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TECHNOLOGIES, LLC and
11 LEVEL 3 COMMUNICATIONS, LLC

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

16 IN RE PERSONAL WEB TECHNOLOGIES,
17 LLC, ET., AL., PATENT LITIGATION

CASE NO.: 5:18-md-02834-BLF

**PERSONALWEB TECHNOLOGIES, LLC
& LEVEL 3 COMMUNICATIONS, LLC'S
STATEMENT OF DISAGREEMENT
RE: DESIGNATION OF A
REPRESENTATIVE WEBSITE
OPERATOR CASE**

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1 Not discussed at last week's CMC is that Twitch is a wholly-owned subsidiary of Amazon and
2 is likely fully indemnified by Amazon. Utilizing Centaur (a UK-domiciled company with the
3 transferor court being the Southern District of New York) as an alternative presents challenges of
4 distance and place of trial.

5 Presumably the Court (1) remains interested in whether a loss by Amazon would "bind all
6 the other defendants;" (2) would be interested in a direct answer to the Court's inquiry on that issue;
7 and, (3) remains mindful of Amazon's representation on November 2 that "Amazon is indemnifying
8 all of the customer defendants" (*see generally*, TR of 11/2/18 hearing p. 7). Said representation by
9 counsel differs from Amazon discovery responses served the night before the recent CMC--that
10 Amazon is presently only indemnifying 61 website operators, not all website operators. In
11 discussions this week Amazon refused to clarify or harmonize "all" versus "61".

12 Reasons for a test case or cases include ensuring that all of PersonalWeb's infringement
13 theories are litigated, and also that those website operators not directly participating believe that
14 interests of the widest spectrum of all website operator defendants are represented, and to the extent
15 feasible, their interests fully aligned and advocated (the Court's observation on April 27 about the
16 benefits of even "a fairly middling mediator ..." is on point). A website operator that is not fully
17 indemnified by Amazon for all potential categories of infringement (categories 1, 2 and 4) may find
18 itself in a position where Amazon protects its own interests over that website operator. It bears
19 emphasis that the parties *agree* that the case against Twitch should proceed, regardless. (Dkt 303.)

20 For all these reasons, in addition to Twitch, website operator Kongregate, Inc. (filed originally
21 in the Northern District of California, 5:18-cv-04625-BLF) and alleged to be infringing in categories
22 1, 2 and 4 (not identified in discovery by Amazon as indemnified, along with at least 20 others), should
23 be added as one additional test case. While Kongregate is lacking a category 3 presence, the working
24 assumption remains that minimally Amazon is most incentivized to vigorously defend that category.

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26 Dated: November 9, 2018

STUBBS, ALDERTON & MARKILES, LLP

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28 By: /s/ Michael A. Sherman

Michael A. Sherman