United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FEDERAL TRADE COMMISSION, et al., Plaintiffs, v. QUALCOMM INCORPORATED, et al., Defendants.	Case No. 17-CV-00220-LHK **ORDER CONTINUING FURTHER CASE MANAGEMENT CONFERENCE, DIRECTING PARTIES TO FILE JOINT ADR STATUS REPORTS, AND DENYING QUALCOMM'S REQUEST FOR OUT-OF-TIME DEPOSITIONS**
IN RE: QUALCOMM ANTITRUST LITIGATION	Case No. 17-MD-02773-LHK

The Court hereby CONTINUES the July 25, 2018 further case management conferences to September 12, 2018 at 2:00 p.m. The parties shall file their joint case management statement by September 5, 2018.

By July 25, 2018, the parties in the FTC action and the parties in the MDL action shall each separately file a joint ADR status report indicating whether the parties are willing to engage in an ADR session and if so, what type and by when.

Finally, the parties in the FTC action present a dispute regarding Qualcomm's addition of "three third-party witnesses to its list of likely trial witnesses" after the close of fact discovery. ECF No. 780-3 at 2.[1] Neither party disputes that the identities of these three individuals were not disclosed during fact discovery. *Id.* at 3–4, 11. Nevertheless, Qualcomm argues that FTC has "ample time" to take additionally deposition testimony before the start of the January 4, 2019 trial. *Id.* at 3. In other words, Qualcomm apparently requests that the Court allow out-of-time depositions of these three individuals. The Court denies that request.

At the initial case management conference on April 19, 2017, this Court set March 30, 2018 as the date for the close of fact discovery. ECF No. 75 at 2. That date has remained the same throughout the case. ECF Nos. 308 at 2, 389 at 2, 645 at 2. At the April 6, 2018 further case management conference, the Court allowed some limited forms of discovery to take place after the March 30, 2018 fact discovery cutoff. For example, the Court approved six depositions for the week of April 16–20, 2018 and one deposition for the week of May 21–25, 2018. ECF No. 678 at 1–2. The Court also granted the parties' request to extend the deadline to file motions to compel fact discovery to May 18, 2018. *Id.* at 1. At no time during these discussions about modifying the case schedule did Qualcomm request out-of-time depositions for the three individuals at issue.

Although Qualcomm suggests that FTC has enough time to depose these individuals before trial begins on January 4, 2019, Qualcomm fails to appreciate that multiple important deadlines have passed such that permitting out-of-time depositions may require a disruption of the entire case schedule. As noted, except for the limited exceptions approved by the Court, fact discovery closed on March 30, 2018. ECF No. 645 at 2. The deadline to file motions to compel

[1] All electronic case filing numbers are from *FTC v. Qualcomm Inc.*, No. 17-CV-00220-LHK, unless otherwise noted.

fact discovery expired on May 18, 2018. ECF No. 678 at 1. Both FTC and Qualcomm have served their expert reports: FTC served its expert reports on May 24, 2018, and Qualcomm served its expert reports on June 28, 2018. *Id.* at 2. Moreover, FTC's rebuttal expert reports are due next week, by July 26, 2018. *Id.* Expert discovery is set to close on August 16, 2018, less than a month from today. *Id.* Dispositive motions and *Daubert* motions are due on August 30, 2018. *Id.*

Thus, allowing out-of-time depositions of the three individuals identified by Qualcomm at this late stage of the proceedings may negatively impact the case schedule and prejudice FTC. Qualcomm's request for out-of-time depositions of these three individuals is denied.

IT IS SO ORDERED.

Dated: July 20, 2018

Lucy H. Koh

LUCY H. KOH
United States District Judge

United States District Court
Northern District of California