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11 AMAZON WEB SERVICES INC., and
12 TWITCH INTERACTIVE, INC.

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

16 IN RE: PERSONALWEB TECHNOLOGIES,
LLC ET AL., PATENT LITIGATION,

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

18 Plaintiffs,

19 v.

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

21 Defendants.

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

24 Plaintiffs,

25 v.

26 TWITCH INTERACTIVE, INC.,

27 Defendant.

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

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

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

**REQUEST FOR CASE MANAGEMENT
CONFERENCE BY AMAZON.COM,
INC., AMAZON WEB SERVICES, INC.,
AND TWITCH INTERACTIVE, INC.**

**[REDACTED VERSION OF
DOCUMENT SOUGHT TO BE
SEALED]**

FENWICK & WEST LLP
ATTORNEYS AT LAW

INTRODUCTION

1
2 Amazon.com, Inc., Amazon Web Services, Inc., and Twitch Interactive, Inc. (collectively,
3 “Amazon”) respectfully request a telephonic conference with the Court to address issues that have
4 arisen with respect to securing and/or enforcing the Court’s judgment pending PersonalWeb’s
5 appeals. Specifically, Stubbs Alderton & Markiles, LLP remains counsel of record for
6 PersonalWeb in this centralized MDL proceeding and in each of its constituent cases, and continues
7 to pursue two Federal Circuit appeals (of the Court’s non-infringement summary judgment order
8 and of its fee award) and Supreme Court review (of the Court’s *Kessler* and claim preclusion order).
9 Nevertheless, those counsel now claim that *service of documents on them in this case is ineffective*
10 if the documents relate to what they deem “post-judgment enforcement” matters. This represents
11 a new and creative low-water mark for debtors seeking to evade a judgment. Amazon has other
12 serious concerns about securing the judgment. The information it has obtained to date indicates
13 that PersonalWeb is purposefully undercapitalized to avoid ever having to pay a judgment against
14 it, while at the same time it pays a prominent and costly member of the Supreme Court bar to pursue
15 its appeal. Amazon believes it would be productive to discuss these issues briefly with the Court,
16 in the hope that doing so will avoid burdening the Court with needless motion practice.

BACKGROUND

17
18 On March 2, 2021, the Court awarded Amazon \$4,615,242.28 in attorney fees and
19 \$203,300.10 in non-taxable costs. (Dkt. 648.) That award serves as a judgment without the need
20 for the Court or clerk to enter a separate document. Fed. R. Civ. P. 58(a)(3). On March 31, 2021,
21 PersonalWeb noticed its appeal of the award. (Dkt. 653.) On April 1, 2021, the automatic 30-day
22 stay of enforcement of the judgment expired. Fed. R. Civ. P. 62(a). The Court later granted an
23 additional \$571,961.71 in attorney fees and \$11,120.97 in non-taxable costs in a separate order.
24 (Dkt. 656.)

25 PersonalWeb has not paid the judgment or posted a supersedeas bond to secure the judgment
26 and stay enforcement. *See* Fed. R. Civ. P. 62. Nearly a month ago, Amazon asked PersonalWeb’s
27 counsel whether PersonalWeb would post a bond. (Ex. A. (3/31/21 email string between T.
28 Gregorian and J. Gersh).) PersonalWeb’s counsel responded by stating that PersonalWeb “is

1 considering its options,” and inviting Amazon to follow up with him by the next week. (*Id.*)
2 Amazon did so on April 17, 2021, seeking to meet and confer about securing the judgment, and
3 asking whether PersonalWeb has sufficient funds to satisfy the judgment or has other assets to
4 secure it. (*Id.*)

5 PersonalWeb did not provide any information in response to this request. PersonalWeb’s
6 principal, Kevin Bermeister, resides in [REDACTED] (Ex. B (8/22/19 Bermeister Dep.) at 10:10-11.)
7 During his deposition, Amazon asked Mr. Bermeister whether PersonalWeb would be able to
8 satisfy a fee award in this case. Mr. Bermeister attempted to deflect, [REDACTED]
9 [REDACTED] but ultimately admitted that he would have to “[REDACTED]
10 [REDACTED].” (*Id.* at 181:2-182:5.) Mr. Bermeister’s testimony—[REDACTED]
11 [REDACTED]—indicates that PersonalWeb is
12 not capitalized adequately to cover that liability. Given this testimony and the silence from
13 PersonalWeb’s counsel, Amazon became concerned that PersonalWeb intends never to pay the
14 Court’s judgment and yet will continue to drive up costs pursuing its multiple appeals.

15 Amazon therefore began taking steps to secure the judgment. Under Fed. R. Civ. P.
16 69(a)(2), a judgment creditor “may obtain discovery from any person—including the judgment
17 debtor—as provided in these rules or by the procedure of the state where the court is located.” In
18 California, a judgment creditor is permitted broad discovery into the finances and assets of the
19 judgment debtor, including any information that identifies or could lead to the discovery of
20 executable assets. *See, e.g.,* Cal. Civ. Proc. Code § 708.110 (with respect to judgment debtor
21 examination); *see SCC Acquisitions, Inc. v. Super. Ct.*, 243 Cal. App. 4th 741, 756 (2015) (doubts
22 about relevance generally resolved in favor of permitting discovery in judgment debtor
23 examination).

24 On April 19, 2021, Amazon served interrogatories and requests for production of documents
25 under Fed. R. Civ. P. 69 and Cal. Civ. Proc. Code §§ 708.020 and 708.030, seeking information
26 about PersonalWeb’s assets. (Exs. C & D.) On April 21, 2021 Amazon again asked PersonalWeb
27 to meet and confer about securing the judgment and to provide asset information, and Amazon also
28 gave notice that it would seek a debtor’s examination of PersonalWeb. (Ex. A.) PersonalWeb’s

1 counsel from Stubbs Alderton & Markiles has not withdrawn from its representation of
2 PersonalWeb in this case and remains counsel of record. Nevertheless, Jeffrey Gersh of that firm
3 responded to Amazon's last request: "We do not represent Pweb in the post judgment proceedings.
4 You have no authority to serve us with any documents relating thereto." (*Id.*) Mr. Gersh conceded
5 that Amazon may conduct discovery in aid of enforcement in this case. (*See id.* ("I never said a
6 new case filing was required.") But he still maintained his objection based on a claim that "all the
7 MDL cases are done, judgment entered and the file closed." (*Id.*) PersonalWeb is thus attempting
8 to evade payment of the judgment by having its attorneys claim that they represent it in this case
9 for some purposes but not others and can only be served in this case for the specific purposes they
10 select.

11 **REQUEST FOR CONFERENCE**

12 Amazon respectfully requests a telephonic conference with the Court at a convenient time
13 to discuss the above issues. Amazon has sought to confer with PersonalWeb about this request,
14 including to determine whether any PersonalWeb counsel of record would even attend a case
15 management conference concerning judgment enforcement given its claim to have no counsel
16 retained for that purpose. (Ex. A.) PersonalWeb has not responded.

17 Date: April 26, 2021

Respectfully submitted,

FENWICK & WEST LLP

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21 By: /s/ Todd R. Gregorian
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23 AMAZON WEB SERVICES, INC., and
24 TWITCH INTERACTIVE, INC.
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