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18
 19 UNITED STATES DISTRICT COURT
 20 SOUTHERN DISTRICT OF CALIFORNIA

21 IN RE QUALCOMM
 22 INCORPORATED SECURITIES
 23 LITIGATION
 24
 25
 26
 27
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Case No. 3:17-cv-00121-JAH-WVG

**CONSOLIDATED CLASS
 ACTION COMPLAINT FOR
 VIOLATION OF THE FEDERAL
 SECURITIES LAWS**

JURY TRIAL DEMANDED

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GLOSSARY OF TERMS

2G	Second generation wireless telephone technology
3G	Third generation wireless telephone technology
4G	Fourth generation wireless telephone technology
ACT	Association for Competitive Technology
CDMA	Code-Division Multiple Access, a 2G standard capable of voice transmission
FTC	United States Fair Trade Commission
FRAND	Fair, Reasonable, and Non-Discriminatory, the terms on which holders of SEPs are required to license such patents
GSM	Global system for mobile communications, a 2G digital standard using time-based wireless (TDMA) that was adopted by the European Union
IP	Intellectual Property
IPR	Intellectual Property Rights
KFTC	Korea Fair Trade Commission
LTE	Long-Term Evolution, the leading 4G standard
OEM	Original Equipment Manufacturer
QCT	Qualcomm CDMA Technologies; a division of Qualcomm that supplies mobile chipsets
QTL	Qualcomm Technology Licensing; a division of Qualcomm that receives royalty payments from licensees of its patents
SEP	Standard-Essential Patent, patents that are part of a designated standard technology required to be licensed by the patent holder on FRAND terms
SEC	United States Securities and Exchange Commission
TDMA	Time Division Multiple Access, an alternative 2G standard
Taiwan FTC	Taiwan Fair Trade Commission
WCDMA	Wideband Code Division Multiple Access, a 3G standard based on CDMA capable of voice and data transmission

1 Lead Plaintiffs Sjunde AP-Fonden (“AP7”) and Metzler Asset Management
2 GmbH (“Metzler”) (together, “Lead Plaintiffs”) bring this action pursuant to
3 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange
4 Act”) on behalf of themselves and all persons or entities who purchased or otherwise
5 acquired the publicly traded common stock of Qualcomm Incorporated
6 (“Qualcomm” or the “Company”) during the period between February 1, 2012
7 through January 20, 2017, inclusive (the “Class Period”), and were damaged thereby
8 (subject to certain exclusions enumerated in paragraph 238 below).

9 Lead Plaintiffs’ allegations are based upon personal knowledge as to
10 themselves and their actions, and upon information and belief as to all other matters.
11 Lead Plaintiffs’ information and belief are based on, among other things, the
12 independent investigation of Court-appointed Co-Lead Counsel, Bernstein Litowitz
13 Berger & Grossmann LLP and Motley Rice LLC. This investigation included
14 review and analysis of, among other things: (i) Qualcomm’s public filings with the
15 U.S. Securities and Exchange Commission (“SEC”); (ii) documents and information
16 concerning Qualcomm’s business practices made available through formal
17 investigations and enforcement proceedings, including by the U.S. Federal Trade
18 Commission (“FTC”), Korea Fair Trade Commission (“KFTC”), Taiwan Fair Trade
19 Commission (“Taiwan FTC”), and the European Commission (“EC”); (iii) research
20 reports by securities and financial analysts; (iv) transcripts of Qualcomm’s
21 conference calls with analysts and investors; (v) Qualcomm’s press releases and
22 presentations; (vi) news and media reports in the United States and relevant
23 jurisdictions around the world concerning the Company and other facts related to
24 this action; (vii) data reflecting the pricing of Qualcomm common stock;
25 (viii) information obtained pursuant to a Freedom of Information Act request to the
26 FTC; (ix) information provided by relevant consultants and experts; (x) interviews
27 with former Qualcomm employees, some of whom were afraid to provide Lead
28 Counsel with information for fear of retaliation by Qualcomm; and (xi) interviews

1 with current and former employees of Qualcomm's customers and competitors,
2 some of whom were afraid to provide Lead Counsel with information for fear of
3 retaliation by Qualcomm. Lead Counsel's investigation into the factual allegations
4 continues, and many of the relevant facts are known only by the Defendants or are
5 exclusively within their custody or control. Lead Plaintiffs believe that substantial
6 additional evidentiary support is likely to exist for the allegations set forth herein
7 after a reasonable opportunity for discovery, including access to the materials that
8 Qualcomm and third parties have produced to the FTC, KFTC, and other
9 government regulators, but not to Lead Plaintiffs.

10 **I. INTRODUCTION**

11 1. This action concerns Qualcomm's false representation that it licensed
12 its standard-essential patents on a non-discriminatory basis to the entire cellular
13 communications industry. Rather than abide by that representation—one it made
14 repeatedly to industry participants, standard-setting bodies, and investors—
15 Qualcomm and its top executives decided instead to exploit the Company's position
16 as the holder of the industry's standard-essential patents to suppress competition,
17 drive its rivals out of business, and extract supra-competitive royalties. To that end,
18 in 2008, prior to the Class Period, Qualcomm and its top executives amended the
19 Company's well-established licensing policies, began refusing to offer licenses to
20 standard-essential patents to competing chipmakers, and doled out royalty relief to
21 mobile phone manufacturers that agreed to largely or exclusively purchase
22 Qualcomm's chipsets. These undisclosed, highly exclusionary practices succeeded:
23 within just seven years of the undisclosed change in its licensing policy, Qualcomm's
24 revenues from chipset sales tripled, rising by approximately \$10 billion, and
25 virtually all competition was defeated.

26 2. But false representations, especially ones made to standard-setting
27 bodies and industry participants for over a decade, have consequences. Anti-
28 competition regulators across three continents have recently charged or found

1 Qualcomm liable for violating competition laws based on its blanket refusal to
2 license its standard-essential patents to competitor chipmakers and other unfair and
3 discriminatory conduct. One of those regulators, the KFTC, recently levied a record
4 fine approaching \$1 billion and issued a detailed and damning order condemning
5 Qualcomm's multi-year effort to eliminate competition. And another regulator, the
6 FTC, recently brought a similar enforcement action to enjoin Qualcomm's anti-
7 competitive licensing model. Qualcomm's investors, including Lead Plaintiffs here,
8 have likewise suffered. These revelations of Qualcomm's clear-cut anti-competitive
9 practices dealt a swift and severe blow to the value of the Company's shares, causing
10 Qualcomm's stock price to plummet 33% during the Class Period, erasing over
11 \$32 billion in shareholder value.

12 3. Qualcomm went public in 1991 as a fledgling company with no profits,
13 few customers, and sorely in need of a capital infusion. The Company's prospects
14 improved dramatically in 1993, when Dr. Irwin Jacobs, the Company's then-
15 Chairman and Chief Executive Officer ("CEO"), succeeded in convincing the titans
16 of high technology to select Code-Division Multiple Access ("CDMA") as a cellular
17 "standard." A cellular standard functions as a technical "language" that allows
18 cellular devices and cellular networks to interact. Without a common technical
19 standard, cellular networks would not function, as different brands of phones would
20 be unable to operate with each other or the network infrastructure in between.

21 4. Qualcomm held nearly all patents essential for anyone to use CDMA
22 technology. If CDMA were accepted as the standard, all participants in the
23 telecommunications industry—including mobile phone companies, equipment
24 manufacturers, chipset makers, and network carriers—would need to use
25 Qualcomm's patented technologies. Accordingly, if its CDMA were adopted,
26 Qualcomm would be able to demand licenses to use its essential patents from
27 industry participants, and thus profit handsomely.

28

1 5. Participants in the wireless industry were understandably skittish about
2 adopting CDMA as the standard. They were concerned about what would happen if
3 Qualcomm, after the adoption of CDMA and follow-on technologies, refused to
4 license its essential patents to its competitors. They were also worried that
5 Qualcomm would insist on bundling the terms of its license agreements with the
6 purchase of Qualcomm downstream products, such as the Company’s chipsets, once
7 the industry was “locked in” to the CDMA standard. To avoid these risks, industry
8 participants required the Company and its executives to commit to the industry’s
9 standard-setting bodies that they would license Qualcomm’s patents essential to the
10 standard (“standard-essential patents” or “SEPs”) to all companies on a “fair,
11 reasonable, and non-discriminatory basis.” Qualcomm and its executives made and
12 reaffirmed this commitment—known as the “FRAND” commitment—hundreds of
13 times to the standard-setting bodies in written declarations and certifications.

14 6. Qualcomm’s compliance with its commitment to the standard-setting
15 bodies and industry participants was also critically important to investors because it
16 greatly impacted the risk profile of an investment in the Company. Failure by
17 Qualcomm to fulfill its commitment to license its standard-essential patents would
18 result in enforcement actions and fines by regulators, as well as civil lawsuits for
19 injunctions and money damages by industry participants. For this reason,
20 Qualcomm and its executives affirmatively represented in reports filed with the SEC
21 and in their public statements that they “committed to such standards bodies that we
22 will offer to license our essential patents for these CDMA standards on a fair,
23 reasonable and non-discriminatory basis” and that the Company had complied with
24 that commitment.

25 7. Qualcomm’s executives bolstered these representations concerning the
26 Company’s commitment to license its standard-essential patents on a fair,
27 reasonable, and non-discriminatory basis with further assurances during analyst
28 calls, investor conferences, and press releases, including unequivocal statements

1 such as “we’ve never refused to license,” “we license broadly,” we made our
2 standard-essential patents “available to the industry,” and we license so “the entire
3 market could play.” As Defendants acknowledged prior to the Class Period, “a
4 decision that we are going to license you and not license you ... would be
5 discriminatory” and “saying we refuse to license competitors is like saying
6 McDonald’s refuses to sell hamburgers It’s nuts. It’s crazy!” These unequivocal
7 assurances that Qualcomm was willing to license to anyone was held out as the
8 “hallmark” of the Company’s licensing model—or so Qualcomm and its top
9 executives led investors to believe.

10 8. In addition to licensing its patents, Qualcomm designs and sells
11 “chipsets.” These integrated semiconductor circuits, which are contained in virtually
12 every cellular phone, function as a wireless controller or application processor for
13 the device. Qualcomm began manufacturing chipsets for cellular phones in 1992.
14 For the next fifteen years, Qualcomm faced robust competition from other chipset
15 manufacturers, including Texas Instruments, MediaTek, Broadcom, Freescale,
16 Infineon, Motorola, NEC, and STMicro, among others. These companies all
17 produced chipsets that could perform virtually all of the digital functions of a cellular
18 phone, and some of these companies produced chipsets that were considered, in
19 terms of both price and quality, superior to Qualcomm’s chipsets. In 2006, for
20 example, Texas Instruments held a commanding 42% share of the wireless chipset
21 market, with Qualcomm’s market share hovering in the 18 to 20% range.

22 9. Then, beginning in 2008, an unexpected shift occurred. Qualcomm’s
23 share of the chipset market spiked—along with its chipset revenues—and
24 competitors were forced to exit the industry. In 2008, for example, Qualcomm saw
25 its share of the chipset market nearly double to 37% from the year before. Over the
26 next six years, Qualcomm’s share of the global chipset market continued to climb,
27 achieving a remarkable 66% share in 2014—two-thirds of the entire worldwide
28 market. And Qualcomm gained even more dominance over the market for CDMA

1 chipsets, in which it commanded more than 90% of the market for each year between
2 2008 and 2014. As would be expected, as Qualcomm’s share of the chipset market
3 swelled, so too did the Company’s revenues attributable to chipset sales. Between
4 2008 and 2014, Qualcomm’s chipset revenues tripled, from \$6.7 billion in 2008 to
5 over \$18.6 billion in 2014. Thus, in a matter of only a few years, Qualcomm went
6 from one in a field of many competitors to *the* global powerhouse in the burgeoning
7 market for mobile-phone chipsets.

8 10. Unknown to investors during the Class Period, Qualcomm achieved
9 dominance over the mobile chipset market by violating its commitment to standard-
10 setting bodies and industry participants, by violating worldwide anti-competition
11 laws, and by violating its affirmative representations to investors. Contrary to its
12 public representations that the Company licensed its cellular technologies “broadly”
13 on a “non-discriminatory” basis to the “entire industry,” Qualcomm adopted a policy
14 beginning in the 2008 timeframe of refusing to license its standard-essential patents
15 to competitor chipset manufacturers. Without a license to these standard-essential
16 patents, Qualcomm’s rival chipmakers were doomed to fail. And that is precisely
17 what happened: mobile phone manufacturers were loath to buy chipsets from
18 unlicensed companies. Accordingly, within a matter of a few years, nearly all of the
19 leading chipset manufacturers exited the market, leaving Qualcomm with an iron
20 grip over the entire global mobile telecommunications industry.

21 11. Qualcomm’s policy of refusing to license competitors has now been
22 exposed. Major industry participants—including Intel, Samsung, Apple, MediaTek,
23 among others—have detailed how Qualcomm stifled competition by refusing to
24 license its standard-essential patents to chipset manufacturers. As explained by Mr.
25 Wei-Fu Hsu, MediaTek’s long-time chief legal officer, MediaTek “specifically
26 demand[ed] patent license negotiations” during the Class Period, and “did raise this
27 request for a license several times,” but was repeatedly rebuffed by Qualcomm and
28 its senior executives. Qualcomm similarly blocked Samsung, Intel, Via

1 Technologies, and other competitors from obtaining licenses to the necessary patents
2 for the cellular standards.

3 12. Regulators in the United States, Asia, and Europe have initiated
4 enforcement actions against Qualcomm for violating fair competition and anti-
5 monopoly laws by refusing to license competitors—and, in the case of the KFTC,
6 found Qualcomm liable and fined it nearly a billion dollars. Confronted with the
7 KFTC’s evidence, Qualcomm ultimately admitted to having engaged in the
8 fundamentally unfair and discriminatory practice of refusing to license its
9 competitors for over the past nine years, which enabled its rise to dominance.

10 13. In addition to misrepresenting its willingness to license to the entire
11 industry, Qualcomm also falsely assured investors that the Company did not
12 “bundle” the terms of its license and chipset agreements. The commitment to license
13 on fair and non-discriminatory terms obligates holders of standard-essential patents
14 (such as Qualcomm) to license their essential patents, regardless of whether
15 licensees also agree to purchase the patent holder’s downstream products (such as
16 Qualcomm’s chipsets). In this case, Qualcomm and its top officers not only
17 committed to license on non-discriminatory terms—and, thus, not bundle—but they
18 also affirmatively represented to investors that “we don’t bundle.” Indeed, during
19 investor conference calls in the Class Period, Qualcomm’s senior officers, including
20 its current President and CEO, quieted investor concerns with specific
21 representations that “we don’t bundle those together” and “we have been very clear
22 that we keep those two things separate.”

23 14. As investors have come to learn, however, Defendants’ representations
24 concerning the purported separation of the terms and negotiations of Qualcomm’s
25 licensing and chipset sales agreements were false, misleading, and omitted material
26 facts. In January 2017, both the FTC and Qualcomm’s largest customer, Apple,
27 detailed in public filings how Qualcomm reinforced its grip on the mobile chipset
28 industry by bundling the terms of its license agreements with chipset sales.

1 Qualcomm gave handset manufacturers a clear avenue to obtain royalty relief on
2 their licenses: buy only Qualcomm's chips. In the words of the FTC, "Qualcomm
3 has offered customers incentive payments (often tied to their purchase of
4 Qualcomm's processors [i.e., chipsets]) to induce those customers to accept
5 Qualcomm's preferred license terms" in order to "close the gap' with customers that
6 resist license terms they regard as unreasonable."

7 15. Qualcomm's practice of bundling the terms of its license and chipset
8 sales agreements has been further confirmed by, among others, former high-level
9 employees of the Company, its customers, and its competitors. For example,
10 Qualcomm's former Vice President of Technology explained that when making
11 chipset agreements with customers, "there was always a QTL [license business]
12 component that would act in the background." A former senior member of Apple's
13 Patent Licensing & Strategy department confirmed that Qualcomm provided royalty
14 rebates tied to chipset purchases, explaining that "if you buy 'x' number of chips
15 over so many years, Qualcomm will give you something else and that will offset
16 what you have to pay for the license." Mr. Hsu, MediaTek's general counsel,
17 confirmed that he heard from multiple companies during the 2012 to 2013
18 timeframe, including Huawei, ZTE, and other handset manufacturers, that if a
19 licensee wanted a royalty reduction they had to buy Qualcomm chipsets.

20 16. When the truth was revealed about Qualcomm's refusal to license its
21 competitors and the Company's bundling of licenses and chipset sales agreements,
22 investors suffered greatly. With each successive revelation of the Company's
23 previously-hidden practices, the market harshly responded, causing the value of
24 Qualcomm's shares to plummet and investors to incur billions of dollars in damages.

25 **II. JURISDICTION AND VENUE**

26 17. This action arises under Sections 10(b) and 20(a) of the Securities
27 Exchange Act, 15 U.S.C. § 78j(b) and 78t(a), and Rule 10b-5, 17 C.F.R. § 240.10b 5,
28 promulgated under the Exchange Act.

1 18. This Court has jurisdiction over the Exchange Act claims pursuant to
2 Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331.

3 19. Venue is proper in this District pursuant to Section 27 of the Exchange
4 Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1391(b) and (c). At all relevant times,
5 Qualcomm has conducted business in this District and has maintained its
6 headquarters in this District at 5775 Morehouse Drive, San Diego, California. In
7 addition, many of the acts charged herein, including the preparation and
8 dissemination of materially false and misleading information, occurred in substantial
9 part in this District.

10 20. In connection with the acts alleged herein, Defendants, directly or
11 indirectly, used the means and instrumentalities of interstate commerce, including,
12 but not limited to, the U.S. mails, interstate telephone communications and the
13 facilities of national securities exchanges.

14 **III. THE PARTIES**

15 **A. Lead Plaintiffs**

16 21. Lead Plaintiff AP7 is a Swedish state-owned pension fund that manages
17 approximately \$37.6 billion in global equity and other investments as of
18 March 31, 2017. As set forth in the certification previously submitted to the Court
19 (*see* ECF No. 11-6), AP7 purchased Qualcomm common stock at artificially inflated
20 prices during the Class Period and suffered damages as a result of the securities law
21 violations alleged herein. By order dated May 4, 2017, the Court appointed AP7 as
22 a Lead Plaintiff in this action.

23 22. Lead Plaintiff Metzler is a German capital investment company
24 headquartered in Frankfurt am Main, Germany. Metzler controls and manages
25 public and specialty investment funds. As set forth in the certification previously
26 submitted to the Court (*see* ECF No. 11-6), Metzler's funds purchased Qualcomm
27 stock at artificially inflated prices during the Class Period and suffered damages as
28

1 a result of the securities law violations alleged herein. By order dated May 4, 2017,
2 the Court appointed Metzler as a Lead Plaintiff in this action.

3 **B. Corporate Defendant**

4 23. Defendant Qualcomm is a corporation organized under Delaware law
5 and headquartered at 5775 Morehouse Drive, San Diego, California. Qualcomm
6 holds patents essential to certain cellular communications standards. Qualcomm has
7 committed to standard-setting bodies to license those patents on a fair, reasonable,
8 and non-discriminatory basis. Qualcomm has also become one of the world's largest
9 chipset suppliers. The Company's primary business segments are Qualcomm
10 Technology Licensing ("QTL"), which receives royalty payments from its licensees
11 of the cellular technologies, and Qualcomm CDMA Technologies ("QCT"), which
12 supplies mobile chipsets. These two business segments accounted for virtually all
13 of the Company's revenues and profits during the Class Period. Qualcomm's stock
14 trades on the NASDAQ Stock Market under the symbol "QCOM."

15 **C. Executive Defendants**

16 24. Defendant Derek K. Aberle ("Aberle") is Qualcomm's current
17 President. He has been President of Qualcomm since March 2014 and a member of
18 Qualcomm's Executive Committee since 2008. Defendant Aberle joined
19 Qualcomm in December 2000, and held numerous executive-level positions at the
20 Company prior to becoming its President. These positions included: Executive Vice
21 President and Group President from November 2011 to March 2014; President of
22 QTL from September 2008 to November 2011; and Senior Vice President and
23 General Manager of QTL from October 2006 to September 2008. As acknowledged
24 in the Company's March 10, 2014 press release, Defendant Aberle was
25 "instrumental in creating and growing many important areas of Qualcomm's
26
27
28

1 business over the past 13 years, including [its] licensing business.”¹ Defendant
2 Aberle has further been described by the Company on its website as having, over the
3 past decade, personally “played a leading role in structuring and negotiating key
4 license agreements with Qualcomm’s licensees.”² During the Class Period, Aberle
5 regularly spoke to investors and securities analysts regarding the Company and its
6 licensing model, professing to know what he was speaking about. Defendant Aberle
7 made certain of the misstatements and omissions alleged herein.

8 25. Defendant Steven R. Altman (“Altman”) was the President and Vice
9 Chairman of Qualcomm and a member of its Executive Committee for over
10 15 years. While at Qualcomm, Defendant Altman’s roles included: Vice Chairman
11 from November 2011 to January 2013; President of Qualcomm from July 2005 to
12 November 2011; Executive Vice President from November 1997 to June 2005;
13 President of QTL from September 1995 to April 2005; and General Counsel from
14 October 1989 through September 2000. As the Company stated in its press releases,
15 Defendant Altman was the “chief architect of Qualcomm’s IP licensing strategy”
16 and was “responsible for structuring and negotiating key license agreements.”³
17 Defendant Altman has stated publicly that he was “an active participant in essentially
18 every major transaction in which the company has taken part.” During the Class
19 Period, Altman regularly spoke to investors and securities analysts regarding the
20 Company and its licensing model, professing to know what he was speaking about.
21 Defendant Altman made certain of the misstatements and omissions alleged herein.

22 26. Defendant Donald J. Rosenberg (“Rosenberg”) has been Executive
23 Vice President, General Counsel and Corporate Secretary of Qualcomm
24

25
26 ¹ Press Release, Qualcomm Inc., “Derek Aberle Named Qualcomm President”
(Mar. 10, 2014).

27 ² *Id.*

28 ³ Press Release, Qualcomm Inc., “Steve Altman, Qualcomm Vice Chairman, to
Retire” (Oct. 16, 2013).

1 Incorporated since October 2007. Rosenberg reports directly to Qualcomm's CEO
2 Defendant Mollenkopf, and is a member of Qualcomm's Executive Committee. In
3 his role as General Counsel, Defendant Rosenberg is responsible for overseeing
4 Qualcomm's worldwide legal affairs, intellectual property and corporate matters.
5 During the Class Period, Rosenberg regularly spoke to investors and securities
6 analysts regarding the Company and its licensing model, professing to know what
7 he was speaking about. Defendant Rosenberg made certain of the misstatements and
8 omissions alleged herein.

9 27. Defendant William F. Davidson, Jr. ("Davidson") joined Qualcomm in
10 February 2002 and was Senior Vice President of Qualcomm's Strategy and
11 Operations for Global Market Development for QTI from May 2013 to August 2014.
12 Prior to that time, Defendant Davidson was Qualcomm's Senior Vice President of
13 Investor Relations from April 2007 to August 2014, and Senior Vice President of
14 Global Marketing from April 2007 to August 2012. During the Class Period,
15 Davidson regularly spoke to investors and securities analysts regarding the Company
16 and its licensing model, professing to know what he was speaking about. Defendant
17 Davidson made certain of the misstatements and omissions alleged herein.

18 28. Defendant Paul E. Jacobs ("Jacobs") is the Chairman of the Board of
19 Directors of Qualcomm, and has occupied that position since March 2009. In
20 addition, Defendant Jacobs was the Company's Chief Executive Officer from July
21 2005 to March 2014. Before becoming CEO, Defendant Jacobs was the Executive
22 Vice Group President of the Qualcomm Wireless & Internet Group from July 2001
23 to July 2005, and Executive Vice President from February 2000 to June 2005. As
24 Qualcomm has acknowledged on its website, Defendant Jacobs was "a key architect
25 of Qualcomm's strategic vision."⁴ Defendant Jacobs signed and certified the
26 _____

27 ⁴ Website biography, Qualcomm Inc., Leadership: Dr. Paul E. Jacobs, Executive
28 Chairman and Chairman of the Board, <https://www.qualcomm.com/company/about/leadership/paul-jacobs>.

1 Company's quarterly and annual SEC filings between 2012 and 2016. During the
2 Class Period, Jacobs regularly spoke to investors and securities analysts regarding
3 the Company and its licensing model, professing to know what he was speaking
4 about. Defendant Jacobs made certain of the misstatements and omissions alleged
5 herein.

6 29. Defendant Steven M. Mollenkopf ("Mollenkopf") is Qualcomm's
7 Chief Executive Officer. Defendant Mollenkopf has been Qualcomm's CEO since
8 March 2014, a member of the Company's Board of Directors since December 2013,
9 and a member of Qualcomm's Executive Committee since July 2008. Defendant
10 Mollenkopf first joined Qualcomm in 1994, and held numerous executive-level
11 positions at the Company prior to becoming its CEO. These positions included
12 President and Chief Operating Officer ("COO") from November 2011 through
13 December 2013; Executive Vice President and Group President from September
14 2010 to November 2011; Executive Vice President and President of QCT from
15 August 2008 to September 2010; Executive Vice President of QCT Product
16 Management from May 2008 to August 2008; Senior Vice President of Engineering
17 and Product Management from July 2006 to May 2008; and Vice President of
18 Engineering from April 2002 to July 2006. As CEO, Mollenkopf is responsible for
19 overseeing Qualcomm's QCT division. Prior to his promotion to CEO, Defendant
20 Mollenkopf, by his own account, "led the Company's chipset business" at
21 Qualcomm.⁵ In addition to running the chipset business, Defendant Mollenkopf also
22 played a critical role in helping to "define and implement Qualcomm's strategy and
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27 ⁵ Website biography, Qualcomm Inc., Leadership: Steve Mollenkopf, Chief
28 Executive Officer, <https://www.qualcomm.com/company/about/leadership/steve-mollenkopf>.

1 technologies.”⁶ Defendant Mollenkopf signed and certified the Company’s
2 quarterly and annual SEC filings from the second quarter of 2014 to the first quarter
3 of 2017. During the Class Period, Mollenkopf regularly spoke to investors and
4 securities analysts regarding the Company and its licensing model, professing to
5 know what he was speaking about. Defendant Mollenkopf made certain of the
6 misstatements and omissions alleged herein.

7 30. In this Complaint, Defendants Aberle, Altman, Rosenberg, Davidson,
8 Jacobs, and Mollenkopf are collectively referred to as the “Executive Defendants”
9 and, together with Qualcomm, as the “Defendants.” The Executive Defendants
10 directly participated in the management of Qualcomm’s operations, had the ability
11 to control and did control Qualcomm’s financial reporting, and were aware of
12 confidential information concerning Qualcomm, its chipset business, and its
13 licensing policies and negotiations. They also were involved in drafting, reviewing,
14 publishing, and making the materially false and misleading statements and
15 omissions alleged herein, and approved or ratified these misstatements or omissions.

16 **IV. BACKGROUND**

17 **A. Cellular Standards**

18 31. Much like human conversation requires participants to agree on which
19 language to speak, manufacturers and vendors in the cellular communications
20 industry needed to agree on a common set of technical standards in order for cell
21 phones, cellular infrastructure, and related communication technologies from
22 different companies to function and operate. Such common standards create the
23 necessary technical “language” that allows mobile devices, cellular networks, and
24 their component parts to communicate with one another. Without a common
25 technical standard, the cellular network simply could not function.

26
27 ⁶ Website biography, Qualcomm Inc., Leadership: Steve Mollenkopf, Chief
28 Executive Officer, <https://www.qualcomm.com/company/about/leadership/steve-mollenkopf>.

1 32. To develop a common set of cellular communications standards,
2 participants in the cellular industry formed standard-setting bodies. A leading
3 standard-setting body for the cellular communications industry is the European
4 Telecommunications Standards Institute (“ETSI”). ETSI is composed of more than
5 800 members from countries across five continents, including manufacturers,
6 network operators, service and content providers, national administrations,
7 universities and research bodies, user organizations, and consultancy companies and
8 partnerships. ETSI has a global perspective, and its standards are accepted
9 throughout the world, including in the United States. In addition to ETSI, other
10 leading standard-setting bodies for the telecommunications industry include the
11 Telecommunications Industry Association (“TIA”), the Cellular
12 Telecommunications Industry Association (“CTIA”), the American National
13 Standards Institute (“ANSI”), and the Alliance for Telecommunications Industry
14 Solutions (“ATIS”).

15 33. Virtually every participant in the development of communication
16 technologies for the cellular industry is a member of one or more standard-setting
17 bodies. Members include: (i) owners of patents underlying the standards, such as
18 Nokia, Ericsson, and Qualcomm; (ii) chipset manufacturers, such as Intel,
19 MediaTek, and Qualcomm, which make the baseband processor chipsets that enable
20 cellular phones to communicate with a carrier’s cellular network; (iii) handset
21 manufacturers, such as Apple, Samsung, and LG, which make the cell phones used
22 by consumers; and (iv) wireless carriers, such as AT&T, Verizon, Sprint, and
23 T-Mobile, which operate the mobile wireless systems that allow users to place and
24 receive telephone calls, and send and receive data on their cell phones.

25 34. Professor Michael A. Carrier is a Distinguished Professor of Law at
26 Rutgers University and an expert in antitrust and intellectual property matters. He
27 has written more than 90 articles and book chapters on antitrust and intellectual
28 property laws. Professor Carrier’s scholarship has been cited in opinions of the U.S.

1 Supreme Court, California Supreme Court, D.C. Circuit, Second Circuit, Third
2 Circuit, Fourth Circuit, district courts, International Trade Commission, and Federal
3 Trade Commission, as well as in congressional hearings, government officials'
4 speeches, and congressional and government agency reports. Professor Carrier has
5 testified before the U.S. Senate Judiciary Committee (Subcommittee on Antitrust,
6 Competition Policy and Consumer Rights) and National Academies (Board on
7 Science, Technology, and Economic Policy), and given talks to the Canadian
8 Competition Bureau, U.S. Department of Justice, FTC, and state attorneys general.
9 He is a member of the Board of Advisors of the American Antitrust Institute and is
10 a past chair of the Executive Committee of the Antitrust and Economic Regulation
11 section of the Association of American Law Schools (AALS). As Professor Carrier
12 has explained in connection with this action:

13 The standards process is vital for products like cellular devices to exist.
14 Without such common 'rules of the road,' it is hard to see how the
15 industry would survive. To put things more practically, without
16 industry standards, your iPhone would not be able to connect to
17 multiple wireless networks, play videos compressed with particular
18 technologies, or even connect to numerous charging outlets.

18 35. Cellular standards incorporate technology covered by patents owned by
19 various holders. Such patents are known as "standard-essential patents" or
20 SEPs. All companies that seek to sell a product, service, or cell phone component
21 that implements the cellular standard necessarily use the technology claimed in
22 standard-essential patents. As a corollary, a company using a standard must obtain
23 a license from the holder of the standard-essential patents to avoid infringing the
24 patent. Without such a license to these essential patents, the company's products or
25 services would infringe, and the patent holder could bring an action to enjoin the
26 infringing conduct or obtain an award of monetary damages.

27 36. For all of its benefits, standardization presents opportunities for
28 abuse. Among other things, the holder of the standard-essential patents may abuse

1 its position by: (i) refusing to license its patents to competitors (thus blocking
 2 competitors from using the standard); (ii) insisting on licensing terms that
 3 discriminate in favor of the patent holder’s own downstream products (thus inducing
 4 licensees to purchase downstream products, such as chipsets, that they otherwise
 5 would not purchase); or (iii) demanding supra-competitive license terms beyond the
 6 value of the patent (thus extracting benefits from their patents to which they are not
 7 entitled). The FTC has explained that “patent holdup” describes the potential that
 8 an “SEP holder can use the leverage it may acquire as a result of the standard setting
 9 process to negotiate higher royalty rates or other favorable terms after the standard
 10 is adopted than it could have credibly demanded beforehand.”⁷ Professor Carrier
 11 has further explained that “‘patent holdup’ has appropriately received antitrust
 12 attention since it reflects an abuse of the process, allowing a patent-holder to take
 13 advantage of investments made in conformance with a standard that would be
 14 rendered worthless if the implementer were forced to switch to a new technology.”

15 **B. The FRAND Commitment**

16 37. To safeguard against potential abuses of standardization, standard-
 17 setting bodies require, before adopting a standard, that all members who believe they
 18 hold standard-essential patents first identify and “declare” such patents, and then
 19 commit to grant licenses to those patents on a “fair, reasonable, and non-
 20 discriminatory” basis. This licensing commitment, referred to as the “FRAND” or
 21 “RAND” commitment, is a critical aspect of the standard-setting process. If a holder
 22 of an essential patent refuses to make such a promise, the standard-setting body will
 23 pursue an alternative technology to include as part of the standard. A patent holder
 24 that makes the FRAND commitment promises to license its standard-essential
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28 ⁷ Prepared Statement of the FTC Before the U.S. Sen. Jud. Comm. Concerning
 “Standard Essential Patent Disputes and Antitrust Law” (July 30, 2013), at 1.

1 patents to anyone willing to accept a license, and relinquishes its right to exclude a
2 licensee from the standards-based technologies.

3 38. The FRAND commitment is an important and necessary check on the
4 patent holder's power to use its standard-essential patents to "holdup" implementers
5 of the standard. Without a FRAND commitment, holders of standard-essential
6 patents would have an easy path to monopoly profits because, once the standard is
7 adopted, the patent holder could refuse to license its essential patents, charge
8 unreasonable or discriminatory terms, or bundle essential patents with other
9 products, with all implementers of the standard having no choice but to use the
10 patented standard and purchase the other products. The FRAND commitment is
11 therefore a critical tool in preventing exploitative and exclusionary practices, and in
12 ensuring that the standard remains accessible to all who wish to implement it. In
13 exchange for making a FRAND commitment, the holder of the standard-essential
14 patent receives the opportunity to obtain a reasonable royalty, as well as the
15 industry's widespread adoption of a standard incorporating its patents.

16 39. As Professor Carrier further emphasized:

17 FRAND obligations are essential to the standard-setting process. 'Ex
18 ante,' before a standard is selected, a patent holder lacks market power.
19 If, at such a time, it stated that it would refuse to license its patent,
20 charge excessive or discriminatory royalties, or force implementers to
21 license additional, non-standard-essential patents or purchase unrelated
22 products, the organizations would quickly drop such patented
23 technology from consideration. For that reason, 'ex post,' after the
24 standard has been adopted, and when the organization is locked into
25 using the technology, a patent holder's attempts to engage in such
26 behaviors constitute an abusive exercise of market power that threatens
27 the standard-setting process, competitors, and consumers.

28 40. Industry organizations have also emphasized the importance of the
FRAND commitment. For example, ACT, also known as the Association for
Competitive Technology, is an industry group representing 5,000 small and mid-size
cellular application developers and information technology firms. As ACT has

1 explained, “[b]ecause the FRAND promise is designed to address the competitive
2 problems that can occur with industry collaboration during the standardization
3 process, the violation of a FRAND promise presents not merely contractual issues,
4 but also significant competition law concerns.”

5 41. After making a FRAND commitment, the holder of a standard-essential
6 patent is entitled to seek only a fair, reasonable, and non-discriminatory royalty from
7 an implementer of the cellular standard. The FRAND commitment includes three
8 basic components relevant to this matter:

9 **(a) An obligation to license.** A standard-essential patent holder that elects
10 to make a FRAND commitment is obligated to offer licenses to any entity that seeks
11 a license. Having made the commitment to license on FRAND terms, thereby
12 inducing others to adopt the standard, the holder of a standard-essential patent cannot
13 then renege on its commitment and decide not to license certain companies. This
14 has been confirmed by courts in this Circuit and around the world. The Ninth Circuit
15 has recognized that, after making a FRAND promise, a standard-essential patent
16 holder “cannot refuse a license to a manufacturer who commits to paying the RAND
17 rate.”⁸ As Professor Carrier has explained, “a refusal to license, after having made
18 the FRAND commitment, is as fundamental a breach of the FRAND licensing
19 promise as can be envisioned.”

20 **(b) An obligation not to discriminate against competitors.** Having made
21 a FRAND commitment, the holder of the standard-essential patent also cannot
22 discriminate when it licenses. Such discrimination occurs when the patent holder
23 refuses to license certain categories of licensees (e.g., competitors). The requirement
24 that a patent holder not discriminate in licensing helps to prevent standard-essential
25 patent holders from squeezing out their competitors.

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⁸ *Microsoft Corp. v. Motorola, Inc.*, 795 F.3d 1024, 1031 (9th Cir. 2015).

1 **(c) An obligation to license standard-essential patents on their own,**
2 **without requiring that a licensee pay for other “bundled” items or products.** A
3 holder of a standard-essential patent maintains a monopoly over the patent
4 underlying the standard. If unchecked, the holder of such a patent could exploit its
5 monopoly by bundling a license to its FRAND-committed patent to the purchase of
6 other products, which could allow it to charge above-FRAND royalty rates. A
7 standard-essential patent holder that links its license to an agreement concerning a
8 separate product is said to have “bundled” those two items.

9 42. As Professor Carrier explained, the above three “basic components” lie
10 at the core of the FRAND obligation:

11 *First*, a FRAND commitment signifies a promise to license, which is
12 directly breached by a refusal to license. *Second*, an obligation of
13 nondiscriminatory treatment ensures that all potential implementers can
14 obtain a license on similar terms, with an standard-essential patent
15 holder’s ability to pick and choose who can receive licenses on varying
16 terms violating such a promise. *Third*, a FRAND commitment is
17 violated by forcing (through refusal “sticks” or rebate “carrots”) potential
18 implementers to purchase separate items, which could result
19 in supra-competitive royalty rates and which threatens even more
20 severe harms than attempts to obtain injunctions.

21 43. Mr. Wei-Fu Hsu, who served as MediaTek’s General Counsel between
22 2008 and 2016 and the head of its legal department for a dozen years (*see* description
23 of Mr. Hsu at paragraph 97), likewise confirmed that “a basic component of the
24 FRAND commitment is that a holder of a standard-essential patent must be prepared
25 to offer a license to the patents, including competitors.” Mr. Hsu explained that this
26 component of the FRAND obligation is extremely important because, when
27 standard-setting organizations’ members are choosing between proposals for
28 competing technologies to be adopted as a standard, the groups rely on a member’s
commitment to license its patents, on FRAND terms, in exchange for their
agreement to adopt the technology as a standard.

1 44. Mr. Hsu further explained why the FRAND commitment is so
2 important from an industry perspective. “Everybody has to use [the standard-
3 essential patents], no exceptions. Everyone is tied-up to the standard-essential patent
4 holder’s technology. A competitor, in particular, would be stuck because it would be
5 forced to change its manufacturing process to comply with the standard, but there
6 would be no way for its products to use the technology without violating the essential
7 patents.” “For this reason,” Mr. Hsu added, “standard-setting organizations always
8 remind members making a technical contribution proposal for their technology to be
9 adopted as standards that the member making the proposal must comply with its
10 FRAND obligations if its technology is adopted.”

11 45. Qualcomm itself has publicly acknowledged that the FRAND
12 commitment requires holders of standard-essential patents, such as itself, to broadly
13 license, including to competitors. As Defendant Rosenberg told the FTC on
14 June 13, 2011, the “foundational goal” of the standard-setting organizations’
15 FRAND policy “is availability of licenses necessary to practice standards” and
16 “[c]ertainly, a patent-holder who gives a RAND commitment gives up the right to
17 refuse to license.”⁹ Defendant Rosenberg has further acknowledged, when speaking
18 to Qualcomm investors, that “a decision that we are going to license you and not
19 license you ... would be discriminatory.”¹⁰

20 46. Remarkably, as discussed further below, despite its recognition that a
21 refusal to license its standard-essential patents to competitors would in fact be
22 “discriminatory,” Qualcomm secretly employed a policy which was exactly that.
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26 ⁹ *Comments of Qualcomm Incorporated to FTC Patent Standards Workshop*, Project
27 No. P11-1204 (June 13, 2011), at 26.

28 ¹⁰ Transcript, “Qualcomm Inc. at Friedman Billings Ramsey Capital Markets
Investor Conference” (Dec. 1, 2009).

1 **V. NATURE OF THE ACTION**

2 **A. Qualcomm Makes the FRAND Commitment**

3 47. Qualcomm holds patents essential to CDMA and certain follow-on
4 cellular technologies. Accordingly, beginning in 1985, Qualcomm advocated that
5 cellular industry participants adopt CDMA and its follow-on technologies as the next
6 cellular standards. Because Qualcomm held CDMA-related patents, the Company
7 would be able to collect significant licensing royalties if CDMA were adopted by
8 standard-setting organizations and market participants as the next cellular standard.

9 48. Qualcomm urged members of the standard-setting bodies during open
10 forum meetings to adopt CDMA as a second generation (“2G”) cellular standard.
11 The industry was initially reluctant to adopt CDMA as a standard, as many
12 companies had already invested millions of dollars in technologies using a
13 competing standard, Time Division Multiple Access (“TDMA”). In addition,
14 industry members expressed reluctance to select CDMA as a standard because
15 Qualcomm possessed near-total control over the patents underlying the CDMA
16 technology. Key critics of CDMA included Ericsson and SCS Mobilcom/Telecom
17 (Interdigital), which submitted technical objections against Qualcomm’s CDMA
18 designs and asserted patent infringement claims against the Company.

19 49. By 1993, Qualcomm persuaded many standard-setting bodies—
20 including CTIA, TIA, and others—to adopt CDMA as a new 2G cellular standard.
21 As part of its efforts, Qualcomm submitted individualized written declarations, some
22 of which were signed by Defendant Altman, stating that, for each CDMA patent it
23 held, Qualcomm would “license [its] essential patents for these CDMA standards on
24 a fair and reasonable basis free from unfair discrimination.”

25 50. After successfully urging the industry’s adoption of CDMA as a 2G
26 standard, Qualcomm promoted several follow-on standards for adoption as the third
27 generation (“3G”) and fourth generation (“4G”) cellular standards. In connection
28 with successfully urging standard bodies to adopt Qualcomm’s technologies,

1 Qualcomm again committed and certified in writing that “we will offer to license
2 our essential patents for these CDMA standards on a fair, reasonable and non-
3 discriminatory basis.” As a result of these repeated and specific assurances to
4 standard-setting bodies, Qualcomm’s technologies were adopted as 3G and 4G
5 cellular standards throughout much of the developed world.

6 51. Qualcomm has confirmed these facts to investors, and reiterated its
7 purported commitment to license on a “fair, reasonable and non-discriminatory
8 basis.” As discussed more fully below, the Company in its securities filings
9 disseminated to investors specifically highlighted how Qualcomm had “informed
10 [the standard-setting bodies] that we hold patents that might be essential” for the
11 cellular standards and “committed to such standards bodies that we will offer to
12 license our essential patents for these CDMA standards on a fair, reasonable and
13 non-discriminatory basis.” Qualcomm further assured investors that it, indeed, did
14 offer licenses to interested companies on terms that are “fair, reasonable and non-
15 discriminatory.”

16 52. As of the filing of this Complaint, Qualcomm declared over 30,000
17 global assets to be “essential” to the wireless standards and was thus obligated to
18 grant licenses to these standard-essential patents on a fair, reasonable, and non-
19 discriminatory basis to all potential licensees wishing to implement the standards.

20 **B. Qualcomm Becomes One of the Most**
21 **Powerful Technology Companies in the World**

22 53. Qualcomm went public in 1991. The Company initially struggled to
23 turn a profit. In its first full year as a public company, Qualcomm reported a
24 \$4 million loss. But as the Company’s CDMA technologies were increasingly
25 adopted as cellular standards, Qualcomm’s licensing revenues climbed.

26 54. As Qualcomm has acknowledged, the adoption of CDMA as a cellular
27 standard “open[ed] the door to the global proliferation” of Qualcomm’s digital
28 wireless technology. CDMA’s adoption as a standard propelled the Company’s

1 revenues, generated millions of dollars in high-margin royalties from those who
2 wished to implement the CDMA standard, and caused the Company to realize
3 immense profits. This is because, as the Company has acknowledged and publicly
4 stated, after the adoption of CDMA and follow-on technologies, any company
5 “seeking to develop, manufacture and/or sell products that use CDMA-based
6 standards will require a patent license from us.”¹¹ Accordingly, in the Company’s
7 first reported annual results after CDMA was adopted as a standard, Qualcomm
8 recorded a profit of \$12 million for fiscal 1993, after having posted a loss of
9 \$4 million the year before.

10 55. In 1999, the selection of Qualcomm’s CDMA and follow-on
11 technology as part of the worldwide 3G cellular standard added new revenue streams
12 for Qualcomm, and further entrenched the Company’s dominant position in the
13 industry. After the introduction of the 3G standard, the Company’s licensing
14 revenues nearly doubled, from approximately \$404 million in fiscal 1999, to over
15 \$705 million in fiscal 2000, and Qualcomm’s profits during that time more than
16 tripled.

17 56. By 2000, Qualcomm had been added to the S&P 500 and the Fortune
18 500 list, reflecting the Company’s tremendous growth. Over the next decade-and-
19 a-half, as cell phones and smart phones became ubiquitous, Qualcomm continued to
20 grow its revenues by persuading additional standard-setting organizations to adopt
21 its wireless technologies as standards. This earned the Company praise as the “ATM
22 of the wireless world” for its ability to generate a steady stream of profits in the form
23 of licensing royalties paid for use of its standard-essential patents.¹²

24 57. In addition to licensing its cellular technologies, Qualcomm derives a
25 significant amount of revenue from the sale of chipsets. Qualcomm began producing
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27
28 ¹¹ Qualcomm Inc. 2012-2016 Forms 10-K.

¹² Dave Mock, The Motley Fool, “Qualcomm: Cash Cow” (Nov. 6, 2003).

1 chipsets for cellular phones in 1992. Despite its initial success, Qualcomm was but
2 one of many in a crowded field of chipset manufacturers. During the first fifteen
3 years that Qualcomm was in the chip business, the Company faced robust
4 competition from companies located across the United States, Asia, and Europe.
5 Qualcomm's chipset competitors included, for example, Texas Instruments,
6 MediaTek, Broadcom, Freescale, Infineon, Motorola, NEC, and STMicro, among
7 others. These companies all produced chipsets that were considered competent to
8 perform virtually all of the digital functions of a cellular phone. And some of these
9 companies produced chipsets that were considered superior to Qualcomm's chipsets,
10 in terms of both price and quality.

11 58. This vibrant global chipset market that existed between 1992 and 2007
12 provided many alternative options for manufacturers of cell phones and their
13 component parts. The availability of numerous alternatives to Qualcomm chipsets
14 created intense pricing pressures across the industry and razor thin margins. For
15 example, in 2005, analysts at Rosetta Group noted that competitor chipset
16 manufacturers, including Texas Instruments and Freescale, had produced "custom
17 solutions" in 3G and WCDMA chipsets that were priced "well below" two-thirds the
18 cost of Qualcomm chipsets.¹³ Thus, as of 2006, Texas Instruments held a
19 commanding 42% share of the wireless chipset market, while Qualcomm's market
20 share hovered in the 18 to 20% range that year and several years prior.

21 59. Beginning in 2008, however, a shift occurred, as Qualcomm's share of
22 the chipset market spiked. In 2008, Qualcomm saw its share of the chipset market
23 nearly double from the year before to 37%. In 2009, analysts at Collins Stewart
24 applauded Qualcomm's "commanding" place in the cellular chipset market, noting
25 that "Qualcomm's technology and commanding market position bodes well for its
26
27

28 ¹³ Mona Eraiba, "Qualcomm: Broader Issues Than Inventories" (Apr. 24, 2005).

1 financial performance in 2010 and beyond.”¹⁴ Qualcomm’s share of the global
2 cellular chipset market continued to climb, achieving a remarkable 66% share in
3 2014—two-thirds of the entire worldwide market.

4 60. Qualcomm attributed its extraordinary success during this period to,
5 among other things, its personnel, innovative technologies, and strategic
6 partnerships. For example, during an analyst conference call on January 2, 2008,
7 Defendant Jacobs claimed that the Company was able to consistently perform
8 “extremely well” in a challenging environment, stating “[t]hat’s really attribute[d]
9 to our employees’ focus, perseverance and dedication.” Five years later, at a
10 May 3, 2013 presentation at Stanford Business School on Qualcomm’s leadership
11 and vision, Defendant Jacobs underscored the Company’s “fundamental values” of
12 “innovation, execution, and partnership.” Jacobs claimed that Qualcomm was able
13 to secure a “leadership position” in the chipset industry by identifying strategic
14 opportunities with companies both large and small “that will take the newest
15 technology and bring it into the market, drive it very hard and then get everyone else
16 to follow.” Qualcomm dismissed as “jealousy” any suggestion that its success was
17 due to factors other than the Company’s superior personnel, technology, and
18 strategic vision. As Defendant Jacobs commented during an analyst conference on
19 November 19, 2014, “when you’re successful, there is a lot of scrutiny” whipped up
20 “by competitors who obviously don’t like the fact that you’re so successful.”¹⁵

21 61. As Qualcomm’s share of the modem chipset market surged, so too did
22 its revenues from licenses and patent royalties. In just a few years after 2008,
23 Qualcomm became *the* global powerhouse in the mobile chipset market, with chipset
24 revenues of over \$12 billion and total revenues approaching \$20 billion. By 2012,
25 Qualcomm was the world’s third biggest semiconductor supplier among all
26

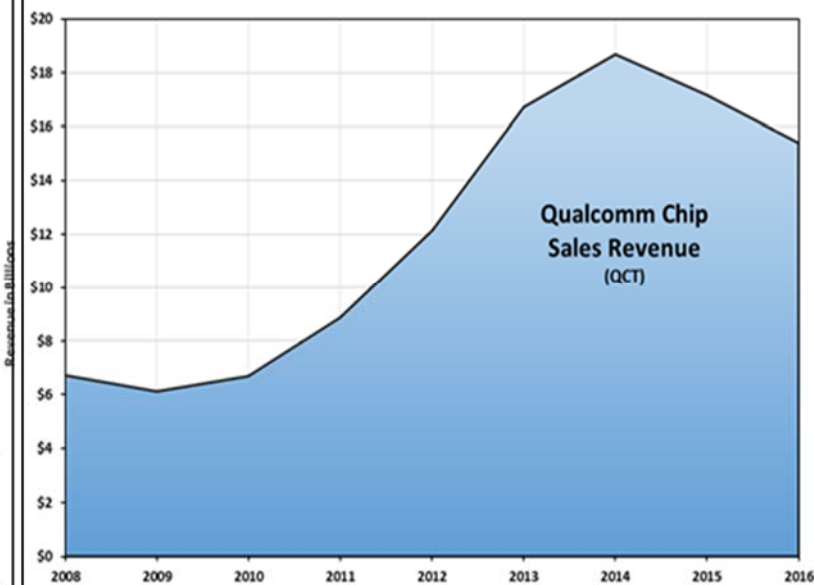
27
28 ¹⁴ Ashok Kumar, “QCOM positioned for long term growth” (Jan. 7, 2009).

¹⁵ Transcript, “Qualcomm Inc. 2014 Analyst Meeting” (Nov. 19, 2014).

1 suppliers, not just mobile companies. Market research firm IHS noted that
 2 Qualcomm’s meteoric ascent represented “the biggest increase of any major
 3 semiconductor supplier in recent history.”¹⁶ Once Qualcomm’s cellular technologies
 4 were adopted as industry standards and the Company generated billions of dollars in
 5 revenues attributable to licensing, royalties, and chip-sales, Qualcomm’s market
 6 share and stock price soared, with the Company reaching a market capitalization of
 7 more than \$137 billion in 2014.

8 62. Remarkably, although the size of the modem chipset market has more
 9 than doubled since 2008, virtually all of Qualcomm’s competing chipset
 10 manufacturers exited the market. As reflected in the below chart, between 2008 and
 11 2015, nine of the eleven largest chipset manufacturers left the market. NXP, Texas
 12 Instruments, and Freescale exited in 2008; NEC, Broadcom, and Ericsson each
 13 exited in 2014; and Nvidia and Marvell both left the market in 2015. And,
 14 meanwhile, not a single significant chipset manufacturer has entered the market
 15 since 2008. As a direct result of these companies exiting the industry, Qualcomm’s
 16 chipset revenues increased dramatically, as reflected in the below chart.

Revenue Growth of Chip Sales After 2008



Chipset Maker	Year of Exit From Industry
NXP	2008
TI	2008
Freescale	2008
STMicro	2012
NEC	2014
Broadcom	2014
Ericsson	2014
Nvidia	2015
Marvell	2015

16 Jeff Defilippi, ARM Blogs, “Qualcomm Rides Wireless Wave to Take Third Place in Global Semiconductor Market in 2012” (Dec. 4, 2012).

1 63. Unknown to investors at the time, and as discussed further below (*see*
2 paragraph 205), Qualcomm achieved and maintained its dominance over competing
3 chipset manufacturers by amending its licensing policy beginning in 2008.
4 Thereafter, the Company implemented a policy of refusing to license its standard-
5 essential patents to any competing chipset manufacturer, which made it unworkable
6 for other chipset makers to meaningfully compete. To further stifle any competition,
7 Qualcomm bundled the terms of its license and chipset agreements, providing
8 handset manufacturers with royalty relief only if they largely or exclusively
9 purchased Qualcomm chipsets. These practices—which forced Qualcomm’s
10 competitors out of business and yielded billions in chipset revenues for
11 Qualcomm—have recently been exposed and resulted in massive regulatory fines,
12 enforcement actions, and investor losses.

13 **C. Qualcomm Assures Investors That It**
14 **Does Not Discriminate Against Competitors**

15 64. Not only did Defendants assure the telecommunications industry and
16 the standard-setting bodies that Qualcomm complied with its FRAND commitment,
17 but they also made the same representations to investors. In addition, Defendants
18 further represented to investors that they “broadly licensed” their standard-essential
19 patents to “everybody,” were “pro-competitive,” and did not “discriminate.” These
20 assurances were made on numerous occasions, in myriad investor presentations, and
21 by each of the six Executive Defendants.

22 65. Both before and during the Class Period, the Executive Defendants told
23 investors that the Company licensed on a “non-discriminatory basis,” with licenses
24 to standard-essential patents offered to any company, including chipset
25 manufacturers. For example, Defendant Altman stated during investor presentations
26 in the lead-up to the Class Period that “[w]e have never refused to license our
27 essential patent to any company to supply chips” and “we have never refused to
28 license our WCDMA essential patents to any company.” Defendant Davidson

1 likewise told investors that “[w]e will license anyone who wants to go and have a
 2 license in CDMA,” which supposedly was “the hallmark of that licensing program.”
 3 He emphasized at a later investor conference that “we don’t shut anybody out” and
 4 “[w]e’ll license anyone who is willing to enter in to the terms of our agreement.”
 5 And Qualcomm specifically emphasized in its annual reports filed with the SEC and
 6 signed by Defendant Jacobs in the build-up to the Class Period that:

- 7 • “We license our CDMA intellectual property to the competitors of our QCT
 8 segment to support the deployment of CDMA-based systems”;
- 9 • “[W]e have made licenses to our essential CDMA patents available to
 10 competitors of our QCT segment”; and
- 11 • “As part of our strategy to generate licensing revenues and support worldwide
 12 adoption of our CDMA technology, we license to other companies, including
 13 the competitors of our QCT segment.”

14 66. During multiple investor presentations prior to the Class Period,
 15 Qualcomm’s top executives further represented how they had “made a decision and
 16 made it very early that Qualcomm would be in the business of licensing and enabling
 17 as many companies as possible to produce products under its patent portfolio,” with
 18 its licensees including “[o]ther chip manufacturers that do compete with Qualcomm
 19 in the chip market for wireless telephones.”¹⁷

20 67. Defendants expressly acknowledged that a refusal to license to
 21 competitor chip manufacturers would violate the Company’s stated commitment to
 22 license on a non-discriminatory basis. For example, Defendant Rosenberg told the
 23 FTC that once a patent holder (such as Qualcomm) commits to license on a fair,
 24 reasonable, and non-discriminatory basis, it “gives up the right to refuse to
 25 license.”¹⁸ Defendant Davidson acknowledged the same when he assured investors

26 ¹⁷ Transcript, “Qualcomm Inc. Licensing/IPR Overview Conference Call &
 27 Webcast” (June 21, 2006).

28 ¹⁸ Donald Rosenberg, Comments of Qualcomm Inc. to FTC Patent Standards
 Workshop (June 13, 2011).

1 prior to the Class Period that “[w]e don’t make a decision that we are going to license
2 you and not license you because that would be discriminatory.”¹⁹

3 68. Qualcomm and the Executive Defendants have acknowledged their
4 awareness of the Company’s licensing and business model. For example, Defendant
5 Altman, the Company’s long-time President and head of its licensing unit for a half
6 decade, was recognized by Qualcomm as the “chief architect of the Company’s
7 licensing business model.” Altman, by his own account, was “an active participant
8 in essentially every major transaction in which the company has taken part.”²⁰
9 Defendant Aberle, who succeeded Altman as the head of Qualcomm’s licensing
10 group, was similarly recognized by the Company as having, “[f]or well over a
11 decade, play[ed] a leading role in structuring and negotiating key license agreements
12 with Qualcomm’s licensees.”²¹ Defendant Rosenberg was also deeply immersed in
13 the Company’s negotiations with licensees and chipset manufacturers and has
14 acknowledged his role in the Company’s negotiations, stating that “[w]e try to
15 negotiate all the time. That’s what we do.”²² And for their parts, Defendants
16 Mollenkopf and Jacobs, the Company’s current and former CEO, respectively, each
17 signed Qualcomm’s SEC filings during the Class Period that purported to describe
18 the Company’s licensing policies. They also frequently met with regulators and
19 appeared before regulatory bodies to discuss Qualcomm’s licensing model and made
20 repeated, specific assurances to investors and analysts on the subject.

21 69. Defendants continued to tell investors during the Class Period that
22 Qualcomm licensed its standard-essential patents to any company and on a non-

23 _____
24 ¹⁹ Transcript, “Qualcomm Inc. at Friedman Billings Ramsey Capital Markets
25 Investor Conference” (Dec. 1, 2009).

26 ²⁰ Press Release, “Qualcomm Announces Leadership Change and Promotions”
27 (Oct. 4, 2011); Transcript, “Qualcomm Inc. Stockholders Meeting” (Mar. 8, 2005).

28 ²¹ Website biography, Qualcomm Inc., Leadership: Derek K. Aberle, President,
<https://www.qualcomm.com/company/about/leadership/derek-aberle>.

²² Transcript, “Qualcomm Inc. Annual Shareholders Meeting” (Mar. 8, 2016).

1 discriminatory basis. For example, in its annual reports filed with the SEC and
 2 disseminated to investors in late 2012 and 2013, Qualcomm represented that it
 3 licensed its standard-essential patents to all “interested companies on terms that are
 4 fair, reasonable and non-discriminatory.” Defendants echoed these representations
 5 during investor conferences, interviews, and press releases, assuring investors that
 6 Qualcomm continued to operate its licensing model consistent with how “we have
 7 done that for 30 years”—namely, licensing to all companies and on a basis that was
 8 “fair, reasonable and non-discriminate.”²³

9 70. Defendants bolstered these representations when touting the
 10 Company’s “licensing program,” which purportedly “broadly licensed” to all
 11 industry participants and was “pro-competitive.” Each of Qualcomm’s quarterly
 12 reports filed with the SEC stressed that the Company’s licensing model “promot[ed]
 13 a highly competitive ... wireless industry” and “enabl[ed] new, highly cost-effective
 14 competitors to their products.” Defendants made yet additional representations
 15 during Class Period interviews and investor conferences that further led investors to
 16 believe that Qualcomm licensed its standard-essential patents to all industry players
 17 on a non-discriminatory basis. For example:

- 18 • Defendant Altman, when questioned about how “this licensing model has
 19 worked,” responded that Qualcomm made its patents “available to the
 20 industry through our licensing program”,²⁴
- 21 • Defendant Aberle told investors that, “when you think about Qualcomm ...
 22 once we solve [technological problems], we don’t keep the technology to
 23 ourselves: our business model is to share that technology through
 24 licensing”;²⁵
- 25 • Defendant Rosenberg assured investors during the Class Period that
 “Qualcomm’s business model – broadly licensing our technology and

26 ²³ Lisa Wang, Taipei Times, “Qualcomm defends licensing fees” (June 24, 2016).

27 ²⁴ Mike Freeman, San Diego Union Tribune, “Qualcomm’s Altman talks technology
 28 licensing” (Nov. 22, 2013).

²⁵ 2016 Shanghai Forum – Keynote Speech (Dec. 6, 2016).

1 reinvesting in R&D – is enabling the success of many other companies in the
2 wireless value chain”;²⁶

- 3 • Defendant Jacobs, when he spoke to investors, similarly highlighted that “one
4 of the things that we’ve really focused on was making sure that we license
5 broadly”;²⁷
- 6 • Defendant Davidson, in his public interviews, also touted Qualcomm’s
7 purported “broad” licensing program, stating that Qualcomm “created this
8 unique business model of not holding our patents to ourselves to advantage
9 our own products, but creating a product of them and broadly licensing them
10 on a pro-active basis”;²⁸ and
- 11 • Defendant Mollenkopf further assured investors that “we figured out that the
12 right business model was to actually focus on licensing the inventions,
13 essentially through the standards bodies so that the entire market could
14 play.”²⁹

15 71. Remarkably, Defendants continued to assure investors that Qualcomm
16 maintained its “pro-competitive” model of “broadly licensing” to the entire industry
17 even after regulators raised concerns that Qualcomm was, in reality, refusing to offer
18 licenses to competitors. For example, on November 17, 2015, Qualcomm issued a
19 press release in response to the KFTC Case Examiner’s Report, which stated that
20 Qualcomm suppressed market competition by excluding competitors. In its press
21 release, Qualcomm quieted investors’ concerns about the Case Examiner’s Report
22 with assurances that “the allegations and conclusions contained in the [KFTC
23 Report] are not supported by the facts,” further stating that Qualcomm’s “patent
24 licensing practices, which we and other patent owners have maintained for almost
25 two decades [are] pro-competitive.” Again on January 17, 2017, immediately after

26 ²⁶ Intan Hamdan-Livramento, WIPO, “The Evolution of Technology Markets: Separating Fact from Fiction” (Apr. 2012).

27 ²⁷ Transcript, “Qualcomm Annual Shareholder Meeting” (Mar. 5, 2013).

28 ²⁸ Power Talk, “The Current State and Future of Mobile with Qualcomm’s Bill Davidson” (Feb. 18, 2017).

29 ²⁹ Burns and Mollenkopf at the 12th SIEPR Economic Summit (Mar. 17, 2015).

1 the FTC levelled its enforcement action, Qualcomm shot back with a press release
 2 in which Defendant Rosenberg assured the investing market that, contrary to the
 3 FTC’s assertions, Qualcomm engaged in “broad-based licensing of [its standard-
 4 essential patents] on fair, reasonable and non-discriminatory terms.”

5 72. The market trusted Defendants’ repeated representations during the
 6 Class Period and highlighted Qualcomm’s “licensing model”—including its
 7 willingness to license to competitors—as a reason to buy its stock. For example,
 8 *Forbes*, in a March 23, 2012 article on Qualcomm, emphasized how Qualcomm
 9 “also licenses out its 3G technology to other chipset manufacturers that wish to sell
 10 CDMA-based chipsets to mobile manufacturers.” Analysts at *Barron’s*, in their
 11 November 25, 2013 report on Qualcomm, also emphasized how the Company, “[i]n
 12 addition to manufacturing its own chips, licenses its technology to other chipmakers,
 13 which provides a lucrative royalty stream.” Analysts at *Trefis*, in their September
 14 27, 2013 report on Qualcomm, similarly noted how “Qualcomm licenses CDMA
 15 technology to other chipset manufacturers that wish to sell CDMA-based chipsets to
 16 mobile manufacturers.”³⁰ Likewise, *Forbes*, in its November 6, 2014 article on the
 17 Company, lauded Qualcomm’s stock as a “big winner” and explained how the
 18 Company did not keep its standard-essential patents to itself, but rather “licens[ed]
 19 this technology to other chip makers.”³¹ Accordingly, when suggestions arose that
 20 the Company might not license to competitors, analysts, including BMO Capital
 21 Markets, found that the allegations “don’t make sense,” as Qualcomm supposedly
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 26 ³⁰ See also, e.g., International Teletimes, “Qualcomm’s got the mobile device market
 27 nailed” (“Qualcomm also licenses out its 3G technology to other chipset
 28 manufacturers that wish to sell CDMA-based chipsets to mobile manufacturers”) (Jan. 23, 2012).

³¹ *Forbes*, “Is Qualcomm’s Business Model and Stock at Risk?” (Nov. 6, 2014).

1 does not “decline[] to issue licenses to chipset suppliers” and does not “prohibit[]
2 these deals” with competitor chipmakers.³²

3 73. Unknown to investors at the time, Defendants’ representations about
4 the Company’s “broad” licensing model and specific denials of anti-competitive
5 conduct were false, misleading and omitted material facts. As discussed further
6 below, Defendants modified Qualcomm’s basic licensing policy by 2008 and, after
7 that point, refused to license Qualcomm’s standard-essential patents to competitor
8 chipmakers. This undisclosed policy change, aimed at stifling competition, violated
9 the Company’s oft-repeated commitment to license on a “fair, reasonable and non-
10 discriminatory basis” and, now revealed, has resulted in a near-billion dollar fine and
11 antitrust enforcement worldwide.

12 **D. Qualcomm Assures Investors That It Does**
13 **Not Bundle Its Licensing and Chip-Sale Agreements**

14 74. Qualcomm also told investors that it kept the negotiations and terms of
15 its license and chipset agreements separate—i.e., that it did not “bundle.” These
16 representations were critical to investors because, as discussed above at
17 paragraphs 41-42, bundling the terms of its agreements violated Qualcomm’s
18 commitment to the standard-setting bodies to license on a fair, reasonable, and non-
19 discriminatory basis, and exposed the Company to regulatory actions and civil
20 litigation.

21 75. For years, investors sought assurances from Qualcomm and its senior
22 management that the Company did not engage in the practice of bundling, but rather
23 that it kept separate the terms of its license and chipset agreements. For example, in
24 an earnings conference call prior to the Class Period, a J.P. Morgan analyst asked
25 Defendant Altman whether, “in all of your royalties ... and your agreements that you
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27
28 ³² BMO Capital Markets, “Qualcomm: More Detail on China IPR Issues”
(Aug. 14, 2014).

1 sign with everyone, are they all pretty much done at hand's length from QCT [i.e.,
2 the Company's chip business] irrespective of whether they [i.e., the licensees]
3 actually purchas[e] chips from you." On this subject, Defendant Altman represented
4 that—consistent with the Company's commitment to the standard-setting bodies—
5 the Company's license agreements "absolutely [] are done without QCT's [i.e., the
6 chipset division's] involvement. It's a QTL business unit [i.e., the licensing
7 division] that is responsible for that."³³

8 76. Throughout the Class Period, Defendants continued to represent to
9 investors that Qualcomm did not bundle the negotiations and terms of its license and
10 chipset agreements, as any such bundling would violate its commitment to license
11 on a fair and non-discriminatory basis. For example, on November 27, 2012,
12 Defendant Aberle spoke at the Credit Suisse Technology Conference in Scottsdale,
13 Arizona, during which he specifically reassured investors:

14 And within the Company, we tend to keep the licensing and the chip
15 business very separate. Obviously, our view is that companies need a
16 license if they are doing 3G or 4G devices, sort of irrespective of whose
17 chip they use. And we try to keep that separated from whether they are
18 using a QRD or a Qualcomm chip, and we don't bundle those together.

19 77. A few months later, Qualcomm's executives once again unequivocally
20 stated to investors that the Company did not bundle the terms or negotiations of its
21 license and chip agreements. Specifically, on February 25, 2013, Defendants
22 Mollenkopf, Aberle, and Jacobs made an investor presentation at the GSM
23 Association Mobile World Congress. When questioned by an analyst about the
24 Company's chip and licensing businesses, Defendant Mollenkopf responded: "Well,
25 they are really separate businesses. I mean we have been very clear that we keep
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27

28 ³³ Transcript, "Q3 FY 2005 Qualcomm Inc. Earnings Conference Call"
(July 20, 2005).

1 those two things separate – separate propositions to the customer. So, really two
 2 different things.”

3 78. Analysts and investors took comfort in these representations.
 4 Accordingly, when rumors developed that Qualcomm might be bundling the terms
 5 of its license and chip agreements, analysts likewise dismissed these rumors as
 6 fiction. On August 14, 2014, for example, BMO Capital Markets issued an analyst
 7 report that concluded that, in light of the Company’s years of assurances, “[w]e do
 8 not believe that QCOM bundles chip-sales with patent deals,” and adding that
 9 Qualcomm has “operated its two businesses independently, as we understand it.”³⁴
 10 In a later report, the same analysts echoed that, based on the Company’s
 11 representations, “[w]e do not think the company engages in this anticompetitive
 12 practice [of bundling].”³⁵

13 79. But as analysts and investors would ultimately learn, they did not
 14 “understand it” correctly: Defendants’ assurances that the Company did not bundle
 15 were untrue, misleading, and omitted material facts. Government regulators and
 16 others have exposed that Qualcomm did, in fact, bundle the negotiations and terms
 17 of its license and chipset agreements. Specifically, as discussed further below, the
 18 Company provided extensive royalty relief to handset manufacturers, including its
 19 largest customer Apple, if they agreed to purchase all or most of their chipsets from
 20 Qualcomm—and not a competitor.

21 **E. Unknown to Investors During the Class Period,**
 22 **Qualcomm Refused to License Competitors and**
 23 **Bundled the Terms of Its License and Chip Agreements**

24 80. The KFTC found, and Qualcomm has now admitted, that the Company
 25 and its executives refused to offer licenses to their standard-essential patents to

26 ³⁴ BMO Capital Markets, “Qualcomm: More Detail on China IPR Issues”
 27 (Aug. 14, 2014).

28 ³⁵ BMO Capital Markets, “Qualcomm: Does a Split Make Sense? Outlook and
 Model Before the Call” (July 21, 2015).

1 competitor chipset manufacturers. It has also been revealed that Qualcomm,
2 contrary to its Class Period representations, bundled the terms and negotiations of
3 its standard-essential patent licenses with its chipset agreements. These undisclosed
4 practices, which contradicted Qualcomm’s express public statements to investors,
5 have been confirmed through numerous sources, including regulators and industry
6 participants, and have resulted in a regulatory fine of nearly \$1 billion and multiple,
7 ongoing enforcement actions and regulatory investigations across the globe.

8 **1. KFTC: Qualcomm**
9 **Refused to License Competitors**

10 81. Beginning in August 2014, the KFTC conducted a non-public
11 investigation into allegations of anti-competitive conduct by Qualcomm. The KFTC
12 is held in high regard for its antitrust enforcement investigations. For example, the
13 Department of Justice (“DOJ”) has publicly praised KFTC for having “done an
14 outstanding job in becoming a leader in the promotion of sound competition law and
15 policy, not only in Asia, but throughout the world.”³⁶ The DOJ has further
16 recognized that the “KFTC has shown itself to be a valued partner in efforts to
17 strengthen international cooperation in the competition area,” and explained that the
18 “U.S.-Korea bilateral antitrust relationship is a strong one, based on a firm tradition
19 of cooperation on both enforcement and policy matters.”³⁷ And in September 2015,
20 the DOJ and FTC highlighted “the day-to-day working relationship we already enjoy
21 with the KFTC” and entered into an agreement of cooperation reflecting the FTC’s
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27 ³⁶ *The Korean Fair Trade Comm’n and the Int’l Competition Network*, 2004 WL
28 5267573 (Apr. 20, 2014).

³⁷ *Id.*

1 “interest in continuing and strengthening [its] relationship [with the KFTC] in the
2 years to come.”³⁸

3 82. The KFTC’s investigation of Qualcomm’s anti-competitive practices
4 included on-site visits, review of electronic and hard-copy files, as well as written
5 surveys and interviews of relevant witnesses and experts. In conducting its
6 investigation, the KFTC adhered to the strict criteria set forth in its Guidelines,
7 including the requirement that “[t]he concerned parties are given opportunities to
8 fully voice their opinions.” Among other things, the KFTC held seven full-
9 commission hearings in connection with the Qualcomm investigation. Industry
10 participants from across the globe participated in the commission hearings, including
11 Qualcomm (US), Apple (US), Ericsson (Sweden), Huawei (China), Intel (US),
12 LG (Korea), Nvidia (US), MediaTek (Taiwan), and Samsung (Korea).

13 83. After completing its thorough investigation, the KFTC issued a Case
14 Examiner’s Report that contained more than 400 pages of investigatory findings,
15 and exceeded 3,200 pages including annexes. The Case Examiner’s Report found
16 that Qualcomm suppressed market competition by excluding competitors. The
17 KFTC provided Qualcomm with the Examiner’s Report on November 17, 2015, and
18 gave the Company nearly fourteen months to review and respond to the KFTC’s
19 initial findings, which it did during numerous non-public hearings.

20 84. On January 20, 2017, the KFTC issued its 146-page Final Decision and
21 Order and a summary of its Order.³⁹ The KFTC’s primary finding was that,
22 “[n]otwithstanding requests from rival modem chipset makers, Qualcomm refused
23

24 _____
25 ³⁸ FTC Press Release, “Federal Trade Commission and Department of Justice Sign
26 Antitrust Memorandum of Understanding with Korea Fair Trade
27 Commission” (Sept. 8, 2015).

27 ³⁹ KFTC Final Decision and Order, Decision No. 2017-0-25 (Jan. 20, 2017). All
28 quotations of the Final Decision contained herein, which originally appeared in
Korean, were translated by certified professional translators.

1 or restricted the licensing of mobile communications SEPs (Standard-Essential
2 Patents) that are essential in manufacturing and selling the chipsets in market.”⁴⁰

3 85. As Professor Carrier has explained, the KFTC deliberation process was
4 extremely thorough: “[t]he KFTC issued a comprehensive and thoughtful 146-page
5 opinion that cited legal opinions and enforcement actions from the U.S. and Europe
6 and that resulted from a thorough investigation that included seven full-commission
7 oral hearings and cooperation from industry participants in Korea (Samsung and LG)
8 and around the world (Apple, Intel, Nvidia, MediaTek, Huawei).”

9 86. As detailed in the KFTC’s Final Decision and Order, Qualcomm
10 historically executed license agreements to its standard-essential patents to
11 competitor chipset manufacturers. By 2008, however, the Company “established a
12 business policy [that] amend[ed] [its] licensing policy.” After 2008, Qualcomm
13 “refused to execute license agreements with competing modem chipset
14 manufacturers even if they requested the licensing of cellular standard-essential
15 patents that are essential for the manufacture, sale, and use of modem chipsets.”
16 Confronted with the KFTC’s evidence, Qualcomm “admitted” that it, indeed, had
17 changed its licensing policies by 2008 and refused to license competing chipset
18 manufacturers throughout the Class Period.

19 87. In its Decision and Order, the KFTC documented many specific
20 instances in which Qualcomm refused to offer a license to rival chipset
21 manufacturers. The specific examples identified by KFTC, and the underlying facts,
22 include the following:

23 (a) MediaTek is a manufacturer of chipsets, whose ability to
24 compete has been severely undermined by Qualcomm’s refusal to offer chipmakers
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28 ⁴⁰ Korea Fair Trade Commission, “KFTC imposes sanctions against Qualcomm’s
abuse of SEPs of mobile communications” (Dec. 28, 2016), at 1.

1 a license to the Company’s standard-essential patents.⁴¹ In 2008, MediaTek
2 requested that Qualcomm enter into a licensing agreement for Qualcomm’s
3 standard-essential patents relating to the WCDMA technologies. Qualcomm refused
4 to make such an offer, and MediaTek was forced to accept, instead, a non-license
5 arrangement. MediaTek soon discovered, however, that it “was impossible to fairly
6 compete” without an actual license to Qualcomm’s patents essential to the WCDMA
7 technologies.

8 (b) Unable to compete without a license, MediaTek made “repeated
9 requests” to Qualcomm in 2012 that it offer MediaTek a license agreement to its
10 standard-essential patents. Qualcomm “again refused.” In late 2012, MediaTek sent
11 a letter to Qualcomm that cited the “unfair terms and conditions” in the parties’ non-
12 license arrangement and requested that the parties “enter into a license agreement
13 under which [MediaTek] would pay royalties.” Five months later, in early 2013,
14 Qualcomm Vice President and Legal Counsel, Fabian Gonell, responded that
15 Qualcomm “did not agree to enter into any license agreement with [Mediatek].”

16 (c) MediaTek again tried to obtain a license from Qualcomm in
17 2013, writing to Qualcomm and noting “the failure of [Qualcomm] to respond to
18 [MediaTek]’s request to propose licensing terms and conditions and FRAND
19 royalties” and “repeat[ing] its request [that Qualcomm] propose royalty rates and
20 licensing terms and conditions.” In its response, Qualcomm “repeatedly refus[ed]
21 [MediaTek’s] request to propose specific licensing terms and conditions and royalty
22 rates,” prompting MediaTek to write Qualcomm again to remind it “that [it] must
23 enter into license agreements with those who have agreed to the FRAND terms with
24

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26 ⁴¹ MediaTek has been identified as “Company A” in the 2017 KFTC Final Decision.
27 As with “Company A,” MediaTek (i) was one of only a small number of companies
28 in the 2G GSM chip business prior to 2008; (ii) began 3G GSM operations in
2009-2010; (iii) entered into a non-license arrangement with Qualcomm in 2009;
and (iv) amended its agreement with Qualcomm in 2013.

1 respect to standard-essential patents.” MediaTek again specifically requested that
2 Qualcomm “propose FRAND licensing terms and conditions.” However,
3 Qualcomm again responded that it had “no duty to grant a license” and would not
4 negotiate a license agreement with MediaTek.

5 (d) Samsung also attempted to manufacture chipsets for sale, but was
6 thwarted in its attempt by Qualcomm’s refusal to license its standard-essential
7 patents to chipset manufacturers.⁴² On or about June 29, 2011, Samsung requested
8 that Qualcomm offer it a license to the Company’s essential patents. Qualcomm
9 refused Samsung’s request, “without any room for negotiations.” Samsung soon
10 recognized, however, that it was critical to obtain a license agreement from
11 Qualcomm in order to maintain a “business [in] modem chipset sales.” Indeed,
12 when Samsung’s modem chipset business division attempted to contact handset
13 manufacturers to promote the sale of its chipsets, the handset manufacturers were
14 reluctant to buy Samsung’s chipsets because it had not obtained a license from
15 Qualcomm to the essential patents. Accordingly, in 2012, Samsung again requested
16 from Qualcomm a license to the standard-essential patents, but that request was
17 similarly rejected. Due to Samsung’s inability to obtain a license to the standard-
18 essential patents, Samsung “has not been able to initiate the business for sale of its
19 modem chipset to handset manufacturers other than itself.”

20 (e) Intel also tried to manufacture chipsets for sale, but Qualcomm’s
21 refusal to grant it a license to the standard-essential patents long prevented it from
22 doing so.⁴³ In 2009, Intel requested from Qualcomm a license in order to
23 _____

24 ⁴² Samsung has been identified as “Company B” in the 2017 KFTC Final Decision.
25 As with “Company B,” Samsung (i) is the only company that operates as both an
26 OEM and a chipset manufacturer; and (ii) entered into a licensing agreement in 1993
27 with Qualcomm that blocked Samsung from selling to other OEMs.

28 ⁴³ Intel has been identified as “Company C” in the 2017 KFTC Final Decision. As
with “Company C,” Intel (i) is a chip company; and (ii) acquired a modem chipset
manufacturer in 2011 (Infineon) that possessed an SEP licensing agreement.

1 manufacture and sell modem chipsets. The parties held two sets of negotiations in
2 2009, during which Qualcomm would “not chang[e] its stance that [Qualcomm]
3 could not grant a license to their patents for [Intel’s] modem chipsets.” As a result,
4 the negotiations were unsuccessful.

5 (f) Via Technologies also attempted to enter the chipset
6 manufacturing market, but was prevented from doing so by Qualcomm’s anti-
7 competitive behavior.⁴⁴ In early 2012, Via Technologies requested a license from
8 Qualcomm for the patents essential to use its WCDMA standard. Qualcomm
9 refused. Via Technologies then sent Qualcomm a written “request that [Qualcomm]
10 comply with the FRAND commitment.” As Via Technologies explained,
11 Qualcomm’s proposed, non-license arrangement “did not actually grant any rights
12 to the standard-essential patents” to Via Technologies. Despite Via Technologies’
13 repeated requests, Qualcomm continued to refuse to offer a license. As a result, Via
14 Technologies has been unable to enter into the WCDMA-based modem chipset
15 market.

16 (g) The KFTC further found that competitor chipset manufacturers
17 made additional requests to Qualcomm for a license to its standard-essential patents,
18 which Qualcomm also rejected. “Firmly following their business policy,
19 [Qualcomm and its executives] refused to license their SEPs to modem chipset
20 manufacturers.” Due to this business policy, “no licensing agreement was entered
21 into between [Qualcomm] and modem chipset manufacturers in order to
22 manufacture and sell modem chipsets.”
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26 ⁴⁴ Via Technologies has been identified as “Company D” in the 2017 KFTC Final
27 Decision. As with “Company D,” Via Technologies (i) is a chip company;
28 (ii) obtained a CDMA 2000 license with Qualcomm based on its acquisition of LSI
Logic’s CDMA division; and (iii) was unable to enter successfully the WCDMA-
based modem chipset market after 2012.

1 88. The above facts identified in paragraphs 86-87 were not disputed and,
2 in fact, “consistently admitted by the [Qualcomm] Respondents from the
3 investigation stage,” which began in August 2014, “through the deliberation” of the
4 KFTC proceedings, which concluded in December 2016. Professor Carrier agreed
5 that, “[a]ccepting the KFTC’s factual findings, Qualcomm violated FRAND by
6 refusing to license to competitors.”

7 89. As the KFTC further found, Qualcomm’s refusal to license the
8 standard-essential patents to other chipset makers has stifled competition. Unable
9 to obtain a license from Qualcomm, “competing chipset makers are subject to patent
10 infringement attacks when they sell their chipsets to handset makers that have not
11 entered in license agreements or that have disputes with Qualcomm.” This makes it
12 “difficult for the competing chipset makers [to] actively explor[e] markets as they
13 can sell their products only to handset makers that have signed a license agreement
14 with Qualcomm.” In addition, “Qualcomm’s practice of refusing to license to
15 competing chipset companies has limited the competitors’ customers and has created
16 a structure in which Qualcomm can intervene in the transactions between the
17 competitors and their respective customers.”

18 90. In refusing to license to competitors, the KFTC found that Qualcomm
19 acted with “anti-competitive intent or purpose” and violated the anti-competitive
20 laws. The evidence detailed in the Order reflected that Qualcomm “had the intention
21 to restrict the competition and they were aware of it.” The KFTC fined Qualcomm
22 nearly a billion dollars and also enjoined it from refusing to offer licenses to chipset
23 competitors going forward.

24 **2. FTC: Qualcomm Refused to**
25 **License Competitors and**
26 **Bundled Licenses and Chipset Deals**

27 91. Beginning in September 2014, the FTC launched a rigorous two-and-
28 a-half-year, non-public investigation into Qualcomm’s anti-competitive business
practices. The FTC has broad resources available to conduct its investigations and

1 employed those resources in connection with its investigation of Qualcomm.
2 Among other things, prior to bringing its enforcement action, the FTC issued civil
3 investigative demands for documents and took non-public testimony from several
4 witnesses.

5 92. The FTC brings an enforcement action in federal court to correct a
6 company's anti-competitive practices only "when it has 'reason to believe' that the
7 law has been or is being violated and it appears to the Commission that a proceeding
8 is in the public interest."⁴⁵ After completing its exhaustive investigation, the FTC
9 determined that it "has 'reason to believe' that the law has been or is being violated"
10 by Qualcomm and filed an enforcement action on January 17, 2017, based on, among
11 other things, Qualcomm having "consistently refused to license its cellular standard-
12 essential patents to its competitors, in violation of Qualcomm's FRAND
13 commitments."⁴⁶ Consistent with the KFTC's findings, the FTC stated, based on its
14 thorough investigation, that Qualcomm had refused to offer standard-essential patent
15 licenses to competitor chip manufacturers, including Intel, MediaTek, and Samsung.
16 By refusing to offer licenses to chipset manufacturers, Qualcomm "bolster[ed] its
17 ability to maintain elevated royalties and other unreasonable license terms."⁴⁷

18 93. The FTC further identified how the Company offered customers
19 "royalty relief" conditioned on their purchasing chipsets exclusively from
20 Qualcomm. In other words, Qualcomm bundled its licenses to the standard-essential
21 patents to the customers' agreement to buy Qualcomm chipsets. This use of
22

23 ⁴⁵ FTC Press Release, "FTC Charges Qualcomm With Monopolizing Key
24 Semiconductor Device Used in Cell Phones" (Jan. 17, 2017).

25 ⁴⁶ FTC Complaint, No. 5:17-cv-00220-LHK (N.D. Cal. Jan. 17, 2017), ECF No. 1.

26 ⁴⁷ The anti-competitive practices in the FTC's enforcement action were identified
27 through its extensive investigation and confirmed by Lead Counsel's independent
28 investigation, including, among other things, interviews of Qualcomm's former
employees and current and former employees of Qualcomm's customers and
competitors.

1 “incentive payments helps Qualcomm ‘close the gap’ with customers that resist
2 license terms that they regard as unreasonable,” and allows Qualcomm to “maintain
3 high royalties on handsets that use competitors’ baseband processors.”

4 94. The FTC described in detail how Qualcomm entered into a series of
5 agreements with Apple, its largest customer, in which it conditioned billions of
6 dollars of “royalty relief” payments on Apple’s agreement to purchase Qualcomm
7 chipsets. These agreements included:

- 8 • 2007 Qualcomm-Apple Agreement: Through the parties’ 2007 agreement,
9 Qualcomm effectively prohibited Apple from using the prospective fourth-
10 generation cellular standard WiMax, which was being promoted by Intel, one
11 of Qualcomm’s competitors at the time. Qualcomm was able to deter Apple
12 from using its competitor’s standard by including in the 2007 agreement a
13 provision that conditioned CDMA royalty relief payments on Apple’s
14 agreement not to sell or license handsets that implemented the WiMax
15 standard.
- 16 • 2011 Qualcomm-Apple Agreement: Qualcomm extracted additional anti-
17 competitive concessions in its 2011 agreement with Apple, which were aimed
18 at further deterring Apple from using Qualcomm’s competitors’ chipsets.
19 Apple’s agreement with Qualcomm required Apple to forfeit all royalty relief
20 payments if, at any point between 2011 and 2016, Apple introduced a new
21 handset that contained a competitor’s chipset.⁴⁸
- 22 • 2013 Qualcomm-Apple Agreement: Qualcomm continued to bundle its
23 standard-essential patent licensing and chipset sales through its 2013
24 agreement with Apple, in which Qualcomm agreed to make substantial,
25 annual payments to Apple in 2013, 2014, 2015, and 2016 that were expressly
26 tied to Apple’s agreement to purchase exclusively from Qualcomm all of its
27 chipsets for new iPad or iPhone models. The 2013 Agreement again contained
28 a forfeiture provision under which Apple would forfeit all royalty relief
payments and could be required to refund all past payments if it ever used a
competitor’s chipset. The 2013 Agreement further provided that Apple would
forfeit all future royalty relief payments and could be required to refund past

48 On December 8, 2015, the European Commission announced its “preliminary
conclusion that [Qualcomm] illegally paid a major customer for exclusively using
Qualcomm chipsets” since 2011. In its January 20, 2017 filing in this District, Apple
identified itself as the “major customer.”

1 payments if Apple either initiated or induced others to initiate an action
2 challenging Qualcomm's licensing as unfair, unreasonable, or discriminatory.

3 95. The FTC's enforcement action against Qualcomm is ongoing. On
4 June 26, 2017, the District Court for the Northern District of California denied
5 Qualcomm's motion to dismiss the enforcement action. In finding that the FTC
6 stated an antitrust claim, the Court agreed that "Qualcomm had an antitrust duty to
7 license its FRAND-encumbered SEPs to its competitors," and "Qualcomm's refusal
8 to deal with its rivals, in violation of its FRAND commitment, was motivated by
9 'anti-competitive malice.'" The Court further found that the FTC had adequately
10 stated "that Qualcomm's exclusive dealing arrangements with Apple violated the
11 Sherman Act."

12 **3. Industry Participants: Qualcomm Refused to License**
13 **Competitors and Bundled Licenses and Chipset Deals**

14 96. Major industry participants have further confirmed that Qualcomm
15 refused to offer licenses to its competitors and drove out competition by bundling
16 the terms of its licenses and chipset-sale agreements.

17 **(a) MediaTek**

18 97. Mr. Wei-Fu Hsu served in the role of General Counsel for MediaTek
19 between September 2008 and his retirement in August 2016. Prior to that time,
20 between 2004 and September 2008, he was the chief legal officer of MediaTek, in
21 charge of all MediaTek legal matters, and reported directly to the CEO and
22 Chairman. Prior to joining MediaTek, Mr. Hsu practiced law at several large
23 international law firms, including Jones Day, Bingham McCutchen, Hogan &
24 Hartson (now Hogan Lovells), and Fulbright & Jaworski (now Norton Rose
25 Fulbright), and was a senior circuit design engineer at National Semiconductor
26 Corporation. Mr. Hsu was named among the top 100 most influential and innovative
27 in-house counsels in the Asia Pacific by Legal 500, and was named the 2015 IAM
28 Strategy 300 by the IAM magazine. The *Financial Times* named Mr. Hsu among

1 the Asia-Pacific Innovative General Counsels in 2015. Mr. Hsu also won the Silver
2 Award 2016 of the Best Asian & South Pacific Legal Department from the
3 International Legal Alliance. Mr. Hsu received his B.S.E.E. from National Cheng
4 Kung University, M.S.E.E. from San Jose State University, and J.D. from University
5 of Washington. Mr. Hsu is licensed to practice law in Washington and California, as
6 well as before the United States Patent and Trademark Office.

7 98. As MediaTek's general counsel, Mr. Hsu was personally involved in
8 MediaTek's negotiations with Qualcomm before and during the Class Period. Over
9 that time, MediaTek repeatedly requested, and was consistently denied, a license for
10 Qualcomm's standard-essential patents for WCDMA and other mobile
11 communications technologies. Mr. Hsu explained that, during the Class Period,
12 Qualcomm "refused to license any of [its] patents to MediaTek" or, to his
13 knowledge, any other chipset manufacturer.

14 99. Consistent with the KFTC's findings, Mr. Hsu explained that
15 Qualcomm also earned higher profits by licensing exclusively to handset
16 manufacturers. Mr. Hsu stated that Qualcomm "can collect a lot more money from
17 a phone maker than a chipmaker." By licensing to handset makers, and not chipset
18 manufacturers, Qualcomm "can charge [a royalty rate] based on the full price of the
19 phone," rather than the price of the chip. Based on his knowledge of industry
20 practice through his 25 years of experience, Mr. Hsu explained that, to his
21 knowledge, Qualcomm is the only chipmaker in the cellular industry that has a
22 policy of refusing to license its standard-essential patents to other chipmakers.

23 100. Again consistent with the KFTC's findings (*see supra* at ¶87a-c),
24 Mr. Hsu further explained how MediaTek attempted to obtain a license to
25 Qualcomm's standard-essential patents for many years, beginning in approximately
26 2008. The first set of negotiations between MediaTek and Qualcomm lasted more
27 than a year, and included senior executives in the Company's QTL division. As the
28 most senior member of MediaTek's legal team, Mr. Hsu led the negotiations and

1 played an active and direct role in MediaTek’s efforts to obtain a license to
2 Qualcomm’s standard-essential patents. Mr. Hsu stated that he participated in
3 “regular meetings every two to three weeks” with the Qualcomm QTL executives.
4 During those negotiations, Qualcomm said, in words or substance, “We are not going
5 to license you.”

6 101. In late 2012, Mr. Hsu sent a letter to Qualcomm that expressly requested
7 that the parties negotiate a license agreement. The letter “specifically demand[ed]
8 patent license negotiations,” Mr. Hsu explained. Qualcomm waited several months
9 to respond to Mr. Hsu’s letter. Eventually, however, Qualcomm responded, and the
10 parties started in early 2013 to negotiate a new arrangement. Mr. Hsu stated that
11 during the beginning of the parties’ negotiations “we did raise this request for a
12 license several times.” Qualcomm, however, refused to offer a license, insisting
13 upon another, more limited, type of arrangement.

14 102. In addition, Mr. Hsu explained that Qualcomm also stifled competition
15 by providing its chipset customers with royalty relief if they largely or exclusively
16 purchased Qualcomm chipsets, rather than MediaTek’s or another competitor’s
17 chipsets. Mr. Hsu described, consistent with the FTC, how Qualcomm agreed to
18 reduce customer royalty rates if the customers purchased their chipsets from
19 Qualcomm, rather than other chipset manufacturers. As Mr. Hsu explained, these
20 were “secrets in the industry.”

21 103. Mr. Hsu confirmed that he heard from multiple companies during the
22 2012 to 2013 timeframe, including Huawei, ZTE, and certain other handset
23 manufacturers, about the incentive concept—that if they wanted a royalty reduction,
24 they had to buy Qualcomm chips. Mr. Hsu explained that, through its bundling of
25 chip sales and the terms of its license agreements, Qualcomm would “use rebates as
26 bait for more cooperation with customers.” As Mr. Hsu further stated, “[i]t’s how
27 they are so successful: they are basically wielding their dominant power in chips,
28

1 and also wielding dominant power in the essential IP portfolios to gain additional
2 advantages in their business practice.”

3 104. After reviewing the KFTC’s order, Mr. Hsu confirmed that KFTC’s
4 findings related to MediaTek were correct and consistent with his best recollection.

5 **(b) Motorola**

6 105. Qualcomm’s refusal to license to its competitors was further
7 corroborated by a senior, former in-house Motorola commercial lawyer from at least
8 January 2014 through the end of 2015 who was personally involved in Motorola’s
9 license negotiations with Qualcomm. The Motorola lawyer participated in dozens
10 of meetings with Qualcomm, with regular interactions with Fabian Gonell and other
11 interactions with his superior, Defendant Aberle, when a matter would escalate to
12 his level. As the Motorola lawyer explained, “[a]ny document that was negotiated
13 with Qualcomm” from at least January 2014 through the end of 2015 “I was pretty
14 much the one negotiating it.”

15 106. When the former senior Motorola lawyer was asked whether Motorola
16 was aware that Qualcomm did not license to competing chipset makers, the Motorola
17 lawyer said, “Yes, definitely. MediaTek, Intel – we tried to work with all of them,
18 but you always had to come back to Qualcomm, because [Qualcomm’s refusal to
19 license to competitors] kept anybody else from developing in that space, so we never
20 really had viable options.” The former Motorola lawyer “kn[e]w Intel tried many
21 times” to obtain a license to Qualcomm’s essential patents and spoke to Intel about
22 it, with Intel confirming that “Qualcomm refused to license to them.” The Motorola
23 lawyer spoke to about five different people at Intel about this issue, including a
24 senior in-house lawyer in Intel’s Patent and Standards group throughout the Class
25 Period.

26 107. The former Motorola lawyer, whose responsibilities included
27 negotiating with Qualcomm, explained how Motorola complained to Qualcomm
28 “constantly” about its refusal to license to competitor chipmakers. “Our CEO would

1 meet with them and tell them we were sick of how they were doing things,” the
2 Motorola lawyer explained. The Motorola lawyer recalled that “we had many
3 escalation meetings with [Defendant] Mollenkopf,” and that Motorola’s then-CEO
4 complained to Qualcomm’s CEO at the time, Defendant Mollenkopf, about the
5 Company’s refusal to license to chipset competitors. The Motorola lawyer attended
6 many meetings with Qualcomm during its negotiations with Motorola and was
7 generally involved in the preparation of Motorola’s presentation materials for high-
8 level executive meetings with Qualcomm. As the Motorola lawyer explained, in its
9 “quarterly business reviews” used during the high-level executive meetings during
10 2014 through the end of 2015, Motorola included a list of “our grievances” that
11 usually included a reference to Qualcomm’s refusal to license to competitors. The
12 Motorola lawyer believes that, in addition to Defendant Mollenkopf, Defendant
13 Aberle also attended the meetings during which these presentation materials were
14 provided.

15 (c) **Samsung**

16 108. Samsung has also publicly confirmed that Qualcomm refused its
17 requests to grant it a license due its status as a competitor chip manufacturer. On
18 May 12, 2017, Samsung filed an *amicus* brief in California federal court in support
19 of the FTC’s enforcement action against Qualcomm. In it, Samsung stated that it
20 had “ongoing firsthand experience with the impact of Qualcomm’s conduct on
21 chipset competitors.” Samsung explained that it manufactured its own line of
22 chipsets (called the “Exynos chipsets”), which Samsung sought to sell to third
23 parties. But as Samsung explained, “[d]espite having requested a license from
24 Qualcomm, Samsung cannot sell licensed Exynos chipsets to non-Samsung entities
25 because Qualcomm has refused to license Samsung to make and sell licensed
26 chipsets.” Samsung further stated that Qualcomm has “acknowledge[d] this policy
27 of refusing to license potential competitors.” Samsung concluded that it “has
28

1 directly experienced, and been directly harmed by, [Qualcomm’s] exclusionary
2 conduct.”

3 **(d) Intel**

4 109. Intel has also publicly confirmed that Qualcomm refused its requests
5 for a license due its status as a competitor chip manufacturer. On May 12, 2017,
6 Intel submitted an *amicus* brief in support of the FTC’s federal lawsuit against
7 Qualcomm. In it, Intel explained that, “[a]s a competitor in the premium cellular
8 chipset market, Intel has seen firsthand the harm caused by the anti-competitive
9 conduct described in the FTC’s complaint.” As Intel explained, “for years
10 Qualcomm has maintained an interlocking web of abusive patent and commercial
11 practices that subverts competition on the merits. These practices have coerced
12 mobile-phone manufacturers ... into purchasing the chipsets they need from
13 Qualcomm and Qualcomm alone.” Intel further stated that “[t]he FTC’s allegations
14 of anti-competitive conduct reflect the reality that Intel has experienced in the
15 marketplace.” In particular, Intel confirmed that Qualcomm has “refuse[d] to license
16 [to] competitors,” including Intel. As Intel explained, “[b]y refusing to license [to]
17 competitors and by coercing customers into exclusivity deals, Qualcomm fences
18 other chipset manufacturers out of the market.”

19 **(e) Apple**

20 110. Apple designs and manufactures mobile devices and is Qualcomm’s
21 single largest chipset customer, singlehandedly comprising 30% of Qualcomm’s
22 total earnings. Over the past few years, Apple has privately warned Qualcomm,
23 including Defendant Aberle, that Qualcomm has improperly set “royalties based on
24 an illegal manipulation of the market for cellular enabled chips.” As Mr. Bruce
25 Sewell, Senior Vice President and General Counsel of Apple, recounted to
26 Defendant Rosenberg in correspondence, Apple cautioned Qualcomm and
27
28

1 Defendant Aberle “at various times in the past few years” that it would stop remitting
2 royalties to Qualcomm due its anti-competitive misconduct. As Mr. Sewell wrote:

3 As you may have already heard from our contract manufacturers, Apple
4 has not remitted funds to those contract manufacturers for royalty
5 payments for the quarter ending March 31, 2017. This should come as
6 no surprise to Qualcomm. Derek [Aberle] and I have discussed this
7 eventuality at various times in the past few years. Qualcomm’s refusal
8 to license on a fair, reasonable, non-discriminatory basis is harming not
9 only Apple, but our contract manufacturers, other chipset companies
10 and the wider industry. We believe Qualcomm is charging the contract
11 manufacturers, who in turn pass back to Apple and its customers,
royalties based on an illegal manipulation of the market for cellular
enabled chips.... Qualcomm’s refusal to meet its FRAND
commitments and its insistence on taxing our innovation is both illegal
and anticompetitive. We cannot support this behavior.⁴⁹

12 111. Qualcomm’s bundling of the terms of its licensing and chipset
13 agreements was also documented in Apple’s January 20, 2017 filing in this District,
14 and subsequent amendment (the “Apple Complaint”), as well as its May 19, 2017
15 Particulars of Claim in the High Court of Justice in London, England.⁵⁰ Therein,
16 Apple explained, consistent with the FTC (*see supra* at ¶94), that Qualcomm’s
17 January 8, 2007 agreement with Apple, titled the “Marketing Incentive Agreement,”
18 prohibited Apple from marketing wireless devices using the WiMAX standard,
19 which was the prospective 4G standard endorsed by Qualcomm’s rival chip
20 manufacturer, Intel. In exchange for its acceptance of this agreement not to use the
21

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23
24 ⁴⁹ Letter from B. Sewell to D. Rosenberg, dated April 25, 2017.

25 ⁵⁰ Apple and its counsel confirmed that they stand by the factual statements and
26 allegations in their amended complaint against Qualcomm filed in this District,
27 which was the product of their investigation and review of underlying documents in
28 Apple’s files. In addition, Apple’s Particulars of Claim, filed on May 19, 2017,
which contains the same factual assertions relevant here, was supported by a
“Statement of Truth,” in which Apple and its counsel verified that “believes that the
facts stated in this Particulars of Claim are true.”

1 standard used for Intel’s chips, Apple received a reduced royalty rate from
2 Qualcomm.

3 112. Apple also publicly confirmed, consistent with the FTC (*see supra* at
4 ¶94), that its February 11, 2011 agreement with Qualcomm, titled the “Transition
5 Agreement,” provides Apple with royalty relief on CDMA-standard iPhones so long
6 as Apple exclusively uses Qualcomm’s chipsets. As Apple has now explained, since
7 2011 “Qualcomm has conditioned billions of dollars in rebates on exclusivity or *de*
8 *facto* exclusivity from Apple.” The “sole purpose of these [rebate] payments was to
9 reduce Apple’s royalty burden in exchange for exclusivity.” Apple has further
10 publicly acknowledged, again consistent with the FTC (*see supra* at ¶94), that
11 Qualcomm, under its January 1, 2013 amendment to the Transition Agreement,
12 makes royalty relief payments to Apple that are conditioned on Apple’s exclusive
13 use of Qualcomm chipsets, as opposed to a competitor’s chipsets.

14 113. Apple has further stated that, in January 2013, it entered into a Business
15 Cooperation and Patent Agreement (the “BCPA”) with Qualcomm that provided
16 additional royalty incentives to Apple. These incentive payments are expressly
17 provided for in Sections 7 and 8 of the BCPA and require Qualcomm to make
18 quarterly, lump-sum payments to Apple that effectively reduce Apple’s per-device
19 royalty payment for each iPhone and iPad sold between 2013 and 2016. In the
20 second paragraph of Section 7 of the BCPA, Qualcomm conditioned these royalty
21 relief payments on Apple’s agreement not to initiate or induce any legal action that,
22 among other things, “claims that Qualcomm failed to offer a license to its SEPs on
23 FRAND terms.” As Apple has publicly explained: “[I]n restraining Apple from
24 initiating action or bringing concerns to law enforcement, Qualcomm conditioned
25 billions of dollars on Apple’s silence before courts and regulators about Qualcomm’s
26 business practices.”

27 114. Apple received quarterly royalty relief payments from Qualcomm
28 under the BCPA from 2013 through mid-2016 totaling billions of dollars. Beginning

1 in mid-September 2016, however, Qualcomm refused to make any additional royalty
2 relief payments to Apple because Apple had provided damaging testimony to the
3 KFTC that helped expose certain of Qualcomm’s anti-competitive licensing
4 practices. Qualcomm specifically told Apple that it ““will not make any further BCP
5 Payments to Apple,”” including the nearly \$1 billion in royalty relief presently owed,
6 due to ““legal issues”” regarding Apple’s interactions with the KFTC and other anti-
7 competition agencies.

8 115. Moreover, Qualcomm eventually proposed to pay Apple the nearly
9 \$1 billion in royalty relief owed if, according to Apple, it would “recant[] its true
10 and, in many cases, sworn testimony before government agencies and instead g[i]ve
11 false testimony favorable to Qualcomm.” Indeed, Qualcomm sent Apple a letter on
12 December 2, 2016, in which Qualcomm specifically conditioned payment of the
13 nearly \$1 billion in royalty relief owed to Apple upon Apple’s agreement to
14 ““publicly and specifically retract and correct”” statements Apple made to regulatory
15 agencies concerning Qualcomm’s anti-competitive practices.

16 116. A former senior member of Apple’s Patent Licensing & Strategy
17 department during the Class Period until June 2015, whose responsibilities included
18 directing Apple’s strategies for negotiations and technology transactions, has
19 confirmed that he read the Apple Complaint, and that the allegations therein are
20 consistent with what he knew from his tenure at Apple. He explained that it was
21 known at Apple that Qualcomm had a royalty rate that is “exorbitant” for the license
22 itself, but that there were ways for a customer to offset that through a chipset deal
23 with Qualcomm. He explained that everybody who had a deal with Qualcomm on
24 a substantial level had to navigate this structure that Qualcomm “imposed” on the
25 industry, continuing:

26 I do say imposed because you either needed the chips or needed a patent
27 license, and if you needed chips you needed both. So it was like
28 everyone had to deal with it on one level or another. And the fact that
Qualcomm could reap more for patent licenses from people who

1 weren't buying chips or weren't willing to do squirrely things with
2 them, that wasn't right under FRAND.

3 117. According to the former senior member of Apple's Patent Licensing &
4 Strategy, there were various "structures" and "mechanisms" by which Qualcomm
5 provided royalty rebates tied to chipset purchases. The former senior member of
6 Apple's Patent Licensing & Strategy explained that "[y]ou can structure the deal so
7 that you pay some amount for chips, but if you buy 'x' number of chips over so many
8 years, Qualcomm will give you something else and that will offset what you have to
9 pay for the license." The former senior member of Apple's Patent Licensing &
10 Strategy department noted that there may be "complexities to the transaction,"
11 including whether it's called a "royalty rebate" or by "some other name," but "I've
12 never heard anyone in the industry suggest that the purpose of that was anything
13 other than 'Jesus, we're not going to pay 'x' amount for this license – we got to find
14 another way to effectively have it not cost us that much."

15 **(f) Qualcomm**

16 118. A former Qualcomm Vice President of Technology, who worked at the
17 Company in various positions for over twenty years, including through the start of
18 the Class Period until August 2015, had experience working with QCT Finance, as
19 well as identifying customers and having them sign up for Qualcomm's chipsets,
20 and was senior enough at Qualcomm to observe its general licensing practices.⁵¹ He
21

22 ⁵¹ The former Vice President of Technology held multiple, high-level positions at
23 Qualcomm during his over twenty years with the Company, which included over ten
24 years as a Vice President. In his last role, from September 2014 through
25 August 2015, he was a Vice President of Technology of Qualcomm Atheros. In
26 addition, between 2009 and 2011, he was the Vice President of Engineering of AST
27 located in San Diego, which was part of QCT, the chip division. In that role, he
28 identified synergies between cost constraints, customer needs, and QCT's next
generation solution and also worked with design, engineering and finance teams to
enable them to meet customer targets on costs. Also in that role, he led negotiations
with U.S. and international network carriers.

1 explained that, when making chipset agreements with customers, “there was always
2 a QTL component that would act in the background.” He also explained that QTL,
3 in fact, “had to” be involved. “If we were discussing some rebate or something, QTL
4 was there.”

5 119. The former Qualcomm Vice President of Technology further explained:
6 “If Qualcomm made a sale to a customer who took the complete chipset, and the
7 volume is huge, then there are incentives saying, ‘If you use our QCT chipsets, our
8 complete solution, then the licensing agreement will be different, and there will be
9 some rebates you have when you reach a milestone.’ Compared to, if you don’t use
10 our chipset...” The milestone could be purchase volume or purchases over a certain
11 length of time. When asked about who was involved in these negotiations and
12 discussions, he said, “There is a whole QTL licensing team, along with [QCT]
13 Finance, that goes and tries to negotiate the price of the chipset with customers. It’s
14 not fixed. Based on volume, you get discounts. Based on technology, you get
15 discounts.”

16 120. The former Vice President of Technology explained that the proposal
17 to the customer was, “Take our chipset and later on there would be some kind of
18 rebate or something applied if the complete solution [chipset plus licensing] is
19 applied.” He said, “One portion of the business is chipsets; the other portion is
20 royalty after the chipset gets sold.” But he added, “It’s tied together.” He explained,
21 “QCT Finance also needs to make sure there are conditions created so that chipset
22 sales are incentivized for newer technologies, so Qualcomm can get more royalties.”

23 **F. Regulators and Investors Respond**
24 **to Qualcomm’s Anti-Competitive Conduct**

25 121. Defendants’ anti-competitive conduct—their refusal to license
26 competitors and their bundling of licenses and chipset agreements—has come to
27 light through the revelation of a series of regulatory investigations and findings
28 around the world, an enforcement action by the FTC, and a multi-billion dollar action

1 by Qualcomm's largest customer. These revelations have also caused substantial
2 losses for Qualcomm's investors.

3 122. *First*, on November 17, 2015, Qualcomm announced that the KFTC
4 had issued its Case Examiner's Report. The Case Examiner's Report stated that
5 Qualcomm suppressed market competition by excluding competitors. In response
6 to the news, Qualcomm's stock price fell by 9.4% in a single trading day. As
7 *Investor's Business Daily* recounted that day, "[s]hares of wireless chip giant
8 Qualcomm (QCOM) plunged 9.4% to \$48, its lowest point in more than 4 years,
9 after S. Korea's Fair Trade Commission said the San Diego-based company violated
10 local competition laws with its patent licensing practices."⁵² On November 20, 2015,
11 *Forbes* similarly stated that the news "had sent investors panicking and the
12 company's stock dropped 10% -- the lowest it's been in the past four years."⁵³
13 Analysts at Bernstein Research stated that the "allegations in the report are
14 troubling.... The Case Examiner's report sheds some troubling light on the details of
15 the complaint."⁵⁴

16 123. *Second*, on December 8, 2015, it was announced that both the Taiwan
17 FTC and European Commission had taken regulatory action against Qualcomm.
18 Specifically, Qualcomm revealed that the Taiwan FTC requested information from
19 the Company and initiated an investigation into whether the Company's patent
20 licensing arrangements violate the Taiwan Fair Trade Act.⁵⁵ The Taiwanese
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23 ⁵² *Investor's Business Daily*, "S. Korea Accuses Qualcomm" (Nov. 17, 2015).

24 ⁵³ Aaron Tilley, *Forbes*, "Qualcomm's Biggest Profit Engine Faces More Pressure"
(Nov. 20, 2015).

25 ⁵⁴ U-Jin Lee, *TheStreet.com*, "Qualcomm (QCOM) Stock Hammered, South Korea
26 Alleges Illegal Patent Licensing Practices" (Nov. 18, 2015).

27 ⁵⁵ The Taiwan FTC investigates and enforces Taiwan's competition laws, and
28 initiates an investigation when it believes that the Taiwan Fair Trade Act has been
violated. As part of its investigation, the Taiwan FTC sent a letter to Qualcomm
inquiring into the Company's patent licensing arrangements.

1 authorities also notified Qualcomm that they were looking into whether “the
2 Company violated a FRAND licensing commitment by declining to grant licenses
3 to chipset makers” and “the Company provided royalty rebates to certain companies
4 in exchange for their exclusive use of the Company’s chipsets.”⁵⁶ Also on
5 December 8, 2015, the European Commission announced that it had informed
6 Qualcomm of its preliminary finding that the Company illegally compensated a
7 major customer, later identified as Apple, in exchange for its exclusive use of
8 Qualcomm chips, thus violating European Union antitrust laws.

9 124. In response to these revelations, Qualcomm’s stock price sank further,
10 declining an additional \$2.67 per share. Discussing the Taiwan FTC and European
11 Commission investigations and findings, analysts at *The Motley Fool* stated that
12 “Qualcomm investors recently received a double dose of bad news.”⁵⁷

13 125. *Third*, on December 27, 2016, the KFTC further exposed Qualcomm’s
14 misconduct when it confirmed the Case Examiner’s findings and issued an
15 \$853 million fine against Qualcomm. The fine was the single largest fine ever
16 administered by a Korean regulator, and one of the largest fines ever administered
17 against a cellular telecommunications company by any governmental authority. The
18 KFTC also ordered Qualcomm, going forward, to offer competitor chipmakers
19 licenses in accordance with the Company’s FRAND commitment. The misconduct
20 identified by the KFTC, and discussed above, stunned industry participants, further
21 devaluing Qualcomm’s stock. For example, the publication *Patent Progress* issued
22 a report describing how:

23 The Korean Fair Trade Commission (‘KFTC’) has just taken extreme
24 action against Qualcomm for anti-competitive practices. The KFTC
25 fined Qualcomm about \$850 million and ordered it to change the way
26 it licenses its standard-essential patents. Why did the KFTC do this?

27 ⁵⁶ Qualcomm Inc., SEC Form 10-Q dated April 19, 2017.

28 ⁵⁷ Leo Sun, *The Motley Food*, “Qualcomm Inc. Faces More Antitrust Challenges in Europe and Taiwan” (Dec. 12, 2015).

1 Well, Qualcomm breaks its commitments to standard setting
2 organizations, strong-arms its customers into giving free cross-licenses,
3 and blocks competitors from entering its chip market.⁵⁸

4 The report further highlighted how the KFTC found facts “show[ing] a deliberate
5 (and successful) attempt to monopolize the CDMA chip market using its CDMA-
6 essential patents.” The report continued that “Qualcomm refuses to license other
7 chip manufacturers” because “[a]pparently, Qualcomm determined that it would be
8 difficult to remain profitable in the CDMA market if it did license other chip
9 manufacturers.”

10 126. *Fourth*, on January 17, 2017, the FTC filed an enforcement action based
11 on, among other things, Qualcomm’s “refusal to license standard-essential patents
12 to competitors” and its demanding “exclusivity from Apple in exchange for reduced
13 patent royalties.” In response to these revelations, Qualcomm’s stock price sank
14 further, declining an additional \$2.48 per share. As *The Street* reported that day,
15 “[t]he news sent Qualcomm shares sharply lower by 4% to \$64.19 on Tuesday on
16 fears of damage to its lucrative business model.”⁵⁹ Analysts at *Seeking Alpha*
17 similarly stated that Qualcomm “lost roughly \$20bn in market cap in just a few days
18 after the announcement.... In our discussion with analysts and legal experts,
19 Qualcomm’s licensing business model and potentially a portion of QCT is perceived
20 to be in jeopardy.”⁶⁰ Analysts at *The Motley Fool* likewise commented that
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25 ⁵⁸ Matt Levy, Patent Progress, “KFTC Takes Action Against Qualcomm”
26 (Jan. 5, 2017).

27 ⁵⁹ Annie Palmer, TheStreet, “The FTC Rocks Qualcomm” (Jan. 17, 2017).

28 ⁶⁰ CDM Capital, Seeking Alpha, “Qualcomm: A Cheap Stock In An Expensive
Market” (Apr. 11, 2017).

1 “Qualcomm brushed off these accusations, but the stock’s performance following
2 the news shows that investors don’t share the same confidence.”⁶¹

3 127. *Finally*, Qualcomm’s anti-competitive conduct was further exposed
4 through a major lawsuit by Qualcomm’s largest customer, Apple. On
5 January 20, 2017, Apple initiated a federal court action against Qualcomm, which
6 further detailed the Company’s abuses of monopolistic power through its refusal to
7 license competitors and its exclusivity contracts that prohibited Apple from
8 purchasing chips from competitors. In addition, the action disclosed that Qualcomm
9 owed Apple over a billion dollars in royalty relief rebates, which Qualcomm
10 withheld in response to Apple’s testimony to the KFTC. On the same day it filed its
11 lawsuit, Apple issued the following statements:

12 Qualcomm built its business on older, legacy, standards but reinforces
13 its dominance through exclusionary tactics and excessive royalties.
14 Despite being just one of over a dozen companies who contributed to
15 basic cellular standards, Qualcomm insists on charging Apple at least
16 five times more in payments than all the other cellular patent licensors
17 we have agreements with combined.

18 To protect this business scheme Qualcomm has taken increasingly
19 radical steps, most recently withholding nearly \$1B in payments from
20 Apple as retaliation for responding truthfully to law enforcement
21 agencies investigating them.⁶²

22 128. The news of Apple’s revelations further surprised investors, with the
23 financial press reporting that investors were “spooked.”⁶³ Analysts at *Bernstein*
24 *Research* responded, downgrading Qualcomm’s stock and warning investors to

25 ⁶¹ Timothy Green, *The Motley Fool*, “Qualcomm Reports Sluggish Growth as
26 *Lawsuits Loom*” (Jan. 26, 2017).

27 ⁶² Susan Decker, Alex Webb, Ian King, *Bloomberg*, “Apple Sues Qualcomm Over
28 *Patent Royalties in Antitrust Case*” (Jan. 20, 2017).

⁶³ Aaron Pressman, *Fortune*, “Qualcomm Blasts Apple Over Alleged Chip
Manipulations” (Apr. 10, 2017).

1 “[e]xpect overhang from what appears to be an all-out attack on the business model
2 from both regulators and largest customers [which] will remain for quite some
3 time.”⁶⁴ Following the revelations contained in the Apple action, Qualcomm’s stock
4 price plummeted over 12% on particularly high trading volume.

5 129. With each of these revelations, investors lost billions of dollars in
6 market value. In total, investors suffered over \$32 billion in market capitalization
7 losses as a result of the disclosures discussed above.

8 **VI. DEFENDANTS’ FALSE AND**
9 **MISLEADING STATEMENTS AND OMISSIONS**

10 130. Defendants made materially false and misleading statements during the
11 Class Period in violation of Sections 10(b) and 20(a) of the Exchange Act and Rule
12 10b-5 promulgated thereunder. Among other things:

- 13 (i) Defendants represented to investors that Qualcomm made its standard-
14 essential patents “available to the industry through its licensing program”
15 on a “non-discriminatory” basis when, in reality, Qualcomm refused to
16 license competitor chipmakers;
- 17 (ii) Defendants represented to investors that Qualcomm’s “patent licensing
18 practices” had been “maintained for almost two decades” when, in reality,
19 Qualcomm materially altered its licensing practices in 2008, creating
20 significant business and regulatory risks;
- 21 (iii) Defendants represented to investors that Qualcomm’s business and
22 licensing divisions were kept “separate” and that they “don’t bundle”
23 when, in reality, Qualcomm refused to license companies if they were a
24 Qualcomm chipset competitor and provided licensees with royalty relief
25 conditioned on their exclusive purchase of Qualcomm chips; and
- 26 (iv) Defendants represented to investors that Qualcomm adopted a “pro-
27 competitive” licensing model that “facilitated competition” when, in
28 reality, Qualcomm instituted a business model and implemented a set of

⁶⁴ Tiernan Ray, Barron’s, “Qualcomm Plunges: Bad News When Your Top Customer Sues You, Says Bernstein” (Jan. 23, 2017).

1 licensing policies that stifled and blocked competition, enabling it to
2 achieve market dominance.

3 131. Defendants also omitted material facts when speaking to investors
4 during the Class Period in violation of Sections 10(b) and 20(a) of the Exchange Act
5 and Rule 10b-5 promulgated thereunder. Once Defendants decided to tout the
6 Company's purported pro-competitive and non-discriminatory licensing practices,
7 they were required to do so in a manner that did not mislead investors. Among other
8 things, Defendants misled investors by omitting that Qualcomm: (i) refused to
9 license to competitor chipmakers, including MediaTek, Samsung, Intel, and Via
10 Technologies; (ii) bundled the terms of its chipset and license agreements by, among
11 other things, providing handset manufacturers royalty relief conditioned on their
12 exclusive use of Qualcomm chips; and (iii) amended its licensing policies in 2008
13 by refusing to license to competitors.

14 **A. False Statements in 2012**

15 **1. 2012 Form 10-Q Quarterly Reports**

16 132. During 2012, Qualcomm issued three quarterly reports with the SEC
17 on Form 10-Q, each of which was signed by Defendant Jacobs. These quarterly
18 reports, which were filed on February 1, April 18, and July 18, 2012, touted "the
19 benefits of our business model and our extensive technology investments in
20 promoting a highly competitive ... wireless industry" and "the success of our
21 business model in enabling new, highly cost-effective competitors to their products."

22 133. The statements identified in paragraph 132 were false and misleading
23 when made. Far from "promoting a highly competitive ... wireless industry" and
24 "enabling new, highly cost-effective competitors to their products," Qualcomm has
25 refused to license competitors its patents essential to the cellular standard. The
26 statements identified in paragraph 132 also omitted material facts when made,
27 including that: (i) Qualcomm maintains a policy by which it refuses to license the
28 standard-essential patents to competitor chipset manufacturers; (ii) Qualcomm has,

1 in accordance with its revised policy, consistently refused to license its standard-
2 essential patents to competitor chipmakers, including MediaTek, Samsung, Intel, Via
3 Technologies, and others; and (iii) Qualcomm stifled competition by bundling the
4 terms of its chipset and license agreements, conditioning royalty relief on customer's
5 exclusive use of Qualcomm chipsets.

6 **2. 2012 Defendant Rosenberg Interview**

7 134. On April 11, 2012, Defendant Rosenberg was quoted in an article
8 entitled "The Evolution of Technology Markets: Separating Fact from Fiction." In
9 the article, Defendant Rosenberg touted, and purported to describe, "Qualcomm's
10 business model." Specifically, the article quoted Defendant Rosenberg as stating
11 "Qualcomm's business model—broadly licensing our technology and reinvesting in
12 R&D—is enabling the success of many other companies in the wireless value
13 chain."

14 135. Defendant Rosenberg's statement identified in paragraph 134 was false
15 and misleading when made. Contrary to Defendant Rosenberg's representation that
16 the "Qualcomm business model" was to "broadly license [its] technology,"
17 Qualcomm refused to license its technology to an entire segment of the industry—
18 namely, its competitor chipset manufacturers. The statement identified in paragraph
19 134 also omitted material facts when made, including that: (i) Qualcomm revised
20 its licensing model in 2008 and, after that point, maintained a policy that refuses to
21 license the standard-essential patents to competitor chipset manufacturers; and
22 (ii) Qualcomm has, in accordance with its revised policy, consistently refused to
23 license its standard-essential patents to competitor chipmakers, including MediaTek,
24 Samsung, Intel, Via Technologies, and others.

25 **3. April 26, 2012 Congressional Testimony**

26 136. On April 26, 2012, Qualcomm presented at a House Hearing before the
27 Subcommittee on Intellectual Property, Competition and the Internet of the
28 Committee on the Judiciary House of Representatives. During its prepared remarks

1 during an open session, Qualcomm, through Sean Murphy, Vice President and
 2 Counsel of International Government Affairs, stated that “Qualcomm’s business
 3 model concentrates on two key areas,” one of which was that “we broadly license
 4 our portfolio of U.S. and foreign patents to virtually every manufacturer in the
 5 mobile industry.”⁶⁵

6 137. The statement identified in paragraph 136 was materially false and
 7 misleading when made. Rather than “broadly license [its] portfolio of U.S. and
 8 foreign patents to virtually every manufacturer in the mobile industry,” Qualcomm
 9 refused to license its patents to an entire segment of the industry—namely, its
 10 competitor chipset manufacturers. The statement identified in paragraph 136 also
 11 omitted material facts when made, including that: (i) Qualcomm maintained a policy
 12 by which it refused to license the standard-essential patents to competitor chipset
 13 manufacturers; and (ii) Qualcomm has, in accordance with its revised policy,
 14 consistently refused to license its standard-essential patents to competitor
 15 chipmakers, including MediaTek, Samsung, Intel, Via Technologies, and others.

16 **4. 2012 Form 10-K Annual Report**

17 138. On November 7, 2012, Qualcomm filed its annual report with the SEC
 18 for the fiscal year 2012 (“2012 Form 10-K”), which was signed by Defendant Jacobs.
 19 In the 2012 Form 10-K, Qualcomm stated that it had “committed to [the] standards
 20 bodies that we will offer to license our essential patents for these CDMA standards
 21 on a fair and reasonable basis free from unfair discrimination.” Qualcomm further
 22

23
 24 ⁶⁵ Sean Murphy was Qualcomm’s Vice President and Counsel of International
 25 Government Affairs throughout the Class Period. In this role, he “manage[d] a range
 26 of international public policy issues for Qualcomm, including intellectual property,
 27 international trade, and innovation policy.” Murphy left Qualcomm in May 2017.
 28 Throughout the Class Period, Murphy spoke on behalf of Qualcomm numerous
 times, holding himself out as someone with intimate knowledge about the
 Company’s business practices. Murphy testified before the U.S. Congress on
 Qualcomm’s behalf at least three times during the Class Period.

1 represented that “[w]e have licensed or otherwise provided rights to use our patented
2 technologies to interested companies on terms that are fair, reasonable and free from
3 unfair discrimination.”

4 139. The statements identified in paragraph 138 were materially false and
5 misleading when made. Qualcomm has not “licensed or otherwise provided rights
6 to use [its] patented technologies to interested companies on terms that are fair,
7 reasonable and free from unfair discrimination.” Rather, the Company has
8 discriminated against, and refused to license its standard-essential patents to,
9 competitor chipset manufacturers, as well as discriminated against licensees by
10 providing royalty relief to customers who agreed to purchase exclusively Qualcomm
11 chipsets. The statements identified in paragraph 138 also omitted material facts
12 when made, including that: (i) Qualcomm maintains a policy in which it refuses to
13 license the standard-essential patents to competitor chipset manufacturers;
14 (ii) Qualcomm has, in accordance with its revised policy, consistently refused to
15 license its standard-essential patents to competitor chipmakers, including MediaTek,
16 Samsung, Intel, Via Technologies, and others; and (iii) Qualcomm, in licensing its
17 essential patents, has discriminated against and provided unfavorable terms to
18 customers that did not purchase chipsets exclusively from Qualcomm.

19 140. Qualcomm’s 2012 Form 10-K also purported to describe the
20 Company’s contribution to “Competition,” claiming that “[w]e have facilitated
21 competition in the wireless communications industry by licensing and enabling a
22 large number of manufacturers.” This statement was false, misleading, and omitted
23 material facts. Far from “facilitat[ing] competition,” Qualcomm stifled competition
24 in the cellular communications industry, and did so by, among other things, refusing
25 to license to chipset manufacturers its patents essential to the wireless standards, as
26 well as by bundling the terms of its license and chip-sale agreements based on
27 whether the customer would purchase exclusively Qualcomm chipsets.
28

1 141. Qualcomm’s 2012 Form 10-K also touted, and purported to describe,
2 the Company’s licensing strategy, stating that “[o]ur strategy to make our patented
3 technologies broadly available has been a catalyst for industry growth, helping to
4 enable a wide range of companies offering a broad array of wireless products and
5 features while driving down average and low-end selling prices for 3G handsets and
6 other wireless devices.” This statement was materially false and misleading when
7 made. Rather than “make [its] patented technologies broadly available,” Qualcomm
8 refused to license its technology to an entire segment of the industry—namely, its
9 competitor chipset manufacturers. This statement also omitted material facts when
10 made, including that: (i) Qualcomm maintained a policy by which it refused to
11 license the standard-essential patents to competitor chipset manufacturers; and
12 (ii) Qualcomm has, in accordance with its revised policy, consistently refused to
13 license its standard-essential patents to competitor chipmakers, including MediaTek,
14 Samsung, Intel, Via Technologies, and others.

15 **5. 2012 Credit Suisse Investor Conference**

16 142. On November 27, 2012, Defendant Aberle addressed investors at the
17 Credit Suisse Technology Conference in Scottsdale, Arizona. During the investor
18 conference, Defendant Aberle assured investors:

19 And within the Company, we tend to keep the licensing and the chip
20 business very separate. Obviously, our view is that companies need a
21 license if they are doing 3G or 4G devices, sort of irrespective of whose
22 chip they use. And we try to keep that separated from whether they are
23 using a QRD or a Qualcomm chip, and we don't bundle those together.

24 143. The statements identified in paragraph 142 were false and misleading
25 when made. Contrary to Defendant Aberle’s statement, Qualcomm did not keep the
26 “licensing and chip business very separate”; rather, it refused to license competitor
27 chipmakers and bundled the terms of its license and chip agreements. The
28 statements identified in paragraph 142 also omitted material facts, including that:
(i) Qualcomm maintained a policy by which it refused to license the standard-

1 essential patents to competitor chipset manufacturers; and (ii) Qualcomm bundled
2 the terms of its license agreements with the terms of its chipset agreements by
3 providing royalty relief to Apple and other customers who purchased all or most of
4 their chipsets from Qualcomm.

5 **B. False Statements in 2013**

6 **1. 2013 Form 10-Q Quarterly Reports**

7 144. During 2013, Qualcomm issued three quarterly reports with the SEC
8 on Form 10-Q, each of which was signed by Defendant Jacobs. These quarterly
9 reports, which were filed on January 30, April 24, and July 24, 2013, touted “the
10 benefits of our business model and our extensive technology investments in
11 promoting a highly competitive ... wireless industry” and “the success of our
12 business model in enabling new, highly cost-effective competitors to their products.”

13 145. The statements identified in paragraph 144 were false and misleading
14 when made. Far from “promoting a highly competitive ... wireless industry” and
15 “enabling new, highly cost-effective competitors to their products,” Qualcomm has
16 refused to license competitors its patents essential to the cellular standard. The
17 statements identified in paragraph 144 also omitted material facts when made,
18 including that: (i) Qualcomm maintained a policy in which it refused to license the
19 standard-essential patents to competitor chipset manufacturers; (ii) Qualcomm has,
20 in accordance with its revised policy, consistently refused to license its standard-
21 essential patents to competitor chipmakers, including MediaTek, Samsung, Intel, Via
22 Technologies, and others; and (iii) Qualcomm stifled competition by bundling the
23 terms of its chipset and license agreements, conditioning royalty relief on the
24 customer’s exclusive use of Qualcomm chipsets.

25 **2. 2013 GSM Association Mobile World Congress**

26 146. On February 25, 2013, Defendants Mollenkopf, Aberle, and Jacobs
27 made an investor presentation at the GSM Association Mobile World Congress.
28 When questioned by Mark McKechnie of Evercore about Qualcomm’s chip and

1 licensing business, Defendant Mollenkopf stated the following: “Well, they are
 2 really separate businesses. I mean we have been very clear that we keep those two
 3 things separate -- separate propositions to the customer. So, really two different
 4 things.”⁶⁶

5 147. The statements identified in paragraph 146 were false and misleading
 6 when made. Contrary to Defendant Mollenkopf’s statement, Qualcomm did not
 7 keep the licensing and chip business “really separate,” and the terms of the
 8 agreements were not “separate propositions to the customer.” Rather, Qualcomm
 9 refused to license competitors to its chipset business and bundled the terms and
 10 negotiations of its license and chipset agreements.

11 148. Defendant Mollenkopf’s statements identified in paragraph 146 also
 12 omitted material facts, including that: (i) Qualcomm bundled the terms of its license
 13 agreements with the terms of its chipset agreements by providing royalty relief to
 14 Apple and other licensees who purchased all or most of their chipsets from
 15 Qualcomm; (ii) Qualcomm’s business and licensing model included refusing to
 16 license its patents essential to the cellular standards to competitor chipset
 17 manufacturers; and (iii) consistent with its business and licensing model, Qualcomm
 18 refused to license its patents essential to the cellular standards to competitor chipset
 19 manufacturers, including MediaTek, Samsung, Intel, and Via Technologies.

20 **3. 2013 Annual Meeting of Stockholders**

21 149. On March 5, 2013, Defendants Jacobs, Rosenberg, Mollenkopf, and
 22 Aberle addressed investors at Qualcomm’s 2013 Annual Meeting of Stockholders.

24 ⁶⁶ Transcript, “Qualcomm at GSM Association Mobile World Congress”
 25 (Feb. 25, 2013). The transcript reflects that the question was inaudible to the
 26 transcriber. Mark McKechnie, the Evercore analyst, has explained that based on
 27 Mollenkopf’s response to his question, the context, and McKechnie’s focus at the
 28 time, his best recollection, although he did not remember exactly, is that his question
 that prompted Defendant Mollenkopf’s answer concerned the “strategic benefits of
 having the royalty and chip business under the same roof.”

1 During his opening remarks, Defendant Jacobs discussed the Company’s “record
2 revenues,” which he attributed to its purported business model of “licens[ing]
3 broadly,” explaining:

4 [O]ne of the things that we’ve really focused on was making sure that
5 we license broadly, that we were seen as a company who is an enabler
6 for the rest of the industry, and so we aren't seen as a tax collector but
7 we’re seen as an R&D engine, an innovation engine that helps our
8 partners grow their businesses and it's worked extremely well.

8 150. Defendant Jacobs’ statements quoted in paragraph 149 were materially
9 false and misleading when made. Contrary to Defendant Jacobs’ statement that
10 Qualcomm focused on “making sure that we license broadly” and is “seen as a
11 company who is an enabler for the rest of the industry,” Qualcomm took affirmative
12 steps to refuse to license its essential patents to an entire segment of the industry—
13 namely, competitor chipset manufacturers. The statements identified in paragraph
14 149 also omitted material facts when made, including that: (i) Qualcomm’s business
15 and licensing model included refusing to license its patents essential to the cellular
16 standards to competitor chipset manufacturers; and (ii) Qualcomm has, in
17 accordance with its revised policy, refused to license its patents essential to the
18 cellular standards to competitor chipset manufacturers, including MediaTek,
19 Samsung, Intel, and Via Technologies.

20 **4. 2013 Form 10-K Annual Report**

21 151. On November 6, 2013, Qualcomm filed its annual report with the SEC
22 for its fiscal year 2013 (“2013 Form 10-K”), which was signed by Defendant Jacobs.
23 In the 2013 Form 10-K, Qualcomm stated that it had “committed to [the] standards
24 bodies that we will offer to license our essential patents for these CDMA standards
25 on a fair, reasonable and non-discriminatory basis.” Qualcomm further represented
26 that “[w]e have licensed or otherwise provided rights to use our patented
27 technologies to interested companies on terms that are fair, reasonable and non-
28 discriminatory.”

1 152. The statements identified in paragraph 151 were false and misleading
2 when made. Qualcomm has not licensed “interested companies on terms that are
3 fair, reasonable and non-discriminatory.” Rather, the Company has discriminated
4 against, and refused to license its standard-essential patents to, competitor chipset
5 manufacturers, as well as discriminated against licensees by providing royalty relief
6 to customers who agreed to purchase exclusively Qualcomm chipsets. The
7 statements identified in paragraph 151 also omitted material facts when made,
8 including that: (i) Qualcomm maintained a licensing policy by which it refused to
9 license the standard-essential patents to competitor chipset manufacturers;
10 (ii) Qualcomm has, in accordance with its revised policy, consistently refused to
11 license its standard-essential patents to competitor chipmakers, including MediaTek,
12 Samsung, Intel, Via Technologies, and others; and (iii) Qualcomm, in licensing its
13 essential patents, has discriminated against and provided unfavorable terms to
14 customers that did not purchase chipsets exclusively from Qualcomm.

15 153. Qualcomm’s 2013 Form 10-K also purported to describe its
16 contribution to “Competition,” claiming that “[w]e have facilitated competition in
17 the wireless communications industry by licensing our technologies to, and therefore
18 enabling, a large number of manufacturers.” This statement was false, misleading,
19 and omitted material facts. Far from “facilitat[ing] competition,” Qualcomm stifled
20 competition in the cellular communications industry, and did so by, among other
21 things, refusing to license to chipset manufacturers its patents essential to the
22 wireless standards, as well as by bundling the terms of its license and chip-sale
23 agreements based on whether the customer would purchase exclusively Qualcomm
24 chipsets.

25 154. Qualcomm’s 2013 Form 10-K also touted, and purported to describe,
26 the Company’s “strategy,” stating that “[o]ur strategy to make our patented
27 technologies broadly available has been a catalyst for industry growth, helping to
28 enable a wide range of companies offering a broad array of wireless products and

1 features while driving down average and low-end selling prices for 3G handsets and
2 other wireless devices.” This statement was false and misleading when made.
3 Rather than “make [its] patented technologies broadly available,” Qualcomm
4 refused to license its technology to an entire segment of the industry—namely, its
5 global rival chipset manufacturers. This statement also omitted material facts when
6 made, including that: (i) Qualcomm maintained a licensing policy by which it
7 refused to license the standard-essential patents to competitor chipset manufacturers;
8 and (ii) Qualcomm has, in accordance with its revised policy, consistently refused to
9 license its standard-essential patents to competitor chipmakers, including MediaTek,
10 Samsung, Intel, Via Technologies, and others.

11 **5. Q4 2013 Earnings Call**

12 155. On November 6, 2013, Qualcomm and Defendant Mollenkopf held an
13 investor conference call to discuss the Company’s results for the fourth quarter and
14 full year of 2013. During his opening remarks, Defendant Mollenkopf purported to
15 describe and touted Qualcomm’s “broad licensing program,” which supposedly
16 enabled the Company to obtain record revenues. Specifically he stated: “Through
17 our broad licensing program, we continue to foster innovation, and enable a large
18 and growing ecosystem that benefits wireless consumers worldwide.”

19 156. The statement identified in paragraph 155 was false, misleading, and
20 omitted material facts when made. Contrary to Defendant Mollenkopf’s statement
21 that Qualcomm maintained a “broad licensing program” Qualcomm refused to
22 license its technology to an entire segment of the industry—namely, its competitor
23 chipset manufacturers. The statements identified in paragraph 155 also omitted
24 material facts when made, including that: (i) Qualcomm maintained a licensing
25 policy by which it refused to license the standard-essential patents to competitor
26 chipset manufacturers; and (ii) Qualcomm has, in accordance with its revised policy,
27 consistently refused to license its standard-essential patents to competitor
28 chipmakers, including MediaTek, Samsung, Intel, Via Technologies, and others.

1 **6. 2013 San Diego Union Tribune**
 2 **Article: Defendant Altman Interview**

3 157. On November 22, 2013, *The San Diego Union Tribune* published an
 4 interview with Defendant Altman. During the interview, Defendant Altman was
 5 asked “How come this licensing model has worked over the years?” In response,
 6 Defendant Altman stated that Qualcomm “make[s] [its patents] available to the
 7 industry through its licensing program.... It allows more and more competition to
 8 get into the marketplace where there is no way they would be able to otherwise.”

9 158. Defendant Altman’s statement identified in paragraph 157 was false
 10 and misleading when made. Contrary to Defendant Altman’s statement, Qualcomm
 11 did not make its patents “available to the industry through [its] licensing program.”
 12 Rather, Qualcomm refused to license its technology to a substantial segment of the
 13 industry—namely, its competitor chipset manufacturers. The statement identified in
 14 paragraph 157 also omitted material facts when made, including that: (i) Qualcomm
 15 maintained a licensing policy in which it refused to license the standard-essential
 16 patents to competitor chipset manufacturers; (ii) Qualcomm has, in accordance with
 17 its revised policy, consistently refused to license its standard-essential patents to
 18 competitor chipmakers, including MediaTek, Samsung, Intel, and Via Technologies;
 19 and (iii) Qualcomm maintained a successful licensing program by bundling the
 20 terms of its license agreements with the terms of its chipset agreements and by
 21 providing royalty relief to Apple and other licensees who purchased all or most of
 22 their chipsets from Qualcomm.

23 **C. False Statements in 2014**

24 **1. 2014 Form 10-Q Quarterly Reports**

25 159. During 2014, Qualcomm issued quarterly reports with the SEC on
 26 Form 10-Q. The quarterly reports were each signed by Defendant Mollenkopf on
 27 January 29, April 23, and July 23, 2014. Each of the reports touted “the benefits of
 28 our business model and our extensive technology investments in promoting a highly

1 competitive ... wireless industry” and “the success of our business model in enabling
2 new, highly cost-effective competitors to their products.”

3 160. The statements identified in paragraph 159 were false and misleading
4 when made. Far from “promoting a highly competitive ... wireless industry” and
5 “enabling new, highly cost-effective competitors to their products,” Qualcomm has
6 refused to license competitors its patents essential to the cellular standard. The
7 statements identified in paragraph 159 also omitted material facts when made,
8 including that: (i) Qualcomm maintained a licensing policy in which it refused to
9 license the standard-essential patents to competitor chipset manufacturers;
10 (ii) Qualcomm has, in accordance with its revised policy, consistently refused to
11 license its standard-essential patents to competitor chipmakers, including MediaTek,
12 Samsung, Intel, Via Technologies, and others; and (iii) Qualcomm stifled
13 competition by bundling the terms of its chipset and license agreements,
14 conditioning royalty relief on a customer’s exclusive use of Qualcomm chipsets.

15 2. 2014 PowerTalk Interview

16 161. On February 18, 2014, Defendant Davidson gave an interview on
17 “PowerTalk,” an online program hosted by Chris Versace, editor of the investment
18 newsletter *PowerTrend Profits*, about Qualcomm and the state of the mobile
19 industry. During the interview, Defendant Davidson touted Qualcomm’s purported
20 business model, stating that Qualcomm “created this unique business model of not
21 holding our patents to ourselves to advantage our own products, but creating a
22 product of them and broadly licensing them on a pro-active basis.”

23 162. The statement identified in paragraph 161 was false and misleading
24 when made. Contrary to Defendant Davidson’s statement that Qualcomm
25 maintained a “business model of not holding our patents to ourselves to advantage
26 our own products,” Qualcomm in reality held its patents to itself by refusing to
27 license the essential patents to competitor chipset manufacturers in order to
28 advantage its chipset business. The statement identified in paragraph 161 also

1 omitted material facts when made, including that: (i) Qualcomm maintained a
2 licensing policy in which it refused to license its standard-essential patents to
3 competitor chipset manufacturers; and (ii) Qualcomm has, in accordance with its
4 revised policy, consistently refused to license its standard-essential patents to
5 competitor chipmakers, including MediaTek, Samsung, Intel, Via Technologies, and
6 others.

7 **3. 2014 Form 10-K Annual Report**

8 163. On November 5, 2014, Qualcomm filed its annual report with the SEC
9 for its fiscal year 2014 (“2014 Form 10-K”), which was signed by Defendant
10 Mollenkopf. In the 2014 Form 10-K, the Company stated that it had “committed to
11 such standards bodies that we will offer to license our essential patents for these
12 CDMA standards on a fair, reasonable and non-discriminatory basis.” This
13 statement was misleading and omitted material facts when made, including that:
14 (i) Qualcomm has, contrary to its commitment to the standard-setting bodies,
15 discriminated against, and refused to license its standard-essential patents to,
16 competitor chipset manufacturers; (ii) Qualcomm has, in accordance with its revised
17 policy, consistently refused to license its standard-essential patents to competitor
18 chipmakers, including MediaTek, Samsung, Intel, Via Technologies, and others; and
19 (iii) Qualcomm has, in licensing its essential patents, discriminated against and
20 provided unfavorable terms to customers that did not purchase chipsets exclusively
21 from Qualcomm.

22 164. Qualcomm’s 2014 Form 10-K also purported to describe the
23 Company’s contribution to “Competition,” claiming that “[w]e have facilitated
24 competition in the wireless communications industry by licensing our technologies
25 to, and therefore enabling, a large number of manufacturers.” This statement was
26 false, misleading, and omitted material facts. Far from “facilitat[ing] competition,”
27 Qualcomm stifled competition in the cellular communications industry, and did so
28 by, among other things, refusing to license to competitor chipset manufacturers the

1 Company's patents essential to the wireless standards, as well as by bundling the
2 terms of its license and chip-sale agreements based on whether the customer would
3 purchase exclusively Qualcomm chipsets.

4 165. Qualcomm's 2014 Form 10-K also touted, and purported to describe,
5 the Company's "strategy," stating that "[o]ur strategy to make our patented
6 technologies broadly available has been a catalyst for industry growth, helping to
7 enable a wide range of companies offering a broad array of wireless products and
8 features while driving down average and low-end selling prices for 3G handsets and
9 other wireless devices." This statement was false and misleading when made.
10 Rather than "make [its] patented technologies broadly available," Qualcomm
11 refused to license its technology to an entire segment of the industry—namely, its
12 competitor chipset manufacturers. This statement also omitted material facts when
13 made, including that: (i) Qualcomm maintained a licensing policy in which it
14 refused to license its standard-essential patents to competitor chipset manufacturers;
15 and (ii) Qualcomm has, in accordance with its revised policy, consistently refused to
16 license its standard-essential patents to competitor chipmakers, including MediaTek,
17 Samsung, Intel, Via Technologies, and others.

18 **D. False Statements in 2015**

19 **1. 2015 Form 10-Q Quarterly Reports**

20 166. Qualcomm issued quarterly reports with the SEC on Form 10-Q on
21 January 28, April 22, and July 22, 2015. Each quarterly report was signed by
22 Defendant Mollenkopf. All of the reports touted "the benefits of our business model
23 and our extensive technology investments in promoting a highly competitive ...
24 wireless industry" and "the success of our business model in enabling new, highly
25 cost-effective competitors to their products."

26 167. The statements identified in paragraph 166 were false and misleading
27 when made. Far from "promoting a highly competitive ... wireless industry" and
28 "enabling new, highly cost-effective competitors to their products," Qualcomm has

1 refused to license competitors its patents essential to the cellular standard. The
2 statements identified in paragraph 166 also omitted material facts when made,
3 including that: (i) Qualcomm maintained a licensing policy in which it refused to
4 license the standard-essential patents to competitor chipset manufacturers; and
5 (ii) Qualcomm has, in accordance with its revised policy, consistently refused to
6 license its standard-essential patents to competitor chipmakers, including MediaTek,
7 Samsung, Intel, Via Technologies, and others.

8 **2. 2015 Defendant Mollenkopf**
9 **Presentation at SIEPR Economic Summit**

10 168. On March 13, 2015, Defendant Mollenkopf was interviewed at the 12th
11 SIEPR Economic Summit. During the interview, Mollenkopf touted the Company's
12 "business model," which purportedly allowed "the entire market" to obtain a license,
13 stating that "we figured out that the right business model was to actually focus on
14 licensing the inventions, essentially through the standards bodies so that the entire
15 market could play, instead of practicing the inventions ourselves, and then we would
16 enable more market participants to enter into that by selling kind of enabling
17 technologies."

18 169. The statement identified in paragraph 168 was materially false and
19 misleading when made. Contrary to Defendant Mollenkopf's statement that
20 Qualcomm maintained a "business model," which purportedly licensed its
21 technology to the standard-essential bodies "so that the entire market could play,"
22 Qualcomm refused to license its technology to an entire segment of the market—
23 namely, its competitor chipset manufacturers. The statement identified in paragraph
24 168 also omitted material facts when made, including that: (i) Qualcomm revised
25 its licensing model in 2008 and, after that point, maintained a policy that refuses to
26 license the standard-essential patents to competitor chipset manufacturers; and
27 (ii) Qualcomm has, in accordance with its revised policy, consistently refused to
28

1 license its standard-essential patents to competitor chipmakers, including MediaTek,
2 Samsung, Intel, Via Technologies, and others.

3 **3. 2015 Form 10-K Annual Report**

4 170. On November 5, 2015, Qualcomm filed its annual report with the SEC
5 for its fiscal year 2015 (“2015 Form 10-K”), which was signed by Defendant
6 Mollenkopf. In it, the Company stated that it had “committed to such standards
7 bodies that we will offer to license our essential patents for these CDMA standards
8 on a fair, reasonable and non-discriminatory basis.” This statement was misleading
9 and omitted material facts when made, including that: (i) Qualcomm has, contrary
10 to its commitment to the standard-setting bodies, discriminated against, and refused
11 to license its standard-essential patents to, competitor chipset manufacturers;
12 (ii) Qualcomm has, in accordance with its revised policy, consistently refused to
13 license its standard-essential patents to competitor chipmakers, including MediaTek,
14 Samsung, Intel, Via Technologies, and others; and (iii) Qualcomm, in licensing its
15 essential patents, has discriminated against and provided unfavorable terms to
16 customers that did not purchase chipsets exclusively from Qualcomm.

17 171. Qualcomm’s 2015 Form 10-K also purported to describe the status of
18 the “Competition,” claiming that “[w]e have facilitated competition in the wireless
19 communications industry by licensing our technologies to, and therefore enabling, a
20 large number of manufacturers.” This statement was false, misleading, and omitted
21 material facts. Far from “facilitat[ing] competition,” Qualcomm stifled competition
22 in the cellular communications industry, and did so by, among other things, refusing
23 to license to chipset manufacturers its patents essential to the wireless standards, as
24 well as by bundling the terms of its license and chip-sale agreements based on
25 whether the customer would purchase exclusively Qualcomm chipsets.

26 172. Qualcomm’s 2015 Form 10-K also touted, and purported to describe,
27 the Company’s “strategy,” stating that “[o]ur strategy to make our patented
28 technologies broadly available has been a catalyst for industry growth, helping to

1 enable a wide range of companies offering a broad array of wireless products and
2 features while driving down average and low-end selling prices for 3G handsets and
3 other wireless devices.” This statement was false and misleading when made.
4 Rather than “make [its] patented technologies broadly available,” Qualcomm
5 refused to license its technology to an entire segment of the industry—namely, its
6 competitor chipset manufacturers. The statement also omitted material facts when
7 made, including that: (i) Qualcomm’s business and licensing model included
8 refusing to license to competitor chipset manufacturers; and (ii) consistent with its
9 business and licensing model, Qualcomm has refused to license its standard-
10 essential patents to competitor chipset manufacturers, including MediaTek,
11 Samsung, Intel, and Via Technologies.

12 **4. Qualcomm November 17, 2015 Press Release**

13 173. On November 17, 2015, Qualcomm issued a press release in response
14 to the KFTC Case Examiner’s Report, which stated that the Company restricted
15 market competition by excluding its competitors. In Qualcomm’s press release in
16 response, Defendants stated that “the allegations and conclusions in the [KFTC Case
17 Examiner’s Report] are not supported by the facts.” Defendants further represented
18 that “[o]ur patent licensing practices, which we and other patent owners have
19 maintained for almost two decades, and which have facilitated the growth of the
20 mobile communications industry in Korea and elsewhere, are ... pro-competitive.”

21 174. Defendants’ statements identified in paragraph 173 were false and
22 misleading when made. Contrary to Defendants’ statements, the facts did support
23 the KFTC Case Examiner’s conclusion that Qualcomm refused to license the
24 standard-essential patents to competitor chipset manufacturers. In addition,
25 Qualcomm’s licensing practices were not “pro-competitive,” but rather stifled
26 competition by refusing to offer licenses to competitors and bundling the terms of
27 its license and chipset agreements. Finally, Qualcomm did not maintain the same
28 licensing practices for “almost two decades,” as stated in its press release; rather

1 Qualcomm revised its licensing model in 2008 and, after that point, maintained a
2 policy that refused to license the standard-essential patents to competitor chipset
3 manufacturers. The statements identified in paragraph 173 also omitted material
4 facts when made, including that: (i) Qualcomm revised its licensing practices in
5 2008 and, after that point, maintained a policy that refuses to license the standard-
6 essential patents to competitor chipset manufacturers; (ii) Qualcomm has, in
7 accordance with its revised policy, refused to license its standard-essential patents to
8 competitor chipmakers, including MediaTek, Samsung, Intel, and Via Technologies;
9 and (iii) Qualcomm maintained anti-competitive licensing practices, including by
10 bundling the terms of its license and chip-sale agreements and by discriminating
11 against potential licensees if they competed with Qualcomm or refused to buy all or
12 most of their chipsets from Qualcomm.

13 **E. False Statements in 2016**

14 **1. 2016 Form 10-Q Quarterly Reports**

15 175. Qualcomm issued quarterly reports with the SEC on Form 10-Q on
16 January 27, April 20, and July 20, 2016. Each quarterly report was signed by
17 Defendant Mollenkopf. All of the reports touted “the benefits of our business model
18 and our extensive technology investments in promoting a highly competitive ...
19 wireless industry” and “the success of our business model in enabling new, highly
20 cost-effective competitors to their products.”

21 176. The statements identified in paragraph 175 were false and misleading
22 when made. Far from “promoting a highly competitive ... wireless industry” and
23 “enabling new, highly cost-effective competitors to their products,” Qualcomm has
24 refused to license competitors its patents essential to the cellular standard. The
25 statements identified in paragraph 175 also omitted material facts when made,
26 including that: (i) Qualcomm maintained a policy in which it refused to license the
27 standard-essential patents to competitor chipset manufacturers; (ii) Qualcomm has,
28 in accordance with its revised policy, refused to license its standard-essential patents

1 to competitor chipmakers, including MediaTek, Samsung, Intel, Via Technologies,
2 and others; and (iii) Qualcomm maintained a successful licensing program by
3 bundling the terms of its license agreements with the terms of its chipset agreements
4 and by providing royalty relief to Apple and other licensees who purchased all or
5 most of their chipsets from Qualcomm.

6 **2. 2016 First Quarter Earnings Call**

7 177. On January 27, 2016, Qualcomm made a presentation to investors
8 during the first quarter 2016 earnings conference call. During the investor
9 conference, Defendant Rosenberg touted how, “our licensing model, as you know,
10 has been in effect for quite a few decades” and how this “licensing model of sharing
11 our intellectual property” has “not only been effective, but has enhanced
12 competition.”

13 178. The statements identified in paragraph 177 were materially false and
14 misleading when made. Contrary to Defendant Rosenberg’s statement that
15 Qualcomm’s licensing model for “quite a few decades” has been “sharing our
16 intellectual property,” Qualcomm’s licensing model refused to license its standard-
17 essential patents to competitor chipset manufacturers. The statements identified in
18 paragraph 177 also omitted material facts when made, including that: (i) Qualcomm
19 revised its licensing model in 2008 and, after that point, maintained a policy that
20 refuses to license the standard-essential patents to competitor chipset manufacturers;
21 and (ii) Qualcomm has, in accordance with its revised policy, refused to license its
22 standard-essential patents to competitor chipmakers, including MediaTek, Samsung,
23 Intel, Via Technologies.

24 **3. May 28, 2016 Shanghai Forum**

25 179. On May 28, 2016, Defendant Aberle spoke at the Shanghai Forum
26 about the Company’s business model. Aberle stated that “you think about
27 Qualcomm ... [o]nce we solve [technological problems], we don’t keep the
28

1 technology to ourselves: our business model is to share that technology through
2 licensing.”

3 180. The statement identified in paragraph 179 was false and misleading
4 when made and omitted material facts. Contrary to Defendant Aberle’s statement,
5 Qualcomm’s business model included refusing to license its standard-essential
6 patents to an entire segment of the industry—namely, its competitor chipset
7 manufacturers. The statement identified in paragraph 179 also omitted material facts
8 when made, including that: (i) Qualcomm maintained a policy in which it refused
9 to license the standard-essential patents to competitor chipset manufacturers; and
10 (ii) Qualcomm has, in accordance with its revised policy, consistently refused to
11 license its standard-essential patents to competitor chipmakers, including MediaTek,
12 Samsung, Intel, Via Technologies, and others.

13 **4. June 24, 2016 Defendant Rosenberg Interview**

14 181. On June 24, 2016, Defendant Rosenberg spoke to a group of reporters
15 in China. In an article published by the *Taipei Times*, Defendant Rosenberg stated
16 that “[w]hen we charge our license, it will be fair, reasonable and non-discriminate.
17 We have done that for 30 years.”

18 182. The statement identified in paragraph 181 was materially false and
19 misleading when made. Qualcomm has not licensed for the past 30 years on terms
20 that are “fair, reasonable and non-discriminate.” Rather, since 2008, the Company
21 had discriminated against, and refused to license its standard-essential patents to, an
22 entire segment of the industry—namely, its competitor chipset manufacturers. The
23 statement identified in paragraph 181 also omitted material facts when made,
24 including that: (i) Qualcomm revised its licensing model in 2008 and, after that
25 point, maintained a policy that refuses to license the standard-essential patents to
26 competitor chipset manufacturers; (ii) Qualcomm has, in accordance with its revised
27 policy, consistently refused to license its standard-essential patents to competitor
28 chipmakers, including MediaTek, Samsung, Intel, Via Technologies, and others; and

1 (iii) Qualcomm, in licensing its essential patents, has discriminated against and
2 provided unfavorable terms to customers that did not purchase chipsets exclusively
3 from Qualcomm.

4 **5. 2016 Form 10-K Annual Report**

5 183. On November 2, 2016, Qualcomm filed its annual report with the SEC
6 for its fiscal year 2016 (“2016 Form 10-K”), which was signed by Defendant
7 Mollenkopf. In the 2016 Form 10-K, the Company stated that it had “committed to
8 such standards bodies that we will offer to license our essential patents for these
9 CDMA standards on a fair, reasonable and non-discriminatory basis.” This
10 statement was misleading and omitted material facts when made, including that:

11 (i) Qualcomm has, contrary to its commitment to the standard-setting bodies,
12 discriminated against, and refused to license its standard-essential patents to,
13 competitor chipset manufacturers; (ii) Qualcomm has, in accordance with its revised
14 policy, consistently refused to license its standard-essential patents to competitor
15 chipmakers, including MediaTek, Samsung, Intel, Via Technologies, and others; and
16 (iii) Qualcomm, in licensing its essential patents, has discriminated against and
17 provided unfavorable terms to customers that did not purchase chipsets exclusively
18 from Qualcomm.

19 184. Qualcomm’s 2016 Form 10-K also purported to describe the status of
20 the “Competition,” claiming that “[w]e have facilitated competition in the wireless
21 communications industry by licensing our technologies to, and therefore enabling, a
22 large number of manufacturers.” This statement was false, misleading, and omitted
23 material facts. Far from “facilitat[ing] competition,” Qualcomm stifled competition
24 in the cellular communications industry, and did so by, among other things, refusing
25 to license to competitor chipset manufacturers its patents essential to the wireless
26 standards, as well as by bundling the terms of its license and chip-sale agreements
27 based on whether the customer would purchase exclusively Qualcomm chipsets.
28

1 185. Qualcomm’s 2016 Form 10-K also touted, and purported to describe,
2 the Company’s “strategy,” stating that “[o]ur strategy to make our patented
3 technologies broadly available has been a catalyst for industry growth, helping to
4 enable a wide range of companies offering a broad array of wireless
5 products....” This statement was false and misleading when made. Rather than
6 “make [its] patented technologies broadly available,” Qualcomm refused to license
7 its technology to an entire segment of the industry—namely, its competitor chipset
8 manufacturers. The statement also omitted material facts when made, including that:
9 (i) Qualcomm’s business and licensing model included refusing to license to
10 competitor chipset manufacturers; and (ii) consistent with its business and licensing
11 model, Qualcomm has refused to license its standard-essential patents to competitor
12 chipset manufacturers, including MediaTek, Samsung, Intel, and Via Technologies.

13 **F. False Statements in 2017**

14 **1. Qualcomm January 17, 2017 Press Release**

15 186. On January 17, 2017, the FTC filed an enforcement action against
16 Qualcomm in the United States District Court for Northern District of California,
17 stating that Qualcomm refused to license its cellular standard-essential patents to
18 competitors and entered into exclusive dealing arrangements with large mobile-
19 phone manufacturers in violation of antitrust laws. That same day, Qualcomm issued
20 a press release in response to the FTC complaint. In it, Defendant Rosenberg again
21 assured investors that the Company engaged in “broad-based licensing of those
22 technologies [the standard-essential patents] on fair, reasonable and non-
23 discriminatory terms.”

24 187. Defendant Rosenberg’s statement identified in paragraph 186 was
25 materially false and misleading when made. Defendant Rosenberg’s statement that
26 Qualcomm’s licensing was “broad-based” and completed on “fair, reasonable and
27 non-discriminatory terms” was false and misleading because Qualcomm
28 discriminated against, and refused to license to, competitor chipset manufacturers,

1 including MediaTek, Samsung, Intel, and Via Technologies. The Company also
2 discriminated against licensees that would not buy all or most of their chipsets from
3 Qualcomm and tied the terms of the license agreements to the terms of the chipset
4 agreements. The statement also omitted material facts when made, including that:
5 (i) Qualcomm has, contrary to its commitment to the standard-setting bodies,
6 discriminated against, and refused to license its standard-essential patents to,
7 competitor chipset manufacturers; (ii) Qualcomm has, in accordance with its revised
8 policy, consistently refused to license its standard-essential patents to competitor
9 chipmakers, including MediaTek, Samsung, Intel, Via Technologies, and others; and
10 (iii) Qualcomm, in licensing its essential patents, has discriminated against and
11 provided unfavorable terms to customers that did not purchase chipsets exclusively
12 from Qualcomm.

13 **VII. ADDITIONAL SCIENTER ALLEGATIONS**

14 188. A host of facts, in addition to those discussed above, support a strong
15 inference that Qualcomm and the Executive Defendants knew or were deliberately
16 reckless in not knowing the true facts concerning Qualcomm's licensing and chipset
17 sales practices when making the materially false and misleading statements and
18 omissions discussed herein.

19 189. *First*, Qualcomm has admitted that it intentionally refused to license its
20 standard-essential patents to competitor chipmakers. As discussed above, the
21 Executive Defendants repeatedly told investors both before and during the Class
22 Period that they licensed to "anyone," "never refused to license," made their patents
23 "available to the entire industry," and licensed to "all interested companies on terms
24 that are fair, reasonable and non-discriminatory." However, as stated in the KFTC's
25 January 2017 Order, Qualcomm "consistently admitted" during the non-public
26 investigation that by 2008, it "established a business policy amending their license
27 programs" and began "refus[ing] to execute license agreements with competing
28 modem chipset manufacturers even if they requested [standard essential patents]."

1 Qualcomm’s admission that the Company, in fact, intentionally refused to license to
2 competitors pursuant to a changed business policy demonstrates scienter.

3 190. *Second*, Qualcomm and the Executive Defendants knew and
4 acknowledged publicly that a refusal to license competitors would be an improper,
5 discriminatory act in violation of the Company’s FRAND commitment. For
6 example, in speaking to the FTC, Qualcomm specifically acknowledged that
7 “[c]ertainly, a patent-holder who gives a FRAND commitment gives up the right to
8 refuse to license.” And Defendant Rosenberg further acknowledged and publicly
9 stated that “a decision that we are going to license you and not license you ... would
10 be discriminatory.” That Defendants knew—and publicly acknowledged—that their
11 refusal to license to competitors was, indeed, “discriminatory” and a violation of
12 FRAND further supports the scienter inference.

13 191. *Third*, the long duration of Defendants’ refusal to license competitors
14 and discriminatory bundling of its license and chipset agreements supports an
15 inference of scienter. By 2008, Qualcomm amended its policy and refused to license
16 its standard-essential patents to chipset competitors. During the ensuing period,
17 major competitors—including MediaTek, Samsung, Intel, and Via Technologies—
18 made repeated requests to Qualcomm’s executives for a license and were
19 categorically denied. Likewise, Qualcomm has, contrary to Defendants’
20 representations, bundled the terms of its license agreements and chipset agreements
21 for many years. Indeed, its agreements with Apple in 2007, 2011, and 2013 all
22 provided for royalty relief conditioned on the exclusive use of Qualcomm chipsets.
23 Business policies maintained for nearly a decade and across a Company’s client and
24 competitor base do not happen by accident or without the knowledge of the
25 Company’s executives.

26 192. *Fourth*, Qualcomm’s purported commitment to “non-discriminatory”
27 licensing was a critical Company policy. Indeed, as Defendant Davidson
28 acknowledged, Qualcomm’s commitment to “license anyone who wants to go and

1 have a license in CDMA” was the “hallmark” of Qualcomm’s licensing policy. For
2 this reason, Alex Rogers, Qualcomm’s Senior Vice President and Legal Counsel,
3 colorfully stated prior to the Class Period that, “[s]aying we refuse to license
4 competitors is like saying McDonald’s refuses to sell hamburgers... It’s nuts. It’s
5 crazy.” That Qualcomm would violate its “hallmark” policy is compelling evidence
6 of scienter.

7 193. *Fifth*, Defendants’ refusal to license the Company’s standard-essential
8 patents to competitors was unprecedented. MediaTek’s general counsel confirmed
9 that, to his knowledge, Qualcomm is the only chipmaker in the cellular industry that
10 has a policy of refusing to license its standard-essential patents to other chipmakers.
11 Indeed, as Professor Carrier explained, “a refusal to license, after having made the
12 FRAND commitment, is as fundamental a breach of the FRAND licensing promise
13 as can be envisioned.” Defendants knew or were deliberately reckless in not
14 knowing that the Company had such a blatantly anti-competitive policy and practice.

15 194. *Sixth*, Qualcomm’s misrepresentations concern its core businesses. As
16 Defendant Jacobs acknowledged during a March 5, 2013 investor conference,
17 Qualcomm’s licensing business (QTL) and its chip business (QCT) are its two “core
18 businesses.” The Company’s press releases filed on Form 8-K during the Class
19 Period further confirmed that these two businesses were, in fact, Qualcomm’s two
20 “core operating businesses.” The Company’s annual reports on Form 10-K during
21 the Class Period likewise acknowledged that Qualcomm conducts its business
22 “primarily through” QCT and QTL. Indeed, during each year from 2012 to 2016,
23 between 96% and 99% of the Company’s total revenues were derived from its
24 licensing and chip businesses. Particularly given their near-total contribution to the
25 Company’s bottom line, Defendants knew, or were deliberately reckless in not
26 knowing, the Company’s actual, undisclosed practices.

1 195. *Seventh*, the Executive Defendants were directly and extensively
 2 involved in developing and maintaining Qualcomm’s licensing model, as well as
 3 negotiating its key licensing and chipset sales agreements:

- 4 • **Defendant Altman** played a key role in designing and implementing the
 5 Company’s licensing model. According to Qualcomm’s founder Dr. Irwin
 6 Jacobs, Altman was the “principal person in working through the very many
 7 contracts that we have signed, licensing agreements, with over 100 companies
 8 around the world.” At one annual shareholder meeting, Altman was likewise
 9 introduced by the Company as the “strategist and negotiator who is primarily
 10 responsible for guiding the development of the company’s intellectual
 11 property protection and licensing strategy.” At that same shareholder meeting,
 12 Altman acknowledged that he had “been an active participant in essentially
 13 every major transaction in which the company has taken part.” Similarly,
 14 Altman has been described by the Company as “very involved in the process
 15 of licensing contracts and negotiations the company has had over the last
 16 several years,” and the “chief architect of the Company’s licensing business
 17 model.”⁶⁷ Defendant Altman was a member of Qualcomm’s Executive
 18 Committee, which “drive[s] Qualcomm’s overall global strategy.”
- 19 • **Defendant Aberle** also played an integral role in the preparation and
 20 negotiation of the Company’s license agreements over the past decade, as well
 21 as overseeing and executing its licensing model. The Company has
 22 recognized, and stated publicly, that Defendant Aberle was “responsible for
 23 overseeing Qualcomm’s technology and IP licensing business” and “[f]or well
 24 over a decade, [Defendant Aberle] has played a leading role in structuring and
 25 negotiating key license agreements with Qualcomm’s licensees.”⁶⁸ For
 26 example, Qualcomm has publicly stated that Aberle “played a leading role in
 27 structuring and negotiating key license agreements with many of our leading
 28 licensees, including Ericsson, Huawei, LGE, Motorola, Nokia, RIM,
 Samsung, ZTE, and many others.” Defendant Aberle was further described
 by Defendant Altman as having “significantly contributed to QTL’s success
 by expanding Qualcomm’s licensing program.” During an April 23, 2014
 earnings call, Defendant Mollenkopf described Aberle as “instrumental in
 creating and growing many important areas of Qualcomm’s business over his

26 ⁶⁷ Press Release, “Qualcomm Announces Leadership Change and Promotions”
 27 (Oct. 4, 2011).

28 ⁶⁸ Website biography, Qualcomm Inc., Leadership: Derek K. Aberle, President,
<https://www.qualcomm.com/company/about/leadership/derek-aberle>.

1 tenure, including our licensing business.” Defendant Aberle is a member of
2 Qualcomm’s Executive Committee, which “drive[s] Qualcomm’s overall
3 global strategy.”

- 4 • **Defendant Rosenberg** oversees Qualcomm’s legal matters and participated
5 in the Company’s licensing negotiations. Addressing the Company’s
6 stockholders in 2016, Defendant Rosenberg emphasized that members of
7 executive management, including himself, were directly involved in the
8 Company’s licensing program, stating that “[w]e try to negotiate all the time.
9 That’s what we do.”⁶⁹ Rosenberg frequently communicated with regulatory
10 bodies, including the Senate and FTC on behalf of Qualcomm. Defendant
11 Rosenberg was a member of Qualcomm’s Executive Committee, which
12 “drive[s] Qualcomm’s overall global strategy.”
- 13 • **Defendant Davidson** was directly involved in operations, reporting, and
14 investor relations, as well as executing on the Company’s strategic global
15 business activities. At a Citigroup investor conference, when discussing his
16 involvement with the licensing program, Davidson stated that “we talk to our
17 licensees and then obviously our chip customers on an ongoing basis.” Both
18 prior to and during the Class Period, Defendant Davidson was personally
19 involved in the Company’s representations to investors that Qualcomm
20 purportedly “will license anyone who wants to go and have a license in
21 CDMA. And that has been the hallmark of that licensing program.”
- 22 • **Defendant Mollenkopf** oversaw the rise of Qualcomm’s chipset business and
23 was directly involved in negotiating key chipset agreements. At a New York
24 analyst meeting on November 12, 2009, Mollenkopf stated “I run the chipset
25 business here at Qualcomm” and, at a 2014 investor conference, Mollenkopf
26 further stated that the “first thing to remember is I’ve been at the Company
27 for a pretty long time, so a little bit shy of 20 years. And in particular really
28 focusing on the chip group for really the last 5 years.”⁷⁰ Defendant
Mollenkopf was a member of Qualcomm’s Executive Committee, which
“drive[s] Qualcomm’s overall global strategy.”
- **Defendant Jacobs** also played a significant role in Qualcomm’s adoption of
Qualcomm’s technologies as industry standards, as well as the Company’s
licensing policies. As Qualcomm has acknowledged on its website,
Defendant Jacobs was “a key architect of Qualcomm’s strategic vision” with

27 ⁶⁹ Transcript, “Qualcomm Inc. Annual Shareholders Meeting” (Mar. 8, 2016).

28 ⁷⁰ Transcript, “Qualcomm at Goldman Sachs Technology and Internet Conference”
(Feb. 12, 2014).

1 responsibilities including “leadership and oversight of all the Company’s
2 initiatives and operations.” As the Company’s former CEO, Jacobs
3 acknowledged that he made the key decisions as to the Company’s “business
4 structure” and made “fundamental changes to enhance value.”⁷¹ Defendant
5 Jacobs was also a member of Qualcomm’s Executive Committee, which
6 “drive[s] Qualcomm’s overall global strategy.”

7 196. During the Class Period, the Executive Defendants participated in and
8 supervised negotiations with handset customers that tied together technology
9 licensing and chipset sales. A former Executive Vice President of Products for
10 Blackberry Limited (f/k/a Research In Motion, Ltd.) (“Blackberry”) from
11 March 2006 until January 2014, confirmed that Qualcomm upper management,
12 including Defendants Mollenkopf and Jacobs, was involved in “blended
13 discussions” of technology licensing and chipset purchases with Blackberry. The
14 former Executive Vice President attended meetings with Qualcomm’s executives
15 and was personally involved in negotiations with Qualcomm on behalf of
16 Blackberry, which designs and manufactures mobile devices and is a Qualcomm
17 chipset customer. The former Blackberry executive recalled that Defendant
18 Mollenkopf participated in a number of meetings with Blackberry executives,
19 including Blackberry’s COO, which involved negotiations over the terms of licenses
20 and chipset deals, and Defendant Jacobs participated in a similar high level meeting
21 regarding the 7600 chipset. Additional representatives from both Qualcomm’s
22 licensing division and its chipset division, including the Executive Defendants’
23 direct reports, were also directly involved in these “blended discussions,” according
24 to the former BlackBerry executive. He noted that, in fact, one of the Qualcomm
25 employees that the former Blackberry executive dealt with most directly—the “guy
26 who was pushing the chipsets”—was actually a Vice President from Qualcomm’s
27 licensing department.

28 ⁷¹ Press Release, “Qualcomm Completes Review of Corporate and Financial Structure” (Dec. 15, 2015).

1 197. *Eighth*, the Executive Defendants made repeated, detailed and
2 unequivocal statements to investors about the Company’s licensing model. As set
3 forth above, Qualcomm and the Executive Defendants frequently told investors that
4 the Company licensed on a non-discriminatory basis and did not bundle their chip-
5 sale and license agreements, making the statements in the Company’s quarterly and
6 annual SEC filings, regular investor conferences and press interviews. They
7 prominently touted without reservation the Company’s licensing model and
8 purported commitment to licensing across the industry on a non-discriminatory
9 basis. Having focused on the Company’s licensing model so often in their
10 representations to investors, Defendants knew, or at minimum, were deliberately
11 reckless in not knowing, the Company’s actual licensing model.

12 198. *Ninth*, the Executive Defendants issued specific denials about the anti-
13 competitive practices at issue. Defendants made many of their statements during the
14 Class Period in response to questions from analysts and investors. For example, on
15 November 27, 2012, Defendant Aberle, responding to an analyst, stated that “within
16 the Company, we tend to keep the licensing and the chip business very separate,”
17 and “we don’t bundle those together.” Again, on February 25, 2013, when
18 Defendant Mollenkopf was asked at the GSM Association Mobile World Conference
19 about the strategic benefits of having the royalty and chip business under the same
20 roof, Mollenkopf responded that the licensing business and the chip business were
21 “really separate businesses,” that the Company had been “very clear” that it kept the
22 businesses separate, and that they were “separate propositions to the customer.”

23 199. Moreover, Defendants continued to deny and conceal Qualcomm’s true
24 licensing practices even after regulators raised concerns and Qualcomm
25 “consistently admitted” to the KFTC, but not the public, that it refused to license
26 competitors. For example, on November 17, 2015, Qualcomm issued a press release
27 in response to the KFTC Case Examiner’s Report, which stated that Qualcomm
28 suppressed market competition by excluding competitors. In its press release,

1 Qualcomm quieted investors' concerns about the Report with assurances that "the
 2 allegations and conclusions in the [KFTC's Report] are not supported by the facts,"
 3 further impressing upon investors that Qualcomm's "patent licensing practices,
 4 which we and other patent owners have maintained for almost two decades [are] pro-
 5 competitive." Again on January 17, 2017, almost immediately after news broke of
 6 the FTC's enforcement action, Qualcomm shot back with a press release sharply
 7 disputing the government's assertions. In it, Defendant Rosenberg assured investors
 8 that, contrary to the FTC's assertions, Qualcomm engaged in "broad-based licensing
 9 of [its standard-essential patents] on fair, reasonable and non-discriminatory terms."
 10 Rather than disclose to investors the Company's actual licensing practices,
 11 Defendant Jacobs and the other Executive Defendants blamed "competitors who
 12 obviously don't like the fact that you're so successful," and claimed that
 13 investigations were a natural consequence of competitors' "envy" of the Company's
 14 success.

15 200. *Tenth*, Defendants knew that investors and analysts were focused on
 16 their licensing model. As Defendant Rosenberg stated during an investor conference
 17 before the Class Period, "clearly [Qualcomm's] business model has been the topic
 18 of a lot of discussion over the last few years." Indeed, past allegations had arisen—
 19 which Qualcomm aggressively and successfully assured investors were false—that
 20 certain aspects of Qualcomm's licensing practices may be inappropriate.⁷² Analysts
 21

22 ⁷² Defendants assured investors regarding these past allegations of inappropriate
 23 licensing practices that competitors had "attempted to flood the market with a lot of
 24 misinformation"; that the allegations are "are inaccurate and without merit"; that the
 25 "result in China is unique to China"; that China's Anti-Monopoly Law "is different
 26 in several respects from anti-trust and competition laws in other countries"; that the
 27 regulatory issues were actually "commercial disputes"; that the allegations were part
 28 of efforts to "avoid paying fair and reasonable royalties"; and that scrutiny is
 "instigated by competitors who obviously don't like the fact that [Qualcomm] is so
 successful," among other things. Indeed, during one pre-Class Period investor
 conference, in the context of disputing these prior challenges, Defendant Altman

1 and the press published reports that accepted and repeated Defendants’
2 representations in that regard as well as dismissed the allegations denied by the
3 Company. For example, accepting Defendants’ representations, analysts at *Barron’s*
4 reported during the Class Period that Qualcomm “[i]n addition to manufacturing its
5 own chips, licenses its technology to other chipmakers.” Analysts at BMO likewise
6 stated that, in light of the Company’s representations and denials, “[w]e do not think
7 the company engages in this anticompetitive practice” of bundling. The Executive
8 Defendants were thus well aware that the market was heavily relying on the accuracy
9 of their statements.

10 201. *Eleventh*, in addition to assuring investors, Qualcomm and the
11 Executive Defendants certified to the standard-setting bodies that the Company
12 licensed its standard-essential patents on fair, reasonable, and non-discriminatory
13 basis. *See supra* ¶¶47-52. Defendant Altman and Qualcomm sent written
14 declarations to standard-setting bodies—including ETSI, CTIA, TIA, ANSI, and
15 ATIS—certifying that the Company was licensing its standard-essential patents to
16 all willing licensees on fair, reasonable, and non-discriminatory terms. Based on
17 this commitment, Qualcomm’s technologies were adopted broadly by standard-
18 setting bodies as cellular standards for much of the developed world. This
19 commitment bound the Company and the Executive Defendants because, as
20 Professor Carrier has explained, “[f]or FRAND to be effective, company officials
21 who agree to the commitment must recognize the binding nature of such a promise;
22 otherwise the FRAND commitment would not mean anything.” The Executive
23 Defendants knew, or were deliberately reckless in not knowing, that Qualcomm was
24 not abiding by the commitment it had repeatedly made.

25
26
27 specifically assured investors that “[w]e’ve never refused to license our WCDMA
28 essential patents to any company, and we have never required any company to
exclusively buy our WCDMA chips for any purpose.”

1 202. *Twelfth*, Qualcomm’s anti-competitive practices were directed at the
2 Company’s biggest customers and competitors. Between 2011 and 2016,
3 Qualcomm forced Apple—its single largest customer, which alone provided
4 Qualcomm with up to 30% of its total earnings—into an exclusivity arrangement.
5 As part of that arrangement, Qualcomm conditioned billions of dollars in royalty
6 rebates on Apple’s purchase of chipsets exclusively from Qualcomm. In addition,
7 Qualcomm has entered into bundling arrangements with other major customers,
8 including Samsung and LG, two more of the world’s leading cell phone makers.
9 Contracts involving 30% or more of the Company’s total earnings and royalty relief
10 payments of this magnitude do not go unnoticed by senior management.⁷³

11 203. *Thirteenth*, industry participants and key customers complained to
12 Qualcomm and its executives about their refusal to license competitors and bundling.
13 For example, Bruce Sewell, Apple’s Senior Vice President and General Counsel,
14 complained to Defendant Aberle “at various times in the past years” about
15 “Qualcomm’s refusal to license on a fair, reasonable, non-discriminatory” basis and
16 forewarned him of the “eventuality” that Apple, as a result, would stop making
17 royalty payments.⁷⁴ Likewise, Motorola’s CEO told Qualcomm and its CEO during
18 the Class Period that Motorola was “sick of how [Qualcomm was] doing things,”
19

20 ⁷³ As the former senior member of Apple’s Patent Licensing & Strategy department
21 with many years of industry experience explained: “A senior executive would see
22 where money was coming in, and where money was going out. Usually, money
23 comes in to pay for the chips and that’s it. They certainly would have known what
24 money was going out because we are talking about billions of dollars here, not little
25 amounts of money. It could be bigger than a whole department’s annual budget.”
26 Moreover, as to whether the Executive Defendants would be aware of Qualcomm’s
27 policy of refusing to license competing chipmakers, this former high-level Apple
28 employee noted that “it’s unthinkable to me that the people running the most
profitable part of their business wouldn’t have been making senior management very
aware of how that’s accomplished, especially if the same companies paying you for
licensing agreements are also the ones buying your chips.”

⁷⁴ Letter from B. Sewell to D. Rosenberg, dated April 25, 2017.

1 referencing Qualcomm’s refusal to license competitors as part of Motorola’s list
2 of “grievances.” And, as a final example, MediaTek and other chipset makers
3 repeatedly complained to Qualcomm and its executives about the Company’s
4 blanket refusal to license competitors. In light of the repeated complaints,
5 Defendants knew—or were deliberately reckless in not knowing—of the Company’s
6 refusal to license and bundling tactics.

7 204. *Fourteenth*, Qualcomm and the Executive Defendants’ refusal to
8 license competitors and its bundling involved serious violations of laws. In its
9 enforcement action, which has been sustained by a federal court in this Circuit, the
10 FTC stated that Qualcomm’s “refus[al] to license FRAND-encumbered patents to
11 baseband processor competitors ... is anticompetitive and constitutes an unfair
12 method of competition, in violation of Section 5(a) of the FTC Act, 15 U.S.C.
13 § 45(a).” The KFTC likewise determined that Qualcomm’s conduct was illegal
14 under Korean law and fined the Company nearly one billion dollars. In addition,
15 competition authorities in the EU and Taiwan have leveled similar charges, and the
16 European Commission preliminarily concluded that Qualcomm violated EU
17 antitrust laws by paying Apple to exclusively use Qualcomm’s chipsets. That
18 Defendants’ undisclosed licensing practices involved grave violations of the laws
19 that already have resulted in nearly a billion dollars in fines further supports an
20 inference of scienter.

21 205. *Fifteenth*, Qualcomm’s refusal-to-license-competitors policy enabled
22 Defendants to establish market dominance. Qualcomm’s policy of refusing to
23 license its standard-essential patents to competitor chipmakers has, since being
24 implemented in 2008, foreclosed meaningful competition in the mobile chipset
25 market and allowed Qualcomm to seize a commanding market-share lead. Among
26 the eleven major chipset companies, nine have been forced out of the chipset market
27 since 2008. And although the size of the overall modem chipset market has doubled
28 since 2008, there has not been a single new meaningful entrant into the market. By

1 2015, Qualcomm accounted for nearly 60% of all mobile chipset sales worldwide,
2 and nearly all third-party chipset sales for top-tier smartphones such as Apple’s
3 iPhone. Qualcomm’s policy of refusing to license to competitors fulfilled its
4 purpose of squeezing out rivals and more than doubled the Company’s revenues,
5 from \$11.1 billion in 2008 to \$25.3 billion in 2015—far beyond that of any
6 remaining competitor. Changes in licensing policies that force competitor
7 chipmakers to exit the market—and lead to billions of dollars in increased
8 revenues—do not occur without the direction and approval of a company’s top
9 executives.

10 206. *Sixteenth*, Qualcomm and the Executive Defendants insisted that their
11 contractual counterparties accept “gag orders” and “no challenge” provisions in their
12 agreements to shield the Company’s anti-competitive practices from public scrutiny.
13 As set forth in the second paragraph of Section 7 of Apple and Qualcomm’s 2013
14 Business Cooperation and Patent Agreement, Qualcomm conditioned royalty relief
15 on Apple’s agreement not to initiate or induce a regulatory action against Qualcomm,
16 including for “claims that Qualcomm failed to offer a license to its SEPs on FRAND
17 terms.” Invoking this “gag provision,” Qualcomm recently retaliated against Apple
18 for providing information to the KFTC by withholding over \$1 billion in royalty
19 rebates. In addition to Apple, Qualcomm inserted “gag provisions” and “no
20 challenge” clauses in its agreements with other industry participants. For example,
21 Blackberry’s former Executive Vice President of Products (*see* paragraph 196) has
22 confirmed that Qualcomm’s license agreement with Blackberry also contained a no-
23 challenge clause. Qualcomm has also insisted that the terms of its agreements are
24 “confidential” and thus cannot be shared. Qualcomm’s insistence on contractual
25 terms with the express purpose of silencing counterparties from reporting to
26 authorities is yet further evidence of scienter.

27 207. *Finally*, the Executive Defendants were financially motivated to
28 conceal the Company’s actual licensing model. As a product of Qualcomm’s anti-

1 competitive conduct, the six Executive Defendants collectively received nearly
2 \$400 million in compensation during the Class Period, which was heavily weighted
3 on stock awards and other incentive compensation. For example, Defendant Aberle
4 earned about \$720,000 to \$890,000 in annual salary, yet he received annual stock
5 awards and other incentive compensation totaling over \$62 million during the Class
6 Period. Defendant Mollenkopf similarly earned between \$805,000 and \$1.1 million
7 in annual salary, yet he received annual stock awards and other incentive plan
8 compensation totaling nearly \$105 million during the Class Period.

9 208. The Executive Defendants also capitalized on their materially false and
10 misleading statements and omissions to investors by disposing of personally-held
11 shares at artificially inflated prices. During the Class Period, Defendant Jacobs
12 collected over \$155 million from sales of his personal Qualcomm holdings;
13 Defendant Altman collected over \$74 million from sales of his personal Qualcomm
14 holdings; Defendant Aberle collected nearly \$50 million from sales of his personal
15 Qualcomm holdings; Defendant Mollenkopf collected over \$45 million from sales
16 of his personal Qualcomm holdings; and Defendant Rosenberg collected over
17 \$40 million from sales of his personal Qualcomm holdings. In total, the Executive
18 Defendants sold over \$365 million of their personally-held Qualcomm shares during
19 the Class Period at artificially inflated prices. Thus, the Executive Defendants were
20 strongly incentivized to develop and maintain practices that ensured Qualcomm's
21 market dominance and artificially drove up the price of Qualcomm shares.

22 209. The foregoing facts, particularly when considered collectively (as they
23 must be), support a strong inference of Qualcomm's and the Executive Defendants'
24 scienter.

25 **VIII. LOSS CAUSATION**

26 210. The conduct alleged herein and the materially false and misleading
27 statements and omissions made before or during the Class Period caused
28 Qualcomm's common stock to trade at artificially inflated prices, trading as high as

1 \$81.97 per share on July 23, 2014. Prior to the revelation of the truth through a
2 series of partial corrective disclosures, the market believed Qualcomm's statements
3 to investors. For example, on August 14, 2014, one analyst, based on Qualcomm's
4 misrepresentations and material omissions, stated, "[w]e do not believe that QCOM
5 bundles chip-sales with patent deals," and, "[w]e do not believe QCOM prohibits
6 [licenses to its competitors]."⁷⁵

7 211. As the truth about Qualcomm's discriminatory and unfair licensing
8 model was revealed to the market through a series of disclosures beginning in
9 November 2015, and the market learned the true basis for the Company's
10 extraordinary financial performance during the Class Period as well as the
11 substantial regulatory actions and litigation facing the Company, the artificial
12 inflation was removed from the Company's stock price and the price of Qualcomm
13 common shares declined significantly.

14 212. On November 17, 2015, after the close of trading, Qualcomm issued a
15 press release disclosing that it had recently received the KFTC Case Examiner's
16 Report, which stated that Qualcomm suppressed market competition by excluding
17 competitors. As described by Qualcomm, the Case Examiner stated that
18 Qualcomm's patent practices violate the competition laws and found that Qualcomm
19 "do[es] not properly negotiate aspects of [its] licenses." Qualcomm further stated
20 that the Case Examiner's Report "proposes remedies," including modifying the
21 Company's business practices and paying a substantial fine.

22 213. In response to the November 17, 2015 revelations, Qualcomm shares
23 declined significantly from a closing price of \$49.69 per share on
24 November 17, 2015, to close at \$45.02 per share on November 18, 2015, on high
25 volume, erasing nearly \$7.5 billion in market capitalization. A total of more than
26
27

28 ⁷⁵ BMO Capital Markets, "More Detail on China IPR Issues" (Aug. 14, 2014), at 2.

1 45 million shares of Qualcomm common stock traded hands that day, an increase of
2 323% above trading volume in the prior session, as shown below.

3 QCOM Closing Price and Volume, November 11-18, 2015



15

16

17 214. The financial press attributed the stock price decline on
18 November 18 to the disclosure of the KFTC Case Examiner’s Report, with *Market*
19 *Watch*, for example, reporting that “[s]hares of Qualcomm Inc. sank ... to their
20 52-week low Wednesday after the chipmaker announced that it faces patent-related
21 antitrust allegations in South Korea.”⁷⁶

22 215. In its press release issued on November 17, 2015, Qualcomm criticized
23 the Case Examiner’s Report, asserting that the Case Examiner’s findings were “not
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25

26 ⁷⁶ S. Chang, *Market Watch*, “Qualcomm sinks to 52-week low after allegations of
27 antitrust violations in Korea” (Nov. 18, 2015); *see also* *The Wall Street Journal*,
28 “Qualcomm Says South Korea Recommends Fine for Alleged Antitrust Violations”
(Nov. 18, 2015) (“Qualcomm’s shares were down nearly 9% on the news [of the
KFTC report] Wednesday.”).

1 supported by the facts” and claimed that Qualcomm’s “patent licensing practices ...
2 have facilitated the growth of the mobile communications industry in Korea and
3 elsewhere [and were] lawful and pro-competitive.”⁷⁷

4 216. Three weeks later, on December 8, 2015, the European Commission
5 announced that it had charged Qualcomm with illegal anti-competitive practices,
6 including paying a major customer to use Qualcomm chips exclusively. The
7 European Commission preliminarily concluded that Qualcomm violated EU
8 antitrust laws by paying a major customer, later identified as Apple, to exclusively
9 use its chipsets, as a way of forcing competitor chipmakers out of the market. On
10 the same day, the Taiwan FTC announced that it was initiating an investigation into
11 Qualcomm’s licensing arrangements. The Taiwan FTC asserted that Qualcomm’s
12 patent licensing practices violated the Taiwan Fair Trade Act, specifically, “by
13 declining to grant licenses to chipset makers” and providing “royalty rebates to
14 certain companies in exchange for their exclusive use of the Company’s chipsets.”
15 These assertions were corroborated by, among other things, the KFTC’s findings,
16 and later revelations.

17 217. In response to these disclosures on December 8, 2015, Qualcomm
18 shares declined significantly from a closing price of \$52.43 per share on
19 December 7, 2015, to close at \$49.48 per share on December 8, 2015, erasing nearly
20 \$4.5 billion in market capitalization. A total of nearly 19 million shares of
21 Qualcomm common stock were sold on December 8, 2015, an increase of 86%
22 above trading volume in the prior session.

23 218. Despite the disclosures of the KFTC Case Examiner’s Report and the
24 charges levied by the European Commission and the Taiwan FTC, the full extent of
25 Qualcomm’s anti-competitive practices still had not been revealed to the market, and
26

27
28 ⁷⁷ Press Release, “Qualcomm Confirms Receipt of Korea Fair Trade Commission’s
Case Examiner’s Report” (Nov. 17, 2015).

1 Qualcomm continued to issue public assurances and denials. For example, on
2 December 8, 2015, a *New York Times* article quoted Defendant Rosenberg, who
3 stated that the Company “look[ed] forward to demonstrating that competition in the
4 sale of wireless chips has been and remains strong,” even though the Company knew
5 at that time that it had been engaging in pervasive anti-competitive practices—
6 including the refusal to license competitors and tying the terms of its license
7 agreements and chipset sales—and that its actions had harmed competition in the
8 chipset market.

9 219. Similarly, in late 2015, Qualcomm told analysts that among the unique
10 strategic benefits of its decision to keep QCT and QTL together was that such a
11 “[p]ro-competitive model benefits [the] wireless industry and consumers.”⁷⁸
12 Defendant Mollenkopf also described Qualcomm as “an important enabler to the
13 wireless industry, acting as a strong partner to carriers, OEMs and software
14 application providers, and is a key supporter of the dynamic and competitive
15 wireless industry.”⁷⁹ In June 2016, Defendant Rosenberg continued to falsely assure
16 the market, telling reporters, “We believe that our licensing practices are fair and
17 they are good not just for Qualcomm, but for the entire industry.”⁸⁰

18 220. On December 27, 2016, the KFTC issued a press release announcing
19 that its two-year investigation into Qualcomm had culminated in findings that the
20

21
22 ⁷⁸ Presentation, “Qualcomm Completes Review of Corporate and Financial
23 Structure” slide 5 (Dec. 15, 2015); *see also* Wells Fargo Securities, Equity Research:
24 Qualcomm Inc. (Dec. 15, 2015), at 2; Cowen and Company, “US FTC Decides to
25 Sue: Our Take” (Jan. 17, 2017), at 2 (“In deciding in late 2015 to keep QTL and
26 QCT together, the company cited, among other things, the view that a split would
27 not help alleviate legal concerns, thus implying that ‘bundling’ was not part of the
28 existential value of QCOM – as this complaint asserts.”).

⁷⁹ Transcript, “Qualcomm Inc. Review of Corporate Completes and Financial
Structure” (Dec. 15, 2015).

⁸⁰ L. Wang, *Taipei Times*, “Qualcomm defends licensing fees” (June 24, 2016).

1 Company had abused its market dominance.⁸¹ Specifically, the press release
2 revealed that Qualcomm had violated its FRAND commitments and Korean antitrust
3 law by, among other things, refusing to license its cellular standards-essential
4 patents. The press release also announced that the KFTC levied an \$853 million fine
5 on the Company for these violations.

6 221. In response to the December 27, 2016 disclosure, Qualcomm shares
7 declined from a closing price of \$67.25 per share on December 27, 2016, to close at
8 \$65.75 per share on December 28, 2016, erasing over \$2.2 billion in market
9 capitalization.

10 222. Media reports directly linked the December 29, 2016 decline in
11 Qualcomm's share price to the decision issued by the KFTC.⁸² *Barron's* reported
12 that "[s]hares of wireless chip giant Qualcomm (QCOM) are down 89 cents, or 1.3%,
13 at \$66.36, after South Korea's Fair Trade Commission said an investigation into the
14 company found some of its 'business practices are in violation of Korean
15 competition law,' and that the commission plans to 'impose an administrative fine
16 of approximately 1.03 trillion South Korean Won (approximately \$865 million at
17 current exchange rates).'"⁸³ In an analyst report published two days later, on
18 December 29, 2016, analysts at Trefis noted that the decision could alter "the way
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23 ⁸¹ Korea Fair Trade Commission, Anti-Monopoly Bureau, Anti-Monopoly Division,
24 Press Release: "Strict Sanctions on Qualcomm's Abuse of Cellular SEPs"
25 (Dec. 28, 2016). The statement was released on December 28 in South Korea,
although it was still December 27 in the United States.

26 ⁸² See, e.g., E. Carson, *Investor's Business Daily*, "Qualcomm Falls As South Korea
27 Fine Puts Royalties In Doubt" (Dec. 28, 2016); J. Francis, "Qualcomm Receives
\$854 Million Antitrust Fine In Korea" (Dec. 30, 2016).

28 ⁸³ T. Ray, "Tech Today: Nvidia Warnings, OLED Trimmed, Qualcomm Fined"
(Dec. 28, 2016).

1 the company conducts business” and “have far greater implications for Qualcomm
2 than the fine itself.”⁸⁴

3 223. Nevertheless, Qualcomm continued to deny that it had engaged in anti-
4 competitive behavior, stating in a press release dated December 27, 2016, that it
5 “believes [the KFTC’s decision] is inconsistent with the facts and the law,” and that
6 Qualcomm had “fostered competition at all levels of the mobile ecosystem”
7 worldwide.⁸⁵

8 224. On January 17, 2017, during market hours, media reports began to
9 circulate that the FTC had commenced an antitrust enforcement action against
10 Qualcomm for “using unfair practices in the way it licenses its technology.”⁸⁶ That
11 same day, following an over two-year investigation, the FTC filed its complaint
12 against Qualcomm in the Northern District of California.⁸⁷ The complaint contained
13 startling revelations, including that: (1) despite its commitment to license standard-
14 essential patents on FRAND terms, “Qualcomm has consistently refused to license
15 those patents to competing suppliers of chipsets”; and (2) Qualcomm precluded
16 Apple from sourcing chipsets from Qualcomm’s competitors from 2011 to 2016. As
17 set forth in the FTC complaint, “Qualcomm recognized that any competitor that won
18 Apple’s business would become stronger, and used exclusivity to prevent Apple
19 from working with and improving the effectiveness of Qualcomm’s competitors.”⁸⁸

22
23 ⁸⁴ Trefis, “Qualcomm: What Does The KFTC Ruling Imply For Qualcomm?”
(Dec. 29, 2016), at 1.

24 ⁸⁵ Press Release, “Qualcomm Responds to Announcement by Korea Fair Trade
25 Commission” (Dec. 27, 2016).

26 ⁸⁶ *See, e.g.*, I. King, Bloomberg Technology, “Qualcomm Said to Face U.S. Antitrust
Case Over Licensing” (Jan 17, 2017).

27 ⁸⁷ FTC Complaint, No. 5:17-cv-00220-LHK (N.D. Cal. Jan. 17, 2017), ECF No. 1.

28 ⁸⁸ FTC Press Release, “FTC Charges Qualcomm With Monopolizing Key
Semiconductor Device Used in Cell Phones” (Jan. 17, 2017).

1 225. In response to the disclosures in the FTC complaint, Qualcomm shares
2 declined significantly from a closing price of \$66.88 per share on January 13, 2017,
3 to close at \$64.19 per share on January 17, 2017, erasing nearly \$4 billion in market
4 capitalization. A total of 22 million shares of Qualcomm common stock traded hands
5 on January 17, 2017, an increase of 261% above trading volume in the prior session.

6 226. Media reports directly linked the foregoing decline in Qualcomm’s
7 share price to the FTC suit.⁸⁹ *Business Insider* reported that “Qualcomm’s stock
8 dropped as much as 4% on Tuesday after the FTC filed an anti-trust complaint
9 against the company,” and that the “initial drop came when Bloomberg reported the
10 FTC was planning to file the complaint against Qualcomm.”⁹⁰ In a research report
11 released on January 18, 2017, Morgan Stanley noted that “[w]hile the market has
12 known since 2014 that the FTC was investigating Qualcomm, yesterday’s
13 announced antitrust lawsuit still comes as a surprise.”⁹¹

14 227. On January 17, 2017, Qualcomm emphatically denied the charges
15 levied by the FTC complaint, insisting that “[t]he portrayal of facts offered by the
16 FTC as the basis for the agency’s case is significantly flawed.”⁹² In particular, the
17 Company stated that it “ha[d] never withheld or threatened to withhold chip supply
18 in order to obtain agreement to unfair or unreasonable licensing terms.”⁹³

20
21 ⁸⁹ See, e.g., A. Palmer, *TheStreet.com*, “The FTC Rocks Qualcomm” (Jan. 17, 2017)
22 (“The news [of the FTC’s allegations] sent Qualcomm shares sharply lower by 4%
23 to \$64.19 on Tuesday on fears of damage to its lucrative business model.”);
24 W. Witkowski, *Market Watch*, “Qualcomm shares close 4% lower on FTC
25 monopoly complaint” (Jan. 17, 2017).

26 ⁹⁰ S. Kovach, *Business Insider*, “Qualcomm’s Stock Falls After Report Says
27 Company Faces US Anti-trust Case” (Jan. 17, 2017).

28 ⁹¹ Morgan Stanley, “Qualcomm Inc.: FTC Move Unexpected; We See Several
Uncertainties” (Jan. 18, 2017).

⁹² Press Release, “Qualcomm Responds to Complaint from U.S. Federal Trade
Commission” (Jan. 17, 2017).

⁹³ *Id.*

1 Qualcomm further asserted that its business practices “ha[d] enabled the growth and
2 advancement of mobile communications worldwide,” and that the Company had
3 engaged in “broad-based licensing of [standards-essential patent] technologies on
4 fair, reasonable and non-discriminatory terms.”⁹⁴

5 228. In the last hour of trading, on January 20, 2017, it was disclosed that
6 Qualcomm’s largest customer, Apple, filed a lawsuit against Qualcomm in the
7 Northern District of California asserting that the Company used its monopoly
8 position to seek onerous, unreasonable, and costly terms for its technology
9 licenses.⁹⁵ The complaint specifically stated that Qualcomm had blocked Apple’s
10 ability to choose suppliers for chipsets by refusing to license to competitors and
11 conditioning billions of dollars of rebates on Apple’s exclusive use of Qualcomm
12 chipsets. The complaint also explained that Qualcomm had attempted to extort
13 Apple into rescinding its truthful testimony to Korean antitrust authorities by
14 withholding contractual royalty rebate payments due to Apple.

15 229. In response to these disclosures, Qualcomm shares declined
16 significantly from a closing price of \$64.44 per share on Thursday, January 19, 2017,
17 to close at \$62.88 per share on Friday, January 20, 2017, erasing over \$2.3 billion in
18 market capitalization on high volume of nearly 21 million shares. The financial
19 press attributed the foregoing decline in Qualcomm’s share price to Apple’s
20 complaint.⁹⁶ In an analyst report released on January 22, 2017, Cowen and Company
21 noted that the allegations in Apple’s complaint, if successful, “could result in
22

23 ⁹⁴ Press Release, “Qualcomm Responds to Complaint from U.S. Federal Trade
24 Commission” (Jan. 17, 2017).

25 ⁹⁵ Apple Complaint, No. 3:17-cv-00108-GPC-MDD (N.D. Cal. Jan. 20, 2017),
26 ECF No. 1.

27 ⁹⁶ *See, e.g.*, D. Bartz & S. Nellis, Reuters, “Apple files \$1 billion lawsuit against chip
28 supplier Qualcomm” (Jan. 20, 2017) (“Qualcomm’s stock closed 2.4 percent lower
at \$62.88 on the news [of Apple’s allegations].”); CNN, “Apple sues Qualcomm for
nearly \$1 billion” (Jan. 20, 2017).

1 limitations to [Qualcomm’s] licensing model which could then spread to other
2 manufacturers.... [T]he largest impact will come from how these lawsuits impact
3 [the Company’s] future licensing fee model.”⁹⁷

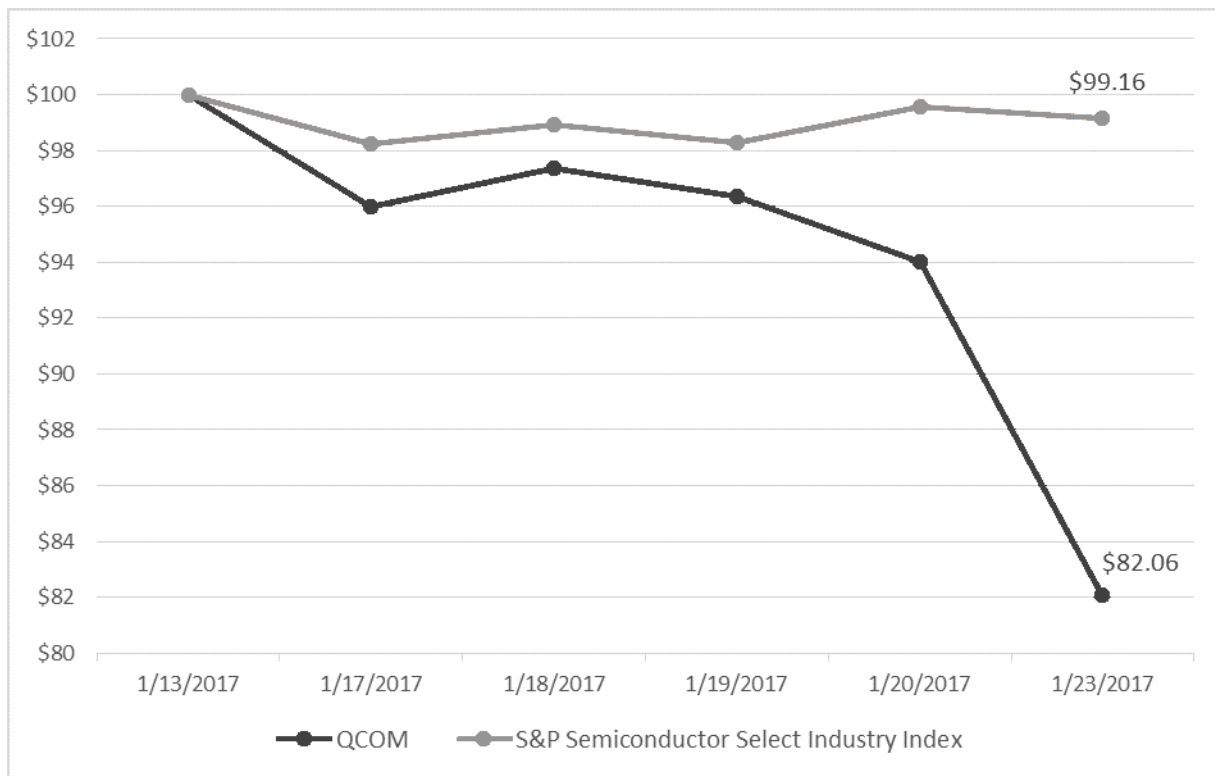
4 230. On the next trading day, January 23, 2017, Qualcomm shares declined
5 further to \$54.88 per share, erasing an additional \$11.8 billion in market
6 capitalization, on high volume of more than 94 million shares, as the market
7 continued to digest the statements in Apple’s disclosure following the intervening
8 weekend. *Business Insider* noted that “Qualcomm plunge[d] 12% on word of
9 Apple’s \$1 billion lawsuit.”⁹⁸

10 231. The chart below shows the value after trading closed on
11 January 23, 2017, of a theoretical \$100 investment in Qualcomm made at the closing
12 price of Qualcomm common stock on January 13, 2017, as compared with value of
13 a \$100 investment in the S&P Semiconductor Select Industry Index made at the
14 same time. The S&P Semiconductor Select Industry Index (ticker symbol:
15 ^SPSISC) comprises all stocks in the S&P Total Market Index that are classified in
16 the GICS semiconductor sub-industry, which includes Qualcomm. While
17 Qualcomm’s share price declined by nearly 18% during this period, the index was
18 down less than 1%.

25
26 ⁹⁷ Cowen and Company, “Qualcomm: Thinking Through This AAPL Lawsuit”
(Jan. 22, 2017).

27 ⁹⁸ T. Wadhwa, *Business Insider*, “Qualcomm plunges 12% on word of Apple’s
28 \$1 billion lawsuit” (Jan. 23, 2017); *see also* D. Blakenhorn, *InvestorPlace*, “The Pain
Is Only the Beginning for Qualcomm, Inc. (QCOM) Stock” (Jan. 23, 2017).

1 **QCOM Share Price versus Semiconductor Industry Index, January 13-23, 2017**



15 232. The declines in the price of Qualcomm common stock identified above
 16 directly resulted from or were substantially caused by the market learning the truth
 17 about Qualcomm's discriminatory and unfair licensing and chipset sale practices,
 18 the true basis for the Company's financial performance during the Class Period, and
 19 the substantial risks facing Qualcomm and a result of its undisclosed practices—
 20 including, specifically, its refusal to license competitors and its bundling of licensing
 21 agreements with chipset sales and negotiations. The timing and magnitude of the
 22 price declines negate any inference that the losses suffered by Lead Plaintiffs and
 23 the Class were caused by changed market conditions, macroeconomic or industry
 24 factors, or Company-specific facts unrelated to Defendants' misrepresentations and
 25 omissions.

26 233. Moreover, each announcement of a government investigation or filing
 27 of a formal proceeding concerning the Company's undisclosed, anti-competitive
 28 practices was followed by a subsequent confirmatory disclosure. Just over one year

1 after the bombshell revelations contained in the KFTC Case Examiner’s Report, the
2 KFTC announced that its comprehensive investigation had culminated in extensive
3 findings that Qualcomm had abused its market dominance and that it had issued a
4 record fine on Qualcomm of nearly \$1 billion. Only months later, Apple, Intel and
5 Samsung each publicly filed documents confirming their “firsthand” experience
6 with Qualcomm’s anti-competitive practices.

7 234. Accordingly, as a result of their purchases of Qualcomm common stock
8 during the Class Period, Lead Plaintiffs and the Class suffered economic loss and
9 damages under the federal securities laws.

10 **IX. INAPPLICABILITY OF THE STATUTORY SAFE HARBOR**

11 235. The statutory safe harbor or bespeaks caution doctrine applicable to
12 forward-looking statements under certain circumstances does not apply to any of the
13 false and misleading statements pleaded in this Complaint. None of the statements
14 complained of herein was a forward-looking statement. Rather, they were historical
15 statements or statements of purportedly current facts and conditions at the time the
16 statements were made, including statements about Qualcomm’s current and
17 historical patent licensing and chip-sale practices, its present licensing and sales
18 practices, and its financial condition, among other topics.

19 236. To the extent that any of the false and misleading statements alleged
20 herein can be construed as forward-looking, those statements were not accompanied
21 by meaningful cautionary language identifying important facts that could cause
22 actual results to differ materially from those in the statements. As set forth above in
23 detail, then-existing facts contradicted Defendants’ statements regarding
24 Qualcomm’s patent licensing and chipset sales practices, and compliance with
25 relevant standards, among others. Given the then-existing facts contradicting
26 Defendants’ statements, any generalized risk disclosures made by Qualcomm were
27 not sufficient to insulate Defendants from liability for their materially false and
28 misleading statements.

1 237. To the extent that the statutory safe harbor does apply to any forward-
2 looking statements pleaded herein, Defendants are liable for those false forward-
3 looking statements because at the time each of those statements was made, the
4 particular speaker knew that the particular forward-looking statement was false, and
5 the false forward-looking statement was authorized and approved by an executive
6 officer of Qualcomm who knew that the statement was false when made.

7 **X. CLASS ACTION ALLEGATIONS**

8 238. Lead Plaintiffs bring this action as a class action pursuant to Fed. R.
9 Civ. P. 23(a) and 23(b)(3) on behalf of a Class consisting of all those who purchased
10 or otherwise acquired the common stock of Qualcomm between February 1, 2012
11 and January 20, 2017, inclusive, and who were damaged thereby (the “Class”).
12 Excluded from the Class are Defendants, the officers and directors of Qualcomm at
13 all relevant times, members of their immediate families and their legal
14 representatives, heirs, agents, affiliates, successors or assigns, Defendants’ liability
15 insurance carriers, and any affiliates or subsidiaries thereof, and any entity in which
16 Defendants or their immediate families have or had a controlling interest.

17 239. The members of the Class are so numerous that joinder of all members
18 is impracticable. Throughout the Class Period, Qualcomm shares were actively
19 traded on the NASDAQ Stock Market. As of January 20, 2017, there were
20 approximately 1.477 billion shares of Qualcomm common stock outstanding. While
21 the exact number of Class members is unknown to Lead Plaintiffs at this time and
22 can only be ascertained through appropriate discovery, Lead Plaintiffs believe that
23 there are at least hundreds-of-thousands of members of the proposed Class. Class
24 members who purchased Qualcomm common stock may be identified from records
25 maintained by Qualcomm or its transfer agent(s), and may be notified of this class
26 action using a form of notice similar to that customarily used in securities class
27 actions.
28

1 240. Lead Plaintiffs' claims are typical of Class members' claims, as all
2 members of the Class were similarly affected by Defendants' wrongful conduct in
3 violation of federal laws as complained of herein.

4 241. Lead Plaintiffs will fairly and adequately protect Class members'
5 interests and have retained competent counsel experienced in class actions and
6 securities litigation.

7 242. Common questions of law and fact exist as to all Class members and
8 predominate over any questions solely affecting individual Class members. Among
9 the questions of fact and law common to the Class are:

10 (a) whether the federal securities laws were violated by Defendants' acts
11 and omissions as alleged herein;

12 (b) whether the Defendants made statements to the investing public during
13 the Class Period that were false, misleading or omitted material facts;

14 (c) whether Defendants acted with scienter; and

15 (d) the proper way to measure damages.

16 243. A class action is superior to all other available methods for the fair and
17 efficient adjudication of this action because joinder of all Class members is
18 impracticable. Additionally, the damage suffered by some individual Class members
19 may be relatively small so that the burden and expense of individual litigation make
20 it impossible for such members to individually redress the wrong done to them.
21 There will be no difficulty in the management of this action as a class action.

22 **XI. PRESUMPTION OF RELIANCE**

23 244. At all relevant times, the market for Qualcomm's common stock was
24 efficient for the following reasons, among others:

25 (a) Qualcomm's stock met the requirements for listing, and was
26 listed and actively traded on the NASDAQ Stock Market, a
27 highly efficient and automated market;

28 (b) As a regulated issuer, Qualcomm filed periodic reports with the

1 SEC and the NASDAQ Stock Market;

2 (c) Qualcomm regularly communicated with public investors via
3 established market communication mechanisms, including
4 through regular dissemination of press releases on the national
5 circuits of major newswire services and through other wide-
6 ranging public disclosures, such as communications with the
7 financial press and other similar reporting services; and

8 (d) Qualcomm was followed by numerous securities analysts
9 employed by major brokerage firms who wrote reports which
10 were distributed to those brokerage firms' sales force and certain
11 customers. Each of these reports was publicly available and
12 entered the public market place.

13 245. As a result of the foregoing, the market for Qualcomm's common stock
14 reasonably promptly digested current information regarding Qualcomm from all
15 publicly available sources and reflected such information in the price of
16 Qualcomm's common stock. All purchasers of Qualcomm common stock during
17 the Class Period suffered similar injury through their purchase of Qualcomm
18 common stock at artificially inflated prices, and a presumption of reliance applies.

19 246. A Class-wide presumption of reliance is also appropriate in this action
20 under the United States Supreme Court holding in *Affiliated Ute Citizens of Utah v.*
21 *United States*, 406 U.S. 128 (1972), because the claims asserted herein against
22 Defendants are predicated upon omissions of material fact for which there is a duty
23 to disclose.

24 **XII. CLAIMS FOR RELIEF UNDER THE EXCHANGE ACT**

25 **COUNT I**

26 **For Violations of Section 10(b) of the Exchange Act 27 and SEC Rule 10b-5 Promulgated Thereunder 28 (Against All Defendants)**

29 247. Lead Plaintiffs repeat and re-allege each and every allegation set forth
30 above as if fully set forth herein.

1 248. This Count is asserted on behalf of all members of the Class against
2 Defendant Qualcomm and the Executive Defendants for violations of Section 10(b)
3 of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder,
4 17 C.F.R. § 240.10b-5.

5 249. During the Class Period, Defendants disseminated or approved the false
6 statements specified above, which they knew were, or they deliberately disregarded
7 as, misleading in that they contained misrepresentations and failed to disclose
8 material facts necessary in order to make the statements made, in light of the
9 circumstances under which they were made, not misleading.

10 250. Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5
11 in that they: (a) employed devices, schemes, and artifices to defraud; (b) made
12 untrue statements of material facts or omitted to state material facts necessary in
13 order to make the statements made, in light of the circumstances under which they
14 were made, not misleading; and/or (c) engaged in acts, practices, and a course of
15 business that operated as a fraud or deceit upon Lead Plaintiffs and others similarly
16 situated in connection with their purchases of Qualcomm common stock during the
17 Class Period.

18 251. Defendants, individually and in concert, directly and indirectly, by the
19 use of means or instrumentalities of interstate commerce and/or of the mails,
20 engaged and participated in a continuous course of conduct that operated as a fraud
21 and deceit upon Lead Plaintiffs and the Class; made various untrue and/or
22 misleading statements of material facts and omitted to state material facts necessary
23 in order to make the statements made, in light of the circumstances under which they
24 were made, not misleading; made the above statements intentionally or with
25 deliberate recklessness; and employed devices and artifices to defraud in connection
26 with the purchase and sale of Qualcomm common stock, which were intended to,
27 and did: (a) deceive the investing public, including Lead Plaintiffs and the Class,
28 regarding, among other things, Qualcomm's patent licensing and chip-sales

1 practices, and the Company's compliance with relevant competition laws and
2 regulations and worldwide patent licensing standards; (b) artificially inflate and
3 maintain the market price of Qualcomm common stock; and (c) cause Lead Plaintiffs
4 and other members of the Class to purchase Qualcomm common stock at artificially
5 inflated prices and suffer losses when the true facts became known.

6 252. Defendant Qualcomm and the Executive Defendants are liable for all
7 materially false and misleading statements made during the Class Period, as alleged
8 above.

9 253. As described above, Defendants acted with scienter throughout the
10 Class Period, in that they acted either with intent to deceive, manipulate, or defraud,
11 or with deliberate recklessness. The misrepresentations and omissions of material
12 facts set forth herein, which presented a danger of misleading buyers or sellers of
13 Qualcomm stock, were either known to the Defendants or were so obvious that the
14 Defendants should have been aware of them.

15 254. Lead Plaintiffs and the Class have suffered damages in that, in direct
16 reliance on the integrity of the market, they paid artificially inflated prices for
17 Qualcomm common stock, which inflation was removed from its price when the true
18 facts became known. Lead Plaintiffs and the Class would not have purchased
19 Qualcomm common stock at the prices they paid, or at all, if they had been aware
20 that the market price had been artificially and falsely inflated by these Defendants'
21 materially misleading statements.

22 255. As a direct and proximate result of these Defendants' wrongful conduct,
23 Lead Plaintiffs and the other members of the Class suffered damages attributable to
24 the material misstatements and omissions alleged herein in connection with their
25 purchases of Qualcomm common stock during the Class Period.
26
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28

COUNT II

**For Violations of Section 20(a) of the Exchange Act
(Against the Executive Defendants)**

256. Lead Plaintiffs repeat and re-allege each and every allegation set forth above as if fully set forth herein.

257. This count is asserted on behalf of all members of the Class against the Executive Defendants for violations of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

258. The Executive Defendants acted as controlling persons of Qualcomm within the meaning of Section 20(a) of the Exchange Act, as alleged herein.

259. By reasons of their high-level positions of control and authority as the Company's most senior officers, the Executive Defendants had the authority to influence and control, and did influence and control, the decision-making and the activities of the Company and its employees, and to cause the Company to engage in the wrongful conduct complained of herein. The Executive Defendants were able to influence and control, and did influence and control, directly and indirectly, the content and dissemination of the public statements made by Qualcomm during the Class Period, thereby causing the dissemination of the materially false and misleading statements and omissions of material facts as alleged herein. The Executive Defendants were provided with, or had unlimited access to, copies of the Company's press releases, public filings, and other statements alleged by Lead Plaintiffs to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or to cause the statements to be corrected.

260. Defendants Jacobs, Mollenkopf, and Altman have each held seats on Qualcomm's Board of Directors during the Class Period. Defendant Jacobs has served as Chairman of the Board since March 2009 and as Executive Chairman since March 2014. Defendant Mollenkopf has served on the Board of Directors since

1 December 2013. Defendant Altman served as Vice Chairman from November 2011
2 to January 2013. In their capacities as members of Qualcomm’s Board of Directors,
3 Defendants Jacobs, Mollenkopf, and Altman had the authority to influence and
4 control, and did influence and control, the decision-making and the activities of the
5 Company and its employees, and to cause the Company to engage in the wrongful
6 conduct complained of herein.

7 261. Defendants Altman and Aberle each directly supervised Qualcomm’s
8 licensing business as President of QTL, and each continued to oversee the
9 Company’s licensing business after their subsequent promotion to President of
10 Qualcomm. Defendant Altman was the “chief architect of Qualcomm’s IP licensing
11 strategy.” In his capacity as Vice Chairman during the Class Period, Defendant
12 Altman had the authority to influence and control, and did influence and control, the
13 Company’s anti-competitive licensing practices complained of herein. Defendant
14 Aberle is similarly credited with “creating and growing [Qualcomm’s] licensing
15 business” and “play[ing] a leading role in structuring and negotiating key license
16 agreements with Qualcomm’s licensees.” In his capacities as Executive Vice
17 President, Group President, and President of Qualcomm during the Class Period,
18 Defendant Aberle had the authority to influence and control, and did influence and
19 control, the Company’s anti-competitive licensing practices complained of herein.

20 262. Defendants Jacobs, Mollenkopf, Aberle, Altman, and Rosenberg each
21 currently serve, or formerly served, as members of Qualcomm’s Executive
22 Committee. The Executive Committee consists of 15 members and “drive[s]
23 Qualcomm’s overall global strategy.” When the Board is not in session, the
24 Executive Committee is assigned complete power in the “management of the
25 business and affairs of the corporation.” In their capacities as members of
26 Qualcomm’s Executive Committee, Defendants Jacobs, Mollenkopf, Aberle, and
27 Altman had the authority to influence and control, and did influence and control, the
28 strategic decision-making and business and licensing activities of the Company and

1 its employees, and to cause the Company to engage in the wrongful conduct
2 complained of herein.

3 263. Each of the Executive Defendants spoke to investors on behalf of the
4 Company during the Class Period. Therefore, each of the Executive Defendants was
5 able to influence and control, and did influence and control, directly and indirectly,
6 the content and dissemination of the public statements made by Qualcomm during
7 the Class Period, thereby causing the dissemination of the materially false and
8 misleading statements and omissions of material facts as alleged herein.

9 264. As set forth above, Qualcomm violated Section 10(b) of the Exchange
10 Act by its acts and omissions as alleged in this Complaint.

11 265. By virtue of their positions as controlling persons of Qualcomm and as
12 a result of their own aforementioned conduct, the Executive Defendants are liable
13 pursuant to Section 20(a) of the Exchange Act, jointly and severally with, and to the
14 same extent as, the Company is liable under Section 10(b) of the Exchange Act and
15 Rule 10b-5 promulgated thereunder, to Lead Plaintiffs and the other members of the
16 Class who purchased or otherwise acquired Qualcomm securities. As detailed
17 above, during the respective times, these Executive Defendants served as officers
18 and/or directors of Qualcomm.

19 266. As a direct and proximate result of the Executive Defendants' conduct,
20 Lead Plaintiffs and the other members of the Class suffered damages in connection
21 with their purchase or acquisition of Qualcomm common stock.

22 **XIII. PRAYER FOR RELIEF**

23 267. WHEREFORE, Lead Plaintiffs pray for relief and judgment as follows:

24 (a) Declaring the action to be a proper class action pursuant to Rule 23(a)
25 and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined
26 herein;

1 (b) Awarding all damages and other remedies available under the
2 Securities Exchange Act in favor of Lead Plaintiffs and all members of the Class
3 against Defendants in an amount to be proven at trial, including interest thereon;

4 (c) Awarding Lead Plaintiffs and the Class their reasonable costs and
5 expenses incurred in this action, including attorneys' fees and expert fees; and

6 (d) Such other and further relief as the Court may deem just and proper.

7 **XIV. JURY DEMAND**

8 Lead Plaintiffs hereby demand a trial by jury.

9 Dated: July 3, 2017

Respectfully submitted,

10
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