

1 Kumar Maheshwari (SBN 245,010)
2 Email: kumar@maheshlaw.com
3 **Mahesh Law Group, P.C.**
4 7700 Irvine Center Drive, Suite 800
5 Irvine, CA 92618
6 Tel: 530.400.9246

7 Stephen M. Lobbin (SBN 181,195)
8 E-mail: sml@smlavvocati.com
9 **SML Avvocati P.C.**
10 888 Prospect Street, Suite 200
11 La Jolla, CA 92037
12 Tel: 949.636.1391

13 Attorney for Plaintiff **Caravan Canopy Int’l, Inc.**

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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **SOUTHERN DIVISION**

18 CARAVAN CANOPY INT’L, INC.,
19 Plaintiff,

20 v.

21 COSTCO WHOLESALE
22 CORPORATION, LOWE’S HOME
23 CENTER, LLC, Z-SHADE CO. LTD.
24 WALMART INC., and
25 SHELTERLOGIC CORP.,
26 Defendants.

27 Case No. 8:19-cv-01072-PSG-ADS
28 (Lead Case)
Case No. 5:19-cv-01224-PSG-ADS
Case No. 2:19-cv-06224-PSG-ADS
Case No. 2:19-cv-06952-PSG-ADS
Case No. 2:19-cv-06978-PSG-ADS

**RESPONSE TO “REQUEST FOR
CLARIFICATION RE STAY OF
LITIGATION”**

Honorable Philip S. Gutierrez

29 Yesterday, without any prior notice, Defendants Lowe’s, Costco and Z-
30 Shade have filed a “Request for Clarification re Stay of Litigation,” stating in
31 relevant part their request for “clarification that said stay applies to all
32 consolidated cases and is not limited to Case No. 19-6978.” See ECF No. 135 at
33 1-2. The filing (by experienced counsel) is improper both procedurally and

1 substantively, and it appears an attempt to intentionally mislead this Court. As
2 such, the Court should deny/strike the request and order sanctions, for the burden
3 on the Court and Plaintiff for having to attend to it, including pursuant to L.R.
4 11-9 and 83-7, 28 U.S.C. 1927, and/or the Court’s inherent power to sanction
5 parties and counsel for frivolous filings.

6 Concerning the procedural impropriety, there is no such filing under this
7 Court’s Local Rules. This Court entertains Stipulations (under L.R. 7-1),
8 Motions (under L.R. 6-1, 7-4 and 7-18), and *Ex Parte* Applications (under L.R.
9 7-19). There is no provision for a “Request,” particularly one without any
10 certification under L.R. 7-3 (“Conference of Counsel Prior to Filing of Motions”)
11 or any compliance with L.R. 6-1, which mandates:

12 L.R. 6-1 Notice and Service of Motion. Unless otherwise provided
13 by rule or order of the Court, no oral motions will be recognized and
14 ***every motion shall be presented by written notice of motion.*** The
15 notice of motion shall be filed with the Clerk not later than twenty-
16 eight (28) days before . . . the ***Motion Day designated in the notice.***
17 *Id.* (emphasis added). For any of these procedural defects alone, this Court
18 should strike the Request.

19 Concerning the substance, not only was the original motion to stay (a)
20 filed by Defendant Walmart ***only*** as movant (*see* ECF No. 100), (b) not joined by
21 any other Defendant, and (c) granted by this Court specifically ***only as to***
22 ***Walmart*** (*see* ECF No. 129),¹ but Walmart is the ***sole*** Petitioner in the IPR
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25 ¹ In relevant part, the Court stated, “Before the Court is Defendant Walmart
26 Inc.’s (‘Defendant’) motion to stay the case pending *inter partes* review. . . . For
27 the foregoing reasons, the Court GRANTS Defendant’s motion to stay pending
28 the Patent Office’s decision on Defendant’s IPR petition. This order
administratively closes No. CV 19-6978 PSG (ADSx) [*i.e.*, CCI v. Walmart
only].” *Id.* at 1, 6.

1 proceeding. See ECF No. 100-3 at 2. The “Request” by these other Defendants
2 is an attempt to “bootstrap” themselves into a stay, but only by misleading this
3 Court into ignoring the estoppel/preclusive effect of an IPR, and how it impacts
4 (and critically differentiates) the stay analysis for these non-Petitioner
5 Defendants. As explained succinctly in *Evolutionary Intelligence, LLC v. Sprint*
6 *Nextel Corp.*, No. 13-4513, at *8 (N.D. Cal. Feb. 28, 2014):

7 One of the reasons IPR proceedings typically simplify the case is
8 that ***IPR petitioners are subject to statutory estoppel provisions***
9 preventing them from relitigating invalidity arguments that were
10 raised or could have been raised in the IPR. 35 U.S.C. § 315(e)(2).

11 Here, ***because Sprint is not one of the IPR petitioners, Sprint***
12 ***would not be precluded under 35 U.S.C. § 315(e)(2) from***
13 ***reasserting invalidity contentions rejected by the PTO.*** To prevent
14 Sprint and the IPR petitioners from “tak[ing] multiple bites at the
15 invalidity apple,” ***the court must condition its stay of this case on***
16 ***Sprint’s agreement to be bound by some estoppel.***

17 *Evolutionary Intelligence*, at *8 (emphasis added) (internal citations omitted); see
18 also *InVue Sec. Prods. Inc. v. Vanguard Prods. Grp.*, No. 18-2548, at *5 (M.D.
19 Fla. May 12, 2020) (stay conditioned on agreement “not to challenge the
20 validity” of the patents involved in the IPR); *Milwaukee Elec. Tool Corp. v.*
21 *Snap-On Inc.*, 271 F. Supp. 3d 990, 1027 (E.D. Wis. 2017) (stay conditioned on
22 “Snap-On’s agreement to be bound by the January 2015 IPRs even though it was
23 not a co-petitioner”).

24 Therefore, not only should Defendants’ “Request” be DOA procedurally,
25 but because it provides no proposal, no guidance, and not even a mention of the
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1 key issue of estoppel and preclusion, it should be judged for what it is—
2 intentionally misleading—and sanctioned accordingly.

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Dated: August 27, 2020

Respectfully submitted,

SML Avvocati P.C.

By: /s/ Stephen M. Lobbin
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2020, I electronically transmitted the foregoing document using the CM/ECF system for filing, which will transmit the document electronically to all registered participants as identified on the Notice of Electronic Filing, and paper copies have been served on those indicated as non-registered participants.

/s/ Stephen M. Lobbin