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10 Counsel for Defendants AMAZON.COM, INC.,
11 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,
17 LLC ET AL., PATENT LITIGATION

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

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

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

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

19 Plaintiffs

20 v.

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

**ADMINISTRATIVE MOTION OF
AMAZON.COM, INC., AMAZON WEB
SERVICES, INC., AND TWITCH
INTERACTIVE, INC. FOR RELIEF
FROM PROTECTIVE ORDER**

22 Defendants,

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

24 Plaintiffs

25 v.

26 TWITCH INTERACTIVE, INC. a Delaware
27 corporation

27 Defendants.

28

1 Amazon moves under Civil Local Rule 7-11 for limited relief from the protective order to
2 allow certain discovery produced in this action to be submitted as evidence in the Los Angeles
3 County Superior Court action (Civ. A. No. 21VECV00575) in a filing currently due March 21, 2023.
4 As the Court is aware, Amazon has intervened in that case because PersonalWeb’s beneficial owners
5 used their own related entities¹ to obtain a receivership and an injunction preventing legitimate
6 creditors like Amazon from enforcing debts against PersonalWeb. Amazon’s complaint in
7 intervention asserts a claim for equitable subordination, alleging that because the investors are
8 insiders who own PersonalWeb and colluded with it, their loans should be treated as equity, and they
9 should collect from PersonalWeb only *after* Amazon has been paid.

10 The investors’ newest trick has been filing special motions to strike (anti-SLAPPs) against
11 Amazon’s complaint in intervention, arguing—apparently for the first time in the history of
12 California’s heavily litigated anti-SLAPP statute—that Amazon’s claim to priority in distribution of
13 assets from the estate is frivolous litigation brought merely to punish the investors for exercising
14 their First Amendment rights. To respond, Amazon must come forward with evidence to support its
15 claims. But most of that evidence was produced under a protective order in this case. In December,
16 Amazon requested that the investors deem their productions as also made in the Superior Court
17 action, but the investors did not meaningfully engage Amazon concerning the proposal. (Declaration
18 of Christopher Lavin in Support of Administrative Motion (“Lavin Decl.”), Ex. 1.) Discovery in the
19 Superior Court is now stayed while the anti-SLAPP motion is pending. And even though the
20 Superior Court case involves the identical parties (Amazon, PersonalWeb, and the subpoenaed
21 investors), PersonalWeb and the investors have claimed that Amazon’s use of documents from this
22 case to defend itself would violate this Court’s protective order.² There is no legitimate reason for
23 this refusal, as any actual confidentiality interests in the documents will be protected by the Superior
24

25 ¹ Brilliant Digital Entertainment, Inc. (“BDE”), Claria Innovations, LLC (“Claria”), Europlay
26 Capital Advisors, LLC (“ECA”), and Monto Holdings Pty Ltd. (“Monto”) (collectively,
“investors”).

27 ² PersonalWeb, Claria, and ECA have refused Amazon’s use of their productions. BDE and
28 Monto have agreed to the use of some documents, but refused as to their financial records.

1 Court's sealing procedures. These parties simply seek to hamstring Amazon and prevent the
2 Superior Court from seeing more evidence of their misconduct. Amazon therefore respectfully
3 moves for limited relief as set forth in the proposed order.

4 **I. BACKGROUND**

5 The Court is familiar with the background of the case, but Amazon includes an abbreviated
6 summary of the facts relevant to the current motion. The Court entered judgment in favor of Amazon
7 and ultimately awarded it \$5,403,122.68 in attorney fees and costs. (Dkt. 708.) The Court's first
8 fee order prompted PersonalWeb's beneficial owners to trigger an asset protection scheme. They
9 had previously characterized a major portion of their investment in PersonalWeb as "loans" from
10 four related entities, each secured by "all of [PersonalWeb's] tangible and intangible assets" as
11 collateral. The loans issued between August 2010 and May 2012, but they were regularly amended
12 over the next decade to extend their maturity dates. In the meantime, PersonalWeb eventually
13 operated as an undercapitalized shell—the investors paid PersonalWeb's operating expenses as they
14 came due, sometimes even paying them directly without bothering to deposit the funds in
15 PersonalWeb's account. And they promptly withdrew and distributed litigation settlement proceeds
16 that PersonalWeb received.

17 When the Court awarded Amazon its fees, the four loans were not scheduled to mature until
18 December 2022, more than a year and a half away. But after discussing the fee award with
19 PersonalWeb's litigation counsel Stubbs Alderton, the investors demanded immediate repayment in
20 full, and then sued PersonalWeb for non-payment in April 2021. (Dkt. 717-2.) Within days,
21 PersonalWeb, through its President, Michael Weiss, signed a declaration prepared on the stationery
22 of the investors' counsel, agreeing that PersonalWeb owed \$19 million and could not pay, and
23 consenting to the appointment of a receiver and the entry of a preliminary injunction. (Dkt. 717-4.)
24 The receivership placed PersonalWeb's assets beyond the reach of the fee award while PersonalWeb
25 continued to pursue its business in the normal course. The receiver was ordered to run PersonalWeb
26 specifically for the benefit of the investors, while legitimate creditors like Amazon were enjoined
27 from collecting.

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1 As this scheme was unfolding, Amazon served post-judgment discovery on PersonalWeb
2 and the four investor entities in this Court, (Dkts. 689-1 & 689-2 (Discovery), Dkt. 704 (Order);
3 Dkts. 733-1, 733-2, 733-3, & 771-1 (Discovery), Dkts. 738, 750, & 779 (Orders)), which has
4 yielded thousands of pages of documents, including documents showing that the PersonalWeb
5 investors are the beneficial owners of PersonalWeb, that they colluded to frustrate the judgment,
6 that PersonalWeb was purposely undercapitalized and repeatedly had to seek funding from the
7 investors for its basic operation, and more.

8 Amazon was permitted to intervene in the receivership action in December 2022. (Lavin
9 Decl., Ex. 2 (Complaint in Intervention).) In late January/early February 2023, the investors filed
10 two special motions to strike (anti-SLAPP) portions of Amazon's complaint in intervention,
11 including the cause of action for equitable subordination that seeks to assign priority to Amazon in
12 the distribution of the estate. (Lavin Decl., Exs. 3-4.) To oppose these motions, Amazon must
13 demonstrate the merit of its claim for equitable subordination by establishing a probability of
14 success. *See Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 67 (2002) ("Section
15 425.16, subdivision (b)(1) requires the court to engage in a two-step process. First, the court decides
16 whether the defendant has made a threshold showing that the challenged cause of action is one
17 arising from protected activity...*If the court finds such a showing has been made, it then*
18 *determines whether the plaintiff has demonstrated a probability of prevailing on the claim.*"
19 (emphasis supplied).) Amazon currently faces an imminent March 21, 2023 deadline for filing its
20 opposition to the motions to strike.

21 The protective orders in this case bar Amazon from using the discovery produced in this
22 action in other actions, such as the receivership action. (*See, e.g.*, Dkt. 427 at 9-11 (§§ 7.1, *et seq.*
23 ("A Receiving Party may use Protected Material that is disclosed or produced by another Party or
24 by a Non-Party in connection with these Actions only for prosecuting, defending, or attempting to
25 settle these Actions," and generally restricting disclosure to certain specified classes of individuals).)
26 Accordingly, Amazon now moves for relief from the protective order to use discovery from
27 PersonalWeb and the PersonalWeb investors to oppose the motions to strike and support its cause

28

1 of action for equitable subordination.

2 **II. THE COURT SHOULD GRANT AMAZON’S REQUEST FOR RELIEF FROM THE**
3 **PROTECTIVE ORDER**

4 The Ninth Circuit “strongly favors access to discovery materials to meet the needs of parties
5 engaged in collateral litigation.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1131 (9th
6 Cir. 2003). In fact, “[w]here reasonable restrictions on collateral disclosure will continue to protect
7 an affected party’s legitimate interests in privacy, a collateral litigant’s request to the issuing court
8 to modify an otherwise proper protective order so that collateral litigants are not precluded from
9 obtaining relevant material should generally be granted.” *Id.* (citing *Beckman Indus., Inc. v. Int’l*
10 *Ins. Co.*, 966 F.2d 470, 475 (9th Cir. 1992); *Olympic Refining Co. v. Carter*, 332 F.2d 260, 265-66
11 (9th Cir. 1964)).

12 When evaluating whether to grant relief from a protective order, the court considers “the
13 relevance of the protected discovery to the collateral proceedings and its general discoverability
14 therein.” *Id.* Next, the court considers the reliance interest of the party opposed to the relief;
15 however, where a blanket protective order is at issue, “any legitimate interest...can be
16 accommodated by placing [the collateral litigants] under the same restrictions on use and disclosure
17 contained in the original protective order.” *Id.* at 1133. Applying this framework, Amazon’s
18 limited request should be granted.

19 First, the relief sought is necessary to allow Amazon to oppose the investors’ motions to
20 strike and to support the cause of action for equitable subordination. The discovery obtained in this
21 case shows that the investors are the beneficial owners of PersonalWeb, that they colluded to
22 frustrate the judgment, and that PersonalWeb was purposely undercapitalized and repeatedly seeking
23 last minute cash infusions from the investors for its day-to-day operations. This evidence is relevant
24 to Amazon’s claim that it would be inequitable to allow what are in essence equity investors to
25 collect a \$19 million “debt” from PersonalWeb before this Court’s judgment is satisfied. Amazon
26 has no other route to get this evidence before the Superior Court because PersonalWeb and the
27 investors have refused to deem it produced in that action and discovery is stayed. Amazon has thus
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