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

FASTVDO LLC,

Plaintiff,

v.
AT&T MOBILITY LLC, et al.,

Defendants.

Consolidated Case No.: 16-cv-385-H-WVG

ORDER:

(1) GRANTING JOINT MOTION FOR PROTECTIVE ORDER AS TO QUALCOMM

[Doc. No. 145.]

(2) STIPULATED SUPPLEMENTAL PROTECTIVE ORDER BETWEEN NON PARTY QUALCOMM INCORPORATED, PLAINTIFF, AND ALL DEFENDANTS

On June 24, 2016, the parties filed a joint motion for a supplemental protective order as to Qualcomm Inc. (Doc. No. 145.) Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court, for good cause shown grants the joint motion and enters the following protective order:

1 WHEREAS, Plaintiff FastVDO LLC (“Plaintiff”); Defendants Apple Inc., AT&T
2 Mobility LLC, AT&T Services, Inc., LG Electronics, Inc., LG Electronics U.S.A., Inc.,
3 Microsoft Mobile Inc., Huawei Device Co., Ltd., Huawei Technologies USA, Inc., Huawei
4 Technologies, Co., Ltd., Futurewei Technologies, Inc., Huawei Device USA, Inc., ZTE
5 (USA) Inc., Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc.
6 (collectively “Defendants”) (together, hereinafter referred to as “the Parties”), and
7 Qualcomm Incorporated (“QUALCOMM”), a non-party to the actions, may produce
8 confidential source code, schematics, and other documents in this action that include or
9 incorporate CONFIDENTIAL INFORMATION belonging to QUALCOMM
10 (“QUALCOMM Confidential Information”);

11 WHEREAS the Parties and Non-Party QUALCOMM have agreed to provisions to
12 protect against misuse or disclosure of such QUALCOMM Confidential Information;

13 WHEREFORE, IT IS HEREBY ORDERED that source code, schematics, or
14 documents that incorporate QUALCOMM Confidential Information produced in
15 connection with the above-captioned matters that are designated as “QUALCOMM –
16 OUTSIDE ATTORNEYS’ EYES ONLY” and “QUALCOMM – OUTSIDE
17 ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” shall be subject to
18 the following restrictions:

19 **1. Definitions**

20 1. “QUALCOMM MATERIAL”: Confidential information (regardless of how
21 generated, stored, or maintained) or tangible things that include or incorporate Non-Party
22 QUALCOMM Confidential Information, that Non-Party QUALCOMM (i) would not
23 normally reveal to third parties except in confidence, or has undertaken with others to
24 maintain in confidence, (ii) believes in good faith is significantly sensitive, or (iii) protected
25 by a right to privacy under federal or state law, or any other applicable privilege or right
26 related to confidentiality or privacy. QUALCOMM MATERIAL includes all information,
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1 documents, source code, schematics, testimony, and things produced, served, or otherwise
2 provided in the actions by any Party or by Non-Party QUALCOMM, that include or
3 incorporate QUALCOMM Confidential Information.

4 2. “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” material:
5 information, documents, and things that include or incorporate QUALCOMM
6 MATERIAL.

7 3. “Source Code”: includes human-readable programming language text that
8 defines software, firmware, (collectively, “software Source Code”) and integrated circuits
9 (“hardware Source Code”). Text files containing Source Code shall hereinafter be referred
10 to as “Source Code files.” Software Source Code files shall include, but are not limited to,
11 files containing Source Code in “C,” “C++,” BREW, Java ME, J2ME, assembler, digital
12 signal processor (DSP) programming languages, and other human readable text
13 programming languages. Software Source Code files further include “.include files,”
14 “make” files, “link” files, and other human-readable text files used in the generation and/or
15 building of software directly executed on a microprocessor, micro-controller, or DSP.
16 Hardware Source Code files include, but are not limited to, files containing Source Code
17 in VDHL, Verilog, and other Hardware Description Language (“HDL”) formats, including
18 but not limited to, Register Transfer Level (“RTL”) descriptions.

19 4. “Chip-Level Schematics”: means symbolic representations of analog electric
20 or electronic circuits from which the physical structure of a chip is directly derived.

21 5. “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY –
22 CONFIDENTIAL SOURCE CODE” Material: QUALCOMM MATERIAL that includes
23 Source Code and Chip-Level Schematics that constitute proprietary technical or
24 commercially sensitive competitive information that Non-Party QUALCOMM maintains
25 as highly confidential in its business, the disclosure of which is likely to cause harm to the
26 competitive position of Non-Party QUALCOMM. This includes Source Code and Chip-
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1 Level Schematics in the Producing Party’s possession, custody, or control, and made
2 available for inspection by the Producing Party.

3 6. “Designated QUALCOMM Material”: material that is designated
4 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM –
5 OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” under
6 this Supplemental Protective Order.

7 7. “Designated Source Code Material”: material that is designated
8 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE
9 CODE” under this Supplemental Protective Order.

10 8. “Personnel Retained by a Receiving Party in the Actions” means any
11 consultants, experts, or outside counsel (including their support staff) that have been and
12 continue to be retained by a Receiving Party in the actions. For the sake of clarity, any
13 person who was retained by a Receiving Party in the actions will no longer fall under this
14 definition if that person ceases to be retained by a Receiving Party in the actions.

15 9. “Party” means any Party to the above-captioned actions, including all of its
16 officers, directors, employees, consultants, retained experts, and all support staff thereof.

17 10. “Producing Party” means a party or non-party that discloses or produces
18 Designated QUALCOMM Material in the above-captioned actions.

19 11. “Receiving Party” a Party that receives Designated QUALCOMM Material
20 from a Producing Party in the above-captioned actions.

21 12. “Authorized Reviewer(s)” shall mean persons authorized to review
22 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” and “QUALCOMM –
23 OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” material
24 in accordance with this Supplemental Protective Order and the Protective Order.

25 13. “Counsel of Record”: (i) Outside Counsel who appears on the pleadings, or
26 has entered an appearance in the actions, as counsel for a Party, and (ii) partners, principals,
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1 counsel, associates, employees, and contract attorneys of such Outside Counsel to whom
2 it is reasonably necessary to disclose the information for the actions, including supporting
3 personnel employed by the attorneys, such as paralegals, legal translators, legal secretaries,
4 legal clerks and shorthand reporters.

5 14. “Outside Consultant”: a person with specialized knowledge or experience in
6 a matter pertinent to the actions who has been retained by Counsel of Record to serve as
7 an expert witness or a litigation consultant in the actions (including any necessary support
8 personnel of such person to whom disclosure is reasonably necessary for the actions), and
9 who is not a current employee of a Party, of a competitor of a Party, or of Non-Party
10 QUALCOMM, and who, at the time of retention, is not anticipated to become an employee
11 of, or a non-litigation consultant of: 1) a Party, 2) a competitor of a Party, 3) a competitor
12 of Non-Party QUALCOMM, or of 4) Non-Party QUALCOMM.

13 15. “Professional Vendors”: persons or entities that provide litigation support
14 services (e.g., photocopying; videotaping; translating; designing and preparing exhibits,
15 graphics, or demonstrations; organizing, storing, retrieving data in any form or medium;
16 etc.) and their employees and subcontractors who have been retained or directed by
17 Counsel of Record in the actions, and who are not current employees of a Party, a
18 competitor of a Party, or of Non-Party QUALCOMM, and who, at the time of retention,
19 are not anticipated to become employees of: 1) a Party, 2) a competitor of a Party, 3) a
20 competitor of Non-Party QUALCOMM, or 4) Non-Party QUALCOMM. This definition
21 includes ESI vendors, and professional jury or trial consultants retained in connection with
22 the actions to assist a Party, Counsel of Record, or any Outside Consultant in their work.
23 Professional vendors do not include consultants who fall within the definition of Outside
24 Consultant.

25 **2. Relationship to Protective Order**

26 16. The Parties and Non-Party QUALCOMM recognize that a future Protective
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1 Order will be entered in this action in the United States District Court, Southern District of
2 California.

3 17. This Supplemental Protective Order governs Designated QUALCOMM
4 Material that does not include Party confidential business information, regardless of
5 whether Non-Party QUALCOMM or a Party designates or produces such Designated
6 QUALCOMM Material.

7 18. Designated QUALCOMM Material that also includes Party confidential
8 business information shall be subject to the restrictions of both this Supplemental
9 Protective Order and the future Protective Order. To the extent there is any confusion or
10 conflict between the protective orders, then this Supplemental Protective Order governs.

11 **3. Scope**

12 19. The protections conferred by this Supplemental Protective Order cover not
13 only Designated QUALCOMM Material (as defined above), but also any information
14 copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations
15 thereof. Nothing herein shall alter or change in any way the discovery provisions of the
16 Federal Rules of Civil Procedure or any applicable local rules or General Orders.
17 Identification of any individual pursuant to this Supplemental Protective Order does not
18 make that individual available for deposition, or any other form of discovery outside of the
19 restrictions and procedures of the Federal Rules of Civil Procedure or any applicable rules
20 or General Orders.

21 20. This Supplemental Protective Order shall not prevent a disclosure to which
22 Non-Party QUALCOMM consents in writing before that disclosure takes place.

23 21. This Supplemental Protective Order shall apply to all Designated
24 QUALCOMM Material that is produced or provided for inspection in the actions, including
25 all Designated QUALCOMM Material that is in the possession, custody or control of
26 QUALCOMM or any Party in the actions, or that is otherwise relevant to the actions.

1 **4. Access to Designated QUALCOMM Material**

2 22. Access to “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY”
3 Material: Unless otherwise ordered by the Court or permitted in writing by Non-Party
4 QUALCOMM, a Receiving Party may disclose any information, document or thing
5 designated “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” only to:

- 6 a. Persons who appear on the face of Designated QUALCOMM Material as
7 an author, addressee or recipient thereof, or persons who have been
8 designated under FRCP 30(b)(6) to provide testimony of behalf of a
9 Producing Party or Qualcomm regarding the same;
- 10 b. Counsel of Record;
- 11 c. Outside Consultants of the Receiving Party to whom disclosure is
12 reasonably necessary for the actions, and who have, after the date of this
13 Supplemental Protective Order, signed the “Acknowledgement And
14 Agreement To Be Bound By Supplemental Protective Order Governing
15 Confidential Information of Non-Party Qualcomm In This Case” attached
16 hereto as Exhibit A, and the “Certification Of Consultant Re Supplemental
17 Protective Order Governing Confidential Information of Non-Party
18 Qualcomm In This Case,” attached hereto as Exhibit B;
- 19 d. Any designated arbitrator or mediator who is assigned to hear this matter,
20 or who has been selected by the Parties, and his or her staff; who have,
21 after the date of this Supplemental Protective Order, signed the
22 “Acknowledgement And Agreement To Be Bound By Supplemental
23 Protective Order Governing Confidential Information of Non-Party
24 Qualcomm In This Case” attached hereto as Exhibit A, and the
25 “Certification Of Consultant Re Supplemental Protective Order Governing
26 Confidential Information of Non-Party Qualcomm In This Case,” attached
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1 hereto as Exhibit B, as well as any arbitrator's or mediator's staff who have
2 also signed Exhibits A and B;

3 e. Court reporters and videographers employed in connection with the
4 actions;

5 f. Professional Vendors to whom disclosure is reasonably necessary for the
6 actions, and a representative of which has signed the "Acknowledgement
7 And Agreement To Be Bound By Supplemental Protective Order
8 Governing Confidential Information of Non-Party Qualcomm In This
9 Case" attached hereto as Exhibit A, subject to the following exception:
10 Designated QUALCOMM Material shall not be disclosed to mock jurors
11 without Non-Party QUALCOMM's express written consent; and

12 g. The Court and its personnel.

13 23. Access to "QUALCOMM – OUTSIDE ATTORNEYS' EYES ONLY –
14 CONFIDENTIAL SOURCE CODE" Material: Unless otherwise ordered by the Court or
15 permitted in writing by Non-Party QUALCOMM, a Receiving Party may disclose any
16 information, document, or thing designated "QUALCOMM – OUTSIDE ATTORNEYS'
17 EYES ONLY – CONFIDENTIAL SOURCE CODE" only to:

18 a. Persons who appear on the face of Designated QUALCOMM Material as
19 an author, addressee or recipient thereof, or persons who have been
20 designated under FRCP 30(b)(6) to provide testimony of behalf of a
21 Producing Party or Qualcomm regarding the same;

22 b. Counsel of Record;

23 c. Outside Consultants of the Receiving Party to whom disclosure is
24 reasonably necessary for the actions, and who have, after the date of this
25 Supplemental Protective Order, signed the "Acknowledgement And
26 Agreement To Be Bound By Supplemental Protective Order Governing
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1 Confidential Information of Non-Party Qualcomm In This Case” attached
2 hereto as Exhibit A, and the “Certification Of Consultant Re Supplemental
3 Protective Order Governing Confidential Information of Non-Party
4 Qualcomm In This Case,” attached hereto as Exhibit B;

- 5 d. Any designated arbitrator or mediator who is assigned to hear this matter,
6 or who has been selected by the Parties, and his or her staff; who have,
7 after the date of this Supplemental Protective Order, signed the
8 “Acknowledgement And Agreement To Be Bound By Supplemental
9 Protective Order Governing Confidential Information of Non-Party
10 Qualcomm In This Case” attached hereto as Exhibit A, and the
11 “Certification Of Consultant Re Supplemental Protective Order Governing
12 Confidential Information of Non-Party Qualcomm In This Case,” attached
13 hereto as Exhibit B, as well as any arbitrator’s or mediator’s staff who have
14 also signed Exhibits A and B, provided, however, that before such
15 disclosure, QUALCOMM is provided notice including: (a) the
16 individual’s name and business title; (b) business address; (c) business or
17 professions; and (d) the individual’s CV. QUALCOMM shall have five
18 (5) business days from receipt of the notice to object in writing to such
19 disclosure (plus three (3) extra days if notice is given other than by hand
20 delivery, e-mail delivery or facsimile transmission). After the expiration
21 of the 5 business days (plus 3 days, if appropriate) period, if no objection
22 has been asserted, then “QUALCOMM – OUTSIDE ATTORNEYS’
23 EYES ONLY – CONFIDENTIAL SOURCE CODE” materials may be
24 disclosed pursuant to the terms of this Supplemental Protective Order;
- 25 e. Court reporters and videographers employed in connection with the
26 actions, subject to the provisions provided in subparagraph 33(g) herein;
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- 1 f. Professional Vendors to whom disclosure is reasonably necessary for the
2 actions, and a representative of which has signed the “Acknowledgement
3 And Agreement To Be Bound By Supplemental Protective Order
4 Governing Confidential Information of Non-Party Qualcomm In This
5 Case” attached hereto as Exhibit A, subject to the following exception:
6 Designated QUALCOMM Material shall not be disclosed to mock jurors
7 without Non-Party QUALCOMM’s express written consent; and
8 g. The Court and its personnel.

9 24. Notwithstanding the Protective Order, unless otherwise ordered or agreed in
10 writing by Non-Party QUALCOMM, Designated QUALCOMM Material may not be
11 disclosed to employees of a Receiving Party, including its in-house attorneys and support
12 staff.

13 25. Notwithstanding the Protective Order, unless otherwise ordered or agreed in
14 writing by Non-Party QUALCOMM, Designated QUALCOMM Material may not be
15 disclosed to mock jurors.

16 26. Notwithstanding the Protective Order, unless otherwise ordered or agreed in
17 writing by Producing Party, Designated QUALCOMM Material may not be disclosed to
18 any in-house counsel for the Receiving Party.

19 27. The Parties acknowledge that Designated QUALCOMM Material also may
20 be subject to the US government export control and economic sanctions laws, including
21 the Export Administration Regulations (“EAR”, 15 CFR 730 et seq.,
22 <http://www.bis.doc.gov/>) administered by the Department of Commerce, Bureau of
23 Industry and Security, and the Foreign Asset Control Regulations (31 CFR 500 et seq.,
24 <http://www.treas.gov/offices/enforcement/ofac/>) administered by the Department of
25 Treasury, Office of Foreign Assets Control (“OFAC”). Receiving Parties may not directly
26 or indirectly export, re-export, transfer or release (collectively, “Export”) any Designated
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1 QUALCOMM Material to any destination, person, entity or end use prohibited or restricted
2 under US law without prior US government authorization to the extent required by
3 regulation. The US government maintains embargoes and sanctions against the countries
4 listed in Country Groups E:1/2 of the EAR (Supplement 1 to part 740), currently Cuba,
5 Iran, Libya, North Korea, North Sudan, and Syria but any amendments to these lists shall
6 apply.

7 28. Receiving Party may host “QUALCOMM – OUTSIDE ATTORNEYS’
8 EYES ONLY” Material only on either 1) any system inside the firewall of a law firm
9 representing the Receiving Party, or 2) inside the system of a professional ESI Vendor
10 retained by Counsel of Record of the Receiving Party. “QUALCOMM – OUTSIDE
11 ATTORNEYS’ EYES ONLY” Material also cannot be sent or transmitted to any person,
12 location, or vendor outside of the United States except to Counsel of Record and Outside
13 Consultants designated pursuant to subparagraphs 22(c) and 23(c) above. To the extent
14 that any “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” Material is
15 transmitted from or to authorized recipients outside of the Receiving Party’s Outside
16 Counsel’s office, or outside of the ESI Vendor’s system, the transmission shall be by hand
17 (and encrypted if in electronic format), by a secure transport carrier (e.g., Federal Express),
18 or by encrypted electronic means. “QUALCOMM – OUTSIDE ATTORNEYS’ EYES
19 ONLY – CONFIDENTIAL SOURCE CODE” may not be transmitted by electronic means.

20 29. Each person to whom Designated QUALCOMM Material may be disclosed,
21 and who is required to sign the “Acknowledgement And Agreement To Be Bound By
22 Supplemental Protective Order Governing Confidential Information of Non-Party
23 Qualcomm In This Case” attached hereto as Exhibit A and, if applicable, the “Certification
24 Of Consultant Re Supplemental Protective Order Governing Confidential Information of
25 Non-Party Qualcomm In This Case,” attached hereto as Exhibit B, shall do so, prior to the
26 time such Designated QUALCOMM Material is disclosed to him or her. Counsel for the
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1 Receiving Party who makes any disclosure of Designated QUALCOMM Material shall
2 retain each original executed certificate and, upon written request, shall provide copies to
3 counsel for Non-Party QUALCOMM at the termination of the actions.

4 30. Absent written permission from Non-Party QUALCOMM, persons not
5 permitted access to Designated QUALCOMM Material under the terms of this
6 Supplemental Protective Order shall not be present at depositions while Designated
7 QUALCOMM Material is discussed or otherwise disclosed. Pre-trial and trial proceedings
8 shall be conducted in a manner, subject to the supervision of the Court, to protect
9 Designated QUALCOMM Material from disclosure to persons not authorized to have
10 access to such Designated QUALCOMM Material. Any Party intending to disclose or
11 discuss Designated QUALCOMM Material at pretrial or trial proceedings must give
12 advance notice to the Producing Party to assure the implementation of the terms of this
13 Supplemental Protective Order.

14 **5. Access By Outside Consultants**

15 31. **Notice.** If a Receiving Party wishes to disclose Designated QUALCOMM
16 Material to any Outside Consultant, Receiving Party must, prior to the Outside Consultant
17 being granted access to any Designated QUALCOMM Material, provide notice to counsel
18 for Non-Party QUALCOMM, which notice shall include: (a) the individual's name and
19 business title; (b) business address; (c) business or profession; (d) the individual's CV; (e)
20 any previous or current relationship (personal or professional) with Non-Party
21 QUALCOMM or any of the Parties to this action; (f) a list of other cases in which the
22 individual has testified (at trial or deposition) within the last six years; (g) a list of all
23 companies with which the individual has consulted or by which the individual has been
24 employed within the last four years, the dates of the consultancy or employment, a brief
25 description of the subject matter of the consultancy or employment, and copies of the
26 "Acknowledgement and Agreement To Be Bound By Supplemental Protective Order
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1 Governing Confidential Information of Non-Party Qualcomm In This Case,” attached as
2 Exhibit A, and the “Certification Of Consultant Re Supplemental Protective Order
3 Governing Confidential Information of Non-Party Qualcomm In This Case,” attached
4 hereto as Exhibit B, that have both been signed by that Outside Consultant.

5 32. **Objections.** With respect to Outside Consultants that have not been
6 previously disclosed to Non-Party QUALCOMM, Non-Party QUALCOMM shall have
7 five (5) business days, starting from the first business day following the date upon which
8 Receiving Party provides the notice and all information required by paragraph 31 to the
9 Producing Party, to object for good cause in writing to such disclosure (plus three (3) extra
10 days if notice is given in any manner other than by hand delivery, e-mail delivery or
11 facsimile transmission). After the expiration of the 5 business days (plus 3-days, if
12 appropriate) period, if no objection for good cause has been asserted by Non-Party
13 QUALCOMM, then Designated QUALCOMM Material may be disclosed to the Outside
14 Consultant pursuant to the terms of this Supplemental Protective Order. Any objection by
15 Non-Party QUALCOMM must be made for good cause, and must set forth in detail the
16 grounds on which it is based. Should Receiving Party disagree with the basis for the
17 objection(s), Receiving Party must first attempt to resolve the objection(s) informally with
18 Non-Party QUALCOMM. If the informal efforts do not resolve the dispute within five (5)
19 business days from the date upon which Receiving Party was first notified of any objection
20 for good cause by Non-Party QUALCOMM, Receiving Party may file a motion requesting
21 that the objection(s) be quashed after that five (5) day period has passed. Non-Party
22 Qualcomm shall have the burden of proof by a preponderance of the evidence on the issue
23 of the sufficiency of the objection(s). Pending a ruling by the Court upon any such
24 objection(s), or the subsequent resolution of the objection for good cause by Receiving
25 Party and Non-Party QUALCOMM, the discovery material shall not be disclosed to the
26 person objected to by Non-Party QUALCOMM.

1 **6. PRODUCTION OF QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY**
2 **– CONFIDENTIAL SOURCE CODE MATERIAL**

3 33. Non-Party QUALCOMM’s Source Code and Chip-Level Schematics:

4 a. To the extent that a Producing Party makes Non-Party QUALCOMM’s
5 Source Code or Chip-Level Schematics available for inspection:

6 (i) The Producing Party shall make all relevant and properly requested
7 Non-Party QUALCOMM Source Code available electronically and in text
8 searchable form (1) if produced by Non-Party QUALCOMM, in a separate
9 room at a secure facility selected by Non-Party QUALCOMM or (2) if
10 produced by Defendants, at the offices of Counsel of Record for the
11 producing Defendant or at a secure facility approved by QUALCOMM.
12 The Producing Party shall make the Source Code available for inspection
13 on a stand-alone, non-networked personal computer running a reasonably
14 current version of the Microsoft Windows or Apple Macintosh OS X
15 operating system (“Source Code Computer”). Alternatively, solely at the
16 option of the Producing Party, the Producing Party may make such source
17 code available on a Source Code Computer that is networked, in a
18 configuration deemed secure by Non-Party QUALCOMM. The Source
19 Code Computer shall be configured to permit review of the Source Code
20 through a password-protected account having read-only access. To
21 facilitate review of the Source Code at the secure facility, the Receiving
22 Party may use appropriate tool software on the Source Code Computer,
23 which shall be installed by the Producing Party, including at least one text
24 editor like Visual Slick Edit that is capable of printing out Source Code
25 with page and/or line numbers, a source code comparison tool like Araxis
26 Merge, and at least one multi-text file text search tool such as “grep.”
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1 Should it be necessary, other mutually agreed upon tools may be used.
2 Licensed copies of other mutually agreed upon tool software shall be
3 installed on the Source Code Computer by the Producing Party and paid
4 for by the Receiving Party.

5 (ii) The Producing Party shall make all relevant and properly requested
6 Chip-Level Schematics available for inspection electronically on the
7 Source Code Computer in a secure room at a secure facility selected by
8 Non-Party QUALCOMM. The Producing Party shall ensure that the
9 Source Code Computer includes software sufficient to allow a user to view
10 such electronic Chip-Level Schematics.

11 b. The Producing Party shall provide access to the Source Code Computer
12 during the normal operating hours of the secure facility.

13 c. The Source Code Computer shall be equipped to allow printing of the
14 Source Code and Chip-Level Schematics made available for inspection by
15 the Producing Party. Copies of Source Code and Chip-Level Schematics
16 shall only be made on watermarked pre-Bates numbered paper, which shall
17 be provided by the Producing Party. Under no circumstances are original
18 printouts of the Source Code or Chip-Level Schematics to be made except
19 for directly onto the watermarked and numbered sides of the paper
20 provided by the Producing Party. Additionally, the Receiving Party may
21 not print any continuous block of source code that results in more than 50
22 consecutive printed pages, except that Authorized Reviewer(s) may
23 request the printing of a continuous block of more than 50 pages, which
24 request shall not be unreasonably denied by the Producing Party. Counsel
25 for the Producing Party will keep the original printouts, and shall provide
26 copies of such original printouts to counsel for the Receiving Party within
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1 four (4) business days of (1) any request by the Receiving Party, or (2)
2 otherwise being notified that such original printouts have been made or
3 designated. Counsel of Record for the Receiving Party may request up to
4 10 copies of each original printout of Source Code or Chip-Level
5 Schematics. No more than 10% or 500 pages of the total Source Code (not
6 including copies of original printouts) whichever is greater, for any
7 software release (or in the case of hardware Source Code, for any hardware
8 product), no more than 500 pages of Chip-Level Schematics, and no
9 continuous blocks of Source Code or Chip-Level Schematics that exceed
10 50 pages, may be in printed form at any one time, without the express
11 written consent of Non-Party QUALCOMM, which shall not be
12 unreasonably denied. All printed Source Code and Chip-Level Schematics
13 shall be logged by Receiving Party's Counsel of Record and/or other
14 Personnel Retained by a Receiving Party in this action as noted in
15 subparagraph 33 (i) below. No additional electronic copies of the Source
16 Code or Chip-Level Schematics shall be provided by the Producing Party.
17 Hard copies of the Source Code or Chip-Level Schematics also may not be
18 converted into an electronic document, and may not be scanned using
19 optical character recognition ("OCR") technology. Only printouts of
20 Source Code and Chip-Level Schematics may be made, and such printouts
21 must include (1) directory path information and filenames from which the
22 Source Code and Chip-Level Schematics came and (2) line numbers. The
23 Producing Party may refuse to provide copies of Source Code and Chip-
24 Level Schematics printouts that fail to comply with this section.

25 d. Authorized Reviewer(s) in this action shall not print Source Code or Chip-
26 Level Schematics which have not been reviewed on the Source Code
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1 Computer, or in order to review the Source Code or Chip-Level
2 Schematics elsewhere in the first instance, i.e., as an alternative to
3 reviewing that Source Code or Chip-Level Schematics electronically on
4 the Source Code Computer, as the Parties and QUALCOMM acknowledge
5 and agree that the purpose of the protections herein would be frustrated by
6 such actions.

7 e. Authorized Reviewer(s) are prohibited from bringing outside electronic
8 devices, including but not limited to laptops, floppy drives, zip drives, or
9 other hardware into the secure room. Nor shall any cellular telephones,
10 personal digital assistants (PDAs), Blackberries, cameras, voice recorders,
11 Dictaphones, external or portable telephone jacks or other outside
12 electronic devices be permitted inside the secure room, except for medical
13 devices, implants, or equipment reasonably necessary for any legitimate
14 medical reason.

15 f. If any Authorized Reviewer(s) reviewing Non-Party QUALCOMM's
16 Source Code or Chip-Level Schematics seeks to take notes, all such notes
17 will be taken on bound (spiral or other type of permanently bound)
18 notebooks. No loose paper or other paper that can be used in a printer may
19 be brought into the secure room.

20 g. In the event copies of Source Code or Chip-Level Schematic printouts are
21 used as exhibits in a deposition, additional copies may be made for the
22 witness and outside counsel for the parties. The printouts shall not be
23 provided to the court reporter, except that the one copy for the witness
24 which will be used as an exhibit can be provided to the court reporter for
25 the purpose of marking the exhibit, and the further copies of the original
26 QUALCOMM Source Code or Chip-Level Schematics printouts made for
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1 the deposition or trial shall be destroyed at the conclusion of the deposition
2 or trial. The original copies of deposition exhibits designated
3 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY –
4 CONFIDENTIAL SOURCE CODE” will be maintained by the deposing
5 party under the terms set forth in this Supplemental Protective Order.

6 h. In addition to other reasonable steps to maintain the security and
7 confidentiality of Non-Party QUALCOMM’s Source Code and Chip-
8 Level Schematics, printed copies of the Designated Source Code Material
9 maintained by the Receiving Party must be kept in a locked storage
10 container when not being actively reviewed or otherwise being transferred
11 as permitted by the Protective Order and/or this Supplemental Protective
12 Order.

13 i. The Receiving Party’s Counsel of Record shall keep log(s) recording the
14 identity of each individual beyond Counsel of Record to whom each hard
15 copy of each Producing Party’s QUALCOMM Source Code or Chip-Level
16 Schematics is provided and when it was provided to that person in the first
17 instance, and within thirty (30) days after the issuance of a final, non-
18 appealable decision resolving all issues in the actions, the Receiving Party
19 must serve upon Non-Party QUALCOMM the log. In addition, any
20 Outside Consultants of the Receiving Party to whom the paper copies of
21 the QUALCOMM Source Code or Chip-Level Schematics were provided
22 must certify in writing that all copies of the QUALCOMM Source Code
23 or Chip-Level Schematics were destroyed or returned to the counsel who
24 provided them the information and that they will make no use of the Source
25 Code or Chip-Level Schematics, or of any knowledge gained from the
26 source code in any future endeavor.

1 **7. Procedure for Designating Materials**

2 34. Subject to the limitations set forth in the Protective Order and in this
3 Supplemental Protective Order, any Party or Non-Party QUALCOMM may: designate as
4 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” or information that it
5 believes, in good faith, meets the definition set forth in paragraph 2 above; and designate
6 as “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL
7 SOURCE CODE” information that it believes, in good faith, meets the definition set forth
8 in paragraph 5 above.

9 35. Except as provided above in paragraph 33 with respect to “QUALCOMM –
10 OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE” Material,
11 any material, including (including physical objects) made available by Non-Party
12 QUALCOMM for initial inspection by counsel for the Receiving Party prior to producing
13 copies of selected items shall initially be considered, as a whole, to constitute
14 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” information, and shall be
15 subject to this Order. Thereafter, Non-Party QUALCOMM shall have seven (7) calendar
16 days from the inspection to review and designate the appropriate documents as
17 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” prior to furnishing copies to
18 the Receiving Party.

19 36. Designation in conformity with the Protective Order and this Supplemental
20 Protective Order shall be made as follows:

- 21 a. For information in documentary (including “electronically stored
22 information”) form (apart from transcripts of depositions or other pretrial
23 or trial proceedings): the Designating Party shall affix the legend
24 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” or
25 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY –
26 CONFIDENTIAL SOURCE CODE” conspicuously on each page that
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1 contains Protected Material.

2 A party or non-party that makes original documents or materials
3 available for inspection need not designate them for protection until after
4 the Receiving Party has indicated which material it would like copied or
5 produced. Before and during the inspection, all material made available
6 for inspection shall be deemed “QUALCOMM – OUTSIDE
7 ATTORNEYS’ EYES ONLY.” After the Receiving Party has identified
8 the documents it wants copied and produced, the Producing Party must
9 determine which documents, or portions thereof, qualify for protection
10 under this Order and, before producing the specified documents, the
11 Producing Party must affix the appropriate legend to each page that
12 contains Designated QUALCOMM Material.

13 b. For Testimony Given in Deposition: For deposition transcripts, the
14 Designating Party shall specify any portions of the testimony that it wishes
15 to designate, by line and page number, no later than 20 business days after
16 the final transcript of the deposition has been received. The Party or Non-
17 Party may identify the entirety of the transcript as “QUALCOMM –
18 OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM –
19 OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE
20 CODE,” but all deposition transcripts not designated during the deposition
21 will nonetheless be treated as “QUALCOMM – OUTSIDE
22 ATTORNEYS’ EYES ONLY” or “QUALCOMM – OUTSIDE
23 ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE,”
24 until the time within which it may be appropriately designated as provided
25 for herein has passed. Any Protected Material that is used in the taking of
26 a deposition shall remain subject to the provisions of this Supplemental
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1 Protective Order and the Protective Order in the actions, along with the
2 transcript pages of the deposition testimony dealing with such Protected
3 Material. In such cases the court reporter shall be informed of this
4 Supplemental Protective Order and shall be required to operate in a manner
5 consistent with this Supplemental Protective Order. Transcript pages
6 containing Designated Material must be separately bound by the court
7 reporter, who must affix to the top of each such page the legend
8 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” and/or
9 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY –
10 CONFIDENTIAL SOURCE CODE.” An encrypted, password protected
11 copy of deposition transcripts containing Designated Qualcomm Material
12 made pursuant to this paragraph may be hosted electronically by the
13 Receiving Party on any system inside the firewall of a law firm
14 representing the Receiving Party, however, all other restrictions in this
15 Supplemental Protective Order pertaining to Designated Source Code
16 Material apply. In the event the deposition is videotaped, the original and
17 all copies of the videotape shall be marked by the video technician to
18 indicate that the contents of the videotape are subject to this Supplemental
19 Protective Order and the Protective Order, substantially along the lines of
20 “This videotape contains confidential or outside counsel eyes only
21 confidential testimony used in this case and is not to be viewed or the
22 contents thereof to be displayed or revealed except pursuant to the terms
23 of the operative protective orders in this matter or pursuant to written
24 stipulation of the parties.” Counsel for any Designating Party shall have
25 the right to exclude from oral depositions, other than the deponent,
26 deponent’s counsel, and the reporter and videographer (if any), any person
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1 who is not authorized by the Protective Orders in the actions to receive or
2 access Protected Material based on the designation of such Protected
3 Material.

4 c. For information produced in some form other than documentary, and for
5 any other tangible items, the Designating Party shall affix, in a prominent
6 place on the exterior of the medium, container or containers in which the
7 information or item is stored, the appropriate legend.

8 d. The provisions of subparagraphs 36(a-c) do not apply to documents
9 produced in native format. For documents produced in native format, the
10 parties shall provide written notice to the Receiving Party of any
11 confidentiality designations at the time of production.

12 **8. Use of Designated QUALCOMM Material**

13 37. Use of Designated QUALCOMM Material By Receiving Party: Unless
14 otherwise ordered by the Court, or agreed to in writing by Non-Party QUALCOMM, all
15 Designated QUALCOMM Material, and all information derived therefrom, shall be used
16 by the Receiving Party only for purposes of the actions, and shall not be used in any other
17 way, or for any other purpose, including the acquisition, preparation or prosecution before
18 the Patent office of any patent, patent application, for drafting or revising patent claims, or
19 in connection with patent licensing or product development work directly or indirectly
20 intended for commercial purposes related to the particular technologies or information
21 disclosed in the Designated QUALCOMM Material. Information contained or reflected in
22 Designated QUALCOMM Material shall not be disclosed in conversations, presentations
23 by parties or counsel, in court or in other settings that might reveal Designated
24 QUALCOMM Material, except in accordance with the terms of the Protective Order or
25 this Supplemental Protective Order.

26 38. Use of Designated QUALCOMM Material by Non-Party QUALCOMM:
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1 Nothing in this Supplemental Protective Order shall limit Non-Party QUALCOMM's use
2 of its own documents and information, nor shall it prevent Non-Party QUALCOMM from
3 disclosing its own confidential information, documents or things to any person. Such
4 disclosure shall not affect any designations made pursuant to the terms of this Supplemental
5 Protective Order, so long as the disclosure is made in a manner that is reasonably calculated
6 to maintain the confidentiality of the information.

7 39. Use of Designated QUALCOMM Material at Deposition: Non-Party
8 QUALCOMM shall, on request prior to the deposition, make a searchable electronic copy
9 of the QUALCOMM Source Code available on a stand-alone computer connected to a
10 printer during depositions of QUALCOMM personnel otherwise permitted access to such
11 Source Code. To the extent required, the party conducting the deposition may print
12 additional pages of Source Code printouts to be marked as exhibits at such depositions
13 consistent with other provisions and limitations of the Protective Order and this
14 Supplemental Protective Order. Except as may be otherwise ordered by the Court, any
15 person may be examined as a witness at depositions and trial, and may testify concerning
16 all Designated QUALCOMM Material of which such person has prior knowledge.

17 40. Use of Designated QUALCOMM Material at Hearing or Trial: The parties
18 will give Non-Party QUALCOMM prior notice of, and an opportunity to object to, any
19 intended use of the Designated QUALCOMM Material at any hearing or trial in the actions.
20 Said notice shall (a) be served by facsimile or email on counsel for Non-Party
21 QUALCOMM at least five (5) business days prior to the hearing or first day of trial, (2)
22 identify the Designated QUALCOMM Material with specificity while redacting any other
23 Party's Confidential Business Information and (3) identify the measures the party intends
24 to rely upon to protect the Designated QUALCOMM Material when used at any hearing
25 or trial consistent with this Supplemental Protective Order. This section shall not limit in
26 any way the use of Designated QUALCOMM Material during the cross-examination of
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1 any witness otherwise permitted access to such Designated QUALCOMM Material, as
2 long as the parties take all necessary steps to protect and maintain the confidentiality of
3 any such Designated QUALCOMM Material.

4 **9. Prosecution and Development Bar**

5 41. Unless otherwise permitted in writing between Producing Party and Receiving
6 Party, any individual who in the course of the actions personally receives, other than on
7 behalf of Producing Party, any material designated “QUALCOMM – OUTSIDE
8 ATTORNEYS’ EYES ONLY” or “QUALCOMM – OUTSIDE ATTORNEYS’ EYES
9 ONLY – CONFIDENTIAL SOURCE CODE” shall not participate in amending or drafting
10 patent specifications or claims before a Patent Office of any patent or patent application
11 related to the information disclosed in the Designated QUALCOMM Material, from the
12 time of receipt of such material through the date the individual person(s) cease to have
13 access to materials designated “QUALCOMM – OUTSIDE ATTORNEYS’ EYES
14 ONLY” or “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY –
15 CONFIDENTIAL SOURCE CODE,” as well as any materials that contain or disclose
16 Designated QUALCOMM Material. This provision shall not apply to post-grant
17 proceedings, including without limitation reexamination or opposition proceedings filed in
18 relation to the patents-in-suit or foreign counterparts.

19 42. Unless otherwise permitted in writing between Non-Party QUALCOMM and
20 Receiving Party, any Outside Consultant retained on behalf of Receiving Party who is to
21 be given access to Non-Party QUALCOMM’s documents, Source Code, or Chip-Level
22 Schematics designated as “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” or
23 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE
24 CODE” must agree in writing, using the form in Exhibit B, not to perform hardware or
25 software development work or product development work directly or indirectly intended
26 for commercial purposes related to the information disclosed in the Designated
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1 QUALCOMM Material, which is not publicly known, from the time of first receipt of such
2 material through the date the expert consultant ceases to have access to any material
3 designated “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” or
4 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE
5 CODE,” as well as any materials that contain or disclose Designated QUALCOMM
6 Material.

7 **10. Designated QUALCOMM Material Subpoenaed or Ordered Produced In**
8 **Other Litigation**

9 43. If a Receiving Party is served with a subpoena or a court order that would
10 compel disclosure of any information, documents or things designated in the actions as
11 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM –
12 OUTSIDE ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE,”
13 Receiving Party must notify the Producing Party and Non-Party QUALCOMM of such
14 information, documents or things, in writing (by fax and email) promptly, and in no event
15 more than ten (10) calendar days after receiving the subpoena or order. Such notification
16 must include a copy of the subpoena or order. Receiving Party also must immediately
17 inform, in writing, the party who caused the subpoena or order to issue that some or all of
18 the material covered by the subpoena or order is subject to this Supplemental Protective
19 Order and the Protective Order. In addition, the Receiving Party must provide a copy of
20 this Supplemental Protective Order and the Protective Order promptly to the party in the
21 other action that caused the subpoena or order to issue. The purpose of imposing these
22 duties is to alert the interested parties to the existence of this Supplemental Protective Order
23 and the Protective Order, and to afford Non-Party QUALCOMM an opportunity to try to
24 protect its confidentiality interests in the court from which the subpoena or order issued.
25 Non-Party QUALCOMM shall bear the burdens and the expenses of seeking protection in
26 that court of its Designated QUALCOMM Material. Nothing in these provisions should
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1 be construed as authorizing or encouraging any Receiving Party in this action to disobey a
2 lawful directive from another court.

3 **11. Unauthorized Disclosure Of Designated QUALCOMM Material**

4 44. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
5 Designated QUALCOMM Material to any person or in any circumstance not authorized
6 under this Order, the Receiving Party must immediately (a) notify in writing Producing
7 Party and Non-Party QUALCOMM of the unauthorized disclosures, (b) use its best efforts
8 to retrieve all copies of the Designated QUALCOMM Material, (c) inform the person or
9 persons to whom unauthorized disclosures were made of all the terms of this Order, and
10 (d) request such person or persons to execute the “Acknowledgment and Agreement to Be
11 Bound By Supplemental Protective Order Governing Confidential Information of Non-
12 Party Qualcomm In This Case” that is attached hereto as Exhibit A. Nothing in these
13 provisions should be construed as limiting any Producing Party’s rights to seek remedies
14 for a violation of this Supplemental Protective Order.

15 **12. Duration**

16 45. Even after the termination of the actions, the confidentiality obligations
17 imposed by this Supplemental Protective Order shall remain in effect following the
18 termination of the actions, or until Non-Party QUALCOMM agrees otherwise in writing
19 or a court order otherwise directs.

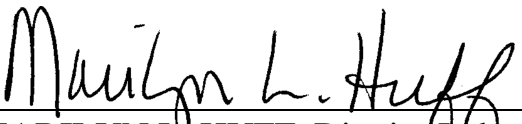
20 **13. Final Disposition**

21 46. Unless otherwise ordered or agreed in writing by Producing Party, within
22 sixty (60) days of the termination of all of the actions, whether through settlement or final
23 judgment (including any and all appeals therefrom), each Receiving Party, including
24 Outside Counsel for each Receiving Party, will destroy all Designated QUALCOMM
25 Material produced by Non-Party QUALCOMM or any other Party in the actions and will
26 destroy or redact any such Designated QUALCOMM Material included in work product,
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1 pleadings, motion papers, legal memoranda, correspondence, trial transcripts and trial
2 exhibits admitted into evidence (“derivations”) and all copies thereof, with the exception
3 of copies stored on back-up tapes or other disaster recovery media. Within sixty (60) days
4 of the date of settlement or final judgment, each Receiving Party shall serve Non-Party
5 QUALCOMM with a certification stating that it, including its Outside Counsel, has
6 complied with its obligations under this paragraph. With respect to any copy of Designated
7 QUALCOMM Material or derivation thereof that remains on back-up tapes and other
8 disaster storage media of an Authorized Reviewer(s), neither the Authorized Reviewer(s)
9 nor its consultants, experts, counsel or other party acting on its behalf shall make copies of
10 any such information available to any person for any purpose other than backup or disaster
11 recovery unless compelled by law and, in that event, only after thirty (30) days prior notice
12 to Producing Party or such shorter period as required by court order, subpoena, or
13 applicable law.

14 **IT IS SO ORDERED.**

15 DATED: June 28, 2016

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18 MARILYN L. HUFF, District Judge
19 UNITED STATES DISTRICT COURT
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EXHIBIT A

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY SUPPLEMENTAL
PROTECTIVE ORDER GOVERNING CONFIDENTIAL INFORMATION OF NON-PARTY
QUALCOMM IN THIS CASE**

I, _____ [print or type full name], state: My
business address is _____;

1. My present employer is _____;

2. My present occupation or job description is _____;

3. I have been informed of and have reviewed the Supplemental Protective Order
Governing Discovery from Non-Party QUALCOMM in this case (the "Supplemental Protective Order")
entered in this case, and understand and agree to abide by its terms. I agree to keep confidential all
information provided to me in the matters of Civil Action Nos. **16-cv-00385-H-WVG, 16-cv-00386-H-
WVG, 16-cv-00390, 16-cv-00394-H-WVG, 16-cv-00395-H-WVG, and 16-cv-00396-H-WVG** in the
United States District Court, Southern District of California in accordance with the restrictions in the
Supplemental Protective Order, and to be subject to the authority of that Court in the event of any violation
or dispute related to the Supplemental Protective Order.

4. I state under penalty of perjury under the laws of the United States of America that
the foregoing is true and correct.

[Signature]

Executed On _____

[Printed Name]

1 **EXHIBIT B**

2 **CERTIFICATION OF CONSULTANT RE SUPPLEMENTAL PROTECTIVE ORDER**
3 **GOVERNING CONFIDENTIAL INFORMATION OF NON-PARTY QUALCOMM IN THIS**
4 **CASE**

5 I, _____ [print or type full name], of
6 _____ am not an employee of the Party who retained me or of
7 a competitor of any Party or Non-Party QUALCOMM and will not use any information, documents, or
8 things that are subject to the Supplemental Protective Order Governing Discovery From Non-Party
9 QUALCOMM in Civil Action Nos. **16-cv-00385-H-WVG, 16-cv-00386-H-WVG, 16-cv-00390, 16-cv-**
10 **00394-H-WVG, 16-cv-00395-H-WVG, and 16-cv-00396-H-WVG** in the United States District Court,
11 Southern District of California, for any purpose other than this litigation. I agree not to perform hardware
12 or software development work or product development work intended for commercial purposes related to
13 the information disclosed in the Designated QUALCOMM Material, from the time of receipt of such
14 material through and including the date that I cease to have access to any material designated
15 “QUALCOMM – OUTSIDE ATTORNEYS’ EYES ONLY” or “QUALCOMM – OUTSIDE
16 ATTORNEYS’ EYES ONLY – CONFIDENTIAL SOURCE CODE.”

17 I state under penalty of perjury under the laws of the United States of America that the
18 foregoing is true and correct.

19 _____
20 [Signature]

21
22 Executed On _____
23 [Printed Name]