

Exhibit A

Shipley, Michael

From: Shipley, Michael
Sent: Tuesday, December 6, 2022 8:55 AM
To: 'Todd Gregorian'
Cc: Marti Guidoux; Holscher, Mark C.; Gosselin, Kyle Eugene; Bruce D. Poltrock; Michael Fletcher; Craig A. Welin; Christopher Lavin; Amazon_PersonalWeb_Team; Thomas Robins
Subject: RE: [EXTERNAL] RE: In Re: Personal Web Technologies, LLC, et al Patent Litigation [ND California Case Nos. 18-md-02834-BLF; 18-cv-00767-BLF, and 18-cv-05619-BLF]

Sounds good. I'll call you then.

Michael Shipley

KIRKLAND & ELLIS LLP
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T +1 213 680 8222

michael.shipley@kirkland.com

From: Todd Gregorian <TGregorian@fenwick.com>
Sent: Tuesday, December 6, 2022 8:40 AM
To: Shipley, Michael <mshipley@kirkland.com>
Cc: Marti Guidoux <MGuidoux@fenwick.com>; Holscher, Mark C. <mholscher@kirkland.com>; Gosselin, Kyle Eugene <kyle.gosselin@kirkland.com>; Bruce D. Poltrock <bpoltrock@frandzel.com>; Michael Fletcher <mletcher@frandzel.com>; Craig A. Welin <cwelin@frandzel.com>; Christopher Lavin <CLavin@fenwick.com>; Amazon_PersonalWeb_Team <Amazon_PersonalWeb_Team@fenwick.com>; Thomas Robins <trobins@frandzel.com>
Subject: RE: [EXTERNAL] RE: In Re: Personal Web Technologies, LLC, et al Patent Litigation [ND California Case Nos. 18-md-02834-BLF; 18-cv-00767-BLF, and 18-cv-05619-BLF]

This message is from an EXTERNAL SENDER

Be cautious, particularly with links and attachments.

Michael,

I am available at 3:30pm. You can reach me at 650-862-5326.

Thank you,

-t

From: Shipley, Michael <mshipley@kirkland.com>
Sent: Monday, December 5, 2022 8:05 PM
To: Todd Gregorian <TGregorian@fenwick.com>
Cc: Marti Guidoux <MGuidoux@fenwick.com>; Holscher, Mark C. <mholscher@kirkland.com>; Gosselin, Kyle Eugene <kyle.gosselin@kirkland.com>; Bruce D. Poltrock <bpoltrock@frandzel.com>; Michael Fletcher <mletcher@frandzel.com>; Craig A. Welin <cwelin@frandzel.com>; Christopher Lavin <CLavin@fenwick.com>; Amazon_PersonalWeb_Team <Amazon_PersonalWeb_Team@fenwick.com>; Thomas Robins <trobins@frandzel.com>

Subject: RE: [EXTERNAL] RE: In Re: Personal Web Technologies, LLC, et al Patent Litigation [ND California Case Nos. 18-md-02834-BLF; 18-cv-00767-BLF, and 18-cv-05619-BLF]

**** EXTERNAL EMAIL ****

Todd-

If the Court is burdened by a motion, it will be because Amazon is refusing to extend basic scheduling courtesies to a third party witness with a bona fide scheduling conflict that wasn't his fault. These are, frankly, courtesies that I can't recall having ever denied to a witness in my entire career. And the refusal is especially troubling, given that you still haven't identified any prejudice to you or Amazon based on a short continuance or Zoom appearance.

We're perfectly willing to try to resolve the underlying dispute. I'm around for a call 9-11:30 tomorrow, and then after 3:30. That said, a fundamental problem seems to be that you are working from a completely false factual and legal premise--that a subpoena to ECA or Claria compels them to search any accounts over which their direct or indirect members (who have not been subpoenaed) may have access, such as Mr. Markiles's Stubbs Alderton email account. ECA and Claria have no right to, as you say, "conduct those searches." I suspect you know that. If I subpoenaed your firm, I assume you would not concede that every partner in the firm needs to search for discoverable evidence in the accounts of every business in which they have an ownership interest and access to an email account? (If you disagree, feel free to cc your managing partner and general counsel...) Because that's essentially what you are arguing here. It doesn't make any sense. Whatever dispute Amazon has with Stubbs Alderton is with Stubbs Alderton, not my clients.

Regardless, the conditionality of your demand is particularly inappropriate. Amazon shouldn't hold Mr. Markiles's vacation--planned and paid for long before he had any indication of this schedule--hostage as leverage in its discovery dispute with Stubbs Alderton. Mr. Markiles has a fight scheduled to depart on the morning of the 11th. The scheduling issue needs to be resolved well before then. So unless you agree to move the hearing or permit a Zoom appearance, we are going to file a motion tomorrow and inform the court that you wouldn't stipulate per LR 7-11(a). There's no reason this schedule issue can't or shouldn't get resolved without court intervention. Beyond that, I am open and available to discuss appropriate means to resolve the underlying discovery dispute.

Thanks,

Mike

Michael Shipley

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michael.shipley@kirkland.com

From: Todd Gregorian <TGregorian@fenwick.com>

Sent: Monday, December 5, 2022 6:14 PM

To: Shipley, Michael <mshipley@kirkland.com>

Cc: Marti Guidoux <MGuidoux@fenwick.com>; Holscher, Mark C. <mholscher@kirkland.com>; Gosselin, Kyle Eugene <kyle.gosselin@kirkland.com>; Bruce D. Poltrock <bpoltrock@frandzel.com>; Michael Fletcher <mfletcher@frandzel.com>; Craig A. Welin <cwelin@frandzel.com>; Christopher Lavin <CLavin@fenwick.com>;

Amazon_PersonalWeb_Team <Amazon_PersonalWeb_Team@fenwick.com>; Thomas Robins <trobins@frandzel.com>

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Michael,

I would suggest that before you burden the Court with a motion, we conduct the conference that I suggested to attempt to resolve the issues. As I mention below, Stubbs has disclosed that it did not search Mr Markiles's emails for responsive ECA or Claria communications, and therefore ECA and Claria need to conduct those searches. This should be a very simple issue to resolve unless Mr. Markiles is committed to willful noncompliance with the Court's order.

Thanks,
-t

On Dec 5, 2022, at 5:51 PM, Shipley, Michael <mshipley@kirkland.com> wrote:

** EXTERNAL EMAIL **

Todd-

Your refusal to afford basic professional courtesies is unfortunate. You notably haven't identified any prejudice to yourself or your client that would be entailed by a brief delay in the hearing or were Mr. Markiles to appear by Zoom. If there's something about the week of the 19th that's an issue, we also would also be willing to find a suitable date in early January.

Regarding your complaints below, just in case it hasn't been clear, Kirkland doesn't represent Stubbs Alderton or PersonalWeb. Indeed, the counsel dealing with their issues aren't even copied on this email. Neither my clients nor I have any control over how they conduct discovery. Mr. Markiles is an inactive partner in Stubbs Alderton, a sinecure unaccompanied by meaningful authority over this discovery. Even were it a fair practice to use scheduling to extract concessions--and it is not--putting the screws to Mr. Markiles over his vacation isn't going to pressure Stubbs Alderton to do whatever it is you want them to do.

So I'd respectfully ask you to reconsider your position below. Again, we're completely open to accommodating whatever concerns with the schedule you might have. Otherwise, we will be filing an administrative motion to reschedule the hearing tomorrow.

Thanks,

Mike

Michael Shipley

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michael.shiple@kirkland.com<<mailto:michael.shiple@kirkland.com>>

From: Todd Gregorian <TGregorian@fenwick.com>

Sent: Monday, December 5, 2022 10:57 AM

To: Shipley, Michael <mshiple@kirkland.com>

Cc: Marti Guidoux <MGuidoux@fenwick.com>; Holscher, Mark C. <mholscher@kirkland.com>; Gosselin, Kyle Eugene <kyle.gosselin@kirkland.com>; Bruce D. Poltrock <bpoltrock@frandzel.com>; Michael Fletcher <mfletcher@frandzel.com>; Craig A. Welin <cwelin@frandzel.com>; Christopher Lavin <CLavin@fenwick.com>; Amazon_PersonalWeb_Team <Amazon_PersonalWeb_Team@fenwick.com>; Thomas Robins <trobins@frandzel.com>

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Michael, Amazon remains troubled that ECA and Claria apparently still intend to argue mootness even with knowledge that Mr. Markiles's partners at Stubbs Alderton did not search for documents responsive to the subpoena requests, and in fact Michael,

Amazon remains troubled that ECA and Claria apparently still intend to argue mootness even with knowledge that Mr. Markiles's partners at Stubbs Alderton did not search for documents responsive to the subpoena requests, and in fact have conducted a deficient and bad faith search, for example by only turning over documents that literally name PersonalWeb in them, and by refusing production of documents after July 2021.

Amazon is not willing to move the hearing date into the holidays which would make scheduling impossible given the pre-paid plans of others. The unfortunate timing here is the result of Stubbs Alderton's game-playing. Amazon has sought information from PersonalWeb about the Stubbs collection for nearly a month, and Stubbs' refusal to provide for weeks it caused PersonalWeb itself to consent to the Court ordering personal appearances. It was not until November 29 that Stubbs first provided even partial information about its collection, which shows that Stubbs is attempting to game its collection so as to avoid producing key categories of documents. As a result, neither PersonalWeb nor ECA or Claria is in compliance with the Court's orders.

Nor will Amazon agree that Mr. Markiles should be excused from making a personal appearance. It was clear at the last discovery conference that the Court desired a personal appearance if the parties could not resolve the production issues informally, and Amazon agrees that such an appearance is necessary for the Court to impress upon Mr. Markiles and his partners at Stubbs Alderton the seriousness of their discovery misconduct.

What I can offer is to work with you in good faith to resolve the issues and get a stipulation and order entered this week committing ECA and Claria to full and prompt compliance, including a search of the omitted Markiles email accounts and provision of an update privilege log identifying any withheld documents. Such an agreement could obviate the need for ECA and Claria's participation in the hearing.

Please let me know if you would like to discuss.

Best,
-t

From: Thomas Robins <trobins@frandzel.com<<mailto:trobins@frandzel.com>>>

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