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8 Advising Bankruptcy Attorneys for *Amicus curiae*  
9 UNIVERSITY OF MARYLAND

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 BROBECK, PHLEGER & HARRISON LLP,  
14 Debtor,

Case No. 03-32715-DM7

Chapter Number: 7

15 **DECLARATION OF WILLIAM P.  
16 GALLIVAN IN SUPPORT OF  
17 TRUSTEE'S MOTION REGARDING  
18 TURNOVER AND ABANDONMENT OF  
19 DIGITAL RECORDS**

20 Date: July 18, 2006  
21 Dept: Courtroom 22  
22 Place: 235 Pine Street  
23 San Francisco, California  
24 Judge: Hon. Dennis Montali

25 I, WILLIAM P. GALLIVAN, declare as follows:

26 Except as otherwise noted, I make this declaration based upon my own personal  
27 knowledge. If called as a witness, I could and would competently testify hereto.

28 1. I am the general manager of Gallivan, Gallivan & O'Melia ("GGO"). GGO  
specializes in computer forensics, electronic evidence production and digital discovery services.  
Our senior team is comprised of attorneys, e-discovery consultants, former military security  
officers, software design architects and computer security experts.

1           2.       After Brobeck, Phleger & Harrison LLP (“Brobeck”) announced its intention to  
2 liquidate in February 2003, GGO entered into a formal agreement with the Liquidation  
3 Committee to make and preserve a digital backup of the law firm’s network. This agreement was  
4 meant to provide future access to client files by clients and former Brobeck partners. After the  
5 bankruptcy case was filed, the Trustee of Brobeck’s estate (“Estate”) moved to assume this  
6 agreement with GGO and on August 24, 2004, the Court entered an Order Authorizing  
7 Assumption of Executory Contracts.

8           3.       Recently, GGO agreed to provide ongoing data access to the Trustee after  
9 abandonment of the Brobeck digital records (“Digital Records”) by the Estate pursuant to an  
10 agreement in principle between GGO and the Estate (“Access Agreement”). The Access  
11 Agreement provides for two categories of work to be performed by GGO. First, GGO will  
12 undertake data collection from the former Brobeck servers (“Acquisition”). On an ongoing basis  
13 upon requests from the estate, GGO will retrieve and deliver digital files to the estate  
14 (“Retrieval”). It is my understanding that the Trustee is moving for authority to enter into the  
15 Access Agreement. A true and correct copy of the Access Agreement is attached hereto as  
16 **Exhibit A.**

17           4.       All fees related to the Acquisition of the Digital Records will be paid for by the  
18 University of Maryland and GGO, both partners of the Library of Congress in the National  
19 Digital Information Infrastructure and Preservation Program (“NDIIPP”). Acquisition involves  
20 working on-site at the servers’ location to upload the Digital Files from the former Brobeck  
21 servers onto GGO servers using forensically sound methods and tools. It also involves using  
22 customized software to organize, sort, filter and restore the data in a form that facilitates review  
23 and retrieval. GGO estimates that Acquisition will cost \$31,000, which will not be charged to the  
24 Estate.

25           5.       The Access Agreement provides that the Estate will only pay for Retrieval  
26 requests to GGO. The Retrieval Fees are calculated by hourly rates. GGO charges the following  
27 rates: \$250/hour for Executive Consultants and Principals, \$225/hour for Primary Consultants and  
28 \$200/hour for Project Managers and technical support consultants. Any services related to

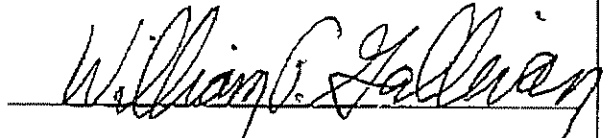
Ropers Majeski Kohn & Bentley  
A Professional Corporation  
Redwood City

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depositions, trial testimony or expert witness services are billed at \$325/hour. Based on my experience, the average standard document request takes 2-3 hours, for an average of \$500 Retrieval fee.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 28<sup>th</sup> day of June 2006 at New York, New York.

  
William P. Gallivan



# **EXHIBIT A**

**GALLIVAN, GALLIVAN & O'MELIA, LLC**

101 Yesler Way, Suite 507  
Seattle, WA 98104-3448

**June 28, 2006**

**Attn: Ronald F. Greenspan – Brobeck Trustee**

**Attn: Bennett J. Murphy**

Hennigan, Bennett and Dorman  
865 South Figuero Street, Suite 2900  
Los Angeles, CA 90017

**Re: Third party custodial management of Brobeck estate documents**

**Dear Mr. Murphy:**

THIS ENGAGEMENT LETTER ( “Agreement”), together with Attachment A and B and any Addenda, made and entered into this 28<sup>th</sup> day of June 2006, by and between Gallivan, Gallivan & O’Melia, LLC, a consulting firm with offices at 101 Yesler Way, Suite 507, Seattle, WA 98104 (hereinafter “**GG&O**”) and the Estate of Brobeck Phlegler and Harrison, (hereinafter “**You**”) constitutes the entire Agreement pursuant to which GG&O will provide computer forensics and electronic evidence services to **You** and your appointed representatives, namely **Hennigan, Bennett & Dorman** (hereinafter “**HBD**”).

**I. Scope of Work**

Under Your direction, GG&O will perform the services for You that are described in Attachments A and B hereto and on any Addendum that may be attached to Attachment A or B from time to time by mutual written agreement of the parties (each an “**Addendum**”), in accordance with the terms and conditions of this Agreement and pursuant to the respective payment terms, delivery timetable, and specifications described in Attachments A and B and in the Addendum(s).

You understand and agree that GG&O will need to perform those procedures that GG&O considers necessary to do the Work. Such procedures will be deemed to be included in the Work.

The parties (i.e., GG&O and You) may alter, change, reduce or add to the Scope of the Work as described in Attachments A and B only by mutual written agreement. Notice to alter, change, reduce or add to the Scope of the Work may be provided by any written form of communication, including email, and will be added as a numbered Addendum to Attachment A or B and thereby incorporated into the Agreement.

**II. Client Service Level Expectations**

GG&O agrees to make a good faith effort to process and deliver documents in native file format for review or production to a third party at Your direction within 2 business days from receipt by a GG&O employee or authorized agent (“**2 day turnaround rule**”). Notice of document release must be conveyed to GG&O by You or HBD via email or other written communication and received by GG&O.

GG&O will be available for bespoke service requests by You or HBD within the United States from Monday through Friday for 15 hours between 8am EST and 8:00pm. PST. Normal availability and response times are as follows:

- **Normal business hours** are 9AM - 5PM: GG&O will acknowledge receipt of **Your** requirements and provide an estimate of time to completion within 1 hour of receipt.
- **Evening hours** are 5PM - 8PM: GG&O will acknowledge receipt of **Your** requirements and provide an estimate of time to completion within 2 hours of receipt.
- **After Hours** are 8PM - 9AM Monday through Friday, all Weekend days and Government Holidays: GG&O will acknowledge receipt of **Your** requirements and provide an estimate of time to completion by 10AM of the next business day.

Any **Expedited Service** request that requires **After Hours** GG&O consulting or GG&O services will be subject to the fee schedule described in Paragraph III of this Engagement letter. Expedited services are defined as services requiring **After Hours** work, work product or delivery.

### **III. GG&O Fee and Payment Schedule**

**You** agree to pay GG&O the fees described in Attachment B, The Statement of Work ("**Fees**"). **You** will pay any and all Fees that are stated in the invoice, typically described as "hourly rates", at the GG&O prevailing rates as of the dates on which the Work generating such Fees is or was performed.

**You** will reimburse GG&O for any reasonable, non-recurring expenses incurred by GG&O in connection with the scope of work listed in Attachment B of this Agreement.

GG&O will not invoice third parties for work performed on behalf of or at the request of **You**, unless specifically agreed in writing, in advance of receipt by **You** of the invoice that contains billing for third party clients. Similarly, GG&O will not suspend collection of fees or alter the fee collection schedule pending outcome of this, or any, litigation. **You** warrant and agree that **You** are solely and exclusively responsible for all Fees under this Agreement, including Attachments and Addendum, and you will not postpone or delay payment of any or all fees due to GG&O while **You** await the outcome of this, or any, litigation.

GG&O will send to **You** monthly invoices for all amounts due under this Agreement. Each invoice will contain summaries of the work performed during the month covered by that invoice, and will list the fees and expense reimbursements due for that period. Payment of each invoice is due and payable within thirty (30) days from receipt, without regard to the current status or outcome of this litigation or any related matter. GG&O requires full payment of any and all amounts owed under this Agreement before it will issue any report or otherwise deliver work product called for in the Statement of Work.

Should payment of Fees to GG&O exceed 90 days from delivery to **You** of an invoice, GG&O reserves the right to stop work until payment in full is received by GG&O. GG&O will resume the work, as described in this Agreement, after receipt of payment in full has been confirmed.

In the event that **You** require services that fall under the category of Expedited Services, the Fees for such after hours requests will be one and one half (1.5) times the usual and customary fee for such work.

#### IV. Terms and Conditions—Entire Agreement

You agree that the following “**Terms and Conditions**” are part of this Agreement and **You** agree to be bound by them. Among other things, the Terms and Conditions limit GG&O’s liability and, as such, provide that **You** will indemnify GG&O against claims brought by any third party, and **You** limit GG&O’s aggregate liability to, whether in contract; tort; or otherwise, to the amount of Fees paid by You to GG&O under this Agreement.

#### V. Conflicts of Interest

Although GG&O is not providing legal advice, from a business standpoint, GG&O intends to make a good faith effort to avoid conflicts of interest (as determined by GG&O in its sole discretion). Accordingly, GG&O has undertaken a reasonable review of its records to determine its professional relationships with the persons and entities **You** have identified as being adverse to **You** regarding the Work. Based on the information **You** have provided to GG&O, GG&O is not aware, at present, of any conflicts of interest or relationships that would preclude GG&O from performing the Work. You will give prompt written notice to GG&O of any additional parties that you learn of later or throughout the course of this matter that GG&O should evaluate for conflicts purposes, and any parties adverse to You regarding any Work set forth in any Schedule, Attachment or Addendum.

#### VI. Warranties

GG&O will provide consulting services consistent with the usual and customary standard of service and/or service level in accordance with those standards that are generally accepted in the marketplace where the services were delivered and/or performed and at the time of performance.

#### VII. Termination

Either party to this Agreement may terminate the Agreement upon sixty (60) days written notice. Upon notice of termination, all outstanding fees and/or expenses are immediately due and payable to GG&O, subject to your receipt of a final invoice. Upon receipt of final payment, GG&O will return to You all data and work product in the custody or control of GG&O. Should GG&O incur any costs in preparing any data for final delivery, a subsequent invoice for such costs will be immediately due and payable.

#### Enforceability

This Agreement, together with Attachment A and any Addendum and Exhibits, represents the entire Agreement between the parties **and supersedes any prior understanding or agreement whether written or oral between the Estate and GG&O respecting the subject matter described herein.** This Agreement may be amended in writing by adding numbered Addenda to Attachment A, provided it has been duly executed and agreed by both parties. It is commonly accepted practice in the industry for an Addendum to take the form of an email exchange between the parties describing the “out of scope” work to be performed, the estimated fees for such request and approval from You, your authorized representative or agent for GG&O to undertake in good faith the additional “out of scope” work requested. Any and all additional “out of scope” work may be requested by You or your agent or authorized representative and will be incorporated to the Agreement as an Addendum to Attachment A, and subject to the Fees as described in the “Fees” section of this Agreement.

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and the respective heirs, personal representatives, successors, and assigns, subject to the limitations contained herein. The unenforceability, invalidity or illegality of any provision of this Agreement shall not render any provision unenforceable, invalid or illegal and shall be subject to reformation to the extent possible to best express the original intent of the parties. The parties’ obligations under this Agreement that by their nature continue beyond termination, cancellation and/or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement.

**Name of Matter**

**Date**

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Very truly yours,

Gallivan, Gallivan & O'Melia, LLC

By: \_\_\_\_\_

William P. Gallivan

Principal

Accepted and agreed to  
on Your behalf:

**Hennigan, Bennett & Dorman for the Brobeck Estate**

By \_\_\_\_\_

Signer's Name \_\_\_\_\_

Title \_\_\_\_\_

Signature Date \_\_\_\_\_



**ATTACHMENT A**

**STATEMENT OF WORK – DATA COLLECTION AND PROCESSING**

**Customer:** The Estate of Brobeck, Phleger & Harrison

**Matter:** Document management and archiving for Brobeck Estate

**(ALL FEES PAID BY THE UNIVERSITY OF MARYLAND AND GG&O)**

**Effective Date:** June 28, 2006

Reviewed and executed by:

**GG&O LLC**

**Hennigan, Bennett & Dorman for Brobeck Estate**

By \_\_\_\_\_

By \_\_\_\_\_

Signer's Name \_\_\_\_\_

Signer's Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Signature Date \_\_\_\_\_

Signature Date \_\_\_\_\_

**A. Introduction:**

GG&O will undertake the data collection and processing work described in this attachment at the direction of You or HBD, but all fees associated with this work will be split equally between the University of Maryland and GG&O. GG&O estimates the cost of data collection and processing to be \$31,000, representing a substantial savings to the Estate of Brobeck, Phleger & Harrison.

**B. Description of the Work:**

GG&O will:

1. Acquire the "Data" onsite using forensically sound methods and tools;
2. Use customized software to analyze, organize, sort, and otherwise preserve the Data in accordance with the rules of evidence;
3. Restore the data in a mutually agreed form and on mutually agreed media; and
4. Index, search, and filter the data on premises for delivery in a form that facilitates review, production and issue coding by attorneys and paralegals.

Specific performance will include:

1. Working on-site at trustee's location to upload all Brobeck server data to Gallivan servers (all other work will be performed at GG&O San Francisco or Seattle offices and/or at Brobeck sites in California);
2. Hashing all Brobeck server data to compare with pre-existing snapshot data;
3. Loading relevant databases onto SQL server for access by Query Analyzer;
4. Making I-Manage documents available for review to authorized archivists through GG&O's Proprietary Veneer® software; and
5. Making data available to the Brobeck estate via this contract.

At your request GG&O will provide a written report regarding GG&O efforts concerning the data.

Timeline for completion is five (5) business days for Acquisition + two (2) business week(s) of work after all acquired data has been assembled for processing, duping, indexing, and hosting.

### **C. Conditions of the Work:**

To facilitate completion of the Work, You or HBD will provide GG&O with access to computers, hard drives, restored backup tapes, email, and certain data (the "Data") in the form and manner and timetable as reasonably requested by GG&O.

### **E. Fees paid by the University of Maryland and GG&O:**

All Fees under this Attachment A will be split equally between the University of Maryland, an interested third party with funds from the Library of Congress, and GG&O.

#### 6. Acquisition (\$14,000)

- a. GG&O will average 10 drives, servers or shares per day (with 2 persons per site) at the Brobeck data site in Spear Tower, San Francisco, over a period of 2-3 days. We anticipate no more than 600 users or common shares at a price of no more than \$2000/consultant per day. GG&O can collect all data within the next two months, specifically July or August of 2006. Fee estimate is four full person days, or \$8,000.
- b. Target media storage arrays and equipment will be passed through at a fee of about \$6,000.
- c. GG&O will set up the Evidence Log and populate the details of the Acquisition.

#### 7. Evidence Management, Project Management & Equipment Staging (\$2,000)

- a. Fees for creating chain of custody documents, preparing the environment/machine, and managing resources will be about \$2,000.

#### 8. Process Data, Index, De-Dupe and Filter Documents: (\$14,000)

- a. Processing approximately 2,000 Gbs of data, creating a database, filtering and indexing for selective key word search is estimated at or around \$8,000.
- b. Index documents for key word search at or around \$3,000.
- c. Filter and extract duplicate files, provide duplicity reports and "new data" reports at or around \$3,000.

9. Hosting Services: NO MONTHLY CHARGE

- a. GG&O will host the native files within GG&O facilities (specifically, the San Francisco secure lab) for retrieval by GG&O authorized individuals at NO MONTHLY CHARGE.

10. GG&O Veneer Software: ROYALTY FREE LICENSE

- a. GG&O will provide Royalty Free review environments using GG&O Veneer®, Hasher and PDS software in addition to the services described above. After production-coding and issue-coding is complete, GG&O can deliver native files or other print shops for production to the adverse party in whatever order or format is required. Software licenses are royalty free for use on a specific matter for the life of the matter.

11. Total Fees and Fee Cap

- a. Service fee totals within this scope of work are (\$8,000 + \$2,000 + \$14,000 = \$24,000).
- b. Equipment and arrays will total \$6,000.
- c. GG&O will cap fees for equipment and services at \$40,000, within the scope of services defined in this Attachment. Since the University of Maryland and GG&O are dividing the fees equally, this is equivalent to a \$20,000 cap for the University of Maryland.

**F. Assumptions and Estimates:**

1. *Location/Collection:* All data will be collected by GG&O in San Francisco.
  - a. Data Integrity: Data collected by GG&O on-site in the 3<sup>rd</sup> floor of Spear Tower where existing Brobeck estate servers and data stores reside.
  - b. Data Veracity: GG&O will employ or direct industry standard Chain of Custody procedures and processes using forensically sound methods and tools.
  - c. Data hosting location: All Brobeck data, documents and databases will be hosted within the GG&O DWR network and only accessible by GG&O employees.
2. *Number of Data Sets (Most Sensitive):* We assume only one large data transfer to a single 2Tb array with 1.6 GBs of usable space. This transfer may take place over the course of several days.
3. *Number of Mailboxes (Most Sensitive):* Mailboxes will be collected but NOT expanded or processed for individual email review.
4. *Character of Data (Very Sensitive):* No unusual design files, database files or proprietary applications such as CAD applications, Etching controllers, etc., are anticipated in this bid. GG&O can process about 400 extensions automatically; all other special files require special processing and setup for review.
5. *Amount of Total Data (Sensitive):* If more than 1600 Gb must be collected, equipment and transfer media fees will increase.
6. *Database Files (Sensitive):* GG&O ASSUMES THAT ALL DATABASES ARE IN A STANDARD DELIMITED FORMAT AND CAN BE IMPORTED OR OTHERWISE MANIPULATED USING MS SQL SERVER SOFTWARE.

**D. Other Products and Services not included in this Attachment:**

1. *OCR*: If you have image files that must be searched we can OCR the images (after isolating) for less than \$0.01/document for over 50,000 documents.
2. *Conversion of files designated for Production*: GG&O has limited capacity to (1) Convert native files designated for production to image format (Tiff, JPEG or PDF); (2) Endorse converted images with Bates numbers and confidentiality marks in single-page or multi-page format with appropriate load files. If the production is **over 20,000 files or 100,000 pages** GG&O will cap conversion and endorsement fees at \$5,000 or \$0.05/page
3. Conversion and Processing of Attorney mailboxes are not included.

**ATTACHMENT B**

**STATEMENT OF WORK – DOCUMENT RETRIEVAL**

**Customer:** The Estate of Brobeck, Phleger & Harrison

**Matter:** Document management and archiving for Brobeck Estate

**(ALL FEES PAID BY THE ESTATE OF BROBECK, PHLEGER & HARRISON)**

**Effective Date:** June 28, 2006

Reviewed and executed by:

**GG&O LLC**

**Hennigan, Bennett & Dorman for Brobeck Estate**

By \_\_\_\_\_

By \_\_\_\_\_

Signer's Name \_\_\_\_\_

Signer's Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Signature Date \_\_\_\_\_

Signature Date \_\_\_\_\_

**A. Introduction:**

This statement of work provides for ongoing document retrieval at the Estate's expense. We are able to provide these document retrieval services to the Estate for the fees described below because the up-front data collection and processing will have already been completed at the sole expense of the University of Maryland and GGO.

**B. Description of the Work:**

GG&O will deliver document retrieval, document analysis, document production support, consulting and technical support for the Brobeck matter at the direction of HBD.

Notwithstanding Section VII of the Engagement letter, Brobeck Documents will only be released by GG&O:

- **To the Estate:** The Brobeck Trustee (Ronald Greenspan) or any consultant specifically designated by the Trustee.
- **To the Estate's Attorneys:** The Brobeck trustee attorneys of Hennigan, Bennett & Doorman and any attorney designated in email or writing by Bennett J. Murphy.

**C. Fees paid by the Estate of Brobeck, Phleger & Harrison:**

Fees are based on hourly Time and Material (T&M) rates as follows:

- Executive Consultants and Principals: \$250/hour
- Primary Consultants, DWR Consultants and Forensic Consultants: \$225/hour
- Project Managers and technical support consultants: \$200/hour
- Depositions, Trial Testimony or Expert Witness Services: \$325/hour

All fees for simple document retrieval and production will be billed at **\$200/hour** for requests related to the retrieval of documents based on CMIDs, individual Brobeck attorneys, or individual client companies of Brobeck. Based on our experience, **the average standard document request will take 2-3 hours, for an average of \$500, and will be delivered on a DVD to HBD via FEDEX.** Non-standard document requests could take longer and GG&O will estimate fees for any request that will exceed \$500.