

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

JONATHAN D. USLANER (Bar No. 256898)

jonathanu@blbglaw.com

LAUREN M. CRUZ (Bar No. 299964)

lauren.cruz@blbglaw.com

2121 Avenue of the Stars, Suite 2575

Los Angeles, CA 90067

Tel: (310) 819-3470

MOTLEY RICE LLC

GREGG S. LEVIN (*pro hac vice*)

glevin@motleyrice.com

28 Bridgeside Blvd.

Mount Pleasant, SC 29464

Tel: (843) 216-9000

Counsel for Lead Plaintiffs and

Lead Counsel for the Class

[Additional Counsel Appear on Signature
Page]

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE QUALCOMM
INCORPORATED SECURITIES
LITIGATION

Case No. 3:17-cv-00121-JO-MSB

**SUPPLEMENTAL JOINT
DECLARATION OF
JONATHAN D. USLANER AND
GREGG S. LEVIN**

Judge: Hon. Jinsook Ohta
Courtroom: 4C

1 JONATHAN D. USLANER and GREGG S. LEVIN declare as follows:

2 1. Jonathan D. Uslaner is a partner in the law firm of Bernstein Litowitz
3 Berger & Grossmann LLP (“BLB&G”). Gregg S. Levin is a member attorney at the
4 law firm Motley Rice LLC (“Motley Rice”). BLB&G and Motley Rice were
5 appointed Lead Counsel for Lead Plaintiffs Sjunde AP-Fonden (“AP7”) and Metzler
6 Asset Management GmbH (“Metzler” and, with AP7, “Lead Plaintiffs”) and Class
7 Counsel for the Class in the above-captioned action (the “Action”). We have
8 personal knowledge of the matters set forth herein based on our active participation
9 in all aspects of the prosecution and settlement of the Action.

10 2. We submit this declaration in further support of: (i) Lead Plaintiffs’
11 motion for final approval of the proposed Settlement and the proposed Plan of
12 Allocation; and (ii) Lead Counsel’s motion for attorneys’ fees and litigation
13 expenses.

14 3. Attached hereto as **Exhibit 1** is a true and correct copy of an email from
15 Hayley Alexander to info@QualcommSecuritiesLitigation.com dated August 30,
16 2024.

17 4. Attached hereto as **Exhibit 2** is a true and correct copy of the
18 Supplemental Declaration of Jack Ewashko Regarding Mailing of Settlement
19 Notices.

20 5. Objector James J. Hayes has filed objections to class action settlement
21 or fee requests in at least twenty other federal or state class actions, as well as at least
22 one bankruptcy matter, of which Lead Counsel is aware. To Lead Counsel’s
23 knowledge, none of Mr. Hayes’s objections have ever been found to be meritorious
24 by any court. The following table sets forth a summary the cases, of which Lead
25 Counsel is aware, in which Mr. Hayes has objected:

1 2 3 4 5 6 7 8 9 10	<p>1. <i>In re Mattel, Inc. Sec. Litig.</i>, No. 2:19-cv-10860-MCS-PLA, Order at 3-5, 9-10 (C.D. Cal. May 18, 2022), ECF No. 160 (overruling various objections from Hayes).</p> <p><i>In re Mattel, Inc. Sec. Litig.</i>, No. 22-55686, Order (9th Cir. Mar. 31, 2023) (dismissing Hayes’s appeal from the denial of his objections for failure to prosecute).</p> <p><i>Houston Mun. Emps. Pension Sys. v. Mattel, Inc.</i>, No. 24-555, Order (9th Cir. May 24, 2024) (summarily dismissing second appeal taken by Hayes from post-judgment motions because “the questions raised in [Hayes’s] appeal are so insubstantial as not to require further argument”).</p>
11 12 13 14 15 16	<p>2. <i>In re Iconix Brand Grp., Inc.</i>, No. 1:15-cv-04860-PGG, Tr. at 12:2-15 (S.D.N.Y. Jan. 23, 2020), ECF No. 173 (overruling objections from Hayes, finding that his “criticisms are not valid,” “flatly wrong,” “have no merit”), <i>aff’d</i>, No. 20-747 (2d Cir. July 23, 2020), ECF No. 52 (granting motion to summarily affirm and dismiss Hayes’s appeal).</p> <p><i>In re Iconix Brand Grp., Inc.</i>, 2021 WL 4225997 (S.D.N.Y. Sept. 16, 2021) (denying Hayes’ post-appeal motion for reconsideration).</p>
17 18 19 20 21 22 23 24 25 26 27 28	<p>3. <i>In re Facebook, Inc., IPO Sec. & Derivative Litig.</i>, 343 F. Supp. 3d 394, 410-12 (S.D.N.Y. 2018) (finding that Hayes has “a well-known history of filing class action objections in federal court” and overruling his objections as “without merit”), <i>aff’d sub nom. In re Facebook, Inc.</i>, 822 F. App’x 40 (2d Cir. 2020) (denying Hayes’s appeal).</p> <p><i>See also In re Facebook, Inc. IPO Sec. & Derivative Litig.</i>, No. 1:12-md-02389-CM-GWG, Mem. and Op. (S.D.N.Y. May 5, 2022), ECF No. 627 (denying another Hayes motion post-appeal and entering order to show cause why Hayes should not be sanctioned).</p>

4.	<i>City of Brockton Ret. Sys. v. Avon Prods., Inc.</i> , No. 1:11-cv-04665-PGG, Tr. at 12:2-4 (S.D.N.Y. Dec. 1, 2015), ECF No. 90 (overruling Hayes’s objection and noting that he is a “‘serial objector’ who regularly filed objections in class action settlements”), <i>appeal dismissed</i> , No. 16-3295, ECF No. 50 (2d Cir. Feb. 22, 2017) (dismissing appeal for lack of standing), <i>cert. denied sub nom. Hayes v. LBBW Asset Mgmt. Investmentgesellschaft mbH</i> , 583 U.S. 934 (2017).
5.	<i>Wong v. Accretive Health, Inc.</i> , 2014 WL 7664249, at *3 (N.D. Ill. April 30, 2014) (finding Hayes’s objection “without merit” and overruling it “in its entirety”), <i>aff’d</i> , 773 F.3d 859, 863 (7th Cir. 2014) (affirming settlement over Hayes’s objections).
6.	<i>In re Toyota Motor Corp. Sec. Litig.</i> , No. 2:10-cv-00922, Order (C.D. Cal. Mar. 15, 2013), ECF No. 322, Judgment (C.D. Cal. Mar. 15, 2013), ECF No. 323, and Order (C.D. Cal. Mar. 19, 2013), ECF No. 324 (approving settlement, plan of allocation and award of attorneys’ fees over Hayes’s objections), <i>appeal dismissed</i> , No. 13-55613, Order at 2 (9th Cir. May 3, 2013) (voluntarily dismissing Hayes’s appeal).
7.	<i>Hayes v. Harmony Gold Mining Co.</i> , 2011 WL 6019219, at *1, *4-5 (S.D.N.Y. Dec. 2, 2011) (rejecting Hayes’s objection settlement), <i>aff’d</i> , 509 F. App’x 21, 23 & n.1 (2d Cir. 2013) (the Second Circuit observed that Hayes is “a frequent class action objector and appellant” and found all of his arguments to be “without merit”).
8.	<i>In re IPO Sec. Litig.</i> , 671 F. Supp. 2d 467, 493-94 (S.D.N.Y. 2009) (overruling Hayes’s objection to settlement); <i>see also In re IPO Sec. Litig.</i> , 728 F. Supp. 2d 289, 294 (S.D.N.Y. 2010) (finding Hayes to be part of a group of objectors engaged in “bad faith or vexatious conduct” and concluding that Hayes “is a serial objector and should also be required to post a Rule 7 bond”). <i>In re IPO Sec. Litig.</i> , 2011 WL 3792825, at *1-2 (S.D.N.Y. Aug. 25, 2011) (finding that Hayes was not a class member, because he had not purchased the relevant securities for two out of three settlement classes to which he claimed membership, while suffering no loss related to his sale of securities relevant to the third class, and had failed to either timely object, file a proof of claim, and provided no evidence to support his claim of membership in a fourth class).

1	9.	<i>In re PainCare Holdings, Inc. Sec. Litig.</i> , No. 6:06-cv-00362-JA-DAB, Objection (MD. Fla. Aug. 20, 2008), ECF No. 151; and Order at 1 (M.D. Fla. Sept. 16, 2008), ECF No. 161 (approving settlement over Hayes’s objections to adequacy of notice and fairness of settlement).
2		
3		
4		
5	10.	<i>In re Omnivision Techs., Inc.</i> , 559 F. Supp. 2d 1036, 1044 & n.4 (N.D. Cal. 2008) (finding that Hayes “lack[ed] standing to object” to securities class action settlement because he suffered no loss due to his purchase of the shares and that “[e]ven if Hayes had standing, his objections lack merit”).
6		
7		
8		
9	11.	<i>In re Tyco Int’l Ltd. Multidistrict Litig.</i> , 535 F. Supp. 2d 249, 263 (D.N.H. 2007) (overruling Hayes’s objection to securities class action as “overly simplistic”).
10		
11		
12		<i>In re Tyco Int’l Multidistrict, Sec. Litig.</i> , No. 1:02-md-01335, Stipulation (D.N.H. Mar. 11, 2008), ECF No. 1226-1 (Hayes agreed to withdraw his motion for reconsideration of the Court’s decision overruling his objections and agreed not to appeal in exchange for \$380,000).
13		
14		
15		
16	12.	<i>In re SFBC Int’l, Inc. Sec. & Derivative Litig.</i> , 495 F. Supp. 2d 477 (D.N.J. 2007) (rejecting Hayes’s objections to securities class action settlement), <i>aff’d</i> , <i>In re SFBC Int’l Inc.</i> , 310 F. App’x 556, 557 n.1, 558 (3d Cir. 2009) (Third Circuit had “no trouble” affirming district court’s decision to overrule Hayes’s objections, noting that his arguments were either “unsupported” or based on “a rather simple calculation which is not tested” and that “his objections appear to give no calculation or weight to the issues of loss causation”).
17		
18		
19		
20		
21		
22	13.	<i>Morton Smith Trust v. Golden W. Fin. Corp.</i> , No. RG06269464, slip op. (Cal. Super. Ct. Alameda Cnty. June 14, 2007) (unpublished) (rejecting Hayes’ objection to class action settlement).
23		
24		
25	14.	<i>In re White Elec. Designs Corp. Sec. Litig.</i> , No. 2:04-cv-01499-SRB, Order at 2 (D. Ariz. May 7, 2007), ECF No. 104 (overruling Hayes’s objection to securities class action settlement and the allocation of settlement proceeds in its entirety).
26		
27		
28		

1	15.	<i>Slayton v. Citibank (S. Dakota), N.A.</i> , 2007 WL 731432, at *2-6 (Cal. Ct. App. Mar. 12, 2007) (upholding trial court’s overruling of Hayes’s objections and approval of class action settlement).
2		
3		
4	16.	<i>Desert Orchid Partners, L.L.C. v. Transaction Sys. Architects, Inc.</i> , 2007 WL 703515, at *1, *4 (D. Neb. Mar. 2, 2007) (overruling Hayes’s objections to class action settlement), <i>aff’d sub nom. Genesee Cnty. Emps.’ Ret. Sys. v. Hanson</i> , 285 F. App’x 317 (8th Cir. 2008) (“Because Hayes did not timely raise (if at all) in the district court the issues he argues on appeal, we do not consider them. Accordingly, we affirm.”).
5		
6		
7		
8		
9	17.	<i>In re Stock Exchs. Options Trading Antitrust Litig.</i> , 2006 WL 3498590, at *14 (S.D.N.Y. Dec. 4, 2006) (rejecting all of Hayes’s objections, finding one objection to “create[] no credible challenge to the findings and determinations already discussed,” dismissing a second objection as irrelevant, and finding that in a third “Mr. Hayes simply misstates the law”).
10		
11		
12		
13		
14	18.	<i>Denver Area Meat Cutters & Emps. Pension Plan v. Clayton</i> , 209 S.W.3d 584, 594-95 (Tenn. Ct. App. 2006) (rejecting Hayes’s appeal of his objections to settlement), <i>cert. denied sub nom. Hayes v. Denver Area Meat Cutters & Emps. Pension Plan</i> , 549 U.S. 1339 (2007).
15		
16		
17	19.	<i>New England Health Care Emps. Pension Fund v. Fruit of the Loom, Inc.</i> , 234 F.R.D. 627, 632 n.2 (W.D. Ky. 2006) (rejecting Hayes’s objections for lack of merit), <i>aff’d sub nom., Fidel v. Farley</i> , 534 F.3d 508, 515 (6th Cir. 2008), <i>cert. denied, Hayes v. Fidel</i> , 555 U.S. 1135 (2009) (cert. petition denied as untimely).
18		
19		
20		
21	20.	<i>In re Genesis Health Ventures, Inc.</i> , No. 1:00-bk-02692-PJW, Tr. at 25-29 (Bankr. D. Del. Jan. 19, 2006), ECF No. 2320 (imposing sanctions on Hayes for vexatiously multiplying proceedings), <i>aff’d</i> , 362 B.R. 657, 661-63 (D. Del.), <i>aff’d</i> , 248 F. App’x 475 (3d Cir. 2007).
22		
23		
24		
25	21.	<i>In re: Nice Sys. Ltd. Sec. Litig.</i> , No. 2:01-cv-00737, J. Order (D.N.J. Apr. 7, 2003), ECF No. 67 (approving class settlement over Hayes’s objections), Order (D.N.J. July 3, 2003), ECF No. 73 (Hayes ordered to pay \$10,000 appeal bond), <i>aff’d</i> , Nos. 03-2262 and 03-3841, 2004
26		
27		
28		

U.S. App. LEXIS 4411, *1 (3d Cir. Feb 9, 2004), *cert. denied sub nom. Hayes v. Nice Sys.*, 543 U.S. 819 (2004).

6. Attached hereto are true and correct copies of the following additional materials concerning objector James J. Hayes:

Exhibit 3: *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, No. 1:12-md-02389-CM-GWG (S.D.N.Y. May 5, 2022), ECF No. 627

Exhibit 4: *Hayes v. Harmony Gold Mining Co.*, No. 13-635, Order (2d Cir. Dec. 16, 2013), ECF No. 141

Exhibit 5: David Glovin, *'Vexatious' Geologist Makes Class-Action Fights His Business*, Bloomberg, Nov. 10, 2011

7. Attached hereto are proposed orders submitted with Lead Plaintiffs and Lead Counsel's reply papers:

Exhibit 6: [Proposed] Judgment Approving Class Action Settlement

Exhibit 7: [Proposed] Order Approving Plan of Allocation of Net Settlement Fund

Exhibit 8: [Proposed] Order Awarding Attorneys' Fees and Litigation Expenses

We declare, under penalty of perjury, that the foregoing is true and correct. Executed on September 20, 2024.

 /s Jonathan D. Uslander
Jonathan D. Uslander

 /s Gregg S. Levin*
Gregg S. Levin

*Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures of the United States District Court of the Southern District of California, all signatories have authorized placement of their electronic signature on this document.

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2024, I electronically filed the foregoing Supplemental Joint Declaration of Jonathan D. Uslaner and Gregg S. Levin and its attachments with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record. In addition, I sent copies of this document by FedEx and/or email to the individuals who submitted objections at the following addresses:

Michael B. Sosna 1208 Tavern Landing Rocky Mount, NC 27804	Hayley Alexander hayslinalex@gmail.com	James J. Hayes 4024 Estabrook Drive Annandale, VA 22003
-and-		-and-
Mbsoz45@gmail.com		jhayes@toast.net

By: /s/ Jonathan D. Uslaner
Jonathan D. Uslaner

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

Exhibit 1

From: [H.Alexander](#)
To: info@QualcommSecuritiesLitigation.com
Subject: Qualcomm Securities Litigation
Date: Friday, August 30, 2024 7:43:23 PM

EXTERNAL SENDER

I object to the manner in which this is being handled. The securities were owned by mother's estate, for which I am co-executor, and the files have long since been placed in long-term storage.

I object for two reasons:

- 1) These legal settlement actions clearly factor in the presumption that many claimants will find it too difficult or inconvenient to locate the information required to file a claim after so much time has passed.
- 2) Law firms typically walk away with a significant percentage of the award, leaving those who were actually damaged with a substantially smaller recovery rate.

Hayley Alexander
Co-executor for the estate of D. Landers at Charles Schwab Ltd.

Exhibit 2

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

JONATHAN D. USLANER (Bar No. 256898)

jonathanu@blbglaw.com

LAUREN M. CRUZ (Bar No. 299964)

lauren.cruz@blbglaw.com

2121 Avenue of the Stars, Suite 2575

Los Angeles, CA 90067

Tel: (310) 819-3470

MOTLEY RICE LLC

GREGG S. LEVIN (*pro hac vice*)

glevin@motleyrice.com

28 Bridgeside Blvd.

Mount Pleasant, SC 29464

Tel: (843) 216-9000

*Counsel for Lead Plaintiffs and
Lead Counsel for the Class*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE QUALCOMM
INCORPORATED SECURITIES
LITIGATION

Case No. 3:17-cv-00121-JO-MSB

**SUPPLEMENTAL
DECLARATION OF JACK
EWASHKO REGARDING
MAILING OF SETTLEMENT
NOTICES**

Judge: Hon. Jinsook Ohta
Courtroom: 4C

1 I, JACK EWASHKO, declare as follows:

2 1. I am a Client Services Director of A.B. Data, Ltd.’s Class Action
3 Administration Company (“A.B. Data”). Pursuant to the Court’s Order
4 Preliminarily Approving Settlement and Providing for Notice (ECF No. 433)
5 (“Preliminary Approval Order”), A.B. Data was authorized to act as the Claims
6 Administrator in connection with the Settlement of the above-captioned action.¹
7 A.B. Data was previously retained and authorized to act as Notice Administrator in
8 connection with the dissemination of Class Notice to potential Class Members and
9 receipt of requests for exclusion from the Class. I submit this Declaration as a
10 supplement to my earlier declaration, the Declaration of Jack Ewashko Regarding:
11 (A) Mailing of Settlement Notices; and (B) Publication of Summary Settlement
12 Notice, dated August 23, 2024 (ECF No. 441-3) (the “Initial Mailing Declaration”).
13 I have personal knowledge of the facts set forth herein and, if called as a witness,
14 could and would testify competently thereto.

15 **CONTINUED DISSEMINATION OF THE SETTLEMENT NOTICES**

16 2. Since the execution of my Initial Mailing Declaration, A.B. Data has
17 continued to disseminate copies of the Postcard Notice in response to additional
18 requests from potential Class Members and nominees. Through September 19,
19 2024, a total of 1,835,653 Postcard Notices and 4,123 Settlement Notice Packets
20 have been mailed or emailed to potential Class Members and nominees.

21 **TELEPHONE HELPLINE AND WEBSITE**

22 3. A.B. Data continues to maintain the toll-free telephone number, 1-877-
23 390-3401 and interactive voice response system to accommodate any inquiries from
24

25 _____
26 ¹ Unless otherwise defined herein, all capitalized terms have the meanings set forth
27 in the Stipulation and Agreement of Settlement dated June 17, 2024 (ECF No. 428-
1) (the “Stipulation”).

1 potential members of the Class with questions about the Action and the Settlement.
2 A.B. Data also continues to maintain the settlement website,
3 (www.QualcommSecuritiesLitigation.com) to assist members of the class. On
4 August 26, 2024, A.B. Data posted to the website copies of the papers filed in
5 support of Lead Plaintiffs’ motion for final approval of the Settlement and Plan of
6 Allocation and Lead Counsel’s motion for attorneys’ fees and expenses. A.B. Data
7 will continue maintaining and, as appropriate, updating the website and toll-free
8 telephone number until the conclusion of the administration.

9 I declare under penalty of perjury that the foregoing is true and correct to the
10 best of my knowledge.

11 Executed on September 19, 2024.

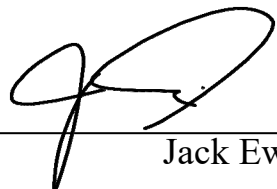
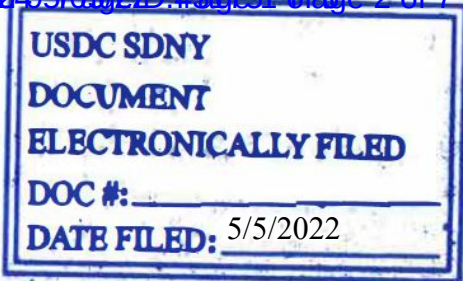
12 
13 _____
14 Jack Ewashko

Exhibit 3



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
_____x

In re: Facebook, Inc., IPO Securities
and Derivative Litigation

No. 12-md-2389 (CM) (GWG)

_____x

**MEMORANDUM AND OPINION DENYING THE MOTION FOR DECLARATORY
JUDGMENT AND ORDER TO SHOW CAUSE**

McMahon, J.:

Currently before the court is James J. Hayes’s motion for a declaration that the Lead Plaintiffs and their counsel in the above-captioned action were required to assert certain fraud claims arising under the Securities Exchange Act of 1934 (the “Exchange Act”) against Morgan Stanley & Co., on behalf of the Hayes and the other class members in connection with the class action that brought against Facebook., Inc., ten years ago, and that was settled in 2018 (*See* Dkt. No. 625) (Motion for Declaratory Judgment filed January 4, 2022) (the “Motion” or “Mot.”).

This court inherited this case from the Honorable Robert W. Sweet, who died during the pendency of an appeal from his order approving the settlement in this case. The United States Court of Appeals for the Second Circuit affirmed Judge Sweet’s order approving the settlement in on September 23, 2020, and the Judicial Panel on Multi-District Litigation reassigned the matter to me for the purpose of completing the administrative matters attendant to the carrying out of the settlement. On June 1, 2021, this court disposed any remaining objections and approved the Lead Plaintiff’s distribution plan of the settlement fund. (Dkt. Nos. 621, 622).

I will briefly recount the background relevant to disposing of the pending motion.

Hayes’s motion arises from the settlement of a securities class action brought based on alleged misrepresentations and omissions made in the registration statement for Facebook’s May

2012 initial public offering (the “IPO”). After six years of hard-fought litigation, the action was settled in 2018 for \$35 million (the “Settlement”).

Hayes objected to approval of the Settlement before Judge Sweet. His objection was based principally on the argument that Lead Plaintiffs and their counsel had purportedly abused their authority under the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), as well as Federal Rule of Civil Procedure 23, by failing to pursue Exchange Act claims against Morgan Stanley & Co., one of the underwriters of Facebook’s IPO. (*See* Dkt. No. 591).

Judge Sweet rejected Hayes’s objection in a well-reasoned decision, holding:

Hayes’s primary objection to the Proposed Settlement centers on the strategic decision by Lead Plaintiffs to forego causes of action under the Securities Exchange Act of 1934 (‘34 Act’) in favor of 1933 Act claims. . . . Assuming a ’34 Act claim or claims would have had merit in this case—and Hayes has not made such a showing—the Class has not been prejudiced by the absence of such claims.

(*See* Dkt. No. 601 at 30-31).

Hayes raised the same issue on appeal of Judge Sweet’s approval order (approving the Settlement), arguing that “Lead Counsels did not adequately represent their named plaintiff client when they declined to amend the Consolidated Complaint to include Exchange Act claims against Morgan Stanley.” (Appeal Dkt. No. 108 at 24)¹; (*see also id.* at 26) (“Conflicted Lead Counsels Abused Their Authority By Declining To Amend the Consolidated Complaint To Include Exchange Act Claims Against Morgan Stanley”).

In a September 23, 2020 summary order, the Second Circuit affirmed Judge Sweet’s settlement approval order, and explicitly rejected Hayes’s arguments for the same reasons that Judge Sweet did. The Second Circuit noted that Hayes’s appeal “primarily reiterates his argument

¹ “Appeal Dkt. No. ___” refers to documents filed in the appellate case, No. 18-3845 (2d Cir.), whereas “Dkt. No. ___” refers to documents filed in the case before the district court, No. 12-md-02389 (S.D.N.Y.).

that the Lead Plaintiffs and Class Counsel should have raised fraud claims against Morgan Stanley pursuant to the Exchange Act,” and rejected that argument for the reasons expressed by the District Court: because “Lead Plaintiffs and Class Counsel acted well within their discretion in choosing not to raise such claims,” and because “Hayes knew since at least October 2015 that Lead Plaintiffs were not raising Exchange Act claims, and he could have brought an individual action raising such a claim if he so wished.” (Appeal Dkt. No. 209-1 at 4) (the “Summary Order”).

Hayes sought neither panel nor *en banc* reconsideration of the Summary Order by October 7, 2020, the last date for doing so. (*See* Fed. R. App. P. 35(c), 40(a)(1)). The Second Circuit’s mandate issued on October 15, 2020. (*See* Dkt. No. 607). Hayes similarly failed to file a petition for certiorari to the U.S. Supreme Court by February 22, 2021, as required by 28 U.S.C. § 2101(c).

On February 17, 2021, Hayes filed a “Motion for Declaratory Judgment Against Plaintiffs’ Counsel” in the Second Circuit appeal. (Appeal Dkt. No. 217). On February 19, 2021, the Second Circuit Clerk of the Court rejected Hayes’s motion as untimely because it was filed after the mandate was issued; she advised Hayes to refile the motion in conjunction with a motion to recall the mandate should he wished to make his motion. (*See* Appeal Dkt. No. 218).

On March 11, 2021, Hayes filed a Motion to Recall the Mandate (Appeal Dkt. No. 219) and refiled the same previously filed Motion for Declaratory Judgment (Appeal Dkt. No. 220). On March 24, 2021, the Second Circuit summarily denied Hayes’ motions to recall the mandate and for declaratory judgment, finding that the motions were “frivolous.” The Circuit warned Hayes “that the continued filing of duplicative, vexatious, or clearly meritless motions or other papers in this appeal could result in the imposition of a sanction that would require Appellant to obtain permission from this Court prior to filing any further submissions in this matter (a ‘leave-to-file’ sanction).” (Appeal Dkt. No. 227).

Notwithstanding the Second Circuit’s warning, Hayes filed the instant motion for declaratory judgment before this court, making once again the same argument that has already been rejected by both the District Court *and* the Second Circuit.

Lead Plaintiffs Arkansas Teacher Retirement System and Fresno County Employees’ Retirement Association (“Lead Plaintiffs”), together with Jose G. Galvan, Mary Jane Lule Galvan, Sharon Morley, Eric Rand, Paul Melton, and Lynn Melton (collectively, “Plaintiffs”), oppose Hayes’s motion for declaratory relief and ask this court to impose “leave-to-file” sanctions against Hayes.

For the following reasons, the motion for declaratory judgment is denied with prejudice, and Hayes is hereby ordered to show cause why a leave-to-file sanction should not be imposed.

I. THE MOTION FOR DECLARATORY JUDGMENT IS DENIED WITH PREJUDICE.

Hayes’s motion is another frivolous and vexatious attempt to relitigate precisely the same argument that he raised previously with the District Court (Judge Sweet) and with the Second Circuit. Both the District Court and the Second Circuit have found his argument to be entirely without merit. As Hayes’s arguments have already been squarely addressed and soundly rejected on the merits, there is nothing for this court to do except deny Hayes’s renewed motion as a paradigmatic example of a frivolous and vexatious litigation. The motion is denied WITH PREJUDICE. This means the argument WILL NOT BE ENTERTAINED AGAIN.

II. HAYES IS ORDERED TO SHOW CAUSE WHY A LEAVE-TO-FILE ORDER SHOULD NOT ISSUE.

Hayes is a serial settlement objector who has frequently filed meritless objections to class action settlements and appeals from settlement approval orders. (*See* Appeal Dkt. No. 130 at 19-20()); (Dkt No. 595 at ¶¶ 8-9).

The Second Circuit has already sanctioned Hayes under similar circumstances. On appeal from *another* Second Circuit securities class action, the Circuit similarly first warned Hayes that the “continued filing of duplicative, vexatious, or clearly meritless appeals, motions, or other papers . . . will result in the imposition of sanctions.” *Hayes v. Harmony Gold Mining Co.*, No. 13-635, Motion Order at 2 (2d Cir. July 18, 2013) (ECF No. 107). After Hayes continued to file frivolous papers following the rejection of his appeal, the Second Circuit imposed a “leave-to-file” sanction on Hayes, refusing “to accept for filing any further papers from [Hayes] regarding appeals of class action securities fraud claims in the Harmony Gold litigation unless he first obtains leave of the Court to file such papers.” *Harmony Gold*, Order at 2 (2d Cir. Dec. 16, 2013) (ECF No. 141).

The procedure in this Circuit for imposing leave-to-file sanctions involves three stages: (1) the court notifies the litigant that the filing of future frivolous appeals, motions, or other papers might result in sanctions (*Sassower v. Sansverie*, 885 F.2d 9, 11 (2d Cir. 1989)); (2) if the litigant continues to file frivolous appeals, motions or other papers, the court orders the litigant to show cause why a leave-to-file sanction order should not issue; and (3) if the litigant fails to show why sanctions are not appropriate, the court issues a sanctions order (*Gallop v. Cheney*, 642 F.3d 364, 370 (2d Cir. 2011)).

The Second Circuit has already warned Hayes that the continued filing of duplicative, vexatious, and clearly meritless motions will result in the impositions of a sanction which would require Hayes to obtain permission prior to filing any further submissions before the court. That warning does not appear to have been effective, considering that this court was forced to waste yet more time on an application that has twice been rejected on the merits. Accordingly, Hayes is hereby ORDERED to show cause, within 30 days of the entry of this order (*i.e.*, by June 5), why

the court should not impose on him a requirement that he obtain leave of court prior to filing any further papers or applications in this long-settled class action.

CONCLUSION

This constitutes the decision and order of the court. It is a written opinion.

The Clerk of Court is respectfully directed to terminate the motion at Docket Number 625.

Dated: May 5, 2022



U.S.D.J.

BY ECF TO ALL COUNSEL

Exhibit 4

S.D.N.Y.-N.Y.C.
08-cv-3653
Jones, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of December, two thousand thirteen.

Present:

Robert A. Katzmann,
Chief Judge,
Dennis Jacobs,
Rosemary S. Pooler,
Circuit Judges.

James J. Hayes, individually,
on behalf of all others similarly situated,

Plaintiff-Appellant,

v.

13-635

Certified Class,

Plaintiff-Appellee,

v.

Harmony Gold Mining Company Limited,

Defendant-Appellee,

Bernard Swanepol, Nomfundo Qangule,

Defendants.

In July 2013, this Court granted the Appellees' construed motions for summary affirmance, denied the Appellees' motions for monetary sanctions, and warned Appellant that "the continued filing of duplicative, vexatious, or clearly meritless appeals, motions, or other papers regarding appeals of class action securities fraud claims in the Harmony Gold litigation will result in the imposition of sanctions, which may include a leave-to-file sanction requiring Appellant to obtain permission from this Court prior to filing any further submissions in this Court." U.S.C.A. dkt. no. 13-635, doc. 107 (Motion Order). Thereafter, Hayes moved for panel rehearing, and the Appellees moved again for monetary sanctions pursuant to Federal Rule of Appellate Procedure 38 and for the imposition of a leave-to-file sanction.

By order entered on October 16, 2013, Appellant was ordered to show cause, within 28 days of the entry of the order, why a leave-to-file sanction and a monetary sanction should not be imposed. The Court deferred decision on the motions for sanctions pending Appellant's response. *See id.*, doc. 136 (Motion Order). Thereafter, Appellant filed an untimely response.

We find that the imposition of a leave-to-file sanction is appropriate, in light of Appellant's litigation history. This Court's procedure for imposing leave-to-file sanctions generally involves three stages: (1) the court notifies the litigant that the filing of future frivolous appeals, motions, or other papers might result in sanctions, *see Sassower v. Sansverie*, 885 F.2d 9, 10 (2d Cir. 1989); (2) if the litigant continues to file frivolous appeals, motions, or other papers, the court orders the litigant to show cause why a leave-to-file sanction order should not issue, *see In re Martin-Trigona*, 9 F.3d 226, 229 (2d Cir. 1993); and (3) if the litigant fails to show why sanctions are not appropriate, the court issues a sanctions order, *see Bd. of Managers for 2900 Ocean Ave. Condo. v. Bronkovi*, 83 F.3d 44, 45 (2d Cir. 1996) (*per curiam*).

Upon due consideration, it is hereby ORDERED that the motions are DENIED with respect to the request for monetary sanctions and GRANTED with respect to the request for the imposition of a leave-to-file sanction. Furthermore, the Clerk of the Court is ORDERED to refuse to accept for filing any further papers from the Appellant regarding appeals of class action securities fraud claims in the Harmony Gold litigation unless he first obtains leave of the Court to file such papers.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

The image shows a handwritten signature in cursive that reads "Catherine O'Hagan Wolfe". To the left of the signature is a circular official seal of the United States Second Circuit Court of Appeals. The seal features the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom, with two small stars on either side of the center text.

Exhibit 5

Markets

'Vexatious' Geologist Makes Class-Action Fights His Business

David Glovin

November 10, 2011 4:46 PM

James J. Hayes agreed to use \$300,000 he was paid in a lawsuit settlement in 2008 to start a foundation to create "a more harmonious working relationship between shareholders and their advocates."

It hasn't worked out that way, according to subsequent legal opponents. Hayes is using the money to finance objections to settlements in class-action lawsuits involving companies whose shares he owns. Because a class action can't be settled without a judge's approval, his aim is to block a deal that he says isn't fair until lawyers change the accord's terms -- and pay him a fee.

"It's a vehicle I'm using in objecting," Hayes, 66, said in an interview about his foundation. "You can call it a business."

Hayes, a former geologist who never attended law school, won the \$300,000 payment to his Foundation for Efficient Markets in March 2008 after objecting to a \$3.2 billion settlement of a fraud suit against Tyco International Ltd.

Since then, he's pressed challenges to accords valued at more than \$700 million in five other cases, delaying payouts to investors for as long as a year.

Hayes appeared today in federal court in Manhattan to oppose the settlement in a suit against Harmony Gold Mining Co. The company, based in Randfontein, South Africa, was accused of understating costs in public filings, to investors' detriment.

IPO Case

In another pending case, Hayes objects to a \$586 million accord in a suit in which dozens of underwriters including Credit Suisse Group AG were accused of rigging initial public offerings of technology companies in the 1990s.

Hayes rejected an offer of \$300,000 to drop his objection, according to a person familiar with the case. Hayes declined to comment on the figure. He said he would accept \$300,000 if the plaintiffs' lawyers changed the deal terms.

Plaintiffs' lawyers in the IPO case, in court papers seeking dismissal of Hayes's claims, called him "an unceasingly litigious, obdurately vexatious man with little regard for the merit of his arguments, his chances of success, or the inconvenience, expense and disruption he foists" upon others.

U.S. District Judge Shira Scheindlin, presiding over the case in New York, called Hayes a "serial objector."

Such objectors, who are usually lawyers representing clients, routinely appear in group lawsuits brought seeking to block a deal they say isn't fair.

Changes, Delays

Sometimes their complaints spur changes, especially if they can argue that too much of the recovery is earmarked for lawyers' fees, said Edward Brunet, a professor at Lewis &

Clark Law School in Portland, Oregon. At other times, objectors achieve only delays, he said.

“They are very unpopular,” Brunet said. “But it’s a profitable business because there are these side deals.”

Hayes said in interviews by phone and at a restaurant in Arlington, Virginia, that he isn’t just after payments like the one he got in the Tyco case. Hayes said he’s long been an advocate for shareholder rights.

“I like to do well by doing good,” he said. “I really want what everyone else says they want -- fairness in class actions.”

Since the mid-1980s, he has been filing suits, objecting to settlements and organizing investors to oppose what he called undervalued takeovers.

Sued by SEC

The Securities and Exchange Commission sued Hayes and a partner in 1984 for misleading investors whom they urged to reject an acquisition. Hayes settled without admitting or denying wrongdoing.

In the Tyco suit, over claims the company defrauded investors, Hayes objected to the settlement calling it inadequate and unfair.

He dropped his objection after lawyers paid \$300,000 to his new foundation and \$80,000 to him and his lawyer, according to court papers. In the Tyco settlement, Hayes said his foundation had tax-exempt status. Hayes said in an interview that the foundation wasn’t tax exempt.

Hayes attributes his success in the Tyco case to the specter of a lengthy appeal delaying settlement payments including \$464 million in attorneys’ fees.

He's using a similar strategy in the IPO case, in which he was among six objector groups. Others settled, he said. They received a total of \$1.7 million, according to the person familiar with the case who didn't want to be identified because the payments weren't public.

Two-Year Delay

"I've already delayed -- I won't say 'I' -- it's already been delayed for two years," Hayes said.

If successful in the appeals court, Hayes's objection may scuttle the entire IPO settlement, he said. He believes the agreement provides money to undeserving investors while shortchanging those who were truly harmed.

"Even a frivolous appeal will prevent" an immediate payout, he said. "So they're usually willing to settle for some payment."

Jay Eisenhofer, a plaintiffs' lawyer in the Tyco case, didn't return calls about the payment to Hayes's foundation. Victoria Harmon, a spokeswoman for Zurich-based Credit Suisse, declined to comment on Hayes's role in the IPO case.

Howard Sirota, one of the lead plaintiffs' lawyers in the IPO case, filed in 2001, said investors "have been delayed an additional two years by a sometimes extortionate objector."

Eager for Fees

Plaintiffs' lawyers, Hayes said, are so eager to settle and collect their fees that they'll reach deals that don't benefit investors.

Hayes hasn't won any of his other challenges, though not for a lack of trying. When he's not playing bridge, the Kansas-born self-taught litigator spends his days at the

George Mason Law School library in Arlington, Virginia, near his home, researching arguments for legal briefs.

“This has completely absorbed my life,” Hayes, hearty and slightly stooped, said of his of vocation. “I’ll think of issues that nobody else sees.”

Hayes today asked U.S. District Judge Barbara Jones in New York to schedule a hearing at which he could question an expert the plaintiffs used to help arrive at the Harmony settlement figure, \$9 million.

Hayes argued the money represents 10 percent of investors’ losses and should be closer to \$30 million. Harmony’s lawyers said it’s about 16 percent and represents a “concrete benefit” for investors.

Settlement Approved

The judge rejected Hayes’s request and approved the accord.

“Even 10 percent is an excellent return,” she said.

U.S. Judge Judith Wizmur in 2006 fined Hayes \$20,000 for “unreasonable and vexatious” litigation when he challenged the bankruptcy settlement of a Genesis Health Ventures Inc. case in Delaware.

Hayes hired an art student to draw cartoons he submitted to the judge with what he called ideas for “a viable alternative,” according to court records. One drawing depicted the judge handing out what the artist called “Judge Judy dollars.”

“Mr. Hayes has turned the system inside and out,” Wizmur said in court. He keeps “coming back to the same issue,” the judge said, “the same party, the same issue, the same response.”

Hayes said the sanction reflects the judiciary's bias against laymen who act as lawyers. As to his persistence, he said he's just as zealous as someone with a law license.

Private Investigator

What upsets him, he said, is a private investigator who he said was set upon him by the plaintiffs' lawyers in the IPO case.

The investigator asked Hayes's bridge partner of 30 years where he could find Hayes's next of kin in case "something happened" to him, Hayes wrote in a Nov. 3 court filing in which he alleged "threats and intimidation."

Sirota, the plaintiffs' lawyer who hired the investigator, said it was "perfectly reasonable" to probe Hayes's foundation, and that he wasn't threatened.

The IPO lawyers, Sirota said, simply want Hayes "to take the money and go away -- essentially what he did in Tyco."

The Tyco case is In Re Tyco Securities Litigation, 1:02-md-01335, U.S. District Court, District of New Hampshire (Concord). The IPO case is In Re Initial Public Offering Securities Litigation, 1:21-mc-00092, U.S. District Court, Southern District of New York (Manhattan).

(Updates with today's hearing in sixth, 30th paragraphs.)

Exhibit 6

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

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE QUALCOMM
INCORPORATED SECURITIES
LITIGATION

Case No. 3:17-cv-00121-JO-MSB

**[PROPOSED] JUDGMENT
APPROVING CLASS ACTION
SETTLEMENT**

1 WHEREAS, a securities class action is pending in this Court entitled *In re*
2 *Qualcomm Incorporated Securities Litigation*, Case No. 3:17-cv-00121-JO-MSB,
3 based on a consolidated class action complaint filed by Lead Plaintiffs on July 3,
4 2017 (the “Action”);

5 WHEREAS, by Order dated March 20, 2023 (ECF No. 279), the Court
6 certified the Action to proceed as a class action on behalf of all persons or entities
7 who purchased or otherwise acquired the common stock of Qualcomm between
8 February 1, 2012 and January 20, 2017, inclusive (the “Class Period”), and who were
9 damaged thereby,¹ appointed Lead Plaintiffs Sjunde AP-Fonden and Metzler Asset
10 Management GmbH as Class Representatives for the Class, and appointed Lead
11 Counsel Bernstein Litowitz Berger & Grossman LLP and Motley Rice LLC as Class
12 Counsel for the Class;

13 WHEREAS, by Order dated October 26, 2023 (ECF No. 309), the Court
14 approved the proposed form and content of the Class Notice to be disseminated to
15 the Class Members to notify them of, among other things: (i) the Action pending
16 against Defendants; (ii) the Court’s certification of the Action to proceed as a class
17 action on behalf of the Class; and (iii) Class Members’ right to request to be excluded
18 from the Class by January 29, 2024, the effect of remaining in the Class or requesting
19 exclusion, and the requirements for requesting exclusion;

20 WHEREAS, the Class Notice was mailed beginning on November 28, 2023
21 to all potential Class Members who could be identified through reasonable effort,
22

23 ¹ Excluded from the Class are Defendants, the Officers and directors of Qualcomm
24 at all relevant times, their Immediate Family Members, legal representatives, heirs,
25 agents, affiliates, successors, or assigns, Defendants’ liability insurance carriers, and
26 any affiliates or subsidiaries thereof, and any entity in which Defendants or their
27 immediate families have or had a controlling interest. Also excluded from the Class
28 are all persons and entities who requested exclusion from the Class in connection
with the mailing of the Notice of Pendency of Class Action as set forth in Appendix
A to the Stipulation.

1 resulting in the mailing of over 2,100,000 copies of the Class Notice, and 233
2 requests for exclusion were received by February 20, 2024;

3 WHEREAS, (a) Lead Plaintiffs Sjunde AP-Fonden and Metzler Asset
4 Management GmbH (“Lead Plaintiffs”), on behalf of themselves and the Class; and
5 (b) defendant Qualcomm Inc. (“Qualcomm”) and defendants Derek K. Aberle,
6 Steven R. Altman, Donald J. Rosenberg, William F. Davidson, Jr., Paul E. Jacobs,
7 and Steven M. Mollenkopf (collectively, the “Individual Defendants,” and together
8 with Qualcomm, “Defendants,” and together with Lead Plaintiffs, the “Parties”)
9 have entered into a Stipulation and Agreement of Settlement dated June 17, 2024
10 (the “Stipulation”) that provides for a complete dismissal with prejudice of the
11 claims asserted against Defendants in the Action on the terms and conditions set
12 forth in the Stipulation, subject to the approval of this Court (the “Settlement”);

13 WHEREAS, unless otherwise defined in this Judgment, the capitalized terms
14 herein shall have the same meaning as they have in the Stipulation;

15 WHEREAS, by Order dated June 27, 2024 (the “Preliminary Approval
16 Order”), this Court: (a) preliminarily approved the Settlement; (b) ordered that
17 notice of the proposed Settlement be provided to Class Members; and (c) scheduled
18 a hearing regarding final approval of the Settlement;

19 WHEREAS, due and adequate notice of the Settlement has been given to the
20 Class;

21 WHEREAS, the Court conducted a hearing on September 27, 2024 (the
22 “Settlement Hearing”) to consider, among other things, (a) whether the terms and
23 conditions of the Settlement are fair, reasonable, and adequate to the Class, and
24 should therefore be approved; and (b) whether a judgment should be entered
25 dismissing the Action with prejudice as against the Defendants; and

26 WHEREAS, the Court having reviewed and considered the Stipulation, all
27 papers filed and proceedings held herein in connection with the Settlement, all oral
28

1 and written comments received regarding the Settlement, and the record in the
2 Action, and good cause appearing therefor;

3 NOW THEREFORE, IT IS HEREBY ORDERED:

4 1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the
5 Action, and all matters relating to the Settlement, as well as personal jurisdiction
6 over all of the Parties and each of the Class Members.

7 2. **Incorporation of Settlement Documents** – This Judgment
8 incorporates and makes a part hereof: (a) the Stipulation filed with the Court on
9 June 18, 2024; and (b) the Postcard Notice, Settlement Notice, and Summary
10 Settlement Notice, all of which were filed with the Court on August 23, 2024.

11 3. **Notice** – The Court finds that the dissemination and posting of the
12 Postcard Notice and Settlement Notice and the publication of the Summary
13 Settlement Notice: (a) were implemented in accordance with the Preliminary
14 Approval Order; (b) constituted the best notice practicable under the circumstances;
15 (c) constituted notice that was reasonably calculated, under the circumstances, to
16 apprise Class Members of (i) the effect of the proposed Settlement (including the
17 Releases to be provided thereunder); (ii) Lead Counsel’s motion for an award of
18 attorneys’ fees and Litigation Expenses; (iii) Class Members’ right to object to any
19 aspect of the Settlement, the Plan of Allocation, and/or Lead Counsel’s motion for
20 attorneys’ fees and Litigation Expenses; and (iv) their right to appear at the
21 Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all
22 persons and entities entitled to receive notice of the proposed Settlement; and
23 (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the
24 United States Constitution (including the Due Process Clause), the Private Securities
25 Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other
26 applicable law and rules.

1 4. **CAFA Notice** – The Court finds that the notice requirements set forth
2 in the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, to the extent applicable
3 to the Action, have been satisfied.

4 5. **Final Settlement Approval and Dismissal of Claims** – Pursuant to,
5 and in accordance with, Rule 23(e)(2) of the Federal Rules of Civil Procedure, this
6 Court hereby fully and finally approves the Settlement in all respects (including,
7 without limitation: the amount of the Settlement; the Releases provided for therein;
8 and the dismissal with prejudice of the claims asserted against Defendants in the
9 Action), and finds that the Settlement is, in all respects, fair, reasonable, and
10 adequate to the Class. Specifically, the Court finds that: (a) Lead Plaintiffs and Lead
11 Counsel have adequately represented the Class; (b) the Settlement was negotiated
12 by the Parties at arm’s length; (c) the relief provided for the Class under the
13 Settlement is fair, reasonable and adequate taking into account the costs, risks, and
14 delay of trial and appeal; the proposed means of distributing the Settlement Fund to
15 the Class; and the proposed attorneys’ fee award; and (d) the Settlement treats
16 members of the Class equitably relative to each other. The Parties are directed to
17 implement, perform, and consummate the Settlement in accordance with the terms
18 and provisions contained in the Stipulation.

19 6. The Action and all claims asserted against Defendants in the Action by
20 Lead Plaintiffs and the other Class Members are hereby dismissed with prejudice.
21 The Parties shall bear their own costs and expenses, except as otherwise expressly
22 provided in the Stipulation.

23 7. **Binding Effect** – The terms of the Stipulation and of this Judgment
24 shall be forever binding on Defendants, Lead Plaintiffs and all other Class Members
25 (regardless of whether or not any individual Class Member submits a Claim Form
26 or seeks or obtains a distribution from the Net Settlement Fund), as well as their
27 respective successors and assigns.
28

1 8. **Releases** – The Releases set forth in paragraphs 4 and 5 of the
2 Stipulation, together with the definitions contained in paragraph 1 of the Stipulation
3 relating thereto, are expressly incorporated herein in all respects. The Releases are
4 effective as of the Effective Date. Accordingly, this Court orders that:

5 (a) Without further action by anyone, and subject to paragraph 9
6 below, upon the Effective Date of the Settlement, Lead Plaintiffs and each of the
7 other Class Members, on behalf of themselves, and their respective heirs, executors,
8 administrators, predecessors, successors, and assigns, in their capacities as such,
9 shall be deemed to have, and by operation of law and of this Judgment shall have,
10 fully, finally, and forever compromised, settled, released, resolved, relinquished,
11 waived, and discharged each and every Released Plaintiffs’ Claim against
12 Defendants and the other Defendants’ Releasees, and shall forever be barred and
13 enjoined from prosecuting any or all of the Released Plaintiffs’ Claims against any
14 of the Defendants’ Releasees.

15 (b) Without further action by anyone, and subject to paragraph 9
16 below, upon the Effective Date of the Settlement, Defendants, on behalf of
17 themselves, and their respective heirs, executors, administrators, predecessors,
18 successors, and assigns, in their capacities as such, shall be deemed to have, and by
19 operation of law and of this Judgment shall have, fully, finally, and forever
20 compromised, settled, released, resolved, relinquished, waived, and each and every
21 Released Defendants’ Claim against Lead Plaintiffs and the other Plaintiffs’
22 Releasees, and shall forever be barred and enjoined from prosecuting any or all of
23 the Released Defendants’ Claims against any of the Plaintiffs’ Releasees.

24 9. Notwithstanding paragraphs 8(a) – (b) above, nothing in this Judgment
25 shall bar any action by any of the Parties to enforce or effectuate the terms of the
26 Stipulation or this Judgment.

27 10. **Rule 11 Findings** – The Court finds and concludes that the Parties and
28 their respective counsel have complied in all respects with the requirements of Rule

1 11 of the Federal Rules of Civil Procedure in connection with the institution,
2 prosecution, defense, and settlement of the Action.

3 11. **No Admissions** – Neither this Judgment, the Stipulation (whether or
4 not consummated), including the exhibits thereto and the Plan of Allocation
5 contained therein (or any other plan of allocation that may be approved by the Court),
6 the negotiations leading to the execution of the Stipulation, nor any proceedings
7 taken pursuant to or in connection with the Stipulation and/or approval of the
8 Settlement (including any arguments proffered in connection therewith):

9 (a) shall be offered against any of the Defendants’ Releasees as
10 evidence of, or construed as, or deemed to be evidence of any presumption,
11 concession, or admission by any of the Defendants’ Releasees with respect to the
12 truth of any fact or allegation that was or could have been asserted by Lead Plaintiffs,
13 that any claim that was or could have been asserted was meritorious, that any defense
14 that was or could have been asserted was without merit in this Action or in any other
15 litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of
16 any of the Defendants’ Releasees or in any way referred to for any other reason as
17 against any of the Defendants’ Releasees, in any arbitration proceeding or other civil,
18 criminal, or administrative action or proceeding, other than such proceedings as may
19 be necessary to effectuate the provisions of the Stipulation;

20 (b) shall be offered against any of the Plaintiffs’ Releasees, as
21 evidence of, or construed as, or deemed to be evidence of any presumption,
22 concession, or admission by any of the Plaintiffs’ Releasees that any of their claims
23 are without merit, that any of the Defendants’ Releasees had meritorious defenses,
24 or that damages recoverable under the Complaint would not have exceeded the
25 Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing
26 of any kind, or in any way referred to for any other reason as against any of the
27 Plaintiffs’ Releasees, in any arbitration proceeding or other civil, criminal, or
28

1 administrative action or proceeding, other than such proceedings as may be
2 necessary to effectuate the provisions of the Stipulation; or

3 (c) shall be construed against any of the Releasees as an admission,
4 concession, or presumption that the consideration to be given under the Settlement
5 represents the amount that could be or would have been recovered after trial;
6 *provided, however,* that the Parties and the Releasees and their respective counsel
7 may refer to this Judgment and the Stipulation to effectuate the protections from
8 liability granted hereunder and thereunder or otherwise to enforce the terms of the
9 Settlement.

10 12. **Retention of Jurisdiction** – Without affecting the finality of this
11 Judgment in any way, this Court retains continuing and exclusive jurisdiction over:

12 (a) the Parties for purposes of the administration, interpretation, implementation, and
13 enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any
14 motion for an award of attorneys’ fees and/or Litigation Expenses by Lead Counsel
15 in the Action that will be paid from the Settlement Fund; (d) any motion to approve
16 the Plan of Allocation; (e) any motion to approve the Class Distribution Order; and
17 (f) the Class Members for all matters relating to the Action.

18 13. Separate orders shall be entered regarding approval of a plan of
19 allocation and the motion of Lead Counsel for attorneys’ fees and Litigation
20 Expenses. Such orders shall in no way affect or delay the finality of this Judgment
21 and shall not affect or delay the Effective Date of the Settlement.

22 14. **Termination of Settlement** – If the Settlement is terminated as
23 provided in the Stipulation or the Effective Date of the Settlement otherwise fails to
24 occur, this Judgment shall be vacated, rendered null and void, and be of no further
25 force and effect, except as otherwise provided by the Stipulation, and this Judgment
26 shall be without prejudice to the rights of Lead Plaintiffs, the other Class Members,
27 and Defendants, and the Parties shall revert to their respective positions in the Action
28 on May 31, 2024, as provided in the Stipulation.

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

15. **Entry of Final Judgment** – There is no just reason to delay the entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment in this Action.

SO ORDERED this _____ day of _____, 2024.

The Honorable Jinsook Ohta
United States District Judge

Exhibit 7

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

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE QUALCOMM
INCORPORATED SECURITIES
LITIGATION

Case No. 3:17-cv-00121-JO-MSB

**[PROPOSED] ORDER
APPROVING PLAN OF
ALLOCATION OF NET
SETTLEMENT FUND**

1 WHEREAS, this matter came on for hearing on September 27, 2024 (the
2 “Settlement Hearing”) on Lead Plaintiffs’ motion to approve the proposed plan of
3 allocation (“Plan of Allocation”) of the Net Settlement Fund created under the
4 Settlement in the above-captioned class action (the “Action”). The Court having
5 considered all matters submitted to it at the Settlement Hearing and otherwise; it
6 appearing that: (i) notice of the Settlement Hearing was mailed to all Class Members
7 who or which could be identified with reasonable effort substantially in the form
8 approved by the Court; and (ii) a summary notice of the hearing substantially in the
9 form approved by the Court was published in *The Wall Street Journal* and over *PR*
10 *Newswire* pursuant to the specifications of the Court; and the Court having
11 considered and determined the fairness and reasonableness of the proposed Plan of
12 Allocation,

13 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

14 1. This Order approving the proposed Plan of Allocation incorporates by
15 reference the definitions in the Stipulation and Agreement of Settlement, dated July
16 17, 2024 (ECF No. 428-1) (the “Stipulation”) and all terms not otherwise defined
17 herein shall have the same meanings as set forth in the Stipulation.

18 2. The Court has jurisdiction to enter this Order approving the proposed
19 Plan of Allocation, and over the subject matter of the Action and all Parties to the
20 Action, including all Class Members.

21 3. Notice of Lead Plaintiffs’ motion for approval of the proposed Plan of
22 Allocation was given to all Class Members who or which could be identified with
23 reasonable effort. The form and method of notifying the Class of the motion for
24 approval of the proposed Plan of Allocation satisfied the requirements of Rule 23 of
25 the Federal Rules of Civil Procedure, the United States Constitution (including the
26 Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15
27 U.S.C. § 78u-4, as amended, and all other applicable laws and rules, constituted the
28

1 best notice practicable under the circumstances, and constituted due and sufficient
2 notice to all persons and entities entitled thereto.

3 4. Over 1.8 million Postcard Notices and over 4,100 Settlement Notice
4 Packets (*i.e.*, the Settlement Notice and Claim Form) were mailed to potential Class
5 Members and nominees, and the Settlement Notice, which included the full text of
6 the Plan of Allocation was posted on the case website,
7 www.QualcommSecuritiesLitigation.com. One objection to the Plan of Allocation
8 has been received, from James J. Hayes. *See* ECF No. 443. Mr. Hayes’s objection
9 to the Plan of Allocation is found to be without merit and is overruled.

10 5. The Court hereby finds and concludes that the formula for the
11 calculation of the claims of Claimants as set forth in the Plan of Allocation provides
12 a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement
13 Fund among Class Members with due consideration having been given to
14 administrative convenience and necessity.

15 6. The Court hereby finds and concludes that the Plan of Allocation is, in
16 all respects, fair and reasonable to the Class. Accordingly, the Court hereby
17 approves the Plan of Allocation proposed by Lead Plaintiffs.

18 7. Any appeal or any challenge affecting this Order approving the Plan of
19 Allocation shall in no way disturb or affect the finality of the Judgment.

20 8. There is no just reason for delay in the entry of this Order, and
21 immediate entry by the Clerk of the Court is expressly directed.

22
23 SO ORDERED this _____ day of _____, 2024.

24
25
26 _____
27 The Honorable Jinsook Ohta
28 United States District Judge

Exhibit 8

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

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE QUALCOMM
INCORPORATED SECURITIES
LITIGATION

Case No. 3:17-cv-00121-JO-MSB

**[PROPOSED] ORDER
AWARDING ATTORNEYS'
FEES AND LITIGATION
EXPENSES**

1 WHEREAS, this matter came on for hearing on September 27, 2024 (the
2 “Settlement Hearing”) on Lead Counsel’s motion for attorneys’ fees and Litigation
3 Expenses. The Court having considered all matters submitted to it at the Settlement
4 Hearing and otherwise; it appearing that: (i) notice of the Settlement Hearing was
5 mailed to all Class Members who or which could be identified with reasonable effort
6 substantially in the form approved by the Court and (ii) a summary notice of the
7 hearing substantially in the form approved by the Court was published in *The Wall*
8 *Street Journal* and over *PR Newswire* pursuant to the specifications of the Court;
9 and the Court having considered and determined the fairness and reasonableness of
10 the award of attorneys’ fees and Litigation Expenses requested,

11 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

12 1. This Order incorporates by reference the definitions in the Stipulation
13 and Agreement of Settlement, dated July 17, 2024 (ECF No. 428-1) (the
14 “Stipulation”) and all terms not otherwise defined herein shall have the same
15 meanings as set forth in the Stipulation.

16 2. The Court has jurisdiction to enter this Order and over the subject
17 matter of the Action and all parties to the Action, including all Class Members.

18 3. Notice of Lead Counsel’s motion for attorneys’ fees and Litigation
19 Expenses was given to all Class Members who could be identified with reasonable
20 effort. The form and method of notifying Class Members of the motion for
21 attorneys’ fees and expenses satisfied the requirements of Rule 23 of the Federal
22 Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995, 15
23 U.S.C. § 78u-4(a)(7), due process, and all other applicable law and rules, constituted
24 the best notice practicable under the circumstances, and constituted due and
25 sufficient notice to all persons and entities entitled thereto.

26 4. Plaintiffs’ Counsel are hereby awarded attorneys’ fees in the amount of
27 23% of the Settlement Fund (*i.e.*, the Settlement Amount plus accrued interest), net
28 of the Litigation Expenses awarded. Plaintiffs’ Counsel are also hereby awarded

1 \$7,437,826.78 for payment of their litigation expenses. These attorneys' fees and
2 expenses shall be paid from the Settlement Fund and the Court finds these sums to
3 be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded
4 among Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the
5 contributions of such counsel to the institution, prosecution, and settlement of the
6 Action.

7 5. In making this award of attorneys' fees and payment of litigation
8 expenses from the Settlement Fund, the Court has considered and found that:

9 a. The Settlement has created a fund of \$75,000,000 in cash that
10 has been funded into escrow pursuant to the terms of the Stipulation, and that
11 numerous Class Members who submit acceptable Claim Forms will benefit
12 from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

13 b. The fee sought is based on the more restrictive of two retainer
14 agreements entered into by Lead Plaintiffs and respective Lead Counsel firms
15 at the outset of the litigation, and the requested fee has been reviewed and
16 approved as reasonable by both Lead Plaintiffs, who are sophisticated
17 institutional investors that actively supervised the Action;

18 c. Over 1.8 million Postcard Notices and over 4,100 Settlement
19 Notices were mailed to potential Class Members and nominees, and the
20 Settlement Notice was posted on the case website,
21 www.QualcommSecuritiesLitigation.com. The Postcard Notice and
22 Settlement Notice stated that Lead Counsel would apply for attorneys' fees in
23 the amount of 23% of the Settlement Fund and payment of Litigation
24 Expenses in an amount not to exceed \$7.5 million. Two objections concerning
25 the requested award of attorneys' fees have been received. *See* ECF Nos. 443,
26 446-1. The Court has considered these objections and found them to be
27 without merit.
28

1 d. Lead Counsel conducted the litigation and achieved the
2 Settlement with skill, perseverance, and diligent advocacy;

3 e. The Action raised a number of complex issues;

4 f. Had Lead Counsel not achieved the Settlement there would
5 remain a significant risk that Lead Plaintiffs and the other members of the
6 Class may have recovered less or nothing from Defendants;

7 g. Plaintiffs' Counsel devoted over 122,000 hours, with a lodestar
8 value of approximately \$61.9 million, to achieve the Settlement; and

9 h. The amount of attorneys' fees awarded and expenses to be paid
10 from the Settlement Fund are fair and reasonable and consistent with awards
11 in similar cases.

12 6. Lead Plaintiff Sjunde AP-Fonden is hereby awarded \$16,552.77 from
13 the Settlement Fund for its reasonable costs and expenses directly related to its
14 representation of the Class.

15 7. Lead Plaintiff Metzler Asset Management GmbH is hereby awarded
16 \$17,500 from the Settlement Fund for its reasonable costs and expenses directly
17 related to its representation of the Class.

18 8. Any appeal or any challenge affecting this Court's approval regarding
19 any attorneys' fees and expense application shall in no way disturb or affect the
20 finality of the Judgment.

21 9. Exclusive jurisdiction is hereby retained over the Parties and the Class
22 Members for all matters relating to this Action, including the administration,
23 interpretation, effectuation or enforcement of the Stipulation and this Order.

24 10. In the event that the Settlement is terminated or the Effective Date of
25 the Settlement otherwise fails to occur, this Order shall be rendered null and void to
26 the extent provided by the Stipulation.

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

11. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed

SO ORDERED this _____ day of _____, 2024.

The Honorable Jinsook Ohta
United States District Judge