

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
No. 10 CVS 8327

OUT OF THE BOX DEVELOPERS, LLC )  
d/b/a OTB CONSULTING, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
LOGICBIT, CORP., FRANCISCO A. RIVERA, )  
and THE DOAN LAW FIRM, LLP, )  
 )  
Defendants. )

**AFFIDAVIT OF  
JONATHAN D. SASSER**

Jonathan D. Sasser, being first duly sworn, deposes and says:

1. I am a partner at Ellis & Winters LLP, counsel for Plaintiff, Out of the Box Developers, LLC. This affidavit is based on my personal knowledge except where otherwise indicated.
2. On June 5, 2013, this Court concluded that “Plaintiff is entitled to be reimbursed its reasonable costs and expenses associated with the various motions to compel that have now been required to have Defendants comply with their discovery obligations.” (Order ¶ 44).
3. This Court then ordered that, on or before June 12, 2013, “Plaintiff shall file an affidavit providing supporting documentation for its claimed fees and expenses incurred in connection with the various motions to compel.” (Order ¶ 46(3)(e)).
4. Plaintiff was required to file three motions to compel on July 12, 2012, November 20, 2012, and March 27, 2013.
5. Plaintiff was also required to file a Motion for Contempt and Sanctions on April 22, 2013.

6. Each of the four referenced motions required Plaintiff to research and draft substantive supporting briefs appending numerous exhibits. Plaintiff was also required to file three reply briefs as well as to address a motion to strike Plaintiff's reply brief and address a motion to file a belated affidavit, for a total of nine memoranda of law. Plaintiff also filed several affidavits.

7. Plaintiff was also required to prepare for and participate in the sanctions hearing conducted by this Court on May 1, 2013.

8. Following the hearing, Plaintiff was required to respond to additional related submissions by the Defendants, namely two supplemental affidavits, one filed out-of-time upon Defendants' motion.

9. Plaintiff's counsel has maintained detailed records of all fees and expenses incurred in connection with its representation of Plaintiff.

10. I have endeavored to segregate and compile Plaintiff's attorneys' fees associated with the three motions to compel and the motion for sanctions. I have erred on the side of exclusion in eliminating time associated with other tasks on days when work was performed on the discovery motions. I have also excluded the negotiations and "meet and confer" discussions leading up to the first motion to compel.

11. Although these matters were discussed in several hearings, I have excluded all hearings but the May 1, 2013 session that addressed solely the issues covered by this Court's sanctions order of June 5, 2013. Ms. Marquis Segal's role at the May 1 hearing was to address any questions regarding any legal authorities cited by the parties or raised by the Court. Mr. Meyers was present to address any questions regarding his personal knowledge of certain conversations with opposing counsel. We also brought an Ellis & Winters IT specialist, Chad

Newman, to address any technical questions regarding preservation of databases. We did not charge for Mr. Newman's time, but did include his mileage, as he drove Ms. Marquis Segal, Ms. Kaufman, and me to Greensboro.

12. The hours billed appearing in smaller font on the statements attached hereto in Exhibit 1 reflect instances where the entirety of a billing individual's efforts exerted for Plaintiff that day were devoted to the discovery issues which formed the basis of the motions to compel and ultimately the sanctions motion. These entries appear as they did on the original statement.

13. The numbers in larger font within Exhibit 1 reflect my efforts to reduce the time to reflect elimination of charges for other tasks. These entries are redacted to exclude tasks not directly related to the relevant discovery dispute.

14. Between time spent conferencing with opposing counsel in compliance with Business Court Rule 18.6, the briefing of the four motions, and arguing at the hearing, Plaintiff's counsel conservatively calculates \$63,714.57 in attorneys' fees and in actual and necessary costs incurred. Redacted billing statements showing the fees and costs comprising the \$63,714.57 total are attached as Exhibit 1 hereto.

15. Affiant respectfully submits that every effort has been made to minimize the expenses in this case, and that the attached expenditures were reasonable, appropriate and warranted.

16. Attorneys' fees are based upon customary hourly charges, the reasonableness of which is reaffirmed daily through payments by the firm's clients and by the marketplace.

17. The bulk of the work done on behalf of Plaintiff has been performed by a small number of individuals, some of whom have from time to time devoted a significant amount of their time and efforts to Plaintiff's representation. Duplication of efforts has been avoided.

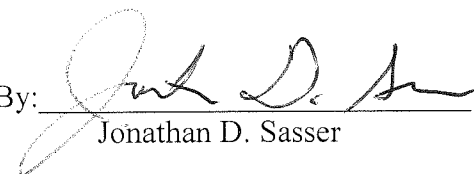
Where appropriate, highly-qualified, experienced paralegals, IT professionals, and litigation support professionals assisted with rendering legal services to Plaintiff in order to minimize the amount of higher-priced attorney time.

- 18. Personnel frequently referenced in Exhibit 1 include:
  - a. Jonathan D. Sasser, Partner, Hourly Rate \$495.00.
  - b. C. Scott Meyers, Associate, Hourly Rate \$260.00.
  - c. Lenor Marquis Segal, Associate, Hourly Rate \$250.00.
  - d. Grant Garber, (Former) Associate, Hourly Rate \$220.00.
  - e. Sarah Hall Kaufman, Legal Assistant, Hourly Rate \$130.00.
  - f. Brian M. Flatley, Legal Assistant, Hourly Rate \$130.00.
  - g. Curtis Haynie, Legal Assistant, Hourly Rate \$85.00.

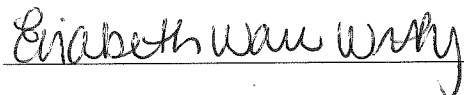
19. Several of these rates quoted above are lower than our standard rates. For example, the standard rates for attorneys Sasser, Meyers, and Marquis Segal are \$565, \$285, and \$260, respectively.

20. In sum, affiant respectfully submits that Plaintiff has been represented in an effective and efficient manner, that the fees and expenses incurred were reasonable, necessary, and justified, and that Plaintiff is entitled to reimbursement in full.

Furthermore the affiant saith not.

By:   
Jonathan D. Sasser

Sworn to and subscribed before me  
this 12 day of June, 2013.



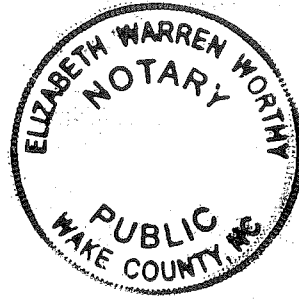
Notary Public Signature

Elizabeth Warren Worth

Notary Public Name

My Commission Expires:

10/19/2016



### CERTIFICATE OF SERVICE

This is to certify that on this 12th day of June, 2013, a copy of the foregoing was electronically filed with the North Carolina Business Court using the Court's electronic filing system, which under Business Court Rule 6.1, will send notification of such filing to the following counsel of record:

<p>Jeffrey Geiger Sands Anderson PC P.O. Box 1998 Richmond, Virginia 23218-1998 Email: <a href="mailto:jgeiger@sandsanderson.com">jgeiger@sandsanderson.com</a></p> <p>David McKenzie Donna Ray Berkelhammer Sands Anderson PC 4101 Lake Boone Trail, Suite 100 Raleigh, North Carolina 27607 Email: <a href="mailto:dmckenzie@sandsanderson.com">dmckenzie@sandsanderson.com</a> <a href="mailto:dchmura@sandsanderson.com">dchmura@sandsanderson.com</a></p>	
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/s/ Jonathan D. Sasser

Jonathan D. Sasser