

EXHIBIT 5

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 8 DEMARAY LLC

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN JOSE DIVISION

13	APPLIED MATERIALS, INC.,)	Case No. 5:20-cv-09341-EJD
)	
14	Plaintiff,)	DEMARAY LLC'S NOTICE OF MOTION
)	AND MOTION TO DISMISS
15	vs.)	
)	Hearing Date: April 8, 2021
16	DEMARAY LLC,)	Hearing Time: 9:00 a.m.
)	
17	Defendant.)	
18)	

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1 **TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE THAT on April 8, 2021, at 9:00 a.m., or as soon thereafter as
3 may be heard, Defendant Demaray LLC (“Demaray”) shall and hereby does move for an order
4 dismissing Applied Materials, Inc.’s (“Applied”) Complaint (“Complaint”) with prejudice. This
5 Motion is based upon this Notice of Motion, the accompanying Memorandum of Points and
6 Authorities included herewith, the accompanying Declaration of C. Maclain Wells and evidence
7 attached thereto, the files, records, and pleadings in this case, such evidence and argument as may
8 be proffered at the hearing of this Motion, and any other matters that the Court deems appropriate.

9 Dismissal is warranted under Federal Rules of Civil Procedure 12(b)(1) for lack of subject-
10 matter jurisdiction and 12(b)(6) and failure to state a claim upon which relief can be granted.
11 Dismissal is also appropriate pursuant to this Court’s discretion to decline declaratory judgment
12 jurisdiction.

13
14 Dated: January 26, 2021

Respectfully submitted,

Irell & Manella LLP

By: /s/ C. Maclain Wells

C. Maclain Wells
Attorneys for Plaintiff
DEMARAY LLC

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¹ All exhibits are attached to the concurrently filed Declaration of C. Maclain Wells.

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² Unless otherwise noted, internal citations, quotations and subsequent history are omitted, and emphasis is added unless otherwise indicated.

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