

FENWICK & WEST LLP
ATTORNEYS AT LAW

1 J. DAVID HADDEN (CSB No. 176148)
dhadden@fenwick.com
2 SAINA S. SHAMILOV (CSB No. 215636)
sshamilov@fenwick.com
3 MELANIE L. MAYER (admitted *pro hac vice*)
mmayer@fenwick.com
4 TODD R. GREGORIAN (CSB No. 236096)
tgregorian@fenwick.com
5 RAVI R. RANGANATH (CSB No. 272981)
rranganath@fenwick.com
6 CHIEH TUNG (CSB No. 318963)
ctung@fenwick.com
7 FENWICK & WEST LLP
Silicon Valley Center
8 801 California Street
Mountain View, CA 94041
9 Telephone: 650.988.8500
Facsimile: 650.938.5200

10 Counsel for AMAZON.COM, INC.,
11 AMAZON WEB SERVICES INC., and
TWITCH INTERACTIVE, INC.

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

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

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

Plaintiffs,

v.

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

Defendants.

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

Plaintiffs,

v.

25 TWITCH INTERACTIVE, INC.,

26 Defendant.

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

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

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

**EX PARTE APPLICATION OF
AMAZON.COM, INC., AMAZON WEB
SERVICES, INC., AND TWITCH
INTERACTIVE, INC. FOR AN ORDER
THAT JUDGMENT DEBTOR
PERSONALWEB TECHNOLOGIES,
LLC APPEAR FOR EXAMINATION**

Dept: Courtroom 3, 5th Floor
Judge: Hon. Beth L. Freeman

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1 Pursuant to Fed. R. Civ. P. 69(a)(2) and Cal. Civ. Proc. Code § 708.110(a), Amazon.com,
2 Inc., Amazon Web Services, Inc., and Twitch Interactive, Inc. (collectively, “Amazon”) respect-
3 fully apply *ex parte* to take the examination of judgment debtor PersonalWeb Technologies, LLC.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 I. BACKGROUND

6 On March 2, 2021, the Court awarded Amazon \$4,615,242.28 in attorney fees and
7 \$203,300.10 in non-taxable costs. (Dkt. 648.) That award serves as a judgment without the need
8 for the Court or clerk to enter a separate document. Fed. R. Civ. P. 58(a)(3). On March 31, 2021,
9 PersonalWeb noticed its appeal of the award. (Dkt. 653.) On April 1, 2021, the automatic 30-day
10 stay of enforcement of the judgment expired. Fed. R. Civ. P. 62(a). The Court later granted an
11 additional \$571,961.71 in attorney fees and \$11,120.97 in non-taxable costs in a separate order.
12 (Dkt. 656.)

13 PersonalWeb has not paid the judgment or posted a supersedeas bond to secure the judg-
14 ment and stay enforcement. *See* Fed. R. Civ. P. 62. Nearly a month ago, Amazon asked Personal-
15 Web’s counsel of record whether PersonalWeb would post a bond. (Dkt. 659-1 [Ex. A. (3/31/21
16 email string between T. Gregorian and J. Gersh)].) PersonalWeb’s counsel responded by stating
17 that PersonalWeb “is considering its options,” and inviting Amazon to follow up with him by the
18 next week. (*Id.*) Amazon did so on April 17, 2021, seeking to meet and confer about securing the
19 judgment, and asking whether PersonalWeb has sufficient funds to satisfy the judgment or has other
20 assets to secure it. (*Id.*) PersonalWeb did not provide any information in response to this request.
21 Deposition testimony from PersonalWeb’s principal, Kevin Bermeister, indicates that PersonalWeb
22 was never capitalized adequately to cover that liability. (Dkt. 659-2 [Ex. B (8/22/19 Bermeister
23 Dep.)] at 181:2-182:5.) Given this testimony and the silence from PersonalWeb’s counsel, Amazon
24 became concerned that PersonalWeb intends never to pay the Court’s judgment and yet will con-
25 tinue to drive up costs pursuing its multiple appeals.

26 On April 19, Amazon served interrogatories and requests for production of documents un-
27 der Fed. R. Civ. P. 69, Cal. Civ. Code §§ 708.020 and 708.030, seeking information about Person-
28 alWeb’s assets in aid of enforcement, and followed up again with PersonalWeb’s counsel as to how

1 it would secure the judgment. PersonalWeb’s attorneys from Stubbs Alderton & Markiles LLP
2 remain counsel of record but have taken the position that they do not represent PersonalWeb with
3 respect to any part of this case concerning Amazon’s attempts to secure or enforce the judgment
4 (what they term “post-judgment proceedings”) and therefore Amazon has “no authority” to serve
5 them with case documents to the extent they concern those issues. (Dkt. 659-1 [Ex. A] (see April
6 22, 2021 email from J. Gersh).)

7 On April 21, Amazon gave PersonalWeb notice of its intention to file this *ex parte* applica-
8 tion for a debtor’s examination. (Declaration of Todd R. Gregorian (“Gregorian Decl.”) ¶ 5.) Per-
9 sonalWeb has not indicated its position.

10 II. ARGUMENT

11 Amazon, the judgment creditor, requests that the Court grant its request for PersonalWeb,
12 the judgment debtor, to appear for an examination and provide information to enable Amazon to
13 secure the Court’s judgment pending resolution of PersonalWeb’s appeals.

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

22 A “judgment creditor may apply to the proper court for an order requiring the judgment
23 debtor to appear before the court . . . at a time and place specified in the order, to furnish information
24 to aid in enforcement of the money judgment.” Cal. Civ. Proc. Code § 708.110(a); see also *Hooser*
25 *v. Super. Ct.*, 84 Cal. App. 4th 997, 1002 (2000) (“Pursuant to the statutory procedure, the judgment
26 creditor may obtain an order requiring the judgment debtor to appear before the court, or a court-
27 appointed referee, to furnish information that will aid in the enforcement of the money judg-
28 ment. . . . A judgment debtor examination is intended to allow the judgment creditor a wide scope

1 of inquiry concerning property and business affairs of the judgment debtor.”), *disapproved on other*
2 *grounds by Williams v. Super. Ct.*, 3 Cal. 5th 531 (2017); *see also Troy v. Super. Ct.*, 186 Cal. App.
3 3d 1006, 1014 (1986) (“the purpose of a judgment debtor examination is to leave no stone unturned
4 in the search for assets which might be used to satisfy the judgment”).

5 The proper court for an examination of the debtor is the court in which the money judgment
6 is entered. Cal. Civ. Proc. Code § 708.160(a); *see also Moore v. Chase, Inc.*, No. 1:14-CV-01178-
7 SKO, 2016 WL 4548751, at *2 (E.D. Cal. Sep. 1, 2016) (granting application for debtor’s exami-
8 nation where the judgment was entered by the district court).

9 If the judgment creditor has not examined the judgment debtor in the 120 days preceding
10 the ex parte application, “the court shall make the order upon ex parte application of the judgment
11 creditor.” Cal. Code Civ. P. § 708.110(b). The debtor’s examination may also result in an order
12 requiring the debtor’s non-exempt property and assets be applied to satisfy the money judgment:

13 (a) Except as provided in subdivision (b), at the conclusion of a proceeding pursuant
14 to this article, the court may order the judgment debtor’s interest in the property in
15 the possession or under the control of the judgment debtor or the third person or a
16 debt owed by the third person to the judgment debtor to be applied toward the satis-
17 fication of the money judgment if the property is not exempt from enforcement of a
18 money judgment. Such an order creates a lien on the property or debt.

17 *Id.* § 708.205(a). The procedures provided by Section 708 reflect California’s legislative intent to
18 allow judgment creditors a “speedy and inexpensive means . . . to obtain priority over other credi-
19 tors.” *In re Hilde*, 120 F.3d 950, 954 (9th Cir. 1997) (citation omitted).

20 Here, Amazon has obtained final judgment against PersonalWeb, and the automatic stay of
21 enforcement expired nearly a month ago. PersonalWeb has not satisfied any portion of that judg-
22 ment; nor has it posted a supersedeas bond; nor has it informally provided information about its
23 accounts and assets in response to Amazon’s requests; nor has it conferred with Amazon on these
24 issues despite repeated requests. (Gregorian Decl. ¶ 4.) Moreover, Mr. Bermeister’s testimony
25 indicates a real possibility of undercapitalization, if not insolvency, and raises the prospect that if
26 not secured now, Amazon will never be able to collect. (*Id.*) PersonalWeb’s evasions are particu-
27 larly concerning given the amount of the judgment at issue. *See Smagin v. Yegiazaryan*, No. 2:14-
28 CV-09764-R, 2016 WL 11676607, at *3 (C.D. Cal. Nov. 14, 2016) (granting preliminary injunction

1 to freeze assets where the defendant declined to post bond pending an appeal and there was an
2 established “pattern of avoidance and concealment” regarding his assets), *aff’d*, 733 F. App’x 393
3 (9th Cir. 2018).

4 Amazon therefore requests that this Court order PersonalWeb to appear for a debtor’s ex-
5 amination to take place within the next 60 days in order to allow for personal service of the order
6 as required by California Code of Civil Procedure § 708.110(d). Amazon has not examined Per-
7 sonalWeb in the preceding 120 days and thus request that the Court issue this order *ex-parte*. (Gre-
8 gorian Decl. ¶ 4.)

9 **III. CONCLUSION**

10 For the foregoing reasons, Amazon respectfully requests that the Court grant this applica-
11 tion and order PersonalWeb to appear for a debtor’s examination within 60 days.

12 April 26, 2021

Respectfully submitted,

FENWICK & WEST LLP



15 By: Todd R. Gregorian
TODD R. GREGORIAN (CSB No. 236096)

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17 Counsel for AMAZON.COM, INC.,
18 AMAZON WEB SERVICES, INC., and
19 TWITCH INTERACTIVE, INC.
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