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

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

FENWICK & WEST LLP
ATTORNEYS AT LAW

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE: PERSONAL WEB TECHNOLOGIES, LLC ET AL., PATENT LITIGATION,	Case No.: 5:18-md-02834-BLF
AMAZON.COM, INC., and AMAZON WEB SERVICES, INC.,	Case No.: 5:18-cv-00767-BLF
	Case No.: 5:18-cv-05619-BLF
Plaintiffs	
v.	**OPPOSITION OF AMAZON.COM, INC., AMAZON WEB SERVICES, INC., AND TWITCH INTERACTIVE, INC. TO MOTION TO WITHDRAW AS COUNSEL BY STUBBS ALDERTON & MARKILES, LLP**
PERSONALWEB TECHNOLOGIES, LLC and LEVEL 3 COMMUNICATIONS, LLC,	
Defendants.	
PERSONALWEB TECHNOLOGIES, LLC, and LEVEL 3 COMMUNICATIONS, LLC,	
Plaintiffs,	
v.	
TWITCH INTERACTIVE, INC.,	
Defendant.	

1   The motion of Stubbs Alderton and Markiles, LLP ("SAM") to withdraw is improper and

2   the Court should deny it, for at least two reasons. This motion marks SAM's *fifth* filing requesting

3   the identical relief. The Court has already ruled that PersonalWeb as an entity may not represent

4   itself. Nothing has changed. SAM argues that there is no reason that PersonalWeb needs ongoing

5   counsel because the clerk has administratively closed the file during the appeals. But that argument

6   defies common sense.   In addition to a potential remand, there are currently multiple pending

7   discovery motions requiring PersonalWeb to respond through its counsel. PersonalWeb is also in

8   violation of the Court's order requiring it to turn over financial account information and documents.

9   If this case had concluded in its entirety as SAM claims there would in fact be no need for counsel

10   to withdraw. To the contrary, it is precisely *because* a member of the bar must remain responsible

11   to the Court for PersonalWeb's conduct that SAM seeks to withdraw.

12   Next, and more important, counsel of record may not withdraw when doing so would

13   prejudice other parties to the litigation, including prejudicing a party in its attempts to collect the

14   judgment.   The prejudice to Amazon is clear here—PersonalWeb openly defied the Court's

15   discovery order concerning judgment enforcement when it believed it could do so with no

16   consequence to itself or its attorneys. It was only after Amazon pointed out that SAM could not

17   remain counsel of record while also refusing service of case documents—and that doing so was

18   sanctionable conduct—that SAM's need to "partially" withdraw became urgent.

19   Indeed, prejudicing Amazon in its collection efforts is *precisely the point* of the withdrawal.

20   There has been no breakdown in the attorney-client relationship—SAM represents PersonalWeb in

21   its other pending matters, including the appeals in this case. And SAM has offered the Court *no*

22   *supporting facts* concerning its supposed limited scope engagement, including no facts about when

23   it agreed to limit its representation (particularly after it originally invited Amazon's counsel to

24   confer on post-judgment matters without a word about any supposed limited-scope representation),

25   what the specific terms are, or the reasons behind it. This is not a situation in which the client has

26   put its attorney in a conflicted situation; PersonalWeb and SAM (who through SAM Ventures is

27   itself an investor in and owner of PersonalWeb, and whose name partner Murray Markiles was a

28   founding director of PersonalWeb, Inc.) are completely aligned. Amazon respectfully requests the

1   Court take a hard look at the circumstances here before it endorses this conduct.

2   Finally, at a minimum, the Court should require the appearance of substitute counsel before

3   withdrawal is permitted, a condition made simple here because PersonalWeb already retained

4   Ronald Richards for this purpose over a month ago.   The Court should also retain jurisdiction over

5   SAM for purposes of discipline and sanctions, an ordinary condition on withdrawal that protects

6   the integrity of the Court.   Amazon has a pending request for sanctions against SAM and is

7   evaluating its options for additional relief given SAM's role in both the exceptional conduct that

8   led the Court to award fees in the first place, and in obstructing enforcement of the judgment.

9   **I.   BACKGROUND**

10   The Court has awarded Amazon over $5.18 million in attorney fees and $214,421.07 in

11   non-taxable costs. (Case No. 5:18-md-02834, Dkts. 648, 656.) Despite noticing its appeal of the

12   award over two months ago (Dkt. 653), PersonalWeb has neither paid the judgment or posted a

13   supersedeas bond to secure the judgment and stay enforcement. *See* Fed. R. Civ. P. 62. Nor has

14   PersonalWeb provided any responses to post-judgment discovery. (Declaration of Todd Gregorian

15   ("Gregorian Dec.") ¶ 2.)

16   In March, SAM told Amazon that PersonalWeb "is considering its options" for posting a

17   bond and invited Amazon to follow up. (Dkt. 659-1.) Amazon did so, asking to meet and confer

18   about securing the judgment and whether PersonalWeb had funds to do so. (*Id*.) PersonalWeb

19   provided no information in response to this request. On April 19, Amazon served written discovery

20   under Fed. R. Civ. P. 69 and Cal. Civ. P. §§ 708.020-708.030, seeking information concerning

21   PersonalWeb's assets. (*See* Dkts. 659-3, 659-4.)   SAM responded by stating that it does not

22   represent PersonalWeb with respect to Amazon's attempts to secure or enforce the judgment, and

23   claimed that Amazon has "no authority" to serve them with documents to the extent they concern

24   those issues. (Dkts. 661, 659-1.)

25   On April 26, Amazon filed an ex-parte application for an order compelling a debtor's

26   examination and the production of documents relating to PersonalWeb's assets. (Dkts. 661, 662.)

27   On April 27, 2021, the Court ordered PersonalWeb to produce its bank and financial account

28   information by May 7. (Dkt. 664.) It separately ordered PersonalWeb to appear for a debtor's

1   examination on May 25, 2021. (Dkt. 665.) SAM received these orders through ECF but again

2   asserted that service on them is ineffective. (Dkt. 673-1 at 3.) Amazon also provided the Court's

3   orders to Ronald Richards, an attorney who PersonalWeb purportedly retained in late April to resist

4   enforcement of the judgment. Mr. Richards reported that he does not plan to appear in this case

5   "except for post judgment motions if for some reason we need to involve the Court." (*Id*. at 4.)

6   After receiving the Court's orders, he nonetheless instructed PersonalWeb's counsel of record that

7   they are "not authorized" by PersonalWeb "to do anything post judgment." (*Id*. at 1.)

8   On May 7, PersonalWeb did not produce any of its bank and financial account information

9   as the Court ordered.   On May 12, SAM moved to withdraw as counsel for PersonalWeb, stating

10 that the client "knowingly and freely assents to termination of the representation." (Dkt. 674.) On

11 May 13, the Court held a case management conference, during which the Court made clear that

12 corporate entities require representation by counsel, and expressed concern over the fact that Mr.

13 Richards had not yet substituted as counsel. (*See* Transcript, May 13 CMC ("Transcript") at 13:11-

14 12 ("PersonalWeb is a company. It can't represent itself."); 9:17-18 ("I don't know why Mr.

15 Richards has not appeared"); 14:12-15 ("I have some concern about [] transferring this to Mr.

16 Richards, or PersonalWeb deciding it's not going to have counsel on this collection matter.") The

17 Court also stated that it would consider the motion to withdraw after Amazon filed its opposition.

18 (*Id.* at 12:11-18.)

19   SAM then took several steps to try to secure a clerk's order approving its withdrawal before

20 Amazon could oppose and the Court could consider the motion. On May 14, SAM filed a "Notice

21 of Substitution" purporting to substitute itself with PersonalWeb appearing "in pro per." (Dkt.

22 678.) The notice listed a *defunct UPS mailbox* as the address where PersonalWeb could supposedly

23 be contacted about this case going forward. (*Id*.; Gregorian Dec. ¶ 2.) On May 17, PersonalWeb

24 re-filed this notice as a "motion" event in the Court's filing system. (Dkt. 679.) On May 19, SAM

25 also withdrew its original motion to withdraw. (Dkt. 684.) That same day, the Court denied the

26 "motion" because "[a] corporation or other artificial entity must be represented by licensed

27 counsel." (Dkt. 685 (citations omitted).) PersonalWeb filed the current motion on May 25, still

28 seeking to withdraw without substitute counsel. (Dkt. 688.)

1   On May 21, Amazon moved to compel PersonalWeb to comply with the Court's April 27

2   order. (Dkt. 687.) PersonalWeb and SAM did not respond by the June 4 deadline. On May 26,

3   counsel for Amazon and SAM conferred on Amazon's separate motion to compel PersonalWeb to

4   respond to Amazon's post-judgment interrogatories and requests for production, with Mr. Richards

5   declining an invitation to participate. (Gregorian Dec. ¶ 3.) Amazon filed this motion on June 1,

6   and it remains pending. (Dkt. 689.)

7   **II.   ARGUMENT**

8   **A.   Legal Standard**

9   Counsel may not withdraw from an action without a court order, and only after counsel has

10   provided written notice reasonably in advance to the client and to all other parties who have

11   appeared in the case. Civ. L. R. 11-5(a).   In considering a motion for withdrawal, courts consider

12   the following factors: "(1) the reasons counsel seeks to withdraw; (2) the possible prejudice that

13   withdrawal may cause to other litigants; (3) the harm that withdrawal might cause to the

14   administration of justice; and (4) the extent to which withdrawal will delay resolution of the case."

15   *Deal v. Countrywide Home Loans*, No. C 09-01643 SBA, 2010 WL 3702459, at *2 (N.D. Cal. Sept.

16   15, 2010).

17   Corporate entities like PersonalWeb cannot appear in this Court without representation by

18   counsel. *Reading Int'l, Inc. v. Malulani Grp., Ltd.*, 814 F.3d 1046, 1053 (9th Cir. 2016) ("A

19   corporation must be represented by counsel"); *see also United States v. High Country Broad. Co.,*

20   *Inc.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (per curiam) ("A corporation may appear in federal court

21   only through licensed counsel"); Dkt. 685 (order denying substitution of counsel); *see also* Civ. L.

22   R. 3-9(b). "When withdrawal by an attorney from an action is not accompanied by simultaneous

23   appearance of substitute counsel or agreement of the party to appear pro se, leave to withdraw may

24   be subject to the condition that papers may continue to be served on counsel for forwarding

25   purposes, unless and until the client appears by other counsel or pro se." Civ. L. R. 11-5(b).

26

27

28

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.

fastcase®
Smarter legal research.