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

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

Attorney for Plaintiff **Caravan Canopy Int'l, Inc.**

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

CARAVAN CANOPY INT'L, INC.,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION, LOWE'S HOME CENTER, LLC, Z-SHADE CO. LTD. WALMART INC., and SHELTERLOGIC CORP.,

Defendants.

Case No. 8:19-cv-01072-PSG-ADS (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

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

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

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

> L.R. 6-1 Notice and Service of Motion. Unless otherwise provided by rule or order of the Court, no oral motions will be recognized and ***every motion shall be presented by written notice of motion***. The notice of motion shall be filed with the Clerk not later than twenty-eight (28) days before . . . the ***Motion Day designated in the notice***.

Id. (emphasis added). For any of these procedural defects alone, this Court should strike the Request.

Concerning the substance, not only was the original motion to stay (a) filed by Defendant Walmart ***only*** as movant (*see* ECF No. 100), (b) not joined by any other Defendant, and (c) granted by this Court specifically ***only as to Walmart*** (*see* ECF No. 129),[1] but Walmart is the ***sole*** Petitioner in the IPR

[1] In relevant part, the Court stated, "Before the Court is Defendant Walmart Inc.'s ('Defendant') motion to stay the case pending *inter partes* review. . . . For the foregoing reasons, the Court GRANTS Defendant's motion to stay pending 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.

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

> One of the reasons IPR proceedings typically simplify the case is that ***IPR petitioners are subject to statutory estoppel provisions*** preventing them from relitigating invalidity arguments that were raised or could have been raised in the IPR. 35 U.S.C. § 315(e)(2). Here, ***because Sprint is not one of the IPR petitioners, Sprint would not be precluded under 35 U.S.C. § 315(e)(2) from reasserting invalidity contentions rejected by the PTO***. To prevent Sprint and the IPR petitioners from "tak[ing] multiple bites at the invalidity apple," ***the court must condition its stay of this case on Sprint's agreement to be bound by some estoppel***.

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

Therefore, not only should Defendants' "Request" be DOA procedurally, but because it provides no proposal, no guidance, and not even a mention of the

key issue of estoppel and preclusion, it should be judged for what it is—intentionally misleading—and sanctioned accordingly.

Respectfully submitted,

Dated: August 27, 2020

SML Avvocati P.C.

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

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