

The Honorable John C. Coughenour

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

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

**NOMINAL DEFENDANT MICROSOFT
CORPORATION’S ANSWER TO
VERIFIED CONSOLIDATED
SHAREHOLDER DERIVATIVE
COMPLAINT**

Nominal Defendant Microsoft Corporation (“Microsoft”) by and through its undersigned attorneys, hereby submits its answer and affirmative defenses to the Verified Consolidated Shareholder Derivative Complaint (“Complaint”) of Kim Barovic and Stephen DiPhilippo (“Plaintiffs”). Microsoft denies each and every allegation not specifically admitted herein and responds to each correspondingly numbered paragraph of the Complaint as follows:

1. Microsoft states that the allegations of Paragraph 1 contain Plaintiffs’ characterization of the Complaint as well as legal contentions and conclusions to which no response is required.

2. Microsoft admits the allegations in Paragraph 2.

3. Microsoft states that the allegations in Paragraph 3 purport to describe regulatory actions taken by the European Commission (“EC”) in connection with Internet

NOMINAL DEFENDANT MICROSOFT
CORPORATION’S ANSWER TO VERIFIED
CONSOLIDATED SHAREHOLDER DERIVATIVE
COMPLAINT
LEAD CASE NO: 2:14-CV-00540-JCC

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1 Explorer and the Windows Operating System. The EC's regulatory actions, including the
2 EC's published report of its findings, are a matter of public record, which speaks for itself.
3 Microsoft refers to the public record and denies any characterization inconsistent with that
4 record.

5 4. Microsoft denies the allegations of Paragraph 4.

6 5. Microsoft states that the allegations in Paragraph 5 purport to describe certain
7 regulatory actions taken by the EC in connection with Internet Explorer and the Windows
8 Operating System. The EC's regulatory actions, including the EC's published report of its
9 findings, are a matter of public record, which speaks for itself. Microsoft refers to the public
10 record, and denies any characterization inconsistent with that record. Microsoft further states
11 that the allegations in Paragraph 5 purport to describe documents exchanged between
12 Microsoft and EU antitrust chief, Joaquin Almunia, which speak for themselves. Microsoft
13 refers to those documents for their contents and denies any characterization inconsistent with
14 their terms. To the extent not expressly admitted, Microsoft denies the allegations in
15 Paragraph 5.

16 6. Microsoft states that the allegations in Paragraph 6 reference the contents of a
17 March 6, 2013 press release that speaks for itself. Microsoft refers to that document for its
18 contents and denies any characterizations inconsistent with its terms. To the extent not
19 expressly admitted, Microsoft denies the allegations in Paragraph 6.

20 7. Microsoft denies the allegations in Paragraph 7.

21 8. Microsoft states that the allegations in Paragraph 8 reference a letter dated
22 March 22, 2013 that speaks for itself. Microsoft refers to that document for its contents and
23 denies any characterizations inconsistent with its terms.

24 9. Microsoft states that the allegations in Paragraph 9 reference a letter dated
25 January 28, 2014 that speaks for itself. Microsoft refers to that document for its contents and
26 denies any characterizations inconsistent with its terms.

1 10. Microsoft admits that the letter dated January 28, 2014 included a “Resolution
2 of the Board of Directors Adopting the Conclusions and Recommendations of the Demand
3 Review Committee,” that speaks for itself. Microsoft refers to that document for its contents
4 and denies any characterizations inconsistent with its terms.

5 11. Microsoft states that the allegations in Paragraph 11 reference documents that
6 speak for themselves. Microsoft refers to those documents for their contents and denies any
7 characterizations inconsistent with their terms. Microsoft further states that the allegations in
8 Paragraph 11 contain legal contentions and conclusions to which no response is required. To
9 the extent the remaining allegations of Paragraph 11 require a response, they are denied.

10 12. Microsoft states that the allegations in Paragraph 12 reference documents that
11 speak for themselves. Microsoft refers to those documents for their contents and denies any
12 characterizations inconsistent with their terms.

13 13. Microsoft states that the allegations in Paragraph 13 reference the contents of a
14 March 26, 2014 letter that speaks for itself. Microsoft refers to that document for its contents
15 and denies any characterizations inconsistent with its terms.

16 14. Microsoft states that the allegations in Paragraph 14 reference the contents of a
17 March 26, 2014 letter that speaks for itself. Microsoft refers to that document for its contents
18 and denies any characterizations inconsistent with its terms. Microsoft further states that the
19 remaining allegations in Paragraph 14 contain legal contentions as to which no response is
20 required. To the extent the remaining allegations of Paragraph 14 require a further response,
21 they are denied.

22 15. Microsoft states that the allegations in Paragraph 15 reference the contents of a
23 March 21, 2013 letter that speaks for itself. Microsoft refers to that document for its contents
24 and denies any characterizations inconsistent with its terms.

1 16. Microsoft states that the allegations in Paragraph 16 reference the contents of a
2 January 28, 2014 letter that speaks for itself. Microsoft refers to that document for its contents
3 and denies any characterizations inconsistent with its terms.

4 17. Microsoft states that the allegations in Paragraph 17 reference a document,
5 entitled “Resolution of the Board of Directors Adopting the Conclusions and
6 Recommendations of the Demand Review Committee,” that speaks for itself. Microsoft refers
7 to that document for its contents and denies any characterizations inconsistent with its terms.

8 18. Microsoft states that the allegations in Paragraph 18 reference documents that
9 speak for themselves. Microsoft refers to those documents for their contents and denies any
10 characterizations inconsistent with their terms. Microsoft further states that the allegations in
11 Paragraph 18 contain legal contentions and conclusions to which no response is required. To
12 the extent the remaining allegations of Paragraph 18 require a response, they are denied.

13 19. Microsoft states that the allegations in Paragraph 19 reference documents that
14 speak for themselves. Microsoft refers to those documents for their contents and denies any
15 characterizations inconsistent with their terms. To the extent that a response is required,
16 Microsoft denies the allegations in Paragraph 19.

17 20. Microsoft states that the allegations in Paragraph 20 contain legal contentions
18 and conclusions to which no response is required. To the extent that a response is required,
19 Microsoft denies the allegations in Paragraph 20.

20 21. Microsoft states that the allegations in Paragraph 21 contain legal contentions
21 and conclusions to which no response is required. To the extent that a response is required,
22 Microsoft denies the allegations in Paragraph 21.

23 22. Microsoft states that the allegations in Paragraph 22 contain legal contentions
24 and conclusions to which no response is required.

25 23. Microsoft states that the allegations in Paragraph 23 contain legal contentions
26 and conclusions to which no response is required.

1 24. Microsoft lacks knowledge or information sufficient to form a belief as to the
2 truth or accuracy of the allegations in Paragraph 24 and therefore denies the same.

3 25. Microsoft lacks knowledge or information sufficient to form a belief as to the
4 truth or accuracy of the allegations in Paragraph 25 and therefore denies the same.

5 26. Microsoft admits the allegations in Paragraph 26.

6 27. Microsoft admits the allegations in Paragraph 27, except that Microsoft states
7 Mr. Ballmer is no longer a Microsoft director.

8 28. Microsoft admits the allegations in the first sentence of Paragraph 28, except
9 that Microsoft states Ms. Dublon is no longer a Microsoft director. Microsoft admits the
10 allegations in the second sentence of Paragraph 28, except that Microsoft states Ms. Dublon
11 was a member of the Board's Audit Committee from March 22, 2005 through December 2,
12 2014. Microsoft admits the allegations in the final sentence of Paragraph 28. Microsoft denies
13 the remaining allegations in Paragraph 28.

14 29. Microsoft admits the allegations in Paragraph 29.

15 30. Microsoft admits the allegations in Paragraph 30.

16 31. Microsoft admits the allegations in the first sentence of Paragraph 31.
17 Microsoft admits the allegations in the second sentence of Paragraph 31, except that Microsoft
18 states Mr. Luczo was a member of the Board's Audit Committee for a portion of the Relevant
19 Period. Microsoft admits the allegations in the final sentence of Paragraph 31. Microsoft
20 denies the remaining allegations in Paragraph 31.

21 32. Microsoft admits the allegations in Paragraph 32, except that Microsoft states
22 Mr. Marquardt is no longer a Microsoft director.

23 33. Microsoft admits the allegations in Paragraph 33.

24 34. Microsoft admits the allegations in Paragraph 34.

25 35. Microsoft admits the allegations in Paragraph 35.

26 36. Microsoft admits the allegations in Paragraph 36.

1 37. Microsoft admits the allegations in Paragraph 37.

2 38. Microsoft admits the allegations in Paragraph 38, except that Microsoft states
3 Mr. Turner started serving as Microsoft's Chief Operating Officer in September 2005.

4 39. Microsoft states that the allegations in Paragraph 39 contain Plaintiffs'
5 characterization of the Complaint, to which no response is required.

6 40. Microsoft states that the allegations in Paragraph 40 contain Plaintiffs'
7 characterization of the Complaint, to which no response is required.

8 41. Microsoft states that the allegations in Paragraph 41 are directed to the
9 Individual Defendants and not Microsoft, and that no response is therefore required. Microsoft
10 further states that the allegations in Paragraph 41 contain legal contentions and conclusions to
11 which no response is required.

12 42. Microsoft states that the allegations in Paragraph 41 are directed to the
13 Individual Defendants and not Microsoft, and that no response is therefore required. Microsoft
14 further states that the allegations in Paragraph 41 contain legal contentions and conclusions to
15 which no response is required. Upon information and belief, Microsoft admits the allegations
16 in the second sentence of Paragraph 42.

17 43. Microsoft states that the allegations in Paragraph 41 are directed to the
18 Individual Defendants and not Microsoft, and that no response is therefore required. The
19 allegations in Paragraph 43 contain legal contentions and conclusions to which no response is
20 required.

21 44. Microsoft states that the allegations in Paragraph 44 reference the contents of an
22 Audit Committee Charter, which speaks for itself. Microsoft refers to that document for its
23 contents and denies any characterizations inconsistent with its terms.

24 45. Microsoft admits the allegations in Paragraph 45.

25 46. Microsoft states that the allegations in Paragraph 46 purport to describe
26 regulatory actions taken by the EC in connection with Microsoft's products. The EC's
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1 regulatory actions, including the EC's published report of its findings, are a matter of public
2 record, which speaks for itself. Microsoft refers to the public record and denies any
3 characterization inconsistent with that record. Microsoft states that the remaining allegations
4 in Paragraph 46 are directed to the Individual Defendants, and not Microsoft, and that no
5 response is therefore required. To the extent not expressly admitted, Microsoft denies the
6 allegations in Paragraph 46.

7 47. Microsoft states that the allegations in Paragraph 47 purport to describe
8 regulatory actions taken by the EC in connection with Microsoft's Internet Explorer and the
9 Windows Operating System. The EC's regulatory actions, including the EC's published report
10 of its findings, are a matter of public record, which speaks for itself. Microsoft refers to the
11 public record and denies any characterization inconsistent with that record. To the extent not
12 expressly admitted, Microsoft denies the allegations in Paragraph 47.

13 48. Microsoft states that the allegations in Paragraph 48 reference the contents of a
14 December 16, 2009 press release that speaks for itself. Microsoft refers to that document for
15 its contents and denies any characterizations inconsistent with its terms.

16 49. Microsoft denies the allegations of Paragraph 49.

17 50. Microsoft states that the allegations in Paragraph 50 reference the contents of a
18 regulatory filing that is a matter of public record. Microsoft refers to that document for its
19 contents and denies any characterizations inconsistent with its terms.

20 51. Microsoft states that the allegations in Paragraph 51 reference the contents of a
21 regulatory filing that is a matter of public record, which speaks for itself. Microsoft refers to
22 that document for its contents and denies any characterizations inconsistent with its terms.

23 52. Microsoft denies the allegations in Paragraph 52.

24 53. Microsoft states that the allegations in Paragraph 53 purport to describe certain
25 regulatory actions taken by the EC in connection with Internet Explorer and the Windows
26 Operating System. The EC's regulatory actions, including the EC's published report of its
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1 findings, are a matter of public record, which speaks for itself. Microsoft refers to the public
2 record, and denies any characterization inconsistent with that record. Microsoft further states
3 that the allegations in Paragraph 53 purport to describe documents exchanged between
4 Microsoft and EU antitrust chief, Joaquin Almunia, which speak for themselves. Microsoft
5 refers to those documents for their contents and denies any characterization inconsistent with
6 their terms. To the extent not expressly admitted, Microsoft denies the allegations in
7 Paragraph 53.

8 54. Microsoft states that the allegations in Paragraph 54 purport to describe
9 regulatory actions taken by the EC in connection with Internet Explorer and the Windows
10 Operating System. The EC's regulatory actions, including the EC's published report of its
11 findings, are a matter of public record, which speaks for itself. Microsoft refers to the public
12 record and denies any characterization inconsistent with that record.

13 55. Microsoft states that the allegations in Paragraph 55 reference the contents of a
14 March 6, 2013 press release that speaks for itself. Microsoft refers to that document for its
15 contents and denies any characterizations inconsistent with its terms. Microsoft states that it
16 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in
17 the last sentence of Paragraph 55.

18 56. Microsoft states that Paragraph 56 references a *New York Times* article, dated
19 March 6, 2013 that speaks for itself. Microsoft refers to that document for its contents and
20 denies any characterizations inconsistent with its terms.

21 57. Microsoft states that Paragraph 57 references an *Computerworld* article, dated
22 March 6, 2013 that speaks for itself. Microsoft refers to that document for its contents and
23 denies any characterizations inconsistent with its terms.

24 58. Microsoft states that the allegations in Paragraph 58 reference the contents of a
25 press release and a *New York Times* article that speak for themselves. Microsoft refers to those
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1 documents for their contents and denies any characterizations inconsistent with their terms. To
2 the extent not expressly admitted, Microsoft denies the allegations in Paragraph 58.

3 59. Microsoft denies the allegations in Paragraph 59.

4 60. Microsoft states that the allegations of Paragraph 60 contain Plaintiffs'
5 characterization of their complaint as well as legal contentions and conclusions to which no
6 response is required.

7 61. Microsoft states that the allegations in Paragraph 61 contain legal contentions
8 and conclusions to which no response is required.

9 62. Microsoft states that the allegations in Paragraph 62 reference a letter dated
10 March 22, 2013 that speaks for itself. Microsoft refers to that document for its contents and
11 denies any characterizations inconsistent with its terms.

12 63. Microsoft states that the allegations in Paragraph 63 reference a letter dated
13 January 28, 2014 that speaks for itself. Microsoft refers to that document for its contents and
14 denies any characterizations inconsistent with its terms.

15 64. Microsoft states that the allegations in Paragraph 64 reference a document,
16 entitled "Resolution of the Board of Directors Adopting the Conclusions and
17 Recommendations of the Demand Review Committee," that speaks for itself. Microsoft refers
18 to that document for its contents and denies any characterizations inconsistent with its terms.

19 65. Microsoft states that the allegations in Paragraph 65 reference documents that
20 speak for themselves. Microsoft refers to those documents for their contents and denies any
21 characterizations inconsistent with their terms. Microsoft further states that the allegations in
22 Paragraph 65 contain legal contentions and conclusions to which no response is required. To
23 the extent the remaining allegations in Paragraph 65 require a response, they are denied.

24 66. Microsoft states that the allegations in Paragraph 66 reference documents that
25 speak for themselves. Microsoft refers to those documents for their contents and denies any
26 characterizations inconsistent with their terms.

1 67. Microsoft states that the allegations in Paragraph 67 reference the contents of a
2 March 26, 2014 letter that speaks for itself. Microsoft refers to that document for its contents
3 and denies any characterizations inconsistent with its terms.

4 68. Microsoft states that the allegations in Paragraph 68 reference the contents of a
5 March 26, 2014 letter that speaks for itself. Microsoft refers to that document for its contents
6 and denies any characterizations inconsistent with its terms. Microsoft admits that the DRC
7 never interviewed Almunia or any member of the European Commission. Microsoft further
8 states that the remaining allegations in Paragraph 68 contain legal contentions as to which no
9 response is required. To the extent the remaining allegations of Paragraph 68 require a further
10 response, they are denied.

11 69. Microsoft states that the allegations in Paragraph 69 contain legal contentions
12 and conclusions to which no response is required. To the extent that a response is required,
13 Microsoft denies the allegations in Paragraph 69.

14 70. Microsoft states that the allegations in Paragraph 70 reference a letter dated
15 March 21, 2013 that speaks for itself. Microsoft refers to that document for its contents and
16 denies any characterization inconsistent with its terms.

17 71. Microsoft states that the allegations in Paragraph 71 reference a letter dated
18 January 28, 2014 that speaks for itself. Microsoft refers to that document for its contents and
19 denies any characterizations inconsistent with its terms.

20 72. Microsoft states that the allegations in Paragraph 72 reference a document,
21 entitled "Resolution of the Board of Directors Adopting the Conclusions and
22 Recommendations of the Demand Review Committee," that speaks for itself. Microsoft refers
23 to that document for its contents and denies any characterizations inconsistent with its terms.

24 73. Microsoft states that the allegations in Paragraph 73 reference documents that
25 speak for themselves. Microsoft refers to those documents for their contents and denies any
26 characterizations inconsistent with their terms. Microsoft further states that the allegations in
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1 Paragraph 73 contain legal contentions and conclusions to which no response is required. To
2 the extent the remaining allegations in Paragraph 73 require a response, they are denied.

3 74. Microsoft states that the allegations in Paragraph 74 reference documents that
4 speak for themselves. Microsoft refers to those documents for their contents and denies any
5 characterization inconsistent with their terms. To the extent the remaining allegations in
6 Paragraph 74 require a response, they are denied.

7 75. Microsoft states that the allegations in Paragraph 75 contain legal contentions
8 and conclusions to which no response is required. To the extent the allegations in
9 Paragraph 75 require a response, they are denied.

10 76. Microsoft states that the allegations in Paragraph 76 contain legal contentions
11 and conclusions to which no response is required. To the extent the allegations in
12 Paragraph 76 require a response, they are denied.

13 77. Microsoft states that the allegations in Paragraph 77 contain legal contentions
14 and conclusions to which no response is required. To the extent the allegations in
15 Paragraph 77 require a response, they are denied.

16 78. Microsoft incorporates by reference and restates each and every statement set
17 forth above, as if fully set forth herein.

18 79. Microsoft states that the allegations in Paragraph 79 are directed to the
19 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
20 further states that the allegations in Paragraph 79 contain legal contentions and conclusions to
21 which no response is required.

22 80. Microsoft states that the allegations in Paragraph 80 are directed to the
23 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
24 further states that the allegations in Paragraph 80 contain legal contentions and conclusions to
25 which no response is required.

1 81. Microsoft states that the allegations in Paragraph 81 are directed to the
2 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
3 further states that the allegations in Paragraph 81 contain legal contentions and conclusions to
4 which no response is required.

5 82. Microsoft incorporates by reference and restates each and every statement set
6 forth above, as if fully set forth herein.

7 83. Microsoft states that the allegations in Paragraph 83 are directed to the
8 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
9 further states that the allegations in Paragraph 83 contain legal contentions and conclusions to
10 which no response is required.

11 84. Microsoft states that the allegations in Paragraph 84 are directed to the
12 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
13 further states that the allegations in Paragraph 84 contain legal contentions and conclusions to
14 which no response is required.

15 85. Microsoft states that the allegations in Paragraph 85 are directed to the
16 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
17 further states that the allegations in Paragraph 85 contain legal contentions and conclusions to
18 which no response is required.

19 86. Microsoft incorporates by reference and restates each and every statement set
20 forth above, as if fully set forth herein.

21 87. Microsoft states that the allegations in Paragraph 87 are directed to the
22 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
23 further states that the allegations in Paragraph 87 contain legal contentions and conclusions to
24 which no response is required.

25 88. Microsoft states that the allegations in Paragraph 88 are directed to the
26 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
27

1 further states that the allegations in Paragraph 88 contain legal contentions and conclusions to
2 which no response is required.

3 89. Microsoft states that the allegations in Paragraph 89 are directed to the
4 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
5 further states that the allegations in Paragraph 89 contain legal contentions and conclusions to
6 which no response is required.

7 90. Microsoft states that the allegations in Paragraph 90 are directed to the
8 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
9 further states that the allegations in Paragraph 90 contain legal contentions and conclusions to
10 which no response is required.

11 91. Microsoft states that the allegations in Paragraph 91 are directed to the
12 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
13 further states that the allegations in Paragraph 91 contain legal contentions and conclusions to
14 which no response is required.

15 92. Microsoft states that the allegations in Paragraph 92 are directed to the
16 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
17 further states that the allegations in Paragraph 92 contain legal contentions and conclusions to
18 which no response is required.

19 93. Microsoft incorporates by reference and restates each and every statement set
20 forth above, as if fully set forth herein.

21 94. Microsoft states that the allegations in Paragraph 94 are directed to the
22 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
23 further states that the allegations in Paragraph 94 contain legal contentions and conclusions to
24 which no response is required.

25 95. Microsoft states that the allegations in Paragraph 95 are directed to the
26 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
27

1 further states that the allegations in Paragraph 95 contain legal contentions and conclusions to
2 which no response is required.

3 96. Microsoft incorporates by reference and restates each and every statement set
4 forth above, as if fully set forth herein.

5 97. Microsoft states that the allegations in Paragraph 97 are directed to the
6 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
7 further states that the allegations in Paragraph 97 contain legal contentions and conclusions to
8 which no response is required.

9 98. Microsoft states that the allegations in Paragraph 98 are directed to the
10 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
11 further states that the allegations in Paragraph 98 contain legal contentions and conclusions to
12 which no response is required.

13 99. Microsoft states that the allegations in Paragraph 99 are directed to the
14 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
15 further states that the allegations in Paragraph 99 contain legal contentions and conclusions to
16 which no response is required.

17 100. Microsoft states that the allegations in Paragraph 100 are directed to the
18 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
19 further states that the allegations in Paragraph 100 contain legal contentions and conclusions to
20 which no response is required.

21 101. Microsoft incorporates by reference and restates each and every statement set
22 forth above, as if fully set forth herein.

23 102. Microsoft states that the allegations in Paragraph 102 are directed to the
24 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
25 further states that the allegations in Paragraph 102 contain legal contentions and conclusions to
26 which no response is required.

1 103. Microsoft states that the allegations in Paragraph 103 are directed to the
2 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
3 further states that the allegations in Paragraph 103 contain legal contentions and conclusions to
4 which no response is required.

5 104. Microsoft states that the allegations in Paragraph 104 are directed to the
6 Individual Defendants, not Microsoft, and that no response is therefore required. Microsoft
7 further states that the allegations in Paragraph 104 contain legal contentions and conclusions to
8 which no response is required.

9 **AFFIRMATIVE DEFENSES**

10 Microsoft alleges the following defenses to Complaint, none of which constitutes an
11 admission or concurrence in the allegations in the Complaint. In pleading these defenses,
12 Microsoft does not assume the burden to establish any fact or proposition necessary to that
13 defense where that burden is properly imposed on Plaintiffs. Microsoft may have further and
14 additional defenses to the claims in the Complaint. Microsoft reserves the right to amend
15 and/or supplement its Answer, including without limitation the right to assert at the
16 appropriate time additional affirmative defenses, counterclaims, cross-claims, and third-party
17 claims not asserted herein of which it becomes aware through discovery or other investigation.

18 **FIRST DEFENSE**

19 Plaintiffs have failed to make an adequate pre-suit demand to the Board of Directors
20 for the claims alleged herein.

21 **SECOND DEFENSE**

22 Plaintiffs lack the standing, ability or right to pursue these claims on Microsoft's
23 behalf.

24 **THIRD DEFENSE**

25 Plaintiffs' claims are barred by the business judgment rule.
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1 **FOURTH DEFENSE**

2 Plaintiffs' claims are not in the best interests of Microsoft or its shareholders.

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4 **PRAYER FOR RELIEF**

5 WHEREFORE, Microsoft prays for judgment as follows:

- 6 1. Dismissing the Complaint with prejudice; and
- 7
- 8 2. For such other and further relief as this Court deems just and proper, including, but
- 9 not limited to, costs, reasonable expenses and attorneys' fees incurred by Microsoft in
- 10 defending this action, whether pursuant to RCW 23B.07.400(4) or any other applicable statute
- 11 or law, plus interest on any sums awarded thereunder.

12 Dated: January 9, 2015

ORRICK, HERRINGTON & SUTCLIFFE LLP

13
14 By:

s/ Daniel J. Dunne

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21 *Attorneys for Nominal Defendant Microsoft*
22 *Corporation*

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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on January 9, 2015, I electronically filed the foregoing document
5 with the Clerk of the Court using the CM/ECF system which will send notification of the filing
6 to all counsel of record.

7 DATED: January 9, 2015

8 **ORRICK, HERRINGTON & SUTCLIFFE LLP**

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