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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  
28

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

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

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

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

JUDGE: Hon. Susan van Keulen

FENWICK & WEST LLP  
ATTORNEYS AT LAW

1 Amazon submits this status update in response to the Court's order (Dkt. 816).

2 ***Search of PersonalWeb Production for Claria/ECA Documents.*** Amazon was able to  
3 complete its staging of the PersonalWeb bulk production late last night, and conduct a search for  
4 Exhibits 2, 3, 9, 22, and 25 to the declaration of Christopher Lavin (Dkt. 810-1). Only one of the  
5 emails, Exhibit 2, appears in the PersonalWeb production, likely because Michael Weiss, the  
6 custodian from whom PersonalWeb collected documents, is copied on the email.

7 This inquiry has shown that the dispute with Claria and ECA about searching the email  
8 accounts of their managing agent Murray Markiles is not "moot." That conclusion is also supported  
9 by recent correspondence with Stubbs Alderton, which suggests that Stubbs is categorizing Claria  
10 and ECA documents as not responsive to the Court's order against PersonalWeb (Dkt. 822-2 at 3),  
11 as well as Stubbs Alderton's refusal for weeks to provide a direct answer to that question. (*See*  
12 *Dkt. 822.*)

13 Accordingly, the Court should grant the motion to compel as to Claria and ECA.

14 The exhibits that Amazon has submitted to the Court show that Mr. Markiles used his  
15 Stubbs Alderton email accounts to conduct the business of Claria and ECA, sometimes exclusively  
16 for business purposes as the Managing Director of ECA or managing agent of Claria, and  
17 sometimes in a way where his business and legal roles were intermingled. Mr. Markiles still has  
18 access to and control over these accounts, and thus, they are within the scope of discovery. *Outdoor*  
19 *Pro Shop, Inc. v. Monster Energy Co.*, Civ. A. No. 20-cv-05999-BLF (VKD), 2022 WL 767277, at  
20 \*2 (N.D. Cal. Mar. 11, 2022) (recipient of discovery requests must conduct a search for documents  
21 that "include locations that are reasonably likely to contain responsive documents"). ECA and  
22 Claria have represented that Mr. Markiles would need some additional permission from Stubbs  
23 Alderton to perform a *server-side* collection, but that is of no moment given that he still has access  
24 to and control over the accounts (just as a custodian can search his or her Gmail account without a  
25 subpoena to Google). The Court should grant the motion to compel Claria and ECA to search Mr.  
26 Markiles' Stubbs Alderton email accounts for responsive documents.<sup>1</sup>

27 <sup>1</sup> Nor can Claria or ECA avoid conducting a search based on privilege. They cannot shield  
28 documents that contain Mr. Markiles's business dealings on their behalf, because those documents  
are not privileged. *Staley v. Gilead Sciences, Inc.*, Civ. A. No. 19-cv-02573-EMC(LB), Dkt. 617

1           ***PersonalWeb’s Production from its Own Files.*** On December 7, 2022, PersonalWeb  
 2 produced approximately 44,000 privilege screen documents to Amazon. These are documents that  
 3 came from PersonalWeb itself and do not include any of the documents collected from Stubbs  
 4 Alderton. After this production, PersonalWeb still has approximately 17,000 privilege screen  
 5 documents that it must produce by January 20, 2023, per the Court’s order. PersonalWeb and  
 6 Amazon have reached an agreement that PersonalWeb will make rolling productions every two  
 7 weeks with the next production scheduled for December 22, 2022.

8           ***Stubbs Alderton’s Inadequate Search.*** On November 11, 2022, after the discovery  
 9 hearing, Amazon immediately contacted PersonalWeb to confer about the search criteria for the  
 10 PersonalWeb documents in Stubbs Alderton’s possession. Amazon proposed that PersonalWeb  
 11 prioritize production of seven categories<sup>2</sup> of documents from Stubbs Alderton to try to streamline  
 12 collection, with an offer to potentially forego further production from Stubbs if PersonalWeb  
 13 promptly and fully produced as to those categories. PersonalWeb relayed this request by November  
 14 14, 2022 to Stubbs Alderton, which purportedly not only rebuffed the proposal, but refused to  
 15 provide any information on its search and collection. (Stubbs Alderton’s refusal is evident from  
 16 PersonalWeb’s later failure to comply with the Court’s order directing it to provide a status report.

17 \_\_\_\_\_  
 18 (N.D. Cal. June 14, 2021) (slip op.) (“The attorney-client privilege does not apply to an attorney’s  
 19 communications about business matters (as opposed to legal advice.)”); *U.S. v. ChevronTexaco*  
 20 *Corp.*, 241 F. Supp.2d 1065, 1076 (N.D. Cal. 2002) (“The [attorney-client] privilege does not  
 21 protect an attorney’s business advice. Corporations may not conduct their business affairs in  
 private simply by staffing a transaction with attorneys.” Moreover, there is no joint defense or  
 common interest privilege over at least the documents concerning the bogus “secured loans” to  
 PersonalWeb from Claria and ECA and the resulting foreclosure and receivership, as PersonalWeb  
 was *adverse* to Claria and ECA in those transactions and lawsuit.

22 <sup>2</sup> The categories are: (1) Any responsive documents or communications for which Mr. Markiles is  
 23 a custodian, sender, recipient. (2) Documents concerning the corporate or investment structure of  
 24 PersonalWeb, including the purpose of its structure vis a vis its investors and principals, and any  
 25 advice provided by Stubbs Alderton or other professionals concerning those subjects. (3)  
 26 Information on the loans between PersonalWeb and the secured creditors, including but not limited  
 27 to, why PersonalWeb entered into the loans, negotiations of the loans, extensions of the loans, and  
 28 the decisions to foreclose on the loans, including any advice provided by Stubbs Alderton or other  
 professionals concerning those subjects. (4) Information on the receivership, including the  
 possibility of entering into a receivership, the decision to enter into receivership, purpose of the  
 receivership, and winding-up/termination of the receivership, including any advice provided by  
 Stubbs Alderton or other professionals concerning those subjects. (5) Communications regarding a  
 potential for a fee award against PersonalWeb in seeking to monetize its patent assets. (6) Any  
 communications between Stubbs Alderton and Ronald Richards. (7) All agreements between  
 Stubbs Alderton and PersonalWeb or its principals

1 (See Dkts. 798, 802, & 807.)

2 Having refused to confer even with PersonalWeb about the means employed to locate  
3 *PersonalWeb*'s documents, Stubbs Alderton conducted its own search in secret and has provided  
4 approximately 20,000 emails to PersonalWeb and only then disclosed its criteria.<sup>3</sup> Stubbs Alderton  
5 (1) disclosed only that it has searched emails of individual custodians and not its other electronic  
6 documents or paper files maintained for PersonalWeb; (2) without explanation refused to collect  
7 any documents dated after July 31, 2021; and (3) has only run keyword searches for  
8 "PersonalWeb", "personalweb", "pw ", and "pw," failing to capture any documents that don't  
9 literally mention PersonalWeb by name (or even those that mention "PWeb," an oft-used shorthand  
10 for PersonalWeb). (See Dkt. 822-2 at 9-11.) Amazon suspects the documents captured by these  
11 criteria will consist mainly of worthless ECF notices from PersonalWeb's numerous litigations,  
12 while the files at Stubbs Alderton containing PersonalWeb's actual business records remain  
13 untouched.

14 Even though the Court has ordered PersonalWeb to produce its documents for which Stubbs  
15 Alderton is custodian, PersonalWeb refuses to direct its lawyers at Stubbs to turn over responsive  
16 documents. Amazon's efforts to confer suggest that PersonalWeb has not even requested Stubbs  
17 Alderton provide the client file. And despite repeated requests Amazon has made directly to Stubbs  
18 Alderton for additional information, Stubbs has steadfastly refused to explain its deficient search  
19 criteria or answer other questions. (*Id.*) Instead, Stubbs Alderton has stated that it intends to  
20 respond in some form only by December 12, 2022, and that they are not "short order cooks" with  
21 respect to document collection. (Dkt. 822-2 at 6.)

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<sup>3</sup> PersonalWeb and Amazon have reached an agreement for PersonalWeb to bulk produce these documents subject to provisions for clawback by next week

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Respectfully submitted,

Dated: December 9, 2022

FENWICK & WEST LLP

By: /s/ Christopher S. Lavin  
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