

FRANZEL ROBINS BLOOM & CSATO, L.C.  
1000 WILSHIRE BOULEVARD, NINETEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90017-2427  
(323) 852-1000

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: PERSONAL WEB TECHNOLOGIES,  
LLC ET AL., PATENT LITIGATION,

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

Plaintiffs

v.

PERSONALWEB TECHNOLOGIES, LLC and  
LEVEL 3 COMMUNICATIONS, LLC,

Defendants.

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

Plaintiffs,

v.

TWITCH INTERACTIVE, INC.,

Defendant.

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

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

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

**[PROPOSED] ORDER DENYING  
WITHOUT PREJUDICE AMAZON'S  
MOTION TO COMPEL COMPLIANCE  
WITH COURT ORDER BY BRILLIANT  
DIGITAL ENTERTAINMENT, INC.,  
CLARIA INNOVATIONS, LLC,  
EUROPLAY CAPITAL ADVISORS,  
LLC, AND MONTO HOLDINGS PTY  
LTD AND DENYING REQUEST FOR  
SANCTIONS**

1 Before the Court is the motion of Amazon.com, Inc., Amazon Web Services, Inc. and Twitch  
 2 Interactive, Inc. (collectively, “Amazon”) to compel compliance with this Court’s order by third  
 3 parties Brilliant Digital Entertainment, Inc., (“BDE”) Claria Innovations, LLC (“Claria”), Europlay  
 4 Capital Advisors, LLC (“ECA”), and Monto Holdings PTY LTD (“Monto”) (collectively, the “Third  
 5 Parties” or “Respondents”) and request for sanctions. The Court has reviewed the Parties’  
 6 submissions (Joint Statement, Joint Charts) and relevant case law and determines that the matter is  
 7 suitable for resolution without oral argument. Civ.L.R.7-1(b).

8 **A. Background**

9 Amazon is pursuing post-judgment discovery from the Third Parties which are secured  
 10 lenders to PersonalWeb Technologies, LLC (“PersonalWeb”) seeking information about their  
 11 relationship and financial dealings with PersonalWeb. Dkt. 733-1, 733-2, 733-3.

12 On April 12, 2022, the Court issued its Order Granting Amazon’s Motion to Compel  
 13 Production From Third Parties, Dkt. 738. (“April 12, 2022 Order.”)<sup>1</sup> As stated therein, the primary,  
 14 if not only, issue addressed was the Third Parties’ blanket objection to the subpoenas based on the  
 15 Receivership Order issued by the Los Angeles County Superior Court in *Brilliant Digital*  
 16 *Entertainment, et al. v. PersonalWeb Technologies, LLC et al.*, LASC Case No. 21VECV00575.<sup>2</sup>  
 17 The Court overruled that objection, ruling that “Amazon may explore corporate relationships and  
 18 transfers in pursuit of alter ego theories.” (Dkt. 738 at 2-3.) The Court granted Amazon’s Motion  
 19 and Ordered: “The Third Parties, as defined in the subpoenas, shall each provide Amazon responses  
 20 to the requests for production and produce any non-protected, responsive documents within any of  
 21 their possession, custody, or control within fourteen (14) days of the date of this Order.”

22 The 14 day deadline stated in the April 12, 2022 Order (April 26, 2022) was extended to  
 23 May 26, 2022, by a stipulated order entered April 26, 2022 (Dkt. 746), in which the Third Parties  
 24 “agree[d] to provide complete responses to the requests for production consistent with the Court’s

25 \_\_\_\_\_  
 26 <sup>1</sup> The Order, and the corresponding motion to compel by Amazon, was directed to Respondents  
 27 BDE, ECA and Claria only. Monto was not a party to that proceeding. Amazon provides the  
 28 subsequently served Monto subpoena as Exhibit 1.

<sup>2</sup> The Court gives no credence to Amazon’s assertion that the Receivership is the product of a  
 conspiracy to which Third Parties are supposedly parties because it is unsupported by any

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1 previous orders” and which added Monto, which had not been a party to the previous motion or a  
2 party to the Order. Pursuant to the Stipulation, Monto agreed to accept service of its subpoena,  
3 waived jurisdiction defenses with respect to the subpoena, and agreed, along with the other Third  
4 Parties, to provide Amazon complete responses and to produce documents and their privilege log  
5 by May 26, 2022. Thereafter, by stipulated Order entered May 18, 2022, the Third Parties’ time for  
6 producing responsive documents and a privilege log was extended to June 27, 2022. (Dkt. 750.)

7 On May 26, 2022, Third Parties served their respective responses. The Responses restated,  
8 and in some instances, explained the basis for specific objections to certain of the Requests.  
9 (Exhibits 2, 3, 4 and 5.) Counsel for the parties report that on June 17, 2022, counsel engaged meet  
10 and confer telephone calls totaling approximately one and a half hours, without reaching any  
11 agreement. Thereafter, on June 23, 2022 counsel for Third Parties provided draft Joint Charts for  
12 each Respondent, stating their respective proposed compromises. On June 27, 2022 and thereafter,  
13 Third Parties produced responsive documents claimed to be in compliance with the April 12, 2022  
14 Order, consistent with its positions stated in the Joint Charts and provided a privilege log with in  
15 excess of 50,000 documents logged. On Saturday, August 6, 2022 Amazon provided counsel for  
16 Third Parties its proposed compromises, to which Third Parties responded on August 16, 2022. (See  
17 Exhibits 6-9.)

18 Unsatisfied with Third Parties’ Responses, their suggested Compromises, and the document  
19 production, Amazon brings this motion, which Third Parties oppose.

20 **B. Amazon’s Position**

21 Amazon argues that months have passed and the Third Parties are treating this Court’s order  
22 as an optional suggestion as to what documents they should produce. Amazon claims that on May  
23 26, Third Parties served new written responses: (i) asserting numerous previously waived or  
24 abandoned objections, (ii) refusing to produce documents in response to some requests, (iii)  
25 unilaterally limiting the scope of their search for documents, and (iv) refusing to log certain  
26 documents withheld under a claim of privilege. (See Exs. 2-54444444.) Amazon requests that the  
27 Court order Third Parties to comply “fully” with the order and sanction them for their refusal to  
28 comply. Amazon argues:

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1 (i) *Waived/Abandoned Objections*: Amazon claims that the Court ordered Third Parties  
2 to provide responses to the requests for production without objection and to produce any non-  
3 privileged, nonprotected responsive documents. (Citing Dkt. 738 at 3.) It argues that Third Parties’  
4 obligation is to comply, not to raise an entirely new set of objections that they waived by not  
5 asserting them originally or by abandoning them when Amazon first moved to compel. *See Kigasari*  
6 *v. Burrows*, (“*Rossi*”) Civ. A. No. 20-cv-01521-JST (SK), Dkt. 75 (N.D. Cal. Jan. 28, 2022) (slip  
7 op.) (finding party waived objections to requests for production not timely raised); *Dep’t. of Toxic*  
8 *Substances Control v. Rossi*, Civ. A. No. 20-cv-01049-VC (RMI), 2022 WL 19355, at \*3 (N.D. Cal.  
9 Jan. 3, 2022) (“*Rossi*”) (“[T]he court finds that Defendants have abandoned all of the objections  
10 which they raised in boilerplate fashion in response to the discovery requests but that were not  
11 presented and developed in response to Plaintiff’s motions to compel.”). Amazon claims that the  
12 Court overruled Third Parties’ objections in compelling responses and to produce documents.  
13 (Citing Dkt. 738 at 3.) Amazon further argues that the Third Parties explicitly agreed to abide by  
14 this Court’s orders to respond without non-privilege objections. (Citing Dkt. 750 at 1-2 (Third  
15 Parties “agree to provide complete responses to the requests for production consistent with the  
16 Court’s previous orders”).) Amazon argues that Third Parties may not just choose a few objections  
17 to litigate on a motion to compel and save other objections for after the Court orders production.

18 (ii) *Limiting Scope of Search*: Many responses limit the scope of search and production  
19 in violation of the order. (*See* Ex. 6 (Chart-BDE) (Nos. 3, 10, 12, 33, 41, and 44); Ex. 7 (Chart-  
20 Claria) (Nos. 10 and 42-44); Ex. 8 (Chart-ECA) (Nos. 10, 12, 33, 41, and 43-45); Ex. 9 (Chart-  
21 Monto) (Nos. 33 and 41-45).

22 (iii) *Privilege Log/Objections*: For many responses, insiders assert privilege objections  
23 but then refuse to log withheld documents. (*See* Ex. 2 (BDE) at 12-13 and 33-34 (Nos. 10 and 42);  
24 Ex. 3 (Claria) at 10 and 26-29 (Nos. 10 and 42-44); Ex. 4 (ECA) at 11-13, 25-27, and 29-35 (Nos.  
25 10, 12, 33, 41-45, and 47);

26 Amazon further claims that it has agreed to a number of compromises as shown in the Joint  
27 Charts.

28 Amazon further claims, that neither the Third Parties nor their counsel, Frandzel Robins

1 Bloom & Csato, L.C., have adequate excuse for what it characterizes as their “disregard” of the  
2 Court’s prior order, and the Court should direct them to reimburse Amazon its reasonable attorney  
3 fees and costs incurred in obtaining compliance. While pointing to the Responses as evidence of  
4 Third Parties conduct that is supposedly sanctionable, Amazon provides no facts pointing to any  
5 sanctionable conduct by counsel themselves.

6 **C. Third Parties’ Position**

7 Third Parties oppose the Motion on a number of grounds. Citing the Requests, they argue  
8 that Amazon seeks to compel “all documents and communications” regarding each Respondent’s  
9 business and operations for a period of 40 years (30 years before PersonalWeb was formed), as to  
10 Monto, a period of 26 years (15 years before PersonalWeb was formed) as to BDE, a period of 20  
11 years (nine years before PersonalWeb was formed) as to ECA (which it claims indirectly owns only  
12 a 9.8% interest in PersonalWeb and only holds approximately 5.3% of PersonalWeb’s debt), and a  
13 period of 10 years as to Claria. Third Parties argue that the only issues to which Amazon claims a  
14 right to the information sought in the subpoenas deal with the existence and whereabouts of  
15 PersonalWeb assets or whether an alter ego relationship currently exists between one or more of  
16 Respondents and PersonalWeb or between themselves. By definition, Third Parties argue, both  
17 issues, at most, involve documents created since PersonalWeb was formed and largely deal with  
18 documents created within the last 3-5 years. Third Parties point out that during the Joint Chart  
19 process, Amazon has now agreed to limit the scope of a number of Requests to January 1, 2010, a  
20 date that is acceptable to them as to many of the Requests.

21 In response to Amazon’s claims that Third Parties are guilty of a wholesale refusal to fully  
22 comply with the subpoenas and the Court’s April 12, 2022 Order, Third Parties point out that of the  
23 48 Requests served on each Respondent, Amazon only challenges 7 as to BDE, 7 as to Monto, 8 as  
24 to ECA and 4 as to Claria. (Amazon Statement, p. 2.) They claim that none of the challenged  
25 responses deal with a refusal to produce all or any non-privileged documents (or a refusal to log all  
26 privileged documents) relating to PersonalWeb, each Respondent’s dealings with that entity, or  
27 documents relating to matters between themselves. Significantly, Amazon does not dispute this  
28 claim.

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