

1 ROBBINS GELLER RUDMAN
& DOWD LLP
2 LUKE O. BROOKS (212802)
ROBERT R. HENSSLER, JR. (216165)
3 CHRISTOPHER D. STEWART (270448)
HILLARY B. STAKEM (286152)
4 655 West Broadway, Suite 1900
San Diego, CA 92101
5 Telephone: 619/231-1058
619/231-7423 (fax)

6 -and-

7
8 KESSLER TOPAZ
MELTZER & CHECK, LLP
9 JENNIFER L. JOOST (296164)
STACEY M. KAPLAN (241989)
One Sansome Street, Suite 1850
10 San Francisco, CA 94104
Telephone: 415/400-3000
11 415/400-3001 (fax)

12 *Lead Counsel for the Class and*
Lead Plaintiff Gatubhai Mistry, and Named
13 *Plaintiffs Gerald L. Koenig, Leonard Brenner,*
and Vanessa D. Washington

14
15 [*Additional Counsel listed on signature page.*]

16
17 **UNITED STATES DISTRICT COURT**
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19
20 IN RE QUALCOMM/BROADCOM
21 MERGER SECURITIES LITIGATION

Case No. 3:18-cv-01208-CAB-AHG

**SECOND AMENDED CLASS
ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS**

DEMAND FOR JURY TRIAL

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1 This is a class action for violations of the federal securities laws brought by Lead
2 Plaintiff Gatubhai Mistry and named plaintiffs Gerald L. Koenig, Leonard Brenner,
3 and Vanessa D. Washington (collectively, “Plaintiffs”) individually and on behalf of
4 all persons who purchased or otherwise acquired Qualcomm Incorporated
5 (“Qualcomm” or the “Company”) common stock between January 29, 2018 and
6 March 12, 2018, inclusive (the “Class Period”). Plaintiffs allege violations of Sections
7 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and
8 Rule 10b-5 promulgated by the Securities and Exchange Commission (“SEC”) and
9 thereunder (17 C.F.R. § 240.10b-5), against: (i) Qualcomm; (ii) Qualcomm’s Chief
10 Executive Officer (“CEO”) Steven M. Mollenkopf (“Mollenkopf”); (iii) Qualcomm’s
11 former Executive Chairman and Chairman of Qualcomm’s Board of Directors (the
12 “Board”) Dr. Paul E. Jacobs (“Jacobs”); (iv) Qualcomm’s General Counsel Donald J.
13 Rosenberg (“Rosenberg”); and (v) Qualcomm’s former Presiding Director of the Board
14 Thomas W. Horton (“Horton”) (collectively, “Defendants”).

15 Plaintiffs allege the following based upon personal knowledge with respect to
16 Plaintiffs’ own acts and upon information and belief as to all other matters based on
17 the investigation undertaken by Court-appointed Co-Lead Counsel, Kessler Topaz
18 Meltzer & Check, LLP and Robbins Geller Rudman & Dowd LLP, and their agents.
19 Co-Lead Counsel’s investigation includes, among other things, a review and analysis
20 of: (i) public filings by Qualcomm and Broadcom Limited (“Broadcom”) with the
21 SEC; (ii) public reports and news articles; (iii) research reports by securities and
22 financial analysts; (iv) economic analysis of securities movement and pricing data;
23 (v) transcripts of investor calls with Qualcomm and Broadcom senior management;
24 (vi) consultations with consultants; and (vii) other publicly available material and data
25 identified herein. Co-Lead Counsel’s investigation into the factual allegations
26 contained herein is continuing and many of the facts supporting Plaintiffs’ allegations
27 are known only to Defendants or are exclusively within their custody or control.

1 Plaintiffs believe that further substantial evidentiary support will exist for the
2 allegations contained herein after a reasonable opportunity for discovery.

3 **I. NATURE OF THE ACTION AND OVERVIEW**

4 1. This action involves Defendants’ materially false and misleading Class
5 Period statements and omissions, undertaken to frustrate Broadcom’s attempt to
6 acquire Qualcomm, entrench themselves in their director and executive positions, and
7 ultimately, to thwart the will of the Company’s shareholders.

8 2. By the fall of 2017, Qualcomm – a semiconductor company based in San
9 Diego – was under intense scrutiny after years of poor performance. The Company
10 was engaged in contentious litigation with one of its biggest customers, Apple
11 Incorporated (“Apple”), over Qualcomm’s alleged “illegal business practices,” and
12 Apple was threatening to discontinue use of Qualcomm’s chips in its iPhones. The
13 Company was also facing multiple suits and investigations by the Federal Trade
14 Commission (“FTC”) and numerous antitrust agencies around the world for its alleged
15 anti-competitive practices – which had already resulted in billions of dollars in fines.

16 3. Qualcomm’s net income plunged 57% in fiscal year 2017, and while its
17 competitors rode the bull market, with the PHLX Semiconductor Sector Index rising
18 58% over the previous year, the Company’s stock price had floundered, plummeting
19 18% over the same period. By November 2017, Qualcomm’s common stock was
20 trading around \$54 per share, down from a high of \$81.32 in April 2014. As a
21 Bernstein analyst summed it up: “Qualcomm’s stock has been hideous to own over the
22 last few years.”

23 4. On November 3, 2017, news leaked that Broadcom was planning a bid to
24 acquire Qualcomm at around \$70 per share, almost 30% over its current market price.
25 Unlike Qualcomm, Broadcom – a semiconductor company domiciled in Singapore –
26 had experienced remarkable success in recent years. In fact, between April 2014 and
27 October 2017, Broadcom’s stock price had increased approximately 350% – from
28 \$58.53 to \$263.91. The market’s response to news of Broadcom’s bid was immediate

1 and positive – Qualcomm’s common stock spiked 13% in a single trading day, closing
2 on November 3 at \$61.81.

3 5. On November 6, 2017, Broadcom made its formal offer to acquire
4 Qualcomm for \$70 per share. A week later, Qualcomm announced that it had rejected
5 Broadcom’s offer, arguing that it “dramatically undervalue[d] Qualcomm.”
6 Qualcomm also cited to unexplained “significant regulatory uncertainty.” Undeterred,
7 Broadcom made clear that it “remain[ed] fully committed” to acquiring Qualcomm and
8 was “encouraged by [shareholder] reaction.”

9 6. The market also remained bullish on the deal, with one analyst reporting:
10 “the probability remains [Broadcom] will up the offer and acquire the asset either via
11 constructive discussions or a proxy battle” to replace Qualcomm’s Board. An
12 Oppenheimer analyst report similarly reported that, “we believe QCOM shareholders
13 would be eager to accept a ~27% premium[.]”

14 7. As a result, the Company’s share price continued to rise throughout
15 November, closing out the month at \$66.34 – a 30.5% total increase. As the Motley
16 Fool explained: “Qualcomm’s share price . . . continued to climb throughout
17 November. That could be an indicator that shareholders are eager to replace
18 Qualcomm’s board and allow this acquisition to go through.” A commentator summed
19 up investor sentiment on CNBC’s *Squawk Box* as follows: “[t]here are many
20 shareholders, including me, who think Qualcomm is very poorly managed. I would
21 like adult supervision to come in from Broadcom[.]”

22 8. Broadcom officially kicked off a proxy fight on December 4, 2017,
23 announcing a slate of 11 director nominees to replace Qualcomm’s beleaguered Board
24 – with the vote to take place at Qualcomm’s annual meeting on March 6, 2018 (the
25 “Annual Meeting”). Broadcom made clear that its “strong preference” was still to
26 negotiate a deal with the Company and that Qualcomm’s shareholders were also
27 “express[ing] their desire for Qualcomm to engage with us.” The proxy fight would
28

1 therefore “give Qualcomm stockholders an opportunity to voice their disappointment
2 with Qualcomm’s directors and their refusal to engage in discussions with us.”

3 9. On December 22, 2017, Qualcomm officially announced that it would
4 oppose Broadcom’s proxy fight and a few weeks later, on January 5, 2018, the two
5 companies filed competing proxy statements soliciting shareholder votes for their
6 respective slates. The main thrust of Qualcomm’s opposition was that Broadcom’s
7 offer “substantially undervalued” the Company and that its current Board “will deliver
8 far more value than the Broadcom proposal.” Qualcomm also asserted that the deal
9 involved “significant regulatory uncertainty,” including from antitrust regulators and
10 the Committee on Foreign Investment in the United States (“CFIUS” or the
11 “Committee”) – an interagency committee that reviews transactions between foreign
12 and domestic entities for potential national security concerns.

13 10. While market commentators recognized some potential antitrust risk
14 associated with Broadcom’s offer, many ultimately concluded that such risks were
15 minimal. For example, a Canaccord Genuity analyst report concluded that “[w]hile we
16 believe the overlapping WiFi businesses would create some regulatory concerns that
17 could be solved, we do not believe there are material product overlaps in other areas of
18 the businesses.” Analyst Oppenheimer Equity Research echoed that “[w]e believe
19 regulatory/HSR hurdles should be low[.]” As The New York Times explained,
20 although antitrust approval could raise some concern, “[t]he biggest issue may simply
21 be that Qualcomm believes the current offer, worth about \$70 a share, is too low.”

22 11. Nor did the market perceive there to be serious risk that a review by
23 CFIUS would stymie a deal. Indeed, just days before it debuted its bid for Qualcomm,
24 Broadcom announced that it would redomicile to the U.S. – a move that the market
25 understood as removing CFIUS risk, since Broadcom would no longer be a foreign
26 entity. As The New York Times reported, “[a]t least one deal hurdle – Washington’s
27 examination of foreign acquirers – has been pre-empted.” Likewise, analyst
28 Morningstar Equity Research reported that “[w]e foresee U.S. approval, thanks to

1 Broadcom’s shrewd move to redomicile in the U.S.” These predictions were
2 seemingly affirmed in mid-November 2017, when CFIUS approved Broadcom’s
3 acquisition of another U.S. company, Brocade Communications Systems, Inc.
4 (“Brocade”), as a result of Broadcom’s decision to redomicile.

5 12. Thus, in an effort to manufacture doubt about CFIUS review, in December
6 and January proxy solicitations Qualcomm seized on what it characterized as
7 “uncertainty surrounding [Broadcom’s] transition from Singapore to the United
8 States,” noting that “they have not made any further progress on their commitment to
9 become an American company[.]” On January 22, 2018, however, Broadcom put
10 Qualcomm’s speculations to rest, announcing that it had filed preliminary proxy
11 materials with the SEC to approve its redomiciliation to the U.S., and expected to
12 complete the process by May 6, 2018.

13 13. With Qualcomm’s disenchanted shareholder base fleeing to Broadcom’s
14 camp, and Broadcom’s redomiciliation imminent, by the end of January, Defendants
15 saw the writing on the wall. They knew they were almost certain to lose the impending
16 proxy contest, and that once Broadcom’s slate of directors was in place, an acquisition
17 agreement would be approved. The Company had no poison pill to employ to deter
18 Broadcom’s advances: as a result of shareholder pressure in 2015, it had had no choice
19 but to let its former poison pill expire. And shortly thereafter, Qualcomm also amended
20 its bylaws to include a shareholder proxy access right, further weakening control over
21 the Board.

22 14. With the Company’s traditional takeover defenses depleted or
23 unavailable, and Defendants’ control of the Board further weakened by the proxy
24 access right, Defendants instead engaged in a desperate and surreptitious attempt to
25 thwart the will of the Company’s shareholders and entrench themselves. Specifically,
26 on January 29, 2018, Defendants secretly filed a unilateral, pre-deal notice with CFIUS,
27 arguing that the deal raised serious national security concerns and asking the regulator
28 to kill Broadcom’s bid before it had the opportunity to redomicile. Over the next

1 month, Defendants continued to covertly submit additional information to CFIUS in
2 furtherance of their plan to kill the deal.

3 15. During the Class Period, Defendants withheld all of this highly material
4 information from their shareholders. Indeed, while behind the scenes Defendants were
5 doing everything in their power to kill Broadcom's bid, publicly they were careful to
6 conceal their efforts to thwart the takeover – including by repeatedly misrepresenting
7 to investors that they were acting in shareholders' best interests by negotiating with
8 Broadcom in good faith to reach a deal. For example, on February 8, 2018, Qualcomm
9 rejected Broadcom's improved offer of \$82 per share – a whopping 50% premium over
10 Qualcomm's pre-bid stock price, accompanied by significant concessions to address
11 Qualcomm's purported concerns about regulatory risk. But though Defendants knew
12 that Qualcomm was actively lobbying CFIUS to block Broadcom's planned
13 acquisition, they told shareholders that they were willing to constructively engage with
14 Broadcom: “*Qualcomm has offered to meet with Broadcom to see if it can address*
15 *the serious deficiencies in value and certainty in its proposal.*”¹

16 16. Throughout the Class Period, Defendants argued against Broadcom's bid
17 through vague statements to shareholders about potential regulatory delay, highlighting
18 the antitrust risks associated with the deal while concealing the steps the Company had
19 already taken to scuttle the transaction. For example, the very same day they filed their
20 secret CFIUS notice, Qualcomm emphasized antitrust risks associated with the deal,
21 telling investors that Broadcom's bid involved “some questions about deal certainty
22 and regulatory approval” and “[w]e believe that [regulatory approval] is probably
23 going to take something in the range of 18 months or more even[.]” While speaking
24 directly to potential regulatory delay associated with the deal, however, Defendants
25 purposefully withheld the fact that they had taken affirmative steps to ensure that the
26 deal would never receive regulatory approval.

27
28 ¹ All emphasis herein is added unless otherwise noted.

1 17. In a February 8, 2018 letter to Broadcom filed with the SEC, Defendants
2 laid out the topics for discussion at their proposed meeting with Broadcom, which
3 included, “*Is Broadcom willing to commit to take whatever actions are necessary to*
4 *ensure the proposed transaction closes?*” (Some emphasis in original.) Defendants’
5 letter explained that Broadcom’s firm commitment to ensure regulatory approval “*is*
6 *extremely important to value preservation for our shareholders*” and “[*if you are not*
7 *willing to agree to do whatever is necessary to ensure a transaction closes, we will*
8 *need you to be extremely clear and specific about exactly what actions you would*
9 *refuse to take, so that we can properly evaluate the risk to Qualcomm’s*
10 *shareholders.*” While focusing attention on Broadcom’s commitment to ensure deal
11 closure, however, Defendants failed to disclose that they had already argued to
12 regulators that the transaction inherently posed a threat to national security and
13 therefore should never close, regardless of any steps Broadcom agreed to take. In so
14 doing, Defendants deprived investors of the opportunity to “properly evaluate the
15 risk[s] to Qualcomm shareholders.”

16 18. Because they were in the dark about Qualcomm’s secret defensive
17 measures, analysts reacted positively to Qualcomm’s stated willingness to engage,
18 writing, “we are encouraged to see a potential meeting between AVGO and QCOM
19 and looking forward to incremental updates” and reaffirming a price target of \$80 per
20 share – just below Broadcom’s bid.

21 19. On February 14, 2018, Qualcomm met with Broadcom to discuss the
22 latter’s improved proposal. After the meeting, Defendants again misrepresented to the
23 market that the parties were making progress toward a negotiated deal, telling
24 shareholders that: “*our Board found the meeting to be constructive*”; “[w]hile the
25 current Broadcom proposal is unacceptable, *our Board is intensely focused on*
26 *maximizing value for Qualcomm stockholders*, whether through executing on its
27 growth strategy *or by selling the Company*”; and “[o]ur Board is open to further
28 *discussions with Broadcom to see if a proposal that appropriately reflects the true*

1 *value of Qualcomm shares, and ensures an appropriate level of deal certainty, can*
2 *be obtained.*” Meanwhile, Qualcomm’s shareholders had no idea that rather than
3 trying to negotiate a deal, Defendants were instead actively working to ensure that a
4 Broadcom deal could never happen.

5 20. Over the next week, shareholder support for Broadcom’s bid was further
6 cemented when two of the top proxy advisory services recommended that Qualcomm’s
7 shareholders vote to oust the Company’s Directors. First, on February 16, 2018,
8 Institutional Shareholder Services (“ISS”) recommended that the Company’s Board
9 “should negotiate with [Broadcom] in good faith,” noting that “[r]egulatory concerns
10 from [a Broadcom/Qualcomm] merger appear manageable[.]” If Qualcomm’s Board
11 failed to engage, however, ISS recommended that shareholders vote to oust them,
12 explaining that “[t]he election of four Broadcom nominees to the 11-member board
13 seems to offer a reasonable path to a negotiated deal, which is likely to be the most
14 beneficial path for shareholders.” Four days later, Glass, Lewis & Co. (“Glass Lewis”)
15 issued a recommendation that shareholders vote “AGAINST” Qualcomm’s directors
16 and “FOR” all of Broadcom’s nominees at the Annual Meeting.

17 21. In response, Defendants continued to mislead investors that they were
18 seeking a negotiated deal with Broadcom. For instance, on February 20, 2018, the
19 Company issued another statement about the February 14 meeting, representing that
20 “*[w]e entered the meeting with Broadcom in a constructive manner, seeking a price*
21 *increase and engagement on issues related to transaction certainty. However,*
22 *Broadcom did not engage on the topic of price . . . [and] should Broadcom present a*
23 *proposal that delivers superior value and sufficiently protects downside risk to you,*
24 *we will pursue a sale.*” Yet, that very same day, Mollenkopf met privately with
25 Treasury Secretary Steven Mnuchin, Chairman of CFIUS, to press his case for CFIUS
26 to kill the deal. This fact would only be revealed after the Class Period, when Secretary
27 Mnuchin’s daily calendar for the first quarter of 2018 was officially published.
28

1 22. To further perpetuate the perception that they were pursuing a negotiated
2 deal, on February 23, 2018, Defendants again met with Broadcom. In a slew of
3 statements issued on February 26, 2018, Defendants misrepresented to investors that
4 the companies had made substantial progress addressing Qualcomm’s regulatory
5 concerns, and suggested that the only sticking point was price: “[t]he Qualcomm Board
6 believes ***the meeting led to further progress toward a possible negotiated transaction***
7 ***on key issues other than price.***” Defendants also represented that they would be
8 providing Broadcom with edits to its proposed merger agreement and a non-disclosure
9 agreement, stating that “***the Board encourages Broadcom to enter into mutual due***
10 ***diligence and price negotiations***” “***with the goal of determining whether there is a***
11 ***mutually beneficial transaction to be done between our two companies.***”

12 23. Market reaction was positive, with commentators noting that Qualcomm
13 “[said] the two sides had made progress on regulatory issues but were yet to agree on
14 the deal value.”

15 24. Defendants’ misleading statements continued unabated on March 1, 2018,
16 when they touted their “***repeated[] and genuine[] attempt[s] to engage with Broadcom***
17 ***on issues including price, regulatory and other closing certainties . . . [and their]***
18 ***attempts to find a path to a deal[.]***” As suggested by Broadcom, it appeared that
19 “Qualcomm’s sudden request to enter into an NDA is a result of Qualcomm finally
20 beginning to recognize the will of its stockholders.” The reality, of course, was that
21 Qualcomm was actively working to thwart the will of its shareholders and scuttle any
22 chance of a Broadcom bid.

23 25. Then, on March 5 and 6, 2018, the market learned that Qualcomm had
24 secretly submitted a voluntary notice to CFIUS ***on January 29, 2018***, requesting that
25 it review Broadcom’s bid and arguing that the deal would jeopardize national security.
26 As a result, CFIUS ordered Qualcomm to postpone its Annual Meeting – including the
27 vote on Broadcom’s slate of nominees – while it conducted a review. As Broadcom
28 noted in a March 5 press release, “[t]his was a blatant, desperate act by Qualcomm to

1 entrench its incumbent board of directors and prevent its own stockholders from voting
2 for Broadcom’s independent director nominees.” Moreover, that Defendants kept
3 Qualcomm’s exceptional, pre-deal initiation of CFIUS review hidden “can only be
4 seen as an intentional lack of disclosure – both to Broadcom and to its own
5 stockholders.”

6 26. On March 6, 2018, Qualcomm published a letter from the U.S.
7 Department of the Treasury that provided further details concerning Qualcomm’s
8 secret Class Period communications with CFIUS and made clear that CFIUS’s decision
9 was the direct result of the unilateral notice and follow-up information submitted by
10 Qualcomm. For example, the letter disclosed that “CFIUS’s assessment thus far
11 includes its review of the information submitted by Qualcomm in its unilateral
12 voluntary notice on January 29, 2018, the parties’ responses to questions posed about
13 the potential transaction during the interim period, and the information provided in our
14 multiple phone calls, emails, and meetings with representatives of both Qualcomm and
15 Broadcom.” As a result of these disclosures, the market also understood that
16 Defendants had never been willing to negotiate with Broadcom in good faith to sell the
17 Company, as they had repeatedly represented. In response to these disclosures, the
18 Company’s stock fell 4.02%, from a closing price of \$64.74 on March 2, 2018, to a
19 closing price of \$62.14 on March 6, 2018.

20 27. The following day, reports began circulating that, in an attempt to salvage
21 its bid, Broadcom was accelerating its efforts to redomicile to the U.S. Then, after the
22 close of business on March 12, 2018, President Donald J. Trump (“President Trump”)
23 issued an executive order blocking Broadcom from acquiring Qualcomm. Market
24 commentators again noted that the decision seemed to stem directly from the
25 information provided by Qualcomm. For example, The Deal Pipeline noted that “some
26 of the objections publicly voiced by the committee sound like Qualcomm talking
27 points.” Similarly, Tech Crunch reported that “[t]he [Qualcomm] board’s original
28 outreach to CFIUS precipitated the sequence of events that led to Trump’s block this

1 past week.” Mondaq Business Briefing concluded that “it is possible we are seeing
2 now for the first time the (potentially successful) use of CFIUS as a takeover defense
3 against a hostile offer.” In response, the Company’s stock price declined 4.95%, to
4 close at \$59.70 per share on March 13, 2018. Controlling for market and industry
5 factors, the disclosures on March 5, March 6, and March 12, 2018, collectively wiped
6 out over \$9 billion in shareholder equity value – or over 9% of Qualcomm’s total
7 common equity value.

8 28. On March 14, 2018, Broadcom announced that it had terminated its offer
9 to acquire Qualcomm. Analysts expressed outrage that Qualcomm’s actions had
10 thwarted the will of its shareholders, with a Bernstein analyst reporting that “[b]y
11 invalidating Broadcom’s board slate, the US government has effectively revoked the
12 rights of Qualcomm’s long-suffering shareholders to vote for change (indeed, it almost
13 feels like Qualcomm shareholders have been asked to effectively subsidize U.S.
14 government policy).” Indeed, numerous news sources reported that, before CFIUS’s
15 intervention at Qualcomm’s behest, the proxy vote count indicated that Broadcom was
16 on track to win a majority of Qualcomm’s Board seats, with defendants Mollenkopf
17 and Jacobs as the lowest vote-getters.

18 **II. JURISDICTION AND VENUE**

19 29. The claims asserted herein arise under Sections 10(b) and 20(a) of the
20 Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated
21 thereunder (17 C.F.R. § 240.10b-5).

22 30. This Court has jurisdiction over the subject matter of this action pursuant
23 to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

24 31. Venue is proper in this District pursuant to Section 27 of the Exchange
25 Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions
26 alleged herein, including the preparation and dissemination of materially false and
27 misleading information, occurred in substantial part in this District. Additionally,
28 Qualcomm’s principal executive offices are located within this District.

1 32. In connection with the acts, transactions, and conduct alleged in this
2 Complaint, Defendants directly and indirectly used the means and instrumentalities of
3 interstate commerce, including the United States mail, interstate telephone
4 communications, and the facilities of a national securities exchange.

5 **III. PARTIES AND RELEVANT NON-PARTY**

6 33. Lead Plaintiff Gatubhai Mistry is an individual investor who purchased
7 Qualcomm common stock, as set forth in the certification attached hereto as Exhibit A,
8 at artificially inflated prices during the Class Period, and suffered damages as a result
9 of the misconduct alleged herein.

10 34. Plaintiff Gerald L. Koenig is an individual investor who purchased
11 Qualcomm common stock, as set forth in the certification attached hereto as Exhibit B,
12 at artificially inflated prices during the Class Period, and suffered damages as a result
13 of the misconduct alleged herein.

14 35. Plaintiff Leonard Brenner is an individual investor who purchased
15 Qualcomm common stock, as set forth in the certification attached hereto as Exhibit C,
16 at artificially inflated prices during the Class Period, and suffered damages as a result
17 of the misconduct alleged herein.

18 36. Plaintiff Vanessa D. Washington is an individual investor who purchased
19 Qualcomm common stock, as set forth in the certification attached hereto as Exhibit D,
20 at artificially inflated prices during the Class Period, and suffered damages as a result
21 of the misconduct alleged herein.

22 37. Defendant Qualcomm is a Delaware corporation with its principal
23 executive offices located at 5775 Morehouse Drive, San Diego, California 92121.
24 Qualcomm develops and commercializes “foundational technologies and products”
25 used in mobile devices and other wireless products. According to the Company’s
26 Annual Report Form 10-K, filed with the SEC on November 1, 2017, Qualcomm is “a
27 pioneer in 3G (third generation) and 4G (fourth generation) wireless technologies . . .
28 to empower a new era of intelligent, connected devices.”

1 38. Defendant Steven M. Mollenkopf was, at all relevant times, the
2 Company's CEO and a member of the Board. Mollenkopf joined Qualcomm in 1994
3 as an engineer. From November 2011 to December 2013, Mollenkopf served as
4 President and Chief Operating Officer of the Company, and from December 2013 to
5 March 2014, he served as CEO-elect and President. Mollenkopf became CEO of
6 Qualcomm in March 2014 and has been a member of the Board since December 2013.
7 As CEO, Mollenkopf had responsibility for the "general supervision, direction and
8 control of the business and the officers of the Corporation" pursuant to Qualcomm's
9 bylaws. During the Class Period, Mollenkopf made materially false and misleading
10 statements in proxy solicitations published to investors on January 29, 2018, February
11 8, 2018, February 16, 2018, February 22, 2018, February 26, 2018, and March 1, 2018.

12 39. Until his ouster in March 2018, Defendant Dr. Paul E. Jacobs was, at all
13 relevant times, the Company's Executive Chairman and Chairman of the Board. As
14 Executive Chairman, Jacobs not only presided over Board meetings but also
15 maintained an executive management function. From July 2005 until March 2014,
16 Jacobs served as Qualcomm's CEO. Jacobs' father, Irwin M. Jacobs, co-founded the
17 Company in 1985 and, up until Jacobs' dismissal from the Board in March 2018, a
18 member of the Jacobs family had always served in a top executive role in the Company.
19 During the Class Period, Jacobs made materially false and misleading statements in
20 proxy solicitations published to investors on February 8, 2018, February 16, 2018,
21 February 22, 2018, February 26, 2018, and March 1, 2018.

22 40. Defendant Donald J. Rosenberg was, at all relevant times, the Company's
23 Executive Vice President, General Counsel, and Corporate Secretary. Rosenberg
24 reported directly to Mollenkopf and was a member of the Company's Executive
25 Committee. In his role as General Counsel, Rosenberg was responsible for overseeing
26 Qualcomm's worldwide legal affairs including litigation, intellectual property, and
27 corporate matters. Qualcomm's Government Affairs, Internal Audit and Compliance
28 organizations also reported to him. Rosenberg has extensive experience in corporate

1 governance, compliance, law department management, litigation, securities regulation,
2 intellectual property, and competition issues. During the Class Period, Rosenberg
3 made materially false and misleading statements in a proxy solicitation published to
4 investors on January 29, 2018.

5 41. Defendant Thomas W. Horton was, at all relevant times, a member of the
6 Company's Board. Horton became a Qualcomm Director in December 2008. During
7 the relevant period, Horton also served as the Board's Presiding Director (lead
8 independent director) and, in that role, led Qualcomm's negotiations with Broadcom.
9 Horton's role also required him to act as the principal liaison between the independent
10 directors, the Chairman, and CEO, collaborate with the Chairman, CEO, and
11 independent directors to develop agendas for Board meetings, and ensure that
12 appropriate briefing materials were provided to the directors in advance of Board
13 meetings. During the Class Period, Horton made materially false and misleading
14 statements in proxy solicitations published to investors on February 22, 2018 and
15 March 1, 2018.

16 42. Defendants Mollenkopf, Jacobs, Rosenberg, and Horton are collectively
17 referred to herein as the "Individual Defendants." The Individual Defendants, because
18 of their positions with the Company, possessed the power and authority to control the
19 contents of Qualcomm's reports to the SEC, press releases, and presentations made to
20 securities analysts, money and portfolio managers, and institutional investors, *i.e.*, the
21 market. Each Individual Defendant was provided with copies of the Company's
22 reports and statements alleged herein to be misleading prior to, or shortly after, their
23 issuance and had the ability and opportunity to prevent their issuance or cause them to
24 be corrected. Because of their positions and access to material non-public information
25 available to them, each of the Individual Defendants knew that the adverse facts
26 specified herein had not been disclosed to and were being concealed from the public,
27 and that the representations which were being made were then materially false and
28 misleading.

1 43. Broadcom was, during the Class Period, a Singapore corporation with its
2 headquarters located at 1 Yishun Avenue 7 in Singapore and at 1320 Ridder Park Drive
3 in San Jose, California. Broadcom is a designer, developer, and global supplier of a
4 broad range of semiconductor devices with a focus on complex digital and mixed signal
5 complementary metal oxide semiconductor (“CMOS”) based devices and analog III-V
6 based products.

7 **IV. DEFENDANTS’ FRAUDULENT SCHEME**

8 **A. Qualcomm – A Beleaguered Technology Business Battered by Legal** 9 **and Regulatory Woes**

10 44. Qualcomm, which is headquartered in San Diego, California, sells
11 technologies and products used in mobile devices and other wireless products,
12 including network equipment, broadband gateway equipment, and consumer electronic
13 devices. Qualcomm derives the majority of its revenues from its semiconductor and
14 patent licensing business.

15 45. In the years leading up to Broadcom’s offer for Qualcomm, Qualcomm’s
16 stock price had floundered, collapsing almost 50% between April 2014 (high of
17 \$81.32 per share) and February 2016 (low of \$42.96 per share).

18 46. By April 2015, the Company’s shareholders were restless. One of
19 Qualcomm’s largest shareholders, JANA Partners, requested the Company consider
20 spinning off its chip unit from its licensing business, and that it undertake significant
21 reforms. After several months of negotiations with JANA Partners, on July 22, 2015,
22 the Company announced that it would be replacing two Board members with JANA
23 Partners-approved selections, that it would be cutting operating costs significantly, and
24 that it would be analyzing whether to make larger structural and governance changes.
25 The Company also announced that it would *not* be renewing its Rights Agreement,
26 entered into on September 26, 2005, which had given the Company a poison pill – a
27 defensive measure which would have allowed the Company to deter a hostile takeover
28 even if the takeover was supported by shareholders.

1 47. By 2017, the Company was under siege on multiple fronts. In
2 January 2017, one of Qualcomm’s largest customers – Apple – sued the Company
3 alleging that Defendants were operating an “illegal business model.”

4 48. Meanwhile, the Company was under fire from multiple antitrust agencies
5 around the world. In the United States, the FTC brought suit against Qualcomm in
6 January 2017, alleging that, among other things, it used its monopoly power over
7 cellphone chip supply and its substantial portfolio of patents to extract inflated
8 royalties, including by threatening to withhold chips from smartphone makers who
9 refused to agree to its unfair licensing terms.

10 49. In China, Qualcomm was forced to pay \$975 million to end a probe into
11 its anti-competitive practices. In late December 2016, the Korea Fair Trade
12 Commission fined the Company a record-setting \$854 million for antitrust violations.
13 In 2017, Taiwan’s Fair Trade Commission imposed a fine of \$778 million on
14 Qualcomm for refusing to sell chips to companies that would not agree to its licensing
15 terms.

16 50. By the fall of 2017, Qualcomm’s anti-competitive practices had taken a
17 massive toll on both its bottom line and its stock price. As the Los Angeles Times
18 explained, Qualcomm was fighting “a fierce legal battle with Apple over patent
19 royalties, and it faces hefty fines and lawsuits from antimonopoly regulators in the
20 U.S., South Korea and Taiwan. Those troubles weighed heavily on Qualcomm’s
21 [2017] full fiscal year results[.]”

22 51. Likewise, The Wall Street Journal reported:

23 [A] string of hits by regulators, competitors and customers including
24 Apple has left the industry titan in a vulnerable position. Qualcomm’s
25 profit in the fiscal year that ended Sept. 24 [2017] plummeted 57%, and
26 its share price declined 18% in the 12 months through Thursday’s close
27 compared with a 58% rise in the PHLX Semiconductor Sector Index.
28

1 The New York Times echoed that “Qualcomm, the longtime leader in cellphone chip
2 technology, has been grappling with a sagging stock price and investor wariness that
3 the Apple fight will continue for some time.”

4 **B. Broadcom – A Growing Business, Redomiciling in the United States**

5 52. Broadcom’s semiconductor business began in 1961 as a division of
6 Hewlett-Packard. In 1991, Hewlett-Packard spun off its semiconductor and scientific
7 testing and measuring business into Agilent Technologies, then the largest ever Silicon
8 Valley IPO. In 2005, two American private equity firms – KKR and Silver Lake
9 Partners (“Silver Lake”) – acquired the semiconductor business from Agilent for
10 \$2.6 billion and formed Avago Technologies (“Avago”). Avago went public in 2009,
11 trading on the NASDAQ under the ticker symbol “AVGO.” As of then, Avago was a
12 Singapore domiciled company for tax purposes, although it maintained significant
13 operations in Silicon Valley.

14 53. In the years that followed, Avago’s CEO, Hock Tan (“Tan”), spearheaded
15 a series of ever-bigger deals, expanding the company exponentially. In May 2015,
16 Avago announced that it was buying Broadcom Corporation, a competing chipmaker
17 based in Irvine, California, for \$37 billion. After the deal closed in February 2016, the
18 combined company – with a market value of \$77 billion – was renamed Broadcom
19 Limited but retained the ticker symbol AVGO.

20 54. In the years leading up to its offer to acquire Qualcomm, Broadcom
21 maintained its remarkable streak of mid-double digit growth by successfully
22 integrating new businesses while also growing organically. As Broadcom flourished,
23 so did its stock price; between April 2014 and October 2017, Broadcom’s stock price
24 increased nearly five-fold, from a low of \$58.53 to a high of \$263.91.

25 55. During the relevant time period, although Broadcom was organized under
26 the laws of Singapore, its nerve center remained in the United States. Broadcom was
27 managed from San Jose, California, its U.S. headquarters, and Broadcom’s board of
28 directors and senior management team, including Broadcom CEO Tan, were nearly all

1 American citizens. Broadcom's stock was also mostly American-owned; ninety
2 percent of its shareholders are in the U.S. As a March 14, 2018 MarketWatch article
3 observed, "Broadcom is largely an American company that placed its legal
4 headquarters in Singapore, . . . largely for tax purposes."

5 56. On November 2, 2017, Broadcom's CEO Tan announced in a White
6 House press conference alongside President Trump that Broadcom would redomicile
7 as an American corporation. President Trump hailed the announcement as a sign that
8 the U.S. business climate was improving, explaining that changing Broadcom's parent
9 from a Singapore company to a U.S. corporation would bring \$20 billion in revenue
10 back to the U.S. President Trump also exalted Broadcom as "one of the really great,
11 great companies," noting that Broadcom employs more than 7,500 workers across the
12 U.S.

13 **C. The Press Reports on Broadcom's Interest in Acquiring Qualcomm**
14 **and Qualcomm's Stock Price Jumps**

15 57. On November 3, 2017, numerous national media sources, including
16 Bloomberg, The New York Times, and Reuters reported that Broadcom was planning
17 a bid for Qualcomm. For example, Reuters reported that "[c]ommunications
18 chipmaker [Broadcom] is planning to unveil a bid for smartphone chip supplier
19 [Qualcomm] by Monday, three sources familiar with the matter said on Friday, an
20 attempt to create a roughly \$200-billion company through the biggest technology
21 acquisition ever." The article noted that "Broadcom is considering a cash and stock
22 offer of about \$70 a share" and that "[s]hares of Broadcom have rallied this year while
23 Qualcomm has fallen, making the target more vulnerable."

24 58. In a same-day article, Bloomberg reported, "Qualcomm finds itself in a
25 weakened state. A legal battle with Apple is costing revenue and jeopardizing a
26 business model that for years made Qualcomm one of the most successful chipmakers."
27 Quoting Sanford C. Bernstein & Co. analyst Stacy Rasgon, the article noted, "[a]
28 change of management at Qualcomm might help resolve the dispute with Apple more

1 quickly, and thereby make Qualcomm’s licensing and chip businesses more
2 valuable[.]”

3 59. In response to the news of Broadcom’s bid, Qualcomm’s stock price
4 jumped nearly 13% from a closing price of \$54.84 on November 2, 2017, to a closing
5 price of \$61.81 on November 3, 2017. On November 5, 2017, a Wells Fargo Securities
6 analyst report noted the market excitement at the prospect of a Qualcomm/Broadcom
7 merger, explaining “we think that the news articles suggesting this possibility have
8 created substantial excitement in the investment community which we think was
9 probably a main reason why Qualcomm’s stock price moved up several dollars on the
10 afternoon of Friday 11/3.” Similarly, on November 7, 2017, The Wall Street Journal
11 reported that “news of Broadcom’s interest sent Qualcomm shares up nearly 13% on
12 [November 3].”

13 60. As the increase in Qualcomm’s stock price made clear, investors were
14 bidding up the price of Qualcomm stock based on the prospect of a deal with Broadcom
15 at \$70 per share.

16 **D. Broadcom Makes a Formal Proposal to Acquire Qualcomm**

17 61. On the evening of November 5, 2017, Broadcom’s CEO Tan called
18 Qualcomm’s CEO Mollenkopf to officially inform him that Broadcom would be
19 making an offer to acquire Qualcomm.

20 62. The following day, November 6, 2017, Broadcom made a formal proposal
21 to acquire all outstanding shares of Qualcomm for \$70 per share (\$60 in cash; \$10 in
22 Broadcom shares). Broadcom’s proposal represented a 28% premium over the
23 unaffected price of Qualcomm stock on November 2, 2017, the day before news of the
24 offer leaked, and a 33% premium to the unaffected 30-day volume-weighted average
25 price (“VWAP”) calculated as of November 2.

26 63. The main regulatory concern with Broadcom’s bid, according to multiple
27 news sources, involved its potential antitrust implications. The Chicago Tribune
28 reported on November 7, 2017, that “a transaction between [Broadcom and

1 Qualcomm] would likely raise antitrust concerns[.]” Reuters similarly wrote the same
2 day, “[t]he merger [between Qualcomm and Broadcom] would face a lengthy review
3 from the anti-monopoly unit of China’s commerce ministry, due to strategic concerns,
4 the huge size of the deal and because Qualcomm has come under fire before in the
5 country over competition concerns.”

6 64. Ultimately, however, while noting that antitrust approval could be a
7 concern, many news sources concluded that “[t]he biggest issue may simply be that
8 Qualcomm believes the current offer, worth about \$70 a share, is too low.”²

9 65. Analysts, while offering mixed opinions on whether the premium offered
10 by Broadcom was too low, consistently concluded that the regulatory risks associated
11 with a combination were minimal. For example, a November 6, 2017 Canaccord
12 Genuity analyst report stated, “[w]hile we believe Qualcomm’s Board of Directors
13 would likely reject this initial bid as too low a valuation, we do believe the combination
14 of the two companies could generate strong synergies and create a dominant wireless
15 business and overall powerful global semiconductor leader.” The report further
16 explained that “[w]hile we believe the overlapping WiFi businesses would create some
17 regulatory concerns that could be solved, we do not believe there are material product
18 overlaps in other areas of the businesses.”

19 66. Similarly, while an Oppenheimer Equity Research report from
20 November 6, 2017 took a different view on the adequacy of Broadcom’s offer – stating,
21 “we believe QCOM shareholders would be eager to accept a ~27% premium to pre-
22 offer reports as myriad overhangs (Apple, FTC, Korea, etc.) could take years to abate,”
23 it too noted that “[w]e believe regulatory/HSR hurdles should be low given limited
24 product overlap.” A same-day Credit Suisse analyst report explained that “[b]ased on
25

26 ² See also Michael J. de la Merced, *Broadcom targets fellow chipmaker in largest-*
27 *ever tech deal*, Boston Herald (Nov. 7, 2017) (noting that while the deal is “expected
28 to face tough antitrust scrutiny,” for “Qualcomm and its advisers, the biggest issue is
likely to be a simple matter of price”).

1 their extensive review of portfolios, [Broadcom] expects regulatory approval in a
2 timely manner and the transaction to be completed within 12 months.”

3 **E. Qualcomm Rejects Broadcom’s Offer**

4 67. On November 12, 2017, Qualcomm’s Board met and unanimously voted
5 to reject Broadcom’s proposal. This was announced the following day in a press
6 release which stated, “[t]he Board and Management are singularly focused on driving
7 value for Qualcomm’s shareholders. After a comprehensive review, conducted in
8 consultation with our financial and legal advisors, the Board has concluded that
9 Broadcom’s proposal dramatically undervalues Qualcomm and comes with significant
10 regulatory uncertainty.”

11 68. Qualcomm’s announcement did not provide any further detail on the
12 “significant regulatory uncertainty,” and news coverage of Qualcomm’s rejection
13 continued to focus on potential antitrust risk as the source of the regulatory uncertainty.
14 For instance, The New York Times reported on November 13, 2017:

15 **Qualcomm has rebuffed a \$105 billion buyout bid from Broadcom,**
16 **setting up two of the world’s biggest chip makers for a potentially**
17 **nasty takeover battle.**

18 The proposal “significantly undervalues” the company, overlooking its
19 reputation in mobile technology and potential for growth, Paul Jacobs,
20 Qualcomm’s board chairman, said in a statement on Monday.

21 Broadcom’s offer, which would amount to the largest deal in the history
22 of the tech industry and have significant implications for smartphone
23 production, could also run afoul of antitrust regulators, Qualcomm said.

24 (Emphasis in original.)

25 69. Later that day, Broadcom issued a press release announcing that it
26 “remains fully committed to pursuing its acquisition of Qualcomm[.]” In the release,
27 Broadcom’s CEO Tan stated:

28 We continue to believe our proposal represents the most attractive, value-
enhancing alternative available to Qualcomm stockholders and we are
encouraged by their reaction. Many have expressed to us their desire that
Qualcomm meet with us to discuss our proposal. It remains our strong

1 preference to engage cooperatively with Qualcomm’s Board of Directors
2 and management team.

3 70. That evening, Broadcom’s CEO Tan reiterated to Qualcomm’s CEO
4 Mollenkopf – through a voicemail and text message – that Broadcom wanted to engage
5 with Qualcomm regarding its offer.

6 71. Notwithstanding Qualcomm’s initial rejection, analysts expressed
7 optimism that Broadcom would ultimately acquire Qualcomm – either via a negotiated
8 deal or by replacing its directors in a proxy fight. For example, a November 13, 2017
9 RBC Capital Markets analyst report stated, “we believe that while the next 3-6 months
10 will be volatile, the probability remains [Broadcom] will up the offer and acquire the
11 asset either via constructive discussions or a proxy battle.”

12 72. On November 16, 2017, Qualcomm filed a Form 8-K with the SEC
13 scheduling its Annual Meeting. Qualcomm reelects its Directors every year at its
14 annual meeting. The deadline to nominate Qualcomm directors for the March 6, 2018
15 Annual Meeting was set for December 8, 2017.

16 **F. Broadcom Launches a Proxy Fight**

17 73. On November 17, 2017, Broadcom’s CEO Tan wrote a public letter to
18 Qualcomm CEO Mollenkopf again asking him to discuss Broadcom’s proposal: “In
19 our recent conversations, many of your stockholders have expressed a clear and strong
20 desire for us to meet in an effort to negotiate a mutually beneficial transaction. I suspect
21 you have heard the same, so I remain hopeful that we can begin productive
22 discussions.” Qualcomm did not respond.

23 74. On November 22, 2017, Reuters quoted sources as disclosing that
24 “following consultation with several of Qualcomm’s top shareholders,” Broadcom was
25 considering raising its offer to acquire Qualcomm by offering more Broadcom stock
26 and that Broadcom had made “several requests for a meeting with Qualcomm since it
27 unveiled its offer on Nov. 6,” but that “Qualcomm has so far rejected these meeting
28 requests[.]”

1 75. On December 4, 2017, Broadcom issued a press release announcing that
2 it had notified Qualcomm of its intention to nominate a slate of 11 directors to replace
3 the current Qualcomm directors. Broadcom also provided notice of its intention to
4 nominate four alternate nominees in the event that (i) Qualcomm increased the size of
5 the Board, (ii) Qualcomm took action to disqualify Broadcom’s original designees, or
6 (iii) any of Broadcom’s original nominees were unable or unwilling to serve as a
7 director of Qualcomm. In the press release, Broadcom also noted that “[t]o ensure
8 continuity, Broadcom would support a decision by the 11 new directors, upon their
9 election, to increase the size of the Board and reappoint [current Qualcomm directors]
10 Mark D. McLaughlin, Anthony J. ‘Tony’ Vinciguerra and Jeffrey W. Henderson as
11 directors.”

12 76. In the press release, Broadcom’s CEO Tan stated:

13 We have heard from many Qualcomm stockholders who have expressed
14 their desire for Qualcomm to engage with us. We also continue to receive
15 positive feedback from customers and, having had initial meetings with
16 certain relevant antitrust authorities, remain confident that any regulatory
17 requirements necessary to complete a combination will be met in a timely
18 manner. Although we are taking this step, it remains our strong
19 preference to engage in a constructive dialogue with Qualcomm. We
20 have repeatedly attempted to engage with Qualcomm, and despite
21 stockholder and customer support for the transaction, Qualcomm has
22 ignored those opportunities. The nominations give Qualcomm
23 stockholders an opportunity to voice their disappointment with
24 Qualcomm’s directors and their refusal to engage in discussions with us.
25 In light of the significant value our proposal provides for Qualcomm
26 stockholders, we believe Qualcomm stockholders would be better served
27 by new independent, highly qualified nominees who are committed to
28 maximizing value and acting in the best interests of Qualcomm
stockholders.

24 77. Later that day, Qualcomm issued a press release in response to
25 Broadcom’s announcement. Qualcomm again referenced nonspecific “regulatory
26 issues” and “significant regulatory uncertainty,” and without further detail argued that
27 a Broadcom takeover “could not be completed for well over a year, if ever, given the
28 regulatory issues, [and] the absence of commitments by Broadcom to resolve those

1 issues[.]” The press release also cited to “uncertainty surrounding [Broadcom’s]
2 transition from Singapore to the United States” as a reason for shareholders to oppose
3 the deal.

4 78. Analysts, however, remained bullish on the deal. For example, a
5 December 4, 2017 Oppenheimer Equity Research analyst report stated, “We see
6 obvious financial/strategic merit in combining QCOM and AVGO’s leading back-end
7 and front-end handset portfolios.” Qualcomm’s stock continued to trade at a premium.

8 79. On December 6, 2017, Broadcom held a conference call regarding its
9 fourth quarter and fiscal year 2017 earnings. During the call, Broadcom addressed
10 Qualcomm’s statement that there was “uncertainty” regarding its transition to the U.S.,
11 confirming its commitment to redomicile to the U.S.:

12 On November 2, I think as everybody knows, we announced our intent
13 to initiate a redomiciliation process to change the parent company of the
14 Broadcom corporate group from a Singapore company to a U.S.
15 corporation. The redomiciliation will occur whether or not there is
16 corporate tax reform in the United States. The redomiciliation is subject
17 to a shareholder vote and is expected to be effected in a manner intended
18 to be tax-free to shareholders. We are confident that our shareholders will
19 support this move.

20 80. During the same call, Broadcom reiterated its “strong preference to
21 engage in a constructive dialogue with Qualcomm,” and expressed Broadcom’s
22 “confiden[ce] that any regulatory requirements necessary to complete a combination
23 will be met in a timely manner.”

24 81. Analysts reacted positively to Broadcom’s reassurances. A December 7,
25 2017 Credit Suisse analyst report noted that “[w]hile AVGO did not address questions
26 on the call, management stated it remains confident that any regulatory requirements
27 necessary to complete the combination will be met in a timely manner.” On the same
28 day, an RBC Capital Markets analyst report echoed that “AVGO and its advisors have
conducted extensive analysis of the regulatory environment, and they are confident
about obtaining all necessary approvals in a timely manner.”

1 82. Broadcom also took immediate steps to rebut Qualcomm’s statements that
2 it was not committed to resolving any regulatory uncertainty. On December 11, 2017,
3 Broadcom issued a press release announcing that it filed a premerger notification under
4 the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with the U.S. Department
5 of Justice Antitrust Division and the FTC in connection with its proposed acquisition
6 of Qualcomm. In the press release, Broadcom’s CEO Han reiterated that:

7 Our Board and management team are committed to consummating this
8 transaction as soon as possible. We continue to receive positive feedback
9 from stockholders and customers, and we have made clear to Qualcomm
10 that it remains our strong preference to engage in constructive dialogue
regarding the value-enhancing proposal we put forward more than a
month ago.

11 83. That same day, Broadcom filed a preliminary proxy statement with the
12 SEC on Schedule 14A, again emphasizing that it did not foresee material regulatory
13 issues with its proposed transaction:

14 We and our advisors have conducted extensive analysis of the regulatory
15 approvals that will be required in connection with the proposed
16 transaction, and we are confident that the transaction will receive all
17 necessary approvals in a timely manner. We would not make this offer if
18 we were not confident that our common global customers would embrace
the proposed combination, and we do not anticipate any material antitrust
or other regulatory issues that would extend the normal timetable for
closing a transaction of this nature.

19 **G. Qualcomm’s Board Rejects Broadcom’s Independent Nominees and**
20 **Urges Shareholders to Do the Same**

21 84. On December 20, 2017, Qualcomm’s Board, on the same-day
22 recommendation of its Governance Committee, unanimously voted not to nominate
23 any of Broadcom’s director nominees.

24 85. On December 22, 2017, Qualcomm issued a press release announcing the
25 Board’s decision. That same day, Qualcomm filed its annual meeting proxy statement
26 with the SEC on Schedule 14A.

27 86. A few weeks later, on January 5, 2018, Qualcomm issued its definitive
28 proxy statement for the Annual Meeting, confirming the Annual Meeting for March 6,

1 2018. That same day, Broadcom mailed a competing definitive proxy statement to
2 Qualcomm’s shareholders, a “Blue Card,” soliciting them to elect Broadcom’s
3 11 independent director nominees. Broadcom’s proxy also urged Qualcomm’s
4 shareholders to vote for its proposed amendments to Qualcomm’s bylaws, which
5 would undo any bylaw amendments adopted by Qualcomm’s incumbent Board without
6 shareholder approval up to the date of the March 6, 2018 Annual Meeting.

7 87. Although Broadcom pursued its hostile proxy strategy, it continued to
8 make clear that its preference was to negotiate a transaction with Qualcomm’s Board.
9 According to the Blue Card:

10 On November 13, 2017, Qualcomm’s Board rejected our proposal. Since
11 that time, we have spoken with many Qualcomm stockholders and
12 customers, and we have heard their desire for Qualcomm to engage with
13 us regarding our compelling proposal. It remains our strong preference
14 to engage cooperatively with Qualcomm’s Board and management team,
15 and we are prepared to meet immediately to work toward a mutually
16 acceptable definitive agreement.

17 88. Qualcomm issued a slew of proxy solicitation materials on January 16,
18 2018 – including a press release, letter, video, investor presentation, and website
19 postings – all urging its shareholders to oppose Broadcom’s slate of directors and its
20 attempt to acquire the Company. Qualcomm chiefly argued that shareholders should
21 oppose Broadcom’s proposal because it substantially undervalued the Company and
22 sought to take advantage of its recent legal troubles. For example, in a video posted to
23 its dedicated deal website – www.qcomvalue.com – Qualcomm’s CEO Mollenkopf
24 stated:

25 In short, we will deliver far more value than the Broadcom proposal. We
26 recognize the impact of the Apple litigation on our business, but we
27 would encourage you not to make a choice based on that short-term stock
28 price reaction. We believe that we can deliver substantially more value
than the Broadcom bid.

89. As a secondary concern, Qualcomm noted Broadcom’s proposal involved
“significant regulatory uncertainty.” Qualcomm repeatedly highlighted the potential
antitrust risk associated with the transaction, warning investors that it would require

1 “clearance from at least a dozen antitrust regulators throughout the world[.]” In a video
2 posted to Qualcomm’s deal website, Rosenberg cautioned that “Broadcom has
3 apparently made no effort to address what we expect will be substantial and potentially
4 conflicting requirements imposed by antitrust regulators around the world, posing
5 immense risk to Qualcomm stockholders.”

6 90. Lastly, Qualcomm mentioned, for the first time, regulatory risk associated
7 with review by CFIUS, *if* Broadcom did not move forward with its redomiciliation. In
8 a video posted to Qualcomm’s deal website, Mollenkopf stated, “Broadcom is still a
9 Singapore company – CFIUS *may* be an issue again for them. It seems strange to us
10 that they have not made any further progress on their commitment to become an
11 American company – an announcement that was carefully timed – just days before they
12 announced their hostile bid for Qualcomm.” CFIUS and its process for review is
13 discussed in more detail in *infra* Section IV.H.1.

14 91. Later that day, Broadcom issued a statement directly responding to
15 Qualcomm’s statements about regulatory risk:

16 Based on the highly complementary nature of the businesses of the two
17 companies, Broadcom’s extensive experience in completing complex,
18 cross-border acquisitions and initial meetings with several relevant
19 antitrust authorities, Broadcom remains very confident that the
20 regulatory requirements necessary to complete a combination will be met
21 in a timely manner and expects that the proposed transaction would be
22 completed within approximately 12 months following the signing of a
definitive agreement. It is important that Qualcomm engage with us so
that Qualcomm stockholders can realize the significant value that
Broadcom is offering.

23 92. Then, on January 19, 2018, Broadcom issued a press release, also filed
24 with the SEC on Form 425, indicating that the regulatory approval process was
25 proceeding smoothly. In particular, Broadcom announced that it received a “second
26 request” for additional information and documentary material from the FTC in
27 connection with its proposed acquisition of Qualcomm, but explained that this “was
28 expected as a normal part of the regulatory approval process. Second Requests are

1 common in similar transactions, and this signifies that Broadcom is moving into the
2 next stage of the U.S. antitrust review process.”

3 93. On January 22, 2018 – this time responding to Qualcomm’s January 16,
4 2018 statement concerning CFIUS review – Broadcom announced in a press release
5 that it had filed preliminary proxy materials with the SEC to approve its redomiciliation
6 to the U.S., and expected to complete the process by May 6, 2018. The preliminary
7 proxy materials explained that redomiciling to the U.S. would allow Broadcom to
8 “continu[e] to execute [its] acquisition strategy”:

9 After considering various factors, the Board unanimously determined
10 that restructuring our corporate group to cause the parent company of our
11 group to be an entity incorporated in Delaware is in the best interests of
12 the Company and its shareholders and will best help us accomplish our
13 strategic objectives. Through our existing subsidiaries, we already have
14 a substantial presence in the United States and it is important to note that
15 a majority of Broadcom’s employees and a significant portion of
16 operating assets are in the United States. We believe that the shareholder
returns we can drive by continuing to execute our acquisition strategy far
outweigh the additional income taxes we would expect to pay as a result
of this restructuring, and the incremental tax cost of being based in the
U.S. has decreased materially as a result of corporate tax reform in the
United States.

17 As discussed in *infra* Section IV.H.2, Broadcom’s redomiciliation to the United States
18 had already proven a successful strategy by which to gain CFIUS approval.

19 94. On January 23, 2018, Qualcomm sent another letter to shareholders, again
20 making its case that Broadcom’s offer significantly undervalued the Company and that
21 antitrust risk remained. The letter also provided Qualcomm’s most detailed statement
22 regarding CFIUS:

23 Broadcom says there will be no issue in obtaining national security
24 clearance from the Committee on Foreign Investment in the United
States (CFIUS).

- 25 ○ THE FACTS: Broadcom is a Singapore-domiciled company
26 seeking to effect a hostile takeover of Qualcomm, one of the U.S.’s
most critical technology companies.
- 27 ○ Even if Broadcom re-domiciles in the future, the national security
28 issues raised by Broadcom’s attempt to acquire Qualcomm remain.

- 1 ○ Broadcom encountered resistance from the U.S. government
2 national security regulator when it sought to acquire another U.S.
3 technology company that was far less critical to the national
 infrastructure than Qualcomm.
- 4 ○ We believe the transaction proposed by Broadcom and any
5 divestitures that may be required by regulatory authorities will be
6 closely scrutinized and may well result in significant national
 security concerns that could potentially block the transaction.
 Therefore, we believe approval by CFIUS is far from assured.

7 Qualcomm did not disclose any intention to initiate a CFIUS review or lobby for its
8 intervention.

9 95. Later that day, Broadcom issued a press release reiterating that “[w]e
10 continue to move forward with redomiciling to the U.S. – just yesterday Broadcom
11 filed preliminary proxy materials in connection with a shareholder meeting to approve
12 the redomiciliation. We expect to receive approvals by the end of our fiscal second
13 quarter ending May 6, 2018.” Broadcom also addressed, at length, Qualcomm’s
14 arguments regarding antitrust risk. Broadcom concluded, “[w]e remain confident in
15 our ability to complete a transaction within approximately 12 months following the
16 signing of a definitive agreement.”

17 **H. Unbeknownst to Shareholders, Qualcomm Petitions CFIUS to Kill**
18 **Broadcom’s Takeover Attempt**

19 96. On January 29, 2018, a week after Broadcom announced that it would
20 complete its redomiciliation by May 6, 2018, Defendants secretly filed a unilateral
21 voluntary notice requesting that CFIUS review Broadcom’s takeover attempt. Also
22 unbeknownst to investors (and Broadcom), Defendants submitted information with
23 their unilateral voluntary request to CFIUS designed to convince CFIUS that
24 Broadcom’s hostile takeover attempt constituted a national security risk and should not
25 be allowed to continue.

26 97. Over the next month, while publicly telling investors that they remained
27 hopeful that a satisfactory deal would be negotiated, Defendants continued to covertly
28 submit additional information and argument to CFIUS in an attempt to kill the deal,

1 including in emails, phone calls, and meetings. Defendants’ actions – which they
2 concealed from investors – constituted a brazen effort to kill Broadcom’s takeover
3 attempt, to entrench themselves in their leadership roles, and to surreptitiously
4 disenfranchise the Company’s shareholders.

5 98. Defendants’ defensive measures were unprecedented. As a former CFIUS
6 member later explained, “[t]his is *Halley’s comet unusual*.” Zack’s Investment
7 Research also later reported that “This was *quite an unprecedented move* wherein
8 Qualcomm management approached the CFIUS to block the deal. . . . It shows that all
9 is far from well at Qualcomm where shareholders were in favor of the deal that
10 management and the board opposed.”

11 99. This is because, as discussed in *infra* Section IV.H.1, CFIUS typically
12 only reviews deals once the parties have entered into an agreement and jointly
13 submitted a voluntary notice requesting CFIUS review. Typically, moreover, CFIUS
14 applications are led by the buyer, not the acquisition target. As The Wall Street Journal
15 later explained in a March 14, 2018 article entitled *Qualcomm Pursued Unusual*
16 *Strategy*, Defendants’ secret and unilateral request for CFIUS to review Broadcom’s
17 takeover attempt constituted “an unusual strategy. Normally both parties in a deal seek
18 approval by making a joint filing before CFIUS, the secretive federal panel that vets
19 foreign purchases of U.S. companies on national-security grounds. And they don’t
20 usually file until there is an actual deal on hand.” Marketwatch, in a March 5, 2018
21 article entitled *Qualcomm was losing in takeover battle with Broadcom, then the*
22 *government stepped in*, reported that CFIUS “rarely reviews mergers before companies
23 have entered into binding agreements[.]” A DealBook article dated March 5, 2018
24 stated, “[CFIUS] typically works behind closed doors and reviews deals only after they
25 are announced.”

26 100. In other words, typically once a deal is signed, the two parties to the deal
27 – led by the acquirer – cooperate in obtaining CFIUS clearance for their signed
28 agreement. Here, had Qualcomm and Broadcom jointly submitted voluntary notice to

1 CFIUS after agreeing to a negotiated transaction, a CFIUS review likely would have
2 occurred (if ever) only after Broadcom had redomiciled in the United States – which it
3 did on April 4, 2018. Instead, by secretly and unilaterally submitting a request for
4 CFIUS to intervene in the middle of Broadcom’s takeover attempt, Qualcomm
5 accelerated the timetable, initiating CFIUS review before Broadcom was able to
6 redomicile in the United States, and making the case for CFIUS to reject the deal.

7 101. Defendants’ concealment of Qualcomm’s unilateral CFIUS request also
8 provided the Company with a valuable tactical advantage – the deception allowed
9 Defendants to keep Broadcom in the dark about the existence of the review and the
10 content of Qualcomm’s submissions and prevented Broadcom from responding to
11 Qualcomm’s arguments for intervention for more than a month while CFIUS reviewed
12 the application. Indeed, Broadcom stated in its March 5 press release entitled
13 *Broadcom Disappointed Will of Qualcomm Stockholders to be Deferred*, CFIUS’s
14 March 4 Interim Order postponing Qualcomm’s Annual Meeting – including the vote
15 on Broadcom’s slate of nominees – was issued on the same day Broadcom was
16 informed of Qualcomm’s unilateral request for CFIUS to initiate the investigation. In
17 a press release published the next day entitled *Broadcom Reiterates Qualcomm Did*
18 *Not Inform Its Own Stockholders or Broadcom of Its Secret, Voluntary Unilateral*
19 *Request Filed on January 29, 2018*, Broadcom reiterated that it was unaware that
20 Qualcomm had unilaterally initiated CFIUS review, and stated that its communications
21 with CFIUS were limited to Broadcom’s nomination of directors to the Qualcomm
22 Board:

23 Broadcom reiterates that Qualcomm failed to disclose to its own
24 stockholders and to Broadcom that it secretly filed a voluntary unilateral
25 request for CFIUS review on January 29, 2018. Broadcom’s only
26 correspondence with CFIUS was in response to CFIUS inquiries about
27 Broadcom’s nomination of directors to the Qualcomm board of directors,
28 and such requests did not reveal that Qualcomm filed to initiate the
CFIUS review on January 29, 2018.

1 102. Thus, unbeknownst to shareholders and contrary to their own public
2 representations, Defendants were not in fact willing to negotiate with Broadcom at a
3 price that would deliver value to shareholders; rather, they were secretly working to
4 kill Broadcom's bid outright. Because Defendants concealed Qualcomm's defensive
5 move and its potential repercussions, investors were denied critical information that
6 was necessary to properly assess the risk that Broadcom's acquisition would not be
7 completed.

8 **1. The Committee on Foreign Investment in the United States**

9 103. CFIUS is a federal interagency committee with authority to review certain
10 foreign investments in U.S. businesses to determine whether such transactions threaten
11 to impair U.S. national security. The Committee then makes recommendations
12 regarding such transactions for the President's ultimate determination.³

13 104. CFIUS is chaired by the Secretary of the Treasury. Other CFIUS
14 members include representatives from the "[Departments of] State, Defense, Justice,
15 Commerce, Energy, and Homeland Security; the Office of the United States Trade
16 Representative; and the White House Office of Science and Technology Policy. The
17 Office of the Director of National Intelligence is an ex-officio member, and five White
18 House offices are observers." Additional agencies may also participate, as
19 appropriate.⁴

20
21
22 ³ CFIUS was established by the Foreign Investment and National Security Act of
23 2007 (Pub. L. No. 110-49, 121 Stat. 246 (2007)), which amended section 721 of the
24 Defense Production Act of 1950 (50 U.S.C. App. 2170). On August 13, 2018,
25 President Trump signed into law the Foreign Investment Risk Review Modernization
26 Act of 2018 ("FIRRMA"), which expanded the scope of transactions reviewable by
CFIUS. See Guidance Concerning the National Security Review Conducted by
CFIUS, 73 Fed. Reg. 74567 (Dec. 8, 2008), <https://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUSGuidance.pdf>; 31 C.F.R. §§ 800.207 & 800.216.

27 ⁴ See CFIUS Annual Report to Congress, at iii (CY 2015), [https://www.treasury.gov/resource-center/international/foreign-investment/Documents/Unclassified%20](https://www.treasury.gov/resource-center/international/foreign-investment/Documents/Unclassified%20CFIUS%20Annual%20Report%20-%20(report%20period%20CY%202015).pdf)
28 [CFIUS%20Annual%20Report%20-%20\(report%20period%20CY%202015\).pdf](https://www.treasury.gov/resource-center/international/foreign-investment/Documents/Unclassified%20CFIUS%20Annual%20Report%20-%20(report%20period%20CY%202015).pdf).

1 105. Typically, a CFIUS review of a transaction begins when the parties to a
2 transaction jointly file a “voluntary notice” notifying CFIUS of the transaction, and
3 usually *after* the parties have come to an agreement on the terms. *See* U.S. Dept. of
4 the Treasury, *Process Overview- Voluntary Notice*, [https://www.treasury.gov/
5 resource-center/international/foreign-investment/Pages/cfius-overview.aspx](https://www.treasury.gov/resource-center/international/foreign-investment/Pages/cfius-overview.aspx). CFIUS
6 is also authorized to commence reviews on its own.

7 106. Preparing a voluntary notice is a significant undertaking that requires the
8 filing parties to provide substantial amounts of information. *See* 31 C.F.R. § 800.402.
9 And once CFIUS formally accepts a filing, it has 30 days to “review” the transaction
10 and determine whether to commence an investigation. *See id.* § 800.502.⁵ As a result,
11 to provide CFIUS with adequate time to review the filing and identify additional
12 information it may need, parties are explicitly encouraged “to consult with the
13 Committee in advance of filing a notice and, in appropriate cases, to file with the
14 Committee a draft notice or other appropriate documents to aid the Committee’s
15 understanding of the transaction and to provide an opportunity for the Committee to
16 request additional information.” *Id.* § 800.401. CFIUS suggests that “pre-notice
17 consultation . . . should be provided, at least five business days before the filing of a
18 voluntary notice.” *Id.*

19 107. CFIUS does not publicly disclose information or documentary material
20 filed in connection with a voluntary request. On the other hand, the rules governing a
21 CFIUS review explicitly state that filing parties are free to disclose such information
22 or material, as well as the fact that they filed a voluntary notice, to the public.
23 *See* 31 C.F.R. § 800.702.

24 108. If, after review, CFIUS decides to commence an “investigation” of the
25 transaction, it has 45 days to complete that investigation. 31 C.F.R. § 800.506. During
26 a review or investigation, the chairperson may invite the parties to attend a meeting
27

28 ⁵ Beginning on October 11, 2018, the “review” period was expanded to 45 days.

1 with the Committee to “discuss and clarify issues pertaining to the transaction.”
2 *Id.* § 800.501.

3 109. The Committee’s review and investigation center on whether the
4 transaction could result in foreign control of a U.S. business, whether that foreign
5 control could impair national security, and whether any law provides adequate and
6 appropriate authority to protect national security. *See* 31 C.F.R. § 800.501. “CFIUS
7 will clear the transaction to proceed if it determines that the transaction does not pose
8 any national security concerns, that any national security concerns are adequately
9 addressed by other laws, or that mitigation measures agreed or imposed by CFIUS
10 resolve any national security concerns.” *See* CFIUS Annual Report to Congress, *supra*
11 at iii.

12 110. After the end of its investigation, CFIUS may make a formal
13 recommendation to the President to block the transaction. Or, CFIUS may clear the
14 transaction outright or clear it with certain conditions. *See* 31 C.F.R. § 800.506. The
15 President has 15 days to make a determination based on CFIUS’s recommendation.

16 111. Based on the Committee’s most recent Report to Congress, 770 notices of
17 “covered transactions” were filed with CFIUS from 2009 to 2015. Over half of the
18 notices were resolved prior to an investigation, and approximately 3% were withdrawn
19 during the review stage (e.g., notices may be withdrawn to resolve national security
20 concerns or because of material changes to the transaction). Only about 40%
21 proceeded to an investigation. Approximately 7% were withdrawn during the
22 investigation stage.

23 112. Even when CFIUS determines that a transaction could threaten or impair
24 national security, it is still very rare for CFIUS to reject a transaction outright. In many
25 cases, CFIUS will instead negotiate with the parties to adopt mitigation measures to
26 address the perceived risks. From 2013 to 2015, CFIUS concluded about 10% of the
27 transactions it reviewed by adopting mitigation measures. Such measures, which are
28 aimed at constraining the foreign control from a transaction, include:

- 1 • Ensuring that only authorized persons have access to certain
2 technology.
- 3 • Exclusion of certain sensitive assets from the transaction.
- 4 • Providing the [U.S. Government] with the right to review certain
5 business decisions and object if they raise national security
6 concerns.

6 CFIUS Annual Report to Congress, *supra* at 21-22.

7 113. From 2009 to 2015, only one voluntary notice to CFIUS resulted in a
8 Presidential decision, and Presidential action based on CFIUS's review remains
9 extremely rare. CFIUS Annual Report to Congress, *supra* at 3. Including the proposed
10 Qualcomm acquisition, a U.S. President has only blocked five transactions based on
11 CFIUS objections. See James K. Jackson, *The Committee on Foreign Investment in*
12 *the United States (CFIUS)*, Congressional Research Service (July 3, 2018),
13 <https://fas.org/sgp/crs/natsec/RL33388.pdf>.

14 2. The Market Did Not View CFIUS as a Serious Obstacle to the 15 Transaction

16 114. At the time that Qualcomm was secretly lobbying CFIUS to kill
17 Broadcom's bid, the market did not perceive CFIUS's review of the transaction to be
18 a serious risk to Broadcom's bid for Qualcomm. As discussed above, it is exceedingly
19 rare for a merger to be blocked based on CFIUS objections. Moreover, Broadcom –
20 which operated out of California, was run by a largely American board and senior
21 management team, and was 90% owned by American shareholders – was seeking to
22 redomicile in the United States and CFIUS had already approved Broadcom's
23 acquisition of a significant U.S. company – Brocade – based on Broadcom's
24 announced intent to redomicile.

25 115. More specifically, on December 20, 2016, after Broadcom and Brocade
26 finalized their negotiated deal, they disclosed that they had filed a joint voluntary notice
27 with CFIUS. On July 18, 2017, Broadcom and Brocade disclosed that, following
28 discussions with CFIUS, on July 17, 2017, they had agreed to withdraw and re-file

1 their joint notice to CFIUS, to allow more time for review and discussion. After
2 additional discussions with CFIUS, Broadcom and Brocade disclosed on October 3,
3 2017, that they had again re-filed their joint voluntary notice to allow more time for
4 review and discussion.

5 116. As noted in *supra* Section IV.B, less than a month later, on November 2,
6 2017, Broadcom announced that it would redomicile as an American corporation, an
7 announcement that was made at the White House and celebrated by President Trump
8 as a success of his administration's business policies.

9 117. The market perceived Broadcom's redomiciliation in the United States as
10 eliminating the risk that CFIUS might fail to ultimately approve the Brocade deal. For
11 example, on November 4, 2017, the Boston Herald reported that "Broadcom's plan to
12 move its home address to the U.S. from Singapore would free its \$5.5 billion deal for
13 U.S. network provider Brocade Communications Systems from a review by the
14 Committee on Foreign Investment in the United States."

15 118. Similarly, with respect to Broadcom's proposed acquisition of
16 Qualcomm, commentators consistently concluded that Broadcom's move to
17 redomicile to the United States would likely allow it to avoid problems with a CFIUS
18 review. For example, on November 3, 2017, Reuters reported that the "bid comes as
19 Broadcom plans to move its headquarters to the United States from Singapore" and
20 that Broadcom planned to complete redomiciliation "before completing any
21 Qualcomm deal, avoiding scrutiny by the Committee on Foreign Investment in the
22 United States[.]"

23 119. On November 4, 2017, a New York Times article likewise explained that
24 Broadcom's "prime motivation" for its redomiciliation was acquiring Qualcomm:
25 "'This [redomiciliation] is all about freeing up Broadcom to make acquisitions,' said
26 Romit Shah, an analyst for Nomura Instinet. 'And Qualcomm has been at the top of
27 Broadcom's wish list for a long time.'"

1 120. The same day that it made its formal proposal to acquire Qualcomm,
2 Broadcom confirmed the intent behind its redomiciliation. In a same-day Investor
3 Presentation regarding the proposed acquisition of Qualcomm, Broadcom stated that it
4 “[p]reviously announced redomiciliation plan further increases deal certainty” and
5 “[r]egulatory approvals expected in timely manner.”

6 121. And following Broadcom’s formal offer, market commentators again
7 highlighted that Broadcom’s redomiciliation should allow any deal with Qualcomm to
8 avoid issues related to CFIUS review. For instance on November 7, 2017, The New
9 York Times reported that “[a]t least one deal hurdle – Washington’s examination of
10 foreign acquirers – has been pre-empted. The Singapore-domiciled Broadcom will
11 move to the United States, Mr. Tan said last week in a news conference with President
12 Trump.”

13 122. In addition, on November 6, 2017, The New York Times reported that
14 neither Qualcomm nor Broadcom expected CFIUS to be an obstacle to a takeover:

15 But while a deal could face such a [CFIUS] review, neither company
16 believes that it would be the main obstacle to a transaction getting done,
17 according to several people briefed on the bid. Broadcom’s operations
18 are largely in the United States, and its legal base is in Singapore
primarily because of that country’s low tax rate.

19 123. On November 17, 2017, Broadcom formally announced that CFIUS had
20 approved the Brocade acquisition, affirming the market’s perception that its proposed
21 acquisition of Qualcomm was not subject to serious CFIUS risk. Accordingly, a
22 November 21, 2017 Morningstar Equity Research analyst report predicted that:

23 Qualcomm remains skeptical about regulatory approval, but we think
24 there’s a good chance Broadcom can get the blessing of various
25 government agencies (especially if NXP is not a part of the mix).⁶ We
foresee U.S. approval, thanks to Broadcom’s shrewd move to redomicile

26 ⁶ On September 29, 2016, Qualcomm announced that it would be pursuing an
27 acquisition of NXP Semiconductor N.V., a Dutch chipmaker (“NXP”). On October 27,
28 2016, Qualcomm announced that it had entered into an agreement to acquire NXP via
a tender offer for \$110 per NXP share.

1 in the U.S. and enter into the good graces of the U.S. Presidential
2 administration.

3 **I. Qualcomm Misleads the Market into Believing Its Board Is Willing**
4 **to Negotiate around a Fair Price at the Same Time It Is**
5 **Affirmatively Seeking to Derail Broadcom’s Bid**

6 124. Rather than disclose that they were actively petitioning CFIUS to kill the
7 Broadcom bid on a national security basis, Defendants instead made a series of
8 misrepresentations and omissions that materially misled investors about:
9 (i) Defendants’ willingness to negotiate with Broadcom on price and cooperate in
10 obtaining regulatory clearance, and (ii) the increased risk Defendants’ strategy had
11 created of the deal being blocked. Because this critical information was withheld from
12 the public, Qualcomm’s stock price did not reflect the true risk that the deal would not
13 go through.

14 **1. Qualcomm Begins Misleading Shareholders on January 29,**
15 **2018, Regarding the Affirmative Steps It Took to Lobby for**
16 **CFIUS Intervention**

17 125. On the same day that they filed their secret, unilateral voluntary notice
18 with CFIUS, Defendants issued a vague statement to shareholders about regulatory risk
19 that could *delay* the transaction while failing to disclose that they were taking active
20 measures to accelerate CFIUS intervention and stop the deal. For example, in a video
21 released on January 29, 2018, CEO Mollenkopf told investors that “there are some
22 questions about deal certainty and regulatory approval.” In the same video, General
23 Counsel Rosenberg stated:

24 The Broadcom-proposed acquisition will be subjected to very, very close
25 scrutiny by well over a dozen potential agencies. We believe that this is
26 probably going to take something in the range of 18 months or more even,
because of the complexity of the two companies’ businesses, because of
the enormous overlap in the two companies’ technologies and
businesses, and because of the global nature of our businesses.

27 Having spoken about potential regulatory impediments to the merger, Defendants were
28 obligated to disclose to investors the full and complete truth. Instead, Defendants

1 misled investors about the true risks associated with the deal by concealing that they
2 had taken affirmative steps to prevent regulatory approval by filing a unilateral
3 voluntary notice with CFIUS before Broadcom could redomicile to the U.S.

4 126. Absorbing the information disclosed by Qualcomm, analysts continued to
5 view the deal positively, with a January 31, 2018 Oppenheimer analyst report
6 reiterating that “[w]e hold a favorable view of the potential AVGO/QCOM
7 combination.” This sentiment was also reflected in Qualcomm’s common stock price,
8 which continued to trade at an inflated premium that did not reflect the true risk that
9 the merger would not go through. On February 1, 2018, analyst BMO wrote that:
10 “QCOM reported strong December quarter results, but weaker guidance, particularly
11 on the chip side. Regardless, we believe investor sentiment is largely being driven by
12 the pending takeover attempt by Broadcom . . . with the March 6 shareholder vote
13 quickly approaching and that the ‘buyout offer from [Broadcom]’ was a ‘key catalyst’
14 that ‘will overshadow most other catalysts.’”

15 **2. Broadcom Ups Its Offer and Qualcomm Claims to Consider It**
16 **Even Though It was Secretly Advocating to End the Bid**

17 127. On February 2, 2018, Broadcom’s representatives contacted Qualcomm’s
18 representatives to offer the terms of an improved acquisition proposal. More
19 specifically, a representative of Broadcom reached out to a representative of Goldman,
20 Sachs & Co. (“Goldman Sachs”), financial advisor to Qualcomm. Also that day, a
21 representative of Wachtell, Lipton, Rosen & Katz (“Wachtell Lipton”), legal counsel
22 to Broadcom, reached out to a representative of Paul, Weiss, Rifkind, Wharton &
23 Garrison LLP (“Paul Weiss”), legal counsel to Qualcomm, to provide details and terms
24 of an improved proposal, including a substantial increase in the offer consideration and
25 significant regulatory commitments. Finally, a representative of Moelis & Company
26 LLC (“Moelis”), financial advisor to Broadcom, also attempted to contact a
27 representative of Goldman Sachs to provide the details and terms of the improved
28 proposal. The Goldman Sachs representative responded to the Moelis representative

1 that he had received the request and would speak to Qualcomm about it. Qualcomm,
2 Goldman Sachs, and Paul Weiss did not otherwise respond.

3 128. Having heard nothing from Qualcomm about its improved proposal, on
4 February 5, 2018, Broadcom sent a letter to the Qualcomm Board outlining the details
5 and terms of its improved proposal. The improved proposal increased the
6 consideration Broadcom was offering to \$82 per Qualcomm share (\$60 in cash; \$22 in
7 Broadcom stock). Broadcom also issued a same-day press release announcing its
8 improved offer.

9 129. The improved proposal represented a 56% premium to Qualcomm's 30-
10 day VWAP, and a 50% premium to Qualcomm's unaffected trading price of \$54.84 on
11 November 2, 2017 (the day before media speculation on the transaction began).
12 According to proxy advisor Glass Lewis, Broadcom's increased bid ranked among the
13 top decile of premiums paid in announced transactions greater than \$25 billion since
14 2001 (excluding financially distressed targets). Indeed, Qualcomm's stock has only
15 traded above \$82 per share on three days during over 25 years as a public company.

16 130. Broadcom's improved proposal also directly addressed Qualcomm's
17 statements about regulatory risk. First, in response to Qualcomm's statements that
18 regulatory approval could take 18 months or more, Broadcom included a "ticking fee"
19 that provided for an increase in the cash consideration paid to Qualcomm if the
20 transaction was not consummated one year after executing a definitive agreement.
21 Second, Broadcom's increased proposal included a "reverse termination fee" – a
22 sizable fee that would be paid to Qualcomm stockholders if the transaction was not
23 consummated because of Broadcom's inability to obtain required regulatory approvals.
24 Broadcom also expressed its willingness to agree to a provision whereby both
25 Qualcomm and Broadcom agreed to use their collective best efforts to obtain regulatory
26 approval.

27 131. Finally, Broadcom stated that it was open to inviting Qualcomm
28 Chairman Jacobs and a second Qualcomm director to join the board of the post-

1 transaction entity. Broadcom conditioned its proposal on (i) Qualcomm acquiring
2 NXP on the currently disclosed terms of \$110 per NXP share; and (ii) Qualcomm not
3 delaying or adjourning its Annual Meeting past March 6, 2018. In its letter, Broadcom
4 wrote, “we believe any responsible board would engage with us, without further delay,
5 to turn this proposal into an executed definitive agreement.” That same day, Broadcom
6 issued a public letter to its employees stating: “It is clear from our discussions with
7 investors and customers of both Broadcom and Qualcomm that there is overwhelming
8 support for Qualcomm to engage with us immediately regarding this transaction.”

9 132. Analysts expressed optimism about Broadcom’s improved proposal. For
10 example, in a February 5, 2018 analyst report, Credit Suisse wrote:

11 Importantly, AVGO re-affirmed its confidence around (1) regulatory
12 approval providing a significant “reverse termination fee” and (2) deal
13 timing thru a “ticking fee” which would increase the cash component
14 after 12 months. Even with the increased offer, the transaction would be
15 >20% accretive (ex-NXPI). Most importantly, today’s announcement
16 places pressure firmly on QCOM board/shareholders, and for AVGO
17 shareholders provides a path to an end-point and clarity to what has been
18 a cloud of uncertainty[.]

19 133. A same-day Canaccord analyst report similarly reported that “the
20 increased bid certainly puts more pressure on Qualcomm shareholders to vote in favor
21 of this acquisition” and “we believe Qualcomm shareholders are considering this
22 \$82 bid more seriously than the initial \$70 bid, as might Qualcomm’s Board of
23 Directors given the longer-term risks in integrating NXP and uncertain outcome from
24 the ongoing Apple disputes and potential declining QCT sales relationship.” Likewise,
25 on CNBC’s *Squawk Box*, Kevin O’Leary stated, “There are many shareholders,
26 including me, who think Qualcomm is very poorly managed. I would like adult
27 supervision to come in from Broadcom.”

28 134. That same day, Broadcom filed a Schedule 14A with the SEC, entitled
*Evaluating Qualcomm’s Claims About Closing Risk, A Conversation with Daniel M.
Wall, Latham & Watkins LLP, Antitrust Counsel to Broadcom Limited*, again
addressing Qualcomm’s purported concerns about the Proposed Transaction’s antitrust

1 risks. Among other things, Broadcom stated that in Qualcomm's January 16, 2018
2 investor presentation, Qualcomm identified:

3 only one [issue] that is a clear-cut antitrust hurdle, and that's with respect
4 to the Wi-Fi networking processors. But this is not a problem for the
5 transaction because Broadcom has always understood that it would need
6 to sell that part of Qualcomm, and that's Broadcom's plan. In fact,
7 Broadcom has already begun advising the antitrust regulators that it
8 intends to divest that business. There shouldn't be any problem selling it,
because it's a valuable business and Broadcom is quite experienced in
divesting businesses, so that overlap—the most serious antitrust issue in
this deal—won't be a problem.

9 135. Later that day, Qualcomm issued a press release confirming that it had
10 received Broadcom's revised proposal and stating: "Consistent with its fiduciary
11 duties, the Qualcomm Board of Directors, in consultation with its financial and legal
12 advisors, will review the revised proposal to determine the course of action it believes
13 is in the best interests of the Company and its stockholders." Qualcomm also reiterated
14 that it had rejected Broadcom's previous proposal because it "comes with significant
15 regulatory uncertainty." While representing to shareholders that they would review
16 the proposal consistent with their fiduciary duties and act "in the best interests of the
17 Company and its stockholders," however, Defendants did not disclose that they had
18 already taken defensive measures intended to kill the deal, regardless of price or terms.

19 **3. Defendants Continue to Mislead Investors About Qualcomm's**
20 **Willingness to Negotiate with Broadcom**

21 136. On February 8, 2018, Qualcomm issued a press release announcing that it
22 had rejected Broadcom's improved proposal. The press release explained that "[t]he
23 Qualcomm Board, assisted by its financial and legal advisors, determined that the
24 Broadcom proposal materially undervalues Qualcomm and falls well short of the firm
25 regulatory commitment the Board would demand given the significant downside risk
26 of a failed transaction." The release noted, however, that "Qualcomm has offered to
27 meet with Broadcom to see if it can address the serious deficiencies in value and
28 certainty in its proposal."

1 137. That same day, Qualcomm's Chairman Jacobs sent a letter to Broadcom,
2 which it also filed with the SEC on Schedule 14A, stating:

3 The Board has unanimously determined that your amended offer
4 materially undervalues Qualcomm and falls well short of the firm
5 regulatory commitment the Board would demand given the significant
6 downside risk of a failed transaction. However, ***the Board is committed***
7 ***to exploring all options for maximizing shareholder value, and so we***
8 ***would be prepared to meet with you to allow you to explain how you***
9 ***would attempt to bridge these gaps in both value and deal certainty*** and
10 to better understand the significant issues that remain unaddressed in
11 your proposal.

12 In the meeting, we would expect that you will be prepared to provide
13 clear, specific and detailed answers to the questions below.

- 14 ○ *What is the true highest price at which you would be prepared to*
15 *acquire Qualcomm? Is it \$82 per share or is it higher?* Your
16 current proposal is inadequate as it materially undervalues
17 Qualcomm. Your proposal ascribes no value to our accretive NXP
18 acquisition, no value for the expected resolution of our current
19 licensing disputes and no value for the significant opportunity in
20 5G. Your proposal is inferior relative to our prospects as an
21 independent company and is significantly below both trading and
22 transaction multiples in our sector.
- 23 ○ Is Broadcom willing to commit to take whatever actions are
24 necessary to ensure the proposed transaction closes? This is
25 extremely important to value preservation for our shareholders.
26 The differences in our business models expose the Company to
27 significant customer and licensee risk between signing and closing
28 an agreement. It is indisputable that there are significant regulatory
hurdles in your proposed transaction. It is also indisputable that if
Qualcomm entered into a merger agreement and, after an extended
regulatory review period the transaction did not close, Qualcomm
would be enormously and irreparably damaged. If you are not
willing to agree to do whatever is necessary to ensure a transaction
closes, we will need you to be extremely clear and specific about
exactly what actions you would refuse to take, so that we can
properly evaluate the risk to Qualcomm's shareholders.

29 We have a number of other important questions, which we can discuss at
30 our meeting. We will reach out to you to schedule the meeting.

31 (Some emphasis in original.) These statements were highly misleading. While telling
32 shareholders that Qualcomm was willing to meet with Broadcom to explore a

1 negotiated solution, Defendants were secretly undertaking defensive measures to
 2 scuttle the deal. Moreover, while asking whether Broadcom was willing to commit to
 3 whatever actions were necessary to obtain regulatory approval, Qualcomm failed to
 4 disclose to its own shareholders that Defendants were taking actions meant to ensure
 5 that the deal never obtained CFIUS approval. As a result, shareholders were misled
 6 about the likelihood of a negotiated solution and the risks associated with a CFIUS
 7 review.

8 138. Analysts reacted positively to Qualcomm's stated willingness to engage.
 9 For example, a February 9, 2018 RBC analyst report stated:

10 After the close today, QCOM announced that its *Board unanimously*
 11 *rejected AVGO's revised unsolicited proposal*. QCOM's Board believes
 12 the \$82 bid significantly undervalues the company and comes with
 13 significant regulatory uncertainty. **Positively, QCOM has offered to meet**
 14 **with AVGO** to discuss two major issues: 1) *Is \$82 AVGO's best and final*
 15 *offer?* QCOM believes \$82/share is inadequate and assigns no value to
 16 the NXP acquisition, potential resolution of licensing disputes and
 17 QCOM's meaningful opportunity in 5G. 2) *Is AVGO willing to do*
 18 *whatever it takes to ensure the successful close of QCOM acquisition?*
 as QCOM believes there are significant regulatory risks associated with
 the proposed transaction. . . . **Net/net:** Despite the rejection from QCOM
 board, **we are encouraged to see a potential meeting between AVGO**
and QCOM and looking forward to incremental updates. We are
 maintaining our Outperform rating on QCOM and price target of \$80.

19 (Some emphasis in original.)

20 139. On February 8, 2018, Broadcom sent a letter to Qualcomm regarding its
 21 attempts to schedule a meeting regarding its improved offer. The letter stated, in part:

22 Broadcom has long sought a meeting to discuss Broadcom's acquisition
 23 of Qualcomm. Following Qualcomm's announcement today that it is
 24 willing to meet with us, we offered to meet with Qualcomm on Friday,
 25 Saturday or Sunday. I was astonished to hear that Qualcomm is not
 26 willing to meet until Tuesday – only after Qualcomm's and Broadcom's
 27 respective meetings with Glass Lewis and ISS. We hope that your
 28 willingness to meet with us reflects Qualcomm's genuine intent to reach
 an agreement with respect to our February 5 proposal. After having met
 with most of your largest stockholders this past week, we have no doubt
 that this is their strong desire as well.

1 To further demonstrate its seriousness, Broadcom’s letter also attached its proposed
2 merger agreement, which provided for an \$8 billion regulatory reverse termination fee
3 and a 6% per annum regulatory ticking fee on the cash portion of the merger
4 consideration (net of dividends). Broadcom also publicly filed a copy of the draft
5 merger agreement with the SEC and issued a press release regarding the same.

6 140. While Broadcom was making efforts to move negotiations with
7 Qualcomm forward, Defendants issued a series of misleading statements regarding the
8 regulatory risk associated with Broadcom’s proposal. First, on February 9, 2018,
9 Qualcomm filed an investor presentation with the SEC on Schedule 14A entitled
10 *Qualcomm Sets the Record Straight on Regulatory Challenges Faced by Broadcom*,
11 which discussed at length the regulatory risks associated with a potential transaction,
12 including “potentially serious national security concerns.”

13 141. In a second investor presentation filed with the SEC on Schedule 14A on
14 the same day, Qualcomm told shareholders that Broadcom’s offer “Poses Unacceptable
15 Regulatory Risks” and “significant regulatory uncertainty,” and that “[r]egulatory
16 approval [was] highly uncertain; at least [an] 18 month process.” The presentation also
17 continued to mislead investors about Qualcomm’s willingness to constructively engage
18 with Broadcom, telling investors that while Broadcom’s initial proposal “so
19 dramatically undervalued the business and carried such regulatory uncertainty that
20 engagement was not warranted,” its improved February 5 proposal, “while not
21 sufficient, . . . warranted engagement.” Nowhere in either of these lengthy
22 presentations, however, did Qualcomm disclose that it had unilaterally filed a voluntary
23 notice with CFIUS in an attempt to stop any Broadcom transaction from occurring and
24 to entrench the incumbent Board and management.

25 142. On February 11, 2018, to address Qualcomm’s stated concerns about its
26 lack of committed funding, Broadcom entered into a commitment letter with a group
27 of 12 financial institutions for up to \$100 billion in debt financing, including a
28 \$5 billion revolving credit facility and bridge financing. Broadcom also secured

1 \$6 billion of convertible note financing from investment funds affiliated with Silver
2 Lake, Kohlberg Kravis Roberts & Co. L.P., and CVC Capital Partners Advisory (U.S.)
3 Inc.

4 143. The following day, Broadcom issued a press release entitled *Broadcom*
5 *and Financing Sources Sign Binding Financing Commitments to Fund Cash*
6 *Component of Qualcomm Acquisition*, announcing that it had secured financing
7 commitments to fully fund the cash component of its \$82 per share offer.

8 144. That same day, Broadcom filed a Schedule 14A with a Latham & Watkins
9 “Point of View” entitled *Qualcomm’s ‘Fact Sheet’ About Closing Risk, A Conversation*
10 *with Daniel M. Wall, Latham & Watkins LLP, Antitrust Counsel to Broadcom Limited*,
11 which responded in detail to Qualcomm’s February 9 “Fact Sheet” regarding
12 regulatory risk. The main message of Broadcom’s presentation was that “objectively,
13 there is no real risk that regulators refuse to approve the deal on any terms.” The
14 document stated:

15 Qualcomm’s management is trying to hide behind a smokescreen of
16 unspecified “regulatory risk.” It consists mostly of general statements
17 about antitrust risks inherent in *any* deal between competitors, not about
18 *this* deal in *these* markets. . . . The most important point anyone needs to
19 know about antitrust risk in this deal is that the vast majority of
Broadcom’s and Qualcomm’s businesses do not raise any antitrust issues
at all[.]

20 (Emphasis in original.)

21 145. Broadcom also made another same-day filing intended to address
22 Qualcomm’s statements regarding antitrust risk, lodging with the SEC, on
23 Schedule 14A, an article published on Morning Consult authored by David Balto, a
24 former policy director of the FTC. The article, entitled *Broadcom’s Acquisition of*
25 *Qualcomm: Redeeming the Unredeemable*, explained that because of Qualcomm’s
26 poor management and “record of antitrust mischief,” “Broadcom’s takeover bid for
27 Qualcomm should be welcomed by all.” The article concluded:

1 Given Qualcomm's past bad behavior and current legal struggles,
2 Broadcom's acquisition may be the rare deal that solves significant
3 antitrust problems, by replacing its leadership and changing its corporate
4 culture. Broadcom already has indicated that it does not support
5 Qualcomm's patent licensing practices. Moreover, the operations of the
6 two companies are largely complementary, and any routine concerns that
7 typically arise in mergers of large companies can be satisfactorily
8 resolved during the merger clearance process. Significantly, Broadcom
9 has a successful track record of completing antitrust merger reviews.

10 Bottom line: Competition advocates, global regulators and customers
11 around the world should all be cheering for Broadcom. Consumers
12 deserve quality smartphones and tablets at fair prices. Broadcom's
13 takeover should be approved, especially when the combined company
14 would end Qualcomm's excessive price squeezes and bullying tactics
15 that have driven consumer prices unsustainably higher.

16 146. The following day, February 13, 2018, after meeting with proxy advisory
17 firm ISS, Broadcom announced that it was scaling back its challenge to Qualcomm's
18 Board by cutting the number of board seats it was trying to win from eleven to six.
19 Broadcom explained in a press release that day that it reduced the number of its
20 nominees in recognition of Qualcomm stockholders' desire "for appropriate continuity
21 on the Qualcomm board[.]"

22 **4. Following a Meeting with Broadcom, Qualcomm Falsely** 23 **Maintains Its Willingness to Negotiate**

24 147. On February 14, 2018, Qualcomm and Broadcom held a meeting
25 regarding Broadcom's improved proposal. Two days later, on February 16, 2018,
26 Qualcomm issued a press release providing an update on the meeting. In the press
27 release, Qualcomm continued to mislead investors about its willingness to engage
28 constructively with Broadcom, its commitment to resolve regulatory concerns, and the
regulatory risks associated with the deal, stating:

[O]ur Board found the meeting to be constructive in that the Broadcom
representatives expressed a willingness to agree to certain potential
antitrust-related divestitures beyond those contained in your publicly
filed merger agreement. At the same time, Broadcom continued to resist
agreeing to other commitments that could be expected to be required by
the FTC, the European Commission, MOFCOM and other government

1 regulatory bodies. Broadcom also declined to respond to any questions
2 about its intentions for the future of Qualcomm’s licensing business,
3 which makes it very difficult to predict the antitrust-related remedies that
4 might be required. In addition, Broadcom insists on controlling all
5 material decisions regarding our valuable licensing business during the
6 extended period between signing and a potential closing, which would
7 be problematic and not permitted under antitrust laws.

8
9 Our Board is highly cognizant of the need to protect Qualcomm’s
10 stockholders from the considerable risks of agreeing to a transaction that
11 does not close. A breakup fee in the range proposed by Broadcom does
12 not come close to compensating for those risks.

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14 148. By focusing on the antitrust risks associated with the deal while again
15 failing to disclose that Qualcomm had initiated a CFIUS review before Broadcom
16 could redomicile to the U.S., Defendants misled investors about the regulatory risks
17 associated with the deal. Moreover, Qualcomm’s statements misrepresented that it was
18 willing to engage constructively with Broadcom’s offer – which included an agreement
19 to work cooperatively to obtain regulatory approval – when behind the scenes it was
20 operating to ensure that the deal with Broadcom would never happen.

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22 149. That same day, ISS issued a report stating that Qualcomm “should
23 negotiate with [Broadcom] in good faith” and that “[r]egulatory concerns from a
24 [Broadcom/Qualcomm] merger appear manageable[.]” On the regulatory front, ISS
25 also agreed that Broadcom’s 12-month timeline seemed reasonable:

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1 150. In a February 16, 2018 analyst report discussing the ISS report, Credit
2 Suisse wrote: “We would highlight . . . Regulatory Approval Achievable. ISS noted
3 that it appeared more likely than not that AVGO and QCOM, with their collective
4 experience and resources, could find a reasonable path to regulatory approval.” In
5 other words, the market’s view of regulatory risk was informed by its understanding
6 that Qualcomm and Broadcom would work cooperatively to obtain regulatory
7 clearance once a deal was finalized.

8 **5. Broadcom Lowers Its Offer in Response to Qualcomm Action**
9 **but Continues to Try to Move the Deal Forward**

10 151. On February 20, 2018, Defendant Mollenkopf had an in-person meeting
11 with Treasury Secretary Steven Mnuchin, CFIUS Chairman, in Washington, D.C. That
12 same day, Qualcomm announced that it had entered into an amendment to its purchase
13 agreement with NXP to increase the consideration from \$110 per share to \$127.50 per
14 share and reduce the minimum number of NXP shares required to tender in order to
15 consummate the transaction to 70% of outstanding shares.

16 152. Later that day, Broadcom issued a statement criticizing Qualcomm for
17 overpaying for NXP but confirming its commitment to the deal:

18 Broadcom believes that a responsible Qualcomm board could have
19 preserved value by following ISS’s clear recommendation to work with
20 Broadcom on the NXP transaction and negotiate the sale of Qualcomm
21 to Broadcom. Instead Qualcomm’s board acted against the best interests
22 of its stockholders by unilaterally transferring excessive value to NXP’s
23 activist stockholders. Despite this direct value transfer, Broadcom
24 remains committed to delivering a value-maximizing offer to Qualcomm
25 stockholders.

26 153. Also on February 20, another leading proxy advisory service, Glass
27 Lewis, issued a recommendation that Qualcomm stockholders vote “AGAINST” the
28 Qualcomm directors and “FOR” all of Broadcom’s Independent Nominees at the
Annual Meeting. Glass Lewis explained that the Board’s behavior “should concern
shareholders” and that “a change in the composition of the board is warranted.” Glass

1 Lewis further reasoned: “Reconstituting the Qualcomm board would go a long way to
2 ensuring shareholders have a fully informed opinion regarding the prospects of the
3 Company as compared to the attractiveness and risks of a potential Broadcom deal, in
4 our view.”

5 154. The following day, February 21, 2018, Broadcom re-affirmed its
6 commitment to acquire Qualcomm but, in light of the new NXP terms, lowered its
7 acquisition proposal to \$79 per Qualcomm share (\$57 in cash; \$22 in Broadcom stock).
8 The new proposal, however, called for an automatic increase of \$3 in cash per
9 Qualcomm share, back to \$82 per Qualcomm share, if the NXP deal was not
10 consummated. Broadcom’s other proposed terms remained the same.

11 155. Broadcom also continued to take steps to obtain regulatory clearance for
12 its proposed transaction, and on February 22, 2018, it filed a Schedule 14A with the
13 SEC reporting that, as of that date, Broadcom (i) had committed to divest two business
14 areas to address the potential antitrust concerns Qualcomm had raised – its WiFi
15 Networking Processors and RF Front End (RFFE) chip businesses; (ii) had agreed to
16 take any other actions required by regulatory agencies with respect to Qualcomm’s
17 other businesses and assets subject to the “Material Adverse Effect” standard; (iii) was
18 working on an anticipated second request from the U.S. Federal Trade Commission;
19 and (iv) had met with MOFCOM in China and started a pre-filing consultation process.
20 Broadcom reiterated that it remained confident in its ability to complete the transaction
21 within approximately twelve months following the signing of a definitive agreement.

22 156. Meanwhile, Qualcomm continued to make misleading statements
23 regarding the regulatory risk associated with the deal. On February 22, 2018,
24 Qualcomm shared with its stockholders its “takeaways” from an article published in
25 the Competition Policy International on the antitrust risks posed by Broadcom’s
26 proposed takeover of Qualcomm. For example, Qualcomm stated that “[b]ased on
27 similar complex cross-border deals, the expected regulatory approval process is likely
28 to take 18+ months and may require significant and material divestitures and/or

1 conduct remedies.” While discussing what it saw as “significant” regulatory risks
2 associated with a Broadcom transaction, however, Qualcomm did not disclose to its
3 shareholders that it had taken affirmative steps to block regulatory approval of the deal.

4 **6. The Parties Meet Once Again and Qualcomm Continues to**
5 **Misrepresent Its Actual Level of Engagement**

6 157. The following day, February 23, 2018, Qualcomm and Broadcom again
7 met to discuss Broadcom’s proposal. Following up on the parties’ meeting, on
8 February 26, 2018, Defendant Jacobs sent a letter to Broadcom’s CEO Tan. Jacobs’
9 letter represented that the parties had made progress toward a negotiated solution and
10 that the major sticking point was price. For example, Jacobs’ letter stated:

11 We appreciate the movement you have made from the draft merger
12 agreement you publicly released on February 9. We have attached our
13 mark-up of that document, which is intended to provide a comprehensive
14 path forward on regulatory and deal certainty issues. The path forward
15 does not require a “hell or high water” commitment on the regulatory
16 front, but still provides the appropriate level of protection to Qualcomm
stockholders commensurate with the high degree of regulatory risk
associated with this potential transaction. If acceptable to Broadcom, *this
would resolve all issues between the two companies other than price.*

17 158. Jacobs also represented that “[t]he Qualcomm Board and management
18 team are committed to exploring fully with Broadcom whether a negotiated transaction
19 that is in the best interests of Qualcomm stockholders is achievable.” As a result,
20 Jacobs proposed that the parties move forward with “the following next steps.” First,
21 Jacobs proposed that the parties “[f]inalize non-price terms” stating, “[w]e welcome
22 your review of the mark-up of the merger agreement we have provided you and propose
23 that we or our representatives meet to address any remaining issues and finalize the
24 language.” Qualcomm also proposed that the parties “[e]xecute [an] NDA [non-
25 disclosure agreement] and begin bilateral due diligence.” Qualcomm reasoned that
26 “[m]utual due diligence will inform our discussions on price.” It concluded that “[w]e
27 are delivering a proposed NDA to your counsel.”
28

1 159. As a fourth and final step, Qualcomm proposed that the parties “[a]rrange
2 [a] meeting focused on price.” More specifically, Jacobs wrote that “[h]aving now
3 addressed the regulatory and certainty issues in principle, we propose arranging a
4 meeting – as soon as mutually convenient for both parties – focused on price, should
5 Broadcom be willing to engage on the topic.” The letter concluded: “Tom Horton, in
6 his capacity as Presiding Director (lead independent Director), will continue to lead
7 Qualcomm in negotiations with Broadcom, with the goal of determining whether there
8 is a mutually beneficial transaction to be done between our two companies. We look
9 forward to your reply.”

10 160. In response, later that day, Broadcom issued a statement that criticized
11 Qualcomm’s “comprehensive proposal” as an effort to delay the March 6, 2018 Annual
12 Meeting, stating that its offer:

13 [H]as never been conditioned on due diligence and Broadcom continues
14 to be prepared to move forward immediately, without diligence. In short,
15 there is no cause to delay the Qualcomm annual meeting. Broadcom
16 would be happy to provide confirmatory reverse due diligence upon an
agreement on all material terms, including price, as is customary.

17 161. That same day, Qualcomm issued a statement in response:

18 The latest statement issued by Broadcom is disingenuous and clearly
19 intended to create a false impression about Qualcomm’s level of
20 engagement. In fact, Qualcomm has repeatedly attempted to engage with
21 Broadcom on issues including price, including at meetings on February
14 and February 23. In each of those meetings, Broadcom has refused to
engage on price.

22 Earlier today, Qualcomm made a comprehensive proposal that addresses
23 regulatory and other merger agreement issues in order to clear the way
24 for a price discussion with Broadcom. The ball is in Broadcom’s court to
let us know whether it is willing to engage with us.

25 162. Qualcomm also accused Broadcom of lying about its attempts to postpone
26 the Annual Meeting: “Broadcom’s statements about Qualcomm considering moving
27 the date of its annual meeting are false. Qualcomm has no intention of delaying the
28 annual meeting and made that clear to Broadcom during our February 23 meeting.”

1 163. Also on February 26, Qualcomm issued a statement regarding the
2 meeting, again confirming that progress had been made toward a negotiated transaction
3 with Broadcom: “The Qualcomm Board believes the meeting led to further progress
4 toward a possible negotiated transaction on key issues other than price.”

5 164. Defendants’ February 26, 2018 statements created the misleading
6 impression that Qualcomm was diligently working to resolve any regulatory concerns
7 to reach a negotiated deal with Broadcom, when, in reality, it was secretly feeding
8 information to and lobbying CFIUS in an attempt to thwart the will of its shareholders
9 and prevent any Broadcom deal from ever occurring.

10 165. News media reported positively on Qualcomm’s apparent engagement in
11 the proposed acquisition. In a February 26, 2018 article entitled *Qualcomm Warms to*
12 *Broadcom Bid, but Price Is Sticking Point; The two companies have made progress on*
13 *many fronts, but are still split on a price*, The Wall Street Journal reported that
14 “Qualcomm Inc. appeared to take a cooperative turn in its talks with Broadcom Ltd.,
15 saying the two sides made progress toward a deal during a recent sit-down and that
16 price could remain one of the few sticking points.”

17 166. CNBC, in a same-day article entitled *Qualcomm Proposes Further Price*
18 *Talks With Broadcom*, reported that “Chipmaker Qualcomm on Monday urged
19 Broadcom to enter into price negotiations on its \$117 billion offer for the company,
20 saying the two sides had made progress on regulatory issues but were yet to agree on
21 the deal value.”

22 167. After the market closed on February 26, 2018, Reuters reported that:

23 [CFIUS] has begun looking at Singapore-based chipmaker Broadcom
24 Ltd’s plan to take over rival Qualcomm Inc. . . . Senator John Cornyn,
25 the No. 2 Republican in the Senate, urged Treasury Secretary Steven
26 Mnuchin on Monday to have the Committee on Foreign Investment in
27 the United States, or CFIUS, officially review the proposed transaction
28 before a key shareholder vote expected on March 6, according to a letter
seen by Reuters. The pre-deal discussions by CFIUS—which are
extremely rare—suggest Broadcom’s plans to move its headquarters to
the United States before it completes its proposed purchase of Qualcomm

1 may not be enough to sidestep a national security review that could
2 threaten the deal.

3 Although the Reuters article raised the prospect that CFIUS might be informally
4 looking at the deal, it did not disclose that a formal review was underway or mention
5 Qualcomm’s efforts to persuade CFIUS to kill Broadcom’s hostile takeover attempt
6 before it could redomicile.

7 168. Moreover, soon thereafter, contradictory reports surfaced of an internal
8 dispute at CFIUS over whether the Committee had jurisdiction to review Broadcom’s
9 proposal. As reported by The Wall Street Journal on March 2, 2018:

10 In a meeting Tuesday [February 27, 2018], members of . . . CFIUS,
11 debated whether the panel has the right to weigh in on Singapore-based
12 Broadcom Ltd.’s bid of \$117 billion for Qualcomm before a deal is
 struck, according to people briefed on the matter.

13

14 ***Mr. Mnuchin [Treasury Secretary and Chair of CFIUS] . . . told his***
15 ***colleagues he wasn't sure the panel had jurisdiction to commence a***
16 ***review yet because the deal hasn't happened.***

17 169. Defendants’ misrepresentations continued unabated on March 1, 2018,
18 when Qualcomm sent a letter to shareholders (filed with the SEC on Schedule 14A),
19 representing that, “Qualcomm has repeatedly and genuinely attempted to engage with
20 Broadcom on issues including price, regulatory and other closing certainties, including
21 most recently at meetings on February 14 and February 23.” Defendants also touted
22 their “attempts to find a path to a deal.” The letter concluded that “[t]he Qualcomm
23 Board of Directors remains ready to engage with Broadcom on these issues both before
24 and after the March 6 stockholder meeting.”

25 170. The following day, March 2, 2018, Telecommunications Reports reported
26 that:

27 Qualcomm, Inc., has suggested to Broadcom Limited that the two
28 companies engage in due diligence and price negotiation of Broadcom’s
 bid for Qualcomm. . . . In a statement, Broadcom replied that . . .

1 “Qualcomm’s sudden request to enter into an NDA is a result of
2 Qualcomm finally beginning to recognize the will of its stockholders.”

3 171. In sum, based on Qualcomm’s Class Period statements, investors were
4 misled to believe that Defendants were engaged in good faith negotiations to secure
5 better terms in a deal with Broadcom, when, in fact, they had been engaged in a lengthy
6 campaign to have U.S. regulators scuttle any chances for the deal. Moreover, as a
7 result of Defendants’ misleading statements, Qualcomm’s shareholders were under the
8 impression that Qualcomm was working to address regulatory concerns, and willing to
9 cooperate with Broadcom to obtain regulatory clearances when, in reality, they were
10 affirmatively campaigning regulators to block the deal.

11 **J. The Relevant Truth Is Revealed in a Series of Disclosures**

12 172. The relevant truth began to leak to the market on the evening of Sunday,
13 March 4, 2018, when Reuters reported that CFIUS had ordered Qualcomm to postpone
14 its annual stockholders meeting by 30 days so that CFIUS could investigate
15 Broadcom’s bid for the Company. The following day, March 5, 2018, Broadcom
16 issued a press release before trading hours, which disclosed that Qualcomm had
17 “secretly filed a voluntary unilateral request for CFIUS review on January 29, 2018.”
18 Then, in another March 5, 2018 press release published before the close of trading
19 entitled *Broadcom Disappointed Will of Qualcomm Stockholders to be Deferred*,
20 Broadcom stated:

21 Broadcom was informed on Sunday night that on January 29, 2018,
22 ***Qualcomm secretly filed a voluntary request with CFIUS to initiate an***
23 ***investigation***, resulting in a delay of Qualcomm’s Annual Meeting 48
24 hours before it was to take place. This was a ***blatant, desperate act by***
25 ***Qualcomm to entrench its incumbent board of directors and prevent its***
26 ***own stockholders from voting for Broadcom’s independent director***
27 ***nominees***. It is critical that Qualcomm stockholders know that Qualcomm
28 did not once mention submitting a voluntary notice to CFIUS in any of its
interactions with Broadcom to date, including in the two meetings on
February 14, 2018 and on February 23, 2018. This can only be seen as an
intentional lack of disclosure - both to Broadcom and to its own
stockholders.

1 173. That same day, also before the market closed, Qualcomm filed a Current
2 Report on Form 8-K with the SEC disclosing that it had “received an Interim Order”
3 from CFIUS (the “March 4 Interim Order”). The March 4 Interim Order, which
4 Qualcomm attached as an exhibit to the Form 8-K, was addressed to Qualcomm’s
5 CFIUS counsel, Covington & Burling LLP (“Covington & Burling”), and directed that:
6 (i) Qualcomm’s Annual Meeting, scheduled for March 6, 2018, would be delayed by
7 30 days and, in the meantime, “Qualcomm shall hold in abeyance the acceptance or
8 count of any votes or proxies for directors, and shall take no action to complete the
9 election of directors”; and (ii) while the March 4 Interim Order was in effect,
10 Qualcomm was prohibited from “accepting, or taking any action in furtherance of
11 accepting, Broadcom’s proposed merger agreement or any other proposed merger,
12 acquisition, or takeover agreement with Broadcom.” The March 4 Interim Order also
13 made clear that it could be modified in writing by CFIUS, including upon written
14 request from Qualcomm. In response to the March 4 Interim Order, on the evening of
15 March 5, 2018, Qualcomm announced that it would delay its Annual Meeting to
16 April 5, 2018.

17 174. On March 6, 2018, Qualcomm filed a Current Report on Form 8-K with
18 the SEC disclosing that it had (i) “received a letter, addressed to both Broadcom
19 Limited and Qualcomm, from the U.S. Department of Treasury” (the “March 5
20 Letter”); and (ii) “received a Modification of Interim Order” from CFIUS (the
21 “Modification Order”). Copies of the March 5 Letter and the Modification Order were
22 attached to the Current Report on Form 8-K as exhibits.

23 175. The March 5 Letter made clear that CFIUS’s conclusions were driven by
24 the voluntary notice and additional information that Qualcomm had secretly submitted
25 during the Class Period:

26 During the time between Qualcomm’s unilateral filing and Treasury’s
27 agency filing, CFIUS has been communicating with both parties to obtain
28 additional information to inform its decision on the appropriate path
forward in regards to this matter. It was during this time, and *as a result*

1 *of these communications and additional information*, that CFIUS has
2 come to believe that Broadcom’s successful hostile takeover attempt of
3 Qualcomm, including the related stock purchase, proxy contest for the
4 election of six directors to Qualcomm’s Board as proposed and selected
5 by Broadcom, Proposed Agreement and Plan of Merger, and any other
6 potential merger between Broadcom and Qualcomm, could pose a risk to
7 the national security of the United States.

8

9 CFIUS’s assessment thus far includes its review of the information
10 submitted by Qualcomm in its unilateral voluntary notice on January 29,
11 2018, the parties’ responses to questions posed about the potential
12 transaction during the interim period, and the information provided in our
13 multiple phone calls, emails, and meetings with representatives of both
14 Qualcomm and Broadcom. In addition, our assessment includes the
15 review of letters to CFIUS submitted by Broadcom on February 21, 2018
16 and March 2, 2018.

17 176. News reports captured the market’s shock at Qualcomm’s behind-the-
18 scenes maneuvering in the face of its public statements. For example, The Wall Street
19 Journal, in a March 6, 2018 article entitled *U.S. Government Intervenes in Broadcom’s*
20 *Bid for Qualcomm; Move represents a highly unusual intervention by Washington*,
21 noted that “[l]ate last month, Qualcomm appeared to be coming around to the idea of
22 a deal. It said the two sides had been talking and making progress.”

23 177. In a March 6, 2018 article entitled *Qualcomm’s Appeal to CFIUS Risks*
24 *Alienating Shareholders*, Dow Jones Institutional News criticized Defendants for their
25 efforts to secretly disenfranchise Qualcomm’s shareholders, writing:

26 As things play out, this latest gambit in Broadcom’s hostile bid for
27 Qualcomm could end up creating more votes to change directors and
28 undermining the credibility of Qualcomm management with any new
director who is ultimately elected. . . . By appearing to encourage the
extraordinary order from [CFIUS], to postpone the shareholder vote on
directors, Qualcomm could be seen as attacking its own investors’ voting
rights.

178. Market commentators also expressed surprise about the timing of
CFIUS’s review, noting that Qualcomm’s actions had resulted in an unprecedented

1 early review of a deal before it was even agreed. For example, The New York Times
2 in a March 6, 2018 article reported that:

3 In most cases, the panel operates in secret and weighs in after a deal is
4 announced. In this instance, Cfius, which is made up of representatives
5 from multiple federal agencies, is taking a proactive role and
6 investigating before an acquisition agreement has even been signed. . . .
7 But Qualcomm, which is based in San Diego, pushed the government to
8 intervene.

9 179. In a same-day article, The New York Times reported that “[e]xperts said
10 they couldn’t recall another instance of the committee’s intervening in a transaction
11 that hadn’t been completed, much less one that is as fluid and bitterly contested as this
12 one.” The article further explained that:

13 Broadcom had sought to pave the way for its bid by changing its
14 headquarters to the United States, an announcement that the company’s
15 chief executive, Hock Tan, made alongside Mr. Trump at the White
16 House last year. . . . Broadcom argued that its status as a soon-to-be-
17 American company meant the Qualcomm deal should not be subject to
18 review by Cfius. Qualcomm nonetheless appealed to regulators to get
19 involved.

20 180. In a March 7, 2018 article entitled *Qualcomm’s Spending Buys the Right*
21 *Friends*, The Wall Street Journal also noted that CFIUS’s rationale was nearly identical
22 to Qualcomm’s talking points:

23 Qualcomm just provided the recipe for companies trying to thwart
24 foreign takeovers: Spend big, first on research and development, then on
25 lawyers. That seems the main takeaway from a letter the Committee on
26 Foreign Investment in the U.S. sent to lawyers for Broadcom and
27 Qualcomm on Monday. . . . In language that closely mimics Qualcomm’s
28 talking points against the deal, the committee describes the company as
“well-known” and “trusted” by the U.S. government. The letter also
lauded the company’s “unmatched expertise and R&D expenditure” –
particularly as it relates to the coming wireless technology standard
known as 5G.

181. In sum, these disclosures revealed to investors that Defendants’ repeated
claims that they were diligently working to negotiate a transaction in the best interest

1 of shareholders were materially misleading when made. In fact, as these disclosures
2 revealed, Defendants were furiously working to kill the deal outright.

3 182. As a result of the March 5 and March 6 disclosures, the price of the
4 Company's common stock declined 4.02%, from a closing price of \$64.74 on March 2,
5 2018, to a closing price of \$62.14 on March 6, 2018. By contrast, the S&P 500
6 increased by 1.35% between March 2 and 6, 2018.

7 183. On March 7, 2018, media outlets began reporting that, in an attempt to
8 salvage its bid, Broadcom was accelerating its plans to redomicile to the United States.
9 For instance, a March 7, 2018 New York Post article disclosed that:

10 Advisers for Singapore-based Broadcom told a Qualcomm shareholder
11 that the company is accelerating its plans to re-domicile to the US, *The*
12 *Post* has learned. . . . Broadcom, to get around a CFIUS review, had
13 promised earlier to become a US company by mid-May. But in light of
the heat this week from Washington, Broadcom is now aiming to
complete the move to the US in April.

14 184. On March 9, 2018, Broadcom disclosed that it had moved up its
15 shareholder vote on redomiciliation to March 23. As *The Wall Street Journal* reported
16 in a March 10, 2018 article entitled *Broadcom Vote Plan May Set Stage for Battle With*
17 *U.S. National Security Panel; If move to become U.S. firm is approved, Singapore*
18 *company could argue hostile bid for Qualcomm is outside of CFIUS's jurisdiction:*

19 Singapore-based Broadcom Ltd. said Friday it will ask shareholders to
20 vote on March 23 to approve its plan to redomicile to the U.S., potentially
21 setting the stage for a showdown with the U.S. national security panel
22 reviewing its \$117 billion hostile bid for Qualcomm Inc. The vote is now
23 set to take place in the middle of a review of the proposed bid by
[CFIUS]. If Broadcom were considered a U.S. company, it could argue
that its deal falls outside of the panel's jurisdiction.

24 185. Then, after market close on March 12, 2018, Defendants' secret campaign
25 to kill Broadcom's bid by instigating government intervention culminated in
26 President Trump's issuance of an executive order blocking Broadcom from acquiring
27 Qualcomm.
28

1 186. This action by CFIUS and President Trump effectively endorsed
2 Qualcomm’s position regarding the national security concerns of the proposed
3 acquisition and, in particular, the need to intervene prior to Broadcom’s
4 redomiciliation. News reports directly connected CFIUS’s recommendation to
5 Qualcomm’s secret campaign to stymie Broadcom’s bid. For instance, *The Deal*
6 *Pipeline*, in a March 13, 2018 article entitled *Qualcomm’s PR and Lobbying Savvy May*
7 *Have Helped It Fight Off Broadcom*, reported that “Qualcomm had requested a Cfius
8 review of Broadcom’s bid on Jan. 29, and ***some of the objections publicly voiced by***
9 ***the committee sound like Qualcomm talking points.***”

10 187. In a March 12, 2018 article, Mondaq Business Briefing wrote, “Although
11 traditional takeover defenses such as the Poison Pill and White Knight have long
12 histories in the corporate M&A world, it is possible we are seeing now for the first time
13 the (potentially successful) use of CFIUS as a takeover defense against a hostile offer.”

14 188. In response to this news, the price of the Company’s common stock
15 declined an additional \$3.11 per share, or 4.95%, to close at \$59.70 per share on
16 March 13, 2018. By comparison, the S&P 500 dropped only 0.67%.

17 189. Even after Qualcomm managed to kill the deal, market commentators
18 continued to report that if Broadcom had been allowed to complete its redomiciliation,
19 it would have avoided CFIUS review altogether. For example, *The Wall Street Journal*,
20 in an article entitled *Broadcom Affirms Plan to Assume U.S. Address*, reported that
21 “Broadcom earlier this week said it expected to complete the process in April, about a
22 month earlier than originally planned. Redomiciling would have allowed Broadcom’s
23 bid for Qualcomm to skip a review by [CFIUS].”

24 190. On March 14, 2018, Broadcom announced that it had withdrawn and
25 terminated its offer to acquire Qualcomm. As Qualcomm’s CFIUS counsel, Covington
26 & Burling, later touted, the March 13, 2018 Presidential Order had “marked ***total***
27 ***victory*** for Qualcomm in its bid to remain an independent company.”

1 191. Through their tactics and campaign of misleading shareholders regarding
2 their true intentions, Defendants were able to effectively thwart the will of Qualcomm’s
3 shareholders and entrench themselves in their management and Board positions. In
4 fact, numerous news sources reported that, before CFIUS’s intervention at Defendants’
5 behest, Broadcom’s nominees were on track to oust Qualcomm’s incumbent directors.
6 For example, a March 5, 2018 Bloomberg article reported that Broadcom “is on course
7 to win all six of the seats it’s seeking on Qualcomm Inc.’s board, giving it a majority
8 to push forward with its hostile takeover even as a U.S. government panel forced a
9 delay of the final tally amid concerns about the deal’s threats to national security.” The
10 article further explained that:

11 Based on a count of more than half of the votes already cast, Broadcom
12 would win a majority of Qualcomm’s board seats, according to
13 information obtained by *Bloomberg*. If that result holds up when the final
14 vote takes place, Broadcom would have a mandate to overturn
Qualcomm management’s opposition to the \$117 billion deal.

15 192. A March 7, 2018 MarketWatch article entitled *Qualcomm was losing in*
16 *takeover battle with Broadcom, then the government stepped in*, similarly reported that
17 “Early returns were reportedly in Broadcom’s favor after two of the big shareholder
18 advisory firms recommended investors vote for some or all of Broadcom’s slate to gain
19 a majority vote on the entrenched Qualcomm board.” On March 8, 2018, analyst
20 Oppenheimer confirmed that “Recent reports . . . indicate AVGO is on track to win a
21 majority of QCOM’s board seats in a shareholder vote delayed until 4/5/18, pending
22 CFIUS’s somewhat puzzling review.” Further, TechCrunch later reported:

23 The votes started to come in on Friday, March 2. By Sunday it was clear
24 that Qualcomm’s defense had failed. Four of the six directors Broadcom
25 had nominated were polling so far ahead of their Qualcomm peers ***that***
the race was effectively over, according to data viewed by Bloomberg.
26 The remaining two were winning by less substantial margins. Making it
27 worse, Mollenkopf and Jacobs, the architects of Qualcomm’s standalone
28 plan, had received some of the fewest votes. Inside the Qualcomm camp,
the mood was bleak; assuming the trend continued, the board would lose
control of the company at the shareholder meeting. Broadcom’s message

1 was one of quiet confidence. The company knew it had won, one person
2 close to the discussions said. At that point, the person said, it was just a
3 question of by how many votes, and who was going to leave the board.
4 Broadcom was winning the battle with shareholders, so Qualcomm's
5 board shifted to a terrain far more favorable to it: Washington
6 bureaucrats. From the same Bloomberg report, 'Federal lobbying
disclosures for 2017 showing that Qualcomm spent \$8.3 million, or
roughly 100 times the \$85,000 Broadcom spent...' These weren't
regulators; these were friends.

7 193. Although Defendants were able to avoid the embarrassment of being
8 ousted by their own shareholders, on March 9, 2018, Qualcomm announced that while
9 Defendant Jacobs would be allowed to retain his Board seat, he would step down as
10 Executive Chairman. The New York Times reported that "[t]he change was widely
11 seen as a move to placate shareholders who had been voicing their displeasure by
12 voting for a slate of six candidates proposed by Broadcom for the 11-seat board as part
13 of its bid to acquire the company." A March 9, 2018 VentureBeat article entitled *Battle*
14 *of Broadcom claims its first victim: Paul Jacobs out as Qualcomm's executive chair*,
15 explained that in announcing the move:

16 [t]he company hinted that the move was in part an effort [to] ensure that
17 its handling of Broadcom's unwanted overtures is above reproach. . . .
18 While it's unclear how much Jacobs' personal history with the company
19 may have affected Qualcomm's stance toward Broadcom, the board
clearly felt it needed to avoid any suggestion that it is putting emotions
ahead of business.

20 194. Meanwhile, investors and market commentators continued to voice their
21 displeasure with Qualcomm's Board. On March 15, 2018, The Wall Street Journal, in
22 an article entitled *Qualcomm Investors Urged to Vote for Broadcom Board Picks in*
23 *Protest*, wrote that:

24 Institutional Shareholder Services Inc., an influential proxy-advisory
25 firm, recommended Qualcomm Inc. shareholders make a symbolic vote
26 in protest against the chip giant's moves to block Broadcom Ltd.'s
\$117 billion takeover bid. ISS, in a note to investors late Wednesday,
27 stood by its original recommendation that shareholders vote for four of
Broadcom's six nominees for Qualcomm's 11-person board, even
28 though the votes won't count. . . . ISS's decision underscores the
frustration of Qualcomm shareholders at how the company's board

1 handled the bid and earlier perceived missteps that have weighed on the
2 stock.”

3 On March 17, 2018, the Los Angeles Times reported that “Qualcomm’s board
4 nominees are on course to get only 16% of the votes cast at its forthcoming shareholder
5 meeting, even though they’re now unopposed.”

6 195. Ultimately, after all of the votes were counted, the majority of
7 Qualcomm’s unopposed incumbent directors *failed* to receive a majority of
8 shareholders’ votes. As The Wall Street Journal reported in a March 24, 2018 article
9 entitled *Qualcomm Investors Register Protest – Six board members get tepid support*
10 *in holder vote following Broadcom ordeal*, “[s]ix of Qualcomm Inc.’s directors,
11 including Chief Executive Steve Mollenkopf, failed to win support from a majority of
12 the company’s shares on Friday, *a significant protest vote that signals investor*
13 *discontent* after the chip-making giant successfully rebuffed a hostile takeover from
14 Broadcom Ltd.” Nevertheless, “[a]ll the directors will remain on the board since they
15 were running unopposed after the U.S. government blocked Broadcom’s bid, and by
16 extension its six-member slate of nominees.”

17 **V. DEFENDANTS’ MATERIALLY FALSE AND MISLEADING**
18 **STATEMENTS AND OMISSIONS OF MATERIAL FACT**

19 196. The Class Period begins on January 29, 2018. On that date, unbeknownst
20 to its shareholders, Qualcomm secretly and unilaterally filed a request for CFIUS to
21 initiate a review prior to Broadcom’s redomiciliation, in a brazen attempt to frustrate
22 Broadcom’s attempt to acquire the Company and for the Individual Defendants to
23 simultaneously entrench themselves in their executive leadership positions at
24 Qualcomm.

25 197. On the same date, Qualcomm filed a Schedule 14A with the SEC that
26 included a transcript of a video entitled *Creating Stockholder Value*. The transcript
27 included the following statement by Defendant Mollenkopf:
28

1 We received an unsolicited bid from Broadcom that the Board evaluated
 2 carefully, concluded that it undervalues the company, ***there are some***
 3 ***questions about deal certainty and regulatory approval.***⁷ We've had
 4 some feedback from customers that have voiced some concerns. Quite
 frankly, the Board concluded this deal is not in the best interest of
 shareholders.

5 198. The transcript included in the January 29, 2018 Schedule 14A also
 6 included the following statement by Defendant Rosenberg:

7 ***The Broadcom-proposed acquisition will be subjected to very, very***
 8 ***close scrutiny by well over a dozen potential agencies. We believe that***
 9 ***this is probably going to take something in the range of 18 months or***
 10 ***more even, because of the complexity of the two companies' businesses,***
because of the enormous overlap in the two companies' technologies
and businesses, and because of the global nature of our businesses.

11 199. Also on January 29, 2018, Qualcomm filed with the SEC on
 12 Schedule 14A a copy of its White Proxy Card sent to shareholders. Qualcomm's White
 13 Proxy Card stated, "***Broadcom's Low-Value, High Risk Proposal Would Steal Value***
 14 ***From You***" and listed as reasons "***High-risk regulatory process***" and "***Cannot deliver***
 15 ***anything to you for at least 18 months, if ever.***"

16 200. Each of Defendants' statements set forth in ¶¶ 197-199 was materially
 17 false or misleading when made, or omitted material facts necessary to make the
 18 statements made not misleading, because: by generically referencing regulatory risks
 19 that could delay or impact the deal and alluding to antitrust concerns while withholding
 20 the fact that Qualcomm had taken affirmative steps to prevent regulatory approval by
 21 filing a unilateral voluntary notice with CFIUS before Broadcom could redomicile to
 22 the U.S., Defendants misled investors about the true risks associated with the deal.

23 201. On February 5, 2018, Qualcomm issued a press release, which it filed with
 24 the SEC on Schedule 14A, confirming that it had received Broadcom's revised
 25 proposal and stating: "***Consistent with its fiduciary duties, the Qualcomm Board of***
 26 ***Directors, in consultation with its financial and legal advisors, will review the revised***

27 ⁷ Each of Defendants' statements in Section IV that is alleged to be false and
 28 misleading is highlighted in ***bold and italics***.

1 *proposal to determine the course of action it believes is in the best interests of the*
 2 *Company and its stockholders.”* Qualcomm also reiterated that it had rejected
 3 Broadcom’s previous proposal because it “*comes with significant regulatory*
 4 *uncertainty.”*

5 202. On February 8, 2018, Qualcomm issued a press release entitled *Proposal*
 6 *Materially Undervalues Qualcomm and Falls Well Short of Firm Regulatory*
 7 *Commitment Necessary Given Significant Downside Risk of a Failed Transaction*
 8 *Qualcomm Offers to Meet to See If Broadcom Can Address Serious Deficiencies in*
 9 *Value and Certainty*, which it filed with the SEC on Schedule 14A, which stated:

10 The Qualcomm Board, assisted by its financial and legal advisors,
 11 determined that *the Broadcom proposal materially undervalues*
 12 *Qualcomm and falls well short of the firm regulatory commitment the*
 13 *Board would demand given the significant downside risk of a failed*
 14 *transaction. However, Qualcomm has offered to meet with Broadcom to*
 15 *see if it can address the serious deficiencies in value and certainty in its*
 16 *proposal.*

17 203. Qualcomm attached to its February 8, 2018 press release a copy of a letter
 18 from Defendant Jacobs, addressed to Broadcom CEO Tan, which stated the following:

19 *The Board has unanimously determined that your amended offer*
 20 *materially undervalues Qualcomm and falls well short of the firm*
 21 *regulatory commitment the Board would demand given the significant*
 22 *downside risk of a failed transaction. However, the Board is committed*
 23 *to exploring all options for maximizing shareholder value, and so we*
 24 *would be prepared to meet with you to allow you to explain how you*
 25 *would attempt to bridge these gaps in both value and deal certainty and*
 26 *to better understand the significant issues that remain unaddressed in*
 27 *your proposal.*

28 *In the meeting, we would expect that you will be prepared to provide*
clear, specific and detailed answers to the questions below.

- *What is the true highest price at which you would be prepared to*
acquire Qualcomm? Is it \$82 per share or is it higher? Your
current proposal is inadequate as it materially undervalues
Qualcomm. Your proposal ascribes no value to our accretive
NXP acquisition, no value for the expected resolution of our
current licensing disputes and no value for the significant
opportunity in 5G. Your proposal is inferior relative to our

1 *prospects as an independent company and is significantly below*
2 *both trading and transaction multiples in our sector.*

- 3 ○ *Is Broadcom willing to commit to take whatever actions are*
4 *necessary to ensure the proposed transaction closes? This is*
5 *extremely important to value preservation for our shareholders.*
6 *The differences in our business models expose the Company to*
7 *significant customer and licensee risk between signing and*
8 *closing an agreement. It is indisputable that there are significant*
9 *regulatory hurdles in your proposed transaction. It is also*
10 *indisputable that if Qualcomm entered into a merger agreement*
11 *and, after an extended regulatory review period the transaction*
12 *did not close, Qualcomm would be enormously and irreparably*
13 *damaged. If you are not willing to agree to do whatever is*
14 *necessary to ensure a transaction closes, we will need you to be*
15 *extremely clear and specific about exactly what actions you*
16 *would refuse to take, so that we can properly evaluate the risk to*
17 *Qualcomm's shareholders.*

18 *We have a number of other important questions, which we can discuss*
19 *at our meeting. We will reach out to you to schedule the meeting.*

20 204. That same day, Qualcomm filed a Schedule 14A with the SEC, which
21 included a copy of a letter from Mollenkopf to Qualcomm employees, discussing
22 Qualcomm's rejection of Broadcom's February 5, 2018 improved \$82 per share
23 proposal:

24 Today we issued a press release announcing that our Board of Directors
25 unanimously rejected Broadcom's revised proposal *after determining*
26 *that it materially undervalues Qualcomm. This proposal also falls well*
27 *short of the regulatory commitment we would demand given the*
28 *significant downside risk of a failed transaction.*

The Board has offered to meet with Broadcom to see if it can address
the serious deficiencies in value and certainty in its proposal. It's
important to note that this does not mean that a transaction will occur.
The Board has a commitment to exploring all options for maximizing
stockholder value – this is the purpose of offering to meet with
Broadcom.

 205. The following day, February 9, 2018, Qualcomm sent an email to its
shareholders, which it also filed with the SEC on Schedule 14A, which stated:

1 Today we announced that Qualcomm’s Board of Directors, *after a*
 2 *thorough review process with its financial and legal advisors,*
 3 *unanimously rejected Broadcom’s revised proposal to acquire*
 4 *Qualcomm after determining that the proposal materially undervalues*
 5 *Qualcomm and falls well short of the firm regulatory commitment the*
 6 *Board would demand given the significant downside risk of a failed*
 7 *transaction. . . . The Qualcomm Board is committed to exploring all*
 8 *options for maximizing stockholder value and has offered to meet with*
 9 *Broadcom to see if it can address the serious deficiencies in value and*
 10 *certainty in its proposal.*

11 206. That same day, Qualcomm filed an Investor Presentation with the SEC on
 12 Schedule 14A, wherein it represented to shareholders that Broadcom’s offer “*Poses*
 13 *Unacceptable Regulatory Risks*” and “*Significant regulatory uncertainty,*” and that
 14 “*Regulatory approval [was] highly uncertain; at least [an] 18 month process.*” The
 15 presentation also continued to mislead investors about Qualcomm’s willingness to
 16 constructively engage with Broadcom, telling investors that while Broadcom’s initial
 17 proposal “*so dramatically undervalued the business and carried such regulatory*
 18 *uncertainty that engagement was not warranted,*” its improved February 5 proposal,
 19 “*while not sufficient, . . . warranted engagement.*”

20 207. Each of Defendants’ statements set forth in ¶¶ 201-206 was materially
 21 false or misleading when made, or omitted material facts necessary to make the
 22 statements made not misleading, because:

- 23 • Defendants’ statements misled investors to believe that Qualcomm was
 24 willing to engage constructively with Broadcom’s offer, and that Broadcom’s
 25 actions (or lack thereof) were the main reason a negotiated solution had not been
 26 reached, when behind the scenes it was working to ensure that the deal with
 27 Broadcom would never happen.
- 28 • Defendants’ statements that price was a major barrier to a negotiated
 transaction misled investors to believe that the Company was willing to engage
 at the right price when, in fact, it was actively attempting to kill the deal
 regardless of price.

1 • By generically referencing regulatory risks that could delay or impact the
2 deal and alluding to antitrust concerns while withholding the fact that Qualcomm
3 had taken affirmative steps to prevent regulatory approval by filing a unilateral
4 voluntary notice with CFIUS before Broadcom could redomicile to the U.S.,
5 Defendants misled investors about the true risks associated with the deal.

6 • Qualcomm’s request that Broadcom “agree to do whatever is necessary to
7 ensure a transaction closes” or “be extremely clear and specific about exactly
8 what actions you would refuse to take, so that we can properly evaluate the risk
9 to Qualcomm’s shareholders” was misleading given that Qualcomm itself was
10 secretly taking action to ensure that the deal never closed. By failing to disclose
11 the Company’s actions to its shareholders, it deprived them of the opportunity
12 to “properly evaluate the risks.”

13 208. On February 9, 2018, Qualcomm filed an investor presentation with the
14 SEC on Schedule 14A entitled *Qualcomm Sets the Record Straight on Regulatory*
15 *Challenges Faced by Broadcom*, which discussed at length the purported regulatory
16 risks associated with the potential Broadcom transaction. While the majority of the
17 presentation focused on antitrust concerns, the presentation noted “*potentially serious*
18 *national security concerns*,” and, in the context of potential divestitures to address
19 antitrust concerns, stated that:

20 *Adding to the uncertainty, Broadcom would have to identify a suitable*
21 *buyer that could compete in the market with equal strength to*
22 *Qualcomm – a challenging and potentially impossible task. In addition,*
23 *any divestiture to a non-U.S. buyer must be approved by the Committee*
24 *on Foreign Investment in the United States (CFIUS). The universe of*
25 *companies that can satisfy the concerns of both antitrust regulators*
26 *and CFIUS is small, if it exists at all. Broadcom’s list of potential*
buyers excludes Chinese firms in an attempt to address CFIUS
obstacles. However, even with assets divested elsewhere, China may
require licensing commitments that will raise CFIUS concerns.

27 209. That same day, Defendants posted material to Qualcomm’s dedicated deal
28 website, www.qcomvalue.com, stating: “Broadcom’s opportunistic proposal

1 dramatically undervalues Qualcomm and ***there is significant doubt about whether it***
2 ***can ever be completed.***”

3 210. Each of Defendants’ statements set forth in ¶¶ 208-209 was materially
4 false or misleading when made, or omitted material facts necessary to make the
5 statements made not misleading, because: by generically referencing regulatory risks
6 that could delay or impact the deal, focusing on antitrust concerns, generally referring
7 to national security concerns, and addressing CFIUS risk in the context of antitrust
8 divestitures – all while withholding the fact that Qualcomm had taken affirmative steps
9 to prevent regulatory approval by filing a unilateral voluntary notice with CFIUS
10 before Broadcom could redomicile to the U.S. – Defendants misled investors about the
11 true risks associated with the deal.

12 211. On February 14, 2018, Qualcomm issued a press release entitled
13 *Qualcomm Issues Statement on Meeting with Broadcom*, which it also filed with the
14 SEC on Schedule 14A, which stated:

15 Qualcomm Incorporated (NASDAQ: QCOM) issued the following
16 statement after members of Qualcomm’s Board and its senior
17 management team met today with Broadcom Limited (NASDAQ:
18 AVGO) to discuss Broadcom’s proposal to acquire Qualcomm: “***We met***
19 ***with representatives of Broadcom for two hours earlier today, and***
listened carefully to what they had to say. The Qualcomm Board will
promptly meet to discuss the meeting and to determine next steps.”

20 212. On February 16, 2018, Qualcomm issued a press release entitled
21 *Qualcomm Provides Update on Meeting with Broadcom*, which it filed with the SEC
22 on Schedule 14A, including a February 16, 2018 letter that Defendant Jacobs sent to
23 Broadcom’s CEO Tan following up on Qualcomm’s February 14, 2018 meeting with
24 Broadcom. In the letter, Jacobs stated:

25 ***The Board remains unanimously of the view that this proposal***
26 ***materially undervalues Qualcomm and has an unacceptably high level***
27 ***of risk, and therefore is not in the best interests of Qualcomm***
28 ***stockholders.***

1 *That said, our Board found the meeting to be constructive in that the*
2 *Broadcom representatives expressed a willingness to agree to certain*
3 *potential antitrust-related divestitures beyond those contained in your*
4 *publicly filed merger agreement. At the same time, Broadcom*
5 *continued to resist agreeing to other commitments that could be*
6 *expected to be required by the FTC, the European Commission,*
7 *MOFCOM and other government regulatory bodies. Broadcom also*
8 *declined to respond to any questions about its intentions for the future*
9 *of Qualcomm’s licensing business, which makes it very difficult to*
10 *predict the antitrust-related remedies that might be required. In*
11 *addition, Broadcom insists on controlling all material decisions*
12 *regarding our valuable licensing business during the extended period*
13 *between signing and a potential closing, which would be problematic*
14 *and not permitted under antitrust laws.*

15 *Our Board is highly cognizant of the need to protect Qualcomm’s*
16 *stockholders from the considerable risks of agreeing to a transaction*
17 *that does not close. A breakup fee in the range proposed by Broadcom*
18 *does not come close to compensating for those risks.*

19 *While the current Broadcom proposal is unacceptable, our Board is*
20 *intensely focused on maximizing value for Qualcomm stockholders,*
21 *whether through executing on its growth strategy or by selling the*
22 *Company. Our Board is open to further discussions with Broadcom to*
23 *see if a proposal that appropriately reflects the true value of Qualcomm*
24 *shares, and ensures an appropriate level of deal certainty, can be*
25 *obtained. If such a proposal cannot be obtained from Broadcom, our*
26 *Board is highly confident in Qualcomm’s ability to deliver superior*
27 *near- and long-term value to its stockholders by continuing to execute*
28 *its growth strategy.*

213. That same day, Qualcomm sent an email to its shareholders, which it filed with the SEC on Schedule 14A, which stated, “*Consistent with its commitment to explore all options to maximize stockholder value, members of Qualcomm’s Board and senior management team met with Broadcom on February 14, 2018, to discuss whether Broadcom could address the serious deficiencies in its proposal to acquire Qualcomm.*”

214. Also on February 16, Defendant Mollenkopf sent an email to Qualcomm employees, which the Company filed with the SEC on Schedule 14A, stating:

1 *As you know, last week our Board unanimously rejected Broadcom's*
 2 *revised proposal, but agreed to meet with members of their senior*
 3 *management team to see if they could address the proposal's serious*
 4 *deficiencies – both in terms of value and deal certainty. During the*
 5 *meeting, which took place on Wednesday, Broadcom addressed some*
 6 *of our regulatory concerns, but would not agree to certain*
 7 *commitments that could be required to satisfy regulators around the*
 8 *world. Broadcom also reiterated that \$82.00 per share is its best and*
 9 *final proposal, which our Board continues to believe materially*
 10 *undervalues Qualcomm and presents unacceptable risk for our*
 11 *stockholders. We sent a letter to Broadcom earlier today articulating*
 12 *that position and that our Board is open to further discussions to*
 13 *address our ongoing and legitimate concerns.*

14 215. Each of Defendants' statements set forth in ¶¶ 211-214 was materially
 15 false or misleading when made, or omitted material facts necessary to make the
 16 statements made not misleading, because:

- 17 • Defendants' statements misled investors to believe that Qualcomm was
 18 willing to engage constructively with Broadcom's offer, and that Broadcom's
 19 actions (or lack thereof) were the main reason a negotiated solution had not been
 20 reached, when behind the scenes it was working to ensure that the deal with
 21 Broadcom would never happen.
- 22 • Defendants' statements that price was a major barrier to a negotiated
 23 transaction misled investors to believe that the Company was willing to engage
 24 at the right price when, in fact, it was actively attempting to kill the deal
 25 regardless of price.
- 26 • By generically referencing regulatory risks that could delay or impact the
 27 deal and focusing on antitrust concerns while withholding the fact that
 28 Qualcomm had taken affirmative steps to prevent regulatory approval by filing
 a unilateral voluntary notice with CFIUS before Broadcom could redomicile to
 the U.S., Defendants misled investors about the true risks associated with the
 deal.

1 216. On February 21, 2018, Qualcomm issued a press release entitled
2 *Qualcomm Issues Statement On Reduced Broadcom Proposal*, which it filed with the
3 SEC on Schedule 14A, which stated:

4 Qualcomm Incorporated (NASDAQ: QCOM) today issued the following
5 statement in response to today's reduced proposal by Broadcom Limited
6 (NASDAQ: AVGO) to acquire all outstanding shares of Qualcomm for
7 \$79.00 per share (\$57.00 in cash and \$22.00 in Broadcom stock):
8 ***“Broadcom’s reduced proposal has made an inadequate offer even
9 worse despite the clear increase in value to Qualcomm stockholders
10 from providing certainty around the NXP acquisition. Broadcom has
11 refused and continues to refuse to engage with Qualcomm on price. . . .
12 The Qualcomm Board is committed to maximizing value for
13 Qualcomm stockholders, whether that be through executing its growth
14 strategy or selling the company. Broadcom’s revised \$79.00 per share
15 proposal materially undervalues Qualcomm, fails to take into account
16 the strategic and financial benefits of acquiring NXP, and continues to
17 face a long and highly uncertain path to regulatory approvals.”***

18 217. On February 22, 2018, Qualcomm issued a press release, filed with the
19 SEC on Schedule 14A, including a February 22, 2018 letter that the Board sent to its
20 shareholders. The letter stated:

21 ***The members of the Qualcomm Board of Directors are firmly
22 committed to maximizing value for Qualcomm stockholders. We are
23 highly confident in Qualcomm’s strategic plan and its multiple value
24 drivers. At the same time, we have seriously evaluated Broadcom’s
25 proposals and explained to Broadcom – including during our meeting
26 with them on February 14 – why their proposals are inadequate. We
27 remain open to continued discussions if a suitable proposal is
28 presented. To date, no such proposal has been made.***

.....

***By lowering its proposal to \$79.00 per share, Broadcom has made an
inadequate proposal even worse despite the indisputable increase in
value and certainty that Qualcomm stockholders will receive from the
compelling and highly accretive acquisition of NXP. Importantly,
Broadcom has refused and continues to refuse to engage with
Qualcomm on price.***

***The Board unanimously believes that Broadcom’s current \$79.00 per
share proposal undervalues Qualcomm, fails to take into account the
strategic and financial benefits of acquiring NXP, and continues to
face a long and highly uncertain path to regulatory approvals.***

1 *Members of this Board and management met with Broadcom earlier*
2 *this month to discuss a path to a transaction that both appropriately*
3 *valued Qualcomm and provided a sufficient level of certainty around*
4 *the regulatory issues. We entered the meeting with Broadcom in a*
5 *constructive manner, seeking a price increase and engagement on*
issues related to transaction certainty. However, Broadcom did not
engage on the topic of price – repeatedly stating that \$82 per share was
“best-and-final.”

6 *Broadcom also insisted it had to control all material decisions*
7 *regarding our licensing business, one that has realized annual*
8 *revenues exceeding \$7 billion, during a lengthy regulatory process,*
9 *despite the fact that this is not permitted under antitrust laws.*
10 *Additionally, Broadcom was unwilling to agree to commitments that*
11 *could be expected to be required by the FTC, European Commission,*
12 *MOFCOM and other government regulatory bodies. Their proposed \$8*
billion reverse termination fee – which equates to only \$5.40 per share
– does not come close to compensating our stockholders for the
substantial value destruction likely to result if the transaction were to
fail to close due to regulatory issues.

13

14 ***THE QUALCOMM BOARD IS SQUARELY FOCUSED ON***
15 ***MAXIMIZING THE VALUE OF YOUR INVESTMENT***

16 *Qualcomm is well positioned to create value for stockholders over the*
17 *near- and long-term, particularly with a clear path to completing the*
18 *NXP transaction. At the same time, should Broadcom present a*
proposal that delivers superior value and sufficiently protects downside
risk to you, we will pursue a sale. Thus far, Broadcom has done neither.

19 218. Each of Defendants’ statements set forth in ¶¶ 216-217 was materially
20 false or misleading when made, or omitted material facts necessary to make the
21 statements made not misleading, because:

- 22 • Defendants’ statements misled investors to believe that Qualcomm was
23 willing to engage constructively with Broadcom’s offer, and that Broadcom’s
24 actions (or lack thereof) were the main reason a negotiated solution had not been
25 reached, when behind the scenes it was working to ensure that the deal with
26 Broadcom would never happen.
- 27 • Defendants’ statements that price was a major barrier to a negotiated
28 transaction and that “should Broadcom present a proposal that delivers superior

1 value and sufficiently protects downside risk to you, we will pursue a sale,”
 2 misled investors to believe that the Company was willing to engage at the right
 3 price when, in fact, it was actively attempting to kill the deal regardless of price.

4 • By generically referencing regulatory risks that could delay or impact the
 5 deal and focusing on antitrust concerns while withholding the fact that
 6 Qualcomm had taken affirmative steps to prevent regulatory approval by filing
 7 a unilateral voluntary notice with CFIUS before Broadcom could redomicile to
 8 the U.S., Defendants misled investors about the true risks associated with the
 9 deal.

10 219. On February 22, 2018, Qualcomm shared with its stockholders an article
 11 published in the Competition Policy International by former senior antitrust enforcers
 12 and leading antitrust experts from China, Korea, the European Union, and the United
 13 States on the significant antitrust risks posed by Broadcom’s proposed takeover of
 14 Qualcomm.

15 220. On February 22, 2018, Qualcomm issued a press release entitled
 16 ***FORMER SENIOR GOVERNMENT OFFICIALS AND LEADING ANTITRUST***
 17 ***EXPERTS FROM AROUND THE WORLD DESCRIBE THE ‘MATERIAL***
 18 ***RISKS’ ASSOCIATED WITH BROADCOM’S EFFORT TO ACQUIRE***
 19 ***QUALCOMM***, filed with the SEC on Schedule 14A, which stated,

20 ***Qualcomm Incorporated (NASDAQ: QCOM) (“Qualcomm”) today***
 21 ***shared with its stockholders an article published in the Competition***
 22 ***Policy International by former senior antitrust enforcers and leading***
 23 ***antitrust experts from China, Korea, the European Union, and the***
 24 ***United States (“the experts”) on the significant antitrust risks posed by***
 25 ***Broadcom’s proposed takeover of Qualcomm.***

26 The press release went on to highlight Qualcomm’s key “*takeaways*” from the article,
 27 including:

28 ○ ***Any combination between Broadcom and Qualcomm faces***
 significant antitrust risks due to their competitive positions in WiFi
 and RFFE products (among others), the potential complex and
 difficult divestiture process with regards to separating the

1 *businesses and finding an acceptable buyer, and the potential for*
 2 *anti-trust agencies demanding significant restrictions on*
 3 *Broadcom’s post-merger licensing and distribution practices.*

- 4 ○ *There are countless examples of regulators imposing substantial*
 5 *conduct remedies and the real risk posed by these conduct remedies*
 6 *generally requires deal protection for the target and its shareholders*
 7 *– such as a “hell-or-high-water clause” – to ensure that “a buyer*
 8 *cannot walk away from the deal at any point during or after a*
 9 *protracted regulatory review period, particularly given the likely*
 10 *disruption caused to targets (here, Qualcomm) during such a review*
 11 *period.”*
- 12 ○ *Based on similar complex cross-border deals, the expected*
 13 *regulatory approval process is likely to take 18+ months and may*
 14 *require significant and material divestitures and/or conduct*
 15 *remedies.*
- 16 ○ *The proposed limitations on Qualcomm by Broadcom on how*
 17 *Qualcomm can operate its business during a potential regulatory*
 18 *review period likely violates antitrust “gun-jumping” rules, and*
 19 *could be subject to an investigation by the U.S. FTC.*

20 221. Each of Defendants’ statements set forth in ¶ 220 was materially false or
 21 misleading when made, or omitted material facts necessary to make the statements
 22 made not misleading, because: by generically referencing regulatory risks that could
 23 delay or impact the deal and focusing on antitrust concerns, all while withholding the
 24 fact that Qualcomm had taken affirmative steps to prevent regulatory approval by filing
 25 a unilateral voluntary notice with CFIUS before Broadcom could redomicile to the
 26 U.S., Defendants misled investors about the true risks associated with the deal.

27 222. The following day, February 23, 2018, Qualcomm and Broadcom again
 28 met to discuss Broadcom’s proposal.

223. On February 26, 2018, Qualcomm issued a press release entitled
Qualcomm Proposes Further Engagement with Broadcom on Price and Terms of
Possible Transaction Delivers Revised Merger Agreement That Would Provide
Comprehensive Path Forward on Regulatory and Closing Certainty for Qualcomm
Stockholders Suggests Path for Continued Engagement and Calls on Broadcom to

1 *Engage in Mutual Due Diligence and Price Negotiation*, filed with the SEC on
2 Schedule 14A, which stated:

3 *Qualcomm Incorporated (NASDAQ: QCOM) today announced that*
4 *Chairman of the Board Dr. Paul E. Jacobs sent a letter on behalf of*
5 *the Qualcomm Board of Directors to Hock Tan, Chief Executive*
6 *Officer of Broadcom Limited (NASDAQ: AVGO), providing*
7 *Qualcomm’s response to the second meeting between the two*
8 *companies, which was held on February 23.*

9 *The Qualcomm Board believes the meeting led to further progress*
10 *toward a possible negotiated transaction on key issues other than price.*
11 *The Board authorized providing Broadcom with a mark-up of*
12 *Broadcom’s previously released draft merger agreement that, if agreed*
13 *to by Broadcom, would resolve all issues between the two companies*
14 *other than price.*

15 *Broadcom reiterated in the February 23 meeting that its reduced*
16 *\$79.00 per share proposal is its best and final proposal. The Qualcomm*
17 *Board is unanimous in its view that each of Broadcom’s proposals,*
18 *including its prior \$82.00 per share proposal, materially undervalues*
19 *Qualcomm, and the Board encourages Broadcom to enter into mutual*
20 *due diligence and price negotiations.*

21 224. The press release included a copy of Defendant Jacobs’ letter to
22 Broadcom CEO Tan. In the letter, Jacobs wrote:

23 *As we are all aware, a combination of Broadcom and Qualcomm would*
24 *represent the largest technology transaction in history and one of the*
25 *largest M&A transactions overall. This represents uncharted territory*
26 *and our Board and management are taking great care to incorporate*
27 *an appropriate level of protections for Qualcomm stockholders in a*
28 *potential transaction with Broadcom.*

We have briefed the full Board on the meeting and the current state of
our discussions. As they have done at previous Board meetings, our
independent directors also met separately in an executive session,
along with the Board’s financial and legal advisors.

We appreciate the movement you have made from the draft merger
agreement you publicly released on February 9. We have attached our
mark-up of that document, which is intended to provide a
comprehensive path forward on regulatory and deal certainty issues.
The path forward does not require a “hell or high water” commitment
on the regulatory front, but still provides the appropriate level of
protection to Qualcomm stockholders commensurate with the high
degree of regulatory risk associated with this potential transaction. If

1 *acceptable to Broadcom, this would resolve all issues between the two*
2 *companies other than price.*

3 *While we have made progress on regulatory and other deal certainty*
4 *issues, you have continued to insist that your current \$79.00 per share*
5 *proposal is your best and final proposal. For the reasons we have stated*
6 *publicly to our stockholders, and privately to you in our meetings, the*
7 *Qualcomm Board continues to be of the unanimous belief that each of*
8 *your proposals, including your prior \$82.00 per share proposal,*
9 *materially undervalues Qualcomm. This conclusion is based on*
10 *substantial and thorough analysis.*

11 *.....*

12 *It is the Board’s responsibility to critically analyze all of the external*
13 *and internal information available to us, challenge assumptions and*
14 *utilize our collective experience to arrive at thoughtful and independent*
15 *conclusions on the future value of Qualcomm. With the support of*
16 *management and our external advisors, we have concluded*
17 *unanimously that an acquisition price materially higher than any of*
18 *Broadcom’s proposals is warranted based upon our evaluation of*
19 *Qualcomm’s near-term prospects and the risk-adjusted present value*
20 *of our long-term forecasts.*

21 *.....*

22 *In our previous meeting on February 14, you agreed to drop your prior*
23 *objection to divesting any Broadcom (as opposed to only Qualcomm)*
24 *businesses and assets as a way to facilitate regulatory approval.*

25 *However, to reduce regulatory risk to an appropriate level, we made*
26 *two additional proposals in our February 23 meeting:*

- 27 *• We asked Broadcom to agree to any conduct remedies and other*
28 *remedies that may be imposed by regulators that would not have a*
 material adverse effect on the combined company (after
 divestitures).
- We proposed a reverse termination fee of 9% of enterprise value,*
 payable if a potential transaction is terminated other than due to a
 breach of the agreement by Qualcomm or our failure to obtain
 stockholder approval. . . .

We believe these commitments and our other changes to the merger
 agreement would provide acceptable risk protection to Qualcomm
 stockholders, and we therefore would no longer ask Broadcom to make
 a “hell or high water” commitment.”

.....

1 *The Qualcomm Board and management team are committed to*
2 *exploring fully with Broadcom whether a negotiated transaction that is*
3 *in the best interests of Qualcomm stockholders is achievable.*
4 *Accordingly, we propose the following next steps:*

5 1. *Finalize non-price terms: We welcome your review of the mark-*
6 *up of the merger agreement we have provided you and propose that we*
7 *or our representatives meet to address any remaining issues and*
8 *finalize the language.*

9 2. *Execute NDA and begin bilateral due diligence: Mutual due*
10 *diligence will inform our discussions on price. We appreciate that we*
11 *have differences in our views on value and that ours is based upon*
12 *significantly more information than the public data you now have at*
13 *your disposal. Therefore, we propose entering into a non-disclosure*
14 *agreement and beginning bilateral due diligence, given the large*
15 *amount of Broadcom stock included in your proposal and to provide*
16 *more granular details on our views on value. We are delivering a*
17 *proposed NDA to your counsel.*

18 3. *Agree on approach to provide information on licensing business:*
19 *You have repeatedly declined to disclose your plan to change*
20 *Qualcomm's licensing business because you think such disclosure*
21 *could pose issues under antitrust laws. Although we believe Broadcom*
22 *is free to disclose this information, we are willing to jointly select a law*
23 *firm with antitrust expertise that you would fully brief on your licensing*
24 *plans. This firm would then provide Qualcomm the information which*
25 *it considers permissible under antitrust law.*

26 4. *Arrange meeting focused on price: Having now addressed the*
27 *regulatory and certainty issues in principle, we propose arranging a*
28 *meeting – as soon as mutually convenient for both parties – focused on*
 price, should Broadcom be willing to engage on the topic.

Tom Horton, in his capacity as Presiding Director (lead independent
 Director), will continue to lead Qualcomm in negotiations with
 Broadcom, with the goal of determining whether there is a mutually
 beneficial transaction to be done between our two companies. We look
 forward to your reply.

 Qualcomm also attached to the press release its proposed markup of Broadcom's
 proposed agreement and plan of merger.

 225. Qualcomm filed a same-day Schedule 14A with the SEC including an
 email from Defendant Mollenkopf to Qualcomm's employees. In the email,
 Mollenkopf stated:

1 *Last Friday, members of Qualcomm’s Board and management team*
2 *met again with representatives from Broadcom to discuss Broadcom’s*
3 *takeover proposal. After Friday’s meeting, Qualcomm’s Board,*
4 *consistent with its commitment and obligation to explore all*
opportunities to maximize value for stockholders, discussed the
meeting and the current state of our engagement with Broadcom.

5 226. Also on February 26, Qualcomm issued a press release entitled
6 *Qualcomm Calls on Broadcom to Stop Misleading Stockholders and Negotiate in*
7 *Good Faith*, filed with the SEC on Schedule 14A, which responded to a same-day
8 Broadcom press release as follows:

9 *Qualcomm Incorporated (NASDAQ: QCOM) today responded to*
10 *Broadcom Limited’s (NASDAQ: AVGO) misleading comments*
11 *regarding Qualcomm’s engagement with Broadcom in connection with*
its proposal to acquire Qualcomm:

12 *“The latest statement issued by Broadcom is disingenuous and clearly*
13 *intended to create a false impression about Qualcomm’s level of*
14 *engagement. In fact, Qualcomm has repeatedly attempted to engage*
15 *with Broadcom on issues including price, including at meetings on*
February 14 and February 23. In each of those meetings, Broadcom
has refused to engage on price.

16 *Earlier today, Qualcomm made a comprehensive proposal that*
17 *addresses regulatory and other merger agreement issues in order to*
18 *clear the way for a price discussion with Broadcom. The ball is in*
19 *Broadcom’s court to let us know whether it is willing to engage with*
20 *us. Qualcomm’s Board remains unanimous in its view that*
21 *Broadcom’s current offer of \$79.00 per share, as well as the previous*
22 *offer of \$82.00 per share, materially undervalues the company.*

23 *Broadcom’s statements about Qualcomm considering moving the date*
24 *of its annual meeting are false. Qualcomm has no intention of delaying*
25 *the annual meeting and made that clear to Broadcom during our*
26 *February 23 meeting.”*

27 227. The following day, February 27, 2018, Qualcomm provided Broadcom a
28 proposed non-disclosure agreement, which it filed with the SEC on Schedule 14A.

228. That same day, Qualcomm filed with the SEC on Schedule 14A a White
Proxy Card vote reminder, which stated, *“Qualcomm’s Board of Directors is*
committed to evaluating ALL opportunities to maximize value for stockholders –
whether through continued execution of our growth strategy or by selling the

1 ***Company. To that end, we are open to constructively engaging with Broadcom and***
2 ***will continue to act in your best interests.”***

3 229. Each of Defendants’ statements set forth in ¶¶ 223-226 and 228 was
4 materially false or misleading when made, or omitted material facts necessary to make
5 the statements made not misleading, because:

6 • Defendants’ statements misled investors to believe that Qualcomm was
7 willing to engage constructively with Broadcom’s offer, and that Broadcom’s
8 actions (or lack thereof) were the main reason a negotiated solution had not been
9 reached, when behind the scenes it was working to ensure that the deal with
10 Broadcom would never happen.

11 • Defendants’ statements that price was a major barrier to a negotiated
12 transaction misled investors to believe that the Company was willing to engage
13 at the right price when, in fact, it was actively attempting to kill the deal
14 regardless of price.

15 • By generically referencing regulatory risks that could delay or impact the
16 deal and focusing on antitrust concerns while withholding the fact that
17 Qualcomm had taken affirmative steps to prevent regulatory approval by filing
18 a unilateral voluntary notice with CFIUS before Broadcom could redomicile to
19 the U.S., Defendants misled investors about the true risks associated with the
20 deal.

21 • Qualcomm’s statement that it “has no intention of delaying the annual
22 meeting” was misleading, given that it had asked CFIUS to stop the vote from
23 occurring altogether.

24 230. In a Schedule 14A filed with the SEC on March 1, 2018, Qualcomm
25 included a same-day letter from the Board to the Company’s shareholders. The letter
26 included the following statements:

1 ***Qualcomm’s Board remains unanimous in its view that Broadcom’s***
 2 ***current offer of \$79.00 per share, as well as the previous offer of \$82.00***
 3 ***per share, materially undervalues the company. Similarly, Broadcom’s***
 4 ***initial offer of \$70.00 per share was so low that it did not merit***
 5 ***engagement. We determined it was in the best interests of stockholders***
 6 ***to wait for a substantially improved offer – which after several months***
 7 ***did eventually come on February 5. The Board undertook a thorough***
 8 ***and in-depth process in reviewing the offers and did so through the lens***
 9 ***of maximizing long-term stockholder value. . . . Since evaluating and***
 10 ***subsequently rejecting the \$82 per share offer on February 8,***
 11 ***Qualcomm has repeatedly and genuinely attempted to engage with***
 12 ***Broadcom on issues including price, regulatory and other closing***
 13 ***certainties, including most recently at meetings on February 14 and***
 14 ***February 23. In each of those meetings, Broadcom refused to engage***
 15 ***in good faith. It instead reiterated its “best and final” stance which it***
 16 ***established prior to our first meeting, despite our attempts to find a path***
 17 ***to a deal that makes sense for Qualcomm stockholders. Broadcom’s***
 18 ***refusal to outline its proposal and the future direction of Qualcomm’s***
 19 ***licensing business also raises significant issues from a value and***
 20 ***regulatory perspective.***

21 ***All three items – price, closing certainty and the licensing business –***
 22 ***are critical to the Board’s evaluation of Broadcom’s proposal, and***
 23 ***without a meaningful discussion or an agreement on these items, the***
 24 ***Qualcomm Board believes it is not in the best interest of Qualcomm’s***
 25 ***stockholders to elect Broadcom’s nominees. The Qualcomm Board of***
 26 ***Directors remains ready to engage with Broadcom on these issues both***
 27 ***before and after the March 6 stockholder meeting.***

28 231. Each of Defendants’ statements set forth in ¶ 230 was materially false or misleading when made, or omitted material facts necessary to make the statements made not misleading, because:

- Defendants’ statements misled investors to believe that Qualcomm was willing to engage constructively with Broadcom’s offer, and that Broadcom’s actions (or lack thereof) were the main reason a negotiated solution had not been reached, when behind the scenes it was working to ensure that the deal with Broadcom would never happen.
- Defendants’ statements that price was a major barrier to a negotiated transaction misled investors to believe that the Company was willing to engage

1 at the right price when, in fact, it was actively attempting to kill the deal
2 regardless of price.

3 • By generically referencing regulatory risks that could delay or impact the
4 deal and focusing on antitrust concerns while withholding the fact that
5 Qualcomm had taken affirmative steps to prevent regulatory approval by filing
6 a unilateral voluntary notice with CFIUS before Broadcom could redomicile to
7 the U.S., Defendants misled investors about the true risks associated with the
8 deal.

9 VI. ADDITIONAL SCIENTER ALLEGATIONS

10 232. As alleged herein, Defendants knew or recklessly disregarded that the
11 public documents and statements issued or disseminated in the name of the Company
12 were materially false and misleading and that such statements or documents would be
13 issued or disseminated to the investing public. Defendants, by virtue of: (i) their receipt
14 of information reflecting the true facts regarding Qualcomm's intentions to block
15 Broadcom's bid through CFIUS; (ii) their control over, and/or receipt and/or
16 modification of Qualcomm's allegedly materially misleading statements and
17 omissions; and (iii) their senior leadership roles at the Company, which made them
18 privy to confidential information concerning Qualcomm and its intentions and efforts
19 with regard to the Broadcom proposal, each participated in the fraudulent scheme
20 alleged herein.

21 A. Defendants Were Each Deeply Engaged in Merger Negotiations and 22 Qualcomm's Response to the Broadcom Proposal, Such That Each 23 Was Aware of and Involved in Qualcomm's Unilateral Request for CFIUS Review and Its Purpose

24 233. As set forth in ¶¶ 38-42, and as further detailed below, each Individual
25 Defendant was a senior member of leadership at Qualcomm and was intimately
26 familiar with the details of Broadcom's merger proposals as well as a participant in
27 Qualcomm's discussions regarding actions taken in response to that proposal. Indeed,
28 not only was the proposed takeover of fundamental importance to the Company during

1 the Class Period, it was also set to be the “biggest technology acquisition ever” (¶ 57).
2 Due to the importance of the potential acquisition to the very existence of Qualcomm,
3 as well as each Individual Defendant’s integral involvement in the Company’s
4 purportedly “extensive” discussion and “rigorous and thorough” review of Broadcom’s
5 proposals – including with its external legal and financial advisors – it can readily be
6 inferred that each knew of Qualcomm’s January 2018 decision to unilaterally contact
7 CFIUS about Broadcom’s proxy contest and to seek CFIUS review of the deal.

8 234. As set forth below, based on their central involvement in the evaluation,
9 negotiation, and rejection of Broadcom’s proposals, it is reasonable to infer each
10 Individual Defendant was aware of (1) Qualcomm’s decision to lobby for CFIUS
11 review and rejection of Broadcom’s proposed takeover, and (2) that they had not told
12 investors the entire truth in making the public statements alleged in *supra* Section V.
13 If the Individual Defendants were not direct participants in Qualcomm’s secret,
14 unilateral, and pre-deal submission to CFIUS on January 29, 2018, as well as in the
15 numerous follow-up phone calls, emails, and meetings with Qualcomm representatives
16 over the course of the following month, then at a minimum, they directly supervised
17 the employees who were. As direct supervisors of the employees who participated in
18 Qualcomm’s secret, unilateral, and pre-deal submission to CFIUS, the Individual
19 Defendants either knew about Qualcomm’s aggressive attempts to obtain CFIUS
20 review of Broadcom’s proxy contest, or were deliberately reckless in not knowing
21 those efforts.

22 1. Mollenkopf

23 235. As the Company’s CEO, Qualcomm’s bylaws conferred Mollenkopf with
24 responsibility for the “general supervision, direction and control of the business and
25 the officers of the Corporation.” It is thus not surprising that Mollenkopf was one of
26 the first individuals approached by Broadcom’s representative about a potential
27 combination between Broadcom and Qualcomm, attending meetings with Broadcom
28 CEO Tan and director Kenneth Hao on August 4, 2016 and again on September 6,

1 2016. In early 2017, Tan called Mollenkopf directly to again express Broadcom's
2 interest in merging with Qualcomm, a matter Mollenkopf initially dismissed but later
3 stated he would consider. On November 5, 2017, Tan reached out to Mollenkopf to
4 inform Qualcomm of Broadcom's intent to make a bid for Qualcomm. Tan called and
5 left a voicemail and texted Mollenkopf on November 13, 2017, to further discuss
6 Broadcom's proposal. Mollenkopf received additional correspondence regarding the
7 merger proposal directly from Tan on December 4, 2017, and again met with
8 Broadcom's representatives on February 14, 2018, and February 23, 2018, for further
9 discussion of Broadcom's proposal.

10 236. Further, as a member of the Board of Directors, Mollenkopf received each
11 of Broadcom's official communications concerning its attempt to acquire Qualcomm,
12 was present at the Board meetings in which Qualcomm's response was discussed (there
13 were at least nine such by February 9, 2018), and voted to reject each of Broadcom's
14 offers. As such, Qualcomm could not have unilaterally initiated the secret CFIUS
15 review – designed to operate as a “poison pill” to prevent the merger – without
16 Mollenkopf's knowledge and approval.

17 237. Mollenkopf was also directly involved in discussions with CFIUS
18 members. For example, on February 20, 2018, the same day that Qualcomm's Board
19 told investors that “[w]e remain open to continued discussions if a suitable proposal is
20 presented,” Mollenkopf met with CFIUS Chair and Treasury Secretary Steven
21 Mnuchin.

22 238. In fiscal year 2017, Mollenkopf received approximately \$11.6 million in
23 his role as CEO.

24 **2. Rosenberg**

25 239. Defendant Rosenberg was Qualcomm's Executive Vice President-
26 General Counsel during the Class Period. In that role, Rosenberg was “responsible for
27 overseeing Qualcomm's worldwide legal affairs including litigation, intellectual
28 property and corporate matters. Qualcomm's Government Affairs, Internal Audit and

1 Compliance organizations also report[ed] to him.” Rosenberg would thus have had
2 direct insight into – if not ultimate approval over – the Company’s hiring of external
3 legal counsel to assist with the Broadcom proposal and on CFIUS issues and
4 knowledge of the information provided to CFIUS about the Broadcom proposal.

5 240. Rosenberg was also the Corporate Secretary, and in such capacity
6 attended the Company’s Board meetings, including those during which the Broadcom
7 proposals were discussed. In addition to attending relevant Board meetings, Rosenberg
8 was also a Qualcomm representative at a meeting with Broadcom to discuss a potential
9 transaction on February 14, 2018. Accordingly, Qualcomm could not have unilaterally
10 initiated the secret CFIUS review – designed to operate as a “poison pill” to prevent
11 the merger – without Rosenberg’s knowledge and approval.

12 3. Jacobs

13 241. Defendant Jacobs was Qualcomm’s Executive Chairman and Chairman
14 of the Board during the Class Period, as well as the Company’s former CEO and the
15 son of its co-founder, Irwin Jacobs. As Executive Chairman, Jacobs presided over
16 Board meetings but also served in an executive management capacity. During fiscal
17 year 2017, Jacobs received approximately \$9.3 million in compensation from
18 Qualcomm.

19 242. Not only did Jacobs speak for the Board in communications with
20 Broadcom and Hock Tan about a potential acquisition (*e.g.*, ¶¶ 137, 157-159), he also
21 was one of the Qualcomm representatives at the in-person meetings with Broadcom on
22 February 14, 2018, and February 23, 2018. Given Jacobs’ role at the Company in
23 general and in the merger negotiations in particular, Qualcomm could not have
24 unilaterally initiated the secret CFIUS review – designed to operate as a “poison pill”
25 to prevent the merger – without his knowledge and approval.

26 4. Horton

27 243. Defendant Horton was the Presiding/Lead Independent Director at
28 Qualcomm during the Class Period, as well as a member of the Board’s Governance

1 Committee. In addition to attending the Board meetings at which Broadcom’s
2 proposals were discussed and responses evaluated, Horton’s role as Presiding Director
3 required him to act as the principal liaison between the independent directors, the
4 Chairman, and the Chief Executive Officer; collaborate with the Chairman and the
5 Chief Executive Officer, as well as independent directors, in developing agendas for
6 Board meetings; and coordinate with independent directors and management to affirm
7 that appropriate briefing materials were provided to directors sufficiently in advance
8 of Board meetings to allow for proper preparation and participation in meetings.

9 244. As stated in Defendant Jacobs’ February 26, 2018 letter to Hock Tan,
10 Horton was responsible for leading Qualcomm in negotiations with Broadcom. For
11 example, Horton represented Qualcomm at meetings with Broadcom to discuss a
12 potential transaction on February 14, 2018, and February 23, 2018, in addition to
13 attending at least nine Board meetings addressing Broadcom’s proposals prior to that
14 point. The following week, on February 20, 2018, Horton held himself out as fully
15 knowledgeable about the deal, speaking publicly about Broadcom’s proposals on an
16 episode of CNBC’s “Squawk on the Street” and asserting that “regulatory certainty has
17 not been sufficiently met.” Given Horton’s role position as lead negotiator in
18 negotiations with Broadcom, Qualcomm could not have unilaterally initiated the secret
19 CFIUS review – designed to operate as a “poison pill” to prevent the merger – without
20 his knowledge and approval.

21 **B. The Unprecedented Nature of Defendants’ Actions Supports an**
22 **Inference of Scienter**

23 245. Defendants understood that secret, unilateral, pre-deal requests for CFIUS
24 review of a proposed transaction were, as a former CFIUS member later put it,
25 “Halley’s Comet unusual.” As explained in ¶¶ 103-113, typically both parties to a deal
26 seek CFIUS approval jointly, and only after they have reached a binding agreement.
27 In Qualcomm’s case, not only did it covertly file for CFIUS review and argue *against*
28 approval of any transaction, but it also hid that fact from Broadcom *throughout the*

1 *companies' negotiations*. It was not until CFIUS revealed that Qualcomm had
2 initiated the review in its March 5, 2018 Interim Order that an outraged Broadcom
3 became aware that Qualcomm intended to use CFIUS review as a *de facto* poison pill.

4 246. Qualcomm's unilateral initiation of CFIUS review was also highly
5 unusual in that it was done before the parties even had a deal agreement for the
6 Committee to review. The move was so unprecedented, in fact, that The Wall Street
7 Journal reported on March 1, 2018, that members of CFIUS were debating internally
8 whether or not they even had the *right* to subject the proposed transaction to scrutiny
9 before a deal was officially reached.⁸ Further highlighting the rarity of such actions,
10 Covington & Burling's website now touts media coverage identifying Qualcomm's
11 early and defensive CFIUS filing as "an 'extraordinary intervention' using 'an unusual
12 strategy.'"

13 247. Because of the novelty of Qualcomm's use of CFIUS review as a takeover
14 defense, investors had no expectation that Defendants would take such an action, and
15 Defendants knew as much when making their materially misleading statements alleged
16 in *supra* Section IV. Defendants knew, for example, when repeatedly making
17 statements suggesting that they were "open" to reaching an agreement with Broadcom
18 (¶¶ 212, 214, 217, 228), that they had in fact lobbied politicians and submitted detailed
19 argument to CFIUS urging it to halt the deal on national security grounds. Such actions
20 directly contradicted Defendants' repeated affirmations to Qualcomm shareholders
21 throughout the Class Period that they were negotiating in good faith with Broadcom to
22 determine if a deal could be reached at a fair price.

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24
25
26 ⁸ See Kate O'Keefe, Ted Greenwald, Stu Woo, *Broadcom's Bid for Qualcomm*
27 *Ignites Debate Within Administration*, The Wall Street Journal (Mar. 1, 2018,
28 4:12 PM), <https://www.wsj.com/articles/broadcoms-bid-for-qualcomm-ignites-debate-within-administration-1519938656>.

1 **C. Defendants Were Motivated to Conceal Qualcomm’s Unilateral Pre-**
 2 **Deal CFIUS Submission**

3 **1. Defendants Knew They Would Lose a Proxy Contest to**
 4 **Broadcom**

5 248. Defendants desperately did not want Broadcom to acquire Qualcomm, but
 6 with no other poison pill to bring to bear, knew that they would lose control of the
 7 Company if the Broadcom proxy contest were allowed to proceed to a vote. The
 8 Company had performed poorly over the past several years, with net income plunging
 9 57% in fiscal year 2017, high-profile lawsuits with Apple, Samsung, and government
 10 investigations in several countries regarding its allegedly illegal business practices and
 11 antitrust violations driving up costs and generating negative publicity and billions of
 12 dollars in fines. ¶¶ 2-3, 45-51. Media and market analysts reported concerns with
 13 current Qualcomm performance and leadership⁹ and skepticism that Qualcomm
 14 management could fend off a slate of qualified Broadcom directors, *e.g.*:

- 15 • *Morningstar Equity Research, November 3, 2017*: “We view
 16 Qualcomm’s stewardship of shareholder capital as Standard. . . .
 17 Qualcomm’s ability to navigate the numerous regulatory challenges has
 18 had its share of ups and downs under Mollenkopf. . . . Additional inquiries,
 19 especially in South Korea and the U.S., also lead us to question whether
 20 management can appropriately steer Qualcomm through troubled waters.”
- 21 • *Bloomberg, November 3, 2017 (quoting Sanford Bernstein & Co.)*: “A
 22 change of management at Qualcomm might help resolve the dispute with
 23 Apple more quickly, and thereby make Qualcomm’s licensing and chip
 24 businesses more valuable[.]”
- 25 • *RBC Capital Markets, November 13, 2017*: “[C]an QCOM management
 26 that has overseen severe underperformance and been unable to resolve
 27 key disputes turn the ship or do shareholders put faith in Hock and take
 28 the exit? At the right price (\$80?) we think investors would choose the
 AVGO option.”

25 ⁹ As reported by The New York Times, Defendant Jacobs in particular was
 26 associated with some of Qualcomm’s largest failures, “including a plan for broadcast
 27 cellular technology called Mediaflo and a technology for mobile-device displays called
 28 Mirasol.” Don Clark, *Qualcomm’s Ex-Chairman to Leave Amid Plans to Buy
 Company*, The New York Times (Mar. 16, 2018), [https://www.nytimes.com/2018/
 03/16/technology/qualcomm-taking-company-private.html](https://www.nytimes.com/2018/03/16/technology/qualcomm-taking-company-private.html).

- 1 • *William Blair, December 11, 2017*: “In our opinion, Broadcom is
2 winning the battle to get shareholders on its side by controlling the
3 narrative and portraying Qualcomm as unwilling to negotiate. . . . We
4 reiterate our belief that Broadcom will ultimately be successful in its
5 pursuit of Qualcomm.”

6 249. At the same time, Broadcom’s proposal was attractive to many investors,
7 as demonstrated by the 12.71% bump in Qualcomm’s stock price when Bloomberg
8 reported rumors of a potential Broadcom bid on November 3, 2017. Indeed,
9 Broadcom’s original proposal represented a price premium for shareholders of almost
10 30%, an amount that increased to 44% by the time Broadcom issued its final proposal
11 for \$79 per share. Broadcom had also been extremely successful over the preceding
12 years, increasing its stock price approximately 350%; it thus presented an attractive
13 alternative to Qualcomm’s continued lackluster performance.

14 250. Then, as the March 6, 2018 shareholder meeting approached, Defendants
15 received still further indication that Broadcom’s bid was likely to succeed. Shareholder
16 advisory services Glass Lewis and ISS recommended that investors elect the majority,
17 if not all, of Broadcom’s slate of directors. Early shareholder vote totals indicated that
18 stockholders were likely to vote for a majority of Broadcom’s nominees, and
19 TechCrunch reported that Mollenkopf and Jacobs received the *fewest* early votes of
20 any of the director nominees. ¶¶ 191-193.

21 251. Still, Defendants knew that if shareholders found out they were attempting
22 to shut down the popular and potentially lucrative deal, the proxy contest would be
23 even more likely to go Broadcom’s way. Management sponsorship (or initiation) of
24 takeover defenses is important to and disfavored by investors, as such defenses are
25 often designed to entrench current management at the expense of investors’
26 preferences. And as discussed in *infra* Section VII.A, research has shown that the
27 existence of management-sponsored takeover defenses at a company is correlated with
28 lower shareholder value. Defendants knew the issue was important to investors from
their experience at Qualcomm and other publicly-traded companies: first, Qualcomm’s

1 previous takeover defense mechanism – its Rights Agreement – was not renewed in
 2 2015 as part of shareholder-negotiated reforms, while all of the Defendants held
 3 prominent management roles; and second, the SEC and Delaware law (under which
 4 Qualcomm is incorporated) have also long recognized that full disclosure of the
 5 purposes and effects of defensive measures is of actual significance to shareholders.

6 252. As Dow Jones Institutional News explained on March 6, 2018, upon
 7 discovery that Qualcomm had filed for CFIUS review, “this latest gambit in
 8 Broadcom’s hostile bid for Qualcomm could end up creating more votes to change
 9 directors and undermining the credibility of Qualcomm management[.]” (¶ 177).¹⁰ In
 10 sum, Defendants understood that with no traditional “poison pill” available to
 11 Qualcomm to prevent a takeover, they needed a creative approach to ensure the
 12 imminent proxy contest did not happen – and they could not let shareholders find out
 13 about their maneuvering behind closed doors.

14 **2. Defendants Knew That Initiation of CFIUS Review Would**
 15 **Delay a Vote on Broadcom’s Director Nominations, If Not**
 16 **Halt the Deal Altogether**

17 253. Defendants understood that initiating a pre-acquisition agreement CFIUS
 18 review presented their best opportunity to prevent Broadcom’s takeover via proxy
 19 contest. Broadcom had announced an intention to redomicile to the United States in
 20 November 2017, and announced on January 22, 2018, that it expected to complete the
 21 redomiciliation process by May 6, 2018. Once Broadcom completed its
 22 redomiciliation to the United States, there was no guarantee that it would be subject to
 23 CFIUS review at all, as it would no longer be a foreign company. Indeed, Defendants
 24

25 ¹⁰ Of course, this is ultimately what happened when it was revealed that Qualcomm
 26 had filed for CFIUS review. On March 15, 2018, ISS recommended that Qualcomm
 27 shareholders still vote for Broadcom’s slate of directors – even though the deal was
 28 blocked – as a symbolic vote of protest against Qualcomm management’s actions.
 ¶ 194. Ultimately, the majority of Qualcomm’s unopposed incumbent directors failed
 to receive a majority of shareholders’ votes, including Mollenkopf. ¶ 195.

1 knew that the market did not believe that CFIUS was a real risk for this reason; both
2 financial analysts and media outlets were reporting as much. ¶¶ 11-12, 117-123.

3 254. By filing unilaterally and heavily lobbying for CFIUS review, Defendants
4 were able to draw the attention of CFIUS, the Trump administration, and members of
5 Congress to the transaction and ultimately persuade them to block the deal. Defendants
6 were desperate to obtain CFIUS review because they understood that even if CFIUS
7 review did not result in the deal being blocked altogether (their ideal result), CFIUS
8 review could still prevent the Company's stockholder meeting scheduled for March 6,
9 2018 – at which stockholders would decide Broadcom's proxy contest – from going
10 forward. Defendants hoped that with the extra time they might be able to turn
11 shareholder sentiment against a Broadcom deal.

12 255. Further supporting an inference that Defendants purposely sought to use
13 early CFIUS review to block Broadcom's takeover bid is that, less than a day after
14 Qualcomm received CFIUS's March 5 Interim Order delaying the March 6, 2018
15 meeting by 30 days, CFIUS modified its order. Rather than simply postponing the
16 meeting, which would have required Qualcomm to stop accepting and counting proxies
17 and change the date of record for voting shareholders, CFIUS's new order permitted
18 Qualcomm's meeting to be opened, and then adjourned – an alteration that meant that
19 the shareholders permitted to vote would remain the same (*i.e.*, stockholders of record
20 as of January 8, 2018) despite the delayed meeting. This in turn meant that, rather than
21 starting over with additional voters, Qualcomm's incumbent directors would be able to
22 continue their efforts to persuade the same group of shareholders to vote against
23 Broadcom's proposal – effectively buying themselves more time.

24 256. Finally, Covington & Burling LLP, Qualcomm's legal counsel in its
25 CFIUS petition, has *admitted* that Qualcomm hired it to prevent Broadcom's hostile
26 takeover. In an article entitled "Covington Secures Presidential Order Protecting
27 Qualcomm From Hostile Takeover" on the firm's website, the firm touts the fact that
28 "Covington secured a U.S. Presidential order compelling Broadcom Limited to

1 ‘immediately and permanently abandon’ its proposed hostile takeover of its client
 2 Qualcomm, Inc.” Covington & Burling also admits that preventing the Broadcom
 3 takeover had been Qualcomm’s goal in seeking CFIUS review all along, describing the
 4 March 13, 2018 Presidential Order ending Broadcom’s proxy contest as “mark[ing]
 5 *total victory* for Qualcomm *in its bid to remain an independent company.*”

6 257. Covington & Burling’s unqualified admission that Qualcomm intended to
 7 kill the deal from the start stands in dramatic contrast with Defendants’ public
 8 representations during the Class Period that it was, e.g.: “committed to exploring all
 9 options for maximizing shareholder value,” including a Broadcom transaction (¶¶ 137,
 10 203); that Broadcom’s February 5, 2018 proposal “warranted engagement” and was in
 11 fact being considered (e.g., ¶ 206); that as of February 26, 2018, Qualcomm was
 12 willing to propose a draft merger agreement that, “if acceptable to Broadcom . . . would
 13 resolve all issues between the two companies other than price” (¶¶ 157, 224); and that
 14 Defendants had made “repeated[] and genuine[] attempt[s] to engage with Broadcom
 15 on issues including price, regulatory and other closing certainties . . . [and their]
 16 attempts to find a path to a deal” (¶¶ 169, 230).

17 **D. Defendants’ Careful Concealment Supports an Inference of Scienter**

18 258. Defendants knew from their experience with Qualcomm’s previous
 19 Rights Agreement shortly before the Class Period – when each of the Individual
 20 Defendants already held a key position of authority at Qualcomm – what a “poison
 21 pill” was, and that the availability and use of takeover defenses, like their secret,
 22 unilateral, and pre-deal negotiations with CFIUS, would be material to investors. ¶ 46.
 23 Defendants were also aware, given their extensive business experience and history with
 24 acquisitions (see ¶¶ 38-41, 123 n.6), that once a credible takeover bid is announced,
 25 the target company’s stock price is primarily a function of investors’ assessment of the
 26 likelihood of the deal closing. As discussed further in *infra* Section VII.A, actions like
 27 Defendants’ that lower the probability of deal completion (and thus lower the
 28 probability of receiving a takeover offer premium) are critical to stock price and

1 investor decision making. Defendants’ careful concealment of Qualcomm’s initiation
2 of CFIUS review from the market and its deal counterparty, despite that knowledge,
3 supports a reasonable inference that Defendants acted with scienter.

4 259. First, as mentioned above, Defendants failed to inform Broadcom or
5 Qualcomm’s investors at any stage of the parties’ negotiations that it had initiated a
6 pre-deal CFIUS review – a decision presenting a stark contrast to Defendants’ repeated
7 professions that they were negotiating with Broadcom in good faith to see if a fair deal
8 was achievable. As described in *supra* ¶¶ 25 and 172, Broadcom was stunned by the
9 revelation of Qualcomm’s secret, unilateral, and pre-deal submission to CFIUS, stating
10 in a March 5, 2018 press release:

11 Broadcom was informed on Sunday night that on January 29, 2018,
12 Qualcomm secretly filed a voluntary request with CFIUS to initiate an
13 investigation, resulting in a delay of Qualcomm’s Annual Meeting 48
14 hours before it was to take place. This was a ***blatant, desperate act by
Qualcomm to entrench its incumbent board of directors*** and prevent its
15 own stockholders from voting for Broadcom’s independent director
nominees.

16 260. Broadcom’s press release further emphasized that “[it] is ***critical*** that
17 Qualcomm stockholders know that Qualcomm ***did not once mention*** submitting a
18 voluntary notice to CFIUS in any of its interactions with Broadcom to date . . . ***an
19 intentional lack of disclosure – both to Broadcom and to its own stockholders.***” It is
20 notable that in response to Broadcom’s condemnation of Defendants’ secret initiation
21 of CFIUS review, Qualcomm ***did not even attempt*** to refute the allegation. Instead,
22 Qualcomm’s March 5, 2018 press release responding to Broadcom’s statement
23 contained only further misdirection, mischaracterizing Broadcom’s reaction as
24 pretended “surprise” at the existence of CFIUS review (which Broadcom had known
25 about for several weeks) rather than addressing Qualcomm’s concealment of its role in
26 bringing that review about in the first place.

1 261. Second, it is highly suspicious that although Qualcomm reached out to
2 preeminent CFIUS-navigation lawyers Covington & Burling¹¹ in early January 2018,
3 and though Qualcomm prominently disclosed in numerous press releases and proxy
4 solicitation materials¹² that it had consulted with three other nationally-recognized law
5 firms (DLA Piper, Cravath, Swaine & Moore, and Paul Weiss) in connection with the
6 Broadcom proposal, Qualcomm notably did *not* publicly disclose that it was working
7 with Covington & Burling until a firm partner appeared on the CFIUS’s March 5, 2018
8 Interim Order.

9 262. Third, throughout the Class Period, as described in *supra* Section IV, most
10 of Defendants’ statements about the “material” regulatory risks that Broadcom would
11 face in closing an acquisition of Qualcomm were deliberately generic, half-truth
12 statements about the possibility that there *could* be difficulty obtaining regulatory
13 approval of a Broadcom-Qualcomm transaction. The *same day* that Qualcomm
14 submitted a request for CFIUS review, for example, Qualcomm released a video in
15 which Defendants attempted to persuade shareholders to vote against Broadcom’s slate
16 of directors (and by proxy, Broadcom’s hostile takeover) by highlighting the claimed
17 uncertainty that the deal would be permitted to close. ¶¶ 196-199. Mollenkopf told
18 investors that “there are some questions about deal certainty and regulatory approval,”
19 and Rosenberg stated “[t]he Broadcom-proposed acquisition will be subjected to very,
20 very close scrutiny by well over a dozen potential agencies. . . . because of the
21 complexity of the two companies’ businesses, because of the enormous overlap in the
22 two companies’ technologies and businesses, and because of the global nature of our
23 businesses.” *Id.* In a February 9, 2018 investor presentation that Qualcomm filed with
24

25 ¹¹ The firm had received numerous accolades for its CFIUS practice at the time
26 that Qualcomm obtained their services in January 2018.
27 See <https://www.cov.com/en/practices-and-industries/practices/regulatory-and-public-policy/cfius> (last visited May 6, 2020).

28 ¹² See, e.g., Qualcomm press releases dated February 5, 2018, February 8, 2018; Schedule 14(A) filed with the SEC on February 9, 2018, at 19.

1 the SEC, Qualcomm told investors that though “[r]egulatory approval [was] highly
2 uncertain; at least [an] 18 month process” and Broadcom’s initial proposal had “so
3 dramatically undervalued the business and carried such regulatory uncertainty that
4 engagement was not warranted,” its February 5 proposal “while not sufficient, . . .
5 warranted engagement.” ¶¶ 141, 206. These statements gave the market the deliberate
6 impression that Qualcomm was approaching negotiations with open minds and that the
7 improved Broadcom proposal had reduced prior regulatory risk. Nowhere did
8 Qualcomm disclose it was currently engaging in secret, concerted efforts to block the
9 deal through CFIUS.

10 263. Fourth, when Defendants did make specific statements regarding the
11 regulatory risks prophesied, they consistently misdirected investors (and Broadcom) to
12 antitrust concerns, *not* CFIUS approval. In a February 6, 2018 release filed on
13 Schedule 14A with the SEC entitled “*Qualcomm Sets the Record Straight on*
14 *Regulatory Challenges Faced By Broadcom*,” Qualcomm discussed the regulatory
15 risks associated with the potential transaction at length. The release gave only a
16 passing mention to “potentially serious national security concerns,” and addressed
17 CFIUS solely in the context of what Qualcomm presented as the real regulatory hurdle
18 – antitrust laws. According to Qualcomm, Broadcom would likely not be able to satisfy
19 antitrust regulators by divesting assets from a combined Qualcomm-Broadcom because
20 likely buyers would be foreign, and CFIUS would need to approve the entity that
21 Broadcom was selling to. Qualcomm notably omitted any mention that CFIUS was
22 already reviewing the potential transaction in its release – which even included a
23 section tailor-made for such a disclosure titled, “What is next from a regulatory
24 standpoint?” This was just one of many times Qualcomm emphasized antitrust
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1 concerns as the basis for its assertion that a Broadcom acquisition would be unable to
2 timely obtain the necessary approvals, if at all.¹³

3 264. In sum, Defendants made a series of carefully calculated decisions to
4 present *some* aspects of the regulatory risk a Broadcom acquisition faced in arguing to
5 shareholders that they should vote for Qualcomm's slate of incumbent directors, all the
6 while knowing that regulatory approval and possible takeover defenses were material
7 considerations in shareholders' evaluation of the proposed deal. They deliberately
8 disclosed *some* participants in its response to Broadcom's proposals – all the while
9 knowing that Qualcomm had in fact sought out highly experienced CFIUS counsel and
10 taken affirmative steps to ensure that stringent national security review *would* be
11 undertaken. Defendants, while insisting they were open to reaching a deal with
12 Broadcom, withheld from both investors and Broadcom's negotiation partner that
13 Qualcomm had in fact taken an unprecedented step to shut the door on the possibility
14 of any transaction with Broadcom closing. Accordingly, Defendants knew, or were at
15 a minimum deliberately reckless to the fact, that they were misleading investors when
16 they spoke of their openness to the transaction under the right price and conditions or
17 the *possibility* that any deal could be reviewed or delayed, and that they had not
18 provided material facts necessary for investors to understand the actual likelihood a
19 deal would be able to obtain regulatory approvals.

20 VII. LOSS CAUSATION/ECONOMIC LOSS

21 265. Defendants' alleged unlawful conduct caused the losses incurred by
22 Plaintiffs and the Class. The market for Qualcomm's common stock was open, well-
23 developed, and efficient at all relevant times. Throughout the Class Period,
24 Qualcomm's common stock traded at artificially inflated prices as a direct result of

25
26 ¹³ On February 22, 2018, for example, Qualcomm issued a press release titled,
27 "*Former Senior Government Officials and Leading Antitrust Experts from Around the*
28 *World Describe the 'Material Risks' Associated with Broadcom's Effort to Acquire*
Qualcomm," which stated that "[b]ased on similar complex cross-border deals, the
expected regulatory approval process is likely to take 18+ months[.]"

1 Defendants' materially misleading statements and omissions of material fact, which
2 were widely disseminated to the securities market, investment analysts, and the
3 investing public. Plaintiffs and other members of the Class purchased or otherwise
4 acquired Qualcomm common stock relying upon the integrity of the market price for
5 Qualcomm's common stock and market information relating to Qualcomm, and have
6 been damaged thereby.

7 266. When the relevant truth became known and/or the materialization of the
8 risk that had been concealed by Defendants occurred, the price of Qualcomm's
9 common stock declined immediately and precipitously as the artificial inflation was
10 removed from the market price of the stock, causing substantial damage to Plaintiffs
11 and the Class. The economic loss, i.e., damage, suffered by Plaintiffs and other
12 members of the Class was a direct result of: (i) Defendants' misleading statements
13 regarding the regulatory risk associated with the Broadcom deal and Qualcomm's
14 willingness to negotiate with Broadcom, as well as their concealment of the affirmative
15 efforts Qualcomm had undertaken to prevent regulatory approval for the deal; and
16 (ii) the subsequent decline in the value of Qualcomm's common stock price as the
17 relevant truth was revealed and/or the concealed risks materialized in a series of partial
18 adverse disclosures on March 5, March 6, and March 12, 2018.

19 267. As detailed below, the information disclosed on March 5, 2018, March 6,
20 2018, and March 12, 2018, was both related to and the foreseeable consequence of the
21 relevant truth that Defendants misrepresented and concealed from investors during the
22 Class Period – namely, that they had undertaken a secret, highly unusual defensive
23 measure in an attempt to get CFIUS to kill the Broadcom deal. The stock price declines
24 immediately following the March 5, 2018, March 6, 2018, and March 12, 2018
25 disclosures were substantially, if not wholly, caused by the revelation of the relevant
26 truth and/or the materializations of the risks that had been concealed by Defendants'
27 fraud. Indeed, each was statistically significant at a 95% or greater confidence level,
28 after controlling for market and industry factors.

1 **A. Information Regarding Hostile Takeover Bids and Defenses Is**
2 **Important to Investors in a Target Company**

3 268. The facts surrounding Defendants' secret Class Period defensive measure
4 were highly material and significantly likely to alter the total mix of information
5 available to Qualcomm investors when deciding to purchase or sell Qualcomm
6 common stock.

7 269. It is well-established in academic literature that a takeover bid is highly
8 material to investors in the target company and significantly affects a target company's
9 stock price. This is because an acquiring company in an acquisition or hostile takeover
10 generally offers a significant premium, or a price above the market price, for a target
11 company's shares. For example, Robert F. Bruner, in *APPLIED MERGERS &*
12 *ACQUISITIONS*, wrote that "[t]arget firm shareholders enjoy returns that are
13 significantly and materially positive." Bruner further summarized findings from
14 25 academic studies, concluding that they "reveal returns that are material and
15 significant, despite variations in time period, type of deal (merger vs. tender offer), and
16 observation period. In short, the typical M&A deal or successful hostile takeover
17 delivers a premium return to target firm shareholders." Likewise, in their 2013 article
18 in the *JOURNAL OF LAW AND ECONOMICS*, Matthew D. Cain and David J. Denis reported
19 an average initial takeover premium of 36.2%.

20 270. After a takeover offer for a target company has been announced, the
21 principal factors influencing the target company's stock price are: (i) the offer price;
22 (ii) the probability that the target will actually be acquired (or get derailed by a rejection
23 from the target or a regulator); and (iii) the probability that the bid will be increased or
24 a better bid will emerge. With a credible bid on the table, "non-deal" information about
25 the target company becomes less important. This is because if the offer is ultimately
26 successful, investors will receive the bid price, rather than whatever future value would
27 be achieved under incumbent management based on the target company's
28 fundamentals. As a result, "non-deal" information is only relevant to the extent the

1 outstanding bid is expected to fail (or could cause the deal to become less likely to
2 close).

3 271. D'Angelo formalized these concepts in the following formula for valuing
4 target companies once a credible takeover offer has been made:

5 [C]onsider the post-offer market price as a probability-weighted
6 average of the values expected to accrue to target stockholders
7 under different outcomes:

$$8 \quad P_M = \pi_A P_A + (1 - \pi_A) P_S \quad (1)$$

9 where:

10 P_M = the open-market stock price after an offer is announced, but
11 before it expires,

12 π_A = the market-assessed probability the target will ultimately be
13 acquired (by the current or another bidder),

14 P_A = the market's expectation of the ultimate acquisition price
15 conditional on the current bid, and

16 P_S = the post-offer expiration market price expected to obtain if
17 the target remains independent, which capitalizes target
18 stockholders' expected values under all other perceived
19 outcomes.¹⁴

20 272. In other words, once a takeover offer has been made for a target company,
21 that company's stock price is a function of investor expectations about the offer
22 premium and the probability or likelihood that the takeover bid will be successfully
23 completed. For that reason, while a takeover bid is outstanding, information that sheds
24 light on the likelihood that a takeover bid will be successfully completed is highly
25 material to investors in the target company.

26 273. Here, information about Broadcom's takeover bid for Qualcomm, and the
27 likelihood of the deal closing, were unquestionably material to Qualcomm's
28 shareholders. News of Broadcom's intention to bid \$70 per share for Qualcomm

¹⁴ Linda Elizabeth DeAngelo, *Equity Valuation and Corporate Control*, 65 THE ACCOUNTING REVIEW, at p. 97 (1990) (footnote omitted).

1 leaked publicly on November 3, 2017. At that time, Broadcom's \$70 bid represented
2 a premium of more than 27% on Qualcomm's \$54.84 November 2, 2017 closing share
3 price. In response to this news, Qualcomm's stock price increased by \$6.97, or
4 12.71%, to close at \$61.81 on November 3, 2017.

5 274. In addition, after controlling for market and industry factors, Qualcomm's
6 November 3, 2017 stock price increase was statistically significant at the 99% level,
7 with a company-specific abnormal return of 12.32% and an abnormal dollar change of
8 \$6.76 per share. Qualcomm's abnormal stock price increase following the news of
9 Broadcom's bid equated to a common equity market capitalization gain of
10 approximately \$9.96 billion.

11 275. Market analysts also confirmed after Broadcom's bid became public that
12 Qualcomm's stock price was primarily being driven by information regarding
13 Broadcom's offer. For example, on February 1, 2018, analyst BMO wrote that:
14 "QCOM reported strong December quarter results, but weaker guidance, particularly
15 on the chip side. Regardless, we believe investor sentiment is largely being driven by
16 the pending takeover attempt by Broadcom . . . with the March 6 shareholder vote
17 quickly approaching and that the 'buyout offer from [Broadcom]' was a 'key catalyst'
18 that 'will overshadow most other catalysts.'"

19 276. Given that a target company's stock price is a function of the likelihood
20 of the deal closing, if a target company takes actions that lower the probability of deal
21 completion (and thus lower the probability of receiving a takeover offer premium),
22 then those actions would be expected to lower the stock price of the target company.
23 To the extent that those actions are concealed from the investing public – as here – the
24 target company's stock price becomes artificially inflated because investors are unable
25 to properly assess the probability that the deal will be completed.

26 277. One of the ways that hostile takeover targets can lower the probability of
27 being acquired is through the use of hostile takeover defenses, such as poison pills or
28 staggered boards. These hostile takeover defenses can alter the likelihood of a target

1 company being acquired, and as a result, the availability and use of these hostile
2 takeover devices is highly material information to investors. For this reason, the SEC
3 explicitly requires companies to disclose in proxy statements “when management
4 sponsors anti-takeover proposals and other devices to insulate management from
5 removal.” *In Re Disclosure in Proxy & Info. Statements*, SEC Release No. 15230,
6 1978 WL 186739, at *2 (Oct. 13, 1978).

7 278. Academic research likewise indicates that companies’ valuations are
8 impacted by their use of hostile takeover defenses (and their resulting susceptibility to
9 a hostile takeover attempt). This is because inefficient management can be replaced
10 via hostile takeover, thus increasing the overall value of a poorly-run company. As an
11 article in the *Journal of Political Economy* explained: “Share price, or that part
12 reflecting managerial efficiency, also measures the potential capital gain inherent in
13 the corporate stock. The lower the stock price, relative to what it could be with more
14 efficient management, the more attractive the take-over becomes to those who believe
15 that they can manage the company more efficiently. And the potential return from the
16 successful take-over and revitalization of a poorly run company can be enormous.”
17 Likewise, an article in the *Stanford Law Review* documented that when managers resist
18 hostile takeover attempts through a staggered board takeover defense strategy,
19 companies are able to remain independent, but at the expense of managerial
20 entrenchment and ultimately lower value for shareholders: “Remaining independent
21 makes shareholders worse off compared with the scenario in which the hostile bid is
22 accepted. Furthermore, we find that [effective staggered boards] do not provide
23 sufficient countervailing benefits in terms of increased premiums and may even
24 provide no such benefits at all.”

25 279. A 2017 study published in the *Journal of Financial Economics* similarly
26 determined that:

27 [F]irm value is positively associated with susceptibility to hostile
28 takeovers Shareholders thus appear to value the disciplinary market
for corporate control, and the secular decline in hostile takeover rates in

1 recent years could perpetuate agency problems related to
2 entrenchment... To the extent that firms deploy similar defenses to thwart
3 shareholder activism, this trend underscores the relation between
takeover defenses and corporate governance.

4 Further, the article concluded that “[t]he external threat of takeover is an important
5 corporate governance mechanism[,]” which is “consistent with studies that show that
6 legal environments in which managers are insulated from takeovers are associated with
7 a negative impact on shareholder value.” As a result, firms may leverage the legal and
8 regulatory environment to resist hostile takeovers, and these actions would be expected
9 to have value-relevant impacts on shareholder value.” Similarly, a 2003 article in the
10 Journal of Political Economy reported that “Corporate governance mechanisms—such
11 as takeover threats, large shareholders, or effective boards—may reduce this moral
12 hazard problem. For example, if managers fear a hostile takeover and the resulting job
13 loss, they may more closely pursue shareholder interests.”

14 280. Here, Defendants were well aware of the importance Qualcomm’s
15 investors placed on information regarding hostile takeover defense mechanisms. For
16 example, when the Company amended and restated its Rights Agreement which
17 contained a poison pill hostile takeover defense on September 26, 2005, it disclosed
18 the same to investors in a Form 8-K filed with the SEC on September 30, 2005. And
19 in 2015, facing shareholder pressure, the Company let its shareholder Rights
20 Agreement expire, which had until then provided Qualcomm’s directors with a poison
21 pill to fend off hostile takeovers. Defendants contemporaneously disclosed these facts
22 in a Form 8-K filed with the SEC on July 22, 2015.

23 281. In addition, Defendants understood the importance shareholders placed
24 on having control over the Board. Shortly after its poison pill expired in 2015,
25 Qualcomm adopted a shareholder “proxy access” right, which enabled shareholders to
26 nominate up to 20% of the Board’s directors. However, in early January 2016,
27 shareholders further proposed expanding proxy access to 25%. Qualcomm barely
28 managed to defeat this proposal during the 2016 annual shareholder meeting,

1 prevailing on a narrow vote only after assuring its shareholders that the 20% access
2 right was “meaningful,” “well-considered,” and “str[uck] the appropriate balance
3 between promoting stockholder rights and adequately protecting the best interests of
4 all of our stockholders.”

5 282. In sum, it is clear that information regarding Broadcom’s takeover offer
6 for Qualcomm, and any defenses thereto, were highly material to Qualcomm’s
7 shareholders.

8 **B. Defendants’ Undisclosed CFIUS Hostile Takeover Defense Was**
9 **Important to Qualcomm’s Investors**

10 283. Historically, CFIUS review was not viewed as a hostile takeover defense
11 routinely available to firms. Over the years, however, a handful of researchers have
12 noted the potential for CFIUS review to be abused for this purpose. For example, a
13 1993 article in *The International Lawyer* noted explained:

14 ABUSE OF EXON-FLORIO AS A HOSTILE TAKEOVER DEFENSE

15 Targets of a hostile takeover by a foreign company have attempted to
16 invoke Exon-Florio as a defense against the takeover, an action
17 sometimes referred to as the “Pentagon Ploy.” If successful in invoking
18 Exon-Florio, the target will cause a minimum delay of thirty days and
19 possibly up to ninety days if the CFIUS undertakes an investigation. Of
course, if the President decides to block the takeover, the target will have
succeeded definitively in defending against the acquisition.

20 284. Researchers have also documented how, in 1990, the Norton Company
21 engaged in a political campaign to lobby members of Congress and manipulate the
22 CFIUS process in the face of a hostile takeover threat:

23 In 1990, only two years after Exon-Florio became law, 119 members of
24 Congress wrote to the president asking for an investigation of the UK
25 firm British Tire and Rubber’s (BTR) proposed hostile acquisition of the
26 Norton Company, based in Massachusetts. The letter stated that “we do
27 not believe that any take over of Norton would be in our economic
28 security or national security interest” (Karim 1995). These members of
Congress, encouraged by Norton, suddenly changed their tune when a
French company, Compagnie de Saint Gobain, offered Norton \$15 more
per share. Clearly, Norton manipulated the CFIUS process to its

1 advantage, because no one raised any national security concerns over the
2 French acquisition. It is hard to imagine how a British acquisition did
3 not. There were no national security issues with the proposed British
4 acquisition; Norton simply did not want to be acquired by BTR, and used
5 a political campaign toward CFIUS to prevent it.

6 Nevertheless, the use of CFIUS review as a hostile takeover defense is exceedingly
7 rare.

8 285. At the time that Broadcom's bid for Qualcomm was launched, however,
9 Defendants had been stripped of the Company's poison pill defense. Defendants thus
10 had to resort to more creative solutions to ensure their entrenchment. The result was
11 Defendants' January 29 unilateral CFIUS notice, as well as their continued lobbying
12 of CFIUS and the Trump administration throughout the Class Period. In fact, news
13 reports following the deal's blockage indicate that Qualcomm had engaged in multiple
14 political efforts in conjunction with its notice to CFIUS. For example, Bloomberg
15 reported:

16 As Broadcom's team scrambled to get up to speed in Washington, one
17 thing became quickly apparent: Qualcomm had beaten them to it. Many
18 of the people that the company tried to hire there were already working
19 for Qualcomm, according to two people close to Broadcom's efforts.
20 Another person familiar with the matter said that Tan [Broadcom's CEO]
21 had refused to spend on lobbying until it was too late. Federal lobbying
22 disclosures for 2017 showing that Qualcomm spent \$8.3 million, or
23 roughly 100 times the \$85,000 Broadcom spent, appear to support this
24 theory.

25 286. Defendants' secret attempts to persuade CFIUS to block Broadcom's bid
26 constituted an undisclosed takeover defense measure akin to a poison pill. Indeed, as
27 discussed in *infra* ¶ 333, once Defendants' tactics were finally revealed, market
28 commentators and academic researchers repeatedly described Qualcomm as having
used CFIUS as an undisclosed "super poison pill," an "antitakeover device," and a
"takeover defense against a hostile offer."

29 287. Defendants' concealed CFIUS takeover defense strategy negatively
impacted the probability that Broadcom's bid for Qualcomm would be successful. This

1 information was critical to Qualcomm’s investors in evaluating the probability of
2 Broadcom’s bid succeeding, the probability that shareholders would ultimately receive
3 the takeover premium offered by Broadcom and, accordingly, the value of
4 Qualcomm’s stock.

5 **C. Defendants’ Fraud Caused Significant and Material Declines in**
6 **Qualcomm’s Stock Price**

7 288. The statistically significant stock price declines and negative market
8 reactions to the revelations of relevant truth concealed by Defendants’ fraud on
9 March 5, 2018, March 6, 2018, and March 12, 2018, further demonstrate the
10 importance of this information to investors in deciding whether to buy or sell
11 Qualcomm common stock. Indeed, following the alleged corrective disclosures,
12 Qualcomm’s market capitalization declined by approximately \$9.22 billion. *See infra*
13 ¶ 338.

14 289. Plaintiffs’ expert – Dr. Matthew D. Cain – evaluated the economic
15 importance of Defendants’ concealed CFIUS hostile takeover defense. Dr. Cain is a
16 Senior Fellow at the Berkeley Center for Law and Business and a Senior Visiting
17 Scholar at Berkeley Law School, University of California. Dr. Cain delivers guest
18 lectures, participates in academic seminars, and conducts research in various topic
19 areas related to finance, economics, accounting, law, and business. Dr. Cain’s research
20 focuses on a variety of topics such as empirical corporate finance, corporate
21 governance, board independence, mergers and acquisitions, hostile takeovers,
22 shareholder lawsuits, negotiations, financial contracting, disclosures of financial
23 information, and shareholder activism. Dr. Cain also previously held a fellowship with
24 the Harvard Law School Program on Corporate Governance, where he participated in
25 research seminars and related activities. Ex. E, Declaration of Matthew D. Cain, Ph.D.
26 (“Cain Dec.”), ¶ 1.

27 290. Dr. Cain worked at the SEC between 2014 and 2018. During that time,
28 Dr. Cain provided economic analysis and expert witness testimony on behalf of the

1 SEC in a wide variety of enforcement investigations, settlement negotiations, and
2 litigated cases, including cases alleging accounting fraud, revenue recognition
3 practices, and disclosure violations. Dr. Cain also served as an advisor to SEC
4 Commissioner Robert J. Jackson, Jr., during which time he assisted with enforcement
5 oversight and policymaking decisions, research, and speechwriting on a wide range of
6 topics including securities violations, revenue recognition practices, and corporate
7 governance issues. Additionally, while employed at the SEC as a Financial Economist,
8 Dr. Cain continued to work on and publish academic research, and was awarded the
9 Chairman's Award for Economic Research. Cain Dec. ¶ 2.

10 291. Prior to working at the SEC, Dr. Cain was an Assistant Professor of
11 Finance at the University of Notre Dame. Dr. Cain taught courses in Mergers and
12 Acquisitions to both undergraduate and graduate students, and also conducted
13 empirical research on various finance, legal, accounting, and economic topics. Cain
14 Dec. ¶ 3.

15 292. Prior to working at Notre Dame, Dr. Cain received a Ph.D. in Finance
16 from Purdue University in 2007. Prior to those studies, Dr. Cain worked as an analyst
17 in Debt Capital Markets at National City Bank, where he assisted companies in raising
18 syndicated loans and private placements of debt and equity for use in funding mergers,
19 acquisitions, and other general corporate purposes. Cain Dec. ¶ 4.

20 293. In addition to teaching at Notre Dame and Purdue, Dr. Cain has delivered
21 guest lectures to undergraduate and graduate students at Vanderbilt University,
22 Arizona State University, Cornell University, and UC Berkeley School of Law.
23 Dr. Cain has also presented his research at numerous academic, governmental, and
24 professional institutions. Cain Dec. ¶ 5.

25 294. In forming his opinion regarding the economic impact of the information
26 that Defendants misrepresented and concealed, Dr. Cain relied upon his professional
27 experience as a capital markets analyst who assisted companies in raising financing for
28 acquisitions, as a financial economist and advisor at the SEC who evaluated

1 companies' disclosures of information to investors, as an academic who has taught
2 M&A courses and published peer-reviewed research on topics including M&A, hostile
3 takeover defenses, and investors' reactions to new information, and as a financial
4 economist who has testified on event studies and the impact of information on stock
5 prices. Cain Dec. ¶ 37.

6 295. After a thorough review of evidence from news stories, analyst reports,
7 academic research studies, and applying his own professional experience in evaluating
8 the importance of information in M&A negotiations and hostile takeover battles,
9 Dr. Cain concluded that:

10 It is my professional opinion, informed through my own academic
11 research, teaching experience, industry experience, government
12 regulatory experience, and review of the materials described throughout
13 this declaration, that Qualcomm's takeover defense strategy involving
14 the unilateral request to CFIUS would represent value-relevant
15 information to investors. This information would be expected to affect
16 the probability of deal completion, the takeover premium being offered
to Qualcomm's shareholders, and the likelihood of those shareholders
receiving such premium. Thus, it was foreseeable that the disclosure of
this information would cause Qualcomm's stock price to decline.

17 Cain Dec. ¶ 52.

18 296. In reaching his conclusion, Dr. Cain explained, *inter alia*, that "when a
19 company adopts a hostile takeover defense during a takeover battle, this defense would
20 be expected to reduce the likelihood of deal success. Given the anticipated takeover
21 premium available to the target company's shareholders, a hostile takeover defense
22 strategy would thus represent value-relevant information to those shareholders." Cain
23 Dec. ¶ 52. Likewise, that a company was leveraging CFIUS review as a hostile
24 takeover defense strategy "would be expected to have an impact on the probability of
25 deal completion, and thus the takeover premium to be received by target shareholders.
26 As a result, this hostile takeover defense strategy would be important to investors in a
27 target company, as it would be expected to impact the value of the target company's
28 stock price." Cain Dec. ¶ 41. Dr. Cain concluded that here, "Qualcomm utilized the

1 CFIUS review process as a hostile takeover defense strategy,” and that this information
 2 “would have been important to Qualcomm’s investors at the time that Qualcomm first
 3 requested CFIUS review of Broadcom’s proxy solicitation process in connection with
 4 its hostile bid.” Cain Dec. ¶¶ 43-44.

5 **1. The March 5 and March 6, 2018 Disclosures Were a**
 6 **Foreseeable Result of Defendants’ Fraud and Caused**
 7 **Significant Declines in Qualcomm’s Stock Price**

8 297. On the evening of Sunday, March 4, 2018, Reuters reported that CFIUS
 9 had ordered Qualcomm to postpone its annual stockholders meeting by 30 days so that
 10 CFIUS could investigate Broadcom’s bid for the Company. On March 5, 2018, before
 11 trading hours, Broadcom issued a press release which disclosed that Qualcomm had
 12 “secretly filed a voluntary unilateral request for CFIUS review on January 29, 2018.”
 13 Then, during trading hours on March 5, 2018, Broadcom issued another press release
 14 which disclosed:

15 *Broadcom was informed on Sunday night that on January 29, 2018,*
 16 *Qualcomm secretly filed a voluntary request with CFIUS to initiate an*
 17 *investigation, resulting in a delay of Qualcomm’s Annual Meeting*
 18 *48 hours before it was to take place. This was a blatant, desperate act*
 19 *by Qualcomm to entrench its incumbent board of directors and prevent*
 20 *its own stockholders from voting for Broadcom’s independent director*
 21 *nominees.*

22 It is critical that Qualcomm stockholders know that *Qualcomm did not*
 23 *once mention submitting a voluntary notice to CFIUS in any of its*
 24 *interactions with Broadcom to date*, including in the two meetings on
 25 February 14, 2018 and on February 23, 2018.

26 *.....*

27 *Broadcom reiterates that Qualcomm failed to disclose to its own*
 28 *stockholders and to Broadcom that it secretly filed a voluntary*
unilateral request for CFIUS review on January 29, 2018. Broadcom’s
only correspondence with CFIUS was in response to CFIUS inquiries
about Broadcom’s nomination of directors to the Qualcomm board of
directors, and such requests did not reveal that Qualcomm filed to
initiate the CFIUS review on January 29, 2018.

1 **WHEREAS** Broadcom, pursuant to the Transaction, is engaged in
2 a concerted effort to complete a hostile takeover of Qualcomm, including
3 acquiring proxies to elect six new Directors (a majority) to the Board of
4 Qualcomm in order to approve a Proposed Agreement and Plan of
5 Merger (the “Proposed Agreement”) that Broadcom filed with the
6 Securities and Exchange Commission (the “SEC”) on February 9, 2018,
7 between Broadcom and Qualcomm;

8 **WHEREAS** CFIUS has determined that the Transaction, *as*
9 *described in the notice that Qualcomm submitted to CFIUS dated*
10 *January 29, 2018*, and the agency notice submitted by the Department
11 of the Treasury dated March 4, 2018 (together, the “Notice”), including
12 the Proposed Agreement or any other potential merger, acquisition, or
13 takeover agreement between Broadcom and Qualcomm constitutes a
14 “covered transaction” for purposes of section 721;

15 **WHEREAS** CFIUS is undertaking a review and investigation of
16 the effects of the Transaction on the national security interests of the
17 United States, as required by section 721;

18 ***CFIUS has determined, based on information provided to, and***
19 ***analyses by CFIUS agencies to date, that there are national security***
20 ***risks to the United States that arise as a result of, and in connection***
21 ***with the Transaction***, and CFIUS seeks to take necessary actions to
22 provide interim protection and impose conditions that mitigate those
23 risks pending any further action by the President, or by CFIUS, 50 U.S.C.
24 §§ 4565(b)(2)(A), (D)(1)(A)[.]

25 (Some emphasis in original.)

26 300. Among other things, the March 4 Interim Order directed that:

27 1.1 Qualcomm’s annual stockholder meeting, including the election of
28 its Board of Directors, shall be delayed from its current scheduled date
of March 6, 2018, for a period of 30 (thirty) days. Qualcomm shall hold
in abeyance the acceptance or count of any votes or proxies for directors,
and shall take no action to complete the election of directors.

 1.2 Qualcomm and Qualcomm’s Board of Directors, executives, and
agents are, while this Order is in effect, hereby prohibited from accepting,
or taking any action in furtherance of accepting, Broadcom’s proposed
merger agreement or any other proposed merger, acquisition, or takeover
agreement with Broadcom.

 301. Section 2.4 of the Interim Order provided that the Order could be modified
in writing by CFIUS, including upon written request from Qualcomm. The Interim
Order also required Broadcom to provide CFIUS with “five business days’ notice

1 before taking any action toward redomiciliation[.]” This provision partially revealed
2 the risk that CFIUS could render a decision on Broadcom’s bid before it could
3 redomicile and take the transaction out of CFIUS’s jurisdiction.

4 302. On March 6, 2018, Qualcomm filed a Current Report on Form 8-K, which
5 disclosed the March 5 Letter that Broadcom and Qualcomm had received from the
6 U.S. Department of the Treasury. The March 5 Letter provided additional information
7 about Qualcomm’s involvement in CFIUS’s investigation, as well as CFIUS’s
8 rationale for delaying the shareholder vote:

9 On January 29, 2018, *Qualcomm Incorporated (“Qualcomm”) filed a*
10 *unilateral notice with the Committee on Foreign Investment in the*
11 *United States (“CFIUS”), seeking review of Broadcom Limited’s*
12 *(“Broadcom”) solicitation of proxies for the purposes of electing a*
13 *majority of the directors of Qualcomm.*

14
15 *During the time between Qualcomm’s unilateral filing and Treasury’s*
16 *agency filing, CFIUS has been communicating with both parties to*
17 *obtain additional information to inform its decision on the appropriate*
18 *path forward in regards to this matter. It was during this time, and as a*
19 *result of these communications and additional information, that*
20 *CFIUS has come to believe that Broadcom’s successful hostile*
21 *takeover attempt of Qualcomm, including the related stock purchase,*
22 *proxy contest for the election of six directors to Qualcomm’s Board as*
23 *proposed and selected by Broadcom, Proposed Agreement and Plan of*
24 *Merger, and any other potential merger between Broadcom and*
25 *Qualcomm, could pose a risk to the national security of the United*
26 *States.*

27 *CFIUS’s assessment thus far includes its review of the information*
28 *submitted by Qualcomm in its unilateral voluntary notice on January*
29, 2018, the parties’ responses to questions posed about the potential
transaction during the interim period, and the information provided in
our multiple phone calls, emails, and meetings with representatives of
both Qualcomm and Broadcom. In addition, our assessment includes the
review of letters to CFIUS submitted by Broadcom on February 21, 2018,
and March 2, 2018.

303. The March 5 Letter also discussed Qualcomm in glowing terms that,
market commentators later noted, “closely mimics Qualcomm’s talking points against
the deal[.]”

1 304. Further demonstrating how closely CFIUS was hewing to Qualcomm’s
2 interests, on March 5, 2018, CFIUS issued the Modification Order that altered its
3 March 4 Interim Order to conform to Qualcomm’s disclosures. Specifically, the
4 March 4 Interim Order required Qualcomm’s Annual Meeting to be delayed by
5 30 days. Qualcomm, however, announced that in contravention of the March 4 Initial
6 Order it would still open its March 6 meeting, but then would immediately adjourn the
7 meeting until April 5, 2018, without any action. By doing so, Qualcomm was able to
8 maintain the current record date, thus preventing turnover in the shareholders permitted
9 to vote. CFIUS promptly modified the March 4 Interim Order to require that the March
10 6, 2018 Annual Meeting be opened but then adjourned for 30 days without any
11 substantive action. In doing so, CFIUS provided Qualcomm’s incumbent directors –
12 who, as discussed below, were significantly behind in the voting count – with
13 30 additional days to solicit proxies from additional shareholders and to change the
14 minds of shareholders who had already entered votes against them.

15 305. The information disclosed on March 5, 2018, and March 6, 2018, was
16 both directly related to and a foreseeable consequence of Defendants’ concealed efforts
17 to get CFIUS to kill Broadcom’s bid for Qualcomm. As an initial matter, the revelation
18 of Defendants’ concealed efforts to block Broadcom’s bid was directly related to and
19 a foreseeable consequence of Defendants’ concealment of that same information
20 during the Class Period. Moreover, Defendants’ voluntary notice to CFIUS requested
21 that CFIUS review Broadcom’s bid. The disclosure that CFIUS was in fact
22 undertaking the very review Defendants requested was, thus, directly related to and a
23 foreseeable consequence of the information misrepresented and concealed by
24 Defendants during the Class Period. Indeed, CFIUS cited to Defendants’ unilateral
25 request and subsequent communications in explaining its decision. Moreover,
26 Defendants’ undisclosed defensive measures and CFIUS’s decision to undertake a
27 review of Broadcom’s bid would also be expected to affect the probability of deal
28 completion and, thus, the likelihood of shareholders receiving a share price premium.

1 Thus, it was also foreseeable that the disclosure of this information would cause
2 Qualcomm's stock price to decline.

3 306. Market commentators recognized that CFIUS's actions were directly
4 related to Defendants' actions. For example, The New York Times indicated that
5 Qualcomm's secret request was responsible for CFIUS's involvement: "[i]n this
6 instance, [CFIUS] . . . is taking a proactive role and investigating before an acquisition
7 agreement has even been signed. *But Qualcomm, which is based in San Diego,*
8 *pushed the government to intervene.*"

9 307. In another article, The New York Times reported that:

10 Experts said they couldn't recall another instance of the committee's
11 intervening in a transaction that hadn't been completed, much less one
12 that is as fluid and bitterly contested as this one.

13

14 Broadcom had sought to pave the way for its bid by changing its
15 headquarters to the United States . . . [and that] Broadcom argued that its
16 status as a soon-to-be-American company meant the Qualcomm deal
17 should not be subject to review by [CFIUS].

18 *Qualcomm nonetheless appealed to regulators to get involved.*

19 308. Similarly, on March 6, 2018, The Wall Street Journal reported that,
20 "Broadcom has criticized Qualcomm for spending too much on R&D when its
21 licensing business could be endangered. Such could ultimately prove to be the case,
22 but *as the letter from CFIUS shows, Qualcomm's spending has at least bought some*
23 *friends in the right places.*" On March 7, 2018, MarketWatch reported that:

24 While it seems like a fortuitous bit of timing for Qualcomm, *it may not*
25 *have been pure luck. In the latest volley of angry statements between*
26 *the two companies, Broadcom accused Qualcomm of instigating the*
27 *review on its own.*

28 "Broadcom reiterates that Qualcomm failed to disclose to its own
stockholders and to Broadcom that it secretly filed a voluntary unilateral
request for CFIUS review on January 29, 2018," the company said in a
statement.

1 309. Dow Jones Institutional News, in a March 6, 2018 article, focused on
2 Qualcomm’s actions and the potential backlash:

3 As things play out, this latest gambit in Broadcom’s hostile bid for
4 Qualcomm could end up creating more votes to change directors and
5 undermining the credibility of Qualcomm management with any new
6 director who is ultimately elected.

7 The problem is that this action undercuts Qualcomm’s best argument to
8 shareholders in the proxy contest: The \$79 per Qualcomm share offered
9 by Broadcom is inadequate, the current board has done a good job
10 pressuring Broadcom to improve its terms and current directors are in the
11 best position to negotiate a deal if Broadcom can be convinced to make
12 a better offer.

13 *By appearing to encourage the extraordinary order from the
14 Committee on Foreign Investment in the United States, known as
15 CFIUS, to postpone the shareholder vote on directors, Qualcomm
16 could be seen as attacking its own investors’ voting rights.* Among other
17 things, that implies the company doesn’t have confidence that its
18 arguments will win the day.

19 310. Media coverage from March 6, 2018, also expressed surprise at the
20 unexpected nature of CFIUS’s actions and the resulting delay. The Deal Pipeline
21 referred to the intervention as “quite unprecedented, given that no deal has been inked
22 yet between Broadcom and Qualcomm . . . and the fact that Broadcom [would] soon
23 be a U.S.-based company.” Bloomberg also reported that the “order for a delay by the
24 government panel is unusual, since CFIUS doesn’t usually investigate before a merger
25 is agreed upon.” The New York Times reported that “[i]t appears to be the first time
26 the committee has intervened on a deal before it has been finalized[.]”

27 311. Several news sources additionally reported statements from experts on
28 CFIUS review, who agreed that the review was highly unusual. The Wall Street
Journal quoted a former CFIUS member, Mario Mancuso, who called it “Halley’s
comet unusual.” The New York Times reported it spoke to experts who had
“acknowledged that the national security panel’s review of Broadcom’s bid for
Qualcomm was extraordinary.” The Deal Pipeline reported that “the move was met by
lawyers specializing in CFIUS issues with shock and surprise . . .” and quoted

1 Clif Burns, an attorney at Bryan Cave in Washington, that he had “never seen [CFIUS]
2 ask a company to postpone an annual meeting to conduct a review.”

3 312. A report by The Wall Street Journal also addressed the unexpected nature
4 of this news given Defendants’ misleading statements over the past month that they
5 were diligently negotiating with Qualcomm: in late February, “Qualcomm appeared to
6 be coming around to the idea of a deal. It said the two sides had been talking and
7 making progress.” Indeed, in addition to revealing to the market the steps that
8 Qualcomm had taken to scuttle the deal, these disclosures also made clear that
9 Defendants’ repeated statements that they were negotiating in good faith with
10 Broadcom were highly misleading.

11 313. Many market commentators concluded that the disclosures of
12 Qualcomm’s defensive measures and CFIUS’s resulting actions lowered the
13 probability of a Broadcom deal being completed. For example, a March 7, 2018 RBC
14 Capital Markets analyst report wrote, “[w]hile there has been constant back and forth
15 between AVGO & QCOM, we think the CFIUS investigation and specifically details
16 in the letter lower the probability of an AVGO/QCOM merger.” On March 6, 2018,
17 The Wall Street Journal reported that, “Qualcomm just provided the recipe for
18 companies trying to thwart foreign takeovers: Spend big, first on research and
19 development, then on lawyers. . . . The letter appears to put an end to Broadcom’s
20 chances of acquiring Qualcomm.”

21 314. Likewise, on March 6, 2018, Macquarie Research wrote, “our base case
22 is that either CFIUS will decline the approval or will require significant remedies that
23 could force AVGO to walk.” The same day, The New York Times reported, “[t]he
24 move complicates an already contentious deal and increases the likelihood that
25 Broadcom, which is based in Singapore, will end its pursuit of Qualcomm. Such an
26 investigation is often a death knell for a corporate acquisition.”

27 315. As a direct and proximate result of the March 5, 2018 partial corrective
28 disclosures and/or materialization of the foreseeable risks concealed by Defendants’

1 fraud, shares of the Company's stock fell 1.13%, from a closing price of \$64.74 on
2 March 2, 2018, to a closing price of \$64.01 on March 5, 2018. By contrast, the S&P
3 500 actually increased by 1.1% between March 2 and 5, 2018.

4 316. In fact, after controlling for market and industry factors, the company-
5 specific abnormal return in Qualcomm's stock price on March 5, 2018, was -2.49%
6 and was statistically significant at the 95% level. In other words, the price decline in
7 Qualcomm's stock price on March 5, 2018, was not the result of randomness but,
8 instead, was caused by the disclosure of Defendant's unilateral request to CFIUS and
9 CFIUS's resulting actions.

10 317. As a direct and proximate result of the March 6, 2018 partial corrective
11 disclosures and/or materialization of the foreseeable risks concealed by Defendants'
12 fraud, shares of the Company's stock fell an additional 2.92% on March 6, 2018, from
13 a closing price of \$64.01 on March 5, 2018, to a closing price of \$62.14 on March 6,
14 2018. Meanwhile, the S&P 500 increased by 0.27% on March 6, 2018.

15 318. After controlling for market and industry factors, the company-specific
16 abnormal return in Qualcomm's stock price on March 6, 2018, was -3.46% and was
17 statistically significant at the 99% level. As a result, the price decline in Qualcomm's
18 stock price on March 6, 2018, was not the result of randomness but, instead, was caused
19 by the disclosure of Defendant's unilateral request to CFIUS and CFIUS's resulting
20 actions. Cain Dec. ¶ 76.

21 319. After controlling for market and industry factors, the company-specific
22 abnormal return in Qualcomm's stock price over the two-day period of March 5-6,
23 2018, was -\$3.83, or -5.95%, and was significantly significant at the 99% level. As a
24 result, the price decline in Qualcomm's stock over the two-day period of March 5-6,
25 2018 was not the result of randomness but, instead, was caused by the disclosure of
26 Defendant's unilateral request to CFIUS and CFIUS' resulting actions. Cain Dec. ¶ 77.

27 320. Despite these disclosures, the price of Qualcomm's shares remained
28 artificially inflated, as it was still not yet clear how Qualcomm's acceleration of the

1 CFIUS review would ultimately undermine Broadcom’s bid and the risks concealed
2 by Defendants’ misleading statements and omissions had not fully materialized.
3 Moreover, shareholders continued to believe that they would be given an opportunity
4 to exercise their right to vote on the board nominees.

5 321. Some analysts still believed that the proposed merger could proceed. On
6 March 8, 2018, Oppenheimer wrote:

7 We believe the potential QCOM acquisition remains in play, a significant
8 upside call option with combined EPS power approaching \$25 on
9 conservative assumptions.

10

11 We continue to see obvious financial/strategic merit in combining
12 QCOM/AVGO’s leading back-end and front-end handset portfolios.
13 Recent reports (Bloomberg 3/5/18) indicate AVGO is on track to win a
14 majority of QCOM’s board seats in a shareholder vote delayed until
15 4/5/18, pending CFIUS’[s] somewhat puzzling review.

16 322. A March 7, 2018 RBC Capital Markets analyst report concluded that,
17 “[w]hile we don’t anticipate AVGO walking away from QCOM it does create a high
18 hurdle. Our expectation is AVGO would spend the next 30 days addressing CFIUS
19 concerns.”

20 323. Dow Jones Institutional News, in the same article in which it criticized
21 Qualcomm’s actions as risking the alienation of its shareholders, did not anticipate this
22 being the end of the deal:

23 Meanwhile, it seems unlikely CFIUS will prevent shareholders from
24 voting for long. A deal with Broadcom isn’t on the ballot and no
25 agreement to sell the company has been signed.

26 It is hard to argue that shareholders replacing existing Qualcomm
27 directors with independent businessmen – and who, with one exception
28 (a Canadian), are U.S. citizens – would threaten the U.S., even if a
combined Broadcom-Qualcomm would.

CFIUS investigations generally focus on whether acquisitions should be
completed, not director elections.

Plus CFIUS regulates foreign investment in the U.S. For months
Broadcom, which moved its incorporation to Singapore from the U.S. in

1 a 2015 “tax inversion,” has been working on moving back to this country.
2 Broadcom predicts that will be done in May.

3 Once completed, it is hard to see how Broadcom – whose chief executive
4 and most of its directors are also U.S. citizens – would be viewed as
foreign.

5 324. A March 7, 2018 MarketWatch article similarly reported,

6 Ultimately, this deal does not seem to merit the attention of CFIUS,
7 especially with Broadcom’s intention to base itself in the U.S., instead of
8 Singapore. Both companies now have some breathing room, with
9 Qualcomm’s new annual meeting a month away. But it’s also likely that
10 it could lead to another month of he-said she-said statements. It would
behoove the two companies to try to mend their differences over the next
month, because if this deal is as inevitable as it seems, it would be better
to start out as partners instead of enemies slinging mud.

11 325. And statements issued by Broadcom at the time of the March 5 Letter,
12 also continued to tout Broadcom’s imminent redomiciliation from Singapore to the
13 United States. In a Form 8-K filed on March 6, 2018, Broadcom described the process
14 by which it was “restructur[ing] its corporate group to cause the parent company of the
15 group to be a Delaware corporation.” The next day, on March 7, Broadcom released
16 the following statement:

17 *Our Pledge to Creating a Stronger Combined American Company*

18
19 Broadcom is in every important respect an American company, with a
20 lineage of great American technology icons like Hewlett-Packard,
21 AT&T, Broadcom Corp., and Brocade Communications Systems, Inc.
22 ***We are now in the final stages of redomiciling to the United States, and
that process will be complete no later than May 6, 2018. When we
23 complete our acquisition of Qualcomm, we expect to have more than
25,000 employees in the U.S., working to make Broadcom the leading
communication semiconductor company in the world.***

24 (Some emphasis in original.)

25 326. News reports also confirmed that Broadcom was speeding up its efforts
26 to redomicile to the U.S. and that CFIUS intervention may yet be avoided. On March
27 7, 2018, the New York Post reported that Broadcom “in light of the heat this week from
28 Washington,” was “aiming to complete its move to the US in April,” rather than the

1 originally-announced mid-May, “to get around a CFIUS review.” On March 10, 2018,
 2 The Wall Street Journal reported that if it redomiciled as a U.S. company, Broadcom
 3 “could argue that its deal falls outside of [CFIUS’s] jurisdiction. CFIUS, though, could
 4 say it still has jurisdiction to review the bid since it began the review while Broadcom
 5 was a Singapore company,” and this speed-up was “potentially setting the stage for a
 6 showdown[.]”

7 **2. The March 12 and March 13, 2018 Disclosures Were a**
 8 **Foreseeable Result of Defendants’ Fraud and Caused**
 9 **Significant Declines in Qualcomm’s Stock Price**

10 327. On March 12, 2018, after the market had closed, President Trump issued
 11 an Order blocking Broadcom from taking further action regarding its proposed
 12 acquisition of Qualcomm. The Order found, “[t]here is credible evidence that leads
 13 me to believe that Broadcom . . . through exercising control of Qualcomm . . . might
 14 take action that threatens to impair the national security of the United States[.]” Thus,
 15 per the Order, “[t]he proposed takeover of Qualcomm by [Broadcom] is prohibited,
 16 and any substantially equivalent merger, acquisition, or takeover, whether effected
 17 directly or indirectly, is also prohibited.”

18 328. A CFIUS letter released earlier that same day made clear that both the
 19 Committee and the administration had adopted Qualcomm’s position regarding the
 20 national security concerns of the proposed acquisition and the need to expedite
 21 intervention prior to Broadcom’s redomiciliation. More specifically, on March 12,
 22 2018, Qualcomm filed a Current Report on Form 8-K with the SEC disclosing that it
 23 had “received a letter, addressed to both Broadcom Limited and Qualcomm, from the
 24 U.S. Department of Treasury” the previous day. This letter from March 11, 2018, was
 25 attached to the Form 8-K filing as Exhibit No. 99.1, and stated, in relevant part:

26 The purpose of this letter is to inform the parties of the status of the
 27 investigation being conducted by [CFIUS]

28 Through [the] March 5, 2018 letter, CFIUS informed you that it had
 identified potential national security concerns that warrant a full

1 investigation of the attempted hostile takeover by Broadcom Limited
 2 (“Broadcom”) of Qualcomm Incorporated (“Qualcomm”), through a
 3 stock purchase, proxy contest, and Proposed Agreement and Plan of
 4 Merger (the “Proposed Agreement”) or other merger. *That determination*
 5 *was based on CFIUS’s review of the information submitted by*
 6 *Qualcomm in its unilateral voluntary notice on January 29, 2018, the*
 7 *parties’ responses to questions posed about the potential transaction*
 8 *during the interim period, and the information provided in our multiple*
 9 *phone calls, emails, and meetings with representatives of both*
 10 *Qualcomm and Broadcom.*

11

12 Since transmitting the letter to you on March 5, 2018, CFIUS has
 13 conducted an investigation of the transaction and its associated national
 14 security risk. That investigation has so far *confirmed the national*
 15 *security concerns that CFIUS identified to you in its letter on March 5,*
 16 *2018.* That investigation is expected to close soon. In light of the actions
 17 that Broadcom has taken in violation of the Interim Order to shorten the
 18 time period for CFIUS investigation, CFIUS requests that Broadcom
 19 provide any information responsive to the March 5, 2018 letter as soon as
 20 possible. *In the absence of information that changes CFIUS’s*
 21 *assessment of the national security risks posed by this transaction,*
 22 *CFIUS would consider taking further action, including but not limited*
 23 *to referring the transaction to the President for decision.*

24 329. The information disclosed on March 12, 2018, was both directly related
 25 to and a foreseeable consequence of Defendants’ concealed efforts to get CFIUS to kill
 26 Broadcom’s bid for Qualcomm. The entire purpose of Defendants’ secret lobbying of
 27 CFIUS during the Class Period was to convince CFIUS to issue a recommendation that
 28 the President block Broadcom’s bid. In fact, Defendants’ own lawyers – Covington &
 Burling – have admitted as much. In an article entitled *Covington Secures Presidential*
Order Protecting Qualcomm From Hostile Takeover on the firm’s website, the firm
 touts the fact that “Covington secured a U.S. Presidential order compelling Broadcom
 Limited to ‘immediately and permanently abandon’ its proposed hostile takeover of its
 client Qualcomm, Inc.” Covington & Burling also admits that preventing the
 Broadcom takeover had been Qualcomm’s goal in seeking CFIUS review all along,
 describing the March 13, 2018 Presidential order ending Broadcom’s proxy contest as
 “mark[ing] *total victory for Qualcomm in its bid to remain an independent company.*”

1 President Trump’s blockage of the deal was thus unquestionably both directly related
2 to and a foreseeable consequence of Qualcomm’s unilateral request for CFIUS review
3 of Broadcom’s hostile takeover attempt. Moreover, given that an order blocking
4 Broadcom’s bid would significantly impact the likelihood of deal completion and
5 effectively end Qualcomm shareholders’ hopes of receiving any deal premium from
6 the Broadcom bid, it was a foreseeable that the disclosure of this information would
7 cause Qualcomm’s stock price to decline.

8 330. Market commentators understood that President Trump’s decision to
9 block the deal was directly related to Defendants’ undisclosed actions. For example, a
10 March 17, 2018 TechCrunch article concluded that the deal’s blockage was a direct
11 result of the Company’s unilateral request to CFIUS: “*The board’s original outreach*
12 *to CFIUS precipitated the sequence of events that led to Trump’s block this past*
13 *week.*” The article further explained that:

14 *Qualcomm’s board of directors took extraordinary steps to block the*
15 *Broadcom acquisition. They unilaterally went to Washington to get an*
16 *injunction not on a deal* – which had never been consummated between
17 the two companies – but to block Broadcom from replacing its board of
18 directors in a standard shareholder vote. This is a very important
distinction: Qualcomm’s board saw the direction shareholders wanted to
go, and essentially decided to just ignore the election process entirely.

19 A March 14, 2018 Wall Street Journal article entitled *Qualcomm Pursued Unusual*
20 *Strategy* reported that, “*Qualcomm’s Jan. 29 filing to CFIUS helped trigger a chain*
21 *of events that culminated in President Donald Trump’s decision Monday to block*
22 *the deal.* . . . The company also got help from sympathetic senators and representatives
23 who pressed the administration.”

24 331. Similarly, on March 15, 2018, Dow Jones Institutional News wrote, “[t]he
25 effort fell apart this week when President Donald Trump blocked it on national security
26 grounds *at the behest of Qualcomm.*” On March 13, 2018, The Deal Pipeline
27 concluded that, “All of this makes it look as if *Qualcomm’s longtime government ties*
28 *and lobbying efforts played a role in scuttling the deal. That’s particularly true since*

1 ***Qualcomm had requested a Cfius review of Broadcom’s bid on Jan. 29***, and some of
2 the objections publicly voiced by the committee sound like Qualcomm talking points.”
3 A March 24, 2018 Wall Street Journal article likewise reported that, “Qualcomm
4 investors had raised concerns about the company’s performance and how the board
5 handled Broadcom’s \$117 billion takeover offer, especially following the revelation
6 that ***Qualcomm had prompted the government review that led to the order from***
7 ***President Donald Trump blocking the deal.***”

8 332. Indeed, news coverage following the March 12, 2018 disclosures
9 described Qualcomm as having used CFIUS as an ***undisclosed “poison pill”*** to kill the
10 deal. For example, Mondaq Business Briefing reported that “it is possible we are
11 seeing now for the first time the (potentially successful) ***use of CFIUS as a takeover***
12 ***defense against a hostile offer,***” comparing it to “traditional takeover defenses such as
13 the Poison Pill and White Knight [which] have long histories in the corporate M&A
14 world.” Additional reporting on March 13, 2018, in Computerworld Australia agreed
15 with this characterization, quoting Jim Lewis, a CFIUS expert at the Center for
16 Strategic and International Studies, describing Qualcomm’s actions as “***obviously a***
17 ***poison pill.***”

18 333. Similarly, academic research studies have since characterized
19 Qualcomm’s concealed actions as a “super poison pill” that ultimately resulted in
20 President Trump’s blockage of the deal. For example, a 2020 article in the Boston
21 College Law Review directly characterized Qualcomm’s actions as a hostile takeover
22 defense: ***Qualcomm “was in effect turning national security review into an***
23 ***antitakeover defense.***” A 2019 study in the Marquette Law Review entitled *Securing*
24 *the Nation or Entrenching the Board? The Evolution of CFIUS Review of Corporate*
25 *Acquisitions*, concluded that “***CFIUS review gained widespread recognition as a kind***
26 ***of ‘super poison pill’ with Qualcomm’s successful effort to fend off acquisition by***
27 ***Broadcom in 2018.***” The study further explained that:
28

1 The actions of CFIUS and the President in connection with Broadcom's
2 attempted Qualcomm acquisition, however, demonstrated an even more
3 aggressive approach. The Broadcom block established that CFIUS
4 reviews can be used for more than the government's defense-related
5 foreign policy or national security purposes. *The CFIUS process was*
clearly available to target companies as an antitakeover device in the
global M&A marketplace.

6 Without CFIUS, the Broadcom-Qualcomm situation was simple: two
7 large high-technology companies, both publicly traded in the U.S.
8 markets, engaged in the familiar M&A ritual of the hostile takeover
9 attempt. Hostile takeovers and proxy fights have long been a part of the
10 U.S. economy, and we have developed extensive legal doctrines to
11 manage such struggles for control in ways that are both fair to the
participants and in society's interest. *The deployment of CFIUS review*
as an antitakeover device by Qualcomm constituted a new weapon in
merger battles, and with the passage of FIRRMA that weapon became
very powerful.

12 334. In an article published on March 12, 2018, The New York Times made
13 clear that President Trump's Order was not fully expected prior to its issuance.
14 Quoting attorney John P. Kabealo, who specializes in foreign investment matters, the
15 article called it "'extraordinary' that Mr. Trump would intervene in the transaction
16 before a full investigation by the government panel was complete." The article further
17 reported that according to law firm Ropes & Gray, "[a] presidential action against
18 foreign investment in an American company is rare and ha[d] only taken place four
19 times in the past 30 years."

20 335. As a direct and proximate result of these disclosures and/or
21 materialization of the foreseeable risks concealed by Defendants' fraud, the
22 Company's share price fell an additional 4.95%, from a closing price of \$62.81 on
23 March 12, 2018, to a closing price of \$59.70 on March 13, 2018. By comparison, the
24 S&P 500 dropped only 0.67%.

25 336. In fact, after controlling for market and industry factors, the company-
26 specific abnormal return in Qualcomm's stock price on March 13, 2018, was -3.82%,
27 and was statistically significant at the 99% level. As a result, the price decline in
28 Qualcomm's stock price on March 13, 2018, was not the result of randomness but,

1 instead, was caused by President Trump's blockage of Broadcom's bid for Qualcomm
2 following Defendants' unilateral request to CFIUS. Cain Dec. ¶ 78.

3 337. In sum, from January 29, 2018, to March 13, 2018, the price of
4 Qualcomm's common stock fell from \$67.32 per share to \$59.70 per share as the
5 relevant truth and undisclosed risks relating to Qualcomm's lobbying for Broadcom's
6 bid to be terminated were revealed. Each of Qualcomm's stock price declines on
7 March 5, 2018, March 6, 2018, and March 13, 2018 was statistically significant at least
8 at the 95% level, and was caused by the revelation of information that was directly
9 related to and a foreseeable result of the information that Defendants' misrepresented
10 and concealed during the Class Period.

11 338. Moreover, Qualcomm's abnormal stock price declines on these three
12 corrective disclosure dates were economically significant to its investors – wiping out
13 approximately \$9.22 billion in shareholder value – or over 9% of Qualcomm's
14 shareholder value.

15 339. Nor is it surprising that the stock price declines on March 5, 6, and 13,
16 2018, were both statistically and economically significant. Rather, abnormal returns
17 of those amounts would be expected to be economically significant for a large company
18 with a multi-billion dollar equity market capitalization that trades in a liquid market
19 with significant daily trading volume. This is because companies of this nature tend to
20 have lower daily volatility and returns. As a result, even a single-digit stock price
21 decline represents a significant reduction in shareholder value.

22 340. It was foreseeable that issuing false and misleading statements and/or
23 omissions of material fact concerning the Company's willingness to negotiate with
24 Broadcom and the regulatory risks associated with Broadcom's proposal, while failing
25 to disclose the efforts Defendants had taken to frustrate the deal by seeking CFIUS's
26 intervention, would artificially inflate the price of Qualcomm common stock during
27 the Class Period. It was similarly foreseeable that the ultimate disclosure of the
28 concealed information and/or the materialization of the risks concealed by Defendants'

1 false and misleading statements and omissions would cause the price of Qualcomm
2 common stock to drop significantly as the inflation caused by earlier misleading
3 statements and omissions was removed from the stock by the corrective disclosures
4 and/or materialization of the risk set forth herein. Accordingly, the conduct of these
5 Defendants as alleged herein proximately caused foreseeable losses under the
6 Exchange Act to Plaintiffs and members of the Class.

7 **D. Expert Opinion Confirms That the Stock Price Declines on the**
8 **Corrective Disclosure Dates Were Statistically and Economically**
9 **Significant**

10 341. Plaintiffs' expert Dr. Cain, after engaging in a thorough analysis of the
11 record, concluded that "Qualcomm's common stock price declines following the
12 corrective disclosures were statistically significant. Furthermore, they were
13 economically significant and represented aggregate abnormal equity market value
14 losses of over \$9 billion, which constituted over 9% of Qualcomm's common equity
15 value." Cain Dec. ¶ 27.

16 342. To reach his conclusions, Dr. Cain performed a thorough event study
17 analysis to evaluate the statistical significance of Qualcomm's common stock price
18 declines on March 5, March 6, and March 13, 2018, following the corrective
19 disclosures. An event study is an established and generally-accepted statistical method
20 that assesses the impact of new information on securities prices. Event studies have
21 been utilized in numerous academic research studies to provide scientific evidence of
22 the linkage between new information and securities prices.

23 343. To conduct his event study, Dr. Cain first established the relationship
24 between the daily return of the Company stock, the daily return on an overall market
25 index, and the daily return on an industry index over the 120-day period ending
26 November 2, 2017, the day prior to the first news about Broadcom's intent to bid for
27 Qualcomm. This allowed Dr. Cain to predict the expected daily return of the Company
28 on a date, once he controlled for that day's market and industry returns. Dr. Cain then

1 subtracted the predicted return from the actual return to get the “abnormal” return,
2 which represented the company-specific return that is not attributable to market-wide
3 or industry-wide movements. Cain Dec. ¶ 71.

4 344. Finally, Dr. Cain calculated the statistical significance of the abnormal
5 company-wide return by comparing it to the usual volatility in the Company stock price
6 return. In particular, Dr. Cain calculated the t-statistic in order to test whether
7 randomness could be rejected as the explanation for any given price movement.
8 Dr. Cain explained that probability theory suggests that under the standard assumption
9 that abnormal returns will be normally distributed with a mean of zero in the absence
10 of new value-relevant company-specific news, based purely on randomness, using a
11 95% confidence level and a sufficiently large sample size, the abnormal return should
12 have a t-statistic greater than 1.96 (or less than -1.96) only 5% of the time. In other
13 words, there is a 95% chance that, barring some non-random explanation, the actual
14 observed return will fall within 1.96 standard deviations of the predicted return. Cain
15 Dec. ¶ 74. If the observed abnormal return had a t-statistic of an absolute magnitude
16 greater than 1.96 and new value-relevant company-specific information were observed,
17 randomness can be rejected as the explanation with 95% confidence and it can be
18 inferred that the new information caused the stock price movement. Cain Dec. ¶ 75.

19 345. Applying those principles here, Dr. Cain concluded that if the new
20 information revealed on the alleged corrective disclosure date had a statistically
21 significant abnormal return and there was no other important company-specific news
22 released on that date, the stock price movement was caused by the newly-available
23 public information. Dr. Cain could then conclude that the alleged corrective disclosure
24 provided new information in the market that was important to investors, causing them
25 to change their valuation of the Company’s stock. Cain Dec. ¶ 72.

26 346. After undertaking his event study and thoroughly analyzing the results,
27 Dr. Cain concluded that each of the stock price declines following the corrective
28 disclosures was statistically significant at the 95% level. Dr. Cain determined that the

1 abnormal return on March 5, 2018, was -2.49% and was statistically significant at the
2 95% level. The abnormal return on March 6, 2018, was -3.46% and was statistically
3 significant at the 99% level. As these abnormal price movements are statistically
4 significant at or above the 90% confidence level, Dr. Cain could reject randomness as
5 the cause of the abnormal movements in stock price and could infer that the new
6 information regarding CFIUS's involvement at Qualcomm's behest in the hostile
7 takeover battle between Broadcom and Qualcomm was the ultimate cause of the
8 observed price declines. Cain Dec. ¶ 76.

9 347. Dr. Cain also determined that the abnormal return on March 13, 2018, was
10 -3.82% and was statistically significant at the 99% level. The abnormal dollar change
11 in Qualcomm's stock price on this date was -\$2.40. As this abnormal price movement
12 was statistically significant at or above the 90% confidence level, Dr. Cain could reject
13 randomness as the cause of the abnormal movement in stock price and could infer that
14 the new information regarding the President's blockage of Broadcom's bid for
15 Qualcomm following Qualcomm's unilateral request to CFIUS was the ultimate cause
16 of the observed price decline. Cain Dec. ¶ 78.

17 348. Finally, Dr. Cain also determined that Qualcomm's abnormal stock price
18 declines on the three corrective dates were economically significant. In particular,
19 based on the event study abnormal returns, Dr. Cain determined that Qualcomm's
20 common equity market value declined by approximately \$9.22 billion following the
21 alleged corrective disclosures. Dr. Cain concluded that this massive reduction in
22 shareholder value following the corrective disclosures was economically significant.
23 Cain Dec. ¶ 79.

24 **E. Expert Opinion Confirms That the Information Disclosed on the**
25 **Corrective Dates Was Directly Related to and a Foreseeable**
26 **Consequence of the Information That Defendants Misrepresented**
and Concealed During the Class Period

27 349. Dr. Cain reviewed news, company press releases, SEC filings by
28 Qualcomm, and research analyst reports regarding Qualcomm and Broadcom to assess

1 the extent to which the information disclosed on March 5, 2018, March 6, 2018, and
2 March 12, 2018, was related to and a foreseeable consequence of the information that
3 Defendants misrepresented and concealed during the Class Period – namely, that rather
4 than working to negotiate a deal with Broadcom, as they represented, Defendants were
5 engaged in secret efforts to convince CFIUS to block the deal. Cain Dec. ¶ 45.

6 350. In reaching his conclusions, Dr. Cain was informed by his own
7 professional experience as a capital markets analyst who assisted companies in raising
8 financing for acquisitions, as a financial economist and advisor at the SEC who
9 evaluated companies' disclosures of information to investors, as an academic who has
10 taught M&A courses and published academic research studies on topics including
11 M&A, hostile takeover defenses, and investors' reactions to new information, and as a
12 financial economist who has testified on the connections among the information
13 environment, new disclosures, and company stock prices. Cain Dec. ¶ 42.

14 351. After conducting a thorough analysis, Dr. Cain ultimately determined that
15 the information disclosed on the corrective disclosure dates was both related to and a
16 foreseeable consequence of the information that Defendants misrepresented and
17 concealed during the Class Period: "I find that: (i) Qualcomm's common stock price
18 declines following the Corrective Disclosures were, from an economic perspective,
19 related to and foreseeable based on the alleged misrepresented and omitted
20 information; and (ii) Qualcomm's stock price declined by statistically significant and
21 economically meaningful amounts following Corrective Disclosures on March 5,
22 March 6, and March 12, 2018." Cain Dec. ¶ 81.

23 352. Dr. Cain first analyzed the corrective information released on March 5
24 and 6, 2018. In particular, Dr. Cain noted that on those dates, investors first became
25 aware that Qualcomm had secretly filed a voluntary request with CFIUS in January
26 2018 to initiate an investigation into Broadcom's bid, that CFIUS had ordered
27 Qualcomm to postpone its annual stockholders meeting by 30 days so that CFIUS
28 could conduct such an investigation. Cain Dec. ¶ 46. Dr. Cain then "reviewed news

1 stories, analyst reports, and academic studies to assess the extent to which the
2 disclosure of Qualcomm’s request that CFIUS review Broadcom’s bid, as well as
3 CFIUS’s decision to undertake that review and delay Qualcomm’s Annual Meeting,
4 were, from an economic perspective, related to and a foreseeable consequence of the
5 information that Defendants allegedly misrepresented and omitted.” Cain Dec. ¶ 48.
6 Dr. Cain determined that, from an economic perspective, “the revelation of
7 Defendants’ concealed efforts to block Broadcom’s bid was directly related to and a
8 foreseeable consequence of Defendants’ concealment of those same efforts during the
9 Class Period.” Cain Dec. ¶ 49. Moreover, “[t]his information would be expected to
10 affect the probability of deal completion, the takeover premium being offered to
11 Qualcomm’s shareholders, and the likelihood of those shareholders receiving such
12 premium. Thus, it was foreseeable that the disclosure of this information would cause
13 Qualcomm’s stock price to decline.” Cain Dec. ¶ 52. Dr. Cain also observed that:

14 [O]ne purpose and foreseeable consequence of Qualcomm’s unilateral
15 request for CFIUS review was that CFIUS would decide to undertake
16 that review. In my professional opinion, this outcome was, from an
17 economic perspective, both related to and a foreseeable consequence of
18 the information that Defendants allegedly misrepresented and omitted
19 during the Class Period. CFIUS’s decision to undertake a review of
20 Broadcom’s bid would also be expected to affect the probability of deal
completion and, thus, the likelihood of those shareholders receiving a
share price premium. Thus, it was also foreseeable that the disclosure of
this information would cause Qualcomm’s stock price to decline.

21 Dr. Cain concluded that the new information disclosed on March 5 and 6, 2018, was
22 both related to and a foreseeable consequence of the information that Defendants
23 misrepresented and concealed during the Class Period. Cain Dec. ¶ 53.

24 353. Dr. Cain next analyzed the corrective information released on March 13,
25 2018, when investors learned that President Trump had blocked Broadcom’s bid for
26 Qualcomm. More specifically, Dr. Cain “reviewed news stories, analyst reports, and
27 academic studies to assess the extent to which the President’s blocking of the deal was,
28 from an economic perspective, related to and a foreseeable consequence of the

1 information that Defendants allegedly misrepresented and omitted.” Cain Dec. ¶ 54.
2 Dr. Cain’s “review provided consistent evidence that the logical endgame of
3 Qualcomm’s unilateral request for CFIUS review could include blockage of
4 Broadcom’s hostile takeover bid by the President.” As a result, Dr. Cain determined,
5 “that the logical endgame of Qualcomm’s unilateral request for CFIUS review could
6 include blockage of Broadcom’s hostile takeover bid by the President. Thus, the bid’s
7 blockage was clearly connected to Qualcomm’s actions.” Cain Dec. ¶ 65. Dr. Cain
8 concluded that the new information disclosed on March 13, 2018, was both related to
9 and a foreseeable consequence of the information that Defendants misrepresented and
10 concealed during the Class Period.

11 **VIII. THE STATUTORY SAFE HARBOR AND BESPEAKS CAUTION**
12 **DOCTRINE ARE INAPPLICABLE**

13 354. The statutory safe harbor and the bespeaks caution doctrine applicable to
14 forward-looking statements under the Private Securities Litigation Reform Act of 1995
15 do not apply to the misleading statements and omissions alleged in this Complaint.

16 355. None of Defendants’ historic or present-tense statements alleged herein
17 was a forward-looking statement because none was an assumption underlying or
18 relating to any plan, projection, or statement of future economic performance, as they
19 were not stated to be such assumptions underlying or relating to any projection or
20 statement of future economic performance when made, nor were any of the projections
21 or forecasts made by Defendants expressly related to, or stated to be dependent on,
22 those historic or present-tense statements when made.

23 356. To the extent that any of the materially false or misleading statements
24 alleged herein, or any portions thereof, can be construed as forward-looking, these
25 statements were not accompanied by meaningful cautionary language identifying
26 important facts that could cause actual results to differ materially from those in the
27 statements. As set forth above in detail, given the then-existing facts contradicting
28 Defendants’ statements, the generalized risk disclosures made by Defendants were not

1 sufficient to insulate Defendants from liability for their materially false and misleading
2 statements.

3 357. Defendants are also liable for any false or misleading forward-looking
4 statement alleged herein, or portion thereof, because at the time each forward-looking
5 statement was made, the speaker knew the forward-looking statement was false or
6 misleading, or the forward-looking statement was authorized and approved by an
7 executive officer of Qualcomm who knew that the forward-looking statement was false
8 or misleading.

9 **IX. CONTROLLING PERSON ALLEGATIONS**

10 358. By virtue of the Individual Defendants' positions of management and
11 control within the Company, they had access to undisclosed adverse information about
12 Qualcomm's response to Broadcom's takeover bid, including information regarding
13 Qualcomm's undisclosed, unilateral voluntary notice to CFIUS and other
14 communications with and other information provided to CFIUS, as particularized
15 herein. The Individual Defendants ascertained such information through Qualcomm's
16 internal corporate documents, conversations, and connections with each other and with
17 corporate officers and employees, attendance at Board of Directors meetings, including
18 committees thereof, and through reports and other information provided to them in
19 connection with their roles and duties as Qualcomm officers, directors, and managers.

20 359. The Individual Defendants participated in the drafting, preparation, and/or
21 approval of the various public, shareholder, and investor reports and other
22 communications complained of herein, and knew or recklessly disregarded that there
23 were materially misleading statements and omissions contained therein. Because of
24 their Board, executive, or managerial positions with Qualcomm, each of the Individual
25 Defendants had access to the adverse undisclosed information about Qualcomm's
26 response to Broadcom's takeover bid, as particularized herein, and knew (or were
27 deliberately reckless in not knowing) that this information rendered the representations
28

1 made by or about Qualcomm and its business, or adopted by the Company, materially
2 false and misleading.

3 360. The Individual Defendants, because of their positions of control and
4 authority as officers or directors of the Company, were able to and did control the
5 content of the various SEC filings, press releases, and other public statements
6 pertaining to the Company during the Class Period. Each Individual Defendant was
7 provided with copies of the documents alleged herein to be misleading before or shortly
8 after their issuance, and had the ability and opportunity to prevent their issuance or
9 cause them to be corrected. Accordingly, each of the Individual Defendants is
10 responsible for the accuracy of the public reports and releases detailed herein, and is
11 therefore primarily liable for the representations therein.

12 361. As officers, directors, and controlling persons of a publicly held company
13 whose common stock is registered with the SEC pursuant to the Exchange Act, and is
14 traded on the NASDAQ, and governed by the provisions of the federal securities laws,
15 the Individual Defendants each had a duty to promptly disseminate accurate and
16 truthful information with respect to the Company's response to Broadcom's takeover
17 bid, as particularized herein, and to correct any previously issued statements that had
18 become materially misleading or untrue, so that the market price of the Company's
19 publicly-traded securities would be based on truthful and accurate information. The
20 Individual Defendants' materially misleading statements and omissions during the
21 Class Period violated these specific requirements and obligations.

22 **X. CLASS ACTION ALLEGATIONS**

23 362. Plaintiffs bring this action on behalf of themselves and as a class action,
24 pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf
25 of a Class consisting of all persons and entities that, during the Class Period, purchased
26 or otherwise acquired the publicly traded common stock of Qualcomm and were
27 damaged thereby. Excluded from the Class are Defendants, members of Defendants'
28 immediate families (as defined in 17 C.F.R. § 229.404, Instructions (1)(a)(iii) and

1 (1)(b)(ii)), any person, firm, trust, corporation, officer, director, or other individual or
2 entity in which any Defendant has a controlling interest, or which is related to or
3 affiliated with any of the Defendants, and the legal representatives, agents, affiliates,
4 heirs, successors-in-interest, or assigns of any such excluded party.

5 363. The members of the Class are so numerous and geographically dispersed
6 that joinder of all members is impracticable. While the exact number of Class members
7 is unknown to Plaintiffs at this time and can only be ascertained through appropriate
8 discovery, Plaintiffs believe that there are at least thousands of members of the
9 proposed Class. At the end of the Class Period, Qualcomm had more than 1.48 billion
10 shares of common stock issued and outstanding, owned by thousands of persons, and
11 actively traded on the NASDAQ. The disposition of their claims in a class action will
12 provide substantial benefits to the parties and the Court. Record owners and other
13 members of the Class may be identified from records maintained by Qualcomm or its
14 transfer agent, and may be notified of the pendency of this action by a combination of
15 published notice and first-class mail, using the techniques and form of notice similar
16 to that customarily used in class actions arising under the federal securities laws.

17 364. There is a well-defined commonality of interest in the questions of law
18 and fact involved in this case. Questions of law and fact common to the members of
19 the Class that predominate over questions that may affect individual Class members
20 include:

21 (a) whether Defendants' actions as alleged herein violated the federal
22 securities laws;

23 (b) whether Defendants' statements and/or omissions issued during the
24 Class Period were materially false and misleading;

25 (c) whether Defendants knew or were deliberately reckless in not
26 knowing that their statements were false and misleading;

27 (d) whether and to what extent the market prices of Qualcomm publicly
28 traded common stock were artificially inflated and/or distorted before and/or

1 during the Class Period due to the misrepresentations and/or omissions of
2 material fact alleged herein; and

3 (e) whether and to what extent Class members sustained damages as a
4 result of the conduct alleged herein, and the appropriate measure of damages.

5 365. Plaintiffs' claims are typical of the claims of the other members of the
6 Class, as all members of the Class, including Plaintiffs, purchased or otherwise
7 acquired Qualcomm publicly traded securities during the Class Period and similarly
8 sustained damages as a result of Defendants' wrongful conduct as alleged herein.

9 366. Plaintiffs will fairly and adequately protect the interests of the members
10 of the Class. Plaintiffs have retained counsel competent and experienced in class action
11 securities litigation to further ensure such protection, and intends to prosecute this
12 action vigorously. Plaintiffs have no interests that are adverse or antagonistic to those
13 of the Class.

14 367. A class action is superior to other available methods for the fair and
15 efficient adjudication of this controversy. Because the damages suffered by each
16 individual member of the Class may be relatively small, the expense and burden of
17 individual litigation make it impracticable for Class members to seek redress for the
18 wrongful conduct alleged herein. Plaintiffs know of no difficulty that will be
19 encountered in the management of this litigation that would preclude its maintenance
20 as a class action.

21 **XI. PLAINTIFFS AND CLASS MEMBERS ARE ENTITLED TO A**
22 **PRESUMPTION OF RELIANCE**

23 368. Plaintiffs and members of the Class are entitled to rely upon the
24 presumption of reliance established by the fraud-on-the-market doctrine in that, among
25 other things:

26 (a) Defendants made public misrepresentations and failed to disclose
27 material facts during the Class Period;

28 (b) the omissions and misrepresentations were material;

1 (c) Qualcomm common stock traded in efficient markets;

2 (d) the material misrepresentations and omissions alleged herein would
3 tend to induce a reasonable investor to misjudge the value of Qualcomm
4 common stock; and

5 (e) without knowledge of the misrepresented or omitted facts,
6 Plaintiffs and other members of the Class purchased or otherwise acquired
7 Qualcomm common stock between the time that Defendants made material
8 misrepresentation and omissions and the time the concealed risks materialized
9 or the true facts were disclosed.

10 369. At all relevant times, the market for Qualcomm common stock was open
11 and efficient for the following reasons, among others:

12 (a) as a registered and regulated issuer of securities, Qualcomm filed
13 periodic public reports with the SEC, in addition to the Company's frequent
14 voluntary dissemination of information;

15 (b) Qualcomm regularly communicated with public investors via
16 established market communication mechanisms, including through regular
17 disseminations of press releases on the national circuits of major newswire
18 services and through other wide-ranging public disclosures, such as
19 communications with the financial press, securities analysts, and other similar
20 reporting services;

21 (c) Qualcomm was followed by numerous securities analysts
22 employed by major brokerage firms who wrote reports that were distributed to
23 the sales force and certain customers of their respective brokerage firms and that
24 were publicly available and entered the public marketplace; and

25 (d) Qualcomm common stock met the requirements for listing, and was
26 listed and actively traded on highly efficient markets, including NASDAQ,
27 where the Company's common stock trades under the ticker symbol "QCOM."
28

1 370. As a result of the foregoing, the market for Qualcomm common stock
2 promptly digested current information regarding Qualcomm from all publicly available
3 sources, and the prices of Qualcomm’s stock reflected such information.

4 371. Based upon the materially false and misleading statements and omissions
5 of material fact alleged herein, Qualcomm common stock traded at artificially inflated
6 prices during the Class Period. Plaintiffs and the other members of the Class purchased
7 Qualcomm common stock relying upon the integrity of the market price of Qualcomm
8 common stock and other market information relating to Qualcomm.

9 372. Under these circumstances, all purchasers of Qualcomm common stock
10 during the Class Period suffered similar injuries through their purchases at artificially
11 inflated prices, and a presumption of reliance applies.

12 373. Further, at all relevant times, Plaintiffs and other members of the Class
13 reasonably relied upon Defendants to disclose material information as required by law
14 and in the Company’s SEC filings. Plaintiffs and the other members of the Class would
15 not have purchased or otherwise acquired Qualcomm common stock at artificially
16 inflated prices if Defendants had disclosed all material information as required. Thus,
17 to the extent that Defendants concealed or improperly failed to disclose material facts
18 with regard to the Company and its business, Plaintiffs are entitled to a presumption of
19 reliance in accordance with *Affiliated Ute Citizens of Utah v. United States*, 406 U.S.
20 128, 153 (1972).

1 **XII. CAUSES OF ACTION**

2 **COUNT I**

3 **Asserted Against All Defendants for**
4 **Violations of Section 10(b) of the Securities Exchange**
5 **Act of 1934 and SEC Rule 10b-5 Promulgated Thereunder**

6 374. Plaintiffs repeat and reallege each and every allegation contained above
7 as if fully set forth herein. This Count is brought pursuant to Section 10(b) of the
8 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC,
9 17 C.F.R. § 240.10b-5, on behalf of Plaintiffs and all other members of the Class
10 against Qualcomm and the Individual Defendants.

11 375. During the Class Period, Defendants carried out a plan, scheme, and
12 course of conduct which was intended to and, throughout the Class Period, did:
13 (i) deceive the investing public, including Plaintiffs and other Class members, as
14 alleged herein; (ii) artificially inflate the price of Qualcomm common stock; and
15 (iii) cause Plaintiffs and other members of the Class to purchase Qualcomm common
16 stock at artificially inflated prices that did not reflect their true value. In furtherance
17 of this unlawful scheme, plan, and course of conduct, Defendants took the actions set
18 forth herein.

19 376. Defendants directly and indirectly, by the use of means and
20 instrumentalities of interstate commerce, the mails, and/or the facilities of a national
21 securities exchange: (i) employed devices, schemes, and artifices to defraud; (ii) made
22 untrue statements of material fact and/or omitted material facts necessary to make the
23 statements not misleading; and (iii) engaged in acts, practices, and a course of business
24 that operated as a fraud and deceit upon the purchasers of the Company's common
25 stock in an effort to maintain the artificially inflated price of Qualcomm common stock
26 in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated
27 thereunder.

1 377. Defendants employed devices, schemes, and artifices to defraud while in
2 possession of material adverse nonpublic information and engaged in acts, practices,
3 and a course of conduct as alleged herein in an effort to assure investors of Qualcomm’s
4 value and performance, which included the making of untrue statements of material
5 facts and omitting material facts necessary in order to make their statements, in light
6 of the circumstances under which they were made, not misleading, as set forth more
7 particularly herein. Defendants did not have a reasonable basis for their alleged false
8 statements and engaged in transactions, practices, and a course of business which
9 operated as a fraud and deceit upon the purchasers of Qualcomm common stock during
10 the Class Period.

11 378. Defendants are liable for all materially false and misleading statements
12 and omissions made during the Class Period, as alleged above, including the false and
13 misleading statements and omissions included in press releases, conference calls, SEC
14 filings, news media, blogs, and Qualcomm’s websites.

15 379. Defendants are further liable for the false and misleading statements made
16 by Qualcomm’s officers, management, and agents in press releases, conference calls,
17 conferences with investors and analysts, news media, blog reports, and Qualcomm’s
18 websites, as alleged above, as they either made or controlled such statements and had
19 ultimate authority and responsibility for the contents thereof.

20 380. Defendants’ material misrepresentations and/or omissions were done
21 knowingly or with recklessness, and without a reasonable basis, for the purpose and
22 effect of concealing from the investing public the relevant truth. By concealing
23 material facts from investors, Defendants maintained the Company’s artificially
24 inflated common stock prices throughout the Class Period.

25 381. Without knowledge of the fact that the price of Qualcomm common stock
26 was artificially inflated, and relying directly or indirectly on the false and misleading
27 statements and omissions made by Defendants, or upon the integrity of the market in
28 which the common stock trades, and/or on the absence of material adverse information

1 that was known to or recklessly disregarded by Qualcomm but not disclosed in public
2 statements by Qualcomm during the Class Period, Plaintiffs and the other members of
3 the Class purchased or acquired Qualcomm common stock during the Class Period at
4 artificially high prices and were damaged when that artificial inflation was removed
5 from the price of Qualcomm common stock.

6 382. At the time of said misrepresentations and omissions, Plaintiffs and other
7 members of the Class were ignorant of their falsity. Had Plaintiffs, the other members
8 of the Class, and the marketplace known of the truth concerning the Company's
9 conduct and the true value of Qualcomm's common stock, Plaintiffs and other
10 members of the Class would not have purchased or acquired their Qualcomm common
11 stock, or, if they had purchased or acquired such common stock during the Class
12 Period, they would not have done so at the artificially inflated prices they paid.

13 383. By virtue of the foregoing, Defendants have violated Section 10(b) of the
14 Exchange Act and Rule 10b-5 promulgated thereunder.

15 384. As a direct and proximate result of Defendants' wrongful conduct,
16 Plaintiffs and the other members of the Class suffered damages in connection with their
17 respective purchases and/or acquisitions of Qualcomm common stock during the Class
18 Period.

19 **COUNT II**

20 **Asserted Against the Individual Defendants for Violations**
21 **of Section 20(a) of the Securities Exchange Act of 1934**

22 385. Plaintiffs repeat and reallege each and every allegation contained above
23 as if fully set forth herein. This Count is brought pursuant to Section 20(a) of the
24 Exchange Act, 15 U.S.C. § 78t(a), on behalf of Plaintiffs and all other members of the
25 Class against the Individual Defendants.

26 386. At all relevant times during the Class Period, as set forth in *supra* ¶¶ 38-
27 41, Mollenkopf was the Company's CEO and a member of the Company's Board;
28 Jacobs was the Company's Executive Chairman and Chairman of the Board;

1 Rosenberg was the Company's General Counsel; and Horton was Qualcomm's
2 Presiding Director of the Board. As such, the Individual Defendants had regular access
3 to non-public information about Qualcomm's business, operations, performance, and
4 future prospects through access to internal corporate documents and information,
5 conversations, and connections with other corporate officers and employees,
6 attendance at management meetings and meetings of the Company's Board and
7 committees thereof, as well as reports and other information provided to them in
8 connection therewith.

9 387. The Individual Defendants acted as controlling persons of Qualcomm and
10 the other Individual Defendants within the meaning of Section 20(a) of the Exchange
11 Act as alleged herein. By virtue of their high-level positions, and their ownership and
12 contractual rights, participation in and/or awareness of Qualcomm's day-to-day
13 operations, and/or knowledge of statements filed by the Company with the SEC and/or
14 disseminated to the investing public, the Individual Defendants had the power to
15 influence and control, and did influence and control, directly or indirectly, the decision-
16 making of the Company and its executives, including the content and dissemination of
17 the various statements that Plaintiffs contend are false and misleading.

18 388. The Individual Defendants were provided with or had unlimited access to
19 copies of the Company's reports, press releases, public filings, and other statements
20 alleged by Plaintiffs to be misleading prior to and/or shortly after these statements were
21 issued and had the ability to prevent the issuance of the statements or cause the
22 statements to be corrected.

23 389. In particular, each of these Individual Defendants had direct and
24 supervisory involvement in and control of the day-to-day operations of the Company
25 and, therefore, is presumed to have had the power to control or influence the particular
26 conduct and transactions giving rise to the securities violations as alleged herein, and
27 exercised the same.

1 390. As set forth above, Qualcomm and the Individual Defendants each
2 violated Section 10(b) and Rule 10b-5 by their acts, statements, and omissions as
3 alleged in this Complaint. By virtue of their positions as controlling persons, the
4 Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a
5 direct and proximate result of Defendants' wrongful conduct, Plaintiffs and other
6 members of the Class suffered damages in connection with their purchases of
7 Qualcomm common stock during the Class Period.

8 **XIII. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for judgment as follows:

10 A. Declaring this action to be a proper class action pursuant to Rule 23 of the
11 Federal Rules of Civil Procedure;

12 B. Awarding Plaintiffs and the members of the Class damages and interest
13 thereon;

14 C. Awarding Plaintiffs' and the Class's reasonable costs, including
15 attorneys' and experts' fees; and

16 D. Awarding such equitable, injunctive or other relief that the Court may
17 deem just and proper.

18 **XIV. JURY DEMAND**

19 Plaintiffs demand a trial by jury.

20 DATED: May 11, 2020

**KESSLER TOPAZ
MELTZER & CHECK, LLP**

21 s/Sharan Nirmul
22 Sharan Nirmul (Pro Hac Vice)
23 Mark Franek (Pro Hac Vice Forthcoming)
24 Raphael Janove (Pro Hac Vice Forthcoming)
snirmul@ktmc.com
mfranek@ktmc.com
rjanove@ktmc.com
25 280 King of Prussia Road
26 Radnor, PA 19087
Telephone: 610/667-7706
610/667-7056 (fax)

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**KESSLER TOPAZ
MELTZER & CHECK, LLP**
Jennifer L. Joost (296164)
Stacey M. Kaplan (241989)
Peng Shao (319624; *admission pending*)
jjoost@ktmc.com
skaplan@ktmc.com
pshao@ktmc.com
One Sansome Street, Suite 1850
San Francisco, CA 94104
Telephone: 415/400-3000
415/400-3001 (fax)

*Lead Counsel for the Class and
Lead Plaintiff Gatubhai Mistry and Named
Plaintiffs Gerald L. Koenig, Leonard Brenner,
and Vanessa D. Washington*

DATED: May 11, 2020

**ROBBINS GELLER RUDMAN
& DOWD LLP**

s/Luke O. Brooks
Luke O. Brooks (212802)
Robert R. Henssler, Jr. (216165)
Christopher D. Stewart (270448)
Hillary B. Stakem (286152)
lukeb@rgrdlaw.com
bhenssler@rgrdlaw.com
cstewart@rgrdlaw.com
hstakem@rgrdlaw.com
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

*Lead Counsel for the Class and
Lead Plaintiff Gatubhai Mistry and Named
Plaintiffs Gerald L. Koenig, Leonard Brenner,
and Vanessa D. Washington*

SIGNATURE CERTIFICATION

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable and I have obtained authorization of all signatories to affix the above-electronic signature(s).

s/Sharan Nirmul
Sharan Nirmul