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 11 Counsel for AMAZON.COM, INC.,
 AMAZON WEB SERVICES INC., and
 TWITCH INTERACTIVE, INC.

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

15
 16 IN RE: PERSONALWEB TECHNOLOGIES,
 LLC ET AL., PATENT LITIGATION,
 17
 18 AMAZON.COM, INC., and AMAZON WEB
 SERVICES, INC.,
 19 Plaintiffs,
 20 v.
 PERSONALWEB TECHNOLOGIES, LLC and
 LEVEL 3 COMMUNICATIONS, LLC,
 21 Defendants.
 22
 23 PERSONALWEB TECHNOLOGIES, LLC and
 LEVEL 3 COMMUNICATIONS, LLC,
 24 Plaintiffs,
 25 v.
 26 TWITCH INTERACTIVE, INC.,
 27 Defendant.

Case No. 5:18-md-02834-BLF
 Case No. 5:18-cv-00767-BLF
 Case No. 5:18-cv-05619-BLF

**DECLARATION OF TODD R.
 GREGORIAN IN SUPPORT OF REPLY
 OF AMAZON.COM, INC., AMAZON
 WEB SERVICES, INC., AND TWITCH
 INTERACTIVE, INC. FURTHER
 SUPPLEMENTAL FEES REQUEST**

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1 I, Todd R. Gregorian, declare as follows:

2 1. I am a partner at the law firm Fenwick & West, LLP (“Fenwick”), attorney of record
3 for Amazon.com, Inc., Amazon Web Services, Inc., and Twitch Interactive, Inc. (collectively
4 “Amazon”). I submit this declaration in support of Amazon’s Reply in Support of Further
5 Supplemental Fees Request filed concurrently with this document. I have personal knowledge of
6 the facts set forth herein.

7 2. The award Amazon requests in connection with this motion is **\$2,856,570.62** in
8 attorney fees and **\$193,299.37** in costs. Amazon originally requested \$3,237,629.66 in fees but
9 revised that request downward by \$344,172.10 to \$2,893,457.56¹ in connection with a settlement
10 of its Superior Court’s anti-SLAPP fee award against PersonalWeb’s investors. (Dkt. 893.)
11 Amazon now deducts an additional \$36,886.94 for fees incurred defending the investors’
12 declaratory judgment action against Amazon as discussed herein.

13 **The alter ego action filed by PersonalWeb’s principals.**

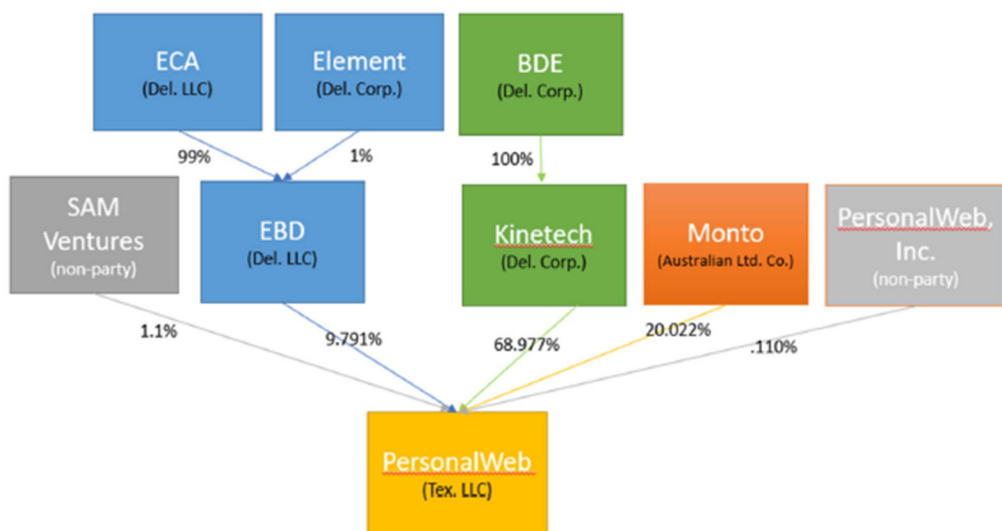
14 3. Amazon at all relevant times has attempted to enforce the Court’s judgment against
15 PersonalWeb by any available means. The state court receivership has limited the available
16 procedures for enforcement, but the work Amazon has done on enforcement has largely consisted
17 of discovery relevant to a range of judgment enforcement issues, including identifying cash and
18 assets, asset tracing, investigating transactions for indications of fraudulent transfer, and
19 determining corporate structure and relationships to identify potential alter egos. It was this work
20 that led us to discover that the individuals that ran PersonalWeb (including Kevin Bermeister and
21 Anthony Neumann of BDE, and Murray Markiles of Stubbs Alderton LLP) had manipulated
22 PersonalWeb’s finances to keep it undercapitalized from its inception, and that they secured the
23 California Superior Court receivership on the basis of fraudulent representations, as explained more
24 fully in Dkt. 871-7. *See also* Dkt. 872 at 3-4 (identifying and quoting the specific fraudulent
25 misrepresentations to the Superior Court); Dkt. 864 at 6 (“The investors took the fraud one step

26 _____
27 ¹ Amazon also revised the costs requested down by \$306.32 from \$193,605.69 to \$193,299.37 for
28 the same reason.

1 further by filing at the Superior Court a complaint and motions presenting themselves only as arms'
2 length creditors, without disclosing that they both owned PersonalWeb, but also controlled it, and
3 were thus themselves responsible for the supposed “nonpayment” that they were complaining
4 about.”).

5 4. On February 27, 2023, BDE, ECA, Claria, and Monto, together with other investors
6 of PersonalWeb—Element Entertainment Inc. (“Element”), Eurocapital Business Development
7 LLC (“EBD”), and Kinetech, Inc.—filed a complaint for declaratory judgment against Amazon. In
8 the complaint, the plaintiffs seek a declaration that they are not “alter egos” of PersonalWeb LLC.
9 Such a declaration would provide a basis for these entities to resist enforcement of the Court’s
10 judgment as against them and potentially their principals as well. A true and correct copy of the
11 complaint is attached as **Exhibit 1**.

12 5. A diagram in this filing purports to explain the relationship between the investors
13 and PersonalWeb:



23 6. After this complaint was filed, on March 30, 2023, I conducted a call with counsel
24 for the declaratory judgment plaintiffs regarding Amazon’s response, with at least Michael Shipley
25 of Kirkland & Ellis and Thomas Robins of Frandzel Robins Bloom & Csato, L.C. At the time, no
26 dispute concerning alter ego was ripe, and thus the declaratory judgment complaint was subject to
27 potential dismissal due to lack of an actual controversy. *See* Cal. Code. Civ. Proc. § 1060. A new
28 state court proceeding would be (and now, has been) an expensive waste of resources given that

1 this Court is more familiar with the facts and could adjudicate at least some alter ego issues via a
2 streamlined post-judgment motion. On the call, Mr. Shipley stated to the effect that the
3 PersonalWeb's investors who are non-diverse from Amazon would raise jurisdictional defenses to
4 such a motion if filed. A true and correct copy of an email string setting up the call is attached as
5 **Exhibit 2.**

6 7. On April 13, 2023, Amazon filed its answer and counterclaim in response to the
7 cross-complaint. This was the first time Amazon formally asserted an alter ego claim against
8 PersonalWeb's investors.

9 8. Notwithstanding that they are recoverable as intimately related to this case, fees
10 expended litigating alter ego issues at the state court represent a natural "cut off" point to end fee
11 proceedings before this Court. Therefore, Amazon withdraws \$36,886.94 from its request,
12 representing the portion of its current fee request related to that work. Amazon withdraws these
13 fees without prejudice to its later seeking reimbursement of them at the Superior Court. I attach a
14 chart summarizing the relevant billing entries as **Exhibit 3.**

15 Reasonableness of Amazon's Hourly Rates

16 9. I have been Fenwick's lead attorney on this matter since it entered the collection
17 phase. I have been a partner at Fenwick since 2020. My practice encompasses both complex
18 commercial litigation and intellectual property litigation. I have experience in post-judgment
19 enforcement work in cases such as *Realtime Adaptive Streaming, LLC v. Netflix, Inc., et al.*, Case
20 No. 2:19-cv-06361-GW(JCx) (C.D. Cal.), *Perfect 10, Inc., v. Giganews, Inc., et al.*, Case No.: 2:11-
21 cv-07098-AB-JPR (C.D. Cal.), and *Giganews, Inc., et al. v. Perfect 10, Inc., et al.* Case No.: 2:17-
22 cv-05075-AB (JPR) (C.D. Cal.). These cases involved extended proceedings to collect judgments
23 from recalcitrant debtors. The *Giganews* matters involved alter ego issues like those in this case,
24 as well as complex forensic discovery issues, and eventually proceeded to a full trial on state law
25 fraudulent transfer claims at which my client prevailed and obtained a punitive damages award. I
26 also have extensive experience litigating commercial matters in state court since approximately
27 2006, having represented clients in cases in the California Superior Courts in Marin, San Francisco,
28 Santa Clara, Los Angeles, and San Bernadino counties.

1 10. Chris Lavin has been the lead Fenwick associate on this matter since 2021. Mr.
2 Lavin's practice encompasses both complex commercial litigation and intellectual property
3 litigation. He also has considerable experience litigating matters in the California Superior Courts,
4 including in *System Architecture Information Technology v. Qualcomm Inc.*, Case No. 37-2014-
5 00025432 (Super. Ct., Cnty of San Diego, July 30, 2014), *Newman v. Central Concrete Supply*,
6 Case No. CIV536008 (Super. Ct., Cnty. of San Mateo, October 28, 2015), and *Xiong v. Yan*, Case
7 No. 16-cv-292330 (Super Ct., Cnty. of Santa Clara, March 4, 2016). His responsibilities in those
8 matters were similar to those here, and included drafting pleadings, running discovery, taking
9 depositions, preparing for and attending hearings and trial, and negotiating settlement.

10 11. Amazon's requested blended rate is approximately \$650. Its total fee request is
11 reasonable given the scope of the matter, the voluntary reductions Fenwick already applied, and
12 how much comparable law firms litigating similar claims in California federal and state courts
13 charge. For example, the average billing rates in 2022 for Kirkland & Ellis LLP, counsel for
14 PersonalWeb's investors Claria and ECA, were \$1,376/hour (Partner), \$1,066/hour (Senior
15 Associate), and \$789/hour (Associate), with an overall blended rate of \$1,106/hour, according to
16 excerpts of the Valeo 2022 Attorney Hourly Rate Report. Attached hereto as **Exhibit 4** is a true
17 and correct copy of these excerpts of the Valeo 2022 Attorney Hourly Rate Report, which details
18 the hourly rates of The American Lawyer top 200 law firms for years 2017 through 2022.

19 12. Kirkland itself submitted the above survey to support its own fees request in
20 *Transperfect Global, Inc. v. Lionbridge Techs., Inc.*, Civ. A. No. 19-cv-03283-DLC (S.D.N.Y. Feb.
21 18, 2022 (Dkt. 293-17)). A true and correct copy of the Declaration of Aaron Marks making such
22 request is attached hereto as **Exhibit 5**.

23 I declare under penalty of perjury under the laws of the United States that the foregoing is
24 true and correct. Executed in Wilmington, Delaware on September 15, 2023.

25
26 /s/ Todd R. Gregorian
27 Todd R. Gregorian
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