

1 J. DAVID HADDEN (CSB No. 176148)
dhadden@fenwick.com
2 SAINA S. SHAMILOV (CSB No. 215636)
sshamilov@fenwick.com
3 MELANIE L. MAYER (admitted *pro hac vice*)
mmayer@fenwick.com
4 TODD R. GREGORIAN (CSB No. 236096)
tgregorian@fenwick.com
5 RAVI R. RANGANATH (CSB No. 272981)
rranganath@fenwick.com
6 FENWICK & WEST LLP
Silicon Valley Center
7 801 California Street
Mountain View, CA 94041
8 Telephone: 650.988.8500
Facsimile: 650.938.5200
9

10 Counsel for AMAZON.COM, INC.,
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: PERSONAL WEB TECHNOLOGIES,
LLC ET AL., PATENT LITIGATION

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

**[PROPOSED] ORDER GRANTING
PRODUCTION OF DOCUMENTS
WITHHELD BY PERSONALWEB
TECHNOLOGIES, LLC, AS INVITED
BY THE COURT IN ITS ORDER,
DATED OCTOBER 31, 2022 (DKT. 793)**

FENWICK & WEST LLP
ATTORNEYS AT LAW

28

1 **PROPOSED ORDER**

2 The Court ordered PersonalWeb to produce documents without objection in response to
3 Amazon's post-judgment discovery and respond to interrogatories. (Dkt. 704.)

4 Amazon moved to compel compliance with the Court's order because PersonalWeb asserted
5 privilege objections that the Court had already deemed waived, noting in its motion that PersonalWeb
6 had produced no additional documents and supplemented no interrogatory responses since August
7 2021. (Dkt. 790.)

8 As of the filing of Amazon's motion, PersonalWeb had reviewed only approximately 200
9 documents for production through October 7, 2022 and reviewed approximately 1,500 documents
10 through October 18, 2022. (Dkt. 791 at 1.) Amazon represents that PersonalWeb also served a privilege
11 log of documents withheld based on this manual review on October 25, 2022.

12 The parties then conferred and entered a stipulation where they agreed to use a first set of search
13 terms to identify responsive documents, and a second set of search terms to screen out documents
14 subject to withholding based on PersonalWeb's disputed privilege claims ("privilege screen"). (*Id.* at
15 2-4.) The stipulation provided that PersonalWeb would produce all responsive documents except for
16 those that hit on the privilege screen, which it would manually review pending the Court's ruling on its
17 privilege assertions. (*Id.*)

18 On October 31, 2022, the Court ruled on Amazon's motion to compel. It found that
19 PersonalWeb had "waived its attorney-client privilege and attorney work product protection regarding
20 the subject discovery and is to provide complete responses and a complete document production." (Dkt.
21 793 at 7.) The Court acknowledged the parties' stipulation, and further stated that it "expect[ed] the
22 Parties will be able to incorporate this Order and proceed with production of all responsive materials in
23 a timely manner." (*Id.*) If the parties were unable to do so, the Court invited Amazon to "submit a
24 proposed order to the Court with a deadline for completion of production as ordered herein." (*Id.*)

25 Amazon represents to the Court the following:

- 26 1. The parties have met and conferred regarding production of the remaining responsive
27 documents that PersonalWeb withheld, including those based on the privilege screen
28 described in the stipulation.

FENWICK & WEST LLP
ATTORNEYS AT LAW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 2. Amazon contends that the documents identified as responsive based on the agreed search terms but withheld based on the privilege screen should now be produced, as the Court has ruled that PersonalWeb’s basis to withhold them was waived.
- 3. The parties have a separate discovery dispute concerning responding to Amazon’s interrogatories as ordered by the Court. PersonalWeb agreed in September 2021 to supplement its original deficient responses but has not done so to date.
- 4. PersonalWeb has taken the position that it will only produce the privilege screen documents based on the agreed search terms as Amazon requests if Amazon agrees that PersonalWeb may supplement the interrogatory responses based only on the present recollection of its principals (including Mr. Bermeister, an individual who the Court previously found submitted a false declaration under oath), without conducting a reasonable inquiry, including consulting its records to the extent necessary to answer.
- 5. Unless Amazon agrees to these terms concerning the interrogatory dispute, PersonalWeb has stated it will instead manually review each of the documents withheld based on the privilege screen. PersonalWeb has claimed that it is withholding approximately 57,000 documents based on the privilege screen. PersonalWeb’s pace for manual review, as described above, has ranged from fewer than 50 documents per week to approximately 750 documents a week. At that pace, PersonalWeb will not be able to produce the withheld documents for months, let alone make that production (*and* conduct the additional search of documents in the possession of Stubbs Alderton) in a timely manner as the Court ordered.

Accordingly, the Court further GRANTS Amazon’s motion as follows:

PersonalWeb is ordered to produce all documents currently withheld based on the waived privilege claims by November 10, 2022, including: (1) the documents identified on the October 25, 2022 privilege log; and (2) the documents previously withheld based on the privilege screen.

SO ORDERED.

Dated: _____

SUSAN VAN KEULEN
United States Magistrate Judge