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5 UNITED STATES DISTRICT COURT
6 FOR THE WESTERN DISTRICT OF WASHINGTON
7 TACOMA DIVISION
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9 CENTIMARK CORPORATION, a Pennsylvania
corporation,

10 Plaintiff,

11 vs.

12 EXECUTIVE ROOF SERVICES, LLC, a
Washington limited liability company; MICHAEL
13 W. MECHAM, an individual; and ERIC S.
PAULY, an individual,

14 Defendants.
15

Case No.: 3:16-cv-05707

**DECLARATION OF BRETT
CREASY IN SUPPORT OF
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

16
17 I, Brett Creasy, hereby declare that I am over the age of 18, have personal knowledge of
18 the matters set forth in this Declaration, and am competent to testify to them:

19 1. I am a certified computer examiner ("C.C.E."), and I am the Vice President and Director
20 of Digital Forensics at bit-x-bit, LLC ("bit-x-bit"), a computer forensic investigation, incident
21 response and e-discovery firm located in Pittsburgh, Pennsylvania. I have personal knowledge
22 of the facts set forth in this Declaration and, if called as a witness, I could and would testify
23 competently thereto.
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1 2. I have conducted hundreds of computer forensic examinations, provided expert reports,
2 and I have been qualified and have testified as an expert witness on matters involving digital and
3 computer forensics.

4 3. Since 2008, bit-x-bit, has been exclusively endorsed by the Allegheny County
5 (Pennsylvania) Bar Association, located in Pittsburgh, to provide computer forensic services and
6 e-discovery services to its 6,000 members.

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8 **DEVICES EXAMINED**

9 4. bit-x-bit was retained by CentiMark Corporation (“CentiMark”) to preserve, image and
10 examine: (1) a Lenovo ThinkPad Model X230 laptop, serial no. PK-2DE53, used by Eric Pauly
11 (“Pauly laptop”); (2) a Lenovo ThinkPad Model X230 laptop, serial no. PK-0P3T4, used by
12 Michael Mecham (“Mecham laptop”); (3) a Samsung Galaxy S4 smartphone used by Mecham
13 (“Mecham smartphone”); and (4) a Samsung Galaxy Note 4 smartphone used by Pauly (“Pauly
14 smartphone”) (“collectively referred to as the CentiMark devices”).

15 5. On August 15, 2016, bit-x-bit received the CentiMark devices. Attached as Exhibit A is
16 a copy of our chain of custody record. On August 15, 2016, we created forensic images of the
17 two Lenovo laptop computers using a Tableau TD3 Forensic Imager. The digital signatures of
18 the original hard drives and the image files match, establishing that the image files for each of
19 the CentiMark computers is an exact copy of the original drive. We then made a working copy of
20 the images for use in our forensic examination. Attached as Exhibits B1 – B4 are copies of our
21 system capture record and our media imaging records for the CentiMark devices.

22
23 **PAULY LAPTOP ANALYSIS**

24 6. The Pauly laptop contains a user account for him: “ericpaul” which was created on
25 February 14, 2014.

1 7. I examined the Pauly laptop to determine whether portable data storage devices such as
2 USB flash drives or external hard drives had been plugged into it. Exhibit C is a list, including a
3 description and serial number, of the USB devices, including external hard drives and flash
4 drives, that were plugged into the Pauly laptop and the dates and times of their first and last
5 connection. There were seven different USB devices plugged into the Pauly laptop from
6 February to July 2016. For example, a Seagate USB hard drive was plugged into the Pauly
7 laptop on July 14, 2016 at 6:26 p.m. This Seagate hard drive was first recognized by the Pauly
8 laptop on that same date, indicating it is “new” to the machine. I note that this particular Seagate
9 hard drive model likely has hundreds of GBs of storage capacity. Such devices are normally
10 used to make copies of documents and files on a computer. I would need to examine the
11 Seagate hard drive to see what documents were copied from the Pauly laptop to the Seagate hard
12 drive. I note that two of the USB devices plugged into the Pauly laptop during 2016 are large
13 storage devices.

14 8. I conducted an analysis to determine the folder structure on one or more of the USB
15 devices plugged into the Pauly laptop. Attached as Exhibit D is a screenshot of the folder
16 structure we recovered. There are numerous folders with the word “backup” in them, including
17 one folder called “MAIL – BACKUP.” I would need to examine all the USB devices plugged
18 into the Pauly laptop to determine what CentiMark documents or files were backed up to USB
19 devices.

20 9. My examination of the Pauly laptop revealed that in July 2016, in the weeks before his
21 departure from CentiMark, Pauly was accessing and deleting numerous documents, such as an
22 Excel spreadsheet called “July potential sales” accessed on July 18, 2016. Attached hereto as
23 Exhibit E is a spreadsheet listing the names, file paths, dates and times of the files accessed on
24 the Pauly computer from March 2016 to July 2016. I have color coded in red the files that were
25 accessed but have since been deleted or moved to another location such as a USB device or other
26

1 storage medium. Until we review the USB devices plugged into the Pauly laptop, we are unable
2 to determine which of the deleted files may have been copied to the USB devices.

3
4 10. The Pauly laptop also contained evidence of the usage of cloud storage. Specifically, my
5 examination of the Pauly computer revealed that Pauly used Dropbox on his CentiMark issued
6 computer. However, the Dropbox folder which contained the local copy of the documents
7 present in Dropbox was deleted when a number of deletions were performed on July 14, 2016.
8 Even though Pauly deleted the Dropbox folder from his CentiMark computer, it does not mean
9 that the documents were deleted from the Dropbox account and thus they likely may still reside
10 in the Dropbox cloud based storage and are accessible by Pauly from any internet connected
11 computer. An examination of the Dropbox accounts for Pauly is the only means to determine
12 what remains in Dropbox at this time.

13 11. The “recycle bin” on the Pauly laptop also reflects over 60 files and folders, many of
14 which have file names suggesting they are CentiMark documents, were deleted during the time
15 period March to July 2016, with 40 files and folders deleted during July 2016. Exhibit F1 is a
16 list of the items deleted and sent to the Recycle Bin. I note that some of the deleted folders, such
17 as the “ericpaul\Documents\Desktop” folder contain many subfolders and files. Attached as
18 Exhibit F2 is a truncated list of some of the items that resided in Pauly’s Desktop folder and
19 which are now deleted or moved.

20 12. The Pauly laptop also contained evidence of communications that Pauly had with a
21 Jarrett Bickham in March 2016 regarding “Executive Roofing Services – Financial Model,”
22 while still employed by CentiMark. A fragment of an email was recovered from the Pauly
23 computer capturing a portion of this communication. Attached as Exhibit G is a screenshot from
24 our forensic software displaying this email fragment.

25 13. As part of my analysis, the internet history on the Pauly computer was also analyzed.
26 This analysis revealed that on July 23, 2016, the date I understand Pauly resigned from

1 CentiMark, he conducted a Google search for “how to wipe a hard drive” and subsequently
2 visited two websites which describe the process. Attached hereto as Exhibit H is a screenshot
3 showing Pauly’s internet browsing history and the visit of these sites on July 22, 2016 starting at
4 11:24 p.m. Wiping a computer is a process by which the user destroys all documents and files
5 present on the computer, including the operating system, and renders them unrecoverable. Based
6 on the deletion activity discussed in the sections above, it appears Pauly chose to delete
7 documents found on his CentiMark issued computer.

8 14. I analyzed the Pauly smartphone and found that the smartphone had been reset to factory
9 condition, thus deleting all user information from the smartphone. By examining the creation
10 dates of key database files on the Pauly smartphone, and initialization of the smartphone
11 activation, I was able to determine the phone factory reset occurred on July 25, 2016 at
12 approximately 1 pm Pacific time and then activated the following day on July 26, 2016. Attached
13 hereto as Exhibit I is a screenshot of our forensic software displaying some summary information
14 about the smartphone, including its activation following the factory reset.

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16 **MECHAM LAPTOP ANALYSIS**

17 15. The Mecham laptop contains a user account for him: “michmech” which was created on
18 February 27, 2014.

19 16. I examined the Mecham laptop to determine whether portable data storage devices such
20 as USB flash drives or external hard drives had been plugged into it. Exhibit J is a list,
21 including a description and serial number, of the USB devices, including external hard drives and
22 flash drives that were plugged into the Mecham laptop and the dates and times of their first and
23 last connection. As reflected on Exhibit J, from June 5, 2016 to July 23, 2016, there were five
24 USB devices inserted into the Mecham laptop. Potentially significant is that just before 1 a.m.
25 on July 23rd, the date on which, I understand, Mr. Mecham gave notice that he was leaving
26 CentiMark, a PNY USB device, serial number AA640E3230014644 was plugged into the

1 Mecham laptop. As mentioned above, USB devices are normally used to make copies of
2 documents and files on a computer. I would need to examine this PNY USB device, and all
3 such devices listed on Exhibit J which were plugged in during 2016, to see what documents were
4 copied from the Mecham laptop. I note that the Seagate USB device, serial number
5 NA7EXBSF, plugged into the Mecham laptop on July 21, 2016 is a large storage device.

6 17. I conducted an analysis to determine the folder structure on one or more of the USB
7 devices plugged into the Mecham laptop. Attached as Exhibit K is a screenshot of an example of
8 the folder structure we recovered. There is evidence that a folder called "7-21-16" was created
9 on a USB device using the Mecham laptop on July 21, 2016. This folder name correlates with
10 the evidence that the Seagate USB drive was plugged into the Mecham computer on July 21,
11 2016 after hours at 7:40 p.m. I would need to examine all the USB devices plugged into the
12 Mecham laptop to determine what CentiMark documents or files were copied or backed up to
13 USB devices. Note that during the evening hours of July 21, 2016, as detailed in the following
14 paragraph, there were a number of files accessed and then later deleted, such as "Mililani
15 Progress Report (1).ppt" and files in the "Finished Photos" folder on the Mecham laptop.

16 18. My examination of the Mecham laptop revealed that in July 2016, in the weeks before his
17 departure from CentiMark, Mecham was accessing numerous documents, such as an Excel
18 spreadsheet called "Monthly Forecast by Office July FY2017.xls" accessed on July 22, 2016 at
19 7:26 a.m., which is no longer on the laptop. Attached hereto as Exhibit L is a spreadsheet listing
20 the names, file paths, dates and times of the files accessed on the Mecham computer from March
21 2016 to July 2016. I have color coded in red the files that were accessed, but have since been
22 deleted or moved to another location such as a USB device or other storage medium. Until we
23 review the USB devices plugged into the Mecham laptop, we are unable to determine which of
24 the deleted files may have been copied to the USB devices.

25 19. The Mecham laptop also contained evidence of the usage of cloud storage. Specifically,
26 there is evidence that Mecham utilized Dropbox, a cloud based storage application. The use of

1 Dropbox on the Mecham computer provides Mecham with the ability to store documents in
2 Dropbox's cloud based storage platform, thus making these documents accessible, even now, by
3 Mecham from any internet connected computer. We do not know whether Mecham would
4 maintain access to the documents in Dropbox after his employment with CentiMark ended.
5 Examples of two folders that I could determine exist in this Dropbox account for Mecham
6 include "4 Quarters of Operations" and "Apprentice Program." These folders contain multiple
7 CentiMark business documents such as a document titled "Hilton / Convention Center Roof
8 Plan" and other documents that appear to be CentiMark templates and forms. An examination of
9 the Dropbox accounts for Mecham is the only means to determine what remains in Dropbox at
10 this time. Attached hereto as Exhibit M is a screenshot which reflects the aforementioned folders
11 and files from Dropbox.

12 20. The "recycle bin" on the Mecham laptop also reflects that approximately 11,000 files and
13 folders, many of which have file names suggesting they are CentiMark documents, were deleted
14 on July 23, 2016. Exhibit N1 is a list of the root level folders that were deleted on July 22 and
15 July 23, 2016. Exhibit N2 is a truncated list of subfolders and files deleted as part of the root
16 folders "Documents" and "Downloads" that were deleted on July 23, 2016.

17 21. I analyzed the Mecham smartphone and found that like the Pauly smartphone, the
18 Mecham smartphone had been reset to factory condition, thus deleting all user information from
19 the smartphone. By examining the creation dates of key database files on the Mecham
20 smartphone, and initialization of the smartphone activation, I was able to determine the phone
21 was factory reset and then activated as of June 23, 2016. Attached hereto as Exhibit O is a
22 screenshot of our forensic software displaying some summary information about the smartphone,
23 including its activation following the factory reset.

24 22. Attached as Exhibit P is a copy of my curriculum vitae.

1 I HEREBY DECLARE UNDER PENALTY OF PERJURY UNDER THE
2 LAWS OF WASHINGTON AND THE UNITED STATES THAT THE
3 FOREGOING IS TRUE AND CORRECT.

4 DATED: August 17, 2016

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7 _____
8 BRETT CREASY
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CERTIFICATE OF SERVICE

I hereby certify that on August __, 2016, I served the foregoing **DECLARATION OF**

[NAME] on:

Scott J. Aldworth
saldworth@kelrun.com
Dennis Steinman
dsteinman@kelrun.com
KELL, ALTERMAN & RUNSTEIN, L.L.P.
520 SW Yamhill St., Ste. 600
Portland, OR 97204-1329
Attorneys for Defendants

- by **electronic** means through the Court’s Case Management/Electronic Case File system, which will send automatic notification of filing to each person listed above.
 - by **mailing** a true and correct copy to the last known address of each person listed above. It was contained in a sealed envelope, with postage paid, addressed as stated
 - by causing a true and correct copy to be delivered **via overnight courier** to the last known address of each person listed above. It was contained in a sealed envelope, with courier fees paid, and addressed as stated above.
1. by **e-mailing** a true and correct copy to the last known email address of each person listed above.

s/James M. Barrett
James M. Barrett, WSBA No. 41137

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

CENTIMARK CORPORATION, a Pennsylvania corporation,

Plaintiff,

vs.

EXECUTIVE ROOF SERVICES, LLC, a Washington limited liability company; MICHAEL W. MECHAM, an individual; and ERIC S. PAULY, an individual,

Defendants.

Case No.: 3:16-cv-05707

TEMPORARY RESTRAINING ORDER

This matter came before the Court on August 18, 2016, on Plaintiff CentiMark Corporation’s (“CentiMark’s”) Motion for Temporary Restraining Order (“Motion”). CentiMark was represented by James M. Barrett of the Ogletree Deakins law firm, and defendants were represented by _____.

The Court, having fully considered all materials filed in support of, and in opposition to, said Motion, as well as oral argument, if any, makes the following order:

The Court finds as follows:

1. CentiMark has demonstrated the presence of a protectable interest in that Mecham and Pauly had access to CentiMark’s trade secrets or competitively sensitive confidential

1 business or professional information that otherwise would not qualify as a trade secret, and that
2 CentiMark has a protectable goodwill and business interest;

3 2. CentiMark has demonstrated a likelihood of success on the merits, or,
4 alternatively, the presence of serious questions going to the merits of enforcing its post-
5 termination restrictive covenants with Mecham and Pauly;

6 3. CentiMark has demonstrated a threat of irreparable harm that outweighs the
7 potential harm to Defendants that would occur during the duration of this Temporary Restraining
8 Order;

9 4. CentiMark has demonstrated that the balance of the equities tips in its favor; and

10 5. CentiMark has established that the public interest in restraining unfair competition
11 and enforcing valid contracts favors granting relief for the duration of this Temporary
12 Restraining Order.

13 Based on the foregoing, IT IS HEREBY ORDERED that CentiMark's Motion for
14 Temporary Restraining Order is GRANTED, as follows:

15 Defendants and any person or persons in active concert or participation with them are
16 required to abide by the following terms for a period of ten (10) days from the date this Order is
17 entered, unless extended by further order of the Court:

18 1. Defendants shall not engage in the businesses of commercial roofing, industrial
19 roofing, or flooring;

20 2. Mecham shall refrain from violating the post-termination restrictive covenants in
21 Mecham's Employment Agreement with CentiMark, ("Mecham Agreement") dated May 16,
22 1996, a copy of which is attached hereto as Appendix A at Dkt. #5. Specifically, Mecham, and
23 any person in active concert or participation with him, are enjoined from:

24 (a) Disclosing or using CentiMark's confidential information regarding its
25 business, including, without limitation, any business records, policy or procedure statements,
26 correspondence, memoranda, plans, proposals, computer hardware, software or data, customer

1 lists, marketing and sales documents, financial or legal documents or records, reports, drawings,
2 formulations, blueprints, notebooks, designs, samples, prototypes, inventory, equipment,
3 photographs of roof projects, employee records, and training materials (hereafter “Confidential
4 Information”);

5 (b) Directly or indirectly soliciting the trade of or trade with CentiMark’s,
6 customers, potential customers, suppliers, or potential suppliers;

7 (c) Soliciting, recruiting, inducing away, or attempting to solicit, recruit, or
8 induce away, directly or indirectly, or by assisting others, any employee of CentiMark;

9 (d) Advertising or promoting services or goods of any person, business,
10 enterprise or other entity which is engaged in the business of commercial and industrial roofing
11 or flooring contracting, or which solicits, trades with, advises, calls upon or otherwise does or
12 attempts to do, directly or indirectly, business with any clients, customers or accounts of
13 CentiMark, its successors, assigns, subsidiaries or affiliates, or that have done business with
14 CentiMark at any time, or from time to time, during Mecham’s employment with CentiMark,
15 within 100 air miles of the United States and the Provinces of Ontario and Quebec, Canada, and
16 any other Regions in which Mecham contacted CentiMark customers; and

17 (e) Competing or engaging in the business of commercial roofing, industrial
18 roofing, or flooring or, any business which solicits, trades with, advises, calls upon or otherwise
19 does or attempts to do, directly or indirectly, a business with any clients, customers or accounts
20 of CentiMark, its successors, assigns, subsidiaries or affiliates, or that have done business with
21 CentiMark at any time, or from time to time, during Mecham’s employment with CentiMark,
22 within 100 air miles of the United States and the Provinces of Ontario and Quebec, Canada, and
23 any other Regions in which Mecham contacted CentiMark customers;

24 3. Pauly shall refrain from violating the post-termination restrictive covenants in
25 Pauly’s Employment Agreement with CentiMark (“Pauly Agreement”), dated January 29, 2002,
26

1 a copy of which is attached as Appendix B to Dkt. #5. Specifically, Pauly, and any person in
2 active concert or participation with him, are enjoined from:

3 (a) Disclosing or using CentiMark's Confidential Information;

4 (b) Directly or indirectly soliciting CentiMark's, customers, potential
5 customers, suppliers, or potential suppliers with whom Pauly had contact during his employment
6 with CentiMark;

7 (c) Soliciting, recruiting, inducing away, or attempting to solicit, recruit, or
8 induce away, directly or indirectly, or by assisting others, any employee of CentiMark;

9 (d) Advertising or promoting his services or goods for any commercial
10 roofing, industrial roofing, or flooring contractor business in direct competition with CentiMark
11 within Northern California and the entire states of Utah, Idaho, Oregon, and Hawaii, and any
12 other Region in which he contacted CentiMark customers; and

13 (e) Engaging or competing in any commercial roofing, industrial roofing, or
14 flooring contractor business in direct competition with CentiMark within Northern California
15 and the entire states of Utah, Idaho, Oregon, and Hawaii, and any other Region in which he
16 contacted CentiMark customers;

17 4. ERS and any person in active concert or participation with it, are enjoined from:

18 (a) Disclosing or using CentiMark's Confidential Information;

19 (b) Directly or indirectly soliciting the trade of or trade with CentiMark's,
20 customers, potential customers, suppliers, or potential suppliers;

21 (c) Soliciting, recruiting, inducing away, or attempting to solicit, recruit, or
22 induce away, directly or indirectly, or by assisting others, any employee of CentiMark; and

23 (d) Advertising or promoting ERS' roofing or flooring services, online or
24 otherwise, including maintaining the website www.executiveroofservices.com or any other URL
25 Internet address for a commercial roofing, industrial roofing, or flooring contractor business,
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1 within 100 air miles of the United States and the Provinces of Ontario and Quebec, Canada, and
2 any other Regions in which Mecham contacted CentiMark customers;

3 5. Defendants and any person in active concert or participation with them shall
4 immediately return all originals and copies of CentiMark's Confidential Information, including
5 but not limited to all CentiMark Confidential Information reflected in Appendices C and D that
6 Defendants forwarded and/or copied or downloaded, regardless whether such materials were
7 prepared by Mecham, Pauly, CentiMark, or another person, and which are in Defendants'
8 possession, custody or control, whether located on hard-drives, disks CD-ROMS, in networked
9 data servicers, in Internet-accessed storage, or any other portable media device;

10 6. Within two (2) business days from the date of entry of this Order, Defendants
11 shall make available personal electronic devices, such as computers, laptops, phones, and storage
12 devices, for forensic imaging and examination by a qualified forensic examiner identified by
13 Centimark for the purposes of facilitating the identification and removal of CentiMark
14 Confidential Information from those devices. The devices that Defendants are required to
15 produce pursuant to this directive include, but are not limited to, all USB devices identified in
16 Appendices E and F. **This provision is deferred until after the preliminary injunction**
17 **hearing;**

18 7. Within two (2) business days from the date of entry of this Order, Defendants
19 shall grant to a qualified forensic examiner identified by CentiMark access to personal and work
20 email accounts and permit copying of those accounts for the purpose of determining how
21 Defendants have used CentiMark's Confidential Information and facilitating the identification
22 and removal of same. The accounts to which Defendants are required to grant access pursuant to
23 this directive include, but are not limited to: ericstevenpauly@gmail.com;
24 mechamaustin@gmail.com; espauly@yahoo.com; mwmecham1@gmail.com;
25 clmecham@comcast.net; info@executiveroofservices.com; and any other address ending with
26

1 @executiveroofservices.com. **This provision is deferred until after the preliminary**
2 **injunction hearing;** and

3 8. Defendants are to cooperate with CentiMark and take any other appropriate and
4 reasonable steps to recover CentiMark's Confidential Information and other CentiMark
5 documents/information and to ensure that CentiMark's Confidential Information was not
6 distributed by or preserved by Defendants or others acting in concert with them.

7 IT IS FURTHER ORDERED that CentiMark shall, within five (5) business days of entry
8 of this Order, post an injunction bond or surety in the amount of \$5,000.00 as security pursuant
9 to Fed. R. Civ. P. 65(c).

10 IT IS FURTHER ORDERED that Defendants appear in person before the Court at 1717
11 Pacific Avenue, Tacoma, Washington 98402 on August 26, 2016, at 1:30 p.m. to show cause
12 why a preliminary injunction should not issue in accordance with this Temporary Restraining
13 Order. The Parties are to file any supplemental briefing and evidence on or before August 24,
14 2016.

15 Dated this 18th day of August, 2016.

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18 Ronald B. Leighton
19 United States District Judge

20
21 *Presented by:*

22 s/James M. Barrett

23 James M. Barrett, WSBA No. 41137
24 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
25 james.barrett@ogeltreedeakins.com
26 Of Attorneys for CentiMark Corporation