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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 and to produce privilege logs by February 2, 2018. (ECF No. 493.) The CMs produced their privilege logs on February 2, 2018. On February 2, 8 and 9, 2018, the CMs produced a total of 60,338 documents that they determined after review were not privileged.

On February 2, 2018, Qualcomm filed a status report in which it outlined its concerns with the CMs' document productions, and in particular the productions of documents from the custodial files of Wistron employees Brian Chong and Alex Yeh. (ECF No. 534.) Qualcomm remains concerned that the CMs have failed to retain and produce important documents. Wistron has produced 296 documents from Mr. Chong's files.[1] The CMs themselves first proposed Mr. Chong as a custodian, and the FTC has disclosed him as a likely witness at a trial of this matter. Wistron has informed Qualcomm that since Mr. Chong's involvement in negotiating Wistron's license agreement with Qualcomm, Mr. Chong has changed job responsibilities, and Wistron has not retained his documents. Similarly, Wistron has produced only 6 documents from the files of Alex Yeh. Wistron has informed Qualcomm that Mr. Yeh left his employment with Wistron on April 5, 2017, and that it has not retained Mr. Yeh's documents in part because no litigation hold was implemented until after the CMs were sued in the related action pending in the Southern District of California.

[1] Of those documents, 59 are completely redacted. The CMs explained that if one document in a document family is non-privileged, they produce all documents in the family, redacting any documents that are withheld in the entirety on privilege grounds. Qualcomm cannot verify this explanation, however, because it cannot determine whether these fully redacted documents were placed on Wistron's privilege log or ascertain the basis for Wistron's privilege assertions. Qualcomm has asked the CMs to account for whether and where these fully redacted documents are logged.

Because the CMs have represented that they have produced all responsive non-privileged documents from the files of the 33 agreed-upon custodians, Qualcomm is not moving at this time to compel further production of documents or for sanctions against Wistron or any other CM for failure to comply with the Court's discovery orders. Qualcomm reserves the right to seek further relief after further discovery (*e.g.*, depositions scheduled for March 12-16), including but not limited to seeking preclusion of certain witnesses or an adverse inference.

Dated: February 16, 2018

Respectfully submitted,

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