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The Honorable Ricardo S. Martinez

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

| | | |
|--------------------------|---|-------------------|
| MICROSOFT CORPORATION |) | |
| |) | |
| Plaintiff, |) | No. 2:15-cv-00369 |
| |) | No. 2:15-cv-00850 |
| v. |) | |
| |) | STATEMENT |
| INTERNAL REVENUE SERVICE |) | |
| |) | |
| Defendant. |) | |

On January 15, 2016, the Department of Justice, Tax Division, notified the Court that the Internal Revenue Service (“IRS”) had reported that it inadvertently had not captured a computer hard drive used by one agreed-upon custodian, Samuel Maruca, and that the hard drive had been sanitized. See Statement, ECF No. 21. Since then, there have been two developments regarding Mr. Maruca’s hard drive. First, the IRS continued to look for responsive records, and in doing so it located potentially responsive user-generated content that had been previously on Mr. Maruca’s hard drive and saved elsewhere in July, 2014, only several weeks before Mr. Maruca separated

STATEMENT

U.S. Department of Justice, Tax Division
Ben Franklin Station , P.O. Box 227
Washington, D.C. 20044
202-616-9832 (Phone) 202-307-6866 (Fax)

1 from the IRS.¹ The Department of Justice disclosed this source of potentially responsive
2 documents to Microsoft's counsel on February 11, 2016.

3 Second, during discussions on and from March 14 through March 23, 2016, IRS Chief
4 Counsel attorneys notified the undersigned Department of Justice counsel that the IRS located a
5 hard drive that appears to be Mr. Maruca's hard drive. The IRS Chief Counsel attorneys believe
6 that the hard drive has not been sanitized, the hard drive is in working condition, and the hard
7 drive contains user-generated content. The IRS Chief Counsel attorneys informed Department of
8 Justice counsel that they are presently processing the content for review and then will review the
9 content for potentially responsive records. Non-exempt responsive records not already produced
10 to plaintiff will be produced as part of the on-going production by the IRS.

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13 DATE: March 25, 2016

14 /s Richard J. Hagerman
15 RICHARD J. HAGERMAN
16 STEPHEN S. HO
17 Trial Attorneys, Tax Division
18 U.S. Department of Justice
19 Post Office Box 227
20 Washington, DC 20044
Phone/Fax: (202) 616-9832/514-6866
Email: Richard.J.Hagerman@usdoj.gov

¹ The IRS reported in February 2016 that the copied material was being reviewed for information responsive to Microsoft's Freedom of Information Act requests. See IRS: Reviewing Its Legal Obligations, Document Preservation, and Data Security: Hearing before the H. Comm. on Oversight and Government Reform, 114th Cong. (February 11, 2016) (written testimony of the Internal Revenue Service), *available at* <https://oversight.house.gov/wp-content/uploads/2016/02/IRS-Statement-2-11-Document-Preservation.pdf>.

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CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing Statement on Plaintiff's counsel via the Court's electronic case filing system this twenty-fifth day of March, 2016.

/s Richard J. Hagerman
RICHARD J. HAGERMAN

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