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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF JUSTICE,

Defendant.

CASE NO. C16-0538JLR

MINUTE ORDER REGARDING
HEARING ON JANUARY 23,
2017

The following minute order is made by the direction of the court, the Honorable James L. Robart:

The court has scheduled oral argument on Defendant United States Department of Justice's motion to dismiss (Dkt. # 38) for Monday, January 23, 2017, at 10:00 a.m. (*see* Dkt.). In addition to other issues the court may raise at the hearing, the parties should be prepared to address whether case law holding that Fourth Amendment rights are personal rights that cannot be vicariously asserted bars Plaintiff Microsoft Corporation from

1 pursuing its Fourth Amendment claim on behalf of its customers and how that case law is
2 to be reconciled with third-party standing doctrine. *See, e.g., Plumhoff v. Rickard*,
3 --- U.S. ---, 134 S. Ct. 2012, 2022 (2014) (stating in a Section 1983 excessive force case
4 that “[o]ur cases make it clear that Fourth Amendment rights are personal
5 rights . . . which may not be vicariously asserted” (internal quotation marks omitted));
6 *Rakas v. Illinois*, 439 U.S. 128, 140 (1978) (noting the Supreme Court’s “long history of
7 insistence that Fourth Amendment rights are personal in nature”); *Cal. Bankers Ass’n v.*
8 *Shultz*, 416 U.S. 21, 69 (1974) (stating in dicta that the Court did not “think that the
9 California Bankers Association or the Security National Bank [could] vicariously assert
10 such Fourth Amendment claims on behalf of bank customers in general”); *Ellwest Stereo*
11 *Theatres, Inc. v. Wenner*, 681 F.2d 1243, 1248 (9th Cir. 1982) (“Ellwest has no standing
12 to assert the fourth amendment [privacy] rights of its customers.”); *Powers v. Ohio*, 499
13 U.S. 400, 410-11 (1991) (discussing three-part test for establishing third-party standing).

14 The parties should also be prepared at oral argument to identify the specific case
15 law or other authority on which they rely. The parties may, but are not required to, file a
16 supplemental brief on this issue prior to oral argument on Monday, January 23, 2017.

17 The length of any such supplemental brief is limited to five (5) pages.

18 Filed and entered this 19th day of January, 2017.

19 WILLIAM M. MCCOOL
20 Clerk of Court

21 s/ Ashleigh Drecktrah
22 Deputy Clerk