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10 Counsel for TWITCH INTERACTIVE, INC.

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

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

Case No. 5:18-md-02834-BLF

17 PERSONALWEB TECHNOLOGIES, LLC, a  
Texas limited liability company, and LEVEL 3  
18 COMMUNICATIONS, LLC, a Delaware limited  
liability company,

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

**DECLARATION OF  
TODD R. GREGORIAN IN SUPPORT  
OF PERSONALWEB TECHNOLOGIES, LLC'S ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL  
(DKT. 549)**

19 Plaintiffs,

20 v.

21 TWITCH INTERACTIVE, INC. a Delaware corporation,  
22

Date: November 15, 2019  
Time: 9:00 a.m.  
Dept: Courtroom 3, 5th floor  
Judge: Hon. Beth L. Freeman  
Trial Date: March 16, 2020

23 Defendant.  
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1 I, Todd R. Gregorian, hereby declare as follows:

2 1. I am an attorney licensed to practice law in the state of California and am an associate  
3 with the law firm of Fenwick & West LLP, counsel for Twitch Interactive, Inc. (“Twitch”) in the  
4 above-captioned action. I have personal knowledge of the facts set forth in this declaration.

5 2. I submit this declaration in support of the Administrative Motion to File Under Seal  
6 (Case No. 18-cv-02834, Dkt. 549, Case No. 18-cv-05619, Dkt. 70) (“Administrative Motion”) filed  
7 by PersonalWeb Technologies, LLC (“PersonalWeb”). The Administrative Motion was filed in  
8 support of PersonalWeb’s Non-Opposition to Amazon’s Motion for Summary Judgment of Non-  
9 infringement and Opposition to Motion Regarding Standing, and PersonalWeb’s Non-Opposition  
10 to Twitch’s Motion for Summary Judgment of Noninfringement and Partial Opposition to Motion  
11 to Exclude Testimony of Erik de la Iglesia. (“Response to Twitch”) (Case No. 18-cv-02834, Dkt.  
12 551, Case No. 18-cv-05619-BLF, Dkt. 69).

13 3. The Administrative Motion seeks an order sealing the following documents (“Re-  
14 quested Sealed Material”):

15 i. The redacted Technical Expert Report of Erik de la Iglesia, dated August 23,  
16 2019 (“Redacted de la Iglesia Expert Report”), attached as Exhibit 1 to the Dec-  
17 laration of Erik de la Iglesia in Support of PersonalWeb’s Response to Twitch  
18 (“de la Iglesia Declaration”); and

19 ii. Excerpts of the transcript of the October 1, 2019 deposition of Twitch corporate  
20 representative James Richard (“Richard Deposition”) attached as Exhibit 7 to  
21 the Declaration of Viviana Boero Hedrick in Support of Personalweb’s Re-  
22 sponse to Twitch (“Hedrick Declaration”).

23 4. The Requested Sealed Material comprises information designated as “HIGHLY  
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – ATTORNEYS’  
25 EYES ONLY” pursuant to the Stipulated Protective Order (Case No. 18-md-02834, Dkt. 290).

26 5. The Redacted de la Iglesia Expert Report attached as Exhibit 1 to the de la Iglesia  
27 Declaration reflects Twitch’s confidential and sensitive business information. It contains refer-  
28 ences to and characterizations of Twitch’s proprietary source code and excerpts of the deposition

1 testimony of Twitch’s technical witnesses. Accordingly, PersonalWeb designated this deposition  
2 transcript as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” A party seeking to  
3 file documents under seal in connection with a dispositive motion must establish compelling rea-  
4 sons for doing so to rebut the presumption against public access. *See Foltz v. State Farm Mut.*  
5 *Auto. Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003). The sensitive business information which  
6 PersonalWeb seeks to file under seal meets this standard, as it represents Twitch’s trade secrets  
7 regarding the operations of its servers and source code. *See Phoenix Technologies Ltd. v. VMware,*  
8 *Inc.*, No. 15-cv-01414-HSG, 2018 WL 1169188, at \*2 (N.D. Cal. Feb. 14, 2018) (good cause exists  
9 to protect business information that might harm a litigant’s competitive standing if disclosed, and  
10 where the redaction is “sufficiently narrowly tailored” to only seal portions of the exhibit that might  
11 put sensitive business information at risk). The Court previously granted Twitch’s Administrative  
12 Motion to Seal Exhibit 1 for substantially the same reasons. (Case No. 18-cv-2834, Dkt. 535).

13 6. I am informed and believe that the way that Twitch designed the backend for its web-  
14 site to achieve top performance is competitively sensitive because a competitor could, for example,  
15 seek to improve their website’s performance by replicating Twitch’s combination of different soft-  
16 ware packages. Disclosure of non-public details regarding the operation of Twitch’s services would  
17 put Twitch at a competitive disadvantage with respect to competitors and competing services.

18 7. The excerpts of the Richard Deposition attached as Exhibit 7 to the Hedrick Declara-  
19 tion are designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the Stipulated  
20 Protective Order. This exhibit contains excerpts of the deposition transcript of Twitch Senior Soft-  
21 ware Engineer and corporate designee James Richard. In this testimony, Mr. Richard provides non-  
22 public and proprietary information concerning the operation of Twitch’s servers. The information  
23 in this transcript also meets the *Foltz* standard because, as explained above, disclosure of this in-  
24 formation would put Twitch at a competitive disadvantage with respect to competitors and com-  
25 peting services. *See Phoenix Technologies*, 2018 WL 1169188, at \*2.

26 8. In light of the foregoing, there is a compelling interest in maintaining the confidenti-  
27 ality of the Requested Sealed Material described above. Public disclosure of this highly confiden-  
28 tial information would put Twitch at undue risk of serious harm by revealing trade secrets and

1 confidential operational information that may put them at a competitive disadvantage relative to  
2 competitors and competing services.

3 9. Accordingly, Twitch requests that the Court maintain under seal Exhibit 1 to the de la  
4 Iglesia Declaration and Exhibit 7 of the Hedrick Declaration.

5  
6 I declare under penalty of perjury under the laws of the United States that the foregoing is  
7 true and correct.

8 Executed this 29th day of October, 2019, in San Francisco, California.

9  
10 /s/ Todd R. Gregorian  
11 Todd R. Gregorian

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