

1 JOHN B. BULGOZDY, Cal Bar. No. 219897
E-mail: bulgozdyj@sec.gov
2 CATHERINE W. BRILLIANT, Cal. Bar No. 229992
E-mail: brilliantc@sec.gov

3 Attorneys for Plaintiff
4 Securities and Exchange Commission
Rosalind R. Tyson, Regional Director
5 Andrew G. Petillon, Associate Regional Director
John M. McCoy III, Regional Trial Counsel
6 5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036
7 Telephone: (323) 965-3998
Facsimile: (323) 965-3908

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 vs.

14 ANDRES LEYVA,

15 Defendant.
16

Case No. 3:09-cv-1565-JLS-NLS

**FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

17 Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows:

18 **SUMMARY**

19 1. This matter involves unlawful insider trading in the securities of Qualcomm
20 Incorporated (“Qualcomm”) by defendant Andres Leyva (“Leyva”) prior to the announcement of
21 Qualcomm’s global settlement and new licensing agreement with Nokia Corporation (“Nokia”) after the market closed on July 23, 2008. Qualcomm and Nokia were set to begin trial on July 23
22 in Delaware to determine whether Nokia owed Qualcomm substantial royalty revenues after the companies’ licensing agreement expired in April 2007. On the morning of July 22, 2008, Leyva
23 learned material, non-public information that Nokia had surprised Qualcomm with a significant
24 settlement offer, which included an upfront payment of \$2.5 billion. Approximately two hours
25 later, Leyva purchased 80 Qualcomm call option contracts at \$.39 each with a strike price of \$50
26 and an expiration date of August 16, 2008.
27
28

1 **RELATED ENTITY**

2 8. Qualcomm is a Delaware corporation with its principal offices in San Diego,
3 California. Qualcomm develops, manufactures, and markets digital wireless telecommunications
4 products and services, and through its QTL division, licenses patented technologies that are the
5 industry standard for 3G mobile phones. Qualcomm's common stock trades on the NASDAQ
6 Global Select Market under the symbol "QCOM."

7 **FACTS**

8 **Leyva's Responsibilities and Access to Material,**

9 **Nonpublic Information about the Qualcomm-Nokia Settlement Negotiations**

10 9. Qualcomm hired Leyva to work as a financial analyst in the QTL group in
11 December 2001. In November 2007, Leyva was promoted to QTL's Director of Strategic
12 Marketing Analysis. In that position, Leyva reported directly to QTL's Vice President of
13 Strategic Marketing Analysis and Contract, and also worked for QTL's Vice President of
14 Finance. Leyva performed various duties relating to Qualcomm's licensing agreements and
15 licensees' monthly royalty reports.

16 10. During the relevant period, Qualcomm had an insider trading policy barring all
17 Qualcomm employees who are "aware of material nonpublic information relating to Qualcomm"
18 from buying or selling Qualcomm securities or "engaging in any other action to take personal
19 advantage of that information." Qualcomm's policy explicitly identified as examples of
20 "material" information "positive or negative information . . . which could reasonably be expected
21 to affect the trading price of Qualcomm's securities" concerning, among other things, "[a]ctual
22 or threatened major litigation, regulatory action or the resolution of such litigation or regulatory
23 action." Qualcomm sent all of its employees, including Leyva, periodic email reminders about
24 the insider trading policy and the use of confidential information.

25 11. Qualcomm derives significant royalty revenues from a limited number of
26 licensees, including Nokia. A licensing agreement between Qualcomm and Nokia expired in
27 April 2007. Two years before that agreement expired, the two companies began a legal battle
28 over wireless technology patents. This included numerous legal actions filed in different

1 jurisdictions around the world, including a case filed in Delaware that could potentially impact
2 other cases. After the licensing agreement expired in 2007, the focus of the legal dispute shifted
3 to whether Nokia owed Qualcomm royalties under the expired agreement and, if so, for which
4 wireless technologies and at what royalty rates.

5 12. Beginning in late 2006, Qualcomm and Nokia engaged in negotiations in an effort
6 to resolve their licensing disputes. Leyva worked directly with QTL's Senior Vice President
7 who led Qualcomm's team negotiating with Nokia ("Qualcomm's Lead Negotiator"), and his
8 duties included "running the numbers" on various potential settlement proposals.

9 13. Leyva attended brainstorming sessions with Qualcomm's litigation and
10 negotiating team about settlement discussions with Nokia. Starting at least in late 2006, Leyva
11 ran hundreds of financial impact analyses of different outcomes of each successive lawsuit with
12 Nokia and the impact each would have on Qualcomm's litigation and settlement strategies.
13 Leyva built a highly confidential database and financial sensitivity model, which Qualcomm
14 executives used to assess the financial impact of numerous settlement scenarios in the various
15 pending cases.

16 14. In May 2008, Leyva attended a settlement meeting between Qualcomm and Nokia
17 in Los Angeles. After the meeting, Qualcomm proposed that Nokia make an upfront payment of
18 about \$4 billion. Nokia countered with a proposal to make an upfront payment between \$300
19 and \$500 million. In subsequent discussions, Qualcomm and Nokia were unable to bridge the
20 gap between Qualcomm's \$4 billion demand and Nokia's \$300-\$500 million counterproposal.

21 15. Leyva participated in two telephonic settlement discussions between Qualcomm
22 and Nokia following the May 2008 meeting, but those discussions did not bring Nokia and
23 Qualcomm any closer to a resolution. Trial was set to begin in the key Delaware case on July 23,
24 2008, and as of mid-July 2008, it appeared unlikely that a pre-trial resolution would be reached.

25 16. Leyva's superiors and the Qualcomm legal team continually impressed upon
26 Leyva the highly confidential and privileged nature of the settlement discussions, as well as of
27 Leyva's financial analyses of different settlement scenarios. Leyva was instructed to mark
28 documents that he created for the Qualcomm-Nokia negotiations as "privileged" and/or "done at

1 the direction of counsel.” Leyva knew, or reasonably should have known, that information he
2 learned about a settlement in the course of his duties was confidential and highly sensitive.

3 **Leyva Purchases Qualcomm Options While in Possession of Material, Nonpublic**
4 **Information about Settlement Negotiations Between Qualcomm and Nokia**

5 17. On or about July 16, 2008, Nokia negotiators suggested to Qualcomm that the
6 parties meet in Delaware before the start of the trial on July 23 to make one more attempt to
7 reach a settlement. Given the long history of failed negotiations, Qualcomm representatives did
8 not anticipate that these discussions would be fruitful. Nevertheless, upon arriving in Delaware
9 on July 21 to prepare for trial, Qualcomm’s President and Qualcomm’s Lead Negotiator met
10 with Nokia representatives. Leyva was not on the Delaware trial team, and he remained in San
11 Diego at Qualcomm’s offices.

12 18. On July 22, 2008, at a meeting held before 7:30 a.m. (PT), Nokia surprised
13 Qualcomm with a substantial offer regarding the royalty fees owed Qualcomm by Nokia for
14 sales after April 2007. As part of an overall settlement, Nokia offered to make a \$2.5 billion
15 upfront payment to Qualcomm.

16 19. Qualcomm’s Lead Negotiator called Leyva at approximately 7:30 a.m. (PT) as
17 Leyva was driving to work. During the call, Leyva was informed that Nokia had increased its
18 offer of an upfront payment from \$500 million to \$2.5 billion. Leyva understood that this was a
19 significant move by Nokia in the settlement negotiations. Leyva was instructed to run a quick
20 financial impact analysis factoring in this significant new development. Because time was of the
21 essence and Leyva was closer to his home than to Qualcomm’s offices, he drove home to
22 conduct the requested analysis. At approximately 7:51 a.m. (PT), after completing the
23 assignment, Leyva telephoned Qualcomm’s Lead Negotiator and reported the results.

24 20. Leyva drove to Qualcomm’s office shortly thereafter. Once at his office, at 8:43
25 a.m. (PT), Leyva accessed Yahoo! Finance on his Qualcomm computer and checked the
26 availability of Qualcomm put/call options. Over the next 71 minutes, Leyva fielded telephone
27 calls from Qualcomm executives regarding Nokia’s new settlement proposal while
28 simultaneously logging on to his E*Trade account and previewing Qualcomm call options.

1 21. At 9:45 a.m. (PT) on July 22, 2008, after placing and canceling two back-to-back
2 orders for 80 Qualcomm call options, Leyva purchased 80 Qualcomm call option contracts
3 priced at \$.39 each. A call option is a security that gives the buyer of the option the right to
4 demand that the option writer sells shares at the exercise price for a specified period of time.
5 The options Leyva purchased gave him the right to purchase Qualcomm securities at a strike
6 price of \$50 until the options expired on August 16, 2008. Leyva acted with scienter in the
7 purchase of the call options while in possession of material and nonpublic information about
8 Qualcomm's settlement negotiations with Nokia.

9 22. On July 23, 2008, just before the Delaware trial was set to begin, the companies
10 notified the Delaware court that they had reached a settlement. The terms of the settlement were
11 substantially the same as the terms that Leyva had learned on the morning of July 22.

12 23. While Qualcomm representatives finalized the settlement papers, Leyva worked
13 closely with Qualcomm's Comptroller, other senior Qualcomm executives, and Qualcomm's
14 accounting department to determine the impact of the settlement on Qualcomm's fourth quarter
15 earnings forecast, that had been scheduled for release immediately after trading closed on July 23.

16 24. At approximately 8:00 a.m. (PT) on July 23, Leyva attended a two-to-three hour
17 meeting at Qualcomm's offices where he explained his financial modeling of the settlement to
18 senior Qualcomm executives and discussed the accounting treatment for the settlement. At the
19 end of the meeting, Leyva and the other attendees were informed that Qualcomm was about to
20 sign off on the settlement and were reminded not to trade in Qualcomm securities prior to a
21 public announcement of the news.

22 25. At 3:35 p.m. (PT) on July 23, Leyva ran a Google search on his computer for the
23 term "10b5-1."

24 26. After the market closed on July 23, Qualcomm and Nokia jointly announced the
25 broad terms of their new licensing agreement and the global settlement of all litigation between
26 them. Qualcomm also released its third quarter earnings report, which was in line with the
27 company's forecasts and analyst expectations.

28 27. Before the market opened on July 24, Qualcomm released its fourth quarter

1 forecast and held an earnings conference call. Qualcomm forecast that its Q4 earnings would be
2 lower than Q3 earnings, and \$0.04 less than 2007 Q4 earnings, excluding the estimated impact of
3 the Nokia deal. However, Qualcomm announced that the settlement with Nokia would add
4 approximately \$0.07 to \$0.13 to its Q4 earnings per share.

5 28. During trading on July 24, Qualcomm's trading volume rose 394% and its stock
6 price closed at \$52.43, reflecting a rise of \$7.61 or 17% from the previous day. That same day,
7 Leyva sold the 80 Qualcomm call option contracts for a profit of \$34,739.98.

8 **Qualcomm Terminates Leyva**

9 29. On August 19, 2008, Qualcomm human resources and legal personnel called
10 Leyva to a meeting where they questioned him about his suspicious trading in Qualcomm
11 options prior to announcement of the settlement with Nokia. Leyva stated that he purchased the
12 Qualcomm options on Friday, July 18, and that he did not know on July 18 about the possibility
13 of a settlement with Nokia. After that meeting, Leyva told Qualcomm's Lead Negotiator about
14 the meeting, and again stated that he purchased Qualcomm options on Friday, July 18, before
15 Nokia had made its \$2.5 billion offer.

16 30. However, later on August 19, 2008, Leyva told Qualcomm's human resources and
17 legal personnel, and Qualcomm's Lead Negotiator, that he had in fact purchased Qualcomm
18 options on Tuesday, July 22, the day that he learned about Nokia's surprise settlement offer.

19 31. Qualcomm placed Leyva on paid administrative leave on August 20, 2008. On
20 August 25, 2008, Qualcomm terminated Leyva for violating Qualcomm's insider trading policy.

21 **CLAIM FOR RELIEF**

22 **FRAUD IN CONNECTION WITH THE**
23 **PURCHASE OR SALE OF SECURITIES**

24 **Violations of Section 10(b) of the Exchange Act**
25 **and Rule 10b-5 Thereunder**

26 32. The Commission realleges and incorporates by reference paragraphs 1 through 31
27 above.

28 33. Defendant Andres Leyva, by engaging in the conduct described above, directly or

1 indirectly, in connection with the purchase or sale of a security, by the use of means or
2 instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities
3 exchange, with scienter:

- 4 a. employed devices, schemes, or artifices to defraud;
- 5 b. made untrue statements of a material fact or omitted to state a
6 material fact necessary in order to make the statements made, in
7 light of the circumstances under which they were made, not
8 misleading; or
- 9 c. engaged in acts, practices or courses of business which operated or
10 would operate as a fraud or deceit upon other persons.

11 34. By engaging in the conduct described above, defendant Andres Leyva violated,
12 and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act,
13 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the Commission respectfully requests that the Court:

16 **I.**

17 Issue a final judgment, in a form consistent with Fed. R. Civ. P. 65(d), permanently
18 enjoining defendant Leyva and his officers, agents, servants, employees, and attorneys, and those
19 persons in active concert or participation with any of them, who receive actual notice of the final
20 judgment by personal service or otherwise, and each of them, from violating Section 10(b) of the
21 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

22 **II.**

23 Order Leyva to disgorge all ill-gotten gains from his illegal conduct, together with
24 prejudgment interest thereon.

25 **III.**

26 Order Leyva to pay a civil penalty under Section 21A(a) of the Exchange Act, 15 U.S.C.
27 § 78u-1(a).

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1 **IV.**

2 Retain jurisdiction of this action in accordance with the principles of equity and the
3 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and
4 decrees that may be entered, or to entertain any suitable application or motion for additional
5 relief within the jurisdiction of this Court.

6 **V.**

7 Grant such other and further relief as this Court may determine to be just and necessary.
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10 DATED: July 21, 2009

/s/ John B. Bulgozdy _____
John B. Bulgozdy
Catherine W. Brilliant
Attorneys for Plaintiff
Securities and Exchange Commission