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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: 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

**SUPPLEMENTAL BRIEF OF  
AMAZON.COM, INC., AMAZON WEB  
SERVICES, INC., AND TWITCH  
INTERACTIVE, INC. AS ORDERED BY  
THE COURT IN ITS ORDER DATED  
NOVEMBER 16, 2022 (DKT. 803)**

FENWICK & WEST LLP  
ATTORNEYS AT LAW

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1 The Court ordered supplemental briefing to address the statement by Claria Innovations,  
2 LLC (“Claria”) and Europlay Capital Advisors, LLC (“ECA”) that the dispute over the collection  
3 of emails from Mr. Markiles’ Stubbs Alderton email accounts “appears to be a moot issue given  
4 the Court’s October 31, 2022 order ordering Personal Web to produce documents from its counsel  
5 at the Stubbs Alderton firm.” (Dkt. 803.)

6 The dispute is not moot, for several reasons:

- 7 1. PersonalWeb is continuing to resist complete production of the responsive emails in  
8 Stubbs Alderton’s possession. It has cut off meet and confer efforts with Amazon  
9 concerning the categories of documents to be produced, including proposals Amazon  
10 has made to streamline the production. Those proposals included that PersonalWeb  
11 prioritize the production of Mr. Markiles’s documents and communications. Amazon  
12 is also informed that, for its part, Stubbs Alderton refused to provide PersonalWeb’s  
13 new counsel with information concerning the criteria it is using to search for responsive  
14 documents, leaving PersonalWeb’s new counsel unable to supply the status report the  
15 Court had ordered beyond simply repeating information it had already disclosed. So,  
16 thus far, Stubbs Alderton has not committed to search Mr. Markiles’s email accounts at  
17 all. Amazon has serious concerns about both Stubbs Alderton’s and PersonalWeb’s  
18 compliance with the order—but it intends to attempt a further conference before raising  
19 these with the Court.
- 20 2. PersonalWeb itself has stated that it *takes no position* on whether its production will  
21 satisfy the Court’s order as to Claria and ECA and therefore render the current discovery  
22 dispute moot. (See Declaration of Todd R. Gregorian in Support of Supplemental Brief,  
23 Ex. 1.) That PersonalWeb cannot make that representation should end the current  
24 inquiry.
- 25 3. Even if PersonalWeb committed to search Mr. Markiles’s accounts, the Court’s October  
26 31, 2022 order directing PersonalWeb to produce documents from the Stubbs Alderton  
27 firm concerns emails in the possession, custody, or control of PersonalWeb. (Dkt. 793  
28 at 7:1-3; Dkt. 799 at 1:17-19.) Although PersonalWeb, Claria, and ECA are closely-

1 related entities, Amazon expects PersonalWeb to take the position that Mr. Markiles's  
2 communications in his role as managing agent of Claria or ECA or made on their behalf  
3 are not subject to the Court's order to PersonalWeb.

- 4 4. Finally, even if PersonalWeb and Stubbs Alderton agreed that the October 31, 2022  
5 order covered the responsive documents of Claria and ECA, the underlying requests for  
6 production to PersonalWeb differ from those to Claria and ECA. (*Compare* Dkt. 689-  
7 2 (RFPs to PersonalWeb) *to* Dkts. 733-2 at 9-16 (RFPs to Claria) & 733-3 at 9-16 (RFPs  
8 to ECA).) Moreover, the parties have agreed to produce from different relevant time  
9 periods.

10 For these reasons, the dispute over discovery of emails for Claria and ECA from Mr.  
11 Markiles' Stubbs Alderton email accounts is not moot. Accordingly, the Court should grant the  
12 motion to compel.

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14 Respectfully submitted,

15 Dated: November 23, 2022

FENWICK & WEST LLP

16  
17 By: /s/ Todd R. Gregorian  
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18 Attorney for AMAZON.COM, INC.,  
19 AMAZON WEB SERVICES, INC., and  
20 TWITCH INTERACTIVE, INC.

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