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10 **Attorneys for PersonalWeb Technologies, LLC**

11   UNITED STATES DISTRICT COURT

12   NORTHERN DISTRICT OF CALIFORNIA

13   SAN JOSE DIVISION

14 IN RE PERSONAL WEB TECHNOLOGIES, LLC, ET AL., PATENT LITIGATION	**CASE NO.: 5:18-md-02834-BLF**
16 AMAZON.COM, INC. and AMAZON WEB SERVICES, INC.,	**Case No.: 5:18-cv-00767-BLF**
18 Plaintiffs,	**DECLARATION OF MICHAEL A. SHERMAN IN SUPPORT OF PERSONALWEB TECHNOLOGIES, LLC'S NON-OPPOSITION TO DEFENDANTS AMAZON.COM, INC. AND AMAZON WEB SERVICES, INC.'S MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT AND OPPOSITION TO MOTION RE STANDING**
19 v.	
20 PERSONALWEB TECHNOLOGIES, LLC, and LEVEL 3 COMMUNICATIONS, LLC,	
21 Defendants.	
23 PERSONALWEB TECHNOLOGIES, LLC and LEVEL 3 COMMUNICATIONS, LLC,	Date: November 15, 2019 Time: 9:00 a.m. Dept.: Courtroom 3, 5th Floor Judge: Hon. Beth Labson Freeman
24 Counterclaimants,	
25 v.	
26 AMAZON.COM, INC. and AMAZON WEB SERVICES, INC.,	Trial Date: March 16, 2020
27 Counterdefendants.	

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DECLARATION OF MICHAEL A. SHERMAN   CASE NO. 5:18-md-02834-BLF

1   **DECLARATION OF MICHAEL A. SHERMAN**

2   I, Michael A. Sherman, declare as follows:

3   1.   I am a member of the bar of the State of California and am admitted to practice before

4   the United States District Court for the Northern District of California. I am a partner at Stubbs

5   Alderton & Markiles, LLP and am counsel for Plaintiffs PersonalWeb Technologies, LLC

6   ("PersonalWeb"). The facts herein are, unless otherwise stated, based upon personal knowledge,

7   and if called upon to do so, I could, and would testify to their truth under oath. I submit this

8   declaration in support of PersonalWeb's Non-Opposition to Amazon's Motion for Summary

9   Judgment of Non-Infringement and Opposition to Motion Re Standing.

10   2.   Following the issuance of the Court's Order on Claim Construction on August 16,

11 2019, it had become apparent to me and my team that regardless of what "unlicensed" might mean

12 or be construed as, that PersonalWeb's claims against Amazon could only continue to be

13 maintained if "unauthorized or unlicensed" and "authorization" were to be construed along the lines

14 that PersonalWeb had unsuccessfully argued in the District Court. Hence, as I had conveyed to

15 Amazon's counsel, PersonalWeb believed that appellate review (and reversal) would be necessary

16 as a predicate for PersonalWeb to continue its claims of infringement against CloudFront.

17   3.   The facts and conclusions I had arrived at in the above paragraph, coupled with

18 Amazon's insistence that PersonalWeb dismiss its claims against Amazon, resulted in my having

19 written to Mr. Hadden on August 19, 2019 and having told him PersonalWeb "proposes stipulating

20 to judgment of non-infringement on its counterclaims in case no. 5:18-cv-00767-BLF ("Case") as

21 respects all claims for patent infringement asserted against AWS' 'CloudFront' product…while

22 preserving all rights to appeal." Attached hereto as Exhibit 1 is a true and correct copy of my

23 August 19, 2019 letter to Mr. Hadden.

24   4.   For all those above reasons I made the decision to recommend that PersonalWeb's

25 technical expert Mr. de la Iglesia not finalize and submit his technical report demonstrating the

26 CloudFront infringement read, which Mr. de la Iglesia was preparing to submit on August 23, 2019.

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5. Following a call I had with Mr. Hadden early in the week on August 19, I had expected that Amazon would enter a proposed dismissal stipulation. However, in late September 2019, Amazon informed us that it would decline to enter any stipulated dismissal and that it would proceed with filing a summary judgment motion of non-infringement. Having reviewed the Amazon summary judgement motion, in particular the three non-Claim Construction Order arguments advanced, and my team having extensively discussed those issues with Mr. de la Iglesia both prior to and following the serving of the Amazon summary judgment motion, I proffer the unsigned declaration of Mr. de la Iglesia attached as Exhibit 2, which I am informed that Mr. de la Iglesia is prepared to sign if permitted by the Court. The proffered declaration details three points:

    a. How CloudFront uses MD5 ETags that were generated by applying the MD5 hash algorithm to the content and only the content of a webpage file to determine whether or not to send a message that permits browsers to keep using cached version of that webpage file after the original permitted time to use that cached version has expired;

    b. How CloudFront uses MD5 ETags to determine whether a file at a browser is a copy of the current version of a webpage file in making the decision of (a); and

    c. How CloudFront compares an MD5 ETag sent in a conditional GET request from a browser to see if its matches one of plurality of ETags that it has stored in making the determinations of (a) and (b).

6. I am mindful of the Court's case management order establishing August 23, 2019 as the last day to serve a technical expert's report and equally mindful of the fact that for the reasons set forth above no such report was provided as regards to Amazon CloudFront. Accordingly, PersonalWeb will not be submitting a declaration/report of Mr. de la Iglesia with regard to CloudFront unless permitted by the Court—which I believe the Court should permit. Therefore, if the Court is inclined to enter any order that grants Amazon's summary judgment motion based upon any merits and not solely based upon PersonalWeb's stated non-opposition to the relief requested, PersonalWeb requests that the Court permit PersonalWeb to file a signed version of proffered Exhibit 2 pursuant to FRCP 56 (d).

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1   I declare under penalty of perjury under the laws of the United States of America that the foregoing

2 is true and correct.

3   Executed on October 25, 2019 in Sherman Oaks, California.

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                                    By: */s/ Michael A. Sherman*

6   Michael A. Sherman

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