

1 Kalpana Srinivasan (237460)
2 SUSMAN GODFREY L.L.P.
3 1900 Avenue of the Stars, 14th Floor
4 Los Angeles, CA 90067
5 Telephone: (310) 789-3100
6 Facsimile: (310) 789-3150
7 Email: ksrinivasan@susmangodfrey.com

8 Joseph W. Cotchett (36324)
9 COTCHETT, PITRE & McCARTHY, LLP
10 840 Malcolm Road, Suite 200
11 Burlingame, CA 94010
12 Telephone: (650) 697-6000
13 Facsimile: (650) 697-0577
14 Email: jcotchett@cpmlegal.com

15 *Plaintiffs' Interim Co-Lead Counsel*

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 IN RE: QUALCOMM ANTITRUST
20 LITIGATION

Case No. 17-md-2773-JSC

21 **PLAINTIFFS' OPPOSITION TO**
22 **DEFENDANT QUALCOMM**
23 **INCORPORATED'S MOTION TO**
24 **DISMISS SECOND AMENDED**
25 **COMPLAINT**

26 This Document Relates To:

27 ALL ACTIONS

Date: November 15, 2022

Time: 9:00 a.m.

Dept.: Courtroom 8, 19th Floor

Judge: Hon. Jacqueline Scott Corley

Trial Date: TBD

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

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT 5

 A. The *FTC* Decision Does Not Dictate the Result of Plaintiffs’ State-Law Claims Under the Doctrines of Res Judicata, Collateral Estoppel, or *Stare Decisis*. 5

 B. Plaintiffs State Plausible Claims Under the Cartwright Act. 7

 1. The Cartwright Act is “Broader and Deeper” than the Sherman Act. 7

 2. Plaintiffs Adequately Allege a Cartwright Act Claim. 10

 a. Plaintiffs’ Factual Allegations Must Be Evaluated as a Whole. 10

 b. Plaintiffs’ Tying and Exclusive Dealing Allegations State a Claim in Light of *Cipro* and *Fisherman’s Wharf*. 13

 c. Plaintiffs Allege Anticompetitive Harm in the Tying and Tied Markets. 13

 d. The *FTC* Decision Does Not Require a Different Result. 16

 C. Plaintiffs State a Claim Under the UCL. 19

 1. Plaintiffs adequately plead a derivative “unlawful” prong claim. 20

 2. Plaintiffs adequately plead a UCL claim under the “unfair” prong. 20

 a. The fate of Plaintiffs’ UCL unfair prong claim does not depend on whether Plaintiffs adequately allege a Cartwright Act claim. 20

 b. Qualcomm’s conduct satisfies all three tests for unfairness under the UCL. 22

 3. Plaintiffs adequately plead a UCL claim under the “fraudulent” prong. 24

III. CONCLUSION 25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Apple Inc. v. Samsung Elecs. Co., Ltd.</i> , 2011 WL 4948567 (N.D. Cal. Oct. 18, 2011).....	9
<i>Arce v. Kaiser Found. Health Plan, Inc.</i> , 181 Cal. App. 4th 471 (2010)	23
<i>Aryeh v. Canon Bus. Sols., Inc.</i> , 55 Cal.4th 1185 (2013)	8
<i>AT&T Mobility LLC v. AU Optronics Corp.</i> , 707 F.3d 1106 (9th Cir. 2013).....	9
<i>Aya Healthcare Servs., Inc. v. AMN Healthcare, Inc.</i> , 9 F.4th 1102 (9th Cir. 2021)	5, 17
<i>Brooks v. Bank of Am., N.A.</i> , 2021 WL 1541643 (S.D. Cal. Apr. 20, 2021).....	22
<i>Camacho v. Auto. Club of S. Cal.</i> , 142 Cal. App. 4th 1394 (2006)	24
<i>Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tele. Co.</i> , 20 Cal.4th 163 (1999)	20, 21, 23
<i>Cellular Plus, Inc. v. Superior Ct.</i> , 14 Cal. App. 4th 1224 (1993)	10
<i>Cent. Valley Med. Grp., Inc. v. Indep. Physician Assocs. Med. Grp., Inc.</i> , 2019 WL 3337891 (E.D. Cal. July 25, 2019)	20, 21
<i>Chavez v. Whirlpool Corp.</i> , 93 Cal. App. 4th 363 (2001)	21
<i>City of Oakland v. Oakland Raiders</i> , 20 F.4th 441 (9th Cir. 2021)	5, 17
<i>City of San Jose v. Office of the Comm'r of Baseball</i> , 776 F.3d 686 (9th Cir. 2015).....	21
<i>Continental Ore Co. v. Union Carbide & Carbon Corp.</i> , 370 U.S. 690 (1962).....	13
<i>Corwin v. L.A. Newspaper Serv. Bureau, Inc.</i> , 4 Cal. 3d 842 (1971)	13

1	<i>County of Tuolumne v. Sonora Cmty. Hosp.</i> ,	
2	236 F.3d 1148 (9th Cir. 2001).....	9
3	<i>Darling v. Green</i> ,	
4	2013 WL 11323320 (C.D. Cal. Sept. 25, 2013).....	24
5	<i>Darush v. Revision LP (“Darush I”)</i> ,	
6	2013 WL 1749539 (C.D. Cal. Apr. 10, 2013)	9
7	<i>Darush v. Revision LP (“Darush II”)</i> ,	
8	2013 WL 12142621 (C.D. Cal. Aug. 28, 2013).....	9
9	<i>Dimidowich v. Bell & Howell</i> ,	
10	803 F.2d 1473 (9th Cir. 1986).....	7
11	<i>Eastman v. Quest Diagnostics</i> ,	
12	2016 WL 1640465 (N.D. Cal. Apr. 26, 2016)	9
13	<i>Epic Games, Inc. v. Apple Inc.</i> ,	
14	559 F. Supp. 3d 898 (N.D. Cal. 2021), <i>injunction stayed pending appeal</i> , 2021	
15	WL 6755197 (9th Cir. Dec. 8, 2021)	21
16	<i>Epic Games, Inc. v. Apple, Inc.</i> ,	
17	No. 21-16506	21
18	<i>Fisherman’s Wharf Bay Cruise Corp. v. Superior Ct.</i> ,	
19	114 Cal. App. 4th 309 (2003)	<i>passim</i>
20	<i>Flagship Theatres of Palm Desert, LLC v. Century Theatres, Inc.</i> ,	
21	55 Cal. App. 4th 381 (2020)	17
22	<i>Forsyth v. Humana, Inc.</i> ,	
23	114 F.3d 1467 (9th Cir. 1997).....	16
24	<i>Freeman v. San Diego Ass’n of Realtors</i> ,	
25	322 F.3d 1133 (9th Cir. 2003).....	19
26	<i>Freeman v. San Diego Ass’n of Realtors</i> ,	
27	77 Cal. App. 4th 171 (1999)	19
28	<i>FTC v. Qualcomm, Inc.</i> ,	
	969 F.3d 974 (9th Cir. 2020).....	<i>passim</i>
	<i>Gainesville Inv., LLC v. Astroenergy Solar, Inc.</i> ,	
	2022 WL 2818259 (C.D. Cal. July 18, 2022).....	24
	<i>Gately v. Massachusetts</i> ,	
	2 F.3d 1221 (1st Cir. 1993).....	6

1	<i>Gee v. Tenneco, Inc.</i> , 615 F.2d 857 (9th Cir. 1980).....	7
2		
3	<i>Hemmings v. Tidyman’s, Inc.</i> , 285 F.3d 1174 (9th Cir. 2002).....	7
4		
5	<i>Hendricks v. Dynegy Power Mktg., Inc.</i> , 160 F. Supp. 2d 1155 (S.D. Cal. 2001).....	20
6	<i>Imperial Irrigation Dist. v. Cal. Indep. Sys. Operator Corp.</i> , 2016 WL 4087302 (S.D. Cal. Aug. 1, 2016)	21, 23
7		
8	<i>In re Ambac Bond Ins. Cases</i> , 2016 WL 661903 (Cal. Ct. App. Feb. 18, 2016) (unpublished)	21
9		
10	<i>In re Automobile Antitrust Cases I & II</i> , 1 Cal. App. 5th 127 (2016), <i>rev. denied</i> (Oct. 19, 2016)	4, 11, 12, 23
11	<i>In re Cal. Gasoline Spot Market Antitrust Litig.</i> , 2021 WL 1176645 (N.D. Cal. Mar. 29, 2021).....	8
12		
13	<i>In re Cipro Cases I & II</i> , 61 Cal. 4th 116 (2015)	<i>passim</i>
14	<i>In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.</i> , 958 F.3d 1239 (9th Cir. 2020).....	5, 6
15		
16	<i>In re Osborne</i> , 76 F.3d 306 (9th Cir. 1996).....	6
17		
18	<i>In re Qualcomm Antitrust Litig.</i> , 328 F.R.D. 280 (N.D. Cal. 2018).....	8
19	<i>Intel Corp. v. Fortress Inv. Grp. LLC</i> , 2020 WL 1983487 (N.D. Cal. Mar. 19, 2020).....	22
20		
21	<i>Knevelbaard Dairies v. Kraft Foods, Inc.</i> , 232 F.3d 979 (9th Cir. 2000).....	10
22		
23	<i>Korea Kumho Petrochem. v. Flexsys Am. L.P.</i> , 2008 WL 686834 (N.D. Cal. Mar. 11, 2008).....	5, 20
24	<i>Kwikset Corp. v. Super. Ct.</i> , 51 Cal. 4th 310 (2011)	22, 25
25		
26	<i>Leegin Creative Leather Prods. v. PSKS, Inc.</i> , 551 U.S. 877 (2007).....	9
27		
28	<i>LePage’s, Inc. v. 3M</i> , 324 F.3d 141 (3d Cir. 2003).....	18

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.