

# EXHIBIT 2

**From:** [Todd Gregorian](#)  
**To:** [Jeffrey Gersh](#)  
**Cc:** [Michael Sherman](#); [David Hadden](#); [Viviana Boero Hedrick](#)  
**Subject:** RE: Conference call  
**Date:** Friday, April 3, 2020 3:18:00 PM  
**Attachments:** [ndca-5-13-cv-01358-95.pdf](#)

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Jeffrey,

Our position is that the motion is frivolous, particularly given Judge Davila's rejection of the same request two days ago. Could you please explain the "ex parte" procedure you intend to use and direct us to the statute or rule that authorizes it? (See Civ. L.R. 7-10.)

Thanks,

**TODD GREGORIAN**

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Admitted to practice in California.

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**From:** Jeffrey Gersh [mailto:[jgersh@stubbsalderton.com](mailto:jgersh@stubbsalderton.com)]  
**Sent:** Friday, April 3, 2020 2:57 PM  
**To:** Todd Gregorian <[TGregorian@fenwick.com](mailto:TGregorian@fenwick.com)>  
**Cc:** Michael Sherman <[masherman@stubbsalderton.com](mailto:masherman@stubbsalderton.com)>; David Hadden <[DHadden@fenwick.com](mailto:DHadden@fenwick.com)>; Viviana Boero Hedrick <[vhedrick@stubbsalderton.com](mailto:vhedrick@stubbsalderton.com)>  
**Subject:** Re: Conference call

**\*\* EXTERNAL EMAIL \*\***

Todd - i just called your office number because that is the only number i have for you re the motion we intend to file to either stay the Motion for Attorneys's Fees or to Deny it without prejudice until such time as the court of appeal rules on the appeals. This is the same thing I tried to address with you the other day and which you responded by email saying you would not agree to this request. I would appreciate hearing from you promptly as we do intend to file this today. Thank you.

JG

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**From:** Todd Gregorian <[TGregorian@fenwick.com](mailto:TGregorian@fenwick.com)>  
**Sent:** Tuesday, March 31, 2020 6:58:33 PM  
**To:** Jeffrey Gersh <[jgersh@stubbsalderton.com](mailto:jgersh@stubbsalderton.com)>  
**Cc:** Michael Sherman <[masherman@stubbsalderton.com](mailto:masherman@stubbsalderton.com)>; David Hadden <[DHadden@fenwick.com](mailto:DHadden@fenwick.com)>  
**Subject:** RE: Conference call

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Jeffrey,

I apologize that I have been unavailable today—I have a summary judgment briefing deadline in another matter that has consumed my attention. But here is Amazon’s position:

The rules provide for attorney fees to be requested and determined shortly after entry of judgment. They do so for good reasons. It is important to get a ruling while the district court has the case fresh in mind and not years later, and the rules seek to have fees appeals resolved contemporaneously with the merits. *See Spitz Technologies Corp. v. Nobel Biocare USA LLC*, No. SACV 17-00660 JVS (JCGx), 2018 WL 6016149 (C.D. Cal. Aug. 13, 2018) (“[J]udicial economy is better served by determining attorneys’ fees promptly while the details of the proceedings are still fresh and when the Federal Circuit has the opportunity to consider any appeal of the calculation at the same time as the appeal on the merits.”); *Masalosalo by Masalosalo v. Stonewall Ins. Co.*, 718 F.2d 955, 957 (9th Cir. 1983) (district courts “retains[] the power to award attorneys’ fees after the notice of appeal from the decision on the merits had been filed . . . [which] will prevent postponement of fee consideration until after the circuit court mandate, when the relevant circumstances will no longer be fresh in the mind of the district judge.”); *see also Ng. v. US Bank, NA*, No. 15-cv-04998-KAW, 2016 WL 6995884 (N.D. Cal. Nov. 30, 2016) (same); Fed. R. Civ. P. 54, advisory committee’s note (1993 amendments) (“Prompt filing affords an opportunity for the court to resolve fee disputes shortly after trial, while the services performed are freshly in mind. It also enables the court in appropriate circumstances to make its ruling on a fee request in time for any appellate review of a dispute over fees to proceed at the same time as review on the merits of the case.”).

We understand circumstances are changing rapidly due to the pandemic. We are open to handling the motion, particularly the hearing, in a way the Court deems appropriate. But a request to defer resolution until after an appeal that was just noticed is finally determined—a delay of 18 months to 2 years or potentially more—is not a request that has anything to do with the COVID-19 pandemic.

The parties agreed on a briefing schedule that we modified once already in light of the COVID-19 situation. PersonalWeb could have raised its request at that time. Instead, it allowed Amazon and Twitch to proceed with filing and get our brief in hand. PersonalWeb’s briefing deadline is also currently weeks away. That said, your point about these being difficult times is well taken. If you face business interruptions or other hardships due to COVID-19, we will certainly work with you on appropriate adjustments to the schedule.

If you would still like a call my schedule is more or less open tomorrow. I hope you and yours remain healthy and safe.

**TODD GREGORIAN**

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Admitted to practice in California.

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**From:** Jeffrey Gersh [<mailto:jgersh@stubbsalderton.com>]  
**Sent:** Tuesday, March 31, 2020 4:11 PM  
**To:** Todd Gregorian <[TGregorian@fenwick.com](mailto:TGregorian@fenwick.com)>  
**Cc:** Michael Sherman <[masherman@stubbsalderton.com](mailto:masherman@stubbsalderton.com)>  
**Subject:** Re: Conference call

**\*\* EXTERNAL EMAIL \*\***

Todd

While Michael and i were hoping to have a call with you today, for some reason you are not responding to my telephone messages or for that matter my email sent earlier today. Needless to say what we want to talk about is time sensitive and will only take a few minutes of your time. To preview our discussion it has to do with the timing of the hearing on the motion for attorney's fees, our response, your reply, and the pending appeals. We believe that it would be prudent to stipulate to continue the hearing on your client's motion for attorney's fees until such time as the appeals have been determined since any decision is likely to impact the court's decision on the motion for attorney's fees. We believe that this practical approach makes imminent sense and promotes efficiency for everyone, especially the court. We would like your cooperation rather than having to seek the court's assistance. Given these terrible times we are all facing the last thing the court needs is to deal with this motion when much more pressing matters are likely pending and have to be dealt with. We request that you let us know today when we can get on a call to meet and confer regarding this situation.

Thank you and i look forward to hearing from you.

JG

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**From:** Jeffrey Gersh  
**Sent:** Tuesday, March 31, 2020 11:04:11 AM  
**To:** Todd Gregorian <[TGregorian@fenwick.com](mailto:TGregorian@fenwick.com)>  
**Cc:** Michael Sherman <[masherman@stubbsalderton.com](mailto:masherman@stubbsalderton.com)>  
**Subject:** RE: Conference call

Todd

Please let me know when we can set up the call today, hopefully before noon. I left you a voice mail also with my cell number which is on my signature block below. Thank you for your attention.

JG

*Jeffrey F. Gersh, Esq.*

Partner

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**From:** Jeffrey Gersh

**Sent:** Monday, March 30, 2020 7:50 PM

**To:** Todd Gregorian <[TGregorian@fenwick.com](mailto:TGregorian@fenwick.com)>

**Subject:** Re: Conference call

Thanks. What's a good time. Discuss the motions. Should be 10 min. Where should I call you?

J. Gersh

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On Mar 30, 2020, at 6:45 PM, Todd Gregorian <[TGregorian@fenwick.com](mailto:TGregorian@fenwick.com)> wrote:

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Not a problem. What's our agenda?

Best,

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