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9 Attorneys for Plaintiff:
10 ANTONIO PEREZ-CRUET

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 ANTONIO PEREZ-CRUET,)
14 individually and as a representative of) CASE NO. '23CV1890 BEN MMP
15 a class of participants and beneficiaries)
16 on behalf of the Qualcomm) **CLASS ACTION COMPLAINT**
17 Incorporated Employee Savings and) **AND DEMAND FOR JURY TRIAL**
18 Retirement Plan,)
19)
20 Plaintiff,)
21 v.)
22)
23 QUALCOMM INCORPORATED;)
24 QUALCOMM INCORPORATED US)
25 RETIREMENT COMMITTEE; and)
26 DOES 1 to 10 inclusive,)
27)
28 Defendants.)

1 1. Plaintiff ANTONIO PEREZ-CRUET (“Plaintiff”), a participant in the
2 Qualcomm Incorporated Employee Savings and Retirement Plan (“Plan” or
3 “Qualcomm Plan”), brings this Employee Retirement Income Security Act
4 (“ERISA”) action on behalf of the Plan under 29 U.S.C. §§ 1132(a)(2) and (3), and
5 under Rule 23 of the Federal Rules of Civil Procedure as a representative of a class
6 of participants and beneficiaries of the Plan, against Defendants QUALCOMM
7 INCORPORATED (“Qualcomm” or the “Company”) and the QUALCOMM
8 INCORPORATED US RETIREMENT COMMITTEE (the “Committee”) for (1)
9 breach of ERISA’s fiduciary duties, (2) violation of ERISA’s anti-inurement
10 provision, and (3) engaging in self-dealing and transactions prohibited by ERISA.
11 Plaintiff, in his individual capacity only, also brings a claim against Qualcomm
12 under 29 U.S.C. § 1132(c)(1) for failure to comply with his request for the Plan
13 document and Summary Plan Description.
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JURISDICTION AND VENUE

20 2. This Court has federal question subject matter jurisdiction under 28
21 U.S.C. § 1331 because this is an action under 29 U.S.C. §§ 1132(a)(2), (a)(3), and
22 (c)(1) for which federal district courts have exclusive jurisdiction under 29 U.S.C. §
23 1132(e)(1).
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26 3. This district is the proper venue for this action under 29 U.S.C. §
27 1132(e)(2) and 28 U.S.C. § 1391(b)(2) because a substantial part of the events or
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1 omissions giving rise to the claim occurred here.

2 **PARTIES**

3 4. The Qualcomm Plan is a defined contribution, individual account,
4 employee pension benefit plan under 29 U.S.C. § 1002(2)(A) and § 1002(34) and is
5 subject to the provisions of ERISA pursuant to 29 U.S.C. § 1003(a).
6

7 5. Defendant Qualcomm is a manufacturer of semiconductors and
8 wireless telecommunications headquartered in San Diego, California.
9

10 6. Qualcomm is both the Plan sponsor under 29 U.S.C. § 1002(16)(B) and
11 the Plan administrator under 29 U.S.C. § 1002(16)(A) with broad authority over the
12 administration and management of the Plan.
13

14 7. The Committee was created by Qualcomm to assist in the management
15 of the Plan and was delegated with authority to, among other things, direct the trustee
16 with respect to the crediting and distribution of the Plan assets.
17

18 8. Qualcomm and the Committee (together “Defendants”) are both named
19 fiduciaries of the Plan and each exercised discretionary authority and discretionary
20 control over the management and administration of the Plan with respect to the
21 matters alleged herein and were fiduciaries of the Plan within the meaning of 29
22 U.S.C. § 1002(21)(A).
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24 9. Plaintiff is a resident of California, was previously employed by
25 Qualcomm in California, and is a current participant of the Plan whose account has
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1 been charged with a share of the Plan’s administrative expenses.

2 10. The defendants sued by the fictitious names DOES 1 through 10,
3 inclusive, are Plan fiduciaries unknown to Plaintiff who exercise or exercised
4 discretionary authority or discretionary control respecting the management of the
5 Plan, exercise or exercised authority or control respecting the management or
6 disposition of its assets, or have or had discretionary authority or discretionary
7 responsibility in the administration of the Plan and are responsible or liable in some
8 manner for the conduct alleged in the complaint. Plaintiff will amend this complaint
9 to allege the true names and capacities of such fictitiously named defendants when
10 they are ascertained.
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14 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

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16 11. In accordance with 29 U.S.C. § 1103(a), the assets of the Qualcomm
17 Plan are held in a trust fund.

18
19 12. The Plan is funded by a combination of wage withholdings by Plan
20 participants and Company contributions that are deposited into the Plan’s trust fund.
21 Upon their deposit into the Plan’s trust fund, all participant contributions and
22 Company contributions become assets of the Plan.
23

24 13. As an individual account, defined contribution retirement plan, the
25 Qualcomm Plan “provides for an individual account for each participant and for
26 benefits solely upon the amount contributed to the participant’s account, and any
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1 income, expenses, gains and losses, and any forfeiture of accounts of other
2 participants which may be allocated to such participant's account." 29 U.S.C. §
3 1002(34).
4

5 14. Plan participants pay for the Plan's administrative expenses through a
6 quarterly direct charge to their accounts.
7

8 15. The deduction of these administrative expenses from participant
9 accounts reduces the funds available to participants for distribution and/or investing.
10

11 16. Participants in the Qualcomm Plan are immediately vested in their own
12 contributions and earnings thereon. Participants vest in the Company's contributions
13 and earnings thereon at the rate of 50% on the first anniversary date and 100% on
14 the second anniversary date of the participant's hire date.
15

16 17. When a participant has a break in service prior to full vesting of the
17 Company's contributions, the participant forfeits the balance of unvested Company
18 contributions in his or her individual account and Defendants exercise discretionary
19 authority and control over how these Plan assets are thereafter reallocated.
20

21 18. At the discretion of Defendants, forfeited nonvested accounts may be
22 used to pay the Plan's administrative expenses or reduce the Company's
23 contributions to the Plan.
24

25 19. Although Defendants have discretion to use the forfeited funds to pay
26 Plan administrative expenses, and thereby reduce or eliminate the amounts charged
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1 to the participants' individual accounts to cover such expenses, Defendants have
2 consistently declined to use any of these Plan assets for such purposes over the class
3 period.
4

5 20. Instead, Defendants have consistently chosen to utilize the forfeited
6 funds in the Plan exclusively for the Company's own benefit, to the detriment of the
7 Plan and its participants, by using these Plan assets solely to reduce Company
8 contributions to the Plan.
9

10 21. In 2019, Company delinquent contributions to the Plan were reduced
11 by \$1,060,000 as a result of Defendants' reallocation of forfeited funds for the
12 Company's own benefit, and no forfeited funds were used to pay any part of the
13 \$493,667 in Plan expenses.
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15

16 22. In 2020, Company contributions to the Plan were reduced by
17 \$1,222,000 as a result of Defendants' reallocation of forfeited funds for the
18 Company's own benefit, and no forfeited funds were used to pay any part of the
19 \$879,423 in Plan expenses.
20

21 23. In 2021, Company contributions to the Plan were reduced by
22 \$1,222,072 as a result of Defendants' reallocation of forfeited funds for the
23 Company's own benefit, and no forfeited funds were used to pay any part of the
24 \$954,269 in Plan expenses.
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1 24. While Defendants’ reallocation of the forfeitures in the Plan’s trust fund
2 to reduce its contributions benefitted the Company by reducing its own contribution
3 expenses, it harmed the Plan, along with its participants and beneficiaries, by
4 reducing Company contributions that would otherwise have increased Plan assets
5 and by causing participants to incur deductions from their individual accounts each
6 quarter to cover administrative expenses that would otherwise have been covered in
7 whole or in part by utilizing forfeited funds.
8

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10 **CLASS ACTION ALLEGATIONS**
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12 25. 29 U.S.C. § 1132(a)(2) authorizes any participant or beneficiary of the
13 Plan to bring an action individually on behalf of the Plan to enforce a breaching
14 fiduciary’s liability to the Plan under 29 U.S.C. § 1109(a).
15

16 26. In acting in this representative capacity and to enhance the due process
17 protections of unnamed participants and beneficiaries of the Plan, as an alternative
18 to direct individual actions on behalf of the Plan under 29 U.S.C. § 1132(a)(2),
19 Plaintiff seeks to certify this action as a class action on behalf of all Qualcomm Plan
20 participants and beneficiaries. Plaintiff seeks to certify the following class:
21

22 All participants and beneficiaries of the Qualcomm Plan from
23 January 1, 2019 through the date of judgment, excluding
24 Defendants and members of the Committee of the Qualcomm
25 Plan.
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1 27. This action meets the requirements of Rule 23 and is certifiable as a
2 class action for the following reasons:

3 a. The class includes over 20,000 members and is so large that
4 joinder of all its members is impracticable.

5
6 b. There are questions of law and fact common to the class because
7 Defendants owed fiduciary duties to the Plan and to all participants and beneficiaries
8 and took the actions alleged herein as to the Plan and not as to any individual
9 participant. Thus, common questions of law and fact include the following, without
10 limitation: Who are the fiduciaries liable for the remedies provided by 29 U.S.C. §
11 1109(a)? Did the fiduciaries of the Plan breach their fiduciary duties to the Plan with
12 respect to their management and allocation of Plan assets? Did fiduciaries of the
13 Plan engage in prohibited transactions with Plan assets? Did fiduciaries of the Plan
14 violate the anti-inurement provision of ERISA by using Plan assets for their own
15 benefit? What are the losses to the Plan resulting from each alleged breach of
16 ERISA? What Plan-wide equitable and other relief should the Court impose to
17 remedy Defendants' alleged breaches?
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23 c. Plaintiff's claims are typical of the claims of the class because
24 Plaintiff was a participant of the Plan during the class period and all participants in
25 the Plan were harmed by the same alleged misconduct by Defendants.
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1 d. Plaintiff is an adequate representative of the class because he was
2 a participant of the plan during the class period, has no interests that conflict with
3 any other members of the class, is committed to the vigorous representation of the
4 class, and has engaged experienced and competent attorneys to represent the class.

5
6 e. Prosecution of separate actions for these breaches of fiduciary
7 duties and prohibited transactions by individual participants and beneficiaries would
8 create the risk of (A) inconsistent or varying adjudications that would establish
9 incompatible standards of conduct for Defendants with respect to their discharge of
10 their fiduciary duties to the Plan and personal liability to the Plan under 29 U.S.C. §
11 1109(a), and (B) adjudications by individual participants and beneficiaries regarding
12 these breaches of fiduciary duties, prohibited transactions, and remedies for the Plan
13 would, as a practical matter, be dispositive of the interests of the participants and
14 beneficiaries not parties to the adjudication or would substantially impair or impede
15 those participants' and beneficiaries' ability to protect their interests. Therefore, this
16 action should be certified as a class action under Rule 23(b)(1)(A) or (B).
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21 28. A class action is the superior method for the fair and efficient
22 adjudication of this controversy because joinder of all participants and beneficiaries
23 is impracticable, the losses suffered by individual participants and beneficiaries may
24 be small and impracticable for individual members to enforce their rights through
25 individual actions, and the common questions of law and fact predominate over
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1 individual questions. Given the nature of the allegations, no class member has an
2 interest in individually controlling the prosecution of this matter, and Plaintiff is
3 aware of no difficulties likely to be encountered in the management of this matter as
4 a class action. Alternatively, then, this action may be certified as a class under Rule
5 23(b)(3) if it is not certified under Rule 23(b)(1)(A) or (B).
6

7
8 29. Plaintiff’s counsel, Hayes Pawlenko LLP, will fairly and adequately
9 represent the interests of the Class and is best able to represent the interests of the
10 class under Rule 23(g).
11

12 **FIRST CLAIM**

13 **BREACH OF FIDUCIARY DUTY OF LOYALTY**

14 **(29 U.S.C. 1104(a)(1)(A))**

15
16 30. Plaintiff realleges and incorporates herein by reference each and every
17 allegation contained in the preceding paragraphs of this Complaint as though fully
18 set forth herein.
19

20 31. Pursuant to 29 U.S.C. § 1104(a)(1)(A), Defendants were required to
21 discharge their duties to the Qualcomm Plan “solely in the interest of the participants
22 and beneficiaries” and “for the exclusive purpose of: (i) providing benefits to
23 participants and their beneficiaries; and (ii) defraying reasonable expenses of
24 administering the plan.”
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1 32. Defendants have continually breached this duty of loyalty with respect
2 to their control and management of the Plan’s assets throughout the class period by
3 choosing to utilize forfeited funds in the Plan for the benefit of the Company rather
4 than solely in the interest of the participants and beneficiaries.
5

6 33. Instead of acting solely in the interest of Plan participants by utilizing
7 forfeited funds in the Plan to reduce or eliminate the administrative expenses charged
8 to their individual accounts, Defendants chose to use these Plan assets for the
9 purpose of reducing its own future contributions to the Plan, thereby saving the
10 Company over one million dollars each year at the expense of the Plan which
11 received decreased Company contributions and its participants and beneficiaries
12 who were forced to incur avoidable expense deductions to their individual accounts.
13
14

15 34. As a direct and proximate result of Defendants’ fiduciary breaches
16 described herein, the Plan suffered injury and loss for which they are personally
17 liable and are subject to appropriate equitable relief, pursuant to 29 U.S.C. § 1109,
18 including, without limitation, the disgorgement of all ill-gotten profits to Defendants
19 resulting from the breach of their duty of loyalty.
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22 35. Each Defendant knowingly participated in the breach of the other
23 Defendants, knowing that such acts were a breach, enabled other Defendants to
24 commit a breach by failing to lawfully discharge its own fiduciary duties, knew of
25 the breach by the other Defendants and failed to make any reasonable effort under
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1 the circumstances to remedy the breach. Thus, each Defendant is liable for the losses
2 caused by the breach of its co-fiduciary under 29 U.S.C. § 1105(a).

3 **SECOND CLAIM**

4 **BREACH OF FIDUCIARY DUTY OF PRUDENCE**

5 **(29 U.S.C. 1104(a)(1)(B))**

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8 36. Plaintiff realleges and incorporates herein by reference each and every
9 allegation contained in the preceding paragraphs of this Complaint as though fully
10 set forth herein.

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12 37. Pursuant to 29 U.S.C. § 1104(a)(1)(B), Defendants were required to
13 discharge their duties with respect to the Qualcomm Plan “with the care, skill,
14 prudence, and diligence under the circumstances then prevailing that a prudent man
15 acting in a like capacity and familiar with such matters would use in the conduct of
16 an enterprise of a like character and with like aims.”

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19 38. Defendants have continuously breached their duty of prudence under
20 29 U.S.C. § 1104(a)(1)(B) throughout the class period by declining to use the
21 forfeited funds in the plan to eliminate the administrative expenses charged to
22 participant accounts and instead using such Plan assets to reduce the Company’s own
23 contributions to the Plan.

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26 39. Defendants failed to engage in a reasoned and impartial decision-
27 making process to determine that using the forfeited funds in the Plan to reduce the
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1 Company's own contribution expenses, as opposed to the administrative expenses
2 charged to participant accounts, was in the best interest of the Plan's participants or
3 was prudent, and failed to consider whether participants would be better served by
4 another use of these Plan assets after considering all relevant factors.
5

6 40. By declining to use forfeited funds in the Plan to eliminate the
7 administrative expenses charged to participant accounts, and instead using such Plan
8 assets to reduce the Company's own contribution expenses, Defendants caused the
9 Plan to receive fewer contributions that would otherwise have increased Plan assets
10 and caused participants to incur expense deductions from their individual accounts
11 that would otherwise have been covered in whole or in part by utilizing the forfeited
12 funds to pay Plan expenses.
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16 41. As a direct and proximate result of Defendants' fiduciary breaches
17 described herein, the Plan suffered injury and loss for which Defendants are
18 personally liable and are subject to appropriate equitable relief, pursuant to 29 U.S.C.
19 § 1109, including, without limitation, the disgorgement of all ill-gotten profits to
20 Defendants resulting from the breach of their duty of prudence.
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23 42. Each Defendant knowingly participated in the breach of the other
24 Defendants, knowing that such acts were a breach, enabled other Defendants to
25 commit a breach by failing to lawfully discharge its own fiduciary duties, knew of
26 the breach by the other Defendants and failed to make any reasonable effort under
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1 the circumstances to remedy the breach. Thus, each Defendant is liable for the losses
2 caused by the breach of its co-fiduciary under 29 U.S.C. § 1105(a).

3
4 **THIRD CLAIM**

5 **BREACH OF ERISA’S ANTI-INUREMENT PROVISION**

6 **(29 U.S.C. 1103(c)(1))**

7
8 43. Plaintiff realleges and incorporates herein by reference each and every
9 allegation contained in the preceding paragraphs of this Complaint as though fully
10 set forth herein.

11
12 44. Pursuant to 29 U.S.C. § 1103(c)(1), “the assets of a plan shall never
13 inure to the benefit of any employer and shall be held for the exclusive purpose of
14 providing benefits to participants in the plan and their beneficiaries and defraying
15 reasonable expenses of administering the plan.”

16
17 45. The balance in a participant’s accounts that a participant forfeits when
18 incurring a break in service prior to full vesting of the Company’s contributions to
19 the participant’s account is an asset of the Qualcomm Plan.

20
21 46. By electing to utilize these Plan assets as a substitute for the Company’s
22 own future contributions to the Plan, thereby saving the Company millions of dollars
23 in contribution expenses, Defendants caused the assets of the Plan to inure to the
24 benefit of the employer in violation of 29 U.S.C. 1103(c)(1).

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1 47. Each Defendant is personally liable under 29 U.S.C. § 1109(a) to make
2 good to the Plan any losses to the Plan resulting from violation of ERISA’s anti-
3 inurement provision as alleged in this claim and to restore to the Plan all profits
4 secured through their use of Plan assets, and is subject to other equitable or remedial
5 relief as appropriate.
6

7
8 **FOURTH CLAIM**
9 **PROHIBITED TRANSACTIONS**

10 **(29 U.S.C. 1106(a)(1))**

11
12 48. Plaintiff realleges and incorporates herein by reference each and every
13 allegation contained in the preceding paragraphs of this Complaint as though fully
14 set forth herein.
15

16 49. 29 U.S.C. § 1106(a)(1) provides that “[a] fiduciary with respect to a
17 plan shall not cause the plan to engage in a transaction, if he knows or should know
18 that such transaction constitutes a direct or indirect . . . exchange . . . of any property
19 between the plan and a party in interest . . . or use by or for the benefit of a party in
20 interest, of any assets of the plan.”
21

22
23 50. Qualcomm and the Committee are parties in interest, as that term is
24 defined under 29 U.S.C. §1002 (14), because they are Plan fiduciaries and because
25 Qualcomm is the employer of Plan participants.
26

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1 51. By electing to use forfeited funds in the Plan as a substitute for future
2 employer contributions to the Plan, and thereby saving the Company millions of
3 dollars in contribution expenses, Defendants caused the Plan to engage in
4 transactions that constituted a direct or indirect exchange of existing Plan assets for
5 future employer contributions and/or a use of Plan assets by or for the benefit of a
6 party in interest.
7
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9 52. As a result of these prohibited transactions, Defendants caused the Plan
10 to suffer losses in the amount of the Plan assets that were substituted for future
11 employer contributions and the lost investment returns on those assets.
12

13 53. Each Defendant is personally liable under 29 U.S.C. § 1109(a) to make
14 good to the Plan any losses to the Plan resulting from the prohibited transactions
15 alleged in this claim, to reverse and/or correct the prohibited transactions, to restore
16 to the Plan all assets and profits obtained through the use of Plan assets and is subject
17 to other equitable or remedial relief as appropriate.
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20 **FIFTH CLAIM**

21 **PROHIBITED TRANSACTIONS**

22 **(29 U.S.C. 1106(b)(1))**

23
24 54. Plaintiff realleges and incorporates herein by reference each and every
25 allegation contained in the preceding paragraphs of this Complaint as though fully
26 set forth herein.
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1 55. 29 U.S.C. § 1106(b) provides that “[a] fiduciary with respect to a plan
2 shall not,” among other things, “deal with the assets of the plan in his own interest
3 or for his own account.”
4

5 56. Defendants violated this prohibition in their management and control
6 of forfeiture funds in the Plan. By utilizing these Plan assets as a substitute for future
7 employer contributions to the Plan, thereby saving the Company millions of dollars
8 in contribution expenses, Defendants dealt with the assets of the Plan in their own
9 interest and for their own account.
10

11 57. As a result of this prohibited conduct, Defendants caused the Plan to
12 suffer losses in the amount of the Plan assets that were substituted for future
13 employer contributions and the lost investment returns on those assets.
14

15 58. Each Defendant is personally liable under 29 U.S.C. § 1109(a) to make
16 good to the Plan any losses to the Plan resulting from the prohibited conduct alleged
17 in this claim, to restore to the Plan all assets and profits obtained through the use of
18 Plan assets and is subject to other equitable or remedial relief as appropriate.
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21 **SIXTH CLAIM**
22

23 **FAILURE TO MONITOR FUDICIARIES**
24

25 59. Plaintiff realleges and incorporates herein by reference each and every
26 allegation contained in the preceding paragraphs of this Complaint as though fully
27 set forth herein.
28

1 60. This claim is asserted against Qualcomm only.

2 61. Qualcomm oversaw the overall governance of the Plan and had the
3 authority to delegate fiduciary responsibilities.
4

5 62. Qualcomm created the Committee to assist in the management of the
6 Plan and delegated to the Committee the authority and discretion to direct the trustee
7 with respect to the crediting and distribution of the Plan assets.
8

9 63. A monitoring fiduciary must ensure that the person to whom it
10 delegated fiduciary duties is performing its fiduciary obligations and must take
11 prompt and effective action to protect the plan and participants when the delegate
12 fails to properly discharge its duties. To the extent any of the fiduciary
13 responsibilities of Qualcomm were delegated to another fiduciary, the Company's
14 monitoring duties included an obligation to ensure that any delegated tasks or
15 responsibilities were being performed in accordance with ERISA's fiduciary
16 standards.
17
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19
20 64. Qualcomm breached its fiduciary monitoring standard with respect to
21 the Committee by, among other things, failing to monitor the Committee's
22 management and use of forfeited funds in the Plan and by failing to take steps to
23 ensure that the Committee was discharging its duties with respect to Plan assets for
24 the sole benefit of Plan participants and beneficiaries.
25
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1 updated Summary Plan Description. Plaintiff's request was sent by letter via
2 certified mail addressed to Qualcomm, as the Plan administrator, at 5775 Morehouse
3 Drive, San Diego, CA 92121.
4

5 72. To date, Qualcomm has not complied with Plaintiff's request.

6 73. Accordingly, Qualcomm is in violation of 29 U.S.C. § 1024(b)(4) and
7 is personally liable to Plaintiff in an amount of up to \$110 a day from September 28,
8 2023.
9

10 **PRAYER FOR RELIEF**

11 For these reasons, Plaintiff, on behalf of the Plan and all similarly situated
12 Plan participants and beneficiaries, respectfully requests that the Court:
13

- 14 • find and declare that Defendants have breached their fiduciary
15 duties and engaged in prohibited conduct and transactions as
16 described above;
- 17 • find and adjudge that Defendants are personally liable to make good
18 to the Plan all losses to the Plan resulting from each violation of
19 ERISA described above, and to otherwise restore the Plan to the
20 position it would have occupied but for these violations;
- 21 • order the disgorgement of all assets and profits secured by
22 Defendants as a result of each violation of ERISA described above;
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- 1 • determine the method by which Plan losses under 29 U.S.C. § 1109
2 should be calculated;
- 3 • order Defendants to provide all accounting necessary to determine
4 the amounts Defendants must make good to the Plan under 29
5 U.S.C. § 1109(a);
- 6 • remove the fiduciaries who have breached their fiduciary duties and
7 enjoin them from future ERISA violations;
- 8 • surcharge against Defendants and in favor of the Plan all amounts
9 involved in any transactions which such accounting reveals were
10 improper, excessive and/or in violation of ERISA;
- 11 • certify the class, appoint Plaintiff as a class representative, and
12 appoint Hayes Pawlenko LLP as class counsel;
- 13 • award to Plaintiff and the class their attorneys' fees and costs under
14 29 U.S.C. § 1132(g)(1) and the common fund doctrine;
- 15 • order the payment of interest to the extent it is allowed by law; and
16 • grant other equitable or remedial relief as the Court deems
17 appropriate.
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25 Plaintiff further respectfully requests that the Court find Qualcomm
26 personally liable to Plaintiff in an amount of up to \$110 a day from September 28,
27 2023.
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DEMAND FOR JURY TRIAL

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Plaintiff hereby demands trial of these claims by jury to the extent authorized
by law.

DATED: October 16, 2023

HAYES PAWLENKO LLP

By: /s/Kye D. Pawlenko
Matthew B. Hayes
Kye D. Pawlenko
Attorneys for Plaintiffs