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15 **ATTORNEYS FOR NON-PARTY**
16 **BROADCOM CORPORATION**

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

20 FEDERAL TRADE COMMISSION,
21 Plaintiff,
22 v.
23 QUALCOMM INCORPORATED, a
24 Delaware corporation,
25 Defendant.

Case No. 5:17-cv-00220-LHK-NMC

JURY TRIAL DEMANDED

**NON-PARTY BROADCOM'S
ADMINISTRATIVE MOTION TO SEAL:
(1) TRIAL EXHIBITS QX1005 AND
QX1009; AND (2) LIMITED PORTIONS
OF THE ROBERT RANGO DEPOSITION
TESTIMONY TO BE PLAYED AT TRIAL**

1 Pursuant to Civil Local Rule 7-11, Non-Party Broadcom Corporation (“Broadcom”)
2 respectfully submits this Administrative Motion to Seal trial exhibits QX1005 and QX1009, as
3 well as limited portions of Broadcom’s former Executive Vice President and General Manager’s
4 (Robert Rango’s) deposition testimony. Broadcom understands that Qualcomm intends to play
5 these deposition excerpts at trial on Tuesday, January 22, 2019.

6 By way of background, Broadcom is a non-party to this case, but in response to broad
7 subpoenas from the FTC and Qualcomm, Broadcom produced hundreds of thousands of pages of
8 documents in this matter. As explained below and in the attached Declaration of Patrick
9 Henderson, certain materials that the parties seek to use and introduce at trial contain
10 competitively-sensitive business information. Broadcom risks harm to its business and customer
11 relationships if this information were to be made public.

12 Qualcomm does not take a position with respect to this motion. The FTC stated that it
13 “does not agree that this testimony meets the Court’s standard for sealing documents and
14 testimony.”

15 **I. LEGAL STANDARD**

16 Pursuant to Rule 26(c), a trial court has broad discretion to permit sealing of court
17 documents for the protection of “a trade secret or other confidential research, development, or
18 commercial information.” Fed. R. Civ. P. 26(c)(1)(G). In addition, the United States Supreme
19 Court has acknowledged that sealing may be justified to prevent judicial documents from being
20 used “as sources of business information that might harm a litigant’s competitive standing.”
21 *Nixon v. Warner Comm’n, Inc.*, 435 U.S. 589, 598 (1978); *In re Elec. Arts, Inc.*, 298 Fed.
22 Appx. 568, 569 (9th Cir. 2008) (unpublished) (quoting *Nixon*, 435 U.S. at 598).

23 Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed if a
24 party “establishes that the documents, or portions thereof, are privileged, protectable as a trade
25 secret or otherwise entitled to protection under the law.” Civ. L.R. 79-5(b). A party seeking to
26 seal a document must submit “narrowly tailor[ed]” requests and overcome the “strong
27 presumption in favor of access” that applies to court documents other than those that are
28 traditionally kept secret. *Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1099 (9th

1 Cir. 2016). For filings that are “more than tangentially related to the underlying cause of action,”
2 the declarations must set forth the “compelling reasons supported by specific factual findings”
3 which “outweigh the general history of access and the public policies favoring disclosure,”
4 *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006) (citation
5 omitted).

6 Counsel for the FTC has informed Broadcom that the Court has ordered that the
7 “compelling reasons” standard applies to information sought to be sealed at trial. Further, counsel
8 for the FTC also stated that, at a pretrial conference on December 13, 2018, “Judge Koh []
9 acknowledged that some portion of the pre-recorded deposition testimony to be played at trial may
10 require closed sessions” and that the Court also “indicate[d] a willingness to have the parties shield
11 from public view particularly sensitive commercial information meeting a ‘compelling reason’
12 sealing standard, by turning off public monitors and formulating examination questions so as to avoid
13 public disclosure.” *See* Dckt. 1072 at 7, 10.

14 II. FACTUAL BACKGROUND

15 Non-party Broadcom Corporation is an American semiconductor company that makes
16 products for the wireless and broadband communication industry. Henderson Decl. (Dckt. 1120-
17 1), at ¶4. Broadcom competes directly with Qualcomm in many fields. *Id.* As relevant to this
18 case, Broadcom used to have a baseband processor business, but it exited that business in 2014.
19 *Id.* Although Broadcom is no longer in the baseband processor business, Broadcom has
20 relationships with many of its baseband processor customers for other product lines and
21 continues to service them today in other technology fields. *Id.* Broadcom’s customer
22 relationships and dealings with these customers are of the utmost importance to Broadcom. *Id.*

23 In connection with this case, both the FTC and Qualcomm served subpoenas on
24 Broadcom seeking a wide variety of information about Broadcom’s business in 2014, including
25 but not limited to the baseband processor business. Broadcom cooperated with the subpoenas
26 and ultimately produced hundreds of thousands of pages of documents to the FTC and
27 Qualcomm. These documents included highly-sensitive materials, including Board of Directors
28 minutes, Board of Directors presentations, financial information, and customers

1 communications. Broadcom also made its former CEO, Scott McGregor, and its former
 2 Executive Vice President and General Manager, Robert Rango, available for depositions. In
 3 their depositions, Mr. McGregor and Mr. Rango discussed many of these highly-sensitive topics
 4 and materials.

5 Consistent with the mandate of the Court's Pretrial Conference Order dated December
 6 13, 2018 (Dckt. 1003), the information that Broadcom seeks to seal through this motion is:

| 7 Item | 8 Whose Confidential Information | 9 Where Information Appears | 10 Standard For Sealing | 11 Declaration Support |
|--|----------------------------------|---|-------------------------|------------------------------------|
| 12 QX1005 | Broadcom | Entirety | Compelling reasons | Attached Henderson Declaration, ¶4 |
| 13 QX1009 | Broadcom | Entirety | Compelling Reasons | Attached Henderson Declaration, ¶5 |
| 14 Deposition Transcript of Robert Rango | Broadcom | 68:1-19 68: 22-24 69:11-70:15 70:18-24 | Compelling reasons | Attached Henderson Declaration, ¶6 |

16 For the Court's convenience, QX1005 is attached as Exhibit D, QX1009 is attached as
 17 Exhibit E, and the relevant deposition testimony is attached as Exhibit F to Mr. Henderson's
 18 declaration, submitted concurrently herewith.

19 III. ARGUMENT

20 Qualcomm has indicated it intends to introduce QX1005, QX1009, and the videotaped
 21 testimony of many portions of the deposition transcript of Mr. Rango (Broadcom's former
 22 Executive Vice President and General Manager) at trial on Tuesday, January 22nd. Accordingly,
 23 Broadcom respectfully moves the Court to keep sealed those exhibits and specific, limited
 24 portions of that deposition testimony of Mr. Rango that Qualcomm intends to play. With this
 25 motion, Broadcom provides a declaration from Patrick Henderson of Broadcom to support its
 26 limited request to seal.

27 As discussed in detail below and in Mr. Henderson's declaration, the exhibits and
 28 testimony contain Broadcom's confidential and sensitive business information, including

1 customer communications and strategy, which are not publicly known and are maintained in
2 confidence by Broadcom. It is important to bear in mind that the customer involved is one of
3 Broadcom's largest and most important customers, who Broadcom works with today for multiple
4 product lines. If the sensitive information that is subject to this motion were released to the
5 public, moreover, Broadcom's competitors could gain insight into Broadcom's internal business
6 operations and strategy, which could hinder Broadcom's ability to compete in the marketplace.
7 The excerpts that Broadcom seeks to seal are only a portion of what Qualcomm indicates that it
8 intends to present and are narrowly limited to those that would cause Broadcom or its customer
9 harm.

10 QX1005

11 Broadcom respectfully requests that the Court seal exhibit QX1005. QX1005 is an email
12 chain between Robert Rango, Scott McGregor (Broadcom's CEO), Patrick Henderson
13 (Broadcom's declarant and then the Senior VP of Americas Sales), and other senior management
14 at Broadcom about a conversation with a key Broadcom customer. Henderson Decl. ¶4. The
15 email discusses the customer's views of Broadcom's strengths and weaknesses and how
16 Broadcom compares to its competitors. *Id.* This information could be harmful to Broadcom if
17 publicly disclosed. *Id.*

18 This Court regularly seals this kind of non-public customer information that could be
19 used to the disclosing party's competitive disadvantage. *See H.Q. Milton, Inc. v. Webster*, 17-
20 CV-06598-PJH, 2017 WL 5625929, at *1 n.1 (N.D. Cal. Nov. 22, 2017) (granting motion to seal
21 "trade secret information, including customer names or pricing information"); *Lawson v.*
22 *Grubhub, Inc.*, 15-CV-05128-JSC, 2017 WL 2951608, at *9 (N.D. Cal. July 10, 2017)
23 ("customer usage information kept confidential by a company that could be used to the
24 company's competitive disadvantage" may present compelling reasons to seal) (citing *Apple Inc.*
25 *v. Samsung Elecs. Co.*, 727 F.3d 1214, 1226 (Fed. Cir. 2013)); *FTC v. DirecTV, Inc.*, 15-CV-
26 01129-HSG, 2016 WL 5339797, at *2 (N.D. Cal. Sept. 23, 2016) (granting motion to seal
27 documents that "contain sensitive business information regarding customer feedback");
28 *Johnstech Int'l Corp. v. JF Microtechnology SDN BHD*, 14-CV-02864-JD, 2016 WL 4091388,

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