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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

20 RONALD M. NAKAMOTO

Case No. 5:09-CV-05193 JF

21 Plaintiff and Counter  
22 Defendant,

**FURTHER JOINT CASE MANAGEMENT  
 STATEMENT AND STIPULATION AND  
 {PROPOSED} ORDER TO CONTINUE  
 FURTHER CASE MANAGEMENT  
 CONFERENCE**

23 vs.

24 LOCKHEED MARTIN CORPORATION,

25 Defendant and  
26 Counter Claimant.

Date: August 27, 2010  
 Time: 10:30 a.m.  
 Judge: Hon. Jeremy Fogel  
 Location: Courtroom 3, 5th floor

Complaint filed: November 3, 2009  
 Trial date: Not set

28

1 Plaintiff and Counter Defendant Ronald M. Nakamoto (“Plaintiff” or “Nakamoto”) and  
2 Defendant and Counter Claimant Lockheed Martin Corporation (“Defendant” or “Lockheed”)  
3 (collectively, “the Parties”), by and through their undersigned counsel, jointly submit this Further  
4 Joint Case Management Statement in anticipation of the Case Management Conference scheduled  
5 for August 27, 2010 at 10:30 a.m., in Courtroom 3 before the Honorable Jeremy Fogel.

6 In light of the upcoming mediation, which is set for September 13, 2010, the Parties  
7 request that the further Case Management Conference be rescheduled for a date occurring after  
8 the mediation.

9 **1. JURISDICTION AND SERVICE**

10 This Court has subject matter jurisdiction over all of Plaintiff’s claims. The Court has  
11 jurisdiction over Plaintiff’s 42 U.S.C. Section 1981 claims based on federal question pursuant to  
12 28 U.S.C. Section 1441(b). The Court has supplemental jurisdiction of the remainder of  
13 Plaintiff’s claims. There are no issues regarding personal jurisdiction or venue, and all parties  
14 have been served with process.

15 This Court has subject matter jurisdiction over Defendant’s counterclaims. The Court has  
16 jurisdiction over Defendant’s 18 U.S.C. Section 1030 *et seq.* claims based on federal question  
17 pursuant to 28 U.S.C. Section 1441(b). The Court has supplemental jurisdiction of the remainder  
18 of Defendant’s counterclaims. There are no issues regarding personal jurisdiction or venue, and  
19 all parties have been served with process.

20 **2. FACTS**

21 **A. Plaintiff’s Description of the Case**

22 Plaintiff began working for Lockheed in 1985. Nakamoto excelled in his various  
23 positions with Lockheed over the years and rose to lead six business units within the company  
24 ranging in size from \$100 million to \$1.5 billion in annual revenues. Nakamoto was demoted  
25 because of his race in late 2007. Before October 27, 2007, and thereafter, Nakamoto complained  
26 of a discriminatory demotion and retaliation based upon his race to his Lockheed superiors. After  
27 complaining about it, Nakamoto immediately met with significant acts of retaliation and general  
28 animosity from his superiors within Lockheed. In March of 2008, Nakamoto retained counsel

1 who submitted correspondence to Lockheed further alleging that his demotion and subsequent  
2 acts taken against him had been the result of race discrimination and retaliation. This caused a  
3 great level of additional enmity and significant retaliatory animus to be directed toward  
4 Nakamoto by his Lockheed superiors. Nakamoto's position within Lockheed became intolerable  
5 and he was wrongfully terminated from his employment in 2009. As a result of his termination,  
6 he has suffered significant pecuniary and non-pecuniary damages as well as costs and attorney's  
7 fees.

8 **B. Defendant's Description of the Case**

9 Plaintiff began working for Lockheed in 1985. On October 27, 2008, Lockheed and  
10 Plaintiff entered into an agreement that provided Plaintiff with various payments and benefits,  
11 including a new position at Lockheed with a salary increase, in exchange for a release of claims  
12 by Plaintiff. Plaintiff resigned from this new position in February 2009. When he was unable to  
13 find another position within the company, his employment was terminated on June 30, 2009.

14 When Plaintiff returned the Lockheed laptop computer he did not return the hard drive  
15 that originally accompanied the laptop computer. Instead, Plaintiff returned a brand new hard  
16 drive. At no point did Lockheed authorize or give consent to Plaintiff to replace his company-  
17 issued hard drive, which contained company confidential information and trade secrets, with a  
18 new hard drive.

19 Plaintiff provided the original company-issued hard drive to third parties, including his  
20 attorney James Shoemaker and IT experts, for the purpose of allowing them to review the  
21 information stored on it, including Lockheed company confidential information and trade secrets.  
22 This was done by Plaintiff without Lockheed's consent or authorization. Plaintiff eventually  
23 returned to Lockheed the company-issued hard drive. Lockheed discovered that files, including  
24 all emails, had been deleted from his company-issued hard drive.

25 The release agreement Plaintiff signed on October 27, 2008 bars all of Plaintiff's claims  
26 that arose prior to that date. This Court granted Defendant's motion for summary adjudication  
27 and motion to strike Plaintiff's claims based on events occurring prior to the execution of the  
28 release agreement. Plaintiff's claims based on events occurring after the execution of the release

1 agreement are meritless. Lockheed found Plaintiff another job after the execution of the release  
2 agreement, he accepted it, and then resigned a few months later. Lockheed again gave him  
3 several months to find another job, and when he was unable to do so, his employment was  
4 terminated.

5 **3. LEGAL ISSUES**

- 6 1. Whether Defendant discriminated against Plaintiff on the basis of his race;
- 7 2. Whether Defendant retaliated against Plaintiff for his alleged complaints of  
8 discrimination;
- 9 3. Whether Defendant constructively terminated Plaintiff's employment;
- 10 4. Whether there existed a contract between Plaintiff and Defendant entitling Plaintiff  
11 to continued employment and, if any, whether Defendant breached obligations  
12 under that contract;
- 13 5. Whether Plaintiff engaged in spoliation of evidence;
- 14 6. Whether Plaintiff violated California's Penal Code and the Computer Fraud and  
15 Abuse Act by destroying the information on Plaintiff's hard drive;
- 16 7. Whether Plaintiff converted Defendant's property;
- 17 8. The nature and extent of damages Plaintiff may recover, if any;
- 18 9. The nature and extent of damages that Defendant may recover; if any; and
- 19 10. Whether Plaintiff mitigated his damages.
- 20 11. Plaintiff contends that the "legal issues" asserted by the Defendant at paragraph 3  
21 (items 6 and 7) are not asserted in good faith and are without foundation.

22 **4. MOTIONS**

23 **A. Prior and Pending Motions**

24 On June 8, 2010, this Court granted Defendant's Motion for Summary Adjudication and  
25 Motion to Strike.

26 **B. Plaintiff's Anticipated Motions**

27 Plaintiff anticipates a Motion in Limine prior to trial.

28

1           **C. Defendant's Anticipated Motions**

2           Defendant anticipates filing a motion for summary judgment and, if necessary, motions in  
3           limine prior to trial.

4           **5. AMENDMENT OF PLEADINGS**

5           **A. Plaintiff's Anticipated Amendments**

6           Plaintiff does not currently anticipate amendments to his pleadings.

7           **B. Defendant's Anticipated Amendments**

8           Portions of Plaintiff's Complaint have been stricken as a result of this Court granting  
9           Defendant's motion to strike. In addition, Defendant has filed a Counterclaim against Plaintiff in  
10          this action.

11          **6. EVIDENCE PRESERVATION**

12          **A. Plaintiff's Actions**

13          Plaintiff has been instructed to preserve all evidence reasonably relevant to this action.

14          **B. Defendant's Actions**

15          Defendant has identified individuals likely to possess evidence reasonably relevant to the  
16          issues of this action and has distributed a directive to these individuals to retain such evidence.

17          **7. DISCLOSURES**

18          The parties have exchanged the requisite initial disclosures under Federal Rule of Civil  
19          Procedure 26(a).

20          **8. DISCOVERY**

21          **A. Plaintiff's Discovery**

22          No formal discovery has been taken to date.

23          **B. Defendant's Discovery**

24          Defendant has propounded a Request for Production of Documents, Set One to Plaintiff,  
25          who has produced documents to Defendant. Defendant has taken Plaintiff's deposition and may  
26          resume the deposition after Plaintiff produces documents that have not yet been produced but  
27          were requested. Defendant anticipates the need for a protective order for confidential documents  
28          to be disclosed in connection with discovery.

1           C.       **Discovery Plan Pursuant to Fed. R. Civ. P. 26(f)(3)**

2           1.       **Rule 26(f)(3)(A): What changes should be made in the timing, form,**  
3                   **or requirement for disclosures under Rule 26(a), including a statement**  
4                   **as to when disclosures under subdivision (a)(1) were made or will be**  
5                   **made.**

6           The parties have exchanged the requisite initial disclosures under Federal Rule of Civil  
7           Procedure 26(a).

8           2.       **Rule 26(f)(3)(B): The subjects on which discovery may be needed,**  
9                   **when discovery should be completed, and whether discovery should be**  
10                  **conducted in phases or be limited to or focused upon particular issues.**

11           a.       Plaintiff's Position

12           Plaintiff intends to introduce expert testimony that Asian-Americans are promoted at a  
13           statistically significant lower rate than non-Asians. As a result, discovery concerning  
14           demographic, educational, promotion and pay information will be required from Lockheed  
15           personnel records. Discovery will also be needed regarding communications between  
16           Nakamoto's superiors during the relevant time period, Nakamoto's past performance, and the  
17           treatment and promotions of employees similarly situated to Nakamoto. Discovery will be  
18           needed as to the benefits, terms and conditions of Nakamoto's employment, and those of  
19           similarly situated employees. Discovery will further be required as to the positions into which  
20           Nakamoto was placed after his complaints of discrimination, the terms and conditions of those  
21           positions, and communications to and about Nakamoto during the relevant time period.

22           b.       Defendant's Position

23           Defendant seeks to limit discovery to exclude issues related to all of Plaintiff's claims and  
24           associated allegations that this Court has summarily adjudicated in connection with its ruling on  
25           Defendant's Motion to Dismiss/Motion for Summary Adjudication.

26           Defendant proposes that the parties postpone expert disclosures until completion of the  
27           hearing on Defendant's Motion for Summary Judgment.

28           3.       **Rule 26(f)(3)(C): Any issues relating to disclosures or discovery of**  
                  **electronically stored information, including the form or forms in which**  
                  **it should be produced.**

              The parties do not anticipate any issues relating to disclosure or discovery of

1 electronically stored information. They agree to address any such issues in the event they arise.

- 2           **4. Rule 26(f)(4)(D): Any issues relating to claims of privilege or of**  
3           **protection as to trial-preparation material, including – if the parties**  
4           **agree on a procedure to assert such claims after production – whether**  
5           **to ask the court to include their agreement in an order.**

6           The Plaintiff anticipates needing personnel information referenced above that is likely  
7 stored electronically. The parties agree to address these issues as they arise.

- 8           **5. Rule 26(f)(5)(E): What changes should be made in the limitations on**  
9           **discovery imposed under the Federal Rules of Civil Procedure or the**  
10           **Local Rules, and what other limitations should be imposed.**

11           a. Plaintiff's Position

12           Plaintiff does not currently anticipate needing any such changes.

13           b. Defendant's Position

14           As noted in Paragraph 8.C.2.B. above, Defendant seeks to limit discovery to exclude  
15 issues related to all of Plaintiff's claims and associated allegations this Court has summarily  
16 adjudicated in connection with its ruling on the Motion to Dismiss/Motion for Summary  
17 Adjudication.

- 18           **6. Rule 26(f)(6)(F): Any other orders that should be entered by the court**  
19           **under Rule 26(c) or under Rule 16(b) and (c).**

20           The parties do not request any other orders that should be entered by the Court under Rule  
21 26(c), Rule 16(b), or Rule 16(c) at this time.

22           **9. CLASS ACTIONS**

23           This case is not a class action.

24           **10. RELATED CASES**

25           There are no related cases.

26           **11. RELIEF**

27           **A. Plaintiff's Position**

28           The Plaintiff asserts that he has suffered economic damages of lost pay, lost benefits, lost  
stock options and lost value of career in excess of \$5 million. In addition, Plaintiff asserts that he  
is entitled to all costs and attorneys fees associated with prosecuting this action as well as an

1 award of punitive damages to prevent such conduct in future.

2 **B. Defendant's Position**

3 Defendant denies that Plaintiff is entitled to recover damages. If the Court finds  
4 otherwise, such amount should be less the amounts Plaintiff has received or could reasonably  
5 have received in compensation following Plaintiff's resignation. Defendant seeks damages for  
6 the destruction of the information on Plaintiff's hard drive.

7 **12. SETTLEMENT AND ADR**

8 The parties have agreed to engage in mediation on September 13, 2010 with mediator  
9 Greta Schnetzler. The parties are ordered to engage in mediation on or before October 11, 2010.

10 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

11 One or more parties decline to consent to the assignment of this case to a United States  
12 Magistrate Judge.

13 **14. OTHER REFERENCES**

14 The parties do not believe that this case is suitable for reference to binding arbitration, a  
15 special matter, or the Judicial Panel on Multi-District Litigation.

16 **15. NARROWING OF ISSUES**

17 At this time, there are no dispositive or partially dispositive issues appropriate for decision  
18 by motion or by agreement.

19 **16. EXPEDITED SCHEDULE**

20 This is not the type of case that can be handled on an expedited basis with streamlined  
21 procedures.

22 **17. SCHEDULING**

23 The parties agree to the following proposed schedule:

24 (a) Non-expert discovery to be completed 180 days before trial.

25 (b) Dispositive motions to be heard 120 days before trial.

26 (c) Expert discovery to be completed 60 days after dispositive motions heard/60 days  
27 before trial.

28 (d) Pretrial conference to be held 30 days before trial.



1 (e) Trial to be held no earlier than May 2011.

2 Defendant requests that the Court set expert-related deadlines after the time at which  
3 dispositive motions would be decided, so the parties can avoid the expense of experts if the case  
4 is disposed of via motion practice.

5 **18. TRIAL**

6 **A. Plaintiff's Position**

7 Plaintiff estimates a 5-7 day jury trial.

8 **B. Defendant's Position**

9 Defendant estimates a 5-7 day jury trial.

10 The parties propose scheduling the trial no earlier than May 2011.

11 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

12 **A. Plaintiff's Disclosure**

13 No parties, other than the Plaintiff, and other than those identified by the Defendant, are  
14 known to have a financial interest in the subject matter in controversy or an interest that could be  
15 substantially effected by the outcome of the above-captioned lawsuit.

16 **B. Defendant's Disclosure**

17 Defendant has filed a Certification of Interested Entities or Persons required by Civil  
18 Local Rule 3-16 (*See* ECF 27). The Certification specifies that, the following listed persons,  
19 associations of persons, firms, partnerships, corporations (including parent corporations) or other  
20 entities, other than the parties herein, are known to have a financial interest in the subject matter  
21 in controversy or in a party to the proceeding, or to have an interest that could be substantially  
22 affected by the outcome of the above-captioned lawsuit:

23 State Street Corporation: a publicly held corporation owning more than 10% of  
24 Lockheed's stock.

25 **20. OTHER MATTERS**

26 The parties are not aware of any other matters at this time conducive to the just, speedy,  
27 and inexpensive resolution of this matter.

28

1 Dated: August 20, 2010

MORGAN, LEWIS & BOCKIUS LLP

2  
3 By \_\_\_\_\_ /s/  
4 Melinda S. Riechert  
5 Attorneys for Defendant  
6 LOCKHEED MARTIN CORPORATION

7 Dated: August 20, 2010

PATTEN, WORNOM, HATTEN &  
DIAMONSTEIN, L.C.

8 By \_\_\_\_\_ /s/  
9 James H. Shoemaker, Jr.  
10 Attorneys for Plaintiff  
11 RONALD M. NAKAMOTO

12 **ORDER**

13 In light of the foregoing STIPULATION of the Parties and good cause appearing, the  
14 Court ORDERS the following revised deadline in this case:

15 Further Case Management Conference: 10/15/2010

16  
17 Dated: August 25, 2010

18   
19 \_\_\_\_\_  
20 Hon. Jeremy Fogel  
21 United States District Court Judge