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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 **SUPPLEMENTAL JOINT CASE MANAGEMENT STATEMENT**
IN RE QUALCOMM ANTITRUST LITIGATION	Case No. 5:17-MD-02773-LHK-NMC

SUPPLEMENTAL JOINT CASE MANAGEMENT STATEMENT

On March 15, 2018, Qualcomm Incorporated ("Qualcomm") and the Federal Trade Commission ("FTC") jointly filed with this Court in Case No. 5:17-cv-00220-LHK-NMC a case management statement that discussed, among other issues, the status of various issues related to third party discovery. (ECF No. 621.) On March 15, 2018, Qualcomm and MDL Plaintiffs also jointly filed a case management statement in Case No. 5:17-md-02773-LHK-NMC, which discussed issues related to third party discovery. (ECF No. 382.) On March 16, 2018, the Court noted that the FTC, Qualcomm, and the MDL Plaintiffs (collectively, the "N.D. Cal. Parties") "all seek third party discovery beyond the deadlines set by the Court". (ECF No. 384.) The Court ordered the N.D. Cal. Parties "to meet and confer on these issues and submit updated Joint Case Management Statements by March 20, 2018." (*Id.*) Counsel for the N.D. Cal. Parties and third party Apple Inc. ("Apple") met and conferred on March 19, 2018. Counsel for the N.D. Cal. Parties met and conferred again on March 20, 2018.

A. Proposed Modifications to the Deposition Schedule

Following the meet and confers, the N.D. Cal. Parties agreed to jointly request permission for the following out-of-time third-party depositions:

Company	**Witness**	**Date**
Essential Products	Andy Rubin	April 2, 2018
InterDigital	30(b)(6)	April 3, 2018 or April 4, 2018
Essential Products	Matt Hershenson	April 5, 2018
Lenovo	Ira Blumberg	April 10, 2018
Nokia	30(b)(6)	April 17, 2018
Apple	Bruce Sewell[1]	[TBD]

[1] Mr. Sewell's deposition was originally scheduled for March 21-22, 2018 but needed to be postponed because of a personal matter. Apple is determining his availability in April.

B. Further Modifications to the Case Schedule

1. FTC Action (Case No. 5:17-cv-00220-LHK-NMC)

In light of the additional depositions described in Section A above, Qualcomm and the FTC further propose for the Court's approval the below revisions to the Court's current schedule in Case No. 5:17-cv-00220-LHK-NMC.

Plaintiff's Opening Expert Reports	April 30, 2018 (currently April 20, 2018)
Defendant's Expert Reports	June 4, 2018 (currently May 25, 2018)
Plaintiff's Rebuttal Expert Reports	July 2, 2018 (currently June 22, 2018)
Close of Expert Discovery	July 27, 2018 (currently July 20, 2018)

All subsequent dates in the Court's schedule would remain unchanged.

2. MDL Action (Case No. 5:17-MD-02773-LHK-NMC)

The MDL Plaintiffs and Qualcomm disagree as to whether outstanding third-party discovery warrants a change in the case schedule.

i. Plaintiff's Position:

MDL Plaintiffs also propose for the Court's approval the below revisions to the Court's current schedule in Case No. 5:17-cv-02773-LHK-NMC.

MDL Plaintiffs' Motion for Class Certification and supporting expert declarations	May 17, 2018 (currently May 3, 2018)
Defendant's Opposition	June 22, 2018 (currently June 8, 2018)
MDL Plaintiffs' Reply	July 20, 2018 (currently July 6, 2018)
Class Certification Hearing	July 26, 2018 (unchanged)

All subsequent dates in the Court's schedule would remain unchanged.

While Qualcomm does not join in MDL Plaintiffs' proposal, MDL Plaintiffs note that revisions to the Court's schedule are appropriate given the ongoing document productions by Qualcomm, the additional depositions, and given that the MDL Plaintiffs' schedule was set to

correspond to the FTC schedule. Qualcomm's recognition of the need for an extension as to expert reports in the FTC case highlights the corresponding need for MDL Plaintiffs to have additional time to prepare their Class Certification Motion. A failure to account for late discovery in the MDL case would benefit Qualcomm, to MDL Plaintiffs' detriment. Indeed, Qualcomm itself initially proposed that MDL Plaintiffs' Motion for Class Certification would not be due until June 22 (with a May 6, 2019 trial date – just one week later than the trial date the Court has set). Dkt. 32. Additionally, the short extension is warranted given that Qualcomm is continuing to make large document productions. On March 17, 2018 alone, Qualcomm produced 3.8 ***million*** pages in the S.D. Cal. action, which appear relevant to this action as well. MDL Plaintiffs are also ingesting thousands of documents recently produced by Qualcomm in conjunction with their privilege re-review. Finally, just last week, Judge Cousins issued an order requiring Qualcomm to significantly revise its privilege log, which will almost certainly result in additional document productions. Although MDL Plaintiffs are evaluating the impact of these productions on the brink of the close of fact discovery, shifting the deadlines by two weeks is needed, particularly because such a modification to the schedule will not impact the hearing date for MDL Plaintiffs' Motion to Certify the Class.

Contrary to Qualcomm's claim, Plaintiffs have diligently pursued discovery. Since the start of fact discovery, Plaintiffs have negotiated third party productions from over 50 different third parties – including obtaining the production of significant amounts of class-specific transactional data from cell phone manufacturers, retailers, and wireless carriers. Plaintiffs have also participated in approximately 60 depositions since January, with approximately 20 more depositions already scheduled. Plaintiffs' request for a two week extension is due to the late discovery occurring in this case – the same discovery that Qualcomm thinks warrant an extension for the deadlines in the FTC action. Qualcomm has also not explained any burden that it would bear as a result of a change in the class certification deadlines. In addition, Plaintiffs intentionally proposed a change to the schedule that would allow the court to keep the current date for the class certification hearing but the Court could set a date for the class certification

hearing two weeks later without altering any other deadlines in the case.

ii. Qualcomm's Position:

Qualcomm does not believe that the limited out-of-time third-party depositions described above warrant a change to the class certification briefing schedule. Qualcomm expects that the above-listed third-party depositions will be minimally, if at all, relevant to class certification issues. The non-Apple depositions are of other intellectual property licensors whose practices are similar to Qualcomm's. This testimony will likely relate primarily to liability, not class certification. And, in any event, the last scheduled third-party deposition will occur on April 17, 2018—weeks before the deadline to file a class-certification motion. Thus, Plaintiffs will have ample time to incorporate any relevant information into their motion. Moreover, Plaintiffs' proposal would make their reply brief on class certification due a mere six days prior to the hearing on the motion. Plaintiffs' complaints about the documents Qualcomm produced in the Southern District action and its complaints about the privilege log lack merit for the reasons detailed in Qualcomm's prior case management statements, submissions to Magistrate Judge Cousins, and which are repeated briefly in Part D below. Moreover, Plaintiffs have made no showing, much less a compelling one, that the materials in question are non-cumulative as to class certification issues (or otherwise).

The Court heard the parties' proposals regarding the overall case schedule and then determined what deadlines were appropriate in light of the overall demands of the MDL case. Plaintiffs' insistence that the MDL schedule should "correspond" to the FTC case schedule does not make sense because the MDL case requires a class-certification motion while the FTC case does not.

The real issue here is that Plaintiffs waited far too long to serve their own discovery and now seek a schedule extension to complete that discovery. As further detailed in the Parties' JCMS of last week, Plaintiffs waited until March 6 to request the depositions of six additional Qualcomm employees, all of whom Plaintiffs knew about for months, and waited until March 7 to serve the document subpoenas mentioned below in Part C on four third parties. The

depositions mentioned below in Part C fare no better. Plaintiffs did not serve notice of their intent to notice a deposition of Avanci until March 10, and did not serve the Apple deposition notice until March 15. The fact that some third-party depositions have not yet occurred should not excuse Plaintiffs' lack of diligence in pursuing discovery.

C. Additional Third-Party Issues

Qualcomm and the MDL Plaintiffs note the following outstanding disagreements that one or more parties have with each other or with third parties concerning third party discovery in the above-captioned cases: (1) MDL Plaintiffs' March 7, 2018 subpoenas served on BrightPoint North America LLC, Brightstar US, Inc., JEG & Sons, Inc. and Synnex Corp; (2) MDL Plaintiffs' request for a 30(b)(6) deposition of Avanci, LLC; and (3) MDL Plaintiffs' request for a 30(b)(6) deposition of Apple.

This Supplemental Joint Case Management Statement is made without prejudice to any of the N.D. Cal. Parties' positions regarding the appropriateness of any of this additional discovery.

D. Qualcomm Discovery Issues

The N.D. Cal. Parties note the following outstanding disagreements concerning Qualcomm-related discovery in the above-captioned cases, which have not yet been resolved: (1) MDL Plaintiffs' request for depositions for three Qualcomm employees, Messrs. Edward Tiedemann, Alexander Katouzian, and David Cianflone; (2) certain topics contained in the FTC's request for a Rule 30(b)(6) deposition of Qualcomm; and (3) MDL Plaintiffs' request for a Rule 30(b)(6) deposition of Qualcomm. In addition to noting the above issues, which remain under discussion, the parties note the following open issues:

1. FTC and MDL Plaintiffs' Position:

The FTC and MDL Plaintiffs note that, despite their best efforts, there are additional outstanding issues, unrelated to third party discovery, which may render the schedule set forth above in Section B insufficient. While the Plaintiffs will make every effort to comply with any modified schedule that is approved by the Court, there are a number of uncertainties that they

seek to bring to the Court's attention now in the event that further modifications to the schedule are requested.

Today, March 20, 2018, without explanation, Qualcomm notified the FTC and MDL Plaintiffs that Paul Jacobs is no longer available for his previously-scheduled deposition on March 29-30, 2018. As former CEO and Chairman of the Board, Mr. Jacobs is a key witness in this case. The parties are meeting and conferring regarding Qualcomm's request to reschedule the deposition, including the reason for the schedule change, and alternative dates on which Mr. Jacobs is available. Qualcomm informed the FTC today that Dr. Jacobs can appear for deposition April 16-17, and later revised that proposal to as early as April 4-5, 2018. The FTC has an immovable conflict during the April 4-5 dates, and believes that April 17 is too late for such a significant deposition, but can be flexible in finding a mutually agreeable date during the week of April 9. The FTC and MDL Plaintiffs reserve the right to seek additional modifications to the schedule, particularly given the timing of the expert discovery deadlines and the importance of Mr. Jacobs' testimony.

Further, the FTC and MDL Plaintiffs continue to receive large volumes of additional documents produced by Qualcomm, including those produced in the Southern District of California action, and as a result of the privilege re-review process ordered by Magistrate Judge Cousins. *See* March 15, 2018 Joint Case Management Statement (ECF No. 621) at pp. 9-10. Since submitting the last Joint Case Management Statement less than a week ago on March 15, 2018, Qualcomm has produced over 3.8 million pages of additional documents in the coordinated actions. The FTC and MDL Plaintiffs continue to reserve all rights to re-open depositions based on the production of new documents that are responsive to their respective discovery requests but were not produced in time in order to allow for effective use at the depositions of relevant witnesses. As a result, it is possible that the continuation of additional large productions by Qualcomm may impact the case schedule.

2. Qualcomm's Position:

The issues discussed above regarding discovery of Qualcomm are not properly presented

in a Supplemental Joint Case Management Statement that the Court ordered regarding third party discovery. Nevertheless, because the FTC and MDL Plaintiffs have chosen to include these issues, Qualcomm responds as follows.

First, the postponement of Paul Jacobs's deposition was not a matter within Qualcomm's control. As has been widely reported, Dr. Jacobs ceased to be the Executive Chairman of the company as of March 9, 2018. Dr. Jacobs informed Qualcomm today (March 20, 2018) that he now has a scheduling conflict that will prevent him from appearing for deposition on the scheduled dates of March 29-30, 2018, but that he can appear for deposition in April, as early as April 4-5, 2018. Qualcomm immediately informed the FTC and MDL Plaintiffs of Dr. Jacobs's unexpected unavailability. The brief postponement of his deposition should not cause any prejudice to the FTC and MDL Plaintiffs or require any adjustments to the schedule beyond those set forth in Part B above regarding expert reports in the FTC action.

Second, the FTC and MDL Plaintiffs' assertion that they are prejudiced by Qualcomm's "continuation of additional large productions" is not justified, for the reasons set forth in Part IV.A of the case management statement filed on March 15, 2018. (ECF No. 621.) As Qualcomm has explained, these productions are being made in response to document requests served on Qualcomm by Apple and its contract manufacturers in the Southern District of California action, not in response to requests made in the above-captioned actions by the FTC or MDL Plaintiffs. Qualcomm has produced these documents to the FTC and MDL Plaintiffs pursuant to requirements of the Coordination Order signed by this Court and Judge Curiel in the Southern District. The Southern District action is proceeding along a different schedule, with fact discovery ending on May 11, 2018, and the productions about which the FTC and MDL Plaintiffs complain are timely in the action in which they are being made. Qualcomm's document productions in the Southern District of California action should not affect the schedules in the above-captioned actions.

Dated: March 20, 2018

Respectfully submitted,

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FILER'S ATTESTATION

I, _____Gary A. Bornstein_____, am the ECF user whose identification and password are being used to file this Joint Stipulation and [Proposed] Order to Continue Case Management Conference. 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/ *Gary A. Bornstein*