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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,

Case No.: 5:18-md-02834-BLF

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

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

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

18 Plaintiffs,

19 v.

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

Defendants.

**DECLARATION OF TODD R.
GREGORIAN IN SUPPORT OF
CORRECTED 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**

21
22 PERSONALWEB TECHNOLOGIES, LLC and
LEVEL 3 COMMUNICATIONS, LLC,

23 Plaintiffs,

24 v.

25 TWITCH INTERACTIVE, INC.,

26 Defendant.

FENWICK & WEST LLP
ATTORNEYS AT LAW

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28

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 Corrected Opposition of Amazon.com, Inc., Amazon Web
4 Services, Inc., and Twitch Interactive, Inc. to Second Motion to Withdraw as Counsel by Stubbs
5 Alderton & 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. The receivership order empowers the receiver to manage PersonalWeb to “seize,
17 manage, control, operate, and collect all of the collateral of Plaintiffs[.]” (¶ 1) It also states that
18 the receiver will have the power and responsibility “[t]o employ...attorneys...to administer the
19 Receivership estate and to protect the Collateral as it shall deem it necessary, including without
20 limitation to continue the pre-receivership employment of attorneys for Defendant PW as to legal
21 actions pending at the time of the receivership[.]” (¶ 14) Attached as **Exhibit 3** is a true and correct
22 copy of this order.

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

- 1 a. On September 2, 2021, Mr. Michael Bubman, counsel for the receiver Robb
2 Evans, threatened Amazon with contempt sanctions for purportedly
3 violating the Superior Court receivership and preliminary injunction orders
4 for continuing to pursue valid post-judgment discovery from PersonalWeb
5 under this Court's orders. Attached as **Exhibit 4** is a true and correct copy
6 of this correspondence.
- 7 b. On September 14, 2021, Mr. Jeffrey Gersh of SAM committed to taking
8 additional steps to make PersonalWeb comply with this Court's orders to
9 provide documents and interrogatory responses. Mere hours later, however,
10 Mr. Gersh did an about-face and refused to do so, contending that Amazon's
11 insistence that PersonalWeb comply with this Court's orders violates the
12 Superior Court preliminary injunction. Attached as **Exhibit 5** is a true and
13 correct copy of this correspondence. But when the parties had appeared
14 before the Magistrate Judge on the motion to compel compliance concerning
15 this very discovery on July 20, 2021, Mr. Gersh raised no such objection.
16 Amazon out of an abundance of caution had informed the Court of the
17 pending receivership action. (*See* Dkt. 707 at 5:12-17.) Mr. Gersh addressed
18 the receivership but elected not to assert any objection to discovery based on
19 it. (*See id.* at 7:19-8:1.)
- 20 c. On February 4, 2022, Mr. Bubman again threatened Amazon with contempt
21 sanctions for requesting that the receiver not make any further payments out
22 of the PersonalWeb estate until the appellate court resolves Amazon's
23 pending motion for a stay. Attached as **Exhibit 6** is a true and correct copy
24 of this correspondence.
- 25 d. On March 3, 2022, both Mr. Michael Fletcher and Mr. Bruce Poltrock,
26 counsel for the insider-investors BDE, Europlay Capital Advisors, LLC,
27 Claria Innovations, LLC, and Monto (collectively, "Insiders"), threatened
28 Amazon with contempt sanctions for pursuing discovery from several of

1 these Insiders. Attached as **Exhibit 7** is a true and correct copy of this
2 correspondence. The Magistrate Judge later ordered the Insiders to produce
3 documents over their objections based on the Superior Court receivership
4 and injunction. (Dkt. 293 (18-cv-00767-BLF).)

5 5. Amazon moved to intervene in the Superior Court proceeding to protect its rights in
6 the PersonalWeb estate and to clarify its rights and obligations with respect to the receivership so
7 that it does not face the risk of a contempt proceeding (no matter how baseless) going forward. On
8 November 17, 2021, the Superior Court denied Amazon's motion to intervene, even though Insiders
9 and PersonalWeb *did not oppose* the motion, ruling that Amazon did not have "a sufficient
10 interested [sic] in the current litigation to justify this Court granting intervention." Attached as
11 **Exhibit 8** is a true and correct copy of this order.

12 6. On December 7, 2021, Amazon filed an amended notice of lien as the Superior Court
13 suggested that was a way that Amazon could enforce this Court's judgment. Attached as **Exhibit**
14 **9** is a true and correct copy of this amended lien. The lien is inadequate to protect Amazon's rights
15 however, as the ongoing payments to attorneys and the Insiders' claims will exhaust the
16 PersonalWeb estate.

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

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

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

1 10. SAM's motion to withdraw raises significant questions about SAM's and the
2 PersonalWeb representatives' conduct in this case over the last year. In mid-February 2022, I twice
3 emailed Mr. Michael Bubman, counsel for the receiver Robb Evans, to inquire about Robb Evans'
4 role in managing PersonalWeb and the PersonalWeb collateral (i.e., this litigation). On February
5 14, 2022, I memorialized a recent telephone conversation with Mr. Bubman, wherein Mr. Bubman
6 on behalf of Robb Evans: (i) refused to provide the receiver's monthly financial reports to Amazon
7 (as California Rule of Court 3.1182 requires), (ii) confirmed that Robb Evans is not aware of any
8 assets in the PersonalWeb estate other than its litigation claims, and (iii) stated that Robb Evans
9 has provided "big picture" direction to PersonalWeb's attorneys about the litigations, but the
10 receiver has not had any input concerning discovery matters and has not directed SAM concerning
11 compliance with this Court's orders to PersonalWeb to turn over documents and to answer
12 interrogatories. Mr. Bubman did not respond to this email to dispute these facts.

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

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

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

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