

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

KAREN STROMBERG; SAMUEL  
ROECKER; THOMAS LAMMEL; MARY  
GALLOWAY; DANIELLE LAGRAVE;  
THOMAS MCMAHON; BOARDSPORTS  
SCHOOL LLC; PATRICK BENAD;  
LINDSEY CARR; RENEE ACOSTA;  
PATRICIA BURNES; CAROL HARRIS;  
ROBERT LINKS; NICHELLE LYONS;  
NUALA VIGNOLES; RACHEL L.  
MILLER; JOHN WILLIAM KIEFER III;  
MATTHEW MITCHELL; SUSAN  
GONZALEZ-PENDER; TERESE  
RUSSELL; SARAH KEY; DALIA  
ZATLIN; BETH CRANDALL; CLARISSA  
SIMON; KENDALL MARTIN; RODRIGO  
SAPLA; REBECCA DAVIS; THOMAS  
MCMANUS; KIMBERLY SCAVONE;  
MELISSA JU; CHRIS THOMPSON;  
MARTHA COUNTESS; KAREN HOOD;  
JAIME MARTIN; ADRIAN ESTEBAN;  
JEFFREY DAVIS; ERICSSON  
BROADBENT; PAUL SCOTT ERVIN;  
CARALYN TADA; NAGORE MILES;  
BETHANY RISING; JIYING SPENCER;  
DAYAN CRUTCHER; CATHERINE  
SCHMIDLIN; ALLISON TRIPP;  
LINDSAY SMITH; KATIE SMITH;  
KIRSTEN LUENZ; LAUREL VENER;  
STEPHEN JUDGE; SETH SALENGER;

No. 19-15159

D.C. No.  
5:17-md-02773-  
LHK

OPINION

SCOTT HANSEN; JOSEPH  
KOVACEVICH; MICHELLE REYNOLDS;  
GEORGE MARUT; JANET ACKERMAN;  
ALAN SCHLAIKJER; LORI LANDES;  
JOYCE GRANTZ; GABRIELLE KURDT;  
JOHN SOLAK; TODD ESPINOSA;  
ANDREW WESTLEY; LAURA  
HALLAHAN; MARY C. McDEVITT;  
PADRAIC J. BRENNAN; JASON  
SCHWARTZ; SUZANNE BLOCK; KEVIN  
CALERO; CARLO ENDOZO CARINGAL;  
IAN CARSON; ANDRE CRUZ; LUCAS  
RANGEL FERREIRA; MASOOD  
JAVAHERIAN; DAVID KOPLOVITZ;  
BRIAN LETULLE; DEIRDRE  
MCELHANEY; CARMEN MINON;  
ERICA MINON; GABRIEL MINON;  
BETSY SANTIAGO; JAVIER SANTIAGO;  
PETER YEE; ALICIA HADNETT;  
DANIEL CARROLL; DEBRA GRASL;  
AMANDA NEWSOME; DAVID  
KREUZER; ARMANDO HERRERA;  
EDEN WAGNER; NEIL WAGNER;  
ALLAN ROTMAN; SHARI COLE;  
PHILLIP JAMES ZACHARIAS; MARY  
BETH CUMMINS; GUY SNOWDY;  
CYNTHIA BAMBINI; GRANT  
HAUSCHILD; DAVID FLOYD; KIM  
COUGHLIN; BRANDON FULLER; LISA  
PATNODE; NINA BARTOSHEVICH;  
LEONIDAS MIRAS; JAMES CLARK,  
*Plaintiffs-Appellees,*

and

JORDIE BORNSTEIN; CORDT BYRNE;  
ELLIOT CARTER; JEFF CIOTTI;  
DWIGHT DICKERSON; MATTHEW  
CHRISTIANSON; LOGAN GRIESEMER;  
RYAN HART; WILLIAM HORTON;  
STEVE KRUG; GAIL MARGOLIS; KATE  
MORTENSEN; ALYSSA NEE;  
CHRISTOPHER WHALEN; STEPHAN  
FARID WOZNIAK; CHRISTOPHER  
ZAYAS-BAZAN; DAVID CARNEY;  
JULIE EWALD; TOM PARKIN; BRIAN  
DEPPERSCHMIDT; BRANDON STEELE;  
KYLE WEBER; CRAIG HOUSENICK;  
RYAN MARGULIS; RICHARD RIZZO;  
GUY DIETRICH; JEFFREY M. KURZON;  
SUSAN NAGY; NICOLAS YOUSIF;  
SCOTT FREDERICK; CHARLES POON;  
ANDREA HOGAN; TINA HEIM;  
MONICA MORROW; MARK  
CARDILLO; ALLISON SHIPP;  
MICHELLE MACKEY; COLLEEN  
SPARKE; JANET SILVERNESS;  
MELANIE BARCLAY; TIFFANY RINGO;  
HALLIE LINGO; CRYSTAL  
HOHENTHANER; DANIEL K.  
BRENDTRO; DANIEL DELIER; PAUL  
NELSON; CATHERINE KADERAVEK;  
KAREN CARLET; DAVID WARING;  
LEON THEODORE LIPKA III,  
*Plaintiffs,*

v.

QUALCOMM INCORPORATED, <i>Defendant-Appellant.</i>
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Appeal from the United States District Court  
for the Northern District of California  
Lucy H. Koh, District Judge, Presiding

Argued and Submitted December 2, 2019  
Submission Withdrawn March 3, 2020  
Resubmitted September 21, 2021  
San Francisco, California

Filed September 29, 2021

Before: Eugene E. Siler\*, Jay S. Bybee, and  
Ryan D. Nelson, Circuit Judges.

Opinion by Judge R. Nelson

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\* The Honorable Eugene E. Siler Jr., Senior United States Circuit Judge of the United States Court of Appeals for the Sixth Circuit, sitting by designation.

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**SUMMARY\*\***

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**Antitrust / Class Certification**

The panel vacated the district court's order certifying a nationwide indirect purchaser class in an antitrust multi-district litigation seeking injunctive and monetary relief under §§ 1 and 2 of the Sherman Act and California law against Qualcomm Incorporated, and remanded for reconsideration of the plaintiffs' claims given *FTC v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020) (holding that Qualcomm's modem chip licensing practices did not violate the Sherman Act, and there was nothing to be enjoined because its exclusive dealing agreements with Apple did not substantially foreclose competition and were terminated years ago).

The plaintiffs, consumers who bought cellphones, alleged that Qualcomm maintained a monopoly in modem chips, harming consumers because the amount attributable to an allegedly excessive royalty was passed through the distribution chain to consumers in the form of higher prices or reduced quality in cellphones. The district court certified a damages class under Fed. R. Civ. P. 23(b)(3) and an injunctive relief class under Rule 23(b)(2).

Vacating the Rule 23(b)(3) class certification order, the panel held that the class was erroneously certified under a faulty choice of law analysis because differences in relevant state laws swamped predominance. The panel held that

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\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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