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12 TWITCH INTERACTIVE, INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

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

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

19 Plaintiffs

v.

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

22 Defendants,

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

24 Plaintiffs,

v.

25 TWITCH INTERACTIVE, INC.,

26 Defendant.
27

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

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

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

**REQUEST OF AMAZON.COM, INC.,
AMAZON WEB SERVICES, INC., AND
TWITCH INTERACTIVE, INC. FOR
STATUS CONFERENCE**

FENWICK & WEST LLP
ATTORNEYS AT LAW

1 Amazon respectfully requests that the Court hold a status conference at the Court's
2 convenience concerning PersonalWeb's compliance with its discovery orders. (*See* Dkts. 793 &
3 799; *see also* Dkt. 704.) Amazon also requests that, as suggested at the November 9 hearing, the
4 Court direct former counsel for PersonalWeb, Stubbs Alderton & Markiles LLP ("Stubbs
5 Alderton") to attend.¹

6 The Court ordered PersonalWeb to produce documents on a rolling basis and complete
7 compliance with its order by January 20, 2023. The Court also ordered PersonalWeb to provide
8 information concerning its collection from Stubbs Alderton—and advised PersonalWeb to err on
9 the side of providing "more information" lest the Court be forced to become more involved in
10 overseeing the production. The status report that PersonalWeb filed did not comply with the
11 Court's order, and indeed it conveyed no meaningful information beyond what PersonalWeb had
12 already disclosed before the Court even ordered the report. Amazon has made numerous
13 unsuccessful attempts to confer that indicate that PersonalWeb and Stubbs Alderton have gone back
14 to their exact same behavior of trying to game the Court's orders. Specifically:

- 15 • In the three weeks since the discovery hearing, PersonalWeb has produced a mere
16 *711 documents* of the 59,000 that it had withheld based on a privilege screen.
- 17 • PersonalWeb has also steadfastly refused to discuss its slow pace of compliance
18 with Amazon. PersonalWeb told the Court that if it devoted 50 hours per week to
19 compliance, it would not complete review of *just* the screened documents *alone* for 20
20 weeks, *i.e.*, 10 weeks later than the Court ordered. PersonalWeb has not devoted the 50
21 hours it promised, let alone the 100+ hours per week necessary to comply.
- 22 • During the three weeks since the hearing, PersonalWeb and Stubbs Alderton refused
23 to provide *any information* to Amazon concerning the scope of the search for documents in
24 Stubbs Alderton's possession, even though Amazon repeatedly suggested that the parties
25 should negotiate the scope of the search in advance to avoid wasteful motion practice. Just
26 today, the reason for PersonalWeb's refusal became clear. It disclosed that Stubbs had

27 _____
28 ¹ PersonalWeb has stated that it will not oppose a request for Stubbs Alderton to appear before the
Court

1 turned over a mere 200 documents, all obtained by a perfunctory search for the word
2 “PersonalWeb” and several variants, and by applying an arbitrary date cutoff of July 2021.
3 Amazon has objected, but PersonalWeb has essentially taken the position that it can only
4 make polite requests of Stubbs Alderton rather than direct it to turn over the responsive
5 documents that PersonalWeb controls.

6 • Finally, Amazon identified seven document categories covered by the Court’s order
7 and requested that PersonalWeb prioritize their production from Stubbs Alderton, offering
8 that might allow the parties to streamline or forego further collection thereafter.
9 PersonalWeb rejected that offer, but it also refused to say whether it intends to produce the
10 document categories *at all*. Amazon believes that any disputes about whether these
11 categories of documents are responsive to the order should be resolved now, by a letter brief
12 to the Court if necessary. PersonalWeb wants Amazon to wait until late January 2023, when
13 Amazon faces an imminent motion deadline, to find out whether PersonalWeb withheld
14 these documents. If PersonalWeb is finely parsing the Court’s order to avoid producing
15 key documents, it should disclose that now, and not be allowed to game the schedule.

16 BACKGROUND

17 ***The Court Finds PersonalWeb Waived Objections and Once Again Orders PersonalWeb***
18 ***to Produce All Responsive Documents.*** On October 31, 2022, the Court reaffirmed its previous
19 order in that “PersonalWeb . . . waived its attorney-client privilege and attorney work product
20 protection regarding the subject discovery and is to provide complete responses and a complete
21 document production.” (Dkt. 793; *see also* Dkt. 704.) Just prior to this order, the parties conferred
22 and entered a stipulation where they agreed to use a first set of search terms to identify responsive
23 documents, and a second set of search terms to screen out documents subject to withholding based
24 on PersonalWeb’s disputed privilege claims (“privilege screen”). (Dkt. 791 at 2-4.) The stipulation
25 provided that PersonalWeb would produce all responsive documents except for those that hit on
26 the privilege screen, which it would manually review pending the Court’s ruling on its privilege
27 assertions. (*Id.*)

1 **Discovery Hearing and Order.** After the Court rejected PersonalWeb’s privilege
2 objections, Amazon filed a proposed order requesting a deadline to timely produce the privilege
3 screen materials. (Dkt. 794.) On November 9, 2022, the Court held a discovery hearing. (Dkt.
4 799.) During that hearing, the Court stated to the parties, as to Stubbs Alderton:

5 I will issue any order that is needed to facilitate or to give them the direction they
6 need as to what has to be produced. The gamesmanship on that side is done. We’re
7 done. So if something’s not happening or materials are not being produced, again,
8 as you said, you don’t know what you don’t know. But what I want, Mr.
9 McCormick is a status report from you....

10 [To counsel for PersonalWeb:] I want you to reach out to them today to get more
11 of a date certain as to that first production with three elements: the date of the
12 production. I want a description of the content to your question. Are they just
13 turning over client files? Are they doing a responsiveness poll? What is it that
14 you’re getting....When are you going to get it? What are you going to get? And as
15 of today’s date which is the 9th of November, what’s the estimate of the size of the
16 first production.

17 And in terms of rolling production, what are they thinking in terms of duration? Is
18 it a two-week rolling? So, that’s a fourth thing. Again, we just need more specificity
19 from them.

20 (Dkt. 798 (Hearing Tr.) at 15:21-16:2; *id.* at 16:13-23; *id.* at 17:24-18:2.) The Court warned
21 PersonalWeb to err on the side of providing “more information” in the status report:

22 Make that call. Get that information and that’ll be a start. But the more information
23 you can get about the production, then the more willing I can wait and see what
24 materializes. The less information that is forthcoming, then I’m going to have to
25 get more involved....And they’ll have to come in and appear....But we’ve got to
26 make this happen.

27 (*Id.* at 17:7-16.) Also, during that hearing, PersonalWeb stated that Stubbs Alderton had informed
28 it that Stubbs Alderton expected to provide an initial batch of documents to Lewis Roca by the
Thanksgiving holiday. (Dkt. 798 (Hearing Tr.) at 4:20-22; *id.* at 16:6-8.)

 After the hearing, the Court ordered “PersonalWeb’s production of documents as ordered
in Dkt. 793 will proceed on a rolling basis and be completed by **January 20, 2023.**” (Dkt. 799.)
The Court also ordered “[b]y **November 14, 2022**, PersonalWeb’s current counsel Lewis Roca
Rothgerber Christie, LLP (“Lewis Roca”) must confer with Stubbs Alderton Markiles LLP (“Stubbs
Alderton”) and file with the Court a status report addressing: (1) the date, content, and estimated

1 size of Stubbs Alderton’s first production of documents to Lewis Roca; and (2) the estimated date
2 upon which Stubbs Alderton’s production of document to Lewis Roca will be completed.” (*Id.*)

3 ***PersonalWeb’s Deficient Status Report.*** PersonalWeb and Stubbs Alderton did not
4 comply with the order as the status report conveys no meaningful information beyond what
5 PersonalWeb had already disclosed before the Court ordered the report—that Stubbs Alderton
6 expected to provide an initial set of documents to Lewis Roca by November 24, 2022, *i.e.*,
7 Thanksgiving:

8 SAM has represented to Lewis Roca that it presently expects its first production to
9 Lewis Roca to be made prior to November 24, 2022. SAM has represented to Lewis
10 Roca that this first production will consist of communications between SAM
11 timekeepers and PersonalWeb representatives. SAM has represented to Lewis
12 Roca that the estimated size of this production is currently unknown, as SAM is
13 presently collecting and reviewing communications to furnish to Lewis Roca.

14 (Dkt. 802 at 2:5-10.²) Based on the status report and subsequent conferences between Lewis Roca
15 and counsel for Amazon, it appears that PersonalWeb cannot provide the information because it is
16 allowing Stubbs Alderton to dictate the document collection process.

17 ***Further Conferences Confirm Stubbs Alderton Is Dictating Its Own Deficient Document***
18 ***Collection Without Oversight By Lewis Roca.*** For weeks, Amazon has attempted without success
19 to confer concerning the search criteria employed by PersonalWeb and Stubbs Alderton as well as
20 the timing of the rolling production. PersonalWeb has refused to discuss its compliance efforts
21 even though it has produced fewer than 1,400 documents in three weeks.³ PersonalWeb also
22 disclosed for the first time on November 29 that Stubbs Alderton has provided only 200 documents
23 to Lewis Roca for review and possible production. Stubbs Alderton has unilaterally decided to run
24 keyword searches for only “Personal Web”, “personalweb”, “pw ”, and “pw”, terms that do not
25 capture responsive documents unless they literally mention PersonalWeb by name (and moreover,

26 ² PersonalWeb further stated regarding the overall production, that “initial estimates of production
27 are dynamic as SAM is setting and re-setting parameters for collection, with initial SAM estimates
28 of collection and SAM own internal review, varying between approximately 15,000 to 17,000
documents, or between approximately 5.5GB to 6.5GB of data.” (Dkt. 802.) This is a moving
target and unhelpful, and in retrospect is false, as Stubbs has turned over only 200 documents not
15,000.

³ In addition to the 711 privilege screen documents, PersonalWeb has also produced 686 documents
based on the parties’ bulk production protocol. (*See* Dkts. 791 & 792.)

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