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CAUSE NO. 2008-24181

VIRGIE ARTHUR ,

PLAINTIFF,

v.

HOWARD K. STERN, BONNIE STERN,
LYNDAL HARRINGTON, ART HARRIS,
NELDA TURNER, TERESA STEPHENS,
LARRY BIRKHEAD, HARVEY LEVIN, and
TMZ PRODUCTIONS, INC.,

DEFENDANTS.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

280th JUDICIAL DISTRICT

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**ORDER COMPELLING PRODUCTION AND
APPOINTING INDEPENDENT COMPUTER FORENSIC EXAMINER**

On December 11, 2008, this Court heard Plaintiff's Motion to Compel Responses to Requests for Production from Defendants BONNIE STERN, ART HARRIS, AND LYNDAL HARRINGTON and determined that the motion should be GRANTED IN PART and DENIED IN PART. It is therefore

ORDERED, ADJUDGED and DECREED that:

(1) Defendants BONNIE STERN, ART HARRIS, AND LYNDAL HARRINGTON shall produce the documents requested by Plaintiff in her Requests for Production Nos. 1 and 3 for the period September 20, 2006 through March 14, 2008.

(2) At the present time, Defendants BONNIE STERN, ART HARRIS, AND LYNDAL HARRINGTON are not compelled to produce the documents requested by Plaintiff in her Request for Production No. 2.

(3) To facilitate production of these documents, the Court hereby appoints Craig Ball, of Austin Texas, as a Special Master, under the terms and conditions contained in

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the Consulting Agreement attached to this Order and incorporated herein as if fully set forth in this Order, to conduct an independent forensic examination of the relevant computer hard drives, external hard drives, jump drives, and other such repositories of electronic communications in the possession or control of Defendants BONNIE STERN, ART HARRIS, AND LYNDAL HARRINGTON, for the purpose of locating documents responsive to Plaintiff's Request for Production. The Special Master shall have discretion to employ or to modify search terms, and he is specifically instructed to:

- a. exclude from production email communications between Stern family members that are of a purely personal nature;
- b. exclude from production any files or communications relating solely to Ms. Stern's accounting business, or other unrelated businesses of Ms. Stern;
- c. capture electronic communications, including but not limited to e-mails, to or from DEFENDANT HOWARD K. STERN'S attorneys, which consist of the law firm of Bryan Cave/Powell Goldstein and its employees, former employees and partners, including but not limited to L. Lin Wood, Nicole J. Wade, John C. Patton Luke Lantta, Ben Erwin, and B. Lyle, and the Law Offices of Eric Sauerberg, and its employees and partners including but not limited to M. Krista Barth, and segregate them in order for the law firm to review and assert any claim of privilege prior to production;
- d. capture all remaining electronic communications, including but not limited to emails to or from the persons, entities and email addresses listed in parts 1 and 3 of Plaintiff's Requests for Production, and submit them to Defendants BONNIE STERN, ART HARRIS, AND LYNDAL HARRINGTON for privilege review prior to production.

(4) Within 14 days after receipt of the captured documents from Special Master, the law firm of Bryan Cave/Powell Goldstein, and Defendants BONNIE STERN, ART HARRIS, AND LYNDAL HARRINGTON shall produce a privilege log and submit it, along with the captured documents, to the Court for in camera inspection.

(5) To facilitate the work of the Special Master, this Court ORDERS Defendants BONNIE STERN, ART HARRIS, AND LYNDAL HARRINGTON, at their own expense, TO CONTACT THE SPECIAL MASTER AND TO DELIVER TO HIM THE RELEVANT MEDIA within 10 days of the signing of this order, under terms to be specified by him;

(6) Other than as stated in part (5) above, the costs of the Special Master shall be carried by the Plaintiff, until such time as the Court may determine otherwise.

Signed this 27th day of January, 2009.


JUDGE TONY LINDSAY

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FILED

Loren Jackson
District Clerk

JAN 20 2009

Time _____
Harris County, Texas

By _____
Deputy

Consulting Agreement

This Consulting Agreement (this "Agreement"), effective December 18, 2008, is entered into by and between The O'Quinn Law Firm ("Client") as counsel for Virgie Arthur, and Craig D. Ball, P.C., a Texas Professional Corporation ("Ball").

Recitals

Ball, whose principal is a computer forensic examiner as well as an attorney licensed in Texas and admitted to practice before all Texas courts, has expertise in the areas of computer forensics and electronic discovery.

Client desires to engage Ball as a court-appointed neutral computer forensics examiner in Cause No. 2008-24181 in the 280th Judicial District Court of Harris County, Texas ("the Court") on the terms and conditions set forth herein.

In consideration of the foregoing and of the mutual promises set forth herein, and intending to be legally bound, the parties hereto agree as follows:

Engagement

Client hereby engages Ball to render the services described in Schedule A hereto.

Ball hereby accepts the engagement to provide the services described on the terms and conditions set forth herein.

Duties

Ball shall serve as a computer forensic examiner as set forth in Exhibit A hereto. Ball will perform such services under the general direction of the Court, but Ball determines the manner and means by which the services are accomplished consistent with the Court's directives. Ball agrees to perform all duties to the best of his professional ability. Subject to the other provisions of this agreement and except as required by law, Ball agrees to take commercially reasonable steps to protect from disclosure to non-parties confidential and proprietary information obtained in connection with this matter.

Compensation

Consulting Fees. Client agrees to pay Ball and Ball agrees to accept for Ball's services under this Agreement consulting fees as set forth in Schedule A. Payment of consulting fees must be made within the number of days after receipt of Ball's invoice as set forth in Schedule A. Billable hours will include time spent in transit for Client, the Court or otherwise in connection with this engagement, provided however that such travel time will be billed at one-half (50%) of the rate set out in Schedule A unless substantive work, research or discussions in support of the engagement are performed while traveling, in which case such activities will be billed at the full rates set out in Schedule A.

Notwithstanding any other provision herein, in the event Ball is called to testify in connection with any matters pertaining to this engagement or services performed hereunder, Ball's time spent in transit to and from, preparation for, attendance upon and giving of such testimony shall constitute consulting services for Client pursuant to this agreement and, Client shall compensate Ball for such time and associated expenses according to Schedule A hereto. As used in this paragraph, "called to testify"

includes, not by way of limitation, testimony in court, grand jury or congressional testimony, deposition, testimony, responding to or resisting interrogatories, responding to or resisting requests for production or requests for admission, responding to or resisting other forms of written discovery, production or appearance pursuant to subpoena, and testimony by affidavit, attestation and/or sworn statement.

Third Parties. In the event a third party (e.g., the person or entity Client represents in this matter) shall timely pay or reimburse Ball for any of the activities described in this paragraph for which Client is obligated to pay or reimburse Ball, Client shall be credited with such payments actually received by Ball from the third party, up to the amount of Client's obligation hereunder.

If Client causes a third party to pay Ball on its behalf, Ball will accept timely payment from such third party in place of a direct payment; provided, however, that Client remains solely responsible for paying Ball all fees and expenses due under this Agreement in a timely manner and Ball shall not, in any event, be obligated to recover any outstanding fees or expenses from third parties.

Legal Relationship. Ball is an independent contractor who will serve as the duly-appointed neutral agent of the Court and is not an employee or agent of Client. Ball does not serve as legal counsel to those Client serves. Ball shall be entitled to no benefits or compensation from Client except as set forth in this Agreement or by written amendment hereto signed by the parties. **This Agreement does not confer upon Ball a share or interest in any attorney's fee recovered by Client or its members. The obligation to compensate and reimburse Ball timely and fully under this Agreement is not contingent upon the outcome of any claim or action, upon collection of monies from third parties or upon the opinions or testimony that Ball may offer.**

Expenses. Client agrees to reimburse Ball all costs and expenses incurred in performing duties hereunder, including (not by way of limitation) for the cost of travel and lodging, storage media and for tools, applications or services specifically required by the engagement. Such reimbursement shall be made within twenty-one (21) days of submission of a request for reimbursement. Ball agrees to provide documentation of such costs and expenses upon request.

Confidentiality and Privilege Respecting Contraband Data

Ball agrees to take commercially reasonable steps to protect the confidentiality of information in or on electronic data and media made available or furnished to him for examination. Client agrees that if, during the course of this engagement, Ball shall find within any electronic data or media evidence of child exploitation (e.g., child pornography) or of a credible threat of physical harm to any person, Ball shall be entitled to immediately bring such matters to the attention of federal or state law enforcement authorities and that no assertion of privilege, confidentiality or breach of contract will be raised as a bar to such action.

Warranty of Lawful Access

Client warrants that any media tendered or made available to Ball for examination or duplication and any access granted to any information, system or network was obtained lawfully, in full compliance with all applicable statutes and regulations or orders or policies of any court or agency of competent jurisdiction, and with due regard for and deference to the property or privacy rights of third parties.

Client agrees to indemnify and hold Ball harmless from any claim or suit alleging unauthorized or unlawful access to any information, media, system or network, including all damages, expenses, liability, fines and attorney fees.

Term

Upon execution and tender of the specified engagement fee, this Agreement commences on the date first written above and, unless modified by the mutual written agreement of the parties shall continue until the earlier of the End Date set out in Exhibit A or, if no End Date is specified, for six months from the effective date of this Agreement. Either Client or Ball may terminate this Agreement upon 10 days written notice to the other. Upon termination of this agreement, Ball shall be entitled to payments for periods that occurred prior to the date notice of termination is received and for which Ball has not been paid, as well as for all time and expenses when "called to testify" as hereinbefore described.

Consultant's Business Activities

This engagement shall not in any manner limit or restrict Ball's participation in consulting, teaching, writing, lecturing, public speaking or continuing legal education activities. Subject to such other personal and professional commitments as Ball in his sole discretion undertakes to complete, Ball shall devote such time, attention and energy to this engagement as requested by the Court, and in any event no less than the amount of time specified in Exhibit A hereto.

Attorney's Fees

Should either party hereto, or any heir, member, personal representative, successor or assign of either party hereto, resort to litigation to enforce this Agreement, the party or parties prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorneys' fees and costs in such litigation from the party or parties against whom enforcement was sought.

Entire Agreement

This Agreement contains the entire understanding and agreement between the parties hereto with respect to its subject matter and supersedes any prior or contemporaneous written or oral agreements, representations or warranties between them respecting the subject matter hereof.

Amendment

This Agreement may be amended only by a writing signed by Craig D. Ball and by a duly authorized agent or representative of Client.

Governing Law

This Agreement shall be construed in accordance with the law of the State of Texas, which law shall govern actions arising hereunder. Any dispute arising hereunder shall be brought and all parties agree to submit to personal jurisdiction in a court of competent jurisdiction in Travis County, Texas.

AGREED:

The O'Quinn Law Firm

Craig D. Ball, P.C.

By: Chris [Signature] 12-22-08

By: [Signature]
Craig Ball, President

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Schedule A to Consulting Agreement

Client: The O'Quinn Law Firm (attorney Neil McCabe)

Matter: Virgie Arthur v. Howard K. Stern, Bonnie Stern, Lyndal Harrington, Art Harris, Nelda Turner, Teresa Stephens, Larry Birkhead, Harvey Levin and TMZ Productions, Inc.

1. Name of Consultant: **Craig D. Ball, P.C.**
2. Address of Consultant for notice: **3723 Lost Creek Blvd., Austin, Texas 78735**
3. Term of Consulting Period: **Start Date: December 18, 2008**
End Date: June 18, 2009
4. Minimum number of hours to be performed during consulting period: **twenty (20)**
5. Duties of Consultant: **Acquire and examine certain electronic media as Court-appointed neutral examiner and report to parties and Court consistent with the Court's direction.**
6. Consulting Fee for Services Pursuant to this Agreement: **Craig D. Ball, P.C.: \$500.00/hour**
7. **Services subcontracted by Consultant are billed at the rate of 120% of the actual cost of such services; however, all subcontracted services subject to markup must be expressly approved in advance by the Court or Client. The cost of archival, working and production media in this engagement will be billed at \$1.00/gigabyte (or any part thereof) of media capacity, unless the actual cost of same exceeds \$1.00/gigabyte.**
8. **Billing and Collection:**
Consulting Fees for work performed in a month is customarily billed by e-mail on or after the last day of the month, and payment of the Consulting Fees shall be made within 21 days after the receipt of Consultant's invoice. Accounts overdue thirty days or more are charged an additional service charge of 1.5% of the unpaid balance per month. The costs of collection, including any attorney's fees and expenses, is added to the invoice principal amount and is subject to the monthly service charge.
9. **Engagement Fee:**
Consultant requires a ten thousand dollar (\$10,000.00) non-refundable engagement fee be tendered with Client's execution of the Consulting Agreement. The engagement fee is credited against sums due and owing for consulting fees under the agreement and further sums may be required as retainers when the engagement fee credit is exhausted. At such time, Consultant will address the status of work completed and anticipated scope of further work jointly with all counsel before proceeding. (Consultant's T.I.N.: 76-0345998).