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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: PERSONALWEB TECHNOLOGIES,  
LLC ET AL., PATENT LITIGATION,

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

**DECLARATION OF TODD R.  
GREGORIAN IN SUPPORT OF  
OPPOSITION OF AMAZON.COM,  
INC., AMAZON WEB SERVICES, INC.,  
AND TWITCH INTERACTIVE, INC.  
TO SECOND MOTION TO  
WITHDRAW AS COUNSEL BY  
STUBBS ALDERTON & MARKILES,  
LLP**

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1           1.       I am a partner at Fenwick & West LLP and counsel to Amazon.com, Inc., Amazon  
2 Web Services, Inc. and Twitch Interactive, Inc. (collectively, “Amazon”) in this matter. I submit  
3 this declaration in support of the Opposition of Amazon.com, Inc., Amazon Web Services, Inc.,  
4 and Twitch Interactive, Inc. to Second Motion to Withdraw as Counsel by Stubbs Alderton &  
5 Markiles, LLP. I have personal knowledge of the facts set forth in this declaration.

6           2.       Mr. Kevin Bermeister is the Chairman and CEO of Brilliant Digital Entertainment,  
7 Inc. (“BDE”). Attached as **Exhibit 1** is a true and accurate copy of Mr. Bermeister’s LinkedIn  
8 profile showing that he is an executive at BDE. Mr. Bermeister is also a director of Monto Holdings  
9 Pty Ltd (“Monto”). Attached as **Exhibit 2** is a true and accurate copy of a publicly available  
10 company profile showing that he is an executive at Monto. Both BDE and Monto are insider-  
11 investors in PersonalWeb Technologies, LLC (“PersonalWeb”).

12           3.       On May 21, 2021, the California Superior Court ordered that the receiver Robb  
13 Evans & Associates LLC (“Robb Evans”) has exclusive control of PersonalWeb and the  
14 PersonalWeb collateral (which consisted primarily of this litigation and PersonalWeb’s other patent  
15 litigations which have since concluded) in the Order for *Ex Parte* Immediate Appointment of a  
16 Receiver. Attached as **Exhibit 3** is a true and correct copy of this order.

17           4.       The California Superior Court also entered a separate injunction against  
18 PersonalWeb’s employees, agents, etc. as well as its creditors, to prevent interference with  
19 PersonalWeb and the receiver’s control of the PersonalWeb estate. (Dkt. 717-6.) Since that time,  
20 the insider-investors directed by Mr. Bermeister, the receiver’s counsel, and the Stubbs Alderton &  
21 Markiles, LLP (“SAM”) attorneys of record for PersonalWeb, have each used the injunction to  
22 threaten Amazon and to try to prevent it from taking additional discovery in this case.

23                   a.       On September 2, 2021, Mr. Michael Bubman, counsel for the receiver Robb  
24 Evans, threatened Amazon with contempt sanctions for purportedly  
25 violating the Superior Court receivership and preliminary injunction orders  
26 for continuing to pursue valid post-judgment discovery from PersonalWeb  
27 under this Court’s orders. Attached as **Exhibit 4** is a true and correct copy  
28 of this correspondence.

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- b. On September 14, 2021, Mr. Jeffrey Gersh of SAM committed to taking additional steps to make PersonalWeb comply with this Court's orders to provide documents and interrogatory responses. Mere hours later, however, Mr. Gersh did an about-face and refused to do so, contending that Amazon's insistence that PersonalWeb comply with this Court's orders violates the Superior Court preliminary injunction. Attached as **Exhibit 5** is a true and correct copy of this correspondence. But when the parties had appeared before the Magistrate Judge on the motion to compel compliance concerning this very discovery on July 20, 2021, Mr. Gersh raised no such objection. Amazon out of an abundance of caution had informed the Court of the pending receivership action. (*See* Dkt. 707 at 5:12-17.) Mr. Gersh addressed the receivership but elected not to assert any objection to discovery based on it. (*See id.* at 7:19-8:1.)
- c. On February 4, 2022, Mr. Bubman again threatened Amazon with contempt sanctions for requesting that the receiver not make any further payments out of the PersonalWeb estate until the appellate court resolves Amazon's pending motion for a stay. Attached as **Exhibit 6** is a true and correct copy of this correspondence.
- d. On March 3, 2022, both Mr. Michael Fletcher and Mr. Bruce Poltrock, counsel for the insider-investors BDE, Europlay Capital Advisors, LLC, Claria Innovations, LLC, and Monto (collectively, "Insiders"), threatened Amazon with contempt sanctions for pursuing discovery from several of these Insiders. Attached as **Exhibit 7** is a true and correct copy of this correspondence. The Magistrate Judge later ordered the Insiders to produce documents over their objections based on the Superior Court receivership and injunction. (Dkt. 293 (18-cv-00767-BLF).)

5. Amazon moved to intervene in the Superior Court proceeding to protect its rights in the PersonalWeb estate and to clarify its rights and obligations with respect to the receivership so

1 that it does not face the risk of a contempt proceeding (no matter how baseless) going forward. On  
2 November 17, 2021, the Superior Court denied Amazon’s motion to intervene, even though Insiders  
3 and PersonalWeb *did not oppose* the motion, ruling that Amazon did not have “a sufficient  
4 interested [sic] in the current litigation to justify this Court granting intervention.” Attached as  
5 **Exhibit 8** is a true and correct copy of this order.

6 6. On December 7, 2021, Amazon filed an amended notice of lien as the Superior Court  
7 suggested that was a way that Amazon could enforce this Court’s judgment. Attached as **Exhibit**  
8 **9** is a true and correct copy of this amended lien. The lien is inadequate to protect Amazon’s rights  
9 however, as the ongoing payments to attorneys and the Insiders’ claims will exhaust the  
10 PersonalWeb estate.

11 7. On December 13, 2021, Amazon moved for a stay pending appeal before the  
12 Superior Court seeking to preclude entry of the stipulated judgment between Insiders and  
13 PersonalWeb and to preclude any further distribution of PersonalWeb cash or assets to Amazon’s  
14 detriment. Attached as **Exhibit 10** is a true and correct copy of this motion. The Superior Court  
15 will hear the stay motion on April 27, 2022.

16 8. On January 14, 2022, Amazon filed a petition for a writ of supersedeas for a similar  
17 stay pending appeal before the Second Appellate District, Court of Appeal of the State of  
18 California. Attached as **Exhibit 11** is a true and correct copy of this motion.

19 9. On March 25, 2022, Amazon filed its opening brief before the Second Appellate  
20 District Court of Appeal of the State of California, seeking to reverse the Superior Court order  
21 denying leave to intervene. Attached as **Exhibit 12** is a true and correct copy of this brief. This  
22 appeal remains pending.

23 10. SAM’s motion to withdraw raises significant questions about SAM’s and the  
24 PersonalWeb representatives’ conduct in this case over the last year. In mid-February 2022, I twice  
25 emailed Mr. Michael Bubman, counsel for the receiver Robb Evans, to inquire about Robb Evans’  
26 role in managing PersonalWeb and the PersonalWeb collateral (i.e., this litigation). On February  
27 14, 2022, I memorialized a recent telephone conversation with Mr. Bubman, wherein Mr. Bubman  
28 on behalf of Robb Evans: (i) refused to provide the receiver’s monthly financial reports to Amazon

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1 (as California Rule of Court 3.1182 requires), (ii) confirmed that Robb Evans is not aware of any  
2 assets in the PersonalWeb estate other than its litigation claims, and (iii) stated that Robb Evans  
3 has provided “big picture” direction to PersonalWeb’s attorneys about the litigations, but the  
4 receiver has not had any input concerning discovery matters and has not directed SAM concerning  
5 compliance with this Court’s orders to PersonalWeb to turn over documents and to answer  
6 interrogatories. Mr. Bubman did not respond to this email to dispute these facts.

7 Two days later, on February 16, 2022, I emailed Mr. Bubman to request that he clarify  
8 whether Robb Evans has allowed the Insiders to provide any input and direction into the  
9 PersonalWeb litigations. Mr. Bubman did not respond to that email either.

10 Attached as **Exhibit 13** is a true and correct copy of this correspondence.

11 11. In early-mid April 2022, Mr. Michael Sherman, counsel for PersonalWeb, twice  
12 emailed Mr. Bubman. Mr. Sherman, apparently for the first time, and nine months after the  
13 deadline for PersonalWeb to comply with the Court’s orders, asked whether Robb Evans would  
14 secure PersonalWeb’s compliance with this Court’s post-judgment orders. Attached as **Exhibit 14**  
15 is a true and correct copy of this correspondence. Mr. Sherman’s emails do not explain SAM’s  
16 failure to disclose Mr. Bermeister’s interference with the receivership to *either* this Court or the  
17 Superior Court for nearly a year. They also do not explain SAM’s nine-month delay in asking for  
18 the receiver’s assistance in complying with this Court’s orders. And they do not disclose any of  
19 SAM’s past communications with the receiver concerning the additional loans PersonalWeb  
20 secured in the meantime from Mr. Bermeister and the Insiders in order to make new payments *to*  
21 *SAM*. At any rate, I am not aware of any response to Mr. Sherman’s April 2022 email  
22 correspondence to Mr. Bubman.

23 12. On April 7, 2022, Amazon filed its opposition to SAM’s parallel motion to withdraw  
24 before the United States Court of Appeals for the Federal Circuit. Attached as **Exhibit 15** is a true  
25 and correct copy of this brief.

26 13. The receiver Robb Evans is based within the state of California and thus subject to  
27 this Court’s jurisdiction under its civil contempt authority, which extends to individuals and entities  
28 in the state of California under Federal Rule of Civil Procedure 4.1(b). Attached as **Exhibit 16** is

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