

1 SEAN C. CUNNINGHAM (Bar No. 174931)  
 sean.cunningham@dlapiper.com  
 2 EDWARD H. SIKORSKI (Bar No. 208576)  
 ed.sikorski@dlapiper.com  
 3 ERIN P. GIBSON (Bar No. 229305)  
 erin.gibson@dlapiper.com  
 4 DAVID R. KNUDSON (Bar No. 265461)  
 david.knudson@dlapiper.com  
 5 DLA PIPER LLP (US)  
 401 B Street, Suite 1700  
 6 San Diego, CA 92101-4297  
 Telephone: 619.699.2700  
 7 Facsimile: 619.699.2701

8 RAJIV DHARNIDHARKA (Bar No.  
 234756)  
 9 rajiv.dharnidharka@dlapiper.com  
 DLA PIPER LLP (US)  
 10 400 Capitol Mall, Suite 2400  
 Sacramento, CA 95814  
 11 Telephone: 650-833-2000  
 12 Facsimile: 650-833-2001

13 Attorneys for Defendant and Counterclaim  
 Plaintiff NETLIST, INC.

MICHAEL F. HEAFEY (Bar No.  
 153499)  
 michael.heafey@troutmansanders.com  
 RYAN A. LEWIS (Bar No. 307253)  
 ryan.lewis@troutmansanders.com  
 TROUTMAN SANDERS LLP  
 580 California Street, Suite 1100  
 San Francisco, CA 94104  
 Telephone: (415) 477-5700  
 Facsimile: (415) 477-5710

ANUP M. SHAH (NC Bar No. 37042)  
 (admitted pro hac vice)  
 anup.shah@troutmansanders.com  
 TROUTMAN SANDERS LLP  
 301 S. College Street, Suite 3400  
 Charlotte, NC 28202  
 Telephone: (704) 998-4089  
 Facsimile: (704) 998-4051

Attorneys for Plaintiff and  
 Counterclaim Defendant SMART  
 MODULAR TECHNOLOGIES, INC.

14 UNITED STATES DISTRICT COURT

15 EASTERN DISTRICT OF CALIFORNIA

16 SMART MODULAR TECHNOLOGIES,  
 17 INC.,

18 Plaintiff and Counterclaim  
 19 Defendant,

20 v.

21 NETLIST, INC.,

22 Defendant and  
 23 Counterclaim Plaintiff

Case No. 2:12-CV-02319-TLN-EFB

**STIPULATION AND ORDER TO STAY  
 CASE PENDING APPEAL OF RELATED  
 ACTION**

Trial Date: None Set  
 Date Action Filed: September 10, 2012

1 Pursuant to L.R. 143 and Fed. R. Civ. P. 83, Plaintiff and Counterclaim Defendant Smart  
2 Modular Technologies, Inc. (“Smart Modular”) and Defendant and Counterclaim Plaintiff Netlist,  
3 Inc. (“Netlist”) hereby stipulate and jointly move the Court to stay this action pending resolution of  
4 Smart Modular’s appeal to the United States Court of Appeal for the Federal Circuit (Appeal No. 18-  
5 01611) of the Patent Trial and Appeal Board’s recent decision finding unpatentable the claims of  
6 United States Patent No. 8,250,295 (“the ’295 patent”), which is asserted in this case. For the reasons  
7 demonstrated below, good cause exists for the Court to stay this case pending Smart Modular’s appeal  
8 to the Federal Circuit.

9 Several events have occurred since the Court declined to reinstitute the stay that warrant  
10 another cessation of this litigation. As the Court is aware, on November 14, 2016 the Patent Trial and  
11 Appeal Board (“PTAB”) found all of the asserted claims of the ’295 patent unpatentable, and reversed  
12 the patent examiner’s previous *inter partes* reexamination decision. Smart Modular hereafter  
13 reopened prosecution of the ’295 patent. The patent examiner ultimately rejected all asserted claims  
14 of the ’295 patent. Smart Modular appealed the examiner’s rejection to the PTAB, and on December  
15 12, 2017, the PTAB affirmed the patent examiner’s decision (See 12/12/17 Decision, attached as Ex.  
16 1). On February 12, 2018, Smart Modular appealed the PTAB’s decision to the Federal Circuit. (See  
17 2/12/18 Notice of Appeal, attached as Ex. 2).

18 Additionally Smart Modular, on August 11, 2017, amended its complaint to add two  
19 additional patents. Netlist has reported that sales of the accused Netlist product from August 11,  
20 2015 to the present are negligible or zero.

21 A stay is also warranted now, because the Court deferred scheduling any case dates or  
22 deadlines pending its decision on Smart Modular’s Motion Dismiss and Motion to Strike Netlist,  
23 Inc.’s Answer and Counterclaims. (See Dec. 14, 2017 Order, ECF No. 207). A stay of the case  
24 would relieve the Court of having to rule on this pending motion and of having to enter a case  
25 schedule.

26 Because a stay (1) may conserve the Court’s and the parties’ resources; (2) may promote  
27 judicial economy or may simplify the issues for trial; (3) may not prejudice any party other than  
28

1 Smart or Netlist, and (4) may be warranted because the Court has set no trial date or other case  
2 deadlines, the parties respectfully request the Court approve this Stipulation and enter an Order the  
3 case be stayed pending the final outcome of Smart Modular's appeal to the Federal Circuit.

4 Respectfully submitted,

5  
6 Dated: March 21, 2018

DLA PIPER LLP (US)

7 By: /s/ Sean C. Cunningham

8 SEAN C. CUNNINGHAM  
9 EDWARD H. SIKORSKI  
10 ERIN P. GIBSON  
11 RAJIV DHARNIDHARKA  
12 DAVID R. KNUDSON

Attorneys for Defendant and  
Counterclaim Plaintiff NETLIST, INC.

13 Dated: March 21, 2018

TROUTMAN SANDERS LLP

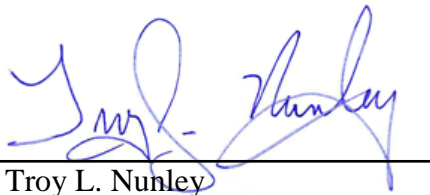
14 By: /s/ Michael F. Heafey

15 MICHAEL F. HEAFEY  
16 ANUP M. SHAH  
17 RYAN A. LEWIS

Attorneys for Plaintiff and Counterclaim  
18 Defendant SMART MODULAR  
19 TECHNOLOGIES, INC.

20 **IT IS SO ORDERED.**

21 Dated: March 27, 2018

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25 Troy L. Nunley  
26 United States District Judge

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**ATTESTATION CLAUSE**

I attest under penalty of perjury that the concurrence in the filing of this document has been obtained from its signatories.

Dated: March 21, 2018

/s/ Sean C. Cunningham  
SEAN C. CUNNINGHAM