

# EXHIBIT H

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Northwest District, Van Nuys Courthouse East, Department U

**21VECV00575**

November 17, 2021

**EUROPLAY CAPITAL ADVISORS, LLC, A DELAWARE  
LIMITED LIABILITY COMPANY, et al. vs PERSONALWEB  
TECHNOLOGIES, LLC, A TEXAS LIMITED LIABILITY  
COMPANY**

8:30 AM

Judge: Honorable Bernie C. LaForteza  
Judicial Assistant: Christine Gyimesi  
Courtroom Assistant: L. Vince-Cruz

CSR: None  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): Michael Gerard Fletcher By: Bruce D. Poltrock Via LACourtConnect

For Defendant(s): Michael Elliot Bubman Via LACourtConnect; Christopher Shawn Lavin and  
Michael Baratz Via LACourtConnect

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**NATURE OF PROCEEDINGS:** Hearing on Motion for Leave to Intervene

The matter is called for hearing.

The tentative ruling is posted on the court's online website.

The Court has read and considered the moving papers, arguments of counsel, and the law. Counsel submit on the Court's tentative ruling, and the Court hereby adopts its tentative ruling as the final order of the Court as set forth herein this minute order.

**I. BACKGROUND**

This is a collection action filed by Brilliant Digital Entertainment, Inc., Europlay Capital Advisors, LLC, Claria Innovations, LLC, and Monto Holdings Pty Ltd (collectively, plaintiffs), alleging default on \$19 million of demand instruments by defendant PersonalWeb Technologies, LLC. On April 27, 2021, Plaintiffs filed a Complaint against defendant and Does 1 through 100 for the following causes of action: (1—4) breach of promissory note (four different causes of action, each brought by a different plaintiff); (5) recovery of personal property; (6) conversion; and (7) specific performance for appointment of receiver.

On August 10, 2021, Amazon.Com, Inc., Amazon Web Services, Inc., and Twitch Interactive, Inc. (collectively, Amazon) filed this motion for leave to intervene. No opposition was filed. On August 19, 2021, Plaintiffs filed a statement of non-opposition to Amazon's motion.

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Hearing on Amazon’s motion was held on November 5, 2021, at which time the Court took the matter under submission in order to further consider the issues, especially as to the nature of Amazon’s interest in the litigation as sufficient or insufficient to justify granting intervention. To this end, the Court granted Amazon leave to file a supplemental brief in support of intervention, which Amazon filed on November 12, 2021. The Court’s findings upon review and analysis of this supplemental brief as well as further review and analysis of the issues and relevant law are included, *infra*, at Part III, subpart (b) of this order.[1]

## II. LEGAL STANDARD

Code of Civil Procedure section 387 subdivision (d) provides two bases by which a nonparty might seek intervention, the first providing being that the trial court must grant leave to intervene, and the second providing that the trial court may grant leave to intervene within its sound discretion. Both prongs of the statute require that the petitioning nonparty be sufficiently interested in the current action.

a. The first prong provides that the Court is required to grant intervention.

Under Code of Civil Procedure section 387 subdivision (d)(1)(B), a nonparty has the statutory right to intervene in litigation between others where the nonparty claims an interest in the property or transaction involved in the litigation and is so situated that any judgment rendered in the nonparty's absence “may impair or impede that person's ability to protect that interest.”

Thus, the trial court must grant a non-party’s motion for intervention where the non-party is able to show: (1) its direct and immediate interest in the property or transaction of the action; and (2) that the litigation is such that the non-party’s interested may be substantially prejudiced by any judgment rendered in its absence. (Code Civ. Proc. § 387 subd. (d)(1)(B); see also *Muller v. Robinson* (1959) 174 Cal.App.2d 511, 515 (*Muller*) [it is the burden of the nonparty petitioner seeking intervention to show it is sufficiently interested under statute].)

b. The second prong provides that the Court may grant intervention as a proper exercise of its discretion.

Under Code of Civil Procedure § 387 subdivision (d)(2), “The court may, upon timely application, permit a nonparty to intervene in the action or proceeding if the person has an

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interest in the matter in litigation, or in the successor of either of the parties, or an interest against both.”

Thus, the trial court may properly exercise its discretion to permit a nonparty petitioner to intervene where: (1) the nonparty has followed proper procedures; (2) the nonparty has a direct and immediate interest in the action; (3) the intervention will not enlarge the issues in the litigation; and (4) the reasons for intervention outweigh any opposition by the parties. (*Western Heritage Ins. Co. v. Superior Court* (2011) 199 Cal.App.4th 1196, 1205.) The trial court may also properly exercise its discretion to deny a nonparty petitioner’s motion to intervene upon finding the nonparty does not have “a direct and immediate interest in the litigation.” (*In re Paul W.* (2007) 151 Cal.App.4th 37, 57 (Paul W.) (“Whether in a particular case intervention should be allowed is best determined by a consideration of the facts of that case, and the decision is ordinarily left to the sound discretion of the trial court.”); see, e.g., *Hinton v. Beck* (2009) 176 Cal.App.4th 1378, 1382—1383; see also, e.g., *Squire v. City and County of San Francisco* (1970) 12 Cal.App.3d 974, 978—979 [trial court’s denial of intervention was not abuse of discretion].)

c. Appellate and California Supreme Court decisions establish boundaries for the doctrine and guide the Court’s consideration of Amazon’s request as follows.

i. Generally speaking, “simple creditors” have no right to intervention under either the mandatory or permissive prong of § 378.

Absent a showing of facts which qualify a non-party’s motion as anything else, e.g. under circumstances described, *infra*, by Part II, subparts (c)(ii), (iii) of this order, a creditor generally may not intervene in an action by or against its debtor, as such a creditor does not have a sufficiently direct interest in the outcome of litigation to justify the court permitting intervention. (*Cont’l Vinyl Products Corp. v. Mead Corp.* (1972) 27 Cal.App.3d 543, 550 (Cont’l Vinyl); see also *Horn v. Volcano Water Co.* (1869) 13 Cal. 62, 69 [“an attempt of one creditor to prevent another creditor obtaining judgment against the common debtor [is] a proceeding which can find no support, either in principle or authority,” except where the petitioning creditor has sufficiently secured its interest].)

This rule against intervention even applies where the debtor-party will be rendered unable to pay the nonparty creditor’s debt as a result of the proceeding for which the nonparty seeks

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intervention. (Cont'l Vinyl, supra, 27 Cal.App.3d at p. 550.) It is thus the burden of any such nonparty creditor to show facts beyond these, which should provide that it is not a "simple creditor," but rather a creditor sufficiently interested in the proceeding as a matter of right, and this may justify the court's granting its motion to intervene. (Muller, supra, 174 Cal.App.2d at p. 515; Olson v. Hopkins (1969) 269 Cal.App.2d 638, 643—644 (Olson).)

ii. Allowable intervention by a nonparty creditor.

Where a creditor has obtained, for example, a lien on a debtor's assets, and that lien could be jeopardized by the instant proceedings, the creditor might be sufficiently interested in the property which is the subject of the proceedings to justify the court allowing its intervention to protect its lien under Code of Civil Procedure section 387 subdivision (d)(2). (See, e.g., Marriage of Kerr (2005) 185 Cal.App.3d 130, 134 (Kerr).)

iii. Intervention available in cases of bad-faith parties.

There is another exception arising under Cont'l Vinyl, which provides that an otherwise merely consequential interest insufficient to grant intervention may become a direct interest justifying intervention where the non-party seeking intervention can show some bad faith or malfeasance among the parties to the relevant litigation. (Cont'l Vinyl, supra, 27 Cal.App.3d at p. 551.) This might be shown by: (a) facts demonstration a party or parties' bad faith; (b) the assertion by all parties to the litigation of claims adverse to the party seeking intervention; (c) collusion among the parties; (d) an impossibility that there will be otherwise asserted a position that should be presented in the litigation; and/or (d) that similar circumstances as are present in the case law justifying intervention warrant that injustice is likely to result if the Court declines it in the instant case. (Ibid.)

Cont'l Vinyl then cites to a number of situations from the case law which illustrate when and how these factors might be applied to the litigation as follows (quoting Cont'l Vinyl, supra, 27 Cal.App.3d at p. 552):

· "The interest of shareholders justifies intervention in an action against a corporation if its officers and directors fail to exercise good faith in defending an action against it." (Citing Shively v. Eureka T.G.M. Co. (1900) 129 Cal. 293, 294—295.)

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