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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION

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

CASE NO.: 5:18-md-02834-BLF

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

12 AMAZON.COM, INC. and AMAZON WEB
13 SERVICE, INC.,

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

14 Plaintiffs,

**STATEMENT OF STUBBS ALDERTON
& MARKILES, LLP PERMITTED BY
COURT ORDER DATED DECEMBER 2,
2022**

15 v.

16 PERSONALWEB TECHNOLOGIES, LLC, et
17 al.,

Defendants.

18 PERSONALWEB TECHNOLOGIES, LLC, et
19 al.,

20 Plaintiffs,

21 v.

22 TWITCH INTERACTIVE, INC.,

23 Defendant.
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1 On September 15, 2022 Stubbs Alderton & Markiles, LLP (SAM) was permitted to substitute
2 out of this case in the District Court (Docket no. 784), following sustained and lengthy efforts.
3 Thereafter, the SAM law firm had little interest in following the multitude of activities in the District
4 Court. Communications with Amazon’s counsel completely ceased then, save for limited activities
5 before the Federal Circuit. On November 9, 2022 counsel at Lewis Roca (“LR”) sent to SAM a copy
6 of Docket no. 799, “Order Following November 9, 2022 Discovery Hearing” and SAM learned that
7 the Court had indirectly placed on SAM certain obligations viz-a-viz its former client PersonalWeb
8 and its obligations to Amazon (a very short time prior LR had asked SAM for a full copy of SAM’s
9 PersonalWeb file and preliminary efforts had commenced).

10 Beginning soon after receipt of that November 9 Order, SAM partner Michael Sherman, joined
11 by two paralegals in the SAM office, practically “dropped everything” to attempt as best as it was able
12 to both understand the scope of what it would need to turn over to LR, and to collect documents for
13 transmission, and began interacting with LR on a court filing it made on November 14. Mr. Sherman
14 was joined by SAM partner Jeffrey Gersh in these efforts, and the four SAM professionals—aided by
15 SAM’s IT department and aided by an electronic database platform (EverLaw) acquired specifically
16 for this project—expended an enormous amount of time prior to the Thanksgiving Holiday, and on
17 November 23 transmitted to LR, both SAM’s search protocol and 20,204 documents (via link),
18 totaling approximately 3.6 GB of data.

19 SAM’s efforts in searching for and furnishing to LR the documents/information on November
20 23 was, to a degree, impeded by “direction” and questions that were being passed along ostensibly
21 from Amazon’s counsel, as reflecting “Amazon wants X” or “Amazon want to know Y”. Very early
22 on SAM had to grapple with 206 Amazon search terms that had been forwarded to its office from LR,
23 containing search terms such as “crypto” or “dollar” or “ledger” or “money” with the suggestion from
24 Amazon being relayed to SAM via LR, that SAM ought to search its e-mail server for those terms—
25 because apparently, that is what PersonalWeb had agreed to. [As SAM quickly realized, for a law firm
26 like SAM that represents large numbers of clients in diverse business fields, search terms like those
27 would be ridiculous and essentially result in the turn-over of the SAM law firm entire e-mail server.]

1 Later, during the week of November 14 SAM communicated with LR counsel about a new request
2 that Amazon had of SAM, *i.e.*, that SAM “prioritize” its furnishing of documents to LR—the problem
3 with that approach being that SAM professionals were already well underway with SAM’s search
4 using a search protocol SAM had formulated.

5 In the late afternoon on November 23, 2022, SAM sent to LR a link to those over 20,000
6 documents along with a detailed e-mail (which, due to space limitations cannot be quoted) that
7 referenced SAM’s continuing efforts, noted that this furnishing would likely be supplemented, and
8 identified the search protocol that SAM followed, among other things. SAM is planning on furnishing
9 certain additional documents to LR, and has begun to look at other categories of documents that
10 Amazon claims are priority. SAM expects that another furnishing of documents will be made to LR
11 before the Christmas Holiday and is not now prepared to share all of its internal mental
12 impressions/internal work-product regarding how it is going about the tasks (but will, like before,
13 share its search protocol, when it transmits its next furnishing of documents to LR).

14 SAM now wishes to flag four other issues—which due to space limitations cannot now be fully
15 developed—that may arise during the December 14 hearing:

- 16 1. SAM has not waived any of *its* work product. True, PersonalWeb has waived all *shared* work
17 product that SAM (and other counsel) had provided it, and SAM believes that it has furnished
18 to LR all such shared work product (searching continues). SAM believes it undisputed that
19 the “attorney is the intended exclusive holder of the work-product privilege and that it may be
20 asserted even against his client in the context of litigation where adversaries of the client seek
21 discovery for use against the client.” *Lasky, Haas, Cohler & Munter v. Superior Court* (1985)
22 172 Cal.App.3d 264, 279. In addition, SAM has never been subpoenaed and there are no Court
23 orders *directed* to it.
- 24 2. SAM has not furnished PersonalWeb, and has no intention of furnishing PersonalWeb, its
25 uncommunicated work product. “[T]he attorney is the holder of the work product privilege
26 for the purpose of adversarial discovery during litigation” and “[d]ocuments within the scope
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1 of the privilege need not be disclosed, even to the client.”) *Eddy v. Fields* (2004) 121
2 Cal.App.4th 1543, 1549. Ethics opinions of various state bar organizations are generally in
3 accord, and in *In re EchoStar Communications Corp.* (Fed. Cir. 2006) 448 F.3d 1294, 1303)
4 the Federal Circuit ruled that “Under Rule 26(b)(3), this so-called ‘opinion’ work product
5 deserves the highest protection from disclosure.” (*Id.*) Attorney work product is not
6 discoverable because doing so would “eviscerate the legitimate policies of the work-product
7 doctrine and chill the principles of our adversary system as a whole on account of the
8 possibility that, from time to time, there may be occurrences of ethical transgressions.” (*Id.* at
9 1305.)

10 3. Among SAM’s numerous clients over the years, are included Europlay Capital Advisors,
11 Brilliant Digital Entertainment, Monto Holdings, Claria Innovations, Topodia Ltd., and (when
12 applicable) their respective affiliates, subsidiaries and controlled portfolio companies. In
13 performing legal services for those clients, SAM’s services varied; on rare occasions, such
14 services, in instances, intersected with PersonalWeb. PersonalWeb was formed over a decade
15 ago. In devising SAM’s search criteria for furnishing of documents to LR, SAM was
16 influenced by, among things, (1) the fact that the Court order regarding waiver of privilege is
17 directed to PersonalWeb and no one else, and (2) obligations as California licensed attorneys
18 in complying with California Business & Professions Code section 6068(e)(1) which makes it
19 the duty of every California attorney “to maintain inviolate the confidence, and at every peril
20 to himself or herself to preserve the secrets, of his or her client.”

21 4. Amazon and its counsel are conflating SAM’s zealous advocacy on behalf of its present and
22 former client PersonalWeb—in an instance where the District Court had commended the firm’s
23 ethics in its handling of the underlying litigation—and what appears to be their animus directed
24 towards third parties. The leveling of “demands,” curt and unprofessional acts, *ad hominins*
25 and hostility towards SAM are unwarranted and unprofessional; they do nothing to advance
26 the cause of PersonalWeb’s compliance.
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Respectfully submitted,

Dated: December 9, 2022

STUBBS, ALDERTON & MARKILES, LLP

By: /s/ Michael A. Sherman
Michael A. Sherman
Jeffrey F. Gersh

Attorneys for Stubbs Alderton & Markiles, LLP