

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

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

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

16 IN RE: PERSONAL WEB 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
 LEVEL 3 COMMUNICATIONS, LLC,

23 Plaintiffs,

24 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

**MOTION TO COMPEL COMPLIANCE
 WITH COURT ORDER OF
 AMAZON.COM, INC., AMAZON WEB
 SERVICES, INC., AND TWITCH
 INTERACTIVE INC.**

Date: September 30, 2021

Time: 9:00 a.m.

Location: San Jose, Courtroom 3, 5th
 Floor

Judge: Hon. Beth L. Freeman

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on September 30, 2021, at 9:00 a.m., at the United States
3 District Court for the Northern District of California, 280 South First Street, San Jose, California,
4 in the courtroom of the Honorable Beth L. Freeman, Amazon.com, Inc., Amazon Web Services,
5 Inc., and Twitch Interactive, Inc. (collectively, “Amazon”) will and hereby do move the Court
6 under Rules 69 and 37 of the Federal Rules of Civil Procedure for an order requiring PersonalWeb
7 Technologies, LLC (“PersonalWeb”) to comply with its April 27, 2021 order to furnish information
8 allowing Amazon to enforce the judgment entered by the Court.

9 Amazon and Twitch base their motion on this notice, the accompanying memorandum of
10 points and authorities, all pleadings and documents on file in this action, and such other materials
11 or argument as the Court may consider.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 On April 27, 2021, the Court ordered that “PersonalWeb shall provide Amazon bank or
14 financial accounts within PersonalWeb’s possession, including current balances, by May 7, 2021.”
15 (Dkt. 664.) PersonalWeb has failed to do so. Amazon now moves to compel PersonalWeb to
16 comply with the Court’s order and requests leave to move for sanctions against PersonalWeb and
17 its counsel for their unjustified conduct.

18 **I. BACKGROUND**

19 On March 2, 2021, the Court awarded Amazon \$4,615,242.28 in attorney fees and
20 \$203,300.10 in non-taxable costs. (Case No. 5:18-md-02834, Dkt. 648.) 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; (Dkt. 661-1 ¶ 4). Nearly two months ago, Amazon
27 asked PersonalWeb’s counsel of record from Stubbs Alderton & Markiles, LLP whether
28 PersonalWeb would post a bond. (Dkt. 659-1 at 5.) PersonalWeb’s counsel responded by stating

1 that PersonalWeb “is considering its options,” and inviting Amazon to follow up with him by the
2 next week. (*Id.*) Amazon did so on April 17, 2021, seeking to meet and confer about securing the
3 judgment, and asking whether PersonalWeb has sufficient funds to satisfy the judgment or has other
4 assets to secure it. (*Id.* at 4.) PersonalWeb did not provide any information in response to this
5 request. (*Id.*)

6 On April 19, Amazon served interrogatories and requests for production of documents
7 pursuant to Fed. R. Civ. P. 69 and Cal. Civ. Proc. Code §§ 708.020-708.030, seeking information
8 as to whether PersonalWeb has sufficient assets to satisfy judgment. (*See* Dkts. 659-3, 659-4.)
9 PersonalWeb’s counsel responded by stating that they do not represent PersonalWeb with respect
10 to Amazon’s attempts to secure or enforce the judgment, and claimed that Amazon has “no
11 authority” to serve them with case documents to the extent they concern those issues. (Dkts. 661-
12 1 ¶ 3, 659-1 at 3.)

13 On April 26, 2021, Amazon filed an ex-parte application for an order compelling a debtor’s
14 examination and the production of information and documents relating to PersonalWeb’s assets.
15 (Dkts. 661, 662.) On April 27, the Court ordered PersonalWeb to produce its bank and financial
16 account information by May 7 and to produce the documents sought by Amazon under Fed. R. Civ.
17 P. 69 and Cal. Civ. Proc. Code § 708.030 by May 27. (Dkt. 664.) It separately ordered
18 PersonalWeb to appear for a debtor’s examination but later vacated that order. (Dkts. 665, 675.)

19 PersonalWeb has retained counsel to represent it with respect to judgment enforcement, Mr.
20 Ronald Richards. (Dkts. 673-1, 674-1 ¶ 4.) Amazon served all relevant post-judgment documents
21 on Mr. Richards by certified mail, including the Court’s order compelling identification of the bank
22 information. (Dkt. 668.) On May 7, 2021, PersonalWeb did not produce any of its bank and
23 financial account information as the Court ordered. (*See* Dkt. 686 (Transcript of May 13, 2021
24 Case Management Conference) at 5:20-25; 9:17-18.) PersonalWeb also made no attempt to seek
25 relief from the order. (*Id.* at 7:7-8:4.) In fact, Mr. Richards has reported that he does not even plan
26 to appear in this case “except for post judgment motions if for some reason we need to involve the
27 Court.” (Dkt. 673-1 at 4.)

28

1 **II. ARGUMENT**

2 **A. Legal Standard**

3 Post-judgment discovery is governed by Fed. R. Civ. P. 69(a)(2), which provides, “In aid
4 of the judgment or execution, the judgment creditor . . . may obtain discovery from any person—
5 including the judgment debtor—as provided in these rules *or* by the procedure of the state where
6 the court is located” (emphasis added). *See also A&F Bahamas, LLC v. World Venture Grp., Inc.*,
7 No. CV 17-8523 VAP (SS), 2018 WL 5961297, at *2 (C.D. Cal. Oct. 19, 2018). The scope of post-
8 judgment discovery is “very broad,” and there is “presumption [] in favor of full discovery of any
9 matters arguably related to the creditor’s efforts to trace the debtor’s assets and otherwise to enforce
10 its judgment.” *Id.* (citation omitted). “[D]ue to its broad scope, a party is free to use any means of
11 discovery allowable under the Federal Rules of Civil Procedure.” *Forreststream Holdings Ltd. v.*
12 *Shenkman*, No. 16-CV-01609-LB, 2018 WL 6522218, at *4 (N.D. Cal. Dec. 11, 2018) (citation
13 omitted).

14 Under federal and California law, judgment creditors may propound both document
15 requests and interrogatories. *See Odnil Music Ltd. v. Katharsis LLC*, No. CIVS05-0545WBSEFB,
16 2007 WL 1703763, at *2 (E.D. Cal. June 11, 2007); *see also Retamco Operating, Inc. v. Carone*,
17 No. CV0402997CBMRZX, 2007 WL 9752774 (C.D. Cal. June 29, 2007).

18 The district court has broad discretion in controlling discovery under these rules. *See*
19 *Packaging Corp. of Am. v. Bonert’s, Inc.*, No. 8:16-cv-00818-JVS-KSx, 2019 WL 1123165, at *1
20 (C.D. Cal. Mar. 11, 2019). If the judgment debtor fails to respond to discovery, Federal Rule of
21 Civil Procedure 37 allows the court to compel responses and impose sanctions. *Odnil Music*, 2007
22 WL 1703763, at *2. Rule 37(b)(2)(A) states that if a party “fails to obey an order to provide or
23 permit discovery . . . the court where the action is pending may issue further just orders,” including
24 “treating as contempt of court the failure to obey any order.” Rule 37(b)(2)(B) also provides that
25 “the court must order the disobedient party, the attorney advising that party, or both to pay the
26 reasonable expenses, including attorney’s fees, caused by the failure, unless the failure was
27 substantially justified or other circumstances make an award of expenses unjust.” *See also Ennova*
28 *Research SRL v. Beebell Inc.*, No. 16-CV-05114-KAW, 2019 WL 285797, at *2 (N.D. Cal. Jan.

1 22, 2019). A party meets the “substantially justified” standard only when there is a “genuine
2 dispute” or if “reasonable people could differ” as to the appropriateness of the motion. *JSR Micro,*
3 *Inc. v. QBE Ins. Corp.*, No. C0903044PJHEDL, 2010 WL 1957465, at *2 (N.D. Cal. May 14,
4 2010).

5 **B. The Court Should Compel PersonalWeb to Comply with Its Order**

6 The Court ordered PersonalWeb to provide by May 7 bank or financial accounts within
7 PersonalWeb’s possession, similar to the information sought by Amazon’s document requests and
8 interrogatories. (Dkt. 664.) PersonalWeb disregarded this order: it did not comply, and it sought
9 no relief from the Court to excuse its lack of compliance. The Court should now compel
10 PersonalWeb to comply with its order, or face sanctions for its continuing and willful violation.

11 Federal courts in California, including in this district, routinely enforce compliance with
12 post-judgment discovery, including by sanctioning parties and attorneys who ignore court orders.
13 In *Forreststream*, after the defendant failed to provide meaningful responses to written discovery
14 about its ability to satisfy judgment, the court ordered the defendant to provide information about
15 its assets. 2018 WL 6522218, at *1. When the defendant failed to comply, the court found a willful
16 violation of its order, ordered compliance, and granted the plaintiff’s motion for sanctions. *Id.* at
17 *4, *7. Likewise, in *Ennova Research SRL*, the court imposed sanctions on the defendant for its
18 failure to comply with an order compelling the production of documents for a debtor’s examination.
19 2019 WL 285797, at *2. There are numerous similar decisions. *See Retamco*, 2007 WL 9752774,
20 at *1 (denying the judgment debtor’s motion for a protective order against post-judgment discovery
21 under Rule 69); *Ryan Inv. Corp. v. Pedregal de Cabo San Lucas*, No. C 06-3219 JWRS, 2009 WL
22 5114077 (N.D. Cal. Dec. 18, 2009) (compelling foreign defendants to complete production of
23 documents under Rule 69); *Odnil Music*, 2007 WL 1703763, at *3 (holding that “[t]he judgment
24 creditors are entitled to seek [] information [regarding judgment debtors’ assets] pursuant to the
25 Federal and California Rules of Civil Procedure,” granting the judgment creditor’s motion to
26 compel responses and imposing sanctions for the judgment debtor’s groundless and untimely
27 objections); *Packaging Corp. of Am.*, 2019 WL 1123165, at *6 (granting post-judgment discovery
28 against third party).

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