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 AMAZON WEB SERVICES, INC.

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

17 AMAZON.COM, INC., and AMAZON WEB  
 SERVICES, INC.,  
 18 Plaintiffs,

Case No.: 5:18-cv-00767-BLF

18 v.

19 PERSONALWEB TECHNOLOGIES, LLC and  
 LEVEL 3 COMMUNICATIONS, LLC,  
 20 Defendants.

**JOINT STATEMENT RE  
 RESOLUTION OF CUSTOMER  
 CASES PER SUMMARY JUDGMENT  
 ORDER**

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### Amazon's Statement

The question the Court asked the parties to answer is which cases in the MDL are “fully adjudicated” by the summary judgment order (Dkt. 384). The parties agree that eight customer cases are fully adjudicated:

- *PersonalWeb Technologies, LLC et al. v. Patreon, Inc.*, No. 5:18-cv-05599;
- *PersonalWeb Technologies, LLC et al. v. Dictionary.com, LLC*, No. 5:18-cv-05606;
- *PersonalWeb Technologies, LLC et al. v. Vox Media, Inc.*, No. 5:18-cv-05969;
- *PersonalWeb Technologies, LLC et al. v. Vice Media, LLC*, No. 5:18-cv-05970;
- *PersonalWeb Technologies, LLC et al. v. Oath Inc.*, No. 5:18-cv-06044;
- *PersonalWeb Technologies, LLC et al. v. BuzzFeed Inc.*, No. 5:18-cv-06046;
- *PersonalWeb Technologies, LLC et al. v. Popsugar, Inc.*, No. 5:18-cv-06612; and
- *PersonalWeb Technologies, LLC et al. v. Ziff Davis, LLC*, No. 5:18-cv-07119.

PersonalWeb's claims against these customers alleged infringement only by Amazon S3, and it has no evidence that any of these customers ever used CloudFront. The Court's summary judgment order therefore fully and finally adjudicated all claims in these cases, and those Amazon customers are entitled to judgment in their favor.

The parties dispute whether two additional cases are fully adjudicated:

- *PersonalWeb Technologies, LLC et al. v. Fab Commerce & Design, Inc.*, No. 5:18-cv-05378; and
- *PersonalWeb Technologies, LLC et al. v. Zoom Video Communications Inc.*, No. 5:18-cv-05625.

PersonalWeb repeatedly told the Court that these cases, like the eight above, involved “Only S3 Related Activity” and would be “out” of the MDL if the Court granted Amazon's claim preclusion/*Kessler* motion. Like the eight above, these cases are fully adjudicated.

In September, PersonalWeb told this Court that Amazon's declaratory judgment claim regarding claim preclusion and the *Kessler* doctrine would resolve all of its infringement claims in what it called “Bucket 3”—claims related to S3. See Dkt. 121, Transcript of September 20, 2018 Case Management Conference, at 31:16–17 (“The Amazon case would resolve all of the S3, what

1 we call Bucket 3 claims.”); *id.* at 33:8–14 (explaining that while categories 1, 2, and 4 would not  
2 be affected by Amazon’s declaratory judgment claim, “Category 3, if they wait [sic; win] on *Kess-*  
3 *ler*, category 3 is out”); *id.* at 13:16–18 (“The three categories, categories 1, 2, and 4, and the ’544  
4 infringement, are all outside of S3. Category 3 is within S3.”). And in both September and No-  
5 vember, PersonalWeb filed charts stating that its complaints alleged infringement due *only* to S3-  
6 related activity for all ten of the defendants listed above. *See* Ex. Dkt. 295, “Infringement Activity  
7 Categories Alleged in Operative Complaints and Counterclaim as of November 2, 2018,” at column  
8 titled “Only S3 Related Activity Alleged”; Dkt. 96-1, at column titled “Only S3 Related Activity  
9 Alleged.” That is, PersonalWeb told Amazon, the customer defendants, and this Court that it al-  
10 leged infringement by those ten customers based *only* on their use of S3, and that Amazon’s sum-  
11 mary judgment motion would resolve the claims in those cases. PersonalWeb should be held to the  
12 representations it made to this Court subject to Rule 11, in its operative pleadings and in its other  
13 filings and hearing statements characterizing the pleadings. *See Icon-IP PTY Ltd. v. Specialized*  
14 *Bicycle Components, Inc.*, No. 13:cv-03677-JST, 2013 WL 10448869, at \*3 (N.D. Cal. Oct. 22,  
15 2013) (binding plaintiff to prior factual statements regarding accused products); *Am. Title Ins. Co.*  
16 *v. Lacelaw Corp.*, 862 F.2d 224, 226–7 (9th Cir. 1988) (explaining that statements of fact in plead-  
17 ings are binding judicial admissions, and those in other filings “may be considered admissions of  
18 the party in the discretion of the district court”).

19 PersonalWeb now argues, with no evidentiary support and no reasonable basis, that the  
20 category it twice identified to the Court as “only S3 related” is—to the contrary—not *only* S3, but  
21 also includes CloudFront. Yet the “Operative Complaints” today are the same as they were when  
22 PersonalWeb made its prior representations. *See* Dkt. 295. CloudFront is not accused in any of  
23 the complaints; the term appears incidentally in an exhibit in the Fab and Zoom complaints that  
24 PersonalWeb offered to show purported infringement *by* S3. *See, e.g.*, Dkt. No. 5:18-cv-05378,  
25 Dkt. 54 at 11, ¶ 47 (“The example in Exhibit 1 is an asset file *served by* S3 with a content-based  
26 ETag *generated by* S3 for that asset file.” (emphases added).) PersonalWeb’s suggestion that these  
27 complaints “explicitly alleged infringement” by CloudFront (p.11, below) is belied by a review of  
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1 the actual documents.

2 PersonalWeb is 15 months into its litigation campaign against Amazon's customers and still  
3 has not settled on a theory. Whenever it has needed to explain its infringement allegations, Per-  
4 sonalWeb has changed its positions, showing itself willing to say anything to keep Amazon's cus-  
5 tomers in the case. But patent litigation is not a fishing expedition in which the plaintiff can swap  
6 its infringement theory each time it fails to get a bite. *See, e.g., Phigenix, Inc. v. Genentech, Inc.*,  
7 No. 15-cv-01238-BLF, 2018 WL 3845998, at \*7 (N.D. Cal. Aug. 13, 2018) (finding case excep-  
8 tional under § 285 in part because of "litigant's unreasonable manner in shifting theories of in-  
9 fringement"); *Kilopass Tech. Inc. v. Sidense Corp.*, No. 10-cv-02066-SI, 2014 WL 3956793, at  
10 \*13–14 (N.D. Cal. Aug. 12, 2014) (finding case exceptional where plaintiff presented three differ-  
11 ent baseless infringement theories over the course of the case). Fab and Zoom are entitled to and  
12 should receive the same judgment in their favor as the other eight customers.

13 Finally, the summary judgment order disposes of all claims in the following cases that are  
14 part of the MDL in which PersonalWeb has alleged that any claim of the asserted patents is met by  
15 S3 (these cases do include infringement allegations which the summary judgment order did not  
16 fully resolve):

- 17 • *PersonalWeb Technologies, LLC et al. v. Airbnb, Inc.*, No. 5:18-cv-00149;
- 18 • *PersonalWeb Technologies, LLC et al. v. Amicus FTW, Inc.*, No. 5:18-cv-00150;
- 19 • *PersonalWeb Technologies, LLC et al. v. Atlassian, Inc.*, No. 5:18-cv-00154;
- 20 • *PersonalWeb Technologies, LLC et al. v. Cloud 66, Inc.*, No. 5:18-cv-00155;
- 21 • *PersonalWeb Technologies, LLC et al. v. Curebit, Inc.*, No. 5:18-cv-00156;
- 22 • *PersonalWeb Technologies, LLC et al. v. Fandor, Inc.*, No. 5:18-cv-00159;
- 23 • *PersonalWeb Technologies, LLC et al. v. Goldbely, Inc.*, No. 5:18-cv-00160;
- 24 • *PersonalWeb Technologies, LLC et al. v. GoPro, Inc.*, No. 5:18-cv-00161;
- 25 • *PersonalWeb Technologies, LLC et al. v. Heroku, Inc.*, No. 5:18-cv-00162;
- 26 • *PersonalWeb Technologies, LLC et al. v. Quotient Technology, Inc.*, No. 5:18-cv-  
27 00169;
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- 1 • *PersonalWeb Technologies, LLC et al. v. Reddit, Inc.*, No. 5:18-cv-00170;
- 2 • *PersonalWeb Technologies, LLC et al. v. Roblox Corp.*, No. 5:18-cv-00171;
- 3 • *PersonalWeb Technologies, LLC et al. v. Stitchfix, Inc.*, No. 5:18-cv-00173;
- 4 • *PersonalWeb Technologies, LLC et al. v. Teespring, Inc.*, No. 5:18-cv-00175;
- 5 • *PersonalWeb Technologies, LLC et al. v. Tophatter, inc.*, No. 5:18-cv-00176;
- 6 • *PersonalWeb Technologies, LLC et al. v. Venmo, Inc.*, No. 5:18-cv-00177;
- 7 • *PersonalWeb Technologies, LLC et al. v. Webflow, Inc.*, No. 5:18-cv-00178;
- 8 • *PersonalWeb Technologies, LLC et al. v. Square, Inc.*, No. 5:18-cv-00183;
- 9 • *PersonalWeb Technologies, LLC et al. v. Spokeo, Inc.*, No. 5:18-cv-02140;
- 10 • *PersonalWeb Technologies, LLC et al. v. Lesson Nine GMBH*, No. 5:18-cv-03453;
- 11 • *PersonalWeb Technologies, LLC et al. v. Karma Mobility Inc.*, No. 5:18-cv-03459;
- 12 • *PersonalWeb Technologies, LLC et al. v. Match Group, LLC et al.*, No. 5:18-cv-03462;
- 13 • *PersonalWeb Technologies, LLC et al. v. WeddingWire, Inc.*, No. 5:18-cv-03463;
- 14 • *PersonalWeb Technologies, LLC et al. v. BDG Media Inc. et al.*, No. 5:18-cv-03571;
- 15 • *PersonalWeb Technologies, LLC et al. v. Blue Apron, LLC*, No. 5:18-cv-03573;
- 16 • *PersonalWeb Technologies, LLC et al. v. Centaur Media USA, Inc. et al.*, No. 5:18-cv-03577;
- 17 • *PersonalWeb Technologies, LLC et al. v. Food52, Inc.*, No. 5:18-cv-03579;
- 18 • *PersonalWeb Technologies, LLC et al. v. Panjiva, Inc.*, No. 5:18-cv-03580;
- 19 • *PersonalWeb Technologies, LLC et al. v. FanDuel Inc. et al.*, No. 5:18-cv-03582;
- 20 • *PersonalWeb Technologies, LLC et al. v. RocketHub, Inc. et al.*, No. 5:18-cv-03583;
- 21 • *PersonalWeb Technologies, LLC et al. v. Spongecell, Inc.*, No. 5:18-cv-03584;
- 22 • *PersonalWeb Technologies, LLC et al. v. Kickstarter, PBC*, No. 5:18-cv-03997;
- 23 • *PersonalWeb Technologies, LLC et al. v. Cloud Warmer Inc.*, No. 5:18-cv-03998;
- 24 • *PersonalWeb Technologies, LLC et al. v. Strava, Inc.*, No. 5:18-cv-04627;
- 25 • *PersonalWeb Technologies, LLC et al. v. Peek Travel, Inc.*, No. 5:18-cv-04628;
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