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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-NMC **JOINT CASE MANAGEMENT STATEMENT** DATE: June 13, 2018 TIME: 2:00 p.m. CTRM: Courtroom 8 JUDGE: Hon. Lucy H. Koh
IN RE QUALCOMM ANTITRUST LITIGATION	Case No. 5:17-MD-02773-LHK-NMC

Pursuant to the Court's May 1, 2018 Order Continuing Further Case Management Conference (MDL ECF No. 445), Plaintiff Federal Trade Commission (the "FTC") and the MDL Plaintiffs (collectively, "Plaintiffs") and Defendant Qualcomm Incorporated ("Qualcomm") (collectively, the "Parties") have met and conferred and hereby submit this Joint Case Management Statement.

I. MOTIONS

Since filing the April 30, 2018 Joint Case Management Statement (MDL ECF No. 444), the MDL Plaintiffs have filed a Joint Discovery Statement with third parties Brightpoint North America, LLC, as well as a Discovery Statement in regard to Synnex Corporation, seeking to compel document production from those third parties in response to the MDL Plaintiffs' subpoenas. (MDL ECF Nos. 450, 455.) Magistrate Judge Cousins has scheduled a hearing to address these Discovery Statements on May 24, 2018. (MDL ECF No. 477.)

Judge Cousins has also scheduled the following matters to be heard on May 24, 2018 (FTC ECF No. 749), all of which were filed on May 18, 2018:

- Qualcomm and the MDL Plaintiffs filed a Joint Discovery Statement regarding certain of their respective interrogatory responses and Qualcomm's provision of certain additional testimony and written answers in response to Topics 1, 2, 8, and 11 of the MDL Plaintiffs' 30(b)(6) Notice. (MDL ECF No. 469.) The Joint Discovery Statement memorializes the resolution of a number of issues regarding these discovery requests, and sets forth one dispute with respect to Qualcomm's response to the MDL Plaintiffs' Interrogatory No. 20.

- The MDL Plaintiffs filed Discovery Statements regarding their requests for the production of additional documents and data from certain databases and other shared sources of information. (MDL ECF Nos. 467, 468.) Qualcomm filed responses on May 22, 2018. (MDL ECF Nos. 473, 474.) Qualcomm and the MDL Plaintiffs expect to resolve or, at least, narrow these issues through further meet and confer discussions. However, in light of the May 18, 2018 deadline for motions to compel fact discovery, MDL Plaintiffs filed Discovery Statements regarding the open issues.

- Qualcomm and the FTC submitted Joint Discovery Statements regarding two of their respective interrogatory responses. (FTC ECF Nos. 742, 743.) The FTC seeks additional information regarding Qualcomm's response to FTC Interrogatory No. 4 (concerning the measures that support Qualcomm's contentions regarding the breadth, quality, and value of its cellular patent portfolio). Qualcomm seeks additional information from the FTC regarding the FTC's response to Qualcomm Interrogatory No. 19 (relating to application of any price-cost-test analysis to Qualcomm's agreements with Apple).

- Pursuant to Judge Cousins's May 4, 2018 Order (FTC ECF No. 724), Qualcomm and non-party Apple, Inc. filed a Joint Status Report regarding Apple's production of documents and assertions of privilege.

On May 2, 2018, the FTC submitted a Motion for Relief from a decision of Magistrate Judge Cousins regarding Qualcomm's assertion of privilege over internal patent ratings Qualcomm maintains. The Court denied that motion on May 22, 2018. (*See* FTC ECF No. 750.)

II. PARTY DISCOVERY

A. Written Discovery

The Parties have not served any new requests for written discovery since the April 30 Joint Case Management Statement (MDL ECF No. 444). The Parties do not have any open issues concerning written discovery beyond those referenced in Part I above.

B. Document Discovery Issues

Qualcomm continues the process of re-reviewing documents pursuant to Judge Cousins's April 4, 2018 Order Regarding Privilege Re-Review for Qualcomm and Apple (MDL ECF No. 427). Qualcomm completed its review of documents involving Mr. Aberle by the Court-ordered deadline of May 2, 2018 and completed its review of documents involving Mr. Altman by the Court-ordered deadline of May 15, 2018. Qualcomm estimates that, as of May 15, 2018, it completed re-review of a total of 77,000 redacted or withheld documents, and that approximately 33,000 documents remain to be re-reviewed by July 1, 2018. As a result of this re-review process, Qualcomm has produced 15,667 documents (either in redacted form or without redactions) that had previously been withheld as privileged, and has reduced or eliminated redactions on 8,934 previously redacted documents. Some of the previously withheld or redacted content had already been produced in other documents before the re-review productions.

FTC's Statement

On May 21, Qualcomm's counsel informed the FTC via email that it had come to their attention "late last week" "that the chipset-level data used by QCT in the ordinary course for fiscal year 2017 … contains imprecise assumptions …." According to Qualcomm's counsel, "[o]ur client has been working over the weekend to correct any issues." On May 22, Qualcomm produced a new version of its 2017 chipset level data. In response to questions from the FTC, Qualcomm's counsel admitted that "[u]pon investigation, we've learned that Qualcomm noticed the same inconsistency" prior to late last week.

The FTC's experts did not have the opportunity to review the revised 2017 data prior to finalizing the analyses in their reports. The parties continue to meet and confer regarding the newly produced 2017 chipset data.

Qualcomm's Statement:

Qualcomm previously produced chipset data for fiscal years 2010-2017 that it used in the ordinary course. Beginning in fiscal year 2017 (which began in late September 2016), the finance team in Qualcomm's chip division changed certain of the assumptions used in organizing the data from the assumptions used for fiscal years 2010-2016. In response to Plaintiffs' requests in the litigation, Qualcomm produced the data for fiscal years 2010-2016 and for fiscal year 2017 as it was maintained in the ordinary course of business. Nevertheless, to ensure that consistent data for fiscal year 2017 is available in this litigation, Qualcomm created a new version of the 2017 data that is consistent with the assumptions used in chipset data Qualcomm produced for fiscal years 2010-2016. Qualcomm alerted the FTC to the inconsistency in the assumptions underlying the 2010-2016 and the 2017 datasets on May 21, and has produced the new dataset on May 22, 2017. In response to questions from the FTC, Qualcomm promptly provided the FTC with further explanation of the different assumptions underlying the two datasets. Qualcomm produced the new 2017 dataset as soon as it was created and without delay. Qualcomm will continue to meet and confer, as necessary, regarding the data.

C. Party Depositions

1. Individual Depositions

Almost all depositions of current or former Qualcomm employees have concluded. The sole exception is Jeffrey Altman, with respect to whom the Court approved an out-of-time deposition (ECF No. 580). Mr. Altman's deposition has been scheduled for May 31 and June 1, 2018.

The Parties will meet and confer regarding re-opening of depositions following the completion of Qualcomm's privilege re-review.

2. Rule 30(b)(6) Depositions

As set forth in Part I above, Qualcomm and the MDL Plaintiffs met and conferred

regarding MDL Plaintiffs' 30(b)(6) Topics 1, 2, 8 and 11. In response to the MDL Plaintiffs' written questions, Qualcomm agreed to provide written responses, plus limited deposition time as to certain portions of Topic 2. The deposition has been scheduled for May 31, 2018.

The FTC has completed its 30(b)(6) deposition of Qualcomm.

III. THIRD-PARTY DISCOVERY

A. Document Production

The vast majority of third parties subpoenaed have completed their document productions in this case. Certain third parties are still producing small volumes of documents.

As stated above, MDL Plaintiffs have filed discovery statements seeking to compel production of certain data from third parties Brightpoint North America, LLC, a subsidiary of Ingram Micro Inc., and Synnex Corporation (MDL ECF Nos. 450, 455). As also stated above, on May 18, 2018, Qualcomm and Apple, Inc. filed a joint status report with Judge Cousins.

B. Depositions

The Parties concluded depositions of third-party witnesses on April 20.

Dated: May 22, 2018

Respectfully submitted,

FEDERAL TRADE COMMISSION,

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Dated: May 22, 2018

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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 Case Management 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/ Gary A. Bornstein
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