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7 Attorneys for Third Parties BRILLIANT
DIGITAL ENTERTAINMENT, INC. and
8 MONTO HOLDINGS PTY LTD

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

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

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

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

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

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

17 Plaintiffs

**DECLARATION OF ANTHONY
NEUMANN IN SUPPORT OF BDE AND
MONTO OPPOSITION TO AMAZON'S
MOTION TO COMPEL PRODUCTION
OF DOCUMENTS OF THIRD PARTIES
BDE/MONTO WITHHELD AS
PRIVILEGED (Dkt. 860, 862, 864)**

18 v.

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

21 Defendants,

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

24 Plaintiffs,

25 v.

26 TWITCH INTERACTIVE, INC.,

27 Defendant.
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1 I, Anthony Neumann, declare:

2 1. I am Vice President of Business Development of Brilliant Digital Entertainment,
3 Inc. (“BDE”). I have been employed by BDE since its inception in 1996. Kevin Bermeister is a
4 founder and CEO of BDE. If called as a witness I could and would competently testify to the
5 following based on my own personal knowledge.

6 2. Since BDE’s inception, Murray Markiles and/or law firms of which he was a
7 partner have provided legal advice and services to BDE and its subsidiaries. After formation of
8 Stubbs Alderton Markiles (“SAM”) that firm has provided legal services to BDE and its
9 subsidiaries up through the present time.

10 3. In addition to other legal services provided to BDE as BDE’s primary corporate
11 counsel, SAM attorneys, commencing in 2011, drafted documents in connection with the loans by
12 BDE and Topodia, now assigned to Monto Holdings Pty, Ltd. (“Monto”), and by Europlay Capital
13 Advisors, LLC (“ECA”) and Claria Innovations, LLC (“Claria”) to PersonalWeb Technologies,
14 LLC (“PW”), consisting of Promissory Notes, Security Agreements, and other related documents,
15 including periodic amendments to same up to and through the 2019 amendments. Mr. Markiles is
16 affiliated with ECA and Claria.

17 4. Attorney Jeffrey Gersh has provided legal services to BDE and one or more of its
18 subsidiaries, beginning as early as 2004 -- well before the time he joined the Stubbs Alderton firm
19 approximately seven-eight years ago. Once Mr. Gersh was with SAM, he has been working with
20 other SAM lawyers representing PW in the Amazon litigation. Moreover, while at SAM, Mr.
21 Gersh also performed legal services for BDE and its subsidiaries, including in 2018 with respect to
22 a trade mark matter.

23 5. In March 2021, after this Court’s attorneys’ fees award was rendered against PW,
24 the issue arose as to what impact that award could have on the secured lenders’ position vis-à-vis
25 PW and the collateral that PW had granted to the secured lenders, including in light of the pending
26 appeal of the Court’s summary judgment order to the United States Supreme Court, the anticipated
27 appeal of the attorneys’ fees award, and appeals of adverse judgments that were then pending in
28 other non-Amazon matters. Mr. Bermeister and Mr. Markiles requested that I contact an attorney

1 by the name of Ronald Bender of the Levene, Neale, Bender law firm in Los Angeles to act as
2 counsel for BDE, Monto, ECA, and Claria to advise the secured lenders with respect to these
3 issues.

4 6. As I recall, Mr. Markiles asked Mr. Gersh to assist us in obtaining and reviewing
5 the loan documents that had been prepared by SAM, and be part of discussions regarding same
6 with Mr. Bender. Mr. Gersh was a party to and copied on emails with Mr. Bender during the last
7 few days of March and the first two days of April 2021. *See* for example Exhibits C and D,
8 previously submitted to the Court. I copied Mr. Gersh and included him on those communications
9 by me because I fully believed and understood that he was participating as counsel assisting BDE,
10 ECA and Monto in connection with the issues confronting the secured lenders concerning their
11 collateral interests and rights. I included Mr. Markiles because ECA and Claria were co-lenders
12 and he served as the general counsel and a managing director of ECA.

13 7. On April 2, 2021, Mr. Bender informed me that his firm could not handle the
14 proposed retention and referred me to Craig Welin of Frandzel Robins Bloom & Csato, LC.

15 8. On April 2, 2021 at approximately 5:00 p.m. I sent the email to Mr. Welin that is
16 Exhibit B, previously submitted to the Court. I copied Mr. Gersh and included him on this
17 communication and subsequent communications by me because I fully believed and understood
18 that he was participating as legal counsel assisting BDE, ECA and Monto in connection with the
19 issues confronting the lenders concerning their collateral interests. As can be seen from the body
20 of my April 2, 2021, email to Mr. Welin, I identified “[t]he company I work for. . .” BDE, as “a
21 lender to a company that is the subject of an attorney fee award” and I identified Stubbs Alderton
22 Markiles as “the law firm we have worked with for decades. . . .”

23 9. Thereafter, Mr. Gersh was included on emails and conference/Zoom calls with Mr.
24 Welin, and his colleagues, Michael Fletcher and Bruce Poltrock, of the Frandzel firm regarding
25 the evaluation of the secured lenders’ positions and rights under the loan documents and
26 applicable law, including possible strategies for the secured lenders to protect their collateral
27 interests, which ultimately led to the filing of the action for the appointment of a receiver over
28 PW.

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1 10. From the beginning of Mr. Gersh's involvement in late March 2021 in the approach
2 to Mr. Bender and in the approach to and communications with the Frandzel firm, I understood
3 that Mr. Gersh was acting on behalf of BDE, and by extension, the secured lenders as a member or
4 representative of SAM which had been long-time counsel for BDE -- consistent with how I
5 introduced the firm to Mr. Welin in my April 2, 2021 email, Exhibit B.

6 11. Attached hereto is Exhibit 1 is a true and correct copy of the Fourth Amended and
7 Restated Secured Revolving Promissory Note between PW and BDE. The same form of
8 Promissory Note was executed by PW with Monto, ECA, and Claria.

9 12. Attached hereto as Exhibit 2 is a true and correct copy of the Pledge and General
10 Security Agreement between PW and BDE (the same form was also executed in connection with
11 the loans by Monto, ECA and Claria).

12 I declare under penalty of perjury under the laws of the United States that the foregoing is
13 true and correct.

14 Executed April 19, 2023 at Los Angeles County, California.

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17 _____
18 ANTHONY NEUMANN
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