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24 BROADCOM CORPORATION

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

27 QUALCOMM INCORPORATED,  
28  
29 Plaintiff,  
30  
31 v.  
32 BROADCOM CORPORATION,  
33  
34 Defendant.

Case No. 05 CV 01958 B (BLM)

**BROADCOM CORPORATION'S  
RESPONSE TO HELLER  
ATTORNEYS' MOTION FOR AN  
ORDER DETERMINING THAT THE  
FEDERAL COMMON LAW SELF-  
DEFENSE EXCEPTION APPLIES,  
AND TO RELATED NOTICES OF  
JOINER; BROADCOM'S  
OBJECTION TO PLACEMENT  
UNDER PERMANENT SEAL OF  
ATTORNEY AFFIDAVITS FILED  
PURSUANT TO THE COURT'S  
ORDER TO SHOW CAUSE OF  
AUGUST 13, 2007**

35 AND RELATED COUNTERCLAIMS

Date: September 28, 2007  
Time: 10:30 a.m.  
Dept.: Courtroom A  
Judge: The Hon. Barbara L. Major

1 Defendant Broadcom Corporation (“Broadcom”) does not oppose the Heller Attorneys’  
2 Motion for an Order Determining that the Federal Common Law Self-Defense Exception to  
3 Disclosing Privileged and/or Confidential Information Applies to the Heller Attorneys’ Response  
4 to the Order to Show Cause (the “Heller Motion”), or the relief that it requests in its Conclusion  
5 (page 14) (Docket No. 634).

6 Additionally, Broadcom does not oppose the Notices for Conditional Joinder to the Heller  
7 Motion filed separately by Certain Individual Attorneys with Day Casebeer Madrid & Batchelder  
8 LLP (Docket No. 635 and No. 643).

9 Broadcom requests, however, that if the Court grants either motion in whole or in part,  
10 that the Court permit Broadcom to review any declarations, briefs, and other filings that the Court  
11 considers. The attorney declarations and related filings have bearing on Broadcom’s pending  
12 motion for sanctions against the plaintiff Qualcomm Incorporated (“Qualcomm”). Broadcom  
13 should have the opportunity to review, and if necessary respond to, the representations made in  
14 those declarations before its sanctions motion is decided.

15 Moreover, the “strong presumption in favor of public access” to documents filed with the  
16 Court warrants removal of any seal, assuming that the Court determines that the self-defense  
17 exception to the attorney-client privilege is applicable. E.g., *Foltz v. State Farm Mutual Auto*  
18 *Insur. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003) (finding that defendant had offered “no  
19 compelling reason to justify sealing” certain documents in the court record). *See also Kamakana*  
20 *v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (“A party seeking to seal a  
21 judicial record then bears the burden of overcoming this strong presumption by meeting the  
22 ‘compelling reasons’ standard” applied when the subject material is submitted pursuant to a  
23 dispositive motion.). Public access is particularly appropriate for these filings which, as the  
24 Heller movants state, relate directly to this Court’s “paramount interest in vindicating the integrity  
25 of federal discovery orders and trial processes . . .” (Heller Motion at 2).

26 If the Court determines that any of the materials filed under seal are subject to the  
27 provisions of the Court’s Protective Order because they contain confidential Qualcomm business  
28 information, Broadcom requests that its attorneys be permitted to review those declarations for

1 purposes of this litigation, as the Protective Order provides and has happened with all other  
2 confidential Qualcomm business information.

3 If the Court does seal any portion of the attorney declarations or other filings, Broadcom  
4 respectfully submits that the material restricted from access by Broadcom or the public should be  
5 as narrow and as limited as possible.

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7 Dated: September 24, 2007

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