

1 MICHAEL A. SHERMAN (SBN 94783)
masherman@stubbsalderton.com
2 JEFFREY F. GERSH (SBN 87124)
jgersh@stubbsalderton.com
3 **STUBBS ALDERTON & MARKILES, LLP**
15260 Ventura Blvd., 20th Floor
4 Sherman Oaks, CA 91403
Telephone: (818) 444-4500
5 Facsimile: (818) 444-4520

6 Former Attorneys for PERSONALWEB
TECHNOLOGIES, LLC
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **SAN JOSE DIVISION**

11 **IN RE PERSONALWEB TECHNOLOGIES,**
12 **LLC, ET., AL., PATENT LITIGATION**

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

CASE NO.: 5:18-cv-00767-BLF

13 **AMAZON.COM, INC. and AMAZON WEB**
14 **SERVICE, INC.,**

CASE NO.: 5:18-cv-05619-BLF

15 **Plaintiffs,**

16 **v.**

17 **PERSONALWEB TECHNOLOGIES, LLC, et**
18 **al.,**

STATEMENT OF STUBBS ALDERTON
& MARKILES, LLP IN RESPONSE TO
THE UPDATED STATUS REPORT OF
AMAZON.COM, INC., AMAZON WEB
SERVICES, INC. AND TWITCH
INTERACTIVE, INC.

18 **Defendants.**

19 **PERSONALWEB TECHNOLOGIES, LLC, et**
20 **al.,**

JUDGE: Hon. Susan van Keulen
HEARING DATE: January 6, 2023
TIME: 1:30 p.m.

21 **Plaintiffs,**

22 **v.**

23 **TWITCH INTERACTIVE, INC.,**

24 **Defendant.**

STUBBS ALDERTON & MARKILES, LLP
15260 VENTURA BLVD.
20TH FLOOR
SHERMAN OAKS, CALIFORNIA 91403

25
26
27
28

1 Amazon.com, Inc., Amazon Web Services, and Services, Inc. and Twitch Interactive, Inc.
2 (collectively “Amazon”) unilaterally filed an Updated Status Report with respect to the hearing
3 originally set for January 5, 2023 at 1:30 p.m., (now continued to January 6, 2023) without ever
4 seeking Stubbs Alderton & Markiles, LLP’s (“SAM”), position. Amazon’s report distorts the facts
5 and attacks SAM in the process. The very first paragraph of Amazon’s report accuses PersonalWeb
6 of only “last week” instructing SAM to turn over documents and cites to Exhibit A of Mr. Gregorian’s
7 Declaration, Dkt. 828-2, at page 3. Mr. Gregorian simply misstates the documents/emails in order to
8 paint SAM in the most unfavorable light before this Court. Amazon’s attacks on SAM are simply
9 unwarranted and unnecessary. SAM has been diligently working to provide documents to
10 PersonalWeb’s new counsel, Lewis Roca. (Gersh Dec. ¶ 2).

11 SAM has undertaken to provide and has provided documents to Lewis Roca on a rolling basis
12 and continues to do so. To date, SAM has delivered approximately 4.3 gigabytes of data to Lewis
13 Roca which consist of approximately 14,000 emails with approximately 4,000 pdf attachments, 1800
14 Word documents, approximately 455 (originally estimated at 520) Excel spreadsheets, 730 images,
15 580 text files, 115 compressed files (uncompressed), and other documents. Approximately 27
16 mailboxes have been searched for emails and documents and approximately 23,000 PersonalWeb
17 documents have been delivered to Lewis Roca. (Gersh Dec. ¶ 3.) More documents will be
18 forthcoming. In fact, it is anticipated that today, January 5, 2023, or at the latest tomorrow, hard
19 copies of certain documents in possession of SAM are going to be delivered to Lewis Roca;
20 approximately 5 banker type boxes. (Gersh Dec. ¶ 3)

21 Amazon then attacks SAM directly and accuses SAM of failing to discuss “what paper or
22 electronic files it maintains for PersonalWeb” and cites once again to Exhibit C of Mr. Gregorian’s
23 declaration (Dkt. 828-4).

24 This Court should note that on December 28, 2022, Mr. Gersh of SAM sent a detailed response
25 to Mr. Lavin explaining the domains that were searched, that the search cut off was extended from
26 July 31, 2021 [not July 31, 2022] to September 15, 2022 (the date that SAM was no longer counsel
27 for PersonalWeb), advised counsel for Amazon that searches were continuing and roughly how much
28 time had already been spent through the Christmas holidays conducting searches and what additional

1 search terms were run, all of which were responsive to Mr. Lavin's December 26, 2022 email (Dkt
2 828-4) as Exhibit C to Mr. Gregorian's declaration at page 4. At no time did Mr. Gersh state in the
3 referenced email that he has "no information" as declared by Mr. Gregorian.

4 What is most troubling is Amazon's counsel, accusing SAM of participating in a "shell game"
5 with PersonalWeb, without any evidence to support its claim (Dkt 828-4, at 2). Amazon simply wants
6 to continue to beat on SAM despite the hundreds and hundreds of hours it has put into reviewing
7 documents and emails and providing same to PersonalWeb's counsel, Lewis Roca.

8 Amazon further misstates the email that it references from Mr. Gersh in Mr. Gregorian's
9 declaration at Exhibit C, (Dkt 828-4 at 2). Amazon takes out of context the word "prohibited"
10 claiming that the email somehow says that SAM is "prohibited" from communicating with its former
11 client. That is not the context at all in which the email was written. Mr. Gersh's email references a
12 cutoff date of September 15, 2022 as the date when it no longer represented PersonalWeb in the
13 District Court matter. This seemed like the most logical date to run the searches to, since it was the
14 date SAM no longer represented PersonalWeb. Any communications after that between SAM and
15 its former client PersonalWeb in the District Court matter should still remain privileged, including
16 communications regarding the Federal Circuit matter.

17 Counsel for Amazon then attacks SAM on "technical issues" citing missing pages, missing
18 attachments, no load files with document metadata. This is not true. Whenever SAM has been
19 advised of a "technical issue", it has worked diligently to provide the missing information or sought
20 to understand what happened. In fact, load files were provided to Lewis Roca, and when SAM was
21 later informed they were in the wrong format or a format they could not read, the format was changed
22 and the documents resent to Lewis Roca. The document metadata is found on the load files sent to
23 Lewis Roca, as well as parent/child information (i.e., attachments to the main email). SAM learned
24 from its third-party document management company, Everlaw, that the pages all appear as originally
25 transmitted and are informed that nothing was intentionally deleted or omitted. (Gersh Dec. ¶ 8,
26 Ex. 1.)
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: January 5, 2023

STUBBS, ALDERTON & MARKILES, LLP

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

STUBBS ALDERTON & MARKILES, LLP
15260 VENTURA BLVD.
20TH FLOOR
SHERMAN OAKS, CALIFORNIA 91403