

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE PERSONALWEB
TECHNOLOGIES, LLC ET AL. PATENT
LITIGATION.

Case No. 18-md-02834-BLF

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

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

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

Plaintiffs,

v.

PERSONALWEB TECHNOLOGIES, LLC
and LEVEL 3 COMMUNICATIONS, LLC,

Defendants.

PERSONALWEB TECHNOLOGIES, LLC
and LEVEL 3 COMMUNICATIONS, LLC,

Plaintiffs,

v.

TWITCH INTERACTIVE, INC.,

Defendant.

**ORDER ON (1) MOTION OF
AMAZON.COM, INC., AMAZON WEB
SERVICES, INC., AND TWITCH
INTERACTIVE, INC. TO COMPEL
COMPLIANCE WITH COURT ORDER
AND (2) JOINT DISCOVERY LETTER
BRIEF RE DISCOVERY IN AID OF
EXECUTION OF JUDGMENT**

Re: Dkt. Nos. 687, 689

Before the Court are: (1) the motion of Amazon.com, Inc., Amazon Web Services, Inc., and Twitch Interactive, Inc. (collectively, "Amazon") seeking to compel compliance with Judge Freeman's April 27, 2021 order requiring PersonalWeb Technologies, LLC to furnish information in connection with Amazon's attempt to enforce the judgment entered by the Court and requesting

1 leave to file a motion for sanctions (Dkt. 687 – the “Motion”); and (2) the Parties’ joint discovery
 2 letter brief regarding PersonalWeb’s failure to respond to interrogatories and requests for
 3 production served by Amazon in connection with enforcement of the judgment (Dkt. 689 – the
 4 “Letter Brief”). The Motion was referred to the undersigned by Judge Freeman. Dkt. 690. The
 5 Court held a hearing on the Motion and the Letter Brief on July 20, 2021. Todd Gregorian
 6 appeared as counsel on behalf of Amazon; Jeffrey Gersh and Michael Sherman appeared as
 7 counsel of record for PersonalWeb.

8 Having carefully reviewed the Motion, the Letter Brief, the case file, and relevant legal
 9 authorities, the Court finds that PersonalWeb has waived its objections to post-judgment discovery
 10 served by Amazon and **ORDERS** that within 10 days of the date of this order, PersonalWeb must
 11 comply with the April 27, 2021 Order, respond fully and without objection to Amazon’s
 12 interrogatories and requests for production, and produce all requested documents.

13 **I. RELEVANT BACKGROUND**

14 On October 28, 2020, the Court entered judgment against PersonalWeb. Dkt. 643.
 15 Following entry of judgment, the Court issued an order awarding Amazon attorney fees and costs
 16 for work pre-dating February 2020. Dkt. 648. The Court later awarded Amazon additional
 17 attorney fees and costs for expenses incurred between February 2020 and February 2021. Dkt.
 18 656.¹

19 On April 19, 2021, after both attorney fees awards were issued, Amazon served
 20 interrogatories and requests for production seeking information about PersonalWeb’s assets in aid
 21 of enforcement of the judgment against PersonalWeb. Dkt. 661-1¶ 3. In the same timeframe,
 22 Amazon’s counsel made informal requests asking PersonalWeb’s counsel to identify bank and
 23 financial accounts for enforcement purposes. *Id.* On April 26, 2021, Amazon filed an *ex parte*
 24 application for an order requiring PersonalWeb to appear for a judgment debtor’s examination.
 25 Dkt. 661-662.

26 On April 27, Judge Freeman issued an order on Amazon’s *ex parte* application, which
 27

28 ¹ The Court has indicated an intention to enter an amended judgment that incorporates the attorney

1 stated as follows:

- 2
- 3 • PersonalWeb shall appear for a debtor's examination before this Court, located at 280
 - 4 South 1st Street, San Jose, CA 95113 at the time and date specified in the Order to Appear
 - 5 for Examination;
 - 6 • PersonalWeb shall provide Amazon bank or financial accounts within PersonalWeb's
 - 7 possession, including current balances, by May 7, 2021; and
 - 8 • PersonalWeb shall produce documents responsive to Amazon's First Set of Requests for
 - 9 Production of Documents Pursuant to FRCP 69 and CCP § 708.030 no later than 30 days
 - 10 from the date of this Order.

11 Dkt. 664 (the "April 27 Order"). On the same date, Judge Freeman signed and issued an order on

12 California Judicial Council Form AT-138/EJ-125 requiring PersonalWeb to appear for a judgment

13 debtor's examination. Dkt. 665 (the "Form Order").

14 On May 13, 2021, Judge Freeman held a Case Management Conference ("CMC").

15 Among the topics discussed at the CMC were whether PersonalWeb could be compelled to appear

16 for a judgment debtor's examination in this District and whether the post-judgment written

17 discovery had been properly served. Dkt. 686 (CMC Transcript) at 15-16, 18-19. Judge Freeman

18 indicated that the post-judgment written discovery issues should be raised with the undersigned

19 Magistrate Judge. *Id.* at 19. Following the Case Management Conference, Judge Freeman issued

20 an order vacating the Form Order requiring a judgment debtor's examination at Dkt. 665.

21 Dkt.675.

22 On May 21, 2021, Amazon filed the Motion now before the Court, which seeks to compel

23 compliance with the April 27 Order and which Judge Freeman referred to the undersigned. Dkt.

24 687, 690. Specifically, the Motion seeks to compel PersonalWeb to provide the bank or financial

25 account information informally requested by Amazon, which Judge Freeman ordered to be

26 provided in the April 27 Order. Dkt. 687-1. The Motion also asks for leave to file a motion for

27 sanctions. *Id.* PersonalWeb did not file an opposition to the Motion by the deadline or at any time

28 thereafter. *See* Dkt. 692. On June 1, 2021, the Parties jointly filed the Letter Brief, in which

29 Amazon asks the Court to compel PersonalWeb to respond to the interrogatories and document

30 requests served on April 19, 2021. Dkt. 689; 689-3.

1 Beginning on or around April 22, 2021, attorneys at the law firm that represented
 2 PersonalWeb in this case, Stubbs Alderton & Markiles (“SAM”), informed Amazon that they do
 3 not represent PersonalWeb in post-judgment proceedings in this case. *See* Dkt. 659-1. According
 4 to SAM, PersonalWeb is represented in post-judgment proceedings by attorney Ronald Richards.
 5 *See* Dkt. 689 at 3. On June 25, 2021, Judge Freeman conditionally granted SAM’s motion to
 6 withdraw, stating that “SAM may withdraw upon notice of appearance by Ronald Richards,
 7 PersonalWeb’s counsel for post-judgment matters.” Dkt. 694. Mr. Richards has not filed an
 8 appearance in this case, nor did he participate in the hearing. Accordingly, SAM remains counsel
 9 of record for PersonalWeb.

10 **II. DISCUSSION**

11 **A. Motion**

12 As discussed above, the April 27 Order requires PersonalWeb to (1) appear for a judgment
 13 debtor’s exam; (2) provide financial and bank account information; and (3) produce documents
 14 responsive to Amazon’s requests for production. Although Judge Freeman subsequently vacated
 15 the Form Order for a judgment debtor’s examination, she did not vacate the portions of the April
 16 27 Order that required PersonalWeb to provide information about its bank and financial accounts
 17 and to produce documents responsive to Amazon’s requests for production. PersonalWeb has not
 18 opposed the motion to compel it to comply with those portions of the April 27 Order.
 19 Accordingly, the Court **GRANTS** Amazon’s motion to compel PersonalWeb to comply with the
 20 April 27 Order.

21 **B. Letter Brief**

22 In the Letter Brief, Amazon asks the Court to compel PersonalWeb to respond and produce
 23 documents in response to interrogatories and requests for production served on April 19, 2021.
 24 Dkt. 689. In its portion of the Letter Brief, SAM and PersonalWeb offer several reasons why
 25 PersonalWeb should not be compelled to respond to Amazon’s written discovery.²

26 _____
 27 ² Although SAM states in a portion of the Letter Brief entitled “SAM’s Position” that it has been
 28 “discharged by its client PersonalWeb for purposes of handling post judgment collection
 29 proceedings.” it also includes a section in the Letter Brief entitled “PersonalWeb’s Position.”

1 First, SAM challenges the method by which the discovery was served—specifically,
2 service of the discovery on SAM. SAM argues that Amazon’s discovery was “improperly served
3 based on California law which requires personal service of such discovery on the judgment
4 debtor.” Dkt. 689 at 3 (citing Cal. Code Civ. Proc. § 684.020 and *Taghizadeh v. Azadi*, 2003 WL
5 504121, at *5 (Cal. Ct. App. Feb. 26, 2003)). SAM’s argument regarding the method of service
6 ignores Federal Rule of Civil Procedure 69, which provides that, “[i]n aid of the judgment or
7 execution, the judgment creditor ... may obtain discovery from any person—including the
8 judgment debtor—as provided in these rules *or* by the procedure of the state where the court is
9 located.” Fed. R. Civ. Proc. 69(a)(2) (emphasis added). Accordingly, Amazon was not required
10 to comply with California’s personal service rules; it could alternatively serve discovery as
11 provided in the Federal Rules.

12 In the Letter Brief, Amazon states that it “served the document requests on SAM through
13 ECF in compliance with Rule 5(b)(1).” Dkt. 689 at 2. The meaning of this statement is unclear;
14 neither the document requests nor interrogatories were filed on ECF so PersonalWeb did not
15 receive service of them by that mechanism. In any event, the certificates of service on the
16 interrogatories and requests for production indicate they were served by email on SAM. Dkt. 689-
17 1 and 689-2. Rule 5(b)(2)(E) states that service can be effected by “sending [a paper] by other
18 electronic means that the person consented to in writing.” Neither PersonalWeb nor SAM dispute
19 that PersonalWeb gave consent to receive service electronically, and in fact SAM admits that it
20 received the discovery requests and states that it sent them to PersonalWeb and Mr. Richards the
21 same day SAM received it. Dkt. 689 at 4. Amazon states that it also served the discovery on Mr.
22 Richards by certified mail and on PersonalWeb’s registered agent by personal delivery. Dkt. 673
23 at 1; Dkt. 668; Dkt. 670. Therefore, the Court concludes that service of the discovery was proper.

24 Second, SAM argues that it does not represent PersonalWeb on post-judgment matters,
25 apparently in another effort to prove that service of the written discovery on SAM was ineffective.
26 Dkt. 689 at 4. However, “[c]ounsel may not withdraw from an action until relieved by order of
27

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