

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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MICROSOFT CORPORATION, :
 :
 :
 Plaintiff, : **Case No. 23-cv-10685**
 -against- :
 :
 :
 DUONG DINH TU, :
 LINH VAN NGUYEN, and :
 TAI VAN NGUYEN, :
 :
 :
 Defendants. :
-----X

NOTICE OF NON-PARTY REQUEST FOR THE PRODUCTION OF DOCUMENTS

PLEASE TAKE NOTICE that pursuant to Federal Rules of Civil Procedure 26, 34, and 45, and Local Rules 26.2 and 26.3 of this Court, Plaintiff Microsoft Corporation is requesting the production from Vietcombank of documents identified in Addendum A to Subpoena to Produce Documents.

Dated: February 22, 2024
New York, New York

CAHILL GORDON & REINDEL LLP

By: /s/ Brian T. Markley
Brian T. Markley
Samson A. Enzer
Jason Rozbruch
32 Old Slip
New York, New York 10005

MICROSOFT CORPORATION
Sean Farrell
One Microsoft Way
Redmond, Washington 98052

Counsel for Plaintiff Microsoft Corporation

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Microsoft Corporation

Plaintiff

v.
Duong Dinh Tu, Linh Van Nguyen, and Tai Van
Nguyen

Defendant

Civil Action No. 23-cv-10685

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Vietcombank

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Addendum A

Place: Cahill Gordon & Reindel LLP 32 Old Slip New York, NY 10005	Date and Time: 03/25/2024 10:00 am
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Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/22/2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

*/s/ Brian T. Markley
Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Microsoft Corp., who issues or requests this subpoena, are:
Brian T. Markley, Cahill Gordon & Reindel LLP, 32 Old Slip, New York, NY 10005, bmarkley@cahill.com, 212-701-3230

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 23-cv-10685

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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 Plaintiff, : **Case No. 23-cv-10685**
 -against- :
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 DUONG DINH TU, :
 LINH VAN NGUYEN, and :
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 Defendants. :
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ADDENDUM A TO SUBPOENA TO PRODUCE DOCUMENTS

DEFINITIONS

1. The term “concerning,” as defined in Local Rule 26.3(c)(7), means relating to, referring to, describing, evidencing or constituting.

2. The term “document,” as defined in Federal Rule of Civil Procedure 34(a)(1)(A) and Local Rule 26.3(c)(2), means any designated document or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term. For purposes of responding to these Requests, Vietcombank shall construe the term “document” to include:

- a. all written and printed matter of any kind, including, but not limited to, (i) correspondence, memoranda, notes, diaries, statistical or factual tabulation or data, letters, petitions, telexes, telegraphs, teletypes, e-mails, texts, minutes, agendas, expense accounts,

contracts, reports, studies, checks, statements, ledgers, receipts, resolutions, applications, summaries, pamphlets, books, notations of any sort of conversations or meetings, newsletters, bulletins, briefing material, computer print-outs, invoices, worksheets; (ii) all existing drafts, alterations, modifications, changes, and amendments for any of the foregoing; and (iii) any copies of the foregoing that are different from the original by reason of any notation made thereon;

- b. all graphic or manual records or representations of any kind, including, but not limited to, photographs, charts, graphs, maps, diagrams, and drawings; and
- c. all electronic or mechanical records or representations of any kind, including, but not limited to, audio tapes, cassettes, discs, recordings, e-mails, texts, and computer files.

3. The term “Person,” as defined in Local Rule 26.3(c)(6), means any natural person or legal entity, including, without limitation, any business or governmental entity or association.

4. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope.

INSTRUCTIONS

1. These Requests incorporate by reference the uniform definitions and rules of construction set forth in Local Rule 26.3(c).

2. Questions regarding the interpretation of the Requests should be resolved in favor of the broadest possible construction.

3. The use of singular form of any word includes the plural and vice versa.

4. When responding to the Requests, Vietcombank should respond to each Request separately and set forth each Request in full before each Response.

5. Documents called for by these Requests are documents either (i) in Vitercombank's possession, custody, or control, or (ii) the possession, custody, or control of anyone acting or purporting to act on Vietcombank's behalf. Specifically, Vietcombank shall furnish all information that is available to it, including information in the possession, custody, or control of its attorneys, accountants, employees, investigators, experts, representatives, or other agents, and Vietcombank shall search all files, records, computers, phones, hard drives, data storage, and/or other archiving systems that might reasonably be expected to contain any of the documents, texts, email, and/or data requested in the Requests.

6. These Requests seek production of all documents, in their entirety, along with any attachments, drafts, and non-identical copies. A document with handwritten, typewritten, or other recorded notes, editing marks, etc., is not and shall not be deemed identical to one without such modifications, additions, or deletions.

7. If no responsive documents exist for any particular Request, Vietcombank shall specifically state that no responsive documents exist.

8. With respect to any document produced in redacted form, Vietcombank shall identify the basis for each redaction.

9. If Vietcombank objects to responding to a Request or producing a document responsive to a specific Request, Vietcombank should state with particularity the basis for all objections with respect to such Request. Vietcombank should respond to all portions of a Request that do not fall within the scope of its objection.

10. To the extent that Vietcombank asserts a claim of privilege in objecting to a Request and refuses to respond to such Request on the basis of such assertion, Vietcombank should provide a privilege log in accordance with the requirements of Federal Rule of Civil Procedure 26(b)(5)(A) and Local Rule 26.2.

11. If any requested document was formerly in the possession, custody or control of Vietcombank and has been lost or destroyed, describe and identify each such document by stating in writing: (a) the nature of the document and its contents; (b) the name(s) of the authors(s), the name(s) of the Person(s) who received the original and all copies and the date and subject matter; (c) the last known custodian of the document; (d) the date on which the document was prepared or transmitted; (e) the date and nature of the incident, event, or occurrence during which such document was lost, destroyed, or otherwise became unavailable; (f) each Person having knowledge of the circumstances of it being lost, discarded or destroyed; and (g) Vietcombank's efforts to locate each such document.

12. Unless otherwise specified, the period of time covered by the Requests is August 1, 2019 to the present.

13. These instructions and the definitions set forth above form an integral part of the Requests and must be read in conjunction with the Requests.

DOCUMENT REQUESTS

1. All documents concerning the Vietcombank account(s) with the account numbers 1038857984 or 0071001307142.

2. All documents concerning any Vietcombank account registered by or otherwise connected to "tcroix2020" or "tcroix".

Dated: February 22, 2024
New York, New York

CAHILL GORDON & REINDEL LLP

By: /s/ Brian T. Markley
Brian T. Markley
Samson A. Enzer
Jason Rozbruch
32 Old Slip
New York, New York 10005

MICROSOFT CORPORATION
Sean Farrell
One Microsoft Way
Redmond, Washington 98052

Counsel for Plaintiff Microsoft Corporation