

1 Mark Holscher (SBN 139582)
2 mark.holscher@kirkland.com
3 Michael Shipley (SBN 233674)
4 michael.shipley@kirkland.com
5 KIRKLAND & ELLIS LLP
6 555 South Flower Street
7 Los Angeles, CA 90071
8 Telephone: (213) 680-8400

9 *Attorneys for Third Parties Europlay*
10 *Capital Advisors, LLC and Claria*
11 *Innovations, LLC*

12 *[Additional Counsel on Signature Page]*

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**

16 IN RE: PERSONAL WEB
17 TECHNOLOGIES, LLC ET AL., PATENT
18 LITIGATION,

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

21 Plaintiffs

22 v.

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

26 Defendants.

27 PERSONALWEB TECHNOLOGIES,
28 LLC, and LEVEL 3
COMMUNICATIONS, LLC,

Plaintiffs,

v.

TWITCH INTERACTIVE, INC.,

Defendant.

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

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

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

**SECURED CREDITORS’
ADMINISTRATIVE MOTION
FOR LIMITED INTERVENTION
FOR THE PURPOSE OF
OPPOSING FURTHER
SUPPLEMENTAL FEE REQUEST
(dkt. # 880)**

1 Non-party movants Europlay Capital Advisors LLC, Claria Innovations LLC,
2 Brilliant Digital Entertainment Inc., and Monto Holdings Pty. Ltd. (“Movants”)
3 respectfully bring this administrative motion to request permission to intervene for the
4 limited purpose of opposing Amazon’s motion to supplement its \$5.4 million attorney fee
5 judgment against Plaintiff PersonalWeb Technologies LLC, with an additional \$3.1
6 million in fees for post-judgment collection activities. *See* dkt. ## 873-75 (declarations);
7 880 (motion); 882 (briefing schedule).

8 * * *

9 In its related alter ego cross-complaint filed in L.A Superior Court, Amazon
10 alleges that Europlay, BDE, and Monto “own approximately 98% of PersonalWeb.”
11 Shipley Decl. Ex. 1 (Cross-Complaint) ¶ 41. They, along with Claria, also hold about \$19
12 million in secured debt to PersonalWeb. *See id.* ¶¶ 8–14. In this Court, Amazon has spent
13 months taking extensive and expensive third-party judgment debtor discovery, for the
14 ostensible purpose of proving that Movants are jointly and severally liable for a \$5.4
15 million attorneys’ fees award the Court granted to Amazon because they are
16 PersonalWeb’s alter egos. Amazon demands that relief in its state-court pleading. *See id.*
17 ¶ 1 (“[T]he Court should analyze whether [Movants] are in fact alter egos of
18 PersonalWeb and liable for the \$5.4 million judgment entered against it in Amazon’s
19 favor.”) Amazon now seeks an order from this Court adding more than \$3.1 million in
20 costs and fees to that judgment, ostensibly for costs of collection. *See* Dkt. # 880 (the
21 “Fee Motion”). The Motion is set to be heard on October 5, 2023. Dkt. # 882.
22 PersonalWeb’s opposition is due on July 14, 2023. Amazon’s reply is due on September
23 15, 2023. *Id.*

24 Given Amazon’s pending state court alter ego complaint, Movants’ interests are
25 clearly implicated by the Fee Motion. On May 9, 2023, Movants first asked Amazon to
26 consent to their intervention for the limited purpose of being heard on the Fee Motion.
27 Shipley Decl. Ex. 2. Amazon stonewalled that request, before ultimately taking the
28 position—six weeks later—that it would consent to Movants intervention only if

1 Movants agreed to various discovery and substantive demands unrelated to the Fee
2 Motion. *Id.* Amazon also declined to agree to an orderly briefing schedule, insisting that
3 Movants brief intervention and the Fee Motion at the same time. *Id.* Movants now seek
4 limited intervention to have an opportunity to be heard on the merits of the Fee Motion.

5 ARGUMENT

6 Movants make this request by administrative motion because there not enough
7 time between the filing of the Motion and the hearing date for Movants to bring a noticed
8 motion for limited intervention and to oppose the substance of the Motion. *See* N.D. Cal.
9 L.R. 7-11. Courts of this district have considered the merits of administrative motions for
10 intervention when intervention is sought not “for the purpose of litigating any claims on
11 the merits,” but instead for leave to be heard on a discrete issue. *See Apple, Inc. v.*
12 *Samsung Elecs. Co.*, 2013 WL 3958232, at *2 (N.D. Cal. July 29, 2013). If the Court is
13 of the contrary view that intervention *must* be sought by noticed motion, Movants request
14 in the alternative a briefing schedule on intervention that would nonetheless permit them
15 to timely oppose the Fee Motion.

16 Indeed, unless the Court permits Movants to intervene, the Fee Motion may face
17 no effective opposition. PersonalWeb is under the control of a state court appointed
18 Receiver. *See* Decl. of Todd Gregorian, dkt. # 873, ¶ 7. The Receiver acts as a neutral
19 officer of the Court for the benefit of all with interests in the receivership property,
20 including both Movants and Amazon. Cal. R. Ct. 3.1179(a). The Receiver’s conduct is
21 subject “to the control of the appointing court and not of the parties to the action.”
22 *Secombe v. Dionne*, 3 Cal. App. 2d 731, 736 (1935). It is undisputed that the
23 PersonalWeb estate cannot satisfy even the un-enhanced \$5.4 million fee award. Shipley
24 Decl. Ex. 3 & ¶ 4 (receiver’s most recent status report). PersonalWeb thus lacks both
25 means and incentive to challenge the Fee Motion. Yet, it is essentially inevitable that, if
26 the Fee Motion is granted, Amazon will seek to enforce the full \$8.5 million against
27 Movants in its state court alter ego claim.¹ It is thus imperative that the Court permit

28 ¹ This Court does not have subject matter jurisdiction to entertain an alter ego claim against Movants.
“[A]bsent an independent basis for federal jurisdiction, a new defendant may not be joined in a

1 Movants to intervene, on a limited basis, to oppose the Fee Motion. For that purpose,
2 Movants satisfy the standards for both mandatory and permissive intervention.

3 **Intervention as of Right:** A “party seeking to intervene as of right [under Federal
4 Rule of Civil Procedure 24(a)], must meet four requirements: (1) the applicant must
5 timely move to intervene; (2) the applicant must have a significantly protectable interest
6 relating to the property or transaction that is the subject of the action; (3) the applicant
7 must be situated such that the disposition of the action may impair or impede the party’s
8 ability to protect that interest; and (4) the applicant’s interest must not be adequately
9 represented by existing parties.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir.
10 2003) (cleaned up).² Each element is met here.

11 First, Movants’ motion is timely. *See United States v. State of Wash.*, 86 F.3d
12 1499, 1503 (9th Cir. 1996). Movants could not object to the Fee Motion until it was
13 made. Following Amazon’s ultimate decision not to consent to intervention, Movants
14 acted with alacrity. There is no prejudice to Amazon.

15 Second, Movants have an interest in disputing additional fees. Amazon already
16 sued Movants in state court to enforce the fee award against them. If the Fee Motion is
17 granted, Movants’ potential joint and several liability in the state court proceedings will
18 increase by upwards of \$3.1 million. When “the specter of joint and several liability
19 hang[s] over” a perspective intervenor’s relationship with a defendant, the intervenor
20 merits a “place at the table because any liability assessed to Defendant may have a direct
21 impact on” the intervenor. *See Hinkle v. Phillips 66 Co.*, 2020 WL 10352346, at *4

22
23 supplementary proceeding to pierce the corporate veil.” *Thomas, Head & Greisen Emps. Trust v. Buster*,
24 95 F.3d 1449, 1454 (9th Cir. 1996); *see also Sandlin v. Corp. Int’rs Inc.*, 972 F.2d 1212, 1216 (10th Cir.
25 1992); *U.S.I. Props. Corp. v. M.D. Const. Co.*, 230 F.3d 489, 498 (1st Cir. 2000). The alter ego issues
must thus be resolved in state court.

26 ² Rule 24(c) also requires an intervention motion to be “accompanied by a pleading setting forth the
27 claim or defense for which intervention is sought.” But the Ninth Circuit has “approved intervention
28 motions without a pleading where the court was otherwise apprised of the grounds for the motion.”
Beckman Indus., Inc. v. Int’l Ins. Co., 966 F.2d 470, 474 (9th Cir. 1992). That is particularly true when,
like here, intervention is sought to be heard on a limited issue not controlled by the pleadings. *See id.*

1 (W.D. Tex. Nov. 13, 2020); *United States v. TDC Mgmt. Corp.*, 2012 WL 13075866, at
2 *4 (D.D.C. July 30, 2012). That is an adequate interest in the subject matter of the Fee
3 Motion to merit protection.

4 Third, the disposition of the Fee Motion will impair Movants' ability to protect
5 their interests. Movants do and will vigorously contest in the state court action that they
6 are PersonalWeb's alter egos. But they expect Amazon to argue that Movants cannot
7 contest the *amount* the award in the state court proceedings because they cannot
8 collaterally attack a federal judgment. Protecting Movants' interest and even basic
9 notions of due process require Movants to be heard on the Fee Motion in this Court, now.

10 Finally, Movants' interests cannot be adequately represented by PersonalWeb.
11 PersonalWeb is essentially insolvent and under the control of its Receiver. It does not
12 have, and will likely never have, assets sufficient to satisfy the \$5.4 million judgment,
13 much less an enhanced award of \$8.5 million. Shipley Decl. Ex. 3 & ¶ 4. PersonalWeb
14 (and the Receiver) thus have little motive to vigorously contest the Motion's enhanced
15 demand. Indeed, Movants understand that absent an infusion of additional cash into the
16 receivership, PersonalWeb likely can't even pay its attorneys to adequately defend
17 against the motion. *Id.* ¶ 5. In similar contexts, courts recognize that an insolvent
18 judgment debtor cannot adequately represent the interests of parties alleged to be its alter
19 egos. *See NEC Elecs. Inc. v. Hurt*, 208 Cal. App. 3d 772, 780 (1989) (alleged alter ego's
20 interests did not align with principally liable company that was "on the verge of
21 bankruptcy" because company had no "occasion to conduct the litigation with a diligence
22 corresponding to the risk of personal liability that was involved" for the alleged alter
23 ego); *Katzir's Floor & Home Design, Inc. v. M-MLS.com*, 394 F.3d 1143, 1149 (9th Cir.
24 2004) (alleged alter ego's interests were not "protected in the underlying action" when
25 principal defendant "was on the verge of dissolution").

26 Limited mandatory intervention for the purpose of opposing the Motion is thus
27 appropriate.

28

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