

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR BREVARD COUNTY, FLORIDA

CASE NO.: 05-2013-CA-033457

SCOTT ELLIS, in his official capacity as
Brevard County Clerk of the Circuit Court,

Plaintiff,

vs.

BLUEGEM, LLC, a Florida limited liability
company,

Defendant.

NOTICE OF SERVICE OF FIRST INTERROGATORIES TO DEFENDANT

Plaintiff, through undersigned counsel, hereby give notice of the service of its First Interrogatories to Defendant, BLUEGEM, LLC, to be answered in writing, under oath, within thirty (30) days as provided by the applicable rules of court.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-Service to Michael Gay, Esq., Foley & Lardner LLP, Attorneys for Defendant/Counter-Plaintiff: mgay@foley.com and rightmyer@foley.com this 28th day of August, 2013.

GRAYROBINSON, P.A.
Attorneys for Plaintiff, SCOTT ELLIS


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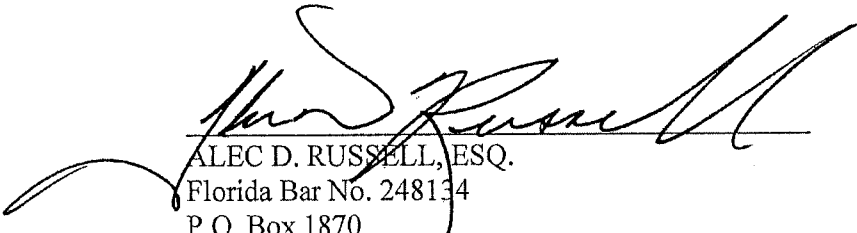
Defendant.

PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT

Plaintiff SCOTT ELLIS, in his official capacity as Brevard County Clerk of the Circuit Court ("Plaintiff"), through undersigned counsel, hereby propounds the following interrogatories on the Defendant, BLUEGEM, LLC ("Defendant"), to be answered in writing, under oath, within thirty (30) days as provided by the applicable rules of court.

DATED this 24 day of August, 2013.

GRAYROBINSON, P.A.
Attorneys for Plaintiff,
SCOTT ELLIS


ALEC D. RUSSELL, ESQ.

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DEFINITIONS

The following terms have the meaning hereafter set forth in these Interrogatories:

1. The term "document" means any writing of any type, kind or nature, whether an original, facsimile, electronic document, extract of a copy, carbon copy, photostatic or photographic copy, or other copy, including, by way of example but not by way of limitation: ledgers, books, diaries, records, letters, papers, correspondence, messages, memoranda, including any memoranda or transcripts of oral communications, pamphlets, lists, reports, contracts, agreements, notes, statements, bills, checks, claims, telephone logs, correspondence logs, accounts, books of account, studies, working papers, photographs, computer programs, computer printouts, commentaries, files, file memoranda, notebooks, forms, certificates, notices, telegrams, telexes, emails, text messages, notations, minutes, resolutions, motions, contracts, summaries, business records of any type or kind (whether on microfilm or stored in computer data banks or tapes), or other written, recorded, typewritten or imprinted item of any type of kind, having corporeal or electronic existence, and in any language, including mathematical symbols, in the possession, custody or control of the Defendant.

2. The term "oral communication" means any form of communication other than a document.

3. The terms "identify" or "identity" mean:

- a. When used in reference to an individual person: To state the full name, home address and telephone number, business address and telephone number.
- b. When used in reference to a person, other than an individual person: To state the full name, address of its principal office, year of incorporation or formation, where documents as to incorporation or formation are on public file, any prior names, and any present or past assumed names.
- c. When used in reference to documents: To state the date, number of pages, general type of document and substance of same, the identity of the author and the person who caused the document to be prepared, the identity of the person to whom it was addressed or directed, or otherwise how it was directed, its present location, and the name of the person who is its present custodian. If any such document was, but no longer is, in possession of the Plaintiff, or subject to the custody or control of the Plaintiff, state with whom and where it is at the present time. If any such document has been destroyed, state when and why.

- d. When used in reference to oral communication: To state the date of communication; identity of the person or persons initiating the communication; all persons involved in the communication; where the communication took place; and a summary of the content of the oral communication.
4. The term "specify" as used hereafter shall mean:
- a. To describe fully and in detail by reference to underlying facts rather than by reference to ultimate facts or conclusions of fact or laws; and
 - b. Where applicable to particularize as to:
 - (1) Time
 - (2) Place
 - (3) Manner; and
 - c. Set forth all relevant facts necessary to complete understanding of the act, process, event or thing in question.
5. The term "action" shall mean the above-styled action bearing Case No. 05-2013-CA-033457-XXXX-XX.
6. The term "Complaint" as used hereafter shall mean, unless otherwise specifically noted, the Complaint filed by the Plaintiff in the above-styled action.
7. The term "Answer" as used hereafter shall mean, unless otherwise specifically noted, the Answer and Affirmative Defenses filed by the Defendant in the above-styled action.
8. The term "Defendant" as used hereafter shall mean BLUEGEM, LLC together with all its employees, agents and/or anyone acting on its behalf.
9. The term "Affiliates" as used hereafter shall mean any of Defendant, BLUEGEM, LLC's affiliated organizations, subsidiaries and/or other organizations of which Rose Harr is a corporate officer, shareholder, member, and/or manager including without limitation RoseWare, LLC, BlueWare, LLC, BlueWare Cloud, LLC, BlueZen, LLC, BlueWare Land, LLC, BlueWare DOD, LLC, BlueScan, LLC, BlueWare Eire, LLC, BlueWare, Inc., and BlueWare International, Inc., together with all employees, agents and/or anyone acting on behalf of one or more of these organizations.
10. The term "Plaintiff" as used hereafter shall mean SCOTT ELLIS in his official capacity as Brevard County Clerk of the Circuit Court.

11. The term "Clerk's Office" shall mean the Brevard County Clerk of the Circuit Court as a corporate body together with all its employees, agents and/or anyone acting on its behalf.

12. The term "Scanning Contract" shall mean the written contract for scanning services executed by BlueGEM and the Clerk's Office and attached to the Complaint as Exhibit "M."

13. "Person" or "persons" includes any natural person, proprietorship or partnership and any organization, including any private, public or municipal corporation, and federal, state or local government entity.

14. "Communication" means any verbal or written contact with another person, including, but not limited to, any conversation, correspondence, interview or interrogation.

INSTRUCTIONS

1. These Interrogatories cover all information and documents in the possession, custody and control of the Defendant, its predecessors or successors in interest, its former and present agents, employees, servants or representatives, and unless privileged, their attorneys. Reference to "you" or "your" includes a reference to each person and entity referenced in this paragraph. These Interrogatories shall be read together with the definitions set forth above.

2. Defendant shall provide the answers to these Interrogatories within thirty (30) days after service hereof, unless an extension of time is requested and granted, or otherwise in accordance with any applicable order of the Court.

3. Defendant's answers shall reveal all information and documents requested. If any answer is withheld under a claim of privilege, Defendant shall identify the subject matter as to which the privilege is claimed, the privilege being asserted, and the basis therefore.

4. Where an Interrogatory is propounded in separate parts, each part is to be answered separately. If an Interrogatory is objected to in part, those parts of the Interrogatory not objected to must be answered.

5. If a document which would have been responsive no longer exists, the response must so indicate. If that documents was destroyed by you, state when it was destroyed, who destroyed it, and whether it was destroyed pursuant to any practice of yours to destroy documents.

6. Identify each document relied upon in any answer to an Interrogatory completely and state:

- a. The responsive information currently available;
- b. The responsive information currently unavailable which would allow you to answer the Interrogatory completely; and
- c. Whether and when you anticipate receiving the information currently unavailable.

INTERROGATORIES TO DEFENDANT

1. Please state the name and address of the person answering these Interrogatories and the person's official position with or relationship to the Defendant.

ANSWER:

2. Please list any and all email addresses of Defendant and/or its Affiliates, including without limitation personal email addresses, that were used to send or receive email correspondence with the Clerk's Office between January 1, 2010 and the date of your Answers to these Interrogatories.

ANSWER:

3. From 2007 through 2012, please describe each and every job undertaken by Defendant and/or for which Defendant bid or otherwise applied for that involved scanning at least 10,000 documents for digital imaging. For each job, please include a detailed description of the work involved, the number of documents to be scanned, the number of employees Defendant employed at that time, the number of employees Defendant used or intended to use to complete each job, the length of time it took Defendant to complete each job, the equipment Defendant used to complete each job including identifying who owned any such equipment, the price for each job (meaning the price proposed by Defendant for job proposals that were not accepted), and the name, address, telephone number and contact person for the customer or potential customer of each job.

ANSWER:

4. Please describe the first meeting between Defendant and/or its Affiliates and the Clerk's Office, including the date of the meeting, persons present, and all subject matter discussed, including without limitation whether an Invitation to Negotiate or other public bidding process was required or would be undertaken and any discussion of a potential price for scanning services.

ANSWER:

5. Please describe *in detail* the relationship, if any, between the Clerk's Office and Defendant and/or its Affiliates prior to the first meeting identified in paragraph 4, above, including without limitation the relationship between former Clerk Mitch Needelman and Defendant's employee Matt Dupree?

ANSWER:

6. Please describe any and all discussions between the Clerk's Office and Defendant and/or its Affiliates regarding scanning services that occurred before March 20, 2012 including what was said and by whom.

ANSWER:

7. Please describe the purpose of the \$10,000 payment from the Clerk's Office to Defendant reflected in the March 20, 2012 invoice attached to the Complaint as Exhibit "A," and identify any and all documents, communications and/or other writings that corroborate the stated purpose of this payment.

ANSWER:

8. Please describe *in detail* the services, if any, that Defendant performed and/or what information Defendant provided to the Clerk's Office in exchange for the payment identified in paragraph 7, above.

ANSWER:

9. Did Defendant and/or its Affiliates communicate with the Clerk's Office regarding the payment identified in paragraph 7, above, including without limitation communicating about the services to be performed by Defendant in exchange for this payment? If so, please specifically identify the date of each such communication, the parties communicating, and what was said by whom.

ANSWER:

10. Please explain how Defendant calculated or otherwise arrived at the \$10,000 figure for the services and/or information, if any, identified in paragraph 7, above, and state whether any such services or information were reflected in the Scanning Contract.

ANSWER:

11. Did Defendant and/or any of its Affiliates participate in any way in the preparation of the Invitation to Negotiate that was issued by the Clerk's Office on May 3, 2012? If so, please describe any and all such participation including who was involved, when it occurred, what was done by whom, and the name, address, telephone number and employer of each such person.

ANSWER:

12. Was the Invitation to Negotiate that was issued by the Clerk's Office on May 3, 2012 modeled after or otherwise based in any way upon any other Invitation to Negotiate, whether issued or draft? If so, please identify any and all such Invitations to Negotiate including without limitation identifying whether each was actually issued by a public body or was solely in draft form, who prepared any such Invitation to Negotiate, how Defendant and/or any of its Affiliates came into possession of such documents and why each was selected for use with the Clerk's Office.

ANSWER:

13. Did Defendant provide any example Invitations to Negotiate, whether draft or otherwise, to the Clerk's Office in 2012? If so, please identify any and all such Invitations to Negotiate including without limitation identifying whether each was actually issued by a public body or was solely in draft form, who prepared any such Invitation to Negotiate, how Defendant and/or any of its Affiliates came into possession of such documents and why each was selected for use with the Clerk's Office.

ANSWER:

14. As it relates to scanning services, did Defendant and/or any of its Affiliates send any proposed, draft or sample contracts to the Clerk's Office prior to the Invitation to Negotiate that was issued by the Clerk's Office on May 3, 2012 being made publicly available? If so, please describe any such documents, state when each was provided to the Clerk's Office and identify who sent it to the Clerk's Office and to whom it was sent.

ANSWER:

15. Please describe how Defendant arrived at the \$8.64 million contract price for scanning services to the Clerk's Office and describe any and all correspondence, communications or other documents that reflect any process, discussion and/or calculation that led Defendant to arrive at this price.

ANSWER:

16. Was Defendant and/or any of its Affiliates involved in any way in the Clerk's Office's responses to and/or evaluations of inquiries from potential bidders regarding the Invitation to Negotiate issued by the Clerk's Office on May 3, 2012? If so, please identify who was involved and describe *in detail* any such involvement including without limitation what occurred and the date(s) of any such occurrence(s).

ANSWER:

17. Please describe the computer hardware/software known as "Digital Pen," identify any individuals or organizations, other than Defendant and/or its Affiliates, that use Digital Pen in any fashion, and identify how long each individual or organization has used Digital Pen, the circumstances of such use (license from Defendant, purchase from Defendant, etc.), and the sums Defendant and/or any of its Affiliates received for such use by these individuals or organizations.

ANSWER:

18. Was there any communication between the Clerk's Office and Defendant and/or any of its Affiliates during the selection process for the Invitation to Negotiate issued by the Clerk's Office on May 3, 2012? If so, please state when any such communications occurred, identify the participants in any such communications and describe *in detail* what was discussed and the outcome of any such discussions.

ANSWER:

19. Did Defendant and/or any of its Affiliates communicate with the Clerk's Office regarding changes to the scanning contract Defendant attached to its response to the Invitation to Negotiate issued by the Clerk's Office on May 3, 2012? If so, please state when any such communications occurred, identify the participants in any such communications and describe *in detail* what was discussed and the outcome of any such discussions.

ANSWER:

20. What was the purpose of the invoices sent to the Clerk's Office by Defendant dated May 23, 2012 and attached to the Complaint as Composite Exhibit "J?" Please describe *in detail* any and all work performed or services rendered by Defendant for the benefit of the Clerk's Office that was reflected by these invoices.

ANSWER:

21. Did Defendant and/or any of its Affiliates communicate with the Clerk's Office regarding the invoices identified in paragraph 20, above, or payment therefore? If so, please state when any such communications occurred, identify the participants in any such communications and describe *in detail* what was discussed and the outcome of any such discussions.

ANSWER:

22. Was the Clerk's Office credited by Defendant for a \$10,000 payment under the Scanning Contract prior to receiving the amounts reflected in the invoices listed in paragraph 20, above? If so, please explain why Defendant accepted payment from the Clerk's Office before the Scanning Contract was executed.

ANSWER:

23. What was the purpose of the invoices sent to the Clerk's Office by Defendant dated June 29, 2012 and attached to the Complaint as Composite Exhibit "N?" Please describe *in detail* any and all work performed or services rendered by Defendant for the benefit of the Clerk's Office that was reflected by these invoices.

ANSWER:

24. Did Defendant and/or any of its Affiliates communicate with the Clerk's Office regarding the invoices identified in paragraph 23, above, or payment therefore? If so, please state when any such communications occurred, identify the participants in any such communications and describe *in detail* what was discussed and the outcome of any such discussions.

ANSWER:

25. Please describe in detail any and all work performed and/or services rendered by Defendant and/or any of its Affiliates pursuant to the Scanning Contract, including providing the date(s) any and all such work and/or services were rendered.

ANSWER:

26. Please identify all sums received by Defendant and/or any of its Affiliates from the Clerk's Office as payment or other remuneration under the Scanning Contract. For each sum, please identify the date of any such payment, the specific person at the Clerk's Office providing such payment and the method of payment.

ANSWER:

27. According to the Complaint, on October 22, 2012, former Clerk Mitch Needelman and Defendant executed an Amendment to the Scanning Contract (the "Amendment"), a copy of which is attached to the Complaint as Exhibit "R." Please explain in detail the purpose of the Amendment and state whether Defendant was aware that former Clerk Mitch Needelman had already lost his bid for re-election for Brevard County Clerk of the Circuit Court at the time Defendant executed the Amendment.

ANSWER:

28. Was Defendant and/or any of its Affiliates involved in any way in proposing, drafting and/or revising the Amendment prior to its execution? If so, please identify who was involved and describe each person's involvement, including describing in detail any discussions that such person may have had regarding the Amendment and the date(s) of such discussion(s).

ANSWER:

29. Did Defendant and/or any of its Affiliates communicate with Hewlett Packard regarding payment by the Clerk's Office and/or on its behalf for the sums due under the Scanning Contract? If so, please state when any such communications occurred, identify the participants in any such communications and describe *in detail* what was discussed and the outcome of any such discussions.

ANSWER:

I HAVE READ THE FOREGOING ANSWERS TO INTERROGATORIES AND DO
SWEAR THAT THEY ARE TRUE AND CORRECT.

By: _____
(Signature)

As its: _____
(Title)

(Print Name)

STATE OF _____)
)ss:
COUNTY OF _____)

BEFORE ME the undersigned authority, the foregoing instrument was acknowledged this _____ day of _____, 20____ by _____, who [] is personally known to me or [] has produced _____ as identification and states that he/she has read the foregoing Answers to Interrogatories and that same are true and correct to the best of his/her knowledge and belief.

My commission expires:

Notary Public Signature

Print Notary Public Name _____