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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, vs. QUALCOMM INCORPORATED, a Delaware corporation, Defendant.	Case No. 5:17-cv-00220-LHK **DEFENDANT QUALCOMM INCORPORATED'S STATUS REPORT REGARDING NON-PARTY CONTRACT MANUFACTURERS' CUSTODIAL PRODUCTIONS** Courtroom: 7, 4th Floor Judge: Hon. Nathanael M. Cousins
IN RE: QUALCOMM ANTITRUST LITIGATION	Case No. 5:17-MD-02773-LHK-NMC

On January 17, 2018, the Court ordered non-parties Compal Electronics, Inc., FIH Mobile Ltd., Hon Hai Precision Industry Co., Ltd., Pegatron Corporation, and Wistron Corporation (collectively, the "CMs") to complete their document production to Defendant Qualcomm Incorporated ("Qualcomm") by January 26, 2018. (ECF No. 493.) The Court also ordered Qualcomm to file any motion for sanctions related to the CMs' document production by February 2, 2018. (*Id.*) Qualcomm does not have sufficient information to move for sanctions at this time and instead submits the following status report to detail certain deficiencies in the CMs' allegedly complete document production.

In Qualcomm and the CMs' January 26, 2018 Joint Status Report, the CMs represented that their January 26 productions completed the CMs' production of responsive, non-privileged documents in the above-captioned actions. (ECF No. 518.) Qualcomm cannot confirm that the CMs have completed their document productions. Qualcomm is concerned that the CMs either have failed to produce responsive documents in their possession or that spoliation has occurred. Qualcomm details two particularly egregious examples below.

Brian Chong: Wistron proposed Brian Chong as one of its original seven custodians on October 13, 2017.[1] Mr. Chong is Wistron's former Chief of Product Planning and New Technology Development. Mr. Chong has been employed by Wistron since 2001, negotiated Wistron's Subscriber Unit License Agreement (SULA) with Qualcomm in 2007, and subsequently communicated with Qualcomm about patent licensing. Mr. Chong is the only Wistron employee who has been disclosed as likely to testify for the FTC at trial in this matter. Wistron has offered to make Mr. Chong available for deposition on March 12-13, 2018 in Taipei.

Although the CMs have produced approximately 740,000 documents, and Wistron has produced over 70,000 documents, only 159 documents are from

[1] Wistron later agreed to add two additional custodians.

Mr. Chong's custodial files. None of the documents date before February 16, 2017. None of Mr. Chong's produced documents contain discussions or analysis of any of Wistron's license agreement negotiations with Qualcomm or any other entity. Notably, Qualcomm has produced from its own files more than twice as many documents sent to or from Mr. Chong than has Wistron—the company where he worked since 2001.

Alex Yeh: On October 30, 2017, Qualcomm proposed Alex Yeh as a Wistron custodian likely to have documents related to patent licensing negotiations. Mr. Yeh communicated with Qualcomm during negotiations of Wistron's license agreement with Qualcomm and was employed by Wistron until April 2017. In a November 14 Joint Motion in the related S.D. Cal. Action, the CMs represented that Mr. Yeh had "left Wistron's employ, and Wistron does not have [his] documents in its possession, custody, or control". In a December 6 letter, Qualcomm responded that Wistron should have preserved Mr. Yeh's documents because it clearly anticipated litigation well before April 2017 when Mr. Yeh left, which was months after Wistron had begun withholding royalty payments from Qualcomm. The CMs subsequently agreed to "review and produce Mr. Yeh's documents that are reasonably accessible". (Dec. 12, 2017 Ltr. from J. Rho to R. Stark.)

Wistron has only produced six documents from Mr. Yeh's custodial files. All six of the documents are dated April 10, 2017. None of the six documents concern licensing negotiations with Qualcomm or any other entity. Qualcomm has produced 173 documents sent to or from Mr. Yeh from its own files.

Further Investigation: Qualcomm does not yet have enough information about the CMs' productions to draw specific conclusions or seek relief at this time. Qualcomm expressed its concerns to the CMs during a February 1 meet and confer, and Qualcomm sent a letter to the CMs seeking information about why so few documents were produced over such limited date ranges for several custodians. Specifically, Qualcomm has requested information regarding each CM's litigation hold and document

retention policies, and each CM's ability to recover documents.

Accordingly, Qualcomm is not moving for sanctions at this point, but rather seeks an explanation from the CMs regarding these deficiencies in their production. Qualcomm reserves the right to move for relief upon further investigation.

Dated: February 2, 2018

Respectfully submitted,

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