

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION, et al.,
Plaintiffs,
v.
QUALCOMM INCORPORATED, et al.,
Defendants.

Case No. 17-CV-00220-LHK (NC)

**ORDER GRANTING APPLE’S
MOTION FOR RELIEF FROM
MAGISTRATE JUDGE’S
NONDISPOSITIVE PRETRIAL ORDER
IMPOSING SANCTIONS**

Re: Dkt. No. 445

IN RE: QUALCOMM ANTITRUST
LITIGATION

Case No. 17-MD-02773-LHK (NC)

Re: Dkt. No. 267

On October 11, 2017, United States Magistrate Judge Nathanael Cousins ordered non-party Apple, Inc. (“Apple”) to substantially complete its document production to Qualcomm Inc.

1 (“Qualcomm”) by December 15, 2017. ECF No. 223 at 1.¹ On December 20, 2017, Judge
 2 Cousins sanctioned Apple \$25,000 per day for failing to comply with the December 15, 2017
 3 deadline and continued the deadline to December 29, 2017. ECF No. 424 at 59:15-60:10. Judge
 4 Cousins memorialized this ruling in a written order issued on December 21, 2017. ECF No. 421
 5 at 2-3 (“sanctions order”).

6 On January 3, 2018, Apple filed a Motion for Relief from Magistrate Judge’s
 7 Nondispositive Pretrial Order Imposing Sanctions, ECF No. 445 (“Apple motion”). Qualcomm
 8 filed its response on January 26, 2018. ECF No. 516. On February 2, 2018, Apple filed its reply.
 9 ECF No. 533.

10 On January 31, 2018, Lawyers for Civil Justice filed a motion for leave to file a brief as
 11 amicus curiae. ECF No. 526-3. The Court granted the motion on February 2, 2018. ECF No.
 12 532. Qualcomm filed its response on February 7, 2018. ECF No. 547.

13 Based on the filings and the record in this case, the Court GRANTS Apple’s motion and
 14 sets aside the sanctions order.

15 Federal Rule of Civil Procedure 72(a) states that a Magistrate Judge’s nondispositive order
 16 must be set aside if it “is clearly erroneous or is contrary to law.” In the instant case, the source of
 17 authority for the sanctions order is unclear. The sanctions order itself cites former United States
 18 Magistrate Judge Paul Grewal’s sanction of Samsung for untimely document production to Apple
 19 in *Apple v. Samsung*, No. 11-CV-01846-LHK (PSG). ECF No. 421 at 3. However, Judge
 20 Grewal’s sanctions order was based on Federal Rule of Civil Procedure 37, which applies to
 21 parties such as Samsung in that case. Apple is not a party in the instant case, so Rule 37 would not
 22 constitute the source of authority to sanction Apple here. Although Apple is not a party in the
 23 instant case, the Court recognizes that Apple has a particular interest in the instant case as Apple
 24 has initiated its own antitrust litigation against Qualcomm. Nonetheless, if Rule 37 was the source
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26 ¹ All electronic case filing numbers are from *FTC v. Qualcomm Inc.*, No. 17-CV-00220-LHK
 27 (NC).

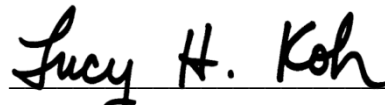
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of authority for the sanctions order, then the sanctions order “is clearly erroneous or is contrary to law.”

Accordingly, the Court GRANTS Apple’s motion and sets aside the sanctions order. The Court does not opine on the propriety of a sanction or the amount of any sanction. Those issues are to be considered by Judge Cousins on remand.

IT IS SO ORDERED.

Dated: February 7, 2018



LUCY H. KOH
United States District Judge

United States District Court
Northern District of California