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HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

v.

IMMERSION CORPORATION, a  
Delaware corporation,

Defendant.

No. CV7-936RSM

**DECLARATION OF KENNETH  
LUSTIG IN SUPPORT OF REPLY  
TO MICROSOFT'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
REGARDING IMMERSION'S  
COUNTERCLAIM**

**NOTED ON MOTION CALENDAR:  
MAY 9, 2008**

Kenneth Lustig declares as follows:

1. I am the Managing Director of IP Acquisitions and Investments at Microsoft Corporation. I am over the age of 18, competent to testify, and make this declaration based upon personal knowledge.

2. Attached is a true and correct copy of an email that I sent to Vic Viegas, CEO of Immersion, on May 9, 2007, which discusses a confidentiality agreement. Any negotiations about a confidentiality agreement occurred over email or the telephone between Washington and California.

3. On May 11, 2007, I signed a Confidentiality Agreement in Redmond, WA between Microsoft Corporation, Sony Computer Entertainment America Inc.(SCEA) and

DECL. OF KENNETH LUSTIG IN SUPPORT OF REPLY TO MS'  
MOT. FOR PARTIAL SUMMARY JUDGMENT (No. CV7-936RSM) - 1  
4827-1986-1506.01  
050908/0938/20363.00411

Riddell Williams P.S.  
1001 FOURTH AVENUE  
SUITE 4500  
SEATTLE, WA 98154-1192  
206.624.3600

1 Sony Computer Entertainment Inc. (SCEI), a copy of which was filed as Exhibit 2 to  
2 Document #95, Declaration of Joffrey M. McWilliam in Support of Immersion's  
3 Opposition to Microsoft's "Motion for Partial Summary Judgment Regarding Immersion's  
4 Counterclaim."

5 4. To my knowledge, all of the Microsoft employees and counsel who were to  
6 receive the Sony/Immersion Agreement as contemplated by the Confidentiality Agreement,  
7 received and reviewed the document in Washington.

8 I declare under penalty of perjury under the laws of the State of Washington that the  
9 foregoing is true and correct.

10 EXECUTED on May 16, 2008, at Redmond, Washington.

11  
12 By 

13 Ken Lustig  
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**From:** Kenneth Lustig (LCA)  
**Sent:** 05/09/2007  
**To:** Victor Viegas  
**Cc:** Laura Peter; Steve McGrath (LCA); Steve Aeschbacher (LCA); Dan Christen (LCA)  
**Bcc:**  
**Subject:** RE: Formal response

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Vic,

Thank you for your May 8, 2007 letter.

Microsoft accepts your offer to provide Microsoft with an unredacted version of the "business agreement" between Immersion and Sony. As stated in my May 1, 2007 letter to you and according to the terms of the Microsoft/Immersion Sublicense Agreement, Microsoft has requested that Immersion provide all the documents pertaining to the Sony/Immersion Deal, including any agreements entered into by Sony and Immersion since the date of the jury verdict in the Immersion/Sony lawsuit. Your letter appears to offer one document. We look forward to receiving that document, but request all relevant documents relating to any agreements between Sony and Immersion or Sony and Immersion's counsel.

Microsoft and its outside counsel will sign the confidentiality agreement that you propose, with the following modifications: please increase the number of in-house Microsoft lawyers that can review this document to three, and allow two business persons within the Intellectual Property and Licensing (IP&L) group, in addition to myself, to review it to analyze the value of the agreement. We also want to add the following language:

"Microsoft and its counsel reserve their rights to use the Sony/Immersion agreement(s) in a future lawsuit over the Immersion/Microsoft Sublicense Agreement, subject to an appropriate litigation confidentiality agreement or a court order."

By signing this confidentiality agreement, Microsoft does not waive its rights to discovery of this and other documents through litigation, if litigation occurs. Please let me know if these changes are acceptable and provide me with a modified version of this agreement for our signature.

Thanks,

Ken Lustig

From: Victor Viegas [mailto:vviegas@immersion.com]  
Sent: Tuesday, May 08, 2007 1:47 PM  
To: Kenneth Lustig (LCA)  
Cc: Laura Peter  
Subject: Formal response

Ken

③

In addition to this email, I am Fed Exing a hard copy of the attached letter.

Thanks

Vic

Victor Viegas

President and CEO

[vviegas@immersion.com](mailto:vviegas@immersion.com)

Immersion Corporation

801 Fox Lane, San Jose, CA 95131

Phone (408) 350-8880 / Fax (408) 467-1901

<http://www.immersion.com/> <http://www.immersion.com>

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 9<sup>th</sup> day of May, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**Richard M Birnholz**  
rbirnholz@irell.com, lwakino@irell.com, ddrescher@irell.com, dkaplan@irell.com

**Morgan Chu**  
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**Blake Edward Marks-Dias**  
bmarksdias@riddellwilliams.com, dhammonds@riddellwilliams.com

**Jofrey M McWilliam**  
jmcwilliam@byrneskeller.com, lyoshinaga@byrneskeller.com

Executed at Seattle, Washington this 9<sup>th</sup> day of May, 2008.

  
Margaret R. Friemann  
Legal Secretary, Riddell Williams P.S.  
1001 Fourth Avenue Plaza, Suite 4500  
Seattle, WA 98154  
Phone: (206) 624-3600  
Fax: (206) 389-1708  
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