

1 Michael A. Sherman (SBN 94783)
 masherman@stubbsalderton.com
 2 Jeffrey F. Gersh (SBN 87124)
 jgersh@stubbsalderton.com
 3 Sandeep Seth (SBN 195914)
 sseth@stubbsalderton.com
 4 Wesley W. Monroe (SBN 149211)
 wmonroe@stubbsalderton.com
 5 Stanley H. Thompson, Jr. (SBN 198825)
 sthompson@stubbsalderton.com
 6 Viviana Boero Hedrick (SBN 239359)
 vhedrick@stubbsalderton.com
 7 STUBBS, ALDERTON & MARKILES, LLP
 15260 Ventura Blvd., 20th Floor
 8 Sherman Oaks, CA 91403
 Telephone: (818) 444-4500
 9 Facsimile: (818) 444-4520

10 **Attorneys for Plaintiffs**
 [Additional Attorneys listed
 11 below]

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN JOSE DIVISION

15 IN RE PERSONALWEB TECHNOLOGIES,
 16 LLC, ET AL., PATENT LITIGATION

Case No.: 5:18-md-02834-BLF

Magistrate Judge Hon. Beth L. Freeman

17 _____
 18 Related Cases:

19 *PersonalWeb Technologies, LLC, et al., v.*
 20 *LESSON NINE GMBH, a Germany Limited*
 21 *Liability Company, Case No.: 5:18-CV-03453-*
 22 *BLF*

23 *PersonalWeb Technologies, LLC, et al., v.*
 24 *MWM MY WEDDING MATCH LTD., a Canada*
 25 *limited company, Case No.: 5:18-CV-03457-*
 26 *BLF*

27 *PersonalWeb Technologies, LLC, et al., v. OUR*
 28 *FILM FESTIVAL, INC., a Delaware corporation,*
 doing business as FANDOR, INC., *Case No.,*
5:18-CV-00159-BLF

PersonalWeb Technologies, LLC, et al., v.
PAYPAL, INC. a Delaware Corporation, Case
No.: 5:18-Cv-00177-BLF

**PLAINTIFFS PERSONALWEB
 TECHNOLOGIES, LLC AND LEVEL 3
 COMMUNICATIONS, LLC NOTICE OF
 MOTION AND MOTION FOR LEAVE TO
 EXTEND PERIOD OF SERVICE TO
 DEFENDANTS NUNC PRO TUNC;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT THEREOF**

*[Declaration of Viviana Boero Hedrick and
 Proposed Order filed concurrently herewith]*

DATE: March 7, 2019
 TIME: 9:00 AM
 PLACE: Courtroom 3, 5TH Floor
 280 South First Street
 San Jose, CA 95113

1 *PersonalWeb Technologies, LLC, et al., v.*
2 *UNDER ARMOUR, INC. A Maryland*
3 *Corporation: Case No.: 5:18-Cv-00166-BLF*

4 *PersonalWeb Technologies, LLC, et al., v.*
5 *YOTPO LTD., An Israel Corporation Case No.:*
6 *5:18-Cv-03452-BLF*

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to the Court’s Case Management Order No. 1 (Dkt 157) (the “Order”), Plaintiffs PersonalWeb Technologies, LLC (“PersonalWeb”) and Level 3 Communications, LLC (“Level 3”) (collectively, “Plaintiffs” or “PersonalWeb”) will, and hereby do move for an order granting this Motion for Leave to Extend Period of Service on Defendants *Nunc Pro Tunc*. The Motion will be based on this Notice and Motion, the Memorandum of Points and Authorities below, the Declaration of Viviana Boero Hedrick, and the [Proposed] Order.

In the Order, the Court ruled that PersonalWeb “may request leave to extend the 90-day period to serve those defendants not yet served, in those cases where the 90-day period has expired” (Dkt 157). PersonalWeb seeks an additional 90-days to effectuate service on Defendants Our Film Festival, Inc. (“Our Film Festival,” formerly erroneously sued under its dba name as “Fandor, Inc.”), PayPal, Inc. (“PayPal,” formerly erroneously sued by one of its brand names, “Venmo, Inc.” which is wholly owned by PayPal, Inc.), and Under Armour, Inc. (“Under Armour,” formerly erroneously sued under MyFitnessPal, Inc., an entity that was merged into and is owned by Under Armour, Inc.). Additional time is needed to serve the aforementioned defendants because they were inadvertently sued under the incorrect entity name, and PersonalWeb needed to amend the operative pleadings to sue the correct respective entities, but PersonalWeb was unable to file amended complaints to serve these Defendants due to the litigation stay then in place.

PersonalWeb likewise seeks an additional 90-days to effectuate service on the following three international defendants for which service must be accomplished abroad in compliance with the Hague Convention: LessonNine GmbH (“Lesson Nine”), a German corporation that as of October 4, 2018 is represented by Fenwick and West, counsel for Amazon.com, Inc. and Amazon Web Services, Inc. (collectively, “Amazon”) and numerous website operator defendants; Yotpo, Inc. (“Yotpo”), an Israeli corporation that is also represented by Fenwick and West, but for which Fenwick and West has refused to accept service; and MWM My Wedding Match, Inc. (“My Wedding Match”), a Canadian corporation. PersonalWeb has encountered difficulty effectuating service on these three foreign

1 entities given their international status. Additional time is needed to serve these three foreign
2 defendants due to the time-consuming and complex nature of serving corporate entities abroad.

3 For the reasons set forth above, and in further detail below, PersonalWeb respectfully requests
4 that the Court grant it leave to extend the 90-day period *nunc pro tunc* to give PersonalWeb an
5 additional 90-days from October 4, 2018, the date PersonalWeb filed all of its amended complaints,
6 including its First Amended Complaint against Our Film Festival, PayPal and Under Armour, and its
7 Second Amended Complaint against Lesson Nine, Yotpo and My Wedding Match, to give
8 PersonalWeb sufficient time to serve these defendants.

9
10 **I. MEMORANDUM OF POINTS AND AUTHORITIES**

11 PersonalWeb encountered difficulty serving six defendants that are party to this multidistrict
12 litigation, to wit, Our Film Festival, PayPal, Under Armour, and foreign defendants Lesson Nine,
13 Yotpo and My Wedding Match. For the reasons articulated below, and supported by the attached
14 Declaration of Viviana Boero Hedrick, PersonalWeb has been unable to serve the following six
15 Defendants with their respective operative amended complaint for patent infringement:

16 **Our Film Festival, PayPal and Under Armour**

17 On January 8, 2018, PersonalWeb filed separate Complaints for Patent Infringement against
18 Fandor, Inc., Venmo, Inc. and MyFitnessPal, Inc. Due to facts that emerged post-filing of these
19 complaints, PersonalWeb learned that it had sued the incorrect entities.

20 Specifically, on March 1, 2018, Ryan Hubbard of Kirkland & Ellis LLP informed PersonalWeb
21 that Fandor Inc. was not the operator of the infringing website at issue, fandor.com, but instead that
22 Fandor, Inc. was a dba for Our Film Festival, the actual entity that owns and operates fandor.com. Mr.
23 Hubbard asserted that he would not accept service until the entity was corrected on the summons and
24 complaint. On April 6, 2018, Michael A. Sherman, counsel for PersonalWeb, sent an email to Mr.

1 Hubbard stating that PersonalWeb would be amending the complaint and causing a new summons to
2 be issued.

3 During this time, PersonalWeb conducted a good faith investigation to not only amend the
4 complaint against Fandor, Inc. to name the correct entity, but to also make additional amendments to
5 further plead the infringement against this defendant. During this time, PersonalWeb conducted
6 further investigation into other actions, and learned that PayPal, Inc., and not the entity sued, Venmo,
7 Inc., was the true and correct owner and operator of the infringing website venmo.com. Similarly,
8 PersonalWeb discovered that MyFitnessPal had merged into Under Armour, and that Under Armour
9 was the correct owner and operator of the infringing website, myfitnesspal.com.

10 On April 27, 2018, the court ordered stayed fourteen (14) underlying actions in which the
11 defendant filed a motion to stay until the June 7, 2018 hearing on PersonalWeb's then motion to
12 dismiss Amazon's First Amended Complaint (*Amazon.com, Inc. et al. v. PersonalWeb Tech., LLC et*
13 *al., Case No. 5:18-cv-00767-BLF (N.D. Cal.)*). Thereafter, the Court set a Preliminary Case
14 Management Conference via an order issued on June 18, 2018 (Dkt. 19). However, on July 13, 2018,
15 due to a scheduling conflict by Defense Counsel, the parties filed a Joint Stipulation and [Proposed]
16 Order Continuing the Preliminary Case Management Conference and Extending the Stay of
17 Proceedings (Dkt 26). Therein, among other things, the parties agreed to stay all of the actions pending
18 against the website operator defendants until the rescheduled date for the Preliminary Case
19 Management Conference, which was ultimately set for September 20, 2018.

20 As a result of the stay put in place in July as to these actions, PersonalWeb was unable to file
21 the amended complaints needed to sue the correct entities, and as such, was unable to serve these three
22 Defendants. PersonalWeb therefore respectfully requests that it be given an additional 90-days from
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