BOIES SCHILLER FLEXNER LLP
William A. Isaacson (*Pro Hac Vice App.* to be filed)
DC Bar No. 414788, wisaacson@bsfllp.com
Karen L. Dunn (*Pro Hac Vice App.* to be filed)
DC Bar No. 1002520, kdunn@bsfllp.com
Amy J. Mauser (*Pro Hac Vice App.* to be filed)
DC Bar No. 424065, amauser@bsfllp.com
1401 New York Avenue, N.W.
Washington, DC 20005
Telephone: (202) 237-2727
Facsimile: (202) 237-6131

BOIES SCHILLER FLEXNER LLP
Edward H. Takashima, SBN 270945
etakashima@bsfllp.com
401 Wilshire Blvd, Suite 850
Santa Monica, CA 90401
Telephone: (310) 752-2400
Facsimile: (310) 752-2490

Attorneys for Non-Party APPLE INC.

CRAVATH, SWAINE & MOORE LLP
Gary A. Bornstein (*pro hac vice*)
gbornstein@cravath.com
Yonatan Even (*pro hac vice*)
yeven@cravath.com
825 Eighth Avenue
New York, NY 10019-7475
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

KEKER, VAN NEST & PETERS LLP
Robert A. Van Nest, SBN 84065
rvannest@keker.com
633 Battery Street
San Francisco, CA 94111-1809
Telephone: (415) 676-2289
Facsimile: (415) 397-7188

MORGAN, LEWIS & BOCKIUS LLP
Richard S. Taffet (*pro hac vice*)
richard.taffet@morganlewis.com
101 Park Avenue
New York, NY 10178-0060
Telephone: (212) 309-6000
Facsimile: (212) 309-6001

Attorneys for Defendant
QUALCOMM INCORPORATED

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 26, 2018 docket entry, Non-Party Apple Inc. ("Apple") and Defendant Qualcomm Incorporated ("Qualcomm") submit this Joint Status Report.

I. Apple's Document Production

A. *Apple's Position*

To date, Apple has produced more than 4.1 million documents totaling over 37 million pages. Apple's anticipated document production is complete, with the following exceptions:

(1) 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. Apple may also re-review other privilege log entries and determine that documents are non-privileged. If so, Apple will produce any such downgrades that are responsive and non-privileged on a rolling basis.

B. *Qualcomm's Position*

Qualcomm received an additional production from Apple on March 16, consisting of 12,792 documents. This production included documents from the custodial files of four Apple witnesses who had already been deposed, namely Ms. Mahe and Messrs. Schafer, Schell and Watrous. Qualcomm reserves the right to seek additional deposition time with these witnesses based on these documents and any other documents that Qualcomm was not reasonably able to review and use at deposition because of the timing of production.

Pursuant to the Court's March 7 order relating to Qualcomm's challenge to Apple's clawback of certain documents, Apple provided Qualcomm with two declarations relating to the clawed back documents. One of those declarations refers to documents from the mediation at issue that Qualcomm cannot locate in Apple's production. Qualcomm has asked Apple to produce the documents referenced in the declaration or, if they have already been produced, to identify them by Bates number.

II. Apple's Privilege Log

A. *Qualcomm's Position*

March 16 Order. Qualcomm is assessing Apple's log in light of the principles articulated in the Court's March 16 Order (ECF No. 627) and will continue to meet and confer with Apple on that issue, pursuant to the Order.

Clawbacks. As set forth in the March 16 Status Report (ECF No. 629), Qualcomm challenges Apple's clawback of two substantively identical documents, Bates numbered APL-QC-FTC_22482289-96 and AAPL-FTC-00004898-4906 (the "Documents"). Qualcomm respectfully refers the Court to the relevant portion of the March 16 Status Report and would be pleased to provide any further information that the Court would find useful, such as copies of the Documents and/or the declarations referenced in the Status Report.

In addition, since the March 16 Status Report, Apple clawed back three additional documents. In total, Apple has now sent 13 clawback letters, of which 12 were sent immediately before or even during the scheduled depositions of Apple's witnesses. Apple's clawbacks total 441 documents, the majority of which were produced to Qualcomm following the Court-ordered date for substantial completion of Apple's production, as part of Apple's rolling productions of documents that were originally withheld and logged as privileged and then "downgraded" after further review. (ECF No. 602.) With the benefit of the Court's rulings on March 7, Qualcomm is continuing to assess whether there are other clawback-related disputes to be raised with Apple. If so, the parties will meet and confer and, if necessary, bring the issue before the Court.

Documents Not Properly Withheld. On March 2, 2018, Qualcomm identified for Apple 728 entries on Apple's privilege log that Qualcomm does not believe can be withheld as privileged, based on the fact that certain third parties sent and/or received the documents. On a March 13, 2018 meet and confer, Apple advised that it was continuing to review the documents and expected complete that review by March 17, 2018, and would then produce any non-privileged documents and identify the documents Apple intends to continue to withhold as

privileged. Qualcomm has inquired about the status of those documents but Apple has not provided any further information.

Nonresponsive Documents. Qualcomm has not yet received the list of documents that Apple deemed non-responsive in the course of revising its privilege log, which it first requested from Apple on February 23, and which the Court on March 7 ordered Apple to produce. (ECF No. 602.) The delay in producing this list has prejudiced Qualcomm's ability to raise any challenges that may be warranted in time to receive any additional documents for use at depositions, and Qualcomm respectfully requests the Court order Apple to produce this list forthwith.

B. *Apple's Position*

Non-Responsive Documents. In the course of re-reviewing privilege log entries, Apple has identified some entries that are not privileged but also non-responsive. Apple is removing those entries from its privilege logs, but because the documents are non-responsive, is not producing the downgraded documents. Apple is in the process of finalizing a log identifying such entries.

Other Issues. Apple will meet and confer with Qualcomm regarding Apple and Qualcomm's privilege logs, as directed in the Court's March 16 Order (ECF No. 627), and regarding other privilege-related issues raised by Qualcomm.

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Dated: March 23, 2018

Respectfully submitted,

By: */s/ Edward H. Takashima*

William A. Isaacson
wisaacson@bsfllp.com
Karen L. Dunn
kdunn@bsfllp.com
Amy J. Mauser
amauser@bsfllp.com
BOIES SCHILLER FLEXNER LLP
1401 New York Avenue, N.W.
Washington, DC 20005
Telephone: (202) 237-2727
Facsimile: (202) 237-6131

Edward H. Takashima
etakashima@bsfllp.com
BOIES SCHILLER FLEXNER LLP
401 Wilshire Blvd, Suite 850
Santa Monica, CA 90401
Telephone: (310) 752-2400
Facsimile: (310) 752-2490

Attorneys for Non-Party APPLE INC.

By: */s/ Gary A. Bornstein*

Gary A. Bornstein
Yonatan Even
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7475
Tel: (212) 474-1000
Fax: (212) 474-3700
gbornstein@cravath.com
yeven@cravath.com

Robert A. Van Nest
Asim M. Bhansali
Eugene M. Paige
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, CA 94111-1809
Tel: (415) 676-2289
Fax: (415) 397-7188
rvannest@keker.com
abhansali@keker.com
epaige@keker.com

Richard S. Taffet
Willard K. Tom
Donn P. Pickett
Geoffrey T. Holtz
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1126
Tel: (415) 442-1000
Fax: (415) 442-1001
richard.taffet@morganlewis.com
willard.tom@morganlewis.com
donn.pickett@morganlewis.com
geoffrey.holtz@morganlewis.com

Attorneys for Qualcomm Incorporated

FILER'S ATTESTATION

I, Edward H. Takashima, am the ECF user whose identification and password are being used to file this Joint Status Report. 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