

# EXHIBIT 10

1 TODD R. GREGORIAN (CSB No. 236096)  
tgregorian@fenwick.com  
2 CHRISTOPHER S. LAVIN (CSB No. 301702)  
clavin@fenwick.com  
3 FENWICK & WEST LLP  
555 California Street, 12th Floor  
4 San Francisco, CA 94104  
Telephone: 415.875.2300  
5 Facsimile: 415.281.1350

6 Michael J. Baratz (*Pro Hac Vice*)  
MBaratz@steptoe.com  
7 Steven Davidson (*Pro Hac Vice*)  
sdavidson@steptoe.com  
8 STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, NW  
9 Washington, D.C. 20036  
Telephone: 202.429.6468  
10 Facsimile: 202.261.0557

11 ATTORNEYS FOR AMAZON.COM, INC.,  
AMAZON WEB SERVICES, INC., and  
12 TWITCH INTERACTIVE, INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES, NORTHWEST DISTRICT (VAN NUYS)

15 BRILLIANT DIGITAL ENTERTAINMENT,  
INC., a Delaware corporation; EUROPLAY  
16 CAPITAL ADVISORS, LLC, a Delaware limited  
liability company; CLARIA INNOVATIONS,  
17 LLC, a Delaware limited liability company; and  
18 MONTO HOLDINGS PTY LTD, an Australian  
company,

19 Plaintiff,

20 v.

21 PERSONALWEB TECHNOLOGIES, LLC, a  
Texas limited liability company; and DOES 1  
22 through 100, Inclusive,

23 Defendant.  
24  
25  
26  
27  
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Case No.: 21VECV00575

**NOTICE OF MOTION AND MOTION  
FOR STAY PENDING APPEAL BY  
AMAZON.COM, INC., AMAZON WEB  
SERVICES, INC., AND TWITCH  
INTERACTIVE, INC.; MEMORANDUM  
OF POINTS AND AUTHORITIES**

Date Action Filed: April 27, 2021

DATE: April 27, 2022  
TIME: 8:30 AM  
DEPT: U

RESERVATION ID: 353103174119

FENWICK & WEST LLP

**NOTICE OF MOTION**

**TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE THAT, at an upcoming date at the Court’s discretion per the Joint Stipulation and [Proposed] Order submitted on November 29, 2021, at 8:30 AM PT, in Superior Court of California, County of Los Angeles (Northwest District), 6320 Sylmar Ave., Van Nuys, CA 91401, before Department U, Amazon.com, Inc., Amazon Web Services, Inc., and Twitch Interactive, Inc. (collectively, “Amazon”) will move this Court for a stay pending appeal of this action. This application is made on the grounds that Amazon intends to appeal this Court’s denial of its motion for leave to intervene in this action and an automatic stay is warranted under Code of Civil Procedure § 916. In the alternative, Amazon seeks a discretionary stay.

This application will be based upon this notice, the memorandum of points and authorities in support, the records and filed in this action, and any further evidence and argument that the Court may receive at or before the hearing.

Dated: December 2, 2021

FENWICK & WEST LLP

By: /s/ Todd R. Gregorian

Todd R. Gregorian

Attorneys for AMAZON.COM, INC., AMAZON  
WEB SERVICES, INC., and TWITCH  
INTERACTIVE, INC.

FENWICK & WEST LLP

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On November 17, 2021, the Court denied the motion of Amazon.com, Inc., Amazon Web  
3 Services, Inc., and Twitch Interactive, Inc. (collectively, “Amazon”) for leave to intervene as  
4 plaintiff-creditors in the receivership action filed by insider plaintiffs Brilliant Digital  
5 Entertainment, Inc., Europlay Capital Advisors, LLC, Claria Innovations, LLC, and Monto  
6 Holdings Pty Ltd. (collectively, “Insiders”) against defendant PersonalWeb Technologies, LLC  
7 (“PersonalWeb”). The Court’s decision denying intervention is appealable as it “finally and  
8 adversely determines the right of the moving party to proceed in the action.” *Noya v. A.W. Coulter*  
9 *Trucking*, 143 Cal. App. 4th 838, 841 (2006). Amazon intends to appeal and moves for a stay of  
10 the entry of judgment pending the outcome of the appeal.

11 **I. FACTUAL BACKGROUND**

12 The Court is familiar with the core issue in this case: all of PersonalWeb’s tangible and  
13 intangible assets have been pledged as collateral for the approximately \$19 million of purported  
14 loans issued by Insiders, and PersonalWeb owes Amazon approximately \$5.4 million on a judgment  
15 based on an attorneys’ fees and costs award issued by the United States District Court for the  
16 Northern District of California after Amazon prevailed in patent litigation (and was affirmed by the  
17 Federal Circuit). Amazon alleges that all four secured creditors are insiders, with the same  
18 beneficial owner as PersonalWeb, and that the swift action taken to shift PersonalWeb’s assets into  
19 the receivership was intended to thwart Amazon’s efforts to collect the judgment. Amazon  
20 therefore sought to intervene as a plaintiff-creditor, because it has an interest in the property  
21 involved in this litigation (the assets of PersonalWeb) and is so situated that any judgment rendered  
22 in its absence, prioritizing the claims of Insiders, may well impair or impede Amazon’s ability to  
23 protect that interest.

24 On August 27, 2021, 17 days after Amazon filed its motion for leave to intervene, Insiders  
25 and PersonalWeb filed a stipulation for entry of judgment in favor of Insiders and against  
26 PersonalWeb that remains pending before the Court. If judgment is entered, and the assets are  
27 dispersed to Insiders and spent, it might be impossible to unscramble the egg even if Amazon  
28

1 prevailed on its appeal and was granted leave to intervene. A stay is necessary to preserve the status  
2 quo until Amazon’s appeal has been resolved and would permit all interested parties to know that  
3 the assets would only be distributed once, after all issues were resolved.<sup>1</sup>

## 4 **II. ARGUMENT**

### 5 **A. The Denial of a Motion to Intervene Is Appealable as of Right.**

6 Amazon is entitled to appeal this Court’s order denying the motion to intervene. ““An order  
7 denying a motion to intervene is appealable when it finally and adversely determines the right of  
8 the moving party to proceed in the action.”” *Crestwood Behavioral Health, Inc. v. Lacy*, 70 Cal.  
9 App. 5th 560, 572 (2021) (citing *Noya v. A.W. Coulter Trucking* 143 Cal. App. 4th 838, 841 (2016));  
10 *see also Hodge v. Kirkpatrick Dev., Inc.*, 130 Cal. App. 4th 540, 547 (2005) (“An order denying a  
11 motion for leave to intervene is directly appealable *because* it finally and adversely determines the  
12 moving party’s right to proceed in the action.” (emphasis added)). Here, the Court’s denial of  
13 Amazon’s motion to intervene finally and adversely prevents Amazon from proceeding in the  
14 action and is thus appealable.

### 15 **B. A Stay Pending Appeal Is Justified.**

16 Amazon is entitled to an automatic stay pending appeal under Code of Civil Procedure  
17 § 916. Cal. Code Civ. P. § 916(a) (“[T]he perfecting of an appeal stays proceedings in the trial  
18 court upon the judgment or order appealed from or upon the matters embraced therein or affected  
19 thereby, including enforcement of the judgment or order . . .”). In the alternative, Amazon is  
20 entitled to a stay subject to this Court’s discretion to stay proceedings in the interests of justice and  
21 to promote judicial efficiency. *See Daly v. San Bernardino Cty. Bd. of Supervisors*, 11 Cal. 5th  
22 1030, 1039 (2021); *Reed v. Super. Ct.*, 92 Cal. App. 4th 448, 454-55 (2001); Cal. Code Civ. P.

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23  
24 <sup>1</sup> While it appears PersonalWeb’s 84 claims against Amazon and its customers (the “Kessler  
25 Cases”), now pending as a certiorari petition before the Supreme Court, may constitute the bulk of  
26 the assets in the Receivership, there are also “a series of cases filed by PersonalWeb against various  
27 companies including Google, You Tube, Facebook, EMC, VMware and Apple, Inc.” relating to  
28 Section 101 of the Patent Act (the “101 Cases”). Declaration of M. Val Miller in Support of  
Receiver’s Motion for an Order Authorizing Issuance of Receiver’s Certificates (“Miller Decl.”)  
¶¶7–8. Both the Kessler Cases and the 101 Cases would continue to be litigated, even if the stay  
requested by Amazon were granted, as the Receiver’s Motion demonstrates.

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