

The Honorable John C. Coughenour

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BAROVIC v. BALLMER, ET AL.,	)	
	)	Lead Case No. 2:14-cv-00540-JCC
This Document Relates To:	)	(Consolidated with
	)	Case No. 2:14-cv-00586-JCC)
ALL ACTIONS	)	
	)	INDIVIDUAL DEFENDANTS’
	)	ANSWER TO VERIFIED
	)	CONSOLIDATED COMPLAINT

Microsoft directors William H. Gates III, Maria M. Klawe, Charles H. Noski, Helmut Panke, and John W. Thompson, former directors Steven A. Ballmer, Dina Dublon, Stephen J. Luczo, and David F. Marquardt, current Microsoft officers B. Kevin Turner and Brad Smith, and former officer Peter S. Klein (collectively, the “Individual Defendants”) answer Plaintiffs Kim Barovic and Stephen DiPhilipo’s (“Plaintiffs”) Verified Consolidated Shareholder Derivative Complaint [Dkt. 18] (“Complaint”) as follows:

1. Plaintiff Kim Barovic (“Barovic”) and Plaintiff Stephen DiPhilipo (“DiPhilipo”) (collectively, “Plaintiffs”), by and through their undersigned attorneys, hereby submit this Verified Consolidated Shareholder Derivative Complaint (the “Complaint”) for the benefit of nominal defendant Microsoft Corporation (“Microsoft” or the “Company”) against certain current and/or former members of its Board of Directors (the “Board”) and executive officers,

1 seeking to remedy defendants' breaches of fiduciary duties and unjust enrichment from 2011 to  
2 the present (the "Relevant Period").

3 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 1 and further  
4 respond that Plaintiffs have not established standing to sue on behalf of the Company. By  
5 answering the Complaint, the Individual Defendants do not concede that Plaintiffs have  
6 standing to pursue this lawsuit and reserve all challenges to Plaintiffs' standing.

7  
8 **NATURE OF THE ACTION**

9 2. According to its public filings, Microsoft is the worldwide leader in software,  
10 services and solutions that help people and businesses realize their full potential.

11 **ANSWER:** The Individual Defendants admit the allegations of Paragraph 2.

12  
13 3. Beginning around 2007, the European Union ("EU") began probing the  
14 Company regarding antitrust violations with respect to the inclusion of Internet Explorer (and  
15 only Internet Explorer) with the Windows Operating System ("Windows"). In December 2009,  
16 EU regulators dropped an antitrust case against Microsoft after the defendants caused the  
17 Company to agree to offer consumers a choice of rival Web browsers with Windows (the  
18 "Settlement"). The Settlement was a five-year deal, whereby European Windows users would  
19 be given a choice of 11 competing web browsers, including those made by Apple, Google and  
20 Mozilla. By stipulating to the Settlement under the defendants' direction, Microsoft avoided  
21 paying a fine to EU officials. Critically, pursuant to the terms of the Settlement, Microsoft was  
22 directly responsible for monitoring its own compliance with the Settlement over the next five  
23 years.

24 **ANSWER:** The Individual Defendants admit that on December 16, 2009, the European  
25 Commission accepted a set of voluntary commitments (which Plaintiffs call the "Settlement")  
26 offered by Microsoft to address potential claims the Commission had raised. *See* Commission  
27 Decision of 16.12.2009 relating to a proceeding under Article 102 of the Treaty on the

1 Functioning of the European Union and Article 54 of the EEA Agreement (Case COMP/C-  
2 3/39.530 – Microsoft (tying)) (the “2009 Order”). Rather than respond to the characterizations  
3 in Paragraph 3 regarding the nature and scope of the European Commission’s inquiry and the  
4 terms upon which it was resolved, the Individual Defendants refer to the 2009 Order (including  
5 the commitments set forth in the Annex thereto), which speaks for itself. Except as admitted  
6 herein, the Individual Defendants deny the allegations in Paragraph 3.

7  
8 4. Beginning in February 2011, under the defendants’ direction and on their watch,  
9 the Company blatantly and continuously violated the terms of the Settlement. At that time, in  
10 direct violation of the Settlement, the defendants caused Microsoft to eliminate the choice  
11 screen from *at least 15 million* installations of Windows 7 in Europe, making Internet Explorer  
12 the only Web browser available on these installations.

13 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 4.

14  
15 5. In the summer of 2012, although Microsoft was responsible for monitoring its  
16 compliance with the Settlement, the EU antitrust chief, Joaquin Almunia (“Almunia”) of the  
17 European Commission, warned the defendants that on some occasions Microsoft software was  
18 not providing users the full access to competing Web browsers, as was stipulated in the  
19 Settlement. The defendants “apologized” to Almunia, calling it a “technical problem.” Yet  
20 despite the apology, the defendants did nothing to halt the illicit scheme.

21 **ANSWER:** Paragraph 5 inaccurately and incompletely characterizes communications  
22 between the European Commission and Microsoft. The Individual Defendants deny the  
23 allegations in Paragraph 5 on that basis and instead refer to those written communications,  
24 which speak for themselves. Except as admitted herein, the Individual Defendants deny the  
25 allegations in Paragraph 5.

1           6.       On March 6, 2013, it was announced that European regulators had fined  
2 Microsoft an extraordinary **€561 million, or approximately \$732.2 million**, for violating the  
3 Settlement. Notably, this was *the first time in history* that the EU had punished a company for  
4 violating the terms of an antitrust settlement. Despite the enormous and unprecedented fine at  
5 issue, the defendants issued an extremely short statement in response to the disastrous situation,  
6 accepting responsibility but maintaining that the violation of the Settlement was purportedly  
7 nothing more than a “technical error.” Moreover, the defendants offered no explanation as to  
8 how the Settlement could have been violated, even though Microsoft itself was responsible for  
9 monitoring its own compliance with the Settlement.

10           **ANSWER:** The Individual Defendants admit the fine alleged in the first sentence of  
11 Paragraph 6 and that Microsoft issued a statement accepting responsibility for the technical  
12 error. The Individual Defendants lack knowledge or information sufficient to form a belief  
13 about the truth of the allegations in the second sentence of Paragraph 6 and on that basis deny  
14 them. Except as admitted herein, the Individual Defendants deny the allegations in Paragraph  
15 6.

16  
17           7.       As a result of their actions, the defendants have caused the Company to be  
18 damaged to the extent of at least **\$732.2 million**.

19           **ANSWER:** The Individual Defendants deny the allegations in Paragraph 7.

20  
21           8.       As a result of the above, on March 22, 2013, Barovic issued a pre-suit demand  
22 pursuant to Washington law (the “Barovic Demand”) on the Board to investigate and  
23 commence an action against certain current and/or former directors and executive officers of  
24 the Company. A true and correct copy of the Barovic Demand is attached hereto at Exhibit A.

25           **ANSWER:** The Individual Defendants admit that counsel for Barovic, Robert Weiser,  
26 sent a demand letter dated March 22, 2013, and a copy of that letter is Exhibit A to the  
27 Complaint. The Individual Defendants deny there is any basis for an action against them, as

1 Barovic claims. Except as admitted herein, the Individual Defendants deny the allegations in  
2 Paragraph 8.

3  
4 9. Over ten months later, on January 28, 2014, Barovic's counsel received a letter  
5 from attorney Susan S. Muck ("Muck") of the law firm Fenwick & West LLP ("Fenwick"),  
6 informing Plaintiff's counsel that the Demand was being refused in its entirety. This  
7 correspondence of January 28, 2014 shall be referred to as the "Barovic Refusal." The Barovic  
8 Refusal informed Barovic's counsel that Fenwick was counsel to a purported Board  
9 subcommittee (the "Demand Review Committee" or "DRC"), consisting of two directors  
10 (defendants Stephen Luczo and Dina Dublin [sic], both further defined herein), who were  
11 purportedly appointed to investigate the allegations in the Demand. A true and correct copy of  
12 the Barovic Refusal is attached hereto at Exhibit B.

13 **ANSWER:** The Individual Defendants admit that the Microsoft Board of Directors  
14 appointed Stephen J. Luczo and Dina Dublon to the Demand Review Committee (the "DRC"),  
15 that the DRC's counsel, Susan Muck, sent a letter to Barovic's counsel, Robert Weiser, dated  
16 January 28, 2014, and that a copy of that letter is included in Exhibit B to the Complaint.  
17 Paragraph 9 characterizes that letter incompletely. The Individual Defendants deny the  
18 allegations in Paragraph 9 to the extent they are not contained in or are inconsistent with the  
19 text of that letter.

20  
21 10. The Barovic Refusal included a purported "Resolution of the Board of Directors  
22 Adopting the Conclusions and Recommendations of the Demand Review Committee"  
23 (hereinafter referred to as the "Resolution"), which totaled less than three pages. The  
24 Resolution contended that among other things, the DRC reviewed thousands of documents and  
25 "conducted relevant witness interviews." The Resolution concluded that the Barovic Demand  
26 did not contain facts "to support any viable claim for breach of fiduciary duty," that the  
27 allegations in the Barovic Demand did "not give rise to legally viable claims against any of the

1 Company's current or former officers or directors," and that "the Company undertook and  
2 adopted significant remedial measures" before receiving the Barovic Demand.

3 **ANSWER:** The Individual Defendants admit that Exhibit B to the Complaint includes  
4 a copy of the "Resolution of the Board of Directors Adopting the Conclusions and  
5 Recommendations of the Demand Review Committee" (the "Resolution"). Paragraph 10  
6 characterizes the Resolution incompletely. Rather than responding to those characterizations,  
7 the Individual Defendants refer to the complete text of the Resolution, which speaks for itself.  
8 The Individual Defendants deny the allegations in Paragraph 10 to the extent they are not  
9 contained in or are inconsistent with the text of the Resolution.

10  
11 11. The Barovic Refusal (that is, Muck's one page letter and the two and a half page  
12 Resolution) is wholly improper. By issuing the conclusory Resolution and cover letter, the  
13 defendants have attempted to insulate their investigation from any scrutiny, which is  
14 unreasonable. Barovic has received no report whatsoever from the DRC, other than the  
15 Resolution described above. Astoundingly, the Resolution found that the Barovic Demand did  
16 not contain facts to support any viable claim for breach of fiduciary duty [against the  
17 defendants], even though the defendants caused the Company *to admit to the wrongdoing and*  
18 *accept responsibility*. The DRC's sweeping conclusion that no breach of fiduciary duty  
19 occurred, when coupled with the defendants taking "full responsibility," creates reasonable  
20 doubt that the DRC's investigation was conducted reasonably and in good faith. The DRC has  
21 merely recited the conclusion that refusing the Barovic Demand was proper, without  
22 sufficiently explaining how the DRC reached that conclusion. The defendants and the DRC  
23 have essentially asked Barovic to "take their word for it" regarding the thoroughness of the  
24 investigation, even though they have made no record.

25 **ANSWER:** Paragraph 11 characterizes the Resolution incompletely. Rather than  
26 responding to those characterizations, the Individual Defendants refer to the complete text of  
27 the Resolution, which speaks for itself. The Individual Defendants deny the allegations in

1 Paragraph 11 that characterize the Resolution, to the extent they are not contained in or are  
2 inconsistent with the text of the Resolution. Except as admitted herein, the Individual  
3 Defendants deny the allegations in Paragraph 11.

4  
5 12. Moreover, there is the critical issue of witness interviews. The Resolution  
6 simply states that the DRC “conducted relevant witness interviews,” but provides absolutely no  
7 detail whatsoever regarding who was interviewed or what questions were asked. As a result,  
8 Barovic’s counsel engaged in extensive correspondence with Muck regarding this issue.  
9 Finally, on March 26, 2014, Barovic’s counsel received a letter from Muck (the “March 26,  
10 2014 Letter”) which purported to answer Barovic’s questions regarding witness interviews. A  
11 true and correct copy of the March 26, 2014 Letter is attached hereto at Exhibit C.

12 **ANSWER:** Paragraph 12 characterizes the Resolution incompletely. Rather than  
13 responding to those characterizations, the Individual Defendants refer to the complete text of  
14 the Resolution, which speaks for itself. The Individual Defendants deny the allegations in  
15 Paragraph 12 that characterize the Resolution, to the extent they are not contained in or are  
16 inconsistent with the text of the Resolution. Answering the remainder of Paragraph 12, the  
17 Individual Defendants admit that Susan Muck sent a letter to Robert Weiser dated March 26,  
18 2014, that a copy of that letter is Exhibit C to the Complaint, and that the letter speaks for itself.  
19 Except as admitted herein, the Individual Defendants deny the allegations in Paragraph 12.

20  
21 13. First, the March 26, 2014 Letter informed Barovic’s counsel that the DRC  
22 declined to identify the names of the specific witnesses interviewed. The March 26, 2014  
23 Letter further stated that thirty-six individuals were interviewed, including members of the  
24 Board and the Board’s Antitrust Compliance Committee, a former president of Microsoft’s  
25 Windows division, members of Microsoft’s Legal and Corporate Affairs department, members  
26 of the Windows Sustained Engineering team, employees in Advertising and Consumer Support,  
27

1 an executive in Windows Marketing, an employee in Windows Testing, and an employee in  
2 Original Equipment Manufacturer Sales.

3 **ANSWER:** Paragraph 13 characterizes the March 26, 2014, letter incompletely.  
4 Rather than responding to those characterizations, the Individual Defendants refer to the  
5 complete text of that letter, which speaks for itself. The Individual Defendants deny the  
6 allegations in Paragraph 13 to the extent they are not contained in or are inconsistent with the  
7 text of that letter.

8  
9 14. The most notable aspect of the list of interviewees was the omissions.  
10 Specifically, it is readily apparent that *the DRC never interviewed Almunia or any member of*  
11 *the European Commission*. It is clear that when conducting its interviews, the DRC did not  
12 interview a single individual who would corroborate Barovic's claims of wrongful conduct.  
13 There can be no doubt that any reasonable investigation of the Barovic Demand should have, at  
14 minimum, included an interview of Almunia, or some other member of the European  
15 Commission with comparable knowledge of the European Commission Investigation.

16 **ANSWER:** The Individual Defendants admit the DRC did not interview Joaquin  
17 Almunia or any member of the European Commission. Except as admitted herein, the  
18 Individual Defendants deny the allegations in Paragraph 14.

19  
20 15. Also as a result of the above, on March 21, 2013, DiPhilipo issued a pre-suit  
21 demand pursuant to Washington law (the "DiPhilipo Demand") on the Board to investigate and  
22 commence an action against certain current and/or former directors and executive officers of  
23 the Company. A true and correct copy of the DiPhilipo Demand is attached hereto at Exhibit  
24 D.

25 **ANSWER:** The Individual Defendants admit that counsel for DiPhilipo, Katharine  
26 Ryan, sent a demand letter dated March 21, 2013, and a copy of that letter is Exhibit D to the  
27 Complaint. The Individual Defendants deny there is any basis for an action against them, as



1 DiPhilipo claims. Except as admitted herein, the Individual Defendants deny the allegations in  
2 Paragraph 15.

3  
4 16. Over ten months later, on January 28, 2014, DiPhilipo's counsel received a letter  
5 from attorney Muck of the law firm Fenwick, informing DiPhilipo's counsel that the DiPhilipo  
6 Demand was being refused in its entirety. This correspondence of January 28, 2014 shall be  
7 referred to as the "DiPhilipo Refusal." The DiPhilipo Refusal informed DiPhilipo's counsel  
8 that Fenwick was counsel to a purported DRC, consisting of two directors (defendants Stephen  
9 Luczo and Dina Dublin [sic], both further defined herein), who were purportedly appointed to  
10 investigate the allegations in the DiPhilipo Demand. A true and correct copy of the Refusal is  
11 attached hereto at Exhibit E.

12 **ANSWER:** The Individual Defendants admit that the Microsoft Board of Directors  
13 appointed Stephen J. Luczo and Dina Dublon to the DRC, that the DRC's counsel, Susan  
14 Muck, sent a letter to DiPhilipo's counsel, Katharine Ryan, dated January 28, 2014, and that a  
15 copy of that letter is included in Exhibit E to the Complaint. Paragraph 16 characterizes that  
16 letter incompletely. Rather than responding to those characterizations, the Individual  
17 Defendants refer to that letter, which speaks for itself. The Individual Defendants deny the  
18 allegations in Paragraph 16 to the extent they are not contained in or are inconsistent with the  
19 text of that letter.

20  
21 17. The DiPhilipo Refusal included a purported "Resolution of the Board of  
22 Directors Adopting the Conclusions and Recommendations of the Demand Review  
23 Committee" (hereinafter referred to as the "Resolution"), which totaled less than three pages.  
24 The Resolution contended that among other things, the DRC reviewed thousands of documents  
25 and conducted relevant witness interviews." The Resolution concluded that the DiPhilipo  
26 Demand did not contain facts "to support any viable claim for breach of fiduciary duty," that  
27 the allegations in the DiPhilipo Demand did "not give rise to legally viable claims against any

1 of the Company's current or former officers or directors," and that "the Company undertook  
2 and adopted significant remedial measures" before receiving the DiPhilipo Demand.

3 **ANSWER:** The Individual Defendants admit that Exhibit E to the Complaint includes  
4 a copy of the Resolution. Paragraph 17 characterizes the Resolution incompletely. Rather than  
5 responding to those characterizations, the Individual Defendants refer to the complete text of  
6 the Resolution, which speaks for itself. The Individual Defendants deny the allegations in  
7 Paragraph 17 to the extent they are not contained in or are inconsistent with the text of the  
8 Resolution.

9  
10 18. The DiPhilipo Refusal (that is, Muck's one page letter and the two and a half  
11 page Resolution) is wholly improper. By issuing the conclusory Resolution and cover letter,  
12 the defendants have attempted to insulate their investigation from any scrutiny, which is  
13 unreasonable. DiPhilipo has received no report whatsoever from the DRC, other than the  
14 Resolution described above. Astoundingly, the Resolution found that the DiPhilipo Demand  
15 did not contain facts to support any viable claim for breach of fiduciary duty [against the  
16 defendants], even though the defendants caused the Company *to admit to the wrongdoing and*  
17 *accept responsibility*. The DRC's sweeping conclusion that no breach of fiduciary duty  
18 occurred, when coupled with the defendants taking "full responsibility," creates reasonable  
19 doubt that the DRC's investigation was conducted reasonably and in good faith. The DRC has  
20 merely recited the conclusion that refusing the DiPhilipo Demand was proper, without  
21 sufficiently explaining how the DRC reached that conclusion. The defendants and the DRC  
22 have essentially asked DiPhilipo to "take their word for it" regarding the thoroughness of the  
23 investigation, even though they have made no record.

24 **ANSWER:** Paragraph 18 characterizes the Resolution incompletely. Rather than  
25 responding to those characterizations, the Individual Defendants refer to the complete text of  
26 the Resolution, which speaks for itself. The Individual Defendants deny the allegations in  
27 Paragraph 18 that characterize the Resolution, to the extent they are not contained in or are

1 inconsistent with the text of the Resolution. Except as admitted herein, the Individual  
2 Defendants deny the allegations in Paragraph 18.

3  
4 19. Moreover, there is the critical issue of witness interviews. The Resolution  
5 simply states that the DRC “conducted relevant witness interviews,” but provides absolutely no  
6 detail whatsoever regarding who was interviewed or what questions were asked. As a result,  
7 DiPhilipo’s counsel has no idea if the individuals with the most knowledge of the facts were  
8 even interviewed.

9 **ANSWER:** Paragraph 19 characterizes the Resolution incompletely. Rather than  
10 responding to those characterizations, the Individual Defendants refer to the complete text of  
11 the Resolution, which speaks for itself. The Individual Defendants deny the allegations in  
12 Paragraph 19 that characterize the Resolution, to the extent they are not contained in or are  
13 inconsistent with the text of the Resolution. Except as admitted herein, the Individual  
14 Defendants deny the allegations in Paragraph 19.

15  
16 20. Clearly, the Board’s and the DRC’s complete disregard of the actual merits of  
17 the claims set forth in the Barovic Demand and the DiPhilipo Demand is improper and  
18 demonstrates the Board’s lack of diligence and good faith.

19 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 20.

20  
21 21. Thus, this shareholder derivative action should be allowed to proceed.

22 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 21.

23  
24 **JURISDICTION AND VENUE**

25 22. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2) in  
26 that Plaintiffs and Defendants are citizens of different states and the matter in controversy  
27 exceeds \$75,000.00, exclusive of interests and costs. This Court has supplemental jurisdiction

1 over the state law claims asserted herein pursuant to 28 U.S.C. §1367(a). This action is not a  
2 collusive one to confer jurisdiction on a court of the United States which it would not otherwise  
3 have.

4 **ANSWER:** This paragraph states legal conclusions to which no response is required.

5  
6 23. Venue is proper in this district because a substantial portion of the transactions  
7 and wrongs complained of herein, including the defendants' primary participation in the  
8 wrongful acts detailed herein, occurred in this district. One or more of the defendants either  
9 resides in or maintains executive offices in this district, and defendants have received  
10 substantial compensation in this district by engaging in numerous activities and conducting  
11 business here, which had an effect in this district.

12 **ANSWER:** This paragraph states legal conclusions to which no response is required.

13  
14 **THE PARTIES**

15 24. Plaintiff Barovic is a current shareholder of Microsoft and has continuously held  
16 Microsoft stock since 2010. Barovic is a citizen of Wisconsin.

17 **ANSWER:** The Individual Defendants lack knowledge or information sufficient to  
18 form a belief about the truth of the allegations in Paragraph 24 and on that basis deny them.

19  
20 25. Plaintiff DiPhilipo is a current shareholder of Microsoft and has continuously  
21 held Microsoft stock since 2010. DiPhilipo is a citizen of Massachusetts.

22 **ANSWER:** The Individual Defendants lack knowledge or information sufficient to  
23 form a belief about the truth of the allegations in Paragraph 25 and on that basis deny them.

24  
25 26. Nominal defendant Microsoft is a Washington corporation with its headquarters  
26 located at One Microsoft Way Redmond, Washington 98052-6399. According to its public  
27

1 filings, Microsoft is the worldwide leader in software, services and solutions that help people  
2 and businesses realize their full potential.

3 **ANSWER:** The Individual Defendants admit the allegations in Paragraph 26.  
4

5 27. Defendant Steven A. Ballmer (“Ballmer”) served as the Company’s Chief  
6 Executive Officer (“CEO”) from 2000 until February 14, 2014, and has served as a director of  
7 the Company since 2000. Upon information and belief defendant Ballmer is a citizen of  
8 Washington.

9 **ANSWER:** The Individual Defendants admit that Steven A. Ballmer served as  
10 Microsoft’s Chief Executive Officer from 2000 until February 4, 2014, that he served as a  
11 Microsoft director from 2000 until August 19, 2014, and that he is a citizen of Washington.  
12 The allegations in Paragraph 27 are otherwise denied.  
13

14 28. Defendant Dina D. Dublon (“Dublon”) has served as a director of the Company  
15 since March 2005. In addition, defendant Dublon served as a member of the Board’s Audit  
16 Committee (the “Audit Committee”) during the Relevant Period. Dublon is a member of the  
17 DRC. Upon information and belief defendant Dublon is a citizen of New York.

18 **ANSWER:** The Individual Defendants admit that Dina Dublon served as a Microsoft  
19 director from March 2005 until December 3, 2014, that she served as a member of the Audit  
20 Committee for a portion of the Relevant Period, and that she is a citizen of New York. The  
21 allegations in Paragraph 28 are otherwise denied.  
22

23 29. Defendant William H. Gates III (“Gates”), the Company’s founder, has served  
24 as a director of the Company since 1981, and served as Chairman of the Board until February  
25 4, 2014. Gates currently serves as the Company’s Technology Advisor. Gates served as the  
26 Company’s CEO from 1975 until 2000. Upon information and belief defendant Gates is a  
27 citizen of Washington.

1           **ANSWER:** The Individual Defendants admit the allegations in Paragraph 29.

2  
3           30.     Defendant Maria M. Klawe (“Klawe”) has served as a director of the Company  
4 since March 2009. Upon information and belief defendant Klawe is a citizen of California.

5           **ANSWER:** The Individual Defendants admit the allegations in Paragraph 30.

6  
7           31.     Defendant Stephen J. Luczo (“Luczo”) served as a director of the Company  
8 from 2012 until March 2014. In addition, defendant Luczo served as a member of the Audit  
9 Committee during the Relevant Period. Luczo is a member of the DRC. Upon information and  
10 belief defendant Luczo is a citizen of California.

11           **ANSWER:** The Individual Defendants admit that Stephen J. Luczo served as a  
12 Microsoft director from 2012 until March 2014, that he served as a member of the Audit  
13 Committee for a portion of the Relevant Period, and that he is a citizen of California. The  
14 allegations in Paragraph 31 are otherwise denied.

15  
16           32.     Defendant David F. Marquardt (“Marquardt”) has served as a director of the  
17 Company since June 30, 1981. Upon information and belief defendant Marquardt is a citizen  
18 of California.

19           **ANSWER:** The Individual Defendants admit that David F. Marquardt served as a  
20 Microsoft director from June 30, 1981 until December 3, 2014, and that he is a citizen of  
21 California. The allegations in Paragraph 32 are otherwise denied.

22  
23           33.     Defendant Charles H. Noski (“Noski”) has served as a director of the Company  
24 since November 2003. In addition, defendant Noski served as Chair of the Audit Committee  
25 during the Relevant Period. Upon information and belief defendant Noski is a citizen of  
26 California.

27           **ANSWER:** The Individual Defendants admit the allegations in Paragraph 33.

1  
2           34. Defendant Helmut Panke (“Panke”) has served as a director of the Company  
3 since November 11, 2003. In addition, defendant Panke served as a member of the Audit  
4 Committee during the Relevant Period. Upon information and belief defendant Panke is a  
5 citizen of Germany.

6           **ANSWER:** The Individual Defendants admit the allegations in Paragraph 34.  
7

8           35. Defendant John W. Thompson (“Thompson”) has served as a director of the  
9 Company since February 2012 and as Chairman of the Board since February 4, 2014. Upon  
10 information and belief defendant Thompson is a citizen of California.

11           **ANSWER:** The Individual Defendants admit the allegations in Paragraph 35.  
12

13           36. Defendant Peter S. Klein (“Klein”) served as the Company’s Chief Financial  
14 Officer (“CFO”) from 2009 until May 8, 2013. Upon information and belief defendant Klein is  
15 a citizen of Washington.

16           **ANSWER:** The Individual Defendants admit the allegations in Paragraph 36.  
17

18           37. Defendant Brad Smith (“Smith”) serves as the Company’s General Counsel and  
19 Executive Vice President, Legal and Corporate Affairs, as well as Corporate Secretary and  
20 Chief Compliance Officer. Upon information and belief defendant Smith is a citizen of  
21 Washington.

22           **ANSWER:** The Individual Defendants admit the allegations in Paragraph 37.  
23

24           38. Defendant B. Kevin Turner (“Turner”) has served as the Company’s Chief  
25 Operating Officer (“COO”) since 2006. Upon information and belief defendant Turner is a  
26 citizen of Washington.  
27





1           **ANSWER:** Paragraph 41 states legal conclusions to which no response is required. To  
2 the extent any response is called for, the Individual Defendants observe that Paragraph 41  
3 characterizes the Individual Defendants’ duties as directors and/or officers of Microsoft.  
4 Rather than responding to those characterizations, the Individual Defendants state that those  
5 duties are defined under the Washington Business Corporations Act and common law, as well  
6 as the Amended and Restated Articles of Incorporation of Microsoft Corporation (the  
7 “Articles”) and the Bylaws of Microsoft Corporation (the “Bylaws”). The Individual  
8 Defendants deny the allegations in Paragraph 41 to the extent they are not contained in or are  
9 inconsistent with those sources.

10  
11           42. Defendants, because of their positions of control and authority as directors  
12 and/or officers of Microsoft, were able to and did, directly and/or indirectly, exercise control  
13 over the wrongful acts complained of herein. Because of their advisory, executive, managerial,  
14 and directorial positions with Microsoft, each of the Defendants had knowledge of material  
15 non-public information regarding the Company.

16           **ANSWER:** The Individual Defendants deny the allegations in the first sentence of  
17 Paragraph 42. Answering the second sentence of Paragraph 42, the Individual Defendants  
18 admit generally that at various times they have had knowledge of material, non-public  
19 information about Microsoft Corp. Except as admitted herein, the Individual Defendants deny  
20 the allegations in Paragraph 42.

21  
22           43. To discharge their duties, the officers and directors of Microsoft were required  
23 to exercise reasonable and prudent supervision over the management, policies, practices and  
24 controls of the Company. By virtue of such duties, the officers and directors of Microsoft were  
25 required to, among other things:

- 26           a. Exercise good faith to ensure that the affairs of the Company were conducted in  
27 an efficient, business-like manner so as to make it possible to provide the  
highest quality performance of their business;

- 1           b.     Exercise good faith to ensure that the Company was operated in a diligent,  
2           honest and prudent manner and complied with all applicable federal and state  
3           laws, rules, regulations and requirements, and all contractual obligations,  
4           including acting only within the scope of its legal authority; and
- 5           c.     When put on notice of problems with the Company's business practices and  
6           operations, exercise good faith in taking appropriate action to correct the  
7           misconduct and prevent its recurrence.

8           **ANSWER:** Paragraph 43 states legal conclusions to which no response is required. To  
9           the extent any response is called for, the Individual Defendants observe that Paragraph 43  
10          characterizes the Individual Defendants' duties as directors and/or officers of Microsoft.  
11          Rather than responding to those characterizations, the Individual Defendants state that those  
12          duties are defined under the Washington Business Corporations Act and common law, as well  
13          as the Articles and Bylaws. The Individual Defendants deny the allegations in Paragraph 43 to  
14          the extent they are not contained in or are inconsistent with those sources.

15          44.     Pursuant to the Audit Committee's Charter, the members of the Audit  
16          Committee are required to review with the Compliance Officer legal and regulatory matters  
17          that may have a material impact on the financial statements or internal controls over financial  
18          reporting, related Company compliance policies and programs, and related reports received  
19          from regulators. In addition, the members of the Audit Committee are required to review  
20          adequacy of the Company's internal controls, as well as the Company's quarterly and annual  
21          financial filings with the United States Securities and Exchange Commission ("SEC").

22          **ANSWER:** This paragraph states legal conclusions to which no response is required.  
23          To the extent any response is called for, the Individual Defendants observe that Paragraph 44  
24          characterizes the Audit Committee's Charter. Rather than responding to those  
25          characterizations, the Individual Defendants refer to the complete text of the Audit  
26          Committee's Charter, which speaks for itself. The Individual Defendants deny the allegations  
27          in Paragraph 44 to the extent they are not contained in or are inconsistent with the text of the  
28          Audit Committee's Charter.

**SUBSTANTIVE ALLEGATIONS**

**Background of the Company and its European Troubles**

1  
2 45. According to its public filings, Microsoft is the worldwide leader in software,  
3 services and solutions that help people and businesses realize their full potential.

4 **ANSWER:** The Individual Defendants admit the allegations in Paragraph 45.

5  
6 46. Microsoft has had troubles with EU officials since at least 1998, largely for  
7 anticompetitive behavior. For instance, in that year, European regulators began to probe  
8 Microsoft with respect to the inclusion of its media player with Windows, and for the use of  
9 confidential coding to favor the Microsoft desktop and server software. All of this was said to  
10 stifle Microsoft's competition. Although (many of the) Defendants caused Microsoft to fight  
11 the charges, Microsoft's arguments were dismissed in 2004 (and then again on appeal in 2007).  
12 In or about October 2007, Defendants caused Microsoft to abandon its efforts to overturn the  
13 ruling, and caused Microsoft to pay the equivalent of about \$2.4 billion in fines and penalties.

14 **ANSWER:** Paragraph 46 inaccurately and incompletely characterizes Microsoft's  
15 interactions with EU regulators over the past 17 years. The Individual Defendants deny the  
16 allegations in Paragraph 46 on that basis, and because Microsoft's interactions with EU  
17 regulators are a matter of public record and speak for themselves.

18  
19 47. Meanwhile, EU officials were probing the Company regarding additional  
20 antitrust violations with respect to the inclusion of Internet Explorer (and only Internet  
21 Explorer) with Windows. On December 16, 2009, EU regulators dropped the antitrust case  
22 against Microsoft after Defendants caused the Company to agree to offer consumers a choice of  
23 rival Web browsers with Windows. The Settlement was a five-year deal, whereby European  
24 Windows users would be given a choice of 11 competing web browsers, including those made  
25 by Apple, Google and Mozilla. Under the terms of the Settlement, by mid-March 2010,  
26 Microsoft was to send ballot screens via automatic software updates to 100 million users of  
27

1 Windows XP, Vista and Windows 7 in Europe who had set Internet Explorer as their main  
2 browser. Further, Microsoft was to send the ballot screens to purchasers of new Windows-  
3 based computers (estimated to be 30 million a year). European users of Windows would be  
4 given a “choice screen,” which would allow them to easily switch from Internet Explorer to  
5 other Web browsers. By stipulating to the Settlement under Defendants’ direction and on their  
6 watch, Microsoft avoided paying a fine to EU officials. Critically, pursuant to the terms of the  
7 Settlement, Microsoft itself was directly responsible for monitoring its own compliance with  
8 the Settlement over the next five years.

9       **ANSWER:** Paragraph 47 incompletely characterizes the 2009 Order and the  
10 circumstances that led to it. Rather than responding to those characterizations, the Individual  
11 Defendants refer to the 2009 Order (including the commitments set forth in the Annex thereto),  
12 which speaks for itself. The Individual Defendants deny the allegations in Paragraph 47 to the  
13 extent they are not contained in or are inconsistent with the 2009 Order.

14  
15       48.     On December 16, 2009, Defendants issued a press release regarding the  
16 Settlement, which contained a statement by defendant Smith, the Company’s Senior Vice  
17 President and General Counsel. This press release set forth, in relevant part:

18             We are pleased with today’s decision by the European Commission,  
19             which approves a final resolution of several longstanding competition  
20             law issues in Europe. We look forward to building on the dialogue and  
21             trust that has been established between Microsoft and the Commission  
22             and to extending our industry leadership on interoperability.

23             Today’s resolution follows years of intensive examination by the  
24             European Commission of competition in computer software. The  
25             measures approved today reflect multiple rounds of input from industry  
26             participants relating to competition in Web browser software and  
27             interoperability between various Microsoft products and competing  
28             products.

29             The Web browser measures cover the inclusion of Internet Explorer in  
30             Windows for users in Europe—specifically the region known as the  
31             European Economic Area, which includes 30 nations. ***Under today’s  
32             resolution, Microsoft commits that PC manufacturers and users will  
33             continue to be able to install any browser on top of Windows, to make  
34             any browser the default browser on new PCs, and to turn access to***

1 *Internet Explorer on or off. In addition, Microsoft will send a*  
 2 *“browser choice” screen to Windows users who are running Internet*  
 3 *Explorer as their default browser. This browser choice screen will*  
 4 *present a list of browsers, making it easy for users to install any one of*  
 5 *them. It will be provided both to users of new computers and to the*  
 6 *installed base of Windows XP, Windows Vista, and Windows 7*  
 7 *computers in Europe where Internet Explorer is set as the default*  
 8 *browser.*

9 The second measure is a “public undertaking” that covers  
 10 interoperability with Microsoft’s products—the way our high-share  
 11 products work with non-Microsoft technologies. This applies to an  
 12 important set of Microsoft’s products—our Windows, Windows Server,  
 13 Office, Exchange, and SharePoint products. We believe it represents the  
 14 most comprehensive commitment to the promotion of interoperability in  
 15 the history of the software industry. Under this undertaking, Microsoft  
 16 will ensure that developers throughout the industry, including in the open  
 17 source community, will have access to technical documentation to assist  
 18 them in building products that work well with Microsoft products.  
 19 Microsoft will also support certain industry standards in its products and  
 20 fully document how these standards are supported. Microsoft will make  
 21 available legally-binding warranties that will be offered to third parties.

22 Our interoperability undertaking reflects the policy outlined by the  
 23 European Commission in a major policy speech given by Commissioner  
 24 Neelie Kroes in June 2008. At that time, the Commissioner said that  
 25 companies offering high-share software products should be required to  
 26 (i) disclose technical specifications to enable interoperability; (ii) ensure  
 27 that competitors can access complete and accurate information and have  
 a remedy if not; and (iii) ensure that the technical specifications are  
 available at fair royalty rates, based on the inherent value of the  
 technology disclosed. Our interoperability undertaking, developed  
 through extensive consultation, implements this approach in full.

As we’ve said before, we are embarking on a path that will require  
 significant change within Microsoft. Nevertheless, we believe that these  
 are important steps that resolve these competition law concerns.

This is an important day and a major step forward, and we look forward  
 to building a new foundation for the future in Europe. [Emphasis  
 added.]

21 **ANSWER:** The Individual Defendants admit that Paragraph 48 quotes a Microsoft  
 22 press release dated December 16, 2009.

### **Defendants Cause the Company to Violate the Settlement**

25 49. Beginning in February 2011, under Defendants’ direction and on their watch,  
 26 the Company blatantly violated the terms of the Settlement. At that time, in direct violation of  
 27

1 the Settlement, Defendants caused Microsoft to eliminate the choice screen *from at least 15*  
2 *million installations* of Windows 7 in Europe, making Internet Explorer the only Web browser  
3 available on these installations.

4 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 49.

5  
6 50. On July 28, 2011, Defendants caused the Company to file with the SEC an  
7 annual report on Form 10-K the (“2011 10-K”), which was signed by defendants Ballmer,  
8 Gates, Dublon, Klawe, Marquardt, Noski, Panke, and Klein. In addition, the 2011 10-K  
9 contained certifications pursuant to the Sarbanes Oxley Act of 2002 (“SOX Certifications”),  
10 signed by defendants Ballmer and Klein, who stated:

11 I, [Steven A. Ballmer/Peter S. Klein], certify that:

- 12 1. I have reviewed this annual report on Form 10-K of Microsoft  
13 Corporation;
- 14 2. Based on my knowledge, this report does not contain any untrue  
15 statement of a material fact or omit to state a material fact necessary to  
16 make the statements made, in light of the circumstances under which  
17 such statements were made, not misleading with respect to the period  
18 covered by this report;
- 19 3. Based on my knowledge, the financial statements, and other financial  
20 information included in this report, fairly present in all material respects  
21 the financial condition, results of operations and cash flows of the  
22 registrant as of, and for, the periods presented in this report;
- 23 4. The registrant’s other certifying officer and I are responsible for  
24 establishing and maintaining disclosure controls and procedures (as  
25 defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal  
26 control over financial reporting (as defined in Exchange Act Rules 13a-  
27 15(f) and 15d-15(0) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused  
such disclosure controls and procedures to be designed under our  
supervision, to ensure that material information relating to the  
registrant, including its consolidated subsidiaries, is made known  
to us by others within those entities, particularly during the  
period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or  
caused such internal control over financial reporting to be  
designed under our supervision, to provide reasonable assurance  
regarding the reliability of financial reporting and the preparation

1 of financial statements for external purposes in accordance with  
generally accepted accounting principles;

2 c) Evaluated the effectiveness of the registrant's disclosure  
3 controls and procedures and presented in this report our  
4 conclusions about the effectiveness of the disclosure controls and  
procedures, as of the end of the period covered by this report  
based on such evaluation; and

5 d) Disclosed in this report any change in the registrant's internal  
6 control over financial reporting that occurred during the  
7 registrant's most recent fiscal quarter (the registrant's fourth  
8 fiscal quarter in the case of an annual report) that has materially  
affected, or is reasonably likely to materially affect, the  
registrant's internal control over financial reporting; and

9 5. The registrant's other certifying officer and I have disclosed, based  
10 on our most recent evaluation of internal control over financial reporting,  
to the registrant's auditors and the audit committee of registrant's Board  
of Directors (or persons performing the equivalent functions):

11 a) All significant deficiencies and material weaknesses in the  
12 design or operation of internal control over financial reporting  
13 which are reasonably likely to adversely affect the registrant's  
ability to record, process, summarize and report financial  
information; and

14 b) Any fraud, whether or not material, that involves  
15 management or other employees who have a significant role in  
the registrant's internal control over financial reporting.

16 \* \* \*

17 In connection with the Annual Report of Microsoft Corporation, a  
18 Washington corporation (the "Company"), on Form 10-K for the year  
ended June 30, 2011, as filed with the Securities and Exchange  
19 Commission (the "Report"), [Steven A. Ballmer, Chief Executive  
Officer of the Company/Peter S. Klein, Chief Financial Officer of the  
20 Company], does hereby certify, pursuant to § 906 of the Sarbanes-Oxley  
Act of 2002 (18 U.S.C. § 1350), that to his knowledge:

21 (1) The Report fully complies with the requirements of section 13(a) or  
22 15(d) of the Securities Exchange Act of 1934; and

23 (2) The information contained in the Report fairly presents, in all  
24 material respects, the financial condition and results of operations of the  
Company.

25 **ANSWER:** The Individual Defendants admit that on July 28, 2011, Microsoft filed  
26 with the SEC an annual report on Form 10-K (the 2011 10-K), which was signed by defendants  
27



1 Ballmer, Gates, Dublon, Klawe, Marquardt, Noski, Panke, and Klein, and that Paragraph 50  
2 quotes from certifications in the 2011 10-K signed by defendants Ballmer and Klein.

3  
4 51. In addition, the 2011 10-K set forth the following, in relevant part:

5 The European Commission closely scrutinizes the design of high-volume  
6 Microsoft products and the terms on which we make certain technologies  
7 used in these products, such as file formats, programming interfaces, and  
8 protocols, available to other companies. In 2004, the Commission  
9 ordered us to create new versions of Windows that do not include certain  
10 multimedia technologies and to provide our competitors with  
11 specifications for how to implement certain proprietary Windows  
12 communications protocols in their own products. In 2009, the  
13 Commission accepted a set of commitments offered by Microsoft to  
14 address the Commission’s concerns relating to competition in Web  
15 browsing software. The Commission’s impact on product design may  
16 limit our ability to innovate in Windows or other products in the future,  
17 diminish the developer appeal of the Windows platform, and increase  
18 our product development costs. The availability of licenses related to  
19 protocols and file formats may enable competitors to develop software  
20 products that better mimic the functionality of our own products which  
21 could result in decreased sales of our products.

22 **ANSWER:** The Individual Defendants admit the allegation in Paragraph 51.

23  
24 52. The 2011 10-K was false and misleading at the time it was issued. The 2011 10-  
25 K failed to disclose that the Defendants were causing the Company to violate the Settlement,  
26 which could expose the Company to hundreds of millions of dollars in fines.

27 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 52.

53. In the summer of 2012, although Microsoft was responsible for monitoring its  
own compliance with the Settlement, EU antitrust chief Almunia warned Defendants that on  
some occasions Microsoft software was not providing users the full access to competing Web  
browsers, as was stipulated in the Settlement. Defendants “apologized” to Almunia, calling it a  
“technical problem.” Yet despite the apology, Defendants did nothing to halt the illicit scheme,  
occurring under their direction and on their watch.





1  
2           56.     That same day, *The New York Times* (“NYT”) published an article entitled  
3 “European Regulators Fine Microsoft, Then Promise to Do Better.” The article set forth, in  
4 relevant part:

5           The European Union fined Microsoft \$732 million on Wednesday for  
6 failing to respect an antitrust settlement with regulators. But in a highly  
7 unusual mea culpa, the European Union’s top antitrust regulator said that  
8 his department bore some of the responsibility for Microsoft’s failure to  
9 respect a settlement that caused the fine.

10          Joaquin Almunia, the European Union competition commissioner, said  
11 the bloc had been “naïve” to put Microsoft in charge of monitoring its  
12 adherence to the deal it agreed to in 2009, when his predecessor let the  
13 company escape a fine in exchange for offering users of its Windows  
14 software a wider choice of Internet browsers.

15          Mr. Almunia insisted that the enforcement of settlements could be  
16 sufficiently strengthened to ensure that companies abide by their pledges,  
17 and he signaled that he would not retreat from his goal to use such deals  
18 to avoid lengthy legal battles with major companies in swiftly evolving  
19 technology markets.

20          Settlements “allow for rapid solutions to competition problems,” Mr.  
21 Almunia said. “Of course such decisions require strict compliance” and  
22 the “failure to comply is a very serious infringement that must be  
23 sanctioned accordingly.”

24          *Microsoft had agreed to alter Windows for five years to give users of  
25 newly purchased computers in Europe a ballot screen that would allow  
26 them to easily download other browsers from the Internet and to turn  
27 off Microsoft’s browser, Internet Explorer.*

*Microsoft told the commission at the end of 2011 that it had been  
abiding by the deal. “We trusted the reports about the compliance,”  
Mr. Almunia said Wednesday.*

*In fact, the company failed to include the ballot system in certain  
products starting in May 2011, affecting more than 15 million  
European users. The lapse came to light last July, after rival  
companies reported its absence.*

*“We take full responsibility for the technical error that caused this  
problem and have apologized,” Microsoft said Wednesday. “We have  
taken steps to strengthen our software development and other processes  
to help avoid this mistake — or anything similar — in the future.”*

        A Microsoft spokesman declined to comment on whether the company  
would appeal, but it seemed unlikely, as the company prefers to focus on

1 its rivalry with Google. Microsoft is among the companies that have  
2 complained about Google's business practices to Mr. Almunia.

3 \* \* \*

4 Mr. Almunia said he had not yet decided whether to appoint a trustee to  
5 oversee whether Microsoft was adhering to the rest of its compliance  
6 period in the browser case, which runs to 2014.

7 ***Microsoft has been a special case in the history of European Union  
8 antitrust enforcement, racking up a total of \$3.4 billion in fines over  
9 about a decade.***

10 Microsoft was the first company to pay so-called periodic penalties for  
11 failing to follow an order to make it easier for rival products to  
12 communicate with powerful server computers running Windows. That  
13 amount, nearly 900 million euros, was subsequently reduced to 860  
14 million euros after the company appealed to the General Court of the  
15 European Union.

16 ***The decision against Microsoft was another milestone for European  
17 Union antitrust law, and for Microsoft, which became the first  
18 company to be punished for failing to adhere to a settlement.  
19 [Emphasis added.]***

20 **ANSWER:** The Individual Defendants admit that Paragraph 56 quotes portions of a  
21 *New York Times* article published on March 6, 2013, which speaks for itself and includes  
22 inadmissible hearsay.

23 57. Also that day, *Computerworld.com* published an article entitled "EU let  
24 Microsoft police itself on browser ballot promises."<sup>1</sup> This article set forth, in relevant part:

25 Europe's antitrust agency had put Microsoft on the honor system, letting  
26 the company monitor its own compliance with a 2009 settlement that  
27 required it to offer other browsers to Windows users, the EU's top  
regulator admitted.

That eventually led to the Brussels-based European Commission  
slapping a \$732 million fine on Microsoft today.

***"The reports we were receiving had not signaled us of this breach,"  
said Joaquin Almunia, the head of the antitrust agency, when asked  
how the oversight went undetected for over a year.***

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<sup>1</sup> Article available at:

[http://www.computerworld.com/s/article/9237392/EU\\_let\\_Microsoft\\_police\\_itself\\_on\\_browser\\_ballot\\_promises](http://www.computerworld.com/s/article/9237392/EU_let_Microsoft_police_itself_on_browser_ballot_promises)

1 *Those reports, it turned out, were coming from Microsoft. “We trusted*  
2 *in the reports on the compliance /from Microsoft!,” said Almunia.*  
3 *“We were not trying to explore Windows Service Pack 1. But maybe*  
4 *we should have tried to complement their reports.”*

5 He admitted the Commission may have made a mistake letting Microsoft  
6 police itself, rather than appointing an external overseer. “In 2009, we  
7 were even more naive than today,” Almunia added. He also suggested  
8 that the agency would change how it monitors deals struck in the future.

9 The 2009 agreement required Microsoft to show European Windows  
10 users a browser ballot, a screen that displayed download links to rivals’  
11 browsers, including Google’s Chrome, Mozilla’s Firefox and Opera  
12 Software’s Opera.

13 But Microsoft made what it has repeatedly called a “technical error”  
14 when it omitted the ballot from Windows 7 Service Pack 1 (SP1) for 14  
15 months, from May 2011 until July 2012. Approximately 15.3 million  
16 users did not see the ballot as intended, said Almunia.

17 *One U.S. antitrust expert struggled to understand why EU regulators*  
18 *let Microsoft supervise itself*

19 *“The Federal Trade Commission, where I used to work, has an entire*  
20 *compliance department, with lawyers and economists, to make sure*  
21 *orders are complied with,” said Robert Lande, a law professor at the*  
22 *University of Baltimore and director of the American Antitrust*  
23 *Institute. “That’s kind of elementary. It’s not rocket science.”*

24 Lande also blasted the Commission for allowing a repeat offender to  
25 police itself. *“Why would you put a three-time offender on the honor*  
26 *system?” Lande asked, referring to other antitrust actions against*  
27 *Microsoft, both in the U.S. and in the EU, that have resulted in billions*  
28 *in fines.*

29 Today, Microsoft reiterated what it has said since mid-2012. “We take  
30 full responsibility for the technical error that caused this problem and  
31 have apologized for it,” the company said in a statement. “We provided  
32 the Commission with a complete and candid assessment of the situation,  
33 and we have taken steps to strengthen our software development and  
34 other processes to help avoid this mistake -- or anything similar -- in the  
35 future.”

36 Microsoft’s quick admission of the omission, multiple apologies, and  
37 cooperation with the EU authorities, were factors Almunia took into  
38 consideration when deciding on a fine, he said today.

39 According to Microsoft, the browser ballot was left out of Windows 7  
40 SP1 when an engineering team forgot to update code that distributed the  
41 choice screen.

42 *Microsoft did not report the oversight to the Commission: As late as*  
43 *December 2011, months after the ballot stopped being shown,*  
44 *Microsoft reported that everything was fine. Instead, an unnamed*

1 *complainant alerted the EU.* Almunia has declined to identify the  
2 complaint's origin, but one possible suspect is Mozilla, which has been  
the most vocal of all of Microsoft's browser rivals about its practices.

3 *Lande thought the explanation incredulous. "You can't say it's*  
4 *accidental for 15 months," he argued today. "Microsoft says it was a*  
5 *technical glitch, okay, one month, I understand, you left it out of a*  
6 *batch. But not for 15 months. That doesn't look like an accident to*  
7 *me."*

8 It's unlikely that Microsoft will appeal the fine, what with its public  
9 apologies and admission of guilt. Today, however, the company  
declined to comment on its plans. [Emphasis added.]

10 **ANSWER:** The Individual Defendants admit that Paragraph 57 quotes a  
11 *Computerworld.com* article published on March 6, 2013, which speaks for itself and includes  
12 inadmissible hearsay.

13 58. Despite the enormous and unprecedented fine at issue, Defendants issued an  
14 extremely short statement in response to the disastrous situation, purportedly taking "full  
15 responsibility" but again maintaining that the violation of the Settlement was merely a  
16 "technical error." Moreover, Defendants offered no explanation as to how the Settlement could  
17 have been violated, even though Microsoft itself was responsible for monitoring its own  
18 compliance with the Settlement. The statement, contained in a press release (and reprinted in  
the NYT article above), read as follows:

19 *We take full responsibility* for the technical error that caused this  
20 problem and have apologized for it. We provided the Commission with  
21 a complete and candid assessment of the situation, and we have taken  
steps to strengthen our software development and other processes to help  
avoid this mistake — or anything similar — in the future.

22 **ANSWER:** Paragraph 58 improperly characterizes and inaccurately transcribes  
23 Microsoft Corporation's March 6, 2013, press release and the circumstances that led to it.  
24 Rather than responding to those characterizations, the Individual Defendants refer to the March  
25 6, 2013, press release, which speaks for itself. The Individual Defendants deny the allegations  
26 in Paragraph 58 to the extent they are not contained in or are inconsistent with the March 6,  
27 2013, press release.

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59. As a result of Defendants’ actions (which they have admitted to), the Company has suffered damages.

**ANSWER:** The Individual Defendants deny the allegations in Paragraph 59.

**DERIVATIVE AND DEMAND ALLEGATIONS**

60. Plaintiffs bring this action derivatively in the right and for the benefit of Microsoft to redress the breaches of fiduciary duty and other violations of law by Defendants.

**ANSWER:** The Individual Defendants deny the allegations in Paragraph 60 and further respond that Plaintiffs have not established standing to sue on behalf of the Company. By answering the Complaint, the Individual Defendants do not concede that Plaintiffs have standing to pursue this lawsuit and reserve all challenges to Plaintiffs’ standing

61. Plaintiffs will adequately and fairly represent the interests of Microsoft and its shareholders in enforcing and prosecuting its rights.

**ANSWER:** The Individual Defendants deny the allegations in Paragraph 61.

**The Barovic Demand**

62. As a result of the actions set forth above, on March 22, 2013, Barovic issued the Barovic Demand pursuant to Washington law on the Board to investigate and commence an action against certain current and/or former directors and executive officers of the Company. See Exhibit A.

**ANSWER:** The Individual Defendants admit that counsel for Barovic, Robert Weiser, sent a demand letter dated March 22, 2013, and a copy of that letter is Exhibit A to the Complaint. The Individual Defendants deny there is any basis for an action against them, as Barovic claims. Except as admitted herein, the Individual Defendants deny the allegations in Paragraph 62.

1  
2           63.     Over ten months later, on January 28, 2014, Barovic's counsel received the  
3 Barovic Refusal from attorney Muck of the law firm Fenwick, informing Barovic's counsel that  
4 the Barovic Demand was being refused in its entirety. The Barovic Refusal informed Barovic's  
5 counsel that Fenwick was counsel to a purported DRC, consisting of defendants Luczo and  
6 Dublin, who were purportedly appointed to investigate the allegations in the Barovic Demand.  
7 See Exhibit B.

8           **ANSWER:** The Individual Defendants admit that the Microsoft Board of Directors  
9 appointed Stephen J. Luczo and Dina Dublon to the DRC, that the DRC's counsel, Susan  
10 Muck, sent a letter to Barovic's counsel, Robert Weiser, dated January 28, 2014, and that a  
11 copy of that letter is included in Exhibit B to the Complaint. Paragraph 63 characterizes that  
12 letter incompletely. The Individual Defendants deny the allegations in Paragraph 63 to the  
13 extent they are not contained in or are inconsistent with the text of that letter.

14  
15           64.     The Barovic Refusal included the purported Resolution, which totaled less than  
16 three pages. The Resolution contended that among other things, the DRC reviewed thousands  
17 of documents and "conducted relevant witness interviews." The Resolution concluded that the  
18 Barovic Demand did not contain facts "to support any viable claim for breach of fiduciary  
19 duty," that the allegations in the Barovic Demand did "not give rise to legally viable claims  
20 against any of the Company's current or former officers or directors," and that "the Company  
21 undertook and adopted significant remedial measures" before receiving the Barovic Demand.

22           **ANSWER:** The Individual Defendants admit that Exhibit B to the Complaint includes  
23 a copy of the Resolution. Paragraph 64 characterizes the Resolution incompletely. Rather than  
24 responding to those characterizations, the Individual Defendants refer to the complete text of  
25 the Resolution, which speaks for itself. The Individual Defendants deny the allegations in  
26 Paragraph 64 to the extent they are not contained in or are inconsistent with the text of the  
27 Resolution.



1  
2           65.     The Barovic Refusal (that is, Muck’s one page letter and the two and a half page  
3 Resolution) are wholly improper. By issuing the conclusory Resolution and cover letter,  
4 Defendants have attempted to insulate their investigation from any scrutiny, which is  
5 unreasonable. Barovic has received no report whatsoever from the DRC, other than the  
6 Resolution described above. Astoundingly, the Resolution found that the Barovic Demand did  
7 not contain facts to support any viable claim for breach of fiduciary duty [against Defendants],  
8 even though Defendants caused the Company *to admit to the wrongdoing and accept*  
9 *responsibility*. The DRC’s sweeping conclusion that no breach of fiduciary duty occurred,  
10 when coupled with Defendants taking “full responsibility,” creates reasonable doubt that the  
11 DRC’s investigation was conducted reasonably and in good faith. The DRC has merely recited  
12 the conclusion that refusing the Barovic Demand was proper, without sufficiently explaining  
13 how the DRC reached that conclusion. Defendants and the DRC have essentially asked  
14 Barovic to “take their word for it” regarding the thoroughness of the investigation.

15           **ANSWER:** Paragraph 65 characterizes the Resolution incompletely. Rather than  
16 responding to those characterizations, the Individual Defendants refer to the complete text of  
17 the Resolution, which speaks for itself. The Individual Defendants deny the allegations in  
18 Paragraph 65 that characterize the Resolution, to the extent they are not contained in or are  
19 inconsistent with the text of the Resolution. Except as admitted herein, the Individual  
20 Defendants deny the allegations in Paragraph 65.

21  
22           66.     Moreover, there is the critical issue of witness interviews. The Resolution  
23 simply states that the DRC “conducted relevant witness interviews,” but gives absolutely no  
24 detail whatsoever regarding who was interviewed or what questions were asked. As a result,  
25 Barovic’s counsel engaged in extensive correspondence with Muck regarding this issue.  
26 Finally, on March 26, 2014, Barovic’s counsel received the March 26, 2014 Letter, which  
27 purported to answer Barovic’s questions regarding witness interviews. See Exhibit C.



1           **ANSWER:** Paragraph 66 characterizes the Resolution incompletely. Rather than  
2 responding to those characterizations, the Individual Defendants refer to the complete text of  
3 the Resolution, which speaks for itself. The Individual Defendants deny the allegations in  
4 Paragraph 66 that characterize the Resolution, to the extent they are not contained in or are  
5 inconsistent with the text of the Resolution. Answering the remainder of Paragraph 66, the  
6 Individual Defendants admit that Susan Muck sent a letter to Robert Weiser dated March 26,  
7 2014, that a copy of that letter is Exhibit C to the Complaint, and that the letter speaks for itself.  
8 Except as admitted herein, the Individual Defendants deny the allegations in Paragraph 66.

9  
10           67.     First, the March 26, 2014 Letter informed Barovic's counsel that the DRC  
11 declined to identify the names of the specific witnesses interviewed. The March 26, 2014  
12 Letter went on to say that thirty-six individuals were interviewed, including members of the  
13 Board and the Board's Antitrust Compliance Committee, a former president of Microsoft's  
14 Windows division, members of Microsoft's Legal and Corporate Affairs department, members  
15 of the Windows Sustained Engineering team, employees in Advertising and Consumer Support,  
16 an executive in Windows Marketing, an employee in Windows Testing, and an employee in  
17 Original Equipment Manufacturer Sales.

18           **ANSWER:** Paragraph 67 characterizes the March 26, 2014, letter incompletely.  
19 Rather than responding to those characterizations, the Individual Defendants refer to the  
20 complete text of that letter, which speaks for itself. The Individual Defendants deny the  
21 allegations in Paragraph 67 to the extent they are not contained in or are inconsistent with the  
22 text of that letter.

23  
24           68.     The most notable aspect of the list of interviewees was the omissions.  
25 Specifically, it is readily apparent that *the DRC never interviewed Almunia or any member of*  
26 *the European Commission*. It is clear that when conducting its interviews, the DRC did not  
27 interview a single individual who would corroborate Barovic's claims of wrongful conduct.

1 There can be no doubt that any reasonable investigation of the Barovic Demand should have, at  
2 minimum, included an interview of Almunia, or some other member of the European  
3 Commission with comparable knowledge of the European Commission Investigation.

4 **ANSWER:** The Individual Defendants admit the DRC did not interview Joaquin  
5 Almunia or any member of the European Commission. Except as admitted herein, the  
6 Individual Defendants deny the allegations in Paragraph 68.

7  
8 69. Clearly, the Board's and the DRC's complete disregard of the actual merits of  
9 the claims set forth in the Barovic Demand is improper and demonstrates the Board's lack of  
10 diligence and good faith.

11 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 69.

12  
13 **The DiPhilipo Demand**

14 70. Also as a result of the above, on March 21, 2013, DiPhilipo issued the DiPhilipo  
15 Demand on the Board to investigate and commence an action against certain current and/or  
16 former directors and executive officers of the Company. See Exhibit D.

17 **ANSWER:** The Individual Defendants admit that counsel for DiPhilipo, Katharine  
18 Ryan, sent a demand letter dated March 21, 2013, and a copy of that letter is Exhibit D to the  
19 Complaint. The Individual Defendants deny there is any basis for an action against them, as  
20 DiPhilipo claims. Except as admitted herein, the Individual Defendants deny the allegations in  
21 Paragraph 70.

22  
23 71. Over ten months later, on January 28, 2014, DiPhilipo's counsel received a letter  
24 from attorney Muck of the law firm Fenwick, informing DiPhilipo's counsel that the DiPhilipo  
25 Demand was being refused in its entirety. The DiPhilipo Refusal informed DiPhilipo's counsel  
26 that Fenwick was counsel to a purported DRC, consisting of two directors (defendants Stephen  
27

1 Luczo and Dina Dublin, both further defined herein), who were purportedly appointed to  
2 investigate the allegations in the DiPhilipo Demand. See Exhibit E.

3 **ANSWER:** The Individual Defendants admit that the Microsoft Board of Directors  
4 appointed Stephen J. Luczo and Dina Dublon to the DRC, that the DRC's counsel, Susan  
5 Muck, sent a letter to DiPhilipo's counsel, Katharine Ryan, dated January 28, 2014, and that a  
6 copy of that letter is included in Exhibit E to the Complaint. Paragraph 71 characterizes that  
7 letter incompletely. Rather than responding to those characterizations, the Individual  
8 Defendants refer to that letter, which speaks for itself. The Individual Defendants deny the  
9 allegations in Paragraph 71 to the extent they are not contained in or are inconsistent with the  
10 text of that letter.

11  
12 72. The DiPhilipo Refusal included a purported Resolution, which totaled less than  
13 three pages. The Resolution contended that among other things, the DRC reviewed thousands  
14 of documents and "conducted relevant witness interviews." The Resolution concluded that the  
15 DiPhilipo Demand did not contain facts "to support any viable claim for breach of fiduciary  
16 duty," that the allegations in the DiPhilipo Demand did "not give rise to legally viable claims  
17 against any of the Company's current or former officers or directors," and that "the Company  
18 undertook and adopted significant remedial measures" before receiving the DiPhilipo Demand.

19 **ANSWER:** The Individual Defendants admit that Exhibit E to the Complaint includes  
20 a copy of the Resolution. Paragraph 72 characterizes the Resolution incompletely. Rather than  
21 responding to those characterizations, the Individual Defendants refer to the complete text of  
22 the Resolution, which speaks for itself. The Individual Defendants deny the allegations in  
23 Paragraph 72 to the extent they are not contained in or are inconsistent with the text of the  
24 Resolution.

25  
26 73. The DiPhilipo Refusal (that is, Muck's one page letter and the two and a half  
27 page Resolution) is wholly improper. By issuing the conclusory Resolution and cover letter,

1 the defendants have attempted to insulate their investigation from any scrutiny, which is  
2 unreasonable. DiPhilipo has received no report whatsoever from the DRC, other than the  
3 Resolution described above. Astoundingly, the Resolution found that the DiPhilipo Demand  
4 did not contain facts to support any viable claim for breach of fiduciary duty [against the  
5 defendants], even though the defendants caused the Company *to admit to the wrongdoing and*  
6 *accept responsibility*. The DRC's sweeping conclusion that no breach of fiduciary duty  
7 occurred, when coupled with the defendants taking "full responsibility," creates reasonable  
8 doubt that the DRC's investigation was conducted reasonably and in good faith. The DRC has  
9 merely recited the conclusion that refusing the DiPhilipo Demand was proper, without  
10 sufficiently explaining how the DRC reached that conclusion. The defendants and the DRC  
11 have essentially asked DiPhilipo to "take their word for it" regarding the thoroughness of the  
12 investigation, even though they have made no record.

13 **ANSWER:** Paragraph 73 characterizes the Resolution incompletely. Rather than  
14 responding to those characterizations, the Individual Defendants refer to the complete text of  
15 the Resolution, which speaks for itself. The Individual Defendants deny the allegations in  
16 Paragraph 73 that characterize the Resolution, to the extent they are not contained in or are  
17 inconsistent with the text of the Resolution. Except as admitted herein, the Individual  
18 Defendants deny the allegations in Paragraph 73.

19  
20 74. Moreover, there is the critical issue of witness interviews. The Resolution  
21 simply states that the DRC "conducted relevant witness interviews," but provides absolutely no  
22 detail whatsoever regarding who was interviewed or what questions were asked. As a result,  
23 DiPhilipo's counsel has no idea if the individuals with the most knowledge of the facts were  
24 even interviewed.

25 **ANSWER:** Paragraph 74 characterizes the Resolution incompletely. Rather than  
26 responding to those characterizations, the Individual Defendants refer to the complete text of  
27 the Resolution, which speaks for itself. The Individual Defendants deny the allegations in

1 Paragraph 74 that characterize the Resolution, to the extent they are not contained in or are  
2 inconsistent with the text of the Resolution. Except as admitted herein, the Individual  
3 Defendants deny the allegations in Paragraph 74.

4  
5 75. Clearly, the Board’s and the DRC’s complete disregard of the actual merits of  
6 the claims set forth in the DiPhilipo Demand is improper and demonstrates the Board’s lack of  
7 diligence and good faith.

8 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 75.

9  
10 **The Barovic Demand and the DiPhilipo Demand**

11 76. In sum, the Board’s and the DRC’s complete disregard of the actual merits of  
12 the claims set forth in the Barovic Demand and the DiPhilipo Demand is improper and  
13 demonstrates the Board’s lack of diligence and good faith.

14 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 76.

15  
16 77. Thus, this shareholder derivative action should be allowed to proceed.

17 **ANSWER:** The Individual Defendants deny the allegation in Paragraph 77.

18  
19 **COUNT I**  
20 **AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY FOR**  
21 **DISSEMINATING INACCURATE INFORMATION**

22 78. Plaintiffs incorporate by reference and reallege each and every allegation set  
23 forth above, as though fully set forth herein.

24 **ANSWER:** The Individual Defendants incorporate their preceding answers here by  
25 reference.  
26  
27



1           **ANSWER:** The Individual Defendants incorporate their preceding answers here by  
2 reference.

3  
4           83. As alleged herein, each of the Defendants (and particularly the Audit Committee  
5 Defendants) had a fiduciary duty to, among other things, exercise good faith to ensure that the  
6 Company's financial statements were prepared in accordance with GAAP, and, when put on  
7 notice of problems with the Company's business practices and operations, exercise good faith  
8 in taking appropriate action to correct the misconduct and prevent its recurrence.

9           **ANSWER:** Paragraph 83 states legal conclusions to which no response is required. To  
10 the extent any response is called for, the Individual Defendants observe that Paragraph 83  
11 characterizes the Individual Defendants' duties as directors and/or officers of Microsoft.  
12 Rather than responding to those characterizations, the Individual Defendants state that those  
13 duties are defined under the Washington Business Corporations Act and common law, as well  
14 as the Articles and Bylaws. The Individual Defendants deny the allegations in Paragraph 83 to  
15 the extent they are not contained in or are inconsistent with those sources.

16  
17           84. Defendants willfully ignored the obvious and pervasive problems with  
18 Microsoft's internal controls and practices and procedures and failed to make a good faith  
19 effort to correct these problems or prevent their recurrence.

20           **ANSWER:** The Individual Defendants deny the allegations in Paragraph 84.

21  
22           85. As a direct and proximate result of the Defendants' foregoing breaches of  
23 fiduciary duties, the Company has sustained damages.

24           **ANSWER:** The Individual Defendants deny the allegations in Paragraph 85.  
25  
26  
27

**COUNT III**  
**AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES FOR**  
**FAILING TO PROPERLY MANAGE THE COMPANY**

1  
2 86. Plaintiffs incorporate by reference and reallege each and every allegation  
3 contained above, as though fully set forth herein.

4 **ANSWER:** The Individual Defendants incorporate their preceding answers here by  
5 reference.

6  
7 87. Defendants owed and owe Microsoft fiduciary obligations. By reason of their  
8 fiduciary relationships, Defendants specifically owed and owe Microsoft the highest obligation  
9 of good faith, fair dealing and loyalty.

10 **ANSWER:** Paragraph 87 states legal conclusions to which no response is required. To  
11 the extent any response is called for, the Individual Defendants observe that Paragraph 87  
12 characterizes the Individual Defendants' duties as directors and/or officers of Microsoft.  
13 Rather than responding to those characterizations, the Individual Defendants state that those  
14 duties are defined under the Washington Business Corporations Act and common law, as well  
15 as the Articles and Bylaws. The Individual Defendants deny the allegations in Paragraph 87 to  
16 the extent they are not contained in or are inconsistent with those sources.

17  
18 88. Defendants had a fiduciary duty to ensure that the Company was operated in a  
19 diligent, honest and prudent manner and complied with all applicable federal and state laws,  
20 rules, regulations and requirements, and all contractual obligations, including acting only  
21 within the scope of its legal authority, and when put on notice of problems with the Company's  
22 business practices and operations, exercise good faith in taking appropriate action to correct the  
23 misconduct and prevent its recurrence.

24 **ANSWER:** Paragraph 88 states legal conclusions to which no response is required. To  
25 the extent any response is called for, the Individual Defendants observe that Paragraph 88  
26 characterizes the Individual Defendants' duties as directors and/or officers of Microsoft.  
27



1 Rather than responding to those characterizations, the Individual Defendants state that those  
2 duties are defined under the Washington Business Corporations Act and common law, as well  
3 as the Articles and Bylaws. The Individual Defendants deny the allegations in Paragraph 88 to  
4 the extent they are not contained in or are inconsistent with those sources.

5  
6 89. Defendants, and each of them, violated and breached their fiduciary duties of  
7 care, loyalty, reasonable inquiry, oversight, good faith and supervision.

8 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 89.

9  
10 90. As a direct and proximate result of Defendants' failure to perform their fiduciary  
11 obligations, Microsoft has sustained significant damages, not only monetarily, but also to its  
12 corporate image and goodwill.

13 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 90.

14  
15 91. As a result of the misconduct alleged herein, Defendants are liable to the  
16 Company.

17 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 91.

18  
19 92. Plaintiffs, on behalf of Microsoft, have no adequate remedy at law.

20 **ANSWER:** Paragraph 92 states a legal conclusion to which no response is required.  
21 To the extent any response is called for, the Individual Defendants deny the allegation in  
22 Paragraph 92 and deny that Plaintiffs are entitled to any remedy.

23  
24 **COUNT IV**

25 **AGAINST ALL DEFENDANTS FOR UNJUST ENRICHMENT**

26 93. Plaintiffs incorporate by reference and reallege each and every allegation set  
27 forth above, as though fully set forth herein.

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**ANSWER:** The Individual Defendants incorporate their preceding answers here by reference.

94. By their wrongful acts and omissions, the Defendants were unjustly enriched at the expense of and to the detriment of Microsoft.

**ANSWER:** The Individual Defendants deny the allegations in Paragraph 94.

95. Plaintiffs, as a shareholders and representatives of Microsoft, seek restitution from Defendants, and each of them, and seek an order of this Court disgorging all profits, benefits, and other compensation obtained by Defendants, and each of them, as a result of their wrongful conduct and fiduciary breaches.

**ANSWER:** The Individual Defendants deny the allegations in Paragraph 95.

**COUNT V  
AGAINST ALL DEFENDANTS FOR ABUSE OF CONTROL**

96. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

**ANSWER:** The Individual Defendants incorporate their preceding answers here by reference.

97. Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence Microsoft, for which they are legally responsible. In particular, Defendants abused their positions of authority by causing or allowing Microsoft to violate the Settlement.

**ANSWER:** The Individual Defendants deny the allegations in Paragraph 97.

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98. As a direct and proximate result of Defendants’ abuse of control, Microsoft has sustained significant damages.

**ANSWER:** The Individual Defendants deny the allegations in Paragraph 98.

99. As a result of the misconduct alleged herein, Defendants are liable to the Company.

**ANSWER:** The Individual Defendants deny the allegations in Paragraph 99.

100. Plaintiffs, on behalf of Microsoft, have no adequate remedy at law.

**ANSWER:** Paragraph 100 states a legal conclusion to which no response is required. To the extent any response is called for, the Individual Defendants deny the allegation in Paragraph 100 and deny that Plaintiffs are entitled to any remedy.

**COUNT VI  
AGAINST ALL DEFENDANTS FOR GROSS MISMANAGEMENT**

101. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

**ANSWER:** The Individual Defendants incorporate their preceding answers here by reference.

102. Defendants had a duty to Microsoft and its shareholders to prudently supervise, manage and control the operations, business and internal financial accounting and disclosure controls of Microsoft.

**ANSWER:** Paragraph 102 states legal conclusions to which no response is required. To the extent any response is called for, the Individual Defendants observe that Paragraph 102 characterizes the Individual Defendants’ duties as directors and/or officers of Microsoft. Rather than responding to those characterizations, the Individual Defendants state that those

1 duties are defined under the Washington Business Corporations Act and common law, as well  
2 as the Articles and Bylaws. The Individual Defendants deny the allegations in Paragraph 102  
3 to the extent they are not contained in or are inconsistent with those sources.

4  
5 103. Defendants, by their actions and by engaging in the wrongdoing described  
6 herein, abandoned and abdicated their responsibilities and duties with regard to prudently  
7 managing the businesses of Microsoft in a manner consistent with the duties imposed upon  
8 them by law. By committing the misconduct alleged herein, Defendants breached their duties  
9 of due care, diligence and candor in the management and administration of Microsoft's affairs  
10 and in the use and preservation of Microsoft's assets.

11 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 103.

12  
13 104. During the course of the discharge of their duties, Defendants knew or  
14 recklessly disregarded the unreasonable risks and losses associated with their misconduct, yet  
15 Defendants caused Microsoft to engage in the scheme complained of herein which they knew  
16 had an unreasonable risk of damage to Microsoft, thus breaching their duties to the Company.  
17 As a result, Defendants grossly mismanaged Microsoft.

18 **ANSWER:** The Individual Defendants deny the allegations in Paragraph 104.

19  
20 **PRAYER FOR RELIEF**

21 The remainder of the Complaint is a prayer for relief to which no response is required.  
22 To the extent any response is called for, the Individual Defendants deny that Plaintiffs are  
23 entitled to any of the relief sought.

24  
25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs are not entitled to a jury trial to the extent they allege equitable rather than  
27 legal claims.

**AFFIRMATIVE DEFENSES**

The Individual Defendants set forth below their affirmative defenses. By stating these affirmative defenses, the Individual Defendants do not assume any burden of proof as to any fact issue or other element of any cause of action that properly belongs to Plaintiffs.

1. The Complaint fails to state a claim upon which relief can be granted.

2. Plaintiffs lack standing to pursue the claims because the Microsoft board of directors exercised independent business judgment and voted unanimously not to pursue the alleged claims.

3. Plaintiffs' claims are barred because the director defendants are exculpated against all monetary liability for conduct of the type alleged by Plaintiffs, pursuant to Article X of Microsoft's Amended and Restated Articles of Incorporation, as adopted pursuant to the Washington Business Corporations Act.

4. Plaintiffs' claims are barred because the Individual Defendants are indemnified against all liability for conduct of the type alleged by Plaintiffs, pursuant to Article XII of Microsoft's Amended and Restated Articles of Incorporation, as adopted pursuant to the Washington Business Corporations Act.

5. Plaintiffs' claims are barred by the business judgment rule.

6. Plaintiffs' claims are barred because the Individual Defendants relied in good faith on information, opinions, reports, or statements prepared by others, as authorized under RCW 23B.08.300(2) and/or RCW 23B.08.420(2).

7. Plaintiffs' claims are barred because the alleged harm of which they complain was caused by the fault of others.

8. Plaintiffs' claims are barred for failure to make an adequate pre-suit demand.

9. The Individual Defendants affirmatively raise and reserve all applicable equitable defenses.



**CERTIFICATE OF SERVICE**

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I hereby certify that on January 9, 2015, I caused the following to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 9th day of January, 2015.

s/ Stephen M. Rummage