STATE OF MINNESOTA
IN SUPREME COURT

C 3-00-1454

DANIEL GORDON, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. MICROSOFT CORPORATION, and DOES 1 through 100, inclusive, Defendants.	Hennepin County District Court Fourth Judicial District Civil No. 00-5994 The Honorable Bruce A. Peterson

PHILIP A. MEDNICK, an individual, on behalf of himself and all others similarly situated, Plaintiff, v. MICROSOFT CORPORATION, a Washington corporation, Defendant.	Ramsey County District Court Second Judicial District Civil No. CO-00-1276 The Honorable Dale B. Lindman

AFFIDAVIT OF DAVID R. CROSBY IN SUPPORT OF MOTION BY MICROSOFT CORPORATION TO TRANSFER AND CONSOLIDATE RELATED CASES

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

David R. Crosby, being first duly sworn upon oath, deposes and states as follows:

1. I am one of the attorneys for Defendant Microsoft Corporation ("Microsoft") in the above-captioned cases. I make this affidavit in support of Microsoft's motion to transfer and consolidate these related cases.

2. Attached respectively hereto as "Exhibits A – F" are true and correct copies of the Complaints (or most recent Amended Complaint) filed in each of the following cases: *The Rubbright Group v. Microsoft Corp.*, Hennepin County District Court No. 99-17351; *Nielsen v. Microsoft Corp.*, Hennepin County District Court No. 99-18076; *Klein v. Microsoft Corp.*, Hennepin County District Court No. 00-2614; *Jaffe v. Microsoft Corp.*, Hennepin County District Court No. 00-2643; *Gordon v. Microsoft Corp.*, Hennepin County District Court No. 00-5994; and *Mednick v. Microsoft Corp.*, Ramsey County District Court No. C0-00-1276.

3. Attached hereto as "Exhibit G" is a true and correct copy of the Transfer Order dated April 25, 2000, issued by the United States Judicial Panel on Multidistrict Litigation in *In re Microsoft Corp. Windows Operating Systems Antitrust Litigation*, MDL Docket No. 1332.

4. Attached hereto as "Exhibit H" is a true and correct copy of this Court's decision in *In re: Minnesota Vitamin Antitrust Litigation*, 2000 WL 210213 (Minn. Feb. 17, 2000).

FURTHER AFFIANT SAITH NOT.

Dated: August 10, 2000.

David R. Crosby

Subscribed and sworn to before me
this 10th day of August, 2000.

Notary Public

CARRIE J. JOHNSON
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

A

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

THE RUBBRIGHT GROUP, JAMES M. BURT and RECLAIM CENTER, INC., individually and on behalf of those similarly situated,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 99-CV-2017
MJD/JGL

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs bring this class action individually and on behalf of other similarly situated indirect purchasers (the "Class") of Windows Operating Systems manufactured and/or distributed by Microsoft ("Windows") between July 17, 1994 and the present (the "Class Period"). Microsoft is charged with monopolization in order to fix prices and restrain trade in the operating systems market and engaging in contracts in unreasonable restraint of trade in order to suppress and restrain trade and innovation in the market for Internet browsers or other application programming interfaces, all in violation of the Minnesota Antitrust Act, Minn. Stats. §§ 325D.49-325D.66. The following allegations, other than those pertaining specifically to the plaintiffs, are made upon information and belief based on the investigation of counsel.

NATURE OF THE ACTION

1. Microsoft is by far the largest worldwide manufacturer of computer operating systems such as Windows. It controls virtually all of the multi-billion annual computer operating

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system business. Microsoft's monopoly in this business has stifled competition and caused monopoly pricing.

2. Microsoft's monopoly power in the market for personal computer operating systems derives from the fact that Windows is used on over 80% of Intel-based personal computers ("PCS"), the dominant type of PC in the United States. More than 90% of new Intel-based PCS are shipped with a version of Windows pre-installed. PC manufacturers (often referred to as Original Equipment Manufacturers, or "OEMs") have no commercially reasonable alternative to Windows for the PCS that they distribute.

3. There are high barriers to entry in the market for PC operating systems. One of the most important is the barrier created by the number of software applications that must run on an operating system in order to make the operating system attractive to end users. Because (I) end users such as plaintiff want a large number of applications available, (ii) most applications today are written to run on Windows, and (iii) it would be prohibitively difficult, time-consuming, and expensive to create an alternative operating system that would run the programs that run on Windows given Microsoft's refusal thus far to publish the information about Windows which would make this possible, a potential new operating system entrant faces a high barrier to successful entry.

4. Accordingly, Microsoft has reduced the potential threat to the Windows monopoly from a direct, frontal assault by existing or new operating systems, to new software products that may support, or themselves become, alternative "platforms" to which applications can be written, and which can be used in conjunction with multiple operating systems, including but not limited to Windows.

5. To protect its valuable Windows monopoly against such potential competitive threats, and to extend its operating system monopoly into other software markets, Microsoft has engaged in a series of anticompetitive activities in unreasonable restraint of trade. Microsoft's conduct includes agreements tying other Microsoft software products to Windows; exclusionary agreements precluding companies from distributing, promoting, buying, or using products of Microsoft's software competitors or potential competitors; and exclusionary agreements restricting the right of companies to provide services or resources to Microsoft's software competitors or potential competitors.

6. As a result of Microsoft' conduct, plaintiffs and the Class have paid higher prices for their computers and the operating systems that run them. In addition, the lack of competition in the operating system market has resulted in diminished product quality. Microsoft's has also acted to suppress and restrain innovation and competition in the market for alternative platforms, as referenced above.

PARTIES

7. Plaintiff The Rubbright Group is a Minnesota corporation with its principal place of business in Minnesota. In or about October 1998, Plaintiff purchased a computer installed with Windows 98. The purchase was made in Hennepin County.

8. Plaintiff Reclaim Center, Inc. ("RCI") is a Minnesota corporation with its principal place of business in Minnesota. RCI purchased a computer installed with Windows 98. RCI has also purchased computers installed with Windows 95.

9. Plaintiff James M. Burt is an individual residing in Ramsey County. Mr. Burt purchased a computer installed with Windows 98.

x. Microsoft is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located at One Microsoft Way, Redmond, Washington. Microsoft sells and licenses Windows operating systems, and delivers copies of its operating systems to OEMs and retail customers, throughout the United States including in Minnesota.

JURISDICTION AND VENUE

11. This court has jurisdiction over this action pursuant to Minn. Stat. § 543.19 because Microsoft transacts business in this state. Venue is proper in this district pursuant to Minn. Stat. § 325D.65 because plaintiffs purchased Windows in this district and Microsoft's agent for service is located here.

THE WINDOWS MONOPOLY

12. Since 1990, Microsoft has made and sold a variety of PC operating systems, including MS-DOS, Windows 3.11, Windows For Workgroups, Windows NT Workstation, Windows 95, and Windows 98. Microsoft has maintained a monopoly share (in excess of 90%) of the PC operating system market over an extended period of time.

13. The durability of Microsoft's market power in part reflects the fact that the PC operating system market is characterized by certain economies of scale in production and by significant "network effects." In other words, the PC operating system for which there are the greatest number, variety, and quality of applications will be selected by the large majority of PC users, and in turn writers of applications will write their programs to work with the most commonly used operating system, in order to appeal to as many potential customers as possible.

14. Economies of scale and network effects, which reinforce one another, result in high barriers to entry. The primary channel through which Microsoft distributes its operating systems is preinstallation on new PCS by OEMs. Because a PC can perform virtually no useful tasks without an operating system, OEMs consider it a commercial necessity to preinstall an operating system on nearly all of the PCS they sell. And because there is no viable competitive alternative to the Windows operating system for Intel-based computers, OEMs consider it a commercial necessity to preinstall Windows on nearly all of their PCS. Both OEMs and Microsoft recognize that OEMs have no commercially viable substitute for Windows, and that they cannot preinstall Windows on their PCS without a license from Microsoft.

13. Microsoft has used its monopoly power to squash efforts by would-be competitors to introduce other operating systems into the market place. For example, in late 1994, IBM Corp. introduced its Intel-compatible OS/2 Warp operating system and spent tens of millions of dollars in an effort to encourage software developers to make applications for OS/2 and in an attempt to reverse- engineer, or 'clone,' that part of the Windows which would allow software to work on both systems. Despite these efforts, IBM could obtain neither significant market share nor developer support for OS/2 Warp. Thus, although at its peak OS/2 ran approximately 2,500 applications and had 10% of the market for Intel- compatible PC operating systems, IBM ultimately determined that the applications barrier prevented effective competition against Windows 95. For that reason, in 1996 IBM stopped trying to convince developers to write for OS/2 Warp.

14. Nor could Apple Computer, Inc. compete effectively with Windows. Although Apple's Mac OS supports more than 12,000 applications, even an inventory of that magnitude is not sufficient to enable Apple to present a significant percentage of users with a viable

substitute for Windows. The absence of a large installed base, in turn, reinforces the disparity between the applications made available for the Mac OS and those made available for Windows, further inhibiting Apple's sales. The applications barrier thus prevents the Mac OS from hindering Microsoft's ability to control price, regardless of whether the Mac OS is regarded as being in the relevant market or not.

15. The complete inability of would-be competitors to offer alternatives to Windows – alternatives that in many ways are superior technically – has inflated the prices of both Windows and the PCS that are sold with Windows. Lack of competition also has prevented the natural flow of technical improvements that normally result when several manufacturers are trying to convince the public to buy their product.

UNITED STATES v. MICROSOFT

16. On November 6, 1999, United States District Judge Thomas P. Jackson issued findings of fact in *United States. v. Microsoft*, 98-CV-1232 (D.D.C.), copy attached as Exhibit 1. Plaintiffs expressly alleges and incorporates Judge Jackson findings, which are summarized as follows:

On Microsoft's power in the market:

> "Microsoft enjoys so much power in the market for Intel-compatible PC operating systems that if it wished to exercise this power solely in terms of price, it could charge a price for Windows substantially above that which could be charged in a competitive market. Moreover, it could do so for a significant period of time without losing an unacceptable amount of business to competitors. In other words, Microsoft enjoys monopoly power in the relevant market."
>
> "Viewed together, three main facts indicate that Microsoft enjoys monopoly power. First, Microsoft's share of the market for Intel-compatible PC operating systems is extremely large and stable. Second, Microsoft's dominant market share is protected

by a high barrier to entry. Third, and largely as a result of that barrier, Microsoft's customers lack a commercially viable alternative to Windows..."

"Microsoft possesses a dominant, persistent, and increasing share of the worldwide market for Intel-compatible PC operating systems. Every year for the last decade, Microsoft's share of the market for Intel-compatible PC operating systems has stood above 90 percent. For the last couple of years the figure has been at least 95 percent, and analysts project that the share will climb even higher over the next few years. Even if Apple's Mac OS were included in the relevant market, Microsoft's share would still stand well above 80 percent."

On evidence of competitor's inability of compete:

"The experiences of IBM and Apple, Microsoft's most significant operating system rivals in the mid and late 1990s, confirm the strength of the applications barrier to entry..."

On why the judge says Microsoft is a monopoly:

"The company's decision not to consider the prices of other vendors' Intel-compatible PC operating systems when setting the price of Windows 98, for example, is probative of monopoly power. One would expect a firm in a competitive market to pay much closer attention to the prices charged by other firms in the market. Another indication of monopoly power is the fact that Microsoft raised the price that it charged OEMs (original equipment manufacturers) for Windows 95, with trivial exceptions, to the same level as the price it charged for Windows 98 just prior to releasing the newer product. In a competitive market, one would expect the price of an older operating system to stay the same or decrease upon the release of a newer, more attractive version.

"A Microsoft study from November 1997 reveals that the company could have charged $49 for an upgrade to Windows 98 - there is no reason to believe that the $49 price would have been unprofitable - but the study identifies $89 as the revenue-maximizing price. Microsoft thus opted for the higher price. ...

"Furthermore, Microsoft expends a significant portion of its monopoly power, which could otherwise be spent maximizing price, on imposing burdensome restrictions on its customers - and in inducing them to behave in ways - that augment and prolong that monopoly power. For example, Microsoft attaches to a Windows license conditions that restrict the ability of (original equipment manufacturers) to promote software that Microsoft believes could weaken the applications barrier to entry. Microsoft also charges a lower price to OEMs who agree to ensure that all of their Windows machines are powerful enough to run Windows NT for Workstations."

On Microsoft's actions toward other firms, including Netscape and Sun:

"Microsoft's monopoly power is also evidenced by the fact that, over the course of several years, Microsoft took actions that could only have been advantageous if they operated to reinforce monopoly power. ...

"Microsoft feared all of these technologies because they facilitated the development of user-oriented software that would be indifferent to the identity of the underlying operating system."

On Microsoft's harm to consumers:

"Microsoft's actions have inflicted collateral harm on consumers who have no interest in using a Web browser at all. If these consumers want the non-browsing features available only in Windows 98, they must content themselves with an operating system that runs more slowly than if Microsoft had not interspersed browsing-specific routines throughout various files containing routines relied upon by the operating system. More generally, Microsoft has forced Windows 98 users uninterested in browsing to carry software that, while providing them with no benefits, brings with it all the costs associated with carrying additional software on a system. These include performance degradation, increased risk of incompatibilities and the introduction of bugs. Corporate consumers who need the hardware support and other non-browsing features not available in earlier versions of Windows, but who do not want Web browsing at all, are further burdened in that they are denied a simple and effective means of preventing employees from attempting to browse the Web.

"Microsoft has harmed even those consumers who desire to use Internet Explorer, and no other browser, with Windows 98. To the extent that browsing-specific routines have been commingled with operating system routines to a greater degree than is necessary to provide any consumer benefit, Microsoft has unjustifiably jeopardized the stability and security of the operating system. Specifically, it has increased the likelihood that a browser crash will cause the entire system to crash and made it easier for malicious viruses that penetrate the system via Internet Explorer to infect non-browsing parts of the system.

On Microsoft's bundling and other business practices:

"Microsoft's argument that binding the browser to the operating system is reasonably necessary to preserve the 'integrity' of the Windows platform is likewise specious.

"In sum, Microsoft successfully secured for Internet Explorer - and foreclosed to Navigator - one of the two distribution channels that leads most efficiently to the

usage of browsing software. Even to the extent that Navigator retains some access to the OEM channel, Microsoft has relegated it to markedly less efficient forms of distribution than the form vouchsafed for Internet Explorer, namely, prominent placement on the Windows desktop. ...

"Microsoft made substantial sacrifices, including the forfeiture of significant revenue opportunities, in order to induce (Internet access providers) to do four things: to distribute access software that came with Internet Explorer; to promote Internet Explorer; to upgrade existing subscribers to Internet Explorer; and to restrict their distribution and promotion of non-Microsoft browsing software. The restrictions on the freedom of IAPs to distribute and promote Navigator were far broader than they needed to be in order to achieve any economic efficiency."

On the effect of free software:

"As Microsoft hoped and anticipated, the inducements it gave out gratis, as well as the restrictive conditions it tied to those inducements, had, and continue to have, a substantial exclusionary impact.

...

"Not surprisingly, the inducements that Microsoft gave out and the restrictions it conditioned them upon have resulted in a substantial increase in Internet Explorer's usage share. A study Microsoft conducted shows that at the end of 1997, Internet Explorer enjoyed a 94 percent weighted average share of shipments of browsing software by (Internet service providers) that had agreed to make Internet Explorer their default browser. By contrast, the study shows that Internet Explorer had only a 14 percent weighted average share of shipments of browsing software by ISPs that had not agreed to make Internet Explorer their default browser."

Conclusions:

"Many of the tactics that Microsoft has employed have also harmed consumers indirectly by unjustifiably distorting competition. The actions that Microsoft took against Navigator hobbled a form of innovation that had shown the potential to depress the applications barrier to entry sufficiently to enable other firms to compete effectively against Microsoft in the market for Intel-compatible PC operating systems. That competition would have conduced to consumer choice and nurtured innovation. ... There is insufficient evidence to find that, absent Microsoft's actions, Navigator and Java already would have ignited genuine competition in the market for Intel-compatible PC operating systems. It is clear, however, that Microsoft has retarded, and perhaps altogether extinguished, the process by which these two middleware technologies could have facilitated the introduction of competition into an important market. ...

"Most harmful of all is the message that Microsoft's actions have conveyed to every enterprise with the potential to innovate in the computer industry. Through its conduct toward Netscape, IBM, Compaq, Intel, and others, Microsoft has demonstrated that it will use its prodigious market power and immense profits to harm any firm that insists on pursuing initiatives that could intensify competition against one of Microsoft's core products. Microsoft's past success in hurting such companies and stifling innovation deters investment in technologies and businesses that exhibit the potential to threaten Microsoft. The ultimate result is that some innovations that would truly benefit consumers never occur for the sole reason that they do not coincide with Microsoft's self-interest."

RELEVANT MARKET

17. The market for personal computer operating systems consists of operating systems written for the Intel x86/Pentium class of microprocessors. These microprocessors perform central processing unit ("CPU") functions for the vast majority of personal computers, and their operating systems manage the interaction between the CPU and the various pieces of hardware, such as a monitor or printer, attached to such computers. Operating systems also control and direct the interaction between applications, such as word processing or spreadsheet programs, and the CPU. No other product duplicates or fully substitutes for the operating system. The geographic market for PC operating systems is worldwide. Because of the complex interactions among operating system software, applications software, and the hardware attached to the PC, an operating system written for one class of microprocessors typically will not work on another class of microprocessors without significant modification. Thus, OEMs and PC users do not consider an operating system that runs a non-Intel-based personal computer to be an effective substitute for an operating system that runs an Intel-based personal computer.

CLASS ACTION ALLEGATIONS

18. Plaintiffs bring this action individually and as a class action, pursuant to Minn. R. Civ. P. 23.01 and 23.02 on behalf of the following Class:

> All individuals and entities who purchased Windows from entities or persons other than Microsoft in Minnesota. Excluded from the class are defendants, their employees, parents, subsidiaries and affiliates.

19. The action meets the numerosity requirement of Rule 23.01(a) because the Class members number at least in the thousands. Accordingly, the Class is so numerous that joinder is impracticable.

20. The action meets the requirements of Rule 23.01(b) because the following common questions predominate over any individual questions:

(a) whether Microsoft maintained a monopoly in the operating system market described herein during the Class Period;

(b) whether Microsoft violated Minn. Stat. §§ 325D.51-.53;

(c) whether plaintiffs and the Class sustained damages as a result of Microsoft's alleged unlawful conduct in the form of higher prices for operating systems and PCS;

(d) whether Microsoft will be liable for punitive damages to the class due to its intentional, outrageous, and egregious conduct.

21. The action meets the typicality requirements Rule 23.01(c) because plaintiffs and the other Class members were damaged by same monopoly. Accordingly, proof of defendants' violations can be presented with common evidence on a class wide basis.

22. The action meets the adequacy requirement of Rule 23.01(d) because plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs' interests coincide with, and do not conflict with, those of other members of the Class. In addition, plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex class actions and antitrust litigation.

23. This action meets the requirements of Rule 23.02(b) because Microsoft's actions are applicable to the class as a whole, and plaintiffs seek, *inter alia*, equitable remedies with respect to the class as a whole.

24. This action meets the requirements of Rule 23.02(c)because the class device is superior to any other method for the fair and efficient adjudication of this dispute. Individual actions would be impractical, if not impossible. The damages suffered by Class members are small compared with the expense of individual litigation. There will be no extraordinary difficulty in the management of this Class action.

CLAIM FOR MONOPOLIZATION

25. Plaintiffs incorporate the allegations the foregoing paragraphs above. Microsoft possesses monopoly power in the market for PC operating systems. Through the anticompetitive conduct described herein, Microsoft has willfully maintained, and unless restrained by the Court will continue to willfully maintain, that power by anticompetitive and unreasonably exclusionary conduct.

26. Microsoft's conduct has caused prices charged to Class members for operating systems to be artificially high and noncompetitive. Class members have been deprived of free and open competition in the operating systems market because full, fair, free, and open

competition in the market was foreclosed and unreasonably restrained. Microsoft's conduct, as set forth herein, predominantly and substantially has affected Minnesota residents.

27. Microsoft's acts as alleged herein are in violation of Minn. Stat. § 325D.49 et. seq.

28. During the Class Period, Microsoft (a) manufactured and sold Windows, and (b) maintained a monopoly in the market therefore; among other things, Microsoft enjoyed more than a 90% share of the sales made each year during the Class Period in the relevant market.

29. In order to maintain its monopoly in the relevant market at times during the Class Period, Microsoft acted unlawfully, anticompetitively and abusively.

CLAIM FOR UNREASONABLE RESTRAINT OF TRADE

30. Plaintiffs reallege and incorporate by reference paragraphs 1 to 29 above.

31. By engaging in the acts described above, and those described in Exhibit 1, Microsoft has, or has attempted to, unreasonably restrain trade and suppress innovation and competition in the markets for operating systems and Internet browsers and application programming interfaces through, inter alia, its licensing agreements.

32. Microsoft's conduct violates Minn. Stats. § 325D.51 to .53. Microsoft's actions are per se illegal or illegal under the rule of reason.

WHEREFORE, plaintiffs respectfully requests this Court to enter judgment as follows:

A. Declaring that this action may proceed as a class action pursuant to Minn. R. Civ. P. 23.01 and 23.02 by declaring that the plaintiffs be certified as Class representatives and its attorneys as Class counsel;

B. Finding that the scheme to monopolize alleged herein unreasonably restrained trade or commerce in and/or constituted a deceptive trade practice in violation of Minn. Stat. § 325D.49 et. seq.

C. Awarding plaintiffs and the Class actual and treble damages as provided for by the relevant statutes due to Microsoft's intentional, outrageous, and egregious conduct which has been established as a matter of record in *United States. v. Microsoft*, 98-CV-1232 (D.D.C.) (*see* exhibit 1).

D. Enjoining Microsoft from continuing the operation of its monopolistic practices as they related to the sale of operating systems.

E. Awarding costs, attorneys' fees, and such other and further relief as the Court may deem fit, just and proper.

JURY DEMAND

Plaintiffs demands a trial by jury of all issues so triable.

Dated: January 14, 2000.

ZELLE, HOFMANN, VOELBEL & GETTE LLP

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ATTORNEYS FOR PLAINTIFFS AND THE CLASS

214697.1

B

Case Type: Other Civil

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Steven Nielsen, individually, and as representative of all persons similarly situated, Plaintiffs, vs. Microsoft Corporation, Defendants.	COMPLAINT Court File No. _____

CLASS ACTION COMPLAINT

STEVEN NIELSEN, individually, on behalf of all persons similarly situated in the State of Minnesota, in his Class Action Complaint of the monopolistic and antitrust activities of Microsoft Corporation ("Microsoft"), states and alleges as follows:

I. INTRODUCTION

1. This case arises out of Defendant Microsoft's manipulation of the operating systems' market for Intel-compatible computers in order to maintain its monopoly on the operating systems market. These monopolistic practices were designed to maintain an artificially high price for the Microsoft Windows product. Consumers in Minnesota had no choice other than to pay these inflated prices. Microsoft's acts constitute a violation of Minnesota's Antitrust Act of 1971, Minn. Stat. §325D.49 et seq.

II. JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction because Plaintiff asserts civil claims pursuant to the Minnesota Antitrust Act, Minn. Stat. Sections 325D.49 to 325D.66 to obtain actual damages and treble damages and the costs of suit, including reasonable attorneys' fees, for the injuries sustained by Plaintiff and the Class (as defined herein) by reason of Microsoft's violations of Minnesota law.

3. Microsoft transacts business in the State of Minnesota. Without limiting the generality of the foregoing, the torts and wrongs alleged herein were committed in the jurisdiction of this Court, the significant damages and losses alleged herein were suffered in this jurisdiction, the rights of the Plaintiff and class members were damaged or impaired in this jurisdiction, and Microsoft's wrongful activities were directed by or on their behalf into this jurisdiction, all as more particularly described herein.

4. Without limiting the generality of the foregoing, Microsoft directly or through agents who were at the time acting with actual and/or apparent authority and within the scope of such authority have:

a. Transacted business in this State and in this county;

b. Contracted to supply goods in this State and in this county;

c. Intentionally availed themselves of the benefits of doing business in this State and in this county;

d. Produced, promoted, sold, marketed, and/or distributed its products in this State and in this county and, thereby, has purposefully profited from its access to this State's and county's markets;

e. Caused tortious damage by act or omission in this State and in this county;

f. Caused tortious damage in this State and county by acts outside this State while (i) regularly doing or soliciting business in this State, and/or (ii) engaging in other persistent courses of conduct within this State, and/or (iii) deriving substantial revenue from goods used or consumed in this State and this county;

g. Committed acts which Microsoft knew or should have known would cause damage (and, in fact, did cause damage) in this State to the Plaintiff and members of the Plaintiff Class while (i) regularly doing or soliciting business in this State, and/or (ii) engaging in other persistent courses of conduct within this State, and/or (iii) deriving substantial revenue from goods used or consumed in this State and this county; and

h. Otherwise had the requisite minimum contacts with this State and this county, and, under the circumstances, it is fair and reasonable to require the Defendants to come to this Court to defend this action.

5. Venue is proper in Hennepin County, pursuant to Minn. Stat. § 325D.65, for the following reasons: (i) Plaintiff has purchased Microsoft's products at artificially inflated prices; (ii) Microsoft does substantial business in Hennepin County; and (iii) Plaintiff designates Hennepin County as the forum for the prosecution of his claims.

6. Plaintiff and the Plaintiff Class seek monetary relief as provided by Minn. Stat. § 325D.57. Plaintiff and each member of the Class have individually incurred damages under the laws of Minnesota in an amount less than $75,000. Neither the Plaintiff nor any member of the Class seeks damages exceeding $75,000, nor do their damages individually exceed $75,000, inclusive of interest and attorneys' fees and all relief of any nature sought hereunder. Plaintiff does not seek any form of

"common" recovery, but rather individual recoveries not to exceed $75,000 for any class member, inclusive of interest and attorneys' fees and all relief of any nature sought hereunder.

7. Plaintiff states, and intends to state, causes of action solely under the laws of Minnesota and specifically denies any attempt to state a cause of action under the laws of the United States of America, including without limitation the Sherman Act, 15 U.S.C. § 1.

III. PARTIES

A. Plaintiff

8. Plaintiff Steven Nielsen resides at 14631 Glendale Avenue S.E., Prior Lake, Minnesota 55372. Plaintiff is an indirect purchaser of Microsoft Windows and Internet Explorer.

B. Defendant

9. Microsoft is a corporation organized and existing under the laws of the State of Washington. Microsoft has facilities and personnel and transacts substantial business in the State of Minnesota, including the sale or licensing of Windows and Internet Explorer.

IV. CLASS ACTION ALLEGATIONS

10. This action is brought by Plaintiff on behalf of himself, and pursuant to Minnesota Rule 23.01 and 23.02 (c), because (i) the Plaintiff has a right or interest in common with the Class; (ii) the Plaintiff fairly represents the interests and rights involved so that the issue may be fairly and efficiently tried; and (iii) there are so many Class members that it would be impracticable to bring all interested persons before the Court.

11. The Class is defined as:

> All persons or entities who indirectly purchased, leased or licensed Microsoft Windows or Microsoft Internet Explorer, in Minnesota, for their own use and not for resale (the "Class").

Excluded from the Class are Microsoft, officers, directors or employees of Microsoft; any entity in which Microsoft has a controlling interest; the affiliates, legal representatives, attorneys, heirs, or assigns of Microsoft; and any federal, state or local governmental entity, and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

12. There are questions of law and fact arising in this action which are common to Plaintiff and the members of the Class, including:

a. Whether Microsoft established, maintained, or used, or attempted to establish, maintain, or use monopoly power in the sale, leasing, or licensing of Windows products;

b. Whether the acts and omissions alleged herein are in restraint of trade or commerce under the laws of Minnesota;

c. Whether such acts and omissions were or are for the purpose of excluding or limiting competition or controlling, fixing or maintaining prices;

d. The existence and duration of the restrictions, limitations, obligations, and course of conduct alleged herein;

e. The existence, duration, and illegality of the lease, sale or license of Windows or Internet Explorer and conditions thereon and course of conduct alleged herein;

f. The effect upon and the extent of injuries sustained by plaintiffs and members of the Class and the appropriate type and/or measure of damages;

g. The amount of additional revenues and profits obtained by Microsoft attributable to its violations of Minnesota law; and

h. The appropriate nature of class wide equitable relief.

13. The questions of law and fact which are common to Plaintiff and all members of the Class predominate over any questions solely affecting individual members. Plaintiff has no interests that are adverse or antagonistic to those of the Class and his claims are typical of the claims of all Class members. Plaintiff is represented by counsel experienced in the prosecution of complex class action and antitrust litigation.

14. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. It would be impracticable and undesirable for each member of the Class who has suffered harm to bring a separate action. In addition, the bringing of such actions would put a substantial and unnecessary burden on the courts, while a single class action can determine, with judicial economy, the rights of all Class members. Plaintiff and all members of the Plaintiff Class were damaged by the same wrongful conduct by Microsoft.

15. The damages suffered by individual Class members are relatively small. Plaintiff's damages and those of each member of the Class are individually less than $75,000. Consequently, the expense and burden of individual antitrust litigation makes it virtually impossible for members of the Class to individually seek redress of the wrongs done to them by Microsoft. Plaintiff and his counsel are not aware of any reason why this case should not proceed as a class action.

V. SUBSTANTIVE ALLEGATIONS

16. A "personal computer" ("PC") is a digital information processing device designed for use by one person at a time.

17. An "operating system" is a software program that controls the allocation and use of computer resources (such as central processing unit time, main memory space, disk space, and input/output channels). The operating system also supports the functions of software programs, called

"applications," that perform specific user-oriented tasks. The operating system supports the functions of applications by exposing interfaces, called "application programming interfaces," or "APIs." These are synapses at which the developer of an application can connect to invoke pre-fabricated blocks of code in the operating system. These blocks of code in turn perform crucial tasks, such as displaying text on the computer screen. Because it supports applications while interacting more closely with the PC system's hardware, the operating system is said to serve as a "platform."

18. An Intel-compatible PC is one designed to function with Intel's 80x86/Pentium families of microprocessors or with compatible microprocessors manufactured by Intel or by other firms.

19. An operating system designed to run on an Intel-compatible PC will not function on a non-Intel-compatible PC, nor will an operating system designed for a non-Intel-compatible PC function on an Intel-compatible one. Similarly, an application that relies on APIs specific to one operating system will not, generally speaking, function on another operating system unless it is first adapted, or "ported," to the APIs of the other operating system.

20. In 1981, Microsoft released the first version of its Microsoft Disk Operating System, commonly known as "MS-DOS." The system had a character-based user interface that required the user to type specific instructions at a command prompt in order to perform tasks such as launching applications and copying files. When the International Business Machines Corporation ("IBM") selected MS-DOS for pre-installation on its first generation of PCs, Microsoft's product became the predominant operating system sold for Intel-compatible PCs.

21. In 1985, Microsoft began shipping a software package called Windows. The product included a graphical user interface, which enabled users to perform tasks by selecting icons and words on the screen using a mouse. Although originally just a user-interface, or "shell," sitting on top of MS-DOS, Windows took on more operating-system functionality over time.

22. In 1995, Microsoft introduced a software package called Windows 95, which announced itself as the first operating system for Intel-compatible PCs that exhibited the same sort of integrated features as the Mac OS running PCs manufactured by Apple Computer, Inc. ("Apple"). Windows 95 enjoyed unprecedented popularity with consumers, and in June 1998, Microsoft released its successor, Windows 98.

23. Microsoft licenses copies of its software programs directly to consumers. The largest part of its MS-DOS and Windows sales, however, consists of licensing the products to manufacturers of PCs (known as "original equipment manufacturers" or "OEMs"), such as the IBM PC Company and the Compaq Computer Corporation ("Compaq"). An OEM typically installs a copy of Windows onto one of its PCs before selling the package to a consumer under a single price.

24. The Internet is a global electronic network, consisting of smaller, interconnected networks, which allows millions of computers to exchange information over telephone wires, dedicated data cables, and wireless links. The Internet links PCs by means of servers, which run specialized operating systems and applications designed for servicing a network environment.

25. The World Wide Web ("the Web") is a massive collection of digital information resources stored on servers throughout the Internet. These resources are typically provided in the form of hypertext documents, commonly referred to as "Web pages," that may incorporate any combination of text, graphics, audio and video content, software programs, and other data. A user of a computer connected to the Internet can publish a page on the Web simply by copying it into a specially designated, publicly accessible directory on a Web server. Some Web resources are in the form of applications that provide functionality through a user's PC system but actually execute on a server.

26. Internet content providers ("ICPs") are the individuals and organizations that have established a presence, or "site," on the Web by publishing a collection of Web pages. Most Web pages

are in the form of "hypertext"; that is, they contain annotated references, or "hyperlinks," to other Web pages. Hyperlinks can be used as cross-references within a single document, between documents on the same site, or between documents on different sites.

27. Typically, one page on each Web site is the "home page," or the first access point to the site. The home page is usually a hypertext document that presents an overview of the site and hyperlinks to the other pages comprising the site.

28. PCs typically connect to the Internet through the services of Internet access providers ("IAPs"), which generally charge subscription fees to their customers in the United States. There are two types of IAPs. Online services ("OLSs") such as America Online ("AOL"), Prodigy, and the Microsoft Network ("MSN") offer, in addition to Internet access, various services and an array of proprietary content. Internet service providers ("ISPs") such as MindSpring and Netcom, on the other hand, offer few services apart from Internet access and relatively little of their own content.

29. A "Web client" is software that, when running on a computer connected to the Internet, sends information to and receives information from Web servers throughout the Internet. Web clients and servers transfer data using a standard known as the Hypertext Transfer Protocol ("HTTP"). A "Web browser" is a type of Web client that enables a user to select, retrieve, and perceive resources on the Web. In particular, Web browsers provide a way for a user to view hypertext documents and follow the hyperlinks that connect them, typically by moving the cursor over a link and depressing the mouse button.

30. Although certain Web browsers provided graphical user interfaces as far back as 1993, the first widely-popular graphical browser distributed for profit, called Navigator, was brought to market by the Netscape Communications Corporation in December 1994. Microsoft introduced its

browser, called Internet Explorer, in July 1995. It is the introduction of Netscape Navigator that prompted Microsoft to begin engaging in anti-competitive activities to protect its monopoly.

31. Since the introduction of Microsoft's Windows Products and the anti-competitive efforts it has undertaken, there is virtually no competition in the operating system and shell markets. Currently there are no products, nor are there likely to be any in the near future, that a significant percentage of consumers world-wide could substitute for Intel-compatible PC operating systems without incurring substantial costs. Furthermore, no firm that does not currently market Intel-compatible PC operating systems could start doing so in a way that would, within a reasonably short period of time, present a significant percentage of consumers with a viable alternative to existing Intel-compatible PC operating systems. Therefore, the relevant market is the purchase, lease or licensing of all Intel-compatible PC operating systems.

32. Beginning with the introduction of Netscape's Navigator Web Browser, Microsoft began to realize that these web browsers could ultimately mature into an application delivery platform which would threaten its operating systems monopoly. Thereafter, Microsoft began to utilize its monopoly power and its agreements with OEMs, IAPs and others to stifle competition in the browser market to protect, maintain and extend its monopoly over in the operating systems market. These actions had the direct effect of lessening competition and promoting Microsoft's monopoly in the operating systems market through its Windows products.

33. For example, in 1995, Microsoft proposed to Netscape that it integrate Navigator into the Windows 95 product that Microsoft intended to release later that year. At the same time, Microsoft representatives also attempted to persuade Netscape representatives to cease platform level development of Navigator. Netscape also required at this time crucial technical information in order to develop its Navigator product to run on the new Windows 95 operating system. Having refused to cease its

platform development of Navigator, Microsoft withheld this crucial information, such that Navigator was incompatible with certain Internet service providers. Microsoft refused to provide this technical information, a script tool, despite the fact that it freely licensed the tool to any Internet service provider that wanted it. Netscape never received a license for the scrip tool, and as a result was unable to do business with certain Internet service providers for a significant period of time.

34. As another example of its anti-competitive activity, a Microsoft study from November 1997 reveals that the company could have charged $49 for an upgrade to Windows 98 which would have resulted in a profit to the company in a competitive market. However, because Microsoft has virtually eliminated competition through use of its monopolistic power, the study identifies $89 as the revenue-maximizing price which was ultimately utilized as the "market" price.

35. Microsoft also quashed software development by Intel. In the mid-1990s, Intel developed a software interface which would enable Intel microprocessors to carry out tasks in such a manner that would greatly enhance video and graphics performance. Additionally, Intel was developing versions of this software for non-Microsoft operating systems. Intel's main reason for developing the software was because Microsoft software, including its Windows operating systems, could not take advantage of advances in hardware technology developed by Intel, while Intel's software interface could.

36. Alarmed by the prospect of manufacturers installing Intel software interface, and thus lessening the need for a Windows operating system, Microsoft persuaded manufacturers not to install Intel software until Intel ceased to offer its software with non-Windows' application capabilities. Microsoft then persuaded Intel that if it stopped promoting its new software interfaces, Microsoft would accelerate its own work to incorporate the functions of Intel's new software into Windows.

37. At the same time, Microsoft pressured major manufacturers of PCs to not install Intel software on their own PCs until the software ceased to offer the ability to run non-Windows' operating systems. As a result, Intel agreed to stop promoting its software. However, Microsoft only incorporated some of Intel's innovations into its operating system products. As late as the end of 1998, Microsoft still had not implemented key capabilities that Intel had been poised to offer consumers in 1995.

38. Additionally, Microsoft pressured Intel to cease utilizing revenues from its microprocessor business to fund development and distribution of its software. Microsoft then threatened Intel by telling Intel representatives that it could not count on Microsoft to support Intel's next generation of microprocessors as long as Intel was developing platform level software that competed with Windows. Understanding that Intel would have difficulty selling PC microprocessors if Microsoft stopped cooperating in making them compatible with Windows and if Microsoft stated to manufacturers that it did not support Intel's chips, Intel agreed to stop developing platform level interfaces that might draw support away from interfaces compatible with Windows.

39. Once Microsoft realized that Netscape would not abandon its efforts to develop Navigator into a platform level application, it set about a strategy to increase its market share for its web browsers, Internet Explorer. To effect the strategy, it realized that it not only needed to offer a product that was considered as good as Navigator, but to find avenues to distribute it more widely than Navigator. Consequently, it chose to bundle Internet Explorer with Windows 95 and 98, instead of selling it separately, as Netscape did with Navigator. Moreover, Microsoft did not charge a license fee even for stand-alone Internet Explorer sales. Furthermore, it delayed release of Windows 98 because Internet Explorer 4.0, the most recent version at the time, was not ready for release. Microsoft made

the conscious decision not to release Windows 98 without Internet Explorer 4.0, because it would have had the result of diminishing dissemination of Internet Explorer 4.0.

40. Since the introduction of Internet Explorer, Microsoft has, by unlawful and anticompetitive means, including the monopoly leveraging of its market power in the PC operating systems market, effectively eliminated competition in the web browser and related markets. Therefore, another relevant market is the purchase, lease or licensing of web browsers.

41. The United States Department of Justice has commenced an action for injunctive relief against Microsoft, alleging violations of the federal antitrust laws, specifically sections 1 and 2 of the Sherman Act (15 U.S.C. § 1 and 2). On November 5, 1999, the Honorable Thomas Penfield Jackson issued Findings of Fact. Among these findings of fact were the following:

> As has been shown, Microsoft also engaged in a concerted series of actions designed to protect the applications barrier to entry, and hence its monopoly power, for a variety of middleware threats . . . . Many of these actions have harmed consumers in ways that are immediate and easily discernible. They have also caused less direct, but nevertheless serious and far-reaching, consumer harm by distorting competition.

See Paragraph 409 of Judge Jackson's Opinion.

42. Plaintiff, individually and on behalf of the Class, brings this action to recover damages for the harm caused by Microsoft as a result of its anticompetitive behavior.

VI. COUNT I
VIOLATION OF THE MINNESOTA ANTITRUST LAW

43. Plaintiff hereby adopts and incorporates by this reference each of the preceding paragraphs as if fully set forth herein.

44. As alleged herein, Plaintiff and the Class have been injured by Microsoft's violation of the Minnesota Antitrust Law which provides a private right of action to indirect purchasers.

45. Beginning with the introduction of Netscape's Navigator Web Browser in December 1994 and continuing thereafter, Microsoft has engaged in unlawful practices designed to eliminate the competition with Microsoft for alternative platforms, operating systems, and web browsers, and for the purposes of excluding further competition.

46. Microsoft's actions have affected all persons and entities who have indirectly purchased, leased or licensed Windows or Internet Explorer, in Minnesota, for their own use and not for resale. As such, the relevant market is the purchase, lease or licensing of all Intel-compatible PC operating systems.

47. Microsoft utilized its monopolistic power to fix, raise, maintain, stabilize, control and establish at artificial and non-competitive levels, the prices at which its Windows operating system was sold and used in Minnesota and elsewhere.

48. The acts committed by Microsoft as alleged herein are illegal monopolies and restraints of trade, because among other things, Microsoft illegally:

a. Suppressed, restrained and/or eliminated competition in the sale of PC operating systems;

b. Suppressed, restrained and/or eliminated competition in the sale of web browsers and applications related thereto; and

c. Raised, fixed, maintained and stabilized at artificial and non-competitive levels the prices of Windows products purchased by Plaintiff and other members of the Class.

49. Each of the above acts constitutes an unlawful restraint of trade and is a distinct and independent violation of Minnesota law.

50. Plaintiff and the Class were injured by reason of the unfair and deceptive practices of Microsoft as alleged herein. Plaintiff and the Class were forced to pay higher prices for Windows products than they would have had to pay if the prices charged by Microsoft to its customers were the product of fair and open competition.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an Order and Judgment against Microsoft as follows:

a. Certifying this action to proceed as a class action pursuant to Minnesota Rule 23 and ordering that reasonable notice be given to members of the Class;

b. Declaring that the violations alleged herein constitute an establishment, maintenance, or use of, or an attempt to establish, maintain, or use monopoly power over trade and commerce by Microsoft for the purpose of affecting competition and controlling, fixing, or maintaining prices in violation of Minn. Stat. § 325D.52;

c. Awarding Plaintiff and the Class treble damages in an amount to be determined at trial pursuant to Minn. Stat. § 325D.57;

d. Granting Plaintiff and the Class the costs of prosecuting this action together with reasonable attorneys' fees pursuant to Minn. Stat. § 325D.57;

e. Permanently enjoining Microsoft from continuing to engage in the unlawful conduct described herein;

f. Granting such other relief as this Court may deem just and proper under the circumstances.

VIII. JURY DEMAND

Plaintiff demands trial by jury on all claims for which he is entitled to a jury trial.

MESSERLI & KRAMER P.A.

Dated: December 17, 1999

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ACKNOWLEDGMENT

Pursuant to Minnesota Statute Section 549.211, Subd. 1 (1997), Plaintiff hereby acknowledges that costs, disbursements, and reasonable attorney's fees and witness fees may be awarded to the opposing party or parties pursuant to Minnesota Statute Section 549.211.

Dated: December 17, 1999

George R. Serdar

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FILED PSL

99 DEC 21 AM 11:12

Re: Steven Nielsen vs. Microsoft Corporation

BY _____ DEPUTY
HENN CO DISTRICT
COURT ADMINISTRATOR

STATE OF MINNESOTA)

COUNTY OF HENNEPIN)

AFFIDAVIT OF SERVICE

Ellis Wangelin, being duly sworn on oath, deposes and states, that on the 17th day of December, 1999, he served the attached: Steven Nielsen's Summons and Complaint upon Microsoft Corporation c/o Corporation Service Company, therein named, personally at 33 South Sixth Street Suite 4100 Minneapolis, County of Hennepin, State of Minnesota, by handing to, and leaving with Stephanie Unterberger, Agent authorized to accept service process, true and correct copies thereof.

Subscribed and sworn to before me
this 20th day of December, 1999.

Notary Public

MARTIN H. RUDNICK
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

Process Server

C

STATE OF MINNESOTA FILED PSL DISTRICT COURT

COUNTY OF HENNEPIN 00 FEB 25 PM 2:02 FOURTH JUDICIAL DISTRICT

BY _____ DEPUTY
FILED IN DISTRICT COURT
COURT ADMINISTRATOR

Idy Klein, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

Microsoft Corporation,

Defendant.

Case No.

COMPLAINT-CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, by and through counsel, on behalf of herself and all others similarly situated ("Plaintiffs"), for her Class Action Complaint against Defendant Microsoft Corporation ("Microsoft"), allege as follows:

NATURE OF THE ACTION

1. This class action is brought on behalf of all residents and citizens of Minnesota who, up to the date of the filing of this Complaint and for four years prior, bought any version of Windows from Microsoft, or purchased a personal computer with Windows pre-installed.

2. This is an action under Minnesota Statutes §§ 325D.52 and 325F.69 to recover damages on behalf of the individual and business purchasers of Microsoft products (collectively "consumers") who suffered injury to their business or property as a direct and proximate result of Microsoft's illegal exercise of its monopoly power in the market for personal computer operating

systems. Microsoft has abused its monopoly power by, among other things, attempting to quash promising marketplace competitors in order to maintain barriers to competition. For at least the past four years, Microsoft's actions have caused Plaintiffs to pay monopoly prices for their operating systems. Microsoft's actions have also caused Plaintiffs to incur costs necessary to remove (to the extent possible) an unwanted browser application called Microsoft Internet Explorer, or to suffer the performance degradation resulting from its undesired presence along with the operating system. Finally, Microsoft's actions have harmed consumers by hampering innovation of rivals, creating confusion and frustration for consumers, denying consumers hardware and software advances that are not controlled by Microsoft, and thereby perpetuating Microsoft's monopoly pricing power.

JURISDICTION AND VENUE

3. This action arises under the law of Minnesota and includes claims for relief against Microsoft for its violation of Minn. Stat. § 325D.52 and § 325F.69 as hereinafter alleged.

4. This Court has personal jurisdiction over defendant pursuant to its presence in Minnesota or pursuant to Minnesota's long-arm statute, Minn. Stat. §543.19, insofar as defendant has intentionally participated in Minnesota commerce, transacted business in Minnesota, caused acts or events to occur in Minnesota, and/or caused injury to Minnesota consumers, including plaintiffs as a direct result of its anti-competitive conduct.

5. Venue is proper in this jurisdiction pursuant to §325D.65 insofar as

defendant has agents, maintains offices and/or transacts or does business in Hennepin County, Minnesota. In addition, certain acts and transactions giving rise to the violations of law described in this Complaint occurred in Hennepin County, Minnesota, including, inter alia, the sale of a personal computer with Windows pre-installed.

6. Although plaintiff and the Class (as defined in ¶ 9, herein) have suffered actual damages as a result of defendants' unlawful conduct, no individual member of the Class has suffered damages in excess of $75,000.

PARTIES

7. Plaintiff Idy Klein resides at 10014 Cove Drive, Minnetonka, Minnesota. Ms. Klein purchased a Pentium PC computer in 1997 which included the Windows 95 operating system.

8. Defendant Microsoft Corporation is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located at One Microsoft Way, Redmond, Washington. Microsoft both sells and licenses operating systems for personal computers throughout the United States and the world. Microsoft is engaged in, and its activities substantially affect, interstate commerce.

CLASS ACTION ALLEGATIONS

9. Plaintiff brings this class action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure individually and on behalf of herself and the following two classes:

Class #1 – All residents and citizens of Minnesota who, as of the date of the filing of this Complaint or for four years prior, purchased any version of Windows operating system software.

Class #2 – All residents and citizens of Minnesota who, as of the date of the filing of this Complaint or for four years prior, purchased a computer with Windows pre-installed, and who do not use Microsoft Internet Explorer.

10. Plaintiff also brings this action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure on behalf of herself and the class of persons entitled to equitable relief for restitution due to the unjust enrichment of Microsoft resulting from its overcharging for the Windows operating system.

11. Millions of consumers have purchased Windows, either in its full or updated version, or have purchased a computer with Windows pre-installed. In 1996 alone, for example, Microsoft shipped 51.9 million operating systems. The plaintiff class is therefore so numerous that joinder is impracticable.

12. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

13. The representative plaintiff's claims are typical of the claims of all class members because the class representative by advancing his claims will also advance the claims of all members of the class and because Microsoft participated in anticompetitive activity that caused members of the class to suffer similar injury arising from Microsoft's illegal conduct.

14. There are questions of law and fact common to the classes including, but not limited to:

(a) Whether Microsoft is liable to the classes for violation of

Minn. Stat. §§ 325D.52 and 325F.69;

(b) Whether Microsoft possesses monopoly power within the relevant market for Intel-compatible personal computer operating systems;

(c) Whether Microsoft acquired or maintained monopoly power within the relevant market through anticompetitive activity;

(d) Whether Microsoft used its monopoly power to extract a monopoly price from consumers purchasing Windows;

(e) Whether Microsoft used its monopoly power to anti-competitively bundle its browser, Microsoft Internet Explorer, with the Windows 98 package, causing damage to consumers who do not use Internet Explorer.

(f) Whether the class is entitled to equitable relief, including but not limited to restitution.

15. The representative plaintiff will fairly and adequately represent and protect the interests of the putative class. The representative plaintiff has retained counsel competent and experienced in complex class action litigation including litigation involving antitrust allegations.

16. Class certification pursuant to Rule 23 of the Minnesota Rules of Civil Procedure is appropriate because common issues predominate over any individual issues and because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

FACTS

17. Defendant Microsoft produces and sells (or technically, licenses) products in the computer industry. One of its best known products is an operating system for personal computers, called "Windows." Personal computers are those computers generally for use by one person at a time (as opposed, for example, to a server which can accommodate many users), and capable of running many different software applications. The operating system of a personal computer is software that allows the components of a personal computer (or "PC") to function with each other, and to control the execution of other software applications.

18. In 1995, Microsoft introduced Windows 95, an operating system for Intel-compatible PCs that updated earlier Microsoft operating systems. This operating system was designed to run on PCs with Intel microprocessors or compatible microprocessors. Windows 95 would not function on a non-Intel compatible PC. Included with Windows 95 was a software application called Internet Explorer, a "browser" that allowed the PC user to find and retrieve information from the World Wide Web. If the consumer did not want the Internet Explorer application, they were able to "uninstall" Internet Explorer from Windows 95.

19. Microsoft licenses its operating system software directly to consumers, and also to manufacturers of PCs, known as "original equipment manufacturers" or OEMs. An OEM will generally install a copy of Windows onto a PC before selling the package to consumers.

Microsoft's Monopoly Power

20. At the time of Microsoft's introduction of Windows 95, and for some years prior, Microsoft had monopoly power – the power to control price or exclude competition – within the worldwide market for Intel-compatible PC operating systems (the "Relevant Market"). This is evidenced not only by Microsoft's high and stable market share percentage coupled with high barriers to entry, but also by direct evidence of actions taken by Microsoft to control price or exclude competition. For consumers, there is no reasonable substitute for an Intel-compatible PC operating system.

21. Microsoft's market share for the four years prior to filing this Complaint (the "Relevant Time Period"), and indeed for some years prior and continuing to this date, exceeds 90% of the Relevant Market. For the last few years, Microsoft's market share has been at least 95%, and industry analysts project an even higher share over the next few years.

22. During the Relevant Time Period, Microsoft took action to control price and exclude competition, and did so free of the normal restraints faced in a competitive market. The price of the Windows 98 update, for example, was set by Microsoft without concern for the pricing of any of its competitors. A Microsoft study for the pricing of the Windows 98 upgrade revealed that a profitable price would have been $49, but Microsoft opted instead for $89, which was identified as the revenue-maximizing price. The price of the outdated Windows 95 was then raised, which makes economic sense only given Microsoft's monopoly position. Upon information and belief, the price paid by Plaintiffs for the

Windows operating system is a monopoly price, far above the price that would be paid in a competitive market.

23. The barriers to entry in this market are high, as was discovered by IBM and others who attempted to make inroads into Microsoft's monopoly. The primary barrier arises from the lack of software applications available for a new operating system. Consumers desire a broad array of software applications; software developers generally spend time and money on applications for the most popular operating system. This leads to a cycle where Microsoft's large market share creates an incentive to write software for Windows, and the large number of Windows software applications creates an incentive for consumers and manufacturers to use the Windows operating system. The cycle is perpetuated and reinforced by Microsoft's practice of issuing updated versions of Windows which do not significantly improve the operation of Windows, but which require the writers of software programs to expend substantial time and resources rewriting their programs for the latest version of Windows. The Windows upgrade practice, therefore, significantly reduces the amount of software available for use on competing operating systems.

24. Microsoft took action to, and was able to, exclude or limit all viable competitors within the Relevant Market, including IBM's OS/2 Warp, Apple's Mac OS, DR DOS and other operating systems. IBM, a computer industry behemoth, manufactures Intel-compatible PCs, as well as software. In 1994, IBM introduced OS/2 Warp, an Intel-compatible PC operating system that briefly competed with Microsoft's operating system. IBM spent millions of dollars and

went to great efforts to promote the system and get software developers to write applications for it. In 1995, when IBM was still promoting OS/2 Warp, it nevertheless calculated that it would lose 70-90% of its sale volume if it failed to load Windows 95 on its PCs. In the end, IBM could obtain neither significant market share nor the support of software developers for OS/2 Warp, and it became a niche product for particular business customers.

25. Consumers and OEMs have no viable alternative to Microsoft's Intel compatible PC operating system. Not only are there insufficient comparable software applications, but also the cost to switch would be large – new hardware, new software, and new training.

Microsoft's Anticompetitive Use of its Operating System Monopoly Power to Curtail the Browser Market

26. In 1994 Netscape Communications introduced a Web browser called "Navigator," which became very popular among consumers seeking to find and retrieve information from the World Wide Web. Microsoft introduced its browser, called Internet Explorer, in July, 1995. Web browsers are a separate product from operating systems, and operate in a separate market subject to different demand characteristics. Web browsers have been and are sold and priced separately from operating systems. Microsoft itself at times promotes, offers and distributes its browser as a separate product, including for non-Windows, non-Microsoft operating systems.

27. Microsoft perceived Netscape's Navigator as a competitive threat, primarily because of its possible use a platform for software applications not

written specifically for Windows. In a May 1995 memo Microsoft's CEO and largest shareholder, Bill Gates, stated: "A new competitor 'born' on the Internet is Netscape. Their browser is dominant, with a 70% usage share, allowing them to determine which network extensions will catch on. They are pursuing a multi-platform strategy where they move the key API [applications programming interface] into the client to commoditize the underlying operating system." Microsoft recognized that the combination of the browser technology, and a new programming language known as "Java," held out the promise of application programs that could be written to run on multiple operating systems. This would revitalize competition in the operating systems market, eliminating or reducing the large barrier to entry created by the incompatibility of software developed for Microsoft's Windows operating system. In addition, the Netscape browser is itself a "platform" to which applications were being written. Since Netscape can run on any PC operating system, this again threatened to reduce the key barrier protecting Microsoft's operating system monopoly.

28. Microsoft set out to prevent consumers from making separate choices as to operating systems and web browsers by a series of ever-more restrictive steps that initially denied end users the option of OEM-effected separation, then made it harder and harder for consumers to avoid receiving and using Internet Explorer when they acquired Windows. Microsoft required OEMs to install Internet Explorer 1.0 and 2.0 or their successor versions with Windows 95 and, in addition, prohibited them from running an "add/remove" or "uninstall" program to delete the means by which Internet Explorer would be triggered by

end users.

29. Internet Explorer versions 1 and 2, mass distributed with Windows, did not obtain a large usage share of the browser market, because of poor quality as compared to Netscape Navigator. Product reviews consistently rated Microsoft's Internet Explorer as a lower quality product than Netscape Navigator. In March, 1997, Microsoft personnel concluded: "80% of those who do not use [Internet Explorer] say they have no plans to switch to it. Which means that if we take away [Internet Explorer] from the [operating system], most nav users will never switch to us." Microsoft representative personnel also determined that it would "be very hard to increase browser share on the merits of [Internet Explorer] alone. It will be more important to leverage the [operating system] asset to make people use [Internet Explorer] instead of Navigator." Microsoft recognized that it could not compete on the merits with Netscape Navigator, and instead decided to use their operating system monopoly to undertake a series of anticompetitive acts, with the intent and effect of harming Plaintiffs and Class Members.

30. For Windows 98, released in June, 1998, Microsoft therefore took action to use and maintain its monopoly power in the Relevant Market by limiting the use of Netscape Navigator in the browser market. Microsoft made integration of its browser with Windows a basic strategy, delaying the release of Windows 98 until they felt this was accomplished. When one executive asked if Windows 98 was going to wait for the integration of Internet Explorer even if that meant missing the Christmas window for sales, the response was affirmative:

"[Internet Explorer] integration will be [the] most compelling feature of [Windows 98]."

31. Microsoft set out to intermingle browsing functions in operating-system files even further for Windows 98 in order to protect the applications barrier to entry.

32. Microsoft wrote the operating code for Windows 98 so that the Internet Explorer was hard-coded or essentially "welded" to the operating system. That is, while in the Windows 95 version a consumer could "uninstall" an unwanted application, such as Internet Explorer, in the Windows 98 version this could not be done. Other Windows 98 applications could be "uninstalled" with a simple "uninstall" function, but not Internet Explorer. Actions taken to uninstall Internet Explorer would likely also render ineffective key portions of the operating system code, bringing the PC to a "crashing" halt. Moreover, if the consumer made a different browser, such as Netscape Navigator, the "default" browser to be used by the computer, this would sometimes be countered by Microsoft's programming, forcing the use of Internet Explorer. As one Microsoft executive wrote in 1995: "We will bind the shell to the Internet Explorer, so that running any other browser is a jolting experience."

33. Microsoft refused to license the Windows 98 operating system to OEMs without the Internet Explorer browser. Microsoft also imposed contractual restrictions (beyond the technical restrictions noted above) upon the OEMs' ability to remove the browser from the operating system.

34. As a result of Microsoft's anticompetitive conduct, Internet

Explorer's share of the browser market has dramatically increased while Netscape's has dramatically declined. Internet Explorer's share of the browser market increased to 49% by August, 1998, while Netscape's fell to 48%. Netscape's share of new browser installations has decreased to an even greater extent.

35. Microsoft thus forced actual consumer use of Internet Explorer and caused considerable confusion to customers. Consumers pay the price for Microsoft's anticompetitive actions. Consumers who do not wish to use Internet Explorer, but desire instead to use Netscape Navigator or another browser, are damaged. Either they can pay the high cost of actually having Internet Explorer uninstalled, or they can leave the application on the computer but not use it. Leaving Internet Explorer on the computer without using it causes at least the following damage: performance degradation – decreased speed and memory; increased risk of incompatibilities; increased risk of bugs; increased risk of security breaches; and increased support costs. Security risks caused by Internet Explorer may expose consumers' sensitive financial information to computer hackers.

36. Consumers who do not wish to use any browser suffer similar damage. Many business consumers desire an operating system with no browser, either so they can standardize browsers among operating systems, or avoid browsers altogether to curtail access to the Internet. Similarly, individual consumers may want to inhibit children's access to the Internet.

37. Other companies that offer browsers with their operating systems

allow OEMs or consumers to decide whether to install it, or if pre-installed to uninstall it. Microsoft is the only operating system vendor that does not allow this flexibility.

Microsoft's Other Anticompetitive Acts

38. Microsoft took other anticompetitive action to maintain its operating system monopoly, such as imposing screen restrictions on OEMs, that caused significant inefficiencies and harmed consumers. Microsoft prohibited removal of icons, folders or "start" menu entries. It prohibited OEMs from modifying the initial boot sequence, and from installing programs that would launch automatically upon completion of the initial Windows boot sequence. OEM's were forced to curtail or eliminate welcome screens and other features that would make computers more consumer-friendly and easier to use. This raised the supports costs of the consumer. A Hewlett-Packard executive wrote:

> From the consumer perspective, we are hurting our industry and our customers. PC's can be frightening and quirky pieces of technology into which they invest a large sum of their money. It is vitally important that the PC suppliers dramatically improve the consumer buying experience, out of the box experience as well as the longer term product usability and reliability. The channel feedback as well as our own data shows that we are going in the wrong direction. This causes consumer dissatisfaction in complex telephone support process, needless in-home repair visits, and ultimately in product returns . . . .If we had a choice of another supplier, based on your actions in this area, I assure you [that you] would not be our supplier of choice.

39. Microsoft curtailed consumer access to non-Microsoft products, and stifled innovation. Microsoft withheld technical information from Netscape, preventing development of a Windows 95 version of Netscape Navigator for a

significant period of time.

40. Microsoft used its monopoly power to punish IBM for non-cooperation in limiting competing software applications.

41. Microsoft took action to promote the incompatibility of Sun Microsystem's Java technologies, which threatened to lower the application barrier to entry in the operating system market. Microsoft used its operating system monopoly to require the distribution of its Windows-specific version of Java, and to restrict the distribution of cross-platform Java by limiting distribution of Netscape's browser, which it recognized as the principal distribution vehicle for cross-platform Java. Microsoft required Independent Software Vendors to use Microsoft's version of Java and not the cross-platform version.

42. Intel designed Native Signal Processing ("NSP") software in 1995 that would allow advanced video and graphic performance from Intel microprocessors, and would also make it easier for software developers to use non-Microsoft operating systems. Microsoft took action to quash the development of NSP. It pressured Intel to stop development of the software with the threat that Microsoft would support Intel microprocessors only if Intel would stay out of platform-level software. Microsoft also pressured OEMs not to install NSP software. By the summer of 1995, Intel agreed to stop promoting NSP software, and consumers were denied the innovations offered.

43. Microsoft took numerous other actions during the Relevant Time Period to prevent competition. All of these actions have: deprived Plaintiffs and Class Members of choice; blunted the development of cross-platform

technologies that would have resulted in increased competition and a reduction in the price of operating systems; slowed innovation; resulted in increased support and testing costs (ultimately borne by consumers); and increased the cost of Microsoft's monopolistic Windows 98 operating system.

44. Microsoft's monopoly and its anticompetitive actions to maintain that monopoly, including in part those addressed above, have been the focus of other suits, in particular an action by the United States Department of Justice Antitrust Division. In 1995, Microsoft and the Government entered into a consent decree restricting the ability of Microsoft to require OEMs that license Windows operating system to also license other software products. A dispute arose over the bundling of Windows with Internet Explorer. In May, 1998, the Government, along with 20 states and the District of Columbia, brought suit against Microsoft, alleging violations of Section 1 and 2 of the Sherman Act. On November 5, 1999, after approximately eight months of trial, Judge Thomas Penfield Jackson of the United States District Court for the District of Columbia issued findings of fact. These Findings of Fact include findings that Microsoft enjoys monopoly power in the relevant market of Intel-compatible PC operating systems, and that Microsoft has taken anticompetitive actions to maintain that monopoly power.

COUNT ONE

VIOLATION OF MINN. STAT. § 325D.52 – MONOPOLIZATION

45. Plaintiff restates the allegations set forth in paragraphs 1 through 44 as if fully rewritten herein.

46. Microsoft possesses monopoly power in the market for Intel-

Compatible PC operating systems, and has possessed monopoly power for the four years prior to the filing of this Complaint to the present.

47. During this time period, Microsoft has willfully maintained its monopoly power through the illegal and anticompetitive conduct described above. Microsoft has acted with others, including but not limited to, unwilling co-conspirators such as computer manufacturers, all in violation of Minn. Stat. § 325D.52.

48. As a direct and proximate result of Microsoft's violations of Minn. Stat. § 325D.52, Plaintiff and Class Members have suffered antitrust injury, including but not limited to: payment of anticompetitively high monopoly pricing for Windows operating systems; decreased performance of PCs due to the integration of Internet Explorer with Windows 98; and associated costs of the integration.

COUNT TWO

RESTITUTION

49. Plaintiff restates the allegations set forth in Paragraphs 1 through 48 as if fully rewritten herein.

50. Microsoft improperly exerted its monopoly pricing power to exact payments from purchasers of Windows operating systems in excess of the fair market value or other price which would have been charged but for the aforesaid improper conduct.

51. As a proximate result, Microsoft has been unjustly enriched at Plaintiffs' expense.

52. Plaintiff requests that the Court exercise its equitable power to grant the specific relief of ordering Microsoft to repay all amounts by which Microsoft was unjustly enriched in the form of restitution to Plaintiffs.

COUNT THREE

VIOLATION OF MINN. STAT. § 325F.69 - CONSUMER PROTECTION STATUTE

53. Plaintiff restates the allegations set forth in Paragraphs 1 through 52 as if fully rewritten herein.

54. Microsoft implicitly represented to consumers that its prices were fair and competitive when in fact the prices were supra-competitive, monopolist prices that far exceeded the prices consumers would have paid if Microsoft had not engaged in the aforesaid conduct.

55. The foregoing alleged conduct of Defendant Microsoft, including that previously alleged, constituted unfair or deceptive acts or practices in connection with consumer transactions in violation of Minn. Stat. § 325F.69.

56. Microsoft knew or should have known at the time it sold its Windows operating systems that the prices paid by consumers for such operating systems were substantially in excess of the prices that similar software could be obtained for if Microsoft had not engaged in such monopolistic and anti-competitive behavior.

57. The foregoing alleged conduct of Defendant Microsoft constituted an unconscionable act or practice in connection with a consumer transaction.

COUNT FOUR

VIOLATION OF ARTICLE 13, SECTION 6
OF THE STATE OF MINNESOTA CONSTITUTION

58. Plaintiff hereby realleges paragraphs 1 through 57 above.

59. This Count arises under the State of Minnesota Constitution, Article 13, § 6, which states:

> Any combination of persons either as individuals or as members or officers of any corporation to monopolize markets for food products in this state or to interfere with, or restrict the freedom of markets is a criminal conspiracy and shall be punished as the legislature may provide.

60. As pled herein, defendant has interfered with and restricted, and continues to interfere and restrict, the freedom of markets in Minnesota.

61. Plaintiff and the Class she seeks to represent have been injured and will continue to suffer injuries as a result of defendant's violations of the Minnesota Constitution. Plaintiff and the Class she seeks to represent seek appropriate relief, including damages and equitable relief, to remedy these violations by defendant.

WHEREFORE, Plaintiff prays that judgment be entered against Defendant Microsoft for:

(a) all compensatory damages permitted by law in an amount to be determined at trial, which amount is in excess of the jurisdictional amount;

(b) equitable relief, including but not limited to:

(1) an order requiring Microsoft to pay restitution to Plaintiffs of

the amount by which Microsoft was unjustly enriched through excessive charges for its operating system products;

(c) costs of this action;

(d) attorneys' fees;

(e) and for such other relief as the Court may deem just and equitable.

Respectfully submitted,

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JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Hart L. Robinovitch

ACKNOWLEDGEMENT

The parties acknowledge that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Hart L. Robinovitch

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STATE OF MINNESOTA
COUNTY OF HENNEPIN

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DISTRICT COURT
FOURTH JUDICIAL DISTRICT

BY _____ DEPUTY
HENN CO DISTRICT COURT ADMINISTRATOR

David Jaffe, Individually and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

MICROSOFT CORPORATION and DOES 1 through 100, inclusive,

Defendants.

Case No. 00-2643

Class Action

COMPLAINT

Plaintiff, on behalf of himself and all others similarly situated, alleges as follows against defendant Microsoft Corporation, hereinafter referred to as "Microsoft," on information and belief, formed after an inquiry reasonable under the circumstances:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to Minn. Stat. §§ 325D.43-48; 325D.49-66. This Court also has jurisdiction over defendants because each are corporations which are authorized to conduct, and in fact do conduct, substantial business in the State of Minnesota. Each defendant has sufficient minimum contacts with Minnesota or otherwise intentionally avails itself of the consumer markets within Minnesota through the promotion, sale, marketing and/or distribution of its products in Minnesota to render the exercise of jurisdiction by the Minnesota courts permissible under traditional notions of fair play and substantial justice. However, the injuries to the plaintiff named herein and absent Class members do not exceed $75,000 per person, inclusive of interest, fees and costs.

2. Venue is proper in this County, pursuant to Minn. Stat. 542.09, as the acts upon which this action is based occurred in part in this County. Plaintiff and numerous Class members reside in this County, and purchased Microsoft licensed Intel-compatible personal computer ("PC") operating systems and were thereby injured and subjected to irreparable harm in this venue. Defendants received substantial compensation and profits from sales of such products in this County. Thus, their liability arose in part in this County.

PRELIMINARY STATEMENT

3. Plaintiff brings this class action under the laws of Minnesota for damages for injuries sustained as a result of defendant Microsoft's unlawful monopolization of the market for licensing all Intel-compatible PC operating systems. As described below, plaintiff alleges that Microsoft unlawfully maintained its operating system monopoly by engaging in anti-competitive conduct that has eliminated or retarded the development of new software products that could support, or themselves become, alternative platforms to Microsoft's operating systems. Microsoft's anti-competitive conduct included, among other things, arrangements tying the sale of Microsoft's Windows operating systems to other Microsoft software products, including its Internet web browser, agreements precluding computer manufacturers from distributing, promoting, buying or using products of Microsoft's competitors or potential competitors, and agreements limiting the ability of software companies to provide services or resources to Microsoft's competitors or potential competitors. As a result of Microsoft's conduct, plaintiff and members of the Class have paid higher prices for Microsoft licensed Intel-compatible PC operating systems than they would have paid in a competitive market and have been injured in their business and property.

PARTIES

4. Plaintiff David Jaffe is a resident of Hennepin County, Minnesota. In or about October of 1999, plaintiff paid for and licensed in his name an Intel-compatible PC operating system licensed by Microsoft and installed in a Compaq Presario personal computer. In addition, Plaintiff recently paid for and licensed in his name the Windows '98 upgrade, on Intel-Compatible PC operating system licensed by Microsoft, which was purchased at Best Buy for approximately $90.00.

5. Defendant Microsoft is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located at One Microsoft Way, Redmond, Washington. Microsoft sells and licenses Intel-compatible PC operating systems, including Windows '95 and Windows '98, throughout Minnesota, the United States and the world. Microsoft's revenues from the sale of its operating systems was approximately $4.92 billion, $6.28 billion, and $8.50 billion in fiscal years 1997, 1998, and 1999, respectively.

6. The true names and capacities of the defendants sued herein as Does 1 through 100, inclusive, are presently unknown to plaintiff who, therefore, sues these defendants by such fictitious names. Plaintiff will seek to amend this Complaint and include these Doe defendants' true names and capacities when they are ascertained. Each of the fictitiously named defendants is responsible in some manner, including, *inter alia*, as aiders and abettors, for the conduct alleged herein and for the injuries suffered by the members of the Class.

7. Various individuals, partnerships, corporations and associations not named as defendants in this Complaint, have participated in the violations alleged herein and have performed acts and made statement in furtherance thereof.

CLASS ACTION ALLEGATIONS

8. Plaintiff brings this action as a class action pursuant to Minn. R. Civ. P., Rule 23 on his own behalf and on behalf of all other members of a class (the "Class"), consisting of all persons or entities in the State of Minnesota who purchased for purposes other than re-sale or distribution on or after May 18, 1994 (the "Class Period"), Intel-compatible PC operating systems licensed by Microsoft. The Class excludes defendants and their co-conspirators, their subsidiaries, affiliates, officers, and employees, and governmental entities.

9. The Class is so numerous that joinder of all members is impracticable. There are thousands of members of the Class who are geographically dispersed throughout Minnesota.

10. Plaintiff's claims are typical of the claims of the members of the Class because plaintiff and all Class members were injured by the same wrongful conduct of the defendants alleged herein.

11. There are questions of law and fact common to the Class which predominate over any questions affecting only individual Class members. Such common questions include:

a. Whether Microsoft is a monopolist in the market for Intel-compatible PC operating systems;

b. Whether Microsoft and its co-conspirators engaged in anti-competitive conduct by which Microsoft unlawfully maintained its monopoly;

c. Whether the alleged conduct violated provisions of Minnesota's Uniform Deceptive Trade Practices Act, Minn. Stat. Ann. §325D.44;

d. Whether the alleged conduct violate the Minnesota Antitrust Law, Minn. Stat. Ann. §§325D.51, et seq.;

e. Whether plaintiff and members of the Class are entitled to

damages and the appropriate measure of such damages.

12. As the claims of the plaintiff are typical of the claims of the Class, and the plaintiff has no interests adverse to or which irreconcilably conflict with the interests of other members of the Class, plaintiff is an adequate class representative.

13. Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel experienced and competent in the prosecution of complex class action litigation.

14. A class action is superior to other available methods for the fair and efficient adjudication of the controversy and substantial benefits will derive from proceeding as a class action. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not afford to individually litigate such claims against large corporate defendants. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient group-wide adjudication of this controversy.

BACKGROUND

15. A "personal computer" ("PC") is a digital information processing device designed for use by one person at a time. A typical PC consists of central processing components (*e.g.*, a microprocessor and main memory) and mass data storage (such as a hard disk). A typical PC system consists of a PC, certain peripheral input/output devices (including a monitor, a keyboard, a mouse, and a

printer), and an operating system. PC systems, which include desktop and laptop models, can be distinguished from more powerful, more expensive computer systems known as "servers," which are designed to provide data, services, and functionality through a digital network to multiple users.

16. An "operating system" is a software program that controls the allocation and use of computer resources (such as central processing unit time, main memory space, disk space, and input/output channels). The operating system also supports the functions of software programs, called "applications," that perform specific user-oriented tasks. The operating system supports the functions of applications by exposing interfaces, called "application programming interfaces," or "APIs." These are synapses at which the developer of an application can connect to invoke pre-fabricated blocks of code in the operating system. These blocks of code in turn perform crucial tasks, such as displaying text on the computer screen. Because it supports applications while interacting more closely with the PC system's hardware, the operating system is said to serve as a "platform."

17. An Intel-compatible PC is one designed to function with Intel's 80x86/Pentium families of microprocessors or with compatible microprocessors manufactured by Intel or by other firms.

18. An operating system designed to run on an Intel-compatible PC will not function on a non-Intel-compatible PC, nor will an operating system designed for a non-Intel-compatible PC function on an Intel-compatible one. Similarly, an application that relies on APIs specific to one operating system will not, generally speaking, function on another operating system unless it is first adapted, or "ported," to the APIs of the other operating system.

19. In 1981, Microsoft released the first version of its Microsoft Disk

Operating System, commonly known as "MS-DOS." The system had a character-based user interface that required the user to type specific instructions at a command prompt in order to perform tasks such as launching applications and copying files. When International Business Machines Corporation ("IBM") selected MS-DOS for pre-installation on its first generation of PCs, Microsoft's product became the predominant operating system sold for Intel-compatible PCs.

20. In 1985, Microsoft began shipping a software package called Windows. The product included a graphical user interface, which enabled users to perform tasks by selecting icons and words on the screen using a mouse. Although originally just a user-interface, or "shell," sitting on top of MS-DOS, Windows took on more operating-system functionality over time.

21. In 1995, Microsoft introduced a software package called Windows 95, which announced itself as the first operating system for Intel-compatible PCs that exhibited the same sort of integrated features as the Mac OS running PCs manufactured by Apple Computer, Inc. ("Apple"). Windows 95 enjoyed unprecedented popularity with consumers, and in June 1998, Microsoft released its successor, Windows 98.

22. Microsoft is the leading supplier of operating systems for PCs. The company transacts business in all fifty of the United States and in most countries around the world.

23. Microsoft licenses copies of its software programs directly to consumers. The largest part of its MS-DOS and Windows sales, however, consists of licensing the products to manufacturers of PCs (known as "original equipment manufacturers" or "OEMs"), such as IBM and Compaq Computer Corporation ("Compaq"). An OEM typically installs a copy of Windows onto one of its PCs before selling the package to a consumer under a single price.

24. The Internet is a global electronic network, consisting of smaller, interconnected networks, which allows millions of computers to exchange information over telephone wires, dedicated data cables, and wireless links. The Internet links PCs by means of servers, which run specialized operating systems and applications designed for servicing a network environment.

25. The World Wide Web ("the Web") is a massive collection of digital information resources stored on servers throughout the Internet. These resources are typically provided in the form of hypertext documents, commonly referred to as "Web pages," that may incorporate any combination of text, graphics, audio and video content, software programs, and other data. A user of a computer connected to the Internet can publish a page on the Web simply by copying it into a specially designated, publicly accessible directory on a Web server. Some Web resources are in the form of applications that provide functionality through a user's PC system but actually execute on a server.

26. Internet content providers ("ICPs") are the individuals and organizations that have established a presence, or "site," on the Web by publishing a collection of Web pages. Most Web pages are in the form of "hypertext"; that is, they contain annotated references, or "hyperlinks," to other Web pages. Hyperlinks can be used as cross-references within a single document, between documents on the same site, or between documents on different sites.

27. Typically, one page on each Web site is the "home page," or the first access point to the site. The home page is usually a hypertext document that presents an overview of the site and hyperlinks to the other pages comprising the site.

28. PCs typically connect to the Internet through the services of Internet access providers ("IAPs"), which generally charge subscription fees to their

customers in the United States. There are two types of IAPs. Online services ("OLSs") such as America Online ("AOL"), Prodigy, and the Microsoft Network ("MSN ") offer, in addition to Internet access, various services and an array of proprietary content. Internet service providers ("ISPs") such as MindSpring and Netcom, on the other hand, offer few services apart from Internet access and relatively little of their own content.

29. A "Web client" is software that, when running on a computer connected to the Internet, sends information to and receives information from Web servers throughout the Internet. Web clients and servers transfer data using a standard known as the Hypertext Transfer Protocol ("HTTP"). A "Web browser" is a type of Web client that enables a user to select, retrieve, and perceive resources on the Web. In particular, Web browsers provide a way for a user to view hypertext documents and follow the hyperlinks that connect them, typically by moving the cursor over a link and depressing the mouse button.

30. Although certain Web browsers provided graphical user interfaces as far back as 1993, the first widely popular graphical browser distributed for profit, called Navigator, was brought to market by the Netscape Communications Corporation in December 1994. Microsoft introduced its browser, called Internet Explorer, in July 1995.

THE RELEVANT MARKET

31. The licensing of Intel-compatible PC operating systems world-wide constitutes a relevant product and geographic market. Currently there are no products, nor are there likely to be any in the near future, that a significant percentage of consumers world-wide could substitute for Intel-compatible PC operating systems without incurring substantial costs. Furthermore, no firm that does not currently market Intel-compatible PC operating systems could start doing

so in a way that would, within a reasonably short period of time, present a significant percentage of consumers with a viable alternative to existing Intel-compatible PC operating systems.

32. The inability of server operating systems, non-Intel-compatible PC operating systems, information appliances, network computers, and server based computing generally to provide reasonable substitutes for Microsoft's operating systems and discipline its monopoly power is set forth in the Findings of Fact of the United States District Court for the District of Columbia in *United States v. Microsoft Corporation*, Civ. No. 98-1232 (TPJ), dated November 5, 1999 (the "Findings of Fact") ¶¶19-32.

33. Middleware programs, while not operating systems themselves, do have the potential to reduce the significance and/or need for operating systems since middleware programs also expose APIs to application developers. The Netscape Web browser and Sun Microsystems, Inc.'s Java class libraries are examples of non-operating system middleware. Such software is often called "middleware" because it relies on the interfaces provided by the underlying operating system while simultaneously exposing its own APIs to developers. Currently no middleware product exposes enough APIs to allow independent software vendors ("ISVs") to profitably write full-featured personal productivity applications that rely solely on those APIs.

34. Even if middleware deployed enough APIs to support full-featured applications, it would not function on a computer without an operating system to perform tasks such as managing hardware resources and controlling peripheral devices. But to the extent the array of applications relying solely on middleware comes to satisfy all of a user's needs, the user will not care whether there exists a large number of other applications that are directly compatible with the underlying

operating system. Thus, the growth of middleware-based applications could lower the costs to users of choosing a non-Intel-compatible PC operating system like the Mac OS. It remains to be seen, though, whether there will ever be a sustained stream of full-featured applications written solely to middleware APIs. In any event, it would take several years for middleware and the applications it supports to evolve from the status quo to a point at which the cost to the average consumer of choosing a non-Intel compatible PC operating system over an Intel-compatible one falls so low as to constrain the pricing of the latter systems.

MICROSOFT'S POWER IN THE RELEVANT MARKET

35. Microsoft possesses a dominant, persistent, and increasing share of the world-wide market for Intel-compatible PC operating systems. Every year for the last decade, Microsoft's share of the market for Intel-compatible PC operating systems has stood above ninety percent. During most of the Class Period, the figure has been at least ninety-five percent, and analysts project that the share will climb even higher over the next few years. Even if Apple's Mac OS were included in the relevant market, Microsoft's share would still stand well above eighty percent.

THE APPLICATIONS BARRIER TO ENTRY

Description of the Applications Barrier to Entry

36. Microsoft's dominant market share is protected by the same barrier that helps define the market for Intel-compatible PC operating systems. As explained above, the applications barrier would prevent an aspiring entrant into the relevant market from drawing a significant number of customers away from a dominant incumbent even if the incumbent priced its products substantially above competitive levels for a significant period of time. Because Microsoft's market share is so dominant, the barrier has a similar effect within the market: It prevents

Intel-compatible PC operating systems other than Windows from attracting significant consumer demand, and it would continue to do so even if Microsoft held its prices substantially above the competitive level.

37. Consumer interest in a PC operating system derives primarily from the ability of that system to run applications. The consumer wants an operating system that runs not only types of applications that he knows he will want to use, but also those types in which he might develop an interest later. Also, the consumer knows that if he chooses an operating system with enough demand to support multiple applications in each product category, he will be less likely to find himself limited later by having to use an application whose features disappoint him. Finally, the average user knows that, generally speaking, applications improve through successive versions. He thus wants an operating system for which successive generations of his favorite applications will be released – and promptly at that. The fact that a vastly larger number of applications are written for Windows than for other PC operating systems attracts consumers to Windows, because it reassures them that their interests will be met as long as they use Microsoft's product.

38. Software development is characterized by substantial economies of scale. The fixed costs of producing software, including applications, is very high. By contrast, marginal costs are very low. Moreover, the costs of developing software are "sunk" – once expended to develop software, resources so devoted cannot be used for another purpose. The result of economies of scale and sunk costs is that application developers seek to sell as many copies of their applications as possible. An application that is written for one PC operating system will operate on another PC operating system only if it is ported to that system, and porting applications is both time-consuming and expensive. Therefore, application

developers tend to write first to the operating system with the most users – Windows. Developers might then port their applications to other operating systems, but only to the extent that the marginal added sales justify the cost of porting. In order to recover that cost, ISVs that do go to the effort of porting frequently set the price of ported applications considerably higher than that of the original versions written for Windows.

39. Consumer demand for Windows enjoys positive network effects. A positive network effect is a phenomenon by which the attractiveness of a product increases with the number of people using it. The fact that there is a multitude of people using Windows makes the product more attractive to consumers. The large installed base attracts corporate customers who want to use an operating system that new employees are already likely to know how to use, and it attracts academic consumers who want to use software that will allow them to share files easily with colleagues at other institutions. The main reason that demand for Windows experiences positive network effects, however, is that the size of Windows' installed base impels ISVs to write applications first and foremost for Windows, thereby ensuring a large body of applications from which consumers can choose. The large body of applications thus reinforces demand for Windows, augmenting Microsoft's dominant position and thereby perpetuating ISV incentives to write applications principally for Windows. This self-reinforcing cycle is often referred to as a "positive feedback loop."

40. What for Microsoft is a positive feedback loop, is for would-be competitors a vicious cycle. For just as Microsoft's large market share creates incentives for ISVs to develop applications first and foremost for Windows, the small or non-existent market share of an aspiring competitor makes it prohibitively expensive for the aspirant to develop its PC operating system into an acceptable

substitute for Windows. To provide a viable substitute for Windows, another PC operating system would need a large and varied enough base of compatible applications to reassure consumers that their interests in variety, choice, and currency would be met to more-or-less the same extent as if they chose Windows. Even if the contender attracted several thousand compatible applications, it would still look like a gamble from the consumer's perspective next to Windows, which supports over 70,000 applications. The amount it would cost an operating system vendor to create that many applications is prohibitively large. Therefore, in order to ensure the availability of a set of applications comparable to that available for Windows, a potential rival would need to induce a very large number of ISVs to write to its operating system.

41. In deciding whether to develop an application for a new operating system, an ISV's first consideration is the number of users it expects the operating system to attract. Out of this focus arises a collective-action problem: Each ISV realizes that the new operating system could attract a significant number of users if enough ISVs developed applications for it; but few ISVs want to sink resources into developing for the system until it becomes established. Since everyone is waiting for everyone else to bear the risk of early adoption, the new operating system has difficulty attracting enough applications to generate a positive feedback loop. The vendor of a new operating system cannot effectively solve this problem by paying the necessary number of ISVs to write for its operating system, because the cost of doing so would dwarf the expected return.

42. Counteracting the collective-action phenomenon is another known as the "first-mover incentive." For an ISV interested in attracting users, there may be an advantage to offering the first and, for a while, only application in its category that runs on a new PC operating system. The user base of the new system may be

small, but every user of that system who wants such an application will be compelled to use the ISV's offering. Moreover, if demand for the new operating system suddenly explodes, the first mover will reap large sales before any competitors arrive. An ISV thus might be drawn to a new PC operating system as a "protected harbor." Once first-movers stake claims to the major categories of applications, however, there is a strong chance that the new operating system could stall; it would not support the most familiar applications, nor the variety and number of applications, that attract large numbers of consumers, and there would no longer exist a first-mover incentive to attract additional ISVs to the important application categories. Although the upstart operating system might find itself with enough applications support to hold a fraction of the market, the collective-action phenomenon would still prevent the system from gaining the kind of positive feedback momentum that can turn a fringe entrant into a rival that would put competitive pressure on Windows.

43. The cost to a would-be entrant of inducing ISVs to write applications for its operating system exceeds the cost that Microsoft itself has faced in inducing ISVs to write applications for its operating system products, for Microsoft never confronted a highly penetrated market dominated by a single competitor. Of course, the fact that it is extremely difficult for an efficient would-be rival to accumulate enough applications support to compete with Windows does not mean that sustaining its own applications support is effortless for Microsoft. In fact, if Microsoft stopped investing the hundreds of millions of dollars it spends each year inducing ISVs to write applications for Windows, it might become easier than it currently is for a competitor to develop its own positive feedback loop. But given that Windows today enjoys overwhelmingly more applications support than any other PC operating system, it would still take that competitor years to develop the

necessary momentum. Plus, while Microsoft may spend more on platform "evangelization," even in relative terms, than any other PC operating-system vendor, it is not difficult to understand why it is worthwhile for the principal beneficiary of the applications barrier to devote more resources to augmenting it than aspiring rivals are willing to expend in speculative efforts to erode it.

44. Microsoft continually releases "new and improved" versions of its PC operating system. Each time it does, Microsoft must convince ISVs to write applications that take advantage of new APIs, so that existing Windows users will have incentive to buy an upgrade. Since ISVs are usually still earning substantial revenue from applications written for the last version of Windows, Microsoft must convince them to write for the new version. Even if ISVs are slow to take advantage of the new APIs, though, no applications barrier stands in the way of consumers adopting the new system, for Microsoft ensures that successive versions of Windows retain the ability to run applications developed for earlier versions. In fact, since ISVs know that consumers do not feel locked into their old versions of Windows and that new versions have historically attracted substantial consumer demand, ISVs will generally write to new APIs as long as the interfaces enable attractive, innovative features. Microsoft supplements developers' incentives by extending various "seals of approval" – visible to consumers, investors, and industry analysts – to those ISVs that promptly develop new versions of their applications adapted to the newest version of Windows. In addition, Microsoft works closely with ISVs to help them adapt their applications to the newest version of the operating system – a process that is in any event far easier than porting an application from one vendor's PC operating system to another's. In sum, despite the substantial resources Microsoft expends inducing ISVs to develop applications for new versions of Windows, the company does not face any obstacles nearly as

imposing as the barrier to entry that vendors and would-be vendors of other PC operating systems must overcome.

45. Empirical evidence describing and confirming the strength of the applications barrier to entry is set forth in the Findings of Fact ¶¶45-67.

THE MIDDLEWARE THREATS

46. Middleware technologies, as previously noted, have the potential to weaken the applications barrier to entry. Microsoft was apprehensive that the APIs exposed by middleware technologies would attract so much developer interest, and would become so numerous and varied, that there would arise a substantial and growing number of full-featured applications that relied largely, or even wholly, on middleware APIs. The applications relying largely on middleware APIs would potentially be relatively easy to port from one operating system to another. The applications relying exclusively on middleware APIs would run, as written, on any operating system hosting the requisite middleware. So the more popular middleware became and the more APIs it exposed, the more the positive feedback loop that sustains the applications barrier to entry would dissipate. Microsoft was concerned with middleware as a category of software; each type of middleware contributed to the threat posed by the entire category. At the same time, Microsoft focused its antipathy on two incarnations of middleware that, working together, had the potential to weaken the applications barrier severely without the assistance of any other middleware. These were Netscape's Web browser and Sun's implementation of the Java technologies.

MICROSOFT'S ANTI-COMPETITIVE CONDUCT

47. Faced with the threat middleware technologies posed to its operating system monopoly, Microsoft and its co-conspirators engaged in a series of anti-competitive and exclusionary acts intended to eliminate or forestall the

development of competitive software programs and thereby maintain Microsoft's monopoly.

48. For example, in order to eliminate the threat posed by the emerging Netscape Navigator as an operating system platform, Microsoft and its co-conspirators, among other things:

a. attempted to dissuade Netscape from developing Navigator as a platform;

b. withheld crucial technical information Netscape needed in order to complete its Windows 95 version of Navigator;

c. developed a competing web browser software product in order to diminish the likelihood that Navigator would emerge as the standard web browser, and gave its browser away for free in exchange for commitments from other firms to distribute and promote Internet Explorer at Navigator's expense; and

d. excluded Navigator from important distribution channels including OEM distribution by:

i. forcing OEMs to take Internet Explorer with Windows;

ii. imposing technical restrictions that increased the cost of promoting Navigator;

iii. offering valuable consideration to OEMs in exchange for commitments to promote Internet Explorer exclusively; and

iv. threatening to penalize individual OEMs that insisted on pre-installing and promoting Navigator.

49. Microsoft engaged in similar conduct to deter other competitors or potential competitors, such as Intel, Apple, Real Networks and IBM from encroaching upon its operating system monopoly.

50. In response to the threat posed to Microsoft's operating system

monopoly by Sun's implementation of Java, Microsoft and its co-conspirators, among other actions:

a. created a Java implementation for Windows that undermined portability and was incompatible with other implementations;

b. induced developers to use the Microsoft implementation of Java rather than Sun-compliant implementations; and

c. thwarted the expansion of the Java Class Libraries.

51. The details of Microsoft's and its co-conspirators' conduct are set forth in the Findings of Fact ¶¶69-407.

52. Such conduct is ongoing and continues to this date.

THE ANTI-COMPETITIVE EFFECTS OF DEFENDANTS' CONDUCT

53. The aforesaid conduct, agreements, arrangements and conspiracies among Microsoft and its co-conspirators have had the following effects, among other, which occurred throughout Minnesota:

a. Competition between actual and potential competitors in the market for Intel-compatible PC operating systems has been restrained, eliminated and foreclosed;

b. Actual and potential competitors in the relevant market have been injured in their business and their property;

c. Purchasers, including indirect purchasers, in the relevant market have been deprived of the benefits of a free, competitive, innovative, and unrestrained market;

d. Purchasers, including indirect purchasers, in the relevant market have had to pay artificially high and non-competitive prices; and

e. In place of a free, open and competitive market, a monopoly in the relevant market has been maintained.

54. Among other things, Microsoft has exploited its unlawful monopoly power to charge non-competitive prices for its operating systems. For example, Microsoft could have profitably charged $49 for an upgrade to its Windows 98 product (the operating systems product Microsoft sells to existing users of Windows 95). Microsoft instead charged a revenue-maximizing price of $89 per upgrade. *See* Findings of Fact ¶63. As a result of Microsoft's conduct, plaintiff and members of the Class have paid higher prices for Microsoft licensed Intel-compatible PC operating systems than they would have paid in a competitive market and have been injured in their business and property.

TOLLING OF APPLICABLE STATUTES OF LIMITATION

55. Any applicable statutes of limitation have been equitably tolled by Microsoft's affirmative acts of fraudulent concealment, suppression, and denial of the true facts regarding the existence of the monopolistic and anti-competitive practices at issue herein. Such acts of fraudulent concealment included intentionally covering up and refusing to publicly disclose critical internal memoranda, product development plans and other reports of anti-competitive practices. Through such acts of fraudulent concealment, Microsoft was able to actively conceal from the public for years the truth about Microsoft's anti-competitive practices, thereby tolling the running of any applicable statutes of limitation. Moreover, Microsoft still refuses to this day to take full responsibility for its actions, vigorously denying all liability or even the existence of monopolistic conduct.

FIRST CAUSE OF ACTION

(Deceptive Acts or Practices in Violation of Minnesota Uniform Deceptive Trade Practices Act, §§325D.44, *et seq.*)

56. Plaintiff realleges and incorporates herein by reference ¶¶1-55 of this

Complaint.

57. Minnesota's Unfair Practices Act prohibits unfair or deceptive trade acts or practices.

58. The policies, acts and practices alleged herein were intended to or did result in the sale to consumers of Microsoft licensed Intel-compatible PC operating systems in violation of the Minnesota Unfair Practices Act, Minn. Stat. Ann. §§325D.44, *et seq.*

59. Plaintiff reserves the right to allege other violations of law which constitute unlawful business acts or practices. Such conduct is ongoing and continues to this date.

60. The Class is, therefore, entitled to the relief available under Minn. Stat. Ann. §§325D.44, *et seq.*, as detailed below in the Prayer for Relief.

SECOND CAUSE OF ACTION

(Violation of Minnesota Antitrust Law - Illegal Combination In Restraint Of Trade)

61. Plaintiff realleges and incorporates herein by reference ¶¶1-60 of this Complaint.

62. At some point before the commencement of the Class Period (the exact date being presently unknown to plaintiff), defendants and their co-conspirators illegally combined to monopolize the relevant markets at issue herein, in violation of the Minnesota Antitrust Law, Minn. Stat. Ann. §§325D.51, et seq.

63. As a result of this violation, plaintiff and members of the Class have been injured in their business and property, in an amount which will be established at the trial of this action.

THIRD CAUSE OF ACTION

(Violation of Minnesota Antitrust Law - Illegal Monopolization)

64. Plaintiff realleges and incorporates herein by reference ¶¶1-63 of this Complaint.

65. As alleged herein, defendants and their co-conspirators have illegally established, maintained and used their monopoly power in the relevant markets at issue in violation of Minn. Stat. Ann. §§325D.52.

66. As a result of this violation, plaintiff and members of the Class have been injured in their business and property, in an amount which will be established at the trial of this action.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, individually and on behalf of the Class, prays for judgment and relief against defendants as follows:

(1) An order of this Court certifying this action as a proper class action and plaintiff as the proper class representative;

(2) Actual and treble damages;

(3) Reasonable costs of suit and attorneys' fees;

(4) Pre- and post-judgment interest; and

(5) Such other and further relief as this Court may deem necessary, proper and/or appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: February 28, 2000

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ACKNOWLEDGMENT

The undersigned acknowledges that reasonable attorneys' fees, witness fees, costs, sanctions and other disbursements may be awarded to the parties against whom the allegations in this pleading are made, pursuant to Minn. Stat. § 549.21, subd. 2 and Minn. Stat. §549.211.

Dated: 2-28-00 By: _____

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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Daniel Gordon, Individually and
On Behalf of All Others Similarly Situated,

Plaintiff,

v.

MICROSOFT CORPORATION and
DOES 1 through 100, inclusive,

Defendants.

Case No. _____

Class Action

COMPLAINT

Jury Trial Demanded

Plaintiff, on behalf of himself and all others similarly situated, alleges as follows against defendant Microsoft Corporation, hereinafter referred to as "Microsoft," on information and belief, formed after an inquiry reasonable under the circumstances:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to Minn. Stat. § 325D. 49-66. This Court also has jurisdiction over defendants because each are corporations which are authorized to conduct, and in fact do conduct, substantial business in the State of Minnesota. Each defendant has sufficient minimum contacts with Minnesota or otherwise intentionally avails itself of the consumer markets within Minnesota through the promotion, sale, marketing and/or distribution of its products in Minnesota to render the exercise of jurisdiction by the Minnesota courts permissible under traditional notions of fair play and substantial justice. However, the injuries to the plaintiff named herein and absent Class members do not exceed $75,000 per person, inclusive of interest, fees and costs.

24134

2. Venue is proper in this County, pursuant to Minn. Stat. 542.09, as the acts upon which this action is based occurred in part in this County. Plaintiff and numerous Class members reside in this County, and purchased Microsoft licensed Intel-compatible personal computer ("PC") operating systems and were thereby injured and subjected to irreparable harm in this venue. Defendants received substantial compensation and profits from sales of such products in this County. Thus, their liability arose in part in this County.

PRELIMINARY STATEMENT

3. Plaintiff brings this class action under the laws of Minnesota for damages for injuries sustained as a result of defendant Microsoft's unlawful monopolization of the market for licensing all Intel-compatible PC operating systems. As described below, plaintiff alleges that Microsoft unlawfully maintained its operating system monopoly by engaging in anti-competitive conduct that has eliminated or retarded the development of new software products that could support, or themselves become, alternative platforms to Microsoft's operating systems. Microsoft's anti-competitive conduct included, among other things, arrangements tying the sale of Microsoft's Windows operating systems to other Microsoft software products, including its Internet web browser, agreements precluding computer manufacturers from distributing, promoting, buying or using products of Microsoft's competitors or potential competitors, and agreements limiting the ability of software companies to provide services or resources to Microsoft's competitors or potential competitors. As a result of Microsoft's conduct, plaintiff and members of the Class have paid higher prices for Microsoft licensed Intel-compatible PC operating systems than they would have paid in a competitive market and have been injured in their business and property.

PARTIES

4. Plaintiff Daniel Gordon is a resident of Hennepin County, Minnesota. In or about July, 1999, plaintiff paid for and licensed in his name an Intel-compatible PC operating system licensed by Microsoft and installed in a Gateway personal computer.

5. Defendant Microsoft is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located at One Microsoft Way, Redmond, Washington. Microsoft sells and licenses Intel-compatible PC operating systems, including Windows '95 and Windows '98, throughout Minnesota, the United States and the world. Microsoft's revenues from the sale of its operating systems was approximately $4.92 billion, $6.28 billion, and $8.50 billion in fiscal years 1997, 1998, and 1999, respectively.

6. The true names and capacities of the defendants sued herein as Does 1 through 100, inclusive, are presently unknown to plaintiff who, therefore, sues these defendants by such fictitious names. Plaintiff will seek to amend this Complaint and include these Doe defendants' true names and capacities when they are ascertained. Each of the fictitiously named defendants is responsible in some manner, including, *inter alia*, as aiders and abettors, for the conduct alleged herein and for the injuries suffered by the members of the Class.

7. Various individuals, partnerships, corporations and associations not named as defendants in this Complaint, have participated in the violations alleged herein and have performed acts and made statement in furtherance thereof.

CLASS ACTION ALLEGATIONS

8. Plaintiff brings this action as a class action pursuant to Minn. R. Civ. P., Rule 23 on his own behalf and on behalf of all other members of a class (the "Class"), consisting of all persons or entities in the State of Minnesota who purchased for purposes other than re-sale or distribution on or after May 18, 1994 (the "Class Period"), Intel-compatible personal computer operating systems licensed by Microsoft. The Class excludes defendants and their co-conspirators, their subsidiaries, affiliates, officers, and employees, and governmental entities.

9. The Class is so numerous that joinder of all members is impracticable. There are thousands of members of the Class who are geographically dispersed throughout Minnesota.

10. Plaintiff's claims are typical of the claims of the members of the Class because plaintiff and all Class members were injured by the same wrongful conduct of the defendants alleged herein.

11. There are questions of law and fact common to the Class which predominate over any questions affecting only individual Class members. Such common questions include:

a. Whether Microsoft is a monopolist in the market for Intel-compatible PC operating systems;

b. Whether Microsoft and its co-conspirators engaged in anti-competitive conduct by which Microsoft unlawfully maintained its monopoly;

c. Whether the alleged conduct violate the Minnesota Antitrust Law, Minn. Stat. Ann. §§325D.51, et seq.;

d. Whether plaintiff and members of the Class are entitled to damages and the appropriate measure of such damages.

12. As the claims of the plaintiff are typical of the claims of the Class, and

24134

the plaintiff has no interests adverse to or which irreconcilably conflict with the interests of other members of the Class, plaintiff is an adequate class representative.

13. Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel experienced and competent in the prosecution of complex class action litigation.

14. A class action is superior to other available methods for the fair and efficient adjudication of the controversy and substantial benefits will derive from proceeding as a class action. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not afford to individually litigate such claims against large corporate defendants. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient group-wide adjudication of this controversy.

BACKGROUND

15. A "personal computer" ("PC") is a digital information processing device designed for use by one person at a time. A typical PC consists of central processing components (*e.g.*, a microprocessor and main memory) and mass data storage (such as a hard disk). A typical PC system consists of a PC, certain peripheral input/output devices (including a monitor, a keyboard, a mouse, and a printer), and an operating system. PC systems, which include desktop and laptop models, can be distinguished from more powerful, more expensive computer systems known as "servers," which are designed to provide data, services, and functionality through a digital network to multiple users.

24134

16. An "operating system" is a software program that controls the allocation and use of computer resources (such as central processing unit time, main memory space, disk space, and input/output channels). The operating system also supports the functions of software programs, called "applications," that perform specific user-oriented tasks. The operating system supports the functions of applications by exposing interfaces, called "application programming interfaces," or "APIs." These are synapses at which the developer of an application can connect to invoke pre-fabricated blocks of code in the operating system. These blocks of code in turn perform crucial tasks, such as displaying text on the computer screen. Because it supports applications while interacting more closely with the PC system's hardware, the operating system is said to serve as a "platform."

17. An Intel-compatible PC is one designed to function with Intel's 80x86/Pentium families of microprocessors or with compatible microprocessors manufactured by Intel or by other firms.

18. An operating system designed to run on an Intel-compatible PC will not function on a non-Intel-compatible PC, nor will an operating system designed for a non-Intel-compatible PC function on an Intel-compatible one. Similarly, an application that relies on APIs specific to one operating system will not, generally speaking, function on another operating system unless it is first adapted, or "ported," to the APIs of the other operating system.

19. In 1981, Microsoft released the first version of its Microsoft Disk Operating System, commonly known as "MS-DOS." The system had a character-based user interface that required the user to type specific instructions at a command prompt in order to perform tasks such as launching applications and copying files. When International Business Machines Corporation ("IBM") selected MS-DOS for pre-installation on its first generation of PCs, Microsoft's product became the

predominant operating system sold for Intel-compatible PCs.

20. In 1985, Microsoft began shipping a software package called Windows. The product included a graphical user interface, which enabled users to perform tasks by selecting icons and words on the screen using a mouse. Although originally just a user-interface, or "shell," sitting on top of MS-DOS, Windows took on more operating-system functionality over time.

21. In 1995, Microsoft introduced a software package called Windows 95, which announced itself as the first operating system for Intel-compatible PCs that exhibited the same sort of integrated features as the Mac OS running PCs manufactured by Apple Computer, Inc. ("Apple"). Windows 95 enjoyed unprecedented popularity with consumers, and in June 1998, Microsoft released its successor, Windows 98.

22. Microsoft is the leading supplier of operating systems for PCs. The company transacts business in all fifty of the United States and in most countries around the world.

23. Microsoft licenses copies of its software programs directly to consumers. The largest part of its MS-DOS and Windows sales, however, consists of licensing the products to manufacturers of PCs (known as "original equipment manufacturers" or "OEMs"), such as IBM and Compaq Computer Corporation ("Compaq"). An OEM typically installs a copy of Windows onto one of its PCs before selling the package to a consumer under a single price.

24. The Internet is a global electronic network, consisting of smaller, interconnected networks, which allows millions of computers to exchange information over telephone wires, dedicated data cables, and wireless links. The Internet links PCs by means of servers, which run specialized operating systems and applications designed for servicing a network environment.

24134

25. The World Wide Web ("the Web") is a massive collection of digital information resources stored on servers throughout the Internet. These resources are typically provided in the form of hypertext documents, commonly referred to as "Web pages," that may incorporate any combination of text, graphics, audio and video content, software programs, and other data. A user of a computer connected to the Internet can publish a page on the Web simply by copying it into a specially designated, publicly accessible directory on a Web server. Some Web resources are in the form of applications that provide functionality through a user's PC system but actually execute on a server.

26. Internet content providers ("ICPs") are the individuals and organizations that have established a presence, or "site," on the Web by publishing a collection of Web pages. Most Web pages are in the form of "hypertext"; that is, they contain annotated references, or "hyperlinks," to other Web pages. Hyperlinks can be used as cross-references within a single document, between documents on the same site, or between documents on different sites.

27. Typically, one page on each Web site is the "home page," or the first access point to the site. The home page is usually a hypertext document that presents an overview of the site and hyperlinks to the other pages comprising the site.

28. PCs typically connect to the Internet through the services of Internet access providers ("IAPs"), which generally charge subscription fees to their customers in the United States. There are two types of IAPs. Online services ("OLSs") such as America Online ("AOL"), Prodigy, and the Microsoft Network ("MSN ") offer, in addition to Internet access, various services and an array of proprietary content. Internet service providers ("ISPs") such as MindSpring and Netcom, on the other hand, offer few services apart from Internet access and

relatively little of their own content.

29. A "Web client" is software that, when running on a computer connected to the Internet, sends information to and receives information from Web servers throughout the Internet. Web clients and servers transfer data using a standard known as the Hypertext Transfer Protocol ("HTTP"). A "Web browser" is a type of Web client that enables a user to select, retrieve, and perceive resources on the Web. In particular, Web browsers provide a way for a user to view hypertext documents and follow the hyperlinks that connect them, typically by moving the cursor over a link and depressing the mouse button.

30. Although certain Web browsers provided graphical user interfaces as far back as 1993, the first widely popular graphical browser distributed for profit, called Navigator, was brought to market by the Netscape Communications Corporation in December 1994. Microsoft introduced its browser, called Internet Explorer, in July 1995.

THE RELEVANT MARKET

31. The licensing of Intel-compatible PC operating systems world-wide constitutes a relevant product and geographic market. Currently there are no products, nor are there likely to be any in the near future, that a significant percentage of consumers world-wide could substitute for Intel-compatible PC operating systems without incurring substantial costs. Furthermore, no firm that does not currently market Intel-compatible PC operating systems could start doing so in a way that would, within a reasonably short period of time, present a significant percentage of consumers with a viable alternative to existing Intel-compatible PC operating systems.

32. The inability of server operating systems, non-Intel-compatible PC operating systems, information appliances, network computers, and server based

computing generally to provide reasonable substitutes for Microsoft's operating systems and discipline its monopoly power is set forth in the Findings of Fact of the United States District Court for the District of Columbia in *United States v. Microsoft Corporation*, Civ. No. 98-1232 (TPJ), dated November 5, 1999 (the "Findings of Fact") ¶¶19-32.

33. Middleware programs, while not operating systems themselves, do have the potential to reduce the significance and/or need for operating systems since middleware programs also expose APIs to application developers. The Netscape Web browser and Sun Microsystems, Inc.'s Java class libraries are examples of non-operating system middleware. Such software is often called "middleware" because it relies on the interfaces provided by the underlying operating system while simultaneously exposing its own APIs to developers. Currently no middleware product exposes enough APIs to allow independent software vendors ("ISVs") to profitably write full-featured personal productivity applications that rely solely on those APIs.

34. Even if middleware deployed enough APIs to support full-featured applications, it would not function on a computer without an operating system to perform tasks such as managing hardware resources and controlling peripheral devices. But to the extent the array of applications relying solely on middleware comes to satisfy all of a user's needs, the user will not care whether there exists a large number of other applications that are directly compatible with the underlying operating system. Thus, the growth of middleware-based applications could lower the costs to users of choosing a non-Intel-compatible PC operating system like the Mac OS. It remains to be seen, though, whether there will ever be a sustained stream of full-featured applications written solely to middleware APIs. In any event, it would take several years for middleware and the applications it supports to

evolve from the status quo to a point at which the cost to the average consumer of choosing a non-Intel compatible PC operating system over an Intel-compatible one falls so low as to constrain the pricing of the latter systems.

MICROSOFT'S POWER IN THE RELEVANT MARKET

35. Microsoft possesses a dominant, persistent, and increasing share of the world-wide market for Intel-compatible PC operating systems. Every year for the last decade, Microsoft's share of the market for Intel-compatible PC operating systems has stood above ninety percent. During most of the Class Period, the figure has been at least ninety-five percent, and analysts project that the share will climb even higher over the next few years. Even if Apple's Mac OS were included in the relevant market, Microsoft's share would still stand well above eighty percent.

THE APPLICATIONS BARRIER TO ENTRY

Description of the Applications Barrier to Entry

36. Microsoft's dominant market share is protected by the same barrier that helps define the market for Intel-compatible PC operating systems. As explained above, the applications barrier would prevent an aspiring entrant into the relevant market from drawing a significant number of customers away from a dominant incumbent even if the incumbent priced its products substantially above competitive levels for a significant period of time. Because Microsoft's market share is so dominant, the barrier has a similar effect within the market: It prevents Intel-compatible PC operating systems other than Windows from attracting significant consumer demand, and it would continue to do so even if Microsoft held its prices substantially above the competitive level.

37. Consumer interest in a PC operating system derives primarily from the ability of that system to run applications. The consumer wants an operating system

that runs not only types of applications that he knows he will want to use, but also those types in which he might develop an interest later. Also, the consumer knows that if he chooses an operating system with enough demand to support multiple applications in each product category, he will be less likely to find himself limited later by having to use an application whose features disappoint him. Finally, the average user knows that, generally speaking, applications improve through successive versions. He thus wants an operating system for which successive generations of his favorite applications will be released – and promptly at that. The fact that a vastly larger number of applications are written for Windows than for other PC operating systems attracts consumers to Windows, because it reassures them that their interests will be met as long as they use Microsoft's product.

38. Software development is characterized by substantial economies of scale. The fixed costs of producing software, including applications, is very high. By contrast, marginal costs are very low. Moreover, the costs of developing software are "sunk" – once expended to develop software, resources so devoted cannot be used for another purpose. The result of economies of scale and sunk costs is that application developers seek to sell as many copies of their applications as possible. An application that is written for one PC operating system will operate on another PC operating system only if it is ported to that system, and porting applications is both time-consuming and expensive. Therefore, application developers tend to write first to the operating system with the most users – Windows. Developers might then port their applications to other operating systems, but only to the extent that the marginal added sales justify the cost of porting. In order to recover that cost, ISVs that do go to the effort of porting frequently set the price of ported applications considerably higher than that of the original versions written for Windows.

39. Consumer demand for Windows enjoys positive network effects. A positive network effect is a phenomenon by which the attractiveness of a product increases with the number of people using it. The fact that there is a multitude of people using Windows makes the product more attractive to consumers. The large installed base attracts corporate customers who want to use an operating system that new employees are already likely to know how to use, and it attracts academic consumers who want to use software that will allow them to share files easily with colleagues at other institutions. The main reason that demand for Windows experiences positive network effects, however, is that the size of Windows' installed base impels ISVs to write applications first and foremost for Windows, thereby ensuring a large body of applications from which consumers can choose. The large body of applications thus reinforces demand for Windows, augmenting Microsoft's dominant position and thereby perpetuating ISV incentives to write applications principally for Windows. This self-reinforcing cycle is often referred to as a "positive feedback loop."

40. What for Microsoft is a positive feedback loop, is for would-be competitors a vicious cycle. For just as Microsoft's large market share creates incentives for ISVs to develop applications first and foremost for Windows, the small or non-existent market share of an aspiring competitor makes it prohibitively expensive for the aspirant to develop its PC operating system into an acceptable substitute for Windows. To provide a viable substitute for Windows, another PC operating system would need a large and varied enough base of compatible applications to reassure consumers that their interests in variety, choice, and currency would be met to more-or-less the same extent as if they chose Windows. Even if the contender attracted several thousand compatible applications, it would still look like a gamble from the consumer's perspective next to Windows, which

24134

supports over 70,000 applications. The amount it would cost an operating system vendor to create that many applications is prohibitively large. Therefore, in order to ensure the availability of a set of applications comparable to that available for Windows, a potential rival would need to induce a very large number of ISVs to write to its operating system.

41. In deciding whether to develop an application for a new operating system, an ISV's first consideration is the number of users it expects the operating system to attract. Out of this focus arises a collective-action problem: Each ISV realizes that the new operating system could attract a significant number of users if enough ISVs developed applications for it; but few ISVs want to sink resources into developing for the system until it becomes established. Since everyone is waiting for everyone else to bear the risk of early adoption, the new operating system has difficulty attracting enough applications to generate a positive feedback loop. The vendor of a new operating system cannot effectively solve this problem by paying the necessary number of ISVs to write for its operating system, because the cost of doing so would dwarf the expected return.

42. Counteracting the collective-action phenomenon is another known as the "first-mover incentive." For an ISV interested in attracting users, there may be an advantage to offering the first and, for a while, only application in its category that runs on a new PC operating system. The user base of the new system may be small, but every user of that system who wants such an application will be compelled to use the ISV's offering. Moreover, if demand for the new operating system suddenly explodes, the first mover will reap large sales before any competitors arrive. An ISV thus might be drawn to a new PC operating system as a "protected harbor." Once first-movers stake claims to the major categories of applications, however, there is a strong chance that the new operating system could

stall; it would not support the most familiar applications, nor the variety and number of applications, that attract large numbers of consumers, and there would no longer exist a first-mover incentive to attract additional ISVs to the important application categories. Although the upstart operating system might find itself with enough applications support to hold a fraction of the market, the collective-action phenomenon would still prevent the system from gaining the kind of positive feedback momentum that can turn a fringe entrant into a rival that would put competitive pressure on Windows.

43. The cost to a would-be entrant of inducing ISVs to write applications for its operating system exceeds the cost that Microsoft itself has faced in inducing ISVs to write applications for its operating system products, for Microsoft never confronted a highly penetrated market dominated by a single competitor. Of course, the fact that it is extremely difficult for an efficient would-be rival to accumulate enough applications support to compete with Windows does not mean that sustaining its own applications support is effortless for Microsoft. In fact, if Microsoft stopped investing the hundreds of millions of dollars it spends each year inducing ISVs to write applications for Windows, it might become easier than it currently is for a competitor to develop its own positive feedback loop. But given that Windows today enjoys overwhelmingly more applications support than any other PC operating system, it would still take that competitor years to develop the necessary momentum. Plus, while Microsoft may spend more on platform "evangelization," even in relative terms, than any other PC operating-system vendor, it is not difficult to understand why it is worthwhile for the principal beneficiary of the applications barrier to devote more resources to augmenting it than aspiring rivals are willing to expend in speculative efforts to erode it.

44. Microsoft continually releases "new and improved" versions of its PC

operating system. Each time it does, Microsoft must convince ISVs to write applications that take advantage of new APIs, so that existing Windows users will have incentive to buy an upgrade. Since ISVs are usually still earning substantial revenue from applications written for the last version of Windows, Microsoft must convince them to write for the new version. Even if ISVs are slow to take advantage of the new APIs, though, no applications barrier stands in the way of consumers adopting the new system, for Microsoft ensures that successive versions of Windows retain the ability to run applications developed for earlier versions. In fact, since ISVs know that consumers do not feel locked into their old versions of Windows and that new versions have historically attracted substantial consumer demand, ISVs will generally write to new APIs as long as the interfaces enable attractive, innovative features. Microsoft supplements developers' incentives by extending various "seals of approval" – visible to consumers, investors, and industry analysts – to those ISVs that promptly develop new versions of their applications adapted to the newest version of Windows. In addition, Microsoft works closely with ISVs to help them adapt their applications to the newest version of the operating system – a process that is in any event far easier than porting an application from one vendor's PC operating system to another's. In sum, despite the substantial resources Microsoft expends inducing ISVs to develop applications for new versions of Windows, the company does not face any obstacles nearly as imposing as the barrier to entry that vendors and would-be vendors of other PC operating systems must overcome.

45. Empirical evidence describing and confirming the strength of the applications barrier to entry is set forth in the Findings of Fact ¶¶45-67.

THE MIDDLEWARE THREATS

46. Middleware technologies, as previously noted, have the potential to

weaken the applications barrier to entry. Microsoft was apprehensive that the APIs exposed by middleware technologies would attract so much developer interest, and would become so numerous and varied, that there would arise a substantial and growing number of full-featured applications that relied largely, or even wholly, on middleware APIs. The applications relying largely on middleware APIs would potentially be relatively easy to port from one operating system to another. The applications relying exclusively on middleware APIs would run, as written, on any operating system hosting the requisite middleware. So the more popular middleware became and the more APIs it exposed, the more the positive feedback loop that sustains the applications barrier to entry would dissipate. Microsoft was concerned with middleware as a category of software; each type of middleware contributed to the threat posed by the entire category. At the same time, Microsoft focused its antipathy on two incarnations of middleware that, working together, had the potential to weaken the applications barrier severely without the assistance of any other middleware. These were Netscape's Web browser and Sun's implementation of the Java technologies.

MICROSOFT'S ANTI-COMPETITIVE CONDUCT

47. Faced with the threat middleware technologies posed to its operating system monopoly, Microsoft and its co-conspirators engaged in a series of anti-competitive and exclusionary acts intended to eliminate or forestall the development of competitive software programs and thereby maintain Microsoft's monopoly.

48. For example, in order to eliminate the threat posed by the emerging Netscape Navigator as an operating system platform, Microsoft and its co-conspirators, among other things:

a. attempted to dissuade Netscape from developing Navigator as a platform;

b. withheld crucial technical information Netscape needed in order to complete its Windows 95 version of Navigator;

c. developed a competing web browser software product in order to diminish the likelihood that Navigator would emerge as the standard web browser, and gave its browser away for free in exchange for commitments from other firms to distribute and promote Internet Explorer at Navigator's expense; and

d. excluded Navigator from important distribution channels including OEM distribution by:

i. forcing OEMs to take Internet Explorer with Windows;

ii. imposing technical restrictions that increased the cost of promoting Navigator;

iii. offering valuable consideration to OEMs in exchange for commitments to promote Internet Explorer exclusively; and

iv. threatening to penalize individual OEMs that insisted on pre-installing and promoting Navigator.

49. Microsoft engaged in similar conduct to deter other competitors or potential competitors, such as Intel, Apple, Real Networks and IBM from encroaching upon its operating system monopoly.

50. In response to the threat posed to Microsoft's operating system monopoly by Sun's implementation of Java, Microsoft and its co-conspirators, among other actions:

a. created a Java implementation for Windows that undermined portability and was incompatible with other implementations;

b. induced developers to use the Microsoft implementation of Java rather than Sun-compliant implementations; and

c. thwarted the expansion of the Java Class Libraries.

24134

51. The details of Microsoft's and its co-conspirators' conduct are set forth in the Findings of Fact ¶¶69-407.

52. Such conduct is ongoing and continues to this date.

THE ANTI-COMPETITIVE EFFECTS OF DEFENDANTS' CONDUCT

53. The aforesaid conduct, agreements, arrangements and conspiracies among Microsoft and its co-conspirators have had the following effects, among other, which occurred throughout Minnesota:

a. Competition between actual and potential competitors in the market for Intel-compatible PC operating systems has been restrained, eliminated and foreclosed;

b. Actual and potential competitors in the relevant market have been injured in their business and their property;

c. Purchasers, including indirect purchasers, in the relevant market have been deprived of the benefits of a free, competitive, innovative, and unrestrained market;

d. Purchasers, including indirect purchasers, in the relevant market have had to pay artificially high and non-competitive prices; and

e. In place of a free, open and competitive market, a monopoly in the relevant market has been maintained.

54. Among other things, Microsoft has exploited its unlawful monopoly power to charge non-competitive prices for its operating systems. For example, Microsoft could have profitably charged $49 for an upgrade to its Windows 98 product (the operating systems product Microsoft sells to existing users of Windows 95). Microsoft instead charged a revenue-maximizing price of $89 per upgrade. *See* Findings of Fact ¶63. As a result of Microsoft's conduct, plaintiff and members of the Class have paid higher prices for Microsoft licensed Intel-compatible PC

24134

operating systems than they would have paid in a competitive market and have been injured in their business and property.

TOLLING OF APPLICABLE STATUTES OF LIMITATION

55. Any applicable statutes of limitation have been equitably tolled by Microsoft's affirmative acts of fraudulent concealment, suppression, and denial of the true facts regarding the existence of the monopolistic and anti-competitive practices at issue herein. Such acts of fraudulent concealment included intentionally covering up and refusing to publicly disclose critical internal memoranda, product development plans and other reports of anti-competitive practices. Through such acts of fraudulent concealment, Microsoft was able to actively conceal from the public for years the truth about Microsoft's anti-competitive practices, thereby tolling the running of any applicable statutes of limitation. Moreover, Microsoft still refuses to this day to take full responsibility for its actions, vigorously denying all liability or even the existence of monopolistic conduct.

FIRST CAUSE OF ACTION
(Violation of Minnesota Antitrust Law - Illegal Combination In Restraint Of Trade)

56. Plaintiff realleges and incorporates herein by reference ¶¶1-55 of this Complaint.

57. At some point before the commencement of the Class Period (the exact date being presently unknown to plaintiff), defendants and their co-conspirators illegally combined to monopolize the relevant markets at issue herein, in violation of the Minnesota Antitrust Law, Minn. Stat. Ann. §§325D.51, et seq.

58. As a result of this violation, plaintiff and members of the Class have been injured in their business and property, in an amount which will be established at the trial of this action.

SECOND CAUSE OF ACTION

(Violation of Minnesota Antitrust Law - Illegal Monopolization)

59. Plaintiff realleges and incorporates herein by reference ¶¶1-58 of this Complaint.

60. As alleged herein, defendants and their co-conspirators have illegally established, maintained and used their monopoly power in the relevant markets at issue in violation of Minn. Stat. Ann. §§325D.52.

61. As a result of this violation, plaintiff and members of the Class have been injured in their business and property, in an amount which will be established at the trial of this action.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, individually and on behalf of the Class, prays for judgment and relief against defendants as follows:

(1) An order of this Court certifying this action as a proper class action and plaintiff as the proper class representative;

(2) Actual and treble damages;

(3) Reasonable costs of suit and attorneys' fees;

(4) Pre- and post-judgment interest; and

(5) Such other and further relief as this Court may deem necessary, proper and/or appropriate.

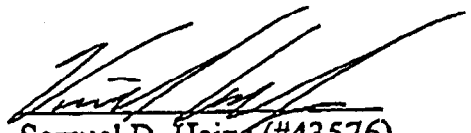
24134

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: April 28, 2000

HEINS MILLS & OLSON, P.L.C.



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ACKNOWLEDGMENT

The undersigned acknowledges that reasonable attorneys' fees, witness fees, costs, sanctions and other disbursements may be awarded to the parties against whom the allegations in this pleading are made, pursuant to Minn. Stat. § 549.21, subd. 2 and Minn. Stat. §549.211.

Vincent J. Esades

34134

F

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

PHILIP A. MEDNICK, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

MICROSOFT CORPORATION, a Washington corporation,

Defendant.

COMPLAINT

For his complaint against Defendant Microsoft Corporation ("Microsoft"), Plaintiff alleges on behalf of himself and all others similarly situated that:

SUMMARY OF THIS ACTION

1. This is a class action for damages and other relief to which Plaintiff and all others similarly situated are entitled due to Microsoft's unlawful pricing of its Windows 98 operating system for Intel-based personal computers.

2. For the purposes of this action, the following terms have the meanings stated and explained.

(a) A "personal computer," or "PC," is a digital information processing device designed for use by one person at a time. A PC consists of the central processing components of a microprocessor and main memory, and mass data storage, usually a hard disk. A typical PC system consists of a PC, peripheral devices including a monitor, a keyboard, a mouse, and a printer, and an "operating system." PC's, which include desktop and laptop models, are distinguished from more powerful, more expensive computer systems known as "servers," which are designed to provide data, services, and functionality through a digital network to multiple users.

(b) An "operating system" is a software program that controls the allocation and use of computer resources, such as central processing unit time, main memory space, disk space, and input and output channels. The operating system is also referred to as a "platform." The operating system also supports the functions of other software programs, called "applications," that perform particular tasks for the PC's user, such as word processing, spread sheet design and use, and database management.

(c) An "Intel-based personal computer" is one designed to function with Intel Corporation's 80x86/Pentium families of microprocessors, or with compatible microprocessors manufactured by Intel Corporation or other firms. Intel-based personal computers are the dominant type of personal computer sold and used in the United States and the State of Minnesota.

3. At all times relevant, Microsoft has possessed monopoly power, meaning the power to control price or exclude competition, in the market for operating systems for Intel-based personal computers.

4. At all times relevant, Microsoft has unlawfully and willfully maintained its monopoly power by anticompetitive and unreasonably exclusionary conduct.

5. Well aware of its unlawfully and willfully maintained monopoly power, and in unlawful exercise of that monopoly power, Microsoft has knowingly, flagrantly, and with impunity licensed its Windows 98 operating system for Intel-based personal computers, without regard to competition, at a monopoly price in excess of what Microsoft would have been able to charge in a competitive market.

6. Plaintiff and all others similarly situated own or lease Intel-based personal computers.

7. Plaintiff and all others similarly situated use Windows 98 as the operating system for their Intel-based personal computers. As a precondition to their first use of Windows 98, Plaintiff

and all others similarly situated were compelled to accept and agree to an end user license directly from Microsoft, pursuant to the terms of which Microsoft dictated, and Plaintiff and all others similarly situated agreed, that Windows 98 was "licensed, not sold."

8. As end user licensee of Microsoft as to its Windows 98 operating system, Plaintiff and all others similarly situated incurred the monopoly price charged by Microsoft for their use of Windows 98.

9. Plaintiff and all others similarly situated are therefore entitled to damages according to proof as to the difference between a competitive price and the monopoly price that they incurred as end user licensees for their use of Windows 98. Plaintiff believes that the difference between a competitive price and the monopoly price he incurred is less than $75.00.

THE PARTIES

10. Plaintiff Philip A. Mednick is an individual who resides at 4715 Chandler Road, City of Shorewood, Ramsey County, Minnesota. Prior to October 16, 1999 Plaintiff Philip A. Mednick owned a computer that had Windows 95 for its operating system. On or about October 16, 1999 the Plaintiff purchased, for approximately $89.95, from Target Stores in Ramsey County, Minnesota a Windows 98 operating system CD ROM disk. Upon installing the CD ROM disk on his Intel-based personal computer, and as a pre-condition to using Windows 98, Plaintiff Philip A. Mednick became an end user licensee of Microsoft as to Windows 98. The Plaintiff's assigned product key from Microsoft, No. WCVYH-TWJG8-TYFJB-YBMQQ-P2CXV, was registered with Microsoft via electronic mail, upon installation and by that means gave Microsoft Plaintiff Philip A. Mednick's electronic mail address and State of residence.

11. Plaintiff Philip A. Mednick, on or about November 12, 1999, purchased from Dell Computer Corp., a new computer system at a cost of approximately $2,500. Microsoft Windows 98, Second Edition had been installed on the computer by the original equipment manufacturer prior to purchase by Plaintiff Philip A. Mednick. As a pre-condition to using Windows 98, Plaintiff Philip A. Mednick became an end user licensee of Microsoft as to Windows 98. Plaintiff Philip A. Mednick registered his ownership of the licenses as Philip A. Mednick, pursuant to the Microsoft assigned product key of KTQH6-F3PXM-RCY9H-YR7JJ-C2DRD, with Microsoft via electronic mail and by that means gave Microsoft his electronic mail address and State of residence.

12. Microsoft is a for-profit corporation organized and existing under the laws of the State of Washington. Microsoft's principal place of business is located at One Microsoft Way, Redmond, Washington. Since its inception, Microsoft has focused primarily on developing and licensing computer software. Microsoft is the leading and dominant supplier of operating systems for personal computers. Microsoft markets and licenses its Windows 98 operating system for Intel-based personal computers throughout the United States, including the State of Minnesota. Microsoft is authorized to conduct, and in fact does conduct, business in Minnesota. The facts regarding Microsoft that are set forth below had a direct effect in the State of Minnesota on the monopoly price that Plaintiff and all others similarly situated incurred as end user licensees of the Windows 98 operating system.

NON-REMOVABILITY

13. The claims asserted in this action do not arise under the Constitution, laws or treaties of the United States, and therefore the Federal courts do not have subject matter jurisdiction of this action under 28 U.S.C. § 1331.

14. The amount in controversy for Plaintiff does not exceed $75,000. Therefore the Federal courts do not have subject matter jurisdiction under 28 U.S.C. § 1332. See, Peterson, et al. v. BASF Corporation, 12 F.Supp.2d 964 (Dist.Minn.1998); Snyder v. Harris, 394 U.S. 332, 89 S.Ct. 1053, 22 L.Ed.2d 319 (1969); Zahn v. International Paper Co., 414 U.S. 291, 9 S.Ct. 505, 38 L.Ed.2d 511 (1973).

15. As the Federal courts do not have subject matter jurisdiction over the claims asserted herein, this action is not subject to removal to the Federal courts under 28 U.S.C. § 1441.

CLASS ACTION ALLEGATIONS

16. The Class is defined as follows: All end user licensees of Windows 98 residing in the State of Minnesota as to whom Microsoft has an electronic mail address that is computer-accessible by Microsoft. Plaintiff Philip A. Mednick is a member of the Class as thus defined.

17. Plaintiff is informed and believes, and on that basis alleges, that the membership of the class is well in excess of 20,000, the exact number being known to Microsoft. The Class is therefore so numerous that joinder of all members is impracticable.

18. There are questions of law and fact common to the Class. Such common questions include:

(a) whether Microsoft has, at all times relevant, possessed monopoly power in the market for operating systems for Intel-based personal computers;

(b) whether Microsoft has unlawfully and willfully maintained its monopoly power by anticompetitive and unreasonably exclusionary conduct;

(c) whether Microsoft knowingly and with impunity licensed its Windows 98 operating system for Intel-based personal computers, without regard to competition, at a monopoly price in excess of what Microsoft would have been able to charge in a competitive market;

(d) whether the alleged conduct by Microsoft violates Minn. Stat. § 325D.48, *et seq.*;

(e) whether the members of the Class are entitled to damages based on the difference between a competitive price and the monopoly price that they incurred as licensees for their use of Windows 98.

19. As set forth above, the claims of the Plaintiff are typical of the claims of the Class.

20. The Plaintiff will fairly and adequately protect the interests of the Class.

21. It is further appropriate to proceed with this action on behalf of the Class because:

(a) the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Microsoft;

(b) adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(c) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this action.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

22. For the purposes of this action, the relevant product market consists of operating systems for Intel-based PCs. At all relevant times, no other product has duplicated or fully substituted for the operating system. The complex interactions among operating system software, applications software, and the hardware attached to the PC are such that, at all relevant times, an

operating system written for a non-Intel type of microprocessor typically will not work on another type of microprocessor without significant modification. Accordingly, original computer equipment manufacturers (commonly referred to as "OEM's") and PC users do not consider an operating system that runs a non-Intel-based PC to be an effective substitute for an operating system that runs an Intel-based PC.

23. The geographic market for operating systems for Intel-based PCs is worldwide, but the relief sought in this action is limited to the Class in the State of Minnesota.

24. In 1981, Microsoft released the first version of its Microsoft Disk Operating System for Intel-based PCs, known as "MS-DOS." The system had a character-based user interface that required the user to type specific instructions at a command prompt in order to perform tasks such as launching applications and copying files. When International Business Machines Corporation ("IBM") selected MS-DOS for pre-installation on its first generation of PCs, Microsoft's software became the dominant operating system for Intel-based PCs.

25. In 1985, Microsoft began marketing an operating system for Intel-based PCs called "Windows." This software included a graphic interface, which enabled users to perform tasks by selecting icons and words on the computer monitor's screen by using a mouse. Although originally a user interface functioning in conjunction with MS-DOS, Windows eventually became something more in the nature of a truly independent operating system.

26. In 1995, Microsoft introduced Windows 95, which Microsoft advertised was the first operating system for Intel-based PCs that had the same kinds of integrated features as the Mac OS operating system for PCs manufactured by Apple Computer, Inc. ("Apple"). Windows 95 was extraordinarily popular with OEMs and PC end users. In June 1998, Microsoft launched its

successor, Windows 98. As of that time, more than ninety percent of new Intel-based PCs had been shipped with a version of Windows pre-installed. Beginning in 1995, and continuing to the present, Intel-based PC OEMs have had no commercially reasonable alternative to Microsoft operating systems for the PCs that they distribute.

27. Microsoft possesses, and at all relevant times has possessed, a highly dominant and ever increasing share of the market for operating systems for Intel-based PCs. Over the last decade, Microsoft's share of the market for operating Systems for Intel-based PCs has exceeded ninety percent. For the last two years, Microsoft's share of that market has been at least ninety-five percent. It has been projected that Microsoft's share of the market will further increase over the next few years.

28. Microsoft's pricing behavior demonstrates that Microsoft possesses monopoly power in the market for operating systems for Intel-based PCs. Microsoft did not even consider the prices of competitors' operating systems for Intel-based PCs when Microsoft set the price of Windows 98. Moreover, Microsoft raised the price that it charged OEMs of Intel-based PCs for Windows 95, with few exceptions, to the same level as the price it charged for Windows 98 prior to its release. In a competitive market, it would be expected that the price of an older operating system would stay the same or decrease upon the release of a newer, more attractive version. Microsoft, however, was only concerned with inducing OEMs to install Windows 98 in favor of the older version. Microsoft would not have imposed this price increase if it were at all concerned that OEMs might shift their business to another vendor of an operating system for Intel-based PCs.

29. As a consequence of its monopoly power in the market for operating systems for Intel-based PCs, Microsoft was able to exercise unfettered discretion in setting the price for the

license of its Windows 98 upgrade product, the operating system that Microsoft licenses to existing end user licensees of Windows 95. A Microsoft internal study dated in November 1997 establishes that Microsoft could have profitably charged $49.00 for an upgrade to Windows 98. The internal company study, however, determined that a price setting of $89.00 would maximize revenues for Microsoft. Because of its monopoly power, Microsoft was able to and, in fact, charged the higher price.

30. The facts set forth in paragraphs 26 and 27, above, came to light during the course of the consolidated trial of *United States v. Microsoft Corporation and New York v. Microsoft Corporation*, Civil Action Nos. 98-1232(TPJ) and 98-1233(TPJ), in the United States District Court for the District of Columbia. The evidentiary record of that trial closed on June 24, 1999. Beginning in or about September 1999, Microsoft began licensing its Windows 98 Second Edition as an upgrade of Windows 98 for a price of $19.95.

31. There are several high and strong barriers to entry into the market for operating systems for Intel-based PCs. Perhaps the most daunting barrier to entry is created by the number of software applications that must run on an operating system in order to make the operating system attractive to end users. End users want to be able to have a large number of applications available to them. Most applications are currently written to run on Windows. It would be prohibitively difficult, time-consuming, and expensive to create an alternative operating system that could run the programs that run on Windows. Any potential new operating system entrant therefore faces a high and strong barrier to successful entry into the market for operating systems for Intel-based PCs. This barrier to entry is often referred to as the "applications barrier to entry."

32. At all relevant times, and as Microsoft has consistently been aware, Defendant's highly dominant share of the market for operating systems for Intel-based PCs has been the principal contributing force in creating and maintaining the applications barrier to entry. As Microsoft has also consistently been aware, it is directly due to the applications barrier to entry into that market enjoyed by Microsoft that enabled Defendant to be able to establish the price for Windows 98 licenses as set forth in paragraphs 28 and 29, above. Microsoft established the price for Windows 98 licenses, without regard to competition, at a monopoly price in excess of what Microsoft would have been able to charge in a competitive market. Plaintiff and the other members of the Class paid those monopoly prices.

33. The experiences of IBM and Apple in creating and attempting to market competing operating systems to Microsoft in the 1990s demonstrate the strength of the applications barrier to entry that Microsoft created and enjoys.

34. IBM introduced its OS/2 Warp operating system for Intel-based PCs in late 1994, and spent tens of millions of dollars in an effort to both attract independent software vendors to develop applications for OS/2 Warp, and to reverse-engineer key aspects of the Windows coding. Despite these efforts and expenditures, IBM could not obtain either significant market share or independent software vendor support for OS/2 Warp. The enormous Windows installed base made it prohibitively expensive for IBM to continue attempting to attract enough software developer support to competitively challenge the Windows operating system. Although at its peak OS/2 Warp ran approximately 2,500 applications and had ten percent of the market for operating systems for Intel-based PCs, IBM ultimately determined that the applications barrier to entry that Microsoft created and enjoys prevented effective competition against Windows 95. For that reason, in 1996,

IBM ceased its efforts to convince independent software vendors to write applications for OS/2 Warp. IBM now targets OS/2 Warp at a market niche, consisting mainly of banks that use particular kinds of applications that run on OS/2 Warp. That IBM has abandoned any effort to compete with Windows is demonstrated by the fact that IBM prices OS/2 Warp at more than twice the price of Windows 98.

35. Apple has also been unable to compete effectively with Windows, providing another example of the strength of the applications barrier to entry that Microsoft has created and enjoys. Although Apple's Mac OS operating system supports more than 12,000 applications, even an inventory of that magnitude is not sufficient to enable Apple to present a significant percentage of users with a realistic substitute for Windows. The absence of a large installed base of Mac OS reinforces the disparity between the applications made available for Mac OS and those made available for Windows, further inhibiting Apple's sales. The applications barrier to entry that Microsoft has created and enjoys has therefore prevented the Mac OS operating system from constraining Microsoft's ability to control the price for Windows 98.

36. At all relevant times, Microsoft has acted aggressively and willfully to maintain the applications barrier to entry into the market for operating systems for Intel-based PCs, and has thereby acted to maintain its monopoly pricing power in that market, by anticompetitive and unreasonably exclusionary conduct. All of Microsoft's unlawful actions in maintaining the applications barrier to entry have had as their ultimate purpose, and have had the resulting effect of, enabling Microsoft unlawfully to exercise its monopoly power by licensing its Windows 98 operating system for Intel-based PCs, without regard to competition, at a monopoly price in excess

of what Microsoft would have been able to charge in a competitive market, to the injury of Plaintiff and the Class.

37. The most significant potential threat to Microsoft's operating system monopoly is not from a direct attack by existing or new operating systems. Instead, as Microsoft itself has expressly recognized, the applications barrier to entry could be seriously eroded, and Microsoft's operating system monopoly correspondingly threatened, by new software products that may support, or even themselves become, alternative platforms to which software applications can be written, and which can be used in conjunction with multiple operating systems, including, but not limited to, Windows.

38. At all relevant times, Microsoft has acted aggressively to protect its Windows monopoly against any such potential competitive threats to the applications barrier to entry that Microsoft created and enjoys, and to leverage Microsoft's operating system monopoly into other software markets, by engaging in a plethora of anticompetitive and exclusionary activities. Microsoft's conduct includes agreements tying other Microsoft software products to Microsoft's Windows operating system; exclusionary agreements precluding companies from distributing, promoting, buying, or using products of Microsoft's software competitors, including potential competitors; and exclusionary agreements restricting the right of companies to provide services or resources to Microsoft's software competitors, including potential competitors. Microsoft's consistent and coordinated pattern of acts have had no valid or sufficient business purpose, and made no business sense for Microsoft except as a means of protecting its operating system monopoly.

39. Microsoft recognized at least as early as May 1995 that the Internet presented one of the most serious threats to the applications barrier to entry, and thereby to Microsoft's operating system monopoly. At that time, Microsoft's Chairman Bill Gates described the Internet as "the most

important single development to come along since the IBM PC was introduced in 1981." The means of accessing the Internet with a PC is known as a "browser," which is a specialized software program that allows a PC user to locate, access, display, and manipulate all of the content and all of the applications software located on the Internet's World Wide Web. At all times relevant, Microsoft has marketed and licensed an Internet browser known as "Internet Explorer" (sometimes referred to below as "IE").

40. Mr. Gates warned his subordinate executives in May 1995 that a competing Internet browser posed a serious threat to Microsoft's established applications barrier to entry and thus to Microsoft's operating system monopoly.

> "A new competitor 'born' on the Internet is Netscape. Their browser [known as Navigator] is dominant, with a 70% usage share, allowing them to determine which network extensions will catch on. They are pursuing a multi-platform strategy where they move the key API [applications programming interface] into the client to commoditize the underlying operating system."

41. Internet browsers that compete with Microsoft's Internet Explorer posed, and have continued to pose, a serious competitive threat to Microsoft's operating system monopoly. The applications barrier to entry, consisting of the large number of software applications that will run on the Windows operating system but not on other operating systems, has precluded other potential software developers of operating systems from competing with Windows. If, however, application programs could be written to run on multiple operating systems, then competition in the market for operating systems for Intel-based PCs could be reinstated. Browser technology, in combination with a new programming language known as "Java," held out exactly that prospect, a threat which was altogether too ominous for Microsoft when Mr. Gates issued his warning in May 1995.

42. Java was designed to permit applications written in its language to be run on multiple operating systems for Intel-based PCs, including, but not limited to, Windows. Given that facility, Java-based applications are not restricted to Windows as their only operating system, as was previously the case with other applications. That daunting restriction has constituted the very foundation of the applications barrier to entry into the market for operating systems for Intel-based PCs that Microsoft has created and enjoys. The distribution of Java through Internet browsers that compete with Microsoft's Internet Explorer therefore threatened to eliminate the applications barrier to entry protecting Microsoft's monopoly of operating Systems for Intel-based PCs, and correspondingly threatened to curtail or eliminate Microsoft's power to license its Windows operating systems for Intel-based PCs at monopoly prices, without regard to competition, in excess of what Microsoft would be able to charge in a competitive market.

43. Non-Microsoft Internet browsers are the most significant means of distributing Java technology to end users. Microsoft recognized that the widespread use of browsers, other than its own Internet Explorer, threatened to increase the distribution and use of Java, and in so doing threaten Microsoft's operating system monopoly by weakening the applications barrier to entry. Microsoft therefore determined to aggressively use its Internet Explorer to counter the threat to Microsoft's operating system monopoly presented by Java. A presentation to Microsoft Chairman Bill Gates on January 5, 1997, discussing how to respond to the Java threat and emphasized "Increase IE share" as a key Microsoft strategy.

44. Microsoft separately recognized that Netscape's Navigator browser was itself a "platform" to which many applications were being written. If Navigator thrived, more and more applications would be written using Navigator as a platform. Because Navigator could be run on any

Intel-based PC operating system, the success of this alternative platform also threatened to reduce or eliminate the applications barrier to entry protecting Microsoft's operating system monopoly. This is the threat that Microsoft's Chairman Bill Gates referred to in his May 1995 communication quoted in paragraph 40, above, as the threat that Netscape would "commoditize" the operating system.

45. To respond to the competitive threat to Microsoft's operating system monopoly posed by Netscape's Navigator browser, both as a platform and as a vehicle for distributing Java, Microsoft determined to eliminate that competitive threat by embarking on an extensive and aggressive campaign to market and distribute Microsoft's own Internet Explorer browser. Microsoft described that campaign as a "jihad" to win the "browser war." Microsoft embarked on that "jihad" because winning the "browser war" was essential to Microsoft's ability to preserve the applications barrier to entry that protects Microsoft's operating system monopoly, and to preserve Microsoft's corresponding power to license its Windows operating systems for Intel-based PCs at monopoly prices, without regard to competition, in excess of what Microsoft would be able to charge in a truly competitive market.

46. A monopolist's weapon of choice is use of its monopoly power. Microsoft therefore undertook its "jihad" by use of its operating system monopoly power as the means of crushing the threat that Netscape's Navigator posed to the applications barrier to entry which sustains that monopoly power. As of February 1997, Microsoft had concluded that it would "be very hard to increase browser share on the merits of IE 4 alone." Instead, Microsoft determined that: "It will be more important to leverage the OS [operating system] asset to make people use IE instead of Navigator."

47. Microsoft first attempted to eliminate the threatened competition of Netscape by soliciting an express horizontal agreement not to compete from Netscape. In May 1995, Microsoft executives met with Netscape executives for the purpose of inducing Netscape not to compete with Microsoft and to secure Netscape's agreement to divide the browser market. Microsoft proposed that it would be the sole supplier of browsers for use with Windows 95 and successor operating systems, and that Netscape would be the sole supplier of browsers for operating systems other than Windows 95 and its successors. Netscape refused to participate in Microsoft's patently unlawful scheme.

48. Microsoft thereupon set about to exclude Netscape and other browser rivals from access to the distribution, promotion, and resources that they needed in order to be competitive. To be successful, browser rivals would need to be able to offer their browser products to OEMs and PC users at a level sufficiently extensive to facilitate the widespread distribution of Java, or to facilitate their browsers becoming an attractive programming platform in their own right. As has been shown above, those two potential scenarios would, either alone or in combination, erode the applications barrier to entry that is the basis of Microsoft's operating system monopoly. Microsoft was determined not to let either scenario come to pass.

49. Microsoft sank hundreds of millions of dollars into the testing and promotion of Internet Explorer, and then distributed that product without separate charge. Such actions would only make sense to a predatory monopolist. As if any further explanation of that behavior were necessary, Microsoft's Vice President in charge of the Platforms Group told industry executives: "We are going to cut off [Netscape's] air supply. Everything they're selling, we're going to give away for free." And Microsoft's Chairman Bill Gates boasted in June 1996: "Our business model works even if all [of

Microsoft's] Internet software is free. ... We are still selling operating systems. What does Netscape's business model look like? Not very good."

50. In addition to free distribution, Microsoft did whatever it took to make sure significant market participants distributed and used Internet Explorer instead of Netscape's Navigator, including paying some customers to take IE and using its Windows monopoly power to induce others to do so. Mr. Gates was blunt in seeking the support of Intuit, a significant application software developer, as he reported in a July 1996 Microsoft e-mail:

> "I was quite frank with him [Scott Cook, Chairman of Intuit] that if he had a favor we could do for him that would cost us something like $1M to do that in return for switching browsers in the next few months I would be open to doing that."

51. Microsoft has also charged different OEMs different prices for their Windows licenses, depending on the degree the individual OEMs have complied with Microsoft's wishes in pursuing its "jihad" in the "browser war." Among the five largest OEMs, Gateway and IBM, which in various ways resisted Microsoft's efforts to enlist them in Defendant's efforts to preserve its applications barrier to entry into the market, pay higher prices for their OEM licenses than Compaq, Dell and Hewlett-Packard, OEMs which have pursued less contentious relationships with Microsoft.

52. Microsoft unlawfully required PC OEMs, as a condition of obtaining licenses for the Windows 95 operating system, to agree to license and pre-install Internet Explorer on every Intel-based PC that they shipped with Windows 95 pre-installed. Windows' monopoly position made it a commercial necessity for OEMs to pre-install Windows 95 on virtually all of the PCs they sold. Microsoft thereby unlawfully leveraged its operating system monopoly to require PC manufacturers to license and distribute Internet Explorer on every PC those OEMs shipped with

Windows, with the purpose and effect of foreclosing competing Internet browsers that, as described above, threatened to erode the applications barrier to entry sustaining Microsoft's operating systems monopoly.

53. Microsoft designed Windows 98 so that removal of Internet Explorer by OEMs or end users is operationally more difficult than it was in Windows 95. Although it is nevertheless technically feasible and practicable to remove Microsoft's Internet browser software from Windows 98 and to substitute other Internet browser software, OEMs are prevented from doing so by Microsoft's contractual tie-in. Microsoft has thus continued this practice begun with Windows 95, with the purpose and effect of foreclosing competing Internet browsers that threaten to erode the applications barrier to entry sustaining Microsoft's operating systems monopoly.

54. In its continuing "jihad" to win the "browser war" and thus preserve the applications barrier to entry, Microsoft has gone to the extreme of controlling the content of the computer screen that is viewed by the PC's end user. Microsoft has misused its Windows operating system monopoly by requiring Intel-based PC OEMs to agree, as a condition of acquiring a license to the Windows operating system, to adopt the uniform "boot-up" sequence and "desktop" screen that Microsoft has dictated. This sequence determines the screens that every user sees upon turning on a Windows-based PC. Microsoft's exclusionary restrictions also forbid, among other things, any changes by an OEM that would remove from the PC any part of Microsoft's Internet Explorer software. OEMs are also prohibited by Microsoft from adding to the PC a competing browser in any more prominent or visible way than the way Microsoft requires Internet Explorer to be presented.

55. The same monopoly-based restrictive agreements also maintain, and enhance the importance of Microsoft's ability to provide preferential placement on the desktop and in the boot-up

sequence to various Internet Service Providers (known as "ISPs") and Internet Content Providers (known as "ICPs"), in return for those firms' commitments to give preferential distribution and promotion to Internet Explorer and to restrict their distribution and promotion of competing browsers.

56. As a result, these restrictions further exclude competing Internet browsers from the most important channels of distribution, and are therefore other means by which Microsoft has used the virtual universality of its Windows operating system monopoly to maintain the applications barrier to entry that competing Internet browsers have threatened to erode by distributing Java and becoming platforms that could substitute for Windows.

57. In its agreements with ISPs, Microsoft has leveraged its operating system monopoly by imposing on ISPs the requirements that they offer Microsoft's Internet Explorer browser primarily or exclusively as the browser they distribute; that they refrain from promoting or mentioning to their subscribers the existence, availability, or compatibility of any competing Internet browser; and that they use on their own Internet sites Microsoft-specific programming that makes those sites look better when viewed through Internet Explorer than when viewed through competing Internet browsers.

58. Microsoft's "jihad" in waging the "browser war" has certainly had independent, significant effects in the market for Internet browsers, but Plaintiff and the Class do not seek any independent relief in this action based on the effects of Microsoft's anticompetitive conduct on that market. Instead, the damages to Plaintiff and the Class stem from their payment of monopoly prices that Microsoft charged for its Windows 98 operating system for Intel-based PCs. In that context, Microsoft's unlawful and anticompetitive behavior in pursuing its "jihad" against competing Internet

browsers has had the purpose and effect of unlawfully maintaining Microsoft's monopoly power in the market for operating systems for Intel-based PCs, by preventing competing Internet browsers from distributing Java and also becoming platforms, consequences which Microsoft itself acknowledged would erode the applications barrier to entry that Microsoft well knows protects its monopoly.

59. Microsoft, like other for-profit corporations, measures its own performance in terms of profits as a function of revenues. Ultimately, therefore, Microsoft's "jihad" had as its purpose maintaining Microsoft's power to charge monopoly prices for its Intel-based PC operating systems. That Microsoft's unlawful acts of monopolization have been successful in staving off the threat to the applications barrier to entry posed by competing Internet browsers is evidenced by the fact that Microsoft did not even need to consider the prices of competitors' operating systems, let alone the prices of competitors' Internet browsers, when Microsoft set the price for Windows 98.

60. As has been shown above, Microsoft has willfully and unlawfully wielded its monopoly power to preserve that very power. In the course of doing so, and in willful and unlawful exercise of its monopoly power, Microsoft has knowingly licensed its Windows 98 operating system for Intel-based PCs, without regard to competition, at a monopoly price in excess of what Microsoft would have been able to charge in a competitive market. Plaintiff and all members of the Class suffered antitrust injury by paying those monopoly prices. Plaintiff and all members of the Class are entitled to compensatory damages based on the difference between the monopoly prices they paid and the price that Microsoft would have been able to charge in a competitive market.

CLAIMS FOR RELIEF

COUNT 1 - ANTITRUST

61. The Plaintiff realleges the preceding paragraphs as if set forth fully herein.

62. As described above, beginning sometime prior to June, 1998 and continuing thereafter, Microsoft attempted to and did establish, maintain and/or use a monopoly of trade or commerce within the State of Minnesota for the purpose of excluding competition and/or controlling, fixing or maintaining prices in the market for operating systems for Intel-based personal computers.

63. There are significant barriers to entry in the market for operating systems for Intel-based personal computers.

64. The specific acts engaged in by Microsoft to acquire and maintain its monopoly power in the Minnesota market for operating systems for Intel-based computers are described above. Such acts have unreasonably restricted competition in this market, and as a result, Microsoft owns the dominant share of such market.

65. Microsoft's monopoly power in such market was willfully and flagrantly acquired and maintained.

66. Pursuant to such attempt by Microsoft to exclude competition with Windows 98, Microsoft licensed its Windows 98 operating system to end users without regard to competition, at a monopoly price in excess of what Microsoft would have been able to charge in a competitive market.

67. As end user licensees of Microsoft as to its Windows 98 operating system, the Plaintiff and all others similarly situated incurred the monopoly price charged by Microsoft for their use of Windows 98 in the purchase of computer systems.

68. As a direct result of Microsoft's conduct, the Plaintiff and all others similarly situated incurred the monopoly price charged by Microsoft for their use of the Windows 98 upgrade.

69. Microsoft has reaped and continues to reap enormous profits by virtue of its wrongful conduct.

70. Said conduct constitutes the establishment, maintenance or use of a monopoly for the purpose of affecting competition or controlling, fixing or maintaining prices in violation of Minn. Stat. § 325D.52.

71. Microsoft's unlawful conduct will continue unless the relief prayed for in this Complaint is granted.

WHEREFORE, the Plaintiff prays as follows:

A. That the Court adjudge and decree that Microsoft has engaged in the conduct alleged herein;

B. That the Court adjudge and decree that such conduct is unlawful and in violation of Minn. Stat. § 325D.52.

C. That the Court award damages to the Plaintiff and all others similarly situated in the amount of the difference between a competitive price and the monopoly price that they incurred as end user licensees for their use of Windows 98, multiplied by three as permitted by Minn. Stat. § 325D.57.

D. That the Court award taxable costs and reasonable attorney's fees to the Plaintiff and all others similarly situated for pursuing this claim.

E. That the Court award pre- and post- judgment interest.

F. That the Court order such other relief as the Court deems just.

COUNT 2 – UNCONSCIONABLE CONTRACT TERM

72. The Plaintiff realleges the preceding paragraphs as if set forth fully herein.

73. Pursuant to the end user agreement referred to in Paragraph 7 above, the Plaintiff was compelled by Microsoft to agree that Windows 98 was "licensed, not sold," notwithstanding the transaction was, in fact, a purchase-sale contract.

74. By reason of Microsoft's monopoly power with respect to its Windows 98 operating system, the contract between Microsoft and the Plaintiff was so one-sided at the time of the making of the contract that Plaintiff and all others similarly situated had no choice but to pay the grossly excessive monopoly price charged by Microsoft for their purchase/use of Windows 98.

75. The price-cost disparity associated with the Plaintiff's purchase/use of Windows 98 renders the price term of the contract between Microsoft and the Plaintiff unconscionable under Minn. Stat. § 336.2-302.

WHEREFORE, the Plaintiff prays as follows:

A. That the Court adjudge and decree that Microsoft has engaged in the conduct alleged herein;

B. That the Court adjudge and decree that such conduct is unlawful and in violation of Minn. Stat. § 336.2-302.

C. That the Court limit the application of the price term of the contract between Microsoft and the Plaintiff such that Microsoft be required to reimburse the Plaintiff and all others similarly situated in the amount of the difference between a competitive price and the monopoly price that they incurred as end user licensees/purchasers of Windows 98.

D. That the Court award taxable costs and reasonable attorney's fees to the Plaintiff and all others similarly situated for pursuing this claim.

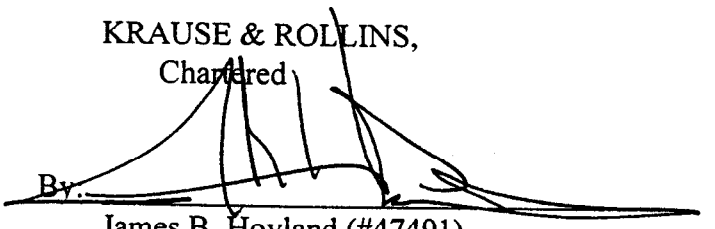
E. That the Court award taxable costs and reasonable attorney's fees to the Plaintiff and all others similarly situated for pursuing this claim.

F. That the Court award pre- and post- judgment interest.

G. That the Court order such other relief as the Court deems just.

DATED this 9th day of February, 2000.

KRAUSE & ROLLINS,
Chartered

By: 

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ORIGINAL of the foregoing filed with the Court this _____ day of February, 2000.

COPY of the foregoing mailed this _____ day of February, 2000, to:

Michael Hatch, Attorney General
Office of the Attorney General
1902 Capitol Building
Aurora Avenue
St. Paul, MN 55115

G

DOCKET NO. 1332

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE MICROSOFT CORP. WINDOWS OPERATING SYSTEMS ANTITRUST LITIGATION

BEFORE JOHN F. NANGLE, CHAIRMAN, WILLIAM B. ENRIGHT, CLARENCE A. BRIMMER, JOHN F. GRADY, BAREFOOT SANDERS, LOUIS C. BECHTLE AND JOHN F. KEENAN, JUDGES OF THE PANEL*

TRANSFER ORDER

Before the Panel are four motions or cross-motions for coordinated or consolidated pretrial proceedings that are brought pursuant to 28 U.S.C. §1407 and currently encompass some or all of the 27 actions listed on the attached Schedule A and pending in seventeen districts as follows: four actions in the District of District of Columbia; three actions in the Southern District of Florida; two actions each in the Eastern District of Michigan, the District of Minnesota, the Southern District of New York, the Southern District of Ohio and the Eastern District of Wisconsin; and one action each in the Northern District of Alabama, the District of Arizona, the Southern District of California, the Southern District of Illinois, the District of Kansas, the Eastern District of Louisiana, the District of South Carolina, the Eastern District of Tennessee, the District of Vermont, and the Southern District of West Virginia.[1] The Section 1407 moving parties are arrayed as follows: 1) sole common defendant Microsoft Corporation (Microsoft), whose motion seeks centralization of all 27 actions in the Western District of Washington or, alternatively, the Northern District of Illinois; 2) plaintiff

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*Judge Bechtle took no part in the decision of this matter.

[1]Seven additional actions that were subject to at least one of the Section 1407 motions have been dismissed or remanded to state court: *Shelby Hartman, et al. v. Microsoft Corp.*, S.D. Florida, C.A. No. 1:99-3401; *Paul Rothstein v. Microsoft Corp.* N.D. Illinois, C.A. No. 1:99-8346; *Harvey Melnick, et al. v. Microsoft Corp.*, D. Maine, C.A. No. 2:99-377; *Burke Cueny v. Microsoft Corp.*, E.D. Michigan, C.A. No. 2:99-76057; *James Edwards v. Microsoft Corp.* D. New Mexico, C.A. No. 6:99-1476; *Daniel Sherwood, et al. v. Microsoft Corp.*, M.D. Tennessee, C.A. No. 3:99-1191; and *Charles T. Clark, Jr. v. Microsoft Corp.*, W.D. Tennessee, C.A. No. 1:99-1334. Accordingly, the question of Section 1407 transfer with respect to these actions is moot at this time. Also, various parties have notified the Panel of the pendency of more than twenty additional, potentially related actions pending in federal district courts. These actions, any other newly filed actions that come to the Panel's attention, and, for that matter, any of the dismissed actions subject to the original Section 1407 motion that may be reopened, will be treated as potential tag-along actions. *See* Rules 7.4 and 7.5, R.P.J.P.M.L., 181 F.R.D. 1, 10-11 (1998).

eLeaders, Inc., in one of the District of District of Columbia actions, whose motion seeks centralization in the District of Columbia district of its action and the Alabama and Louisiana actions; 3) plaintiffs Linda Kloth, *et al.*, in the two Southern District of Ohio actions, whose motion seeks centralization in the Ohio district of only one of the Ohio actions, the Alabama action, and the District of Columbia *eLeaders* action; and 4) plaintiffs Precision Billing Service, Inc., *et al.*, in the Southern District of Illinois action, whose motion seeks centralization in the Illinois district of their action and the Alabama action.[2] All actions are brought, in whole or in part, on behalf of customers of Microsoft by plaintiffs who allege that Microsoft violated federal or state antitrust laws. Objections to transfer, generally, are raised with respect to transfer of particular actions: 1) plaintiffs in certain actions or potential tag-along actions who contend that actions removed by Microsoft from state to federal court should be excluded from transfer because there is no federal jurisdiction and the actions should be remanded to state court; 2) plaintiffs in certain actions who contend that actions brought on behalf of indirect purchasers should not be centralized or should be centralized separately from actions brought on behalf of direct purchasers; and 3) the non-Microsoft parties (plaintiffs Gravity, Inc., *et al.*, and defendants Compaq Computer Corp., Dell Computer Corp., and Packard Bell NEC) in one District of District of Columbia action (*Gravity*) that is the only action naming defendants in addition to Microsoft, who object to inclusion of *Gravity* in 1407 proceedings. Finally, plaintiffs in the Eastern District of Louisiana action have suggested that the Louisiana district should be selected as the transferee forum.

On the basis of the papers filed and the hearing held, the Panel finds that the actions in this litigation involve common questions of fact, and that centralization under Section 1407 in the District of Maryland before Chief Judge J. Frederick Motz will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. All actions arise out of the same nucleus of operative facts pertaining to Microsoft's alleged antitcompetitive conduct in a purported market for personal computer operating systems. Accordingly, each action raises similar questions of market definition, the existence of monopoly power, the fact and significance of Microsoft's alleged anti-competitive conduct, and the existence and scope of any antitrust injury suffered by plaintiffs. Relevant discovery, including expert testimony, will overlap substantially in each action. Centralization under Section 1407 is thus necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (particularly with respect to overlapping class certification requests), and conserve the resources of the parties, their counsel and the judiciary.

Various plaintiffs' principal objection to Section 1407 transfer at this time is rooted in their contention that the Panel's decision should be stayed pending resolution of motions to remand to state court that are pending in their actions. We note, however, that jurisdictional and remand motions can be presented to and decided by the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 368 F.Supp. 812, 813 (J.P.M.L. 1973).

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[2]Much of the differences among the number of actions subject to the various motions seems to be in large part attributable to the various movants' awareness or lack of awareness of the pendency of related actions.

Other parties that either oppose inclusion of their respective action in Section 1407 proceedings or seek creation of two separate multidistrict dockets have argued, *inter alia*, that such an approach is necessary because 1) their action involves additional unique issues, parties or legal theories; and/or 2) centralization of all actions would be unduly burdensome. We are not persuaded by these contentions. We point out that transfer under Section 1407 does not require a complete identity or even majority of common factual issues as a prerequisite to transfer. Nor is the presence of additional or differing legal theories significant when the underlying actions still arise from a common factual core. We observe that transfer under Section 1407 has the salutary effect of placing all actions in this docket before a single judge who can formulate a pretrial program that: 1) allows discovery with respect to any non-common issues to proceed concurrently with discovery on common issues, *In re Joseph F. Smith Patent Litigation*, 407 F. Supp. 1403, 1404 (J.P.M.L. 1976); and 2) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. Finally, to any parties who believe that the uniqueness of their particular situation or the type of their claims renders continued inclusion of their action in MDL-1332 unnecessary or inadvisable, we point out that whenever the transferee judge deems remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See* Rule 7.6, R.P.J.P.M.L., 181 F.R.D. 1, 11-13 (1998).

Given the range of locations of parties and witnesses in this docket and the geographic dispersal of constituent actions, it is clear that no single district emerges as a nexus. Thus we have searched for a transferee judge with the ability and temperament to steer this complex litigation on a steady and expeditious course, a quest that has encompassed virtually the entire corps of federal judges. By centralizing this litigation in the District of Maryland before Chief Judge Motz, a judge with considerable experience as a transferee judge for multidistrict litigation, we are confident that we are entrusting this important and challenging assignment to an able jurist who has the added advantage of sitting in an accessible, metropolitan district equipped with the resources that this complex docket is likely to require.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. §1407, the actions on the attached Schedule A be, and the same hereby are, transferred to the District of Maryland and, with the consent of that court, assigned to the Honorable J. Frederick Motz for coordinated or consolidated pretrial proceedings.

FOR THE PANEL:

John F. Nangle
Chairman

SCHEDULE A

MDL-1332 – In re Microsoft Corp. Windows Operating Systems Antitrust Litigation

Northern District of Alabama

Blaine Cox, et al. v. Microsoft Corp., C.A. No. 1:99-3009

District of Arizona

Wayne Mims v. Microsoft Corp., C.A. No. 2:99-2245

Southern District of California

Clay Tyler, et al. v. Microsoft Corp., C.A. No. 3:99-2602

District of District of Columbia

Gravity, Inc., et al. v. Microsoft Corp., et al., C.A. No. 1:99-363
eLeaders, Inc. v. Microsoft Corp., C.A. No. 1:99-3090
Franklin L. DeJulius v. Microsoft Corp., C.A. No. 1:99-3148
Paul A. Deiter v. Microsoft Corp., C.A. No. 1:99-3275

Southern District of Florida

Eric S. Lazarus v. Microsoft Corp., C.A. No. 0:99-7527
To The Rescue Comprehensive Computer v. Microsoft Corp., C.A. No. 1:99-3301
Elvarado Baptiste, et al. v. Microsoft Corp., C.A. No. 9:99-9076

Southern District of Illinois

Precision Billing Services, Inc., et al. v. Microsoft Corp., C.A. No. 3:99-896

District of Kansas

Elizabeth A. Wilson v. Microsoft Corp., C.A. No. 5:99-4192

Eastern District of Louisiana

Jay S. Quigley, et al. v. Microsoft Corp., C.A. No. 2:99-3420

Eastern District of Michigan

D's Pet Supplies, Inc. v. Microsoft Corp., C.A. No. 2:99-76056
David Bach v. Microsoft Corp., C.A. No. 2:99-76086

MDL-1332 Schedule A (Continued)

District of Minnesota

Rubbright Group v. Microsoft Corp., C.A. No. 0:99-2017
Steven Neilsen v. Microsoft Corp., C.A. No. 0:99-2037

Southern District of New York

Raymond Pryor v. Microsoft Corp., C.A. No. 1:99-12161
Seastrom Associates, Ltd. v. Microsoft Corp., C.A. No. 1:99-12162

Southern District of Ohio

Linda Dameron Kloth, et al. v. Microsoft Corp., C.A. No. 1:99-1043
Linda Dameron Kloth, et al. v. Microsoft Corp., C.A. No. 2:99-1276

District of South Carolina

Chris Campbell v. Microsoft Corp., C.A. No. 2:99-4165

Eastern District of Tennessee

Denise Davenport v. Microsoft Corp., C.A. No. 3:99-660

District of Vermont

Sara Cheeseman, et al. v. Microsoft Corp., C.A. No. 2:99-396

Southern District of West Virginia

Harold A. Phillips v. Microsoft Corp., C.A. No. 2:99-1080

Eastern District of Wisconsin

Matthew W. O'Neill v. Microsoft Corp., C.A. No. 2:99-1477
Robert Weinke v. Microsoft Corp., C.A. No. 2:99-1505

H

***210213 In Re: Minnesota Vitamin Antitrust Litigation.**

No. C6-99-1909.
Supreme Court of Minnesota.
Feb. 17, 2000.

ORDER

****1** This litigation currently consists of five actions, identified on the attached addendum, filed in five different district courts. The complaints claim damages on behalf of classes of plaintiffs based on alleged violation of the state antitrust laws in the sale and distribution of vitamins and vitamin products. The court is informed that additional similar actions may be filed. Defendants moved for transfer and consolidation of the actions before a single district court judge. All plaintiffs in the five actions and all defendants who have appeared in connection with the motion have agreed that the cases should be transferred to a single judge.

These actions involve similar questions of law and fact, the potential for duplicative discovery and other common issues or problems. The same industry defendants are involved in the multiple claims. The class of plaintiffs alleged in each of the actions is either identical or overlapping in large degree.

The court has determined that the interests of the parties and the judiciary will be furthered by a uniform and coordinated system of litigation management to eliminate duplicative discovery, prevent inconsistent pretrial rulings and conserve the resources of the parties, their counsel and the judiciary.

IT IS THEREFORE ORDERED that, pursuant to Minn.Stat. §§ 480.16 and 2.724 (1998), the Honorable Gregg E. Johnson of the Second Judicial District, having consented, be appointed to hear and decide all matters, including pretrial and trial proceedings, in the vitamin antitrust cases currently pending in the Minnesota state district courts and any future actions filed in Minnesota state district courts raising similar claims arising from the same alleged conduct. To facilitate the identification and management of these cases, all documents served and filed from the date of this order shall in addition to the individual case captions, bear the general case caption "In Re: Minnesota Vitamin Antitrust Litigation."

The Clerk of Appellate Courts shall mail a copy of this order to all counsel who have appeared in conjunction with this motion and who are listed in the attached addendum, to the district court judges assigned to the cases in the courts in which they were filed, to the court administrators in the counties in which the cases were filed, and to the chief judges and district administrators in the districts in which the cases are now pending, as well as to Judge Johnson, Chief Judge Lawrence Cohen and the district and court administrator in the Second Judicial District. If counsel for the moving defendants are aware of any parties who have appeared in any of the pending actions that are not represented on the appended list of counsel, they shall serve a copy of this order on counsel for those parties forthwith.

ADDENDUM

I. PENDING CASES

Denise DeNardi v. F. Hoffman LaRoche, Ltd., et al.
No. 99-3123, Hennepin County District Court

Thomas Murr v. F. Hoffman LaRoche, Ltd., et al.
No. 19-C9-99-9673, Dakota County District Court

****2.** *Custom Nutrition, Inc. and Brinton Veterinary Supply, Inc. v. F. Hoffman LaRoche, Ltd., et al.*
No. 34-C4-99-01274 (DMS), Kandiyohi County District Court

Big Valley Milling, Inc. v. F. Hoffman LaRoche, Ltd., et al.
No. C1-99-405, Chippewa County District Court

Form-A-Feed, Inc., et al. v. Akzo Nobel, Inc., et al.
No. 43-C0-99-000856, McLeod County District Court

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