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8 Attorneys for PERSONALWEB
 TECHNOLOGIES, LLC
 9 (Excluding Post Judgment Debtor
 Collection Proceedings)

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

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

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

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

15 AMAZON.COM, INC. and AMAZON WEB
 16 SERVICE, INC.,

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

17 Plaintiffs,

**NOTICE OF MOTION AND MOTION OF
 STUBBS ALDERTON & MARKILES
 AND THEODORE (“TED”) MACEIKO
 TO WITHDRAW AS COUNSEL FOR
 PERSONALWEB TECHNOLOGIES, LLC
 PURSUANT TO CLIENT INSTRUCTION**

18 v.

19 PERSONALWEB TECHNOLOGIES, LLC, et
 20 al.,

**DECLARATIONS OF JEFFREY F.
 GERSH AND MICHAEL A. SHERMAN
 FILED IN SUPPORT; [PROPOSED]
 ORDER**

21 Defendants.

22 PERSONALWEB TECHNOLOGIES, LLC, et
 23 al.,

Hearing: July 1, 2021

Time: 9:00 a.m.

Judge: Hon. Beth Labson Freeman

24 Plaintiffs,

25 v.

26 TWITCH INTERACTIVE, INC.,

27 Defendant.

28

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 1, 2021 at 9:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Beth Labson Freeman, Courtroom 3, 5th Floor, of the United States District Court for the Northern District of California, San Jose Division, 280 South First Street, San Jose, California 95113, Stubbs Alderton & Markiles, LLP and Theodore (“Ted”) Maceiko of Maceiko IP (collectively, “SAM”), will and hereby does move the Court, pursuant to Civil Local Rule 11-5(a) and in compliance with California Rule of Professional Conduct 1.16, to withdraw as counsel for PersonalWeb Technologies, LLC (“PersonalWeb”) as a result of having been terminated from representing PersonalWeb in any matters in connection with the within action other than the pending appeals. This Motion is based on this Notice, the attached Memorandum of Points and Authorities, the Declarations of Jeffrey F. Gersh and Michael A. Sherman, all the pleadings and records on file in this action, and any further argument or evidence as may be presented at or before the hearing on this matter, should the Court choose to hold a hearing.

Respectfully submitted,

Dated: May 25, 2021

STUBBS, ALDERTON & MARKILES, LLP

By: /s/ Michael A. Sherman

Michael A. Sherman
Jeffrey F. Gersh
Wesley W. Monroe
Viviana Boero Hedrick
Sandeep Seth

Attorneys for PERSONALWEB
TECHNOLOGIES, LLC
(Excluding Post Judgment Debtor
Collection Proceedings)

1 Dated: May 25, 2021

MACEIKO IP

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TECHNOLOGIES, LLC,

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Pursuant to Civil Local Rule 11-5, SAM seeks to withdraw as counsel of record for PersonalWeb at the request of its client in this closed case, as PersonalWeb has discharged SAM as its counsel in the proceedings before this Court and has retained other counsel, Ronald Richards, to represent it in the post judgment collection proceedings brought by Amazon and Twitch (collectively “Amazon”). Mr. Richards has specifically advised SAM that it is not authorized to do any work in connection with such post judgment collection proceedings on behalf of PersonalWeb, which is all that remains before this trial court. SAM remains counsel for PersonalWeb in the pending appeals only. As PersonalWeb has terminated SAM’s representation of it as its counsel in this case, SAM cannot continue to remain as counsel of record for PersonalWeb. SAM has provided written notice of its intent to withdraw as counsel to all parties who have appeared in this case.

SAM previously filed a motion to withdraw on May 12, 2021 (Dkt. 674) but later withdrew it (Dkt. 684) and thereafter PersonalWeb filed a consent motion to substitute PersonalWeb, *in pro per*, in place of SAM (Dkt. 679) as a result of the Court’s suggestion at the case management conference on May 13, 2021 that *in pro per* substitution by PersonalWeb was permissible because PersonalWeb did not need counsel other than to appear in court. (Gersh Decl., Ex. C, CMC Hearing Transcript, at 10:23-25; 16:20-23) (“You know a party -- a debtor doesn’t have to have a lawyer. They could be representing themselves.”; “And, you know, if PersonalWeb wants your firm clearly out of the way on this issue, then it will appear and file a substitution signed by PersonalWeb, and signed by you. There’s a really streamlined way to do it.”) However, on May 19, 2021, the Court denied the motion to substitute. (Dkt. 685 (“While the Court may have suggested at the recent case management conference that this [*in pro per*] substitution was permissible, a more searching review of civil procedure indicates otherwise. A corporation or other artificial entity must be represented by licensed counsel.”) As a result, SAM hereby refiles this motion to withdraw as counsel (with additional authorities) and respectfully requests that the Court issue an order granting withdrawal.

1 II. LEGAL ARGUMENT

2 Civil Local Rule 11-5(a) permits withdrawal of counsel by “order of Court after written notice
3 has been given reasonably in advance to the client and to all other parties who have appeared in the
4 case.” Pursuant to the California Rules of Professional Conduct, Rule 1.16(a)(4), an attorney “shall
5 withdraw” where the client discharges the lawyer or otherwise terminates the representation.

6 “It is axiomatic that an attorney cannot continue to represent a client in a lawsuit in
7 contravention of that client’s explicit instruction to the contrary.” *Trulis v. Barton*, 107 F.3d 685,693
8 (9th Cir. 1995). Under California law, a client’s right to discharge its counsel “is absolute.” *Fracases*
9 *v. Brent*, 6 Cal. 3d 784, 790, 100 Cal. Rptr. 385, 494 P.2d 9 (1972); accord *Federal Sav. and Loan*
10 *Ins. Corp. v. Angell, Holmes & Lea*, 838 F.2d 395, 395–396 (9th Cir. 1988) (“the law of California []
11 holds that a client’s power to discharge an attorney, with or without cause, “is absolute”) and *Heller*
12 *Ehrman LLP v. Davis, Wright, Tremaine, LLP*, 527 B.R. 24, 31 (N.D. Cal. 2014) (“It has long been
13 recognized in California that the client’s power to discharge an attorney, with or without cause, is
14 absolute.”); see also *Shuang Zhang v. Parfet*, No. 16-CV-04333-LHK, 2017 WL 1739163, at *2 (N.D.
15 Cal. May 4, 2017) (granting withdrawal of counsel where representation terminated by the client).

16 Indeed, acknowledging that under California law, a client’s right to no longer be represented
17 by its counsel of record “is absolute”, this Court granted a motion to withdraw as counsel where
18 counsel was terminated by its entity client, even though (1) the entity client had not retained new
19 counsel nor had its new counsel entered an appearance on its behalf, and (2) despite recognizing that
20 an entity may not appear *pro se* in any action. See *Senah, Inc v. Xi'an Forstar S&t Co, Ltd*, No. 13-
21 CV-04254-BLF, 2016 WL 3092099, at *1 (N.D. Cal. June 2, 2016) (granting entry of default judgment
22 even though the entity defendant did not have any counsel of record after “[u]nexpectedly, Defendant’s
23 counsel sought to withdraw after being terminated by Defendant, which the Court allowed....The Court
24 issued several orders to Defendant explaining that withdrawing from this litigation [and not obtaining
25 new counsel] could result in default judgment being entered against it....Having satisfied itself that
26 Defendant was fully advised of the consequences of its actions, the Court proceeded with the case.”)
27 and see also No. 13-CV-04254-BLF, Dkt. 133 (Order Granting Emergency Motion to Withdraw as
28 Counsel for Defendant Xi’an Forstar S&T Co., Ltd. Pursuant to Client Instruction.)

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