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10 *Attorneys for PersonalWeb Technologies, LLC*

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 IN RE PERSONALWEB
14 TECHNOLOGIES, LLC, ET., AL.,
15 PATENT LITIGATION,

CASE NO. 5:18-md-02834-BLF

Case No. 5:18-cv-0767-BLF

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

16 AMAZON.COM, INC. and AMAZON
17 WEB SERVICE, INC.,

18 Plaintiffs,

19 v.

20 PERSONALWEB TECHNOLOGIES,
21 LLC, et al.,

22 Defendants.

**PERSONALWEB
TECHNOLOGIES, LLC'S
SUPPLEMENTAL RESPONSE TO
AMAZON.COM, INC.'S MOTION
FOR FURTHER SUPPLEMENTAL
FEES REQUEST**

23 PERSONAL WEB TECHNOLOGIES,
24 LLC, et al.,

25 Plaintiffs

26 v.

27 TWITCH INTERACTIVE, INC.,

28 Defendant.

One South Church Avenue, Suite 2000
Tucson, AZ 85701-1611

LEWIS  **ROCA**

1 PersonalWeb Technologies, LLC hereby submits proposed reductions to Amazon's
2 requested attorneys' fees due to the unavailability of fees incurred in pursuit of alter ego
3 claims without naming the alleged alter egos.

4 Attached to the Declaration of Patrick Emerson McCormick in support of this
5 Supplemental Response ("McCormick Decl.") as **Exhibit A** are excerpts from Dkts. 873-4
6 and 874-2. In these excerpts, PersonalWeb has highlighted the entries from Amazon's
7 counsel that were performed in pursuit of Amazon's alter ego theory against PersonalWeb's
8 alleged alter egos (the "Secured Creditors"). Attached to McCormick Decl. as **Exhibit B** is
9 a spreadsheet with only the highlighted entries from Ex. A. The entries in Ex. B have an
10 additional column applying Amazon's reduced hourly rates (per Dkt. 873 at 6-7) or
11 removing the incurred fees if it was timekeeper who billed fewer than 30 hours for whom
12 Amazon did not seek to recover (Dkt. 873, ¶ 11). PersonalWeb has erred on the side of
13 caution to only highlight those entries that are clearly tied to Amazon's alter ego claims as
14 described below. In total, Amazon has requested \$566,411.51 in fees incurred in pursuit of
15 alter ego theories, none of which Amazon can recover from PersonalWeb.

16 Amazon has effectively conceded that the fees it incurred in pursuit of alter ego claims
17 are unavailable for recovery from this Court. (*See* Dkt. 903-1 at 3:9-14 [waiving \$36,886.94
18 in fees Amazon incurred in its declaratory relief action in Los Angeles Superior Court].)
19 Amazon can only recover fees incurred in pursuit of alter ego claims if and when the alleged
20 alter egos are somehow joined or named in the action. (*See* Dkt. 889-1 at 4:26-7:8.) Here,
21 Amazon has not named any alleged alter egos in this action and thus cannot recover fees it
22 incurred in pursuit of its alleged alter egos and their information.

23 The Secured Creditors initiated a receivership action against PersonalWeb in Los
24 Angeles Superior Court on April 27, 2021 (the "Receivership Action"). Amazon appeared
25 in the Receivership Action on August 3, 2021. From that point forward, Amazon had actual
26 and constructive knowledge PersonalWeb lacked the assets and revenue streams to satisfy
27 the approximately \$5,000,000 judgement against PersonalWeb (the "Judgement"). Yet
28

PERSONALWEB'S SUPPLEMENTAL RESPONSE TO SUPPLEMENTAL FEES PROPOSED

1 Amazon proceeded to spend approximately \$2,000,000 in discovery in this Court and the
 2 Receivership Action in pursuit of the Judgment. Amazon’s claim—that these fees were
 3 unrelated to alter ego claims or theories—strains credulity.

4 No evidence Amazon sought from PersonalWeb after January 2022 was in pursuit of
 5 recovering the Judgment directly from PersonalWeb, as it was undisputed PersonalWeb
 6 lacked the assets to satisfy the Judgment. Rather, the discovery Amazon pursued was
 7 directed at Amazon’s assertions of alter ego liability. The timeline provides a clear
 8 illustration of Amazon’s laser focus on its alter ego theories against the Secured Creditors.

9 Starting in January 2022, Amazon’s time entries repeatedly represent that Amazon was
 10 explicitly pursuing alter ego theories, referencing “alter ego” and “veil piercing” 30 times.

11 On March 18, 2022, Amazon represented to this Court that it sought discovery from
 12 the Secured Creditors in pursuit of alter ego claims. (*See* Dkt. 733 at 2:20-23 [“Amazon is
 13 entitled to explore corporate relationships and transfers **in pursuit of alter ego theories**”]
 14 [emphasis added].) This Court agreed, holding “Amazon may explore corporate
 15 relationships and transfers in pursuit of alter ego theories.” (Dkt. 738 at 2:28-3:1.)

16 From March to August 2022, Amazon sought discovery from the Secured Creditors in
 17 this action directed at the Secured Creditors’ financial information and transactions with
 18 PersonalWeb. These requests were directed at establishing alter ego liability or recovering
 19 from the Secured Creditors on a theory of alter ego liability, as evidenced by Amazon’s
 20 subsequent motion to compel.

21 In August and September 2022, Amazon’s motion to compel the Secured Creditors
 22 were focused on the breadth and scope of the categories related to the structure, finances,
 23 business, and activities of the Secured Creditors going back to their respective inceptions
 24 from the 1980s to early-2000s. Amazon submitted charts to this Court seeking to compel
 25 production from the Secured Creditors for evidence related to Amazon’s alter ego claims.
 26 (*see* Dkt. 779-1 at 7, 9-10, 16-17; Dkt. 779-2 at 3-4; Dkt. 779-3 at 1-4, 9-10, 12-13; Dkt.
 27 779-4 at 3-4, 9-10 [“Amazon must understand the identities of persons and entities involved

28 PERSONALWEB’S SUPPLEMENTAL RESPONSE TO SUPPLEMENTAL EXHIBIT PROTECT

1 for the purpose of establishing potential alter ego relationships and fraudulent transfers”])
 2 and Amazon’s time entries focused on the Secured Creditors’ financial privacy objections.

3 In October 2022, Amazon sought documents from PersonalWeb’s records related to
 4 the following keywords, which are not relevant to discovery PersonalWeb’s assets, but
 5 would be relevant to any potential alter ego allegations: bermeister; weiss; klier; petty;
 6 mirman; frandzel; welin; kane; dyne; neumann; ko; “robb evans;” mbn; fletcher; robins;
 7 markiles; chan; miller; robbevans; bubman; poltrock; freeman. (Dkt. 791, 3:1-4.) These
 8 keywords directly targeted evidence from PersonalWeb related to Amazon’s alleged alter
 9 ego claims against the Secured Creditors. PersonalWeb produced hundreds of thousands of
 10 pages of documents in response to Amazon’s demands.

11 In October and November 2022, Amazon utilized the discovery process to obtain,
 12 through PersonalWeb, evidence from PersonalWeb’s prior counsel, Stubbs Alderton &
 13 Markiles. Amazon’s top priorities for the SAM documents focused specifically on the
 14 emails from Murray Markiles (whom Amazon alleges was also exerting control over
 15 PersonalWeb through one of the Secured Creditors), PersonalWeb’s corporate structure as
 16 it related to the Secured Creditors, and the loans between PersonalWeb and the Secured
 17 Creditors. (See McCormick Decl., **Exhibit C**, November 10, 2022 email from Amazon
 18 counsel to PersonalWeb counsel regarding the “categories of documents that Amazon
 19 would like PersonalWeb to prioritize from the Stubbs Alderton collection”). This evidence
 20 was no longer relevant to any of Amazon’s claims of misbehavior, as the Court had already
 21 awarded Amazon its fees. The only potential use of this evidence was in pursuit of
 22 Amazon’s alter ego theories.

23 PersonalWeb requests that Amazon’s supplemental attorneys’ fees award be reduced
 24 in the amount of the entries for the work described above.

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 PERSONALWEB’S SUPPLEMENTAL RESPONSE TO SUPPLEMENTAL FEE REQUEST

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Dated this 21st day of November, 2023. LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Patrick Emerson McCormick
Robert M. Charles, Jr.
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PERSONAL Web's SUPPLEMENTAL RESPONSE TO SUPPLEMENTAL ERM PROTECT

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