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6 Attorneys for PERSONALWEB
TECHNOLOGIES, LLC
7 (Excluding Post Judgment Debtor
Collection Proceedings)
8

9 UNITED STATES DISTRICT COURT
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 JEFFREY F. GERSH
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
24

25 Defendant.
26
27
28

DECLARATION OF JEFFREY F. GERSH

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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 through 8). In light of the facts and circumstances that arose below and with
13 the concurrence of recognized legal ethics experts, I believe that SAM is required to pursue this
14 instant 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 timeframe 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 the
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 the
4 Los Angeles Superior Court. Neither SAM nor any of its attorneys represent PersonalWeb or
5 anyone in that receivership proceeding. For the most part, SAM obtains information about that
6 receivership proceeding by reviewing the public docket, with occasional transmittals of
7 information to it, primarily from the Receivers' counsel. On August 10, 2021, Amazon filed a
8 motion for leave to intervene in the receivership proceeding, on the basis that it held a \$5.4 million
9 judgment against PersonalWeb and therefore had an interest in the property involved in the
10 litigation. The Los Angeles Superior Court denied that intervention motion in an Order that
11 Amazon is appealing.

12 5. Following the April 27, 2021 order of this Court and the Magistrate Judge's order
13 compelling compliance and responses to post judgment discovery (Dkts. 664-665 and 704),
14 PersonalWeb has provided only limited documents and information to enable SAM to respond,
15 which information was produced to Amazon on July 30, 2021 (consisting of approximately 2000
16 pages). Without divulging the contents of privileged communications between SAM and
17 PersonalWeb, I know that, following that production to Amazon, SAM was not authorized by
18 PersonalWeb representatives to produce any additional materials called for by said orders, and that
19 PersonalWeb did not fully cooperate in responding to SAM's requests for complete information
20 needed to comply with those orders.

21 6. In e-mail communications between attorneys in my firm and Amazon's counsel in
22 late August and September 9, 2021 that I either received, was copied on or that were forwarded
23 to me, counsel for Amazon indicated it planned to move for sanctions against PersonalWeb and
24 SAM. True and correct copies of those communications are attached hereto and marked as
25 Exhibit I.

26 7. On January 28, 2022, SAM attorneys received an email from Amazon's counsel
27 concerning the status of PersonalWeb's compliance with the Magistrate Judge's orders and
28 reiterating a request for much of the court-ordered information, which SAM has been unable to
substantively respond to because PersonalWeb representatives have not cooperated with SAM in
relation to that email. I timely forwarded that email to PersonalWeb representatives. A true and

1 correct copy of that e-mail is attached hereto and marked as Exhibit J.

2 8. SAM has enjoyed an excellent relationship with PersonalWeb and its representatives
3 going back many years. In the years I worked directly with PersonalWeb representatives going
4 back to 2017, I had never experienced a time when SAM's requests for information were not
5 responded to, or where to my knowledge SAM's advice had been ignored. Yet, beginning in the
6 early summer 2021-time frame, and accelerating over the past six months, it became clear to me
7 that a break-down in communications was occurring. A major inflection point in this break-down
8 was the short period of time immediately leading up to the January 20, 2022 Case Management
9 Conference and following, where multiple direct questions that myself and other SAM attorneys
10 have asked of PersonalWeb representatives have not been answered fully and/or directly, where
11 advice is not being followed, and where our ability to meaningfully communicate with
12 PersonalWeb representatives is significantly hampered.

13 I declare under the penalty of perjury under the laws of the United States of America
14 that the foregoing is true and correct.

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

17 By: /s/ Jeffrey F. Gersh
18 Jeffrey F. Gersh