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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Case No. [18-md-02834-BLF](#) (SVK)

ORDER ON AMAZON'S MOTIONS TO COMPEL

Re: Dkt. Nos. 771, 773

United States District Court
Northern District of California

The Court is in receipt of two joint discovery submissions. In the first submission (Dkt. 771) judgment-creditors Amazon.com, Inc. and Amazon Web Services, Inc. (“Amazon”) seek to compel post-judgment document productions from third parties Brilliant Digital Entertainment, Inc. (“BDE”), Claria Innovations, LCC (“Claria”), Europlay Capital Advisors, LLC (“ECA”) and Monto Holdings PTY. Ltd. (“Monto”) (collectively, “Respondents”), each of which is related in some fashion to judgment-debtor Personal Web Technologies, LLC (“Personal Web”). In the second submission (Dkt. 773), Amazon seeks production of more than 300 documents withheld by Respondents on the basis of a financial privacy privilege. *See also* Dkt. 773-1.

The Court has reviewed the joint submissions and supporting charts, post-judgment discovery filings and orders, as well as the relevant statutes and case law. The Court has determined that these disputes may be resolved without oral argument. Civ. L.R. 7-1(b).

I. Motion to Compel Post-Judgment Document Productions

Respondents BDE, Claria and ECA previously challenged the subject subpoenas with the argument that a related state court receivership action had sole jurisdiction over the assets of the judgement-debtor, PersonalWeb, as well as over the judgement-debtor’s secured creditors. Dkt.

1 733.¹ The Court overruled that objection and ordered the Respondents to each “provide Amazon
 2 responses to the requests for production and produce any non-privileged, nonprotected, responsive
 3 documents within any of their possession, custody, or control.” Dkt. 738. Though not argued in
 4 their joint submission at Dkt. 733, the Respondents submitted their formal objections to the
 5 subpoenas with the joint submission. Dkts. 733-4 (BDE); 733-5 (ECA); 733-6 (Claria). Those
 6 objections largely mirror the objections now at issue.

7 Amazon argues that all objections not raised in the previous joint submission (Dkt. 733)
 8 have been waived or abandoned and that this Court’s previous Order (Dkt. 738) required the
 9 Respondents to answer “without objection.” Dkt. 771 at 3. The Court does not find this argument
 10 persuasive in light of the fact that Respondents’ formal objections were before the Court at the
 11 time of its previous ruling and the language of its previous order did not expressly exclude further
 12 objections. Dkt. 738 at 3. Thus, Respondents’ current objections are not *per se* improper.

13 The Court has reviewed the disputed discovery charts submitted as to each Respondent
 14 wherein Respondents assert a variety of objections regarding breadth, vagueness and privilege.
 15 Dkts. 771-6 (BDE); 771-7 (Claria); 771-8 (ECA); 771-9 (Monto). Each side has also proposed
 16 compromises, and in some instances, the Parties have found common ground through their meet
 17 and confer efforts. Post-judgment discovery under Federal Rule of Civil Procedure 69 is broad,
 18 with a “presumption [] in favor of full discovery of any matters arguably related to [the creditor’s]
 19 efforts to trace [the debtor’s] assets and otherwise to enforce its judgement.” *JW Gaming Dev.,*
 20 *LLC v. James*, No. 18-2669, 2021 WL 2322265, at *4 (N.D. Cal. June 7, 2021) (quoting *Credit*
 21 *Lyonnais, S.A. v. SGC Int’l, Inc.*, 160 F.3d 428, 431 n.9 (8th Cir. 1998)); *Ryan Inv. Corp. v.*
 22 *Pedregal de Cabo San Lucas*, No. 06-3219, 2009 WL 5114077, at *4 (N.D. Cal. Dec. 18, 2009)
 23 (“As several federal courts have noted, Rule 69 discovery can indeed resemble the proverbial
 24 fishing expedition, ‘but a judgment creditor is entitled to fish for assets of the judgment debtor.’”)
 25 (citation omitted); *see also Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 138 (2014)
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 28 ¹ Though not a party to the previous discovery dispute (Dkt. 733). Monto agreed to be bound by

1 (explaining that “[t]he rules governing discovery in postjudgment execution proceedings are quite
2 permissive.”). With this guideline in mind, the Court’s specific rulings as to each request for each
3 Respondent are set forth in Exhibits A-D hereto. Further, applicable to each and every request, the
4 Court **ORDERS** as follows:

- 5 1. Excepted as noted in Exhibits A-D, Amazon’s requests seek relevant information
6 proportional to the needs of this post-judgment action.
- 7 2. Objections, except as noted in Exhibits A-D, are **OVERRULED** and a rolling
8 production of responsive documents is to begin immediately and to be completed no
9 later than September 30, 2022.
- 10 3. If a Respondent has already fully complied as ordered herein such that there are no
11 additional responsive documents in its custody or control, it must so state in a
12 declaration executed under penalty of perjury by a person with personal knowledge of
13 the facts by September 30, 2022.
- 14 4. Subject to Ruling #5 immediately below and in accordance with the Court’s ORDER
15 on the assertion of a financial privacy privilege, also below, Respondents may withhold
16 privileged documents only on the grounds of attorney client communication or attorney
17 work product. All documents withheld on the basis of such privileges must appear on
18 a privilege log to be served on Amazon no later than October 7, 2022.
- 19 5. ECA represents to the Court that, “One of Europlay’s several lines of business is
20 litigation advisory services which, in addition to providing advisory services, includes
21 litigation support in return for which it receives a compensation” and that it conducts
22 this business on behalf of clients who are not “even remotely related to PersonalWeb or
23 Amazon.” Dkt. 771-8 at 2-3. In light of this representation, to the extent ECA
24 contends that this Order, notwithstanding narrowing of requests by the Court, would
25 require production or logging of attorney client communications, attorney work
26 product related to, or confidential financial information of a client that is unrelated to
27 Personal Web or to any Respondent other than ECA, ECA may so indicate on its
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United States District Court
Northern District of California

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“In response to RFP No. ___, ECA is withholding documents on behalf of (*number*) clients that ECA represents are unrelated to Personal Web, BDE, Claria, Monto or Amazon on the basis of (*identify privilege or protection*).”

Amazon may, following meet and confer with ECA, request further briefing on ECA’s assertions of these privileges. Nothing in this paragraph supercedes or limits ECA’s obligation to log documents for which it claims the attorney-client privilege or attorney work product protection on behalf of any client related in any way to Personal Web, BED, Claria, Monto or Amazon or to produce confidential financial information of any client related in any way to Personal Web, BED, Claria, Monto or Amazon in accordance with this Order.²

- 6. All Respondents are represented in this matter by the Frandzel Robins Bloom & Csato, L.C. firm. In the discovery charts counsel for Respondents, frequently disavow statements made in the meet and confer process upon which Amazon relies in accepting a compromise position. Such disavowal is improper. Counsel has a duty of candor before this tribunal, and that extends to representations to counsel made in the meet and confer process.
- 7. In light of its ruling above that Respondents did not waive or abandon the subject objections, Amazon’s request for sanctions is **DENIED** without prejudice to renewal if Respondents fail to comply with this Order.

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1 **II. Motion to Compel Production of Documents Withheld on the Basis of**
 2 **Financial Privacy Privilege**

3 In support of this joint submission (Dkt. 773), Respondents³ submit a lengthy privilege log,
 4 asserting a “financial privacy privilege” to an estimated 325 documents. Dkt. 773-1. The
 5 privilege claims arise out of Respondents’ overbreadth objections, which are addressed by the
 6 Court in Exhibits A-D hereto. Dkt. 773 at 5. In some instances, the Court has narrowed the scope
 7 of the disputed requests, and those rulings will reduce the number of documents at issue. Amazon
 8 objects to any claim of financial privacy on various grounds. *Id.* at 2-4. The Court addresses
 9 Amazon’s argument that this claim of privilege has been waived or abandoned above and
 10 **OVERRULES** it here for the same reasons. The remaining issues are addressed below.

11 The Court recognizes that under certain circumstances, it may be appropriate for a third
 12 party to seek to protect financially sensitive information. *See Valdez v. Travelers Indem. Co. of*
 13 *Conn.*, Civ. A. No. 12-cv-04307-SBA (KAW), 2013 WL 3989583, at *5 (N.D. Cal. Aug. 2, 2013)
 14 (“The right of privacy in California extends to financial privacy in litigation, but is ‘subject to
 15 balancing the needs of the litigation with the sensitivity of the information/records sought.’”)
 16 (quoting *Davis v. Leal*, 43 F. Supp. 2d 1102, 1110 (E.D. Cal. 1999)). Both sides acknowledge, if
 17 reluctantly, that a balancing test is appropriate here. Dkt. 773 at 2, fn.1; 773 at 5.

18 The Court again turns to the breadth and scope of post-judgment discovery which, by its
 19 very nature, is directed at financial information, often in the possession of third parties with a
 20 relationship to the judgment-debtor. *JW Gaming Dev.*, 2021 WL 2322265, at *4 (denying
 21 motion to quash subpoena directed to third-party bank pertaining to accounts of judgment debtor
 22 and subordinate entities); *Ryan Inv. Corp.*, 2009 WL 5114077, at *4 (“As several federal courts
 23 have noted, Rule 69 discovery can indeed resemble the proverbial fishing expedition, ‘but a
 24 judgment creditor is entitled to fish for assets of the judgment debtor.’”) (citation omitted); *see*
 25 *also A&F Bahamas, LLC v. World Venture Grp., Inc.*, No. CV 17-8523 VAP (SS), 2018 WL

26 _____
 27 ³ In this joint submission, Respondents comprise only BDE, ECA and Monto. “There are no
 28 remaining privacy objections as to Claria.” Dkt. 773 at 5. Notwithstanding this slight change in
 29 posture among the Respondents. for the Court’s convenience. it will continue to refer to the three

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