

1 MICHAEL A. SHERMAN (SBN 94783)
 masherman@stubbsalderton.com
 2 JEFFREY F. GERSH (SBN 87124)
 jgersh@stubbsalderton.com
 3 SANDEEP SETH (SBN 195914)
 sseth@ stubbsalderton.com
 4 WESLEY W. MONROE (SBN 149211)
 wmonroe@stubbsalderton.com
 5 STANLEY H. THOMPSON, JR. (SBN 198825)
 sthompson@stubbsalderton.com
 6 VIVIANA B. HEDRICK (SBN 239359)
 vhedrick@stubbsalderton.com
 7 STUBBS ALDERTON MARKILES, LLP
 15260 Ventura Boulevard, 20TH Floor
 8 Sherman Oaks, CA 91403
 Telephone: (818) 444-4500
 9 Facsimile: (818) 444-4520

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
 TODD R. GREGORIAN (CSB No. 236096)
 tgregorian@fenwick.com
 RAVI R. RANGANATH (CSB No. 272981)
 rranganath@fenwick.com
 SHANNON E. TURNER (CSB No. 310121)
 sturner@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

10 Attorneys for PERSONALWEB
 TECHNOLOGIES, LLC

Counsel for Defendant
 TWITCH INTERACTIVE, INC.

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 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-SVK

18 PERSONALWEB TECHNOLOGIES, LLC, a
 Texas limited liability company, and
 19 LEVEL 3 COMMUNICATIONS, LLC, a
 Delaware limited liability company

CASE NO.: 5:18-CV-05619-BLF-SVK

20 Plaintiffs,

**JOINT STATEMENT REGARDING
 PERSONALWEB TECHNOLOGIES,
 LLC'S MOTION TO COMPEL
 DEPOSITIONS OF TWITCH'S 30(B)(6)
 WITNESSES**

21 v.

22 TWITCH INTERACTIVE, INC. a Delaware
 corporation,

23 Defendant.

Trial Date: March 16, 2020

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1 **I. PERSONALWEB’S STATEMENT**

2 This case against Twitch is directed to HTTP caching using content-based identifiers.
3 PersonalWeb (“PWeb”) accuses Twitch of using HTTP cache control headers such as max-age value
4 and content-based ETags, in conjunction with other aspects of the HTTP protocol, to carry out the
5 claimed method of controlling distribution of its webpage content to invalidate and revalidate the
6 access rights of browsers. (See, e.g., FAC, Dkt. 13 at ¶¶ 42-52.) PWeb is entitled to information
7 regarding all the benefits to Twitch of using the accused HTTP cache control method to calculate
8 damages. Nevertheless, Twitch has refused to provide data and competent 30(b)(6) witnesses
9 regarding infrastructure cost savings from its use of HTTP caching, data relating to lower web-page
10 load times due to caching, or data relating to revenue increase or user-base increase through HTTP
11 caching as a result of lower load times. This information is relevant to damages. The parties have
12 met and conferred, most recently on August 19, 2019. See deposition notices attached as **Exs. 1-2.**

13 **Twitch’s 30(b)(6) witnesses.** PWeb sent its first 30(b)(6) deposition notice to Twitch on June 14,
14 2019. Twitch designated witnesses for some of the requested deposition topics. Vincent Cellini was
15 designated regarding Topics 2(b)-(c), 3(b)-(c), and 5(a)-(b); James Richard regarding Topics 4(a)-(o),
16 4(q), 6(h), and 6(g); and Kevin Lin regarding Topics 1 (a)-(b), 2(a)-(b), and 6(a). However, the
17 witnesses had large gaps in their knowledge, and were unable to answer many questions even related
18 to their designated topics. Subsequently, on July 29, 2019, PWeb served an additional 30(b)(6) notice.
19 PWeb needs Twitch to provide knowledgeable deponents on the topics Twitch never designated a
20 witness for, or were unable to testify about, and as set forth in July 2019 30(b)(6) depo notice.

21 **Non-designated topics.** Twitch has never designated witnesses on the topics relating to its projected
22 financials at the time of its sale to Amazon, its revenue forecasts, or the people within Twitch with the
23 most knowledge regarding cache control and cache busting.” (Topics 1(c), 5(e), and 7(a)-7(b),
24 respectively.) These topics are relevant to the issues controlling costs/revenue due to cache control.

25 **Inadequately prepared witnesses.** A 30(b)(6) witness must be educated to testify intelligibly
26 regarding its designated topics. See §2103 Persons Subject to Examination—Corporations and Other
27 Organizations, 8A Fed. Prac. & Proc. Civ. § 2103 (3d ed.) Twitch’s witnesses were not.

28 *First*, Mr. Cellini was designated by Twitch regarding financial topics. However, Mr. Cellini

1 did not know how caching and cache control reduces costs and increases revenue or reduces the cost
2 of infrastructure and bandwidth; decreases load time; increases the number of users; and increases
3 advertising and subscriber revenues to Twitch over its competitors. *See e.g.* V. Cellini draft Tr. at 34-
4 38, 89, 91-95, 112-120. Mr. Cellini was also unable to testify regarding the cost of adding
5 infrastructure to meet demand for additional capacity. *See e.g. Id.* at 89, 91-99.

6 Mr. Cellini identified two additional witnesses to fill in the gaps. Michael Comperda - Twitch's
7 head of platforms - who he believes has personal knowledge of the cost of Twitch's infrastructure
8 investments and the cost/benefit analysis behind deciding whether infrastructure investments would
9 be made in response to demand for additional capacity. Twitch has agreed to provide Mr. Comperda
10 for deposition. However, Mr. Cellini also identified Daniel MacIntyre as the person most
11 knowledgeable of the financial analysis relating to the costs and benefits to Twitch of HTTP caching.
12 Twitch has refused to provide Mr. MacIntyre or confirm that Mr. Comperda will be able to answer
13 questions regarding such financial analysis. Thus, Mr. MacIntyre must be produced to testify.

14 *Second*, Mr. Richard, a Twitch software engineer, was designated on Topics 4(a)-(o), 4(q),
15 6(h), and 6(g). While Mr. Richard was able to confirm the technical aspects of Twitch's use of HTTP
16 browser caching and its methods of cache control, he was not able to answer questions regarding how
17 such browser caching reduced infrastructure cost. *See e.g.* Richard Depo Tr. at 48. Moreover, while
18 he was able to verify that Twitch tracks webpage usage and active users, he was unable to provide any
19 information regarding total user numbers or webpage loads for any time period. Furthermore, Mr.
20 Richard was not able to confirm how much the load time was reduced by HTTP caching. *Id.* at 99,
21 84. Though designated on Topic 6(g), Mr. Richard confirmed he made no investigation regarding the
22 benefit to Twitch in [reduced] load time from using the accused cache control. He did not look for
23 documents or talk to anyone regarding load time benefit or the quantification thereof nor reduction in
24 the necessary bandwidth/infrastructure. *Id.* at 154-157.

25 Third, Twitch designated Kevin Lin, Twitch's first COO, regarding business operation topics.
26 Mr. Lin was asked but had no specific knowledge of the benefits of HTTP caching to Twitch. *See* Lin
27 depo at 103, 105-106. Mr. Lin did not know how page load time affected Twitch's viewership or user
28 base. *Id.* at 98-99. He knew that efforts were made to decrease load time but not what those efforts

1 were or how much was spent on them or how caching reduced page load time or reduced infrastructure
2 cost. *Id.* at 98-99, 105-106, 115, 124, 126-127. He knew Twitch tracked the number of active users
3 and the amount of ad revenue for any given time period, and the amount of page load time in that time
4 period and that it could correlate them. He testified that Twitch had such data, yet could not testify
5 regarding specifics, and no such data has been produced to PWeb. *Id.* at 116-119.

6 **The July 30(b)(6) deposition notice.** PWeb anticipates that Twitch will argue that the July 29, 2019
7 30(b)(6) deposition notice was improper. However, the Northern District of California held that a
8 second corporate deposition does not require leave of court, so long as topics do not overlap. *HVAC*
9 *Technology LLC v. Southland Industries*, No. 15-cv-02934-PSG, 2016 U.S. Dist. LEXIS 73585, 2016
10 WL 3030196 (N.D. Cal. Apr. 8, 2016) (so holding). Further, “second” depositions have been allowed
11 where there is new evidence since the first deposition. *Graebner v. James River Corp.*, 130 F.R.D.
12 440, 441 (N.D. Cal. 1989). The July 29 deposition notice concerns testimony about new evidence that
13 Twitch had not yet produced regarding new production requests.

14 **II. TWITCH’S STATEMENT**

15 **Non-designated topics.** Topic 1(c) is unintelligible, but appears to ask about Amazon’s valuation.
16 This topic should therefore be directed to Amazon, not Twitch. To the extent topic 1(c) asks about
17 Twitch’s revenue and profit, it is redundant of topics 3(b-c) and 5(b), for which Twitch already
18 offered a 30(b)(6) witness. Topic 5(e) asks for Twitch’s revenue forecasts. Since the patents-in-suit
19 expired in 2016, Twitch’s projected revenue in the future is irrelevant. In addition, Twitch already
20 provided its revenue for the relevant time period (2012-2016) as well as a 30(b)(6) witness on these
21 topics. Topics 7(a-b) ask for the persons most knowledgeable about cache control/cache busting.
22 Twitch designated Mr. Richard on topics relating to cache busting and cache control (*e.g.*, topics
23 4(m) and (n)) because he is the person most knowledgeable about these topics in the relevant time
24 frame. PWeb also had the opportunity to ask Mr. Richard about others with knowledge on these
25 topics. No additional witness is necessary.

26 **The June 30(b)(6) deposition notice.** Twitch designated its International Controller, Mr. Cellini, to
27 address discrete financial topics (topics 2(b)-(c), 3(b)-(c), and 5(a)-(b)) relating to Twitch’s revenue
28 and pricing. Mr. Cellini was prepared to address each of these topics. PWeb complains that Mr.

1 Cellini could not address “how caching and cache control reduces costs and increases revenue,” but
2 Mr. Cellini was *not* designated for that topic and this topic is *nowhere to be found* in PWeb’s
3 30(b)(6) notice. Moreover, PWeb never even asked Mr. Cellini this question at his deposition. In
4 the cited transcript pages, PWeb only asks technical questions about caching including “approaches
5 that Twitch takes to caching” and “how Twitch caches.” PWeb also complains that Mr. Cellini
6 could not address “the cost of adding infrastructure to meet demand for additional capacity.” To the
7 extent this falls within a designated topic, Mr. Cellini explained that Twitch’s financial statements
8 separately identify the tech service costs, which include infrastructure costs, and also further break
9 down the tech services costs including for bandwidth. *See, e.g.,* Cellini Tr. at 33-35, 83-84.

10 When asked who he would speak to about “the various approaches [Twitch takes] to
11 reducing tech service costs. . . right now,” Mr. Cellini said he would start with Mr. MacIntyre.
12 Cellini Tr. at 43. But since the patents-in-suit expired in 2016, how Twitch reduces costs “*right*
13 *now*,” in 2019, is completely irrelevant. In addition, Mr. MacIntyre only joined Twitch in June 2017
14 and has no knowledge for the relevant time period (2012-2016). To the extent Mr. Comperda has
15 information about costs in 2012-2016, Twitch is already making him available for a deposition.

16 Twitch designated its Senior Software Engineer, Mr. Richard, to address topics regarding
17 Twitch’s use of content-based identifiers (topics 4(a)-(o) and 4(q)) and discrete topics regarding
18 Twitch’s avoidance of infringement (topics 6(h) and 6(g)). PWeb concedes that Mr. Richard
19 adequately addressed the technical aspects of Twitch’s use of HTTP browser caching and methods
20 of cache control, but claims he was not able to answer questions regarding “how [] browser caching
21 reduced infrastructure cost,” “total user numbers or webpage loads for any time period,” and “how
22 much load time was reduced by HTTP caching.” However, Mr. Richard was not designated for
23 these topics because *none of these topics* appear in PWeb’s 30(b)(6) notice.

24 Moreover, PWeb’s assertion that Mr. Richard “made no investigation regarding the benefit to
25 Twitch in [reduced] load time from using the accused cache control” for topic 6(g) is misleading. As
26 an initial matter, topic 6(g) concerns the benefits to Twitch’s *users*—not Twitch—from the use of
27 content-based ETags. Regardless, Mr. Richard testified that he could address the benefit to Twitch
28 from using cache control by drawing on his own historical experience. *See* Richard Tr. at 154:17-

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