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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

GEORGE E. ENGSTROM, an individual, and
JOHN E. STOCKWELL, an individual,

Plaintiffs,

vs.

MICROSOFT CORPORATION, a Washington
corporation,

Defendant.

No. 15-2-04785-0 SEA

**JOHN P. SHERIDAN
DECLARATION IN SUPPORT OF
PLAINTIFFS' MOTION TO
ENFORCE NOTICE OF
UNAVAILABILITY AND TO
REQUIRE DEFENDANT TO
FOLLOW CIVIL RULES**

1. I, Jack Sheridan, make the following statement based upon my personal knowledge. I am counsel of record representing Plaintiffs George Engstrom and John Stockwell in this matter.
2. I became involved in the case in September 2014 after I was approached by the plaintiffs following a failed mediation with Microsoft, which is represented by Rob Maguire at Davis Wright.
3. Over the following months, we drafted a complaint for use in the case, and the firm considered various legal theories. I decided that owing to the high-level positions held by the plaintiffs, it made sense to send a draft of the complaint to Mr. Maguire to ensure that nothing contained in the complaint could be considered

1 highly sensitive business confidential information or trade secrets. On November
2 24, 2014, I sent a copy of the draft to Mr. Maguire, who reviewed the draft and sent
3 back a marked-up copy on December 4, 2014. In the final complaint, I deleted
4 words in accordance with Mr. Maguire's stated concerns.

5 I also learned that Microsoft has its employees sign employment agreements
6 that require the return of all documents to Microsoft upon separation. My
7 investigation revealed that Microsoft has no process for obtaining such documents
8 from departing employees, and learned that Microsoft does not even provide copies
9 of the employment agreements to departing employees at the time of departure.
10 Nevertheless, to avoid possible counter-claims, I had the plaintiffs assemble all
11 Microsoft documents and delete any copies. This was accomplished over the next
12 several weeks. Those documents were put on DVDs and on a portable hard drive
13 and stored under lock and key at my law firm.

14 I also learned the Plaintiff Engstrom had made a few audio recordings while
15 at work, which I viewed as possibly in violation of RCW 9.73.030, which prohibits
16 the audio recording of private conversations. I did not listen to the recordings, and
17 thus could not evaluate whether they met the standard, but felt that they should be
18 safeguarded and deposited with the court.

19 On February 6, 2015, I delivered the entire body of Microsoft documents to
20 Mr. Maguire and advised him of the existence of the audio recordings. In the letter
21 transmitting the documents, I wrote:

22 We have been getting organized in preparation for filing the lawsuit. In an
23 abundance of caution, because there is a prior employment agreement with
24 confidentiality provisions stating that documents and emails created during
25 employment are Microsoft's property to be returned upon termination, we
are returning all Microsoft documents held in the possession of our clients
at the time of their termination. Enclosed herein are thirty (30) DVDs,
which represent two copies of the documents, along with an external hard
drive #0629901771. There may be attorney client privileged documents in

SHERIDAN DECLARATION IN SUPPORT OF
PLAINTIFFS' MOTION TO ENFORCE NOTICE
OF UNAVAILABILITY AND TO REQUIRE
DEFENDANT TO FOLLOW CIVIL RULES - 2

THE SHERIDAN LAW FIRM, P.S.
Attorneys at Law
Hoge Building, Suite 1200
705 Second Avenue
Seattle, WA 98104
Tel: 206-381-5949 Fax: 206-447-9206

1 the stack, which we have not reviewed. Do not destroy or otherwise
2 modify the documents on the DVDs or external drive, since they may
3 contain information relevant to the lawsuit. However, if there are ACP
4 documents in the stack, they may be deleted. I am hopeful that we can talk
5 about having those DVDs returned once they are reviewed and any ACP
6 files are removed. It will simplify discovery.

7 Also, there are a few audio files, which came into our possession. We
8 intend to deposit those with the court once the lawsuit is filed. They are
9 also on DVDs. I'm thinking it makes sense for the parties to stipulate that
10 the court is the proper repository for the files.

11 Let's meet and talk about that.

12 Our clients have taken steps to ensure that no other copies of the Microsoft
13 documents and audio files are kept. Please acknowledge receipt.

14 A true and correct copy is attached as **Exhibit 1**.

15 Mr. Maguire made no inquiry about the audio files for the next month. I left
16 on vacation in February, and the case was filed after his return. The filing was
17 covered by local, national, and international press.

18 On February 27, 2015, after the media coverage, Mr. Maguire contacted me
19 and indicated that he wanted to come and listen to the tapes. I was at a hearing in
20 Thurston County that morning and did not return to the office. I was the only
21 person with a key to the locked file cabinet storing the audio recordings. Mr.
22 Maguire indicated that he was against storing the audio recordings with the Court
23 because they may not be secure. He suggested that they be given to a third party,
24 and he identified Eric Blank, an attorney in Mount Vernon. I agreed, and retained
25 Mr. Blank. **Exhibit 2** is a true and correct copy of my agreement with Mr. Blank.
The contract provides that he will secure the recordings, and make a copy for
Mr. Maguire. The audio recordings were picked up on March 2, 2015, and a copy
was provided to Mr. Maguire the same day.

On March 5, 2015, I filed a notice of unavailability, which is a typical filing
in King County, and which in my experience, is honored by attorneys practicing in

1 Seattle. Mr. Maguire sent a letter the same day, and spoke with me on March 6,
2 2015, by telephone.

3 In the phone call, Mr. Maguire indicated that Microsoft insisted that the
4 plaintiffs sign declarations indicating what was contained in his letter:

5 As I previously requested, Microsoft needs prompt assurances under
6 oath concerning its information and now also the recordings of its
7 employees. Please provide by Sunday, March 8th, sworn declarations
8 from your clients stating, if true:

9 • Your clients did not record private conversations of any other
10 Microsoft employees;

11 • Your clients do not possess any recordings of private
12 conversations involving Microsoft employees;

13 • Your clients have not provided copies of recordings of private
14 conversations involving Microsoft employees to anyone other
15 than Eric Blank;

16 Your clients have not played for anyone any recordings of
17 private conversations
18 involving Microsoft employees;

19 • Your clients have returned all Microsoft information,
20 including all electronic and hard copy documents without
21 retaining any copies or providing any copies to anyone else;
22 and

23 • Your clients did not use or disclose any Microsoft information
24 since their employment with Microsoft ended.

25 If your clients will not provide sworn statements, Microsoft anticipates
seeking assistance from the court to ensure protection of its information
and employees.

Later, he indicated that I make those representations. I told him, "You put me
in the position of speaking for my clients, and I will not do that. This is regular
discovery. I told you that I dilligently worked to obtain, secure, and return all
documents, and to secure all recordings, and that you have nothing to worry about. I
will stand behind that. "

1 I indicated that my past conduct (consulting about the complaint, securing and
2 returning the documents, and securing the audio recordings) demonstrated that
3 Microsoft has nothing to worry about, and that Microsoft had no basis for claiming an
4 emergency to justify going outside the Civil Rules. I indicated that this was normal
5 discovery, and the Microsoft was behaving like a bully, and should not be filing
6 anything during the Thurston County trial. I challenged Mr. Maguire to state who
7 would submit a declaration under oath showing that there was any risk. Mr. Maguire
8 had no response, but Mr. Maguire would not agree to refrain from filing motions
9 during the trial. An impasse was reached, and this motion follows so the issues are
10 resolved before trial.

11 I declare under penalty of perjury under the laws of the State of Washington
12 and of the United States that the foregoing is true and correct to the best of my
13 knowledge.

14 Dated this 6th day of March, 2015, in Seattle, Washington.

15
16
17 s/John P. Sheridan
18 John P. Sheridan, WSBA # 21473

1 CERTIFICATE OF SERVICE

2 I certify that on the below date I electronically filed the foregoing document
3 via the Court's CM/ECF system, which will serve such filing to the following persons
4 via messenger:

5 Rob Maguire
6 DAVIS WRIGHT TREMAINE LLP
7 1201 Third Avenue, Suite 2200
8 Seattle, WA 98101
9 Phone: (206) 757-8094
10 Email: robmaguire@dwt.com

11 DATED this 6th day of March, 2015, at Seattle, Washington.

12 s/Patti Lane
13 Patti Lane, Legal Assistant

Exhibit 1

The Sheridan Law Firm, P.S.

Attorneys at Law
Hoge Building, Suite 1200
705 Second Avenue
Seattle, WA 98104
www.sheridanlawfirm.com

Tel: 206-381-5949

Fax: 206-447-9206

February 6, 2015

VIA MESSENGER

Rob Maguire
Davis Wright Tremaine
201 Third Avenue, Suite 2200
Seattle, WA 98101

Re: George "Eric" Engstrom and John Edward "Ted" Stockwell

Dear Rob:

We have been getting organized in preparation for filing the lawsuit. In an abundance of caution, because there is a prior employment agreement with confidentiality provisions stating that documents and emails created during employment are Microsoft's property to be returned upon termination, we are returning all Microsoft documents held in the possession of our clients at the time of their termination. Enclosed herein are thirty (30) DVDs, which represent two copies of the documents, along with an external hard drive #0629901771. There may be attorney client privileged documents in the stack, which we have not reviewed. Do not destroy or otherwise modify the documents on the DVDs or external drive, since they may contain information relevant to the lawsuit. However, if there are ACP documents in the stack, they may be deleted. I am hopeful that we can talk about having those DVDs returned once they are reviewed and any ACP files are removed. It will simplify discovery.

Also, there are a few audio files, which came into our possession. We intend to deposit those with the court once the lawsuit is filed. They are also on DVDs. I'm thinking it makes sense for the parties to stipulate that the court is the proper repository for the files. Let's meet and talk about that.

Our clients have taken steps to ensure that no other copies of the Microsoft documents and audio files are kept. Please acknowledge receipt.

Rob Maguire
February 6, 2015
Page 2

I'm in Maui next week, but back on 2/15. I can talk and exchange emails next week, but with some limited availability. I look forward to working with you.

Sincerely,



John P. Sheridan

Enclosures: 30 DVDs and external drive

I, _____, acknowledge receipt of a package from the Sheridan Law Firm, P.S. containing 30 DVDs and the external hard drive.

Date

Name:

Exhibit 2

BLANKL+T

VIA ELECTRONIC MAIL

CONFIDENTIAL Communication
NOTE: COPIED TO OPPOSING COUNSEL

March 2, 2015

Jack Sheridan, Esq. (jack@sheridanlawfirm.com)
Sheridan Law Firm, P.S.
705 2nd Ave, Suite 1200
Seattle, WA 98104

**RE: Engagement Agreement: Neutral Computer Forensics/Discovery
Engstrom and Stockwell v. Microsoft, Superior Court (King County
WA) Cause No. 15-2-04785-0 SEA**

Dear Mr. Sheridan:

We appreciate the opportunity to work with you in this matter. The purpose of this letter is to set forth the terms of engagement of our firm, BLANK Law & Technology P.S. (BLT), and to familiarize you with our practices as we move forward. Please read this letter carefully.

SCOPE OF WORK

Our initial scope of work in this matter is to secure custody of recordings, which we understand to be on one or more DVDs, pending further agreement of the parties or Court Order. We will also, with the understanding that this is done with the agreement of the parties, make one copy of the recordings and deliver it to counsel for Microsoft.

Any additional services will be undertaken only ~~at your express instruction~~. We will discuss the cost-benefit to all future action with you to help you make informed decisions.

BLT will keep chain of custody documents noting locations, dates, + times of

ESTIMATE OF FEES AND COSTS

Whenever possible, we attempt to provide clients with what we believe—based on our experience and understanding of each project—is an estimate of the fees and costs that may be incurred as we move forward. Of course, an “estimate” is just that: it may vary significantly based on developments that may or may not be within our control. We will keep you informed of changes in our estimates, and we will work with you to keep our fees reasonable.

by court order or written agreement of the parties.
WS.
access of the recordings.
WS

BLANKL+T

Blank Law + Technology P.S.
1700 Continental Place | Mount Vernon, WA 98273
www.digital-legal.com | 206.256.9699

In this matter, our initial estimate includes the following:

Pickup of storage media; delivery of copy to Microsoft counsel: \$250
Image (copy) and verify media: \$250/hr, minimum 2 hours (\$500)
Hourly rates associated with communications: 2 hours @ \$400/hr (\$800)
Secure storage longer than 6 months: \$250/item/year

Estimate: \$1500, plus any storage fees beginning after September 2015.

We will discuss costs and benefits relative to risks as we move forward, and we will strive to help you make informed business decisions based on the state of the law, your business realities, and our informed analysis.

BILLING PRACTICES & ADVANCE FEE DEPOSIT

I will be the person in our firm primarily responsible for providing services to you on this matter. Although I may delegate portions of your work to other attorneys, technicians and project managers in order to make our services as cost effective and timely as possible, you should always feel comfortable calling me directly to discuss work status, priorities, work-related concerns, or any other matter of interest. My current billing rate is \$400 per hour. Billing rates for attorneys, engineers, technicians and legal assistants with BLT range from \$125 to \$595 per hour.

As with all matters, we require an advance fee deposit equal to the initial estimate; in this matter, \$1500. Advance fee deposit funds are advances against future billings and will be placed in Blank Law & Technology's primary client trust account. Any interest earned on the funds in our trust account will be paid, as required by law, directly by the bank to the Washington State Bar Association's Legal Foundation of Washington to fund legal services for indigent persons. If at the termination of our services the total amount of fees and costs incurred and unpaid is less than the remaining balance in the trust account, the entire difference will be refunded to you.

We will invoice you monthly for all fees and costs. Our monthly invoices are due and payable upon receipt; if not paid within 30 days, in whole or in part, you will be charged a late fee equal to 1% per month on the outstanding balance from the date of the invoice until paid. At our discretion, invoices unpaid after 30 days will be paid from any funds available in the trust account. We may ask you to replenish or increase the trust account from time to time, depending on circumstances and the volume of work we are undertaking.

COMMUNICATIONS

It is our policy not to charge for long distance telephone fees incurred during brief conversations with clients. Our clients are located around the United States and throughout the world; it is contrary to our basic philosophy regarding the value of our services to penalize clients who happen to not be based in Seattle or who are traveling.

In addition, although we keep time records in tenths of an hour increments, we do not ordinarily charge for telephone conversations, responses to email inquiries, or other work that is routine in nature and does not aggregate more than one tenth of an hour per day. We prefer for clients to be comfortable calling us on small issues, before they become big issues, without worrying that the "meter is running." We want to do everything possible to help make you comfortable with our relationship and to facilitate your interaction with the other attorneys at BLT who are supporting your needs.

We will endeavor to inform you promptly of material developments relating to our services on this project and will consult with you about decisions relating to those developments. We will also send you copies of significant correspondence and other documents. We encourage you to ask us about issues that are unclear to you, to advise us of developments that might affect our work for you, and to let us know of any concerns or questions you have about our work.

You may contact me via e-mail at: eblank@digital-legal.com. Although it is the position of the American Bar Association that the attorney-client privilege applies to e-mail communications, e-mail is easily intercepted, lost, or inadvertently produced. Accordingly, please do not send sensitive information via electronic mail. Similarly, in an emergency or where a response is time-critical, please communicate with me via telephone. My cell phone number is 206-890-7358.

CONFIDENTIALITY AND PRIVILEGE

Our work for you, as for all of our clients, is absolutely confidential except as you direct. In addition, BLT is an information security law firm, and I and other attorneys in the firm are licensed to practice law in the State of Washington. To the extent our work in this matter constitutes a communication between attorney and client, or is attorney work product, your client's communications and our work is additionally protected by the force of law.

In this matter, we are acting as a neutral. Thus, although our work is confidential with respect to the rest of the world, WE WILL COPY ALL COMMUNICATIONS FROM OR TO YOU TO COUNSEL FOR OPPOSING PARTY/PARTIES. Accordingly, we recommend that you do not share with us any sensitive matter-

Jack Sheridan, Esq.
March 2, 2015
Page 4 of 5

related information except to the extent necessary for us to perform our work. Also, as a matter of preference and as a courtesy to the other party/parties, please limit *ex parte* telephone communications to administrative matters only.

We have worked in the hybrid attorney-technician area for many years and are comfortable with the issues that may arise. We will keep you informed of developments in this direction.

BLT ROLE IN THIS MATTER

Our role in this matter is to provide informed electronics expertise and computer forensics support related to litigation, as we have done on hundreds of projects since our founding in 2001. Neither I, nor my firm, have been retained as litigation counsel. Our role is limited as described in the Scope of Work.

* * * * *

If you agree to the terms of this engagement, please sign where indicated below and return a copy to my attention at your earliest convenience along with payment of the \$1500 advance fee deposit. Our wire coordinates are set forth on the next page; or we can accept a check. Please call or email with any questions.

Once again, thank you for the opportunity to be of service. We look forward to working with you.

Sincerely yours,

BLANKL+T



Eric P. Blank

AGREED:

Sheridan Law Firm, P.S



Jack Sheridan, Esq.

DATE: 3/2/15

cc: Rob Maguire, Esq., counsel for Microsoft (robmaguire@dwt.com)

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Blank Law + Technology P.S.
1700 Continental Place | Mount Vernon, WA 98273
www.digital-legal.com | 206.256.9699

Jack Sheridan, Esq.
March 2, 2015
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International Wiring Instructions
Blank Law & Technology PS

Receiving Bank:

Pacific Coast Bankers Bank
San Francisco, California 94104
ABA 121042484
SWIFT PCBBUS66

Beneficiary:

Savi Bank (fkn Business Bank)
1854 S Burlington Blvd
Burlington WA 98233
Routing No: 125108748

Remittance:

Credit To:

Blank & Associates PS/Blank Law & Technology PS
Account No: 1600005910

Beneficiary Bank Telephone Number (USA): 360-707-2272

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