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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 MICHAEL GERARD
FLETCHER 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.
28

1 Michael Gerard Fletcher declares:

2 1. I am an attorney admitted to practice in all of the courts of the State of California,
3 and admitted to the bar of this Court. I am also a shareholder in Frandzel, Robins, Bloom & Csato,
4 L.C. (“FRBC”), counsel of record for Third Parties Brilliant Digital Entertainment, Inc., (“BDE”) and
5 Monto Holdings Pty, Ltd. (“Monto”) in this proceeding. I have personal knowledge of the
6 matters set forth in this declaration and I could and would testify competently thereto if called upon
7 to do so in this matter. This declaration pertains to the BDE and Monto opposition to the attempts
8 by Amazon to invade their attorney client privileges (and those of the other secured creditors) and
9 my firm’s work product privileges.

10 2. I am one of the primary attorneys representing BDE and Monto (and previously all
11 of the secured creditors, including ECA and Claria) (“collectively, the “Secured Creditors”) in that
12 certain pending state court action entitled *Brilliant Digital Entertainment, Inc., etc., et al. vs.*
13 *PersonalWeb Technologies, LLC, etc., et al.*, Los Angeles County Superior Court Case No.
14 21VECV00575, wherein the Secured Creditors sued PersonalWeb Technologies, LLC
15 (“PersonalWeb”), and sought and obtained from that court the appointment of a receiver over their
16 personal property collateral (“Receivership Action”).

17 3. In early April 2021, Anthony Neumann of BDE contacted FRBC as a referral from
18 Ronald Bender of the Levine Neale law firm in connection with a potential representation of BDE
19 and the other Secured Creditors by FRBC as to PersonalWeb, against which an attorney fee award
20 had been recently entered. Attached hereto as Exhibit 1 is a printout of Mr. Neumann’s email to
21 my co-shareholder, Craig Welin, dated Friday, April 2, 2021. Jeffrey Gersh of the Stubbs Alderton
22 firm (“SAM”) and Murry Markiles were copied with that email. (BDE 64543-544.) The email
23 states:

24 Hi Craig:

25 Ron Bender recommended I reach out to you per his email below.
26 ***Stubbs Alderton, Markiles, the law firm we have worked with for***
27 ***decades***, has worked closely with Ron for many years but his team
is currently unavailable for immediate work.

28 The company I work for, Brilliant Digital Entertainment, is a lender
to a company that is the subject of an attorney’s fees judgment. We

1 would like to engage you for this matter.

2 Can we get on the phone at your earliest convenience? At the very
3 least, I would like to set up a call for Monday at a suitable time for
4 you. [Emphasis added.]

4 4. Mr. Welin told me about the request for representation and asked me to participate.
5 He then forwarded to me this email early in the morning of Monday, April 5, 2021, for my
6 preparation for the Zoom conference call scheduled for the afternoon of April 5, 2021. Mr. Welin
7 also forwarded to me an email from Mr. Neumann with a link to documents for me to review prior
8 to the Zoom meeting, which email also copied Messrs. Gersh and Markiles. I thereafter participated
9 in a lengthy Zoom meeting that afternoon and further calls later that week. While I do not presently
10 recall who said what regarding the SAM attorney Mr. Gersh being included in the communications,
11 I was told and always understood that, consistent with Mr. Neumann's first email to Mr. Welin
12 (paragraph 3, above), *SAM had been a long-time provider of legal services to at least BDE*,
13 including having prepared the original loan documents between the Secured Creditors and
14 PersonalWeb, and the subsequent renewals of same.

15 5. I was also informed that SAM had represented PersonalWeb in the Amazon litigation
16 and was representing PersonalWeb on its appeal of the Amazon Judgment, but was not intending to
17 represent PersonalWeb on any post judgment matters in the Amazon case, or with respect to the
18 Secured Creditors. However, based on my discussions with Messrs. Neumann and CEO Kevin
19 Bermeister of BDE and Mr. Markiles, who was a named partner in SAM and was the representative
20 of two of the Secured Creditors, ECA and Claria, and Mr. Neumann's inclusion of Mr. Gersh of
21 SAM on the initial emails, I also understood and believed that Mr. Gersh, on behalf of SAM, was
22 being consulted in the context of SAM's prior involvement in preparation of the loan documents on
23 behalf of the Secured Creditors and not as a representative of PersonalWeb. At no time did Mr.
24 Gersh or anyone else state or suggest that he/SAM were participating in such Secured Creditor
25 communications on behalf of PersonalWeb, and I never had that impression or belief.

26 6. As I recall, throughout the month of April 2021, Mr. Gersh's major involvement
27 focused on the rights of the Secured Creditors under the loan documents, including with respect to
28 the collateral that PersonalWeb had granted to the Secured Creditors. I understood at all times that

1 SAM had prepared the original loan documents and the amendments to those loan documents. That
2 collateral included PersonalWeb's IP, including that involved in the underlying Amazon case, and
3 in other patent litigation pending at the time, including various appeals. Communications with our
4 Secured Creditor clients also included Mr. Gersh on emails and calls that discussed the potential of
5 filing an action in California state court against PersonalWeb seeking, among other things, the
6 appointment of a receiver over the personal property collateral granted by PersonalWeb to the
7 Secured Creditors. A receivership would effectively put such assets in the protection of the state
8 court appointing the receiver. No creditor --- including the Secured Creditors --- could get at such
9 collateral without the receiver permitting such actions under the order of the state court appointing
10 the receiver.

11 7. I considered all of my communications that included Mr. Gersh to be privileged and
12 confidential on behalf of the Secured Creditors. In fact, at one point when the subject of delivery
13 of documents to Michael Weiss of PersonalWeb came up, and it was suggested that Mr. Gersh
14 forward same to him, Mr. Gersh very strongly stated that he/SAM did not represent PersonalWeb
15 in connection with post-judgment (non-appeal) matters; nor would he or it represent PersonalWeb
16 in any litigation with the Secured Creditors.

17 8. At that point, toward the latter part of April 2021, I learned that PersonalWeb had
18 retained separate legal counsel, Ronald Richards, to represent it concerning post-judgment matters
19 in the Amazon litigation and, separately, concerning the Secured Creditors. I had known Mr.
20 Richards from another matter. On behalf of the Secured Creditors, I communicated with Mr.
21 Richards, and only with Mr. Richards, about PersonalWeb (except when he told us to communicate
22 directly with PersonalWeb's representative Michael Weiss --- see below --- about the declaration
23 draft for the Receivership Action about the PersonalWeb defaulted loans owed to the Secured
24 Creditors). At no time did I consider my communications with Mr. Richards to be privileged or
25 confidential.

26 9. Mr. Richards told me that PersonalWeb had no defenses to enforcement by the
27 Secured Creditors of their rights under the loan documents such that it would not defend any lawsuit
28 in that regard. Mr. Richards also told me that PersonalWeb would not oppose the receivership

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1 application that I told him the Secured Creditors intended to file in the Receivership Action. I asked
2 Mr. Richards to have PersonalWeb stipulate to the appointment of the receiver, given what he had
3 told me. Mr. Richards refused, not because of any substantive objections, but, as he told me, because
4 he would have to sign such a stipulation as PersonalWeb's lawyer. He did not want to appear in the
5 state court Receivership Action on behalf of PersonalWeb. (I am told that similar dynamics
6 involving Mr. Richards have played out in this Court, with Mr. Richards refusing to appear.) Mr.
7 Richards told me to draft a declaration for PersonalWeb's principal, Michael Weiss to sign, in lieu
8 of Richards signing a stipulation for the appointment of the receiver as PersonalWeb's lawyer. We
9 did so, making sure that the declaration for the appointment of the receiver established the Secured
10 Creditors' *prima facie* case against PersonalWeb, and for the appointment of the receiver.

11 10. Mr. Gersh's participation in the communications regarding the Secured Creditors
12 trailed off toward the end of April 2021 once the discussions about the loan documents and the
13 personal property collateral concluded and the decisions on the course of action about the
14 Receivership Action were decided. Eventually such communications ceased.

15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct and that this declaration was executed this 19th day of April, 2023, at
17 Los Angeles County, California.
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21 MICHAEL GERARD FLETCHER
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