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12 TWITCH INTERACTIVE, INC.

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

16 IN RE: PERSONALWEB TECHNOLOGIES,
17 LLC ET AL., PATENT LITIGATION,

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

Plaintiffs,

v.

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

Defendants.

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

Plaintiffs,

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

**RESPONSE OF AMAZON.COM, INC.,
AMAZON WEB SERVICES, INC., AND
TWITCH INTERACTIVE, INC. TO
PERSONALWEB'S SUPPLEMENTAL
OPPOSITION TO MOTION FOR
FURTHER SUPPLEMENTAL FEES**

1 The Court afforded PersonalWeb an opportunity to show why the Court should deduct fees
2 that Amazon spent litigating alter ego issues. (Dkt. 913 (Tr. 11/16/23) at 12:20-14:10, 25:19-25.)
3 To that end, the Court instructed the parties to attempt to reach an agreement concerning at least
4 the amount of fees corresponding to the objection. (*Id.* at 26:1-12, 27:6-11; *see also* Dkt. 912.)
5 The parties conferred but did not reach agreement. Consequently, Amazon now responds to
6 PersonalWeb’s supplemental brief.

7 **1. There Should Be No Deduction.**

8 Amazon respectfully submits that there should be no deduction. The disputed fees relate to
9 discovery taken to support Amazon’s attempt to enforce the judgment *in this case*. (Declaration of
10 Todd R. Gregorian, ¶ 3.) That work continues to focus on core issues related to enforcing a
11 judgment, including PersonalWeb’s assets and liabilities, PersonalWeb’s relationship with its
12 principals and to other entities, and transfers among those persons and entities. Understanding
13 these financial interrelationships is necessary, for example, to trace PersonalWeb’s assets and
14 identify potential fraudulent transfers—*i.e.*, issues that are independent of (even if they overlap
15 with) an alter ego theory. (*Id.*) And *all* of this work became necessary only because of
16 PersonalWeb’s collusion with its principals and the subpoenaed third parties to manufacture
17 insolvency. To be sure, alter ego is one potential theory that Amazon has pursued in discovery;
18 Amazon planned to pursue that theory *in this case* via a motion to add alter egos to the judgment,
19 and, though it hopes to avoid this outcome, could still do so *at least* as to individuals and entities
20 not named in the state proceeding. *See* Fed. R. Civ. P. 69; Cal. Civ. Proc. Code §187; (Gregorian
21 Decl., ¶ 4). It is perverse for PersonalWeb to assert now that this work relates *solely* or even
22 primarily to a different “case” just because its principals filed a separate declaratory judgment suit
23 against Amazon claiming that they are not the alter egos of PersonalWeb.¹ It cannot possibly be
24 the case that a party can immunize itself from a fee award by unilaterally filing a new case

25 _____
26 ¹ That case was filed on February 27, 2023, well after Amazon propounded subpoenas on the
27 PersonalWeb “investors” in winter-spring 2022 and completed most of the work reflected in the
28 disputed billing entries. (Dkts. 871-7 at 122-134; 733-1, 733-2, 733-3, 771-1.)

1 addressing overlapping issues. To the contrary, where discovery has a dual purpose (*i.e.*, it is useful
2 for a patent litigation and in another proceeding), the Federal Circuit has deemed fees relating to
3 that discovery recoverable. *See Monolithic Power Sys., Inc. v. O2 Micro Int'l Ltd.*, 726 F.3d 1359,
4 1369-70 (Fed. Cir. 2013).

5 Elsewhere, PersonalWeb has conceded the point. At the motion hearing, PersonalWeb's
6 counsel argued that disentangling these issues is impossible:

7 *[I]t's largely impossible to untangle certain aspects of this discovery to the point*
8 *that actually -- PersonalWeb's position is that any fees incurred in pursuit of the*
9 *alter ego -- the alleged alter egos, secured creditors assets or information, is not*
10 *available to Amazon.*

11 (Dkt. 913 (Tr. 11/16/23) at 13:8-12 (emphasis supplied).) And this flip-flopping (a common theme
12 in this case) gets worse. PersonalWeb's principals forcefully *objected* to the use of discovery from
13 this case in the state court proceedings, compelling Amazon to seek a modification of this Court's
14 protective order. (Dkt. 858.) By now asking for a further discount of over \$560,000.00,
15 PersonalWeb seeks to immunize itself from fees of its own creation. Having dug its hole even
16 deeper, it now pleads for a ladder from this Court. But to give one would create the very "new road
17 map" for bad actors that this Court is trying to avoid. (Dkt. 913 (Tr. 11/16/23) at 23:1-10.)

18 **2. If There Is to Be a Deduction, It Should Be Far Less Than What PersonalWeb**
19 **Claims.**

20 PersonalWeb has taken this second chance to substantiate its objection as an opportunity to
21 try to cleave off fees wholly unrelated to the alter ego issue. This is evident in many of the billing
22 entries PersonalWeb identified, which reflect work that relates to tasks either unrelated to the alter
23 ego issue or overlapping with other issues, *e.g.*, seeking enforcement discovery from the
24 PersonalWeb "investors," dealing with PersonalWeb's receiver, and opposing withdrawal of
25 PersonalWeb's prior counsel. (*See, e.g.*, Dkt. 911-1 at 3 (Feb. 4, 2022: "Conduct legal and factual
26 research on subpoenas to PersonalWeb investors (2.0); Discussions regarding receivership with
27 team and receiver (0.4)."); *id.* (Feb. 10, 2022: "Attention to judgment enforcement issues including
28 subpoenas to insider investors and Stubbs proposed motion to withdraw as counsel."); *id.* at 191
(Dec. 5, 2022: "Analyze PersonalWeb document production, coordinate review with team, and

1 conduct records research.”.) During the hearing, Amazon explained that it agreed that there must
2 be a cut-off date for fees litigation in this Court, and that the filing of the alter ego case seemed to
3 be a natural place. (Dkt. 913 (Tr. 11/16/23) at 16:16-17:2.) But that was a concession to the need
4 to end fee litigation in this Court; it was *not* a concession that PersonalWeb has any valid objection
5 to the fees requested for work performed in this case.

6 PersonalWeb argues that all judgment enforcement work after August 3, 2021 pertained
7 exclusively to alter ego because Amazon “should have” known then that PersonalWeb was
8 insolvent and there was no other means to enforce. (Dkt. 910 at 2:25-27.) But that is wrong. Not
9 only did Amazon have to fight for months after that date to obtain information about the
10 receivership, *to this day* Amazon has no guarantee that the receiver took possession of all
11 PersonalWeb’s assets. (See Gregorian Decl., ¶ 9; Ex. B.) PersonalWeb’s principals continue to
12 refuse to certify that they have turned everything over to the receiver. PersonalWeb’s argument
13 about discovery from Messrs. Bermeister and Markiles pertaining only to alter ego is incorrect for
14 the same reasons. (See Dkt. 910 at 4:3-22.) Mr. Bermeister ran PersonalWeb and Mr. Markiles
15 designed its asset protection scheme and manages two of its “investors.” Discovery from and about
16 these individuals, as well as “PersonalWeb’s corporate structure” and the “loans between
17 PersonalWeb and the Secured Creditors,” was necessary to uncover concealed assets and identify
18 fraudulent transfers.

19 Given all this, if the Court imposes a deduction, Amazon proposes the approach in its
20 declaration, consisting of excluding entries that relate solely to alter ego issues, plus a percentage
21 of the entries that pertain to review of documents from the PersonalWeb “investors.” Such an
22 approach fairly accounts for the potential use of these documents in the state court alter ego action.

23
24 Dated: December 5, 2023

FENWICK & WEST LLP

25
26 By: /s/ Todd R. Gregorian
Todd R. Gregorian

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