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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.)	

Consistent with the Court’s order of October 20, 2015, the Internal Revenue Service (“Service” or “IRS”) has continued to search for, process, and release, on a monthly basis, non-exempt records that are responsive to the Freedom of Information Act (“FOIA”) requests at issue in the above-captioned suits. In December 2015, IRS Chief Counsel attorneys informed the undersigned Department of Justice counsel that they had identified a potential issue with the collection of the hard drive of at least one of the roughly 40 agreed-upon custodians, Samuel Maruca. According to the Service, Mr. Maruca separated from the IRS in August 2014. The Service has advised that under its ordinary data management practices, Mr. Maruca’s hard drive would have been recycled by the end of September 2014 (i.e., approximately three months before Microsoft submitted any of the administrative FOIA requests at issue in this case). See also IRS

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 Chief Counsel Notice CC-2012-017 at 16 (Sept. 13, 2012) (hard drives generally should be
2 recycled within 30 days of separation). Consequently, Mr. Maruca's hard drive was inadvertently
3 not captured by the litigation hold instituted for these cases. According to the Service, however,
4 Mr. Maruca's hard drive was not sanitized until April 2015, which was after one of the above-
5 captioned suits had been filed and after IRS Chief Counsel attorneys had instituted a litigation
6 hold.

7 IRS Chief Counsel attorneys have advised the undersigned counsel that since December
8 2015, they have continued to study whether or how the foregoing might implicate the Service's
9 obligation to conduct a reasonable search in response to Microsoft's FOIA requests.

10 DATE: January 15, 2016

11 /s Richard J. Hagerman
12 RICHARD J. HAGERMAN
13 GEOFFREY J. KLIMAS
14 Trial Attorneys, Tax Division
15 U.S. Department of Justice
16 Post Office Box 227
17 Washington, DC 20044
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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 Fifteenth day of January, 2016.

/s Richard J. Hagerman
RICHARD J. HAGERMAN

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