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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FEDERAL TRADE COMMISSION Plaintiff, v. QUALCOMM INCORPORATED, a Delaware corporation, Defendant.	Case No. 5:17-cv-00220-LHK-NMC **NON-PARTY APPLE INC. AND DEFENDANT QUALCOMM INCORPORATED'S JOINT STATUS REPORT** Courtroom: 7, 4th Floor Judge: Hon. Nathanael M. Cousins
IN RE QUALCOMM ANTITRUST LITIGATION	Case No. 5:17-md-02773-LHK-NMC

Pursuant to the Court's February 15, 2018 Order, Non-Party Apple Inc. ("Apple") and Defendant Qualcomm Incorporated ("Qualcomm") submit this Joint Status Report to address discovery issues identified by the Court.

I. Apple's Document Production

A. *Apple's Position*

To date, Apple has produced more than 4 million documents totaling over 37 million pages. Apple's anticipated document production is complete, with the following exceptions:

(1) One written common interest agreement has not been produced pursuant to an objection from the other party to the agreement. That agreement is the subject of a joint discovery statement and has been submitted for *in camera* review. (ECF 536).

(2) Apple is finalizing a production of documents it has downgraded from its privilege logs, and anticipates completing that production no later than February 26, 2018.

(3) Apple is reviewing certain privilege log entries identified by Qualcomm as part of the meet and confer process, and may downgrade some of those documents from its privilege logs. If so, Apple will produce any such downgrades that are responsive and non-privileged on a rolling basis.

Qualcomm has asked Apple to produce privilege downgrades from the custodial files of Messrs. Schafer and Schell—including any downgrades from certain privilege log entries Qualcomm identified on February 22—by February 25. Apple has advised Qualcomm that Apple anticipates it will complete its production of downgrades from Apple's self-initiated privilege log review by February 26, and will attempt to complete that production by February 25. Apple will attempt to produce any documents Qualcomm identified in its February 22 correspondence that Apple agrees are non-privileged and responsive by February 26.

B. *Qualcomm's Position*

Since the February 15, 2018 hearing, Qualcomm has received one production, totaling 30,242 documents. The production, which arrived on February 21, 2018, included over 2,300

documents from the custodial files of Messrs. Schafer and Schell, whose depositions are scheduled to begin on February 28, 2018. Qualcomm has requested that, if Apple has any more documents pending in its production from the custodial files of either of these individuals, Apple produce them no later than February 25, 2018, in order for the documents to be processed and reviewed in advance of the depositions.[1]

Apple has also informed Qualcomm that some of the "documents it has downgraded from its privilege log" mentioned in sub-paragraph (2) above may be subject to third-party notice and/or consent requirements, and that Apple will inform Qualcomm by February 25 or 26, 2018, whether any of those documents need to be withheld.

As discussed in more detail below, Qualcomm continues to believe that Apple has not yet produced a large number of responsive, non-privileged documents because of unjustified claims of privilege or other protection from discovery.

II. Apple's Privilege Log

A. *Apple's Position*

Apple completed its service of its Amended Privilege Log on February 19, 2018.

Qualcomm has asked Apple to re-examine certain privilege log entries as part of the meet and confer process. In response, Apple has downgraded some documents, and is producing responsive non-privileged downgrades on a rolling basis. Apple and Qualcomm are continuing to meet and confer regarding privilege log entries identified by Qualcomm. Apple and Qualcomm are next scheduled to meet and confer on February 26, 2018. Qualcomm has not raised any issues concerning Apple's privilege determinations other than with respect to a discrete set of privilege log entries reflecting communications with third parties. If Qualcomm raises any such issues, Apple will meet and confer with Qualcomm.

[1] Qualcomm disputes Apple's assertion that it has engaged in a "self-initiated privilege log review". Apple materially revised the entirety of its privilege log following questions and concerns Qualcomm raised about the original December 29, 2017 log, as reflected in the January 12, 2018 status report.

B. *Qualcomm's Position*

Apple's revised privilege log continues to have hundreds of entries that appear, based on the information on the log, not to be privileged or otherwise protected from discovery, such as communications between Apple and third parties. On February 16, 2018, Qualcomm sent to Apple a list of 1,145 such log entries from the first two tranches of Apple's revised log, dated February 9 and 15, 2018, and requested that Apple review its privilege claims as to those entries. During a meet and confer on February 21, 2018, Apple reversed its privilege calls for *all* of those entries except for (i) communications with one set of third parties affiliated with a trade association, on the basis of a joint representation by counsel, and (ii) communications with Intel and Samsung, on the basis of Apple's purported common interest agreements with those companies. Apple has not yet identified the Intel and Samsung communications that it continues to withhold on that basis, but based on the identities of the third parties over which Apple is not standing on its privilege claims, it is downgrading at least 1,069 entries, representing 93% of the documents Qualcomm identified as unwarranted assertions of privilege.

On February 22, 2018, Qualcomm sent to Apple a list of 732 log entries from the third tranche of its revised log, dated February 19, 2018. Apple is currently reviewing those 732 entries. Qualcomm and Apple have scheduled a meet and confer regarding these entries for February 26, 2018.

As noted above, Apple is continuing to withhold communications pursuant to its purported common interest agreements, including those withheld under the written agreement with Samsung that was submitted to the Court for *in camera* review. Qualcomm is still assessing the appropriateness and validity of the common interests that Apple has asserted. Qualcomm is also continuing its more general assessment of the more than 165,000 entries on Apple's revised privilege log. That analysis includes Qualcomm's assessment of Apple's practice of "downgrading" documents from its initial privilege log but not producing the downgraded documents, apparently based on a decision that the document was not responsive—even though Apple previously deemed the document responsive and took the time to put it on the privilege log.

Qualcomm is of the view that any re-review of documents over which Apple previously asserted privilege should be limited to a re-review of that privilege assertion, and not a re-review of responsiveness. Accordingly, on February 23, Qualcomm requested further information from Apple to evaluate which documents Apple had withheld on the basis of a purported "downgrade" to non-responsive through its re-review process. Qualcomm intends to continue to meet and confer with Apple regarding its revised privilege log.

III. Deposition Scheduling

Apple and the parties have scheduled all depositions of Apple employees and former employees that Qualcomm seeks to depose in connection with the above-captioned cases, including the deposition of Bruce Sewell.

Dated: February 23, 2018

Respectfully submitted,

By: */s/ Edward H. Takashima*

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FILER'S ATTESTATION

I, Edward H. Takashima, am the ECF user whose identification and password are being used to file this Joint Discovery Statement. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that the signatories on this document have concurred in this filing.

/s/ Edward H. Takashima

Edward H. Takashima