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9
 10 **UNITED STATES DISTRICT COURT**
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

12
 13 QUALCOMM INCORPORATED,

14 Plaintiff,

15 vs.

16 BROADCOM CORPORATION,

17 Defendant.

CASE NO. 05CV1958-B (BLM)

**OBJECTIONS OF RESPONDENT
 STANLEY YOUNG TO ORDER
 GRANTING IN PART AND DENYING
 IN PART DEFENDANT'S MOTION
 FOR SANCTIONS AND SANCTIONING
 QUALCOMM, INCORPORATED AND
 INDIVIDUAL LAWYERS**

[F.R.C.P. 72(a)]

18 and RELATED COUNTERCLAIMS.
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1 Pursuant to Federal Rule of Civil Procedure 72(a), Respondent Stanley Young hereby
2 objects to the Order Granting in Part and Denying in Part Defendant's Motion for Sanctions and
3 Sanctioning Qualcomm, Incorporated and Individual Lawyers filed and served on January 7, 2008
4 (the "Order") as clearly erroneous and/or contrary to law as follows:

5 1. The Magistrate Judge's finding that the self-defense exception to the attorney-client
6 privilege did not apply is clearly erroneous and contrary to law and thereby denied Mr. Young the
7 opportunity to disclose both attorney-client privileged communications and other confidential
8 communications as defined by California Business & Professions Code section 6068(e) pertaining
9 to his client Qualcomm, Incorporated ("Qualcomm") in response to the Order To Show Case Why
10 Sanctions Should Not Be Imposed ("OSC") issued by the Magistrate Judge in this case, which
11 communications were necessary and material to Mr. Young's defense, and which were
12 exculpatory.

13 2. The Order is further contrary to law in that, once having found that the self-defense
14 exception to the attorney-client privilege did not apply, the Court erred by not dismissing the OSC
15 as to Mr. Young.

16 3. The Order is clearly erroneous and contrary to law in that it sanctioned Mr. Young,
17 while finding that the self-defense exception did not apply, thereby preventing him from fully and
18 adequately defending himself in response to the OSC, thereby violating his right to due process of
19 law under the U.S. Constitution, Article 1, Section 7 of the California Constitution and case law
20 holding that it is unfair and unlawful to deny an accused party the opportunity to present a full
21 defense.

22 4. The Order is clearly erroneous and contrary to law in that the Magistrate Judge
23 imposed a sanction upon Mr. Young without affording him any opportunity to conduct discovery,
24 present live testimony, cross-examine other declarants, and introduce other evidence, all in
25 violation of due process of law as guaranteed by the Fifth Amendment to the U.S. Constitution.

26 5. The Order is clearly erroneous and contrary to law in that the Magistrate Judge
27 assessed Mr. Young's mens rea (including what he knew or should have known or suspected and
28 his intentions) on the basis of a materially incomplete record, which record was distorted by

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1 QUALCOMM's invocation of the attorney-client privilege and the Magistrate Judge's refusal to
2 permit Mr. Young to utilize the self-defense exception, all in violation of due process of law as
3 guaranteed by the Fifth Amendment to the U.S. Constitution.

4 6. The Order is clearly erroneous and contrary to law in that the Magistrate Judge
5 imposed a sanction upon Mr. Young despite the fact that at the time of the activities for which Mr.
6 Young was sanctioned, there was no fair notice that such actions would subject an attorney to
7 punishment or that Mr. Young could not reasonably rely on representations by QUALCOMM's
8 employees including but not limited to in-house counsel as well as outside counsel, thereby
9 depriving Mr. Young of due process of law as guaranteed by the Fifth Amendment to the U.S.
10 Constitution.

11 7. The Order is clearly erroneous and contrary to law in that the Magistrate Judge, by
12 imposing a punitive sanction that served no compensatory or coercive purpose upon Mr. Young
13 purportedly on the basis of inherent authority, exceeded a court's inherent power to protect its
14 proceedings and judgments.

15 8. The Order is clearly erroneous and contrary to law in that the Magistrate Judge
16 failed to apply a "clear and convincing" evidentiary standard to Mr. Young's alleged conduct as
17 required by applicable law, but instead concluded that it was "likely" that Mr. Young engaged in
18 misconduct.

19 9. The Order is clearly erroneous and contrary to law in that there is insufficient
20 evidence to support any finding that Mr. Young is guilty of any conduct warranting sanctions,
21 including, but not limited to sanctions for violations of Rules 11, 26, 37 or under the Court's
22 "inherent power."

23 10. The Order is clearly erroneous and contrary to law in that the sanctions imposed are
24 "punitive" and to that extent required the Magistrate Judge to use a "beyond a reasonable doubt"
25 standard in adjudicating Mr. Young's conduct, which was not done.

26 11. The Order is clearly erroneous and contrary to law in that in sanctioning Mr.
27 Young, the Magistrate Judge relied upon evidence in the form of witness declarations as to which
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1 Mr. Young had no opportunity to confront or cross-examine, thereby denying him due process of
2 law.

3 12. The Order is clearly erroneous and contrary to law in that it sanctions Mr. Young
4 for making allegedly false statements, both written and oral to the trial judge in trial or pretrial
5 pleadings which is beyond the jurisdiction and authority of the Magistrate Judge.

6 13. The Order is clearly erroneous and contrary to law in that none of the purported
7 standards or grounds for sanctions identified in fn. 9 of the Order were identified in the OSC, and
8 Mr. Young was thereby deprived of adequate notice of the standards to be applied by the
9 Magistrate Judge and thereby prevented from preparing a full and adequate defense.

10 14. The order is clearly erroneous and contrary to law in that it sanctioned Mr. Young
11 in the circumstance where his client Qualcomm was invoking the attorney-client privilege, thereby
12 preventing him from fully and adequately defending himself in response to the OSC, thereby
13 violating his right to due process of law under the U.S. Constitution, the California Constitution
14 and case law holding that it is unfair and unlawful to deny a party the opportunity to present a full
15 defense.

16 15. The Order is clearly erroneous and contrary to law with respect to Mr. Young in
17 that there is insufficient evidence to establish that he had involvement with or responsibility for
18 the preparation of the discovery responses or discovery violations at issue in the OSC and the
19 Order, or possessed the requisite knowledge of or intent to engage in or conceal misconduct.

20 16. The Order is clearly erroneous and contrary to law in concluding that Mr. Young
21 did not conduct a reasonable investigation before making or authorizing statements in pleadings
22 and at trial regarding Qualcomm's participation in the JVT standard setting process.

23 17. The Order is clearly erroneous and contrary to law in concluding that Mr. Young
24 did not conduct a reasonable investigation before making or authorizing statements in pleadings
25 and at trial regarding Qualcomm's participation in the JVT standard setting process in that it failed
26 to credit him with knowledge of and reliance upon investigation and analysis conducted by others
27 both under his supervision and otherwise.

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1 18. The Order is clearly erroneous in that it ignores substantial, uncontroverted
2 evidence that (1) Mr. Young conducted a reasonable and diligent investigation before making
3 statements in pretrial motions and to the Court during trial and (2) was unaware of any
4 information that (a) would have led him to believe his statements were inaccurate or incorrect or
5 (b) would have raised suspicions that co-counsel and/or Qualcomm had not conducted an adequate
6 discovery search including, but not limited to the following:

- 7 • From the beginning of the case, the Day Casebeer firm handled JVT-related issues
8 while Mr. Young and other lawyers at Heller Ehrman handled damages issues.
(See, Declaration of James Batchelder ("Batchelder Decl.") ¶ 18.)
- 9 • In his first meeting with co-counsel at Day Casebeer, Day Casebeer attorney Chris
10 Mammen told Mr. Young that Qualcomm had had no involvement in the JVT
11 standard setting process. (Declaration of Stanley Young ("Young Decl.") ¶ 13 &
12 Exhibit 1.)
- 13 • Later, after being asked by Day Casebeer to work with Qualcomm's expert to
14 respond to the report of Broadcom's expert, Cliff Reader, Respondent was again
15 informed by Day Casebeer attorneys about Qualcomm's lack of participation in the
16 JVT standard setting process. (Young Decl. ¶ 44.)
- 17 • Mr. Young reviewed the report of Broadcom Corporation expert Dr. Cliff Reader
18 wherein *Broadcom's expert* – who had been personally involved in the JVT
19 standard setting process since 2002 – stated only that Qualcomm was involved in
20 the JVT as early as 2003 and attended JVT meetings as early as September 2003.
21 (Young Decl. ¶¶ 39-43.)
- 22 • Mr. Young reviewed Qualcomm's response to Broadcom's second set of
23 interrogatories prepared by Day Casebeer and served on August 16, 2006, which
24 interrogatory responses contained substantially the same information regarding
25 Qualcomm's participation in JVT meetings as was contained in Broadcom's expert
26 report. (Young Decl. ¶ 44 and Exhibit 6 thereto.)
- 27 • Mr. Young relied on sworn deposition testimony of numerous Qualcomm witnesses
28 who all testified about Qualcomm's lack of involvement in the JVT standard setting
process. (Young Decl. ¶ 52.)
- Mr. Young reviewed a summary of the deposition of third party witness Gary
Sullivan, the chairperson of the JVT since its inception, who testified that he had
little or no recollection of any activities by Qualcomm in the JVT prior to 2004 or
2005, which was after the standard had been published. (Young Decl. ¶ 53.)
- Mr. Young took the deposition of Broadcom expert Dr. Reader who again
confirmed that he had no information that Qualcomm had participated in the
development of the H.264 standard before its approval in May 2003. (Young Decl.
¶ 44.)
- In authorizing the filing of the Motion for Summary Adjudication, Mr. Young
relied on the investigation performed above and the work performed by his

1 associates at Heller Ehrman, Jaideep Venkatesan and Kyle Robertson. (Young
2 Decl. ¶ 58.)

- 3 • Under Mr. Young's direction and supervision, Kyle Robertson undertook
4 substantial investigation including (i) reviewing numerous deposition transcripts
5 and discovery responses, (ii) circulating drafts of all pleadings to counsel at both
6 Day Casebeer and in-house counsel at Qualcomm, as well as to Mr. Young, for
7 their approval of the pleadings and of the statements contained therein, (iii)
8 reviewing the JVT website for information about the ad hoc group email list, (iv)
9 contacting numerous Day Casebeer lawyers for more information and speaking
10 with Qualcomm employee/witness Viji Raveendran. (Declaration of Kyle
11 Robertson at ¶ 33-56.) Kyle Robertson also reviewed the database of all
12 documents produced in the case (October 12, Hrg. Tr., pp. 65-66.)
- 13 • In approving the filing of the Motion for Summary Adjudication, Mr. Young relied
14 on his knowledge and review of the substantial factual record to date, including (i)
15 Qualcomm's interrogatory responses, (ii) the Reader report, (iii) the Richardson
16 declaration about the publicly available minutes from the JVT website, (iv) Dr.
17 Reader's sworn deposition testimony taken by Mr. Young, and (v) the sworn
18 deposition testimony of Qualcomm JVT witnesses Viji Raveendran, Yuriy Reznik,
19 Yiliang Bao, Phoom Sagetong and Yan Ye, as well as the deposition testimony of
20 Dr. Gary Sullivan, Chairman of the JVT - all of which confirmed that there were no
21 facts indicating that Qualcomm had been involved in the JVT standards setting
22 process before H.264 was adopted in May 2003. (Young Decl. ¶ 58.)
- 23 • Mr. Young further relied on the work done by and his conversations with Day
24 Casebeer attorneys who had prepared and defended the Qualcomm JVT witnesses
25 at their depositions and who had responded on behalf of Qualcomm to Broadcom's
26 discovery requests. (Young Decl. ¶ 58.)
- 27 • Mr. Young reviewed an outline of the Motion for Summary Adjudication prepared
28 by Kyle Robertson which Mr. Young had transmitted to the Day Casebeer
attorneys for review. (Young Decl. ¶ 55.)
- Mr. Young directed Kyle Robertson to transmit his draft of the Motion for
Summary Adjudication via email to various Day Casebeer attorneys as well as to
in-house counsel for Qualcomm for their comments and approval, which Mr.
Young and Mr. Robertson received. (Young Decl. ¶ 56.)
- After Broadcom's opposition to the Motion for Summary Adjudication included a
document showing that Ms. Raveendran's email address was listed on a subscriber
email list in the AVC Ad Hoc Group Report for December 2002, Mr. Young tasked
Kyle Robertson with investigating the document. The investigation included
contacting the Day Casebeer attorneys and Ms. Raveendren herself. (Young Decl.
¶¶ 60-62.)
- Kyle Robertson then "made significant efforts to confirm the accuracy of the facts
upon which he relied in drafting the various pleadings' filed by Heller Ehrman."
(Order at 34:8-9.)
- Mr. Young reviewed Mr. Robertson's email providing his notes of his conversation
with Ms. Raveendran, the content of which Mr. Young was precluded from
referring to due to Qualcomm's assertion of the attorney-client privilege and the
Magistrate Judge's erroneous determination that the self-defense exception to that
privilege did not apply. (Young Decl. ¶ 62.)

- 1 • Mr. Young was also aware that drafts of the reply memorandum in support of the
2 Motion for Summary Adjudication were circulated among the attorneys at Day
3 Casebeer as well as and among Qualcomm in-house counsel so that prior to filing
4 of that brief Mr. Young and his associates could ensure that the client and lead
5 counsel could confirm that the factual statements made and the positions taken
6 were correct. (Young Decl. ¶¶ 64-65.)

7 19. The Order is clearly erroneous in its conclusion, as to Mr. Young, that no
8 investigation was done by him regarding the document mentioning the December 2002 avc_ce
9 email reflector. In that regard, while most of the investigative work was undertaken by Mr.
10 Young's associate, Kyle Robertson, the work was done under Mr. Young's supervision and
11 direction, and was reported to him.

12 20. The Order is clearly erroneous in its statement that Attorney Lee Patch ("Patch") of
13 Day Casebeer informed Mr. Young about the 21 emails found on the laptop computer of
14 Qualcomm employee and witness Viji Raveendran on January 14, 2007. That statement
15 disregards the following substantial uncontroverted evidence to the contrary, including but not
16 limited to:

- 17 • In his declaration, Patch did not claim that he informed Mr. Young of these 21
18 emails. Instead, Mr. Patch stated only that he "gave a brief heads up to my other
19 colleagues, including Jim Batchelder and Stanley Young, of the discovery of JVT-
20 related documents on Ms. Raveendran's laptop. However, I do not recall that I was
21 explicit with them that the documents were emails or that they were from the
22 'avc_ce' email list, and this I regret in light of later events." (See, Declaration of
23 Lee Patch ("Patch Decl.") at ¶ 26, p. 6.)
- 24 • Mr. Patch further declared that "[o]bviously, if I had known of the sidebar
25 comments [made by Mr. Young on January 18, 2007] or if we had more effectively
26 communicated with the Heller Ehrman attorneys on these matters, the statements
27 would either never have been made, or I would have been in a position to
28 immediately take corrective action with the Court after they were made . . . I regret,
and apologize, that I did not share the information about the 21 emails more fully
with all other members of the trial team." (Patch Decl. ¶ 34.)
- Mr. Young denied being informed about the discovery of the 21 emails before they
were testified to by Ms. Raveendran in open court on January 24, 2007. A brief
exchange about emails between himself and Day Casebeer attorney Adam Bier (the
content of which Mr. Young could not disclose due to the attorney-client privilege)
did not change Mr. Young's earlier belief regarding the absence of emails to Ms.
Raveendran from the JVT. (Young Decl. ¶¶ 80, 82, 83, 87, 99-101.)
- Mr. Young did not see any of the 21 emails in question until after they were
marked as exhibits in open court on January 24, 2007. (Young Decl. ¶¶ 86-87.)

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- A contemporaneous email from Day Casebeer attorney Bier on January 29, 2007, confirmed that Mr. Young made his January 18, 2007 comments regarding lack of any JVT emails to Raveendran "having not been privy to or present during the previous conversation" regarding the discovery of the 21 emails on January 14, 2007 and the decision about whether or not to produce them. (Young Decl. ¶ 91 and Exhibit 11 thereto.)
- Prior to a February 1, 2007 telephonic meet and confer with attorneys for Broadcom regarding the 21 emails discovered during trial, Day Casebeer attorneys Mr. Bier and Mr. Patch both stated that they had not told Mr. Young about the 21 emails before they were disclosed in Court on January 24, 2007. (Young Decl. ¶ 94.)
- During the February 1, 2007 telephonic meet and confer with Broadcom's attorneys, Day Casebeer attorney Patch reiterated that they had not told Mr. Young about the 21 emails before they were disclosed in court on January 24, 2007. (Young Decl. ¶ 94.)
- Counsel for Broadcom, Louis Tompros, Esq., confirmed Patch's statement during that telephone call in his follow-up letter of February 7, 2007 wherein he stated that Mr. Patch had said that "Mr. Young did not know about this search when he represented to the Court, on January 18, 2007 that there was no evidence of any email from the JVT to Ms. Raveendran, a representation that has since been withdrawn." (Young Decl. ¶ 94 and Exhibit 12 thereto.)

21. The Order is clearly erroneous and contrary to law in basing the sanctions against Mr. Young on clearly erroneous factual and legal statements or conclusions including, but not limited to:

- The Court's statement at page 26, line 14 through page 27, line 2 that Mr. Young contributed to and is personally responsible for Qualcomm's "monumental discovery violation."
- The Court's statement at page 29, lines 17-20 that Mr. Young did not conduct a reasonable inquiry into Qualcomm's discovery production before making specific factual and legal arguments to the Court.
- The Court's statement at page 29, lines 20 through page 20, line 2 that Mr. Young did not conduct a reasonable inquiry into whether the facts asserted in Qualcomm's Motion for Summary Adjudication were true.
- The Court's statement, at pages 29, line 27 through 30, line 2 that Mr. Young did not conduct a reasonable inquiry into the accuracy of his statement that no emails were sent to Qualcomm employee/witness Viji Raveendran from the avc_ce email group.
- The Court's statement at page 30, lines 2-5 that Mr. Young did not conduct a reasonable, or any, inquiry before he approved the Motion for Judgment as a Matter of Law ("JMOL").

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- 1 • The Court's statement at page 29, lines 1-2 that Mr. Young asserted that "there was
2 a plausible argument that Broadcom did not request" the emails found by attorneys
3 for Day Casebeer on the laptop computer of Viji Raveendran.
- 4 • The Court's statement on page 30, footnote 12 that "the Heller Ehrman attorneys
5 took on the task of preparing witnesses ... regarding the JVT".
- 6 • The Court's statement at page 30, fn. 12 that Mr. Young was aware of some of the
7 red flags such as discovery of the JVT emails on Raveendran's computer.
- 8 • The Court's statement at page 34, lines 7-8 that Robertson was working under the
9 supervision of Venkatesan. In fact, both Robertson and Venkatesan were
10 associates working on the case under the supervision of Mr. Young.
- 11 • The Court's statement on page 46, lines 27-28 that Mr. Young "[a]greed to present
12 the JVT witnesses at trial, although they ultimately were not used at trial."
- 13 • The Court's statement at page 30, fn. 11 that Patch "claims that he told Mr. Young
14 about the 21 Raveendran emails."
- 15 • The Court's statement at page 30, fn. 11 that "Young did not conduct any
16 investigation."
- 17 • The Court's statement at page 31, lines 10-11 that Mr. Young made a "false"
18 statement that no emails had been sent to Ms. Raveendran from the avc ce email
19 group during trial, to the extent that the use of the term "false" implies that the
20 statement was made intentionally with knowledge of its falsity.
- 21 • The Court's statement at page 34, lines 23-27 that Mr. Young intentionally, or by
22 virtue of acting with reckless disregard for his discovery obligations, assisted
23 Qualcomm in any discovery violation.
- 24 • The Court's statement at page 7, fn. 3 that "on September 1, 2007, Qualcomm
25 submitted an expert declaration confirming the absence of any corporate records
26 indicating Qualcomm's participation in the JVT." Young and other Heller Ehrman
27 attorneys worked on that expert declaration. That declaration did not refer or relate
28 to Qualcomm's corporate records at all, but instead specifically referenced the
expert's review only of the depositions of the Qualcomm witnesses and the archives
of the JVT. (Young Decl., ¶¶ 50-51 and Exh. 7.)

22. The Order is also clearly erroneous and contrary to law in that it disregarded
contrary evidence and misinterpreted the record when it made its findings that Mr. Young did not
conduct a reasonable or any investigation before making statements in the Motion for Summary
Adjudication and JMOL or before the Court during trial.

23. The Order is clearly erroneous and contrary to law in its conclusion that Mr. Young
failed to make a reasonable or any investigation before making certain statements in the Motion
for Summary Adjudication, in the JMOL and during trial, but, at the same time, refused to permit

1 Mr. Young to present evidence that would have contradicted the Magistrate Judge's findings with
2 respect to Mr. Young.

3 24. The Order is clearly erroneous and contrary to law in sanctioning Mr. Young in that
4 it exceeded the scope of the reference from the District Court.

5 25. The Order is clearly erroneous and contrary to law in sanctioning Mr. Young in that
6 it exceeds the jurisdiction and authority of a Magistrate Judge under the applicable authorizing
7 statutes and rules, including but not limited to, 28 U.S.C. section 636(b), Federal Rule of Civil
8 Procedure 72(a) and Civil Local Rule 72.1(b) of the United States District Court for the Southern
9 District of California in that it rules on matters that are not non-dispositive.

10 26. The Order is clearly erroneous and contrary to law in sanctioning Mr. Young
11 because it exceeds the jurisdiction and authority of a Magistrate Judge under the applicable
12 authorizing statutes and rules, including but not limited to, 28 U.S.C. section 636(b), Federal Rule
13 of Civil Procedure 72(a) and Civil Local Rule 72.1(b) of the United States District Court for the
14 Southern District of California in that it rules on motions and matters that are not pretrial motions
15 and matters.

16 27. The Order is clearly erroneous and contrary to law in sanctioning Mr. Young
17 because it exceeds the jurisdiction and authority of a Magistrate Judge under the applicable
18 authorizing rules and statutes, including but not limited to, 28 U.S.C. section 636(b), Federal Rule
19 of Civil Procedure 72(a) and Civil Local Rule 72.1(b) of the United States District Court for the
20 Southern District of California in that Mr. Young is sanctioned largely for his conduct at, during
21 and after trial, and not for his conduct pretrial.

22 28. The Order is clearly erroneous and contrary to law in sanctioning Mr. Young
23 because it exceeds the jurisdiction and authority of a Magistrate Judge under the applicable
24 authorizing statutes and rules, including, but not limited to 28 U.S.C. section 636(b), Federal
25 Rules of Civil Procedure 72(a) and Civil Local Rule 72.1(b) of the United States District Court for
26 the Southern District of California in sanctioning Mr. Young for statements made in pretrial
27 motions and during trial. (Order p. 18, fn. 5.)

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1 29. The Order is also clearly erroneous and contrary to law in that the Magistrate Judge
2 had no inherent power to sanction Mr. Young under the scope of the reference from this Court, the
3 limitations on the authority of a Magistrate Judge, and/ or based on the evidentiary record.

4 30. The Order is also clearly erroneous and contrary to law in sanctioning Mr. Young
5 because the Magistrate Judge relied on Federal Rule of Civil Procedure 11 ("Rule 11") even
6 though her authority was limited in her review, analysis and conclusions to discovery violations
7 and applicable discovery rules and remedies; therefore, Rule 11 was inapplicable and any reliance
8 on it to impose sanctions violates due process in violation of the Fifth Amendment to the U.S.
9 Constitution. (*See*, Order p. 18, fn. 5.)

10 31. The Order is clearly erroneous and contrary to law to the extent it relies on Rule 11
11 to sanction Mr. Young in that Mr. Young did not violate Rule 11.

12 32. The Order is clearly erroneous and contrary to law, including the Due Process
13 Clause of the Fifth Amendment to the U.S. Constitution, to the extent it sanctions Mr. Young on
14 the basis of Rule 11 where the Magistrate Judge did not comply with Rule 11's procedural and
15 notice requirements.

16 33. The Order is clearly erroneous and contrary to law to the extent it sanctions Mr.
17 Young under Rule 11, the Court's inherent power, or otherwise because Mr. Young reasonably
18 relied on co-counsel and Qualcomm, as permitted by applicable case law.

19 34. The order is clearly erroneous and contrary to law in that the Magistrate Judge
20 relied in part upon Federal Rules of Civil Procedure 26 and 37 to sanction Mr. Young when said
21 rules do not authorize sanctions under the circumstances of this case.

22 35. The Order is clearly erroneous and contrary to law because Mr. Young did not
23 violate Federal Rule of Civil Procedure 26 ("Rule 26").

24 36. The Order is clearly erroneous and contrary to law because Mr. Young did not sign
25 any discovery responses and therefore cannot be sanctioned pursuant to Rule 26.

26 37. The Order is clearly erroneous and contrary to law in that Mr. Young did not
27 violate Federal Rule of Civil Procedure 37 ("Rule 37"), and should not be subject to sanctions
28 under that Rule, including, but not limited to, Rule 37(a), (b), or (c).

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1 38. The Order is clearly erroneous and contrary to law because Mr. Young did not
2 violate Rule 37 in that Mr. Young is not a party to the action and there is no evidence that Mr.
3 Young advised any conduct leading to a violation of any discovery order.

4 39. The Order is clearly erroneous and contrary to law to the extent it sanctions Mr.
5 Young for violating Federal Rule of Civil Procedure 37 in that there is no discovery order issued
6 or identified that Qualcomm violated based on the purported advice of Mr. Young.

7 40. The Order is clearly erroneous and contrary to law to the extent it sanctions Mr.
8 Young pursuant to the Court's inherent power, because Mr. Young's conduct does not meet the
9 requirements for the exercise of such power to sanction. Moreover, Mr. Young was not provided
10 notice that his conduct was to be adjudicated under the Court's "inherent power" standard and he
11 was therefore denied due process.

12 41. The Order is clearly erroneous and contrary to law to the extent it is based in whole
13 or in part on the Court's "inherent powers" in that there is insufficient evidence from which the
14 Court could find that Mr. Young made reckless misstatements of law or fact with an improper
15 purpose, as would be required under the Order's recitation of the standard for imposing "inherent
16 powers" sanctions (Order, p. 6, fn. 9) or as required by controlling Ninth Circuit case law.

17 42. The Order is clearly erroneous and contrary to law in its finding that the "federal
18 rules impose a duty of good faith and reasonable inquiry on all attorneys involved in litigation
19 who rely on discovery responses executed by another attorney," violation of which is sanctionable.
20 (Order, p. 26, fn. 9.) Additionally, this standard was not cited or referenced in the Court's OSC,
21 and its apparent application to the conduct of Mr. Young in the Order violates the prohibition
22 against *ex post facto* application of law.

23 43. The Order is clearly erroneous and contrary to law with respect to Mr. Young in
24 that Mr. Young did not breach or violate any duty of good faith and reasonable inquiry in relying
25 on discovery responses executed by other attorneys and on other evidence available to him.

26 44. The Order is contrary to law because the OSC failed to provide Mr. Young
27 adequate and sufficient notice of the charges levied against him and what alleged conduct of Mr.
28 Young was the subject of the OSC. The OSC mentions consideration of sanctions based on

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1 alleged violation of "this Court's discovery and/or scheduling orders" but the Order imposes
2 sanctions for other matters not set forth in or within the scope of the OSC, including for conduct
3 during the course of trial and post-trial.

4 45. The Order is clearly erroneous and contrary to law in that it refers to and relies on
5 this Court's Order on Remedy for Finding of Waiver ("Waiver Order") as a basis for sanctioning
6 Mr. Young even though he was not a party to the case, should not be bound by said Order and
7 lacked an opportunity to be heard on and respond to the issues raised in said Order as they
8 pertained to his conduct in the case.

9 46. Mr. Young further objects to that portion of the Order entering sanctions against
10 him because it is based on a clearly erroneous review of and conclusion about the evidentiary
11 record as it pertains to him.

12 47. The Order is clearly erroneous and contrary to law in that there is no evidentiary or
13 legal basis to impose the sanctions listed in the Order against Mr. Young.

14 48. The Order is clearly erroneous and contrary to law in that it does not apply a clear
15 and convincing evidence standard as required by applicable law, and in that the evidence on which
16 the Court relies to sanction Mr. Young does not meet the "clear and convincing" standard as
17 required by applicable law.

18 49. The Order is fundamentally unfair and denies Mr. Young due process of law in
19 violation of the Fifth Amendment to the U.S. Constitution in that it relies on the declarations of
20 Qualcomm employee witnesses Glathe, Raveendran, Irvine and Ludwin to support the Court's
21 conclusions in sanctioning Mr. Young, while at the same time denying Mr. Young the right to use
22 privileged communications with Qualcomm in his defense, and depriving him of the opportunity
23 to cross-examine said declarants or rebut such declarations.

24 50. The Order is clearly erroneous and contrary to law in that the Magistrate Judge
25 exceeded her authority in imposing the sanctions listed in the Order against Mr. Young.

26 51. The Order is clearly erroneous and contrary to law in that the Magistrate Judge
27 exceeded her authority in imposing as a sanction upon Mr. Young the comprehensive case review
28 and enforcement of discovery obligations ("CREDO") program.

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1 52. The Order is clearly erroneous and contrary to law in that there is no basis in the
2 law for imposing as a sanction the CREDO program or for imposing upon Mr. Young the
3 obligation to pay in part for the reasonable costs and attorneys' fees of Broadcom should it choose
4 to have an attorney representative participate in the CREDO program.

5 53. The Order is clearly erroneous and contrary to law in that it imposed the CREDO
6 sanctions against Mr. Young even though the motion for discovery sanctions by Broadcom was
7 not brought against Mr. Young and did not request imposition of sanctions against Mr. Young.

8 54. The Order is clearly erroneous and contrary to law in that it imposes a monetary
9 sanction against Mr. Young that is not authorized by statute, rule, case law or the Court's inherent
10 power.

11 55. The Order is clearly erroneous and contrary to law in its apparent conclusion that
12 Mr. Young knew about the 21 emails found on the laptop computer of Qualcomm employee and
13 witness Viji Raveendran prior to their disclosure in court on January 24, 2007, because Mr. Young
14 was precluded by the attorney-client privilege from fully presenting in the record critical
15 communications that demonstrate his lack of such knowledge.

16 56. It is clearly erroneous, contrary to law, and outside the scope of the referral to the
17 Magistrate Judge to impose sanctions upon an attorney for arguing to a Court or jury about what
18 the facts in evidence are, or about what those facts in evidence prove or fail to prove.

19 57. Mr. Young was not provided notice that the Court was considering requiring him to
20 participate in the Case Review and Enforcement of Discovery Obligations (CREDO) program; and
21 that lack of notice violated his due process rights. The Court's order that Mr. Young participate in
22 CREDO also constitutes a mandatory injunction, and thus exceeds the Magistrate Judge's authority
23 under 28 U.S.C. §636(b). It appears that the CREDO proceedings will require Mr. Young to
24 reveal many of the same attorney client communications that he was unable to reveal in his own
25 defense. The process also seems to require self-criticism by Mr. Young and/or criticism of his
26 former client Qualcomm in the presence of that former client and its adversary Broadcom, as well
27 as in a report that presumably will be available to the public. Compelling such statements, which
28 could be deemed admissions, violates due process.

1 58. The Order is clearly erroneous and contrary to law in that the Magistrate Judge
2 adopted a "totality of circumstances" standard at page 14, where Mr. Young was precluded by
3 Qualcomm's invocation of the attorney-client privilege, and the Court's denial of his "self-defense
4 exception" motion from providing exculpatory facts and information which would inform the
5 Court as to the "totality of the circumstances."
6

7 DATED: January 22, 2008

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