

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE QUALCOMM INCORPORATED
SECURITIES LITIGATION

Case No.: 17cv121-JO-MSB

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS’
MOTION FOR CLASS
CERTIFICATION**

Plaintiffs Sjunde AP-Fonden (“AP7”) and Metzler Asset Management GmbH (“Metzler) (collectively, “Plaintiffs” or “Lead Plaintiffs”) filed a class action alleging violations of federal securities laws against Defendants Qualcomm Inc. (“Qualcomm”) and several of its executives, Derek K. Aberle, Steven R. Altman, Donald J. Rosenberg, William F. Davidson, Jr., Paul E. Jacobs, and Steven Mollenkopf (collectively, “Defendants”). On May 16, 2022, Plaintiffs filed a motion to certify the class pursuant to Federal Rule of Civil Procedure 23. Dkt. 217. For the reasons stated below, the Court GRANTS IN PART AND DENIES IN PART Plaintiffs’ motion for class certification.

I. BACKGROUND

Qualcomm is a leading technology company that owns patents for components inside of cell phones, handsets, and other devices. Qualcomm does not manufacture the end-product—*e.g.*, cell phones and handsets—but, rather, it patents and sells the components, such as chips, to the companies that make the end-products. As relevant to this action, Qualcomm operates two primary lines of business: (1) a licensing business through which Qualcomm licenses to device manufacturers the right to make and use its patented components, such as chips; and (2) a chip-supply¹ business through which Qualcomm directly sells its patented chips to device manufacturers.

Since at least 2008, Qualcomm has operated its licensing business at the “device level” only.² Qualcomm sells other companies a license that allows them to insert Qualcomm’s technology components in certain end-product devices, such as cell phones. Qualcomm licenses at the device level only, meaning that Qualcomm licenses the use of its components in a specific end-product device (*e.g.*, the cell phone) rather than licensing the use of the component (*e.g.*, the cell phone chip). Qualcomm operates in this fashion because if it licensed at the component level, other companies might be able use those components however they wanted, including selling them downstream. *See, e.g., Quanta Comput., Inc. v. LG Elecs., Inc.*, 553 U.S. 617, 625 (2008). Device-level licensing allows Qualcomm to control how its patented components are used and to collect higher royalties based on a percentage of the end-product sales as opposed to the value of the smaller

¹ Qualcomm’s modem chips are technological components that determine call quality and data transmission speeds in cell phones, handsets, and other devices.

² Qualcomm submits evidence to show that it has, since its inception, only granted full licenses at the device level. *See, e.g.*, Dkt. 246, Longman Decl., Ex. 1 at L8. Qualcomm states that, prior to 2008, it “occasionally” granted limited chip licenses to make and sell chips, but never to *use* chips in full devices like handsets. *See* Opp. at 5–6. Qualcomm points to evidence showing that it entered into only three such agreements prior to 2008. *See also* Longman Decl., Ex. 4 at L167–69. Plaintiffs do not comment on this distinction but agree that Qualcomm has only licensed at the device level since 2008. *See, e.g.*, Compl. ¶¶ 53–61, 63, 73, 86.

1 components. Due to similar concerns, Qualcomm only sells its chips to companies that
2 license Qualcomm patents at the device level.

3 While Qualcomm maintains that it has openly engaged in the above licensing and
4 chip-supply practices, Plaintiffs allege that Defendants deceived the public about
5 Qualcomm’s business model in violation of Sections 10(b) and 20(a) of the Securities
6 Exchange Act of 1934. *See* Dkt. 32 (“Compl.”). Specifically, Plaintiffs allege that
7 Qualcomm misled the market through two categories of deceptive statements. First,
8 Plaintiffs allege Qualcomm touted that it “broadly license[d]” its technology throughout
9 the industry when, in fact, Qualcomm did not license at the chip level and refused to license
10 competing chipmakers. *See, e.g.,* Compl. ¶¶ 10–11, 131. Second, Plaintiffs allege that
11 Qualcomm misled the market by stating that it kept its licensing and chip-supply businesses
12 separate when, in fact, Qualcomm regularly bundled the two in negotiations and
13 agreements. *See, e.g., id.* ¶¶ 14–15, 131.

14 **A. Qualcomm’s Alleged Licensing Misrepresentations**

15 Plaintiffs point to three rough categories of misrepresentations that Defendants made
16 between February 1, 2012 and January 20, 2017, regarding Qualcomm’s licensing
17 practices. In the first category, on at least ten instances, Defendants said that Qualcomm
18 licensed “broadly,” had a “broad licensing” model, or otherwise described the breadth of
19 Qualcomm’s licensing practices. *See, e.g.,* Compl. ¶ 134 (April 11, 2012: Defendant
20 Rosenberg was quoted in an article describing “Qualcomm’s business model” as “broadly
21 licensing our technology”); ¶ 149 (March 5, 2013: Defendant Jacobs said at a stockholder
22 meeting that Qualcomm “license[d] broadly” and was “an enabler for the rest of the
23 industry”); ¶ 155 (November 6, 2013: Defendant Mollenkopf referred to Qualcomm’s
24 “broad licensing program” during an investors’ conference call).³ In the second category,
25

26
27 ³ *See also* Compl. ¶ 136 (April 26, 2012: a high-ranking executive stated at a hearing before the
28 House that “we broadly license our portfolio of U.S. and foreign patents to virtually every manufacturer
in the mobile industry”); ¶¶ 141, 154, 165, 172, 185 (in SEC filings, Qualcomm stated that its “strategy
to make [Qualcomm’s] patented technologies broadly available has been a catalyst for industry growth”

1 Plaintiffs point to at least eight instances where Defendants said that Qualcomm licensed
2 on a “fair,” “reasonable,” or “non-discriminatory” basis. *See e.g.*, ¶¶ 138, 151 (SEC filings
3 on November 7, 2012, and November 6, 2013, stating that, “[w]e have licensed or
4 otherwise provided rights to use our patented technologies to companies on terms that are
5 fair, reasonable and free from unfair discrimination.”).⁴ Finally, Plaintiffs point to more
6 than a dozen instances where Defendants described Qualcomm’s long-standing licensing
7 model as facilitating competition in the industry. *See, e.g.*, ¶ 157 (November 22, 2013:
8 Qualcomm “make[s] [its patents] available to the industry through its licensing program.”);
9 ¶¶ 140, 153, 164, 171, 184 (in SEC filings from 2012–2016, Qualcomm stated: “[w]e have
10 facilitated competition in the wireless communications industry by licensing and enabling
11 a large number of manufacturers.”).⁵

12 **B. Qualcomm’s Alleged Bundling Misrepresentations**

13 Plaintiffs point to four rough categories of misrepresentations that Defendants made
14 between February 1, 2012 and January 20, 2017, regarding Qualcomm’s bundling
15 practices. In the first category, Plaintiffs point to two instances where Qualcomm
16 executives described the licensing and chip-supply businesses as separate and represented

17
18
19 on November 7, 2012, November 6, 2013, November 5, 2014, November 5, 2015, and November 2, 2016);
20 ¶ 161 (February 18, 2014: Defendant Davidson said in a “Powertalk” interview that Qualcomm “broadly”
licensed its patents “on a proactive basis.”).

21 ⁴ *See also* Compl. ¶¶ 138, 151, 163, 170, 183 (on November 7, 2012, November 6, 2013, November
22 5, 2015, June 24, 2016, and November 2, 2016, Qualcomm stated in SEC filings that “we will offer to
license our essential patents for these CDMA standards on a fair and reasonable basis free from unfair
23 discrimination.”); ¶ 186 (January 17, 2017: Qualcomm similarly stated that it licensed its patents on “fair,
reasonable and non-discriminatory terms.”).

24 ⁵ *See also* Compl. ¶¶ 132, 144, 159, 166, 175 (in SEC filings from 2012, 2013, 2014, 2015, and
25 2016, that Defendants described the following: “the benefits of our business model ... in promoting a
highly competitive ... wireless industry” and “the success of our business model in enabling new, highly
26 cost-effective competitors to their products.”); ¶ 173 (November 17, 2015: Qualcomm stated in a press
release that “[o]ur patent licensing practices, which we . . . have maintained for almost two decades . . . are
27 pro-competitive.”); ¶ 177 (January 27, 2016: during an earnings conference call, Defendant Rosenberg
stated that Qualcomm’s licensing model “has been in effect for quite a few decades.”); ¶ 179 (May 28,
28 2016: Defendant Aberle said at an investors’ forum that “we don’t keep the technology to ourselves: our
business model is to share that technology through licensing.”).

1 that Qualcomm did not bundle, even though Qualcomm allegedly bundled its licensing and
2 chip-supply businesses in multiple ways. *See* Compl. ¶ 142 (November 27, 2012:
3 Defendant Aberle said at an investors’ conference that Qualcomm “tend[ed] to keep the
4 licensing and chip business very separate . . . And we try to keep that separated from
5 whether they are using a QRD or a Qualcomm chip, and we don’t bundle those together.”);
6 ¶ 146 (February 25, 2013: Defendant Mollenkopf said during an investors’ presentation
7 that the licensing and chip-supply businesses were “really separate businesses. I mean we
8 have been very clear that we keep those two things separate—separate propositions to the
9 customer. So, really, two different things.”). Second, on November 17, 2015, Qualcomm
10 issued a press release stating that the Korean Fair Trade Commission’s “allegations and
11 conclusions” were “not supported by the facts,” when, according to Plaintiffs, the agency’s
12 allegations about bundling were true. *See id.* ¶ 173. In the third category, Plaintiffs point
13 to the instances already discussed above where Defendants said that Qualcomm licensed
14 on a “fair,” “reasonable,” or “non-discriminatory” basis, when Qualcomm was allegedly
15 engaged in unfair bundling practices.⁶ Finally, Plaintiffs point to the instances discussed
16 above where Defendants said that its business model facilitated competition in the industry,
17 even though Qualcomm was allegedly stifling competition by bundling.⁷

18 ///

19 ///

20 _____

21 ⁶ *See* Compl. ¶¶ 138, 151 (SEC filings on November 7, 2012, and November 6, 2013 stating that:
22 “[w]e have licensed or otherwise provided rights to use our patented technologies to companies on terms
23 that are fair, reasonable and free from unfair discrimination.”); ¶¶ 138, 151, 163, 170, 181, 183 (on
24 November 7, 2012, November 6, 2013, November 5, 2015, June 24, 2016, and November 2, 2016,
25 Qualcomm stated in SEC filings that “we will offer to license our essential patents for these CDMA
standards on a fair and reasonable basis free from unfair discrimination.”); ¶ 186 (January 17, 2017:
Qualcomm similarly stated that it licensed its patents on “fair, reasonable and non-discriminatory terms.”).

26 ⁷ *See* Compl. ¶¶ 140, 153, 164, 171, 184 (in SEC filings in 2012–2016, Qualcomm stated: “[w]e
27 have facilitated competition in the wireless communications industry by licensing and enabling a large
28 number of manufacturers.”); ¶¶ 132, 144, 159, 166, 175 (in SEC filings in 2012, 2013, 2014, 2015, and
2016, Defendants described the following: “the benefits of our business model ... in promoting a highly
competitive ... wireless industry” and “the success of our business model in enabling new, highly cost-
effective competitors to their products.”).

1 **C. The Alleged Corrective Disclosures**

2 Plaintiffs allege that the market remained in the dark about Qualcomm’s selective
3 licensing and bundling practices until the truth was revealed in four corrective disclosures:

4 **The First Corrective Disclosure**

5 **November 17, 2015** – Qualcomm’s press release in response to an antitrust
6 investigation initiated by the Korean Fair Trade Commission (“KFTC”)
7 (Compl. ¶ 212; Defs. Ex.⁸ 35 at A815):

8 [KFTC] alleges, among other things, that we do not properly
9 negotiate aspects of our licenses, and that our practice of
10 licensing our patents only at the device level and requiring that
11 our chip customers be licensed to our intellectual property violate
Korean competition law.

12 **The Second Corrective Disclosure**

13 **December 8, 2015** – The European Commission’s press release
14 announcing that it was investigating Qualcomm for violating European
15 competition law (Compl. ¶ 216; Defs. Ex. 7 at A423):

16 The European Commission has informed Qualcomm of its
17 preliminary conclusions that the chipset company illegally paid
18 a major customer for exclusively using Qualcomm chipsets and
19 sold chipsets below cost with the aim of forcing its competitor
20 Icera out of the market, in potential breach of EU antitrust
21 rules . . . The first Statement of Objections outlines that since
22 2011, Qualcomm has paid significant amounts to a major
23 smartphone and tablet manufacturer on condition that it
24 exclusively use Qualcomm baseband chipsets in its smartphones
25 and tablets. The Commission takes the preliminary view that this
26 conduct has reduced the manufacturer’s incentives to source
chipsets from Qualcomm’s competitors and has harmed
27 competition and innovation in the markets for UMTS and LTE
28 baseband chipsets. The contract between Qualcomm and the
manufacturer containing the exclusivity clauses is still in force.

27
28 ⁸ “Defs. Ex.” refers to Defendants’ exhibits in support of their opposition to class certification, which can be found at Dkt. 245.

1 **The Third Corrective Disclosure**

2 **January 17, 2017** – A Complaint publicly filed by the Federal Trade
3 Commission (“FTC”) (Compl. ¶ 224; Defs. Ex. 9):

4 Qualcomm has consistently refused to license its cellular
5 standard-essential patents to its competitors, in violation of
6 Qualcomm’s FRAND⁹ commitments . . . Qualcomm has
7 consistently refused to license its SEPs to competing suppliers of
8 baseband processors. Several of Qualcomm’s former and current
9 competitors, including Intel, MediaTek, and Samsung, have
10 sought SEP licenses from Qualcomm. In each instance,
11 Qualcomm refused to grant a SEP license.

12 Qualcomm withholds its baseband processors unless a customer
13 accepts a license to standard-essential patents on terms preferred
14 by Qualcomm, including elevated royalties that the customer
15 must pay when using competitors’ processors (‘no license-no
16 chips’).

17 Qualcomm entered into exclusive dealing arrangements with
18 Apple Inc., a particularly important cell phone
19 manufacturer . . . When Apple sought relief from Qualcomm’s
20 excessive royalty burden, Qualcomm conditioned partial relief
21 on Apple’s exclusive use of Qualcomm baseband processors.

22 Qualcomm has also used its dominant position to negotiate
23 supply terms that leave OEMs vulnerable to a supply disruption
24 in the event of a license dispute . . . Qualcomm has induced
25 certain OEMs to accept its preferred license terms using [] the
26 “stick” of supply disruption.

27 **The Fourth Correction Disclosure**

28 **January 20, 2017** – A Complaint filed by Apple alleging antitrust violations
(Compl. ¶ 228; Defs. Ex. 11):

 Qualcomm inserted a gag order that prevented an aggrieved party
 from seeking relief that could curb Qualcomm’s illegal conduct,
 in an effort to keep courts and regulators in the dark and its
 coerced customers quiet.

⁹ “FRAND” stands for fair, reasonable, and non-discriminatory.

1 Among Apple’s damages are nearly \$1 billion that Qualcomm
2 owes Apple . . . Qualcomm claims that Apple has forfeited those
3 amounts by responding to [KFTC] requests . . . Qualcomm then
4 attempted to extort Apple into changing its responses and
5 providing false information to the KFTC in exchange for
6 Qualcomm’s release of those payments to Apple.

7 Qualcomm illegally double-dips by selling chipsets . . . and then
8 separately licensing (but never to competitors) the purportedly
9 necessary intellectual property. By tying together the markets
10 for chipsets and licenses to technology in cellular standards,
11 Qualcomm illegally enhances and strengthens its monopoly in
12 each market . . . Qualcomm leverages its market power to extract
13 exorbitant royalties, later agreeing to reduce those somewhat
14 only in exchange for additional anticompetitive advantages.

15 Plaintiffs point to the First, Third, and Fourth Corrective Disclosures as corrections
16 of Qualcomm’s licensing misrepresentations. Plaintiffs allege that the market learned for
17 the first time that Qualcomm did not license its chip components to chipmakers on
18 November 17, 2015, when Qualcomm announced in a press release that the Korean Fair
19 Trade Commission was investigating it, in part, for Qualcomm’s practice of “licensing [its]
20 patents only at the device level.” *See* First Corrective Disclosure; Compl. ¶ 212; Defs. Ex.
21 35 at A815. Plaintiffs also allege that the market learned more information regarding
22 Qualcomm’s refusal to license chips to chipmakers on January 17, 2017, when the Federal
23 Trade Commission filed a public complaint accusing Qualcomm of refusing to license
24 chipset competitors. *See* Third Corrective Disclosure; Defs. Ex. 9 ¶¶ 3, 112 (“Qualcomm
25 has consistently refused to license its cellular standard-essential patents to its
26 competitors”). Finally, Plaintiffs point to a public complaint filed by Apple three days later
27 on January 20, 2017, similarly accusing Qualcomm of refusing to license chipset
28 competitors. *See* Fourth Corrective Disclosure; Defs. Ex. 11 ¶ 51 (Qualcomm “refus[ed]
to license its [standard-essential patents] to competing chipset manufactures”).

Plaintiffs also point to all four corrective disclosures as corrections of Qualcomm’s
bundling misrepresentations. According to Plaintiffs, the market first began to learn about
Qualcomm’s unfair bundling practices on November 17, 2015, when Qualcomm

1 announced in the First Corrective Disclosure that the Korean Fair Trade Commission had
2 accused it of not “properly negotiat[ing]” its licenses. *See* First Corrective Disclosure;
3 Defs. Ex. 35 at A815. The market then allegedly learned more about the truth of
4 Qualcomm’s bundling practices through the Second Corrective Disclosure on December
5 8, 2015, when the European Commission accused Qualcomm of “illegally pa[ying] a major
6 customer for exclusively using Qualcomm chipsets.” *See* Second Corrective Disclosure;
7 Pltfs. Ex. 89.¹⁰ Then, in the Third Corrective Disclosure on January 17, 2017, the FTC
8 filed a civil complaint against Qualcomm, alleging that Qualcomm offered incentive
9 payments tied to chipset purchases and provided conditional royalty payments that
10 operated as penalties for using other chip suppliers. *See* Third Corrective Disclosure; Pltfs.
11 Ex. 91 ¶¶ 124–30. Finally, in the Fourth Corrective Disclosure on January 20, 2017, Apple
12 accused Qualcomm of deterring it from switching to other chip suppliers via royalty
13 rebates. *See* Fourth Corrective Disclosure; Pltfs. Ex. 92 ¶¶ 95–97.

14 Plaintiffs contend that when the market learned the truth about Qualcomm’s business
15 practices through the four corrective disclosures above,¹¹ Qualcomm’s artificially inflated
16 stock price dropped, causing investors harm. *See generally* Compl. Under this “inflation
17 maintenance” theory,¹² Plaintiffs seek to prove that Defendants’ misstatements and
18 omissions maintained Qualcomm’s stock at an artificially inflated price until the truth was
19 revealed. When the market finally learned the information withheld from them,
20

21
22 ¹⁰ “Pltfs. Ex.” refers to Plaintiffs’ exhibits in support of their motion for class certification, which
23 can be found at Dkts. 217 and 255.

24 ¹¹ Plaintiffs originally identified five corrective disclosures in their complaint but appear to
25 concede on class certification that the Korean Fair Trade Commission’s press release announcing the
26 findings of its investigation on December 27, 2016, did not have a statistically significant impact on stock
27 prices and thus, is not a corrective disclosure. *See* Dkt. 217, Pltfs. Ex. 1 (“Tabak Report”) ¶ 61 n.49 (“[t]he
28 December 27, 2016 disclosure is not associated with a statistically significant price movement in my
analysis using the event-study model described earlier in this report. Thus, my damages model will assign
no inflation or damages as a result of that disclosure”).

¹² *See generally Goldman Sachs Grp., Inc. v. Arkansas Tchr. Ret. Sys.*, 141 S. Ct. 1951, 1961
(2021) (describing inflation maintenance theory of price impact); *see also In re Vivendi, S.A. Sec. Litig.*,
838 F.3d 223, 232 (2d Cir. 2016) (same).

1 Qualcomm’s stock price dropped by a commensurate amount. *See id.* ¶¶ 10–11, 14–15,
2 131. As proof of inflation maintenance, Plaintiffs point to the price declines following the
3 four corrective disclosures to demonstrate that the stock price had been artificially inflated
4 prior to that point due to Defendants’ alleged misstatements and omissions.

5 **D. Public Information Regarding Qualcomm’s Licensing Practices Prior to the**
6 **Corrective Disclosures**

7 Prior to the First Corrective Disclosure in 2015, it appears that the following
8 information regarding Qualcomm’s licensing practices was publicly available. In 2009, a
9 Deutsche Bank company alert stated that “Qualcomm does not collect royalty payments
10 from chip vendors, they collect them from chip vendors’ customers (handset makers),”
11 suggesting that market participants understood Qualcomm did not license chips to
12 chipmakers. Defs. Ex. 23 at A695. In 2014, the China National Development and Reform
13 Commission’s (“NDRC”) investigation into Qualcomm made Qualcomm’s device-level
14 licensing practice public. On July 23, 2014, Qualcomm disclosed in its Form 10-Q that the
15 NDRC was investigating the company for refusing to license its chips to chipmakers. *See*
16 Defs. Ex. 16 at A651 (disclosing that the NDRC was investigating Qualcomm for “the
17 alleged refusal of the Company to grant patent licenses to chipset manufacturers.”). After
18 this disclosure, market makers and analysts reported on the investigation and the agency’s
19 eventual censure of Qualcomm. *See* Defs. Exs. 6, 25, 26, 28, 33. For example, analyst
20 reports in August and September 2014 noted that the agency was reviewing Qualcomm’s
21 “practice of . . . refusing to license chipset manufacturers.” *See* Defs. Ex. 25 at A714; Ex.
22 26 at A725. Then, after the NDRC’s investigation concluded in March 2015, analysts and
23 legal sources reported that Qualcomm would be able to maintain its device-level licensing
24 practice and could continue to refuse to license at the chip level. *See* Defs. Ex. 6 at A417
25 (“Qualcomm retained its ability to calculate royalties based on the wholesale price of the
26 entire device” and “avoided a duty to license at the chip level”); Defs. Ex. 28 at A739
27 (Qualcomm “ha[d] staved off the elephant in the room” of chip-level licensing, which
28 “would [have] require[d] fundamental changes to [Qualcomm’s] biz model”); Defs. Ex. 33

1 at A783 (“Qualcomm agreed to pay a \$975 million fine” but “can still base licensing fees
2 on devices, not components”).

3 Prior to the corrective disclosures, it was also public knowledge that device-level
4 licensing was a common industry practice, and, in fact, there was a public debate occurring
5 in the industry regarding the continuation of that practice. *See* Defs. Exs. 3–5. Qualcomm
6 participated in this debate by publicly defending device-level licensing in several forums,
7 including at a hearing before Congress on July 30, 2013, during which industry participants
8 testified about patenting standards and practices. *See generally* Defs. Ex. 3. There,
9 Qualcomm repeatedly stated that it licensed device manufacturers, *see id.* at A75, A144,
10 and argued that companies like Qualcomm should not be required to license at the
11 component level. *See id.* at A166–68 (arguing that FRAND commitments do not require
12 licensing components to component makers and that requiring companies to do so “would
13 be inconsistent with widely accepted industry practice”; “it is and has long been the
14 industry norm . . . to license at the level of complete standard-compliant devices, not part
15 and components”). Other witnesses at the hearing confirmed patent holders “often go to
16 great lengths to avoid licensing upstream component (*e.g.*, chip) manufacturers and choose
17 instead to license . . . at . . . the device (*e.g.*, computer) level” and “refuse to license chip
18 makers so that they can seek excessive royalties.” *Id.* at A74, A85, A117, A,126, A129,
19 A131.¹³

20 Qualcomm also engaged in this public debate by filing an amicus brief in the Federal
21 Circuit arguing in favor of device-level licensing and by filing objections to a standard
22 setting organization’s proposed policy change. On February 27, 2014, Qualcomm filed a
23 public amicus brief in *Ericsson Inc. v. D-Link Sys., Inc.*, after the defendant appealed to the
24 Federal Circuit. *See* Defs. Ex. 4. There, Qualcomm argued that companies have the right
25

26
27 ¹³ Defendants also highlight a variety of court and regulatory filings reflecting similar notions,
28 including that, “large companies have adopted [] policies of only licensing fully compliant products,” (*see*
Ericsson Inc. v. D-Link Sys., Inc., 2013 WL 4046225 (E.D. Tex. Aug. 6, 2013)), and that device-level
licensing is a “widespread industry licensing practice.” *See* Defs. Ex. 4.

1 to license devices instead of components and are not required to license chips to chip
2 suppliers. *See id.* at A344–48 (“[companies] regularly set royalties” based on “wholesale
3 price of handset[]”; there is “nothing inherently wrong or unfair” with the practice of
4 licensing “fully compliant products”; standard-setting-organization commitments “do not
5 require the licensing of components”).¹⁴ Then, on May 26, 2014, Qualcomm filed public
6 objections to the proposed policy of a standard setting organization. *See* Defs. Ex. 5.
7 Standard setting organizations are “global collaborations of industry participants” that
8 collectively establish standards in the field. *See Fed. Trade Comm’n v. Qualcomm Inc.*,
9 969 F.3d 974, 982–83 (9th Cir. 2020). When one of these organizations that Qualcomm
10 participated in proposed a policy that would have required companies like Qualcomm to
11 “license exhaustively” at the component level, Qualcomm objected in a public filing,
12 arguing that it would constitute “a disruptive change to existing licensing practices.” *See*
13 Defs. Ex. 5 at A370. Defendants argue that this public information illustrates that device-
14 level licensing was a well-known, industry-wide practice.

15 **E. Public Information Regarding Qualcomm’s Bundling Practices Prior to the** 16 **Corrective Disclosures**

17 Prior to the First Corrective Disclosure in 2015, it appears that the following
18 information regarding Qualcomm’s bundling practices was publicly available. From
19 December 10, 2007 to March 16, 2015, third-parties publicly stated that Qualcomm had a
20 policy of only selling its chips to licensees.¹⁵ Qualcomm was also publicly investigated by
21 various regulatory agencies for allegedly bundling its licensing and chipset businesses and
22 for offering royalty rebates in exchange for exclusive use of Qualcomm’s chips. *See* Defs.
23 Exs. 20, 24, 26; Dkt. 246, Longman Decl., Ex. 3 at L115, L120. On August 14, 2014, an
24

25 ¹⁴ *See also id.* at A320 (“Qualcomm has licensed its portfolio to essentially all major *handset*
26 *manufacturers*”) (emphasis added).

27 ¹⁵ *See* Defs. Ex. 1 at A15 (December 10, 2007: Qualcomm’s Supreme Court amicus brief stating
28 that it “typically sells chips only to those handset manufacturers that are licensed”); Defs. Ex. 16 at A651
(July 23, 2014: in its SEC filing, Qualcomm stated that the NDRC was investigating its “policy of selling
chipsets only to the Company’s patent licensees”); *see also* Defs. Exs. 6, 18, 27, 29–30 (similar).

1 analyst reported that the China National Development and Reform Commission was
2 investigating whether Qualcomm “bundl[ed] patents with chip sales.” *See* Defs. Ex. 24 at
3 A699, Ex. 26 at A725. Then, on June 26, 2016—after the first two corrective disclosures
4 but before the third—Qualcomm disclosed in its SEC filing that the Taiwan Fair Trade
5 Commission was accusing Qualcomm of providing “royalty rebates” to certain companies
6 in exchange for exclusive use of Qualcomm’s chipsets. *See* Defs. Ex. 20 at A680. A month
7 later, also before the Third Corrective Disclosure, Apple made a presentation before the
8 Korean Fair Trade Commission, alleging that Qualcomm “require[d] bundl[ing] of IPR
9 and chipset” and “insist[ed] on exclusionary terms in exchange for renewed royalty limits.”
10 *See* Dkt. 246, Longman Decl., Ex. 3 at L115, L120. Based on this public information,
11 Defendants argue that the market was already aware that Qualcomm only sold its chips to
12 licensees and had been accused of improper bundling, such that the information in the
13 corrective disclosures was not new. *See* Opp. at 10–11, 23–24, 28–30.

14 Plaintiffs seek to certify a class of investors who were injured by the deception-
15 induced inflation and consequent price drops described above. They define this class as
16 follows: “[a]ll persons or entities who purchased or otherwise acquired the common stock
17 of Qualcomm between February 1, 2012 and January 20, 2017, inclusive, and who were
18 damaged.” Dkt. 217, Notice of Motion at 1. The two Lead Plaintiffs who seek to represent
19 the class are institutions that purchased Qualcomm stock during the class period at prices
20 that were allegedly inflated due to Defendants’ material misstatements and omissions. *See*
21 *id.*

22 II. LEGAL STANDARD

23 To certify a class, the plaintiffs bear the burden of proving by a preponderance of
24 the evidence that the class meets all four requirements of Federal Rule of Civil Procedure
25 23(a). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–51 (2011); *Zinser v. Accufix*
26 *Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001); *Olean Wholesale Grocery Coop.,*
27 *Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 665 (9th Cir. 2022). Rule 23(a) sets out four
28 prerequisites for a certifiable class: (1) numerosity, (2) commonality, (3) typicality, and (4)

1 adequacy. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979–80 (9th Cir. 2011). If the
2 proposed class meets the four prerequisites of Rule 23(a), the Court must then decide
3 whether the class action is maintainable under Rule 23(b). Under Rule 23(b)(3), a class
4 may be certified if the Court finds that “the questions of law or fact common to class
5 members predominate over any questions affecting only individual members, and that a
6 class action is superior to other available methods for fairly and efficiently adjudicating the
7 controversy.” *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 944 (9th Cir. 2009)
8 (quoting Fed. R. Civ. P. 23(b)(3)).

9 At the class certification stage, the Court must take the substantive allegations of the
10 complaint as true, but it “also is required to consider the nature and range of proof necessary
11 to establish those allegations.” *In re Coordinated Pretrial Proceedings in Petroleum*
12 *Prods. Antitrust Litig.*, 691 F.2d 1335, 1342 (9th Cir. 1982). The court must engage in a
13 “rigorous analysis” of each Rule 23(a) factor, which often “will entail some overlap with
14 the merits of the plaintiff’s underlying claim.” *Dukes*, 564 U.S. at 351. If the Court
15 concludes that the moving party has carried its Rule 23 burden, then the court is afforded
16 “broad discretion” to certify the class. *Zinser*, 253 F.3d at 1186.

17 Because Plaintiffs bring claims for securities fraud under Sections 10(b) and 20(a)
18 of the Securities Exchange Act, the Court considers whether class certification is warranted
19 with respect to those claims. Plaintiff’s Section 10(b) claim contains the following
20 elements: “(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a
21 connection between the misrepresentation or omission and the purchase or sale of a
22 security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and
23 (6) loss causation.” *Erica P. John Fund, Inc. v. Halliburton Co.* (“*Halliburton I*”), 563
24 U.S. 804, 809–10 (2011) (citation and internal quotations omitted). Plaintiff’s Section
25 20(a) claim contains the following elements: (1) “a primary violation of federal securities
26 law” and (2) “that the defendant exercised actual power or control over the primary
27 violator.” *No. 84 Emp’r-Teamster Joint Council Pension Tr. Fund v. Am. W. Holding*
28 *Corp.*, 320 F.3d 920, 945 (9th Cir. 2003) (citation and internal quotations omitted).

1
2 **III. DISCUSSION**

3 The Court will first examine whether Plaintiffs have met their burden to establish
4 that their proposed class meets the four prerequisites of Rule 23(a): numerosity,
5 commonality, typicality, and adequacy. It will then turn to the predominance and
6 superiority requirements of Rule 23(b).

7 **A. Plaintiffs Have Satisfied Rule 23(a)**

8 *1. The Class is Sufficiently Numerous*

9 First, the Court finds that Plaintiffs’ proposed class of investors is sufficiently
10 numerous. To establish numerosity, Plaintiffs must show that the represented class is “so
11 numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Although
12 the numerosity requirement is not tied to a strict numerical threshold, trial courts have
13 generally found that classes of at least 40 members satisfy the requirement. *See, e.g., West*
14 *v. Cal. Servs. Bureau, Inc.*, 323 F.R.D. 295, 303 (N.D. Cal. 2017) (class of more than 40
15 “raises a presumption of impracticability of joinder”) (quotation and alterations omitted);
16 *In re BofI Holding, Inc. Sec. Litig.*, 2021 WL 3742924, at *2 (S.D. Cal. Aug. 24, 2021)
17 (finding that “millions of shares trading on NASDAQ during the Class Period” allowed the
18 court to “infer that the number of shareholders . . . would be far too numerous to join”); *In*
19 *re Bridgepoint Educ., Inc. Sec. Litig.*, 2015 WL 224631, at *4 (S.D. Cal. Jan. 15, 2015)
20 (finding 51.3 million outstanding shares and trading volume of 160.4 million shares during
21 the class period sufficient to show numerosity). Here, Plaintiffs allege that Qualcomm had
22 1.69 billion outstanding shares of common stock and a weekly traded average of 24.6
23 million shares during the Class Period. Dkt. 217 (“Mot.”) at 7. Defendants do not
24 challenge numerosity in their opposition to class certification. *See generally* Dkt. 244
25 (“Opp.”); *see also Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975) (noting that
26 defendants “understandably” did not contest numerosity where the class period
27 encompassed “about 120,000 transactions involving some 21,000,000 shares”). Because
28

1 numerosity can be properly inferred from the number of outstanding shares and the rate of
2 shares traded during the class period, Plaintiffs have met their burden to show numerosity.

3 2. *There are Questions of Law and Fact Common to the Class*

4 Second, both common questions of law and fact exist with respect to the class. To
5 satisfy the commonality requirement, “[t]he existence of shared legal issues with divergent
6 factual predicates is sufficient, as is a common core of salient facts coupled with disparate
7 legal remedies within the class.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir.
8 1998) (“[t]he commonality preconditions of Rule 23(a)(2) are less rigorous than the
9 companion requirements of Rule 23(b)(3) [predominance]”); *Blackie*, 524 F.2d at 902
10 (“[c]onfronted with a class of purchasers allegedly defrauded over a period of time by
11 similar misrepresentations, courts have taken the common sense approach that the class is
12 united by a common interest”). Here, common questions abound, including whether
13 Defendants made misrepresentations and whether class members suffered damages.
14 Because Plaintiffs point to one set of misrepresentations to which the entire class was
15 exposed, whether those statements were misleading can be resolved in one stroke by
16 evaluating the statements themselves and common evidence of their falsity. *See* Mot. at 4,
17 8; Compl. ¶¶ 138–87. Additionally, because Plaintiffs seek to measure their financial
18 injury via a drop in Qualcomm’s stock price, all class members will rely on evidence of
19 Qualcomm’s historical stock prices to demonstrate damages. Because the above common
20 evidence will resolve issues central to the securities fraud claims of the entire class—
21 whether Qualcomm made misrepresentations and the amount of Plaintiffs’ damages—the
22 Court finds that the commonality requirement is met.

23 3. *The Lead Plaintiffs are Typical*

24 Third, the Court finds that the Lead Plaintiffs are typical of the class. Typicality
25 requires that “the claims or defenses of the representative parties are typical of the claims
26 or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Thus, the Court considers “whether the
27 action is based on conduct which is not unique to the named plaintiffs, and whether other
28 class members have been injured by the same course of conduct.” *Evon v. Law Offices of*

1 *Sidney Mickell*, 688 F.3d 1015, 1030 (9th Cir. 2012) (internal citation and quotations
2 omitted); *Ellis*, 657 F.3d at 984 (typicality inquiry focuses on “the nature of the
3 claim . . . and not . . . the specific facts from which it arose”) (citation omitted). Here, the
4 Lead Plaintiffs’ claims are essentially the same as that of the proposed class members:
5 investors purchased stock at an allegedly inflated price due to Defendants’ material
6 misrepresentations and omissions regarding Qualcomm’s licensing and bundling practices,
7 and investors suffered damages when the truth was revealed. Thus, the Lead Plaintiffs’
8 claims are typical of the class.

9 Despite Defendants’ argument to the contrary, the Court concludes that Lead
10 Plaintiff Metzler is not subject to a unique defense that threatens to overwhelm the
11 litigation. When a lead plaintiff “is subject to unique defenses which threaten to become
12 the focus of the litigation,” then “class certification is inappropriate.” *Hanon v.*
13 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted). The mere
14 presence of a defense, however, is not a basis to deny class certification unless it is unique
15 and threatens to overwhelm other issues. *Compare id.* (finding unique reliance defense
16 threatened to overwhelm litigation where plaintiff had a practice of buying nominal shares
17 to sue defendants), *with In re Novatel Wireless Sec. Litig.*, 2010 WL 11470156, at *5 (S.D.
18 Cal. May 12, 2010) (finding reliance defense was not unique where other class members
19 could be subject to the same defense and the issue did not “threaten to become the focus”).
20 Defendants contend that Lead Plaintiff Metzler is not typical because 70% of its Qualcomm
21 stock purchases were performed by its investment manager, who used a proprietary “value
22 investment” method and did not rely on the integrity of the market. *See Opp.* at 38–39.
23 The mere presence of this defense—without more to indicate whether it is unique to Lead
24 Plaintiff Metzler or has the potential to overwhelm the litigation—is not a basis to find that
25 Lead Plaintiff Metzler is not typical. At present, there is no evidence that this defense will
26 not also be asserted against other class members who similarly used investment managers.
27 Nor does the Court have any indication that this defense will not be a relatively cabined
28 issue. Should later developments in the case reveal that this defense is indeed unique to

1 Lead Plaintiff Metzler and does threaten to overwhelm the litigation, the Court retains the
2 authority to modify the class. *See Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982)
3 (“[e]ven after a certification order is entered, the judge remains free to modify it in the light
4 of subsequent developments in the litigation”). Currently, however, the existence of this
5 defense against Lead Plaintiff Metzler does not undermine the typicality of its claims
6 against Qualcomm. Accordingly, this requirement is met under Rule 23(a).

7 *4. The Lead Plaintiffs are Adequate*

8 Fourth, the Court finds that Lead Plaintiffs and proposed class counsel are adequate
9 representatives of the putative class. In determining adequacy, the Court considers whether
10 “the representative parties will fairly and adequately protect the interests of the class.” Fed.
11 R. Civ. P. 23(a)(4). The Court focuses on two questions: (1) whether “the representative
12 plaintiffs and their counsel have any conflicts of interest with other class members,” and
13 (2) whether “the representative plaintiffs and their counsel prosecute the action vigorously
14 on behalf of the class.” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). Here,
15 neither party has raised concerns about Lead Plaintiffs’ ability to adequately represent the
16 class in question. Lead Plaintiffs’ interests appear to be aligned with the class because their
17 losses and those of the class members were caused by the same allegedly unlawful conduct.
18 *See generally* Mot. Moreover, proposed class counsel’s resume and related materials
19 indicate it has extensive experience litigating securities class actions in federal court. *See*
20 *generally* Opp.; *see also* Pltfs. Exs. 3–4. Lead Plaintiffs also point to their vigorous
21 prosecution of this action to date, including opposing Defendants’ motions to dismiss and
22 for judgment on the pleadings, and conducting extensive discovery. *See* Mot. at 10–11.
23 Defendants have not identified any actual or potential conflicts between Lead Plaintiffs
24 and the putative class and do not dispute the adequacy of Lead Plaintiffs or their counsel.
25 *See generally* Opp. Accordingly, Plaintiffs have met their burden on adequacy.

26 **B. Whether Plaintiffs Have Satisfied Rule 23(b)**

27 Having concluded that Plaintiffs have met Rule 23(a)’s requirements, the Court turns
28 to whether common questions will predominate over individual ones under Rule 23(b)(3).

1 The Rule 23(b)(3) inquiry looks to whether the putative class is “sufficiently cohesive to
2 warrant adjudication by representation.” Fed. R. Civ. P. 23(b)(3); *Amchem Products, Inc.*
3 *v. Windsor*, 521 U.S. 591, 623 (1997). Where “one or more of the central issues in the
4 action are common to the class and can be said to predominate, the action may be
5 considered proper under Rule 23(b)(3) even though other important matters will have to be
6 tried separately, such as damages or some affirmative defenses peculiar to some individual
7 class members.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (citing C.
8 Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 1778, pp. 123–124 (3d
9 ed. 2005)). Plaintiffs bear the burden to demonstrate that common questions will
10 predominate over individual ones under Rule 23(b)(3) by a preponderance of the evidence
11 before the Court may certify a class. *Olean Wholesale Grocery Coop., Inc.*, 31 F.4th at
12 665 (adopting preponderance burden of proof). The Court considers whether Plaintiffs
13 have demonstrated that “the same evidence will suffice for each member to make a prima
14 facie showing or the issue is susceptible to generalized, class-wide proof,” or if “members
15 of a proposed class will need to present evidence that varies from member to member.”
16 *Tyson Foods*, 577 U.S. at 453. The predominance inquiry “begins . . . with the elements
17 of the underlying cause of action.” *Halliburton I*, 563 U.S. at 809 (quoting Fed. R. Civ. P.
18 23(b)(3)).

19 Here, whether the predominance requirement of Rule 23(b) is satisfied hinges on
20 whether reliance can be resolved on a class-wide basis. As discussed above, the class
21 shares several common questions, such as the deceptiveness of Defendants’ statements and
22 the measurement of Plaintiffs’ damages. The parties dispute, however, whether common
23 questions or individualized issues will predominate. Defendants argue that class members’
24 reliance on the alleged misrepresentations, an essential element of Plaintiffs’ Section 10(b)
25 securities fraud claim, will need to be proved separately for each class member and these
26
27
28

1 individualized inquiries would overwhelm the common questions described above.¹⁶
2 *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta*, 552 U.S. 148, 159 (2008) (noting
3 reliance is an essential element under Section 10(b)). Therefore, the Court examines below
4 whether questions regarding reliance can be addressed on a class-wide basis such that a
5 class action is the appropriate vehicle for Plaintiffs’ claims.

6 *I. Basic’s Presumption of Reliance*

7 Plaintiffs argue that reliance can be resolved in one stroke for all class members
8 because investors that buy stock in an efficient market are presumed to have relied on all
9 publicly available information, including Defendants’ alleged misrepresentations.
10 Although reliance is generally an individualized issue, Plaintiffs need not show individual
11 reliance if they can invoke a rebuttable presumption of class-wide reliance. *See Basic Inc.*
12 *v. Levinson*, 485 U.S. 224, 241–247 (1988). In *Basic*, the Supreme Court held that, based
13 on the fraud-on-the-market theory, the price of a security traded in an efficient market will
14 reflect all publicly available information, including any public, material
15 misrepresentations. *See id.* Thus, if the market is efficient, the stock price will reflect the
16 alleged misrepresentations and all buyers “may be presumed to have relied” on those
17 misrepresentations at the time of purchase. *See Amgen Inc. v. Connecticut Retirement*
18 *Plans and Trust Funds*, 568 U.S. 455, 458 (2013). To invoke *Basic’s* rebuttable
19 presumption, Plaintiffs must show the following: “(1) the alleged misrepresentations were
20 publicly known, (2) that they were material, (3) that the stock traded in an efficient market,
21 and (4) that the plaintiff traded the stock between the time when the misrepresentations
22 were made and when the truth was revealed.” *Halliburton Co. v. Erica P. John Fund, Inc.*
23 *(“Halliburton II”)*, 573 U.S. 258, 277–78 (2014). Here, Defendants do not dispute that
24 Qualcomm’s stock traded in an efficient market such that the *Basic* presumption of class-

25
26
27 ¹⁶ Although Plaintiffs argue that reliance can be resolved on a class-wide basis here, Plaintiffs do
28 not dispute that if it cannot, individualized issues would predominate, and class certification would be
inappropriate.

1 wide reliance can be invoked in the first instance for class certification purposes.¹⁷ The
2 Court will, therefore, proceed to the crux of the parties’ dispute on reliance—whether
3 Defendants have successfully rebutted *Basic*’s presumption, thereby defeating Plaintiffs’
4 argument that common questions predominate.

5 2. *How Basic’s Presumption Can be Rebutted*

6 Rather than disputing that the *Basic* presumption has been successfully invoked,
7 Defendants instead argue that their evidence on class certification rebuts the presumption.
8 Because the theory that misrepresentations are baked into the stock price in an efficient
9 market is the premise of *Basic*’s presumption, Defendants can rebut that presumption by
10 showing that the misrepresentations in question did not actually impact price. *See*
11 *Halliburton II*, 573 U.S. at 268, 278–82; *see also Halliburton I*, 563 U.S. at 814 (“[p]rice
12 impact’ simply refers to the effect of a misrepresentation on a stock price.”). Such evidence
13 rebuts *Basic*’s presumption because “[i]n the absence of price impact,
14 *Basic*’s . . . presumption of reliance collapse[s].” *Halliburton II*, 573 U.S. at 278. “[T]he
15 defendant bears the burden of persuasion to prove a lack of price impact” by a
16 “preponderance of the evidence.” *Goldman*, 141 S. Ct. at 1960, 1963 (directing courts to
17
18
19

20
21 ¹⁷ Based on the evidence submitted with Plaintiffs’ motion for class certification, the Court finds
22 that Plaintiffs have successfully invoked *Basic*’s presumption of class-wide reliance. *See, e.g., In re USA*
23 *Talks.com Sec. Litig.*, 2000 WL 1887516, at *5 (S.D. Cal. Sept. 14, 2000) (considering *Cammer* factors
24 when deciding whether *Basic*’s presumption applied); *Cammer v. Bloom*, 711 F. Supp. 1264, 1286 (D.N.J.
25 1989) (factors include, (1) whether stock traded at a high weekly volume; (2) whether securities analysts
26 reported on stock; (3) whether stock had market makers; (4) whether the company is eligible to file SEC
27 registration Form S-3; and (5) whether there are empirical facts showing a cause-and-effect relationship
28 between company news and an immediate response in a stock price). The evidence submitted by Plaintiffs
demonstrates that Qualcomm’s stock traded on a national exchange at a high weekly volume and was
reported on by securities analysts. Moreover, Qualcomm had a high number of institutional investors,
and was eligible to file an SEC Form S-3. Dr. Tabak’s study also suggests that the market did efficiently
digest news about Qualcomm and that the news was reflected in Qualcomm’s stock price. Given this
evidence and the fact that Defendants do not dispute market efficiency at this juncture, *Basic*’s rebuttable
presumption applies.

1 “determine whether it is more likely than not that the alleged misrepresentations had a price
2 impact.”).

3 At this stage, the Court considers all probative evidence to determine whether
4 Defendants have met their burden to rebut *Basic*’s presumption by a preponderance of the
5 evidence. At class certification, the Court’s “rigorous analysis” will often “entail some
6 overlap with the merits of the plaintiff’s underlying claim.” *Dukes*, 564 U.S. at 351. With
7 respect to securities fraud cases specifically, the Supreme Court has recently instructed that
8 “a court cannot conclude that Rule 23’s requirements are satisfied without considering *all*
9 evidence relevant to price impact,” “regardless [of] whether that evidence overlaps with
10 materiality or any other merits issue.” *Goldman*, 141 S. Ct. 1960–61 (remanding with
11 instructions to consider all price-impact evidence prior to certification) (emphasis in
12 original). Thus, where a defendant submits evidence to rebut *Basic*’s presumption of class-
13 wide reliance, “[t]he district court’s task is simply to assess all the evidence of price
14 impact—direct and indirect—and determine whether it is more likely than not that the
15 alleged misrepresentations had a price impact.” *Id.* at 1963.

16 The Court will first examine whether it is more likely than not that Defendants’
17 alleged misrepresentations about Qualcomm’s licensing practices had an impact on
18 Qualcomm’s stock price. It will then conduct the same inquiry with regard to Defendants’
19 alleged misrepresentations about Qualcomm’s bundling practices. In doing so, the Court
20 keeps in mind the Supreme Court’s instruction to consider all evidence of price impact,
21 “regardless [of] whether that evidence overlaps with materiality *or any other merits issue*,”
22 to decide whether *Basic*’s presumption holds. *Goldman*, 141 S. Ct. 1960–61 (emphasis
23 added).

24 3. *Defendants Have Shown a Lack of Price-Impact with Respect to the “Chip* 25 *Licensing” Misrepresentations*

26 Plaintiffs’ invocation of *Basic*’s presumption rests on a link between Qualcomm’s
27 alleged misrepresentations and its later stock-price drops—a link Defendants attempt to
28 rebut. Plaintiffs theorize the market was unaware that Qualcomm did not license at the

1 chip level such that when Qualcomm made representations like, “we license broadly,” the
2 market interpreted those statements to mean “we license chips.” *See, e.g.*, Compl. ¶¶ 64–
3 72. Plaintiffs argue that these misrepresentations falsely inflated Qualcomm’s stock price
4 and that when the market learned for the first time through the corrective disclosures that
5 Qualcomm did not license chips, Qualcomm’s stock price dropped. *See id.* ¶¶ 64–72, 121–
6 29, 210–34.

7 Defendants attempt to rebut *Basic*’s presumption by undermining the connection
8 between Qualcomm’s alleged misrepresentations and its stock prices. Defendants first
9 argue that sweeping statements about the “broad,” “fair,” or “non-discriminatory” nature
10 of Qualcomm’s licensing practices were not specific enough to make the market believe
11 that Qualcomm engaged in specific, chip-level licensing. *See Opp.* at 19, 23. Defendants
12 further argue that their statements about Qualcomm’s licensing practices could not have
13 impacted the stock price as Plaintiffs claim because the market already knew that
14 Qualcomm did not license chips. *See Opp.* at 21–23, 28–30.

15 Defendants argue that their generic statements about Qualcomm’s licensing would
16 not have impacted Qualcomm’s stock price because those statements were not specific
17 enough to create the misimpression that Qualcomm licensed at the chip level. In *Goldman*,
18 the Supreme Court noted that “when the earlier misrepresentation is generic (e.g., ‘we have
19 faith in our business model’) and the later corrective disclosure is specific (e.g., ‘our fourth
20 quarter earnings did not meet expectations’),” then “there is a mismatch between the
21 contents of the misrepresentation and the corrective disclosure.” 141 S. Ct. at 1961. The
22 Court noted that this evidence was relevant to price impact because such a mismatch meant
23 there was “less reason to infer front-end price inflation—that is, price impact—from the
24 back-end price drop.” *See id.*

25 The Court therefore compares the information in the alleged misrepresentations to
26 the information in the corrective disclosures to determine whether there is such a mismatch.
27 Plaintiffs allege that the corrective disclosures between November 17, 2015 and January
28 20, 2017, revealed the information that Qualcomm, (1) only licensed at the device level,

1 and (2) did not license at the chip level to competing chipmakers. *See* Defs. Ex. 35 at
2 A815.¹⁸ Although Plaintiffs parse these as two separate pieces of revelatory information,
3 the notion that Qualcomm only licensed at the device level to device manufacturers and
4 did not license chips to chipmakers are two sides of the same coin. This information—that
5 Qualcomm licensed at the device level and not the chip level—is far more specific than
6 Defendants’ generic statements assigning the adjectives “broad,” “fair,” “reasonable,” and
7 “non-discriminatory” to Qualcomm’s overall licensing model. Although Plaintiffs argue
8 that the market interpreted these generic statements to mean that Qualcomm licensed chips
9 to chipmakers and that this inflated Qualcomm’s stock price, that conclusion is not
10 apparent when the alleged misrepresentations and corrective disclosures are viewed side
11 by side. Thus, the Court finds that the generic nature of the alleged misrepresentations
12 makes it less likely that those misrepresentations deceived the market in the way Plaintiffs
13 theorize, and therefore, less likely that they caused “front-end price inflation.” *See*
14 *Goldman*, 141 S. Ct. at 1961.

15 The Court now turns to Defendants’ argument that the information in the corrective
16 disclosures was publicly available prior to the corrective disclosures. The three relevant
17 corrective disclosures—The First, Third, and Fourth Corrective Disclosures on November
18 17, 2015, January 17, 2017, and January 20, 2017, respectively—allegedly revealed that
19 Qualcomm only licensed devices and did not license chips to chipmakers. The First
20 Corrective Disclosure on November 17, 2015 stated that Qualcomm had a “practice of
21 licensing [] patents at the device level.” First Corrective Disclosure; Compl. ¶ 212; Defs.
22 Ex. 35 at A815. But, in the years prior to the First Corrective Disclosure, Qualcomm’s
23 device-level licensing policy was made public multiple times. For example, in 2009, an
24 analyst reported that Qualcomm licensed at the device level: “Qualcomm does not collect
25

26
27 ¹⁸ The Court notes that the allegedly revelatory nature of this information is belied by Plaintiffs’
28 own submission to the Court in advance of oral argument admitting that “the market understood that
Qualcomm based its royalties on device-level pricing.” *See* Pltfs. 10/18/22 Submission.

1 royalty payments from chip vendors, they collect them from chip vendors’ customers
2 (handset makers),” Defs. Ex. 23 at A695. In 2014 and 2015, multiple publications
3 discussed that the China National Development and Reform Commission was investigating
4 Qualcomm for its device-level licensing policy. *See* Defs. Exs. 6, 16, 25–26, 28, 33. For
5 instance, in March 2015, in the wake of this investigation, several analysts and legal
6 sources reported that Qualcomm would be able to continue its device-level licensing
7 practice and continue to refuse to license at the chip level. *See* Defs. Ex. 6 at A417
8 (“Qualcomm retained its ability to calculate royalties based on the wholesale price of the
9 entire device” and “avoided a duty to license at the chip level”); Defs. Ex. 28 at A739
10 (Qualcomm “ha[d] staved off the elephant in the room” of chip-level licensing, which
11 “would [have] require[d] fundamental changes to [Qualcomm’s] biz model”); Defs. Ex. 33
12 at A783 (“Qualcomm agreed to pay a \$975 million fine” but “can still base licensing fees
13 on devices, not components”). During the 2013 to 2014 time period, Qualcomm also
14 defended its device-level licensing policy on the public stage at a time when the pros and
15 cons of this commonplace industry practice were being debated before Congress, the
16 courts, and standard-setting organizations. *See* Defs. Exs. 3–5. Thus, the information in
17 the First Corrective Disclosure on November 17, 2015, was publicly stated prior to that
18 point in 2009, 2014, and 2015, against the backdrop of an industry that was widely
19 licensing at the device level and debating whether that practice could continue.

20 Similarly, Plaintiffs allege that the Third and Fourth Corrective Disclosures revealed
21 that Qualcomm refused to license chips to competing chipmakers, but this information was
22 already public. These January 2017 disclosures—civil complaints brought against
23 Qualcomm by the FTC and Apple—accused Qualcomm of refusing to license chips to
24 chipmakers.¹⁹ *See* Third Corrective Disclosure; Defs. Ex. 9 ¶¶ 3, 112 (“Qualcomm has
25

26
27 ¹⁹ The Court notes that Plaintiffs appeared to acknowledge at oral argument that Qualcomm’s
28 “device-level licensing” and “refusal to license chips and chip competitors” are essentially two sides of
the same coin. *See* Dkt. 276 at 20.

1 consistently refused to license . . . its competitors”); *see also* Fourth Corrective Disclosure;
2 Defs. Ex. 11 ¶ 51 (Qualcomm “refus[ed] to license . . . competing chipset manufactures”).
3 But the FTC’s and Apple’s accusations in January 2017 were not new. Indeed, the same
4 exact accusations had been publicly levied by two regulatory agencies years prior to that
5 date. First, in July 2014, the China National Development and Reform Commission
6 investigated Qualcomm’s alleged refusal to license chips to chipmakers. *See* Defs. Ex. 16
7 (“the alleged refusal of the Company to grant patent licenses to chipset manufacturers.”);
8 *see also* Defs. Exs. 25–26 (Qualcomm’s “practice of . . . refusing to license chipset
9 manufacturers.”). Then, in December 2016, the Korean Fair Trade Commission announced
10 that “Qualcomm [] refused to license competing chipset companies.” *See* Defs. Ex. 8 at
11 A426. Therefore, the information in the Third and Fourth Corrective Disclosures in
12 January 2017, was disclosed prior to that point in 2014 and 2016.

13 The Court finds that Defendants’ evidence that Qualcomm’s device-level licensing
14 practice and refusal to license chipmakers was public prior to the corrective disclosures
15 makes price impact less likely. *See Amgen*, 568 U.S. at 458 (under the *Basic* presumption,
16 “the price of a security traded in an efficient market will reflect all publicly available
17 information”). The fact that there was public information available from 2009–November
18 17, 2015, that Qualcomm licensed only at the device level and, thus, did not license chips
19 to competing chipmakers, makes it less likely that the market interpreted Defendants’
20 generic statements from February 1, 2012, and January 20, 2017 to mean that Qualcomm
21 licensed chips. If the market was not misled by the alleged misrepresentations in this
22 manner under Plaintiffs’ theory, then there is less reason to infer that the alleged
23 misrepresentations caused front-end stock price inflation. In addition, the fact that there
24 was public information available from November 2009–December 2016 that mirrors the
25 corrective disclosures makes it less likely that the corrective disclosures were actually
26 curative. If the corrective disclosures did not actually contain new information correcting
27 the alleged misrepresentations, it becomes less likely that their announcement caused the
28

1 back-end price drops and less reasonable to assume that Defendants’ alleged
2 misrepresentations caused front-end inflation in the first place.

3 The Court finds that, together, Defendants’ evidence discussed above is enough to
4 demonstrate a lack of price impact by a preponderance of the evidence with respect to
5 Defendants’ alleged licensing misrepresentations. As a whole, the evidence suggests that—
6 —prior to the alleged corrective disclosures—the market was exposed to statements about
7 Defendants’ “broad” and “competitive” licensing practices while also privy to information
8 that Defendants licensed only at the device level and refused to license chips to chipmakers.
9 The alleged corrective disclosures only repeated already public information—that
10 Qualcomm licensed only at the device level and refused to license competing chipmakers.
11 At a “common sense,” level, this evidence makes it less likely that Defendants’ alleged
12 misrepresentations inflated Qualcomm’s stock price on the front end and the information
13 in the disclosures caused the price drop on the back end. *See Goldman*, 141 S. Ct. 1960.

14 This inference is further supported by evidence that at least one disclosure that
15 Qualcomm “refused to license to competitors” did not impact Qualcomm’s stock price.
16 Plaintiffs admit that the Korean Fair Trade Commission’s December 2016
17 announcement—which is virtually identical to the licensing information in the Third and
18 Fourth Corrective Disclosures—had no impact on Qualcomm’s stock price. *See* Defs. Ex.
19 8 at A426 (KFTC: “Qualcomm [] refused to license competing chipset companies.”); *see*
20 *also* Pltfs. Ex. 1 (“Tabak Report”) ¶ 61 n.49. The fact that the market did not react to this
21 announcement makes it more likely that the market was already aware of Qualcomm’s
22 device-level licensing practice by the date of this announcement in December 2016—
23 before the Third and Fourth Corrective Disclosures in January 2017. In light of this
24 evidence, the Court cannot say that it is more likely than not that Defendants’ statements
25 about “broad” licensing practices inflated Qualcomm’s stock price because the market did
26 not know until the corrective disclosures that Qualcomm licensed only at the device level.
27 Accordingly, the Court finds that Defendants have rebutted *Basic’s* class-wide
28 presumption of reliance by a preponderance of the evidence.

1 Because Defendants have rebutted the class-wide presumption of reliance, a
2 factfinder would have to conduct individualized inquiries regarding each class member’s
3 reliance on the various alleged misrepresentations. *See Amgen*, 568 U.S. at 462–63
4 (“Absent the fraud-on-the-market theory . . . reliance would ordinarily preclude
5 certification of a class action seeking money damages because individual reliance issues
6 would overwhelm questions common to the class.”). Without *Basic*’s presumption,
7 Plaintiffs would have to demonstrate that each class member was aware of Defendants’
8 misrepresentations and purchased Qualcomm stock in reliance on them. Given the
9 thousands of investors that fit the class definition, class resolution of this question would
10 be untenable under Rule 23(b). Individual issues of reliance, rather than common
11 questions, would predominate. *See id.* at 461. Accordingly, the Court will not certify a
12 class of investors with respect to Qualcomm’s alleged misrepresentations regarding its
13 device-level licensing practice or refusal to license chips to chipmakers.

14 4. *Defendants have Not Shown a Lack of Price-Impact with Respect to the*
15 *“Bundling” Misrepresentations*

16 Next, the Court turns to Plaintiffs’ allegations that Defendants misled the market
17 about the extent to which Qualcomm bundled its licensing and chip-supply businesses. *See*
18 *Reply* at 12–13. Plaintiffs posit that the market was misled when Defendants made
19 representations about the separateness of Qualcomm’s licensing and chip-supply
20 businesses when, in fact, Qualcomm was bundling the two businesses in multiple,
21 undisclosed ways. *See id.* Under Plaintiffs’ theory, these misrepresentations artificially
22 inflated Qualcomm’s stock price. *See id.* Then, when the corrective disclosures revealed
23 the truth about the extent to which Qualcomm bundled its licensing and chip-supply
24 businesses, Qualcomm’s stock price dropped. *See id.* Similar to Defendants’ arguments
25 with respect to licensing, Defendants attempt to rebut price impact in two ways. First,
26 Defendants argue that their generalized statements about the “separateness” of
27 Qualcomm’s licensing and chip-supply businesses were not specific enough to make the
28 market believe that Qualcomm did not bundle terms and negotiations, practices that were

1 later revealed in the corrective disclosures. *See Opp.* at 24–26. Second, Defendants also
2 argue that their statements about bundling could not have impacted the stock price in the
3 way Plaintiffs theorize because the market already knew that Qualcomm did bundle in
4 certain ways, including by only selling chips to licensed companies and offering royalty
5 rebates in exchange for exclusive use of Qualcomm chips. *See id.* at 10–11, 26–29.

6 Defendants argue that their generic statements about the separateness of
7 Qualcomm’s licensing and chip-supply businesses did not impact Qualcomm’s stock price
8 because they were not specific enough to make the market believe that Qualcomm did not
9 engage in the bundling practices revealed in the corrective disclosures. *See Goldman*, 141
10 S. Ct. at 1961. As noted above, Defendants’ alleged misstatements regarding bundling
11 include statements like the following: (1) “we tend to keep the licensing and the chip
12 business very separate . . . we don’t bundle those together,” Compl. ¶ 142; (2) “they are
13 really separate businesses . . . we have been very clear that we keep those two things
14 separate,” *Id.* ¶ 146. The foregoing statements are admittedly more general than the
15 specific disclosures that Qualcomm “[withheld] its baseband processors unless a customer
16 accept[ed] a license . . . on terms preferred by Qualcomm,” or “induced certain OEMs to
17 accept its preferred license terms using [] the ‘stick’ of supply disruption.” *See Defs. Ex.*
18 9 ¶¶ 3, 102. Nevertheless, Defendants’ alleged misstatements are not at such a high level
19 of generality that one cannot discern the inherent contradiction between those statements
20 and the information in the corrective disclosures when viewed side by side. *See Goldman*,
21 141 S. Ct. 1960. The fact that Qualcomm allegedly bundled the terms and negotiations of
22 the two businesses and leveraged them against one another does directly contradict the
23 statements that the businesses were “separate.” Thus, while the more general nature of the
24 alleged misrepresentations makes price impact slightly less likely, it does not rebut the
25 presumption of price impact by a preponderance of the evidence.

26 Further, the Court finds that the corrective disclosures contained information
27 regarding bundling that was not publicly available prior to the corrective disclosures. The
28 corrective disclosures revealed the following new information about the company’s

1 bundling practices: (1) the First Corrective Disclosure allegedly revealed that Qualcomm
2 did not “properly negotiate” its licenses; (2) the Second Corrective Disclosure allegedly
3 revealed that Qualcomm “illegally paid a major customer for exclusively using Qualcomm
4 chipsets” to force competitors out of the market; (3) the Third Corrective Disclosure
5 allegedly revealed that Qualcomm “withh[eld] its baseband processors unless a customer
6 accept[ed] a license . . . on terms preferred by Qualcomm,” “conditioned partial [royalty]
7 relief on [] exclusive use,” and “induced certain OEMs to accept its preferred license terms
8 using [] the ‘stick’ of supply disruption”; and (4) the Fourth Corrective Disclosure allegedly
9 revealed that Qualcomm “illegally leverage[d] its market power to extract exorbitant
10 royalties.” See Compl. ¶¶ 212, 216, 224, 228; Defs. Exs. 7, 9, 11, 35. Defendants have
11 not pointed to evidence that this precise information was publicly available prior to the
12 corrective disclosures. Although Defendants submit evidence that Qualcomm’s practice
13 of only selling chips to licensees was public, the corrective disclosures allegedly revealed
14 far more than just this one practice. Further, although bundling and royalty rebate
15 accusations had been levied against Qualcomm prior to the corrective disclosures, those
16 prior allegations do not mirror the corrective disclosures quoted above. The latter disclosed
17 far more detail regarding the alleged bundling, including the way it occurred, the customers
18 involved, and Qualcomm’s alleged abuse of market power. Accordingly, Defendants’
19 evidence in this regard does not sever the link between Defendants’ alleged
20 misrepresentations and their impact on the stock price.

21 Because Defendants cannot rebut *Basic*’s presumption by demonstrating a lack of
22 price impact, reliance can be resolved on a class-wide basis. *Goldman*, 141 S. Ct. at 1958–
23 59 (noting the *Basic* “presumption allows class-action plaintiffs to prove reliance through
24 evidence common to the class.”); see also *Halliburton II*, 573 U.S. at 276. Because the
25 *Basic* presumption applies, Plaintiffs will not need to show that individual class members
26 were aware of, and relied upon, Defendants’ alleged misrepresentations about bundling.
27 Instead, class members may be presumed to have relied on the integrity of Qualcomm’s
28 stock price, and reliance can be resolved in one stroke.

1 5. Damages

2 The Court next addresses Defendants’ argument that Plaintiffs have not presented a
3 viable method for determining class-wide damages, precluding the ability to proceed as a
4 class action. To satisfy predominance, a plaintiff must propose a plausible methodology
5 for proving damages on a class-wide basis. *Nguyen v. Nissan N. Am., Inc.*, 932 F.3d 811,
6 818 (9th Cir. 2019) (finding predominance where plaintiff’s proposed out-of-pocket
7 damages method was routinely recognized as “a reasonable basis of computation” for
8 CLRA claims); *Chavez v. Blue Sky Natural Beverage Co.*, 268 F.R.D. 365, 379 (N.D. Cal.
9 2010) (“[a]t class certification, plaintiff must present a likely method for determining class
10 damages though it is not necessary to show that his method will work with certainty at this
11 time”) (cleaned up). This damages method must be capable of measuring the harm caused
12 by a defendant’s illegal conduct. *Comcast Corp. v. Behrend*, 569 U.S. 27, 35 (2013) (a
13 damages model that “does not even attempt” to measure the harm alleged by the plaintiffs
14 does not satisfy predominance requirement); *see also Vaquero v. Ashley Furniture Indus.,*
15 *Inc.*, 824 F.3d 1150, 1154 (9th Cir. 2016) (interpreting “*Comcast* to mean that plaintiffs
16 must be able to show that their damages stemmed from the defendant’s actions that created
17 the legal liability.”) (internal quotations and citation omitted). The Court thus considers
18 whether Plaintiffs have proposed a plausible damages methodology that is linked to their
19 liability case.

20 The parties do not dispute that the event study Plaintiffs’ expert proposes is a
21 plausible method for measuring class-wide damages in a securities case such as this one.
22 An event study is a statistical method that examines whether a specific event had an impact
23 on a public company’s stock price. Courts have consistently held that an event study is an
24 appropriate method for measuring stock price inflation caused by alleged
25 misrepresentations and therefore, satisfies the predominance requirement. *City of Miami*
26 *Gen. Employees’ & Sanitation Employees’ Ret. Trust v. RH, Inc.*, 2018 WL 4931543, at *3
27 (N.D. Cal. Oct. 11, 2018) (the “event study[] method is the standard measurement of
28 damages in Section 10(b) securities cases”) (collecting cases)); *see also In re Diamond*

1 *Foods, Inc., Sec. Litig.*, 295 F.R.D. 240, 251 (N.D. Cal. 2013). Here, Plaintiff’s damages
2 expert, Dr. Tabak, proposes to calculate damages on a class-wide basis using an event study
3 to estimate “the amount of artificial inflation in the market price at issue and calculate[]
4 how much of that inflation is due to the alleged fraud, as opposed to other factors.” Reply
5 at 20; Tabak Report ¶¶ 58–60. Consistent with the consensus of the parties in this matter,
6 the Court finds that Plaintiffs’ expert has proposed a plausible methodology.

7 While Defendants do not challenge the plausibility of the model, they do argue that
8 Plaintiffs’ damages model fails under *Comcast* because it cannot measure the harm
9 resulting from Plaintiffs’ multiple theories of liability. *See Comcast*, 569 U.S. 27.
10 Defendants point to the fact that Plaintiffs posit different categories of
11 misrepresentations—*i.e.*, that Qualcomm’s businesses were (1) fair and non-
12 discriminatory, (2) procompetitive, and (3) not bundled. *See Opp.* at 31–33. Defendants
13 hypothesize that if a jury were to find Defendants liable for some of these statements but
14 not all, Plaintiffs’ damages model would be unable to determine “what portion of the stock
15 price decline on a given corrective disclosure date was caused” by which alleged
16 misrepresentation. *See id.* at 32.

17 The Court finds that Plaintiffs’ proposed damages methodology is sufficient under
18 *Comcast* because the methodology can isolate different categories of misrepresentations
19 and measure the damages stemming from each. The Court in *Comcast* found that a
20 damages model failed because the completed “model assumed the validity of all four
21 theories of antitrust impact” even though only one theory remained in the case. *See*
22 *Comcast*, 569 U.S. at 36. The model thus calculated damages that were not caused by the
23 defendant’s illegal conduct. *See id.* at 36–37. No such issue exists here because Dr. Tabak
24 proposes a model that can isolate and separately measure the impact of each category of
25 misrepresentation. *See Tabak Report* ¶¶ 59–63; *see also* Pltfs. Ex. 6 (“Tabak Reply
26 Report”) ¶ 63. He explains that his model accounts for the following factors that may have
27 impacted Qualcomm’s stock price and removes them from his damages calculation using
28 “standard [disaggregation] techniques”: (1) inflation declines for reasons other than the

1 corrective disclosures, (2) changes in the market and industry effects, and (3) information
2 in the corrective disclosures that is unrelated to the alleged misrepresentations. Tabak
3 Report ¶¶ 59–63. Dr. Tabak also opines that he can use standard techniques to disaggregate
4 the impact of different categories of information, and ultimately, “determine the relative
5 importance of different aspects of [the] alleged corrective disclosure[s].” *See id.* ¶ 62 n.50;
6 Tabak Reply Report ¶ 63. Accordingly, contrary to Defendants’ assertions, the damages
7 model proposes to parse out the effects that different categories of alleged
8 misrepresentations had on Qualcomm’s stock price. Because Dr. Tabak proposes a
9 damages model that will be designed to measure the damages caused solely by Defendants’
10 alleged misrepresentations and to disaggregate the damages caused by each type of
11 misrepresentation, Plaintiffs’ damages model satisfies *Comcast* at this stage.²⁰ Plaintiffs’
12 have proposed a plausible method of determining class-wide damages in a manner
13 consistent with *Comcast*.

14 For the reasons set forth above, the Court concludes that common questions
15 predominate over individual ones with respect to Defendants’ bundling misrepresentations,
16 but not with respect to Defendants’ licensing misrepresentations. Because Defendants’
17 have successfully rebutted the presumption that all class members relied on Defendants’
18 licensing misrepresentations, the factfinder would need to make individualized
19 determinations of reliance for each class member in a class of thousands. These
20 individualized inquiries would undoubtedly overwhelm any common questions.
21 Accordingly, as stated above, the Court will not certify a class based on this category of
22

23
24
25 ²⁰ The Court notes that the concerns in *Comcast* were, in part, due to the procedural posture of the
26 case—where the damages model was completed based on four theories of liability and the district court
27 dismissed three of those theories afterwards. 569 U.S. at 35–39. Here, Dr. Tabak has yet to implement
28 his proposed model and so can perform his disaggregation techniques as necessary pursuant to this opinion
certifying only Plaintiffs’ bundling allegations. Should Defendants believe, after Dr. Tabak has completed
his currently proposed model, that the completed damages model is insufficiently linked to Plaintiffs’
theory of liability under *Comcast*, Defendants can and should raise that in an appropriate motion before
the Court. At present, however, Dr. Tabak’s proposed model satisfies *Comcast*.

1 misrepresentations. Conversely, because Defendants have not rebutted the presumption
2 that all class members relied on Defendants’ bundling misrepresentations, the issue of
3 reliance can be resolved in one stroke for all class members using common evidence.
4 Deceptiveness, materiality, and damages are also capable of class-wide resolution because
5 Plaintiffs point to one body of evidence common to all class members such that these
6 elements can be resolved in one stroke. *See supra* Section III.A.2. Therefore, the Court
7 concludes that common questions predominate over individual ones with respect to
8 Defendants’ alleged bundling misrepresentations such that predominance is satisfied.

9 6. *Superiority*

10 Having determined that questions of law or fact common to the class predominate
11 with respect to Plaintiffs’ “bundling” allegations, the Court also finds that a class action is
12 the superior method of resolving this controversy. Under Rule 23(b)(3), a class action may
13 be superior if “classwide litigation of common issues will reduce litigation costs and
14 promote greater efficiency.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th
15 Cir. 1996). In evaluating superiority, courts examine (a) the class members’ interests in
16 individually controlling separate actions, (b) the extent and nature of any preexisting
17 related litigation, (c) the desirability of concentrating the litigation of the claims in the
18 forum; and (d) manageability. Fed. R. Civ. P. 23(b)(3). “A consideration of these factors
19 requires the court to focus on the efficiency and economy elements of the class action so
20 that cases allowed under subdivision (b)(3) are those that can be adjudicated most
21 profitably on a representative basis.” *Zinser*, 253 F.3d at 1190.

22 Here, the putative class includes thousands of investors who purchased Qualcomm’s
23 stock between February 1, 2012, and January 20, 2017. The claim for all investors is the
24 same; that each purchased Qualcomm stock at artificially inflated prices which were caused
25 by Defendants’ same alleged misrepresentations. Because the elements of the class’s
26 claims—whether Defendants’ statements were false and material, whether the class relied
27 on an efficient market, and whether the class suffered damages—are class-wide questions
28 susceptible to common proof, the Court concludes that trying the claims as a class will be

1 more efficient and cost-effective than trying the claims on an individual basis.
2 Accordingly, the Court finds that a class action is the superior method of resolving the
3 controversy regarding the alleged bundling practices.

4 **IV. CONCLUSION AND ORDER**

5 For the reasons set out above, the Court GRANTS IN PART AND DENIES IN
6 PART Plaintiffs' motion for class certification [Dkt. 217]. Plaintiffs' motion is DENIED
7 to the extent Plaintiffs seek to certify their claims regarding Defendants' alleged licensing
8 misrepresentations. With respect to Plaintiffs' remaining claims regarding Defendants'
9 alleged bundling misrepresentations, the Court CERTIFIES a class of investors defined as
10 follows:

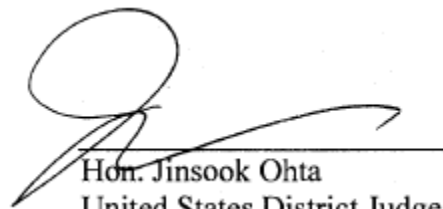
11 All persons or entities who purchased or otherwise acquired the
12 common stock of Qualcomm between February 1, 2012 and
13 January 20, 2017, inclusive, and who were damaged thereby.
14 Excluded from the Class are Defendants, the officers and
15 directors of Qualcomm at all relevant times, members of their
16 immediate families and their legal representatives, heirs, agents,
17 affiliates, successors or assigns, Defendants' liability insurance
carriers, and any affiliates or subsidiaries thereof, and any entity
in which Defendants or their immediate families have or had a
controlling interest.

18 The Court appoints Lead Plaintiffs as class representatives and Bernstein Litowitz
19 Berger & Grossmann LLP and Motley Rice LLC as class counsel.

21 **IT IS SO ORDERED.**

22 Dated: March 20, 2023

23
24
25
26
27
28



Hon. Jinsook Ohta
United States District Judge