

1 YAR R. CHAIKOVSKY (SB# 175421)
yarchaikovsky@paulhastings.com
2 PHILIP OU (SB# 259896)
philipou@paulhastings.com
3 ANDY LEGOLVAN (SB# 292520)
andylegolvan@paulhastings.com
4 JOSEPH J. RUMPLER, II (SB# 296941)
josephrumpler@paulhastings.com
5 BERKELEY FIFE (SB# 325293)
berkeleyfife@paulhastings.com
6 BORIS LUBARSKY (SB# 324896)
borislubarsky@paulhastings.com
7 PAUL HASTINGS LLP
1117 S. California Avenue
8 Palo Alto, California 94304-1106
Telephone: 1(650) 320-1800
9 Facsimile: 1(650) 320-1900

10 Attorneys for Plaintiff
APPLIED MATERIALS, INC.

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 APPLIED MATERIALS, INC.,
16 Plaintiff,
17 vs.
18 DEMARAY LLC,
19 Defendant.

CASE NO. 5:20-cv-05676-EJD

**APPLIED MATERIALS, INC.'S
RESPONSE TO DEMARAY LLC'S
STATEMENT OF RECENT DECISION**

**Hearing Date: November 12, 2020
Hearing Time: 9:00 a.m.**

1 Applied Materials, Inc. (“Applied”) submits this Response to Demaray LLC’s
2 (“Demaray”) Statement of Recent Decision Regarding Applied’s Motion for Preliminary
3 Injunction, Dkt. No. 32 (“Statement of Recent Decision”).

4 Demaray has improperly invoked Local Rule 7-3(d)(2) to bring to the Court’s attention a
5 status report and scheduling order recently filed in the actions in which Demaray is pursuing
6 infringement claims against Applied’s customers, Intel and Samsung. *See* Dkt. No. 32.

7 As an initial matter, Local Rule 7-3(d)(2) does not permit the filing of any post-briefing
8 judicial paper—*e.g.*, a status report or scheduling order—but rather only permits filing of “a
9 relevant *judicial opinion*.” (emphasis added). The purpose of the rule is to inform the Court of
10 new relevant legal authorities bearing on the issues before it—not to submit additional evidence
11 that may take the form of court filings. *See Bhandari v. Mehta*, No. C 02-2813 SI, 2003 U.S. Dist.
12 LEXIS 21386, at *4 n.1 (N.D. Cal. Nov. 24, 2003) (noting that plaintiff’s supplemental evidence
13 did not “conform to Rule 7-3(d) because the new material,” consisting of motions and orders
14 from another court, “is not submitted for its value as new case law but rather as evidence of this
15 Court’s personal jurisdiction over [defendant].”).¹

16 Regardless, Demaray mischaracterizes the underlying proceedings. The scheduling order
17 issued by the WDTX court is just that—a scheduling order. The court did not consider—nor did
18 Samsung or Intel request—a stay of the underlying proceedings. Demaray’s quotation to the joint
19 status report describing it as a “stay” is from Demaray’s portion of the joint status report. *See*
20 Dkt. No. 32; Dkt. No. 32-1 at 4. Intel and Samsung did not request a stay, but rather they asked
21

22 ¹ In *Bhandari*, the court ultimately took leniency with respect to the *pro se* plaintiff’s
23 supplemental evidence because he was not represented by counsel. *See Bhandari*, 2003 U.S. Dist.
24 LEXIS 21386, at *4 n.1 (“However, because plaintiff is not represented by counsel in this matter,
25 this Court will liberally construe Rule 7-3(d) and consider plaintiff’s supplemental pleading.”).
26 Demaray, however, is represented by counsel here, and thus there is no reason to condone
27 violation of this Court’s rules.
28

1 the WDTX court to defer issuing a scheduling order in light of the upcoming preliminary
2 injunction hearing in this Court. *Id.* The court ultimately entered a scheduling order pursuant to
3 the court’s ordinary practice—and, importantly, made no findings or ruling on the question of
4 whether Applied’s action in this Court or the customer suits in WDTX should take precedence
5 under the “customer suit” rule.

6 DATED: November 10, 2020

7 YAR R. CHAIKOVSKY
8 PAUL HASTINGS LLP

9 By: /s/ Yar R. Chaikovsky
10 YAR R. CHAIKOVSKY

11 Attorneys for Plaintiff
12 APPLIED MATERIALS
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28