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DEMARAY LLC

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 APPLIED MATERIALS, INC.,

13 Plaintiff,

14 vs.

15 DEMARAY LLC,

16 Defendant.

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

**DEMARAY UPDATE TO THE JOINT
CASE MANAGEMENT STATEMENT**

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1 Defendant Demaray LLC (“Demaray”) submits this update to the Joint Case Management
2 Statement pursuant to the Court’s December 2, 2020 Order. *Applied Materials, Inc. v. Demaray*
3 *LLC*, Case No. 5:20-cv-05676-EJD, Dkt. No. 41. Demaray incorporates by reference the prior
4 Joint Case Management Statement (Dkt. No. 40) and provides the update below.

5 **1. Updates To The Procedural Posture**

6 Since the Court’s Order continuing the previously scheduled case management
7 conference, on December 16, 2020, the Court denied Applied’s Motion for Preliminary
8 Injunction, finding that Applied failed to allege an actual controversy to support subject matter
9 jurisdiction under the Declaratory Judgment Act. *See* Dkt. No. 46. Demaray’s motion to dismiss
10 the operative complaint in this case remains pending. *See* Dkt. Nos. 39, 42, 43. Demaray’s motion
11 to dismiss is scheduled for hearing on March 4, 2021. *Id.*

12 On December 24, 2020, Applied filed a new civil action in the Northern District of
13 California based upon the same causes of action. *See Applied Materials, Inc. v. Demaray LLC*,
14 Case No. 4:20-cv-09341-EJD, Dkt. No. 1. On December 24, Applied also filed an improper
15 administrative request to lodge its new declaratory judgment complaint in this case, requesting
16 “(1) leave to lodge the concurrently filed declaratory judgment complaint, (2) that the Court
17 permit the new complaint to become the operative complaint in this action, and (3) that the Court
18 deny as moot Demaray’s pending motion to dismiss.” *See* Dkt. 53, at 2. On January 6, 2021, the
19 Court denied Applied’s improper administrative motion in its entirety, stating that Applied
20 “chose...to improperly make its request in the form of an administrative motion for leave to
21 lodge. Because Federal Rule of Civil Procedure Rule 15(a)(1)(2) appropriately governs, the Court
22 must deny Applied’s request for leave to lodge its new declaratory judgment complaint as well as
23 its request for the new declaratory judgment complaint to become the operative complaint in this
24 action. The Court also denies Applied’s request that Demaray’s pending motion to dismiss be
25 denied as moot.” *Id.* at 3.

26 On December 28, 2020, Applied filed an administrative motion to consider whether its
27 new case should be related. Dkt. No. 52. Demaray agrees that this Court should address the new
28 case given its familiarity with the issues and thus did not oppose. On January 6, the Court issued

1 an Amended Related Case Order in this matter, stating “[a]ny case management conference in
2 any reassigned case will be rescheduled by the Court.” Dkt. No. 54. The Court has not yet
3 rescheduled the case management conference in the newly reassigned case.

4 In addition, the parties have agreed that Demaray will have until January 26, 2021, to
5 respond to the new complaint and Applied has committed to ensuring that duplicative claims are
6 not present between the two cases by the time of Demaray’s response.

7 **2. How the Cases Should Proceed**

8 On January 6, 2021, the Court denied “Applied’s request that Demaray’s pending motion
9 to dismiss be denied as moot.” Dkt. 53, at 3. Demaray believes that the Court should continue to
10 stay discovery in this matter until it rules on Demaray’s pending motion to dismiss.

11 **3. Applied’s Contravention Of The Court’s Order On Applied’s Improper Motion To** 12 **Lodge Its New Complaint In This Case**

13 The only issues remaining in this case are Demaray’s motion to dismiss and the Court’s
14 ruling thereon. In preparing an update of the case management issues for the Court, Applied
15 insisted on raising issues properly addressed to the case involving its new declaratory judgment
16 complaint, Case No. 4:20-cv-09341-EJD, and thus Demaray could not join Applied’s filing. In
17 trying to conflate the cases, Applied ignores the Court’s unambiguous order *denying* Applied’s
18 “*request for the new declaratory judgment complaint to become the operative complaint in this*
19 *action.*” Dkt. No. 53, at 3. Instead of following the Court’s guidance, Applied again seeks by
20 improper means, this time via the Court’s simple request for an update to the case management
21 statement, to have the Court make Applied’s new declaratory judgment complaint the operative
22 complaint in this action. As noted in the Court’s order denying Applied’s prior request, the proper
23 mechanism to raise such a request is “as a properly noticed motion under Federal Rule of Civil
24 Procedure Rule 15(a)(1)(2).” Applied still has not done so and the Court should again reject
25 Applied’s attempts to circumvent the Federal Rules and orders of this Court.
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Dated: January 11, 2021

Respectfully submitted,
IRELL & MANELLA LLP

By: /s/ C. Maclain Wells
C. Maclain Wells

Attorneys for Defendant
DEMARAY LLC