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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

APPLE INC.,

Plaintiff,

v.
QUALCOMM INCORPORATED,

Defendant.

Case No.: 17cv108-GPC-MDD

**ORDER REQUIRING MEET AND
CONFER; DENYING PLAINTIFF
APPLE, INC.’S EX PARTE
MOTION FOR LEAVE TO AMEND
AS MOOT**

[ECF No. 150]

QUALCOMM INCORPORATED,

Counterclaim-Plaintiff,

v.
APPLE INC.,

Counterclaim-Defendant.

Before the Court are Apple Inc. (“Apple”) and Qualcomm Incorporated’s (“Qualcomm”) Joint Motion for Discovery (ECF Nos. 149, 152), Apple’s *ex parte* Motion for Order Granting Leave to File an Amended Opposition to Qualcomm’s Motion to Compel the Production of Documents (ECF No. 150),

1 and Apple’s Amended Motion for Discovery (ECF No. 156).

2 This dispute is a result of poor timing. According to the filings, Apple
3 served allegedly deficient responses and objections to Qualcomm’s First Set of
4 Requests for Production (“RFP”) on September 6, 2017. (ECF No. 149-1 at
5 ¶2). Qualcomm then sent Apple a meet and confer letter on September 12,
6 2017 (*Id.* at ¶3), which Apple insists included “little detail.” (ECF No. 151 at
7 2). During a September 20, 2017, phone call Apple declined to provide
8 requested information as to which RFPs Apple intended to stand on its
9 objection and which RFPs required further vetting for potential narrowing.
10 (ECF No. 149-1 at ¶4). During that call, Apple indicated that they would
11 respond to Qualcomm’s September 12 letter on September 22, 2017. (*Id.*) On
12 September 23, 2017, Apple indicated the letter would be served on September
13 25, 2017. (*Id.* at ¶6).

14 Qualcomm served their portion of the Joint Motion for Discovery on
15 September 27, 2017, and included a one-sentence cover email indicating that
16 they anticipated filing the Joint Motion on October 6, 2017.¹ (ECF No. 153-1
17 at ¶2). Apple insists they did not receive this notice and that the first time
18 they were made aware of Qualcomm’s intent to timely file the Joint Motion
19 was on October 2, 2017. (ECF No. 150 at 3, 4). Qualcomm’s draft portion
20 included a request for the Court to order Apple to meaningfully meet and
21 confer by October 13, 2017, because at the time Qualcomm served their
22 portion, Apple had not yet responded to the September 12 letter. (ECF No.
23 153 at 2-3). Apple stated that they interpreted that request to mean

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26 ¹ According to Chambers’ Rules, a motion related to discovery disputes must be filed no
27 later than thirty days after the date upon which the event giving rise to the dispute
occurred.

1 Qualcomm wished to extend the meet and confer process for the purposes of
2 the joint motion until October 13, 2017. (ECF No. 150 at 3-4). Apple does not
3 report seeking clarification from Qualcomm with respect to extending the
4 meet and confer process, nor did Apple seek leave from the Court to extend
5 the date by which the joint motion was due. Apple's response to the
6 September 12 meet and confer letter was then served on September 29, 2017.
7 (149-1 at ¶7).

8 The parties had a telephonic meet and confer on October 3, 2017. (*Id.*
9 at ¶9). Qualcomm indicates that during the phone call they offered to sit
10 down and discuss each contested RFP one-by-one, while Apple indicated they
11 were not prepared to agree to a compromise in response to any RFPs at that
12 time. (ECF Nos. 149-1 at ¶10, 153 at 5). Apple then served a letter on
13 Qualcomm on October 5, 2017, addressing fifty-four RFPs initially brought
14 up in the September 12 letter. (ECF No. 149-1 at ¶11). Apple indicated that
15 they "planned to follow up as soon as possible" on the remaining unaddressed
16 disputed RFPs. (ECF No. 153 at 5).

17 Apple asserts that they did not have reasonable time to respond to
18 Qualcomm's disputed RFPs, given the number of RFPs at issue and their
19 complexity. (ECF No. 150 at 4). Nevertheless, in the proposed Amended
20 Joint Motion, Apple agrees to produce documents to the extent they exist and
21 are non-privileged to twenty-four disputed RFPs. (*See, e.g.*, ECF No. 156 at
22 12, 31, 47, 93, etc.). Additionally, both parties have indicated a willingness to
23 meet and confer to further narrow and clarify the disputed RFPs. In fact, in
24 the Amended Joint Motion, Apple articulates this willingness ninety-four
25 times. (*See, e.g., Id.* at 8, 13, 17, 22, 32, etc.).

26 Therefore, the Court orders the parties to participate in a meaningful
27 meet and confer that fully addresses all remaining allegedly deficient RFP

1 responses within the next 14 days. The Parties are to withdraw the currently
2 pending Joint Motions (ECF Nos. 149, 152, and 156) and file a coherent joint
3 motion representing only those RFPs that remain truly in dispute after a
4 meaningful meet and confer by **November 22, 2017**.

5 **IT IS SO ORDERED.**

6 Dated: October 25, 2017

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8 Hon. Mitchell D. Dembin
9 United States Magistrate Judge
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