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

BECKY KIGER, derivatively on  
behalf of QUALCOMM  
INCORPORATED,  
  
Plaintiff,

vs.

STEVE MOLLENKOPF, MARK D.  
MCLAUGHLIN, MARK FIELDS,  
BARBARA T. ALEXANDER,  
FRANCISCO ROS, JEFFREY W.  
HENDERSON, ANN M.  
LIVERMORE, HARISH MANWANI,  
JAMIE S. MILLER, CLARK T.  
RANDT, JR., IRENE B. ROSENFELD,  
KORNELIS SMIT, ANTHONY J.  
VINCIQUERRA, and DOES 1-30,  
  
Defendants,

- and -

QUALCOMM INCORPORATED,  
  
Nominal Defendant.

Case No. '20CV1355 LAB MDD

**VERIFIED SHAREHOLDER  
DERIVATIVE COMPLAINT FOR:**

- 1. BREACH OF FIDUCIARY DUTY;**
- 2. AIDING AND ABETTING BREACH OF FIDUCIARY DUTY;**
- 3. ABUSE OF CONTROL;**
- 4. UNJUST ENRICHMENT;**
- AND**
- 5. VIOLATION OF SECTION 14(A) OF THE SECURITIES EXCHANGE ACT OF 1934.**

**DEMAND FOR JURY TRIAL**

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1 Plaintiff Becky Kiger (“Plaintiff”) submits this Verified Shareholder  
2 Derivative Complaint against certain directors and officers of nominal  
3 defendants Qualcomm Incorporated (“Qualcomm” or the “Company”) for,  
4 *inter alia*, violations of the Securities Exchange Act of 1934 (“Exchange Act”)  
5 and breaches of fiduciary duties. In support of these claims, Plaintiff alleges  
6 the following upon (1) personal knowledge with respect to the matters  
7 pertaining to herself; and (2) information and belief with respect to all other  
8 matters, based upon the investigations undertaken by her counsel, which  
9 include a review of Qualcomm’s legal and regulatory filings, press releases,  
10 analyst reports, and media reports about the Company. Plaintiff believes  
11 that substantial additional evidentiary support will exist for the allegations  
12 set forth below after a reasonable opportunity for discovery.

### 13 I. INTRODUCTION

14 “We are a country suffering from racial inequality. And we  
15 want the inequality and suffering to end. Enough people agree  
16 with these points that this issue has become a matter that will  
17 impact every corporation doing business in this country.  
18 Companies that are capable of understanding their roles in  
19 taking effective action to end inequality will benefit  
20 operationally and reputationally; those that refuse to  
21 acknowledge their exposure to this massive problem or that are  
22 incapable of swift and effective action will struggle to maintain  
23 their competitive positions as employers and with consumers.”<sup>1</sup>

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23 <sup>1</sup> See John Streur, “More engagement needed to get companies to  
24 address racial inequality risks and issues,” Calvert Research and  
25 Management, June 19, 2020, available at  
26 [https://www.calvert.com/impact.php?post=more-engagement-needed-to-  
27 get-companies-to-address-racial-inequality-risks-and-issues-&sku=35910,](https://www.calvert.com/impact.php?post=more-engagement-needed-to-get-companies-to-address-racial-inequality-risks-and-issues-&sku=35910)  
28 last visited June 29, 2020.

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“Diversity shouldn’t be encouraged, it should be demanded as a critical business imperative.”<sup>2</sup>

1. Despite the statement of Qualcomm’s Chief Diversity Officer that diversity and inclusion “should be demanded,” Qualcomm has failed to create any diversity at the very top of the Company – the Board of Directors (the “Board”). The Qualcomm Board has lacked diversity at all relevant times, and is one of the few remaining publicly-traded companies without a single African American director.

2. Back in the 1960s, almost every corporate board looked like the following:



Board of directors attend a meeting in 1960. CENTRAL PRESS GETTY.

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<sup>2</sup> Vicki Mealer-Burke, Qualcomm’s Chief Diversity Officer. See Diana Goovaerts, “Q&A: Qualcomm pushes diversity for business boost,” *Mobile World Live*, Mar. 12, 2020, available at <https://www.mobileworldlive.com/featured-content/top-three/qa-qualcomm-pushes-diversity-for-business-boost/>, last visited July 3, 2020.

1           3. While most of corporate America has made substantial  
2 progress in diversification since the 1960s, Qualcomm still does not have a  
3 single African American on its Board. The following are the current  
4 members of the Board:

5  
6 **Mark D. McLaughlin**  
Chairman of the Board  
of Directors



**Mark Fields**  
Member of Audit  
Committee,  
Director



**Jeffrey W. Henderson**  
Chair of Audit  
Committee,  
Director



14  
15  
16 **Ann M. Livermore**  
Member of Governance  
Committee,  
Director



**Harish Manwani**  
Member of HR and  
Compensation  
Committee,  
Director



**Jamie S. Miller**  
Member of Audit  
Committee,  
Director



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**Clark T. Randt, Jr.**  
Chair of Governance  
Committee,  
Director



**Irene B. Rosenfeld**  
Chair of HR and  
Compensation  
Committee,  
Director



**Kornelis Smit**  
Member of Governance  
Committee & HR and  
Compensation  
Committee,  
Director



**Anthony J. Vinciguerra**  
Member of Audit  
Committee,  
Director



4. At Qualcomm, it is not just the Board that lacks any African American individuals; there are no African Americans among the Company's executive officers:



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**Steve Mollenkopf**  
Chief Executive Officer,  
Qualcomm  
Incorporated



**Cristiano R. Amon**  
President, Qualcomm  
Incorporated



**Brian Modoff**  
Executive Vice  
President, Strategy and  
M&A, Qualcomm  
Incorporated



**Akash Palkhiwala**  
Executive Vice  
President & Chief  
Financial Officer,  
Qualcomm  
Incorporated



**Alex Rogers**  
Executive Vice  
President and President  
Qualcomm Technology  
Licensing



**Donald J. Rosenberg**  
Executive Vice  
President, General  
Counsel and Corporate  
Secretary



1           **Heather Ace**  
2           Executive Vice  
3           President, Human  
4           Resources, Qualcomm  
5           Incorporated



6           **James H. Thompson**  
7           Executive Vice  
8           President, Engineering  
9           Qualcomm  
10          Technologies, Inc. &  
11          Chief Technology  
12          Officer



13           **II. NATURE AND SUMMARY OF THE ACTION**

14           5. Qualcomm’s Directors, wishing to avoid public backlash, have  
15           repeatedly made misrepresentations in the Company’s public statements by  
16           claiming to have a policy of “demanding” diversity and inclusion at the  
17           Company.

18           6. In reality, though, Qualcomm’s Board and senior executive  
19           officers remain devoid of Blacks and other minorities.

20           7. Even Qualcomm’s Chief Diversity Officer, Vicki Mealer-Burke,  
21           is white:



1 8. Ms. Mealer-Burke, like her employer Qualcomm, likes to offer  
2 platitudes as a way of trying to create a veneer of “commitment” to  
3 diversity:

4 “I recently heard a great way to sum it up: the idea you don’t have is  
5 from the voice you haven’t heard.”<sup>3</sup>

6 9. This quote sounds clever, but rings hollow at Qualcomm: the  
7 voices with new ideas remain unheard since the Company’s workforce and  
8 Board remain conspicuously devoid of any meaningful percentage of Black  
9 and minority individuals.

10 10. *At Qualcomm, only 1.5% of the workforce is comprised of*  
11 *African Americans*, despite the fact that African Americans make up over  
12 13% of the U.S. population:

	<u>2019</u>	<u>2018</u>	<u>2017</u>
<i>Black/African American</i>	1.5%	1.4%	1.5%

13  
14  
15  
16 11. Moreover, as the chart above demonstrates, Qualcomm has  
17 made no progress in increasing the hiring of African Americans since 2017 –  
18 the percentage has remained flatlined at 1.5%, after dipping to 1.4% in 2018.

19 12. Qualcomm has three times more Hispanic than Black workers,  
20 which comprise 4.6% of its workforce.<sup>4</sup>

21 13. In reality, Qualcomm has made no real efforts to promote  
22 diversity on its Board and among its senior executives. Indeed, the word  
23 “diversity” only appears three (3) times in Qualcomm’s 2019 Proxy  
24

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25 <sup>3</sup> *Id.*

26 <sup>4</sup> Source: Qualcomm 2019 Corporate Sustainability Report, at p. 39.

1 Statement.

2 14. Qualcomm was recently called out for being among the 20  
3 largest companies in the United States without a single Black individual on  
4 its Board. See Kerri Anne Renzulli, "*The 20 Largest U.S. Companies Without a*  
5 *Black Person on Their Board*," NEWSWEEK, June 17, 2020. "Companies need to  
6 be intentional about increasing the diversity of their executive leadership  
7 teams," says Crystal Ashby, president and CEO of the Executive Leadership  
8 Council, an organization of black senior executives that works to increase  
9 inclusivity in business leadership. "The culture of an organization is  
10 cultivated by its leaders." *Id.*

11 15. As one individual has aptly stated: "We've seen anemic  
12 progress to date but *this is a watershed moment that must spur private and*  
13 *public boards into accelerated action*," says Janet Foutty, executive chair of  
14 the board for Deloitte, which has separately researched board diversity  
15 among Fortune 500 companies.<sup>5</sup>

16 16. But at Qualcomm, the problem has not just been a lack of  
17 diversity, but also discrimination, and the discrimination has not been  
18 isolated to that directed towards African Americans. In July 2016,  
19 Qualcomm was forced to pay \$19.5 million to settle a class action lawsuit  
20 which alleged that Qualcomm systematically discriminated against  
21 approximately 3,300 women by paying them less than men holding the  
22 same or equivalent positions. In addition to the monetary relief, the  
23 settlement required Qualcomm to institute comprehensive programmatic  
24

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25 <sup>5</sup> See "*Kerri Anne Renzulli, 'The 20 Largest U.S. Companies Without a*  
26 *Black Person on Their Board*," NEWSWEEK, June 17, 2020.

1 relief designed to ensure that female employees working, for example, in  
2 STEM and related positions, would have access to equal job opportunities at  
3 the Company.

4 17. However, four years after the settlement, in 2020 Qualcomm still  
5 received an “F” grade in gender pay equity. See “*Gender Pay Equity Report: F*  
6 *Grades for Oracle, Qualcomm, Verizon, AT&T*,” DATAQUEST, April 1, 2020.<sup>6</sup>

7 18. Moreover, despite settling the gender discrimination lawsuit,  
8 Qualcomm did not do anything to reform its practices with respect to hiring  
9 African Americans or ensuring that they have equal job opportunities.  
10 Instead of making necessary changes, Qualcomm just continued to issue  
11 platitudes about its supposedly strenuous efforts to increase diversity.

12 19. Founded in 1985, Qualcomm today in 2020 has: (1) zero African-  
13 Americans or other minority representatives on its Board; and (2) zero  
14 African-Americans among its senior executive ranks.

15 20. The Director Defendants named herein all signed each of  
16 Qualcomm’s annual proxy statements. With such signatures come an  
17 obligation to ensure that the statements in the Proxy were true and accurate,  
18 and to correct any misleading statements. They failed to do so.

19 21. Qualcomm’s Directors have deceived stockholders and the  
20 market by claiming to have concrete and specific “inclusion and diversity  
21 programs that are measurable and produce actionable tasks.” In doing so,  
22 the Directors have breached their duty of candor and have also violated the  
23 federal securities laws. Their conduct has also irreparably harmed

24 \_\_\_\_\_  
25 <sup>6</sup> Available at [https://www.dqindia.com/gender-pay-equity-report-f-](https://www.dqindia.com/gender-pay-equity-report-f-grades-oracle-qualcomm-verizon-att-analog-devices/)  
26 [grades-oracle-qualcomm-verizon-att-analog-devices/](https://www.dqindia.com/gender-pay-equity-report-f-grades-oracle-qualcomm-verizon-att-analog-devices/), last visited July 13,  
27 2020.  
28

1 Qualcomm. For those who care about diversity, inclusion, and honesty,  
2 those who do not adhere to these principles should be boycotted, especially  
3 if the perpetrator is one of the largest and most influential corporations in  
4 San Diego.

5 22. Moreover, greater diversity is in Qualcomm's own interest.  
6 Studies show that greater board diversity is associated with increased  
7 profits. *A McKinsey report found that companies with the most ethnically*  
8 *or culturally diverse boards worldwide were 43 percent more likely to*  
9 *experience higher profits.*

10 23. The shareholder derivative lawsuit has been the only judicial  
11 mechanism for shareholders to hold directors accountable for engaging in  
12 wrongdoing. Like the United States Supreme Court, California courts have  
13 long recognized that derivative suits play an important role in corporate  
14 governance where directors fail to do their jobs:

15 The derivative action is practically the only remedy for  
16 calling the management to account for its wrongs against the  
17 corporation and to obtain restitution. Where a derivative suit is  
18 against outsiders for wrongs against the corporation the  
19 directors can usually be expected to decide impartially on the  
20 advisability of suing. But the management cannot be expected to  
21 sue themselves for their own misdeeds.

19 *Pearce v. Super. Ct.*, 149 Cal. App. 3d 1058, 1065 (1983); *see also Vega v. Jones,*  
20 *Day, Reavis & Pogue*, 121 Cal. App. 4th 282, 297 (2004); *accord Kamen v.*  
21 *Kemper Fin. Servs.*, 500 U.S. 90, 95 (1991) (quoting *Cohen v. Beneficial Indus.*  
22 *Loan Corp.*, 337 U.S. 541, 548 (1949)). As the California Supreme Court  
23 recognized in *Jones v. H. F. Ahmanson & Co.*, where, as here, the company's  
24 board and management fail to perform their duties, stockholders have a  
25 "right" to bring derivative actions. *See* 1 Cal. 3d 93, 107 (1969). The courts  
26 of Delaware, Qualcomm's state of incorporation, likewise acknowledge that  
27 derivative actions serve an important function: "The machinery of corporate  
28

1 democracy and the derivative suit are potent tools to redress the conduct of  
2 a torpid or unfaithful management.” *Aronson v. Lewis*, 473 A.2d 805, 811  
3 (Del. 1984), *overruled in part on other grounds by Brehm v. Eisner*, 746 A.2d 244  
4 (Del. 2000).

5 24. Plaintiff, derivatively on behalf of Qualcomm, seeks the  
6 following relief from the Director Defendants:

7 (a) Qualcomm should fire its Chief Diversity Officer and  
8 replace her with a person of color;

9 (b) At least three of Qualcomm’s directors should immediately  
10 resign prior to the Company’s annual meeting which is scheduled for  
11 March 2021 and should request that the Company nominate three  
12 new persons to serve in their stead, which applicants should include  
13 two black persons and one other minority;

14 (c) All Director Defendants named in this suit should return  
15 all their 2020 compensation received from Qualcomm (including any  
16 stock grants), and donate the money to an acceptable charity or  
17 organization whose efforts include the advancement of blacks and  
18 minorities in corporate America;

19 (d) Qualcomm should agree to publish an annual Diversity  
20 Report that contains particularized information about the hiring,  
21 advancement, promotion, and pay equity of all minorities at  
22 Qualcomm;

23 (e) Qualcomm should create a \$800 million fund to hire  
24 blacks and minorities, promote minorities to more management  
25 positions at the Company, establish and maintain a mentorship  
26 program at Qualcomm for minorities that is committed to providing  
27 the skills and mentorship necessary to succeed in corporate America;  
28

1 (f) Qualcomm should require annual training of its entire  
2 Board and all Section 16 executive officers, which training should at a  
3 minimum focus on diversity, affirmative action, anti-discrimination  
4 and anti-harassment, and other relevant topics;

5 (g) Qualcomm should immediately set specific goals with  
6 respect to the number of blacks and minorities to hire at the Company  
7 over the next five years, and Qualcomm should adopt a revised  
8 executive compensation program that makes 30% of executives'  
9 compensation tied to the achievement of the diversity goals; and

10 (h) Qualcomm should replace PricewaterhouseCoopers LLP  
11 ("PWC") as its auditor. Qualcomm is one of PWC's significant  
12 customers, and PWC has served as Qualcomm's auditor *since the*  
13 *Company was founded in 1985*, giving rise to a cozy and clubby  
14 relationship between PWC and Qualcomm which is not conducive to  
15 effective auditing. The Company's compliance with its stated policies  
16 concerning the alleged commitment to diversity has been abysmal to  
17 the point of being basically non-existent. The very purpose of an  
18 auditor is to assess the Company's internal controls and determine if  
19 they are functioning effectively. Rather than doing so, PWC has  
20 wrongfully and consistently given Qualcomm's internal controls a  
21 clean bill of health and has failed to point out the obvious — that  
22 Qualcomm lacks an effective system of internal controls to ensure that  
23 the Company is not discriminating against minorities and is  
24 complying with its stated goals and initiatives regarding the  
25 promotion of diversity and the avoidance of discrimination and  
26 harassment.

27 25. The Individual Defendants' misconduct has caused severe  
28



1 financial and reputational damage to Qualcomm Corporation.

2 26. While systematically underpaying minorities and women,  
3 Qualcomm's CEO and executives have used the money saved to pay  
4 themselves unfathomable amounts. In 2018, Defendant Mollenkopf ranked  
5 #21 on the list of the 100 highest paid CEOs, with total compensation of  
6 \$19,975,472.<sup>7</sup> Qualcomm reported this figure in its 2019 Proxy, which  
7 stated:

8 For fiscal 2018, our last completed fiscal year:

- 9 • the annual compensation of our CEO, as reported in the  
10 Summary Compensation Table included on page 54 of this  
11 proxy statement, was \$19,975,472;
- 12 • the annual total compensation of our median employee was  
13 \$85,592; and
- 14 • **the resulting ratio was 233 : 1.**<sup>8</sup>

15 27. As set forth below, Defendants' conduct constitutes bad faith  
16 and disloyal acts, giving rise to claims that fall outside the scope of the  
17 business judgment rule and outside of permissible indemnification by  
18 Qualcomm. As a result, all members of the Board face a substantial  
19 likelihood of liability and any demand on them to bring this case would be  
20 a futile and useless act.

21 ///

22 ///

---

24 <sup>7</sup>See [https://www.equilar.com/reports/63-table-highest-paid-ceos-2019-](https://www.equilar.com/reports/63-table-highest-paid-ceos-2019-equilar-100.html)  
25 [equilar-100.html](https://www.equilar.com/reports/63-table-highest-paid-ceos-2019-equilar-100.html), last visited July 7, 2020.

26 <sup>8</sup> See Qualcomm 2019 Proxy Statement at p. 56.

1 **III. JURISDICTION AND VENUE**

2 28. This Court has subject matter jurisdiction over this action under  
3 Article III of the U.S. Constitution and 28 U.S.C. § 1331 because of claims  
4 arising under Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and SEC  
5 regulation 14a-9 promulgated thereunder. The Court has exclusive  
6 jurisdiction under Section 27 of the Exchange Act, 15 U.S.C. § 78aa. The  
7 Court has jurisdiction over the state-law claims in accordance with 28 U.S.C.  
8 § 1367.

9 29. This Court also has subject matter jurisdiction over this action  
10 under Article III of the U.S. Constitution and 28 U.S.C. § 1332 because  
11 Plaintiff and Defendants are citizens of different States and the amount in  
12 controversy exceeds the sum or value of \$75,000, exclusive of interest and  
13 costs.

14 30. This Court has jurisdiction over Defendants. Each Defendant is  
15 either a resident of California or otherwise has sufficient contacts with  
16 California in order to render the exercise of jurisdiction by this Court over  
17 them permissible under traditional notions of fair play and substantial  
18 justice. Additionally, in connection with the misconduct alleged herein,  
19 Defendants, directly or indirectly, used the means and instrumentalities of  
20 interstate commerce, including the United States mails, interstate telephone  
21 communications, and the facilities of the national securities markets. The  
22 Court has jurisdiction over Qualcomm because Qualcomm is headquartered  
23 in San Diego, California and has substantial business operations in  
24 California.

25 31. Venue is proper in this District pursuant to Section 27 of the  
26 Exchange Act. Venue is also proper under 28 U.S.C. § 1391(b) because:  
27 (a) Qualcomm maintains its principal place of business in this District; and  
28 (b) many of the acts and conduct that constitute the violations of law

1 complained of herein, including the preparation and dissemination to the  
2 public of materially false and misleading information, occurred in this  
3 District.

#### 4 **IV. THE PARTIES**

##### 5 **A. Plaintiff**

6 32. Plaintiff Becky Kiger is a current shareholder of Qualcomm, and  
7 has continuously held Qualcomm stock at all relevant times. Plaintiff is a  
8 citizen of Kansas.

##### 9 **B. Nominal Defendant**

10 33. Qualcomm Incorporated is a Delaware corporation with its  
11 headquarters at 5775 Morehouse Drive, San Diego, California 92121.  
12 Qualcomm is an American public multinational corporation that creates  
13 intellectual property, semiconductors, software, and services related to  
14 wireless technology.

##### 15 **C. Executive Officer Defendant**

16 34. Defendant Steve Mollenkopf has served as chief executive  
17 officer of Qualcomm Incorporated since 2014, and serves on the Company's  
18 Board. Before becoming CEO, Mollenkopf served as Qualcomm's President  
19 and Chief Operating Officer ("COO"). Prior to his role as President and  
20 COO, Mollenkopf led the Company's chipset business, overseeing the  
21 launch of 4G technology. Mollenkopf lives in Rancho Santa Fe, which is part  
22 of San Diego County.

##### 23 **D. Director Defendants**

24 35. Defendant Mark D. McLaughlin has served as the Chairman of  
25 the Board since August 2019 and as a director of the Company since July  
26 2015.

27 36. Defendant Mark Fields has served as a director since June 2018  
28

1 and currently is a member of Qualcomm's Audit Committee.

2 37. Defendant Barbara T. Alexander was a director of Qualcomm  
3 from 2006 until approximately 2019. Alexander reviewed and approved the  
4 2019 Proxy and served as Chair of the Compensation Committee.

5 38. Defendant Francisco Ros was a director of Qualcomm from 2010  
6 until approximately 2019. Ros reviewed and approved the 2019 Proxy and  
7 served as a member of the Governance Committee.

8 39. Defendant Jeffrey W. Henderson has served as a director of the  
9 Company since January 2016. He currently serves as Chair of Qualcomm's  
10 Audit Committee. He served as Chairman of the Board from March 2018 to  
11 August 2019.

12 40. Defendant Ann M. Livermore has served as a director of the  
13 Company since October 2016. She currently is a member of Qualcomm's  
14 Governance Committee.

15 41. Defendant Harish Manwani has served as a director of the  
16 Company since May 2014. He currently is a member of Qualcomm's  
17 Human Resources and the Compensation Committee. Manwani is a Senior  
18 Operating Partner at Blackstone and in addition currently sits on the board  
19 of directors of many companies, including Qualcomm, Gilead Sciences, Tata  
20 Sons, Nielsen Holdings plc, Pearson plc, Whirlpool Corporation and The  
21 Economic Development Board (EDB) of Singapore. He is also non-Executive  
22 Chairman of Hindustan Unilever Limited in India.

23 42. Defendant Jamie S. Miller has served as a director of the  
24 Company since May 2020. She is currently a member of Qualcomm's Audit  
25 Committee.

26 43. Defendant Clark T. Randt, Jr. has served as a director of the  
27 Company since October 2013. He currently is the Chairman of Qualcomm's  
28

1 Governance Committee.

2 44. Defendant Irene B. Rosenfeld has served as a director since  
3 October 2018. She currently is Chairman of Qualcomm’s Human Resources  
4 and the Compensation Committee.

5 45. Defendant Kornelis Smit has served as a director since June  
6 2018. He currently is a member of Qualcomm’s Governance Committee,  
7 Human Resources, and the Compensation Committee.

8 46. Defendant Anthony J. Vinciguerra has served as a director since  
9 July 2015. He currently is a member of Qualcomm’s Audit Committee.  
10 Vinciguerra is also on the AFI Board of Trustees and currently serves as  
11 Chairman and CEO of Sony Pictures.

12 47. The defendant identified in paragraph 34 is referred to herein as  
13 the “Executive Officer Defendant.” The Defendants identified in  
14 paragraphs 35 through 46 are referred to herein as the “Director  
15 Defendants.” Collectively, all defendants are referred to herein as the  
16 “Individual Defendants.”

17 **E. Doe Defendants**

18 48. Except as described herein, Plaintiff is ignorant of the true  
19 names of defendants sued as Does 1 through 30, inclusive, and therefore,  
20 Plaintiff sues these defendants by such fictitious names. Following further  
21 investigation and discovery, Plaintiff will seek leave of this Court to amend  
22 this Complaint to allege their true names and capacities when ascertained.  
23 These fictitiously named defendants are Qualcomm officers, other members  
24 of management, employees, and/or consultants or third parties who were  
25 involved in the wrongdoing detailed herein. These defendants aided and  
26 abetted, and participated with and/or conspired with the named defendants  
27 in the wrongful acts and course of conduct or otherwise caused the  
28

1 damages and injuries claimed herein and are responsible in some manner  
2 for the acts, occurrences, and events alleged in this Complaint.

3 **F. Unnamed Participants**

4 49. Numerous individuals and entities participated actively during  
5 the course of and in furtherance of the wrongdoing described herein. The  
6 individuals and entities acted in concert by joint ventures and by acting as  
7 agents for principals, to advance the objectives of the scheme and to provide  
8 the scheme to benefit Defendants and themselves to the detriment of  
9 Qualcomm.

10 **V. RESPONSIBILITIES AND DUTIES OF THE INDIVIDUAL  
11 DEFENDANTS**

12 **A. Responsibilities of the Individual Defendants**

13 50. Corporate officers and directors owe the highest fiduciary duties  
14 of care and loyalty to the corporation they serve.

15 51. Board Members and Executive Officers are held to the highest  
16 level of ethics and compliance with the law.

17 52. The Company's Corporate Governance Principles state:

18 The Board oversees the exercise of corporate powers and the  
19 Company's business affairs to ensure that they are managed to  
20 meet the Company's stated goals and objectives. The Board  
21 recognizes its responsibility to engage, and provide for the  
22 continuity of, executive management that possesses the  
23 character, skills and experience required to attain the  
24 Company's goals and to ensure that nominees for the Board of  
25 Directors possess appropriate qualifications and reflect a  
26 reasonable diversity of backgrounds and perspectives. Board  
27 members represent the collective interests of all stockholders of  
28 the Company and will act in good faith, with due care and in a  
manner he or she reasonably believes to be in the best interests  
of the Company.

53. Qualcomm's Corporate Governance Principles also state:

**Board Member Criteria**

The Governance Committee is responsible for reviewing the  
appropriate skills and characteristics required of Board  
members in the context of prevailing business conditions and

1 composition of the Board. The qualifications and criteria  
2 considered in the selection of director nominees have the  
3 objective of assembling a Board that brings to the Company a  
4 reasonable diversity and variety of backgrounds, perspectives,  
5 experience and skills derived from high quality business and  
6 professional experience, with the Governance Committee also  
7 giving consideration to candidates with appropriate non-  
8 business backgrounds. . .

9 *As part of its efforts to create a diverse Board, including with  
10 respect to race, ethnicity and gender, the Governance Committee  
11 will include, and instruct any search firm it engages to include,  
12 women and racially/ethnically diverse candidates in the pool  
13 from which the Governance Committee selects director  
14 nominees.*<sup>9</sup>

15 54. The Board is responsible for oversight and compliance with the  
16 Company's internal controls regarding diversity, anti-discrimination, pay  
17 equity, hiring and promotion. As alleged herein, the Company's Board of  
18 Directors failed to act in good faith by failing to ensure compliance with  
19 these policies and controls. These policies existed on paper, but were  
20 knowingly disregarded.

21 55. The Board has obviously been aware at all relevant times that it  
22 is all-white and lacks diversity. The Board and the Executive Officers also  
23 knew that diversity was lacking in the Company's workforce. The  
24 Defendants' knowledge of the problems is reflected by their efforts to  
25 conceal the lack of diversity and discrimination.

26 56. The Board knew the Company had policies in place on paper,  
27 but they failed to give the policies any teeth or enforcement. The Board's  
28 conduct represented hypocrisy, bad faith, and disloyal conduct. The Board

---

23 <sup>9</sup> See Qualcomm's Corporate Governance Principles and Practices,  
24 available at  
25 [https://d1io3yog0oux5.cloudfront.net/\\_cf13d56813c1ec7af0aeb3f038c77a4e/qualcomm/db/720/6495/file/QCOM\\_MASTER+Corporate+Governance+Principles+and+Practices\\_Proposed+Updates\\_050320\\_Clean.pdf](https://d1io3yog0oux5.cloudfront.net/_cf13d56813c1ec7af0aeb3f038c77a4e/qualcomm/db/720/6495/file/QCOM_MASTER+Corporate+Governance+Principles+and+Practices_Proposed+Updates_050320_Clean.pdf), last visited July  
26 13, 2020.

1 had a duty to cause the Company to comply with the law and its own  
2 Corporate Governance Principles, and failed to do so.

3 57. The direct involvement of Qualcomm's Board makes them  
4 interested in the outcome of this litigation because they face a substantial  
5 likelihood of liability. Demand is thus futile.

6 **B. Fiduciary Duties of the Individual Defendants**

7 58. By reason of their positions as officers and directors of the  
8 Company, each of the Individual Defendants owed and continue to owe  
9 Qualcomm and its shareholders fiduciary obligations of trust, loyalty, good  
10 faith, and due care, and were and are required to use their utmost ability to  
11 control and manage Qualcomm in a fair, just, honest, and equitable manner.  
12 The Individual Defendants were and are required to act in furtherance of  
13 the best interests of Qualcomm and not in furtherance of their personal  
14 interest or benefit.

15 59. To discharge their duties, the officers and directors of the  
16 Company were required to exercise reasonable and prudent supervision  
17 over the management, policies, practices, and controls of the affairs of the  
18 Company. By virtue of such duties, the officers and directors of Qualcomm  
19 were required to, among other things:

20 (a) conduct the affairs of the Company in an efficient,  
21 business-like manner in compliance with all applicable laws, rules,  
22 and regulations so as to make it possible to provide the highest  
23 quality performance of its business, to avoid wasting the Company's  
24 assets, and to maximize the value of the Company's stock; and

25 (b) remain informed as to how Qualcomm conducted its  
26 operations, and, upon receipt of notice or information of imprudent or  
27 unsound conditions or practices, make reasonable inquiry in  
28



1 connection therewith, and take steps to correct such conditions or  
2 practices and make such disclosures as necessary to comply with  
3 applicable laws.

4 **C. Breaches of Fiduciary Duties by the Individual Defendants**

5 60. The conduct of the Individual Defendants complained of herein  
6 involves a knowing and culpable violation of their obligations as officers  
7 and directors of Qualcomm, the absence of good faith on their part, and a  
8 reckless disregard for their duties to the Company.

9 61. The Individual Defendants breached their duty of loyalty and  
10 good faith by allowing defendants to cause, or by themselves causing, the  
11 Company to cover up Qualcomm's discrimination, and caused Qualcomm  
12 to incur substantial damage.

13 62. The Individual Defendants, because of their positions of control  
14 and authority as officers and/or directors of Qualcomm, were able to and  
15 did, directly or indirectly, exercise control over the wrongful acts  
16 complained of herein. The Individual Defendants also failed to prevent the  
17 other Individual Defendants from taking such improper actions. As a  
18 result, and in addition to the damage the Company has already incurred,  
19 Qualcomm has expended, and will continue to expend, significant sums of  
20 money.

21 **D. Conspiracy, Aiding and Abetting, and Concerted Action**

22 63. At all relevant times, Individual Defendants were agents of the  
23 remaining Individual Defendants, and in doing the acts alleged herein,  
24 were acting within the course of scope of such agency. The Individual  
25 Defendants ratified and/or authorized the wrongful acts of each of the other  
26 Individual Defendants. The Individual Defendants, and each of them, are  
27 individually sued as participants and as aiders and abettors in the improper  
28

1 acts, plans, schemes, and transactions that are the subject of this Complaint.

2 64. In committing the wrongful acts alleged herein, the Individual  
3 Defendants have pursued, or joined in the pursuit of, a common course of  
4 conduct, and have acted in concert with and conspired with one another in  
5 furtherance of the improper acts, plans, schemes, and transactions that are  
6 the subject of this Complaint. In addition to the wrongful conduct herein  
7 alleged as giving rise to primary liability, the Individual Defendants further  
8 aided and abetted and/or assisted each other in breaching their respective  
9 duties.

10 65. The Individual Defendants engaged in a conspiracy, common  
11 enterprise, and/or common course of conduct, by failing to maintain  
12 adequate internal controls at the Company and covering up discrimination  
13 at the Company.

14 66. During all times relevant hereto, the Individual Defendants,  
15 collectively and individually, initiated a course of conduct that was  
16 designed to and did circumvent the internal controls at the Company and  
17 caused the Company to cover up Qualcomm executives' discrimination. In  
18 furtherance of this plan, conspiracy, and course of conduct, the Individual  
19 Defendants, collectively and individually, took the actions set forth herein.

20 67. The purpose and effect of the Individual Defendants'  
21 conspiracy, common enterprise, and/or common course of conduct was,  
22 among other things, to disguise the Individual Defendants' violations of  
23 law, breaches of fiduciary duty, and waste of corporate assets, and to  
24 conceal adverse information concerning the Company's operations.

25 68. The Individual Defendants accomplished their conspiracy,  
26 common enterprise, and/or common course of conduct by intentionally  
27 circumventing internal controls at the Company and causing the Company  
28

1 to cover up discrimination at the Company. Because the actions described  
 2 herein occurred under the authority of the Board, each of the Individual  
 3 Defendants was a direct, necessary, and substantial participant in the  
 4 conspiracy, common enterprise, and/or common course of conduct  
 5 complained of herein.

6 69. Each of the Individual Defendants aided and abetted and  
 7 rendered substantial assistance in the wrongs complained of herein. In  
 8 taking such actions to substantially assist the commission of the  
 9 wrongdoing complained of herein, each Individual Defendant acted with  
 10 knowledge of the primary wrongdoing, substantially assisted in the  
 11 accomplishment of that wrongdoing, and was aware of his or her overall  
 12 contribution to and furtherance of the wrongdoing.

### 13 E. The Directors' Roles and Committees at Qualcomm

14 70. The following chart sets forth the directors of Qualcomm as set  
 15 forth in the Company's most recent Proxy Statement and the committees on  
 16 which they serve:

Name	Committees		
	Audit	HR and Compensation	Governance
Barbara T. Alexander		Chair	
Mark Fields	X		
Jeffrey W. Henderson	Chair		
Ann M. Livermore			X
Harish Manwani		X	
Mark D. McLaughlin*			
Steve Mollenkopf			
Clark T. Randt, Jr.			Chair
Francisco Ros			X
Irene B. Rosenfeld		X	
Kornelis "Neil" Smit	X		
Anthony J. Vinciguerra	X		
<b>Number of Committee Meetings Held in Fiscal 2019</b>	<b>9</b>	<b>11</b>	<b>5</b>

1 **VI. SUBSTANTIVE ALLEGATIONS**

2 71. Qualcomm’s Board enjoys the dubious distinction of being one  
3 of only a handful of publicly-traded companies in the United States with  
4 zero Black individuals.

5 72. The lack of diversity at the top at Qualcomm is significant. The  
6 Board bears ultimate responsibility for ensuring the Company’s compliance  
7 with federal and state laws prohibiting discrimination based on race,  
8 gender, and other factors. Diversity in the workforce is a strong indication  
9 of a lack of discrimination; conversely, a lack of diversity provides a strong  
10 indication that discrimination is present.

11 73. The son of Qualcomm’s founder, who previously served as  
12 CEO, has acknowledged the Board’s ultimate responsibility to ensure the  
13 Company is managed in compliance with all applicable laws and in  
14 accordance with strict fiduciary duties:

15 **LEADING BY EXAMPLE**

16 As a publicly held company, we are governed by a 12-member  
17 Board of Directors, which sets high standards for our executive  
18 leadership and all of our employees as it acts in the best interests  
19 of our stockholders. Our directors serve as prudent fiduciaries  
20 and oversee our Company’s management. Board members are  
21 expected at all times to act in accordance with our Code of  
22 Ethics.<sup>10</sup>

23 74. If the Qualcomm Board is vested with the responsibility of  
24 “Leading by Example,” it has failed miserably at that role with respect to  
25 diversity; the Board still, in 2020, lacks any Black or minority individuals.

26 <sup>10</sup> Statement by Paul E. Jacobs in Qualcomm’s 2011 Social  
27 Responsibility Report, available at file:///C:/Users/fbottini/Downloads/2011-  
28 qualcomm-social-responsibility-report.pdf, last visited July 3, 2020.

1 75. Qualcomm's own Chief Diversity Officer has stated that:  
2 "Diversity shouldn't be encouraged, it should be demanded as a critical  
3 business imperative."<sup>11</sup>

4 **A. Qualcomm Has Repeatedly Falsely Represented That It Has**  
5 **Made Substantial Progress Towards Diversity and Inclusion**  
6 **in Its Workplace and on the Board**

7 76. Qualcomm has repeatedly represented that it effectively  
8 promotes and achieves diversity and inclusion at the Company. For  
9 example, the Company's website states:

10 **Inclusion and Diversity**

11 Qualcomm aims to build an inclusive environment where  
12 everyone feels like they're part of the team.

13 *We further innovation and accelerate progress by fostering a*  
14 *diverse workforce.* We cultivate innovators who bring varying  
15 backgrounds, ideas, and points of views.

16 We are committed to building a pipeline of diverse talent.  
17 *Qualcomm is present at many diversity conferences and partner*  
18 *with many universities and organizations dedicated to building*  
19 *diversity and creating more opportunities for professional*  
20 *development and engagement.* We proudly focus on developing  
21 leaders and shaping future talent pools to help us meet the  
22 needs of our customers worldwide.<sup>12</sup>

23 77. The Individual Defendants have not only caused the Company  
24 to make vague statements about a "commitment" to diversity, but have  
25 approved false statements that Qualcomm has been successful in those  
26

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27 <sup>11</sup> Vicki Mealer-Burke, Qualcomm's Chief Diversity Officer. See Diana  
28 Goovaerts, "Q&A: Qualcomm pushes diversity for business boost," Mobile  
World Live, Mar. 12, 2020, available at  
<https://www.mobileworldlive.com/featured-content/top-three/qa-qualcomm-pushes-diversity-for-business-boost/>, last visited July 3, 2020.

<sup>12</sup>See <https://www.qualcomm.com/company/corporate-responsibility/our-people/inclusion-diversity>, last visited July 3, 2020.

1 efforts, which “are measurable and produce actionable tasks” and “are having a  
2 tangible effect”:

3 ***We’re creating and implementing inclusion and diversity***  
4 ***programs that are measurable and produce actionable tasks.***

5 Qualcomm has a variety of initiatives to improve workplace  
6 diversity and inclusion, as seen below.

7 We have a Diversity Task Force of senior vice presidents to  
8 review strategic programs and advise on best practices for  
9 driving diversity through collective data analysis. This task  
10 force also explores innovative hiring and retention best practices  
11 for implementation throughout our Company.

12 We implement an Inclusion Awards program that uses a peer  
13 nomination process to recognize employees who demonstrate  
14 our inclusion and diversity values on a daily basis.

15 We’re measuring and tracking our progress to ensure that *our*  
16 ***programs and policies around inclusion and diversity are***  
17 ***having a tangible effect.***<sup>13</sup>

18 78. The Company’s website also states:

19 **We are committed to continuously building a pipeline of**  
20 **diverse talent.**

21 Qualcomm actively seeks and recruits diverse candidates for  
22 positions at the company. Diverse teams, built around different  
23 perspectives, experiences and skill sets, fuel creativity and  
24 innovation. We’re developing leaders and shaping future talent  
25 pools to help us meet the needs of our diverse customers  
26 worldwide. This means we’re taking a broad approach to  
27 finding diverse candidates.<sup>14</sup>

28 79. The Individual Defendants have also caused Qualcomm to  
represent that the Company has taken active and concerted steps to recruit  
African American individuals:

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<sup>13</sup> *Id.* (emphasis in original).

<sup>14</sup> *Id.* (emphasis in original).

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**African Americans**

*Qualcomm supports engineering initiatives, such as hackathons, panel discussions, school visits, and mentoring, centered on African Americans.* We collaborate with the National Society of Black Engineers and AfroTech to provide career development opportunities for our employees, create interest in employment opportunities at Qualcomm and identify and recruit talent.<sup>15</sup>

80. Defendant Mollenkopf, the CEO, has also repeatedly stated that he prizes diversity and that the supposed diversity that exists at Qualcomm makes the Company “a stronger, more effective company”:

We believe the diversity of our employees makes us a stronger, more effective company.<sup>16</sup>

81. In the Company’s 2019 Corporate Responsibility Report, Defendant Mollenkopf also stated:

We remain dedicated to driving long-term growth and value for all our stakeholders. As such, I signed onto the Business Roundtable Statement on the Purpose of a Corporation. *Becoming a signatory further demonstrates our commitment to good corporate citizenship and responsible innovation wherever we do business. Moreover, our commitment to operating with the highest ethical standards, transparency and integrity in key environmental, social and governance matters earned us an honored position on the 2019 Dow Jones Sustainability North America Index — a benchmark of companies leading the way to a sustainable world.*<sup>17</sup>

82. Qualcomm also states that:

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Available

<https://www.qualcomm.com/media/documents/files/2019-qualcomm-sustainability-report.pdf>, last visited July 3, 2020.

at

1 In 2019, *we refreshed our inclusion and diversity training and*  
 2 *rolled it out to our worldwide talent acquisition staff.* This  
 3 training provides tips, tools, platforms and techniques to help us  
 4 identify a broader range of world-class candidates, including  
 5 underrepresented populations. . .

6 *We also revamped our strategy for participating in diversity*  
 7 *and inclusion conferences to maximize the benefits that those*  
 8 *critical events provide.* We engage as a high-level sponsor of  
 9 professional conferences where we can reach technical talent in  
 10 diverse communities and increased our senior leadership and  
 11 hiring manager participation at these events.<sup>18</sup>

12 **B. The Compensation Committee at Qualcomm is Responsible**  
 13 **for the Company's Diversity and Inclusion Efforts**

14 83. At Qualcomm, the Directors sitting on the Compensation  
 15 Committee are responsible for the Company's diversity and inclusion  
 16 initiatives. The 2019 Proxy stated:

17 The Compensation Committee. *The Compensation Committee*  
 18 *determines compensation levels for the Chief Executive Officer,*  
 19 *the other executive officers and directors, administers and*  
 20 *approves stock offerings under our employee stock purchase*  
 21 *and long-term incentive plans, reviews our employee*  
 22 *compensation and talent management policies and practices,*  
 23 *administers our incentive recoupment policy, reviews our*  
 24 *workforce management policies, programs and initiatives*  
 25 *focusing on diversity and inclusion, and reviews executive*  
 26 *officer development and succession planning.*

27 84. As the chart *supra* indicates, in 2019 and 2020 Qualcomm's  
 28 Compensation Committee was comprised of Defendants Alexander,  
 Manwani, and Rosenfeld.

29 **C. The Governance Committee is Responsible for Nominating**  
 30 **Individuals to the Company's Board**

31 85. In 2019 and 2020, Defendants Livermore, Randt, and Ros served  
 32 on Qualcomm's Governance Committee.

33 \_\_\_\_\_  
 34 <sup>18</sup> *Id.*



1 86. The Charter of the Governance Committee states that the  
2 Committee is responsible for the following duties, among others:

3 • Review and approve the disclosures made by the  
4 Company in the Company's proxy statement or other  
5 documents filed with the Securities and Exchange Commission  
6 with respect to matters of corporate governance, including  
7 qualifications of Board members.

8 • Develop and implement annually a self-evaluation  
9 of its own performance.

10 • Oversee the management of risks associated with the  
11 matters for which the Committee is responsible.

12 • Consistent with the foregoing, take such actions as it  
13 deems necessary to encourage continuous improvement of, and  
14 foster adherence to, the Company's corporate governance  
15 policies, procedures and practices at all levels, and perform  
16 other corporate governance oversight functions as requested by  
17 the Board.

18 87. At Qualcomm, the Governance Committee is responsible for  
19 nominating individuals to serve on Qualcomm's Board, as stated in the 2019  
20 Proxy:

21 [T]he Governance Committee evaluates and recommends  
22 nominees, including stockholder nominees, for membership on  
23 the Board and its committees.

24 85. The Governance Committee states that its goal in nominating  
25 individuals to serve on the Board is to attain a "diversity of perspectives"  
26 but not any specific goals of ensuring adequate representation of Blacks or  
27 minorities:

28 *The Governance Committee's goal is to assemble a board of directors  
that brings to us a **diversity of perspectives and skills** derived  
from high quality business and professional experience. In  
doing so, the Governance Committee also considers nominees  
with appropriate non-business backgrounds.<sup>19</sup>*

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<sup>19</sup> See 2019 Proxy at p. 11.

1 86. With respect to the nominating process, the Governance  
2 Committee's charter also states:

3 Actively seek individuals qualified to become Board members  
4 and make recommendations to the Board regarding Board  
5 nominees, including an annual recommendation with respect to  
6 those individuals to be nominated for election at the Company's  
7 annual meeting of stockholders. As part of this process the  
8 Committee shall consult with Board members, management and  
9 others to evaluate the knowledge and skills which should be  
10 considered in making nominations, including the knowledge  
11 and skills set forth in the Company's Corporate Governance  
12 Principles and Practices.

13 87. In reality, Qualcomm has made no real efforts to promote  
14 diversity on its Board and among its senior executives. Indeed, in the 2019  
15 Proxy the word "diversity" only appears three (3) times.

16 **D. At All Relevant Times, the Individual Defendants Have Had  
17 Actual Knowledge That, Contrary to Its Public Statements,  
18 Qualcomm Was Not Achieving Success With Respect to Its  
19 Diversity and Inclusion Initiatives and That Such Efforts  
20 Were Not Having a "Tangible Effect" on the Lack of Diversity  
21 at Qualcomm**

22 88. Qualcomm, led by Steve Mollenkopf and the Board, has  
23 consistently refused to appoint Black and minority individuals to its Board  
24 and to management positions within the Company. The Company has been  
25 criticized for its refusal to do so, but has persisted in its intransigence.

26 89. And the lack of diversity at the top at Qualcomm has resulted in  
27 economic discrimination. The pay of the Company's CEO in 2018 was 233  
28 times as high as the median pay of all other employees:

For fiscal 2018, our last completed fiscal year:

- the annual compensation of our CEO, as reported in the Summary Compensation Table included on page 54 of this proxy statement, was \$19,975,472;

- 1 • the annual total compensation of our median employee was
- 2 \$85,592; and
- 3 • **the resulting ratio was 233 : 1.**<sup>20</sup>

4 90. Instead of acknowledging the problem and demanding change,  
5 Qualcomm has instead issued false statements claiming success in  
6 achieving diversity and inclusion.

7 **E. False and Misleading 2019 and 2020 Proxy Statements**  
8 **Approved by the Director Defendants**

9 91. Notwithstanding their knowledge about Qualcomm's failure to  
10 promote and achieve diversity and its discriminatory hiring and promotion  
11 practices, the Director Defendants have caused Qualcomm to issue Proxy  
12 Statements that were materially misleading. The Company's 2019 Proxy  
13 was filed with the SEC on January 24, 2019 and signed by Directors  
14 Mollenkopf, Alexander, Fields, Livermore, Henderson, Manwani,  
15 McLaughlin, Randt, Ros, Rosenfeld, Smit, and Vinciguerra.

16 92. The Company's 2020 Proxy Statement was filed with the SEC on  
17 January 23, 2020 and was approved by Defendants Mollenkopf, Fields,  
18 Henderson, Livermore, Manwani, McLaughlin, Randt, Rosenfeld, Smit, and  
19 Vinciguerra.

20 93. In the 2019 Proxy, the Directors represented that the goal of the  
21 Company's Governance Committee was to assemble a diverse Board:

22 *The Governance Committee's goal is to assemble a board of*  
23 *directors that brings to us a diversity of perspectives and skills*  
24 *derived from high quality business and professional experience.*  
*In doing so, the Governance Committee also considers nominees*  
*with appropriate non-business backgrounds.*

25 \_\_\_\_\_  
26 <sup>20</sup> See Qualcomm 2019 Proxy Statement at p. 56.

1 94. In the 2020 Proxy Statement, the Company stated:

2 The qualifications and criteria considered in the selection of  
3 director nominees have the objective of assembling a Board that  
4 brings to the Company a reasonable diversity and variety of  
5 backgrounds, perspectives, experience and skills derived from  
6 high quality business and professional experience, with the  
7 Governance Committee also giving consideration to candidates  
8 with appropriate non-business backgrounds. *As part of its  
9 efforts to create a diverse Board, including with respect to race,  
10 ethnicity and gender, the Governance Committee will include,  
11 and instruct any search firm it engages to include, women and  
12 racially/ethnically diverse candidates in the pool from which  
13 the Governance Committee selects director nominees.*

14 95. These statements in the 2019 and 2020 Proxy Statements were  
15 highly misleading. By using the term “a board of directors that brings us a  
16 diversity of perspectives and skills,” the Proxy suggests that the  
17 Governance Committee has a goal of achieving diversity on the Board by  
18 seeking to achieve representation of diverse persons – *i.e.*, Blacks and other  
19 minorities. In reality, however, the Governance Committee does not have a  
20 goal of increasing the racial diversity of applicants for Board seats and  
21 instead only has a goal of increasing diversity of skills among Board  
22 candidates.

23 96. Moreover, the representation that “*the Governance Committee  
24 will include, and instruct any search firm it engages to include, women and  
25 racially/ethnically diverse candidates in the pool from which the  
26 Governance Committee selects director nominees*” was misleading because  
27 it suggested that the Company was actively seeking to achieve racial and  
28 ethnic diversity in its Board membership. Despite allegedly requiring  
racially and ethnically diverse candidates to be included in the director  
nominee pool, the fact remains that Qualcomm has no African Americans  
on its Board, and that no African American or other minority candidate has  
been elected to the Qualcomm Board in the last six years. The undisclosed  
truth therefore is that Qualcomm may have a policy of attempting to

1 include racially and ethnically diverse candidates in its director nominee  
2 pool, but it either has no intention to actually nominate such persons to its  
3 Board or it engages in efforts to thwart the nomination of such persons and  
4 prefers non-diverse applicants in the pool.

5 97. Indeed, elsewhere in the 2019 Proxy the Company lists the  
6 following factors that are considered by the Governance Committee when  
7 selecting Board applicants:

8 In evaluating director nominees, the Governance Committee  
9 considers the following factors:

- 10 • The appropriate size of the Board;
- 11 • Our needs with respect to the particular talents, experience and  
12 diversity of our directors;
- 13 • The knowledge, skills and experience of nominees, including  
14 experience in technology, business, finance, administration or  
15 public service, in light of prevailing business conditions and the  
16 knowledge, skills and experience already possessed by other  
17 members of the Board;
- 18 • Familiarity with national and international business matters;
- 19 • Experience in political affairs;
- 20 • Experience with accounting rules and practices;
- 21 • Appreciation of the relationship of our business to the changing  
22 needs of society;
- 23 • The nominee's other commitments, including the other boards  
24 on which the nominee serves; and
- 25 • The desire to balance the considerable benefit of continuity with  
26 the periodic injection of the fresh perspective provided by new  
27 members.

28 98. The 2020 Proxy listed almost identical factors as those  
considered by Qualcomm when nominating director candidates:

In evaluating director nominees, the Governance Committee  
considers, among others, the following factors:

- The appropriate size of the Board;

- 1 • Our needs with respect to the particular talents, experience and diversity of our directors;
- 2 • The knowledge, skills and experience of nominees, including  
3 experience in technology, business, finance, administration or  
4 public service, in light of prevailing business conditions and the  
5 knowledge, skills and experience already possessed by other  
6 members of the Board;
- 7 • Familiarity with national and international business matters;
- 8 • Experience in political affairs;
- 9 • Experience with accounting rules and practices;
- 10 • Appreciation of the relationship of our business to the changing  
11 needs of society;
- 12 • Board tenure, including the desire to balance the considerable  
13 benefit of continuity with the periodic injection of the fresh  
14 perspectives provided by new members; and
- 15 • The nominee's other commitments, including the other boards  
16 on which the nominee serves.

17 99. As is evident, racial diversity is not among the relevant factors  
18 which the Governance Committee lists as considerations in its decisions  
19 with respect to Board nominees.

20 100. The Governance Committee at Qualcomm is responsible for  
21 nominating candidates to the Board. The Company's Corporate  
22 Governance Principles state that:

23 *As part of its efforts to create a diverse Board, including with  
24 respect to race, ethnicity and gender, the Governance Committee  
25 will include, and instruct any search firm it engages to include,  
26 women and racially/ethnically diverse candidates in the pool  
27 from which the Governance Committee selects director  
28 nominees.<sup>21</sup>*

29 <sup>21</sup> See Qualcomm's Corporate Governance Principles and Practices,  
30 available at  
31 [https://d1io3yog0oux5.cloudfront.net/\\_cf13d56813c1ec7af0aeb3f038c77a4e/q  
34 ualcomm/db/720/6495/file/QCOM\\_MASTER+Corporate+Governance+Prin  
35 ciples+and+Practices\\_Proposed+Updates\\_050320\\_Clean.pdf](https://d1io3yog0oux5.cloudfront.net/_cf13d56813c1ec7af0aeb3f038c77a4e/q<br/>32 ualcomm/db/720/6495/file/QCOM_MASTER+Corporate+Governance+Prin<br/>33 ciples+and+Practices_Proposed+Updates_050320_Clean.pdf), last visited July  
36 13, 2020.

1           101. The 2019 Proxy contained information that was at odds with  
2 information in the Company's Corporate Governance Principles. The 2019  
3 Proxy stated that the Governance Committee's goal was to "assemble a  
4 board of directors that brings to us a diversity of perspectives and skills"  
5 whereas the Corporate Governance Principles claim that the Governance  
6 Committee "will include, and instruct any search firm it engages to include,  
7 women and racially/ethnically diverse candidates in the pool from which  
8 the Governance Committee selects director nominees." In other words, the  
9 2019 Proxy stated that the goal of the Governance Committee is only  
10 diversity of skills and perspectives, while the Governance Principles state  
11 that racial and ethnic diversity is not only a goal but that the Committee  
12 demands that racial and ethnic minorities be included in the pool of  
13 potential Board candidates.

14           102. Due to these disparities and conflicts between the 2019 Proxy  
15 and the Corporate Governance Principles, the Proxy Statements were  
16 materially misleading. And if Qualcomm's answer is that there is no  
17 conflict since the Company intended the term "diversity" in the 2019 Proxy  
18 to include racial and ethnic diversity, such explanation is contrary to the  
19 plain language in the 2019 Proxy, which contains no reference to ethnic and  
20 racial diversity and only mentions the word diversity three (3) times.

21           103. In addition, if the Governance Committee "instructs" the  
22 search firms it employs to include racial and ethnic minorities in the pool  
23 from which Board nominees are chosen, why are there no African  
24 Americans on Qualcomm's Board and why have no racial or ethnic  
25 minorities been elected to the Qualcomm Board in the last at least six years?

26           104. At Qualcomm, one of the ways the Company has inhibited and  
27 prevented diverse candidates from being nominated to serve on the Board  
28

1 is through restrictive and unreasonable provisions that place a high bar on  
2 shareholders' ability to nominate candidates other than the incumbent  
3 directors. As admitted in the 2019 Proxy:

4 Our Bylaws contain provisions that address the process  
5 (including required information and deadlines) by which a  
6 stockholder may nominate an individual to stand for election to  
7 the Board at our annual meeting of stockholders. In addition,  
8 the "proxy access" provisions of our Bylaws provide that, *under*  
9 *certain circumstances, a stockholder or group of up to 20*  
10 *stockholders may seek to include director nominees in our proxy*  
11 *statement if such stockholder or group of stockholders own at*  
12 *least 3% of our outstanding common stock continuously for at*  
13 *least the previous three years. The number of stockholder*  
14 *nominees appearing in the proxy statement for our annual*  
15 *meeting cannot exceed 20% of the number of directors to be*  
16 *elected. If 20% of the number of directors is not a whole number,*  
17 *the maximum number of stockholder nominees is rounded*  
18 *down to the next whole number.*<sup>22</sup>

19 105. As this statement indicates, any Qualcomm shareholder  
20 wanting to nominate a new individual to the Board – for example, an  
21 African American individual – has to own 3% of the Company's stock, or  
22 alternatively somehow get in contact with and convince 19 other  
23 shareholders who collectively own 3% of the Company's stock to agree to  
24 nominate the individual. The 2019 Proxy disclosed that "At the close of  
25 business on the Record Date, we had 1,210,199,813 shares of common stock  
26 outstanding and entitled to vote." Thus, 3% of Qualcomm's shares equates  
27 to 3,630,599 shares.

28 106. At Qualcomm's current stock price of approximately \$93.50, a  
shareholder would have to own \$399,461,006 in Qualcomm stock in order to  
have the right to nominate an African American individual to Qualcomm's

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<sup>22</sup> See 2019 Proxy at p. 10.



1 Board. No wonder there are no Blacks on Qualcomm's Board.

2 107. But the restrictions do not end there. In addition to having to  
3 own 3% of Qualcomm's stock, a shareholder has to have owned the stock  
4 "continuously for at least the last three years." So there is a three-year  
5 waiting period even after a person buys Qualcomm stock in order to be able  
6 to nominate a director to the Board.<sup>23</sup>

7 108. Qualcomm's Proxy Statement was also materially misleading  
8 because it contained material omissions: it failed to disclose that the  
9 purpose and effect of its "proxy access" rules, in combination with the  
10 policies of its Governance Committee, was to inhibit the nomination and  
11 election of Blacks and minorities to the Board. These material omissions  
12 would have been material to a shareholder's decision as to whether to re-  
13 elect the incumbent directors at the annual meeting. In the 2019 Proxy, the  
14 reelection of the incumbent directors was Item No. 1. With respect to the  
15 election, the Board asked shareholders to vote in favor, stating:

16 The affirmative vote of a majority of the votes cast at the Annual  
17 Meeting at which a quorum is present, either in person or by  
18 proxy, is required to elect each of the 12 nominees for director,  
19 meaning that the number of shares cast "for" a nominee's  
20 election exceeds the number of "withhold" votes cast against  
21 that nominee. If you hold your shares in your own name and  
22 abstain from voting on this matter, your abstention will have no  
23 effect on the vote. If you hold your shares through a broker and  
24 you do not instruct the broker on how to vote for each of the 12  
25 nominees, your broker will not have the authority to vote your  
26 shares. Abstentions and broker non-votes will each be counted

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23 At some point in 2020, in response to shareholder backlash at these  
29 onerous requirements, Qualcomm apparently changed the requirements to  
30 1% of the Company's stock for at least a one-year holding period. But even  
31 at these levels, no individual shareholder owns enough stock to nominate a  
32 person to serve on the Board. Even Defendant Mollenkopf, who is the  
33 Company's third largest shareholder (after Vanguard and BlackRock), owns  
34 less than 1% of the Company's stock.

1 as present for purposes of determining the presence of a  
quorum but will not have any effect on the outcome of the vote.

2 **THE BOARD RECOMMENDS A VOTE "FOR" THE**  
3 **ELECTION OF EACH OF THE ABOVE NOMINEES.**<sup>24</sup>

4 109. The Proxy was also materially misleading because it failed to  
5 disclose that the Company does not have term limits, and that the purpose  
6 of the lack of term limits is to entrench the current directors in office and  
7 prevent African Americans and minorities from having fair opportunities to  
8 be elected to the Board.

9 110. To attempt to justify its racism, Qualcomm's Board has resisted  
10 efforts to appoint new members to its Board by claiming that the  
11 individuals who have served on the Board for, in some cases decades, have  
12 experience that is valuable to the Company. The Proxy was false and  
13 misleading for failing to disclose the lack of term limits and the true reasons  
14 and effect of the lack of term limits.

15 111. In reality, longer-tenured directors do not serve the best  
16 interests of the Company, as amply demonstrated by leading academics and  
17 professionals in the field of best corporate governance principles. A report  
18 by the Harvard Law School Forum on Corporate Governance noted that:

19 *Investor respondents to ISS' 2016–2017 Global Policy*  
20 *Survey (conducted between Aug. 2, 2016 and Aug. 30, 2016)*  
21 *were asked which tenure-related factors — with multiple*  
22 *answers allowed — would give rise to concern about a board's*  
23 *nominating and refreshment processes. Among the 120*  
24 *institutional investors (one-third of whom each own or manage*  
25 *assets in excess of \$100 billion) who responded, 68 percent*  
26 *pointed to a high proportion of directors with long tenure as*  
27 *cause for concern, 53 percent identified an absence of newly-*  
28 *appointed independent directors in recent years as a potential*  
*problem, and 51 percent flagged lengthy average tenure as*  
*problematic. Just 11 percent of the investor respondents said*

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24 See 2019 Proxy at p. 20.

1 that tenure is not a concern, although even several of those  
2 respondents indicated that an absence of newly-appointed  
3 directors is a concern.<sup>25</sup>

4 112. The Director Defendants' refusal to adopt director term limits  
5 and to appoint new black and minority members to the Board represents  
6 explicit or implicit racism at Qualcomm, and an improper pretext for failing  
7 to add Black and minority individuals to the Board. By falsely asserting  
8 that term limits would deprive Qualcomm of the "experience" of older  
9 white members who have served on the Board for decades, the Director  
10 Defendants made intentionally or recklessly false statements in order to get  
11 themselves reelected and to conceal the true reasons for Qualcomm's long-  
12 standing failure to add Blacks to its Board.

13 113. The 2019 and 2020 Proxy Statements were also materially  
14 misleading because they asked shareholders to vote in favor of executive  
15 compensation "say on pay" proposals, but failed to disclose that none of  
16 Qualcomm's executive compensation decisions take into consideration  
17 whether the executives have been successful in achieving the Company's  
18 critical diversity and inclusion goals.

19 114. For example, the 2019 Proxy stated:

20 In executive session without our CEO or other executive officers  
21 present, the Compensation Committee approved our CEO's and  
22 other executive officers' fiscal 2018 equity award amounts, the  
23 fiscal 2018 ACIP earned amounts, and any adjustments to base  
24 salaries and ACIP targets for fiscal 2019. In making these  
25 decisions, and in determining the amounts and mix of executive  
26 compensation, the Compensation Committee considered the  
27 following factors, among others:

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28 <sup>25</sup> Available at [https://corpgov.law.harvard.edu/2017/02/09/board-  
refreshment-trends-at-sp-1500-firms/](https://corpgov.law.harvard.edu/2017/02/09/board-refreshment-trends-at-sp-1500-firms/) (last visited June 21, 2020).

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- Feedback from other Board members regarding the leadership contributions of our CEO and other executive officers to our annual and long-term performance;
- Feedback from the Compensation Committee members;
- Our business performance;
- Feedback from our CEO regarding our business performance, his performance and his evaluation of and compensation recommendations for the other executive officers;
- The executive officers' individual performance and contributions to financial and strategic objectives, including expertise, skills and tenure in position;
- Labor market conditions and the executive officers' potential to assume increased responsibilities;
- Operational management, such as project milestones, process improvements and expense management;
- Internal working and reporting relationships and teamwork among our executive officers (for example, using the same ACIP financial metrics and objectives for all executive officers promotes teamwork and collaboration and our executive officers' contribution to Company-wide initiatives);
- The Compensation Committee's intention for compensation to be internally fair and equitable relative to roles, responsibilities and relationships, in addition to being competitively reasonable;
- *Developing and motivating employees* (such as establishing processes for identifying and assessing high potential employees) and *attracting and retaining employees (such as initiatives to increase the pipeline of women in leadership roles)*; and
- *Leadership actions that support our ethical standards and compliance culture.*

115. The 2020 Proxy had an almost identical statement with respect to the factors considered by Qualcomm's Compensation Committee when determining executive compensation:

In executive session without our CEO or other executive officers present, the HR and Compensation Committee approved the fiscal 2019 equity award amounts, the fiscal 2019 ACIP earned amounts and any adjustments to base salaries and ACIP targets for fiscal 2020. In making these decisions and determining the

1 amounts and mix of executive compensation, the HR and  
2 Compensation Committee considered the following factors,  
among others:

- 3 • Labor market conditions, competitive compensation for  
4 comparable positions and threats to our business due to  
retention-related risks.
- 5 • Business performance including operational management  
6 such as project milestones, process improvements and expense  
management.
- 7 • Feedback from our CEO regarding the performance of our  
8 business, his performance and his evaluation of and  
compensation recommendations for the other executive officers.
- 9 • *The executive officers'* individual performance and  
10 *contributions to* financial and *strategic objectives*, including  
expertise, skills, tenure in position and potential to assume  
increased responsibilities.
- 11 • Internal working and reporting relationships and  
12 teamwork among our executive officers (for example, using the  
same ACIP financial metrics and objectives for all executive  
13 officers promotes teamwork and collaboration and our  
executive officers' contribution to Company-wide initiatives).
- 14 • The HR and Compensation Committee's intention for  
15 compensation to be internally fair and equitable relative to roles,  
responsibilities and relationships, in addition to being  
16 competitively reasonable.
- 17 • *Leadership actions that support our ethical standards and  
compliance culture.*
- 18 • *Developing and motivating employees (such as  
19 establishing processes for identifying and assessing high  
potential employees) and attracting and retaining employees  
20 (such as initiatives to increase the pipeline of women in  
leadership roles).*

21 116. These statements about executive compensation were false and  
22 misleading. The statements suggested that executive compensation took  
23 into consideration "leadership actions that support our ethical standards  
24 and *compliance culture*" and efforts towards increasing diversity and  
25 increasing the pipeline of women in leadership roles. In reality, those kinds  
26 of salutary and important goals do not count for any kind of significant  
27 weighting towards the amount of compensation that gets awarded to  
28

1 executives at Qualcomm. In fact, at Qualcomm over 90% of executive  
2 compensation is based on the Company's financial performance.

3 117. These omitted facts, had they been disclosed, would have been  
4 highly material to stockholders' decisions as to whether to reelect the Board  
5 nominees and vote in favor or against the "say on pay" executive  
6 compensation proposals. Diversity and inclusion are valued very highly by  
7 shareholders, including Plaintiff, and the omitted fact that Qualcomm does  
8 not include any significant weight (if any) to executives' success or lack  
9 thereof in achieving the Company's diversity goals would have been very  
10 important to shareholders' voting deliberations.

11 118. The false statements and material omissions in the Proxy  
12 Statements had their desired effect. At Qualcomm's annual meetings in  
13 2019 and 2020, all the incumbent white directors were reelected. No  
14 competing Black or minority candidates made it on the ballot or were  
15 elected. The executive compensation "say on pay" proposals were  
16 approved. PWC was reappointed as the Company's auditor.

17 119. The 2019 and 2020 Proxy Statements were false and misleading  
18 because they omitted and failed to disclose that:

19 (a) the statement in the 2020 Proxy that "*the*  
20 *Governance Committee will include, and instruct any search*  
21 *firm it engages to include, women and racially/ethnically*  
22 *diverse candidates in the pool from which the Governance*  
23 *Committee selects director nominees*" was misleading because it  
24 suggested that the Company was actively seeking to achieve  
25 racial and ethnic diversity in its Board membership, while the  
26 undisclosed reality is that Qualcomm may have a policy of  
27 attempting to include racially and ethnically diverse candidates  
28

1 in its director nominee pool, but it either has no intention to  
2 actually nominate such persons to its Board or it engages in  
3 efforts to thwart the nomination of such persons and prefers  
4 non-diverse applicants in the pool;

5 (b) that the Company does not have term limits due to a  
6 desire to retain the experience of the incumbent Director  
7 Defendants, but instead to keep minorities off the Board;

8 (c) That the Company's refusal to disclose its median  
9 salary and pay/employment data in an annual report is due to a  
10 desire to conceal existing, known pay disparity at the Company  
11 which adversely affects women and minorities;

12 (d) That the Company's executive compensation  
13 decisions do not take into consideration in any way the  
14 executives' success or lack thereof in achieving the Company's  
15 diversity and inclusion goals; moreover, that the Company's  
16 stated policies with respect to diversity and anti-discrimination  
17 were not effective and were not being complied with;

18 (e) That the Board's Governance Committee did not  
19 take racial and ethnic diversity into consideration when  
20 nominating Board candidates, as opposed to including persons  
21 in the pool of potential nominees, and instead simply sought to  
22 create a false appearance of seeking diversity among potential  
23 Board candidates;

24 (f) Defendants' knowledge that the Company's internal  
25 controls and systems were inadequate and ineffective to protect  
26 minorities against discrimination in hiring, promotion, and  
27 other critical terms of employment and equal access;

28

1 (i) That Defendants failed to maintain appropriate  
2 policies, internal controls, and procedures to ensure that the  
3 Company's stated policies with respect to diversity and anti-  
4 discrimination were being complied with;

5 (j) That the Company's diversity and inclusion  
6 programs were not achieving measurable and actionable results,  
7 and needed substantial improvement; and

8 (k) That, as a result, the Company was at substantial  
9 risk of large monetary fines, penalties, and adverse judgments  
10 from lawsuits due to the fact that the Company was not in  
11 compliance with federal and state laws regarding hiring,  
12 promotion, and pay practices.

13 120. The 2019 and 2020 Proxy Statements harmed the Company by  
14 interfering with the proper governance on its behalf that requires  
15 stockholders' informed voting of directors. As a result of the false or  
16 misleading statements in the Proxies, stockholders voted to reelect all of the  
17 Defendants to the Board each year.

18 121. The statements in the 2019 and 2020 Proxy Statements conveyed  
19 that the Company's corporate governance structure was "effective" and  
20 provided "oversight of management and Board accountability." In reality,  
21 the Company's corporate governance structure and defective internal  
22 controls allowed senior executives and the Board to sidestep real  
23 accountability and instead continue perpetuating the discriminatory  
24 practices that led to the Company's discriminatory pay practices, private  
25 class action lawsuits filed by female employees and other discrimination in  
26 hiring practices, and lack of diversity on both the Board and management.

27 122. The 2019 and 2020 Proxies, which contained materially  
28



1 misleading statements and thus deprived shareholders of adequate  
2 information necessary to make a reasonably informed decision, caused the  
3 Company's stockholders to reelect all of the Defendants to the Board and  
4 approve executive compensation proposals while the Defendants were  
5 breaching their fiduciary duties to the Company and deliberately  
6 concealing material information concerning the Company's discrimination  
7 against Black and other minority individuals and its effects on the  
8 Company's business and reputation.

9 **F. Qualcomm's Governance Committee Members Have**  
10 **Repeatedly Breached Their Fiduciary Duties to Ensure**  
11 **Diversity on the Board**

12 123. The Charter of the Governance Committee sets forth the duties  
13 of the Board members serving on such committee. Among those duties,  
14 with respect to the nomination of candidates to serve on Qualcomm's  
15 Board, are the following:

16 *As part of its efforts to create a diverse Board, including with*  
17 *respect to race, ethnicity and gender, the Governance Committee*  
18 *will include, and instruct any search firm it engages to include,*  
19 *women and racially/ethnically diverse candidates in the pool*  
20 *from which the Governance Committee selects director*  
21 *nominees.<sup>26</sup>*

22 124. The 2019 Proxy also stated the following with respect to the  
23 Governance Committee responsibilities:

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24 <sup>26</sup> See Qualcomm's Corporate Governance Principles and Practices,  
25 available at [https://d1io3yog0oux5.cloudfront.net/\\_cf13d56813c1ec7af0aeb3f038c77a4e/qualcomm/db/720/6495/file/QCOM\\_MASTER+Corporate+Governance+Principles+and+Practices\\_Proposed+Updates\\_050320\\_Clean.pdf](https://d1io3yog0oux5.cloudfront.net/_cf13d56813c1ec7af0aeb3f038c77a4e/qualcomm/db/720/6495/file/QCOM_MASTER+Corporate+Governance+Principles+and+Practices_Proposed+Updates_050320_Clean.pdf), last visited July  
26 13, 2020.

1           • *Review annually a report on the Company's policies*  
2 *and programs concerning corporate citizenship and social*  
3 *responsibility, including charitable giving.*

4           • *Review and approve the disclosures made by the*  
5 *Company in the Company's proxy statement or other*  
6 *documents filed with the Securities and Exchange Commission*  
7 *with respect to matters of corporate governance, including*  
8 *qualifications of Board members.*

9           • *Consistent with the foregoing, take such actions as*  
10 *it deems necessary to encourage continuous improvement of,*  
11 *and foster adherence to, the Company's corporate governance*  
12 *policies, procedures and practices at all levels, and perform*  
13 *other corporate governance oversight functions as requested by*  
14 *the Board.*

15           • *Actively seek individuals qualified to become Board*  
16 *members and make recommendations to the Board regarding*  
17 *Board nominees, including an annual recommendation with*  
18 *respect to those individuals to be nominated for election at the*  
19 *Company's annual meeting of stockholders. As part of this*  
20 *process the Committee shall consult with Board members,*  
21 *management and others to evaluate the knowledge and skills*  
22 *which should be considered in making nominations, including*  
23 *the knowledge and skills set forth in the Company's Corporate*  
24 *Governance Principles and Practices.*

25           • *Periodically evaluate the size and composition of the*  
26 *Board, make recommendations to the Board as a result of such*  
27 *evaluations, and consider and make recommendations to the*  
28 *Board regarding comments from stockholders relating to Board*  
*composition.*

125. The members of the Governance Committee (Livermore and Randt) have breached their fiduciary duties as directors by failing to fulfill these duties. Rather than causing Qualcomm to comply with its corporate governance principles, Livermore and Randt have caused Qualcomm to merely pay lip service to these principles. Instead of recommending well-qualified black and minority candidates to serve on Qualcomm's Board, Livermore and Randt have perpetuated the all-white Board under the pretext that the existing members' "experience" and long tenure on the Board is beneficial to Qualcomm.

1 126. Moreover, to entrench themselves and their fellow directors in  
2 office, all the Director Defendants have opposed term limits in order to  
3 prevent the addition of qualified blacks and minorities to the Board.

4 127. As the saying goes, the rich get richer while the poor get poorer.  
5 Serving on Qualcomm's Board has enriched the already-rich elites whose  
6 profitable sinecure has been perpetuated by the Defendants' wrongdoing.  
7 Many qualified black and minority candidates would enjoy the prestige and  
8 compensation that comes with a position on Qualcomm's Board. The  
9 following chart sets forth the compensation earned by outside directors on  
10 Qualcomm's Board in 2019:

### Fiscal 2019 Director Compensation (1)(2)

Name	Fees Earned or Paid in Cash (\$ (3))	Stock Awards (\$ (4))	All Other Compensation (\$ (5))	Total (\$)
<b>Barbara T. Alexander</b>	141,500	200,048	50,000	391,548
<b>Martin B. Anstice</b>	17,261	73,867 (6)	—	91,128
<b>Mark Fields</b>	113,500	200,048	—	313,548
<b>Jeffrey W. Henderson</b>	290,198	200,048	11,005	501,251
<b>Thomas W. Horton</b>	49,705	—	50,000	99,705
<b>Ann M. Livermore</b>	107,500	200,048	50,000	357,548
<b>Harish Manwani</b>	133,500	200,048	—	333,548
<b>Mark D. McLaughlin</b>	138,302	200,048	50,000	388,350
<b>Clark T. Randt, Jr.</b>	122,500	200,048	9,000	331,548
<b>Francisco Ros</b>	127,500	200,048	—	327,548
<b>Irene B. Rosenfeld</b>	113,098	273,915 (6)	50,000	437,013
<b>Kornelis "Neil" Smit</b>	113,500	200,048	50,000	363,548
<b>Anthony J. Vinciguerra</b>	113,500	200,048	25,000	338,548

23  
24 128. In addition to awarding themselves substantial compensation  
25 for serving on the Board, the Director Defendants lavished the Company's  
26 executives with the following compensation:

**Fiscal 2019 Summary Compensation Table (1)**

Name and Principal Position	Year	Salary (\$ (2))	Bonus (\$ (3))	Stock Awards (\$ (4))	Option Awards (\$ (5))	Non-Equity	All Other	Total (\$)
						Incentive Plan Compensation (\$ (6))	Compensation (\$ (7))	
<b>Steve Mollenkopf</b> Chief Executive Officer	2019	1,198,709	—	21,600,213	—	—	266,130	23,065,052
	2018	1,390,739	—	10,000,072	6,003,095	2,260,000	321,566	19,975,472
	2017	1,156,079	—	8,000,035	—	2,260,000	175,196	11,591,310
<b>Akash Palkhiwala</b> Executive Vice President and Chief Financial Officer	2019	540,607 (8)	250,000	3,837,614 (9)	—	291,200	42,998	4,962,419
	2018							
	2017							
<b>Cristiano R. Amon</b> President	2019	1,111,577	—	12,200,138	—	—	113,190	13,424,905
	2018	916,964	—	11,000,110	—	1,575,000	132,825	13,624,899
	2017	750,006	—	6,675,108	—	1,250,000	74,627	8,749,741
<b>James H. Thompson</b> Executive Vice President, Engineering, Qualcomm Technologies, Inc. and Chief Technology Officer	2019	837,361	—	10,700,192	—	—	182,136	11,719,689
	2018	905,634	—	7,000,156	—	1,036,000	194,792	9,136,582
	2017	723,102	—	6,200,077	—	1,100,000	169,396	8,192,575
<b>Alexander H. Rogers</b> Executive Vice President and President, Qualcomm Technology Licensing	2019	737,242	—	6,400,165	—	—	76,755	7,214,162
	2018							
	2017							
<b>George S. Davis</b> Former Executive Vice President and Chief Financial Officer	2019	400,467	—	—	—	—	91,901	492,368
	2018	875,083	—	5,500,133	—	1,064,000	122,990	7,562,206
	2017	760,011	—	5,000,083	—	1,050,000	181,149	6,991,243
<b>David E. Wise</b> Former Senior Vice President and Interim Chief Financial Officer	2019	1,079,221 (8)	—	1,500,133 (9)	—	—	145,083	2,724,437
	2018							
	2017							

129. These huge salaries to the Company's executives have been awarded by the Compensation Committee Directors (Defendants Alexander, Manwani, McLaughlin, and Rosenfeld) while systematically underpaying minorities and women. In 2018, Defendant Mollenkopf ranked #21 on the list of the 100 highest paid CEOs, with total compensation of \$19,975,472.<sup>27</sup> Qualcomm reported this figure in its 2019 Proxy, which

<sup>27</sup> See <https://www.equilar.com/reports/63-table-highest-paid-ceos-2019-equilar-100.html>, last visited July 7, 2020.

1 stated:

2 For fiscal 2018, our last completed fiscal year:

- 3 • the annual compensation of our CEO, as reported in the  
4 Summary Compensation Table included on page 54 of this  
5 proxy statement, was \$19,975,472;  
6 • the annual total compensation of our median employee was  
7 \$85,592; and  
8 • **the resulting ratio was 233 : 1.**<sup>28</sup>

9 130. During 2019, the pay disparity at Qualcomm got even worse.

10 As disclosed in the 2020 Proxy Statement:

11 For fiscal 2019, our last completed fiscal year:

- 12 • the annual compensation of our CEO, as reported in the  
13 Summary Compensation Table included on page 59 of this  
14 proxy statement, was \$23,065,052;  
15 • the annual total compensation of our median employee was  
16 \$90,259; and  
17 • **the resulting ratio was 256 : 1.**

18 131. The inequitable compensation awarded to Mollenkopf and other  
19 executives by Defendants Alexander, Manwani, McLaughlin, and Rosenfeld  
20 was so egregious that BlackRock, the Company's second-largest  
21 shareholder, objected to the compensation and voted against the "say on  
22 pay" executive compensation proposal in the Company's proxy statement.

23 *See* Attracta Mooney, "BlackRock Rebels Over Executive Pay at Qualcomm,"  
24 THE FINANCIAL TIMES, Mar. 11, 2020. The article noted:

25 *BlackRock has rebelled over executive pay at Qualcomm,*  
26 *criticising the chipmaker's decision to award its chief executive*  
27 *a \$3.6m bonus in a rare public rebuke from the world's biggest*  
28 *asset manager.*

<sup>28</sup> See Qualcomm 2019 Proxy Statement at p. 56.

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*The \$7.4bn investment company said Qualcomm failed to provide “sufficient justification” for its decision to provide an equity award to chief executive Steve Mollenkopf and other executives after they settled a bitter legal battle with Apple in 2019.*

Mr Mollenkopf received a \$22.5m package last year, mainly in shares, according to Institutional Shareholder Services, the world’s largest adviser to shareholders.

*BlackRock, Qualcomm’s second-largest shareholder, voted against the so-called say on pay resolution at the company’s annual meeting on Tuesday, playing a decisive role in ensuring that Qualcomm lost its non-binding vote on executive remuneration.*

Mr Mollenkopf was given the \$3.6m award of full-vested shares last year after Apple and Qualcomm announced the dismissal of all litigation between the parties and agreed to a historic six-year licence agreement in April. The dispute had been weighing on investor sentiment at Qualcomm. When it was resolved, the company’s shares surged 40 per cent in a week.

Qualcomm declined to comment but in a January filing it said that “one-time grants” between \$250,000 and \$3.6m were issued to executives “to recognise outstanding efforts in entering into multiyear licence and chipset supply agreements with Apple.” Its Compensation Committee considered the payments appropriate, given “the anticipated long-term stockholder value” of the agreement.

BlackRock acknowledged the event’s “importance” but said that Qualcomm “did not provide sufficient justification for why this outcome with Apple is outside Mr. Mollenkopf’s realm of responsibilities as CEO, which are already covered in the company’s long-term executive compensation plan.”

It added: *“Ultimately, granting this one-off award suggests a pay plan that is not aligned with shareholders’ long-term interests, which is difficult to reconcile with ongoing underperformance versus Qualcomm’s peers, raising a perceived pay-for-performance disconnect.” . . .*

*The fund manager also voted against the re-election of Harish Manwani, the longest-tenured member of the company’s remuneration committee.* According to Capital IQ, the data provider, BlackRock holds more than 7 per cent of Qualcomm’s shares.

1 *BlackRock rarely publicly criticises companies*, instead  
2 focusing on private conversations with board directors to try to  
3 influence businesses. In January, however, BlackRock boss Larry  
4 Fink announced plans to be more transparent about its voting  
5 record at annual meetings and its discussions with companies.

6 **G. The Director Defendants Breached Their Duties of Loyalty  
7 and Good Faith by Failing to Ensure the Company's  
8 Compliance with Federal and State Laws Regarding Diversity  
9 and Anti-Discrimination**

10 132. The Director Defendants have known for years that Qualcomm  
11 has been violating federal and state laws regarding diversity, equal pay,  
12 and discrimination against women and minorities.

13 133. Defendants' knowledge is reflected by the fact that, in 2016, the  
14 Company was forced to settle a class action lawsuit alleging unfair and  
15 disparaging pay to women.

16 134. The Director Defendants, however, knew that Qualcomm had  
17 not corrected all the problems with respect to fair and equitable pay to  
18 women and minorities and disclosures and best practices regarding pay  
19 equity.

20 135. Four years after the class action settlement, in 2020 Qualcomm  
21 still received an "F" grade in gender pay equity. See "*Gender Pay Equity  
22 Report: F Grades for Oracle, Qualcomm, Verizon, AT&T*," DATAQUEST, April 1,  
23 2020.<sup>29</sup> The article noted that:

24 Gender and racial pay gaps at some of the world's largest  
25 corporations has been an area of increased concern and focus, as  
26 pay discrepancies raise reputational, regulatory, financial and  
27 legal risks. Consequently, an increasing number of shareholders

28 <sup>29</sup> Available at <https://www.dqindia.com/gender-pay-equity-report-f-grades-oracle-qualcomm-verizon-att-analog-devices/>, last visited July 13, 2020.

1 have asked companies to report on their analyses, policies, and  
goals to reduce any gender/racial pay gaps.

2 **Key findings:**

3 By sector, the highest and lowest-rated companies were:  
4 **Tech/Communications:** No company in this sector received an  
"A," though Apple and Intel both were graded "B." A score of  
5 "C" was given to Alphabet, Expedia, Facebook, eBay, Microsoft,  
Texas Instruments, and Adobe. Hewlett Packard rated a "D"  
6 and "F" grades were assigned to Verizon Communications,  
AT&T Inc., Oracle, Qualcomm, and Analog Devices.

7 . . .

8 *The unadjusted "median" gender/racial pay disclosures—as*  
9 *opposed to statistically adjusted "equal pay" data—expose a*  
10 *lack of female/minority representation in higher-paying jobs,*  
11 *and less women/minorities in leadership.* This new level of  
transparency sought by U.S. investors is in line with the  
12 disclosures mandated in the United Kingdom, and provides  
investors with a baseline to understand broad pay equity at  
13 portfolio companies. That is, the difference between what men  
make and what women make, and what minorities and non-  
14 minorities make on a median, unadjusted basis.

15 . . .

16 *It is also critical to look also at the intersection of race and*  
17 *ethnicity. For African American, Native, and Latina women, the*  
18 *career earnings gap is close to \$1 million dollars.* Indeed, the  
weekly median earnings for African American and Latina  
19 women are 62 percent and 54 percent of that of their male peers,  
20 respectively. At the current rate of change in the U.S., women  
will not reach pay parity until 2059, while African American  
21 women will have to wait till 2130, and Latina women till 2224.<sup>30</sup>

22 136. In their efforts to avoid detailed disclosures that would shed  
23 light of the true extent of pay inequity at Qualcomm afflicting African  
24 Americans and minorities, the Director Defendants continue to refuse to  
25 publish the unadjusted median gender/racial pay disclosures which are  
26 industry best practices and standards.

27 137. In addition to improperly claiming that the diversity statistics  
28 were trade secrets, Qualcomm refused to publish annual diversity reports,

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<sup>30</sup> *Id.*



1 thus enabling the Company to attempt to hide the lack of diversity. The  
 2 Director Defendants were aware of this and were complicit in these acts,  
 3 thus demonstrating their scienter about Qualcomm's failure to ensure  
 4 diversity and failure to pay minorities equal pay.

5 **H. The Director Defendants Have Breached Their Duties by**  
 6 **Continually Re-Hiring PriceWaterhouseCoopers LLP as the**  
 7 **Company's Auditor, Despite Its Failure to Do Its Job**

8 138. PWC is the Company's auditor, and has been so since the  
 9 Company's founding in 1985 — 35 years and counting.

10 139. As Qualcomm's Proxy Statement from 2020 disclosed, the  
 11 following table sets forth the approximate aggregate fees billed to  
 12 Qualcomm by PWC for fiscal 2018 and fiscal 2019:

	Fiscal 2019	Fiscal 2018
Audit fees (1)	\$ 10,726,000	\$ 11,552,000
Audit-related fees (2)	1,921,000	1,742,000
Tax fees (3)	463,000	1,155,000
All other fees (4)	13,000	42,000
<b>Total</b>	<b>\$ 13,123,000</b>	<b>\$ 14,491,000</b>

13 140. Despite billing Qualcomm over \$10 million in fees in both 2018  
 14 and 2019, PWC has completely failed to properly audit and assess the  
 15 Company's internal controls.

16 141. Defendants Fields, Henderson, Miller, and Vinciquerra as the  
 17 members of Qualcomm's Audit Committee, are responsible for selecting  
 18 and monitoring PWC.

19 142. PWC has served as Qualcomm's auditor *since 1985*, giving rise  
 20 to a cozy and clubby relationship between PWC and Qualcomm which is  
 21 not conducive to effective auditing. The Company's compliance with its  
 22 stated policies regarding diversity and inclusion have been severely  
 23

1 deficient and inadequate.

2 143. The very purpose of an auditor is to assess the Company's  
3 internal controls and to determine if they are functioning effectively. Rather  
4 than doing so, PWC has wrongfully and consistently given Qualcomm's  
5 internal controls a clean bill of health and has failed to point out the obvious  
6 — that Qualcomm lacks an effective system of internal controls to ensure  
7 that the Company is not discriminating against minorities and is complying  
8 with its stated goals and initiatives regarding the promotion of diversity  
9 and the avoidance of discrimination and harassment.

10 144. Defendants Fields, Henderson, Miller, and Vinciguerra, as the  
11 members of the Audit Committee, breached their fiduciary duties by failing  
12 to perform their duties on the Audit Committee, including failure to ensure  
13 that an adequate audit was being performed of the Company's internal  
14 controls regarding diversity, anti-discrimination, anti-harassment, pay  
15 equity, and other relevant areas of critical importance to the Company.  
16 They also signed the Proxy Statements which contained false statements  
17 regarding the Company's internal controls being effective and adequate,  
18 which were false and gave a very misleading and inaccurate portrayal of  
19 these key issues to stockholders.

20 **I. The Unjust Compensation Awarded to Defendant Mollenkopf**

21 145. Defendant Mollenkopf received unjust compensation and/or  
22 compensation and payments that were higher due to Defendants'  
23 wrongdoing and because the Company was more profitable by paying  
24 blacks and minorities less.

25 146. Much of the information about the exact amount of the unjust  
26 payments is not publicly available, and has been fraudulently concealed by  
27 Defendants. As a result, Plaintiff requires discovery in order to properly  
28

1 allege the full extent and details of Defendants' wrongdoing.

2 147. However, at a minimum, based on publicly available  
3 information, Defendant Mollenkopf has received substantial unjust  
4 compensation during the time the wrongdoing has occurred and persisted.

5 148. Defendant Mollenkopf's receipt of this compensation during the  
6 relevant time period was unjust in light of his direct participation in the  
7 wrongful conduct alleged herein, which constituted bad faith and disloyal  
8 conduct. Defendant Mollenkopf's receipt of such compensation while  
9 knowingly or recklessly breaching his fiduciary duties to the Company  
10 constitutes unjust compensation that should be recouped by Qualcomm.

11 149. The following table provides some additional information about  
12 some of Defendant Mollenkopf's compensation during part of the relevant  
13 time period:

Name and Principal Position	Year	Salary (\$) <sup>(2)</sup>	Bonus (\$) <sup>(3)</sup>	Stock Awards (\$) <sup>(4)</sup>	Option Awards (\$) <sup>(5)</sup>	Non-Equity		Total (\$)
						Incentive Plan Compensation (\$) <sup>(6)</sup>	All Other Compensation (\$) <sup>(7)</sup>	
Steve Mollenkopf	2019	1,198,709	—	21,600,213	—	—	266,130	23,065,052
Chief Executive Officer	2018	1,390,739	—	10,000,072	6,003,095	2,260,000	321,566	19,975,472
	2017	1,156,079	—	8,000,035	—	2,260,000	175,196	11,591,310

18 150. As discussed *supra*, the inequitable compensation awarded to  
19 Mollenkopf by Defendants Alexander, Manwani, McLaughlin, and  
20 Rosenfeld was so egregious that BlackRock, the Company's second-largest  
21 shareholder, objected to the compensation and voted against the "say on  
22 pay" executive compensation proposal in the Company's 2020 Proxy  
23 Statement. See Attracta Mooney, "BlackRock Rebels Over Executive Pay at  
24 Qualcomm," THE FINANCIAL TIMES, Mar. 11, 2020.

25 151. Defendant Mollenkopf's compensation during the relevant  
26 period was also unjust because it significantly exceeded the average  
27

1 employees' pay, as disclosed by the Company in its 2020 Proxy:

2 For fiscal 2019, our last completed fiscal year:

- 3 • **the annual compensation of our CEO**, as reported in the  
4 Summary Compensation Table included on page 59 of this  
proxy statement, **was \$23,065,052;**
- 5 • the annual total compensation of our median employee was  
6 \$90,259; and
- 7 • **the resulting ratio was 256 : 1.**

8 152. If Defendant Mollenkopf's 2020 pay was more than 256 times  
9 the average employees' compensation, then it was an even higher multiple  
10 of the median pay of Black and minority employees if Qualcomm paid such  
employees less than other employees for similar jobs.

11 153. When viewed in light of these facts, Defendant Mollenkopf's  
12 compensation was unjust under equitable principles.

13 154. Defendant Mollenkopf's compensation detailed herein was  
14 unjust and should be disgorged or returned by him because he acted in bad  
15 faith and in a disloyal manner by virtue of the conduct alleged in this  
16 complaint.

## 17 **VII. THE COMPANY HAS SUFFERED SIGNIFICANT DAMAGES**

18 155. The Company has suffered significant harm and damages due  
19 to Defendants' wrongdoing and breaches of duties.

20 156. As a direct and proximate result of the Individual Defendants'  
21 conduct, the Company has expended and will continue to expend  
22 significant sums of money. Such expenditures include, but are not limited  
23 to, the amounts paid to outside lawyers, accountants, and investigators in  
24 connection with internal and external investigations into issues pertaining  
25 to the lack of diversity at Qualcomm, discrimination lawsuits, harassment  
26 claims, wrongful termination lawsuits, and lack of pay equity claims.  
27

1 157. Moreover, Qualcomm's reputation, goodwill, and market  
2 capitalization have been harmed as a result of the Individual Defendants'  
3 misconduct.

4 158. Further, as a direct and proximate result of the Individual  
5 Defendants' actions, Qualcomm has expended, and will continue to expend,  
6 significant sums of money. Such expenditures include, but are not limited  
7 to:

8 (a) costs incurred from having to hire new employees,  
9 as employees have quit in protest over Defendants' misconduct  
and the discriminatory practices employed by Qualcomm;

10 (b) costs incurred from defending and paying  
11 settlements in discrimination lawsuits, since the Individual  
Defendants' wrongdoing caused discrimination to proliferate at  
Qualcomm;

12 (c) loss of reputation; and

13 (d) costs incurred from compensation and benefits paid  
14 to the Individual Defendants who have breached their duties to  
Qualcomm.

15 **VIII. DEMAND FUTILITY**

16 159. Plaintiff brings this action derivatively in the right and for the  
17 benefit of Qualcomm to redress injuries suffered, and to be suffered, by  
18 Qualcomm and its stockholders as a direct result of the Defendants'  
19 violations of federal securities laws and breaches of fiduciary duty.

20 160. Qualcomm is named as a nominal defendant solely in a  
21 derivative capacity.

22 161. This is not a collusive action to confer jurisdiction on this Court  
23 that it would not otherwise have.

24 162. At the time this action was commenced, Qualcomm's Board  
25 consisted of the following 11 members: Defendants Mollenkopf,  
26 McLaughlin, Fields, Henderson, Livermore, Manwani, Miller, Randt,  
27 Rosenfeld, Smit, and Vinciguerra.

1 163. Plaintiff has not made any demand on Qualcomm to institute  
2 this action because such a demand would be a futile, wasteful, and useless  
3 act.

4 164. Under Delaware law, demand is futile if a majority of the  
5 directors are either interested in or not independent of a person interested  
6 in the claims asserted. Further, where a board is made up of an even  
7 number of directors, a majority of directors is considered to be half the  
8 Board.

9 165. Based on these principles, demand is futile here if six (6) of the  
10 eleven (11) directors are either interested in or not independent of a person  
11 interested in the claims asserted herein.

12 **A. Demand on the Board is Excused as Futile**

13 166. The challenged misconduct at the heart of this case involves the  
14 direct facilitation of illegal activity, including the Board knowingly and/or  
15 consciously presiding over the Company's discrimination against Blacks  
16 and minorities at Qualcomm. In their capacity as corporate directors, the  
17 Board members affirmatively adopted, implemented, and/or condoned a  
18 business strategy based on Qualcomm's deliberate and widespread  
19 violations of law. The Board members cannot plausibly claim ignorance  
20 concerning these wide-ranging compliance failures. Indeed, the Board was  
21 specifically and uniquely accountable and responsible for the compliance  
22 failures discussed herein given that the Board was repeatedly made aware  
23 of the Company's failed internal controls and failure to comply with  
24 regulations.

25 167. Indeed, the lack of diversity challenged by this lawsuit pertains  
26 to the Board itself, which does not contain a single African American  
27 individual. The Governance Committee charter states that:

1 *As part of its efforts to create a diverse Board, including with*  
2 *respect to race, ethnicity and gender, the Governance Committee*  
3 *will include, and instruct any search firm it engages to include,*  
4 *women and racially/ethnically diverse candidates in the pool*  
5 *from which the Governance Committee selects director*  
6 *nominees.*<sup>31</sup>

7 168. Defendants Mollenkopf, McLaughlin, Fields, Henderson,  
8 Livermore, Manwani, Miller, Randt, Rosenfeld, Smit, and Vinciguerra thus  
9 all knew that the Company's search firms *were required to include "racially*  
10 *and ethnically diverse candidates* in the pool from which the Governance  
11 Committee selects director nominees."

12 169. Despite having actual knowledge of this requirement,  
13 Defendants Mollenkopf, McLaughlin, Fields, Henderson, Livermore,  
14 Manwani, Miller, Randt, Rosenfeld, Smit, and Vinciguerra all knew that,  
15 year after year, Qualcomm did not choose any racially or ethnically diverse  
16 candidates to be Board members.

17 170. Rather than undertake their duty to investigate all complaints  
18 and concerns related to the Company's financial reporting and internal  
19 controls, the Board undertook minimal action. This essential "do nothing"  
20 strategy in the face of information evidencing the systematic violations of  
21 applicable laws and regulations is not a legally protected business decision  
22 and such conduct can in no way be considered a valid exercise of business  
23 judgment. A derivative claim to recoup damages for harm caused to the  
24 Company by pervasive unlawful activity represents a challenge to conduct

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25 <sup>31</sup> See Qualcomm's Corporate Governance Principles and Practices,  
26 available at  
27 [https://d1io3yog0oux5.cloudfront.net/\\_cf13d56813c1ec7af0aeb3f038c77a4e/q](https://d1io3yog0oux5.cloudfront.net/_cf13d56813c1ec7af0aeb3f038c77a4e/q)  
28 [ualcomm/db/720/6495/file/QCOM\\_MASTER+Corporate+Governance+Prin](https://d1io3yog0oux5.cloudfront.net/_cf13d56813c1ec7af0aeb3f038c77a4e/q)  
[ciples+and+Practices\\_Proposed+Updates\\_050320\\_Clean.pdf](https://d1io3yog0oux5.cloudfront.net/_cf13d56813c1ec7af0aeb3f038c77a4e/q), last visited July  
13, 2020.

1 that is outside the scope of appropriate business judgment – conduct for  
2 which the Individual Defendants should face potential personal liability. As  
3 such, the protections of the “business judgment rule” do not extend to such  
4 malfeasance. Nor can such malfeasance ever involve the “good faith”  
5 exercise of directorial authority. Accordingly, any demand on the Board to  
6 initiate this action would be futile.

7 **B. Demand Is Excused Because a Majority of the Director**  
8 **Defendants is Either Not Independent or is Conflicted**  
9 **Because These Defendants Face a Substantial Likelihood of**  
10 **Liability Arising From Their Misconduct**

11 171. Even if knowingly presiding over illegal conduct somehow falls  
12 within the ambit of the business judgment rule (which it does not), demand  
13 is also futile and excused because a majority of the members of the Board  
14 are not disinterested or independent and cannot, therefore, properly  
15 consider any demand.

16 172. As an initial matter, the Board has conceded in the Company’s  
17 SEC filings, including its January 23, 2020 proxy statement, that Mollenkopf  
18 is not an independent director of the Company. Specifically, Mollenkopf is  
19 not independent and faces a substantial likelihood of liability because his  
20 principal occupation is serving as the Company’s Chief Executive Officer.  
21 According to the Company’s SEC filings, since 2009, Mollenkopf has  
22 received in excess of \$189,135,171 in salary and other compensation from  
23 Qualcomm. Moreover, a significant portion of Mollenkopf’s compensation  
24 is incentive-based, which means that he was personally incentivized to  
25 perpetuate misconduct (such as that described herein) that artificially  
26 inflates the performance of the Company. As a Qualcomm executive, he had  
27 exposure to and knowledge of the wrongdoing alleged, including any “red  
28 flags.” Mollenkopf cannot realistically distance himself from the misconduct  
alleged herein. Mollenkopf is therefore incapable of impartially considering



1 a demand to commence this action.

2 173. Furthermore, Defendants Fields, Henderson, Smit and  
3 Vinciguerra have all been members of the Audit Committee during the  
4 relevant period, and are conflicted from considering a demand because they  
5 each face a substantial likelihood of liability as a result of their conduct on  
6 the committee. The Audit Committee's charter imposes specific duties on  
7 members of this committee to, among other things, "review and approve  
8 the Company's Code of Ethics and provide for and review prompt  
9 disclosure to the public of any change in, or waiver of such Code of Ethics."

10 174. In accordance with its charter, the Audit Committee also  
11 reviews the Company's policies and practices with respect to the financial  
12 reporting and control aspects of risk management, and must review the  
13 status of risk oversight activities performed by the Board and its other  
14 committees.

15 175. As members of the Audit Committee, Defendants Fields,  
16 Henderson, Smit and Vinciguerra violated their fiduciary duties to act in  
17 good faith to address the pervasive legal violations discussed herein,  
18 including the unlawful discrimination. Accordingly, Defendants Fields,  
19 Henderson, Smit and Vinciguerra face a substantial likelihood of liability  
20 and cannot impartially consider a demand. Therefore, demand is excused  
21 with respect to these defendants.

22 176. Furthermore, the Director Defendants were on the Board during  
23 the relevant period, and thus were exposed to and had knowledge of the  
24 "red flags" alleged herein regarding unlawful discrimination and failure to  
25 abide by the Company's stated policies to promote diversity. The directors'  
26 inaction in the face of red flags subjects them to a substantial likelihood of  
27 liability for their conduct and, therefore, demand is excused.

1 177. The Board is likewise conflicted from and unable to pursue  
2 Qualcomm's claims against members of the Company's management,  
3 including Defendant Mollenkopf. Any effort to prosecute such claims  
4 against these Defendants for their direct roles in implementing a business  
5 strategy designed to ignore or otherwise circumvent federal and state laws  
6 prohibiting discrimination would necessarily expose the Board's own  
7 culpability for the very same conduct. In other words, given that the Board  
8 had been on notice of the wrongdoing, any effort by the Board to hold  
9 Defendant Mollenkopf liable would surely lead these executives to defend  
10 on the ground that their own conduct was consistent with Qualcomm's  
11 corporate policy and practice, as established by and known to the Board.

12 **C. The Entire Board Faces a Substantial Likelihood of Liability**  
13 **for Failure to Discharge Their Oversight Obligations in Good**  
14 **Faith**

15 178. Under Delaware law and Qualcomm's Corporate Governance  
16 Principles, the Board, as the Company's highest decision-making body, is  
17 charged with ensuring that processes are in place for ensuring legal and  
18 regulatory compliance. This is particularly true when such compliance  
19 concerns a core operation of the Company such as its employment practices.  
20 Here, the misconduct alleged was pervasive, took place over many years,  
21 and involved the Company's core business operations since the  
22 employment practices affected all Company operations. Organized and  
23 long-running violations of the law do not result from an isolated failure of  
24 oversight. The entire Board was obligated to oversee the Company's risk,  
25 including potential liability for Qualcomm's violations of federal and state  
26 laws regarding discrimination. At the very least, the Director Defendants  
27 consciously turned a blind eye to these pervasive violations of law, creating  
28 a substantial likelihood of liability. Accordingly, demand is excused.

1           179. All of the Board’s directors, at the time this action was initiated,  
2 failed to act in the face of known duties. Indeed, as explained herein, they  
3 were presented with – but consciously ignored (and/or perpetuated) –  
4 substantial “red flag” warnings that Qualcomm was discriminating against  
5 Blacks and other minorities with respect to hiring, promotion, and  
6 evaluation of Board candidates. The Board also knew that the Company’s  
7 workforce has consistently only had 1.5% African American workers. The  
8 Board was also aware of other systematic discrimination at Qualcomm,  
9 such as the fact that in July 2016, Qualcomm was forced to pay \$19.5 million  
10 to settle a class action lawsuit which alleged that Qualcomm systematically  
11 discriminated against approximately 3,300 women by paying them less than  
12 men holding the same or equivalent positions.

13           180. These and other wrongful acts have caused and will continue to  
14 cause the Company to be subjected to significant potential fines and  
15 penalties and numerous lawsuits. They have also resulted in severe harm to  
16 the Company’s business reputation. Since the wrongdoing and harm  
17 alleged in this Complaint flows directly from the Board’s conscious decision  
18 to permit the sustained and systemic violations of law in question, the  
19 Director Defendants are incapable of exercising the independent judgment  
20 required to determine whether the initiation of an action against the  
21 Defendants is appropriate.

## 22 **IX. CAUSES OF ACTION**

### 23 **COUNT I**

#### 24 **Breach of Fiduciary Duty**

#### 25 **Against All Individual Defendants and Does 1–30**

26           181. Plaintiff incorporates by reference and realleges each and every  
27 allegation contained above, as though fully set forth herein.  
28

1 182. The Individual Defendants and Does 1–30 owed and owe the  
2 Company fiduciary obligations. By reason of their fiduciary relationships,  
3 the Individual Defendants owed and owe the Company the highest  
4 obligation of good faith, fair dealing, loyalty, and due care.

5 183. The Individual Defendants and Does 1–30, and each of them, as  
6 a result of the facts alleged herein, violated and breached their fiduciary  
7 duties of candor, good faith, and loyalty.

8 184. As a direct and proximate result of the Individual Defendants’  
9 and Does 1–30’s breaches of their fiduciary obligations, the Company has  
10 sustained significant damages, as alleged herein. As a result of the  
11 misconduct alleged herein, Defendants are liable to the Company.

12 **COUNT II**

13 **Aiding and Abetting Breach of Fiduciary Duty**  
14 **Against All Individual Defendants and Does 1–30**

15 185. Plaintiff incorporates by reference and re-alleges each of the  
16 preceding paragraphs as if fully set forth herein.

17 186. Each of the Individual Defendants aided and abetted the other  
18 Individual Defendants in breaching their fiduciary duties owed to the  
19 Company.

20 187. The Individual Defendants owed the Company certain fiduciary  
21 duties as fully set out herein. By committing the acts alleged herein, the  
22 Individual Defendants breached their fiduciary duties owed to the  
23 Company.

24 188. Each of the Individual Defendants colluded in or aided and  
25 abetted the other Individual Defendants’ breaches of fiduciary duties, and  
26 actively and knowingly participated in the other Individual Defendants’  
27 breaches of fiduciary duties. Each of the Individual Defendants knew about  
28

1 or recklessly disregarded the other Individual Defendants' breaches of  
2 fiduciary duty, which were and are continuing, as set forth in particularity  
3 herein.

4 189. The Company was injured as a direct and proximate result of  
5 the aforementioned acts.

6 **COUNT III**  
7 **Abuse of Control**  
8 **Against all Defendants**

9 190. Plaintiff incorporates by reference and realleges each and every  
10 allegation contained above, as though fully set forth herein.

11 191. By virtue of their positions and financial holdings at Qualcomm,  
12 the Director Defendants exercised control over Qualcomm and its  
13 operations, and owed duties as controlling persons to Qualcomm not to use  
14 their positions of control for their own personal interests and contrary to  
15 Qualcomm's interests.

16 192. Defendants' conduct alleged herein constitutes an abuse of their  
17 ability to control and influence the Company, for which they are legally  
18 responsible.

19 193. As a result of Defendants' abuse of control, the Company has  
20 sustained and will continue to sustain damages and injuries for which it has  
21 no adequate remedy at law.

22 **COUNT IV**  
23 **Unjust Enrichment**  
24 **Against All Individual Defendants and Does 1-30**

25 194. Plaintiff incorporates by reference and realleges each and every  
26 allegation contained above as though fully set forth herein.

27 195. By their wrongful acts and omissions, the Individual Defendants  
28 were unjustly enriched at the expense of, and to the detriment of, the

1 Company.

2 196. During the Relevant Period, the Individual Defendants either  
3 received annual stipends, bonuses, stock options, or similar compensation  
4 from the Company that was tied to the financial performance of the  
5 Company or received compensation that was unjust in light of the  
6 Individual Defendants' bad faith conduct.

7 197. Plaintiff, as shareholder and representative of the Company,  
8 seeks restitution from the Individual Defendants and seeks an order from  
9 this Court disgorging all profits, benefits, and other compensation,  
10 including any performance-based compensation, obtained by the Individual  
11 Defendants due to their wrongful conduct and breach of their fiduciary  
12 duties.

13 198. Plaintiff, on behalf of the Company, has no adequate remedy at  
14 law.

15 **COUNT V**

16 **Violation of Section 14(a) of the Exchange Act and SEC Rule 14a-9**  
17 **Against All Individual Defendants**

18 199. Plaintiff incorporates by reference and re-alleges each allegation  
19 contained above, as though fully set forth herein, except to the extent those  
20 allegations plead knowing or reckless conduct by Defendants. This claim is  
21 based solely on negligence, not on any allegation of reckless or knowing  
22 conduct by or on behalf of Defendants. Plaintiff specifically disclaims any  
23 allegations of, reliance upon any allegation of, or reference to any allegation  
24 of fraud, scienter, or recklessness with regard to this claim.

25 200. SEC Rule 14a-9 (17 C.F.R. § 240.14a-9), promulgated under  
26 Section 14(a) of the Exchange Act, provides:

27 No solicitation subject to this regulation shall be made by  
28 means of any proxy statement form of proxy, notice of meeting  
or other communication, written or oral, containing any

1 statement which, at the time and in the light of the  
2 circumstances under which it is made, is false or misleading  
3 with respect to any material fact, or which omits to state any  
4 material fact necessary in order to make the statements therein  
5 not false or misleading or necessary to correct any statement in  
any earlier communication with respect to the solicitation of a  
proxy for the same meeting or subject matter which has become  
false or misleading.

6 201. Defendants negligently issued, caused to be issued, and  
7 participated in the issuance of materially misleading written statements to  
8 stockholders that were contained in the 2019 and 2020 Proxy Statements.  
9 The Proxy Statements contained proposals to the Company's stockholders  
10 urging them to reelect the members of the Board, to approve "say on pay"  
11 executive compensation proposals, and to rehire PWC as the Company's  
12 auditor. The 2019 and 2020 Proxy Statements, however, misstated or failed  
13 to disclose the following information, among others:

14 (a) That deficiencies in the Company's internal and  
15 disclosure controls were known to the Board when the Proxy  
16 Statements were filed;

17 (b) That the Company was not, through its diversity  
18 and inclusion programs, achieving results that were "*measurable*  
19 *and produce actionable tasks*" and was in fact discriminating  
20 against Black and minority individuals with respect to hiring,  
21 promotion, and pay;

22 (c) That the statement in the 2020 Proxy that "*the*  
23 *Governance Committee will include, and instruct any search*  
24 *firm it engages to include, women and racially/ethnically*  
25 *diverse candidates in the pool from which the Governance*  
26 *Committee selects director nominees*" was misleading because it  
27 suggested that the Company was actively seeking to achieve  
28

1 racial and ethnic diversity in its Board membership, while the  
2 undisclosed reality is that Qualcomm may have a policy of  
3 attempting to include racially and ethnically diverse candidates  
4 in its director nominee pool, but it either has no intention to  
5 actually nominate such persons to its Board or it engages in  
6 efforts to thwart the nomination of such persons and prefers  
7 non-diverse applicants in the pool;

8 (d) That the Company does not have term limits due to  
9 a desire to retain the experience of the incumbent Director  
10 Defendants, but instead to keep minorities off the Board;

11 (e) That the Company's refusal to disclose its median  
12 salary and pay/employment data in an annual report is due to a  
13 desire to conceal existing, known pay disparity at the Company  
14 which adversely affects women and minorities;

15 (f) That the Company's executive compensation  
16 decisions do not take into consideration in any way the  
17 executives' success or lack thereof in achieving the Company's  
18 diversity and inclusion goals; moreover, that the Company's  
19 stated policies with respect to diversity and anti-discrimination  
20 were not effective and were not being complied with;

21 (g) That the Board's Governance Committee did not  
22 take racial and ethnic diversity into consideration when  
23 nominating Board candidates, as opposed to including persons  
24 in the pool of potential nominees, and instead simply sought to  
25 create a false appearance of seeking diversity among potential  
26 Board candidates;



1 (h) That Defendants' had knowledge that the  
2 Company's internal controls and systems were inadequate and  
3 ineffective to protect minorities against discrimination in hiring,  
4 promotion, and other critical terms of employment and equal  
5 access;

6 (i) That Defendants failed to maintain appropriate  
7 policies, internal controls, and procedures to ensure that the  
8 Company's stated policies with respect to diversity and anti-  
9 discrimination were being complied with;

10 (j) That the Company's diversity and inclusion  
11 programs were not achieving measurable and actionable results,  
12 and needed substantial improvement; and

13 (k) That, as a result, the Company was at substantial  
14 risk of large monetary fines, penalties, and adverse judgments  
15 from lawsuits due to the fact that the Company was not in  
16 compliance with federal and state laws regarding hiring,  
17 promotion, and pay practices.

18 202. By reasons of the conduct alleged herein, Defendants violated  
19 Section 14(a) of the Exchange Act and SEC Rule 14a-9. As a direct and  
20 proximate result of Defendants' wrongful conduct, the Company misled or  
21 deceived its stockholders by making misleading statements that were an  
22 essential link in stockholders heeding the Company's recommendation to  
23 reelect the current Board, vote in favor of executive compensation  
24 proposals, and rehire PWC.

25 203. Plaintiff, on behalf of the Company, seeks injunctive and  
26 equitable relief because the conduct of the Individual Defendants interfered  
27 with Plaintiff's voting rights and choices at the 2019 and 2020 annual  
28

1 meetings. Plaintiff does not seek any monetary damages for the proxy law  
2 violations.

3 204. This action was timely commenced within three years of the  
4 date of the 2019 and 2020 Proxy Statements and within one year from the  
5 time Plaintiff discovered or reasonably could have discovered the facts on  
6 which this claim is based.

7 **X. PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of the Company, requests  
9 judgment and relief as follows:

10 A. Against all of the Defendants, jointly and severally, and in  
11 favor of the Company for the amount of damages sustained by the  
12 Company along with pre- and post-judgment interest as allowed by law  
13 resulting from Defendants' breaches of fiduciary duty;

14 B. Directing the Company to take all necessary actions to reform  
15 and improve its corporate governance and internal procedures to comply  
16 with applicable laws and to protect the Company and its shareholders  
17 from a repeat of the damaging events described herein, including, but not  
18 limited to, putting forward for shareholder vote, resolutions for  
19 amendments to the Company's By-Laws or Articles of Incorporation and  
20 taking such other action as may be necessary to place before shareholders  
21 for a vote of the following Corporate Governance Policies:

22 (1) a proposal to require at least three current Directors  
23 to resign from the Board and setting forth a resolution to replace  
24 such Directors with two Black persons and one other minority;

25 (2) a proposal to replace Steve Mollenkopf as CEO with  
26 a non-executive director who is independent;

1 (3) all Director Defendants named in this suit should  
2 return all their 2020 compensation received from Qualcomm  
3 (including any stock grants), and donate the money to an  
4 acceptable charity or organization whose efforts include the  
5 advancement of blacks and minorities in corporate America;

6 (4) publication of an annual Diversity Report that  
7 contains particularized information and the hiring,  
8 advancement, promotion, and pay equity of all minorities at  
9 Qualcomm;

10 (5) creation of a \$800 million fund to hire Black and  
11 minority employees, promote them to more management  
12 positions at the Company, establish and maintain a mentorship  
13 program at Qualcomm for Black and minority people that is  
14 committed to providing the skills and mentorship necessary to  
15 succeed in corporate America;

16 (6) requirement of annual training of Qualcomm's  
17 entire Board and all Section 16 executive officers, which training  
18 should at a minimum focus on diversity, affirmative action, anti-  
19 discrimination and anti-harassment, and other relevant topics.

20 (7) immediately setting specific goals with respect to the  
21 number of Blacks and minority employees to hire at the  
22 Company over the next five years, and Qualcomm should adopt  
23 a revised executive compensation program that makes 30% of  
24 executives' compensation tied to the achievement of the  
25 diversity goals.

26 (8) replacement of PWC as its auditor. Qualcomm is  
27 one of PWC's largest customers, and PWC has continuously  
28

1 served as Qualcomm's auditor *since the Company was founded*  
2 *in 1985*, giving rise to a cozy and clubby relationship between  
3 PWC and Qualcomm which is not conducive to effective  
4 auditing. The Company's compliance with its stated policies  
5 concerning the alleged commitment to diversity has been  
6 abysmal to the point of being basically non-existent. The very  
7 purpose of an auditor is to assess the Company's internal  
8 controls and determining if they are functioning effectively.  
9 Rather than doing so, PWC has wrongfully and consistently  
10 given Qualcomm's internal controls a clean bill of health and  
11 has failed to point out the obvious — that the Company lacks an  
12 effective system of internal controls to ensure that the Company  
13 is not discriminating against minorities and is complying with  
14 its stated goals and initiatives regarding the promotion of  
15 diversity and the avoidance of discrimination and harassment.

16 (8) a proposal to strengthen the Board's supervision of  
17 operations and develop and implement procedures for greater  
18 non-controlling shareholder input into the policies and  
19 guidelines of the Board;

20 (9) a proposal to strengthen Qualcomm's oversight of  
21 its procedures regarding the termination of employees,  
22 executives, and Board members accused of discrimination;

23 (10) a proposal to strengthen internal controls concerning  
24 discrimination;

25 (11) a proposal to eliminate the use of Non-Disclosure  
26 Agreements at the Company so that current and former  
27 employees can report any and all instances of suspected  
28

1 discrimination without threat of legal action;

2 (12) a proposal to eliminate the use of mandatory  
3 arbitration for employee disputes and claims of wrongful  
4 termination and discrimination;

5 (13) a proposal requiring one vote for each share held,  
6 and eliminating the current use of a dual class structure  
7 affording more than one vote per share; and

8 (14) a provision to permit the non-management  
9 shareholders of Qualcomm to nominate at least three candidates  
10 for election to the Board;

11 C. Extraordinary equitable and/or injunctive relief as permitted by  
12 law, equity, and state statutory provisions sued hereunder, including  
13 attaching, impounding, imposing a constructive trust on, or otherwise  
14 restricting the proceeds of Defendants' trading activities or their other  
15 assets so as to assure that Plaintiff on behalf of Qualcomm has an effective  
16 remedy;

17 D. Awarding to Qualcomm restitution from Defendants, and each  
18 of them, and ordering disgorgement of all profits, benefits, and other  
19 compensation obtained by Defendants;

20 E. Awarding punitive damages at the maximum amount  
21 permitted by law;

22 F. Awarding to Plaintiff the costs and disbursements of the action,  
23 including reasonable attorneys' fees, accountants' fees, experts' fees, costs,  
24 and expenses; and

25 G. Granting such other and further relief as the Court deems just  
26 and proper.

27

28

**DEMAND FOR JURY TRIAL**

1  
2 Plaintiff, on behalf of Qualcomm, hereby demands a trial by jury of all  
3 issues that are subject to adjudication by a trier of fact.

4 Dated: July 17, 2020

Respectfully submitted,  
BOTTINI & BOTTINI, INC.  
Francis A. Bottini, Jr. (SBN 175783)  
Albert Y. Chang (SBN 296065)  
Anne Beste (SBN 326881)

8 s/ Francis A. Bottini, Jr.

Francis A. Bottini, Jr.

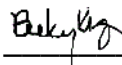
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*Counsel for Plaintiff Becky Kiger*

## VERIFICATION

I, Becky Kiger, verify that I am a shareholder of Qualcomm Incorporated. I have reviewed the allegations in this Verified Shareholder Derivative Complaint. As to those allegations of which I have personal knowledge, I believe them to be true; as to those allegations of which I lack personal knowledge, I rely upon my counsel and counsel's investigation, and believe them to be true. Having received a copy of the complaint and reviewed it with counsel, I authorize its filing.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 17, 2020.



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Becky Kiger