

1 HONORABLE RICARDO S. MARTINEZ

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

11 MICROSOFT CORPORATION,

12 Plaintiff,

13 vs.

14 INTERNAL REVENUE SERVICE,

15 Defendant.

NO. 2:15-cv-01605 RSM

FOURTH CONSENT MOTION AND ORDER
REGARDING CASE SCHEDULE

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17 The above-captioned action is for declaratory and injunctive relief under the Freedom of
18 Information Act (“FOIA”), 5 U.S.C. § 552, as amended, and the Administrative Procedure Act, 5
19 U.S.C. § 701 et seq. The parties jointly request that the action remain open and that the Court
20 approve the parties’ agreed upon, modified schedule set forth in paragraph 3, below. In support
21 of this request, the parties state the following:

22 1. On September 17, 2021, the Court issued a modified case management order
23 adopting the parties’ proposed revised schedule and case management order. Under that
24 schedule, the IRS was required to file a motion for summary judgment by December 3, 2021.

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FOURTH CONSENT MOTION TO EXTEND TIME AND ORDER
REGARDING CASE SCHEDULE
(Case Nos. 2:15-cv-1605)

U.S. Department of Justice, Tax Division
Ben Franklin Station , P.O. Box 227
Washington, D.C. 20044
202-616-8994 (Phone)
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1 2. Counsel for the IRS and Microsoft have had regular discussions over the past
2 months to identify and attempt to narrow the issues for which summary judgment briefing would
3 be necessary. By letters dated September 22, 2021 and November 10, 2021, Microsoft
4 acknowledged that the IRS had addressed some of its concerns, and summarized a variety of
5 outstanding issues it had raised previously regarding the IRS's productions, draft declarations,
6 and draft *Vaughn* indices, including certain exemption claims. The IRS responded to certain of
7 the issues raised by Microsoft by letter dated November 23, 2021, and in the process, discovered
8 that its previously provided draft *Vaughn* index was incomplete and missing approximately
9 3,400 records. The IRS therefore needs additional time to supplement and revise its previously
10 provided draft *Vaughn* index. The IRS is also in the process of responding to Microsoft's
11 remaining concerns, and the parties are still engaging in good faith negotiations to narrow the
12 issues that may be addressed in summary judgment proceedings.

13 3. The IRS accordingly requests, and Microsoft consents, to extend the remaining
14 deadline for the filing of the IRS's motion for summary judgment. The IRS thus requests that the
15 Court adopt a case schedule extending the deadline for filing a motion for summary judgment up
16 to and including January 28, 2022 for the above-captioned case.

17 4. Recognizing that the parties continue to engage in good faith negotiations, the
18 parties agree that evidence of the IRS's efforts to address Microsoft's concerns, including any
19 revisions to previously exchanged declarations or exemption claims, is not admissible to prove
20 that the IRS's search was unreasonable or that the IRS's exemption claims were improper.

21 5. The parties jointly request that this action remain open and that the Court enter an
22 order adopting the case schedule proposed in paragraph 3.

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1 Respectfully submitted this 2nd day of December, 2021.

2 **BAKER & McKENZIE LLP**

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23 *Attorney for Defendant Internal Revenue Service*

1 **CERTIFICATE OF SERVICE**

2 I certify that I served a true and correct copy of the foregoing JOINT MOTION via the
3 Court's electronic case filing system on December 2, 2021.

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5 /s Stephen S. Ho

6 STEPHEN S. HO
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1 **ORDER**

2 It is SO ORDERED this 6th day of December, 2021.

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6 RICARDO S. MARTINEZ
7 CHIEF UNITED STATES DISTRICT JUDGE

8 Presented by:

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