MICHAEL A. SHERMAN (SBN 94783)
masherman@stubbsalderton.com
JEFFREY F. GERSH (SBN 87124)
jgersh@stubbsalderton.com
SANDEEP SETH (SBN 195914)
sseth@stubbsalderton.com
WESLEY W. MONROE (SBN 149211)
wmonroe@stubbsalderton.com
STANLEY H. THOMPSON, JR. (SBN 198825)
sthompson@stubbsalderton.com
VIVIANA BOERO HEDRICK (SBN 239359)
vhedrick@stubbsalderton.com
STUBBS, ALDERTON & MARKILES, LLP
15260 Ventura Blvd., 20th Floor
Sherman Oaks, CA 91403
Telephone: (818) 444-4500
Facsimile: (818) 444-4520

Attorneys for PERSONALWEB TECHNOLOGIES, LLC

J. DAVID HADDEN (CSB No. 176148)
dhadden@fenwick.com
SAINA S. SHAMILOV (CSB No. 215636)
sshamilov@fenwick.com
MELANIE L. MAYER (admitted *pro hac vice*)
mmayer@fenwick.com
PHILLIP J. HAACK (CSB No. 262060)
phaack@fenwick.com
RAVI R. RANGANATH (CSB No. 272981)
rranganath@fenwick.com
CHIEH TUNG (CSB No. 318963)
ctung@fenwick.com
FENWICK & WEST LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Telephone: 650.988.8500
Facsimile: 650.938.5200

Attorneys for AMAZON.COM, INC. and AMAZON WEB SERVICES, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE: PERSONALWEB TECHNOLOGIES, LLC ET AL., PATENT LITIGATION	Case No. 5:18-md-02834-BLF
AMAZON.COM, INC., and AMAZON WEB SERVICES, INC., Plaintiffs, v. PERSONALWEB TECHNOLOGIES, LLC and LEVEL 3 COMMUNICATIONS, LLC, Defendants.	Case No.: 5:18-cv-00767-BLF **JOINT STATEMENT RE RESOLUTION OF CUSTOMER CASES PER SUMMARY JUDGMENT ORDER**

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/*Kessle*r 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

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

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

the actual documents.

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

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

- *PersonalWeb Technologies, LLC et al. v. Airbnb, Inc.*, No. 5:18-cv-00149;
- *PersonalWeb Technologies, LLC et al. v. Amicus FTW, Inc.*, No. 5:18-cv-00150;
- *PersonalWeb Technologies, LLC et al. v. Atlassian, Inc.*, No. 5:18-cv-00154;
- *PersonalWeb Technologies, LLC et al. v. Cloud 66, Inc.*, No. 5:18-cv-00155;
- *PersonalWeb Technologies, LLC et al. v. Curebit, Inc.*, No. 5:18-cv-00156;
- *PersonalWeb Technologies, LLC et al. v. Fandor, Inc.*, No. 5:18-cv-00159;
- *PersonalWeb Technologies, LLC et al. v. Goldbely, Inc.*, No. 5:18-cv-00160;
- *PersonalWeb Technologies, LLC et al. v. GoPro, Inc.*, No. 5:18-cv-00161;
- *PersonalWeb Technologies, LLC et al. v. Heroku, Inc.*, No. 5:18-cv-00162;
- *PersonalWeb Technologies, LLC et al. v. Quotient Technology, Inc.*, No. 5:18-cv-00169;

- *PersonalWeb Technologies, LLC et al. v. Reddit, Inc.*, No. 5:18-cv-00170;
- *PersonalWeb Technologies, LLC et al. v. Roblox Corp.*, No. 5:18-cv-00171;
- *PersonalWeb Technologies, LLC et al. v. Stitchfix, Inc.*, No. 5:18-cv-00173;
- *PersonalWeb Technologies, LLC et al. v. Teespring, Inc.*, No. 5:18-cv-00175;
- *PersonalWeb Technologies, LLC et al. v. Tophatter, inc.*, No. 5:18-cv-00176;
- *PersonalWeb Technologies, LLC et al. v. Venmo, Inc.*, No. 5:18-cv-00177;
- *PersonalWeb Technologies, LLC et al. v. Webflow, Inc.*, No. 5:18-cv-00178;
- *PersonalWeb Technologies, LLC et al. v. Square, Inc.*, No. 5:18-cv-00183;
- *PersonalWeb Technologies, LLC et al. v. Spokeo, Inc.*, No. 5:18-cv-02140;
- *PersonalWeb Technologies, LLC et al. v. Lesson Nine GMBH*, No. 5:18-cv-03453;
- *PersonalWeb Technologies, LLC et al. v. Karma Mobility Inc.*, No. 5:18-cv-03459;
- *PersonalWeb Technologies, LLC et al. v. Match Group, LLC et al.*, No. 5:18-cv-03462;
- *PersonalWeb Technologies, LLC et al. v. WeddingWire, Inc.*, No. 5:18-cv-03463;
- *PersonalWeb Technologies, LLC et al. v. BDG Media Inc. et al.*, No. 5:18-cv-03571;
- *PersonalWeb Technologies, LLC et al. v. Blue Apron, LLC*, No. 5:18-cv-03573;
- *PersonalWeb Technologies, LLC et al. v. Centaur Media USA, Inc. et al.*, No. 5:18-cv-03577;
- *PersonalWeb Technologies, LLC et al. v. Food52, Inc.*, No. 5:18-cv-03579;
- *PersonalWeb Technologies, LLC et al. v. Panjiva, Inc.*, No. 5:18-cv-03580;
- *PersonalWeb Technologies, LLC et al. v. FanDuel Inc. et al.*, No. 5:18-cv-03582;
- *PersonalWeb Technologies, LLC et al. v. RocketHub, Inc. et al.*, No. 5:18-cv-03583;
- *PersonalWeb Technologies, LLC et al. v. Spongecell, Inc.*, No. 5:18-cv-03584;
- *PersonalWeb Technologies, LLC et al. v. Kickstarter, PBC*, No. 5:18-cv-03997;
- *PersonalWeb Technologies, LLC et al. v. Cloud Warmer Inc.*, No. 5:18-cv-03998;
- *PersonalWeb Technologies, LLC et al. v. Strava, Inc.*, No. 5:18-cv-04627;
- *PersonalWeb Technologies, LLC et al. v. Peek Travel, Inc.*, No. 5:18-cv-04628;

DOCKET ALARM

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.