

WHEREAS, the four above-captioned actions involve various disputes between Elizabeth Elting (“Elting”) and Philip Shawe (“Shawe”) relating to TransPerfect Global, Inc. (the “Company”);

WHEREAS, on February 22, 2015, Elting filed a motion for sanctions based on certain alleged acts of misconduct by Shawe relating to the litigation of the four actions (the “Sanctions Motion”);

WHEREAS, from February 23, 2015, to March 3, 2015, the Court held a six-day trial addressing the claims asserted in the four actions (the “Merits Trial”), during which eleven witnesses testified;

WHEREAS, on August 13, 2015, the Court issued a post-trial memorandum opinion adjudicating the claims (the “Merits Opinion”);

WHEREAS, on January 7-8, 2016, the Court held a two-day evidentiary hearing (the “Sanctions Hearing”) on issues implicated in the Sanctions Motion, during which seven witnesses testified, including two computer forensic experts;

WHEREAS, on July 20, 2016, the Court issued a memorandum opinion granting the Sanctions Motion (the “Sanctions Opinion”);

WHEREAS, the Sanctions Opinion directed Shawe to pay Elting (1) 33% of her attorneys’ fees and expenses incurred in connection with the litigation of the Merits Trial (including computer expert expenses but not including other expert expenses) from December 2, 2014 up to the resolution of the Merits Trial, *i.e.*, the

date on which the Merits Opinion was issued (August 13, 2015), plus (2) 100% of her attorneys' fees and expenses (including computer expert expenses) incurred in connection with the litigation of the Sanctions Hearing. The attorneys' fees for the first and second periods are referred to herein, respectively, as the "Merits Fees" and "Sanctions Fees;"

WHEREAS, the Sanctions Opinion directed Elting to prepare and file with the Court within ten business days a form of implementing order for the amount of reimbursable fees and expenses she incurred, along with affidavits documenting the same;

WHEREAS, on August 3, 2016, Elting filed a letter accompanied by affidavits from representatives of Potter Anderson & Corroon LLP ("PAC"), Kramer Levin Naftalis & Frankel LLP ("Kramer Levin"), Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss"), and herself attesting that Elting incurred \$7,911,916 in Merits Fees, \$4,693,959 in Sanctions Fees, and \$656,499 in reimbursable expenses, and seeking an award of \$7,961,390 based on the formula in the Sanctions Opinion;¹

WHEREAS, the Court afforded Shawe ten business days from the date of Elting's submission to submit a response and directed Shawe to include with his

¹ The amounts of fees and expenses set forth in this Order are rounded to the nearest whole numbers.

response the amount of attorneys' fees and expenses he incurred during the same periods along with supporting affidavits from each of the law firms representing him if he intended to challenge the reasonableness of the amount of Elting's fee calculation;

WHEREAS, on August 17, 2016, Shawe submitted a response (the "Response") to Elting's August 3 submission, in which he challenges the reasonableness of Elting's fee calculation on various grounds;²

WHEREAS, Shawe included with his Response affidavits from David L. Finger, Esquire and from representatives of Sullivan & Cromwell LLP, Richards, Layton & Finger, P.A., Morris James LLP, Kaplan Rice LLP, Frankfurt Kurnit Klein & Selz, P.C., and Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., attesting that he incurred a total of \$9,872,763 in Merits Fees, \$3,338,210 in Sanctions Fees, and at least \$620,947 in expenses;³

WHEREAS, the Court has considered Elting's submission, including the affidavits and supporting schedules, and Shawe's Response;

² The Response also seeks to reargue various aspects of the Sanctions Opinion. This is improper. Shawe did not seek reargument of the Sanctions Opinion within the deadline set forth in Court of Chancery Rule 59(f) and thus waived the right to do so. Accordingly, this Order does not address Shawe's attempts to reargue the basis for the Sanctions Opinion, and only addresses the objections Shawe raised to the reasonableness of Elting's calculation of reimbursable attorneys' fee and expenses.

³ One of Shawe's law firms made no effort to break out expenses into merits-related and sanctions-related categories, and another did not include any expenses.

IT IS HEREBY ORDERED, this 19th day of August, 2016, as follows:

1. Shawe objects to the inclusion of \$466,438 in Merits Fees by PAC because it failed to submit specific billing information for this amount, which Shawe asserts is required under Court of Chancery Rule 88. Response 6-8. This objection is overruled. Kevin R. Shannon, a partner who played the lead role for PAC in these proceedings, submitted an affidavit in which he stated he “reviewed the invoices reflecting PAC fees and costs that have been billed to Ms. Elting in connection with the” four Delaware actions, explained the methodology he used to allocate those fees and expenses as between “sanctions issues” and “non-sanction issues,” and provided an itemization of the amounts falling into each category. Shannon Aff. ¶¶ 5-14. Assuming Rule 88 is applicable here, Shannon’s affidavit satisfies its requirements in my view.⁴ Moreover, the reasonableness of the amount of Merits Fees that PAC estimated is confirmed by the fact that Shawe’s primary Delaware law firm (Richards, Layton & Finger, P.A.) billed Merits Fees in a similar range. Specifically, PAC estimated its total Merits Fees to be \$1,413,448, while Richards, Layton & Finger, P.A. estimated its total Merits Fees to be \$1,225,206.

⁴ Rule 88 states, in relevant part, that “the Court shall require the applicant to make an affidavit or submit a letter, as the Court may direct, itemizing . . . the expenses incurred and services rendered.” In this case, the Court required affidavits, which each law firm representing Elting provided.

2. Shawe objects to a total of \$2,913,685 in both Merits and Sanctions Fees on the ground that the billing entries are ambiguous or unclear. Response 8-9. This objection is overruled. Senior partners of each of the three law firms for which Elting seeks reimbursement submitted affidavits explaining their efforts to ensure in good faith that the fees for which reimbursement is sought properly could be characterized as Merits Fees or Sanctions Fees. *See* Shannon Aff. ¶¶ 5-7; Kaufman Aff. ¶ 5; Stone Aff. ¶ 5. To the extent specific concerns have been raised about the allocation of certain amounts, those objections are addressed herein. As discussed below, moreover, the fact that Elting and Shawe both incurred fees in a similar range reinforces the reasonableness of the amounts Elting incurred and for which she seeks reimbursement.

3. Shawe objects to the inclusion of \$334,865 in fees incurred after the date of the Merits Opinion (August 13, 2015) relating to Elting's motion to compel the return of Elting's gmails. Response 9-10. This objection is sustained. This motion, which was filed on September 2, 2015, did not directly relate to the litigation of the Sanctions Hearing. Moreover, it was unclear to the Court at the time (and remains so today) if one side or the other was more to blame for failing to accomplish the return of Elting's gmails, which is the reason the Court ordered Shawe and Elting to equally split the fees of the Special Master who was appointed to resolve this matter.

4. Shawe objects to Kramer Levin's inclusion of \$67,500 in fees incurred from March 9, 2015 to June 29, 2015 in connection with a mediation. Response 10-11. This objection is sustained. The Court awarded Elting part of her fees and expenses "incurred in connection with the litigation of the Merits Trial" because "Shawe's misconduct unduly complicated and drove up the costs of that proceeding." Sanctions Opinion 55. This rationale does not apply to the mediation, which was done for the purpose of attempting to reach a settlement.

5. Shawe objects to Kramer Levin's inclusion of \$90,805 in Merits Fees for work related to non-computer experts, arguing that "the Court specifically carved out fees for non-computer experts." Response 11. This objection is overruled. What the Court carved out is non-computer expert *expenses* for the Merits Trial, but not *attorneys' fees* for work related to non-computer experts in connection with the Merits Trial. The reason for this is that the Court awarded Elting 33% of her overall fees for the Merits Trial (which would include fees incurred in connection with non-computer expert work) as a reasonable approximation of the additional fees that Elting incurred during the merits portion of the case as a result of Shawe's misconduct. *See* Sanctions Opinion 54-55.

6. Shawe objects to Kramer Levin's inclusion of \$18,043 in fees incurred in connection with the Merits Trial for work related to Shirley Shawe.

Response 11. This objection is sustained. The Court agrees the sanction should not apply to work Elting performed that related to Ms. Shawe.

7. Shawe objects to various fee amounts totaling \$18,714 that he claims are “inexplicable.” Response 11-12. This objection is sustained. Having reviewed the items listed under this category, I agree they should not be reimbursed.

8. Shawe asserts that fees that were incurred by PAC and Paul Weiss in connection with the briefing of two matters should be reallocated from Sanctions Fees to Merits Fees to maintain consistency with how Kramer Levin billed for those same matters, resulting in a reduction of \$56,766. Response 12-13. This objection is sustained.

9. Shawe asserts that certain deposition-related expenses should be reallocated from Sanctions Fees to Merits Fees, resulting in a reduction of \$106,523. Response 13. This objection is sustained. Virtually all of the expenses at issue were incurred on or before February 26, 2015, in connection with the Merits Trial. *See* Shawe Submission Ex. O.

10. Shawe objects that Gerald Harper, a senior Paul Weiss attorney, “accounted for an unreasonably high percentage of the total hours billed” by Paul Weiss during a three month-period from December 2, 2014 to February 22, 2015. Response 14. This objection is overruled. Having personally witnessed Mr.

Harper's involvement in the proceedings, his billing for 305.5 hours during this period seems entirely reasonable.

11. Shawe objects to Kramer Levin's inclusion of \$183,009 as Sanctions Fees due to the elimination of a 20% fee discount it provided Elting before August 13, 2015. Response 14-15. This objection is sustained. The only explanation offered in Elting's submission for the elimination of the discount is that "[u]pon receiving the Court's Memorandum Opinion dated August 13, 2015, Kramer Levin and Elting agreed that it was no longer appropriate to apply the 20% discount." Kaufman Aff. ¶ 3 n.3. Given the absence of any representation that Elting agreed to pay this amount irrespective of the outcome of the Sanctions Motion and that she actually has done so,⁵ the Court will not include this amount.

12. Shawe objects to a total of \$2,268,693 in both Merits and Sanctions Fees, alleging overstaffing and duplication of work across Elting's firms. Response 15-16. This objection is overruled. The litigation of these proceedings has been a complex affair in which each side has been represented by an army of lawyers. Combining each side's Merits and Sanctions Fees, the record reflects that Elting incurred a total of approximately \$12.6 million in attorneys' fees while Shawe incurred a total of approximately \$13.2 million. The fact the aggregate fees

⁵ By comparison, the PAC and Paul Weiss affidavits both confirm that Elting paid the amounts they billed, except for PAC's most recent invoice for June 2016. Shannon Aff. ¶ 5; Stone Aff. ¶ 7.

fall within a similar range provides compelling evidence of the reasonableness of the sanctions award and obviates the need to perform an audit to sort out accusations of duplicative work and unclear billing entries.

13. Elting requests entry of a sanctions award in the total amount of \$7,961,390, consisting of \$7,304,891 in attorneys' fees and \$656,499 in expenses. Based on the objections sustained in paragraphs 3-4, 6-9, and 11 above, the amount of Elting's fee reimbursement request will be reduced by \$785,420 (approximately 11%) to \$6,519,471. Applying an 11% reduction to her expenses as well, Elting's expense reimbursement request will be reduced by \$72,215 to \$584,284. Thus, for the reasons explained in the Sanctions Opinion, Shawe is directed to pay Elting the total amount of \$7,103,755 ($\$6,519,471 + \$584,284$) within ten business days of the date of this Order.

14. There is no just reason for delaying the entry of a final judgment concerning this matter. All proceedings concerning the Sanctions Motion have been concluded. The events underlying the Sanctions Motion overlap with matters decided in the Merits Opinion, which has been certified for interlocutory review, and the interests of justice and judicial economy would be served best through simultaneous appellate review of the Merits Opinion and the Sanctions Opinion.

Accordingly, under Court of Chancery Rule 54(b), final judgment is hereby entered on the adjudication of the Sanctions Motion.


Chancellor

Dated: August 19, 2016