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

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

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

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

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

13
14 AMAZON.COM, INC. and AMAZON WEB
SERVICE, INC.,

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

15 Plaintiffs,

**DECLARATION OF MICHAEL
SHERMAN IN SUPPORT OF STUBBS
ALDERTON & MARKILES, LLP'S
SECOND MOTION TO WITHDRAW AS
COUNSEL FOR PERSONALWEB
TECHNOLOGIES, LLC PURSUANT TO
CALIFORNIA RULES OF
PROFESSIONAL CONDUCT, RULE
1.16(a)(2)**

16 v.

17 PERSONALWEB TECHNOLOGIES, LLC, et
al.,

18 Defendants.

19 PERSONALWEB TECHNOLOGIES, LLC, et
al.,

20 Plaintiffs,

21 v.

22 TWITCH INTERACTIVE, INC.,

23 Defendant.
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DECLARATION OF MICHAL A. SHERMAN

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2 1. I am a member of the bar of the State of California and am admitted to practice before
3 the United States District Court for the Northern District of California. I am a partner at Stubbs
4 Alderton & Markiles, LLP (“SAM”). The facts herein are, unless otherwise stated, based upon
5 personal knowledge, and if called upon to do so, I could, and would testify to their truth under oath.
6 I submit this Declaration in support of SAM’s Second Motion to Withdraw as Counsel for
7 PersonalWeb Technologies, LLC (“Motion”).

8 2. This is SAM’s second Motion to unconditionally withdraw immediately from its
9 representation of PersonalWeb Technologies, LLC (“PersonalWeb”). At the time of the briefing
10 of the first Motion to Withdraw (Dkt. 688), I was unaware of the facts set forth below — facts and
11 circumstances that arose after our having first moved for withdrawal (specifically those in
12 paragraphs 3, and 5-10). In light of the facts and circumstances that arose below and with the
13 concurrence of recognized legal ethics experts, I believe that SAM is required to pursue this instant
14 filing.

15 3. The Court has familiarity from the first motion of PersonalWeb’s discharge of SAM
16 of Mr. Richards’ communications in the late April 2021 time-frame about his intention of
17 representing PersonalWeb in all post judgment collection proceedings, and Mr. Richards’ advice
18 to Amazon of same, including his advice that SAM had no “authori[ty] to do anything post
19 judgment.” In addition to those facts and additional communications where I cannot divulge the
20 contents of due to their privileged nature, I fully expected in late April 2021 extending through
21 early summer 2021-time frame, that it would only be a short period of time before SAM would be
22 substituted out of the post-judgment proceedings pending before the District Court. My confidence
23 about this substitution matter waned (a) as time elapsed following the Court’s June 25 Order
24 without PersonalWeb substituting any attorney into the case as I believed would be the case, and
25 (b) certainly not later than late summer/early fall – following the time after the June 25 Order, when
26 with knowledge of PersonalWeb representatives, SAM transmitted partial documents/information
27 to Amazon in response to the various orders. Shortly following that period of time that the SAM
28 offices transmitted those documents, I and others at SAM had further privileged communications
that I cannot disclose the contents of, that contributed to my confidence level further decreasing on
the issue of substitution.

1 4. I became aware that, in May, 2021 a California state court receiver was appointed in
2 relation to certain indebtedness that PersonalWeb owes various creditors, captioned *Brilliant*
3 *Digital Entertainment Inc., et al., v. PersonalWeb, et al.* (Case No. 21VECV00575) pending in
4 the Los Angeles Superior Court. Neither SAM nor any of its attorneys represent PersonalWeb or
5 anyone in that receivership proceeding.

6 5. Following the April 27, 2021 order of this Court, and the Magistrate Judge's order
7 compelling compliance and responses to post judgment discovery (Dkts. 664-665 and 704),
8 PersonalWeb has provided only limited documents and information to enable SAM to respond,
9 which information was produced to Amazon on July 30, 2021 (consisting of approximately 2,000
10 pages). Without divulging the contents of privileged communications between SAM and
11 PersonalWeb, I know that, following that production to Amazon, SAM was not authorized by
12 PersonalWeb representatives to produce additional materials called for by said orders, and that
13 PersonalWeb did not fully cooperate in responding to SAM's requests for complete information
14 needed to comply with those orders.

15 6. In e-mail communications between attorneys in my firm and Amazon counsel in late
16 August and September 2021 that either I was copied on or that were forwarded to me, counsel for
17 Amazon indicated it planned to move for sanctions against PersonalWeb and SAM. True and
18 correct copies of those communications are attached to the Declaration of Jeffrey Gersh, marked
19 as Exhibit I.

20 7. On January 28, 2022 SAM attorneys received an email from Amazon's counsel
21 concerning the status of PersonalWeb's compliance with the Magistrate Judge's orders and
22 reiterating a request for much of the court-ordered information, which SAM has been unable to
23 substantively respond to because PersonalWeb representatives have not cooperated with SAM in
24 relation to that email. Mr. Gersh had timely forwarded that email to PersonalWeb representatives.
25 A true and correct copy of that e-mail, as well as my reply, is attached hereto as Exhibit G.

26 8. The firm has enjoyed an excellent relationship with PersonalWeb and its
27 representatives going back many years. In the years I worked directly with PersonalWeb
28 representatives going back to 2017, I had never experienced a time when SAM's requests for
information were not responded to, or where to my knowledge SAM's advice had been ignored.
Yet, beginning in the early summer 2021 time frame, and accelerating over the past six months, it

1 became clear to me that a break-down in communications was occurring. A major inflection point
2 in this break-down was the short period of time immediately leading up to the January 20, 2022
3 Case Management Conference and following, where multiple direct questions that SAM attorneys
4 have asked of PersonalWeb representatives have not been answered fully and/or directly, where
5 advice is not being followed, and where our ability to meaningfully communicate with
6 PersonalWeb representatives is significantly hampered.

7 9. After having checked the receivership docket, I became aware that, over six months
8 following Amazon having obtained its judgment against PersonalWeb, on December 7, 2021
9 Amazon finally filed a notice of lien pursuant to Code of Civil Procedure §708.410, an avenue I
10 know that was specifically noted in an Order of the Los Angeles Superior Court dated November
11 17, 2020 for Amazon to protect its interests as a judgment creditor. A true and correct copy of the
12 November 17, 2021 Order is attached hereto as Exhibit H. Further, while this Court had indicated
13 in May 2021 of Amazon having the right to conduct judgment debtor examinations — but not
14 within the geographic locus of the Northern District of California — as of this date, I am unaware
15 of any activity by Amazon to have its judgment entered and/or recognized in other United States
16 District Courts or to notice any judgment debtor examinations of PersonalWeb representatives out
17 in any other District Courts outside of California, in locations closer to where PersonalWeb
18 representatives may be located.

19 10. SAM presently remains engaged as counsel for PersonalWeb in two other matters
20 relating to PersonalWeb's seeking review of decisions of this District Court, (a) one a petition for
21 *certiorari* filed on April 2, 2021 in the U.S. Supreme Court, *PersonalWeb Techs., LLC v. Patreon,*
22 *Inc.*, No. 20-1394, 2021 WL 1298201 seeking review of an order of the Federal Circuit U.S.C.A.
23 affirming this District Court's granting of summary judgment on the application of preclusion
24 matters including an earlier decision of the US Supreme Court, *Kessler v. Eldred*, 206 U.S. 285
25 (1907) where the firm serves as co-counsel, and the other (b) an appeal pending before the USCA
26 for the Federal Circuit, appeal nos. 2021-1858, 2021-1869, 2021-1860, captioned *In Re:*
27 *PersonalWeb Technologies, LLC; Amazon.com, Inc., et. al. v. PersonalWeb Technologies, LLC,*
28 *et. al.* If PersonalWeb continues to refuse to substitute Mr. Richards or other counsel into the
District Court matter post-filing and service of this Motion, SAM will be shortly filing motions to
withdraw from its representation of PersonalWeb in these pending appellate matters due to the

1 actual conflict in the respective interests of PersonalWeb and SAM, resulting in SAM's inability
2 to continue to represent PersonalWeb in any matters.

3 11. Concurrent with the filing of this Motion, we will be providing written notice of all
4 filed moving papers to PersonalWeb's representatives, Kevin Bermeister, Michael Weiss, and
5 Ronald Richards, via their regularly used email addresses.

6 Executed this 10th day of February 2022 at Sherman Oaks, California.

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8 By: /s/ Michael A. Sherman

9 Michael A. Sherman
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