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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

v.

19 PERSONALWEB TECHNOLOGIES, LLC and
20 LEVEL 3 COMMUNICATIONS, LLC,

21 Defendants.

22 PERSONALWEB TECHNOLOGIES, LLC, and
23 LEVEL 3 COMMUNICATIONS, LLC,

24 Plaintiffs,

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

**JOINT STATEMENT RE AMAZON'S
MOTION TO COMPEL PRODUCTION
OF DOCUMENTS FROM THIRD
PARTIES BRILLIANT DIGITAL
ENTERTAINMENT, INC., EUROPLAY
CAPITAL ADVISORS, LLC, AND
CLARIA INNOVATIONS, LLC**

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1 **I. AMAZON'S STATEMENT**

2 Amazon asks the Court to compel Brilliant Digital Entertainment, Inc. ("Brilliant Digital"),
 3 Claria Innovations, LLC ("Claria"), and Europlay Capital Advisors, LLC ("Europlay"), insider-
 4 investors of PersonalWeb Technologies, LLC ("PersonalWeb"), to produce documents in response
 5 to subpoenas seeking information about their relationship and financial dealings with PersonalWeb.
 6 The Court previously ruled that PersonalWeb's misconduct made this case exceptional, and it
 7 ordered PersonalWeb to reimburse Amazon's fees and costs. (Dkts. 643, 648, 656.) But further
 8 misconduct by PersonalWeb and its principals, affiliates, and attorneys has prevented Amazon from
 9 collecting even a dollar of the Court's \$5,403,122.68 judgment. (Dkt. 708.) There are two basic
 10 elements to the scheme:

11 **1. *PersonalWeb refused to comply with the Court's post-judgment discovery orders.***

12 PersonalWeb refused to pay the judgment, post a supersedeas bond, or respond to discovery
 13 requests, and refused to comply with two different court orders (Dkts. 664, 704) directing
 14 PersonalWeb to produce documents and respond to interrogatories. PersonalWeb's response
 15 instead was to "fire" its counsel Stubbs Alderton, but only from aspects of this case that concerned
 16 judgment enforcement. (Stubbs Alderton continued to act as counsel of record as to patent matters,
 17 and it remains an investor in PersonalWeb with a financial interest in these litigations.) When the
 18 Court rejected this attempt to evade its authority (Dkt. 685), Stubbs Alderton sought to withdraw
 19 unconditionally, leaving PersonalWeb in contempt of the Court's orders and effectively beyond its
 20 jurisdiction. (Dkt. 688.) Amazon has received only a small production of outdated bank records
 21 collected without meaningful supervision by Stubbs Alderton. (*See* Dkt 717.)

22 **2. *PersonalWeb's principals used its shell-company affiliates to obtain a state court***
 23 ***receivership over PersonalWeb.*** The subpoenaed entities are PersonalWeb's shell company
 24 investors who serve the same principals.¹ The Court's original fee order prompted this group to
 25 trigger an asset protection scheme. They demanded that PersonalWeb immediately "repay" \$19

26 _____
 27 ¹ All three have the same beneficial owners as PersonalWeb: Claria owned 99% of PersonalWeb
 28 and had governing authority when PersonalWeb was formed; Kevin Bermeister, the Non-Executive
 Chairman of PersonalWeb, founded Brilliant Digital; and the former chairman and CEO of BDE,
 Kevin Bermeister's cousin Mark Dyne, founded Europlay. (*See* Dkt. 717-3 at 3.)

1 million in “loans” that do not mature until December 31, 2022. (*See id.*) They then requested a
 2 California state court appoint a receiver for their benefit and enjoin any other creditor from
 3 enforcing claims against PersonalWeb. (Dkt. 717-2.) PersonalWeb’s President Michael Weiss
 4 signed a declaration *prepared on the stationery of the insiders’ counsel* consenting to the receiver
 5 and the injunction. (Dkt. 717-4.) Brilliant Digital and the other insiders are now using the
 6 receivership to “lend” PersonalWeb additional funds to pay its ongoing business expenses
 7 (including paying attorneys to continue to pursue claims against Amazon, its customers, and others
 8 such as Google and Facebook), without paying any of the judgment. (Dkts. 717-7 & 717-8.) Even
 9 more troubling: the state court ordered *the receiver* to assume control of the “Collateral,” which
 10 consists of these legal claims. (Dkt. 717-7.) But the receiver has confirmed that beyond providing
 11 “big picture” guidance, he has not done so. Instead, he has simply let PersonalWeb’s principals
 12 (and potentially others, like the insider entities here) continue to run the litigations themselves.
 13 None of the original state court filings disclosed to that court that PersonalWeb and the insider-
 14 plaintiffs had the same beneficial owners, or that this group was colluding to prevent PersonalWeb’s
 15 major creditor, Amazon, from collecting the judgment.²

16 ***Motion to Compel.*** The scope of post-judgment discovery is “very broad,” with a
 17 “presumption [] in favor of full discovery of any matters arguably related to the creditor’s efforts
 18 to trace the debtor’s assets and otherwise to enforce its judgment.” *A&F Bahamas, LLC v. World*
 19 *Venture Grp., Inc.*, No. CV 17-8523 VAP (SS), 2018 WL 5961297, at *2 (C.D. Cal. Oct. 19, 2018)
 20 (citations omitted). And Amazon is entitled to explore corporate relationships and transfers in
 21 pursuit of alter ego theories. Code Civ. Proc. § 187; *Yolanda’s, Inc. v. Kahl & Goveia Commercial*
 22 *Real Estate*, 11 Cal. App. 5th 509, 512, 515 (2017) (permitting discovery on the relationship
 23 between the debtor and related parties to establish possible alter ego liability).³ Amazon’s

24 _____
 25 ² In other words, PersonalWeb (*i.e.*, Weiss and Bermeister) have colluded with the insiders (*i.e.*,
 26 Bermeister and his family) to try to place PersonalWeb beyond the reach of this Court’s judgment
 while it continues to pursue its business in the normal course.

27 ³ Post-judgment discovery is governed by Fed. R. Civ. P. 69(a)(2), which provides, “In aid of the
 28 judgment or execution, the judgment creditor...may obtain discovery from any person...as
 provided in these rules *or* by the procedure of the state where the court is located.” (emphasis
 added)

1 subpoenas seek documents about the relationship of the insider-investors, their financial dealings
2 with PersonalWeb, and their involvement in the litigation that resulted in the fee award. (*See* Exs.
3 1-3.) The subpoenaed insiders provided only boilerplate objections. (*See* Exs. 4-6.)

4 The insiders contend that they do not have to produce documents due to the state court
5 injunction. This objection is baseless. The District Judge already confirmed on the record that the
6 state court injunction does not restrict this Court's jurisdiction and that the Court can continue to
7 issue post-judgment discovery orders. (Dkt. 725 at 3, 13.⁴) That in and of itself is sufficient, but
8 the preliminary injunction also simply does not apply to this action or to the discovery requests at
9 issue. First, clause (b) exempts from the injunction "any pending enforcement actions by Defendant
10 PersonalWeb concerning its intellectual property claims." (*See* Dkt. 717-6 at 4.) PersonalWeb
11 initiated this action involving intellectual property claims and the preliminary injunction therefore
12 does not purport to enjoin proceedings in this Court. Second, the subpoenas seek *discovery* from
13 *non-parties*; they simply do not implicate the receivership or the disposition of any PersonalWeb
14 assets. (*See id.*)

15 **II. STATEMENT OF BRILLIANT DIGITAL, CLARIA, AND EUROPLAY ("THIRD** 16 **PARTIES")**

17 On May 10, 2021, the Los Angeles Superior Court (Van Nuys) ("Receivership Court"), in
18 pending Case No. 21VECV00575, *Brilliant Digital Entertainment, Inc., et al., v. PersonalWeb*
19 *Technologies, LLC, et al.* ("Receivership Action") appointed Robb Evans and Associates LLC
20 ("Receiver") as Receiver over Personal Web, pursuant to the Receivership Court's Order for Ex
21 Parte Immediate Appointment of Receiver ("Receivership Order"). The Receivership Court is the
22 first and only court to date to have taken jurisdiction over the secured creditors of PersonalWeb,
23 PersonalWeb itself, and all of the assets of PersonalWeb, and the subject of the interrelationships
24 between and among those parties and those assets. On June 1, 2021, the Receivership Court entered
25 its Order for Entry of Preliminary Injunction in Aid of the Receiver ("Injunction Order"), which

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27 ⁴ At the last case management conference, the District Judge suggested (without taking any position
28 on the merits) that Amazon could pursue a second motion to compel compliance along with a
request for contempt sanctions against both PersonalWeb and Stubbs Alderton. (Dkt. 725 at 10.)
Amazon is currently considering its options in this regard.

1 confirmed the Receiver's appointment and enjoined certain actions by PersonalWeb, its creditors,
2 judgment holders, and others. Amazon has had notice of and received service of the Injunction
3 Order. The Subpoena violates the Injunction Order, which Order provides, in part:

4 ... IT IS FURTHER ORDERED that except by leave of this Court, during the pendency of
5 the receivership ordered herein, Defendant PersonalWeb, and all of its customers,
6 principals, investors, collectors, stockholders, lessors, other creditors, judgment holders,
7 and other persons seeking to establish or enforce any claim, debt, right, lien, or interest
8 against Defendant PersonalWeb, or any of its subsidiaries or affiliates, and all others acting
9 for or on behalf of such persons, attorneys, trustees, agents, sheriffs, constables, marshals,
10 and any other officers and their deputies, and their respective attorneys, servants, agents,
11 and employees, be and are hereby stayed from:

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

(d) Using self-help or executing or issuing, or causing the execution or issuance of
any court attachment, subpoena, replevin, execution, levy, writ, or other process for the
purpose of impounding or taking possession of or interfering with, or creating or enforcing
a lien upon, any property, wheresoever located, owned by, claimed by, or in the possession
of Defendant PersonalWeb, or any of its subsidiaries or affiliates, or the Receiver appointed
pursuant to this Order or any agent appointed by said Receiver; and

(e) Doing any act or thing whatsoever to interfere with the Receiver taking control
or possession of, or managing the property subject to this receivership; or in any way to
interfere with the Receiver; or to harass or interfere with the duties of the Receiver; or to
interfere in any manner with the exclusive jurisdiction of this Court over the property and
assets of Defendant PersonalWeb, or its subsidiaries or affiliates. ...

A court appointing a receiver has exclusive jurisdiction over receivership property.
(*O'Flaherty v. Belgum* (2004) 115 Cal.App.4th 1044, 1062, citing 2 Clark on Receivers (3d
ed.1959), § 548(a), p. 889.) Further, "it must be held, in conformity with the general rule of comity
established by a long line of authority, that the court which first takes the subject matter of a
litigation into its control for the purpose of administering the rights and remedies with relation to
specific property obtains thereby jurisdiction so to do, to the exclusion of the exercise of a like
jurisdiction by other tribunals ..." (*Cutting v. Bryan* (1929) 206 Cal. 254, 257 [state court quiet
title action dismissed where federal receivership action filed first].) This principle applies to both
federal and state courts. (*Princess Lida of Thurn and Taxis v. Thompson* (1939) 305 U.S. 456, 466,
59 S.Ct. 275, 280 ["[T]he principle applicable to both federal and state courts [is] that the court first
assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of
the other ...".])

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