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8 Attorneys for PERSONALWEB
 TECHNOLOGIES, LLC
 9 (Prior to 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,

**REPLY OF STUBBS ALDERTON &
 MARKILES AND THEODORE (“TED”)
 MACEIKO IN SUPPORT OF MOTION TO
 WITHDRAW AS COUNSEL FOR
 PERSONALWEB TECHNOLOGIES, LLC**

18 v.

19 PERSONALWEB TECHNOLOGIES, LLC, et
 20 al.,

**DECLARATIONS OF MICHAEL A.
 SHERMAN AND JEFFREY F. GERSH**

21 Defendants.

22 PERSONALWEB TECHNOLOGIES, LLC, et
 23 al.,

24 Plaintiffs,

25 v.

26 TWITCH INTERACTIVE, INC.,

27 Defendant.

28

1 Amazon's Opposition vilifies SAM by suggesting SAM's Motion is part of a scheme to
2 thwart Amazon's enforcement of its judgment. Amazon levels these charges against SAM and two
3 California-licensed attorneys (Messrs. Sherman and Gersh) who have spent their entire legal careers
4 (over 40 years each) maintaining litigation practices of the highest integrity, with deservedly
5 exemplary reputations. Amazon begins by asking the Court to deny SAM's motion because it is
6 "improper", and then asserts that SAM seeks to withdraw for no other reason than to prejudice
7 Amazon's collection efforts. There is no evidence to support these inflammatory claims, and SAM
8 denies such assertions. (Sherman Decl. ¶4).

10 Amazon asserts this is SAM's *fifth* filing with this Court seeking "identical" relief even
11 though the Court allegedly "has already ruled" on this issue. (Oppo. 1:1-4.) This is an exaggeration
12 and highly misleading. The Court is aware of its tentative views expressed on May 12, 2021, at the
13 CMC, and that exchange was a direct contributor to multiple filings by which SAM did *not* seek
14 identical relief. There is a difference between substituting a corporation in *pro per* versus a motion
15 to withdraw filed by counsel. (Dkt. 688-4, Dkt. 679, 688-4 at 10, 16, 688, 685.) As set forth in the
16 Motion, after the Court's order it became necessary for SAM to file this Motion.

18 SAM does not contend that PersonalWeb does not *need* counsel to appear before this Court
19 (Oppo 1:4-6.) nor did SAM file this Motion to prejudice Amazon by obstructing its collection
20 efforts. Instead, SAM was terminated and is incapable of acting on PersonalWeb's behalf.
21 PersonalWeb decided it wanted different counsel, Ronald Richards, Esq., to represent it in any post-
22 judgment collection/discovery issues. (Dkt. 688-3, 671-9, 673-5.) That PersonalWeb chose different
23 counsel to handle the post-judgment collection/discovery stage of this case is neither improper,
24 impermissible nor unusual. The only issue that remains here is Amazon's insistence that the Court
25 prohibit SAM from withdrawing until Mr. Richards makes an appearance in this case. But SAM has
26 no control over when Mr. Richards will enter an appearance. The rationale against self-
27 representation by an entity is to protect the client when they have not attempted to secure counsel or
28 do not have counsel at all, a fact that does not apply here given Mr. Richard's engagement as

1 PersonalWeb’s counsel. *See Arch Ins. Co. v. Sierra Equip. Rental, Inc.*, No. 2:12-cv-00617-KJM-
2 KJN, 2016 WL 829208, at *2-3 (E.D. Cal. Mar. 3, 2016) (denying motion to withdraw because
3 counsel had “not indicated he has attempted to locate substitute counsel [for his client] or has
4 attempted to advise Sierra of the potential consequences it would face in his absence.”). *See*
5 *Vedatech, Inc. v. St. Paul Fire & Marine Ins. Co.*, No. C 04-1249 VRW, 2008 WL 2790200, at *5 (N.D.
6 Cal. July 17, 2008) (and other similar authorities relied on by PersonalWeb in its Motion) where courts
7 have granted motions by counsel to withdraw, when the entity client had terminated its counsel even
8 though the entity was not represented by licensed counsel. (Dkt. 688 at 5:9-16). (“For the
9 uncooperative corporate client who has not been willing to bring in new counsel, granting of the
10 withdrawal motion will put extreme pressure on it to obtain new counsel of record for should it fail
11 to do so it risks forfeiture of its rights through nonrepresentation.”). *Id.*

12 Amazon criticizes SAM’s lack of response on PersonalWeb’s behalf to Amazon’s discovery
13 requests to PersonalWeb, ignoring that an attorney may not act on behalf of its client once it is
14 discharged. Acting contrary would violate California Rule of Professional Conduct 1.16(a)(4) which
15 requires that an attorney “shall withdraw from the representation” when discharged by its client.
16 PersonalWeb, through Mr. Richards, advised SAM that it is “not to do anything post judgment” and
17 that SAM was only retained for handling the “appeals” since he was retained to represent SAM in
18 post-judgment collection/discovery proceedings. (Dkt. 688-1, 2 and 3) In further support of SAM
19 having been discharged, PersonalWeb’s President, Michael Weiss confirmed in writing
20 PersonalWeb’s consent to SAM’s substituting out. (Dkt. 679, 683, 683-1) SAM therefore did the
21 only thing it could: it notified Amazon’s counsel in writing as soon as it was discharged and notified
22 the Court as well. (Dkt. 671-2, 671-3, 671-4, 674, 688-1, and 688-4.) SAM has continued to forward
23 all of Amazon’s discovery requests, Court orders and motion documents to PersonalWeb and Mr.
24 Richards. (Gersh Decl., ¶ 6.)

27 Amazon contends SAM’s representation of PersonalWeb in pending appeals is evidence that
28 no “breakdown in the attorney-client relationship” occurred. (Oppo, 19:19-21.) This is beside the

1 point. SAM's withdrawal motion is not predicated on that dynamic, nor is that required. CA. ST.
2 RPC Rule 1.16(a). Relationship or engagement break-down is not a requirement for discharge. *Id.*
3 PersonalWeb has the right to retain different counsel with expertise for particular issues of law.
4 Wanting new or separate representation does not equate to nefarious behavior by SAM and SAM
5 ought to not be forced into involuntary servitude in remaining as counsel once discharged. SAM has
6 no issue with the Court allowing it to withdraw with logical and reasonable conditions attached, *e.g.*,
7 that it must continue to forward post-judgment collection discovery to Mr. Richards and/or to
8 PersonalWeb until Mr. Richard's enters an appearance, or any other reasonable condition.
9

10 **A. Withdrawal Will Not Prejudice Amazon's Enforcement of the Judgment.**

11 The withdrawal motion in WB Music cited and relied upon by Amazon (Oppo. at 5:4-12) is
12 unlike the one at issue here. There is a major factual difference between (i) when an attorney "may
13 withdraw" (CA. ST. RPC Rule 1.16(b)(4) and (5) "a lawyer may withdraw") versus (ii) when an
14 attorney "shall withdraw" ("shall withdraw" *Id.* at (a)(4)), and the difference is as plain as non-
15 payment of fees or unreasonable difficulty ("may") versus discharged as counsel ("shall"). In the
16 latter, withdrawal is manifest because "[i]t is axiomatic that an attorney cannot continue to represent
17 a client in a lawsuit in contravention of that client's explicit instruction to the contrary." *Trulis v.*
18 *Barton*, 107 F.3d 685,693 (9th Cir. 1995), and other cases cited in Motion at 7. Unlike the defendant
19 in WB Music where the court was left to speculate that "there may [be] an innocent explanation" for
20 why counsel sought to withdraw in that case, but simultaneously appeared for that same client in an
21 appeal, here the Court has the explanation: PersonalWeb discharged SAM and hired Mr. Richards as
22 its counsel to assist it with the post judgment discovery/collection issues, while keeping SAM as its
23 counsel for the pending appeals. This is legally permissible and a fact that SAM did not hide from
24 the Court or Amazon's counsel. (Dkt.688-1, 3.) Presumptively (and logically) Amazon's interest in
25 collecting on its judgment coupled with its claim of prejudice, ought to require some comparison
26 between (a) what action it has taken to domesticate the judgment outside of California and seeking
27 an order for a judgment debtor examination of PersonalWeb to issue where PersonalWeb might be
28

1 compelled under lawful state process in that other state to produce records at an oral examination,
2 versus (b) delay that Amazon claims it is now experiencing with its more limited discovery
3 procedures available in this Court (i.e. inability to obtain an order for a judgment debtor examination
4 of PersonalWeb in California). Amazon presents no facts comparing any such efforts in any state it
5 might domesticate to collect the judgment to the present circumstances in this Court, nor does it
6 explain why it is prejudiced other than it cannot get the full discovery it seeks in California.
7 Theoretically any action taken by a judgment debtor or any counsel (discharged or not) now or
8 previously representing that judgment debtor could conceivably relate to some argument of
9 “prejudice”. Here, Amazon presents no tie in that because of SAM’s withdrawal motion, therefore
10 Amazon is now being substantially prejudiced in some tangible way – because no connection or
11 prejudice exists.

12 **B. SAM Has Not Engaged in Sanctionable Conduct Nor Attempted to Obstruct**
13 **Enforcement of Amazon’s Judgment.**

14 Amazon persists in impugning SAM attorneys by name-calling SAM’s Motion a “tactic” and
15 seeking sanctions. Unlike the other authority that Amazon cites, *Wyman v. High Times Prods., Inc.*,
16 No. 2:18-CV-02621-TLN-EFB, 2020 WL 6449236, at *2 (E.D. Cal. Nov. 3, 2020), there the court
17 denied a motion to withdraw because the “may withdraw” in contrast to the “shall withdraw”
18 language/facts were operative under California Rules of Professional Conduct 1.16(b)(4). In *Wyman*,
19 the court further found that counsel “did not identify substitute counsel as required for corporate
20 entities like Defendant” which was necessary because “[i]t is the duty of the trial court to see that the
21 client is protected, so far as possible, from the consequences of an attorney’s abandonment.” *Id.* at
22 *1-2. That is not the case here. It is evident that there is no abandonment taking place; rather,
23 PersonalWeb has chosen other counsel to represent it in the further proceedings. In *Wyman*, the
24 court found plaintiff would be prejudiced because withdrawal would delay plaintiff’s payment under
25 a settlement agreement. That is also, not the case here. To the contrary, the record reveals Mr.
26 Richards’ attempts to reach out to Amazon’s counsel to meet and confer, in an instance where
27 presumably Amazon chose, strategically, to ignore him. (Dkt. 671-8, 671-9:4-6.)

28 Amazon also alludes to wrongdoing by PersonalWeb’s creditors as a result of the creditors

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