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10 Attorneys for **PersonalWeb Technologies, LLC**

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

14 IN RE PERSONAL WEB TECHNOLOGIES,
 15 LLC, ET AL., PATENT LITIGATION

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

16 AMAZON.COM, INC. and AMAZON WEB
 17 SERVICES, INC.,

Case No.: 5:18-cv-00767-BLF

Case No.: 5:18-cv-05619-BLF

Plaintiffs,

18 v.

19 PERSONALWEB TECHNOLOGIES, LLC
 20 and LEVEL 3 COMMUNICATIONS, LLC,

**ADMINISTRATIVE MOTION TO FILE
 UNDER SEAL PERSONALWEB'S NON-
 OPPOSITION TO AMAZON'S MOTION
 FOR SUMMARY JUDGMENT AND
 OPPOSITION TO MOTION RE
 STANDING, EXHIBIT 1 TO
 DECLARATION OF ERIK DE LA
 IGLESIA, EXHIBIT 2 TO
 DECLARATION OF MICHAEL A.
 SHERMAN, AND EXHIBITS 2, 7, 8 TO
 DECLARATION OF VIVIANA BOERO
 HEDRICK IN SUPPORT OF
 PERSONALWEB TECHNOLOGIES, LLC
 NON-OPPOSITION/OPOSITIONS TO
 AMAZON.COM, INC. AND AMAZON
 WEB SERVICES, INC.'S AND TWITCH
 INTERACTIVE, INC.'S MOTIONS FOR
 SUMMARY JUDGMENT**

Defendants.

22 PERSONALWEB TECHNOLOGIES, LLC
 23 and LEVEL 3 COMMUNICATIONS, LLC,

Counterclaimants,

24 v.

25 AMAZON.COM, INC. and AMAZON WEB
 26 SERVICES, INC.,

Counterdefendants.

28

1 PERSONALWEB TECHNOLOGIES, LLC, a
2 Texas limited liability company, and
3 LEVEL 3 COMMUNICATIONS, LLC, a
4 Delaware limited liability company
5 Plaintiffs,
6 v.
7 TWITCH INTERACTIVE, INC. a Delaware
8 corporation,
9 Defendant.
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1 Pursuant to Civil Local Rules 7-11 and 79-5(d), PersonalWeb Technologies, LLC
2 (“PersonalWeb”) hereby moves for administrative relief to file the following items under seal in
3 connection with PersonalWeb’s Non-Opposition to Amazon.com, Inc. and Amazon Web Services,
4 Inc.’s (collectively, “Amazon”) Motion for Summary Judgment of Noninfringement and Opposition
5 to Motion Regarding Standing (“Response to Amazon”), and PersonalWeb’s Non-Opposition to
6 Twitch Interactive, Inc.’s (“Twitch”) Motion for Summary Judgment of Noninfringement and Partial
7 Opposition to Motion to Exclude Testimony of Erik de la Iglesia. (“Response to Twitch”):

- 8 • PersonalWeb’s Response to Amazon at page:line nos.: 14:14-15. 14:21-23, 14:25, 26,
9 15:6-7, 15:9-10.
- 10 • **Exhibit 2** to the Declaration of Michael A. Sherman in Support of PersonalWeb’s
11 Response to Amazon (“Sherman Declaration”) is the *unsigned* de la Iglesia
12 Declaration.
- 13 • **Exhibit 1** to the Declaration of Erik de la Iglesia in Support of PersonalWeb’s
14 Response to Twitch (“de la Iglesia Declaration”) is the *redacted* Technical Expert
15 Report of Erik de la Iglesia, dated August 23, 2019 (“Redacted de la Iglesia Expert
16 Report”).
- 17 • **Exhibit 2** to the Declaration of Viviana Boero Hedrick in Support of PersonalWeb’s
18 Response to Amazon and Response to Twitch (“Hedrick Declaration”) is excerpts
19 from the January 17, 2014 deposition of Ronald Lachman (“Lachman Deposition”).
- 20 • **Exhibit 7** to the Hedrick Declaration is excerpts from the October 1, 2019 deposition
21 transcript of James Richard (“Richard Deposition”).
- 22 • **Exhibit 8** to the Hedrick Declaration is excerpts from the July 24, 2019 Amazon
23 30(b)(6) deposition transcript of Matthew Baldwin (“Baldwin Deposition”).

24 PersonalWeb requests leave to file its Response to Amazon, Exhibit 2 to the Sherman
25 Declaration, Exhibit 1 to the de la Iglesia Declaration, and Exhibits 2, 7, and 8 to the Hedrick
26 Declaration under seal.

27 PersonalWeb seeks leave to file under seal the entire unsigned de la Iglesia Declaration
28 (Sherman Declaration, Exhibit 2) and the Redacted de la Iglesia Expert Report (de la Iglesia

1 Declaration, Exhibit 1) because both contain the impressions and analysis of PersonalWeb’s
2 technical expert, Erik de la Iglesia (“de la Iglesia”). Mr. de la Iglesia’s unsigned Declaration and
3 Redacted de la Iglesia Expert Report includes references to, and analysis of, Twitch’s propriety
4 source code, which Twitch has designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY”. PersonalWeb files this administrative motion to abide by the terms of the Stipulated
6 Protective Order as to the information discussed above, which Twitch marked confidential and
7 which meets the standard for filing under seal in the Ninth Circuit. *See, e.g., Opperman v. Path,*
8 *Inc.*, No. 3-cv-00453-JST, 2017 WL 1036652, at *2 (N.D. Cal. Mar. 17, 2017) (sealing excerpts of
9 developers’ proprietary source code in summary judgment pleadings).

10 PersonalWeb further seeks leave to file under seal its Response to Amazon and Exhibit 2 to
11 the Hedrick Declaration, which contain excerpts of testimony from the Lachman Deposition
12 regarding non-public aspects of the business negotiations between Kinetech, Inc. and Digital Island,
13 Inc. PersonalWeb designated this item as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY” (“AEO”) under the Stipulated Amended Protective Order entered by the Court in the
15 pending actions under Case No. 5:18-md-02834-BLF (Dkt. No. 427), 5:18-cv-00767-BLF (Dkt. No.
16 107) and 5:18-cv-05621-BLF (Dkt. No. 290) (“Current Actions”), and additionally, these deposition
17 excerpts were previously designated as confidential in the prior action, *PersonalWeb Technologies,*
18 *LLC, et al. v. Microsoft Corp.*, Case 6:12-cv-00663-LED.

19 In the Ninth Circuit, a district court may override the presumption of public access to judicial
20 documents where “good cause” is shown. *See Phillips ex rel. Estates of Byrd v. General Motors*
21 *Corp.*, 307 F.3d 1206, 1210 (9th Cir. 2002). “For good cause to exist, the party seeking protection
22 bears the burden of showing specific prejudice or harm will result if no protective order is granted.”
23 *Id.* at 1211 (internal citations omitted). A party seeking to file documents under seal in connection
24 with a dispositive motion must establish compelling reasons for doing so to rebut the presumption
25 against public access. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir.
26 2003). As explained in the accompanying Declaration of Viviana Boero Hedrick in Support of
27 Administrative Motion to File Under Seal, (“Hedrick MFUS Declaration”), the confidential
28 excerpted deposition testimony in the Lachman Deposition meets the *Foltz* standard. *See Phoenix*

1 *Technologies Ltd. v. VMware, Inc.*, No. 15-cv-01414-HSG, 2018 WL 1169188, at *2 (N.D. Cal. Feb.
2 14, 2018) (good cause exists to protect business information that might harm a litigant’s competitive
3 standing if disclosed, and where the redaction is “sufficiently narrowly tailored” to only seal portions
4 of the exhibit that might put sensitive business information at risk). Disclosure of non-public details
5 regarding the negotiation and business deadlines between Digital Island and Kinetech, would put
6 PersonalWeb at a competitive disadvantage with respect to competitors and competing services.

7 PersonalWeb also requests leave to file Exhibits 7 and 8 under seal. These deposition
8 transcripts were designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by
9 Amazon and/or Twitch. With respect to these two exhibits, PersonalWeb seeks leave to file under
10 seal only to abide by the terms of the Stipulated Amended Protective Order in the Current Actions
11 and to facilitate the filing of their Motions. By filing this administrative motion, PersonalWeb does
12 not waive its right to contest Amazon and/or Twitch’s designations and expressly reserves its right to
13 contest the propriety of the designations, in whole or in part.

14 Because Exhibit 2 to the Hedrick Declaration was previously designated as confidential in
15 the prior action and the remaining exhibits have designated as highly confidential by
16 Amazon/Twitch or they contain information that Amazon/Twitch have designated as highly
17 confidential, PersonalWeb also seeks leave to file the corresponding excerpts in PersonalWeb’s
18 Amazon Response under seal for the same reason outlined above.

19 For these reasons, PersonalWeb respectfully requests that the Court grant this motion for
20 leave to file under seal portions of its Response to Amazon, Exhibit 2 to the Sherman Declaration,
21 Exhibit 1 to the de la Iglesia Declaration, and Exhibits 2, 7, and 8 to the Hedrick Declaration.

22 Respectfully submitted,

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24
25 Dated: October 25, 2019

STUBBS, ALDERTON & MARKILES, LLP

26 By: /s/ Michael A. Sherman

Michael A. Sherman

Jeffrey F. Gersh

Sandeep Seth

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