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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 IN RE PERSONALWEB TECHNOLOGIES,
12 LLC, ET., AL., PATENT LITIGATION,

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

15 Plaintiffs,

16 v.

17 PERSONALWEB TECHNOLOGIES, LLC, et
al.,

18 Defendants.

19 PERSONAL WEB TECHNOLOGIES, LLC, et
20 al.,

21 Plaintiffs

22 v.

23 TWITCH INTERACTIVE, INC.,

24 Defendant.

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

Case No. 5:18-cv-0767-BLF

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

**PERSONALWEB TECHNOLOGIES,
LLC'S RESPONSE TO
AMAZON.COM, INC.'S MOTION FOR
RELIEF FROM PROTECTIVE ORDER**

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I. INTRODUCTION

Amazon.com, Inc.’s Administrative Motion for Relief from Protective Order (the “Administrative Motion”)—so that Amazon can use PersonalWeb’s documents produced in this Action in the state court Receivership Action—is an abuse of L.R. Civ. 7-11 and attempts to have this Court manage a state court’s discovery procedure. The Administrative Motion must be denied.

Per Local Rule of Civil Procedure 7-11, administrative motions are reserved for motions **not** governed by Federal Rules or standing orders. However, protective orders are explicitly governed by the Federal Rules (namely, FED. R. CIV. PROC. 5.2 and 26) and this Court’s Standing Order, ¶ 8. Moreover, the modified use of PersonalWeb’s documents Amazon now seeks would result in the disclosure of these documents to the Secured Creditors in the Receivership Action, thus modifying their confidentiality designations. This challenge to the confidentiality designations must follow the procedure provided in Dkt. 472 (the “PO”), § 6.

Amazon’s Administrative Motion must also be denied because it is attempting to use this Court as an end-run around the state court’s inherent power to control the proceedings in the Receivership Action, including a specific exemption to the stay of discovery while an anti-SLAPP motion is pending if the state court so chooses. Relief from the PO would have this Court, instead of the state court, determine what objections, if any, have been waived in the Receivership Action.

Amazon’s time crunch is of its own making, and it has taken procedural shortcuts as a result. Granting Amazon’s Administrative Motion would deprive PersonalWeb of its ability to properly respond to the numerous issues raised in the Administrative Motion and reward Amazon for its procedural gamesmanship. The Administrative Motion must be denied.

II. PROCEDURALLY IMPROPER

The Administrative Motion must be denied, as it should have been brought as a regularly-noticed and briefed motion. Amazon seeks to shoehorn its substantive request into an “administrative” motion to work around its self-created shortened timeframe and ignores the provisions of the PO it seeks to modify.

A. Amazon seeks relief from the entire PO

Despite listing specific documents in Mr. Lavin’s declaration, Amazon’s Administrative

1 Motion seeks relief from the *entire* PO, raising other issues with respect to PersonalWeb’s produced
2 documents that it is unable to address in this short time frame and page limit. This would result in
3 relief from the PO of over 1.3 million pages of documents, much of which was produced
4 unreviewed per the Parties’ Stipulation and includes almost 400,000 pages of communications with
5 PersonalWeb’s counsel. (*See* Dkt. 792.)

6 **B. Amazon’s time crunch is of its own making**

7 Amazon never met and conferred with PersonalWeb as to specific documents it wanted to use
8 in the Receivership Action. Amazon also waited to file the Administrative Motion three weeks after
9 PersonalWeb’s refusal to stipulate to a blanket release of all PersonalWeb documents produced in
10 this Action for use in the Receivership Action.

11 Amazon telephonically met and conferred with PersonalWeb regarding a stipulation to modify
12 the PO on Monday, February 13, 2023, but provided no substantive argument as to why relief
13 should be granted. PersonalWeb confirmed in writing on February 15, 2023, that it would not
14 stipulate to a blanket modification permitting use of PersonalWeb documents production in this
15 Action for use in the Receivership Action. Rather than coordinate a joint statement per this Court’s
16 Standing Order, ¶ 8, Amazon waited three weeks to file this “administrative” motion.

17 Amazon now cries foul and seeks emergency relief because its opposition to the Secured
18 Creditors’ Anti-SLAPP Motion is due in one week. Had Amazon moved in a timely fashion and
19 via the proper methods, PersonalWeb and this Court would have had the time and opportunity to
20 properly address Amazon’s request. Now, however, Amazon cannot be rewarded for its delay.

21 **C. Amazon’s Administrative Motion is not “administrative”**

22 Amazon attempts to cloak a substantive motion to modify PersonalWeb’s protections under
23 this Court’s Order as an “administrative” proceeding. However, Amazon’s request is governed by
24 the Federal Rules and this Court’s Standing Order.

25 Administrative motions per L.R. 7-11 are to be used for “miscellaneous administrative
26 matters, not otherwise governed by a federal statute, **Federal Rule**, local rule, or **standing order**[,
27 such as] motions to exceed otherwise applicable page limitations or motions to file documents
28 under seal, for example” (emphasis added).

1 Here, protective orders are governed by both the Federal Rules and this Court’s standing order.
 2 Two rules in the Federal Rules of Civil Procedure govern protective orders: FED. R. CIV. P. 5.2(e)
 3 and 26(b)(2), (c). The procedures in this Court’s Standing Order, ¶¶ 7-8, further govern protective
 4 orders and their disputes. Per this Court’s standing order, ¶ 8, the Parties were to meet and confer
 5 in person or by phone,¹ then file a joint statement not to exceed ten pages and a **joint chart** setting
 6 forth the dispute as to the specific requests. Amazon’s request in its Administrative Motion is a
 7 substantive request. Entry and modification of protective orders are subject to standard FED. R. CIV.
 8 P. 7 motions or the Court’s Standing Order, ¶ 8.

9 To further illustrate, every case Amazon cites in support of its Administrative Motion is a
 10 court opinion resulting from a standard, fully-briefed motion. Amazon has filed this expedited,
 11 “administrative” motion because it waited too long and now faces an imminent deadline.
 12 PersonalWeb should have the time and page space to oppose Amazon’s request per L.R. Civ. 7-3.

13 **D. Amazon’s Motion is a challenge to PersonalWeb’s confidentiality designations**

14 Amazon would have certain documents identified in Mr. Lavin’s declaration (PWEB-PJ-
 15 1379; PWEB-PJ-1741; PWEB-PJ-1919; PWEB-PRIV-00008525; and PWEB-SAM699911), as
 16 well as all documents PersonalWeb produced after judgment, stripped of their “Confidential” or
 17 “Highly Confidential” designations.

18 The Administrative Motion was the first time Amazon identified any specific PersonalWeb
 19 documents that it intended to use in the Receivership Action. These documents contain confidential
 20 information (and at least two of them contain attorney-client privilege), and none of these
 21 documents were produced to the Secured Creditors in this lawsuit. Amazon’s attempt to utilize
 22 these documents and disclose them to the Secured Creditors is, in effect, a challenge to their
 23 confidentiality designation.

24 The PO has a procedure for challenging the confidentiality designations of documents, and
 25 that procedure is not an administrative hearing that only allows PersonalWeb five pages and four
 26 days to respond. Rather, per PO §§ 6.2-6.3, the Parties are to meet and confer and, if they cannot

27 _____
 28 ¹ In the Parties’ February 13, 2023 telephonic meet and confer, Amazon’s did not provide any
 specificity as to which documents it sought to use in the Receivership Action, nor did it provide
 any authority under which it relief from the PO was warranted

1 reach an agreement, PersonalWeb has 21 days from Amazon raising the challenge to bring a motion
2 to retain confidentiality. (*See* Dkt. 427, 8-9.) PersonalWeb should have the opportunity to go
3 through this procedure, and Amazon should not be able to shirk these procedural requirements
4 simply because it waited this long to raise these specific documents with PersonalWeb.

5 III. SUBSTANTIVELY INCORRECT

6 Not only is Amazon's Administrative Motion procedurally improper, it is also substantively
7 incorrect. Amazon is asking this Court to encroach on the state court's ability to govern the
8 discovery timetable of the Receivership Action and asking this Court to effectively determine, for
9 the state court, whether certain objections have been waived in that proceeding.

10 A. This Action and the Receivership Action are not "collateral"

11 Despite being named in the caption of the Receivership Action, PersonalWeb is effectively a
12 third party to the Receivership Action. The Receiver, a distinct legal entity from PersonalWeb, is
13 the party in the Receivership Action. Furthermore, no party has propounded discovery on
14 PersonalWeb in the Receivership Action.

15 Thus, Amazon's claim that this Action and the Receivership Action "involve[] identical
16 parties" misses the point. PersonalWeb is not a party to the Receivership Action (and the Receiver
17 is in no way involved in *this* Action), and thus these are not collateral actions in which the
18 documents should simply transfer over. This distinction is critical. In three of the cases cited by
19 Amazon, the moving party sought to use the documents of the opposing party in another lawsuit in
20 which the opposing party **was a party**. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122,
21 1128-29 (9th Cir. 2003) (opposing party, State Farm, was party to original action and a party to the
22 collateral action in which the moving party sought to use those previously-produced documents);
23 *Beckman Industries, Inc. v. International Ins. Co.*, 966 F.2d 470, 471 (9th Cir. 1992) (opposing
24 party, International Ins. Co., was party to the original action in which depositions were taken and a
25 party to the collateral action in which the moving party sought to use those deposition transcripts);
26 *CBS Interactive, Inc. v. Etilize, Inc.*, 257 F.R.D. 195, 200 (N.D. Cal. 2009) (opposing party, Etilize,
27 Inc., was a party in the original action and a party to the collateral action in which the moving party
28 sought to use those previously-produced documents). In the last case Amazon cites, the party

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