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BRILLIANT DIGITAL ENTERTAINMENT, INC.;
8 MONTO HOLDINGS PTY. LTD.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12
13 IN RE: PERSONAL WEB TECHNOLOGIES,
LLC ET AL., PATENT LITIGATION,

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

14
15 AMAZON.COM, INC., and AMAZON WEB
SERVICES, INC.,

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

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

16 Plaintiffs

17 v.

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

19 Defendants.

**SUPPLEMENTAL BRIEF OF THIRD
PARTIES, BRILLIANT DIGITAL
ENTERTAINMENT, INC. AND MONTO
HOLDINGS PTY LTD IN OPPOSITION
TO AMAZON’S MOTION TO COMPEL
PRODUCTION OF PRIVILEGED
DOCUMENTS [Dkt. 860, 862, 864]**

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

21 Plaintiffs,

22 v.

23 TWITCH INTERACTIVE, INC.,

24 Defendant.

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1 Third Parties, Brilliant Digital Entertainment, Inc. (“BDE”) and Monto Holdings Pty Ltd.
2 (“Monto”), (along with Third Parties, Europlay Capital Advisors, LLC (“ECA”), and Claria
3 Innovations, LLC (“Claria”) (“Secured Lenders”), submit this Supplemental Brief in opposition to
4 Amazon’s Motion to compel production of documents (the “Gersh emails” and “non-Gersh emails”)
5 withheld on grounds of attorney-client and attorney work product privileges.

6 **A. Introduction**

7 The Court’s March 28, 2023 Order (Dkt. 862) raised four issues for further discussion: (1)
8 Authority addressing waiver of privilege where communications are with counsel engaged in dual
9 representation as is Gersh/SAM; (2) Regarding attorney work product, whether disclosure to Gersh
10 was not the equivalent of disclosure to PW itself; (3) whether the common interest doctrine would
11 apply between PW and Secured Lenders in light of the receivership action in state court; and (4) the
12 identity of emails with “other PW representatives” that Amazon claims purportedly lead to waiver.
13 (As to this item (4), Amazon’s Supplemental Brief (“Supp. Br.”) does not reference any such
14 matters, so this is a non-issue.)

15 The Gregorian Decl. Exhibit 1 and Exhibit 2 violate the Court’s 10-page limit for this
16 briefing and the requirement that declarations contain facts, not argument. Neither of these two
17 Exhibits, nor the majority of the 90 Exhibits attached to Exhibit 2, provide information relevant to
18 the issues now before the Court.

19 Filed with this Brief are the Declarations of Michael Fletcher, Bruce Poltrock, Thomas
20 Robins, and Craig Welin of the Frandzel firm, Kevin Bermeister and Anthony Neumann of BDE,
21 Ronald Dyne of Monto, and Murray Markiles of SAM and ECA. Secured Lenders attempted to
22 obtain a Declaration from Mr. Gersh, but was informed that, on the advice of counsel, he would not
23 provide one. This effort continues. (Robins Decl., ¶¶ 3-7.)

24 **B. No Dual Representation**

25 The Court’s first question raises the issue of “dual representation.” Secured Lenders do not
26 claim a “dual representation” in the sense that Gersh was retained to represent both the lenders and
27 PW for purposes of advice as to enforcement of the secured loans. Just because Secured Lenders
28 were clients of SAM as was PW does not necessarily mean that they are “joint clients” for the same

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