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9 Attorneys for Defendant
KONGREGATE INC.

10 **UNITED STATES DISTRICT COURT**

11
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 IN RE: PERSONAL WEB TECHNOLOGIES, LLC,
14 ET AL., PATENT LITIGATION

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

**DEFENDANT KONGREGATE'S
STATEMENT REGARDING
REPRESENTATIVE CUSTOMER CASE**

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1 Through counsel and pursuant to the Court's Case Management Order No. 2 (Dkt. 304) and
2 the Joint Notice Regarding Parties' Proposals for a Representative Customer Case filed by Plaintiffs
3 and Amazon (Dkt. 303), Defendant Kongregate Inc. ("Kongregate") respectfully submits this
4 Statement Regarding Representative Customer Case.

5 During the November 2, 2019 status conference, the Court made it clear that it wished to
6 proceed with a "single" customer case, and that case should involve a customer alleged to infringe
7 the asserted patents in all four categories. (Nov. 2, 2018 Trans., at pp. 5-9, 28-29, identifying Twitch
8 Interactive, Inc. and Centaur Media as the only candidates). The Court soundly reasoned that
9 proceeding with such a case would best promote efficiencies and provide the most comprehensive
10 claim preclusion or collateral estoppel scenario as applied to Plaintiffs' claims against the other
11 customers. Plaintiffs' counsel agreed. (*Id.* at 7).

12 Following the conference, and without notice to Kongregate, Plaintiffs apparently decided
13 that the Kongregate case should also move forward. As Plaintiffs have not contacted Kongregate to
14 discuss the matter, and Plaintiffs do not allege that Kongregate infringes under all four categories,
15 Kongregate is left to speculate about Plaintiffs' motives (Perhaps Plaintiffs wish to proceed with the
16 Kongregate case because Kongregate is one of the few customer defendants not currently
17 represented by Amazon's counsel).

18 Regardless, Kongregate objects to Plaintiffs' new proposal. It makes no sense and runs
19 counter to the Court's rational of proceeding with a single customer case that is comprehensive.
20 Kongregate is not alleged to infringe under all four categories, and many defendants that are alleged
21 to infringe the same categories as Kongregate are represented by Amazon's counsel. Moreover,
22 requiring Kongregate to defend against Plaintiffs' claims while the Amazon case and a fully-
23 encompassing customer case proceeds, would be highly prejudicial to Kongregate, only serve to
24 complicate matters, and waste the Court's and Kongregate's resources. Accordingly, Kongregate
25 respectfully submits that the Court should reject Plaintiffs' most recent proposal.

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DATED: November 9, 2018

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By: /s/ Joshua Anderson
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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Joshua Anderson
David R. Boaz