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FILED
Clerk of the Superior Court

SEP 24 2018

By: T. Horak

15
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION**

18 **QUALCOMM INCORPORATED,**

19 Plaintiff,

20 v.

21 **APPLE INC. and DOES 1 through 25,**
inclusive,

22 Defendants.

CASE NO. 37-2017-00041389-CU-BC-NC

**DECLARATION OF KELLY V. O'DONNELL IN
SUPPORT OF PLAINTIFF QUALCOMM
INCORPORATED'S MOTION FOR LEAVE TO
FILE FIRST AMENDED COMPLAINT FOR
BREACH OF CONTRACT AND TRADE
SECRET MISAPPROPRIATION (CIVIL CODE
§ 3426, et seq.)**

Assigned for all purposes to
Hon. Jacqueline M. Stern

Date: November 30, 2018
Time: 1:30 p.m.
Dept.: N-27
Action Filed: November 1, 2017
Trial Date: April 26, 2019

1 I, Kelly V. O'Donnell, hereby declare:

2 I am an attorney duly admitted to practice before all Courts of the State of California and
3 before this Court, and I am a partner with the law firm of Jones Day, counsel for Plaintiff
4 Qualcomm Incorporated ("Qualcomm") in the above captioned matter. Pursuant to Cal. Rule of
5 Court 3.1324(b), I make this declaration in support of Qualcomm's Motion for Leave to File First
6 Amended Complaint. I know the facts stated herein to be true based upon my own personal
7 knowledge. If called to testify as a witness, I could and would testify competently thereto.

8 1. Qualcomm's proposed First Amended Complaint for Breach of Contract and
9 Trade Secret Misappropriation (Civil Code § 3426)) ("FAC") is attached hereto as **Exhibit A**.
10 The purpose of Qualcomm's proposed FAC is to amend Qualcomm's allegations based on newly
11 discovered facts showing that Apple's wrongful conduct went beyond breaching the contract
12 originally sued on. These newly uncovered facts give rise to additional, related claims against
13 Apple, namely for trade secret misappropriation under Civil Code Section 3426 and for breach of
14 an additional agreement between the parties.

15 2. The effect of Qualcomm's proposed FAC is to amend Qualcomm's first cause of
16 action, for breach of contract, to assert breach of a Software Development Tools Limited Use
17 Agreement entered into as of May 12, 2009, and to add a second cause of action, for trade secret
18 misappropriation (California Uniform Trade Secret Act). Qualcomm's proposed FAC also adds
19 and amends allegations related to the nature of the action, jurisdiction and venue, statement of
20 facts, and prayer for relief in accordance with Qualcomm's amended first cause of action and new
21 second cause of action. Qualcomm's proposed FAC also makes certain changes not bearing on
22 Qualcomm's claims or the relief sought, such as indicating the case number and the name of the
23 assigned judge. Specifically, Qualcomm's proposed FAC makes the following revisions and
24 additions:

25 • Paragraphs 1 through 4, 11 through 16, and 25 through 28 of the proposed FAC set
26 forth allegations regarding the nature of the action, the additional agreement that Qualcomm
27 alleges Apple has breached, the Qualcomm trade secrets that Apple misappropriated, and Apple's
28 years-long campaign of false promises, stealth, and subterfuge designed to steal Qualcomm's

1 confidential information and trade secrets for the purpose of improving the performance of lower-
2 quality modem chipsets with the goal of diverting Qualcomm's Apple-based business;

3 • Paragraphs 9 and 10 of the proposed FAC set forth additional material regarding
4 personal jurisdiction and venue as they relate to the additional causes of action alleged in
5 Qualcomm's proposed FAC;

6 • Paragraphs 17 through 23 of the proposed FAC set forth allegations regarding the
7 Master Software Agreement;

8 • Paragraphs 25 through 28 of the proposed FAC plead allegations related to the
9 parties' May 12, 2009 Tools Agreement;

10 • Paragraphs 29 through 31 of the proposed FAC set forth allegations regarding
11 Apple's theft of Qualcomm's protected information beginning at least several years ago and
12 continuing through the present;

13 • Paragraphs 32 through 36 of the proposed FAC include allegations, which were
14 included in Qualcomm's original Complaint, regarding Apple's breach of its audit and inspection
15 obligations under the MSA;

16 • Paragraphs 37 through 47 of the proposed FAC include revised and additional
17 allegations related to Qualcomm's cause of action for breach of contract;

18 • Paragraphs 48 through 55 of the proposed FAC set forth allegations related to
19 Qualcomm's cause of action for trade secret misappropriation; and

20 • The Prayer for Relief in the proposed FAC sets forth a revised request for the
21 judgment Qualcomm seeks by its proposed FAC, consistent with the causes of action set forth in
22 Qualcomm's proposed FAC.

23 3. **Exhibit B** hereto is a true and correct copy of Qualcomm's original Complaint in
24 this action, filed on November 1, 2017. On December 19, 2017, Apple filed an answer to
25 Qualcomm's Complaint.

26 4. **Exhibit C** hereto is a true and correct copy of a comparison showing all changes
27 between Qualcomm's Complaint filed on November 1, 2017, and Qualcomm's proposed FAC.

28 5. The facts giving rise to the proposed amendment were only recently discovered, as

1 part of discovery that remains ongoing. Qualcomm diligently commenced discovery as soon as
2 permitted under the Code of Civil Procedure. On December 1, 2017, Qualcomm served Requests
3 for Inspection directed at inspecting Apple's chipset supplier communications, as well as source
4 code and related information in Apple's possession, relevant to Qualcomm's claim that Apple
5 breached the MSA by improperly misusing or disclosing Qualcomm's source code and/or
6 confidential information. Qualcomm moved to compel Apple to comply with these Requests for
7 Inspection, and on March 20, 2018, this Court ordered Apple to comply with Requests for
8 Inspection 1-5. Apple then moved to stay the Court's order (a request this Court denied on
9 April 9, 2018), and then filed a petition seeking a writ of mandate, which the Court of Appeal
10 denied on May 2, 2018.

11 6. On May 4, 2018, Qualcomm gave renewed notice to Apple of Qualcomm's intent
12 to conduct an inspection consistent with this Court's March 20, 2018 order. A series of technical
13 delays and deficiencies in the materials Apple made available required weeks of further meeting
14 and conferring, and ultimately a motion for sanctions, before Apple finally produced all materials
15 required under the Court's March 20, 2018 order. Despite promising to make them available on
16 three separate occasions, it was not until Friday, June 29, 2018, that Apple finally provided the
17 responsive "Git repositories" that Qualcomm and its consultants need in order to fully evaluate
18 the source code that Apple has provided to date in discovery. All the while, Qualcomm's counsel
19 and consultants have been diligently and expeditiously reviewing the materials that Apple has
20 slowly been providing. Qualcomm also has served follow-up discovery on Apple and on third
21 parties based on facts discovered through materials Apple has made available to date.

22 7. On June 15, 2018, Qualcomm took the deposition of Clark Mueller, Apple's
23 corporate representative designated to provide testimony in response to deposition topics directed
24 at access to communications within Apple's RADAR system. On August 7, 2018, Qualcomm
25 took the deposition of Jason Shi, Apple's corporate representative designated to testify in
26 response to topics focusing on access to Qualcomm's confidential information and Apple's
27 procedures to safeguard such information. Qualcomm's deposition of Apple, through its
28 designated representatives, remains ongoing as Apple has not yet designated a witness to respond

1 to numerous topics on which Apple has agreed to provide testimony.

2 8. Discovery and Qualcomm's review of materials provided so far by Apple remains
3 ongoing. Thus far, the discovery process in this case has uncovered evidence of broader
4 misconduct by Apple. As set forth in detail in Qualcomm's proposed FAC, Apple's wrongful
5 behavior encompasses a multi-year campaign designed to steal Qualcomm's confidential
6 information and trade secrets. Upon learning of and investigating these additional facts, and the
7 other information set forth in Qualcomm's proposed FAC, Qualcomm promptly sought leave to
8 amend once it believed that a sufficient basis existed to assert the new claims. Qualcomm could
9 not have brought these claims earlier, as it was only through court-ordered discovery in this
10 action that Qualcomm discovered the necessary factual predicate.

11 9. The Court held a Case Management Conference on July 20, 2018. At that Case
12 Management Conference, the Court set April 26, 2019 as the trial call date for a 20 day trial. The
13 Court set March 22, 2019 as the deadline to file pretrial motions, and scheduled a trial readiness
14 conference for March 29, 2019. As of the date of this Motion, the parties have not made any
15 expert witness disclosures, and Apple has taken only a single deposition of Qualcomm. Apple
16 has filed a narrow motion for summary adjudication, but that motion (which the Court should
17 deny, as explained in Qualcomm's forthcoming opposition thereto) addresses only a portion of
18 Qualcomm's claim for breach of the MSA and has no bearing on Qualcomm's proposed
19 additional claims for trade secret misappropriation and breach of the Tools Agreement.
20 Qualcomm believes that the existing pretrial and trial schedule provides sufficient time for the
21 parties to complete discovery and prepare for trial on Qualcomm's claims as set forth in the
22 proposed FAC.

23 I declare under penalty of perjury and under the laws of the State of California that the
24 foregoing is true and correct and that I executed this Declaration on September 24, 2018, in San
25 Diego, California.

26 
27 Kelly V. O'Donnell
28

EXHIBIT A

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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **SAN DIEGO COUNTY, NORTH COUNTY DIVISION**

18 QUALCOMM INCORPORATED,

19 Plaintiff,

20 v.

21 APPLE INC., and DOES 1 through 25,
22 inclusive,

23 Defendants.
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CASE NO. 37-2017-00041389-CU-BC-NC

**FIRST AMENDED COMPLAINT FOR
BREACH OF CONTRACT AND
TRADE SECRET
MISAPPROPRIATION (CIVIL CODE
§ 3426, et seq.)**

[DEMAND FOR A JURY TRIAL]

Assigned for all purposes to
Hon. Jacqueline M. Stern

Trial Date: April 26, 2019
Action Filed: November 1, 2017

1 Plaintiff Qualcomm Incorporated (“Qualcomm”), by its undersigned attorneys, alleges,
2 with knowledge with respect to its own acts and on information and belief (including but not
3 limited to belief based on discovery taken to date in this action) as to other matters, as follows:

4 **NATURE OF THE ACTION**

5 1. This action arises from Defendant Apple Inc.’s (“Apple”) breaches of certain
6 contracts between Apple and Qualcomm, including a Master Software Agreement For Limited Use
7 entered into as of September 20, 2010 (“MSA”) and a Software Development Tools Limited Use
8 Agreement entered into as of May 12, 2009 (“Tools Agreement”), and Apple’s misappropriation
9 of Qualcomm’s trade secrets constituting protectable techniques, methods, processes, programs
10 (including software and source code) and compilations.¹

11 2. Qualcomm’s trade secrets are very valuable. For example, cell phones using
12 Qualcomm baseband modem chipsets and related software maintain better connectivity, drop fewer
13 calls, and transmit data faster. And Qualcomm’s technology enables cell phones to optimize power
14 consumption, resulting in extended battery life and enhanced user experience. These qualities are
15 highly valued by consumers and cell phone manufacturers alike. Qualcomm invested enormous
16 resources in the development of this technology, and goes to great lengths to protect the secrecy of
17 the information.

18 3. Apple has engaged in a years-long campaign of false promises, stealth, and
19 subterfuge designed to steal Qualcomm’s confidential information and trade secrets for the purpose
20 of improving the performance and accelerating time to market of lower-quality modem chipsets,
21 including those developed by Intel Corporation (“Intel”), a competitor of Qualcomm, to render such
22 chipsets useable in Apple iPhones and other devices, with the ultimate goal of diverting
23 Qualcomm’s Apple-based business to Intel. Apple has wrongfully acquired, failed to protect,
24 wrongfully used, wrongfully disclosed, and outright stolen Qualcomm’s confidential information
25 and trade secrets, and Apple used that stolen technology to divert Qualcomm’s Apple-based
26 business to Intel.

27
28 ¹ Because this complaint is being filed publicly, Qualcomm cannot include the particulars
of its trade secrets in the complaint itself.

4. Through this action, Qualcomm seeks to protect and promote honest investment in breakthrough innovation. Apple entered into its contractual relationship with Qualcomm understanding that it was gaining access to the world's best communications technology, and promising to guard the secrecy of that technology with extreme care. Apple therefore agreed to strict limitations regarding how it could use Qualcomm's technology and information. As explained in greater detail below, Apple repeatedly ignored those restrictions, using and sharing Qualcomm's trade secrets in ways that Apple knew very well were improper. Indeed, the scale and brazenness of Apple's misappropriation demonstrates that it never intended to keep the promises it made in its agreements with Qualcomm, but rather planned all along to misuse and transfer Qualcomm's technology in ways Apple thought would not be detected.

PARTIES

5. Qualcomm is a Delaware corporation with its principal place of business at 5775 Morehouse Drive, San Diego, California. Qualcomm is one of the world's leading technology companies and a pioneer in the mobile phone industry. Its inventions form the very core of mobile communications and enable modern consumer experiences on mobile devices and cellular networks. Since its founding in 1985, Qualcomm has been designing, developing, and improving mobile communication devices, systems, networks, and products. It has invented technologies that transform how the world communicates. Qualcomm developed fundamental technologies at the heart of 2G, 3G, and 4G cellular communications, is leading the industry to 5G cellular communications, and has developed numerous innovative features used in virtually every modern cell phone. Since 1989, when Qualcomm publicly introduced Code Division Multiple Access (CDMA) as a commercially successful digital cellular communications standard, Qualcomm has been recognized as an industry leader and innovator in the field of mobile devices and cellular communications. Qualcomm is a world leader in the sale of chips, chipsets, and associated software for mobile phones and other wireless devices. It also derives revenues and profits from licensing its intellectual property.

6. Apple is a corporation organized and existing under the laws of the State of California, with its principal place of business at 1 Infinite Loop, Cupertino, California. Apple

1 maintains a retail store within the venue for the North County Division of the San Diego Superior
2 Court, at 1923 Calle Barcelona, Carlsbad, California. Apple designs, manufactures, and sells
3 throughout the world a wide range of products, including mobile devices that incorporate
4 Qualcomm chipsets, software, and technology. Apple is now the world's most profitable seller of
5 mobile devices, and has enormous commercial leverage over its suppliers, including Qualcomm.
6 Apple designs, develops, and markets, among other things, iPhones and other devices, including
7 those that utilize Qualcomm's baseband modem chipsets and software, which process received
8 voice and data information and prepare the same for transmission. Apple was entrusted with
9 unprecedented access to Qualcomm's very valuable and highly confidential software, including
10 source code, and development tools.

11 7. The true names and capacities of defendant Does 1 through 25, whether individual,
12 corporate, associate, or otherwise, are presently unknown to Qualcomm. Therefore, Qualcomm
13 sues the Doe defendants under fictitious names pursuant to Code of Civil Procedure section 474.
14 When Qualcomm learns their true names and capacities, it will seek permission from the Court to
15 amend this complaint to insert the true name and capacity of each fictitiously named defendant.
16 Qualcomm alleges that each fictitiously named defendant acted in concert and is legally responsible
17 in some manner for the occurrences alleged in this complaint, and that each defendant directly and
18 proximately caused Qualcomm's damages.

19 JURISDICTION AND VENUE

20 8. This Court has jurisdiction over the subject matter of this action pursuant to Code
21 of Civil Procedure section 410.10.

22 9. This Court has personal jurisdiction over Apple because it is organized and exists
23 under the laws of California, and its principal place of business is located in California. In its
24 answer in this action, Apple admits that this Court has personal jurisdiction over Apple. Defendant
25 Apple Inc.'s Answer and Defenses, filed Dec. 19, 2017 (Apple's "Answer"), ¶ 15. In addition,
26 Apple expressly consented to personal jurisdiction in San Diego County pursuant to the MSA and
27 Tools Agreement, respectively. MSA § 11; Tools Agreement § 10. Further, on information and
28

1 belief, Apple's contract breaches and trade secret misappropriation described herein took place in
2 San Diego County, among other places.

3 10. Venue is proper in San Diego County pursuant to Code of Civil Procedure section
4 395 because the MSA was entered into and negotiated, in part, in this County. In its answer in this
5 action, Apple "admits that venue is proper in San Diego County." Apple's Answer ¶ 16. Moreover,
6 the MSA provides that claims for breach of the MSA "shall be adjudicated only by a court of
7 competent jurisdiction in either the county of San Diego or the county of Santa Clara, State of
8 California, and each Party hereby consents to the personal jurisdiction of such courts for that
9 purpose." MSA § 11. And the Tools Agreement provides that claims for breach of the Tools
10 Agreement "shall be adjudicated only by a court of competent jurisdiction in the county of San
11 Diego, State of California...." Tools Agreement § 10.

12 STATEMENT OF FACTS

13 11. Apple has incorporated Qualcomm baseband modem chipsets and software in
14 iPhones and other devices since 2011, beginning with the launch of the so-called Verizon iPhone 4.
15 Before that, Apple used Intel baseband modem chips in iPhones.² Qualcomm also supplied Apple
16 with unprecedented access to Qualcomm's highly confidential and proprietary software, including
17 virtually all source code for Qualcomm's cutting-edge cellular modem technology, for use in
18 iPhones containing Qualcomm's chipsets that implement much of the functionality that allows
19 mobile devices like cell phones to communicate. The software, including source code, constitutes
20 classic trade secret information. Apple has demanded the ability to modify Qualcomm's software,
21 including source code, to allow Apple to create what it calls an "integrated design" that allows
22 Qualcomm chipsets to work with Apple's system. Qualcomm and Apple therefore entered into a
23 number of agreements over a number of years governing and strictly limiting Apple's access to,
24 and use and disclosure of, Qualcomm's software, including source code, including but not limited
25 to those agreements described below.

26
27
28 ² At the time, Apple used baseband modem chips manufactured by Infineon Technologies.
Infineon was later acquired by Intel.

1 12. In 2016, Apple resumed using Intel chipsets in certain iPhone models while
2 continuing to use Qualcomm chipsets in other models. Independent analysis concluded that
3 Qualcomm's chipset solutions performed demonstrably and substantially better than their Intel
4 counterparts: "In all tests, the iPhone 7 Plus with the Qualcomm modem had a significant
5 performance edge over the iPhone 7 Plus with the Intel modem." *See iPhone 7 Plus: A Tale of Two*
6 *Personalities*, Cellular Insights (Oct. 20, 2016), www.cellularinsights.com/iphone7/. These facts
7 were widely reported: "According to a new study by Cellular Insights, the Qualcomm iPhone 7 and
8 iPhone 7 Plus units – that's the Verizon, Sprint and factory-unlocked models – have more than 30
9 percent better performance in weak signal conditions than the AT&T and T-Mobile models, which
10 have Intel modems." *See, e.g.,* Sascha Segan, *Study: Weak Signals Crush Intel iPhones*, PC
11 Magazine (Oct. 20, 2016, 12:23 PM), [www.pcmag.com/news/348886/study-weak-signals-crush-](http://www.pcmag.com/news/348886/study-weak-signals-crush-intel-iphones)
12 [intel-iphones](http://www.pcmag.com/news/348886/study-weak-signals-crush-intel-iphones).

13 13. In light of this performance disparity, some questioned why Apple would use Intel
14 chipsets at all:

15 If this makes you ask the question of why Apple decided to go with
16 an inferior Intel modem in the first place, you're not alone. Apple
17 isn't saying. But as I've spoken to independent analysts, a picture
18 becomes clear. Qualcomm is the leader in LTE, and Apple has been
19 using their modems since the iPhone 4s generation. But Qualcomm
20 tends to drive hard bargains. Intel hasn't had a big modem win with
21 its XMM7360 devices before, so the company may have been an
22 easier partner for Apple to deal with.

23 *Id.*

24 14. On information and belief, Apple long ago devised a plan to improve the
25 performance of non-Qualcomm chipset solutions, including Intel's, by stealing Qualcomm's
26 technology and using it to establish a second source of chipsets in order to pressure Qualcomm in
27 business negotiations over chipset supply and pricing, and ultimately to divert Qualcomm's Apple-
28 based business to Intel, from which Apple could extract more favorable terms. Apple's illegal

1 conduct was calculated and pervasive, particularly among its engineers working with Qualcomm
2 and Intel chipsets. An internet posting regarding Intel layoffs, which appears to have been made
3 by a former Intel engineer working on an Intel modem chipset, stated, "We were told to ignore
4 intellectual property rights when designing the modem. There was even a conspiracy to copy
5 Qualcomm's technology by hints from Apple about the 'reference device.'"

6 15. Over time, publicly reported testing indicated that Apple's plan was coming
7 together. "Compared to last year's tests, while Intel's modem hasn't caught up to Qualcomm's,
8 there's a considerably smaller difference between the two." Sascha Segan, *Exclusive: Qualcomm's*
9 *iPhone X Still Outpaces Intel's*, PC Magazine (Dec. 1, 2017, 9:00 AM),
10 www.pcmag.com/news/357671/exclusive-qualcomms-iphone-x-still-outpaces-intels. Ultimately,
11 Apple used the stolen Qualcomm technology and trade secrets to divert some of its business away
12 from Qualcomm and instead to Intel.

13 16. Apple's conduct as alleged herein breached multiple agreements with Qualcomm,
14 including but not limited to those described below. In addition, Apple misappropriated
15 Qualcomm's trade secrets, as alleged herein. Qualcomm now seeks court intervention to enjoin
16 Apple's ongoing, irreparable harm to Qualcomm, and to make Qualcomm whole for the damage
17 caused by Apple's brazen and unlawful conduct.

18 **A. Master Software Agreement**

19 17. In 2009, Apple demanded access to large portions of Qualcomm software, including
20 the most sensitive and important layers of source code for Qualcomm's industry-leading modem,
21 which Apple claimed it needed in order to modify and integrate the code to enable Qualcomm
22 chipsets to work in Apple devices, including iPhones. Qualcomm agreed to and did provide the
23 unprecedented access that Apple demanded conditioned on Apple's agreement to take a number of
24 steps to ensure and maintain the confidentiality and security of Qualcomm's software, including
25 source code, pursuant to the MSA. Apple and Qualcomm entered into the MSA as of September
26 20, 2010. The MSA was subsequently amended. In its answer in this action, Apple "admits that
27
28

1 the MSA was executed by the parties on or around September 20, 2010 and remains in effect today.”

2 Apple’s Answer ¶ 17.

3 18. The MSA governs and limits Apple’s use of Qualcomm software, including source
4 code, pursuant to a limited license granted to Apple by Qualcomm. Qualcomm software licensed
5 under the MSA may be used by Apple only in connection with the development of Apple Products
6 containing Qualcomm chipsets, and may be provided by Apple in binary form only to third parties
7 that are “Authorized Purchasers” of Qualcomm chipsets and that in turn have their own valid
8 software agreements with Qualcomm for use of the same version of the Qualcomm software. MSA
9 § 3.1. Such Authorized Purchasers may ultimately incorporate the Qualcomm software provided
10 to them by Apple into Apple Products (that include Qualcomm chipsets) manufactured by the
11 Authorized Purchasers for Apple and subsequently sold to Apple. *Id.* The MSA expressly prohibits
12 any disclosure of software to third parties other than as “Compiled Binaries” to Authorized
13 Purchasers and end user consumers (solely for purposes of updating their devices). MSA §§ 3.1(iv),
14 3.2(a).

15 19. The MSA refers to one category of software licensed under the MSA as “Restricted
16 Software.” MSA § 1. Restricted Software refers to software delivered to Apple in source code
17 form and identified in a “Software Addendum” as Restricted Software, or otherwise made available
18 to Apple via Qualcomm’s “HY31 source directory.” *See id.* Qualcomm and Apple entered into
19 Software Addenda for each Qualcomm software platform that Qualcomm licensed to Apple. In its
20 answer in this action, Apple “admits that Apple and Qualcomm have executed software addenda to
21 the MSA....” Apple’s Answer ¶ 19.

22 20. The MSA requires that Apple take several steps to ensure and maintain the security
23 and confidentiality of Qualcomm software, including source code. For example, MSA § 3.1(iv)
24 requires that Apple use the same security infrastructure to protect compiled copies of Qualcomm’s
25 software that Apple uses for its own iOS software when it distributes software to its customers.
26 MSA § 3.2 prohibits Apple from “sublicens[ing], transfer[ring], or otherwise disclos[ing] the
27 Software in Source Code form to any third party (other than Authorized Purchasers, Affiliates or
28 subcontractors . . . in accordance with and subject to Section 10 (Restrictions on Disclosure and

1 Use) below).” MSA § 3.3(a) requires that certain software be stored, viewed, and used only on
2 “Restricted Computers” in “Authorized Locations,” as defined. MSA § 3.3(d) requires that Apple
3 “maintain a list of the names of the Authorized Engineers who have accessed the Restricted
4 Software, the purpose for such access and any actions taken as a result of such access, and such
5 information shall be provided to QUALCOMM upon request.” MSA § 3.5.1 sets forth the
6 requirements for storing and accessing the software, while § 3.5.2 requires that Apple maintain and
7 periodically review certain information, such as password logs showing access to the software. By
8 way of MSA § 3.5.3, Apple represents and warrants that it “has adequate security measures in place
9 to comply with” the obligations of the MSA and to ensure that access to Qualcomm’s confidential
10 information and trade secrets is appropriately protected under the terms of the MSA.

11 21. MSA § 3.5.4 allows Qualcomm to audit Apple’s compliance with these and other
12 provisions. Specifically, it provides that “QUALCOMM shall have the right to inspect [Apple’s]
13 and [Apple’s] Affiliates’ facilities, network connectivity and practices, upon reasonable advanced
14 notice and not more than one time per year. . . to verify [Apple’s] compliance with these obligations
15 [e.g., those of MSA § 3.5] and the obligations set forth in Section 3.1(iv) and Section 3.3
16 (Additional Limitations on Restricted Software) above.” *Id.* Qualcomm’s contractual right to audit
17 Apple once a year does not require Qualcomm to provide any reason or justification for exercising
18 such right. *Id.*

19 22. The broad audit and inspection rights granted by the MSA provide Qualcomm the
20 authorization and ability to, among other things, investigate whether Apple has at all times
21 complied with its obligations to handle Qualcomm software, including source code, in accordance
22 with the terms of the MSA, including the obligation that certain software “shall only be stored,
23 viewed, and used by Authorized Engineers on Restricted Computers located in Authorized
24 Locations[.]” *See* MSA §§ 3.3(a), 3.5.4. For example, only Apple engineers who have a need to
25 access certain source code and have signed a written agreement to comply with the terms and
26 conditions of Section 3 of the MSA may be given access to such code. MSA § 3.3(i). Similarly,
27 the MSA obligates Apple to maintain a list identifying the Apple engineers who have accessed such
28 software, the purpose of such access, and any actions taken as a result of that access. MSA § 3.3(d).

1 Further, Apple engineers with access to certain Qualcomm software may only utilize such access
2 through specific, designated computers that restrict access only to those authorized engineers.
3 MSA § 3.3(a). And those computers storing such Qualcomm software may only be housed in
4 specific, designated locations. *Id.* The MSA also imposes certain restrictions on Apple engineers
5 developing software for use with certain non-Qualcomm chipsets during (and after) the time those
6 engineers have access to certain Qualcomm software. MSA § 3.3(i). One of the primary purposes
7 of the MSA’s confidentiality and use restrictions (and the concomitant audit provisions aimed at
8 verifying Apple’s compliance) is to prevent Apple (and any companies working with Apple, like
9 Intel) from inappropriately or unlawfully accessing, using, or appropriating the benefits of
10 Qualcomm’s software, including source code.

11 23. In addition, the MSA provides that all software, including source code, provided by
12 Qualcomm to Apple pursuant to the MSA is also subject to strict and express non-disclosure terms
13 and conditions, MSA § 10, without which “QUALCOMM would not have entered into [the MSA.]”
14 MSA § 13. The MSA further provides that Apple may use Qualcomm’s confidential information
15 “only for the purposes contemplated under this Agreement” and that “QUALCOMM hereby
16 consents to [Apple’s] disclosure of information (including Software) to [Apple’s] Affiliates, solely
17 for purposes of ... its development of [products containing Qualcomm chipsets]” MSA § 10.

18 24. Software, including source code, provided by Qualcomm to Apple pursuant to the
19 MSA since 2010 constitutes Qualcomm trade secrets because it derives independent economic
20 value, actual or potential, from not being generally known to the public or to other persons who can
21 obtain economic value from its disclosure or use, and because it is the subject of reasonable efforts
22 under the circumstances to maintain its secrecy, as exemplified by the provisions of the MSA.

23 **B. Tools Agreement**

24 25. In 2009, Apple demanded that Qualcomm provide Apple with certain Qualcomm
25 software development tools to enable Apple to test and integrate certain Qualcomm technology in
26 Apple devices, including iPhones. Qualcomm agreed to do so, conditioned on and subject to the
27 restrictions set forth in the Tools Agreement. Apple and Qualcomm entered into the Tools
28 Agreement as of May 12, 2009.

1 26. The Tools Agreement governs and limits Apple's use of specified software
2 development tools since 2009, pursuant to a limited license granted to Apple by Qualcomm. The
3 Qualcomm software development tools provided under the Tools Agreement may be used by Apple
4 "solely for testing and integrating" for customers of Qualcomm that develop, manufacture, and/or
5 sell embedded modules that incorporate Qualcomm chipsets. Tools Agreement §§ 1, 3. The Tools
6 Agreement specifies that Apple has "no right to alter, modify, translate or adapt" the software
7 development tools, that Apple shall not "sublicense, transfer or otherwise provide" those tools "to
8 any third party," and that Apple shall not use the software development tools "for any other
9 purpose" except as expressly permitted by the Tools Agreement. Tools Agreement § 3.

10 27. Further, the parties agreed, and Apple acknowledged, that Qualcomm's software
11 development tools provided to Apple under the Tools Agreement "and all other information relating
12 to the design, configuration, use, installation and operation relating thereto constitute confidential
13 or proprietary information of QUALCOMM," and that Apple shall not use or disclose to any third
14 party Qualcomm's confidential or proprietary information except as permitted in the Tools
15 Agreement. Tools Agreement § 8.

16 28. The software development tools constitute Qualcomm trade secrets because they
17 derive independent economic value, actual or potential, from not being generally known to the
18 public or to other persons who can obtain economic value from their disclosure or use, and because
19 they are the subject of reasonable efforts under the circumstances to maintain their secrecy, as
20 exemplified by the terms of the Tools Agreement.

21 **C. Apple's Theft of Qualcomm Technology**

22 29. Discovery to date in this action indicates that Apple's theft of Qualcomm's protected
23 information extends far beyond the breach of the MSA that led to the filing of this lawsuit. On
24 information and belief, Apple developed and carried out an intricate plan, beginning at least several
25 years ago and continuing through the present, to steal vast swaths of Qualcomm's confidential
26 information and trade secrets and to use the information and technology to improve the performance
27 of non-Qualcomm chipset solutions and, in conjunction, the performance of iPhones based on such
28 non-Qualcomm chipset solutions.

1 30. For example, on information and belief, Apple engineers working to incorporate
2 Intel chipsets into Apple devices (whose access to Qualcomm trade secrets or confidential
3 information in the first instance breached the MSA), after becoming aware of certain performance
4 deficiencies with Intel's chipset solutions, repeatedly accessed, used, and provided to Intel
5 engineers Qualcomm software and confidential information, including source code, for the purpose
6 of improving the performance of Intel's chipset solutions. On information and belief, this
7 unauthorized access, use, and disclosure was independently initiated by Apple on some occasions
8 and affirmatively requested by Intel on others, beginning at least several years ago and continuing
9 through the present. Further, Apple engineers repeatedly used Qualcomm's software development
10 tools and related highly confidential files to open and process Qualcomm log files to provide to
11 Intel, again for the purpose of improving Intel's chipset solutions. Intel engineers even complained
12 to Apple engineers about being unable to open Qualcomm log files, which Apple had provided to
13 Intel, for lack of the appropriate Qualcomm tools. In response, Apple engineers routinely used
14 Qualcomm tools to create post-processed log files, which they then sent to Intel engineers to use in
15 improving Intel's chipset solutions.

16 31. On information and belief, Apple's covert misappropriation of Qualcomm's trade
17 secrets and other protected information succeeded in improving the relative performance of Intel's
18 chipset solutions. "Compared to last year's tests, while Intel's modem hasn't caught up to
19 Qualcomm's, there's a considerably smaller difference between the two." Sascha Segan,
20 *Exclusive: Qualcomm's iPhone X Still Outpaces Intel's*, PC Magazine (Dec. 1, 2017, 9:00 AM),
21 www.pcmag.com/news/357671/exclusive-qualcomms-iphone-x-still-outpaces-intels. In fact, it
22 apparently improved Intel chipsets to the point where Apple decided to divert some of Qualcomm's
23 Apple-based business to Intel. On information and belief, Apple created and executed this scheme
24 in part to reduce its cost of goods and increase its commercial leverage over Qualcomm, but at the
25 cost to Qualcomm of its valuable trade secrets and Apple-based business.

26 **D. Apple's Refusal to Honor the Audit Provisions of the MSA**

27 32. In furtherance of this scheme, and in an effort to prevent Qualcomm from
28 discovering Apple's theft and misuse of Qualcomm's confidential information and trade secrets,

1 Apple refused to allow Qualcomm to audit Apple's compliance with the MSA, as is Qualcomm's
2 right under the MSA. On February 28, 2017, Qualcomm requested an audit pursuant to the MSA,
3 stating it wished to commence the audit on March 20, 2017. Apple responded, claiming three
4 weeks' notice was not reasonable, and refusing to let the audit proceed on that date. Apple also
5 admitted that it had not maintained a list of Authorized Engineers who accessed Qualcomm's
6 software, the purpose for such access, and any actions taken as a result of such access, in violation
7 of MSA § 3.3(d).

8 33. In subsequent correspondence, Apple provided some information requested by
9 Qualcomm, such as what Apple claimed to be a list of Authorized Engineers pursuant to MSA
10 § 3.3(d), and certain transactional records from Apple repositories hosting certain Qualcomm
11 software. The information provided by Apple, however, was incomplete and insufficient for
12 Qualcomm to audit Apple's compliance with its obligations under the MSA, including but not
13 limited to the obligation to ensure that certain software "shall only be stored, viewed, and used by
14 Authorized Engineers on Restricted Computers in Authorized Locations[.]" See MSA § 3.3(a).
15 Apple failed to provide additional information in response to Qualcomm's follow-up requests that
16 would allow Qualcomm to exercise meaningfully its audit rights.

17 34. In other ways, Apple flatly refused to permit Qualcomm to proceed with the audit.
18 For example, Qualcomm requested to inspect "Restricted Computers, Approved Machines, and
19 Authorized Locations." Apple refused to permit the inspection, claiming it would be "unworkable."
20 Similarly, Qualcomm sought to audit Apple's compliance with respect to "additional debug
21 messages and log packets" added by Apple pursuant to MSA § 3.3(b), but Apple also refused to
22 permit that inspection.

23 35. When Qualcomm became aware of the Intel layoff posting, *see supra*, Qualcomm
24 specifically requested, in writing, on August 14, 2017, that Apple investigate whether and to what
25 extent any Apple engineers working on Intel modem chipsets for use in iPhones were provided
26 Qualcomm intellectual property and/or confidential information in any form. Qualcomm also
27 requested that Apple investigate whether and to what extent Qualcomm's modem hardware or
28 software was referred to by Apple as a "reference device" or similar descriptions in the context of

1 modem design. On August 24, 2017, Apple responded that it “does not plan to conduct an
2 investigation.”

3 36. To date, despite Qualcomm’s repeated requests, Apple has refused to permit
4 Qualcomm to complete an audit of Apple’s compliance with the terms and conditions of the MSA.

5 **FIRST CAUSE OF ACTION**

6 **(BREACH OF CONTRACT)**

7 **(MSA; TOOLS AGREEMENT)**

8 37. Qualcomm repeats and re-alleges the allegations of all of the above paragraphs as if
9 fully set forth herein.

10 38. The MSA is a written, valid, enforceable, and binding agreement between
11 Qualcomm and Apple, supported by adequate consideration, for the grant of a limited software
12 license from Qualcomm to Apple. The MSA is and was in effect at all relevant times, from
13 September 20, 2010, through the present.

14 39. The Tools Agreement is a written, valid, enforceable, and binding agreement
15 between Qualcomm and Apple, supported by adequate consideration, for the delivery of certain
16 software development tools and the grant of a limited license from Qualcomm to Apple. The Tools
17 Agreement is and was in effect at all relevant times, from May 12, 2009, through the present.

18 40. Qualcomm performed all of its obligations under the MSA and Tools Agreement,
19 respectively.

20 41. As set forth above, on information and belief, Apple materially breached the MSA
21 and Tools Agreement, respectively, in numerous ways and at numerous times, beginning at least
22 several years ago and continuing through the present. By way of example and without limitation,
23 Apple’s conduct as alleged herein constitutes breaches of sections 3.1, 3.2, 3.3, 3.5.1, 3.5.2, 3.5.3,
24 3.5.4, 6, and 10 of the MSA, and sections 3 and 8 of the Tools Agreement. Qualcomm learned of
25 such breaches, beyond those alleged in the original complaint in this action, in 2018, through
26 discovery in this action.

27 42. As a direct and proximate result of Apple’s breaches of the MSA and Tools
28 Agreement, respectively, Qualcomm suffered significant damages in an amount to be proven at

1 trial. Qualcomm is entitled to recover damages flowing from Apple's breaches and any other
2 available remedies, including those below.

3 43. The MSA provides that the prevailing party in any proceeding to enforce the terms
4 of the MSA shall be entitled to recover reasonable attorneys' fees. MSA § 11. Qualcomm is
5 therefore entitled to recover its reasonable attorneys' fees incurred in connection with this lawsuit.
6 *See id.*

7 44. The Tools Agreement provides that the prevailing party in any proceeding to enforce
8 the terms of the Tools Agreement shall be entitled to recover reasonable attorneys' fees. Tools
9 Agreement § 10. Qualcomm is therefore entitled to recover its reasonable attorneys' fees incurred
10 in connection with this lawsuit. *See id.*

11 45. Qualcomm is also entitled to specific performance under the MSA, permitting
12 Qualcomm to complete the audit to which it is entitled pursuant to MSA § 3.5.4. The language of
13 the MSA is sufficiently definite for the Court to enforce, and the contract, including the audit
14 provision, is just and reasonable. Moreover, the specific performance requested by Qualcomm
15 mirrors Apple's existing obligations under the MSA.

16 46. Absent specific performance, Qualcomm will suffer substantial, irreparable, and
17 incalculable injury for which monetary damages will not provide adequate compensation. For
18 example, without enforcement of its audit rights, Qualcomm will be unable to monitor whether the
19 confidentiality and security of its software, including source code, has been maintained by Apple
20 in compliance with the MSA. Likewise, Qualcomm will be unable to determine the scope of any
21 breach in order to take corrective action. Qualcomm's audit rights under the MSA constitute a
22 critical and material safeguard without which Qualcomm would not have shared its highly
23 confidential and trade secret software, including source code, with Apple.

24 47. Qualcomm is entitled to injunctive relief under the MSA. The parties agreed, and
25 Apple acknowledged, that "any breach or threatened breach of this Agreement relating to any
26 Source Code provided hereunder would cause QUALCOMM . . . irreparable harm for which money
27 damages alone will not be an appropriate or sufficient remedy." MSA § 3.4. Apple agreed that
28

Qualcomm is entitled to injunctive or other equitable relief to remedy any such breach, in addition to all other remedies. *Id.*

SECOND CAUSE OF ACTION

(TRADE SECRET MISAPPROPRIATION (CUTSA))

48. Qualcomm repeats and re-alleges the allegations of all of the above paragraphs as if fully set forth herein.

49. At all relevant times, Qualcomm has owned and is the valid owner of the trade secrets alleged herein constituting protectable techniques, methods, processes, programs (including software and source code) and compilations for wireless telecommunications and features including, but not limited to, GPS and location services. Qualcomm will provide further identification of its trade secrets under the Court Protective Order. These trade secrets constitute some of Qualcomm's most important and sensitive assets. Qualcomm derives significant and independent economic value, actual or potential, from keeping these trade secrets confidential and not generally known to the public or to other persons who can obtain economic value from their disclosure or use. Moreover, these trade secrets provide a competitive advantage for Qualcomm's chipset solutions over those of its rivals, including Intel. For example, these trade secrets enable Qualcomm to make demonstrably superior – and thus more valuable – software for use with its chipsets. *See, e.g.,* Sascha Segan, *Study: Weak Signals Crush Intel iPhones*, PC Magazine (Oct. 20, 2016, 12:23 PM), www.pcmag.com/news/348886/study-weak-signals-crush-intel-iphones.

50. Qualcomm has made and continues to make significant efforts, which are reasonable under the circumstances, to ensure and maintain the secrecy of this information, including by entering into the MSA and Tools Agreement, among other agreements, with Apple before providing access to any trade secrets thereunder, and by attempting to audit Apple's compliance under the MSA. Without these contractual protections, Qualcomm would not have provided Apple access to any of the trade secrets alleged herein. At the time of misappropriation, Qualcomm's trade secrets were not published in patents or other publications, nor were they generally known to the public or to other persons who can obtain economic value from their disclosure or use.

1 Qualcomm learned of Apple's misappropriation as alleged herein in 2018, through discovery in
2 this action.

3 51. On information and belief, as alleged herein, Apple misappropriated Qualcomm's
4 trade secrets by (1) improperly acquiring them through deception and false pretenses (i.e., Apple's
5 false promises to Qualcomm, including by way of the MSA and Tools Agreement, among other
6 things, that Apple would ensure and maintain the confidentiality and secrecy of Qualcomm's trade
7 secrets), beginning at least several years ago and continuing through the present; (2) improperly
8 using Qualcomm's trade secrets without authorization and in contravention of the MSA and Tools
9 Agreement, among other things, to improve the performance of non-Qualcomm chipset solutions,
10 beginning at least several years ago and continuing through the present; and (3) improperly
11 disclosing Qualcomm's trade secrets to Intel without authorization and in contravention of the MSA
12 and Tools Agreement, among other things, to help improve the performance of Intel chipset
13 solutions, beginning at least several years ago and continuing through the present. On information
14 and belief, Apple intended to and did convert Qualcomm's trade secrets for Apple's own economic
15 benefit by reducing its cost of goods by improving other chipsets that Apple can purchase at lower
16 cost, thereby avoiding the enormous risk and investment of time, resources, and money necessary
17 to develop similar technology legitimately.

18 52. On information and belief, Apple knew, by virtue of the MSA and Tools Agreement,
19 among other things, that its acquisition, use, and disclosure of Qualcomm's trade secrets as alleged
20 herein was improper and in breach of its duty of confidentiality, among other things, to Qualcomm.

21 53. As a direct and proximate result of Apple's misappropriation of Qualcomm's trade
22 secrets, Qualcomm has suffered actual damages, including but not limited to lost profits, in an
23 amount to be proven at trial, and Apple has been unjustly enriched, including by avoiding the
24 enormous risk and investment of time, resources, and money necessary to develop similar
25 technology legitimately, and by unfairly reducing its cost of goods. Qualcomm pleads in the
26 alternative that if it is determined that neither actual damages nor unjust enrichment are provable,
27 Qualcomm is entitled to a reasonable royalty to compensate Qualcomm for Apple's
28 misappropriation.

54. On information and belief, Apple's misappropriation of Qualcomm's trade secrets is and was willful and malicious. Qualcomm secured numerous agreements with Apple governing access to, and use and disclosure of, trade secrets before making them available to Apple, based on Apple's representations and the express condition that Apple's only use of Qualcomm's trade secrets would be as permitted by those agreements and solely in connection with Apple's use and development of devices using Qualcomm chipsets. Nevertheless, on information and belief, Apple secretly intended to and did convert Qualcomm's trade secrets for Apple's own use and economic benefit by improving rival chipset solutions, including those of Intel. On information and belief, Apple acted with a purpose and willingness to commit the acts alleged, with malicious intent, and its conduct was not reasonable under the circumstances. Qualcomm is therefore entitled to punitive and exemplary damages and attorney's fees and costs.

55. On information and belief, Apple's misappropriation as alleged herein will continue unless enjoined and restrained by this Court, and will cause continuing, great, and irreparable injury to Qualcomm's business and business opportunities. Absent injunctive relief, Apple's improper acquisition, disclosure, and use of Qualcomm's trade secrets could and will irreparably harm Qualcomm.

PRAYER FOR RELIEF

WHEREFORE, Qualcomm respectfully requests that the Court enter judgment as follows:

- (a) Declaring that Apple breached the MSA;
- (b) Declaring that Apple breached the Tools Agreement;
- (c) Awarding damages in an amount to be proven at trial, including but not limited to actual losses, unjust enrichment, lost profits, and/or imposition of a reasonable royalty;
- (d) Awarding punitive and exemplary damages;
- (e) For immediate assignment, transfer, and return of all right, title, and interest in Qualcomm trade secrets misappropriated by Apple, and all other Qualcomm confidential information misused by Apple, in all forms and in all manners in which it now exists, whether in paper or electronic form or in any other tangible or intangible entitlement or format, so that Qualcomm retains all legal and equitable rights in its trade secrets and confidential information;

1 (f) For an order directing the assignment of any and all intellectual property and other
2 rights that Apple sought or obtained to inventions embodying or constituting Qualcomm's trade
3 secrets (whether or not Apple's acts have destroyed trade secret rights in such information) or
4 confidential information;

5 (g) Awarding reasonable attorneys' fees and costs to Qualcomm;


6 (h) Awarding expenses, costs, and disbursements in this action, including prejudgment
7 interest;

8 (i) Ordering specific performance;

9 (j) Ordering injunctive or other equitable relief; and

10 (k) Awarding such other and further relief as the Court deems just and proper.

11 Dated: September 24, 2018

12 By: 
13 Kelly V. O'Donnell

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EXHIBIT B

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17 **QUALCOMM INCORPORATED**

18
19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **SAN DIEGO COUNTY, NORTH COUNTY DIVISION**
21

22 **QUALCOMM INCORPORATED,**
23 **Plaintiff,**
24 **v.**
25 **APPLE INC. and DOES 1 through 25,**
26 **inclusive,**
27 **Defendants.**
28

CASE NO. 37-2017-00041389-CU-BC-NC
COMPLAINT FOR BREACH OF
CONTRACT
[DEMAND FOR A JURY TRIAL]

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
11/01/2017 at 08:00:00 AM
Clerk of the Superior Court
By Esperanza Fernandez, Deputy Clerk

1 Plaintiff Qualcomm Incorporated ("Qualcomm"), by its undersigned attorneys, alleges,
2 with knowledge with respect to its own acts and on information and belief as to other matters, as
3 follows:

4 **NATURE OF THE ACTION**

5 1. This action arises from Apple Inc.'s ("Apple") breach of a Master Software
6 Agreement For Limited Use entered into between Apple and Qualcomm on September 20, 2010,
7 as amended ("MSA" or "Agreement").

8 2. Qualcomm is one of the world's leading technology companies and a pioneer in the
9 mobile phone industry. Its inventions form the very core of mobile communications and enable
10 modern consumer experiences on mobile devices and cellular networks.

11 3. Since its founding in 1985, Qualcomm has been designing, developing, and
12 improving mobile communication devices, systems, networks, and products. It has invented
13 technologies that transform how the world communicates. Qualcomm developed fundamental
14 technologies at the heart of 2G, 3G, and 4G cellular communications, is leading the industry to 5G
15 cellular communications, and has developed numerous innovative features used in virtually every
16 modern cell phone.

17 4. Apple is the world's most profitable seller of mobile devices, and has enormous
18 commercial leverage over its suppliers, including Qualcomm. Apple manufactures and markets
19 phones, including phones that utilize Qualcomm's baseband modem chips, which process received
20 voice and data information and prepare the same for transmission.

21 5. During negotiations with Qualcomm, Apple exercised its commercial leverage and
22 demanded unprecedented access to Qualcomm's very valuable and highly confidential software,
23 including source code. Pursuant to the MSA, Qualcomm has provided Apple with a limited license
24 that grants restricted access to large portions of that Qualcomm software and source code because
25 Apple said that it needed this access to customize the code for Apple's own devices. Upon
26 information and belief, Apple has failed to comply with the restrictions on access and use that
27 Qualcomm required in exchange for Apple's unprecedented access to software and source code.

1 6. Apple agreed, as a condition of Qualcomm providing the above-described software
2 to Apple under the MSA, to take a number of steps to maintain the confidentiality and security of
3 Qualcomm's software. The MSA provides Qualcomm broad audit and inspection rights in order
4 to provide Qualcomm the ability, among other things, to confirm that Apple has at all times
5 complied with its obligation to handle such software per the terms of the MSA including the
6 obligation that such software "shall only be stored, viewed, and used by Authorized Engineers on
7 Restricted Computers in Authorized Locations[.]" For example, only Apple engineers who have a
8 need to access certain source code and have signed a written agreement to abide by the terms of the
9 MSA can have access to such source code. Similarly, the MSA obligates Apple to maintain
10 information as to which Apple engineers are accessing such software and what actions the engineers
11 take with that access. Furthermore, Apple's engineers with access to certain of Qualcomm's
12 software may only do so through specific designated computers that restrict access to such software
13 only to those authorized engineers. And those computers storing such Qualcomm software may
14 only be housed in specific designated locations.

15 7. The MSA also contains restrictions on Apple engineers working on certain non-
16 Qualcomm baseband modem chipsets and related software solutions during (and after) the time
17 period those Apple engineers have access to certain Qualcomm software. One of the primary
18 purposes of the confidentiality and use restrictions of the MSA (and the concomitant compliance
19 audit rights) is to prevent Apple (and any Qualcomm competitor working with Apple) from
20 unlawfully and inappropriately using Qualcomm's software.

21 8. Several years after the MSA was first executed by Apple and Qualcomm, Apple
22 began to work with Intel to design and develop a baseband modem chipset solution for Apple's
23 iPhone. Beginning in 2017, Apple began selling iPhones using a competitive baseband modem and
24 associated software designed by Apple and/or Intel in competition with Qualcomm's baseband
25 modem and software.

26 9. The restrictions in the MSA are designed to maintain the confidentiality of
27 Qualcomm's source code and related proprietary information. Upon information and belief, Apple
28 has violated the confidentiality and restricted use provisions of the MSA. For example, in July

1 2017, Apple requested that Qualcomm provide details about how Qualcomm's implementation of
2 a particular interprocessor communication was designed to meet a certain wireless carrier's
3 requirements. Qualcomm's proprietary implementation of this communication protocol is not
4 dictated by any standard and it contains Qualcomm's highly confidential trade secrets. Apple,
5 however, included in the "CC'd Persons" distribution list for this request an engineer from Intel (a
6 competitive vendor) and an Apple engineer working with that competitive vendor. In a separate
7 incident, Qualcomm received correspondence indicating that rather than preventing information
8 regarding Qualcomm's proprietary implementations from being shared with Apple engineers
9 working with competitive vendors, Apple appears to have merely redacted the code name that
10 Apple uses for Qualcomm on that correspondence. As another example, an Apple engineer
11 working on a competitive vendor's product asked an Apple engineer working on Qualcomm's
12 product to request assistance from Qualcomm relating to a downlink decoding summary for carrier
13 aggregation.

14 10. The MSA provides Qualcomm the right to, at least once per year and in Qualcomm's
15 sole discretion, audit Apple to ensure Apple's compliance with its obligations under the MSA. On
16 February 28, 2017, Qualcomm requested an audit under the MSA. To date, despite Qualcomm's
17 repeated requests, Apple has refused to permit Qualcomm to audit Apple's compliance with the
18 provisions of the MSA. Qualcomm seeks specific performance of Apple's obligations under the
19 MSA to provide sufficient information to Qualcomm to confirm that Apple has at all times
20 complied with its obligations related to Qualcomm's software. Qualcomm also seeks compensation
21 for Apple's breach of the MSA and its failure to adhere to the use restrictions placed on the
22 Qualcomm code by the MSA.

23 PARTIES

24 11. Qualcomm is a Delaware corporation with its principal place of business at 5775
25 Morehouse Drive, San Diego, California. Since 1989, when Qualcomm publicly introduced Code
26 Division Multiple Access ("CDMA") as a commercially successful digital cellular communications
27 standard, Qualcomm has been recognized as an industry leader and innovator in the field of mobile
28 devices and cellular communications. Qualcomm is a world leader in the sale of chips, chipsets,

1 and associated software for mobile phones and other wireless devices. It also derives revenues and
2 profits from licensing its intellectual property.

3 12. Apple is a corporation organized and existing under the laws of the State of
4 California, with its principal place of business at 1 Infinite Loop, Cupertino, California. Apple
5 maintains a retail store within the venue for the North County Division of San Diego Superior Court
6 at 1923 Calle Barcelona, Carlsbad, California 92009. Apple designs, manufactures, and sells
7 throughout the world a wide range of products, including mobile devices that incorporate
8 Qualcomm's software.

9 13. The true names and capacities of Defendant Does 1 through 25, whether individual,
10 corporate, associate, or otherwise, are unknown to Qualcomm. Therefore, Qualcomm sues the Doe
11 Defendants under fictitious names pursuant to California Code of Civil Procedure section 474.
12 When Qualcomm learns their true names and capacities, it will seek permission from this Court to
13 amend this Complaint to insert the true name and capacity of each fictitiously named Defendant.
14 Qualcomm alleges that each fictitiously named Defendant is legally responsible in some manner
15 for the occurrences alleged in this Complaint, and that each Defendant directly and proximately
16 caused Qualcomm's damages.

17 **JURISDICTION AND VENUE**

18 14. This Court has jurisdiction over the subject matter of this action pursuant to Cal.
19 Civ. Proc. Code § 410.10.

20 15. This Court has personal jurisdiction over Apple because it is organized and exists
21 under the laws of California.

22 16. Venue is proper in San Diego County pursuant to Cal. Civ. Proc. Code § 395 because
23 the MSA was entered into and negotiated, in part, in this County. Moreover, the MSA in a section
24 titled "JURISDICTION AND VENUE" provides that claims for breach of the MSA "shall be
25 adjudicated only by a court of competent jurisdiction in either the county of San Diego or the county
26 of Santa Clara, State of California, and each Party hereby consents to the personal jurisdiction of
27 such courts for that purpose." MSA, § 11.

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1 to the software. Upon information and belief, Apple has failed to comply with the use and access
2 restrictions set forth in the MSA, including but not limited to SECTION 3 (referenced above) and
3 Section 10 (*RESTRICTIONS ON DISCLOSURE AND USE*).

4 21. MSA § 3.5.4 provides a mechanism for Qualcomm to audit Apple's compliance
5 with these and other provisions. Specifically, it provides that "QUALCOMM shall have the right
6 to inspect LICENSEE's and LICENSEE's Affiliates' facilities, network connectivity and practices,
7 upon reasonable advanced notice and not more than one time per year. . . to verify LICENSEE's
8 compliance with these obligations [e.g., those of MSA § 3.5] and the obligations set forth in Section
9 3.1 (iv) and Section 3.3 (Additional Limitations on Restricted Software) above." Qualcomm's
10 contractual discretionary right to audit Apple at least once per year does not require any reason or
11 justification.

12 **Apple's Breach Of The MSA**

13 22. On February 28, 2017 Qualcomm requested an audit pursuant to the MSA, stating
14 that it would commence the audit beginning on March 20, 2017. Apple responded, claiming that
15 three weeks' notice was not "reasonable," and refusing to let the audit proceed on that date. Apple
16 also admitted that it had not maintained the list of Authorized Engineers who had accessed the
17 software, the purpose for such access and any actions taken as a result of such access, which Apple
18 was required to maintain under MSA § 3.3(d).

19 23. In subsequent correspondence, Apple provided some information requested by
20 Qualcomm, such as what Apple claimed to be a list of Authorized Engineers pursuant to MSA
21 § 3.3(d) and certain transactional records from Apple repositories hosting certain Qualcomm
22 software. The information provided by Apple was incomplete and insufficient for Qualcomm to
23 audit Apple's compliance or lack thereof with its obligations under the MSA, including but not
24 limited to the requirement that certain software "shall only be stored, viewed, and used by
25 Authorized Engineers on Restricted Computers in Authorized Locations[.]" MSA 3.3(a). Apple
26 has failed to provide additional information in response to Qualcomm's follow-up requests for
27 information that would allow Qualcomm to meaningfully exercise its audit rights.

24. In other respects, Apple flatly refused to permit Qualcomm to proceed with the audit. For example, Qualcomm requested to inspect “Restricted Computers, Approved Machines, and Authorized Locations.” Apple refused to permit this inspection, stating that doing so would be “unworkable.” Similarly, Qualcomm sought to audit Apple’s compliance with the MSA with respect to “additional debug messages and log packets” added by Apple pursuant to MSA § 3.3(b), but Apple has refused to permit that inspection.

25. Subsequent to Apple's refusal to permit audit and inspection under the MSA, Qualcomm became aware of a posting regarding Intel Corp. layoffs that appears to have been posted by a former modem design engineer, and which contains several statements of concern that on August 14, 2017 Qualcomm specifically requested Apple investigate. The post references a CNBC article reporting on the ITC action filed by Qualcomm against Apple and goes on to say: "We were told to ignore intellectual property rights when designing the modem. There was even a conspiracy to copy Qualcomm's technology by hints from Apple about the 'reference device'." This statement appears to be made by an Intel engineer working on the Apple (Intel branded) modem.

26. Qualcomm requested in writing that Apple investigate whether and to what extent any engineers working on the Intel branded modem for use in the Apple iPhone were provided Qualcomm intellectual property and/or confidential information in any form. Qualcomm also requested that Apple investigate whether and to what extent Qualcomm's modem hardware or software was ever referred to by Apple as the "reference device", or other similar descriptions in the context of modem design.

27. On August 24, 2017, Apple responded to Qualcomm’s request by refusing to conduct any investigation. Apple specifically responded as follows: “Apple does not plan to conduct an investigation [].”

FIRST CAUSE OF ACTION

(BREACH OF CONTRACT)

28. Qualcomm repeats and re-alleges the allegations of all of the above paragraphs as if fully set forth herein.

1 29. The MSA is a written, valid, enforceable, and binding agreement, supported by
2 adequate consideration, for the grant of a limited software license from Qualcomm to Apple. The
3 MSA was in effect at all relevant times, from September 20, 2010 through the present.

4 30. Qualcomm has performed all of its obligations under the MSA.

5 31. By its actions set forth herein, Apple breached its duties under the MSA. Those
6 breaches include, without limitation, Apple's refusal to permit Qualcomm to exercise its audit
7 rights under MSA § 3.5.4 and Apple's violation of the restrictions on disclosure and use under
8 Sections 3 and 10 of the MSA.

9 32. As the direct and proximate result of Apple's conduct, Qualcomm has suffered
10 significant damages in an amount to be proven at trial. Qualcomm is entitled to recover damages
11 flowing from Apple's breach of the MSA, and any other remedy available under law.

12 33. Qualcomm is also entitled to specific performance under the MSA, permitting
13 Qualcomm to proceed with the audit to which it is entitled pursuant to MSA § 3.5.4.

14 34. The language of the MSA is sufficiently definite for this Court to enforce.
15 Moreover, the specific performance requested by Qualcomm mirrors Apple's existing obligations
16 under the MSA.

17 35. Absent specific performance, Qualcomm will suffer substantial, irreparable, and
18 incalculable injury for which monetary damages will not provide adequate compensation. Without
19 enforcement of its audit rights, Qualcomm will be unable to monitor whether the confidentiality
20 and security of its software has been maintained by Apple in compliance with the MSA.
21 Qualcomm's audit rights under the MSA constitute a critical safeguard without which Qualcomm
22 would not have shared its highly confidential source code with Apple.

23 36. Indeed, in the MSA, Apple acknowledged that "any breach or threatened breach of
24 this Agreement relating to any Source Code provided hereunder would cause
25 QUALCOMM . . . irreparable harm for which money damages alone will not be an appropriate or
26 sufficient remedy." MSA § 3.4. Apple agreed that Qualcomm would be entitled to injunctive or
27 equitable relief to remedy any such breach, in addition to all other remedies. *Id.*

1 37. The MSA provides that the prevailing party in a proceeding to enforce the provisions
2 of the MSA shall be entitled to recover reasonable attorneys' fees. Qualcomm is therefore entitled
3 to recover its reasonable attorneys' fees incurred in connection with this lawsuit. MSA § 11.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Qualcomm respectfully requests that the Court enter judgment as follows:

- 6 (a) Declaring that Apple has breached the MSA;
7 (b) Awarding damages in an amount to be proven at trial;
8 (c) Ordering an award of reasonable attorneys' fees to Qualcomm;
9 (d) Awarding expenses, costs, and disbursements in this action, including prejudgment
10 interest;
11 (e) Ordering specific performance;
12 (f) Injunctive or equitable relief; and
13 (g) Awarding such other and further relief as the Court deems just and proper.

14 Dated: October 31, 2017

15 By: Randall E Kay
16 RANDALL E. KAY

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24 QUALCOMM INCORPORATED

25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
26 **SAN DIEGO COUNTY, NORTH COUNTY DIVISION**

27 QUALCOMM INCORPORATED,

CASE NO. 37-2017-00041389-CU-BC-NC

37-2017-00041389-CU-BC-NC

28 NAI-15031644881504654513v42

FIRST AMENDED COMPLAINT FOR BREACH OF CONTRACT
AND TRADE SECRET MISAPPROPRIATION

1 Plaintiff,
2 v.
3 APPLE INC., and DOES 1 through 25,
4 inclusive,
5 Defendants.

**FIRST AMENDED COMPLAINT FOR
BREACH OF CONTRACT AND
TRADE SECRET
MISAPPROPRIATION (CIVIL CODE
§ 3426, et seq.)**

[DEMAND FOR A JURY TRIAL]

Assigned for all purposes to
Hon. Jacqueline M. Stern

Trial Date: April 26, 2019
Action Filed: November 1, 2017

8
9
10 Plaintiff Qualcomm Incorporated ("Qualcomm"), by its undersigned attorneys, alleges,
11 with knowledge with respect to its own acts and on information and belief (including but not
12 limited to belief based on discovery taken to date in this action) as to other matters, as follows:

13 **NATURE OF THE ACTION**

14 1. This action arises from Defendant Apple Inc.'s ("Apple") ~~breach of~~ breaches of
15 certain contracts between Apple and Qualcomm, including a Master Software Agreement For
16 Limited Use entered into ~~between Apple and Qualcomm on~~ as of September 20, 2010, ~~as amended~~
17 ("MSA" or "Agreement"). and a Software Development Tools Limited Use Agreement entered
18 into as of May 12, 2009 ("Tools Agreement"), and Apple's misappropriation of Qualcomm's
19 trade secrets constituting protectable techniques, methods, processes, programs (including
20 software and source code) and compilations.¹

21 ~~2. Qualcomm is one of the world's leading technology companies and a pioneer in~~
22 ~~the mobile phone industry. Its inventions form the very core of mobile communications and~~
23 ~~enable modern consumer experiences on mobile devices and cellular networks.~~

24 2. Qualcomm's trade secrets are very valuable. For example, cell phones using
25 Qualcomm baseband modem chipsets and related software maintain better connectivity, drop
26 fewer calls, and transmit data faster. And Qualcomm's technology enables cell phones to

27
28 ¹ Because this complaint is being filed publicly, Qualcomm cannot include the particulars
of its trade secrets in the complaint itself.

1 optimize power consumption, resulting in extended battery life and enhanced user experience.
2 These qualities are highly valued by consumers and cell phone manufacturers alike. Qualcomm
3 invested enormous resources in the development of this technology, and goes to great lengths to
4 protect the secrecy of the information.

5 3. Apple has engaged in a years-long campaign of false promises, stealth, and
6 subterfuge designed to steal Qualcomm's confidential information and trade secrets for the
7 purpose of improving the performance and accelerating time to market of lower-quality modem
8 chipsets, including those developed by Intel Corporation ("Intel"), a competitor of Qualcomm, to
9 render such chipsets useable in Apple iPhones and other devices, with the ultimate goal of
10 diverting Qualcomm's Apple-based business to Intel. Apple has wrongfully acquired, failed to
11 protect, wrongfully used, wrongfully disclosed, and outright stolen Qualcomm's confidential
12 information and trade secrets, and Apple used that stolen technology to divert Qualcomm's
13 Apple-based business to Intel.

14 4. Through this action, Qualcomm seeks to protect and promote honest investment in
15 breakthrough innovation. Apple entered into its contractual relationship with Qualcomm
16 understanding that it was gaining access to the world's best communications technology, and
17 promising to guard the secrecy of that technology with extreme care. Apple therefore agreed to
18 strict limitations regarding how it could use Qualcomm's technology and information. As
19 explained in greater detail below, Apple repeatedly ignored those restrictions, using and sharing
20 Qualcomm's trade secrets in ways that Apple knew very well were improper. Indeed, the scale
21 and brazenness of Apple's misappropriation demonstrates that it never intended to keep the
22 promises it made in its agreements with Qualcomm, but rather planned all along to misuse and
23 transfer Qualcomm's technology in ways Apple thought would not be detected.

24 PARTIES

25 ~~3.~~ 5. Qualcomm is a Delaware corporation with its principal place of business at
26 5775 Morehouse Drive, San Diego, California. Qualcomm is one of the world's leading
27 technology companies and a pioneer in the mobile phone industry. Its inventions form the very
28

1 core of mobile communications and enable modern consumer experiences on mobile devices and
2 cellular networks. Since its founding in 1985, Qualcomm has been designing, developing, and
3 improving mobile communication devices, systems, networks, and products. It has invented
4 technologies that transform how the world communicates. Qualcomm developed fundamental
5 technologies at the heart of 2G, 3G, and 4G cellular communications, is leading the industry to
6 5G cellular communications, and has developed numerous innovative features used in virtually
7 every modern cell phone.

8 Since 4. ~~Apple is the world's most profitable seller of mobile devices, and has~~
9 ~~enormous commercial leverage over its suppliers, including Qualcomm. Apple manufactures and~~
10 ~~markets phones, including phones that utilize Qualcomm's baseband modem chips, which~~
11 ~~process received voice and data information and prepare the same for transmission.~~

12 ~~5.~~ ~~During negotiations with Qualcomm, Apple exercised its commercial leverage and~~
13 ~~demanding unprecedented access to Qualcomm's very valuable and highly confidential software,~~
14 ~~including source code. Pursuant to the MSA, Qualcomm has provided Apple with a limited~~
15 ~~license that grants restricted access to large portions of that Qualcomm software and source code~~
16 ~~because Apple said that it needed this access to customize the code for Apple's own devices.~~
17 ~~Upon information and belief, Apple has failed to comply with the restrictions on access and use~~
18 ~~that Qualcomm required in exchange for Apple's unprecedented access to software and source~~
19 ~~code.~~

20 ~~6.~~ ~~Apple agreed, as a condition of Qualcomm providing the above-described~~
21 ~~software to Apple under the MSA, to take a number of steps to maintain the confidentiality and~~
22 ~~security of Qualcomm's software. The MSA provides Qualcomm broad audit and inspection~~
23 ~~rights in order to provide Qualcomm the ability, among other things, to confirm that Apple has at~~
24 ~~all times complied with its obligation to handle such software per the terms of the MSA including~~
25 ~~the obligation that such software "shall only be stored, viewed, and used by Authorized Engineers~~
26 ~~on Restricted Computers in Authorized Locations[.]" For example, only Apple engineers who~~
27 ~~have a need to access certain source code and have signed a written agreement to abide by the~~

1 terms of the MSA can have access to such source code. Similarly, the MSA obligates Apple to
2 maintain information as to which Apple engineers are accessing such software and what actions
3 the engineers take with that access. Furthermore, Apple's engineers with access to certain of
4 Qualcomm's software may only do so through specific designated computers that restrict access
5 to such software only to those authorized engineers. And those computers storing such
6 Qualcomm software may only be housed in specific designated locations.

7 7. The MSA also contains restrictions on Apple engineers working on certain non-
8 Qualcomm baseband modem chipsets and related software solutions during (and after) the time
9 period those Apple engineers have access to certain Qualcomm software. One of the primary
10 purposes of the confidentiality and use restrictions of the MSA (and the concomitant compliance
11 audit rights) is to prevent Apple (and any Qualcomm competitor working with Apple) from
12 unlawfully and inappropriately using Qualcomm's software.

13 8. Several years after the MSA was first executed by Apple and Qualcomm, Apple
14 began to work with Intel to design and develop a baseband modem chipset solution for Apple's
15 iPhone. Beginning in 2017, Apple began selling iPhones using a competitive baseband modem
16 and associated software designed by Apple and/or Intel in competition with Qualcomm's
17 baseband modem and software.

18 9. The restrictions in the MSA are designed to maintain the confidentiality of
19 Qualcomm's source code and related proprietary information. Upon information and belief,
20 Apple has violated the confidentiality and restricted use provisions of the MSA. For example, in
21 July 2017, Apple requested that Qualcomm provide details about how Qualcomm's
22 implementation of a particular interprocessor communication was designed to meet a certain
23 wireless carrier's requirements. Qualcomm's proprietary implementation of this communication
24 protocol is not dictated by any standard and it contains Qualcomm's highly confidential trade
25 secrets. Apple, however, included in the "CC'd Persons" distribution list for this request an
26 engineer from Intel (a competitive vendor) and an Apple engineer working with that competitive
27 vendor. In a separate incident, Qualcomm received correspondence indicating that rather than
28

1 preventing information regarding Qualcomm's proprietary implementations from being shared
2 with Apple engineers working with competitive vendors, Apple appears to have merely redacted
3 the code name that Apple uses for Qualcomm on that correspondence. As another example, an
4 Apple engineer working on a competitive vendor's product asked an Apple engineer working on
5 Qualcomm's product to request assistance from Qualcomm relating to a downlink decoding
6 summary for carrier aggregation.

7 10. The MSA provides Qualcomm the right to, at least once per year and in
8 Qualcomm's sole discretion, audit Apple to ensure Apple's compliance with its obligations under
9 the MSA. On February 28, 2017, Qualcomm requested an audit under the MSA. To date, despite
10 Qualcomm's repeated requests, Apple has refused to permit Qualcomm to audit Apple's
11 compliance with the provisions of the MSA. Qualcomm seeks specific performance of Apple's
12 obligations under the MSA to provide sufficient information to Qualcomm to confirm that Apple
13 has at all times complied with its obligations related to Qualcomm's software. Qualcomm also
14 seeks compensation for Apple's breach of the MSA and its failure to adhere to the use restrictions
15 placed on the Qualcomm code by the MSA.

16 PARTIES

17 11. Qualcomm is a Delaware corporation with its principal place of business at 5775
18 Morehouse Drive, San Diego, California. Since 1989, when Qualcomm publicly introduced Code
19 Division Multiple Access ("CDMA") as a commercially successful digital cellular
20 communications standard, Qualcomm has been recognized as an industry leader and innovator in
21 the field of mobile devices and cellular communications. Qualcomm is a world leader in the sale
22 of chips, chipsets, and associated software for mobile phones and other wireless devices. It also
23 derives revenues and profits from licensing its intellectual property.

24 126. Apple is a corporation organized and existing under the laws of the State of
25 California, with its principal place of business at 1 Infinite Loop, Cupertino, California. Apple
26 maintains a retail store within the venue for the North County Division of the San Diego Superior
27 Court, at 1923 Calle Barcelona, Carlsbad, California-92009. Apple designs, manufactures, and
28

1 sells throughout the world a wide range of products, including mobile devices that incorporate
2 ~~Qualcomm's software.~~ Qualcomm chipsets, software, and technology. Apple is now the world's
3 most profitable seller of mobile devices, and has enormous commercial leverage over its
4 suppliers, including Qualcomm. Apple designs, develops, and markets, among other things,
5 iPhones and other devices, including those that utilize Qualcomm's baseband modem chipsets
6 and software, which process received voice and data information and prepare the same for
7 transmission. Apple was entrusted with unprecedented access to Qualcomm's very valuable and
8 highly confidential software, including source code, and development tools.

9 ~~137.~~ The true names and capacities of ~~Defendant~~defendant Does 1 through 25, whether
10 individual, corporate, associate, or otherwise, are presently unknown to Qualcomm. Therefore,
11 Qualcomm sues the Doe ~~Defendants~~defendants under fictitious names pursuant to ~~California~~
12 Code of Civil Procedure section 474. When Qualcomm learns their true names and capacities, it
13 will seek permission from ~~this~~the Court to amend this ~~Complaint~~complaint to insert the true name
14 and capacity of each fictitiously named ~~Defendant~~defendant. Qualcomm alleges that each
15 fictitiously named ~~Defendant~~defendant acted in concert and is legally responsible in some manner
16 for the occurrences alleged in this ~~Complaint~~complaint, and that each ~~Defendant~~defendant
17 directly and proximately caused Qualcomm's damages.

18 JURISDICTION AND VENUE

19 ~~148.~~ This Court has jurisdiction over the subject matter of this action pursuant to ~~Cal.~~
20 ~~Civ. Proc.~~ Code ~~§~~of Civil Procedure section 410.10.

21 ~~159.~~ This Court has personal jurisdiction over Apple because it is organized and exists
22 under the laws of California, and its principal place of business is located in California. In its
23 answer in this action, Apple admits that this Court has personal jurisdiction over Apple.
24 Defendant Apple Inc.'s Answer and Defenses, filed Dec. 19, 2017 (Apple's "Answer"), ¶ 15. In
25 addition, Apple expressly consented to personal jurisdiction in San Diego County pursuant to the
26 MSA and Tools Agreement, respectively. MSA § 11; Tools Agreement § 10. Further, on
27 information and belief, Apple's contract breaches and trade secret misappropriation described
28 herein took place in San Diego County, among other places.

1 ~~16~~10. Venue is proper in San Diego County pursuant to ~~Cal. Civ. Proc.~~ Code ~~§~~of Civil
2 Procedure section 395 because the MSA was entered into and negotiated, in part, in this County.
3 In its answer in this action, Apple “admits that venue is proper in San Diego County.” Apple’s
4 Answer ¶ 16. Moreover, the MSA ~~in a section titled “JURISDICTION AND VENUE”~~ provides
5 that claims for breach of the MSA “shall be adjudicated only by a court of competent jurisdiction
6 in either the county of San Diego or the county of Santa Clara, State of California, and each Party
7 hereby consents to the personal jurisdiction of such courts for that purpose.” MSA, § 11. And
8 the Tools Agreement provides that claims for breach of the Tools Agreement “shall be
9 adjudicated only by a court of competent jurisdiction in the county of San Diego, State of
10 California....” Tools Agreement § 10.

11 STATEMENT OF FACTS

12 11. Apple has incorporated Qualcomm baseband modem chipsets and software in
13 iPhones and other devices since 2011, beginning with the launch of the so-called Verizon
14 iPhone 4. Before that, Apple used Intel baseband modem chips in iPhones.² Qualcomm also
15 supplied Apple with unprecedented access to Qualcomm’s highly confidential and proprietary
16 software, including virtually all source code for Qualcomm’s cutting-edge cellular modem
17 technology, for use in iPhones containing Qualcomm’s chipsets that implement much of the
18 functionality that allows mobile devices like cell phones to communicate. The software,
19 including source code, constitutes classic trade secret information. Apple has demanded the
20 ability to modify Qualcomm’s software, including source code, to allow Apple to create what it
21 calls an “integrated design” that allows Qualcomm chipsets to work with Apple’s system.
22 Qualcomm and Apple therefore entered into a number of agreements over a number of years
23 governing and strictly limiting Apple’s access to, and use and disclosure of, Qualcomm’s
24 software, including source code, including but not limited to those agreements described below.

25 12. In 2016, Apple resumed using Intel chipsets in certain iPhone models while
26 continuing to use Qualcomm chipsets in other models. Independent analysis concluded that

27 ² At the time, Apple used baseband modem chips manufactured by Infineon Technologies.
28 Infineon was later acquired by Intel.

Qualcomm's chipset solutions performed demonstrably and substantially better than their Intel counterparts: "In all tests, the iPhone 7 Plus with the Qualcomm modem had a significant performance edge over the iPhone 7 Plus with the Intel modem." See *iPhone 7 Plus: A Tale of Two Personalities*, Cellular Insights (Oct. 20, 2016), www.cellularinsights.com/iphone7/. These facts were widely reported: "According to a new study by Cellular Insights, the Qualcomm iPhone 7 and iPhone 7 Plus units – that's the Verizon, Sprint and factory-unlocked models – have more than 30 percent better performance in weak signal conditions than the AT&T and T-Mobile models, which have Intel modems." See, e.g., Sascha Segan, *Study: Weak Signals Crush Intel iPhones*, PC Magazine (Oct. 20, 2016, 12:23 PM), www.pcmag.com/news/348886/study-weak-signals-crush-intel-iphones.

13. In light of this performance disparity, some questioned why Apple would use Intel chipsets at all:

If this makes you ask the question of why Apple decided to go with an inferior Intel modem in the first place, you're not alone. Apple isn't saying. But as I've spoken to independent analysts, a picture becomes clear. Qualcomm is the leader in LTE, and Apple has been using their modems since the iPhone 4s generation. But Qualcomm tends to drive hard bargains. Intel hasn't had a big modem win with its XMM7360 devices before, so the company may have been an easier partner for Apple to deal with.

The MSA*Id.*

14. On information and belief, Apple long ago devised a plan to improve the performance of non-Qualcomm chipset solutions, including Intel's, by stealing Qualcomm's technology and using it to establish a second source of chipsets in order to pressure Qualcomm in business negotiations over chipset supply and pricing, and ultimately to divert Qualcomm's Apple-based business to Intel, from which Apple could extract more favorable terms. Apple's illegal conduct was calculated and pervasive, particularly among its engineers working with

1 Qualcomm and Intel chipsets. An internet posting regarding Intel layoffs, which appears to have
2 been made by a former Intel engineer working on an Intel modem chipset, stated, “We were told
3 to ignore intellectual property rights when designing the modem. There was even a conspiracy to
4 copy Qualcomm’s technology by hints from Apple about the ‘reference device.’”

5 15. Over time, publicly reported testing indicated that Apple’s plan was coming
6 together. “Compared to last year’s tests, while Intel’s modem hasn’t caught up to Qualcomm’s,
7 there’s a considerably smaller difference between the two.” Sascha Segan, *Exclusive:*
8 *Qualcomm’s iPhone X Still Outpaces Intel’s*, PC Magazine (Dec. 1, 2017, 9:00 AM),
9 www.pcmag.com/news/357671/exclusive-qualcomms-iphone-x-still-outpaces-intels. Ultimately,
10 Apple used the stolen Qualcomm technology and trade secrets to divert some of its business away
11 from Qualcomm and instead to Intel.

12 16. Apple’s conduct as alleged herein breached multiple agreements with Qualcomm,
13 including but not limited to those described below. In addition, Apple misappropriated
14 Qualcomm’s trade secrets, as alleged herein. Qualcomm now seeks court intervention to enjoin
15 Apple’s ongoing, irreparable harm to Qualcomm, and to make Qualcomm whole for the damage
16 caused by Apple’s brazen and unlawful conduct.

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1 19. The MSA refers to one category of software licensed under the MSA as
2 “Restricted Software.” ~~“MSA § 1. Restricted Software”~~ refers to software delivered to Apple in
3 source code ~~format~~form and identified in a “Software Addendum” as Restricted Software. ~~MSA,~~
4 ~~§ 1, or otherwise made available to Apple via Qualcomm’s “HY31 source directory.”~~ *See id.*
5 Qualcomm and Apple entered into Software Addenda for each ~~model of Qualcomm ASIC for~~
6 ~~which Qualcomm provides software to Apple.~~ *Id.* Qualcomm software platform that Qualcomm
7 licensed to Apple. In its answer in this action, Apple “admits that Apple and Qualcomm have
8 executed software addenda to the MSA....” Apple’s Answer ¶ 19.

9 20. The MSA requires that Apple take several ~~measures to~~steps to ensure and maintain
10 the security and confidentiality of ~~certain~~ Qualcomm software, including source code. For
11 ~~instance~~example, MSA § 3.1(iv) requires that Apple use the same security infrastructure to
12 protect compiled copies of Qualcomm’s software that Apple uses for its own iOS software when
13 it distributes software to its customers. ~~As another example, MSA §~~ MSA § 3.2 prohibits Apple
14 from “sublicens[ing], transfer[ring], or otherwise disclos[ing] the Software in Source Code form
15 to any third party (other than Authorized Purchasers, Affiliates or subcontractors . . . in
16 accordance with and subject to Section 10 (Restrictions on Disclosure and Use) below).” MSA §
17 3.3(a) requires that certain software be stored, viewed, and used only on “Restricted Computers”
18 in “Authorized Locations,” as ~~those terms are defined in MSA § 3.3.~~ MSA § 3.3(d) requires that
19 Apple “maintain a list of the names of the Authorized Engineers who have accessed ~~[certain]~~the
20 Restricted Software, the purpose for such access and any actions taken as a result of such access,
21 and such information shall be provided to QUALCOMM upon request.” MSA § 3.5.1 sets forth
22 the requirements for storing and accessing the software, while ~~MSA~~ § 3.5.2 requires that Apple
23 maintain and periodically review certain information, such as password logs showing access to
24 the software. ~~Upon information and belief, Apple has failed to comply with the use and access~~
25 ~~restrictions set forth in the MSA, including but not limited to SECTION 3 (referenced above) and~~
26 ~~Section 10 (RESTRICTIONS ON DISCLOSURE AND USE).~~ By way of MSA § 3.5.3, Apple
27 represents and warrants that it “has adequate security measures in place to comply with” the
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1 obligations of the MSA and to ensure that access to Qualcomm's confidential information and
2 trade secrets is appropriately protected under the terms of the MSA.

3 21. MSA § 3.5.4 ~~provides a mechanism for~~allows Qualcomm to audit Apple's
4 compliance with these and other provisions. Specifically, it provides that "QUALCOMM shall
5 have the right to inspect ~~LICENSEE's and LICENSEE's~~[Apple's] and [Apple's] Affiliates'
6 facilities, network connectivity and practices, upon reasonable advanced notice and not more than
7 one time per year. . . to verify ~~LICENSEE's~~[Apple's] compliance with these obligations [e.g.,
8 those of MSA § 3.5] and the obligations set forth in Section 3.1(iv) and Section 3.3 (Additional
9 Limitations on Restricted Software) above." Id. Qualcomm's contractual ~~discretionary~~right to
10 audit Apple ~~at least once~~ per year does not require Qualcomm to provide any reason or
11 justification: for exercising such right. Id.

12 ~~Apple's Breach Of The MSA~~

13 22. The broad audit and inspection rights granted by the MSA provide Qualcomm the
14 authorization and ability to, among other things, investigate whether Apple has at all times
15 complied with its obligations to handle Qualcomm software, including source code, in
16 accordance with the terms of the MSA, including the obligation that certain software "shall only
17 be stored, viewed, and used by Authorized Engineers on Restricted Computers located in
18 Authorized Locations[.]" See MSA §§ 3.3(a), 3.5.4. For example, only Apple engineers who
19 have a need to access certain source code and have signed a written agreement to comply with the
20 terms and conditions of Section 3 of the MSA may be given access to such code. MSA § 3.3(i).
21 Similarly, the MSA obligates Apple to maintain a list identifying the Apple engineers who have
22 accessed such software, the purpose of such access, and any actions taken as a result of that
23 access. MSA § 3.3(d). Further, Apple engineers with access to certain Qualcomm software may
24 only utilize such access through specific, designated computers that restrict access only to those
25 authorized engineers. MSA § 3.3(a). And those computers storing such Qualcomm software
26 may only be housed in specific, designated locations. Id. The MSA also imposes certain
27 restrictions on Apple engineers developing software for use with certain non-Qualcomm chipsets
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1 during (and after) the time those engineers have access to certain Qualcomm software. MSA §
2 3.3(i). One of the primary purposes of the MSA's confidentiality and use restrictions (and the
3 concomitant audit provisions aimed at verifying Apple's compliance) is to prevent Apple (and
4 any companies working with Apple, like Intel) from inappropriately or unlawfully accessing,
5 using, or appropriating the benefits of Qualcomm's software, including source code.

6 23. In addition, the MSA provides that all software, including source code, provided
7 by Qualcomm to Apple pursuant to the MSA is also subject to strict and express non-disclosure
8 terms and conditions, MSA § 10, without which "QUALCOMM would not have entered into [the
9 MSA.]" MSA § 13. The MSA further provides that Apple may use Qualcomm's confidential
10 information "only for the purposes contemplated under this Agreement" and that "QUALCOMM
11 hereby consents to [Apple's] disclosure of information (including Software) to [Apple's]
12 Affiliates, solely for purposes of ... its development of [products containing Qualcomm chipsets]
13" MSA § 10.

14 24. Software, including source code, provided by Qualcomm to Apple pursuant to the
15 MSA since 2010 constitutes Qualcomm trade secrets because it derives independent economic
16 value, actual or potential, from not being generally known to the public or to other persons who
17 can obtain economic value from its disclosure or use, and because it is the subject of reasonable
18 efforts under the circumstances to maintain its secrecy, as exemplified by the provisions of the
19 MSA.

20 **B. Tools Agreement**

21 25. In 2009, Apple demanded that Qualcomm provide Apple with certain Qualcomm
22 software development tools to enable Apple to test and integrate certain Qualcomm technology in
23 Apple devices, including iPhones. Qualcomm agreed to do so, conditioned on and subject to the
24 restrictions set forth in the Tools Agreement. Apple and Qualcomm entered into the Tools
25 Agreement as of May 12, 2009.

26 26. The Tools Agreement governs and limits Apple's use of specified software
27 development tools since 2009, pursuant to a limited license granted to Apple by Qualcomm. The
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Qualcomm software development tools provided under the Tools Agreement may be used by Apple “solely for testing and integrating” for customers of Qualcomm that develop, manufacture, and/or sell embedded modules that incorporate Qualcomm chipsets. Tools Agreement §§ 1, 3. The Tools Agreement specifies that Apple has “no right to alter, modify, translate or adapt” the software development tools, that Apple shall not “sublicense, transfer or otherwise provide” those tools “to any third party,” and that Apple shall not use the software development tools “for any other purpose” except as expressly permitted by the Tools Agreement. Tools Agreement § 3.

27. Further, the parties agreed, and Apple acknowledged, that Qualcomm’s software development tools provided to Apple under the Tools Agreement “and all other information relating to the design, configuration, use, installation and operation relating thereto constitute confidential or proprietary information of QUALCOMM,” and that Apple shall not use or disclose to any third party Qualcomm’s confidential or proprietary information except as permitted in the Tools Agreement. Tools Agreement § 8.

28. The software development tools constitute Qualcomm trade secrets because they derive independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from their disclosure or use, and because they are the subject of reasonable efforts under the circumstances to maintain their secrecy, as exemplified by the terms of the Tools Agreement.

C. Apple’s Theft of Qualcomm Technology

29. Discovery to date in this action indicates that Apple’s theft of Qualcomm’s protected information extends far beyond the breach of the MSA that led to the filing of this lawsuit. On information and belief, Apple developed and carried out an intricate plan, beginning at least several years ago and continuing through the present, to steal vast swaths of Qualcomm’s confidential information and trade secrets and to use the information and technology to improve the performance of non-Qualcomm chipset solutions and, in conjunction, the performance of iPhones based on such non-Qualcomm chipset solutions.

1 30. For example, on information and belief, Apple engineers working to incorporate
2 Intel chipsets into Apple devices (whose access to Qualcomm trade secrets or confidential
3 information in the first instance breached the MSA), after becoming aware of certain performance
4 deficiencies with Intel's chipset solutions, repeatedly accessed, used, and provided to Intel
5 engineers Qualcomm software and confidential information, including source code, for the
6 purpose of improving the performance of Intel's chipset solutions. On information and belief,
7 this unauthorized access, use, and disclosure was independently initiated by Apple on some
8 occasions and affirmatively requested by Intel on others, beginning at least several years ago and
9 continuing through the present. Further, Apple engineers repeatedly used Qualcomm's software
10 development tools and related highly confidential files to open and process Qualcomm log files to
11 provide to Intel, again for the purpose of improving Intel's chipset solutions. Intel engineers even
12 complained to Apple engineers about being unable to open Qualcomm log files, which Apple had
13 provided to Intel, for lack of the appropriate Qualcomm tools. In response, Apple engineers
14 routinely used Qualcomm tools to create post-processed log files, which they then sent to Intel
15 engineers to use in improving Intel's chipset solutions.

16 31. On information and belief, Apple's covert misappropriation of Qualcomm's trade
17 secrets and other protected information succeeded in improving the relative performance of
18 Intel's chipset solutions. "Compared to last year's tests, while Intel's modem hasn't caught up to
19 Qualcomm's, there's a considerably smaller difference between the two." Sascha Segan,
20 Exclusive: Qualcomm's iPhone X Still Outpaces Intel's, PC Magazine (Dec. 1, 2017, 9:00 AM),
21 www.pcmag.com/news/357671/exclusive-qualcomms-iphone-x-still-outpaces-intels. In fact, it
22 apparently improved Intel chipsets to the point where Apple decided to divert some of
23 Qualcomm's Apple-based business to Intel. On information and belief, Apple created and
24 executed this scheme in part to reduce its cost of goods and increase its commercial leverage over
25 Qualcomm, but at the cost to Qualcomm of its valuable trade secrets and Apple-based business.

1 **D. Apple's Refusal to Honor the Audit Provisions of the MSA**

2 ~~2232.~~ In furtherance of this scheme, and in an effort to prevent Qualcomm from
3 discovering Apple's theft and misuse of Qualcomm's confidential information and trade secrets,
4 Apple refused to allow Qualcomm to audit Apple's compliance with the MSA, as is Qualcomm's
5 right under the MSA. On February 28, 2017, Qualcomm requested an audit pursuant to the MSA,
6 stating ~~that it would~~ wished to commence the audit ~~beginning~~ on March 20, 2017. Apple
7 responded, claiming ~~that~~ three weeks' notice was not "reasonable," and refusing to let the audit
8 proceed on that date. Apple also admitted that it had not maintained ~~the~~ a list of Authorized
9 Engineers who ~~had~~ accessed ~~the~~ Qualcomm's software, the purpose for such access, and any
10 actions taken as a result of such access, ~~which Apple was required to maintain under~~ in violation
11 of MSA § 3.3(d).

12 ~~2333.~~ In subsequent correspondence, Apple provided some information requested by
13 Qualcomm, such as what Apple claimed to be a list of Authorized Engineers pursuant to MSA
14 § 3.3(d), and certain transactional records from Apple repositories hosting certain Qualcomm
15 software. The information provided by Apple, however, was incomplete and insufficient for
16 Qualcomm to audit Apple's compliance ~~or lack thereof~~ with its obligations under the MSA,
17 including but not limited to the ~~requirement~~ obligation to ensure that certain software "shall only
18 be stored, viewed, and used by Authorized Engineers on Restricted Computers in Authorized
19 Locations[.]" See MSA § 3.3(a). Apple ~~has~~ failed to provide additional information in response
20 to Qualcomm's follow-up requests ~~for information~~ that would allow Qualcomm to ~~meaningfully~~
21 exercise meaningfully its audit rights.

22 ~~2434.~~ In other ~~respects~~ ways, Apple flatly refused to permit Qualcomm to proceed with
23 the audit. For example, Qualcomm requested to inspect "Restricted Computers, Approved
24 Machines, and Authorized Locations." Apple refused to permit ~~this~~ the inspection, ~~stating that~~
25 ~~doing so~~ claiming it would be "unworkable." Similarly, Qualcomm sought to audit Apple's
26 compliance with ~~the MSA with~~ respect to "additional debug messages and log packets" added by
27 Apple pursuant to MSA § 3.3(b), but Apple ~~has~~ also refused to permit that inspection.

25. ~~Subsequent to Apple's refusal to permit audit and inspection under the MSA, Qualcomm became aware of a posting regarding Intel Corp. layoffs that appears to have been posted by a former modem design engineer, and which contains several statements of concern that on August 14, 2017 Qualcomm specifically requested Apple investigate. The post references a CNBC article reporting on the ITC action filed by Qualcomm against Apple and goes on to say: "We were told to ignore intellectual property rights when designing the modem. There was even a conspiracy to copy Qualcomm's technology by hints from Apple about the 'reference device'." This statement appears to be made by an Intel engineer working on the Apple (Intel branded) modem.~~

2635. When Qualcomm became aware of the Intel layoff posting, see supra, Qualcomm specifically requested, in writing, on August 14, 2017, that Apple investigate whether and to what extent any Apple engineers working on the Intel branded modem chipsets for use in the Apple iPhone iPhones were provided Qualcomm intellectual property and/or confidential information in any form. Qualcomm also requested that Apple investigate whether and to what extent Qualcomm's modem hardware or software was ever-referred to by Apple as thea "reference device"; or other similar descriptions in the context of modem design.

27. ~~On August 24, 2017, Apple responded to Qualcomm's request by refusing to conduct any investigation. Apple specifically responded as follows: "Applethat it "does not plan to conduct an investigation-[]."~~

36. To date, despite Qualcomm's repeated requests, Apple has refused to permit Qualcomm to complete an audit of Apple's compliance with the terms and conditions of the MSA.

FIRST CAUSE OF ACTION

(BREACH OF CONTRACT)

(MSA; TOOLS AGREEMENT)

2837. Qualcomm repeats and re-alleges the allegations of all of the above paragraphs as if fully set forth herein.

1 2938. The MSA is a written, valid, enforceable, and binding agreement between
2 Qualcomm and Apple, supported by adequate consideration, for the grant of a limited software
3 license from Qualcomm to Apple. The MSA is and was in effect at all relevant times, from
4 September 20, 2010, through the present.

5 39. The Tools Agreement is a written, valid, enforceable, and binding agreement
6 between Qualcomm and Apple, supported by adequate consideration, for the delivery of certain
7 software development tools and the grant of a limited license from Qualcomm to Apple. The
8 Tools Agreement is and was in effect at all relevant times, from May 12, 2009, through the
9 present.

10 3040. Qualcomm ~~has~~ performed all of its obligations under the MSA and Tools
11 Agreement, respectively.

12 31. ~~By its actions set forth herein, Apple breached its duties under the MSA. Those~~
13 ~~breaches include, without limitation, Apple's refusal to permit Qualcomm to exercise its audit~~
14 ~~rights under MSA § 3.5.4 and Apple's violation of the restrictions on disclosure and use under~~
15 ~~Sections 3 and 10 of the MSA.~~

16 41. As set forth above, on information and belief, Apple materially breached the MSA
17 and Tools Agreement, respectively, in numerous ways and at numerous times, beginning at least
18 several years ago and continuing through the present. By way of example and without limitation,
19 Apple's conduct as alleged herein constitutes breaches of sections 3.1, 3.2, 3.3, 3.5.1, 3.5.2, 3.5.3,
20 3.5.4, 6, and 10 of the MSA, and sections 3 and 8 of the Tools Agreement. Qualcomm learned of
21 such breaches, beyond those alleged in the original complaint in this action, in 2018, through
22 discovery in this action.

23 3242. As ~~the~~ direct and proximate result of Apple's ~~conduct~~ breaches of the MSA and
24 Tools Agreement, respectively, Qualcomm ~~has~~ suffered significant damages in an amount to be
25 proven at trial. Qualcomm is entitled to recover damages flowing from Apple's ~~breach of the~~
26 ~~MSA, breaches~~ and any other ~~remedy~~ available under law remedies, including those below.

1 43. The MSA provides that the prevailing party in any proceeding to enforce the terms
2 of the MSA shall be entitled to recover reasonable attorneys' fees. MSA § 11. Qualcomm is
3 therefore entitled to recover its reasonable attorneys' fees incurred in connection with this
4 lawsuit. See id.

5 44. The Tools Agreement provides that the prevailing party in any proceeding to
6 enforce the terms of the Tools Agreement shall be entitled to recover reasonable attorneys' fees.
7 Tools Agreement § 10. Qualcomm is therefore entitled to recover its reasonable attorneys' fees
8 incurred in connection with this lawsuit. See id.

9 ~~33~~45. Qualcomm is also entitled to specific performance under the MSA, permitting
10 Qualcomm to ~~proceed with~~complete the audit to which it is entitled pursuant to MSA § 3.5.4.

11 ~~34.~~ The language of the MSA is sufficiently definite for ~~this~~the Court to enforce, and
12 the contract, including the audit provision, is just and reasonable. Moreover, the specific
13 performance requested by Qualcomm mirrors Apple's existing obligations under the MSA.

14 ~~35~~46. Absent specific performance, Qualcomm will suffer substantial, irreparable, and
15 incalculable injury for which monetary damages will not provide adequate compensation.
16 ~~Without~~For example, without enforcement of its audit rights, Qualcomm will be unable to
17 monitor whether the confidentiality and security of its software, including source code, has been
18 maintained by Apple in compliance with the MSA. Likewise, Qualcomm will be unable to
19 determine the scope of any breach in order to take corrective action. Qualcomm's audit rights
20 under the MSA constitute a critical and material safeguard without which Qualcomm would not
21 have shared its highly confidential and trade secret software, including source code, with Apple.

22 ~~36~~47. ~~Indeed, in the MSA,~~Qualcomm is entitled to injunctive relief under the MSA. The
23 parties agreed, and Apple acknowledged, that "any breach or threatened breach of this Agreement
24 relating to any Source Code provided hereunder would cause QUALCOMM . . . irreparable harm
25 for which money damages alone will not be an appropriate or sufficient remedy." MSA § 3.4.
26 Apple agreed that Qualcomm ~~would be~~is entitled to injunctive or other equitable relief to remedy
27 any such breach, in addition to all other remedies. *Id.*

1 37. ~~The MSA provides that the prevailing party in a proceeding to enforce the~~
2 ~~provisions of the MSA shall be entitled to recover reasonable attorneys' fees. Qualcomm is~~
3 ~~therefore entitled to recover its reasonable attorneys' fees incurred in connection with this~~
4 ~~lawsuit. MSA § 11.~~

5 SECOND CAUSE OF ACTION

6 (TRADE SECRET MISAPPROPRIATION (CUTSA))

7 48. Qualcomm repeats and re-alleges the allegations of all of the above paragraphs as
8 if fully set forth herein.

9 49. At all relevant times, Qualcomm has owned and is the valid owner of the trade
10 secrets alleged herein constituting protectable techniques, methods, processes, programs
11 (including software and source code) and compilations for wireless telecommunications and
12 features including, but not limited to, GPS and location services. Qualcomm will provide further
13 identification of its trade secrets under the Court Protective Order. These trade secrets constitute
14 some of Qualcomm's most important and sensitive assets. Qualcomm derives significant and
15 independent economic value, actual or potential, from keeping these trade secrets confidential
16 and not generally known to the public or to other persons who can obtain economic value from
17 their disclosure or use. Moreover, these trade secrets provide a competitive advantage for
18 Qualcomm's chipset solutions over those of its rivals, including Intel. For example, these trade
19 secrets enable Qualcomm to make demonstrably superior – and thus more valuable – software for
20 use with its chipsets. See, e.g., Sascha Segan, *Study: Weak Signals Crush Intel iPhones*, PC
21 Magazine (Oct. 20, 2016, 12:23 PM), [www.pcmag.com/news/348886/study-weak-signals-crush-](http://www.pcmag.com/news/348886/study-weak-signals-crush-intel-iphones)
22 [intel-iphones](http://www.pcmag.com/news/348886/study-weak-signals-crush-intel-iphones).

23 50. Qualcomm has made and continues to make significant efforts, which are
24 reasonable under the circumstances, to ensure and maintain the secrecy of this information,
25 including by entering into the MSA and Tools Agreement, among other agreements, with Apple
26 before providing access to any trade secrets thereunder, and by attempting to audit Apple's
27 compliance under the MSA. Without these contractual protections, Qualcomm would not have
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1 provided Apple access to any of the trade secrets alleged herein. At the time of misappropriation,
2 Qualcomm's trade secrets were not published in patents or other publications, nor were they
3 generally known to the public or to other persons who can obtain economic value from their
4 disclosure or use. Qualcomm learned of Apple's misappropriation as alleged herein in 2018,
5 through discovery in this action.

6 51. On information and belief, as alleged herein, Apple misappropriated Qualcomm's
7 trade secrets by (1) improperly acquiring them through deception and false pretenses (i.e.,
8 Apple's false promises to Qualcomm, including by way of the MSA and Tools Agreement,
9 among other things, that Apple would ensure and maintain the confidentiality and secrecy of
10 Qualcomm's trade secrets), beginning at least several years ago and continuing through the
11 present; (2) improperly using Qualcomm's trade secrets without authorization and in
12 contravention of the MSA and Tools Agreement, among other things, to improve the performance
13 of non-Qualcomm chipset solutions, beginning at least several years ago and continuing through
14 the present; and (3) improperly disclosing Qualcomm's trade secrets to Intel without
15 authorization and in contravention of the MSA and Tools Agreement, among other things, to help
16 improve the performance of Intel chipset solutions, beginning at least several years ago and
17 continuing through the present. On information and belief, Apple intended to and did convert
18 Qualcomm's trade secrets for Apple's own economic benefit by reducing its cost of goods by
19 improving other chipsets that Apple can purchase at lower cost, thereby avoiding the enormous
20 risk and investment of time, resources, and money necessary to develop similar technology
21 legitimately.

22 52. On information and belief, Apple knew, by virtue of the MSA and Tools
23 Agreement, among other things, that its acquisition, use, and disclosure of Qualcomm's trade
24 secrets as alleged herein was improper and in breach of its duty of confidentiality, among other
25 things, to Qualcomm.

26 53. As a direct and proximate result of Apple's misappropriation of Qualcomm's trade
27 secrets, Qualcomm has suffered actual damages, including but not limited to lost profits, in an
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1 amount to be proven at trial, and Apple has been unjustly enriched, including by avoiding the
2 enormous risk and investment of time, resources, and money necessary to develop similar
3 technology legitimately, and by unfairly reducing its cost of goods. Qualcomm pleads in the
4 alternative that if it is determined that neither actual damages nor unjust enrichment are provable,
5 Qualcomm is entitled to a reasonable royalty to compensate Qualcomm for Apple's
6 misappropriation.

7 54. On information and belief, Apple's misappropriation of Qualcomm's trade secrets
8 is and was willful and malicious. Qualcomm secured numerous agreements with Apple
9 governing access to, and use and disclosure of, trade secrets before making them available to
10 Apple, based on Apple's representations and the express condition that Apple's only use of
11 Qualcomm's trade secrets would be as permitted by those agreements and solely in connection
12 with Apple's use and development of devices using Qualcomm chipsets. Nevertheless, on
13 information and belief, Apple secretly intended to and did convert Qualcomm's trade secrets for
14 Apple's own use and economic benefit by improving rival chipset solutions, including those of
15 Intel. On information and belief, Apple acted with a purpose and willingness to commit the acts
16 alleged, with malicious intent, and its conduct was not reasonable under the circumstances.
17 Qualcomm is therefore entitled to punitive and exemplary damages and attorney's fees and costs.

18 55. On information and belief, Apple's misappropriation as alleged herein will
19 continue unless enjoined and restrained by this Court, and will cause continuing, great, and
20 irreparable injury to Qualcomm's business and business opportunities. Absent injunctive relief,
21 Apple's improper acquisition, disclosure, and use of Qualcomm's trade secrets could and will
22 irreparably harm Qualcomm.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Qualcomm respectfully requests that the Court enter judgment as follows:

- 25 (a) Declaring that Apple ~~has~~ breached the MSA;
26 (b) Declaring that Apple breached the Tools Agreement;
27

(bc) Awarding damages in an amount to be proven at trial, including but not limited to actual losses, unjust enrichment, lost profits, and/or imposition of a reasonable royalty;

(d) Awarding punitive and exemplary damages;

(e) For immediate assignment, transfer, and return of all right, title, and interest in Qualcomm trade secrets misappropriated by Apple, and all other Qualcomm confidential information misused by Apple, in all forms and in all manners in which it now exists, whether in paper or electronic form or in any other tangible or intangible entitlement or format, so that Qualcomm retains all legal and equitable rights in its trade secrets and confidential information;

(f) For an order directing the assignment of any and all intellectual property and other rights that Apple sought or obtained to inventions embodying or constituting Qualcomm's trade secrets (whether or not Apple's acts have destroyed trade secret rights in such information) or confidential information;

(eg) ~~Ordering an award of~~ Awarding reasonable attorneys' fees and costs to Qualcomm;

(dh) Awarding expenses, costs, and disbursements in this action, including prejudgment interest;

(ei) Ordering specific performance;

(fj) ~~Injunctive or~~ Ordering injunctive or other equitable relief; and

(gk) Awarding such other and further relief as the Court deems just and proper.

Dated: ~~October 31, 2017~~ September 24, 2018

By:

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