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AMAZON WEB SERVICES, INC., and
11 TWITCH INTERACTIVE, INC.

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

15 IN RE: PERSONAL WEB TECHNOLOGIES,
LLC ET AL., PATENT LITIGATION

16 AMAZON.COM, INC., and AMAZON WEB
17 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

**REQUEST OF AMAZON.COM, INC.,
AMAZON WEB SERVICES, INC., AND
TWITCH INTERACTIVE, INC. FOR
CASE MANAGEMENT CONFERENCE**

FENWICK & WEST LLP
ATTORNEYS AT LAW

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1 Amazon.com, Inc., Amazon Web Services, Inc., and Twitch Interactive, Inc. (collectively,
2 “Amazon”) respectfully request that the Court hold a case management conference as soon as
3 practical at the Court’s convenience to confirm both that it retains jurisdiction over this case and its
4 judgment and that PersonalWeb Technologies, LLC (“PersonalWeb”) must comply with valid post-
5 judgment discovery orders of the Court. The Court has twice ordered PersonalWeb to provide
6 documents and information about its finances. PersonalWeb has done nothing to comply but make
7 a small document production (collected without meaningful supervision by its counsel of record)
8 and provide interrogatory responses that assert objections the Court already deemed waived and
9 incorporate the entire document production by reference. Mere hours after committing in writing
10 to taking additional steps to comply, Jeffrey Gersh, PersonalWeb’s counsel at Stubbs Alderton &
11 Markiles LLP (“Stubbs Alderton”) sent an email reversing course. He argued that PersonalWeb
12 need no longer comply with this Court’s orders at all because a California state court appointed a
13 receiver over PersonalWeb’s assets back in May 2021. But at the hearing on the last motion to
14 compel compliance, Mr. Gersh himself argued for PersonalWeb and raised no such objection even
15 after Amazon informed the Court of the receivership.

16 The Court previously found that “PersonalWeb appears to be thwarting Amazon’s
17 legitimate interest in collecting its judgment,” and that its manipulation of its counsel of record,
18 “along with the chameleon-like efforts of Personal Web to use this time to make itself judgment
19 proof, amount to a concerted effort to thwart collection of the judgment ordered by this Court.”
20 (Dkt. 694 at 3-4.) Those observations remain true. The receivership is fraudulent. The plaintiffs
21 in the state court action are insider-investors in PersonalWeb who in some cases share overlapping
22 membership. The receivership is based on an alleged \$19 million in loans that do not mature until
23 December 31, 2022. PersonalWeb’s investors simply demanded repayment in full as soon as the
24 Court issued the fee award in this case; immediately sought the receivership (to which PersonalWeb
25 immediately consented, submitting a declaration *on the stationery of insider-investors’ counsel*);
26 and have since used the receivership to funnel hundreds of thousands of dollars in additional
27 payments through PersonalWeb to Stubbs Alderton and appellate counsel MoloLamken LLP, to
28 continue prosecuting patent infringement lawsuits in PersonalWeb’s name and for the insider-

1 investors' benefit.

2 Amazon requests a conference to seek guidance concerning Stubbs Alderton's new round
3 of belated objections that the Court lacks authority to enforce its judgment and PersonalWeb need
4 not comply with past discovery orders due to the receivership.

5 **BACKGROUND**

6 ***The Court's judgment and fee award.*** The Court entered judgment in favor of Amazon in
7 this case on October 28, 2020. (Dkt. 643.) On March 2, 2021, the Court awarded Amazon
8 \$4,615,242.28 in fees and \$203,300.10 in non-taxable costs against PersonalWeb for work
9 performed until February 2020, and on April 19, 2021, the Court awarded Amazon an additional
10 \$571,961.71 in fees and \$11,120.97 in costs for work performed between February 2020 and
11 February 2021. (Dkts. 648, 656.) On July 27, 2021, the Court entered an amended judgment in
12 favor of Amazon for a total amount of \$5,403,122.68. (Dkt. 708.)

13 ***Insider investors demand repayment of purported demand instruments.*** The original
14 March 2 fee order apparently prompted PersonalWeb's beneficial owners to trigger an asset
15 protection scheme. Insider-investors Brilliant Digital Entertainment, Inc. ("BDE"), Europlay
16 Capital Advisors, LLC ("ECA"), Claria Innovations, LLC ("Claria"), and Monto Holdings Pty Ltd
17 ("Monto") (collectively, "Insiders") had characterized a major portion of their investment in
18 PersonalWeb as debt: four alleged loans first issued between August 2010 and May 2012. Security
19 agreements for the loans issued in May 2012 and March 2014 pledging "all of [PersonalWeb's]
20 tangible and intangible assets" as collateral. All four loans were also regularly amended and
21 restated, most recently on December 31, 2019, and did not mature until *December 31, 2022*. Even
22 though these "loans" were less than halfway through their term (and had already been amended and
23 restated multiple times over the course of nearly a decade), Insiders demanded repayment in full
24 based on the amounts due as of March 31, 2021.

25 ***Insiders file the receivership action.*** After demanding repayment, Insiders then filed a
26 receivership action in California state court against PersonalWeb on April 27, 2021. (Declaration
27 of Todd R. Gregorian in Support of Request for CMC ("Gregorian Decl."), Ex. 1 [Insiders'
28 Complaint].) All four Insiders have the same beneficial owners as PersonalWeb: Claria owned

1 99% of PersonalWeb and had governing authority when PersonalWeb was formed; Monto currently
2 owns 20% of PersonalWeb; the founder of BDE was Kevin Bermeister, the Non-Executive
3 Chairman of PersonalWeb; and the former chairman and CEO of BDE, Kevin Bermeister's cousin
4 Mark Dyne, founded ECA. (Gregorian Decl., Ex. 2 [Amazon's Complaint-In-Intervention], at 3.)
5 Insiders requested the appointment of a receiver and the entry of a preliminary injunction enjoining
6 any other PersonalWeb creditors from enforcing any claim, debt, right, lien, or interest against
7 PersonalWeb. (Gregorian Decl., Ex. 1 [Insiders' Complaint], at 15-17.) Within days,
8 PersonalWeb, through its President, Michael Weiss, signed a declaration prepared on the stationery
9 of Insiders' counsel conceding that PersonalWeb owed \$19 million to Insiders and could not pay,
10 and consenting to the appointment of a receiver and the entry of a preliminary injunction.
11 (Gregorian Decl., Ex. 3 [Weiss Decl.].) Neither the complaint nor any of Insiders' other filings
12 before the state court disclosed the fact that Amazon is a creditor of PersonalWeb or that the
13 ultimate beneficial owners of PersonalWeb are the same as the ultimate beneficial owners of
14 Insiders. In other words, PersonalWeb (*i.e.*, Weiss and Bermeister) colluded with the Insiders (*i.e.*,
15 Bermeister and family) to try to place PersonalWeb beyond the reach of this Court's judgment
16 while it continues to pursue its business in the normal course.

17 ***Entry of preliminary injunction.*** On May 20, 2021, PersonalWeb and Insiders stipulated
18 to entry of the preliminary injunction. (Gregorian Decl., Ex. 4 [Stipulated Preliminary Injunction].)
19 On June 1, 2021, the California state court entered it. (Gregorian Decl., Ex. 5 [Preliminary
20 Injunction Order].) The preliminary injunction establishes that the receivership will be run
21 exclusively for Insiders' benefit (to the detriment of PersonalWeb's other creditors). It purports to
22 prohibit any PersonalWeb creditor from enforcing claims against PersonalWeb during the
23 receivership. But (perhaps due to a drafting error) it also *expressly carves out* the proceedings of
24 any then-pending intellectual property actions filed by PersonalWeb, such as this case:

25 **IT IS FURTHER ORDERED** that except by leave of this Court,
26 during the pendency of the receivership ordered herein, Defendant
27 PersonalWeb, and all of its customers, principals, investors,
28 collectors, stockholders, lessors, other creditors, judgment holders,
and other persons seeking to establish or enforce any claim, debt,
right, lien, or interest against Defendant PersonalWeb, or any of its

1 subsidiaries or affiliates, and all others acting for or on behalf of
2 such persons, attorneys, trustees, agents, sheriffs, constables,
3 marshals, and any other officers and their deputies, and their
4 respective attorneys, servants, agents, and employees, be and are
5 hereby stayed from:

6 (a) Commencing, prosecuting, continuing, or enforcing any suit,
7 judgment, lien, levy, or proceeding against Defendant PersonalWeb,
8 or any of its subsidiaries or affiliates, except such actions may be
9 filed to toll any applicable statute of limitations;

10 (b) Commencing, prosecuting, continuing, or entering into any suit
11 or proceeding in the name or on behalf of Defendant PersonalWeb,
12 or any of their subsidiaries or affiliates, *except for any pending*
13 *enforcement actions by Defendant PersonalWeb concerning it [sic]*
14 *intellectual property claims;*

15 (*Id.* at 4 (emphasis added).)

16 ***Insiders continue to fund PersonalWeb intellectual property suits by funneling protected***
17 ***payments through the receivership.*** Through the receivership, Insiders have begun “lending”
18 PersonalWeb additional funds to pay its ongoing business expenses, including paying Stubbs
19 Alderton and MoloLamken to continue to pursue claims against Amazon, its customers, and others
20 such as Google and Facebook. (Gregorian Decl., Exs. 6 [Receiver’s Motion] & 7 [Order Granting
21 Receiver’s Motion].)

22 ***This Court’s Discovery Orders.*** PersonalWeb is subject to two orders to provide post-
23 judgment debtor discovery to Amazon. (Dkts. 664, 704.) On July 30 and August 6, 2021,
24 PersonalWeb served interrogatory responses that improperly asserted objections that the Magistrate
25 Judge had already ruled were waived, and (rather than provide substantive responses) simply
26 incorporated its entire document production chosen by PersonalWeb without oversight by Stubbs
27 Alderton. (*See, e.g.*, Gregorian Decl., Ex. 8 [Interrogatory Responses], at 1-3 (broadly
28 incorporating PersonalWeb’s entire document production without identifying any specific Bates
numbers); *id.*, at 4 (for Interrogatory Nos. 9 & 10, asserting the attorney/client privilege without
providing any substantive response).) Indeed, in an e-mail exchange, Stubbs Alderton admitted
“the docs that [Amazon] received is all [Stubbs Alderton] was provided” by PersonalWeb. (*See*
Gregorian Decl., Ex. 9 [E-mail Exchange] at 3 (Counsel for Amazon: “When I asked you how a

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