APPENDIX 1



Wesley Monroe

Of Counsel

E-Mail

Mobile

Phone/Fax/Text 818.444.9279 626,712,0571

wmonroe@stubbsalderton.com

September 24, 2018

VIA E-mail and U.S. MAIL

nicholas.lee@arnoldporter.com michael.berta@arnoldporter.com

Nicholas H. Lee ARNOLD & PORTER KAYE

777 S. Figueroa Street, 44th Floor Los Angeles, CA 90017

Michael A. Berta

ARNOLD & PORTER KAYE SCHOLER LLP

Three Embarcadero Center, 10th Floor San Francisco, CA 94111-4024

Re:

SCHOLER LL

In Re: PersonalWeb Technologies, Inc., et al., Patent Litigation (Case No: 5:18-md-02834-BLF); Personal Web Technologies - Heroku, Inc. (5-18-cv-00162-BLF)

Dear Mr. Lee and Mr. Berta:

At the Preliminary CMC on September 20, 2018, Mr. Berta told the Court that Heroku is considering filing a "Rule 11 Motion to Dismiss" based on the allegation, "[T]here's literally not one fact that's pleaded in [PersonalWeb's complaint against Heroku]."

As an initial matter, Personal Web's complaint against Heroku meets and exceeds the pleading requirements of the Federal Rules as well as the requirements set forth by Igbal/Twombly, Furthermore, PersonalWeb's complaint against Heroku does recite specific facts regarding the manner in which its infringing website operates. The complaint contains facts alleging each of the elements of at least one claim in each of the four asserted patents in suit. While not required to defeat a Rule 12 motion (or satisfy Rule 11 requirements), the operative complaint does not include specific examples of index files ("webpage base files" in the proposed amended complaint), asset files, and fingerprints in URI's involved in the described infringing activities.

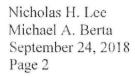
Nonetheless, in an effort to resolve this issue, and avoid unnecessary motion practice, this letter provides Heroku with specific examples of webpage base files, asset files, and fingerprints in URI's involved in Heroku's infringing activity, some of which will be included in the Second Amended Complaint that Personal Web will be filing against Heroku. We ask that Heroku correct us if it believes we have any of these facts incorrect. As we have referenced in open court, there have been some Website Operators who were sued and PersonalWeb subsequently dismissed based on information they provided us. We are always willing to hear what Website Operators have to say, particularly if that defendant disagrees with facts alleged.

15260 Ventura Boulevard, 20th Floor * Sherman Oaks, California 91403 office > 818.444.4500 * fax > 818.444.4520

1316 3rd Street Promenade, Suite 107 * Santa Monica, California 90401 office > 310.746.9800 * fax > 310.395.5292



Case 5:18-md-02834-BLF Document 271-1 Filed 10/26/18 Page 3 of 6



According to the archives at archive.org, by way of example: On December 25, 2013, Heroku served a webpage base file substantially similar to the attached file¹: Heroku_2013_base_file.html. This file was served by host server "heroku.com". When this file was served to archive.org on December 25, 2013, according to the headers archived by archive.org, it was served with an "etag" header with the value "22f26b42b31065d3a9c4882c440129b6". Our understanding is that this ETag was a content-based identifier of the webpage base file served by heroku.com.

This December 25, 2013 heroku.com webpage base file expressly included references to the asset files listed below. According to the archives at archive.org: Each of these asset files was served to archive.org on or about December 25, 2013. Copies of these asset files as they are archived by archive.org have been downloaded, some of which were modified by our litigation software programming referenced in footnote one and are attached. Each of these asset files was served by the host server at "d4yt8xl9b7in.cloudfront.net", with an "etag" header with the ETag value listed below for the corresponding asset file and with a "server type" header with the value "AmazonS3". For each listed asset file, the value of the "etag" header served with that asset file is the MD5 hash of the contents of that asset file.

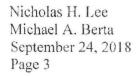
According to the archives at archive.org: This December 25, 2013 heroku.com webpage base file included references to the asset files "placeholders-de90ef0087cad3ae8e589a40312e4f8d.js" and "retina-6aaf485d185c125a62bd793d2c6ad419.js". Each of these asset files was served to archive.org on or about December 25, 2013. Copies of these asset files as they are archived by archive.org have been downloaded, modified by our litigation software programming referenced in footnote one, and are attached. Both of these asset files were served by the host server at "d4yt8x19b7in.cloudfront.net". Both of these asset files were served with a "server type" header with the value "AmazonS3". The MD5 hash value of the asset file "placeholdersde90ef0087cad3ae8e589a40312e4f8d.js" prepended with the seed string "2.2.2production-1.0" is "de90ef0087cad3ae8e589a40312e4f8d". The MD5 hash value of the asset file "retina-6aaf485d185c125a62bd793d2c6ad419.js" prepended with the seed string "2.2.2production-1.0" is "6aaf485d185c125a62bd793d2c6ad419.js" prepended with the seed string "2.2.2production-1.0" is "6aaf485d185c125a62bd793d2c6ad419".

According to the archives at archive.org: On December 24, 2014, Heroku served a webpage base file substantially similar to the attached file (see footnote one): Heroku_2014_base_file.html. This file was served by host server "heroku.com". When this file was served to archive.org on December 24, 2014, according to the archives at archive.org, it was served with an "etag" header with the value "W/"6c23585e273cd3c7da0a21ed28f942f2". This file was also served with a "server type" header of "Cowboy". Our understanding is that this ETag served was a content-based identifier of the webpage base file served by heroku.com.



¹ By "substantially similar" we are referring to the fact that Archive.org – while a recording/preservation service – modifies the webpage base file in order to re-create the experience of visiting the webpage at the archived time that most often appear insignificant to someone with a general interest in seeing what a website looked like at some point in the past. Our specially written litigation software programming has removed as many of these modifications as can be determined from the modified file.

Case 5:18-md-02834-BLF Document 271-1 Filed 10/26/18 Page 4 of 6



This December 24, 2014 heroku.com webpage base file expressly included references to the asset files listed below. According to the archives at archive.org: Each of these asset files was served to archive.org on or about December 24, 2014. Copies of these file files as they are archived by archive.org have been downloaded, some modified by our litigation software programming referenced in footnote one and are attached. The asset files "screenshot-macys.png", "screenshot-scoot.png", and "screenshot-lutron.png" listed below were served by the host server at heroku.com, with a "server type" header having the value "Cowboy". Each of the remaining asset files listed below was served by the host server at "d4yt8xl9b7in.cloudfront.net" and a "server type" header with the value "AmazonS3". Each of the listed asset files, whether served from "heroku.com" or "d4yt8xl9b7in.cloudfront.net", was served with an "etag" header having the ETag value listed below for the corresponding asset file. For each listed asset files, the value of the "etag" header served with that asset file is the MD5 hash of the contents of that asset file.

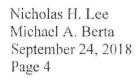
These aforementioned examples demonstrate PersonalWeb's evidentiary support for the factual contentions alleged against Heroku in PersonalWeb's operative complaint, which will be further illuminated in the Second Amended Complaint. These examples support infringement of each of the four claims for relief asserted against Heroku.

Again, we welcome comments, questions or disagreements.

Sincerely.

Wesley Monroe





Selected 2013 Heroku Asset Files

Name	ETag
application-2b3a070e5e7c56d08f01682bc8cafbd4.js	"c278d96f2b7c5066bbb7283bf863a8d2"
build-811ee90c559256bc1e03b40b14b319b2.png	"8eba2104e8114859b336c737bf6f3dcf"
rollbar-ac73a6a6643acbc589717d8eb64c3b46.js	"197a8ef8f3927007c4827fa4f8e8063e"
application-2e62f3cd5ee8f20f6a3149c01917d702.css	"a0b5fa9f3b709eac8521bef8f5775866"
aaron-ce770f217fc31a1ffa1ea97c2e6d57f3.png	"7025c67921a7c4c72d89c4e2b30ea64f"
placeholders-de90ef0087cad3ae8e589a40312e4f8d.js	"3d314c301dc458b9cee8b1cc9317a1fa"
retina-6aaf485d185c125a62bd793d2c6ad419.js	"a9a89e3d141ee3044993257fc82cb84b"
ryan-48a4f951304b37e5ec52bb7807973f99.png	"cee49fa3d02bea72618d6d974ed73b4c"
scale-e0e96966fd3945c259789e2c98898630.png	"ea3187f364287e3f84565463465dfd4a"
rahul-61f19b8f79cb2ef65044a69f0710033a.png	"3a75466b48200d99b13a6e55d47b59a5
code-for-america-54cb817d00505598ff3cbfac73c3e9ef.png	"41cb3aa3abe841314b5591e4be26b9eb'
github-ff96a3cca5ba3c650dc46a275c5917a8.png	"dff84859e032604e8f9d5cd55eddbd9e"
lyft-04074927ccb6506b0b5c01834cb324b7.png	"14ba28e645e9e01098bca9b9fd46625f"
logo-537c330ed59a42305b70bfa628bac079.png	"67be5d3f41e42525232769deffea69d9"
navbar-toggle-b92a3af0ce285c32e25bdbc1761d5d88.png	"ead87c052b468db46a3850b2986ce6bd"
ted-f2a13dea85e10efd65f5f09b6e19f972.png	"5208787be6ba664c7c4663245d53c8c7"
mailchimp-6acdbe9faa9e62fef8bfb914616c04ff.png	"66a7c2c128cd54cce11c079f98a82410"
facebook-49e7745ea31cbda9599eaf1a2d52d2ba.png	"eb8b9767cbd5cad614565819d9174f27"
footer-brand-logo-72660c80a8d08ae06875f5097c5d63f7.png	"cdb0df776363d697df3c28615bd68477"
bentonsans-book-520df8a5f03b6a45cbf79f2c7e40ebc2.woff	"cb4d66cf19b9c2a847a296072bb084b7"
bentonsans-regular-f94699eab9db9172ba064c99fec1aef0.woff	"a3103229fa33543d322525a5669d3b27"
bentonsans-medium-09c1eb88ad32a9ad8aa37b19d83587a9.woff	"682dfc4bcd67cb851fa3dad68f564761"

DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

