described above, unless the
10 Court enjoins such acts, practices, and conduct.

11 **COUNT VIII**

12 **Declaratory Judgment that Qualcomm Did Not Comply with Its Obligations**

13 374. Counterclaimants reallege and incorporate by reference each of the
14 allegations set forth above.

15 375. There is a dispute between the parties concerning whether Qualcomm has
16 offered Counterclaimants licenses to Qualcomm’s SEPs under FRAND terms
17 consistent with Qualcomm’s promises to at least ETSI, TIA, and ATIS.

18 376. The dispute is of sufficient immediacy and reality to warrant the issuance
19 of a declaratory judgment.

20 377. Counterclaimants are entitled to a declaratory judgment that Qualcomm
21 has not offered Defendants licenses to Qualcomm’s SEPs under FRAND terms.

22 **COUNT IX**

23 **Waiver**

24 378. Counterclaimants reallege and incorporate by reference each of the
25 allegations set forth above.

1 379. Qualcomm expressly stated in its declarations to at least ETSI, TIA, and
2 ATIS that Qualcomm would license its identified patents under reasonable and non-
3 discriminatory terms.

4 380. Through these express declarations, Qualcomm voluntary and
5 intentionally waived its rights to obtain compensation for its identified patents for the
6 2G-CDMA, 3G, and 4G/LTE standards other than at fair, reasonable, and non-
7 discriminatory terms.

8 381. Counterclaimants will suffer irreparable injury by reason of the acts,
9 practices and conduct of Qualcomm, as described above, unless the Court enjoins such
10 acts, practices, and conduct.

11 **COUNT X**

12 **Negligent Misrepresentation**

13 382. Counterclaimants reallege and incorporate by reference each of the
14 allegations set forth above.

15 383. Qualcomm at least negligently made a false promise to at least ETSI, TIA,
16 and ATIS that it would license its SEPs on FRAND terms so as to induce the SSOs to
17 adopt its technology.

18 384. Qualcomm knew that, absent such a promise, the SSOs were obligated to
19 search for alternatives, and to revise, or even abandon, the standard altogether if a
20 viable alternative could not have been found to avoid Qualcomm's technology.

21 385. Qualcomm thus intended to induce, and did induce, the SSOs to rely upon
22 Qualcomm's negligently false promise and not consider alternatives to Qualcomm's
23 allegedly essential patents.

24 386. The SSOs, including ETSI, TIA, and ATIS, had no knowledge of the
25 falsity of Qualcomm's promise, and reasonably and detrimentally relied upon
26 Qualcomm's promise to offer a license on FRAND terms to anyone practicing the
27 standard.

1 387. In reliance upon Qualcomm’s promise to offer FRAND licenses,
2 Counterclaimants contracted with companies to manufacture electronic devices that
3 comply with cellular standards, such as 2G-CDMA, 3G, and 4G/LTE.

4 388. Once the standards were widely adopted, and the industry became reliant
5 upon those standards that allegedly incorporate Qualcomm’s SEPs, Qualcomm
6 reneged on its promise by exploiting its new-found market power to demand
7 unreasonable and excessive licensing terms, far in excess of the patents’ own value.
8 Indeed, Qualcomm refuses to license only the patents it considers essential to
9 practicing the standard. Instead, Qualcomm leverages its allegedly essential patents to
10 demand additional royalties for its admittedly non-essential patents.

11 389. Counterclaimants have been harmed as a result of Qualcomm’s negligent
12 misrepresentations and are threatened by imminent loss of profits, loss of customers
13 and potential customers, and loss of goodwill and product image.

14 390. Counterclaimants have suffered damages in an amount to be determined
15 at trial.

16 **COUNT XI**

17 **Breach of Contract (License Agreements)**

18 391. Counterclaimants reallege and incorporate by reference each of the
19 allegations set forth above.

20 392. Qualcomm has entered into License Agreements with each of the
21 Counterclaimants, which include express and implied terms (including the implied
22 covenant of good faith and fair dealing).

23 393. Qualcomm’s actions, as alleged above, constitute breaches of the License
24 Agreements.

25 394. Qualcomm has breached the express and implied terms of the License
26 Agreements, including by: (i) exercising in an unreasonable manner its authority under
27 the License Agreements to assess royalties and to conduct audits, depriving

1 Counterclaimants of the common purpose and justifiable expectations under the
2 License Agreements, in an attempt to extract more money from Counterclaimants; (ii)
3 charging Counterclaimants exorbitant non-FRAND royalties and refusing to license
4 competitors, violating the common purpose and justifiable expectations under the
5 License Agreements; and (iii) demanding royalty payments from Counterclaimants
6 that exceed the net royalty payment to which Qualcomm is entitled in light of and
7 because of Qualcomm’s withholding of rebates from Apple, and by bringing suit for
8 licensing fees that include those fees illegally withheld from Apple.

9 395. As a result of Qualcomm’s breaches of contract, Counterclaimants have
10 been injured in their business, and are threatened by imminent loss of profits, loss of
11 customers, and loss of goodwill and product image.

12 396. Counterclaimants have suffered and will suffer irreparable injury by
13 reason of the acts, practices, and conduct of Qualcomm, as described above, unless the
14 Court enjoins such acts, practices, and conduct.

15 **COUNT XII**

16 **Declaration of Unenforceability Under Cal. Civ. Code §§ 1598–99**

17 397. Counterclaimants restate and incorporate by reference each of the
18 allegations set forth above.

19 398. Counterclaimants each entered into its own SULA with Qualcomm.

20 399. The SULAs each contain a provision that purports to require
21 Counterclaimants pay royalties to Qualcomm based upon the net selling prices of the
22 manufactured product.

23 400. This royalty provision is unenforceable because it violates public policy
24 prohibiting the extension of patent rights beyond their proper boundaries. Cal. Civ.
25 Code §§ 1598–99. This provision improperly extends Qualcomm’s patent rights in
26 multiple ways.

1 405. Similarly, to the extent Qualcomm’s royalty is based upon: [REDACTED]
2 [REDACTED]
3 [REDACTED], Qualcomm is impermissibly broadening the
4 scope of its patent rights.

5 406. Fourth, the royalty provision improperly extends Qualcomm’s patent
6 rights beyond their geographic borders by requiring a license on patents for countries
7 that the manufactured products will never enter.

8 407. Fifth, the royalty provision also improperly extends Qualcomm’s patent
9 rights by requiring a license on expired patents.

10 408. An actual case or controversy exists between Counterclaimants and
11 Qualcomm concerning their rights and obligations under the royalty provision of their
12 respective SULAs.

13 409. In sum, the royalty provision impermissibly extends the scope of
14 Qualcomm’s patent rights by requiring a royalty on exhausted patents and/or products
15 that do not practice the patents, unpatented components and/or services, patents that do
16 not cover the same geographic region, and expired patents. The royalty provision
17 therefore impermissibly extends Qualcomm’s monopoly.

18 410. Counterclaimants seek a judicial determination that the royalty provision
19 of their respective SULAs is unenforceable as against public policy. *See* Cal. Civ.
20 Code §§ 1598–99.

21 411. A judicial determination is necessary and appropriate at this time for
22 Counterclaimants to ascertain their rights and obligations, in view of Qualcomm’s
23 breach of contract claim against Counterclaimants under the SULAs. The parties’
24 relationship is ongoing, and a judicial determination would inform the parties’ future
25 conduct.

COUNT XIII

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

412. Counterclaimants restate and incorporate by reference each of the allegations set forth above.

413. Representative claim 1 of U.S. Patent No. 7,246,242 (the “’242 patent”) reads as follows (claim 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.

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

415. No claim of the ’242 patent has been or is infringed, either directly, contributorily, or by inducement, literally or under the doctrine of equivalents, by Counterclaimants or the purchasers of Counterclaimants’ products through the manufacture, use, importation, sale, and/or offer for sale of Counterclaimants’ products, at least because, by way of non-limiting example, Counterclaimants’ products do not satisfy the following claim limitation: 1.[b].

1 422. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
2 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
3 the '242 patent is invalid.

4 **COUNT XV**

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

6 423. Counterclaimants restate and incorporate by reference each of the
7 allegations set forth above.

8 424. Qualcomm has contractually obligated to license the '242 patent on
9 FRAND terms and conditions.

10 425. As a result of the acts described in the foregoing paragraphs, there exists a
11 definite and concrete, real and substantial, justiciable controversy between
12 Counterclaimants and Qualcomm regarding the FRAND royalty for the '242 patent
13 with respect to Counterclaimants' products. This controversy is of sufficient
14 immediacy and reality to warrant the issuance of a Declaratory Judgment.

15 426. To the extent that the '242 patent is actually essential to a standard, valid,
16 and infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select
17 as a royalty base, at most, the smallest salable unit substantially embodying the '242
18 patent, and (b) apply to that royalty base a reasonable royalty rate that reflects the
19 actual technical contribution to the standard that is attributable to the patent. *See*
20 *Commonwealth Sci. & Indus. Research Org. v. Cisco Sys., Inc.* ("CSIRO"), 809 F.3d
21 1295, 1305 (Fed. Cir. 2015); *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1209
22 (Fed. Cir. 2014); *Innovatio IP Ventures, LLC Patent Litig.*, No. 11 C 93089, 2013 WL
23 5593609, at *13 (N.D. Ill. Oct. 3, 2013); *Microsoft*, 2013 WL 2111217, at *74. As
24 discussed above, Qualcomm has not complied with these requirements, and has not
25 offered FRAND terms. Counterclaimants are willing, and have been willing, to license
26 this patent on FRAND terms. As an alternative to its requests for declarations of
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1 noninfringement, invalidity, and unenforceability, Counterclaimants are entitled to a
 2 judicial declaration that sets a FRAND royalty for the '242 patent in this manner.

3 **COUNT XVI**

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

5 427. Counterclaimants restate and incorporate by reference each of the
 6 allegations set forth above.

7 428. Representative claim 1 of U.S. Patent No. 6,556,549 (the "'549 patent")
 8 reads as follows (claim 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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19 429. The '549 patent is not essential to the 3G/UMTS standard, including, but
 20 not limited to, the standard described in 3GPP TS 25.211, 25.212, 25.214, at least
 21 because, by way of non-limiting example, the 3G/UMTS standard does not require the
 22 following claim limitation: 1.[b].

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27 430. No claim of the '549 patent has been or is infringed, either directly,
 28 contributorily, or by inducement, literally or under the doctrine of equivalents, by
 Counterclaimants or the purchasers of Counterclaimants' products through the
 manufacture, use, importation, sale, and/or offer for sale of Counterclaimants'
 products, at least because, by way of non-limiting example, Counterclaimants'
 products do not satisfy the following claim limitation: 1.[b].

431. As a result of the acts described in the foregoing paragraphs, there exists a
 definite and concrete, real and substantial, justiciable controversy between
 Counterclaimants and Qualcomm regarding the noninfringement of the '549 patent

1 with respect to Counterclaimants' products. This controversy is of sufficient
2 immediacy and reality to warrant the issuance of a declaratory judgment.

3 432. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
4 *seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do
5 not infringe and have not infringed any claim of the '549 patent.

6 **COUNT XVII**

7 **Declaration of Invalidity of U.S. Patent No. 6,556,549**

8 433. Counterclaimants restate and incorporate by reference each of the
9 allegations set forth above.

10 434. One or more claims of the '549 patent fail to meet the conditions of
11 patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101
12 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting
13 example, the representative claim, claim 1, of the '549 patent is anticipated and/or
14 rendered obvious in view of U.S. Patent No. 6,269,239, U.S. Patent No. 5,673,259,
15 U.S. Patent No. 5,659,578, U.S. Patent No. 6,584,086, and/or U.S. Patent No.
16 5,603,096.

17 435. U.S. Patent No. 6,269,239 issued on July 31, 2001, from an application
18 that was filed on May 19, 1999, and claims priority to a provisional application filed
19 on December 11, 1998. Because the effective filing date of this reference predates the
20 filing date of the '549 patent, it qualifies as prior art under at least 35 U.S.C. § 102(e).

21 436. U.S. Patent No. 5,659,578 issued on August 19, 1997, over one year
22 before the July 2, 1999 filing date of the '549 patent, and from an application that was
23 filed on November 23, 1994. As a result, this reference qualifies as prior art under at
24 least 35 U.S.C. § 102(a), (b), and (e).

25 437. U.S. Patent No. 6,584,086 issued on June 24, 2003, from an application
26 that was filed on April 21, 1998. Because the filing date of this reference predates the
27 filing date of the '549 patent, it qualifies as prior art under, at least, 35 U.S.C. § 102(e).

1 438. U.S. Patent No. 5,603,096 issued on February 11, 1997, over one year
2 before the July 2, 1999 filing date of the '549 patent, and from an application that was
3 filed on July 11, 1994. As a result, this reference qualifies as prior art under, at least,
4 35 U.S.C. § 102(a), (b), and (e).

5 439. As a result of the acts described in the foregoing paragraphs, there exists a
6 definite and concrete, real and substantial, justiciable controversy between
7 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
8 '549 patent. This controversy is of sufficient immediacy and reality to warrant the
9 issuance of a declaratory judgment.

10 440. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
11 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
12 the '549 patent are invalid.

13 **COUNT XVIII**

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

15 441. Counterclaimants restate and incorporate by reference each of the
16 allegations set forth above.

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

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

24 444. To the extent that the '549 patent is actually essential to a standard, valid,
25 and infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select
26 as a royalty base, at most, the smallest salable unit substantially embodying the '549
27 patent, and (b) apply to that royalty base a reasonable royalty rate that reflects the

1 actual technical contribution to the standard that is attributable to the patent. *See*
 2 *CSIRO*, 809 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013
 3 WL 5593609, at *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above,
 4 Qualcomm has not complied with these requirements and has not offered FRAND
 5 terms. Counterclaimants are willing, and have been willing, to license this patent on
 6 FRAND terms. As an alternative to its requests for declarations of noninfringement,
 7 invalidity, and unenforceability, Counterclaimants are entitled to a judicial declaration
 8 that sets a FRAND royalty for the '549 patent in this manner.

9 **COUNT XIX**

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

11 445. Counterclaimants restate and incorporate by reference each of the
 12 allegations set forth above.

13 446. Representative claim 12 of U.S. Patent No. 9,137,822 (the "'822 patent")
 14 reads as follows (claim 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 of 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.

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26 447. The '822 patent is not essential to the 4G/LTE standard, including, but not
 27 limited to, the standard described in 3GPP TS 36.300, 36.321, at least because, by way

1 of non-limiting example, the 4G/LTE standard does not require the following claim
2 limitation: 12.[d].

3 448. 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 Counterclaimants or the purchasers of Counterclaimants' products through the
6 manufacture, use, importation, sale, and/or offer for sale of Counterclaimants'
7 products, at least because, by way of non-limiting example, Counterclaimants'
8 products do not satisfy the following claim limitation: 12.[d].

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

14 450. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
15 *seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do
16 not infringe and have not infringed any claim of the '822 patent.

17 **COUNT XX**

18 **Declaration of Invalidity of U.S. Patent No. 9,137,822**

19 451. Counterclaimants restate and incorporate by reference each of the
20 allegations set forth above.

21 452. One or more claims of the '822 patent fail to meet the conditions of
22 patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101
23 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting
24 example, the representative claim, claim 12, of the '822 patent is anticipated and/or
25 rendered obvious in view of U.S. Patent No. 7,061,890.

1 453. U.S. Patent No. 7,061,890 issued on June 13, 2006, from an application
2 that was filed on June 4, 2001. Because the filing date of this reference predates the
3 filing date of the '822 patent, it qualifies as prior art under at least 35 U.S.C. § 102(e).

4 454. As a result of the acts described in the foregoing paragraphs, there exists a
5 definite and concrete, real and substantial, justiciable controversy between
6 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
7 '822 patent. This controversy is of sufficient immediacy and reality to warrant the
8 issuance of a declaratory judgment.

9 455. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
10 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
11 the '822 patent are invalid.

12 **COUNT XXI**

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

14 456. Counterclaimants restate and incorporate by reference each of the
15 allegations set forth above.

16 457. Qualcomm has contractually obligated to license the '822 patent on
17 FRAND terms and conditions.

18 458. As a result of the acts described in the foregoing paragraphs, there exists a
19 definite and concrete, real and substantial, justiciable controversy between
20 Counterclaimants and Qualcomm regarding the FRAND royalty for the '822 patent
21 with respect to Counterclaimants' products. This controversy is of sufficient
22 immediacy and reality to warrant the issuance of a Declaratory Judgment.

23 459. To the extent that the '822 patent is actually essential to a standard, valid,
24 and infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select
25 as a royalty base, at most, the smallest salable unit substantially embodying the '822
26 patent, and (b) apply to that royalty base a reasonable royalty rate that reflects the
27 actual technical contribution to the standard that is attributable to the patent. *See*

1 CSIRO, 809 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013
 2 WL 5593609, at *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above,
 3 Qualcomm has not complied with these requirements and has not offered FRAND
 4 terms. Counterclaimants are willing, and have been willing, to license this patent on
 5 FRAND terms. As an alternative to its requests for declarations of noninfringement,
 6 invalidity, and unenforceability, Counterclaimants are entitled to a judicial declaration
 7 that sets a FRAND royalty for the '822 patent in this manner.

8 **COUNT XXII**

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

10 460. Counterclaimants restate and incorporate by reference each of the
 11 allegations set forth above.

12 461. Representative claim 1 of U.S. Patent No. 7,289,630 (the "'630 patent")
 13 reads as follows (claim 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
[h]	at the end of a session, storing at least part of the highest hyperframe number used during the session.

25 462. The '630 patent is not essential to the 3G/UMTS standard, including, but
 26 not limited to, the standards described in 3GPP TS 23.236, 25.331, 33.102, at least

1 because, by way of non-limiting example, the 3G/UMTS standard does not require the
2 following claim limitation: 1.[h].

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

9 464. As a result of the acts described in the foregoing paragraphs, there exists a
10 definite and concrete, real and substantial, justiciable controversy between
11 Counterclaimants and Qualcomm regarding the noninfringement of the '630 patent,
12 with respect to Counterclaimants' products. This controversy is of sufficient
13 immediacy and reality to warrant the issuance of a declaratory judgment.

14 465. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
15 *seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do
16 not infringe and have not infringed any claim of the '630 patent.

17 **COUNT XXIII**

18 **Declaration of Invalidity of U.S. Patent No. 7,289,630**

19 466. Counterclaimants restate and incorporate by reference each of the
20 allegations set forth above.

21 467. One or more claims of the '630 patent fail to meet the conditions of
22 patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101
23 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting
24 example, the representative claim, claim 1, of the '630 patent is anticipated and/or
25 rendered obvious in view of *Security Architecture* (3GPP TS 33.102 version 3.2.0).

26 468. *Security Architecture* (3GPP TS 33.102 version 3.2.0) was published in
27 October 1999. On information and belief, *Security Architecture* (3GPP TS 33.102

1 version 3.2.0) was publicly distributed and accessible before the March 1, 2000 filing
2 date of the earliest application to which the '630 patent claims priority, e.g., by and
3 through the Third Generation Partnership Project ("3GPP2") organization. Because the
4 reference was described in a publication before the March 1, 2000 filing date of the
5 earliest application to which the '630 patent claims priority, this reference qualifies as
6 prior art under at least 35 U.S.C. § 102(a).

7 469. As a result of the acts described in the foregoing paragraphs, there exists a
8 definite and concrete, real and substantial, justiciable controversy between
9 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
10 '630 patent. This controversy is of sufficient immediacy and reality to warrant the
11 issuance of a declaratory judgment.

12 470. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
13 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
14 the '630 patent are invalid.

15 **COUNT XXIV**

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

17 471. Counterclaimants restate and incorporate by reference each of the
18 allegations set forth above.

19 472. Qualcomm has contractually obligated to license the '630 patent on
20 FRAND terms and conditions.

21 473. As a result of the acts described in the foregoing paragraphs, there exists a
22 definite and concrete, real and substantial, justiciable controversy between
23 Counterclaimants and Qualcomm regarding the FRAND royalty for the '630 patent
24 with respect to Counterclaimants' products. This controversy is of sufficient
25 immediacy and reality to warrant the issuance of a declaratory judgment.

26 474. To the extent that the '630 patent is actually essential to a standard, valid,
27 and infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select

1 as a royalty base, at most, the smallest salable unit substantially embodying the '630
 2 patent, and (b) apply to that royalty base a reasonable royalty rate that reflects the
 3 actual technical contribution to the standard that is attributable to the patent. *See*
 4 *CSIRO*, 809 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013
 5 WL 5593609, at *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above,
 6 Qualcomm has not complied with these requirements and has not offered FRAND
 7 terms. Counterclaimants are willing, and have been willing, to license this patent on
 8 FRAND terms. As an alternative to its requests for declarations of noninfringement,
 9 invalidity, and unenforceability, Counterclaimants are entitled to a judicial declaration
 10 that sets a FRAND royalty for the '630 patent in this manner.

11 **COUNT XXV**

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

13 475. Counterclaimants restate and incorporate by reference each of the
 14 allegations set forth above.

15 476. Representative claim 17 of U.S. Patent No. 8,867,494 (the "'494 patent")
 16 reads as follows (claim 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]	jointly encoding first feedback information corresponding to a first downlink channel state for the first downlink channel at the first sector with second feedback information corresponding to a second downlink channel state for the second downlink channel at the second sector using a channelization code; and
[d]	transmitting the jointly encoded first and second feedback information on an uplink channel over a first uplink carrier frequency.

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25 477. The '494 patent is not essential to any 3G/UMTS standard, including, but
 26 not limited to, the standard described in 3GPP TS 25.212, 25.214, 25.308, at least

1 because, by way of non-limiting example, the 3G/UMTS standard does not require the
2 following claim limitation: 17.[b].

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

9 479. As a result of the acts described in the foregoing paragraphs, there exists a
10 definite and concrete, real and substantial, justiciable controversy between
11 Counterclaimants and Qualcomm regarding the noninfringement of the '494 patent
12 with respect to Counterclaimants' products. This controversy is of sufficient
13 immediacy and reality to warrant the issuance of a declaratory judgment.

14 480. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
15 *seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do
16 not infringe and have not infringed any claim of the '494 patent.

17 **COUNT XXVI**

18 **Declaration of Invalidity of U.S. Patent No. 8,867,494**

19 481. Counterclaimants restate and incorporate by reference each of the
20 allegations set forth above.

21 482. One or more claims of the '494 patent fail to meet the conditions of
22 patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101
23 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting
24 example, the representative claim, claim 17, of the '494 patent is anticipated and/or
25 rendered obvious in view of U.S. Patent Application No. 2008/0085708.

26 483. U.S. Patent Application No. 2008/0085708 was published on April 10,
27 2008. Because the reference was described in a publication before the earliest

1 application to which the '494 patent claims priority, this reference qualifies as prior art
2 under at least 35 U.S.C. § 102(a).

3 484. As a result of the acts described in the foregoing paragraphs, there exists a
4 definite and concrete, real and substantial, justiciable controversy between
5 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
6 '494 patent. This controversy is of sufficient immediacy and reality to warrant the
7 issuance of a declaratory judgment.

8 485. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
9 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
10 the '494 patent are invalid.

11 **COUNT XXVII**

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

13 486. Counterclaimants restate and incorporate by reference each of the
14 allegations set forth above.

15 487. Qualcomm has contractually obligated to license the '494 patent on
16 FRAND terms and conditions.

17 488. As a result of the acts described in the foregoing paragraphs, there exists a
18 definite and concrete, real and substantial, justiciable controversy between
19 Counterclaimants and Qualcomm regarding the FRAND royalty for the '494 patent
20 with respect to Counterclaimants' products. This controversy is of sufficient
21 immediacy and reality to warrant the issuance of a declaratory judgment.

22 489. To the extent that the '494 patent is actually essential to a standard, valid,
23 and infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select
24 as a royalty base, at most, the smallest salable unit substantially embodying the '494
25 patent, and (b) apply to that royalty base a reasonable royalty rate that reflects the
26 actual technical contribution to the standard that is attributable to the patent. *See*
27 *CSIRO*, 809 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013

1 WL 5593609, at *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above,
 2 Qualcomm has not complied with these requirements and has not offered FRAND
 3 terms. Counterclaimants are willing, and have been willing, to license this patent on
 4 FRAND terms. As an alternative to its requests for declarations of noninfringement,
 5 invalidity, and unenforceability, Counterclaimants are entitled to a judicial declaration
 6 that sets a FRAND royalty for the '494 patent in this manner.

7 **COUNT XXVIII**

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

9 490. Counterclaimants restate and incorporate by reference each of the
 10 allegations set forth above.

11 491. Representative claims 9 and 26 of U.S. Patent No. 7,095,725 (the "'725
 12 patent") reads as follows (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
[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.
Claim 26	
[a]	An apparatus comprising:
[b]	a transmit subsystem; and
[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,
[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.

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

5 493. No claim of the '725 patent has been or is infringed, either directly,
6 contributorily, or by inducement, literally or under the doctrine of equivalents, by
7 Counterclaimants or the purchasers of Counterclaimants' products through the
8 manufacture, use, importation, sale, and/or offer for sale of Counterclaimants'
9 products, at least because, by way of non-limiting example, Counterclaimants'
10 products do not satisfy the following claim limitations: 9.[d], 26.[d].

11 494. As a result of the acts described in the foregoing paragraphs, there exists a
12 definite and concrete, real and substantial, justiciable controversy between
13 Counterclaimants and Qualcomm regarding the noninfringement of the '725 patent
14 with respect to Counterclaimants' products. This controversy is of sufficient
15 immediacy and reality to warrant the issuance of a declaratory judgment.

16 495. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
17 *seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do
18 not infringe and have not infringed any claim of the '725 patent.

19 **COUNT XXIX**

20 **Declaration of Invalidity of U.S. Patent No. 7,095,725**

21 496. Counterclaimants restate and incorporate by reference each of the
22 allegations set forth above.

23 497. One or more claims of the '725 patent fail to meet the conditions of
24 patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101
25 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting
26 example, the representative claims, claims 9 and 26, of the '725 patent are anticipated
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1 and/or rendered obvious in view of U.S. Patent No. 7,058,124 and/or *cdma2000 High*
2 *Rate Packet Data Air Interface Specification* (3GPP2 C.S0024, Version 2.0).

3 498. U.S. Patent No. 7,058,124 issued on June 6, 2006, from an application
4 that was filed on June 28, 2001. Because the filing date of this reference predates the
5 filing date of the '725 patent, it qualifies as prior art under at least 35 U.S.C. § 102(e).

6 499. *cdma2000 High Rate Packet Data Air Interface Specification* (3GPP2
7 C.S0024, Version 2.0) ("cdma2000 V2.0") was published on October 27, 2000, over
8 one year before the December 19, 2002 filing date of the '725 patent. On information
9 and belief, cdma2000 V2.0 was publicly distributed and accessible over one year
10 before the December 19, 2002 filing date of the '725 patent, e.g., by and through the
11 Third Generation Partnership Project 2 ("3GPP2") organization. As a result, this
12 reference qualifies as prior art under at least 35 U.S.C. § 102(a) and (b).

13 500. As a result of the acts described in the foregoing paragraphs, there exists a
14 definite and concrete, real and substantial, justiciable controversy between
15 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
16 '725 patent. This controversy is of sufficient immediacy and reality to warrant the
17 issuance of a declaratory judgment.

18 501. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
19 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
20 the '725 patent are invalid.

21 **COUNT XXX**

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

23 502. Counterclaimants restate and incorporate by reference each of the
24 allegations set forth above.

25 503. Qualcomm has contractually obligated to license the '725 patent on
26 FRAND terms and conditions.

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Claim 11	
[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
[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.

508. The '469 patent is not essential to the 3G/UMTS or the 4G/LTE standard, including, but not limited to, the standard described in 3GPP TS 25.211, 25.214, 25.221, 25.321, 25.322, 36.213, 36.300, 36.321, 36.322, at least because, by way of non-limiting example, the 3G/UMTS or the 4G/LTE standard does not require the following claim limitation: 11.[e].

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

510. As a result of the acts described in the foregoing paragraphs, there exists a definite and concrete, real and substantial, justiciable controversy between Counterclaimants and Qualcomm regarding the noninfringement of the '469 patent with respect to Counterclaimants' products. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

511. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do not infringe and have not infringed any claim of the '469 patent.

COUNT XXXII

Declaration of Invalidity of U.S. Patent No. 6,694,469

512. Counterclaimants restate and incorporate by reference each of the allegations set forth above.

513. One or more claims of the '469 patent fail to meet the conditions of patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting example, the representative claim, claim 11, of the '469 patent is anticipated and/or rendered obvious in view of U.S. Patent No. 6,707,814, U.S. Patent No. 5,684,791, U.S. Patent No. 4,970,714, U.S. Patent No. 6,735,202, U.S. Patent No. 6,275,471 and/or *ATM User-Network Interface Specification, Version 3.0*.

514. U.S. Patent No. 6,707,814 issued on March 16, 2004, from an application that was filed on June 29, 1998, and claims priority to a foreign application filed on June 30, 1997. Because the effective filing date of this reference predates April 14, 2000, which is the filing date of the '469 patent, it qualifies as prior art under, at least, 35 U.S.C. § 102(e).

515. U.S. Patent No. 5,684,791 issued on November 4, 1997, from an application that was filed on November 7, 1995. Because the reference issued as a patent over one year before April 14, 2000, which is the filing date of the '469 patent, it qualifies as prior art under, at least, 35 U.S.C. § 102(a), (b), and (e).

516. U.S. Patent No. 4,970,714 issued on November 13, 1990, from an application that was filed on January 5, 1989. Because the reference issued as a patent over one year before April 14, 2000, which is the filing date of the '469 patent, it qualifies as prior art under, at least, 35 U.S.C. § 102(a), (b), and (e).

517. U.S. Patent No. 6,735,202 issued on May 11, 2004, from an application that was filed on January 10, 2000. Because the effective filing date of this reference

1 predates April 14, 2000, which is the filing date of the '469 patent, it qualifies as prior
2 art under, at least, 35 U.S.C. § 102(e).

3 518. U.S. Patent No. 6,275,471 issued on August 14, 2001, from an application
4 that was filed on May 12, 1998. Because the effective filing date of this reference
5 predates April 14, 2000, which is the filing date of the '469 patent, it qualifies as prior
6 art under, at least, 35 U.S.C. § 102(e).

7 519. *ATM User-Network Interface Specification, Version 3.0* was published on
8 September 10, 1993. On information and belief, the *ATM User-Network Interface*
9 *Specification, Version 3.0* was publicly distributed and accessible over one year before
10 April 14, 2000, which is the filing date of the '469 patent, e.g., by and through the PTR
11 Prentice Hall. Because the reference was published over one year before April 14,
12 2000, which is the filing date of the '469 patent, it qualifies as prior art under, at least,
13 35 U.S.C. § 102(a) and (b).

14 520. As a result of the acts described in the foregoing paragraphs, there exists a
15 definite and concrete, real and substantial, justiciable controversy between
16 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
17 '469 patent. This controversy is of sufficient immediacy and reality to warrant the
18 issuance of a declaratory judgment.

19 521. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
20 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
21 the '469 patent are invalid.

22 **COUNT XXXIII**

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

24 522. Counterclaimants restate and incorporate by reference each of the
25 allegations set forth above.

26 523. Qualcomm has contractually obligated to license the '469 patent on
27 FRAND terms and conditions.

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Claim 1	
[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.

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

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

530. As a result of the acts described in the foregoing paragraphs, there exists a definite and concrete, real and substantial, justiciable controversy between Counterclaimants and Qualcomm regarding the noninfringement of the '819 patent with respect to Counterclaimants' products. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

531. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do not infringe and have not infringed any claim of the '819 patent.

COUNT XXXV

Declaration of Invalidity of U.S. Patent No. 9,059,819

532. Counterclaimants restate and incorporate by reference each of the allegations set forth above.

1 540. To the extent that the '819 patent is actually essential to a standard, valid,
 2 and infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select
 3 as a royalty base, at most, the smallest salable unit substantially embodying the '819
 4 patent, and (b) apply to that royalty base a reasonable royalty rate that reflects the
 5 actual technical contribution to the standard that is attributable to the patent. *See*
 6 *CSIRO*, 809 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013
 7 WL 5593609, at *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above,
 8 Qualcomm has not complied with these requirements and has not offered FRAND
 9 terms. Counterclaimants are willing, and have been willing, to license this patent on
 10 FRAND terms. As an alternative to its requests for declarations of noninfringement,
 11 invalidity, and unenforceability, Counterclaimants are entitled to a judicial declaration
 12 that sets a FRAND royalty for the '819 patent in this manner.

13 **COUNT XXXVII**

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

15 541. Counterclaimants restate and incorporate by reference each of the
 16 allegations set forth above.

17 542. Representative claim 12 of U.S. Patent No. 7,096,021 (the "'021 patent")
 18 reads as follows (claim element enumeration added for convenience):

Claim 12	
[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:
[b]	means for receiving at least one threshold value transmitted to the terminal by the first cellular radio system,
[c]	means for measuring a power level of a signal transmitted by at least one base station of the first cellular radio system,
[d]	means for comparing the measured power level with said at least one threshold value,

Claim 12

[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
[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,
[g]	wherein the terminal maintains radio connection with the first cellular radio system while measuring the second cellular radio system.

543. 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].

544. 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 Counterclaimants or the purchasers of Counterclaimants' products through the manufacture, use, importation, sale, and/or offer for sale of Counterclaimants' products, at least because, by way of non-limiting example, Counterclaimants' products do not satisfy the following claim limitation: 12.[e].

545. As a result of the acts described in the foregoing paragraphs, there exists a definite and concrete, real and substantial, justiciable controversy between Counterclaimants and Qualcomm regarding the noninfringement of the '021 patent with respect to Counterclaimants' products. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

546. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do not infringe and have not infringed any claim of the '021 patent.

COUNT XXXVIII

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

547. Counterclaimants restate and incorporate by reference each of the allegations set forth above.

548. One or more claims of the '021 patent fail to meet the conditions of patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting example, the representative claim, claim 12, of the '021 patent is anticipated and/or rendered obvious in view of U.S. Patent No. 6,154,652, U.S. Patent No. 5,117,502, *Compressed Mode Techniques for Inter-Frequency Measurements in a Wide-band DS-CDMA System*, Gustafsson et al., The 8th IEEE International Symposium on Personal Indoor and Mobile Radio Communications, Helsinki, Finland (Sept. 1–4, 2007), and/or *WCDMA—The Radio Interface for Future Mobile Multimedia Communications*, Dahlman et al., IEEE Transactions on Vehicular Technology, Vol. 47, No. 4 (Nov. 1998).

549. U.S. Patent No. 6,154,652 issued on November 28, 2000, from an application that was filed on December 4, 1998. Because the filing date of this reference predates the filing date of the earliest application to which the '021 patent claims priority, it qualifies as prior art under, at least, 35 U.S.C. § 102(e).

550. U.S. Patent No. 5,117,502 issued on May 26, 1992, from an application that was filed on March 15, 1991. Because the filing date of this reference predates the filing date of the earliest application to which the '021 patent claims priority and the reference issued as a patent over one year before the filing date of the earliest application to which the '021 patent claims priority, it qualifies as prior art under, at least, 35 U.S.C. § 102(a), (b), and (e).

551. *Compressed Mode Techniques for Inter-Frequency Measurements in a Wide-band DS-CDMA System* was published in September 1997, over one year before

1 the May 26, 1999 filing date of the earliest application to which the '021 patent claims
2 priority. On information and belief, cdma2000 V2.0 was publicly distributed and
3 accessible over one year before the May 26, 1999 filing date of the earliest application
4 to which the '021 patent claims priority, e.g., by and through the Institute of Electrical
5 and Electronics Engineer (“IEEE”) organization. As a result, this reference qualifies as
6 prior art under, at least, 35 U.S.C. § 102(a) and (b).

7 552. *WCDMA—The Radio Interface for Future Mobile Multimedia*
8 *Communications* was published in November 1998, before the May 26, 1999 filing
9 date of the earliest application to which the '021 patent claims priority. As a result, this
10 reference qualifies as prior art under at least 35 U.S.C. § 102(a).

11 553. As a result of the acts described in the foregoing paragraphs, there exists a
12 definite and concrete, real and substantial, justiciable controversy between
13 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
14 '021 patent. This controversy is of sufficient immediacy and reality to warrant the
15 issuance of a declaratory judgment.

16 554. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
17 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
18 the '021 patent are invalid.

19 **COUNT XXXIX**

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

21 555. Counterclaimants restate and incorporate by reference each of the
22 allegations set forth above.

23 556. Qualcomm has contractually obligated to license the '021 patent on
24 FRAND terms and conditions.

25 557. As a result of the acts described in the foregoing paragraphs, there exists a
26 definite and concrete, real and substantial, justiciable controversy between
27 Counterclaimants and Qualcomm regarding the FRAND royalty for the '021 patent

1 with respect to Counterclaimants’ products. This controversy is of sufficient
 2 immediacy and reality to warrant the issuance of a declaratory judgment.

3 558. To the extent that the ’021 patent is actually essential to a standard, valid,
 4 and infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select
 5 as a royalty base, at most, the smallest salable unit substantially embodying the ’021
 6 patent, and (b) apply to that royalty base a reasonable royalty rate that reflects the
 7 actual technical contribution to the standard that is attributable to the patent. *See*
 8 *CSIRO*, 809 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013
 9 WL 5593609, at *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above,
 10 Qualcomm has not complied with these requirements and has not offered FRAND
 11 terms. Counterclaimants are willing, and have been willing, to license this patent on
 12 FRAND terms. As an alternative to its requests for declarations of noninfringement,
 13 invalidity, and unenforceability, Counterclaimants are entitled to a judicial declaration
 14 that sets a FRAND royalty for the ’021 patent in this manner.

15 **COUNT XL**

16 **Declaration of Noninfringement of U.S. Patent No. 7,061,890**

17 559. Counterclaimants restate and incorporate by reference each of the
 18 allegations set forth above.

19 560. Representative claim 4 of U.S. Patent No. 7,061,890 (the “’890 patent”)
 20 reads as follows (claim element enumeration added for convenience):

Claim 4	
[a]	A method for selecting a random access channel (RACH), comprising the steps of:
[b]	receiving RACH system information message from a UTRAN (UMTS (Universal Mobile Telecommunication System) Terrestrial Radio Access Network), and determining a total number of RACHs available in a cell depending on the received RACH system information; and
[c]	selecting a scrambling code for one of the RACHs using the determined total number of the RACHs and a unique identifier of a user equipment (UE),
[d]	wherein the selected scrambling code has a serial number defined as a remainder obtained by dividing the unique identifier of the UE by a quotient obtained by dividing the total number of the RACHs by a persistence level

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Claim 4
transmitted from the UTRAN.

561. The '890 patent is not essential to the 3G/UMTS standard, including, but not limited to, the standard described in 3GPP TS 33.102, at least because, by way of non-limiting example, the 3G/UMTS standard does not require the following claim limitation: 4.[d].

562. No claim of the '890 patent has been or is infringed, either directly, contributorily, or by inducement, literally or under the doctrine of equivalents, by Counterclaimants or the purchasers of Counterclaimants' products through the manufacture, use, importation, sale, and/or offer for sale of Counterclaimants' products, at least because, by way of non-limiting example, Counterclaimants' products do not satisfy the following claim limitation: 4.[d].

563. As a result of the acts described in the foregoing paragraphs, there exists a definite and concrete, real and substantial, justiciable controversy between Counterclaimants and Qualcomm regarding the noninfringement of the '890 patent with respect to Counterclaimants' products. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

564. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do not infringe and have not infringed any claim of the '890 patent.

COUNT XLI

Declaration of Invalidity of U.S. Patent No. 7,061,890

565. Counterclaimants restate and incorporate by reference each of the allegations set forth above.

566. One or more claims of the '890 patent fail to meet the conditions of patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting

Gibson, Dunn & Crutcher LLP

1 example, the representative claim, claim 4, of the '890 patent is anticipated and/or
2 rendered obvious in view of U.S. Patent No. 6,393,047, U.S. Patent No. 6,724,813,
3 and/or U.S. Patent No. 6,535,736.

4 567. U.S. Patent No. 6,393,047 issued on May 21, 2002, from an application
5 that was filed on June 16, 1998. Because the filing date of this reference predates the
6 filing date of the earliest application to which the '890 patent claims priority, it
7 qualifies as prior art under, at least, 35 U.S.C. § 102(e).

8 568. U.S. Patent No. 6,724,813 issued on April 20, 2004, from an application
9 that was filed on October 14, 1998. Because the filing date of this reference predates
10 the filing date of the earliest application to which the '890 patent claims priority, it
11 qualifies as prior art under, at least, 35 U.S.C. § 102(e).

12 569. U.S. Patent No. 6,535,736 issued on March 18, 2003, from an application
13 that was filed on December 11, 1998. Because the filing date of this reference predates
14 the filing date of the earliest application to which the '890 patent claims priority, it
15 qualifies as prior art under, at least, 35 U.S.C. § 102(e).

16 570. As a result of the acts described in the foregoing paragraphs, there exists a
17 definite and concrete, real and substantial, justiciable controversy between
18 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
19 '890 patent. This controversy is of sufficient immediacy and reality to warrant the
20 issuance of a declaratory judgment.

21 571. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
22 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
23 the '890 patent are invalid.

24 **COUNT XLII**

25 **Declaration of FRAND Royalties for U.S. Patent No. 7,061,890**

26 572. Counterclaimants restate and incorporate by reference each of the
27 allegations set forth above.

1 573. Qualcomm has contractually obligated to license the '890 patent on
2 FRAND terms and conditions.

3 574. As a result of the acts described in the foregoing paragraphs, there exists a
4 definite and concrete, real and substantial, justiciable controversy between
5 Counterclaimants and Qualcomm regarding the FRAND royalty for the '890 patent
6 with respect to Counterclaimants' products. This controversy is of sufficient
7 immediacy and reality to warrant the issuance of a declaratory judgment.

8 575. To the extent that the '890 patent is actually essential to a standard, valid,
9 and infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select
10 as a royalty base, at most, the smallest salable unit substantially embodying the '890
11 patent, and (b) apply to that royalty base a reasonable royalty rate that reflects the
12 actual technical contribution to the standard that is attributable to the patent. *See*
13 *CSIRO*, 809 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013
14 WL 5593609, at *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above,
15 Qualcomm has not complied with these requirements and has not offered FRAND
16 terms. Counterclaimants are willing, and have been willing, to license this patent on
17 FRAND terms. As an alternative to its requests for declarations of noninfringement,
18 invalidity, and unenforceability, Counterclaimants are entitled to a judicial declaration
19 that sets a FRAND royalty for the '890 patent in this manner.

20 **COUNT XLIII**

21 **Declaration of Noninfringement of U.S. Patent No. 8,000,717**

22 576. Counterclaimants restate and incorporate by reference each of the
23 allegations set forth above.

24 577. Representative claim 1 of U.S. Patent No. 8,000,717 (the "'717 patent")
25 reads as follows (claim element enumeration added for convenience):

Claim 1	
[a]	An apparatus, in a base station functioning as a serving base station for a mobile station, for controlling reverse link communication in a distributed base station communication system, comprising:

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Claim 1	
[b]	means for receiving a maximum tolerable coupled load representing a maximum coupled load at another base station functioning as a non-serving base station to the mobile station, the maximum tolerable coupled load determined to be the reserved maximum load at the another base station due to reverse link transmissions of mobile stations served by the base station;
[c]	means for receiving a coupled load indicator representing a coupled load parameter measured at the another base station due to the mobile station; and
[d]	means for managing reverse link transmissions of the mobile station in accordance with the maximum tolerable coupled load.

578. The '717 patent is not essential to any 4G/LTE standard, including, but not limited to, the standard described in 3GPP TS 36.300, 36.420, and/or TS 36.423, at least because, by way of non-limiting example, no 4G/LTE standard requires the following claim limitation: 1.[b].

579. No claim of the '717 patent has been or is infringed, either directly, contributorily, or by inducement, literally or under the doctrine of equivalents, by Counterclaimants or the purchasers of Counterclaimants' products through the manufacture, use, importation, sale, and/or offer for sale of Counterclaimants' products, at least because, by way of non-limiting example, Counterclaimants' products do not satisfy the following claim limitation: 1.[b].

580. As a result of the acts described in the foregoing paragraphs, there exists a definite and concrete, real and substantial, justiciable controversy between Counterclaimants and Qualcomm regarding the noninfringement of the '717 patent with respect to Counterclaimants' products. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

581. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do not infringe and have not infringed any claim of the '717 patent.

COUNT XLIV

Declaration of Invalidity of U.S. Patent No. 8,000,717

582. Counterclaimants restate and incorporate by reference each of the allegations set forth above.

583. One or more claims of the '717 patent fail to meet the conditions of patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting example, the representative claim, claim 1, of the '717 patent is anticipated and/or rendered obvious in view of U.S. Patent Application No. 2002/00102985, U.S. Patent No. 6,069,883, and/or U.S. Patent No. 6,968,192.

584. U.S. Patent Application No. 2002/0102985 was filed on January 31, 2001, and was published on August 1, 2002. Because the filing date of this reference predates the earliest application to which the '717 patent claims priority, it qualifies as prior art under, at least, 35 U.S.C. § 102(a) and (e).

585. U.S. Patent No. 6,069,883 issued on May 30, 2000, from an application that was filed on April 8, 1997, and claims priority to a prior application filed on October 5, 1995. Because the filing date of this reference predates the filing date of the earliest application to which the '717 patent claims priority and the reference issued as a patent over one year before the filing date of the earliest application to which the '717 patent claims priority, it qualifies as prior art under, at least, 35 U.S.C. § 102(a), (b), and/or (e).

586. U.S. Patent No. 6,968,192 issued on November 22, 2005, from an application that was filed on June 7, 2001, and was published on May 2, 2002. Because the filing date of this reference predates the filing date of the earliest application to which the '717 patent claims priority and the reference was published over one year before the filing date of the earliest application to which the '717 patent claims priority, it qualifies as prior art under, at least, 35 U.S.C. § 102(a), (b), and/or (e).

1 587. As a result of the acts described in the foregoing paragraphs, there exists a
2 definite and concrete, real and substantial, justiciable controversy between
3 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
4 '717 patent. This controversy is of sufficient immediacy and reality to warrant the
5 issuance of a declaratory judgment.

6 588. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
7 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
8 the '717 patent are invalid.

9 **COUNT XLV**

10 **Declaration of FRAND Royalties for U.S. Patent No. 8,000,717**

11 589. Counterclaimants restate and incorporate by reference each of the
12 allegations set forth above.

13 590. Qualcomm has contractually obligated to license the '717 patent on
14 FRAND terms and conditions.

15 591. As a result of the acts described in the foregoing paragraphs, there exists a
16 definite and concrete, real and substantial, justiciable controversy between
17 Counterclaimants and Qualcomm regarding the FRAND royalty for the '717 patent
18 with respect to Counterclaimants' products. This controversy is of sufficient
19 immediacy and reality to warrant the issuance of a declaratory judgment.

20 592. To the extent that the '717 patent is actually essential to a standard, valid,
21 and infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select
22 as a royalty base, at most, the smallest salable unit substantially embodying the '717
23 patent, and (b) apply to that royalty base a reasonable royalty rate that reflects the
24 actual technical contribution to the standard that is attributable to the patent. *See*
25 *CSIRO*, 809 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013
26 WL 5593609, at *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above,
27 Qualcomm has not complied with these requirements and has not offered FRAND

1 terms. Counterclaimants are willing, and have been willing, to license this patent on
 2 FRAND terms. As an alternative to its requests for declarations of noninfringement,
 3 invalidity, and unenforceability, Counterclaimants are entitled to a judicial declaration
 4 that sets a FRAND royalty for the '717 patent in this manner.

5 **COUNT XLVI**

6 **Declaration of Noninfringement of U.S. Patent No. 8,614,975**

7 593. Counterclaimants restate and incorporate by reference each of the
 8 allegations set forth above.

9 594. Representative claim 1 of U.S. Patent No. 8,614,975 (the "'975 patent")
 10 reads as follows (claim element enumeration added for convenience):

Claim 1	
[a]	A method for synchronizing a wireless communication system, comprising:
[b]	determining a silence duration for a base station based on a stratum level of the base station, the stratum level corresponding to a number of base stations including a global timing source node and zero or more intermediate base stations between the base station and the global timing source node; and
[c]	ceasing all transmissions from the base station for the silence duration.

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15 595. The '975 patent is not essential to any 4G/LTE standard, including, but
 16 not limited to, the standard described in 3GPP TS 36.413, at least because, by way of
 17 non-limiting example, no 4G/LTE standard requires the following claim limitation:
 18 1.[b].

19 596. No claim of the '975 patent has been or is infringed, either directly,
 20 contributorily, or by inducement, literally or under the doctrine of equivalents, by
 21 Counterclaimants or the purchasers of Counterclaimants' products through the
 22 manufacture, use, importation, sale, and/or offer for sale of Counterclaimants'
 23 products, at least because, by way of non-limiting example, Counterclaimants'
 24 products do not satisfy the following claim limitation: 1.[b].

25 597. As a result of the acts described in the foregoing paragraphs, there exists a
 26 definite and concrete, real and substantial, justiciable controversy between
 27 Counterclaimants and Qualcomm regarding the noninfringement of the '975 patent

1 with respect to Counterclaimants' products. This controversy is of sufficient
2 immediacy and reality to warrant the issuance of a declaratory judgment.

3 598. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
4 *seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do
5 not infringe and have not infringed any claim of the '975 patent.

6 **COUNT XLVII**

7 **Declaration of Invalidity of U.S. Patent No. 8,614,975**

8 599. Counterclaimants restate and incorporate by reference each of the
9 allegations set forth above.

10 600. One or more claims of the '975 patent fail to meet the conditions of
11 patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101
12 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting
13 example, the representative claim, claim 1, of the '975 patent is anticipated and/or
14 rendered obvious in view of U.S. Patent No. 7,990,944 and U.S. Patent Application
15 No. 2006/0140135.

16 601. U.S. Patent No. 7,990,944 issued on August 2, 2011, from an application
17 that was filed on September 6, 2007. Because the filing date of this reference predates
18 the filing date of the earliest application to which the '975 patent claims priority, it
19 qualifies as prior art under, at least, 35 U.S.C. § 102(e).

20 602. U.S. Patent Application No. 2006/0140135 was filed on December 28,
21 2004, and was published on June 29, 2006. Because the filing date of this reference
22 predates the earliest application to which the '975 patent claims priority and the
23 reference was published over one year before the filing date of the earliest application
24 to which the '975 patent claims priority, it qualifies as prior art under, at least, 35
25 U.S.C. § 102(a), (b), and/or (e).

26 603. As a result of the acts described in the foregoing paragraphs, there exists a
27 definite and concrete, real and substantial, justiciable controversy between

1 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
2 '975 patent. This controversy is of sufficient immediacy and reality to warrant the
3 issuance of a declaratory judgment.

4 604. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
5 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
6 the '975 patent are invalid.

7 **COUNT XLVIII**

8 **Declaration of FRAND Royalties for U.S. Patent No. 8,614,975**

9 605. Counterclaimants restate and incorporate by reference each of the
10 allegations set forth above.

11 606. Qualcomm has contractually obligated to license the '975 patent on
12 FRAND terms and conditions.

13 607. As a result of the acts described in the foregoing paragraphs, there exists a
14 definite and concrete, real and substantial, justiciable controversy between
15 Counterclaimants and Qualcomm regarding the FRAND royalty for the '975 patent
16 with respect to Counterclaimants' products. This controversy is of sufficient
17 immediacy and reality to warrant the issuance of a declaratory judgment.

18 608. To the extent that the '975 patent is actually essential to a standard, valid,
19 and infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select
20 as a royalty base, at most, the smallest salable unit substantially embodying the '975
21 patent, and (b) apply to that royalty base a reasonable royalty rate that reflects the
22 actual technical contribution to the standard that is attributable to the patent. *See*
23 *CSIRO*, 809 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013
24 WL 5593609, at *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above,
25 Qualcomm has not complied with these requirements and has not offered FRAND
26 terms. Counterclaimants are willing, and have been willing, to license this patent on
27 FRAND terms. As an alternative to its requests for declarations of noninfringement,

1 invalidity, and unenforceability, Counterclaimants are entitled to a judicial declaration
 2 that sets a FRAND royalty for the '975 patent in this manner.

3 **COUNT XLIX**

4 **Declaration of Noninfringement of U.S. Patent No. 8,761,068**

5 609. Counterclaimants restate and incorporate by reference each of the
 6 allegations set forth above.

7 610. Representative claim 1 of U.S. Patent No. 8,761,068 (the "'068 patent")
 8 reads as follows (claim element enumeration added for convenience):

Claim 1	
[a]	A method of initiating a high speed uplink channel, comprising:
[b]	receiving, at a user equipment (UE), an order on a high speed shared control channel (HS-SCCH) from a Node B, wherein the order is configured to trigger the UE to start transmitting on a high speed dedicated physical control channel (HS-DPCCH) in CELL FACH;
[c]	performing a physical random access channel (PRACH) procedure in response to the receiving of the order;
[d]	performing a collision resolution procedure in response to the receiving of the order; and
[e]	transmitting, in response to the order, a current channel quality indicator (CQI) of the UE on the HS-DPCCH prior to achieving a collision resolution result from the collision resolution procedure.

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17 611. The '068 patent is not essential to any 3G/UMTS standard, including, but
 18 not limited to, the standards described in 3GPP TS 25.212, 25.214 and/or 25.321, at
 19 least because, by way of non-limiting example, the 3G/UMTS standard does not
 20 require the following claim limitation: 1.[b].

21 612. No claim of the '068 patent has been or is infringed, either directly,
 22 contributorily, or by inducement, literally or under the doctrine of equivalents, by
 23 Counterclaimants or the purchasers of Counterclaimants' products through the
 24 manufacture, use, importation, sale, and/or offer for sale of Counterclaimants'
 25 products, at least because, by way of non-limiting example, Counterclaimants'
 26 products do not satisfy the following claim limitation: 1.[b].

1 613. As a result of the acts described in the foregoing paragraphs, there exists a
2 definite and concrete, real and substantial, justiciable controversy between
3 Counterclaimants and Qualcomm regarding the noninfringement of the '068 patent
4 with respect to Counterclaimants' products. This controversy is of sufficient
5 immediacy and reality to warrant the issuance of a declaratory judgment.

6 614. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
7 *seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do
8 not infringe and have not infringed any claim of the '068 patent.

9 **COUNT L**

10 **Declaration of Invalidity of U.S. Patent No. 8,761,068**

11 615. Counterclaimants restate and incorporate by reference each of the
12 allegations set forth above.

13 616. One or more claims of the '068 patent fail to meet the conditions of
14 patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101
15 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting
16 example, the representative claim, claim 1, of the '068 patent is anticipated and/or
17 rendered obvious in view of U.S. Patent No. 8,730,989.

18 617. U.S. Patent No. 8,730,989 issued on May 20, 2014, from an application
19 that was filed on February 10, 2012, and claims priority to provisional applications
20 filed on February 11, 2011, April 29, 2011 and August 12, 2011. Because the effective
21 filing date of this reference predates the filing date of the earliest application to which
22 the '068 patent claims priority, it qualifies as prior art under, at least, 35 U.S.C. §
23 102(e).

24 618. As a result of the acts described in the foregoing paragraphs, there exists a
25 definite and concrete, real and substantial, justiciable controversy between
26 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
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1 '068 patent. This controversy is of sufficient immediacy and reality to warrant the
2 issuance of a declaratory judgment.

3 619. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
4 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
5 the '068 patent are invalid.

6 **COUNT LI**

7 **Declaration of FRAND Royalties for U.S. Patent No. 8,761,068**

8 620. Counterclaimants restate and incorporate by reference each of the
9 allegations set forth above.

10 621. Qualcomm has contractually obligated to license the '068 patent on
11 FRAND terms and conditions.

12 622. As a result of the acts described in the foregoing paragraphs, there exists a
13 definite and concrete, real and substantial, justiciable controversy between
14 Counterclaimants and Qualcomm regarding the FRAND royalty for the '068 patent
15 with respect to Counterclaimants' products. This controversy is of sufficient
16 immediacy and reality to warrant the issuance of a declaratory judgment.

17 623. To the extent that the '068 patent is actually essential to a standard, valid,
18 infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select as a
19 royalty base, at most, the smallest salable unit substantially embodying the '068 patent,
20 and (b) apply to that royalty base a reasonable royalty rate that reflects the actual
21 technical contribution to the standard that is attributable to the patent. *See CSIRO*, 809
22 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013 WL 5593609, at
23 *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above, Qualcomm has not
24 complied with these requirements and has not offered FRAND terms.

25 Counterclaimants are willing, and have been willing, to license this patent on FRAND
26 terms. As an alternative to its requests for declarations of noninfringement, invalidity,
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1 and unenforceability, Counterclaimants are entitled to a judicial declaration that sets a
 2 FRAND royalty for the '068 patent in this manner.

3 **COUNT LII**

4 **Declaration of Noninfringement of U.S. Patent No. 8,861,424**

5 624. Counterclaimants restate and incorporate by reference each of the
 6 allegations set forth above.

7 625. Representative claim 1 of U.S. Patent No. 8,861,424 (the "'424 patent")
 8 reads as follows (claim element enumeration added for convenience):

Claim 1	
[a]	A method for wireless communications, comprising:
[b]	allocating resources of a backhaul link between a donor base station and a relay base station to the relay base station for communicating with the donor base station; and
[c]	transmitting a control channel indicating the allocated resources to the relay base station,
[d]	wherein the control channel is transmitted on a subset of physical resource blocks (PRBs) of subframes assigned for downlink communications on the backhaul link, and
[e]	wherein a size of the control channel is aligned with a bandwidth-dependent resource block group (RBG) size.

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 16 626. The '424 patent is not essential to any 4G/LTE standard, including, but
 17 not limited to, the standard described in 3GPP TS 36.216, at least because, by way of
 18 non-limiting example, no 4G/LTE standard requires the following claim limitation:
 19 1.[b-e].

20 627. No claim of the '424 patent has been or is infringed, either directly,
 21 contributorily, or by inducement, literally or under the doctrine of equivalents, by
 22 Counterclaimants or the purchasers of Counterclaimants' products through the
 23 manufacture, use, importation, sale, and/or offer for sale of Counterclaimants'
 24 products, at least because, by way of non-limiting example, Counterclaimants'
 25 products do not satisfy the following claim limitation: 1.[b-e].

26 628. As a result of the acts described in the foregoing paragraphs, there exists a
 27 definite and concrete, real and substantial, justiciable controversy between

1 Counterclaimants and Qualcomm regarding the noninfringement of the '424 patent
2 with respect to Counterclaimants' products. This controversy is of sufficient
3 immediacy and reality to warrant the issuance of a declaratory judgment.

4 629. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
5 *seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do
6 not infringe and have not infringed any claim of the '424 patent.

7 **COUNT LIII**

8 **Declaration of Invalidity of U.S. Patent No. 8,861,424**

9 630. Counterclaimants restate and incorporate by reference each of the
10 allegations set forth above.

11 631. One or more claims of the '424 patent fail to meet the conditions of
12 patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101
13 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting
14 example, the representative claim, claim 1, of the '424 patent is anticipated and/or
15 rendered obvious in view of U.S. patent 8,537,724 and 3GPP TS 36.213 version 8.3.0
16 Release 8.

17 632. U.S. Patent No. 8,537,724 issued on September 17, 2013, from an
18 application that was filed on March 17, 2009. Because the effective filing date of this
19 reference predates July 6, 2009, which is the filing date of the earliest application to
20 which the '424 patent claims priority, it qualifies as prior art under, at least, 35 U.S.C.
21 § 102(e).

22 633. 3GPP TS 36.213 version 8.3.0 Release 8 ("TS 36.213") was published in
23 November, 2008. Based on on information and belief, TS 36.213 was publicly
24 distributed and accessible before July 6, 2009, which is the filing date of the earliest
25 application to which the '424 patent claims priority, *e.g.*, by and through ETSI, it
26 qualifies as prior art under, at least, 35 U.S.C. § 102(a).

1 634. As a result of the acts described in the foregoing paragraphs, there exists a
2 definite and concrete, real and substantial, justiciable controversy between
3 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
4 '424 patent. This controversy is of sufficient immediacy and reality to warrant the
5 issuance of a declaratory judgment.

6 635. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
7 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
8 the '424 patent are invalid.

9 **COUNT LIV**

10 **Declaration of FRAND Royalties for U.S. Patent No. 8,861,424**

11 636. Counterclaimants restate and incorporate by reference each of the
12 allegations set forth above.

13 637. Qualcomm has contractually obligated to license the '424 patent on
14 FRAND terms and conditions.

15 638. As a result of the acts described in the foregoing paragraphs, there exists a
16 definite and concrete, real and substantial, justiciable controversy between
17 Counterclaimants and Qualcomm regarding the FRAND royalty for the '424 patent
18 with respect to Counterclaimants' products. This controversy is of sufficient
19 immediacy and reality to warrant the issuance of a declaratory judgment.

20 639. To the extent that the '424 patent is actually essential to a standard, valid,
21 infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select as a
22 royalty base, at most, the smallest salable unit substantially embodying the '424 patent,
23 and (b) apply to that royalty base a reasonable royalty rate that reflects the actual
24 technical contribution to the standard that is attributable to the patent. *See CSIRO*, 809
25 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013 WL 5593609, at
26 *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above, Qualcomm has not
27 complied with these requirements and has not offered FRAND terms. Counterclaimants

1 are willing, and have been willing, to license this patent on FRAND terms. As an
 2 alternative to its requests for declarations of noninfringement, invalidity, and
 3 unenforceability, Counterclaimants are entitled to a judicial declaration that sets a
 4 FRAND royalty for the '424 patent in this manner.

5 **COUNT LV**

6 **Declaration of Noninfringement of U.S. Patent No. 8,873,471**

7 640. Counterclaimants restate and incorporate by reference each of the
 8 allegations set forth above.

9 641. Representative claim 1 of U.S. Patent No. 8,873,471 (the "'471 patent")
 10 reads as follows (claim element enumeration added for convenience):

Claim 1	
[a]	A method for optimizing Radio Link Control (RLC) headers comprising:
[b]	implementing, by one or more processors, a segment offset (SO) field in a RLC header to designate resegmented packets for lost protocol data units;
[c]	implementing, by the one or more processors, a length indicator (LSO) for the SO field in the RLC header, to further accommodate a variable size of the SO field in the RLC header; and
[d]	implementing, by the one or more processors, a Last Segment Flag (LSF) in the RLC header to identify a last segment of a protocol data unit (PDU).

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17 642. The '471 patent is not essential to the 4G/LTE standard, including, but not
 18 limited to, the standard described in 3GPP TS 36.322, at least because, by way of non-
 19 limiting example, the 4G/LTE standard does not require the following claim limitation:
 20 1.[c].

21 643. No claim of the '471 patent has been or is infringed, either directly,
 22 contributorily, or by inducement, literally or under the doctrine of equivalents, by
 23 Counterclaimants or the purchasers of Counterclaimants' products through the
 24 manufacture, use, importation, sale, and/or offer for sale of Counterclaimants'
 25 products, at least because, by way of non-limiting example, Counterclaimants'
 26 products do not satisfy the following claim limitation: 1.[c].

1 1, 2007 filing date of the earliest application to which the '471 patent claims priority,
2 this reference qualifies as prior art under, at least, 35 U.S.C. § 102(a).

3 649. *Comparison of different SN handling at Layer 2* was published in August
4 2007. On information and belief, *Comparison of different SN handling at Layer 2* was
5 publicly distributed and accessible before the October 1, 2007 filing date of the earliest
6 application to which the '471 patent claims priority, e.g., by and through the Third
7 Generation Partnership Project ("3GPP2") organization. Because the reference was
8 described in a publication before the October 1, 2007 filing date of the earliest
9 application to which the '471 patent claims priority, this reference qualifies as prior art
10 under, at least, 35 U.S.C. § 102(a).

11 650. As a result of the acts described in the foregoing paragraphs, there exists a
12 definite and concrete, real and substantial, justiciable controversy between
13 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
14 '471 patent. This controversy is of sufficient immediacy and reality to warrant the
15 issuance of a declaratory judgment.

16 651. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
17 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
18 the '471 patent are invalid.

19 **COUNT LVII**

20 **Declaration of FRAND Royalties for U.S. Patent No. 8,873,471**

21 652. Counterclaimants restate and incorporate by reference each of the
22 allegations set forth above.

23 653. Qualcomm has contractually obligated to license the '471 patent on
24 FRAND terms and conditions.

25 654. As a result of the acts described in the foregoing paragraphs, there exists a
26 definite and concrete, real and substantial, justiciable controversy between
27 Counterclaimants and Qualcomm regarding the FRAND royalty for the '471 patent

1 with respect to Counterclaimants’ products. This controversy is of sufficient
 2 immediacy and reality to warrant the issuance of a declaratory judgment.

3 655. To the extent that the ’471 patent is actually essential to a standard, valid,
 4 infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select as a
 5 royalty base, at most, the smallest salable unit substantially embodying the ’471 patent,
 6 and (b) apply to that royalty base a reasonable royalty rate that reflects the actual
 7 technical contribution to the standard that is attributable to the patent. *See CSIRO*, 809
 8 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013 WL 5593609, at
 9 *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above, Qualcomm has not
 10 complied with these requirements and has not offered FRAND terms. Counterclaimants
 11 are willing, and have been willing, to license this patent on FRAND terms. As an
 12 alternative to its requests for declarations of noninfringement, invalidity, and
 13 unenforceability, Counterclaimants are entitled to a judicial declaration that sets a
 14 FRAND royalty for the ’471 patent in this manner.

15 **COUNT LVIII**

16 **Declaration of Noninfringement of U.S. Patent No. 8,989,140**

17 656. Counterclaimants restate and incorporate by reference each of the
 18 allegations set forth above.

19 657. Representative claim 1 of U.S. Patent No. 8,989,140 (the “’140 patent”)
 20 reads as follows (claim element enumeration added for convenience):

Claim 1	
[a]	1. A method of wireless communication for a User Equipment (UE) that is configured with a Multi-Point High Speed Data Packet Access (HSDPA) mode utilizing a primary serving cell and a secondary serving cell, the method comprising:
[b]	receiving Multi-Point HSDPA data from a first cell as the primary serving cell and a second cell as the secondary serving cell;
[c]	determining that a measurement of the secondary serving cell exceeds a measurement of the primary serving cell;
[d]	transmitting a request corresponding to the measurement of the secondary serving cell;
[e]	receiving a Radio Resource Control (RRC) message in response to the

Claim 1	
	request, wherein the RRC message includes an information element configured to inform the UE that the secondary serving cell utilizes the same carrier frequency as that of the primary serving cell;
[f]	transmitting a response to the RRC message to confirm completion of a reconfiguration in accordance with the RRC message; and
[g]	receiving Multi-Point HSDPA data from the second cell as the primary serving cell and the first cell as the secondary serving cell in response to the reconfiguration.

658. The '140 patent is not essential to any 3G/UMTS standard, including, but not limited to, the standard described in 3GPP TS 25.331, at least because, by way of non-limiting example, the 3G/UMTS standard does not require the following claim limitation: 1.[b].

659. No claim of the '140 patent has been or is infringed, either directly, contributorily, or by inducement, literally or under the doctrine of equivalents, by Counterclaimants or the purchasers of Counterclaimants' products through the manufacture, use, importation, sale, and/or offer for sale of Counterclaimants' products, at least because, by way of non-limiting example, Counterclaimants' products do not satisfy the following claim limitation: 1.[b].

660. As a result of the acts described in the foregoing paragraphs, there exists a definite and concrete, real and substantial, justiciable controversy between Counterclaimants and Qualcomm regarding the noninfringement of the '140 patent with respect to Counterclaimants' products. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

661. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do not infringe and have not infringed any claim of the '140 patent.

COUNT LIX

Declaration of Invalidity of U.S. Patent No. 8,989,140

662. Counterclaimants restate and incorporate by reference each of the allegations set forth above.

663. One or more claims of the '140 patent fail to meet the conditions of patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting example, the representative claim, claim 1, of the '140 patent is anticipated and/or rendered obvious in view of U.S. Patent No. 8,854,976, U.S. Patent No. 8,948,765, U.S. Patent Appl. Pub. No. 2008/0261599, and/or U.S. Patent Appl. Pub. No. 2009/0052401.

664. U.S. Patent No. 8,854,976 issued on October 7, 2014, from an application that was filed on January 7, 2011, and claims priority to provisional applications filed on June 17, 2010, April 30, 2010, April 2, 2010 and January 8, 2010. Because the effective filing date of this reference predates the filing date of the earliest application to which the '140 patent claims priority, it qualifies as prior art under, at least, 35 U.S.C. § 102(e).

665. U.S. Patent No. 8,948,765 issued on February 3, 2015, from an application that was filed on March 25, 2011, and claims priority to a provisional application filed on April 2, 2010. Because the effective filing date of this reference predates the filing date of the earliest application to which the '140 patent claims priority, it qualifies as prior art under, at least, 35 U.S.C. § 102(e).

666. U.S. Patent Application Publication No. 2008/0261599 published on October 23, 2008, from an application that was filed on April 10, 2008. Because the reference published over one year before June 28, 2010, which is the earliest provisional application date of the '140 patent, it qualifies as prior art under, at least, 35 U.S.C. § 102(a), (b), and (e).

1 667. U.S. Patent Application Publication No. 2009/0052401 published on
2 February 26, 2009, from an application that was filed on February 1, 2007. Because
3 the reference published over one year before June 28, 2010, which is the earliest
4 provisional application date of the '140 patent, it qualifies as prior art under, at least,
5 35 U.S.C. § 102(a), (b), and (e).

6 668. As a result of the acts described in the foregoing paragraphs, there exists a
7 definite and concrete, real and substantial, justiciable controversy between
8 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
9 '140 patent. This controversy is of sufficient immediacy and reality to warrant the
10 issuance of a declaratory judgment.

11 669. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
12 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
13 the '140 patent are invalid.

14 **COUNT LX**

15 **Declaration of FRAND Royalties for U.S. Patent No. 8,989,140**

16 670. Counterclaimants restate and incorporate by reference each of the
17 allegations set forth above.

18 671. Qualcomm has contractually obligated to license the '140 patent on
19 FRAND terms and conditions.

20 672. As a result of the acts described in the foregoing paragraphs, there exists a
21 definite and concrete, real and substantial, justiciable controversy between
22 Counterclaimants and Qualcomm regarding the FRAND royalty for the '140 patent
23 with respect to Counterclaimants' products. This controversy is of sufficient
24 immediacy and reality to warrant the issuance of a declaratory judgment.

25 673. To the extent that the '140 patent is actually essential to a standard, valid,
26 infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select as a
27 royalty base, at most, the smallest salable unit substantially embodying the '140 patent,

1 and (b) apply to that royalty base a reasonable royalty rate that reflects the actual
 2 technical contribution to the standard that is attributable to the patent. *See CSIRO*, 809
 3 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013 WL 5593609, at
 4 *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above, Qualcomm has not
 5 complied with these requirements and has not offered FRAND terms. Counterclaimants
 6 are willing, and have been willing, to license this patent on FRAND terms. As an
 7 alternative to its requests for declarations of noninfringement, invalidity, and
 8 unenforceability, Counterclaimants are entitled to a judicial declaration that sets a
 9 FRAND royalty for the '140 patent in this manner.

10 **COUNT LXI**

11 **Declaration of Noninfringement of U.S. Patent No. 9,007,974**

12 674. Counterclaimants restate and incorporate by reference each of the
 13 allegations set forth above.

14 675. Representative claim 1 of U.S. Patent No. 9,007,974 (the “’974 patent”)
 15 reads as follows (claim element enumeration added for convenience):

Claim 1	
[a]	A method for wireless communications comprising:
[b]	communicatively connecting with a user equipment (UE), a first cell, and a second cell;
[c]	determining a sub-frame pairing between the first cell and the second cell;
[d]	determining a timing offset representative of a sub-frame delay between the first cell and the second cell;
[e]	selectively updating the sub-frame pairing based on the timing offset by aligning a first downlink discontinuous reception (DRX) pattern of the first cell with a second DRX pattern of the second cell based on the sub-frame pairing;
[f]	transmitting timing information of the first and second DRX patterns to the UE; and
[g]	signaling the first cell and the second cell of the DRX patterns and corresponding timings.

25 676. The '974 patent is not essential to any 3G/UMTS standard, including, but
 26 not limited to, the standard described in 3GPP TS 25.214, at least because, by way of
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1 non-limiting example, the 3G/UMTS standard does not require the following claim
2 limitation: 1.[f].

3 677. No claim of the '974 patent has been or is infringed, either directly,
4 contributorily, or by inducement, literally or under the doctrine of equivalents, by
5 Counterclaimants or the purchasers of Counterclaimants' products through the
6 manufacture, use, importation, sale, and/or offer for sale of Counterclaimants'
7 products, at least because, by way of non-limiting example, Counterclaimants'
8 products do not satisfy the following claim limitation: 1.[f].

9 678. As a result of the acts described in the foregoing paragraphs, there exists a
10 definite and concrete, real and substantial, justiciable controversy between
11 Counterclaimants and Qualcomm regarding the noninfringement of the '974 patent
12 with respect to Counterclaimants' products. This controversy is of sufficient
13 immediacy and reality to warrant the issuance of a declaratory judgment.

14 679. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
15 *seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do
16 not infringe and have not infringed any claim of the '974 patent.

17 **COUNT LXII**

18 **Declaration of Invalidity of U.S. Patent No. 9,007,974**

19 680. Counterclaimants restate and incorporate by reference each of the
20 allegations set forth above.

21 681. One or more claims of the '974 patent fail to meet the conditions of
22 patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101
23 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting
24 example, the representative claim, claim 1, of the '974 patent is anticipated and/or
25 rendered obvious in view of U.S. Patent No. 8,867,442 in view of U.S. Patent No.
26 8,929,301.

1 682. U.S. Patent No. 8,867,442 issued on October 21, 2014, from an
2 application that was filed on September 29, 2011, and claims priority to provisional
3 applications filed on October 1, 2010, April 29, 2011 and August 12, 2011. Because
4 the filing date of this reference predates the filing date of the earliest application to
5 which the '974 patent claims priority, it qualifies as prior art under, at least, 35 U.S.C.
6 § 102(e).

7 683. U.S. Patent No. 8,929,301 issued on January 6, 2015, from an application
8 that was filed on April 24, 2009, published on December 3, 2009, and claims priority
9 to provisional applications filed on April 25, 2008, July 31, 2008 and November 10,
10 2008. Because the publication of this reference is more than one year before March 19,
11 2012, which is the earliest provisional application date of the '974 patent, it qualifies
12 as prior art under, at least, 35 U.S.C. § 102(a), (b), and (e).

13 684. As a result of the acts described in the foregoing paragraphs, there exists a
14 definite and concrete, real and substantial, justiciable controversy between
15 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
16 '974 patent. This controversy is of sufficient immediacy and reality to warrant the
17 issuance of a declaratory judgment.

18 685. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
19 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
20 the '974 patent are invalid.

21 **COUNT LXIII**

22 **Declaration of FRAND Royalties for U.S. Patent No. 9,007,974**

23 686. Counterclaimants restate and incorporate by reference each of the
24 allegations set forth above.

25 687. Qualcomm has contractually obligated to license the '974 patent on
26 FRAND terms and conditions.

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1 688. As a result of the acts described in the foregoing paragraphs, there exists a
 2 definite and concrete, real and substantial, justiciable controversy between
 3 Counterclaimants and Qualcomm regarding the FRAND royalty for the '974 patent
 4 with respect to Counterclaimants' products. This controversy is of sufficient
 5 immediacy and reality to warrant the issuance of a declaratory judgment.

6 689. To the extent that the '974 patent is actually essential to a standard, valid,
 7 and infringed by Counterclaimants, and not exhausted, then Qualcomm must (a) select
 8 as a royalty base, at most, the smallest salable unit substantially embodying the '974
 9 patent, and (b) apply to that royalty base a reasonable royalty rate that reflects the
 10 actual technical contribution to the standard that is attributable to the patent. *See*
 11 *CSIRO*, 809 F.3d at 1305; *Ericsson*, 773 F.3d at 1209; *Innovatio IP Ventures*, 2013
 12 WL 5593609, at *13; *Microsoft*, 2013 WL 2111217, at *74. As discussed above,
 13 Qualcomm has not complied with these requirements and has not offered FRAND
 14 terms. Counterclaimants are willing, and have been willing, to license this patent on
 15 FRAND terms. As an alternative to its requests for declarations of noninfringement,
 16 invalidity, and unenforceability, Counterclaimants are entitled to a judicial declaration
 17 that sets a FRAND royalty for the '974 patent in this manner.

18 **COUNT LXIV**

19 **Declaration of Noninfringement of U.S. Patent No. 9,144,071**

20 690. Counterclaimants restate and incorporate by reference each of the
 21 allegations set forth above.

22 691. Representative claim 1 of U.S. Patent No. 9,144,071 (the "'071 patent")
 23 reads as follows (claim element enumeration added for convenience):

Claim 1	
[a]	A method for wireless communications, comprising:
[b]	receiving, at a first base station, resource partitioning information (RPI) from at least one second base station, wherein the RPI comprises a bitmap of almost blank subframes (ABSs);
[c]	determining one or more resources indicated in the RPI usable by the first base station; and

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Claim 1	
[d]	sending, from the first base station to the at least one second base station, an indication of the usable resources.

692. The '071 patent is not essential to any 4G/LTE standard, including, but not limited to, the standard described in 3GPP TS 36.423, at least because, by way of non-limiting example, no 4G/LTE standard requires the following claim limitations: 1.[b-d].

693. No claim of the '071 patent has been or is infringed, either directly, contributorily, or by inducement, literally or under the doctrine of equivalents, by Counterclaimants or the purchasers of Counterclaimants' products through the manufacture, use, importation, sale, and/or offer for sale of Counterclaimants' products, at least because, by way of non-limiting example, Counterclaimants' products do not satisfy the following claim limitations: 1.[b-d].

694. As a result of the acts described in the foregoing paragraphs, there exists a definite and concrete, real and substantial, justiciable controversy between Counterclaimants and Qualcomm regarding the noninfringement of the '071 patent with respect to Counterclaimants' products. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

695. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, Counterclaimants request the declaration of the Court that Counterclaimants do not infringe and have not infringed any claim of the '071 patent.

COUNT LXV

Declaration of Invalidity of U.S. Patent No. 9,144,071

696. Counterclaimants restate and incorporate by reference each of the allegations set forth above.

697. One or more claims of the '071 patent fail to meet the conditions of patentability and/or otherwise comply with one or more provisions of 35 U.S.C. § 101 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and/or 112. By way of non-limiting

1 example, the representative claim, claim 1, of the '071 patent is anticipated and/or
2 rendered obvious in view of U.S. Patent No. 8,537,724 in view of 3GPP R1-105779,
3 Agenda Item 6.8.1.1, presented at TSG-RAN WG1 Meeting #62bis.

4 698. U.S. Patent No. 8,537,724 issued on September 17, 2013, from an
5 application that was filed on March 17, 2009. Because the effective filing date of this
6 reference predates March 24, 2011, which is the filing date of the earliest application
7 to which the '071 patent claims priority, it qualifies as prior art under, at least, 35
8 U.S.C. § 102(e).

9 699. 3GPP R1-105779, Agenda Item 6.8.1.1, presented at TSG-RAN WG1
10 Meeting #62bis, was, on information and belief, published in October 2010. Because
11 the publication date of the reference predates March 24, 2011, which is the filing date
12 of the earliest application date of the '071 patent, it qualifies as prior art under, at least,
13 35 U.S.C. § 102(a).

14 700. As a result of the acts described in the foregoing paragraphs, there exists a
15 definite and concrete, real and substantial, justiciable controversy between
16 Counterclaimants and Qualcomm regarding the validity of one or more claims of the
17 '071 patent. This controversy is of sufficient immediacy and reality to warrant the
18 issuance of a declaratory judgment.

19 701. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
20 *seq.*, Counterclaimants request the declaration of the Court that one or more claims of
21 the '071 patent are invalid.

22 COUNT LXVI

23 **Declaration of FRAND Royalties for U.S. Patent No. 9,144,071**

24 702. Counterclaimants restate and incorporate by reference each of the
25 allegations set forth above.

26 703. Qualcomm has contractually obligated to license the '071 patent on
27 FRAND terms and conditions.

1 709. Under the patent exhaustion doctrine, this authorized sale of modem chips
2 by Qualcomm to Counterclaimants exhausts Qualcomm’s patent rights with respect to
3 all patents substantially embodied in Qualcomm modem chips. *See Lexmark Int’l*, 137
4 S. Ct. at 1531–38; *Quanta Computer*, 553 U.S. at 638.

5 710. As described above, Qualcomm has sought, and continues to seek, both
6 the price of the modem chips themselves, and also separate patent license agreements
7 and royalties from Counterclaimants for the purported right to make, use, and sell
8 products that would allegedly infringe Qualcomm patents that are substantially
9 embodied in the Qualcomm modem chips.

10 711. Counterclaimants pay the entirety of both the license royalty and the cost
11 of the modem chip itself through the web of agreements described herein.

12 712. As the Supreme Court recently reaffirmed, the rights granted by the Patent
13 Act ensure that Qualcomm “receives one reward” for its alleged invention—either the
14 sale price or the license fee—but not both. *Lexmark Int’l*, 137 S. Ct. at 1537.

15 Qualcomm’s decision to sell modem chips in which its patents are substantially
16 embodied and receive whatever fee it decides is appropriate “for the article and the
17 invention which it embodies” triggers exhaustion, prohibiting Qualcomm from seeking
18 license royalties for Counterclaimants products that incorporate those modem chips.
19 *Id.* (quoting *United States v. Univis Lens Co.*, 316 U.S. 241, 251 (1942)).

20 713. Moreover, Qualcomm’s refusal to sell modem chips to Counterclaimants
21 unless they also pay for a license to practice the patents substantially embodied in
22 those modem chips is an example of a “conditional sale” prohibited by patent law and
23 the patent exhaustion doctrine. The sale to Counterclaimants is conditioned on
24 Counterclaimants paying a license fee for the same products, even though no license
25 fee is owed. But once “a patentee decides to sell—whether on its own or through a
26 licensee—that sale exhausts its patent rights, regardless of any post-sale restrictions the
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1 patentee purports to impose, either directly or *through a license.*” *Lexmark, Int’l*, 137
2 S. Ct. at 1535 (emphasis added).

3 714. Qualcomm has attempted to evade the patent exhaustion doctrine by
4 reorganizing its corporate structure to create an artificial division between
5 (a) Qualcomm Inc., which holds Qualcomm’s patents, (b) Qualcomm’s wholly owned
6 subsidiary QTI, and (c) Qualcomm’s U.S. and Asia-Pacific sales segments QCT and
7 QCTAP, which are operated by QTI and its subsidiaries.

8 715. As described below, Qualcomm has also restricted Counterclaimants’
9 ability to recover any financial reward from a judicial decision that Qualcomm’s
10 patents are exhausted.

11 716. As a matter of legal and economic reality, Qualcomm is responsible for
12 all licensing and all chip sales by Qualcomm and its subsidiaries. With respect to sales
13 of Qualcomm modem chips to Counterclaimants, Qualcomm intends for such modem
14 chips to be incorporated into Counterclaimants products and uses its contracts with
15 Counterclaimants’ clients, described in Apple’s Amended Complaint, to further that
16 end.

17 717. Qualcomm, QTI, QCT, and QCTAP should be treated as a single entity
18 for purposes of the patent exhaustion doctrine. *RRX Indus., Inc. v. Lab-Con, Inc.*, 772
19 F.2d 543, 545 (9th Cir. 1985) (citing *Automotriz Del Golfo De California S.A. de C.V.*
20 *v. Resnick*, 306 P.2d 1, 3 (1957)). Qualcomm’s parent and subsidiary entities share
21 such a unity of interest that the separate personalities of the corporations no longer
22 exist. The purported division between Qualcomm’s parent and subsidiary entities is
23 illusory and an attempt to evade the patent laws. Qualcomm, QTI, QCT, and QCTAP
24 work together and collude in refusing to sell modem chips to manufacturers unless
25 they enter into separate patent license agreements, demonstrating a unity of interest of
26 extracting excess royalties for Qualcomm for patents that are in fact exhausted through
27 sale. Permitting Qualcomm to hide its collusive behavior behind alleged corporate

1 walls will lead to an inequitable result, allowing Qualcomm to continue to “double-
2 dip” and collect excess royalties for patents exhausted through the authorized sale of
3 Qualcomm modem chips.

4 718. As a result of the acts described in the foregoing paragraphs, there exists a
5 definite and concrete, real and substantial, justiciable controversy between
6 Counterclaimants and Qualcomm regarding the exhaustion of Qualcomm’s patent
7 rights with respect to patents substantially embodied in baseband processor modem
8 chips sold by Qualcomm to Counterclaimants. This controversy is of sufficient
9 immediacy and reality to warrant the issuance of a declaratory judgment.

10 719. To the extent that that any of the Patents-in-Suit are actually essential to
11 any 3G/UMTS and/or 4G/LTE standard and infringed by Counterclaimants, such
12 patents are substantially embodied in the Qualcomm baseband processor modem chips
13 used in the products manufactured by Counterclaimants and, therefore, exhausted by
14 Qualcomm’s authorized sales.

15 720. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et*
16 *seq.*, Counterclaimants request a judicial declaration that the sale of Qualcomm’s
17 baseband processor modem chips to Counterclaimants exhausts Qualcomm’s patent
18 rights for patents substantially embodied in those modem chips, and that any of the
19 Patents-in-Suit, which are actually essential to any 3G/UMTS and/or 4G/LTE standard
20 and infringed by Counterclaimants, are unenforceable as against Counterclaimants due
21 to patent exhaustion.

22 **JURY DEMAND**

23 Counterclaimants demand a trial by jury on all issues so triable.

24 **PRAYER**

25 Wherefore, Counterclaimants respectfully request that the Court:

- 26 A. Decree that Qualcomm engaged in unlawful monopolization in
27 violation of Section 2 of the Sherman Act (15 U.S.C. § 2), and

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Counterclaimants were injured in their business and property as a result of those violations;

B. Decree that Qualcomm engaged in an illegal contract, combination, or conspiracy in restraint of trade or commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1), and Counterclaimants were injured in their business and property as a result of those violations;

C. Decree that Qualcomm engaged in unlawful trust activity in violation of the Cartwright Act (Cal. Bus. & Prof. Code § 16700 *et seq.*), and that Counterclaimants were injured in their business and property as a result of those violations;

D. Decree that Qualcomm engaged in conduct in violation of California’s Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*), that Counterclaimants were injured in their business and property, and that Qualcomm was unjustly enriched as a result of those violations;

E. Decree that Qualcomm is liable for breach of its contractual obligation to offer its SEPs at a FRAND rate;

F. Decree that Qualcomm is estopped from seeking royalties in excess of its promised FRAND rate;

G. Decree that Qualcomm did not comply with its FRAND obligation;

H. Decree that Qualcomm waived its right to recover royalties for its SEPs in excess of a FRAND rate;

I. Decree that Qualcomm negligently misrepresented that it would offer licenses on FRAND terms to induce the SSOs to adopt its technology;

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- J. Decree that Qualcomm breached the Implied Covenant of Good Faith and Fair Dealing;
- K. Decree that Qualcomm breached the License Agreements with each of the Counterclaimants;
- L. Decree that the the License Agreements are unenforceable under Cal. Civ. Code §§ 1598–99;
- M. Decree that Counterclaimants do not infringe any claims of the Patents-in-Suit;
- N. Decree that one or more claims of each of the Patents-in-Suit are invalid;
- O. If any of the claims of the Patents-in-Suit are found to be not invalid and infringed, decree that the Patents-in-Suit are unenforceable against Counterclaimants due to patent exhaustion;
- P. If any of the claims of the Patents-in-Suit are found to be not invalid, infringed, and not exhausted, decree that Qualcomm has not offered Counterclaimants a non-discriminatory license, with reasonable rates and with reasonable terms and conditions;
- Q. If any of the claims of the Patents-in-Suit are found to be not invalid, infringed, and not exhausted, decree a FRAND royalty rate that uses an appropriate royalty base and royalty rate for such patent claim that, at minimum, does not exceed the actual technical contribution to the standard that is attributable to the patent claim;
- R. Decree that Qualcomm cannot seek injunctive relief or exclusion orders against Counterclaimants based on the Patents-in-Suit;
- S. Find Qualcomm liable for the damages incurred by Counterclaimants;

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- T. Order Qualcomm to disgorge any non-FRAND royalties and royalties for exhausted patents that Qualcomm previously extracted from Counterclaimants;
- U. Award restitution of all excessive license fees that Counterclaimants paid;
- V. Permanently enjoin Qualcomm and its subsidiaries, affiliates, successors, transferees, assignees, and their officers, directors, partners, agents, and employees, and all other persons acting or claiming to act on Qualcomm’s behalf, from continuing the wrongful conduct detailed herein;
- W. Adjudge and decree that Qualcomm may not interrupt chipset supplies;
- X. Enjoin Qualcomm from taking any adverse action against Counterclaimants related to the allegations in the counterclaims;
- Y. Enjoin Qualcomm from imposing or enforcing any unlawful and/or non-FRAND terms and conditions relating to cellular SEPs;
- Z. Enjoin Qualcomm from further unlawful actions;
- AA. Award Counterclaimants damages for unlawful overcharges and other injury to their property or business, duly trebled under Section 4 of the Clayton Act and under the Cartwright Act;
- BB. Award Counterclaimants’ reasonable attorneys’ fees and costs;
- CC. Award Counterclaimants’ all available pre-judgment and post-judgment interest, to the fullest extent available under law or equity from the date of service of the initial complaint in this action;
- DD. Enter judgment awarding Counterclaimants their expenses, costs, and attorneys’ fees in accordance with Rule 54(d) of the Federal Rules of Civil Procedure; and

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EE. Award such other and further relief as the Court deems just and proper.

1 Dated: July 18, 2017

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