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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

PRELIMINARY JOINT CASE MANAGEMENT STATEMENT

Pursuant to Federal Rule of Civil Procedure 26(f), Civil Local Rules 16-9 and 16-10, Patent Local Rule 2-1, the Standing Order for All Judges of the Northern District of California, this Court's Standing Order Re Civil Cases, and the Court's Preliminary Case Management Order of June 18, 2018 (Dkt.19)[1], PersonalWeb and Level 3 Communications ("Patent Plaintiffs," "Declaratory Judgment Counterclaimants," or "PersonalWeb"), Amazon.com, Inc. and Amazon Web Services Inc. (collectively, "Amazon" or "Declaratory Judgment Plaintiffs"), and the defendants in the actions filed by PersonalWeb represented by the undersigned counsel (collectively, "Website Operator Defendants" or "website defendants") hereby respectfully submit this Joint Case Management Statement.

A. JURISDICTION AND SERVICE

Subject matter jurisdiction of Patent Plaintiffs' claims, Declaratory Judgment Plaintiffs' claims, and Declaratory Judgment Counterclaimants' claims are based on 35 U.S.C. § 1 *et seq.,* 28 U.S.C. §§ 1331 and 1338(a), and 28 U.S.C. §§ 2201 and 2202. No issues as to personal jurisdiction over any of the parties or venue have been raised to date.

1. Patent Plaintiffs' Statement

PersonalWeb has been diligently effectuating service of all website operators sued to date.

PersonalWeb has attempted and is continuing to attempt service on the following website operator defendants, who remain to be served:

Amicus FTW, Inc.: Defendant's California agent for service of process cannot be located—now attempting to serve Delaware agent for service of process with new summons;

Fandor, Inc.: Named party needs to be amended prior to service due to affiliate transactions, which was not permissible given the stay;

MyFitnessPal, Inc.: Named party needs to be amended prior to service due to affiliate transactions, which was not permissible given the stay;

Venmo, Inc.: Named party needs to be amended prior to service due to affiliate transactions, which was not permissible given the stay; and

[1] Unless otherwise specified, docket citations are to the master docket of MDL Case No. 5:18-md-02834-BLF.

Lesson Nine GMBH: Hague Convention service pending.

Service of My Wedding Match Ltd. and Yotpo Ltd. via the Hague Convention was commenced in Canada on April 24, 2018 and in Israel on May 2, 2018, respectively, and is currently pending. PersonalWeb sought waiver of service of Yotpo Ltd., in light of the fact that their counsel is Fenwick & West, who represents Amazon and a multitude of Website Operator Defendants in this MDL proceeding, but such waiver was refused. Rockethub, Inc., and ELEQT Group Ltd., though both served, have not appeared in the action.

PersonalWeb filed complaints against another 19 defendants on September 13 and 14, 2018.

2. Amazon and Website Defendants' Statement

At least 14 customer parties sued by PersonalWeb have not yet appeared. No waiver or proof of service has been filed for the following parties, and these cases should be dismissed for failure to prosecute: (a) Amicus FTW, Inc.; Fandor, Inc.; MyFitnessPal, Inc.; Venmo, Inc.; and Lesson Nine GMBH; (b) LIVECHAT Software SA; and Vend Ltd.; and (c) Yotpo, Inc.; and MWM My Wedding Match Ltd. PersonalWeb admits that the parties in groups (a) and (c) have not yet been served, and states that it will dismiss the cases against the parties in group (b).

B. FACTS

1. Procedural Background

As of today, this multidistrict litigation includes 67 actions. PersonalWeb filed 66 of them, asserting infringement of several U.S. patents by the Website Operator Defendants. Amazon filed the remaining one, a declaratory judgment action seeking declarations that PersonalWeb is barred from asserting its claims and the patents are not infringed.

In January 2018, PersonalWeb filed 55 patent infringement actions in six judicial districts.

On February 5, 2018, Amazon filed a declaratory judgment action against PersonalWeb ("the DJ Action")[2] seeking a declaration that PersonalWeb's infringement claims against Amazon and the website defendants were barred by claim preclusion and the *Kessler* doctrine based on aa prior case brought by PersonalWeb against Amazon, Case No. 6:11-cv-00658-LED (E.D. Tex.) ("the Texas Action"), or alternatively, that Amazon and the website defendants did not infringe any

[2] 5:18-cv-00767-BLF, N.D. Cal.

claim of the patents-in-suit. PersonalWeb originally filed a motion to dismiss, which it withdrew and counterclaimed in the declaratory judgment action. *Id.*, Dkt. 62 at 12-13. Amazon answered, asserting a defense of invalidity.

On February 22, 2018, PersonalWeb appealed to the Federal Circuit a decision of the PTAB in *inter partes* review IPR2013-00596 involving one of the patents-in-suit, U.S. Patent 7,802,310 (the '310 patent). *See Personal Web Technologies, LLC v. Apple, Inc.* (CAFC-18-1599). The '310 Appeal is referenced because it is factored into the streamlining proposal made by PersonalWeb herein.

On February 23, 2018, Amazon moved to enjoin PersonalWeb's claims against the website defendants while the DJ action is being resolved. *See* DJ Action, Dkt. 20. Between March 23, 2018 and May 9, 2018, 35 website operators moved to stay the actions against them until the resolution of the DJ action. *See, e.g.*, 5:18-cv-00154-BLF, Dkt. 27.

On February 27, 2018, PersonalWeb filed a motion before the Judicial Panel on Multidistrict Litigation ("JPML") to coordinate or consolidate its infringement actions with this multidistrict proceeding. *In re PersonalWeb Technologies et al.,* MDL No. 2834, Dkt. 1.

On April 13, 2018, PersonalWeb moved to dismiss the DJ action. *See* DJ Action, Dkt. 43. On May 11, 2018, PersonalWeb withdrew its motion to dismiss and on May 25, 2018 filed its counterclaims against Amazon. *See* DJ Action, Dkt. 59, 62.

On June 6, 2018, the JPML granted PersonalWeb's motion and transferred all of PersonalWeb's then-pending infringement actions to this Court. *Id.*, Dkt. 134. In its June 18, 2018 Order, this Court ordered that "all tag-along actions are automatically made part of the centralized proceedings upon filing in, removal to or transfer to this Court; rulings on common issues are deemed tag-along actions without the need for separate motions and orders." Dkt. 19, p. 4. The Court also ruled that the June 18 Order would apply to "related cases later filed in, removed to, or transferred to this Court." *Id.*

In July and August 2018, PersonalWeb filed 18 "tag-along" patent infringement actions across five judicial districts. PersonalWeb filed a Notice of Potential Tag-along Actions with the JPML, identifying the 13 actions that originated outside the Northern District of California. *In re*

PersonalWeb Technologies et al., MDL No. 2834, Dkt. 139. PersonalWeb also filed a Notice of Related Cases before this Court for the remaining five actions it filed in this district. Dkt. 38. On August 15, 2018, the JPML conditionally transferred the 13 actions to this Court. *Id.;* Dkt. 140. On August 23, 2018, the JPML's order was finalized. As of this filing, all of those actions have been transferred. And on August 22, 2018, in response to PersonalWeb's Notice of Related Cases, this Court consolidated the remaining five actions under this multidistrict litigation. Dkt. 42.

2. PATENT PLAINTIFFS' STATEMENT

On September 12 and 13, 2018 PersonalWeb filed additional 19 "tag-along" actions. PersonalWeb anticipates filing a final tranche of approximately 40 additional "tag-along" actions by November 1, 2018.

a. Background Facts.

PersonalWeb and Level 3 Communications allege that they jointly own patents that cover certain methods and systems using content-based identifiers for instructing how website data should be cached at various points in the world wide web, including to reduce or eliminate a browser's use of stale website content. Content based identifiers are unique identifiers generated by hash algorithms, which are functions applied to data of arbitrary size that map the data to an alphanumeric value of fixed size, whereby when the data is changed, so is the resulting alphanumeric value.

In broad overview, the accused activity that PersonalWeb complains of is a specific form of "cache busting" which may be described as follows:

Website operators have a need to control the distribution of their webpage(s) content to help ensure that browsers only use the latest authorized content. This content includes a given webpage's base file and the asset files that are also necessary to render the webpage.[3]

On one hand, the website operators want to be able to allow the browser to use previously

[3] The webpage base file is a file, typically an HTML file, that provides the browser with the instructions to render the framework of the webpage. The asset files are files comprising of additional content necessary to render the webpage, such as pictures, text, audio or video and that are referenced in the webpage page files so that the browser may obtain them when rendering the webpage.

cached content when that content has not changed since the time it was cached, *i.e.*, it is still the latest authorized content. On the other hand, the website operators want to be able to instruct the browsers to obtain newly authorized content when the cached content is no longer the latest authorized content. In order to meet both needs in an optimal way, some of the defendant website operators have used content-based identifiers as ETags for their webpage base files.[4] Others have used content base identifiers as ETags for their asset files. Some have used both. Some of the website operator defendants that use content-based identifiers as ETags for their asset files used S3 to generate the ETags and serve the asset files with the ETags, whereas others do not use S3. Some generated ETags for and served some of their assets using S3 whereas others generated ETags for and served other assets outside of S3. These ETags are used in conjunction with various aspects of the HTTP protocol to instruct the browser whether the cached version of a webpage is or is not still the latest authorized content and, if not, which files it must acquire in order to have all the latest authorized content for that webpage.

Some of these defendants have also used, in conjunction with content-based identifier ETags for their webpage base files, content-based part values ("fingerprints") for webpage asset files that are inserted into the filenames for those asset files. These filenames (and hence fingerprints) are in turn made part of the webpage base files so that a webpage base files ETag value will change when an asset file's fingerprint changes due to a change in its underlying content.

To summarize, there are four categories of website operator activity involved in the infringement of at least one PersonalWeb patent-in-suit. Specifically, these categories are:

1) generating and serving webpage base files and content-based ETags outside of S3;
2) generating and serving webpage asset files and content-based ETags outside of S3;
3) serving webpage asset files from S3 and generating ETags using S3;
4) generating content-based fingerprints for asset files and inserting them into the asset file's filename outside of S3.

Patent Plaintiffs allege that website operators that engage in these four activity categories

[4] A ETag is a parameter used within the HTTP protocol to effectuate certain request and response behavior between browsers and responding servers under specific conditions.

1 also infringe the '310, '442 and '420 patents. Patent Plaintiffs allege that website operators that
2 engage in a combination of activity categories 1 and 4 (webpage base file ETags plus fingerprints
3 inserted into the assets' filenames) also infringe the '544 patent.

4 A chart showing the respective activity categories engaged in by each defendant is attached
5 as Appendix A. Of the 81 website operator defendants, PersonalWeb alleges 64 to have engaged
6 in category 1 activity, 15 engaged in category 2 activity, 59 engaged in category 3 activity, 63
7 engaged in category 4 activity and 59 to have engaged in the combination of category 1 and
8 category 4 activity. Only 1 of the 62 website operator defendants sued between January and August
9 2018, and only 7 of the 19 website operator defendants sued on September 12 and 13, 2018 engaged
10 only in category 3 (S3) activity in the relevant period.[5]

11 **b. Proposal for streamlining proceedings.**

12 During the meet and confer process preceding the upcoming CMC, counsel for participating
13 parties discussed methods of streamlining disposition of the cases that comprise this MDL. One
14 item discussed is that Amazon asserts that the website operator cases present the "same cause of
15 action" previously brought in the Texas action and that claim preclusion (and the *Kessler* Doctrine)
16 thereby prevent prosecution of the website operator cases. Dispositive of this issue is whether the
17 transactional facts in this action are "essentially the same" as the ones in the Texas action,
18 *SimpleAir, Inc. v. Google LLC*, 884 F.3d 1160, 1167 (Fed. Cir. 2018), including whether the two
19 claims addressed the use of the "same [S3] technology in the same way." *SpeedTrack, Inc. v.*
20 *Office Depot, Inc.*, No. C 07-3602 PJH, 2014 U.S. Dist. LEXIS 62674, at *21 (N.D. Cal. May 6,
21 2014), *aff'd sub nom,* 791 F.3d 1317, 1325 (Fed. Cir. 2015).

22 Patent Plaintiffs' position is that the transactional facts are different, there was no prior final
23 adjudication on the merits, the website operators who host their asset files on Amazon S3 are not
24 *merely* "customers" for purposes of application of the *Kessler* doctrine, the website operators are
25 not parties/in privy with Amazon for purposes of claim preclusion, and the patents and claims are
26 different—all of these reasons precluding application of claim preclusion principles and/or the
27
28 [5] The chart and the activity categorization set forth herein is based upon PersonalWeb's best understanding based upon the publicly available facts available to it.

1 *Kessler* doctrine.

2 While a resolution of the claim preclusion/*Kessler* issue is not dispositive of the website
3 operator cases (other than potentially in 10 cases), a ruling in Amazon's favor would narrow the
4 infringement *issues* for substantive resolution in the website operator cases in which the website
5 operators host their asset files with S3.

6 Another item discussed was the '310 Apple IPR Appeal, which Patent Plaintiffs believe
7 will inform and may have bearing on claim construction, infringement and validity issues
8 notwithstanding that different claims are asserted here in the '310 patent (and the other asserted
9 patents.) Briefing has been completed in that appeal, and Patent Plaintiffs' best sense is that oral
10 argument may be scheduled for later in 2018/early 2019, with a decision following in due course.

11 In light of this background, Patent Plaintiffs recommend the following streamlining
12 protocol: While the '310 Apple IPR Appeal remains pending, first addressing the Claim Preclusion
13 and *Kessler* Issues raised by Amazon by proceeding with the Amazon case with the limited
14 discovery and a briefing schedule set forth *infra*. Fact discovery will be initially limited to claim
15 preclusion/*Kessler* issues. These issues include the prior accused use of S3 (*i.e.*, multi-part upload
16 set forth in the Texas Action infringement report and final infringement contentions) and the
17 website operator's interactions/transactions with S3 in the website operator cases, for at least a
18 representative sample of each website operator activity category, and the reasons for the dismissal
19 of the prior Amazon action, including the prior damages report.

20 To promote efficiency, all website owners who wish to participate in the Claim
21 Preclusion/*Kessler* issues agree to actually participate (or waive their right to participate), and agree
22 to be bound by the Court's ruling. Moreover, PersonalWeb strongly believes that a single claim
23 construction should be engaged in for the four asserted patents with all parties who wish to
24 participate agreeing to actually participate (or waive their right to participate), and agree to be
25 bound by the Court's claim construction.

26 Therefore, PersonalWeb proposes that claim construction take place after a ruling on Claim
27 Preclusion and *Kessler* (and a decision on the '310 Apple IPR Appeal). To be clear PersonalWeb
28 believes all remaining issues should be addressed after the Claim Preclusion/*Kessler*, after a

subsequent CMC to select lead cases and set timelines for patent cases for the exchange of infringement and invalidity contentions, claim construction briefing and proceedings, infringement and invalidity reports, damages reports, and dispositive motion briefing.

c. Response to Amazon and Website Operators Statement.

Civil Local Rule 11-4(a) requires every undersigned attorney to comply with the standards of professional conduct required of members of the State Bar of California and to comply with the Local Rules of this Court, including by maintaining due respect and practicing with honesty, care and decorum in discharging their obligation to the Court. Amazon and the Website Operator Defendants should be required do so as well rather than continuing to make numerous *ad hominem* attacks as well as numerous incorrect and misleading statements.

(1) *Improper Ad Hominem Attacks*

Amazon and the Website Operator Defendants engage in numerous indecorous *ad hominem* attacks projecting onto PersonalWeb various nefarious motives. Such *ad hominem* attacks are unnecessary, incorrect, improper and violate the rules of this Court. These are the not first of such attacks, and Amazon the Website Operator Defendants should now stop making them.

(2) *Improper Statements Made With Insufficient Honesty & Care*

Amazon and the Website Operator Defendants continue to assert facts they know to be incorrect in an effort to conflate the website owner cases--most of which have little to do with S3 and some which have nothing to with S3--with the S3 declaratory judgement action which only addresses one of the four categories of infringement.

Both Amazon and the Website Operator Defendants have known from the start what PersonalWeb has only recently learned -- that their webpage base files and the ETags of such files are always created and served *outside* of S3,

Specifically, as Amazon's counsel acknowledged to this Court on April 27, 2018:

> "…when a customer goes to the website, makes a request, typically the website will generate some dynamic content, the actual HTML that it sends to a specific customer. It sends it back, and that HTML has a bunch of embedded requests for these, the images and all of that."

CV-18-00767-BLF, April 27, 2018 Oral Argument, Transcript at 38:7-12.

Nonetheless, the Defendants continue to argue based upon the old and incorrect notion, that S3 was involved in the ETag generation and service of webpage base files - a notion that PersonalWeb has corrected in the later filed cases and in the proposed amendments. **In their Appendix C hereto and their chart in section B(3)(1), *infra*, Defendants highlight and still use the old and incorrect allegations in making their arguments and comparisons, in particular utilizing the old allegations they know to be incorrect (*i.e.*, they know that the webpage base files and their ETags are neither generated in S3 nor served by S3)**. Defendants' approach does not meet their obligation to the Court or their responsibilities under the local rules.

Quotations attributable to PersonalWeb's counsel made to the JPML are equally flawed. For example, Amazon's states that PersonalWeb's counsel admitted to the JPML that a resolution of the DJ action "will resolve PersonalWeb's affirmative suits." To the contrary, PersonalWeb's counsel stated: "If you are a user of infringing methods and devices and don't use Amazon's S3, it doesn't resolve it at all," and that "a substantial amount" of the cases against the website operator defendants would remain if only the DJ action went forward. MDL No. 2834, May 31, 2018 Oral Argument, Tr. 7:6-8 and 8:15-18.

Nor does their statement that PersonalWeb has "agreed…its cases against the website defendants should be stayed while the DJ action proceeds." PersonalWeb has not made any such agreement, as reflected in its statement of how this case should proceed. For one, such an approach would mean that PersonalWeb thinks it would be good to exclude the Website Operator Defendants from participating (or even having the opportunity to participate) in the claim construction proceedings now, thereby necessitating a second round of claim construction proceedings later for all non-S3 based infringement scenarios. PersonalWeb does not so believe, and for that reason has not and would not agree that Amazon's DJ Action take priority simply because one of the four infringement scenarios involves S3. If what Amazon said was true, that would also mean that PersonalWeb likewise thinks it would be good to exclude the Website Operator Defendants from the resolution of Claim Preclusion/*Kessler* issues now, resulting in the Website Operator Defendants not being bound to the extent they use S3 in some of the infringement scenarios. This

is not PersonalWeb's position. PersonalWeb believes in seriatim proceedings on this issue would be inefficient and that the Website Operator Defendants must be bound to such rulings and must at least be given the opportunity to participate in such proceedings if they so choose.

d. Response to Amazon and Website Operators Proposal.

Amazon is an interloper here with regard to much of PersonalWeb's causes of action against the Website Operator Defendants. Indeed, in only 10 cases (including just filed cases) would a ruling in Amazon's favor on Claim Preclusion/Kessler entirely eliminate the case. The Website Operator Defendants who uses a webpage base file ETag always generate and serve those ETags outside of S3. The Website Operator Defendants who use content-based fingerprints in their asset file filenames always generate and serve those fingerprints (in webpage base files) outside of S3. And, given the relative ease with which content-based ETags may be generated, several Defendants who use asset file ETags, but do not host their asset files on S3, choose to simply generate those asset file ETags themselves. Because it is important for the Court to fully understand the four categories of activity that are addressed in Appendix A in deciding how to proceed, PersonalWeb would like to reserve **15-20 minutes** at the hearing for a brief technology tutorial that builds upon the one given by Amazon at the last hearing. This tutorial will help to illuminate the differences between the four categories in Appendix A. PersonalWeb will provide its slides not later than close of business the day prior to the hearing.

The Website Operator Defendants and Amazon object to PersonalWeb's proposal as "unworkable" for three reasons, each of which are easily dismissed. First, they assert that PersonalWeb "proposes that the Court resolve these claims without PersonalWeb serving any infringement contentions." *Id.* at 6. PersonalWeb's proposal does include serving exemplary infringement contentions for each of the four activity categories prior to the briefing so that there can be a clear decision by the Court as to whether PersonalWeb's cause/s of action against the website owner is/are the same as the cause of action against Amazon dismissed in the Texas action.

Second, the website operators and Amazon object that "by requiring that this premature determination be final and binding on all parties, it introduces the possibility that PersonalWeb will characterize its complaints in one way to secure a ruling of no preclusion, and then introduce the

precluded infringement theories later." Leaving aside the fact that PersonalWeb would not benefit from introducing "precluded infringement theories later" the issue is moot because PersonalWeb proposes to file its Amended Complaints and Counterclaims that already state the basis of its causes of action against the website operators, and because PersonalWeb proposes to provide exemplary infringement contentions for each infringement activity category.

Lastly, the Defendants assert that "Federal Circuit law…directs the Court to proceed with the DJ action first in circumstances such as these." PersonalWeb disagrees with the fundamental predicate advanced here that the issues raised in its causes of actions against the Website Operator Defendants are identical to or even substantially overlap with the declaratory judgment action for the reasons previously discussed.

3. AMAZON AND WEBSITE DEFENDANTS' STATEMENT

PersonalWeb started its litigation campaign against Amazon's customers in January of this year. *See, e.g.*, *PersonalWeb Techs. v. Airbnb, Inc.*, No. 5:18-cv-00149-BLF (filed Jan. 8, 2018). It filed 56 actions against Amazon's customers then. It subsequently filed 18 additional actions in August. It filed 5 more cases yesterday and an additional 14 cases today.[6] And PersonalWeb is promising to file 40 more actions after the Conference. The Federal Circuit mandates a procedure for managing these types of vexatious litigation campaigns: the customer cases must be stayed pending a final resolution of the declaratory judgment action filed by the technology provider, here Amazon. *In re Google Inc.*, 588 F. App'x 988, 992 (Fed. Cir. 2014); *In re Nintendo of Am., Inc.*, 756 F.3d 1363, 1366 (Fed. Cir. 2014); *Katz v. Lear Siegler, Inc.*, 909 F.2d 1459, 1464 (Fed. Cir. 1990). Accordingly, the Court should (1) grant Amazon's pending motion for preliminary injunction; and (2) stay all of the cases against the website defendants while Amazon's DJ Action proceeds. How the DJ Action itself is managed and what schedule the parties follow in that action is a separate question. The DJ Action should follow the schedule imposed by the Local Rules of this district. Amazon does not oppose filing an early motion on its claim preclusion and *Kessler* claims, but PersonalWeb's specific proposal on how to brief and resolve that motion is

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[6] Many of the defendants that PersonalWeb sued in August and none of the defendants it sued recently had an opportunity to participate in the discussions relating to this CMC Statement.

unreasonable and unworkable for several reasons outlined below.

1. The DJ Action must proceed first and all other cases must be stayed until the final resolution of the DJ Action.

Since it started its litigation campaign, at every point when confronted with a request to explain the basis of its infringement allegations, PersonalWeb has changed its story. First, it admitted that it sued Amazon's customers because they use Amazon's S3. Then, when confronted with Amazon's preliminary injunction motion, it changed its position and claimed that it is accusing the use of Ruby on Rails. When this Court expressed skepticism toward that explanation[7], PersonalWeb devised its new "four categories" theory, despite having previously told the Court and the JPML that all of its cases involve the same theory of infringement. But none of this changes the fact that Amazon's DJ Action will resolve, or at a minimum, *substantially* reduce the issues in the cases against the website defendants and that action should proceed first as the Federal Circuit directs.

PersonalWeb's original suits allege that the website defendants infringe PersonalWeb's patents because they use Amazon's S3. *See, e.g., PersonalWeb Techs. LLC v. Airbnb, Inc.*, 5:18-cv-00149-BLF (N.D. Cal. Jan. 8, 2018), Dkt. 1 ¶¶ 22–23, 56, 64, 66. In its answer to Amazon's DJ Action, PersonalWeb confirmed that its infringement allegations against the website defendants are based on "their use or incorporation of certain aspects of S3." DJ Action, Dkt. 62, Answer at ¶¶ 16, 50, 58, 66, 74, 82. That its cases are customer suits accusing the use of Amazon's S3 system is now an established fact in this litigation which PersonalWeb may no longer deny. And in its counterclaims against Amazon, PersonalWeb accuses the same Amazon S3 technology of infringement of every asserted patent. *Id.*, Counterclaims at ¶¶ 44–78. Accordingly, a resolution of the DJ Action will resolve PersonalWeb's affirmative customer suits.

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[7] *See* April 27, 2018 Hearing Transcript at 10:10-11 ("And I am not satisfied that you have adequately alleged the role that Ruby on Rails plays, or that you even can…."); 11:6–8 ("But you barely mention Ruby on Rails. You don't map it on to the claimed elements at all. It's not even clear that it maps on to all of the claims that you've asserted."). And the Court also recognized that, to the extent it could allege such a theory, the Amazon DJ Action would address it. *See id.*, at 10:17–19 ("It appears what Amazon is asking for in declaratory relief is a finding that neither S3 or the tool kit to customers that shows how to use Ruby on Rails infringes."); 19:3–6 ("I actually think that your declaratory relief action can resolve the entire case because you also allege or seek declaratory relief on the tool kit.").

PersonalWeb admitted as much: when it sought centralization of its cases, it told the JPML that "[a]ll these actions allege infringement of the same claims in the same five patents, against essentially the *same accused systems and methods*." Case No. MDL 2834, Dkt. 1-1 at 1–2 (emphasis added). PersonalWeb also told the JPML that all of its cases involved Amazon technology: "Each defendant is alleged to have contracted with the *same third party* [Amazon] to serve its content on its behalf using the *same S3 host system* so that it may control its content distribution in an infringement of the Patents-in-Suit." *Id.* at 7 (emphasis added). In its counterclaims against Amazon, PersonalWeb alleged that "this Court may find in lawsuits against the website defendants that despite infringement of the patents-in-suit, such website defendants are not the ones directly infringing, *but rather Amazon is.*" DJ Action, Dkt. 62 at 13:6–8 (emphasis added). Now, however, PersonalWeb argues above that "most of [its cases] have little to do with S3 and some [] have nothing to [*sic*] with S3."

PersonalWeb contends that it purportedly learned new information that prompted it to recast its complaints. But PersonalWeb previously stated that it spent a year "carefully studying [its] technology and the open source [alleged] infringement" before filing its first wave of complaints in January of this year. *See* "FanDuel Latest to Face Cloud Computing Suit," Law360, Jan. 12, 2018, *available at* https://www.law360.com/articles/1001505. PersonalWeb told the Court that its complaints were drafted by "very, very experienced patent counsel" and "went far, far, far beyond the *Twombly* [and] *Iqbal* requirements." April 27, 2018 Hearing Transcript at 21:3-6. Its infringement theories are based on features of the HTTP protocol, as it states above, which is a publicly available industry standard. And if it did learn something new at the last hearing before the Court, as PersonalWeb suggests above (even though the passage it quotes simply describes standard website operations), it filed its counterclaims against Amazon after that and alleged infringement of the patents by Amazon's S3, suggesting that whatever information it learned did not change the nature of its claims.

PersonalWeb's attempt to recast its complaints to avoid the outcome mandated by the Federal Circuit—that the DJ Action must proceed first—fails. First, in its answer, PersonalWeb unequivocally admitted, for *every* patent it asserted against the website defendants, including the

'544 patent, that "PersonalWeb has alleged that such parties' infringement of the patents-in-suit include their use or incorporation of certain aspects of S3." DJ Action, Dkt. 62, Answer at ¶¶ 50, 58, 66, 74, 82. Whether use or incorporation of S3 infringes any of the asserted patents will be determined in the DJ Action.

Second, even in its proposed amended complaints, PersonalWeb accuses all the website defendants of infringing the same overlapping set of claims, and has accused Amazon of infringing all, but one, of the very same claims.[8]

Asserted Claims	Party Accused of Infringement
US 6,928,442: claims 10, 11	All website defendants and Amazon
US 8,099,420: claims 25, 26, 27, 29, 30, 32, 34-36 and 166	All website defendants and Amazon
US 7,945,544: claims 46, 48, 52, 55	54 of the website defendants and Amazon
US 7,802,310: claim 20	50 of the website defendants and Amazon
US 7,802,310: claim 69	54 of the website defendants

The only claim PersonalWeb did not affirmatively assert against Amazon, claim 69 of the '310 patent, will still be at issue in the DJ Action. PersonalWeb explicitly denied that Amazon's technology does not infringe claim 69 of the '310 patent, either directly or indirectly. DJ Action, Dkt. 62, Answer at ¶¶ 67-69 (denying ¶¶ 67–69 of Dkt. 36). Its infringement allegations for claim 20 of the '310 patent, asserted against Amazon, and claim 69 are nearly identical, so any resolution of claim 20 claims will be applicable and relevant to a resolution of claim 69 claims. And, in any event, a complete overlap of issues is not required under the Federal Circuit precedent. *See In re Google*, 588 F. App'x at 990–991 (ordering stay where there would be "substantial similarity involving the infringement and invalidity issues in all the suits," and the declaratory judgment action would "moot[] or at least advanc[e] the 'major premises' being litigated in the [customer]

[8] PersonalWeb asserts the same patent claims from the '442, '420, and '544 patents in the August 2018 complaints (which it has not indicated it intends to amend) as it asserts in its counterclaims against Amazon. For the 310 patent, PersonalWeb asserts claim 20 against some of those website defendants and both claim 20 and claim 69 against others, just as it does in the proposed amended complaints.

1 actions").

2 Third, in its counterclaims, PersonalWeb alleged that Amazon infringes, directly and/or
3 indirectly, the patents it asserted against the website defendants because Amazon's technology
4 purportedly performs the very acts PersonalWeb identifies in its four newly-created categories:

PersonalWeb's "four categories"	PersonalWeb's exemplary allegations against Amazon
"(1) generating and serving webpage base files and content-based ETags"	Paragraph 30: "On information and belief, an object's value comprised a sequence of bits and, upon upload, *an object's associated ETag value was generated by the S3* web host server by applying a hash function to the sequence of bits; wherein any two objects comprising identical sequences of bits had identical associated ETag values. Thus, on information and belief, when an object's content was changed and uploaded *to the S3 web host server, a new associated ETag value was generated on the web server customers' behalf.* Upon information and belief, *this ETag was used by Amazon and its web server customers* in authorizing or disallowing the respective service or use of the object's content by intermediate cache servers and endpoint caches such as browser caches." (emphases added) Paragraph 77: "On information and belief, Amazon's S3 web host servers included databases containing ETag values associated with the various URIs for asset and manifest/index files necessary to render web host customers' webpages; moreover, Amazon's system has used a system of conditional GET requests with If-None-Match headers and HTTP 304 and HTTP 200 messages containing the ETags, as described more particularly *supra*, to ensure that downstream caches only access authorized file content to either serve that file content further downstream or to use it to render the web server customers' webpages. On information and belief, in particular, as more fully described *supra*, the system compared the ETag received in a given conditional GET request with the ETags contained in the database to selectively determine whether the requesting computer could access the file content it already had or must access newly received authorized content."
"(2) generating and serving webpage asset files and content-based ETags"	Paragraph 26: "On information and belief, *S3 web host servers and their associated method of providing webpage content used conditional GET requests with If-None-Match headers and associated ETag* values for various index and/or

	asset files required to render various webpages of the web server customers. In this manner, and as controlled by their web server customers, S3 web host servers and their associated method forced both intermediate cache servers and endpoint caches to check whether they were still authorized to access the previously cached webpage files of the web server customers, or whether they were required to access newly authorized content in rendering the web server customers' webpages." (emphasis added) Paragraph 49: "On information and belief, as set forth above, S3 web host servers have, and Amazon has caused the intermediate cache servers between an endpoint cache and one of the S3 web host servers to, in response to receiving a conditional GET request with an If-None-Match header, determine whether it has a file present that matches the URI in the conditional GET and to compare the ETag in the conditional GET to the ETag for that URI and determine whether a copy of the content having that ETag is present."
"(3) serving webpage asset files from S3 and generating ETags using S3"	Paragraph 26: "On information and belief, *S3 web host servers and their associated method of providing webpage content used conditional GET requests with If-None-Match headers and associated ETag* values for various index and/or *asset files required to render various webpages of the web server customers*. In this manner, and as controlled by their web server customers, S3 web host servers and their associated method forced both intermediate cache servers and endpoint caches to check whether they were still authorized to access the previously cached webpage files of the web server customers, or whether they were required to access newly authorized content in rendering the web server customers' webpages." (emphasis added)
"(4) generating content-based fingerprints for asset files and inserting them into the asset file's filename"	Paragraph 28: "On information and belief, *the fingerprint of individual asset files that were part of the webpage's content were included in the filenames of the individual asset files*. On information and belief, the modified filenames were then used as part of the Uniform Resource Identifier ("URI") used to access the individual asset files over the Internet. On information and belief, when an asset file's content was changed, a new fingerprint was generated and included in the filename, its URI thus being changed accordingly. On information and belief, the asset file fingerprint was generated with a message digest hash function and used to indicate content changes. Furthermore,

	asset file URIs (with such fingerprints) were included in index files, which were recompiled when any URI changed due to a fingerprint change. Thus, a content change in an asset file for a given webpage would result in a change to its fingerprint, its URI, and consequently a content change to the index file for that webpage." (emphasis added) Paragraph 63: "On information and belief, for some of Amazon's web server customers ("URI fingerprint customers"), each of the URI fingerprint customers' webpages comprises one or more asset files and has an associated index file. The index file contained URIs having fingerprints of a plurality of asset files comprising that webpage. On information and belief, once the index and asset files are compiled and complete and the files have been uploaded to the S3 host system by the URI fingerprint customers, the index file's associated ETag value is generated by applying a hash algorithm to the index file's contents, wherein any two index files comprising the identical content will have identical associated ETag values. On information and belief, whenever a new index file is uploaded to an S3 server or the index file's content changes, Amazon determines and associates an ETag for the index file at the time of upload." Paragraph 43: "On information and belief, in this manner, Amazon used (1) ETag values and (2) fingerprints in URIs generated by their web server customers that used Ruby on Rails: to control the behavior of downstream intermediate cache servers and endpoint caches to make sure that they only accessed and used the web server customers' latest authorized webpage content to serve or to render the web server customers' webpages."

Accordingly, whether the acts in the "four categories" map to the asserted patents will be determined in the DJ Action.

Fourth, according to PersonalWeb during the parties' conferences in preparation of this statement, PersonalWeb's proposed amendments, which merely remove the express references to Amazon, S3, and Ruby on Rails, are intended only to "genericize" the allegations in order to cover any *potential* technology that might infringe, along with Amazon's technology. Further, setting aside its admissions in response to the DJ Action complaint, PersonalWeb admitted that the

infringement theories in the majority of its actions concern Amazon's S3. Indeed, in the table it submits with this statement (Appendix A), PersonalWeb claims that it alleges infringement based in whole or in part on the use of S3 in more than 70% of its cases. These cases will be simplified or mooted altogether by Amazon's DJ Action, and as described below, the remaining ones will be as well.

Fifth, the vast majority of sued website defendants are Amazon's customers and use S3 to operate their websites; accordingly how Amazon's S3 maps to the asserted claims, which will be decided in the DJ Action, is directly relevant to any reading of those claims against the websites of the website defendants.

Sixth, as PersonalWeb explains in its statement above, its infringement theory—in any of the four categories—is based on the website defendants' use of "ETags," which are "parameter[s] used within the HTTP protocol" and "ETags [] used in conjunction with various aspects of the HTTP protocol" regardless of whether ETags were generated "using S3" or "outside of S3." *See, supra,* Sec. B.2.a & n.4. The HTTP protocol is used by any and all websites on the web, including those that use S3. Accordingly, "ETags [] used in conjunction with various aspects of the HTTP protocol" will be at issue in the DJ Action and whether they map to any claims of the asserted patents will be determined there. *See also, e.g., PersonalWeb Techs., LLC v. Curious.com, Inc.*, 5:18-cv-05198-BLF, Dkt. 1 ¶¶ 29–49, 52–56, 60–68, 70–77, 81–86 (alleging infringement based on both "ETag values" and "asset files referenced by URIs with fingerprints based on the asset files' content", in new "S3" theory); *PersonalWeb Techs., LLC v. Treehouse Island, Inc.*, 5:18-cv-05205-BLF, Dkt. 1 ¶¶ 29–47, 50–54, 58-61, 65–72, 76–81 (same, in "non-S3" theory).

So, even if there were defendants against whom PersonalWeb asserts no infringement claim involving S3, its purported alternative claims will be addressed by the DJ Action, substantially narrowing any remaining disputes, if not resolving them all. Indeed, this Court has already explained that there need not be complete overlap of the infringement claims for the Court to enjoin or stay PersonalWeb's suits against the website defendants. April 27, 2018 Hearing Transcript at 10:20–22 ("And it doesn't have to be complete overlap, it doesn't have to completely resolve the case for me to enjoin or stay based on the customer exceptions."). And there is no reason to allow

1 scores of cases to proceed into discovery when a single declaratory judgment action will resolve
2 them all. The Federal Circuit mandates that in situations such as these, the declaratory judgment
3 action must proceed first. *See* DJ Action, Dkt. 15 at 5–11 (and authorities cited therein).

4 PersonalWeb's proposed amended counterclaims against Amazon do not affect the analysis.
5 PersonalWeb has proposed to drop its infringement allegations against Amazon with respect to the
6 '544 patent. This has no impact on the scope of the DJ Action. Amazon asserts a claim for
7 declaratory judgment of non-infringement of the '544 patent by either Amazon or its customers,
8 which PersonalWeb denied in its answer to the DJ Action. DJ Action, Dkt. 36 (Amended
9 Complaint) ¶¶ 74–79; Dkt. 62 (Answer) ¶¶ 74–79. Dismissing the counterclaim would not deprive
10 the Court of jurisdiction over Amazon's declaratory judgment claim; only a covenant not to sue
11 Amazon and its customers for any past or future infringement would do so. *See Revolution*
12 *Eyewear, Inc. v. Aspex Eyewear, Inc.*, 556 F.3d 1294, 1297–98 (Fed. Cir. 2009). Finally, Amazon
13 has already answered the counterclaims; PersonalWeb cannot dismiss voluntarily. *See* Fed. R. Civ.
14 P. 41(c). And even if the '544 patent was no longer at issue in the DJ Action, the Federal Circuit
15 still requires that the DJ Action must proceed first given the still substantial overlap between that
16 action and PersonalWeb's customer suits. *See In re Google*, 588 F. App'x at 990–91 (granting
17 mandamus relief ordering stay of customer suits in light of the "significant overlap" in patentee's
18 infringement allegations).

19 This Court previously asked for the parties' views on whether a lead customer case should
20 proceed with Amazon's DJ Action. This suggestion came while PersonalWeb was contesting
21 jurisdiction and before PersonalWeb filed its counterclaims against Amazon. The counterclaims
22 expressly accuse Amazon's technology and, as shown in the table in Appendix C, are nearly
23 identical to the infringement allegations PersonalWeb made in its suits. There is no need for any
24 representative customer cases to proceed.

25
26 **2. The DJ Action should proceed according to the Local Rules of the district and PersonalWeb's proposal to the contrary ignores the Federal Circuit mandate and is in all events inefficient.**

27
28 Following Federal Circuit precedent, the DJ Action should proceed first following the Local

Rules of the district and the standing orders of this Court. Amazon's proposed schedule for the DJ Action is attached hereto as Appendix D. As shown in the proposed schedule, Amazon does not oppose filing a dispositive motion on its claim preclusion and *Kessler* claims early in the case, and has included in its proposed schedule a date for filing the motion.[9] But PersonalWeb's proposal, including its mechanism for briefing and resolving that motion, is unreasonable and inefficient.

First, PersonalWeb's proposal ignores Federal Circuit law that *directs* the Court to proceed with the DJ Action first and stay the cases against the website defendants until the final resolution of the DJ Action. As explained above, the DJ Action will resolve the other cases, or at a minimum substantially narrow *all* of them. None of the other cases should proceed before the DJ Action is finally resolved. PersonalWeb's proposal should be rejected for this reason alone.

Second, there is no justification for bifurcating the DJ Action as PersonalWeb proposes. The Federal Circuit appeal from the PTAB's decision of unpatentability of certain claims of the '310 patent is not a reason to do so. The appeal concerns only one of the four asserted patents and does not involve the claims at issue in the DJ Action or PersonalWeb affirmative cases. *See Finjan, Inc. v. Blue Coat Sys., Inc.*, No. 15-cv-03295-BLF, 2016 WL 7732542, at *4 (N.D. Cal. July 25, 2016) (denying stay pending IPR, noting that "[t]he fact that seven of the ten asserted patents are not subject to IPRs or *ex parte* reexaminations weighs heavily against a stay"). PersonalWeb's original suits have been pending since January of this year and it has been filing scores of additional suits since then against Amazon's customers. Amazon has the right to defend its technology and to protect its customers, and to obtain a just and speedy resolution of the dispute in its entirety.

Third, a resolution of Amazon's motion on the claim preclusion and *Kessler* claims does not require discovery, and certainly not the vast amount of discovery that PersonalWeb claims it may need *after* Amazon files its motion. If PersonalWeb believes it will need discovery after reviewing Amazon's motion, the way to proceed is *not* to guess today about what that discovery might be (and thus be over-inclusive) but to file a properly-tailored Rule 56 affidavit after reading

[9] As shown in the case schedule proposed by Amazon and the website defendants (Appendix C), this motion addressing the *Kessler* doctrine and claim preclusion would be separate from the parties' motion for summary judgment pursuant to the Court's Standing Order Regarding Civil Cases and the Local Rules of this district.

1 the motion.

2 For Amazon's part, all of these issues may be resolved on the pleadings alone. *See ViaTech*
3 *Techs., Inc. v. Microsoft Corp.*, Civil Action No. 17-570-RGA, 2018 WL 4126522, at *4 (D. Del.
4 Aug. 29, 2018) ("Thus, it is apparent from the face of the Amended Complaint in this case that
5 claim preclusion bars the assertion of the '567 Patent against Windows in this case."); *Adaptix, Inc.*
6 *v. Amazon.com, Inc.*, Nos. 5:14-cv-01379-PSG et al., 2015 WL 4999944, at *4–5, *12 (N.D. Cal.
7 Aug. 21, 2015) (granting Rule 12(b)(6) and Rule 12(c) motions based on claim preclusion and the
8 *Kessler* doctrine). All that matters is what PersonalWeb alleges now and what it alleged before. It
9 has admitted that it alleges now infringement by Amazon's S3. DJ Action, Dkt. 62, Answer at
10 ¶¶ 46 (admitting that it alleged that "parties' infringement of the patents-in-suit includes their use
11 of Amazon's S3"), 50, 58, 66, 74, 82. And it has admitted also that it alleged in the previous action
12 infringement of the same patents by the same Amazon S3 technology. *Id.* ¶ 16 ("PersonalWeb
13 admits that it alleged the patents involved in the Texas [case] were infringed by Amazon and that
14 it accused a certain product and/or feature within the S3 service called 'multi-part upload.'").
15 Accordingly, it is undisputed that the infringement allegations in the prior Texas case and the
16 present actions concern the same product and the same patents. It is entirely unnecessary and
17 irrelevant for PersonalWeb to have "all prior Texas case documents" or any discovery from
18 unidentified "website operators."

19 In any event, according to Amazon's proposal, once the DJ Action proceeds first,
20 PersonalWeb is free to seek whatever discovery it believes it needs and prioritize its discovery
21 requests as it sees fit, and it does not need to wait to do so until after Amazon files any motion on
22 any of its claims. And doing it this way will eliminate duplicative discovery that will result if the
23 Court adopts PersonalWeb's proposal under which the parties are first to engage in Rule 30(b)(6)
24 depositions and discovery of S3 and website operation, among other things, but solely limited to
25 the claim preclusion and *Kessler* issues and then, after the Court resolves the early motion, engage
26 again in the same type of discovery, from many of the same witnesses, only this time related to the
27 other claims in the DJ Action. This is inefficient and unnecessarily disruptive to the parties and the
28 witnesses.

Finally, PersonalWeb's proposal does not provide any concrete path for resolution of its disputes. It attempts instead to defer those disputes by arguing that at some later time the Court should hold another "subsequent CMC to select lead cases and set timelines for patent cases for the exchange of infringement and invalidity contentions, claim construction briefing and proceedings, infringement and invalidity reports, damages reports, and dispositive motion briefing." PersonalWeb decided to sue over 100 companies, disrupt their businesses, impact relationships with their technology provider, and yet it appears to have no concrete plan on how to proceed. And more importantly, it now asks the Court to require—in contravention of Federal Circuit law—customer defendants to participate in litigating the issues of claim preclusion and the *Kessler* doctrine and participating in claim construction proceedings in parallel with Amazon's DJ Action, or risk waiving those arguments. PersonalWeb also seeks to hold the Court's resolution of these same issues against yet-to-be-named defendants (of which PersonalWeb admits there are at least 40, but that could include any number of the thousands of S3 customers), who under PersonalWeb's proposal would have no opportunity to participate in these proceedings. Depriving these customer defendants the right to participate in the resolution of the critical issues of claim preclusion and claim construction "runs up against the 'deep-rooted historic tradition that everyone should have his own day in court.'" *Taylor v. Sturgell*, 553 U.S. 880, 892-93 (2008) (quoting *Richards v. Jefferson Cnty.*, 517 U.S. 793, 798 (1996)).

The Federal Circuit has mandated a procedure for handling litigation campaigns such as the one initiated by PersonalWeb: the DJ Action proceeds to its final resolution while the other cases remain stayed. That mandate is so well-settled that the Federal Circuit has twice ordered the extraordinary writ of mandamus to enforce it. *In re Google*, 588 F. App'x 988 (Fed. Cir. 2014); *In re Nintendo of Am., Inc.*, 756 F.3d 1363 (Fed. Cir. 2014). The mandate should be followed here.

C. LEGAL ISSUES

The principal disputed legal issues are:

PERSONALWEB

1. Whether Website Operator Defendants infringe one or more of the asserted patents under 35 U.S.C. § 271;

2. Whether Declaratory Judgement Plaintiffs infringe one or more of the asserted patents under 35 U.S.C. § 271;
3. Whether one or more of the asserted patents are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112 or for failure to comply with any other requirement for patentability;
4. What effect claim preclusion or the *Kessler* Doctrine has on the website operator cases:
   i. Whether the claims in the website operator cases are the same claims as brought in the Texas Action:
   ii. Whether the transactional facts in the website operator cases are "essentially the same" as the ones in the Texas action. *SimpleAir, Inc. v. Google LLC*, 884 F.3d 1160, 1167 (Fed. Cir. 2018);
   iii. Whether the Texas Action addressed the use of the "same [S3] technology in the same way" as addressed in the website operator cases. *SpeedTrack, Inc. v. Office Depot, Inc.*, 2014 U.S. Dist. LEXIS 62674, at *21 (N.D. Cal. May 6, 2014);
   iv. Whether the claims asserted in the Texas Action have the same scope as the claims asserted in the website operator cases;
5. What effect claim preclusion or the *Kessler* Doctrine has on the counterclaims.
   i. Whether the counterclaims are the same claims as brought in the Texas Action;
   ii. Whether the transactional facts in the counterclaims are "essentially the same" as the ones in the Texas action. *SimpleAir, Inc. v. Google LLC*, 884 F.3d 1160, 1167 (Fed. Cir. 2018);
   iii. Whether the Texas Action and counterclaims address the use of the "same [S3] technology in the same way." *SpeedTrack, Inc. v. Office Depot, Inc.*, 2014 U.S. Dist. LEXIS 62674, at *21 (N.D. Cal. May 6, 2014);
   iv. Whether the claims asserted in the Texas Action have the same scope as the counterclaims asserted in the website operator cases.

AMAZON AND WEBSITE OPERATOR DEFENDANTS

1. Whether PersonalWeb's patent infringement actions against the website defendants should be enjoined.

2. If not enjoined, whether all of PersonalWeb's patent infringement actions against the website defendants should be stayed pending the resolution of Amazon's declaratory judgment action.

3. The proper construction of any disputed claim term.

4. Whether the *Kessler* doctrine or claim preclusion bar PersonalWeb's patent infringement claims against Amazon and/or the website defendants.

5. Whether Amazon's technology (including its S3 service), or the technology used by website defendants (including in conjunction with Amazon's technology), infringes any claim of the patents-in-suit under 35 U.S.C. § 271.

6. Whether one or more claims of the asserted patents are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112 or for failure to comply with any other requirement for patentability.

7. Whether PersonalWeb is entitled to, and the extent of any appropriate relief under, 35 U.S.C. § 285.

8. Whether PersonalWeb is entitled to, and the extent of, any other costs and expenses.

9. Whether Amazon (or the website defendants) are entitled to, and the extent of, any other costs, fees, and expenses.

D. MOTIONS

1. PERSONALWEB'S STATEMENT

To the extent that that they are not already, PersonalWeb believes Amazon's Preliminary Injunction Motion and the various Website Operators' Motions to Stay will be mooted by the Court's Order following the Preliminary Case Management Conference.

No other immediate motions are anticipated at this time. Patent Plaintiff proposes the parties obtain a substantive ruling regarding whether and to what extent claim preclusion and the *Kessler* doctrine apply to the current website actions and to Patent Plaintiffs counterclaims against Amazon.

2. AMAZON AND WEBSITE DEFENDANTS' STATEMENT

1 **a. Pending Motions**

2 On February 20, 2018, Amazon filed a motion to enjoin PersonalWeb from litigating its
3 patent infringement suits against the website defendants while Amazon's DJ Action is being
4 resolved. That motion is currently pending. At the April 27, 2018 hearing, this Court stated that it
5 was "inclined to grant the preliminary injunction" if it denied PersonalWeb's motion to dismiss.
6 DJ Action, Dkt. 51 at 18:23-19:1. PersonalWeb has since withdrawn its motion to dismiss.

7 The following website defendants filed motions to stay in their respective cases before this
8 Court, which are currently pending: Airbnb, Inc.; Atlassian, Inc.; Cloud 66, Inc.; Curebit, Inc.;
9 Doximity, Inc.; Goldbely, Inc.; GoPro, Inc.; Heroku, Inc.; Leap Motion, Inc.; Melian Labs, Inc.;
10 Merkle, Inc.; Quotient Technologies Inc.; Reddit, Inc.; Roblox Corporation; Spokeo, Inc.; Stitchfix,
11 Inc.; Teespring, Inc.; Tophatter, Inc.; Webflow, Inc.; and Vend Inc.

12 The following customer defendants filed motions to stay in their respective cases in other
13 judicial districts, before the cases were consolidated by the JPML: Capterra, Inc.; Karma Mobility
14 Inc.; LiveChat, Inc.; Match Group, Inc.; WeddingWire, Inc.; BDG Media, Inc.; Bitly, Inc.; Blue
15 Apron, LLC; Fab Commerce & Design, Inc.; Food52, Inc.; Panjiva, Inc.; Group Nine Media, Inc.;
16 Thrillist Media Group, Inc.; FanDuel Inc.; FanDuel Ltd.; Spongecell, Inc.; and Atlas Obscura, Inc.

17 Neither Amazon's pending injunction motion nor the pending motions to stay will be
18 rendered moot by any procedure the Court adopts at the Case Management Conference. The
19 motions are fully briefed and should be decided; and any order on the injunction motion may be
20 immediately appealed to the Federal Circuit.

21 **b. Anticipated motions**

22 The remaining website defendants have not yet filed motions to stay in view of this Court's
23 June 18, 2018 order (Dkt. 19), which states that "[e]xcept for motions for emergency relief, no
24 motion shall be filed until and in accordance with the case schedule." However, the majority of
25 these remaining website defendants (including Square, Inc., Fiverr International Ltd.; Match
26 Group, LLC; Centaur Media USA, Inc.; E-consultancy.com Limited; Cloud Warmer Inc.;
27 Kongregate, Inc.; Shopify Inc.; Shopify (USA) Inc.; Strava, Inc.; Peek Travel, Inc.; Braze, Inc.;
28 Cars.com, LLC; Curious.com, Inc.; Mavenlink, Inc.; NRT LLC; NRT New York LLC; tastytrade,

Inc.; Valassis Communications, Inc.; WeWork Companies, Inc.; and Dollar Shave Club, Inc.) intend to file motions to stay if necessary and believe that a stay of their cases is appropriate for the same reasons as set forth in the motion papers that have already been filed.

Amazon and the website defendants anticipate filing a dispositive motion requesting that PersonalWeb's patent infringement claims be dismissed as barred by claim preclusion and/or the *Kessler* doctrine and other dispositive motions, as necessary. Amazon also plans to seek an exceptional case determination and its reasonable attorneys' fees (both incurred on behalf of itself and in indemnifying the website defendants).

E. AMENDMENT OF PLEADINGS

1. PATENT PLAINTIFFS' STATEMENT

On August 28, 2018, Patent Plaintiffs provided copies of their proposed First/Second Amended Complaints in 43 website operator cases to the website operator's respective counsel, seeking their stipulation to their filing. These First/Second Amended Complaints conform the Original Complaints filed in July/August 2018 which, *inter alia*, clarify that the website operator always generated webpage base files and their ETag values outside of S3, regardless of whether or not that website operator chose to host any asset files on S3. On September 8, 2018, Patent Plaintiffs also provided a copy of their proposed First Amended Counterclaim against Amazon which similarly conforms the allegations in the Original Counterclaim (Amazon DJ, Dkt. 62) to the July/August filed complaints. PersonalWeb has respectively requested the website operators and Amazon stipulate to the filing of the Amended Complaints and the Amended Counterclaim but those requests have thus far been unanswered.

Patent Plaintiffs propose filing all of their First/Second Amended Complaints against the website operators and its First Amended Counterclaim against Amazon within 5 days of the CMC. Except as set forth herein, the stays in the website operator cases should remain in effect.

2. AMAZON AND THE WEBSITE DEFENDANTS' STATEMENT

The Court should not lift the stay currently in place to permit PersonalWeb to amend its complaints against certain website defendants for the same reasons it entered the stay in the first place and directed PersonalWeb not to file any amended complaints. *See* April 27, 2018 Hearing

Transcript at 27:3-8. As described above, none of the proposed amendments changes the result that the Federal Circuit mandates to take place here. The DJ Action should proceed, and PersonalWeb may seek to amend its pleadings in that action. Once that action is resolved, and if its cases against the website defendants need to proceed—and likely they won't—it can seek any additional amendments then and there.

F. EVIDENCE PRESERVATION

The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines"). The parties expect to meet and confer and submit a stipulation regarding ESI in this matter.

G. INITIAL DISCLOSURES

No initial disclosures have been made as the actions have been stayed until the Case Management Conference. PersonalWeb believes that all participants to the *Kessler*/Claim Preclusion briefing should make their initial disclosures within 30 days of the CMC at least as it relates to issues of indemnity, privity, and website operation. Amazon believes that only its DJ Action should go forward and that Amazon and PersonalWeb should make their initial disclosures on October 19, 2018.

H. DISCOVERY

The parties intend to file a proposed ESI Order to address discovery of ESI as well as a Protective Order. The parties agree that the Federal Rules of Civil Procedure and the Local Rules of this Court govern discovery from experts in this case.

1. PATENT PLAINTIFFS' STATEMENT

Patent Plaintiffs propose to limit discovery, presently, to Claim Preclusion/*Kessler* Issues including some limited discovery regarding the accused systems and methods in less than a handful of website owner cases that Patent Plaintiff would identify.

This limited discovery would include entry of a stipulated protective order and 90 days of new discovery after getting access to all prior Texas case documents (including but not limited to confidential deposition transcripts, final infringement and damages reports, and Amazon produced documents and discovery responses). The new discovery would include discovery relating to

indemnification, website operation, S3 operation, and one 30(b)(6) deposition from Amazon and up to three website operators and depositions of Mr. Shenoy and other declarants.

Generally, regarding scheduling, Patent Plaintiffs' counsel would receive access to the documents from the prior Amazon action, and supply one set of exemplary infringement contentions for each website operator activity category. Then Amazon and the participating website operators would file their motion regarding the application of claim preclusion/*Kessler*; PersonalWeb would take limited discovery for 90 days and then respond; and the website operators and Amazon would get to reply, with PersonalWeb getting a brief sur-reply.

A more definite proposed schedule is as follows:

1. 7 days from CMC to get a stipulated protective order filed with the Court and receive access to all Texas Action documents;

2. 28 days from CMC to serve exemplary infringement contentions for each website operator category (and Amazon);

3. 42 days from CMC for Website Operators and Amazon to file motion and briefing on Claim Preclusion/*Kessler*;

4. 84 days from No. 3 to conclude limited discovery of least one website operator who hosts their asset files on S3;

5. 98 days from No. 3 to file responsive briefs regarding Claim Preclusion/*Kessler*;

6. 105 days from No. 3 to file reply briefs regarding Claim Preclusion/*Kessler*; and

7. 112 days from No. 3 to file brief sur-reply briefs regarding Claim Preclusion/*Kessler*.

After the Court issues a ruling on Claim Preclusion/*Kessler*, and a ruling is issued from the Federal Circuit in the '310 Appeal, all remaining issues would be addressed for infringement and invalidity contentions, claim construction, invalidity and damages reports and dispositive motions after a supplemental case management conference. As the Court alluded at the April 27, 2018 hearing, it would be helpful to have representative cases to maximize efficiency; at this future stage, an identification of those representative cases would be appropriate. Patent Plaintiffs believe that earlier identification of test/representative cases before the steps identified above in 1-7 and before

a ruling on Claim Preclusion/*Kessler* would be premature.

2. AMAZON AND WEBSITE DEFENDANTS' STATEMENT

Only the Amazon DJ Action should go forward, and PersonalWeb's more than 65 cases against the website defendants, and any others yet to be filed before the Case Management Conference or after, should be enjoined or stayed. Amazon's proposed schedule for the DJ Action with deadlines for all discovery contemplated under the Local Patent Rules (*e.g.*, infringement contentions, invalidity contentions, damages contentions), as well as fact and expert discovery, is included in Appendix D. Amazon proposes that the parties make initial disclosures for its DJ Action on October 19, 2018 (29 days after the Case Management Conference).

Discovery in Amazon's DJ Action shall be subject to the limitations set forth in the Federal Rules of Civil Procedure, Local Rules of this Court, and the ESI Order and Protective Order to be entered in that action. If a party requests discovery that exceeds any of those limits, the parties should meet and confer in good faith to attempt to resolve the issue without Court invention. If the parties are unable to reach agreement, a party may seek leave from the Court for the additional discovery.

PersonalWeb's proposal in this section is unreasonable and unworkable for the reasons described in detail above. Furthermore, PersonalWeb has provided no justification for discovery from up to three cherry-picked website defendants that have yet to be identified.

3. Electronically Stored Information ("ESI") and Stipulated Protective Orders

The parties agree to work cooperatively towards a stipulated e-discovery order. The parties also agree that the sensitive nature of the material at issue in this case requires a protective order concerning discovery of confidential information, and agree to discuss entering a stipulated protective order.

4. Privilege Logs

The parties agree that the issues of privilege or work product should be addressed as provided in the Federal Rules of Civil Procedure, Federal Rule of Evidence 502, and the Protective Order and ESI Order entered in each case.

I. CLASS ACTIONS

This matter is not a class action.

J. RELATED CASES

This MDL currently comprises the 67 cases under lead case 5:18-md-02834-BLF.

PersonalWeb filed an additional 19 cases, including 9 cases that were just filed in the Oakland and San Francisco divisions of the Northern District of California. These are:

PersonalWeb Technologies, LLC and Level 3 Communications, LLC v. Dictionary.com, LLC (NDCA 4:18-cv-05606-KAW); PersonalWeb Technologies, LLC and Level 3 Communications, LLC v. Goodreads, LLC (NDCA 3:18-cv-05595-LB); PersonalWeb Technologies, LLC and Level 3 Communications, LLC v. Imgur, Inc. (NDCA 3:18-cv-05596-JSC); PersonalWeb Technologies, LLC and Level 3 Communications, LLC v. Patreon, Inc. (NDCA 3:18-cv-05599-SK); PersonalWeb Technologies, LLC and Level 3 Communications, LLC v. Slack Technologies, Inc. (NDCA 3:18-cv-0500-EDL); PersonalWeb Technologies, LLC and Level 3 Communications, LLC v. Twitch Interactive, Inc. (NDCA 3:18-cv-05619-EDL); PersonalWeb Technologies, LLC and Level 3 Communications, LLC v. Intuit, Inc. (NDCA 3:18-cv-05611-LB); PersonalWeb Technologies, LLC and Level 3 Communications, LLC v. Upwork Global, Inc. (NDCA 5:18-cv-05624); and PersonalWeb Communications, LLC and Level 3 Communications, LLC v. Zoom Video Communications, Inc. (NDCA 5:18-cv-05625).

Additionally, there is currently an appeal pending before the United States Court of Appeals for the Federal Circuit, *Personal Web Technologies, LLC v. Apple, Inc.* (2018-1599) regarding an *Inter Partes* Review proceeding involving one of the patents asserted in the complaints initiating this MDL, U.S. Patent 7,802,310 ('310 patent) ("the '310 Apple IPR Appeal").

K. RELIEF

The relief that PersonalWeb seeks is past damages in the form of a reasonable royalty for past unlicensed use of the claimed systems and methods. The patents are expired and PersonalWeb seeks no injunctions. Specifying an amount of damages before discovery is taken on the matter is premature, but PersonalWeb anticipates that its damages report will be based upon related revenues during the relevant period as a royalty base, in conformance with several past licenses.

1 Amazon seeks a declaration that PersonalWeb's claims against Amazon and its customers
2 are barred by claim preclusion and the *Kessler* doctrine, as well as an order enjoining PersonalWeb
3 from pursuing those claims. If PersonalWeb's claims are not barred, Amazon seeks a declaration
4 of non-infringement and invalidity of all claims of the patents-in-suit. Amazon and the website
5 defendants also seek attorneys' fees and costs.

6 **L. SETTLEMENT AND ADR**

7 Pursuant to ADR L.R. 3-5, the parties have reviewed the Court's ADR handbook, dis-
8 cussed the available ADR procedures, and considered whether this case would benefit from an
9 ADR procedure. The parties will be prepared to discuss ADR selection with the Court at the case
10 management conference. PersonalWeb believes that ADR efforts may be worthwhile in instances
11 where the website operator shows an interest in settlement (some have). In accordance with ADR
12 Local Rule 7, PersonalWeb proposes having a magistrate settlement conference upon the request
13 of any party.

14 **M. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

15 All parties do not consent to have a magistrate judge conduct all further proceedings
16 including trial and entry of judgment.

17 **N. OTHER REFERENCES**

18 The parties do not believe this MDL proceeding is suitable for reference to binding
19 arbitration or requires reference to a special master.

20 **O. NARROWING OF ISSUES**

21 PersonalWeb believes that issues cannot be further narrowed at this time.

22 Amazon believes Amazon's DJ Action will resolve all of PersonalWeb's infringement
23 claims and thus should be the only one to proceed. The issues in Amazon's DJ Action may also be
24 amenable to motion practice, such as Amazon's claim that PersonalWeb's infringement claims
25 against Amazon and its customers are barred by claim preclusion and the *Kessler* doctrine, that
26 Amazon's technology or use thereof does not infringe any of the patents-in-suits, and that the
27 patents are invalid.

28 **P. EXPEDITED TRIAL PROCEDURE**

The parties do not believe that this case is of the type suitable for Expedited Trial Procedure under General Order No. 64, Attachment A.1

Q. SCHEDULING

PersonalWeb believes that the participating parties should focus on the Claim Preclusion and *Kessler* issues first and has proposed a schedule for such proceedings. PersonalWeb proposes that, once rulings on the '310 Appeal and the *Kessler*/Claim preclusion issues have been made, a further case management conference should be set and a supplemental Joint CMC statement filed at that time regarding a schedule for the resolution of the other substantive issues, i.e., claim construction, infringement, validity and damages.

Amazon and the website defendants are providing a proposed schedule (attached as Appendix D) for Amazon's declaratory judgment action only for the reasons provided herein.

R. TRIAL

Both Amazon and PersonalWeb have demanded a jury trial in their respective complaints. Amazon anticipates a trial on its claims to last 7-10 days. PersonalWeb asserts it wouldn't be prudent to propose a number of trial days at this juncture.

PersonalWeb proposes that the participating parties should focus on the Claim Preclusion and *Kessler* issues first and has proposed a schedule for such proceedings. Once respective rulings on the '310 Appeal and the *Kessler*/Claim preclusion issues have been made, a further case management conference should be set and supplemental Joint CMC statement filed at that time addressing trial matters.

S. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

Each party that has appeared and that is currently part of the MDL action has or will file within 10 days of the CMC the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-15.

T. PROFESSIONAL CONDUCT

All counsel of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

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U. SUCH OTHER MATTERS TO FACILITATE THE JUST, SPEEDY AND INEXPENSIVE DISPOSITION OF THIS MATTER

None at this time.

V. DEFENDANTS' PROPOSAL, IF ANY, FOR APPOINTING LEAD COUNSEL

The Court has asked for defendants' proposal, if any, for appointing lead counsel. Fen-wick & West is lead counsel in Amazon's declaratory judgment action, and represents a majority of the website defendants. However, several of the other website defendants, including Merkle, Inc.; Capterra, Inc.; Kickstarter, Reddit, Inc.; Heroku, Inc.; Mavenlink, Inc.; Kon-gregate, Inc. and others are represented by other counsel. There is no one lead counsel that has authority to speak for all of the defendants in PersonalWeb's infringement suits.

W. LIST OF ALL PARENTS, SUBSIDIARIES, AND COMPANIES AFFILIATED WITH THE CORPORATE PARTIES AND OF ALL COUNSEL ASSOCIATED IN THE LITIGATION TO HELP THE COURT IDENTIFY ANY PROBLEMS OF RECUSAL OR DISQUALIFICATION

See Appendix E.

X. IMMEDIATE ISSUES AND ANY OTHER MATTERS THEY WISH TO BRING TO THE COURT AT THIS TIME

None.

Dated: September 13, 2018

Respectfully submitted,

STUBBS ALDERTON & MARKILES, LLP

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Jeffrey F. Gersh
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Attorneys for Patent Plaintiffs

Dated: September 13, 2018

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Dated: September 13, 2018

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INC., FANDUEL LTD., FOOD52, INC., GROUP NINE MEDIA, INC., PANJIVA, INC., SPONGECELL, INC., THRILLIST MEDIA GROUP, INC., ATLAS OBSCURA, INC., and SPOKEO, INC., DOLLAR SHAVE CLUB, INC., PEEK TRAVEL, INC., CURIOUS.COM, INC., TASTYTRADE, INC., and WEWORK COMPANIES INC.

Dated: September 13, 2018

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Dated: September 13, 2018

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Dated: September 13, 2018

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PROOF OF SERVICE

I declare as follows:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 15260 Ventura Blvd., 20th Floor, Sherman Oaks, California 91403. On **September 13, 2018**, I served the documents described as: **PRELIMINARY JOINT CASE MANAGEMENT STATEMENT** on the interested parties in this action as follows:

*****SEE ATTACHED SERVICE LIST*****

☒ **BY U.S. MAIL:** By depositing for collection and mailing in the ordinary course of business. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on the same day with postage thereon fully prepaid at Sherman Oaks, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing on affidavit.

☒ **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") pursuant to FRCP, Rule 5(b)(2)(E) and JPML Rule 4.1** (Pursuant to controlling General Order(s) and Local Rule(s) ("LR"), the foregoing document will be served by the court via NEF and hyperlink to the document to counsel at the email address(s) listed below).

☐ **(BY OVERNIGHT DELIVERY)** I am personally and readily familiar with the business practice of Stubbs Alderton & Markiles, LLP for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by Federal Express for overnight delivery.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct. Executed on **September 13, 2018**, at Sherman Oaks, California.

/s/ Elizabeth Saal de Casas
ELIZABETH SAAL DE CASAS

<table>
<tr><th colspan="2">SERVICE LIST
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SERVICE LIST CASE NO.: 5:18-md-02834-BLF	
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SERVICE LIST
CASE NO.: 5:18-md-02834-BLF

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SERVICE LIST
CASE NO.: 5:18-md-02834-BLF

MYFITNESSPAL, INC. c/o Wesley Muller Under Armour 2601 Port Covington Drive Baltimore, MD 21230 **NDCA Case No. 5:18-cv-00166-BLF** **Via U.S. Mail**	MWM MY WEDDING MATCH LTD. c/o Angel Pui, CEO 609 Hastings St. W 11th Floor Vancouver British Columbia V6B4W4 **NDCA Case No. 5:18-cv-03457-BLF** *Unrepresented Party* *Last known address* ***Via U.S. Mail***
NRT, LLC c/o Rich Basile rbasile@murthalaw.com Murtha Cullina 177 Broad Street, 16th Floor Stamford, CT 06901 **NDCA Case No. 5:18-cv-05201-BLF** Attorneys for NRT LLC ***Via ECF***	NRT New York LLC dba Citi Habitats c/o Rich Basile rbasile@murthalaw.com **NDCA Case No. 5:18-cv-05201-BLF** Attorneys for NRT New York LLC dba Citi Habitats ***Via ECF***
PANJIVA, INC. c/o Martin Edward Gilmore, III Perkins Coie LLP *(NYC) mgilmore@perkinscoie.com c/o J. David Hadden Fenwick & West, LLP dhadden@fenwick.com **NDCA Case No. 5:18-cv-03580-BLF** *Attorneys for Panjiva, Inc.* ***Via ECF***	PEEK TRAVEL, INC. c/o J. David Hadden dhadden@fenwick.com Fenwick & West LLP Silicon Valley Center 801 California Street Mountain View, CA 94041 **NDCA Case No. 5:18-cv-04628-BLF** ***Via U.S. Mail***
QUOTIENT TECHNOLOGY INC. c/o J. David Hadden Fenwick and West LLP dhadden@fenwick.com c/o Jason A. Crotty Mauriel Kapouytian Woods LLP jcrotty@mkwllp.com **NDCA Case No. 5:18-cv-00169-BLF** *Attorney for Quotient Technology Inc.* ***Via ECF***	REDDIT, INC. c/o Marcus Barber Kasowitz Benson Torres LLP MBarber@kasowitz.com **NDCA Case No. 5:18-cv-00170-BLF** *Attorney for Reddit, Inc.* ***Via ECF***

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ROBLOX CORPORATION c/o J. David Hadden Fenwick & West, LLP dhadden@fenwick.com **NDCA Case No. 5:18-cv-00171-BLF** *Attorney for Roblox Corporation* ***Via ECF***	ROCKETHUB INC. AND ELEQT GROUP LTD. 34 Queen Anne Street London, W1G 8HG United Kingdom **NDCA Case No. 5:18-cv-03583-BLF** *Unrepresented Party Last known address* ***Via U.S. Mail***
SHAREFILE LLC c/o Aaron Wainscoat aaron.wainscoat@dlapiper.com DLA Piper LLP **NDCA Case No. 5:18-cv-05202-BLF** ***Via ECF***	SHOPIFY INC. c/o Ryan Hubbard ryan.hubbard@kirkland.com Kirkland & Ellis LLP 300 N. LaSalle Chicago IL 60654 **NDCA Case No. 5:18-cv-04626-BLF** *Attorneys for Shopify Inc.* ***Via U.S. Mail***
SHOPIFY (USA), INC. c/o Brent P. Ray Brent.ray@kirkland.com Kirkland & Ellis LLP **NDCA Case No. 5:18-cv-04626-BLF** *Attorneys for Shopify (USA), Inc.* ***Via ECF***	SPOKEO, INC. c/o J. David Hadden dhadden@fenwick.com Fenwick & West, LLP **NDCA Case No. 5:18-cv-02140-BLF** *Attorney for Spokeo, Inc.* ***Via ECF***
SPONGECELL, INC. c/o Shannon Turner sturner@fenwick.com Fenwick & West LLP c/o Todd R. Gregorian tgregorian@fenwick.com Fenwick & West LLP **NDCA Case No. 5:18-cv-03584-BLF** *Attorney for Spongecell, Inc.* ***Via ECF***	SQUARE, INC. c/o J. David Hadden dhadden@fenwick.com Fenwick & West, LLP c/o Bijal V. Vikal bvakil@whitecase.com c/o Allen W. Wang awang@whitecase.com White & Case LLP **NDCA Case No. 5:18-cv-00183-BLF** *Attorneys for Square, Inc.* ***Via ECF***

SERVICE LIST CASE NO.: 5:18-md-02834-BLF	
STARTDATE LABS, INC. c/o Andrew Colin Mayo amayo@mnat.com Morris, Nichols, Arsht & Tunnell 1201 North Market Street, 16th Floor P.O. Box 1347 Wilmington, DE 19899-1347 **NDCA Case No. 5:18-cv-05203-BLF** ***Via U. S. Mail***	STITCH FIX, INC. c/o Brent P. Ray Brent.ray@kirkland.com Kirkland & Ellis, LLP c/o J. David Hadden dhadden@fenwick.com Fenwick & West, LLP **NDCA Case No. 5:18-cv-00173-BLF** *Attorneys for Stitch Fix, Inc.* ***Via ECF***
STRAVA, INC. c/o Brent P. Ray Brent.ray@kirkland.com Ryan Hubbard, Esq. Ryan.hubbard@kirkland.com Kirkland & Ellis LLP **NDCA Case No. 5:18-cv-04627-BLF** Attorneys for Strava, Inc. ***Via ECF***	TASTY TRADE, INC. c/o J. David Hadden dhadden@fenwick.com Fenwick & West LLP Silicon Valley Center 801 California Street Mountain View, CA 94041 **NDCA Case No. 5:18-cv-05204-BLF** ***Via U.S. Mail***
TEESPRING, INC. c/o Ryan R. Smith Wilson Sonsini Goodrich & Rosati rsmith@wsgr.com c/o J. David Hadden Fenwick & West, LLP dhadden@fenwick.com **NDCA Case No. 5:18-cv-00175-BLF** *Attorneys for Teespring, Inc,* ***Via ECF***	THRILLIST MEDIA GROUP, INC. c/o J. David Hadden Fenwick & West, LLP dhadden@fenwick.com **NDCA Case No. 5:18-cv-03581-BLF** *Attorney for Thrillist Media Group, Inc.* ***Via ECF***
TOPHATTER, INC. c/o J. David Hadden Fenwick & West, LLP dhadden@fenwick.com **NDCA Case No. 5:18-cv-00176-BLF** *Attorney for Tophatter, Inc.* ***Via ECF***	TREEHOUSE ISLAND INC. c/o Peter E. Heuser pheuser@schwabe.com Schwabe, Williamson & Wyatt, P.C. 1211 SW Fifth Avenue Suite 1900 Portland, OR 97204 **NDCA Case No. 5:18-cv-05205-BLF** *Attorneys for Treehouse Island, Inc.* ***Via ECF***
VALASSIS COMMUNICATIONS, INC. c/o Brent P. Ray Brent.ray@kirkland.com Ryan Hubbard Ryan.Hubbard@kirkland.com Kirkland & Ellis LLP **NDCA Case No. 5:18-cv-05206-BLF** Attorneys for Valassis Communications, Inc. ***Via ECF***	VEND, INC. AND VEND LIMITED c/o J. David Hadden Fenwick & West, LLP dhadden@fenwick.com **NDCA Case No. 5:18-cv-00196-BLF** *Attorney for Vend, Inc. and Vend Limited* ***Via ECF***

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WEBFLOW, INC. c/o J. David Hadden Fenwick & West, LLP dhadden@fenwick.com **NDCA Case No. 5:18-cv-00178-BLF** *Attorney for Webflow, Inc.* ***Via ECF***	WEDDINGWIRE, INC. c/o Steven J. Balick Ashby & Geddes sbalick@ashbygeddes.com c/o J. David Hadden Fenwick & West, LLP dhadden@fenwick.com c/o Andrew Colin Mayo Morris, Nichols, Arsht & Tunnell amayo@mnat.com **NDCA Case No. 5:18-cv-03458-BLF** *Attorneys for WeddingWire, Inc.* ***Via ECF***
WEWORK COMPANIES INC. c/o Todd R. Gregorian tgregorian@fenwick.com Fenwick & West LLP **NDCA Case No. 5:18-cv-05272-BLF** *Attorneys for WeWork Companies Inc.* ***Via ECF***	YOTPO LTD. c/o J. David Hadden Fenwick & West, LLP 801 California Street Mountain View, CA 94041 **NDCA Case No. 5:18-cv-03452-BLF** *Attorney for Yotpo, Ltd.* ***Via U.S. Mail***