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AMAZON WEB SERVICES, INC., and  
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

20 v.

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

22 Defendants,

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

24 Plaintiffs,

25 v.

26 TWITCH INTERACTIVE, INC.,

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

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

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

**UPDATED STATUS REPORT OF  
AMAZON.COM, INC., AMAZON WEB  
SERVICES, INC., AND TWITCH  
INTERACTIVE, INC. FOR JANUARY 5,  
2023 HEARING**

JUDGE: Hon. Susan van Keulen

FENWICK & WEST LLP  
ATTORNEYS AT LAW

1        **PersonalWeb:** (1) After months of refusing to direct its lawyers at Stubbs Alderton to turn over  
2 responsive documents, PersonalWeb only last week purportedly did so. (*See* Declaration of Todd  
3 R. Gregorian (“Gregorian Decl.”), Ex. A at 3.) But PersonalWeb still refuses to take responsibility  
4 for the collection process, leaving it to Amazon to try to negotiate with Stubbs. (Exs. B-D.)<sup>1</sup>

5        (2) Stubbs refuses to discuss what paper and electronic files it maintains for PersonalWeb; only  
6 that its search is still ongoing and that it plans to complete production by January 20. (Ex. C at 3.)  
7 For electronic documents, Stubbs still has apparently only run full keyword searches for  
8 “PersonalWeb” and variants not including “Pweb.” Stubbs offered to consider additional electronic  
9 search terms, but then it shut down discussion of Amazon’s proposals. (Ex. C at 9 “Priority  
10 Categories”.) Now, on the eve of the hearing, PersonalWeb and Stubbs both report that Stubbs has  
11 run a subset of Amazon’s proposed search terms against an undisclosed data set. (*Id.* at 3; Ex. A  
12 at 1.) Amazon maintains that Stubbs must turn over the seven priority categories that Amazon  
13 identified previously for the Stubbs collection. (*See* Dkt. 823 at 1 n.2.)

14        (3) Stubbs Alderton now admits to withholding documents that it claims “belong” to other firm  
15 clients like the PersonalWeb insider-investors. Stubbs originally promised to provide information  
16 about this issue before December 14th hearing, (*see* Ex. D at 1, 5), but now it refuses to identify on  
17 behalf of which entities it is withholding documents, explain how it is making judgment calls about  
18 which of its joint clients “own” each document, provide a log of the withheld documents, or even  
19 just disclose their number. (*See* Ex. C at 2-4.) At a recent conference of counsel, Mr. Sherman  
20 became animated and shut down discussion of this issue. (*Id.* at 8.) He then went on vacation,  
21 promising that Mr. Gersh would address open questions in his absence. (*Id.* at 5.) But Mr. Gersh  
22 then claimed to have no information about this issue. (*Id.* at 2.) Given that the entities are closely-  
23 related and share principals, and Stubbs Alderton apparently represented them jointly and also when  
24 they were on opposite sides of certain transactions, this seems to be a shell game.

25        <sup>1</sup> For its own collection, PersonalWeb has represented that approximately 3,700 documents it had  
26 previously withheld based on the waived privilege claims (*i.e.*, the “privilege screen” documents)  
27 remain to be reviewed, but that it intends to complete production by January 20. PersonalWeb has  
28 also received certain hard drives from Stubbs Alderton (Ex. J at 1) that it has reported that it does  
not plan to search because it believes them to be duplicative of its collection from Mr. Weiss.  
PersonalWeb has represented its forensic consultant would verify this belief, but has not provided  
any information about the consultant’s methods or results

1 (4) Stubbs Alderton has agreed to remove its arbitrary July 2021 date limit. It now plans to  
 2 search for documents only through September 15, 2022, because it claims that after that date it was  
 3 “prohibit[ed]” from communicating with its “former client.” (*Id.* at 2.) To the contrary, Stubbs  
 4 still represents PersonalWeb at the Federal Circuit, including filing a substantive letter brief for  
 5 PersonalWeb after its new proposed date cutoff. (Case No. 21-1858, Dkt. 71.)

6 (5) The PersonalWeb documents that Stubbs Alderton has already produced are fraught with  
 7 technical issues, such as missing page images, missing pages out of a multi-page document, missing  
 8 attachments to emails, and no load file or document metadata. Amazon raised these issues with  
 9 both PersonalWeb and Stubbs Alderton weeks ago, and neither party has addressed them.

10 **PersonalWeb insider-investors (Claria/ECA/Brilliant Digital/Monto):** (1) By comparing  
 11 productions across parties, Amazon determined that the PersonalWeb investors had failed to  
 12 produce certain documents. This led to a further discovery that they had failed to produce other  
 13 responsive documents as well, including incriminating emails showing that they had colluded with  
 14 PersonalWeb to modify the secured loan agreements shortly before they foreclosed. Specifically,  
 15 just *days* before the PersonalWeb investors filed the receivership action, they amended the  
 16 agreements to identify PersonalWeb’s patent infringement suits as collateral for the loans. (Exs. E,  
 17 and F-H.) The PersonalWeb investors have thus far totally failed to explain why these documents  
 18 were not captured by their searches and produced previously. (Ex. I.)

19 (2) This failure makes it even more important that the Court order Claria and ECA to search  
 20 and produce all email accounts that Mr. Markiles used to conduct their business. As discussed  
 21 above, Stubbs Alderton has not searched for those documents, and is withholding any that it locates  
 22 in the PersonalWeb search based on criteria that it refused to disclose to Amazon. Amazon has  
 23 also searched the PersonalWeb productions made since the date of the last status update. Due to  
 24 the technical issues and lack of metadata, Amazon cannot be certain, but as best it can tell, Exhibits  
 25 3, 9, 22, and 25 to the Lavin Declaration (Dkt. 810-1) remain absent from the production.<sup>2</sup>

26 <sup>2</sup> Claria and ECA’s remaining argument is their misdirection that this Court would lack jurisdiction  
 27 to consider an alter ego *claim* in a complaint filed against them. (*See* Dkts. 801 & 825.) The Court  
 28 clearly has jurisdiction to order discovery from a nonparty to aid in enforcement of a judgment. *See*  
*Em Ltd. v. Rep. of Argentina*, 695 F.3d 201, 209 (2d Cir. 2012), *aff’d*, *Rep. of Argentina v. NML*  
*Capital Ltd.* 573 U.S. 134 (2014). And this Court has already held correctly that there is “a

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Respectfully submitted,

Dated: January 3, 2023

FENWICK & WEST LLP

By: /s/ Todd R. Gregorian  
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presumption [] in favor of full discovery of any matters arguably related to [the creditor’s] efforts to trace [the debtor’s] assets and otherwise to enforce its judgment.” (Order at 2 (Dkt. 779) (internal quotations omitted).)